

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM SPARTANBURG COUNTY
HONORABLE J. DERHAM COLE CIRCUIT COURT JUDGE

THE STATE

v.

RESPONDENT

RECEIVED

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SC Court of Appeals

DESHON JERMAINE NORMAN

APPELLANT

APPELLATE CASE NO 2017-001239
PRO SE BRIEF BY APPELLANT

DESHON JERMAINE NORMAN
APPELLATE DEFENDER

KIRKLAND CORRECTIONAL INST.
UNIT B2 CELL 28
4344 BROAD RIVER ROAD
COLUMBIA S.C. 29210

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STATEMENT OF ISSUES ON APPEAL

① WHETHER THE TRIAL JUDGE ERRED IN NOT SUPPRESSING THE EVIDENCE ON FEBRUARY 27, 2017 THAT CAME FROM A TRAFFIC STOP ON JANUARY 19, 2016. STATE V. WILLIAMS, 351 S.C. 591, 598 S.E.2d 703, 707 (CT. APP 2002) DELAWARE V. PROUSE, 440 U.S. 648, 653, 99 S.Ct., 1391, 1395, 59 L.Ed 660 (1979). TERRY V. OHIO 392, U.S. 1, 88 S.Ct. 1868, 20 L.Ed 2d 889 (1968). WONG SUN V. UNITED STATES, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed 2d 441 (1963) UNITED STATES V. GUZMAN, 864 F.2d 1512, 1516 (10TH CIR) UNITED STATES V. VAIDEZ, 931 F.2d 1448 (11TH CIR 1991) UNITED STATES V. SMITH 799 F.2d 704, 709 (11TH CIR) UNITED STATES V. SOKOLOV 490 U.S. 1109 S.Ct. 1581, 104 L.Ed 2d 1 (1989) STATE V. BIASSINGAME, 338 S.C. 240, 248, 525 S.E. 2d 535 (CT APP 1999) WORTMAN V. CITY OF SPARTANBURG, 310 S.C. 1, 425 S.E. 2d 18 (1992) THOMPSON V. SMITH 289 S.C. 334, 336-37, 345 S.E. 2d 500, 502 (CT APP 1986) GIST V. BERKELEY COUNTY SHERIFF DEPT. 336 S.C. 611, 521 S.E. 2d 163 (C.T. APP 1986) FLORIDA V. BOSTICK, 501 U.S. 429, 434 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991)

② WHETHER ON MARCH 3, 2017 DID THE TRIAL COURT ERRED IN IMPROPERLY PARTICIPATING IN PLEA DISCUSSIONS. UNITED STATES V. BRADLEY, 455 F.3d 453, 460 (2006) UNITED STATES V. BAKER, 489 F.3d 366, 373 (D.C. CIR 2007) UNITED STATES V. RODRIGUEZ, 197 F.3d 156, 158-59 (5TH CIR 1999) UNITED STATES V. KRAUS, 137 F.3d 447, 452 (7TH CIR. 1998) UNITED STATES V. DOMINGUEZ BENITEZ, 542 U.S. 74, 83, 124 S.Ct. 2333 159 L.Ed 2d 157 (2004)

ALSO ON MARCH 3, 2017 THE PLEA COURT ERRED IN ACCEPTING APPELLANT'S GUILTY PLEA WITHOUT COUNSEL WITHOUT ADVISING APPELLANT OF DANGERS AND DISADVANTAGES OF PROCEEDING PRO SE UNDER FARETTA V. CALIFORNIA, 422 U.S. 806, 95 S.Ct 2525 (1975) PRINCE V. STATE, 301 S.C. 422, 392 S.E. 2d 462 (1990) IOWA V. TOVAR, 2004, 541 U.S. 77 124 S.Ct 1379

③ THE COURT ALSO ERRED IN NOT RECOGNIZING MY PLEA WAS INVOLUNTARY AND MADE RECKLESSLY WITHOUT COUNSEL AND WAS A PRODUCT OF FEAR PLUS COERCION BY THE SOLICITOR OFFICE AS WELL AS SPARTANBURG COUNTY NARCOTIC OFFICERS. MOORE V. MICHIGAN 355 U.S. 155, 78 S.Ct. 191, 2 L.Ed.2d 167 (1957) LYNCH V. OVERHOISTER

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① THE COURT ALSO ERRED BY NOT HAVING THE PROSECUTION TO TURN
IN ALL EVIDENCE BEFORE THE TRIAL. BRADY V. MARYLAND, 373 U.S.
83, 87, 83 S.Ct. 1194, 1196, 10 L. Ed 2d 215 (1963) BERGER V.
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(1935) UNITED STATES V. AGURS, 427, U.S. 97, 106, 111, 96 S.Ct. 2392
2398, 2401, 49 L. Ed 2d 706 (1972)

② THE COURT ALSO ABUSED DEFENDANTS DUE PROCESS TO A FAIR
TRIAL BY NOT LETTING COUNSEL CROSS-EXAMINE ALL WITNESSES
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STATEMENT OF THE CASE

PETITIONER APPEARED FOR A SUPPRESSION HEARING AND JACKSON V. DENNO HEARING ON FEBRUARY 27; MARCH 2, 2017, BEFORE THE HONORABLE J. DERHAM COLE IN SPARTANBURG COUNTY. THE MOTIONS ON THE HEARING WERE DENIED AND A BENCH TRIAL STARTED ON THE MERITS OF THE CASE ON MARCH 3, 2017 AFTER THE STATE PRESENTED ITS CASE. APPELLANT DECIDED TO PLEAD GUILTY TO TRAFFICKING IN CRACK COCAINE. A TWELVE (12) YEAR SENTENCE WAS IMPOSED. (R.P. 206). ON MARCH 17, 2017 APPELLANT MADE A MOTION TO WITHDRAW THE GUILTY PLEA AND TO RECONSIDER THE DENIAL OF THE MOTION TO SUPPRESS. THOSE MOTIONS WERE DENIED (R.P. 222) ON MAY 15, 2017. APPELLANT MOVED TO RECONSIDER THE DENIAL OF HIS MOTION TO WITHDRAW HIS GUILTY PLEA. THAT MOTION WAS DENIED. (R.P. 229)

THIS APPEAL FOLLOWS.

ARGUMENT

ON MARCH 3, 2017 THE TRIAL COURT ERRED IN IMPROPERLY PARTICIPATING IN PLEA DISCUSSIONS. UNITED STATES V. BRADLEY. 455 F.3d 453, 460 (460) SANTOBELLO V. NEW YORK 404 U.S. 257 (1971) U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK 256 F. SUPP 244 (S.D. N.Y.) 1966.

DURING APPELLANT GUILTY PLEA THE FOLLOWING TRANSPIRED

THE COURT: ARE WE READY OR NOT

MR. MAXEY: YOUR HONOR, ITS MY UNDERSTANDING THAT THE DEFENSE COUNSEL WAS UNWILLING TO SIGN SENTENCING SHEET. SO IS UNWILLING TO GO FORWARD WITH PLEA.

THE DEFENDANT: SO WITH ME FIRING HIM WOULD I— WITH ME FIRING HIM YOUR HONOR. I COULD GO AHEAD AND PROCEED WITH MY PLEA?

THE COURT: YOU WANT TO TERMINATE HIS REPRESENTATION OF YOU?

THE DEFENDANT: IF HE DOESNT SIGN THE PAPER WHAT ELSE GOES ON?

THE COURT: WELL IM NOT ALL HUNG UP ON THAT PAPER WORK SIGNING. YOU'VE GOT TO SIGN IT. IT DOESN'T MEAN ANYTHING TO ME IF YALL GET UP HERE AND YOU PLEAD GUILTY. THAT MEANS ILL PUT YOUR NAME ON IT IF I HAVE TO.

THE DEFENDANT: I'VE DONE SIGN IT. WAITING ON HIM TO SIGN IT. HE SAY HE DONT WANT TO SIGN IT.

