

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable Letitia H. Verdin, Circuit Court Judge

DUANE HARRISON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-002384

APPENDIX

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State of South Carolina.,)
)
)
)
)
County of York.)

In the General Sessions
Court of York

Case No.: 2013-GS-46-02040
2013-GS-46-02041

State of South Carolina.,)
)
Plaintiff.,)
)
-vs-)
)
Duane Arness Harrison.,)
)
Defendant.)
)

Transcript of Record

September 2, 2014
York, South Carolina

B E F O R E:

The Honorable Lee S. Alford, Judge, and a jury.

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

Mr. Matthew Shelton
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For the Plaintiff

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For Defendant Duane Harrison

Ms. Leah Moody
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For Defendant Jacquese Underwood

COPY

Wanda Nelson, CVR-M
Official Court Reporter
To the Honorable John C. Hayes, III

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

No witnesses were called.

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits were received into the record.

Court Reporter's Certificate Page P.31

1 (COURT IN SESSION AND ON THE RECORD AT 10:55 A.M..)

2 THE COURT: Thank you. Please be seated.

3 SOLICITOR SHELTON: Your Honor, I believe Ms. Moody
4 and Mr. Rutherford are still speaking with their clients.

5 THE COURT: Okay.

6 SOLICITOR SHELTON: While we can give them another
7 minute or two.

8 THE COURT: All right. We can do that.

9 (PAUSE.)

10 SOLICITOR SHELTON: Judge, may we approach?

11 THE COURT: Yes, sir.

12 (BENCH CONFERENCE OFF THE RECORD AT 11:00 A.M..)

13 THE COURT: It'll take a few minutes to sign their
14 clients up.

15 (COURT AT EASE AT 11:02 A.M..)

16 (COURT BACK IN SESSION AT 12:14 P.M..)

17 (BENCH CONFERENCE OFF THE RECORD AT 12:27 P.M..)

18 MADAM CLERK: Can I get each of you to raise your
19 right hand?

20 (WHEREUPON, JACQUESE TRAVEON
21 UNDERWOOD AND DUANE ARNESS HARRISON, BEING FIRST CALLED AND
22 DULY SWORN, TESTIFIED AS FOLLOWS:)

23 MADAM CLERK: Thank you.

24 SOLICITOR SHELTON: May it please the Court, Your
25 Honor.

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1 THE COURT: Solicitor.

2 SOLICITOR SHELTON: Your Honor, standing before you is
3 Duane Arness Harrison repressed by Todd Rutherford of the
4 Richland County Bar. And Jacquese Traveon Underwood
5 represented by Leah Moody of the York County Bar.

6 Both men as you know were scheduled to resume their
7 jury trial this morning. We had one outstanding pretrial
8 issue that was to be ruled on by Your Honor this morning
9 but in the interim we've been able to negotiate a plea
10 agreement whereby both men are entering No Contest Pleas
11 for a negotiated twelve and a half years.

12 Their charges as indicted carry the mandatory minimum
13 of twenty-five up to thirty years. This represents exactly
14 half of what they would be exposed to as a mandatory
15 minimum sentence if they were to continue at trial and so
16 their pleading to a lower weight.

17 Harrison's pleading to trafficking cocaine. I believe
18 it's ten to one hundred grams, first offense. And
19 Underwood is pleading to the same, trafficking cocaine ten
20 to one hundred grams but this one is a second offense based
21 on a prior conviction.

22 THE COURT: Twenty-eight to one hundred grams. You
23 said --

24 SOLICITOR SHELTON: Yes, sir. I'm sorry. Twenty-
25 eight to a hundred yes, sir.

1 THE COURT: Sir, you're Duane Arness Harrison; is that
2 correct?

3 MR. HARRISON: Yes, sir.

4 THE COURT: Mr. Harrison, how old are you?

5 MR. HARRISON: Forty.

6 THE COURT: How far did you go in school?

7 MR. HARRISON: I graduated from high school and a year
8 of college.

9 THE COURT: What do you do for a job or occupation?

10 MR. HARRISON: I have my own business BBR Investment.
11 And I also work at ABK Racing.

12 THE COURT: Are you married, sir?

13 MR. HARRISON: No, sir.

14 THE COURT: Do you have children?

15 MR. HARRISON: Yes, sir.

16 THE COURT: What are their ages?

17 MR. HARRISON: A nine month old and a six year old.

18 THE COURT: Did you serve any time in jail on this
19 charge when you were arrested or anytime since you were
20 arrested?

21 MR. HARRISON: I think one day.

22 THE COURT: Sir, you are Jacques Trave on Underwood;
23 is that correct?

24 MR. UNDERWOOD: Yes, sir.

25 THE COURT: How old are you, Mr. Underwood?

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1 MR. UNDERWOOD: Twenty-nine.

2 THE COURT: How far did you go in school?

3 MR. UNDERWOOD: Twelfth grade.

4 THE COURT: What do you do for a job or occupation?

5 MR. UNDERWOOD: Stewart Plumbing.

6 THE COURT: Are you married, sir?

7 MR. UNDERWOOD: No, sir.

8 THE COURT: Do you have children?

9 MR. UNDERWOOD: Yes, sir.

10 THE COURT: What are their ages?

11 MR. UNDERWOOD: Ten and - Both of 'em are ten.

12 THE COURT: Did you serve any time in jail on this
13 charge when you were arrested?

14 MR. UNDERWOOD: Yes, sir.

15 THE COURT: How much time?

16 MR. UNDERWOOD: I think a day and a half, two days.

17 THE COURT: Mr. Harrison, you are charged today with
18 conspiring to traffic in cocaine in an amount between
19 twenty-eight grams and one hundred grams, first offense,
20 which carries as classified as a felony; carries a maximum
21 sentence of twenty-five years and fifty thousand dollar
22 fine and carries a minimum sentence of seven years, the
23 minimum sentence cannot be suspended and no probation
24 granted.

25 This offense is also classified as a serious offense.

1 The importance of that classification is should you get
2 three serious offenses on your record or a combination of
3 three serious and most serious offenses on your record,
4 upon receiving a third such offense you could get a
5 sentence of life without parole, so called the three
6 strikes rule. This offense is classified as one of those
7 three strikes.

8 Do you understand that?

9 MR. HARRISON: Yes, sir.

10 THE COURT: It's also classified as a violent offense
11 which could affect your ability to participate in certain
12 programs down at the South Carolina Department of
13 Corrections. It is a no parole offense which means you
14 would be expected to serve the sentence you actually
15 receive. You would have to serve at least eighty-five
16 percent of your sentence before you would be eligible for
17 parole. Do you understand that?

18 MR. HARRISON: Yes, sir.

19 THE COURT: Understanding the charge and the maximum
20 minimum sentences you could receive on this charge, my
21 understanding is you wish to enter a plea of No Contest to
22 this charge. Is that correct, sir?

23 MR. HARRISON: Yes, sir.

24 THE COURT: Mr. Underwood, you are charged today with
25 conspiracy to trafficking in cocaine in an amount of

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1 twenty-eight grams to one hundred grams, second offense,
2 which carries a minimum sentence of seven years. A minimum
3 sentence cannot be suspended nor probation granted. It
4 carries a maximum sentence of thirty years and a Fifty
5 Thousand Dollar fine.

6 It's also classified as a felony. It is classified as
7 a serious offense. As I explained if you get three serious
8 offenses on your record or a combination of three serious
9 and most serious offenses on your record upon receiving a
10 third such offense you could get a sentence of life without
11 parole, so called three strikes rule. This would classify
12 as one of those three strikes in your case. Do you
13 understand that?

14 MR. UNDERWOOD: Yes, sir.

15 THE COURT: It's also classified as a violent offense
16 and it's classified as a no parole offense. Again you'd be
17 expected to serve the sentence you actually receive but you
18 would not be eligible for parole until you've served
19 eighty-five percent of your sentence. Do you understand
20 that?

21 MR. UNDERWOOD: Yes, sir.

22 THE COURT: Understanding all of that, my
23 understanding is that you wish to enter a plea of NO
24 Contest to this charge. Is that correct, sir?

25 MR. UNDERWOOD: Yes, sir.

1 THE COURT: All right. Mr. Harrison, Mr. Underwood,
2 you understand that entering these pleas you give up your
3 right to remain silent. You understand that, Mr. Harrison?

4 MR. HARRISON: Yes, sir.

5 THE COURT: Mr. Underwood?

6 MR. UNDERWOOD: Yes, sir.

7 THE COURT: And if you give - plead guilty - Excuse
8 me.

9 By entering your plea of No Contest you also give up
10 your right to a trial by jury.

11 Mr. Harrison, you understand that?

12 MR. HARRISON: Yes, sir.

13 THE COURT: Mr. Underwood.

14 MR. UNDERWOOD: Yes, sir.

15 THE COURT: And if you give up your right to a trial
16 by jury you also give up your right to assert any legal
17 defenses you might have in a jury trial.

18 Mr. Harrison?

19 THE COURT: And, Mr. Underwood?

20 MR. UNDERWOOD: Yes, sir.

21 THE COURT: I know you're attorney's have gone over
22 that right with you, I'm gonna do so as well. If you
23 request a trial by a jury - Of course we were already in
24 trial posture in this case - the state would give you a
25 trial, at trial you would have the right to confront and

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1 cross examine all witnesses' against you. You would have
2 the right to present any witnesses' and or evidence in your
3 own defense. You would have the right to testify in your
4 own defense if you wished to do so, but no one could make
5 you testify in your own trial. If you decide to go to
6 trial and not testify the judge would tell the jury they
7 could not hold your failure to testify against you. In
8 fact the jury couldn't even consider your failure to
9 testify in their deliberations on your guilt or innocence.

10 You would be presumed innocent throughout your trial,
11 the State would have to prove you guilty beyond a
12 reasonable doubt to a jury of twelve people, all twelve
13 people would have to unanimously agree that you were guilty
14 in order for you to be convicted. And even if you were
15 convicted you would still have the right to appeal that
16 conviction.

17 Do you understand your rights with regard to a trial
18 by a jury, Mr. Harrison?

19 MR. HARRISON: Yes, sir.

20 THE COURT: Mr. Underwood?

21 MR. UNDERWOOD: Yes, sir.

22 THE COURT: Now the State had --

23 Mr. Harrison, the State has recommended in your case
24 they've agreed to reduce this down to a first offense and
25 reduce the amount to twenty-eight to one hundred grams and

1 for a plea of twelve point five years.

2 Is that your understanding of the agreement you have
3 with the Solicitor's office in order to enter your plea
4 today?

5 MR. HARRISON: Yes, sir.

6 THE COURT: Did anybody promise you anything other
7 than that in order to get you to enter your plea?

8 MR. HARRISON: No, sir.

9 THE COURT: Mr. Underwood, the State has agreed to
10 reduce the amount of cocaine involved in this trafficking
11 case and is recommending or has agreed to a sentence of
12 twelve point five years in your case. Is that your
13 understanding of the agreement you have with the
14 solicitor's office in order to enter your plea today?

15 MR. UNDERWOOD: Yes, sir.

16 THE COURT: Did anybody promise you anything other
17 than that in order to get you to enter your plea today?

18 MR. UNDERWOOD: No, sir.

19 THE COURT: Are you satisfied with the manner in which
20 your attorney has advised and represented you in this case,
21 Mr. Harrison?

22 MR. HARRISON: Yes, sir.

23 THE COURT: Mr. Underwood?

24 MR. UNDERWOOD: Yes, sir.

25 THE COURT: Are you today under the influence of any

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1 mind altering substance such as alcohol, drugs, or
2 prescription medications which interfere with your judgment
3 or ability to understand what you're doing in court today,
4 Mr. Harrison?

5 MR. HARRISON: No, sir.

6 THE COURT: Mr. Underwood?

7 MR. UNDERWOOD: No, sir.

8 THE COURT: Do you have any mental, emotional or
9 nervous condition that interferes with your judgment or
10 ability to understand what you're doing in court today, Mr.
11 Harrison?

12 MR. HARRISON: No, sir.

13 THE COURT: Mr. Underwood?

14 MR. UNDERWOOD: No, sir.

15 THE COURT: Are you entering your plea today of your
16 own free will, Mr. Harrison?

17 MR. HARRISON: Yes, sir.

18 THE COURT: Mr. Underwood?

19 MR. UNDERWOOD: Yes, sir.

20 THE COURT: Please give me the facts.

21 SOLICITOR SHELTON: Thank you, Your Honor. May it
22 please the Court.

23 On October 30th, 2012 an officer from the Drug
24 Enforcement Agency Task Force named Frank Finch was called
25 to the UPS facility on Mount Gallant Road in Rock Hill,

1 York County, South Carolina in reference to a suspicious
2 package. Agent Finch brought with him a K9 who is trained,
3 along with Agent Finch and package drug detection packages.
4 The K9 conducted a package lineup on five packages as you
5 heard about in pretrial, alerted on the package. There
6 were also indicators on the package suggesting that there
7 was some sort of illegal contraband inside.

8 A search warrant was obtained and executed at the UPS
9 facility where what was gauged or estimated as one kilogram
10 of cocaine was inside of a package. The package was
11 addressed to a residence at [REDACTED] in Rock
12 Hill, South Carolina addressed to a woman named Sharika
13 White who law enforcement were able to confirm that she was
14 in fact a resident at that house.

15 Before I loose my chain of thought, Judge, as you have
16 heard us mention Ms. White was interviewed by the Drug Unit
17 and during their interview they did not suspect she was
18 involved in this activity. It became clear to them that
19 she had been notified by Mr. Underwood the day before and
20 morning of as she characterized it him checking to see if
21 she was home. She would testify consistent with that. I
22 have no reason - had no reason to doubt anything she said
23 to the police or in subsequent interviews, and she was at
24 fact at home with her children at school.

25 Her front door was unlocked. Mr. Underwood had some

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1 time after that morning after he contacted her this morning
2 actually bought her breakfast at Bojangles, had gone into
3 her house through the unlocked doors. She indicated she
4 did not give him permission to be there and didn't give
5 either one of these men permission to send anything to her
6 house.

7 The package was opened and inside was the kilogram of
8 cocaine. It was taken to the Drug Unit at the Rock Hill
9 Police Department. The kilogram of cocaine was extracted
10 and put in - and submitted as evidence. A imitation of
11 kilogram was put in the box sealed up for what's known as a
12 controlled delivery. An agent out of Lexington County
13 dressed in full UPS uniform went into a white paneled van
14 and went undercover to affect control of the delivery.

15 Officer Harrelson from the Drug Unit was already in
16 the neighborhood before the package was delivered. He
17 observed Mr. Harrison riding up and down the street in a
18 Yukon in what would have been characterized or described as
19 counter surveillance. Things that Commander Brown is
20 trained on has trained all of his agents to look out for.

21 Mr. Harrison was watching the house, was watching
22 traffic in and out of the neighborhood, was watching for
23 the delivery van. In fact he tailed the delivery van out
24 of the neighborhood - in and out of the neighborhood. Only
25 when he doubled back after the controlled delivery had been

1 affected he slowed by the house and then Mr. Underwood came
2 outside and retrieved the package. He then put it in the
3 trunk of a vehicle that was parked in the garage of the
4 residence, backed the car out and went back inside.

5 Officers from the drug Unit moved in to effect an arrest.
6 Harrison fled from the police in reverse as fast as he
7 could go and then did a one eighty turn and continued to
8 flee through the neighborhood with Commander Brown and
9 other agents chasing him.

10 Harrison got out on foot continued running and threw a
11 couple of cell phones into the woods that were recovered.
12 Underwood was outside of the house when Harrison came by.
13 Harrison was blowing the horn at him. Harrison ran back in
14 the house, locked himself in the house, tried to go out the
15 back door where he was met my Agent Lubin and he then
16 secured himself inside the residence, eventually opening up
17 the residence for officers. They had a anticipatory search
18 warrant for the residence.

19 The package was in the trunk of the car. There was a
20 cell phone in the front seat of the car that Underwood
21 admitted was his. Inside that cell phone was a message to
22 a store contact indicating his new number. That's relevant
23 because that's the number that Harrison had stored in his
24 phone as a contact of Jacq, the exact number that Underwood
25 said was his new number. And between Harrison's phone and

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1 that number who we know to be Jacq, Jacques Underwood,
2 there were a series of text messages throughout the month
3 of October dealing with what appears to be packaged
4 delivery. That certainly would have been a question for
5 the jury to determine. Also Your Honor was still to rule
6 on the admissibility of those text messages. But
7 regardless on the 17th of October Jacq sent Harrison the
8 address, the [REDACTED] address, through a text
9 message from his new number to Harrison's phone, one of the
10 phones he threw in the woods. And then no more than two
11 weeks later this package arrives.

12 The drugs were tested by our certified chemist Ms.
13 Mitcham. It tested positive as cocaine and it weighed nine
14 hundred and sixty-five grams so it's just shy of a kilogram
15 by what appeared to be a kilo to law enforcement on the
16 front end.

17 Those are the substantive facts, Your Honor.
18 Obviously all those things together exhibited a conspiracy
19 between these two men to traffic the drugs and that's the
20 case the State would argue to the jury and were confident
21 that we would have proven those facts beyond a reasonable
22 doubt to a jury.

23 Mr. Harrison has a prior conviction out of Richland
24 County. In 1995 he was convicted of kidnaping and received
25 an eighteen year sentence. And he also subsequently a

1 couple of years ago got a possession of marijuana
2 conviction in 2009 in York County.

3 Jacques Underwood in 2007 received a five year
4 sentence for trafficking in cocaine ten grams to twenty-
5 eight grams. Possession of a stolen pistol and possession
6 of a weapon during the commission of a violent crime.

7 I think Mr. Underwood also has a prior possession of
8 marijuana conviction according to his NCIC. We've made
9 copies of their substantive prior convictions already a
10 part of the court's record when we were dealing with Rule
11 609 issues in pretrial. Also the text message we were
12 referring to earlier in the month have also been made Court
13 Exhibits for Your Honor's consideration on that motion that
14 was outstanding.

15 THE COURT: I find the decision of the defendant Duane
16 Arness Harrison and the defendant Jacques Traveon
17 Underwood to plead guilty to their - Excuse me - Plead no
18 contest to their respective charges be made freely
19 voluntarily and intelligently. They've had the
20 representation of each of them of a competent attorney with
21 whom each has said he is satisfied. I find the facts
22 presented to the court by the Solicitor's office fully
23 support the plea's in this case and I will accept the pleas
24 as freely and voluntarily made.

25 Mr. Harrison, Mr. Underwood, if you disagree with the

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1 proceeding in which you are currently involved you have ten
2 days from today's date within which to file a Notice of
3 Intent to Appeal. Do you understand your right to appeal
4 today's proceeding, Mr. Harrison?

5 MR. HARRISON: Yes, sir.

6 THE COURT: And, Mr. Underwood?

7 MR. UNDERWOOD: Yes, sir.

8 THE COURT: Counsel, before I hear from you, let me
9 just state on in so far as the motion is outstanding, there
10 is a question of the admissibility of certain text
11 messages, I believe phone messages, text messages from
12 respective cell phones in this case. And the question of
13 whether they were admissible not of the day of the - I
14 believe of the occurrence - but previous phone messages or
15 text between the two defendant's in this case and the Court
16 took that question under advisement.

17 The Court however indicated to the counsel how I had
18 planned to rule in this case and I will tell you for
19 purposes of the record, and I think you can make those
20 exhibits in this case, I find that they would be
21 admissible. Those phone messages would be admissible in
22 the case and I want to give some of the reasons for that
23 and go ahead and put that on the record in the event the
24 question comes up later at Appellate Court level.

25 It comes in for - And I researched this since we had

1 the motion and I took them under advisement - and there are
2 two reasons, primary reasons that the evidence comes in in
3 a case. First of all they are relevant as to the
4 relationship with regard to any conspiracy between these
5 two individuals so it's relevant. The approbative value to
6 the State is very high; it is somewhat prejudicial to the
7 defendant but the approbative value is somewhat high so by
8 using that balancing test they would come in.

9 Secondly, the Court finds a conspiracy and actually
10 there's more than one but there are several different ways
11 that you can conspire under the trafficking statute and be
12 guilty. One of them is of course this possession of over a
13 certain amount of drugs, either actual or constructive.
14 They don't have to be in your hands. Knowingly actual
15 constructive possession. And certainly in this case Mr.
16 Underwood I think, and I think the evidence shows, he
17 believed he was in possession of about a kilo and in this
18 case it turned out to be nine hundred and sixty-five grams
19 which certainly exceeds the four hundred grams that's
20 required for this maximum trafficking.

21 So he believed he was in possession of it. He picked
22 it up, put it in the car so he was in possession of it,
23 actual possession of it. Even sitting in the car that's
24 constructive possession. So for that reason he could have
25 been proven to be guilty of trafficking on that basis

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1 alone.

2 But also in the statute it provides as follows that
3 anyone who manufactures, cultivates, delivers, purchases,
4 or brings into this state, or provides financial assistance
5 or otherwise aid, abet, attempt, or conspire to sell,
6 manufacture, cultivate, deliver, purchase, or bring into
7 this state, or was knowingly in actual constructive
8 possession as I previously stated.

9 Conspiring in any of those, bringing it into the
10 state, to handle it in this state, do something with it in
11 this state, all of those are guilty of trafficking. And so
12 the state has to prove that there is a connection between
13 these two defendants which would amount to a conspiracy,
14 conspired together to do any of these things. They would
15 have to prove that. But, it's pretty broad this
16 conspiracy, their ability to prove it.

17 Now, I say it is relevant in the case because these
18 two defendant's can simply take the position that they
19 really don't even know each other that well and certainly
20 were not working together with regard to these drugs simply
21 delivered to them on the day in question. They can
22 certainly say we don't know each other so the state has to
23 prove a connection between them and their relationship and
24 how they were involved.

25 That's one reason this evidence comes in, to show

1 through these previous text messages - and it's all within
2 thirty days so their timing - but all of these is showing
3 their connection between them, and similar type activity
4 shows the relationship between them, and they would be able
5 to bring that in to prove their case.

6 It also comes in the State is entitled to present the.
7 res gestae of the case according to the cases. That means
8 a full res gestae, what was going on with the parties. So
9 it comes in for that reason, to be able to prove their case
10 that it was a conspiracy going on as part of the res gestae
11 of the case.

12 Finally under - It comes in under Rule 404(b) evidence
13 of other crimes, wrongs or acts is not admissible and reads
14 as I'm reading it to you. Not admissible to prove
15 character of a person in order to show action and
16 conformity there. It may however be admissible to show
17 motive, identity - Again these tend to show identity of the
18 parties - involved the existence of a common scheme of
19 plan. The text messages indicate the same type of conduct
20 and communication between these two defendants as were
21 going on the day the arrest was made and the drugs were
22 delivered.

23 The existence of a common scheme of plan as I said the
24 absence of mistake or action or intent of the parties. And
25 so it comes in under Subsection B and also 404(b). Not to

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1 show the character of the defendants but to show common
2 scheme or plan, identity of the parties involved which the
3 State has to prove the absence of mistake or absence - or
4 the intent of the parties in this case.

5 I go on and cite some cases here. In *State versus*
6 *Wallace* 384 SC 428 683 S.E. 2d 275, the Court found that
7 when determining whether the evidence is admissible as a
8 common scheme or plan the trial court must analyze the
9 similarities and dissimilarities between the crime charged
10 and the bad act evidence to determine whether there is a
11 close degree of similarity. And I found it was all
12 similar, the difference being that the day of the arrest in
13 this case, the day of the occurrence, with the drugs and et
14 cetera, or the delivery of fake drugs as it were. But
15 delivery is except for the fact that there is no text
16 messages that they had been able to retrieve, no pointing
17 out that there are a couple of cell phones that they were
18 not able to get into for whatever reason, but not
19 considering that for or against it, but just to - that was
20 the only dissimilarity. All of the other messages on there
21 are the similar type behavior which is described by the
22 police when they made the arrest on this day or what went
23 on that day they are very similar messages parallel to
24 those that went on in this case. And so it's very similar
25 evidence that was going on.

1 When the similarities outweigh the dissimilarities,
2 and they do in this case, the bad evidence is admissible
3 under Rule 404(b). And that's cited in *State versus*
4 *Classy, C-l-a-s-b-y*, 385 SC 148, 682 S.E. 2d 892. And the
5 prior bad act evidence is admissible where the evidence is
6 of a such close similarity to the charge of the offense
7 that previous act enhances the approbative value of the
8 evidence so as to outweigh the prejudicial effect. That's
9 exactly the case in here.

10 When it's taken together it enhances the approbative
11 value of the State's evidence to prove the conspiracy in
12 this case. The degree of remoteness between the other
13 crimes and the one charge is one factor to be considered in
14 determining the connection between them. All these phone
15 messages happened within thirty days so it's very close in
16 time.

17 As the similarities become closer the more likely the
18 evidence would be admissible. The acid test of
19 admissibility is the logical relevancy of the other crime.
20 And that they are very relevant. Logically they are very
21 relevant to each other and point to the same type of
22 conduct which the evidence is a conspiracy.

23 When the prior bad acts are very similar in nature
24 these acts are admissible as a common scheme or plan,
25 *State versus Martucci, -a-r-t-u-c-c-I*, found at 387 SC 232

-25-

1 669 S.E. 2d 598.

