

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenwood County

Frank R. Addy, Circuit Court Judge

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SC Court of Appeals

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DUSTIN TILLER,

PETITIONER, S.C. Supreme Court

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

BREEN RICHARD STEVENS
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
 COUNTY OF GREENWOOD)

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

vs)

DUSTIN TILLER,)

DEFENDANT.)

IN THE CIRCUIT COURT
 OF THE EIGHTH JUDICIAL CIRCUIT

2008-GS-47-03,04

2009-GS-47-01

GUILTY PLEA

JANUARY 27, 2009
 GREENWOOD, SOUTH CAROLINA

BEFORE: THE HONORABLE D. GARRISON HILL

FOR THE PLAINTIFF:

ROBERT E. BOGAN, ESQUIRE
 OFFICE OF THE ATTORNEY GENERAL
 POST OFFICE BOX 11549
 COLUMBIA, SC 29211-1549

FOR THE DEFENSE:

W. TOWNES JONES, IV
 ATTORNEY AT LAW
 116 COURT AVENUE, WEST
 GREENWOOD, SC 29646

C. RAUCH WISE
 ATTORNEY AT LAW
 305 MAIN STREET
 GREENWOOD, SC 29646

JO RICE
 COURT REPORTER

1 **THE COURT:** GOOD AFTERNOON. THIS IS STATE VERSUS DUSTIN ALLEN
2 TILLER, STATE GRAND JURY CASE NUMBER 08-GS-47-03 AND 04. THIS CASE
3 VENUE WAS ESTABLISHED BY ORDER NOVEMBER 19, 2008 IN THIS COUNTY
4 PURSUANT TO A SUPREME COURT ORDER DATED NOVEMBER 19, 2008.
5 JURISDICTION ESTABLISHED MAY 4TH FOR THE RESOLUTION OF THIS MATTER
6 AND I UNDERSTAND THAT THERE IS A PLEA AGREEMENT AND MISTER TILLER
7 WISHES TO ENTER HIS PLEA AT THIS TIME. IS THAT CORRECT?

8 **MS. BOGAN:** IT IS, YOUR HONOR. THANK YOU. ROBERT BOGAN FROM
9 THE ATTORNEY GENERAL'S OFFICE, YOUR HONOR. WE'RE HERE TODAY ON
10 2008-GS47-03 AND 47-04. WE HAVE ENTERED INTO A PLEA AGREEMENT WITH
11 MISTER TILLER WHICH WILL INCLUDE HIM WAIVING INDICTMENT ON ANOTHER
12 TRAFFICKING OFFENSE. I HAVE THAT INDICTMENT WITH THE SIGNATURES
13 FOR WAIVER. IT'S 2009-GS-47-01. THE NEGOTIATIONS THAT WE HAVE
14 ENTERED INTO AND THE AGREEMENT THAT WE'VE ENTERED INTO WITH
15 DEFENSE COUNSEL ALL CULMINATE IN A RANGE OF SENTENCING BETWEEN
16 TEN AND FIFTEEN YEARS TO BE IMPOSED IN THE COURT'S DISCRETION. I'LL
17 HAND COPIES OF THE INDICTMENTS UP IF THE COURT DOES NOT HAVE THEM.

18 **THE COURT:** I DO HAVE THEM.

19 **MR. BOGAN:** I KNOW YOU DON'T HAVE THE WAIVED INDICTMENT. I'LL
20 HAND THAT UP.

21 **THE COURT:** ALL RIGHT.

22 **MR. BOGAN:** DOES THE COURT HAVE A COPY OF THE WRITTEN PLEA
23 AGREEMENT?

24 **THE COURT:** I HAD IT EMAILED TO ME. I DON'T HAVE A FILED COPY OF
25 IT.

1 **MR. BOGAN:** OKAY. WHAT WE DID, YOUR HONOR, WAS EMAILED THE
2 PLEA AGREEMENT TO RAUCH WISE. THEY OBTAINED SIGNATURES AND
3 FAXED IT BACK TO ME AND SO THE DOCUMENT I HAND TO YOU IS THE
4 DOCUMENT I SIGNED. I BELIEVE THAT WOULD BE THE FILED COPY OF THE
5 PLEA AGREEMENT. (MISTER BOGAN HANDS DOCUMENT UP TO JUDGE HILL)

6 **THE COURT:** ALL RIGHT, SIR.

7 **MR. BOGAN:** MISTER TILLER IS PRESENT IN COURT TODAY TO ENTER
8 THIS PLEA. HE'S REPRESENTED BY TOWNES JONES AND RAUCH WISE, BOTH
9 OF THE GREENWOOD BAR. I'LL BE HAPPY TO GIVE YOU A RECITATION OF THE
10 FACTS WHENEVER YOU WANT, YOUR HONOR.

11 **THE COURT:** OKAY. MISTER TILLER, HOW OLD ARE YOU, SIR?

12 **MR. TILLER:** TWENTY-TWO.

13 **THE COURT:** AND HOW FAR DID YOU GO IN SCHOOL?

14 **MR. TILLER:** NINTH GRADE.

15 **THE COURT:** NINTH?

16 **MR. TILLER:** YES, SIR.

17 **THE COURT:** OKAY. AND WHAT KIND OF WORK HAVE YOU DONE IN THE
18 PAST?

19 **MR. TILLER:** MECHANIC WORK.

20 **THE COURT:** ALL RIGHT. AND ARE YOU UNDER THE INFLUENCE OF ANY
21 ALCOHOL, DRUGS OR MEDICATIONS AT THIS TIME, SIR?

22 **MR. TILLER:** NO, SIR.

23 **THE COURT:** DO YOU HAVE ANY PHYSICAL, MENTAL, OR EMOTIONAL
24 ISSUE THAT WOULD KEEP YOU FROM UNDERSTANDING WHAT'S HAPPENING
25 HERE TODAY?

1 **MR. TILLER:** NO, SIR.

2 **THE COURT:** HAVE YOU HAD ENOUGH TIME TO TALK WITH YOUR
3 ATTORNEYS, MISTER WISE AND MISTER JONES?

4 **MR. TILLER:** YES, SIR.

5 **THE COURT:** ARE YOU FULLY SATISFIED WITH THEIR SERVICES?

6 **MR. TILLER:** YES, SIR.

7 **THE COURT:** HAVE THEY DONE EVERYTHING YOU'VE ASKED THEM TO
8 DO?

9 **MR. TILLER:** YES, SIR.

10 **THE COURT:** ALL RIGHT. AND DO YOU FULLY UNDERSTAND THE RANGE
11 I COULD SENTENCE YOU TO THAT YOU FACE FOR THESE CHARGES?

12 **MR. TILLER:** YES, SIR.

13 **THE COURT:** AND, LET'S SEE, DO WE HAVE A SENTENCING SHEET?

14 **MR. BOGAN:** I DO NOT, JUDGE.

15 **THE COURT:** OKAY. YOU'VE APPARENTLY SIGNED A PLEA AGREEMENT
16 IN THIS MATTER THAT APPEARS TO CONSIST OF FOUR PAGES, NOT
17 COUNTING THE SIGNATURE BLOCK FOR MISTER WISE AND MISTER BOGAN,
18 BUT I'LL SHOW YOU THIS PLEA AGREEMENT, SIR. IS THAT THE ENTIRE
19 AGREEMENT YOU HAVE WITH THE STATE?

20 (THE CLERK OF COURT HANDS DOCUMENT TO MISTER JONES, WHO
21 SHOWS IT TO THE DEFENDANT. DEFENDANT LOOKS AT EACH PAGE OF THE
22 DOCUMENT)

23 **MR. TILLER:** YES, SIR.

24 **THE COURT:** OKAY. AND DO YOU HAVE ANY PROMISE OR DEAL WITH
25 THE STATE OR AGREEMENT, WHATSOEVER, THAT IS NOT ENTERED INTO THIS

1 WRITTEN PLEA AGREEMENT?

2 MR. TILLER: NO, SIR.

3 THE COURT: THAT IS YOUR SIGNATURE ON THE AGREEMENT. IS THAT
4 CORRECT?

5 MR. TILLER: YES, SIR.

6 THE COURT: HAVE YOU HAD ENOUGH TIME TO DISCUSS THE
7 AGREEMENT AND THE CONSEQUENCES OF EVERY PROVISION IN IT WITH
8 MISTER JONES AND MISTER WISE?

9 MR. TILLER: YES, SIR.

10 THE COURT: OKAY. AND DO YOU UNDERSTAND THE MAXIMUM
11 SENTENCE YOU FACE FOR EACH CRIME YOU ARE PLEADING GUILTY TO?

12 MR. TILLER: YES, SIR.

13 THE COURT: AND AT THIS TIME I'M GOING TO ASK THE ATTORNEY
14 GENERAL TO SET FORTH THE MAXIMUM SENTENCES AND ANY MINIMUM
15 SENTENCES THAT MAY APPLY.

16 MR. BOGAN: THANK YOU, YOUR HONOR.

17 MR. JONES: MISTER BOGAN AND YOUR HONOR, IF IT PLEASES THE
18 COURT. IF I COULD, BRIEFLY. I DON'T KNOW IF THIS IS THE APPROPRIATE
19 TIME TO MENTION THIS, BUT OUT OF AN ABUNDANCE OF CAUTION, I WOULD
20 LIKE TO MENTION IT.

21 THE COURT: YES, SIR.

22 MR. JONES: OUTSIDE THAT AGREEMENT WAS, I BELIEVE, AN
23 UNDERSTANDING THAT A SHOTGUN BELONGED TO DUSTIN AND WAS A GIFT
24 FROM HIS GRANDFATHER, THAT WAS SEIZED PURSUANT TO A SEARCH
25 EXECUTED AT THE HOME OF MATTHEW NANCE ON JULY 17, 2007, COULD AND

1 WOULD BE RETURNED TO DUSTIN'S MOTHER AT HER REQUEST IF SHE COMES
2 TO GET IT.

3 (MISTER BOGAN, MISTER WISE AND MISTER JONES CONFER)

4 MR. BOGAN: YOUR HONOR, THAT'S CORRECT. WE HAVE WORKED THAT
5 OUT. I WAS UNDER A MISUNDERSTANDING, AND I BELIEVE THAT
6 CONVERSATION CAME UP BETWEEN MISTER WISE AND I AFTER THE PLEA
7 AGREEMENT HAD BEEN ENTERED INTO, WHICH IS WHY IT'S NOT IN THAT PLEA
8 AGREEMENT, IN A TELEPHONE CALL. I TALKED TO THE SLED AGENT WHO IS
9 HANDLING THIS CASE AND SLED TELLS ME THEY DON'T HAVE ANY OBJECTION
10 TO IT.

11 MR. WISE: THIS GUN WAS GIVEN TO HIM BY HIS GRANDFATHER WHO IS
12 NOW DECEASED AND OBVIOUSLY, HE CAN'T GET IT. HIS MOTHER DOESN'T
13 HAVE A RECORD AND WE'D LIKE HER TO BE THE ONE TO GO PICK IT UP.

14 THE COURT: OKAY. SO, THAT'S PART OF THE AGREEMENT NOW.
15 OTHER THAN THAT, DO YOU HAVE ANY PROMISES, DEALS OR AGREEMENT
16 WITH THE STATE?

17 MR. TILLER: NO, SIR.

18 THE COURT: OKAY. IN OTHER WORDS, EVERYTHING ELSE IS INCLUDED
19 IN THE PLEA AGREEMENT FOR ME TO APPROVE HERE TODAY.

20 MR. TILLER: YES, SIR.

21 THE COURT: OKAY. MISTER BOGAN?

22 MR. BOGAN: THANK YOU, YOUR HONOR. MISTER TILLER WAS
23 ORIGINALLY INDICTED BY THE STATE GRAND JURY FOR THE OFFENSE OF
24 TRAFFICKING MORE THAN A HUNDRED GRAMS OF METHAMPHETAMINE. THAT
25 WAS BASED ON AN INCIDENT HERE IN GREENWOOD COUNTY. IT OCCURRED

1 IN THE EARLY MORNING HOURS OF MARCH 30, 2007.

2 THE COURT: YES. I'M SORRY. I WAS JUST ASKING YOU ABOUT THE
3 MINIMUM OR MAXIMUM SENTENCES FOR THE OFFENSES HE'S PLEADING
4 GUILTY TO TODAY. I'LL ASK YOU ABOUT THE FACTS IN A FEW MINUTES.

5 MR. BOGAN: YES, SIR. SORRY. THE MAXIMUM SENTENCE FOR THE
6 OFFENSE OF TRAFFICKING MORE THAN TWENTY-EIGHT BUT LESS THAN ONE
7 HUNDRED GRAMS OF METHAMPHETAMINE IS NOT LESS THAN SEVEN YEARS
8 NOR MORE THAN TWENTY-FIVE YEARS, NO PART OF WHICH MAY BE
9 SUSPENDED NOR PROBATION GRANTED AND A FINE OF \$50,000.00. THAT
10 WOULD BE TRUE OF BOTH INDICTMENTS 2008-GS-47-03 AND 2009-47-01, THAT
11 HE'S WAIVED PRESENTMENT OF HERE TODAY. INDICTMENT 2008-47-04 IS FOR
12 POSSESSION OF METHAMPHETAMINE WITH INTENT TO DISTRIBUTE, THAT'S IN
13 VIOLATION OF §44-53-375(d). THAT HAS A MAXIMUM TERM OF IMPRISONMENT
14 OF FIFTEEN YEARS AND A FINE OF NOT LESS THAN \$25,000.00. AS PART OF
15 THE PLEA NEGOTIATIONS, YOUR HONOR, WE'VE ENTERED INTO THIS PLEA
16 AGREEMENT AND RECOMMENDED THE RANGE OF TEN TO FIFTEEN YEARS.

17 THE COURT: ALL RIGHT. AND MISTER TILLER, DO YOU UNDERSTAND
18 THOSE MINIMUM AND MAXIMUM SENTENCES THAT YOU WILL FACE?

19 MR. TILLER: YES, SIR.

20 THE COURT: ALL RIGHT. AND DO YOU UNDERSTAND THE ELEMENTS OF
21 EACH CRIME THAT THE STATE WOULD HAVE TO PROVE BEYOND A
22 REASONABLE DOUBT TO CONVICT YOU?

23 MR. TILLER: YES, SIR.

24 THE COURT: AND DO YOU ENTER YOUR PLEA FREELY AND
25 VOLUNTARILY, SIR?

1 MR. TILLER: YES, SIR.

2 THE COURT: ARE YOU PLEADING GUILTY BECAUSE YOU ARE GUILTY?

3 MR. TILLER: YES, SIR.

4 THE COURT: HAS ANYONE THREATENED YOU OR PUT ANY PRESSURE
5 ON YOU TO GET YOU TO COME FORWARD AND ENTER YOUR PLEA?

6 MR. TILLER: NO, SIR.

7 THE COURT: ARE YOU DOING SO OF YOUR OWN FREE CHOICE AND
8 WILL?

9 MR. TILLER: YES, SIR.

10 THE COURT: AND HAVE YOU HAD ENOUGH TIME TO THINK ABOUT WHAT
11 YOU ARE DOING?

12 MR. TILLER: YES, SIR.

13 THE COURT: DO YOU UNDERSTAND THAT YOU HAVE A CONSTITUTIONAL
14 RIGHT TO A JURY TRIAL ON THESE CHARGES?

15 MR. TILLER: YES, SIR.

16 THE COURT: AND, IN FACT, I BELIEVE THIS CASE WAS SCHEDULED TO
17 GO TO TRIAL NEXT MONDAY AND A JURY WOULD BE CALLED IN TO HEAR
18 YOUR CASE AND DECIDE A VERDICT OF GUILTY OR NOT GUILTY AND YOU
19 WISH TO GIVE UP YOUR RIGHT TO HAVE A JURY DECIDE THAT AND INSTEAD
20 PLEAD GUILTY HERE TODAY. IS THAT RIGHT?

21 MR. TILLER: YES, SIR.

22 THE COURT: DO YOU UNDERSTAND THAT AT A JURY TRIAL, YOU WOULD
23 BE PRESUMED INNOCENT. YOU WOULDN'T HAVE TO PROVE YOUR
24 INNOCENCE OR PROVE YOU WERE NOT GUILTY. YOU WOULDN'T HAVE TO
25 PROVE ANYTHING. THE BURDEN OF PROOF WOULD BE ON THE STATE AND

1 YOU WOULD ONLY BE CONVICTED, MISTER TILLER, IF ALL TWELVE JURORS
2 AGREED THAT THE STATE HAD PROVED EACH AND EVERY ELEMENT OF THE
3 CRIME BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

4 MR. TILLER: YES, SIR.

5 THE COURT: AT YOUR TRIAL, YOU COULD SEE AND HEAR THE
6 WITNESSES. YOU COULD CONFRONT THE EVIDENCE AGAINST YOU. YOU
7 COULD BRING WITNESSES IN USING THE SUBPOENA POWERS OF THE COURT.
8 YOU COULD TESTIFY, PRESENT ANY DEFENSES YOU MAY HAVE, HAVE YOUR
9 LAWYER ASSIST YOU AT YOUR TRIAL, BOTH OF YOUR LAWYERS ASSIST YOU.
10 DO YOU UNDERSTAND THAT, SIR?

11 MR. TILLER: YES, SIR.

12 THE COURT: I DON'T KNOW IF YOU HAVE ANY DEFENSES OR NOT, BUT
13 YOU UNDERSTAND BY PLEADING GUILTY, YOU GIVE UP THE RIGHT TO
14 PRESENT ONE AS WELL AS THE RIGHT TO CHALLENGE OR CONTEST ANY OF
15 THE EVIDENCE IN THE CASE, INCLUDING ANY STATEMENTS YOU MAY HAVE
16 GIVEN, SEARCHES THAT MAY HAVE BEEN MADE OR TESTING THAT WAS DONE
17 OR SHOULD HAVE BEEN DONE. DO YOU UNDERSTAND THAT, SIR?

18 MR. TILLER: YES, SIR.

19 THE COURT: AND AS I SAID, YOU COULD TESTIFY AT YOUR TRIAL AND
20 PRESENT EVIDENCE, BUT NO ONE CAN FORCE YOU TO TESTIFY AT YOUR
21 TRIAL OR TO SAY ANYTHING. THE JURY WOULD BE TOLD THAT YOU ARE NOT
22 ONLY PRESUMED INNOCENT BUT HAVE THE RIGHT TO REMAIN SILENT AND
23 THE STATE WOULD HAVE THE SOLE BURDEN OF PROOF, BUT THEY FURTHER
24 WILL BE TOLD THAT IF YOU PREFER TO REMAIN SILENT, THEY COULD NOT
25 HOLD THAT AGAINST YOU OR TAKE THAT INTO ACCOUNT OR EVEN DISCUSS

1 IT DURING DELIBERATIONS IN DETERMINING WHETHER YOU WERE GUILTY OR
2 NOT GUILTY. DO YOU UNDERSTAND THAT, SIR?

3 MR. TILLER: YES.

4 THE COURT: NOW...

5 MR. JONES: YOUR HONOR, WHILE YOU ARE REVIEWING THAT
6 DOCUMENT.

7 THE COURT: YES, SIR.

8 MISTER JONES: COULD I GET MISTER TILLER TO SIGN THESE
9 SENTENCING SHEETS ALONG WITH MISTER WISE AND MYSELF?

10 THE COURT: YES, SIR.

11 (DEFENSE ATTORNEYS AND DEFENDANT WRITE ON DOCUMENTS)

12 THE COURT: IF YOU WOULD, JUST CHECK THE BOX AND INITIAL THE
13 WAIVER ON THIS INDICTMENT, 09-01.

14 MR. JONES: 09-47-01, YOUR HONOR?

15 THE COURT: YES, SIR.

16 (DEFENDANT WRITES ON DOCUMENT HANDED DOWN BY JUDGE HILL)

17 THE COURT: OKAY. ARE YOU READY?

18 MR. JONES: YES, SIR.

19 THE COURT: ALL RIGHT. THE GRAND JURY WAS NOT PRESENTED WITH
20 THE INDICTMENT, 09-GS-47-01, AND MISTER TILLER, YOU HAVE INDICATED BY
21 INITIALING THE SENTENCING SHEET AND THE INDICTMENT, ACTUALLY
22 SIGNING THE INDICTMENT, THAT YOU WISH TO GIVE UP OR WAIVE YOUR
23 RIGHT TO HAVE THAT CHARGE PRESENTED TO THE GRAND JURY. IS THAT
24 WHAT YOU WISH TO DO, SIR?

25 MR. TILLER: YES, SIR.

1 THE COURT: AND DO YOU FULLY UNDERSTAND THE CONSTITUTIONAL
2 RIGHTS YOU HAVE TO HAVE THAT CHARGE PRESENTED TO THE GRAND
3 JURY?

4 MR. TILLER: YES, SIR.

5 THE COURT: HAVE YOU DISCUSSED IT WITH YOUR LAWYERS?

6 MR. TILLER: YES, SIR.

7 THE COURT: DO YOU HAVE ANY QUESTIONS OF ME ABOUT THAT?

8 MR. TILLER: NO, SIR.

9 THE COURT: ALL RIGHT. I FIND HE HAS VOLUNTARILY, KNOWINGLY AND
10 FREELY WAIVED HIS RIGHT TO HAVE THE CHARGE PRESENTED TO THE
11 GRAND JURY. THE PWID INDICTMENT, 08-GS-47-04, IS THAT A SERIOUS OR
12 MOST SERIOUS?

13 MR. BOGAN: NO, SIR.

14 THE COURT: OKAY. THE OTHER TWO ARE, THOUGH. CORRECT?

15 MR. BOGAN: YES, SIR.

16 THE COURT: ALL RIGHT. SO, MISTER TILLER, YOU UNDERSTAND YOU
17 ARE PLEADING GUILTY TO TWO CHARGES, SPECIFICALLY, 08-GS-47-03 AND
18 09-GS-47-01, WHICH ARE CLASSIFIED AS SERIOUS OFFENSES UNDER SOUTH
19 CAROLINA LAW. DO YOU UNDERSTAND THAT?

