

ORIGINAL

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2016-002382

Erick Hewins,.....Respondent,

v.

State of South Carolina,.....Petitioner.

**APPENDIX**

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HUNTER CHASE HARBIN - DIRECT EXAMINATION BY MR. SCHMECKPEPER

1 story as far as consent went?

2 A. That Officer Gardner was lying and pretty much about the  
3 entire, uh, course of events, uh, or at least procedurally the  
4 course of events and that, uh, consent wasn't asked for nor  
5 given.

6 Q. So and then the officer said or the officer said I think  
7 first and correct me if I'm wrong, uh, The applicant gave me  
8 consent, that applied to both searches.

9 A. Yeah, I I I can tell ya certainly the officer said that  
10 he asked for and got consent and only based upon my reading of  
11 the transcript, not based upon my specific recollection of the  
12 trial that I believe he said that having gotten consent I  
13 reached back in or something like that.

14 Q. And that, and the the transcript would reflect his exact  
15 words.

16 A. Sure.

17 MR. SCHMECKPEPER: I beg the Court's indulgence.

18 (Pause.)

19 MR. SCHMECKPEPER: Your Honor, I don't have anymore  
20 questions; however, I would like to preserve the right make an  
21 argument ---

22 THE COURT: Okay.

23 MR. SCHMECKPEPER: --- at the end.

24 MR. JOHNSON: Thank Your Honor.

25 CROSS-EXAMINATION BY MR. JOHNSON:

HUNTER CHASE HARBIN - CROSS-EXAMINATION BY MR. JOHNSON

1 Q. Mr. Harbin, uh, that when you were subpoenaed for this  
2 case, did they give you opportunity to review the appeals  
3 decision from from the case?

4 A. I haven't -- I have r -- uh, read it, I can't tell ya I  
5 memorized it but I'm I'm aware of it.

6 Q. What is it, what is your understanding of of the consent  
7 issue that that they addressed in that opinion?

8 A. Well, uh, uh, as as I've done in person with him, I would  
9 respectfully disagree with Judge Few. Um, I I, essentially my  
10 understanding is that he compartmentalized two reaches into my  
11 client's pocket, the first being to pull out the cash and the  
12 second being to reach back in and retrieve what ultimately,  
13 uh, was found to be some prescription pills I believe.

14 Q. Now based on this decision that that you had a similar  
15 situation would you make a double objection?

16 A. Sure. Yeah, ---

17 Q. Okay.

18 A. --- I am not gonna, uh, he's still on the Court of  
19 Appeals so I'm gonna make him happy one ---

20 THE COURT: No, ---

21 A. --- way or the other.

22 THE COURT: --- he moved up.

23 A. Oh, I'm sorry. Well need to read the paper little bit  
24 more. He he's still in a position of authority so I wanna, I  
25 wanna do things, uh, the way they like it to be done.

HUNTER CHASE HARBIN - CROSS-EXAMINATION BY MR. JOHNSON

1 Q. All right. And you believe that the consent issue itself  
2 was meritorious, that was, it's it's a good issue.

3 A. Uh, I believe that we made a good case that, uh, that the  
4 jury at least had the right to determine whether or not, uh,  
5 the facts existed to justify the search.

6 Q. Okay. Now I know you you made some reference to the what  
7 my client classified as the Allen charge, it sounds more like  
8 the, he thought you shoulda made a request for for a hung jury  
9 and did ya'll, did ya'll have any sort of discussion between  
10 each other on that issue, do you recall?

11 A. I I don't think we did. I don't recall if we did but I  
12 don't believe so.

13 Q. Okay. And as far as, uh, the reasonable suspension, uh,  
14 reasonable suspicion, was was there a specific, that I can't  
15 re -- recall but that there, was there a specific *Jackson v.*  
16 *Denno* hearing done or it was all done under the circumstances  
17 of the consent?

18 A. I believe it was all done, uh, as as I presented it  
19 anyway as a suppression motion, uh, I was ultimately seeking  
20 to suppress the fruits of the search of the search into the  
21 pocket, um, and it was done on top of the previous trial  
22 having done a similar motion so Ms. Monts introduced, uh, that  
23 to the Court that we'd be, uh, I already talked to her ahead a  
24 the case and told her of course we'd wanna revisit this issue  
25 for this trial as well.

