

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Letitia H. Verdin, Circuit Court Judge

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S.C. Supreme Court

MARLIN HUTLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000104

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT	1
TRIAL EXHIBITS	74
APPLICATION FOR POST-CONVICTION RELIEF	80
RETURN	100
AMENDED APPLICATION FOR POST- CONVICTION RELIEF	105
POST-CONVICTION RELIEF HEARING TRANSCRIPT	123
POST-CONVICTION RELIEF HEARING EXHIBITS.....	160
ORDER OF DISMISSAL	166
ARREST WARRANTS.....	175
INDICTMENTS	177
SENTENCING SHEETS	181

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2010GS2302817,
	)	2010GS2302819
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Marlin Hutley,	)	
	)	
Defendant.	)	
	)	

October 10, 2011
Greenville, South Carolina

B E F O R E:

HONORABLE ROBIN B. STILWELL, Judge.

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

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Reported by: Mary DiGirolamo
Circuit Court Reporter

Transcribed by: Teresa B. Johnson
Circuit Court Reporter

I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Motions	4			
Suppression Hearing	9			
Jeffrey Hines				
by Ms. McCall	9			
by Mr. Robinson		17		
Marlin Rutley				
by Mr. Robinson	31			
by Ms. McCall		38		
Argument	39			
Ruling of the Court	42			
Jeffrey Hines				
by Ms. McCall	44			
by Mr. Robinson		51		
Steven Babinsky				
by Ms. McCall	58			
by Mr. Robinson		61		
Verdict of the Court	65			
Sentencing of the Court	66			
Certificate of Reporter	73			

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
------------	--------------------	-----------	-----------

PLAINTIFF EXHIBITS

S-1	Ticket	4	
S-2	Photo	4	
S-3	Map	4	
S-4	Warning record	4	
S-5	Drugs - Crack	4	49
S-6	Drugs - Crack	4	49
S-7	Drugs - Crack	4	49
S-8	Drugs - Cocaine	4	49
S-9	Lab Report	4	49

DEFENSE EXHIBITS

D-1	QVD	4	
D-2	Dispatch report	24	24
D-3	Temporary law enforcement commitment	55	55

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, State's Exhibits 1 through 9 are marked for identification purposes.)

(WHEREUPON, Defendant's Exhibit 1 is marked for identification purposes.)

THE COURT: All right. Take your seats, Ladies and Gentlemen. Good morning.

Okay. Let's call to bar the case of the State versus Marvin Hutley, uh, Indictment number 2010-2817 and 2010-2819. And I will defer to the State.

MS. McCALL: Uh, actually, it's a motion for suppression.

THE COURT: Okay.

MS. McCALL: I'm going to give you a brief background of the case and why the evidence shouldn't be suppressed in the, uh, suppression hearing and the State should be able to go forward. Officer Hines initiated stop, a traffic stop on the defendant and issued a ticket to the defendant for giving a false name to the police.

I'm handing up what has been marked as, uh, State Exhibit 1, a certified conviction of when the defendant gave false name to police. The

1 defendant pled guilty to giving this false name
2 to police on March 4th, 2010 which was related
3 to the traffic stop at issue here. The traffic
4 stop and the defendant giving false name is
5 what led to the arrest of the defendant and the
6 search incident to arrest which led to the drug
7 charges that are before you now.

8 The State would argue that the defendant
9 waived his right to be heard on
10 constitutionality of the stop by pleading
11 guilty to false name. Uh, State v. Snowden,
12 and I've got a copy of that if you want that.

13 THE COURT: Okay. Thank you.

14 MS. McCALL: Uh, the State would argue
15 that the case facts is analogous to State v.
16 Snowden where the defendant gave a Breach of
17 Peace plea. The magistrate court precluded him
18 from contesting legality of his arrest. The
19 defendant waived constitutionality and
20 collateral estoppel was established. The State
21 would argue that the defendant already had a
22 chance to argue the constitutionality of the
23 stop and failed to do so and does not get a
24 second chance to argue.

25 THE COURT: Okay. All right. Mr.

1 Robinson, do you need to be heard, sir?

2 MR. ROBINSON: Yeah. May it please the
3 Court.

4 THE COURT: Sure.

5 MR. ROBINSON: Your Honor, uh, we're
6 talking apples and oranges here. Uh, we're
7 arguing this suppression hearing regarding the
8 stop itself which occurred in, uh, January of
9 2010, about two and a half months before the
10 defendant pled to a, uh, to a, uh, ticket that
11 was given. The ticket wasn't given before or
12 during the stop. It wasn't before the stop.
13 We're attacking in the suppression hearing the
14 actual stop itself. This is long after, uh,
15 the stop was even done.

16 So I think that if this had been done, he
17 had been, uh, -- pled before that time, it
18 would be one thing. But this is a month and a
19 half afterwards. This is -- we're just arguing
20 here just about the illegality of the stop. So
21 it's kind of after the fact arguing this. We
22 think that the motion should be rejected.

23 THE COURT: Okay. In, uh, reviewing the
24 holding in State versus Snowden, it does appear
25 that the facts of those case -- of that case

1 are analogous to the case at bar. Uh, there
2 were two separate and distinct, uh, charges
3 that issued from the arrest. One was handled
4 in a summary court, wherein the defendant pled
5 guilty to the arrest. And then, subsequently,
6 at his trial for a -- in circuit court for the
7 other charge, tried to suppress that evidence
8 as the fruit of a search from an illegal arrest
9 made without probable cause. I think this is
10 an instance which the facts are analogous
11 because it would appear that the false name to
12 police was a charge that was issued and
13 emanated from the same set of facts and that he
14 came before the court in summary court and pled
15 guilty, uh, and waived any right to the, uh, to
16 the arrest and now in circuit court attempts to
17 raise that very same issue and suppress
18 evidence that was found incident to an illegal
19 arrest. And I think that State versus Snowden
20 is clear in that he waived that in the initial,
21 the initial, uh, proceeding before the court.

22 Now, I'll also say that, uh, in, in giving
23 a false name to police, not only did he waive
24 that in the first offense but also having given
25 a false name to the police, uh, upon an

1 inquiry, that would give rise to probable cause
2 for a search in and of itself, notwithstanding
3 the fact that there was a plea in summary
4 court. Therefore, on those two sustaining
5 grounds, I respectfully deny the motion to
6 suppress.

7 MR. ROBINSON: Okay.

8 THE COURT: All right. Anything else
9 before we get started?

10 MR. ROBINSON: Your Honor, so we're not
11 going to have the suppression hearing?

12 THE COURT: Oh, well, we can have a
13 suppression hearing. I thought that y'all were
14 just giving me a legal argument with respect to
15 the suppression hearing. But if you want to
16 call witnesses to the stand, I'm comfortable
17 with that too.

18 MR. ROBINSON: Well, the reason is, the
19 suppression hearing, the Court's ruling, if I'm
20 understanding correctly is that we can't have a
21 suppression hearing?

22 THE COURT: Huh-uh. I'm not. I thought
23 y'all were making an argument based on
24 acknowledged facts, stipulated facts. The way
25 that y'all had begun the hearing, I thought

1 that's what you had done. But it sounds to me
2 like you haven't. So let's put the witnesses
3 on the stand. Okay. What I'm doing is I'm
4 withholding that, I'm withholding that
5 determination until I hear from witnesses.

6 **MR. ROBINSON:** Thank you, Your Honor.

7 **THE COURT:** Okay. Good enough.

8 **MS. McCALL:** Okay. The State would call
9 Officer Hines to the stand.

10 **THE CLERK:** Sir, please place your left
11 hand on the Bible and raise your right hand.

12 **JEFFREY SCOTT HINES**

13 having first been sworn, testifies as follows:

14 **THE CLERK:** Thank you. Please be seated.
15 Please state your full name for the record.

16 **THE WITNESS:** Jeffrey Scott Hines.

17 **DIRECT EXAMINATION**

18 **BY MS. McCALL:**

19 **Q** Officer Hines, where are you employed?

20 **A** Greenville City Police Department.

21 **Q** And how long have you been employed there?

22 **A** Four years.

23 **Q** And uh, what is your current position?

24 **A** Uniform patrol.

25 **Q** Were you working on January 25th, 2010?

1 A Yes, ma'am.

2 Q And can you tell us what you were doing
3 that evening?

4 A Yes, ma'am. I was, uh, stationary at a
5 stop sign at West Washington and, uh, West Washington
6 Street.

7 Q And that would be in Greenville County?

8 A Yes, ma'am. It is.

9 Q Uh, and why were you watching the stop
10 sign?

11 A Uh, we have a lot of problems with people
12 running the stop sign there. It comes from a lot of,
13 uh, a lot of traffic moves through from, uh,
14 different angles. So we've been having a lot
15 problems, which we still have problems with people
16 running that stop sign.

17 Q And you know, when you are watching the
18 stop sign, where do you have to sit to be able to
19 monitor the stop sign?

20 A I actually sit, uh, -- there's the train
21 depot right there on West Washington Street. I back
22 my patrol car up there on the hill on West Washington
23 Street at the train depot there, uh, so I'll be out
24 of traffic's way and I'll have a very clear view of
25 the stop signs and the stop marks.

1 Q Uh, now did you come in contact with this
2 defendant on that -- on the evening of January 25th,
3 2010?

4 A Yes, ma'am.

5 Q Could you please tell us how you gained
6 contact?

7 A Yes, ma'am. I, uh, conducted a traffic
8 stop on the defendant due to him not coming to a stop
9 at the stop sign located at the intersection at West
10 Washington and Washington Street Extension.

11 Q Okay. Were you able to see who was driving
12 the vehicle when it didn't come to a complete stop?

13 A No, ma'am. Where I'm sitting at, it's on
14 top of the hill there. There's no way I can see in
15 the vehicle in the day time, especially not at
16 nighttime.

17 Q Did you initiate a traffic stop, a traffic
18 stop once you saw, uh, a vehicle roll by the stop
19 sign?

20 A Yes, ma'am. I had to pull out. And then I
21 issued -- I conducted a traffic stop.

22 Q And when did you, uh, pull out behind the
23 defendant and when did you pull the defendant over?

24 A Uh, I pulled the defendant over. I
25 actually initiated my blue lights a couple of blocks

1 from Hampton Avenue on, uh, Mulberry Street. The
2 defendant then kept going straight and made a right
3 hand turn onto Hampton Avenue and then pulled into a
4 driveway on the left.

5 Q Okay. Uh, uh, describe, uh, tell us what
6 happened during this traffic stop, when you initiated
7 the traffic stop.

8 A Yes, ma'am. I initiated the traffic stop.
9 And, uh, I exited my patrol vehicle. I went up to
10 the driver of the black Forerunner there. And I
11 asked him for his license, insurance, registration,
12 which is a common practice any time that I pull
13 anyone over. He told me that he didn't have a driving
14 license. And, uh, I asked him his name. He then
15 told me his name was Michael Cooper.

16 I was able to see the defendant. I
17 recognized him from a prior incident. I knew that
18 his name was not Michael Cooper. It didn't ring a
19 bell. I did not know his name. I then returned to
20 my vehicle and, uh, started going through my incident
21 reports because I took an incident report on the
22 defendant, uh, prior to that. After I went through
23 there, I noticed that, uh, his name was actually, uh,
24 Marlin Hutley, which, uh, -- so I then called for
25 assistance. Oh, excuse me.

1 Q Uh, with the name Michael Cooper, did you
2 run that name?

3 A Yes, ma'am. I did.

4 Q Okay. And what came back?

5 A The name that came back and it actually had
6 a C driving license number that, uh, came back.

7 Q And that, uh, what does that mean when you
8 say a C driver's license?

9 A Uh, when the DMV, say, they issue a C in
10 front of the license number if someone has used that
11 name before and they do not have a driving license.
12 That way, they will keep a track if they are
13 suspended or for DUI or whatever. So that way, it
14 helps law enforcement and DMV keep track of people
15 who do not have valid driver's licenses.

16 Q So after you were able to determine what
17 you thought was the defendant's name, what did you do
18 at that time?

19 A Uh, once I determined that he was giving me
20 a false name, I called for assistance.

21 Q Okay. Uh, and why did you call for
22 assistance at that time?

23 A I called for assistance at that time
24 because I knew I was going to be placing him under
25 arrest.

1 Q And what did you do once your assistance
2 arrived?

3 A Asked -- reapproached the vehicle, asked
4 him to step out of the car, and then placed him under
5 arrest for false name to police and no state DL.

6 Q Okay. And, uh, did you issue any sort of
7 warning ticket?

8 A Yes, ma'am. I issued a warning for the
9 stop sign violation.

10 Q How do you document the fact that you gave
11 someone a warning?

12 A Uh, I write it down on a, uh, blue ticket.
13 I keep, uh, -- there's a blue and a white copy. I,
14 uh, keep the white copy and give the blue copy to the
15 defendant. And then it goes upstairs. We turn it
16 in. It goes upstairs to Crime Analysis. Then they
17 electronically file it and dispose of the hard copy.

18 Q Okay. I'm going to show you what's been
19 marked as State's Exhibit 4. Would you take a look
20 at this. What is this document?

21 A Uh, this is the document that I received
22 from, uh, Records, Crime Analysis of, uh, the warning
23 ticket that I issued.

24 Q What's the date listed on that?

25 A It's, uh, -- the date is January 25th,

1 2010.

2 Q And the location?

3 A West Washington Street.

4 Q And what does that viol-- is that --
5 violation coding on there, what does that stand for?

6 A Uh, violation code 42, uh, is disregarding
7 a stop sign.

8 Q And how do you recognize that document?

9 A Uh, I actually retrieved this document from
10 Crime Analysis records.

11 MS. McCALL: Uh, I mean, I would move to
12 have that exhibit admitted. But, uh, that's all
13 we have as far as suppression.

14 THE COURT: All right. Is it marked
15 already? Any objection to this, sir?

16 MR. ROBINSON: I have an objections. If I
17 could see it, Your Honor. (Pause.)

18 Your Honor, the objection that I have is it
19 doesn't say a ticket versus that. It's not like
20 a regular warning ticket that you would get,
21 that someone would receive. What it is is an
22 administrative report of some sort. Uh, and I
23 don't -- my objection is it's not -- it really
24 does not reflect a warning ticket. It doesn't
25 say anything about a warning ticket on there.

1 And looking at on the top of the, uh, it looks
2 like a faxed copy. The top of it, I believe,
3 that's from some other date. And it also has
4 page 2. We don't know whether there's a page 1
5 or 3 or anything of that nature.

6 THE COURT: It's just simply a record of a
7 warning ticket that was issued. Is that
8 correct?

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: Okay. And your testimony was
11 that you issued a warning ticket?

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: What was that warning ticket
14 for?

15 THE WITNESS: For disregarding the stop
16 sign at West Washington Street and --

17 THE COURT: Okay. All right. Inasmuch as
18 this document doesn't really have any
19 information that is instructive to the court,
20 that is, it has a violation code of 42 and it
21 seems to be administrative in nature, I think
22 it's probably cumulative and not relevant. I
23 take notice of the fact that he has testified
24 under oath that he issued a warning to the
25 officer. Therefore, I'm not going to allow it

1 into evidence. I don't really think it's
2 instructive to anybody's analysis. Anything
3 further?

4 MS. McCALL: That's all the questions I
5 have.

6 THE COURT: Mr. Robinson?

7 MR. ROBINSON: May it please the Court,
8 Your Honor?

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. ROBINSON:

12 Q Officer Hines, uh, you said that you had
13 experience with the defendant previously, is that
14 correct?

15 A Yes, sir.

16 Q And that was like in some other court, is
17 that right?

18 A Yes, sir.

19 Q Okay. And you testified on the record a
20 moment ago that the reason for the stop was not, uh,
21 giving false information to police. That happened
22 after the stop, isn't that correct?

23 A The stop was for a stop sign violation.

24 Q Right. So it's fair to say that the stop
25 itself was not for giving false information to

1 police, correct?

2 A The stop was for a stop sign violation.

3 Q The question is yes or no. The stop was
4 not for giving false information to police, correct?

5 A That's correct.

6 Q Uh, now in terms of where you were sitting,
7 you testified that you were sitting on a hill looking
8 down. What time of night was this or what time of
9 day was this?

10 A It was, uh, approximately -- it's on the
11 incident report there. It's 10:00-something, I
12 believe.

13 Q Was it nighttime?

14 A Yes, sir. It was.

15 Q Okay. And, uh, how far away from this stop
16 sign were you that we're talking about? How far away
17 were you?

18 A Uh, approximately, -- I was right above it
19 there. I mean, it's down, so I'm backed up above it.
20 Probably 20 feet. And it's below me. So just backed
21 up probably a car length from me. Maybe two car
22 lengths maybe.

23 Q When did you start duty that night for, uh,
24 for your shift?

25 A 6:30 p.m.

1 Q About 6:30?

2 A Yes, sir.

3 Q So you had been on your shift for a few
4 hours at that time, is that correct?

5 A Correct.

6 Q And during that period of time, how many
7 tickets did you give out for going through the stop
8 sign or not -- excuse me, not stopping at a stop
9 sign. How many tickets did you give out?

10 A I don't recall. It was in 2010.

11 Q Last January, okay. Uh, would it be fair
12 to say that you didn't given any tickets out other
13 than to Mr. Hutley? Would that be fair to say?

14 A I wouldn't say that. I was sitting at the
15 stop sign, watching the stop sign. I worked the area
16 there for approximately two years. It was common
17 practice for me to write tickets and warning
18 citations through that stop sign on a regular basis.

19 Q Okay. Now in looking at the vehicle that
20 Mr. Hutley was driving, the tag was fine, correct?
21 Nothing wrong with the tag?

22 A Uh, after I got behind him and conducted
23 the traffic stop, the tag was fine. I could not see
24 the tag from where I was sitting. I just observed
25 him roll through the stop sign ---

1 Q Okay.

2 A --- without stopping.

3 Q So your testimony is that after you
4 actually conducted the traffic stop, you observed --
5 you found that the tag was fine?

6 A Dispatch did not -- dispatch did not advise
7 me of anything wrong with the tag. We called the tag
8 number in. They usually advise us if something is
9 wrong with the tag.

10 Q So nothing wrong with the tag. Now, the
11 lights -- were there any lights on in the car?

12 A I do not recall. I stopped him for the
13 stop sign violation.

14 Q Would it be fair to say that if you had,
15 uh, -- if there were lights that were either damaged
16 or missing, uh, in this Forerunner, this vehicle,
17 that you would have given a ticket for that?

18 A For the lights that -- if it was damaged?

19 Q If the lights were out or damaged.

20 A Would I have given a ticket?

21 Q Would you normally -- would you normally
22 give a ticket for that?

23 A I would -- it depends if I'd give a ticket.
24 If I give a warning ticket for -- first of all, I
25 don't write tickets for lights being out. I usually

1 write warning tickets for that because that's, uh,
2 common for anybody to have a light out. I don't
3 think it's anything that's going to hurt anyone else.
4 I just normally give them a warning for it. So, uh,
5 when I pulled him over for running the stop sign, he
6 got a warning ticket for the stop sign. I do not
7 recall if any lights were out. But no, I would not
8 have wrote anything for the lights being out due to
9 him already getting a warning for the stop sign
10 violation and for being arrested for false name. I
11 would not have given a citation.

12 Q So your testimony is -- so you're not
13 saying you would have given ticket for a light being
14 out or some sort of damage to the vehicle, correct,
15 is that what you're saying? You wouldn't have
16 normally given a ticket, right?

17 A Normally, I would not issue a ticket for
18 it. Unless that's the violation that I pulled him
19 over for, I would not give a ticket for it.

20 Q And you did not do that in this case,
21 correct?

22 A I gave him a citation for, uh, -- a warning
23 citation for disregarding the stop sign.

24 Q But you didn't give him one for lights out
25 or some sort of common thing, right?

1 A No.

2 Q Uh, now you talk about this traffic stop
3 violation that you gave him immediately. Now, you
4 didn't give that -- you didn't stop him for a period
5 of a couple, did you?

6 A That's correct. I had to catch up to him
7 from where I was sitting at. I have to make sure
8 that the intersection there is clear. And also
9 there's speed bumps that go over on Mulberry Street.
10 So without damaging my car, I had to go over the
11 speed bump there before I could initiate my traffic
12 stop. And at that point, I call out my traffic stop
13 before I issue, before I conduct the traffic stop. I
14 call out to dispatch for my safety to let them know
15 where I'm at, what vehicle and then I initiate my
16 emergency equipment to pull them over.

17 Q Do you have your report up there? Do you
18 have your file up there?

19 A Uh, no, sir. I do not.

20 Q Uh, going back to the traffic stop, did you
21 see -- other than the -- other than this, uh, going
22 through the stop sign that we're talking about and
23 not -- the ticket is for not coming to a complete
24 stop, correct?

25 A Disregarding a stop sign.

1 Q Right. Okay. Other than that, there was
2 nothing else concerning the stop that gave you any
3 sort of reasonable suspicion to stop him, was there?
4 You didn't see --

5 A I --

6 Q You didn't see --

7 A I stopped him for disregarding a stop sign.
8 That's the reason that I stopped him, for
9 disregarding a stop sign.

10 Q And it's your testimony that you gave him a
11 ticket that night, is that right?

12 A I gave him a citation, a warning citation
13 that night and then also, uh, the other citations
14 that I wrote that night.

15 MR. ROBINSON: Beg the Court's indulgence.

16 THE COURT: Sure.

17 BY MR. ROBINSON:

18 Q Where is your copy of this ticket? Do you
19 have it here? Did you keep it in your file?

20 A As I explained earlier, the copy of the
21 ticket goes into a metal box which gets picked up by
22 Crime Analysis. It goes to Crime Analysis. Crime
23 Analysis then enters the copy of the ticket into a
24 database and then destroys the hard copies due to
25 storage. So they store it in the database.

1 Q And then you called for backup at some
2 point, correct?

3 A After he gave the false name.

4 Q False name. After the stop, is that right?

5 A Yes, sir.

6 MR. ROBINSON: All right. Your Honor, I
7 have an exhibit here. It was provided to me by
8 the State. Uh, it's the incident recall. It's
9 the dispatch report as far as time and so forth.
10 They have stipulated to it as far as
11 authenticity and so forth. I would like to have
12 it put in as Defendant's Exhibit number 1 and
13 then ask him some questions as far as time.

14 THE COURT: All right. Any objection?

15 MR. ROBINSON: Defendant's Exhibit 2.

16 THE COURT: Okay. All right. If you will
17 mark it, without objection, it will be entered
18 into evidence.

19 (WHEREUPON, Defendant's Exhibit 2 is marked for
20 identification and admitted into the record.)

21 BY MR. ROBINSON:

22 Q Officer Hines, have you seen, uh, -- are
23 you familiar with dispatch in your office, the
24 dispatchers that keep track of all the time that you
25 call in and so forth?

1 A Am I familiar with their job duties or am I
2 familiar with --

3 Q No, you understand they do reports and
4 stuff like that, correct? They take down times ---

5 A Yes.

6 Q --- and such of calls, is that correct?

7 A Yes.

8 Q Okay. What we just did a second ago, this
9 is an Exhibit that's been agreed to by the State,
10 stipulated to. Uh, this is an Exhibit, Defendant's
11 number 2, which is the dispatch report for that
12 night, which is, uh, January 25th, 2010. You -- I'm
13 going to show this to you and make sure you
14 understand it. I'm going to ask you some questions
15 about this. It is a dispatch report. Have you seen
16 a dispatch report before?

17 A I have seen dispatch reports before. That
18 looks like a dispatch report.

19 Q Does that look like a dispatch report to
20 you?

21 A Yes, sir.

22 Q I want to, uh, ask you -- this goes to your
23 testimony a few moments ago as far as when you made
24 calls in terms of when you started calling this in
25 and so forth. Now the time that -- and this is

1 defense Exhibit number 2 -- the time that you
2 actually made the call in to dispatch, you don't make
3 any mention in there of any stop sign violation, do
4 you?

5 A I do say stop sign violation in the call.
6 It's, uh, actually recorded. When I call the traffic
7 stop, if I recall, I say copy 56 which means traffic
8 stop. Then I stated for stop sign violation, uh, on
9 the radio, if I recall correctly.

10 Q It doesn't reflect that on there, does it?

11 A They don't take notes as we're going
12 through unless it is a critical incident. Then
13 they'll put notes in. Like a chase, for example.
14 They don't just take notes. They just, uh, -- they
15 just click when you do the traffic stop and then the
16 time appear. So they don't take notes of it.

17 Q As far as when you called this in though,
18 when you called it in, did you call for backup at the
19 same time you called this in?

20 A I did not.

21 Q Did not?

22 A No, sir.

23 Q Does it reflect anything on what's marked
24 as Defense Exhibit 2, anything regarding backup,
25 calling for backup?

1 A (Reviewing.) I don't see where it says I
2 asked for backup on here.

3 Q But you testified a few moments ago that
4 you did call for backup, isn't that correct?

5 A Uh, yes, correct.

6 Q And it's not in report, correct?

7 A It's on the -- again, it's on the radio.
8 When I called, it should be on the radio. It's
9 recorded. The actual transmission is recorded, so
10 it would be on the radio.

11 Q And does it say on that report that as far
12 as the vehicle goes, no occupants?

13 A Does it state no occupants?

14 Q Yeah.

15 A Uh, if you would point that out to me, I
16 don't see it. And if it does, I don't know why it
17 would. Unknown occupants maybe.

18 Q I'll withdraw that question. And you say
19 that there was an audio that was done, is that
20 correct?

21 A Correct.

22 Q I'm going to, uh, -- you know your voice
23 and so forth. We have an Exhibit, which is
24 Defendant's Exhibit number 1, that I want to play for
25 you. What you do is you call into dispatch and it's

1 all recorded, isn't that correct?

2 A Correct.

3 Q If there's anything that happened, the date
4 and time are on that, correct?

5 A Uh, I believe so, yes, sir.

6 Q Okay. I'm going to play this. If you
7 recognize your voice for the court.

8 (WHEREUPON, Defendant's Exhibit 1 is played.)

9 BY MR. ROBINSON:

10 Q Is that the entirety, officer, of the call
11 you made?

12 A Would you repeat the question?

13 Q So that's your voice on there and that's
14 the entirety of the call, correct?

15 A That -- that is my voice on the tape. So
16 you're asking is that the whole --

17 Q That reflects the stop?

18 A That does reflect the stop, yes, sir.

19 Q Okay. Thank you. There may be more to
20 this tape.

21 (WHEREUPON, the attorneys confer.)

22 MR. ROBINSON: That's all I have. Thank
23 you, Your Honor.

24 THE COURT: Any followup questions?

25 MS. MCCALL: No, sir.

Remarks

29

1 THE COURT: Okay. Officer, let me ask you
2 one question. Where'd you find the drugs?

3 THE WITNESS: Sir?

4 THE COURT: Where did you find the drugs?

5 THE WITNESS: The drugs were found after
6 the arrest inside his sock inside detention,
7 inside the sally port, right before you go
8 inside.

9 THE COURT: Okay. So it was found
10 incident to arrest at the detention center in
11 his sock, which was on his person?

12 THE WITNESS: Correct.

13 THE COURT: All right. Good enough.
14 Thank you very much.

15 THE WITNESS: Yes, sir.

16 (WHEREUPON, the witness exits the witness
17 stand.)

18 MS. McCALL: I move that, uh, the stop was
19 constitutional and, therefore, search incident
20 to arrest (inaudible).

21 THE COURT: Okay. All right.

22 MR. ROBINSON: Your Honor?

23 THE COURT: Yes, sir.

24 MR. ROBINSON: He would like to --
25 regarding the pre-trial motion, he would like to

1 testify in regard to that.

2 THE COURT: Okay. Sure. You can call --
3 you may call him to stand.

4 MR. ROBINSON: I would call Mr. Marlin
5 Hutley to the stand.

6 THE CLERK: Mr. Hutley, please place your
7 left hand on the Bible and raise your right
8 hand.

9 MARLIN HUTLEY

10 having first been sworn, testifies as follows:

11 THE CLERK: Thank you. Please be seated.

12 THE COURT: Mr. Robinson, before you get
13 started, I'm going to ask him -- just advise him
14 of his rights. Okay.

15 Mr. Hutley, you recognize, sir, that under
16 the Constitution, you have the right to remain
17 silent?

18 MR. HUTLEY: Yes, sir.

19 THE COURT: And you recognize that
20 incident to that, you have a right against self-
21 incrimination, which means that you don't have
22 to say or do or prove anything. You understand
23 that?

24 MR. HUTLEY: Yes, sir.

25 THE COURT: And you understand that if you

1 do elect to waive that right and testify, then
2 you are subject to cross-examination. You
3 understand that?

4 MR. HUTLEY: Yes, sir.

5 THE COURT: Okay. Uh, and you are fully
6 aware and advised of that right to remain silent
7 and recognize you don't have to say anything in
8 this courtroom. Nothing to me and nothing to
9 anybody else. You understand?

10 MR. HUTLEY: Yes, sir.

11 THE COURT: You want to waive it and
12 present testimony?

13 MR. HUTLEY: Yes, sir.

14 THE COURT: All right. Good enough.
15 Go ahead, Mr. Robinson.

16 MR. ROBINSON: May it please the Court.

17 DIRECT EXAMINATION

18 BY MR. ROBINSON:

19 Q Mr. Hutley, you obviously are -- are you a
20 resident of Greenville?

21 A Yes, sir.

22 Q Okay. How old are you?

23 A 39.

24 Q How far did you go in school?

25 A 11th grade.

1 Q Mr. Hutley, you acknowledge that you do
2 have a criminal record, correct?

3 A Yes, sir.

4 Q No argument on that?

5 A No, sir.

6 Q Uh, I believe they did mention at one point
7 that you had pled guilty to, uh, a false name or
8 something like that, isn't that correct?

9 A Yes, sir.

10 Q You acknowledge all that, correct?

11 A Yes, sir.

12 Q Let's take -- let me take you back to that
13 night of January 25th of 2010. Uh, tell me about
14 this stop.

15 A Yes.

16 Q Why don't you just tell the judge how you
17 approached the intersection. This is at Mulberry
18 Street, is that correct?

19 A This was at Washington Street.

20 Q Okay. Why don't you tell the judge what
21 happened.

22 A Uh, I came to a stop at Washington Street
23 and Washington Street Extension. I was crossing
24 Washington Street to go to Mulberry Street. I see
25 the officer popped out behind me with no headlights

1 on. How I know is because the reflection from the
2 light, the street light shined off of his car. I
3 kept pursuing, going up to Mulberry and Hampton
4 Avenue. The whole time, he's behind me tailgating me
5 with no lights on. I get to the stop sign on Mulberry
6 and Hampton Avenue. I make a right. I pull into the
7 driveway of a friend of mine's and that's when he put
8 the blue lights on me.

9 Q Okay. So when you came up to the, went up
10 to stop sign, did you not stop completely?

11 A No, I stopped completely.

12 Q You stopped completely?

13 A Yes, sir.

14 Q When the officer says that you didn't stop
15 completely, that's false?

16 A Yes, sir.

17 Q Okay. Now, did you get a ticket, actually a
18 warning ticket, either yellow or blue, from this
19 officer that you had gone through or did not stop at
20 the stop sign?

21 A No, sir.

22 Q Okay. You never got one?

23 A No.

24 Q Uh, this vehicle that we're talking about,
25 did it belong to you?

1 A No, it was a friend of mine.

2 Q A friend of yours? Okay. Were the lights
3 working?

4 A Yes, sir.

5 Q Okay. Was the tag valid?

6 A Yes, sir.

7 Q Okay. Uh, did the officer stop you
8 immediately after you stopped at the stop sign?

9 A No, I continued -- like I said, I continued
10 from that stop sign, went about three or four blocks
11 up to another stop sign. No blue lights. No kind of
12 signal to let me know -- notify me to pull over.

13 Like I said, the next stop sign, I made a right turn.
14 After I made the right turn, I pulled into the
15 driveway on the lefthand side, two houses down from
16 the turn. That's when he put the blue lights on me.

17 Q Did the officer advise you that he was
18 stopping you for not coming to a complete stop at the
19 stop sign?

20 A Once he approached the vehicle, he had not
21 told me that. Like he said earlier, he said that the
22 came back and he said that he was calling for backup.

23 Q Okay. Did he call for backup when he come
24 to your car?

25 A When he left -- when he approached me, he

1 said he stopped me for a stop sign violation. That's
2 when he made the call.

3 Q And you knew Officer Hines from a previous
4 incident, is that correct?

5 A Yes, sir.

6 Q What was that time about?

7 A He had arrested me for Loitering to Engage
8 in Drug Activity, Interfering with Police Officer and
9 Possession of Marijuana. I went to magistrate court
10 and, I think, two of the charges got expunged. One
11 of the charges got expunged. At that time, as me
12 leaving the courthouse, leaving the courtroom
13 building, courtroom, he came out following behind me
14 and approached me and asked me -- and told me, he
15 said you one of the first person who beat my cases.
16 I asked him why he telling me that. He told me about
17 the case. I said if he feel as though something is
18 wrong, he should address it with the judge. After
19 that, I asked him was he through. So I continued to
20 walk on.

21 Q Okay. And this time in January 25th, 2010,
22 is that the next time that you saw this officer?

23 A Yes, sir.

24 Q Would you acknowledge giving the officer a
25 False name?

1 A No, I did not, sir.

2 Q But he knew who you were, is that correct?

3 A Yes, sir, from the previous arrest. The
4 previous arrest.

5 Q Now, this road that we're talking about
6 with the stop sign, is there like a light, like a
7 red, green, yellow light?

8 A There's no light. It's just a stop sign.

9 Q How many lanes are you talking about going
10 across?

11 A It's a two-way lane.

12 Q Two? So it's two lanes. One going one
13 way, one going the other, right?

14 A Yes, sir.

15 Q Is there a traffic block in between the
16 two?

17 A That's on the other side of Washington
18 Street. It's like when you get on the other side,
19 you have some like, some speed bumps on the other
20 side of Washington Street.

21 Q And when did the officer turn the blue
22 lights on?

23 A When I pulled into the driveway.

24 Q So it wasn't when you went through the stop
25 sign, you approached the stop sign and went through

1 the intersection? That was not until --

2 A No, the stop sign he said I ran, I went
3 pass, he did not put the blue lights on then. I got
4 to another stop sign. He didn't put them on then.
5 Like I said, he put them on when I pulled into the
6 driveway. After the second stop sign, he put them
7 on.

8 Q And this area that you were in that night
9 -- this is what time of night?

10 A After 9:30.

11 Q After 9:30. Is this a high crime area that
12 we're talking about?

13 A Yes, sir.

14 Q High crime area. And you were in a
15 Forerunner, is that right?

16 A Yes, sir.

17 Q A black Forerunner?

18 A Yes, sir.

19 Q And did you have anyone else in the car
20 with you?

21 A No, sir.

22 MR. ROBINSON: One second, Your Honor.

23 (Pause.)

24 That's all I have for this witness. Thank
25 you.

1 THE COURT: Any questions?

2 MS. McCALL: Just a couple of questions.

3 CROSS-EXAMINATION

4 BY MS. McCALL:

5 Q Isn't it true that you weren't even allowed
6 to drive a car night?

7 A Yes, ma'am.

8 Q And you said you admitted you gave the
9 officer a false name when he pulled you over?

10 A I did not.

11 Q You admitted that -- you saying you did not
12 give him --

13 A I misunderstood what he said.

14 Q Well, isn't it true that you pled guilty to
15 giving false name to police?

16 A Yes, ma'am.

17 Q So you want us to believe that everything
18 that you just said is the truth when you pled guilty
19 to giving a false name?

20 A The reason why I gave him the false name is
21 because at that time, I was going through so much. I
22 was trying to find a job. I had just got a job. So
23 I wanted to pay the fines and --

24 MS. McCALL: That's all that -- I don't
25 have any further questions.

Argument

39

1 MR. ROBINSON: I have no redirect, Your
2 Honor.

3 THE COURT: Okay. Thank you, Mr. Hutley.
4 You may step down, sir.

5 All right. Any additional arguments? Any
6 arguments regarding the evidence and the
7 suppression matter?

8 MS. McCALL: The State would argue that
9 the stop was constitutional and that the
10 evidence should be -- should not be suppressed.

11 THE COURT: Okay. Good enough.

12 All right. Mr. Robinson, anything you need
13 to put on the record, sir?

14 MR. ROBINSON: Yeah. May it please the
15 Court. Your Honor, we've put on the record two
16 exhibits, the actual audio of the stop as well
17 as the dispatch report. Your Honor, at this
18 point, this motion has everything to do with
19 whether or not the stop was either illegal or
20 legal. We believe it was a pretextual stop,
21 that he didn't give him anything until after he
22 had gone over two or three blocks as far as, uh,
23 giving a ticket.

24 As the Court's aware, in the exhibit that
25 was not entered, originally, there's no ticket

1 that was put into evidence that he gave him a
2 warning ticket or a citation that he stopped him
3 or he pulled him over for a stop sign violation.
4 As the Court's aware, there's three difference
5 reasonings of how officers can stop you. This
6 would fall under the, uh, — not reasonable
7 suspicion, but a traffic violation obviously.

8 Your Honor, there is a question as far as
9 the, uh, as far as whether or not a ticket ever
10 was given in this case. We don't have any
11 tickets in evidence in this matter. Without the
12 ticket, all they have is a stop that was not
13 done for any other reason. He may have known
14 this person from the past or something. Uh,
15 but, uh, he acknowledges that there was no
16 problem with the lights in the car. The tag was
17 valid. When he stopped him, he stopped him --
18 it was a pretextual, unconstitutional stop. He
19 shouldn't have stopped him.

20 Going back to the Snowden case, which is
21 the case that the prosecutor mentioned in the
22 beginning, the officer testified on the stand
23 that, uh, this false information, uh, this plea
24 that he did in magistrate, municipal court, that
25 was not -- he did not do that at that time. It

1 was one and a half months later. Mr. Hutley
2 testified as far as why he did that plea. A lot
3 of things going on, but he pled to day. And we
4 acknowledge that.

5 But Your Honor, we still believe that the
6 stop was illegal. There was no ticket given.
7 The officer stopped him because he had, uh,
8 wanted to stop him. Any reason. He found a
9 reason. He pulled him over. He started talking
10 to him. He gave false information. That was
11 after the stop, not before the stop. So coming
12 up to the stop, as far as the stop itself,
13 that's what we say is illegal in this case.

14 THE COURT: Okay.

15 MR. ROBINSON: We can't bring in a ticket
16 that was never issued in this matter. He had no
17 other reason to stop him.

18 THE COURT: Okay. You wanted to respond?

19 MS. McCALL: In regards to the ticket that
20 was never issued, that's what the electronic --
21 the reason why we don't have a ticket is because
22 of they get a copy as the officer testified.

23 THE COURT: Is it -- is the standard that
24 a ticket must be issued?

25 MS. McCALL: They don't keep all the --

1 **THE COURT:** I don't think that's the
2 standard. The ticket -- the standard is whether
3 there was a reason for the stop. That is an
4 articulate suspicion. I don't think there's any
5 case law that says there must be a criminal
6 citation issued because it doesn't have to even
7 rise to that level. So I don't know that that's
8 relevant to my consideration in this case.

9 **MS. MCCALL:** The traffic stop is
10 reasonable.

11 **THE COURT:** Okay. Well, given the
12 testimony that I've heard in this case, I find
13 that the officer's testimony is credible with
14 respect to the reasoning for the initial stop.
15 And I believe that given the false name that was
16 given to the police, uh, that was a justifiable
17 reason for the arrest. I think there was a --
18 it was a legal stop incident to the suspicion of
19 having violated a traffic law. All right.

20 And I will also find that in keeping with
21 the Snowden case, the legality of the stop was
22 waived by and through the initial plea to false
23 name to police. All right. Okay.

24 Uh, you prepared to proceed, Ms. McCall,
25 with the introduction of evidence in this case?

Remarks

43

1 MS. McCALL: I am.

2 THE COURT: Okay. How many witnesses do
3 you intend to put up?

4 MS. McCALL: He stipulated to change, so
5 just Officer Hines which you've heard the bulk
6 of his testimony and then the search officer.

7 THE COURT: Okay. Let's take a short
8 five-minute break and then come back in and
9 we'll take testimony.

10 (WHEREUPON, a recess is taken.)

11 THE COURT: All right. Ms. McCall, you
12 can call your first witness, ma'am.

13 MS. McCALL: I would call Officer Hines.

14 THE CLERK: You want me to put him under
15 oath again?

16 THE COURT: Uh, no.

17 THE CLERK: Okay.

18 THE COURT: I'll remind you, Officer, you
19 continue under your oath that you previously
20 took. Okay.

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay. Good enough.

23 MS. McCALL: I'm just going to pick up
24 where we left off.

25 THE COURT: That is fine.

1 **JEFFREY SCOTT HINES**

2 having previously been sworn, testifies as
3 follows:

4 **DIRECT EXAMINATION**

5 **BY MS. McCALL:**

6 **Q** You said you called for backup when you
7 realized his false name. What happened at that
8 point?

9 **A** Officer Burdett then showed up. He just
10 stood by when I placed the defendant under arrest. I
11 then placed him in the back seat of my patrol car.

12 **Q** Uh-huh.

13 **A** And then, uh, started to transport him to
14 detention after his vehicle was towed.

15 **Q** Okay. What happened once the defendant was
16 in your patrol car?

17 **A** Once he was in my patrol car, he kept
18 moving around, uh, a good bit. More than a normal
19 suspect would, uh, in the back of my patrol car.

20 **Q** And, uh, when you got to the jail, what
21 happened at point?

22 **A** Once we got to the jail, he kept repeatedly
23 asking me to, uh, allow him to use the restroom. Uh,
24 I told him that he could use the restroom once he,
25 uh, gets inside, uh, because I wanted him checked to

1 make sure he didn't have any kind of contraband due
2 to him moving around as much as he was moving around
3 in the back seat of my patrol car.

4 Q And once -- at that point, what happened
5 after that?

6 A Uh, once we, uh, -- I went ahead and filled
7 out his paperwork for his temporary commitment. Then
8 we proceeded to go on through the sally port. At
9 that time, a detention officer came and checked him.
10 They do the pat down and search -- well, it's not a
11 pat down, it's a search -- inside the detention
12 facility there to make sure that no contraband or
13 weapons of any sort is brought in. At that time, uh,
14 the defend -- I meant, uh, the defendant was, uh, --
15 I think the detention officer got down to his sock,
16 his left sock, and felt a bulge in the sock. Said
17 what's this.

18 MR. ROBINSON: Your Honor, I think that's
19 hearsay.

20 THE COURT: Is the other officer going to
21 testify?

22 MS. McCALL: He is. He's just basically
23 explaining what called him to do -- act next.
24 But he is going to testify.

25 THE COURT: Okay. All right. If he's

1 going to testify, I'm going to, uh, I'm going to
2 sustain the objection.

3 THE WITNESS: He stated, uh, what's this
4 as he felt the bulge there. I then grabbed his
5 sock there. He had, uh, four bags of white,
6 beige-looking substance, quite -- quite big, in
7 his left sock there. I then immediately took
8 the substance and held onto them as he finished
9 his search.

10 BY MS. MCCALL:

11 Q Okay. And do you know whether any of this
12 was captured on the video?

13 A I do not.

14 Q And have you learned -- since this case,
15 have you learned anything about the video system?

16 A Yes, since the -- Yes, ma'am. Since this
17 case, I have.

18 Q What did you learn?

19 MR. ROBINSON: I'm going to object as far
20 as foundation. I don't know where this
21 information he's getting is coming from and how
22 he learned about it. I think it's goes to, uh,
23 -- relevance and also be considered hearsay. I
24 don't know how he's going to testify to
25 something that he's learned about or he's heard.

1 MS. McCALL: Basically --

2 THE COURT: Well, I need to rule on it.

3 MS. McCALL: What now?

4 THE COURT: I didn't rule on it. If he
5 has information about whether it exists or
6 doesn't exist, I'll let him testify to that. To
7 that extent, I'm going to overrule and sustain,
8 not hearsay testimony about what happened, but
9 about whether it exist or whether it doesn't.

10 MS. McCALL: Really, it goes to that he
11 doesn't know whether it exist. We'll just leave
12 it at that.

13 BY MS. McCALL:

14 Q I want to show you now, uh, -- we
15 stipulated to chain of custody, but I just wanted to
16 introduce these exhibits. So I'm showing you State's
17 Exhibits 5 through 8 and the corresponding Property
18 and Evidence sheets. Do you recognize these
19 exhibits?

20 A Yes, ma'am.

21 Q Now, are these items that you checked out
22 of Property and Evidence? I mean -- sorry. How are
23 you able to recognize these?

24 A Uh, these are the items that were located
25 in Mr. Hutley's sock in detention. I took them and

1 placed them in Property and Evidence.

2 Q Does it appear, uh, as it did back on
3 January 25th of 2010?

4 A Yes, ma'am.

5 Q Do they appear to be altered in any way?

6 A No, ma'am. The only difference here is the
7 J.M.A., which I believe is the drug analysis.

8 Q Okay. Uh, what did you do with those
9 substances when you retrieved them from the
10 defendant's sock?

11 A Once I retrieved them from his sock, I held
12 on to them. Uh, I then went outside the detention
13 center and field tested them for cocaine base. Uh,
14 it did come back positive as a cocaine base. I then
15 took the items to Property and Evidence and placed
16 them in the drop box at, uh, Property and Evidence.

17 Q Okay. And, uh, did you weigh the
18 substances, uh, at the time?

19 A I did. I weighed them prior to, uh, prior
20 to dropping them in the drop box. I left out also
21 filled out a drug analysis sheet.

22 Q Okay. And are they in the same condition
23 that they were when you turned them in to Property
24 and Evidence?

25 A Yes, ma'am.

1 Q We won't go into what Property and Evidence
2 is since the judge is familiar with that. Uh, Now
3 did you submit these in Property and Evidence? What
4 time of night was this?

5 A Uh, it was at 12:27 a.m.

6 Q How did you submit it?

7 A I submitted it through the drop box because
8 Property and Evidence was closed. I had to put them
9 in the drop box.

10 Q Okay. Now, the Property and Evidence sheet
11 that I gave to you, is your signature on that?

12 A It is.

13 Q Did you fill out a P&E sheet?

14 A I did.

15 Q What is the date on that?

16 A January 26th, 2010 at 12:27 a.m.

17 **MS. McCALL:** Judge, since we already
18 stipulated to chain, I would submit that -- move
19 those exhibits in. Also, I want to add this as
20 an exhibit, the lab analysis, just so you can --
21 since we won't have James Armstrong going
22 through that.

23 **THE COURT:** Okay. Any objection to that?

24 **MR. ROBINSON:** I stipulate to that. No
25 objection.

1 THE COURT: Okay. Good enough.

2 (WHEREUPON, State's Exhibits 5 through 9 are
3 admitted into the record.)

4 MS. McCALL: I'm just going to get him to
5 read out just for the record what the --

6 THE COURT: Okay.

7 MS. McCALL: I'll wait until you -- I'm
8 sorry.

9 THE COURT: Don't talk and hand her
10 something at the same time.

11 BY MS. McCALL:

12 Q All right. Will you please tell the judge
13 what that is and can you read the weights of the
14 different items?

15 A Yes, ma'am. Uh, Item JSH-1 states bag
16 containing rock substances. Results, cocaine base
17 found, weighing 3.26 grams. Item JSH-2, bag
18 containing rock substance. Results, cocaine base
19 found, 12.10 grams. Item JSH-3, bag containing rock
20 substance. Results, cocaine base found, 8.35 grams.
21 JSH-4, bag containing powder substance. Cocaine
22 found, 8.58 grams.

23 Q Uh, after securing the evidence, did that
24 conclude your investigation in this case?

25 A It did.

1 Q After securing this evidence, did that
2 conclude your investigation in the case?

3 A Yes, ma'am. After, after I finished the,
4 uh, Property and Evidence, I had to go type my
5 report.

6 Q Do you see the defendant in the courtroom
7 today?

8 A I do.

9 Q Would you point to where he is.

10 A Yes, he is right there with the blue
11 jumpsuit on.

12 MS. McCALL: All right. Let the record
13 reflect that the officer is pointing to the
14 defendant. That's all I got. If you could
15 answer any questions from Mr. Robinson.

16 THE COURT: Mr. Robinson. Okay.

17 MR. ROBINSON: May it please the Court.

18 CROSS-EXAMINATION

19 BY MR. ROBINSON:

20 Q Officer, when you drove down to the, uh,
21 detention center with, uh, with Mr. Hutley, you said
22 that you heard him in the back shuffling and so
23 forth?

24 A Yes.

25 Q You are not telling the Court that anything

1 was found in the car after he was let out, are you?

2 A Uh, nothing was found in the car after he
3 was let out.

4 Q Now, when you go to the detention center
5 with a defendant, do you fill out something called a
6 Temporary Law Enforcement Commitment? Is that what
7 that is?

8 A Yes.

9 Q What is that?

10 A That is a sheet that we fill out and we put
11 the charges on. And then put out to the side the
12 ticket number or warrant number, if we have it at the
13 time.

14 Q Okay. And that's going to have all the
15 tickets that someone has that they've been charged
16 with, is that right?

17 A Uh, it will unless there's other charges
18 that comes later. Then we'd have to fill out another
19 one.

20 Q Okay. That's done every single instance
21 pretty much, isn't it?

22 A Uh, yes. Almost.

23 Q Almost? Pretty much every -- on something
24 like this, that would be pretty normal, right? This
25 kind of stop?

1 A Uh, if the judge isn't there, it's normal
2 to put them on the, uh, -- at that time, the judge
3 was not there. It's normal to put them in on the
4 citation and a temporary commitment.

5 Q So you would do what they'd call a
6 Temporary Law Enforcement Commitment, correct?

7 A Yes, sir.

8 Q Now, that would include everything up to
9 going through the detention center as far as
10 citations and things like that, but it's not going to
11 include stuff that may have happened afterwards,
12 right?

13 A Uh, if there -- for say, what I brought him
14 in on would have been on the temporary commitment at
15 the time. If there's other charges after the fact, I
16 would have to fill out another temporary commitment.

17 Q When you say after the fact, are we talking
18 about something that may have occurred when you were
19 in the car with him or ---

20 A No, sir.

21 Q --- something like that?

22 A No, sir.

23 Q What are you talking about?

24 A I'm referring to as the, uh, -- when I put
25 Mr. Hubley in on the temporary commitment, I did not

1 find the drugs on him before I took him inside. I
2 already -- I took him inside. At that time, that's
3 when the drugs were located. I had to go -- before I
4 could just charge someone with a substance, I have to
5 field test the substance and then get the appropriate
6 charges. Weigh the substance and get the appropriate
7 charges. Then I can come back and charge someone.

8 Q So the temporary law enforcement, that
9 would have the charges PWID and Trafficking, right?
10 You field tested those, correct?

11 A I did test the crack cocaine and the
12 cocaine.

13 Q Okay. And that would be the PWID powder
14 and trafficking the crack, correct?

15 A That's correct.

16 Q And that report then -- so there was a
17 Temporary Law Enforcement Commitment report filled
18 out and you actually sign the bottom, don't you?

19 A Yes, sir. We do.

20 Q I'm going to ask you to look at a document.

21 MR. ROBINSON: May I approach the witness,
22 Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. ROBINSON:

25 Q Let me ask you to look at this document.

1 Just -- do you recognize this document?

2 A Yes, sir.

3 Q And what is that document? If you can just
4 tell me the title of that document.

5 A This is a Temporary Law Enforcement
6 Commitment.

7 Q Okay. And is there a signature on that
8 document?

9 A Yes, sir.

10 Q Okay.

11 MR. ROBINSON: Your Honor, if I could -- I
12 would ask this be marked as, uh, Defendant's
13 Exhibit number 3.

14 THE COURT: You asking it be introduced or
15 just marked?

16 MR. ROBINSON: I'm going to show her
17 first.

18 THE COURT: Okay.

19 (WHEREUPON, there is a pause.)

20 MR. ROBINSON: I'll have this marked as
21 Defendant's Exhibit number 3. And I have shown
22 that to the prosecution.

23 THE COURT: Okay.

24 MR. ROBINSON: And there's no objection.

25 THE COURT: All right. That is introduced

1 into evidence as Defendant's Exhibit number 3.

2 (WHEREUPON, Defendant's Exhibit 3 is marked for
3 identification and admitted into the record.)

4 BY MR. ROBINSON:

5 Q And Officer, looking at Defendant's Exhibit
6 number 3, that's your signature on a Temporary Law
7 Enforcement Commitment when Mr. Hutley was booked
8 in. There is no indication in that report of a stop
9 sign violation.

10 A We don't have to put a stop sign violation
11 on there because he did not get a, uh, -- we don't
12 put warning tickets on our commitments. So no, sir,
13 the stop sign citation would not be on this report.
14 This is what he goes to jail on, not what he's pulled
15 over. I can actually write him a uniform citation
16 and not put it on there.

17 Q And you did not bring that uniform citation
18 to court?

19 A I believe that they have a copy of the
20 uniform citation.

21 Q When you got to the detention center with
22 Mr. Hutley, did you advise him that you stopped him
23 for going through a stop sign?

24 A I advised him once I got up to him and
25 approached on the traffic stop that the reason he was

1 pulled over was for stop sign violation.

2 Q There's no record of that stop sign
3 violation in that report that's marked Defendant's
4 Exhibit 3, right?

5 A No, sir.

6 MR. ROBINSON: Beg the Court's indulgence
7 for one second, Your Honor. (Pause.)

8 BY MR. ROBINSON:

9 Q Officer, I want to take a second and go
10 back to the, uh, back to the stop. I just want to
11 make sure -- I want to clarify some things if you
12 don't mind. You said that this citation for running
13 the stop sign and not stopping -- coming to a
14 complete stop at a stop sign, right?

15 A A warning citation for disregarding a stop
16 sign.

17 Q And you arrested Mr. Hutley for doing that,
18 is that correct?

19 A I arrested Mr. Hutley for false information
20 to police officer which occurred after the traffic
21 stop.

22 MR. ROBINSON: That's all the questions I
23 have.

24 THE COURT: All right. Thank you,
25 officer. You may step down, sir.

1 THE WITNESS: Yes, sir.

2 THE COURT: Your next witness, ma'am.

3 MS. McCALL: The State will call Steven
4 Babinsky.

5 THE CLERK: Sir, you're going to have a
6 hard time raising your right hand, but place
7 your left hand on the Bible please.

8 STEVEN BABINSKY

9 having first been sworn, testifies as follows:

10 THE CLERK: Thank you. Please be seated.
11 Please state your full name for the record.

12 THE WITNESS: Steven William Babinsky.

13 THE COURT: Officer, I know you got --
14 some of that evidence, I believe in your hand,
15 was all admitted into evidence.

16 OFFICER HINES: Okay. I apologize.

17 THE COURT: So just leave it. I know that
18 leaving crack cocaine just sitting around is
19 counterintuitive to you and to me. But inasmuch
20 as it has been admitted into evidence, we've got
21 to keep it now.

22 OFFICER HINES: Yes, sir. I apologize.

23 THE COURT: No, that's no problem. No
24 problem.

25 DIRECT EXAMINATION

1 BY MS. McCALL:

2 Q Where are you employed?

3 A Greenville County Detention Center.

4 Q How long have you worked there?

5 A Two years.

6 Q What is your current position?

7 A Detention officer.

8 Q What training and education did you receive
9 that aided you in that job responsibility?

10 A Three weeks at the South Carolina Criminal
11 Justice Academy.

12 Q Uh, were you working on the night of
13 January 25th, 2010?

14 A Yes.

15 Q Can you tell us what you were doing that
16 evening?

17 A I was working as a search officer in the
18 intake and release area.

19 Q Okay. Did you have a chance to come into
20 contact with, uh, this defendant?

21 A Yes, ma'am. I did.

22 Q And how so?

23 A Officer Hines brought him into the sally
24 port. And being the search officer, I conducted a
25 pat down search.

1 Q Could you real quickly tell what the sally
2 port is?

3 A The sally port is the area between the
4 judicial area and the actual intake and release where
5 they do the booking.

6 Q And why do you search inmates in the sally
7 port?

8 A To make sure they don't bring any sort of
9 contraband or weapons in the facility.

10 Q Okay. What happened during the search?

11 A Uh, while patting down Mr. Hutley, I got to
12 the outer part of left leg. I felt a bulge about the
13 size of my fist. I directed Officer Hines' attention
14 to it. He pulled it out. It was four bags. Three
15 to four bags bundled up.

16 Q Okay. And, uh, you directed Officer Hines'
17 attention. What happened at that point?

18 A Officer Hines then pulled it out.

19 Q You had any other involvement in this case?

20 A No, ma'am.

21 Q That's all that I have. Could you please
22 answer any questions that Mr. Robinson has.

23 THE COURT: Mr. Robinson.

24 MR. ROBINSON: Before I ask him -- could I
25 talk to my client one second, Judge, before I

1 start asking questions?

2 THE COURT: Yes, sir.

3 (WHEREUPON, Mr. Robinson consults with
4 Mr. Hutley.)

5 CROSS-EXAMINATION

6 BY MR. ROBINSON:

7 Q Officer, you did the pat down of Mr.
8 Hutley, is that correct?

9 A Yes, sir.

10 Q And before you started your pat down, what
11 was your understanding? Did you give Mr. -- did you
12 or Officer Hines give Mr. Hutley an idea of what he
13 was being charged with before you started searching
14 his pants?

15 A No, sir. I had nothing to do with -- with
16 -- I didn't know what he was being charged with.

17 Q You didn't say anything to him about what
18 he was being charged with?

19 A No, sir.

20 Q Were you ever given anything by Officer
21 Hines regarding what Mr. Hutley was being charged
22 with?

23 A We were supposed to receive a predetention
24 form and a Temporary Law Enforcement Commitment when
25 they entered the facility.

1 **MR. ROBINSON:** That's all I have, Your
2 Honor. Thank you.

3 **THE COURT:** Okay. Thank you. You may
4 step down.

5 You may call your next witness, ma'am.

6 **MS. McCALL:** The State rests.

7 **THE COURT:** Okay. All right.

8 Mr. Robinson, any motions or anything from
9 the -- any evidence you would like to present on
10 behalf of the defendant, sir?

11 **MR. ROBINSON:** Your Honor, I would
12 respectfully submit a motion for directed
13 verdict. The State has not, uh, put forth any
14 evidence to establish the two cases of
15 Trafficking and PWID. Obviously, it's going to
16 be construed in favor of the State as far as the
17 motion. But, Your Honor, we believe that there
18 has been no testimony or evidence put in that
19 would indicate that a crime took place. We
20 reserve again making an argument regarding the
21 illegality of the stop in this matter. Thank
22 you.

23 **THE COURT:** Okay. I'll respectfully deny
24 your motion. Any evidence you would like to
25 proffer into the record, sir?

Remarks

63

1 MR. ROBINSON: Your Honor, I would like to
2 incorporate in the record in this case the
3 pretrial motions that were made, all the
4 evidence that was submitted and marked as
5 exhibits and in the pretrial hearing that we had
6 regarding the suppression, as well as the
7 exhibits that were presented in the case-in-
8 chief in this matter. I believe there were
9 three different exhibits that we put in for the
10 defense as well as the State. Our exhibits are
11 the audio, the dispatch report, as well as the,
12 uh, detention report. Those are the things I
13 would like to include in the record, Your Honor,
14 in this case.

15 THE COURT: Okay. Uh, those were included
16 and introduced as exhibits, were they not?

17 MR. ROBINSON: They were, Your Honor.

18 THE COURT: Okay. Then they are in. All
19 right. Anything further?

20 MR. ROBINSON: Your Honor, the, uh, -- Mr.
21 Rutley advised me he does not want to testify.
22 With that, the defense rests, Your Honor.

23 THE COURT: Okay. All right. Good
24 enough. Let us take up an issue then that I
25 have. It's a question as much as anything.

1 That is, I have two indictments before me, one
2 for Possession with Intent to Distribute and one
3 for Trafficking. Each of them, uh, has, uh, as
4 an essential element, the possession of this
5 particular quantity of cocaine. Can they both
6 exist contemporaneously? Or is the, uh,
7 possession subsumed by the trafficking case.

8 MR. STEINBERG: Well, the trafficking is
9 crack cocaine and PWID is powder cocaine. I'm
10 double checking the trafficking. Yep, it says
11 crack cocaine, cocaine base. And PWID is simply
12 cocaine, which is powder cocaine.

13 THE COURT: Okay. And introduced into
14 evidence is quantities of both crack cocaine
15 and, uh, powder cocaine?

16 MS. McCALL: There's one -- if you will
17 allow in the police report.

18 THE COURT: Yes, ma'am. I'm looking at
19 what's --

20 MS. McCALL: Uh, one bag of powder cocaine
21 and three bags of crack.

22 THE COURT: All right. I'm looking at
23 what's been introduced as State's Exhibit number
24 9. So Possession with Intent to Distribute is
25 for the powder cocaine because it came back as

Verdict

65

1 8.58 grams, whereas, the trafficking is the
2 cocaine base which came back as 12.10 grams. Am
3 I correct?

4 MS. McCALL: It's really a total of --

5 THE COURT: I see there are 12.10, 8.35
6 and 3.65 and then cocaine in the amount of 8.58,
7 correct? Okay. All right. All right. Good
8 enough. I find in this case that based on the
9 weights of the crack cocaine and the weight of
10 the cocaine and the evidence that has been
11 presented, I find that the State has met its
12 burden of proving the defendant guilty beyond a
13 reasonable doubt. I find that the State's
14 witnesses were credible and introduced evidence
15 into the record that, in fact, Mr. Hutley did
16 have in his possession a significant quantity of
17 both crack cocaine and cocaine which was found
18 when he was taken into arrest and searched
19 incident to his being placed into detention at
20 the Law Enforcement Detention. I reiterate my
21 prior ruling regarding the legality of the stop.
22 Therefore, we may proceed at this time to
23 sentencing if y'all would like to approach
24 please.

25 MR. ROBINSON: May it please the Court,

1 Your Honor.

2 THE COURT: Yes, sir.

3 MR. ROBINSON: I think that in the outset,
4 Your Honor, you had said you were reserving the
5 ruling on the Snowden case.

6 THE COURT: And subsequent to the
7 suppression hearing, I reinstated it. Okay.
8 And I do again. Okay. So if y'all want to come
9 on up.

10 All right. Ms. McCall, it's my
11 understanding that on the, uh, Trafficking --
12 excuse me. Is this the, uh, -- on the
13 Possession with Intent to Distribute, is it a
14 first offense?

15 MS. McCALL: Your Honor, it's third
16 offense and above.

17 THE COURT: Third offense and above. So
18 is it 15 to 30 years?

19 MS. McCALL: 25 to 30.

20 THE COURT: 25 to 30. Under the old law
21 or under the new law?

22 MS. McCALL: New law.

23 THE COURT: Okay. What's the CDR code?
24 0185?

25 MS. McCALL: I don't know it by heart.

1 THE COURT: Okay.

2 MS. McCALL: The cocaine is 15 to 30. Is
3 that what you're asking? The trafficking is 25
4 to 30. That might be where you were confused.

5 THE COURT: Yeah. Yeah. That's right.
6 15 to 30.

7 MS. McCALL: For the cocaine. I'm sorry.

8 THE COURT: Okay. All right. Then for
9 the trafficking in cocaine?

10 MS. McCALL: Trafficking crack, third
11 offense.

12 THE COURT: Third offense.

13 MS. McCALL: 25 to 30.

14 THE COURT: 25 to 30. Okay. All right.
15 And what is his prior record please?

16 MS. McCALL: Uh, 1995, Driving Under
17 Suspension; 1996, PWID Crack, Failure to Stop,
18 Shoplifting; 1997, Possession of Marijuana; '98,
19 Driving under Suspension; 2009, Interference and
20 Hindering an Officer. That was all in South
21 Carolina.

22 In New Jersey, he had a 1993 drug
23 conviction. In New York, in '92, he had a
24 possession of cocaine. Then he had a federal
25 charge in 1997 of Distribution of Cocaine Base

1 and felony in Possession of Firearm where he
2 served 151 months.

3 THE COURT: Okay. And just real clear for
4 the record, uh, the three prior drug offenses, I
5 know that I heard the Possession of Intent to
6 Distribute and then another drug offense, is
7 that correct?

8 MS. McCALL: In '93.

9 THE COURT: Okay. And he --

10 MS. McCALL: And I can --

11 THE COURT: He --

12 MS. McCALL: I have the certified
13 convictions of those if you need to see those.

14 THE COURT: Okay.

15 MS. McCALL: As far as getting the third
16 and above, the federal charge was '97 and then
17 in South Carolina, we have a '96 PWID crack.
18 Those two. Then you have the two way back, '92
19 for Possession of Cocaine in New York and then
20 the '93 is -- they call it Criminal Possession
21 of a Controlled Substance 5th degree.

22 THE COURT: Okay. All right. All right.
23 Mr. Hutley, you heard that recitation of your
24 prior records. Does that sound like a fair
25 account of your prior record?

1 MR. HUTLEY: Yes, sir.

2 THE COURT: All right, sir. All right.
3 Uh, Mr. Robinson, anything you'd like to tell
4 me, sir?

5 MR. ROBINSON: Your Honor, Mr. Hutley made
6 a decision today that spared jury expense and
7 jury time to go forward. Primarily, the biggest
8 issue for Mr. Hutley was whether or not the stop
9 was legal or not. He did not put the court or
10 the system through a jury trial, putting through
11 state expenses and so forth. Uh, I believe that
12 that may, that may mitigate in terms of the
13 higher sentence. He should get the lowest
14 sentence. Obviously, the court knows what the
15 lowest sentence is. We'd ask it be done
16 concurrently obviously.

17 But, uh, I believe that he has spared
18 significant time for a jury to be hearing this
19 case. We don't know what would have happened in
20 this case. The jury heard it obviously. But
21 once the drugs did come in, he didn't have to
22 put through any sort of trial that took a jury
23 and so forth. We'd ask the Court for the
24 minimum sentence in this case.

25 THE COURT: What -- how much time has Mr.

1 Hutley done already?

2 MS. McCALL: Uh, I'm sorry. I don't have
3 the most updated time. But he's been on federal
4 probation. That's what he's been in jail for.
5 Not for the --

6 THE COURT: Let me ask this, when were you
7 arrested on this charge? What was the date on
8 it? January 25th, 2010?

9 MS. McCALL: He got back out.

10 THE COURT: That's okay.

11 MS. McCALL: Okay. Okay. I just wanted
12 to make sure. Okay. Sorry.

13 THE COURT: Okay.

14 MR. HUTLEY: I got arrested back on May
15 19th. I been in here since May 19th, 2010.

16 MS. McCALL: Yeah.

17 THE COURT: May 19, 2010.

18 MS. McCALL: That is correct.

19 THE COURT: Okay. How many days did you
20 do initially?

21 MR. HUTLEY: What you mean?

22 THE COURT: You got arrested on January
23 25th. Did you bond out the same day?

24 MR. HUTLEY: No, I stayed a day. A day.

25 THE COURT: A day?

1 MR. HUTLEY: Yeah.

2 THE COURT: So May 10th, 2011 is when you
3 started doing time?

4 MR. HUTLEY: No. I came in May 19th.

5 THE COURT: May 19th. I'm going to give
6 you time -- credit for time since May 18th which
7 gives you credit for that one day that you did.
8 Okay. Mr. Hutley, is there anything you'd like
9 to tell me, sir?

10 MR. HUTLEY: You saying you giving me
11 credit for one day?

12 THE COURT: No, no. I'm giving you credit
13 since May 18th, 2011.

14 MR. HUTLEY: Okay.

15 THE COURT: You said you came in on May
16 19th?

17 MR. HUTLEY: Uh-huh.

18 THE COURT: And you did a day before, so I
19 backed it to May 18th.

20 MR. HUTLEY: Okay.

21 THE COURT: It makes the calculation a
22 little bit easier. I don't do good math because
23 I'm an English major. Okay. Anything you want
24 to tell me, Mr. Hutley?

25 MR. HUTLEY: No, sir.

1 THE COURT: All right. On your
2 trafficking crack cocaine, 25 years in the
3 Department of Corrections concurrent. Credit
4 for time served since May 18th. On Possession
5 with Intent to Distribute third offense, 15
6 years in the Department of Corrections
7 concurrent. Credit for time served since May
8 18th. Good luck to you.

9 MR. ROBINSON: Thank you, Judge.

10.

11

12.

END OF PROCEEDINGS

CERTIFICATE

73

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 3rd day of January, 2012.

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



Teresa B. Johnson

Circuit Court Reporter

Form S-438
Rev. 12/08

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF

Greenville

FIRST NAME

Maria

MIDDLE NAME

Jamelle

VERSUS

Hutley

STREET AND NO.

Pendleton St

CITY

Greenville

STATE

SC

ZIP CODE

29601

STATE LICENSED

SC

DRIVER'S LICENSE NO.

0100017966

CDL

☐ YES ☐ NO

DRI. LIC. CLASS

FD

VEH. LIC. NO.

FTK 184

STATE

SC

MAKE OF VEH

TOYOTA

YEAR

1988

CONV. VEH

☒ AUTO ☐ MOPED

HAZ. MT.

☐ MTRCYCL ☐ OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER

Hutley

STREET AND NO.

906 N. Main St

DATE

2

OF

12

TRIAL

20

TIME OF TRIAL

11 AM

CITY

Greenville

STATE

SC

ZIP CODE

29601

VIOLATION - COURT APPEARANCE REQUIRED. YES NO

YES

VIOLATION SECTION NO.

24

OWNER OF VEHICLE

False Name to Police

DATE OF ARREST

1/25/20

ADDRESS OF OWNER

1/25/20

DATE OF VIOLATION

1/25/20

BAIL DEPOSITED

NAME OF ARRESTING OFFICER

Hines, JS

RANK

UTC

RACE

B

SEX

M

DESCRIPTION OF ACCUSED

7/12/1970, 5'10", 170 lbs, Bk, Hrs, Brn

BIRTH DATE

7/12/1970

MT.

1970

HAIR

Bk

WT.

170

EYES

Brn

DATE BAIL REC'D.

20

BY

CASE BEFORE

MAGISTRATE

☐

MUN. COURT

☒

CIRCUIT COURT

☐

FAMILY COURT

☐

FEDERAL COURT

☐

NAME OF TRIAL OFFICER

IF DIFFERENT FROM ABOVE

DEFENDANT: DID NOT APPEAR

☐

APPEARED

☐

NOLLE PROSSED

☐

DISPOSITION

☒

GUilty

☐

FORFEITED BOND

☐

PLED: NOLO CONTENDERE

☐

TRIAL BY:

TRIAL OFFICER

☐

JURY

☐

VERDICT OF

GUilty

☐

DATE OF TRIAL IF ANY

TRIAL IF ANY

GUilty

☐

NO

☐

JAIL

15

SUSPEND

200

FINE

AMT. COLLECTED

AMT. SUSPENDED

COMMITTED TO:

Vehicle Searched

Arrest as Result of Collision

☒

CERTIFIED CORRECT

DATE

3/4/20

COUNTY

Greenville

BADGE

203

DISTRICT

3

DAY

1

S

2

M

3

T

4

W

5

T

6

F

7

S

8

TIME OF VIOLATION

2153

AM-1 P.M.-2

C

WEATHER

DISTANCE IN FEET FROM INTERSECTION OF

mulberry St

MILES

N

1

E

2

S

3

W

4

HWY NO.

CITY

Greenville

Lat

Long

OFFENSE CODE

94

B.A. LEVEL

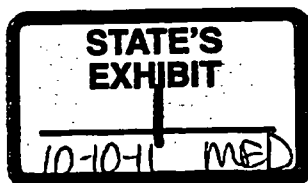
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DOCKET NO. 10-11383

3-4-100-118

TRIAL OFFICER'S COPY

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This is to certify that this is a true copy.
 Date: 7-19-11
 Pamela A. Rawson (SS)
 Clerk of Court

LASTNAME HUTLEY
FIRST NAME MARLIN
MIDDLE JAMELLE
DOB 4/20/1972
VIOLATION CODE 42
OFFENSE CODE
OFFICER NAME RINES JS
DATE 1/25/2010
LOCATION W. WASHINGTON ST
OFFENDER RACE Black
OFFENDER SEX Male
OFFICER RACE White
OFFICER SEX Male

STATE'S
EXHIBIT

D 4
10-11 MPA



County of Greenville

"...At Your Service"

DEPARTMENT OF PUBLIC SAFETY

Page 1 of 1

DRUG ANALYSIS REPORT

Department: Greenville Police Department
Officer: Hines, J.
Subject: Hutley, Marlin Jamelle

Case Number: 02-2010-011383
Report Number: 1
Incident Date: 01/26/2010
Received From: Property & Evidence
Received Date: 02/24/2010

This is an official report of the Greenville County Department of Public Safety Crime Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no examinations of evidence submitted in this case have been or will be conducted by any other laboratory or agency.

James M. Dorriety, Assistant County Administrator
Department of Public Safety

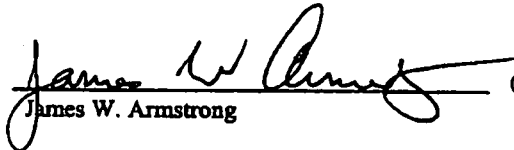
EXAMINATIONS CONDUCTED

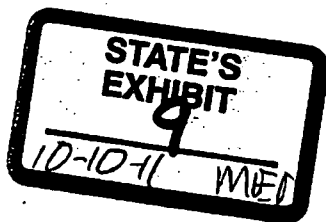
☒ CHEMICAL TEST ☐ MICROSCOPIC ☒ INFRARED SPECTROSCOPY
☐ ULTRAVIOLET SPECTROSCOPY ☒ GAS CHROMATOGRAPHY ☒ MASS SPECTROSCOPY

ITEMS OF EVIDENCE:

- Item JSH1: Bag containing rock substance
Results: Cocaine base found, 3.26 grams C-II
- Item JSH2: Bag containing rock substance
Results: Cocaine base found, 12.10 grams C-II
- Item JSH3: Bag containing rock substance
Results: Cocaine base found, 8.35 grams C-II
- Item JSH4: Bag containing powder substance
Results: Cocaine found, 8.58 grams C-II

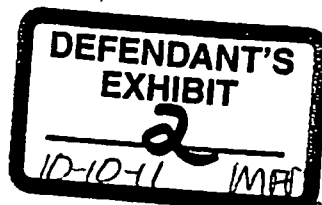
I am a Criminalist employed by Greenville County to perform chemical and physical examinations on evidence submitted by law enforcement agencies in criminal cases, and to testify in courts of record in the state of South Carolina on such examinations.


James W. Armstrong 03/04/2010



Scanned by
IPR

Hines



77

GREENVILLE POLICE DEPARTMENT
Date: 09/12/11 Time: 19:30

INCIDENT RECALL

PAGE: 000001
By: JULIAN, MONIKA

Incident	Time	Type	Pri	Dispo	Address	Bldg Apt	Callers Name	P-unit	Close
					Location		Callers Address		Date/
					BEAT TEAM/Dist	AREA	Callers Phone		Time
CP10011383	21:53	56TS	3A	5	HAMPTON AVE&MULBERRY ST			CP/E8	10/01/26 CP644
					CPE1	CP	CP		01:30

Date	Time	Operator
10/01/25	21:53	Primary Event: MAIN Opened: 10/01/25 21:53
10/01/25	21:53	Incident Initiated By: CP/BOSTON, LAKEISHA
10/01/25	21:53	BLK TOYT UNK
10/01/25	21:53	Plate Number CHANGED To: SC-FTK184
10/01/25	21:53	Stat CP/E8 6 -ONSCENE Loc: HAMPTON AVE&MULBERRY
10/01/25	21:53	Officer 1 Name: HINES, JEFFERY Officer 2 Name:
10/01/25	21:53	Primary Unit CHANGED CP/E8
10/01/25	21:53	Units Recommended CP/D7 CP/C8 CP/A7 CP/B8
10/01/25	21:53	Stat CP/D7 5 Loc: HAMPTON AVE&MULBERRY
10/01/25	21:53	Officer 1 Name: BURDETTE, DOYLE Officer 3 Name:
10/01/25	21:58	Stat CP/D7 6 -ONSCENE Loc: HAMPTON AVE&MULBERRY
10/01/25	21:58	Officer 1 Name: BURDETTE, DOYLE Officer 2 Name:
10/01/25	22:03	Unit CP/E8 Timed Out
10/01/25	22:03	Officer 1 Name: HINES, JEFFERY Officer 2 Name:
10/01/25	22:08	Unit CP/D7 Timed Out
10/01/25	22:08	Officer 1 Name: BURDETTE, DOYLE Officer 2 Name:
10/01/25	22:16	Units Recommended CP/E7 CP/D8 CP/F7 CP/F8
10/01/25	22:17	DUTY NOTIFIED AT 2217
10/01/25	22:25	Stat CP/E8 5 Loc: 1046 DETN
10/01/25	22:25	Officer 1 Name: HINES, JEFFERY Officer 2 Name:
10/01/25	22:25	Stat CP/E8 6 -ONSCENE Loc: 1046 DETN
10/01/25	22:25	Officer 1 Name: HINES, JEFFERY Officer 2 Name:
10/01/25	22:33	Stat CP/D7 8 -AVAILABLE
10/01/25	22:33	Officer 1 Name: BURDETTE, DOYLE Officer 2 Name:
10/01/25	22:35	Unit CP/E8 Timed Out
10/01/25	22:35	Officer 1 Name: HINES, JEFFERY Officer 3 Name:
10/01/26	00:05	Units Recommended CP/E7 CP/D7 CP/D8 CP/F7 CP/F8
10/01/26	00:11	Units Recommended CP/E7 CP/D7 CP/D8 CP/F7 CP/F8
10/01/26	00:26	Units Recommended CP/E7 CP/D7 CP/D8 CP/F7 CP/F8
10/01/26	00:29	Units Recommended CP/E7 CP/D7 CP/D8 CP/F7 CP/F8
10/01/26	00:36	Units Recommended CP/E7 CP/D7 CP/D8 CP/F7 CP/F8
10/01/26	00:40	Units Recommended CP/E7 CP/D7 CP/D8 CP/F7 CP/F8
10/01/26	00:50	Units Recommended CP/E7 CP/D7 CP/D8 CP/F7 CP/F8
10/01/26	01:30	Unit CP/E8 Status Comment Added 95X4
10/01/26	01:30	Officer 1 Name: HINES, JEFFERY Officer 2 Name:
10/01/26	01:30	Stat CP/E8 8 -AVAILABLE
10/01/26	01:30	Officer 1 Name: HINES, JEFFERY Officer 2 Name:
10/01/26	01:30	Route Closed: MAIN 7W 9M 9M
10/01/26	01:30	Disposition CHANGED 7W MAIN
10/01/26	01:30	Disposition CHANGED 9M
10/01/26	01:30	Disposition CHANGED 9M
10/01/26	01:30	Incident Closed: 10/01/26 01:30

GREENVILLE POLICE DEPARTMENT
Date: 03/12/11 Time: 19:30

PAGE: 000002
Requested By: JULIAN, MONIKA

I N C I D E N T R E C A L L

Incident	Time	Type	Pri	Dispo	Address Location	Bldg Apt	Callers Name Callers Address Callers Phone	2-unit	Close Date/ Time	Operate
10/01/26	07:03	10-29 CODE 4 UNIT 107	LOWE		BEAT TEAM/Dist	AREA	16		HENDERSON, RYAN	
10/04/07	04:25	Disposition		CHANGED Fr: 7W		5	16		JULIAN, MONIKA	
10/04/07	04:25	Disposition		CHANGED		7W	14		JULIAN, MONIKA	

New Vehicle / Subject Information ----

Date	Time	Vehicle	Role	VS01	Color	Year	Make	Model	Style	Plate	STX104	State	SC	Type	Misc	Prob. Cause	Search Typ	Searched	Property
10/01/25	21:53	Vehicle																	
10/01/26	21:53	Vehicle																	
10/01/28	21:53	Vehicle																	
10/01/25	21:53	Vehicle																	

TEMPORARY LAW ENFORCEMENT COMMITMENT

TO: JAIL ADMINISTRATOR
GREENVILLE COUNTY DETENTION CENTER

FROM: JS Hines
ARRESTING OFFICER'S NAME (PRINTED)

GPD
DEPARTMENT/AGENCY

SUBJECT: TEMPORARY COMMITMENT

DATE/TIME: 1 / 25 / 10 @ 2306 HOURS

REQUEST THAT YOU CONFINE THE PERSON NAMED BELOW TEMPORARILY UNTIL SUCH TIME AS MY DEPARTMENT CAN OBTAIN A JUDICIAL COMMITMENT FROM:

(CIRCLE ONE)

COUNTY MAGISTRATE
CITY RECORDER

Maria Hickey
SUBJECT'S FULL NAME (Last, First, Middle)

B M
RACE/SEX

DATE OF BIRTH

CASE NUMBER(S)	CHARGE(S) TO BE ARRAIGNED ON	TRIAL JUDGE(S)	TICKET/WRNT NUMBER(S)
10-11383	No State DL	Hawley	9312cFB
6-11383	False Name to Police	Hawley	93121 FB
	PWID Cocaine		
	PWID 1/2 mde (Cocaine)		
	Trafficking Crack		
	PWID Crack 1/2 mile		

MAGISTRATE TRIAL DATE/TIME

1 / 1 @ HOURS

NOTE: ALL CASE NUMBERS, WARRANT NUMBERS AND CHARGES MUST BE LISTED.
USE ADDITIONAL FORM IF NECESSARY.

ARRESTING OFFICER'S SIGNATURE: [Signature]

STAR NUMBER/UNIT NUMBER: 603 Unit 23

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLEMARLIN H. HEA 240707

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2013-CP-23-0

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
DEC 30 PM 3 53INSTRUCTIONS - 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 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 LEE Correctional Institution 990 Wisconsin Hwy Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Greenville County Court of General Session 305 East North St Greenville, S.C. 29601
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Trafficking in Crack / 2010 GS 2302817 (25) YEARS 3rd offense
 - (b) BUT. D COCAINE, 3rd offense (15) YEARS 2010 GS 2302819
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 10, 2011
 - (b) October 10, 2011

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere ☒ _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina court of appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. South Carolina court of appeals (APPEAL DISMISSED)
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. JUNE 26, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) SEE Attachment
- (b) SEE Attachment
- (c) SEE Attachment

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

- (a) SEE Attachment
- (b) SEE Attachment
- (c) SEE Attachment

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. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- 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. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- 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) NO OPPORTUNITY
- (b) NO OPPORTUNITY
- (c) NO OPPORTUNITY
17. Were you represented by an attorney at any time during the course of:

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

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. Scott D. Robinson, Law Firm LLC P.O. Box 10042 Federal Station
Greenville, S.C. 29602
- ii. DAYNE C. Phillips Appellate lawyer, P.O. Box 11589 Columbia, S.C. 29211-1589
South Carolina Commission on Indigent Defense
- iii. _____

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

- i. Bench trial
- ii. Appellate court
- iii. _____

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

Justice within the laws of South Carolina

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

No

STATE OF SOUTH CAROLINA

)

)

County of

)

VERIFICATION

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.

Mark H. Hulse

SWORN to and subscribed before me this 24
day of Nov, 2013.

Diana Sims (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

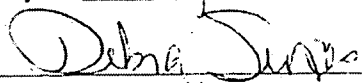
I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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 give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

24 day of Nov, 2013.


Notary Public

My Commission Expires: 11-4-2015

ISSUE

10(A.)

Trial Counsel was ineffective in failure to make minimal inquires of substantial investigation. Which would have revealed, Petitioner intial arrest was a predicated omission of warrant affidavit, Which was insufficient establishing probable cause of the Constitution. If Counsel had discovered the facts, Defendants post arrest and evidence could have been succesfully suppress and case dismiss. Petitioner contends "U.S. Const. 4th and 14th Amend", and "S.C. Art. Section 3 and 10", and "Spoilation Doctrine" were violated.

RELEVANT FACTS

Applicant contends misrepresentation of conduct by Attorney Scott D. Robinson at bench trial and Motion to Suppression hearing. Which was held before Honorable Robin B. Stilwell on October 10, 2010, pursuant to Pitts v. State, 432 S.E.2d 643, Counsel for defendant establish deficiency's of investigation upon satisfying a intial essential element of arrest. Depriving petitioner of constitutions of unlawfulness conduct to obtain, Probable Cause, of Incident to Arrest or post arrest. (See: Gamble v. State, 747 S.E.2d 784), (The testimony of the state that the drugs were seized pursuant to a search incident to lawful arrest. (See Trial Transc. Lines 5-7, and pg.7 Lines 14-19).

ARGUMENTS

Petitioner asserts counsel ineffectiveness demonstrated denial of applicant to perserve issue for appellate review. Its a fundamental question in determining the lawfulness of an arrest is whether probable cause existed to make an arrest. (See: State vs. Baccus, 625 S.E.2d 216, Due to neglect of counsel to defend defendant rights, Rules and Codes of South Carolina law. Petitioner ask the court to review arrest

warreants #M-381909 and #M-381911. Where as Greenville City Police Officer Jeffery Scott Hines indicated, Due to a lawful traffic stop sign violation affiant did find accuse, Marlin Hutley to be the driver and upon placing the accused under arrest for the traffic stop. (See: Trial Transc. pg. 57 Lines 15-23, Where Officer Hines "Abandon" and "refuse" the intial arrest. (In Beck v. Ohio, 85 S.Ct. 223), (A Court must consider "Whether at the moment the arrest was made, the officer had probable cause to make it. The affidavit must set forth particular facts and circumstances underlying the existence of probable cause to allow the magistrate to make an independent evaluation of the matter. See: (Franks v. Delaware, 98 S.Ct. 2674), See: S.C. Code Ann § 56-7-10. There will be a uniform traffic ticket used by all Law Enforcement officers in arrest for traffic offense and the following offenses. Also See: 56-7-15 (A), (the uniform traffic ticket establish pursuant to provisions of section 56-7-10. May be used by law enforcement officers to arrest a person for a offense committed in there presence of a law enforcement officer. If the punishment is within the jurisdiction of a Magistrate Court and Municipal Court, a law enforcement agency processing an made pursuant to this section must furnish the information to state law enforcement. Due to the failure of Mr. Robinson, Mr. Hutley's ("Right to be informed of the true grounds of arrest; Consequences of refusal to answer of false answer"), (See: S.C. Code Ann. §17-13-50 (A), 1-4 and (B). And Trial Transc. pg. 56 Lines 5-15 and pg. 57 Lines 2-21. Petitioner contends to not challenging the accuracy of the affirmative statement made by Officer Hines in his affidavit, Petitioner argues that Officer Hines omitted facts. Making the affidavit deceptive, when relying

on an omission, of a false affirmative statement to a affidavit).., (See: U.S. v. Tate, 524 F.3d 449). Officer Hines omitted facts by design to mislead the issuing judge as to the constitutionality of an arrest for stop sign violation establishing probable cause. Applicant asserts documentation provided by "Greenville S.C. Police Department an Accredited Law Enforcement Agency, Title 220 A4", Section 9.3.1. Officers may issue a warning ticket in lieu of a citation for any minor moving violation at their discretion. The warning serve as an official warning to the violater and no further "ENFORCEMENT" action will be taken. And 9.4 when a warning ticket is written the officer will fill the ticket out in it "Entirety" in the violation block circle the violation, and in the offense code "Block" write the code of laWS OF South Carolina "statue" number. In reviewing the duplicate evidence of warning ticket that was omitted at trial from the state, and vouching of the state to the credibilty of the state only witness Officer Hines. Futhermore, Solicitor and officer stated in open court under oath, that original copy was "destroyed". See: Trial Transc. pg. 14 Lines 15-17; Also See: pg. 41 Lines 19-22. Appellate asserts after trial and suppression hearing original copy was discovered by LT.J. Browning of Greenville Police Department, The examination of the duplicate, original and arrest warrant affidavit omitted inconsistencies, contradiction, fabrication, forgery, and reckless disregard of truth of documentation of evidence and testimony of state witness. Due to numerous effects of circumstantial as well as creating cumulative evidence deferring credibility of goverment witness whom Honorable Judge Robin B. Stilwell supported reliabilty and veracity of witness See: Trial Transc. pg. 42 Lines 11-19. Abusing standards of prejudice

held to unlawful detention and exerting a fishing expedition. Defendant prior Counsel Dorothy Manigault submitted notice of motion and Motion to Suppression, and Rule 5 Brady Motion dated May 4, 2011 to the Clerk of Court. Requesting that the tapes of traffic stop and the tapes of Detention Center in audio and video be relinquish to Counsel to ascertain the testimony of arresting officer and search officer of validity of arrest. (See: Kolle v. State, 690 S.E.2d 73), (Counsel failure to procure pertinent discovery materials, In particular the call dispatch logs in audio and transcript, and arrest warrant affidavits, incident reports. If Trial Counsel had these discrepancies to cross-examine the officer of the material). The video and audio of the tapes of sallyport of detention and traffic stop would have shown invalidity of arrest to sustain probable cause standard. (See: Trial Transc. pg. 61 Lines 7-25). Testimony of Detention Center search officer maintaining to not receiving any forms with arrest for traffic offense of disregard of stop sign. (See: Trial Transc. pg. 24 Lines 6-11), Where counsel just receive from state transcript of traffic stop, and (See: Trial Transc. pg. 28 Lines 10-20), Where Counsel is questioning witness of the tape contemporaneous to the transcript. The neglected and preparing of counsel for defendant having fair trial was denied, due to Counsel unsuccessful attempts of cross examine of witness knowledge of material. Counsel failure of Contemporaneous Objection Rule. The conduct of attorney Scott D. Robinson surrounding Mr. Hutley's rights codes and rules. These violations deprive component's of law to the U.S. Constitutions and S.C. Articles. Prejudicial tribunal of malfeasance to issues of evidence and testimony of allege accusation to crime conducted by petitioner, was unfounded of any and all records to sufficient probable cause of warrant affidavit. Appellate contends the omission of Exhibit D (3) to be evidence of inconsistencies was

unfairly manipulative at trial proceedings within testimony by Officer Jeffery Scott Hines of consisting facts of Exhibit D (3), Temporary Lawenforcement Comment Sheet, stipulating effects for filing charges on sheet, place ticket and warrant number on the side. (See: Trial Transc. pg. 52 Lines 4-13. Further testimony from Officer Hines indicated to denying of presenting an arrest for a crime on temporary form and stated he believes that crime analysis supplied the court with a copy of the uniform citation for disregard of stop sign. (See: state v. Gentile, 646 S.E.2d 171). (Whether the Magistrate was privy of this information where there is no evidence in record of what was communicated to magistrate other than complaint of affidavit). The conclusion of what might have transpired would cumulate negative evidence with magistrate and officer. (See: Trial Transc. pg. 23 Lines 18-25), Where as Officer Hines informed the court of not bringing a copy. He has no record of copy, and stop sign violation of report in defendants Exhibit D (3), Officer Hines replied "NO SIR". See: Trial Transc. pg. 56 Lines 5-20 and Trial Transc. pg. 57 Lines 2-5. The document of Exhibit D(3) is required to be authenticated of "Time" and "Date" stamped by search and arresting officer clarifying authorization to applicants arrest for crime. See: Trial Transc. pg. 61 Lines 7-25, Where search officer Steven Babinsky replied "NO SIR" to why petitioner was detain seize, search to constituting probable cause requirement to ascertain incident to arrest. (See: State v. Gamble, WL 4554310 S.C. (2013)). Where state and officer testified that drugs were seized pursuant to search incident to lawful arrest. The state has failed to demonstrate the drugs were seize as part of a legally permissible search and seizure for any perserve evidence that only arose after what appear to be a constitutionally infirm detainment). Within the above information, Applicant avow with evidence and Gamble Supreme Court Ruling. Grants merits

presented by petitioner in numerous standard of U.S. 4th Amend, and S.C. Art. 1 § 10. And Spoliation act to defendant initial post arrest, that was not in violation of any law, Where crime was not committed for any record of evidence, verbally, visually, hearing, and writing. Appellate asserts to arresting Officer Hines testified of knowledge of the video recording. See: Trial Transc. pg. 46 Lines 11-17, that evidence was destroyed as well as other by the state reverting violations of defendant constitution requirements. These corroborated inconsistencies, contradiction of different testimony quoted by State Witness. See: Trial Transc. pg. 57 Lines 9-21. Applicant contends arrest warrant are implied reference of probable cause standards, (In Kyles v. Whitley 115 S.Ct. 1555). The individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government behalf in the case "Including the Police".

ISSUE

10 (C).

Petitioner avow Trial Counsel was ineffective in denying defendants constituent parts of elements of crime for prima facie. Where court lack sufficient deprivation to Direct Verdict Motion. Presentation of tainted evidence is seriously view to be carefully scrutinized when prosecutor argue and introduce withheld exculpatory evidence it prejudice defendants palpable of fair trial. (See: Brown v. Bory, 951 F.2d 1011).

RELEVANT FACTS

Trial Counsel inadequate duties to represent defendant failed under numerous standard of "Objections to preserve" to the rulings of Trial Judge denial of petitioner Direct Verdict Motion. (See: State v. Rice, unless an objection is made at the time the evidence is offered and a final ruling is made the issue is not preserve for review. See: Rule 103

(A)(1), (See: Trial Transc. pg. 62 Line 11-25). Pettitioner asserts sufficient evidence of the state disclosure prejudice defendant and, Counselor to numerous Contemporaneous Objection to inconsistency's, contradiction, fraud and forgery of cumulative circumstantial exculpatory evidence. When presentment of evidence as such, must constitute positive proof of facts and governs circumstances which reasonably tends to prove guilt, and which guilt may fairly and logically deduced to the exclusion of any other reasonable hypothesis. (See: State v. Peake, 396 S.E. 2d 362), and (State v. Schrock, 322 S.E.2d 450).

ARGUMENTS

"A material variance between charge and proof entitles the defendant to a Direct Verdict, A variance is not material if it is not an element of offense. The conclusion of the ruling handed down by Trial Judge was without the benefit of inspection to the contested material evidence, Where as the disclosure convince the court appraisal of likelihood. Whenever the state fails to produce circumstantial evidence that applicant committed a crime the defendant is entitled to a Directed Verdict. (See: State v. Odems, 720 S.E.2d 48). Deficiency's in the state evidence is inadmissible to determine probable cause requirement to meet Fourth Amendment Constitution and S.C. Article 1 Section 10, a discretion is shown when the court ruling falls out of base and corrupt the errors of law, any ruling without legal principle is unsupported of facts stipulated from evidentiary requirements. The arbitrary capricious effects reveals discretion with impermissible decisions that may be deemed affirmative misconduct consume by the court. a complaint is a written statement of essential facts constituting an accusation of offense under oath, Before a magistrate,

hearing the allege accusation of essential elements effecting to guilt of a punishable offense adding probable cause, officer's are required to posses knowledge of fact sufficient to affiant accusation omitted in affidavit of warrant standards, to implicate violation of U.S. Constitution and S.C. Articles and Sections of law. (See: Trial Transc. pg. 57 Lines 9-23, and Trial Transc. pg. 14 Lines 3-17). (In State v. Arnold, 460 S.E.2d 403), Additional information which is not set fourth in the affidavit and for which there is no indication it was presented to the magistrate in any form, The warrant may issue only upon a finding of probable cause. The reviewing court may only consider information brought to the magistrate attention, Where by a person is arrested without a warrant and uniform citation charging by information may be jailed or subject to other restraints pending trial without any opportunity, for it probable cause determination are unconstitutional, as well as S.C. Statute 56-7-10, Authorizing the use of uniform traffic ticket to effect arrest expands general jurisdiction of magistrate court by identifying certain offense beyond limits of statute setting forth its general jurisdiction and eliminates the need for an arrest warrants and authorize use of a uniform traffic ticket notifying the accused the intial essential element of arrest. (See: Bayly v. State, 724 S.E.2d 182).

ISSUE

10 (D).

Applicant avow Trial Counsel inadequat failure prejudice defendant credence of procedure, within state's bolstering of convict phase of petitioner. Testimony and evidence given by state and state only witness placed jurisdiction of the Subject Matter of a unfound record of crime. Counsel failure to object to prosecutor vouching for state case of impeachment evidence of state witness. (See: State v. Owens, 611 N.E.2d 364).

RELEVANT FACTS

Petitioner contends it is improper procedure of State Prosecutor to vouch of credibility for government witness, Where as Counselor ineffectiveness to not only contest, the errors of objectionable effects that occur at petitioner's bench trial, Governs a prejudicial effect. (See: Argument C), where petitioner conceded that he had no personal knowledge of the commission of guilt, punishment, and charge of initial arrest of offense. (See: U.S. v. Keith Wayne Fredrick 78 F.3d 1370). Evidence of prior offense is likely to prejudice a defendant even where the defendant has the opportunity to rebut the evidence. The Due Process of Counselor ineffectiveness to calling expert witnesses denied defendant opportunity to rebut or object the only government witness and vouching of prosecutor.

ARGUMENTS

Vouching the testimony of a witness involves prosecutorial remarks that bolster credibility by reference to matters outside the record. It also turns on cumulative effect of all evidence that the government suppress. The prosecutor is responsible for gauging that effect regardless of any failure by the police to bring favorable evidence to prosecutor's attention linking petitioner to other crimes related to trafficking offense. The improper vouching is devastating to the defendant. (See: Trial Transc. pg.41 Lines 19-22, and Trial Transc. pg.14 Lines 12-25, and Trial Transc. pg.15 Lines 11-13). the conclusion of the reports where cumulative of corroboration testimony of witness to his credibility. (Under Rule 702); Understanding the evidence or to determine a fact in issue. A witness must qualify as

an expert by knowledge, skill experience, training, or education, may testify there to in the form of an opinion or otherwise. (See: State v. Ellis, 547 S.E.2d 490). It should be consider how much vouching implies that the prosecutor has "EXTRA-RECORD" knowledge of or the capacity to monitor the witness truthfulness (and) any inference that the court is monitoring the witness veracity. Applicant avow counselor lack to opportunities of attacking not only the probative value or impeachment of crucial physical evidence and the circumstances in which it was found. The given assurance of testimony and supporting evidence, substantiate completeness to the court where state prosecutor corroborate hearsay in the manner of bolstering the credibilty of witness.

ISSUE

10 (E).

Petitioner contends Trial Counsel was ineffectiv in failing to prepare and present of ration basic test of numerous essential evidence. (See: U.S. v. Van.Arsdall 106 S.Ct.). Such and error is harmless in particular cases depend on multiple factors, the factors include importance to witness testimony of prosecution's case, whether testimony was cumulative of presence or absence and corroborating or contradicting testimony evidence of material points from witness. Constituting forgery of false making or altering some essential apparant instrument of "LEGAL EFFICACY", Is to defraud without completment in any amount of particular forgery. And writing prejudice another may defraud to the genuine, oporates a legal effect to another mans foundation of liabilty. (See: State v. Brandt). Petitioner asserts if transcript of recording is offered as an aid to a recording and, the recording and transcript was put into (Exhibit A) evidence. However, reviewing of transcript and tape which was not "MIRRORED" the way in which evidence was of rebuttable presumption commit constitutional violations as to judgment in (State v. Winkler, 698 S.E.2d 596).

RELEVANT FACTS

Appellant asserts counsel awareness for preparing and presenting was deficient in capabilities for defense, when state used evidence

of bad conduct of an offense that lead to an arrest, and later bench trial establish guilt and punishment. Evidence was not authenticated as to be authorize of original documentation. (See: Rule 901, Requirements of Authentication or Indentification), (In Sheppard v. State, 594 S.E.2d 740), (Withheld evidence must be material to guilt or punishment). The credibilty of the state only witness presented testimony and evidence petitioner committed a crime in his presence. This unfair term prejudicial effect was upheld by Honorable Judge Robin B. Stilwell the judge of the bench trial. (See: Trial Transc. pg 42 Lines 11-23, and Trial Transc. pg. 15 Lines 16-25, and Trial Transc. pg. 16 Lines 1-25, Within the ruling of these judgements placed defendant at the mercy of the court. (See: U.S. v. Miguel Jejeda, Jr. 142 F.3d 18).

ARGUMENT

Applicant contends to call upon witness to conduct expert testimony, of the State useof forge,fabricated, and fraudulent evidence. With these numerous failures of counselor strategy of conduct abridge petitioner of successful perservance gather from testimony and evidence by witness police Officer Jeffery S. Hines of the Greenville Police Dept. (See: Trial Transc. pg. 23 Lines 10-25). Do to the Libel accusation in the trial court proceedings was an advantage upon the state, where as appellant asserts to these factual findings of neglectness. He was not afforded ample time or counselor prepartion to defend client to essential elements of a uncharge crime. Mere conclusion is a violation of expectation of pettioner's privacy, liberty, and compulsory process. The documentation used as forge items of

elements was ruled by the Court to believe to be genuine. Might have operated to the prejudice of an individual. (State v. Webster, 70 S.E. 442). The purpose of the statute against forgeries is to protect society against fabrication, falsification and the uttering, publishing and passing of forged instruments. See: (16-13-10), without the testimony and evidence and credibility of witness statements the motive of the initial arrest where there is a lack of proof, Establishing guilt of crime to detain. The tainted evidence should have been considered lack of authorization and authentication to petitioner probative innocence. Applicant contends the conviction that was obtained by the knowing use of perjured testimony is unfair and must be set aside if there is any reasonable likelihood that the false testimony and evidence could have effected the judgment upon the court). (See: U.S. v. Agurs, 96 S.Ct. 2392). Citing (U.S. v. Charles Lee Young, 17 F.3d 1201). When probative force of evidence depends on the circumstances raise a possibility of fraud, Indications of conscientious police work will enhance probative force and sloppy work will diminish it. (See: The People of The State of New York v. Jeffery Young, 591 N.E.2d 1163). Two documents cannot be "duplicates equivalents" if there are variations or inconsistencies between them.

MARLIN HUTLEY #340707
LEE CORR, Inst
Richland Unit, Rm 112
190 W. Sackey Hwy
Bishopville, S.C. 29010

D-181

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2013-CP-23-6842
COUNTY OF GREENVILLE	)	
	)	
Marlin Jamelle Hutley,	)	
S.C.D.C. No. 240707,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed December 30, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the December 2010 term of General Sessions for trafficking cocaine base (crack cocaine) (2010-GS-23-2817) and possession with intent to distribute (PWID) cocaine (2010-GS-23-2819). Scott D. Robinson, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant proceeded with a bench trial. On October 10, 2011, the Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of twenty-five years for trafficking crack cocaine (10-28 grams), third offense and fifteen years for PWID cocaine, third offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Dayne C. Phillips, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense

perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Hutley, Op. No. 2013-UP-293 (S.C. Ct. App. filed June 26, 2013). The Remittitur was sent on July 17, 2013.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

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

1. Ineffective assistance of trial counsel:
 - a. Failed "to make minimal inquiries of substantial investigation. Which would have revealed, Petitioner intial [sic] arrest was a predicated omission of warrant affidavit, Which was insufficient establishing probable cause of the Constitution."
 - b. Denied "defendants constituent parts of elemnts [sic] of crime for prima facie."
 - c. Failed "to object to prosecutor vouching for state case of impeachment evidence of state witness."
 - d. Failed "to prepare and present of ration basic test of numerous essential evidence."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an

evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

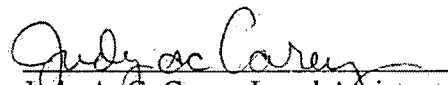
5/21, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2013-CP-23-6842
	)	
MARLIN JAMELLE HUTLEY, 240707	)	
	)	
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 by depositing same in the United States mail, postage prepaid:

**Marlin Jamelle Hutley, 240707
Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669**

DATED this 21st day of May, 2014.


Judy A. C. Carey, Legal Assistant
For Respondent.

Marlon Hutley
ID# 240707
V Applicant

Court of Common Pleas
13th Judicial Circuit

State of South Carolina
County of Greenville
Respondent

Case NO: 2013-CP-2306842

MEMORANDUM OF LAW
IN SUPPORT OF PETITION TO AMEND
P.C.R.

ENTERED COMPUTER
FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL D. WICKENBARGER
JUN 13 2014 3:34 PM

Now Comes the above-captioned Petitioner, presenting the foregoing Memorandum of Law supporting Amend Issues of Exhibits D, F, G, H and I Pursuant to Rule 15(a), and 16(c), SCRPC, Filing this Memorandum of Law and Petitioner Exhibits F, G, H, and I are hereby Amend to, within the previously filed Post-Conviction Relief Application, Submitted December 30, 2013 Under the above-referenced civil action.

Pursuant to Statutory Law and Rules of Court, Memorandum and Issues of Exhibits are attached hereto, and are previously before the Court.

SCANNED

State of South Carolina
County of Greenville

MARILYN HUTTLEY #240707
Applicant

V.

State of South Carolina
Respondent

Court of Common Pleas
13th Judicial Circuit

Case NO: 2013-CP-2306842

Affidavit of Service By mail

- 1, I am the applicant 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/filed a copy of each foregoing documents of P.C.R, Affidavit, and Issue of Exhibits 10 F, G, H, and I, in the above-captioned matter on the following Person Below, and by depositing same in the United States Mail Postpaid:

Paul B. Wickenbarger
Clerk of Court
305 East North Street
Greenville, S.C. 29601

Sworn And Subscribed before me, this 16th

day of June, 2014

James C. Murchant
Notary Public

My Commission Expires 1-23-2023

Marilyn Huttley

MARILYN HUTTLEY #240707
PERRY C.I. 02B-206
430 Oaklawn Rd
Pelzer, S.C. 29669

10/F

ISSUE

Petitioner Asserts Counsel WAS ineffective to Articulate U.S. 4th Amend. And S.C. Art. 1, Sec. 10 Claim. AN Individual is Seized "When an Officer Restrains his freedom. Even if the detention is brief and falls short of Arrest." (SEE TELV V. OHIO 88 S.Ct 1868). Applicant MAINTAINS Arrest Warrant. Stipulates defendant WAS Arrested for Disregard of Stop Sign, HOWEVER there's NO proof of his Disobedience OR Charge in form of Warrant OR Citation, Establishing Probable Cause Requirement. (SEE Arrest Warrants #M381909 Thru M-381912).

Relevant Facts

Appellate Contend A Person is Seized "Only When, by Means, of Physical Force OR Show of Authority, his Freedom of Movement is Restrained. The Purpose of the fourth Amendment is Not to Eliminate all Contact between Police and Citizen, But to Prevent "Arbitrary and Oppressive Interference by Law Enforcement Officials (SEE U.S. V. Mendenhall 100 S.Ct 870). A legitimate Expectation of Privacy is both Subjective and Objective in Nature, Petitioner Can Show He has a Subjective Expectation of not being discovered, and The Expectation is one that Society Recognizes as Reasonable. "U.S. Supreme Court has been sensitive to the danger that Officer's Will Enlarge, a specific authorization, furnished by a warrant OR an Exigency, into the Equivalent of a general Warrant to Rummage and Seize at Will." (SEE TEXAS V. BROWN 103 S.Ct 1535). Applicant Awaits When Officer HINES Statement of Affidavit Under Oath At original trial told Magistrate He Arrested defendant for

otherside →

disregard of Stop Sign, this Arbitrary Omission Misted Judge of guilt and Punishment as well as Probable Cause, Violating Petitioner Safeguards of the U.S. Const. and S.C. Art. of Warrant Standard, /SEE Trial Trans p 57 L17-21/ Where Officer Hines Refused, Denied, and abandon initial arrest of disregard of Stop Sign. /IN STATE V. BROW 371 S.E.2d 523/, The Courts will not condone perjury, Testimony given under Oath at a previous trial where result is subsequently invalidated is admissible impeachment evidence.

10/8/

Argument

Applicant contend the fourth Amend And S.C. Act, of Search and Seizure Procedure, A Judge Ruling of Evidence Must be Supported in Ruling UPON Evidence, SEE Beck V Ohio 85 Sct 223, If Subjective good faith alone was the test, the Protection of the 4th Amendment would evaporate, and the people would be "Secure in their person, houses, papers, and effects" only in the discretion of the police. Appellate assert inconsistencies, fraud, forgery, and MANUFACTURE Evidence was used throughout Petitioner trials. Appellate begs the Court to grant A Evidentiary Hearing to Rebut the Ruling upon Evidence Supported by Honorable Judge Robin B. Stilwell. SEE FRANKS V. Delaware 98 Sct 2684, Where Acts of omission in which Exculpatory Material is left out of the Affidavit, Under S.C. Code ANN 17-13-101, The initial Step in the Procedure is to Place the Affiant, usually a Police Officer Under oath, for Example, Do you swear OR affirm that the information contained in this Affidavit is true, "So Help you God"? The Affiant should be Reminded that the Penalty for Perjury will attach to all Statements of facts found in the Affidavits! SEE Arrest Warrants And Trial Transcripts L17-21. The U.S. Supreme Court often observed that Searches and Seizures Conducted Outside the "Judicial Process" without prior approval by Judge or Magistrate, ARE PER SE Unreasonable Under 4th Amendment, SEE Stone V Woodruff 54 Sct 2240, In State V Dowd 411 Sct 2428 And State V Leak 181 Sct 224 AN Arrest does not NECESSARY terminate the instant a person is taken in to custody, AN Arrest also includes "Bringing the person personally within the custody and control of the law

Other Side →

The Arrest does Not "Terminate" Until the Arrestee is delivered to the Jailer and properly confined, SEE Trial Trans Pg 1d (17-25), WHERE Search Officer OR Jailer Steven Brainsky Testified to Detention Center procedures of forms to be provided for Arrestee Arrest OR knowledge of what Arrestee was Arrested for. In Any Judicial Proceeding, which if conducted to a determination, Result in a decree OR Judgement, This Action was done when Officer Affidavit was satisfied meeting Warrant Requirements, HOWEVER SEE Greenville S.C. Police Dept. An Accredited Law Enforcement Agency Title 22AHS Sec 9.3.1, The Warning Ticket serves only as an official warning to the Violator AN NO further "Enforcement" action will be taken. The Pre-textual Arrest Officer Hines used with omission in Affidavit to obtain an arrest for Warrant clauses, SEE Sikes v State 448 S.32d 567. An individual is "Seize" when A Officer RESTRAINS A Person's freedom and liberty of a citizen MAY WE CONCLUDE THAT A SEIZURE HAS OCCURRED. Applicant contend to seek Evidentiary Hearing And Trial's hearing to decide Rulings Conducted by the Court without "fact-finding" OF Contrary to Law.

11/5)

ISSUE

Applicant Awa Counselor ineffective failure to Maintain Ethical litigation of Judgment in support of defendant and State Exhibit Evidence of Cumulative Effect, IN State V. Page 750 S.E.2d 623 "Relevant Evidence" Means Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action, more probable or less probable than it would be without the evidence, "Abuse of discretion" was establish at petitioner's bench trial, by Judge Robin B. Stilwell of presumption of Exhibit Evidence which displayed fraud, forgery, and malicious prosecution of Publication to defame. The Cumulative Effect of Conclusion was decided upon deceitful testimony and Evidence Prongs, which can be rebutted or disproved, If Counsel investigated or Ask the Court for Continuance to "Issue Effect" and Preserve so Appellate could present the conclusiveness of Material Essential Evidence upon facts of (Contemporaneous Objection Rule, See Hoffman v. State 440 S.E.2d 764) "A (Contemporaneous Objection is Required to properly Preserve an error for Appellate Review)".

Relevant facts

Appellate Assents Counsel failed to demonstrate "Perjury, Prejudice", and Errors of law to the credibility to impeach State Witness and Exhibits, (See State V. Brown 371 S.E.2d 523), Where As testimony given under oath at a previous Trial, whose Results is subsequently invalidated is admissible impeachment Evidence, See Arrest Warrants M-381909 and M-381911/ where State Witness Officer Hines of Greenville Police Dept.

otherside

Affirm Petitioner Arrest for Stop Sign Violation. Original Jurisdiction was abridged in Applicant Bench trial, when Confirmation of formal "Declaration OR Assertion" of Affiant Affidavit of Arrest for disregard of Stop Sign. The Denial, Refusal, and Abandonment of the Arrest By Officer HINES, /see Trial Trans pg 57 L15-23/. This Judgment By the Court and State was an Abusement of defendant trial of "Material Misrepresentation".

10/6/

Argument

Petitioner Allow Counsel Strategy and Tactics failed within
 the wide Range of ineffective UPON Reasonable Professional Norms.
 Defense Counsel Numerous deficiencies Prejudice Applicant
 Reputation of defense. AN Abuse of discretion arises from and
 Error of law OR factual Conclusion that is without "Evidentiary"
 Support, /SEE STATE V ALEXSEY 538 S.E.2d 248/, /SEE Trial/Trans Pg 16
 L 20-25 And Pg 42 L 4-8/, Where Court is Establishing Relevancy
 of Evidence without Evidentiary Support, /Also Trial/Trans Pg 22
 L 12-16/, Where defendant Counsel question State Witness Officer
 HINES of comparison and accuracy of C.D And Transcript of
 Dispatch call in Procedure of Traffic Stop And Other Evidence.
 /SEE Trial/Trans Pg 24 L 6-11 And Pg 28 L 1-19/, Where State Submitted
 Transcript of dispatch of Relevancy and Authenticity. Applicant
 contend in his CASE the record does indicate the State intention
 to use the "Audio Recording, Transcript and Warning ticket" AS
 Evidence in Chief at Petitioner trial, Appeal/AS CASE is
 distinguish From, /State V Green 705 S.E.2d 441/, Where AS the
 State does not indicate the State intended to use the Audio
 And Transcript. Brady Violation by Prosecution or suppression of
 Evidence which is favorable to the accused UPON Request
 Violates due Process and Spoliation Where Evidence is material
 to either to guilt OR Punishment, /SEE Strickler V. Greene 524
 U.S. 263, 281-82/ When State Withholds from Criminal/defendant
 Evidence that is material to his guilt OR Punishment, /Also SUTZKER
 V. Johnson/ undisclosed Police Reports were material because could
 be used to impeach witness when trial testimony was
 inconsistent with reports. Petitioner Assert the Court

Other Side →

Introduces ANY And All Exhibits Marked As Exhibits ARE
 Permitted As Evidence, /SEE Trial Trans pg 63 L15-16, /8-19).
 The Case at hand has multiple Subsequent Cumulation, Prejudice
 And ABUSE OF PROCESS, Trial Judge ABUSE his discretion at trial in
 finding State Witness proffered Testimony and Evidence was not
 Relevant But Cumulative, /SEE Trial Trans pg 16 L21-22). This Error
 of Law of Findings in Applicant Record of Trial Transcript, Where
 Trial Judge Rule Credibility And Veracity of State Witness Testimony
 /SEE Trial Trans pg 42 L11-14, And pg 65 L8-15). The Results Prejudice
 the defendant of Rights Presenting A defense of Calling Favorable
 Witness of Compulsory Process Clause granted Under U.S Const
 Amend 6 And S.C. Art 1 Sec. 14), Compelling the Attendance of
 Witnesses at trial in his favor. The State contention to Presume
 Assumption of defendant Conviction of Guilt and Punishment extends
 from Initial trial To Bench trial Ruled by Judge Stillwell of WAIVER of
 Rights in higher Court without Jurisdiction, /SEE S.C. Code ANN 22-3-710, And
 /SEE Trial Trans pg 17 L14-21 and pg 42 L21-22), Petitioner contend /White Oak
 Manor, Inc V Lexington Inv WL 130495). The purpose of a summons is to
 acquire "Jurisdiction" of the person and to give notice of the action and
 opportunity to appear and defend To Court's "WAIVER", /G/A25 V STATE
 62 SE 2d 655, Quoting Argersinger V Hamlin The U.S Supreme Court held
 that absent A knowing and intelligent waiver, No person may be imprisoned
 for any offense whether Classified as petty, misdemeanor, or felony, unless
 he was represented by counsel at trial, /SEE Trial Trans pg 14, L15-17 and pg 23 L22-25
 Witness Officer HINE testified of disposing and destroying hard copy of
 warning ticket conducted by Crime Analysis, Disclosure of Exculpatory
 Evidence was Arbitrary /SEE MAK V. Blockett 970 F.2d 614. Petitioner
 contend Judgements of fictitious action was decided.

ID/H)

ISSUE

Petitioner assert counsel ineffective failure to object of indictment and information, issue of proof and variance unsupported to any accusation of indictment language. /SEE Stirons V. U.S. 803, Ct 270. The court set aside the conviction, holding that the proof at trial of these uncharged facts amounted to an amendment of the indictment with respect to the elements Interstate Trafficking. /SEE Indictment #2010-GS-23-002817. Applicant further contend statute 44-53-0375, Does Not apply Petitioner to serve a mandatory sentence of (25) years day for day. This construed procedure of the court OR S.C. D.C. within utilizing C.D.R. offense codes to put weight the statute of 44-53-0375(c)(1) Petitioner first offense, and sentence sheet bearing information of Ten grams or more, But less than twenty eight grams.

Relevant Facts

Appellate contend that guilt and Punishment Phase was upheld at Bench trial which prejudice defendant of loss of liberty amounting to waiver of Rights to an uncharge offense, /SEE S.C. ANN Code 22-3-710. Proceeding commenced on information when an arrest has been made, "Without a Warrant" the obtaining of an arrest warrant is necessary to vest Magistrate Court with Jurisdiction over the offense as charge, Exception in cases of Official "Summons", /SEE Skinner V. Westinghouse Elec, Corp 108 S.E.2d 745, Also /SEE S.C. Art 2, Sec 11. No person

otherside →

MAY BE HELD TO ANSWER FOR ANY CRIME THE JURISDICTION OVER
 WHICH IS NOT WITHIN THE MAGISTRATE COURT UNLESS ON A
 PRESENTMENT OR INDICTMENT OF A GRAND JURY OF THE COUNTY
 WHERE THE CRIME HAS BEEN COMMITTED, /SEE ARREST WARRANT
 M-381909 thru M-381912, /SEE TRIAL TRANS PG 42, L 11-23) WHERE
 COURT STIPULATED TRAFFIC STOP WAS LEGAL AND PETITIONER WAIVES
 CONSTITUTIONALITY OF THE STOP. THE ALLEGATION WAS NEVER CONFIRM
 OF ANY WARRANT OR UNIFORM TRAFFIC TICKET VESTING JURISDICTION
 FOR DEFENDANT TO APPEAR IN COURT FOR DISREGARD OF STOP
 SIGN. PETITIONER CONTEND UNDER (S.C. CODE ANN. 17-27-20) HE
 HAS BEEN VIOLATED OF U.S. CONST 14TH AND S.C. ART 1, SEC 3.
 /SEE STATE V. BISH 124 (S.O. 22859), RECOGNIZING THAT SECTION 56-7-10
 DOES NOT REPEAL SEC. 23-3-710 IT MERELY PROVIDES A METHOD
 OF ACQUIRING JURISDICTION IN TRAFFIC COURTS FINDING A UNIFORM
 TRAFFIC VIOLATION JURISDICTION IN TRAFFIC COURTS, AND THE ISSUANCE
 OF TRAFFIC TICKET MERELY SUMMONS THE ACCUSED TO APPEAR
 BEFORE A MAGISTRATE WHERE HE MAY SUBMIT ANY CONTENTION
 RELATIVE TO THE PRESERVATION OF HIS RIGHTS OF BEING TRIED.

10/4/

Argument

Applicant assert A Variance occurs when the Charging term of an indictment are left unaltered, However Evidence offered at trial proves facts materially different from language alleged in the Indictment / See Stirons v U.S. 80 S.Ct 270, and / Stirons Gaither, Charles Tatum v U.S 413 F.2d 1046. Petitioner Ask Officer Hines Officer to confirm an arrest for disregard of Stop Sign this compliant was made under oath, However at Bench trial defense counsel ask Officer about the arrest Officer ~~blandon~~, Refuse and denied, / In State v David Hill 822 S.W.2d 428 / And / State v Leak 181 S.W.2d 224 / An Arrest does not terminate the instant a person is taken into custody and control of the Law, Termination of the arrest is not final until delivered to Jailor and properly confined, See Trial Trans pg 57, L15-23, Where Search officer OR Jailor Steven Babinsky of Detention Center was not provided any forms of Arrest OR what purpose defendant was brought to Jail for of Arrest. Petitioner contend the Indictment Reads ON OR about the 25th day of January, 2010 Petitioner "knowingly Sell, Manufacture And Deliver OR bring into the State of S.C.", There's no proof of accusation in Summons, Warrant, presentment and indictment to Conviction of lower court, However Jurisdiction was Violated with Judgement and adjudication of General Session Court to Rights, Due Process of Law and liberty of Waiver against Appellate, Judge Stilwell Ruled Traffic Stop was legal and defendant waive Constitutionality of the stop, However defendant was not aware to challenge disregard of Stop Sign when lower Court Hearing was for other charge And No discussion

other side →

Of disregard of stop sign, /see Watts V. State 556 S.E.2d 368/, Trial
 Judge did not effectively warn defendant of the dangers of
 appearing Pro SE to Pleading guilty, /IN State V Langford 78 S.E.2d 854/,
 The forfeiture of imprisonment or Arrest is a loss of Rights which is
 A Nullity, BECAUSE NO Jurisdiction was obtain of accuse, SINCE A WARRANT
 WAS NOT ISSUED FOR HIS ARREST WITHIN REASONABLE TIME AFTER HIS DETENTION
 THERE CAN BE NO Valid adjudication, Either by way of Conviction of
 Accused OR Forfeiture of imprisonment OR Arrest, until A Warrant has been
 Issued and that absence of Warrant goes to the Jurisdiction of the
 Court and cannot be "waived", /see Gardner V. State 570 S.E.2d 184/,
 Constitutional Rights extends to defendant for course /when suspended
 Sentence may end in actual deprivation of a person's liberty.
 Applicant Awa /IN State V Bennett 650 S.E.2d 440/, C.D.B Codes
 CANNOT Trump up A statute of First offense Thru Third And
 Construe language of Guiding Policy implements. Violation of
 U.S. Const. Amend 4, 5, And 14, And S.C. Act 1 Sec. 3, 10 and 11
 WAS detriment of Indictment Process.

10(I)

Argument

Applicant Assert When A Conviction is obtain by knowing Use Of Perjured testimony is fundamentally Unfair, and Must be Set aside If any reasonable likelihood of the False testimony have affected the Judgement, (see Trial Transc pg 24 L 14-18, and pg 42 L 11-19), The Rulings by Judge Stillwell of documents describing defendant's guilt, punishment, and loss of right Prejudice defendant At Bench trial. Petitioner Contend to Show Perspective Perjured testimony given by witness in below paragraph, (see Trial Transc pg 21 L 6-9 and pg 22 L 12-16), Where Officer HINES Stated #1 Called IN Tag, #2 Called out traffic stop 56, #3 Location Where's He At #4 description of Vehicle, #5 Calling for back up when Relized false Name. Inconsistencies Will Prevail In Reviewing Recording and Transcript Of Contemporaneous Effect Where Material Evidence detail Primary Event; Main Open is establish at 21:53 of documents, and Other Related incident of material of Officer HINES Reported Information to dispatch, (see Trial Transc pg 26 L 5-22), Officer HINES Replying "No SiB" of the Simultaneous Call-INS of Incident. Appellate Allow his case is similar, in U.S.V (01/020 432 F.2d 1200), Where Judge allowed transcript as evidence without Review by Court and State for accuracy, Authority, (see Trial Transc pg 24 L 16-20). Petitioner Assert the Process of data filtration Requires some specialize knowledge or skill of education of Expert testimony, However the admission of a lay witness Opinionated testimony concerning a ultimate issues in a Case is not harmless, (see State V Ellis 547 S.2d 490), ALSO Rule 702 S.C.R.E. Officer HINES is NOT qualified to testify As AN EXPERT without training upon any process or procedure of

Other side

Department facility, (see State v. Goode 406 S.E.2d 393). Testimony is based solely on principles and methodology, not by what's generated by conclusion. Reliability and Relevancy is a determination finding of expert evaluation, ensuring the task of the Court rest upon constitutional foundation.

Appellate review machines provided by data, require concerns of Reliability by proponent to show machine is functional and reliable of correct adjustment or calibration of data with accurate input, describing the process or system usefulness to produce results can be established by evidence, (see U.S. v. Washington 498 F.3d 225). Petitioner Rights are essential to present a defense in a adversary criminal trial where violations of due process, U.S. Const and S.C. Art, were nullified without statutory adjudication.

10(I)

ISSUE

Petitioner Allege Counsel inadequate performance to investigate inconclusive Circumstantial Exculpatory Evidence of Exhibits admitted from State and defense at Bench Trial. Prior preparation of the Court was within abuse of discretion Under U.S.V. CLARK 986 F.2d 65. When admitting transcript of Recording. (SEE Trial Transcript pg 24 L 14-20). Applicant Contend Counsel Stipulated to accuracy of Incident Recall Sheet Transcript. (SEE Trial Transcript pg 24 L 16-17). Trial Counsel inquiry of Recording lack knowledge of Contemporaneous documents. (SEE Trial Transcript pg 28 L 21). Counsel stated in Court There may be more to this Tapes. (SEE U.S.V. CAPERS 61 F.3d 1100). Counsel Cross Examination of accuracies to government Witness, Exploring Opportunities of admission to ERRORS IN Audio Recording and Transcript Evidence. Appellate Allow the Court Should be Concern Whenever Raw data is generated by Analysts is testimonial. A forensic Analysts is properly permitted to give opinion as to the meaning of data. (SEE U.S.V. SUMMERS 603 F.3d 142). Also Trial Transcript pg 14 L 12-25, And pg 15 L 1-10). Government Witness testifying to process and procedure of Analysts facilities without knowledge of skill or Education, This is a Violation Under Rule 1003 SCRE.

Relevant Fact

Applicant Contend there is little to doubt of petitioner's Valid Allegation of the documents at issue of this case with falls within "Core Class Testimonial Statement" that should be attained, Thus describe within brief.

OTHERSIDE →

The Confrontation and Compulsory Clause is implicated by Extrajudicial Statements, They are contained in formalized testimonial materials such as affidavits, depositions, prior testimony, or confession of exculpatory material evidence which is denominated by S.C. Law. Applicant know the guilt, punishment, and loss of rights process of the court documents were in violation of defendant U.S. 4th Amend, and S.C. Art. I Sec 10 Constitution. These unlawful deficiencies establish by State witness, court, and prosecutor are insufficient, (see Baley v. U.S 105 S.Ct 3381). The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he receive a fair trial.

"Brady" Claim: Arises where previously undisclosed evidence revealed that prosecution introduces trial testimony that it knew or should have known was perjured; Claim 2 The government fails to accede to a defense request for disclosure of some specific kind of exculpatory evidence. The definition of materiality to be stressed here is suppressed evidence considered collectively, not item by item. Within the rebutted evidence and facts of brief, petitioner contend to not having to demonstrate that evidence if disclosed probably would have resulted in acquittal, (see Agurs v. U.S 96 S.Ct 2392).

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2013CP2306842
	)	
Marlin Hutley,	)	
	)	
Applicant,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

October 22, 2014
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

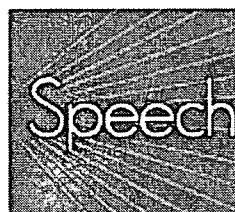
A P P E A R A N C E S:

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I N D E XDIRECT CROSS REDIRECT RECROSS

Marlin Hutley

by Mr. Johnson 6

by Ms. Ratigan 28

Scott Robinson

by Ms. Ratigan 29

by Mr. Johnson 33

Certificate of Reporter 37

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
APPLICANT EXHIBITS			
A-1	Motion	15	15
A-2	Traffic Tickets (2)	20	21
A-3	Redacted Traffic Ticket	20	21

RESPONDENT EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 22nd day of October, 2014 at approximately 11:54 a.m.)

MS. RATIGAN: May it please the Court?

THE COURT: Yes.

MS. RATIGAN: This is the case of Marlin Hutley versus the state of South Carolina. The docket number is 2013-CP-23-6842. Mr. Hutley was indicted for trafficking cocaine base and PWID Cocaine. He was represented on these charges by Mr. Robinson.

The case was actually bought the trial as a bench trial. On October 10th of 2011, Judge Stillwell found him guilty and sentenced him to concurrent charges of 25 years for Trafficking Cocaine third offense and 15 years for PWID Cocaine third offense. The case was appealed. The Court of Appeals dismissed the matter in June of 2013. The state is ready to proceed.

THE COURT: All right, Mr. Johnson.

MR. JOHNSON: Thank you, Your Honor. May it please the court. Again, there are some things that Mr. Hutley would like to provide to the Court. Also, we have got some limited issues as far as trying to help the court with

Remarks

1 what we are trying to do.

2 **THE COURT:** Okay. Very good.

3 **MR. JOHNSON:** First of all, there is a
4 subject matter of a case that was relied upon.
5 The Snowden case. Looks like it was recently
6 overruled by State versus Hewins which was
7 appellate case number 2012-210306. That was
8 part of the basis of the judge's ruling in that
9 case. I would like to elicit testimony on
10 that. Furthermore, Judge, there was an issue
11 with regards to an audio tape of the stop -- of
12 the dispatch, the dispatch audio.

13 Your Honor, just for a little bit of
14 background, my client was pulled over. The
15 probable cause was the basis of running a stop
16 sign. He contends that he never ran the stop
17 sign. He was trying to prove that the police
18 officer never wrote him a warning ticket or
19 never called it in or things of that nature.

20 There was the subject of an audio tape. It
21 is my client's contention that Mr. Robinson
22 wasn't even aware of the tape. If he was aware
23 and they had gone over it, it might have
24 changed his analysis as far as whether to plead
25 guilty, et cetera, things of that nature,

1 Judge. Those are the two things. I'm sorry
2 about the long-winded --

3 **THE COURT:** No, that is fine. I
4 appreciate it. You ready to call your witness?

5 **MR. JOHNSON:** Yes, ma'am, Your Honor. I
6 am going to call Mr. Marlin Hutley.

7 **MARLIN HUTLEY**

8 having first been duly sworn, testifies as follows:

9 **THE CLERK:** Thank you. Please state your
10 full name for the record.

11 **THE WITNESS:** Marlin Hutley.

12 **THE CLERK:** Thank you. You may be seated.

13 **DIRECT EXAMINATION**

14 **BY MR. JOHNSON:**

15 **Q** All right, Marlin. You know why we are
16 here today?

17 **A** Yes, sir.

18 **Q** Why? Speak up please or speak into the
19 microphone.

20 **A** To get the confirmation of the Hewins
21 versus State case.

22 **Q** I'm sorry. Say that again.

23 **A** To get the confirmation of the Hewins
24 versus State case.

25 **Q** Okay. Can you slow down and say that louder

1 one more time?

2 **A** To get the confirmation of Hewins versus
3 State case.

4 **Q** I believe you are stating to address the
5 Hewins, State versus Hewins case. Is what you are
6 stating?

7 **A** Yeah.

8 **Q** Did you file an application for ineffective
9 assistance of counsel?

10 **A** Yes, I did.

11 **Q** Who was your counsel?

12 **A** Scott Robinson.

13 **Q** This application is for postconviction
14 relief, correct?

15 **A** Yes, sir.

16 **Q** What type of relief are you asking for?

17 **A** (No response.)

18 **Q** Are you asking for your sentence to be
19 vacated and remanded back to trial court?

20 **A** Yes, a new trial.

21 **Q** Yes. Okay. This wasn't a guilty plea.
22 This was a trial, correct?

23 **A** Yes, sir.

24 **Q** Was it a jury trial or a bench trial?

25 **A** Bench trial.

1 Q Do you recall the strategies that you and
2 your attorney discussed at the bench trial? Were
3 there any pretrial motions?

4 A Motion to suppress.

5 Q Motion to suppress what?

6 A To suppress the evidence.

7 Q What evidence?

8 A The drugs.

9 Q To be clear for the record, you were
10 convicted of what? And what type of sentence were you
11 serving?

12 A 25-year sentence. Convicted of trafficking
13 cocaine.

14 Q This is the trafficking in reference to
15 what we discussed here today?

16 A Yes, sir.

17 Q What was your basis of the motion to
18 suppress?

19 A The basis of my motion to suppress was that
20 I was illegally stopped for a traffic violation, a
21 traffic offense that never occurred. During that,
22 the officer took me to the county jail and found some
23 drugs when I got to the county jail.

24 Q Why did the officer say that he stopped
25 you?

1 **A** He said I ran a stop sign.

2 **Q** Do you contend that you ran the stop sign?

3 **A** I did not run a stop sign.

4 **Q** The police officer basically pulled you
5 over, correct?

6 **A** Yes.

7 **Q** What happened after that? What transpired?

8 **A** He came to the vehicle -- after the traffic
9 stop, he came to the vehicle and we had a couple of
10 words. The dude that was supposed to come and
11 testify at trial, he didn't testify. They were
12 approaching the car and Officer Hines stepped back
13 and started using his radio and started calling
14 dispatch for backup and plate numbers and stuff like
15 that.

16 **Q** Now, is it true that the officer contended
17 that you gave him a false name when he pulled you
18 over?

19 **A** Yes, sir.

20 **Q** Do you agree with that statement?

21 **A** No, sir.

22 **Q** So you are saying you didn't give them a
23 false name?

24 **A** I didn't.

25 **Q** Now, you were eventually arrested for

1 giving a false name?

2 **A** Yes, sir.

3 **Q** And you were taken to the detention center?

4 **A** Yes, sir.

5 **Q** And that's when they found the drugs?

6 **A** Yes, sir.

7 **Q** And you contend that you should have been
8 arrested, first of all, you shouldn't have been
9 pulled over and you shouldn't have been arrested for
10 false information to police either?

11 **A** Yes, sir.

12 **Q** Now you eventually pled guilty to the false
13 information to police, is that correct?

14 **A** Yes, sir.

15 **Q** Why did you do that?

16 **A** At that time, I was -- you know. At that
17 time, I was going through a lot of things. I had a
18 job. I was trying to take care of my
19 responsibilities. I said instead of me going to
20 jail, I'll just take it and pay the fine just to get
21 it over with.

22 **Q** Did that decision eventually hurt you as
23 far as your pretrial motions or as far as trial?

24 **A** Yes, sir. It did.

25 **Q** Can you please portray to the Court your

1 understanding of the judge's ruling on the basis of
2 your plea?

3 **A** The judge stated that I gave up my rights,
4 constitutional rights, to try to fight the traffic
5 stop because I pleaded guilty to the false
6 information. He said that I had a chance, they said
7 I had a chance to argue that when I never had a
8 chance to argue the traffic stop because I never went
9 in front of the judge for the traffic stop for the
10 initial traffic stop, not for what happened after the
11 traffic stop. That is what I did not understand.

12 **Q** Is your understanding that there was a case
13 that they relied upon when they decided that you
14 could not argue?

15 **A** State versus Snowden.

16 **Q** Snowden? Is it S-N-O-W-D-E-N?

17 **A** Yes, sir.

18 **Q** All right. You mentioned earlier at the
19 beginning of this, you stated that you bought up a
20 case by the name of Hewins.

21 **A** Yes, sir.

22 **Q** How do you -- why do you believe that that
23 case affects the decision in your case?

24 **A** Because in the State versus Hewins, it
25 states that in order for collateral estoppel to be

1 lit -- it has to be litigated at some point in time.
2 At some point in time, it has to be litigated. Like
3 I said, the traffic stop was never litigated.

4 Q Because you pled guilty?

5 A No, the traffic stop. The initial traffic
6 stop. On the arrest warrant, the officer states that
7 he arrested me for a stop sign violation. I never
8 received a ticket to go to magistrate court or
9 anywhere to fight this. The only thing I went to
10 magistrate court for was false information. There
11 was no mention of nothing about no stop sign
12 violation. At that time, so he would not, so the
13 judge would not take my constitutionality from me of
14 the traffic stop.

15 Q So to clarify, it is your contention that
16 you never had an opportunity to question the probable
17 cause with the stop.

18 A That's right.

19 Q And you believe you were prejudiced by your
20 inability to do that at trial?

21 A Yes, sir.

22 Q With regards to the stop itself, was there
23 an issue with regards to the dispatch record?

24 A Yes, sir.

25 Q Can you please portray to the Court what

1 your understanding of the issue is?

2 **A** The dispatch and the CD-ROM that posted --
3 it was admitted at trial. We got the transcript at
4 trial from the solicitor the day of trial. Mr.
5 Robinson was questioning the officer about the
6 consistencies that supposed to be in it. The officer
7 was saying that the transcript is not going to have
8 the same thing as the CD-ROM is going to have. I
9 didn't understand that because the solicitor gave me
10 that the day of trial. It should have been
11 authentic. It should have been authorized for us to
12 use it at that time.

13 **Q** So the solicitor gave you what at the
14 trial?

15 **A** The transcript.

16 **Q** Okay. What about the audio?

17 **A** I don't know where that came from. Scott
18 Robinson never had it, so I don't know who bring it
19 to trial.

20 **Q** Was there any indication in your discovery
21 or in the Property and Evidence sheet or anything
22 that there should have been an audio or video tape of
23 dispatch?

24 **A** Read that again, sir.

25 **Q** Was there any indication in discovery that

1 there should've been some sort of audio of the
2 dispatch?

3 **A** No, it's not in discovery.

4 **Q** So in any case, this is not something that
5 you discussed with Mr. Robinson?

6 **A** No.

7 **Q** Do you think that that was a reason for Mr.
8 Robinson to be ineffective? What is your contention
9 there?

10 **A** That is what I am saying. At that time --
11 at the time, if he had the transcript and the tape,
12 at the same time, he did not know -- he had the
13 foreknowledge to know that this was not adequate
14 before trial, he could've been prepared. He's
15 question in the stop and the inconsistencies of it.

16 **Q** You believe that Mr. Robinson was aware
17 that he didn't, that he did read out the stop on the
18 audio? Do you think -- excuse me. Strike that,
19 judge. Do you think Mr. Robinson was aware that the
20 audio contained a version of the stop? Do you think
21 he was aware of that?

22 **A** No.

23 **Q** So you --

24 **A** It's not on the transcript. It's not on
25 the transcript. That's the only thing that he had --

1 that I know he had the day of trial. I got a letter
2 from the judge that he never had a copy of the tape.
3 How can he be prepared to have a copy to see if
4 everything was together with it?

5 **Q** One second please.

6 **MR. JOHNSON:** Your Honor, I would like to
7 have this marked and moved in as Applicant's
8 Exhibit 1. I don't believe there is an
9 objection.

10 **MS. RATIGAN:** No objection, Your Honor.

11 **THE COURT:** All right. It will be so
12 entered.

13 **(WHEREUPON,** Applicant's Exhibit 1 is marked for
14 identification and admitted into the record.)

15 **MR. JOHNSON:** Your Honor, permission to
16 publish to you.

17 **THE COURT:** Thank you.

18 **BY MR. JOHNSON:**

19 **Q** Will you tell -- Mr. Hutley, will you
20 please tell Your Honor what she is looking at?

21 **A** She is looking at a letter from appellate
22 counsel asking Mr. Robinson for a copy of the tape,
23 the CD-ROM. Mr. Robinson told the man that he does
24 not have a copy.

25 **Q** How do you believe that not having a copy

1 of the CD of the dispatch prejudiced you?

2 **A** This would have showed that there was never
3 a traffic stop. There was never a traffic stop.

4 **Q** You believe that if you had it, you would
5 have been prepared for that?

6 **A** Yes, sir.

7 **Q** In regards to the stop or otherwise, is
8 there anything else that you would like to portray to
9 the Court with regards to ineffectiveness or with
10 regards to your PCR application?

11 **A** Yes, I do. At the time of the trial, I
12 asked Mr. Robinson, I said the cop -- he asked the
13 cop did he arrest me for the stop sign violation.
14 The cop, he did not ever reply as to yes or no. He
15 said he arrested me for false information. Again,
16 like I say, he said he did arrest me for the stop
17 sign violation. 56-7-15 states that a uniform
18 traffic ticket is supposed to be arrested for a
19 traffic offense.

20 **Q** Now, you are speaking in regards to the
21 warrant. Can you portray to the Court what section
22 of the warrant you think is inconsistent with his
23 testimony?

24 **A** The officer stated that on 1/25/2010,
25 following a lawful traffic stop for a stop sign

1 violation, did find the accused, Marlin Hutley, to be
2 the driver and upon placing the accused under arrest
3 for the traffic offense.

4 Q Now, I guess it is your contention that
5 false information to police is not a traffic --

6 A No.

7 Q Therefore, the warrant, you believe the
8 warrant should be challenged?

9 A Yes.

10 Q To your knowledge, did Mr. Robinson attempt
11 to challenge the warrant?

12 A No, he didn't.

13 Q How do you feel that prejudiced you?

14 A At that time -- at that time, if you would
15 have challenged it, it would have showed that I
16 should never have been brought to the jail. Like he
17 asked the detention center officer what was his
18 intention when Officer Hines brought me to the
19 detention center, what was I arrested for, what was
20 the detention for. There was nothing shown. He
21 asked the man on the commitment sheet where is the
22 arrest for the stop sign violation. Where is any
23 contention that you arrested this man, that you say
24 you stopped him for?

25 Q You also quoted in the code section, South

1 Carolina code, is that correct?

2 A Yes, sir.

3 Q Can you repeat what it is that you recited?

4 A 56-7-10(a) there will be a uniform traffic
5 ticket used by all law enforcement officers in
6 arrests for traffic offenses and for the following
7 additional offenses. It is C, no other ticket may be
8 used for these offenses. To serve -- that traffic
9 ticket shall match all traffic, recorders' and
10 magistrates' courts with jurisdiction to hear and to
11 dispose of the charge for which the ticket was issued
12 and served.

13 Q Is your contention that the warrant states
14 that he arrested you for traffic violation, that
15 should be a traffic ticket?

16 A Yes, sir.

17 Q Because there is no traffic ticket, that
18 should have been challenged?

19 A Yes, sir.

20 Q Is there anything else, Mr. Hutley, that
21 you would like to portray to the Court?

22 A Okay. I also have a, uh, -- I also have the
23 warning ticket that they used -- they used at trial.
24 And we -- Scott Robinson, he objected and the court
25 ruled that, uh, it may be cumulative. It may be not

1 relevant, but it's cumulative. The reason why I
2 really want to address this is because Hines and the
3 solicitor stated that --

4 Q Who is Hines? Who is Hines?

5 A Officer Hines.

6 Q Okay. The arresting officer.

7 A Yeah, Officer Hines, the arresting officer.
8 And the solicitor stated that the original copy has
9 been destroyed. The investigator that we had on the
10 case, she, uh, -- after the case, she got in touch
11 with the lieutenant from the police department. The
12 lieutenant gave her the copy, the original copy that
13 was supposed to be destroyed. It doesn't match with
14 what the admitted at trial.

15 Q So you have a copy that you would like to
16 present?

17 A Yes, I have a copy.

18 Q Okay.

19 A I would also like to submit the copies of
20 the ones before -- the ones before and after the
21 serial number of the original one they said that was
22 destroyed.

23 Q Okay.

24 MR. JOHNSON: Your Honor, with regard to
25 these tickets, the Attorney General has an

1 objection to one which is redacted. If I may at
2 least proffer it for the court's record.

3 **THE COURT:** Certainly.

4 **MR. JOHNSON:** The other two, I don't
5 believe she has an objection to.

6 **MS. RATIGAN:** The ones you have in your
7 right hand, I have no objection to. The one
8 that is redacted, I don't know who it is in
9 reference to because it has been redacted.

10 **MR. JOHNSON:** Okay.

11 **THE COURT:** Okay. All right. I will
12 admit it for what it is worth.

13 **MR. JOHNSON:** Yes, ma'am, Your Honor.

14 **THE COURT:** Make that Applicant's 2, the
15 ones that are not objected to, and Applicant's
16 3, the one that is.

17 **MR. JOHNSON:** Yes, ma'am, Your Honor.

18 **THE COURT:** Does that make sense? Okay.

19 **MR. JOHNSON:** Yes, ma'am.

20 **(WHEREUPON, Plaintiff's Exhibits 2 and 3 are**
21 **marked for identification.)**

22 **MR. JOHNSON:** Again, Judge, I don't know.
23 He would like to testify on the basis of them.
24 I suppose we could at least proffer it and you
25 can decide whether or not you will consider it.

1 **THE COURT:** All right. No, I will admit
2 them. I will admit them. All right.

3 **(WHEREUPON, Plaintiff's Exhibits 2 and 3 are**
4 admitted into the record.)

5 **BY MR. JOHNSON:**

6 **Q** Mr. Hutley, would you please portray to the
7 Court before I publish to the Court what it is that
8 you are trying to show.

9 **A** The reason why I would like to have them
10 all admitted is because the ones, the original ticket
11 and the copy have discrepancy in them. The one they
12 used at trial, it has a date of 1/25/2010. The
13 original copy says 1/25/2009. The violation code is
14 also changed. It has the one that was used at trial
15 with a code of 42. The original one has a code of
16 23. Also, the location has changed. The location on
17 the one that is used at trial was West Washington
18 Street. The original got Washington Street.

19 Also, the ones I have that is before the
20 serial number of the original one that was supposed
21 to be issued to me, it has a code of 23. The one
22 that was issued to me has a code of 23. Code 23 of
23 these tickets mean defective equipment. The officer
24 has the words stop sign violation on them but he
25 doesn't have the right code. If he gave this to the

1 people -- crime analyst to take the date and put them
2 in the computer, who changed the date that is
3 analogued in there on the ticket? If he had it to
4 the point that he is saying what is supposed to be,
5 why would he change it?

6 Q So to understand your testimony, as I
7 understand what you are stating is you are trying to
8 attack the credibility of the officer?

9 A And to the point that it was never issued.

10 Q So you are trying to say that if a ticket
11 was issued, this information would match up and it
12 would be correct?

13 A Yeah, it would be correct.

14 Q From your knowledge, was this challenged at
15 trial?

16 A It was just -- no. No.

17 Q And do you believe you were prejudiced by
18 the failure to challenge at trial?

19 A Yeah. This is helping the officer's
20 credibility saying that this occurred, the situation
21 occurred. That is just like the transcript and the
22 tape. All of this is saying that this situation
23 occurred of a traffic stop. But the only thing that
24 is on record is not adding up.

25 Q You believe the court considered the

1 officer's credibility in deciding whether or not --

2 **A** He did that.

3 **Q** Okay. Mr. Hutley, is there anything else
4 that you would like to portray to the Court at this
5 time?

6 **A** Yes, sir. Also, the officer in his report,
7 in the officer's report, he doesn't have no mention
8 of giving me a written warning ticket or uniform
9 traffic ticket for this offense.

10 **Q** Would you like to portray that to the
11 Court?

12 **A** Yes, sir.

13 **Q** It's not submitted in evidence. I can
14 submit it. Would you like to read it into the
15 record?

16 **A** The whole thing?

17 **Q** Just a portion, just a portion --

18 **A** I've got to read the portion that, the
19 ticket that he did say admitted.

20 **Q** Okay.

21 **A** He said Mr. Hutley was also charged with No
22 State Driver License, ticket number 93120FB, and
23 False Name to Police, ticket number 93121FB. There
24 is nothing in there stating that he gave me a written
25 warning ticket or was going to give me any kind of

1 ticket for the stop sign violation.

2 Q Do you know whether Mr. Robinson properly
3 examined him on the basis of that during the trial?

4 A No, he did not.

5 Q You believe that prejudiced you?

6 A Yes, sir.

7 Q You believe that would shed light and
8 attack his credibility?

9 A Yes, sir.

10 Q Is there anything else you would like to
11 portray to the Court?

12 A I would also like to submit for the record
13 the amount of times that officer -- I mean Scott
14 Robinson visit me at the jail before the appointed
15 time for trial. There is a visiting sheet at the
16 jail. He only visited me three times to try to even
17 put up some kind of defense. The amounts of time
18 that he visited me was no more than three hours on
19 the three offenses together.

20 Q Okay. What dates did he visit you?

21 A 9/13/2011, 9/11/2011, and 8/18/2011.

22 Q When was the trial?

23 A 10/10/2011.

24 Q So you don't believe you had sufficient
25 time to speak with him concerning your case?

1 **A** No, sir.

2 **Q** You got that record from the jail?

3 **A** Yes, sir.

4 **Q** Mr. Hutley, anything else you would like to
5 portray?

6 **A** Okay. We had submitted the pre-detention
7 temporary law enforcement sheet at the trial. It is
8 already marked as Exhibit 3. On there, I told Mr.
9 Scott Robinson when he was questioning the detention
10 center officer about the procedure of the exhibit
11 that the officer's name who testified, his name is
12 not on here. He testified to not receiving this
13 paper. He testified to not receiving any paper. By
14 him not signing it, that means any time limit or any
15 preparation that the officer stated that happened
16 during the time he brought me to the detention center
17 can never occur because it never really got it
18 stamped. It is supposed to be time stamped by the
19 machine. It is not time stamped.

20 **Q** So your testimony is he did not follow
21 proper procedures?

22 **A** Proper procedures.

23 **Q** Do you know was this brought to light
24 during the trial?

25 **A** Say it again?

1 Q Was this brought to light during the trial?

2 A No.

3 Q You believe that would have cast light on
4 his credibility as well?

5 A Yes, sir. He testified to the time limits
6 of me arriving to the detention center like was on
7 the transcript, to what he did before he took me into
8 the sally port where the drugs were found. At that
9 time, like I said, in order for me to be -- I don't
10 have the policy. It got torn up some kind of way
11 while I was at the prison where I was at.

12 It states that in order for a detention
13 center officer to receive you as being taken into
14 custody, it has to receive this form. It has to be
15 filled out, filled out in entirety. That is like
16 when he asked the man, me asking Officer Hines why is
17 the traffic -- stop sign violation not on here. He
18 testified that he don't have to put it on because it
19 is a written warning ticket.

20 If this is what you said you brought me to
21 the jail for, why do not put it on there? If this is
22 what you are arresting me for, the form said any
23 arrest the defendant may have for the individual, for
24 the defendant, it is supposed to be on this form. It
25 is not there.

1 **Q** All right, Mr. Hutley.

2 **A** I have something else I have for the judge.
3 When I was sentenced, the judge in the transcript, we
4 established that for the time to be conducted was to
5 start on 9 -- 5/19. He asked me the day I got
6 arrested. I told him I got arrested on May 18th.

7 **Q** Okay.

8 **A** I got arrested on May 18. He said -- he
9 was telling me -- he was asking me how many days I
10 eventually do. I told him I stayed in there for one
11 day. No, it was January for the charge -- for the
12 charge of January. He asked me how much time did I
13 do. I told him one day. Then I got rearrested and
14 came back to the jail on May 19th -- May 18th. He
15 gave me time credit from May 19th of 2010. He gave
16 me credit from May 19th, 2010 and he stated, he
17 stated later on before he closed out that May 19th,
18 2011. We was established in 2010. To my
19 understanding, that took a whole year from me.

20 **Q** You are aware that postconviction relief
21 is not necessarily the framework to attack time
22 credit. I will be happy to discuss that with you
23 after the hearing, okay.

24 **THE COURT:** Okay. Any other questions,
25 Mr. Johnson?

1 **MR. JOHNSON:** Please answer any questions
2 Ms. Ratigan has.

3 **THE COURT:** All right.

4 **CROSS-EXAMINATION**

5 **BY MS. RATIGAN:**

6 **Q** I just need you to clear up one thing for
7 me. You are talking about the tape. What table are
8 you talking about? Is it a tape where the officer
9 called dispatch?

10 **A** Yeah.

11 **Q** That was played at trial, was it not?

12 **A** Yes, it were.

13 **Q** Okay. And you said you had not heard it
14 before then?

15 **A** I never heard it.

16 **Q** And when you are talking about the
17 transcript, is the transcript of that tape?

18 **A** Yes, ma'am.

19 **Q** Okay. That is all I have, Your Honor.

20 **THE COURT:** All right. Sir, you can step
21 down.

22 Mr. Johnson, is that all?

23 **MR. JOHNSON:** Yes, ma'am, Your Honor.

24 **THE COURT:** All right. Yes, ma'am.

25 **MS. RATIGAN:** The state would call Mr.

1 Robinson.

2 **SCOTT ROBINSON**

3 having first been duly sworn, testifies as follows:

4 **THE CLERK:** Thank you. Please state your
5 full name for the record.

6 **THE WITNESS:** Scott Robinson.

7 **THE CLERK:** Thank you. You may be seated.

8 **DIRECT EXAMINATION**

9 **BY MS. RATIGAN:**

10 **Q** Mr. Robinson, do you recall representing
11 Mr. Hutley on these charges?

12 **A** I do. I was appointed after Dorothy
13 Manigault was released.

14 **Q** Did you file discovery motions?

15 **A** Yes.

16 **Q** Did you receive those materials from the
17 state?

18 **A** Yes.

19 **Q** Did that include a tape of the dispatch
20 call from the officer and the dispatch?

21 **A** Anything that the state has that they were
22 going to use at trial, they always give it to me.
23 They have an open file policy. If they had it, they
24 would give it to me.

25 **Q** Was Mr. Hutley at the detention center

1 while you were representing him?

2 A Yes.

3 Q Do you send your clients copies of
4 discovery materials?

5 A Yes. I think he actually had another copy
6 that Ms. Manigault had given to him as well.

7 Q Did you review those materials with Mr.
8 Hutley?

9 A Yes.

10 Q Did he tell you his version of what
11 happened that day?

12 A Yes.

13 Q Do you recall there being some kind of a
14 transcript of the dispatch tape?

15 A If it was available, we would have that.

16 Q But you don't have any independent
17 recollection?

18 A I don't. I don't. As I said before, if
19 the Solicitor's office had it, they would have given
20 it to me.

21 Q What was going to be your trial strategy in
22 this case given the discovery and your client story?

23 A The unfortunate thing about this is when he
24 got to the detention center, they found a bunch of
25 drugs on him. Going back to how it all started, my

1 initial strategy was to see if I could get the stop
2 suppressed or show that it was illegal at some point.
3 That is where we were coming from at first. At that
4 time, I believe the Snowden case was good law at that
5 time.

6 Q You went ahead and had a suppression
7 hearing for the record anyway?

8 A We did. We did. That was in the only --
9 that was part of the strategy of this case. We were
10 going after every -- everything we could do to keep
11 the stuff out based on the stop based on everything
12 else that Mr. Hutley wanted to talk about.

13 Q Did you bring up the issues of, that he was
14 stopped for failure to stop and then there was also
15 the issue of providing false information. Did you
16 bring up all of these discrepancies in terms of the
17 ticketing?

18 A I have to look at the transcript. If it is
19 in the transcript, then I did or I didn't.

20 Q Was that part of your strategy to point out
21 the discrepancies in the state's story basically?

22 A Looking back at this case which was three
23 years ago, that appears to have been my strategy at
24 that time.

25 Q Did you know, going into the suppression

1 hearing, that this was ultimately going to be
2 resolved in a bench trial or is that something that
3 kind of developed as the suppression hearing went
4 along?

5 **A** I think it was -- I think we liked Judge
6 Stillwell. He is a very fair judge in this matter
7 and he would listen. That is why a bench trial was
8 chosen over a jury trial. Plus, two, it also would
9 be something that would save time, save expense.

10 **Q** Do you recall since while he was at the
11 detention center, do you recall whether Mr. Hutley
12 would have been able to listen to that dispatch tape
13 prior to the trial?

14 **A** I have no idea. If I had a tape --
15 typically, if I had a tape, I would take that to the
16 detention center with either a laptop or something.
17 I share everything with them.

18 **Q** That would just be your general practice?

19 **A** It would, yes.

20 **Q** Can you think -- obviously, this is kind of
21 a Monday morning quarterback question. Can you think
22 of anything else in retrospect that you could have
23 done to prepare for the suppression hearing or the
24 bench trial?

25 **A** I really don't know what I could have done.

1 I think when Mr. Hutley pled guilty on the giving
2 false information, that kind of set the ball rolling
3 a little bit. It kind of made it more difficult to
4 challenge some of these things. I just did the best
5 that I could with the law that I had at that time.

6 **MS. RATIGAN:** That's all I have, Your
7 Honor.

8 **THE COURT:** All right. Mr. Johnson.

9 **MR. JOHNSON:** Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 **BY MR. JOHNSON:**

12 **Q** Mr. Robinson, you heard his testimony here
13 today about the audio of the dispatch?

14 **A** I did.

15 **Q** Now it is his contention that he never
16 heard it and he didn't believe that you had either.
17 Do you believe his recollection could be correct or
18 do you believe that your recollection is different?

19 **A** Going back three years, I can say that the
20 Solicitor's office, when I dealt with them, they are
21 great about getting information, discovery and so
22 forth. As far as independently have any recollection
23 of that, I don't have any independent recollection of
24 that. I can't tell you. My practice would be to do
25 that if I had it. They are always good about giving

1 information. If we have received it the day of
2 court, they would have let us review with Mr. Hutley.

3 Q I guess your answer is you don't
4 necessarily recall?

5 A No, I really don't. I don't have an
6 independent recollection.

7 Q Would you agree that that video would've
8 been crucial, not the video but the audio would have
9 been crucial if it was consistent with Mr. Hutley's
10 version of events that he didn't run the stop sign?

11 A I don't know. I think what Mr. Hutley was
12 getting at, at that time, I think he believed -- this
13 officer knew him. He had had some experience with
14 him before. He knew what he looked like. He
15 thought, I believe this is my own recollection. I
16 think he believed this was pretextual stuff. That is
17 what I believe he thought. I don't know if that tape
18 would have helped or not. I really don't. The fact,
19 the germane fact in this case is that he pled guilty
20 to giving false information. When he did that, as I
21 told the Attorney General, that set in motion this
22 problem. I attacked that as far as the stop goes.

23 Q You attempted to preserve the record on
24 that issue, is that correct?

25 A I hope I did. I believe I did. You have

1 to look at the transcript as far as whether or not I
2 believe I did.

3 Q With regards -- would you believe that if
4 he didn't run a stop sign there would've been no
5 probable cause to stop?

6 A That's what my argument was. I think
7 that's basically what it came down to. He said he
8 didn't run the stop sign. Then you have the officer
9 saying I did see him run the stop sign. He knew him.
10 Of course.

11 Q You would also agree that anything that
12 would tend to prove that the officer did not document
13 that he ran the stop sign --

14 A I think it goes to credibility of the
15 officer.

16 Q Okay.

17 A It goes to the procedures, credibility and
18 so forth. Whether it is dispositive or anything like
19 that, I'm not sure.

20 Q The court considered the officer's
21 credibility in deciding whether or not there was
22 probable cause?

23 A Sure.

24 Q Okay. I have no further questions.

25 THE COURT: All right. Anything else for

1 this witness?

2 **MS. RATIGAN:** No, Your Honor. The state
3 would rest.

4 **THE COURT:** Sir, you can step down.
5 All right. Anything else, Mr. Johnson?

6 **MR. JOHNSON:** Not at this time , Judge.

7 **THE COURT:** All right. I'm going to take
8 this matter under advisement. I am certainly
9 going to read the trial transcript and take a
10 look at some other things. I will be issuing a
11 decision shortly.

12 **MR. JOHNSON:** Thank you, Your Honor.

13 **MS. RATIGAN:** Thank you, Judge.

14 **THE COURT:** Thank you.

15 **(WHEREUPON, the proceedings conclude at**
16 approximately 12:36 p.m.)

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22

23

24

25

STATE OF SOUTH CAROLINA)
160)
COUNTY OF GREENVILLE)

IN THE Common Pleas COURT

CASE NO(s). 13-6842

EXHIBITS RECEIPT

PLAINTIFF	<u>Marlin Hutley</u>	PLAINTIFF'S ATTORNEY	<u>B. Johnson</u>
DEFENDANT	<u>State</u>	DEFENDANT'S ATTORNEY	<u>K. Petigan</u>
JUDGE	<u>Verdin</u>	DATE OF HEARING	<u>10/22/14</u>

The following exhibits were received by me from Teresa B. Johnson, Court Reporter for the Thirteenth Judicial Circuit, on the 22 day of Oct, 2014.

They are, as follows:

Plaintiff / Petitioner / State Exhibits	Defendant / Respondent Exhibits	Court Exhibits
1 <u>Motion</u> ID / EV	1 ID / EV	1
2 <u>Ticket (2)</u> ID / EV	2 ID / EV	2
3 <u>Redacted ticket</u> ID / EV	3 ID / EV	3
4 ID / EV	4 ID / EV	4
5 ID / EV	5 ID / EV	5
6 ID / EV	6 ID / EV	6
7 ID / EV	7 ID / EV	7
8 ID / EV	8 ID / EV	8
9 ID / EV	9 ID / EV	9
10 ID / EV	10 ID / EV	10
11 ID / EV	11 ID / EV	
12 ID / EV	12 ID / EV	
13 ID / EV	13 ID / EV	
14 ID / EV	14 ID / EV	
15 ID / EV	15 ID / EV	
16 ID / EV	16 ID / EV	
17 ID / EV	17 ID / EV	
18 ID / EV	18 ID / EV	
19 ID / EV	19 ID / EV	
20 ID / EV	20 ID / EV	
21 ID / EV	21 ID / EV	
22 ID / EV	22 ID / EV	
23 ID / EV	23 ID / EV	
24 ID / EV	24 ID / EV	
25 ID / EV	25 ID / EV	

Jan White
Clerk of Court

10-22-14
Date Received

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

MARLIN HUTLEY,

APPELLANT.

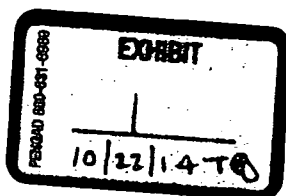
MOTION TO HOLD TIME LIMITS IN ABEYANCE

The undersigned respectfully shows the Court:

The initial brief of appellant and designation of matter in this case are due to be served and filed today.

1. As of today, Counsel has not received a copy of Defendant's Exhibit #1 (DVD) for his use in preparation for the initial brief of appellant. In attempting to procure a copy of the DVD, Counsel contacted appellant's trial attorney, Scott Robinson, and was informed that Mr. Robinson did not have a copy of the DVD.

2. Pursuant to the agreed upon procedure between Appellate Defense and the Attorney General's office as explained to me by Chief Appellate Defender, Robert Dudek, Counsel



contacted Senior Assistant Deputy Attorney General, Salley Elliott, about obtaining a copy of the DVD. Ms. Elliott has since contacted the Greenville County Solicitor's office and requested a copy of the DVD. The Greenville County Solicitor's office has yet to respond Ms. Elliott's request.

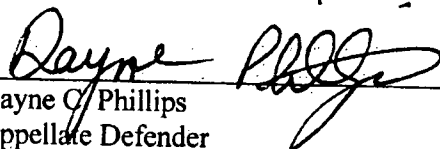
3. On October 12, 2012, Counsel sent a letter to this Court requesting that the time limits be held in abeyance; Ms. Elliott consented to Counsel's request.

4. Counsel makes this request in good faith and not for purpose of delay because it is necessary for Counsel to ethically represent his client, Marlin Hutley, and to protect Mr. Hutley's rights on appeal.

5. Accordingly, Counsel requests that the time limits be held in abeyance pending counsel's receipt of the DVD.

6. As indicated by her signature below, Salley W. Elliott, of the South Carolina Attorney General's Office, does not oppose this request.

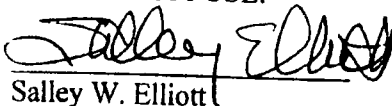
Respectfully submitted,


Dayne C. Phillips
Appellate Defender

Attorney for Appellant

This 16th day of October, 2012

I DO NOT OPPOSE:


Salley W. Elliott

**PUBLIC CONTACT / WARNING
STATE OF SOUTH CAROLINA
CITY OR COUNTY OF Greenville**

First Name <u>Mario</u>		Middle Name <u>Sonelle</u>		Last Name <u>Hurtley</u>	
State Licensed <u>SC</u>		Driver's License No. <u>0100017966</u>			
Race / Ethnicity <u>B</u>	Gender <u>M</u>	Date of Birth <u>7-20-70</u>		Latitude	Longitude
Hwy Type	Hwy No. / Name <u>Washington St</u>	County <u>Greenville</u>	Code <u>25</u>	Date <u>1-25-09</u>	Time <u>053</u>
Vehicle License No. <u>F9K184</u>		State <u>SC</u>	Vehicle Make <u>Toyota</u>		Year <u>48</u>
Issued By <u>Hines, J</u>			Rank <u>Pfc</u>	Badge No. <u>203</u>	

NATURE OF CONTACT

- | | |
|---|--|
| ☐ SPEEDING | ☐ DISOBOARDING TRAFFIC SIGNAL |
| ☐ CONTACT ONLY | ☐ FOLLOWING TO CLOSE |
| ☐ IMPROPER LANE USE | ☐ CHANGING LANES UNLAWFULLY |
| ☐ FAILURE TO DIM LIGHTS | ☐ NO RIGHT OF WAY |
| ☐ IMPROPER BACKING | ☐ DEFECTIVE EQUIPMENT |
| ☐ IMPROPER LIGHTS | ☐ IMPROPER PASSING |
| ☐ IMPROPER TURN | ☐ DRIVERS LICENSE VIOLATION |
| ☐ DISREGARDING STOP SIGN | ☐ VEHICLE LICENSE VIOLATION |
| ☐ SEAT BELT VIOLATION | ☐ OTHER (SPECIFY): <u>stop sign</u> |

RECORD CONTACT**PRIMARY REASON FOR CONTACT (CHECK ONLY ONE):**

- | | |
|---|--|
| ☐ MOVING VIOLATION | ☐ BOLD |
| ☐ NON-MOVING VIOLATION | ☐ TRAFFIC COLLISION |
| ☐ MOTORIST ASSISTANCE | ☐ SUSPICIOUS ACTIVITY |
| ☐ OTHER (SPECIFY): | |

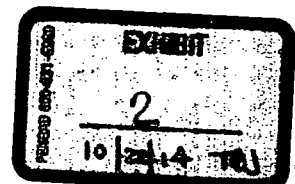
SEARCHES (CHECK ALL THAT APPLY):

- | | | | |
|--|---|-------------------------------------|---------------------------------------|
| ☐ SEARCH CONDUCTED: | ☐ OF DRIVER | ☐ OF VEHICLE | ☐ OF PASSENGER |
| ☐ CONSENT SEARCH REQUESTED: | ☐ YES | ☐ NO | |
| ☐ CONSENT GIVEN: | ☐ YES | ☐ NO | |
| ☐ SEARCH MADE BY CONSENT | ☐ INCIDENT TO ARREST | | |
| ☐ INVENTORY (VEHICLE TOWED) | ☐ PROBABLE CAUSE | | |
| ☐ OTHER (SPECIFY): | | | |

063757-Q

AGENCY COPY

FORM 412 (REV 10/2008)



No page 1

LASTNAME HUTLEY
FIRST NAME MARLIN
MIDDLE JAMELLE
DOB 4/20/1972
VIOLATION CODE 42
OFFENSE CODE
OFFICER NAME PINES US
DATE 1/25/2010
LOCATION W. WASHINGTON ST
OFFENDER RACE Black
OFFENDER SEX Male
OFFICER RACE White
OFFICER SEX Male

STATE'S
EXHIBIT

10-11-11 MFA

PUBLIC CONTACT / WARNING
STATE OF SOUTH CAROLINA
CITY OR COUNTY OF Greenville

First Name		Middle Name		Last Name	
[REDACTED]					
State Licensed		Driver's License No.			
[REDACTED]					
Race / Ethnicity		Gender	Date of Birth	Latitude	Longitude
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Hwy Type	Hwy No. / Name	Country	Code	Date	Time
	MULberry/Hwy	GV	23	1-25-10	2057
Vehicle License No.		State	Vehicle Make	Year	CMV ☐
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Issued By			Rank	Badge No.	
HARRIS, JS			PC	207	

NATURE OF CONTACT

- | | |
|---|---|
| ☐ SPEEDING | ☐ DISREGARDING TRAFFIC SIGNAL |
| ☐ CONTACT ONLY | ☐ FOLLOWING TO CLOSE |
| ☐ IMPROPER LANE USE | ☐ CHANGING LANES UNLAWFULLY |
| ☐ FAILURE TO DIM LIGHTS | ☐ NO RIGHT OF WAY |
| ☐ IMPROPER BACKING | ☒ DEFECTIVE EQUIPMENT |
| ☐ IMPROPER LIGHTS | ☐ IMPROPER PASSING |
| ☐ IMPROPER TURN | ☐ DRIVERS LICENSE VIOLATION |
| ☐ DISREGARDING STOP SIGN | ☐ VEHICLE LICENSE VIOLATION |
| ☐ SEAT BELT VIOLATION | ☐ OTHER (SPECIFY): |

CONTACT

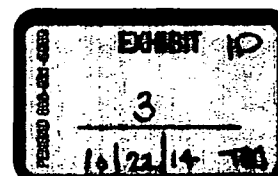
- CONTACT (CHECK ONLY ONE):
- | | |
|---|--|
| ☐ NON-MOVING VIOLATION | ☐ TRAFFIC COLLISION |
| ☐ MOTORIST ASSISTANCE | ☐ SUSPICIOUS ACTIVITY |
| ☐ OTHER (SPECIFY): | |

SEARCHES (CHECK ALL THAT APPLY):

- | | | | |
|--|---|-------------------------------------|---------------------------------------|
| ☐ SEARCH CONDUCTED: | ☐ OF DRIVER | ☐ OF VEHICLE | ☐ OF PASSENGER |
| ☐ CONSENT SEARCH REQUESTED: | ☐ YES | ☐ NO | |
| ☐ CONSENT GIVEN: | ☐ YES | ☐ NO | |
| ☐ SEARCH MADE BY CONSENT | ☐ INCIDENT TO ARREST | | |
| ☐ INVENTORY (VEHICLE TOWED) | ☐ PROBABLE CAUSE | | |
| ☐ OTHER (SPECIFY): | | | |

FORM 432 (REV 10/2008)

063756-Q
AGENCY COPY



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. No. 2013-CP-23-6842

Marlin Jamelle Hutley,)

S.C.D.C. # 240707,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 DEC 19 PM 4:39

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 30, 2013. The Respondent made its return on May 21, 2013. A hearing into the matter was held on October 22, 2014 before Judge Letitia H. Verdin at the Greenville County Courthouse. The Applicant was present and represented by Brian P. Johnson, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Scott D. Robinson, Esquire. The Court had before it the transcript of the bench trial, the Greenville County Clerk of Court records, including the arrest warrant, indictment and sentencing sheet; the Applicant's South Carolina department of Corrections Records; the PCR Application, and the Return.

PROCEDURAL HISTORY

The Applicant was confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Greenville County Grand Jury indicted the Applicant at the December 2010 term of General Sessions for trafficking



cocaine base (crack cocaine) (2010-GS-23-2817) and possession with intent to distribute (PWID) cocaine (2010-GS-23-2819). Scott D. Robinson, Esquire represented the Applicant.

When the case was called to trial, the Applicant requested—and was afforded—a bench trial. The Applicant was found guilty on both charges. On October 10, 2011, the Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of twenty-five years for trafficking cocaine (10-28 grams), third offense and fifteen years for PWID cocaine, third offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Dayne C. Phillips, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders brief. See Anders v. California, 386 U.S. 738 (1967). The Court of Appeals dismissed the Appeal. State v. Hutley, Op. No. 2013-UP-293 (S.C. Ct. App. June 26, 2013).

ALLEGATIONS

In this Application, the Applicant alleges that he is entitled to PCR because he received ineffective assistance of trial counsel. Particularly, the Applicant argues that counsel was ineffective because:

- a. He failed to make minimal inquiries of substantial investigation, which would have revealed that the Applicant's initial arrest was a "predicated omission of warrant affidavit" which was insufficient to establish probable cause;
- b. He denied "defendants constituent parts of elements [sic] of crime for prima facie;"
- c. He failed to object to the prosecutor "vouching for the state's case of impeachment evidence of state witness;"
- d. He failed to prepare and present numerous pieces of essential evidence, specifically the audio tape of law enforcement's dispatch center relating to the initial traffic stop; and
- e. The trial court relied on legal precedent which has been overturned.

Of these allegations, the Applicant presented evidence relating only to the last two points.



FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2014).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 686 (1984); Porter v. State, 368 S.C. 378, 629 S.E.2d 353, 356 (2006). Regarding the first prong, the Applicant must in essence show that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). A reasonable probability is "a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 686).



Furthermore, the decisions and advice of trial counsel should be assessed for reasonableness under all the circumstances, with heavy deference given to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). A criminal defense attorney has a duty to conduct a reasonable investigation so that he may discover all reasonably available mitigation evidence, as well as any reasonably available evidence tending to rebut evidence produced by the state. McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 361 (2008). There is a strong presumption that adequate assistance of counsel was rendered, and that reasonable care was exercised—particularly in the arena of professional judgments. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007).

- a. **Failure to make minimal inquiries of substantial investigation, which would have revealed that the Applicant's initial arrest was a "predicated omission of warrant affidavit" which was insufficient to establish probable cause.**

This issue was not raised during the Applicant's PCR hearing. Furthermore, the Applicant did not present any additional evidence in his PCR application in support of this contention. Therefore, this Court finds that the Applicant has failed to meet his burden of proving that trial counsel failed to offer a proper defense, and therefore the first prong of Strickland has not been satisfied. PCR on this ground will not be granted.

- b. **Denial of "defendants constituent parts of elements [sic] of crime for prima facie."**

This issue also was not raised during the Applicant's PCR hearing. Additionally, the Applicant did not present any evidence in his PCR application in support of this contention. Therefore, this Court finds that the Applicant has not met his burden of proving that trial counsel failed to offer a proper defense.



- c. Failure to object to the prosecutor "vouching for the state's case of impeachment evidence of state witness."

The Applicant did not raise this issue during his PCR hearing. Furthermore, the Applicant did not present any additional evidence in his PCR application in support of this contention. This Court therefore finds that the Applicant has failed to meet his burden of proving that trial counsel failed to offer a proper defense.

- d. Failure to prepare and present numerous pieces of essential evidence, specifically the audio tape of law enforcement's dispatch center relating to the initial traffic stop.

The Applicant argues at his PCR hearing that his case would have been materially advanced by a more thorough challenge to the arresting officer's credibility. For example, the Applicant pointed out that the officer did not follow the proper procedure during the initial traffic stop. Similarly, the Applicant argues that the discrepancies between his traffic tickets would also have put the officer's credibility at issue. Finally, the Applicant asserts that his case would have been strengthened by the presentation of an audio recording of law enforcement's dispatch center. The Applicant asserts that this recording would have revealed that there was no basis for his initial traffic stop. The Applicant testified that he did not tell his attorney about his belief that this recording would be helpful to the preparation of his defense.

The Applicant's trial counsel testified that he had no knowledge of such a recording. Trial counsel was appointed during the later portion of the discovery process, after the Applicant's prior counsel was unable to continue his representation. The Applicant's trial counsel also testified that his trial strategy focused on trying to suppress evidence of the traffic stop completely, or in the alternative to bring out the discrepancies between the officer's reasons for the Applicant's arrest. As trial counsel indicated, the arresting officer at times indicated that



the Applicant was being arrested for running a stop sign or for giving a false name to law enforcement.

The Applicant's trial counsel further testified that his trial options were somewhat limited, because the Applicant had previously pled guilty to giving a false name to law enforcement from the same incident. Therefore, trial counsel asserted, there was no way he could have suppressed the traffic stop in its entirety, and his only option at trial was to attack the officer's credibility through the use of the conflicting statements.

This Court finds that the Applicant has failed to meet his burden of proving counsel was ineffective for failing to procure the dispatch center tape and failing to further challenge the arresting officer's credibility. The Applicant has not demonstrated that trial counsel's performance fell below the representation expected under prevailing professional norms. The evidence presented at the PCR hearing demonstrates that trial counsel conducted a reasonable investigation into the facts of the Applicant's case, as required by McKnight v. State, 378 S.C. at 46, 661 S.E.2d at 361. Furthermore, there was no evidence presented that proved that the result of the proceeding would have been different, had trial counsel adopted a different strategy. This Court therefore finds that trial counsel's preparation and presentation of evidence at trial and his challenge to the credibility of the arresting officer were reasonably effective under the prevailing professional norms of the legal community.

e. The trial court relied on legal precedent which has been overturned.

The Applicant argues that the State's reliance on State v. Snowden, 371 S.C. 331, 638 S.E.2d 91 (Cl. App. 2006) during his bench trial was improper, as the case was subsequently overturned by State v. Hewins, 409 S.C. 93, 760 S.E.2d 814 (July 16, 2014).

In Snowden, the Court of Appeals held that a defendant's entry of a guilty plea in magistrate's court constituted a waiver of any constitutionally-based objections to his initial



arrest. 371 S.C. at 334, 638 S.E.2d at 93. Therefore, the Court concluded that the defendant was collaterally estopped from re-litigating the issue of the validity of his arrest. Id. Several years later, in Hewins the State relied on Snowdon to prevent the defendant from suppressing evidence of narcotics discovered during a traffic stop after he had been convicted in municipal court for an open container charge. The Supreme Court distinguished, rather than overturned, Snowden with the following language:

[T]he waiver that results from the entry of a guilty plea is confined to the offense that is the subject of the plea. Thus, by implication, a defendant who pleads guilty waived any assertion of an unlawful search that precipitated the offense to which he pled guilty. Accordingly, even if Hewins pled guilty to the open container violation, his plea would have constituted a waiver of any challenge he may have had to that offense but could not be extended to constitute a waiver of a challenge to the charge of possession of crack cocaine.

Hewins, 409 S.C. at 105-06, 760 S.E.2d at 820. In short, the traffic stop in Hewins involved reckless driving and law enforcement's discovery of an open container. A K-9 unit's walk around the vehicle during the traffic stop generated the narcotics charge. Conversely, the defendant in Snowdon was arrested for breach of the peace, and narcotics were discovered on his person during a search incident to the arrest.

This Court finds the facts of this case to be more analogous to Snowdon, rather than Hewins. Here, the Applicant was stopped and subsequently arrested for giving a false name. A search incident to the arrest revealed the narcotics. The Applicant pled guilty to providing a false name to law enforcement some time prior to his bench trial on the narcotics charges. This guilty plea involved the same underlying facts as the charges which were brought to trial in this case. During the bench trial, the State correctly argued that, under Snowden, the Applicant waived his right to challenge the probable cause for the underlying arrest by pleading guilty. Thus, the Applicant was collaterally estopped from challenging the same arrest at his later trial,



since the facts involved in the prior case and the bench trial were inextricably linked. The Applicant's argument that Hewins should have controlled the trial court's ruling is without merit.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test—that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds that the Applicant has failed to prove the second prong of Strickland—that he was prejudiced by trial counsel's performance. This Court concludes that the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appellate review. His attention is

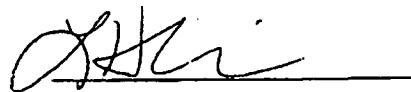


also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 8 day of ^{Dec.} ~~November~~, 2014.



Letitia H. Verdin
Circuit Court Judge
Thirteenth Judicial Circuit



ARREST WARRANT

M-381909

6360

STATE OF SOUTH CAROLINA

☒ County/ ☒ Municipality of

2-5-10

Greenville

THE STATE

10-11383

against

Martin Janelle Hutley

Address: 614 Pendleton Street

Greenville, SC 29601-

Phone:

Sec: M Race: B

DL #:

Height: 6

Weight: 190

DOB: 1/19/72

Agency OR #:

SC0230200

Prosecuting Agency:

Greenville Police Department

Prosecuting Officer: Jeffrey Scott Hines - 0603

Offense: Drugs / Trafficking in ice, crack or crack - 28 g or more, but less than 100 g - 3rd or sub. (Fel., 25Y to

Offense Code: 0349

Coda/Ordinance Sec: 44-53-0375(C)(2)

This warrant is

☐ County/ ☐ Municipality of

CERTIFIED FOR SERVICE in the

is to be arrested and brought before me to be

dealt with according to the law.

The accused

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Martin Janelle Hutley on 1-26-10

Signature of Court/Clerk/Law Enforcement Officer

RETURN WARRANT TO:

City Of Greenville

426 North Main Street

P O Box 488

Greenville, SC 29601

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Greenville

Personally appeared before me the affiant Jeffrey Scott Hines

being duly sworn deposes and says that defendant Martin Janelle Hutley

did within this county and state on or about 01/25/2010

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

violate the criminal laws of the

in the following particulars:

DESCRIPTION OF OFFENSE

Drugs / Trafficking in ice, crack or crack - 28 g or more, but less than 100 g - 3rd or sub. (Fel., 25Y to 30Y)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

AFFIANT STATED THAT ON 1-25-10 FOLLOWING A LAWFUL TRAFFIC STOP FOR A STOP SIGN VIOLATION, AFFIANT DID FIND THE ACCUSED, MARTIN JANELLE HUTLEY, TO BE THE DRIVER AND UPON PLACING THE ACCUSED UNDER ARREST FOR THE TRAFFIC STOP, AFFIANT DID UPON REACHING THE DETENTION CENTER FIND THAT THE ACCUSED WAS IN POSSESSION WITHIN HIS LEFT SOCK THREE CLEAR PLASTIC BAGGIES OF A BEIGE ROCK LIKE SUBSTANCE THAT DID TEST POSITIVE AS CRACK COCAINE WEIGHING 28.8 GRAMS AND ONE BAGGIE OF A WHITE POWDER SUBSTANCE THAT DID WEIGH 9.6 GRAMS AND TESTED POSITIVE AS A COCAINE BASE. THIS TRAFFIC STOP WAS CONDUCTED AT HAMPTON AND MULBERRY STREETS WHICH IS WITHIN 1/2 MILE OF ST. MARY'S CATHOLIC SCHOOL AT 111 HAMPTON AVE. THIS INCIDENT OCCURRED IN THE CITY LIMITS OF GREENVILLE, S.C.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Greenville

Affiant's Address 4 MCGEE STREET

GREENVILLE, SC 29601-

Affiant's Telephone

ARREST WARRANT

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

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

on or about 1/25/2010

defendant Martin Janelle Hutley

did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☒ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in ice, crack or crack - 28 g or more, but less than 100 g - 3rd or sub. (Fel., 25Y to 30Y)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 01/26/2010

Judge's Address

426 North Main Street

Greenville, SC 29601-

Judge's Telephone (864) 672-2405

John Barksdale

Issuing Court

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ARREST WARRANT

M-381911

6360

STATE OF SOUTH CAROLINA

☐ County/
☒ Municipality of

25-10

Greenville

THE STATE

10-11383

against

Marlin Janelle Hutley

Address: 614 Pendleton Street

Greenville, SC 29601-

Phone:

SSN:

Sex: M Race: B Height: 6 2 Weight: 190DL State: 1972 DL #:DOB: 1972 Agency ORI #: SC0230200Prosecuting Agency: Greenville Police DepartmentProsecuting Officer: Jeffery Scott Hines - 0603Offense: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c),LSD, and Sched. II (Cocaine) 3rd or sub. offenseOffense Code: 0185Code/Offense Sec: 44-53-0370(b)(1)This warrant is CERTIFIED FOR SERVICE in the
☐ County/
☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Marlin Janelle Hutley
on 1-26-10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Of Greenville
426 North Main Street
P O Box 488
Greenville, SC 29601

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/
☒ Municipality of

Greenville

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
10-11383
SCCA 118

Personally appeared before me the affiant Jeffery Scott Hinesbeing duly sworn deposes and says that defendant Marlin Janelle Hutleydid within this county and state on or about 01/25/2010State of South Carolina (or ordinance of ☐ County/
☒ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 3rd or sub. offenseI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

AFFIANT STATED THAT ON 1-25-10 FOLLOWING A LAWFUL TRAFFIC STOP FOR A STOP SIGN VIOLATION,
AFFIANT DID FIND THE ACCUSED, MARLIN JANELLE HUTLEY, TO BE THE DRIVER AND UPON PLACING THE
ACCUSED UNDER ARREST FOR THE TRAFFIC STOP, AFFIANT DID UPON REACHING THE DETENTION CENTER
FIND THAT THE ACCUSED WAS IN POSSESSION WITHIN HIS LEFT SOCK THREE CLEAR PLASTIC BAGGIES OF A
BEIGE ROCK LIKE SUBSTANCE THAT DID TEST POSITIVE AS CRACK COCAINE WEIGHING 28.8 GRAMS AND ONE
BAGGIE OF A WHITE POWDER SUBSTANCE THAT DID WEIGH 9.6 GRAMS AND TESTED POSITIVE AS A COCAINE
BASE. THIS TRAFFIC STOP WAS CONDUCTED AT HAMPTON AND MULBERRY STREETS WHICH IS WITHIN 1/2
MILE OF ST. MARY'S CATHOLIC SCHOOL AT 11 HAMPTON AVE. THIS INCIDENT OCCURRED IN THE CITY LIMITS
OF GREENVILLE, S.C.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/
☒ Municipality of

Greenville

Affiant's Address 4 MCGEE STREETGREENVILLE, SC 29601-

Affiant's Telephone

ARREST WARRANT

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

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

on or about 1/25/2010defendant Marlin Janelle Hutleydid violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/
☒ Municipality of Greenville) as set forth below:DESCRIPTION OF OFFENSE: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 3rd or sub. offense

Having found probable cause and the above affiant hearing sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 01/26/2010

Judge's Address

426 North Main Street
Greenville, SC 29601-

Judge's Telephone

John BarksdaleJudge Code: 6361Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

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ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

**INDICTMENT FOR
TRAFFICKING COCAINE BASE (CRACK COCAINE)**

At a Court of General Sessions, convened on **DEC 14 2010** the Grand Jurors of Greenville
County present upon their oath:

That MARLIN JAMELLE HUTLEY did in Greenville County, on or about the 25th day of January, 2010, knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 10 grams of Cocaine Base (Crack Cocaine). This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

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

Kellybourne
SOLICITOR

DOCKET NO. 2010-GS-23-
KHM

002819

Page

The State of South Carolina

County of Greenville

WITNESSES

Jeffery Scott Hines

Greenville Police Department

1/26/2010

COURT OF GENERAL SESSIONS

December TERM 2010

10-10-11

THE STATE

VS.

MARLIN JAMELLE HUTLEY

ARREST WARRANT NUMBER

M381911

ACTION OF GRAND JURY

TRUE BILL

James H. Hester
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

0185

Indictment for

POSSESSION OF COCAINE WITH INTENT TO
DISTRIBUTE

VIOLATION § 44-53-0370

Foreperson of Petit Jury

Date:

10 OCT 11

JS
ENTERED
ACCT

RECEIVED

APR 20 2010

Clerk of Court
Greenville County

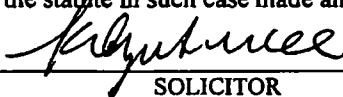
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE

At a Court of General Sessions, convened on **DEC 14 2010** the Grand Jurors of Greenville County present upon their oath:

That MARLIN JAMELLE HUTLEY did in Greenville County, on or about the 25th day of January, 2010, possess with intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Cocaine, a controlled substance, such possession not having been authorized by law. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

Jeffery Scott Hines

Greenville Police Department

1/26/2010

DOCKET NO. 2010-GS-23-

KHM

002817

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December TERM 2010

10-10-11

THE STATE

VS.

MARLIN JAMELLE HUTLEY

ARREST WARRANT NUMBER

M381909

ACTION OF GRAND JURY

TRUE BILL

As per Marjorie
JERMAN GRAD 800

Foreperson of Grand Jury

VERDICT

LOUIS

AS PER TRACY

Foreperson of Petit Jury

10 OCT 11 Date:

Indictment for

0452

TRAFFICKING COCAINE BASE (CRACK
COCAINE)

VIOLATION § 44-53-0375

ENTERED
ACCT

RECEIVED

APR 20 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
 STATE VS.
Marlin Jamelle Hutley

AKA:

Race: BLACK Sex: M Age: 38DOB: 1972 SS# [REDACTED]Address: 117-A Hilton StreetCity, State, Zip: Greenville, SC 29607DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Trafficking in crack - 10 g or more, but less than 28 g - 3rd or sub.

INDICTMENT/CASE#: 2010GS2302817A/W#: M381909Date of Offense: 1/25/2010S.C. Code § : 44-53-0375(C)(2)(CDR Code #: 0349

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 44-53-0375(C)(1)(of the S.C. Code of Laws, bearing CDR Code # 0452

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

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

ATTEST:

McCall, Kathryn Harper72567
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed — years
 and/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or payment
 of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation for —

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. SINCE MAY 18, 2011.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ — plus 20% fee: \$ —Payment Terms: —☐ Set by SCDPPPS —Recipient: —

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

PTUP —— days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. —May serve W/E beginning —Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ — beginning —\$ — paid to Public Defender FundOther: —

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

Clerk of Court/ Deputy Clerk Paul B. WickensCourt Reporter: M. Di Hialano

SCCA/217 (03/2011)

Presiding Judge [Signature]Judge Code: 2158Sentence Date: 10 OCT 2011

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Marlin Jamelle Hutley

AKA:

Race: BLACK Sex: M Age: 38

DOB: -1972 SS#:

Address: 614 Pendleton Street

City, State, Zip: Greenville, SC 29601

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: PWID Cocaine - 3rd or sub. offense

IN THE COURT OF GENERAL SESSIONS

1288224

INDICTMENT/CASE#: 2010GS2302819

A/W#: M381911

Date of Offense: 1/25/2010

S.C. Code § : 44-53-0370(B)(1)

CDR Code #: 0185

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0370(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0185

☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST *[Signature]*

72567

McCall, Kathryn Harper

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 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. *11/18/2011*☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$	
§ 56-5-2995 (DUI Assessment)	\$12	\$	
§ 56-1-286 (DUI Breath Test)	\$25	\$	
Proviso 47.9 (Public Def/Prob)	\$500	\$	
§ 14-1-212 (Law Enforce. Funding)	\$25	\$	25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$	
§ 50-21-114(BUI Breath Test Fee)	\$50	\$	
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
Proviso 90.5 (SCCJA Surcharge)	\$5	\$	5
3% to County (if paid in installments)		\$	
TOTAL		\$	

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Paul B. Wickens

Court Reporter:

M. DiDiemo

SCCA/217 (03/2011)

Presiding Judge

Judge Code: *2158*Sentence Date: *10 OCT 2011*