20 MR. TILLER: YES.

21 THE COURT: AND HAVE YOU TALKED TO YOUR LAWYERS ABOUT THE
22 CONSEQUENCES OF A PLEA TO A SERIOUS OFFENSE?

23 MR. TILLER: YES, SIR.

24 THE COURT: AND DO YOU UNDERSTAND THE TWO STRIKES AND THREE
25 STRIKES LAW, SIR?

1 **MR. TILLER: YES, SIR.**

2 **THE COURT: AND DO YOU UNDERSTAND THAT IF YOU EVER GET**
3 **CONVICTED AGAIN OF A SERIOUS OR MOST SERIOUS OFFENSE, YOU COULD**
4 **BE SUBJECT TO A MANDATORY PRISON SENTENCE OF LIFE WITHOUT A**
5 **POSSIBILITY OF PAROLE?**

6 **MR. TILLER: YES, SIR.**

7 **THE COURT: KNOWING THAT, YOU STILL WISH TO ENTER YOUR PLEA,**
8 **SIR?**

9 **MR. TILLER: YES, SIR.**

10 **THE COURT: DO YOU HAVE ANY QUESTIONS OF ME ABOUT THE TWO**
11 **STRIKES, THREE STRIKES LAW?**

12 **MR. TILLER: NO, SIR.**

13 **THE COURT: ALL RIGHT. UNDERSTANDING THE RIGHTS THAT YOU DO**
14 **HAVE AND THAT YOU MUST GIVE THEM UP HERE TODAY REGARDING THE**
15 **RIGHTS TO HAVE A JURY TRIAL THAT I'VE GONE OVER WITH YOU, DO YOU**
16 **STILL WISH TO PLEAD GUILTY, MISTER TILLER, OR WOULD YOU LIKE TO HAVE**
17 **A JURY TRIAL?**

18 **MR. TILLER: I'D LIKE TO PLEAD GUILTY.**

19 **THE COURT: HAVE YOU UNDERSTOOD ALL MY QUESTIONS, SIR?**

20 **MR. TILLER: YES, SIR.**

21 **THE COURT: HAS ANYONE TOLD YOU HOW TO ANSWER MY**
22 **QUESTIONS?**

23 **MR. TILLER: NO, SIR.**

24 **THE COURT: ALL RIGHT. THANK YOU FOR YOUR ATTENTION. LISTEN**
25 **CAREFULLY, MISTER BOGAN IS GOING TO SUMMARIZE THE FACTS OF YOUR**

1 CASE. YOU HAVE TEN DAYS TO APPEAL ANY SENTENCE I MAY IMPOSE AND
2 YOUR APPEAL MUST BE IN WRITING.

3 MR. TILLER: YES, SIR.

4 MR. BOGAN: THANK YOU, YOUR HONOR. IN THE MATTER OF
5 2008-GS-47-03, ON OR ABOUT MARCH 21, 2007, AN INDIVIDUAL BEGAN
6 COOPERATING WITH THE STATE LAW ENFORCEMENT DIVISION AND THAT
7 INDIVIDUAL MADE TELEPHONE CALLS DURING THE PERIOD BETWEEN MARCH
8 21ST AND MARCH 30TH TO MISTER TILLER TO ARRANGE TO BUY A QUANTITY
9 OF METHAMPHETAMINE. JUST AFTER MIDNIGHT ON MARCH 30TH, SOME
10 ADDITIONAL TELEPHONE CALLS WERE MADE WHEREBY THERE WOULD BE A
11 DEAL FOR FOUR OUNCES OF METHAMPHETAMINE FOR THE PRICE OFF
12 \$4000.00 AND THEY WOULD MEET OUT ON THE HIGHWAY 72 BY-PASS HERE IN
13 GREENWOOD. THE LOCATION OF THAT EXCHANGE WAS THEN CHANGED
14 SEVERAL TIMES DURING OTHER TELEPHONE CALLS AND THIS COOPERATING
15 INDIVIDUAL WAS TOLD TO PLACE THE MONEY BEHIND A GARBAGE CAN
16 BEHIND TACO BELL OUT ON HIGHWAY 72 BY-PASS AND HE DID SO. HE WAS
17 TOLD WHEN HE ARRIVED THERE, HE WOULD FIND THE FOUR OUNCES OF
18 METHAMPHETAMINE AT THAT LOCATION CONCEALED IN A SOCK, IN A PLASTIC
19 BAG INSIDE A SOCK. THE COOPERATING INDIVIDUAL WENT TO THAT
20 LOCATION, PICKED UP THE SOCK, PUT THE MONEY ON THE GROUND AS HE
21 WAS INSTRUCTED TO DO AND THEN LEFT. THE ENTIRE DEAL WAS
22 SURVEILLANCED BY LAW ENFORCEMENT AND THE COOPERATING INDIVIDUAL
23 WAS WEARING AN UNDERCOVER WIRE WITH A CAMERA TO VIDEOTAPE IT
24 AND WHEN LAW ENFORCEMENT MOVED IN AFTER A SUBJECT, MISTER TILLER,
25 WALKED UP TO THE GARBAGE CAN AND PICKED UP THE MONEY, MISTER

1 TILLER FLED AS A PASSENGER IN ANOTHER VEHICLE. LAW ENFORCEMENT
2 THOUGHT HE WAS GOING TO BE DRIVING A WHITE TAHOE, AS HAD BEEN
3 STATED IN SOME OF THE MONITORED TELEPHONE CALLS, AND WHEN THIS
4 RED HONDA WAS ATTEMPTING TO LEAVE THE TACO BELL, THEY ACTUALLY
5 LET IT OUT NOT KNOWING IT CONTAINED MISTER TILLER. A HIGH SPEED
6 CHASE ENSUED AFTER THAT AND MISTER TILLER ESCAPED. AS PART OF THE
7 PLEA AGREEMENT, MISTER TILLER HAS AGREED TO IDENTIFY FOR US THE
8 DRIVER OF THAT CAR. SLED RECOVERED THE METHAMPHETAMINE THAT
9 WAS LEFT IN THE SOCK, IN THE PLASTIC BAG. THEY TESTED IT AND IT
10 PROVED TO BE 111.96 GRAMS OF METHAMPHETAMINE, HENCE THE
11 INDICTMENT FOR TRAFFICKING MORE THAN ONE HUNDRED GRAMS AND THIS
12 PLEA AGREEMENT TO THE LESSER OFFENSE OF TRAFFICKING TWENTY-
13 EIGHT TO ONE HUNDRED GRAMS.

14 IN INDICTMENT 2008-GS-47-04, MISTER TILLER HAD BEEN UNDER
15 SURVEILLANCE WHILE TRAVELING AS A FRONT SEAT PASSENGER OF A CAR
16 AT A CONVENIENCE STORE AT 8091 ABBEVILLE HIGHWAY IN IVA, SOUTH
17 CAROLINA, WHICH IS IN ANDERSON COUNTY. THE DRIVER OF THE CAR WAS A
18 COOPERATING INDIVIDUAL, ALSO WEARING A WIRE AT THE TIME. THERE'S
19 REFERENCE ON THE TAPE OF THAT CONVERSATION THAT MISTER TILLER
20 HAD METHAMPHETAMINE IN HIS POSSESSION AND WHEN THE POLICE
21 APPROACHED THE CAR, MISTER TILLER WAS SEATED IN THE PASSENGER'S
22 SEAT IN THE PARKING LOT OF THIS CONVENIENCE STORE, OPENED THE
23 DOOR AND THREW A SMALL OBJECT ON THE GROUND. THAT OBJECT WAS
24 RETRIEVED AND TESTED. IT WAS 1.11 GRAMS OF METHAMPHETAMINE.

25 IN INDICTMENT 2009-GS-47-01, WHICH MISTER TILLER HAS WAIVED

1 PRESENTMENT TO THE GRAND JURY HERE TODAY, THE STATE WOULD HAVE
2 EVIDENCE THAT MISTER TILLER WAS INVOLVED IN TRAFFICKING
3 METHAMPHETAMINE BY BRINGING AMOUNTS MORE THAN 28 GRAMS INTO THE
4 STATE OF SOUTH CAROLINA ACROSS A STATE LINE AND THEN DISTRIBUTING
5 IT TO OTHER PEOPLE, BOTH KNOWN AND UNKNOWN TO MEMBERS OF THE
6 GRAND JURY.

7 THE COURT: WHAT WAS THE TOTAL AMOUNT IN GRAMS?

8 MR. BOGAN: WE DON'T HAVE A TOTAL AMOUNT, YOUR HONOR, BUT FOR
9 PURPOSES OF WAIVING THE INDICTMENT, MORE THAN TWENTY-EIGHT
10 GRAMS.

11 THE COURT: ALL RIGHT. MISTER TILLER, IS THAT WHAT HAPPENED IN
12 THESE CASES, SIR?

13 MR. TILLER: YES, SIR.

14 THE COURT: AND THE OFFENSES IN 08-GS-47-03 AND 09-GS-47-01,
15 THOSE OFFENSES ARE CLASSIFIED AS VIOLENT OFFENSES. DO YOU
16 UNDERSTAND THE CONSEQUENCES OF PLEADING TO A VIOLENT OFFENSE?

17 (MISTER JONES CONFERS WITH HIS CLIENT)

18 MR. TILLER: YES, SIR.

19 THE COURT: ARE YOU RELYING ON ANY PROMISES OF PAROLE OR
20 ELIGIBILITY FOR PAROLE WHEN ENTERING YOUR PLEA TO THESE OFFENSES?

21 MR. WISE: HE'S NOT PAROLE ELIGIBLE. WE'VE TOLD HIM THEY ARE NOT
22 PAROLE ELIGIBLE, WHICH IT ISN'T.

23 THE COURT: THE PWID CHARGE, IS THAT CLASSIFIED AS VIOLENT?

24 MR. WISE: THAT'S PAROLE ELIGIBLE, BUT IT'S GOING TO BE A MOOT
25 QUESTION.

1 THE COURT: OKAY.

2 MR. WISE: HE UNDERSTANDS THAT.

3 THE COURT: ALL RIGHT. I FIND THAT THERE IS A FACTUAL BASIS FOR
4 THE PLEA. IT'S BEEN ENTERED INTO FREELY, VOLUNTARILY AND WITH THE
5 ASSISTANCE OF TWO SKILLED LAWYERS AND I ACCEPT THE PLEA. MISTER
6 JONES OR MISTER WISE?

7 MR. JONES: YES, YOUR HONOR. MISTER WISE WILL PRECEDE ME.
8 COULD WE BOTH HAVE AN OPPORTUNITY TO SPEAK?

9 THE COURT: ABSOLUTELY.

10 MR. JONES: THANK YOU.

11 MR. WISE: YOUR HONOR, I THINK IT'S FAIR TO SAY THAT THE
12 DEFENDANT RELUCTANTLY AGREES THAT THIS IS AN ACCEPTABLE RANGE OF
13 SENTENCING FOR MISTER TILLER AND I'M PREPARED TO SAY THAT THE
14 STATE ALSO RELUCTANTLY AGREES THAT THIS IS A FAIR SENTENCING
15 RANGE FOR MISTER TILLER. THE STATE, OF COURSE, WANTING A HIGHER
16 RANGE AND THE DEFENSE WANTING A LOWER RANGE, BUT THIS IS AN AREA
17 WE BOTH CAME TO WITH THE IDEA THAT, BASICALLY, WE CAN LIVE WITH
18 WHATEVER HAPPENS. THE THING ABOUT DUSTIN, YOUR HONOR, IS I THINK
19 THAT YOU REALLY HAVE TO CONSIDER IS THE FACT THAT DUE TO THE WAY
20 THAT DRUG LAWS ARE STRUCTURED IN SOUTH CAROLINA AND VIRTUALLY
21 EVERYWHERE IN THE COUNTRY, YOU HAVE A YOUNG MAN IN FRONT OF YOU
22 WHO IS JUST TWENTY-TWO YEARS OLD NOW AND WHEN ALL THIS STARTED,
23 HE WAS ROUGHLY TWENTY OR IN HIS LATE TEENS WHO HAS NO PRIOR DRUG
24 RECORD. HE'S NOT A YOUNG MAN WHO HAS BEEN IN AND OUT OF JAIL,
25 WHO'S SERVED SIX MONTHS OR A YEAR FOR A DRUG CHARGE AND DIDN'T

1 LEARN HIS LESSON, THEN GETS OUT AND IS UP FOR ANOTHER DRUG
2 OFFENSE. THIS IS HIS FIRST DRUG OFFENSE BEFORE THE COURT. THE
3 OTHER THING THAT I'VE DISCOVERED IN WORKING THIS CASE WITH MISTER
4 JONES IS THAT MISTER TILLER IS ALSO A USER. SOMETIMES YOU GET
5 PEOPLE WHO GET INVOLVED WITH DRUG TRAFFICKING AND, YOU KNOW,
6 THEY'VE GOT THE SENSE NOT TO USE IT. HE DIDN'T. HE ACTUALLY STARTED
7 OUT USING IT AND THEN GOT INVOLVED IN IT. AT ANY RATE, IN DISCUSSING
8 THIS WITH MISTER BOGAN, I THINK MISTER BOGAN SUMMED IT UP BEST
9 WHEN HE SAID -- AND ONE REASON WE HAVE THAT CONSPIRACY CHARGE IN
10 THERE IS THAT THEY'VE INTERVIEWED SEVERAL PEOPLE THAT KNOW MISTER
11 TILLER AND THAT HE KNOWS AND AS MISTER BOGAN APTLY EXPRESSED IT,
12 "WHEN I LEAVE COURT ON THIS ONE I WANT TO BE THROUGH WITH MISTER
13 TILLER." WELL, THAT'S WHY THE CONSPIRACY IS THERE, BECAUSE THAT
14 ENCOMPASSES ANY POSSIBILITY OF ANYTHING COMING UP IN THE FUTURE.
15 SO, HE WILL HAVE, AND I'VE EXPLAINED THIS TO HIM, WHEN HE GETS OUT, A
16 CHANCE AT A FRESH START. HE WILL, HOPEFULLY, BE UNDER THIRTY WHEN
17 HE GETS OUT, HE WILL HAVE A FUTURE AHEAD OF HIM AND WHAT HE DOES
18 WITH THAT FUTURE IS UP TO HIM. I CAN TELL THE COURT FROM TALKING
19 WITH HIM, WITHOUT PRODDING HIM, JUST IN GENERAL CONVERSATION FROM
20 WHAT HE SAYS TO US, HE REALIZES THIS IS IT FOR HIM. THAT IF HE GETS
21 BACK INVOLVED IN THE DRUG -- AS I EXPRESSED IT TO HIM, YOU KNOW, IF
22 HE'S FOUND WITH ANY MORE THAN LESS THAN AN OUNCE OF MARIJUANA ON
23 HIM IN THE FUTURE, HE'S GOING TO JAIL FOR A LONG TIME, PERIOD. HE'LL BE
24 A MULTIPLE OFFENDER ON THE DRUG FIELD AND HE UNDERSTANDS THAT.
25 HE UNDERSTANDS THAT BEING INVOLVED IN DRUGS IS NOT GOING TO DO

1 ANYTHING FOR HIM OTHER THAN PUT HIM IN JAIL FOR A REALLY LONG TIME,
2 IF HE GETS INVOLVED IN IT WHEN HE GETS OUT. I CAN ASSURE THE COURT
3 THAT HE THOROUGHLY AND COMPLETELY UNDERSTANDS THAT. HE'S A HIGH
4 SCHOOL DROP-OUT. HE PLAYED A LITTLE FOOTBALL IN HIGH SCHOOL. HE
5 HAD SOME COACHES ENCOURAGE HIM TO CONTINUE TO PLAY WHEN HE GOT
6 READY TO DROP OUT, BUT AS A LOT OF SIXTEEN, SEVENTEEN-YEAR-OLDS,
7 HE, OF COURSE, KNEW BETTER. THEY ACTUALLY TRIED TO TALK HIM INTO
8 STAYING ON SO HE COULD ACTUALLY GET A SCHOLARSHIP AT A SMALL
9 COLLEGE. THEY SAW NO PROBLEM IN HIM DOING THAT, BUT AS WE SAY,
10 WHEN YOU'RE SIXTEEN, YOU KNOW BETTER. WELL, HE REALLY DIDN'T,
11 OBVIOUSLY. I LOOK AT THE SENTENCING RANGE YOU CAN IMPOSE ON HIM
12 AND WHEN I LOOK AT THE ACTUAL TIME HE WILL SERVE, ON THE LOW END,
13 HE'S LOOKING AT SERVING TWO PRESIDENTIAL ELECTIONS. EIGHT YEARS, A
14 LITTLE OVER EIGHT YEARS. AND THAT'S NOT AN INSIGNIFICANT SENTENCE. I
15 REALLY AND TRULY BELIEVE THAT A SENTENCE ON THE LOW END IS MORE
16 THAN ENOUGH TO DETER DUSTIN TILLER FROM ANY FURTHER INVOLVEMENT
17 IN THIS. YOU KNOW, THAT'S NOT AN INSIGNIFICANT SENTENCE. IT SEEMS
18 THAT IN SENTENCING, OR AT LEAST IT'S BEEN MY THOUGHTS, THAT YOU CAN
19 GIVE A SENTENCE THAT SOMEBODY BECOMES, BASICALLY,
20 INSTITUTIONALIZED. THEY JUST FIGURE THEY CAN DEAL WITH IT, YOU KNOW,
21 AND IT DOESN'T DO MUCH GOOD. I REALLY THINK THAT THE LOW END OF
22 THIS MAY EVEN EXCEED THAT, BUT AT ANY RATE, IT'S A SENTENCE THAT
23 WILL ALLOW HIM, ON THE LOW END, TO GET OUT WHEN HIS CHILDREN, WHO
24 ARE NOW CHILDREN, WILL BE ENTERING THEIR PRE-TEENS AND HE WILL BE
25 ABLE TO HAVE SOME INFLUENCE ON THEIR LIVES, HOPEFULLY AT THAT POINT

1 AND OFFER SOME GUIDANCE TO THEM. WE'RE NOT HERE BECAUSE,
2 OBVIOUSLY, BECAUSE MISTER TILLER IS A CASUAL USER OF DRUGS,
3 ALTHOUGH HE IS A USER. THERE'S NO QUESTION ABOUT THAT. WE DON'T
4 MEAN TO MINIMIZE HIS INVOLVEMENT IN IT, BUT I DO THINK THAT WE DO
5 HAVE TO EMPHASIZE THAT AT TWENTY-TWO, OR ACTUALLY TWENTY WHEN
6 ALL THIS STARTED, WE DON'T NEED TO TREAT HIM AS SOMEONE WHO IS
7 THIRTY-FIVE YEARS OLD WHO'S BEEN IN AND OUT OF JAIL FOR SOME
8 RELATIVELY LIGHT SENTENCES OF A COUPLE OF YEARS OR SO AND DIDN'T
9 LEARN A LESSON AND THEN GOT INVOLVED IN DRUGS ON A BIG DEAL AND
10 THEN HAVE SHOWN NO INDICATION OF CHANGING THEIR ATTITUDE. THIS IS
11 GOING TO BE THE ONLY CHANCE THAT HE HAS TO CHANGE HIS ATTITUDE
12 AND LIFE BECAUSE, AS I SAY, IF HE GETS BACK INVOLVED WITH IT, HE'S
13 GOING TO GO FOR A LONG TIME. THERE ARE NO IF, ANDS OR BUTS ABOUT IT.
14 THE JUDGE'S HANDS WILL BE TIED, THERE WILL BE NO CHOICE ABOUT IT, AND
15 HE WILL BE LOOKING AT SUBSTANTIAL TIME IF HE GOES BACK BEFORE THE
16 COURT ON A THIRD OFFENSE OF A DRUG CHARGE, EVEN ONE THAT WOULD
17 BE RELATIVELY MINOR FOR SOMEONE WITH NO PRIOR DRUG RECORD AND I
18 AM SURE HE UNDERSTANDS THAT. WE TRULY FEEL THAT A SENTENCE ON
19 THE LOW END, THE TEN TO FIFTEEN RANGE, CERTAINLY DETERS HIM FROM
20 GOING OUT AND COMMITTING A SIMILAR CRIME. I THINK EIGHT YEARS IN JAIL
21 IS A LONG TIME AND ANYBODY OUT THERE THAT READS ABOUT IT, KNOWS
22 ABOUT IT, WILL REALIZE THAT IF HE GETS A TEN YEAR SENTENCE, HE'LL
23 HAVE TO SERVE EIGHT-AND-A-HALF, KNOWS THAT HE GOT A SUBSTANTIAL
24 SENTENCE AND SO THERE WILL BE THAT DETERRENT EFFECT. IT CERTAINLY
25 WOULD BE ADEQUATE PUNISHMENT TO HIM AND THE FACT THAT HE HAS NO

1 PRIOR DRUG RECORD AT THIS POINT, NO PRIOR DRUG RECORD, PERIOD.

2 THE COURT: ALL RIGHT. THANK YOU, MISTER WISE. MISTER JONES?

3 MR. JONES: THANK YOU, YOUR HONOR. IF IT PLEASES THE COURT,
4 YOUR HONOR. JUDGE, I'D LIKE TO TELL YOU THIS, DUSTIN HAS ALREADY
5 CHANGED AND I WANT TO TELL YOU HOW I KNOW THAT. I FIRST MET HIM
6 MARCH OF '07 WHEN HE WAS CHARGED WITH THIS OFFENSE. I WAS
7 RETAINED TO REPRESENT HIM THEN. I WORKED WITH HIM FOR SEVERAL
8 MONTHS AND THEN HE WAS ARRESTED AGAIN, SERVED WITH A STATE-WIDE
9 GRAND JURY CHARGE. THE ORIGINAL WARRANT WAS A GREENWOOD POLICE
10 DEPARTMENT WARRANT ON THIS TRAFFICKING CHARGE. STATE-WIDE
11 GRAND JURY, WENT TO THE GRAND JURY AND GOT AN INDICTMENT AND RE-
12 ARRESTED HIM IN SEPTEMBER. DURING THAT PERIOD, HE WAS INATTENTIVE
13 TO MY ADVICE, HE WAS CLEARLY ON SOME SORT OF DRUG WHEN I WOULD
14 MEET WITH HIM FROM TIME TO TIME. HE APPEARED TO BE HYPER. HE
15 APPEARED TO BE INTENSE AND, YOU KNOW, NOT REALLY LISTENING TO
16 WHAT I HAD TO SAY TO HIM AND QUITE FRANKLY, JUDGE, HE'S BEEN IN JAIL
17 FOR OVER A YEAR NOW. I'VE SEEN A CHANGE IN HIS DEMEANOR. I'VE SEEN
18 HIM MATURE. I'VE SEEN HIM COME TO GRIPS WITH WHERE HE IS NOW FROM
19 WHERE HE WAS THEN. THE DIFFERENCE BETWEEN THE TWO. HE ACTUALLY
20 HAD A PRETTY GOOD LIFE SEVERAL YEARS BEFORE MARCH OF 2007, WHERE
21 HE WAS WORKING AS A MECHANIC, A MACHINE OPERATOR. HE HAD MET A
22 WOMAN AND HAD TWO YOUNG CHILDREN WITH HER AND NOW – YOUR
23 CHILDREN ARE HOW OLD, DUSTIN?