HUNTER CHASE HARBIN - CROSS-EXAMINATION BY MR. JOHNSON

1 Q. Okay. Now in addition to the consent, well was there  
2 also other testimony or other, uh, other statements that my,  
3 that my client made, uh, presented to the jury, was it just,  
4 it's just a consent, do you recall?

5 A. Uh, and can -- could you be more specific about what  
6 information you're ---

7 Q. Uh, for example, uh, my client testified, uh, What the  
8 hell are you doin' in my pocket, like where where there  
9 statements like that, did that come before the purview a the  
10 jury?

11 A. Uh, yeah, I I believe he was able to testify, also, uh,  
12 we had the testimony of, uh, Megan, I can't remember her last  
13 name, but she -- he he had other testimony as well that  
14 basically corroborate or I don't know if it corroborated every  
15 single thing 'cause I don't know if she heard every single  
16 thing he said but but it was favorable to our argument being  
17 made that, uh, Officer Gardner's testimony was not exactly  
18 accurate.

19 MR. JOHNSON: Okay. Thank Your Honor, I have no further  
20 questions.

21 THE COURT: Okay, you can step down.

22 MR. HARBIN: Thank you, Judge.

23 THE COURT: You can be excused, ---

24 MR. HARBIN: Thank you.

25 THE COURT: --- appreciate your time.

## MOTIONS AND MATTERS

1 MR. HARBIN: Yes, sir.

2 (Whereupon, the witness left the stand.)

3 MR. HARBIN: Don't tell Judge Few I didn't know.

4 (Laughter.)

5 THE COURT: All right.

6 MR. SCHMECKPEPER: Your Honor, that's the State's case.

7 THE COURT: You, State wants to make some arguments, do  
8 you wanna hear 'em first or you have some you wanna make?

9 MR. JOHNSON: Sure, I I, uh, I I know Mr. Hewins lo --  
10 would love for me to say sumtin' briefly.

11 THE COURT: Oh, okay, go ahead.

12 MR. JOHNSON: Uh, Mr. Hewins, uh, you know, discussin'  
13 the case with him I I think that obviously he feels it pretty  
14 strong concerning what the Court of Appeals has has has  
15 stated, uh, I also ask you consider that also Mr. Hewins, uh,  
16 and and this is part of the record, he didn't testify this  
17 but, you know, also as part of the, uh, transcript itself  
18 Mr. Hewins wants to point out that, uh, Mr. Harbin  
19 acknowledged that he didn't necessarily ha, uh, know how to  
20 address the consent argument itself and I guess that turned  
21 out to be correct and you look at page 155 of of the  
22 transcript line 12 and 13, uh, uh, he admits such and so we  
23 ask you consider sider [sic] that at this time. It appears  
24 from the Court of Appeals' decision itself that it, there  
25 appeared to be merit, I I've seen them say something's not

## MOTIONS AND MATTERS

1       preserved but they went as far as to say well there seems to  
2       be somethin' fishy here but it wasn't preserved and I think  
3       because they did that, uh, that my client has proved, uh, not  
4       only defectiveness but also prejudice, uh, as far as the the  
5       other, uh, issues that he's brought forth to the Court today,  
6       as far as the Allen charge is concerned, I believe, uh, Mr.  
7       Harbin testified that they didn't really really talk about  
8       that that sorta strategy or anything of that nature. My  
9       client believes that, uh, because he didn't request a hung  
10      jury or otherwise that he was ineffective, we ask you consider  
11      that and then finally, as far as the *Jackson vs. Denno* is  
12      concerned, it seemed like, it appears that, uh, from the  
13      transcript that that they went over, uh, my client's  
14      statements as far the consent's concerned but did not go over  
15      as far as voluntariness was was concerned and so he he missed  
16      the opportunity to challenge on different, uh, on a different  
17      ground, I know that the the Fourth, Sixth Amendment cover many  
18      things but it it would allow him almost a a a another look at  
19      the issue a, under different eyes because the the rules are  
20      different and so I ask you consider that, Judge, uh, he he was  
21      prejudiced by that because again, that's not a issue that  
22      would woulda been preserved, his appeals counsel can't raise  
23      it and it's not something that was reviewed as well.