2 Generally in *State versus Edwards* 373 S.C. 230, 644
3 S.E. 2d 66 the court found such evidence is admissible when
4 the intent to establish a common scheme or plan embracing
5 the commission of two or more crimes so related to each
6 other that proof of one tends to establish the other.
7 That's exactly the case the court finds in this case as far
8 as the State's evidence is concerned.

9 The foundation for admissibility transcends mere
10 similarity for the admission of such evidence of it's
11 common scheme or plan exception requires a connection
12 between the extraneous crime and the crime charged so that
13 proof of the former tends to prove the later. Succinctly
14 stated the prior bad act evidence must be relevant to prove
15 the alleged crime. The Court finds that it is in this case
16 and this is *State versus Tuffour*, T-u-f-f-o-u-r, 364 S.C.
17 497, 1613 S.E. 2d 814.

18 Finally a close degree of similarity or connection
19 between the prior bad act and the crime for which the
20 defendant's are on trial is required to support
21 admissibility under the common scheme or plan exception.
22 The Court so finds that it is in this case. And that's
23 *State versus Chesborough* 346, SC 526, 552 S.E. 2d 300.

24 Finally the trial judge must clearly perceive the
25 connection between the other crimes and the crime charged.

1 Further other crimes which are not a subject of conviction
2 must be proven by clear and convincing evidence. The Court
3 finds that would be clear and convincing evidence in this
4 case in their close connection and logically related
5 between the same and the same type of conduct which would
6 evidence a conspiracy.

7 So for all of those reasons the Court finds Number
8 One, the primary reason is it's evidence of a conspiracy
9 between these two same individuals through the same type of
10 conduct which is trafficking number one and that's pretty
11 broad.

12 And Number Two: It comes under 404(b) Lyle type
13 evidence in this case. The court finds that it meets all
14 the requirements to be admitted and it would be admitted.

15 All right, I put all of that on the record.

16 Now, counsel, I'll go to Mr. Rutherford first I guess
17 as to Mr. Harrison. Anything you wish to say on his
18 behalf?

19 MR. RUTHERFORD: Your Honor, just briefly. As he told
20 you he's told you his background and we respectfully ask
21 that you accept the negotiated sentence. Our understanding
22 is what the court sees as well, that it is for a twelve and
23 half year sentence which is twelve years and six months
24 just for anybody that's listening and trying to figure out
25 what twelve and a half is, which also I believe a hundred

-27-

1 and fifty months all together. That is our understanding
2 of the negotiation and we would ask that Your Honor accept
3 that.

4 My client did one year of college. There is no
5 indication that he cannot read and write, in fact, he can
6 read and write where at the plea sheet that he was given,
7 those are his initials, not mine. He did indicate that he
8 understood everything and has understood everything up
9 until this point. And again, Your Honor, we'd ask that you
10 accept the negotiated sentence.

11 THE COURT: Thank you.

12 Mr. Harrison, you're pleading no contest. You do not
13 have to say anything. Do you want to say anything?

14 MR. HARRISON: No, sir.

15 THE COURT: Now counsel as to Mr. Underwood.

16 Ms. Moody.

17 MS. MOODY: Thank you, Your Honor, may it please the
18 court.

19 I would reiterate what Mr. Rutherford has said in
20 terms of the negotiated plea here that it is twelve and a
21 half years. I can't break down all the numbers but my
22 client did give me that information and did go over the
23 plea affidavit with me and did initial and those are his
24 initials on the sheet.

25 Your Honor, based on your ruling as far as the cell

1 phone messages, I explained to my client, he understood
2 that was something that we were waiting on and I felt like
3 it would weigh heavily in a trial in this situation and
4 what the State could prove. Not what exactly happened for
5 him but what the State could prove and what consequences of
6 any kind of conviction would have on him in terms of his
7 sentence and what the Court would have to sentence him to
8 and what his sentencing exposure would be. And with that
9 being said, Your Honor, we ask that you accept this
10 negotiated plea.

11 THE COURT: Mr. Harrison, you're pleading no contest.

12 Excuse me. Mr. Underwood, you're pleading no contest.
13 You do not have to say anything. Do you want to say
14 anything?

15 MR. UNDERWOOD: No, sir.

16 THE COURT: I know these sentences are tough on
17 families and tough on the defendant's; I understand that.
18 I believe there is substantial evidence so based on
19 pretrial information that came in and the evidence I
20 believe there is substantial evidence in this case. The
21 ultimate decision would be up to the jury but I think there
22 is substantial evidence to take this case to the jury and
23 it would be their decision.

24 Of course each defendant were convicted of more than
25 four hundred grams if they are convicted of a jury of that

-29-

1 the Court would have had to impose a minimum of twenty-five
2 years no parole. Possibly thirty years up to thirty years
3 no parole. And in this case what you're pleading to is
4 twelve point five years which mean you - on the twenty-five
5 year sentence if you were to get to have to serve twenty-
6 one point twenty-five years before you would be eligible
7 for parole that's a long time.

8 On the twelve and a half year sentence you would have
9 to serve ten point six-two five years before you would be
10 eligible for parole. That's a big difference. Twice the
11 time you would have to serve. You would be a lot older
12 when you got out so I concur and understand why you're
13 pleading in this case.

14 Again I accept the pleas as freely voluntarily made.

15 Now, Mr. Harrison, in your case you have plead no
16 contest to the charge of conspiracy and trafficking cocaine
17 in the amount of twenty-eight grams or less than one
18 hundred grams first offense the sentence of the court is
19 you be committed to the State Department of Corrections for
20 a determinate term of twelve point five years. You're
21 given credit for one day of jail time.

22 Mr. Underwood, you have plead no contest to a charge
23 of trafficking cocaine in the amount between twenty-eight
24 grams and one hundred grams second offense, the sentence of
25 the court is you be committed to the State Department of

1 Corrections for a determinant term of twelve point five
2 years. And you're given credit for two days jail time.

3 MS. MOODY: Your Honor, if I may ask. And I meant to
4 ask this on behalf of my client, to ask if he could do a
5 delayed report. He came here today thinking that it was
6 just a trial.

7 THE COURT: I'm not gonna do that. With this kind of
8 sentencing I just don't do that. Thank you.

9 MS. MOODY: Thank you, Your Honor.

10 - END OF TRANSCRIPT OF RECORD -
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-31-

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 2nd days of September, 2014.

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

Wanda Nelson

Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: July 6 / 2015

STATE OF SOUTH CAROLINA
 County of YORK
Duane Harrison
 Full name and prison number (if any) of Applicant

v.

State of South Carolina
Attorney General
Office S.C.

APPLICATION FOR
 POST-CONVICTION REVIEW

DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

CERTIFIED TRUE COPY
 2015 APR 29 AM 10:41

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention: McCormick Cor Inst 386 Redem-
ption Way McCormick, SC 29889
2. Name and location of Court which imposed sentence York County Court
of General Sessions
3. Name(s) of co-defendant(s) (if any) Jacquese Underwood
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-46-020-40
 - (b) 2013-GS-46-020-41

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Sept 2, 2014 Sentence to 12 1/2 years (85%)
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty YES
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere YES
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. NO
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. NO
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. NO
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NO
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Trial Court. Lawyer didn't file appeal after I ask Lawyer to file appeal.
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) 6th Amendment
- (b) 14th Amendment
- (c) 4th Amendment
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see Memorandum of Law in support
- (b) of Post-conviction Relief Application
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NA
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NA
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NA
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. NA
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. NA
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

ND

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

(a) which grounds have been presented:

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

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

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

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

(a) see Memorandum of Law Support PCR
(b) Application.
(c) _____

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

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

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Mr. Todd Rutherford

ii. _____

iii. _____

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

i. Guilty Plea

ii. _____

iii. _____

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

Vacate sentencing and set aside conviction.

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

NA

STATE OF SOUTH CAROLINA)

VERIFICATION

County of McCormick)

I, Duane Harrison #241473, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Duane Harrison

SWORN to and subscribed before me this 20 day of April, 2015.

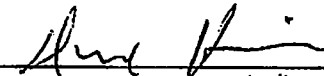
J. Frankler (L.S.)
Notary Public

My Commission Expires: 12-16-2019

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

I, Duane Harrison # 241475, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

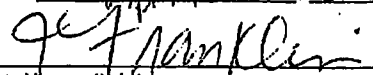
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this

20 day of April, 2015.



Notary Public

My Commission Expires: 12-16-2019

Duane Harrison #241473
 386 Redemption Way
 McCormick, SC 29879

Date 9-20 2015

CA/_____

FILED-RECEIVED
 2015 APR 28 AM 8:26
 DAVID HAMILTON
 CLERK & U.S.
 YORK COUNTY, SC

DEAR Honorable Clerk of Court York County:

Enclosed Please find for filing within your office a original copy of Post-Conviction Relief Application and Summons and Affidavit of Services requiring your office to please forward a copy to the Respondent's Attorney General office.

Wherefore it would be a honor if you would Please return to me a ~~copy~~ clocked dated Stamped Copy.

Respectfully Submitted

S/ Duane Harrison

C.C: D.H

C.C: H.C.C. Y.C.

State of South Carolina)
 County of York)

Duane Harrison #241473)
 Applicant)

✓)

State of South Carolina)
 Respondent)

In the Court of Common
 Pleas

CA/_____

Affidavit of Services

To Respondent

I Duane Harrison #241473 Hereby serving
 a true copy of Post-conviction relief
 Application by placing a true copy in
 the United States mail address below.

(1) Clerk of court's office
 Post office Box 649 York
 South Carolina 29745

Sworn before me This

Day 20 of April 2015

Notary J. C. Franklin

Expires 12/16/2019

Duane Harrison

Duane Harrison
 241473

386 Redemption Way

McCormick, SC 29899

FILED-RECEIVED
 2015 APR 28 AM 8:27
 DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

State of South Carolina)
 County of York)

In The Court of Common Pleas

C/A _____

Dwane Harrison #241473)
 Applicant)

Summons

V

State of South Carolina)
 Respondent)

FILED-RECEIVED
 2015 APR 28 AM 8:27
 DAVID HAMILTON
 C.C.P. & C.S.
 YORK COUNTY, SC

To: Respondent

You are hereby summoned and required to answer the Post-conviction relief Application herein, a copy of which is herewith served upon you and to serve a copy of your answer to this Post-conviction relief application upon the Subscriber, at the address shown below, within sixty (60) days after service hereof, exclusive of the day of such service, and if you fail to answer the Post-conviction relief Application, judgement by default will be rendered against you for the relief demanded in the Post-conviction relief Application pursuant to SCRCPS Rule 12(a)

Date 4-20 2015

Dwane Harrison
 Dwane Harrison #241473
 386 Redemption Way
 McCormick SC 29899

State of South Carolina	)	In the court of Common
County of York	)	Pleas
Duane Harrison #241473	)	C/A _____
Applicant	)	Memorandum of Law In
VS	)	Support of PCR Application
State of South Carolina	)	

To Respondent :

This matter comes before the court
Of Common Pleas pursuant to S.C. Code of
Law Ann 17-27-10-160 Application for
Post-conviction Relief Application.

Statement of the Case

A case aroused in the county of York
County S.C, whereby the applicant has
been accused of trafficking cocaine into
the state of South Carolina and conspiracy
in violation of S.C. Code of Law ann 44-
53-0370(e)(2)(e).

FILED-RECEIVED
2015 APR 28 AM 8:27
DAVID HAMILTON
C.P. & G.S.
YORK COUNTY, SC

Argument 1

Trial counsler prejudice me by failing to conduct a pre-trial investigation.

I receive ineffective assistance of counsler prior to and during my guilty plea of guilty - No contest. Counsler prejudice me by failing to investigate alleged crime on Oct 30th, 2012. Counsler prejudice me by advising me to plead guilty No contest and if counsler would have investigated he would have known I didnt have any drugs in my possession and was arrested at Jessica's way in woods and driven back to a unknown resident. Counsler prejudice me by advising me to plea guilty no contest to imitation drugs and counsler prejudice me by failing to investigate the york county multijurisdictional drug enforcement unit general session case file summary. Incident Report #20120036814 by agent Marvin Brown If counsler would have investigate this report he would have been aware that the evidence had been tampered and altered by agent Rawl of SLED. The evidence was tampered with because the evidence was open and a kilogram of cocaine was suppose to be in box Agent Rawls never field tested the suspected cocaine or weigh it. The Alleged kilogram of cocaine was taking out of box and replace with an imitation kilogram of cocaine and the package was sealed.

Trial counsel prejudice me by advising me to plea guilty no-contest and failing to conduct a pre-trial Investigation. Counsel prejudice me by not determine was there a chain of custody for chemical analyze report perform to determine was the drugs cocaine or imitation cocaine and the weight of drugs Counsel prejudice me by not conducting a pretrial investigation to determine who had handle the evidence by law-enforcement division agency

The six Amendment to the united state constitution guarantees that every eriminal defendant is entitled to the effective assistance of counsel in preating their defense. see also, SC. Const. Art 1, section 14

The supreme court has stated, "The right of Criminal defendants, it assures the fairness and thus the legitimacy of our adversary Process". Kimmelman V. morrison, 477 U.S 365 (1986) Furthermore

the supreme court has recognized that The right of counsel is the right to effective assistance of counsel McMann V. Richardson, 397 U.S 759, 771 (1970). To see wheter counsel has fallen below the minimum standord needed for effective assistance of counsel under the sixth amendment to the constitution.

Argument (2)

Trial Counsel prejudice applicant by failing to advise applicant that a preliminary hearing was scheduled, and the Respondent violated my due process right of the 14th Amendment Right to be present at the preliminary hearing and to examine the evidence. 6th & 14th

I requested at bond hearing that I wanted to be present at preliminary hearing and respondent notify me I had (10) days from the bond hearing to complete a preliminary hearing. I completed a preliminary form requesting to be present and to examine evidence. Trial counsel prejudice me by appearing at preliminary hearing in my absent because I advise counsel I wanted to be present.

IF I was present at preliminary hearing the outcome to bind the case over to trial may have been different. The state could have heard my statement and I could have advise the lawyer that the evidence they had was fabricated and I didn't commit a crime of trafficking cocaine. There was no evidence to link me to a crime of trafficking cocaine over 400 grams. When the Respondent only had imitation cocaine. I also could have advise counsel that they didn't have a right to detain me for two hours, while they fish for evidence to charge me with trafficking cocaine.

The court noted that many right required under the due process clause of the 14th Amendment. Footnote 17 apply irrespective of the classification of the charge pending against the defendant who faces potential incarceration. We believe the right to ~~is~~ a preliminary probable cause hearing before a defendant is subject to due process as those right listed in and extended by argersinger; See cited Pugh v. Rainwater 483 F2d. 778 (1973) and standard of strickland v. washington.

Argument 3

Trial Counsel prejudice me by advising me to plea guilty No-contest and counster prejudice me by failing to prepare any pretrial brief or motion before advising me to plea guilty.

In my case counster advise me to plea guilty No Contest relying on the respondent version of facts and material which was provide to counster and counster prejudice me by failing to file any motions because he relied on respondent on version of facts and not base on his own reasonable investigation calls counsels representation into serious question of inadequacy. If counster had presude in filing a pretrial motion to suppress the evidence of phones. This evidence wouldnt have been use in my case. Pursuant to the York County Sherriff's office evidence/Inventory sheet has been fabricated that the incident seizing location was 1162 Shenadoah Circle Rock Hill SC. Counster prejudice me by failing to challenge the fabricated affidavit Search warrant of phones. The affidavit to judge was fabricated by saying I was found in possession of a kilogram of cocaine while at 1162 Shenadoah circle, rock Hill, York county, South Carolina. Also fabricated that at that location I had three cell phones in my possession. SEE: AFFIDAVIT of Search warrant. Pursuant to booking report I was arrested at the location of Jessica's way Rock Hill, S.C. Also see YCMOEU General session case file summary.

Incident Report #201200036814. I was caught in woods and was taken to the residence of 1162 Shenandoah Circle Rock Hill SC. I was then kept secured in a patrol vehicle while the officers searched the residence. Counsel prejudice me by not filing a motion to have this evidence suppress due to the Fabricated Search Warrant affidavit See cited at Hill V. Lockhart 474 U.S. 52, 88 LED 203, 106 S.Ct 366 (1985) and Strickland v. Washington. The Hill Court further exposed that in many guilty plea cases, the "prejudice" inquiry would closely resemble the inquiry engaged in by courts reviewing ineffective error of counsel is a failure to investigate or discover potentially Exculpatory evidence, the determination whether the error "prejudiced" the defendant by causing him to plea guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment in turn will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial. Similarly where the alleged error of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charge, the resolution of the "prejudice" inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial. SEE Nevarez-Diaz v. US 870 F.2d 417 (7th Cir. 1989)

Trial counsels attempt to plead defendant guilty where it was apparent that defendant felt that he was guilty only because he was present at the time the acts occurred, constitute ineffective assistance and render

Argument 4

Trial Counsel prejudice me by not filing a direct appeal, when I advised counsel I had only a few days left to file a direct appeal and he advise me that he would file a direct appeal.

Counsel prejudice me by not filing a timely notice of appeal, which I advise counsel that I wanted him to file the direct appeal. Different rules apply if the "PCR" court finds that the applicant was denied the right to a direct appeal of his conviction. In such circumstances, the applicant will be entitled to a belated review of direct appeal issues. In White v. State the South Carolina Supreme Court held that trial counsel is obligated to make certain that a defendant is aware of his right to appeal his conviction. In the absence of an "Intelligent Waiver" by the defendant, counsel should perfect on appeal by either pursuing an appeal on the defendants behalf or if appropriate, complying with the procedure set forth in Andres v. State of California 386 U.S. 738, 87 S.Ct. 1396, 18 L.E. 2d 493

Conclusion

Wherefore Applicant conviction and Sentencing should be vacate and set aside.

Date 4.20- 2015

Duane Hansen
S/Duane Hansen

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	2015-CP-46-1244
Duane Harrison,	)	
S.C.D.C. #241473	)	
	)	
Applicant,	)	RETURN
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the application for post-conviction relief filed by Duane Harrison (Applicant) on April 29, 2015, Respondent would show this Court:

I.

Applicant is presently confined with the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the May 2014 term of the York County Grand Jury for Trafficking in Cocaine over 400 grams (2013-GS-46-2041).¹ Applicant was represented by James Todd Rutherford, Esquire. On September 2, 2014, Applicant pled no contest before the Honorable Lee S. Alford to the lesser included offense of conspiracy to traffic cocaine, 28-100 grams, first offense. He was sentenced, pursuant to a negotiated sentence, to imprisonment for twelve and one-half years.

II.

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

1. Ineffective Assistance of Counsel
 - a. Failure to conduct pre-trial investigation

¹ In his application, Applicant also lists that he is challenging 2013-GS-46-2040. This charge was nolle prossed on August 28, 2014, and Applicant is not serving any sentence from this charge.

- b. Failure to advise applicant that a preliminary hearing was scheduled
- c. Violation of due process rights to be present at preliminary hearing and examine the evidence.
- d. Ineffective for advising Applicant to plead no contest
- e. Failure to file any pretrial brief or motion before advising to plea
- f. Failure to file a direct appeal

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

Attached herewith and incorporated herein are the York County Clerk of Court records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Applicant alleges ineffective assistance of plea counsel. Respondent submits plea counsel rendered effective assistance of counsel. In a Post-Conviction Relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 334 S.E.2d 813.

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

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

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

[Signature block on following page]

IV.

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

V.

WHEREFORE, Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's plea counsel was ineffective.

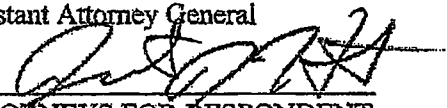
Respectfully submitted,

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Assistant Attorney General

By: 
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Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

June 23, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

2015-CP-46-1244

DUANE HARRISON, #241473,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

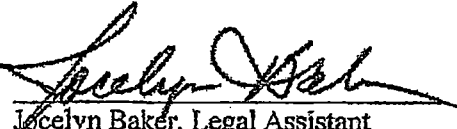
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Clarissa W. Joyner, Esquire
 The Law Firm of Clarissa Warren Joyner
 PO Box 1724
 Orangeburg, SC 29116-1724

DATED this 23rd day of June, 2016.


 Jocelyn Baker, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
2015-CP-46-1244

DUANE HARRISON)
vs.) TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA)

AUGUST 1, 2016
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE LETITIA VERDIN

APPEARANCES:

JUSTIN HUNTER, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

CLARISSA JOYNER, ESQUIRE
ORANGEBURG, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
DUANE HARRISON				
BY MS. JOYNER	5			
BY MR. HUNTER		42		
ARTHUR HARRISON				
BY MS. JOYNER	52			
BY MR. HUNTER		57		
BY MS. JOYNER			58	
DANIELLE DOWDELL				
BY MS. JOYNER	58			
BY MR. HUNTER		72		
TODD RUTHERFORD				
BY MR. HUNTER	74			
BY MS. JOYNER		90		
DUANE HARRISON				
BY MS. JOYNER	102			

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
A-1	Inmate Search Detail Report		33
A-2	Summary history display record		62
A-3	Copy of Gucci wallet ad		65
A-4	Copy of watch ad		66
A-5	Receipt		98

DUANE HARRISON - DIRECT BY MS. JOYNER

5

1 MS. JOYNER - I would call Duane Harrison to the
2 stand.

3 DEPUTY CLERK - Mr. Harrison, if I could have you
4 step around here to the bible and be sworn.

5 DUANE HARRISON, AFTER BEING FIRST DULY SWORN,
6 TESTIFIES AS FOLLOWS: -

7 DEPUTY CLERK - Thank you. Have a seat there in
8 the witness stand and watch your step up.

9 MS. JOYNER - May it please Court.

10 THE COURT - Oh, certainly.

11 DIRECT EXAMINATION

12 BY MS. JOYNER -

13 Q Please state your full name for the record.

14 A Duane Arness Harrison.

15 Q And are you presently imprisoned under a conviction
16 entered by this Court?

17 A Yes.

18 Q And what were you convicted of?

19 A Trafficking cocaine.

20 Q And was it here in York County?

21 A Yes.

22 Q What was your sentence?

23 A Twelve and 1/2 years.

24 Q And where are you currently confined?

25 A McCormick Institution.

- 1 Q Did you plead guilty or did you go to trial?
- 2 A I pleaded, um, guilty no contest.
- 3 Q No contest?
- 4 A (No response)
- 5 Q And do you know Todd Rutherford?
- 6 A Yes.
- 7 Q In what capacity do you know him?
- 8 A He was my trial lawyer.
- 9 Q He was your trial lawyer?
- 10 A (No response)
- 11 Q Did you retrain Mr. Rutherford privately or was he
- 12 appointed to represent you?
- 13 A Private.
- 14 Q And do you recall the date you were arrested for
- 15 trafficking in cocaine?
- 16 A October the 30th, 2012.
- 17 Q And when did Mr. Rutherford -- when did you retain him
- 18 to represent you on that charge?
- 19 A I think within a month's time after October the 30th,
- 20 2012.
- 21 Q Okay. It was within a month's time, so some time in
- 22 probably November, 2012?
- 23 A Yes.
- 24 Q When did you enter the no contest plea?
- 25 A I want to say September the 2nd, 2014.

DUANE HARRISON - DIRECT BY MS. JOYNER

7

1 Q Okay. In the interval between your arrest and trial,
2 were you out on bail?

3 A Yes.

4 Q And did you have occasion to discuss your case with
5 Mr. Rutherford prior to appearing in Court on September 2nd?

6 A We met -- we met like one time, but me and him never
7 discussed the motion in discovery or anything.

8 Q So you're saying you only met with him one time to
9 discuss the -- your case and your defense?

10 A Yes, with Mr. Rutherford.

11 Q Where did you see him when you met with him?

12 A In his office in Columbia, South Carolina.

13 Q Do you remember when that was?

14 A No, ma'am.

15 Q How long did you spend with him during that meeting?

16 A Maybe 30 minutes to a hour.

17 Q Thirty minutes to hour? And you -- what did you
18 discuss during that time?

19 A The first time we discussed just the payment plan and
20 how I would be paying, how did I wanted to plead, guilty or
21 go to trial.

22 Q And did you at some point get discovery material? Was
23 a discovery motion filed on your behalf?

24 A It was a motion -- it was a discovery given to Mr.
25 Rutherford, but I wasn't allowed to take it out of his

1 office, so basically I had to come from Rock Hill, South
2 Carolina to Columbia to -- to go over the, um, discovery.

3 Q And did you go over that discovery with Mr.
4 Rutherford?

5 A No. I only went over it with his paralegal.

6 Q So you're saying you had a meeting with -- one meeting
7 with Mr. Rutherford and you met with his paralegal?

8 A Correct.

9 Q So when you went over the discovery with the
10 paralegal, you didn't have access to Mr. Rutherford to ask
11 him any questions?

12 A No, ma'am.

13 Q At any point prior to going to Court on September 2nd,
14 did you go over the discovery material with Mr. Rutherford?