24 MR. TILLER: THREE AND TWO.

25 MR. JONES: THREE AND TWO YEARS OLD, HIS TWO CHILDREN. HE HAS

1 MISSED THE LAST TWO CHRISTMASES WITH THOSE TWO CHILDREN AND
2 WITH EACH SUBSEQUENT CHRISTMAS THAT HE KNOWS HE WILL MISS, AT
3 LEAST SEVEN MORE IF YOU CHOOSE TO SENTENCE HIM TO THE TEN YEARS
4 THAT WE THINK IS A FAIR, REASONABLE, JUST AND SUBSTANTIAL SENTENCE
5 UNDER THIS AGREEMENT. HE'LL MISS EIGHT CHRISTMASES AND EIGHT
6 BIRTHDAYS OF EACH ONE OF THOSE CHILDREN AND HE WILL REMEMBER
7 THEM. HE WILL SUFFER IN HIS HEART AND HIS GUT AND HIS SOUL NOT BEING
8 ABLE TO BE WITH THEM AND HE WILL KNOW WHY HE'S NOT WITH THEM,
9 BECAUSE HE ENGAGED IN THIS ACTIVITY. IT WASN'T THEIR FAULT. IT WASN'T
10 THEIR MOTHER'S FAULT, BUT HE DID IT AND I'M JUST TRYING TO EXPLAIN TO
11 YOU SOME OF THE THINGS THAT HE WILL BE LIVING WITH IF HE GETS THE
12 MINIMUM SENTENCE OVER THE NEXT EIGHT YEARS. THE PAIN OF NOT
13 WATCHING THEM GROW UP. BUT IN TALKING WITH HIM LAST WEEK, AND I
14 SUGGESTED SOME THINGS TO HIM. AND DUSTIN, IF YOU WOULD – DID YOU
15 WANT TO PLACE HIM UNDER OATH IF HE HAS A CHANCE TO SPEAK TO YOU,
16 YOUR HONOR? HAVE YOU ALREADY DONE THAT?

17 (MISTER TILLER IS PLACE UNDER OATH BY MISTER PARKS)

18 **MR. JONES:** DUSTIN, THE OTHER AFTERNOON, I MENTIONED SOME
19 THINGS TO YOU ABOUT WHAT YOU WILL BE DOING FOR AT LEAST EIGHT
20 YEARS. WHAT WERE SOME OF THE THINGS THAT YOU REMEMBER THAT I
21 SUGGESTED THAT YOU AGREED TO TRY TO DO WHILE YOU ARE
22 INCARCERATED?

23 **MR. TILLER:** GET MY EDUCATION, LEARN A TRADE THAT WOULD HELP
24 ME DOWN THE ROAD, JUST DO THE BEST I CAN DO SO THAT WHEN I GET OUT,
25 I CAN BE THERE FOR MY KIDS AND BE A ROLE MODEL IN LIFE AND BE

1 SUCCESSFUL IN LIFE.

2 **MR. JONES:** AS MISTER WISE MENTIONED, JUDGE, HE WILL STILL HAVE
3 AN OPPORTUNITY TO HAVE AN INFLUENCE ON THEM IF HE GETS OUT WHEN
4 THEY ARE TEENAGERS AND YOUNG CHILDREN NEED THEIR DADDY AND THEIR
5 MAMA PROBABLY MORE, WHEN THEY ARE TEENAGERS THAN WHEN THEY
6 ARE PRE-SCHOOLERS OR EARLY SCHOOLERS. THEY WILL BE ABLE TO TALK
7 TO HIM AND RELATE TO HIM AND KNOW THAT HE'S THERE AND I REALLY
8 THINK HE'S GOING TO DO THAT, JUDGE. HE HAS NOT, AS MISTER WISE
9 POINTED OUT, BEEN GIVEN A CHANCE TO REHABILITATE HIMSELF YET. IN
10 OTHER WORDS, AS MISTER WISE SAID, HE'S NEVER BEEN IN BEFORE. THIS
11 IS HIS FIRST OFFENSE, SO WE DON'T KNOW IF A FOUR OR FIVE YEAR
12 SENTENCE WOULD REHABILITATE THIS MAN. WE ARE GOING TO HAVE TO,
13 UNDER THIS AGREEMENT, PUT HIM IN JAIL FOR AT LEAST EIGHT YEARS TO
14 SEE IF THAT REHABILITATES HIM. AND IF IT DOES, THEN I'M GOING TO
15 SUGGEST THAT UNDER THIS SENTENCE AND UNDER THESE LAWS, WITH YOU
16 HAVING NO PREROGATIVE AND NO DISCRETION, WILL BE PUNISHED FOR A
17 LONGER TIME THAN IT WILL TAKE TO REHABILITATE HIM. AND SO, KEEPING
18 THAT IN MIND, I BELIEVE THAT WE ARE SATISFYING THE STATE'S NEED FOR
19 BOTH ENDS OF THAT SPECTRUM, TO REHABILITATE AND PUNISH AND SEND A
20 MESSAGE AND IT'S BEING DONE, JUDGE. I DON'T KNOW THAT THERE IS A
21 NEED AT THIS POINT IN TIME TO DISCUSS OTHER CASES THAT, YOU KNOW,
22 HAVE TRANSPIRED IN THIS CIRCUIT OVER TIME. I MEAN, THERE HAVE BEEN
23 METHAMPHETAMINE CASES WHERE, YOU KNOW, PEOPLE HAVE PLED
24 RECENTLY, BUT I'M NOT GOING TO GO INTO THAT BECAUSE I DON'T THINK
25 YOUR HONOR NEEDS THAT INFORMATION FOR A BASIS TO DETERMINE A FAIR

1 AND APPROPRIATE SENTENCE, BUT I WOULD SAY THERE HAVE BEEN OTHERS
2 THAT DIDN'T INVOLVE DUSTIN WHERE, YOU KNOW, THERE WAS LESS TIME
3 IMPOSED IN RECENT YEARS, IN THE LAST TWO OR THREE YEARS. JUDGE, I
4 DO THINK THAT WHAT IS BEFORE YOU ON THE POSSESSION WITH INTENT,
5 THAT IS CLEAR FOR YOU. YOU SEE, THAT'S ONE TENTH OF A GRAM OVER
6 WHAT ALLOWS THEM TO CHARGE HIM WITH POSSESSION WITH INTENT, BUT
7 THAT WAS SOMETHING THAT THEY WANTED AND WE AGREED TO PLEAD TO
8 POSSESSION WITH INTENT, BUT THAT TAPE WOULD SHOW THAT HE HAD
9 THAT GRAM OF METH, ICE, HE WAS USING IT, HE WAS SNORTING IT THAT DAY
10 AND THEY WENT TO A GROCERY STORE AND SO THAT'S AN EXAMPLE OF THE
11 FACT THAT HE WAS NOT JUST A BUSINESS MAN BUT THAT HE WAS ENCASED
12 AND ENGULFED IN A LIFESTYLE THAT, YOU KNOW, REALLY SUCKED HIM UP
13 FAST AND HE GOT IN OVER HIS HEAD SO QUICK THAT I REALLY DON'T THINK
14 HE UNDERSTOOD THE MAGNITUDE OF WHERE HE WAS AND WHAT HE WAS
15 DOING AND THE CONSEQUENCES THAT WOULD COME ONCE HE WAS FOUND
16 OUT. SO, HERE WE ARE, HERE WE ARE, JUDGE, WITH THIS YOUNG MAN
17 COMING FORWARD AND ACCEPTING FULL AND COMPLETE RESPONSIBILITY. I
18 MEAN, DUSTIN, HE HAS HONESTLY, IN HIS WHOLE BEING, YOU KNOW,
19 ACCEPTED THE WRONGNESS, THE GUILT, THE BAD THAT HE'S CAUSED AND
20 HE'S GOING TO PAY FOR IT AND WE FEEL LIKE HE'S PAYING A PRETTY GOOD
21 PRICE IF HE'S SENTENCED TO TEN YEARS. AND JUDGE, I JUST WOULD URGE
22 YOU TO STRONGLY CONSIDER IMPOSING THAT SENTENCE UNDERSTANDING
23 THAT WE BELIEVE THAT IT WILL REHABILITATE HIM AND PUNISH HIM.

24 THE COURT: THANK YOU VERY MUCH, MISTER JONES. AND MISTER
25 TILLER, I ASKED YOU A SERIES OF QUESTIONS EARLIER AND ALL THE

1 QUESTIONS I ASKED YOU, WERE YOUR ANSWERS TRUTHFUL?

2 MR. TILLER: YES, SIR.

3 THE COURT: ALL RIGHT. ANYTHING YOU WANT TO ADD OR MODIFY OR
4 AMEND TO ANY PREVIOUS ANSWER YOU GAVE OR STATEMENT YOU MADE
5 HERE THIS AFTERNOON IN COURT?

6 MR. TILLER: NO, SIR.

7 THE COURT: ALL RIGHT. ANYTHING YOU WANT TO TELL ME, SIR?

8 MR. TILLER: YOUR HONOR, I WAS OUT THERE MESSING WITH DRUGS
9 AND I REALLY DIDN'T UNDERSTAND THE SERIOUSNESS OF IT AND REALLY, I
10 JUST GOT CAUGHT UP IN THE WRONG THING. I MEAN, I'VE BEEN LOCKED UP
11 ALMOST A YEAR-AND-A-HALF NOW AND I'VE LEARNED MY LESSON IN THE
12 TIME I'VE BEEN LOCKED UP. I'M AWAY FROM MY FAMILY AND I LOST
13 EVERYTHING, MY FAMILY, MY KIDS AND MY FREEDOM. I GUESS, WHILE I GO
14 TO PRISON, I'LL JUST MAKE THE BEST OF IT, JUST GET MY EDUCATION AND
15 JUST DO THE BEST I CAN SO THAT WHEN I GET OUT, LIKE THEY SAY, I CAN BE
16 A ROLE MODEL FOR MY KIDS.

17 MR. JONES: YOUR HONOR, HE HAS NO ONE HERE TODAY OTHER THAN
18 HIS LAWYERS. HIS MOTHER IS ALIVE. HE HAS BROTHERS AND SISTERS, BUT
19 THEY ARE IN DIRE STRAITS. HE'S LOST EVERYTHING HE HAD. WHEN HE GETS
20 OUT, HE WON'T HAVE A NICKEL TO PUT BETWEEN HIS FINGERS. THAT'S WHY
21 I'VE URGED HIM TO FIND A TRADE, A SKILL, VOCATION, GET HIS GED. I EVEN
22 TOLD YOU TO WORK OUT WHILE YOU'RE IN THERE, TOO. KEEP YOUR FOCUS,
23 KEEP YOUR MIND. WHEN YOU GET OUT, YOU'VE GOT TO BE READY TO MAKE
24 IT ON YOUR OWN HONESTLY AND SUCCESSFULLY FOR HIS KIDS SAKE AND
25 HIS OWN SAKE AND I BELIEVE HE WILL.

1 **THE COURT:** ALL RIGHT. THANK YOU VERY MUCH. WHEN WAS HE
2 TAKEN INTO CUSTODY? I'M TRYING TO FIGURE OUT THE TIME SERVED
3 ASPECT OF THIS.

4 **MR. JONES:** YOUR HONOR, HE WAS ARRESTED ORIGINALLY ON
5 AUGUST 17, 2007 AND WAS RELEASED FOR ABOUT TEN DAYS BETWEEN
6 SEPTEMBER AND OCTOBER AND WAS RE-ARRESTED IN OCTOBER AND HAS
7 BEEN IN SINCE OCTOBER THE 4TH.

8 **MR. BOGAN:** JUDGE, TOO, I'D LIKE TO BE HEARD ON TWO THINGS
9 BEFORE YOU PASS SENTENCE --

10 **THE COURT:** YES, SIR.

11 **MR. BOGAN:** -- BUT I DON'T WANT TO INTERRUPT YOU.

12 **THE COURT:** GO AHEAD, SIR.

13 **MR. BOGAN:** TWO THINGS. THE COOPERATION THAT IS REQUIRED BY
14 MISTER TILLER UNDER THIS PLEA AGREEMENT REQUIRES HIM TO IDENTIFY
15 THE DRIVER OF THE GET-A-WAY VEHICLE IN WHICH HE WAS THE PASSENGER
16 ON MARCH 30, 2007. WE'D LIKE FOR HIM TO GO AHEAD AND DO THAT IF WE
17 CAN. (MISTER BOGAN IS HANDED A DOCUMENT BY MISTER TILLER) THANK
18 YOU, YOUR HONOR. MISTER TILLER HAS GIVEN US THE NAME OF THE DRIVER
19 AND COMPLIED WITH THAT REQUIREMENT OF THE PLEA AGREEMENT. THE
20 STATE WOULD LIKE TO MAKE A FEW COMMENTS ON SENTENCING BEFORE
21 YOU DELIBERATE ON IT. ALTHOUGH MISTER TILLER WAS AT A YOUNG AGE
22 WHEN THESE EVENTS HAPPENED IN HIS LIFE, THEY WERE VERY SERIOUS
23 CRIMES. ON ONE OCCASION, HE MOVED FOUR OUNCES OF
24 METHAMPHETAMINE. ACCORDING TO COMMENTS MADE IN COURT TODAY, IF
25 ONE GRAM IS ENOUGH FOR ONE PERSON TO HAVE A USER AMOUNT, WE'RE

1 TALKING ABOUT USER AMOUNTS OF METHAMPHETAMINE FOR A HUNDRED
2 PEOPLE AND THE DEVASTATION THAT METHAMPHETAMINE, THAT
3 METHAMPHETAMINE CAN CAUSE IN A HUNDRED LIVES AND HAS CAUSED. IN
4 ADDITION, YOU KNOW, THERE WAS SOME DANGEROUS ACTIVITY THAT TOOK
5 PLACE THAT NIGHT IN FURTHERANCE OF THE CRIME AND THAT WAS THAT
6 HIGH SPEED CASE. SOME CARS WERE NEARLY STRUCK AS THEY WERE
7 FLEEING FROM THE SCENE AND, OF COURSE THEY MANAGED TO FLEE AND
8 OUTRUN THE POLICE DEPARTMENT'S FORD LTD'S WHICH I THINK CAN DO A
9 PRETTY GOOD JOB WITH MOST VEHICLES. AND SO, THERE IS SOME DANGER
10 THAT GOES WITH NARCOTIC TRAFFICKING. MISTER TILLER WAS INDICTED
11 ORIGINALLY, FOR TRAFFICKING OVER A HUNDRED GRAMS THAT CARRIES A
12 MANDATORY MINIMUM TWENTY-FIVE YEAR SENTENCE AND IT CARRIES IT FOR
13 A REASON. WE ENTERED INTO PLEA NEGOTIATIONS WITH HIM THROUGH HIS
14 COUNSEL AND AGREED TO COME DOWN TO A RANGE OF TEN TO FIFTEEN
15 YEARS. I THINK THAT'S ABOUT STANDARD FOR FIRST OFFENDERS IN
16 CONSPIRACY CASES IN THE STATE GRAND JURY. WE JUST WANTED TO
17 POINT THAT OUT TO THE COURT AND ARGUE THAT INSTEAD OF GOING ON
18 THE LOW END OF THIS RANGE, CERTAINLY, WE WANT MISTER TILLER TO BE
19 REHABILITATED, BUT THERE'S ALSO SOME PUNISHMENT THAT NEEDS TO BE
20 METED OUT HERE AND ALTHOUGH HE HAS PLED PURSUANT TO THIS PLEA
21 AGREEMENT, WHAT HE WOULD END UP SERVING IS ABOUT HALF OF THE
22 MAXIMUM SENTENCE THAT HE WAS FACING, BY AGREEING TO PLEAD GUILTY.
23 I JUST WANTED TO POINT OUT THE COURT. I'LL HAND UP A COPY OF HIS RAP
24 SHEET. TOWNES, I THINK Y'ALL HAVE SEEN THAT.

25 MR. JONES: YES, SIR.

1 **MR. BOGAN:** THE ONLY CONVICTION THAT I KNOW OF, YOUR HONOR, IS
2 THIS CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE.
3 I'LL HAND THAT UP TO THE COURT. I BELIEVE THAT MAY HAVE BEEN THE
4 BULK OF THE TIME THAT HE WAS IN THE DEPARTMENT OF CORRECTIONS,
5 AND SO, I DON'T KNOW HOW THAT FIGURES INTO THE TIME SERVED. I
6 BELIEVE MISTER PARKS HAS SOME NUMBERS THAT HE MAY BE ABLE TO GIVE
7 THE COURT CONCERNING THE TIME SERVED AND IT'S MY UNDERSTANDING
8 THAT THAT CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED
9 NATURE MAY HAVE BEEN -- TOWNES, YOU CORRECT ME IF I'M WRONG -- WITH
10 THE MOTHER OF THOSE TWO CHILDREN.

11 **MR. JONES:** THAT'S CORRECT.

12 **MR. BOGAN:** THAT'S CORRECT.

13 **MR. JONES:** AND YOUR HONOR, IF YOU WOULD LIKE, I COULD BRIEFLY
14 EXPLAIN TO YOU THE CIRCUMSTANCES SURROUNDING THAT, IF IT'S NEEDED.

15 **THE COURT:** I DON'T THINK IT'S NECESSARY. I'M NOT PROHIBITING IT.

16 **MR. JONES:** IF I COULD BRIEFLY SAY --

17 **THE COURT:** YES, SIR.

18 **MR. JONES:** -- NO ONE WAS PHYSICALLY TOUCHED OR INJURED. IT
19 INVOLVED HIM GETTING OUT OF JAIL ON THIS CHARGE AND LEARNING THAT
20 SHE WAS LIVING WITH ANOTHER MAN AND AN ARGUMENT ENSUED AND HE
21 WENT BACK IN AFTER THE ARGUMENT. HE WAS ARRESTED. THE ANDERSON
22 SHERIFF'S DEPARTMENT CHARGED HIM WITH CDVHAN AND KIDNAPPING.
23 THEY DROPPED THE KIDNAPPING AND REDUCED THE CDVHAN TO THE
24 MANDATORY MINIMUM ONE YEAR AND WE COULDN'T MAKE BOND FOR TEN
25 MONTHS AND SO WE WENT ALONG WITH THE ONE YEAR AFTER THE TEN

1 MONTHS.

2 MR. WISE: THE BOND HE HAD BEEN OUT ON WAS REVOKED, TOO. HE'D
3 BEEN OUT ON BOND ON THE STATE GRAND JURY CHARGE AND THAT WAS
4 REVOKED AT THE SAME TIME AND I GUESS IT COMES AS NO SURPRISE FOR
5 THE COURT TO LEARN THAT THAT DISPUTE WAS IN ALL PROBABILITY
6 RELATED TO BOTH OF THEM.

7 THE COURT: ALL RIGHT. MISTER PARKS, CREDIT FOR TIME SERVED, DO
8 YOU HAVE ANY CLARIFICATION ON THAT?

9 (MR. PARKS HANDS DOCUMENT TO AND HAS A DISCUSSION WITH JUDGE HILL)

10 THE COURT: OKAY. ANYTHING FURTHER?

11 MR. JONES: YOUR HONOR, I HAVE ONE MATTER THAT DOESN'T RELATE
12 TO SENTENCING. IT HAS TO DO WITH VIDEOTAPED CONVERSATION IN YOUR
13 POSSESSION.

14 MR. WISE: WE CAN DO THAT AFTER SENTENCING.

15 MR. JONES: YES, AFTER SENTENCING.

16 THE COURT: ALL RIGHT.

17 MR. BOGAN: NOTHING FURTHER FROM THE STATE, YOUR HONOR.

18 THE COURT: OKAY. WELL, MISTER TILLER, I APPRECIATE WHAT YOU
19 SAID AND WHAT YOUR FINE ATTORNEYS HAVE SAID ON YOUR BEHALF. AS I'M
20 SURE YOU'RE FULLY AWARE YOU'VE RECEIVED TREMENDOUS BENEFIT BY
21 THEIR EXPERTISE AND THEIR ADVOCACY ON YOUR BEHALF AND THE HARD
22 WORK THEY'VE PUT INTO THIS CASE TO REACH A PLEA AGREEMENT WHICH,
23 AS MISTER BOGAN POINTED OUT, REDUCES SUBSTANTIALLY THE POTENTIAL
24 PRISON SENTENCE THAT YOU DID FACE WITH THE AMOUNT OF
25 METHAMPHETAMINE WHICH WAS INVOLVED AND WHICH, OF COURSE, HAS

1 BEEN A PLAGUE ON OUR SOCIETY FOR A LONG TIME. AT ANY RATE, I'M SURE
2 YOU ARE GRATEFUL FOR THAT AND IT'S FORTUNATE THAT YOU HAD BOTH
3 SUPERB ATTORNEYS TO DEFEND YOU AND NEGOTIATE THIS FOR YOU AND I
4 FIND THAT THE APPROPRIATE SENTENCE ON TRAFFICKING
5 METHAMPHETAMINE, CASE 08-GS-47-03, IS THAT YOU BE COMMITTED TO THE
6 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF TWELVE YEARS, CREDIT
7 FOR TIME SERVED, OBTAIN YOUR GED, COMPLETE THE ADDICTION
8 TREATMENT UNIT. ON CONSPIRACY TRAFFICKING, THE SENTENCE IS TEN
9 YEARS, CONCURRENT AND ON POSSESSION WITH INTENT TO DISTRIBUTE,
10 IT'S FIVE YEARS CONCURRENT, ALL WITH CREDIT FOR TIME SERVED. GOOD
11 LUCK TO YOU, SIR.

12 **MR. WISE:** HOW MUCH TIME ON THE TIME SERVED DID YOU
13 CALCULATE?

14 **THE COURT:** WELL, I DON'T KNOW HOW TO CALCULATE THAT.

15 **MR. WISE:** I KNOW. HE SERVED A LOT OF CONCURRENT TIME WITH
16 BOTH OF THEM.

17 **THE COURT:** SIR?

18 **MR. WISE:** HE SERVED CONCURRENT TIME WITH BOTH CHARGES.

19 **THE COURT:** I'M GOING TO DEFER TO THE DEPARTMENT OF
20 CORRECTIONS.

21 **MR. WISE:** ALL RIGHT. THEN, WE WILL DEAL WITH THEM.

22 **THE COURT:** ALL RIGHT.

23 **MR. BOGAN:** THANK YOU, JUDGE.

24 **MR. JONES:** OH. YOU HAVE IN YOUR POSSESSION WHAT IS
25 PURPORTED TO BE A VIDEOTAPED CONVERSATION —

1 **MR. WISE:** AUDIOTAPE.

2 **MR. JONES:** AN AUDIOTAPED CONVERSATION BETWEEN MISTER TILLER
3 AND MY PARALEGAL. I WOULD LIKE FOR YOU TO EITHER DECIDE THAT IT
4 SHOULD BE DESTROYED OR THAT YOU GIVE IT TO ME, OR, YOU KNOW, DO
5 SOMETHING WITH IT OTHER THAN TURN IT BACK OVER TO THE STATE LAW
6 ENFORCEMENT DIVISION FOR WHATEVER USE THEY DEEM APPROPRIATE.