24           THE COURT: Okay, thank you.

25           MR. SCHMECKPEPER: Your Honor, just starting off with

## MOTIONS AND MATTERS

1 the, uh, allegation involving the unpreserved issue, um, I  
2 don't think I can dispute the fact that the Court of Appeals  
3 did in fact say that the issue was unpreserved, uh, I think  
4 that's on 2 ---

5 THE COURT: I I ---

6 MR. SCHMECKPEPER: --- right ---

7 THE COURT: --- saw it ---

8 MR. SCHMECKPEPER: It's on page ---

9 THE COURT: --- earlier.

10 MR. SCHMECKPEPER: --- 6 of the ---

11 MR. JOHNSON: Yeah, on ---

12 MR. SCHMECKPEPER: --- opinion. Yes, Your Honor, uh, I I  
13 would just like to highlight the the language. It's not that  
14 this issue is unpreserved as meritorious, it's this issue is  
15 unpreserved and we don't have the facts before us to make the  
16 determination. The issue they're referring to is whether or  
17 not the second search was covered by the first bit of consent  
18 and the Court of Appeals said, Well there is consent there,  
19 and I think that's a part of their ear, yeah, an earlier  
20 portion of their ruling and they said it's a question that  
21 wasn't addressed as to whether or not that extends to the  
22 second one or whether or not that consent was limited or or  
23 narrow. Uh, with that, loo -- looking looking just at that  
24 language in the Court of Appeals' findings, I think the  
25 applicant has the burden in this forum to develop the record

## MOTIONS AND MATTERS

1 factually to show that either; one, the consent was so narrow  
2 as to not cover the second, the second search or; two, that  
3 the applicant revoked consent prior to a second search and and  
4 we don't have that in the record before us, all we have is the  
5 police officer's testimony saying that the consent, well it  
6 covered both, and and maybe at trial there there, if the  
7 record had been de -- full or developed more fully, there  
8 there maybe, may have been an issue at trial, here it's the  
9 applicant's burden to show prejudice, it's the applicant's  
10 burden to develop the record factually, uh, and the  
11 applicant's failed to do so in this case so for that reason  
12 I'd reque -- I request that this court deny that a -- that  
13 allegation on the ground that applicant's failed to show  
14 prejudice. Um, concerning the remaining ---

15 THE COURT: (Indiscernible cross-talk.)

16 MR. SCHMECKPEPER: --- allegation ---

17 THE COURT: --- let me ask on that regard, sort of being  
18 the devil's advocate, not the devil's advocate, not  
19 Mr. Hewin's advocate either, uh, how do you, how can the, how  
20 can the Court cure a failure to preserve an issue? How can  
21 this court or what can, what could the Court do to make that  
22 right?

23 MR. SCHMECKPEPER: Well, Your Honor, there there are all  
24 sorts of cases, and I I'm not conceding deficiencies, I'm not  
25 sure that counsel really was deficient here, there all sorts

## MOTIONS AND MATTERS

1 of cases, uh, where counsel is in fact deficient but there's  
2 no prejudice and that's compara -- it contemplated by  
3 *Strickland* in PCR, the remedy is there is not remedy, you have  
4 to show deficiency and prejudice, uh, and the burden is on the  
5 applicant to make that showing. I don't know how the record  
6 would've turned out. I don't know the exact nature, I don't,  
7 I don't know exactly what the extent of the consent was. It  
8 looks like from the Officer's testimony that it covered both  
9 searches. Applicant ---

10 THE COURT: I ---

11 MR. SCHMECKPEPER: --- I apol -- go ahead, Your Honor.

12 THE COURT: No, I was gonna say I, now I would have  
13 thought it it, following trial counsel's position I would have  
14 thought that the o -- the o -- the objection woulda covered  
15 both but apparently upstairs they didn't think so.

16 MR. SCHMECKPEPER: And, Your Honor, I think that the the  
17 the standard for ineffective assistance or the standard for  
18 deficient performance isn't necessarily the Court of Appeals  
19 finds you didn't preserve an issue, it's whether or not your  
20 performance was reasonable under professional norms, uh, but  
21 in any event I think, uh, uh, the problem is the applicant  
22 didn't develop the record factually to the point where, uh,  
23 this court could actually determine prejudice existed. On the  
24 remaining i -- allegations, I would rest on the record, Your  
25 Honor, and be happy to answer any questions.