THE COURT: OKAY. WELL IS HE GOING TO REPRESENT YOU IN THE GUILTY -- DO YOU WANT HIM TO REPRESENT YOU IN THE GUILTY PLEA? DO YOU WANT TO PLEAD GUILTY, FIRST OF ALL?

THE DEFENDANT: YES IM GOING TO GO AHEAD AND PLEAD TO WHAT THE STATE'S --

THE COURT: ALL RIGHT. AND HES BEEN REPRESENTING YOU. DO YOU WANT HIM TO REPRESENT YOU IN THE GUILTY PLEA, OR ARE YOU TERMINATING HIS EMPLOYMENT?

THE DEFENDANT: HES TELLING ME TO. I DON'T REALLY UNDERSTAND

THE COURT: WELL, NO. THATS YOUR DECISION. ITS NOT HIS DECISION IN OTHER WORDS, YOU GET TO DECIDE IF YOU WANT HIM TO CONTINUE REPRESENTING YOU OR NOT. IM ASSUMING YOU'VE ENGAGED HIM TO REPRESENT YOU, AND HES OBLIGATED TO DO SO. IF YOU DON'T WANT HIM TO, THEN YOU DON'T HAVE TO BUT IF YOU WANT HIM TO, HE MUST. (R.p. 188, 21-25, R.p. 189, 1-25 R.p. 190, 1-4)

DESIGNATION CONTENDS THAT, IN VIOLATION OF FEDERAL RULE OF CRIMINAL PROCEDURE 11(C)(1) THE DISTRICT COURT IMPROPERLY PARTICIPATED IN PLEA DISCUSSIONS, BY OPENLY IN COURT SUGGEST THAT MR. NORMAN MAY PLEA GUILTY WITHOUT ADVICE OF COUNSEL WHICH RENDER HIS 6TH AMENDMENT STATING "DURING PLEA NEGOTIATIONS DEFENDANTS ARE ENTITLED TO THE EFFECTIVE ASSISTANCE OF COMPETENT COUNSEL. THE SIXTH AMENDMENT REQUIRES EFFECTIVE ASSISTANCE OF COUNSEL AT CRITICAL STAGES OF CRIMINAL PROCEEDING" RULE 11(C) PROVIDES THAT "A ATTORNEY FOR THE GOVERNMENT AND THE DEFENDANTS ATTORNEY... MAY DISCUSS AND REACH A PLEA AGREEMENT, BUT THE COURT MAY NOT PARTICIPATE IN THESE DISCUSSIONS" FED. R. CRIM. P 11(C)(1). THIS PROHIBITION ON JUDICIAL INVOLVEMENT SERVES "THREE PRINCIPAL INTERESTS; IT DIMINISHES THE POSSIBILITY OF JUDICIAL COERCION OF A GUILTY PLEA; IT PROTECTS AGAINST UNFAIRNESS AND PARTIALITY IN THE JUDICIAL PROCESS; AND IT ELIMINATES THE MISLEADING IMPRESSION THAT THE JUDGE IS ADVOCATE FOR THE AGREEMENT RATHER THAN A NEUTRAL ARBITER. "UNITED STATES V. BRADLEY, 455 F.3d 453, 460 (2006) (QUOTING UNITED STATES V. CANNADY, 283 F.3d 641, 644-45 (4TH CIR. 2002) JUST AS CLEARLY, THIS ERROR WAS PLAIN. RULE 11(C) IS NOT NEW, AND THE DOCTRINE SURROUNDING ITS INTERPRETATION IS WELL SETTLED. THE RULES COMMITTEE ADOPTED - AND THE SUPREME COURT APPROVED - WHAT NOW IS RULE 11(C) IN SUBSTANTIALLY ITS PRESENT FORM MANY YEARS PRIOR TO THE HEARING AT ISSUE IN THIS CASE, SEE DAVILA 1, 133 S.Ct. AT 2146; FED. R. CRIM. P. 11 ADVISORY COMMITTEE'S NOTE ON 1974 AMENDMENT. FURTHERMORE LIKE OUR SISTER CIRCUITS, WE HAVE CONSTANTLY WARNED THAT A DISTRICT COURT ERRS IN URGING DEFENDANTS TO PLEAD GUILTY. SEE E.G., BRADLEY, 455 F.3d AT 462; UNITED STATES V. BAKER, 489 F.3d 366, 373 (D.C. CIR. 2007); UNITED STATES V. RODRIGUEZ, 197 F.3d 156, 158-59 (5TH CIR. 1999); UNITED STATES V. KRAUS, 137 F.3d 447, 452 (7TH CIR 1998).

THUS WE CAN ONLY CONCLUDE THAT THE COURT'S DISCUSSION OF AND ADVOCACY FOR A PLEA AND "GLOBAL RESOLUTION" CONSTITUTED PLAIN ERROR.

NOW DETERMINING DID THE ERROR AFFECT MR. NORMAN "SUBSTANTIAL RIGHT" OLAND, 507 U.S. AT 731-32, 113 S.Ct. 1770. IN DOING SO YOU MIGHT ASK WHETHER THERE IS "A REASONABLE PROBABILITY THAT THRU JUDICIARY INTERFERENCE AND THE MENTAL COERCION OF THE SOLICITOR OFFICE WOULD MR. NORMAN HAVE PLEADED GUILTY KNOWING HE PLEADED NOT GUILTY THE DAY BEFORE. UNITED STATES V. DOMINGUEZ BENITEZ, 542 U.S. 74, 83, 124 S.Ct 2333 159 L. Ed. 2d 157 (2004) WITH CLOSE EXAMINATION MR. NORMAN CONCLUDE THAT THERE IS REASONABLE PROBABILITY. US. VS. SANVA 5

A LITTLE LATER THE FOLLOWING TRANSPIRED:

THE COURT: OKAY. AND HAVE YOU HAD PLENTY OF TIME TO REFLECT UPON THAT DECISION?

THE DEFENDANT: YES, SIR

THE COURT: AND AS I UNDERSTAND IF YOUR LAWYER DOESN'T AGREE WITH YOUR DECISION. IS THAT RIGHT.

THE DEFENDANT: YES SIR

THE COURT: BUT YOU UNDERSTAND THAT WHETHER HE AGREES OR DISAGREES, ITS ALWAYS YOUR DECISION. YOU GET TO MAKE THE DECISION. HE CAN GIVE YOU ADVICE, BUT ITS ALWAYS YOUR DECISION AS HOW YOU WANT TO PROCEED WITH YOUR CASE.

THE DEFENDANT: YES SIR

THE COURT: OKAY. AND HOW DO YOU WANT TO PROCEED WITH YOUR CASE?

THE DEFENDANT: PLEAD GUILTY (R.P. 191, 10-24)

THE PLEA COURT ON MARCH 3, 2017 ERRED IN ACCEPTING APPELLANT'S GUILTY PLEA WITHOUT COUNSEL WITHOUT ADVISING APPELLANT OF DANGERS AND DISADVANTAGES OF PROCEEDING PRO SE UNDER FARETTA V. CALIFORNIA, 422 U.S. 806, 95 S. Ct. 2525 (1975)