7 **MR. BOGAN:** JUDGE, I CAME PREPARED TO DO A PLEA TODAY, NOT
8 ARGUE THAT MOTION. WE'D LIKE TO SUBMIT A WRITTEN BRIEF TO YOU. I
9 DON'T WANT TO TAKE UP YOUR TIME. I KNOW YOU'RE IN THE MIDDLE OF A
10 TRIAL, BUT WE WOULD LIKE TO SUBMIT A WRITTEN BRIEF IF WE CAN ON THAT
11 MATTER. I DON'T KNOW HOW YOU COULD DETERMINE WHETHER IT'S
12 PRIVILEGED OR WHETHER THE PRIVILEGE HAS BEEN WAIVED WITHOUT
13 LISTENING TO IT. THAT WOULD BE THE STATE'S POSITION.

14 **THE COURT:** WELL, I DON'T KNOW HOW THE STATE COULD BE
15 PREJUDICED BY IT. THAT'S NOT THE REASON I WOULD LISTEN TO IT, NOT THE
16 WHOLE REASON. THAT'S NOT THE ORIGINAL, IS IT?

17 **MR. BOGAN:** THE COPY THAT YOU HAVE?

18 **THE COURT:** FIRST OFF, I DON'T HAVE IT. THE CLERK OF COURT HAS
19 IT. JUST SO WE'RE ALL ON THE SAME PAGE ON THAT, I TRANSFERRED
20 CUSTODY OF THAT TO THE CLERK OF COURT WHO ADVISED ME THAT SHE
21 WAS GOING TO PUT IT IN THE SAFE.

22 **MR. BOGAN:** JUDGE, I BELIEVE -- I'VE NOT SEEN IT. IT'S MY
23 UNDERSTANDING IT'S SEALED, I THINK IT'S IN A SAFE. IT CAN'T POSSIBLY BE
24 ANY HARM TO IT REMAINING THERE UNTIL WE CAN HAVE THIS MATTER
25 HEARD.

1 **MR. WISE:** IF IT'S SEALED, SITTING IN A SAFE, WE CAN DECIDE IN THE
2 NEXT TWENTY TO THIRTY YEARS. THAT'S FINE.

3 **THE COURT:** IF YOU'RE GOING TO MAKE SOME MOTION.

4 **MR. WISE:** IT PROBABLY NEEDS TO BE RESOLVED, THOUGH.

5 **MR. JONES:** I REALIZE THIS IS, WE HAVEN'T SERVED THEM WITH NOTICE
6 OF A MOTION. I DON'T THINK THAT AT THIS POINT THERE IS ANY ARGUMENT
7 THAT MISTER TILLER WAS CALLING MY OFFICE AS A CLIENT AND I ADVISED
8 MY PARALEGAL TO TELL HIM TO CALL HER LATER, YOU KNOW, AFTER HOURS
9 IF HE HAD SOMETHING HE NEEDED OTHER THAN WHAT WE DISCUSSED AND
10 HE DID THAT AND THEY RECORDED IT AND THEY DISCUSSED IT.

11 **THE COURT:** MISTER BOGAN, IN ALL FAIRNESS, I THINK HE SHOULD BE
12 GIVEN AN OPPORTUNITY TO STATE HIS OPPOSITION.

13 **MR. WISE:** IF IT'S SEALED IN A SAFE, I'M NOT WORRIED ABOUT IT IN THE
14 NEAR FUTURE.

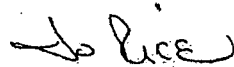
15 **THE COURT:** JUST LET ME KNOW. I'LL BE HAPPY TO RESOLVE IT.

CERTIFICATE

I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING THIRTY-ONE PAGE TRANSCRIPT IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, IN THE COURT OF GENERAL SESSIONS FOR GREENWOOD COUNTY, SOUTH CAROLINA ON, JANUARY 27, 2009, AT THE GREENWOOD COUNTY COURTHOUSE, TO THE BEST OF MY SKILL AND ABILITIES.

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

MAY 13, 2010

A handwritten signature in cursive script, appearing to read "Jo Rice", is written over a horizontal line.

JO RICE

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

Full name and prison number (if any) of Applicant.)

Dustin Tiller, #329553,)
v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS
8th Judicial CircuitCase No. : ~~09-CF-240~~ 1779

APPLICATION FOR

POST-CONVICTION RELIEF

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
2009 DEC 1 PM 11:52INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Corr. Inst., 386 Redemption Way, McCormick, SC 29899
2. Name and location of Court which imposed sentence Greenwood County Court of General Sessions, Greenwood, SC 29646
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) GS-43-3 - Trafficking -
 - (b) GS-47-1 - Conspiracy
 - (c) GS-47-4 - P.W.I.D.
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January 19, 2009 - 12-years
 - (b) January 19, 2009 - 10-years

Revised 3/2003

- (c) January 19, 2009 - 5-years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty XXXXX
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) This is the first opportunity the Applicant has had to raise the issues raised in this application.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
 - (b) your trial, if any? No trial held.
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No appeal was requested in this matter.
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. W. Townes Jones, IV, 116 W. Court Avenue, Greenwood, SC 29646
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. 17(a) & (c) - Plea and sentencing
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
 I request that this Court reverse the plea of guilty in this case and
remand this case back to General Sessions Court for a trial in this matter.
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of McCormick)

Dustin Tiller, #329553)

I, , 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.

Dustin Tiller

SWORN to and subscribed before me this 10
day of December, 2009.

Jeramie C Franklin (L.S.)
Notary Public

My Commission Expires: 01-31-2010

FILED 6032009 12:43
8TH JUDICIAL CIRCUIT
GREENSBORO, NC
2009 DEC 14 PM 11 52

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

Dustin Tiller, #329553

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

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

Dustin Tiller

Applicant

SWORN or affirmed to and subscribed before me this

10 day of December, 2009.

Jeanine C. Franklin
Notary Public

My Commission Expires: 01.31.2010

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENE COUNTY, OH
2009 DEC 14 PM 11 52

STATE OF SOUTH CAROLINA)
County of Greenwood)

IN THE COURT OF COMMON PLEAS
8th Judicial Circuit

Dustin Tiller, #329553,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

Case No.: **02-CF-24**

MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR POST CONVICTION
RELIEF

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD
2009 DEC 14 PM 1:52

In the instant case, the Applicant alleges that his attorney was ineffective during his representation of the Applicant. In Strickland v. Washington, 104 S.Ct. 2052 (1984), the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to drive the defendant of a fair trial. 104 S.Ct. at 2064. The Applicant submit that counsel's performance was deficient and that the deficiency prejudiced the Applicant's defense by not presenting one.

The United States Supreme Court also stated in Hill v. Lockhart, 106 S.Ct. 366 (1985), that the two part test adopted in Strickland v. Washington, supra, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant

must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. Applicant's allegations and supporting arguments will show that the prejudice prong of the Strickland's test has been easily met.

See grounds and supporting argument beginning o the nex page:

Answer to question number 10(a) of the application:

COUNSEL WAS INEFFECTIVE FOR FAILING TO INVESTIGATE THE CONTENTS OF A TAPE RECORDED CONVERSATION BETWEEN THE APPLICANT AND COUNSEL'S PARALEGAL, WHICH RENDERED THE APPLICANT'S PLEA OF GUILTY NOT KNOWINGLY AND VOLUNTARILY MADE.

Answer to question 11(a) of the application:

In the instant case, a tape recorded conversation between the Applicant and Applicant's plea hearing attorney's, W. Townes Jones, Esq., female paralegal surfaced prior to trial. Trial counsel, without listening to the conversation on the tape recording, moved to suppress the tape prior to trial after counsel learned that the tape recording would be presented as evidence if a trial took place.

The Court set a hearing date to determine the admissibility of the tape recording during a trial. The hearing never took place.

Counsel never listened to the tape recording, but counsel advised the Applicant to plead guilty. The Applicant believes and believed that counsel based his decision to advise the Applicant to plead guilty on the existence of the tape recording, and its likelihood of being admitted during a trial.

Counsel's failure to investigate the contents of the tape recording was ineffective assistance of counsel. In Ard v. Catoe, 642 S.E.2d 590 (S.C. 2007), the South Carolina Supreme Court stated that "[a] criminal defense attorney has a duty to investigate, but this investigation is limited to reasonable investigation." citing Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir. 1986); also Strickland v. Washington, 466 U.S. at 691, 104 S.Ct. 2052.

In this case it was not only reasonable, but a requirement of counsel to at least have listen to the conversation on the tape before determining whether or not to proceed to trial.

To be knowing and voluntary, guilty pleas must be entered with awareness of consequences of plea. See Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991).

In the instant case, the Applicant was not aware of the consequences he faced by pleading guilty. He was not aware of whether the exculpatory evidence in the Applicant's possession would have resulted in a acquittal had the Applicant proceeded to trial.

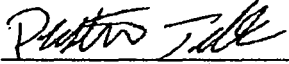
It is the Applicant's contentions that if not for the misadvice of counsel, the Applicant believes that he would not have pleaded guilty and would have insisted on going to trial. See Hill v Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

CONCLUSION

The Applicant request that an evidentiary hearing be held on the issue of ineffective assistance of counsel. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983). The Applicant also request that this Court appoint counsel to represent him during the course of this post-conviction relief action. See Rule 71.1 (d), of the South Carolina Rules of Civil Procedure.

Date: December 4, 2009

Respectfully submitted,

Dustin Tiller, #329553,
 329553

MCCI F-4 194-A
386 Redemption Way
McCormick, SC 29899
Applicant

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	
	)	
	)	2009-CP-24-1779
	)	
Dustin Tiller, 329553,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the Application for Post-Conviction Relief filed December 14, 2009, 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 Clerk of Court for Greenwood County. The Applicant was indicted by the April 2008 State Grand Jury for one count of trafficking more than 100 grams of methamphetamine (2008-GS-47-3), and one count of possession of methamphetamine with intent to distribute (2008-GS-47-4). Applicant was also charged with conspiracy to traffic more than 28, but less than 100, grams of methamphetamine (2009-GS-47-1). The Applicant was represented by W. Townes Jones, IV, Esquire, and C. Rauch Wise, Esquire. On January 23, 2009, Applicant entered into a plea agreement whereby he would receive a sentence of ten (10) to fifteen (15) years. In exchange, Applicant agreed to plead guilty to the lesser included offense of trafficking more than 28, but less than 100, grams of methamphetamine (2008-GS-47-3), to plead guilty as indicted to possession of methamphetamine with intent to distribute (2008-GS-47-1), and to waive presentment and plead guilty as charged to conspiracy to traffic more than

28, but less than 100, grams of methamphetamine. On January 27, 2009, Applicant pled guilty pursuant to the negotiated plea agreement. The Honorable D. Garrison Hill sentenced him to ten (10) years for the conspiracy charge, twelve (12) years for the trafficking charge, and five (5) years for the PWID charge, all sentences concurrent. The Applicant did not appeal his convictions or sentences.

Attached herewith and incorporated herein by reference are the records of the Greenwood County Clerk of Court regarding the subject convictions, Applicant's records from the Department of Corrections, and Applicant's guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1) Ineffective assistance of counsel

- a. "Counsel was ineffective for failing to investigate the contents of a tape recorded conversation between the Applicant and counsel's paralegal, which rendered the Applicant's plea of guilty not knowingly and voluntarily made"

III.

The Applicant alleges he received 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 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).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise questions of fact that are not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. 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.

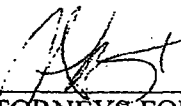
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HARRISON D. BRANT
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

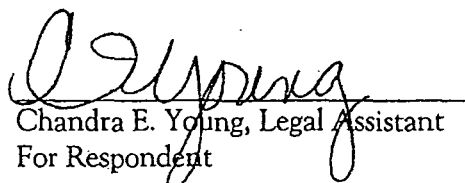
February 15, 2011.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	
	)	
	)	2009-CP-24-1779
	)	
DUSTIN TILLER,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT 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 in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Travis Warren Moore, Esquire
 PO Box 3208
 Greenwood, SC 29646

DATED this 15th day of February, 2011.


 Chandra E. Young, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
COUNTY OF GREENWOOD	)	IN THE COURT OF COMMON PLEAS
	)	2009-CP-24-01779
DUSTIN TILLER,	)	
	)	
APPLICANT,	)	
	)	
VERSUS	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
	)	DATE: JUNE 29, 2011
RESPONDENT.	)	GREENWOOD, SOUTH CAROLINA

POST-CONVICTION RELIEF HEARING

B E F O R E:

THE HONORABLE FRANK R. ADDY, JR.

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

BRADLEY W. KNOTT, ESQUIRE
ATTORNEY FOR THE APPLICANT

HARRISON D. BRANT, ESQUIRE
ATTORNEY FOR THE STATE

W. TOWNES JONES, IV, ESQUIRE
C. RAUCH WISE, ESQUIRE
WITNESSES

PROVIDED FOR: SCCID

FOR COPIES CONTACT: JO RICE
JRICE@SCCOURTS.ORG
OFFICIAL COURT REPORTER
SOUTH CAROLINA JUDICIAL DEPARTMENT

DUSTIN TILLER VERSUS THE STATE OF SOUTH CAROLINA

1 P R O C E E D I N G S

2 MR. BRANT: May it please The Court?

3 THE COURT: Yes, sir.

4 MR. BRANT: Your Honor, this is a Greenwood County
5 case, 2009-CP-24-1779. The applicant's name is Dustin
6 Tiller, SCDC Number: 329553. Mr. Tiller was indicted in
7 April 2008 by the State Grand Jury for trafficking between
8 100 and 200 grams of methamphetamine and possession with
9 the intent to distribute methamphetamine in the amount of
10 less than one gram. He was also, sequentially, charged
11 with conspiracy to traffic methamphetamine, in the amount
12 between 28 to 100 grams. He was represented on these
13 charges by Townes Jones and Rauch Wise. On January 27,
14 2009 he waived presentment on a conspiracy charge and he
15 pled guilty to all three and I believe he pled guilty to
16 the lesser offense of trafficking between 28 to 100 grams
17 and the possession with intent to distribute
18 methamphetamine in the amount of less than a gram that was
19 as indicted and the conspiracy charge was as charged. This
20 was in front of Judge Garrison Hill and in the plea
21 agreement he received a recommendation of 10 to 15 years in
22 exchange for the plea and he received a sentence of 12
23 years for trafficking, five years for the PWID, and then 10
24 years for conspiracy to traffic meth and those all were run
25 concurrent. He filed an application for his PCR on

DIRECT EXAMINATION OF DUSTIN TILLER BY MR. KNOTT

4

1 December 14, 2009. The State filed a return on February
2 16, 2011. He is represented today by Brad Knott and I will
3 turn it over to him at this point.

4 THE COURT: All right. Mr. Knott, are you ready to
5 proceed?

6 MR. KNOTT: Yes, sir, Your Honor.

7 THE COURT: I'll be happy to hear from you, Mr. Knott.

8 MR. KNOTT: Your Honor, we call Dustin Tiller to the
9 stand.

10 THE COURT: Come on up, Mr. Tiller.

11 (After being duly sworn by Judge Addy, Dustin Tiller
12 testified as follows:)

13 THE COURT: Mr. Knott.

14 MR. KNOTT: May it please the Court.

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION OF DUSTIN TILLER BY MISTER KNOTT

17 Q Mr. Tiller, you originally, as the Attorney General
18 stated, filed this application in December of 2009.
19 Is that right?

20 A Yes, sir.

21 Q And try to speak up into that microphone. And after I
22 became involved and you and I met, you decided to
23 amend your PCR. Is that correct?

24 A Yes, sir.

25 Q And we have since filed your amended PCR, which

DIRECT EXAMINATION OF DUSTIN TILLER BY MR. KNOTT

5

1 included four additional grounds, to the one original
2 ground that you alleged. Is that right?

3 A Yes, sir.

4 Q I want to treat, first, your original ground. That
5 had to do with your allegation that a tape recorded
6 conversation between yourself and Mr. Jones', one of
7 your attorney's, paralegals, was being held by the
8 State. Correct?

9 A Yes, sir.

10 Q It was recorded.

11 A Yes, sir.

12 Q And it was your understanding that action had been
13 taken by your attorneys to suppress those tapes.

14 A Yes, sir.

15 Q All right. Tell the Court what happened with the
16 action to suppress.

17 A Well, Mr. Jones and Mr. Wise had a suppression hearing
18 set up for the recorded phone calls between me and the
19 paralegal. At the time, I think it was like a week
20 before it was supposed to go to the jury, and it came
21 down to, like, two days before time for the
22 suppression hearing and the State come forward saying
23 that if you go forward with this suppression hearing,
24 then there would be no more plea offer on the table.
25 So, at that point right there, we didn't have an

DIRECT EXAMINATION OF DUSTIN TILLER BY MR. KNOTT

6

1 opportunity to even know what was on the recorded
2 phone calls. Mr. Jones objected to the recorded phone
3 calls -- when the State brought it up, he objected to
4 them. So, at that time, we didn't know what they
5 consisted of and we didn't have the opportunity to
6 know if they was going to be allowed in trial or even
7 know what was really going on.

8 Q To your knowledge, did Mr. Jones or Mr. Wise ever
9 listen to those tapes?

10 A To my knowledge, they didn't.

11 Q They did not.

12 A Yes, sir.

13 Q And could you, effectively, tell them what you
14 recalled speaking to the paralegal about?

15 A I mean, at the time, Mr. Jones was back and forth out
16 to California and, basically, like if I had questions
17 concerning my case, I would call her. See, at the
18 time, I think I was at Broad River, and they would
19 only let us call between seven and nine and I would
20 call to her house and I would ask her questions and
21 she would elaborate on them or get back to Townes and,
22 you know, basically, handling my case on the phone,
23 pretty much.

24 Q Okay. Do you believe your attorneys should have had
25 the opportunity to listen to those tapes?

DIRECT EXAMINATION OF DUSTIN TILLER BY MR. KNOTT

7

1 A I mean, yes, sir.

2 Q Do you believe it would have been helpful to you if
3 they had been able to counsel with you and tell you
4 what was on those tapes?

5 A I mean, yes, sir. I mean, If I'd had knowed what was
6 on the tapes, when they had came forward saying,
7 "Well, if you go forward with this hearing Wednesday,
8 then there is no more plea offer," if I would have
9 knowed what was on the tapes, then I could have said,
10 well -- I mean, it ain't like a tape between me and my
11 brother or me and my mother. It was between me and my
12 paralegal. So, I mean, I'm pretty sure it could have
13 been something incriminating on that tape, considering
14 the fact that I was talking to her about my case,
15 asking her questions. I mean, what if the State had
16 been allowed to put those tapes into my trial? I
17 mean...

18 Q Did that affect your decision to plead guilty?

19 A I mean, when you are not being able to know what's on
20 the tapes and pretty much not allowed, not knowing if
21 I was going to get the opportunity to suppress, but I
22 had to go plea, I mean, yeah.

23 Q And I want to make sure with each of these allegations
24 that you have made that you get a full opportunity to
25 say whatever you want to say. Is there anything, in

DIRECT EXAMINATION OF DUSTIN TILLER BY MR. KNOTT

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1 addition, on that one issue that you want to say?

2 A No, sir.

3 Q Okay, that covers that issue. The second issue is,
4 you've alleged that your attorneys failed to
5 investigate the contents of a photo line-up that was
6 referenced while all this was going on, while the
7 decision was being made to plead guilty. Tell the
8 Court what you are referring to on this photo line-up.

9 A We had got a photo line-up from the State and the
10 photo line-up was a one picture photo line-up. It was
11 one picture of me. It was a DMV picture and so on and
12 the date and the time on the documentation was where
13 they went on the internet and pulled that information
14 off. In the meantime, Townes was saying he wanted to
15 file a motion to get that photo line-up suppressed
16 because it was a one picture photo line-up and the
17 State, more or less, was telling the officer that
18 identified me, that yeah, that's him, more or less
19 telling the man, yeah, that's him. With one picture
20 in front of you, I mean, how could you not say that's
21 me? I mean, pretty much, that was persuading the man
22 to say that was me, with the one picture.

23 Q To your knowledge, was that motion to suppress the
24 photo line-up ever filed?

25 A No, sir. I don't think so. No, sir.

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1 Q All right. Did that affect your ability to knowingly
2 plead guilty?

3 A I mean, that photo line-up was one of the main tools
4 that would have took effect in my trial. I mean,
5 yeah, that photo line-up, I would like to know if it
6 was going to get suppressed at a trial or had the
7 opportunity to at least know what testimony or
8 everything that was going to be held against me when I
9 went to trial, I mean.

10 Q So, you feel like you were pressured into pleading
11 guilty before knowing whether that photo line-up would
12 have been suppressed or not?

13 A I mean, I was told that if I went forward with a
14 suppression hearing with them recorded phone calls,
15 there would be no more plea offers. So, at that point
16 right there, that rendered me from knowing if the
17 photo line-up was going to be suppressed. I mean, if
18 the phone calls weren't going to be suppressed and I
19 didn't know what was on the phone calls, so, pretty
20 much, I mean.

21 Q Okay. Anything else you want to say about that issue?

22 A No, sir.

23 Q Okay. The third issue you have alleged is that your
24 attorneys advised you to plead guilty before you had
25 had the opportunity to see all of the State's

DIRECT EXAMINATION OF DUSTIN TILLER BY MR. KNOTT

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1 discovery. Now, you may be referring to some of what
2 you have already said when you say you didn't get to
3 see everything or you didn't get to learn what was
4 coming in or what wasn't.

5 A Yes, sir.

6 Q But again, I want to give you the opportunity, number
7 one, is that an accurate statement? Is that what you
8 were talking about, those first two things that we
9 just discussed, or are you talking about something in
10 addition to that?

11 A I am talking about the first two things that we
12 discussed.

13 Q Okay, is there any other discovery material that you
14 felt you didn't get to see that you would have liked
15 to have seen?

16 A I mean. The main issue was that photo line-up. I
17 mean, I would have liked for Townes and them to have
18 that suppressed at a trial. I mean, to see if they
19 are going to allow it, or if the State would return
20 that information or let the motion stay, or at least
21 knowing what was on them recorded phone calls, I mean,
22 just at least knowing.

23 Q Okay. Anything else you can think of with regard to
24 discovery?

25 A No, sir.

DIRECT EXAMINATION OF DUSTIN TILLER BY MR. KNOTT

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1 Q Okay. The next to last issue you've raised is that
2 your attorneys failed to investigate and obtain all
3 the Grand Jury testimony that was against you. What
4 are you talking about there?

5 A I mean, I think Townes Jones got all the testimony,
6 but certain parts of it were blacked out like they
7 wasn't letting us know everything that was actually
8 said or the names. That's what I'm talking about, that
9 right there.

10 Q So, you received an edited copy of the testimony?

11 A Yes, sir. Townes done had a copy of the testimony.

12 Q Okay. Was there any discussion between yourself and
13 your attorneys about trying to get a clean copy?

14 A I mean, I really can't recall that, to be honest with
15 you. I mean, I'm sure Townes and them were wanting --
16 I mean, all the information, we didn't know. I mean,
17 it was a question about who or, you know, what was
18 down there we didn't know. I mean, I'm sure Townes
19 could get a clean copy.