## MOTIONS AND MATTERS

1 THE COURT: Well I'm gonna take it under advisement.

2 MR. JOHNSON: Uh, ---

3 MR. SCHMECKPEPER: Thank Your Honor.

4 MR. JOHNSON: --- one more thing, Judge, ---

5 THE COURT: Okay.

6 MR. JOHNSON: --- while we adjourn, uh, my client just  
7 brought to my attention if if you, uh, if Your Honor should,  
8 uh, deny his request for relief, uh, he wants it known that  
9 he's asked me to file a Rule 59(e) motion should, uh, the  
10 Court, uh, fail to cover any of the issues that he's alleging  
11 and deems is important for him, for me put that on the record,  
12 is that correct, Mr. Hewins?

13 THE APPLICANT: Yes, sir.

14 THE COURT: You, well you don't have to 'cause that's  
15 your right, ---

16 THE APPLICANT: Yes.

17 THE COURT: --- that I got no control over that but  
18 that's fine. All right, we'll take this under advisement  
19 then.

20 MR. JOHNSON: All right, thank you, Judge.

21 MR. SCHMECKPEPER: Thank you, Your Honor.

22

23

24

25

## CERTIFICATE OF REPORTER

1  
2  
3 I, Margaret A. Woods, Court Reporter in and for the State  
4 of South Carolina at Large, hereby certify that I reported the  
5 preceding case on October 25, 2016 at the time and place  
6 heretofore set forth; and that the foregoing pages numbered  
7 from 4 through 47, inclusive, constitute a true and accurate  
8 transcription of my stenographic notes of the said proceeding.

9 I further certify that I am neither attorney nor counsel  
10 for, nor related to or employed by any of the parties  
11 connected to the action, nor am I financially interested in  
12 the action.

13 January 21, 2017

14  
15 Margaret A. Woods

16 Margaret A. Woods, Court Reporter  
17 in and for the State of South Carolina at Large.  
18  
19  
20  
21  
22  
23  
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25

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Erick Hewins, )  
 #297728, )  
 )  
 Applicant, )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 THIRTEENTH JUDICIAL CIRCUIT  
 C.A. No.: 2016-CP-23-2656

ORDER

ENTERED COMPUTER

COURT  
 OF COMMON PLEAS  
 THIRTEENTH JUDICIAL CIRCUIT  
 GREENVILLE, S.C.  
 2016 NOV 4 PM 2 54

Applicant filed this Application for Post-Conviction Relief on April 26, 2016. The matter was heard October 25, 2016. Applicant was represented by Brian P. Johnson, Esq. The State was represented by Patrick Schmeckpeper, Esq.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court of Greenville County. Applicant was indicted for trafficking in Cocaine base (greater than 10 grams) (2010-GS-23-8295) and possession of a schedule IV Controlled Substance (clonazepam) second offense (2010-GS-8296). He was tried by jury January 14-17, 2013. Upon conviction he was sentenced by the Honorable L. Edward Welmaker to twenty-five years for trafficking cocaine and one year for possession of cocaine, consecutive, for an aggregate term of twenty-six years. A notice of appeal was served January 25, 2013, and the direct appeal perfected. The Court of Appeals affirmed the conviction and sentence. *State v. Hewins*, Op. No. 2014-UP-478 (filed Dec. 23, 2014). A petition for rehearing was filed January 6, 2015 and was denied February 24, 2015. The Petition for writ of certiorari followed. The Supreme Court granted the petition for writ of certiorari on Applicant's issues 1-4 on November 5, 2015. On March 23, 2016 the Supreme Court dismissed as improvidently

*J. C. H. H. H.*

granted. Applicant filed for Post-Conviction Relief on April 26, 2016 and subsequently amended his application on May 26, 2016.

In his Application, and in amended applications (filed May 20, 2016 and May 26, 2016), Applicant alleges he is being held in custody unlawfully for a number of reasons. The Court will address those presented at the hearing. All other reasons set forth in his application, having not been presented at the hearing, are deemed abandoned.