IN PRINCE V. STATE, 301 S.C. 422, 392 S.E.2d 462 (1990) THE COURT WROTE:
"TO ESTABLISH A VALID WAIVER OF COUNSEL, FARETTA REQUIRES THE ACCUSED TO BE: (1) ADVISED OF THE RIGHT TO COUNSEL; AND (2) ADEQUATELY WARNED OF THE DANGERS OF SELF REPRESENTATION" BEYOND AFFORDING THE DEFENDANT THE OPPURTUNITY TO COUNSEL PRIOR TO ENTRY OF A PLEA AND TO BE ASSISTED BY COUNSEL AT THE PLEA HEARING, MUST THE COURT SPECIFICALLY: (1) ADVISE THE DEFENDANT THAT "WAIVING THE ASSISTANCE OF COUNSEL IN DECIDING WHETHER TO PLEAD GUILTY [ENTAILS] THE RISK THAT A VIABLE DEFENSE WILL BE OVERLOOKED; AND (2) ADMONIS[h] THE DEFENDANT THAT BY WAIVING HIS RIGHT TO AN ATTORNEY HE WILL LOSE THE OPPURTUNITY TO OBTAIN AN INDEPENDENT OPINION ON WHETHER UNDER THE FACTS AND APPLICABLE LAW, IT IS WISE TO PLEAD GUILTY? 656 N.W. 2d, 112, 121 (IOWA 2003)
THE IOWA SUPREME COURT HEID BOTH WARNINGS ESSENTIAL TO THE "KNOWING AND INTELLIGENT WAIVER OF THE SIXTH AMENDMENT RIGHT TO THE ASSISTANCE OF COUNSEL. IBID "IOWA V. TOVAR SUPREME COURT, MARCH, 8 2004, 541 U.S. 77, 124 S. Ct. 1379. ALSO ON MAY 15, 2017

MR. SMITH: MAY IT PLEASE THE COURT. MY MAIN FOCUS OF MY REPLY IS THAT MR. NORMAN CHANGED OVERNIGHT I DON'T KNOW WHY. I DIDN'T HAVE AN OPPORTUNITY TO SPEAK TO HIM. WHEN YOU SENT US OUT OF THE COURTROOM BASED ON MY UNWILLINGNESS TO SIGN THE SENTENCING SHEET. WE WERE FOLLOWED BY ASSISTANT SOLICITOR AND TWO AGENTS THAT WERE PART OF THE ARREST. AND SO MR. NORMAN NEVER HAD THE OPPORTUNITY TO SPEAK TO ME AND BASED ON THAT I WOULD SAY THAT THAT WAS PER SE INVOLVED IN IT.

MR. MAXEY: REPLY BRIEFLY YOUR HONOR

THE COURT: OKAY

MR. MAXEY: ALSO AT NO POINT DURING THAT CONVERSATION THAT MR. SMITH REFERENCED DID HE ASK TO SPEAK TO HIS CLIENT OR WHATEVER. HAD HE ASKED ME OR ASKED THE OFFICERS PERMISSION TO SPEAK TO HIS CLIENT, OF COURSE WE WOULD HAVE LEFT THE ROOM AND LET HIM DO SO. I JUST WANTED TO MAKE THAT ABUNDANTLY CLEAR. MR. MAXEY CLEARLY TELLS THE JUDGE THERE WAS CLEARLY PEOPLE THAT WAS NOT SUPPOSE TO BE INVOLVED IN MY PLEA DISCUSSIONS BUT WAS STILL THERE, AND JUDGE COLE JUST IGNORED IT.

THE COURT ALSO ERRED IN NOT RECOGNIZING MY PLEA WAS INVOLUNTARY AND MADE RECKLESSLY WITHOUT COUNSEL AND WAS A PRODUCT OF FEAR PLUS COERCION BY THE SOLICITOR OFFICE AS WELL AS SPARTANBURG COUNTY NARCOTIC OFFICERS.

MOORE V. MICHIGAN, 355 U.S. 155, 78 S. Ct 191, 2 L. Ed. 2d 167 (1975) LYNCH V. OVERHOISER, 369 U.S. 705, 719, 82 S. Ct 1063, 1072, 8 L. Ed. 2d 211 (1962) DUNCAN V. LOUISIANA, 391 U.S. 145, 88 S. Ct. 1444, 20 L. Ed. 2d 491. KERCHEVAL V. UNITED STATES, 274 U.S. 220, 47 S. Ct. 582, 71 L. Ed 1009

ON FEBRUARY 27, 2016

DONALD SMITH: WHAT DID YOU TELL MR. NORMAN WHEN YOU CAUGHT UP TO HIM?

STEVE COOPER: ONCE HE WAS DETAINED I READ HIM HIS MIRANDA RIGHTS

DONALD SMITH: IS THAT WHEN YOU TALKED TO HIM ABOUT WORKING FOR YOU?

STEVE COOPER: I DID

DONALD SMITH: WHAT DID YOU TELL HIM

STEVE COOPER: I ASKED HIM IF HE WANTED TO DO SOMETHING TO HELP HIS SELF OUT-- AND I WAS BASICALLY SPECIFIC THAT HE WOULD HAVE TO-- IN TURN SET MR. SMITH AND MR. SIMPSON UP (R.p. 36, 20-25) (R.p. 37, 1-3)

REDIRECT

MR. MAXEY: OKAY WAS HE THREATENED IN ANY MANNER?

STEVE COOPER: NOT AT ALL

MR. MAXEY: WERE ANY PROMISES MADE TO HIM

STEVE COOPER: NO THERE WEREN'T

MR. MAXEY: WAS HE COERCED IN ANY WAY?

STEVE COOPER: NO HE WAS NOT. (R.P. 44, 7-10)

I DESHON NORMAN TESTIFIED TO THIS

DONALD SMITH: CAN YOU TELL US WHEN MR. COOPER CAUGHT UP TO YOU IN THE WOODS WHAT ALL DID YOU DISCUSS?

DESHON NORMAN: NOTHING HE JUST TOLD ME -- I TOLD HIM I'M NOT GOING TO RUN NO MORE. AS HE PUT ME LIKE IN A CHOKE HOLD OR WHATEVER. HE WAS LIKE I KNOW YOU'RE NOT GOING TO RUN NO MORE. HE BROUGHT ME BACK OUT THE WOODS HE SAID HE -- IF I CAN HELP HIM HE CAN HELP ME. THATS AS WE WAS GOING TOWARDS THE TRUCK, AND ASKED HIM. I WAS LIKE WHAT ARE YALL FEDS OR THE COUNTY. HE TOLD ME COUNTY. SO I SAID WELL YOU CAN TAKE ME TO JAIL.
(R.P. 58, 23-25) (R.P. 59, 1-8)

DONALD SMITH: DID HE -- DID HE READ YOU YOUR RIGHTS TO YOU IN THE TRUCK?

DESHON NORMAN: NO I TALKED TO ANOTHER OFFICER IN THE TRUCK AND WAS ASKING HIM DIFFERENT -- I WAS ASKING HIM QUESTIONS ABOUT HOW DOES THIS GO BECAUSE THIS IS MY FIRST TIME GOING TO INTERROGATION AND HE WAS LIKE JUST DO WHAT EVER -- DO WHATEVER LIEUTENANT COOPER ASK YOU TO DO AND YOU'LL BE ALL RIGHT. YOU'LL BE GOING HOME TONIGHT.
(R.P. 59 16-23) WHEN WE GOT TO THE INTERROGATION ROOM

ROOM

DONALD SMITH: ALL RIGHT YOU GOT TO THE INTERROGATION ROOM. WHAT ABOUT THAT STATEMENT THAT HE READ? WHERE DID THAT COME FROM?

DESHON NORMAN: MOST OF IT WAS MR. SCHAFER AND ME TELLING A BUNCH OF LIES TO GO HOME

DESHON NORMAN: YEAH HE ASKED ME A BUNCH OF QUESTIONS. AND ALOT OF THEM DO -- A LOT OF PEOPLE IN THERE I DIDNT KNOW. WHEN I GOT IN THERE THEY ASKED ME A BUNCH OF QUESTIONS AND SHOWED ME A BUNCH OF PICTURES OF GUYS WAS LIKE DO YOU KNOW HIM, DO YOU KNOW HIM, THIS IS SUCH AND SUCH. YOU KNOW HE BIG TIME, YOU KNOW SO. AS THEY TELLING ME THIS, LIKE I SAY I USED ALOT OF IT JUST TO GO IN MY STATEMENT BECAUSE I KNEW BY ME TELLING HIM WHATEVER HE WANTED TO HEAR I WAS GOING HOME TONIGHT BECAUSE HE TOLD ME HE WASN'T BOOKING ME. HE WAS LIKE YOU GIVE ME WHAT I NEED TONIGHT AND YOU'LL GO HOME. YOU DON'T HAVE TO WORRY ABOUT NOTHING THIS CHARGE CAN DISAPPEAR IF YOU DO A COUPLE JOBS FOR US. (R.P. 60, 25) (R.P. 61, 14-25) (R.P. 62, 1-2) (B)

DONALD SMITH: DID YOU -- WERE YOU OFFERED ANYTHING? WERE YOU PROMISED ANYTHING?

