

Petition For Writ of Certiorari To The Court of Appeals

The State of South Carolina

In The Supreme Court

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DEC - 6 2013

S.C. Supreme Court

Appeal From Richland County

Court of Common Pleas

Casey L. Manning, Circuit Court Judge

WARREN RUSSELL ©
Petitioner

Petitioner

v.

State of South Carolina

Respondent

Appellate Case # 2012-213313

Exhibit Booklet for Petitioner Brief

1 Q And was that filed?

2 A No, there was no direct appeal ever filed.

3 Q Did you file anything pro se?

4 A No, I did not.

5 Q And today are you requesting a belated appeal
6 pursuant to White versus State?

7 A I think it would be in my best interest to preserve
8 that that right be available to me and not waive it, yes.

9 Q But your primary request is for a new trial?

10 A Yes.

11 Q Mr. Russell, I've gone over the outline that we
12 prepared together. We've met several times. I know that
13 you've worked very diligently on your case. Is there
14 anything else that you'd like to present to the Court that
15 we did not go over?

16 A I have some information regarding the actual verdict
17 because I understand that they're trying to insinuate that
18 since the actual verdict was never read in open court that
19 it doesn't consist of a verdict, but the judge stated
20 herself that there was two ways that she could handle this
21 particular situation: One was her upholding the guilty
22 verdict and calling a mistrial on the other seven counts
23 that was deadlocked on, so clearly there was a legal
24 binding verdict for the judge to be considering calling a
25 mistrial and upholding the verdict.

1 him of that, that was Ms. Grafton's opinion. We also
2 informed him of what the judge said he would get as a
3 sentence for everything, which was pretty much in the
4 middle of the range for the drug charge by itself.

5 Q And did you have a verdict form that you showed him
6 at any time?

7 A I don't recall having a verdict form or an indictment
8 that was signed. I don't recall that.

9 Q And that would be my next question. I asked him
10 about the indictment that was signed guilty. You did not
11 see that prior to the plea?

12 A I did not.

13 I don't recall if they had the indictments or if
14 they had separate jury verdict forms for all the charges.
15 I know for the assault and battery with intent to kill, I
16 believe the lesser included of ABHAN was given to them and
17 therefore the judge did jury verdict forms. I don't
18 recall if it was for all the charges or just those.

19 Q Do you recall that you advised him that his
20 non-violent sentences would be superseded by his violent
21 sentences for time computation purposes?

22 A I certainly went through time computation briefly. I
23 told him that it is up to the Department of Corrections
24 and that all the charges as indicted except for the
25 extortion are 85-percent sentences.

1 Q Now, during the plea, Judge Jefferson does inform
2 Mr. Russell that he can appeal. And he had testified at
3 length today that he thought that he could appeal the
4 double jeopardy issue and the successive Allen charge even
5 though he entered a plea. Did you explain his appellate
6 rights to him prior to entering that plea?

7 A We may have discussed it very briefly.

8 I had never heard of a double jeopardy claim
9 because he was pleading guilty to all the charges. That
10 was my understanding of what was going on at that time.

11 The jury had reached a verdict on one count. We
12 didn't know what it was. It was never announced to the
13 Court, it was never entered into evidence, so he was
14 simply pleading guilty to all charges that he was on trial
15 for.

16 In terms of the successive Allen charge, I don't
17 remember discussing that at all.

18 Q So would you agree or disagree that he entered a
19 conditional plea, if it was his belief that he still
20 maintained those appellate rights?

21 A I don't remember anything about a conditional appeal
22 being mentioned at all. I don't remember it being
23 discussed and it's certainly not in the plea record.

24 Q Now, in this case or in his application, he's also
25 alleged prosecutorial misconduct. Were you aware of any

1 anything about that. Is there any exception to me
2 doing that?

3 MS. CAMPBELL: None, Your Honor.

4 THE COURT: From the Defense?

5 MR. SCHNEE: No, Your Honor.

6 THE COURT: Okay. Thank you. I need Juror
7 120, if you can have him step outside.

8 (WHEREUPON, the Court talks to Juror 120
9 outside of the courtroom.)

10 (WHEREUPON, a break was taken.)

11 MR. SCHNEE: I believe I mentioned to your law
12 clerk I have an issue. It is entirely possible it
13 is just this late hour and me not fully
14 understanding the statute, and this is obviously
15 out of pure respect for the Court, that I believe
16 that it might be improper to issue a separate Allen
17 charge.

18 THE COURT: Actually case law does not support
19 that position. Would you like me to give you the
20 case? It is Buff versus South Carolina Department
21 of Transportation.

22 MR. SCHNEE: If you have researched that, I
23 will take your word for it; Your Honor.

24 THE COURT: More like I deal with it all the
25 time.

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

THE DEFENDANT: No, Your Honor.

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

THE DEFENDANT: No, Your Honor.

THE COURT: Have you had any drugs or alcohol or medication in the last 72 hours?

THE DEFENDANT: No, Your Honor.

THE COURT: Are you aware of any physical, emotional or nervous problem that might keep you from understanding where you are or what you are doing?

THE DEFENDANT: No, Your Honor.

THE COURT: Do we need to re-recite the facts?

MS. SHIPLEY: No, Your Honor. I was going to move to incorporate the trial record

THE COURT: That's fine, I think. Is there any exception, Mr. Schnee?

MR. SCHNEE: No, Your Honor.

THE COURT: Sir, do you agree or disagree with the facts as they have been presently presented during the course of this trial?

THE DEFENDANT: I agree, Your Honor.

THE COURT: Do you feel anything needs to be

~~2nd~~ Issue

1 A I believe it was unanimous on one. They were not
2 unanimous on the second and they were deadlocked on the
3 other six.

4 Q Right. And then on page 37 through 38 of the
5 transcript, do you recall that they came out deadlocked,
6 they said they were deadlocked 11 to 1 on the other charge
7 and they needed to make phone calls?

8 A Yes. At that point it was very late in the evening.
9 I don't remember what time the jury got it. I just know
10 that they were out approximately nine hours at the time of
11 the plea, but I know this was very close to the time of
12 the plea.

13 Q And then on page 40, the Court says, Your options are
14 a verdict, a mistrial, or additional instruction. And the
15 jury indicated that further instructions may help. Was
16 that a concern to you how the judge initiated that
17 communication to the jury?

18 A It was a slight concern. I had not really looked at
19 the case law about Allen charges at that point. I did
20 make a quick phone call to another lawyer to ask them what
21 was going on. I believe Ms. Grafton, she may have -- we
22 may have talked about it also. I was concerned about just
23 the way it was going on, but I wasn't sure what the proper
24 procedure was.

25 Q And you in fact raised an objection to the Court

1 I have no objection.

2 MR. PETRANO: I will rephrase.

3 BY MR. PETRANO:

4 Q The facts as presented at the plea that the applicant
5 pled to.

6 A There were no facts presented at the plea.

7 Essentially, the Solicitor stood on the indictments and
8 said, you know, Your Honor, you've been here for the
9 entire trial, you've heard everything, and it was
10 essentially incorporated into the plea at that point.
11 That's my understanding of it.

12 Q And that was basically, I believe, touched on the
13 kidnapping and extortion and being in the vehicle with the
14 drugs. But you had also mentioned the house he was
15 running -- I think those were your words -- and so all of
16 this was kind of the same? That's where all the
17 indictments went to?

18 A Yes, it was all one chain of events for a one-day
19 period essentially.

20 MR. PETRANO: That's all I was trying to get at.

21 THE COURT: Anything else? Go ahead.

22 MR. PETRANO: Your Honor, everything has been
23 covered.

24 THE COURT: That's fine. Thank you.

25 Anything on redirect?

1 MS. BLANCHETTE: Just one question, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. BLANCHETTE:

4 Q In review of the plea transcript, was Mr. Russell put
5 on notice of the exact details for the negotiations that
6 were incorporated in the plea?

7 A No, he was not. It was very clear that the judge
8 told me what she was going to sentence him to, but it was
9 a straight-up plea otherwise.

10 Q Is it likely based upon the plea transcript that he
11 could have a viable belief that he still could appeal
12 those issues?

13 A I don't believe so. Based on my reading of the
14 transcript, it was a plea and that was it, it was just a
15 plea of guilty. There were no reservations about an
16 appeal.

17 MS. BLANCHETTE: I have nothing further.

18 THE COURT: All right. You may step down,
19 Mr. Schnee.

20 THE WITNESS: Thank you.

21 (A discussion was held off the record.)

22 THE COURT: Good luck to you, Mr. Russell.

23 (The proceedings were concluded.)

24 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
25

1 opinion based on reasoning satisfactory to himself
2 or herself merely for the purposes of being in
3 agreement.

4 With that added instruction, I'm going to ask
5 you to retire and to deliberate further. If you
6 would go with your caretakers.

7 If you have any additional questions, please
8 do not hesitate to advise us.

9 (WHEREUPON, the jury retires to the jury
10 room at 4:31 p.m.)

11 THE COURT: Are there any exceptions to the
12 instructions? From the State?

13 MS. CAMPBELL: No, Your Honor.

14 THE COURT: From the Defense?

15 MR. SCHNEE: No, Your Honor.

16 THE COURT: Thank you. The court will be at
17 ease.

18 (WHEREUPON, the jury note was marked as
19 Court's Exhibit 6.)

20 (WHEREUPON, a break was taken.)

21 (WHEREUPON, at 6:33 p.m. the jury had a
22 question as follows:)

23 THE COURT: Okay, we have a note from the
24 jury. And that note indicates as follows: Your
25 Honor, the jury appears to be deadlocked at 11 to 1

1 on seven indictments. Several jurors need -- well,
2 that is about phone calls for their children, so
3 that is something I'll handle.

4 That appears, then, that they are still
5 unanimous on one indictment, which means they have
6 reached a verdict on one. They are still
7 deadlocked on the other seven.

8 There are one or two ways we can handle it. I
9 can declare a mistrial on -- I'll take the verdict
10 on the one indictment where they reached a verdict
11 and declare a mistrial on the other seven; or I can
12 inquire of the foreperson to discuss with them
13 whether they feel further instruction will aid in
14 them reaching a verdict. And then we will live
15 with whatever decision they make. If they say no,
16 that is the end of it. If they say yes, I will
17 give them an abbreviated Allen charge, not as long
18 as the one I just gave, but an abbreviated form of
19 it that is about maybe two paragraphs long.

20 What is the State's preference?

21 MS. CAMPBELL: Your Honor, if you would
22 inquire if further deliberations would be helpful.

23 THE COURT: Well, I wouldn't ask if further
24 deliberations --

25 MS. CAMPBELL: Whatever you think appropriate.

3rd
Allen
charge

JURY ISSUE

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2 unanimous on the second and they were deadlocked on the
3 other six.

4 Q Right. And then on page 37 through 38 of the
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8 A Yes. At that point it was very late in the evening.
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10 that they were out approximately nine hours at the time of
11 the plea, but I know this was very close to the time of
12 the plea.

13 Q And then on page 40, the Court says, Your options are
14 a verdict, a mistrial, or additional instruction. And the
15 jury indicated that further instructions may help. Was
16 that a concern to you how the judge initiated that
17 communication to the jury?

18 A It was a slight concern. I had not really looked at
19 the case law about Allen charges at that point. I did
20 make a quick phone call to another lawyer to ask them what
21 was going on. I believe Ms. Grafton, she may have -- we
22 may have talked about it also. I was concerned about just
23 the way it was going on, but I wasn't sure what the proper
24 procedure was.

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2 doing that?

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15 out of pure respect for the Court, that I believe
16 that it might be improper to issue a separate Allen
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19 that position. Would you like me to give you the
20 case? It is Buff versus South Carolina Department
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25 time.

Exhibit # 14
LINES - 8-17

Trial Counsel
PCR testimony

PCR TRANSCRIPT

3rd Issue

67

1 before she gave that Allen charge?

2 A Yes.

3 Q But she went ahead and gave a second Allen charge; is
4 that correct?

5 A That's correct.

6 Q Thereafter the case proceeded to a plea. How did
7 that come about?

8 A After the second Allen charge, the judge called us up
9 to the bench. It was myself, Ms. Grafton and the two
10 solicitors, Vanessa Shipley and Luck Campbell. She
11 essentially asked us if there was any way we could work it
12 out. It was in her opinion that this jury was not going
13 to reach a verdict. She had sat through the whole trial
14 and she said she thinks it would be difficult for any jury
15 to reach a verdict. To some extent, she wasn't very
16 particular about that and asked if there was any way we
17 could work it out.

18 At that point, I told her that I think my client
19 would probably plead if he was sentenced somewhere between
20 12 and 15 years. Ms. Grafton brought up the fact there
21 were other charges. There was a separate assault and
22 battery with intent to kill. That would have to be
23 dismissed; otherwise it would be an automatic life without
24 parole. Judge Jefferson said, "That's fine with me, I
25 think 15's appropriate."

4th Issue

1 him of that, that was Ms. Grafton's opinion. We also
2 informed him of what the judge said he would get as a
3 sentence for everything, which was pretty much in the
4 middle of the range for the drug charge by itself.

5 Q And did you have a verdict form that you showed him
6 at any time?

7 A I don't recall having a verdict form or an indictment
8 that was signed. I don't recall that.

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16 believe the lesser included of ABHAN was given to them and
17 therefore the judge did jury verdict forms. I don't
18 recall if it was for all the charges or just those.

19 Q Do you recall that you advised him that his
20 non-violent sentences would be superseded by his violent
21 sentences for time computation purposes?

22 A I certainly went through time computation briefly. I
23 told him that it is up to the Department of Corrections
24 and that all the charges as indicted except for the
25 extortion are 85-percent sentences.

WITNESSES

Investigator Dave McRoberts, RCSD

ARREST WARRANT NUMBER

DP08034

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: FEB 20 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-40-1681

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

91

THE STATE
vs.

WARREN RUSSELL

Indictment for
KIDNAPPING

SC Code: 16-3-910
CDR Code:0095
Class FEL/A(V)

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST
A TRUE COPY

Barbara C. Scott
C. C. C. P. & G. S.

WITNESSES

Investigator Dave McRoberts, RCSD

ARREST WARRANT NUMBER

DP08034

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: FEB 21 2008

VERDICT

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Date:

DOCKET NO. 2008-GS-40- 1681

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

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vs.

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AMENDED
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SC Code: 16-3-910
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Class FEL/A(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTESTED
A TRUE COPY

[Signature]

WITNESSES

Investigator Dave McRoberts, RCSD

ARREST WARRANT NUMBER

DP08035

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: FEB 21 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-40- 1682

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

91

**THE STATE
vs.**

WARREN RUSSELL

Indictment for

**AMENDED
KIDNAPPING**

SC Code: 16-3-910

CDR Code:0095

Class: FEL/A(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

WITNESSES

Investigator Dave McRoberts, RCSD

ARREST WARRANT NUMBER

DP08035

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: FEB 20 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-40- 1682

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

91

THE STATE
vs.

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Indictment for

KIDNAPPING

SC Code: 16-3-910

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Class FEL/A(V)

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Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST
A TRUE COPY

Barbara P. Beach
CLERK

WITNESSES

(S) Investigator Dave McRoberts, RCSD

ARREST WARRANT NUMBER

DP08036

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: FEB 20 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-40-1683

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

91

**THE STATE
vs.**

WARREN RUSSELL

Indictment for

**ASSAULT AND BATTERY
WITH INTENT TO KILL**

SC Code: 16-3-620
CDR Code: 0014
Class: EL-C(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

**ATTEST
A TRUE COPY**

Barbara G. Leav
C. C. C. P. & G. S.

WITNESSES

✓ (S) Investigator Dave McRoberts, RCSD

ARREST WARRANT NUMBER

DP08036

ACTION OF GRAND JURY

TRUE BILL

Permaice Briffe
Foreperson of Grand Jury
Date: FEB 21 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-40-1683

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

91

THE STATE

vs.

WARREN RUSSELL

Indictment for

**AMENDED
ASSAULT AND BATTERY
WITH INTENT TO KILL**

SC Code: 16-3-620

CDR Code: 0014

Class: FEL-C(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

**ATTEST
A TRUE COPY**

James P. Heats

WITNESSES

✓ (S) Investigator Dave McRoberts, RCSD

ARREST WARRANT NUMBER

DP08037

ACTION OF GRAND JURY

TRUE BILL

Barbara C. Bragg
Foreperson of Grand Jury
Date: FEB 21 2008

VERDICT

Person of Petit Jury

DOCKET NO. 2008-GS-40-1684

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

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THE STATE
vs.

WARREN RUSSELL

Indictment for
**AMENDED
ASSAULT AND BATTERY
WITH INTENT TO KILL**
SC Code: 16-3-620
CDR Code: 0014
Class FEL-C(V)

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Defendant

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Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST
A TRUE COPY

Barbara C. Bragg

C. C. C. P. & G. S.

WITNESSES

(S) Investigator Dave McRoberts, RCSD

ARREST WARRANT NUMBER

DP08037

ACTION OF GRAND JURY

TRUE BILL

Pamela Bringle
Foreperson of Grand Jury
Date: FEB 20 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-40-1684

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

91

**THE STATE
vs.**

WARREN RUSSELL

**Indictment for
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SC Code: 16-3-620
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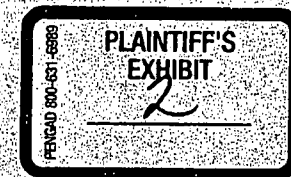
Defendant

I hereby appear in my own proper person and plead
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Witness:

C.C.C. PLS. AND G.S.



3rd Issue

1 A That's correct.

2 Q Okay. And what type of discussion did you have with
3 him about that?

4 A This was, as he said, the week before trial. I had
5 discussed it very briefly with the solicitor.

6 Her -- what she informed me is that the officers
7 were given the name by some of the other victims. The
8 officers had not actually talked to this victim.

9 They didn't know if they were going to go
10 forward on the indictment at the time because they weren't
11 sure if they could even find him, but they indicted it, I
12 suppose, just to be safe on their end.

13 Q As a result of those indictments, were you concerned
14 at all with the integrity of the grand jury process in
15 this case?

16 A No, I was not. I don't have very much faith in the
17 grand jury process at all to begin with, so it's not much
18 of an issue for me.

19 Q Let me hand you Indictment 2008-GS-40-1684 that was
20 introduced as No. 13.

21 A Yes.

22 Q Did you have the opportunity to review that
23 indictment with him?

24 A I'm sure I did, yes.

25 Q And he testified that that was dismissed due to lack

1 judge that we're coming up on this trial and I'm not sure
2 that Mr. Schnee is capable of handling a trial of this
3 magnitude based on his actions prior to that.

4 MS. BLANCHETTE: And again, Your Honor, we're
5 moving this as Applicant's No. 8.

6 THE COURT: All right. It's admissible.

7 (WHEREUPON, Applicant's Exhibit No. 8 was marked
8 for identification and received into evidence.)

9 THE COURT: Mr. Russell, I want you to
10 understand it's nothing personal. I've got to hear this
11 case and I want you to do the best you can to explain it.

12 THE WITNESS: Yes, sir. Thank you, sir.

13 THE COURT: Go ahead.

14 BY MS. BLANCHETTE:

15 Q Could you identify this document for the record?

16 A Yes. This is a letter from the Clerk of Court in
17 which after I was convicted, I started doing some
18 investigating on those new indictments that was presented
19 to me, all the 2008 indictments, because I brought these

20 concerns out to Mr. Schnee at the time when they was
21 presented as well and my concerns was, number one, where's
22 the statements from these alleged victims; number two,
23 with just being presented with these five new indictments
24 two business days before the trial, we obviously were not
25 prepared for those, and when I did this research with the

1 Clerk of Court, the Clerk of Court sent me back
2 documentation saying that the Clerk of Court has no
3 correspondence of any of these kind of documentations,
4 please contact your attorney.

5 MS. BLANCHETTE: Your Honor, at this time I'd
6 move this as Applicant's No. 9.

7 MR. PETRANO: Your Honor, I'm not sure what to
8 ask. I don't understand. There seems to be some side
9 notations in a different handwriting. Can you clear that
10 up before this is introduced?

11 BY MS. BLANCHETTE:

12 Q Mr. Russell --

13 A Yes, that's the Clerk of Court's writing.

14 Q The cursive handwriting on the left-hand side?

15 A Yes, that says, "Do not have, the Clerk's office,
16 contact your attorney."

17 MR. PETRANO: Who wrote it, Exhibit No. 9?

18 THE WITNESS: That was my documentation. This
19 is part of my exhibits.

20 MR. PETRANO: Pertaining to that?

21 THE WITNESS: Yes, sir.

22 MR. PETRANO: No objection.

23 MS. BLANCHETTE: Your Honor, I would like to
24 introduce this as Applicant's No. 9.

25 THE COURT: Very well.

1 A Yes, ma'am, that is.

2 Q Mr. Russell, could you identify these two documents
3 for the record?

4 A This is Indictment 2008-GS-040-1682. It's an
5 indictment for kidnapping. It's dated February 20th,
6 2008. And there's an amended verdict, an amended copy of
7 the same indictment dated February 21st with a total
8 different name of a person on it.

9 MS. BLANCHETTE: Your Honor, at this time I'd
10 move these in as Applicant's No. 12.

11 MR. PETRANO: No objection. I just wanted to
12 comment, Your Honor, that these are not in your packet
13 because the Clerk has not forwarded any nol prossed
14 indictments.

15 THE COURT: Okay.

16 (WHEREUPON, Applicant's Exhibit No. 12 was
17 marked for identification and received into
18 evidence.)

19 BY MS. BLANCHETTE:

20 Q Now, Mr. Russell, you had concerns regarding the
21 first indictment here, 1682. What was your concern
22 regarding that?

23 A Well, my concerns with this particular indictment is,
24 number one, it was presented to me on the 20th, which was
25 three business days before the trial, and number two,

1 two, aren't we going to challenge these and ask for a
2 continuance for time to prepare for these -- for this new
3 information that was presented to us.

