

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

J. Mark Hayes, II, Circuit Court Judge

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S.C. SUPREME COURT

NATHANIEL GREEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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Appellate Defender

South Carolina Commission on Indigent
Defense
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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 NATHANIEL GREEN,)
)
 DEFENDANT.)
 _____)

2004-GS-42-4993

TRANSCRIPT OF RECORD

FEBRUARY 15, 2005
SPARTANBURG, SOUTH CAROLINA

BEFORE:

THE HONORABLE J. DERHAM COLE

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

SARA GANSS, ASSISTANT SOLICITOR
SUSAN PORTER, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

TAM BOGGS, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

CHRIS RAYMOND

DIRECT BY MS. GANSS

8

KEITH PEARSON

DIRECT BY MS. GANSS

20

CROSS BY MR. BOGGS

30

REDIRECT BY MS. GANSS

31

MARY E. VAUGHN

DIRECT BY MS. GANSS

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CROSS BY MR. BOGGS

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SENTENCE OF THE COURT

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EXHIBITS

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1 THE COURT: ALL RIGHT. THIS IS IN THE MATTER OF THE
2 STATE VERSUS NATHANIEL GREEN. MR. BOGGS, YOU REPRESENT MR.
3 GREEN?

4 MR. BOGGS: I DO, YOUR HONOR.

5 THE COURT: I HAVE BEFORE ME THIS INDICTMENT, 2004-
6 4993. THE INDICTMENT CHARGES MR. GREEN WITH TRAFFICKING IN
7 CRACK COCAINE. YOU ARE NATHANIEL GREEN?

8 MR. GREEN: YES, SIR.

9 THE COURT: MR. GREEN, THIS INDICTMENT CHARGES THAT YOU
10 DID ON OR ABOUT JUNE THE 30TH OF 2004 KNOWINGLY SELL,
11 MANUFACTURE, DELIVER, PURCHASE, OR BRING INTO THIS STATE OR
12 THAT YOU DID PROVIDE FINANCIAL ASSISTANCE OR YOU DID
13 OTHERWISE AID, ABET, ATTEMPT, OR CONSPIRE TO SELL,
14 MANUFACTURE, DELIVER, PURCHASE, OR BRING INTO THIS STATE OR
15 THAT YOU DID KNOWINGLY ACTUALLY OR CONSTRUCTIVELY POSSESS OR
16 YOU DID KNOWINGLY ATTEMPT TO ACTUALLY OR CONSTRUCTIVELY
17 POSSESS MORE THAN TEN GRAMS OF CRACK COCAINE, A VIOLATION OF
18 SECTION 44-53-375.

19 TRAFFICKING IN CRACK COCAINE WHEREIN THE AMOUNT ALLEGED
20 TO HAVE BEEN TRAFFICKED IN IS MORE THAN TEN GRAMS, BUT LESS
21 THAN TWENTY-EIGHT GRAMS CARRIES A MAXIMUM -- CARRIES A
22 SENTENCE FOR A FIRST OFFENSE OF A TERM OF NOT LESS THAN
23 THREE YEARS IN JAIL AND NOT MORE THAN TEN YEARS IN JAIL AND
24 A FINE OF TWENTY-FIVE THOUSAND DOLLARS.

25 FOR A SECOND OFFENSE IT CARRIES A PUNISHMENT OF NOT

1 LESS THAN FIVE YEARS IN JAIL, NOR MORE THAN THIRTY YEARS IN
2 JAIL, AND A FINE OF FIFTY THOUSAND DOLLARS.

3 AND FOR A THIRD OR SUBSEQUENT OFFENSE IT CARRIES A
4 MANDATORY MINIMUM SENTENCE OF NOT LESS THAN TWENTY-FIVE
5 YEARS, AND NOT MORE THAN THIRTY YEARS IN JAIL, AND A FINE OF
6 FIFTY THOUSAND DOLLARS. IS THE AMOUNT THAT THE STATE
7 ALLEGES THE DEFENDANT DID TRAFFIC IN LESS THAN TWENTY-EIGHT
8 GRAMS?

9 MS. GANSS: YES, YOUR HONOR. IT'S TWENTY-FIVE POINT
10 TWO ONE GRAMS.

11 THE COURT: OKAY. ALL RIGHT. MR. GREEN, YOU
12 UNDERSTAND WHAT YOU'RE CHARGED WITH?

13 MR. GREEN: YES, SIR.

14 THE COURT: YOU UNDERSTAND THE POTENTIAL SENTENCES THAT
15 MIGHT BE IMPOSED DEPENDING UPON WHAT OFFENSE IT ACTUALLY IS?

16 MR. GREEN: YES, SIR.

17 THE COURT: AND YOU'VE DISCUSSED THAT WITH MR. BOGGS?

18 MR. GREEN: YES, SIR.

19 THE COURT: ALL RIGHT. MR. BOGGS, DOES YOUR CLIENT
20 WISH TO ENTER A PLEA OF GUILTY OR NOT GUILTY TO THE CHARGE
21 OF TRAFFICKING IN CRACK COCAINE?

22 MR. BOGGS: NOT GUILTY, YOUR HONOR.

23 THE COURT: HE WISHES TO ENTER A PLEA OF GUILTY TO
24 TRAFFICKING IN CRACK COCAINE?

25 MR. BOGGS: NOT GUILTY.

1 THE COURT: NOT GUILTY?

2 MR. BOGGS: YES, SIR.

3 THE COURT: OKAY. AND DOES HE WISH TO HAVE A JURY
4 TRIAL OR DOES HE WISH TO HAVE A BENCH TRIAL?

5 MR. BOGGS: BENCH TRIAL, YOUR HONOR.

6 THE COURT: DOES THE STATE CONSENT PURSUANT TO RULE
7 14 B TO HAVE THE DEFENDANT TRIED BY THE COURT IN LIEU OF
8 BEING TRIED BY A JURY?

9 MS. GANSS: IT DOES, YOUR HONOR.

10 THE COURT: ALL RIGHT. MR. BOGGS, HAVE YOU EXPLAINED
11 TO YOUR CLIENT HIS RIGHT TO HAVE A JURY TRIAL?

12 MR. BOGGS: I HAVE, YOUR HONOR.

13 THE COURT: AND, MR. GREEN, DO YOU UNDERSTAND FULLY YOU
14 DO HAVE A RIGHT FOR A JURY TO BE SELECTED FOR THE PURPOSE OF
15 DECIDING THE VERDICT IN THIS CASE?

16 MR. GREEN: YES, SIR.

17 THE COURT: HAVE YOU DISCUSSED IT FULLY WITH YOUR
18 LAWYER, YOUR RIGHT TO HAVE A JURY TRIAL?

19 MR. GREEN: YES, SIR.

20 THE COURT: YOU UNDERSTAND HOW A JURY TRIAL IS
21 ACCOMPLISHED?

22 MR. GREEN: YES, SIR.

23 THE COURT: YOU UNDERSTAND YOU HELP PICK THE JURY?

24 MR. GREEN: YES, SIR.

25 THE COURT: YOU UNDERSTAND TWELVE ARE CHOSEN?

1 MR. GREEN: YES, SIR.

2 THE COURT: YOU UNDERSTAND THAT BEFORE A JURY COULD
3 FIND YOU GUILTY OF THIS CHARGE ALL TWELVE JURORS WOULD HAVE
4 TO BE CONVINCED OF YOUR GUILT BEYOND A REASONABLE DOUBT?

5 MR. GREEN: YES, SIR.

6 THE COURT: AND UNDERSTANDING YOUR RIGHT TO HAVE A JURY
7 TRIAL DO YOU WISH TO HAVE A JURY TRIAL OR WAIVE THAT RIGHT?

8 MR. GREEN: I'D LIKE TO HAVE A BENCH TRIAL.

9 THE COURT: YOU WISH FOR ME TO DECIDE THE CASE?

10 MR. GREEN: YES, SIR.

11 THE COURT: YOU DO NOT WISH TO HAVE A JURY DECIDE IT?

12 MR. GREEN: NO, SIR.

13 THE COURT: OKAY. YOU MAY BE SEATED. ALL RIGHT,
14 SOLICITOR.

15 MS. GANSS: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
16 COURT? WE'RE HERE TODAY BECAUSE ON JUNE 30TH, 2004 THE
17 DEFENDANT, NATHANIEL GREEN, DID SELL NEARLY AN OUNCE OF
18 CRACK COCAINE TO AN OPERATIVE WORKING FOR THE SPARTANBURG
19 COUNTY SHERIFF'S OFFICE. THAT OPERATIVE IS HERE TO TESTIFY
20 TODAY AS IS THE INVESTIGATOR WITH THE SHERIFF'S OFFICE, WHO
21 ORGANIZED THIS CONTROLLED BUY. WE'RE PREPARED TO MOVE
22 FORWARD, YOUR HONOR.

23 THE COURT: OKAY. CALL YOUR FIRST WITNESS.

24 MS. GANSS: THE STATE CALLS INVESTIGATOR CHRIS RAYMOND.

25 CHRIS RAYMOND, BEING DULY

1 SWORN TESTIFIED AS FOLLOWS:

2 **DIRECT EXAMINATION BY MS. GANSS:**

3 Q. PLEASE STATE YOUR NAME FOR THE RECORD.

4 A. IT'S CHRIS RAYMOND.

5 Q. AND WHAT'S YOUR OCCUPATION?

6 A. I WORK IN THE NARCOTICS UNIT FOR THE SPARTANBURG COUNTY
7 SHERIFF'S OFFICE.

8 Q. HOW MANY YEARS HAVE YOU WORKED FOR THE SPARTANBURG
9 COUNTY SHERIFF'S OFFICE?

10 A. ABOUT FIVE AND A HALF.

11 Q. AND YOUR EDUCATION AND TRAINING, COULD YOU PLEASE SHARE
12 THAT WITH THE COURT?

13 A. I HAVE A BACHELOR'S DEGREE IN POLITICAL SCIENCE WITH A
14 MINOR IN HISTORY. AND I GRADUATED FROM THE SOUTH CAROLINA
15 CRIMINAL JUSTICE ACADEMY.

16 Q. AND WHAT HAVE YOUR ASSIGNMENTS OVER THE YEARS BEEN?

17 A. I STARTED OFF WORKING IN UNIFORM PATROL FOR A LITTLE
18 OVER TWO YEARS AND HAVE BEEN IN THE NARCOTICS UNIT EVER
19 SINCE.

20 Q. AS A NARC CAN YOU EMPLOY CITIZENS OF SOUTH CAROLINA TO
21 BUY DRUGS ON BEHALF OF THE SHERIFF'S OFFICE?

22 A. YES.

23 Q. AND HOW DO YOU MAKE THE DETERMINATION IF YOU WANT A
24 PARTICULAR PERSON TO BECOME A CONFIDENTIAL RELIABLE
25 INFORMANT OR OPERATIVE?

CHRIS RAYMOND - DIRECT EXAMINATION BY MS. GANSS

9

1 A. IF SOMEONE WOULD CONTACT US WITH THE INFORMATION, WE
2 WOULD VERIFY THAT THEIR INFORMATION IS CORRECT AND SEE IF
3 THEY'D BE A RELIABLE PERSON TO WORK WITH. AT THAT POINT
4 WE'D RUN THEIR CRIMINAL HISTORY AND THEN DO INFORMANT
5 PAPERWORK AND SIGN THEM UP AS AN INFORMANT.

6 Q. DO YOU KNOW KEITH PEARSON?

7 A. YES.

8 Q. HOW DID YOU MEET KEITH PEARSON?

9 A. THROUGH THE -- OUR NARCOTICS LIEUTENANT AT THAT TIME,
10 WHO WAS KEN HANCOCK.

11 Q. OKAY. WHEN THE IDEA OF HAVING KEITH WORK FOR THE
12 SPARTANBURG COUNTY SHERIFF'S OFFICE CAME ABOUT, WHEN THAT
13 IDEA CAME ABOUT, WHAT DID YOU DO BEFORE YOU AGREED TO ALLOW
14 KEITH PEARSON TO WORK FOR YOU?

15 A. I SPOKE WITH LIEUTENANT HANCOCK ABOUT PAST DEALINGS
16 WITH KEITH. AND HE INFORMED ME THAT HE HAD BEEN RELIABLE, A
17 RELIABLE INFORMANT. AND THEN I DID AN INTERVIEW WITH KEITH
18 AND KIND OF VERIFIED SOME OF THE INFORMATION HE HAD TOLD ME.

19 Q. WHAT WAS THE SPECIFIC WORKING AGREEMENT BETWEEN THE
20 SHERIFF'S OFFICE AND KEITH PEARSON FOR THIS INCIDENT THAT
21 WE'RE GOING TO DISCUSS TODAY, JUNE 30TH, 2004?

22 A. HE WAS TO BE PAID FOR THE SERVICES HE PROVIDED FOR US.

23 Q. SO HE WASN'T WORKING OFF ANY CHARGES, IT WAS JUST FOR
24 MONEY?

25 A. YES.

1 Q. DID HE MAKE -- HAD KEITH PEARSON MADE ANY PRIOR
2 CONTROLLED BUYS FOR THE SHERIFF'S OFFICE?

3 A. YES, HE DID, FOR KEN HANCOCK PRIOR TO WORKING WITH ME.

4 Q. AND APPROXIMATELY HOW MANY OF THOSE WERE YOU AWARE OF?

5 A. ABOUT A DOZEN.

6 Q. CAN YOU TELL THE COURT WHAT A CONTROLLED BUY IS?

7 A. BASICALLY WE'LL TAKE THE INFORMANT, WE'LL SEARCH HIM.
8 IF HE'S DRIVING A VEHICLE, WE'LL SEARCH THE VEHICLE PRIOR TO
9 A BUY. WE'LL EQUIP HIM WITH A DEVICE WHERE WE CAN HEAR THE
10 TRANSACTION TAKING PLACE. AND IN THIS CASE WE USED A VIDEO
11 DEVICE AS WELL SO WE COULD SEE THE TRANSACTION TAKING PLACE.

12 WE'LL GIVE THE INFORMANT THE MONEY. BEFORE HE GETS THE
13 MONEY HE HAS TO SIGN FOR IT. THERE'S PHOTO COPIES MADE OF
14 THE MONEY. AND THEN HE GOES TO THE SCENE WHEREVER THE BUY
15 IS GOING TO TAKE PLACE AND ACTUALLY MAKES THE TRANSACTION.

16 AFTER THE TRANSACTION TAKES PLACE WE MEET THE INFORMANT
17 AGAIN, COLLECT WHATEVER WAS PURCHASED, SEARCH HIM AND THE
18 VEHICLE AGAIN, AND COLLECT ALL THE TAPES, WHETHER IT'S
19 AUDIO, OR VIDEO, OR BOTH.

20 Q. ALL RIGHT. AND NOW WITH REGARD TO THIS PARTICULAR DAY,
21 JUNE 30TH, 2004, WERE YOU WORKING THAT DAY?

22 A. YES.

23 Q. AND WHAT WAS YOUR ASSIGNMENT ON THAT PARTICULAR DAY?

24 A. I WAS IN CHARGE -- I WAS THE CASE AGENT ON A BUY THAT
25 WAS GOING TO TAKE PLACE WITH NATHANIEL GREEN.

1 Q. WHO WAS WORKING WITH YOU?

2 A. KEITH PEARSON, SERGEANT DOUG HARWELL FROM THE CITY
3 POLICE, AND SEVERAL OTHER INVESTIGATORS WITH THE SHERIFF'S
4 OFFICE.

5 Q. AND WHERE DID Y'ALL MEET THAT DAY?

6 A. BEHIND THE SPARTANBURG AUDITORIUM.

7 Q. ABOUT WHAT TIME WAS THAT, DO YOU REMEMBER?

8 A. IT WAS BEFORE 9:00, JUST ABOUT DUSK AT THAT POINT.

9 Q. NINE PM?

10 A. YES.

11 Q. WHO WAS THE TARGET FOR THAT PARTICULAR BUY?

12 A. IT WAS NATHANIEL GREEN.

13 Q. AND JUST TELL THE COURT WHAT YOU DID WHEN Y'ALL MET AT
14 THE MEMORIAL AUDITORIUM. WHAT HAPPENED?

15 A. WE MET WITH KEITH BEHIND THE AUDITORIUM. THE FIRST
16 THING WE DID WAS SEARCH HIS VEHICLE TO MAKE SURE THERE WAS
17 NO CONTRABAND, DRUGS, OR ANYTHING IN THE VEHICLE. WE
18 SEARCHED KEITH'S PERSON. I MADE SURE THERE WAS NO
19 CONTRABAND IN HIS POCKETS OR ANYWHERE ON HIS PERSON.

20 WE GOT ALL THE DEVICES HOOKED UP, THE AUDIO AND THE
21 VIDEO DEVICES HOOKED UP, HAD HIM SIGN FOR THE MONEY, AND
22 BASICALLY SENT OVER TO MEET WITH OUR TARGET THAT DAY. AND
23 WE WERE GOING TO PURCHASE ONE OUNCE OF CRACK COCAINE FOR, I
24 BELIEVE IT WAS EIGHT HUNDRED DOLLARS.

25 Q. SO IS THAT HOW MUCH MONEY YOU GAVE KEITH PEARSON?

1 A. YES.

2 Q. AND YOU SAID YOU SEARCHED THE CAR FOR CONTRABAND. DID
3 YOU ALSO SEARCH THE CAR AND KEITH PEARSON FOR MONEY TO SEE
4 IF HE HAD ANYTHING ELSE BESIDES THE EIGHT HUNDRED DOLLARS?

5 A. YES.

6 Q. AND DID HE HAVE ANYTHING ELSE BESIDES THE EIGHT HUNDRED
7 DOLLARS?

8 A. I BELIEVE HE MIGHT HAVE HAD A FEW DOLLARS ON HIM, WHICH
9 WE HELD UNTIL THE BUY WAS COMPLETED JUST SO IT DIDN'T GET
10 MIXED UP WITH OUR MONEY.

11 Q. OKAY. DID HE HAVE ANY OTHER CONTRABAND ON HIS PERSON
12 OR IN THE CAR ---

13 A. NO.

14 Q. --- WHEN YOU SEARCHED HIM? SO AFTER YOU CHECKED KEITH
15 PEARSON OUT DID YOU FOLLOW KEITH PEARSON TO THE CARWASH?

16 A. YES.

17 Q. AND THAT CARWASH, WHERE WAS IT LOCATED?

18 A. I BELIEVE THE PHYSICAL ADDRESS IS 2045 SOUTHPORT ROAD
19 IN SPARTANBURG COUNTY.

20 Q. THANK YOU. DID THE VEHICLE EVER LEAVE YOUR LINE OF
21 SIGHT, KEITH PEARSON'S VEHICLE, THAT ---

22 A. NO.

23 Q. --- HE WAS DRIVING IN? DID KEITH DRIVE STRAIGHT FROM
24 THE AUDITORIUM WHERE HE MET TO THAT CARWASH OR DID HE MAKE
25 ANY STOPS ALONG THE WAY?

1 A. HE WENT STRAIGHT THERE.

2 Q. WERE YOU ABLE TO HEAR WHAT WAS GOING ON IN THE CAR
3 WHILE KEITH PEARSON WAS DRIVING IN THE CAR?

4 A. YES. HE WOULD ALWAYS TELL US WHERE HE WAS AT. HE WAS
5 PRETTY GOOD ABOUT THAT, TELLING US WHAT STREET HE WAS
6 PASSING, AND KEPT US PRETTY WELL INFORMED OF WHERE HE WAS
7 AT.

8 Q. SO WHAT HAPPENED WHEN KEITH PEARSON ARRIVED AT THE
9 CARWASH AT 2045 SOUTHPORT ROAD? WHAT DID YOU OBSERVE?

10 A. HE MET WITH NATHANIEL GREEN AND GOT INSIDE HIS VEHICLE.
11 IT WAS A WHITE TRUCK. AND WAS HANDED A BAGGY CONTAINING
12 WHAT APPEARED TO BE CRACK COCAINE AND THEN HANDED NATHANIEL
13 GREEN THE MONEY WHICH WE HAD GIVEN HIM PRIOR TO THE BUY.

14 Q. AND YOU WERE ABLE TO HEAR THIS TRANSACTION TAKE PLACE?

15 A. YES.

16 Q. ONCE THE DEAL WAS COMPLETED, WHAT HAPPENED NEXT?

17 A. KEITH LEFT THE SCENE. WE FOLLOWED HIM BACK TO THE
18 AUDITORIUM. WE RECOVERED THE DRUG EVIDENCE. I RECOVERED
19 THE DRUG EVIDENCE. WE SEARCHED HIM AGAIN, SEARCHED HIS
20 VEHICLE AGAIN AND GOT A DEBRIEFING WRITTEN -- BASICALLY GAVE
21 US A WRITTEN STATEMENT AS TO WHAT HAD HAPPENED. AND WE
22 RECOVERED ALL THE AUDIO AND VIDEO TAPES. AND BASICALLY THAT
23 WAS IT. I TOOK THE EVIDENCE BACK TO THE OFFICE, WEIGHED IT,
24 FIELD TESTED IT, AND PLACED IT INTO EVIDENCE.

25 Q. DID KEITH PEARSON GO STRAIGHT FROM THE CARWASH BACK TO

1 THE AUDITORIUM WHERE YOU MET AT THE BEGINNING OR DID HE
2 STOP ---

3 A. HE WENT STRAIGHT THERE.

4 Q. WAS HIS CAR EVER OUT OF YOUR LINE OF SIGHT?

5 A. NO.

6 Q. AND WHEN YOU SEARCHED HIM AGAIN AT THE AUDITORIUM WHERE
7 Y'ALL RETURNED YOU SEARCHED FOR WHAT NOW?

8 A. ANY TYPE OF EXTRA CONTRABAND THAT HE SHOULDN'T HAVE HAD
9 THAT HE DIDN'T TURN OVER TO US, ANY MONEY THAT HE SHOULDN'T
10 HAVE HAD, THOSE TWO THINGS.

11 Q. DID YOU FIND ANY?

12 A. NO.

13 Q. NOW THE DRUGS THAT YOU SAY YOU GOT FROM HIM, WHAT DID
14 YOU DO WITH THOSE DRUGS?

15 A. I TOOK THEM BACK TO THE SHERIFF'S OFFICE. I WEIGHED
16 THEM ON THE DIGITAL SCALE TO GET AN APPROXIMATE WEIGHT. I
17 FIELD TESTED A SMALL PORTION OF IT TO SEE IF IT FIELD TESTED
18 FOR CRACK COCAINE, WHICH IT DID. THEN I PLACED IT INTO A
19 BEST BAG AND DROPPED IT INTO THE EVIDENCE LOCKER AT THE
20 SHERIFF'S OFFICE.

21 Q. NOW WE'VE HEARD TALK ABOUT THE AUDIO. WE'VE HEARD THE
22 AUDIO. HE WAS WIRED FOR VIDEOTAPE, YES?

23 A. YES.

24 Q. KEITH PEARSON WAS?

25 A. YES.

1 Q. WHEN DID THIS VIDEOTAPING START? DID THE VIDEOTAPING
2 START -- WHEN DID IT START?

3 A. BASICALLY AS SOON AS WE MET WITH HIM WE GOT IT SET UP,
4 SERGEANT HARWELL DID. AND PRIOR TO HIM LEAVING THE
5 AUDITORIUM THE VIDEOTAPE HAD STARTED.

6 Q. OKAY. I'M GOING TO HAND YOU NOW WHAT'S BEEN MARKED
7 STATE'S EXHIBIT NUMBER 1. DO YOU RECOGNIZE IT?

8 A. YES.

9 Q. HOW DO YOU RECOGNIZE IT?

10 A. THIS IS MY HANDWRITING ON HERE. IT'S THE CASE NUMBER I
11 WROTE ON HERE. AND THIS IS THE TAPE I PLACED INTO EVIDENCE
12 FROM THAT NIGHT.

13 Q. OKAY. HAVE YOU WATCHED THIS VIDEO?

14 A. YES.

15 Q. IS IT A DEPICTION OF THE INCIDENT THAT OCCURRED ON JUNE
16 30TH, 2004?

17 A. YES.

18 MS. GANSS: AT THIS TIME, YOUR HONOR, THE STATE MOVES
19 TO ENTER STATE'S EXHIBIT 1 INTO EVIDENCE.

20 THE COURT: ANY OBJECTION?

21 MR. BOGGS: NO OBJECTION.

22 THE COURT: IT'S ADMITTED.

23 MS. GANSS: YOUR HONOR, AT THIS TIME WE'D LIKE TO
24 PUBLISH IT AS WELL.

25 THE COURT: LET ME LOOK AT THE TAPE AND LISTEN TO ANY

1 TAPE THAT YOU OFFER AFTER WE COMPLETE THE TESTIMONY.

2 MS. GANSS: OKAY. THANK YOU, YOUR HONOR.

3 Q. AS A NARC DO YOU OCCASIONALLY USE PHOTOGRAPHIC LINEUPS
4 TO IDENTIFY SUSPECTS?

5 A. YES.

6 Q. AND HOW DO YOU MAKE A PHOTOGRAPHIC LINEUP?

7 A. THERE'S A COMPUTER PROGRAM AT THE SHERIFF'S OFFICE
8 WHERE YOU HAVE YOUR SUSPECT AND THEN FIVE OTHER PEOPLE WHO
9 HAVE SIMILAR PHYSICAL CHARACTERISTICS. AND YOU PUT A SIX
10 PICTURE PHOTO LINEUP TOGETHER AND SHOW IT TO WHOEVER YOU
11 NEED TO SHOW IT TO AFTER THAT.