DESHON NORMAN: YEAH HE TOLD ME AS LONG AS I COULD HELP HIM OUT AND TALK TO HIM THAT NIGHT THAT I COULD GO HOME. HE SAID IF I HELPED HIM OUT A LITTLE BIT THAT THE CHARGE COULD DISAPPEAR. THAT'S WHY I WASN'T BOOKED. BUT I CHANGED MY MIND I COULDN'T DO IT. I PRAYED ABOUT IT TALKED TO MY MAMA AND MY GRANDMA RIGHT IS RIGHT WRONG IS WRONG (R.P. 62, 12-20)

DESHON NORMAN: AND LIKE I SAY FOR THE NEXT TWO DAYS ME AND MY MAMA CALLED IN AND WE WENT DOWN THERE, THERE WASN'T A WARRANT FOR MY ARREST.

SO I JUST WENT BACK TO -- WENT TO BACK -- WENT BACK TO WORK LIKE I SAY ABOUT A MONTH -- ABOUT A MONTH AND SOME CHANGE LATER THEY PICKED ME UP. WELL THEY PICKED UP MR. CLEVELAND, AND HE CALLED ME AND I TOLD HIM LET ME SPEAK TO THE ARRESTING OFFICER. AND I TOLD HIM WELL I'M THE ONE THAT Y'ALL NEED TO COME AND GET BECAUSE HE NEVER KNEW NOTHING ABOUT THIS, BECAUSE MR. CLEVELAND WAS GOING OFF THE INSTINCT OF THEM TELLING US. WELL YOU HELP US TONIGHT OR SO BECAUSE WE DIDN'T KNOW HOW IT GO, YOU DON'T HAVE TO WORRY ABOUT GOING TO JAIL. SO I THOUGHT THAT WAS A PROMISE MADE TO US BY US TALKING TO HIM YOU KNOW OR BY ME TALKING TO HIM.

DONALD SMITH: SO YOU DIDN'T OFFER ON YOUR OWN BASH I'D LIKE TO PUT MY FRIEND IN JAIL? (R.P. 63, 7-25)

DESHON NORMAN: NO SIR. BECAUSE EVEN AFTER THE FACT THEY HAD TALKED TO -- WHAT DO YOU CALL IT -- THE LAWYER THAT YOU GET FOR \$40. THEY HAD ALREADY TALKED TO HIM. HE WAS SAYING THAT THEY SAYING ALL YOU HAVE TO DO IS TESTIFY AGAINST THESE GUYS. NO MATTER WHAT YOU'LL WALK OUT OF HERE A FREEMAN. SO NO I WOULDN'T NEVER PUT MYSELF OR MY FAMILY IN THAT TYPE OF POSITION (R.P. 64, 1-6)

THE FOLLOWING TRANSPIRED ON

MARCH 2, 2017

THE COURT: BEFORE WE BEGIN I JUST WANT TO PUT ON THE RECORD AS PART OF OUR CHAMBERS DISCUSSION THE STATE IS TAKING LIFE WITHOUT PAROLE -- ITS OUR POSITION THE DEFENDANT IS ELIGIBLE FOR OFF THE TABLE. AND WE ARE PROCEEDING WITH THE BENCH TRIAL.

THE COURT: ALL RIGHT SO THE DEFENDANT HAS BEEN NOTICED BECAUSE OF PRIOR CRIMINAL HISTORY THAT IF HE IS CONVICTED OF TRAFFICKING IN CRACK COCAINE AS ALLEGED IN THIS INDICTMENT THAT HE'LL BE SUBJECT TO A SENTENCE OF LIFE WITHOUT PAROLE.

MR. MAXEY: THATS CORRECT YOUR HONOR.

THE COURT: AND HIS AGREEMENT TO WAIVE A JURY TRIAL HAS CAUSED THE STATE TO AGREE NOT TO SEEK A SENTENCE OF LIFE WITHOUT PAROLE IN EVENT OF CONVICTION FOR THIS OFFENSE. (R.p. 77, 11-25)

MR. MAXEY: THATS CORRECT YOUR HONOR

THE COURT: DID YOU UNDERSTAND THAT MR. NORMAN

DESHON NORMAN: NO. SIR IF SOMEBODY BREAK IT DOWN A LITTLE MORE FOR ME. (R.p. 78, 1-3)

MR. MAXEY: I JUST WANTED TO PUT ON RECORD THAT ANOTHER OFFER WAS EXTENDED AFTER THAT IN CHAMBERS CONVERSATION. THE STATE OFFERED MR. NORMAN THE OPPURTUNITY TO PLEAD GUILTY AND RECIEVE A 12 YEAR-- A RECOMMENDED 12 YEAR SENTENCE INFRONT OF YOUR HONOR. WHICH WAS REJECTED BY THE COUNTER OFFER OF SEVEN YEARS WAS ALSO REJECTED BY THE STATE, AND WERE READY TO PROCEED WITH THE BENCH TRIAL.

THE COURT: ALL RIGHT, LET ME BE SURE I UNDERSTAND. MR. NORMAN THE SOLICITOR SAYS HE AGREED TO OFFER YOU A SENTENCE OF 12 YEARS IF YOU PLED

DESHON NORMAN: YES SIR

THE COURT: AND HE SAYS THAT YOU REJECTED THAT OFFER. DO YOU NEED SOME ADDITIONAL TIME TO TALK WITH YOUR LAWYER ABOUT THAT (R.p. 80, 12-17)

ON MARCH 3, 2017
THE SOLICITOR OFFICE SAID THIS
TO ME AGAIN IN OPEN COURT

MR. BARNETTE: MAY IT PLEASE THE COURT, YOUR HONOR, I HAVE MADE THE 12 YEAR OFFER TO MR. SMITH AND HIS CLIENT. I TOLD HIM, I SAID IT'D BE OPEN OBVIOUSLY. IF WE GO FORWARD WITH IT, IT'LL BE WITH DRAWN, AND THAT WAS DISCUSSED YESTERDAY, AND I JUST WANT TO MAKE SURE ON RECORD. IT HAS BEEN REOFFERED BUT I DON'T KNOW IF THEY'LL ACCEPT IT OR NOT. BUT IVE EXTEND IT TO HIS CLIENT. (R.p. 186, 2-8)

HOWEVER, ALL THESE CONSIDERATIONS PRESUPPOSE FAIRNESS IN SECURING AGREEMENT BETWEEN AN ACCUSED AND A PROSECUTOR IT IS NOW CLEAR, FOR EXAMPLE, THAT THE ACCUSED PLEADING GUILTY MUST BE COUNSELED ABSENT WAIVER "MOORE V. MICHIGAN, 355 U.S. 155, 78 S.Ct. 191, 2 L. Ed. 2d 167 (1957) FED RULE CRIM. PROC. II GOVERNING PLEAS IN FEDERAL COURT NOW MAKES CLEAR THAT THE SENTENCING JUDGE MUST DEVELOP ON THE RECORD, THE FACTUAL BASIS FOR THE PLEA, AS FOR EXAMPLE BY HAVING THE ACCUSED DESCRIBE CONDUCT THAT GAVE RISE TO THE CHARGE THE PLEA MUST OF COURSE BE (10)

VOLUNTARY AND KNOWING, AND IF IT WAS INDUCED BY PROMISES THE ESSENCE OF THOSE PROMISES MUST IN SOME WAY BE MADE KNOWN. THERE IS OF COURSE NO ABSOLUTE RIGHT TO HAVE A GUILTY PLEA ACCEPTED. LYNCH V. OVERHOLSTER, 369 U.S. 705, 719, 82 S. Ct. 1063, 1072, 8 L. Ed 2d 211 (1962)

FED RULE CRIM. PROC 11.