4 MS. BLANCHETTE: Your Honor, at this time I'd
5 move this in as Applicant's No. 13.

6 MR. PETRANO: No objection.

7 (WHEREUPON, Applicant's Exhibit No. 13 was
8 marked for identification and received into
9 evidence.)

10 BY MS. BLANCHETTE:

11 Q And you indicated that you wanted your attorney to
12 object to the lack of notice regarding these indictments?

13 A Yes. I asked him specifically that since these
14 indictments was presented on the 20th and amended on the
15 21st, that left us two business days to prepare for these
16 four new indictments that was presented to us at the trial
17 that was coming up on 25th, that Monday.

18 Q And did you ask Counsel to either object to lack of
19 notice or file a continuance?

20 A Yes, I did, and also the letters that we introduced
21 into evidence earlier regarding me requesting a
22 continuance based on these particular newly-discovered
23 information.

24 Q Mr. Russell, could you please identify this for the
25 record?

1 A Yes.

2 Q Okay. And he said he was transported to the
3 courthouse on the 18th through the 21st and then his
4 trial wouldn't begin until sometime later. Do you know
5 the reason he was transported all those days?

6 A I don't remember if he was transported all four days.
7 I know he was transported some of the days. I don't have
8 my notes in front in me for that.

9 Part of it was to have him served with these new
10 indictments. I think he was brought over two separate
11 days because of the amended indictment on one.

12 Another day he was brought over I believe at my
13 request to go over some of the discovery. And I think the
14 last day was for his motion to have me relieved and for a
15 request for a continuance that he had requested that Judge
16 Childs denied.

17 Q And regarding that request for a continuance, were
18 you at all concerned that you were just receiving these
19 indictments and amended indictments several days before

20 trial?

21 A I discussed my concern about that with the solicitor
22 in terms of this is a new victim. She informed me that
23 she had no written statements, there were no oral
24 statements given by him.

25 My only concern would have been if I wanted to

1 interview him if they were going forward on that charge.
2 But, otherwise, it didn't involve any other facts that I
3 was not aware of, so I did not personally feel it was
4 going to be a problem before trial.

5 Q So you didn't see a basis for a request for a
6 continuance on those grounds?

7 A Not at that time, no.

8 Q Now, you mentioned the motions to relieve Counsel.
9 The defendant -- I'm sorry -- Mr. Russell testified that
10 he filed two. Did you in fact also file one yourself?

11 A I did file one at some point, yes.

12 Q Okay. And what was your reasoning for that?

13 A The basis of that was mostly all the motions that he
14 had filed. Doug Strickler, my boss, had called me into
15 his office at one point because he receives a lot of those
16 letters from the Clerk of Court before it gets forwarded
17 to me. He suggested that I needed to file that and
18 request that he go pro se based on the language that he
19 was putting pro se in his own motions.

20 Q And did you feel confident in proceeding to trial
21 with Mr. Russell or was there a conflict as far as your
22 representation of him?

23 A I didn't feel there was a conflict that would prevent
24 me from going forward. Mr. Russell is somewhat hardheaded
25 in a lot of ways. He's also very intelligent, which

3rd Issue

1 Q And Mr. Russell had alleged that the Court or Judge
2 Jefferson actually initiated those plea discussions.

3 Would that be your opinion on the matter?

4 A I believe so. I'm not sure who brought it up first,
5 but I know she had asked us if there was any plea
6 discussions prior to trial or during the deliberations.

7 Q You've had the opportunity to hear Mr. Russell's
8 testimony that you informed him that there had been a
9 guilty verdict and the purpose of the plea was to run
10 everything in with that verdict that had already been
11 reached. Is that what you in fact informed him?

12 A I know that they had reached a guilty verdict. We
13 were not sure of which charge it was. We all pretty much
14 assumed it was going to be the possession with intent to
15 distribute mostly because I told them to find him guilty
16 of that charge in my closing argument. That was the first
17 thing I said.

18 Beyond that, the second charge, we assumed that
19 they were having trouble with the extortion and the
20 remaining six that they were deadlocked on were the three
21 assault and battery with intent to kills and three
22 kidnappings.

23 It was never announced which charge they
24 actually had a verdict for, but we were all probably 98
25 percent positive that it was the drug charge. I informed

1 pursued a motion for bond in your case or what happened in
2 that regard?

3 A I believe at some point there was a motion put in for
4 a bond reduction.

5 Q Did you file anything on your own behalf, do you
6 know?

7 A Yes, I filed several motions regarding motions to
8 dismiss.

9 Q No, let me clarify. It's regarding bond. Did you
10 file anything regarding bond or trying to get bond?

11 A No, I sent documentation to my counsel, Mr. Schnee,
12 Schnee --

13 THE COURT: Judge Jefferson had trouble
14 pronouncing it, too. I just read the transcript.

15 Go ahead.

16 THE WITNESS: Okay -- to Mr. Schnee --

17 THE COURT: Schnee.

18 THE WITNESS: Schnee -- excuse me -- regarding
19 my concerns with the preliminary hearing.

20 BY MS. BLANCHETTE:

21 Q Okay. Let me ask you about bond.

22 Did anyone file a motion for bond or did you
23 file your own motion?

24 A I believe Mr. Schnee filed a motion for bond.

25 Q Now, there was a tipster in this case. Did you ask

1 them to look into the tipster or do you know if he did?

2 A Yes, I did ask him to investigate the tipster's
3 information and, to my understanding, nothing was never
4 done with that.

5 Q Now, you just referenced that you asked him to file a
6 number of motions on your behalf; is that correct?

7 A Yes, I did.

8 Q Now, sir, could you identify this letter? And they
9 may not be in chronological order because I just received
10 these today.

11 A Okay.

12 Q Could you identify that and explain what it is to the
13 Court?

14 A This is a letter that I sent to the Clerk of Court
15 and to my counsel requesting that we order a continuance
16 on this particular case because we had just got served
17 with five more indictments two days before the trial.

18 Q And you were trying to raise those concerns to him
19 about a motion for continuance?

20 A Yes, ma'am, I was.

21 Q And was that filed in your case, a motion for
22 continuance?

23 A No, ma'am, no motion was ever filed.

24 MS. BLANCHETTE: Your Honor, at this time I'd
25 move this as Applicant's No. 2.

1 failed to respond to any of my letters addressing these
2 issues.

3 Q And as of this date, did you receive a response from
4 Counsel regarding these matters?

5 A I've never received one correspondence from
6 Mr. Schnee regarding any of these issues.

7 Q Now, one issue in your case that you've listed in the
8 documents submitted to the Clerk of Court January 22nd,
9 2008, deals with probable cause. What were your concerns
10 regarding probable cause?

11 A Well, it was to my understanding from the warrant
12 that the probable cause for this initial stop was that I
13 was a suspect in the kidnapping, I was being detained
14 because I was a suspect in the kidnapping. And this
15 information came through to law enforcement by way of a
16 third-party informant. And I was never formally arrested
17 for the probable cause for this stop until 14 days later.
18 So I was concerned with the probable cause for the actual
19 stop that they couldn't confirm or alleviate until 14 days
20 later.

21 Q And did you file a motion for habeas corpus regarding
22 that matter?

23 A Yes, I did. I filed a motion for habeas corpus to
24 challenge the probability of the arrest.

25 Q Could you identify this document for the Court?

1 received to Mr. Russell, went over it in some amount of
2 depth in various meetings.

3 Q Okay. And were you able to establish a defense or a
4 strategy for this case?

5 A Yes. It was shortly before trial we were really
6 working on the actual strategy itself.

7 Partly the problem was just essentially issues
8 with it came down to, we thought, believability of the
9 witnesses in terms of the victims. Really that's all they
10 had. They had some forensic information that put
11 Mr. Russell there. We didn't really think it was much of
12 an issue that it happened in a house that he essentially
13 was running. The real issue is what did he do to these
14 alleged victims and what did not happen, and it came down
15 to credibility in our minds.

16 Q And did you have a private investigator working with
17 you or did you have to conduct the investigation yourself?

18 A I know I filled out an investigation request and one
19 was hired. I do not recall who it was.

20 Q Okay. And Mr. Russell indicated that he asked for to
21 you look into the issue of the tipster. Do you recall
22 anything regarding that issue or any work you did on that?

23 A The only thing I would think about for a tipster
24 would have been if they were investigating him beforehand
25 for the drugs. I don't recall if there was another issue.

1 Q Now, in this case, were you always preparing for
2 trial or were there any pleas that came down?

3 A It was trial from day one.

4 Q Okay. And --

5 A And the solicitor -- I'm sorry.

6 Q Go ahead.

7 A The solicitor made it very clear that the only number
8 she was looking at for any kind of sentence was life.

9 Q And was that actually a formal plea offer or just was
10 it clear there was going to be nothing but life?

11 A The latter.

12 Q Okay. Now, we introduced a copy of a letter that
13 Mr. Russell received from the City of Columbia indicating
14 that his preliminary hearing had been cancelled by the
15 Public Defender's Office. Were you involved in that?

16 A I have cancelled one prelim in my entire life, and it
17 was not Mr. Russell's.

18 Q So you don't have a record that indicates that you
19 cancelled it?

20 A Absolutely not. What happened was his charges were
21 indicted by the grand jury prior to his preliminary
22 hearing. I would have never waived a preliminary hearing
23 in this case.

24 Q Now, the letter indicates that a preliminary hearing
25 was held on July 25th, 2007. Were you in attendance at

1 that hearing?

2 A I'm not sure if I would have been in attendance on
3 that day or if it was someone else from my office on that
4 day. I can't recall. I do know it was indicted prior to
5 the prelim going forward, which is why it did not go
6 forward.

7 Q And I introduced a number of documents that
8 Mr. Russell submitted to yourself and to the Court
9 addressing issues he wanted you to look into. One of
10 those was probable cause. Do you recall any work you did
11 or investigation you did into probable cause in this case?

12 A The probable cause was for the initial stop when my
13 client was driving. This was all related to the alleged
14 kidnappings and the blackmail/extortion.

15 Essentially, the police were given information
16 that he was coming with one of the victims to meet up with
17 the victim's sister for an exchange of money for the
18 sister. That's when they immediately arrested him, they
19 searched him and found the drugs.

20 Q So you did look into the issue of probable cause and
21 you resolved that issue?

22 A I resolved it myself by I went over it with my
23 client. I went over the police reports and I explained
24 that the police, at least in their minds, had a rational
25 basis to arrest him and detain him at that time; that's

1 where they found the drugs.

2 Q And do you recall that he filed a motion for a speedy
3 trial in this case?

4 A He had sent a number of letters to the Clerk of Court
5 requesting a speedy trial, and he's correct, I informed
6 him that I would not file a motion on my own.

7 He was arrested, I guess, a second time in early
8 May of 2007 for all the events. They arrested him for the
9 drug charge. For some reason they didn't arrest him for
10 the other charge until a week or two later.

11 His trial was in February of 2008. It was about
12 nine months later.

13 At the time that he was asking me for a speedy
14 trial, he was still in the process of having a second
15 appearance. His track had not ended under the system in
16 Richland County and I knew a judge wasn't going to speed
17 the process up any faster than that. There had been no
18 undue delay.

19 Q Now, during his testimony, he gave lengthy testimony
20 regarding the grand jury process and the indictments that
21 were obtained.

22 A Yes.

23 Q You had received a request from him to look into the
24 grand jury and try to obtain the minutes; is that correct?

25 A That's correct.

ARREST WARRANT

STATE OF SOUTH CAROLINA)

☐ County/ ☐ Municipality of)

COLUMBIA)

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

COLUMBIA

THE STATE

against

RUSSELL WARREN

Address: 124 CHADWELL RD
COLUMBIA SC 29202

Phone: _____ SSN: _____

Sex: M Race: R Height: 6' 01" Weight: 185

DL State: _____ DL #: _____

DOB: 1/22/1968 Agency ORI: 3004400100

Prosecuting Agency: CITY OF COLUMBIA

Prosecuting Officer: RUSSELL CR/CPL DA CRIBB

Offense: PWID CRACK COCAINE

Offense Code: 04P

Code/Ordinance Sec. 44-53-275

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

COLUMBIA

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: Russell Warrenon 20 April 07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CITY OF COLUMBIA
MUNICIPAL COURT
P.O. BOX 644
COLUMBIA, SC 29202

STATE OF SOUTH CAROLINA)

☐ County/ ☐ Municipality of)

COLUMBIA)

Personally appeared before me the affiant CR 44-53-275 who
being duly sworn deposes and says that defendant RUSSELL WARREN
did within this county and state on 04/20/2007 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of COLUMBIA)
in the following particulars:

DESCRIPTION OF OFFENSE: PWID CRACK COCAINE 44-53-275

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:

ON 04/20/2007 AT APPROX. 0547 HOURS, AT 6201 FARROW RD., CITY OF
COLUMBIA, RICHLAND CNTY, THE DEF WAS DETAINED AS A SUSPECT IN A
KIDNAPPING. DURING A PAT DOWN OF THE DEF'S OUTER CLOTHING, AFFIANT
DISCOVERED A BULKY ITEM, THAT HE IMMEDIATELY RECOGNIZED UPON TOUCH
AS BEING CONSISTENT WITH A BAGGIE OF CRACK COCAINE, IN HIS RIGHT
FRONT PANTS POCKET. AFFIANT RETRIEVED THE ITEM, WHICH WAS A PLASTIC
BAGGIE THAT CONTAINED APPROX. FORTY SMALL WHITE ROCK LIKE SUBSTANCES
AND TWO SMALLER BAGGIES THAT CONTAINED LARGER PIECES OF THE WHITE

Signature of Affiant

C. R. Russell

STATE OF SOUTH CAROLINA)

☐ County/ ☐ Municipality of)

COLUMBIA)

Affiant's Address: #1 JUSTICE SQ

COLA, SC 29201

Affiant's Telephone: 5453500

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 04/20/2007 defendant RUSSELL WARREN

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of COLUMBIA) as set forth below.

DESCRIPTION OF OFFENSE: PWID CRACK COCAINE

44-53-275

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 04/20/2007)

))

Signature of Issuing Judge (L.S.))

Judge's Address)

Judge's Telephone)

Judge Code: 000000)

Judge's Address: CITY OF COLUMBIA, SC

MUNICIPAL COURT, P.O. BOX 644 29202

Judge's Telephone: _____

Issuing Court: ☐ Magistrate ☐ Municipal ☐ CircuitBARRARA A. SCOTT
CLERK
APR 24 AM 10:30
RECORDED

OFFICIAL

ARREST WARRANT

J-557078

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

THE STATE

RCSD0705802402

against

Warren Russell

Address: 124 Chadwell Rd

Columbia, SC 29223-

Phone: (803)223-4177

SSN: 000000000

Sex: M Race: B Height: 6 1 Weight: 185

DL State: SC DL #: 008799086

DOB: 11/27/1968 Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: William Mcroberts - 579

Offense: Kidnapping

Offense Code: 0095

Code/Ordinance Sec: 16-03-0910

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

WARREN RUSSELL
5/17/07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Personally appeared before me the affiant William Mcroberts

who

being duly sworn deposes and says that defendant Warren Russell

did within this county and state on or about 04/20/2007

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland Bond Court

in the following particulars:

DESCRIPTION OF OFFENSE Kidnapping

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:That on 04-20-07 while at 3719 Hoyt St in the Dentsville Magisterial District of Richland County, one Warren Russell did commit
the crime of Kidnapping in that he did hold the victim against his will for no just cause or reason. The defendant physically held
the victim at the location and beat him with with a hot piece of metal rebarb. The victim suffered a broken wrist as a result of the
beating. The victim has identified the defendant in a photographic line up and given a written sworn statement to the incident.
Investigators have executed a search warrant at the incident location where the incident occurred and recovered the weapon used in
the crime. Affiant and others are witness to prove the same.

Signature of Affiant

Lively for Mcroberts

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/20/2007

defendant Warren Russell

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland Bond Court

) as set forth below:

DESCRIPTION OF OFFENSE: Kidnapping

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 05/07/2007

Signature of Issuing Judge
V R Stroman-Boyd (L.S.)

V R Stroman-Boyd

Judge Code: 5021

Judge's Address 1400 Huger Street

Columbia, SC 29201-

Judge's Telephone (803)576-2330

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

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ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

ORIGINAL

AFFIDAVIT

RECEIVED
MAY 23 PM 1:08
CLERK OF COURT
BARBARA A. GIBB

ARREST WARRANT
J-557079
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Richland Bond Court
THE STATE **RCSD 0705802402**
against
Warren Russell
Address: **124 Chadwell Rd**
Columbia, SC 29223-
Phone: **(803)223-4177** SSN: **_____**
Sex: **M** Race: **B** Height: **6** Weight: **185**
DL State: **SC** DL #: **008799086**
DOB: **11/27/1968** Agency ORI #: **04000**
Prosecuting Agency: **Richland County Sheriff Department**
Prosecuting Officer: **William Mcroberts - 579**
Offense: **Blackmail / Blackmail or Extortion**

Offense Code: **0030**
Code/Ordinance Sec: **16-17-0640**
This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge
Date: _____

RETURN
A copy of this arrest warrant was delivered to
defendant **WARREN RUSSELL**
on **5/7/07**

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
Richland General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGIN

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ORIGINAL

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Richland Bond Court
Personally appeared before me the affiant **William Mcroberts** who
being duly sworn deposes and says that defendant **Warren Russell**
did within this county and state on or about **04/20/2007** violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of **Richland Bond Court**)
in the following particulars:
DESCRIPTION OF OFFENSE **Blackmail / Blackmail or Extortion**

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:

That on 04-20-2007 while at 3719 Hoyt Street in Dentsville Magisterial District of Richland County, one Warren Russell did
commit the crime of Blackmail in that he did hold the victim hostage and he only agreed to release the victim and not kill her if the
victim's sister gave him one thousand dollars. The victim has identified the def in a photographic line-up and given a written sworn
statement to the crime. The def agreed to meet the victim's sister at Wilkes and Farrow Rd to make the exchange and he was met by
police and arrested with the victim in the car. Affiant and others are witness to prove the same.

Signature of Affiant **Lively for Mcroberts**
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Richland Bond Court
Affiant's Address **5623 Two Notch Road**
Columbia, SC 29223-
Affiant's Telephone **(803)576-3000**

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on or about **4/20/2007** defendant **Warren Russell**
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of **Richland Bond Court**) as set forth below:

DESCRIPTION OF OFFENSE: **Blackmail / Blackmail or Extortion**

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 **05/07/2007**
Signature of Issuing Judge **V R Stroman-Boyd** (L.S.)
V R Stroman-Boyd
Judge Code: **5021**
Judge's Address **1400 Hugger Street**
Columbia, SC 29201-
Judge's Telephone **(803)576-2330**
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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ORIGINAL

ARREST WARRANT

J-557081

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

THE STATE

RCSD 0705802402

against

Warren Russell

Address: 124 Chadwell Rd

Columbia, SC 29223-

Phone: (803)223-4177

SSN:

Sex: M Race: B Height: 6 1 Weight: 185

DL State: SC DL #: 008799086

DOB: 11/27/1968 Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: William Mcroberts - 579

Offense: Assault / Assault and battery with Intent to Kill
(ABWIK)

Offense Code: 0014

Code/Ordinance Sec: 16-03-0620

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant WARREN RUSSELL
on 5/7/07

Signature of Constable Law Enforcement Officer

RETURN WARRANT TO:

Richland General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Personally appeared before me the affiant William Mcroberts whobeing duly sworn deposes and says that defendant Warren Russelldid within this county and state on or about 04/20/2007

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland Bond Court

in the following particulars:

DESCRIPTION OF OFFENSE Assault / Assault and battery with Intent to Kill (ABWIK)

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:That on 04/20/2007 while at 3719 Hoyt Street in the Dentsville Magisterial District of Richland County, one Warren Russell did
commit the crime of ABWIK in that he did beat the victim numerous times with a metal piece of rebar causing severe injuries.
The victim suffered severe burns and bruises on her body where the def heated the metal barb up before he hit the victim with it.
He also held the burning metal to the victim's skin after he heated it up on the stove. The victim has identified the def in a
photographic line-up and given a written sworn statement to the crime. During the assault the def continued to say he was going to
kill the victim. Affiant and others are witness to prove the same.