15 A No, no, ma'am.

16 Q Did he ever discuss the nature and extent of the
17 evidence that the State had against you?

18 A No, not really, he just said he feel that I had a good
19 case to go to trial.

20 Q He said you -- he felt you had a good case to go to
21 trial?

22 A (No response)

23 Q Did you discuss the State's witnesses or your co-
24 defendant and what they were going to be offering against
25 you at trial?

DUANE HARRISON - DIRECT BY MS. JOYNER

9

1 A We -- we talked about, um, a guy name Micos Hemphill
2 that was going to testify against me, which he came in the
3 picture like, I want to say, 23 months later.

4 Q So you're saying 23 months after you were charged,
5 this person came into -- as a witness against you? What,
6 if anything, did you discuss about him with Mr. Rutherford?

7 A He basically asked me, um, did I know him, how did I
8 know him, and what was our relationship and basically did I
9 know he was locked up in the Moss Detention Center for
10 other charges.

11 Q And you said prior to discussion about Mr. Hemphill
12 who came into the case about -- you said about 23 months in
13 -- had you discussed the weaknesses, because you had
14 maintained that you were told you had a good case -- had
15 you discussed, specifically, what the weaknesses of the
16 State's case was against you?

17 A Mostly he said that he didn't see a conspiracy in my
18 case, and that if I was going to get found guilty, it was
19 going to be because of a conspiracy and, um, I guess good
20 that I didn't have and drugs in my possession, and ---

21 Q So after Mr. Hemphill came into the picture 23 months
22 into the case, as you indicated, was there a change in the
23 analysis or your defense because of that additional
24 testimony?

1 A Yes, he said it would make it harder with him
2 testifying.

3 Q Okay. Was there a change in your desire to go to
4 trial at that point?

5 A No, ma'am.

6 Q So it was still discussed that you were going to go to
7 trial.

8 A Correct.

9 Q And what was the last time you met with Mr. Rutherford
10 or talked with him prior to September 2nd when you actually
11 appeared to start your case?

12 A I can't -- I think it was like the week before I came
13 to his office on a weekend; me and my father came to his
14 office on a weekend.

15 Q So you did meet with him ---

16 A (Indicating yes)

17 Q You're saying earlier you met with him once, so did
18 you meet with him more than once?

19 A Yeah, I met him -- I met him, but we didn't go over my
20 motion discovery or anything, we just went, talked, and he
21 said we go to trial on September the 2nd or whatever and
22 begin trial, so that ---

23 Q So during this meeting, a week prior to September the
24 2nd, you still didn't review the discovery?

25 A No, ma'am.

DUANE HARRISON - DIRECT BY MS. JOYNER

11

1 Q Did you review statements or any evidence that was
2 going to be presented against you?

3 A No, ma'am.

4 Q And what was the nature of the conversation you had
5 with Mr. Rutherford at that point?

6 A That he still feel that I had a -- I had a good case
7 and he was going to fight it to the best of his ability.

8 Q Okay. So at that point you were prepared for and
9 thought you were going to trial?

10 A Correct.

11 Q So did you know what the defense strategy was or what
12 was going to be presented on your behalf?

13 A No, ma'am, we never really discussed it.

14 Q Did you inform Mr. Rutherford of your belief as to why
15 you thought you weren't involved in this conspiracy to
16 traffic in cocaine or trafficking in cocaine? Did you give
17 him a factual recitation of what your role or lack thereof
18 was in this case?

19 A No, we never discussed it.

20 Q You didn't feel the need to tell him what happened, or
21 at some point did you tell him what happened in the case?

22 A I -- I did feel that he needed to know, but I guess
23 the fact that I wasn't getting on the stand and testifying
24 for my own behalf, that we didn't discuss it or whatever,
25 he had his own plan, game plan.

1 Q He said he had his own game plan?

2 A Well, he never said it, but he never discussed how we
3 was going to fight it or what our strategy was to go Court,
4 trial.

5 Q Did you tell Mr. Rutherford that you weren't in the
6 location where the drugs were found?

7 A Yes.

8 Q You did tell him that?

9 A (No response)

10 Q When did you tell him that?

11 A Uh, like maybe the day we was going to trial.

12 Q Did you also tell him that the drugs that were
13 delivered, that you never touched, felt or had any --
14 didn't open the package that was delivered?

15 A Correct. I told him I never seen the package.

16 Q Did you talk with him about being detained?

17 A No, we never -- we never talked about being detained.

18 Q Were you detained prior to your arrest?

19 A Well, actually, in the motion discovery they said --
20 they move in to arrest me, they never said I was detained,
21 but when I was asking was I being -- what I was being
22 arrested for, no one would tell me.

23 Q So you were arrested and then you were -- can you
24 describe what happened in terms of being held at the scene?

1 A Okay, well, I was -- I was, um, -- I was held,
2 basically, at another location; they arrested me at another
3 location and then they placed me in a police car and took
4 me to this house where these drugs was at or whatever, but
5 I was sitting in front of the house next to the house in a
6 police car for like two hours, I guess, while they looked
7 for whatever they was searching for.

8 Q And you were already under arrest at that point?

9 A Yes, I was already under arrest.

10 Q And were you questioned?

11 A No, I never gave a statement.

12 Q You didn't give a statement, but was there questions
13 posed to you?

14 A Yeah, yes.

15 Q But you didn't give any statement at all?

16 A No, ma'am.

17 Q And what significance do you think the lack of
18 adequate preparation and lack of discussion with you about
19 your defense, how do you think that relates to your claim
20 now that you received ineffective assistance of counsel?

21 A Well, as I study the law, I look at more and
22 everything, I see where that their preparation really -- it
23 really wasn't any preparation, meaning that it, basically,
24 was never no briefs filed, no motion to suppress any
25 evidence, which we had two significant situation where

1 evidence, as far as, a search -- search warrant issues and
2 the fact that they took cell phones of mine, but my lawyer
3 never -- he never filed anything to get the evidence
4 dismissed.

5 Q So there were cell phones that were taken from you
6 after your arrest?

7 A Yes.

8 Q And those cell phone -- evidence from the cell phones
9 were going to be admitted into evidence?

10 A Yes, they was trying to use some text message that
11 was, um, -- that they claim that was inside of the cell
12 phone, and, um, they was going to use that to try to say it
13 was a common scheme or a bad act to prove that I did this
14 crime, or whatever, but they received the cell phones on
15 October the 30th from my possession, but they didn't get a
16 search warrant til November the -- November the 1st I want
17 to say to obtain information from the, um, cell phone.

18 Q So it's your contention that there was not challenge
19 to the affidavit to get the search -- to get the warrant
20 for search of the phones, or what is your contention ---

21 A My contention is they never had a search warrant in
22 the first place to seize my phone, and then they seized my
23 phone before they, actually, went and got a search warrant.
24 And then when they got -- when they received the search
25 warrant, the affidavit for the search was fabricated.

1 Q Okay. So those are separate issues, the affidavit
2 being fabricated, you're saying that the warrant initially
3 did not exist to seize your cell phone, ---

4 A Correct.

5 Q --- that there was not warrant to, specifically, seize
6 the phone from you. Are you maintaining in your testimony
7 that these issues weren't properly challenged by your
8 attorney?

9 A They was never challenged.

10 Q They were never challenged? Wasn't there some sort of
11 pre-trial hearing before your trial was to commence?

12 A Yes.

13 Q What was the nature of that hearing?

14 A Well, basically, the only one issue that he, Mr.
15 Rutherford, he objected to the bad act, bad act situation
16 in my case, and the Judge was going to come back the
17 following couple of days to make a ruling on it.

18 Q Did the Judge make a ruling on the bad acts issue?

19 A Actually, he didn't -- he didn't really -- he didn't
20 make a ruling, but Mr. Rutherford told me that he had ruled
21 in the State's favor.

22 Q Okay. And because you were told that he had ruled in
23 the State's favor, what, if any, impact did that have on
24 you moving forward?

1 A Well, at that point he felt that since the Judge ruled
2 in his favor, that it may be best that we go ahead and
3 plead to this charge.

4 Q So are you saying that that was the -- what the basis
5 for you entering a plea?

6 A Yes, because I really thought the State and the Judge
7 had made a ruling saying that he was going to allow it, but
8 as you read the guilty plea transcript, he never made a
9 ruling. He ---

10 Q So ---

11 A He just said that he was going to -- if he had to
12 rule, he was going to rule in their favor.

13 Q Okay. So you -- you were under the impression that a
14 ruling had already been made, ---

15 A Correct.

16 Q --- and you're testifying that a ruling had not been
17 made and that that was part of the reason you entered the
18 plea?

19 A Correct.

20 Q Is it your testimony that if you knew a ruling had not
21 been made, you would not have entered that plea?

22 A Yes, I would not entered, I'd at least made the Judge
23 make a ruling first before I decide what I wanted to do.

24 Q And as -- and you're saying that Mr. Rutherford
25 informed you that ruling was, in fact, made.

DUANE HARRISON - DIRECT BY MS. JOYNER

17

1 A Yes.

2 Q Okay. And as it relates to the scope of the
3 suppression motion, you're stating that the only thing
4 raised by Mr. Rutherford related to the entry of bad acts
5 into evidence?

6 A Correct.

7 Q And what is -- any other issues are you maintaining
8 you thought should've been raised that weren't raised by
9 your attorney?

10 A Well, I thought he should've raised the fact of the
11 arrest warrant, the initial arrest warrant, it lacked
12 probable cause once you take out the fabricated statements
13 in it, and then the following -- it was only like one long
14 sentence or whatever, but if you would've take the
15 fabricated search warrant -- I mean the fabricated
16 statement out, then it wasn't no probable cause in the
17 arrest warrant originally and at the preliminary hearing we
18 could have gotten this case dismissed.

19 Q Okay. We'll get to that. So you're saying you
20 thought the affidavit was defective, the search warrant was
21 ---

22 A The arrest warrant.

23 Q --- arrest warrant was defective, but as relates to
24 the search warrant, you're saying it was not issued at the
25 time they seized the phones from you.

1 A Correct.

2 Q Okay. And that that was not challenged by your
3 attorney.

4 A Correct.

5 Q Okay. Did you give Mr. Rutherford the names of any
6 witnesses to substantiate any of the claims that you were
7 making?

8 A Yes.

9 Q And whose name did you give him?

10 A Ms. Danielle Dowdell.

11 Q And what, if anything, was she going to testify to on
12 your behalf?

13 A Well, it was two situations that she could've
14 testified to. One was the fact that they were saying this
15 package pro se had been received at this location between
16 8:30 to 10:30, but she could've testified that I was at her
17 job around 11:00 o'clock in North Carolina, so they was
18 retaining (sic) that I was being a lookout guy, which this
19 would be very significant, they saying I was the lookout
20 guy and I'm still in another state, you know what I'm
21 saying, when this supposed to be taking -- you know, taking
22 place.

23 Q And what was the other issue that you maintain ---

24 A And the other issue, um, Micos Hemphill said in his
25 statement, the guy that was going -- came in the picture 23

DUANE HARRISON - DIRECT BY MS. JOYNER

19

1 months later said that he, um, -- that I told him that I
2 was -- I was the lookout guy or whatever, but she was there
3 and she overheard the conversation, which she (sic)
4 switched my words around and said that I -- I told him I
5 was the lookout guy, but the conversation was that I told
6 him the police said that I was the lookout guy, and she
7 could've testified to hearing -- hearing me and him -- our
8 conversation together.

9 Q And you gave Mr. Rutherford Ms. Dowdell's information
10 to talk with her?

11 A Yes.

12 Q Do you know if he talked with her prior to your case
13 starting on September the 2nd?

14 A No. He didn't talk to her, because he said, um,
15 basically if we -- if we need her, we'll use her.

16 Q But do you know if he interviewed her?

17 A No, not of my knowledge.

18 Q Did you mention any other evidence or -- or anything
19 that you wanted Mr. Rutherford to investigate or look into
20 as relates to you being present at the scene or having
21 access to the drugs that were delivered, basically, being
22 involved with the conspiracy, other than what you've
23 already testified to? Was there anything else that you
24 mentioned to him that you wanted him to do and you're
25 maintaining now he did not do?

1 A On the search warrant affidavit, you know, I wanted
2 him to challenge it because it was -- the affidavit was
3 fabricated, but he, basically, told me he didn't -- I guess
4 he -- this is the reason why he didn't file anything motion
5 or anything, he said that the officer was acting in good
6 faith, as far as -- I guess is what they told the Judge,
7 but as you read the affidavit, you can tell that it was
8 fabricated from their own report, the police report.

9 Q In what way are you maintaining it was fabricated?

10 A In the affidavit for search warrant for my phone, they
11 said that on October the 30th that I conspired with another
12 while at [REDACTED] Shenandoah Circle and I had in my possession
13 a ki (sic) of cocaine and I was arrested at that location,
14 but as you read the motion discovery (sic), I never had any
15 drugs in my possession, and I never was at that location,
16 [REDACTED] Shenandoah Circle, and that was the only statements in
17 the search warrant affidavit, so if you take those out, it
18 was never no probable cause left in the search warrant.

19 Q So you're saying you weren't at the scene where these
20 drugs were delivered to?

21 A I never was at the scene where the drugs were
22 delivered.

23 Q Was there a preliminary hearing to challenge the
24 probable cause for your arrest that you maintain that these

DUANE HARRISON - DIRECT BY MS. JOYNER

21

1 statements were inaccurate or you could prove that the --
2 that didn't exist, you weren't there?

3 A Well, at my bond hearing I said that I wanted to be
4 present for the preliminary hearing and everything, but I
5 never was informed about a preliminary hearing til after it
6 was already supposed to be held, but I haven't found
7 anything in my motion discovery (sic) anything where the
8 preliminary hearing was held or anything.

9 Q So you don't know if the preliminary hearing even took
10 place?

11 A No. I did get a phone call from Mr. Rutherford later
12 saying that he had went to my preliminary hearing, but I
13 advised that I wanted to go, and he had my cell phone
14 number, my work -- my work number and my father's number,
15 and we never got a ---

16 Q So you never received notice of the preliminary
17 hearing?

18 A No, ma'am.

19 Q And you did not attend the preliminary hearing?

20 A No, ma'am.

21 Q And you think your presence there would've made a
22 difference in the ---

23 A Yeah. Yes, because at the time we never discussed my
24 case, so, basically, how can you -- you know what I'm
25 saying -- be my lawyer and represent me if you never -- we

1 never talked about the case, yet, and could've -- I feel --

2 -

3 Q So you think you could've assisted him in conducting
4 that preliminary hearing and could've provided him
5 information to show that probable cause was lacking?

6 A Correct.

7 Q You think you weren't given an opportunity to do that?

8 A No, ma'am.

9 Q How do you feel that prejudiced you in the overall
10 case, though?

11 A I feel that it prejudiced me at the time, because if I
12 was there and what they was saying happened, I could've
13 proved in the (sic) own words that I was never at this
14 location, and when they said that I conspired with whoever
15 this person is, they didn't even know -- from the time I
16 was arrested they didn't even know who was in the house, so
17 can you -- how can you already lock me up for a conspiracy
18 when you don't even though who was in the house or no
19 mutual agreement between me is no evidence saying that I
20 even knew the person in the house or any of those things?
21 So I feel if I was there to tell him that, hey, they saying
22 I was at this address where these drugs was at, but I'm --
23 I was never at this address where these drugs was at, and
24 they saying that I conspired with this person, but they
25 have no, like, text messages or video or audio or

1 surveillance or anything saying that I even knew the person
2 that was in the house that they saying I was conspiring
3 with.

4 Q What's your understanding of how these drugs were even
5 delivered? What happened leading to the delivery of the
6 drugs that you were charged with conspiring to traffic in?

7 A From the motion discovery (sic) I got that the drugs
8 were delivered by UPS, and, um, they was delivered to that
9 address of [REDACTED] Shenandoah Circle.

10 Q And your testimony is you weren't there?

11 A I never was at the location.

12 Q And, again, your testimony is that Mr. Rutherford
13 didn't adequately explore, investigate that issue?

14 A No, because the -- the UPS -- the UPS truck that they
15 said that, um, was being delivered or whatever, every --
16 you know, UPS deliver in brown trucks, but this, actually,
17 truck that delivered the drugs they say was a white panel
18 van with no logo on it, nothing saying delivery or any type
19 of thing, so there was no way I could've known that this
20 was a delivery truck, let alone a UPS truck, because they
21 was trying to say that I was following, you know, this
22 vehicle.

23 Q Okay. Other than you allegedly following that
24 vehicle, what other evidence before your arrest was there

1 that you knew about the drugs or conspired to traffic in
2 them?

3 A There was no other evidence. They was, basically,
4 saying because I rode up and down a road three times that I
5 guess constitute a conspiracy or whatever, because I was
6 never -- like I say, never in the location, there was no
7 prior arrangement where they knew that me and my co-
8 defendant even knew each other or there was no meetings
9 between me and my co- -- before this exist, no text
10 message, like I say no wire conversation, no confidential
11 informant, no witness called and say that I look suspicious
12 or anything of that nature.

13 Q You said that your co-defendant was at the location
14 where the drugs were delivered to?

15 A Correct.

16 Q And you said -- you also testified you were held for
17 two hours while they were searching for the drugs?

18 A Yes, I was held in the police car for two hours while
19 they was, I guess, searching for the drugs or searching for
20 the evidence.

21 Q So what -- what happened -- how did you end up there?

22 A There at the -- in front of the house?

23 Q Yeah. You -- were you brought there? You said you --

24 -

1 A Yes, I was brought there in the, um, -- in a police
2 car.

3 Q Where were you brought from?

4 A Another location on Jessica's Way ---

5 Q Okay.

6 A --- where they said I was -- in my booking report they
7 say that -- that's what he say I was (sic) arrested and I
8 was brought back to that location of [REDACTED] Shenandoah
9 Circle.

10 Q So when the officers or law enforcement officers
11 finally discovered -- I'm presuming they did discover the
12 package that was delivered to that address -- had your co-
13 defendant opened that package?

14 A No, ma'am.

15 Q Was there any evidence to support that you knew what
16 was in there?

17 A There was no evidence that I knew anything about the
18 package, is no witness, no confidential informant said I
19 knew anything about this package, I never saw the package.
20 The co-defendant never gave a statement saying that I knew
21 anything about this package. The owner of the house said I
22 haven't been to her house in over a year.

23 Q So was there any motion brought by Mr. Rutherford as
24 it relates to that issue?

25 A No, ma'am.

1 Q And you stated the one motion that was raised was not
2 finalized and it was abandoned and you entered a plea?

3 A Yes.

4 Q Did you agree to abandon that motion prior to it being
5 ruled on?

6 A No, ma'am. The only reason I thought it was already -
7 - he had already made a ruling on it.

8 Q So that issue was never discussed with you?

9 A No, ma'am. I mean only to the time that Mr.
10 Rutherford said that it was -- that he, um, -- that the
11 Judge ruled in their favor.

12 Q Well, under those circumstances, how were you induced
13 or what happened to lead you to change your mind and enter
14 a plea?

15 A With the bad act situation?

16 Q No, I'm asking, was there some inducement? What
17 happened to make you change your mind and enter a guilty --
18 or a no contest plea when you came there that day
19 anticipating you were going to trial?

20 A Well, several things that happened, the fact that he
21 didn't -- he didn't, um, talk to any -- talk to my alibi
22 witness, he didn't file any motions to suppress the -- the,
23 um, -- the evidence that was found at the house because they
24 had a search warrant for the house, but they didn't have a
25 search warrant for my co-defendant car, and I asked him

1 about it, and he was like, well, as long as they had a
2 search warrant for the house, then they could search the
3 car, you know, but that prejudiced me, because they had to
4 have a search warrant to search that car, because they were
5 not at a jurisdiction of the search -- of the search
6 warrant by searching the car, and they needed a search
7 warrant to go into ---

8 Q Okay, so you're saying the drugs were found in the
9 car?

10 A In the car.

11 Q In a car?

12 A Yes.

13 Q And the search warrant did not cover a car ---

14 A No.

15 Q --- to be searched? And you're saying that your
16 attorney did not challenge that issue either?

17 A No, ma'am.

18 Q In terms of the actual decision to plead guilty, was
19 it brought up by you? Did these issues make you say, Todd,
20 I want to plead guilty? Mr. Rutherford, I want to plead
21 guilty or was it brought up by Mr. Rutherford?

22 A Um, it was -- it was brought up by Mr. Rutherford
23 after the -- mostly after they said that -- he told me that
24 the Judge had ruled in their favor, and that he was like,
25 we may need to plea, I don't want to lose to these, you

1 know, and you 40 some years old, and if you lose, you'll
2 get 30 years, you won't be out til your 70, and, um, --
3 but, basically, when he told me that, I, basically, still
4 wanted to go to trial, because it was -- it was my father
5 and myself and Todd in a room, and I, basically, said -- I
6 stood up and said, well, just do the best you can, and, Mr.
7 Todd, grabbed my arm -- he grabbed my arm and made me sit
8 back down and then, you know, he was like, I want you to
9 really think about this and this and that and then it had
10 to a point where I still wanted to go to trial, and he was
11 like, well, I can, um, -- I can -- if you talk to Mr.
12 Marvin Brown or whatever, I can get your time cut in half.

13 Q What do you mean by that?

14 A Basically, if I was to speak with Mr. Marvin Brown and
15 tell him some information that I know about drug activities
16 or anything of that nature that he can get my time cut in
17 half and he has done it before.

18 Q So he told you he could get your time -- the --
19 meaning the offer you were made, that 12 and 1/2 years, he
20 told you he could get it cut to six somewhat?

21 A Yes, he said you really don't have to look at that, if
22 you do this right here, that we can -- we can get this time
23 cut in half to, you know, or whatever, and basically, you
24 know, ---

25 Q Did he tell you he would try or he told you that ---

1 A No, he told me that he could -- he could -- he could
2 make that happen if I ---

3 Q He said he could make that happen. Was that part of
4 your decision process in deciding to enter a plea?

5 A That was my final decision after he said that.

6 Q After he said that, that was your final decision?

7 A Yeah.

8 Q So you thought the 12 and 1/2 years would be cut to
9 six years?

10 A Yes, if I was to speak with Marvin Brown.

11 Q If you were to speak with Marvin Brown?

12 A (Indicating yes)

13 COURT REPORTER - He needs to answer verbally.

14 A Yes.

15 THE COURT - I need you to say yes or no.

16 MR. HARRISON - Okay, thank you, ma'am.

17 Q So this reduction in sentence, you're maintaining that
18 that was a promise made to you that induced you to into
19 this plea?

20 A Yes.

21 Q Okay. And what, if anything, happened to lead you to
22 believe that that was part of this arrangement?

23 A Well, like I said, he was just like don't worry about
24 it, I can -- I done done this before, I'm going to help you

1 or whatever and -- and I guess after that he set -- he set
2 up an appointment with Marvin Brown.

3 Q He set up an appointment with Marvin Brown? When?

4 A After I had received my time and went to Kirkland at
5 R&E, I was in my cell and they called me and they said, um,
6 Mr. Harrison, you, um, -- called me to the front, it was
7 like, you going back on your PCR, and I was like, well,
8 ma'am, there's no way I can go back on my PCR, because I
9 haven't filed a PCR, and she said, no, you going back on a
10 PCR, and so I was kind of happy thinking that they found
11 something and I'm getting ready to get out jail or
12 whatever, so as I went back, they -- I guess they did a
13 transportation run; they took me back to York County
14 Detention Center and I was thinking I was going to see, um,
15 -- I was going to a PCR hearing, but once I got there,
16 Marvin Brown -- they -- the narcotics came and picked me up
17 and took me to their office.

18 Q So you were -- do you remember when that happened?

19 A No, ma'am, I know it would be on my transportation
20 sheet as a -- as a South Carolina inmate. I don't know the
21 exact date.

22 Q So it would show you were transported ---

23 A I was transported back to York County.

24 Q Where were you transported to?

25 A York County, the detention center.

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1 Q And that -- that was the only time that there was any
2 follow-up with this reduction in sentence promise?

3 A No, ma'am.

4 Q When was the other time?

5 A After I talked with -- from the Moss Center, Mr.
6 Rutherford wasn't there and, you know, and I thought that
7 was kind of strange, you my lawyer, you supposed to be
8 helping me do this and you wasn't there, so, basically, I
9 really didn't -- didn't say much that day, so I went back
10 to Kirkland R&E, and I don't know was it a couple of weeks
11 or about a month later or so, I was sitting there and they
12 told me I was going to Richland County, and I knew I didn't
13 have any charges in Richland County or anything, so they
14 came and picked me up from Richland County and took me --
15 from R&E and took me to Richland County, and when I -- when
16 I was there, Mr. Rutherford was there and, um, I think
17 either a DEA guy or a FBI guy.

18 Q So you were taken to Court in Richland County ---

19 A No, no, ma'am, not Court. It was just -- we was in a
20 room, Mr. Rutherford -- I don't know -- it was a DEA or FBI
21 agent and myself and his paralegal.

22 Q But when you were transported from the department of
23 corrections, you were told on both occasions you were going
24 to Court?

1 A Well, I was going to the PCR on the first one, and the
2 second one, it didn't say, it just saying I was getting
3 transferred to Richland County.

4 Q And ---

5 (WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL
6 WHICH WAS NOT REPORTED.)

7 Q Could you take a look at this inmate search detailing
8 the Court which indicates your movement? Is it reflected
9 on here the occasions that you maintain you were
10 transported to Court or transported to deal with the
11 promise to reduce your sentence?