HOWEVER IMPORTANT PLEA BARGAINING MAY BE IN THE ADMINISTRATION OF CRIMINAL JUSTICE OUR OPINIONS HAVE ESTABLISHED THAT A GUILTY PLEA IS A SOBERING AND SERIOUS OCCASION IN AS MUCH AS IT CONSTITUTES A WAIVER OF FUNDAMENTAL RIGHTS TO A JURY TRIAL "DUNCAN V. LOUISIANA"; 391, U.S. 145 88 S. Ct. 1444, 20 L. Ed 2d, 491 to CONFRONT ONE'S ACCUSERS "POINTER V. TEXAS"

380 U.S. 400, 85 S. Ct. 1065, 13 L. Ed 2d, 923 to PRESENT WITNESSES IN ONE'S DEFENSE "WASHINGTON V. TEXAS" 380 U.S. 14, 87 S. Ct. 1920, 18 L. Ed 2d 1019 to REMAIN SILENT, MALLOY V. HOGAN 378 U.S. 1, 84 S. Ct 1489, 12 L. Ed 2d 653 AND TO BE CONVICTED BY PROOF BEYOND ALL REASONABLE DOUBT. IN

RE WINSHIP 397 U.S. 358 90 S. Ct. 1068, 25 L. Ed 1009 THE COURT HAS RECOGNIZED THAT FAIRLY OBTAINED GUILTY PLEAS IN FEDERAL COURTS SHOULD NOT BE VACATED IN THE COURSE OF HOLDING THAT WITHDRAWN GUILTY PLEAS WERE NOT ADMISSIBLE IN SUBSEQUENT FEDERAL PROSECUTIONS THE COURT OPINED: ON TIMELY APPLICATIONS, THE COURT WILL VACATE A PLEA OF GUILTY SHOWN TO HAVE BEEN UNFAIRLY OBTAINED OR GIVEN THROUGH IGNORANCE, FEAR, OR INADVERTENCE SUCH AN APPLICATION DOES NOT INVOLVE ANY QUESTIONS OF GUILT OR INNOCENCE "KERCHEVAL V. UNITED STATES, 274, U.S. 220, 47 S. Ct. 582 71, L. Ed. 1009" Id; AT 224, 47, S. Ct AT 583

ALTHOUGH KERCHEVAL'S DICTUM CONCERNING GROUNDS FOR WITHDRAWAL OF GUILTY PLEAS DID NOT EXPRESSLY REST ON CONSTITUTIONAL GROUNDS (CF. FRAME V. HUDSPETH, 309 U.S. 632, 60, S. Ct. 712, 84 L. Ed 989).

WALKER V. JOHNSTON 312 U.S. 275, 61 S. Ct. 574 85 L. Ed 830 CLEARLY HELD THAT A FEDERAL PRISONER HAD PLED GUILTY DESPITE HIS TENORANCE OF AND BEING UNIFORMED OF HIS RIGHT TO A LAWYER WAS DEPRIVED OF THAT SIXTH AMENDMENT RIGHT, OR IF HE HAD BEEN TRICKED BY PROSECUTOR THROUGH MISREPRESENTATION INTO PLEADING GUILTY THEN HIS DUE PROCESS RIGHTS WERE OFFENDED IN WALKER, THE PETITIONER WAS GRANTED AN EVIDENTIARY HEARING TO PROVE HIS FACTUAL CLAIMS IN ANTICIPATION OF VACATING PLEA ACCORD:

WALEY V. JOHNSTON, 316, U.S. 101, 62, S. Ct. 964, 86 L. Ed 1302;

VON MOLTKE V. GILES 322, U.S. 708 68, S. Ct. 316, 92 L. Ed 309, STATE

CONVICTIONS FOUNDED UPON (COERCED) OR UNFAIRLY INDUCED GUILTY PLEAS HAVE ALSO RECEIVED INCREASED SCRUTINY AS MORE FUNDAMENTAL RIGHTS HAVE BEEN APPLIED TO THE STATES AFTER "POWELL V. ALABAMA 287, U.S. 45, 53, S. Ct. 55 77 L. Ed 158 THE COURT HELD THAT A STATE (11)

DEFENDANT WAS ENTITLED TO A LAWYER ASSISTANCE IN CHOOSING WHETHER TO PLEAD GUILTY "WILLIAMS V. KAISER" 323 U.S. 471, 65 S. Ct. 363 89 L. Ed 398 AND A GUILTY PLEA OBTAINED WITHOUT THE ADVICE OF COUNSEL MAY NOT BE ADMITTED AT A SUBSEQUENT STATE PROSECUTION.

POLICE MAY NOT QUESTION INDIVIDUAL IF HE ALONE AND INDICATES IN ANY MANNER THAT HE DOES NOT WISH TO ^{IS} BE INTERROGATED. COERCION CAN BE MENTAL AS WELL AS PHYSICAL AND BLOOD OF ACCUSED IS NOT ONLY HALLMARK OF UNCONSTITUTIONAL INQUISITION "ERNESTO A. MIRANDA V. STATE OF ARIZONA" "MICHAEL VIENERA V. STATE" 384 U.S. 436, 10 OHIO MISC 9, 86 S. Ct. 1602 (1966)

AGENTS OF THE STATE MAY NOT PRODUCE A GUILTY PLEA BY ACTUAL THREATENED OR PHYSICAL HARM OR BY MENTAL COERCION OVER BEARING THE WILL OF THE DEFENDANT. TO BE ADMISSIBLE A CONFESSION MUST BE FREE AND VOLUNTARY THAT IS IT MUST NOT BE EXTRACTED BY ANY SORT OF THREATS OR VIOLENCE NOR OBTAINED BY ANY DIRECT OR IMPLIED PROMISES HOWEVER SLIGHT NOR BY THE EXERCISE OF ANY IMPROPER INFLUENCE "ROBERT BRADY V. UNITED STATES" 397 U.S. 742, 90 S. Ct. 1463 (1970)

IN DETERMINING WHETHER A GUILTY PLEA IS VOLUNTARY MADE FOR AS WE HAVE SAID A PLEA OF GUILTY IS MORE THAN AN ADMISSION OF CONDUCT; ITS TERROR, INDUCEMENTS, SUBTLE OR BLATANT THREATS, IGNORANCE, INCOMPREHENSION, COERCION, FEAR OF CONVICTION ALL WHICH ARE ALL PERFECT COVER UPS OF UNCONSTITUTIONALLY. THE QUESTION OF AN EFFECTIVE WAIVER OF A FEDERAL CONSTITUTIONAL RIGHT IN A PROCEEDING IS OF COURSE GOVERNED BY FEDERAL STANDARDS "DOUGLAS V. ALABAMA" 380 U.S. 415, 422, 85 S. Ct. 1074, 1078, 13 L. Ed. 2d 934

DEFENDANTS CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED IF CONVICTION IS BASED IN WHOLE OR IN PART OR INVOLUNTARY CONFESSION REGARDLESS OF ITS TRUTH OR FAISITY EVEN IF THERE IS AMPLE EVIDENCE ASIDE FROM CONFESSION TO SUPPORT CONVICTION. AMEND. 5

THE COURT ALSO ERRED BY NOT HAVING THE PROSECUTION TO TURN IN ALL EVIDENCE BEFORE THE TRIAL SO DEFENDANT COULD HAVE FAIR TRIAL.
ON MARCH, 17, 2017