Signature of Affiant

Likely for Mcroberts

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/20/2007defendant Warren Russell

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland Bond Court as set forth below:

DESCRIPTION OF OFFENSE: Assault / Assault and battery with Intent to Kill (ABWIK)

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 meon 05/07/2007Signature of Issuing Judge (L.S.)
V R Stroman-Boyd

V R Stroman-Boyd

Judge Code: 5021

Judge's Address 1400 Huger Street

Columbia, SC 29201-

Judge's Telephone (803)576-2330

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 51807 MAY 29 PM 12:08
BARBARA A. SCOTT
C.O. # 1000000000

ARREST WARRANT

J-557089

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

THE STATE

RCSD0705802402

against

Warren Russell

Address: 124 Chadwell Rd

Columbia, SC 29223-

Phone: (803)223-4177

SSN: ()

Sex: M Race: B Height: 6 1 Weight: 185

DL State: SC DL #: 008799086

DOB: 11/27/1968 Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: William Mcroberts - 579

Offense: Kidnapping

Offense Code: 0095

Code/Ordinance Sec: 16-03-0910

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Sgt C. Watkins
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGIN

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STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Personally appeared before me the affiant William Mcroberts

being duly sworn deposes and says that defendant Warren Russell

did within this county and state on or about 04/20/2007

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland Bond Court

in the following particulars:

DESCRIPTION OF OFFENSE Kidnapping

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:That on 05/04/07 while at 3719 Hoyt St in the Dentsville Magisterial District of Richland County, one Warren Russell did commit
the crime of Kidnapping in that he did for no just cause or reason hold the victim against her will at the above location. The
defendant held the victim against her will using deadly force and threatened to kill her if she tried to leave. The victim has identified
the defendant in a photographic line-up and given investigators sworn statements to the crime. Affiant and others are witness to
prove the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/20/2007 defendant Warren Russell

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland Bond Court

) as set forth below

DESCRIPTION OF OFFENSE: Kidnapping

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 05/07/2007

Signature of Issuing Judge

Caroline W Streater

Judge Code: 7027

Judge's Address 1400 Huger Street

Columbia, SC 29201-

Judge's Telephone (803)576-2341

Issuing Court: ☒ Magistrate☐ Municipal☐ CircuitForm Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

ORIGINAL

AFFIDAVIT

07 MAY 28 PM 12:08
BANDANA A. SCOTT
C.C. G.S.

I-916766

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Dentsville Magistrate

THE STATE

RCSD0705802402

against

Warren Russell

address: 124 Chadwell Rd

Columbia, SC 29223-

Phone: (803)223-4177

SSN:

Sex: M Race: B Height: 6 1 Weight: 185

DL State: SC DL #: 008799086

DOB: 11/27/1968 Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: William Mcroberts - 579

Offense: Assault / Assault and battery with Intent to Kill (ABWIK)

Offense Code: 0014

Code/Ordinance Sec: 16-03-0620

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

WARREN RUSSELL

Lively, Kenneth

5/2/07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Dentsville Magistrate

2500 Decker Blvd Suite B-1 Box 10

Columbia, SC 29206

ORIGINAL

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ORIGINAL

☒ County/ ☐ Municipality of

Richland / Dentsville Magistrate

Personally appeared before me the affiant William Mcroberts

being duly sworn deposes and says that defendant Warren Russell

did within this county and state on or about 04/20/2007

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE Assault / Assault and battery with Intent to Kill (ABWIK)

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:

That on 04-20-07 while at 3719 Hoyt street in the Dentsville Magisterial District of Richland County, one Warren Russell did commit the crime of assault and battery of a high and aggravated nature in that he did beat the victim Anna McCleod with a hot piece of metal rebarb metal causing injury. The defendant committed this crime for no just cause or reason. The victim and other witnesses have given statements identifying the defendant in photo line-ups as the person who committed this crime. Richland County Sheriff's Department Case Number 0705802402. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Dentsville Magistrate

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/20/2007

defendant Warren Russell

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Dentsville Magistrate

) as set forth below:

DESCRIPTION OF OFFENSE: Assault / Assault and battery with Intent to Kill (ABWIK)

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 05/07/2007

Signature of Issuing Judge

Phillip F Newsom

Judge Code: 5014

(L.S.)

Judge's Address 2500 Decker Blvd

Columbia, SC 29206-2323

Judge's Telephone (803)576-2560

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 516

AFFIDAVIT

violate the criminal laws of the

TRUE COPY

C. C. C. P. & C.

ARREST WARRANT
MAY 23 PM 1:08
C. C. C. P. & C.

State of South Carolina
County of Richland

In the Court of Common Pleas

Warren Russell # 316802
petitioner

Civil Action No.
2008-CP-400-7960

VS.

State of South Carolina
Respondents

Petitioner's Request
For

Production of Documents

The Petitioner, Pursuant to South Carolina Rule of Civil Procedure, Rule 34, hereby Request that the above named Respondents Produce (Deliver) a complete copy of the documents identified below within Thirty Days to petitioner at the institution he is housed, to inspect, copy and/or photo copy, or at such other time and place as shall be mutually agreed upon by the parties.

DEFINITIONS

1. "Documents" is to include any form of writing, communication or other means by which information may be transferred or recorded, whether it be by paper, film, Audio, computer printout, computer disk or other form, including, but not limited to, Notes, Reports, Records, Memorandums, Communication, fax, work sheets, meetings, analysis, Etc, Etc, and any other forms of information preservation.

"Documents" also means all copies which are not identical to the originals, such as those bearing marginal comments, Alterations,

Notes or other notations not present on the original document as originally written, typed or otherwise prepared.

2. "And" and "Or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The use of the words "Include(s)" and "Including" shall be construed to mean "Without limitation".

3. Use of the term "Control" when referring to documents or other tangible or intangible things shall mean that you have the right to secure the things or documents or a copy thereof from another person or entity which has actual possession thereof.

If any objection raised by you is based in whole or in part on the fact that documents are not in your possession or custody, then you shall identify the persons and/or entities in possession or custody of the documents, and shall further identify the location of the documents with sufficient particularity to allow the petitioner to issue a subpoena to obtain copy of the document or things.

4. If any document was, but is no longer in your possession or subject to your control, state what disposition was made of it, including, but not limited to, whether or not it was destroyed or disposed of, by whom, and the date or dates or approximate date or dates on which such disposition was made and why.

Instructions

1. All documents covered in this request shall be produced in and

orderly manner (and with appropriate markings or other identification) so that the petitioner will be able to identify the source of the document and the number of the request to which it responds.

2. If you refuse to produce any requested materials in whole or in part, describe the basis for your refusal to produce including any claim to privilege or work product, in sufficient detail so as to permit the court to adjudicate the validity of your refusal, and identify each document for which a privilege is claimed.

3. This request shall be continuing in nature so that any documents requested herein must be produced prior to the evidentiary hearing of this case, even if a document is not in existence at the time of your initial response (e.g. An Altered or Amended document).

Documents to Be Produced

1. A complete and accurate copy of the hearing held on Feb, 21st 08 by the Chief Administrative Judge M. Childs, before the trial on Feb 25th 2008, including transcript and rulings.

2. A complete and accurate copy of the transcript for the trial date Feb 25th 2008 thru Feb 28th 2008, in its entirety. This trial was held by the Honorable Judge Deoden L. Jefferson, in the court of General Sessions on indictments # 07-CS-40-4163 - 4167, 07-CS-40-3668, 08-CS-40-1681-1683. The Official Court Reporter, Deborah M. McCurdy LPR. The Attorneys for the plaintiff K. Luck Campbell and Vanessa C. Shipley. The Attorneys for the Defendant, MARK E. Schaefer and Kristy M. Grafton.

3. A complete and accurate copy of the defendant's motion of discovery and any and all other data, to include, but not limited to, faxes, notes, motions, communication, recorded, whether it be by paper, film, audio, computer printout, reports, memorandums, marginal comments, etc, etc, and any other forms of information preservation.

4. According to S.C. code § 14-7-1770 and § 14-7-1630 as well as Fed Rules Crim P. Rule 6(E)(1), 6(E)(2) and ruled upon in Evans v. State opinion no # 28963, and noted in the opinion of Oakes, J. in U.S. v. Creamer, first since Dennis v. U.S. 384 U.S. 855, 86 S Ct 1840, 16 L. Ed 2d 973 (1966) defendant has been entitled to examine the grand jury testimony of witnesses against him.

Thus this Request is to review all evidence and testimony which was considered in handing down these indictments, to include, but not limited to, Officers' for the state testimony, statements, evidence, Records Reports, communications, etc, etc, and any other forms of information presented to the grand jury for consideration in handing down a true bill on said indictments.

Respectfully Entrusted
 Anna Russell # 316802
 LCI 990 Wsacky Hwy
 Bishopville, S.C. 29010

Executed This _____ Day
 of _____ 2009
 Bishopville, S.C. 29010.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Warren Russell,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
2008CP4007960

**OBJECTION TO USE OF DISCOVERY AND
OBJECTION TO USE OF SUBPOENA
IN PCR ABSENT COMPLIANCE WITH
S.C. CODE ANN. § 17-27-150 (2006)**

This matter comes by way of a document dated June 16, 2009, captioned "MOTION FOR PRODUCTION OF TRANSCRIPT AND CASE DOCUMENTS AND/OR MOTION FOR DISCOVERY."

The Respondent, State of South Carolina, submits that the use of subpoenas or other discovery in non-capital PCR matters, when no discovery has been ordered, is improper.¹ S.C. Code of Laws § 17-27-150 provides:

A party in a noncapital post-conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise....

Transcript Request

The Respondent respectfully disagrees with the Applicant's intent that this Court order the Respondent to procure a transcript from a trial that the Applicant himself abandoned in order to accept a plea offer. The Applicant waived his right(s) to review the trial when he abandoned

¹ The Respondent notes that this is not a motion to quash any potential subpoena(s), as it is the Respondent's position that construing this motion as a motion to quash could potentially constrain any arguments per the limited protection afforded by Rule 45(c)(3)(a), SCRPC. Instead, the Respondent, via this motion, takes the position that the use of subpoenas in non-capital PCR matters is improper, unless the judge in the exercise of discretion, and for good cause shown, grants leave to do so. If good cause is demonstrated and the judge grants leave to invoke limited discovery, the Respondent reserves its right to move to quash, per Rule 45(c)(3)(a), SCRPC, if applicable.

it. If the trial contained errors, the appropriate method of review was a direct appeal or perhaps a PCR following conviction – that is assuming the Applicant would have been convicted at trial. The Respondent submits that there simply is no mechanism for claiming ineffective assistance of counsel during a trial that was abandoned. The Applicant's convictions are from his guilty plea, that transcript is all that is relevant.

Other Discovery Requests

In response to any argument that a subpoena - requiring that a *third party* provide documents - is not "discovery," the Respondent submits that our State Supreme Court recognizes that subpoenas are indeed "discovery."

Similarly, an order quashing a subpoena duces tecum issued to a nonparty prior to commencement of enforcement of a judgment, is interlocutory and not immediately appealable. **This discovery order** is not a final order because it leaves some further act to be done by the court before the rights of the parties in an enforcement proceeding are determined."

Ex parte Wilson, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005) (emphasis added).

The Court in Ex parte Wilson also explained that a subpoena, *i.e.* Rule 45, SCRPC, is part of "the right to obtain discovery under Rules 26 through 37" and that "Rule 34, SCRPC, incorporates by reference Rule 45, SCRPC." Ex parte Wilson, 367 S.C. 7, 15, 625 S.E.2d 205, 209 (2005)

If the legislature sought to only include Rule 26 through Rule 37 then the PCR statute would clearly reflect such intent. Rather, when drafting the PCR statute, the legislature instead opted for the liberal phrase, "*processes of discovery available under the South Carolina Rules of Civil Procedure.*"² S.C. Code § 17-27-150. "Processes of discovery under the South Carolina Rules of Civil Procedure" undoubtedly incorporates Rule 45. Accordingly [in non-capital PCR

² See also, Hiott v. State, 375 S.C. 354, 357, 652 S.E.2d 436, 437 (S.C. App. Ct. 2007): "Section 17-27-150 indicates the legislature's express intent to afford PCR applicants limited use of the discovery process as stated in the South Carolina Rules of Civil Procedure."

cases], subpoena – and all other discovery - is permitted only when the judge in the exercise of discretion, and for good cause shown, grants leave to do so, but not otherwise.³

Also, the inclusion of a notice requirement to the opposing party for subpoenas is to allow the opposing party an opportunity to object to the subpoena, exactly like the discovery rules for parties. Rule 45(b)(1), SCRCF. Subpoenas are merely processes of discovery for non-parties; subpoenas cannot exist as their own category separate and apart from discovery.

Regarding discovery, our State PCR statute mimics the Federal Rules Governing Habeas Corpus,

Rule 6 of the Rules Governing Habeas Corpus, entitled “Discovery,” provides:“(a) Leave of court required. A party shall be entitled to invoke the processes of discovery available under the Federal Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for effective utilization of discovery procedures, counsel shall be appointed by the judge for a petitioner who qualifies for the appointment of counsel under 18 U.S.C. s 3006A(g).“(b) Requests for discovery. Requests for discovery shall be accompanied by a statement of the questions, interrogatories, or requests for admission and a list of the documents, if any, sought to be produced.”(c) Expenses. If the respondent is granted leave to take the deposition of the petitioner or any other person the judge may as a condition of taking it direct that the respondent pay the expenses of travel and subsistence and fees of counsel for the petitioner to attend the taking of the deposition.”

Blackledge v. Allison, 431 U.S. 63, 82, 97 S.Ct. 1621, 1633 (U.S.N.C., 1977) (emphasis added).

When applying the “processes of discovery” clause of Rule 6, in Federal Habeas Corpus proceedings, subpoenas fall into the category of discovery and are allowed, only after the showing of good cause, and with approval from the judge.⁴ Applying that a subpoena is

³ Under the general rules of construction, the words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation. State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002). A court must apply the plain meaning of a statute where its language is unambiguous and conveys a clear meaning. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000).

⁴ “Good cause” cannot be based on conclusory allegations:

“The burden of demonstrating the materiality of the information requested is on the moving party.” Rule 6 does not “sanction fishing expeditions based on a petitioner’s conclusory allegations.” Rector v. Johnson, 120 F.3d 551, 562 (5th Cir.1997); “Conclusory allegations are not enough to warrant discovery under [Rule 6];

"discovery," Cherrix v. True, 177 F.Supp.2d 485 E.D.Va.,2001, habeas petitioner moved for subpoena duces tecum to compel police department records; issue was whether there existed "good cause" to grant petitioner's discovery request.⁵

Finally, our state rules of civil procedure mimic the federal rules, the federal courts hold, without doubt, that a "subpoena" is part of the processes of "discovery." McLean v. Prudential S. S. Co., 36 F.R.D. 421 E.D.Va., 1965, subpoena is "discovery." Richardson v. State of Fla., 137 F.R.D. 401 M.D.Fla.,1991, subpoena is part of "processes of discovery." Tessera, Inc. v. Micron Technology, Inc., 2006 WL 733498, 2 (N.D.Cal.) (N.D.Cal.,2006), "[a] party may serve a subpoena to obtain discovery from a non-party. Fed.R.Civ.P. 45."

the petitioner must set forth specific allegations of fact ." Ward v. Whitley, 21 F.3d 1355, 1367 (5th Cir.1994).

Stanford v. Parker, 266 F.3d 442, 460 (6th Cir.2001).

⁵ The Respondent also submits that similar to the Federal rule, S.C. § 17-27-150 prohibits discovery (unless ordered by the judge after the showing of good cause) to prevent abuse and harassment of 3rd parties and/or victims.

Federal courts have recognized their inherent power to monitor and control an indigent party's employment of the privileges afforded under 28 U.S.C. § 1915 for the purpose of preventing abuse of the court's process and harassment of both parties and non-parties. *See, e.g., Westbrook v. M-R P'ship*, No. 1:07-CV-140, 2008 WL 711866, at *1 (N.D.Ind. Mar. 14, 2008); *Jackson v. Brinker*, No. IP 91-471-C, 1992 WL 404537, at *5 (S.D.Ind. Dec. 21, 1992) (citing *Estep v. United States*, 251 F.2d 579 (5th Cir.1958)); *Badman v. Stark*, 139 F.R.D. 601, 605 (M.D.Pa.1991) (citing *Hecht v. Pro-Football, Inc.*, 46 F.R.D. 605, 606 (D.D.C.1969)). "This power authorizes the Court to review indigent parties' subpoenae duces tecum before service and to order the Marshals Service to reject service requests in certain circumstances." *Jackson*, 1992 WL 404537, at *5; *see also Lloyd v. McKendree*, 749 F.2d 705, 707 (11th Cir.1985); *Manning v. Lockhart*, 623 F.2d 536, 539 (8th Cir.1980).

Luster v. Sands, 2008 WL 4449542, 1 (N.D.Ind.) (N.D.Ind.,2008)

WHEREFORE, the Respondent respectfully requests that this Court deny the Applicant's request(s) for failure to satisfy S.C. Code Ann. § 17-27-150 (2006) and/or because the information sought is irrelevant regarding any challenge made to the legality of his confinement per S.C. Code § 17-27-20 (Supp. 2008).

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

BY:


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

Columbia, South Carolina
June 25, 2009

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2008-CP-400-7960

Warren Russell, 316802

Applicant,

vs

State of South Carolina,

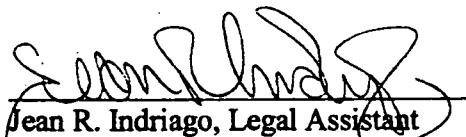
Respondent.

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

Tricia A. Blanchette, Esquire
Post Office Box 12725
Columbia, South Carolina 29211

DATED this 25th day of June, 2009.


Jean R. Indriago, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2008CP4007960

Warren #316802 Russell

vs.

State of South Carolina

Plaintiff

Defendant

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:

☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order;☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2009.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2009, and a copy mailed first class this 15th day of Sept., 2009, to attorneys of record or to parties (when appearing pro se) as follows:

Warren #316802 Russell
Tricia A Blanchette

Brian T Petrano

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Russell Warren,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2008-CP-40-7960

ORDER

This matter comes before the Court by way of an Application for Post Conviction Relief filed on November 5, 2008. On November 24, 2008, Tricia A. Blanchette Esquire, was appointed by the Richland County Clerk of Court. Brian T. Petras, Assistant Attorney General, submitted the State's Return on or around April 29, 2009.

On June 18, 2009, the Applicant, through appointed counsel, filed a Motion for Production of Transcript and Case Documents and/or Motion for Discovery. On or about June 25, 2009, the State filed an Objection to Use of Discovery and Objection to Use of Subpoena in PCR Absent Compliance with S.C. Code Ann. § 17-27-150 (2006).

1. Trial Transcript

In the Applicant's Motion, counsel explained that the State refused to order the trial transcript from the Applicant's trial on February 25-28, 2008 at the Richland County Courthouse since the Applicant entered a guilty plea on February 28, 2008. Counsel also submitted that the Applicant has made a number of allegations that she cannot properly research and/or prepare without the trial transcript. Therefore, counsel respectfully requested that this Court order the State to obtain the trial transcript since it is "material to the questions raised in the Application." S.C. Code Ann. § 17-27-70 (2008).

RICHLAND COUNTY
FILED

2009 SEP 10 AM 11:47
JEANETTE W. McBRIDE
Clerk of Court

2009
On August 28, 2008, this Court held a phone conference with Tricia A.

Blanchette, Attorney for the Applicant, and Brian T. Pretrano, Assistant Attorney General. This Court allowed Ms. Blanchette to further explain her request for the trial transcript and allowed Mr. Petrano to further explain his objection to ordering the trial transcript.

At the conclusion of the phone conference, this Court found that the Applicant had proven that a portion of the trial transcript may be material to the allegations raised in his Application. Therefore, this Court finds that the State must order a portion of the trial transcript, to include the court's jury charge through the Applicant's entry of his plea, and produce this portion of the trial transcript.

2. Request for Discovery

In the Applicant's Motion, counsel explained that the Applicant prepared and sent a "Petitioner's Request for Production of Documents" to appointed counsel and the Attorney General's Office. In response, counsel wrote to the Applicant explaining the discovery rule set forth in S.C. Code Ann. §17-27-150 (2008). Counsel also noted that the Applicant had also prepared and submitted a list of "actions" for PCR counsel to complete prior to his evidentiary hearing. This list included but was not limited to the following: 1) Subpoena the twelve jurors; 2) Conduct investigations on the Solicitor's Office and the investigators that handled the case; 3) Subpoena the trial judge; 4) Subpoena Investigator Dave McRoberts regarding grand jury proceedings; and 5) Subpoena all correspondence exchanged with the Clerk of Court. Based upon the Applicant's requests, counsel respectfully requested that this Court allow the Applicant to

proceed to a discovery hearing to determine if the Applicant may invoke the discover process and/or pursue the specific actions set forth in the Motion.

During the phone conference, this Court also allowed both parties to explain their position on the Applicant's request for discovery. Ms. Blanchette explained that an Order for Discovery was necessary to pursue her client's discovery requests, and Mr. Petrano strongly objected to the issuance of an Order for Discovery. This Court denies the Applicant's request for discovery pursuant to S.C. Code Ann. §17-27-150 (2008).

3. Hybrid Representation

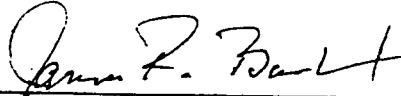
Due to the number of pro-se filings the Applicant has filed in connection with his PCR Application, this Court would further remind the Applicant about the prohibition on hybrid representation. Rule 11, SCRPC, requires every pleading, motion, or other paper of a party represented by counsel to be signed by at least one attorney of record who is an active member of the South Carolina Bar. If a pleading, motion, or other paper is not signed, "it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." Rule 11, SCRPC. South Carolina does not recognize any right to hybrid representation at trial or on appeal. See, e.g., Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

IT IS THEREFORE ORDERED:

1. That the Applicant has shown that the portion of the trial transcript, from the court's jury charge forward, may be material to the allegations in the Application;
2. That the State must order and produce the portion of the trial transcript beginning with the court's jury charge and ending with the entry of the Applicant's plea;

3. That the Applicant's request for discovery and/or a discovery hearing is denied; and
4. That the Applicant has been cautioned that hybrid representation is prohibited.

AND IT IS SO ORDERED this 2nd day of SEPTEMBER, 2009



The Honorable James R. Barber, III
Administrative Judge, Fifth Judicial Circuit

COLUMBIA

, South Carolina

✓
9/17/09

Clerk of Court

This is a Formal Request pursuant to 54(b) SCRPC, Re MS Terina
Blanchette, in the case of No: 2008CP4007960 to file a motion to enter an
Amend, said order from the Honorable James R. Barber III signed 9/2/09
On this day I informed MS Blanchette of the issues that I am objecting
to and requested her to file said issue in said requested motion. Please
Stamp and send me copy thank you

CC copy have been sent to MS Blanchette listing issues to addressed
in said Request motion. on this same date.

Sincerely
Warren Russell # 36502
LEE 990 Niskey Hwy
Bishopville, SC 29010

Mailing Address:
Post Office Box 12725
Columbia, South Carolina 29211



Office Address:
1330 Lady Street, Suite 209
Columbia, South Carolina 29201

LAW OFFICE OF TRICIA A. BLANCHETTE

September 25, 2009

Warren Russell #316802
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Dear Mr. Russell:

I received and reviewed your letter and proposed Motion dated September 17, 2009. In my response to my request to schedule a motion hearing, Judge Barber called me and indicated that he would not be holding a hearing, but he would conduct a phone conference to discuss the Motion. He requested that I set up the phone conference for the following morning. Despite the fact that I had two prison visits that day, I took your file home with me, and I was more than adequately prepared for the phone conference.

The decision to schedule a hearing, discuss the matter over the phone, or issue an order without a discussion is within the sole discretion of the Administrative Judge (Judge Barber). There is no transcript of our phone call since it was not recorded. I will put it on the record at the beginning of your evidentiary hearing, and I will renew the Motion for Discovery on the record.