Applicant claims ineffective assistance of counsel in his application. In a Post-Conviction Relief action, the Applicant bears the burden of proving the allegations in their complaint. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 446 U.S. 668, 686, 104 S.Ct. 2052, 2064 (1984); *Butler*, 334 S.E.2d 813.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that the counsel’s performance was deficient. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” *Cherry*, 300 S.C. at 117-118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.*

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

professional judgment. *Strickland*, 446 U.S. 668. The applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Applicant asserts that trial counsel failed to properly object to law enforcements' second search of his pants pocket<sup>1</sup> and that the failure to object resulted in any issue as to the second search not being preserved for appeal. That the issue was not preserved for appellate review is evidenced by the opinion of the South Carolina Court of Appeals in *State v. Hewins*, Op. No. 2014-UP-478 (2014).

Trial counsel, when at trial was asked what were the issues that needed to be addressed pre-trial, stated "...a suppression issue." (Trial Record p. 40, ll. 18-19).

At trial transcript page 139, lines 23-24, the trial judge stated "I'll be glad to hear from you about the suppression issue Mr. Harbin." Thereafter, trial counsel presents a lengthy and cogent argument for suppression which, in candor, focuses on the first search, referred to by counsel and the Court of Appeals as a *Terry*<sup>2</sup> frisk. (See particularly Trial Record p. 148, ll. 10-11). However, in rebuttal to the State's counter-argument to trial counsel's argument, trial counsel, addressing Applicant's consent specifically questions whether or not any consent extended to the "second time." (Trial Record p. 155, ll. 21-230).

In his ruling, the trial judge stated that a *Terry* frisk was warranted and allowed "the evidence in." (Trial Record p. 160, ll. 13-15). This, according to the Court of Appeals was a "general ruling" and because trial counsel did not request a specific ruling on the issue of consent for the second search, that constitutionality of the second search is not preserved. *State v. Hewins*, Op. No. 2014-UP-478 (2014).

---

<sup>1</sup> The Court of Appeals has upheld the constitutionality of the first search of applicant's pants pocket. *State v. Hewins*, Op. No. 2014-UP-478 (2014).

<sup>2</sup> *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968).

Based on the analysis above, it is hard for the undersigned to find, despite the Court of Appeal's holding, that trial counsel was not diligent in his attempt to suppress the result of the second search. The second search was the one in which the pills were found. It seems illogical to believe that trial counsel did not expect the trial court to make a ruling on the seizure of the pills, the things giving rise to the prosecution. However, the undersigned must live with the Court of Appeals', the ultimate authority, holding that trial counsel did not preserve for appeal the issue of consent for the second search.

Applying the *Strickland*, supra, test as applied in *Cherry*, supra, the fact that the Court of Appeals has, by its decision in *Hewins*, found that trial counsel's conduct affected the adversarial process to the prejudicial detriment of Applicant. The Court must find in favor of Applicant on the unpreserved issue argument. This case is hard to fit into the parameters set forth in *Strickland*, supra, and *Cherry*, supra. However, looked at it in totality, the test ultimately is: did trial counsel fail in his representation, and did it prejudice Applicant. This leaves out the reasonableness prong. In this case trial counsel diligently sought to suppress the evidence which constituted the bases for the drug charge. This is what is expected of a reasonable attorney. The question then becomes whether or not a reasonable attorney would have asked the trial judge, who has denied the attorney's motion to suppress, to break down with specificity separate rulings on the *Terry* frisk and the consent issue as to the second search. Since case law as cited by the Court of Appeals requires such, trial counsel is ineffective for not doing so regardless of what a reasonable attorney would have done under the same or similar circumstances.

Applicant raises a second issue relating to the trial court's *Allen*<sup>3</sup> charge. Applicant alleges trial counsel was ineffective for not objecting to the court's *Allen* charge. Procedurally, the jury sent a note to the trial judge late on the second day of trial (based on the record after

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<sup>3</sup> *Allen v. U.S.*, 164 U.S. 492, 17 S. Ct. 154 (1896).

JC H # 4

approximately 5:30 and before 5:55 (Trial Record pp. 410 and 412)). At some point (not reflected in the record) the jury indicated that it had reached a verdict on the possession charge but not on the trafficking charge. (Trial Record p. 411, ll. 3-5). At that time, the trial judge indicated he did not want to give an *Allen* charge that late in the day and did not want to accept only one verdict. The trial judge, without objection of counsel, released the jury for the day to return for further deliberation the next day, which they did.