12 A Yes, ma'am.

13 Q Where is it indicated on there?

14 A At 10/23/2014 movement -- movement date to location,
15 York County, status, it says -- something absence -- absent
16 and then the reason for Court.

17 Q Okay. And is it on here the other instance that you
18 said you were moved as well ---

19 A Yes.

20 Q --- to Richland County?

21 A On 11/3/2014, to 2014, it also says I went to Richland
22 County due to Court.

23 Q Okay. And you were not taken to Court on those days?

24 A No, ma'am.

1 MS. JOYNER - Your Honor, I move to enter into
2 evidence the inmate search detail report indicating the
3 movement of the defendant allegedly to Court.

4 THE COURT - Any objection?

5 MR. HUNTER - No objection.

6 THE COURT - All right, it's so admitted.

7 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
8 APPLICANT EXHIBIT NUMBER 1.)

9 Q So what, if anything, do those two transports of you
10 have to do with your claim that you were promised a
11 reduction in your sentence?

12 A Well, after, like I say, Mr. Todd said he could do
13 that, that, you know, I'm following up on it, because I'm
14 thinking, you know, if I go talk to these people or
15 whatever, that he -- that he could get my time cut in half,
16 so I followed up and went to these locations.

17 Q And it's your testimony that that was the basis for
18 you entering this plea, that your time would be cut in
19 half, ---

20 A Yes.

21 Q --- that that was a promise that was made to you?
22 When the Court questioned you during the plea, you were
23 asked whether anyone promised you anything in order to get
24 you to plea, why didn't you say anything or were you told

1 not to say anything, or why didn't you say anything
2 concerning this promise that was made to you?

3 A No, I didn't say anything, because he just told me
4 don't worry about the 12, I can do this, so I'm putting my
5 trust in, you know, in my lawyer and ---

6 Q But you didn't think you needed to tell the Court
7 anything about that additional promise to reduce your
8 sentence to six years?

9 A No, ma'am.

10 Q But you said you relied on that in entering the plea.

11 A Correct.

12 Q Was there any compensation or additional monies that
13 you had to pay in order to effect that reduction?

14 A Well, -- well, basically, when I had -- when I had
15 obtained Mr. Rutherford, he told me he was charging me
16 twenty thousand dollars, and the day of Court or whatever I
17 had paid him up to seventeen -- seventeen thousand, and I
18 owed him three more thousand, and um, basically, we was
19 standing out in the lobby or whatever and, um, he,
20 basically, told me like, you know, if you don't give me
21 this other three thousand dollars, you know, I'm going to
22 go in the courtroom I act like I don't really know what's
23 going on with your case, you know.

24 Q Did you take him serious when he said that?

1 A Yes, I took him serious, because, you know, I'm facing
2 30 years, you know. Who wouldn't take, you know, that
3 serious when you facing 30 years.

4 Q So what, if anything, did you do as a result of that
5 statement?

6 A Well, as a result of that statement, you know, and me
7 thinking that he can get the time cut in half, you know, I
8 end up giving him -- I had a watch -- a watch on and I gave
9 him my watch and my wallet, you know, to try to -- you
10 know, because you telling me you can do this and I want to
11 -- you know, I don't want to make you mad, so, basically,
12 he told me, you know, I need that money still, you know, --
13 -

14 Q What kind of watch and wallet did you have on?

15 A I had a, um, -- I had a Gucci, um, --a diamond Gucci
16 watch, and I also had a Gucci, um, -- a Gucci wallet.

17 Q What do you think the value of those items were?

18 A The Gucci watch I want to say probably around fifteen
19 hundred or so, and the wallet was around three hundred --
20 maybe three hundred or something.

21 Q And why did you give him those items?

22 A I mean because -- I'm, basically, -- any time, you
23 know, like as long as I can get this six years, he asking
24 for this, I want to -- I want to pay him or get him his

1 money so it won't be no confusion for me to get my time cut
2 into six, because, because six is way better than 12.

3 Q Did he accept those items from you?

4 A Yes.

5 Q And he kept them?

6 A Yes.

7 Q So they weren't taken because you were taken to jail
8 and turned over to your family?

9 A No, ma'am, because my family was there when I got
10 sentenced.

11 Q So someone witnessed you turning those items over?

12 A Yes.

13 Q And you believed that they were a condition to you
14 getting your sentence cut?

15 A Yes. Because it was no need -- I mean had already got
16 the 12 years so it wasn't no need to pay, I guess, the
17 other three thousand dollars when I already had received my
18 time, so by me doing that I'm thinking, you know, it was
19 going to help my situation.

20 Q Lastly, were you advised of your right to seek review
21 of your guilty plea by appeal?

22 A Oh, no, ma'am.

23 Q You were never advised of that?

24 A No, ma'am.

1 Q Did you at some point come to realize it or did you
2 know it of your own accord?

3 A Yeah, I knew it of my own accord.

4 Q And what, if anything, did you do in regards to the
5 filing of an appeal?

6 A Well, I was sent to Kirkland, and at the time I
7 couldn't talk to him or I couldn't reach out to him, so I
8 had my family member to call, text him and do all type of
9 things to let him know that I only had a -- which he
10 already knew that -- I only had ten days to file this --
11 this appeal, and I needed to get it in, you know, as fast
12 as I could.

13 Q So there was an effort to contact him and advise him
14 you wanted to file the appeal?

15 A Yes.

16 Q How was that affected -- you said something about a
17 text, a text message?

18 A That ---

19 Q Do you know if that was, actually, sent to him?

20 A Yes.

21 Q And what, if anything, was stated to him about filing
22 an appeal?

23 A I think the text message may have been that -- from my
24 girlfriend at the time who was telling him that, hey, we
25 need to get this in, we need to get this appeal in, and he

1 said that he was going to handle it, and he was going to do
2 it, he was going to file the appeal.

3 Q And you went to Court on -- you plead guilty on
4 September 2nd?

5 A Yes.

6 Q Is your understanding that that text was sent on
7 September the 11th?

8 A Some -- somewhere along in that.

9 Q Okay. So you feel that you made an effort through
10 family members to tell him you wanted to appeal even though
11 he didn't discuss that issue with you?

12 A Yes.

13 Q Was an appeal filed?

14 A No, ma'am.

15 Q And are you asking this Court to give you an
16 opportunity to file a belated appeal since your request for
17 appeal was not honored?

18 A Yes.

19 Q Is there any other issue or anything else that you
20 want to present to this Court to substantiate your claim
21 that your plea was involuntary and that your plea was
22 induced by promises? Is there anything else you want to
23 present or testify to that we haven't already covered?

24 A Well, like I say, after he told me that I could get
25 that time cut in half, he also -- it was just like a on-

1 going thing -- he also asked me could he borrow my truck,
2 you know, that he had a client coming in from out of -- out
3 of state or whatever and he wanted to use my truck for that
4 client or whatever -- I didn't really understand why would
5 you need my truck for your client in -- you know what I'm
6 saying -- to use my truck.

7 Q And you're saying this is something he brought up to
8 you?

9 A Yes, he brought it up to me.

10 Q And what, if anything, happened relating to that?

11 A Well, as he brought it up to me, like I say, I really
12 didn't want to give a stranger that I don't really know --
13 and I'm going to jail that day -- to -- you know, -- to
14 access to my truck or whatever, so what he done was, soon
15 as trial was over with, he followed my girlfriend back to -
16 - back to her house in North Carolina and him and his
17 private investigator picked up the truck.

18 Q Why kind of truck?

19 A It was a Range Rover.

20 Q So he had possession of your truck?

21 A Yes, he -- he took possession of it and, I guess,
22 drove it back to Columbia, South Carolina, him and his ---

23 Q But you told your girlfriend to give it to him?

24 A Yes.

25 Q Why?

1 A I mean, like I say, I'm going -- you know, I'm trying
2 not to make this guy mad, because my life is in his hand
3 and I, you know, -- and he already promised me he can get
4 it -- get me six years, I just -- just -- told him he could
5 get it, you know.

6 Q So is that -- is that all? Is there any other
7 testimony or evidence that you want to present? I have
8 other witnesses that you're going to call, but in regards
9 to your testimony, is there anything that we haven't
10 covered that you want to present?

11 A Um, I guess another thing was, you know, me and him
12 went over the chain of custody in my case, and, you know,
13 I'm asking him about this chain of custody, but they never
14 gave us the chain of custody, you know, far as to these
15 drugs or my cell phone, and I'm telling him that's very
16 important, if we going to go to trial that I need the
17 complete chain of custody so we can, you know, you know,
18 see if the chain of custody was broken. If the chain of
19 custody was broke, it could've changed the outcome of the
20 trial, because the drugs would have to have been dismissed
21 and, uh, ---

22 Q Do you know if he investigated that issue or looked
23 into it?

24 A No, which he never filed a motion on it either.

1 Q Okay. And in the chain of custody hearing, was it --
2 it's my understanding there were imitation drugs
3 substituted for the real drugs?

4 A Yes, the ---

5 Q What is your contention or concern in regards to chain
6 of custody as relates to that?

7 A Well, with the chain of custody with the imitation
8 drugs that they found at the house, it changes a lot
9 because of the law itself, you know, basically, if -- it's
10 saying if law enforcement was to change, you know, change
11 the drugs and put out imitation -- imitation substance or
12 anything in it, that they have to at least field test --
13 you know what I'm saying -- the drugs before they take it
14 out, before they replace it and put it in or whatever. You
15 know, that was a valid part, because the drugs in my case
16 didn't get tested til two and a half months later, and they
17 had already switched the drugs and put it in a box that was
18 found at that -- at that house at [REDACTED] Shenandoah Circle,
19 so the drugs that we was talking about was, actually,
20 imitation drugs at the house.

21 Q So when you went through the discovery with Mr.
22 Rutherford's paralegal, you didn't see anything in the
23 discovery that related to the initial real drugs or alleged
24 real drugs being field tested before imitation drugs ---

25 A No, ma'am.

1 Q --- were substituted?

2 A No, ma'am.

3 Q And you brought that issue up to Mr. Rutherford?

4 A Correct.

5 Q And you thought that issue would be investigated and a
6 motion would be made in that regard?

7 A Yes.

8 Q And it was not?

9 A No, ma'am.

10 MS. JOYNER - Your Honor, that's all I have of
11 this witness.

12 THE COURT - All right. Yes, sir.

13 MR. HUNTER - May it please the Court, Your Honor.

14 THE COURT - Yes.

15 CROSS EXAMINATION

16 BY MR. HUNTER -

17 Q You remember signing the plea waiver form before you
18 plead, the form that you had to initial a bunch of boxes?

19 A Yes.

20 Q You remember signing that?

21 A Yes.

22 Q Did you go over that with your attorney?

23 A Somewhat, yes.

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1 Q Okay. And do you remember the part talking about
2 whether there were any other promises -- I believe the
3 sentence -- I'll just show it to you.

4 MR. HUNTER - Can I approach, Your Honor?

5 THE COURT - Certainly.

6 Q It's the last part. Do you recognize this form? Do
7 you recognize this?

8 A Yes, I think so.

9 Q Okay. And is that your initials in all those boxes?

10 A Yes.

11 Q Okay. Could you read that last sentence there?

12 A This plea is not the product of any other promises or
13 threat whatsoever except as indicated below.

14 Q Okay. And there's nothing below in those blanks?

15 A No.

16 Q Okay. But you're still saying that there was some
17 sort of promise that you'd get six years?

18 A That he would get it cut in half, yes.

19 Q And was this promise done prior to the plea? Were you
20 informed of this promise prior to pleading no contest?

21 A Yes.

22 Q Okay. And did you talk to the State about this?

23 A No, I only talked to Mr. Rutherford.

24 Q Okay. And you were originally facing 25 to 30 years.

25 Right?

1 A Correct.

2 Q And you plead no contest and you were given 12 and a
3 1/2?

4 A Yes.

5 Q Okay. And you want to go back -- if you win today,
6 you understand that you'll go back and still face 25 to 30.
7 Correct?

8 A Yes.

9 Q Okay. Now, just back a little bit to the beginning,
10 you said you only met with him, I guess, a total of two
11 times before your plea?

12 A Like two -- two times in his -- yes, in his office and
13 not -- yeah.

14 Q And y'all talked on the phone?

15 A Maybe one or two times.

16 Q Okay. And you discussed the State's evidence against
17 you?

18 A Nah, me -- me and Mr. Rutherford never talked about
19 the State evidence against me or went over the motion
20 discovery (sic), me and him, only his paralegal.

21 Q Did you have any questions or anything to give Mr.
22 Rutherford through the paralegal?

23 A I think I may have asked her something about what did
24 he say about this conspiracy which it was no evidence of a

1 conspiracy in what he say, but I never -- he never gave me
2 a reason why, but he just felt that it wasn't a conspiracy.

3 Q Okay. And you had two full days of pre-trial motions.
4 Correct?

5 A (No response)

6 Q Before entering a plea?

7 A I want to say I think one day.

8 Q Okay. Either way, there were pretty extensive pre-
9 trial motions going on as if you were to proceed to trial?

10 A Yes.

11 Q Okay. And, again, what -- what made you decide to
12 plead instead of going to trial?

13 A Well, I just really felt that we really wasn't
14 actually prepared to go to trial, like, you know, my key
15 issues was -- like I say, was about the search warrants and
16 all of that and we never filed a motion or he never talked
17 to any witness or anybody about the situation.

18 Q Well, the pre-trial motions, didn't that concern
19 suppressing the text messages?

20 A Only -- only issue was addressed was the bad act.

21 Q Right, through the text messages?

22 A I don't understand what you saying through the text
23 messages.

24 Q Sorry. Isn't ---

25 A The bad act was -- was the text messages.

1 Q Right. That's what I was getting at. Sorry. You're
2 right. So he challenge -- wouldn't you agree that he
3 challenged that during those pre-trial hearings?

4 A That's the only thing he did challenge.

5 Q Okay. Did you tell him anything else you wanted him
6 to challenge?

7 A Yes.

8 Q And he didn't do it for you?

9 A No.

10 Q Okay. Did you ever go over the search warrants with
11 him?

12 A No.

13 Q When'd you find out that they were bad or they were
14 defective?

15 A Um, actually when I got to R&E and started getting
16 cases and started reading up on the law myself.

17 Q Then you think there was something wrong?

18 A Yes.

19 Q Okay, and regardless, were you aware of the difference
20 between no contest plea and guilty plea?

21 A I knew -- I knew I didn't have to give a statement
22 once I pleaded no contest.

23 Q Okay. Did you understand that you weren't contesting,
24 you know, the evidence or anything against you by entering
25 a plea?

DUANE HARRISON - CROSS BY MR. HUNTER

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1 A No, not really. I just know I wasn't pleading like
2 guilty.

3 Q Okay. And, again, you said you gave them the name of
4 two witnesses, and I -- I can't remember how pronounced the
5 names, one that would testify that you were in North
6 Carolina?

7 A Yes.

8 Q And she would testify that you were at work during
9 when this -- when this happened?

10 A No, it was testified that she was at work and I came
11 by her office.

12 Q Okay. Came by her office when this ---

13 A Well, Mr. Rutherford told me that this crime or
14 whatever supposed to had took place between 8:30 and 10:30,
15 as they was trying to say I was the lookout guy or
16 whatever. If he would've witnessed her (sic) as my alibi
17 witness, I was still in North Carolina at -- at the --
18 around that time.

19 Q Okay, but you were still apprehended by police in that
20 location or near that location. Correct?

21 A Yes, around 2:00 o'clock.

22 Q Okay. Now, as far as the -- I guess the ruling on the
23 text messages, you said you pled guilty because you thought
24 that a ruling had been made that the Judge would admit the
25 text messages?

1 A Mr. Rutherford told me that the Judge had ruled in
2 their favor.

3 Q Okay. And the Judge discussed during your plea
4 hearing that had it gone to trial that he would've ruled
5 that way?

6 A Yes.

7 Q Okay. So does it really make a difference when he
8 rules if he's -- if he says that's how he's going to do it?

9 A I mean it's a big difference for I would've (sic)
10 pleaded, because I would want the Judge to go ahead and
11 make a ruling it would've been saved for my appeal if he
12 had already made the motion of -- was -- that he was going
13 to allow it in, that -- and by him not doing that, you
14 know, it hurted my appeal because he -- Mr. Todd couldn't,
15 you know, um -- it would've hurted (sic) my appeal, because
16 it was never ruled on.

17 Q Okay. Did you ever tell him this prior to pleading?

18 A To who?

19 Q To your attorney?

20 A No, because I -- like I said, I thought he had already
21 ruled.

22 MR. HUNTER - Beg the Court's indulgence one
23 second.

24 THE COURT - Certainly.

1 Q And, again, you said you pled because he didn't talk
2 to your alibi witnesses; he didn't move to suppress
3 evidence, and that you thought you'd get a time cut. Is
4 that correct?

5 A Yes, and also the fact that I didn't -- I could've got
6 these charges dropped at the preliminary hearing, you know,
7 if I was there to rep -- you know, to let him know what was
8 going on at the time.

9 Q And you believe had you been at the prelim, that you
10 would've had all the charges dropped?

11 A I could've had the charges dropped.

12 Q All right. And did you give Mr. Rutherford your
13 version of events, what you say happened, where you were at
14 the time?

15 A No, we never discussed it.

16 Q Why didn't you tell him?

17 A I guess because I -- like I said, I wasn't planning
18 going on the stand, so and he never asked me, so I figured
19 if he, you know, wanted to know that information or
20 anything he would ask me.

21 Q You never wanted to tell him your side of the story?

22 A Yes.

23 Q You did want to tell him?

24 A Yes.

25 Q Or you just never did?

1 A No, it -- no, -- would he ask (sic), which I thought
2 was strange knowing that we was going to trial.

3 Q So you were just waiting on him to ask those
4 questions?

5 A Correct.

6 Q Okay. And, again, do you -- you said you were
7 transported to York and then to Richland and that was for
8 this meeting about a time cut? Is that what that was for?

9 A Well, he had already promised me that he could get my
10 time cut in half, but I was just following up on what I
11 needed to do to get my time cut in half.

12 Q Right, and that was -- that's what those -- I'm just
13 asking, that's what those movements were for ---

14 A Correct.

15 Q --- one to York and then one to -- did you cooperate
16 with police?

17 A Yes.

18 Q And what happened?

19 A I -- at the second time I -- I stopped cooperating
20 with them, because I realized what he had told me wasn't
21 the truth. He -- basically -- what -- the words had got
22 switched around that he didn't say -- he told me that if I
23 talked to Marvin Brown, he could get me the six years, but
24 then once we got in front of the people, it changed so that
25 I had to get a conviction to get the six years, and that's

DUANE HARRISON - CROSS BY MR. HUNTER

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1 a -- that's a big difference. And he also said, well, you
2 know, if you get a conviction, it might take ten -- ten
3 years for, you know, the information that they could use,
4 and I had 12 and 1/2 years and I -- I got to do ten.

5 Q Again, you said you didn't -- your family informed him
6 that you wanted to appeal?

7 A Yes.

8 Q But that was never done?

9 A Never.

10 Q But you had, I guess, some issues that you felt like
11 would've been meritorious on appeal?

12 A Yes.

13 Q And something about -- I'm sorry, I couldn't really
14 understand -- he was using your truck?

15 A Yes.

16 Q And does that affect your plea at all?

17 A Did it affect my plea?

18 Q Right.

19 A No, it was just, basically, showing that, you know, I
20 was going along, you know, with him, you know, because this
21 is my lawyer and if I do these things, it would help him,
22 you know, keep the six -- you know, get my time cut in
23 half.

24 Q So you thought doing that would help you get a time
25 cut?

1 A Yes, by him asking.

2 MR. HUNTER - Okay. That's all I have.

3 THE COURT - Thank you. Anything else for this
4 witness?

5 MS. JOYNER - Nothing further of this witness,
6 Your Honor.

7 THE COURT - Sir, you can step down.

8 MS. JOYNER - I call Arthur Harrison.

9 ARTHUR HARRISON, AFTER BEING FIRST DULY SWORN,
10 TESTIFIES AS FOLLOWS -

11 DEPUTY CLERK - Have a seat and watch your step.

12 MS. JOYNER - May it please the Court.

13 THE COURT - Yes, ma'am.

14 MS. JOYNER - Thank you.

15 DIRECT EXAMINATION

16 BY MS. JOYNER -

17 Q Mr. Harrison, state your full name for the record.

18 A Arthur Harrison.

19 Q And what's your relationship to the applicant?

20 A He's my son.

21 Q And were you there when he pled guilty or no contest,
22 excuse me?

23 A I did not come back in the courtroom, but I was in the
24 room when the conversation that Duane is saying that went
25 on in between him and Todd.

1 Q And which conversation are you referring to?

2 A The conversation when Todd said if he talked to Marvin
3 Brown that he could get his time cut in half, he didn't
4 have to pay anything attention to what the sentence -- what
5 -- what -- this was just on paper more-or-less -- that what
6 the real thing would be, he would get it cut in half, and
7 he also said he had did it before.

8 Q Okay. And you said you were in the room when that
9 conversation ---

10 A I was in the room when it took place.

11 Q So do you think that -- that induced your son to enter
12 into this plea?

13 A I really think so, because he said that he -- he said
14 he wanted to go to Court, and he really asked me what he
15 should do, and I said, son, you facing all this and at the
16 last minute I don't want to make the decision for you, and
17 so I said, you know, you go to make this one on your own,
18 because I'm not going to have to do the time.

19 Q Okay. And do you know anything else about the
20 preparation that your son testified to? Are you familiar
21 with the meetings? Were you involved?

22 A I took Duane down for one meeting, the one he
23 mentioned. I think it was pretty close to trial time. I
24 wasn't in the meeting or anything; I transported him.

1 Q Were there any other meetings during this two and a
2 half years that the case was pending that you were aware
3 of?

4 A No.

5 Q Do you think he would've discussed that with you, that
6 he was meeting with his lawyer? Was that -- what kind of
7 relationship do you have with your son that ---

8 A I asked him about and I said you're not -- you're not
9 on Todd (sic). I said uh -- I said your trial's coming up.
10 He really to me was a whole lot more trusting than I
11 would've been in that position, and I said, man, you need
12 to be talking to him, you need to -- need to find out
13 what's what on your case, but to me he put all his trust in
14 Todd that -- I recommended Todd, for him to hire Todd. I
15 recommended that he hire Todd and that Todd -- I liked him
16 from everything I had saw on television and everything, he
17 speak up, he speaks his peace. I feel like he could come
18 to Court and do him a good job, so I was the person who
19 recommended Todd, that he hire Todd.

20 Q But you felt there wasn't enough communication and ---

21 A It wasn't -- it really ---

22 Q --- preparation.

23 A No, not at all.

24 Q Did Todd ever discuss the evidence with you or have
25 any discussions about how they were proceeding forward?

1 A No, he did not.

2 Q Okay. What, if anything, do you know about the
3 enticement to plead based on the reduction to six years and
4 the exchange of jury and other things of that nature?

5 A I don't really -- like I say, I was in the room and
6 Todd -- and Todd -- one thing Duane said go to trial and
7 Todd say you thinking with -- I don't know -- one of them
8 said -- Todd said, you thinking with your -- with your
9 heart rather than your mind or something, if you don't take
10 this plea, you know, basically, you could do all these
11 years and all this everything, but I can't, you know, --
12 I'm not sure about anything else; I'm sure about that.

13 Q Okay. Well, do you know anything about the appeal?
14 There was some testimony from your son about he couldn't
15 reach Todd directly, so he asked that other family members
16 text or contact Todd regarding ---

17 A Yes, he -- he got contact with me. I can't remember
18 how, and I also had contact with Danielle and she -- and
19 she said she had texted Todd and told him -- I think the
20 first thing she told me, like we -- you only had one day to
21 get it in. I believe it was down to the end. I think one
22 day or either three days, then she -- another text she said
23 she texted him and said to the fact that you only got a day
24 left to get it in, and I think both of those things on Todd
25 -- me and her was together, so I think on Todd thing (sic)

1 I think he said I'm going -- each time he said he was going
2 to be talking with him I think he said.

3 Q He said he was going to be talking with him.

4 A Will be talking Duane. Say I'm going to be talking to
5 him at -- I think at a certain time, but he did say that he
6 was going -- on the text he would be talking with him later
7 on or something.

8 Q So you -- you are testifying that Todd knew he wanted
9 to file an appeal.

10 A Absolutely, from his texts. I looked at them
11 personally.

12 Q And an appeal was not filed.

13 A That's correct.

14 Q Okay. Is there anything else that you want to add
15 that you know to be relevant about the issues that were
16 used testified to and discussed?

17 A I get ---

18 Q Do you have any other relevant evidence, other than
19 what we've already elicited through your testimony?

20 A No, I don't have anything other.

21 MS. JOYNER - Okay. Thank you for your time.

22 THE COURT - Any questions for this witness?

23 MR. HUNTER - Just briefly.

24 CROSS EXAMINATION

25 BY MR. HUNTER -

ARTHUR HARRISON - CROSS BY MR. HUNTER

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1 Q So you didn't attend any of the meetings with Mr.
2 Rutherford?