I will not file a Motion regarding Judge Barber's Order because he made it very clear that it was his final decision. If needed, I will renew the Motion for Discovery prior to and/or at the evidentiary hearing.

Also, please adhere to the portion of the Order regarding hybrid representation. Judge Barber can take further action regarding this matter if he chooses.

In your letter, you also mentioned that I have not met with you recently regarding your case. I have 2 prison visits a week, but I must go to every prison in the State. Even when I am at Lee, I cannot meet with all my clients at one time, so please feel free to write or call my office in between my visits.

Again, please feel free to contact me with any questions regarding your case.

Yours truly,

A handwritten signature in black ink, appearing to read "Tricia A. Blanchette".
Tricia A. Blanchette
Attorney at Law

Phone: 803-988-0008 Facsimile 803-988-8070

Email: BlanchetteLaw@Gmail.com

Mailing Address:
Post Office Box 12725
Columbia, South Carolina 29211



Office Address:
1330 Lady Street, Suite 209
Columbia, South Carolina 29201

LAW OFFICE OF TRICIA A. BLANCHETTE

January 20, 2010

Warren Russell #316802
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Dear Mr. Russell:

Today I received and reviewed your letter dated January 17th. I was in court with Judge Manning on Friday, and it is my understanding that he is still reviewing your case.

As to the exhibits, my notes indicated that I introduced sixteen exhibits. Most of those exhibits you provided to me the day of your hearing, and I had to make copies in the Judge's chambers very hastily. With that said, I have a note on my outline that the indictment was introduced as #13. If for some reason it was not introduced, all the indictments from your case are considered part of the record of your case.

Regarding Judge Manning's comments about the discovery Order, Judge Manning did not know that Judge Barber instructed me to prepare the Order. As you noted, his comments will appear on the record, but I stand by my opinion that I should not file a motion on an Order I prepared at the Judge's request. Also, I followed Judge Barber's instructions without further complaint since he did grant partial discovery. My point in renewing the Motion at the hearing was so Judge Manning would consider it in light of all testimony and evidence presented at your hearing. As I recall our discussion, you seemed satisfied with the portion of the Transcript I was able to obtain and you indicated that you did not have any further issues to raise at your PCR.

I hope I have adequately addressed your letter. I will contact you when I receive any information from Judge Manning regarding his decision in your case.

Yours truly,

A handwritten signature in black ink, appearing to read "Tricia A. Blanchette".
Tricia A. Blanchette
Attorney at Law

Phone: 803-988-0008 Facsimile 803-988-8070

Email: BlanchetteLaw@Gmail.com

Dear Clerk of Court, Please clock stamp and send me back copy

This is a second Request for you as my attorney in case NO. 2008-CP-40-77601 and pursuant to Pruitt v. State 423 S.E. 2d 127 SC. 1992, to file a 548e motion to alter or amend a Judgment in the above mention case if the Judges Order fails to set forth the required findings, reasons for these findings and or Rule on all issues presented in said PCR Hearing. Since you did in fact submitted a motion to the courts to Amend my application for Past Conviction Relief to include a number of issues that was clearly addressed at said PCR. I am also making this Request to prevent again any Judge from endeavoring you to prepare a motion against me in this case. Clearly in your letter to me dated 1/20/10 you did in fact state that Judge Braxton instructed you to prepare a motion against me that you could not challenge even though I Requested you to do so by way of a 548e motion. Furthermore since this information was only brought to my attention after said PCR Hearing, nothing could be done, even though said motion prevented me of the right to be allowed use of discovery and subpoenas, and prevented me to be allowed the right to know the truth, and use the truth in prosecuting my PCR. Furthermore pursuant to Canon 3(B)(9) - A Judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The Judge shall require similar abstention on the part of

2010 FEB 7 AM 11:11
JEANE M. MORRIS
Clerk of Court
FILED
RICHMOND, VA

Court personnel subject to the Judges discretion and control. Clearly for Judge Brooke to ^{have} instructed you to prepare a order against your own client preventing him from gathering evidence that would have been in your clients best interest is a abuse of discretion and in contras to the Canon Rule. This is why I am Requesting in advance for you to not allow this unethical behavior to happen again.

Please Respect A.S.A.P.

Thanks for Your Help

Sincerely,

MR. Warren Russell

LCF 990 Wismar, Hwy

Bishopville, S.C. 29010

CC. Copies have been forwarded to my Attorney Tricia A. Blanchette.

2/10/10

Mailing Address:
Post Office Box 12725
Columbia, South Carolina 29211



Office Address:
1330 Lady Street, Suite 209
Columbia, South Carolina 29201

LAW OFFICE OF TRICIA A. BLANCHETTE

February 15, 2010

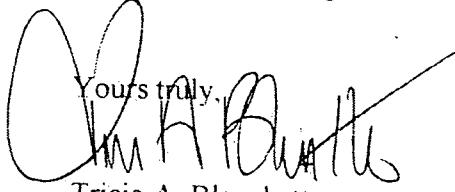
Warren Russell #316802
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Dear Mr. Russell:

Today I received and reviewed your letter regarding the preparation of an Order in your case. Typically, Judge Manning will instruct the winning party to prepare a proposed Order. As of today, neither side has received such a request from him. Therefore, I am only requested to prepare an Order if the Judge requests such from each side or if I am the winning party.

As I explained in my last letter, I was instructed to prepare the Order regarding discovery since we partially won our motion. As I also explained in my last letter, I did not file a motion asking Judge Barber to reconsider his decision because I have a duty to not file frivolous motions. I also was concerned that such a Motion would negate our partial victory, which was vital to the preparation of your PCR Action.

I will contact you when I receive any information from Judge Manning regarding his decision in your case.

Yours truly,

Tricia A. Blanchette
Attorney at Law

Phone: 803-988-0008 Facsimile 803-988-8070

Email: BlanchetteLaw@Gmail.com

Mailing Address:
Post Office Box 12725
Columbia, South Carolina 29211



Office Address:
1330 Lady Street, Suite 209
Columbia, South Carolina 29201

LAW OFFICE OF TRICIA A. BLANCHETTE

March 5, 2010

Honorable L. Casey Manning
Judge, Fifth Judicial Circuit
PO Box 192
Columbia, SC 29202

RE: Warren Russell v. State, Docket No.: 2008-CP-40-7960

Dear Judge Manning:

I was appointed to represent Warren Russell on the above referenced PCR Action, and an evidentiary hearing was held in front of you on December 8, 2009. Mr. Russell has brought a matter to my attention that he wanted me to address with you. I have discussed this matter with Brian Petrano, Ast. Attorney General, and he has decided to order the PCR Transcript.

The matter that is of concern to Mr. Russell is as follows: In June 2009, I submitted an Order for Production of the Trial Transcript and Discovery. The State filed a timely response, and the Honorable James R. Barber, III, conducted a phone conference. At the conclusion of the phone conference, Judge Barber instructed me to prepare an Order Granting Partial Discovery, which I submitted on or about September 2, 2009. As I have thoroughly explained to my client, I choose not to file a Motion, Pursuant to Rule 59(e), SCRCP, since I prepared the Order and determined that I had properly addressed the issues as requested by Judge Barber. Furthermore, I also determined and informed my client that I would not file a Motion, Pursuant to 59(a), SCRCP, because I did not want to lose our victory of obtaining partial discovery, which was vital to the preparation of his PCR Action. I also informed Mr. Russell that it was my understanding that I could renew the Motion for Discovery and Production at his evidentiary hearing.

When I renewed my motion at the evidentiary hearing, I failed to provide the detailed information listed above. It is my client's position that this information should have been made part of the record. Therefore, I am providing this information at his request.

Again, it is my understanding that Brian Petrano has ordered the PCR transcript, so I would respectfully request that this Court does not render a decision on this case, which is under advisement until such time as the Transcript has been received and reviewed with my client.

Yours truly,
A handwritten signature in black ink, appearing to read "Tricia A. Blanchette".

Tricia A. Blanchette
Attorney at Law

cc: Brian Petrano, Assistant Attorney General
Warren Russell

Phone: 803-988-0008 Facsimile 803-988-8070

Email: BlanchetteLaw@Gmail.com

State of South Carolina

County of Richland

Harren Russell ©

V.

State of South Carolina

Respondent

In the Court of Common Pleas

Fifth Judicial Circuit

2008-CP-40-7960

AFFIDAVIT OF SERVICE

By Mail

Personally appeared before me, Harren Russell #316802, who being duly sworn states:

- 1) That I am the Petitioner in this matter
- 2) That Regular Communication by mail exists throughout the State of South Carolina and that this proper circumstance of service by mail.
- 3) That I have this day served a copy of this letter on the following persons by mail postage prepaid;

1) Law Office of Tricia A. Blanchette

P.O. Box 12725

Columbia, S.C. 29211

2) Harren Russell #316802

LCI 990 Wilsack Hwy

Bishopville S.C. 29010

Sworn to and subscribed before me this 12 day of March 2010

[Signature]
Notary Public for South Carolina

My Commission Expires 5/16/17

Harren Russell ©
Harren Russell #316802
Petitioner

3/12/2010

1 of 3

Dear Ms. Blanchette

I Received and Reviewed your letter dated March 5, 2010, Regarding our meeting on March 4, 2010. I appreciate all of your help, but what concerns me the most about said letter is that you ask for Judge Manning to Not Render a decision on said PIR until the PIR transcript has been received. My concerns with that is the PIR transcript has absolutely nothing to do with any issues presented before said PIR hearing. Therefore such a Request to Judge Manning helps me none, and can only help the State in advance to prepare a defense to my appeal. Furthermore with all due respect, I never ask you to do such, and was not in agreement to such Request to delay said PIR decision. I strongly object to said Request to delay said PIR decision until the PIR transcript have been Received. I would have only agree to such Requested delays, if you were this adamant and vigilant in regards to Requesting the trial transcript and use of subpoenas, which could be helpful to this case. In your letter you stated that you are continuing to try to persuade Brenan to Obtain the complete trial transcript and use it's subpoenas, so that this issue does not have to be addressed on appeal. Clearly the fact that this is now an issue for appeal is in my face. Thus, for Brenan to now allow full discovery at this time can not, and will not correct said issue at an appeal, unless a New hearing is held, to which this withheld discovery can be considered. Clearly the issue for appeal is pursuant to S.C. Code Ann § 17-25-150(2008) in which good cause was proven to warrant portions of the trial transcript (discovery), thus good cause was proven to warrant full compliance with S.C. Code Ann § 17-27-150(2008) to include use of subpoenas.

Investigator Dave McRoberts, RCSI, ^{and} the state testified on Record that said victim was in hiding and could not be found, thus was never talked to or identified as a victim. Which will clearly show the allegations of prosecutorial misconduct.

4) I respectfully request that you gather the transcript from the pre-trial hearing held on Feb 21, 2008, before the honorable Chief Administrative Judge J. Michelle Childs and or interrogations or deposition thereof.

5) I respectfully request that you gather any and all documents from any and all hearing held before the Honorable Judge B. Thomas Cooper. Regarding having counsel Mark Schaefer removed. Definition "Documents" is to include any form of writing, communication or other means by which information may be transferred or recorded, whether it be by paper, film, audio, computer printout, computer disk or other form, including, but not limited too, notes, reports, records, memorandums, communications, fax, work sheets, meetings, analysis, Etc, Etc, and any other forms of information preservation.

6) Statement of the interview that you had with co-counsel Kristy M. Grafton, or her testimony to be disclosed to the courts. Thus this information was in your clients best interest.

7) Any and all other measure necessary, ethical, and legal to further champion my case.

8) This is the information I would like to present to the court along with any thing else that might come up as well, Thus I would respectfully agree to your request to re-open said pre hearing.

4 of 5

With the new evidence and/or information that will become available after the full discovery and use of subpoenas, we could adequately use the truth to support the allegations that would clearly warrant a lie. I truly understand that to get the state to relinquish this information will require your excellence, diligence and your perseverance, despite the opposition, obstruction and personal and/or professional inconvenience. So I thank you, my family thanks you for acting with zeal in the advocacy upon my case, May God Bless you

Please forward me a copy of this letter for my record and I look forward to the PCR transcript, and the rest of the trial transcript and use of subpoenas. for officer Dave Meredith RCSI

Sincerely
Mr. Winston Russell
LCI 990 Wismek Hwy
Bishopville, S.C. 29010

The State at first via Objection to use of discovery and objection to use of Subpoena, states that said motion is not to quash any potential subpoenas, or to potentially constrain any arguments, and takes the position that the use of subpoenas in non-capital PCR matters is improper, unless the judge in the exercise of discretion, and for good cause shown, grants leave to do so. The state also states that if good cause is demonstrated and the judge grants leave to invoke limited discovery, which was clearly done right? The state would reserve its right to move to quash, per Rule 45(c)(3)(A), SCRCP, if applicable.

Thus now the state is saying good cause has been shown and thus the applicant ~~and the judge~~ is allowed to use subpoenas so that they will not constrain the arguments per the limited protection afforded by Rule 45(c)(3)(A).

So for the state to object now would clearly show the true intent to only constrain the arguments.

P.S. How much longer will this hold up the process of said PCR and or ruling.

5/7/2010

Dear MS. Blanchette

I have received your letter regarding my request for you to send the Honorable Judge Manning the proposed Order that I sent to you. Since you have stated that you have never done such before and believe that it would not be appropriate to do such. Let me assure you that such request is very much appropriate since you are my attorney. According to Rule 5(B)(3) Service of Proposed Orders and other papers, Any party providing a proposed order, proposed findings of fact or conclusions of law, or proposed judgment or other papers to the courts for its consideration in any pending matter shall serve the same on all Counsel of Record at the same time and by the same means. This Rule does not require the court to delay entering any proposed order. Clearly, I would have not asked you to do such without me first researching said issue. With that said, said requested action is clearly appropriate, for a attorney to take, even without the judge requesting for such. Since you have also stated that Judge Manning has not requested a proposed order for either side, our timing is great. Further, after a review of said applicants proposed order, and supporting documents, plain, palpable, and indisputable fact exist on which reasonable minds cannot differ, Summary judgment should be granted.

Rule 12(c) Motion for judgment on the pleadings - after the pleadings are filed but within such time as not to delay the trial, ~~any party~~ may move for judgment on the Pleadings. Rule 56 - Summary Judgment - Summary judgment is completely appropriate when a properly supported motion set forth facts that Plaintiff undisputed or are contested in a deficient manner.

That therefore, with these clear, plain, palpable and undisputable fact that;
1) I was put twice in jeopardy on indictment #07-65-46-3669; 2) Trial judge in fact had ex-parte communication with juror #120; 3) Knew of the numerical division, 4) Then gave a 2nd discharge, are clear facts which reasonable minds cannot differ.

Further, in your 2nd paragraph you stated that the State indicated that they would not send in a proposed order in response, to mine, since it was prepared by me for the judge's review, and my Attorney was not proposing said order. In your 3rd paragraph you then stated the State would submit a proposed order denying said PRR Question? Are you in fact saying that if I propose said order the State would not respond, or are you in fact saying that if said order was to have been prepared by yourself the State would in fact respond. Either way this is my 2nd formal request for my Attorney to respectfully propose said order, Granting Relief from the PRR Hearing, in accordance to Rule 5(B)(3), serve on all parties and clerk of Court.

I can not understand why said order was not filed from my 1st Request after I made said request crystal. Why would we consistent the State, if said request was appropriate, and then not file said Request?

I understand that this decision to propose said order may cause the judge to make a decision before the PRR transcript arrives or the State determine if they in fact will even order the trial transcript, thus only supporting my theory

1st Request 04/30/2010

2nd Request 05/27/2010 (R)

Emailed on Friday May 7th, 2010 3rd Request to BlankettLm@Gmail.Com

of intentional delay tactics. At this point the Judge will not move, I'm not on any docket, and the State may or may not order the trial transcript.

My revelations are real and right and exact. Further the PCR transcript is only for the state to form a defense; it can't help me none at this stage.

The issues raised in said order is what was addressed at said PCR hearing.

So with this order please send the supporting trial transcript pages and the PCR transcript pages. Please propose said order in the proper form, and submit, also please send me copies of said order, exhibits and cover sheet showing when it was submitted to the clerk of courts. (File A.S.A.P.)

Please don't take this as disrespect, for I am truly grateful and have the upmost respect for you and all the help you have provided. I am aware of the quantum, and on pickle this puts you in

Rule 1.2 Scope of representation and allocation of authority between client and lawyer (1) Recognize that the client has the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by the law and the lawyer's professional obligations.

Rule 1.3 Diligence (1) - A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor.

Sincerely, Thankful for your help
Warren Russell ©

P.S. Please send copies of all correspondence regarding this matter 1st and 2nd Request, and order. Thank You

State of South Carolina
County of Richland
Warren Russell ©

In the Court of Common Pleas
Fifth Judicial Circuit
2008-CP-40-7960

V.
State of South Carolina

AFFIDAVIT of Service
By Mail

Personally appeared before me, Warren Russell © #316862, who being duly sworn states:

- 1) That I am the Petitioner in the within, and Request for my Attorney to send The Order Granting Post Conviction Relief in case no #2008-CP-40-7960, to all parties,
- 2) That this is my 2nd formal Request to my Attorney Tricia A. Blanchette to file said Requested order under Rule 5(B)(3) Service of Proposed Order and other paper.
- 3) That Regular Communication by mail exist throughout the State of S.C. and that this proper circumstance of service by mail.
- 4) That I have this day served a copy of this letter on the following persons by mail postage prepaid;

1) Law Office of Tricia A. Blanchette

P.O. Box 12725

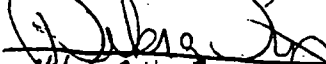
Columbia, S.C. 29211

2) Warren Russell © #316862

LCE 990 Visbeck Hwy

Bishopville, S.C. 29010

Sworn to and subscribed before me this 11 day of May 2010


Notary Public for South Carolina


Plaintiff.

My Commission Expires 11-4-2015

May 12th 2010

Dear Ms. Blanchette

I have received your letter dated May 4th 2010, Regarding my 1st Request for you to send the Honorable Judge Manning the proposed order granting Relief from the PCR that I sent to you on April 30th 2010. In your letter you stated that you have never done such before, and that you believe, that to do such would not be appropriate. I, understand the fact that you have never done such before, but it is concerning to me that you are not aware of Rule 5(B)(3) Service of Proposed Orders and other paper; **ANY PARTY** providing a proposed order, proposed findings of facts or conclusions of Law, or proposed judgment or other papers to the court for its consideration in any pending matter shall serve the same on all counsel of record at the same time and by the same means. Thus opposing counsel will have the opportunity to review and comment on the proposed order before it is signed. This Rule does not require the court to delay entering any proposed order. Clearly you must know, that I would not have requested you to do such, without me first knowing that it was legal and ethical, and me doing the research. With that said, as in my 1st and 2nd Request, said actions are appropriate for my counsel to take, even without the Judge requesting to do such. Since you stated in your letter that you had or choose to refer to the State to see if said request was appropriate, said opposing counsel have had the opportunity to review and comment on said proposed order. So ^{Now} ~~known~~ we must file said order with the courts. You have me that stated that Judge Manning have not requested either side to propose such order, and my case is still pending. Thus Due proposed order should be filed with the Clerk of Court, before the states is filed, if the state decides to file such proposed order. denying PCR Relief.

Thus I am of the hope, that you will present said order in the correct form, listing all of the exhibits, and issues addressed, along with any other case laws that would support such order without any further delays. The Order that I sent to you on April 30th 2020, is only a blue print to express my intent, issues, evidence and conclusion of Law, if you feel that said order was done correctly and is in proper form then by all means submit to the courts immediately. If within your expertise, if not, then this is a Request for you to ~~represent~~^{prepare} said order correctly and in proper form to the courts to include all exhibits and issues. Clearly in said order you can see that there are plain, palpable, and undisputable facts that exist and which reasonable minds, cannot differ.

In Rule 56 Motion for judgment on the pleading - After the pleadings are closed but within such times as not to delay the trial, **ANY PARTY** may move for judgment on the pleading. In Rule 56 Summary Judgment - Summary judgment is completely appropriate when a properly supported Motion sets forth facts that remain undisputed or are contested in a deficient Manner. Clearly at said PER hearing, the State had no defense for said evidence presented at said hearing. Further any oppositions to said facts would be deficient.

Therefore, clearly in said order, I have properly supported clear, plain, palpable and undisputable facts, and if needed to be ~~renewed~~^{prepared} by you, I am sure you will do the same. Clearly; 1) Appellant was put twice in jeopardy on indictment # 07-65-40-3669; 2) Trial judge in that had ex-parte communication with juror # 620; 3) Trial judge knew of the numerical division and then gave a Jury Allen charge; 4) Trial judge violated FRCP Rule 11; 5) Trial judge stopped the trial to initiate said plea. All of which are supported by the trial, and Plea transcript, and case law in said order. Since ~~these~~ are facts based on evidence and conclusions of law, in Accordance with § 17-27-60, said opposing

order

~~July~~ ~~Butler~~ must address all issues, since said issues were not all attached to the ~~sub~~ issue of ineffective assistance of counsel, and stand alone as their own individually they must be ruled on as such. Thus this is again a request for you as my attorney to protect such rights, and make sure said is done. Thus I am comforted because you are my legal representative, and are more than capable of doing such. Further, since these issues have been addressed before we crossed these bridges, we are in a good position to prevent said possible mishaps. Thus the only question now is how far the state is willing to go. Any attempt to oppose said order would be done not in good faith and could be considered vexatious. Further, the state from the beginning misrepresented the facts of this case to the courts, by stating that I plead guilty to all charges before the jury reached a verdict, when in fact the record clearly shows that to be untrue. See: long jury form, State Return, and Objections to use of discovery. All supports said allegations, which is clearly fraud upon the court, by officers of the court, in an attempt to intentionally conceal documents, and was a deliberate attempt by said parties to effectively deprive the applicant of a fair hearing or opportunity to present its case. Clearly the same can be alleged with the denial of discovery, in compliance with § 77-27-150. for said PCR hearing.