At some time after 9:06 a.m. on the third day, before 11:00 a.m., the jury indicated their deliberations stood as they had when they adjourned the night before. Thereafter, without objection from either of the parties, the trial judge brought in the jury and gave the *Allen* charge.

Trial counsel's representation of Applicant regarding the trial judge's decision to give an *Allen* charge was not ineffective assistance of counsel but rather it was well within the range of competence required of counsel in a criminal case. *See Strickland, supra; Cherry, supra.*

Applicant's third ground for relief was framed as an issue with trial counsel's representation of Applicant in a *Jackson v. Denno*<sup>4</sup> hearing. The record reflects that that was no *Jackson v. Denno* hearing. The trial judge asked if there needed to be pre-trial hearings and did use the term "*Jackson v. Denno*...hearing." (Trial Record p. 41, ll. 10-11). However, there is no other allusion to *Jackson v. Denno*, nor by content do any of the issues argued evidence a *Jackson v. Denno* hearing was held. There is no merit to this last "issue" as there is no issue.

Based on trial counsel's ineffective assistance in failing to preserve a pivotal issue for appellate review, the Applicant is granted a new trial.

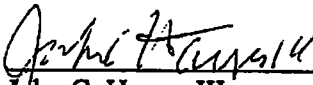
IT IS SO ORDERED.



---

<sup>4</sup> *Jackson v. Denno*, 378 U.S. 368, 84 S. Ct. 1774 (1964).

October ~~October 27~~<sup>27</sup> 2016  
Greenville, South Carolina

  
\_\_\_\_\_  
John C. Hayes, III  
Presiding Judge #6

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NO: 2016CP2302656

**Erick Hewins vs. South Carolina State Of**

**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 Greenville, South Carolina, this .

Court Reporter:

\_\_\_\_\_  
**PRESIDING JUDGE - John C Hayes, III**

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

**Brian P. Johnson** 522 North Church Street  
Greenville, SC 29601

**Patrick Lowell Schmeckpeper** PO Box 11549  
Columbia, SC 29211

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**Paul B. Wickensimer** Greenville County Clerk Of Court  
- Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

129093

COUNTY OF Greenville
STATE VS.

Erick Eton Hewins

INDICTMENT/CASE#: 2010GS2308295

A/W#: M383853

Date of Offense: 8/9/2010

S.C. Code § : 44-53-0375(C)(1)(c)

CDR Code #: 0452

AKA:

Race: BLACK Sex: M Age: 39

DOB: 1973 SS#:

Address:
City, State, Zip: GREENVILLE, SC 29607

DL#: SID#:

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Trafficking cocaine base/crack cocaine, > 10 grams, 3rd offense

CONVICTED OF or PLEADS

in violation of § 44-53-0375(C)(1)(c) of the S.C. Code of Laws, bearing CDR Code # 0452

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST

Mpnt, Joyce K.

65331 SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on: 2010 GS 23-8296
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (DUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments), TOTAL.

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Paul Wickens

Court Reporter:

Hanks

Presiding Judge

Handwritten signature of Judge

Judge Code: 2137

Sentence Date: 1-17-2013

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
TRAFFICKING COCAINE BASE (CRACK COCAINE)

JUL 19 2011

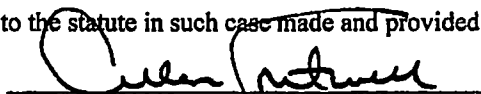
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That ERICK ETON HEWINS did in Greenville County, on or about the 9th day of August 2010, knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 10 grams of Cocaine Base (Crack Cocaine). This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

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

  
SOLICITOR

RE WITNESSES

S. Gardner

Greenville Police Department

8/9/2010

ARREST WARRANT NUMBER

M383853

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 1-17-2013

DOCKET NO. 2010-GS-23- 008295

AOF

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2010

2011

THE STATE

vs.

ERICK ETON HEWINS

DL SUSPENDS

Did Clerk receive driver's license?