12 Q. DID YOU MAKE A PHOTOGRAPHIC LINEUP IN THE CASE OF
13 NATHANIEL GREEN?

14 A. YES.

15 Q. AND WERE THE PERSONS IN THE PHOTOGRAPH ALL SIMILAR IN
16 PHYSICAL DESCRIPTIONS?

17 A. YES.

18 Q. DID YOU SHOW THIS PHOTOGRAPHIC LINEUP TO KEITH PEARSON,
19 ---

20 A. YES.

21 Q. --- THE OPERATIVE? OKAY. WHERE DID YOU SHOW HIM THE
22 PHOTOGRAPHIC LINEUP?

23 A. IT WAS AT THE SPARTANBURG AUDITORIUM. THAT'S WHERE WE
24 USUALLY MEET.

25 Q. WAS THIS RIGHT AFTER HE HAD DONE THE BUY?

1 A. I BELIEVE IT WAS THE DAY AFTER.

2 Q. OKAY. HOW WAS -- HOW DID YOU DISPLAY THE PHOTOGRAPHIC
3 LINEUP TO HIM?

4 A. BASICALLY I WOULD SHOW IT TO HIM AND SAY, CIRCLE THE
5 PERSON WHO YOU MADE THE PURCHASE FROM LAST NIGHT.

6 Q. LET ME JUST BACKTRACK HERE IF I MAY AND SHOW YOU WHAT'S
7 BEEN MARKED STATE'S EXHIBIT NUMBER 2. DO YOU RECOGNIZE IT?

8 A. YES.

9 Q. WHAT IS IT?

10 A. IT'S THE PHOTO LINEUP I PREPARED ON JUNE 30TH.

11 Q. AND ARE THERE ANY MARKINGS? HOW DO YOU RECOGNIZE IT?
12 JUST ...

13 A. WELL, IT HAS THE DATE ON HERE. AND I REMEMBER PUTTING
14 THIS TOGETHER.

15 Q. OKAY. AND WHEN YOU SHOWED THIS TO KEITH PEARSON ---

16 MS. GANSS: MAY I HAVE ONE MOMENT, YOUR HONOR? THANK
17 YOU. THANK YOU, YOUR HONOR.

18 Q. COULD YOU PLEASE SHOW THE COURT HOW YOU SHOWED THIS
19 PHOTOGRAPHIC LINEUP TO MR. KEITH PEARSON, HOW YOU PRESENTED
20 IT TO HIM?

21 A. BASICALLY PUT IT DOWN ON WHATEVER SURFACE, LIKE A
22 CONSOLE IN THE CAR, I BELIEVE IT WAS, AND ASKED HIM IF HE
23 SAW THE PERSON THAT HE MADE THE BUY FROM LAST NIGHT, IF HE
24 DID TO GO AHEAD AND CIRCLE THAT PERSON.

25 Q. AND DID MR. PEARSON DO ANYTHING WHEN YOU SHOWED HIM

1 THAT ---

2 A. YES.

3 Q. --- PHOTOGRAPHIC LINEUP?

4 A. YES. HE IMMEDIATELY CIRCLED THIS PICTURE HERE.

5 Q. OKAY. THANK YOU. ALL RIGHT. NOW I'D LIKE TO SHOW YOU
6 WHAT'S BEEN MARKED STATE'S EXHIBIT NUMBER 6. DO YOU
7 RECOGNIZE IT?

8 A. YES.

9 Q. WHAT IS IT?

10 A. THIS IS THE CRACK COCAINE THAT WAS PURCHASED ON JUNE
11 30TH.

12 Q. AND HOW DO YOU RECOGNIZE IT? HOW DO YOU KNOW WHAT IT
13 IS?

14 A. PART OF THE BEST BAG HERE HAS THE DATE SEALED, MY NAME,
15 AND THEN WHERE I SIGNED IT.

16 Q. SO ARE THESE THE DRUGS YOU RECEIVED FROM KEITH PEARSON?

17 A. YES.

18 Q. AND WHEN YOU RECEIVED THESE DRUGS FROM KEITH PEARSON
19 DID YOU IMMEDIATELY SEAL THEM UP?

20 A. I FIELD TESTED AND WEIGHED THEM, THEN SEALED THEM UP.

21 Q. AND ALL THAT, YOU DID ACCORDING TO PROCEDURE?

22 A. YES.

23 Q. I'D LIKE TO SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
24 NUMBER 7. DO YOU RECOGNIZE THIS?

25 A. YES. THIS IS THE CHAIN OF CUSTODY.

1 Q. OKAY. IS YOUR SIGNATURE ON THAT?

2 A. YES.

3 Q. AND SO THIS TELLS THE COURT WHAT?

4 A. THE DRUG EVIDENCE CAME FROM KEITH PEARSON TO ME. AND
5 AT THAT POINT I PUT IT IN THE SHERIFF'S OFFICE EVIDENCE
6 LOCKER.

7 Q. OKAY. THANK YOU.

8 MS. GANSS: ONE MOMENT, YOUR HONOR. THE STATE HAS NO
9 MORE QUESTIONS AT THIS TIME FOR THIS WITNESS, YOUR HONOR.

10 THE COURT: ALL RIGHT. LET ME ASK YOU THIS. YOU ASKED
11 THAT EXHIBIT NUMBER 1 BE ADMITTED. WHAT ABOUT EXHIBITS 2,
12 6, AND 7?

13 MS. GANSS: I THINK ACTUALLY 2 I WAS GOING TO INTRODUCE
14 THROUGH MR. PEARSON.

15 THE COURT: OKAY.

16 MS. GANSS: AND THE OTHER, I THINK THE DRUGS ---

17 THE COURT: I KNOW, BUT YOU INTENDED NOT TO INTRODUCE
18 THEM YET OR ---

19 MS. GANSS: EXACTLY. I WILL INTRODUCE THEM AT SOME
20 POINT.

21 THE COURT: OKAY.

22 MS. GANSS: THANK YOU.

23 THE COURT: MR. BOGGS, YOU GOT ANY QUESTIONS YOU WANT
24 TO ---

25 MR. BOGGS: NO QUESTIONS.

1 THE COURT: --- ASK THIS WITNESS? ALL RIGHT. YOU MAY
2 STEP DOWN. I'VE GOT -- THE JURY HAS A VERDICT IN THE OTHER
3 CASE. I'M GOING TO ASK Y'ALL TO STEP BACK AGAIN IF YOU WILL
4 PLEASE. AND WE'LL TAKE THAT VERDICT, AND WE'LL RESUME.

5 (WHEREUPON COURT WAS IN RECESS)

6 THE COURT: ALL RIGHT. WE'RE BACK WITH MR. GREEN'S
7 CASE. WHO'S YOUR NEXT WITNESS, SOLICITOR?

8 MS. GANSS: THE STATE CALLS KEITH PEARSON, YOUR HONOR.

9 KEITH PEARSON, BEING DULY

10 SWORN TESTIFIED AS FOLLOWS:

11 **DIRECT EXAMINATION BY MS. GANSS:**

12 Q. MR. PEARSON, PLEASE STATE YOUR FULL NAME FOR THE
13 RECORD.

14 A. KEITH PEARSON.

15 Q. YOU LIVE HERE IN SPARTANBURG COUNTY?

16 A. YES.

17 Q. MR. PEARSON, YOU'VE GOT A LOT OF CONVICTIONS ON YOUR
18 RECORD, YES?

19 A. YES, THAT'S CORRECT.

20 Q. SOME DRIVING VIOLATIONS?

21 A. UM-HUM (AFFIRMATIVE).

22 Q. CONVICTIONS?

23 A. RIGHT.

24 Q. YOU HAVE SOME DRUG CONVICTIONS?

25 A. RIGHT, I DO.

1 Q. AND JUST CORRECT ME IF I'M WRONG ON THESE, POINTING AND
2 PRESENTING; 1994.

3 A. RIGHT.

4 Q. CARRYING A PISTOL FROM 1994.

5 A. THAT'S CORRECT.

6 Q. YOU ALSO HAVE SOME DRUG CONVICTIONS, IS THAT TRUE?

7 A. THAT'S CORRECT.

8 Q. AGAIN, CORRECT ME IF I'M WRONG, BUT TRAFFICKING IN
9 COCAINE, YOU WERE CONVICTED OF THAT IN 1996?

10 A. RIGHT.

11 Q. AND I THINK YOU HAVE A DISTRIBUTION OF CRACK COCAINE
12 FROM 1993.

13 A. THAT'S CORRECT.

14 Q. AND A FEW OTHER CHARGES ON YOUR RECORD, SOME CRIMINAL
15 DOMESTIC VIOLENCE AND RESISTING ARREST, CORRECT?

16 A. THAT'S CORRECT.

17 Q. SO YOU'VE BEEN A BUSY PERSON?

18 A. RIGHT.

19 Q. ALL RIGHT. DID YOU DO TIME FOR THOSE DRUG CHARGES THAT
20 I TALKED ABOUT, THE TRAFFICKING AND THE DISTRIBUTION?

21 A. YES, I DID.

22 Q. HOW MUCH TIME DID YOU DO?

23 A. I HAD A SIX YEAR SENTENCE. I DID THREE AND A HALF
24 YEARS OFF THAT SIX YEAR SENTENCE.

25 Q. SO WHEN DID YOU GET OUT?

1 A. I GOT OUT DECEMBER 9TH OF 2000.

2 Q. SAY THAT AGAIN PLEASE.

3 A. DECEMBER THE 9TH OF 2000.

4 Q. OF 2000. OKAY. PLEASE SPEAK CLEARLY IF YOU CAN SO THE
5 COURT AND MYSELF CAN HEAR YOU. WERE YOU A DRUG USER OR A
6 DRUG SELLER?

7 A. I SOLD DRUGS.

8 Q. ALL RIGHT. I'M GOING TO ASK YOU ABOUT THIS CASE WE'RE
9 TALKING ABOUT TODAY. DO YOU KNOW THE DEFENDANT?

10 A. WELL, YES. I'VE MET HIM THROUGH -- BY KIMBRELL'S WHEN
11 I WAS WORKING AT KIMBRELL'S AT THAT TIME.

12 Q. OKAY. NOW LET'S BACK UP. DO YOU KNOW THE DEFENDANT?

13 A. NOT PERSONALLY, KNOWING HIM AS A FRIEND, NO.

14 Q. OKAY. HOW MANY TIMES HAVE YOU MET THE DEFENDANT?

15 A. I'D SAY ABOUT THREE.

16 Q. AND EACH TIME THAT YOU MET THE DEFENDANT WERE YOU ABLE
17 TO TALK TO HIM FOR ABOUT ---

18 A. ABOUT TWO MINUTES OR SO.

19 Q. ON EACH OF THOSE OCCASIONS?

20 A. YES.

21 Q. WHY DO YOU WORK FOR THE SHERIFF'S OFFICE AS AN
22 OPERATIVE?

23 A. TO GET PAID.

24 Q. HOW MUCH DO YOU GET PAID?

25 A. IT'S ACCORDING TO WHAT I GET. TWO OR SOMETIMES THREE

1 HUNDRED DOLLARS.

2 Q. OKAY. THIS INCIDENT WE'RE TALKING ABOUT, JUNE 30TH,
3 2004, HAVE YOU ALREADY BEEN PAID FOR YOUR WORK ON THAT?

4 A. NO, I HAVEN'T.

5 Q. YES OR NO?

6 A. NO, NO, I HAVEN'T.

7 Q. YOU HAVEN'T -- TODAY, AS OF TODAY HAVE YOU BEEN PAID
FOR WHAT YOU ALREADY DID ON JUNE 30TH, 2004?

8 A. OH, I HAVE DONE SOME IN THE PAST AND I HAVEN'T BEEN
9 PAID EXACTLY.

10 Q. OKAY. SO YOU'RE ALREADY PAID?

11 A. RIGHT.

12 Q. OKAY. ALL RIGHT. ARE YOU MAKING ANY MONEY FOR
13 TESTIFYING TODAY?

14 A. NO.

15 Q. DO YOU GET PAID BY THE SHERIFF'S OFFICE IF NATHANIEL
16 GREEN IS CONVICTED TODAY?

17 A. NO, I DON'T.

18 Q. ALL RIGHT. LET'S GO BACK TO JUNE 30TH, 2004. YOU WERE
19 WORKING AS AN OPERATIVE FOR THE SPARTANBURG COUNTY SHERIFF'S
20 OFFICE, YES?

21 A. YES.

22 Q. WHO WAS THE OFFICER THAT RAN THAT OPERATION?

23 A. INVESTIGATOR CHRIS RAYMOND.

24 Q. WHEN YOU MET WITH INVESTIGATOR RAYMOND THAT DAY TELL
25

*attained
to object
perjury
immunity
dear should have been
turned
over to
defense*

1 THE COURT WHAT THE PLAN WAS.

2 A. THE PLAN WAS TO GO PURCHASE DRUGS FROM NATHANIEL. AND
3 WHEN I MET WITH HIM AT THE AUDITORIUM I WAS SEARCHED DOWN
4 AND PATTED DOWN. THE CAR WAS CHECKED AND EVERYTHING. AND I
5 WAS SURVEILLANCED, HAD SURVEILLANCE PUT ON ME. AND THEN AT
6 THAT TIME I WAS FOLLOWED TO THE LOCATION WHERE I WAS
7 SUPPOSED TO MEET NATHANIEL.

8 Q. SO THEY PATTED YOU DOWN?

9 A. YES, THEY PATTED ME DOWN.

10 Q. THEY SEARCHED YOUR CAR?

11 A. SEARCHED MY CAR.

12 Q. AND WHAT WERE THEY LOOKING FOR?

13 A. ANY KIND OF LIKE CONTRABAND, DRUGS, OR ANYTHING THAT I
14 SHOULDN'T HAVE.

15 Q. DID THEY FIND ANY?

16 A. NO, THEY DIDN'T.

17 Q. AND THEY WIRED YOU WITH WHAT?

18 A. WITH A WIRE, AND RECORDER, AND A VIDEO.

19 Q. OKAY. ALL RIGHT. DID YOU HAVE ANY MONEY ON YOU BEFORE
20 THEY GAVE YOU ANY?

21 A. I THINK I HAD ABOUT LIKE A FEW DOLLARS, MAYBE SEVEN
22 DOLLARS, SOMETHING LIKE THAT.

23 Q. LET'S SEE. AFTER YOU WERE SEARCHED AND AFTER YOU WERE
24 GIVEN THE MONEY AND WIRED WHAT DID YOU DO NEXT?

25 A. WELL, I DROVE TO THE LOCATION WHERE I WAS SUPPOSED TO

1 MEET NATHANIEL AT THE CARWASH ON SOUTHPORT.

2 Q. WERE YOU FOLLOWED?

3 A. YES, I WAS FOLLOWED.

4 Q. WHAT HAPPENED WHEN YOU GOT TO THE CARWASH?

5 A. WHEN I GOT THERE I MET WITH NATHANIEL. I TALKED WITH
6 HIM. AND I GAVE HIM THE MONEY, AND HE GAVE ME THE DRUGS.
7 AND AT THAT TIME I LEFT THE LOCATION AND WENT BACK TO THE
8 AUDITORIUM.

9 Q. OKAY. AT THE CARWASH WITH THAT TRANSACTION HOW LONG
10 DID THAT TRANSACTION TAKE?

11 A. I'D SAY ABOUT TWO MINUTES OR SO.

12 Q. OKAY. ALL RIGHT. NOW I'D LIKE TO SHOW YOU WHAT'S BEEN
13 MARKED STATE'S EXHIBIT NUMBER 3 FOR IDENTIFICATION PURPOSES
14 ONLY. DO YOU RECOGNIZE THIS?

15 A. YES. THAT'S ME GIVING THE MONEY TO HIM.

16 Q. ALL RIGHT. WELL, OKAY, JUST BE A LITTLE CLEARER. WHAT
17 IS THAT? THAT IT IS ...

18 A. THAT'S MONEY FROM THE SHERIFF'S OFFICE THAT THEY GIVE
19 ME TO GIVE THE MONEY TO NATHANIEL GREEN.

20 Q. IS THAT A FAIR AND ACCURATE REPRESENTATION OF WHAT
21 HAPPENED THAT DAY?

22 A. RIGHT. EXACTLY. THAT'S THE TRANSACTION GOING ON.

23 Q. OKAY. LET'S SEE.

24 MS. GANSS: AT THIS TIME I'D LIKE TO INTRODUCE THIS
25 PHOTOGRAPH INTO EVIDENCE, YOUR HONOR.

1 MR. BOGGS: NO OBJECTION.

2 THE COURT: IT'S ADMITTED.

3 MS. GANSS: THANK YOU, YOUR HONOR.

4 Q. I'D LIKE TO SHOW YOU NOW WHAT'S BEEN MARKED STATE'S
5 EXHIBIT NUMBER 4 FOR IDENTIFICATION PURPOSES ONLY. DO YOU
6 RECOGNIZE THIS?

7 A. YES. THAT'S THE DRUGS THAT I PURCHASED, NATHANIEL
8 GIVING TO ME.

9 Q. OKAY. IS THAT ON THIS DAY IN QUESTION, JUNE 30TH,
10 2004?

11 A. RIGHT, EXACTLY.

12 Q. AND IS THAT A FAIR AND ACCURATE REPRESENTATION OF WHAT
13 HAPPENED THAT DAY?

14 A. YES, THAT'S WHAT HAPPENED.

15 MS. GANSS: AT THIS TIME I'D ALSO LIKE TO MOVE INTO
16 EVIDENCE STATE'S EXHIBIT NUMBER 4, YOUR HONOR.

17 MR. BOGGS: NO OBJECTION.

18 THE COURT: IT'S ADMITTED.

19 MS. GANSS: THANK YOU.

20 Q. AND WE HAVE ONE MORE. I'D LIKE TO SHOW YOU STATE'S
21 EXHIBIT NUMBER 5 FOR IDENTIFICATION PURPOSES ONLY. DO YOU
22 RECOGNIZE THIS?

23 A. YES. THAT'S WHAT WENT ON THE DAY THAT I MET HIM AT THE
24 CARWASH. THAT'S THE DRUGS THAT HE HANDED TO ME.

25 Q. AND THAT TOO, IS THAT A FAIR AND ACCURATE

1 REPRESENTATION OF WHAT HAPPENED THAT DAY?

2 A. YES, IT IS.

3 MS. GANSS: AT THIS TIME WE'D LIKE TO INTRODUCE STATE'S
4 EXHIBIT NUMBER 5 INTO EVIDENCE.

5 MR. BOGGS: NO OBJECTION.

6 THE COURT: IT'S ADMITTED. LET ME HAVE THOSE
7 PHOTOGRAPHS PLEASE. THANK YOU.

8 Q. ONCE THE TRANSACTION WAS COMPLETED WHERE DID YOU GO
9 NEXT?

10 A. WELL, AFTER THE TRANSACTION WAS COMPLETED I WENT BACK
11 TO THE AUDITORIUM.

12 Q. OKAY. WHO DID YOU MEET AT THE AUDITORIUM?

13 A. CHRIS RAYMOND, INVESTIGATOR CHRIS RAYMOND.

14 Q. DID YOU STOP ANYWHERE ALONG THE WAY?

15 A. NO, I DIDN'T.

16 Q. WHAT DID CHRIS AND YOU DO WHILE Y'ALL WERE AT THE
17 AUDITORIUM? WHAT DID Y'ALL DO?

18 A. WELL, HE PATTED ME DOWN AND SEARCHED MY CAR AGAIN, THE
19 SAME ROUTINE LIKE WE WAS LEAVING. WHEN I GOT BACK THERE HE
20 DID THE SAME THING, SEARCHED ME DOWN, MY CAR AND EVERYTHING.
21 AND BASICALLY I GAVE THE DRUGS OVER TO HIM.

22 Q. OKAY. DID Y'ALL WRITE ANYTHING DOWN WHILE YOU WERE AT
23 THE AUDITORIUM?

24 A. NO.

25 Q. OKAY. DID HE EVER SHOW YOU A PHOTOGRAPHIC LINEUP?

1 A. I THINK IT WAS A DAY AFTER. HE SHOWED ME A LINEUP.

2 YEAH, THE DAY AFTER WHEN HE SHOWED ME A LINEUP.

3 Q. OKAY. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED STATE'S
4 EXHIBIT NUMBER 2 FOR IDENTIFICATION PURPOSES ONLY. IS THIS
5 THE PHOTOGRAPHIC LINEUP THAT INVESTIGATOR RAYMOND ---

6 A. YES, IT IS.

7 Q. --- SHOWED YOU? WHAT DID -- CAN YOU SHOW THE COURT HOW
8 INVESTIGATOR RAYMOND SHOWED YOU THAT PHOTOGRAPHIC LINEUP?

9 A. WELL, HE JUST LIKE GAVE IT TO ME, ASKED ME TO PICK OUT
10 WHICH ONE THAT I BOUGHT THE NARCOTICS FROM, AND CIRCLE IT,
11 AND INITIAL IT. AND THAT'S WHAT I DONE.

12 Q. OKAY. AND THE MAN YOU ID'D IN THAT PHOTOGRAPHIC
13 LINEUP, IS THAT MAN IN THE COURTROOM HERE TODAY?

14 A. YES.

15 Q. COULD YOU POINT HIM OUT FOR THE COURT PLEASE?

16 A. YES, IT'S NATHANIEL.

17 Q. AND JUST TO BE VERY CLEAR DID INVESTIGATOR RAYMOND IN
18 ANY WAY, SHAPE, OR FORM POINT OUT TO YOU WHO HE WANTED YOU
19 TO IDENTIFY IN THAT PHOTOGRAPHIC LINEUP?

20 A. NO, HE DIDN'T.

21 MS. GANSS: AT THIS POINT, YOUR HONOR, THE STATE WOULD
22 LIKE TO INTRODUCE THIS PHOTOGRAPHIC LINEUP INTO EVIDENCE.

23 MR. BOGGS: NO OBJECTION, YOUR HONOR.

24 THE COURT: WITHOUT OBJECTION?

25 MR. BOGGS: YES, SIR.

1 THE COURT: IT'S ADMITTED.

2 (WHEREUPON STATE'S EXHIBIT NUMBER 2 WAS ADMITTED INTO
3 EVIDENCE)

4 MS. GANSS: THANK YOU, YOUR HONOR.

5 Q. I'D LIKE TO SHOW YOU ALSO WHAT'S BEEN MARKED STATE'S
6 EXHIBIT NUMBER 7 FOR IDENTIFICATION PURPOSES ONLY. DO YOU
7 RECOGNIZE THIS?

8 A. YES.

9 Q. DO YOU KNOW WHAT IT IS?

10 A. REPORT ANALYSIS FOR LIKE DANGEROUS SUBSTANCES.

11 Q. OKAY. DO YOU CONSIDER IT -- IS YOUR SIGNATURE LOCATED
12 ANYWHERE ON THESE? THERE ARE FOUR PAGES. FEEL FREE TO FLIP
13 THROUGH THEM. IS YOUR SIGNATURE LOCATED ANYWHERE IN THERE?

14 A. YES, RIGHT HERE.

15 Q. OKAY. SO THIS SIGNATURE, YOU WROTE THAT THERE BECAUSE
16 -- DID YOU WRITE YOUR SIGNATURE THERE AFTER YOU HANDED ---

17 A. RIGHT.

18 Q. BECAUSE YOU GAVE ---

19 A. SIGNATURE RIGHT HERE AND THERE TOO.

20 Q. BECAUSE YOU GAVE INVESTIGATOR RAYMOND THE DRUGS?

21 A. THE DRUGS, UM-HUM (AFFIRMATIVE).

22 Q. OKAY.

23 MS. GANSS: BEG THE COURT'S INDULGENCE.

24 Q. MR. PEARSON, CAN YOU TELL THE COURT WHY YOU'RE HERE
25 TODAY?

1 A. I HAD TO -- I WAS SUBPOENAED TO BE HERE.

2 Q. OKAY. AND TO BE CLEAR AGAIN, ARE YOU GETTING PAID FOR
3 ANYTHING YOU'RE DOING TODAY?

4 A. NO, I'M NOT.

5 Q. OKAY.

6 MS. GANSS: THE STATE HAS NO MORE QUESTIONS AT THIS
7 TIME, YOUR HONOR.

8 **CROSS EXAMINATION BY MR. BOGGS:**

9 Q. MR. PEARSON, YOU SAY YOU'RE A PAID INFORMANT, IS THAT
10 RIGHT?

11 A. YES, SIR.

12 Q. ALL RIGHT. RIGHT AFTER THIS YOU HAD SOME PRETTY
13 SERIOUS CHARGES DISMISSED, DIDN'T YOU?

14 A. UM-HUM (AFFIRMATIVE).

15 Q. I'M SORRY?

16 A. I DID.

17 Q. ALL RIGHT. SOME CHARGES THAT HAVE BEEN PENDING SINCE
18 7/28 OF 2003, AFTER YOU BECAME A PAID INFORMANT THOSE
19 CHARGES SUDDENLY DISAPPEAR IN SEPTEMBER, RIGHT?