See MS. Blanchette the problem is that my case is not active, dead if you will, because 1) The state asked the judge not to rule until the complete transcript is ordered 2) Now the state is not even sure that they will in fact ever order said transcript 3) Clearly this is gonna delay the process, Question what happens if the state decides not to order the transcript? Clearly the state is aware, Clearly

1st Request April 30th 2010
2nd Request May 7th 2010
3rd Request Email May 8th 2010
4th Request May 12th 2010 Affidavit of Service

The PER transcript will be of no help to me at this stage, the state only wants it to find a defense for the judge comment about me being deprived discovery or find away to omit it.

Thus said in actions, and or opposing said order by the state will only cause further undue delay, and additional cruel and unusual punishment in further violation of my Constitutional Rights. Thus this motion must be address to ensure that the applicant has had a fair chance to address the courts in a timely manner. I am sure this would be of interest to the Honorable Chief Justice Tenth H. Torl, to know that said acts are in fact happening under her watch.

Therefore, since you have a direct open line of communication with Beran, maybe you could make some kind of suggestion that could bring this matter to a speedy remedy. As you must know, and can attest to, I will not give up and will not sit by and do nothing. The business of the court is to try the case, not the man; and a very bad man may have a very righteous case, [A] plaintiff must show that he stands on fair ground when he calls on a court of justice to administer relief upon him; The laws assist those who are vigilant, not those who sleep over their rights; Power delegated cannot exceed that which its origin; The purpose of the law is to prevent the strong from always having their way.

So with all due respect, please A.S.A.P send said proposed order, Requesting Relief and include all requested issues stated, include all exhibits enclosed (trial and plea transcript), include all supporting cases included and any other case laws that would support said Relief. Please send me copies of said order along with said cover sheet to the clerk of court in compliance with ~~Seventeen~~ Rule 5 (2013). Please do not take this requested motion as disrespect, for I only have the up most respect for you and all the help that you have provided thus far.

Sincerely/ Thankful/
Warren Russell © #316802

P.S. Copies of All correspondence regarding this matter to include Email.

1 Q And was that filed?

2 A No, there was no direct appeal ever filed.

3 Q Did you file anything pro se?

4 A No, I did not.

5 Q And today are you requesting a belated appeal
6 pursuant to White versus State?

7 A I think it would be in my best interest to preserve
8 that that right be available to me and not waive it, yes.

9 Q But your primary request is for a new trial?

10 A Yes.

11 Q Mr. Russell, I've gone over the outline that we
12 prepared together. We've met several times. I know that
13 you've worked very diligently on your case. Is there
14 anything else that you'd like to present to the Court that
15 we did not go over?

16 A I have some information regarding the actual verdict
17 because I understand that they're trying to insinuate that
18 since the actual verdict was never read in open court that
19 it doesn't consist of a verdict, but the judge stated
20 herself that there was two ways that she could handle this
21 particular situation: One was her upholding the guilty
22 verdict and calling a mistrial on the other seven counts
23 that was deadlocked on, so clearly there was a legal
24 binding verdict for the judge to be considering calling a
25 mistrial and upholding the verdict.

1 Q Now, during the plea, Judge Jefferson does inform
2 Mr. Russell that he can appeal. And he had testified at
3 length today that he thought that he could appeal the
4 double jeopardy issue and the successive Allen charge even
5 though he entered a plea. Did you explain his appellate
6 rights to him prior to entering that plea?

7 A We may have discussed it very briefly.

8 I had never heard of a double jeopardy claim
9 because he was pleading guilty to all the charges. That
10 was my understanding of what was going on at that time.

11 The jury had reached a verdict on one count. We
12 didn't know what it was. It was never announced to the
13 Court, it was never entered into evidence, so he was
14 simply pleading guilty to all charges that he was on trial
15 for.

16 In terms of the successive Allen charge, I don't
17 remember discussing that at all.

18 Q So would you agree or disagree that he entered a
19 conditional plea, if it was his belief that he still
20 maintained those appellate rights?

21 A I don't remember anything about a conditional appeal
22 being mentioned at all. I don't remember it being
23 discussed and it's certainly not in the plea record.

24 Q Now, in this case or in his application, he's also
25 alleged prosecutorial misconduct. Were you aware of any

1 at the close of the hearing if the Court saw fit that the
2 rest of the transcript was needed, that that may be an
3 issue to discuss then, but I tailored our presentation
4 today based upon the transcript.

5 THE COURT: The question again: Judge Barber's
6 order was not appealed or any motions

7 MS. BLANCHETTE: No, I did not.

8 THE COURT: All right. Thank you.

9 MR. PETRANO: And we certainly would agree that
10 if it develops, Your Honor --

11 THE COURT: I mean, my position is it's been
12 waived, but I will let you do your job.

13 MS. BLANCHETTE: Thank you, Your Honor.

14 I'd call Mr. Warren Russell to the stand.

15 THE COURT: Come around, Mr. Russell.

16 WARREN RUSSELL, after being duly sworn,
17 testified as follows:

18 THE COURT: Take a seat, Mr. Russell. Tell us
19 your full name and spell your last name for the record.

20 You look a little bit like Elton Brand. Has
21 anybody ever told you that before?

22 THE WITNESS: No, sir.

23 THE COURT: Well, I'm telling you that now.

24 DIRECT EXAMINATION

25 BY MS. BLANCHETTE:

1 Q And was that filed?

2 A No, there was no direct appeal ever filed.

3 Q Did you file anything pro se?

4 A No, I did not.

5 Q And today are you requesting a belated appeal
6 pursuant to White versus State?

7 A I think it would be in my best interest to preserve
8 that that right be available to me and not waive it, yes.

9 Q But your primary request is for a new trial?

10 A Yes.

11 Q Mr. Russell, I've gone over the outline that we
12 prepared together. We've met several times. I know that
13 you've worked very diligently on your case. Is there
14 anything else that you'd like to present to the Court that
15 we did not go over?

16 A I have some information regarding the actual verdict
17 because I understand that they're trying to insinuate that
18 since the actual verdict was never read in open court that
19 it doesn't consist of a verdict, but the judge stated

20 herself that there was two ways that she could handle this
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22 verdict and calling a mistrial on the other seven counts
23 that was deadlocked on, so clearly there was a legal
24 binding verdict for the judge to be considering calling a
25 mistrial and upholding the verdict.

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

THE DEFENDANT: No, Your Honor.

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

THE DEFENDANT: No, Your Honor.

THE COURT: Have you had any drugs or alcohol or medication in the last 72 hours?

THE DEFENDANT: No, Your Honor.

THE COURT: Are you aware of any physical, emotional or nervous problem that might keep you from understanding where you are or what you are doing?

THE DEFENDANT: No, Your Honor.

THE COURT: Do we need to re-recite the facts?

MS. SHIPLEY: No, Your Honor. I was going to move to incorporate the trial record.

THE COURT: That's fine, I think. Is there any exception, Mr. Schnee?

MR. SCHNEE: No, Your Honor.

THE COURT: Sir, do you agree or disagree with the facts as they have been presently presented during the course of this trial?

THE DEFENDANT: I agree, Your Honor.

THE COURT: Do you feel anything needs to be

1 I have no objection.

2 MR. PETRANO: I will rephrase.

3 BY MR. PETRANO:

4 Q The facts as presented at the plea that the applicant
5 pled to.

6 A There were no facts presented at the plea.

7 Essentially, the Solicitor stood on the indictments and
8 said, you know, Your Honor, you've been here for the
9 entire trial, you've heard everything, and it was
10 essentially incorporated into the plea at that point.
11 That's my understanding of it.

12 Q And that was basically, I believe, touched on the
13 kidnapping and extortion and being in the vehicle with the
14 drugs. But you had also mentioned the house he was
15 running -- I think those were your words -- and so all of
16 this was kind of the same? That's where all the
17 indictments went to?

18 A Yes, it was all one chain of events for a one-day
19 period essentially.

20 MR. PETRANO: That's all I was trying to get at.

21 THE COURT: Anything else? Go ahead.

22 MR. PETRANO: Your Honor, everything has been
23 covered.

24 THE COURT: That's fine. Thank you.

25 Anything on redirect?

1 MS. BLANCHETTE: Just one question, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. BLANCHETTE:

4 Q In review of the plea transcript, was Mr. Russell put
5 on notice of the exact details for the negotiations that
6 were incorporated in the plea?

7 A No, he was not. It was very clear that the judge
8 told me what she was going to sentence him to, but it was
9 a straight-up plea otherwise.

10 Q Is it likely based upon the plea transcript that he
11 could have a viable belief that he still could appeal
12 those issues?

13 A I don't believe so. Based on my reading of the
14 transcript, it was a plea and that was it, it was just a
15 plea of guilty. There were no reservations about an
16 appeal.

17 MS. BLANCHETTE: I have nothing further.

18 THE COURT: All right. You may step down,
19 Mr. Schnee.

20 THE WITNESS: Thank you.

21 (A discussion was held off the record.)

22 THE COURT: Good luck to you, Mr. Russell.

23 (The proceedings were concluded.)

24 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
25

1 Q Now, in this case, were you always preparing for
2 trial or were there any pleas that came down?

3 A It was trial from day one.

4 Q Okay. And --

5 A And the solicitor -- I'm sorry.

6 Q Go ahead.

7 A The solicitor made it very clear that the only number
8 she was looking at for any kind of sentence was life.

9 Q And was that actually a formal plea offer or just was
10 it clear there was going to be nothing but life?

11 A The latter.

12 Q Okay. Now, we introduced a copy of a letter that
13 Mr. Russell received from the City of Columbia indicating
14 that his preliminary hearing had been cancelled by the
15 Public Defender's Office. Were you involved in that?

16 A I have cancelled one prelim in my entire life, and it
17 was not Mr. Russell's.

18 Q So you don't have a record that indicates that you
19 cancelled it?

20 A Absolutely not. What happened was his charges were
21 indicted by the grand jury prior to his preliminary
22 hearing. I would have never waived a preliminary hearing
23 in this case.

24 Q Now, the letter indicates that a preliminary hearing
25 was held on July 25th, 2007. Were you in attendance at

Trial Counsel
per testimony

Exhibit # 14
LINAS - 8-17

PCR TRANSCRIPT

67

3rd Issue

1 before she gave that Allen charge?

2 A Yes.

3 Q But she went ahead and gave a second Allen charge; is
4 that correct?

5 A That's correct.

6 Q Thereafter the case proceeded to a plea. How did
7 that come about?

8 A After the second Allen charge, the judge called us up
9 to the bench. It was myself, Ms. Grafton and the two
10 solicitors, Vanessa Shipley and Luck Campbell. She
11 essentially asked us if there was any way we could work it
12 out. It was in her opinion that this jury was not going
13 to reach a verdict. She had sat through the whole trial
14 and she said she thinks it would be difficult for any jury
15 to reach a verdict. To some extent, she wasn't very
16 particular about that and asked if there was any way we
17 could work it out.

18 At that point, I told her that I think my client
19 would probably plead if he was sentenced somewhere between
20 12 and 15 years. Ms. Grafton brought up the fact there
21 were other charges. There was a separate assault and
22 battery with intent to kill. That would have to be
23 dismissed; otherwise it would be an automatic life without
24 parole. Judge Jefferson said, "That's fine with me, I
25 think 15's appropriate."

1 Q And Mr. Russell had alleged that the Court or Judge
2 Jefferson actually initiated those plea discussions.
3 Would that be your opinion on the matter?

4 A I believe so. I'm not sure who brought it up first,
5 but I know she had asked us if there was any plea
6 discussions prior to trial or during the deliberations.

7 Q You've had the opportunity to hear Mr. Russell's
8 testimony that you informed him that there had been a
9 guilty verdict and the purpose of the plea was to run
10 everything in with that verdict that had already been
11 reached. Is that what you in fact informed him?

12 A I know that they had reached a guilty verdict. We
13 were not sure of which charge it was. We all pretty much
14 assumed it was going to be the possession with intent to
15 distribute mostly because I told them to find him guilty
16 of that charge in my closing argument. That was the first
17 thing I said.

18 Beyond that, the second charge, we assumed that
19 they were having trouble with the extortion and the

20 remaining six that they were deadlocked on were the three
21 assault and battery with intent to kills and three
22 kidnappings.

23 It was never announced which charge they
24 actually had a verdict for, but we were all probably 98
25 percent positive that it was the drug charge. I informed

4th Issue

1 him of that, that was Ms. Grafton's opinion. We also
2 informed him of what the judge said he would get as a
3 sentence for everything, which was pretty much in the
4 middle of the range for the drug charge by itself.

5 Q And did you have a verdict form that you showed him
6 at any time?

7 A I don't recall having a verdict form or an indictment
8 that was signed. I don't recall that.

9 Q And that would be my next question. I asked him
10 about the indictment that was signed guilty. You did not
11 see that prior to the plea?

12 A I did not.

13 I don't recall if they had the indictments or if
14 they had separate jury verdict forms for all the charges.
15 I know for the assault and battery with intent to kill, I
16 believe the lesser included of ABHAN was given to them and
17 therefore the judge did jury verdict forms. I don't
18 recall if it was for all the charges or just those.

19 Q Do you recall that you advised him that his
20 non-violent sentences would be superseded by his violent
21 sentences for time computation purposes?

22 A I certainly went through time computation briefly. I
23 told him that it is up to the Department of Corrections
24 and that all the charges as indicted except for the
25 extortion are 85-percent sentences.

Exhibit # 1

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Warren Russell, 316802)

☒ Plaintiff)

v.)

State Of South Carolina)

☐ Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2008-CP-40-7960

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Tricia A. Blanchette, Bar No. 74904 (appointed)
Address:
PO Box 12725
Columbia, SC 29211
phone: 803-988-0008 fax: 803-988-8070
e-mail: blanchettelaw@gmail.com other:

Defendant's Attorney:
Brian Petrano, Bar No.
Address:
PO Box 11549
Columbia, SC 29211
phone: 803-734-3737 fax: 803-734-4113
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

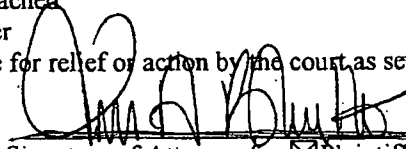
Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☒ Plaintiff / ☐ Defendant

July 8, 2010

Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT:
☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed:

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

Mailing Address:
Post Office Box 12725
Columbia, South Carolina 29211



Office Address:
1330 Lady Street, Suite 209
Columbia, South Carolina 29201

LAW OFFICE OF TRICIA A. BLANCHETTE

July 8, 2010

Richland County Clerk of Court
ATT: Common Pleas
PO Box 2766
Columbia, SC 29202

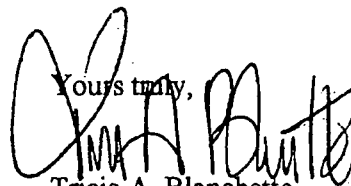
RE: Warren Russell v. State, Docket No.: 2008-CP-40-7960

Dear Sir or Madam:

For filing, attached please find an original and one copy of a proposed Order Granting Post Conviction Relief, which was prepared by my client with the attached exhibits. As his appointed PCR counsel, I am submitting this proposed Order on his behalf. Upon filing, please return the copy to my office in the enclosed envelope.

By copy of this letter, I am sending a copy of this proposed Order and exhibits directly to the Honorable Casey L. Manning for his review.

Thank you for your assistance with this matter. Please contact me if you need any additional information.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: Honorable Casey L. Manning
Brian Petrano, Assistant Attorney General
Warren Russell

Phone: 803-988-0008 Facsimile 803-988-8070

Email: BlanchetteLaw@Gmail.com

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
Warren Russell, 316802,	)	
Applicant,	)	2008-CP-40-7960
v.	)	
	)	ORDER GRANTING
State of South Carolina,	)	POST CONVICTION RELIEF
Respondent.	)	

This matter comes before the Court by way of an Application for Post Conviction Relief filed on November 5, 2008. On November 24, 2008, Tricia A. Blanchette, Esquire, was appointed by the Richland County Clerk of Court. Brian T. Petrano, Assistant Attorney General, submitted the State's Return on or around April 29, 2009.

On June 18, 2009, the Applicant, through appointed counsel, filed a Motion for Production of Transcript and Case Documents and/or Motion for Discovery. On or about June 25, 2009, the State filed an Objection to Use of Discovery and Objection to Use of Subpoena in PCR Absent Compliance with S.C. Code Ann. § 17-27-150 (2006). The State refused to order the trial transcript from the Applicant's trial on February 25-28, 2008 in Richland County. On August 28, 2009, the Honorable James R. Barber, III, held a phone conference with Tricia A. Blanchette, Esquire and Brian T. Petrano, Assistant Attorney General. The Honorable James R. Barber, III, allowed Applicant's counsel to further explain her request and allowed the State to explain the objection to ordering the transcript. On September 2, 2009, the Honorable James R. Barber issued an Order which held as follows:

1. That the Applicant has shown that the portion of the trial transcript, from the court's jury charge forward, may be material to the allegations in the Application;

2. That the State must order and produce the portion of the trial transcript beginning with the court's jury charge and ending with the entry of the Applicant's plea;
3. That the Applicant's request for discovery and/or a discovery hearing is denied; and
4. That the Applicant has been cautioned that hybrid representation is prohibited.

On December 8, 2009, an evidentiary hearing was conducted in front of the Honorable L. Casey Manning at the Richland County Courthouse. The Applicant was present at the hearing was represented by Tricia A. Blanchette, Esquire. The State was represented by Brian T. Petrano, Assistant Attorney General.

At the evidentiary hearing, the Applicant testified on his own behalf. The Applicant through counsel introduced a number of exhibits. Testifying on behalf of the State was Mark Schnee, Esquire, the Applicant's trial counsel. This Court had before a copy of a portion of the trial transcript, the plea transcript, the records of the Richland County Clerk of Court and the South Carolina Department of Corrections.

The record before this Court indicates that the Applicant is presently confined at Lee Correctional Institution within the South Carolina Department of Corrections pursuant to orders of commitment from the Richland County Clerk of Court. The Applicant was indicted by the Richland County Grand Jury on June 20, 2007 and February 20, 2008 for Possession with Intent to Distribute Crack Cocaine, three counts of Assault and Battery with Intent to Kill, three counts of Kidnapping and Extortion. The Applicant was represented by Mark Schee, Assistant Public Defender.

On February 25-28, 2008, the Applicant proceeded to trial in front of the Honorable Deadra L. Jefferson in Richland County. After, the Applicant was found

guilty by the jury for Possession with Intent to Distribute Crack Cocaine (Indictment No.: 2007-GS-40-3669) only, the Applicant pled entered a guilty plea to the other seven counts. The Honorable Deadra L. Jefferson sentenced the Applicant to a concurrent term of fifteen (15) years. The Applicant requested that his trial counsel file his direct appeal, but trial counsel did not file or perfect the Applicant's appeal.

Prosecutorial Misconduct

In his Amended Application, the Applicant alleged prosecutorial misconduct because the prosecution procured fraudulent indictments based on the presentation of evidence in an unfair manner, knowingly presenting false testimony and evidence, and skillfully misleading the grand jury by presenting false evidence on Indictment No.: 2008-GS-40-1682. See Applicant's Exhibit 1. The Applicant alleges that the said indictments were true billed two business days before trial, as the record will support.

This Court has had the limited opportunity to review only a portion of the trial transcript and has heard the testimony and evidence presented at the evidentiary hearing. This Court has had the opportunity to observe the witnesses and to pass on their credibility and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80.

In his allegations before this Court, the Applicant alleges that prosecutorial misconduct so infected the proceeding with unfairness that it has poisoned the entire legal process, thus everything is the fruit of the poisonous tree. The prosecutors are officers of the court, their conduct, if dishonest, would constitute fraud on the court. The Applicant alleges that because the State prosecution embarked on a scheme to either suborn perjury

WITNESSES

Investigator Dave McRoberts, RCSD

ARREST WARRANT NUMBER

DP08035

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: FEB 20 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-40-1682

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

91

THE STATE
vs.

WARREN RUSSELL

Indictment for

KIDNAPPING

SC Code: 16-3-910

CDR Code:0095

Class FEL/A(V)

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST:
A TRUE COPY

Barbara P. Leach
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on February 20, 2008, the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That WARREN RUSSELL did in Richland County on or about April 20, 2007, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any person, to wit: Mike, by any means whatsoever without authority of law. All in violation of § 16-3-910, Code of Laws of South Carolina (1976) as amended.

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


Warren B. Giese, SOLICITOR

1 A That's correct.

2 Q Okay. And what type of discussion did you have with
3 him about that?

4 A This was, as he said, the week before trial. I had
5 discussed it very briefly with the solicitor.

6 Her -- what she informed me is that the officers
7 were given the name by some of the other victims. The
8 officers had not actually talked to this victim.

9 They didn't know if they were going to go
10 forward on the indictment at the time because they weren't
11 sure if they could even find him, but they indicted it, I
12 suppose, just to be safe on their end.

13 Q As a result of those indictments, were you concerned
14 at all with the integrity of the grand jury process in
15 this case?

16 A No, I was not. I don't have very much faith in the
17 grand jury process at all to begin with, so it's not much
18 of an issue for me.

19 Q Let me hand you Indictment 2008-GS-40-1684 that was
20 introduced as No. 13.

21 A Yes.

22 Q Did you have the opportunity to review that
23 indictment with him?

24 A I'm sure I did, yes.

25 Q And he testified that that was dismissed due to lack

or intentionally conceal documents to the grand jury, extrinsic fraud occurred, which was done with an intent to deceive or defraud the court and effectively deprived the Applicant of a fair trial or opportunity to present his case.