3 A I -- I, actually, wanted to go in with the meeting
4 when I took him down there, but some reason Duane -- either
5 -- either he or Duane said that I couldn't go or didn't go.
6 I'm not positive about that, but I really wanted to be
7 involved with it, but they -- Duane or him either one asked
8 me to wait outside, and I waited outside in the waiting
9 room.

10 Q Okay. And were you aware that Duane was originally
11 facing a charge that carried 25 to 30 years?

12 A No, I was not. He -- every time I talked to Duane and
13 everything he said Todd had told him that he was facing 25
14 years, not 25 to 30, and I thought that was odd, also. He
15 told him he was facing 25 years until the day of Court;
16 then the day of Court -- this is what Todd said, not
17 somebody else said -- Todd said it's my bad; you actually
18 facing 25 to 30.

19 Q Okay. And when he pled no contest, he received 12 and
20 1/2 years?

21 A I didn't come back into the courtroom, because I
22 didn't want to witness it, but that's what he had agreed to
23 plea to.

24 MR. HUNTER - Okay, I have nothing else.

25 MS. JOYNER - Just one follow-up.

1 RE-DIRECT EXAMINATION

2 BY MS. JOYNER -

3 Q So your -- your testimony is that Todd admitted he did
4 not explain to him what his exposure was and he was wrong
5 about what his exposure was by pleading guilty, 25 to 30
6 years ---

7 A Right. Right, he told -- had told him all during the
8 case it was 25 years, and the day of Court, when we
9 received (sic) for Court, he told him it was his -- he was
10 wrong, he was facing 30. I thought that was strange; he's
11 been on the case for two years.

12 MS. JOYNER - Okay, thank you. That's all I have.

13 THE COURT - Anything else?

14 MR. HUNTER - Nothing else.

15 THE COURT - Sir, you can step down.

16 MS. JOYNER - Your Honor, I call Danielle Dowdell.

17 DANIELLE DOWDELL, AFTER BEING FIRST DULY SWORN,

18 TESTIFIES AS FOLLOWS -

19 DEPUTY CLERK - Have a seat and watch your step.

20 DIRECT EXAMINATION

21 BY MS. JOYNER -

22 Q Ms. Dowdell, please state your full name for the
23 record.

24 A Danielle Christina Dowdell.

25 Q And what's your relationship to the applicant?

1 A Duane's my boyfriend and the son -- the father of my
2 son.

3 Q Okay. And where do you live?

4 A Charlotte, North Carolina.

5 Q Okay. And what kind of work do you do?

6 A I'm an operational risk consultant, level II with
7 Wells Fargo Home Mortgage.

8 Q There was some testimony earlier about Duane Harrison
9 coming to your job. Were you working in this same position
10 at that time? Did he come to your job?

11 A Yes. I've -- I've been with Wells Fargo in this
12 specific location since 2010. Duane did come to my job the
13 day of the incident. I believe he was there in between
14 11:00 and 12:00 o'clock, but as I was stating to Duane, you
15 know, if Todd looks into this, he might be able to access
16 the video to see him there, because he -- he came in order
17 to search for his wallet; he thought his wallet was in my
18 car.

19 Q Okay, so what, if any, importance do you think him
20 being at your job that day would've had on a potential for
21 trial?

22 A Well, I -- I think if Todd would've done the research,
23 he would find that with the case, they're saying that Duane
24 knew of a package that was supposed to be delivered in the
25 morning-time, I guess, from 8:00 to 10:00. I can't

1 remember the exact time, but he was, actually, at my office
2 and could have been located on camera that he was there and
3 not acting as a lookout for a package down in Rock Hill,
4 South Carolina.

5 Q And did you ever discuss that with Mr. Rutherford?

6 A I've never talked to Todd. I talked to Todd for the
7 first time the day of trial.

8 Q The day of trial?

9 A (Indicating yes)

10 Q So there was never any attempt to contact you
11 concerning knowledge that you might have in regards to the
12 case?

13 A Not any, no.

14 Q Did Duane indicate to you that he had told Todd you
15 were someone who could be a potential witness?

16 A Yes. Yes. I told him to give Todd my information,
17 and I never heard from him.

18 Q And so you -- you never were interviewed, even that
19 day in Court?

20 A No. No one ever asked me any questions.

21 Q There was also a issue concerning a rental car being
22 driven when he was allegedly the lookout. Did you indicate
23 you had information regarding that issue, also?

24 A Yes, um, with the case the solicitors, they built a
25 case stating that Duane was a lookout and that he had a

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1 rental car to detect from being discovered, however, I was
2 able to pull his records, because we know that we had an
3 issue with the car, so he, actually, had the car put in the
4 shop the day before, and the car dealership was the one
5 that gave him the rental car, so he did not obtain that
6 rental car for -- to detect ---

7 Q So you're saying that you would've been able to
8 present evidence that he did not rent a car to be anonymous
9 and be a lookout, that he had a rental car that was
10 supplied because his vehicle was in repair.

11 A Yes, that is correct. I also contacted the car
12 company, and I obtained the records, and they did send them
13 to me, and it has Duane's name on there and also the vin
14 number of his vehicle.

15 Q Is the record you're referring to?

16 A Yes.

17 Q Can you identify what this document is?

18 A This is a summary history display from Land Rover, or
19 I think it's Hendrick Automotive, but it's with Land Rover.
20 It says customer name, Duane Harrison, and the entry that
21 I'm speaking of is October 29th, 2012.

22 Q And what does that entry state?

23 A It states that they have a multipoint inspection,
24 radio specific equipment, instruments, brakes and a rental
25 car.

1 Q So they provided him a rental car on October 29th?

2 A Yes, ma'am.

3 Q And it's because his car was in the -- the -- being
4 repaired of those things you indicated?

5 A Yes, that is correct.

6 Q And do you believe that if Todd had contacted you, you
7 would've been able to provide some relevant testimony as to
8 why he was in a rental car?

9 A Yes.

10 Q And this document, again, you said you received it?

11 A I do research for a living, so I went ahead and looked
12 into it to see if there was any type of records to dispute
13 what they were saying.

14 MS. JOYNER - Your Honor, I move to enter this
15 record that the witness has testified to into evidence
16 indicating that the applicant received a rental vehicle
17 from a car dealership.

18 THE COURT - Any objection?

19 MR. HUNTER - No objection.

20 THE COURT - All right, that's admitted as
21 Applicant's 2.)

22 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
23 APPLICANT'S EXHIBIT NUMBER 2.)

24 MS. JOYNER - Thank you.

1 Q You testified you were there at the hearing and when
2 he -- when his case was called for trial was September 2nd?

3 A Yes.

4 Q Okay. What, if anything, do you know about the plea
5 and the decision made by Mr. Harrison to enter into a plea
6 as opposed to pursuing trial?

7 A Well, I was not in any room to hear any type of
8 arrangement. I did speak with Duane in private after he
9 had discussions with Todd, and then that's when Todd -- um,
10 I'm sorry -- that's when Duane let me know about taking the
11 plea, about the 12 and 1/2 and to don't worry because our
12 son was nine months at the time, that Todd could get it cut
13 down to six.

14 Q And what, if anything, did he tell you about the --
15 the reduction to six years?

16 A He didn't say much about it; he just said that Todd's
17 going to make some type of arrangements, by then it --
18 everything was -- everything was moving so fast.

19 Q And from that point there was another issue about a
20 wallet and a watch. Were you -- were you aware or know
21 anything about those issues?

22 A Yes, um, as we stood in the double doors there, Todd
23 reached for Duane's wallet and took out his license, his
24 debit card and a twenty dollar bill and handed those items

1 to me, and he put the wallet, which was a Gucci wallet that
2 I purchased for Duane, he put that in his jacket pocket.

3 Q He put that in his jacket pocket, the wallet and the
4 watch?

5 A Just the wallet. Um, ---

6 Q Just the wallet.

7 A -- Duane had mentioned to me that Todd had already
8 taken the watch. He also mentioned to me to give Todd a
9 bracelet.

10 Q What kind of bracelet?

11 A It was a diamond bracelet, approximately, maybe around
12 twenty-five hundred.

13 Q What is your understanding as to why you were giving
14 Todd these items, Todd Rutherford these items?

15 A He said that Todd felt that he wasn't completely paid
16 and that Todd was going to help him, so to just go ahead
17 and do what he said.

18 Q So he -- he wasn't completely paid and he was going to
19 help him, he was going to get the sentence reduced.

20 A Yes, ma'am.

21 Q You stated that you bought the wallet yourself, so you
22 know what value it was?

23 A Yes, ma'am, it was a black Gucci wallet that had
24 embossed G's all over; it was roughly around four hundred

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1 dollars. It was a Christmas present that I bought for him
2 in 2013.

3 Q And you stated you know the value because you
4 purchased it.

5 A Yes, ma'am.

6 Q Is this also an advertisement indicating the same type
7 of wallet?

8 A Yes, it's the same type of wallet. I couldn't find
9 the exact wallet, but that's the same one.

10 Q And how much does it indicate that that type of wallet
11 cost?

12 A Three hundred and seventy dollars.

13 MS. JOYNER - Your Honor, I move to enter this
14 document into evidence.

15 THE COURT - Any objection?

16 MR. HUNTER - Your Honor, I'd object. I don't see
17 the relevance to an ad for a wallet, what that has to do
18 with ineffective assistance of counsel.

19 THE COURT - I'm going to admit it, you know, for
20 what it's worth, as exhibit, Applicant's Exhibit Number 3.

21 MS. JOYNER - Thank you.

22 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
23 APPLICANT'S EXHIBIT NUMBER 3.)

24 Q And what, if anything, did you state about the watch?
25 What was your knowledge of the watch?

1 A Well, I -- I looked down on Duane's wrist to obtain
2 the watch, and then that's when he told me that it was gone
3 and he had previously given to Todd. It was a -- it was a
4 Gucci watch; it had a black face and it had diamonds in it.

5 Q And did you give me a estimate of its value and of --
6 that as well as?

7 A Yes, this is a -- um, estimate in between twelve
8 hundred and fifteen hundred at the time of purchase. We
9 purchased it a year or two before hand.

10 Q And this is the same watch?

11 A Yes, I -- I have a matching one.

12 MS. JOYNER - Okay. Your Honor, I move to enter
13 the value of watch, as well.

14 THE COURT - Any objection?

15 MR. HUNTER - Same objection, Your Honor,
16 relevance.

17 THE COURT - All right. Again, I'll admit it as
18 Applicant's 4.

19 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
20 APPLICANT'S EXHIBIT NUMBER 4.)

21 MS. JOYNER - Thank you.

22 Q There was testimony about a bracelet also, a diamond
23 bracelet?

24 A Yes, ma'am.

25 Q What happened in terms of a bracelet?

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1 A What prior -- well, okay, I'll go with the bracelet.
2 Duane asked me to give Todd the diamond bracelet; it was
3 not in my possession; it was at Duane's aunt's house, which
4 she lived in Rock Hill, South Carolina. After trial Todd
5 and I exchanged phone numbers, and at one point in time on
6 my text messages I contacted Todd and I said, hey, Todd,
7 I'm on my way down to D's aunt's house to pick up the
8 bracelet, I -- I can send it to you shortly.

9 Q And you sent him a text that stated that?

10 A Yes.

11 Q And did you send the watch?

12 A The bracelet, yes.

13 Q Bracelet, I'm sorry. You sent the bracelet?

14 A Yes. I also contacted Todd via text message and asked
15 him, which location did he want me to send the bracelet,
16 because his um -- his business card has a Florence address
17 and a Columbia address, and he responded in text message,
18 Columbia, please. Todd then called me on my phone and
19 asked me to mark the bracelet private and confidential.

20 Q He asked you to mark it private and confidential?

21 A Yes. He asked me to send it to the Columbia box -- I
22 believe that's a P.O. Box -- and to make it personal and
23 confidential.

24 Q Do you have the phone where you exchanged these text
25 messages?

1 A Yes, I do.

2 Q Is that phone here with you?

3 A Yes, it's in my purse.

4 Q And did you print out a copy of those text messages?

5 A Yes.

6 Q Could you identify which message relates to the
7 conversation you've just testified to?

8 A Yes, um, Friday, September 12th a 1:49 p.m., I said,
9 hey, Todd, I picked up the bracelet from D's aunt house, so
10 it might be tomorrow before I can get it off, did you get
11 my text about the payoff, and that's when he called me.

12 Q Okay. And this is a copy of the actual text between
13 you and Todd?

14 A Yes.

15 MS. JOYNER - Your Honor, I'd move to enter this -
16 - a copy of this text message into evidence.

17 MR. HUNTER - Your Honor, the State would object.
18 I don't really see any point of putting a printout in. She
19 read what's on it.

20 THE COURT - What's -- what would be the
21 additional purpose of the printout and ---

22 MS. JOYNER - It just indicates the exchange and
23 it has Todd Rutherford identified. I understand she
24 testified to it, but I think it corroborates that
25 testimony.

1 THE COURT - And I know that she's read those text
2 messages into record. I think it's just duplicative.

3 MS. JOYNER - Okay. Okay. Okay, thank you.

4 Q You indicated there was some issue regarding the
5 truck, as well. What was the nature of that?

6 A Um, yes. Right after trial, um, Todd asked -- Todd
7 and his private investigator -- I'm not sure of his name --
8 they asked me to wait -- wait a while, because they were
9 going to follow me home in order to obtain Duane's truck,
10 so Todd texted me, and that was the first text that I ever
11 received from him, and he said, hi, this -- it's Todd
12 Rutherford, and not even 30 minutes after trial, Todd and
13 his private investigator were on the highway up to
14 Charlotte to come and obtain Duane's truck from my -- from
15 my house.

16 Q And you gave it to them? You turned it over?

17 A Yes. Todd Rutherford himself drove Duane's car. He
18 came to my house that's in Charlotte, North Carolina; he
19 watched me clean out the vehicle and back it out of the
20 driveway, and Todd got into the car and drove off.

21 Q Okay. Now, there was testimony from Arthur Harrison
22 concerning a request for appeal. Were you involved in that
23 request?

24 A Yes.

1 Q What, if any, involvement did you have in indicating
2 to Mr. Rutherford that Duane wanted to file an appeal?

3 A I texted -- I texted Todd -- I believe it was
4 September 11th -- I can't be honest on my text -- I believe
5 it was September 11th, and I texted Todd and I said
6 something to the effect that Duane was trying to get in
7 contact with you, today is the last day to file -- I'm not
8 really sure what that is -- call me back.

9 Q And this is a printout of two texts on September 10th
10 and 11th. Do they depict the conversation that you were
11 requesting the appeal in?

12 A Yes. Wednesday, September 10th at 11:37 I texted Todd
13 and I said, Duane has been at Kirkland since 9/4/14. He
14 said, got it. I said, got a call about Duane, can you call
15 me back, something about the last day to file, but I don't
16 know what they were talking about, and he can only have
17 attorney visits and not calls. At that time Todd did call
18 me on my cell phone and he stated that Duane wanted people
19 to move on his own time and that he wasn't paid to file any
20 appeals.

21 Q He said he wasn't paid to file an appeal?

22 A Yes.

23 Q Okay. But that is a text of you requesting that the
24 appeal be filed?

25 A Yes.

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1 MS. JOYNER - Your Honor, I move to enter this
2 document into evidence.

3 MR. HUNTER - Again, Your Honor, the State would
4 object. I don't believe we need -- evidence that she's
5 already read it.

6 THE COURT - And she did read the entire document?

7 MS. JOYNER - Okay, well, ---

8 THE COURT - No, I -- that's a question. Did she,
9 in fact, read the entire document?

10 MS. JOYNER - She did not read the entire
11 document, Your Honor.

12 THE COURT - Okay. All right. Will you hand it
13 back to her and just let her finish reading it.

14 MS. JOYNER - Okay.

15 A The next -- the next entry after the call, the next
16 entry was Thursday, September 11th, at 8:36 a.m., I said,
17 hey, Todd, are you going to visit today? Todd replies, we
18 have a call with him at 1:00. I state, okay, thanks, and
19 then it starts another ---

20 THE COURT - Okay, all right.

21 Q Okay. So, again, that was your effort to request that
22 an appeal be filed?

23 A Yes.

24 Q And that was September 10th and 11th?

25 A Yes.

1 Q And he had entered the plea on September 2nd?

2 A Yes.

3 Q So it was still within the time-frame to file the
4 appeal?

5 A Yes.

6 Q Was an appeal filed?

7 A No.

8 MS. JOYNER - Thank you.

9 THE COURT - Any questions for this witness?

10 MR. HUNTER - Just briefly.

11 CROSS EXAMINATION

12 BY MR. HUNTER -

13 Q And with -- I was trying to understand with this
14 rental car -- you're saying that, I guess, you wanted to
15 present evidence to Mr. Rutherford that a rental car was,
16 actually, I guess, received from the dealership?

17 A Yes.

18 Q As opposed to just some other place?

19 A Well, in the statements from the police, they were
20 indicating that Duane obtained a rental car to not -- to go
21 being undetected for the counter-surveillance that they
22 said that he was doing.

23 Q Okay, but the fact that he got a rental car from a
24 dealership, that doesn't really say what its use was for,
25 does it?

1 A It states that he got his car fixed the day before.

2 Q Okay. But it doesn't say what he could use cars for?

3 A To drive.

4 MR. HUNTER - Okay. Good. That's all I have.

5 THE COURT - All right.

6 MS. JOYNER - Nothing further.

7 THE COURT - Ma'am, you can step down.

8 Anything else?

9 MS. JOYNER - Your Honor, the applicant rest.

10 THE COURT - All right, thank you. Anything in

11 reply?

12 You okay?

13 COURT REPORTER - Could I run to the restroom?

14 THE COURT - I'll tell you what, let's take a ten

15 minute break.

16 MS. JOYNER - Thank you, Your Honor.

17 (WHEREUPON, RECESS TAKEN.)

18 MR. HUNTER - May it please the Court, Your Honor.

19 THE COURT - Yes, sir.

20 MR. HUNTER - The State would call Mr. Todd

21 Rutherford.

22 THE COURT - All right.

23 TODD RUTHERFORD, AFTER BEING FIRST DULY SWORN,

24 TESTIFIES AS FOLLOWS -

25 DEPUTY CLERK - Thank you, sir. Have a seat.

1 DIRECT EXAMINATION

2 BY MR. HUNTER -

3 Q State your name.

4 A Todd Rutherford, R-u-t-h-e-r-f-o-r-d.

5 Q Good afternoon. How are you doing?

6 A Good, how are you?

7 Q Doing well. Can you just give us a brief background
8 of your employment?

9 A Sure. I'm a lawyer. I practice in Columbia. I've
10 been practicing now going on 20 years. Started off as an
11 assistant solicitor in 1996 and went into private practice
12 in 1998.

13 Q And your practice -- what are the areas that you
14 primarily focus on?

15 A I primarily focus on criminal defense.

16 Q Okay. Did you remember how you became involvement in
17 Mr. Harrison's case?

18 A Mr. Harrison came and hired me -- I don't have the
19 date in front of me -- I apologize -- I came up without my
20 file -- and told me about his situation. It was in my
21 experience a very unique situation. Mr. Harrison was
22 charged as being the lookout for a package delivery. A
23 package was delivered to a young lady's house, and Mr.
24 Harrison's co-defendant, a guy named Underwood -- last name
25 Underwood -- was there and opened the door, got the

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1 package, took the package and put it in his trunk while Mr.
2 Harrison drove back in front of the house two or three
3 times. Mr. Harrison then drove out of the neighborhood,
4 was chased by the police, and when he got out in ran, he
5 threw several cell phones, which were recovered by the York
6 County Multi-jurisdictional Task Force. They got a search
7 warrant on those cell phones and recovered some text
8 messages from a prior day between he and Mr. Underwood.
9 The package contained nine hundred and sixty-five grams of
10 fake cocaine, because they had intercepted the package
11 earlier at the UPS center taking the real cocaine out and
12 put fake cocaine in the package, and that's kind of the
13 summary of what he ---

14 Q Okay. Now, as far as your representation goes, how
15 many times before the plea did you meet with him?

16 A Before the plea we had about two or three day -- two
17 days, I believe, -- it was at least a day and a half of
18 pre-trial motions in front of Judge Alford. And so several
19 times before -- because that was the beginning of what we
20 thought was going to be the trial -- several times before
21 then several phone conversations, because the only reason
22 why that got continued -- and going based off of memory; I
23 may be somewhat incorrect -- there was a -- USC's opening
24 football game was that Thursday, so we argued the pre-trial
25 regarding the suppression of the cell phone. The Judge

1 ruled, in my estimation, incorrectly and set us on a path
2 to where we were forced to plea, so we had hours of going
3 back and forth about not only the text message but also
4 where we should go in terms of the trial.

5 Q Okay, and just back up to the pre-trial situation.
6 Did you meet with him and discuss the State's evidence?

7 A Absolutely, and I have a letter in my file where my
8 office notified him that he could come down and look at the
9 discovery. We talked about the evidence in the case, but
10 more importantly we talked about the lack of evidence,
11 because in my estimation in most counties in this State his
12 case would've been thrown out and it should've been thrown
13 out here but for the Judge's ruling, so that's -- I mean we
14 talked about it quite a bit, because I still did not
15 believe up until the Judge's ruling that they had a good
16 case, and I told him that and I talked to the solicitor
17 about that, as well.

18 Q Okay, and so as far as the -- your pre-trial, as
19 preparation did you discuss with him the State's strategy -
20 - I mean your strategy?

21 A We did, um, and we talked about the witness that he
22 mentioned who came in the last minute who we didn't think
23 would testify but he did. We talked about any number of
24 things related to package delivery cases, related to what
25 his defense needed to be and should've been; we talked

1 about standing on the search warrants; we met with his co-
2 defendant and his co-defendant's lawyer, Leah Moody, um, we
3 -- we talked about this case a lot, and, you know, again, I
4 -- well, I'll refrain from giving my opinion on how we
5 ended up here, except to say that we did talk about this
6 case a great deal.

7 Q Okay. And were there any other witnesses or alibis
8 that he presented to you before the trial?

9 A Uh, I don't -- the alibi thing is kind of interesting.
10 He was caught because he was driving back and forth in
11 front of the house. They allege he was the lookout, and
12 they alleged that because he was driving back and forth in
13 front of the house. They had no prior notice that he would
14 be there; they had no pre-conceived notion that this
15 belonged to him. They only came into contact with him
16 because he was driving back and forth in front of the
17 house, which we alleged so what, but when they did try and
18 blue-light him, he didn't stop, so they got him for the
19 failure to stop for blue-light, then he got out of the car
20 and ran, so then they got the cell phones that he tossed,
21 which as I stated before, had text message, not -- none
22 from that day but all from about a month before -- between
23 he and Mr. Underwood which would've seemed to indicate the
24 exact same type of plan or scheme, according to the
25 prosecution, where a package was being delivered and they

1 were watching the house and then seen whether anybody was
2 watching the van and that kind of a deal, so that was the
3 relevance of the text messages.

4 Q Okay, and as far as an alibi about him being in North
5 Carolina earlier that morning, was that relevant to you?

6 A I mean no -- he could've been in Spain, because the
7 fact of the matter is, he was in front of the house while
8 the package was delivered, and I think he's going to the
9 fact that the package should've been delivered earlier that
10 morning, but that doesn't affect the case at all. The fact
11 of the matter is they only knew who he was, because he was
12 in front of the house.

13 Q Okay. And just to touch on issues brought up earlier,
14 would it matter anything about a rental car, where that was
15 rented from? Would that matter in this case?

16 A No. No. I mean, obviously, from their perspective in
17 front of a jury they would love to sew that it was part of
18 subterfuge that he was trying to confuse it, but it didn't
19 matter, he was caught because he kept driving back and
20 forth in front of the house, whether it was in his car, a
21 rental car, my car, it didn't matter; that's how he got
22 caught.

23 Q Okay. So did you have any problems with the search
24 warrants or the arrest warrant or the chain of custody,

1 anything involving, I guess, the evidence and how they come
2 about?

3 A This was an earlier case with cell phones, because it
4 happened in 2012, I believe, but they did, despite what I
5 would've liked for them to have done, they did obtain a
6 search warrant to get into the phone; that's how they got
7 into the phone. And we got copies of all the search
8 warrants. The search warrant -- the first search warrant
9 was for the package; the second one was for the package and
10 the house, and the third one was for the cell phones. A
11 lot of people during that time were, actually, just going
12 into the cell phone seeing the data. They, actually, went
13 and got a cell phone for it, so there was really nothing we
14 could do, and further complicating that, issues arising
15 because is your defense going to be later in the case,
16 these aren't my phones, and then secondarily as it related
17 to the package, well, he doesn't have standing; it was not
18 his house, not his car, and he was not at the house, and so
19 is it that we had -- we -- I say we, me and my client, --
20 had nothing to do with this package in this house and we
21 were just driving by, just doing whatever in the
22 neighborhood, or are we going to assert that we have some
23 constitutional protection in a house, in a car that we
24 don't have anything to do with, so it's -- it's this
25 constant balance, and I know I'm going way too deep into

1 it, but these are the discussions that we had, because
2 these are the issues that were presented. What we knew was
3 that Leah Moody who was the co-defendant's lawyer, that we
4 joined in motions with her because her client was the one
5 in the house; her client was the one with the package, and
6 so the issue was trying to get the information out of the
7 cell phone, which, again, was from a month prior, trying to
8 stop that from coming in, and once Judge Alford, -- and
9 again, in my opinion -- incorrectly ruled that the text
10 messages would come in, we had no choice, because it was
11 going to improperly show a relationship between Mr.
12 Harrison and Mr. Underwood that we would be incapable of
13 fighting. It would show -- it would -- it had text
14 messages -- literally looked like exactly what had gone on
15 that day but they were dated for a month before, and so,
16 you know, all the things that go into is this even your
17 phone, were you even talking to him, was he the recipient
18 with -- of things you don't know, but Judge Alford ruled
19 that they was going to come in, and at that point we had to
20 back up and see what we were going to do.