YES \_\_\_\_\_ NO \_\_\_\_\_

If no, explain \_\_\_\_\_

Defendant

Indictment for

0452

TRAFFICKING COCAINE BASE (CRACK  
COCAINE)

VIOLATION §44-53-0375

ENTERED  
ACCT

Clerk of Court  
Greenville County

OCT 26 2010

RECEIVED

521

ARREST WARRANT

M-383853 6360

STATE OF SOUTH CAROLINA

County/ Municipality of 8-12-10

Greenville

THE STATE against

10-67312

Erick Eton Hewins

Address: [Redacted]

Tailors, SC 29687-

Sex: M Race: B Height: 5 9 Weight: 250 DL State: DL #:

DOB: 10/18/1973 Agency ORI #: SC0230200

Prosecuting Agency: Greenville Police Department

Prosecuting Officer: S Gardner - 0635

Offense: Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g - 1st offense

Offense Code: 0450

Code/Ordinance Sec: 44-53-0375(C)(1)(

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Erick E Hewins on Aug 9-2010

Signature of Probable Law Enforcement Officer

RETURN WARRANT TO:

City Of Greenville 426 North Main Street P O Box 488 Greenville, SC 29601

ORIGINAL

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ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

Personally appeared before me the affiant S Gardner

being duly sworn deposes and says that defendant Erick Eton Hewins

did within this county and state on or about 08/09/2010

State of South Carolina (or ordinance of County/ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

AFFIANT STATED THAT ON 8-9-10 A FIELD INTERVIEW WAS BEING CONDUCTED WITH THE ACCUSED, ERICK ETON HEWINS, WHILE OBSERVED IN THE PARKING LOT OF 50 ORCHARD PARK DR. UPON THE ACCUSED BECOMING NERVOUS AND SWEATING A PROTECTIVE PATDOWN WAS CONDUCTED, AT WHICH TIME FOUR GREEN PILLS WERE FOUND IN THE ACCUSED LEFT FRONT POCKET, LATER FOUND TO BE CLONAZEPAN. FURTHER INVESTIGATION LED TO AN INVENTORY OF THE ACCUSED VEHICLE, WHICH LED TO THE FINDING OF AN ADVIL BOTTLE CONTAINING SEVERAL BEIGE ROCK LIKE SUBSTANCE AND A LARGE ROCK BEHIND THE PASSENGER SEAT ALL OF WHICH FIELD TESTED POSITIVE AS CRACK COCAINE WEIGHING 22.2 GRAMS. SAID INCIDENT OCCURRED IN THE CITY LIMITS OF GREENVILLE, S.C.

Signature of Affiant

[Handwritten Signature]

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

Affiant's Address 4 MCGEE STREET GREENVILLE 29601-

Affiant's Telephone

ARREST WARRANT

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

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

on or about 8/9/2010 defendant Erick Eton Hewins

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

County/ Municipality of Greenville

) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g - 1st offense

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 08/09/2010

Signature of Issuing Judge John Barksdale

John Barksdale

Judge Code: 6361

(L.S.)

Judge's Address 426 North Main Street Greenville, SC 39601-

Judge's Telephone (864)467-2405

Issuing Court: Magistrate Municipal Circuit

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522

ORIGINAL

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

AFFIDAVIT

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.

INDICTMENT/CASE#: 2010GS2308296
A/W#: M383854
Date of Offense: 8/9/2010
S.C. Code § : 44-53-0370
CDR Code #: 0180

AKA: Erick Eton Hewins
Race: BLACK Sex: M Age: 39
DOB: -1973 SS#:
Address:
City, State, Zip: Taylors, SC 29687
DL#: SID#:

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Possession of a schedule 4 controlled substance, clonazepam, 2nd offense

CONVICTED OF or PLEADS

in violation of § 44-53-0370 of the S.C. Code of Laws, bearing CDR Code # 0180
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Joyce K. Montz, 65331 SC Bar# Defendant
Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 1 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for

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

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$.

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul Blumchenin
Court Reporter: Franky
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2137
Sentence Date: 1-17-2013

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
POSSESSION OF A SCHEDULE IV CONTROLLED  
SUBSTANCE: CLONAZEPAM

JUL 19 2011

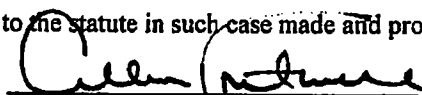
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That ERICK ETON HEWINS did in Greenville County, on or about the 9th day of August 2010, willfully and unlawfully have in his possession and under his control a quantity of a schedule IV controlled substance, CLONAZEPAM. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

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

  
SOLICITOR

WITNESSES

*ll*

S. Gardner

Greenville Police Department

8/9/2010

ARREST WARRANT NUMBER

M383854

ACTION OF GRAND JURY.