Findings of Fact and Conclusions of Law

Therefore, this Court finds from the transcript, testimony and evidence presented at the evidentiary hearing that the prosecution did in fact commit acts that constitute prosecutorial misconduct. See State v. Thompson, 409 S.E.2d 420 (Ct. App 1991). Proceedings before a grand jury are presumed to be regular unless there is clear evidence to the contrary. State v. Dawkins, 297 S.C. 386, 377 S.E.2d 298 (1989), State v. Anderson, 312 S.C. 185, 439 S.E.2d 835 (1993), State v. Capps, 276 S.C. 59, 275 S.E.2d 872 (1981). The Supreme Court of the United States has now explicitly prohibited the practice by officers of the court, appearing as the sole witness before the grand jury. Kupferman v. Consolidated Research & Mfg. Corp., 459 S.E.2d 1072 (2nd Cir. 1972) (Finding that institution of action by attorney who knew that there was complete defense to an action might be fraud upon the court.), Great Coastal Express v. International Brotherhood of Teamsters, 675 F.2d 1349, 1357 (4th Cir. 1982) (Finding a verdict may be set aside for fraud on the court if an attorney and a witness have conspired to present perjured testimony.), Rozier v. Ford Motor Co., 573 F.2d 1332 (5th Cir. 1978) (Fabrication of evidence where attorney is implicated is fraud upon the court.), H.K. Porter Co. v. Goodyear Tire & Rubber Co., 536 F.2d 1115, 1119 (6th Cir. 1976) (Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court.), Ray v. Ray, 374 S.C. 79, 647 S.E.2d 237 (2007) (Finding that like all other types of fraud, the perpetrators acted with the intent to defraud, for there is no such thing

as accidental fraud). 18 U.S.C.A. § 1623 (false declarations before the grand jury), 18 U.S.C.A. § 1505 (obstruction of proceedings before department, agencies and committees), 18 U.S.C.A. § 1621 (perjury), 18 U.S.C.A. § 2071 (concealment, removal or mutilation), 42 U.S.C.A. 1983, said statutes generally do not give rise to claims for malicious prosecution, but it will, only when official conspire to procure groundless indictments and charges based upon fabricated evidence or false, distorted, and perjured testimony presented to official bodies. The Supreme Court of the United States, in Marbury v. Madison, 5 U.S. 137 (1803), clearly states that if the solicitor knew beforehand that the indictments were fraudulent, this would constitute "prosecutorial misconduct" horrendous enough to bar re-prosecution.

Double Jeopardy

Additionally, the Applicant alleges that he was put twice in jeopardy on Indictment No.: 2007-GS-40-3669. Applicant alleges that the prosecution was allowed to make repeated attempts to convict Applicant, as well as a second change to enhance the possibility that the Applicant would be found guilty. Applicant alleges that the State was allowed an unfair opportunity to reformulate its case after the State failed to prove to the jurors the full elements of the crimes, based on the testimony, evidence, and the jury's inability to render a guilty verdict, even on the lesser included offenses. As the record clearly supports, the Applicant was in fact convicted twice for Indictment No.: 2007-GS-40-3669, once by way of the jury's guilty verdict and twice by the way of the guilty plea. See Applicant's Exhibit 2, 3 and 4, Plea Transcript p. 8, lines 8-12, p. 26-27, lines 25-25, 1-2, Trial Transcript p. 32, lines 17-19. Therefore, this Court finds that the portion of the trial transcript and the plea transcript and the testimony and evidence from the

WITNESSES

(S) HASSELL - CPD

ARREST WARRANT NUMBER

196773

ACTION OF GRAND JURY

TRUE BILL

Jay Cheek
Foreperson of Grand Jury
Date:

JUN 21 2007

VERDICT

GUILTY

Brian L. Taylor 2/28/08
Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-40-3669

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2007

18

THE STATE

VS.

~~RUSSELL WARREN~~

Warren Russell

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE CRACK COCAINE

SC Code: 44-53-375(B)

CDR Code: 3015

Class FEL/E

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

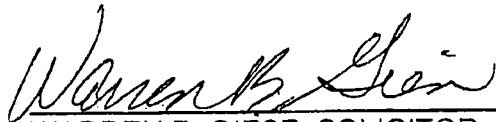
INDICTMENT

At a Court of General Sessions, convened on June 20, 2007, the Grand Jurors of Richland County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE

That Russell Warren did in Richland County on or about April 20, 2007, did willfully, knowingly and intentionally, manufacture, distribute, dispense, deliver, purchase or aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance, to wit: Crack Cocaine, ----- in violation of Section § 44-53-375 Code of Laws of South Carolina (1976, as amended).

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


WARREN B. GIESE, SOLICITOR

1 changed or added to the facts?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Sir, are you pleading guilty to
4 each of these offenses because you are guilty?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And I got a little ahead of
7 myself, and I apologize.

8 On Indictment 2007-GS-40-3669, which is
9 possession with the intent to distribute crack
10 cocaine second, sir, how do you plead, guilty or
11 not guilty?

12 THE DEFENDANT: Guilty, Your Honor.

13 THE COURT: Do you understand that that
14 carries a minimum penalty of five years, a maximum
15 of 30 years, and/or a maximum fine of \$50,000?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And you agree or disagree with the
18 facts as they have been presented regarding this
19 offense?

20 THE DEFENDANT: I agree, Your Honor.

21 THE COURT: Indictment 2007-4163, an
22 indictment for assault and battery with intent to
23 kill, sir, how do you plead?

24 THE DEFENDANT: Guilty.

25 THE COURT: Guilty or not guilty? I'm sorry,

1 I say that to you to hope that you are -- I
2 believe you are sincere in what you articulated.

3 THE DEFENDANT: Yes, I am, Your Honor.

4 THE COURT: I do -- I would like to believe
5 I'm a pretty good judge of character, and I believe
6 that you are sincere. And I hope that you will
7 take the benefit of this opportunity.

8 You have three children, who I don't know what
9 your relationship is with them, but I would imagine
10 they want to have some benefit of their father at
11 some point. But they can't enjoy you if your life
12 doesn't change.

13 So I hope that that will be your motivator
14 during this time when you are in the system, and
15 that you will come out better.

16 It is very difficult sometimes to go into the
17 system and not let it become you instead of you
18 rise above it. I hope that you will have the
19 fortitude to be able to rise above it and come out
20 better.

21 THE DEFENDANT: I will, Your Honor.

22 THE COURT: Okay. I think it is appropriate
23 and the Court sentences you as follows:

24 On possession with the intent to distribute
25 crack cocaine second, sir, you are sentenced to the

1 State Department of Corrections for a period of 15
2 years.

3 On each of the offenses of kidnapping, you are
4 sentenced to the State Department of Corrections
5 for a period of 15 years.

6 And on each of the counts of assault and
7 battery with intent to kill, you are sentenced to
8 the State Department of Corrections for a period of
9 15 years.

10 On the charge of blackmail or extortion, you
11 are sentenced to the State Department of
12 Corrections for a period of ten years.

13 Each of these sentences are to run
14 concurrently with one another. You are to get
15 credit pursuant to 24-13-40. That is for your time
16 you have served. The State Department of
17 Corrections will calculate that, they will get a
18 printout from the detention center, and state law
19 mandates that they make that calculation for you.
20 And the reason they do that is sometimes judges
21 under calculate, which works to your detriment. It
22 is an administrative function that really they
23 should perform. I'm directing that they do that.

24 Also, I'm ordering the ATU if it is available
25 to you for you to get treatment if in fact you do

10-19

*

32

1 their mind on the second indictment there is no
2 unanimous agreement and therefore there is no
3 verdict and that they are to, consistent with the
4 Allen charge I'm going to give them, continue to
5 deliberate.

6 Is there any exception from the State?

7 MS. SHIPLEY: No, Your Honor.

8 THE COURT: From the Defense?

9 MR. SCHNEE: No, Your Honor.

10 THE COURT: Please bring in the jury.

11 (WHEREUPON, the jury came into open
12 court at approximately 4:24 p.m.)

13 THE BAILIFF: Your Honor, the jury is present.

14 THE COURT: Mr. Foreman, ladies and gentlemen,

15 I received your note, and I will give the following
16 instructions in response.

17 And just going back through the note, you have
18 indicated that you have reached a verdict on one
19 indictment. That does not require the Court to
20 make any comment.

21 As regards your second portion of the note --
22 which is: We had reached a verdict on the second
23 indictment, afterward one juror changed their mind.
24 The verdict form had already been filled out and
25 signed. Please advise on how to handle this

evidentiary hearing shows that these facts are plain, palpable, and indisputable facts on which reasonable minds cannot differ.

Findings of Fact and Conclusions of Law

This Court has had the limited opportunity to review only a portion of the trial transcript and has heard the testimony and evidence presented at the evidentiary hearing. This Court has had the opportunity to observe the witnesses and to pass on their credibility and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80.

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution guarantees that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." This clause provides three separate protections for criminal defendants: 1) protection against re-prosecution for the same offense after an acquittal, 2) protection against re-prosecution for same offense after conviction, and 3) protection against multiple prosecutions for the same offense.

In the case at hand, the Appellant was prosecuted and convicted for the same offense on Indictment No.: 2007-C-40-3669. Once by the jury at trial and twice by way of the plea. See United States v. Kizman, 125 F.3d 1363, 1365 (10th Cir. 1997). A defendant's entry of an unconditional guilty plea does not waive right to assert double jeopardy claim. S.C. Const. art. I, § 12. As a general rule, one is in jeopardy when a legal jury is sworn and impaneled to try him on a valid indictment in a competent court, unless the jury before reaching a verdict be discharged with the prisoner's consent or upon some grounds of legal necessity or the verdict if rendered be set aside according to

law. State v. Stephenson, 54 S.C. 234, 32 S.E. 305 (1899), State v. Bilton, 156 S.C. 324, 153 S.E. 269 (1930). The Double Jeopardy Clause forbids the government to try a person twice for the same crime if after a criminal trial has begun the government decides that the case is going badly for it, it cannot dismiss the case and re-prosecute defendant, nor is it permitted to achieve by indirection what it is not permitted to do directly.

Where a double jeopardy claim is based on an allegation of successive prosecution, the court first determines if the offenses are the same or if one is a lesser included offense of the other, and then determines whether second prosecution requires re-litigation of factual issues already resolved by first. The Double Jeopardy Clause protects defendant's valued right to have trial completed by a particular tribunal, and also bars abusive government conduct designed to harass defendant through repetitive prosecution or undertaken for purposes of increasing likelihood of conviction. The Double Jeopardy Clause also protects defendant's right to have trial completed by the particular tribunal he or she has chosen. State v. Greuling, 257 S.C. 515, 186 S.E.2d 706 (S.C. 1972). The common law rule and the constitutional provisions declaratory therefore against the second jeopardy apply in this jurisdiction only to a second prosecution for the same act and crime, both in law and in fact, for which the first prosecution was instituted. However, if a subsequent prosecution survives the Blockburger test, the court must determine whether the State, in order to establish an essential element of an offense charged in the subsequent prosecution, will prove conduct that constitutes an offense for which the defendant has already been prosecuted. Under United States v. Blockburger, 284 U.S. 299, 52 S.Ct. 180 (1932), double jeopardy bars

subsequent prosecution for a single act unless the act can be prosecuted and punished under a different statutory provision that requires proof of different elements.

Involuntary and Unknowing Plea

Additionally, the Applicant has shown that his guilty plea was not a knowing and intelligent decision among the wide range of choices available to him. Specifically, the Applicant was not aware that the trial judge's participation in the plea process was a violation of the Applicant's rights. Rule 11(E), of the Federal Rules of Criminal Procedure, states that judicial intervention may coerce the defendant into an involuntary plea that he would not have otherwise entered. The Applicant alleges that for the trial judge to stop the trial after the jury has returned a guilty verdict on one count, while further deliberation was still pending by the jury on the other counts, to offer a defendant a plea, was in fact a withdrawal of the case from the jury after it has been charged and therewith amounts to an acquittal. Said action by the trial judge caused the following prejudice: 1) allowed unfair opportunity for the State to reformulate its case in light of what it learned at trial, which was the case was going bad for it, 2) removed the State from having to prove the case beyond a reasonable doubt, 3) said judicial intervention coerced the defendant into an involuntary plea, 4) the withdrawal of the case from the jury after it has been charged and deliberated, amounts to an acquittal on the other seven offenses. Applicant alleges that said plea came only after the conviction on Indictment No.: 2007-GS-40-3669. Transcript p. 38, lines 4-14, Applicant's Exhibit 5. Applicant alleges that the court nor his counsel, on or off the record, informed the Applicant that the guilty verdict returned by the jury on Indictment No.: 2007-GS-40-3669 would be set aside according to the law or on some ground of legal necessity. Thus, the State is not

1 on seven indictments. Several jurors need -- well,
2 that is about phone calls for their children, so
3 that is something I'll handle.

4 That appears, then, that they are still
5 unanimous on one indictment, which means they have
6 reached a verdict on one. They are still
7 deadlocked on the other seven.

8 There are one or two ways we can handle it. I
9 can declare a mistrial on -- I'll take the verdict
10 on the one indictment where they reached a verdict
11 and declare a mistrial on the other seven; or I can
12 inquire of the foreperson to discuss with them
13 whether they feel further instruction will aid in
14 them reaching a verdict. And then we will live
15 with whatever decision they make. If they say no,
16 that is the end of it. If they say yes, I will
17 give them an abbreviated Allen charge, not as long
18 as the one I just gave, but an abbreviated form of
19 it that is about maybe two paragraphs long.

20 What is the State's preference?

21 MS. CAMPBELL: Your Honor, if you would
22 inquire if further deliberations would be helpful.

23 THE COURT: Well, I wouldn't ask if further
24 deliberations --

25 MS. CAMPBELL: Whatever you think appropriate.

3rd
Allen
charge

1 before she gave that Allen charge?

2 A Yes.

3 Q But she went ahead and gave a second Allen charge; is
4 that correct?

5 A That's correct.

6 Q Thereafter the case proceeded to a plea. How did
7 that come about?

8 A After the second Allen charge, the judge called us up
9 to the bench. It was myself, Ms. Grafton and the two
10 solicitors, Vanessa Shipley and Luck Campbell. She
11 essentially asked us if there was any way we could work it
12 out. It was in her opinion that this jury was not going
13 to reach a verdict. She had sat through the whole trial
14 and she said she thinks it would be difficult for any jury
15 to reach a verdict. To some extent, she wasn't very
16 particular about that and asked if there was any way we
17 could work it out.

18 At that point, I told her that I think my client
19 would probably plead if he was sentenced somewhere between
20 12 and 15 years. Ms. Grafton brought up the fact there
21 were other charges. There was a separate assault and
22 battery with intent to kill. That would have to be
23 dismissed; otherwise it would be an automatic life without
24 parole. Judge Jefferson said, "That's fine with me, I
25 think 15's appropriate."

1 Q And Mr. Russell had alleged that the Court or Judge
2 Jefferson actually initiated those plea discussions.

3 Would that be your opinion on the matter?

4 A I believe so. I'm not sure who brought it up first,
5 but I know she had asked us if there was any plea
6 discussions prior to trial or during the deliberations.

7 Q You've had the opportunity to hear Mr. Russell's
8 testimony that you informed him that there had been a
9 guilty verdict and the purpose of the plea was to run
10 everything in with that verdict that had already been
11 reached. Is that what you in fact informed him?

12 A I know that they had reached a guilty verdict. We
13 were not sure of which charge it was. We all pretty much
14 assumed it was going to be the possession with intent to
15 distribute mostly because I told them to find him guilty
16 of that charge in my closing argument. That was the first
17 thing I said.

18 Beyond that, the second charge, we assumed that
19 they were having trouble with the extortion and the

20 remaining six that they were deadlocked on were the three
21 assault and battery with intent to kills and three
22 kidnappings.

23 It was never announced which charge they
24 actually had a verdict for, but we were all probably 98
25 percent positive that it was the drug charge. I informed

allowed to stop a trial after a verdict has been reached to re-prosecute a defendant by way of a plea, nor is the court permitted to achieve by indirection what it is not permitted to do directly. Therefore, since the Applicant was not informed regarding the court setting aside the jury's guilty verdict, said plea was not free and voluntary with a full knowledge of the circumstances surrounding the plea. Further, the Applicant alleges that said plea, under such above mentioned circumstances was void and left the trial court without jurisdiction over said matter. The actions of a court in a matter over which it had no jurisdiction are void.

Findings of Fact and Conclusions of Law

This Court has had the limited opportunity to review only a portion of the trial transcript and has heard the testimony and evidence presented at the evidentiary hearing. This Court has had the opportunity to observe the witnesses and to pass on their credibility and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80.

In his allegation before this Court, the Applicant alleges that his plea was not voluntarily and intelligently made. See State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975). The South Carolina Supreme Court has held that the essence of Boykin was to make the requirements of Rule 11 of the Federal Rules of Criminal Procedure applicable to the States. The Supreme Court has held that for there to be valid waiver under the due process clause of the three constitutional rights listed in Boykin, the record must clearly establish it. See Boykin v. Alabama, 359 U.S. 238, 89 S.Ct. 1709 (1969). A valid waiver of these rights cannot be preserved by a silent record. See Roddy v. State, 339 S.C. 29,

528 S.E.2d 418 (2000). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea and the evidence presented at the evidentiary hearing. See Rule 11(e)(1), Fed.R.Crim.P. Regardless of whether he has shown actual prejudice, a defendant who has pled guilty after the judge has participated in plea discussions is entitled to re-plead. United States v. Corbitt, 996 F.2d 1132 (11th Cir. 1993). Prohibition on judge's participation in discussion of plea negotiations requires that sentencing judge take no part in any discussion or communication regarding sentence to be imposed prior to entry of a plea of guilty or a conviction, or submission to him of a plea agreement. See United States v. Bruce, 976 F.2d 552 (9th Cir. 1992). A district court's failure to comply with criminal rule forbidding court from participating in any plea discussions is plain error that entitles defendant to withdraw his guilty plea even if error is identified for first time on appeal. In United States v. Johnson, 89 F.3d 778(11th Cir. 1996), the court interpreted Rule 11(e), Fed.R.Crim.P., as a "bright line rule" prohibiting participation of the judge in plea negotiations under any circumstances, it is a rule as we have noted, admits of no exceptions. See United States v. Anderson, 993 F.2d 1435 (9th Cir. 1993). To be valid, a guilty plea must be voluntarily and intelligently entered and cannot be the result of threats, misrepresentations, or improper promises. Only the trial judge has the authority to stop a trial after a verdict is rendered.

Unconstitutionally Coercive Allen Charge

Additionally, the Applicant alleged that he did not receive effective assistance of counsel since counsel failed to object to the coercive Allen charges directed towards the minority juror. Applicant alleges that after the jury had expressed an inability to agree,

the trial judge gave two Allen charges to the jury. In the first supplemental instruction, the court reminds the jury "If you do not agree on a verdict, it just means [w]e will go through the whole process again." Trial Transcript p. 36, lines 5-12, Applicant's Exhibit 6. The jury then sends a note to the judge expressing their continued inability to agree and reveals to the court its numerical division and decisional disagreement. Trial Transcript p. 37-38, lines 25, 1, Applicant's Exhibit 7. The trial judge fails to instruct the jury not to state its division in the future, and then the trial judge had improper ex-parte communication with juror no. 120, Mr. George S. King, Jr., in which counsel failed to object. The Applicant alleges that this juror had expressed to the court his unwillingness to further deliberate and was the sole hold out in the numerical division. Trial Transcript p. 41-2, lines 21-25, 1-10, Applicant's Exhibit 8. The trial judge then gives the second supplemental Allen charge, which was coercive in its content and under all the circumstances directed at the minority voter on the jury. The Applicant alleges that counsel allowed this improper ex-parte communication by the trial judge directed at the minority juror after knowing the harm and/or prejudice and failed to object. Applicant's Exhibit 9.

Thus the Applicant alleges that trial counsel was ineffective for failing to object to the court improper ex-parte communication with a juror and failing to object to coercive Allen charges given to the jury where the trial judge knew of the numerical division and decisional disagreement and was directed at the minority.

Findings of Fact and Conclusions of Law

This Court has had the limited opportunity to review only a portion of the trial transcript and has heard the testimony and evidence presented at the evidentiary hearing.

1 should listen to each other and give to the others'
2 thoughts such meaning as you think it should have.
3 And so to some degree it can be said that jury
4 service is a matter of give and take.

5 If you do not agree on a verdict, it just
6 means that at some future term of court before some
7 other judge, perhaps, that some other jury will sit
8 where you are, the same participants will come and
9 the same lawyers probably will come and they will
10 ask basically the same questions. And presumably
11 and probably they will get much the same answers.
12 And we will go through the whole process again.

13 And I have no reason now to think that any
14 other 12 citizens of Richland County will be more
15 capable of solving this controversy than the 12 of
16 you.

17 And so I'm going to ask you at this time to
18 deliberate further and to see if you cannot reach a
19 verdict on these indictments.

20 I want to close this part of this additional
21 instruction by reminding you again that while it is
22 important that litigation be ended, I want to
23 emphasize that it should be ended in the form of a
24 verdict by no jurors doing violence to his or her
25 own conscience. No juror is expected to give up an

1 opinion based on reasoning satisfactory to himself
2 or herself merely for the purposes of being in
3 agreement.

4 With that added instruction, I'm going to ask
5 you to retire and to deliberate further. If you
6 would go with your caretakers.

7 If you have any additional questions, please
8 do not hesitate to advise us.

9 (WHEREUPON, the jury retires to the jury
10 room at 4:31 p.m.)

11 THE COURT: Are there any exceptions to the
12 instructions? From the State?

13 MS. CAMPBELL: No, Your Honor.

14 THE COURT: From the Defense?

15 MR. SCHNEE: No, Your Honor.

16 THE COURT: Thank you. The court will be at
17 ease.

18 (WHEREUPON, the jury note was marked as
19 Court's Exhibit 6.)

20 (WHEREUPON, a break was taken.)

21 (WHEREUPON, at 6:33 p.m. the jury had a
22 question as follows:)

23 THE COURT: Okay, we have a note from the
24 jury. And that note indicates as follows: Your
25 Honor, the jury appears to be deadlocked at 11 to 1

1 on seven indictments. Several jurors need -- well,
2 that is about phone calls for their children, so
3 that is something I'll handle.

4 That appears, then, that they are still
5 unanimous on one indictment, which means they have
6 reached a verdict on one. They are still
7 deadlocked on the other seven.

