

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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SC SUPREME COURT

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Craig Brown, Circuit Court Judge

Appellate Case 2015-001798

Shawn Madison, #1213456

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

) COURT OF GENERAL SESSIONS
) 08-GS-02-0089

THE STATE OF SOUTH CAROLINA)
PLAINTIFF)
VS.)

TRANSCRIPT OF RECORD

SHAWN MADISON)

DEFENDANT)

MAY 20, 2008
AIKEN, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DOYET A. EARLY, III, JUDGE.

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

ELIZABETH B. YOUNG, ASSISTANT SOLICITOR
ATTORNEY FOR THE PLAINTIFF

EVERETT K. CHANDLER, ESQ.
ATTORNEY FOR THE DEFENDANT

LISA H. HICKLIN
OFFICIAL COURT REPORTER

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SHAWN MADISON,

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
S-1	VIDEO	18	

1 (WHEREUPON, ON MAY 20, 2008 THE FOLLOWING PROCEEDINGS
2 WERE HELD:)

3 SHAWN MADISON, AFTER BEING DULY SWORN, TESTIFIED
4 AS FOLLOWS:

5 THE COURT: ALL RIGHT. THIS IS THE CASE OF STATE OF
6 SOUTH CAROLINA VERSUS SHAWN MADISON, INDICTMENT
7 2008-GS-02-89, AN INDICTMENT FOR TRAFFICKING IN COCAINE
8 BETWEEN 10 GRAMS AND 28 GRAMS, THIRD OFFENSE, AND THIRD
9 OFFENSE -- I KNOW HE IS PLEADING TO SECOND, BUT THIRD
10 CARRIES WHAT?

11 MRS. YOUNG: TWENTY-FIVE YEAR MINIMUM TO 30-YEAR
12 MAXIMUM AND 50,000.

13 THE COURT: ANY OF IT SUSPENDIBLE?

14 MRS. YOUNG: NO, SIR.

15 THE COURT: MR. CHANDLER, YOU REPRESENT SHAWN
16 MADISON; IS THAT CORRECT?

17 MR. CHANDLER: I DO, YOUR HONOR.

18 THE COURT: BEFORE WE GET INTO THAT, TELL ME WHAT HIS
19 RECORD IS, PLEASE.

20 MRS. YOUNG: YES, YOUR HONOR. HE HAS A RECORD IN
21 SOUTH CAROLINA AND GEORGIA. HIS SOUTH CAROLINA RECORD,
22 1993 UNLAWFUL CARRYING A PISTOL; 1994 POINTING AND
23 PRESENTING A FIREARM WHICH HE RECEIVED A Y.O.A. SENTENCE
24 ON; 1998 DRIVING UNDER SUSPENSION; 2000 MALICIOUS INJURY
25 TO PERSONAL PROPERTY.

1 HIS GEORGIA RECORD BEGINS IN 1997, SIMPLE POSSESSION
2 OF MARIJUANA; IN 1998 D.U.I.;, 1999 DRIVING WHILE SUSPENDED
3 OR REVOKED AND GIVING FALSE INFORMATION TO LAW
4 ENFORCEMENT. IN MAY OF 2000 HE WAS CONVICTED FOR
5 PURCHASING, POSSESSING, OR CONTROLLING COCAINE -- SOME
6 SORT OF HIGH-LEVEL FELONY WHICH HE RECEIVED 15 YEARS
7 CONFINEMENT, 10 YEARS PROBATION, AND A \$2000 FINE.

8 THE COURT: THAT WAS IN 2000? HE GOT TEN YEARS?

9 MRS. YOUNG: HE GOT 15 YEARS CONFINEMENT AND 10 YEARS
10 PROBATION. I AM NOT EXACTLY SURE WHAT IT MEANS, YOUR
11 HONOR. THAT'S WHAT THE RAP SHEET INDICATES, BUT,
12 APPARENTLY, HE'S -- IT WAS EITHER SUSPENDED BECAUSE HE WAS
13 OUT.

14 THE COURT: OKAY.

15 MRS. YOUNG: AND THEN IN JUNE OF 2000 HE WAS
16 CONVICTED FOR TRAFFICKING IN COCAINE, ILLEGAL DRUGS,
17 MARIJUANA, OR METHAMPHETAMINE IN MORGAN COUNTY. HE
18 RECEIVED A 15-YEAR SENTENCE CONCURRENT WITH THE MAY
19 CONVICTION. THOSE ARE TWO SEPARATE INCIDENTS AND TWO
20 SEPARATE COUNTIES.

21 THE COURT: SO, 00 AND 00 -- THE 2000 COCAINES WOULD
22 BE THE FIRST TWO?

23 MRS. YOUNG: TWO SEPARATE OFFENSES AS WELL AS THE
24 POSSESSION OF MARIJUANA WHICH BASED ON THE CHARGE WOULD
25 COUNT.

1 THE COURT: QUALIFY FOR THIRD OFFENSE?

2 MRS. YOUNG: YES, SIR.

3 THE COURT: MR. CHANDLER, HAVE YOU HAD AN OPPORTUNITY
4 TO REVIEW THAT RECORD AND YOU CONCUR IN THAT?

5 MR. CHANDLER: I HAVE, AND I DO CONCUR, YOUR HONOR.
6 WITH REFERENCE TO THE 15-YEAR CONFINEMENT IN GEORGIA HE
7 WAS ONLY -- HE WAS ONLY REQUIRED TO SERVE A THIRD OF THAT
8 SENTENCE.

9 THE COURT: SO, HE DID FIVE YEARS --

10 MR. CHANDLER: HE DID FIVE YEARS.

11 THE COURT: -- APPROXIMATELY?

12 MR. CHANDLER: YES, SIR.

13 THE COURT: SO, THERE IS NO QUESTION THAT HE IS
14 PROPERLY INDICTED. IT IS A THIRD OFFENSE TRAFFICKING, AND
15 YOU'VE EXPLAINED TO HIM THAT A THIRD OFFENSE IS A MINIMUM
16 OF 25 YEARS, MAXIMUM OF 30?

17 MR. CHANDLER: I BEG THE COURT'S INDULGENCE, YOUR
18 HONOR, FOR THE PURPOSES OF EXPLAINING THE 30-YEAR
19 TRAFFICKING.

20 (WHEREUPON, THE ATTORNEY CONFERRED WITH THE CLIENT.)

21 MR. CHANDLER: YOUR HONOR, WE WOULD AGREE THAT THIS
22 IS THE THIRD OFFENSE TRAFFICKING, NOT HIS THIRD
23 TRAFFICKING OFFENSE.

24 THE COURT: RIGHT. THAT'S WHAT I MEANT. SO, AS I
25 UNDERSTAND THAT THIS IS A NEGOTIATED SENTENCE WHICH MEANS

1 THAT YOU HAVE NEGOTIATED WITH THE STATE. Y'ALL HAVE COME
2 UP WITH AN AGREED-UPON SENTENCE PROVIDED I GO ALONG WITH
3 IT?

4 MR. CHANDLER: THAT'S CORRECT.

5 THE COURT: AND MY UNDERSTANDING IS THAT IT IS A
6 REDUCTION FROM TRAFFICKING THIRD OFFENSE ALLOWING HIM TO
7 PLEAD TO THE LESSER INCLUDED OFFENSE OF TRAFFICKING -- IS
8 THAT A LESSER INCLUDED -- TRAFFICKING IN THE SECOND
9 OFFENSE -- TRAFFICKING SECOND OFFENSE AND THAT CARRIES
10 FIVE TO 30 AND \$50,000 AND Y'ALL HAVE ALSO NEGOTIATED A
11 20-YEAR SENTENCE?

12 MR. CHANDLER: THAT'S CORRECT, YOUR HONOR.

13 THE COURT: MRS. BETH ANN YOUNG, IS THAT YOUR
14 UNDERSTANDING OF THE NEGOTIATION?

15 MRS. YOUNG: YES, SIR, YOUR HONOR.

16 THE COURT: TWENTY YEARS AND 50,000?

17 MRS. YOUNG: YES, SIR.

18 THE COURT: MR. CHANDLER, IS THAT YOUR UNDERSTANDING?
19 THE 50,000 I CAN'T DO ANYTHING WITH. IT IS AND -- NOT AND
20 OR.

21 MR. CHANDLER: THAT'S -- YEA AND IT IS RECOGNIZING
22 THAT THERE WAS NO NEGOTIATION ON THE 50.

23 THE COURT: THAT'S A MAXIMUM OR IS THAT MANDATORY?

24 MRS. YOUNG: I THINK IT IS MANDATORY.

25 MR. CHANDLER: THAT'S RIGHT.

1 THE COURT: NOW, MR. MADISON, DO YOU UNDERSTAND THE
2 NEGOTIATION?

3 THE DEFENDANT: YES, SIR.

4 THE COURT: WHICH MEANS IF I ACCEPT IT YOU'RE GETTING
5 READY TO GO TO JAIL FOR 20 YEARS.

6 THE DEFENDANT: YES, SIR.

7 THE COURT: IF I DO NOT ACCEPT IT, IF I DON'T THINK
8 THAT'S APPROPRIATE, YOU SHOULD HAVE -- GO TO THE THIRD
9 OFFENSE, I WILL TELL YOU AND YOU'LL BE ABLE TO DISCUSS
10 YOUR OPTIONS WITH YOUR LAWYER. YOU CAN WITHDRAW YOUR
11 PLEA. IS THAT FAIR?

12 THE DEFENDANT: YES, SIR.

13 THE COURT: YOU UNDERSTAND THAT?

14 THE DEFENDANT: YES, SIR.

15 THE COURT: ALL RIGHT. MR. CHANDLER, AS TO WHAT HE
16 IS PLEADING TO -- THE LESSER INCLUDED OFFENSE -- WHICH IS
17 TRAFFICKING IN COCAINE SECOND OFFENSE BETWEEN 10 GRAMS AND
18 27.9 GRAMS, HAVE YOU ADVISED HIM OF A NUMBER OF THINGS --
19 NUMBER ONE, WHAT THE POSSIBLE CHARGE IS IF I DO NOT ACCEPT
20 THE PLEA WHICH IS NOT LESS THAN FIVE, NOR MORE THAN 30 AND
21 \$50,000?

22 MR. CHANDLER: THAT'S CORRECT, YOUR HONOR.

23 THE COURT: ALL RIGHT. HAVE YOU FURTHER ADVISED HIM
24 THAT IT IS CLASSIFIED AS SERIOUS -- I'M SORRY, AS VIOLENT?

25 MR. CHANDLER: AND I DID, YOUR HONOR, EXPLAIN THAT IT

1 WAS VIOLENT AND SERIOUS AND THE IMPLICATIONS FOR BOTH OF
2 THOSE DESIGNATIONS WITH THE 85 PERCENT THAT HE WOULD BE
3 REQUIRED AND THAT HE WOULD BE CLASSIFIED AS VIOLENT IN THE
4 DEPARTMENT OF CORRECTIONS AND WITH REGARD TO THE SERIOUS
5 OFFENSE THAT IF HE HAS ANY COMBINATION OF TWO MORE SERIOUS
6 OR MOST SERIOUS OFFENSES THAT HE WOULD BE FACING TRUE LIFE
7 IN PRISON.

8 THE COURT: WITHOUT THE POSSIBILITY OF PAROLE.

9 MR. CHANDLER: WITHOUT THE POSSIBILITY OF PAROLE.

10 THE COURT: IN YOUR OPINION DOES HE UNDERSTAND THAT?

11 MR. CHANDLER: HE DOES, YOUR HONOR.

12 THE COURT: HAVE YOU ALSO DISCUSSED WITH HIM HIS
13 RIGHT TO A TRIAL BY JURY?

14 MR. CHANDLER: I HAVE, YOUR HONOR. WE'VE GONE OVER
15 THAT AND TALKED ABOUT THE POSSIBLE DEFENSES AND CHALLENGES
16 TO EVIDENCE AND, OF COURSE, YOUR HONOR, YOU'RE AWARE OF
17 THE MOTION HEARING THAT WE HAD TO SUPPRESS. IN LIGHT OF
18 ALL OF THAT, MY CLIENT HAS DECIDED TO WAIVE HIS RIGHT TO
19 TRIAL AND PLEAD GUILTY TODAY.

20 THE COURT: AND IN LIGHT OF THE RULING YESTERDAY ARE
21 YOU IN AGREEMENT WITH HIS DECISION?

22 MR. CHANDLER: IN LIGHT OF THE RULING YESTERDAY I AM
23 IN AGREEMENT WITH HIS DECISION.

24 THE COURT: THIS IS AN 85 PERCENT SENTENCE?

25 MR. CHANDLER: IT IS, YOUR HONOR.

1 THE COURT: HAVE YOU ADVISED HIM THAT HE'LL DO
2 85 PERCENT OF 20 YEARS BEFORE HE IS ELIGIBLE, AND IF HE IS
3 RELEASED THEN THAT HE WOULD BE RELEASED TO COMMUNITY
4 SUPERVISION?

5 MR. CHANDLER: THAT'S CORRECT.

6 THE COURT: MR. MADISON, YOU STAND BEFORE ME INDICTED
7 FOR TRAFFICKING COCAINE THIRD OFFENSE. YOU'VE HEARD ME
8 TALK ABOUT THAT CARRIES UP TO 25 TO 30 YEARS AND \$50,000.
9 YOUR LAWYER THROUGH HIS GOOD EFFORTS -- HE IS AN EXCELLENT
10 LAWYER -- HAS NEGOTIATED A PLEA WITH THE SOLICITOR'S
11 OFFICE IN CONJUNCTION WITH THE POLICE DEPARTMENT THAT
12 YOU'LL BE ALLOWED TO PLEAD TO THE LESSER INCLUDED OFFENSE
13 OF SECOND OFFENSE TRAFFICKING IN COCAINE AND THAT THEY
14 HAVE NEGOTIATED A 20-YEAR SENTENCE. DO YOU UNDERSTAND
15 THAT?

16 THE DEFENDANT: YES, SIR.

17 THE COURT: DO YOU FURTHER UNDERSTAND THAT IT'S
18 CLASSIFIED AS VIOLENT WHICH MAY HAVE SOME REPERCUSSIONS IN
19 THE DEPARTMENT OF CORRECTIONS, BUT YOU'LL BE CLASSIFIED AS
20 VIOLENT?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: DO YOU FURTHER REALIZE THAT IT IS
23 CLASSIFIED AS SERIOUS?

24 BILL, WE GOT ANY PROBLEM?

25 MR. WEEKS: YOUR HONOR, I JUST WANTED TO INTRODUCE

1 THAT INTO THE RECORD.

2 MRS. YOUNG: I WAS GOING TO.

3 THE COURT: OKAY. NO PROBLEM.

4 THAT IT IS CLASSIFIED AS SERIOUS WHICH MEANS THAT
5 WHEN YOU GET OUT THAT IF YOU BECOME INVOLVED IN CRIMINAL
6 ACTIVITY THAT IT'S CLASSIFIED AS SERIOUS TWO MORE TIMES OR
7 MOST SERIOUS AND YOU HAVE A COMBINATION THERE OF THREE
8 STRIKES THAT YOU WOULD BE SUBJECTING YOURSELF TO LIFE IN
9 PRISON WITHOUT THE POSSIBILITY OF PAROLE. IF YOU CAME
10 BACK OUT AND DID THIS SAME THING TWO MORE TIMES YOU WOULD
11 NOT BE ELIGIBLE FOR PAROLE OR ANY OTHER TYPE OF CRIME
12 THAT'S CLASSIFIED AS SERIOUS OR MOST SERIOUS. DO YOU
13 UNDERSTAND THE IMPLICATIONS OF THAT?

14 THE DEFENDANT: YES, SIR.

15 THE COURT: DO YOU HAVE ANY QUESTIONS YOU WANT TO ASK
16 ME ABOUT THAT?

17 THE DEFENDANT: NO, SIR.

18 THE COURT: ALL RIGHT. UNDERSTANDING -- AND ALSO
19 WHEN YOU GET OUT AFTER DOING 85 PERCENT YOU WOULD BE
20 RELEASED TO A COMMUNITY SUPERVISION PROGRAM THAT YOU WOULD
21 BE SUPERVISED FOR A PERIOD OF TIME. DO YOU UNDERSTAND
22 THAT?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: MR. MADISON, UNDERSTANDING THE CHARGES
25 THAT YOU ARE PLEADING TO -- TRAFFICKING COCAINE SECOND

1 BETWEEN 10 AND 27 GRAMS, 27.9 GRAMS, THE POSSIBLE
2 PUNISHMENT OF FIVE TO 30 YEARS AND \$50,000, THE
3 CLASSIFICATION OF VIOLENT, THE CLASSIFICATION OF SERIOUS,
4 AND THE NEGOTIATIONS -- UNDERSTANDING ALL OF THAT, HOW DO
5 YOU WISH TO PLEAD, NOT GUILTY OR GUILTY?

6 THE DEFENDANT: GUILTY.

7 THE COURT: MR. MADISON, WHEN YOU ENTER A PLEA OF
8 GUILTY YOU GIVE UP CERTAIN CONSTITUTIONAL RIGHTS. ONE IS
9 YOUR RIGHT TO REMAIN SILENT. YOU WILL HAVE TO ADMIT YOUR
10 GUILT. THE SECOND IS YOU WILL GIVE UP YOUR RIGHT TO A
11 TRIAL BY JURY. WE HAVE A JURY PANEL ALREADY QUALIFIED.
12 IF YOU WISH TO EXERCISE YOUR RIGHT TO TRIAL BY JURY, ALL
13 YOU HAVE TO DO IS TELL US AT WHICH TIME WE'LL GIVE YOU A
14 TRIAL. THE STATE WILL GIVE YOU A TRIAL.

15 DURING THAT TRIAL THROUGH YOUR LAWYER YOU'LL HAVE THE
16 RIGHT TO CONFRONT AND CROSS EXAMINE EVERY WITNESS WHO
17 TESTIFIES AGAINST YOU AND CHALLENGE THE POLICE OFFICERS,
18 CHALLENGE THE CHEMIST, WHOEVER ELSE IS INVOLVED IN THE
19 CASE. YOU HAVE THE RIGHT TO CONFRONT THEM AND CROSS
20 EXAMINE THEM THROUGH YOUR LAWYER.

21 YOU ALSO HAVE THE RIGHT TO PRESENT YOUR OWN DEFENSE.
22 YOU CAN CALL WHATEVER WITNESSES YOU NEED TO CALL TO DEFEND
23 YOUR CASE. YOU CAN INTRODUCE WHATEVER RELEVANT EVIDENCE
24 YOU MAY HAVE TO DEFEND YOURSELF AND YOU CAN EVEN GET ON
25 THAT WITNESS STAND AND TESTIFY IN YOUR OWN DEFENSE. .

1 HOWEVER, IF YOU EXERCISE YOUR CONSTITUTIONAL RIGHT TO
2 REMAIN SILENT, THEN I WILL TELL THE JURY THAT THEY COULD
3 NOT HOLD YOUR FAILURE TO TESTIFY AGAINST YOU IN ANY MANNER
4 WHATSOEVER, AND I WOULD INSTRUCT OR CHARGE THEM AT THE
5 CONCLUSION OF THE CASE THAT THEY COULDN'T EVEN TALK ABOUT
6 THE FACT THAT YOU DID NOT TESTIFY WHEN THEY DELIBERATED
7 YOUR GUILT OR INNOCENCE.

8 YOU WOULD BE PRESUMED TO BE INNOCENT THROUGHOUT THE
9 ENTIRE TRIAL AND THE STATE OF SOUTH CAROLINA WOULD HAVE
10 THE BURDEN OF PROVING YOU GUILTY BEYOND A REASONABLE DOUBT
11 TO A JURY OF 12 PEOPLE, AND IN ORDER FOR THAT JURY TO
12 CONVICT YOU ALL 12 WOULD HAVE TO UNANIMOUSLY AGREE THAT
13 YOU WERE, IN FACT, GUILTY, AND EVEN IF YOU WERE CONVICTED
14 YOU WOULD STILL HAVE THE RIGHT TO AN APPEAL.

15 NOW, DO YOU UNDERSTAND YOUR RIGHTS TO TRIAL BY JURY?

16 THE DEFENDANT: YES, SIR.

17 THE COURT: ANY QUESTIONS YOU WANT TO ASK ME ABOUT
18 YOUR RIGHTS TO TRIAL BY JURY?

19 THE DEFENDANT: NO, SIR.

20 THE COURT: OTHER THAN THE NEGOTIATIONS WHICH IS A
21 20-YEAR SENTENCE AND A \$50,000 FINE, HAS ANYBODY PROMISED
22 YOU ANYTHING, HELD OUT ANY HOPE OF REWARD, OR THREATENED
23 YOU IN ANY MANNER IN ORDER TO MAKE YOU PLEAD GUILTY?

24 THE DEFENDANT: NO, SIR.

25 THE COURT: DO YOU HAVE ANY QUESTIONS NOW THAT YOU

1 WANT TO ASK ME ABOUT THE NEGOTIATIONS OR THE EFFECTS OF
2 IT?

3 THE DEFENDANT: IS IT TRUE IT 85 PERCENT ON THE 20?

4 THE COURT: IT IS TRUE.

5 IS THAT CORRECT, MR. CHANDLER?

6 MR. CHANDLER: THAT'S CORRECT.

7 THE COURT: IS THAT CORRECT, MRS. SOLICITOR?

8 MRS. YOUNG: YES, SIR.

9 THE COURT: MR. WEEKS, YOU AGREE WITH THAT?

10 MR. WEEKS: YES, SIR.

11 THE COURT: THAT'S WHAT THE LEGISLATURE HAS PASSED.

12 THAT'S THE LAW.

13 KNOWING THAT, DO YOU WANT TO CHANGE YOUR MIND?

14 THE DEFENDANT: NO, SIR.

15 THE COURT: ALL RIGHT, SIR. DO YOU NEED ANY MORE
16 TIME TO TALK TO YOUR LAWYER ABOUT THAT?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: YOU DO?

19 THE DEFENDANT: YES, SIR.

20 THE COURT: STEP RIGHT OVER THERE.

21 (WHEREUPON, A BREAK WAS TAKEN.)

22 MR. CHANDLER: THANK YOU, YOUR HONOR.

23 THE COURT: ALL RIGHT. MR. MADISON, HAVE YOU HAD A
24 CHANCE TO DISCUSS WITH YOUR LAWYER THE LEGISLATION THAT
25 DICTATES ON THIS TYPE OF OFFENSE THAT IT IS AN 85 PERCENT

1 NO-PAROLE TYPE SENTENCE?

2 THE DEFENDANT: YES, SIR.

3 THE COURT: ARE YOU SATISFIED WITH WHAT THAT MEANS?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: KNOWING THAT, DO YOU STILL WISH TO MOVE
6 FORWARD?

7 THE DEFENDANT: YES, SIR.

8 THE COURT: NOW, I'LL ASK YOU AGAIN. OTHER THAN THE
9 NEGOTIATIONS WHICH WE'VE TALKED ABOUT, HAS ANYBODY
10 PROMISED YOU ANYTHING, HELD OUT ANY HOPE OF REWARD, OR
11 THREATENED YOU IN ANY MANNER IN ORDER TO MAKE YOU ENTER
12 THIS PLEA OF GUILTY?

13 THE DEFENDANT: NO, SIR.

14 THE COURT: ALL RIGHT. YOU HAVE HIRED MR. EVERETT
15 CHANDLER TO REPRESENT YOU OR MEMBERS OF YOUR FAMILY; IS
16 THAT CORRECT?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: ARE YOU SATISFIED WITH HIS SERVICES?

19 THE DEFENDANT: YES, SIR.

20 THE COURT: DO YOU BELIEVE THAT HE HAS HAD ENOUGH
21 TIME TO BE ABLE TO RESEARCH THE LAW, INVESTIGATE ALL OF
22 THE FACTS, AND SPEND ENOUGH TIME WITH YOU SO THAT HE CAN
23 PROPERLY PREPARE -- PROPERLY REPRESENT YOU HERE TODAY AND
24 DEFEND YOU?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: MR. MADISON, IS THERE ANYTHING ELSE YOU
2 WISH FOR HIM TO DO FOR YOU TODAY BEFORE WE PROCEED OTHER
3 THAN SPEAK UP ON YOUR BEHALF?

4 THE DEFENDANT: NO, SIR.

5 THE COURT: MR. MADISON, I ASK YOU ONCE AGAIN, SIR,
6 ARE YOU TOTALLY AND COMPLETELY SATISFIED WITH HIS
7 REPRESENTATION?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: MR. MADISON, ARE YOU TODAY UNDER THE
10 INFLUENCE OF ANY ALCOHOLIC BEVERAGES?

11 THE DEFENDANT: NO, SIR.

12 THE COURT: DRUGS?

13 THE DEFENDANT: NO, SIR.

14 THE COURT: PRESCRIPTION MEDICATIONS?

15 THE DEFENDANT: NO, SIR.

16 THE COURT: MR. MADISON, ARE YOU TODAY AWARE OF ANY
17 MENTAL, NERVOUS, OR EMOTIONAL CONDITION WHICH WOULD KEEP
18 YOU FROM UNDERSTANDING WHAT WE'RE DOING HERE TODAY?

19 THE DEFENDANT: NO, SIR.

20 THE COURT: MR. MADISON, HAVE YOU UNDERSTOOD ALL OF
21 MY QUESTIONS?

22 THE DEFENDANT: YES, SIR.

23 THE COURT: HAVE YOU UNDERSTOOD YOUR CONVERSATIONS
24 WITH YOUR LAWYER?

25 THE DEFENDANT: YES, SIR.

1 THE COURT: AT THIS POINT IN THE PROCEEDING DO YOU
2 NEED TO ASK HIM ABOUT ANYTHING ELSE?

3 THE DEFENDANT: NO, SIR.

4 THE COURT: ARE YOU ENTERING THIS PLEA WITH A
5 NEGOTIATED SENTENCE OF YOUR OWN FREE WILL AND ACCORD?

6 THE DEFENDANT: YES, SIR.

7 THE COURT: MR. MADISON, IT IS ALLEGED IN THE
8 INDICTMENT THAT IN AIKEN COUNTY ON OR ABOUT MARCH 27, 2007
9 THAT YOU HAD IN YOUR POSSESSION A QUANTITY OF COCAINE
10 BETWEEN -- HOW MUCH WAS IT?

11 MRS. YOUNG: 27.7 GRAMS.

12 THE COURT: 27.7 IN YOUR POSSESSION WHICH CONSTITUTES
13 EITHER ACTUAL OR CONSTRUCTIVE NOTICE OR POSSESSION TO SELL
14 THE DRUGS; IS THAT CORRECT?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: IT WAS 27-POINT WHAT?

17 MRS. YOUNG: 27.70.

18 THE COURT: IF IT WENT TO 28, WHAT WOULD IT BE? A
19 DIFFERENT OFFENSE?

20 MRS. YOUNG: IT WOULD WOULD BE A HIGHER LEVEL --

21 THE COURT: A HIGHER LEVEL.

22 MRS. YOUNG: -- OFFENSE. IT GOES ALL THE WAY UP, MY
23 UNDERSTANDING IS, TO 27.9 AND THEN IT BUMPS UP.

24 THE COURT: YOU JUST MISSED THE CUT-OFF ON THAT. IT
25 WOULD HAVE BEEN SUBSTANTIALLY INCREASED. DO YOU

1 UNDERSTAND THAT?

2 THE DEFENDANT: YES, SIR.

3 THE COURT: MR. MADISON, ARE YOU PLEADING GUILTY OF
4 THIS OFFENSE BECAUSE YOU ARE, IN FACT, GUILTY?

5 THE DEFENDANT: YES, SIR.

6 THE COURT: MR. MADISON, ARE YOU PLEADING GUILTY
7 BECAUSE YOU BROKE THE LAW?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: THE DRUG TRAFFICKING LAWS?

10 THE DEFENDANT: YES, SIR.

11 THE COURT: I AM ABOUT READY TO ACCEPT YOUR PLEA. IS
12 THERE ANYTHING YOU WANT TO TELL ME OTHER THAN -- I MEAN,
13 IS THERE ANYTHING YOU NEED TO ASK YOUR LAWYER OR ME OR
14 ANYTHING BEFORE I ACCEPT IT?

15 THE DEFENDANT: NO, SIR.

16 THE COURT: MR. MADISON, I FIND THAT YOUR DECISION TO
17 PLEAD GUILTY IS FREELY, VOLUNTARILY, AND INTELLIGENTLY
18 MADE. YOU'VE HAD THE REPRESENTATION OF A COMPETENT LAWYER
19 MR. EVERETT CHANDLER WITH WHOM YOU TELL ME YOU'RE VERY
20 SATISFIED AND I WILL ACCEPT THE PLEA. IF YOU DISAGREE
21 WITH THESE PROCEEDINGS OR THE SENTENCE YOU HAVE 10 DAYS
22 FROM TODAY'S DATE TO FILE A NOTICE OF INTENT TO APPEAL.
23 DO YOU UNDERSTAND YOUR APPELLATE RIGHTS?

24 THE DEFENDANT: YES, SIR.

25 THE COURT: MRS. BETH ANN YOUNG?

1 MRS. YOUNG: YOUR HONOR, IF I MAY, BEFORE I GO INTO
2 THE COLLOQUY ON THE FACTS I WOULD LIKE TO ADDRESS ONE
3 MATTER REFERRING TO THE MOTION TO SUPPRESS THAT
4 MR. CHANDLER FILED. AS YOU KNOW AND HE KNOWS WE HAD THAT
5 MOTION HERE YESTERDAY AFTERNOON. WE HAD THE POLICE
6 OFFICERS HERE, AND MR. CHANDLER, OF COURSE, IS AWARE WE
7 COULD HAVE PUT THEM ON THE RECORD. HOWEVER, SINCE WE DID
8 HAVE THE VIDEOTAPE OF THE STOP, MYSELF, YOU, AND
9 MR. CHANDLER HAD AN OPPORTUNITY TO GO BACK IN THE CHAMBERS
10 AND YOU HAD AN OPPORTUNITY TO REVIEW THAT IN BOTH OF OUR
11 PRESENCE AND IT'S MY UNDERSTANDING OF YOUR RULING THAT IT
12 WAS BASED ON BOTH OUR ARGUMENTS AND YOUR REVIEW OF THE
13 VIDEO.