20 A. I WAS IN THE COUNTY AS WELL. I DID TIME IN THE COUNTY.

21 Q. THEY GOT DISMISSED THOUGH, DIDN'T THEY?

22 A. YEAH, THEY WAS GONE.

23 Q. ALL RIGHT. AND YOU WERE LOOKING AT A CDV THIRD, WHICH
24 CARRIED TEN YEARS, RIGHT?

25 A. RIGHT, THAT WAS DISMISSED.

KEITH PEARSON - REDIRECT EXAMINATION BY MS. GANSS

31

1 Q. YEAH. AFTER YOU DID THIS?

2 A. WHILE I WAS IN THE COUNTY JAIL THEY WAS DISMISSED.

3 Q. AFTER THIS INCIDENT THEY WERE DISMISSED, RIGHT?

4 A. NOT TO MY KNOWLEDGE THAT I KNOW OF.

5 Q. WELL, IT SAYS SEPTEMBER 17TH, ISN'T THAT RIGHT?

6 A. WELL, IF IT SAYS IT, YEAH.

7 Q. THE POINT IS, AFTER YOU BECAME A PAID INFORMANT ALL THE
8 SUDDEN THESE SERIOUS CHARGES DISAPPEAR AS WELL AS YOU
9 GETTING PAID, RIGHT?

10 A. I GUESS.

11 Q. OKAY.

12 MR. BOGGS: I DON'T HAVE ANY OTHER QUESTIONS FOR HIM.

13 MS. GANSS: REDIRECT, YOUR HONOR?

14 THE COURT: YES.

15 **REDIRECT EXAMINATION BY MS. GANSS:**

16 Q. MR. PEARSON, THOSE CHARGES THAT MR. BOGGS REFERRED TO,
17 DID THEY HAVE ANYTHING -- ARE THEY RELATED IN ANY WAY TO THE
18 BUY YOU DID FOR THE SPARTANBURG COUNTY SHERIFF'S OFFICE ON
19 JUNE 30TH?

20 A. NO, THEY NOT. NO, THEY NOT.

21 Q. THANK YOU.

22 MS. GANSS: NO MORE QUESTIONS, YOUR HONOR.

23 THE COURT: YOU MAY STEP DOWN.

24 MS. GANSS: THE STATE CALLS BETH VAUGHN.

25 MARY E. VAUGHN, BEING

1 DULY SWORN TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION BY MS. GANSS:

3 Q. PLEASE INTRODUCE YOURSELF TO THE COURT.

4 A. MY NAME IS MARY ELIZABETH RAMPEY VAUGHN.

5 Q. AND WHAT DO YOU DO FOR A LIVING?

6 A. I'M THE FORENSIC CHEMIST FOR THE SPARTANBURG COUNTY
7 SHERIFF'S OFFICE.

8 Q. AND HOW LONG HAVE YOU BEEN WORKING FOR THE COUNTY?

9 A. ABOUT TWO YEARS NOW.

10 Q. CAN YOU GIVE US YOUR EDUCATIONAL BACKGROUND?

11 A. YES. I HAVE A BACHELORS OF SCIENCE IN CHEMISTRY FROM
12 THE COLLEGE OF CHARLESTON, ALSO A BACHELORS OF SCIENCE IN
13 BIOCHEMISTRY FROM THE COLLEGE OF CHARLESTON. I HAVE A
14 MASTERS IN CHEMISTRY FROM THE UNIVERSITY OF SOUTH CAROLINA.
15 I GRADUATED FROM THE SOUTH CAROLINA CRIMINAL JUSTICE
16 ACADEMY. I'VE BEEN TO THE DEA FORENSIC CHEMIST SCHOOL.
17 I'VE BEEN CERTIFIED AS A CONTROL SUBSTANCE ANALYST. I'VE
18 BEEN CERTIFIED AS A MARIJUANA ANALYST. BEEN TO THE DEA
19 CLANDESTINE LABORATORY CERTIFICATION SCHOOL AND MULTIPLE
20 OTHER TRAINING.

21 Q. SO DO YOU ATTEND CONTINUING EDUCATION CLASSES?

22 A. YES, FOR INSTRUMENTATION AND ALSO FOR NEW DRUG TRENDS
23 OR DIFFERENT TECHNIQUES WE USE IN DRUG ANALYSIS. WE HAVE TO
24 ATTEND FORTY HOURS A YEAR.

25 Q. AND CAN YOU DESCRIBE YOUR DUTIES AS A CHEMIST FOR THE

1 SHERIFF'S OFFICE?

2 A. YES. I TEST CONTROLLED SUBSTANCES INCLUDING MARIJUANA.

3 I ALSO DO POISON ANALYSIS AND CLANDESTINE LAB PROCESSING.

4 Q. HAVE YOU HAD OCCASION TO CHEMICALLY ANALYZE SUBSTANCES

5 TO DETERMINE WHETHER OR NOT THEY CONTAIN A NARCOTIC OR A

6 NARCOTIC LIKE DRUG?

7 A. YES.

8 Q. OKAY. HOW MANY TIMES?

9 A. I'VE WORKED OVER SIX HUNDRED AND FIFTY CASES AND

10 APPROXIMATELY TWELVE HUNDRED ITEMS WITHIN THOSE CASES.

11 Q. AND HAVE YOU TESTIFIED BEFORE TODAY AS AN EXPERT IN THE

12 FIELD OF THE ANALYSIS FOR NARCOTICS?

13 A. YES, I HAVE.

14 Q. OKAY. APPROXIMATELY HOW MANY TIMES?

15 A. TWO OTHER TIMES.

16 Q. AND THOSE TIMES, WERE THEY BOTH IN SOUTH CAROLINA?

17 A. YES.

18 MS. GANSS: AT THIS TIME, YOUR HONOR, I'D LIKE TO OFFER

19 BETH VAUGHN AS AN EXPERT IN THE FIELD OF CHEMISTRY AND THE

20 ANALYSIS OF NARCOTICS.

21 THE COURT: ANY OBJECTION?

22 MR. BOGGS: NO OBJECTION.

23 THE COURT: SHE IS SO QUALIFIED.

24 MS. GANSS: THANK YOU, YOUR HONOR. MAY I HAVE ONE

25 MOMENT, YOUR HONOR?

1 Q. WHEN YOUR LAB RECEIVES A SUBSTANCE FOR TESTING OR TO
2 DETERMINE WHETHER OR NOT IT CONTAINS A NARCOTIC WHAT STEPS
3 ARE TAKEN TO ENSURE THAT THAT SUBSTANCE HAS NOT BEEN
4 TAMPERED WITH?

5 A. WE GO OVER TO THE SHERIFF'S OFFICE AND RETRIEVE, WE
6 CALL THEM BEST BAGS, FROM EVIDENCE. THEY'RE DOWN IN
7 ENVELOPES, BUT WE TAKE THE BEST BAG OUT AND LOOK AT IT. IT
8 HAS A CONTROL NUMBER ON IT. IT'S SEALED UP. IT'S GOT THE
9 OFFICER'S SIGNATURE ON IT. WE CHECK TO LOOK AND MAKE SURE
10 THAT IT'S SEALED. IT'S NOT TAMPER PROOF, IT'S JUST TAMPER
11 EVIDENT THAT IT WOULD BE OBVIOUS IF SOMEONE HAD TAMPERED
12 WITH IT. WE CHECK TO MAKE SURE THAT THAT'S SEALED. AND AT
13 THAT POINT WE CHECK IT OUT AND TAKE IT INTO OR CUSTODY BACK
14 TO THE LAB.

15 Q. SO CAN YOU -- I GUESS IN A LAY PERSON -- IS THAT WHAT'S
16 UNIQUE ABOUT THE BEST BAG OR ---

17 A. IT IS. IT'S BEST EVIDENCE SAMPLE TESTING IS WHAT THE
18 ACRONYM STANDS FOR. BASICALLY IT'S JUST A UNIFIED WAY FOR
19 EVERYBODY TO SUBMIT DRUGS 'CAUSE, YOU KNOW, WE NOT ONLY GET
20 DRUGS FROM THE SHERIFF'S OFFICE, BUT OTHER AGENCIES AS WELL.
21 SO THEY'RE DROPPED DOWN IN THERE, A STRIP IS REMOVED, AND
22 IT'S GLUE SEALED. SO IF ANYBODY WERE TO TAMPER WITH THE TOP
23 THE GLUE SEAL WOULD BE -- IT'S GOT LINES DOWN THE SIDE AND
24 BOTTOM THAT WOULD BE STRETCHED OUT OF PROPORTION IF SOMEONE
25 TRIED TO RIP INTO IT OR TEAR INTO IT.

1 Q. OKAY. AND IF YOU RECEIVE SAMPLES OF THE SUBSTANCE AND
2 THE BEST BAG WAS -- OR THERE WAS SOME KIND OF EVIDENCE THAT
3 HAD BEEN TAMPERED WITH WOULD YOU TEST IT?

4 A. NO.

5 Q. IN THE CASE OF NATHANIEL GREEN DID YOU RECEIVE A
6 SUBSTANCE TO TEST?

7 A. YES.

8 Q. I'D LIKE TO HAND YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
9 NUMBER 6 FOR IDENTIFICATION PURPOSES ONLY. DO YOU RECOGNIZE
10 IT?

11 A. I DO.

12 Q. HOW?

13 A. ON THE BEST BAG ITSELF ARE MY INITIALS, THE DATE I
14 OPENED THE CASE, AND THEN OK, WHICH BASICALLY MEANS -- AFTER
15 WE GET BACK TO THE LAB I'LL TAKE IT OUT AGAIN, RE-LOOK OVER
16 IT, MAKE SURE THERE'S ABSOLUTELY NOTHING I MISSED THAT IT
17 MIGHT HAVE BEEN TAMPERED WITH, AND I'LL PUT MY INITIALS, THE
18 DATE I'M OPENING, AND AN OK ON THE BACK TO SAY IT WAS
19 SEALED. ALSO ON THE INSIDE ARE MY INITIALS AND THE DATE ON
20 THE EVIDENCE INSIDE AND ALSO MY INITIALS AND THE DATE WHERE
21 I RESEALED IT.

22 Q. OKAY. CAN YOU TELL THE COURT WHAT YOU DID WITH THE
23 SUBSTANCE ONCE YOU RECEIVED IT?

24 A. YES. LIKE I SAID, WHEN I TAKE THE CASE BACK OUT I RE-
25 LOOK AT THE BEST BAG, MAKE SURE THAT IT'S SEALED AGAIN, SIGN

1 IT, THEN I OPEN THE CASE. ONCE I OPEN THE CASE I VISUALLY
2 INSPECT THE SUBSTANCE, WRITE DOWN WHAT MY VISUAL INSPECTIONS
3 ARE. THEN I PERFORM A CHEMICAL SPOT TEST, WHICH IS OUR
4 PRESUMPTIVE ANALYSIS OF THE SUBSTANCE. BASED ON THAT
5 CHEMICAL SPOT TEST I THEN DO AN EXTRACTION AND PUT THE ITEM
6 ON AN INSTRUMENT FOR A CONFIRMATORY TEST TO DETERMINE WHAT
7 THE SUBSTANCE IS.

8 Q. OKAY. AND WHEN YOU PERFORMED THOSE TESTS DID YOU
9 DETERMINE IF INDEED THIS WAS A NARCOTIC OR NOT?

10 A. YES, I DID.

11 Q. WHAT DID YOU DETERMINE IT TO BE?

12 A. MAY I LOOK BACK AT MY ---

13 Q. YES.

14 A. I DETERMINED IT TO BE COCAINE CRACK WITH A WEIGHT OF
15 TWENTY-FIVE POINT TWO ONE GRAMS.

16 Q. OKAY. THANK YOU. AT THIS TIME ALSO I'D LIKE TO SHOW
17 YOU WHAT'S BEEN MARKED STATE'S EXHIBIT NUMBER 7 FOR
18 IDENTIFICATION PURPOSES ONLY. DO YOU RECOGNIZE THIS?

19 A. YES. IT'S A CHAIN OF CUSTODY.

20 Q. OKAY. AND IS YOUR SIGNATURE ON THAT?

21 A. YES. THE LAST STEP IN THE CHAIN IS THE CHEMIST CHAIN.
22 IT'S CALLED A FORM A. AND I'VE SIGNED HERE AND ALSO MARKED
23 WHAT STEPS WERE PERFORMED ON THE SUBSTANCE.

24 Q. OKAY. AND CAN YOU TELL THE COURT WHERE YOU RECEIVED --
25 FROM WHERE YOU RECEIVED THE DRUGS?

1 A. YES, FROM EVIDENCE -- THE SPARTANBURG COUNTY SHERIFF'S
2 OFFICE EVIDENCE.

3 Q. OKAY.

4 MS. GANSS: AT THIS TIME, YOUR HONOR, THE STATE WOULD
5 LIKE TO MOVE INTO EVIDENCE STATE'S EXHIBIT NUMBER 6 AND
6 STATE'S EXHIBIT NUMBER 7.

7 MR. BOGGS: NO OBJECTION.

8 THE COURT: THEY'RE ADMITTED.

9 MS. GANSS: THANK YOU. THE STATE HAS NO MORE QUESTIONS
10 FOR THIS WITNESS AT THIS TIME.

11 CROSS EXAMINATION BY MR. BOGGS:

12 Q. WHAT'S THE LARGEST AMOUNT YOU'VE EVER WEIGHED? DO YOU
13 KNOW?

14 A. THE LARGEST AMOUNT I'VE EVER WEIGHED?

15 Q. YEAH. YOU SAID YOU'D WEIGHED ABOUT OR TESTED ABOUT
16 TWELVE HUNDRED DIFFERENT ITEMS DURING YOUR CAREER.

17 A. I'VE -- MORE THAN TWO HUNDRED GRAMS OF IT. IT'S -- IF
18 YOU COUNT MARIJUANA, POUNDS.

19 Q. OKAY. WELL, LET'S TALK ABOUT CRACK THEN. WHAT'S THE
20 LARGEST YOU'VE EVER WEIGHED, DO YOU THINK?

21 A. OVER TWO HUNDRED GRAMS FOR SURE. I DON'T REMEMBER
22 EVERY CASE ---

23 Q. YEAH. WELL, I UNDERSTAND.

24 A. --- SPECIFICALLY. DEFINITELY OVER ---

25 Q. BUT JUST GENERALLY, HAVE YOU EVER WEIGHED OVER A

1 HUNDRED GRAMS?

2 A. YES, SIR.

3 Q. OVER TWENTY-EIGHT GRAMS?

4 A. YES, SIR.

5 Q. OVER TWENTY-EIGHT GRAMS MORE THAN TEN TIMES?

6 A. MORE THAN TEN SEPARATE OCCASIONS?

7 Q. YEAH.

8 A. YES, SIR.

9 Q. MORE THAN THIRTY SEPARATE OCCASIONS, YOU THINK? AND I
10 REALIZE YOU CAN'T PIN IT DOWN EXACTLY, BUT JUST ROUGH
11 ESTIMATES.

12 A. POSSIBLY. I DON'T KNOW FOR SURE WITHOUT GOING BACK AND
13 LOOKING AT ALL THE CASES I'VE WORKED.

14 Q. OKAY. HOW MANY, ROUGHLY DO YOU THINK, HOW MANY TIMES
15 HAVE YOU WEIGHED MORE THAN A HUNDRED GRAMS?

16 A. THAT WOULD BE A LITTLE LESS COMMON. SO MAYBE FIVE OR
17 SO.

18 Q. OKAY. ALL RIGHT.

19 MR. BOGGS: THAT'S ALL THE QUESTIONS I HAVE OF HER.

20 OH, EXCEPT ---

21 Q. THIS CAME OUT LESS THAN AN OUNCE, RIGHT?

22 A. YES, SIR.

23 Q. OKAY. THANK YOU.

24 MS. GANSS: NO MORE QUESTIONS, YOUR HONOR.

25 THE COURT: YOU MAY STEP DOWN.

1 MS. GANSS: THE STATE RESTS, YOUR HONOR.

2 THE COURT: ALL RIGHT. MR. BOGGS, DO YOU WISH TO OFFER
3 ANY TESTIMONY OR EVIDENCE?

4 MR. BOGGS: NO, SIR, YOUR HONOR. THE DEFENSE RESTS.

5 THE COURT: MR. GREEN, YOU UNDERSTAND YOU HAVE THE
6 RIGHT TO TESTIFY? EVEN THOUGH WE DON'T HAVE A JURY HERE,
7 I'M TRYING THE CASE, I'M GOING TO DECIDE THE VERDICT JUST
8 LIKE A JURY WOULD DO. DO YOU UNDERSTAND YOU HAVE A RIGHT TO
9 TESTIFY, OR CALL WITNESSES, OR OFFER OTHER EVIDENCE IF YOU
10 WISH TO?

11 MR. GREEN: YES, SIR.

12 THE COURT: HAVE YOU AND MR. BOGGS DISCUSSED YOUR RIGHT
13 TO TESTIFY AS WELL AS NOT TESTIFY?

14 MR. GREEN: YES, SIR.

15 THE COURT: YOU UNDERSTAND THAT THIS IS THE ONLY
16 OPPORTUNITY THAT YOU WILL HAVE TO TESTIFY IF YOU WISH TO?

17 MR. GREEN: YES, SIR.

18 THE COURT: YOU UNDERSTAND THIS IS THE ONLY OPPORTUNITY
19 THAT YOU'LL HAVE TO CALL OTHER WITNESSES IF YOU WISH TO?

20 MR. GREEN: YES, SIR.

21 THE COURT: AND MR. BOGGS HAS EXPLAINED TO YOU THE
22 ADVANTAGES AND DISADVANTAGES OF TESTIFYING AND OF NOT
23 TESTIFYING?

24 MR. GREEN: YES, SIR.

25 THE COURT: AND YOU'VE MADE A DECISION IN THAT REGARD?

1 MR. GREEN: YES, SIR.

2 THE COURT: AND WHAT IS YOUR DECISION?

3 MR. GREEN: I DON'T WISH TO TESTIFY.

4 THE COURT: HAS ANYBODY FORCED YOU INTO THAT DECISION?

5 MR. GREEN: NO, SIR.

6 THE COURT: HAS ANYBODY THREATENED YOU OR PUT ANY
7 PRESSURE ON YOU THAT CAUSED YOU TO ARRIVE AT THAT DECISION?

8 MR. GREEN: NO, SIR.

9 THE COURT: IS THAT A DECISION THAT YOU REACHED OF YOUR
10 OWN FREE WILL AND ACCORD?

11 MR. GREEN: YES, SIR.

12 THE COURT: YOU'RE SATISFIED WITH IT?

13 MR. GREEN: YES, SIR.

14 THE COURT: DO YOU HAVE ANY OTHER WITNESSES YOU WANT
15 MR. BOGGS TO CALL ON YOUR BEHALF?

16 MR. GREEN: NO, SIR.

17 THE COURT: OKAY.

18 MS. GANSS: YOUR HONOR, AT THIS TIME THE STATE WOULD
19 LIKE TO ASK THAT BETH VAUGHN BE EXCUSED.

20 THE COURT: SHE MAY BE.

21 MS. GANSS: THANK YOU.

22 THE COURT: ALL RIGHT. ANYTHING FURTHER OTHER THAN ME
23 REVIEWING THE VIDEOTAPE?

24 MR. BOGGS: NOTHING FROM THE DEFENSE, YOUR HONOR.

25 MS. GANSS: AND NOTHING FROM THE STATE EITHER, YOUR

1 HONOR.

2 THE COURT: OKAY. WHO'S GOT SOMETHING TO PLAY THE
3 VIDEOTAPE ON?

4 MS. GANSS: THE STATE DOES.

5 (WHEREUPON THE COURT VIEWED THE VIDEOTAPE)

6 THE COURT: OKAY. I VIEWED IT. ALL RIGHT. ANYTHING
7 FURTHER?

8 MR. BOGGS: NOTHING FROM THE DEFENDANT, YOUR HONOR.

9 MS. GANSS: NOTHING FROM THE STATE, YOUR HONOR.

10 THE COURT: ALL RIGHT. I FIND, BASED UPON THE
11 TESTIMONY AND THE EVIDENCE PRESENTED, THAT THE DEFENDANT HAS
12 BEEN PROVEN GUILTY OF THE CRIME OF TRAFFICKING IN CRACK
13 COCAINE IN AN AMOUNT OF AT LEAST TEN GRAMS, BUT LESS THAN
14 TWENTY-EIGHT GRAMS. AND I FIND THAT HE HAS BEEN SO PROVEN
15 BEYOND A REASONABLE DOUBT. ANY MATTERS TO ADDRESS PRIOR TO
16 SENTENCING?

17 MR. BOGGS: YOUR HONOR, WE WOULD LIKE TO BE HEARD ON
18 THE SENTENCING. NOTHING AS FAR AS MOTIONS OR ANYTHING.

19 THE COURT: ALL RIGHT, SIR. YES, SIR.

20 MR. BOGGS: I WOULD LIKE TO HAVE HIS RAP SHEET MARKED
21 AS A DEFENDANT'S EXHIBIT PLEASE.

22 THE COURT: OKAY.

23 (WHEREUPON DEFENDANT'S EXHIBIT 1 WAS MARKED)

24 MR. BOGGS: YOUR HONOR, THE PRIMARY QUESTIONS IS WHAT
25 OFFENSE THIS IS AS FAR AS ENHANCEMENT PURPOSES GO. THE

1 DEFENDANT SUBMITS THAT THIS WOULD BE HIS SECOND OFFENSE. I
2 WILL HAND UP THIS RAP SHEET FOR THE COURT. IT'S THE ONLY
3 COPY I'VE GOT. I DON'T KNOW IF THE SOLICITOR'S GOT ANOTHER
4 ONE.

5 BUT I'LL POINT OUT BACK IN 1994 AND INTO 1995 THERE WAS
6 A REVERSE STING, SWEEP, WHATEVER YOU WANT TO CALL IT GOING
7 ON IN SPARTANBURG COUNTY. I BELIEVE THE CODE NAME WAS SAFE
8 STREETS OR SOMETHING TO THAT EFFECT. IT WENT ON FOR A
9 PERIOD OF EIGHT TO NINE MONTHS. DURING THAT PERIOD OF TIME
10 THERE WERE NUMEROUS ONE ROCK, TWO ROCK BUYS FROM INDIVIDUALS
11 IN SPARTANBURG COUNTY.

12 IT WAS AN ON-GOING CONTINUOUS INVESTIGATION, STING
13 OPERATION THAT INVOLVED THE SAME POLICE OFFICERS, THE SAME
14 INFORMANTS, ALL IN THE SAME GEOGRAPHICAL AREA, ALL WITHIN A
15 TIME-FRAME OF THE -- IT INCLUDED -- THE INVESTIGATION
16 INCLUDED A SET TIME-FRAME ALL SIMILAR IN MODUS OPERANDI.
17 BASICALLY THEY WOULD GO AND BUY FROM A PERSON, COME BACK A
18 SECOND TIME AND BUY FROM THAT PERSON, COME BACK A THIRD TIME
19 ON MANY OCCASIONS AND BUY FROM AN INDIVIDUAL.

20 THE CASE CAME TO OR WHEN THIS PARTICULAR CASE CAME TO A
21 CLOSE SEPTEMBER 13TH, I BELIEVE, OF 2005, IF MY MEMORY
22 SERVES ME RIGHT, APPROXIMATELY TWO HUNDRED AND FIFTY-SIX
23 PEOPLE WERE ARRESTED, TAKEN OUT TO THE SPARTANBURG COUNTY
24 FAIRGROUNDS, AND THEN RELEASED ON BOND, MOST OF THEM.

25 MY CLIENT WAS ARRESTED IN THAT PARTICULAR STING

1 OPERATION. HIS ARREST DATE WAS ON SEPTEMBER THE 14TH, THE
2 DAY AFTER THE FAIRGROUND. HE WAS ARRESTED ON THREE SEPARATE
3 WARRANTS CHARGING HIM WITH DISTRIBUTION. THOSE WERE LATER
4 REDUCED DOWN TO PWIDS.