20 Q That's something you would have liked to have seen?

21 A Yes, sir.

22 Q Anything else on that issue as far as Grand Jury
23 testimony?

24 A No, sir.

25 Q The final issue that you have raised, and I think we

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1 are speaking specifically to Mr. Jones here, is that
2 he was representing an individual, you have alleged
3 his name in your application, Michael Patten Holt.

4 A Yes, sir.

5 Q Mr. Jones represented Mr. Holt?

6 A Yes, sir.

7 Q And you have alleged that Mr. Holt was working with
8 the State in an attempt to implicate or build a case
9 against you?

10 A Yes, sir.

11 Q All right. And you claim that's a conflict of
12 interest. Is that correct?

13 A Yes, sir

14 Q All right, tell the Court whatever you want to about
15 that issue.

16 A I mean, all right, at the time when Michael Holt got
17 arrested, with the drugs he got arrested with, he said
18 it came from me. And then, with the incident that I
19 was allegedly involved in, Michael Holt said that I
20 was telling him that the car that I was supposedly in
21 the incident with, that it was in my yard. He was
22 going to testify that he seen the car in my yard and
23 he said that I hid the car at my shop to law
24 enforcement. I mean, he said that he took me to a man
25 to pick up drugs, and that he wore a wire on me when

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1 SLED picked me up the day of my arrest to my house and
2 I was in the car with him and they took me down.
3 Mr. Holt was wired up by law enforcement and they said
4 that he would pretty much get on the stand and testify
5 against me.

6 Q When did you learn that your attorney, Mr. Jones, was
7 also representing Mr. Holt?

8 A I mean, I've been knowed that Mr. Jones represent
9 Mr. Holt.

10 Q You knew it while he was representing you?

11 A Yes, sir.

12 Q Did that issue come up?

13 A I mean, at the time, Mr. Jones didn't know that
14 Michael Holt was working for the State, but once the
15 discovery came up, I mean, we seen it in there and
16 Townes, like, pretty much told me he can't believe
17 that Michael was working for the State, and all that
18 right there, and that's it, pretty much.

19 Q Do you think that affected his ability to effectively
20 represent you?

21 A I mean, I mean, I say, with him representing Mr. Holt
22 and representing me, I don't feel like once Townes
23 seen the man was working for the State, Townes should
24 have took the man and pled the man out to probation
25 after he seen that the man was going to testify

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1 against me and all that right there, cause, I mean.

2 Q Anything else you want to say about it?

3 A No, sir.

4 Q All of these things taken together, that you've
5 stated, affected your ability to knowingly plea?

6 A Yes, sir.

7 Q You've read the guilty plea transcript. Have you not?

8 A Yes, sir.

9 Q And there were a whole lot of questions you were asked
10 in there. Isn't that right?

11 A Yes, sir.

12 Q And you answered affirmatively to all of them, that
13 you understood what you were doing.

14 A Yes, sir.

15 Q And that nobody had pressured you into pleading
16 guilty.

17 A I mean, I ain't necessarily saying that because I was
18 told that if I went forward with that photo line-up,
19 I'd have to go to trial on Monday, and so I'm in a
20 position where, all right, I'll go forward with the
21 photo line-up and they say they are going to allow the
22 recorded phone calls in the trial between me and my
23 lawyer's paralegal, and I mean, that could be
24 devastating. That would be like, I mean, pretty much,
25 I felt I was being forced into a guilty plea, I mean,

CROSS EXAMINATION OF DUSTIN TILLER BY MR. BRANT

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1 because if I tell you, all right, you go forward with
2 this photo line-up-- I mean, if you go forward with
3 this suppression hearing, then there's no more plea
4 offer on the table. And at the time, like I say, I
5 mean, Mr. Jones hadn't had the opportunity to suppress
6 the photo line-up. Mr. Jones, we didn't even know
7 what was on those tapes, I mean, and then they telling
8 me if I go forward with this suppression hearing,
9 there was no more plea. If I had knowed what was, at
10 least, on the tapes, I, at least, could have made a
11 rational decision about whether or not to go, but I
12 just didn't know.

13 Q So, you felt that you had no choice?

14 A I mean, pretty much.

15 Q Anything else you want to tell the Court?

16 A No, sir.

17 MR. KNOTT: That's all the questions I have.

18 THE COURT: All right. Mr. Brant?

19 CROSS EXAMINATION OF DUSTIN TILLER BY MISTER BRANT

20 Q Mr. Tiller, when you pled guilty that day, you knew
21 you didn't have the tapes yet. Correct? Or that your
22 tapes had not been given to your attorney. Correct?

23 A That's correct.

24 Q So, when you went in and pled, you knew that that was
25 what you didn't have?

CROSS EXAMINATION OF DUSTIN TILLER BY MR. BRANT

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- 1 A The day I pled? Yes, sir.
- 2 Q And the photo line-up, which is not a photo line-up,
3 was one picture of you that was shown to a witness.
4 Correct?
- 5 A I mean, it was a picture they saying that he
6 identified me on, so, I mean, they said that was a
7 photo line-up that was turned over or in the evidence
8 that was supposedly what his identification was.
- 9 Q Who was the witness that identified you?
- 10 A I think it was Hugh Butler.
- 11 Q What does he do?
- 12 A He works for Greenwood City.
- 13 Q Was it the city or was he a police officer?
- 14 A I guess he was a police officer.
- 15 Q And you wanted to be able to have a motion to suppress
16 that. Correct?
- 17 A Yes, sir. I mean, my attorney did, too, at that
18 point. See, my attorney had a motion in wanting
19 information back on that identification, but that
20 never got turned over to them.
- 21 Q So, you knew, when you pled guilty, that you didn't
22 have that. You didn't find out until after you pled
23 guilty, that there was this photo identification
24 problem?
- 25 A I mean, it had been a problem, but like I said, we

CROSS EXAMINATION OF DUSTIN TILLER BY MR. BRANT

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1 were waiting on the information, but once I was told
2 that if I didn't plea and went forward with the
3 suppression hearing, that pretty much knocked me out
4 of the box, before even knowing anything.

5 Q And you said the only -- you saw all the discovery,
6 but you never got to see the evidence on the photo
7 identification or the tape recording.

8 A Right.

9 Q What was the other evidence? Do you recall?

10 A What do you mean?

11 Q The other evidence that the State did turn over to
12 you.

13 A The other evidence they turned over to me?

14 Q Yes.

15 A Phone transcripts, testimony from other witnesses.

16 Q All right.

17 A The tape recording that the C.I. had on.

18 Q And regards to Mr. Holt, did your -- are you aware of
19 whether or not your attorney was still representing
20 him at the time you got discovery, when you found out
21 he was testifying for the State?

22 A Say that again.

23 Q Was your attorney still representing Mr. Holt at the
24 time you got discovery and found out that he was a
25 confidential informant?

CROSS EXAMINATION OF DUSTIN TILLER BY MR. BRANT

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- 1 A No, sir.
- 2 Q And what do you base that on?
- 3 A What do I base that on?
- 4 Q Yes, how do you know that?
- 5 A I know because, I mean, I had full communication with
- 6 Mr. Jones and his office. I mean, when I came back
- 7 to Greenwood, they told me, they just told me that
- 8 Michael Holt pleaded in Greenwood and got probation.
- 9 Q And so, you said you pled guilty because they were
- 10 going to withdraw the offer, withdraw the plea offer,
- 11 if you moved to suppress, to get that evidence.
- 12 Correct?
- 13 A Could you say that again?
- 14 Q You said the State was going to withdraw the plea
- 15 offer if you went forward with trying to suppress the
- 16 tape and the photo identification evidence. Correct?
- 17 A I mean, they didn't say nothing about identification
- 18 back then. They were going to withdraw it for the
- 19 recorded calls, to suppress the recorded phone calls.
- 20 Q And at that time, what stopped you from just going to
- 21 trial to contest that evidence?
- 22 A What stopped me from going to trial? I mean, because
- 23 I didn't know what the tapes consisted of or if that
- 24 line-up was even going to be allowed at trial. I
- 25 mean, I mean, the information wasn't there for me to

CROSS EXAMINATION OF DUSTIN TILLER BY MR. BRANT

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1 see so I could make a decision to go to trial. I
2 mean, like I say, the recorded phone calls between me
3 and my lawyer's paralegal was, I mean, that's risky,
4 to be allowed at trial. I mean, we talked about my
5 case on those tapes. I mean, that's a hard decision
6 right there.

7 Q Was there more than one tape, one conversation from
8 the jail?

9 A I mean, really, I don't know. I mean, the tapes were
10 never turned over. Mr. Jones objected to the tapes
11 and they weren't turned it over, but I never had a
12 chance to listen to them, I mean.

13 Q And did your attorneys ever tell you to plead guilty
14 because you couldn't -- I guess, because the tapes
15 hadn't been turned over?

16 A No. Mr. Jones said that would be a big risk to go
17 forward with that hearing and them allowing that in
18 there. He said that would be a big risk to take.

19 Q Is it fair to say his advice to you was, it was a big
20 risk to give up the deal just to see what's on the
21 tape?

22 A No, his advice was that, I mean, it was a big risk. A
23 chance to take. I mean, Mr. Jones, he told me, I
24 mean, that this lady on the case told Mr. Jones they
25 had a personal vendetta against me and Mr. Jones said

1 he had never seen law enforcement act so vindictive
2 towards no one the way they were acting towards me.
3 He said he'd never seen no one take it personal as
4 they did towards my case. I mean, all that came into
5 play, I mean.

6 Q What did that have to do with the tape?

7 A Well, because that was how the conversation come up
8 about all that related. I mean, I'm sure Mr. Jones
9 and those wanted to go forward with that hearing, too,
10 to know what was on the tapes and go forward with the
11 suppression hearing but, I mean, they wouldn't give no
12 leeway. I mean, everything got rushed right there at
13 the end. I had just got back from Broad River to the
14 County and within two weeks. Mr. Jones and them
15 didn't have time to do, I mean, what they wanted to
16 do, I mean, to just get it done.

17 Q At your plea hearing, and as your attorney stated
18 earlier, you answered numerous questions. Correct?

19 A Yes, sir.

20 Q And they asked if you had enough time to discuss the
21 agreement and the consequences of your plea agreement
22 with your attorneys, and you said, "Yes". They also
23 asked you if you understood you were giving up the
24 right to present defenses and the right to challenge
25 any evidence ---

DIRECT EXAMINATION OF TOWNES JONES BY MR. KNOTT

21

1 A Yes, sir.

2 Q --- and you said, "Yes".

3 A (Nods head)

4 MR. BRANT: Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 MR. BRANT: Nothing further, Your Honor.

7 MR. KNOTT: Nothing on redirect.

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

9 Knott?

10 MR. KNOTT: Yes sir, Your Honor. We call Townes Jones.

11 (After being duly sworn by Judge Addy, Townes Jones
12 testified as follows:)

13 MR. KNOTT: Thank you, Your Honor.

14 DIRECT EXAMINATION OF TOWNES JONES BY MISTER KNOTT

15 Q Mr. Jones, you have been present in the courtroom
16 while Mr. Tiller testified. Is that correct?

17 A Yes, sir.

18 Q I am going to do, basically, the same thing with you
19 as far as going down the list of his allegations and
20 get your recollection of what occurred at that time.

21 A Yes, sir.

22 Q With regard to this first allegation concerning the
23 taped conversations, do you recall that, the taped
24 conversation issue between your paralegal and Mr.
25 Tiller while he was incarcerated?

DIRECT EXAMINATION OF TOWNES JONES BY MR. KNOTT

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1 A I recall, at some point in time, during the
2 preparation of the defense, maybe --- I'm trying to
3 remember how long before our plea date, which was in
4 late January of 2010, I believe it was, or was it
5 '09, -- that it came up, yes, that we were given
6 notice that they had audio tapes of conversations
7 between Dustin Tiller and Laura Boyd, the paralegal
8 working in my office, that had been taped when Dustin
9 was being housed at the Alvin S. Glenn Detention
10 Center in Richland County and had called Laura from
11 there, I'm pretty sure, although he was also housed,
12 at some point in time, in Anderson County and it
13 could have come from there. I don't know that we
14 were ever told exactly from what institution the
15 tapes arose, but we were told that there were tapes.
16 We weren't told how many tapes, what the length of
17 the tape was, or what the nature of the conversation
18 was, but we were told about the tapes and it was an
19 issue that Dustin and I discussed, along with Mr.
20 Wise, about how they may try to introduce those tapes
21 and we were going to object to their introduction of
22 those tapes based on attorney/client privilege, but
23 we discussed it and Mr. Wise said, if they attempted
24 to use those tapes as a basis to identify Dustin's
25 voice, they had another audio tape of the

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1 confidential informant allegedly talking with Dustin
2 prior to the alleged dope deal and we discussed the
3 fact that they may try to use those audio taped
4 conversations that they had of Dustin and my
5 paralegal in an effort to identify the speaker on the
6 audio tapes of the drug transaction with the
7 confidential informant.

8 Q In your opinion, would a motion to suppress have been
9 successful to block out the content of the
10 conversations?

11 A Well, you know, you would hope so, but, you know,
12 without knowing what was said. You know, if it was,
13 "Hey, how are you doing," I guess, since it was my
14 paralegal, we would argue to keep it out, but they
15 may have discussed some things that didn't involve
16 the case. I mean, I don't know what's on them. But
17 if you ask me if a Motion to Suppress would have been
18 successful, I just don't know whether it would have
19 been or not. I know we were never told that they
20 were going to use them and attempt to introduce them,
21 but we knew they existed and we intended to ask the
22 Judge to listen to them to see if they should be
23 turned over to me or destroyed or kept and suppressed
24 or not.

25 Q Prior to Mr. Tiller pleading guilty, did you make a

DIRECT EXAMINATION OF TOWNES JONES BY MR. KNOTT

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1 request to listen to the tapes?

2 A Not in writing. I think I did talk to someone in the
3 Attorney General's office about, you know, wanting to
4 know the content of the conversation, Mr. Bogen, and
5 I never had access to them.

6 Q Is your answer any different on the idea of the
7 success of a Motion to Suppress if the motion is
8 about the voice itself? In other words, not the
9 content of the conversation, but simply the
10 identification of Mr. Tiller's voice? Is that less
11 likely to be successful in a Motion to Suppress, in
12 your opinion?

13 A Well, I was relying on Mr. Wise's input there and his
14 was that it would be less likely to be successful,
15 but, you know, Mr. Wise was brought in the last
16 couple of months of the case in an effort to assist
17 at trial and possibly handle an appeal if one was
18 filed post-trial, and we discussed that issue with
19 Mr. Wise and he believed that, and so, I trust his
20 view more than I do mine and so I really followed his
21 lead there.

22 Q Is it accurate to say that at the time Mr. Tiller was
23 deciding whether to plead guilty, you didn't know
24 whether the State was going to use the tapes or not?

25 A Correct.

DIRECT EXAMINATION OF TOWNES JONES BY MR. KNOTT

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1 Q Now in regard to his second allegation concerning,
2 and it may not be the correct phrase and I am going
3 to see if you are going to have a different phrase
4 for it, the photo line-up. A photo line-up, to me,
5 implies more than one photo, but at any rate, do you
6 recall some discussions about this idea of a photo of
7 Mr. Tiller and whether that would be admissible or
8 not?

9 A With Dustin Tiller?

10 Q Yes.

11 A Yes, sir.

12 Q And what was your take on the idea of the photo and
13 whether or not it was admissible?

14 A Well, let me try to explain it this way. Well, let
15 me just answer the question. What was my take on
16 whether the photo would be admissible or not?

17 Q (Nods head)

18 A You know, we were scheduled to be called for trial
19 the following week, and for a couple of weeks we knew
20 Judge Garrison Hill would be presiding over the trial
21 and would have heard any Motion to Suppress. You
22 know, Judge Hill is a very learned Judge and a very
23 fair Judge, but we still were not sure how he would
24 rule on that motion, would not have known until we
25 had taken testimony from Hugh Butler, presented the

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1 physical photograph. Hugh Butler told me he was
2 prepared to testify that they asked him if he
3 recognized the person on a photograph on a computer
4 screen and when the photograph was presented in front
5 of him and he said, "That's the guy that I saw
6 sitting in the car, that's the guy I saw tonight."
7 They showed him that, I think, within hours of the
8 time, so he said, within hours of the time of the
9 alleged drug transaction and, ultimately, the chase
10 of the deliverance of the drugs, and so, I talked to
11 Hugh about it, because I couldn't get much
12 information out of the Attorney General about it. I
13 couldn't get much information from the police officer
14 in charge of the case or even question him about it.
15 So, I tracked down Hugh Butler and he explained to me
16 how it took place and what he did, but I don't know,
17 you know, you just don't know how those rulings are
18 going to go. You just can't predict ahead of time,
19 you know, what a judge is going to do. Is that your
20 question?

21 Q Yes, sir.

22 A That did I think we would win the suppression motion
23 on the photo line-up issue?

24 Q Right.

25 A I just didn't know. I couldn't tell Dustin that we

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1 would lose, I couldn't tell him we would win. What I
2 had to tell him was, if we lose, then the ten to
3 fifteen-year plea offer is off the table and he's
4 looking at twenty-five mandatory minimum headed for
5 trial the next day or the next week. And so, that
6 was the way I presented my advice to him about how to
7 proceed.

8 Q Well, more specifically, and let's make sure y'all
9 were on the same page or that you are still on the
10 same page, his testimony is that he wasn't going to
11 find out. In other words, if you were going to
12 pursue the suppression motions the deal was off the
13 table.

14 A That's correct. That's what SLED agents and the
15 Attorney General related to us.

16 Q And that position, by the State, played into your
17 counsel of Mr. Tiller in terms of whether he should
18 plead guilty or not. Correct?

19 A Actually, correct. Yes. I mean, you know.

20 Q He's made a reference in here, an allegation, and of
21 course all of this is surrounding the ineffective
22 assistance of counsel allegations, but that it was
23 the ineffective assistance of counsel to advise him
24 to plead guilty before he had seen all of the
25 discovery and he testified that that what we have

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1 already talked about is primarily what he was talking
2 about, besides the other tapes with the paralegal and
3 the photo issue. Is there anything else you are
4 aware of discovery-wise that you did not get to see
5 as his attorney that you would have liked to have
6 seen?

7 A Well, no. As he mentioned, in some of the Grand Jury
8 testimony, there were some redacted or blacked out
9 names of individuals who had either been referred to
10 by witnesses who were testifying or that were --
11 Yeah, I think that was the way it was. It referred
12 to witnesses that were testifying. That's the only
13 information that we know of that we were not made
14 privy to.

15 Q How common or uncommon is that?

16 A Well, you know, it's a state-wide Grand Jury
17 proceeding and this case was presided over,
18 originally, by Judge Wyatt Saunders and he had
19 delivered and ordered some guidelines that we were to
20 follow: We weren't supposed to discuss his testimony
21 with anybody, let anybody look at this Grand Jury
22 testimony, we weren't supposed to lose possession
23 of the Grand Jury testimony, and so, it's fairly
24 common.

25 Q Okay. It's not uncommon to see redacted testimony---

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1 A Correct.

2 Q --- from the Grand Jury?

3 A Correct.

4 Q Finally, this issue of Mr. Holt, your representation
5 of Mr. Holt.

6 A Yes, sir.

7 Q Tell the Court, if you would, kind of the time
8 sequence there and any involvement between the two
9 cases as you know it.

10 A Mr. Holt was charged with possession of -- I'm trying
11 to recall if it was cocaine or methamphetamine, in
12 Abbeville County, about four, five, or six grams and
13 possession of a weapon arising out of the same
14 traffic stop and he was in jail and I was hired by
15 someone to represent him and did not know, at the
16 time, that he had talked with Reed Cresswell and
17 Brandon Scott. Brandon is with the Abbeville County
18 Sheriff's Department. Reed is with SLED. He never
19 told me that, that he had talked with them. I didn't
20 know. They didn't tell me that. He hired me. I
21 was hired in '07 to represent him and, you know, I
22 pled him in, I think it was, August or September of
23 '08 and he got probation. At some point in time, and
24 I guess it was prior to that plea, something occurred
25 to cause Dustin to feel like Mr. Holt was giving

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1 information to the authorities, the police. He
2 wasn't able to say who, exactly, but he said, you
3 know, I don't trust him. I think he's telling some
4 lies on me to the police, see if you can find out.
5 And I, you know, asked Mr. Holt point blank in my
6 office, "Are you working with the police? My
7 client's don't work with the police. If they tell me
8 they are working with the police, they don't need my
9 representation." He denied having anything to do
10 with the police on that occasion. I don't know if I
11 discussed it with him again or not, but, I do know
12 that I did confront him with it on at least one
13 occasion and he convinced me. I even came back and
14 told Dustin I didn't think he was. And then, when we
15 got the discovery sometime in the fall of '09, we saw
16 that he had been and he had been from as early on as
17 the night that he was arrested for the charge that he
18 hired me on. So, -- I'm trying to remember what your
19 question was, again. Tell me ---

20 Q That you had a conflict ---

21 A --- about my representation of Mr. Holt?

22 Q --- of interest.

23 A Well, when we looked at the discovery, Mr. Holt would
24 not have been testifying against -- he actually told
25 them that the drugs that he was caught with, he got

DIRECT EXAMINATION OF TOWNES JONES BY MR. KNOTT

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1 from Dustin, in the Abbeville case. All right? And
2 he told them that Dustin had threatened him and tried
3 to harm him and then we found out that when Dustin
4 was arrested in Anderson with 1.1 gram of Meth near
5 him in a car, that Holt had set him up, and, you
6 know, gone with him, wanted to do some drugs and
7 decided to go for a ride and told the police that
8 Dustin was in the car, "That's Dustin Tiller, he's
9 got Meth on him, I've seen it, and you can bust him,"
10 and that's what happened, so. But I didn't know that
11 at the time I was representing Holt. But, in
12 preparing for the trial, we weren't told that he was
13 going to testify about any of that and I did discuss
14 with Dustin, I thought he understood that if he
15 wanted me to get off the case because of the
16 information that I had learned from Holt, any issue
17 that may come up in my representing him, that I, you
18 know, could get off the case or at least try to get
19 off the case, raise the issue of conflict of interest
20 and we decided that, you know, that that wouldn't be
21 what he wanted at that point in time, but he may not
22 have understood all the ramifications that came with
23 that ---

24 Q By the time you learned that Mr. Holt had been
25 assisting the State, your representation of Mr. Holt

CROSS EXAMINATION OF TOWNES JONES BY MR. BRANT

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1 had concluded?

2 A I think it had, but I can't remember. Let me try to
3 clear that up. His father, Holt's father, hired me
4 on a separate case in Greenwood County where Holt was
5 charged with CDV. Okay? I had not learned of this
6 Grand Jury testimony at this time and I'm pretty sure
7 that I had concluded my representation. Holt was in
8 jail and his Dad came down from Virginia and hired
9 me. We got him a plea that week, he pled, got
10 probation, and walked out of court. Okay? I'm
11 pretty sure it was before we got the discovery from
12 the State from the state-wide Grand Jury. But it was
13 a separate representation and I just know, I know I
14 would not have come over here and represented him if
15 I had read what I read in the discovery about what he
16 had said about Dustin, but I would have to check.