14 SO, FOR PURPOSES OF THE RECORD I WOULD LIKE TO OFFER
15 THE VIDEO AND MAKE IT A PART OF THE RECORD IN THIS CASE.

16 MR. CHANDLER: WITHOUT OBJECTION.

17 THE COURT: SO GRANTED.

18 (WHEREUPON, PLAINTIFF'S EXHIBIT NO. 1 WAS MARKED FOR
19 IDENTIFICATION ONLY.)

20 MRS. YOUNG: THANK YOU, YOUR HONOR. ON MARCH 27,
21 2007 THE NORTH AUGUSTA DEPARTMENT OF PUBLIC SAFETY
22 RECEIVED AN ANONYMOUS COMPLAINT ABOUT POSSIBLE DRUG
23 ACTIVITY AT NORTH AUGUSTA GARDENS APARTMENTS WHICH ARE IN
24 NORTH AUGUSTA IN AIKEN COUNTY AND THE COMPLAINT REPORTED
25 THAT TRANSACTION WAS OCCURRING WITH TWO BLACK MALES IN

1 BETWEEN BUILDINGS ONE AND TWO OF THE APARTMENTS.

2 OFFICER GLENN NICHOLS AND OFFICER JEREMY YOUNGBLOOD
3 RESPONDED TO THE SCENE. MR. NICHOLS WAS THE FIRST OFFICER
4 ON THE SCENE. AS HE APPROACHED AND TURNED INTO THE
5 APARTMENTS HE OBSERVED A BLACK CAR TRAVELING IN THE
6 OPPOSITE DIRECTION. MR. NICHOLS WAS FAMILIAR WITH THE
7 LAYOUT OF THE APARTMENTS AND KNEW THAT THE CAR WAS COMING
8 FROM A DEAD-END CUL-DE-SAC AND THAT WAS THE ONLY WAY OUT
9 AND BASED ON THE QUICKNESS OF HIS RESPONSE AND THE CALL HE
10 FELT LIKE THAT MIGHT HAVE BEEN INVOLVED IN THE ACTIVITY.
11 SO, HE ASKED MR. YOUNGBLOOD WHO WAS BEHIND HIM TO STOP THE
12 CAR.

13 AS MR. YOUNGBLOOD ATTEMPTED TO STOP THE CAR HE
14 NOTICED THAT IT HAD AN IMPROPER TAG WHICH IS A TRAFFIC
15 VIOLATION IN THIS STATE WHICH WAS A COVER -- A TINTED
16 COVER ON TOP OF HIS LICENSE PLATE WHICH IS IN VIOLATION OF
17 THE LAW. OFFICER YOUNGBLOOD PULLED THE CAR OVER. HE
18 APPROACHED THE CAR. HE BEGAN SPEAKING WITH MR. MADISON.
19 MR. MADISON SPEAKS BACK WITH HIM AND CORROBORATES THE CALL
20 BECAUSE HE SAYS SOMETHING ON THE VIDEO ABOUT TWO BLACK
21 MALES STANDING BY HIS CAR. SO, THEY HAVE A LITTLE
22 CONVERSATION ABOUT THAT FOR SEVERAL MINUTES.

23 MR. MADISON ASSERTS THAT THE OFFICERS CAN LOOK IN THE
24 CAR IF THEY WANT TO OR THAT HE DOESN'T HAVE ANYTHING TO
25 HIDE. SO, OFFICER YOUNGBLOOD ASKED HIM TO STEP OUT OF THE

1 VEHICLE. AT THAT TIME HE NOTICED THAT MR. MADISON
2 APPEARED TO BE HOLDING HIS CROTCH OR GROIN AREA. HE ASKED
3 HIM TO MOVE HIS HAND AND SPREAD HIS LEGS AND AS HE DID
4 THAT A BAGGY OF A WHITE, POWDERY SUBSTANCE FELL DOWN FROM
5 HIS SHORTS ONTO THE GROUND. HE WAS PLACED UNDER ARREST
6 FOR WHAT APPEARED TO BE COCAINE.

7 THE ITEMS WERE SENT OFF FOR ANALYSIS AND DID COME
8 BACK POSITIVE FOR COCAINE 27.70 GRAMS.

9 THE COURT: THANK YOU. YOU'VE ALREADY GIVEN ME HIS
10 PRIOR RECORD.

11 MRS. YOUNG: YES, SIR.

12 THE COURT: HAVE YOU DISCUSSED THE NEGOTIATIONS WITH
13 THE AGENCY?

14 MRS. YOUNG: THE AGENCY IS THE NORTH AUGUSTA
15 DEPARTMENT OF PUBLIC SAFETY. I HAVE DISCUSSED THE
16 NEGOTIATED SENTENCE WITH THEM. THEY ARE IN AGREEMENT WITH
17 THIS SENTENCE, AND REPRESENTATIVES OF THE AGENCY ARE, IN
18 FACT, PRESENT IN THE COURTROOM AND DO AGREE WITH THE
19 NEGOTIATIONS.

20 THE COURT: THANK YOU.

21 MR. CHANDLER?

22 MR. CHANDLER: MAY IT PLEASE THE COURT. WE DO NOT
23 DISPUTE THE GENERAL NATURE OF IT. OF COURSE, WE WOULD
24 HAVE HAD EVIDENCE THAT WOULD HAVE DISPUTED AT LEAST THE
25 REASON FOR THE CALL, BUT AS THAT IS NOT MATERIAL IN THIS

1 PROCEEDING, YOUR HONOR, WE'LL MOVE FORWARD TO DISCUSS MY
2 CLIENT SHAWN MADISON.

3 HE IS 32 YEARS OF AGE. HE IS THE FATHER OF THREE
4 CHILDREN, YOUR HONOR. HE SERVES AS A TECHNICIAN AT
5 ALEWINE POOL AND SPA. HE IS --

6 THE COURT: HOW MANY CHILDREN DOES HE HAVE?

7 MR. CHANDLER: HE HAS THREE CHILDREN.

8 THE COURT: HOW OLD ARE THEY?

9 MR. CHANDLER: 13, 9, AND 2? 13, 9, AND 2; THREE
10 GIRLS -- TWO GIRLS AND A SON.

11 YOUR HONOR, ACCOMPANIED HERE TODAY IS HIS SUPERVISOR
12 MR. CHARLES EVANS FROM ALEWINE POOL AND SPA, HIS
13 GIRLFRIEND ADREKA ROBINSON, HIS SISTERS, AND OTHER FAMILY
14 MEMBERS IN SUPPORT OF HIM WHO ARE LOCATED ON THE SECOND
15 ROW TO THE BACK.

16 THE COURT: I THINK THEY'VE BEEN HERE ALL DAY
17 YESTERDAY. I NOTICED THEM YESTERDAY.

18 MR. CHANDLER: THEY ARE HERE TO SUPPORT HIM. YOUR
19 HONOR, YOU'VE HEARD THE FACTS OF THE CASE AND YOU SAW THE
20 VIDEO. JUST TO SHARE SOME THINGS. SHAWN, IN FACT, DOES
21 HAVE THE PRIORS THAT HAVE BEEN MENTIONED. CERTAINLY, THIS
22 ORDEAL AND FACING THESE 20 YEARS HAVE CERTAINLY GIVEN HIM
23 OPPORTUNITY TO THINK ABOUT THE WAY THAT HE WANTS TO ORDER
24 HIS LIFE. HE REALIZED THAT HE HAS BEEN GIVEN AN
25 OPPORTUNITY WITH BEING ABLE TO PLEA TO THE 20 YEARS.

1 WE WOULD ASK THAT YOU ACCEPT THIS NEGOTIATION, YOUR
2 HONOR AND WHATEVER TIME YOU DEEM APPROPRIATE.
3 MR. EVANS -- CHARLES EVANS WOULD LIKE TO SPEAK ON BEHALF
4 OF MY CLIENT.

5 THE COURT: MR. EVANS? THANK YOU FOR COMING.

6 MR. EVANS: MY NAME IS CHARLES EVANS. I AM THE
7 SERVICE MANAGER AT ALEWINE POOL COMPANY. SHAWN MADISON
8 HAS BEEN WITH US FOR THE LAST TWO AND A HALF YEARS. HE'S
9 BEEN AN EXCELLENT EMPLOYEE. HE IS ONE OF OUR BETTER
10 TECHNICIANS. HE'S PASSED EVERY TEST WE'VE GIVEN HIM AS
11 FAR AS WITH CUSTOMERS, WITH RANDOM DRUG TESTS AND
12 EVERYTHING ELSE. SO, HE'S BEEN AN EXCELLENT EMPLOYEE. I
13 CAN'T SAY ANYTHING BAD ABOUT HIM. HE IS ONE OF OUR BETTER
14 ONES.

15 THE COURT: SIR, WELL, I APPRECIATE YOU COMING
16 FORWARD. YOU KNOW, IT'S JUST -- IT'S A DIFFICULT
17 SITUATION WHEN YOU HAVE SOMEONE THAT HAS FAMILY LIKE THIS
18 YOUNG MAN HAS AND, OBVIOUSLY, NOW WORKING TRYING TO GET
19 HIS LIFE IN ORDER. YOU HAVE TO BALANCE THAT WITH THE
20 DAY-IN AND DAY-OUT TRAGEDY THAT WE SEE IN THIS COURTROOM
21 THAT DRUGS CAUSE. IT'S JUST AMAZING. I'D SAY 80 TO
22 85 PERCENT EITHER DIRECTLY OR INDIRECTLY THE TROUBLES THAT
23 WE DEAL WITH IN THIS COURTROOM ARE DEALING WITH DRUGS.
24 THE AMOUNT OF DRUGS HE HAD IS NOT JUST FOR PERSONAL USE.
25 IT IS OBVIOUSLY FOR OTHER REASONS. IT'S UNFORTUNATE OR

1 FORTUNATE. WHATEVER. HE MADE HIS OWN BED BECAUSE HE'S
2 GOT ALL OF THESE PRIORS.

3 THE STATE IS ALLOWING HIM TO PLEAD TO A LESSER FROM A
4 THIRD TO SECOND. SO, HE IS GETTING SOME BREAK, BUT THE
5 LEGISLATURE HAS BEEN PRETTY CLEAR TO THE JUDGES AND
6 EVERYONE ELSE THAT IF YOU'RE GOING TO GET INVOLVED IN THE
7 BUSINESS OF SELLING THIS STUFF AND YOU GET CAUGHT ENOUGH
8 TIMES THEY'RE GOING TO PUT YOU AWAY. THE STATE HAS BEEN
9 SOMEWHAT LENIENT. MR. CHANDLER HAS DONE THE ABSOLUTE BEST
10 HE CAN DO, AND I'M SURE IF MR. MADISON HAD AN OPPORTUNITY
11 TO START OVER HE WOULDN'T BE STANDING HERE TODAY. IT IS
12 IT IS JUST A SHAME THAT HE DECIDED TO START OVER TOO LATE.
13 MY HANDS ARE TIED. THANK YOU, FOR COMING.

14 MR. MADISON, ANYTHING YOU WANT TO TELL ME?

15 THE DEFENDANT: NO, SIR.

16 THE COURT: YOU GOT THREE KIDS, DON'T YOU?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: YOU'VE SEEN WHAT COCAINE DOES TO THE
19 COMMUNITY. WHEN DO YOU WANT YOUR KIDS TO START USING IT?
20 WHEN DO YOU WANT PEOPLE TO START SELLING IT TO YOUR
21 BABIES? THAT'S WHAT WE HAVE TO GUARD AGAINST. YOU KNOW,
22 YOU PUT YOURSELF IN THIS POSITION, AND THERE IS NOT A
23 WHOLE LOT ANYBODY CAN DO TO HELP YOU.

24 MR. MADISON, THE SENTENCE OF THIS COURT IS THAT YOU
25 BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A

1 PERIOD OF 20 YEARS. GOOD LUCK TO YOU.

2 (END OF TRANSCRIPT OF RECORD.)

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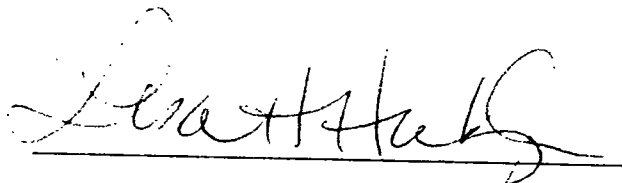
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, LISA H. HICKLIN, OFFICIAL COURT REPORTER FOR THE
SECOND JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
AIKEN COUNTY, SOUTH CAROLINA, ON THE 20TH DAY OF MAY,
2008.

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

JUNE 12, 2009



LISA H. HICKLIN, COURT REPORTER

2009-CP-02-00369
2008-GS-02-89
Filed: 3/8/09
C.C.P. & GS - Aiken County
Clerk: Anita Koseoff
Deputy Clerk: [blank]
Trial Judge: D.A. [blank]
Trial Atty.: Everett Chandler
Court Reporter: Lisa Hicklin
Sec: PCR Petitioner: [blank]
General Sessions: [blank]
Appointed Atty.: [blank]

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
)
)
SHAWN MADISON)
328499)
)
PLAINTIFF)
VS)
STATE OF SOUTH CAROLINA)
DEFENDANT)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST- CONVICTION RELIEF

1. Place of detention: Lieber Correctional
2. Name and location of Court which imposed sentence: Aiken County,
Court of General Sessions
3. Name(s) of co-defendant(s) (if any): None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2008-GS-02-89
(b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) May 20, 2008 Twenty years and \$50,000.00
(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty: Yes

(b) after a plea of not guilty: No

(c) after a plea of nolo contendere: No

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

No

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

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

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

9. If you answered (no) to (7), state your reasons for not so appealing:

(a) Attorney did not inform me of my right to Appeal. He only told me about my right to file for PCR

(b) _____

(c) _____

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

(a) Ineffective assistance of counsel

(b) _____

(c) _____

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

(a) See Exhibit A Attached

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

- iii. _____
iv. _____

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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 _____

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

(a) which grounds have been presented:

- i. N/A _____

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) Did not know I had any rights other than PCR

(b) _____

(c) _____

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

(a) your arraignment and plea? Yes

(b) your trial, if any? N/A

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Only this Application for Post Conviction Relief.

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. 17 (a) and (c) Everett K. Chandler, Attorney and Counselor at Law, PO BOX 2391, 225 Chesterfield St. NW, Aiken, SC 29801

ii. _____

iii. 17 (e) Demal I. Mattson, Jr., Attorney at Law, 990 Lake Hunter Cr., Ste 201, Mt. Pleasant, SC 29464

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

i. Mr. Chandler from Preliminary Hearing to Plea and Sentencing

ii. _____

iii. _____

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

Reversal of conviction, vacation of sentence and new trial

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

Yes, parole from State of Georgia which was transferred to South Carolina.

EXHIBIT A

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

- (a) Counsel failed to inform applicant of right to appeal;
- (b) Counsel did not file an appeal;
- (c) Counsel did not file a Motion to reconsider the sentence;
- (d) Counsel never advised applicant to obtain character witnesses and family members for the sentencing process;
- (e) Counsel did not adequately explain the plea sentence;
- (f) Counsel did not recommend any substance abuse or counseling programs for applicant to attend for sentencing purposes and possible mitigation;
- (g) Counsel did not recommend the applicant to obtain any type of psychological profile or evaluations for sentencing purposes and possible mitigation;
- (h) Counsel never spoke with any family members, friends, teachers of the applicant for sentencing purposes nor did he advise applicant or even question applicant about the existence of persons to support applicant during sentencing process;
- (i) Counsel failed to file any Motions to require an independent evaluation of the alleged controlled substance seized from the applicant;
- (j) Counsel did not obtain anyone to independently weigh the amount of the alleged controlled substance;
- (k) At the Suppression Hearing Counsel was completely unprepared and deficient in the following particulars:
 - 1. Never enquired into why the Police had been dispatched to the apartment complex;
 - 2. Never obtained a copy of the 911 call or tape of the complainant who requested Police services nor did he ever talk with or interview the complainant concerning his or her call to the Police;
 - 3. Never raised the issue of racial profiling or the pretextual stop;
 - 4. Never obtained or attempted to obtain the Police Dispatch Log dispatching the Law Enforcement Officers to the area;
 - 5. Never filed a Motion to obtain the arresting Officer's ticket books or warning ticket books to determine the possibility of racial profiling and/or pretextual stops which would have provided him with the names and addresses of possible witness for the Suppression Hearing;
- (l) The applicant's rights were violated by the ineffective assistance of Counsel which prejudiced the Defendant in violation of the 6th Amendment to the United States Constitution.

Strickland v. Washington, 466 US 668, 104 S.Ct. 2052,(1984).

COUNTY OF

) VERIFICATION
)

I, Shawn Madison, 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.

Shawn Madison

SWORN to and subscribed before me this 30

Day of January, 20 09

Gloria C. Miller

Notary Public

My commission Expires: 08/21/2011

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

2009-CP-02-0369

Shawn Madison, #328499,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN
(Appointment of Counsel Requested)

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 2, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted at the February 2008 term of the Aiken County Grand Jury for Trafficking in Cocaine >10 g < 28 g - 3rd Offense (2008-GS-02-0089). Everett Chandler, Esquire, represented him. On May 20, 2008, the Applicant pled guilty before the Honorable Doyet A. Early, III, and was sentenced to twenty (20) years imprisonment and a \$50,000.00 fine. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina

1 of 5

FILED 5.15.09
Shawn Madison
Clerk
In 2 pm/ASK
Deputy Clerk

Department of Corrections, and the guilty plea transcript.¹ The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. "Counsel failed to inform me of right to appeal."
 - b. "Counsel did not file an appeal."
 - c. "Counsel did not file a Motion to reconsider the sentence."
 - d. "Counsel never advised applicant to obtain character witnesses and family members for the sentencing process."
 - e. "Counsel did not adequately explain the plea sentence."
 - f. "Counsel did not recommend any substance abuse or counseling programs for applicant to attend for sentencing purposes and possible mitigation."
 - g. "Counsel did not recommend the applicant to obtain any type of psychological profile or evaluations for sentencing purposes and possible mitigation."
 - h. "Counsel never spoke with any family members, friends, teachers, of the applicant for sentencing purposes nor did he advise applicant or even question applicant about the existence of persons to support applicant during sentencing process."
 - i. "Counsel failed to file any Motions to require an independent evaluation of the alleged controlled substance seized from the applicant."
 - j. "Counsel did not obtain anyone to independently weigh the amount of the alleged controlled substance."
 - k. "At the Suppression Hearing Counsel was completely unprepared and deficient in the following particulars:
 - i. Never inquired as to why the Police had been dispatched to the apartment complex;
 - ii. Never obtained a copy of the 911 call or tape of the complainant concerning his or her call to the police;
 - iii. Never raised the issue of racial profiling or the pretextual stop;
 - iv. Never obtained or attempted to obtain the Police Dispatch Log dispatching law enforcement officers to the area;

¹ As of the date of this return, the transcript has been ordered by Respondent but not yet received. The transcript will be forwarded upon receipt.

- v. Never filed a Motion to obtain the arresting officer's ticket books or warning ticket books to determine the possibility of racial profiling and/or pretextual stops which would have provided him with the names and addresses of possible witness for the Suppression Hearing;"
- l. "The applicant's rights were violated by the ineffective assistance of Counsel which prejudiced the Defendant in violation of the 6th Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984)."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(s).

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was

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

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

IV.

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

V.

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

[Signatures on next page.]

Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: *Mary S. Williams*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

May 13, 2009.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

SHAWN MADISON, 328499

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2009-CP-02-0369

AFFIDAVIT OF SERVICE BY MAIL

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:

Demal L. Mattson, Jr., Esquire
990 Lake Hunter Circle, Suite 201
Mt. Pleasant SC 29464

DATED this 14th day of May, 2009.


Aughtry B. K. Randall, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

SHAWN MADISON, #328499,)
)
Applicant,)
v.)
)
THE STATE OF SOUTH CAROLINA,)
)
Respondent.)

2009-CP-02-0369

AMENDED POST-CONVICTION
RELIEF APPLICATION

The Post-Conviction Relief Application previously filed on March 2, 2009 under docket number 2009-CP-02-0369 is hereby amended to include the following additional allegations:

- 1) Plea Counsel was ineffective for failing to fully present evidence and arguments in support of Applicant's motion to suppress the drug evidence in his case.
- 2) Plea Counsel was ineffective for advising his client to accept a guilty plea bargain, and enter a plea of guilty, without first fully advising his client of all the consequences of such a plea including the waiver of his right to appeal the decision of the lower court on his motion to suppress the drug evidence in his case.
- 3) Plea Counsel was ineffective for neglecting to advise his client that a plea of guilty would effectively waive his right to have an appellate court review the question of whether or not the lower court erred in ruling that the drug evidence in his case was admissible notwithstanding evidence that the drugs were seized as a result of an unlawful detention.
- 4) Plea Counsel was ineffective for failing to develop a record in support of Applicant's motion to suppress the drug evidence in his case.
- 5) Plea Counsel was ineffective for failing to challenge the assertion of law enforcement that the tag cover found on the vehicle driven by the Applicant on the night of the incident in question violated State law.
- 6) Plea Counsel was ineffective for failing to take necessary measures to preserve the license tag and tag cover from the car driven by the Applicant on the evening of the violation alleged by this State where said evidence was material to Applicant's ability to prove that the reason advanced by law enforcement for the stop of the vehicle on the evening in question was a pretext.

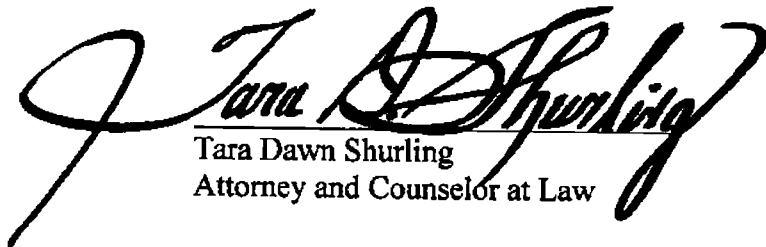
8.1.14
J. J. Gadd
cc: P. & G.S.
Anita Knepper
Deputy Clerk

7) Plea Counsel was ineffective for failing to take proper measures to obtain copies of law-enforcement logs, dispatch tapes and other law-enforcement records which would have documented the exact nature of the call which resulted in law enforcement coming to the apartment complex where the Applicant was stopped, eventually arrested, on the night of his arrest.

8) Applicant's plea was not voluntarily and intelligently entered where it was entered without the understanding that he would not be able to appeal the lower court's ruling on the legality of the seizure of the drugs in his case if he pleaded guilty, and where his belief that he would still have the right to appeal that decision was reinforced by remarks from the Court at the time of his plea.

The Applicant has no further amendments at this time. For the reasons set forth herein, as well as those set forth in his original application, the Applicant asserts that his right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, was violated in the trial court. Copies of these amendments have been served on opposing counsel, Daniel Gourley, Assistant Attorney General, and Plea Counsel for the Applicant, Everett K. Chandler, Esquire.

Respectfully submitted,



Tara Dawn Shurling
Attorney and Counselor at Law

Law Office of Tara Dawn Shurling
3614 Landmark Dr., Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 (fax)
tdslaw@shurlinglaw.com

Attorney for the Defendant

This 10 day of July, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

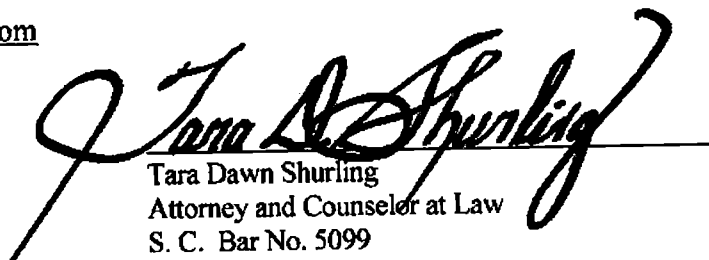
SHAWN MADISON, #328499,)
Applicant,)
v.)
THE STATE OF SOUTH CAROLINA,)
Respondent.)

2009-CP-02-0369

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that one copy of the Amended Post-Conviction Relief Application in the above-entitled cause has been served upon, Plea Counsel, Everett K. Chandler, by email on this the 28th day of July, 2014 to:

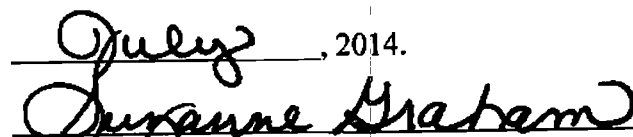
Everett K. Chandler, Esquire
P. O. Box 2391
Aiken, SC 29802
echandler@thechandlerlawfirm.com

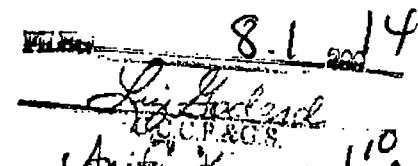

Tara Dawn Shurling
Attorney and Counselor at Law
S. C. Bar No. 5099

3614 Landmark Dr., Ste. A
Columbia, SC 29204
(803) 738-8622
(803) 738-1600 (Fax)
Email: tdslaw@shurlinglaw.com

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 28th day of

July, 2014.
 (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24

8-1-2014

Deputy Clerk

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

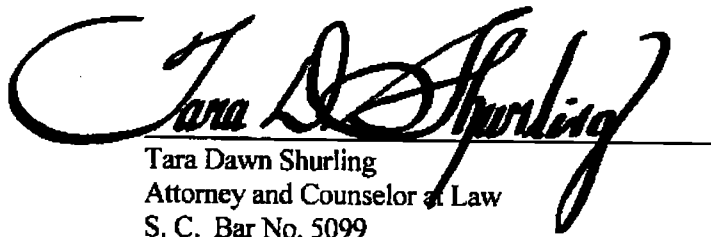
SHAWN MADISON, #328499,)
Applicant,)
v.)
THE STATE OF SOUTH CAROLINA,)
Respondent.)

2009-CP-02-0369

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that one copy of the Amended Post-Conviction Relief Application in the above-entitled cause has been served upon, Assistant Attorney General, Daniel Gourley, by email on this the 28th day of July, 2014 to:

Daniel Gourley
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211


Tara Dawn Shurling
Attorney and Counselor at Law
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ATTORNEY FOR THE APPLICANT.

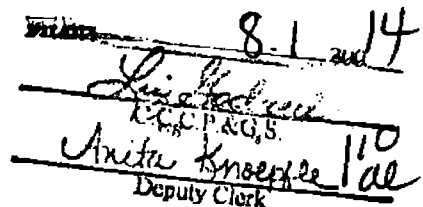
SWORN TO BEFORE ME this 28th day of

July, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 2/28/24


Anita Knoepke
Deputy Clerk

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

2009-CP-02-00369

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V.

APPLICANT'S MEMORANDUM IN
SUPPORT OF PCR APPLICATION IN
FORM OF A PROPOSED ORDER

—

Respondent.

PROPOSED ORDER

2.20.15

~~FILED~~

L. J. Gadsden
U.C.C.P. & G.S.

Amita K. Knepper 235
Deputy Clerk

This matter comes before the Court by way of a Post-Conviction Relief (PCR) Application filed on March 3, 2009. Respondent made its return on May 14, 2009. An evidentiary hearing was convened on the merits of Applicant's allegations on January 12, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Tara Dawn Shurling, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted at the February 2008 term of the Aiken County Grand Jury for trafficking in cocaine greater than ten grams but less than twenty-eight grams – third offense (2008-GS-02-0089). Everett Chandler, Esquire represented Applicant in the Court of General Sessions. On May 19, 2008, a hearing was held before the Honorable Doyet A. Early, III, presiding circuit judge, on Applicant's Motion to Suppress drug evidence seized during a traffic stop. At the conclusion of this

hearing, Applicant's Motion to Suppress was denied. On May 20, 2008, Applicant entered a negotiated guilty plea before Judge Early and was sentenced to twenty years imprisonment and a \$50,000.00 fine. Applicant did not appeal his conviction or sentence.

An evidentiary hearing was convened into the matter on July 12, 2011, before the Honorable James C. Barber, III, at the Aiken County Courthouse. At the conclusion of the hearing, Applicant's PCR counsel, Demal I. Mattson, Jr., renewed a previously filed motion for discovery to obtain the 911 phone call audio tape and the officer's ticket books in order to explore the possibility of a pretextual stop. Judge Barber issued a Form 4 order retaining jurisdiction and continuing the case until the September 2011 term of PCR Court. Demal Mattson subsequently notified the Court that these items were no longer available. By Order dated September 16, 2011, Judge Barber ordered that the case be continued and placed on the next available roster before the next presiding judge. On September 17, 2012, the Honorable Doyet A. Early, III signed a consent order of substitution of counsel and Tara Dawn Shurling, Esquire, was substituted as counsel of record for Demal I. Mattson, Jr., Esquire.

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

1. Ineffective assistance of counsel:
 - a. "Counsel failed to inform me of right to appeal."
 - b. "Counsel did not file an appeal."
 - c. "Counsel did not file a motion to reconsider the sentence."
 - d. "Counsel never advised applicant to obtain character witnesses and family members for the sentencing process."