21 Q Okay, and just to clarify and discuss this ruling, was
22 the ruling on the evidence, I guess, during the pre-trial
23 hearing, was that made on the record?

24 A He called us back into chambers and told us that this
25 is what he was going to do, he said he had thought about it

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1 and this is what he was going to do and that we needed to
2 take steps based on that to figure out what we were going
3 to do next, and what that meant to me was -- and if I
4 remember correctly -- Mr. Harrison was facing a mandatory
5 minimum 25 years, and when you've got that, you're gambling
6 the entire house, and in my estimation he simply could not
7 afford to gamble the entire house when those text messages
8 were going to come in and so after that, Judge Alford gave
9 us time to talk and the -- prior to the plea, myself, Mr.
10 Harrison, his father, we were in one of these rooms for
11 about three hours. I mean this was a long drawn-out
12 process trying to figure out exactly what our next step was
13 going to me. I remember times when we talked to -- I
14 talked to him; I talked to his father; we talked to co-
15 counsel and co-defendant and just tried to figure out what
16 the next best step was. The York County Solicitor's
17 Office, typically, does not -- all deals were off when you
18 go to trial, and we were successful in getting him to -- or
19 getting Matt and Kevin Brackett -- because Kevin Brackett
20 came in -- to add on six months as kind of a penalty for
21 him not initially accepting the deal, and so that's how he
22 got the 12 and 1/2 years.

23 Q Okay, and this three hours that you're discussing with
24 -- discussing this with him, did he ever indicate he didn't
25 understand what was going on?

1 A I mean he did indicate that he didn't want to plead,
2 and he absolutely did not want to plead, and again,
3 rightfully so prior to that point, but after that point it
4 was you kind of don't have a choice. You know, the deck is
5 stacked against you, and at this point you don't have a
6 choice but to plead guilty, because while you may be able
7 to appeal the Judge's ruling and appeal everything else,
8 you'll be doing 25 years, and that's too much to gamble
9 with. The drug laws are stupid here, and that's kind of
10 how we ended up taking it.

11 Q Okay. And did you discuss the difference between a no
12 contest guilty plea, all that?

13 A We did, and that was his decision to do a no contest
14 plea, because again, the evidence was only from a month
15 prior which linked he and Mr. Underwood together. Had that
16 not come in, there would've been absolutely nothing that
17 linked he and Mr. Underwood together, except the fact that
18 he was driving in a neighborhood where Mr. Underwood was
19 present.

20 Q Okay. So during the plea hearing did you have any
21 reason to believe that he didn't know what was going on?

22 A No, he's a -- he's a very small, intelligent guy, like
23 him a lot, and I just think we got put in a bad position,
24 but I -- no indication that he didn't know what was going
25 on.

1 Q Okay, and let's talk about the plea waiver form. When
2 was that filled out?

3 A That was filled out right before the plea.

4 Q Okay. With a -- and this would be after your long
5 discussion with him?

6 A Right. Right.

7 Q Were you there when he signed everything?

8 A I was.

9 Q And as far as the amount of time goes, 12 and 1/2, he
10 completely understood what that meant?

11 A Well, -- all right, go back to that. All right, so
12 when it came time for -- when he decided that he would go
13 ahead and plead, or like right before then, around this
14 time when we were discussing what we were going to do, I
15 had a conversation with Matt, the solicitor, and with
16 Marvin Brown about him cooperating, whether they would
17 allow him to cooperate, and if so, would they consider
18 giving him a reduction. Matt talked to Kevin Brackett who
19 came in and said they'd be willing to listen; Marvin Brown
20 said they'd be willing to listen, thought he had a lot that
21 he could give him. (sic) I'm not sure if the FBI was there
22 that day, but they might've been because they -- it was
23 their dog. They came up and brought the dog to run through
24 the distribution center, so the conversation was about him
25 cooperating further, and if he agreed to do so, that

1 obviously, no guarantees, but they would look out for him
2 on backend if he cooperated and gave them information that
3 they could use, stated language that you have with any
4 defendant who is possibly able to give information. So
5 after his plea, I had -- I talked to Marvin Brown; we
6 scheduled for them to go pick him up, and I wasn't sure of
7 the ruse that the department of corrections was given or
8 what they used to get him back to Court without anybody
9 knowing that he was coming back to give information, so
10 they told him it was for a PCR -- I didn't have anything to
11 do with that -- but it was simply so that anybody around
12 him would not feel like he was coming back to give
13 information. He came to York; he didn't cooperate and so I
14 called him after that. He said that he didn't want to talk
15 to Marvin Brown. So I set it up so that he could be
16 transported to Richland County. He came to Richland
17 County, and I set it up so that only the FBI would come in,
18 and again, he didn't really cooperate with him and told me
19 that at that point he just didn't think that he was going
20 to do it, a little bit after that, so this is all going on
21 after the plea to try and get him down to what sentence he
22 would've wanted, whether it was six years -- whether it was
23 even less is the potential if he does what he's supposed to
24 do, but he chose not to do it, so that's ---

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1 Q Okay, so any of this cooperation discussions, were
2 those done, you know, as part of the negotiation process?

3 A Those were done with him prior to him pleading guilty
4 with the understanding that if he did what he's supposed to
5 do that he might be able to get his time reduced. That is
6 the only reason why someone would agree to come back and
7 talk to Marvin Brown or agree to come and talk to the FBI
8 if they felt like they were getting something out of it.

9 Q That -- was that a promise that you made to him ---

10 A That if he ---

11 Q --- as far as pleading guilty or pleading ---

12 A That if he cooperated he could get his sentence
13 reduced? Absolutely.

14 Q Was it a promise you made to -- or a guarantee that
15 would happen ---

16 A I can't guarantee, because I don't know what he knows,
17 so it's up to him as to whether he's going to provide
18 information to them that they're able to use. I can tell
19 you that they really wanted to talk to him. Very rarely do
20 they give somebody two opportunities to take a bite of the
21 apple. They gave him two, sent different agents down and
22 they were quite upset when he did not follow-through with
23 what he said he was going to do.

24 Q Okay.

1 A And he knew at the time when he pled that if he did
2 not want to -- he didn't have to -- he could do his 12 and
3 1/2 years and go on about his business, so he knew -- there
4 was -- the only penalty for not cooperating was finishing
5 out his sentence. The carrot in cooperating would be a
6 potential reduction in the sentence.

7 Q Okay. All right, and just touching on a few
8 miscellaneous things, did you ever tell him how much time
9 he was facing originally?

10 A Absolutely, and then -- his father's right. What we
11 kept talking about was he was facing a mandatory minimum
12 25, that he could not go below that, and so as to the 25 to
13 30, it almost gets to be negligible when you're facing a
14 mandatory minimum 25 year. That was our discussion. It
15 was, I believe covered in the plea colloquy, so the issue
16 becomes, yes, he was facing a ridiculous mandatory minimum
17 25 year sentence. If he was not facing that, if he was
18 facing any average time, a normal time, we would not have
19 pled, we probably would've taken our chances at trial, but
20 25 was too much for me.

21 Q Okay, so given Judge Alford's indication on his
22 ruling, do you think that pleading was his best option?

23 A I think it was his only option, and again, I wish --
24 and we've -- he and I had had this discussion -- I wished
25 that there was more that could've been done. I believe

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1 Judge Alford's ruling was incorrect. I believe that there
2 are a whole bunch of things that are different and
3 difficult in this county as it relates to his case, but
4 none of them thinks (sic) kind of the situation in the box
5 that we ended up in.

6 Q Okay. And we heard testimony about wallets, watches,
7 bracelets, can you discuss how these affected your
8 representation?

9 A Absolutely, he -- according to my records I believe he
10 was still -- he still owed my six thousand dollars when we
11 were doing the plea; he told me that he would get me paid,
12 and he gave me his watch and a bracelet and a wallet, and
13 he had a Range Rover, which I believe he was under water
14 in, so I got that from his girlfriend's house. I had a
15 wholesale car dealer's license at the time; we were going
16 to try and sell it, but he owed too much on the car to get
17 him any money for it, so she ended up coming to get it back
18 from us and taking it back, so ---

19 Q Okay. But did any of these -- any of these objects
20 affect your representation of him to plead?

21 A No. No.

22 Q Okay, let's discuss the appeal. Did the -- did he
23 ever indicate to you that he wanted to appeal this?

24 A He went back and forth on whether he wanted to appeal,
25 and we talk (sic) about and talk about what the advantages

1 and disadvantages were, the problem being that he would be
2 appealing a no contest guilty plea, which his likelihood of
3 success was, in my estimation, less than zero, and that his
4 best effort, which should be put forth toward cooperating
5 with Marvin Brown or the FBI, and that would be the way to
6 get his sentence reduced. That's why the -- the two visits
7 were made, one to York, one to Richland County, to try and
8 affect that change. I don't give out information or detail
9 information, except sitting her, to anyone about my
10 client's cooperation or potential cooperation, because it's
11 dangerous, but I don't see anybody except the young lady
12 with the blonde hair, anybody that's not a Court officer in
13 here, but normally that is not discussed with family,
14 because I don't know who it is potentially he's going to
15 tell on, and maybe it's his girlfriend, that she's
16 receiving drugs -- she's not -- but obviously, that's not
17 for me to tell her that he's cooperating, so, no, we are
18 good on him not appealing, but that's why the date was set
19 up after that, because the last indication that I got from
20 him is that he did not want to appeal. Now, that being
21 said, because he was in the process of trying to cooperate,
22 or not trying to cooperate, but still doing that, whether
23 there's some confusion about that, if it -- if there is, I
24 apologize -- I'm not going to sit here and tell them that
25 he knows what I know. I can tell him that we talked about

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1 it; I thought we came to a conclusion that he was not going
2 to appeal, and that's why we kept going forward with
3 cooperating.

4 Q And I believe you said earlier, had you filed an
5 appeal, do you believe there were any meritorious issues to
6 raise?

7 A No, I don't. I think that Judge Alford did a great
8 job of -- when I say a great job, he covered his basis in
9 terms of making sure that an appeal would not be
10 successful, even though I still believe that his ruling was
11 incorrect. He also stated on the record that he would've
12 ruled that way even though he didn't technically take the
13 bench to do that, he said on the record that he was
14 inclined to let the text messages come in.

15 Q Now, is there anything else you think you could've
16 done or should've done for Mr. Harrison?

17 A You know, if the trial had started, then maybe we'd
18 have more issues to appeal later on. If there was such
19 thing as an interlocutory appeal for a criminal defendant,
20 then yes, but given where we were, I just -- I don't think
21 that there's anything else that I could've done.

22 MR. HUNTER - Okay. That's all I have.

23 THE COURT - Yes, ma'am.

24 MS. JOYNER - May it please the Court.

25 THE COURT - Yes.

1 CROSS EXAMINATION

2 BY MS. JOYNER -

3 Q Mr. Rutherford, ---

4 A Yes, ma'am.

5 Q --- you indicated that you believed that the Judge was
6 wrong with his ruling concerning the pre-trial issues.

7 Correct?

8 A That's correct.

9 Q So if that -- your motion had not been withdrawn,
10 wouldn't there be an appealable issue in regards to the
11 ruling?

12 A Say that again.

13 Q If you hadn't withdrawn the motion to suppress and
14 entered the plea, wouldn't there have been appealable
15 issues as relate to ---

16 A You mean if he were going -- if he'd gone to trial and
17 been convicted? Yeah.

18 Q Okay.

19 A I mean that's the only way for him to get that appeal.
20 He would've had to have gone to trial facing a mandatory
21 minimum 25, gotten 25 years and then he would've been able
22 to appeal.

23 Q And at the time you withdrew the motion to suppress,
24 the Judge had not issued the formal ruling. Correct?

TODD RUTHERFORD - CROSS BY MS. JOYNER

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1 A When you say issued a formal ruling, you mean did he
2 come out on the bench and do it or ---

3 Q Yeah, and ---

4 A No, he told us in chambers what he was going to do,
5 and I had every reason to believe that he was going to do
6 what he said he was going to do.

7 Q Do you believe Mr. Harrison was indicating that he
8 wanted -- because of your discussions with him and your
9 belief that the Judge's ruling was wrong, Mr. Harrison has
10 indicated that he wanted to move forward but it was the six
11 years that convinced him not to -- when you were having
12 that discussion with him, isn't it possible that he
13 interpreted what you were saying that the six years was
14 iron clad?

15 A No, he would've had to have known, because he's --
16 he's no dummy -- he's a very smart guy -- he would've had
17 to have known that it required his participation, that it
18 required his cooperation and that if he -- we had this
19 discussion. If he's not willing to do, it's fine, he can
20 do the 12 and 1/2. If he is, then he can earn his way down
21 to getting a lessened sentence, period.

22 Q In fact, did he provide three hours of information
23 during the meetings?

24 A During what meetings?

25 Q With the federal agent and with York County.

1 A The federal agent -- if it -- if that meeting lasted
2 for three hours and you're counting transport time -- it
3 certainly didn't last three hours. He was very -- the
4 federal agent was very upset that he got nothing from the
5 discussion and ---

6 Q Were you in the room?

7 A I was there. I don't know if I was in the room, but I
8 was there.

9 Q So you don't know what the discussion entailed?

10 A No, I -- I do, and it was -- there was nothing there,
11 and that's part of the problem. The agent was interested
12 in the distribution of cocaine in the York County area,
13 and, again, I had to call on friends of mine in Richland
14 County to have him transported -- because he's not a
15 Richland County defendant -- to the Richland County
16 courthouse, get the FBI agent to drive down to the
17 courthouse, had to get an investigator in Richland County
18 Solicitor's office to bring him up, put him in a -- I can't
19 -- I think they went in a jury room -- in the back of the
20 courthouse to sit down and have this conversation, and
21 nothing came of it.

22 Q And don't you believe being that this discussion was
23 had on the day of his plea that he could've been induced by
24 the promise of six years to enter this plea?

1 A I think the inducement is supposed to be that you will
2 cooperate with law enforcement. It is not to plead guilty.
3 Someone pleads guilty because they believe that they will
4 get a harsher sentence if they go to trial. He didn't
5 simply plead guilty to get six years. He pled guilty
6 because that was the box that we were put in. Whether he
7 believed that he could've gotten a better sentence had he
8 cooperated, he would be correct, but he didn't cooperate.
9 That's why he didn't get a better sentence.

10 Q In the interval between your being retained on this
11 case and the date of trial, how many times did you state
12 you met with Mr. Harrison?

13 A I have no clue, no clue. I can tell you that most of
14 our discussions were probably on the phone, because prior
15 to the Judge admitting the text messages, they did not have
16 a case. This case sucks. This case would've been
17 dismissed in any other county in this state. It sucks.

18 Q So you're saying prior to admission of those text
19 messages there weren't any evidence. Did you do a
20 preliminary hearing?

21 A I believe I did, but I can tell you also -- glad you
22 brought that up -- a preliminary hearing in York County
23 means absolutely nothing. In Richland County, we call it
24 direct presentment; here, they call it direct indictment.
25 They simply would've directly indicted him without the

1 benefit -- I mean after the case was dismissed. A
2 preliminary hearing means absolute nothing.

3 Q But you -- and maybe that would have happened but in
4 this case did it happen? Did ---

5 A To be honest with you, I don't know. I mean I'm sure
6 there's a record somewhere.

7 Q You don't remember if you did a prelim?

8 A I have no clue.

9 Q You don't remember if you did a prelim on the case?

10 A I have no clue.

11 Q Do you have your file with you?

12 A I do. It wouldn't indicate it.

13 Q Your file wouldn't -- you don't take notes of ---

14 A Preliminary hearings in York County are absolutely
15 useless, absolutely ---

16 Q That's not the question. I'm asking you ---

17 A I've answered it; I don't remember. You asked it
18 three times and I still don't remember.

19 Q No, I'm asking you ---

20 THE COURT - I'll note for the record that the
21 applicant was subsequently indicated, so I'm not sure if a
22 preliminary hearing or lack thereof is particularly
23 relevant.

24 MS. JOYNER - Okay.

1 Q Do you think you could have learned information that
2 could've been helpful to this case had you completed ---

3 A No, they gave us everything. They gave us a multitude
4 of information, and again I don't -- the solicitor believes
5 that he and I did the prelim. He believes -- this is the
6 first time I ever met him. I don't remember that, so I'm
7 not testifying to that, but I will testify repeatedly, it
8 makes no difference, because in order to take him to trial,
9 he has to be indicted, whether it is directly presented to
10 the grand jury or whether he is indicted because his case
11 is true billed -- I mean because his case is passed up by
12 the Judge at a prelim -- either way, he loses nothing by
13 not going to a prelim; there was no more information to
14 gain. We got it all, because we actually started the
15 trial. Pre-trial happened because we started the trial.

16 Q I'm sorry; say that again.

17 A The pre-trial hearing started because we started the
18 trial. You don't get a motion to suppress, which we did on
19 the phones, on the text messages, because we started a
20 trial. This was not him showing up one day to plead and
21 potentially being blindsided because he doesn't know what's
22 going on; we started a trial. And the day -- the amount of
23 time between us starting this trial and him pleading guilty
24 was four or five days, so at -- at any point ---

25 Q So you had four or five days of pre-trial hearing?

1 A No, no, no, because it was interrupted by -- as I
2 recall -- the USC first football game, but even prior to
3 that -- I mean the discussions that went on with my client
4 and myself and with Ms. Moody and with Mr. Underwood were
5 extensive about this case, about their information, about
6 Marvin Brown, about the drugs, about how to handle package
7 deliveries. We heard from the dog, (sic) the guy that ran
8 the dog, from Mr. Hemphill who came and snitched on Mr.
9 Harrison. I mean this was not something that we entered
10 into willy-nilly.

11 Q Again, but your testimony is you don't believe that
12 your assuring -- assurances to him about a six year
13 sentence were assurances that his sentence was going to be
14 reduced.

15 A His sentence would've been reduced if he cooperated;
16 he did not. So the inducement is for him to cooperate just
17 like it is on every single criminal defendant who decides
18 that they want to cooperate. He was told by myself, if you
19 do not cooperate, you will simply do the 12 and 1/2 years.
20 If you do, the potential is that you can get your sentence
21 reduced.

22 Q And all of the items of property that were discussed,
23 the vehicle that you were going to sell, the diamond watch,
24 the Gucci wallet and the diamond bracelet and the Gucci
25 watch, all of those items -- none of those were part of the

1 arrangement concerning the reduction to a six year
2 sentence?

3 A No. In fact, I don't want any of that stuff. It is
4 still sitting in the same place it was on the very first
5 day, except for the Range Rover, because we couldn't sell
6 it, with the exception of the fact that, as I stated, he
7 still owed me six thousand dollars. I did not -- we did
8 not talk about fee prior to going to trial, because I don't
9 want someone to think that I'm not going to do my best
10 because they owe me money, so after the plea that's when we
11 discussed, you still owe me money. He said, I'm going to
12 continue to pay you. Okay. There you go.

13 Q Is this a receipt from your office?

14 A Looks like one.

15 Q What does it indicate his balance was?

16 A It indicates that his balance was three thousand
17 dollars, and that's August 27th, 2014.

18 Q 2014 it was three thousand.

19 A Right.

20 Q So he didn't ---

21 MS. JOYNER - Your Honor, I move to enter this
22 receipt into evidence.

23 (WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL
24 WHICH WAS NOT REPORTED.)

25 Q Is that signature ---

1 A It's signed by Tantiana Gonzalez (phonetic) and it
2 says -- and it resembles her signature -- it says legal
3 fee, Duane Harrison, two thousand dollars, and it's August
4 27th, 2014.

5 Q And what is the balance?

6 A It says payment of two thousand, balance due is three
7 thousand.

8 Q Thank you.

9 MS. JOYNER - Your Honor, I move to enter ---

10 MR. HUNTER - No objection.

11 THE COURT - All right, it's admitted as

12 Applicant's Exhibit Number 5.

13 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
14 APPLICANT'S EXHIBIT NUMBER 5.)

15 Q So he did not owe you six thousand dollars?

16 A I don't know that I said my records as I'm looking at
17 my file. I don't know what he owed. I know that he still
18 owed me money, and he knew that he still owed my money,
19 which is why he agreed to give me that stuff on the day
20 that he pled.

21 Q As it relate to the appeal, isn't it true that there
22 was a text message on the day before -- two days before and
23 the day before the expiration of time indicating that Mr.
24 Harrison said he wanted to file the appeal?

1 A That's why I said that if he was under an
2 understanding that him communicating with his girlfriend
3 was him communicating with me, then I can understand how he
4 was confused, but because we had a discussion at 1:00
5 o'clock that day as was indicated to his girlfriend about
6 his continued -- and I didn't talk about his continued
7 cooperating with her -- but he knew that he was continuing
8 to cooperate, so we scheduled that next hearing, which is
9 why we did not appeal. Again, in discussions with him,
10 there is nothing to appeal. It was a no contest guilty
11 plea with Judge Alford where he went over every single
12 thing. There's nothing there.

13 Q You said the Judge went over everything. So there was
14 a ruling in regards to the entry of this evidence, and you
15 don't believe that if a client tells you they want to file
16 an appeal, that you have an obligation to do so?

17 A The client didn't tell me that; his girlfriend told me
18 that. He and I talked about his continued cooperation.

19 Q Isn't it true that he indicated to you he wanted to
20 appeal, as well?

21 A No, our final discussion was about him continuing to
22 cooperate, because that's what was in his best interest. I
23 would've told him then the same thing I'll tell you now,
24 there was no need for him to waste his money hiring a
25 lawyer to appeal when a no contest guilty plea where the

1 Judge has gone over everything. The last time I saw that
2 be successful was either a lawyer did not wait on the drug
3 analysis and it came back as a rock rather than crack, or
4 when Judge Epps simply used to do guilty pleas and ask
5 somebody were they guilty and then sentence them. After
6 that point, Judges go over enough with a client, especially
7 with a no contest guilty plea -- and Judge Alford did -- he
8 did not have to state for the record what he was going to
9 rule, but he did it anyway, so it's in the record; there's
10 nothing to appeal. There's no justiciable issue in an
11 appeal, and so I advised him, don't waste your money when
12 we talked about this before. His best effort was for him
13 to cooperate. He chose not to do that.

14 Q Did you bring up the issue of him cooperating and
15 getting his sentence reduced to six years?

16 A Yes, we talked about him cooperating multiple times.
17 That is why he came over to talk to Marvin Brown and the
18 FBI and why he came over again to talk to the FBI.

19 Q No, but that was brought up when you were in this
20 three-hour discussion about whether to plead guilty.

21 A Correct.

22 Q And that was the primary basis for him deciding to
23 plead guilty.

24 A No. The primary basis for him pleading guilty was
25 because they were going to find him guilty, and he needed

TODD RUTHERFORD - CROSS BY MS. JOYNER

101

1 to get the best sentence that he could and that was 12 and
2 1/2 years. There was no inducement for him to plead guilty
3 because he wasn't guilty, but he could cooperate and get
4 six years. The inducement was that he was, in fact, going
5 to be found guilty in our best estimation, and that the way
6 for him to get a good sentence was to cooperate, however,
7 if he did not, he would simply do the 12 and 1/2 years,
8 period.

9 MS. JOYNER - Beg the Court's indulgence.

10 THE COURT - Certainly.

11 Q Were you at that first meeting with law enforcement
12 when he was brought over at your request?

13 A No.

14 Q So you don't know what he said.

15 A I don't know what he said. I was only told by Marvin
16 Brown ---

17 Q But you let him ---

18 A But Marvin Brown said he didn't cooperate, and he
19 confirmed that when I talked to him and said he didn't want
20 to talk to Marvin Brown, so that's why the second meeting
21 was only with the FBI without Marvin Brown being present.

22 MS. JOYNER - Your Honor, that's all I have.

23 THE COURT - All right. Anything else?

24 MR. HUNTER - Nothing else for this witness.

25 THE COURT - Sir, you can step down.

1 MR. RUTHERFORD - Thank you, Your Honor. Can I be
2 excused, Judge, to go back to Columbia? Or does anybody
3 still need me?

4 THE COURT - Anybody still need Mr. Rutherford?

5 MR. HUNTER - No, Your Honor. The State has no
6 further witnesses.

7 MS. JOYNER - No objection.

8 THE COURT - All right. Then thank you.

9 MR. RUTHERFORD - Thank you, Your Honor.

10 THE COURT - Thank you for being here.

11 Anything else on the Applicant's behalf?

12 MS. JOYNER - I just have one thing. My client
13 wants to reiterate or make sure he testified to; I'd like
14 to call him back.

15 THE COURT - Certainly. Anything objection to the
16 applicant being re-called?

17 MR. HUNTER - No objection, Your Honor.

18 THE COURT - All right, then.

19 DUANE HARRISON, AFTER BEING PREVIOUSLY SWORN,

20 TESTIFIED AS FOLLOWS -

21 DIRECT EXAMINATION

22 BY MS. JOYNER -

23 Q Did you specifically discuss with Todd an appeal?

24 A Yes, I ---

25 Q Did you ask him to file an appeal?

1 A I asked to file appeal.

2 Q Did you waiver on that and say you didn't want to?

3 A No, not at no time, and that's why -- I couldn't get
4 back in touch with Mr. Rutherford, because I'm at Kirkland
5 R&E, we not allowed to use the phones but on Tuesdays and
6 Thursday, so I -- you know, when I couldn't get in touch
7 with him, I had to get in touch with my girlfriend at the
8 time for her to get in touch with him, because it was no
9 way that I can keep communicating with him to keep telling
10 him, hey, I need you to file this appeal.

11 Q Okay. Thank you.

12 MS. JOYNER - That's all I have.

13 THE COURT - Anything else for this witness?

14 MR. HUNTER - No, Your Honor.

15 THE COURT - Sir, you can step down.

16 Anything you'd like to say in summation in this
17 matter? And it's not necessary if you don't want to. It's
18 fine. I just want to make sure I give you every
19 opportunity.

20 MS. JOYNER - Your Honor, I think the record
21 stands for itself.

22 MR. HUNTER - The State would rest on the
23 testimony, as well.

24 THE COURT - All right. Well, I've had an
25 opportunity to review the transcript in this case. I've

1 read Mr. Harrison's application. I've also read the return
2 in this case, and certainly heard the testimony throughout
3 today, this afternoon, and I think -- and I commend both
4 sides for being very thorough in this matter. I would just
5 go through a few points that were made throughout. As I
6 did note for the record earlier, the preliminary hearing,
7 whether that took place or not, I don't think was
8 established, but I will say he was subsequently indicted.
9 The fruitfulness of a preliminary probably or was
10 diminished as a result of that. Furthermore, the
11 applicant's attorney testified that -- I'm still reading my
12 notes here -- that he believes all discoverable evidence
13 was provided, so there was nothing at the preliminary
14 hearing that would have benefited to get at that time.
15 There was an alibi witness that the applicant identified,
16 his girlfriend who testified here today, and, you know, I
17 find her very credible, in fact, that he was at her office;
18 that Mr. Rutherford testified that he met a legal
19 determination that in light of the allegations in this
20 case, that alibi witness would not be useful, and hearing
21 in his testimony today, the Court finds that he did not
22 fall below the objective standard of reasonableness of
23 legal counsel in that matter. So far as not having gotten
24 a ruling by the Judge, I listened carefully to that. I
25 also read the transcript, and the Judge very detailed in

1 his ruling during the plea, and Mr. Rutherford testified
2 here today that that ruling was already conveyed to him in
3 chambers, which is -- I would say a somewhat normal
4 practice when someone's facing a good bit of time and a
5 possibility of a plea. That is normal practice I would say
6 by a Judge. It's, I feel in this Court's opinion, a
7 courteous practice by the Court to allow both the attorneys
8 to know what that ruling would be prior to going to trial
9 to give everyone the benefit of all the information, and so
10 the Judge was very clear in what his ruling was going to
11 be, and -- and the Court agrees with Mr. Rutherford that it
12 sounds as though those text messages would have been fairly
13 damning to the case and would've been a major problem at
14 trial. It sounds as though any other issues, things
15 related to the search warrant were weighed, and that the
16 attorney determined that those were without merit, although
17 there was a day and a half of testimony, a day and a half
18 of pre-trial hearing in this matter, so pretty -- pretty
19 extensive pre-trial hearings. I have no way to know of any
20 prior involvement that you had in the legal system, I don't
21 know, but a day and a half of pre-trial hearings is pretty
22 thorough, I would say. You know, in terms of most trials
23 they are generally not that lengthy at pre-trial hearings.
24 I will note for the record that in weighing the decision to
25 counsel you as to a guilty plea, you did get a substantial

1 reduction in the sentence. The minimum sentence was 25
2 years on what you were initially charged with, and knowing
3 what you were facing with regard to the text messages being
4 admitted at trial, it does appear that there was
5 substantial benefit gained by entering the plea in terms of
6 that the minimum you couldn't gotten was 25 up to 30 years.
7 I also will note that the applicant clearly stated on the
8 record, and it was part of the transcript, that he was not
9 promised anything in entering this plea. I'm jumping
10 around a little bit, because I'm following my notes that I
11 was taking throughout the testimony. Furthermore, there's
12 been a lot of testimony and discussion, and to me in many
13 ways the crux of the case, was with regard to the six
14 years, talking about possibly getting six years. Clearly,
15 that was something that was -- that was premised upon -- it
16 was clearly premised upon cooperation. Here today Mr.
17 Rutherford did follow-through, set up those meetings, and
18 those meetings were evidently not fruitful and there was --
19 and therefore, the State was not willing to give him the
20 benefit, but that Mr. Rutherford did do as he had promised
21 to do. So far as the -- the wallet and the watch and those
22 sorts of things, Mr. Rutherford testified that that was in
23 order to pay a previous legal bill and not for any new --
24 and not for any new work on the case. And I would say that
25 Mr. Rutherford's conversation here -- or his testimony here

1 today of his conversation with his client discussing his
2 right to appeal, the applicant had knew he had a right to
3 appeal, he was clearly apprised of that, knew he had a
4 right to appeal, and Mr. Rutherford said that strategically
5 that he and his client were moving towards getting the
6 reduction in sentence due to cooperation and -- cooperation
7 with the State. The Court will note -- the Court also
8 notes that after having read the transcript -- and the
9 Judge is very thorough questioning of you -- it's clear --
10 it appears to this Court that an appeal of that plea would
11 not have led to any -- would not have led to any fruitful
12 results, therefore, after hearing -- after reviewing all
13 these things and after hearing all the testimony and
14 evidence, I find that Mr. Rutherford's representation
15 didn't fall below the objective standard of reasonable
16 legal counsel to you, and furthermore, even if there were
17 some deficiency, I also find that it was not established
18 that the result of the proceeding would have been any
19 different. In fact, the result it appears would have been
20 far worse had you not taken Mr. Rutherford's counsel in
21 this matter. I'll ask that the State prepare a proposed
22 Order; of course, send it to the applicant's attorney at
23 the same time you send it to me, and I'll certainly hold
24 off signing it until I can get any input to make sure that
25 it comports with my ruling here today.

1 Sir, I know you're not happy with the outcome,
2 but I do wish you the best of luck. Thank you.

3 MS. JOYNER - Thank you, Your Honor.

4 (END OF TRANSCRIPT)

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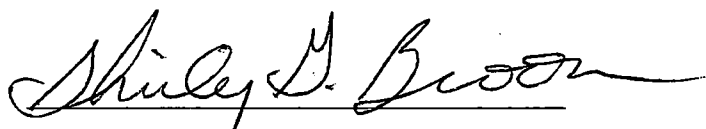
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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 108 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Duane Harrison vs. State of South Carolina, as taken by me in The Court of Common Pleas for the Sixteenth Judicial Circuit on August 1, 2016, and provided by me this the 27th day of March, 2017.

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



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

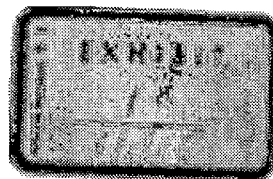
INMATE SEARCH DETAIL REPORT

HARRISON, DUANE ARNESS (00241473)

MOVEMENT			
MOVEMENT DATE	TO LOCATION	STATUS	REASON
10/12/2016	KIRKLAND	INCARCERATED	MEDICAL
09/02/2015	MCCORMICK	INCARCERATED	ADMINISTRATIVE
09/01/2015	KIRKLAND	INCARCERATED	MEDICAL
07/20/2015	MCCORMICK	INCARCERATED	ADMINISTRATIVE
07/20/2015	KIRKLAND	INCARCERATED	MEDICAL
07/08/2015	MCCORMICK	INCARCERATED	ADMINISTRATIVE
07/06/2015	KIRKLAND	INCARCERATED	MEDICAL
06/08/2015	MCCORMICK	INCARCERATED	ADMINISTRATIVE
06/08/2015	KIRKLAND	INCARCERATED	MEDICAL
03/03/2015	MCCORMICK	INCARCERATED	ADMINISTRATIVE
11/13/2014	KIRKLAND	INCARCERATED	RETURN FROM COURT
* 11/13/2014	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
10/24/2014	KIRKLAND	INCARCERATED	RETURN FROM COURT
* 10/23/2014	YORK CO	AUTH ABSENCE (AWL)	TO COURT
09/04/2014	KIRKLAND	INCARCERATED	NEW ADMISSION

EARNED WORK CREDITS				
JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LEVEL
GENERAL WORKER	03/05/2015	08/23/2015	PLACED IN ST/SP CUSTODY	2F5

EARNED EDUCATION CREDITS				
NO EARNED EDUCATION CREDITS DURING CURRENT INCARCERATION				



INMATE SEARCH DETAIL REPORT

HARRISON, DUANE ARNESS (00241473)



INMATE DESCRIPTION

SEX: MALE
 RACE: BLACK
 HEIGHT: 6' 04"
 WEIGHT: 238 lbs.
 AGE: 42
 CITIZENSHIP: CITIZEN - NATIVE BORN
 BUILD: LARGE
 COMPLEXION: LIGHT BROWN
 HAIR COLOR: BLACK
 EYE COLOR: BROWN
 PICTURE DATE: 09/04/2014

INMATE SENTENCE AND LOCATION

SDOC ID: 00241473
 SID: SC00943081
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE
 ADMISSION DATE: 09/04/2014
 LOCATION: KIRKLAND
 SECURITY / CUSTODY: 2 / DISCIPLINARY DETENTION
 EWC LEVEL:
 EEC LEVEL:
 PROJECTED RELEASE DATE: 10/26/2025
 PROJECTED PAROLE ELIGIBILITY: NOT ELIGIBLE
 SUP. FURLOUGH ELIGIBILITY: NOT ELIGIBLE

CURRENT OFFENSES

OFFENSE	SENTENCE TYPE	YRS	MOB	DYS	COUNTY	START DATE	V/NV	CAT	INDICT	STATUS
TRAFFICKING IN COCAINE	ADULT-STRAIGHT SENTENCE	12	6	0	YORK	09/01/2014	V	4	13GS4602041	ACTIVE

ESCAPES

ESCAPE DATE	ESCAPE TYPE	ESCAPE SEVERITY
06/15/2016	ESCAPE	CLASS I

DISCIPLINARIES

SANCTIONS NOT AVAILABLE IN THE AUTOMATED SYSTEM PRIOR TO JANUARY 2008

DATE	DESCRIPTION
06/15/2016	DAMAGE, DESTROY, PROP. VALUE AT \$100./MORE LOSS OF CANTEEN PRIVILEGES FOR 135 DAYS DISC. DETENTION FOR 15 DAYS LOSS OF PROPERTY PRIVILEGES FOR 135 DAYS LOSS OF TELEPHONE PRIVILEGES FOR 135 DAYS LOSS OF VISITATION PRIVILEGES FOR 135 DAYS
06/15/2016	CLASS I ESCAPE LOSS OF CANTEEN PRIVILEGES FOR 240 DAYS DISC. DETENTION FOR 60 DAYS LOSS OF PROPERTY PRIVILEGES FOR 240 DAYS LOSS OF TELEPHONE PRIVILEGES FOR 240 DAYS LOSS OF VISITATION PRIVILEGES FOR 240 DAYS
09/19/2016	SMUGGLING/CONSPIRACY SMUGGLE CONTRABAND LOSS OF CANTEEN PRIVILEGES FOR 65 DAYS DISC. DETENTION FOR 20 DAYS LOSS OF PROPERTY PRIVILEGES FOR 65 DAYS LOSS OF TELEPHONE PRIVILEGES FOR 65 DAYS LOSS OF VISITATION PRIVILEGES FOR 65 DAYS

MOVEMENT

MOVEMENT DATE	TO LOCATION	STATUS	REASON
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04/25/2016	MCCORMICK	INCARCERATED	ADMINISTRATIVE
04/25/2016	KIRKLAND	INCARCERATED	MEDICAL
03/03/2016	MCCORMICK	INCARCERATED	ADMINISTRATIVE
03/03/2016	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
10/12/2015	MCCORMICK	INCARCERATED	ADMINISTRATIVE

08/27/2014
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SUMMARY HISTORY DISPLAY

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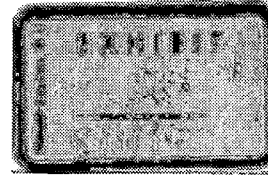
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TOTAL R/O'S 14

TOTAL SERV. DAYS 20

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				T	212	3	I 12ROZ	ENGINE
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				T	212	5	C 86ROZL1	LIGHTS
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				T	172	3	I 86ROZWIRE	WIRING
				T	172	4	W 04ROZ	
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				T	172	4	C 86ROZ11	INSTRUMENTS
				T	172	5	C 70ROZ	BRAKES
				T	172	6	C 02ROZR	RENTAL CAR
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				T	74	3	C 12ROZ	ENGINE
10	99186	05/09/2012	59344	A			560	
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				T	172	4	C 70ROZ	BRAKES
				T	67	5	I 11ROZRTIRE	RED TIRE
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08/27/2014

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PAGE 2.

CUSTOMER NAME DUANE HARRISON

SERIAL NO. SALMF15418A268183

TOTAL R/O'S 14

TOTAL SERV. DAYS 20

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				T	67	2	C 86ROZINFLOCK	INFRARED LOCKING
				T	67	3	C 04ROZRR	NEW RR/LR3 L/O/F
14	97103	12/31/2011	49300	A	550			
				T	67	1	C 86ROZINFLOCK	INFRARED LOCKING

GUCCI

+1.877.482.2430
assistance@us.onlineshopping.gucci.com

Gucci Signature money clip wallet

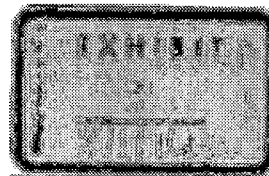


\$ 370

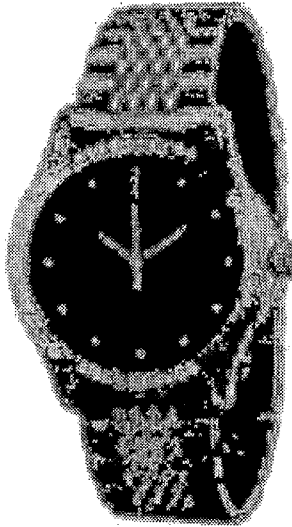
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Product Description

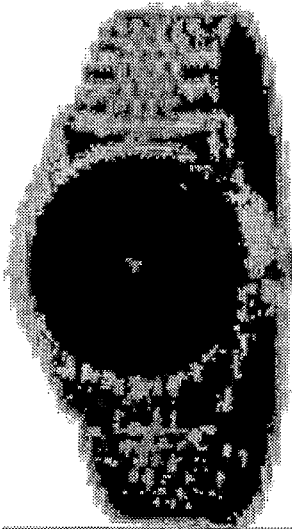
Eight card slots and one flat open pocket • Central metal clip • Small • Made in Italy



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GUCCI

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Item No. YA126408

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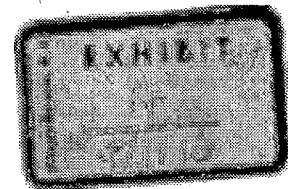


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More choices:





RECEIPT		DATE <u>August 27, 2014</u>	No. <u>508117</u>
RECEIVED FROM <u>Diana Harrison</u>		<u>\$2,000.00</u>	
		DOLLARS	
☐ FOR RENT <u>legul/acc</u> ☐ FOR			
ACCOUNT		☒ CASH	
PAYMENT	<u>2000.-</u>	☐ CHECK	FROM _____ TO _____
BAL. DUE	<u>3000.-</u>	☐ MONEY ORDER	
		☐ CREDIT CARD	BY <u>Talman Sigil</u>

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

FORM 4

FILED-RECEIVED
2016 AUG -2 PM 2:14

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4601244

Duane Harrison

South Carolina State Of

PLAINTIFF(S)

DAVID HAMILTON
C.C.C.P. & SS
YORK COUNTY, SC

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (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. ☐ See Page 2 for additional information.
- ☐ **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; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: PCH application heard and after hearing testimony and reviewing the transcript, the application is denied. State will prepare an order.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Letita H. Verdin
Circuit Court Judge

2162

Judge Code

8/1/16
Date

For Clerk of Court Office Use Only

This judgment was entered on August 2, 2016, and a copy mailed first class or placed in the appropriate attorney's box on August 2, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

Clarissa Warren Joyner 1259 Amelia St., Ste., A PO Box
1724 Orangeburg, SC 29115

Justin James Hunter PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter: Shirley Broom

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

Duane Harrison,
S.C.D.C. #241473,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2015-CP-46-1244

ORDER OF DISMISSAL

FILED-RECORDED
2016 SEP 19 PM 12:46
DAVID HAMILTON
C.C. CLERK
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed April 29, 2015. An evidentiary hearing into the matter was convened on August 1, 2016, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Clarissa Joyner, Esquire. Justin J. Hunter, Esquire, of the South Carolina Attorney General's Office represented the Respondent. At the hearing, Applicant testified on his own behalf. Todd Rutherford, Esquire testified. Applicant's father, Arthur Harrison, testified. Danielle Dowdell also testified. This Court also had before it a copy of the records of the York County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the May 2014 term of the York County Grand Jury for Trafficking in Cocaine over 400 grams (2013-GS-46-2041). Applicant was represented by James Todd Rutherford, Esquire. On September 2, 2014, Applicant pled no contest before the Honorable Lee S. Alford to the lesser

included offense of conspiracy to traffic cocaine, 28-100 grams, first offense. He was sentenced, pursuant to a negotiated sentence, to imprisonment for twelve and one-half years.

Allegations

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

1. Ineffective Assistance of Counsel
 - a. Failure to conduct pre-trial investigation
 - b. Failure to advise applicant that a preliminary hearing was scheduled
 - c. Violation of due process rights to be present at preliminary hearing and examine the evidence.
 - d. Ineffective for advising Applicant to plead no contest
 - e. Failure to file any pretrial brief or motion before advising to plea
 - f. Failure to file a direct appeal

II. SUMMARY OF EVIDENCE PRESENTED AT PCR HEARING

Applicant's Testimony

Applicant testified that he retained Counsel within a month after his arrest. He testified that they met one time at Counsel's office. He testified that during this meeting, the two discussed his case but never discussed the motion for discovery. Applicant testified that they discussed the payment plan and whether or not Applicant would plead guilty or go to trial. He testified that discovery was given to Counsel but Applicant did not go over it with Counsel. Applicant testified that they discussed the weaknesses of his case, and Counsel believed that the State would have a hard time proving conspiracy. Applicant further testified that Counsel never discussed the defense strategy.

Applicant testified that he never discussed his version of events with Counsel. He testified that he felt Counsel needed to know his story but did not discuss it with Counsel since he was not taking the stand. He testified that he told Counsel that he was not in the location

where the drugs were found and never saw the package of drugs. He further testified that no one would tell him why he was being arrested.

Applicant alleged that Counsel was ineffective for failing to prepare for trial. He testified that the State never had a warrant to search the phone and that the warrant's affidavit was fabricated. He testified that the affidavit was fabricated because he did not have any cocaine but Counsel said that the officers were acting in good faith. Applicant also testified that Counsel should have argued that the search warrants lacked probable cause. He testified that Counsel should have argued issues dealing with the chain of custody.

Applicant testified that there was an extensive pretrial hearing concerning the admissibility of cell phone evidence. He testified that he pled because he thought a ruling had been made on the admissibility but testified that the judge never made a ruling.

Applicant testified that he informed Counsel of potential witnesses, including Ms. Dowdell who would testify that Applicant was not at the scene but was in North Carolina. He also testified that he provided the name of another witness who would say that he was not the lookout.

Applicant testified that Counsel never told him about the preliminary hearing. He testified that he told Counsel that he wanted to attend and would have made a difference in the outcome of the preliminary hearing.

Applicant testified that he was never at the location where the drugs were delivered and was only brought there by the police from another location.

Applicant testified that he pled no contest because Counsel did not talk to his alibi witnesses or move to suppress the evidence. He testified that he still wanted to go to trial but Counsel told him that he should plead. Applicant further testified that Counsel told him that if he

pled, he would get a time cut if he helped the police. He testified that he was transported to York County for his meeting to help the police and then to Richland County for another meeting. He testified that he cooperated with police. He testified that he did tell the plea court that he was not promised anything to plead guilty but did not want to tell the court the truth.

Applicant testified that he thought Counsel's representation was negatively affected by money and Applicant's payment. He testified that he told his girlfriend to give Applicant his truck to help pay.

Applicant testified that he was not advised of his right to appeal. He testified that he wanted to appeal and tried to appeal on his own. He testified that his family sent Counsel a text message asking about the appeal.

Arthur Harrison's Testimony

Applicant's father, Arthur Harrison testified at the evidentiary hearing. He testified that he was not at the plea but was present during the conversation about Applicant getting a time cut. He testified that he went with Applicant to one of the meetings but did not take part in it. He testified that he did not think there was enough communication between Counsel and Applicant. Mr. Harrison further testified that Applicant contacted him to talk to Counsel about filing an appeal. He testified that Counsel told him that he had been talking to Applicant. Lastly, Mr. Harrison testified that Counsel told him that Applicant would receive a twenty-five year sentence.

Danielle Dowdell's Testimony

Applicant's girlfriend, Danielle Dowdell, testified that Applicant went to her work in North Carolina on the day of the incident and could not have been the lookout for the drug

delivery. She testified that the State alleged that Applicant had a rental car but that she did not rent a car to be a drug delivery lookout.

Ms. Dowdell testified that she was not present to hear the plea arrangement. She testified that she spoke with Applicant after he spoke with Counsel, and Applicant told her that Counsel told him that he could get his sentence cut in half.

Ms. Dowdell testified that after the plea, Counsel took Applicant's wallet and watch to help pay for his representation. She testified that Applicant told her to give her watch to Counsel as well.

Ms. Dowdell testified that she told Counsel to file a direct appeal but Counsel told her that he was not being paid to file an appeal.

Counsel Todd Rutherford's Testimony

Counsel testified that he has been practicing law for twenty years and has been practicing criminal defense since 1998. He testified that he was hired to represent Applicant.

Counsel testified that the State's alleged facts included that Applicant was the lookout for a cocaine delivery and drove back and forth near the delivery location. He testified that Applicant and his codefendant threw their cell phones after being caught and that the search warrant for their phones was from the day before the incident.

Counsel testified that he and Applicant met several times prior to the plea. He testified that they talked for hours and discussed the evidence, lack of evidence, and defense strategy. He testified that they discussed possible witnesses as well. Counsel testified that they went over Applicant's alibi that he was in North Carolina at the time but it was irrelevant because Applicant was at the delivery house when the drugs were delivered and was caught by police going back and forth in front of the delivery house before fleeing. Counsel testified that there was not much

they could do in challenging the search warrants on the phone and package and Applicant had no standing to challenge the search warrant on the package.

Counsel testified that the preliminary hearing did not make a difference 'because Applicant would have been direct indicted on the charges. Counsel also testified that the State produced all evidence in Applicant's case.

Counsel testified that there was an extensive pretrial suppression hearing. He testified that Judge Alford told him and codefendant's counsel in chamber how he was going to rule on the suppression issue, which prompted Counsel and Applicant to think about pleading. He testified that Applicant was facing a mandatory minimum of twenty-five years had he gone to trial so he talked with Applicant and his family about taking a plea deal. Counsel testified that that he discussed with Applicant the potential twenty-five year mandatory minimum that Applicant was facing. He testified that Applicant did not want to enter a plea until realizing that the suppression motion would fail. Counsel testified that he believed pleading was the best option.

Counsel testified that he was able to negotiate a no-contest plea to a lesser included offense. He testified that a plea waiver form was used and he was present to go over it with Applicant. He testified that he talked to the State about Applicant cooperating to possibly get his sentence lowered. He testified that, after the plea, Counsel arranged for Applicant to be taken to York County to meet with law enforcement but Applicant would not cooperate. Counsel testified that he arranged for Applicant to then be taken to Richland County to make a second attempt at providing information but again did not provide cooperative information. He testified that the federal agents were upset that they went to great lengths to allow Applicant to cooperate only to be provided with no information. He testified that Applicant understood that there was no

guarantee that he would get a reduction in sentence simply by cooperating and knew that he did not have to cooperate. Counsel further testified that Applicant understood by pleading no contest that he was pleading to and would receive a twelve and one-half year sentence, and that any reduction in his sentence would require sufficient cooperation.