5 HE HAD EVENTUALLY PLED TO TWO OF THOSE CHARGES, BOTH OF
6 WHICH WERE A RESULT OF THIS ON-GOING SINGLE CASE, SINGLE
7 OPERATION. HE WAS ARRESTED THE SAME DAY ON BOTH OF THEM.
8 HE MADE BOND ON THIS ONE CASE THAT SAME ---

9 (WHEREUPON MR. BOGGS WAS TALKING TO CLIENT)

10 MR. BOGGS: HE WENT TO COURT THE SAME DAY ON BOTH OF
11 THE CHARGES, GOT CONCURRENT SENTENCES ON THOSE CHARGES.
12 IT'S OUR POSITION THAT INASMUCH AS -- THIS WAS ONE CASE
13 INVOLVING THE SAME PARTIES, THE SAME CI, THE SAME
14 GEOGRAPHICAL AREA, THE SAME MODE OF OPERATION. THESE TWO
15 CHARGES SHOULD BE CONSOLIDATED FOR ENHANCEMENT PURPOSES AS
16 THEY WERE FOR SENTENCING PURPOSES AND BE TREATED AS A SINGLE
17 FIRST OFFENSE, THEREFORE MAKING THIS A SECOND OFFENSE DRUG
18 CHARGE. AGAIN, HIS ORIGINAL CHARGE WAS A PW -- OR ORIGINAL
19 CHARGE WAS DISTRIBUTION AND PLED TO PWID.

20 I HAVE FOUND CASES THAT TALK ABOUT CONSOLIDATION OF
21 CHARGES FOR SENTENCING PURPOSES AND THE EFFECT THAT HAS ON
22 LATER ENHANCEMENTS. EACH OF THOSE CASES THAT I'VE BEEN ABLE
23 TO FIND DEAL WITH CASES THAT HAVE NO RELATIONSHIP AT ALL
24 OTHER THAN IT WENT TO COURT ON THE SAME DAY FOR DISPOSITION.
25 EXAMPLE: A GUY GETS ARRESTED ON A PARTICULAR CHARGE, GETS

1 OUT ON BOND ON A TOTALLY UNRELATED CHARGE, LATER ON GETS
2 ARRESTED, BUT ENDS UP GOING TO COURT ON THE SAME DAYS.

3 I HAVE REVIEWED VERY BRIEFLY THE CASE OF STATE V. BOYD.
4 IN THAT CASE THE SUPREME COURT RULED THAT THREE SEPARATE
5 CHARGES MADE AGAINST AN INDIVIDUAL ARRESTED ON ONE DAY COULD
6 NOT BE TREATED AS MORE THAN ONE OFFENSE FOR ENHANCEMENT.
7 I'LL POINT OUT THAT THAT WAS A SINGLE CASE AS WAS THE
8 SITUATION WITH MR. GREEN IN HIS 1995 ARREST.

9 SO WE'RE SUBMITTING THAT IT SHOULD BE TREATED AS A
10 SINGLE OFFENSE FOR ENHANCEMENT PURPOSES AND THAT THIS WOULD
11 BE A SECOND OFFENSE. AND I'LL HAND UP HIS RECORD. I GOT
12 THE CLERK TO MARK THAT SHOWING DATES OF ARREST OF THIS, MS.
13 GANSS. THAT'S HER WRITING, NOT MINE.

14 I WOULD POINT OUT, YOUR HONOR, TOO I HAVE NOT BEEN ABLE
15 TO FIND THE CASE THAT SAYS THAT THIS SHOULD NOT BE TREATED
16 UNDER THESE PARTICULAR FACTS AS ONE OFFENSE, AS A FIRST
17 OFFENSE CONSOLIDATED FOR ENHANCEMENT PURPOSES. IF ANYTHING,
18 AND AGAIN, I'VE NOT BEEN ABLE TO FIND ANYTHING -- BY OUR
19 SUPREME COURT.

20 THE COURT: ALL RIGHT. WHAT'S THE STATE'S POSITION?

21 MS. GANSS: MAY IT PLEASE THE COURT, YOUR HONOR? THE
22 DEFENDANT HAD BEEN ARRESTED AND SENTENCED ON THE SAME DAY,
23 BUT THEY ARE TRULY TWO UNIQUE INCIDENTS. AND, OF COURSE,
24 I'VE GOT THE CERTIFIED CONVICTIONS, ONE BEING DECEMBER 15TH,
25 1994, THE OTHER OVER SIX MONTHS LATER, JUNE 28TH, 1995.

1 IT'S THE STATE'S POSITION THAT THESE ARE ENTIRELY TWO
2 SEPARATE INCIDENTS. AND ACCORDING TO STATE V. BOYD, THAT
3 MR. BOGGS CITES, THOSE ARRESTS AND WHAT THAT DEFENDANT PLED
4 TO ARE ALL BORN OUT OF THE SAME DAY, A SINGLE INCIDENT. THE
5 COURT OF APPEALS RETAINED IN THAT CASE THE RIGHT TO REVIEW
6 OR SEE THINGS BORN NOT OUT OF THE SAME INCIDENT AS WE HAVE
7 HERE, TWO UNIQUE, SIX MONTHS APART CONVICTIONS, AS SEPARATE
8 CONVICTIONS FOR SENTENCING ENHANCEMENT PURPOSES.

9 THE STATE WOULD ALSO LIKE TO POINT OUT STATUTE 44-53-
10 470, AND THERE IT SAYS THAT IF THE OFFENDER HAS AT ANY TIME
11 BEEN CONVICTED UNDER THIS ARTICLE OR UNDER ANY STATE OR
12 FEDERAL STATUTE RELATING TO NARCOTIC DRUGS, THOSE
13 CONVICTIONS MAY BE USED FOR ENHANCEMENT PURPOSES. IT
14 DOESN'T SAY ARREST. IT DOESN'T SAY HE PLED. IT SAYS
15 CONVICTIONS. AND THE STATE HAS PRESENTED TWO CONVICTIONS.
16 AND SO WE WOULD RESPECTFULLY REQUEST THAT YOU FIND THE
17 DEFENDANT GUILTY OF A THIRD DRUG OFFENSE.

18 MR. BOGGS: MY FOLLOW-UP TO THAT TOO, AND I MEANT TO
19 BRING THIS OUT, AND I THINK MS. GANSS JUST DID, THOSE
20 CONVICTIONS MAY BE USED BY THE COURT FOR ENHANCEMENT
21 PURPOSES, I BELIEVE, IS THE WAY THE STATUTE SAYS.

22 HERE WE'RE TALKING ABOUT A MAN THAT HASN'T HAD A RECORD
23 IN TEN YEARS ALMOST, NINE AND A HALF YEARS. THE QUANTITY
24 WAS LESS THAN AN OUNCE, TWENTY-FIVE GRAMS. THIS IS HIS,
25 DEPENDING ON HOW YOU LOOK AT IT, HIS MAXIMUM THIRD OFFENSE

1 OR HIS SECOND OFFENSE, DEPENDING ON HOW THE COURT RULES.

2 WE HAD OFFERED TO PLEAD, AS I MADE THE COURT AWARE, TO
3 A SECOND ALL ALONG. I THINK THAT COMPARED TO OTHER CASES
4 THAT HAVE COME THROUGH THE COURT -- AND I REALIZE EACH CASE
5 IS A CASE BY CASE BASIS. IT'S GOT TO BE DECIDED ON A CASE
6 BY CASE BASIS. BUT THIS MAN IS LOOKING AT MANDATORY TWENTY-
7 FIVE YEARS FOR THREE ROCKS AND TWENTY-FIVE GRAMS, WHICH IS
8 COMPARED TO OTHER PEOPLE -- AND AGAIN, I REALIZE YOU'VE GOT
9 TO DEAL ON CASE BY CASE. BUT IT SOUNDS LIKE MS. GANSS
10 POINTED OUT THAT IT IS DISCRETIONARY WITHIN THE COURT'S
11 POSITION.

12 MS. GANSS: WELL, ACTUALLY IT DOES READ, IF I MAY, AN
13 OFFENSE IS CONSIDERED A SECOND OR SUBSEQUENT OFFENSE IF
14 PRIOR TO HIS CONVICTION OF THE OFFENSE THE OFFENDER HAS AT
15 ANY TIME BEEN CONVICTED UNDER THIS ARTICLE OR UNDER ANY
16 STATE OR FEDERAL STATUTE RELATING TO NARCOTIC DRUGS,
17 MARIJUANA, DEPRESSANTS, STIMULANTS, OR HALLUCINOGENIC DRUGS.
18 THE WORD MAY IS NOT IN THERE, YOUR HONOR. AND THE STATE ---

19 MR. BOGGS: I'M SORRY. I THOUGHT THAT'S WHAT YOU READ.

20 MS. GANSS: NO. I APOLOGIZE ---

21 MR. BOGGS: OKAY.

22 MS. GANSS: --- IF I DID MISSPEAK. I'LL APPROACH ---

23 THE COURT: I DON'T NEED TO SEE IT. I MEAN, I
24 RECOGNIZE THAT WHERE THE DEFENDANT HAS PRIOR CONVICTIONS THE
25 COURT IS TO CONSIDER THOSE PRIOR CONVICTIONS IN IMPOSING ANY

1 SUBSEQUENT CONVICTION UNLESS THERE'S SOME AGREEMENT TO THE
2 CONTRARY BASED UPON SOME NEGOTIATIONS ENTERED INTO BETWEEN
3 THE STATE AND THE DEFENSE.

4 MR. BOGGS, THERE'S NO QUESTION ABOUT THE FACT THAT YOUR
5 CLIENT HAS BEEN CONVICTED OF TWO SEPARATE DISTRIBUTION OF
6 CRACK COCAINE CHARGES. ONE ALLEGING TO HAVE -- ONE WHICH
7 WAS ALLEGED TO HAVE OCCURRED ON DECEMBER THE 15TH OF 1994,
8 THE OTHER ALLEGED TO HAVE OCCURRED ON JUNE THE 28TH OF 1995.

9 I UNDERSTAND THAT THE DEFENDANT ENTERED PLEAS OF GUILTY
10 TO BOTH OF THOSE CHARGES ON THE SAME DATE AND WAS SENTENCED
11 TO BOTH OF THOSE CHARGES ON THE SAME DATE, BUT WE ARE IN
12 AGREEMENT, ARE WE NOT, THAT THE INCIDENT DATES WERE DECEMBER
13 THE 15TH OF 1994 AND JUNE THE 28TH OF 1995?

14 MR. BOGGS: THAT SOUNDS RIGHT, JUDGE. BUT THE REASON
15 IS ---

16 THE COURT: THOSE ARE THE DATES ALLEGED IN THE
17 INDICTMENT.

18 MR. BOGGS: YEAH. HE WAS NOT ARRESTED ON EITHER ONE OF
19 THOSE UNTIL SEPTEMBER 14TH. AND AGAIN, TIME IS ONLY ONE --
20 THE VARIANCE IN TIME IS ONLY ONE FACTOR THAT THE COURTS LOOK
21 AT. THEY LOOK AT SIMILARITY OF OFFENSES, WHEN THEY TALK
22 ABOUT TREATING AN OFFENSE AS ONE, GEOGRAPHICAL, WHETHER OR
23 NOT THE SAME PARTIES ARE INVOLVED, THE SAME METHOD OF
24 OPERATION. TIME'S ONLY ONE FACTOR, VARIANCE IN TIME THAT
25 THE COURTS LOOK AT.

1 THE COURT: WELL, TREATING THESE AS CONVICTION PURPOSES
2 I THINK THEY ARE SEPARATE CONVICTIONS, ONE HAVING OCCURRED
3 ON DECEMBER 15TH OF 1994, THE OTHER HAVING OCCURRED ON JUNE
4 THE 28TH OF 1995. HE ENTERED PLEAS OF GUILTY TO EACH OF THE
5 SEPARATE CHARGES ON THE SAME DATE. BUT FOR CRIMINAL RECORD
6 PURPOSES THEY ARE TWO SEPARATE CONVICTIONS. THEY'RE NOT ONE
7 CONVICTION.

8 STATE VERSUS BOYD PROVIDES THAT WHERE A DEFENDANT HAS
9 BEEN CONVICTED ON TWO OR MORE COUNTS FOR A VIOLATION OF A
10 CONTROLLED SUBSTANCE ACT WHICH ARISES OUT OF SIMULTANEOUS
11 ACTS COMMITTED IN THE COURSE OF A SINGLE INCIDENT THE
12 CONVICTIONS SHOULD BE TREATED AND CONSIDERED AS ONLY ONE FOR
13 THE PURPOSE OF SENTENCING UNDER ANY SUBSEQUENT CONVICTION
14 THAT IS FOR ENHANCEMENT PURPOSES.

15 THEY, HOWEVER, GO ON TO SAY THAT WE HASTEN TO ADD THAT
16 WHERE MULTIPLE CONVICTIONS ARE OBTAINED FOR VIOLATIONS OF
17 THE CONTROLLED SUBSTANCE ACT, WHICH WE HAVE HERE, WE HAVE
18 TWO CONVICTIONS THAT ARE SEPARATE OFFENSES OCCURRING ON THE
19 SAME DAY. WHERE THE CONVICTIONS ARE UNRELATED TO ONE
20 ANOTHER AND DO NOT ARISE OUT OF A SINGLE INCIDENT THERE IS
21 NO PROHIBITION OF COUNTING FOR SENTENCING PURPOSES EACH
22 CONVICTION SEPARATELY. AND THEY SAY, WE SO HOLD.

23 NOW, MR. BOGGS, IF YOU THINK THERE'S SOME DISCRETION IN
24 THE COURT THAT I CAN DECIDE WHETHER THESE OUGHT TO BE
25 TREATED AS ONE OFFENSE OR SEPARATE OFFENSES FOR SENTENCING

1 PURPOSES I'LL BE HAPPY TO CONSIDER ANY CASE THAT YOU WISH
2 FOR ME TO CONSIDER. BUT IT DOES APPEAR THAT WHEN A PERSON
3 IS CONVICTED OF A CRIMINAL OFFENSE WHERE THERE ARE -- WHERE
4 IT IS ONE THAT IS CUMULATIVE IN NATURE, THAT IS WHERE THE
5 PENALTY FOR ONE DEPENDS UPON THE PRIOR CONVICTIONS FOR
6 SIMILAR OFFENSES, IT WOULD APPEAR TO ME THAT THEY ALL SHOULD
7 BE CONSIDERED SEPARATELY.

8 NOW I REALIZE IF YOU HAD SEVERAL OFFENSES AS IN THE
9 CASE OF STATE VERSUS BOYD OCCURRING ON THE SAME DAY THEN
10 THEY ARE TO BE TREATED AS ONE OFFENSE FOR SENTENCING
11 PURPOSES. BUT FOR FUTURE CONDUCT, THEY'RE SEPARATE
12 CONVICTIONS. AND THAT'S WHAT MR. GREEN HAS HERE. HE'S GOT
13 TWO SEPARATE CONVICTIONS FOR DISTRIBUTION OF CRACK COCAINE.
14 THE OFFENSE FOR TRAFFICKING, WHICH OCCURRED ON JUNE THE 30TH
15 OF 2004 WOULD APPEAR TO ME TO BE A THIRD OR SUBSEQUENT
16 OFFENSE UNDER THE LAW.

17 I MEAN, I DON'T KNOW HOW I CAN DECIDE WHAT OFFENSE TO
18 TREAT IT AS. I MEAN, ARE YOU TELLING ME THAT YOU THINK
19 UNDER THE LAW I COULD TREAT IT AS A FIRST OFFENSE IF I
20 WANTED TO?

21 MR. BOGGS: YES, SIR.

22 THE COURT: OKAY. WELL, I DON'T AGREE WITH THAT. I
23 THINK I HAVE TO CONSIDER THE OFFENSES OR THE RECORD OF THE
24 DEFENDANT.

25 THE STATUTE UNDER WHICH HE IS TO BE SENTENCED IS 44-53-

1 375. THAT STATUTE SAYS THAT A PERSON WHO COMMITS THE CRIME
2 OF TRAFFICKING AND UPON CONVICTION, TRAFFICKING IN CRACK
3 COCAINE AND UPON CONVICTION MUST BE PUNISHED AS FOLLOWS IF
4 THE QUANTITY INVOLVED IS TEN GRAMS OR MORE, BUT LESS THAN
5 TWENTY-EIGHT GRAMS.

6 FOR A FIRST OFFENSE, NOT LESS THAN THREE, NO MORE THAN
7 TEN. FOR SECOND OFFENSE, NOT LESS THAN FIVE, NO MORE THAN
8 THIRTY. FOR A THIRD OFFENSE, NOT LESS THAN TWENTY-FIVE, NO
9 MORE THAN THIRTY. AND 44-53-470 WITHIN THE SAME ARTICLE
10 DEFINES A SECOND OR SUBSEQUENT OFFENSE. AND IT DEFINES --
11 AN OFFENSE IS CONSIDERED A SECOND OR SUBSEQUENT IF PRIOR TO
12 HIS CONVICTION HE HAS AT ANY TIME BEEN CONVICTED UNDER THIS
13 ARTICLE FOR ANY STATE OR FEDERAL STATUTE RELATED TO NARCOTIC
14 DRUGS, MARIJUANA, DEPRESSANTS, STIMULANTS, OR HALLUCINOGENIC
15 DRUGS.

16 AND IN THIS CASE HE'S BEEN PREVIOUSLY CONVICTED OF
17 DISTRIBUTION OF CRACK COCAINE ON TWO SEPARATE OCCASIONS,
18 OCCURRING ON TWO SEPARATE OCCASIONS, WHICH OBVIOUSLY WOULD
19 FALL UNDER NARCOTIC DRUGS. THOSE BEING TWO PRIOR
20 CONVICTIONS, I THINK THIS HAS TO BE TREATED BY THE COURT AS
21 A THIRD OFFENSE. BUT I DON'T HAVE A SENTENCING SHEET.

22 THEREFORE THE COURT IS GOING TO TREAT IT AS A THIRD OR
23 SUBSEQUENT OFFENSE. DO YOU HAVE ANYTHING ELSE YOU WANT TO
24 ADD, MR. BOGGS?

25 MR. BOGGS: NO, SIR.

1 THE COURT: MR. GREEN, YOU GOT ANYTHING YOU WANT TO ADD
2 PRIOR TO SENTENCING?

3 MR. GREEN: YES. I WOULD LIKE TO STATE THAT LIKE I
4 DON'T UNDERSTAND THE LAW FULLY. I WAS IN THE COUNTY JAIL
5 FOR A WHILE. AND I HAVE SEEN GUYS COME IN ON DIFFERENT
6 OCCASIONS AND GUYS HAVING BEEN SENTENCED LIKE EARLY '90s,
7 LATE 2000, I MEAN, EARLY 2000, MID '90s ON DIFFERENT CHARGES
8 ON DIFFERENT OCCASIONS. AND THEY WAS ONLY CHARGED WITH LIKE
9 SECOND OFFENSE. AND THEY HAD NUMEROUS CHARGES. IT'S PLENTY
10 OF GUYS IN THE COUNTY JAIL THAT'S DOWN THE ROAD DOING THE
11 SAME THING, THEY GOT THE SAME CHARGES.

12 THE COURT: WELL, YOU'RE SAYING THAT YOU THINK THE
13 STATE IS NOT BEING UNIFORM IN THEIR PROSECUTION?

14 MR. GREEN: NOT FULLY. NOT IN EVERY -- THEY HAVE
15 DIFFERENT CASES SEPARATE. I MEAN, THEY'RE DIFFERENT.

16 THE COURT: WELL, NOW YOU UNDERSTAND THAT WHETHER OR
17 NOT THE SOLICITOR IS UNIFORM IN HIS OR HER PROSECUTION,
18 THAT'S DISCRETIONARY WITH THE SOLICITOR. I DON'T HAVE ANY
19 CONTROL OVER THAT.

20 MR. GREEN: I UNDERSTAND THAT.

21 MR. BOGGS: I'VE EXPLAINED TO HIM.

22 MR. GREEN: I WAS JUST STATING HOW IT IS AND HOW, YOU
23 KNOW, I WAS JUST TRYING TO GET MINE TO A SECOND OFFENSE AS
24 WELL AS OTHER PEOPLE 'CAUSE A LOT OF GUYS HAVE A RECORD WAY
25 WORSE THAN MINE. THREE ---

SENTENCE OF THE COURT

52

1 THE COURT: WELL, I DON'T ---

2 MR. GREEN: --- AND FOUR TIMES OF THE SAME -- ON

3 DIFFERENT OCCASIONS OF CRACK. AND I JUST ...

4 THE COURT: WELL, I DON'T DISPUTE THAT, BUT YOU

5 UNDERSTAND THAT'S NOT SOMETHING THAT I HAVE ANY CONTROL

6 OVER. THAT DISCRETION DOES NOT LIE WITH ME. THAT

7 DISCRETION LIES WITH THE SOLICITOR AS TO HOW TO PURSUE THE

8 PROSECUTION. ANYTHING ELSE YOU WANT TO TELL ME?

9 MR. GREEN: NO, SIR.

10 THE COURT: ALL RIGHT. ON INDICTMENT 2004-4993, AN

11 INDICTMENT FOR TRAFFICKING IN CRACK COCAINE IN AN AMOUNT OF

12 GREATER THAN TEN GRAMS, BUT LESS -- OR TEN GRAMS OR MORE,

13 BUT LESS THAN TWENTY-EIGHT GRAMS WHEREIN YOU HAVE BEEN FOUND

14 GUILTY, THE SENTENCE OF THE COURT IS YOU, NATHANIEL GREEN,

15 BE CONFINED TO THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

16 FOR A PERIOD OF TWENTY-FIVE YEARS.

17 MS. GANSS: THANK YOU, YOUR HONOR.

18 (WHEREUPON STATE'S EXHIBITS 8 & 9 WERE MARKED)

19 (HEARING ENDED AT 5:39 PM)

20 (END OF REQUESTED TRANSCRIPT OF RECORD)

1

CERTIFICATE OF REPORTER

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9

I, THE UNDERSIGNED, SUSAN W. HUDGINS, OFFICIAL COURT REPORTER FOR THE THIRTEENTH 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 EVIDENCE INTRODUCED IN THE TRIAL/HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR SPARTANBURG COUNTY, SOUTH CAROLINA, ON THE 15TH DAY OF FEBRUARY 2005.

10

11

12

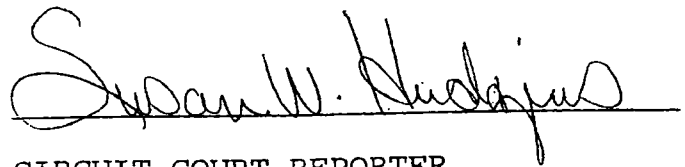
13

14

15

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

APRIL 21, 2005

A handwritten signature in cursive script, reading "Susan W. Hudgins", is written over a horizontal line.

CIRCUIT COURT REPORTER

WITNESSES

C D RAYMOND

SPIC CO SHERIFF'S OFFICE

1. SEARCHED MAILED

2. RECORDED ☒ **Computer** ☐

3. CARD PULLED ☒

4. INDEXED ☒

5. CHECKED WARRANTS ☒

6. ARREST WARRANT NUMBER ☒

7. ARREST CARD ☒

8. FINE CARD ☒

DIRECT PLEA VOUCHERS COPY
DIRECT INDICTMENT (H781022)

ACTION OF GRAND JURY

True Bill

Norah W Burnett

Foreperson of Grand Jury
Date: 11-23-04

VERDICT

Beyond Trial pursuant to

section 14(b)

Guilty

William Ole

Foreperson of Petit Jury
Date: Duane Court Judge

04-GS-42-4993

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

NOV 29 2004

TERM

THE STATE

VS.

NATHANIEL GREEN

Indictment for

TRAFFICKING IN CRACK COCAINE

SC Code: 44-53-375

FILED
CLERK OF COURT
2004 DEC -1 AM 11:41
MARC KITCHENS

54

55

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on NOV 23 2004, the

Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN CRACK COCAINE

That Nathaniel Green did in Spartanburg County on or about June 30, 2004, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess more than (10) ten grams of Crack Cocaine, a schedule II controlled substance, in violation of §44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

Sarah Vance
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July 7th, 2006


Joseph L. Savitz, III
Chief Attorney

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of SPARTANBURG**2008-CP-42-3298**NATHANIEL GREEN # 307622

Full name and prison number, if any, of applicant.

v.

STATE OF SOUTH CAROLINA

Name of Respondent

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2008 JUN 23 PM 1:52
MARC KITCHENSINSTRUCTIONS - 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 it clear to which question any such continued answer refers.

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

If the applicant 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 applicant was convicted.

- Place of detention PERRY CORRECTIONAL INST. 430 Oaklawn Rd.
Delzer, SC. 29669
- Name and location of Court which imposed sentence Spartanburg county
Court of General Sessions
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 04-GS-42-4993 Direct indictment (H781022)
(b) _____
(c) _____
- The date upon which sentence was imposed and the terms of the sentence:
(a) 2/15/05 Terms of the sentence 25 years
(b) _____
(c) _____

Computer

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒ _____

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? sentence

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. Court of General Sessions of Spartanburg Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Dismissed appeal

ii. _____

iii. _____

(c) the date of each such result:

i. June 1, 2007 - Filed June 11, 2007

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. After a thorough review of the record, counsel's brief, and my prose

ii. brief pursuant to Anders v. California, 386 U.S. 738 (1967) and State v.

iii. Williams, 305 S.C. 116, 406 S.E. 2d 357 (1991). The court of appeals grant my counsel's motion to be relieved and dismissed my Appeal

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b) N/A

(c) N/A

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) 6th and 4th Amendment violation / Ineffective assistant of counsel / issues

(b) Brady v. Maryland violation.