- e. "Counsel did not adequately explain the plea sentence."
- f. "Counsel did not recommend any substance abuse or counseling programs for applicant to attend for sentencing purposes and possible mitigation."
- g. Counsel did not recommend Applicant to obtain any type of psychological profile or evaluations for sentencing purposes."
- h. "Counsel never spoke with any family members, friends, teachers, of Applicant for sentencing purposes nor did he advise applicant or even question applicant about the existence of persons to support applicant during sentencing purposes."
- i. "Counsel failed to file any motions to require an independent evaluation of the alleged controlled substance seized from the applicant."
- j. "Counsel did not obtain anyone to independently weigh the amount of the alleged controlled substance."
- k. "At the suppression hearing counsel was completely unprepared and deficient in the following particulars:
 - i. Never inquired as to why the Police had been dispatched to the apartment complex;
 - ii. Never obtained a copy of the 911 call or tape of the complainant concerning his or her call to the police;
 - iii. Never raised the issue of racial profiling or the pretextual stop;
 - iv. Never obtained or attempted to obtain the Police Dispatch Log dispatching law enforcement officers to the area;
 - v. Never filed a Motion to obtain the arresting officers ticket books or warning ticket books to determine the possibility of racial profiling and/or pretextual stops which would have provided him with the names and addresses of possible witness for the Suppression Hearing."
- l. "The applicant's rights were violated by the ineffective assistance of counsel which prejudiced the Defendant in

violation of the 6th Amendment to the United States Constitution. *Strickland v. Washington*, 455 U.S. 558, 104 S.Ct. 2052 (1984)."

Applicant's Counsel, Tara Dawn Shurling filed an Amended Application for Post-Conviction Relief on July 28, 2014, raising the following allegations:

1. Plea Counsel was ineffective for failing to fully present evidence and arguments in support of Applicant's motion to suppress the drug evidence in his case.
2. Plea Counsel was ineffective for advising his client to accept a guilty plea bargain, and enter a plea of guilty, without first fully advising his client of all the consequences of such a plea including the waiver of his right to appeal the decision of the lower court on his motion to suppress the drug evidence in his case.
3. Plea Counsel was ineffective for neglecting to advise his client that a plea of guilty would effectively waive his right to have an appellate court review the question of whether or not the lower court erred in ruling that the drug evidence in his case was admissible notwithstanding evidence that the drugs were seized as a result of an unlawful detention.
4. Plea Counsel was ineffective for failing to develop a record in support of Applicant's motion to suppress the drug evidence in his case.
5. Plea Counsel was ineffective for failing to challenge the assertion of law enforcement that the tag cover found on the vehicle driven by Applicant on the night of the incident in question violated State law.
6. Plea Counsel was ineffective for failing to take necessary measures to preserve the license tag and tag cover from the car driven by Applicant on the evening of the violation alleged by this State where said evidence was material to Applicant's ability to prove that the reason advanced by law enforcement for the stop of the vehicle on the evening in question was a pretext.
7. Plea Counsel was ineffective for failing to take proper measures to obtain copies of law-enforcement logs, dispatch tapes and other law-enforcement records which would have documented the exact nature of the call which resulted in law enforcement coming to the apartment complex where Applicant was stopped, eventually arrested, on the night of his arrest.
8. Applicant's plea was not voluntarily and intelligently entered where it was entered without the understanding that he would not be able to appeal the lower court's ruling on the legality of the seizure of the drugs in his case if he pleaded guilty, and where his belief that

he would still have the right to appeal that decision was reinforced by remarks from the Court at the time of his plea.

EVIDENCE BEFORE THE COURT

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from his Plea Attorney, Everett Chandler, Esquire (Defense Counsel) and Rose Rivers (Rivers). The State presented Reply testimony from Defense Counsel. This Court also has before it a transcript of the preliminary hearing held in this matter on January 30, 2008,¹ a transcript of the motion hearing held on May 19, 2008, a transcript of the guilty plea proceeding held on May 20, 2008, the records of the Aiken County Clerk of Court regarding the subject conviction, Applicant's South Carolina Department of Corrections records, the PCR application, Applicant's Amended Application for PCR and the Respondent's Return. In addition, the Court has before it a copy of the exhibit introduced by Applicant during his PCR hearing and marked as Plaintiff's Exhibit No. 1.

What follows below are this Court's findings of fact and rulings of law on all Applicant's allegations as is required by S.C. Ann. §17-27-80.

STANDARD OF REVIEW

This Application for Post-Conviction Relief generally raises numerous specific allegations of ineffective assistance of counsel. The burden of proof is on the Applicant in a Post-Conviction Relief proceeding to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief hearing. *Thompson v. State*, 340 S.C. 112,

¹ During the PCR hearing, PCR Counsel inquired as to whether the package of materials provided to the Court by the Respondent, contained a copy of the preliminary hearing transcript. When it was determined that it did not, PCR Counsel supplied the Court a copy noting that the only copy she had available was not signed. PCR Counsel advised the Court that she would try to obtain a signed copy of this transcript and would provide the Court and Respondent a signed copy. Counsel now advises that there does not appear to be a signed copy of this transcript. She had provided this Court, and Respondent, a copy of the transcript bearing a stamp which indicates that it came from the Solicitor's file. Counsel advises that this transcript was provided to her by Defense Counsel's Office.

531 S.E.2d 294 (2000); Rule 71.1(e), SCRPC. In evaluating an Application for Post-Conviction Relief, the moving party must demonstrate that Defense Counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial. *Strickland v. Washington*, 466 U.S. 668 (1984). In other words, the Applicant must show that, but for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. *Id.*; *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). A reasonable probability has been defined by our Supreme Court as a probability sufficient to undermine confidence in the outcome of the trial. *Ard v. Catoe*, 372 S.C. 318, 330, 642 S.E.2d 590, 596 (2007).

On the one hand, where Defense Counsel articulates a valid reason for employing certain trial strategies, such conduct should not be deemed ineffective assistance of trial counsel. *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). On the other hand, counsel may not explain away errors and omissions which acted to prejudice his client's ability to receive a fair trial simply by labeling them matters of trial strategy or tactics. In the case of *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002), the Supreme Court of South Carolina found that

Counsel must articulate a **valid** reason for employing a certain strategy to avoid a finding of ineffectiveness. Where counsel articulates a strategy, it is measured against an objective standard of reasonableness.

Where a Post-Conviction Relief Petitioner pleaded guilty in the trial court, on collateral review it is necessary for him to establish that, but for the errors and omissions of counsel, he would not have waived his constitutional right to trial by jury by pleading guilty. *Hill v. Lockhart*, 474 U.S. 52 (1985).

SUMMARY OF RELEVANT PORTIONS OF THE RECORD BELOW

A hearing was held on a Motion to Suppression made by Applicant on May 19, 2008. At this Suppression Hearing Defense Counsel stated that North Augusta Public Safety was called to the North Augusta Gardens Apartments to investigate a complaint that an individual named Sheika Key was smoking pot.² S.H. Tr. p. 3, l. 23- p. 4, l. 1. He went on to state that as officers were arriving, Applicant was walking to his car, got in and began driving out of the apartment complex. He advised the Court that these officers followed Applicant some distance and pulled him over. Defense Counsel goes on to note that the officers found drugs and arrested Applicant. He argues that it was only after Applicant was taken to the police station that he was given a traffic warning ticket for a tag cover violation. S.H. Tr. p. 4, ll. 2-11

During the Suppression Hearing, it was apparent that Defense Counsel had not researched the law concerning the tag violation, and could not directly answer the Judge's questions. Defense Counsel argued that the police had executed a pretextual stop and that Applicant's consent to search was nullified by the illegality of initial stop. Defense Counsel notes that on the video recording made of the stop by law enforcement there is nothing said about a tag violation. S.H. Tr. p. 5, l. 6- p. 6, l. 24. Although neither

² The Suppression Hearing Transcript is referenced herein as S.H. Tr.

Defense Counsel, nor the State, produced the tag cover in question, Defense Counsel conceded "*I just know it was dark*", S. H. Tr. p. 4, ll. 15-24.

Defense Counsel went on to erroneously inform the Court that his client "volunteered to be searched." S. H. Tr. p 5, ll. 16-19. This assertion is not supported by the record. The incident report prepared by the officer that stopped Applicant on the date of the stop, PCR Plaintiff's Exhibit No. 1, documents that law enforcement asked Applicant for permission to search his car. In the incident report Applicant is said to have given consent after being questioned by law enforcement concerning whether he had drugs in the car. As he exited the vehicle, Applicant was observed to have his hand on his crotch. The drugs for which he was arrested fell out of his pants when law enforcement directed him to let go of his crotch.

During the suppression hearing, the presiding judge expressed concern over a stop for a tinted tag cover. The prosecution then admits, "that's not the only reason for the stop..." S.H. Tr. p. 7, ll. 11-18. The prosecutor goes on to more fully articulate the State's position. S.H. Tr. p. 7, l. 20- p. 8, l. 16. During that explanation she expressly states,

The first officer indicated to the second officer that there was a car coming out. The second officer observed that plate was obscured and that that was a traffic violation so he pulled him over for that.... S.H. Tr. p. 8, ll. 3-7.

Despite the State's position that this stop was *initiated* as a traffic stop, they also argue the officers had a reasonable suspicion Applicant was engaged in drug activity. During

Applicant's guilty plea proceeding,³ the Prosecutor openly acknowledged that Officer Youngblood was in the process of stopping the car driven by Applicant when "he noticed that it had an improper tag which is a traffic violation in this state...." G.P. Tr. p. 19, ll. 13-17.

In support of Applicant's motion, Defense Counsel noted that the State was effectively arguing that because at 10 PM someone made a complaint that a female was smoking pot outside at the apartment complex, any car seen leaving the complex could be stopped. He basically argued that under the State's theory anyone leaving the complex could be stopped because, as Defense Counsel repeatedly noted, that there was no mention of a tag cover violation on the law enforcement video recording the stop and the subsequent search. Although Defense Counsel did not introduce the video of the stop and search, the State did not dispute his assertion that the tag violation was never even mentioned during the stop. Defense Counsel notes that, "actually, during the preliminary, the investigating officer testified to that fact." S. H. Tr. p. 6, ll. 5-24. Defense Counsel did not introduce a transcript of the preliminary hearing during this hearing. Neither did Defense Counsel introduce a copy of the incident report documenting this stop and the subsequent search. Defense Counsel consistently argued that this was a pretextual stop. S. H. Tr. p. 6, ll. 18-21. Since neither of the officers involved in this stop testified during the Suppression Hearing, it is instructive to examine the record the Preliminary Hearing held in this matter on _____. A transcript of that proceeding was made part of this record during the PCR hearing in this case.

³ The Guilty Pleas proceeding is referenced herein as G. P. Tr.

Throughout the preliminary hearing⁴, the officer who presented the case, Detective Turner stated that he *believed* Applicant asked Officer Nichols if he wanted to search *him*. P.H. Tr. p. 4, ll. 1-7. He informed the magistrate that Applicant was issued a warning ticket for the improper display of the license tag. While he did not expressly say so, the order of his testimony suggested Applicant received the ticket before being taken into custody at the jail. P.H. Tr. p. 4, ll. 27-39. Later during the Preliminary Hearing Detective Turner once again presented the facts of this case in a manner which strongly suggested that Applicant was given a warning ticket for the tag violation contemporaneously with the traffic stop. P.H. Tr. p. 8, ll. 39-43. Later, this officer acknowledged that there was never any mention of a traffic violation for the tag cover during the stop and subsequent search. P.H. Tr. p. 10, l. 19- p. 11, l. 13. Detective Turner advised the Magistrate Court that he was the Chief Investigating Officer assigned by the City of North Augusta to Applicant's case. P.H. Tr. p. 2, ll. 15-21. He expressly stated that,

On March the 27th, 2007, at approximately 10:07 p.m., Officer Jeremy Youngblood reports that he was dispatched to the area of 310 West Hugh Street, North Augusta, South Carolina, which is North Augusta Garden Apartments. Our dispatcher took the complaint from the anonymous complainant believed to be a white male, (INAUDIBLE), that states that between buildings one and two of North August Gardens, which is come in and take a right down to the bottom there was what was believed to be drug activity,

⁴ References to the preliminary hearing record will appear hereafter as P.H. Tr.

drug distribution taking place on persons loitering in the parking lot thought it was drug activity.

P.H. Tr. p. 2, l. 41- p. 3, l. 13.

In the Incident Report prepared by Officer Jeremy Youngblood on the date of this stop, Officer Youngblood simply reports, "On the above date and time, this officer responded to the incident location in reference to suspicious activity." *See*, Plaintiff's Exhibit No. 1, pg. 1.

Although, Detective Turner initially described the complaint that brought law enforcement to this apartment complex as simply a report of "drug activity" to the dispatcher by an anonymous individual believed to be a white male, he immediately added, "drug distribution taking place on persons loitering in the parking lot thought it was drug activity." P.H. Tr. p. 3, ll. 1-13. Detective Turner advised the Magistrate Judge that he had been told by Officer Youngblood and Officer Nichols that when they arrived at the scene "the only person they saw in the areas between building one and two" was Applicant. P.H. Tr. p. 3, ll. 13-19.

When asked what the justification was for Officer Youngblood to stop Applicant, Detective Turner advised the Magistrate Judge as follows,

Okay. They then turned into the place. Saw him, the only person leaving from that area, which was the complainant area from where our complaint came from saying that this was taking place. He drove by as officers pulled into a known drug area. He jumps in his car. Pulls out. Starts exiting the complex. As they turn, as he passes them he has a tag, which is obscured from a tinted license plate cover and he does match, he's the only person in the description

of the complainant area for which we received a call for a young man for people standing outside selling drugs. He gets in a car from that area and then starts exiting. He was then stopped. He was issued a warning for the tag, the license plate cover as well.

P.H. Tr. p. 8, ll. 23-43.

When asked if the tipster had described Applicant's car, Detective Turner responded,

I'm not a hundred percent positive and we, I've been trying to gather that, and that's still they said the person people standing outside building one and two, which if you look down there is like this if you've ever been out there.

P. H. Tr. p. 9, ll. 3-9. When once again asked to articulate *why* Applicant was stopped, Detective Turner stated,

He's there. He gets in a vehicle there where the complaint happens from. He's the only person there. Gets in a vehicle then drives that vehicle right there, as they're looking, they can see from where they turned around at where he was standing to get in that vehicle. He turns and passes them and yeah, he's got a traffic violation.

P.H. Tr. p. 9, ll. 31-39. As previously noted however, Detective Turner acknowledges that nothing was said about the tag violation at the scene of the stop. P.H. Tr. p. 10, l. 15-p. 11, l. 3. There was no indication that the anonymous tipster ever described anyone matching Applicant's description, nor did he report a car being involved in the drug activity he reported. P. H. Tr. p. 13, ll. 13-43. At the conclusion of the preliminary hearing, the State summarized its position by arguing,

Under *Terry v. Ohio*, officers have to have reasonable suspicion with which to stop and speak to people. And that case applies to automobiles as well. As I understand Detective Turner's testimony there was a call made about suspicious activity at North Augusta Gardens Apartments. When the officers arrived on the scene they observed the defendant on the scene. Being the only individual present he immediately got into a vehicle and left. As they turned around besides him being there where they perceived a report of a suspicious person they also observed that he had an improperly displayed tag, which give them reasonable suspicion and probable cause to pull him over for a traffic violation.

P.H. Tr. p. 16, ll. 1-23.

At the hearing held on Applicant's Motion to Suppress, the State did not produce the tag cover which was the alleged basis for the traffic stop. The State didn't produce any photographs of the tag cover in question. As previously noted, Defense Counsel not only failed to hold the State to its burden of proof that the tag cover in question was tinted, he conceded that the tag cover was "dark."⁵ Defense Counsel repeatedly asserted that the video tape of the stop demonstrated that not a word was said about a traffic violation during the duration of the stop. He did not, however, introduce a copy of the incident report which documented the fact that the warning ticket for the alleged tag cover violation was not issued until after the Applicant was taken to the Detention Center for booking on the drug charge. *See, Plaintiff's Exhibit No. 1.* Significantly, Defense Counsel did not object to the prosecutor's failure to present sworn testimony from the Officers involved in Applicant's stop, search and subsequent arrest. It is impossible to

⁵ Pursuant to S.C. Code Ann. § 56-6-1240, a "tinted cover" is not allowed.

tell from the record below whether these officers were even present for this hearing. Defense Counsel did not introduce a copy of the video, upon which his arguments so heavily relied, into record of the suppression hearing. Trial Counsel failed to investigate and present readily available evidence which would have challenged the expanded version of the tip, which lead law enforcement to come to this apartment complex to begin with, advanced by the prosecution in response to Applicant's suppression motion. During the PCR hearing held in this matter, Apartment Manager, Rose Rivers, was presented as a witness for the Applicant. She testified on the evening of this event, a tenant named Billy Laird called her about a female smoking pot in the parking lot of the complex. She testified that Laird asked her if he could call the police or if she needed to do it. She stated that she told him he could call himself. She said that, as was her custom, she went and got a copy of the police report. She said it was then that she discovered that Applicant had been arrested following a stop in the complex. Her PCR testimony also established that Rivers stated that there were over 100 units in 18 individual buildings. Rivers stated that Laird is no longer a resident of the apartment complex and she does not know where he currently resides. She did verify that Laird lived at the complex for a time after this incident. Rivers verified that Applicant was a frequent guest at the apartment complex and that his girlfriend was a tenant at the apartment complex. Rivers stated Applicant's girlfriend lived in apartment building one. Rivers stated apartment Building One faced apartment Building Two and was at the end of a cul-de-sac. Rivers stated that the girlfriend's name was Dricka Robinson. The testimony of Rose Rivers, would have established that the anonymous tip received by law

enforcement addressed a complaint about a lone female smoking pot in the parking lot, not drug activity engaged in between multiple males.

PCR Counsel has, as an officer of this Court, stated that she and her staff had been unable to locate, Billy Laird, as a witness for Applicant despite exhaustive efforts which included interviewing a member of Laird's family. The testimony of Rose Rivers, establishes that Laird lived at this apartment complex during this time period, and therefore that he, like the complex manager, Rose Rivers, would have been available to Defense Counsel as witnesses for Applicant's Suppression hearing. Defense Counsel offered no reasonable explanation for his failure to investigate the source and scope of the tip which brought law enforcement to the scene. Defense Counsel admitted that he was retained within days after Applicant's arrest. He did not request copies of the 911 call made by the tipster in this case, nor did he request copies of the dispatch transmissions conveying this tip to law enforcement. As previously noted, prior PCR Counsel requested leave to obtain a copy of these items and subsequently reported to Judge Barber that they were no longer available. Applicant asserts that this crucial evidence, would have been readily available shortly after Applicant's arrest.

Following River's testimony, Applicant was called to testify on his own behalf. Applicant stated he was driving his girlfriend's car when he was pulled over by the police. His testimony confirms that the police never mentioned the tinted tag cover when they pulled him over. Applicant recalled that the police officer asked him if they could search the car after questioning him about drugs and he consented to the search. He denied volunteering to be searched. Applicant stated he retained Defense Counsel's services. Applicant testified that Defense Counsel never really discussed a strategy for

addressing the Fourth Amendment issues in his case with him. Applicant acknowledged that he was aware of the suppression hearing before it was held. Applicant testified however, that Defense Counsel never discussed the need to establish that the police were called out to the apartment complex due to a complaint about a single woman smoking marijuana. Defense Counsel testified that he may have interviewed the apartment personal but had little recollection of that interview if it in fact occurred. Rivers did not recall be interviewed by Defense Counsel.

Applicant testified that he was present at the preliminary hearing. During his testimony he stated he learned about the tinted license tag cover for the first time during the preliminary hearing. Applicant stated it was his opinion that the police were merely using the tinted license tag as a justification for pulling him over. Applicant testified that he never discussed the fruit of the poisonous tree doctrine with Defense Counsel. Applicant unequivocally testified that Defense Counsel did not advise him that he would lose his right to appeal the denial of his suppression motion if he pled guilty. He testified that he would not have pleaded guilty had he realized that he would lose the right to challenge the trial court's ruling on his suppression motion by doing so. Applicant recalled that he was sentenced pursuant to negotiations and received exactly what he bargained for during the plea process. Applicant recalled the plea judge advising him about his right to appeal. Applicant stated his mom and girlfriend were present at the guilty plea hearing. He recalled Defense Counsel advising him about his right to a PCR appeal.

Following Applicant's testimony, Defense Counsel was recalled by the State. He testified that he discussed the Fourth Amendment violation with Applicant on numerous

occasions. Defense Counsel stated that they discussed the Fourth Amendment violation prior to his preliminary hearing and that they discussed whether the stop was legal and valid. Defense Counsel acknowledged that Applicant had no chance of prevailing at trial unless the Court granted his motion to suppress the drug evidence. Defense Counsel stated Applicant had no chance of acquittal if they lost the suppression motion because the officer's dash cam captured Applicant exiting the vehicle and a bag of cocaine falling from his pants. Neither Defense Counsel's direct testimony nor his testimony on Reply asserts any clear strategy for winning the challenge to the search in this case.

DISCUSSION

Defense Counsel's repeated argument that the traffic stop was pretextual reflected a basic lack of research and preparation for the suppression hearing. . At the time this motion was heard, May 19, 2008, it was well established that the subjective state of mind of the officers making a stop is not the controlling factor in evaluating the legality of a search. In *State v. Provet*, 405 S.C. 101, 747 S.E.2d 453 (2013), our Supreme Court relied upon *Ohio v. Robinette*, 519 U.S. 33, 38 (1996), for its ruling that the, "test whether reasonable suspicion exists is an *objective* assessment of the circumstances; the officer's *subjective* motivations are irrelevant." (Emphasis added). Normally the inquiry in cases such as this is whether a traffic stop supported by reasonable suspicion of a traffic violation has been unreasonably extended in order to investigate unrelated matters. There the operative question is whether the office "possesses reasonable suspicion that warrants an *additional* seizure of the motorist." *United States v. Sullivan*, 138 F.3rd 126, 131 (4th Cir. 1998) (Emphasis added). It is

clear that an "officer's observations while conducting a traffic stop may create reasonable suspicion to justify further search or seizure." *Provet*, 747 S.E. 2d at 457.

The Supreme Court of South Carolina's recent decision in *State v. Hewins*, 409 S.C. 93, 760 S.E.2d 814 (S.C. 2014), contains an overview of the law relating to investigative stops. In that opinion the Court reviews the standard for the application of that law to traffic stops. As noted in *Hewins*, a police officer may "stop and briefly detain a person for investigative purposes" if he "has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot'..." *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989), 20 L.Ed.2d 889 (1968)). *Id.*, 409 S.C. at 114, 760 S.E.2d at 825. In Applicant's case, the officer making the stop, never pursued the traffic violation upon stopping the car driven by Applicant. He never even mentioned it. As in the case of *United States v. Guignon-Ortiz*, 6609 F. 3rd 757 (4th Cir., 2011), the officer in this case "failed to diligently pursue the purposes of the stop and embarked on a sustained course of investigation into the presence of drugs in the car that constituted the bulk of the encounter between the officer and the defendant." *See also*, *United States v. Digiovanni*, 650 F.3rd 498 (4th Cir., 2011). Thus, Defense Counsel should have argued that once the vehicle was stopped, law enforcement clearly did not pursue the traffic violation and immediately began actively investigating Applicant as the target of their drug investigation.

Rather than arguing that the traffic stop was pre-text for a drug investigation, Defense clearly should have more thoroughly addressed the basic question of whether law enforcement had "a reasonable suspicion supported by articulable facts" that Applicant was involved in criminal activity. Applicant asserts, and this Court agrees,

that Defense Counsel neglected to present evidence and arguments tailored to demonstrate that law enforcement had no legal justification for stopping Applicant's vehicle. The record before this Court reveals that Defense Counsel mounted a more significant challenge to the legality on this stop during the preliminary hearing than he did in the circuit court suppression hearing.

In his PCR Testimony Trial Counsel offered no valid reason for his failure to develop a record designed to illustrate that law enforcement had no basis for "reasonable suspicion" that Applicant was involved in drug activity. Defense Counsel failed to require the State to present sworn testimony concerning the details and scope of the tip. This stop occurred in an apartment complex parking lot. The PCR testimony of apartment complex manager, Rose Rivers, establishes that this was a large complex with many buildings and a large number of tenants. There was no evidence presented by the State that established that the tip they received included a description of the individual, or individuals, reportedly involved in drug activity. There was no evidence introduced during the suppression hearing which supported the State's position that there was a report of a drug transaction taking place in the complex parking area. There was no mention of a car being involved in the suspicious activity much less a description of a vehicle matching the one driven by Applicant. In addition, there was absolutely no evidence that this tip came from a reliable informant. It was incumbent on Defense Counsel to establish that the conduct of the officer making the stop clearly established that the stop was made to investigate drug activity and therefore, that the prosecution had to demonstrate that facts existed *before the stop* giving rise to a reasonable suspicion that *Applicant* was engaged in illegal drug activity.

The Applicant submits, and this Court agrees, that the record before this Court may support reasonable suspicion that some kind of drug activity was taking place at this apartment complex, but it does not support reasonable suspicion that Applicant was party to it. The State does not argue anything, beyond Applicant's alleged nervousness, as a factor gleaned *during* to diligent pursuit of a traffic violation which justified escalation of a simple traffic stop into an investigation into suspected drug activity *by Applicant*. The record, as documented in the incident report, in fact establishes that the officer immediately began questioning Applicant regarding drug activity and asked for permission to search the vehicle without a legitimate basis for doing so. The State did not refute Defense Counsel's repeated assertions that the alleged traffic violation was not so much as mentioned at the scene of the stop. An officer's observations during a traffic stop may result in the development of reasonable suspicion to justify further search and seizure beyond that necessary to accomplish the traffic stop. *Pennsylvania v. Mimms*, 434 U.S. 106, 11-12 (1977). Based upon the limited evidence adduced during this suppression hearing, there was no evidence gleaned as a result of the stop which justified off-subject questioning and the request for permission to search this car. Thus, Defense Counsel should have narrowed the focus of the inquiry to the operative question of whether law enforcement had a legal justification for *initiating the stop* independent of the traffic violation. In his argument on this point, Defense Counsel failed to articulate the many reasons why the facts in this case did not support the conclusion that law enforcement had an independent basis for stopping Applicant, questioning him about his involvement in drug activity and requesting permission to search his car. Defense Counsel not only failed to point out the reasons why the State could not meet their burden

of proof on the existence of reasonable suspicion, he actually argued against Applicant's cause by stating that his client had volunteered to be searched. In addition, he missed the opportunity to develop and present evidence which would have supported his assertions that the police were called to the scene to investigate a complaint about one lone female smoking marijuana on the apartment complex property. That testimony would have further refuted the State's claim that Applicant somehow fit into the information supplied by the anonymous tipster whose call precipitated their trip to this apartment complex.

Defense Counsel totally failed to argue that where law enforcement had no legal basis to detain and question Applicant about drugs, any consent to search flowing from that unlawful detention would have been "*the fruit of the poisonous tree*" and hence that any evidence obtained from the subsequent search was inadmissible. While a warrantless search is reasonable under Fourth Amendment analysis in the presence of a voluntary consent, where the defendant disputes the voluntariness of the search, the burden is on the State to prove the consent was voluntary. *Palacio v. State*, 333 S.C. 506, 514, 511 S.E.2d 62, 66 (1999). "A consent to search procured during an unlawful stop is invalid unless such consent is both voluntary and not exploitive of the original stop." *State v. Robinson* 306 S.C 399, 402, 412 S.E.2d 411, 414 (1991)(*Emphasis in original*).

In summary, this Court finds that Applicant has met his burden or proof regarding his allegations that Defense Counsel was ineffective in his representation of Applicant on the suppression motion. Applicant's testimony concedes that he gave consent, however, the record below far from establishes that this consent was voluntarily made in the absence of coercive factors. Defense Counsel failed to present testimony from Applicant which would have refuted the State's claim that this consent was

voluntarily entered in the absence of any exploitation of an illegal stop. Applicant's PCR testimony indicates that he did not give knowing and voluntary consent to search the car in which he was stopped.

This Court is well familiar with the long standing principal that a plea of guilty acts as a waiver of all non-jurisdictional defects and defenses. The rule generally applies even to constitutional challenges. The waiver is, however, dependent upon a knowingly and voluntarily entered plea. *Gibson v. State*, 334 S.C. 515, 514 S.E.2d 320 (1999); *State v. Munsch*, 287 S. C. 313, 338 S.E. 2d 329 (1985).

Here Applicant submits that Defense Counsel's errors and omissions prior to and during his suppression hearing were such that Applicant was deprived of reasonable professional assistance of counsel in his effort to have the Court suppress evidence obtained in violation of his constitutional rights. This Court is constrained to agree. While the end result of the actions of law enforcement developed evidence of Applicant's involvement in drug possession, his judgment and sentence would not likely have occurred had Defense Counsel effectively represented him in this suppression hearing. The Applicant has clearly testified that he would not have pleaded guilty, even if the Trial Court had denied his motion to exclude these drugs, had Defense Counsel effectively represented him on his suppression motion. Further he has asserted that he never would have pleaded guilty had he been informed that he would lose his right to any sort of appellate review of the trial judge's ruling on his suppression motion as a consequence of doing so. Defense Counsel's testimony on this issue is far from definitive. He was unable to swear that he advised Applicant that he would waive his right to any appeal on the trial court's ruling on his suppression motion if he pleaded guilty.