8 There are one or two ways we can handle it. I
9 can declare a mistrial on -- I'll take the verdict
10 on the one indictment where they reached a verdict
11 and declare a mistrial on the other seven; or I can
12 inquire of the foreperson to discuss with them
13 whether they feel further instruction will aid in
14 them reaching a verdict. And then we will live
15 with whatever decision they make. If they say no,
16 that is the end of it. If they say yes, I will
17 give them an abbreviated Allen charge, not as long
18 as the one I just gave, but an abbreviated form of
19 it that is about maybe two paragraphs long.

20 What is the State's preference?

21 MS. CAMPBELL: Your Honor, if you would
22 inquire if further deliberations would be helpful.

23 THE COURT: Well, I wouldn't ask if further
24 deliberations --

25 MS. CAMPBELL: Whatever you think appropriate.

3rd
Allen
charge

1 THE COURT: Okay, great. If you would go back
2 into the jury room. I'll give those of you who
3 need to make phone calls an opportunity to do that,
4 and then I will give that additional instruction.

5 THE FOREMAN: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 (WHEREUPON, the foreman returns to the
8 jury room at 6:40 p.m.)

9 THE COURT: As soon as those jurors who need
10 to make personal phone calls do that, I will give
11 the additional instruction. It is a very
12 abbreviated form of the Allen charge I gave a
13 little while ago, but it emphasizes -- it is -- I
14 made sure that it is not coercive and it emphasizes
15 of course reaching a verdict but by no one doing
16 violence to their own conscience or any position
17 that is strongly held by them or they feel it is
18 one that is firmly reasonable.

19 Okay. As soon as they let me know we'll get
20 started.

21 And also, does anyone -- I had a note from one
22 of the jurors about a municipal court summons for
23 jury duty that they have next week, and I need to
24 let them know that they need to talk to the
25 municipal court about that, that we can't do

1 anything about that. Is there any exception to me
2 doing that?

3 MS. CAMPBELL: None, Your Honor.

4 THE COURT: From the Defense?

5 MR. SCHNEE: No, Your Honor.

6 THE COURT: Okay. Thank you. I need Juror
7 120, if you can have him step outside.

8 (WHEREUPON, the Court talks to Juror 120
9 outside of the courtroom.)

10 (WHEREUPON, a break was taken.)

11 ✓ MR. SCHNEE: I believe I mentioned to your law
12 clerk I have an issue. It is entirely possible it
13 is just this late hour and me not fully
14 understanding the statute, and this is obviously
15 out of pure respect for the Court, that I believe
16 that it might be improper to issue a separate Allen
17 L charge.

18 THE COURT: Actually case law does not support
19 that position. Would you like me to give you the
20 case? It is Buff versus South Carolina Department
21 of Transportation.

22 MR. SCHNEE: If you have researched that, I
23 will take your word for it, Your Honor.

24 THE COURT: More like I deal with it all the
25 time.

1 A I believe it was unanimous on one. They were not
2 unanimous on the second and they were deadlocked on the
3 other six.

4 Q Right. And then on page 37 through 38 of the
5 transcript, do you recall that they came out deadlocked,
6 they said they were deadlocked 11 to 1 on the other charge
7 and they needed to make phone calls?

8 A Yes. At that point it was very late in the evening.
9 I don't remember what time the jury got it. I just know
10 that they were out approximately nine hours at the time of
11 the plea, but I know this was very close to the time of
12 the plea.

13 Q And then on page 40, the Court says, Your options are
14 a verdict, a mistrial, or additional instruction. And the
15 jury indicated that further instructions may help. Was
16 that a concern to you how the judge initiated that
17 communication to the jury?

18 A It was a slight concern. I had not really looked at
19 the case law about Allen charges at that point. I did
20 make a quick phone call to another lawyer to ask them what
21 was going on. I believe Ms. Grafton, she may have -- we
22 may have talked about it also. I was concerned about just
23 the way it was going on, but I wasn't sure what the proper
24 procedure was.

25 Q And you in fact raised an objection to the Court

9B

EXHIBIT 14
LINES 8-12
Trial Counsel
PCR testimony

PCR Transcript

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3rd Issue

1 before she gave that Allen charge?

2 A Yes.

3 Q But she went ahead and gave a second Allen charge; is
4 that correct?

5 A That's correct.

6 Q Thereafter the case proceeded to a plea. How did
7 that come about?

8 A After the second Allen charge, the judge called us up
9 to the bench. It was myself, Ms. Grafton and the two
10 solicitors, Vanessa Shipley and Luck Campbell. She
11 essentially asked us if there was any way we could work it
12 out. It was in her opinion that this jury was not going
13 to reach a verdict. She had sat through the whole trial
14 and she said she thinks it would be difficult for any jury
15 to reach a verdict. To some extent, she wasn't very
16 particular about that and asked if there was any way we
17 could work it out.

18 At that point, I told her that I think my client
19 would probably plead if he was sentenced somewhere between
20 12 and 15 years. Ms. Grafton brought up the fact there
21 were other charges. There was a separate assault and
22 battery with intent to kill. That would have to be
23 dismissed; otherwise it would be an automatic life without
24 parole. Judge Jefferson said, "That's fine with me, I
25 think 15's appropriate."

This Court has had the opportunity to observe the witnesses and to pass on their credibility and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80.

The courts have held that the language "must be decided" should no longer be included in Allen charges because there is the possibility that State may decide not to retry the case in the event of a mistrial. See United States v. Flannery, 411 F.2d 880, 883 (1971). The courts agree that there should be three elements contained in second Allen charges: 1) remind the jury of the burden of proof, 2) the onus of re-examination would not be on the minority alone, and 3) the language that the jury would feel compelled to reach an agreement, saying the case must at sometime be decided. In Briggsfield v. United States, 272 U.S. 448, 450, 47 S.Ct. 135, 136 (1926), the inquiry into the jury's numerical division necessitated reversal because it was generally coercive and always brought to the bear in some degree, serious although not measurable, an improper influence on the jury.

In Green v. State, 351 S.C. 184, 569 S.E.2d 318 (2002), the South Carolina Supreme Court held that an Allen charge cannot be directed to the minority voters on the jury panel, but must be even handed, directing both the majority and the minority to consider the other's views. See Tucker v. Catoe, 346 S.C. 483, 491, 552 S.E.2d 712 (2001) (citing Lowenfield v. Phelps, 484 U.S. 231, 237, 108 S.Ct. 546, 550 (1988)). In Tucker, the court considered various factors to determine whether the given Allen charge was unconstitutionally coercive. In Dawson v. State, 352 S.C. 15, 572 S.E.2d 445 (2002), the jury initially volunteered its numerical division to the trial court. On appeal, the Court held that the PCR judge erred by concluding that trial counsel was not

ineffective for failing to object to an unconstitutionally coercive Allen charge. Therefore, this case is an analogous and/or direct authority to the Applicant's case because Dawson is so similar to the Applicant's the law applied in Dawson should be applied to the Applicant's case.

Ineffective Assistance of Counsel

Additionally, the Applicant is alleging that his trial counsel was ineffective for allowing the following procedural irregularities, that denied the Applicant of his constitutional right to a fair trial. Trial counsel allowed the State to procure fraudulent indictments, trial counsel allowed the Applicant to be put twice in jeopardy on Indictment No.: 2007-GS-40-3669 and others, trial counsel allowed the State to make repeated attempts to convict Applicant, as well as enhancing the possibility that the Applicant would be found guilty, trial counsel allowed the Applicant and advised the Applicant to make an involuntary and unknowing plea, trial counsel allowed the trial judge to violate Rule 11, Fed.R.Crim.P., trial counsel allowed the judge to stop the trial after a verdict was reached, trial counsel allowed the trial judge to give an unconstitutionally coercive Allen charges, after knowing the numerical division and decisional disagreement, and trial counsel allowed the trial judge to have improper ex-parte communication with the sole hold out in the numerical division. The Applicant alleges that that because trial counsel failed to object and allowed and/or participated in these many procedural irregularities, that his trial counsel failed to perform within the range of competence demanded of an attorney in a criminal matter.

Findings of Fact and Conclusions of Law

This Court has had the limited opportunity to review only a portion of the trial transcript and has heard the testimony and evidence presented at the evidentiary hearing. This Court has had the opportunity to observe the witnesses and to pass on their credibility and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80.

In his allegations before this Court, the Applicant alleges that trial counsel was ineffective for allowing these many procedural irregularities and thus trial counsel failed to perform within the range of competence demanded of attorney's in criminal matters. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). A reasonable probability is one sufficient to undermine confidence in the outcome of trial. See Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). Whether the accumulation of several errors, which by themselves are not prejudicial, would warrant relief is unsettled in South Carolina. See State v. Peterson, 287 S.C. 244, 335 S.E.2d 800 (1985). Trial counsel committed errors that adversely affected his right to a fair trial. See State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999). Accumulation of errors warranted reversal, but courts also found each individual error caused prejudice, also found multiple errors, which were not prejudicial separately, could be prejudicial to deny an individual a right to a fair trial when they were viewed together. See State v. Freeman, 319 S.C. 110, 459 S.E.2d 867 (Ct. App. 1995), State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). A deficient performance by trial counsel is prejudicial when there is a reasonable probability that, but for counsel's errors, the outcome of the trial would have been different. See Butler v. State, 286 S.C. 441, 442,

334 S.E.2d 813, 814 (1985). Failure to object to language in Allen charges where judge knew there only one hold out, which singled out the juror was ineffective assistance of counsel. See Green v. State, 351 S.C. 184, 569 S.E.2d 318 (2008). Trial counsel was ineffective for failing to object to the coercive Allen charges given to a jury. See Dawson v. State, 352 S.C. 15, 572 S.E.2d 445 (2002).

All Other Allegations

As to any and all other allegations which were or could have been raised in the Application or at the evidentiary hearing in this matter, this Court finds that the Applicant has stated a legitimate reason for the preservation of such right. Said reason must be stated on the record and included in the factors for the court's consideration. Reasons are as follows:

1. The Applicant was denied the completed trial transcript, after a hearing was held, and the Applicant did show good cause in compliance with S.C. Code Ann. 17-27-150, 2).
2. When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea and the evidence presented at the evidentiary hearing. See Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2002).
3. Without said complete trial transcript the entire record was not and could not be considered for the Applicant to have a fair hearing and or present all issues that could be discovered.
4. The Applicant showed due diligence in requesting counsel and the courts for said information.

5. Pursuant to S.C. Code Ann. § 17-27-90, all grounds for relief available to the Applicant could not be raised in his original supplemental or amended application because of the denial of the complete trial transcript and it is not a voluntary and intelligent waiver of the Applicant's right to secure relief and should be allowed as the basis for a subsequent application.

Thus, the Applicant has shown sufficient reason why said unasserted issues were inadequately raised in the original, supplemental or amended application through no fault of his own.

Conclusion

Based on all the following, this Court finds and concludes that the Applicant has satisfied the burden of proof that the State did commit prosecutorial misconduct horrendous enough to bar re-prosecution, the Applicant was in fact put in double jeopardy, the trial judge did violate Rule 11, Fed.R. Crim.P., the trial judge did in fact have improper ex-parte communication with a juror member, after knowing the numerical division and decisional disagreement, the trial judge in fact, then gives an unconstitutionally coercive Allen charge directed towards the minority and trial counsel allowed these many procedural irregularities. The trial counsel's performance fell below an objective standard of reasonableness and but for counsel's errors, there is a reasonable probability the result of the trial would have been different. Therefore, this Court finds that the Applicant has established constitutional violations or deprivations before or during his trial and sentencing proceedings.

Therefore, the Application for Post Conviction Relief is granted and the State's case is dismissed with prejudice.

5. Pursuant to S.C. Code Ann. § 17-27-90, all grounds for relief available to the Applicant could not be raised in his original supplemental or amended application because of the denial of the complete trial transcript and it is not a voluntary and intelligent waiver of the Applicant's right to secure relief and should be allowed as the basis for a subsequent application.

Thus, the Applicant has shown sufficient reason why said unasserted issues were inadequately raised in the original, supplemental or amended application through no fault of his own.

Conclusion

Based on all the following, this Court finds and concludes that the Applicant has satisfied the burden of proof that the State did commit prosecutorial misconduct horrendous enough to bar re-prosecution, the Applicant was in fact put in double jeopardy, the trial judge did violate Rule 11, Fed.R. Crim.P., the trial judge did in fact have improper ex-parte communication with a juror member, after knowing the numerical division and decisional disagreement, the trial judge in fact, then gives an unconstitutionally coercive Allen charge directed towards the minority and trial counsel allowed these many procedural irregularities. The trial counsel's performance fell below an objective standard of reasonableness and but for counsel's errors, there is a reasonable probability the result of the trial would have been different. Therefore, this Court finds that the Applicant has established constitutional violations or deprivations before or during his trial and sentencing proceedings.

Therefore, the Application for Post Conviction Relief is granted and the State's case is dismissed with prejudice.

1 before she gave that Allen charge?

2 A Yes.

3 Q But she went ahead and gave a second Allen charge; is
4 that correct?

5 A That's correct.

6 Q Thereafter the case proceeded to a plea. How did
7 that come about?

8 A After the second Allen charge, the judge called us up
9 to the bench. It was myself, Ms. Grafton and the two
10 solicitors, Vanessa Shipley and Luck Campbell. She
11 essentially asked us if there was any way we could work it
12 out. It was in her opinion that this jury was not going
13 to reach a verdict. She had sat through the whole trial
14 and she said she thinks it would be difficult for any jury
15 to reach a verdict. To some extent, she wasn't very
16 particular about that and asked if there was any way we
17 could work it out.

18 At that point, I told her that I think my client
19 would probably plead if he was sentenced somewhere between
20 12 and 15 years. Ms. Grafton brought up the fact there
21 were other charges. There was a separate assault and
22 battery with intent to kill. That would have to be
23 dismissed; otherwise it would be an automatic life without
24 parole. Judge Jefferson said, "That's fine with me, I
25 think 15's appropriate."

~~Plaintiff~~
Transcript
~~Plaintiff~~
Transcript

1 anything about that. Is there any exception to me
2 doing that?

3 MS. CAMPBELL: None, Your Honor.

4 THE COURT: From the Defense?

5 MR. SCHNEE: No, Your Honor.

6 THE COURT: Okay. Thank you. I need Juror
7 120, if you can have him step outside.

8 (WHEREUPON, the Court talks to Juror 120
9 outside of the courtroom.)

10 (WHEREUPON, a break was taken.)

11 MR. SCHNEE: I believe I mentioned to your law
12 clerk I have an issue. It is entirely possible it
13 is just this late hour and me not fully
14 understanding the statute, and this is obviously
15 out of pure respect for the Court, that I believe
16 that it might be improper to issue a separate Allen
17 charge.

18 THE COURT: Actually case law does not support
19 that position. Would you like me to give you the
20 case? It is Buff versus South Carolina Department
21 of Transportation.

22 MR. SCHNEE: If you have researched that, I
23 will take your word for it, Your Honor.

24 THE COURT: More like I deal with it all the
25 time.

1 opinion based on reasoning satisfactory to himself
2 or herself merely for the purposes of being in
3 agreement.

4 With that added instruction, I'm going to ask
5 you to retire and to deliberate further. If you
6 would go with your caretakers.

7 If you have any additional questions, please
8 do not hesitate to advise us.

9 (WHEREUPON, the jury retires to the jury
10 room at 4:31 p.m.)

11 THE COURT: Are there any exceptions to the
12 instructions? From the State?

13 MS. CAMPBELL: No, Your Honor.

14 THE COURT: From the Defense?

15 MR. SCHNEE: No, Your Honor.

16 THE COURT: Thank you. The court will be at
17 ease.

18 (WHEREUPON, the jury note was marked as
19 Court's Exhibit 6.)

20 (WHEREUPON, a break was taken.)

21 (WHEREUPON, at 6:33 p.m. the jury had a
22 question as follows:)

23 THE COURT: Okay, we have a note from the
24 jury. And that note indicates as follows: Your
25 Honor, the jury appears to be deadlocked at 11 to 1

1 on seven indictments. Several jurors need -- well,
2 that is about phone calls for their children, so
3 that is something I'll handle.

4 That appears, then, that they are still
5 unanimous on one indictment, which means they have
6 reached a verdict on one. They are still
7 deadlocked on the other seven.

8 There are one or two ways we can handle it. I
9 can declare a mistrial on -- I'll take the verdict
10 on the one indictment where they reached a verdict
11 and declare a mistrial on the other seven; or I can
12 inquire of the foreperson to discuss with them
13 whether they feel further instruction will aid in
14 them reaching a verdict. And then we will live
15 with whatever decision they make. If they say no,
16 that is the end of it. If they say yes, I will
17 give them an abbreviated Allen charge, not as long
18 as the one I just gave, but an abbreviated form of
19 it that is about maybe two paragraphs long.

20 What is the State's preference?

21 MS. CAMPBELL: Your Honor, if you would
22 inquire if further deliberations would be helpful.

23 THE COURT: Well, I wouldn't ask if further
24 deliberations --

25 MS. CAMPBELL: Whatever you think appropriate.

3rd
Allen
Charge

1 opinion based on reasoning satisfactory to himself
2 or herself merely for the purposes of being in
3 agreement.

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19 it that is about maybe two paragraphs long.

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22 inquire if further deliberations would be helpful.

23 THE COURT: Well, I wouldn't ask if further
24 deliberations --

25 MS. CAMPBELL: Whatever you think appropriate.

*3rd
Allen
charge*

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Warren Russell, 316802

☒ Plaintiff

v.

State Of South Carolina

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2008-CP-40-7960

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

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Defendant's Attorney:

Brian Petrano, Bar No.

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phone: 803-734-3737 fax: 803-734-4113

e-mail: other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

July 8, 2010

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Warren Russell, 316802,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2008-CP-40-7960

ORDER GRANTING
POST CONVICTION RELIEF

This matter comes before the Court by way of an Application for Post Conviction Relief filed on November 5, 2008. On November 24, 2008, Tricia A. Blanchette, Esquire, was appointed by the Richland County Clerk of Court. Brian T. Petrano, Assistant Attorney General, submitted the State's Return on or around April 29, 2009.

On June 18, 2009, the Applicant, through appointed counsel, filed a Motion for Production of Transcript and Case Documents and/or Motion for Discovery. On or about June 25, 2009, the State filed an Objection to Use of Discovery and Objection to Use of Subpoena in PCR Absent Compliance with S.C. Code Ann. § 17-27-150 (2006). The State refused to order the trial transcript from the Applicant's trial on February 25-28, 2008 in Richland County. On August 28, 2009, the Honorable James R. Barber, III, held a phone conference with Tricia A. Blanchette, Esquire and Brian T. Petrano, Assistant Attorney General. The Honorable James R. Barber, III, allowed Applicant's counsel to further explain her request and allowed the State to explain the objection to ordering the transcript. On September 2, 2009, the Honorable James R. Barber issued an Order which held as follows:

1. That the Applicant has shown that the portion of the trial transcript, from the court's jury charge forward, may be material to the allegations in the Application;

guilty by the jury for Possession with Intent to Distribute Crack Cocaine (Indictment No.: 2007-GS-40-3669) only, the Applicant pled entered a guilty plea to the other seven counts. The Honorable Deadra L. Jefferson sentenced the Applicant to a concurrent term of fifteen (15) years. The Applicant requested that his trial counsel file his direct appeal, but trial counsel did not file or perfect the Applicant's appeal.

Prosecutorial Misconduct

In his Amended Application, the Applicant alleged prosecutorial misconduct because the prosecution procured fraudulent indictments based on the presentation of evidence in an unfair manner, knowingly presenting false testimony and evidence, and skillfully misleading the grand jury by presenting false evidence on Indictment No.: 2008-GS-40-1682. See Applicant's Exhibit 1. The Applicant alleges that the said indictments were true billed two business days before trial, as the record will support.

This Court has had the limited opportunity to review only a portion of the trial transcript and has heard the testimony and evidence presented at the evidentiary hearing. This Court has had the opportunity to observe the witnesses and to pass on their credibility and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80.

In his allegations before this Court, the Applicant alleges that prosecutorial misconduct so infected the proceeding with unfairness that it has poisoned the entire legal process, thus everything is the fruit of the poisonous tree. The prosecutors are officers of the court, their conduct, if dishonest, would constitute fraud on the court. The Applicant alleges that because the State prosecution embarked on a scheme to either suborn perjury

as accidental fraud). 18 U.S.C.A. § 1623 (false declarations before the grand jury), 18 U.S.C.A. § 1505 (obstruction of proceedings before department, agencies and committees), 18 U.S.C.A. § 1621 (perjury), 18 U.S.C.A. § 2071 (concealment, removal or mutilation), 42 U.S.C.A. 1983, said statutes generally do not give rise to claims for malicious prosecution, but it will, only when official conspire to procure groundless indictments and charges based upon fabricated evidence or false, distorted, and perjured testimony presented to official bodies. The Supreme Court of the United States, in Marbury v. Madison, 5 U.S. 137 (1803), clearly states that if the solicitor knew beforehand that the indictments were fraudulent, this would constitute "prosecutorial misconduct" horrendous enough to bar re-prosecution.

Double Jeopardy

Additionally, the Applicant alleges that he was put twice in jeopardy on Indictment No.: 2007-GS-40-3669. Applicant alleges that the prosecution was allowed to make repeated attempts to convict Applicant, as well as a second change to enhance the possibility that the Applicant would be found guilty. Applicant alleges that the State was allowed an unfair opportunity to reformulate its case after the State failed to prove to the jurors the full elements of the crimes, based on the testimony, evidence, and the jury's inability to render a guilty verdict, even on the lesser included offenses. As the record clearly supports, the Applicant was in fact convicted twice for Indictment No.: 2007-GS-40-3669, once by way of the jury's guilty verdict and twice by the way of the guilty plea. See Applicant's Exhibit 2, 3 and 4, Plea Transcript p. 8, lines 8-12, p. 26-27, lines 25-25, 1-2, Trial Transcript p. 32, lines 17-19. Therefore, this Court finds that the portion of the trial transcript and the plea transcript and the testimony and evidence from the

law. State v. Stephenson, 54 S.C. 234, 32 S.E. 305 (1899), State v. Bilton, 156 S.C. 324, 153 S.E. 269 (1930). The Double Jeopardy Clause forbids the government to try a person twice for the same crime if after a criminal trial has begun the government decides that the case is going badly for it, it cannot dismiss the case and re-prosecute defendant, nor is it permitted to achieve by indirection what it is not permitted to do directly.