(c) _____

See attached Sheet 10(A) + 10(B)

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) did not argue the ambiguities in title 17-25-50 / did object to the chain of custody / did not ~~challenge~~ challenge the credibility of drugs
- (A) did not object to the line of questions from the prosecutor to the government witness,
- (B) Brady v. Maryland Violation / the state withheld information

11. 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 petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

- (d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), 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. _____

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SPARTANBURG COURT
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(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. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), 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. _____

15. If any ground set forth in (9) 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) Trial did not object to issues for an appeal
- (b) _____
- (c) _____

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

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

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Thomas A.M. Boggs 147 East St. John St Spartanburg S.C. 29306
- ii. Joseph L. Savitz, III 1330 Lady Street, Suite 401 Columbia, S.C.
- iii. 29201 - 3332

(b) the proceedings at which each such attorney represented you:

- i. At my trial
- ii. Appellate defense
- iii. _____

18. State clearly the relief you seek in filing this application.

New Trial
Remand for Resentencing

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

NO

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ISSUE # 3 (10)

A+B Counsel was ineffective because he did not object to the line of question from the prosecutor to government witness. The state bolster the witness testimony. The government witness testified that he was a paid operative working for Spartanburg county Sheriff's office. On 2-15-05 the day at my trial the prosecutor ask him the operative have he been paid for the control buy that took place on 6-30-04 the operative answer was no and the prosecutor ask the operative again and he answered no, no twice. That's three times the operative answered no to question, but the prosecutor go on to ask him the operative again. She said you haven't -- today, as of today have you been paid for what you already did on June 30th 2004? The operative answer to that was, OH I have done some in the past and haven't been paid exactly. The prosecutor next question was, Okay, so you're already paid? The operative answer was, Right. Tr. pg. 23 lines 2 to 12. Once the question was ask twice by the prosecutor and answered three times by the operative /- witness, the question should have never been ask again. When the question was ask again that's when my lawyer became ineffective, because the operative gave a different answer from the last times the question

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was answer. If the operative getting paid by S.C.S.O why haven't he been paid for the control buy that took place on June 30, 04? My lawyer at the time questioned the operative at my trial, he told my lawyer he was a paid operative. My lawyer had no proof of that so he goes on to ask the operative, right after the control buy you had some pretty serious charges dismissed, didn't you? The operative answer was um-Hum (Affirmative) I did. There is proof to those facts but there is no proof that the operative was getting paid other than the testimony of C. Raymond the investigator. We can not discredit a witness/operative if we don't have all the information we need from the prosecution. There for making this issue a Brady v. Maryland violation. My lawyer was ineffective because he did not raise this issue. My case depended alot on the operative testimony. I want to know why those charges on September 17, 2004 of the operative was dismissed. This information could show if the operative was working ~~was~~ off charges. Also it will show that C. Raymond investigator lied during my trial as well as the operative. If they lied during my trial who knows what else they could have lied about during my trial. Based on my 4th and 6th Admendment violation ineffective assistant

(10)

A. of counsel as well as the Brady v. Maryland
violation my case should be dismissed and
remanded for new trial.

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10.

ISSUE #1 (A) Counsel was ineffective because counsel performance was deficient in that counsel failed to argue the Ambiguities in title 17-25-50 counsel also based my sentence arguemet on a control substance case, State v. Boyd 288 S.E. 2d 341 S.E. 2d 144 In Boyd the court of appeals ruled where two or more controlled substance violation arising out of a single incident and occurred simultaneously will be treated as one under title 17-25-50. Title 17-25-50 does not states what the court of appeals ruled on in Boyd it only states: In determining the number of offenses for the purpose of imposition of sentence, the court shall treat as one offense any number of offenses which have been committed at times closely connected in point of time that they may be considered as one offense, notwithstanding under the law they constitute separate and distinct offenses. You could apply Boyd case to title 17-25-50 because of the ambiguities with in the statute. Because of the ambiguities you could also apply title 17-25-50 to my case as well. In my case, both of my 1995 convictions are connected by an ongoing investigation, and sting operation that involved the same police officers, the same informants, all in the same geographical area, a set-time frame all of which were similar in modus operandi. In my case, both of my 1995 convictions

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MARCO K. CHEN

are clearly connected case that happened in point of time that they may be considered as one offense. S.C. code, 17-25-50 does not state the time between closely connected offenses. Both 1995 conviction happen six month apart, but they were within the set-time all of which were similar in modus operandi, I have clearly brought my case within the language and meaning of the statute, 17-25-50. Ambiguities as to the applicable penalty must be resolved in favor of lenity granting the defendant the benefit of the doubt. Penal laws are to be expounded strictly against the offender and liberally in his favor and it is immaterial, for the purpose of the application of the rule of strict construction, whether the proceeding for the enforcement of the Penal law be criminal or civil. Based on the facts in my case and the ambiguity in S.C. code section 17-25-50 it is only logical and fair these two prior 1995 offenses should be considered as one for enhancement purposes as they were for sentencing purposes in 1995 and be treated as a single first offense, therefore making my trafficking conviction a second conviction and not a 3rd offense.

10

SUE #2 (A.) Counsel was ineffective because he did not object to the chain of custody there was a weak link in the chain of custody. The chain of custody witness who has the weak link in the chain of custody did not come to trial to testify. Also the substance I was charged with changed through out the course of the chain to the arrest on 07/24/04. I was arrested for trafficking cocaine 10 g or more, Less than 28 g 1st (E) (A) (H781022). That same arrest warrant number was direct indicted on 11-23-04 and the substance was changed to trafficking in crack cocaine. The point I am trying to make is why arrest me with a warrant charging me with trafficking in cocaine when the drug forensic Analysis lab tested the substance on 7-2-04 C. Raymond narcotics unit tested the substance on 6-30-04 both said the substance tested positive for crack cocaine. Also C. Raymond gave his statement to that almost three month later after the control buy. control buy date 6-30-04, date C. Raymond statement was given 9-16-04, and date of my arrest 7/24/04. The narcotics unit had 24 days to get the right warrant. If they knew what the substance was why wasn't the right substance charged in the arrest warrant, it wasn't like the

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JACKSONBURG COUNTY

substance was not tested, Based on C. Raymond the investigator statement given 9-16-04 and Spartanburg county forensic analysis lab statement given 7-2-04. The drugs charged should have been trafficking in crack cocaine. If given a new trial my self and my new lawyer could challenge the credibility of the substance. We could also ask the evidence officer which mistake she made on her form C (Rule 6). She either put the wrong control, no. 5007684 on her form or name of person making original seizure. The evidence officer has on her form the person making original seizure is C. Raymond, when in fact the person made the original seizure was Keith Pearson. If she tell the court she ^{made} the mistake of putting the wrong control no. #5007684 on the form we have a question of admissibility. If she say she put the wrong person making original seizure on the form C (Rule 6) we have a question of credibility. That's why a new trial is needed in this case. Facts: Evidence officer did not come to trial to testify even though she have a error on her form C (Rule 6). The 6th amendment to the constitution of the United States, Requires that a citizen have this right to effective assistant of counsel, and have the right to confrontation under the confrontation clause to confront the evidence and/or

10

ISSUE #2 (A) witnesses that are against me. Further a meanefull
cross examumination by defense.

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HARVARD COUNTY
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STATE OF SOUTH CAROLINA)

VERIFICATION

COUNTY OF Spartanburg)

I, Nathaniel Green, 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.

Nathaniel Green

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SPARTANBURG COUNTY
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MARC KITCHENS

Sworn to and subscribed before me

This 29th day of May, 2008

Carol A. Thackston

Notary Public for South Carolina

My Commission Expires 07-10-2011

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

I, Nathaniel Green, 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 or 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 proceeding or give security therefor.

Nathaniel Green
Applicant

Sworn to and subscribed before me

This 29th day of May, 2008

Carol A. Thackston

Notary Public for South Carolina

My Commission Expires: 07-10-2011

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2008-CP-42-3298

Nathaniel Green, 307622,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed June 23, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted during the November 2004 term of the Spartanburg County Grand Jury trafficking in crack cocaine (04-GS-42-4993). Thomas A.M. Boggs, Esquire, represented the Applicant. On February 15, 2005, a bench trial was held before the Honorable J. Derham Cole. Judge Cole found the Applicant guilty and sentenced him to confinement for a period of twenty-five (25) years with credit for time served.

A timely notice of appeal was filed and Joseph L. Savitz, III, Esquire, submitted an Anders appeal on the Applicant's behalf. The Court of Appeals dismissed the appeal by order filed June 11, 2007. The remittitur was issued on June 27, 2007.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the records from the Applicant's direct appeal. Any of the above not so attached will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. Failure to argue "ambiguities in title 17-25-50;"
3. Failure to object to chain of custody;
4. Failure to challenge the credibility of drugs;
5. Failure to object to the State's line of questions on direct; and
6. Brady violation were the State withheld information.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

V.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MICHELLE J. PARSONS
Assistant Attorney General

By: Michelle Parsons
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

February 4, 2009.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Nathaniel Green,

2008-CP-42-3298

Applicant,

vs.

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

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 of the Respondent in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

O. Cyrus Hinton, Esquire
Hinton & Associates, PA
145 N. Church Street, Box 12
Spartanburg, South Carolina 29306


Anne A. Mueller
Legal Assistant for the Respondent

DATED this February 4th day of February, 2009.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
4 NATHANIEL GREEN,)
5) TRANSCRIPT
6 APPLICANT,) OF
7 vs.) RECORD
8 STATE OF SOUTH CAROLINA,) 08-CP-42-3298
9 RESPONDENT.)

10
11 July 27th, 2009
12 Spartanburg, South Carolina

13 B E F O R E:

14 THE HONORABLE J. MARK HAYES, II, Judge.

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

16 VANESSA CASON
17 ESQ.
18 Attorney for the Applicant

19 MICHELLE PARSONS KELLEY
20 ASSISTANT ATTORNEY GENERAL
21 Attorney for the Respondent

22
23
24 PAMELA E. GREEN
25 Circuit Court Reporter
Seventh Judicial Circuit

I N D E X O F W I T N E S S E SWITNESSESPAGE

NATHANIEL GREEN

Direct examination by Ms. Cason

5

TAM BOGGS

Direct examination by Mrs. Kelley

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Cross-examination by Ms. Cason

37

Closing by Mrs. Kelley

41

Closing by Ms. Cason

43

Certificate

45

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Applicant's Exhibits</u>		
A-1	Form C	13	18
A-2	Form C	13	18
A-3	Form C	13	18
A-4	Brief		30

P R O C E E D I N G S

1
2
3 MRS. KELLEY: Your Honor, this case is Nathaniel Green,
4 2008-CP-42-3298. Mr. Green was indicted in November of 2004
5 in Spartanburg County for trafficking in crack cocaine. He
6 was represented by Mr. Boggs. On February 14th, 2005, a
7 bench trial was held before Judge Cole. Judge Cole found
8 the applicant guilty and sentenced him to 25 years. An
9 appeal was filed and an Anders brief was submitted on his
10 behalf. The Court of Appeals dismissed the appeal on July
11 11th, 2007, and issued the remittitur on July 27th, 2007.

12 THE COURT: Is the applicant ready to proceed?

13 MS. CASON: Yes, Your Honor.

14 MR. GREEN: Excuse me, Your Honor.

15 Could I have a minute with my attorney?

16 THE COURT: Uh-huh. (Affirmative).

17 (Pause.)

18 MS. CASON: The applicant is ready, Your Honor.

19 THE COURT: Yes, ma'am, are you ready to call your
20 first witness?

21 MS. CASON: Yes, I call Nathaniel Green to the stand.

22 THE COURT: Mr. Green, if you would, come on around up
23 to the stand.

24 MR. GREEN: All right.

25 THE COURT: You can lay your papers up there on the

Nathaniel Green - Direct examination
by Ms. Cason

1 counter and place your left-hand on the Bible and raise your
2 right-hand.

3 NATHANIEL GREEN, being first duly
4 sworn, testified as follows:

5 THE COURT: Thank you, sir. Please have a seat in that
6 chair.

7 DIRECT EXAMINATION

8 BY MS. CASON:

9 Q Mr. Green, you have filed a petition for
10 post-conviction relief, is that correct?

11 A Yes.

12 Q And in your petition, your application, would you state
13 your issues?

14 A Well, one being trial counsel really ineffective
15 assistance of counsel by failing to investigate and/or
16 challenge the use of fraudulent, falsified, and/or perjured
17 chain of custody documents utilized in the evidence.

18 Q Okay. Okay. Are there any other issues?

19 A And -- yes, my next issue I have marked, my Ground,
20 Ground B, it says trial counsel really ineffective
21 assistance of counsel by failing to object to the admission
22 of faulty chain of custody and to evidence without
23 clarification of error.

24 Q Okay. And your next issue?

25 A The next issue is, issue two, trial counsel was

Nathaniel Green - Direct examination
by Ms. Cason

1 ineffective for failing to investigate critical evidence or
2 defense when preparing for trial regarding application,
3 applicant's prior convictions relative to recent
4 imprisonment.

5 Q Okay. Now, those were stated or were those outlined in
6 your application?

7 A Yes.

8 Q Okay. And what, what exactly are you looking at in
9 front of you?

10 A You talking about the issue I just read off to you?

11 Q Yes.

12 A This right here is -- it's dealing with the
13 enhancement, the enhancement issue of my, my sentence.

14 Q Are you looking at a brief?

15 A Yes.

16 Q Okay. So, you're not actually looking at your
17 application?

18 A Yes, I know it's got -- I did this brief around my
19 application.

20 Q Okay. So, those are the issues that you would like the
21 Court to consider today?

22 A Yes, I also have one more of the issue.

23 Q Okay. And your, your other issues?

24 A Yeah, my other issue. I had it here. I think I might
25 of left it at the table.

Nathaniel Green - Direct examination
by Ms. Cason

1 Q Okay. Can you state for the Court what your final
2 issue is?

3 A Just give me a second. Okay. I have it right here.

4 All right. It's a discovery violation, petition due
5 process rights. Rights were violated due to counsel
6 ineffective in recognized and challenging the solicitor on
7 Brady violation and/or not correcting false, misleading
8 testimony for, of confidential informant.

9 Q Okay. All right. Now, with respect to your first
10 issue, and that is regarding ineffective assistance of
11 counsel, you believe that your trial attorney made an error
12 because he did not challenge the chain of custody?

13 Is that your---

14 A Yes.

15 Q Is that your issue?

16 A Yes.

17 Q Can you explain that?

18 A The reason being is the first issue, the first issue on
19 it, my trial counsel, he wrote me on one occasion and on
20 that occasion it had a case in it addressing the chain of
21 custody issue. Based on that, based on that knowledge -- I
22 have a copy of that letter, but I don't think I have it with
23 me, and it states, and I'm pretty sure he can testify to
24 this as well, that case was dealing with a chain of custody
25 issue. But during the fact, due to the fact that I have two

Nathaniel Green - Direct examination
by Ms. Cason

1 chain of custody issues, I'm not really sure on what issue
2 he was referring to when he wrote me and gave me, gave me
3 the case. That case would help me in further proceedings.

4 But I got two chain of custody issues. I got them
5 marked Issue A and Issue B. But both of them, both of them
6 as a whole issue is Issue one, and one is dealing with --
7 the other issue was dealing with the documents in the chain
8 of custody was, was already signed. The, the State was
9 using the forms that was already signed and notarized by
10 Evidence Officer Jane Millwood and evidence, and notary
11 public, Mr. Rosenburg, Mr. Rosenburg, excuse me.

12 They used those forms in there as evidence. I also
13 have other forms on unrelated cases that has the same exact
14 form, and these forms right here is, is being used by the
15 State in evidence.

16 Q Okay. You -- do you have those documents with you?

17 A Yes, I have those documents. I have them marked in, in
18 as exhibits, as exhibits, and I would like to make them as
19 evidence.

20 Also I like to point out both forms, all forms dealing
21 with Jane Millwood is the form that I like to bring to the
22 Court's attention. It's the form right there, the other
23 forms. You got the form on the unrelated case, unrelated
24 case. Okay.

25 Q Okay. Now, you're saying that there were Rule 6 forms,

Nathaniel Green - Direct examination
by Ms. Cason

1 two forms C's?

2 A Yeah, Rule 6 Form C forms. All of them, they marked
3 Jane Millwood, and those forms that marked with Jane
4 Millwood, all forms have identical, identical signatures on
5 them, and they wasn't personally signed by Jane Millwood on
6 the days indicated on the forms.

7 Q Well, let's, let's just go back for a moment.

8 The first form that I'm looking at is a Form C, Rule 6,
9 is that correct?

10 A Yes.

11 Q Is this a form that was completed in your case?

12 A Well, that's one, that's one form that was completed in
13 my case, but they dismissed that, that particular form
14 because it was a lack of evidence. That was one case.
15 That, that's one form they dismissed.

16 But the reason why I have this form right here because
17 that form, that particular form has this exact same
18 signature and notary's signature and commission expire date
19 identical as the form that I'm, that I'm convicted on. The
20 form that I'm convicted on is dated 7/1/04 with Control
21 Number 5007684.

22 Q Okay. So, is it your testimony that they're two
23 different forms?

24 A Two different forms. well, identical hand,
25 handwritten, handwritten signature from Jane Millwood and

Nathaniel Green - Direct examination
by Ms. Cason

1 from Robert Rosenberg.

2 Q Okay. Two different Form C's?

3 A Two different Form C's.

4 Q Both belonging?

5 A Both belonging to Jane Millwood. Both of them bearing
6 the exact same signature both in the, in the exact same
7 alignment.

8 Q Okay.

9 A Both those forms were not signed on no particular day
10 by Jane Millwood nor was it personally signed by a notary
11 public.

12 Q And the third form?

13 A The third form, Form C was, involved an unrelated case
14 from a guy, an unrelated defendant, and it has the, also the
15 same exact signature from Jane Millwood and I, also Mr.
16 Rosenberg.

17 Q So, what is your, what is your contention or what is
18 your issue with these documents?

19 A Okay. My, my contention with these documents, each --
20 up under South Carolina Rules of Criminal Procedure, Rule
21 6(b), all forms have to be personally signed each time by
22 every person, every person that come in contact with those
23 forms.

24 Q Okay. And---

25 A They also have to be notarized each time.

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1 Q Okay. And what are the dates on these documents, all
2 three documents?

3 A All three documents, the unrelated form is dated
4 8/16/04. The form that I'm currently incarcerated on is
5 7/1/04, and the, the form that was dismissed on my case is
6 six, is dated 6/24/04.

7 MS. CASON: Your Honor, at this time I'd like to have
8 these---

9 A Also, also I want to, I want to point, point out, make
10 one more -- also I want to point out right -- I want to
11 demonstrate, I want to demonstrate with the Court that if
12 you, if you take both forms, if you take all three forms,
13 excuse me, take all three forms and you will hold all three
14 forms up to the light, you can see, you can clearly see that
15 both, all, both, all the forms have the signatures as
16 identical as each other, and it's, it's impossible for her
17 to write characteristics and signatures in the same exact
18 spot each time they sign a form.

19 There would be eerily similar, but it would never be,
20 they would never be exact, and, in this case, all forms got
21 the exact same signatures from Mr. Robert Rosenberg and Jane
22 Millwood. If this practice is allowed by the Court, as I
23 have been, as I have, I'm demonstrating here today, if it's
24 allowed by the Court, then you might as well allow
25 narcotic's agent to have forms, blank forms that the Court

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1 is using, that the State is using, excuse me, and you might
2 allow them to sign the form, have them notarized, and ride
3 around in their patrol cars with these, these particular
4 forms and fill in the dates on later dates. That's what I'm
5 claiming that the State did in this particular case.

6 They're using fraud and they're using tamper, tamper
7 documents. In this case, that will create an issue of
8 admissibility.

9 MS. CASON: Your Honor, at this time I'd like to have
10 these three documents, Form C's, marked as Petitioner's 1.

11 THE COURT: You want them as a group?

12 MS. CASON: Yes, Your Honor.

13 WITNESS: Before, before you admit them into evidence,
14 I got some on the Issue B that I would want to point out.

15 THE COURT: She's just admitting them into evidence,
16 and allow -- if you will, sir, allow your lawyer to do her
17 job.

18 Okay?

19 WITNESS: All right.

20 THE COURT: Thank you.

21 Now, are you just admitting them for identification or
22 are you---

23 MS. CASON: For identification before I actually---

24 THE COURT: All right.

25 MS. CASON: ---try to move them into evidence.

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1 (Whereupon, the Form C's were marked as Applicant's
2 Exhibit No. 1 for identification purposes only at this
3 time.)

4 Q Now, Mr. Green, now you have what's been marked as
5 Applicant's 1, these three documents---

6 THE COURT: How many -- I apologize for interrupting.
7 Let's mark them 1, 2, and 3.

8 MS. CASON: 1, 2, and 3.

9 (Whereupon, the Form C's were marked as Applicant's
10 Exhibit Nos. 1 through 3 for identification purposes only at
11 this time.)

12 Q Okay. Mr. Green, so, you're looking at what's been
13 marked as Applicant's 1, 2, and 3.

14 Now, again, would you identify which documents are your
15 documents related to any case that you've had?

16 A Okay. The documents that's related to the case that I
17 have is, it bares control number -- the first one -- there
18 was one that was dismissed dated 6/24/04. It bares Control
19 Number 5007682.

20 Q Is that marked Applicants 1, 2, or 3?

21 A It's marked one.

22 Q Applicant's 1.

23 What about Applicant's 2?

24 A Applicant's 2 is marked Control Number -- well, the
25 control number's off the sheet right here. Different.

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1 control number, you know what I'm saying, I can't speak to
2 the control number.

3 Q Okay. There's no control number, but this is a Form C,
4 is that correct?

5 A It's a control number, but due to the fact that it's
6 not -- the run off copy didn't copy. I guess another copy.
7 It should be another copy with the control number on it.

8 THE COURT: All right, sir. If you would, I'm gonna
9 instruct you, please listen to the question your lawyer is
10 asking and answer the question, and if you can not answer
11 the question, then you may state that as well.

12 Okay?

13 WITNESS: Okay. Well, I can answer the question, but
14 what I would -- the issue I'm---

15 THE COURT: Then, then, if you would, please do so
16 cause she may have a strategy in mind as to how she's asking
17 the questions. I, I do not know.

18 WITNESS: I wish to point out the reason why I can't
19 answer the question is because the copies, this one is on---

20 THE COURT: All right. Sir?

21 WITNESS: It's ineffective copy.

22 THE COURT: Sir, then listen to the question your
23 lawyer's asking you. If you can not answer her question,
24 then let her know so. She is the who controls the asking of
25 the question.

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1 Okay?

2 WITNESS: All right.

3 THE COURT: Thank you.

4 Q Do -- you have in front of you what's been marked as
5 Applicant's 2, is that correct?

6 A Yes.

7 Q Okay. And is that a Form C?

8 A Yes, it's a Form C.

9 Q Okay. And the information contained in this exhibit,
10 was -- were items collected from or substances collected
11 from whom?

12 A This, this substance was collected from unrelated --
13 it's from an unrelated case dealing with unrelated narcotic
14 agent, and it defectively. It has a control number on it,
15 but it's not clear on the form.

16 Q Okay. Who was it collected from?

17 A It was collected from I think it was Mark, Mark
18 Kitchens, Jay Kelly.

19 Q Okay. And is that someone who was a part of your case?

20 A No, it wasn't.

21 Q Okay. And with this exhibit, you are -- it was your
22 testimony earlier that it was signed by the same person who
23 signed Applicant's 1?

24 A Yeah, correct.

25 Q And Applicant's 1 is that exhibit, is your exhibit from

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1 your case?

2 A Yes, it's, it's my exhibit from my case.

3 Q Okay. And Applicant's 2 is not, not an item from your
4 case, is that correct?

5 A No, it's not an item from my case.

6 Q What about Applicant's 3?

7 A Applicant's 3 is -- it's an item from my case. It's
8 the one that was a result of my incarceration.

9 Q Okay. And is it your contention that the signatures on
10 each of the exhibits is exactly the same?

11 A Yes, they are photocopy signatures.

12 Q And is it also your contention that the affidavit is
13 exactly the same?

14 A Yes, all affidavits are the same.

15 Q Okay. So, you have Exhibits 1, 2, and 3?

16 A Yes.

17 Q Applicant's 1, 2, and 3?

18 A Yes.

19 Q Do you have anything else that you would like to
20 indicate about these forms?

21 A Yes, I would like have something -- I have something
22 else I like, something else I'd like to indicate.

23 Where's the brief?

24 Here's -- yeah, give me a second.

25 Q Well, Mr. Green, while, while you're looking, let's

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by Ms. Cason

1 just---

2 A Huh?

3 Q ---talk about---

4 A Go ahead.

5 Q ---your, your problem with the form is what?

6 A Those forms, each, each one of those forms is, what the
7 state, what I'm alleging the state is doing with those, with
8 those forms right there. The state, the state is taking
9 blank documents, blank chain of custody forms, C forms, and
10 signing the blank forms, and notary public is signing the
11 blank form, signing commission expire date on it, on that
12 blank form, making copies, and using those forms on later
13 dates when you, when needed.