Defense Counsel's PCR testimony acknowledges that the suppression effort in this case was in effect the whole ballgame. If Applicant did not prevail on his suppression motion, the outcome of the trial was inevitable. Thus, Defense Counsel's deficient performance in the context of the suppression hearing was decisive of the entire case. It is in that sense that Applicant asserts that his plea of guilty was coerced by the ineffective assistance of counsel he received prior to and during the suppression hearing. On the extremely narrow facts of this case, this Court is inclined to agree. In addition, this Court finds credible Applicant's assertion that his plea was not voluntarily entered inasmuch as he was not clearly advised that he would waive his right to an appellate review of the ruling of the trial court on the suppression issue if he waived his right to continue with his trial by jury by pleading guilty.

While it is true that a guilty plea effectively waives all non-jurisdictional errors, in order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of his plea. *State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980). It has long been established that a guilty plea is not valid unless it is entered with a full understanding of the consequences of the charge and the plea. *State v. Lambert*, 266 S.C. 574, 225 S.E.2d 340 (1976). In *Hammond v. U.S.*, 528 U.S. 15, 18 (1975), the high court relied upon what has come to be known as the *Brady*⁶ trilogy for the proposition that "the *sine qua non* to a voluntary plea of guilty is the effective assistance of counsel 'within the range of competence required of attorneys representing defendants in criminal matters.'" Our own Supreme Court has held that,

⁶ *Brady v. United States*, 397 U.S. 742 (1970); *McMann v. Richardson*, 397 U.S. 759 (1970) and *Parker v. North Carolina*, 397 U.S. 790 (1970).

[A] plea is more than an admission of conduct; it is a conviction which leaves only the punishment to be determined. A defendant who pleads guilty simultaneously waives several constitutional rights, including the privilege against self-incrimination, the right to trial by jury and the right to confront his accusers. For such a waiver to be valid under the due process clause, it must be an intentional relinquishment or abandonment of a known right of privilege. Further the record must clearly establish waiver.

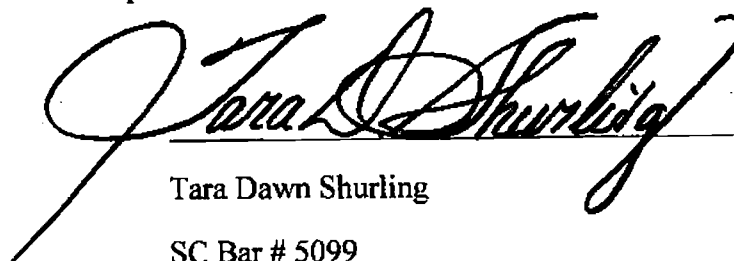
State v. Patterson, 278 S.C. 319, 295 S.E.2d 264, 265 (1982), citing, Boykin v. Alabama, 395 U.S. 238 (1969). This Court finds that the record below does not support a finding that Applicant intentionally relinquished his right to an appeal by pleading guilty and therefore, it can not find that his plea was voluntarily entered.

For all the reasons set forth above, this finds Applicant has met his burden of proof with regard to this claim that he received ineffective assistance of counsel in the trial court. Likewise this Court finds that the record before it does not reflect a knowing and voluntary plea inasmuch as the record fails to establish that Applicant was informed that his plea would be construed as a waiver of his right to appeal the decision made by the Court on his suppression motion the previous day. Applicant's misunderstanding of this crucial factor may have been compounded by instructions given during his guilty plea proceeding wherein the Court explained the rights he would have during a jury trial and then advised him that, "even if you were convicted you would still have the right to an appeal." G.P. Tr. p. 12, ll. 8-14. The record, however, does not reflect that Applicant was advised that he would lose his right to appeal the Court's rulings on the search and seizure issues if he pleaded guilty. While this Court has found Defense Counsel was deficient in his representation of Applicant on the suppression issue, the record before this Court reflects such a sparse showing by the State of facts supporting reasonable suspicion that Applicant would have had a meritorious issue for direct appeal.

Applicant's judgment and sentence are hereby vacated and his case is remanded
for a new trial.

AND IT IS SO ORDERED

Document above submitted as a Memorandum in Support of the PCR Application,
addressed herein, was previously submitted to the Court, and served on opposing counsel,
on February 17, 2015 in the form of a Proposed Order.

A handwritten signature in black ink, reading "Tara Dawn Shurling", written over a horizontal line.

Tara Dawn Shurling

SC Bar # 5099

ATTORNEY FOR APPLICANT

This 17th day of February, 2015.

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2009-CP-02-00369

3
4 SHAWN MADISON,
Applicant,

5 -vs-

TRANSCRIPT OF RECORD

6
7 STATE OF SOUTH CAROLINA,
Respondent.

8
9 Post Conviction Relief Hearing

10 Heard on Monday, January 12, 2015

11 Aiken, South Carolina

12
13 BEFORE:

14 THE HONORABLE D. CRAIG BROWN

15
16
17 APPEARANCES:

18 Counsel on Behalf of the Applicant:
Tara D. Shurling, Esq.

19
20 Counsel on Behalf of the Respondent, State of SC:
Daniel F. Gourley, II, Esq.

21
22
23 Cheri L. Young, RPR
Circuit Court Reporter
P O Box 5232
24 Aiken, SC 29803-5232
25

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MAR ADM

Applicant's

1 Incident report

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1 ON MONDAY, JANUARY 12, 2015 AT 1:43 P.M.:

2 THE COURT: State ready to proceed?

3 MR. GOURLEY: Yes, Your Honor. Ms. Shurling, how
4 are you doing today? Are you ready to proceed?

5 MS. SHURLING: Good afternoon. Yes, sir.

6 THE COURT: All right.

7 MR. GOURLEY: May it please the Court, Your Honor.

8 THE COURT: Yes, sir.

9 MR. GOURLEY: This is Shawn Madison versus the
10 State of South Carolina, 2009-CP-02-369. He is presently
11 confined in the South Carolina Department of Corrections
12 pursuant to orders of commitment of the Aiken County Clerk
13 of Court. He was indicted at the February 2008 term of
14 the Aiken County Grand Jury for trafficking in cocaine
15 more than 10 grams but less than 28 grams, third offense.

16 Mr. Chandler represented him. On May 20th of 2008,
17 he pled guilty before the Honorable Doyet A. Early the
18 Third and was sentenced to 20 years imprisonment and a
19 \$50,000 fine.

20 He did not appeal his sentence or conviction. He
21 subsequently filed a timely application for post-
22 conviction relief on March 2nd, 2009.

23 Your Honor, this has a little bit of a different
24 procedural history. A PCR hearing was actually held in
25 front of Judge Barber at some point. I believe it was in

1 July 2011.

2 THE COURT: July 12th he signed an order. I'm
3 looking at it.

4 MR. GOURLEY: Yes, Your Honor.

5 And he left the record open to obtain some
6 discovery materials. Time went by. Ms. Shurling was
7 substituted on, as counsel at that point in time.

8 Judge Early subsequently released jurisdiction of
9 the case and through some discussions with Ms. Shurling
10 and I, we both agreed that it should at this point just go
11 de novo hearing and basically start fresh, Your Honor.

12 THE COURT: You said Judge Barber released
13 jurisdiction on it?

14 MR. GOURLEY: Yes, Your Honor. There's not a -- I
15 don't believe, and correct me if I'm wrong, Ms. Shurling,
16 there's not a formal order of him releasing jurisdiction.
17 It was just done via e-mail chains where he stated he
18 was -- never intended to retain jurisdiction past that
19 date. When the date arose in his order discovery had not
20 been gathered at that point in time and a continuance was
21 granted. And then it kind of sat for a period of time.

22 THE COURT: Ms. Shurling, anything you want to add
23 to that?

24 MS. SHURLING: No, sir, Your Honor.

25 Just to make very clear that we did have several

1 discussions with Judge Barber. He had originally, as the
2 State has summarized, announced intention to retain
3 jurisdiction over the matter. But it was to be scheduled
4 again very quickly for that following September for a
5 hearing. And when it was not scheduled for September,
6 after that Judge Barber wasn't going to be back in the
7 jurisdiction for quite some time.

8 I in the interim was hired and became involved in
9 the case and started trying to set up an appropriate time
10 that we could have phase two, if you will, of the
11 hearing. And ultimately Judge Barber concluded that
12 because of the passage of time and the fading of memories
13 and so forth that it was just fair and appropriate to
14 allow him to just start over and he notified us of that in
15 an e-mail.

16 THE COURT: All right.

17 MS. SHURLING: And I broached the subject of
18 getting an order from him specifically releasing
19 jurisdiction. But as he noted, Your Honor, the form four
20 that he did back on July 12th, 2011, retains
21 jurisdiction. Basically retained it until the September
22 16th, 2011, term. In other words, he was retaining it to
23 hear it in September of 2011.

24 So Judge Barber felt like since it wasn't heard in
25 that term that it would be clear that the matter just did

1 not get heard. So he never did a formal order but rather
2 just notified us by e-mail

3 THE COURT: All right. I'm satisfied that y'all as
4 officers of this court have provided your explanation as
5 far as Judge Barber retaining jurisdiction. I'm satisfied
6 with what y'all have told me here today. And I am ready
7 to proceed with this matter provided counsel is ready to
8 proceed.

9 Mr. Gourley, are you ready to proceed?

10 MR. GOURLEY: Yes, Your Honor. Thank you.

11 THE COURT: Ms. Shurling, are you ready to
12 proceed?

13 MS. SHURLING: I am.

14 THE COURT: You're so recognized. Call your first
15 witness.

16 MS. SHURLING: Your Honor, as a preliminary matter
17 I need to make sure that Your Honor has a copy of a
18 preliminary hearing transcript in this matter. It will be
19 referenced in this case. I provided at some juncture
20 counsel for the Respondent a copy, and I've just checked
21 with him and he said he did not believe that one was put
22 in your packet.

23 THE COURT: No. I've reviewed the file in its
24 entirety and a copy of that was not provided.

25 MR. GOURLEY: May 19th, Your Honor. There's one

1 May 19th and the guilty plea is May 20th.

2 THE COURT: One's a suppression hearing. From the
3 suppression hearing that was done on May 19th?

4 MR. GOURLEY: Yes, Your Honor.

5 THE COURT: And then a plea on the following day.
6 That's what I have.

7 MR. GOURLEY: Okay. I don't have --

8 MS. SHURLING: But you don't have the October 22nd,
9 2009, preliminary hearing record?

10 MR. GOURLEY: He would not. I don't believe I have
11 it either.

12 THE COURT: Why would there have been an October
13 2009 preliminary hearing when he pled guilty on May 20th,
14 2009?

15 MS. SHURLING: I'm sorry, Your Honor. That was the
16 date the court reporter certified the record. The
17 preliminary hearing transcript is certified the 19th day
18 of May, 2008.

19 THE COURT: Okay. Well, I don't have a copy.

20 MS. SHURLING: Well, now, that's -- wait a second,
21 Your Honor. I'm sorry. I have the --

22 THE COURT: Hold on a minute. Hold on a minute.

23 I have -- as I told you before and I've read both
24 of the transcripts that I have. One being May 19, 2008,
25 which was a suppression hearing. It was Mr. Chandler was

1 present along with the solicitor. And the bulk of it or
2 all of it was done by way of argument and by way of Judge
3 Early reviewing a video of the stop in the chambers with
4 Mr. Chandler and Ms. Young, and the subsequent plea on May
5 20th.

6 You got another transcript you want to provide me,
7 I'll be happy to look at it.

8 MS. SHURLING: Yes, Your Honor.

9 What I'm trying to locate -- the copy that I have
10 in my file -- I've got -- let me get you another copy.
11 Your Honor, I have a copy of the preliminary hearing
12 transcript in my file.

13 Unfortunately the copies that I have are not signed
14 by the magistrate judge. I will pass up to the Court a
15 copy of that record.

16 THE COURT: Any objection from the State?

17 MR. GOURLEY: No, Your Honor. I just would request
18 a copy as well.

19 MS. SHURLING: I'm digging up copies as we speak,
20 Your Honor.

21 And lastly, Your Honor, I want to make sure Your
22 Honor has a copy of the amended application for post-
23 conviction relief.

24 THE COURT: I do. I have two copies in the file.

25 MS. SHURLING: Thank you.

1 Your Honor, at this time I believe I'm going to
2 start with Mr. Chandler, please.

3 THE COURT: Mr. Chandler, I remind you you're still
4 under oath, sir.

5 MS. SHURLING: Your Honor, in order to have a
6 smooth hearing without my client interrupting me, I have
7 done what I always do which is put a legal pad in front of
8 him and a couple of pens and ask if he has any comments or
9 questions to write them.

10 With the height of this table he's having a
11 difficult time reaching the pad to write notes to me.
12 Would it be possible for him to have one hand uncuffed so
13 that he can write any communication that he needs to with
14 me?

15 THE COURT: Any objection from the Department of
16 Corrections on that?

17 THE OFFICER: That's not our policy, Your Honor,
18 but it's whatever you want.

19 THE COURT: I'll allow one hand. Is he right
20 handed or left handed?

21 THE APPLICANT: Right.

22 THE COURT: I'll allow it if it's okay with the
23 Department of Corrections. I understand it's not their
24 policy. He's got to put chains on, leg irons?

25 THE OFFICER: Yes, sir.

EVERETT KEITH CHANDLER - DIRECT BY SHURLING

1 THE COURT: I'll allow one arm released.

2 MS. SHURLING: Thank you for that consideration,
3 Your Honor.

4 THE COURT: All right.

5 EVERETT KEITH CHANDLER, having been duly sworn, was
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. SHURLING:

9 Q. Mr. Chandler --

10 THE COURT: Hold on a minute. Who's the lady
11 seated here?

12 MS. SHURLING: My apologies, Your Honor. This is
13 Patricia Edwards, my legal assistant.

14 THE COURT: I'm sorry. Go ahead. I wanted to find
15 out who she was for the record.

16 MS. SHURLING: I know better than that, Your
17 Honor. She should have been identified for the record.
18 My apology.

19 THE COURT: Go ahead. Thank you.

20 BY MS. SHURLING:

21 Q. Mr. Chandler, do you recall representing Shawn
22 Madison?

23 A. I do.

24 Q. And this case involved a stop that occurred in a
25 apartment complex; is that correct?

EVERETT KEITH CHANDLER - DIRECT BY SHURLING

1 A. Yes.

2 Q. And you filed a motion to suppress evidence seized
3 as a result of a search of your client's automobile at
4 that apartment complex, correct?

5 A. Correct.

6 Q. And a hearing was held on that motion and a ruling
7 had from the Court before your client entered a change of
8 plea and entered a plea of guilty pursuant to a plea
9 bargain, right?

10 A. I'm not sure to the degree of the ruling now
11 because I had some confusion in discussing it. So my
12 memory is not clear as to whether or not there was a
13 ruling or not at this point.

14 Q. Okay. Let's take a look at the transcript for
15 just a second. In the fiddling of transcripts, I've
16 gotten mine misplaced.

17 Okay. Do you have a copy of that proceeding?

18 A. I don't have one.

19 MR. GOURLEY: Do you have any objection to him --

20 MS. SHURLING: That will be great if you've got it.

21 MR. GOURLEY: Your Honor, if I may approach?

22 THE COURT: Yes, sir.

23 MR. GOURLEY: (Hands transcript to witness.)

24 THE WITNESS: Okay.

25 MS. SHURLING: Moment's indulgence, Your Honor.

EVERETT KEITH CHANDLER - DIRECT BY SHURLING

1 THE COURT: Yes, ma'am.

2 BY MS. SHURLING:

3 Q. Could you please look with me on page 12 line --

4 A. Twenty-four.

5 Q. -- 24 and 25?

6 A. Yes. I see it. I see it.

7 Q. Does the record indicate that the judge in fact
8 ruled against you on your motion to suppress?

9 A. Yes, it does.

10 Q. And of course this was on May 19th, 2008, and the
11 following day your client entered a plea?

12 A. That's correct.

13 Q. Okay. Let's talk about preparation for the motion
14 to suppress first. Okay? When you were hired, how long
15 had it been since your client's initial arrest?

16 A. I'm not sure.

17 Q. Does your file not reflect when you were retained?

18 A. It does. Is that your question?

19 Q. Pardon?

20 A. Is that your question: When were you retained?

21 Q. Yes. When were you retained?

22 A. All right. It says April 2nd of 2007.

23 Q. Okay. And the incident date according to the
24 discovery materials was March 27th, 2007, correct? Does
25 that sound about right?

EVERETT KEITH CHANDLER - DIRECT BY SHURLING

1 A. That sounds right.

2 Q. At that time did you file any motions to preserve
3 any of the evidence in this case?

4 A. A motion to preserve?

5 Q. To preserve.

6 Let me rephrase. Your client was stopped following
7 investigation of drug activity in a parking -- in the
8 parking lot of an apartment complex; is that correct?

9 A. That's correct.

10 Q. But ultimately one of the major reasons given for
11 the stop was that your client had a tinted cover of some
12 sort on his license tag; is that accurate?

13 A. That is accurate, yes.

14 Q. And the incident reports in this case also reflect
15 that after a search of the automobile -- we'll go back
16 into more of the facts in a minute, but after a search of
17 the automobile which was negative for anything illegal the
18 car was turned over to your client's girlfriend, right?

19 A. I'm not -- that I can't remember.

20 Q. Do you have a copy of the incident report of
21 Officer Jeremy Youngblood dated 3-27-07 in your file?

22 A. Yes.

23 Q. And if you could look at page two of that. Do you
24 have a page two?

25 A. I see a page one, but I don't see a page two.

EVERETT KEITH CHANDLER - DIRECT BY SHURLING

1 MR. GOURLEY: May I approach, Your Honor?

2 THE COURT: Yes, ma'am.

3 BY MS. SHURLING:

4 Q. Let me help you out.

5 A. All right. Good enough. And your question?

6 Q. Does the incident report filed in this matter
7 reflect that the vehicle was turned over to the girlfriend
8 after a negative search for drugs?

9 A. Yes.

10 Q. Okay. Did you do anything to try to preserve the
11 license tag and cover that was cited by law enforcement as
12 the justification or one of the justifications for the
13 search?

14 A. No, ma'am.

15 Q. Did you go to the young lady's apartment and take
16 photographs of it or anything to obtain evidence to
17 demonstrate that it was not obscuring the tag number?

18 A. I did go to the apartment and I can't remember if I
19 took pictures or not. I remember having a camera but I
20 can't remember if I took pictures or not. I did go to the
21 apartment.

22 Q. Did you interview the girlfriend?

23 A. You're talking about Mr. --

24 Q. Shawn Madison's girlfriend.

25 A. Yeah. I did talk to her about this.

EVERETT KEITH CHANDLER - DIRECT BY SHURLING

1 Q. Okay.

2 A. But I -- yeah. If that's what you're talking
3 about, yes.

4 Q. Do you recall the location of her apartment?

5 A. It's been a while but I actually went into the
6 apartment but right now I don't recall the location.

7 Q. And do you recall that the vehicle in question that
8 was driven by Shawn Madison was actually registered in the
9 girlfriend's name?

10 A. I don't recall.

11 Q. Do you recall that the girlfriend's apartment was
12 very close to the area that was articulated by law
13 enforcement as the search area that they were interested
14 in as a result of a tip?

15 A. I don't recall.

16 Q. Okay. Now, during the suppression hearing you
17 mentioned the fact that all of this initiated when law
18 enforcement had gotten a call concerning a complaint
19 regarding Sheka Key smoking marijuana in the North Augusta
20 Gardens.

21 And I'll call your attention to the bottom of page
22 three going over to the top of line four on the May 19th
23 transcript.

24 A. Okay.

25 Q. Do you see that?

EVERETT KEITH CHANDLER - DIRECT BY SHURLING

1 A. Yes, I see it.

2 Q. How did you become privy to the fact that the stop
3 -- pardon me, that the reason law enforcement was at the
4 North Augusta Gardens Apartments that night was in
5 response to a complaint concerning this female smoking
6 marijuana? Where did you get that information from?

7 A. I'm not sure. It would have been part of whatever
8 I gathered through speaking with witnesses or looking at
9 the report. I just can't remember at this point.

10 Q. Okay. Did you file -- well, let me back up for a
11 moment. This is going a little while back, but at the
12 time of this case in 2008 about how long had you been
13 practicing law?

14 A. 2008. It would have been almost 10 years at that
15 point.

16 Q. And at that time approximately, you know, no one
17 knows from day-to-day for sure but approximately what
18 percentage of your practice was related to criminal law
19 and criminal defense?

20 A. From that -- you're -- at the moment of that time?

21 Q. In 2008 approximately what percentage of your
22 practice of law involved criminal defense?

23 A. Probably about 75 percent.

24 Q. About 75 percent?

25 A. Yes, ma'am.

EVERETT KEITH CHANDLER - DIRECT BY SHURLING

1 Q. And had you had occasion, Mr. Everett {sic}, to
2 need to use 9-1-1 calls and dispatch logs as part of your
3 investigation of a defense in other cases?

4 A. Yes, yes.

5 Q. And were you aware as a result of that experience
6 that such logs are normally kept for a relatively brief
7 period of time?

8 A. Yes. Uh-huh.

9 Q. What steps, if any, did you take to ensure that the
10 9-1-1 call from the tipster and the dispatch log say
11 exactly what these officers were told when they were
12 dispatched were preserved so that you would have them
13 available for the suppression hearing?

14 A. I did not preserve those, those records.

15 Q. And would the content of those records have been
16 helpful to you in your effort to get this drug evidence
17 which you argue was -- pardon me --

18 MR. GOURLEY: That's speculation --

19 THE COURT: Hold on. Finish the question, please.

20 MS. SHURLING: Is it your belief that the content
21 of those records other than -- and/or the 9-1-1 call
22 record or the dispatch log, and/or, may have been helpful
23 to you in your pursuit of suppression?

24 MR. GOURLEY: And, Your Honor, I would just object
25 to that based on speculation. We don't know what those

EVERETT KEITH CHANDLER - DIRECT BY SHURLING

1 records would have contained or said.

2 THE COURT: Objection's sustained. You can
3 rephrase the question or if you can lay a proper
4 foundation he might can answer.

5 MS. SHURLING: Yes, Your Honor.

6 THE COURT: But the objection is sustained at this
7 stage.

8 BY MS. SHURLING:

9 Q. If you had obtained those records and the records
10 had contained statements that clearly indicated the stop
11 had nothing to do with tag, that it was all related to
12 drugs, would that have been helpful to you in your
13 arguments as presented at the suppression hearing?

14 MR. GOURLEY: And, Your Honor, I'm going to again
15 object. Ms. Shurling is making a conclusory argument in
16 that question.

17 THE COURT: I understand your objection. It is a
18 conclusory argument, but the way she's phrased it I'll
19 allow him to answer it: If it had in fact existed, would
20 it have helped.

21 MS. SHURLING: Thank you for that latitude, Your
22 Honor. And I will explain why it has to be couched that
23 way in a moment.

24 Q. Mr. Chandler?

25 A. I didn't think it was relevant. I didn't think it

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1 was relevant in this situation. So I didn't think it
2 would help, no.

3 Q. Why would you not think it was relevant?

4 A. You're talking about the need? Why didn't I -- I
5 didn't think I needed the -- I didn't think I needed the,
6 -- I didn't think I needed the 9-1-1 records. That's why
7 I didn't order them.

8 And if you think that -- do I think it would have
9 been relevant to the hearing? I don't think so because in
10 our discussions I clearly believed that the judge realized
11 that this was a pretextural stop.

12 So I don't think any additional information would
13 have made a difference in this hearing. And that's just
14 my opinion.

15 Q. I understand.

16 And, Your Honor, I need to backtrack for a moment.

17 What I meant to say a while ago was that I would
18 explain to Your Honor my reasoning as to why that was
19 important, not -- that came out sounding wrong and I
20 didn't mean it to. I apologize.

21 Why I think it works. I'll explain that in a
22 moment.

23 A. Okay.

24 Q. Mr. Chandler, is it fair to say that the
25 explanations given for the stop in this case evolved as

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1 this case progressed?

2 A. That's more than fair, yes, ma'am.

3 Q. And you started out with a preliminary hearing in
4 this matter, did you not?

5 A. I did.

6 Q. And at the preliminary hearing stage, what were you
7 being told was the reason for the stop?

8 A. I think that I would have to read this but my
9 recollection is that their best argument was that he had a
10 defective tag.

11 Q. Okay.

12 A. And that's why they pulled him over.

13 Q. Okay. And then when you progressed to the
14 suppression hearing on May 19th, law enforcement officers'
15 argument for why the stop was proper had evolved, hadn't
16 it?

17 A. That is correct. One of the problems with the
18 defective tag is that I highlighted -- I don't know where
19 I highlighted but I highlighted, I thought, in both
20 hearings was that there was never any discussion about a
21 defective tag during the stop. There was never any
22 discussion to my client specifically about a defective tag
23 and basically as soon as the officers got to the station a
24 defective -- a tinted tag or defective -- not defective,
25 but a tinted tag, that warning appeared almost as a

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1 retro-justification for the stop.

2 Q. And, in fact, in the context of the suppression
3 hearing the officers admitted, and it was on videotape
4 after all, that there was absolutely nothing said to your
5 client about a tag, right?

6 A. Sure. Absolutely.

7 Q. Okay. And they admitted that there was no
8 discussion of a citation or a warning or anything, that he
9 wasn't given a warning ticket until he got to the station,
10 right?

11 A. That's correct.

12 Q. Okay. But by the time you got to the suppression
13 hearing they were also saying they thought they had
14 articulable suspicion with regard to his possible
15 involvement and the reason they were originally called to
16 the apartment complex, correct?

17 A. That's my understanding.

18 Q. Okay. And were you able, without the 9-1-1 tapes
19 or the dispatch logs, to firmly establish what time they
20 were called and what time they arrived at the scene?

21 A. Obviously that wasn't anything I was trying to
22 establish so I didn't have them because I didn't need
23 them. But, would I have been able to do that if it was on
24 the tape? If you're asking me if I had it would I be able
25 to do it? I guess I would have been able to establish

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1 that at that time if I had it and it was located on the
2 9-1-1.

3 Q. I understand.

4 A. Yeah.

5 Q. Your argument during the suppression hearing was
6 that your client, a lone black male pulling out of an
7 apartment parking lot, was stopped pretextually because of
8 a tag when they really just wanted to stop and ask to
9 search his car, right?

10 A. That's correct.

11 Q. Now at some juncture during this suppression
12 hearing you actually concede that your client had
13 volunteered for them to search his car. Do you remember
14 saying that?

15 A. I don't remember it, but if you can point it out to
16 me.

17 Q. I can indeed. If you give me just a second.

18 A. Sure.

19 Q. Your Honor, I apologize. It won't take me but a
20 moment.

21 A. I see a page four number, line 19 maybe -- well,
22 maybe line 17.

23 Q. Wait a minute. I'm sorry. I'm looking at the
24 wrong transcript. No wonder I don't see it.

25 A. Page four line 17.

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1 Q. Okay. Page four.
2 A. Line 17.
3 Q. You're looking at page four line, what?
4 A. Seventeen.
5 Q. Seventeen, page four line 17. I have -- yeah, it's
6 an illegal tag cover. What do you have?
7 A. That's what I have.
8 Q. Okay. At some point during this same proceeding,
9 do you recall telling the Court that your client -- ah, I
10 found it, Your Honor, page five.
11 A. Oh, I'm sorry.
12 Q. Page five line 16, line 16 through about 19. He
13 did tell them he did not have anything on him and actually
14 volunteered to be searched. Do you see that?
15 A. Yes.
16 Q. Would you please go back for a moment to the
17 incident report that we were referencing earlier --
18 A. Yes, ma'am.
19 Q. -- dated March 27th, 2007?
20 A. Yes, ma'am.
21 Q. Got it?
22 A. Yes.
23 Q. On page one this officer spoke with the subject who
24 stated that he was at the incident location. This
25 officer asked the subject if he had any drugs or weapons

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1 that he needed to tell him about. The subject stated that
2 he did not have anything on him. This officer asked the
3 subject if he could search the car.

4 Do you agree that that's a fair reading of this
5 incident report?

6 A. That is a fair reading.

7 Q. A verbatim reading, actually, of the incident
8 report?

9 A. Right, right.

10 Q. Okay.

11 Your Honor, I would move to introduce a copy of the
12 incident report as Applicant's One.

13 MR. GOURLEY: I have no objection, Your Honor.

14 THE COURT: Without objection.

15 THE WITNESS: If I may add, the remainder of it
16 does say that he stepped out of his car and then the
17 substance fell out. And on the transcript I say, "he got
18 out of the car, I know he got out of the car." And it
19 said, "The thing he was holding fell out." So in the
20 transcript --

21 Q. I understand. I'll get there.

22 A. Okay.

23 Q. But, let's let Madam Court Reporter -- or, I'm
24 sorry, ...

25 (Applicant's Exhibit No. 1, incident report, marked

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1 and received into evidence.)

2 BY MS. SHURLING:

3 Q. In your analysis of your motion to suppress you
4 conceded that your client had volunteered for his car to
5 be searched?

6 A. Yes.

7 Q. Correct?

8 A. Yes.

9 Q. And in fact the incident report that's now been
10 marked Plaintiff's Exhibit Number One indicates that the
11 officer stopped him and engaged him in conversation about
12 drugs and weapons, asked him what he had in the car, et
13 cetera. And then asked to search the car?

14 A. Yes.

15 Q. Is there any particular reason that you would not
16 have made note that your client was asked if his car could
17 be searched as opposed to saying that he volunteered? Was
18 there any reason why he did not --

19 A. I guess -- frankly, I guess I just unartfully
20 described what I thought happened. So I guess the more
21 accurate description would be that he acquiesced or agreed
22 to be searched. And that's what I basically was referring
23 to, the incident where the officer said he voluntarily got
24 out of the car, meaning he was not forced out of the car
25 or anything like that. He got out of the car and the

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1 drugs fell out.

2 But I would agree that I unartfully said
3 volunteered when I probably should have said he agreed or
4 acquiesced to step out of the car.