Where a double jeopardy claim is based on an allegation of successive prosecution, the court first determines if the offenses are the same or if one is a lesser included offense of the other, and then determines whether second prosecution requires re-litigation of factual issues already resolved by first. The Double Jeopardy Clause protects defendant's valued right to have trial completed by a particular tribunal, and also bars abusive government conduct designed to harass defendant through repetitive prosecution or undertaken for purposes of increasing likelihood of conviction. The Double Jeopardy Clause also protects defendant's right to have trial completed by the particular tribunal he or she has chosen. State v. Greuling, 257 S.C. 515, 186 S.E.2d 706 (S.C. 1972). The common law rule and the constitutional provisions declaratory therefore against the second jeopardy apply in this jurisdiction only to a second prosecution for the same act and crime, both in law and in fact, for which the first prosecution was instituted. However, if a subsequent prosecution survives the Blockburger test, the court must determine whether the State, in order to establish an essential element of an offense charged in the subsequent prosecution, will prove conduct that constitutes an offense for which the defendant has already been prosecuted. Under United States v. Blockburger, 284 U.S. 299, 52 S.Ct. 180 (1932), double jeopardy bars

allowed to stop a trial after a verdict has been reached to re-prosecute a defendant by way of a plea, nor is the court permitted to achieve by indirection what it is not permitted to do directly. Therefore, since the Applicant was not informed regarding the court setting aside the jury's guilty verdict, said plea was not free and voluntary with a full knowledge of the circumstances surrounding the plea. Further, the Applicant alleges that said plea, under such above mentioned circumstances was void and left the trial court without jurisdiction over said matter. The actions of a court in a matter over which it had no jurisdiction are void.

Findings of Fact and Conclusions of Law

This Court has had the limited opportunity to review only a portion of the trial transcript and has heard the testimony and evidence presented at the evidentiary hearing. This Court has had the opportunity to observe the witnesses and to pass on their credibility and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80.

In his allegation before this Court, the Applicant alleges that his plea was not voluntarily and intelligently made. See State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975). The South Carolina Supreme Court has held that the essence of Boykin was to make the requirements of Rule 11 of the Federal Rules of Criminal Procedure applicable to the States. The Supreme Court has held that for there to be valid waiver under the due process clause of the three constitutional rights listed in Boykin, the record must clearly establish it. See Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). A valid waiver of these rights cannot be preserved by a silent record. See Roddy v. State, 339 S.C. 29,

the trial judge gave two Allen charges to the jury. In the first supplemental instruction, the court reminds the jury "If you do not agree on a verdict, it just means [w]e will go through the whole process again." Trial Transcript p. 36, lines 5-12, Applicant's Exhibit 6. The jury then sends a note to the judge expressing their continued inability to agree and reveals to the court its numerical division and decisional disagreement. Trial Transcript p. 37-38, lines 25, 1, Applicant's Exhibit 7. The trial judge fails to instruct the jury not to state its division in the future, and then the trial judge had improper ex-parte communication with juror no. 120, Mr. George S. King, Jr., in which counsel failed to object. The Applicant alleges that this juror had expressed to the court his unwillingness to further deliberate and was the sole hold out in the numerical division. Trial Transcript p. 41-2, lines 21-25, 1-10, Applicant's Exhibit 8. The trial judge then gives the second supplemental Allen charge, which was coercive in its content and under all the circumstances directed at the minority voter on the jury. The Applicant alleges that counsel allowed this improper ex-parte communication by the trial judge directed at the minority juror after knowing the harm and/or prejudice and failed to object. Applicant's Exhibit 9. T.T. 11-25 PS #42

Thus, the Applicant alleges that trial counsel was ineffective for failing to object to the courts improper ex-parte communication with a juror and failing to object to coercive Allen charges given to the jury where the trial judge knew of the numerical division and decisional disagreement and was directed at the minority.

Findings of Fact and Conclusions of Law

This Court has had the limited opportunity to review only a portion of the trial transcript and has heard the testimony and evidence presented at the evidentiary hearing.

ineffective for failing to object to an unconstitutionally coercive Allen charge. Therefore, this case is an analogous and/or direct authority to the Applicant's case because Dawson is so similar to the Applicant's the law applied in Dawson should be applied to the Applicant's case.

Ineffective Assistance of Counsel

Additionally, the Applicant is alleging that his trial counsel was ineffective for allowing the following procedural irregularities, that denied the Applicant of his constitutional right to a fair trial. Trial counsel allowed the State to procure fraudulent indictments, trial counsel allowed the Applicant to be put twice in jeopardy on Indictment No.: 2007-GS-40-3669 and others, trial counsel allowed the State to make repeated attempts to convict Applicant, as well as enhancing the possibility that the Applicant would be found guilty, trial counsel allowed the Applicant and advised the Applicant to make an involuntary and unknowing plea, trial counsel allowed the trial judge to violate Rule 11, Fed.R.Crim.P., trial counsel allowed the judge to stop the trial after a verdict was reached, trial counsel allowed the trial judge to give an unconstitutionally coercive Allen charges, after knowing the numerical division and decisional disagreement, and trial counsel allowed the trial judge to have improper ex-parte communication with the sole hold out in the numerical division. The Applicant alleges that that because trial counsel failed to object and allowed and/or participated in these many procedural irregularities, that his trial counsel failed to perform within the range of competence demanded of an attorney in a criminal matter.

Findings of Fact and Conclusions of Law

334 S.E.2d 813, 814 (1985). Failure to object to language in Allen charges where judge knew there only one hold out, which singled out the juror was ineffective assistance of counsel. See Green v. State, 351 S.C. 184, 569 S.E.2d 318 (2008). Trial counsel was ineffective for failing to object to the coercive Allen charges given to a jury. See Dawson v. State, 352 S.C. 15, 572 S.E.2d 445 (2002).

All Other Allegations

As to any and all other allegations which were or could have been raised in the Application or at the evidentiary hearing in this matter, this Court finds that the Applicant has stated a legitimate reason for the preservation of such right. Said reason must be stated on the record and included in the factors for the court's consideration. Reasons are as follows:

1. The Applicant was denied the completed trial transcript, after a hearing was held, and the Applicant did show good cause in compliance with S.C. Code Ann. 17-27-150, 2).
2. When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea and the evidence presented at the evidentiary hearing. See Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2002).
3. Without said complete trial transcript the entire record was not and could not be considered for the Applicant to have a fair hearing and or present all issues that could be discovered.
4. The Applicant showed due diligence in requesting counsel and the courts for said information.

It is therefore Ordered:

1. That the Application for Post Conviction Relief be granted.
2. In compliance with S.C. Code Ann. 17-27-80, any and all of the following consideration:
 - a. Conviction or sentence in the former proceedings.
 - b. Supplemental orders to re-arraignment, retrial, custody, bail, discharge
 - c. Correction of sentence or other matters that may be necessary and proper.

AND IT IS SO ORDRED this ____ day of _____, 2010

The Honorable L. Casey Manning
Judge, Fifth Judicial Circuit

_____, South Carolina

Exhibit H 2

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Warren Russell, 316802

☒ Plaintiff

v.

State Of South Carolina

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2008-CP-40-7960

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

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Defendant's Attorney:

Brian Petrano, Bar No.

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e-mail: other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Summary Judgment

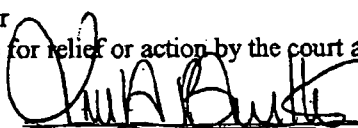
Estimated Time Needed: 1/2 hour Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☒ Plaintiff / ☐ Defendant

August 3, 2010

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

State of South Carolina	)	In The Court of Common Pleas
	)	
County of Richland	)	Fifth Judicial Circuit
	)	
Russell Warren, #316802	)	2008-CP-40-7960
Applicant	)	
	)	
-vs-	)	SUMMARY JUDGEMENT
	)	
State of South Carolina	)	
Respondent.	)	

The applicant moves this court for summary judgement pursuant to the SCRCP Rule 56. The applicant has submitted through his counsel a motion and order granting post conviction relief to this court on July 8, 2010. Summary judgement is appropriate because plain, palpable and undisputable facts exist on which reasonable minds can not defer, and the applicant has presented a properly supported motion that set forth finding of facts, or conclusions of law, that remain undisputed or contested in a deficient manner.

Further, the applicant is requesting that the respondents give answer to the applicants motion granting post conviction relief within ten days of receipt of said summary judgement. If the respondents fails to answer within allotted time frame, or fails to comply with S.C. Code Ann § 17-27-80, summary will be awarded to the applicant by default.

Respectfully Submitted

Russell Warren

Russell Warren, 316802

Dated July 26, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Warren Russell, 316802,)
Applicant,)

2008-CP-40-7960

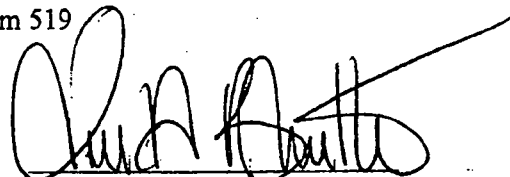
v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I, Tricia A. Blanchette, Attorney for the Applicant, hereby certify that hand
delivered this 3rd day of August 2010, a copy of Motion for Summary Judgment, Brian
Petrano, Assistant Attorney General at the Office of the Attorney General at:

Office of the Attorney General
ATT: Brian Petrano, Esq.
1000 Assembly Street, Room 519
Columbia, SC 29201



Tricia A. Blanchette
Attorney for the Applicant
PO Box 12725
Columbia, SC 29211

August 3, 2010

Mailing Address:
Post Office Box 12725
Columbia, South Carolina 29211



Office Address:
1330 Lady Street, Suite 209
Columbia, South Carolina 29201

LAW OFFICE OF TRICIA A. BLANCHETTE

August 3, 2010
VIA HAND DELIVERY

Richland County Clerk of Court
ATT: Common Pleas
PO Box 2766
Columbia, SC 29202

RE: Warren Russell v. State, Docket No.: 2008-CP-40-7960

Dear Sir or Madam:

For filing, attached please find an original Motion for Summary Judgment, which was prepared by my client. As his appointed PCR counsel, I am submitting this Motion on his behalf.

By copy of this letter, I am sending a copy of this Motion directly to the Honorable Casey L. Manning for his review.

Thank you for your assistance with this matter. Please contact me if you need any additional information.

Yours truly,

A handwritten signature in black ink, appearing to read 'Tricia A. Blanchette', written over the typed name.

Tricia A. Blanchette
Attorney at Law

cc: Honorable Casey L. Manning
Brian Petrano, Assistant Attorney General
Warren Russell

Phone: 803-988-0008 Facsimile 803-988-8070

Email: BlanchetteLaw@Gmail.com

Exhibit # 3

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Warren Russell, 316802

☒ Plaintiff

v.

State Of South Carolina

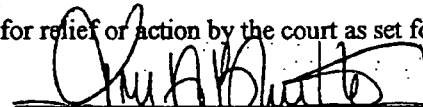
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2008-CP-40-7960

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Tricia A. Blanchette, Bar No. 74904 Address: PO Box 12725 Columbia, SC 29211 phone: 803-988-0008 fax: 803-988-8070 e-mail: blanchettelaw@gmail.com other:		Defendant's Attorney: Brian Petrano, Bar No. Address: PO Box 11549 Columbia, SC 29211 phone: 803-734-3737 fax: 803-734-4113 e-mail: other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Default Judgment Estimated Time Needed: 1/2 hour Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant August 26, 2010 Date submitted			
SECTION III: Motion Fee			
☐ PAID - AMOUNT: ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____			
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

FILED
2010 AUG 27 AM 9:33
JEANE L. E. HARRIS
C.C.P. & G.S. CLERK

State of South Carolina
County of Richland

In The Court of Common Pleas
Case No: 2008-CP-40-7960

Warren Russell ©

plaintiff

AFFIDAVIT OF Default

vs.

State of South Carolina

defendants

Plaintiff, Warren Russell, personally appearing before me, who being sworn, states that a Proposed Order Granting Relief, Motion for Summary Judgment, and a Motion for default was served on the defendants on July 8, 2010, August 3, 2010, and August 26, 2010, all of which required that defendant to answer or appear before me on the day of August 19, 2010; that defendant failed to appear or answer as required and is now in default.

Sworn to before me this 15
day of Oct, 2010.

x [Signature]
Notary Public for South Carolina

My Commission expires: 5-16-11

Warren Russell ©
x Warren Russell ©
Plaintiff

Mailing Address:
Post Office Box 12725
Columbia, South Carolina 29211



Office Address:
1330 Lady Street, Suite 209
Columbia, South Carolina 29201

LAW OFFICE OF TRICIA A. BLANCHETTE

August 26, 2010

Richland County Clerk of Court
ATT: Common Pleas
PO Box 2766
Columbia, SC 29202

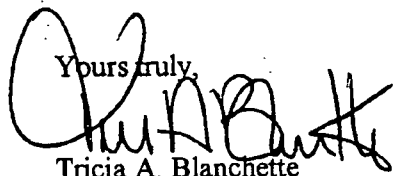
RE: Warren Russell v. State, Docket No.: 2008-CP-40-7960

Dear Sir or Madam:

For filing, attached please find an original and one copy of a Motion for Default, which was prepared by my client. As his appointed PCR counsel, I am submitting this Motion on his behalf. Upon filing, please return the copy to my office in the enclosed envelope.

Thank you for your assistance with this matter. Please contact me if you need any additional information.

Yours truly,


Tricia A. Blanchette
Attorney at Law

cc: Brian Petrano, Assistant Attorney General
Warren Russell

Phone: 803-988-0008 Facsimile 803-988-8070

Email: BlanchetteLaw@Gmail.com

State of South Carolina
County of Richland

In The Court Common Pleas
Fifth Judicial Circuit

Russel Warren, 316982
Applicant,

2008-CP-40-7960

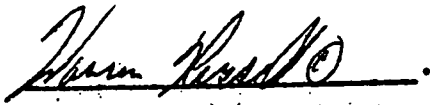
vs.

MOTION FOR DEFAULT

State of South Carolina
Respondent.

The Applicant moves this court for a judgement by default on the respondents for the following: (1). Failure to prosecute, (2). Default by silence, (3). Failure to respond to Applicants Motion and order granting Post Conviction Relief, and (4). Failure to respond to Applicants Summary Judgement within the allotted time frame. This pursuant to SCACP Rule 55(b)(1) and/or (b)(2), the Applicant is requesting this court to take the legal necessary actions to enforce the Applicants Motion for default.

Respectfully Submitted,



Russel Warren, 316802

Dated: August 17, 2010

FILED
2010 AUG 27 AM 9:31
JANET L. B. & G.S. HENDERSON

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Warren Russell, 316802,)
Applicant,)

2008-CP-40-7960

v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I, Tricia A. Blanchette, Attorney for the Applicant, hereby certify that I placed in the United States Mail on this 26th day of August 2010, a copy of a Motion for Default, with postage prepaid and the return address clearly shown on said envelope to Brian Petrano with the Office of the Attorney General at:

Office of the Attorney General
ATT: Brian Petrano, Esq.
P.O. Box 11549
Columbia, SC 29211



Tricia A. Blanchette
Attorney for the Applicant
PO Box 12725
Columbia, SC 29211

2010 AUG 27 AM 9:33
JEANE L. HARRIS
C.C.P. & G.S.

FILED

August 26, 2010

Exhibit #5

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Warren Russell, 316802

☒ Plaintiff

v.

State Of South Carolina

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2008-CP-40-7960

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Tricia A. Blanchette, Bar No. 74904
Address:
PO Box 12725
Columbia, SC 29211
phone: 803-988-0008 fax: 803-988-8070
e-mail: blanchettelaw@gmail.com other:

Defendant's Attorney:
Brian Petrano, Bar No.
Address:
PO Box 11549
Columbia, SC 29211
phone: 803-734-3737 fax: 803-734-4113
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

November 3, 2010

Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT:
☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court, or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

State of South Carolina
County of Richland

In The Court of Common Plea
Case No. 2008-CP-40-7960

Warren Russell

Plaintiff

Judicial Notice of Adjudicative Facts

v.

State of South Carolina
Defendants

The Plaintiff through his counsel, would like to put on the record his objection to this court allowing the Defendants to meet its default by allowing these Defendants to submit a responsive pleading, after these Defendants have waived its rights, from failure to respond. On October 20, 2010, a hearing was held before the Honorable Judge C. Manning. At this hearing, and included in this Judicial Notice of Adjudicative Facts the plaintiff has put forth evidence by way of Proposed Order Granting Relief, Summary Judgment given notice that failure to respond would result in Default Judgment and A Default Judgment. Said above mention motions were properly filed and served on all parties, and these Defendants failed to give answer to any of Plaintiff's responsive pleadings, and has been in default. At this hearing on 10/20/2010, the Honorable Judge Manning allowed these Defendants the opportunity to file a answer to the Plaintiff's above mention motions, after clearly these Defendants being in default. Pursuant to the S.C.R.P. P Rule 35, the defendants failure to plead an affirmative defense is deemed

a waiver to assert it. Since the record shows that these Defendants failed to give answer to any of the Plaintiff's responsive pleading such right has long been abandoned by these Defendants, and thus should not be allowed to file any pleading regarding this matter after said fact. See Madden v. Bradford, (SC App 2008), 378, S.C. 187, 661 S.E.2d 390. Further, pursuant to S.C.R.C.V.P., 8(d) Effect of failure to deny -, states and averment in a pleading to which a responsive pleading is required, are admitted when not denied. Plaintiff has shown that because these Defendants has failed to give answer ~~denying them~~ ^{to any} of these responsive pleadings, that all allegations and averments in these pleadings are in fact admitted, by way of the Defendants failure to give answer denying them. Further, pursuant to S.C.R.C.V.P., 15(b) provides an exception to this waiver rule, but these Defendants' failure to give answer does not qualify for this exception under this rule. Therefore, pursuant to S.C.R.C.V.P., 55(c), these Defendants has not met the prerequisite for this court to set aside the plaintiff's Motion for Default. With all due respect, the Attorney's failure to answer, even if negligent, this negligence was imputed to these Defendants. See William v. Karmelkenburg, (SC App 1994) 312 S.C. 373, 440 S.E.2d 408. Further, these Defendants have failed to set forth any reasons why they failed to answer, as well as failed to demonstrate the existence of "good cause" to allow this court to set aside the entry of default. Once a party moving for Summary Judgment meets the initial burden of showing an absence of evidentiary support for the opponents case, whether by failure to respond (Default) or, a properly supported motion setting forth facts that remain undisputed or contested

in a deficient manner (failure to respond) the Non-moving party must come forward with specific facts showing a genuine issue of material fact. These Defendants were given adequate notice by way of Summary Judgment that a failure to respond would result in judgment by default, thus, were given adequate notice, and these Defendants failed to respond, therefore leaving no questions as to the fact that these Defendants are in default.

Therefore, it would be clearly opposite S.C.R. Civ. P. and clearly established case law, if this court set aside the Plaintiff's Motion for Default and/or allow these Defendants an additional opportunity to respond and/or correct said Default after clearly abandoning said right by failing to respond.

Further, for this court to do such would be unduly harsh and disproportionately prejudicial to the plaintiff. Plaintiff asserts that the only issue for this court to decide is if the Defendants are in default or not. Any and all issues derived at or from the PER hearing is now moot. Thus the Plaintiff respectfully prays that this court gives any and all relief warranted by the Constitution and S.C. laws.

Wynn Russell ©

11/1/2010

Mailing Address:
Post Office Box 12725
Columbia, South Carolina 29211



Office Address:
1330 Lady Street, Suite 209
Columbia, South Carolina 29201

LAW OFFICE OF TRICIA A. BLANCHETTE

November 3, 2010

Richland County Clerk of Court
ATT: Common Pleas
PO Box 2766
Columbia, SC 29202

RE: Warren Russell v. State, Docket No.: 2008-CP-40-7960

Dear Sir or Madam:

For filing, attached please find an original and one copy of a Judicial Notice, which was prepared by my client. As his appointed PCR counsel, I am submitting this pleading on his behalf. Upon filing, please return the copy to my office in the enclosed envelope.

Thank you for your assistance with this matter. Please contact me if you need any additional information.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: Brian Petrano, Assistant Attorney General
Warren Russell

Phone: 803-988-0008 Facsimile 803-988-8070

Email: BlanchetteLaw@Gmail.com

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Warren Russell, 316802,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2008-CP-40-7960

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for the Applicant, hereby certify that I placed in the United States Mail on this 3rd day of November 2010, a copy of a Judicial Notice, with postage prepaid and the return address clearly shown on said envelope to Brian Petrano with the Office of the Attorney General at:

Office of the Attorney General
ATT: Brian Petrano, Esq.
P.O. Box 11549
Columbia, SC 29211



Tricia A. Blanchette
Attorney for the Applicant
PO Box 12725
Columbia, SC 29211

November 3, 2010



LAW OFFICE OF TRICIA A. BLANCHETTE

November 18, 2011
VIA HAND DELIVERY

Richland County Clerk of Court
ATT: Common Pleas
PO Box 2766
Columbia, SC 29202

RE: Warren Russell v. State, Docket No.: 2008-CP-40-7960

Dear Sir or Madam:

For filing on behalf of my appointed client, attached please find an original Affidavit of Statement of Facts and Judicial Notice of Adjudicated Facts prepared by my appointed client. A Certificate of Service is attached.

As a courtesy, I am sending a copy of this Affidavit and Judicial Notice to the Honorable L. Casey Manning.

Thank you for your assistance with this matter. Please contact me if you need any additional information.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: Honorable L. Casey Manning
Brian Petrano, Assistant Attorney General
Warren Russell