14 Q Okay. Thank you.

15 Your Honor, I'd like to have these moved into evidence,
16 Exhibits 1, 2, and 3.

17 THE COURT: Any objection from the State?

18 MRS. KELLEY: Your Honor, are these originals?

19 MS. CASON: They are not originals. They are
20 photocopies. All of which -- well, two of which, Nos. 1 and
21 3, came from Mr. Green's---

22 WITNESS: Those are, those are the documents that I,
23 that I received from my trial attorney.

24 THE COURT: All right. Mr. Green, thank you for the
25 information. Please allow your attorney to make the

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by Ms. Cason

1 arguments.

2 All right?

3 WITNESS: All right.

4 MRS. KELLEY: Your Honor?

5 THE COURT: She said they're photocopies.

6 MRS. KELLEY: I would object being these photocopies
7 could of been tampered with.

8 THE COURT: All right. I'll allow it, allow them into
9 evidence. You may cross-examine as to those, to that issue.

10 MRS. KELLEY: Your Honor, can I see those again?

11 THE COURT: Uh-huh. (Affirmative).

12 (Whereupon, Applicant's Exhibit Nos. 1 through 3 were
13 received into evidence at this time.)

14 Q Okay. Now, Mr. Green, your -- that was your fourth
15 issue. Now, let's go back to your first issue.

16 Your first issue dealt with ineffective assistance of,
17 of trial counsel with respect to the chain of custody, is
18 that correct?

19 A Yes.

20 Q Okay. What exactly happened with respect to the chain
21 of custody that was not followed?

22 A Well, on that chain of custody, on that same chain of
23 custody that was just previously, previously admitted into
24 evidence, the one that was dated 7/1/04, on that form right
25 there, it's -- Mrs. Millwood have on that form the original

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1 seizure on that form is, excuse me, Chris Raymond on that
2 form, and the person on that form, according to that, in
3 that, in that chain of custody, on that chain of custody,
4 and throughout the chain, the first person coming into
5 contact on that form, on the Form B, is the person is Keith
6 Pearson. That's the person that make the original seizure
7 on the drugs, and Mrs. Millwood had on another chain of
8 custody, Form C form, that the drugs were originally seized
9 by Chris Raymond, and I never -- it was never alleged that I
10 sold any drugs to Chris Raymond. That's the mistake that
11 Mrs. Millwood made on the forms.

12 And, also, I want to point out that Mrs. Millwood also
13 didn't come to trial to testify. My trial attorney did not
14 also -- she didn't -- he didn't, due to the error, he did
15 not also request Mrs. Millwood present to come testify, and
16 the reason it was required that Mrs. Millwood come to trial
17 to testify is for, to state what mistakes she made on the
18 form.

19 Now, it's two errors -- it's, it's an error clearly
20 made on the form by -- if you look at the form, you can see
21 it's clearly error made on the form. She either made a
22 mistake of putting the wrong control number on the form or
23 the person making the original seizure. But I don't
24 think -- well, excuse me, let me take back -- let me, let me
25 back up. Anyone that can't answer that question to the

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1 mistake Mrs. Millwood made on the form. It's clearly a
2 mistake made on the form because the person making the
3 original seizure is Keith Pearson. He is the person alleged
4 made the original seizure. If you look at Officer Raymond,
5 Officer Raymond, on form, Form C Rule 6, he would of had on
6 his form indicating that the person making the original
7 seizure is Keith Pearson as well as by Keith Pearson Form B
8 form. It's indicating that he is the one making the
9 original seizure, and Mrs. Millwood has on her form the
10 person making the original seizure is Officer, Detective
11 Raymond.

12 Q All right.

13 A So---

14 THE COURT: Let me interrupt you again. If he's gonna
15 testify so methodically I'm gonna need to have the forms in
16 my hand so I can be sure I'm understanding his testimony.

17 Q Okay. So, is it your claim that the, your, your trial
18 counsel was ineffective because he, he failed to object to
19 these documents?

20 A Yes.

21 Q Okay. And particularly documents, Exhibits 1 and 3, is
22 that correct?

23 A Yes, correct.

24 Q Okay. All right. So, now, let's go to your issue two.
25 You stated that you believe your trial counsel is

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by Ms. Cason

1 ineffective for failing to investigate evidence in this
2 case, is that correct?

3 A Correct.

4 Q Specifically what do you believe your trial counsel
5 failed to investigate?

6 A During, during the sentencing phase at my trial, he
7 failed to investigate in reviewing other cases that related
8 to enhancement, and the Penal Statutes 17-25-50. Those,
9 statutes -- those -- the penal statute deals with
10 enhancements of prior, prior convictions, and those cases
11 that he failed to raise during, during my sentencing phase
12 was State versus Gordon, 588 S.E.2d 105 and also State
13 versus Benjamin, 579 S.E.2d 289.

14 Q Okay. So, so, you believe that your trial counsel
15 should have known about those cases---

16 A Yeah.

17 Q ---or should have---

18 A Yes, because those cases already ruled on during the
19 time of my sentencing.

20 Q Okay. And, and in those cases, what exactly are you
21 claiming?

22 A Well, in particularly, in State versus Gordon, in that
23 case he had multiple charges, and he, he didn't have any
24 arrests when he had committed all of those charges, and in
25 that case, all, all the charges was drove as, as one charge

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1 based upon, based upon Title 17-25-50.

2 Q Okay. Was, was this what -- you appealed your case, is
3 that correct?

4 A Yes.

5 Q Your conviction?

6 A Yes.

7 Q And was this the basis of your appeal?

8 A Well, yeah, it's the -- it was the basis of my appeal,
9 yeah.

10 Q Okay. And what was the outcome of that appeal?

11 A The outcome of my appeal was they dismissed my appeal.

12 Q Okay. So, that issue has already been ruled on, is
13 that correct?

14 A Yes.

15 Q Okay. So, today what relief are you asking this Court
16 to grant you based on that?

17 A Well, the relief I'm asking the Court to grant me on
18 this was is to be resentenced upon the two, the two cases I
19 stated, State versus Gordon and State versus Benjamin.

20 Q Okay. Although it's already been ruled on?

21 A Although it has been ruled on without, without using
22 these two cases, yes.

23 Q Without using these particular cases?

24 A Yes.

25 Q Okay. All right. Now, with respect to your third

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by Ms. Cason

1 issue, you alleged that your rights were violated because
2 your trial counsel failed to object to false or misleading
3 testimony, is that correct?

4 A Yes. Yes.

5 Q Could you explain that?

6 A Well, the operative in my case, he committed perjury
7 twice and there were testimony given by the head
8 investigation in my case, Officer Raymond, and he testified
9 that the operative, the operative in my case was to receive
10 clemency for his, for his cooperation with Spartanburg
11 County Sheriff's Office. But prior to trial, me and my
12 attorney, we didn't have any proof from the State stating
13 that this, the guy was receiving currency from Spartanburg
14 County Sheriff's Office, and there was, there was testimony
15 given by Mr. Pearson, the operative in my case, about
16 whether he's been paid in my particular case, and in this
17 particular case, and Mr. Pearson answered no three times in
18 my case, and---

19 Q Okay. Okay. Now, you're citing to the actual
20 transcript, is that correct?

21 A Yeah, the actual transcript.

22 Q Okay. And what you're citing to can be found on Pages,
23 starting on Page 22 and continuing to Page 23, is that
24 correct?

25 A Yes, correct.

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by Ms. Cason

1 Q And this is the direct examination of Mr. Pearson, is
2 that correct?

3 A Yes, correct.

4 Q And Mr. Pearson is the confidential informant?

5 A The confidential informant.

6 Q Okay. And it's your contention that Mr. Pearson
7 perjured himself, is that correct?

8 A Yes, he perjured himself.

9 Q Okay. And, and tell the Court again how he did that.

10 A Yes, I will read briefly off of the Transcript Pages
11 and what Mr. Pearson committed perjury.

12 Q What page are you reading from?

13 A Transcript Page 23, 22 -- Transcript Page 23, 22 and
14 23, excuse me, Lines 24 to 25.

15 Okay. It says he was asked, the question was how much
16 did you get paid?

17 His answer was it's according to what I did. Sometimes
18 two or three hundred dollars.

19 The next question asked by Mr. Pearson was, this
20 incident that we're talking about, June the 3rd of 2004,
21 have you been, have you been paid, have you already been
22 paid for your work on that?

23 His answer to that was no, I haven't.

24 The next question was yes or no, by Ms. Ganss, the
25 operative answer was no, no, I haven't.

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by Ms. Cason

1 The solicitor goes on to ask him, so, you haven't, as
2 of today, June of 2004, have you been paid, been paid for
3 the work you did on that, and the operative goes on to say
4 well, I have got some in the past and I haven't been paid
5 exactly, and the solicitor goes on to say, she asking so you
6 are paid, and the operative answered yes, I have been paid.
7 That's when the perjury was committed.

8 Q Okay. Can you tell the Court why that's relevant?

9 A It is relevant to information that the State used
10 saying that the operative that was a paid informant that
11 could be impeached and we were entitled to have that in the
12 defense prior to going to trial.

13 Q And are you saying you and your attorney did not have
14 that prior to trial?

15 A We did not have that prior to trial. I wrote my, I
16 wrote my attorney for the information. He told me he didn't
17 never have, received any information.

18 Q Is it relevant for any other reason?

19 A Yes, it's relevant -- he testified that he hasn't been
20 paid, and there's nothing in the record -- Mr., Officer
21 Raymond testified that he's been paid, but there's nothing
22 in the record to indicate that he was paid, and, in fact, he
23 was a paid informant, and he was sit in, sit paid in for,
24 but they never gave anything in the record to say he was a
25 paid informant, and my lawyer was ineffective for not

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1 challenging the, the money transaction between the Sheriff's
2 office and officer, and the operative. Excuse me.

3 Q Okay. And you had also an issue with the fact that you
4 thought there was immunity given to the confidential
5 informant, is that correct?

6 A Yeah, that's correct.

7 Q And can you explain that as it relates to what you're
8 speaking on now?

9 A Okay. And, again, I would like to read off briefly
10 from the transcript.

11 Q What page are you on, sir?

12 A Okay. Transcript Page, Transcript Page 30, Lines 12
13 through 16. The next, the next inconsistent perjured
14 testimony by the operative, Keith Pearson, was given when he
15 was questioned by Petitioner trial lawyer, my trial lawyer.
16 Mr. Boggs during that time. His direct examination, he
17 committed perjury when trial counsel asked right after the
18 controlled buy you had some fairly serious charges
19 dismissed, didn't you?

20 His answer was affirmative, I did.

21 Trial counsel next question was all right, so charges
22 that was, has been pending since July the 28th, 2003.
23 After you became a paid informant those, those charges
24 suddenly disappeared in September, right?

25 His answer I was, I was in the county, I was in the

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by Ms. Cason

1 county jail as well. I did time in the county jail.

2 Next question was, they got dismissed though, didn't
3 they?

4 His answer was yeah, they was gone.

5 Next question was all right, and you were looking at a
6 CDV third which carries three years, right?

7 His answer was right, they was dismissed.

8 Transcript Page 30, Lines 17 through 25. Next question
9 was by, on trial counsel, yeah, after you did this?

10 His answer was while I was in the county jail they was
11 dismissed.

12 Ted next question was after those incident they were
13 dismissed, right?

14 His answer, the operative answer was not to my
15 knowledge, that I know of.

16 The next question was well, it says September the
17 17th, isn't that right?

18 The answer was well, yes, if it says it, yeah.

19 Trial counsel next question was the point is after you
20 became a paid informant, all of a sudden these serious
21 charges disappeared as well as you being paid, right?

22 The answer was I guess insinuating he had, he is a paid
23 informant and charges were dismissed due to the fact of his
24 cooperation.

25 Q Okay. And so, are you testifying today that the

Nathaniel Green - Direct examination
by Ms. Cason

1 operative had a reason to be dishonest or that the operative
2 was not credible?

3 A Yes, the operative -- yes, the operative wasn't
4 credible.

5 Q Okay. And is, is there a specific reason that, that
6 the, that you believe the operative would have to lie?

7 A One reason is being that if he's a, if he's a, if he
8 was to be paid, which was never proven at my, at my trial,
9 if he was to be paid, he would have, he had a reason, one
10 reason he would have to, he facing, he would -- it's
11 according to how much drugs he received and how much he give
12 back to Spartanburg County Sheriff's Office is according to
13 how much he get paid, and Spartanburg County also do not
14 have a strip search policy prior to an informant going to
15 make a controlled buy.

16 And based on Mr. Pearson acknowledge of it, being that
17 he had priors being in the SCDC, and as well as him being an
18 ex-drug dealer, he know how to conceal drugs, and, and that
19 if, if, if one was to give, if I was to -- the control buy
20 that alleged to have taken place on that particular day, if
21 it was to be true and I given Mr. Pearson something, there
22 was, there's, there's, there's nothing that saying that Mr.
23 Pearson couldn't of took those same drugs and made a switch
24 on his person because Spartanburg County does not have a
25 policy of strip, of strip searching operatives before they

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by Ms. Cason

1 go on make a controlled buy.

2 And if he was to receive money, he could of made a
3 switch of the drugs and hand it to the officers to, to
4 receive more favorable money, more currency.

5 Q Okay. So, you are, in essence, attacking the
6 controlled buy?

7 A And as well as the testimony of the witness.

8 Q As well as Mr. Pearson's testimony?

9 A Yes, correct.

10 Q Okay. And based on that, you, do you feel that your
11 trial attorney failed to object to the testimony regarding
12 the controlled buy?

13 A Yes.

14 Q And the credibility of Mr. Pearson?

15 A Yes.

16 Q All right. Now, with, with those issues, those four
17 issues, you actually did a brief on those issues, is that
18 correct?

19 A Yes, I have briefed all the issues that---

20 Q And---

21 A I have briefed all the issues.

22 Q And is this the brief that you actually completed?

23 A Yes.

24 Q And this brief contains three of the four, three of
25 your four issues?

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by Ms. Cason

1 A Yes, correct.

2 Q And your fourth issue related to Exhibits 1, 2, and 3,
3 is that correct?

4 A Yes.

5 MS. CASON: Okay. Your Honor, I'd like to have this
6 brief marked as Applicant's 4.

7 MRS. KELLEY: Your Honor, we would like to have a copy
8 of this for our file, but we have no objection.

9 THE COURT: All right. Be Applicant's 4.

10 Do you want to go ahead and just have it introduced
11 into evidence?

12 MS. CARSON: Yes, Your Honor, I'd like to.

13 THE COURT: Any objection to it---

14 MRS. KELLEY: None.

15 THE COURT: Okay. It's without objection.

16 (Whereupon, the brief was marked as Applicant's Exhibit
17 No. 4 and received into evidence at this time.)

18 Q Now, Mr. Green, these are -- this brief, which is
19 Applicant's 4, outlines all the issues that you have stated
20 here today?

21 A Yes.

22 Q And are there any other issues that you would like the
23 Court to consider regarding your, the relief that you're
24 seeking?

25 A Yes, the reason I'm seeking for the chain of custody is

Tam Boggs - Direct examination
by Mrs. Kelley

1 vacate of sentence or either new trial.

2 MS. CASON: Okay. All right. Your Honor, that
3 concludes my examination of Mr. Green.

4 THE COURT: Can I have the brief?

5 MS. CASON: Yes, sir.

6 THE COURT: Yes, ma'am.

7 MRS. KELLEY: I have no questions for this witness.

8 THE COURT: All right. Thank you, sir. You may step
9 down.

10 Is the applicant ready to call their next witness?

11 MS. CASON: We have no further witnesses, Your Honor.

12 THE COURT: Is the State ready to proceed?

13 MRS. KELLEY: Your Honor, we would call Tam Boggs.

14 THE COURT: Come around, sir. If you would, place your
15 left-hand on the Bible and raise your right-hand.

16 TAM BOGGS, being first duly sworn,
17 testified as follows:

18 THE COURT: Thank you, sir. You may be seated in that
19 chair.

20 DIRECT EXAMINATION

21 BY MRS. KELLEY:

22 Q Mr. Boggs, were you appointed or retained in this case?

23 A Retained.

24 Q Do you have much experience in criminal law?

25 A Thirty-two years. I did -- about sixty-five percent of

Tam Boggs - Direct examination
by Mrs. Kelley

1 what I did was -- sixty to sixty-five percent was criminal.

2 Q Do you recall when you first met with the applicant?

3 A That -- no, I really don't.

4 Q Did you meet multiple times with the applicant?

5 A We met several times. Nathaniel was pretty good about
6 keeping up with what's going on in his case.

7 Q What did y'all discuss during the meetings?

8 A Initially it, it would of been just interviewing him,
9 what, what he told me about it, and I always felt like he
10 was pretty forthcoming about what happened, which was always
11 a nice, nice experience when your client tells you the
12 truth. Once I got the discovery in, he and I discussed that
13 and discussed how, how we could proceed with the case.

14 Q And what were the facts?

15 A The facts of the case were he had met, and I think
16 fairly casually, a fellow named Keith Pearson. They met on
17 several occasions. During those conversations, discussed
18 the sale and purchase of drugs.

19 Keith was working as an operative for the Spartanburg
20 County Sheriff's Department at that time, and I think they
21 kind of -- I think the Sheriff's Office kind of had a
22 casual, or not casual, but had an understanding with him
23 that if Keith could initiate a case, he would, he would come
24 to them. If they had somebody they were targeting, they
25 would ask Keith if he knew them. In this case, if I

Tam Boggs - Direct examination
by Mrs. Kelley

1 remember correctly, Keith actually brought up Nathaniel's
2 name. I don't think it came from the police. I may be
3 wrong on that count.

4 But anyway, Keith Pearson arranged for a controlled buy
5 of crack cocaine from Nathaniel. It was consummated when,
6 and with wire and with audiotapes, and then Nathaniel
7 ultimately was arrested on it.

8 Q Were you aware, prior to trial, that Keith was a paid
9 informant?

10 A I'm pretty sure I knew ahead of time. Well, let's see.
11 This would of been -- I knew Keith had tried to trade favors
12 before to get more favorable treatment on charges, and I
13 know I learned that Keith was a paid informant. But I'm not
14 sure if I knew that exactly before his case or subsequent to
15 it. But at some point I became aware of that, yes.

16 Q And were you able to cross-examine the C.I. on that
17 point?

18 A I was. I was.

19 Q And did you cross-examine him to attack his
20 credibility?

21 A I did.

22 Q What sort of defenses did y'all discuss?

23 A Once we went through the discovery, on the face of it
24 it looked to me like the whole mechanism, the whole scenario
25 was put together pretty tightly. Wasn't any question that

Tam Boggs - Direct examination
by Mrs. Kelley

1 Nathaniel was there. Wasn't any question that he had the
2 conversation. Wasn't any question about the videos. It
3 appeared, from the discovery, that the police had done the
4 right thing about the, the searches prior to and subsequent
5 to the actual buy.

6 Their testimony was they had visual contact with
7 Pearson from the time he left the, the meeting place till
8 the time he made the buy and returned to the meeting place
9 with the police officers. So, on paper, it looked like they
10 had done a pretty good job of doing it the way they were
11 suppose to. At some point, and I'm not sure exactly when,
12 it looked to me like we would have to try to do something
13 with the sentencing as opposed to the facts of the case.

14 Q So, you began to focus on arguing what about
15 sentencing?

16 A Initially, initially to try and get the solicitor to
17 agree that this was at least a, I mean to get her to agree
18 that this was a second or at least work out some sort of
19 plea agreement to a second as opposed to a third.

20 Q Was the solicitor willing to agree to that?

21 A No, she wasn't.

22 Q What did you do at that point?

23 A Pretty much challenged the say -- this was during the
24 time -- I think Nathaniel's actually pointed out some cases
25 that were heading that way. But this was a time frame where

Tam Boggs - Direct examination
by Mrs. Kelley

1 our Supreme Court had actually decided they would start
2 getting in line in some areas with the U.S. Supreme Court
3 and the Fourth, Fourth Circuit. Our Supreme Court had
4 already adopted State v. Williams and State v. Ray, which
5 was the step along the automobile stops to conform to what
6 the U.S. Supreme Court said had to be done. So, we were
7 kind of in a transitional stage.

8 Secondly, these two or this -- the, the two previous
9 offenses that Nathaniel had actually came about during the
10 time frame where there was a, about an eight or nine month
11 sting operation going on in Spartanburg County, and it was
12 more trying to do the one, two, three rock sales, purchases,
13 and both of his prior arrests fell within that time frame,
14 and, and it was my argument that they fell within this one
15 ongoing operation. And if we could establish that they were
16 so closely connected, they could be considered as one,
17 because he pled, pled to both of them on the same day. So
18 that, that's kind of where we're going. I think I had
19 informed Nathaniel was that that was what we were gonna have
20 to shoot for because the State wasn't willing to negotiate
21 down on the charge.

22 Q And then when you made that argument before the Court,
23 did they find against you?

24 A They did.

25 Q So, it was his third offense rather than his second?

1 A They sentenced him as a third.

2 Q Cause they counted those first two offenses that pled
3 on the same day as separate?

4 A Yeah, under I think State v. Boyd. The two ways you
5 can read that, it can, it can allow for both to be
6 considered as one or it can, the judge has the option of
7 saying, you know, each one is a separate offense regardless
8 of whether he pled to both of them on the same day. Just --
9 and State v. Boyd, I think that was primarily with the time
10 frame and ignored the other elements that the Court can take
11 into consideration when consolidating for sentencing.

12 Q And are you aware that this matter was taken up on
13 appeal?

14 A I saw that when I got the -- well, I know I filed
15 notice of intent to appeal. So, I know that -- I didn't
16 know what had happened to it, but I knew that we had
17 appealed it, and that it was picked up by the Appellate
18 Defense.

19 Q Have you since seen that this was denied on appeal?

20 A I did.

21 Q Did you discuss with the applicant the elements of the
22 crime he was facing?

23 A I'm sure I did.

24 Q And did y'all discuss any possible plea deal?

25 A I'm sure we talked about trying to get it to a second,

Tam Boggs - Direct examination
by Mrs. Kelley

1 yeah.

2 Q But the solicitor wasn't willing to make any plea
3 negotiations?

4 A No.

5 Q Would you say this is a case where the state had
6 overwhelming evidence?

7 A They had a good case factually, yeah.

8 MRS. KELLEY: No further questions. Thank you.

9 MS. CASON: Thank you.

10 CROSS-EXAMINATION

11 BY MS. CASON:

12 Q Mr. Boggs, did you object at all to the credibility of
13 the controlled buy?

14 A Did, did I raise any objection to the manner in which
15 it was done?

16 Q Yes.

17 A No, ma'am, I did not.

18 Q Okay. Do you remember having a discussion with
19 Mr. Green about the manner in which it was done?

20 A I'm sure we did. Specifically, yeah, like I said,
21 Nathaniel was pretty straightforward with me. At least I
22 felt like he was. So, a specific conversation I can't say
23 we did. However, I would think, because he was
24 communicating with me pretty well, yes, we had to have one
25 at some point.

Tam Boggs - Cross-examination
by Ms. Cason

1 Q Okay.

2 A I mean if you -- if there was a specific thing that
3 you're thinking of, maybe it will jog my memory.

4 Q Well, at the trial, did he give you any specific
5 instructions to object to any line of questioning by the
6 solicitor with regard to the buy itself?

7 A I don't, I don't remember that he did.

8 Q Okay. All right. Did you-all discuss the Form C's?

9 A No, we didn't and this is the first time that I've seen
10 that and popped it up. In fact, of all the issues he's
11 raised, that's, you know, in my opinion, that, that's one
12 that's caught my attention today.

13 Q Okay. All right. So, you weren't aware of that at the
14 time of trial?

15 A No, ma'am, I wasn't.

16 Q Okay. Were those documents presented to you?

17 A Yes, we would of had copies of them and I would imagine
18 I turned them over to -- well, the ones that were related to
19 our case I would of turned over to Nathaniel.

20 Q Okay. All right. Were you aware of any -- I know you
21 testified to your knowledge of Mr. Pearson and how he worked
22 with the Spartanburg County Sheriff's Department.

23 But were you aware of any immunity agreements or any
24 agreements that he had with the Sheriff's Department?

25 A No, and that's one of the reasons I had, pursued that

Tam Boggs - Cross-examination
by Ms. Cason

1 during the, my cross-examination of him because I, I had
2 knowledge that he had actually tried to work off charges in
3 the past. I also knew about this CDV third he had hanging
4 over his head, which was not his first CDV third, but it
5 ultimately got dismissed again. So, I was curious as to how
6 much of an incentive it was for him to, you know, to
7 testify. And so, I was trying to point out that this guy
8 has a lot to gain by, by testifying. He has a lot to gain
9 by making up stuff.

10 Q Okay. Do you believe that some of his testimony was
11 false.

12 A Well, the problem, the problem I had in this case with
13 that is, and I have no way to prove or disprove it, but the
14 document had this visual contact that the police said they
15 had from Point A to Point B and back. If I could of broken
16 that down for, you know, broken that visual contact down for
17 any length of time, I think I could of had something to
18 argue with that Keith had a, you know, a compatriot come out
19 and throw some dope at him or do something to adulterate the
20 thing. But it was this, you know, this visual contact the
21 whole time.

22 Q Okay.

23 A Assuming that the police were telling the truth.

24 Q Okay.

25 A I don't know.

Tam Boggs - Cross-examination
by Ms. Cason

1 Q Okay. Do you believe that perhaps the solicitor's
2 office withheld some of that information from you as far as
3 whether or not Mr. Pearson had some type of agreement or
4 deal with them?

5 A I don't know. I just felt like it was strange that we
6 had discovered that his CDV did, did disappear, and I don't
7 know why, but I tried, I tried to and he kept claiming he
8 didn't know why it was. But I think he did, I think he
9 could of been a double dipping on this case. It could of
10 been dismissed because he made another case. I mean we just
11 really don't have a way to substantiate that.

12 Q Okay. All right. Thank you.

13 Okay. You, you heard Mr. Green read and testify that
14 he believed that the operative perjured himself.

15 Is there a particular reason that you didn't object to
16 I guess the line of questioning or the fact that Mr. Pearson
17 was asked three times the same question, gave the same
18 answer, and then on the fourth try, without testifying, he
19 gave a different answer?

20 A I don't know, I don't know that that bothered me that
21 much. It certainly doesn't -- not as much as it does
22 Nathaniel because I think he had established that he was
23 getting something of value. Whether it was money or whether
24 it was reduction in charges, we had established he was
25 getting something of value. And what I -- all I wanted to

Tam Boggs - Cross-examination
by Ms. Cason

1 do was just say maybe you were double dipping, maybe you
2 really weren't getting some, and, by inference, your
3 credibility ought to be even lower than it would be if you
4 were just a paid informant. I think -- and, again, the only
5 thing really that's caught my attention really were those
6 documents you have. I don't, I don't know the background of
7 those. Other than that I would of had them. I just, I just
8 never saw anything on them that, like you brought out today.

9 Q Okay. Thank you. No further questions.

10 THE COURT: Any redirect?

11 MRS. KELLEY: None, Your Honor.

12 THE COURT: Thank you, sir. You may step down.

13 Is the State ready to call your next witness?

14 MRS. KELLEY: We have no further witnesses, but we
15 would like, request a brief closing.

16 THE COURT: Does the applicant intend to call any
17 witnesses in reply?

18 MS. CASON: No, Your Honor.

19 THE COURT: All right. The State wishes to present
20 brief argument.

21 Does the applicant?

22 MS. CASON: No, Your Honor.

23 THE COURT: Yes, ma'am.

24 MRS. KELLEY: Your Honor, briefly, I would move through
25 the applicant's allegations today starting with the Form C

1 which he's presented for your attention. I would submit
2 that he hasn't met the burden on this allegation where he
3 hasn't provided originals and he hasn't provided any
4 testimony to substantiate this allegation, which I would
5 submit are speculation at its very best. So, I would say
6 that he had a burden here of evidence and he didn't meet it.

7 Secondly, I would say that it's clear that Mr. Boggs
8 investigated the case thoroughly reviewing the discovery and
9 the audio and visual of the controlled buy, and that is
10 clear he prepared for trial. I would also note that he
11 argued substantially on the sentence enhancement providing
12 case law to the Lower Court.

13 I would say that this issue was also briefed in front,
14 in front of the Appellate Court though and an Anders brief,
15 which raised this issue, and an Anders brief, by its very
16 nature, requires the Appellate Court to review the entire
17 record for any issues it sees, whether or not they were
18 raised, any meritorious issues. It denied the sentence
19 enhancement issue and also found that there were no further
20 issues.

21 In regard to the allegation of a discovery or Brady
22 violation, I think Mr. Boggs has testified here today that
23 he did have an indication that the C.I. was working either
24 for money or for lesser charges, and that he sufficiently
25 cross-examined the C.I. on that matter on Pages 30 and 31 of

1 the record. It shows that he brought it to the Court's
2 attention and raise the issues of the C.I.'s credibility on
3 those grounds.

4 THE COURT: Thank you, ma'am.

5 MS. CASON: Thank you, Your Honor.

6 Mr. Green still contends that each of his issues are
7 relevant, that the chain of custody was, was broken, and
8 that Mr. Boggs failed to, at, based on his testimony, failed
9 to investigate to ascertain the fact that these documents
10 relating to at least Mr. Green were signed apparently on the
11 same day. Those -- these documents are not originals. They
12 did come from Mr. Boggs' office who, in turn, received that
13 from the Solicitor's Office.

14 With regard to the enhancement, the, Mr. Green believes
15 that the newly discovered evidence or the two cases that he
16 has presented in his brief would indicate that he should
17 have been charged as a second versus, versus a third in this
18 case, and that with the, with the discovery, that Mr. Boggs
19 should have known about the false or misleading testimony of
20 the informant, and he, in fact, testified he believed that
21 it was possible that the informant did have some reason to
22 give false testimony.

23 So, Mr. Green does believe that at least on the first
24 three issues that he should be successful in this PCR, and
25 that he is requesting or asking that his sentence be vacated

1 and that a new trial be given.

2 THE COURT: All right. Thank you very much. I will
3 take a look at the information that has been presented and
4 then issue my ruling.

5 Thank y'all very much.

6 Good luck to you, sir.

7 MS. CASON: Thank you, Your Honor.

8 MRS. KELLEY: Thank you, Your Honor.

9

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11 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh 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 Nonjury for Spartanburg County, South Carolina, on the 27th day of July, 2000.

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

March 20th, 2010



PAMELA E. GREEN, Court Reporter

CONTROL NO. 50071-82EXHIBIT
A

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)C
11/19/04
100-0512This is to certify that I JANE MILLWOOD am employed by
(Name) 09-16-2004 0037SPARTANBURG CO SHERIFF'S OFFICE as EVIDENCE OFFICER and that on
(Name of Agency or Department) (Capacity of Employment)6-24, 04, I received IN PERSON
(Date) (Year) (Specify Whether by Mail or in Person)from drop box of SPTBG CO SHERIFF'S OFFICE
(Name of Person) (Law Enforcement Agency)

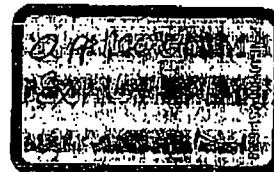
the following substance(s) or container(s) which were originally seized by

K. PEARSON
(Name of Person making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

ONE SEALED BEST BAGOn 6-24, 04, I made delivery of the above described
(Date) (Year)substance(s) or container(s) to DRUG VAULT of
(Name)SPARTANBURG CO SHERIFF'S OFFICE in substantially the same condition
(Law Enforcement Agency)

as when I received it.

Place: SPTBG CO S.O.
Date: 6-23-04Jane W. Millwood
(Signature)Sworn to me on this 24 day of 6, 04Robert Roseberry
Notary Public for South CarolinaMy Commission expires: 12 08 07

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)

10-07-2004

This is to certify that I JANE MILLWOOD am employed by
(Name)SPARTANBURG CO SHERIFF'S OFFICE as EVIDENCE OFFICER and that on
(Name of Agency or Department) (Capacity of Employment)8-16, 04, I received IN PERSON
(Date) (Year) (Specify Whether by Mail or in Person)from drop box of SPTBG CO SHERIFF'S OFFICE
(Name of Person) (Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by

J Kelly
(Name of Person making Original Seizure)
(Describe substance or container with sufficient particularity to distinguish it.)ONE SEALED BEST BAGOn 8-16, 04, I made delivery of the above described
(Date) (Year)substance(s) or container(s) to DRUG VAULT of
(Name)SPARTANBURG CO SHERIFF'S OFFICE in substantially the same condition
(Law Enforcement Agency)

as when I received it.

Place: SPTBG CO S.O.
Date: 8-16-04

(Signature)

Sworn to me on this 16 day of 8, 04Robert Rosenber
Notary Public for South CarolinaMy Commission expires: 12-08-07

CONTROL NO. 5007684

123

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)

7
1/18/04
10/1/04

This is to certify that I JANE MILLWOOD am employed by
(Name) 09-16-2004 0042

SPARTANBURG CO SHERIFF'S OFFICE as EVIDENCE OFFICER and that on
(Name of Agency or Department) (Capacity of Employment)

7-1, 04, I received IN PERSON
(Date) (Year) (Specify Whether by Mail or in Person)

from drop box of SPTBG CO SHERIFF'S OFFICE
(Name of Person) (Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by

C. Raymond
(Name of Person making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

ONE SEALED BEST BAG

On 7-1, 04, I made delivery of the above described
(Date) (Year)

substance(s) or container(s) to DRUG VAULT of
(Name)

SPARTANBURG CO SHERIFF'S OFFICE in substantially the same condition
(Law Enforcement Agency)

as when I received it.

Place: SPTBG CO S.O.

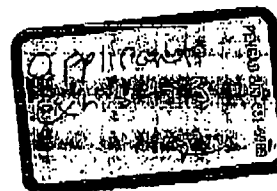
Date: 7-1-04

Jane W. Millwood
(Signature)

Sworn to me on this 1 day of 7, 04

Robert Rosenberg
Notary Public for South Carolina

My Commission expires: 12-08-07



THE STATE OF SOUTH CAROLINA
IN THE COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
Seventh Judicial Circuit

Nathaniel Green, #307622,

C/A NO: 2008-CP-42-3258

Petitioner,

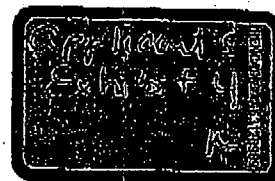
v.

State of South Carolina

Respondent.

MEMORANDUM OF LAW
IN SUPPORT OF
PCR AMENDMENT

ISSUE I
CHAIN OF CUSTODY



GROUND A: 'Fraud Upon the Court'

TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO INVESTIGATE AND/OR CHALLENGE THE USE OF FRAUDULENT, FALSIFIED AND/OR PERJURED CHAIN OF CUSTODY DOCUMENT(S) UTILIZED AS EVIDENCE.

FACTS

1. The Petitioner herein alleges and would respectfully demonstrate prima facie evidence to this Honorable Court that the State, et al, in prosecuting the instant case, deliberately, knowingly, and maliciously, through a continued, on-going practice has created and employed the use of court-fabricated, forged and procedurally illegitimate documents. The State, et al, by employing the use of this procedural practice, have consequently and unlawfully violated S.C. Code of Law, § 19-5-10; "Perjury" and thereby has committed "Fraud Upon the Court" involving for the Petitioner, the provisions of S.C. Civil Rules of Court, (30823), Rule 60(b)(3); Relief from Judgment.

The Form 3 (Rule 6), Chain of Custody document pertaining to Petitioner's current conviction; Dated: 7-1-08, bearing control no: 2007000 bearing the signature of Jane Millwood as Evidence Officer, was not legitimately or personally signed by Jane Millwood while personally appearing before the Notary Public, Mr. Robert Rosenbury. Consequently, the Notary Public himself did not personally witness Jane Millwood's signature on that particular Form 3.

Furthermore, the Notary, Mr. Rosenberg, did not personally complete the Notary block on that particular Form C in Petitioner's Chain of Custody with his personal signature thereby invalidating the form itself. Instead, this and other forms were apparently photocopied in advance, already containing information such as normal agency and evidence identification and illegally bearing the signatures of not only the Evidence Officer, but also the Notary Public with blanked-out date blocks to be filled in at later dates as needed.

This "blanket-form" process and practice first of all, does not constitute or create an officially authentic and valid, oath sworn, Chain of Custody record as required by Rule and Law. Secondly, this practice does not accord with the duties of those officials certified to officiate and administer sworn oaths, thereby undermining the integrity and veracity of truth in official legal and court matters. Indeed, this practice is most certainly contrary to the peace and dignity of the State of South Carolina and its citizens and does damage to Petitioner's constitutional Procedural Due Process rights and moreover deprives him of Equal Protection of the Law.

2. Petitioner asserts these claims of fraud based upon physical, demonstrable evidence, presently available to the court through a simple physical comparison demonstration—~~begging the Court's indulgence, and those present.~~ Please take notice, that by utilizing a simple test of light filtration, one may compare an unrelated Form C -Chain of Custody- document of a separate person from a separate case (EXHIBIT A), bearing Control No: ⁵⁰⁰⁷⁶⁸⁵~~5007685~~, Dated: 8-16-04 with Petitioner's two (2) Form C -Chain of Custody- document(s) (EXHIBIT B & C) bearing Control No(s): 5007682 / 5007684 and Dated: 6-24-04 / 7-1-04 respectively, and therefore it may be reasonably shown, becoming self-evident even to the untrained eye, that these forms were photocopied already bearing the subscriptions of both the Evidence Officer, Jane Millwood and the Official Notary, Robert Rosenberg, but illegally leaving the notarization dates blank for later use.

By analyzing the documents in this record, the Court and all present may see that first, the signatures used on all three forms are in perfect, exact alignment with one another and appear to be identical. Any copy and/or writing, and/or expert could reveal to us that it is impossible for

humans to sign or write characters in a precisely duplicated manner, location and alignment.

Secondly, an obvious conclusion therefore becomes self-evident that this is an on-going practice by these officials, even where it involves unrelated defendants and unrelated, stored material evidence from different dates, times and circumstances evident by the fact there appear to be multiple forms involved in this instance.

It further becomes apparent that Mr. Rosenberg and Ms. Millwood are also in the practice of exchanging duties, as they both appear to be Evidence Officers and Public Notaries as demonstrated by these two (2) sets of unrelated Chain of Custody documents, indicating possible collusion between these two officials. (EXHIBIT D & E)

DISCUSSION / ANALYSIS

1. S.C. Rules of Criminal Procedure (SCRCrime), Rule 6(B) states:

CERTIFIED OR SWORN STATEMENT, "For the purpose of establishing a chain of physical custody or control of evidence entered under part of this rule, a certified or sworn statement signed by each successive person having custody of the evidence that, he or she delivered it to the person stated is evidence that the person had custody and made delivery as stated without the necessity of the person who signed the statement being present in court provided: (1) The statement contains a sufficient description of the substance or its container to distinguish it; and (2) the statement says the substance was delivered in substantially the same condition as when received.

Under this rule, it is required that a certified or sworn statement be signed by each successive person having custody of the evidence. It does not say signatures may be copied from one blank form to another. If this practice were acceptable, then one only needs to simply get his or her hands on the already signed documents, fill in an arbitrary date, and pass it off as authentic. This would violate Petitioner's Due Process rights and creates an issue of a missing and/or questionable link within the chain of custody. Therefore making the Form 2 -Chain of Custody- inadmissible as valid, verifiable evidence of absolute integrity. See, State v. Chisolm, 385 S.C. 175, 534 S.E.2d 401. See also, S.C. Rules of Evidence, Rule 1002;

WRITINGS, RECORDINGS, PHOTOS; ADMISSIBILITY OF DUPLICATES. "A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original."

The "genuine question". Petitioner herein raises, indeed challenges the legality, veracity and integrity of the procedures and process utilized by Spartanburg County officials in generating supposedly certified Form C -Chain of Custody- documents. Specifically, the authenticity of Petitioner's Form C (Rule 6) -Chain of Custody- which supposedly bears the signature of Jane Millwood under the Control No: 5007584, Dated: 7-1-04 is seriously brought into question considering this documents was instrumental in obtaining a conviction. How can the State, et al, by means of photocopy process, transfer signatures from one form to another, upon documents whose notary date blocks are left blanked-out for future use, but still call the form genuine, authentic and certified? More importantly though is, how could any court allow this to stand after being challenged and proven?

2. According to S.C. Code of Law, § 19-5-10; Admissibility of Certified Copies or Certified Photostatic Copies of Documents; "A certified document must be authenticated." Under the heading - AUTHENTICATION - in Black's Law Dictionary (2nd Pkt.Ed. 2001) the following definition is rendered:

1. Broadly, the act of proving that something (as a document) is true or genuine, esp. so that it may be admitted as evidence; the condition of being so proved. 2. specif., the assent to or adoption of a writing as one's own.

The transferring of signatures from one blank Form C (Rule 6) document to another, with blank notary dates, does not constitute a properly or legally certified and authenticated document pursuant to SCRCrIMP, Rule 6(e). Nor does this practice comport with mandates set forth within S.C. Code of Law, § 19-5-10 and in fact, is violative of this statute. If trial counsel would have been diligent in examining the Chain of Custody documentation, he would have picked-up on this fraudulent act as Petitioner has. And therefore, counsel would have been better able to challenge the legality of the Form C (Rule 6) -Chain of Custody- document which quite possibly would not have been entered as valid evidence, thus quite possibly changing the outcome at trial.

CONCLUSION

For the foregoing presentation and demonstrated evidence, pursuant to the provisions under the SCRPC, Rule 60(b)(3), Petitioner pleads to this Honorable Court, in considering the merits of the allegations and the prima facie evidence rendered and proven herein, would now, in its most sound discretion, grant Petitioner relief from judgement as a matter of course and justice, ordering Petitioner's conviction and sentence vacated and set aside in light of these most blatant acts of Fraud Upon the Courts and abuse of discretion. Acts which not only does damage to the Petitioner but also to the integrity of this State, notwithstanding that prejudice is deemed to be presumed in such matters.

Respectfully submitted,

Date: _____

Ground 8: [Inadmissibility Due to Error]

TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO OBJECT TO THE ADMISSION OF FAULTY CHAIN OF CUSTODY INTO EVIDENCE WITHOUT CLARIFICATION OF AN ERROR.

FACTS

Petitioner asserts this claim because the Evidence Officer, Jane Millwood has listed on her Form C (Rule 6) -Chain of Custody-; Control No: 5007584, that the person making the original seizure is C. Raymond. According to Keith Pearson's Form B (Rule 6), he is the one making the original seizure. Also, the next person in the chain is C. Raymond, the investigator. His Form C (Rule 6) indicates the person making original seizure is Keith Pearson. Please take notice that all forms are bearing Control No: 5007684.

According to the record Petitioner has indicated above, it can clearly be shown that the Evidence Officer, Jane Millwood has made an error on her Form C (Rule 6) -Chain of Custody- document. Either she made the mistake of indicating the wrong person making original seizure, or she indicated the incorrect Control Number on the Form C.

The courts nor the Petitioner can answer this question. For this cause, a new trial is warranted and is indicative of why counsel should be considered ineffective for failing to object to the admission of the faulty Form C which contained obvious errors. Due to the fact that Jane Millwood made the error on her Form C (Rule 6) -Chain of Custody-, trial counsel should have required the presence of Jane Millwood at Petitioner's trial. If trial counsel would have done this, he could have made examination of Jane Millwood in order that she clarify her mistake on her Form C.

DISCUSSION / ANALYSIS

Petitioner asserts that if she made the mistake of putting the wrong control number on the form, that would create an issue of admissibility. The reason being is, there would not be a valid Chain of Custody for Petitioner because her link in the chain of custody would be broken as a result of the error, by having an incorrect control number, and the investigator, C. Raymond making the original seizure would indicate that her Form C (Rule 6) -Chain of Custody- document belonged to some other case, not Petitioner's. Therefore,

this would create a gap in the Chain of Custody and that the drug evidence should not have been admitted into evidence. See; State v. Chiselm, 355 S.C. 175, 584 S.E.2d 401.

Now on the other hand, if the Evidence Officer, Jane Millwood made the mistake of putting the wrong person making the original seizure on her Form C (Rule 6) -Chain of Custody-, that would create another issue, one of only credibility. Due to trial counsel failure to object to the admission of the faulty Chain of Custody and not requesting the presence of the Evidence Officer, Jane Millwood at trial to testify concerning the errors made on her Form C (Rule 6) -Chain of Custody- rendered outcome of trial unreliable. Prejudice in this matter is shown by the fact that a broken chain of custody would have rendered the evidence not only inadmissible but unreliable, therefore severely damaging the State's case due to a lack of evidence.

CONCLUSION

Due to the foregoing argument, Petitioner earnestly pleads with this Honorable Court, in considering the merits of the allegation contained herein, to grant Petitioner relief by vacating the conviction and sentence, and remand this case back to the Circuit Court for new trial because relying upon a faulty Chain of Custody violates Petitioner's Due Process rights and his Sixth Amendment guarantee to Effective Assistance of Counsel.

Respectfully submitted,

Date: _____

Attorney for Petitioner

ISSUE II
FAILURE TO INVESTIGATE

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO INVESTIGATE CRITICAL EVIDENCE OR DEFENSE WHEN PREPARING FOR TRIAL REGARDING APPLICATION OF PRIOR CONVICTION RELATIVE TO RECENT PRECEDENT

ARGUMENT

- A. If trial counsel would have investigated critical evidence and/or defense when preparing for trial, he would have seen there were other cases that possibly would have won a favorable ruling in the Petitioner's case. Those cases deal with interpreting recidivist statute: S.C. Code of Law, § 17-25-50. Two of those cases are State v. Gordon, 588 S.E.2d 105, 356 S.C. 143 and State v. Benjamin, 353 S.C. 441, 579 S.E.2d 289. Trial counsel used State v. Boyd, 288 S.C. 206, 341 S.E.2d 144 to argue defendant's case at sentencing phase. The problem is; in Boyd, the court of appeals has ruled, that where a defendant has been convicted on two or more counts for the violation of the controlled substance act, arising out of simultaneous acts committed in the course of a single incident, the conviction will be considered as one for the purposes of sentencing upon a subsequent conviction for a violation of the Controlled Substance Act. ~~S.C. Code of~~ Law, § 17-25-50 does not state what the Court of Appeals ruled on in Boyd. S.C. Code of Law, § 17-25-50 states: "In determining the number of offenses for the purpose of imposition of sentence, the court shall treat as one offense any number of offenses which have been committed at a time so closely connected in point of time that they may be considered as one offense, notwithstanding under the law they constitute separate and distinct offenses."
- Defendant argues that his two prior offenses qualify as one conviction because they were the result of an ongoing investigation or "sting" operation, involving the same informants, in the same geographical area, planned over a specified amount of time. All of which were similar in modus operandi over the course of the operation. Pursuant to S.C. Code of Law, § 17-25-50 and according to dictum in Boyd and Gordon, supra, the prior conviction of the two (2) counts during the drug "sting", should count as

one when being considered for sentencing in the subsequent conviction of the instant case. "...we hold that where a defendant has been convicted on two or more counts for the violation of the Controlled Substance Act arising out of simultaneous acts committed in the course of a single incident, the convictions will be considered as only one for the purpose of sentencing under a subsequent conviction for a violation of the Controlled Substance Act." (emphasis added) State v. Boyd, 288 S.C. 206, 341 S.E.2d 144 (Ct.App. 1986)

Petitioner further asserts that, in his particular case, the prior drug "sting" operation and investigation constitutes the requisite "course of a single incident" and relates to the term "simultaneous". Moreover, the prior conviction should be treated as a first offense, as it was incident to a single arrest and absent, were any intervening arrests for each violative act observed during the drug "sting" operation. (EXHIBIT(S) F & G) Therefore, making the current conviction of the instant case, a second drug conviction instead of a third; ("...notwithstanding under the law they constitute separate and distinct offenses.") § 17-25-50. What the statute does not say, is that they [the charges] would constitute "separate and distinct" convictions. Therein lies a key to understanding the interpretation of the statute.

B. "The purpose of requiring separate offenses is to ensure that those offenders being sentenced under the harsh provisions of a recidivist sentencing statute have not been classified as habitual offenders because of multiple convictions arising from a single criminal enterprise; it provides the [S]tate with some certainty that the offender has participated in multiple criminal trials and, despite these opportunities to understand the gravity of his behavior and abide by the law, has continued to engage in criminal conduct. Gordon, supra, citing Daniel Rogers, People v. Pughan and Foret Strick: Have the Traditional Goals of Recidivist Sentencing Been Sacrificed at The Alter of Public Passion?, 20 Thomas Jefferson L.Rev. 139, 156 (Spring 1994).

The Court, in State v. Gordon, 356 S.C. 143, 587 S.E.2d 105 further clarified its position and interpretation of the recidivist subject by holding thus; "We find the recidivist statute is aimed at career criminals, those who have been previously sentenced and then commit another crime..."

Petitioner contends that he was never arrested, tried and sentenced at any time between the two (2) prior drug offenses which occurred during the "sting" operation between 1994/1995. And, that for the sake of furthering investigations of the "sting" operation, Law Enforcement allowed him to continue in that illegal drug enterprise, while being totally unaware and oblivious that he was being investigated or monitored. Had Law Enforcement intervened and arrested Petitioner after the first drug transaction, there would be no "second offense" to even consider in the instant case. But, because they chose to wait and make one arrest, why should Petitioner then be further penalized as a result of their delay or inaction?

The Court of Appeals found, "the recidivist statute is aimed at career criminals, those who have been previously sentenced and commit another crime, not at those whose recidivist status is premised solely upon acts which occur at times so closely connected in point of time that they may be considered as one offense." See State v. Gordon, supra; overruling State v. Benjamin, 353 S.C. 441, 579 S.E.2d 289 (2003). If this is true in considering a sentence of Life Without Parole, then the same logic would apply in other case circumstances, including those related to determining first, second or third offenses of the Controlled Substance Act. The Title 17 subsection makes no distinction or prohibition against application to other criminal statutes. Indeed, it appears to be written unilaterally, able to be applied across the board to all crimes.

FACTS OF PRECEDENT CASE

In Gordon, he had, "In May 1997, a seven-count indictment, handed down. On June 9-12, 1997, the State proceeded to trial solely on count five of the indictments, trafficking in crack cocaine in violation of S.C. Code of Law, § 44-53-375(c)...." Count five alleged that he "did Traffic in Crack Cocaine in York County, on or about September 21st through September 27th, 1996..." "Whereafter, in October 2000, another indictment was issued against Gordon, charging him with trafficking crack cocaine as follows: 'and on or about September 27, 1996, in York County, S.C., the defendant, Willie Edward Gordon, Jr. AKA, Jr. Gordon, did willfully, unlawfully and knowingly sell and/or deliver and/or bring into the state of S.C. and/or provide financial assistance and/or otherwise aid or abet and/or conspire with Spencer A. Gordon

to sell and/or was knowingly in actual or constructive possession of more than 10 grams but less than 28 grams of crack cocaine as defined in... § 44-53-375, Code of Laws of South Carolina (1976 as amended)."

It's important here to note, that the second indictment which was not pressed, but issued three (3) years later, was essentially the same as count seven of the original set of charges. "In light of Gordon's 1997 trafficking conviction, the State moved for a sentence of LWOP, under the Two-Strikes law, S.C. Code of Law, § 17-25-45 (Supp 2002). The trial court declined to impose a LWOP sentence, finding the crime charged in the 1997 indictment (Sept. 21-23, 1996) and the one charged in the 2000 indictment (Sept. 27, 1997), were so closely connected in point in time as to come within the purview of S.C. Code Ann. § 17-25-50. Accordingly, the court held that Gordon was not subject to a recidivist sentence under the Two-Strikes law; he was sentenced to thirty years, concurrent to the sentence imposed for his 1997 trafficking conviction."

In a footnote, the Court of Appeals noted, "[T]he only exception would be if a defendant is tried simultaneously for numerous offenses. If, however, the [S]tate elects separate trials to prosecute a defendant for multiple crimes, such that he or she has a qualifying "prior conviction", then the trial court is prohibited from consideration of whether the offenses were committed at points so close in time as to be one offense. We find this an absurd result, clearly not intended by the legislature." Petitioner herein alleges that he was set-up for a qualifying "prior conviction" by Law Enforcement's inaction upon the first instance during the "sting" operation in 1994/1995. (emphasis added)

SUMMARY

Defendant's prior conviction clearly happened "at points so close in time" under the Gordon standard. Gordon's convictions happened three (3) years apart and were the results of an ongoing investigation over a lengthy period of time. Petitioner's circumstances are similar if not identical. The Court of Appeals ruled they were treated as one, because Gordon committed those crimes without arrest or conviction, and had no chance or opportunity to understand the gravity of his behavior and abide by the law. The same circumstances are present in Petitioner's instant case. His crimes occurred

during a drug "sting" operation, that lasted a year. There was one arrest, and one court date in which both prior charges were consolidated for adjudication and sentencing. Therefore, Petitioner's prior convictions should be recognized as one for enhancement purposes, being treated as a single offense for sentencing consideration in the instant case.

Finally, and of great importance, is the fact that circumstances of the instant case, are very much similar as compared to those in Gordon. And therefore, the principles of stare decisis would definitely be appreciative here. It "exists to 'insure a quality of justice which results from certainty and stability'". State v. One Coin-Operated Video Game Mach., 321 S.C. 176, 467 S.E.2d 443 (1996)(..."Ultimately, no one benefits when the Court issues opinions which diverge from month to month. Accordingly, even when a judge dislikes the result, stare decisis behoves him to follow precedent.") It is an important principle of law which should bind us all to the rigors of uniformity and conformity. But not so rigidly as to prohibit uncompromising flexibility.

CONCLUSION

WHEREFORE, based upon the foregoing argument and illustrations, Petitioner respectfully prays this Honorable to make diligent consideration in vacating, and/or reversing and remanding, Petitioner's conviction and/or sentence, or whatsoever this Court may deem fair and just within its power and discretion.

Date: _____

ISSUE III

DISCOVERY VIOLATION

PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED DUE TO COUNSEL'S INEFFECTIVENESS IN RECOGNIZING AND CHALLENGING SOLICITOR ON BRADY VIOLATION AND FOR NOT CORRECTING FALSE/MISLEADING TESTIMONY OF CONFIDENTIAL INFORMANT

ARGUMENT

Petitioner raises this claim because a witness for the state, Keith Pearson, testified that: (1) he had been paid [money] for the alleged Controlled Buy drug transaction conducted with Petitioner, and (2) he was not working off any criminal charges. The record will clearly show there is nothing to support the claim that the operative in the instant case was in fact working for money on June 30, 2004 other than testimony from the investigator, Chris Raymond. What the record does show is that the operative was most likely working off criminal charges and not being paid in currency.

If it is true that the operative, Keith Pearson was to be paid, or was paid by the Spartanburg County Sheriff's Office, the State failed to give Defense this Brady evidence of this payment agreement/transaction prior to trial. Defense could have used this material to impeach the operative's testimony. Had the State disclosed the Brady material prior to trial, Defense would have had a better impeachment defense of the operative. The defense was surprised when testimony was proffered that the agreement with the operative and Spartanburg County Sheriff's Office was for the operative to be paid in currency. The defense was not aware or made aware of any agreement between the State and the operative until trial.

When the State does not disclose an immunity, deals, or plea agreement, the Defendant must rely on the surrounding circumstance to claim that an immunity agreement did indeed exist. For example, in State v. Binson, 203 S.C. 406; 551 S.E.2d 120 (1997), the Defendant made a Brady motion for disclosure of favorable evidence. In response, the State did not disclose an immunity agreement, and the witness testifies that the witness was not promised anything for the witness's cooperation and truthful testimony. Initially after the jury returned a guilty verdict, the State advised the trial court that the charges against the witness would be dismissed. The

Defendant moved for a new trial based on the State's failure to disclose a promise of immunity to the witness. The trial court denied this motion and the Supreme Court reversed and remanded the case for a new trial. The Supreme Court held that although the record strongly suggested an undisclosed promise, it did not clearly show a promise existed. Thus, the Defendant was entitled to a new trial to explore the issue of a promise of immunity.

As in the case at hand, the record strongly suggests the operative was never paid [in currency] for the Controlled Buy work alleged to have taken place on June 30, 2004. The record strongly suggests though that serious criminal charges against the operative were dismissed two months after the alleged Controlled Buy with Petitioner. (Tr. pp. 31, lns. 5-6) It reasonably appears the operative was working off those criminal charges and not being paid in currency for the work he did for the Spartanburg Sheriff's Office. SEE (EXHIBIT H)

FACTS/PROCEDURAL HISTORY

At Petitioner's trial, the operative was asked; "why do you work for the Sheriff's Office as an operative?" His answer was; "to get paid." (Tr.p. 22, lns. 21-23). The next question was; "how do you get paid?" His answer to this was; "it's according to what I get, two or sometimes three hundred dollars." (Tr.p. 22/23, lns. 24-25/1). The next question asked of the operative was by Ms. Ganss as Assistant Solicitor; "this incident we're talking about, June 30th, 2004... Have you already been paid for your work on that?" His answer to that was; "no, I haven't." The next question was; "yes or no?" The operative's answer was; "no, no, I haven't." The Solicitor's next question was; "you haven't -- today, as of today have you been paid for what you already did on June 30th, 2004?" Operative's answer was; "no, I have done some in the past and I haven't been paid exactly." The Solicitor's next question was; "okay, so you're already paid?" Operative's answer was; "right." (Tr.p. 23, lns. 7-12)

Due to the incompetent, perjured testimony by the operative and Solicitor's failure to correct this known, false testimony, and further due to Defense Counsel's failure to object or act upon this, Petitioner's Due Process rights have been violated. At the 2005 trial, the operative was asked once again once have you been paid for the Controlled Buy alleged to have taken

place on June 30, 2004. The operative answered "no" he hasn't three times. But later in the same line of questioning, the operative answered "right"; implying that he had been paid. Either the operative was paid or he was not. The operative could not have been telling the truth given the two different answers he gave the Solicitor. The Solicitor knew the testimony given by the operative was false and allowed it to go uncorrected.

The issue is not why the operative failed to tell the truth: Rather, it is why the Solicitor, who knew the operative's testimony to be false, failed to correct it. See, Riddle v. State, Opinion Number - 26153. A Prosecutor's deliberate deception of a court by the presentation of known false evidence is incompatible with rudimentary demands of justice. Giglio v. U.S., 405 U.S. 150, 153 (1972). The failure to correct false evidence is as reprehensible as its presentation. Washington v. State, 324 S.C. 232, 478 S.E.2d 833 (1996).

The next inconsistent, perjured testimony by the operative, Keith Pearson, was given when he was questioned by Petitioner's trial lawyer, Mr. Soggs during direct examination. He committed perjury when trial counsel asked; "right after the Controlled Buy you had some fairly serious charges dismissed, didn't you?" His answer was affirmative; "I did." (Tr.p. 30, lns. 12-15) Trial counsel's next question was; "All right, some charges that have been pending since July 28 of 2003. After you became a paid informant, those charges suddenly disappear in September, right?" His answer was; "I was in the county as well, I did time in the county." The next question was; "They got dismissed though, didn't they?" His answer was; "yeah, they was gone." Next question was; "all right, and you were looking at a COV third, which carries ten years, right?" His answer was; "right, that was dismissed." (Tr.p. 30, lns. 17-25) The next question by counsel was; "yeah, after you did that?" His answer was; "while I was in the county jail they was dismissed." The next question was; "after this incident they were dismissed, right?" His answer was; "not to my knowledge that I know of." The next question was; "well, it says September 17th, isn't that right?" His answer was; "well if it says it, yeah." Trial counsel's next question was; "the point is after you became a paid informant, all of a sudden these serious charges disappear as well as you getting paid, right?" His answer was; "I guess." (Tr.p. 31, lns. 1-10).

According to the transcript, the operative clearly committed perjury twice. Once when he was asked about having been paid for the Controlled Buy transaction where his answer was "no" three times, but later in questioning he

answered that he had been paid. The next perjured testimony occurred when the operative was asked about why and when serious criminal charges against him had been mysteriously dismissed. His answer was that the charges were dismissed while he was in the county jail, implying dismissal before his work as an informant. But the record clearly shows he was out of jail when those charges were dismissed on September 17, 2004, which was after the Controlled Buy with Petitioner.

The question at hand is either the operative's charges were dismissed while he was in the county jail, before becoming an informant on the instant case, or they were not. Again, the operative could not have been telling the truth when questioned by trial counsel, because he said, two times, the charges had been dismissed while he was in the county jail. But trial counsel then showed him records indicating those charges were dismissed after he was released from jail. Due to the inconsistent testimonies of the operative, which were never corrected and the perjury that resulted therefrom, the Solicitor rendered Petitioner's trial fundamentally unfair.

Moreover, if the State would have given to the Defense, Brady material regarding why and by what agreement the operative was working for the Spartanburg County Sheriff's Office, it would have made available to the Defense an effective impeachment strategy against the operative. Evidence is material under Brady if there is a "reasonable probability" that the result of the proceeding would have been different had the information been disclosed. State v. Proctor, 358 S.C. 424, 595 S.E.2d 490 (2004). The question is not whether Petitioner would more likely have been acquitted had this evidence been disclosed, but whether, without this impeachment evidence, he received a fair trial resulting in a verdict worthy of confidence.

The overriding theme of the Brady case is the emphasis the Supreme Court has placed on the prosecutor's responsibility for fair play. In close cases, "the private prosecutor will receive doubtful questions in favor of disclosure. This is so it should be, such disclosures will serve to justify trust in the prosecutor as the representative of a sovereignty whose interest in a criminal prosecution is not that it shall win a case, but that justice shall be done." And it will tend to preserve the criminal trial, as distinct from the prosecutor's private deliberations, as the chosen forum for ascertaining the truth about criminal associations."

CONCLUSIONS

The Constitution requires only that a Defendant receive a fair trial, not a perfect one. U.S. Const., Amend. VI. Due to the Solicitor's failure to correct false testimony by the operative and the failure to turn over Brady material, to the Defense prior to trial, regarding agreements between the State and the operative, Petitioner's trial was rendered fundamentally unfair. In addition, trial counsel's representation should be deemed ineffective for not acting on these issues, thereby causing prejudice to and violation of Petitioner's Due Process rights. Therefore, for the foregoing argument(s), the Court should reverse Petitioner's conviction and remand for new trial to explore the issue of a promise of immunity and whether or not the operative was in fact a paid informant.

Respectfully submitted,

Date: _____

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2008-CP-42-3298

Nathaniel Green, 307622,

Applicant,

v.

State of South Carolina,

Respondent.

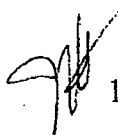
**ORDER OF DISMISSAL
WITH PREJUDICE**

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SPARTANBURG COUNTY
2009 NOV -3 AM 11:31
MARC KITCHENS

I. PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 23, 2008. An evidentiary hearing into the matter was convened on July 27, 2009, at the Spartanburg County Courthouse. The Applicant was present at the hearing and represented by Vanessa Cason, Esquire. Michelle Parsons Kelley of the South Carolina Attorney General's Office represented the State. This Court had before it the application, the respondent's return, the trial transcript, the records of the Spartanburg County Clerk of Court, the Applicant's appellate records, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted during the November 2004 term of the Spartanburg County Grand Jury trafficking in crack cocaine (04-GS-42-4993). Thomas A.M. Boggs, Esquire, represented the Applicant. On February 15, 2005, a bench trial was held before the Honorable J. Derham Cole. Judge Cole

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found the Applicant guilty and sentenced him to confinement for a period of twenty-five (25) years with credit for time served.

A timely notice of appeal was filed and Joseph L. Savitz, III, Esquire, submitted an Anders appeal on the Applicant's behalf. The Court of Appeals dismissed the appeal by order filed June 11, 2007. The remittitur was issued on June 27, 2007.

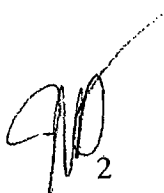
II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED

AT THE PCR EVIDENTIARY HEARING

The Applicant testified at the PCR hearing on his own behalf. The Applicant testified Counsel was ineffective. Specifically, the Applicant claimed counsel failed to object to the chain of custody. The Applicant claimed the State had used a form that had been signed and notarized prior to being filed out. The Applicant alleged this violates the rule requiring personal signature. The Applicant also claimed Pearson Millwood made errors on the form and failed to come to trial and testify. The Applicant claimed Counsel was ineffective for disputing the chain of custody on these grounds. The Applicant also generally alleged Counsel failed to investigate his case and prepare for trial.

The Applicant also alleged Counsel failed to object to improper sentencing enhancement. The record reflected, however, the enhancement issue formed the basis of the Applicant's appeal and this appeal was denied.

The Applicant also claimed Counsel failed to correct false testimony of the confidential informant. The Applicant felt the confidential informant was not paid and the officer's testimony that he was paid amounted to perjury. The Applicant claimed the informant was


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actually working off the charges. The Applicant also felt that he had not been informed prior to trial that the informant was paid, which was a discovery violation.

Thomas A. M. Boggs, Esquire, ("Counsel") also testified at the PCR hearing. Counsel testified he has practiced law for thirty-two years and sixty-five percent of his practice was criminal. Counsel testified he met with the Applicant several times before trial. He reviewed the discovery file with the Applicant.

The sheriff's office had used wire and audio to capture the Applicant involved in a control drug buy with a confidential informant. Counsel testified the Applicant was aware prior to trial that the informant had been paid for his participation. Counsel testified the cross-examination about the informant being paid was beneficial to the Applicant's case where it allowed the defense to impeach the informant's credibility.

Counsel testified he tried to get the solicitor to agree to a second offense rather than a third offense, but the matter fell under undecided case law at the time. The two prior offenses arose from a sting operation and the Applicant pled to the offenses on the same day. Counsel tried to argue they were part of one ongoing operation should count as one prior. Counsel's efforts were denied and the Applicant was regarded as having two priors. This issue was appealed and denied on appeal.

Counsel testified the State had substantial evidence of the Applicant's guilt. The searches appeared to be solid and the police testified they maintained visual contact with the confidential informant.

Counsel testified he did not know of any chain of custody issues at trial. He did not identify the chain of custody signature as a point of argument prior to the trial.



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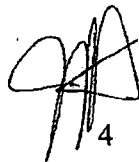
III. APPLICABLE LAW

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for



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counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented.

This Court finds the Applicant's testimony to be lacking in credibility, while Counsel's testimony was credible. The Applicant claimed Counsel failed to object to chain of custody issues. Counsel testified he did not notice signature discrepancies prior to the trial. In arguing his claim, the Applicant provided chain of custody forms from an unrelated case, as well as his own. Counsel did not have the benefit of the forms from the unrelated case prior to trial. The Applicant also failed to provide original copies of either form, raising questions of authenticity. This Court finds Counsel was not ineffective for failing to further investigate this issue. Counsel did not have reason to believe the forms contained false signatures at the time of trial. As a result, his actions in this regard were reasonable. This Court denies and dismisses this claim.

The Applicant also claimed Counsel failed to investigate his case or prepare for trial. Counsel's testimony reveals Counsel's efforts at trial to be in excess of the reasonable standard.



Counsel performed significant research and properly investigated the case. As a result, these claims are denied and dismissed.

The Applicant further alleged Counsel was ineffective for failing to properly address the sentencing enhancement issue. This Court finds Counsel thoroughly researched this issue and presented adequate argument to the court. Further, this matter was taken up on appeal where it was denied. This Court denies and dismisses this allegation.

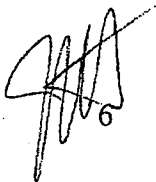
The Applicant also claimed a discovery violation where he was not aware prior to trial the informant had been paid. Counsel testified the Applicant was aware of this prior to trial. The Applicant further claimed the informant did not end up being paid and Counsel was ineffective for failing to object to testimony about his status as a paid informant. Counsel testified the cross-examination regarding the confidential informant's paid status was beneficial to the Applicant's case where it jeopardized the informant's credibility. This Court finds the Applicant failed to meet his burden on this allegation. As a result, this allegation is also denied and dismissed.

This Court finds that any and all other allegations raised at the hearing or in the application are without merit.

Therefore, this Court finds that the Applicant failed to carry his burden to show that trial counsel's representation fell below the standard of professional reasonableness for a criminal defense attorney in this regard. Strickland v. Washington; Cherry v. State. This Court finds that the Applicant cannot satisfy either requirement of the Strickland test.

V. CONCLUSION

Based on all the foregoing, this Court finds and concludes that this application for post conviction relief must be denied and dismissed with prejudice. All other allegations or claims



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ARSEN KITCHENS

that were raised or could have been raised in this application are hereby dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

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MARC KITCHENS

IT IS THEREFORE ORDERED:

1. This application for post conviction relief is denied and dismissed with prejudice.
2. The Applicant is remanded to the custody of the South Carolina Department of Corrections to serve the remainder of his sentence.

AND IT IS SO ORDERED this 2 day of November, 2009.

Honorable J. Mark Hayes, II
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

A CERTIFIED COPY

Marc Kitchens

CLERK OF COURT
SPARTANBURG COUNTY
BY: Theresa Winters D.C.
DATED: 11-4-09

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Nathaniel Green, 307622,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2008-CP-42-3298

ORDER

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 DEC -4 PM 2:33
MARC KITCHENS

This matter comes before the Court by way of the Applicant's motion to alter or amend pursuant to Rule 59, SCRCF. This matter originally came before the Court by way an Application for post-conviction relief (PCR) filed June 23, 2008. A hearing was held at the Spartanburg County Courthouse on July 27, 2009. The Applicant was present and represented by Vanessa Cason, Esquire. The Respondent was represented by Michelle Parsons Kelley, Esquire. By Order dated November 2, 2009, this Court dismissed the Application.

Based upon careful reconsideration of all of the evidence in this case and upon full consideration of the Applicant's motion and supporting memorandum, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. The previous order fully comports with the requirements of Rule 52(a), SCRCF.

IT IS THEREFORE ORDERED:

1. That the Applicant's motion to alter or amend judgment is denied and dismissed.

AND IT IS SO ORDERED this 2 day of December, 2009.

HONORABLE J. MARK HAYES, II
Presiding Judge
Seventh Judicial Circuit

Spartanburg South Carolina

Computer

WITNESSES

C D RAYMOND

SPTG CO SHERIFF'S OFFICE

1. RETURN MADE

2. REPT **Computer** ☐

3. CARD PULLED ☐

4. INDEXED ☐

5. CHECKED WARRANTS ☐

6. ARREST WARRANT NUMBER ☐

7. ARRESTED ☐

DIRECT PRINT CARD MADE ☐

ACTION OF GRAND JURY

True Bill

Verda W Burnett

Foreperson of Grand Jury

Date: *11-23-04*

VERDICT

Benen trial pursuant to

sec 14(b)

Guilty

William Ole

Foreperson of Petit Jury

Date: *duid court judge*

44-153-42-4993

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

NOV 29 2004

TERM

THE STATE
VS.

NATHANIEL GREEN

Indictment for

TRAFFICKING IN CRACK COCAINE

SC Code: 44-53-375

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

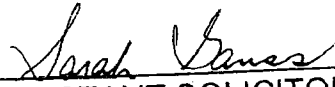
At a Court of General Sessions, convened on NOV 23 2004 the

Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN CRACK COCAINE

That Nathaniel Green did in Spartanburg County on or about June 30, 2004, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess more than (10) ten grams of Crack Cocaine, a schedule II controlled substance, in violation of §44-53-375, THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.AKA: Nathaniel GreenRace: B Sex: M Age: 27DOB: 10/3/77 SS#: 2Address:
City, State, Zip

DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

04 -GS- 47 - 4993A/W#: Direct IndictmentDate of Offense: 10/30/2004S.C. Code §: 44-53-375CDR Code #: 0 1 4 1 5 1 2☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Trafficking Crack Cocaine (10-28grams)in violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 0 1 4 1 5 1 2☐ NON-VIOLENT ☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient: _____

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath. Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

R. Hammer DC
Clerk of Court/ Deputy ClerkCourt Reporter: Susan Higgins

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2Sentence Date: February 15, 2005

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Nathaniel Green,

Appellant.

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2007-UP-310
Submitted June 1, 2007 – Filed June 11, 2007

APPEAL DISMISSED

Chief Attorney Joseph L. Savitz, III, South Carolina
Commission on Indigent Defense, of Columbia, for
Appellant

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, Office of the
Attorney General, all of Columbia; and Solicitor Harold
W. Gowdy, III, of Spartanburg, for Respondent.

2007 JUL 23 PM 2:01
MAIC MICHENS

PER CURIAM: Nathaniel Green appeals his sentence of twenty five years imprisonment for trafficking in cocaine. Green argues the trial court erred in failing to consolidate two prior possession with intent to distribute convictions which were entered on the same day. Green contends this error resulted in his erroneous sentence for a third conviction which resulted in a minimum twenty five years imprisonment. Green also filed a separate pro se brief addressing this same argument. After a thorough review of the record, counsel's brief, and Green's pro se brief pursuant to Anders v. California, 386 U.S. 738 (1967) and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss¹ Green's appeal and grant counsel's motion to be relieved.

APPEAL DISMISSED.

STILWELL, SHORT, and WILLIAMS JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11625
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 27, 2007

REMITTITUR

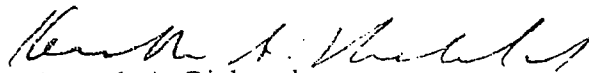
The Honorable Marcus W. Kitchens
180 Magnolia Street
PO Box 3483
Spartanburg, SC 29304-3483

Re: The State v. Green, Nathaniel
2004-GS-42-04993

Dear Mr. Kitchens:

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

Sincerely,


Kenneth A. Richstad
Clerk of Court

KAR/rj

cc: Chief Attorney Joseph L. Savitz, III
Nathaniel Green # 307622
Assistant Deputy Attorney General Salley W. Elliott
Harold W. Gowdy, III, Esquire