5 Q. Mr. Chandler, did you consider arguing that with a
6 traffic stop of this ilk that there would have been no
7 justification for asking him to exit the vehicle had the
8 stop not been extended and gone beyond the scope of
9 permissible investigation for a traffic stop?

10 A. Looking at that statement, obviously I didn't think
11 about that.

12 Q. And did you consider arguing very specifically that
13 the discussion with your client and the request to search
14 his car were not -- were improper and therefore that the
15 drugs that were subsequently found coming off the person
16 of your client were the fruit of the poisonous tree?

17 A. Again my focus was on the pretextual stop. I was
18 not focusing on that particular fact.

19 Q. Would it be fair to say that Judge Early expressed
20 real concern about the stop insofar as it related to a
21 claim that he was stopped about the tinted tag?

22 A. Yes, he did express concern. To my memory he did
23 express concern.

24 Q. But in addition the State argued that they had
25 articulable suspicion which justified them stopping your

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1 client with reference to the drug report in addition to
2 the tag issue, right?

3 A. They certainly brought that up. Yes, ma'am.

4 Q. Okay. So going to page 12, I believe it was,
5 where we were talking about the Court's final ruling --

6 A. Uh-huh.

7 Q. -- line 22 through 25 on page 12. The Judge says
8 he's respectfully going to deny your motion.

9 A. Okay.

10 Q. Do you see that?

11 A. Yes.

12 Q. Did you consider asking Judge Early to clarify at
13 that point whether he was denying your motion on the
14 ground that the stop was justified based on articulable
15 suspicion concerning drug activity or whether he was
16 denying your motion because he thought the scope of the
17 stop was not improperly extended for a traffic violation?

18 A. I didn't consider those, the latter because that
19 was not the focus of my motion. My motion was focused on
20 the pretextual stop as to the illegal tag cover which I
21 think was only a retro-justification for the stop.

22 So to answer your question, I did not need
23 clarification because it was my understanding that that is
24 exactly why he was denying my motion.

25 Q. Okay. And I'm not, truly not trying to be

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1 disrespectful or difficult but you'd been practicing law
2 for 10 years by then. You were aware, were you not, that
3 only issues that are clearly articulated and argued and
4 ruled on in the record are subject to appellate review,
5 correct?

6 A. Without any question. And I didn't see it as an
7 issue so I didn't need any clarity on it because I knew --
8 we had made the arguments and he clearly had made his
9 decision based on the arguments that I made. You're
10 setting forth new arguments that I didn't make and so I
11 wouldn't -- or alternative arguments, so I didn't need him
12 to clarify which of those arguments because I simply
13 didn't make them during that hearing.

14 Q. Okay. Let me clarify.

15 A. Okay.

16 Q. We've agreed, I thought, that at the suppression
17 hearing the State's argument evolved, okay. They went
18 from just a tag argument to a tag and even if it weren't
19 for the tag we had a fourth amendment justification. We
20 had articulable suspicion and could have stopped him
21 anyway, right?

22 A. Yes. That's correct.

23 Q. Okay. And my question is: Did it occur to you to
24 get a ruling from Judge Early as to which of those
25 arguments he was agreeing with the State's position on,

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1 what his basis for finding that the seizure was not
2 improper was?

3 A. And my answer is despite the evolution I still
4 thought that there was one argument regarding the
5 suppression and that was the argument that the stop was
6 pretextual. And whatever justifications they offered I
7 didn't bifurcate those as you're doing. And so because I
8 didn't bifurcate them I didn't ask for clarity because I
9 had clarity as to the argument that I was making which the
10 judge denied.

11 Q. Okay. And during the suppression -- and, Your
12 Honor, I will wrap this up and explain why I believe it
13 was important for me to establish these matters -- the
14 officers are, clearly are saying that they had gotten a
15 tip from somebody that resulted in them coming to the
16 scene, correct?

17 A. That's my understanding. Yes, ma'am.

18 Q. Did you consider making arguments concerning
19 whether or not the tipster was reliable under existing
20 law?

21 A. And, again, it's been a long time. I can't
22 remember so I would have to -- I can't remember what I was
23 considering or what arguments were laid forth. It was
24 just my understanding that there was some call that was
25 made. But, anything beyond that I can't remember.

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1 Q. All right.

2 A. Yes.

3 Q. Is there any reason why you would not have engaged
4 the officer witnesses in questioning concerning who the
5 tipster was, whether or not they had ever worked with that
6 tipster in the past?

7 A. At this point I don't -- I can't remember the
8 nature of the tip or those things. I can't remember what
9 information I received from the investigation.

10 Q. Okay.

11 A. And what questions I've asked to the officers or
12 the investigators at this point. Yes, ma'am.

13 Q. Okay. So, would it be fair to say you went into
14 the hearing thinking the focus was going to be on the
15 traffic violation and whether or not the search was proper
16 as part of the traffic stop?

17 A. Right. And I don't think that's mutually exclusive
18 even for this evolving theory because I did know -- I did
19 inquire, I know I spoke to someone who worked at the --
20 worked -- somebody who worked at, what do you call it, the
21 office that, whatever it is, the housing office of that
22 complex about the complaints and just trying to figure out
23 what the complaints are. But I can't remember what I
24 assumed or worked out as a result of the complaint. I
25 just can't. I can't remember now.

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1 But I know when I was there. So frankly going in I
2 don't know -- I knew what theory I was going under but if
3 you're asking me what I went in knowing, I just can't
4 remember what I went in knowing.

5 Q. Do you recall or is the person you spoke with at
6 the apartment complex Rose Rivers, the apartment manager?

7 A. At this point I can't, I can't remember exactly.

8 Q. And based on your conversations with her, is that
9 how you developed a better understanding of what the
10 nature of the call was?

11 A. I'm not sure if it was Ms. Rivers. I knew it was
12 someone. I don't recall who that person was, their name.

13 Q. Okay.

14 A. But that it would be that I spoke to Ms. Rivers. I
15 know I spoke to Mr. Madison's girlfriend at the time when
16 I was there in addition to just kind of looking at the
17 different areas where the alleged -- if I can remember
18 whether -- where they were saying that there's some
19 complaints going.

20 And as where they ultimately found my client, I
21 just remember traveling the entire complex, back and
22 forth, trying to map out the stop and, you know, trying to
23 get the timing together of the stop.

24 Q. Is there any particular reason why you did not
25 point out in your arguments in the suppression hearing the

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1 address of the party to whom the car in question was
2 registered?

3 A. I can't recall. Well, I really don't know -- to
4 get into my mind set why I didn't specifically -- even now
5 I can't think why it would be relevant, but my reasoning
6 back then, I can't remember. I don't remember what the
7 reason was.

8 Q. Okay. The State's exact position during this
9 suppression hearing is laid out pretty clearly on page
10 eight lines three through seven of the May 19th hearing.
11 Do you see that?

12 A. I see it. I have it in front of me.

13 Q. And at that point who's speaking? Look at the
14 bottom of page seven.

15 A. Ms. Young.

16 Q. Do you recall Ms. Young saying something different
17 from that during the guilty plea the very next day?

18 A. I don't personally recall that but I do know
19 you discussed that with me earlier today. But I don't
20 personally recall that.

21 MS. SHURLING: A moment's indulgence, Your Honor.

22 THE COURT: Yes, ma'am.

23 Q. If you look with me on page 19 of the May 20th
24 transcript. If you've got a copy of that up there with
25 you. The suppression -- I mean. Pardon me. The guilty

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1 plea transcript.

2 A. May?

3 Q. 20th?

4 A. 20th. I don't have the 20th.

5 THE COURT: What page? What page, Ms. Shurling?

6 MS. SHURLING: Nineteen, sir.

7 THE COURT: That's what I thought you said.

8 MS. SHURLING: Too many 19s and 20s floating
9 around. I apologize. It's confusing.

10 THE COURT: That's all right.

11 THE WITNESS: Page 19 on May 20th.

12 MS. SHURLING: Yes, sir.

13 THE WITNESS: All right.

14 THE COURT: Go ahead with your question.

15 BY MS. SHURLING:

16 Q. If you would look for me beginning at line two --

17 A. Yes, ma'am.

18 Q. -- moving down through line 15. What does she say?

19 A. Do you want me to read it or summarize it?

20 Q. You can publish it.

21 A. Okay. Officer Glenn Nichols and Officer Jeremy
22 Youngblood responded to the scene. Mr. Nichols was the
23 first officer on the scene. As he approached -- he turned
24 into the apartment. He observed a black car traveling in
25 an opposite direction. Mr. Nichols was familiar with the

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1 layout of the apartment and knew that the car was coming
2 from a dead end cul-de-sac and that was the only way out.
3 Based on the quickness of the response and the call he
4 felt like they might have been involved in activity. So
5 he asked Mr. Youngblood who was behind him to stop the
6 car.

7 Q. And the next line?

8 A. As Mr. Youngblood attempted to stop the car. He
9 noticed that it had an improper tag which is a traffic
10 violation in this state which was a cover --

11 Q. You may stop there for a moment.

12 A. Okay.

13 Q. Read line 13 very slowly.

14 A. As Mr. Youngblood attempted to stop the car --

15 Q. Stop. Would it be fair to say that the language
16 you read from line two through 12 indicates that the
17 officers had directed Youngblood to stop the car because
18 of their suspicions involving drug activity?

19 A. That is correct. From the reading of it, yes.

20 Q. And on line 13 indicates that as Youngblood was
21 following those instructions as he attempted to stop the
22 car --

23 A. Meaning he's already --

24 Q. -- then he notices the tags.

25 A. So at the point that he initiates the stop he

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1 notices the tag, I guess, as a secondary.

2 Q. And is that markedly different from the position he
3 took during the suppression hearing?

4 A. Certainly. It is.

5 Q. Did you consider at that point asking for a brief
6 recess to discuss that with your client or bring it to the
7 attention of the Court with regard to whether or not he
8 wanted to go forward with the plea?

9 A. No. At this point -- I know I didn't consider
10 stopping the plea and I don't specifically remember this
11 being said. And obviously it was, but nothing came to my
12 mind to stop the plea, I know that, during the time
13 frame. Yes.

14 Q. Okay. Now, there was a point in the transcript of
15 the plea where the judge is going over what the penalties
16 would have been for third offense and what the exposure
17 would be for second offense. And the fact that it's still
18 a felony, still violent. Do you remember that?

19 A. I just -- just briefly, yeah, I do.

20 Q. And the judge asked your client if he needs any
21 more time with his lawyer and he says, "Yes, I do." And
22 there is a brief recess. Do you recall that?

23 A. I don't -- I don't recall it.

24 Q. I'll get you a page line.

25 Judge, I apologize. I've somehow managed to give

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1 my copy that was marked all over the place away. Let me
2 find this for you. Ah.

3 Page 13, line 15, 16. "All right, sir. Do you
4 need any more time to talk to your lawyer about that. THE
5 DEFENDANT: Yes, sir. THE COURT: You do. THE
6 DEFENDANT: Yes, sir. Step right over here." And a
7 break is taken.

8 Do you see that? Page 13 line 15 through 21.

9 A. Yes, I see it.

10 Q. Can you recall today what it was that your client
11 felt the need to interrupt the plea to have further
12 discussions with you about?

13 A. No, ma'am.

14 Q. Okay. Judge Early in his typically thorough plea
15 colloquy advised your client of all the ways he would have
16 had the right to present a defense if he proceeded with
17 this trial, didn't he?

18 A. If he did what he normally does, yes, but I --
19 specifically, I would have to read it to go over it.

20 Q. Well -- okay. Let's look at page -- back on 12.

21 A. Okay.

22 Q. Actually he's starting on page 11, line seven
23 talking about all the rights inherent to a jury trial,
24 presenting evidence, cross-examining witnesses and so
25 forth. Do you recall that?

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1 A. I don't recall it but --

2 Q. Did you see it in the record?

3 A. -- I'm familiar with this colloquy and I'm looking
4 at --

5 Q. Specifically on page 12 he advises him at lines 13
6 and 14 that even if you were convicted you would still
7 have the right to an appeal, right?

8 A. Yes.

9 Q. Do you see that? Did you at any point advise
10 Mr. Madison -- well, let me stop and rephrase for a
11 second.

12 This case was somewhat unusual in the sense that
13 most cases are either a trial or a plea, aren't they?

14 A. Uh-huh.

15 Q. I mean, in most cases you have either a jury trial
16 or a guilty plea, right?

17 A. Yeah. That specifically is correct.

18 Q. And in this case -- I'm not saying that it never
19 happens but a little bit more unique situation where you
20 have a pretrial hearing on a motion to suppress evidence
21 that goes all the way through a ruling and then there's a
22 change of plea and your client opts to enter a plea of
23 guilty, correct?

24 A. Other than as for pleas that have drug cases and we
25 have a suppression motion, this is normally what happens.

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1 Everything kind of hinges on what ultimately the judge
2 decides.

3 Q. I understand.

4 A. Yes.

5 Q. What I'm saying is in your typical guilty plea
6 proceeding you have a guilty plea proceeding without
7 having had any court proceedings as lengthy and involved
8 with witnesses and so forth as you did in a case like this
9 with a suppression hearing?

10 A. It certainly was not -- a suppression hearing
11 doesn't happen all the time. And this was not your normal
12 guilty plea proceeding. No, ma'am. Okay.

13 Q. Okay. And had you given Mr. Madison an opinion
14 based on your experience as to how good his fourth
15 amendment arguments were with regard to the stop and the
16 fruits of the stop?

17 A. I told him about them beforehand and the risks that
18 were involved. And I told him afterwards and the risks
19 that were involved.

20 Q. But did you give him an opinion based on your
21 experience as to whether or not he had a good fourth
22 amendment challenge?

23 A. I would have. I can't remember specifically but of
24 course I would have. I would have offered an opinion
25 about what I thought about -- and that would have been

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1 before the hearing and even after the hearing.

2 Q. Okay. Did you specifically advise him that if he
3 pleaded guilty, he took the deal, that he was giving up
4 his right to an appellate review of the fourth amendment
5 challenge, that the suppression motion and the hearing
6 that was held on it and the judge's ruling, that if he
7 pleaded guilty he would waive his right to have a higher
8 court take a look at that and review the decision of the
9 lower court?

10 A. And I don't recall. It would be something I
11 normally do. I talked to the attorney general. I just
12 can't remember. I tried to. I just can't remember.

13 Q. At the very -- Your Honor, I'm checking for
14 something I forgot to check. My apologies.

15 After he entered the plea, did you have any
16 further -- and was sentenced, did you have any further
17 contact with him?

18 A. I went to the jail to see him. We talked.

19 Q. And at that point did he ask you about filing an
20 appeal for him?

21 A. Yes. I did talk to him about appeal.

22 Q. And what did you tell him?

23 A. I just told him about his right to appeal. Told
24 him about his right to a PCR -- I mean -- to a PCR, yeah.

25 Q. And did you --

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1 A. He was really -- I can specifically remember him
2 looking at me and saying, you know, telling me, "That's a
3 long time." I said, "Well, this is what we were talking
4 about at the beginning."

5 And I remember just telling him about all his
6 rights to appeal and his rights to the PCR. I
7 specifically remember that because his family was so -- in
8 fact, his family is very upset. His girlfriend even
9 passed out and her head hit, you know, hit the concrete
10 ground and the concrete -- just outside the courthouse.
11 So I wanted to meet with him and just give him an update
12 about everything that was going on.

13 Obviously, you know, for a young man like that to
14 get a significant sentence, but it was at that time I do
15 specifically remember I told him about everything that he
16 could do. And I told him that face to face.

17 Q. And to your credit, Mr. Chandler, at that point you
18 explained to him that the type of appeal that would
19 potentially do him any good after a plea was a PCR, right?

20 A. I told him about an appeal and a PCR because that's
21 what I tell everybody about. I let them know what their
22 rights are especially when it's something that they're not
23 happy about. If it's something that we've agreed to, if
24 it's something that, you know, if we get what we really
25 negotiated and it's a sentence that he really wanted, I --

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1 we'll just talk about it and I'll say, "You remember the
2 judge said this," but I specifically told him that because
3 I knew he was upset.

4 Q. Okay.

5 A. Since then I put it in the letters because it's now
6 easier to say, "I mailed him this letter that says it."

7 Q. Okay.

8 A. But I do remember this case because I do remember
9 going to the jail and I remember the look on his face when
10 we were talking through the glass. And, frankly, I've
11 alluded to that moment many times, yeah.

12 Q. I'm sorry?

13 A. I've alluded to that moment many times, not giving
14 his name specifically but to other clients when I talk to
15 them about moving forward with suppression hearings when
16 there might be plea opportunities and deals because at
17 that point he also wanted to know about cooperating with
18 the police and working out some of the things that we
19 talked about on the front end that at the point that he
20 decided to go forward with the suppression motion went off
21 the table.

22 So I often allude to his situation when I talk to
23 other clients, not him specifically but in general, when
24 they decide to go all or nothing because I tell them
25 there's such a thing as there is something that is all and

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1 there's a situation. And I always think about
2 Mr. Madison.

3 Q. I don't want to interrupt you. Are you --

4 A. Yes, ma'am.

5 Q. Okay. Thank you.

6 So you did tell him about a direct appeal and a
7 PCR?

8 A. When I came back to him on that, yeah, that day,
9 yes. Yes, ma'am.

10 Q. And he was expressing that he wanted an appeal?

11 A. He was expressing that he wanted to go back to the
12 -- what he was wondering, he was wanting to know if we
13 could go back to the solicitor's office and get some deals
14 that might have been on the table before his plea. And I
15 frankly told him it was just too late.

16 Q. But based on your testimony a couple minutes ago he
17 was also asking you about doing an appeal?

18 A. I may have misspoken. I told him about an appeal.

19 Q. Okay.

20 A. I specifically told him about an appeal but he was
21 just upset about his sentence. So he asked about what can
22 he do, what are his options. The options that he asked
23 me, that he specifically asked me about was going back to
24 the solicitor, possibly doing some of the things that we
25 talked about before, cooperation with the police, giving

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1 information and all of those things.

2 And I told him those options were gone. And I told
3 him about a PCR and I told him about a direct appeal.

4 Q. That was in May 2008. At that point had the state
5 legislation which mirrors Federal Rule 35 been passed
6 then? I think so. Okay. All right.

7 Did you discuss with him -- given what he was
8 saying, did you discuss with him his right within 10 days
9 to file a post-plea motion to withdraw his plea for some
10 reason?

11 A. Yeah. I told him about -- yes, I told him about
12 all of that.

13 Q. Did you tell him the difference between a direct
14 appeal and a PCR in terms of the kind of issues that could
15 be raised?

16 A. No, we didn't get into detail about the difference
17 between the two things. I don't recall getting into any
18 detail.

19 In fact, I told him when he gets there -- after I
20 told him there'll be opportunities, you know. I just told
21 him about the opportunities. You know, my general spiel
22 is you got the opportunity to, you know, to have an
23 appeal. You also have an opportunity to do a PCR against
24 me for ineffective assistance of counsel because generally
25 they want to use whatever avenues that they can use at

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1 that point.

2 Q. When you said there would be opportunities for an
3 appeal, who did you think would file the appeal for him?

4 A. I just told him in general.

5 Q. In general.

6 A. Just in general, that he has an opportunity for
7 appeal, a PCR.

8 Q. Okay. Are you familiar with the standing Supreme
9 Court order captioned In Re: An Anonymous Member of the
10 Bar in which it indicates that it's trial counsel's
11 responsibility to file an appeal if the client has not
12 waived his right to do so?

13 A. I am not familiar with that but in that meeting I
14 don't recall my client even expressing a desire for an
15 appeal. At this point I don't recall it.

16 Q. Okay.

17 A. But I will give my clients, I will tell them what
18 their rights are.

19 Q. When -- you said you actually met with the
20 girlfriend?

21 A. Yes.

22 Q. Correct? And at that time when you met with her at
23 her apartment, did it dawn on you that her apartment was
24 right there in the area that was the subject of this drug
25 operation, investigation, whatever we're going to call it?

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1 A. I mean, did it dawn on me? I knew there was a
2 reason why he was there. I mean, that didn't seem
3 surprising because that's where she lives, yes.

4 Q. And you were able to confirm that by actually
5 visiting her apartment right there, right?

6 A. I went there, yes, uh-huh.

7 Q. And you also were able to confirm that the car was
8 registered in her name?

9 A. Now I don't recall doing all of that.

10 Q. But you knew the car had been given back to her?

11 A. I really -- I don't recall anything about the car,
12 yes.

13 Q. Okay. Well, you don't dispute the fact that the
14 officer's incident report was in the discovery materials
15 given to you by the State?

16 A. I don't.

17 Q. Okay. Any particular reason why you would not
18 have asked her to come and be a witness at the suppression
19 hearing to establish that your client had a lawful reason
20 for being right there on the evening in question?

21 A. I didn't think it was relevant to the suppression
22 hearing because whether, whether he -- whether she lived
23 there, or whether he decided to just visit some friends
24 there the man has a right to be in the car. And I thought
25 the pretextual stop has nothing to do with whether his

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1 girlfriend lives at the house --

2 Q. Well --

3 A. -- in my opinion.

4 Q. I understand.

5 A. Yes.

6 Q. And I understand that you were arguing that the
7 stop was pretextual.

8 A. Yes.

9 Q. But do you not think it would have been beneficial
10 to your argument of pretext if you were able to
11 demonstrate to the judge that your client in fact had a
12 very lawful reason for being there?

13 A. I think it's irrelevant. I think the focus is not
14 on why he's there because he shouldn't have to explain why
15 he was there. Just like I wouldn't if I was riding in
16 that neighborhood.

17 Q. And --

18 A. So that's why I didn't call her. I didn't think
19 that was relevant.

20 Q. And based on your comments at the suppression
21 hearing you indicate that you knew that this drug stop,
22 this drug investigation was based on a tip about a female
23 Sheka, smoking marijuana at the apartment complex,
24 correct?

25 A. I certainly recited that and obviously I wouldn't

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1 recite it if I didn't know it or if it was some facts I
2 wasn't assuming. And at this point I don't remember how I
3 came to those facts, but that certainly is something I
4 recited in the transcript.

5 Q. Was there any particular reason why you did not
6 come to court that day prepared to present evidence that
7 the police, the tip that they received in fact involved a
8 female, a sole female smoking marijuana?

9 A. Again, I don't remember specifically what my
10 thought pattern was as to that specific issue.

11 And frankly until I read that I led with that, I
12 was even -- when I think about this case I never, never
13 thought about the fact that I articulated that so clearly
14 because it just wasn't -- my thought process has been kind
15 of focused just on the stop itself.

16 Q. I understand.

17 A. Yes.

18 Q. But I certainly know you as an officer of the
19 court, you would not have represented to Judge Early that
20 this stop involved a complaint involving a lone female
21 smoking marijuana at the apartment complex if you had not
22 had credible information to that.

23 A. Without any question. I just don't -- as I said
24 before, I just don't know where I got it from but
25 obviously I got it from somewhere. But I don't even know

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1 what my thought process was with it because in my memory I
2 don't even -- even reading it, I don't know why I would
3 lead in with that or assume those facts.

4 Q. At the time the suppression hearing was held and
5 the argument had expanded from the time of the prelim to
6 the suppression hearing from being just about the tag to
7 being about the tag and oh yeah we have articulable
8 suspicion too. Remember that? We talked about that
9 earlier.

10 Did you consider questioning the law enforcement
11 officers that testified at that proceeding as to why their
12 incident report talked all about the stop being based on
13 the tag and didn't say a word about the investigation of
14 ongoing drug issues at the complex?

15 A. No, no.

16 Q. And the fact that this incident report which was
17 filled out well after the time of the stop, I say well
18 after, I mean hours later. The fact that it's not even
19 talking about this tipster, would that not have bolstered
20 your argument that they were shoring up their case talking
21 about the tag argument?

22 A. Again, would it have bolstered it? I don't think
23 it would have. But I would say that, again, I highlighted
24 the fact that there was no discussion of the tag on the
25 video or anything.

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1 As to what, what the additional argument is that --
2 that the suspicious activity was not in the report, I
3 don't know what affect it would have had.

4 MS. SHURLING: Your Honor, let me go through my
5 checklist real quickly to make sure I haven't missed
6 something.

7 THE COURT: All right.

8 (Pause.)

9 BY MS. SHURLING:

10 Q. When Judge Early was questioning you concerning the
11 law as it related to tag violations during the hearing and
12 you say something about that it must have been a North
13 Augusta citation or something; do you recall that?

14 A. Yes.

15 Q. Had you not researched the law as it relates to tag
16 violations prior to the suppression hearing?

17 A. I read that. I don't know if I did or not. I
18 don't know if I was saying it to kind of cast along the
19 relevancy of this whole tag thing because that was -- I
20 didn't believe that was the reason. My argument was that
21 wasn't even the reason why he was stopped.

22 So I can't remember if I researched it or not but
23 my discussion about it was that the fact of the matter is
24 they didn't care about a tag anyway. And so I wasn't
25 going to get into making an argument about it because my

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1 whole feeling was that this was never about the tag.
2 This -- just like if they were going to talk about the
3 tire, one of the tires was slick. I wasn't going to
4 measure the tire because I knew that the reason why they
5 stopped him wasn't for a slick tire. It was because he
6 looked suspicious to them. And what looked suspicious to
7 them probably would be me looking suspicious 20 years ago
8 riding in the same neighborhood in a nice car.

9 Q. I understand.

10 A. Yes.

11 Q. But, Mr. Chandler, would you agree that the record
12 reflects that Judge Early certainly showed interest in
13 what is this law, what's it say you can and can't do, how
14 dark was it. He was interested in that, wasn't he?

15 A. Yes. And to that extent I don't remember if -- to
16 answer your question, I don't remember if I researched it
17 or not if you're asking me. Yes, he asked the question
18 and I minimized it as I minimized this entire thing
19 because that was part of my argument. It wasn't about the
20 tag, whether it was covered, whether it was tinted; it
21 wasn't about the tag.

22 MS. SHURLING: Moment's indulgence, Your Honor,
23 (Conferring with Applicant.)

24 Your Honor, before I conclude I just want to make
25 sure the Court has the -- all three transcripts, the

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1 preliminary, 19th and the 20th. Correct?

2 THE COURT: Yes, ma'am.

3 MS. SHURLING: I have no further questions,
4 Mr. Chandler. Thank you very much.

5 THE COURT: Cross-examination, please.

6 MS. SHURLING: Yes, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. GOURLEY:

9 Q. Mr. Chandler, is it fair to say that you went into
10 the suppression motion with what you felt was the best
11 argument to suppress these drugs?

12 A. Absolutely.

13 Q. Okay. And that best argument in your opinion was
14 that the stop was pretextual because of a tinted license
15 plate, essentially?

16 A. Because of an argument about a tinted license plate
17 that only came hours after he was arrested and he was in
18 the -- and he was at North Augusta Public Safety.

19 Q. Okay. Regarding the right to appeal, was your
20 testimony that you discussed Mr. Madison's right to appeal
21 after his guilty plea?

22 A. When I went to the -- yes, when I went to the jail
23 to see him, yes.

24 Q. And he never indicated to you that he wanted an
25 appeal?

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1 A. To my recollection he didn't.

2 Q. And to the best of your recollection was any
3 objections made during the guilty plea?

4 A. By my client you mean?

5 Q. Yes, Your Honor -- yes.

6 A. If he did we wouldn't have gone further with it.
7 No, I can't remember specifically what we talked about if
8 that's what you're talking about.

9 Q. Do you feel there was any kind of meritorious issue
10 raised on appeal after the guilty plea?

11 A. No, I did not.

12 MR. GOURLEY: Beg the Court's indulgence, Your
13 Honor.

14 Q. Mr. Chandler, was there any question that it was a
15 violation of law to have a tinted license plate?

16 A. I can't remember. I would have likely done the
17 research. I just can't remember if it was or if it
18 isn't. If you have it, I just can't remember.

19 MR. GOURLEY: That's the statute.

20 MS. SHURLING: Thank you.

21 MR. GOURLEY: Your Honor, may I approach?

22 THE COURT: Yes.

23 BY MR. GOURLEY:

24 Q. Mr. Chandler, I've handed you a copy of 56-3-1240
25 discussing display of license plates and motorcycles

1 equipped with vertically mounted brackets, missing
2 plates.

3 MS. SHURLING: Actually, Your Honor, I hate to be
4 picky, but this is the one that was in effect December 26,
5 2012. We had previously researched it on Westlaw and had
6 the one that was in effect at the time.

7 MR. GOURLEY: Perfect. Sorry, Your Honor. I
8 apologize, Your Honor.

9 THE COURT: All right.

10 THE WITNESS: Thank you.

11 BY MR. GOURLEY:

12 Q. Mr. Chandler, is there any question that was a
13 violation of the law to have a tinted license plate based
14 on your reading of the statute?

15 A. I'm reading the statute and I don't see any
16 question.

17 MR. GOURLEY: Okay.

18 Your Honor, I believe that's all the questions I
19 have for Mr. Chandler. Thank you.

20 MS. SHURLING: I have nothing in redirect, Your
21 Honor. Thank you.

22 THE COURT: Thank you. Sir, you may step down.

23 MS. SHURLING: Your Honor, as far I'm concerned
24 Mr. Chandler could be excused but we both have him under
25 subpoena so I don't know whether the State wants him to

1 stick around or not.

2 MR. GOURLEY: If Your Honor, if I could have
3 Mr. Chandler stay during the testimony of Mr. Madison in
4 case something comes up.