Counsel testified that Applicant went back and forth on whether or not he wanted a direct appeal. He testified that they discussed the advantages and disadvantages of a direct appeal. Counsel testified that, in his opinion, the success rate on appealing a negotiated no contest plea was less than zero. He further testified that Applicant said he did not want to appeal and wanted to continue cooperating with law enforcement. Counsel also testified that there were no meritorious issues to raise on appeal. Counsel testified that the motion to suppress could have led to an appealable issue only if Applicant had actually gone to trial and been convicted.

Counsel testified that Applicant gave him a watch, wallet, and bracelet because he owed Counsel over \$6,000. He testified that any property given by Applicant was not part of their original representation arrangement.

III. APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive

on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

Failure to conduct pre-trial investigation

Applicant alleges that Counsel was ineffective for failing to conduct a pre-trial investigation. Applicant alleged that Counsel should have produced Ms. Dowdell as an alibi witness to testify that he was not at the scene of the crime but was in North Carolina.

This Court finds that although Ms. Dowdell was credible, Counsel made a legal determination not to use her as an alibi witness because her potential testimony would not have been useful to Applicant's case. This Court finds Counsel's testimony credible that Applicant's alibi through Ms. Dowdell that he was in North Carolina was irrelevant because Applicant was caught by police officers when the drug delivery was made.

This Court finds that Applicant has failed to definitively show what any additional investigation would have found. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (relief denied where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Applicant has failed to prove that Counsel was deficient regarding his investigation and has also failed to show prejudice as he has

failed to show that he would have gone to trial but for Counsel's actions. Accordingly this allegation must be dismissed.

Failure to advise Applicant that a preliminary hearing was scheduled

Applicant alleged that Counsel was ineffective for failing to advise him that a preliminary hearing had been scheduled. This Court finds that Applicant has not established that Counsel was ineffective or that any part of the preliminary hearing was done improperly or objectionable. This Court finds credible Counsel's testimony that the State shared all discoverable evidence and finds relevant the fact that Applicant was subsequently indicted on the charge. Further, this Court finds that Applicant has failed to prove that he was prejudiced by Counsel's actions as he has failed to show that he would not have pled but would have instead proceeded to trial if he had attended the preliminary hearing.

Applicant also alleges that his due process rights were violated because his right to be present at the preliminary hearing and examine the evidence was violated. This Court finds that Counsel provided credible testimony that the State produced all discoverable evidence and that Counsel went over the evidence with Applicant prior to the plea. This Court finds that Applicant has failed to show that he was not given the right to be present at the preliminary hearing. Accordingly this allegation must be dismissed.

Advising Applicant to plead no contest

Applicant alleges that Counsel was ineffective for advising him to plead no contest. An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An

applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969).

The record reflects that Applicant was fully advised of the charges against him, his constitutional rights, and the consequences of entering a plea. This Court finds that Applicant has failed to show that Counsel was ineffective in this regard and has failed to show that he should depart from his statements during the plea hearing. This Court finds that the plea waiver form, signed and initialed by Applicant, clearly states that Applicant was agreeing to plead no contest to conspiracy to traffic cocaine, 28 to 100 grams, and that the offense carries a sentence ranging from seven days to twenty-five years imprisonment. The waiver form explains that Applicant was pleading to a negotiated sentence of twelve years and six months. This Court finds Counsel's testimony credible that he reviewed the plea waiver form with Applicant. After reviewing the plea hearing transcript, this Court finds no deficient performance by Counsel during Applicant's plea. This Court also finds that Counsel's ability to negotiate a no contest plea to a lesser included offense after already proceeding through pretrial motions resulted in a substantially lower sentence than Applicant was facing and a benefit to Applicant. Applicant has failed to prove that Counsel's performance was deficient or that he was prejudiced by Counsel's actions. Accordingly, this allegation must be dismissed.

To the extent Applicant alleges that Counsel promised him a sentence of six years, this Court finds that this allegation is without merit. The plea transcript reflects that Applicant was

informed of the negotiated sentence in the signed plea waiver form and from the solicitor and judge during the plea colloquy. Additionally, this Court finds that Applicant informed the plea court that he was not promised anything in order to induce his plea. See Plea Transcript, p. 12, ll. 6-8. See Wolfe v. State, 485 S.E.2d 367, 371, 326 S.C. 158, 165 (1997) (Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made). Furthermore, this Court further finds that Counsel discussed with Applicant the fact that any post-plea reduction in his sentence would depend solely on his cooperation with law enforcement and was not guaranteed. This Court finds that Counsel arranged meetings with law enforcement as promised, but Applicant was unsuccessful in providing cooperative information. This Court finds that Applicant has failed to show that he was prejudiced by Counsel's actions because Applicant has failed to show that he otherwise would have elected to go to trial. Accordingly, this allegation is denied and dismissed.

Failure to file any pretrial brief or motion before advising to plea

Applicant alleges that Counsel was ineffective for failing to file a pretrial brief or motion before advising Applicant to plead. This Court finds that Counsel joined in Applicant's codefendant's pretrial motion to suppress text messages, which was heard by the court extensively over the course of two days. Counsel provided credible testimony that Judge Alford informed the parties in chambers as to how he planned to rule on the suppression issue, which prompted Counsel to discuss with Applicant the possibility of pleading. This Court also finds that Judge Alford's method of notifying the parties of his ruling to allow them to work out a plea deal is a normal practice. This Court agrees that the text messages would have been detrimental to Applicant at trial. Furthermore, the plea transcript reflects that Judge Alford gave a lengthy

and detailed explanation as to how he would have ruled on the motion to suppress. See Plea Transcript, p. 19 l. 8 – p. 26 l. 18. As such, this Court finds that Counsel was not ineffective because he did join in the pretrial suppression motion and argue extensively on Applicant's behalf. Additionally, this Court finds that any other evidentiary issues were waived and Counsel determined that they would be without merit. Furthermore, Applicant has failed to prove that he was prejudiced by Counsel's actions in this regard. Accordingly, this allegation must be dismissed.

Failure to file a direct appeal

Applicant also alleges that Counsel was ineffective for failing to file his direct appeal. Applicant testified that he was not advised of his right to appeal and that his family asked Counsel to file an appeal. Ms. Dowdell also testified that she asked Counsel to file a direct appeal. This Court finds Counsel's testimony credible that he and Applicant wanted to work toward cooperating with law enforcement rather than filing a meritless direct appeal. As such, this Court finds that Counsel's actions were not deficient in this regard. Most importantly, this Court finds that it is clear from the record that an appeal from Applicant's negotiated no-contest plea would not have led to any fruitful results. This Court finds that Applicant was well informed of the consequences of his plea through discussions with Counsel, the initialed and signed plea waiver form, and his colloquy with the plea judge. The plea transcript shows that Applicant did not raise any issues or concerns or make objections at any point during the plea hearing. Applicant has not shown that any specific issue was raised and ruled upon at the plea hearing or would be otherwise preserved for direct appeal. Accordingly, Applicant has failed to meet his burden of showing that he was prejudiced by Counsel's actions, and this allegation must be dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 14 day of Sept., 2016.



LETTIA VERDIN
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE FAMILY COURT FOR THE
SIXTEENTH JUDICIAL CIRCUIT

Duane Harrison, SCDC#241473)

Docket No.: 2015-CP-46-1244

Plaintiff,)

vs.)

State of South Carolina,)

Defendant.)

**RULE 59(E) MOTION
TO ALTER OR AMEND JUDGMENT**

FILED-RECEIVED
2016 OCT -3 PM 3:30
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

YOU WILL PLEASE TAKE NOTICE that the Applicant, Duane Harrison, by and through his undersigned attorney, moves the Honorable Letitia Verdin for reconsideration of its Order of Dismissal and decision in the above entitled case, which was rendered and signed by the Court on September 14, 2016, filed with the York County Clerk of Court on September 19, 2016, and served on Applicant's Counsel on September 21, 2016.

In support of his Motion to Alter or Amend Judgment pursuant to Rule 59(e), *SCRCP*, Applicant asserts that the Court needs to correct clear error and rule on issues raised by the Applicant to prevent manifest injustice. The Court has broad authority to alter or amend a judgment. This Rule 59(e) Motion is appropriate because the Court has misapprehended the facts, the Applicants's position, or the controlling law and/or failed to rule on issues properly raised by the Applicant.

"The right to counsel is the right to effective assistance of counsel." *Strickland v. Washington*, 466 U.S. 668, 686, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984). The defendant has a right to expect that his attorney will use every skill, expend every energy, and tap every legitimate

resource in exercise of independent professional judgment on behalf of defendant and in undertaking representation. Counsel owes defendant duty of loyalty, unhindered by state or by counsel's constitutionally deficient performance. *Id.*

"First, the defendant must show that counsel's performance was deficient...Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Strickland, at 687.

As for the prejudice requirement "[t]he benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland, at 686.

The "defendant need not show that counsel's deficient conduct more likely than not altered the outcome of the case," Strickland, at 693, but rather "must show that there is a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceedings would have been different." Strickland, at 695-96.

Prejudice requirement does not require petitioner to prove that he would not have been found guilty. In cases which "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing," ineffectiveness will be presumed under *United States v. Cronin*, 466 U.S. 648, 80 L.Ed.2d.657, 140 S.Ct. 2039 (1984).

Ineffectiveness is presumed when an actual conflict of interest is shown or an irreconcilable conflict between counsel and the defendant.

The grounds for ineffective assistance of counsel raised by the Applicant herein included the following:

Counsel was ineffective in investigation, preparation or for another substantial reason
 Counsel's performance was deficient and prejudiced defendant
 Counsel's serious errors deprived defendant of fair trial
 Counsel provided bad advice
 Counsel had conflict of interest
 Counsel and defendant had irreconcilable differences
 Counsel did not file a Motion to Suppress
 Counsel abandoned the Oral Motion to Suppress without a Ruling being issued
 Counsel's performance fell below an objective standard of reasonableness
 Counsel's failure to investigate mitigating evidence
 Counsel's failure to subject prosecution's case to meaningful adversarial testing
 Counsel's failure to file timely motions
 Counsel's failure to advocate the defendant's theory of the case
 Counsel's failure to be competent, prompt and diligent
 Counsel's failure to maintain adequate communications with defendant
 Counsel's absence through critical stages of the prosecution (Preliminary Hearing)
 Representation fails to move to suppress evidence, conduct an adequate investigation, raise legal issues at trial, introduce exculpatory evidence or file timely notice of appeal.

In any case presenting a claim counsel's assistance was constitutionally ineffective, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances and prevailing norms of practice as reflected in American Bar Association standards. *Strickland*, at 677.

Under Strickland, a defendant claiming ineffective assistance of counsel must demonstrate both that his attorney's performance fell below an objective standard of reasonable professional conduct and that the deficient performance resulted in prejudice to the defendant.

In cases which "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing," ineffectiveness will be presumed. Counsel's failure to file a motion to suppress evidence can provide the basis for a claim of ineffectiveness, but in order to show prejudice the defendant must show that he would have prevailed on the suppression motion, and that there is a reasonable probability that the successful motion would have affected the outcome.

"Counsel has a constitutional duty to make reasonable investigations or to make reasonable decisions that make particular investigation unnecessary." *Strickland v. Washington*, 466 U.S. 688, 691, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984). The Sixth Amendment requires investigation and preparation, not only to exonerate, but also to secure and protect the rights of the accused. such constitutional rights are granted to the innocent and guilty alike, and failure to investigate and file appropriate motions is ineffectiveness. *Kimmelman v. Morrison*, 477 U.S. 365, 91 L.Ed.2d 305, 106 S.Ct. 2574 (1986).

"A lawyer's duty to investigate is virtually absolute, regardless of a client's expressed wishes." If counsel conducts an inadequate investigation "that fact would have no effect on the deficient conduct prong of Strickland because counsel had already demonstrated ineffectiveness by failing to thoroughly investigate the existence of mitigating factors." The Supreme Court has made clear the American Bar Association's standards of practice in determining the professional norms of defense preparation for purposes of Strickland analysis.

I.

Applicant alleged that counsel was ineffective for failing to file his direct appeal. The applicant did not knowingly and intelligently waive his right to direct appeal, and is entitled to a belated review of his direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). The applicant testified and his father, Arthur Harrison, and his friend, Danielle Doydell all testified that they requested that a direct appeal be filed. There was even an exhibit of a text message sent to trial counsel requesting that the appeal be filed as well as telephone calls and messages left indicating the desire to appeal the guilty plea. There were repeated attempts to communicate with trial counsel in order to get a notice of appeal timely filed. Ms. Dowdell testified that she had a discussion with Mr. Rutherford concerning the filing of an appeal. She testified that she made numerous calls and sent a text to Mr. Rutherford shortly before the appeal deadline expired, and Mr. Rutherford called her back before the appeal deadline. She testified she spoke with Todd Rutherford on September 10 and 11, 2014 about filing the appeal. She further testified that Mr. Rutherford told her that the Applicant had not paid for an appeal.

To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal. *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986); *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). The Applicant alleged that he requested an appeal from his original conviction, but his lawyer failed to timely file the appeal. An attorney who fails to file an appeal after being instructed by his client to do so is per se ineffective. The Sixth Amendment requires counsel to consult with the defendant concerning whether to appeal when counsel has reason to believe either: (1) that a rational defendant would want to appeal, for example, because there are

non-frivolous grounds for appeal; or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. If the defendant expressed his intention to appeal, and counsel decided not to file an appeal without having discussed the matter further with the defendant after he was sentenced, counsel's performance would be constitutionally deficient. *United States v. Witherspoon*, 231 F.3d 923 (4th Cir. 2000).

II.

The Applicant asserts that the court failed to directly rule on several allegations he made in his testimony concerning ineffective assistance of counsel in failing to challenge evidence, also that his no contest plea was involuntary and unintelligent because it was entered in reliance upon promises by his trial counsel that his time would be cut in half to six years, and upon erroneous advise of counsel, and based upon trial counsel's receipt of valuable property in exchange for the promise to have his time reduced in half if he pled no contest.

Applicant alleged ineffectiveness because his trial counsel failed to challenge the State's failure to seek a search warrant to seize his cell phones. He alleged ineffectiveness based on his trial counsel's failure to object to the State's failure to field test and weigh the cocaine before substituting imitation cocaine. Applicant alleged ineffectiveness based on trial counsel's failure to obtain a ruling from the Court as to whether bad acts would be allowed to be introduced at trial prior to convincing him to plead no contest. Applicant alleged ineffectiveness because his trial counsel failed to challenge the chain of custody for the cell phone and imitation drugs.

At the PCR hearing, the Applicant testified that his trial counsel, Todd Rutherford, failed to investigate the facts surrounding his arrest, including the fact that he was never at or near Shanidoah Circle when the drugs were discovered. He testified he was not in the same location

as his co-defendant when the arrests were made. He further testified that he was detained for two hours while the package was searched for at Shanodoah Circle and a car was searched at this location. He testified that while he was being detained before his arrest, he was not free to leave and he did not receive Miranda Warnings prior to being detained and questioned.

Applicant testified that he told Mr. Rutherford that he did not see or handle the package that contained the drugs or imitation drugs, and at the time of the alleged delivery, he had an alibi because he was at Danielle Dowdell's job at 11:30 a.m. in Fort Mill, South Carolina. Nevertheless, Mr. Rutherford failed to substantiate that fact or talk to his potential witness, Danielle Dowdell.

Applicant stated that the only thing he was told prior to his trial date was that the evidence against him was weak but counsel failed to inform him how he would move to suppress the evidence the State would be presenting, and despite being asked to prepare a Motion to Suppress, trial counsel failed to prepare a Suppression Motion.

Applicant also testified that he wanted to attend the Preliminary Hearing to see the evidence being put forth and to challenge the probable cause for his arrest, But Mr. Rutherford failed to attend this critical and fact finding state of the process, and waived the Preliminary hearing without notifying Applicant.

The Applicant also expressed to trial counsel that the Affidavit for a search warrant for the cell phones recovered when he was arrested were defective and should be challenged. Nevertheless, his trial counsel failed to discuss a Motion to Suppress any evidence recovered with him and failed to prepare a written motion and memorandum to support the motion as he

requested. In fact, the oral motion to suppress which his trial counsel simply joined in was abandoned before he plead no contest without his consent.

In trying to convince Applicant to plead no contest, trial counsel made promises to him concerning his sentence? He assured him that if he paid additional money then and there, he could get the twelve year sentence reduced to six years. The Applicant believed and relied upon these assurances in entering the no contest plea. Trial counsel required as a condition of the reduced sentence forms of remuneration or payment above and beyond his retainer fee. Evidence was introduced to show that Applicant had paid \$17,000.00 of his \$20,000.00 retainer he paid for this case to be taken to trial. However, trial counsel requested and Applicant gave him jewelry, a Rolex watch, Gucci wallet, and a Range Rover vehicle. Despite having already paid a \$17,000.00 retainer, as evidenced by the receipt from Mr. Rutherford's office which was entered into evidence, the Applicant testified that these additional items of property were demanded in order to have his sentence reduced to 6 years. He further testified that Mr. Rutherford lead him to believe that he had the ability to accomplish what he promised, and that he relied on these promises in entering the no contest plea. He testified that he would not have entered the plea to 12 ½ years if the reduction was not promised as a part of the arrangement.

Danielle Dowdell testified that she knew about the promise made to Applicant regarding the plea and reduction of his sentence. She testified that Mr. Rutherford gave her his number after court, and followed her back to Charlotte, NC to get the Range Rover vehicle. She also testified she witnessed other forms of remuneration or payment by Duane to Mr. Rutherford for the promised sentence reduction. She testified she saw Applicant removed his Gucci watch and give it to Mr. Rutherford, she saw Applicant give Mr. Rutherford his Gucci wallet, and that she was

instructed by Mr. Rutherford to mail him a diamond bracelet, which she did. Text messages between Ms. Dowdell and Mr. Rutherford were entered into evidence concerning the delivery of a diamond bracelet to Mr. Rutherford which was part of arrangement to have Applicant's sentence reduced.

III.

Applicant alleged that trial counsel was ineffective for failing to conduct a preliminary hearing and failing to move to quash the arrest warrant and search warrant on the basis that the information in the warrants was demonstrably false and therefore the magistrate issued the warrant based on false information. Trial counsel failed to challenge the fabricated arrest warrant at the preliminary hearing or in pre trial hearings. Had trial counsel challenge the fabricated arrest and search warrants, it could've been proven that the incident report number 2012 00036814 and arrest warrant stated erroneous information. The arrest warrant stated that officer L Harrelson stated that on October 30, 2012, the defendant did willfully and unlawfully violate of South Carolina drug law by aiding, abetting, scheming and conspiring with another to traffic approximately 1000 g of cocaine while at [REDACTED] Shanadoah Circle, Rock Hill South Carolina. Officer L. Harrelson mislead the judge by fabricating information about the Applicant conspiring while at [REDACTED] Shanadoah Circle. Nowhere in the discovery or testimony was it mentioned that applicant was at [REDACTED] Shanadoah Circle at any time. Nor was there any evidence that a conspiracy took place at this location. In fact, on October 30, 2012, the state did not know that petitioner even knew the alleged codefendant. The state had no prior meetings, arrangements or any type of evidence that a conspiracy took place at [REDACTED] Shanadoah Circle. Trial counsel was ineffective when he failed to argue on the record or challenge fabricated information in the arrest warrant which was not

supported by the State's evidence. When trial counsel abandon the applicant's suppression motion, he waived applicant's right to challenge the arrest warrant and to challenge the veracity of the information in this statement made by Officer L Harrelson in the arrest warrant affidavit to establish probable cause for Applicants arrest, all denying applicant due process of law.

Prior to the Applicant's state trial on conspiracy to traffic in cocaine charges and in connection with his motion to suppress on Fourth Amendment grounds drugs and cell phones found in a search of his co-defendant's girlfriend's home, applicant asked his trial counsel to challenge the truthfulness of certain factual statements made in the police affidavit supporting the search and sought to call witnesses to prove the misstatements. Trial counsel failed to present such proposed testimony and abandoned the motion to suppress, and convinced Applicant to plead no contest.

The applicant testified that he wanted to challenge the veracity of a sworn statement used by police to procure a search warrant. Trial counsel refused to assert the claim on his behalf. The law provides that where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment, as incorporated in the Fourteenth Amendment, requires that a hearing be held at the defendant's request. The trial counsel here therefore erred in refusing to investigate the adequacy of Applicant's claim and make a proffer of misrepresentation in the warrant affidavit.

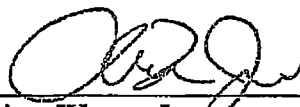
In *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), the Supreme Court held that in certain defined circumstances a defendant can attack a facially sufficient

affidavit. The Franks Court recognized a "presumption of validity with respect to the affidavit supporting the search warrant", and thus created a rule of "limited scope". The rule created by the Franks decision requires that a dual showing be made before a court will hold an evidentiary hearing on the affidavit's integrity. This showing incorporates both a subjective and an objective threshold component. To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. The allegation of deliberate falsehood or of reckless disregard must point out specifically with supporting reasons the portion of the warrant affidavit that is claimed to be false. It also must be accompanied by an offer of proof, including affidavits or sworn or otherwise reliable statements of witnesses, or a satisfactory explanation of their absence. If these requirements as to allegations and offer of proof are met, and if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required, but if the remaining content is insufficient, the defendant is entitled under the Fourth and Fourteenth Amendments to a hearing. If, after a hearing, a defendant establishes by a preponderance of the evidence that the false statement was included in the affidavit by the affiant knowingly and intentionally, or with reckless disregard for the truth, and the false statement was necessary to the finding of probable cause, then the search warrant must be voided and the fruits of the search excluded from the trial to the same extent as if probable cause was lacking on the face of the Affidavit. *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978).

The applicant further argues and testified that Officer J. Faukenberry misled the Magistrate when he stated both the Applicant Duane Harrison and his codefendant were found in possession

of a kilogram of cocaine while at [REDACTED] Shanadoah Cir., Rock Hill, SC, York County. The search warrant affidavit and discovery material failed to demonstrate that Applicant had any drugs in his possession. Applicant argues there is no mention of Officer Faulkenberry having any first-hand knowledge of what he actually testified to before the Magistrate and swore to under oath to the Magistrate. Applicant argues officer Faulkenberry knowingly and intentionally with reckless disregard for the truth made false statements in the search warrant affidavit made on November 1, 2012. Therefore the evidence of cell phones and drugs should've been suppressed because the evidence was obtained illegally in violation of the fourth and 14th amendment. Had a challenge by trial counsel been made and ruled on, the outcome of this case would have been different and therefore the applicant was prejudiced. Moreover the no contest plea was involuntary and petitioner applicant would have continued to trial had motions been raised. The applicant alleges that his trial counsel erred and was ineffective when he advised him to plead to conspiracy to trafficking in cocaine and didn't challenge the evidence that a conspiracy existed between his codefendant and him.

WHEREFORE, Applicant asserts he was denied the right of effective assistance of counsel and therefore his plea conviction should be overturned. *See Hill v Lockhart* 474 US 52, and that the Court should rule on all issues raised above and not specifically ruled on in the Order of Dismissal.



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Attorney for the Applicant

Orangeburg, South Carolina
October 2, 2016

FORM 4

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

Duane Harrison

FILED-RECEIVED

2016 NOV -7 PM 2:11

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SCJUDGMENT IN A CIVIL CASE
CASE NUMBER 2015-CP-46-1244

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (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. ☐ See Page 2 for additional information.
- ☐ **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; (formal order to follow) ☒ Statement of Judgment by the Court: Court denies Plaintiff's Motion to Alter or Amend Judgment in this matter.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

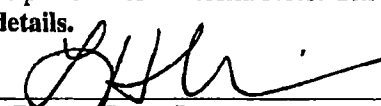
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2162

Judge Code

10/17/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Clarissa Warren Joyner 1259 Amelia St., Ste., A PO Box
1724 Orangeburg, SC 29115

ATTORNEY(S) FOR THE PLAINTIFF(S)

Justin James Hunter PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

WITNESSES

DEU Harrelson

sg

ARREST WARRANT NUMBER

N-280853

ACTION OF GRAND JURY

/s/ Tammy Eakins

6-13-2013 True Billed **TRUE BILL**

Foreperson of Grand Jury

Date: 5/29/14

VERDICT

Foreperson of Petit Jury

Date:

AMENDED
DOCKET NO. 2013-GS-46-02041

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

May 29, Term 2014

THE STATE

vs.

DUANE ARNESS HARRISON

Indictment for

TRAFFICKING IN COCAINE

SC Code: 44-53-370(e)(2)(a)

CDR Code: 0281

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. O.S. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

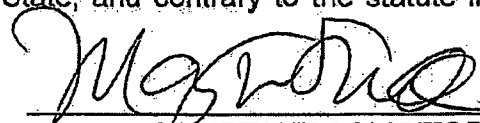
INDICTMENT
CERTIFIED TRUE COPY
2015 APR 30 AM 9:03

At a Court of General Sessions, convened on May 29, 2014, the Grand Jurors of York County present upon their oath: YORK COUNTY, SC

TRAFFICKING IN COCAINE

Between the dates of September 30, 2012 through October 30, 2012, the Defendant, Duane Arness Harrison, did knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of four hundred (400) grams or more of cocaine or any mixtures containing cocaine, as provided in 44-53-210(b)(4). Said incident occurred in York County, South Carolina, all in violation of Section 44-53-370, 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.


ASSISTANT SOLICITOR