17 MR. KNOTT: That is all the questions I have.

18 THE COURT: Mr. Brant?

19 MR. BRANT: Beg The Court's indulgence.

20 THE COURT: Yes, sir.

21 CROSS EXAMINATION OF TOWNES JONES BY MISTER BRANT

22 Q Mr. Jones, did you review the discovery you did
23 receive for Mr. Tiller?

24 A I'm sorry?

25 Q The discovery you did receive in this case, you

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1 reviewed it with Mr. Tiller?

2 A Yes.

3 Q Can you -- let me ask if you can summarize the
4 evidence that you received against him, not counting
5 the stuff he wanted to be suppressed later.

6 A Well, there were two sets of allegations, basically.
7 One involved the case where law enforcement in
8 Greenwood and SLED initiated a buy on the part of a
9 confidential informant, Sonny Ashley, of four ounces
10 of cocaine from Dustin Tiller. And, you know, the
11 evidence in that case amounted to an audio tape that
12 was reported to be Sonny Ashley talking with Dustin
13 Tiller about the price of the cocaine, the delivery
14 of the cocaine, the location of the delivery of the
15 cocaine, the hour of the delivery of the cocaine, and
16 the quality of the cocaine, or Methamphetamine.
17 Methamphetamine. And accompanying the evidence of
18 the tape, the -- there was a videotape of a chase, a
19 high speed chase, of a vehicle that had left the
20 scene of this alleged transaction that Hugh Butler
21 was going to testify he witnessed and identified
22 Dustin Tiller as being a passenger in a vehicle that
23 left the scene of the delivery of the cocaine in
24 Greenwood County on the 72 By-Pass at the Taco Bell
25 location. He drove up Laurel from Highway 72 to

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1 Montague Avenue, took a right on Montague, and the
2 video covered an area that went out Montague and out
3 Highway 25 towards Hodges and the vehicle that law
4 enforcement was chasing left them in the dust and
5 they just lost sight of it and you heard some radio
6 transmissions of the police, "We lost them. We lost
7 them." And then you had Hugh Butler saying, you
8 know, the evidence of the photo line-up or the
9 photograph, the South Carolina Department of Motor
10 Vehicles photograph of his driver's license, it was
11 pulled up off the Internet that Hugh Butler viewed to
12 identify Dustin Tiller as the person he had seen in
13 the car that night and we did get that late in the
14 trial, by the way. We got that information the week
15 before the trial was scheduled to go. That was a
16 very pressurized -- we didn't know what they had
17 shown him. We didn't know what they had shown Hugh
18 Butler. We didn't know if it was a photo line-up.
19 We didn't know what he had used to identify Mr.
20 Tiller. We didn't know if he had known him
21 previously. We'd been trying to get that information
22 and were never able to get that until about a week
23 before trial. There was, in that case, State-wide
24 Grand Jury testimony from Sonny Ashley that purported
25 to have seen Dustin with Methamphetamine prior to

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1 this occasion, some weeks prior to this alleged drug
2 buy that Sonny Ashley was involved in with the
3 police, of Dustin and some testimony from Sonny
4 Ashley saying he had purchased some ounces of
5 Methamphetamine or cocaine from Dustin before and had
6 purchase a pound of marijuana from Dustin before,
7 just testimony of prior dealings with Dustin from
8 Sonny Ashley from the State-wide Grand Jury evidence.
9 And of course, you know, the SLED analysis of the
10 drugs, which weighed out at 100, 4,5,6 grams, over
11 the 100 gram limit, was where you're at the 25
12 mandatory minimum for trafficking cocaine. You know,
13 we established they could prove that he, you know,
14 they claimed they could prove the amount of the drug,
15 they could prove the trafficking, they still had to
16 prove that it was in his possession when, you know,
17 Ashley tried to transfer it. That was really the
18 critical issue of the proof that he was the person
19 that delivered these drugs here in this case. In this
20 case. But during the course of the year, the year-
21 and-a-half that I represented Dustin on this case,
22 that they were maintaining, they were maintaining
23 that they were developing a state-wide Grand Jury
24 case that involved multiple defendants, multiple
25 individuals, all of whom had been involved in pounds

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1 of, trafficking in pounds of methamphetamine and
2 cocaine and marijuana, hundreds of pounds of
3 marijuana and pounds of cocaine. And they provided me
4 with state-wide Grand Jury testimony about those
5 types of, testimonies involving witnesses who claimed
6 that Dustin had taken pounds of marijuana to North
7 Carolina and had purchased pounds of marijuana in
8 North Carolina and back. I mean, when you ask me if
9 I recall the kind of evidence that I received, there
10 was a constant assessment on my part of who they were
11 going to charge in this operation, what individuals.
12 Dustin had a business partner, Matthew Nance. We
13 didn't know if he was going to be charged.
14 Ultimately, he wasn't. But there were numbers of
15 individuals, acquaintances of Dustin that we were,
16 that it was suggested to me that by the state-wide
17 Grand Jury testimony that they might be charged in a
18 state-wide Grand Jury case, which was what this was,
19 but they were never charged. Dustin was the only
20 person charged in this state-wide Grand Jury case.
21 Does that answer your question about some of the
22 evidence?

23 Q And then there was a charge developed when he was
24 pulled over with Mr. Holt in the vehicle.

25 A Correct. Yes. He wasn't in the vehicle. He had been

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1 in the vehicle. He wasn't pulled over. They
2 actually pulled up to a grocery store, Holt got out,
3 went inside, there was an officer inside. He told
4 the officer, that's Dustin Tiller and he's holding
5 drugs and the officers were waiting for radio
6 transmissions to pull in behind Dustin to keep him
7 from leaving and a couple of cars came in and
8 surrounded him and they arrested him with some, a
9 gram of meth or coke, in his proximity, within his
10 reach. Is that what you are asking me about?

11 Q Yes, and based on the evidence that you had, not on
12 the evidence you had yet to have, what was your
13 opinion of the strength of the State's case before he
14 pled guilty?

15 A Well, you know, let me answer it this way, if it
16 makes any sense: You're looking at a mandatory
17 sentence of 25 years. If you are convicted with what
18 you are charged with, no judge can give you less than
19 25 years. So, when you start talking about the
20 strength of the case, you start talking about the
21 risk that, you know, if, if, if the strength of the
22 case -- you know, if you're talking about the facts,
23 not who's going to be sitting on the jury, who's
24 going to be presiding over the trial, the strength of
25 a case, you know, I felt like if, if, Sonny Ashley

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1 came in and was convincing in his testimony, was not
2 hesitant or forgetful, or appeared to be, you know,
3 less than candid and trustworthy, then, you know,
4 that helps the case, but there are so many factors.
5 You just don't know how people are going to testify
6 and how, you know -- I know Sonny Ashley, personally,
7 and he can be very convincing and at the same time,
8 you know, I grew up with him. We played baseball,
9 pool with him. He's a pool shark and he has been
10 around. He's not going to be some little wall flower
11 in there, but, but, he's also, you know, if I had him
12 as a State's witness, I wouldn't be too comfortable,
13 either. You know, you don't know where he is going
14 to land, but if he came in and did a good job, then
15 their case looks better and our case looks worse,
16 and, you know, how was the Lieutenant, now Captain,
17 Hugh Butler going to do? I know him. I've worked
18 with him for 20 years and he is an excellent police
19 officer. He's smart, he's seasoned, he's trained,
20 and he knows that when you testify, you look at the
21 jury and you look at the prosecutor and you turn and
22 you say, "That was him. There is no doubt in my
23 mind, whatsoever, that I saw Dustin Tiller that
24 night. There was enough light and he was within six
25 feet of me. As a matter of fact, I thought he was

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1 going to run over me. I will never forget what he
2 looked like." If he testified that way, you know,
3 we, we -- our case is beginning to slide downhill a
4 little bit and the State's case is getting better,
5 you know, but if he doesn't, which I didn't expect
6 that he would, I mean, I expected he would be a great
7 witness for the State. He's a seasoned, intelligent,
8 confident, police officer and he had already
9 identified Dustin Tiller and I just didn't see him
10 deciding, maybe the light wasn't as good as it was or
11 as he thought it was that night, and now that he
12 looks at this guy, maybe that wasn't him. I was
13 afraid he was going to make a terrific identification
14 of Dustin at trial. So, I had said it was a risky,
15 risky case. I felt the State's case was not strong,
16 but adequate, and that we risked a conviction. Okay?
17 I'll put it that way.

18 Q So, your opinion was, you would have to go forward
19 without hearing the contents of the tape, without
20 having the photo identification evidence that was not
21 turned over? Am I correct? Those were the two
22 things that were not turned over by the time he pled?

23 A The audio tapes of the conversation that Dustin had
24 with my paralegal were not turned over to us and we
25 got, very late in the ball game, a printed out

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1 photograph of Dustin that the Highway Department
2 keeps on record and online that they say they showed
3 to Hugh Butler that night and we got that the week
4 before, or right around the week he pled, and it was
5 at the last minute. It was kind of frantic and
6 hectic, you know, to get that kind of information at
7 that point in time. We actually made a decision,
8 Rauch came on board, and had been toying with the
9 strategic idea, since they had never given me the
10 photograph in discovery, if he wanted to go to trial,
11 we weren't going to ask Hugh about it until he got on
12 the stand. We kind of tipped our hand by saying,
13 "Look, how did he know it was Dustin?" What -- They
14 never told us that he picked him out of a photograph
15 at any point in time. I was unable to get a
16 preliminary hearing on the case. I asked for one
17 three times while it was still a Greenwood Police
18 Department case and they continued it three times.
19 Finally, Captain Fallaw said to Agent Cresswell,, "Is
20 this a Greenwood City case or a state-wide Grand Jury
21 case?" And Cresswell responded by saying, "It was a
22 state-wide Grand Jury case and he won't be getting a
23 preliminary hearing," and that was, probably, three
24 months into Dustin's arrest for this charge. Three
25 or four months into his arrest, I had requested

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1 preliminary hearings, because I wanted to know how
2 they were going to identify him, but I was never able
3 to get that information. Once it became a state-wide
4 Grand Jury case, I had to wait for the Attorney
5 General to give me the discovery and the evidence.

6 Q So, without knowing the contents of that particular
7 evidence, did you still feel like the State could
8 have convicted him at trial?

9 A I felt like that they had a pretty good chance of
10 getting their case to the jury. I felt if Sonny
11 Ashley testified and Hugh Butler testified as I
12 thought they would, that there was a substantial risk
13 that Dustin would be convicted. Yes.

14 Q And you conveyed that to Mr. Tiller?

15 A I did.

16 Q Did you ever advise him that he should plead guilty
17 because you did not have the contents of the tape?

18 A Did I advise him that he should plead guilty or
19 should not plead guilty?

20 Q Should plead guilty, because you did not know the
21 contents of the tape.

22 A I don't think I would -- No, I don't think I would
23 advise somebody to plead guilty because I did not
24 know the contents of a tape. I just can't see the
25 logic behind that statement. I don't know, did

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1 Dustin testify that way? That I told him to plead
2 guilty because I didn't know the contents of a tape?

3 Q I think the allegations of the application could be
4 read that way.

5 A That I, maybe, advised him to plead guilty in spite
6 of not knowing the contents of the tape? You know,
7 despite the fact that we didn't know the contents of
8 the tape, to go ahead and plead guilty? The contents
9 of the conversations -- I'm just going from memory
10 now and I could be wrong, but when you say, "advised
11 him to plead guilty," I kind of left that up to
12 Dustin, I think. I mean, I may have suggested to him
13 that if we lost, he's looking at 25. If we were lucky
14 enough to get 10, could he live with that? Could he
15 live with himself, if he pleads, after this? Is he
16 going to be able to do that? I leave it up to the
17 clients, a lot, to decide, you know, ultimately what
18 they are going to do. So, when you say "advise", I
19 guess, when he said he would do it, I didn't tell him
20 not to. I didn't tell him we've got to go to trial.
21 I didn't tell him, we've got to get this tape. So, I
22 guess I advised him to go to trial without knowing
23 the contents of the conversations on the tapes. Yes.
24 I did.

25 Q In your opinion, knowing the contents of the tapes

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1 is not worth filing a Motion to Suppress in the
2 pleadings?

3 A Correct.

4 Q Switch over to the issue of Mr. Holt. You did say
5 you didn't learn that Holt had provided information
6 to the State until you had seen the discovery in this
7 case?

8 A Correct. Dustin and I had conversations about that,
9 because Dustin thought he was. I just, I just -- In
10 retrospect now, when I look back, it's kind of
11 interesting that Holt got probation in Abbeville.
12 You know, six grams of crack, a gun, and the State
13 recommended the probation and I said, "Man, I'm
14 really doing a good job." We were going in front of
15 Judge Houston and Houston said, "No, I'm not going to
16 take this recommendation, this negotiation." I
17 thought, "Geez, Houston." And he said "nah", and he
18 called me up to the bench. I will never forget it.
19 He said, "We've made a pact in Charleston, guns and
20 drugs, you're going to jail for some period of time,
21 but if you've already cut this deal I will let you do
22 it this time, but remember that when you're in front
23 of me, Jones. Guns and drugs, you're going to jail
24 for some period of time." Because I was a little
25 startled when he said he wasn't going to take it.

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1 But anyway, I guess in retrospect, I should have put
2 everything together. Sometimes, you know, it just
3 doesn't all click the way, maybe, you wish it would,
4 and in this case it didn't. But when I confronted
5 him about it and he just seemed to be so, you know,
6 and, you know, when he -- when I confronted him after
7 Dustin was arrested in Anderson and he said, "No, man
8 I was with him, man. I was just lucky. I walked in
9 the store when they got him. I was lucky I wasn't in
10 the car when they got Dustin. I promise. I promise.
11 I mean I was with him, man. You know, he's my bud."
12 And I just, I honestly -- I confronted him with it
13 and he convinced me that, you know, he was a user and
14 that he wasn't going to -- And from what I knew, I
15 knew he didn't have anything hanging over his head.
16 I mean, you know, I was representing him on his
17 charges. We got him probation. He was working. It
18 just didn't add up to me. But to answer your
19 question, correct, I didn't know until I got the
20 discovery from the state-wide Grand Jury that he had
21 been an informant for the State.

22 Q During your representation of Mr. Holt, were you ever
23 asked, or given an opportunity by the State, to agree
24 to a plea deal in exchange for providing information
25 with regards to Mr. Tiller?

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- 1 A No.
- 2 Q And vice-versa, were you ever asked, I guess, with
- 3 regards to Mr. Tiller, to use any information from
- 4 him against Mr. Holt?
- 5 A No. But, you know, there was a time in the case when
- 6 law enforcement had approached Dustin about
- 7 cooperating, prior to the plea deal, and, you know,
- 8 they didn't say who the cooperation would involve him
- 9 testifying against, but we assumed that it would have
- 10 been everybody involved in the case, any and
- 11 everybody.
- 12 Q As far as you can remember, Mr. Holt pled guilty
- 13 before you received the discovery in this case?
- 14 A Yes, sir.
- 15 MR. BRANT: Beg The Court's indulgence.
- 16 Q In your discovery in this case, were you given a
- 17 signed statement from Mr. Holt?
- 18 A Yes. A signed statement. I don't know who wrote it,
- 19 but, yes.
- 20 Q Do you recall the contents of that statement, or any
- 21 facts about it, without looking at it?
- 22 A You know, some. Some. He implicated Dustin as being
- 23 someone that, you know, threatened him and sold drugs
- 24 to him, and used drugs with him.
- 25 Q Were you present when he signed that statement?

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1 A No.

2 Q Do you actually remember if there was a ---

3 A He said in the statement that I didn't know that he
4 was giving a statement to law enforcement. They
5 didn't discuss the facts and issues of the case that
6 I represented him on in the statement. They were
7 clear to put that in the statement, that he had not
8 discussed, that they had not discussed the facts of
9 the case that I represented him on, represented Holt
10 on, when they discussed facts with him.

11 Q Do you recall if there was a Waiver of Rights to an
12 Attorney in that statement?

13 A Yes, sir.

14 Q There was a waiver?

15 A I'm sorry. I can't recall. I just -- I can't
16 recall. It was a handwritten statement.

17 Q You said that you represented Mr. Tiller on charges
18 in Anderson County. Is that correct?

19 A Yes.

20 Q Can you explain what those charges were, the nature
21 of those charges?

22 A He was charged with the crime of criminal domestic
23 violence of a high aggravated nature and kidnaping.
24 It was a charge that was brought against him by the
25 mother of his children and the Anderson County

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1 Sheriff's Department.

2 Q Who was the victim?

3 A Tanya. I can't recall Tanya's last name. Tiller?
4 (Looking at Mr. Tiller) No? Let me see. Tanya
5 Jones.

6 Q Was she a girlfriend or ---

7 A The mother of his children.

8 Q Was there ever any concern about her being involved
9 in this case?

10 A There were multiple concerns about Tanya: About her
11 mental ability, concerns about her trustworthiness,
12 multiple concerns about information that she may have
13 had about Dustin's activities over several years.

14 Q Was she upset about these charges?

15 A Her emotions vacillated back and forth. Sometimes,
16 you know, everything was hunky-dory. Sometimes, she
17 wanted him buried under the jail.

18 Q So, you weren't concerned about the possibility of
19 her testifying against him?

20 A Again, it was back and forth. You know, we were
21 certainly concerned, but we felt like we had enough
22 ammunition to pretty much negate the effect of
23 whatever she had to say. But, you know, she had
24 given statements and denials, statements and denials,
25 and she does have a mental illness and a drug

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1 problem, so, you know. But you are still concerned
2 about how a witness is going to come across when they
3 testify and in my experience, if they are telling the
4 truth, it's tough for anybody to rough them up too
5 much.

6 Q Let me clarify that: Based on your conversations with
7 Mr. Tiller, he understood that he was waiving the
8 rights to suppress, to move to suppress that
9 evidence, in exchange for pleading guilty?

10 A To suppress the tapes? You know, I thought he
11 understood that the suppression motion on the
12 introduction of the identification, the photo
13 identification of Dustin, was being given up. But,
14 you know, there was probably some confusion about the
15 audiotapes of the paralegal conversations. I don't
16 know that we really had that clear of an
17 understanding on what the issue was with that.

18 Q Based on your conversations, were the audiotapes a
19 major factor in your decision on whether or not to
20 accept the plea of guilt?

21 A It wasn't, based on my, you know, recollection of our
22 concerns at that time.

23 Q What were his concerns, at the time, based on your
24 conversations? Do you recall?

25 A Well, he was concerned about the identification. He

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1 was concerned about having a complete understanding
2 of what was going to happen if he went to trial. I
3 mean, he wanted to know what to expect and how things
4 were going to develop and, you know, I don't know
5 that I could explain all that to him. I tried to
6 give him as much of it as I could.

7 Q Based on your conversations prior to the plea, whose
8 decision do you think it was to plead guilty that
9 day?

10 A It was, you know, it was his decision. I think he
11 was counting a good bit on what I was telling him and
12 saying to him. He vacillated a lot, and quite
13 frankly, in addition to the wealth of experience, the
14 knowledge and the expertise that Rauch Wise would
15 bring to a trial of this sort, not to mention any
16 potential appellate issues, Rauch was another lawyer
17 talking to Dustin about what could happen, and
18 different from me, somebody other than me, so that
19 Dustin would see that, you know, I wasn't just trying
20 to get rid of the case and move him through and get
21 him eleven or twelve years and not bother me, you
22 know, move it and do it and I wanted Rauch to give
23 his opinion about what to do and, you know. It was
24 his decision, but he was relying on us. He's just
25 got a ninth grade education and he had never really

1 been involved in the criminal justice system prior to
2 this. He didn't have a long, extensive, criminal
3 history and so he was pretty naive. And, you know,
4 up until the date of the plea, he was exercising, in
5 our conversations, all of his options and he had
6 never fully committed to the plea until we got right
7 down to, "You do it today, or you go to trial
8 Monday." So, there were a lot of questions that he
9 had, but it was his decision, but he was relying, I
10 think, a good bit on our advice.

11 Q And how much -- Let's go back to one of the first
12 questions I asked: How much experience do you have
13 practicing law?

14 A Let's see, I was admitted to the bar in the Spring of
15 '81, I think, and I have been practicing since then.
16 I did twenty years as a prosecutor/solicitor with the
17 Eighth Judicial Circuit. A year or two as an
18 assistant solicitor, and I have been practicing as a
19 private defense attorney since January 2005, which is
20 going on seven years, astonishingly.

21 MR. BRANT: Nothing further, Your Honor.

22 THE COURT: Redirect?

23 MR. KNOTT: No redirect.

24 THE COURT: Thank you. You can step down. We are
25 going to take two quick minutes. I need to make a phone

1 call about a trial issue and then we will resume.

2 (Break)

3 THE COURT: Mr. Knott, are you done? Have you rested?

4 MR. KNOTT: Nothing further, Your Honor.

5 THE COURT: Nothing from the State?

6 MR. BRANT: Nothing further from the State, Your
7 Honor.

8 THE COURT: All right. Let me hear you on anything
9 y'all want to tell me about what we've got.

10 MR. KNOTT: Well, Your Honor, I will be brief, since
11 we haven't been up until now.

12 THE COURT: That's quite all right. Honestly, there's
13 no rush, whatsoever. I'm in good shape. We have plenty of
14 time.

15 MR. KNOTT: I have talked to Mr. Tiller a lot about
16 all of this. He has impressed me that he understands the
17 ramifications of both winning and losing his application.
18 He spoke with me intelligently about all these grounds and
19 as we've referenced, amended his application after we had
20 an opportunity to speak. He just feel very strongly that
21 he did not have all of the information he needed available
22 to him in order to make a knowing and voluntary plea. He
23 understands how the guilty transcript reads, and, of
24 course, we have been over that in detail. And I'm sure,
25 like happens a lot of times in General Session matters,

1 things happen at the last minute, but, of course, it's his
2 life that we are talking about. So, I won't belabor the
3 points that already have been made, but that is his
4 position and we respectfully ask The Court to consider
5 them all and, preferably, taking the matters under
6 advisement so all due consideration can be given.

7 THE COURT: Very good. Mr. Brant, what's the
8 State's position with regard to the...

9 MR. BRANT: Your Honor, I would submit to you that his
10 burden of proof to come in here and prove that his plea
11 counsel was deficient such to the degree that his guilty
12 plea was not knowing and voluntary, that his testimony and
13 his attorney's, Mr. Jones, testimony has established that
14 he knew all the risks. He knew all these factors going
15 in. There were certain issues that had not been addressed
16 yet before he went to trial, and he elected not to go to
17 trial and risk losing his plea deal.

18 With regards to the conflict, the alleged conflict, I
19 have case law, that I was unable to print these cases out,
20 but the cases just showing that you have to show that the
21 attorney's actions were detriment to the client or an
22 actual conflict arose. I can provide you with the
23 citations if you would like, but, I think they say that -
24 - Beg The Court's indulgence. I think they said that
25 there had to be another interest to another client that

1 are sufficiently adverse to show an attorney has a duty to
2 the defendant and takes some action that is detrimental to
3 the other client. I don't think there is anything shown
4 here that would establish that. I think Mr. Jones
5 testified and Mr. Tiller testified that Mr. Jones did not
6 know that his other client, at any point, supplied
7 information against Mr. Tiller and I think the record
8 reflects that he found out that information after Mr.
9 Holt, the other client, had pled guilty and after he
10 received the discovery in this case, at which point, he
11 realized Mr. Holt had provided the information. Nobody
12 ever has to testify against anyone in exchange for a plea
13 deal. Mr. Jones was never a part of anything like that.

14 And with regards to the other claims, I don't think
15 anything was presented, that we've heard. I will just
16 rest with that at this time.

17 THE COURT: All right. The two things that trouble me
18 a little bit about this case and, of course, I will take
19 it under advisement, but let me go ahead and throw it out
20 there and get your thoughts on this. It appears that
21 there was some testimony that the plea deal would expire,
22 or the offer for a plea in the ten to fifteen range, would
23 expire or go away if he pressed his right to discovery
24 and/or suppression of the taped telephone call between the
25 paralegal and Mr. Jones and him. Am I correct in that that

1 was pretty much what the testimony was?

2 Mr. Knott: Yes, Your Honor.

3 THE COURT: And that troubles me on two levels.

4 First of all, there's that whole situation that happened
5 in Lexington County some years ago when a videotape of an
6 attorney and his client was taken and, I believe, it
7 wasn't turned over, initially, and then at some point in
8 time, it was turned over. It, obviously, had been
9 reviewed by the State. So, obviously, this is an item
10 that the State had in its possession, and importantly, it
11 did include a conversation between someone who was
12 operating under the direction of an attorney, so,
13 presumably, it would be bound by attorney/client
14 privilege. Apparently, to this day, we don't know what
15 the contents are. Now, you take that, and I understand
16 that his burden in this case is to demonstrate prejudice
17 as well as some deficiency in his representation, but
18 obviously, without knowing the contents of the tape, it is
19 impossible for him to ever determine prejudice. So, he is
20 in quite a Catch 22. Now, you couple the issue with the
21 tape with the order that the Chief Justice says it is
22 improper for the State to condition any waiver of
23 discovery or condition any plea on the waiver of discovery
24 and that just doesn't sit very well with me. So, that is
25 number one.

1 Number two, the entire issue concerning Mr. Holt,
2 what bothers me about that is that, obviously, if the
3 defendant were to proceed to trial and Mr. Holt were to be
4 a witness because he is a confidential informant who is
5 involved with the trial in this case and Mr. Jones is then
6 in the position of having to cross exam a client that he
7 formerly had represented, you get involved in issues of
8 attorney/client privilege and things of that nature in
9 that Mr. Jones obviously represented Mr. Holt during the
10 course of his representation of the plaintiff in this
11 case. He actually questions Mr. Holt about whether Mr.
12 Holt was a snitch or was a C-I or the person who was
13 fingering the petitioner. So, he's cross examining him
14 and he's probably breaching the attorney/client privilege
15 on a couple of different levels if he then goes into
16 discussing with Holt, "Well, you told me that you were
17 not, in fact, involved in this." And, of course,
18 credibility is going to be a central issue in any such
19 trial where Mr. Holt was the primary one involved with
20 this dope or whether the applicant was involved in this
21 dope. So, the State had really put, in my cursory view of
22 this, the State did really put Mr. Tiller in quite an
23 untenable position. You don't get to know what's on the
24 tape and if you seek to suppress that tape or seek access
25 to that tape, then the deal is gone and you're looking at

1 25 years on a case where you are a first time offender.
2 As a practical matter, that's like giving a person a
3 choice between death by hanging or death by firing squad,
4 in my mind, but that's just my cursory evaluation. Would
5 you care to speak to that, Mr. Brant?

6 MR. BRANT: Yes, Your Honor. My understanding based,
7 on the transcript and discussions with everyone involved
8 in this case, the State did not have a tape that they knew
9 the contents of and refused to provide it. It was a tape
10 that was recorded. The issue was sealed. No one was
11 allowed to listen to it and that's what the issues with
12 the suppression motions were, because they wanted to find
13 out what was on it. I may be able to call Mr. Jones back
14 up to speak to that or...

15 THE COURT: Okay. Is it agreed -- Well, in that
16 case, there are one or two possibilities: That the tape
17 was harmful to Mr. --- to the applicant, in which case, in
18 all likelihood, I would think the Judge, more likely than
19 not, would suppress it or suppress any reference to it or
20 it was helpful to him and it's self-serving testimony and
21 it's not going to come in unless the applicant were to
22 take the stand, maybe, but there is also, probably, a
23 third option and that is that the conversation was, in
24 fact, listened to and somebody did, in fact hear the
25 contents of the conversation and that led those

1 individuals to some other evidence that was then going to
2 be used against Mr. Tiller at trial, at which probably
3 almost unheard of that the conversation was in fact
4 listened to and somebody did in fact hear the contents of
5 that conversation that led those individuals to some other
6 evidence that was then going to be used against Mr. Tiller
7 at trial, at which case, that other evidence would
8 constitute the fruit of the poisonous tree which would be
9 a violation of the attorney/client privilege leading
10 directly to evidence which was gathered, but we don't know
11 any of that because the tapes were never made available.
12 Correct?

13 Mr. BRANT: Correct. If I may respond.

14 THE COURT: Please.

15 Mr. BRANT: If Your Honor would be so inclined, I
16 have spoken with the agent involved in this case that Mr.
17 Jones identified, Agent Cresswell from SLED. He was out
18 of town this week, but if you would like to schedule him
19 in the future, we can do a deposition of him and ask him
20 the details of the case or we can schedule another hearing
21 in November and ask him to address the matter.

22 MR. KNOTT: Your Honor, I don't think it will get
23 that far, because all of this has to do with his decision
24 to plea. I mean that's all done.

25 THE COURT: I have not had an opportunity to research

1 this particular issue and, apparently, Mr. Jones wants to
2 supplement his testimony. Would you like to throw
3 something else out there?

4 MR. JONES: Yes, sir. Just for clarification
5 purposes.

6 THE COURT: Please.

7 MR. JONES: In listening to your -- I may have
8 misstated something and I would like to try to clarify it.

9 THE COURT: Please. Come on back up here and tell
10 me what you want to tell me.

11 MR. JONES RETURNS TO THE WITNESS STAND

12 MR. JONES: Your Honor, I can't remember exactly how I
13 testified, but what I would like the Court to understand
14 is that Rob Bogen was the Attorney General or Assistant
15 Attorney General that I was dealing with in this case. I
16 don't know who was going to try it. It may have been
17 Jennifer Edwards or Rob Bogen, or both. He never
18 indicated to me that he had ever heard the tape or that he
19 intended to use the tape as evidence.

20 THE COURT: Okay.

21 MR. JONES: All right? So, I don't know that I ever
22 filed a motion to suppress the tape and I also can't tell
23 you that they said, "If you insist on hearing the tape,
24 the plea deal is off." I don't think Bogen said that
25 about the tape. Okay? I think there was a

1 misunderstanding about -- I think the plea deal would be
2 off if we didn't, if we forced the photo line-up
3 suppression issue.

4 THE COURT: Okay.

5 MR. JONES: But as far as listening to the tape, I
6 know we were never given an opportunity to listen to it.
7 We didn't know --- this is my recollection and, maybe Mr.
8 Wise has some other idea about it, but my recollection is,
9 that I can't sit here and tell you that Rob Bogen told me
10 that if you insist on listening to that tape this plea
11 deal is off. I know that we wanted it, wanted to know
12 what was on the tape, wanted to know if they would use the
13 tape. They never told us that. We asked about that. You
14 know, it was not provided to us as a part of the discovery
15 in the case. We were told of it's existence ---

16 THE COURT: Okay.

17 MR. JONES: --- And that it purported to have a
18 recorded conversation between Dustin Tiller and my
19 paralegal.

20 THE COURT: Okay.

21 MR. JONES: And I asked, "I need to hear it, I want
22 to hear it, what are you going to do with it?" He said,
23 "I think we ought to turn it over to the judge," or
24 something like that. I said, "When," and he said, "Well,
25 if we don't, we will let the judge hear it or something

1 and that was the basis of it. So, you know, what I am
2 here trying to explain is I don't think I made a motion to
3 suppress the tape or was told that if I tried to make a
4 motion to suppress the tape, the plea offer would be
5 rescinded. I think the conversation was, "I'd like to
6 hear the tape." And I welcome to be cross examined about
7 it while I'm up here if they want to, to try to -- but
8 that's -- I didn't realize that that's the way the ---

9 THE COURT: That's kind of the way it came out.

10 MR. JONES: Was it?

11 THE COURT: Or that's the way I took it.

12 MR. JONES: Yes, sir.

13 THE COURT: But I understand now that it was related
14 only to the photo line-up.

15 MR. JONES: Yes, sir.

16 THE COURT: I appreciate you clarifying that. Do you
17 have any other questions, Mr. Knott, based on that
18 clarification?

19 MR. JONES: But, the fact still remains, I didn't file
20 a motion to suppress it and maybe my client thought I
21 should have or was going to or under the impression that
22 if we tried to hear the tape, then the plea would be
23 rescinded. I can't tell you that he didn't have that
24 understanding, but I can't tell you that I had that
25 understanding from Rob Bogen. Okay? From the Attorney

1 General.

2 THE COURT: I understand. Is there anything else?

3 MR. KNOTT: Yes sir, Your Honor. I think there are
4 two things there. One would be the argument that
5 ineffective assistance of counsel existed if that motion
6 was not filed, because it should have been, arguably. And
7 secondly, I still see the same dilemma. If the State had
8 possession of that tape and listened to it -- I don't know
9 whether they did or not, we simply don't know -- but if
10 they gained evidence from that tape that they used in
11 another manner, we've still got the same issue.

12 THE COURT: All right. Let me take it under
13 advisement. I will think about it and I will let you know
14 Mr. Brant, how I want to proceed and whether I want the
15 testimony from the agent who was the primary investigator
16 on this case or whether I've got enough information to
17 rule at this point in time.

18 MR. BRANT: Thank you, Your Honor.

19 THE COURT: Thank you.

20 MR. KNOTT: Thank you, Your Honor.

21 THE COURT: Thank you, Mr. Knott.

22

(WHEREUPON, THE HEARING IN THE ABOVE-
ENTITLED MATTER WAS CONCLUDED.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

CERTIFICATE

BE IT KNOWN THAT I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, BEFORE THE CIRCUIT COURT FOR GREENWOOD COUNTY, SOUTH CAROLINA, SO GIVEN ON WEDNESDAY, JUNE 29, 2011, TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

IN WITNESS WHEREOF I HAVE HERE UNTO SET MY HAND AND SEAL THIS 31ST DAY OF MARCH, 2012.



JO RICE
OFFICIAL COURT REPORTER

ATTEST A TRUE COPY

Ingram Moon

STATE OF SOUTH CAROLINA
 COUNTY OF GREENWOOD
 INGRAM MOON, CCOP AND AS THE COURT OF COMMON PLEAS
 GREENWOOD COUNTY 8TH JUDICIAL CIRCUIT
 S. C.

2009-CP-24-1779

Dustin Tiller, 329553,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

FILED COMMON PLEAS
 8TH JUDICIAL CIRCUIT
 GREENWOOD, SC
 2011 DEC 20 AM 10 47

This matter comes before the Court by way of Application for Post-Conviction Relief filed December 14, 2009. The Respondent filed its Return on February 16, 2011. The Applicant then filed an Amended Application on June 17, 2011. An evidentiary hearing into the matter was convened at the Greenwood County Courthouse on June 29, 2011. The Applicant was present at the hearing and was represented by Bradley W. Knott, Esquire. The Respondent was represented by Assistant Attorney General Harrison D. Brant.

The Applicant testified on his own behalf at the hearing. The Applicant's trial counsel, W. Townes Jones, IV, Esquire, also testified at the hearing. This Court had before it the records of the Clerk of Court for the State Grand Jury regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the plea transcript.

PROCEDURAL HISTORY

The Applicant was indicted by the April 2008 State Grand Jury for Trafficking Methamphetamine in excess of 100 grams (2008-GS-47-3), and Possession with Intent to Distribute ("PWID") Methamphetamine (2008-GS-47-4). In addition, he was subsequently charged with Conspiracy to Traffic Methamphetamine in the amount of 28 to 100 grams (2009-

MS

GS-47-1). W. Townes Jones, IV, Esquire, and C. Rauch Wise, Esquire, represented him on these charges.

On January 23, 2009, the Applicant entered into a plea agreement whereby he agreed to: plead guilty to the lesser include offense of Trafficking Methamphetamine in the amount of 28 to 100 grams (2008-GS-47-3); plead guilty as indicted to PWID Methamphetamine (2008-GS-47-4); and waive presentment and plead guilty as charged to Conspiracy to Traffic Methamphetamine in the amount of 28 to 100 grams (2009-GS-47-1). In exchange for his plea, the agreement provided that the Applicant would receive a sentence in the range of ten (10) to fifteen (15) years imprisonment.¹ On January 27, 2009, the Applicant pled guilty in accordance with the terms of the negotiated plea agreement. The Honorable D. Garrison Hill sentenced him to twelve (12) years for trafficking, five (5) years for PWID, and ten (10) years for the conspiracy to traffic, all concurrent. The Applicant did not appeal his convictions or sentences.

ALLEGATIONS

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully because he received ineffective assistance of counsel based on the following:

- (1) Failure "to investigate the contents of a tape recorded conversation between the Applicant and counsel's paralegal, which rendered the Applicant's plea of guilty not knowingly and voluntarily made";
- (2) Failure "to investigate the contents of a photo lineup as said lineup was flawed";
- (3) "By advising the Applicant to plead guilty before he had seen all of the discovery";
- (4) Counsel "had a conflict of interest in that he also represented Michael Patton Holt who was working with the State and [sic] an attempt to implicate and/or build a case against the Applicant"; and
- (5) Failure "to investigate and obtain all grand jury testimony against the Applicant."

¹ A copy of the plea agreement was included in the records provided by the Clerk of Court for the State Grand Jury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003).

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove "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, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."



Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the post-conviction relief hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The charges involved in this case arose from two separate incidents or series of events. Between March 21 and March 30 of 2007, an individual cooperating with law enforcement made telephone calls to the Applicant for the purpose of purchasing a quantity of methamphetamine. (Tr. 13). This cooperating individual was identified at the evidentiary hearing as a man named "Sonny." As a result of several telephone calls made just after midnight on March 30, 2007, an arrangement was made whereby Sonny would receive four ounces of methamphetamine for \$4,000.00. (Tr. 13). Sonny was instructed to go to the back of a Taco Bell located off of the Highway 72 Bypass in Greenwood and leave the money behind a garbage can. There, Sonny was told he would find a sock containing a plastic bag in which the drugs were enclosed.

Sonny did as he was instructed and left. (Tr. 13). The incident was monitored by law enforcement, and Sonny was wired with a video camera. The Applicant then walked up to the



garbage can and picked up the money. As law enforcement moved in, the Applicant got in the passenger seat of a red Honda and fled the scene. (Tr. 13-14). Because law enforcement expected the Applicant to be in a white Tahoe based on information previously gathered, officers accidentally allowed the red Honda to leave the Taco Bell. (Tr. 14). A high speed chase ensued, but the Applicant was ultimately able to escape. The drugs Sonny picked up at the scene were tested and proved to be 111.96 grams of methamphetamine.

The second incident took place on August 17, 2007, and resulted in the Applicant's arrest. The Applicant was in Anderson County traveling as a passenger in a vehicle. (Tr. 14). The driver of the vehicle was a cooperating individual who was identified at the evidentiary hearing as Michael Holt. The wire Holt was wearing recorded a conversation which indicated the Applicant had methamphetamine in his possession. (Tr. 14). When police approached Holt's vehicle at a convenience store, the Applicant opened the door and threw a small object on the ground. This object was later tested and proved to be 1.11 grams of methamphetamine.

Failure to Obtain and Investigate Contents of Tape Recorded Conversation

Issues concerning the tape were addressed on the record at the Applicant's plea hearing. Mr. Jones brought to the attention of the trial court a matter involving an audiotape which apparently contained a recording of a telephone conversation that took place between the Applicant and Mr. Jones's legal assistant. (Tr. 29-30). Mr. Jones explained that the Applicant called his office after hours, and that call was recorded. (Tr. 31). At the evidentiary hearing, Mr. Jones further explained that the call was made from and recorded by a detention center in Anderson County where the Applicant was being housed at the time. Evidently, the tape was turned over to the trial court pending further action by the parties. (Tr. 30). The trial court then transferred custody of the tape to the clerk of court who sealed it and placed it in a safe. (Tr. 30). Mr. Jones asked the trial court to decide that the tape should either be destroyed or turned over to



him, but requested that it not be turned over to law enforcement. (Tr. 30). The parties briefly began discussing whether the tape-recorded conversation was "privileged or whether the privilege has been waived." (Tr. 30). The Prosecutor argued the issue could not be determined without first listening to the tape. (Tr. 30). Ultimately, however, the parties agreed the issue need not be addressed in the near future if the tape is sealed and being stored in a safe. (Tr. 30-31).

At the evidentiary hearing, the Applicant's testimony established that he was aware of the tape's existence prior to his plea. He testified he made telephone calls to Mr. Jones' legal assistant when Mr. Jones was out of town, and the tape apparently recorded one of these conversations. However, he does not know what was on the tape, and does not believe his attorneys ever listened to it. He testified Mr. Jones moved to suppress the tape, but the State said if they went forward with the motion there would be no plea deal. He stated Mr. Jones advised him to plead guilty because they did not know what was on the tape, and it was risky to move to suppress it because they would lose the plea deal. He believes his attorneys should have had the opportunity to listen to the tape, and stated his decision of whether to plead guilty was affected by his lack of knowledge of the tape's contents because he did not know if they could suppress it.

Mr. Jones testified he recalls receiving notice from the State of the tape's existence, but has no knowledge of what was on the tape. He recalls asking the Prosecutor for the tape, but the Prosecutor informed him that it had been turned it over to the trial court. He does not believe he ever moved to suppress the tape, does not recall the State ever indicating the plea offer would be revoked if he made such a motion or otherwise attempted to listen to it. He stated he never advised the Applicant that he had to go to trial in order to learn the contents of the tape. He later



clarified, however, that the State did threaten to revoke the plea offer if they moved to suppress the photo identification evidence, a matter which is discussed in the following section.

Mr. Jones also testified that he intended to object to the tape if the State attempted to use it; however, the State never indicated that it intended to do so, nor did the Prosecutor ever indicate that he knew what was on the tape. He stated he is unsure of how successful a motion to suppress may have been without knowing what was on the tape. He testified he never advised the Applicant that he should plead guilty because they did not know what was on the tape, and such advice would not have been rational. He stated that the tape was not a major issue in this case, and believed if they went to trial that the State had a good chance of getting the case submitted to a jury without the tape.² He testified that proceeding with trial created a substantial risk for the Applicant because the charges carried a minimum sentence of twenty-five years.

This Court finds defense counsel's testimony on the matter credible. This Court finds the tape was a non-issue as the State did not intend to use it. Counsel never advised the Applicant to plead guilty because they were unaware of the tape's contents, and the State never threatened to revoke the plea deal if the defense moved to suppress the tape. To the extent the Applicant testified to the contrary, this Court finds the Applicant's testimony not credible. This Court finds the Applicant failed to meet his burden of proving counsel was deficient in his handling of the tape, or that counsel's advice on the matter was somehow erroneous. Furthermore, this Court finds the Applicant failed to prove how he would have benefited from further investigation of the

² Mr. Jones explained that some of the other evidence the State intended to use included: recordings of telephone conversations between the Applicant and the informant, Sonny, discussing details of the transaction; testimony from Sonny, who previously testified before the State Grand Jury that he bought drugs from the Applicant in the past and also saw the Applicant with methamphetamine weeks before the controlled buy; and testimony from a police officer who would identify the Applicant as the individual he saw riding as the passenger in the vehicle which fled the scene of the controlled buy. He also testified that he and the Applicant were worried that the mother of the Applicant's children, Tonya, would testify at trial. He explained that Tonya had already brought criminal domestic violence charges against the Applicant in Anderson County, and they were concerned about information she might be able to provide the State about the instant case.



tape's contents or a motion to suppress. *See Dalton v. State*, 376 S.C. 130, 140, 654 S.E.2d 870, 875 (Ct. App. 2007) (counsel not ineffective for failing to interview witnesses where applicant failed to establish how witnesses' testimony would have benefited him). Therefore, the allegation that counsel was ineffective for failing to obtain and investigate the contents of the tape must fail because "the allegation is supported only by mere speculation as to the result." *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998).

Even assuming counsel was somehow deficient with regards to the tape, this Court finds the Applicant failed to establish resulting prejudice. As counsel indicated, the tape was not a major issue, and if the Applicant proceeded to trial the State likely had other evidence sufficient for the case to be submitted to a jury. The Applicant pled guilty not because of any issue surrounding the tape, but because the State's plea offer, among other things, allowed him to avoid the risk of losing a jury trial and receiving a minimum of twenty-five years in prison.³ This Court finds that even if counsel somehow misadvised the Applicant with regards to the tape, the Applicant did not rely on such advice when he pled guilty.

Moreover, "[t]he general rule is that a plea of guilty, voluntarily and understanding made, constitutes a waiver of nonjurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea." *Rivers v. Strickland*, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) (citing *State v. Fuller*, 254 S.C. 260, 266, 174 S.E.2d 774, 777 (1970)). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *Tollett v. Henderson*, 411 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973); *see also Dalton v. State*, 376 S.C.

³ The plea offer the Applicant accepted also allowed him to avoid any future prosecution that could result from his past involvement in other trafficking incidents, thereby granting him "a chance at a fresh start" when he finishes his prison sentence. (Tr. 17).

130, 654 S.E.2d 870 (Ct.App.2007). The plea transcript indicates the Applicant understood his rights, including the right to present defenses or contest any evidence, and affirmed that he wanted to waive these rights. (Tr. 8-9). The Applicant also admitted his guilt, stated he wanted to plead guilty, and agreed with the facts of the case as stated by the Prosecutor. (Tr. 8; 12; 15). Therefore, this Court finds the Applicant was fully aware of the rights he was waiving when he pled guilty. Per the authority cited above, the Applicant waived the right to contest this evidence and any alleged violation of the attorney-client privilege which may have occurred when he knowingly, intelligently, and voluntarily pled guilty. Accordingly, the Applicant's claims concerning the tape are denied and dismissed.

Failure to Obtain and Investigate Contents of Photo Lineup

The Applicant testified law enforcement conducted a "photo lineup" using a picture of him taken from the Department of Motor Vehicles. He explained that his picture was shown to a police officer who identified him. He testified Mr. Jones was going to move to suppress the photograph, but such a motion was never filed because the State threatened to revoke the plea offer if they went forward with it. He stated he was pressured to plead guilty by counsel's failure to move to suppress this evidence.

Mr. Jones' testimony established that although law enforcement used of a photograph of the Applicant, no actual "lineup" was conducted. Mr. Jones testified he personally interviewed this officer to see what he would say, and it was his understanding the officer was going to testify at trial. The officer indicated he was at the scene of the controlled buy and was able to see the passenger of the vehicle as it fled the scene. Several hours after the incident, the officer looked at a picture of the Applicant and identified him as that passenger. Mr. Jones testified the State indicated the plea deal was "off the table" if he proceeded with a motion to suppress this evidence. He stated he advised the Applicant of the State's position and believes the



Applicant understood that he was waiving the right to challenge this evidence if he accepted the State's offer and pled guilty.

This Court finds the allegation that counsel failed to investigate the matter is without merit. Counsel conducted an independent interview of the officer and advised the Applicant of what the officer would say. To the extent the Applicant alleges counsel should have further investigated the matter, this Court finds the Applicant failed to establish how he would have benefited from any additional investigation. See Dalton v. State, 376 S.C. at 140, 654 S.E.2d at 875 (counsel not ineffective for failing to interview witnesses where applicant failed to establish how witnesses' testimony would have benefited him). To the extent the Applicant alleges a suppression hearing should have been conducted regarding this evidence, this Court reiterates its finding that the Applicant was fully aware of the rights he was waiving by proceeding with a plea, including the right to contest this evidence. See Rivers, 264 S.C. 121, 213 S.E.2d 97; Fuller, 254 S.C. 260, 174 S.E.2d 774. This Court finds counsel's advice to the Applicant was not deficient on this issue. In addition, this Court finds the Applicant failed to establish how he was prejudiced by any such alleged deficiency. Accordingly, this issue is denied and dismissed.

Failure to Receive All Discovery Before Advising Applicant to Plead Guilty

The Applicant testified the discovery counsel allegedly failed to obtain before advising him to plead guilty concerns only the tape-recorded conversation and the photo identification evidence. These issues have been fully addressed above, and the findings and conclusions of the preceding sections are included herein by reference. Thus, the allegation is denied and dismissed.

Conflict of Interest

The Applicant alleges Mr. Jones was ineffective because his representation of another client, Michael Holt, constituted a conflict of interest. The Applicant testified Holt was working with the police to build a case against him. He stated Holt told the police the drugs he possessed



came from him. He also stated that Holt was with him at the time of his arrest and was wearing a wire. He testified Mr. Jones did not learn of Holt's involvement in this case until they received discovery from the State.

Mr. Jones testified he represented Holt on a drug possession charge arising from a traffic stop. He was hired to represent Holt some time in 2007, and Holt pled guilty to these charges in August or September of 2008. He testified he did not initially know that Holt had talked to the police about the Applicant's case, and Holt never advised him of such. He recalls that at some point prior to the Applicant's plea, the Applicant indicated he thought Holt was giving information to the police. He stated he asked Holt in private if he was working with the police, but Holt denied that he was doing so.

Mr. Jones testified he learned of Holt's actual involvement when he received the discovery for the Applicant's case in the fall of 2009. By that time, Holt had already pled guilty and was no longer represented by Mr. Jones. He stated he was never put in a position where he could obtain a deal for Holt in exchange for information against the Applicant, and was never told that Holt would testify at the Applicant's trial. He testified he offered to get off the Applicant's case once he learned of Holt's involvement, but the Applicant indicated he wanted to continue with the representation.

"In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Cuyler v. Sullivan, 446 U.S. 335, 348, 100 S.Ct. 1708, 1718 (1980). "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." State v. Gregory, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005).



“[U]ntil a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.” Lomax v. State, 379 S.C. 93, 102, 665 S.E.2d 164, 168 (2008) (citation omitted).

This Court finds no evidence indicating counsel was ever in a position to use his representation of Holt to the detriment of the Applicant. See Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984) (“The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney *owes a duty to the defendant to take some action that could be detrimental to his other client*”); see also Langford v. State, 310 S.C. 357, 359-60, 426 S.E.2d 793, 795 (1993) (finding no actual conflict in representation of two co-defendants where no evidence indicated counsel advised either one to plead guilty to obtain more favorable consideration for the other). In addition, this Court finds credible counsel’s assertion that he offered to get off the case, but the Applicant desired that counsel continue the representation. Regardless, “the Rules of Professional Conduct have no bearing on the constitutionality of a criminal conviction.” Langford, 310 S.C. at 360, 426 S.E.2d at 795. This Court finds the Applicant failed to establish more than a mere possibility of a conflict of interest. Thus, the Applicant failed to meet his burden of proof as to this claim. Accordingly, the claim is denied and dismissed.

Failure to Obtain Grand Jury Testimony

The Applicant testified counsel failed to investigate or otherwise obtain certain testimony that was presented before the State Grand Jury. He explained that although counsel did obtain transcripts of some the grand jury testimony, certain parts of the transcripts were blacked out. Counsel confirmed that certain portions of these transcripts had been redacted, but stated it was fairly common to receive redacted transcripts of State Grand Jury testimony.

This Court finds the Applicant failed to meet his burden of proof as to this claim. The Applicant did not produce the content of any testimony counsel allegedly failed to procure, nor did he establish how such testimony would have benefited him. See Dalton, 376 S.C. at 140, 654 S.E.2d at 875. Nothing in the record before this Court indicates a different outcome would have resulted in this case if counsel had obtained this information. Thus, this claim must fail because “the allegation is supported only by mere speculation as to the result.” Moorehead, 329 S.C. at 334, 496 S.E.2d at 417.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence trial counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel’s performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, the allegation of ineffective assistance of counsel is denied.

CONCLUSION

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

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right

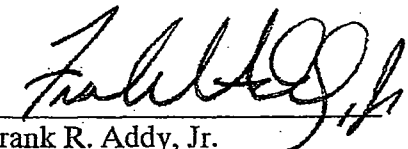


to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19th day of December, 2011.


Frank R. Addy, Jr.
Presiding Judge
Eighth Judicial Circuit

Greenwood, South Carolina.

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	CASE NO 2008GS 47 04
	)	
VS.	)	INDICTMENT FOR
	)	POSSESSION OF
DUSTIN ALLEN TILLER,	)	METHAMPHETAMINE WITH
	)	INTENT TO DISTRIBUTE
DEFENDANT.	)	S.C. Code Ann. § 44-53-375(B)
	)	

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on April 15, 2008, the State Grand Jurors present upon their oath:

POSSESSION OF METHAMPHETAMINE WITH INTENT TO DISTRIBUTE
S.C. Code Ann. § 44-53-375(B)

That DUSTIN ALLEN TILLER did in Anderson County on or about August 17, 2007, possess with intent to distribute more than one (1) gram of methamphetamine, a controlled substance under provisions of § 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

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

A True Bill

Amanda L. Haley
FOREMAN

Henry D. McMaster
HENRY D. McMASTER (rb)
SOUTH CAROLINA ATTORNEY GENERAL

FILED

APR 15 2008

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENWICH
STATEINDICTMENT/CASE# 2008 GS 47 4vs.
Dennis Allen Tucker

A/W#:

AKA:

Date of Offense: 2/17/07Race White Sex M Age: 22S.C. Code §: 44-53-375(B)DOB: 3/7/86 SS#CDR Code #: 03014

Address:

City, State, Zip: 0 27620

DL# SID#

SENTENCE SHEET

JAN 21 2009

JAMES R. PARKS

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADED CLERK, STATE GRAND JURY
TO: POSSESSION OF METHAMPHETAMINE w/ INTENT TO DISSEMINATEin violation of § 44-53-375(B) of the S.C. Code of Laws, bearing CDR Code #☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1" or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the StateATTEST: [Signature] [Signature] [Signature] 3216

Solicitor

Defendant

Attorney for Defendant

SC Bar #

1188

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 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: 08-GS-47-3☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: Obtain GED ☐☐ set by SCDPPPS Attend Voc. Rehab. or Job Corp. _____

Recipient: May serve W/E beginning _____

Substance Abuse Counseling ☐*Fine: \$ _____ Random Drug/Alcohol Testing ☐

§14-1-206 (Assessments 107.5%) \$ _____ Fine may be pd. in equal, consecutive weekly/monthly

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 pmts. of \$ _____ Beginning _____

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ \$ _____ paid to Public Defender Fund

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

§35 13 (Public Defr/Prob) \$500 \$ _____

§73 3. 1B TP (Law Enforce Funding) \$25 \$ 25.00§33 7. 1B TP (Drug Court Surcharge) \$100 \$ 100.00

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

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

3% to County (if paid in installments) \$ _____

§90 11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$ 234.00

Clerk of Court/ Deputy Clerk

RICE

Court Reporter

PRESIDING JUDGE

Judge Code: 2111318Sentence Date: JANUARY 27, 2009

STATE GRAND JURY OF SOUTH CAROLINA

JAN 28 2009

STATE OF SOUTH CAROLINA

CASE NO. 2009-CS-171 JAMES R. PARKS
CLERK, STATE GRAND JURY

VS.

INDICTMENT FOR CONSPIRACY
TO TRAFFICK
METHAMPHETAMINE

DUSTIN ALLEN TILLER,

DEFENDANT.

S.C. Code Ann. § 44-53-375(C)(2)(a)

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on February 10, 2009, the State Grand Jurors present upon their oath:

CONSPIRACY TO TRAFFICK METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(C)(2)(a)

That DUSTIN ALLEN TILLER and other persons whose names are both known and unknown to the State Grand Jury, did in Greenwood County, during the period of time extending from on or about January 1, 2004 until the present, knowingly conspire to sell, manufacture, deliver, purchase, or bring into this State, more than twenty-eight (28) but less than one hundred (100) grams of methamphetamine, a controlled substance under provisions of § 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

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

A _____ Bill

FOREMAN

HENRY D. McMASTER (rh)
SOUTH CAROLINA ATTORNEY GENERAL

*1/20/09 Prosecution of Indictment Waived
J.R. Parks, Clerk, State Grand Jury*

I WAIVE PRESENTMENT

+ Dustin Tiller

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATEINDICTMENT CASE# 2008-GS-47-1AKA: VS

AW#

Race: WSex: MAge: 22Date of Offense: 1/11/2009DOB: 3/07/86SS#: 123456789S.C. Code § 44-53-375(C)(2)(A)Address: 123456789CDR Code # 03-12City, State, Zip: 12345

SENTENCE SHEET

DL#

SID#

JAN 21 2009

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO CONSPIRACY TO TRAFFICK 28-100 CRIMINALS OF MICH

JAMES R. PARKS

in violation of § 44-53-375(C)(2)(A) of the S.C. Code of Laws, bearing CDR Code #

CLERK, STATE GRAND JURY

☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45

(CSC w/minor 1" or Lewd Act)

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

ATTEST:

Solicitor [Signature]Defendant [Signature]Attorney for Defendant [Signature]SC Bar # 3216WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 08-GS-47-3☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCDPPPS. _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	_____
\$14-1-211(A)(1) (Conv Surcharge)	\$100	\$ <u>1400</u>
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____
\$56-5-2995 (DUI Assessment)	\$12	\$ _____
\$35 13 (Public Def/Prob)	\$500	\$ _____
\$73 3. 1B TP (Law Enforce Funding)	\$25	\$ <u>2500</u>
\$33.7 1B TP (Drug Court Surcharge)	\$100	\$ <u>3370</u>
\$50-21-114(BUI Breath Test Fee)	\$50	\$ _____
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	\$	\$ <u>165</u>
\$90 11 TP (SCJA Surcharge)	\$5	\$ <u>450</u>
TOTAL	\$	\$ <u>3370</u>

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.Clerk of Court/Deputy Clerk RicePRESIDING JUDGE [Signature]Judge Code: 211318Sentence Date: January 17, 2009

APR 16 2008

STATE GRAND JURY OF SOUTH CAROLINA

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA)

CASE NO. 2008GS 47 03

VS.)

DUSTIN ALLEN TILLER,)

DEFENDANT.)

VENUE ORDER

The State Grand Jury of South Carolina returned a True Bill of the Indictment in the above case on April 16, 2008. The Indictment is within the authority of the State Grand Jury and is otherwise in accordance with the provisions of the State Grand Jury Act, found in S.C. Code Ann. §§14-7-1600 to -1820 (Law. Co-op. 1976). Venue is appropriate under South Carolina law in the County of Greenwood. Accordingly, it is hereby

ORDERED that the instant Indictment be returned to Greenwood County for prosecution by the Attorney General or his designee.

J. Michelle Childs
J. MICHELLE CHILDS
FIFTH JUDICIAL CIRCUIT
PRESIDING JUDGE
STATE GRAND JURY OF SOUTH CAROLINA

Columbia, South Carolina

April 16, 2008

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

CASE NO. 2008GS 47 03

VS.)

INDICTMENT FOR
TRAFFICKING MORE THAN 100
GRAMS OF METHAMPHETAMINE

DUSTIN ALLEN TILLER.)

DEFENDANT.)

S.C. Code Ann. § 44-53-375(C)(3)

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on April 15, 2008, the State Grand Jurors present upon their oath:

TRAFFICKING METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(C)(3)

That DUSTIN ALLEN TILLER did in Greenwood County on or about March 30, 2007, knowingly sell, manufacture, deliver, purchase or bring into this State, or attempt to sell, manufacture, deliver, purchase or bring into this State, or was in actual or constructive possession of more than one hundred (100) grams of methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

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

A TRUE Bill

Amanda L. Haley
FOREMAN

Henry D. McMaster
HENRY D. McMASTER (rb)
SOUTH CAROLINA ATTORNEY GENERAL

FILED

APR 16 2008

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENWOOD
STATEINDICTMENT/CASE#: 2008-GS-47-3

VS
Dennis Allen Turner
AKA.
Race W Sex M Age 32
DOB 3/4/76 SS# 1-728
Address: 1-728
City, State Hubertville SC 29224
DL# 1-728 SID# 1-728

A/W# FILED
Date of Offense: 3/2/08
S.C. Code §: 44-53-375(2)(a)
CDR Code #: 0392 JAN 2 / 2009

SENTENCE SHEET MARKS
CLERK, STATE GRAND JURY

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: TRUCKING WITH MORE THAN 26 BUT LESS THAN 100 CUBIC

in violation of § 44-53-375(2)(a) of the S.C. Code of Laws, bearing CDR Code # 0392

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1" or Lewd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury: _____ (defendant initial)

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

ATTEST: [Signature] Solicitor Dennis Turner Defendant [Signature] Attorney for Defendant 3216 SC Bar # 6118

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 12 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. TS to be determined by SCJ
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP CG

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐

☐ set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine.
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§35-13 (Public Def./Prob) \$500 \$ _____
§73-3-1B TP (Law Enforce Funding) \$25 \$ 25.00
§33-7-1B TP (Drug Court Surcharge) \$100 \$ 100.00
§50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40 ea \$ _____
3% to County (if paid in installments) \$ _____
§90-11 TP (SCCJA Surcharge) \$5 \$ 5.00
TOTAL \$ 236.00

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other: -OBTAIN GED
-COMPLETE ATU

☐ Appointed PD or appointed other counsel, §35-13 TP
☐ Requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

PRESIDING JUDGE

Court Reporter

Rice

Judge Code:

Sentence Date:

2 1 3 5
January 27, 2009

132

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENWOOD)

IN THE COURT OF JAN 29 2009
 GENERAL SESSIONS FOR
 THE EIGHTH JUDICIAL CIRCUIT
 JAMES R. PARKS
 CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA)

2008-GS-47-3

-VERSUS-

2008-GS-47-4

2009-GS-47-1

DUSTIN ALLEN TILLER,)

DEFENDANT.)

PLEA AGREEMENT

PLEA AGREEMENT made between the State of South Carolina, as represented by Attorney General Henry McMaster and Robert E. Bogan, Assistant Deputy Attorney General, and the Defendant, Dustin Allen Tiller, and his attorneys, W. Townes Jones, IV, Esquire and C. Rauch Wise, Esquire.

IN CONSIDERATION of the mutual promises made herein, the parties hereto agree as follows:

1. This Plea Agreement supersedes all prior promises, representations, statements, and negotiations of the parties.
2. This Plea Agreement contains the entire understanding between the parties concerning the matters set forth herein.
3. This Plea Agreement and any plea(s) and sentence(s) that result from it relate to and resolve only the defendant's criminal liability for the conduct and offenses set forth in the indictments referenced herein. This Plea Agreement expressly does not include defendant's non-criminal liability for the conduct that is the subject of the referenced indictment(s) or any other of defendant's conduct, if any there be, that may be the subject of an investigation, prosecution, or proceeding in the State of South Carolina or elsewhere.
4. In matter 2008-GS-47-3, defendant has been indicted for trafficking more than 100 grams of methamphetamine in violation of S.C. Code Ann. § 44-53-375(C)(3), which carries a

mandatory minimum sentence of twenty-five years incarceration. Defendant agrees to plead guilty to the lesser included offense of trafficking more than twenty-eight but less than one hundred grams of methamphetamine in violation of S.C. Code Ann. § 44-53-375(C)(2)(a). The defendant understands the offense to which he agrees to plead guilty carries a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars. The Defendant further understands this offense is a Class B felony pursuant to S.C. Code Ann. § 16-1-90, a "violent crime" pursuant to S.C. Code Ann. § 16-1-60, a "serious offense" pursuant to S.C. Code Ann. § 17-25-45, and a "no parole offense" pursuant to S.C. Code Ann. § 24-13-100. As part of the consideration for this Plea Agreement and the State's agreement to allow the defendant to plead guilty to a lesser offense, the State and the defendant have agreed upon, and the defendant agrees to accept, a sentence of not less than 10 nor more than 15 years, to be determined by the presiding judge. The Defendant understands that the minimum sentence he can receive pursuant to this agreement is ten (10) years.

5. In matter 2008-GS-47-4, defendant has been indicted for and agrees to plead guilty to possession of methamphetamine with intent to distribute in violation of S.C. Code Ann. § 44-53-375(b). The defendant understands the offense to which he agrees to plead guilty carries a term of imprisonment of not more than fifteen years and a fine of not less than twenty-five thousand dollars. The Defendant further understands this offense is a Class D felony pursuant to S.C. Code Ann. § 16-1-90. The State and the defendant have agreed upon, and the defendant agrees to accept, a sentence of not less than 10 nor more than 15 years, to be determined by the presiding judge. The parties have agreed that the sentence imposed by the presiding judge for this offense may run concurrent with any other sentence imposed pursuant to this Plea Agreement. The Defendant understands that the minimum sentence he can receive pursuant to this Plea Agreement is ten (10) years.

6. In addition to the foregoing, defendant Dustin Allen Tiller agrees to waive presentment of indictment 2009-GS-47-1 for conspiracy to traffick more than twenty-eight but less than one hundred grams of methamphetamine during the period of time from January 1, 2004 to the present in violation of S.C. Code Ann. § 44-53-375(C)(2)(a) and plead guilty to that offense. The defendant understands the offense to which he agrees to plead guilty carries a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars. The Defendant further understands this offense is a Class B felony pursuant to S.C. Code Ann. § 16-1-90(B), a "violent crime" pursuant to S.C. Code Ann. § 16-1-60, a "serious offense" pursuant to S.C. Code Ann. § 17-25-45, and a "no parole offense" pursuant to S.C. Code Ann. § 24-13-100. The State and the defendant have agreed upon, and the defendant agrees to accept, a sentence of not less than 10 nor more than 15 years, to be determined by the presiding judge. The parties have agreed that the sentence imposed by the presiding judge for this offense may run concurrent with any other sentence imposed pursuant to this Plea Agreement. The Defendant understands that the minimum sentence he can receive pursuant to this Plea Agreement is ten (10) years.

7. As part of the consideration of this Plea Agreement, the defendant agrees to truthfully identify the driver of the car used in connection with indictment 2007-GS-47-3 on March 30, 2007, and agrees to testify whenever and wherever he may be called upon to do so by the State for the purpose of prosecuting the said driver.

8. As part of the consideration of this Plea Agreement, the defendant consents to civil forfeiture of all drug related assets currently in the possession of the government, if any there be, and agrees that this Plea Agreement may be received by any court of competent jurisdiction as conclusive evidence of that consent. Nothing in this agreement prohibits the State from commencing civil forfeiture proceedings concerning other assets subsequently identified as subject to forfeiture pursuant to state law.

9. The Attorneys for the State reserve the right to summarize all evidence which would have been presented at trial to establish a factual basis for the plea(s).

10. The Attorneys for the State agree to advise any Court or other authority of the extent and value of the Defendant's cooperation, if any.

11. Nothing in this Plea Agreement limits or shall be construed to limit either party from advocating for or requesting a particular sentence within the range negotiated and agreed to by the parties.

12. The parties hereby agree that this Plea Agreement shall not be binding upon the parties until it has been executed by all of the signatories hereto.

13. The parties hereby agree that this Plea Agreement shall not be amended except in writing signed by all parties hereto.

14. The defendant has been advised by counsel in connection with the execution and delivery of this Plea Agreement. Legal counsel to the defendant are W. Townes Jones, IV, and C. Rauch Wise, who are persons currently licensed to practice as attorneys in the State of South Carolina. Counsel for the defendant join in the execution and delivery of this Plea Agreement and certify that they have advised the defendant regarding this Plea Agreement and that counsel believes that the defendant is competent and is voluntarily and knowingly entering into this Plea Agreement with a full understanding of the effect of the Plea Agreement.

1-23-09

Date

Dustin Tiller

Dustin Allen Tiller
Defendant

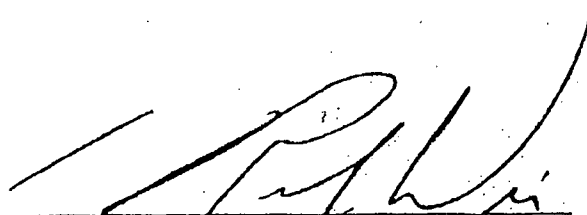
1-23-09

Date

W. Townes Jones, IV
W. Townes Jones, IV
Attorney for Defendant

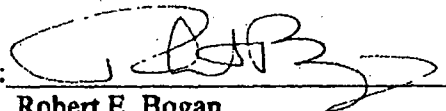
[SIGNATURE BLOCK CONTINUED ON NEXT PAGE]

1-23-2009
Date


C. Rauch Wise
Attorney for Defendant

Henry McMaster
Attorney General of South Carolina

1/23/2009
Date

By: 
Robert E. Bogan
Assistant Deputy Attorney General