5 THE COURT: All right.

6 MS. SHURLING: Your Honor --

7 THE COURT: We're going to stop for just a few
8 minutes.

9 MS. SHURLING: Thank you.

10 (Break taken at 2:56 p.m. At 3:23 p.m., the
11 hearing of this matter resumed as follows:)

12 THE COURT: Defense counsel, proceed. Applicant's
13 counsel, petitioner's counsel.

14 MS. SHURLING: Thank you.

15 Your Honor, before the recess I had indicated that
16 I would call the Applicant next because my choice of my
17 next witness has not yet arrived. It turned out, bless
18 her heart, she was sitting in the courtroom across the
19 hall and she will be relatively brief.

20 So at this time I would call Rose Rivers to the
21 stand.

22 THE COURT: All right.

23 ROSE RIVERS, having been duly sworn, was examined
24 and testified as follows:

25 THE CLERK: Please have a seat in the witness box.

ROSE RIVERS - DIRECT BY SHURLING

1 State your full name for the Court.

2 THE WITNESS: Rose Rivers.

3 DIRECT EXAMINATION

4 BY MS. SHURLING:

5 Q. Ms. Rivers?

6 A. Uh-huh.

7 Q. Back in 2007, were you the apartment manager at --
8 well, let's see. The name of the complex was -- now I
9 don't see it. Tell me the name.

10 A. North Augusta Gardens Apartments.

11 Q. North Augusta Gardens. Okay. And how long had
12 you been the complex manager at that time?

13 A. I started in July '03.

14 Q. '03?

15 A. Yes.

16 Q. Okay.

17 A. So that's, what, four years?

18 Q. And you're still there today?

19 A. I am.

20 Q. Okay. And what were your duties as complex
21 manager?

22 A. Property manager overseeing the complex and all of
23 the residents.

24 Q. How large a complex is it?

25 A. It's 100 units.

ROSE RIVERS - DIRECT BY SHURLING

1 Q. One hundred units?

2 A. Yes. Eighteen buildings.

3 Q. Consists of individual apartments or not 100
4 buildings?

5 A. Eighteen buildings.

6 Q. Eighteen buildings?

7 A. Yes.

8 Q. Okay. And back -- going back to March of 2007, do
9 you recall an incident where law enforcement came to the
10 apartment complex?

11 A. Yes.

12 Q. Prior to law enforcement arriving on the scene that
13 evening, had you had any other -- had you had discussions
14 with anyone concerning law enforcement?

15 A. Yes.

16 Q. Now don't -- without specifically talking about
17 what anybody said, what was the nature of the inquiry that
18 came to your attention that evening?

19 A. It was to know if they should call the police.

20 Q. And was it a tenant?

21 A. Yes.

22 Q. And when you say wanting to know if they should
23 call the police, were they wanting to know if they should
24 call or you should call?

25 A. If he should call.

ROSE RIVERS - DIRECT BY SHURLING

1 Q. If he should call the police?

2 A. Uh-huh.

3 Q. Was it whether he should or whether he could?

4 A. Whether he could.

5 Q. Could?

6 A. Could.

7 Q. Okay. And did you as complex manager tell him --

8 A. Yes.

9 Q. -- he had that right?

10 A. Yes.

11 Q. As a result of that conversation, did you become
12 aware that his general complaint involved a single black
13 female?

14 A. Yes.

15 Q. Were you -- that black female, was she a resident
16 at the apartment complex?

17 A. Yes, she was.

18 Q. What was her name?

19 A. Sheka Key.

20 Q. Sheka Key?

21 A. Sheka. S-H-E-K-A.

22 Q. And at a later time on that day, did law
23 enforcement in fact respond to the scene?

24 A. They did.

25 Q. And did you see them that night?

ROSE RIVERS - DIRECT BY SHURLING

- 1 A. No.
- 2 Q. When did you get the details of what they had done?
- 3 A. The following morning.
- 4 Q. And how did that come about?
- 5 A. Usually when -- if they come on the scene I call
6 down to the station and ask if I can have an incident
7 report. They will say yes or no and then I will go down
8 and pick it up. And that's what I had done, gone down and
9 picked it up.
- 10 Q. Is that normal policy for you to do?
- 11 A. Normal policy, yes.
- 12 Q. You are responsible in part for security at the
13 complex?
- 14 A. Yes.
- 15 Q. And are you responsible for keeping track of such
16 things as lighting and, as my father would say,
17 undesirables loitering in the parking lot and so forth?
- 18 A. Yes.
- 19 Q. That was part of your job?
- 20 A. Yes.
- 21 Q. Did you request a copy of this particular incident
22 report?
- 23 A. I did.
- 24 Q. Were you surprised that the incident report did not
25 say anything about a drug investigation?

ROSE RIVERS - DIRECT BY SHURLING

1 A. I was.

2 Q. And did there come a later date when you found out
3 that another tenant's boyfriend -- well, actually, when
4 you got the incident report you saw the name?

5 A. Exactly.

6 Q. And did you recognize the name Shawn Madison as
7 being the boyfriend of one of your tenants?

8 A. I did.

9 Q. Did he stay there with her?

10 A. No, not really.

11 Q. No? But he was a frequent guest?

12 A. Frequent guest, yes.

13 Q. Now, buildings one and two were mentioned during
14 the course of some of the proceedings in this matter.
15 Would buildings one and two be facing each other?

16 A. No. They were side by side.

17 Q. They're side by side?

18 A. Right.

19 Q. This way?

20 A. Yes.

21 Q. End on end?

22 A. Right. End on end.

23 Q. And were they located in a cul-de-sac?

24 A. Yes.

25 Q. They were located in a cul-de-sac?

ROSE RIVERS - DIRECT BY SHURLING

1 A. Correct.

2 Q. Were they located in the end of the cul-de-sac?

3 A. Yes, on the end.

4 Q. In the end of the cul-de-sac?

5 A. Right.

6 Q. Okay. And where the cul-de-sac came back out onto

7 the main road, there were other apartment buildings?

8 A. That's -- in between, yes.

9 Q. Do you know what, what your tenant Mr. Madison's

10 girlfriend's name was?

11 A. Dricka. I forget her last name.

12 Q. Okay. But --

13 A. Robinson.

14 Q. Sheka Robinson?

15 A. Dricka.

16 Q. Dricka. Would you spell that for us?

17 A. I think it's spelled D-R-I-C-K-A.

18 Q. Okay.

19 A. I don't remember.

20 Q. And did she live in one of the buildings that was

21 on that particular cul-de-sac where buildings one and two

22 were located?

23 A. She lived in the building in front of building one.

24 The building sit like here, and then there's a building

25 and then there's the driveway out to the street. And she

ROSE RIVERS - DIRECT BY SHURLING

1 lived in the one in front.

2 Q. So she lived in very close proximity to buildings
3 one and two on the same cul-de-sac?

4 A. Yes, correct.

5 Q. And, what was the parking situation in that cul-de-
6 sac area?

7 A. Okay. In front of building three you can park and
8 then you go around in front of building one and two you
9 can park on either side. So there was parking in front of
10 the buildings. There was parking in the back of the
11 building.

12 Q. And then the other buildings that were adjacent
13 would have likewise had --

14 A. Parking the same way, correct.

15 Q. Okay. Would traffic coming from buildings one and
16 two have come out of the same traffic outlet as the
17 building where the girlfriend lived?

18 A. Yes.

19 Q. Okay. So, how many buildings would have been on
20 that whole cul-de-sac?

21 A. Three.

22 Q. Three?

23 A. Yes.

24 Q. All together, three on the cul-de-sac?

25 A. Right.

ROSE RIVERS - DIRECT BY SHURLING

1 Q. And everyone that lived in those buildings had to
2 come back out on the main road out the same exit?

3 A. Through that, exactly.

4 Q. Okay. Did there come a time when you told
5 Mr. Everett Chandler, Shawn Madison's lawyer, about what
6 you recalled about the incidents of that evening?

7 A. Yes.

8 Q. And did he ask you whether or not you would be
9 willing to come and testify at his suppression hearing?

10 A. No.

11 Q. If he had asked you to come -- you're here under
12 subpoena today, aren't you?

13 A. Well, I haven't received a subpoena. I was told I
14 got one coming but I'm here.

15 Q. You were nice enough -- when we called to follow up
16 and see if you had gotten your certified letter you had
17 not, right?

18 A. No, I had not.

19 Q. And you said you'd come anyway?

20 A. Right. Yes.

21 Q. God bless you. If Mr. Chandler had similarly
22 asked you if you would come and tell what you knew
23 regarding the events of that evening at the suppression
24 hearing, would you have been willing to do so?

25 A. Yes.

ROSE RIVERS - DIRECT BY SHURLING

1 Q. Other than your mileage from the location where you
2 work to here, have I paid you anything?

3 A. No, you haven't.

4 Q. Okay. In fact you didn't get the check that was
5 mailed to you, did you?

6 A. No, I didn't.

7 Q. We'll take care of that. The tenant that called
8 you --

9 A. Yes.

10 Q. -- was his name Billy Laird?

11 A. Yes, it was.

12 Q. Do you have any idea what the current whereabouts
13 of Billy Laird are?

14 A. No, I don't.

15 Q. Do you know how long -- well, let me rephrase. At
16 the time you talked to Everett Chandler about Shawn
17 Madison's case, was Billy Laird still a tenant in that
18 complex?

19 A. Yes.

20 Q. And would you have been able to direct Everett
21 Chandler to Billy Laird to interview with ease?

22 A. Yes.

23 Q. Do you know how long after that Mr. Laird left the
24 complex?

25 A. Mr. Laird left in '09.

SHAWN MADISON - DIRECT BY SHURLING

1 Q. '09?

2 A. Yes.

3 Q. Okay. How about the young lady that was smoking
4 reefer, what happened to her? Is she still there?

5 A. No.

6 Q. And was she arrested by law enforcement that night?

7 A. No.

8 Q. Thank you. I have no further questions.

9 A. Uh-huh.

10 MR. GOURLEY: I have no questions, Your Honor.

11 THE COURT: Ma'am, you may step down.

12 THE WITNESS: Thank you.

13 THE COURT: Thank you. Call your next witness,
14 please.

15 MS. SHURLING: Your Honor, I would call Shawn
16 Madison.

17 SHAWN MADISON, having been duly sworn, was examined
18 and testified as follows:

19 THE CLERK: Please have a seat in the witness box.
20 State your full name for the Court.

21 THE WITNESS: Shawn Madison.

22 DIRECT EXAMINATION

23 BY MS. SHURLING:

24 Q. Shawn, on the evening you were arrested you were in
25 a car that was stopped by law enforcement at that

SHAWN MADISON - DIRECT BY SHURLING

1 apartment complex we've been discussing?

2 A. Right.

3 Q. Who did that car belong to?

4 A. My girlfriend, Adricka Robinson.

5 Q. What was her name?

6 A. Adricka Robinson.

7 Q. Okay. And when you were stopped by law
8 enforcement that night did anyone say anything to you
9 about a traffic violation, a tag cover violation, about
10 there being anything improper about the way your tag was
11 presented or hung, anything like that?

12 A. No, ma'am.

13 Q. Okay. And did the officer that stopped you ask
14 you if he could search your car?

15 A. Yes, he did.

16 Q. And when he asked is when you made the response
17 that's been referenced in the pleadings and in the
18 transcript that you said they could go ahead and search?

19 A. That's right.

20 Q. But you did not make that statement until when?

21 A. After he asked me.

22 Q. After he asked if he could search?

23 A. Right.

24 Q. And when he first stopped you he had not asked you
25 to get out of the car, had he?

SHAWN MADISON - DIRECT BY SHURLING

1 A. No.

2 Q. He did not ask you to get out of the car until
3 after he got you to consent to searching the car?

4 A. Right.

5 Q. And it was when you exited the car that the drugs
6 fell out of your pants and were confiscated by the
7 police?

8 A. Right.

9 Q. Now, do you recall having discussions -- well,
10 let's back up for a second. Was Everett Chandler retained
11 or court appointed?

12 A. Retained.

13 Q. Did you have discussions with Mr. Chandler about
14 building a case or suppressing the drugs that were seized
15 based on a fourth amendment violation?

16 A. No, we didn't. We never had no discussion about no
17 fourth amendment issues.

18 Q. Well, did you discuss with him the fact that he was
19 going to try to keep the drugs out based on saying it was
20 a bad stop?

21 A. No, we never discussed it.

22 Q. Never discussed it with you in advance at all?

23 A. No. I probably seen Mr. Chandler three times. The
24 whole time that I've been out. I've been out 13 months,
25 and I seen Mr. Chandler three times.

SHAWN MADISON - DIRECT BY SHURLING

1 Q. Well, when the day came that you were getting ready
2 to go to court on May 19th to have a hearing on a motion
3 to suppress --

4 A. Right.

5 Q. -- those drugs, had you seen the motion to suppress
6 prior to that?

7 A. No.

8 Q. Did you know what the purpose of the hearing was
9 going to be on May 19?

10 A. My suppression hearing?

11 Q. Yes.

12 A. Yes, I knew about that. He informed me of that.

13 Q. Okay. Let's back up then. How long before the
14 May 19th, 2008, hearing did he tell you that he was trying
15 to suppress those drugs?

16 A. That was on a Sunday, the day before. That was the
17 18th maybe. It was the 19th I went to court. That was a
18 Monday. I had roll call that Monday. He told me at roll
19 call that we're going to have a suppression hearing at
20 3:30.

21 Q. Okay. And that's all the notice you had?

22 A. Right.

23 Q. Okay. Now, at some point did you tell him that
24 you had heard it through your girlfriend about the police
25 being out there because of this woman smoking reefer?

SHAWN MADISON - DIRECT BY SHURLING

1 A. Yes.

2 Q. And did you ask that he talk to the authorities,
3 the manager or somebody out at the apartment complex to
4 try to find out more about that?

5 A. No, I didn't ask him that.

6 Q. Okay. But you did tell him that, from what you
7 understood from your girlfriend who was a resident that it
8 was about a woman sitting out there smoking pot?

9 A. Right.

10 Q. Okay. When you had your preliminary hearing, were
11 you present?

12 A. Yes, ma'am.

13 Q. Okay. And at that juncture the officers were
14 arguing that the primary reason for your stop was, what?

15 A. A tinted tag.

16 Q. Okay. Did you tell Mr. Chandler about the warning
17 ticket that the police had given you at the police
18 department?

19 A. Yes, ma'am.

20 Q. Did he discuss with you the tag on your
21 girlfriend's car at all?

22 A. I think he might have mentioned it. I can't -- I
23 can't remember. I think he mentioned something about the
24 tag. Like it was irrelevant about the tag or something.
25 Like, they was going to still, like, charge me with it

SHAWN MADISON - DIRECT BY SHURLING

1 because it was tinted. It was, like, a North Augusta
2 citation issue, something like that.

3 Q. Let's be more practical about it. Did he ever ask
4 you to have your girlfriend bring the car around to his
5 office and let him take a look at it?

6 A. No.

7 Q. Did he ask you where you bought the -- where the --
8 whether or not you had put the license cover on the tag?

9 A. No, ma'am. Actually the tag come from Advance Auto
10 Part.

11 Q. You told him that?

12 A. No, no. I didn't tell him that.

13 Q. Okay. You did put the tag cover on it?

14 A. Right.

15 Q. And it came from Advance Auto Parts?

16 A. Yes, ma'am.

17 Q. In Aiken or in Augusta?

18 A. North Augusta.

19 Q. North Augusta?

20 A. Right.

21 Q. And, but he had no discussions with you about
22 either getting access to the car to look at the tag or
23 getting pictures of the tag or trying to go to Advance
24 Auto Parts and buy another one like it or anything like
25 that, did he?

SHAWN MADISON - DIRECT BY SHURLING

1 A. No, ma'am.

2 Q. Okay. Now once you got to that suppression hearing
3 on the 19th, at that point the police were adding
4 additional justifications to their stopping you and
5 searching your car, weren't they?

6 A. Yes, ma'am.

7 Q. Were you shocked when your lawyer up and stated for
8 the record that you had volunteered to be searched?

9 A. Yes, ma'am.

10 Q. Was that accurate?

11 A. Yeah, because I did volunteer but I didn't think he
12 was going to get up and volunteer the information the way
13 he did.

14 Q. Okay. When say you volunteered, did you volunteer
15 just out of the blue or did you volunteer in response to a
16 request from law enforcement?

17 A. I responded to his request after he asked me.

18 Q. Okay. So you didn't just up and say, "Go ahead
19 and search my car". When they asked if they could search
20 your car you said, "Yeah, go ahead"?

21 A. Yes, ma'am.

22 Q. Okay. And were you surprised that Mr. Chandler
23 didn't make that distinction clear during the suppression
24 hearing?

25 A. Yes, ma'am.

SHAWN MADISON - DIRECT BY SHURLING

1 Q. Okay. Were you surprised during the suppression
2 hearing when law enforcement was talking about their
3 so-called tip being about a drug transaction between two
4 males? Were you surprised that Mr. Chandler was not
5 prepared to introduce evidence that the tipster was in
6 fact about a lone female smoking marijuana?

7 A. Yes, ma'am.

8 Q. Would you have wanted him to do that as part of his
9 offering at the suppression hearing?

10 A. Yes, ma'am.

11 Q. But even so, Judge Chandler -- pardon me. Judge
12 Early expressed concern about the stop and the legal
13 justification for the stop during the suppression hearing,
14 didn't he?

15 A. Yes, ma'am.

16 Q. But he ultimately ruled at least -- and the record
17 will speak for itself, Your Honor -- appears to be
18 focusing on the fact that, well, whatever he consented to
19 it, right?

20 A. Right.

21 Q. But of course your lawyer hadn't told him that the
22 only reason you so-called volunteered is you'd been asked?

23 A. Right.

24 Q. And do you recall your lawyer arguing at all that
25 the request to search and your consent and the findings of

SHAWN MADISON - DIRECT BY SHURLING

1 the search were the fruit of the poisonous tree?

2 A. I don't recall any of that.

3 Q. You and I have discussed the concept of the fruit
4 of the poisonous tree, haven't we?

5 A. Yes, ma'am.

6 Q. Did you have any discussions with your lawyer about
7 how evidence that flows from an initial illegality can
8 also be suppressed?

9 A. I don't understand -- can you repeat that? I don't
10 understand that.

11 Q. Did you ever have discussions with him about the
12 legal principals that sometimes allow you to suppress
13 evidence that flows from an illegality that occurs further
14 up the food chain so to speak?

15 A. No, ma'am.

16 Q. Okay. He never discussed all of that with you?

17 A. No, ma'am.

18 Q. All right. Once the suppression hearing was held
19 and Judge Early did not rule in your favor, did
20 Mr. Chandler begin encouraging you to plead guilty?

21 A. Yes, ma'am.

22 Q. Did he ever at any time tell you that if you plead
23 guilty you would lose your right to an appellate review of
24 the substantive issues of law and the fourth amendment
25 challenges that were involved in your suppression

SHAWN MADISON - DIRECT BY SHURLING

1 moment -- pardon me -- motion and a hearing held on that
2 motion?

3 A. No. He never advised me of none of that.

4 Q. And of course if that evidence had been suppressed
5 the whole case would have been gone, correct?

6 A. Right.

7 Q. Had you known that by entering a plea of guilty you
8 were waiving the right to a review, an appellate review of
9 the substantive errors of law, the rulings that were made
10 in the context of the suppression motion? Would you have
11 gone through with a guilty plea if you had known that
12 meant you couldn't have appealed Judge Early's ruling on
13 that?

14 A. No. I would've went to trial.

15 Q. You would have gone to trial?

16 A. Yes, ma'am.

17 Q. No question in your mind about that?

18 A. No, ma'am.

19 Q. Now, do you remember Judge Early telling you what
20 the penalty was for third offense?

21 A. Twenty-five, 30.

22 Q. To 30.

23 A. Something.

24 Q. Okay. And you understand that as part of a plea
25 bargain they let you plead to a second offense, right?

SHAWN MADISON - DIRECT BY SHURLING

1 A. Right.

2 Q. And when they let you plead to a second offense, at
3 that juncture it reduced your exposure substantially,
4 didn't it?

5 A. Yes, ma'am.

6 Q. Five to 25, I believe.

7 A. Five to 30.

8 Q. Five to 30. Pardon me.

9 A. Second offense.

10 Q. Okay. And this -- your plea was for a negotiated
11 20?

12 A. Right.

13 Q. Now have I explained to you, and I'll do this as
14 quickly as I can but it's important that the record
15 reflects that I've explained to you that as grandmama
16 would say, be careful what you pray for, huh?

17 A. Right.

18 Q. That if His Honor finds that you did not knowingly,
19 voluntarily and intelligently waive your right to a direct
20 appeal from the suppression motion and the rulings
21 thereon, and grant you the right to have your plea and
22 sentence vacated and to start over, that that's exactly
23 what you'll be doing is starting over?

24 A. Yes, ma'am.

25 Q. And that means the State could try you for, what?

SHAWN MADISON - DIRECT BY SHURLING

1 A. Trafficking third.

2 Q. Traffic third. And you understand that if you did
3 not prevail on your fourth amendment issue even --
4 assuming you could present it better and stronger than you
5 did the first time, if you still lost on it you understand
6 that you'd have a right to an appeal but you'd be looking
7 at a mandatory 25?

8 A. Right.

9 Q. And that that mandatory 25 obviously is five years
10 more than you've got right now?

11 A. Yes, ma'am.

12 Q. And you could get all the way up to 30?

13 A. Yes, ma'am.

14 Q. Okay. Knowing that, are you sure you want to risk
15 this?

16 A. Yes, ma'am.

17 Q. Have I explained to you that you can't get buyer's
18 remorse? That if we go through with this and we tell
19 Judge Brown that's what you want, that's your remedy
20 you're praying for and he says, "I've thought it over and
21 I think you're right, I'm going to grant a vacation and a
22 new trial," I can't then tell him you've changed your mind
23 then, it will be too late. Do you understand that?

24 A. Yes, ma'am.

25 Q. Okay. So you're sure you want to go through with

SHAWN MADISON - DIRECT BY SHURLING

1 this?

2 A. Yes, ma'am.

3 Q. Okay. Would you have wanted your lawyer to
4 present your ex-girlfriend as a witness at your
5 suppression hearing?

6 A. Yes, ma'am.

7 Q. And what is it that her testimony could have
8 established?

9 A. It could have established that the call --

10 MR. GOURLEY: Objection, Your Honor. That's
11 hearsay.

12 THE COURT: Objection is sustained.

13 BY MS. SHURLING:

14 Q. What -- if you had called your girlfriend as a
15 witness, would she have been able to testify to your
16 relationship at the time?

17 MR. GOURLEY: Your Honor, I'm going to object to
18 the leading question.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Hold on. Objection's sustained.

21 BY MS. SHURLING:

22 Q. If you had called your ex-girlfriend as a witness,
23 would you have been able to question her concerning the
24 nature of her relationship with you at the time?

25 A. Yes, ma'am.

SHAWN MADISON - DIRECT BY SHURLING

1 Q. And would you have been able to question her
2 concerning whose name the car in question was registered
3 in?

4 A. Yes, ma'am.

5 MR. GOURLEY: This is still leading questions.

6 THE COURT: I'll allow it. Go ahead.

7 THE WITNESS: Yes, ma'am.

8 BY MS. SHURLING:

9 Q. And of course the car registration would have
10 verified her residence, correct?

11 A. Her name and her residence, yes, ma'am.

12 Q. And on the evening in question you were coming from
13 her apartment?

14 A. Yes, ma'am.

15 Q. And you heard the earlier testimony of the complex
16 manager. When you would leave your girlfriend's
17 apartment, did you go out the same exit from the cul-de-
18 sac that the folks that lived in buildings one and two had
19 used?

20 A. Yes, ma'am.

21 Q. When you got to the detention center, is that when
22 you were presented with a ticket for the tag?

23 A. Yes, ma'am. I got to North Augusta Police
24 Department they gave me a warning ticket. Actually they
25 stuffed it in my property, the warning ticket.

SHAWN MADISON - DIRECT BY SHURLING

1 Q. They put it in your property?

2 A. Yeah.

3 Q. Okay. When did you become aware that it had been
4 put with your personal property?

5 A. At -- I think after I bond out, bond out of Aiken
6 County. They expedited me from North Augusta to Aiken.

7 Q. So, your warning for the tag violation wasn't even
8 personally served on you, it was just put with your
9 property at the jail?

10 A. Right.

11 Q. Okay. Did Mr. Everett Chandler ever discuss a
12 direct appeal with you at all?

13 A. No, ma'am. He just told me my right to a PCR.

14 Q. And did -- and this was after your plea?

15 A. Right.

16 Q. After your plea when he discussed the PCR with you,
17 did he explain the differences with you between a PCR and
18 a direct appeal and the kind of issues that could be
19 raised in the two different types of appeal?

20 A. No, ma'am. I didn't know about appeal, all of that
21 until I got incarcerated and got up the road. He just
22 told me I had a right to PCR.

23 Q. Okay. You heard me questioning Mr. Chandler
24 earlier. And I'm not going to reinvent the wheel because
25 it's late in the day. But this is your one chance at a

SHAWN MADISON - DIRECT BY SHURLING

1 PCR. Barring extraordinary circumstances you're not
2 likely to get another one. Do you understand that?

3 A. Right.

4 Q. Did you listen carefully to the questions I
5 presented to Mr. Chandler and your other witness from the
6 apartment complex?

7 A. Yes, yes, ma'am.

8 Q. Have I through questioning those witnesses
9 addressed all of the issues that you wanted me to raise in
10 your PCR?

11 A. Yes, ma'am.

12 Q. Have you also been given by my office a copy of the
13 amended application for post-conviction relief I filed on
14 your behalf in August of 2014?

15 A. I can't see that. I can't see.

16 Q. (Document handed to the witness.)

17 A. Yeah, I got a copy of that.

18 Q. Speak up.

19 A. Yes, I got a copy of it.

20 Q. Please remember that nice lady has to write down
21 every word you say, so speak up.

22 You got a copy of it and reviewed it?

23 A. Yes, ma'am.

24 Q. And have I raised to your satisfaction all of the
25 key issues involving your sixth amendment claim that you

SHAWN MADISON - CROSS BY GOURLEY

1 wanted raised in this PCR proceeding?

2 A. Yes, ma'am.

3 Q. Are there any other specific allegations that you
4 want addressed that have not been raised by me?

5 A. No, ma'am.

6 Q. Are you sure?

7 A. Yes, ma'am.

8 Q. Okay. Again, the most crucial issue. If you had
9 known that you could not do a direct appeal from your
10 suppression hearing if you pled guilty, would you have
11 pled guilty?

12 A. No, ma'am. I would have gone to trial.

13 Q. You would have gone to trial?

14 A. Yes, ma'am.

15 Q. And is that still your desire to go to trial?

16 A. Yes, ma'am.

17 MS. SHURLING: No further questions, Your Honor.

18 THE COURT: Cross-examination.

19 MR. GOURLEY: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. GOURLEY:

22 Q. Mr. Madison, why did you plead guilty?

23 A. I pled guilty because that's what Mr. Chandler
24 advised me to do.

25 Q. Okay. Mr. Chandler advised you to do that? And

SHAWN MADISON - CROSS BY GOURLEY

1 that was a negotiated plea, right?

2 A. Yes, sir.

3 Q. From a third offense to a second offense?

4 A. Yes, sir.

5 Q. Twenty years?

6 A. Yes, sir.

7 Q. Who was all at your plea hearing?

8 A. Just me and Mr. Chandler and the solicitor's
9 office.

10 Q. Your girlfriend was present too, wasn't she?

11 A. At the plea hearing?

12 Q. Yeah.

13 A. Yeah. And my mom and my sister and them. Okay,
14 yeah.

15 Q. Okay. And your mom and girlfriend. And the judge
16 advised you of your right to appeal during your guilty
17 plea, right? Do you recall that?

18 A. I don't recall. He might have said within 10 days
19 maybe or something like that.

20 MR. GOURLEY: And, Your Honor, that's on page 17 of
21 the guilty plea record.

22 Q. And it's your statement or your testimony today
23 that you never discussed any kind of suppression motion
24 with Mr. Chandler?

25 A. No, sir.

SHAWN MADISON - REDIRECT BY SHURLING

1 Q. And you only found out about it the day before?

2 A. That's right.

3 Q. Okay. Mr. Madison, what happened when you stepped
4 out of the car?

5 A. The cocaine fell off me.

6 Q. Fell out of your pants?

7 A. Yes, sir.

8 Q. And you don't dispute that there was a license tag,
9 tinted license plate cover over your license tag?

10 A. That's correct.

11 MR. GOURLEY: Your Honor, that's all the questions
12 I have.

13 THE COURT: Any redirect?

14 MS. SHURLING: Quickly.

15 REDIRECT EXAMINATION

16 BY MS. SHURLING:

17 Q. That license tag that's been discussed, DU1397, is
18 that a South Carolina tag or a Georgia tag; do you
19 remember?

20 A. South Carolina.

21 Q. South Carolina tag?

22 A. It's a wildlife.

23 Q. And when the judge referenced on page 17 of your
24 plea, "If you disagree with these proceedings or the
25 sentence you have 10 days from today's date to file a

1 notice of appeal. Do you understand your appellate
2 rights." Do you remember that?

3 A. Yes, ma'am.

4 Q. How quickly after you were sentenced did you go to
5 SCDC? Within a day, two days; how long?

6 A. I got sentenced that Tuesday. Friday I was at
7 Kirkland. I was in SCDC that Friday.

8 Q. Once you got to the Department of Corrections, did
9 you begin discussing appeals with other people?

10 A. Yes, ma'am.

11 Q. And at that juncture did you find out that a direct
12 appeal from a guilty plea was worthless?

13 A. Yes, ma'am.

14 Q. Is that why you then decided to pursue a PCR?

15 A. That's correct.

16 MS. SHURLING: Thank you. No further questions.

17 MR. GOURLEY: Nothing else, Your Honor.

18 THE COURT: All right, sir. You may step down.

19 THE APPLICANT: Yes, sir.

20 THE COURT: You can hook him back up.

21 THE OFFICER: Yes, sir.

22 MS. SHURLING: Your Honor, the Applicant would have
23 no further witnesses.

24 I don't know whether the State intends to present
25 any further evidence. Assuming they do, when it's over if

EVERETT KEITH CHANDLER - REBUTTAL BY GOURLEY

1 we could have the Court's permission to submit memoranda
2 in lieu of closing arguments. I'm coming off three weeks
3 with a flu and my voice is really giving out on me. And
4 I have two-day hearing in Spartanburg day after tomorrow
5 so I'm trying to save it. If we could please just submit
6 a brief memoranda or proposed orders, either, I would
7 appreciate it.