TRUE BILL

*[Signature]*  
Foreperson of Grand Jury

VERDICT

*GUILTY*

*[Signature]* 1-17-2010  
Foreperson of Petit Jury Date:

DOCKET NO. 2010-GS-23- 008296

AOF

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2010

*2011*

THE STATE

vs.

ERICK ETON HEWINS

**DL SUSPENDS**

Did Clerk receive driver's license?

YES \_\_\_\_\_ NO \_\_\_\_\_

If no, explain \_\_\_\_\_

Defendant

Indictment for

0180

POSSESSION OF A SCHEDULE IV  
CONTROLLED SUBSTANCE: CLONAZEPAM

VIOLATION §44-53-0370

Greenville County  
Clerk of Court

OCT 26 2010

RECEIVED

525

ARREST WARRANT

M-383854

6360  
8-12-10

STATE OF SOUTH CAROLINA

County/  Municipality of

Greenville

THE STATE

10-67312

against

Erick Eton Hewins

Address: [Redacted]

Taylors, SC 29687-

Phon: [Redacted] SSN: [Redacted]  
Sex: M Race: B Height: 5 9 Weight: 250  
DL State: [Redacted] DL #:

DOB: [Redacted] 1973 Agency ORI #: SC0230200

Prosecuting Agency: Greenville Police Department

Prosecuting Officer: S Gardner - 0635

Offense: Drugs / Attempt and conspiracy, general provisions of the drug laws (half the penalty of

Offense Code: 0027

Code/Ordinance Sec: 44-53-0420

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

*Erick E Hewins  
Aug 9-2010*

*Jeff Brown #415*  
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Of Greenville  
426 North Main Street  
P O Box 488  
Greenville, SC 29601

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
Greenville )

AFFIDAVIT

ORIGINAL

Form Approved by  
U.S. Attorney General  
April 21, 2005  
SCCA 616

Personally appeared before me the affiant S Gardner )  
being duly sworn deposes and says that defendant Erick Eton Hewins )  
did within this county and state on or about 08/09/2010 )

State of South Carolina (or ordinance of  County/  Municipality of Greenville )  
in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Attempt and conspiracy, general provisions of the drug laws (half the penalty of substantive offense)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

AFFIANT STATED THAT ON 8-9-10 A FIELD INTERVIEW WAS BEING CONDUCTED WITH THE ACCUSED, ERICK ETON HEWINS, WHILE OBSERVED IN THE PARKING LOT OF 50 ORCHARD PARK DR. UPON THE ACCUSED BECOMING NERVOUS AND SWEATING A PROTECTIVE PATDOWN WAS CONDUCTED, AT WHICH TIME FOUR GREEN PILLS WERE FOUND IN THE ACCUSED LEFT FRONT POCKET, LATER FOUND TO BE CLONAZEPAN. FURTHER INVESTIGATION LED TO AN INVENTORY OF THE ACCUSED VEHICLE, WHICH LED TO THE FINDING OF AN ADVIL BOTTLE CONTAINING SEVERAL BEIGE ROCK LIKE SUBSTANCE AND A LARGE ROCK BEHIND THE PASSENGER SEAT ALL OF WHICH FIELD TESTED POSITIVE AS CRACK COCAINE WEIGHING 22.2 GRAMS. SAID INCIDENT OCCURRED IN THE CITY LIMITS OF GREENVILLE, S.C.

Signature of Affiant

*[Handwritten Signature]* 635

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
Greenville )

Affiant's Address 4 MCGEE STREET  
GREENVILLE 29601-

Affiant's Telephone

ARREST WARRANT

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

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

on or about 8/9/2010 defendant Erick Eton Hewins )  
did violate the criminal laws of the State of South Carolina (or ordinance of )  
 County/  Municipality of Greenville ) as set forth below.

DESCRIPTION OF OFFENSE: Drugs / Attempt and conspiracy, general provisions of the drug laws (half the penalty of substantive offense)

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 08/09/2010 )

*[Handwritten Signature]*

(L.S.) )

Signature of Issuing Judge

John Barksdale

Judge Code: 6361

Judge's Address 426 North Main Street  
Greenville, SC 39601-

Judge's Telephone (864)467-2405

Issuing Court:  Magistrate  Municipal  Circuit

526