MR SMITH: YOUR HONOR, WHEN WE DISCUSSED THE MOTION TO SUPPRESS YOU INDICATED THAT THE IDEA THAT THE STOP WAS SOMEWHAT PRETEXTUAL, WAS SOMETHING THAT'S UNDERSTOOD, HOWEVER, IF THERE WERE LIES ASSOCIATED WITH IT THAT WOULD MAKE A DIFFERENCE. AND THE FACT OF THE MATTER IS THE DISCOVERY THAT WAS PROVIDED BY THE STATE OMITTED TWO OF A FIVE PAGE NARRATIVE BY ONE OF THE OFFICERS WHO WAS ALSO -- THE NAME OF THAT INDIVIDUAL WAS OMITTED.
(R.p. 211, 12-19)

MR. SMITH: BUT NOW RECOGNIZING THAT THEY OMITTED TWO PAGES OF THE GUYS NARRATIVE AND ALSO THE FACT THAT THEY OMITTED HIS NAME --- THAT WAY I COULDN'T PINPOINT HIM AND CALL HIM AS A WITNESS -- AND THEY CERTAINLY DIDN'T CALL HIM AS A WITNESS -- WAS ABLE TO CONTRADICT MR. MATHIS, MR. COOPER AND SO FORTH. (R.p. 215, 3-8)
GOVERNMENT FAILURE TO ASSIST DEFENSE BY DISCLOSING INFORMATION THAT MIGHT HAVE BEEN HELPFUL IN CONDUCTING CROSS-EXAMINATION AMOUNTS TO CONSTITUTIONAL VIOLATION ONLY IF IT DEPRIVES DEFENDANT OF FAIR TRIAL, CONSTITUTIONAL ERROR OCCURS AND CONVICTION MUST BE REVERSED ONLY IF EVIDENCE IS MATERIAL IN SENSE THAT ITS SUPPRESSION UNDERMINES CONFIDENCE IN OUTCOME OF TRIAL "EVIDENCE WITHHELD BY GOVERNMENT IS MATERIAL AS WOULD REQUIRE REVERSAL OF CONVICTION. ONLY IF THERE REASONABLE PROBABILITY THAT HAD EVIDENCE BEEN DISCLOSED TO DEFENSE, RESULT IN PROCEEDING WOULD HAVE BEEN DIFFERENT" BRADY V. MARYLAND, 373 U.S. 83, 87, 83 S. Ct, 1194, 1196, 10 L. Ed. 2d 215 (1963)
"THE BRADY RULE IS BASED ON REQUIREMENT OF DUE PROCESS. ITS PURPOSE IS NOT TO DISPLACE THE ADVERSARY SYSTEM AS THE PRIMARY MEANS BY WHICH TRUTH IS UNCOVERED, BUT TO ENSURE THAT A MISCARriage OF JUSTICE DOES NOT OCCUR. THUS THE PROSECUTOR IS NOT REQUIRED TO DELIVER HIS ENTIRE FILE TO DEFENSE COUNSEL, BUT ONLY DISCLOSE EVIDENCE FAVORABLE TO THE ACCUSED THAT IF SUPPRESSED WOULD DEPRIVE THE DEFENDANT OF A FAIR TRIAL. THE COURT MUST RECOGNIZE THAT THE PROSECUTOR'S ROLE TRANSCENDS THAT OF AN ADVERSARY "HE IS THE REPRESENTATIVE NOT OF AN ORDINARY PARTY TO CONTROVERSY BUT OF A SOVEREIGNTY... WHOSE INTEREST IN A CRIMINAL PROSECUTION IS NOT THAT IT SHALL WIN A CASE BUT JUSTICE SHALL BE DONE" BERGER V. UNITED STATES, 295 U.S. 78, 88, 55 S. Ct. 629 (13)

633, 79 L. Ed. 1314 (1935) SEE ALSO UNITED STATES V. AGURS, 427, U.S. 97, 106, 111, 96 S.Ct 2392, 2398, 2401, 49 L. Ed. 2d 706 (1972)

THE COURT ALSO ABUSED DEFENDANTS DUE PROCESS TO A FAIR TRIAL BY NOT LETTING COUNSEL CROSS EXAMINE

ALL WITNESSES THAT WAS AGAINST HIM. STATE V. JENKINS

322 S.C. 360 474 S.E. 2d 812,

(QUOTING

FROM DAVIS V. ALASKA. 415 U.S. 308, 318, 94 S.Ct. 1105, 1111, 39 L. Ed. 2d 347 (1979) ON MARCH 2, 2017

THE COURT: ALL RIGHT, MOTION FOR DIRECTED VERDICT IS DENIED. ANY ADDITIONAL EVIDENCE YOU WISH TO OFFER, MR. SMITH?

DONALD SMITH: FOR MY CASE?

THE COURT: YES SIR

DONALD SMITH: OH YES, SIR I GAVE THEM A LIST OF OFFICERS THAT WERE INVOLVED HERE THAT I WANTED TO EXAMINE.

THE COURT: OKAY IS IT GOING TO BE RELEVANT TO THE MOTION TO SUPPRESS OR RELEVANT TO THE QUESTION OF WHETHER OR NOT HE POSSESSED THE CRACK COCAINE IN QUESTION?

DONALD SMITH: I WISH TO QUESTION THEM SIR.

THE COURT: ABOUT WHAT?

MR. SMITH: THEIR INVOLVEMENT

THE COURT: WELL WHAT IS THE RELEVANCE OF THEIR TESTIMONY IS MY POINT WEVE ALREADY HAD A SUPPRESSION HEARING, AND THAT HAS BEEN DENIED. SO THE QUESTION BEFORE ME NOW IS WHETHER OR NOT YOUR CLIENT IS GUILTY OF TRAFFICKING. DO YOU THINK THERES GOING TO BE SOME TESTIMONY FROM THE OFFICERS THAT WOULD TEND TO DISPUTE OR REFUTE THE FACT THAT HE POSSESSED CRACK COCAINE? (R.p. 178, 10-20)

DONALD SMITH: IM NOT SURE

THE COURT: BECAUSE THAT WOULD BE A CONFLICT OF YOUR OWN CLIENTS TESTIMONY.

DONALD SMITH: I UNDERSTAND SIR THATS WHY I WANT TO QUESTION THEM

THE COURT: HAVE YOU TALKED TO THEM?

DONALD SMITH: NO SIR

THE COURT: ALL RIGHT WELL YOU TALK TO THEM DURING THE OVERNIGHT RECESS.

DONALD SMITH: TALK TO THE WITNESSES. (R.p. 180 2-25) (R.p. 181, 1-2)

A DEFENDANT'S CONSTITUTIONAL RIGHT TO BE CONFRONTED WITH WITNESSES AGAINST HIM INCLUDES THE RIGHT TO CROSS EXAMINE THOSE WITNESSES. WITNESSES RIGHT OF CROSS EXAMINATION IS ONE OF THE SAFEGUARDS ESSENTIAL TO A FAIR TRIAL. TO DEPRIVE AN ACCUSED THE RIGHT TO CROSS EXAMINE WITNESSES AGAINST HIM IS DENIAL OF FOURTEENTH AMENDMENT'S GUARANTEE OF DUE PROCESS LAW. ON CROSS-EXAMINATION WITNESS MAY BE ASKED QUESTIONS IN REFERENCE TO IRRELEVANT MATTER, PRIOR STATEMENTS, CONTRADICTORY OR TESTIMONY OR STATEMENTS CONCERNING RELEVANT MATTER NOT CONTRADICTORY OF TESTIMONY. THE CONFRONTATION CLAUSE DOES NOT PREVENT A TRIAL JUDGE FROM IMPOSING ANY LIMITS ON DEFENSE COUNSEL'S INQUIRY INTO THE POTENTIAL BIAS OF A PROSECUTION WITNESS" STATE V. JENKINS 322 S.C. 360, 474 S.E. 2d 812. IN DAVIS V. ALASKA THE SUPREME COURT HELD THAT THE DENIAL OF THE RIGHT OF EFFECTIVE CROSS EXAMINATION WAS CONSTITUTIONAL ERROR OF THE FIRST MAGNITUDE REQUIRING AUTOMATIC REVERSAL" 79 F. 2d at 1464, DAVIS V. ALASKA 415 U.S. 308, 318, 94 S.Ct. 1105, 1111 39 L.Ed. 2d 347 (1979)

CROSS EXAMINATION IS THE PRINCIPAL MEANS BY WHICH THE BELIEVABILITY OF A WITNESS AND THE TRUTH OF HIS TESTIMONY ARE TESTED SUBJECT ALWAYS TO THE BROAD DISCRETION OF A TRIAL JUDGE TO PRECLUDE REPETITIVE AND UNDUY HARASSING INTERROGATION, THE CROSS EXAMINER IS NOT ONLY PERMITTED TO DEIVE INTO THE WITNESS'S STORY TO TEST THE WITNESS PERCEPTIONS AND MEMORY, BUT THE CROSS EXAMINER HAS TRADITIONALLY BEEN ALLOWED TO IMPEACH... I.E. DISCREDIT THE WITNESS ONE WAY OF DISCREDITING THE WITNESS IS TO INTRODUCE EVIDENCE OF A PRIOR CRIMINAL CONVICTION OF THAT WITNESS BY SO DOING THE CROSS-EXAMINER INTENDS TO AFFORD THE JURY A BASIS TO INFER THAT THE WITNESS CHARACTER IS SUCH THAT HE WOULD BE LESS LIKELY THAN THE AVERAGE TRUST WORTHY CITIZEN TO BE TRUTHFUL IN HIS TESTIMONY. THE INTRODUCTION OF EVIDENCE OF A PRIOR CRIME IS THUS A GENERAL ATTACK ON THE CREDIBILITY OF THE WITNESS. A MORE PARTICULAR ATTACK ON THE WITNESS IS EFFECTED BY MEANS OF CROSS-EXAMINATION DIRECTED TOWARD REVEALING POSSIBLE BIASES, PREJUDICES OR UTTERIOR MOTIVES OF THE WITNESS AS THEY MAY RELATE DIRECTLY TO ISSUES OR PERSONALITIES. THE PARTIALITY OF A WITNESS IS SUBJECT TO EXPLORATION AT TRIAL, AND IS ALWAYS RELEVANT AS DISCREDITING THE WITNESS AND AFFECTING THE WEIGHT OF HIS TESTIMONY; 3A J. WIGMORE EVIDENCE §940 P. 775 (CHADBOURN REV. 1970) YOU MUST RECOGNIZE THAT THE EXPOSURE OF A WITNESS MOTIVATION IN TESTIFYING IS A PROPER AND IMPORTANT FUNCTION OF THE CONSTITUTIONALLY PROTECTED RIGHT OF CROSS EXAMINATION" GREENE V. MCELROY, 300 U.S. 474, 496, 79 S.Ct 1400, 1413, 3 L.Ed. 2d 1377 (1959)

ON FEBRUARY 27, 2017 I FEEL THE TRIAL COURT
ERRED IN NOT SUPPRESSING THE EVIDENCE FROM

THE TRAFFIC STOP ON January 19, 2016 "DEIWARE V. PROUSE,

440, U.S. 648, 653, 99 S. Ct. 1391, 1395, 59 L. Ed. 2d 660 (1979)
TERRY V. OHIO, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d. 889 (1968) Wong Sun
V. UNITED STATES, 371 U.S. 471 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963)
GUZMAN V. UNITED STATES, 804 F.2d. 1512, 1516 (10th Cir 1988) VAIDEZ V.
UNITED STATES, 931 F.2d 1448 (11th Circuit 1991) SMITH V. UNITED STATES
799 F.2d 704, 709 (11th Cir 1986) STATE V. ROBINSON, 306 S.C. 399, 412 S.E. 2d
411 (1991) STATE V. FOSTER 269, S.C. 373, 237, S.E. 2d 589 (1977); STATE V.
WOODROFF, 344, S.C. 537, 546, 544, S.E. 2d, 290, 295, UNITED STATES V. CORTEZ
449, U.S. 411, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981) STATE V. LESLEY, 326 S.C.
641 486, S.E. 2d 276, STATE V. SOKOLOW, 490 U.S. 1109 S. Ct. 1581, 104 L. Ed
2d, 1 (1989) STATE V. BUSSINGAME 338, S.C. 240, 248, 525, S.E. 2d 535
539, WORTMAN V. CITY OF SPARTANBURG, 310 S.C. 1, 425 S.E. 2d, 18 (1992)
THOMPSON V. SMITH, 289, S.C. 334, 336-37, 345 S.E. 2d 500, 502 (1986)
FLORIDA V. BOSTICK, 501 U.S. 429, 434, 111, S. Ct. 2382 115 L. Ed 2d, 389
(1991)

EXPLANATION OF WHY TRAFFIC
STOP WASN'T JUSTIFIABLE.

PRIOR TO TRIAL MY LAWYER DONALD SMITH FILED MOTIONS TO SUPPRESS THE
PHYSICAL EVIDENCE AND STATEMENTS TAKEN AS A RESULT OF THE STOP
OF MY CO-DEFENDANT CLEVELAND SMITH'S SUV, AND ANYTHING FROM A
SURVEILLANCE OF MR. ANDREW SMITH. THE PRIMARY ISSUE HERE IS
WHETHER SPARTANBURG COUNTY NARCOTICS OFFICERS WERE LEGALLY
JUSTIFIED IN STOPPING THE S.U.V. DROVE BY MR. CLEVELAND SMITH
BECAUSE AN ORDINARY TRAFFIC STOP CONSTITUTES A LIMITED SEIZURE
WITHIN IN THE MEANING OF THE 4TH AND 14TH AMENDMENTS "DEIWARE
V. PROUSE, 440, U.S. 648, 653, 99 S. Ct. 1391, 1395, 59 L. Ed 660 (1979)
SUCH ACTION MUST BE JUSTIFIED BY PROBABLE CAUSE OR A
REASONABLE SUSPICION BASED ON SPECIFIC AND ARTICULABLE FACTS
OF UNLAWFUL CONDUCT TERRY V. OHIO, 392 U.S. 1, 88 S. Ct.
1868, 20, L. Ed 2d 889 (1968) EVIDENCE SEIZED AS RESULT OF AN
ILLEGAL STOP IS SUBJECT TO THE FRUIT OF POISONOUS TREE
DOCTRINE SEE e.g. WONG SUN V. UNITED STATES 371 U.S. 471
83 S. Ct. 407, 9 L. Ed 2d 441 (1963) HERE HOWEVER THERE (16)

WAS A SPECIFIC AND ARTICULABLE FACT: THE TRAFFIC OFFENSE
MY LAWYER ARGUED THAT THE POLICE USED A MINOR TRAFFIC
VIOLATION. IF THERE WAS ONE AS A PRETEXT TO CONDUCT A STOP
OF THE S.U.V. AND TO SEARCH WITHOUT JUSTIFICATION FOR MORE
SERIOUS CRIMINAL ACTIVITY. DESPITE THE TRIAL COURT DECISION
TO CREDIT THE OFFICERS TESTIMONY CONCERNING THE S.U.V.
FAILURE TO MAINTAIN A LANE. MY LAWYER DONALD SMITH
MAINTAINS THAT THE OFFICERS TESTIMONY DEMONSTRATED THAT
THEIR TRUE MOTIVATION FOR STOPPING THE CAR WAS THEIR UNSUBSTANTIATED
FEELING THAT THE PASSENGER WAS INVOLVED IN SOME SORT OF
CRIMINAL ACTIVITY MR DONALD SMITH CONTENDS THAT SUCH A "PRETEXTUAL"
STOP VIOLATES THE FOURTH AMENDMENTS PROHIBITION AGAINST
UNREASONABLE SEARCHES. SEE e.g. UNITED STATES V. GUZMAN, 864
F2d, 1512, 1516 (10TH CIR 1988) (DEFINING A PRETEXTUAL STOP AS AN
OCCASION ON WHICH THE POLICE USE A LEGAL JUSTIFICATION TO MAKE
[A] STOP IN ORDER TO SEARCH A PERSON OR PLACE OR TO INTERROGATE
A PERSON FOR AN UNRELATED SERIOUS CRIME FOR WHICH THEY DO NOT
HAVE THE REASONABLE SUSPICION NECESSARY TO SUPPORT A LEGAL STOP.)
I DESHON NORMAN URGE US TO ADOPT THE TEST USED BY THE 10TH
AND 11TH CIRCUITS FOR EVALUATING CLAIMS OF PRETEXTUAL STOPS. IN
THOSE CIRCUITS AN OTHERWISE OBJECTIVELY LAWFUL INVESTIGATIVE
STOP WILL BE DEEMED INVALID. IF IT REPRESENTS A DEPARTURE
FROM ROUTINE POLICE PRACTICE. IN THIS CASE IT DID IT TOOK
UP TO 3 TO 4 FOUR NARCOTIC VEHICLE TO STOP A CAR FOR A
FAILURE TO MAINTAIN. THEN TO HAVE ONE PULL UP BESIDE MR.
CLEVELAND S.U.V AND TELL THE PASSENGER HE NEEDS TO PULL
OVER IS CLEARLY NOT NORMAL. IN DETERMINING WHEN AN INVESTIGATORY
STOP IS UNREASONABLY PRETEXTUAL, THE PROPER INQUIRY... IS NOT
WHETHER THE OFFICER COULD VALIDLY HAVE MADE THE STOP, BUT WHETHER
UNDER THE SAME CIRCUMSTANCES A REASONABLE OFFICER WOULD HAVE
MADE THE STOP IN THE ABSENCE OF INVALID PURPOSE. UNITED STATES V.
VAIDEZ, 931, F2d 1448 (11TH CIRCUIT 1991) QUOTING UNITED STATES V.
SMITH 709, F2d, 704, 709 (11TH CIRCUIT 1986) ACCORD UNITED STATES V.
GUZMAN 864, F2d 1512, 1517 (10TH CIRCUIT 1988) (APPLYING THE SMITH
TEST AND NOTING THAT A STOP IS UNREASONABLE NOT BECAUSE THE
OFFICER SECRETLY HOPES TO FIND EVIDENCE OF A GREATER OFFENSE
BUT BECAUSE IT IS CLEAR THAT A OFFICER WOULD HAVE BEEN UNINTERESTED
IN PURSUING THE LESSER OFFENSE ABSENT THAT HOPE.

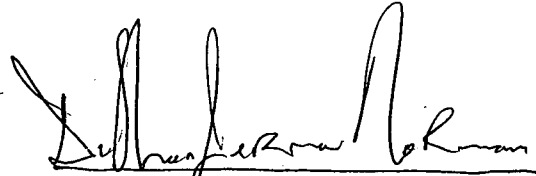
IN DETERMINING WHETHER REASONABLE SUSPICION EXIST THE WHOLE PICTURE MUST BE CONSIDERED. "UNITED STATES V. SOKOLOW, 490 U.S. 1109, S.Ct. 1581, 104 L.Ed 2d 1 (1989) STATE V. BIASSINGAME, 338, S.C. 240, 248, 525, S.E. 2d 535, 539 (CT. APP 1999)

THE FUNDAMENTAL QUESTION IN DETERMINING THE LAWFULNESS OF AN ARREST IS WHETHER PROBABLE CAUSE EXISTED TO MAKE ARREST. WORTMAN V. CITY OF SPARTANBURG, 310 S.C. 1, 425 SE 2d 18 (1992) PROBABLE CAUSE IS DEFINED AS A GOOD FAITH BELIEF THAT A PERSON IS GUILTY OF A CRIME. WHEN THIS BELIEF REST ON SUCH GROUNDS AS WOULD INDUCE AN ORDINARILY PRUDENT AND CAUTIOUS PERSON UNDER THE CIRCUMSTANCES TO BELIEVE LIKE WISE "Id AT 4, 425. SE 2d AT 20. PROBABLE CAUSE MAY BE FOUND SOMEWHERE BETWEEN SUSPICION AND SUFFICIENT EVIDENCE TO CONVICT. "THOMPSON V. SMITH 289, S.C. 334 336-37 345, S.E. 2d 500, 502 (CT APP 1986) IN DETERMINING THE PRESENCE OF PROBABLE CAUSE FOR ARREST THE PROBABILITY CANNOT BE TECHNICAL MUST BE FACTUAL AND PRACTICAL CONSIDERATIONS OF EVERYDAY LIFE ON WHICH REASONABLE PRUDENT AND CAUTIOUS MEN NOT LEGAL TECHNICIANS ACT.

"CIST V. BERKELEY COUNTY SHERIFF DEPT, 336 S.C. 611, 521 SE 2d, 163 (CT. APP 1999). THE ISSUE BEFORE THE COURT WAS WHETHER THE EVIDENCE COLLECTED WAS THE FRUIT OF AN ILLEGAL SEIZURE THE COURT DETERMINED [A] PERSON IS SEIZED BY THE POLICE AND THUS ENTITLED TO CHALLENGE THE STATES ACTION UNDER THE FOURTH AMENDMENT WHEN THE OFFICER BY MEANS OF PHYSICAL FORCE OR SHOW OF AUTHORITY TERMINATES RESTRAINS HIS FREEDOM MOVEMENT "Id; 127 S.Ct. at 2405 (QUOTING FLORIDA V. BOSTICK 501, U.S. 429, 434, 111 S.Ct. 2382, 115 L.Ed, 2d 389 (1991) QUOTING TERRY V. OHIO 392 U.S. 1, 19 N. 16 88 S.Ct. 1868, 20 L.Ed 2d 889 (1968) THE COURT HEID THAT A PASSENGER IS SEIZED AT THE MOMENT THE CAR COMES TO A HAIT. Id 127 S.Ct. AT 2403 AS SOON AS THE DRIVER PULLED HIS CAR OVER IN RESPONSE TO THE POLICE PRESENCE A SEIZURE OF ALL OCCUPANTS OF THE VEHICLE WAS COMPLETED. THIS CASE IS IMPORTANT BECAUSE IT FURTHER CLARIFIES A SEIZURE OCCURES WHEN AN INDIVIDUAL SUBMITS TO A SHOW OF AUTHORITY INCLUDING WHEN THAT PERSON IS A PASSENGER IN A SUBMITTING VEHICLE. Id 127 S.Ct at 2403 SO I DESTON NORMAN WAS SEIZED SOON AS THE CAR CAME TO A HAIT, AND HS A ERROR TO DENY SUPPRESSION MOTION ON THE GROUND THAT THE SEIZURE OCCURED ONLY AT FORMAL ARREST.

CONCLUSION

I THE APPELLANT DESHON JERMAINE NORMAN
FEELS I WAS CHEATED OUT OF MY DUE PROCESS
IN COURT THROUGH FABRICATED TESTIMONY'S
CERTAIN ASPECTS OF DISCOVERY BEING WITHHELD
JUDICARY INTERFERENCE. I COULD CLEARER
SEE NO MATTER WHAT MY COUNSEL SAID OR
DID THE COURT WAS NEVER IN MY FAVOR. I DESHON
JERMAINE NORMAN FEELS MY GUILTY PLEA
SHOULD BE VACATED AND THE SUPPRESSION
OF EVIDENCE SHOULD CLEARLY BE GRANTED
DUE TO THE FACT THE VEHICLE STOP WAS
NOT SUPPORTED BY REASONABLE SUSPICION
NOR PROBABLE CAUSE.


DESHON JERMAINE NORMAN
APPELLANT

THE SIXTH DAY OF MARCH, 2018

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