8 Thank you, Your Honor.

9 THE COURT: Mr. Gourley, you got any witnesses?

10 MR. GOURLEY: Yes, Your Honor. I would call
11 Mr. Chandler in reply. Just one quick question.

12 THE COURT: I'll answer your question at the
13 conclusion.

14 MS. SHURLING: Sir?

15 THE COURT: I'll answer your question at the
16 conclusion, or your request.

17 MS. SHURLING: I was jumping the gun. I'm sorry.

18 THE COURT: That's okay. You didn't know he was
19 going to call Mr. Chandler back.

20 EVERETT KEITH CHANDLER, testified further under
21 oath as follows:

REBUTTAL EXAMINATION

22
23 BY MR. GOURLEY:

24 Q. Mr. Chandler, you've heard Mr. Madison's testimony
25 today. Mr. Madison has alleged that you never discussed

EVERETT KEITH CHANDLER - SURREBUTTAL BY SHURLING

1 the suppression motion with him. Did you have any
2 discussions with Mr. Madison about the suppression motion?

3 A. Yes, I did.

4 MR. GOURLEY: Okay. That's all I have, Your Honor.

5 THE COURT: Anything?

6 SURREBUTTAL EXAMINATION

7 BY MS. SHURLING:

8 Q. Well, how long before the suppression motion
9 hearing did you have those discussions?

10 A. It was, it was early on. We actually started
11 discussing it even before the prelim because that was
12 really the entire issue that we had, you know. The whole
13 idea is that we didn't think it was a valid stop.

14 I made that -- made basically the same argument
15 during the preliminary hearing. And we discussed the
16 suppression motion. And, frankly, we discussed it because
17 he, Mr. Madison decided for us to pursue the other options
18 that he may have had and that is to work with the police
19 and cooperate, all of the things that he asked to see if
20 we could get back on the table after, after his
21 conviction.

22 And I told him it was too late. When you decided
23 -- because that's when I told him. When you decide to
24 move forward with the suppression hearing, this is all we
25 have. We'll not have anything else. We'll just have this

EVERETT KEITH CHANDLER - SURREBUTTAL BY SHURLING

1 because if the judge doesn't throw the drugs out, the jury
2 certainly is not when they see it fall out on the video.

3 Q. When the hearing was being held on May 19th --

4 A. Yes.

5 Q. -- how had Mr. Madison been notified of that
6 hearing?

7 A. I would have told him. I don't know if it was -- I
8 can't remember if it was my staff member or my -- if it
9 was a direct call that I made or, but my -- it would have
10 been my office would have told him about the hearing date.
11 However, he knew about the option of the suppression.

12 Q. Would you have told him about the hearing in
13 writing or just in a telephone call?

14 A. I would have told him, I would have -- it would
15 have depended on when we were told. In Aiken County you
16 could find out that you're on the docket on Friday. And
17 so if we found out we were on the docket on Friday, then
18 he would get a call about two P.M. just like when we got
19 and it would have said, "Shawn, we're up," you know.

20 But we knew what we were going to argue, whether
21 they were going to call our case or not.

22 Q. I feel your pain but don't feel rained on. It's
23 not the only county it happens in.

24 A. Oh, really? Well, I was being very specific as in
25 this situation. I would not be surprised. So it could be

EVERETT KEITH CHANDLER - SURREBUTTAL BY SHURLING

1 as early as the Friday before or we would have known a
2 week before from our discussions with Beth Ann Young who
3 was the prosecutor then. I just don't remember.

4 Q. Would you have any kind of record in your file of
5 when he was scheduled to have a second appearance?

6 A. I'm not even sure if that was in effect then. This
7 is so long ago, I'm not even sure we were doing that then
8 but I'll look. (Looking through documents.)

9 I'm looking at my correspondence to Mr. Madison.
10 And I'm looking. It seems like I'm giving him roll call
11 dates. And I don't know if we were doing first and second
12 appearances then here in this county.

13 Q. Okay.

14 A. But I see --

15 Q. What is the last roll call notification you gave
16 him prior to May 19th?

17 A. Of what year?

18 Q. 2008.

19 A. I see an October reminder. I see an October 1st,
20 2007, reminder. I see a November 2nd reminder of a roll
21 call. I see a December 10th reminder. You said the last
22 before the day?

23 Q. Uh-huh. Please, sir.

24 My apologies, Madam Court Reporter. I'm as bad as
25 my witnesses. I apologize.

EVERETT KEITH CHANDLER - SURREBUTTAL BY SHURLING

1 A. I see a February. What was the date again? I'm
2 sorry.

3 Q. May 19th, 2008.

4 A. Last reminder I see is on a March 2008 roll call.

5 Q. Do you maintain a phone log of your calls?

6 A. I'm looking at it now. I have a log from my
7 paralegal on April the 18th, spoke to Shawn and reminded
8 him about roll call on or about 4-21-08 and he said he
9 would be there.

10 Let's see. May 12th. Spoke to him and reminded
11 him about a roll call on 5-19. He said he would be there.

12 Q. So your own records indicate that when he was
13 notified for Court for May 19th it was for roll call?

14 A. I say I have two -- a May 12th that says it was for
15 roll call.

16 Q. For roll call for May 19th?

17 A. Yes.

18 Q. Which was the day of the suppression hearing?

19 A. Yes.

20 Q. And, again, to not try to beat a dead horse --

21 A. Oh no.

22 Q. -- but that's the only documentation you have of
23 any notification to Mr. Madison of anything on May 19th is
24 your paralegal's notation that she reminded him of a roll
25 call on that day?

1 A. That would be the only documentation. As I said
2 before, we had his mobile number. I could have -- as I
3 said earlier, I could have called him to tell him. I
4 can't remember what was our way of notification. As I
5 said, we could get a call that, that Friday at two saying
6 "You're up."

7 Q. I understand.

8 A. Yes, but, but the documentation that we have is
9 just calls, documented calls saying that, telling
10 Mr. Madison, reminding him of the roll call on that.

11 Q. And no documentation of any notification, verbal or
12 written, that there would be a suppression hearing held on
13 that day?

14 A. There was no written documentation, no.

15 MS. SHURLING: Thank you. No further questions.

16 MR. GOURLEY: Nothing else, Your Honor.

17 THE COURT: Sir, you may step down. Thank you.

18 THE WITNESS: Thank you.

19 MS. SHURLING: Moment's indulgence.

20 (Pause.)

21 MS. SHURLING: Your Honor, with consent of
22 respondent -- I apologize. I meant to do this earlier --
23 I would just proffer as an officer of the Court that I
24 made every reasonable attempt to locate Billy Laird, the
25 tenant of the apartment complex that called and complained

1 about the female smoking marijuana out in the parking lot.
2 I was actually able to locate his first cousin who was
3 able to give me also an address and phone number for a
4 sister. The sister's phone number had been disconnected.
5 The cousin advised me that he moved around a lot and had
6 been in trouble a good bit and that he, frankly, didn't
7 know where he was. And that was as far as my lead went
8 but I made every good faith effort to locate him so I
9 could proffer his testimony here today.

10 Thank you, Your Honor.

11 THE COURT: Now with regards to what Ms. Shurling
12 had requested earlier, any objection to that by the
13 State?

14 MR. GOURLEY: Judge, I would propose proposed
15 orders, if anything. The memorandums just seem excessive
16 in my opinion and delays the process.

17 THE COURT: I will allow you to submit proposed
18 orders within 10 days.

19 MS. SHURLING: That's actually my preference, Your
20 Honor.

21 I just recently found an obscure little case
22 somewhere that took fault with a lawyer for sending
23 proposed -- for sending proposed orders when it was the
24 lawyer's idea, not the judge's. So I always offer
25 memorandum in case the Court prefers that.

1 THE COURT: I'd rather have a proposed order.

2 MS. SHURLING: Thank you, Your Honor.

3 THE COURT: Let me just say this for the record.
4 During the hearing of Mr. Madison we took a break earlier,
5 and during that break I called Mr. Gourley back in
6 chambers. I just want to put on the record the purpose of
7 calling him back there, was for scheduling issues as it
8 pertains to the matter involving Ms. Aimee Zmroczek which
9 is scheduled for Wednesday and Thursday, that it had
10 absolutely nothing to do with this particular case.

11 And in other words, I come in -- other judges
12 handle these post-conviction relief matters, it's very,
13 very uncommon for the judge to converse or to speak with
14 the attorney general because he sets the roster for that
15 week or for this week. And I have gotten a call from
16 Judge McMahon concerning the hearing scheduled for
17 Wednesday and Thursday which is one matter with
18 Ms. Zmroczek. Judge McMahon inquired about the status of
19 that hearing for Wednesday and Thursday because she was
20 wanted in Edgefield County in general sessions court. And
21 therefore myself, my law clerk, Mr. Gourley had a
22 conference call with Ms. Zmroczek concerning this matter
23 scheduled for this coming Wednesday and Thursday at the
24 request of Judge McMahon. That was why I called him back
25 in chambers during the break.

1 MS. SHURLING: Thank you, Your Honor.

2 I, for the record, had already told my client that
3 unfortunately the fate that befell presiding judges on
4 Monday of a term of PCR was that you were dealing with
5 countless requests to beg off and get continuances and
6 that you more than likely had scheduling matters you had
7 to confer with the attorney general.

8 THE COURT: Well, and I just want to make clear for
9 the record and address that when I came back and didn't
10 want to leave anything out there concerning any of
11 questions in your minds as to what that was about. So I
12 wanted to make it clear for the record.

13 MS. SHURLING: Yes, sir. One last thing.

14 THE COURT: Yes.

15 MS. SHURLING: And I don't know about Aiken, I've
16 lost track at this point, but in most counties without any
17 difficulty what I do when I submit a proposed order in
18 lieu of making arguments in court --

19 THE COURT: Yes.

20 MS. SHURLING: -- I give Your Honor a copy that's,
21 you know, the order but I also do a copy that the cover
22 page says memorandum of law in support of application in
23 the form of a proposed order. And on the final page
24 where Your Honor would sign it says "The above written
25 proposed order was submitted to the judge for

1 consideration in lieu of arguments," and I sign it and
2 file it just so that the arguments that I've made in the
3 proposed order will be part of the record.

4 THE COURT: That's fine.

5 MS. SHURLING: Because if I just try to file it as
6 a proposed order some clerks of court will take them and
7 some won't. So I've had to adopt that other practice.
8 Thank you, Your Honor.

9 THE COURT: All right.

10 MR. GOURLEY: Thank you, Judge. That's it for
11 today.

12 THE COURT: All right. 9:30 in the morning.

13 END OF PROCEEDINGS 4:11 P.M.
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, Cheri L. Young, Registered Professional Reporter and Official Court Reporter for the State of South Carolina, Second Circuit-At Large, do hereby certify that the foregoing proceedings were written stenographically by me using computer-aided translation; further, that the foregoing is a true, accurate and complete record, to the best of my skill and ability, of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Aiken County, on the 12th day of January, 2015.

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

I have hereunder set my hand this 6th day of November, 2015.

Cheri L. Young, RPR
Official Court Reporter

AGENCY I.D.
SC0020300

REPORT

CASE NUMBER

NCIC

0,7,-,0,1,4,6,8,6

NO. EXTD.
N N

PLAINTIFF'S
EXHIBIT

04-CP-369

4/12/15

EVENT	1. TRAFFICKING COCAINE (35A)		COMPLETED ☒ YES ☐ NO		FORCED ENTRY ☐ YES ☐ NO		PREMISE TYPE Highway/Road/Alley		UNITS ENTERED		TYPE VICTIM ☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☒ Soc. Public ☐ Other ☐ Unknown ☐ Police Off.																	
	2.		☐ YES ☐ NO		☐ YES ☐ NO																							
	3.		☐ YES ☐ NO		☐ YES ☐ NO																							
VICTIM NO. 1	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) 310 WEST HUGH STREET, NORTH AUGUSTA										ZIP CODE 29841-		WEAPON TYPE															
	INCIDENT DATE 03/27/2007		24 HR. CLOCK 22:07		TO DATE		24 HR. CLOCK		DISPATCH DATE/TIME 24 HR. CLOCK DISP. DATE 03/27/07		DISP. TIME 22:07		TIME ARRIVED 22:07		DEPART. TIME 23:11		LOCATION NO.											
	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) YOUNGBLOOD, JEREMY,				RELATIONSHIP TO SUBJECT ST		RESIDENT ☒ S ☐ O ☐ U		RACE W		SEX M		AGE 23		ETH. N		DAYTIME PHONE (803) 279-2121		EVENING PHONE (803) 279-2121									
	ADDRESS 400 EAST BUENA VISTA AVE				CITY NORTH AUGUSTA				STATE SC		ZIP CODE 29841-		LOCATION NO. 02003															
VICTIM NO. 1	VICTIM'S NAME (LAST, FIRST, MIDDLE) STATE, OF SOUTH CAROLINA,				RELATIONSHIP TO SUBJECT		RESIDENT ☒ S ☐ O ☐ U		RACE		SEX		AGE		ETH.		DAYTIME PHONE (803) 279-2121		EVENING PHONE									
	HEIGHT				WEIGHT				HAIR				EYES				FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.											
	ADDRESS				CITY				STATE				ZIP CODE				LOCATION NO.											
	VICTIM INJURY (VICT. 1) ☐ YES ☐ NO ☐ EXPLAIN—																		COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☒ NO									
SUBJECT NO. 1	VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK. ☐ DRUGS: ☐ YES ☐ NO ☐ UNK. ☐ TYPE:																											
	TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/PLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ * J—This Jurisdiction. S—State. O—Out of State. U—Unknown																											
	☒ SUSPECT		NAME (LAST, FIRST, MIDDLE) MADISON, SHAWN,				RACE B		SEX M		AGE 31		ETH. N		DATE OF BIRTH 12/07/75		HEIGHT 510		WEIGHT 154		HAIR BLK		EYES BRO					
	☐ RUNAWAY		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. TATTOO LFT FOREARM / RT FOREARM / LFT SHOULDER																									
NARRATIVE	☐ WANTED		ADDRESS 528 MOTON ST																		CITY NORTH AUGUSTA		STATE SC		ZIP CODE 29841-		LOCATION NO.	
	☐ WARRANT		SUBJECT (NO. 1) USING: ALCOHOL: ☐ YES ☐ NO ☐ UNK. ☐ ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐ DATE/TIME OF OFFENSE 03/27/07 22:07																		DATE/TIME OF ARREST 03/27/07 22:24							
	☐ ARREST		DRUGS: ☐ YES ☐ NO ☐ UNK. ☐ TYPE: TOTAL # ARRESTED 1																									
	☐ FUGITIVE		ON THE ABOVE DATE AND TIME, THIS OFFICER RESPONDED TO THE INCIDENT LOCATION IN REFERENCE TO SUSPICIOUS ACTIVITY. THIS OFFICER OBSERVED A BLACK FORD TAURUS, LICENSE NUMBER DU1397, DRIVING AWAY FROM THE LOCATION. THIS OFFICER INITIATED A TRAFFIC STOP ON THE VEHICLE OUTSIDE THE ENTRANCE OF THE INCIDENT LOCATION. THIS OFFICER SPOKE WITH THE SUBJECT WHO STATED THAT HE WAS AT THE INCIDENT LOCATION. THIS OFFICER ASKED THE SUBJECT IF HE HAD ANY DRUGS OR WEAPONS THAT HE NEEDED TO TELL HIM ABOUT. THE SUBJECT STATED, THAT HE DID NOT HAVE ANYTHING ON HIM. THIS OFFICER ASKED THE SUBJECT IF HE COULD SEARCH THE CAR. THE SUBJECT STATED THAT THIS OFFICER COULD SEARCH THE CAR. WHEN THE SUBJECT STEPPED OUT OF THE CAR HE WAS HOLDING HIS CROTCH, THIS OFFICER TOLD HIM TO LET GO AND WHEN HE DID A CLEAR BAG CONTAINING A WHITE POWDER SUBSTANCE CONSISTENT TO COCAINE FELL OUT OF HIS PANTS. THE SUBJECT WAS PLACED UNDER ARREST, SEARCHED AND HANDCUFFED																									
PROPERTY EST.	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY																		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY									
	TYPE (GROUP) Cocaine - al		TOTAL VALUE																									
	STOLEN																											
	DAMAGED																											
ADMINISTRATIVE	BURNED																											
	RECOVERED																											
	SEIZED		29.700 GM																									
	SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER																			
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY																												
REPORTING OFFICER YOUNGBLOOD, JEREMY		DATE 03/27/07		UNIT NUMBER 242		APPROVING OFFICER DUKE, WAYNE		DATE 03/28/07		UNIT NUMBER 102																		
FOLLOW-UP INVESTIGATION ☐ YES ☒ NO																												

AGENCY I.D.
SC0020300

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

07 - 014686

NCIC

INO. N
END. N

☒ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 2 of 2 PAGES

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINT	NAME (LAST, FIRST, MIDDLE)										VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH.			
	☐ VICTIM #											#1	#2	#3									
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.																	
	☐ RUNAWAY																						
	☐ WANTED	ADDRESS										CITY			STATE	ZIP CODE	LOCATION NO.	DAY PHONE			EVENING PHONE		
	☐ WARRANT																						
	☐ ARREST	☐ VICTIM NO. : VISIBLE INJURY: ☐ NO ☐ YES										COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES			VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK			☐ TWO-MAN VEHICLE ☐ DETECTIVE/PLASMT. ☐ ALONE					
	☐ JAIL	EXPLAIN:													DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK			☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED					
	☐ SUMMONS	☐ SUBJECT NO. : USING ALCOHOL: ☐ NO ☐ YES																					
	☐	USING DRUGS: ☐ NO ☐ YES → TYPE: ☐ UNK																					

BEHIND THE BACK. THE HANDCUFFS WERE CHECKED FOR FIT AND DOUBLE LOCKED. THE SUBJECTS VEHICLE WAS SEARCHED WITH NEGATIVE RESULTS AND RELEASED OVER TO THE SUBJECTS GIRLFRIEND. THE SUBJECT WAS TRANSPORTED TO HEADQUARTERS IN OFFICER NICHOLS VEHICLE. THE VEHICLE WAS SEARCHED BEFORE AND AFTER TRANSPORT FOR CONTRABAND WITH NEGATIVE RESULTS. THE SUBJECT WAS BOOKED, FINGERPRINTED, AND INCARCERATED. THE CLEAR BAG CONTAINING A WHITE POWDER WAS TAKEN INTO EVIDENCE. A WARRANT APPLICATION WAS COMPLETED. WILL SEE MAGISTRATE FOR WARRANT. THE SUBJECT WAS ISSUED WARNING NUMBER A194188, FOR IMPROPER DISPLAY OF VEHICLE LICENSE.

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	
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VEH. / GUN / ETC. 1	STATUS	TYPE	VIN AND/OR LICENSE NO.		BOAT HULL NO. AND/OR REG. NO.	
	☐ STOLEN	☐ VEHICLE				
	☐ RECOVERED	☐ GUN	SERIAL AND/OR OWNER APPLIED NO.		STATE	
	☐ FOUND	☐ BOAT	YEAR OF REGISTRATION		YEAR OF EXPIRATION	YEAR
	☐ TOWED	☐ LICENSE PLATE	MODEL	STYLE	COLOR	MAKE
	☐ SUSPECT	☐ SECURITIES/BONDS, STOCKS	MFG NO.		DENOMINATION	ISSUER
	☐ VICTIM	☐ ARTICLE	MISCELLANEOUS		SECURITIES DATE	

TYPE (GROUP)						TOTAL VALUE
STOLEN						
DAMAGED						
BURNED						
RECOVERED						
SEIZED						

SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☒ ACTIVE ☐ ASK CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 16 ☒ ARRESTED 16 AND OVER	☐ EX-CLEAR UNDER 16 ☐ EX-CLEAR 16 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY						
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE
YOUNGBLOOD, JEREMY		03/27/07	242	DUKE, WAYNE <i>[Signature]</i>		03/28/07
				FOLLOW-UP INVESTIGATION ☐ YES ☒ NO		

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Shawn Madison, #328499

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2009-CP-02-00369

ORDER OF DISMISSAL

58-15
[Signature]
C.C.P. & G.S.
[Signature] 115
Deputy Clerk

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on March 3, 2009. Respondent made its return on May 14, 2009. An evidentiary hearing into the matter was convened on January 12, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted at the February 2008 term of the Aiken County Grand Jury for trafficking in cocaine greater than ten grams but less than twenty-eight grams – third offense (2008-GS-02-0089). Everett Chandler, Esquire represented him. On May 19, 2008, a suppression motion was held and denied. On May 20, 2008, Applicant entered a negotiated guilty plea before the Honorable Doyet A. Early, III, and was sentenced to twenty years imprisonment and a \$50,000.00 fine. Applicant did not appeal his conviction or sentence.

An evidentiary hearing was convened into the matter on July 12, 2011, before the Honorable James C. Barber, III, at the Aiken County Courthouse. At the conclusion of the hearing, Applicant's PCR counsel, Demal I. Mattson, Jr., renewed a previously filed motion for discovery to obtain the 911 phone call audio tape and the officer's ticket books in order to explore the possibility of a pretextual stop. Judge Barber issued a Form 4 order retaining jurisdiction and continuing the case until the September 2011 term of PCR Court. By Order dated September 16, 2011, Judge Barber ordered that the case be continued and placed on the next available roster before the next presiding judge. On September 17, 2012, the Honorable Doyet A. Early, III signed a consent order of substitution of counsel and Tara D. Shurling, Esquire, was substituted as counsel of record for Demal I. Mattson, Jr., Esquire.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. "Counsel failed to inform me of right to appeal."
 - b. "Counsel did not file an appeal."
 - c. "Counsel did not file a motion to reconsider the sentence."
 - d. "Counsel never advised applicant to obtain character witnesses and family members for the sentencing process."
 - e. "Counsel did not adequately explain the plea sentence."
 - f. "Counsel did not recommend any substance abuse or counseling programs for applicant to attend for sentencing purposes and possible mitigation."
 - g. Counsel did not recommend Applicant to obtain any type of psychological profile or evaluations for sentencing purposes."
 - h. "Counsel never spoke with any family members, friends, teachers, of Applicant for sentencing purposes nor did he advise applicant or even question applicant about the existence of persons to support applicant during sentencing purposes."
 - i. "Counsel failed to file any motions to require an independent evaluation of the alleged controlled substance seized from the applicant."

- j. "Counsel did not obtain anyone to independently weigh the amount of the alleged controlled substance."
- k. "At the suppression hearing counsel was completely unprepared and deficient in the following particulars:
 - i. Never inquired as to why the Police had been dispatched to the apartment complex;
 - ii. Never obtained a copy of the 911 call or tape of the complainant concerning his or her call to the police;
 - iii. Never raised the issue of racial profiling or the pretextual stop;
 - iv. Never obtained or attempted to obtain the Police Dispatch Log dispatching law enforcement officers to the area;
 - v. Never filed a Motion to obtain the arresting officers ticket books or warning ticket books to determine the possibility of racial profiling and/or pretextual stops which would have provided him with the names and addresses of possible witness for the Suppression Hearing."
- l. "The applicant's rights were violated by the ineffective assistance of counsel which prejudiced the Defendant in violation of the 6th Amendment to the United States Constitution. Strickland v. Washington, 455. U.S. 558, 104 S.Ct. 2052 (1984)."

Applicant's Counsel, Tara D. Shurling filed an amended application for post-conviction relief on July 28, 2014, alleging the following allegations:

- 1. Plea Counsel was ineffective for failing to fully present evidence and arguments in support of Applicant's motion to suppress the drug evidence in his case.
- 2. Plea Counsel was ineffective for advising his client to accept a guilty plea bargain, and enter a plea of guilty, without first fully advising his client of all the consequences of such a plea including the waiver of his right to appeal the decision of the lower court on his motion to suppress the drug evidence in his case.
- 3. Plea Counsel was ineffective for neglecting to advise his client that a plea of guilty would effectively waive his right to have an appellate court review the question of whether or not the lower court erred in ruling that the drug evidence in his case was admissible notwithstanding evidence that the drugs were seized as a result of an unlawful detention.
- 4. Plea Counsel was ineffective for failing to develop a record in support of Applicant's motion to suppress the drug evidence in his case.
- 5. Plea Counsel was ineffective for failing to challenge the assertion of law enforcement that the tag cover found on the vehicle driven by Applicant on the night of the incident in question violated State law.
- 6. Plea Counsel was ineffective for failing to take necessary measures to preserve the license tag and tag cover from the car driven by Applicant on the evening of the violation alleged by this State where said evidence was material to Applicant's ability to prove that the reason advanced by law enforcement for the stop of the vehicle on the evening in question was a pretext.

7. Plea Counsel was ineffective for failing to take proper measures to obtain copies of law-enforcement logs, dispatch tapes and other law-enforcement records which would have documented the exact nature of the call which resulted in law enforcement coming to the apartment complex where Applicant was stopped, eventually arrested, on the night of his arrest.
8. Applicant's plea was not voluntarily and intelligently entered where it was entered without the understanding that he would not be able to appeal the lower court's ruling on the legality of the seizure of the drugs in his case if he pleaded guilty, and where his belief that he would still have the right to appeal that decision was reinforced by remarks from the Court at the time of his plea.

This Court notes Applicant only proceeded on claims stemming from his amended application filed by PCR Counsel on July 28, 2014.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Rose Rivers (Rivers). The State presented testimony from Everett Chandler, Esquire (Plea Counsel). This Court also had before it a copy of the motion hearing transcript, plea transcript, the Aiken County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, amended allegations, and return.

During the evidentiary hearing, Applicant called Plea Counsel to testify. Plea Counsel stated that he was retained to represent Applicant on or about April 2, 2007. Plea Counsel stated Applicant was stopped by police on March 27, 2007 after exiting an apartment complex. Plea Counsel explained that the police were dispatched to the apartment complex for a complaint related to a drug transaction. Plea Counsel stated Applicant consented to a search of the vehicle and as he exited the vehicle a package of cocaine fell out of his pants. Plea Counsel stated the police initially stopped Applicant for a tinted license plate. Plea Counsel stated he filed a motion to suppress the evidence due to an unlawful search and seizure. Plea Counsel stated the motion was heard on May 19, 2008, before the Honorable Doyet A. Early, III. During the course of the suppression hearing, Plea Counsel argued that the stop was pretextual in nature because the

officers never mention the tinted license plate. Plea Counsel stated he argued that Applicant was only given a warning for the tinted license plate after the stop, search, and seizure had occurred. Plea Counsel stated Judge Early ultimately denied the motion to suppress the drug evidence. Plea Counsel stated the following day, May 20, 2008, Applicant pled guilty to the lesser included offense of trafficking cocaine-second offense 10 grams to 27.9 grams and was sentenced to a negotiated twenty year sentence. Plea Counsel stated he discussed Applicant's right to withdraw his guilty plea.

Plea Counsel stated that he did not file a motion to preserve the tinted license tag, log books, or 911 audio tapes. Plea Counsel stated that he did not think to preserve the 911 calls or dispatch logs because he did not believe they were relevant to the suppression motion. Plea Counsel stated his strategy was to argue the stop was pretextual in nature because the police never mentioned that the basis for stopping Applicant was the tinted license plate. Plea Counsel stated in his opinion, the warning for the tinted license plate was only issued in an attempt to give some sort of justification for the stop. Plea Counsel stated that he continually argued that there was never any mention about a tinted tag prior to or during the stop. Plea Counsel further stated the police never discussed the tag with Applicant during the stop. Plea Counsel stated it was his opinion that the warning for the tinted license plate was a retroactive justification for the stop itself.

Plea Counsel recalled that the vehicle Applicant was driving was registered to Applicant's girlfriend and it was released to Applicant's girlfriend after the search was conducted. Plea Counsel recalled visiting the apartment complex, meeting with Applicant's girlfriend, and going into her apartment. Plea Counsel could not recall if he took pictures of the vehicle or license tag cover. Plea Counsel stated he knew Applicant was at the apartment

complex visiting his girlfriend prior to being pulled over by the police. However, Plea Counsel stated the focus was not on why Applicant was at the apartment complex. Plea Counsel stated that Applicant did not "volunteer" to have the car searched, but instead gave "permission" that the car be searched. Plea Counsel conceded that he may have artfully worded that Applicant volunteered that the car be searched.

Plea Counsel stated that he did not attempt to bifurcate the State's argument during the course of the suppression hearing. Plea Counsel stated he was not focused on whether or not the police were acting on a credible "tipster." Plea Counsel stated he did not present evidence that the tip was about a lone female smoking marijuana. Plea Counsel recalled talking to the apartment complex personnel. Plea Counsel opined that the stop was pretextual and the best argument to suppress the evidence was to argue that the police merely used the tinted license tag as means to legitimize the stop. Plea Counsel stated that he reviewed the applicable law and determined that a tinted license tag was illegal.

Plea Counsel stated that he advised Applicant of his right to appeal his guilty plea and Applicant did not indicate that he wanted to file an appeal. Plea Counsel stated he could not recall, seven years later, whether he advised Applicant that he would lose the right to appeal the denial of the suppression motion hearing if he pled guilty. However, Plea Counsel stated it is his typical practice to advise his clients that they waive all non-jurisdictional challenges by pleading guilty. Plea Counsel further explained that he visited Applicant after his guilty plea and discussed his appellate rights and his post-conviction relief rights. Plea Counsel further recalled the plea judge advising Applicant of his appellate rights.

Following Plea Counsel's testimony, Applicant called Rivers to testify on his behalf. Rivers stated that she was the apartment manager for North Augusta Garden Apartments in 2007.

Rivers stated that there were over 100 units in 18 individual buildings. Rivers stated a concerned resident, Billy Laird, brought to her attention that there was a lone female smoking marijuana outside one of the buildings. Rivers stated that she advised Billy Laird that he could call the police. Rivers stated the Billy Laird called the police and she obtained the police report the following day. Rivers stated that Billy Laird is no longer a resident of the apartment and she does not know where he currently resides.

Rivers stated that Applicant was a frequent guest at the apartment complex. Rivers stated that Applicant's girlfriend was a tenant at the apartment complex. Rivers stated Applicant's girlfriend lived in apartment building one. Rivers stated apartment building one faced apartment building two and was at the end of a cul-de-sac. Rivers stated Applicant's girlfriends name was Dricka Robinson.

Following River's testimony, Applicant was called to testify on his own behalf. Applicant stated he was driving his girlfriend's car when he was pulled over by the police. Applicant stated the police never discussed the tinted tag cover when they pulled him over. Applicant stated the police officer asked him if they could search the car and he consented to the search. Applicant stated he retained Plea Counsel's services. However, Applicant stated they never discussed the Fourth Amendment issue. Applicant claimed that he saw Plea Counsel three separate times out of a thirteen month time span. Applicant stated he was aware of the suppression hearing. Applicant stated Plea Counsel never discussed the possibility of arguing that the police were called out to the apartment complex due to a woman smoking marijuana.

Applicant stated he was present at the preliminary hearing. Applicant stated he first learned about the tinted license tag cover during the preliminary hearing. Applicant stated that he did not tell Plea Counsel that the tinted license tag came from Advance Auto Parts. Applicant

stated it was his opinion that the police were merely using the tinted license tag as a justification for pulling him over. Applicant stated that he gave consent to search the vehicle. Applicant stated that he never discussed the fruit of the poisonous tree doctrine with Plea Counsel. Applicant stated that Plea Counsel never discussed the fact that he would lose his right to appeal the denial of his suppression motion if he pled guilty. Applicant stated that he was completely unaware of his appellate rights and only knew about his PCR rights.

Applicant recalled that he was sentenced pursuant to negotiations and received exactly what he bargained for during the plea process. Applicant recalled the plea judge advising him of his right to appeal within ten days of the guilty plea. Applicant stated his mom and girlfriend were present at the guilty plea hearing.

Following Applicant's testimony, Plea Counsel was recalled by the State. Plea Counsel stated that he discussed the Fourth Amendment violation with Applicant on numerous occasions. Plea Counsel stated that they discussed the Fourth Amendment violation prior to his preliminary hearing. Plea Counsel stated they discussed whether the stop was legal and valid. Plea Counsel stated that Applicant had no chance at trial and their only hope was to suppress the drug evidence. Plea Counsel stated they had no chance at trial if they lost the suppression motion because the officer's dash cam captured Applicant exiting the vehicle and a bag of cocaine falling from his pants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weighed their testimony accordingly. Specifically, this Court finds Plea Counsel's testimony credible

while finding Applicant's testimony self-serving and not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would

not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

Plea Counsel was ineffective for failing to fully present evidence and arguments in support of Applicant's motion to suppress the drug evidence in his case.¹

This Court finds Applicant's allegation that he received ineffective assistance of counsel when Plea Counsel failed to present evidence and arguments in support of the motion to suppress the drug evidence in this case to be without merit. Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

In the instant case, Plea Counsel stated he discussed the Fourth Amendment violation with Applicant prior to the actual hearing. Plea Counsel stated he explained to Applicant that

¹ This Court notes Applicant's amended allegations 1 and 4 both stem from a central claim of ineffective assistance of counsel for failing present arguments and evidence during the suppression hearing. As such, this Court is consolidating amended allegations 1 and 4 and has addressed them as one claim.

they were going to argue that the stop itself was not valid and the subsequent search was illegal. Plea Counsel stated he explained to Applicant that if they were not successful on the suppression motion then they would have nothing left to argue at trial because Applicant was on camera when a bag of cocaine fell from his pants.

Additionally, Plea Counsel's argued that the stop and subsequent search of Applicant's vehicle was illegal and pretextual in nature. A review of the suppression motion hearing transcript reveals that Plea Counsel argued that a warning ticket for an illegal tag was merely a post-justification for the stop. Plea Counsel argued that the investigating officer had previously admitted during the preliminary hearing that he never mentioned the illegal tag during the stop. (Supp. Mtn. tr. p. 4). Plea Counsel continually stressed to the court that a warning ticket was only given "after he had been arrested for trafficking cocaine." (Supp. Mtn. tr. p. 5). Plea Counsel concluded that all the evidence should be suppressed because it was the result of an illegal stop. Based on the foregoing, this Court finds Plea Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). This Court finds Plea Counsel's strategy and arguments during the suppression motion were reasonable. Whitehead, 308 S.C. at 119, 417 S.E.2d at 529 (1992).

Under the second prong of the analysis in Strickland, the PCR applicant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Id. In the instant case, Applicant has failed to provide any persuasive evidence or arguments to show what, if anything, Plea Counsel could have done during the suppression

motion to convince the judge to rule in Applicant's favor. To the contrary, Applicant merely states alternative arguments that Plea Counsel *could* have pursued during the suppression motion. Applicant has failed to present any persuasive arguments to this Court that Plea Counsel's strategy during the suppression motion was not a valid argument. Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

*Plea Counsel was ineffective for advising his client to accept a guilty plea bargain, and enter a plea of guilty, without first fully advising his client of all the consequences of such a plea including the waiver of his right to appeal the decision of the lower court on his motion to suppress the drug evidence in his case.*²

Applicant's allegation that he received ineffective assistance of counsel when Plea Counsel failed to advise him that if he pled guilty he would ultimately waive his right to appeal the lower court's denial of his suppression motion is without merit. Plea Counsel stated that he could not specifically recall, seven years later, whether he advised Applicant that his guilty plea would waive his right to appeal the denial of his suppression motion. However, Plea Counsel stated that it is his typical practice to advise his clients of such a waiver. Furthermore, Plea Counsel recalled advising Applicant of both his appellate rights and PCR rights. Additionally, the plea transcript reveals Plea Counsel telling the court that he discussed applicant's possible defenses, challenges to the evidence, and the denial of the motion to suppress the drugs. Plea Counsel advised the court that "in light of all of that, my client has decided to waive his right to trial and plead guilty." (Pl tr. p. 8 lines 15-19). Based on the foregoing, this Court finds Plea Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

² This Court notes Applicant's amended allegations 2 and 3 both stem from a central claim of ineffective assistance of counsel for failing to advise Applicant that when he pled guilty he would ultimately waive his right to appeal the denial of his suppression motion. As such, this Court is consolidating amended allegations 2 and 3 and has addressed them as one claim.

Under the second prong of the analysis in Strickland, the PCR applicant “must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Id. In order to prove prejudice, Applicant must show that the judge erred in denying his suppression motion. See generally Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) (“When the defendant claims that counsel’s failure to articulate a Fourth Amendment claim was ineffective assistance, [the] defendant must show that such claim is *meritorious* and that the verdict would have been different absent the evidence that should have been excluded.” (emphasis added)).

“Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of ‘persons’ within the meaning of [the Fourth Amendment].” Whren v. United States, 517 U.S. 806, 809–10, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). “An automobile stop is thus subject to the constitutional imperative that it not be ‘unreasonable’ under the circumstances.” Id. at 810, 116 S.Ct. 1769. “As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” Id. (citing Delaware v. Prouse, 440 U.S. 648, 659, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979) and Pennsylvania v. Mimms, 434 U.S. 106, 109, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977)). Once a motor vehicle is detained lawfully for a traffic violation, the police may order the driver to exit the vehicle without violating Fourth Amendment proscriptions on unreasonable searches and seizures. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977); State v. Williams, 351 S.C. 591, 571 S.E.2d 703 (Ct. App. 2002).

In the instant case, the North Augusta Department of Public Safety received an anonymous complaint about possible drug activity at North Augusta Gardens Apartments. (Pl. tr. p. 18). As the officers approached the complex they observed a black car pulling out of the complex. (Pl tr. p. 19). The officer's noticed that the car had a tinted cover on its license plate. A tinted license tag is a violation of the law.³ (Pl tr. p. 19). The officers' conducted a traffic stop. (Pl tr. p. 19). During the course of the traffic stop, Applicant gave consent to search the vehicle. (Pl. tr. p. 19). While exiting the vehicle, a bag of cocaine fell from Applicant's person. (Pl tr. p. 20). Applicant was subsequently arrested.

Based on the foregoing, this Court finds that Applicant has not shown any prejudice as a result of his Plea Counsel's alleged error because Applicant's Fourth Amendment claims fails on its merits. It is clear from the factual context as relayed at both the suppression hearing and guilty plea hearing that Applicant was lawfully stopped due to a traffic violation. During the course of the stop, Applicant gave consent to search his vehicle. While exiting the vehicle a bag of cocaine fell from his pants and Applicant was arrested. The subjective motive of the officers does not invalidate the stop. Whren v. United States, 517 U.S. 806, 809-10, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). Under these circumstances, Applicant has not established the requisite prejudice to support his claim of ineffective assistance of counsel. Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

Plea Counsel was ineffective for failing to challenge the assertion of law enforcement that the tag cover found on the vehicle driven by Applicant on the night of the incident in question violated State law.

This Court finds Applicant's allegation that he received ineffective assistance of counsel when Plea Counsel failed to challenge whether a tinted license plate cover is a violation of the

³ Applicant does not challenge that having a tinted license plate is a violation of the law.

law to be without merit.⁴ Plea Counsel stated he reviewed the appropriate statute and determined that a tinted tag cover was a violation of the law. Plea Counsel stated it was not in dispute that the car Applicant was driving had a tinted license tag cover. Based on the foregoing, this Court finds Plea Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, Applicant has failed to provide this Court with any persuasive argument or case law to show Plea Counsel was ineffective in failing to challenge whether the tinted license plate was a violation of the law. Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

*Plea Counsel was ineffective for failing to take proper measures to obtain copies of law-enforcement logs, dispatch tapes and other law-enforcement records which would have documented the exact nature of the call which resulted in law enforcement coming to the apartment complex where Applicant was stopped, and eventually arrested.*⁵

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to preserve various items of evidence to be without merit. Plea Counsel stated he did not consider making an effort to preserve the information. Plea Counsel stated he did not feel the information was relevant to the proceedings or case. Based on the foregoing, this Court finds Plea Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Additionally, this Court notes Applicant can show no prejudice as a result of Plea Counsel's alleged deficiencies because he failed to present any of the evidence in question. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of

⁴ This Court notes that a tinted tag is a violation of §56-3-1240.

⁵ This Court notes Applicant's amended allegations 6 and 7 both stem from a central claim of ineffective assistance of counsel for failing to preserve various pieces of evidence. As such, this Court is consolidating amended allegations 6 and 7 and has addressed them as one claim.

challenged documents were not presented at the PCR hearing, applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense); see also Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Accordingly, this Court finds that Applicant has failed to meet his burden of proof and thus, this allegation is denied and dismissed with prejudice.

Applicant's plea was not voluntarily and intelligently entered where it was entered without the understanding that he would not be able to appeal the lower court's ruling on the legality of the seizure of the drugs in his case if he pleaded guilty, and where his belief that he would still have the right to appeal that decision was reinforced by remarks from the Court at the time of his plea.

This Court finds Applicant's allegation that his plea was not knowingly and intelligently entered because it was done so without the understanding that he would not be able to appeal the denial of his suppression motion to be without merit. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless

a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds that this allegation is without merit and Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made. This Court finds that the Applicant's plea was entered freely and voluntarily. Applicant testified at the evidentiary hearing that he was pleading guilty freely and voluntarily. This Court finds further that the record reflects Applicant was thoroughly advised of the waiver of his constitutional rights by both Plea Counsel and the plea judge. Plea Counsel stated that he could not specifically recall - seven years later - whether he advised Applicant that his guilty plea would waive his right to appeal the denial of his suppression motion. However, Plea Counsel stated that it is his typical practice to advise his clients of such a waiver. Furthermore, Plea Counsel recalled advising Applicant of both his appellate rights and PCR rights.

Additionally, the record reflects Applicant at his plea proceeding told the court that he wished to plead guilty. (Pl. p. 11). The record also reflects that Applicant told the court that he had not been promised or threatened by anyone to get him to plead guilty. (Pl. p. 12). This Court finds that Applicant had a full understanding of the consequences of his plea and the charges against him. This Court finds that the plea judge correctly found that the Applicant's plea was freely, voluntarily, and intelligently made. (Pl. p. 17). Based off of the foregoing, this Court finds this allegation should be denied and dismissed with prejudice.

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 Applicant failed to present

any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

CONCLUSION

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

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 22 day of April, 2015.

D. Brown, South Carolina


D. CRAIG BROWN
Presiding Judge
Second Judicial Circuit

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

SHAWN MADISON, 328499

Applicant.

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

2009-CP-02-00369

RULE 59(e) SCRPC, MOTION TO
ALTER OR AMEND

FILED

5.26.15

L. Hodges
C.C.P. & G.S.

W. Knepper
Deputy Clerk

NOW COMES the Applicant in the above-captioned case, acting by and through undersigned counsel, respectfully moving this Court pursuant to Rule 59(e), SCRPC, to alter or amend its Order of Dismissal filed May 8, 2015 and received by Counsel for the Applicant on May 13, 2015. The Application for Post-Conviction Relief in this matter was filed on March 3, 2009 and was amended on August 1, 2014. The State filed its Return on May 14, 2009. An evidentiary hearing was convened on January 12, 2015 at the Aiken County Courthouse. The Respondent was represented at that proceeding by Assistant Attorney General, Daniel Gourley and the Applicant was represented by Tara Dawn Shurling, Esquire (PCR Counsel) of the Richland County Bar. In the Court of General Sessions the Applicant was represented by Everett Chandler, Esquire (Defense Counsel).

Applicant submits that the Order of Dismissal entered in this matter fails to make findings of fact and rulings of law concerning certain aspects of the allegations as raised by him in this PCR action. Specifically, Applicant would note the following:

- The Order does not address Defense Counsel's failure to introduce readily available evidence that the officer who conducted the vehicular stop which lead to Applicant's arrest had admitted that he was in the process of pulling over the vehicle driven by Applicant before he noticed the tag cover on the vehicle. While Defense Counsel drew the

trial court's attention to the fact that a tag violation was never even mentioned at the scene of the traffic stop, he did not introduce evidence which would have established that the stop had already been initiated before the officer noticed a tag cover on the vehicle's license plate.

- The Order of Dismissal does not address the fact that, although the State claimed Applicant consented to search during a traffic stop, they also argued that law enforcement had just cause to stop Applicant based on articulable suspicion he was involved in drug activity they had been called to the scene to investigate. The Order of Dismissal fails to address Applicant's claim that Defense Counsel failed to develop readily available evidence that could have refuted that claim.
- The Order of Dismissal fails to address Applicant's claims with regard to Defense Counsel's failure to attack the legality of the stop which lead to Applicant's arrest by arguing that the State had failed to meet its burden of proof with regard to the "tipster" involved in this case.
- The Order of Dismissal does not address Defense Counsel's failure to argue that the State did not present any evidence that the tag cover in question violated State law where the State did not produce either the tag cover itself or photographs of the cover. Not only did Defense Counsel fail to make this argument, he conceded that "I just know it was dark" when there is no evidence that he had personally seen the tag cover or discussed it with Applicant.
- The Order of Dismissal does not address Defense Counsel's failure to argue that the State conceded during the suppression hearing that the tag cover violation *was not* "the only reason for the stop ..." S. H. Tr. p. 7, ll. 11-18. Furthermore, the Order fails to address the fact that the Prosecutor openly acknowledged that Officer Youngblood was *in the process of stopping* the car driven by Applicant when "he noticed that it had an improper tag which is a traffic violation..." G. P. Trans. P. 19, ll 13-17.
- Defense Counsel's failure to refute, with readily available evidence, the Prosecution's claim that the stop in this case was supported by reasonable suspicion that Applicant was involved in drug activity is not addressed in the Order of Dismissal.

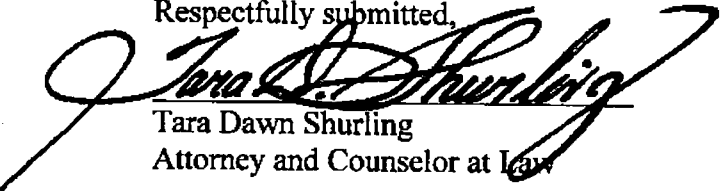
- While the Order of Dismissal notes that Defense Counsel argued that the tag cover violation was a pretext for the real reason for the stop, the Order does not address Defense Counsel's failure to present evidence which would have supported the argument of pre-text. For example, Plaintiff's Exhibit No. 1, the incident report, could have been introduced to prove that a warning ticket for the tag violation was not generated until after Applicant was taken to the Detention Center for booking on the drug charge. Defense Counsel also failed to present evidence that police were called to the scene by a tip that a lone female was smoking marijuana at the scene. While Defense Counsel stated this circumstance as fact in his argument to the Court, he introduced no evidence to corroborate that claim. In addition, Defense Counsel failed to point out that the officer who made the stop proceeded directly with questioning Applicant about drug activity, and asked to search the car, without ever even mentioning what was advanced as the reason for the stop; a tag cover violation.
- The Order of Dismissal does not address Defense Counsel's failure to object to the lower court's ruling on Applicant's Suppression Motion in light of the State's failure to introduce any sworn testimony, or other evidence, during the suppression hearing.
- Defense Counsel's failure to contest the State's claim of reasonable suspicion is not addressed in the Order of Dismissal despite the fact that Applicant has established that there was no evidence that Applicant in any way matched the information provided by the "tipster" whose phone call brought law enforcement to the apartment complex. Where the State argued the stop was both a traffic stop and a stop supported by reasonable suspicion of drug activity, it was crucial that Defense Counsel argue both pretext and lack of reasonable suspicion.
- The Order of Dismissal does not address Applicant's argument that Defense Counsel was ineffective for failing to attack the State's prolonged detention of Applicant after this stop or the off-subject questioning engaged in by the officers making the stop, as factors supporting Applicant's claim of pretext. The Order of Dismissal neglects to address Applicant's argument that Defense Counsel was ineffective for failing to argue that law enforcement had no independent basis for stopping the car driven by Applicant, for questioning him about his involvement in drug activity or for requesting permission to search his car.

Applicant is mindful of the "ALL OTHER ALLEGATIONS" paragraph found at pages 17-18 of this Court's Order of Dismissal, however, it is Applicant's position that such "catch-all" provisions are not sufficient to preserve an issue for review on appeal. *See, Marlar v. State*, 375 S.C. 407, 409-410, 653 S.E.2d 266, 266-267 (S.Ct. 2007); *Humbert v. State*, 345 S.C. 332, 548 S.E. 2d 862 (2001); *Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (1992); *McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991).

CONCLUSION

For all the reasons articulated herein, and as argued at length in Applicant's Memorandum in the Form of a Proposed Order, Applicant respectfully asks the Honorable Court to reconsider its decision to deny relief in this case. Applicant asks that the Order of Dismissal be vacated and that his Application be granted based upon all the arguments and authorities set forth in Applicant's Memorandum as well as those argued at his PCR hearing. Alternatively, he asks for this Court to issue an Amended Order of Dismissal making findings of fact and rulings of law on each of the allegations raised and fully argued at Applicant's PCR hearing and in his Memorandum in support of his PCR Application.

Respectfully submitted,



Tara Dawn Shurling
Attorney and Counselor at Law

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ATTORNEY FOR THE APPLICANT

This 20th day of May, 2015.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Shawn Madison, #328499,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2009-CP-02-00369

**RETURN TO APPLICANT'S
RULE 59(e) MOTION**

FILED

6-22-2015

David L. Haddock
CLERK, C.J. & C.B.

John A. Knepper 1230
Deputy Clerk

Respondent, by and through undersigned counsel, making a Return to Applicant's Motion to Alter or Amend a Judgment, would respectfully show unto this Court:

1. The matter is before the Court by way of a post-conviction relief action filed March 3, 2009.
2. An evidentiary hearing was convened on January 12, 2015, at the Aiken County Courthouse.
3. Applicant was present at the hearing and represented by Tara Shurling, Esquire. Applicant testified in his own behalf. Also testifying was Everett Chandler, Esquire ("plea counsel").
4. After a full review of the evidence presented at the evidentiary hearing, this Court issued an order dated May 8, 2015, denying the application for post-conviction relief.
5. Applicant – through counsel – submitted a Motion to Alter or Amend Judgment on May 20, 2015 (which was received by Respondent on May 26, 2015). Applicant argues the Order of Dismissal fails to properly address his allegation that counsel's ineffective assistance caused Applicant's guilty plea to fail the constitutional requirements that a guilty plea must be knowing and voluntary. Furthermore Applicant argues that the standing Order of Dismissal fails to address various alternative arguments in support of

- the motion to suppress presented by PCR Counsel during the evidentiary hearing.
6. Respondent submits Applicant's motion to alter or amend should be denied. Applicant is not requesting either an alteration or amendment to the Order of Dismissal. Rather, Applicant is asking the Court to reverse its decision and grant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) ("Post-trial motions are not necessary to preserve issues that have been ruled upon at trial; they are used to preserve those that have been raised to the trial court but not yet ruled upon by it." (citing Hubbard v. Rowe, 192 S.C. 12, 5 S.E.2d 187 (1939))).
 7. Respondent submits the post-conviction relief court fully reviewed and properly ruled upon all issues raised in the PCR application and amended application.
 8. Therefore, Respondent submits Applicant's Motion to Alter or Amend should be denied

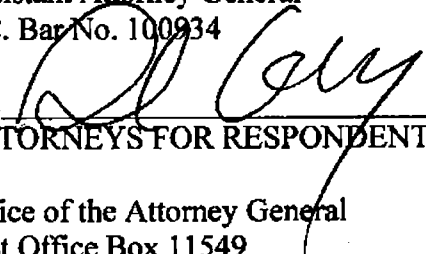
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOULEY
Assistant Attorney General
S.C. Bar No. 100934

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

June 19, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

Shawn Madison, #328499,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2009-CP-02-00369

ORDER

FILED 7-24-15
Leigh Haden
C.C.P. & G.S. 30
Christa Kneiple
Deputy Clerk

This matter comes before this Court by way of a post-conviction relief (PCR) application filed by Shawn Madison (Applicant) on March 3, 2009. The State (Respondent) made its return on May 14, 2009. An evidentiary hearing in to the matter was convened on January 12, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office. This Court issued an Order dated May 8, 2015, denying the application for post-conviction relief.

Applicant filed a motion pursuant to Rule 59(c) of the South Carolina Rules of Civil Procedure, in which he asked this Court to alter or amend its order dismissing his PCR application. Respondent made its return to the motion, requesting this motion be dismissed.

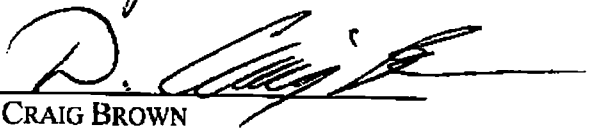
Based upon careful reconsideration of the evidence in this case, including Applicant's motion and supporting memorandum, this Court is not persuaded to alter or amend its judgment. This Court further finds oral argument would not aid in the reconsideration of the original judgment. The Order of Dismissal issued by this Court

DCB
1.10.12

contains the required findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2014) and Rule 52(a) of the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED that Applicant's motion be denied and dismissed.

AND IT IS SO ORDERED this 27 day of June, 2015.


D. CRAIG BROWN
Presiding Judge
Second Judicial Circuit

Florence, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF Aiken
STATE VS.Shawn Madison

AKA:

Race: BSex: MAge: 32DOB: 12/2/75SS#: [REDACTED]Address: 538 Morton RoadCity, State, Zip: North Augusta, SC 29854

DL#

SID# SC 00890750

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-02-89AW#: H 736451Date of Offense: 3/27/07S.C. Code §: 56-53-370(e)(2)(a)(3)CDR Code #: 0147

SENTENCE SHEET

Not Less Than
5 yrs. Nor
more than
30 yrs. ?
\$50,000In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Trafficking Cocaine 222 Offense - 10g - 27.9gin violation of § 44-53-370(e)(2) of the S.C. Code of Laws, bearing CDR Code # 387☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS (CSC
w/minor 1st or Lewd Act)☐ \$17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.(Defendant Initial)
20 years

ATTEST:

Elizabeth B. Young
SolicitorShawn Madison
DefendantE. Chandler
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand to pay a fine of \$ 500; 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.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)		\$50,000.00
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$53,950.00
\$14-1-211(A)(2) (DUI Surcharge)	\$100	100.00
\$56-5-2995 (DUI Assessment)	\$12	
\$35.13 (Public Def/Prob)	\$500	
\$73.3, 1B TP (Law Enforce. Funding)	\$25	25.00
\$33.7, 1B TP (Drug Court Surcharge)	\$100	100.00
\$50-21-114(BUI Breath Test Fee)	\$50	
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	
3% to County (if paid in installments)		3,119.25
TOTAL		107,094.25

PTUP

 days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 0136Sentence Date: May 20, 2008

Court Reporter:

Clerk of Court Deputy Clerk

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT

At a Court of General Sessions, convened on February 11, 2008 the Grand Jurors of Aiken County present upon their oath:

TRAFFICKING IN COCAINE >10GM <28GM - 3RD OFFENSE

That Shawn Madison did in Aiken County in or about March 27, 2007, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of 27.70 grams of Cocaine or any mixtures thereof.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

MAR 02 2009

Liz Godard
C.C.C.P. & G. S., Aiken County, S.C.
Anita Knoepfle
Deputy Clerk

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

Barbara R. Morgan
BARBARA R. MORGAN SOLICITOR

WITNESSES

J.K. Youngblood, N.A.D.P.S.

FILED Feb 7 2008

Shirley Hodard

Clerk

Shawn J. Langley ss
Deputy Clerk

ARREST WARRANT NUMBER

H-736451

ACTION OF GRAND JURY

True Bill

Gayle Fatto
Foreperson of Grand Jury
Date: February 7, 2008

VERDICT

Foreperson of Petit Jury
Date: 194

DOCKET NO. 2008-GS-02-- 89

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

FEBRUARY 11, TERM 2008

THE STATE

vs.

Shawn Madison

Indictment for

**TRAFFICKING IN COCAINE >10GM <28GM -
3RD OFFENSE**

SC Code: 44-53-370(e)(2)(a)3

CDR Code: 0147

Class FEL/EXM(V)

ARREST WARRANT

H-736451

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

AIKEN COUNTY

THE STATE

against

NA2007-014686

SHAWN MADISON

Address: 528 MORTON ROAD

NORTH AUGUSTA SC 29841

Phone: 803 278-5196 SSN: 061-70-8751

Sex: M Race: E Height: Weight:

DL State: SC DL #

DOB: 12/07/75 Agency ORI#: 0203

Prosecuting Agency: N AUGUSTA PS

Prosecuting Officer: PGO J.L.K. YOUNGBLOOD

Offense: TRAFFICKING COCAINE 3RD

OR SUB(>28GRMS) Offense Code: 0148

Code/Ordinance Sec. 44 53 370(2)(B)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant SHAWN MADISON

on 3/28/07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

NORTH AUGUSTA SUMMARY COURT

P.O. BOX 6493

NORTH AUGUSTA SC 29861

2007-65-22-89
STATE OF SOUTH CAROLINA☒ County/ ☐ Municipality of

AIKEN COUNTY

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCGA 618

Personally appeared before me the affiant PGO J.L.K. YOUNGBLOOD who being duly sworn deposes and says that defendant SHAWN MADISON did within this county and state on 3/27/07 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of) in the following particulars:

DESCRIPTION OF OFFENSE: TRAFFICKING COCAINE 3RD OR SUB(>28GRMS)
VIOLATION CODE 44-53-370(2)(B)

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:

UPON INFORMATION AND BELIEF, THAT ON MARCH 27, 2007, THE DEFENDANT, SHAWN MADISON, WHILE OPERATING A BLACK FORD TAURUS, DID KNOWINGLY AND WITHOUT THE AUTHORITY TO DO SO, POSSESS APPROXIMATELY 29.7 GRAMS OF COCAINE. THIS OFFENSE OCCURRING AT 310 WEST HUGH STREET, NORTH AUGUSTA, AIKEN COUNTY, SOUTH CAROLINA. THIS BEING IN VIOLATION OF SECTION 44-53-370 OF THE S.C. CODE OF LAWS. THIS DEFENDANT HAVING THREE PRIOR DRUG CONVICTIONS ON JULY 9, 1997, JUNE 7, 2000, AND MAY 15, 2000.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

AIKEN COUNTY

Affiant's Address 400 E. BUENA VISTA AVENUE

NORTH AUGUSTA SC 29841

Affiant's Telephone 803 279-2121

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 the defendant SHAWN MADISON did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE: TRAFFICKING COCAINE 3RD OR SUB(>28GRMS)
VIOLATION CODE 44-53-370(2)(B)

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 3/28/07

Signature of Issuing Judge

Judge Code: 655

Judge's Address P.O. BOX 6493

NORTH AUGUSTA SC 29861

Judge's Telephone 803 202-3580

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit