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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY

James R. Barber, III, Circuit Court Judge

Appellate Case Number: 2014-001774

Phillip H. Crocker, III

Petitioner,

v.

State of South Carolina

Respondent.

Appendix – Volume IV, Pages 1501-2000

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646

Attorney for Petitioner

Alan Wilson
Attorney General

Megan Harrigan Jameson
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211

Attorneys for Respondent

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to Columbia under the guise of a bogus drug deal. In Columbia the defendant disguised material to be marijuana in the hopes of "ripping off" the would be purchasers. There were no specific overt acts done in Richland County in furtherance of a trafficking in marijuana conspiracy. The only possible argument under the conspiracy portion of the trafficking statute is that the "agreement" that took place in Dillon constitutes the crime of conspiracy to traffick in marijuana. As discussed in issue III, there are problems with this theory under the facts of this case. If there was a proper venue for the trafficking in marijuana charge it would have been Dillon and not Richland County.

Viewing the evidence in the light most favorable to the State, there is no evidence that the defendant conspired to traffick marijuana in Richland County. If the State had produced any evidence, direct or circumstantial, that the defendant intended to traffick in marijuana in Richland County, then a denial of the directed verdict motion might be appropriate. The State in this case, however, presented no such evidence. The State's evidence, in fact, showing that the defendant delivered cement and blankets instead of marijuana, negates any specific intent to traffick in marijuana in Richland County. The State's evidence fully supports the fact that the defendant's actions were an attempt to set up the drug buyers and rob them.

Richland County lacked jurisdiction to hear the conspiracy to traffick in marijuana case because the alleged agreement was made in Dillon County and the State failed to present any evidence that the defendant committed overt acts in

furtherance of a conspiracy to traffick in marijuana in Richland County. The State presented no evidence to show that the defendant committed a trafficking in marijuana offense in Richland County. The defendant is entitled to a directed verdict when the State fails to present evidence that the offense was committed in the County alleged in the indictment. State v. Evans, 307 S.C. 477, 415 S.E.2d 816 (1992). The trial court erred in failing to direct a verdict in favor of the defendant on the trafficking in marijuana charge.

III. The trial court erred in failing to direct a verdict in favor of the defendant on the trafficking in marijuana charge when the State failed to prove the existence of a conspiracy to traffick in marijuana.

In denying the motion for directed verdict on the ground that the State failed to prove the existence of a conspiracy to traffick in marijuana the trial court stated,

I find that there is circumstantial evidence that on or about November 20th, 2001, the defendant, who has been identified by Ms. Casey, entered into an agreement with her to provide a quantity of drugs -- to sell her a quantity of drugs. At that meeting, that within a definite time for which I think price was certainly established. A delivery date may not have been established but according to her testimony, there would be telephone calls to determine the date and time of the actual transaction.

In my opinion, and I -- even if I read Buckmon, on the conspiracy issue, it would appear to me that there is at least circumstantial evidence of a conspiracy to make a drug transaction, which is an illegal transaction. I think I understand your point. The essence of a conspiracy is the agreement, but there's evidence of an agreement.

There may not -- There's evidence of two parties agreeing to enter into this transaction, and that is from the -- solely from the testimony of Consuelo Casey, there was a buy and sell agreement. She sought to buy

marijuana. She said the seller, who she identified as the defendant, in exchange wished a certain amount of money.

Mr. Jennings -- Well, I don't conclude a conspiracy, other than the fact that he may have had something to do with the creation of the conspiracy, also had financial gain in mind, but Buckmon says to establish the existence of a conspiracy, proof of an expressed agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties.

It appears to the court that there is a course of conduct that was created or established on the evening of November 20th 2001, which created a conspiracy to deal in marijuana and I so find. (Tr.pp. 1057-58)

The court considers the "agreement" made in Dillon (which raises the jurisdictional issues previously discussed) without reference to the subsequent acts of the defendant as presented by the State. The evidence presented by the State, supports the fact that the "agreement" was nothing more than a ruse to lure the buyers to Columbia in an attempt to rob them. Considering all of the evidence presented, the State failed to establish the existence of a conspiracy.

In State v. Holmes, 277 S.C. 232, 285 S.E.2d 353 (1981), the court wrote, "... [O]ne cannot enter into a conspiracy with another who only feigns acquiescence in a crime." Holmes at 354 citing U.S. v. Chase, 372 F.2d 453, 459 (4th Cir. 1967), cert denied 387 U.S. 907, 87 S.Ct. 1688, 18 L.ed.2d 626 (1967).

The facts presented by the State in the present case support the fact that the defendant feigned acquiescence in a drug transaction in order to rob the would be buyers. If the State is relying on the conspiracy portion of the trafficking charge, then the State must prove there was an agreement because under a conspiracy

theory the agreement is the crime. State v. Buckmon, 347 S.C. 316, 555 S.E.2d 402 (2001). While there was testimony of an “agreement” that took place in Dillon on November 20, 2001, it is difficult to imagine how this agreement constitutes a “meeting of the minds” when all the evidence presented by the State supports that this meeting and “agreement” was simply a set up to rob the would be drug buyers.

In discussing conspiracy the Court in State v. Barroso, 320 S.C. 1, 462 S.E.2d 862 (Ct. App. 1995) rev'd on other grounds, 328 S.C. 268, 493 S.E.2d 854 (1997), wrote “It is sufficient to show that each defendant knew or had reason to know of the scope of the conspiracy and that each defendant had reason to believe his own benefits were dependent upon the success of the entire venture.” In the present case, each party had a different venture in mind. The State’s evidence shows that Mr. and Mrs. Casey thought they were going to buy marijuana from the defendant. As to the defendant, however, the State’s evidence shows that the defendant was setting the buyers up in an attempt to rob them. The State failed to present any evidence that there was a joint venture from which both the defendant and the Caseys were to benefit. The State failed to present the elements required to submit the trafficking charge to the jury. The State failed to prove a conspiracy as there was no agreement between the parties.

Pursuant to the reasoning in State v. Dudley, 354 S.C. 514, 581 S.E.2d 171 (2003) cert. granted December 17, 2003, the State must prove that the defendant had a specific intent to traffick in marijuana in Richland County. Viewing the

evidence in the light most favorable to the State, there was no evidence of a specific intent to traffick in marijuana in Richland County. In fact, the State's evidence showing that the defendant delivered cement and blankets instead of marijuana negates any specific intent to traffick in marijuana. The court erred in failing to direct a verdict in favor of the defendant.

IV. The trial court erred in admitting in evidence marijuana and a book about marijuana laws found at the defendant's home in Charlotte, North Carolina, when The State failed to prove any connection between these items and the crimes charged.

At the pre-trial hearing defense counsel moved to suppress evidence of 15 ounces of marijuana found in a locked shed on the defendant's property in Charlotte, North Carolina and a book about marijuana laws found at the defendant's home in North Carolina. (Pre-trial tr. pp. 25-39). Once again, prior to trial and pursuant to Rule 404(b), counsel moved to suppress evidence of the small amount of marijuana and the textbook on marijuana laws found in North Carolina. (Tr. pp. 18-21). The Court denied the motion finding the evidence relevant to the trafficking charge. (Tr. pp. 25-27 and 29-31). Trial counsel made a timely objection when the items were introduced by the State. (Tr. p. 854). As discussed above, if the court erred in failing to quash and failing to direct a verdict in favor of the defendant on the trafficking indictment, then the evidence of marijuana and a book on marijuana no longer has relevance to the remaining murder charge. Clearly, the prejudicial effect of this evidence outweighs any probative value as to the murder charge and the error requires reversal of the

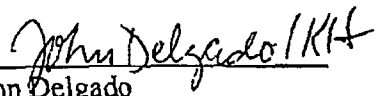
murder charge.

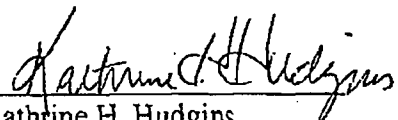
CONCLUSION

The trial court lacked personal and subject matter jurisdiction to hear the trafficking in marijuana charge against the defendant because the State failed to prove that the offense took place in Richland County. If there is a proper venue for the trafficking charge to be heard, it would be Dillon and not Richland County. The trial court erred in failing to quash the indictment prior to trial. The trial court erred in failing to direct a verdict in favor of the defendant on the trafficking in marijuana charge because the State failed to prove that the offense occurred in Richland County. Additionally, the trial court erred in failing to direct a verdict because the State failed to prove a specific intent on the part of the defendant to conspire to traffick in marijuana in Richland County. The appellant's conviction for trafficking in marijuana should be vacated.

Additionally, the court erred in admitting evidence of marijuana and a book about marijuana into evidence when the evidence had no connection to the crime charged.. These errors were not harmless to the murder charge and in combination require a reversal of the murder charge. The appellant's conviction for trafficking in marijuana should be vacated and the conviction for murder should be reversed..

Respectfully submitted,


John Delgado
P.O. Box 1359
Columbia, SC 29202
(803) 254-7745


Kathrine H. Hudgins
P.O. Box 1359
Columbia, SC 29202
(803) 254-7745

Attorneys for Phillip Crocker

August 27, 2004
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

The Honorable G. Thomas Cooper,
Circuit Court Judge

Case No. 02-GS-40-9503
02-GS-40-9561

THE STATE Respondent.

v.

PHILLIP CROCKER Appellant.

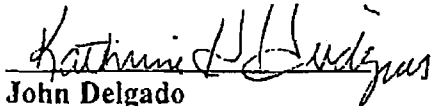
DESIGNATION OF MATTER TO
BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following to be included in the Record on Appeal:

- 1.) Pre-Trial Transcript Pages: 13-39
- 2.) Trial Transcript: 18-21, 25-27, 29-33, 254-257, 262-263, 267, 269, 272-274, 355-356, 370-371, 375, 400-401, 418, 423, 854, 872, 895, 1034-1059

Certification

I certify that this designation contains no matter which is irrelevant to this appeal


John Delgado
Kathrine H. Hudgins
P.O. Box 1359
914 Richland Street
Columbia, South Carolina
29202
(803)254-7745
Attorneys for the Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

The Honorable G. Thomas Cooper
Circuit Court Judge

Case Nos. 02-GS-40-9503
02-GS-40-9561

THE STATE.....Respondent

v.

PHILLIP CROCKER.....Appellant

CERTIFICATE OF SERVICE

I, the undersigned acting as an employee of the Law Firm of John Delgado, attorney for the Appellant, certify that I have served the foregoing document(s) on the individual(s) listed below by United States mail to the following address:

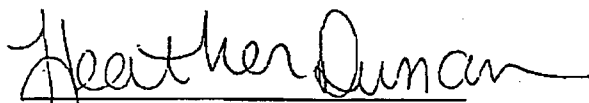
PERSON(S) SERVED:

HENRY MCMASTER
Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

DOCUMENTS:

INITIAL BRIEF AND DESIGNATION OF
MATTER TO BE INCLUDED IN THE
RECORD ON APPEAL

Respectfully submitted,


Heather Duncan

August 27, 2004
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal From Richland County
The Honorable G. Thomas Cooper, Circuit Court Judge**

THE STATE,

Respondent,

vs.

PHILLIP H. CROCKER, III,

Appellant.

INITIAL BRIEF OF RESPONDENT

**HENRY D. McMASTER
Attorney General**

**JOHN W. McINTOSH
Chief Deputy Attorney General**

**DONALD J. ZELENKA
Assistant Deputy Attorney General**

**WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General**

**P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305**

**W. BARNEY GIESE
Solicitor, Fifth Judicial Circuit**

**P. O. Box 192
Columbia, South Carolina 29202
(803) 748-4785**

ATTORNEYS FOR RESPONDENT.

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial judge properly deny Appellant's motion to quash the indictment for trafficking in marijuana because the indictment was sufficient to convey subject matter jurisdiction over him in the Richland County Court of General Sessions?**
- II. Did the trial judge properly deny Appellant's motion for directed verdict on the charge of trafficking of marijuana because the direct and circumstantial evidence presented at trial reasonably tended to prove that he conspired to traffick in marijuana, that once he entered the conspiracy he never communicated his withdrawal to his co-conspirators, and that overt acts in furtherance of the conspiracy were committed in Richland County?**
- III. Did the trial court abuse its discretion by allowing the State to introduce over fifteen ounces of marijuana and a book on marijuana laws seized from Appellant's residence in Charlotte, North Carolina, where there challenged evidence reasonably tended to make the existence of Appellant's intent to traffick in marijuana more probable and its probative value was not substantially outweighed by the danger of prejudice?**

STATEMENT OF THE CASE

Appellant is currently confined in the South Carolina Department of Corrections pursuant to commitment orders from the Richland County Clerk of Court. The Richland County Grand Jury indicted him at the January 2002 term of court for murder (02-GS-40-9561) and trafficking in marijuana, more than ten pounds (02-GS-40-9503). Following an October 20, 2003 pretrial hearing, he received a jury trial on both charges on December 1-5, 2003, before the Honorable G. Thomas Cooper. Deputy Public Defender Fielding Pringle and Public Defender Douglas S. Strickler of the Richland County Public Defender's Office represented Appellant. Assistant Solicitors Deitrich Lake and Katherine Luck Campbell, of the Fifth Circuit Solicitor's Office, prosecuted the case.

The jury found Appellant guilty of both offenses, and Judge Cooper sentenced him to thirty years imprisonment for murder and to a consecutive five year sentence for trafficking in marijuana. Appellant timely served and filed a Notice of Appeal. This appeal follows.

ARGUMENT

I.

The trial judge properly denied Appellant's motion to quash the indictment for trafficking in marijuana because the indictment was sufficient to convey subject matter and personal jurisdiction over him in the Richland County Court of General Sessions.

Appellant first claims that the trial judge erred by failing to grant his motion to quash the indictment for trafficking in marijuana (02-GS-40-9503, R. p. ____) based upon his assertion that Richland County lacked subject matter and personal jurisdiction since it was allegedly the improper venue for a trafficking charge. He asserts that he was entitled to relief because, at the pre-trial hearing on his motion to quash, the State failed to allege sufficient facts demonstrating that he committed the offense of trafficking in Richland County. The State submits that the trial judge properly denied Appellant's motion to quash the indictment for trafficking in marijuana because the indictment was sufficient to convey subject matter and personal jurisdiction over him in the Richland County Court of General Sessions.

At the October 20, 2003 pre-trial hearing, Appellant raised his motion to quash the indictment for trafficking in marijuana based upon a supposed lack of subject matter jurisdiction and lack of personal jurisdiction. He argued that "there was no crime committed in Richland County. There are no drugs found in the car. There is a small amount of marijuana found in the victim's pocket, but there is nothing to substantiate a trafficking charge here in Richland County, Columbia." He asserted that under art. I, § 11, he could only be held accountable if indicted and tried in the county where the offense occurred. See also *State vs. Evans*, 307 S.C. 477, 415 S.E.2d 816 (1992) (right to be tried

in county where offense is alleged to have been committed is not jurisdictional).

Appellant further maintained that under the State's evidence, any conspiracy had occurred in Dillon County and that there was no act sufficient to support a charge of trafficking in Richland County. 10/20 Tr. pp. 13-18.

In support of his position, he also relied upon this Court's decision in *State vs. Dudley*, 354 S.C. 514, 581 S.E.2d 171 (Court App. 2003), *cert. granted* (Dec. 17, 2003). When the trial judge asked if his motion would not be a matter for a directed verdict, Appellant argued that he was objecting to personal jurisdiction as well, and noted that he would be entitled to a directed verdict if the State could not establish that the actions transpired in Richland County. 10/20 Tr. pp. 18-20.

Trial judge, however, noted that if there was an allegation that he had committed an offense in Richland County, then he had to stand trial in this county. Appellant, again, maintained that under the State's own theory, the offense occurred in Dillon. 10/20 Tr. pp. 20-21.

The State asserted that the motion would be best addressed later in the trial but maintained that it would present evidence that the transaction was initially discussed in Dillon County and that the parties set up a place and general time to complete the deal in Richland County at that point. The State explained that the proposed transaction was to sell roughly fifty pounds of marijuana in exchange for approximately thirty-five or forty thousand dollars; and that once the victim and his wife were in Richland County, there were further phone calls concerning the transaction. Also, once the victims and Appellant were in Lowes' parking lot, "there was an actual container that was containing what was supposed to be marijuana that was transferred from the defendant's car to the victim's

car. There was money there in the car to pay for it." 10/20 Tr. pp. 20-24.

The State argued that under the trafficking statute, its facts were sufficient to establish jurisdiction. Because some overt act in furtherance of the conspiracy occurred in this county, there was concurrent jurisdiction here and in Dillon County. The trial judge ruled that appellant's motion was more properly addressed at the directed verdict stage of the trial and denied the motion. 10/20 Tr. pp. 21-24.

Appellant renewed the motion to quash prior to trial. The trial judge noted that he had previously ruled that he would have to hear evidence before he could make a determination as to whether or not there was jurisdiction on the trafficking charge. 10/20 Tr. pp. 31-34.

The circuit court has subject matter jurisdiction to convict a defendant of an offense provided that there is an indictment which sufficiently states the offense, the defendant waives presentment, or the offense is the lesser-included crime charged in the indictment. *State vs. Owens*, 346 S.C. 637, 552 S.E.2d 745 (2001). An indictment is sufficient "if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and if an acquittal or a conviction thereon may be pleaded as a bar to any subsequent prosecution." *Id*, citing, *State v A. Owens*, 293 S.C. 161, 165, 359 S.E.2d 275, 277 (1987); *State v. Munn*, 292 S.C. 497, 357 S.E.2d 461(1987) (test of sufficiency of indictment is whether it contains the necessary elements of offense intended to be charged and sufficiently apprizes defendant of what he must be prepared to defend). *Accord Joseph v. State*, 351 S.C. 551, 571 S.E.2d 280 (2002).

Generally, the trial court acquires personal jurisdiction of a defendant when the

party charged is arrested or voluntarily appears in court and submits himself to its jurisdiction. *State v. Douglas*, 245 S.C. 83, 138 S.E.2d 845 (1964). "A defendant may waive any complaints he may have regarding personal jurisdiction by failing to object to the lack of personal jurisdiction and by appearing to defend his case." *State v. Adams*, 354 S.C. 361, 374-75, 580 S.E.2d 785, 792 (court App. 2003).

The trafficking indictment in this case provides on its face that it is for the offense of "TRAFFICKING IN MARIJUANA > 10LB." It further cites to S.C. Code Ann. §44-53-370 (e)(1)(a)1(supp 2002). R. p. ____.

"that Phillip Henry Crocker did in Richland County on or about November 21, 2001 knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more that 10 lbs. of Marijuana. All in violation of §44-53-370, Code of Laws of South Carolina.

R. p. ____.

Thus, the indictment sufficiently states the offense of trafficking of marijuana in amount over ten pounds so as to provide the trial court with jurisdiction in Richland County, because it both cites the relevant code section and states with particularity the elements of the offense charged. *Owens, supra*; *State v. Granger*, 333 S.C. 2, 507 S.E.2d 322 (1998) (indictments charging trafficking and cocaine, without specifying the amount, or specifying only that the amount was in excess of ten grams, is sufficient to confer subject matter jurisdiction for trafficking in any amount); see also S.C. Code Ann. §17-19-20 (Supp. 2003) ("Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges

the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided"); *State v. Towery*, 300 S.C 86, 386 S.E.2d 462 (1989). Additionally, appellant's arrest and subsequent indictment on the charge of trafficking in marijuana in the amount of greater than ten pounds was sufficient to give the trial court personal jurisdiction over him. *Adams, supra*. Cf. *Costello v. United States* 359 (1956) (an indictment returned by a legally constituted and unbiased grand jury, is valid on its face, is enough to call for trial the charge on the merits). Further, a reviewing of the record reflects beyond cavil that he had adequate notice of the allegations in the indictment.

The State submits that appellant's arguments are more properly addressed in the context of his motions for directed verdict. However, the State would note that one manner in which to prove trafficking in marijuana is to prove a conspiracy to traffick. It is well settled South Carolina law that venue for the prosecution for the charge of conspiracy may be laid in either the county in which the agreement was entered, or in any county in which any overt act was done by any other co-conspirators in furtherance of their common design.¹ *State v. Wells*, 249 S.C. 249, 153 S.E.2d 904 (1967). See also *State vs. Hightower*, 221 S.C. 91, 69 S.E.2d 363 (1952). This argument is without merit.

¹ Although not required to do so, it is clear that the prosecution clearly explained its theory of the case and how the trial court had jurisdiction to try Appellant for trafficking in marijuana. 10/20 Tr. pp. 21-24.

ARGUMENT

II.

The trial judge properly denied Appellant's motion for directed verdict on the charge of trafficking of marijuana because the direct and circumstantial evidence presented at trial reasonably tended to prove that he conspired to traffick in marijuana, that once he entered the conspiracy he never communicated his withdrawal to his co-conspirators, and that overt acts in furtherance of the conspiracy were committed in Richland County. (Appellant's argument II-III).

In **Argument II**, Appellant maintains that the trial judge erroneously denied his motion for directed verdict on the charge of trafficking of marijuana since the prosecution allegedly failed to present evidence that the offense of trafficking was committed in Richland County. In **Argument III**, he contends that the trial judge erred in failing to grant him a directed verdict on the charge of trafficking of marijuana because the state failed to prove the existence of a conspiracy to traffick in marijuana. The State submits that these arguments are without merit because the direct and circumstantial evidence presented at trial reasonably tended to prove that Appellant entered into a conspiracy to traffick in marijuana, that the thereafter failed to communicate any withdrawal from the conspiracy to his co-conspirators until the time of the murder, and that overt acts in furtherance of the conspiracy were committed in Richland County.

After the State rested its case, Appellant moved for a directed verdict on the charge of trafficking in marijuana and maintained that the State had failed to prove that he was guilty of trafficking, since allegedly there was no evidence that he normally sold, manufactured, delivered, purchased, or did otherwise aid, abet, attempt or did conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State any marijuana. He also contended that he was not in actual or constructive possession and did not attempt to

become in actual or constructive possession of marijuana in the amount of over ten pounds. With respect to the theory of conspiracy, he asserted that the prosecution had failed to prove either any overt acts in furtherance of a conspiracy or that he agreed to conspire with anyone. Relying upon *State v. Dudley, supra*, he contended that the prosecution failed to establish an agreement because it did not establish that each member of the conspiracy knew or had reason to know that his own benefits were dependent upon the success of the venture. **Tr. pp. 1034-38.**

Additionally, he contended that there was no jury issue with respect to whether or not any marijuana was delivered in excess of ten pounds. Likewise, he maintained that the State's theory was that the person who murdered the victim went to the parking lot at Lowe's with intent to rob the victim and his wife. However, State's witness Willie Jennings, a co-conspirator, testified that he never had any intent nor did he enter into a conspiracy to rob the victim and Consuelo Casey, the victim's wife. Moreover, he asserted that the victims did not have an intent or plan to be robbed. **Tr. pp. 1039-40.**

Following the State's response (**Tr. pp. 1040-45**), Appellant, again, maintained that there was no attempt to traffick; and that there was no conspiracy because the perpetrator did not have the same intent that the other members of the alleged conspiracy had, as shown by the fact that he showed up without marijuana or other drugs and attempted to rob the victim. Thus, he asserted that any overt act tended to disprove the existence of conspiracy. **Tr. pp. 1045-47.** After listening to further arguments from the State and Appellant (**Tr. pp. 1047-55**), then he denied Appellant's motion. **Tr. pp. 1056-59.**

After observing that he was concerned only with the existence of evidence as

opposed to its weight, the trial judge specifically found that there was circumstantial evidence that on or about November 20, 2001, Appellant entered into an agreement with Consuelo Casey to provide a quantity of drugs for an agreed upon price. While a delivery date may not have been established, it was clear that there were to be further phone calls to determine the date and time of the transaction. "It would appear to me that there was at least circumstantial evidence of a conspiracy to make a drug transaction, which is no legal transaction." Also, he found that Willie Jennings also had a financial interest in the transaction. Moreover, he found that "there is a course of conduct that was created or established on the evening of November 20th, 2001, which created a conspiracy to deal in marijuana...." Tr. pp. 1056-58.

With respect to Appellant's jurisdictional claim, he found as follows:

"as to the jurisdictional issues, it appears to me that if a conspiracy is created in one county, to preform an illegal act in another county, and a second county, the host county, is where the alleged transaction is supposed to take place, where it actually takes place or not is irrelevant.

If there's an attempt to complete the transaction in the host county, then I believe that that county acquires jurisdiction...even if it does not go as planned.

I don't think the conspiracy...or the crime has to be completed in the county in which the trial is held. So for both reasons, I deny your motion for directed verdict."

Tr. p. 1058, l.19- p.1059, l. 7. There was no error.

Consuelo Casey testified that she was married to Nathaniel Casey, Jr. They lived in Lattis, South Carolina, where she owed a barber shop. "Junior" (the victim) was unemployed and sold marijuana to make money. They were planning to buy some land and build a house. They were going to get the money to do so from selling marijuana. Tr. pp.

239-46.

At some point in November 2001, she had a conversation with a long-time friend who worked in the music business, Willie Jennings, and asked Jennings if he could get her fifty pounds of marijuana. This would cost between forty and fifty thousand dollars depending upon the price. Jennings told her he would have to talk to her later. Several days before the November 21 murder, she had a conversation in which he indicated he was going to come by her store with another person. Between 10:00 and 10:30 p.m. on Tuesday, November 20, he came into her barber shop with a man whom the Casey's had never met. A client, Shannon Miles, was also in the store. **Tr. pp. 247-57; pp. 297-98.**²

Consuelo testified that she, Junior, Jennings and the man with him, whom she identified as Appellant, had a conversation on the other side of the wall from Miles in which Appellant agreed to sell the Casey's over fifty pounds of marijuana. They made plans to meet in Columbia on the following day because Appellant said that he would be coming from Atlanta. The arrangement as to where they were to meet in Columbia was to be made as they were on their way to the city. Conseulo let her husband and Appellant talk. Appellant and Jennings were in the salon for approximately fifteen minutes before leaving. **Tr. pp. 257-64.**

On Wednesday, November 21, Conseulo and Junior left Dillon between 1:00 and 2:00 p.m. and headed for Columbia in their black Tahoe. They had two weapons with

² Miles testified at trial that two men came into the store while she was there on November 20, and positively identified Appellant as the taller of the two men who entered the store that night. She did not hear any of the ensuing conversations between the other people in the store because they had the conversations behind a wall in the store which prevented her from hearing anything. She was able to positively identify Appellant from a lineup shortly after the incident. **Tr. pp. 513-32.**

them, as well as the money with which to purchase marijuana and Junior's cell phone.

Before they left for Columbia, she had received a phone call from Appellant, whom she knew only as "Sayeed" or "big man." She and Junior had several more conversations with him on the cell phone as they were traveling to Columbia. Appellant initiated some of these phone calls, while Nathaniel and Consuelo initiated the others. Once they arrived in Columbia, they stopped at a gas station on Two Notch Road and called Appellant. They were supposed to have met at Toys R Us, but he changed the location to the parking lot at Lowe's on Two Notch Road.³ The plan was supposed to be "[j]ust to get the weed and leave." Tr. pp. 265-72; 310-11.

Shortly after they parked in the parking lot at Lowe's, Appellant backed up to their truck in an old station wagon.⁴ He was alone. After he got out of his vehicle, Junior got out because at Appellant's request, to help Appellant take the container out of the car. Consuelo remained in the front seat "doing my makeup in the mirror." However, her door was open. She saw Appellant and Junior take a large, blue Tupperware looking container from Appellant's vehicle and place it in the back of the truck. They then had a conversation, which Consuelo did not hear. However, when she turned around, she saw Appellant pull a gun from the waistband of his pants and shoot Junior. After Junior fell, Appellant stood and looked at her briefly. She was "fanning him away" so that he would

³This store is near I-20 at 7441 Two Notch Road. The incident occurred shortly before 4:00 p.m. Tr. pp. 140; 249.

⁴Consuelo thought it was dark grey with wood grain. Other witnesses described a similar station wagon and such a wagon is seen on the surveillance tape taken at the Lowe's parking lot. Consuelo identified the vehicle in the surveillance tape. Also, one witness got a partial Georgia plate from the suspect's vehicle and another witness testified that Appellant, who owned an old station wagon with wood grain siding, had Georgia plates on another vehicle. Tr. pp. 189; 191-96; 568-69; 799-812; 823-29; 864-68.

not shoot her, and eventually he got back into his car and left the scene. Consuelo then went to where her husband lay dying on the ground. **Tr. pp. 274-81; 294-95; 333; 337.**

Although she was initially reluctant to cooperate with authorities because of her own involvement in the conspiracy to purchase marijuana, Consuelo did give a composite drawing of the person who had shot her husband (**State's Exhibit 11**). She also gave Junior's cell phone (**State's Exhibit 14**) to law enforcement on the night of the shooting. Eventually, she fully cooperated with authorities, told them what had actually happened, and was able to positively identify Appellant's photograph from a lineup. **Tr. pp. 285-97; 308-09; 513-15; 327; 516; 720-22.** Consuelo spoke to Jennings after the shooting and this was when she learned that "Croc" was involved. **Tr. pp. 344-45.**

Willie Jenkins corroborated much of Consuelo's testimony concerning the conspiracy. He testified that he makes CD's for a living and he had known Appellant for about a year, through the music business.⁵ He also knew Consuelo Casey because he had gone to school with her. At some point during November 2001, he went to Consuelo's shop and she asked him if he could get some marijuana for her. His initial response was that he did not do that. **Tr. pp. 620-36.**

However, when he saw Appellant, he mentioned her request and Appellant "said that he might could get his hands on it, so I introduced those two."⁶ He subsequently went to Consuelo's shop and told her what Appellant, nicknamed "Croc," had said. He also agreed to introduce Appellant and Consuelo. **Tr. pp. 636-40.**

⁵ He had only had occasional contact with Appellant throughout this year, but had been to Appellant's home in Charlotte.

⁶ He stated that they were "just talking" when he told Appellant that a friend of his was looking for marijuana. **Tr. pp 637**

For his part in the transaction, Jennings was to receive five hundred dollars. Later in November, Appellant came to Dillon and Jennings took him to the shop to meet with Consuelo. Upon his arrival, he learned that her husband, Junior, was also involved.⁷ Jennings introduced Appellant to Junior and Consuelo then sat down while they talked. The meeting only lasted minutes and Jennings was not a part of any plans developed during the conversation. Although he lived in Raleigh, North Carolina, at the time, he stayed with his family in Dillon that evening. Tr. pp. 639-45.

Jennings went to Consuelo's shop the following morning at Appellant's request.⁸ Consuelo asked Jennings to call Appellant because she had been unable to contact him. Jennings also was unable to contact him at the time. Jennings only stayed in the store for approximately five minutes and returned to his home in Raleigh after he left, following a detour to Bennettsville in order to pick up a friend. Tr. pp. 645-49. He called Appellant later that night "just to see how everything went."⁹ In response to his inquiry, Appellant "said to run the [minute I got] off the phone. People would be looking for me." They did not have any further discussion. Tr. pp. 651-53.

When he called Consuelo later that week to invite her to a show in Maryland, she informed him as to what had happened. He later cooperated with authorities even though he was arrested for trafficking in marijuana and had those charges pending at the time of

⁷He did not remember what time the meeting occurred, but he did remember that it was dark outside. Appellant had followed Jennings to the shop from I-95 in a Range Rover.

⁸Appellant had called him that morning and asked him to go to the shop to make sure that Consuelo and Junior were there.

⁹He unsuccessfully tried to reach Appellant on one telephone and had to call a second telephone number.

trial. Tr. pp. 653-60;671-73.¹⁰

When authorities arrived on the scene shortly after the shooting, they discovered that the blue container in the back of the Tahoe contained light blue polyester blankets, a sack of cement, concrete, and two cinder blocks. Tr. pp. 168;199-200; 366-67; 370. There were seven prints belonging to Phillip H. Crocker, II, found on the container. Tr. pp. 395-403; 408-09; 471-76; 486-95; 508; 586-87.¹¹ Consuelo's 22-caliber derringer and the victim's weapon were found inside of the Tahoe.¹² Also, there was approximately thirty to forty thousand dollars in the truck. Tr. pp. 373-75.

Eventually, an arrest warrant was issued charging Appellant with Junior Casey's murder. On December 12, 2001, officers executed a search warrant of his residence at 207 Woodthrush Drive in Charlotte, North Carolina. This resulted in the seizure of approximately 439.98 grams from a locked shed in the back yard. Also inside this shed were a number of storage containers that were identical to that found in the Tahoe, and all of which contained light blue polyester blankets identical to those found in the container left at the scene. Inside the house, officers found five cell phones. Many of these had been issued as a result of identity theft and were closed accounts. They did not find the cell phone that Junior had called and which was listed on his cell phone as belonging to Croc. Inside Appellant's residence, officers also found a number of nine millimeter luger rounds in the den. A holster and a nine millimeter magazine were found in a closet in his

¹⁰Finally, he corroborated that Appellant had an old station wagon, but he believed that the wagon was not driveable. Tr. pp. 660-61.

¹¹ Appellant is Phillip H. Crocker, III.

¹² The victim's weapon was under the driver's seat, and is thus clear that he was unarmed at the time of the shooting.

master bedroom. Finally, officers seized a book on marijuana laws (State's Exhibit 94), some paperwork associated with a Pontiac 6000 Station Wagon, and a W2 form for Alejandro Dios Vasques, the man to whom Appellant claimed he had sold the station wagon. Officers unsuccessfully attempted to locate Vasques. **Tr. pp. 560-69; 579-84; 619-24; 734-45; 757-59; 847-72.**

Authorities never located the nine millimeter weapon used to kill the victim. However, Appellant's former girlfriend testified that he used to keep a nine millimeter in his bedroom closet. **Tr. pp. 590-92.**

Once Consuelo had given officers Junior's cell phone, they were able to determine that the last phone number called by him was to Croc, and the phone number listed for Croc was 646-408-5502, which was a Sprint cell phone registered in the name of John Sieman. However, Mr. Sieman was a Virginia attorney who had never ordered the phone in his name. Again, testimony was that this is a common form of identity theft. The records for this phone number were introduced as State's Exhibit 119. **Tr. pp. 720-30; 835-37.** The Richland County Sheriff's Department subpoenaed information for all incoming and outgoing calls for Junior's phone, the phone number listed for Willie Jennings and the phone associated with number 646-408-5502. **Tr. pp. 894-98.** It is possible to determine, within a three mile radius, from where a call originated by which cell site it utilized. Using both the victim's phone records and the records from the telephone with the 646 area code, investigators were able to determine that a number of calls were placed by these phones on the day before and the day of the murder. For instance, the phone listed for Croc called Consuelo's hair salon on November 20 at 7:42

p.m.¹³ On the morning of November 21, 2001, this same telephone called Conseulo's shop at 12:33 p.m. and only lasted three seconds. It was made from an area from Appellant's residence. **Tr. pp. 894-905.**

Later on November 21, fifteen incomplete calls were placed from the victim's cell phone to Croc's phone.¹⁴ At 3:09 p.m., however, Croc called the victim's cell phone and spoke for fifteen seconds. The cell tower utilized for this phone call was located at 10801 Farrow Road in the Blythewood area, which is consistent with someone coming down I-77. Another call from Croc's phone to the victim's phone was made at 3:10 p.m. at lasted thirty-four seconds. It utilized the same cell tower. The victim then called Croc's phone at 3:20 and they spoke for twenty-three seconds. Croc's phone was located in the area of Pisgah Church Road in Northern Richland County. The victim's phone then called Croc's phone at 3:21 at they spoke for thirty-seven seconds. The cell tower utilized for this phone call was here in Columbia. Next, Croc called the victim's phone at 3:27. Again, he was in the area of Pisgah Church Road. The victim again called Croc and spoke to him for approximately three and a half minutes, utilizing a tower on Shakespeare Road. There were five more calls from Croc's phone to the victim's phone and all these came off the Shakespeare Road Tower, which is the tower nearest Lowe's. The final phone call was from Croc to the victim's phone at 3:43 p.m. and lasted almost a minute. This phone call utilized the cell site on North Chausey Road, which is two to three miles from Lowe's.

The Croc phone did not make any additional calls after this call at 3:43 p.m. Further, the shooting occurred at approximately 3:55 p.m. **Tr. pp. 912.** The phone records

¹³ This call was made from within Dillon County.

¹⁴ Either the phone was off or Croc was not answering the phone.

for Jennings' phone reflect that he called Consuelo's salon in Dillon at approximately 4:18 on November 20. The following morning he makes a series of phone calls to a telephone number that was registered to a phone found in the search of Appellant's residence. The sequence of these calls is consistent with Jennings' testimony concerning his activities on November 21. **Tr. pp. 912-21.**

"In reviewing a motion for directed verdict, the trial judge is concerned with the existence of evidence, not with its weight." *State v. Curtis*, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004). On appeal, a reviewing court must review the evidence in the light most favorable to the State. *State v. Burdette*, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999). "In ruling on a motion for a directed verdict, the trial court is concerned with the existence of evidence, not its weight." *State v. Kelsey*, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998) "If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." *Id*; *Curtis, supra*.

Appellant was indicted for "trafficking in marijuana" in an amount greater than ten pounds, in violation of § 44-53-370(e)(1)(a)1. One manner in which the State may establish the substantive offense of "trafficking in marijuana" under this section is to prove that the defendant "conspires to sell, manufacture, cultivate, deliver, purchase, or bring [marijuana] into this State."¹⁵ The offense of "conspiracy" is defined as the "combination between two

¹⁵Section 44-53-370(e) states, in pertinent part, that:

(e) **Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of:**

or more persons for the purpose of accomplishing a criminal or unlawful object or an object neither criminal nor unlawful by criminal or unlawful means." S.C.Code Ann. § 16-17-410 (Supp.2004). *See also State v. Prince*, 316 S.C. 57, 447 S.E.2d 177 (1993). "To establish the existence of a conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties. *State v. Fleming*, 243 S.C. 265, 133 S.E.2d 800 (1963)." *Kelsey*, 331 S.C. at 63, 502 S.E.2d at 69-70.

Applying this criteria to the case at bar, it is clear that there was no error. The State's evidence reasonably tended to show that when Jennings' mentioned to Appellant that he had a friend looking to buy some marijuana, Appellant stated that he thought he could get some. A reasonable inference from the evidence that Appellant had in his possession at the time of his arrest (a book on marijuana laws, as well as a brick of marijuana weighing almost sixteen ounces, and a number of storage containers similar to that utilized in this case) is the Appellant was dealing marijuana at the time that the crimes occurred. Moreover, he thereafter met with Consuelo, Jennings, and Junior. During their conversation, he indicated that he could get some marijuana for them and arranged to contact them the following day about a location where they could make the transaction in Columbia. Clearly, this constitutes "any direct evidence or substantial circumstantial evidence reasonably tending to prove"

(1) ten pounds or more of marijuana is guilty of a felony which is known as "trafficking in marijuana" and, upon conviction, must be punished as follows if the quantity involved is:

(a) ten pounds or more, but less than one hundred pounds:

1. for a first offense, a term of imprisonment of not less than one year nor more than ten years, no part of which may be suspended nor probation granted, and a fine of ten thousand dollars

Appellant's guilt under *Curtis* and *Kelsey, supra*. If Appellant did not have any intent to join this conspiracy, he never made that known to his co-conspirators. Instead, it was his representation to Jennings and his subsequent representation of an intent to conspire that tended to prove an intent to conspire to traffick. Thus, there was sufficient evidence of a conspiracy to traffick in marijuana to submit to the jury.

While Appellant obviously formulated the plan to rob the victims at some point following his initial introduction to the conspiracy, this does not eliminate his liability as a co-conspirator to traffick. To the contrary, a defendant has the burden of demonstrating withdrawal from a conspiracy by proving an affirmative act communicating the withdrawal to his co-conspirators. *United States v. United States Gypsum Co.*, 438 U.S. 422, 464 (1978). Again, it is not enough that he merely have changed his mind regarding participation in the conspiracy, rather, he must demonstrate "[a] affirmative acts inconsistent with the object of the conspiracy and communicated in a manner reasonably calculated to reach co-conspirators...." *Id* at 464. See also *Hyde v. United States*, 225 U.S. 347, 367-70 (1912) (A defendant is presumed to remain a participant of a conspiracy until that defendant takes affirmative action to withdraw from the conspiracy); *United States v. Sheffer*, 896 F.2nd 842, 844 (4th Cir. 1990) (same); *People v. Crosby*, 58 Cal. 2nd 713, 730, 375 P. 2nd 839, 850, 25 Cal. Rptr. 847, 858 (1962) (In bank) ("A Defendant's mere failure to continue previously active participation in a conspiracy, however, is not enough to constitute withdrawal; there must be an affirmative and bona fide rejection or repudiation of the conspiracy, communicated to the coconspirators"). cf. *State v. Gunn*, 313 S.C. 124, 135, 437 S.E. 2d 75, 81 (1993) ("We find the only evidence in the record shows that appellant Moss withdrew from the conspiracy in 1987 or 1988 and that this withdrawal was communicated to all

coconspirators....consequently, transactions between Moss and others after this time cannot be used to connect those individuals to the Gunn Conspiracy.”) (citation omitted).¹⁶ It is not part of the Prosecution’s *prima facie* case to negate the possibility of such a withdrawal. See *Crosby*, 58 Cal. 2nd at 731, 375 P. 2nd at 850.

Here, Appellant never communicated to his other co-conspirators that he had withdrawn from the conspiracy. Indeed, the only affirmative act which he ever took to indicate his lack of continued involvement in the conspiracy occurred when he met with the victim and Conseulo at the Lowe’s parking lot and attempted to rob them. This is insufficient to limit his liability for conspiracy. *id.* Moreover, as discussed in **Argument I**, venue for the prosecution of a conspiracy may properly be laid in either the county in which the agreement was entered or in any county in which an overt act was done by any of the co-conspirators in furtherance their common design. See *Wells, supra*; *Hightower, supra*. The prosecution’s evidence as outlined above clearly demonstrates acts in furtherance of the conspiracy which were taken by the victim, Conseulo and Appellant here in Richland County. Therefore, the trial court had subject matter jurisdiction to try him for conspiracy to traffick in marijuana here in Richland County.

In light of this evidence, the State submits that Appellant’s reliance upon *State v. Dudley*, 354 S.C. at 532-34, 581 S.E. 2d at 181-82, is misplaced because a reasonable inference from this evidence is that each defendant knew or had reason to know of both the

¹⁶ A number of other cases have reached the same conclusion. *e.g.*, *United States v. Antar*, 53 F. 3rd 568, 582 (3rd Cir. 1995) (a defendant withdraws from a conspiracy only when he or she acts inconsistent with the object of the conspiracy and communicated his or her withdrawal in a manner reasonably calculated to reach his or her co-conspirators); *United States v. Walker*, 796 F. 2nd 43,49 (4th Cir. 1986) (to establish withdrawal from a conspiracy, a defendant must show affirmative acts consistent with the object of the conspiracy and communicated in a manner reasonably calculated to reach his co-conspirators).

scope of the conspiracy and that Appellant had reason to believe that his own benefits were dependent upon the success of the entire venture. *See also State v. Barroso*, 320 S.C. 1, 8-9, 462 S.E. 2nd 862, 868 (Ct. App. 1995), *rev'd on other grounds*, 328 S.C. 268, 493 S.E. 2d 854 (1997); *see State v. Buckmon*, 347 S.C. 316, 323, 555 S.E. 2d 402, 405 (2001) ("To establish the existence of a conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties"), citing *State v. Kelsey*, *supra*. Likewise, he misunderstands *State v. Holmes*, 277 S.C. 232, 285 S.E.2d 353 (1981). In *Holmes*, the Court observed that "one cannot enter into a conspiracy with another who only feigns acquiescence in a crime, such as an informer or undercover officer." *Id* at 253, 285 S.C. at 354 (citation omitted). Here, however, all parties had an intent to conspire, when the conspiracy was entered. Also, the victim had a small amount of marijuana on his person when he died. A reasonable inference is that he acquired this marijuana from Appellant. **Tr. pp. 624-625.** Therefore, it continued to exist until moments before the victim was murdered.

Therefore, the State submits that the trial judge properly denied Appellant's motions for directed verdict and the **Arguments II - III** are without merit.

ARGUMENT

III.

The trial court did not abuse its discretion by allowing the State to introduce over fifteen ounces of marijuana and a book on marijuana laws seized from Appellant's residence in Charlotte, North Carolina, where there challenged evidence reasonably tended to make the existence of Appellant's intent to traffick in marijuana more probable and its probative value was not substantially outweighed by the danger of prejudice.

Appellant's remaining contention is that the trial judge erroneously overruled his pre-trial motion to suppress a book on marijuana laws (State's Exhibit 94) and over fifteen ounces of marijuana, both of which were seized as a result of a search pursuant to a search warrant for Appellant's residence and property. The State submits that the trial judge's ruling was not an abuse of discretion because these items of evidence reasonably tended to make it more probable that Appellant had the intent to conspire to traffick in marijuana at the time of his discussions with Consuelo and Junior Casey, and the probative value of this evidence was not substantially outweighed by its prejudicial effect.

At the October 20, 2003 pre-trial hearing, Appellant moved to suppress a number of items that were seized as a result of a search of his residence and property in Charlotte, North Carolina. These items included fifteen ounces of marijuana, seized from a locked shed on his property; the book on marijuana laws, which was seized from his residence; some nine millimeter ammunition and a nine millimeter magazine; a holster for a nine millimeter weapon; various other weapons and ammunitions; and a copy of the Koran. 10/20 Tr. pp. 25-40. The trial judge decided to take the matter under advisement. 10/20 Tr. pp. 52-54.

Immediately prior to trial, Appellant again moved to suppress these items. Tr.

pp.18-25.

The trial judge stated that he was inclined to admit the fifteen ounces of marijuana found in the shed at Appellant's residence, "the guns, ammunition, and the nine-millimeter magazine found inside the Defendant's home and the book on marijuana laws that was found in the Defendant's home and will suppress a copy of the Koran...." He explained that the reason for his ruling was that "generally evidence is relevant and admissible if it has any tendency to make any existence of the fact that is of consequence to the determination of the action...more probable or less probable than it would have been without the evidence citing Rules 401 and 402." After acknowledging that Rule 403 SCRE requires a balancing test between the prejudicial effect and the probative value, he stated that he found that the fact "substantial amount of marijuana was found on the premises of the Defendant is relevant and probative to the charge of conspiracy to traffick in marijuana." He noted that the indictment charged Appellant with conspiring to sell, manufacture, cultivate, deliver, purchase or bring marijuana into this State. "Possession of 15-ounces of marijuana could indicate an intent to distribute of a conspiracy to do so."

Tr. pp. 25-26.

While acknowledging that "[t] the evidence is clearly prejudicial for the Defendant [,]...I find it is not unfairly prejudicial and the probative value of this evidence outweighs its prejudicial effect." **Tr. pp. 26.** He likewise found that the book on marijuana laws was relevant to the crime of trafficking marijuana and that the probative value of this evidence outweighs its prejudicial effect. **Tr. pp. 29-30.** Further, he indicated that the evidence concerning a nine millimeter magazine, holster, and nine millimeter ammunition were admissible but questioned the admissibility of other

weapons and ammunition found during the search. He also did not allow the State to introduce evidence that the Koran was found in the search. **Tr. pp. 26-31.**

Subsequently, the trial judge ruled that the other weapons and ammunition were inadmissible. He specifically found that these items failed under a Rule 403 analysis. **Tr. pp. 459-63.**¹⁷

There was no error. "The admission or exclusion of evidence is a matter within the sound discretion of the trial court and absent clear abuse, will not be disturbed on appeal." *Gambell v. Intl. Paper Realty Corp.*, 323 S.C. 367, 373, 474 S.E.2d 438, 441 (1996). "To warrant reversal, a appellant must show the error of the ruling and resulting prejudice." *Recco Paper & Label Co. v. Barfield*, 312 S.C. 214, 216, 439 S.E.2d 838, 840 (1994); *State v. Hamilton*, 344 S.C. 344, 353, 534 S.E.2d 586, 591 (Ct. App.2001). Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence." Rule 401, SCRE. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; *State v. Schuler*, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003); *State v. Martin*, 347 S.C. 522, 533, 556 S.E.2d 706,712 (Ct. App. 2001).

Applying this criteria to the case at bar, it is clear that the trial judge did not abuse his discretion. As discussed in **Argument II, supra**, Appellant was properly tried for trafficking in marijuana because he had conspired to traffick in marijuana.¹⁸ The

¹⁷ Appellant does not challenge the trial judge's ruling on the admissibility of the nine millimeter ammunition, magazine, or holster.

¹⁸Under Rule 404(b), SCRE, evidence of a defendant's prior bad acts may not be introduced to prove his guilt for the crime charged except to the extent that this evidence

challenged evidence made it more probable than not that he actually had the intent to conspire at the time of his conversations with Jennings and the Caseys. Despite his contention that there was a relatively small amount of marijuana, it is clear that it was almost a pound of it; and that it was packaged in brick or "cake" form, which is common in dealing significant quantities of marijuana. This coupled with his book on marijuana laws reasonably tended to prove that he was, in fact, someone who dealt marijuana and reasonably tended to corroborate that he had the intent to conspire to traffick in marijuana. Likewise, possession of *State's Ex. 94*, is innocuous in and of itself.

However, when considered with the marijuana and large containers, made it more probable than not that Appellant had the intent to conspire to traffick in marijuana. *See United States v. Rey*, 923 F.2d 1217, 1221 (6th Cir. 1991).¹⁹ *See also Hubbard v. State*,

establishes (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan; or (5) the identity of the perpetrator. *See also State v. Dickerson*, 341 S.C. 391, 535 S.E.2d 119 (2000); *Lyle*. In addition, the "bad act" must logically relate to the crime with which the defendant has been charged. If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing. *State v. Beck*, 342 S.C. 129, 134-36, 536 S.E.2d 679, 682-83 (2000) (employee's testimony concerning appellant's assault and robbery of employee was admissible to prove the identity of the appellant as the perpetrator of victim's murder); *State v. Kennedy*, 339 S.C. 243, 528 S.E.2d 700 (Ct. App. 2000) (evidence that defendant charged with first-degree burglary, grand larceny, and financial transaction card fraud committed burglaries at three other homes and used or attempted to use bank or credit cards he took from those homes was relevant to establish common plan or scheme and identity and was sufficiently similar to crimes charged to be admissible). Finally, even if the evidence of prior bad acts meets this criteria, the trial judge must exclude it if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. *Id.*; Rule 403, SCRE.

¹⁹In *Rey*, the defendant was prosecuted for conspiracy to distribute and possession with intent to distribute cocaine. On appeal, he argued error in refusing to suppress a mobile phone and warranty card, beeper, answering machine, police scanner, microphone, CB radio, cassette recorder, pilot tapes, and several books taken from a larger collection. The Court held that electronic equipment and books tended to prove that the defendant conspired to distribute or possess with intent to distribute cocaine because such items are sometimes used by drug dealers. While one or two of the items taken by themselves would not indicate conspiracy or possession with an intent to distribute cocaine, the entire collection of items makes the charge more

173 Ga.App. 127, 325 S.E.2d 799 (Ga. Ct. App. 1984) (Evidence tending to indicate defendant's familiarity with small metric measurements commonly used in sale and transfer of controlled substances, in the form of a book containing various names and numbers, was relevant to charge of possessing drugs with intent to distribute).

Moreover, the present case is not controlled by *State v. Humphries*, 354 S.C. 87, 579 S.E.2d 613 (2003). In *Humphries*, petitioners Claude and Phil Humphries were convicted of trafficking in marijuana and were each sentenced to twenty-five years imprisonment and fined \$25,000. The Court held that the prosecution was erroneously allowed to present testimony by a prior employee that suggested petitioner Claude Humphries had marijuana delivered to employee's residence after Claude's arrest on the underlying criminal charge. The Court further found that presentation of this evidence was not harmless error, where it was only direct evidence of defendants' intent to deal in marijuana, and only other evidence of guilt was a package of marijuana, unopened at time of arrest, with a return address from an out-of-state automotive parts business, \$4,500 in cash in desk drawer in garage, and employee's testimony that he was told not to open packages similar to package seized at arrest.

Here, there was other evidence of Appellant's intent at the time he entered into the conspiracy: specifically, his admissions to Jennings, both prior to and on November 20 that he could "get his hands on" a large quantity of marijuana, and his representations to the Caseys on November 20 that he would sell them a large quantity of marijuana. Further, although the search of his residence was not done until two weeks after the conspiracy was entered, a reasonable inference from the record, including the fact he

probable; thus, the evidence was relevant).

retained the 439 grams of marijuana in brick form and the book on marijuana laws, is that he was involved in an ongoing effort to distribute marijuana. Thus, unlike *Humphries*, the challenged evidence was not of specific acts following his arrest to show intent. Instead, it was evidence relevant to prove the substantive offense charged

Moreover, because Appellant disputed the State's evidence concerning identity and intent, the evidence of these other acts was highly probative of his guilt on the conspiracy charge because they tended to establish the common plan that constituted the conspiracy: namely, his intent to traffick in marijuana. Also, the challenged evidence was presented at a trial where he was charged with trafficking, as opposed to being evidence of trafficking admitted at a trial for another offense, such as murder or armed robbery. Consequently, the probative value of the evidence was so great that it was not substantially outweighed by any prejudicial effect. *See State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App.1998) (" 'Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.' "), quoting *United States v. Bonds*, 12 F.3d 540, 567 (6th Cir.1993). *See also State v. Ford*, 334 S.C. 444, 452-53, 513 S.E.2d 385, 389 (Ct. App.1999); *Blakely v. State*, 360 S.C. 636, 602 S.E.2d 758 (2004) (evidence of previous threats made by the defendant to his former girlfriend was admissible to show malice and to show intent, as to charged offenses of assault and battery with intent to kill as to former girlfriend, and murder as to former girlfriend's male friend). *Cf. State v. Raffaldt*, 318 S.C. 110, 456 S.E.2d 390 (1995) (holding evidence of marijuana dealing by the defendant in prosecution for trafficking in cocaine was admissible as indicative of a common scheme or plan); *State v.*

Moultrie, 316 S.C. at 555, 451 S.E.2d at 39 (holding evidence of defendant's prior drug deals was admissible to prove existence and nature of marijuana trafficking scheme).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

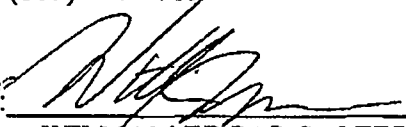
DONALD J. ZELENKA
Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General

P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

W. BARNEY GIESE
Solicitor, Fifth Judicial Circuit

P. O. Box 192
Columbia, South Carolina 29202
(803) 748-4785

By: 
WILLIAM EDGAR SALTER, III

ATTORNEYS FOR RESPONDENT

January 18, 2005

WES

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Richland County
The Honorable G. Thomas Cooper, Circuit Court Judge

THE STATE,

Respondent,

vs.

PHILLIP H. CROCKER, III,

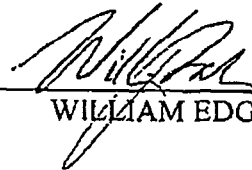
Appellant.

PROOF OF SERVICE

I, William Edgar Salter, III, counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, John Delgado, Esquire, P.O. Box 1359, Columbia, South Carolina 29202.

I further certify that all parties required by Rule to be served have been served.

This 18th day of January, 2005.



WILLIAM EDGAR SALTER, III

Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal From Richland County
The Honorable G. Thomas Cooper, Circuit Court Judge**

THE STATE,

Respondent,

vs.

PHILLIP H. CROCKER, III,

Appellant.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

In addition to the matter designated by the Appellant, Respondent proposes the following to be included in the Record on Appeal:

1. Indictments;
2. Transcript Pages 18-33; 131-231; 239-348; 354-455; 459-467; 471-550; 552-613; 615-697; 717-873; 894-977; 985-1059; 1069-1139; 1149-1161; 1165-1335; 1366-1373
3. State's Exhibit 94
4. Transcript from 10/20/93 hearing pages 5-43 and 52-54.

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

**HENRY D. McMASTER
Attorney General**

JOHN W. McINTOSH
Chief Deputy Attorney General

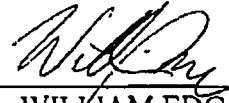
DONALD J. ZELENKA
Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General

Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

W. BARNEY GIESE
Solicitor, Fifth Judicial Circuit

P. O. Box 192
Columbia, South Carolina 29202
(803) 748-4785

By: 

WILLIAM EDGAR SALTER, III
ATTORNEYS FOR RESPONDENT

January 18, 2005

366 S.C. 394

Court of Appeals of South Carolina.

The STATE, Respondent,

v.

Philip H. CROCKER, III, Appellant.

No. 4038. | Heard Sept. 13,
2005. | Decided Oct. 31, 2005.

Synopsis

Background: Defendant was convicted in the Circuit Court, Richland County, G. Thomas Cooper, Jr., J., of murder and trafficking in marijuana, and he appealed.

Holdings: The Court of Appeals, Kittredge, J., held that:

[1] venue was proper in Richland County; and

[2] marijuana brick and book on marijuana laws found at defendant's residence were admissible.

Affirmed.

West Headnotes (26)

[1] **Courts**

☞ Jurisdiction of Cause of Action

"Subject matter jurisdiction" is the power of a court to hear and determine cases of the general class to which the proceedings in question belong.

1 Cases that cite this headnote

[2] **Criminal Law**

☞ Jurisdiction of Offense

Criminal Law

☞ Nature or grade of offense

Circuit courts have subject matter jurisdiction to try criminal matters, and circuit courts have subject matter jurisdiction over drug trafficking charges.

1 Cases that cite this headnote

[3] **Criminal Law**

☞ Mode of acquiring jurisdiction

Generally, the requirements of subject matter jurisdiction are satisfied when appropriate charges are filed in a competent court.

Cases that cite this headnote

[4] **Criminal Law**

☞ Jurisdiction of Offense

Criminal Law

☞ Jurisdiction of the person

Circuit court in Richland County had subject matter and personal jurisdiction over drug trafficking defendant; circuit courts had subject matter jurisdiction over drug trafficking charges, indictment alleged that defendant conspired in Richland County to sell marijuana, and the record was replete with evidence that many of the actions undertaken by defendant in furtherance of the alleged conspiracy occurred in Richland County. Rules of Evid., Rules 401, 403.

1 Cases that cite this headnote

[5] **Criminal Law**

☞ Jurisdiction of Offense

Criminal Law

☞ Jurisdiction of the person

Jurisdiction of the offense charged and of the person of the accused is indispensable to a valid conviction.

Cases that cite this headnote

[6] **Courts**

☞ Jurisdiction of Cause of Action

Courts

☞ Jurisdiction of the Person in General

Two distinct types of jurisdiction exist: (1) jurisdiction of the subject or subject matter, and (2) jurisdiction of the person.

Cases that cite this headnote

1550

[7] Criminal Law

⚡ Locality of Offense

Jurisdiction over the person in a criminal case lies in the state or county where the crime was committed.

Cases that cite this headnote

[8] Criminal Law

⚡ Locality of Offense in General

The right to be tried in the county in which the offense is alleged to have been committed is a matter of venue.

Cases that cite this headnote

[9] Criminal Law

⚡ Grounds in general

Venue principles entitle a criminal defendant to a directed verdict when the State fails to present evidence that the offense was committed in the county alleged in the indictment.

Cases that cite this headnote

[10] Criminal Law

⚡ Circumstantial evidence

The standard for establishing venue is not a stringent one, for venue, like jurisdiction, in a criminal case need not be affirmatively proved, and circumstantial evidence of venue, though slight, is sufficient.

Cases that cite this headnote

[11] Criminal Law

⚡ Offenses Committed Partly in One County and Partly in Another

Where some acts material to the offense occur in one county, and some in another, venue is proper in either county.

Cases that cite this headnote

[12] Criminal Law

⚡ Conspiracy

Venue for drug trafficking prosecution was proper in Richland County; defendant was charged with trafficking in marijuana, and one manner in which the State could establish the substantive offense of trafficking was to prove that defendant conspired to sell ten or more pounds of marijuana, State presented evidence that the agreement between defendant and another was formed in Dillon County, meeting in Richland County occurred as a result of the agreement to traffic in marijuana made the previous day in Dillon County, and numerous phone calls were made in Richland County to determine location for the transfer of the marijuana. Code 1976, § 44-53-370(e)(1).

Cases that cite this headnote

[13] Conspiracy

⚡ Combination or Agreement

The gravamen of conspiracy is an agreement or combination. Code 1976, § 16-17-410.

Cases that cite this headnote

[14] Conspiracy

⚡ Overt act

An overt act in furtherance of the conspiracy is not necessary to prove the crime. Code 1976, § 16-17-410.

1 Cases that cite this headnote

[15] Conspiracy

⚡ Combination or Agreement

Conspiracy

⚡ Circumstantial evidence

To establish the existence of a conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties. Code 1976, § 16-17-410.

Cases that cite this headnote

[16] Conspiracy

⚙ Combination or Agreement

Evidence of direct contact or an explicit agreement between the defendants need not be shown in order to prove conspiracy. Code 1976, § 16-17-410.

1 Cases that cite this headnote

[17] **Conspiracy**

⚙ Knowledge and intent

To prove conspiracy, it is sufficient to show that each defendant knew or had reason to know of the scope of the conspiracy and that each defendant had reason to believe his own benefits were dependent upon the success of the entire venture. Code 1976, § 16-17-410.

Cases that cite this headnote

[18] **Criminal Law**

⚙ Conspiracy

Venue of a prosecution for conspiracy may be laid in either the county in which the agreement was entered, or in any county in which an overt act was done by any of the conspirators in furtherance of their common design.

1 Cases that cite this headnote

[19] **Conspiracy**

⚙ Questions for Jury

The question of the existence and nature of the agreement to traffic in marijuana was for jury to determine in prosecution of defendant for conspiracy to traffic in marijuana.

Cases that cite this headnote

[20] **Conspiracy**

⚙ Informer or government agent as coconspirator

One cannot enter into a conspiracy with another who only feigns acquiescence in a crime, such as an informer or undercover agent.

Cases that cite this headnote

[21] **Conspiracy**

⚙ Nature and Elements of Criminal Conspiracy in General

The law calls for an objective, rather than subjective, test in determining the existence of a conspiracy.

2 Cases that cite this headnote

[22] **Criminal Law**

⚙ Drugs or narcotics and related objects

Marijuana brick and book on marijuana laws found at defendant's residence were relevant to establish the nature of the conspiracy to traffic in marijuana, and the danger of unfair prejudice from this evidence did not substantially outweigh its probative value, and thus, this evidence was admissible; the marijuana was in brick form, indicating intended use in volume sale, not personal consumption, and the book on marijuana laws had some probative value as to the trafficking charge.

1 Cases that cite this headnote

[23] **Criminal Law**

⚙ Necessity and scope of proof

Criminal Law

⚙ Reception and Admissibility of Evidence

The admission or exclusion of evidence is a matter within the sound discretion of the trial court and, absent clear abuse, will not be disturbed on appeal.

1 Cases that cite this headnote

[24] **Criminal Law**

⚙ Burden of showing error

To warrant reversal, an appellant must show both error and resulting prejudice.

2 Cases that cite this headnote

[25] **Criminal Law**

⚙ Relevancy in General

1552 Evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. Rules of Evid., Rule 401.

Cases that cite this headnote

[26] Criminal Law

⇒ Evidence calculated to create prejudice against or sympathy for accused

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rules of Evid., Rule 403.

1 Cases that cite this headnote

Attorneys and Law Firms

****892** John Dennis Delgado, and Kathrine Haggard Hudgins, both of Columbia, for appellant.

Attorney General Henry D. McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, Senior Assistant Attorney General William Edgar Salter, III, Office of the Attorney General; and Solicitor W. Barney Giese, all of Columbia, for respondent.

Opinion

KITTREDGE, J.:

398** Phillip H. Crocker, III, was convicted and sentenced in Richland County for murder and trafficking in marijuana. Crocker appeals only from the drug conviction and sentence, contending the State neither alleged nor presented evidence that he committed a drug trafficking offense in Richland County. This contention is embraced in three assignments of error: (1) the denial of his motions to quash the marijuana trafficking indictment and for a directed verdict based on lack of jurisdiction and improper venue; (2) the denial *893** of his ***399** motion for a directed verdict based on lack of evidence; and (3) the admission of certain evidence.¹ We affirm.

FACTS

Nathaniel Casey, Jr. (known as "Junior") was murdered when he and his wife, Consuelo, met Crocker in a parking lot in Richland County for the purpose of buying a large amount of marijuana. The relevant facts leading up to this ultimately violent meeting between the Caseys and Crocker are as follows.

Consuelo operated a barbershop in Dillon, South Carolina, and Junior sold marijuana for a living. The Caseys wanted to build a home, and they chose Junior's marijuana business as the way to raise the necessary funds.

On November 19, 2001, Consuelo told an acquaintance, Willie Jennings, about the plan. She inquired if Jennings could assist the couple with a large purchase in the \$40,000 range, or about 50 pounds of marijuana. Jennings said he could put them in touch with a dealer.

The following day, November 20, Jennings returned to the barbershop with the appellant Crocker, who lived in Charlotte, North Carolina. At this meeting Crocker agreed to sell Junior approximately 50 pounds of marijuana. They planned to meet in Columbia, South Carolina, the following day. The exact location would be determined on the way there. Cell phone numbers were exchanged. The meeting concluded, and it was agreed Jennings would be paid \$500 for helping broker the deal between Junior and Crocker.

***400** The next day, November 21, Consuelo and Junior left Dillon in their Chevrolet Tahoe between 1:00 and 2:00 in the afternoon and headed for Columbia with \$40,000 in cash. Several phone conversations were made via cell phone while en route. Crocker first called the Caseys from near his home in Charlotte. Crocker called the Caseys again around 3:00 p.m., this time from the Blythewood area of Columbia in Richland County. Several more calls were made back and forth in the Columbia area. The parties finally agreed to meet in the Lowe's parking lot, near I-20 on Two Notch Road in Columbia.

When the Caseys arrived in the Lowe's parking lot, Crocker pulled in behind them, driving a dark gray station wagon with wood grain paneling. Crocker backed up his station wagon to the Casey vehicle. Crocker got out and asked Junior to help him transfer the drugs. Junior exited to help Crocker with the

lifting of the marijuana, while Consuelo remained in the front seat of the vehicle.

Crocker and Junior transferred a large, blue, Tupperware-like container into the back of the Tahoe. Consuelo noticed a conversation between Junior and Crocker as the purported drugs were placed in the Casey vehicle, but she was unable to hear what was said. Crocker then pulled out a gun and shot Junior, killing him. Crocker fled the scene in his station wagon. Law enforcement responded to the crime scene.

No marijuana was found in the large container, only blankets and a sack of concrete and cinder blocks. On the blue container police found seven fingerprints belonging to Crocker's father, Phillip H. Crocker, II. Also found in the Casey vehicle were two handguns and the \$40,000 in cash.

Both Consuelo and Jennings eventually cooperated with police. A search warrant was executed at Crocker's home in Charlotte, where he resided with his father. A number of items were found at the house, including: ****894** (1) a half pound bag of marijuana in block form locked in a shed in the back yard; (2) a book on laws pertaining to marijuana; (3) storage containers identical to that found in the Casey's vehicle, all of which contained the same type of blankets; (4) paperwork relating to a 1988 Pontiac 6000 Station Wagon, which had been sold to a third party after Junior's murder; and (5) various ***401** weapons and ammunition. Five or six cell phones—which were connected to accounts in different names—were also found.

Prior to trial, Crocker moved to quash the indictment for lack of subject matter jurisdiction, personal jurisdiction, and improper venue. The trial court declined to grant the motions, noting that at the pretrial stage, the record was “factually deprived.” The motions were renewed at the directed verdict stage and denied. Crocker also moved to suppress the items seized from his home. The trial court denied the suppression motion with respect to the marijuana and book on marijuana laws found at his residence, among other items.

The jury convicted Crocker of both charges. Crocker was sentenced to thirty years for the murder charge and five years, consecutively, on the trafficking in marijuana charge. Crocker appeals only from the drug-related conviction and sentence.

Crocker's challenge to his trafficking in marijuana conviction is threefold: (1) since the “State failed to allege any facts to support that the defendant committed a trafficking offense in Richland County,” the trial court erred in denying his motions to quash and for directed verdict, on jurisdictional and venue grounds; (2) since the “State failed to present evidence that the [trafficking] offense was committed in Richland County,” the trial court erred in denying his directed verdict motion based on jurisdictional and venue grounds, as well as lack of evidence; and (3) the trial court erred in the admission of certain items seized from his home. We address these issues separately, although we recognize the relationship among them.

I. JURISDICTION AND VENUE

A. Subject matter and personal jurisdiction

[1] [2] [3] [4] “Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong.” *Pierce v. State*, 338 S.C. 139, 150, 526 S.E.2d 222, 227 (2000). “The circuit court has ***402** original jurisdiction in all criminal matters except those where an inferior court is given exclusive jurisdiction.” *State v. Dudley*, 364 S.C. 578, 582, 614 S.E.2d 623, 625 (2005); S.C. Const. art. V, § 11 (Supp. 2004). “Circuit courts obviously have subject matter jurisdiction to try criminal matters.” *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). Circuit courts have subject matter jurisdiction over drug trafficking charges. *Dudley*, 364 S.C. at 582, 614 S.E.2d at 625. Generally, the requirements of subject matter jurisdiction are satisfied when appropriate charges are filed in a competent court. *State v. Dudley*, 354 S.C. 514, 523, 581 S.E.2d 171, 176 (Ct.App.2003), *aff'd as modified*, 364 S.C. 578, 614 S.E.2d 623.

[5] [6] “Jurisdiction of the offense charged and of the person of the accused is indispensable to a valid conviction.” *Dudley*, 354 S.C. at 522, 581 S.E.2d at 175 (quoting *State v. Langford*, 223 S.C. 20, 26, 73 S.E.2d 854, 857 (1953)). Two distinct types of jurisdiction exist: (1) jurisdiction of the subject or subject matter, and (2) jurisdiction of the person. *Dudley*, 354 S.C. at 522, 581 S.E.2d at 175.

We summarily dispose of Crocker's subject matter jurisdiction claim that the State failed to allege any facts that he committed a drug trafficking offense in Richland County, and affirm pursuant to Rule 220(b)(2), SCACR, and the above-cited authorities.

LAW/ANALYSIS

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[7] Turning to the second prong of Crocker's jurisdictional challenge, it is generally recognized that jurisdiction over the person in a criminal case lies in the state or county where the crime was committed. 4 Wayne R. LaFave et al., *Criminal Procedure* § 16.4(c) (2d ed. 1999). The indictment alleged, in pertinent part, that Crocker "did in Richland County on or about November 21, 2001[,] knowingly ... conspire to sell ...

****895** more than 10 lbs. of Marijuana." During pretrial arguments, the State disputed Crocker's factual recitation, and the trial court denied the motion preliminarily, noting the record was "factually deprived." Clearly, the State alleged a trafficking offense in Richland County, and resolution of Crocker's motion required an evidentiary record. We reject as meritless Crocker's assertion that the trial court erred in denying his directed verdict motion based on a lack of jurisdiction over his person.

***403** The real thrust of Crocker's jurisdictional arguments is that the trial court erred in not granting his directed verdict motion, because the State failed to *prove* any act in furtherance of a conspiracy to traffic in marijuana took place in Richland County.

As we view the evidence in a light most favorable to the State, as we must, we reject the premise of Crocker's assertion that the conspiracy had no connection to Richland County. *State v. Kelsey*, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998) (holding that on a directed verdict motion in a criminal case, the evidence must be viewed in the light most favorable to the State). To accept Crocker's factual recitation would have required the trial court-and now us-to abandon the mandated lens through which evidence is viewed in a directed verdict motion in a criminal case. When properly viewed, the record is replete with evidence that many of the actions undertaken by the Caseys and Crocker in furtherance of the alleged conspiracy occurred in Richland County.

[8] Were we to indulge in the fiction that the conspiracy had no nexus to Richland County, we would nevertheless be constrained to reject Crocker's jurisdictional arguments. As relates to a defendant's entitlement to a directed verdict on such grounds, our supreme court has held that "[a] criminal defendant is entitled to a directed verdict when the State fails to present evidence that the offense was committed in the county alleged in the indictment." *State v. Williams*, 321 S.C. 327, 333, 468 S.E.2d 626, 630 (1996) (quoting *State v. Evans*, 307 S.C. 477, 480, 415 S.E.2d 816, 818 (1992), *overruled in part* by *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494

(2005)). But the legal basis for this proposition is venue, not jurisdiction, for the court in *Evans* observed that "[a]lthough an accused has a right to be tried in the county in which the offense is alleged to have been committed, we hold this right is not jurisdictional." *Evans*, 307 S.C. at 480, 415 S.E.2d at 818. *Evans* recognized the merging of jurisdictional and venue principles in prior cases, but "overruled" those cases "[t]o the extent ... the cases ... indicate[d] that venue is jurisdictional...." *Id.* The right to be tried in the county in which the offense is alleged to have been committed, then, is a matter of venue.

***404 B. Venue**

[9] [10] [11] [12] Because the trial court had jurisdiction over Crocker-subject matter and personal-the issue is whether venue was properly laid in Richland County. As noted, venue principles entitle a criminal defendant "to a directed verdict when the State fails to present evidence that the offense was committed in the county alleged in the indictment." *State v. Evans*, 307 S.C. 477, 480, 415 S.E.2d 816, 818 (1992), *overruled in part on other grounds* by *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). The standard for establishing venue is not a stringent one, for "venue, like jurisdiction, in a criminal case need not be affirmatively proved, and circumstantial evidence of venue, though slight, is sufficient...." *State v. Williams*, 321 S.C. 327, 334, 468 S.E.2d 626, 630 (1996). "[W]here some acts material to the offense ... occur in one county, and some in another, venue is proper in either county." *Id.*

Crocker was charged with trafficking in marijuana in violation of section 44-53-370(e)(1)(a)(1) of the South Carolina Code (Supp.2000). One manner in which the State may establish the substantive offense of trafficking in marijuana under this section is to prove that the defendant "conspire[d] to sell" ten or more pounds of marijuana. Section 44-53-370(e)(1). Thus, a defendant may be charged with trafficking under a theory of conspiracy.

[13] [14] A conspiracy is defined as the "combination between two or more persons for the purpose of accomplishing an unlawful ****896** object or lawful object by unlawful means." S.C.Code Ann. § 16-17-410 (2003). "The gravamen of conspiracy is an agreement or combination." *State v. Dudley*, 354 S.C. 514, 532, 581 S.E.2d 171, 181 (Ct.App.2003), *aff'd as modified*, 364 S.C. 578, 614 S.E.2d 623 (2005). An overt act in furtherance of the conspiracy is not necessary to prove the crime. *Id.*

[15] [16] [17] “To establish the existence of a conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties.” *Id.* (quoting *State v. Buckmon*, 347 S.C. 316, 323, 555 S.E.2d 402, 405 (2001)). Evidence of direct contact or an explicit agreement between the defendants need not be shown. *State *405 v. Barroso*, 320 S.C. 1, 8, 462 S.E.2d 862, 868 (Ct.App.1995), *rev’d on other grounds*, 328 S.C. 268, 493 S.E.2d 854 (1997). “It is sufficient to show that each defendant knew or had reason to know of the scope of the conspiracy and that each defendant had reason to believe his own benefits were dependent upon the success of the entire venture.” *Id.* at 8-9, 462 S.E.2d at 868.

[18] The State presented evidence that the agreement between Crocker and the Caseys was formed in Dillon County. Crocker argues that because he challenges the existence of the agreement itself, acts in furtherance of the purported conspiracy should not be considered in laying venue. Crocker misapprehends the interplay between the law of conspiracy and venue. “Venue of a prosecution for conspiracy may be laid in either the county in which the agreement was entered, or in any county in which an overt act was done by any of the conspirators in furtherance of their common design.” *State v. Wells*, 249 S.C. 249, 259, 153 S.E.2d 904, 909 (1967); *see also State v. Hightower*, 221 S.C. 91, 97-98, 69 S.E.2d 363, 366 (1952) (noting that “[t]he rule is generally recognized that if the overt act is committed within the court’s jurisdiction, the place of the conspiracy is immaterial”). The jury, of course, could not have returned a guilty verdict on the conspiracy indictment without finding the formation of the marijuana trafficking agreement in Dillon County on November 20.

The November 21 meeting in Richland County occurred as a result of the agreement-to traffic in marijuana-made the previous day in Dillon County. Moreover, because numerous phone calls were made in Richland County between Crocker and Junior to determine the location for the transfer of the marijuana, and the meeting occurred in Richland County, ample evidence exists to clear the hurdle necessary to support venue in Richland County. *See Williams*, 321 S.C. at 333-34, 468 S.E.2d at 630 (holding that venue need not be affirmatively proved). Venue was proper in Richland County.

II. CONSPIRACY TO TRAFFIC IN MARIJUANA

[19] Crocker next claims that he was entitled to a directed verdict because the State failed to prove the existence of a conspiracy to traffic in marijuana. Crocker testified that he *406 had no knowledge of and no involvement in the alleged agreement to traffic marijuana. Specifically, Crocker argues that because no marijuana was actually delivered to the Caseys in Richland County, the only inference supported by the evidence is that the perpetrator’s intent was to rob the Caseys, not sell them marijuana. Therefore, he asserts no “meeting of the minds” existed to form the agreement necessary for a conspiracy charge. Of Crocker’s various assignments of error, this one is the most fundamentally at odds with our standard of review from the denial of a directed verdict motion, and we reject it.

[20] Crocker asserts that no meeting of the minds can be shown because the perpetrator only pretended to set up a drug sale, but intended from the beginning to rob the Caseys. There are, to be sure, situations where a lack of an agreement is manifest and the absence of a conspiracy may be determined as a matter of law. For example, “one cannot enter into a conspiracy with another who only feigns acquiescence in a crime; such as an informer or undercover agent.” *State v. Holmes*, 277 S.C. 232, 233, 285 S.E.2d 353, 354 (1981). Crocker was neither an informer nor an undercover agent.

**897 [21] We additionally note that the law calls for an objective, rather than subjective, test in determining the existence of a conspiracy. There are sound policy reasons for using an objective standard. The drug culture is not known for attracting paragons of virtue, as courts are often presented with “drug deals gone bad,” and in any event, a subjective test favorable to a defendant would run counter to the well-established standard of review for directed verdict motions. *State v. Kelsey*, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998) (holding that on a directed verdict motion in a criminal case, the evidence must be viewed in the light most favorable to the State). For purposes of the trial court’s resolution of the directed verdict motion, the evidence, when viewed objectively in the proper light, created a jury question as to the existence of the claimed drug conspiracy.²

*407 We find direct evidence of the conspiracy in the testimony of Consuelo and Jennings. They understood that the agreement was for the Caseys to buy marijuana from Crocker, with Jennings to receive \$500 for brokering the deal. We find circumstantial evidence in the cell phone calls in Richland County and the Caseys traveling to Richland County with \$40,000. We find further circumstantial evidence in the

1556

items seized from Crocker's home. Because some evidence indicated the agreement was to traffic in marijuana, the question of the existence and nature of the agreement was properly a jury question.

We finally note that Crocker never testified that he planned to rob the Caseys at trial, but instead denied any connection with the transaction. Although the evidence indicates that at some point Crocker decided to withdraw from the marijuana conspiracy and to double-cross the Caseys, the crime of conspiracy was complete at the time the agreement was made. *See State v. Woods*, 189 S.C. 281, 287-88, 1 S.E.2d 190, 193-94 (1939) (stating that a conspirator seeking to withdraw must affirmatively communicate this intention to his associates); *see also State v. Gunn*, 313 S.C. 124, 135, 437 S.E.2d 75, 81 (1993) (holding that certain defendants withdrew by communicating their intent to do so to all co-conspirators). The record here is devoid of any suggestion that the perpetrator communicated an intent to withdraw from the conspiracy to Jennings or the Caseys. The presence of evidence establishing the existence of the drug conspiracy, coupled with the absence of evidence *408 of withdrawal from the conspiracy, confirms the correctness of the trial court's decision to deny the directed verdict motion.

III. MOTION TO SUPPRESS

[22] Crocker's final argument is that the trial court erred in denying his motion to suppress the marijuana brick and book on marijuana laws found at his residence. We disagree.

[23] [24] [25] [26] "The admission or exclusion of evidence is a matter within the sound discretion of the trial court and absent clear abuse, will not be disturbed on appeal." *Gamble v. Int'l Paper Realty Corp. of S.C.*, 323 S.C. 367, 373, 474 S.E.2d 438, 441 (1996). To warrant reversal, an appellant must show both error and resulting prejudice. **898 *Recco Tape & Label Co., Inc. v. Barfield*, 312 S.C. 214, 216, 439

S.E.2d 838, 840 (1994). "[E]vidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy." *State v. Staten*, 364 S.C. 7, 36-37, 610 S.E.2d 823, 838 (Ct.App.2005); Rule 401, SCRE. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." *State v. Shuler*, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003); Rule 403, SCRE.

Here, the marijuana and the book on marijuana laws were relevant to establish the nature of the conspiracy. As discussed above, the marijuana was in brick form, indicating intended use in volume sale, not personal consumption. The book on marijuana laws also had some probative value as to the trafficking charge. We cannot say the danger of unfair prejudice from the evidence substantially outweighed its probative value. We thus find no abuse of discretion in the admission of this evidence.

CONCLUSION

We reject Crocker's various challenges to the marijuana trafficking conviction and sentence. We hold that all of Crocker's motions attacking jurisdiction and venue were properly denied. We further hold that sufficient evidence existed that Crocker entered into a conspiracy to sell marijuana to survive his motion for a directed verdict on the trafficking *409 charge. Finally, the trial court acted within its discretion in the admission of the challenged evidence.

AFFIRMED.

HEARN, C.J., and STILWELL, J., concur.

All Citations

366 S.C. 394, 621 S.E.2d 890

Footnotes

- 1 In challenging the admission of evidence seized from his Charlotte, North Carolina home, the last sentence of Crocker's brief reads: "The appellant's conviction for trafficking in marijuana should be vacated and the conviction for murder should be reversed." This is the only challenge to the murder conviction. Crocker's "Statement of Issues on Appeal" contains no reference or challenge to the murder conviction. *See* Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."). Moreover, conclusory statements unaccompanied by argument and citation to authority are insufficient to preserve an issue for appellate review. *Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct.App.1993) (holding that failure to provide argument or supporting authority for an issue renders it abandoned); Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 75-76 (2d. ed. 2002).

- 2 Crocker's view that the purported drug deal was never intended-and the perpetrator secretly planned all along to rob the Caseys-is interesting in light of his testimony that he had no involvement in these crimes and was not present in Dillon on November 20, 2001. We decline to accept Crocker's self-serving version of the perpetrator's undisclosed secret intentions, especially when on appeal from the denial of a directed verdict we are required to view the evidence in a light most favorable to the State. If Crocker's argument were adopted as framed, we would be creating a complete defense to a conspiracy charge that would entitle a defendant to a directed verdict on the mere self-serving contention that he (or the perpetrator) never intended to complete the drug transaction. A defendant like Crocker may advance such an argument, and a jury may accept the argument that there was no agreement in the first instance and acquit on the conspiracy charge. But Crocker asks us to rule in his favor on this issue as a matter of law. The presence of evidence in support of the indicted conspiracy offense precludes the direction of a verdict. And the law is contrary to Crocker's position, for a conspiracy may be proven by circumstantial evidence and conduct-objectively viewed-of the parties. *State v. Buckmon*, 347 S.C. 316, 323, 555 S.E.2d 402, 405 (2001). These are factual matters for a jury, not the court, to settle.

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The South Carolina Court of Appeals

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POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
WWW.SCCOURTS.ORG

November 16, 2005

REMITTITUR

The Honorable Barbara A. Scott
1701 Main St
PO Box 2766
Columbia, SC 29202-2766

Re: The State v. Crocker, Phillip H.
2002-GS-40-09503
2002-GS-40-09561

Dear Ms. Scott:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kenneth A. Richstad".
Kenneth A. Richstad
Clerk of Court

KAR/rj

cc: John Dennis Delgado, Esquire
Kathrine Haggard Hudgins, Esquire
Senior Assistant Attorney General William Edgar Salter, III
Solicitor W. Barney Giese

FORM 5

1006-C.P. 400-6124

STATE OF SOUTH CAROLINA

County of Richland

IN THE COURT OF COMMON PLEAS

Phillip H. Crocker, III, #218423

Full name and prison number (if any) of Applicant

v.

State of South Carolina

John Ozmint, South Carolina
Director of Department of Corrections
and Henry McMaster, Attorney
General of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF

2006 OCT 17 PM 12:13
 BARBARA A. SCOTT
 C.C. & S.
 RICHLAND COUNTY
 FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be written (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 an additional page. Applicant shall make clear to which questions 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 for 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 Perry Correctional Institute, 430
Oaklawn Road, Columbia, SC 29669
2. Name and location of Court which imposed sentence Richland County Court
of General Sessions
3. Name(s) of co-defendant(s) (if any) Willie F. Jennings (for
Trafficking in Marijuana Charge)
4. The indictments number or numbers (if known) upon which and the offences for which sentence was imposed:
(a) Murder

(b) Trafficking in Marijuana

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) MURDER: Thirty years on December 10, 2003

(b) Trafficking in Marijuana: 5 years on December 10, 2003

(c) _____

6. Check whether a finding of guilty plea was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒ _____

(c) after a plea of nolo contendere _____

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

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

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. Convictions and sentences were affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. Convictions and sentences affirmed on October 31, 2005

ii. _____

iii. _____

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

i. Not Known

- ii. _____
- iii. _____

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

- (a) Not applicable
- (b) _____
- (c) _____

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

- (a) _____
- (b) SEE ATTACHMENT
- (c) _____

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

- (a) _____
- (b) SEE ATTACHMENT
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) Any petition in State or Federal Courts for habeas corpus or post - convictions relief? NO
- (c) Any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8) NO
- (d) Any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
- i. _____
- ii. _____

10)a)

Applicants right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and South Carolina law was violated because he is actually innocent of charges.

11)a)

Considerable evidence exists to show applicant is actually innocent of Casey's murder and the trafficking of marijuana. As described within, evidence of third party guilt existed at the time of trial and was in the possession

of trial counsel. In addition, evidence of applicant's innocence has been revealed through post-trial investigations. Applicants continued incarceration for a crime he did not commit is a miscarriage of justice and should be remedied immediately.

10/6)

Applicants right to the effective assistance of counsel as guaranteed by the Sixth Amendment of the United States Constitution and South Carolina law was violated by appellate counsel's failure to appeal trial counsel's objection to expert testimony offered by the State regarding cell phones.

11/15/64

Appellate Counsel's failure to appeal trial Counsel's objection to Sgt. McDonald expert testimony on cellphones was ineffective assistance of counsel. Sgt. McDonald characterization of the complete operation of cell phone usage was improper testimony. Sgt. McDonald admitted that he had no certifications and was not an expert in this field. Counsel's failure to appeal trial Counsel's objection to this explosive testimony was deficient and caused applicant to suffer prejudice. Strickland v. Washington, 466 U.S. 688 (1984).

Gilchrist v. State, 364 S.C. 173, 612 S.E.¹⁵⁶⁵
2d 702 (2005).

Anderson v. State, 354 S.C. 431, 581 S.E.
2d 834 (2003)

Southerland v. State, 337 S.C. 610, 524
S.E. 2d 833 (1999)

Cherry v. State, 300 S.C. 115, 386 S.E.
2d 624 (1989)

10)c)

Applicant's right to due process of
law as guaranteed by the Fifth and
Fourteenth Amendments to the
United States Constitution and
South Carolina law was violated
when he was not present for
off the record communications
between judge and jurors.

11) 1566

At applicant's trial, Judge Casey Manning met with the jury in a separate Court room off the record, while the applicant was not present. Tr. 74

Defendants are guaranteed the "right to be present at any stage of the Criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure". Kentucky v. Stincer, 482 U.S. 730 (1987).

A criminal defendant has the right to be present in his own person whenever his presence has a relation, reasonably substantial to the fullness of his opportunity to defend against the charge.

• *Faretta v. California*, 422 U.S. 806 (1975)¹⁵⁶⁷

Similarly, the South Carolina Supreme Court has held "a defendant has the right to be present at any stage of the criminal proceeding that is critical to its outcome if his or her presence would contribute to the fairness of the procedure."

Starnes v. State, 307 S.C. 247, 414

S.E. 2d 582, 583 (1991). Applicants

absence for Judge Mannings *Ex Parte* Communication with the jury violated his right to be present. Jury selection is a critical stage in the judicial proceedings at which defendants have a constitutional right to be

~~Present~~ United States v. Rolle, 204 Fed.
3d 133, 136 (4th Cir. 2000).

This error requires no showing of
prejudice because applicants' right
to an fair and impartial jury was
violated. Johnson v. United States, 117 S.Ct.
1544, 1550 (1997), Arizona v. Fulminate,
499 U.S. 279, 309-310 (1991). Porter v.
Singletery, 49 F.3d 1483, 1489 (11th Cir. 1995)

10)d) Applicant's right to due process of law
as guaranteed by the Fifth and
Fourteenth Amendments to the United
States Constitution and the South
Carolina law, and to an impartial
jury, as guaranteed by the Sixth
Amendment of the United States
Constitution and South Carolina law,

was violated when judge Manning made it known to the jury he was from the same town (Dillion) as the victim in the case.

11/5/5

Judge Manning as described above met with the jury off the record and conducted Ex Parte communication in which he stated to the jury that he was from "Dillion", which is the same town of the victim, this statement only became known to the applicant when Judge Cooper asked the jury, "does any member of the jury know or member of

1570R Family have any connection with Dillion or Dillion County"? Tr. 73. Jury Panel member, Mr. Brown answered in affirmative "yes, sir, my parents are foster parents and they have a branch in Dillion". Tr. 73. Judge Cooper goes on to ask, "did Judge Manning do the qualification this morning?" "He didn't tell you he was from Dillion"? Mr. Brown affirmed yes to these questions by shaking his head in the form of yes, Judge Manning did inform the jury panel that he was from the same town (Dillion) as the

Victim. Judge Cooper then states,¹¹⁵⁷¹
See you learn something everyday.

Casey Manning is from of course,
he calls it "DILLION", "Tr. 74. This

Comment by Judge Manning, which
was affirmed by Judge Cooper, were

improper and prejudicial comments.

State v. Pruitt, 187 S.C. 58, 196 S.E. 2d 11 (1938).

"Judges are prohibited from making
improper and prejudicial comments.

The reasoning for such prohibition
was recognized for such, in Crenshaw

v. Southern Railway Company, 214 S.C.

553, 53 S.E. 2d 789 (1949), such

prohibition exists because of the

ease with which a judge may

even unintentionally influence a jury. It has long been recognized that even a slight remark, apparently innocent in its language, may even when uttered by the Court have a decided weight in shaping the opinion of the jury."

A Defendant is entitled to a jury "free from outside influences of whatever kind and nature. State v. Cameron 311 S.C. 204, 207, 428 S.E.2d 10, (Ct. App. 1993) State v. Johnson 302 S.C. 243, 250, 395 S.E. 2d 167, 170 (1990). State v. Wasson 299 SC 508, 511, 386 S.E. 2d 255, 256 (1989). State v. Salters, 273 S.C. 501 504, 257 S.E. 2d, 502, 504 (1979).

This error requires no showing of prejudice because applicants right to due process, a fair trial and effective assistance of counsel was violated. Johnson, Supra, Fulminante, Supra Porter, Supra.

O/E)

Applicants right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and South Carolina law was violated when the judge excluded witness with testimony of third-party-guilt from testifying.

11/15/74
EJ

During Pre-trial, applicants trial Counsel Motioned for a Sequester order. Pre-Tr. 9-13. Before first witness testified, Judge Cooper ordered Sequestration order in effect. Pre-Tr. 61-62. After Sequestration was in effect, trial Counsel noticed witness Luthereen Williams seated inside the Court Room, he affirmed her presence through her daughter Consuelo Cayce. Pre-Tr. 126. It was then agreed upon that witness Luthereen Williams violated the Sequestration Order, and she was now excluded

from testifying at this trial. Tr. 98-103, and 107-108.

The Court not allowing Catherine Williams to testify, not only violated the applicants Constitutional rights, but prejudiced him as well. This being on the basis, but not limited to, Catherine Williams informed

Inv. Gonzalez she had been showing the Composite around Dillion and the Composite matched "Marty Morgan" who was trying to buy a 9mm pistol, and who was out to rob her and the victim. She

Also gave Inv. Gonzalez the names of the individuals who could corroborate this information, Phillip and Marcus Williams. Furthermore Williams was a vital part of this case concerning the third-party-guilt of "Marty Morgan" whom her daughter Consuelo Casey said she was 95% sure "Marty Morgan" was the man who shot her husband when she was shown his picture by Inv. Gonzalez.

"Barring the defendants evidence violated his right to [be] present a complete defense because the

1577
NAMES OF the individuals who could
CORROBORATE this information, Phillip
and Marcus Williams. LUTHEREEN Williams
was a vital part of this case concerning
the third-party-guilt of "Marty Morgan"
whom her daughter Consuelo Casey said
she was 95% sure "Marty Morgan" was
the man who shot her husband when
she was shown his picture by Inv.
Gonzalez.

"BARRING the defendants evidence
violated his right to present a
complete defense because the
evaluating the strength of only
one party's evidence no logical
conclusion can be reached regarding
the strength of contrary evidence
offered by the other side to rebut
or cast doubt." Holmes v. South Carolina
U.S. No. 04-1327, 5/1/06.

1378 evaluating the strength of only
one party's evidence. No logical
conclusion can be reached regarding
the strength of contrary evidence
offered by the other side to rebut
or cast doubt." Holmes v. South Carolina,
U.S. No. 04-1327, 5/1/06.

10) F)

Applicant's right to the effective assistance
of counsel as guaranteed by the Sixth
Amendment to the United States
Constitution and South Carolina law
was violated when/ by trial counsel's
failure to motion for a mistrial when
witness violated the sequestration order
and was excluded from testifying.

117

As indicated above, Luthereen Williams gave information to Inv. Gonzalez concerning the third party guilt of "Marty Morgan" who was the main suspect in this case at one point, which trial counsel was aware of. Pre-Trial Tr. 169. By trial counsel not motioning for a mistrial after it was ordered that Luthereen Williams would be excluded from testifying, he was ineffective and prejudiced the applicant from presenting his entire defense. Holmes v. South Carolina U.S. No. 04-1327, 5/1/06.
Strickland, Supra, Cherry, Supra.

Pr 580
The judge is presumed when applicants
right to due process is violated. Johnson,
Supra, Fulminate, Supra, Porter, Supra.

10) 6)

Applicants right to effective assistance of
counsel as guaranteed by the Sixth
Amendment to the United States

Constitution and South Carolina law was
violated by trial counsel's failure to
move to vacate invalid search warrants
and suppress the use in evidence of
all evidence stemming from these
search warrants which were issued
to conduct searches outside the
issuing magistrate jurisdictional
issuing power and the investigators
executing and return power.

11.6)

Shortly after the said crimes, Stg. McDonald and Inv. Gonzalez sought to retrieve cellphone and telephone records for evidence to their investigation, they proceed to magistrate's Phil Newsome and Valerie R. Stroman-Boyd to get search warrants to conduct these searches in Overland Park, Kansas, Atlanta, Georgia, Bedminster, New Jersey and Tucker, Georgia for telephone and cellphone. Magistrates Newsome and Stroman-Boyd issued these search warrants to Stg. McDonald pursuant to S.C. Code Ann § 17-13-140 (1976) which provides in pertinent part:

"Any magistrate or recorder or city judge having the powers of magistrates,

9582 any judge of any Court of record of the State having jurisdiction over the area where the property sought is located may issue a search warrant."

By statute [17-13-140], it is clear the Magistrates were not empowered to issue search warrants in the jurisdictions of Kansas, New Jersey, and Georgia.

In construing statute, words used are to be given their ordinary and usual meaning. *Eifert v. Read*, 1 Nott and McC 374, Note (S.C. 1818), and (Atty. Gen. 1919). "Attorney General may not read into a legislative enactment a meaning other than clearly appears in construct." 1919 Op. Atty. Gen 74. *Davis v. Doe*, 285 S.C 538, 331 S.E. 2d 352 (1985).

Stg. McDonald and Inv. Gonzalez stated^{158B}
under oath that they executed these
search warrants and returned them
to the issuing magistrates.

Not only did the magistrates not have
power to issue these search warrants,
Sgt. McDonald, Inv. Gonzalez nor any
member of the Richland County Sheriff
Department had jurisdictional power
to conduct searches in Kansas, New
Jersey and Georgia. State v. Hammond
242 S.E.2d 411, (Atty. Gen.) Op. Atty. Gen
234.

And in light of Sgt. McDonald and Inv.
Gonzalez "Return" of these "invalidly"
issued and illegally executed search
warrants the issuing magistrates,

~~these~~ were also violations of the
"legal process", by the officers returning
them and the magistrates accepting
their (officers) Returns. See: S.C. Code
Ann. § 19-5-510 and State v. McFarlane,
279 SC 327. 306 S.E. 2d 611.

This was not and is not a matter
of S.C. Code Ann. § 22-3-750, therefore
Sections 22-3-520 and 17-3-80 of
the S.C. Code Ann., were not and
are not of no arguable validation,
and are void to this matter. This
was and is a matter of the
Ultra Vires Acts upon 17-13-140,
by the magistrates and their

Constables, which trial Counsel failed¹⁵⁸⁵ to shed light upon by moving to vacate these invalid search warrants of "Prima Facie" invalidation, and all evidence to be used from them against his client, now petitioner.

Proper and valid remedy for obtaining these records for "legal process" would be by way of "Subpoena" South Carolina Rules of Criminal Procedure, Rule 13, to bring forth the fulfillment of S.C. Code Ann. § 19-5-510; Uniform Business

Record as Evidence Act, which was violated in this matter. Jenkins v. Dixie Specialty Co. 326 S.E 2d 658.

"Access to records was to be in accordance with "existing legal process."

1586 There was no indication that the traditional distinction between a search warrant and a subpoena would not be recognized. To permit a police officer access to these records merely upon his request, without any judicial control as to the relevancy or other traditional requirements of legal process and allow the evidence to be used in any subsequent criminal prosecution against a defendant, opens the door to a vast and unlimited range of very real abuses of police powers. *United States v. Miller*, 425 U.S. 435 (1976). *State v. McFarlane*, 279 SC 327, 306 S.E. 2d 611.

Trial Counsel's Failure to move to vacate these invalid search warrants and to suppress all evidence to be used from them against the ~~P~~ETITIONER, violated the petitioners right to effective assistance of counsel.

Strickland, Supra, Gilchrist, Supra
Anderson, Supra, Southerland, Supra
Cherry, Supra.

This error requires no showing of prejudice because applicant's right to due process was violated.

Johnson, Supra, Fulminante, Supra
Porter, Supra.

Please See: Exhibits- 1, 2, and 3 (Search Warrants

And Ex. 4

STATE OF SOUTH CAROLINA}

1588

COUNTY OF RICHLAND }

SEARCH WARRANT

Ex. 1

ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Sprint PCS, Custodian of Records, Melanie Hall, Sprint Spectrum L.P.
6480 Sprint Parkway
Overland Park, KS 66251

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

originating and terminating calls to Sprint phone number 646-408-5502 between November 14, 2001 to November 22, 2001. In particular cell site information is needed to show where these calls were made from (city, state etc..) and received at (city, state, etc..)

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

Judge Valerie R. Stroman-Boyd

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Columbia, S.C.

November 26, 2001

(6:14 P.M.)

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

COUNTY OF RICHLAND }

AFFIDAVIT

Personally appeared before me, one Sgt. McDonald who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

all originating and terminating calls to Sprint phone number 646-408-5502 between November 14, 2001 to November 2, 2001. In particular cell site information is needed to show where these calls were made from (city, state etc.) and received at (city, state, etc.)

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

print PCS, Custodian of Records, Melanie Hall, Sprint Spectrum L.P.
480 Sprint Parkway
Overland Park KS 66251

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

During the late afternoon hours of November 21, 2001, in Richland County, the Richland County Sheriff's Department was notified of a shooting incident at 7441 Two Notch Rd. (Lowe's parking lot). Upon the deputies arrival at the scene, they observed one Nathaniel Casey Jr. shot one time in the head area which resulted in his death. The victim's wife Consuelo Casey was present during this incident and indicated that the victim makes and receives calls on a Nokia cellular phone that was present at the scene. The victim had placed a call to the phone number 646-408-5502 just prior to his death. This is going to be a Sprint Spectrum Cell phone number. Law enforcement believes that information sought in this search will assist in the on going investigation into the death of Mr. Casey. Investigators feel that the information sought after will be located at the the location to be searched.

sworn to and Subscribed before me

this 26th day of November, 2001

Alvin R. Thomas, Jr. (L.S.)
Signature of Judge

Sgt. McDonald
Affiant

Address Richland County Sheriff's Department5623 Two Notch Road, Columbia, S.C. 29223Phone (803) 691-9000

RETURN

1500 Received the attached Search Warrant 11-26-01, 2001, and have executed it as follows:
On 11-26, 2001 at 7:30 o'clock p M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with AT The Place of Search
Name of person searched or "at the place of search" with
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

All originating and terminating calls to Sprint phone number
646-408-5502 between Nov. 14 2001 to Nov 22, 2001
with cell site provider

This inventory was made in the presence of Sgt. McDonald / INV. R.H. GONZALEZ
AND

I swear that this Inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this 14th
day of December, 2001

Valerie Thomas Boyd (L.S.)
Signature of Judge

(8:00 p.m.)

Roby M. Jones
(Signature of Officer Executing Warrant)

FROM CINGULAR WIRELESS. COURT ORDERS

(THU) 11 22 2001 18:57/ST. 18167/NO. 0000000764 P 2

Ex. 2

STATE OF SOUTH CAROLINA

County of Richland

SEARCH WARRANT

Date 11-22-01Officer Sgt. McDonald

1592

FROM CINGULAR WIRELESS. COURT ORDERS

(THU) 11 22 2001 18:57/ST. 18:57/NO. 0000000764 P 3

BSCC0111S1628

RECD 11/22/01

STATE OF SOUTH CAROLINA}

SEARCH WARRANT

COUNTY OF RICHLAND }

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF _____

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHEDCingular Wireless Subpoena Compliance Center
Attention: Custodian of Records
5600 Glenridge Dr. Suite G418 Atlanta, GA, 30342

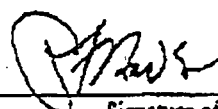
Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

All originating and terminating calls to Cingular phone number 843-615-3711 between November 15, 2001 through November 22, 2001This Search Warrant shall not be valid for more than ten days from the date of issuance.
A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Colt. S.C.
November 22 2001

Signature of Judge (L.S.)

STATE OF SOUTH CAROLINA)

AFFIDAVIT

COUNTY OF RICHLAND)

Personally appeared before me, one Sgt. McDonald who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

All originating and terminating calls to Cingular phone number 843-615-3711 between November 15, 2001 through November 22, 2001.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

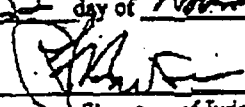
Cingular Wireless Subpoena Compliance Center
Attention: Custodian of Records
5600 Glenridge Dr. Suite G418 Atlanta, GA. 30342

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

During the late afternoon hours of November 22, 2001, in Richland County, the Richland County Sheriff's Department was notified of a shooting incident at 7441 Two Notch Rd. (Lowe's parking lot). Upon the deputies arrival at the scene, they observed one Nathaniel Casey Jr. shot one time in the head area which resulted in his death. The victims wife Consuelo Casey was present during this incident and indicated that the victim makes and receives calls on a Nokia cellular phone that was present at the scene. The service provider for this phone is Cingular Wireless. Law enforcement believes that information sought in this search will assist in the on going investigation into the death of Mr. Casey. Investigators feel that the information sought after will be located at the the location to be searched.

Sworn to and Subscribed before me

this 22 day of November, 2001



Signature of Judge

(L.S.)

6:11 P.M.



Affiant

Affiant

Address Richland County Sheriff's Department5623 Two Notch Road, Columbia, S.C. 29223Phone (803) 691-9000

(THU)11 22 2001 10:57/ST. 10:57/NO. 0000000706 0 5

I received the attached Search Warrant _____, 20____, and have executed it as follows:

I left a copy of the warrant with _____
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

100

AND

SWORN to before me this _____
day of _____, 20____

Signature of Judge

STATE OF SOUTH CAROLINA

Ex. 3

County of Richland

SEARCH WARRANT

Date 11-30-01

Officer Inv. R. M. Gonzalez

STATE OF SOUTH CAROLINA }
1596 }

COUNTY OF RICHLAND }

SEARCH WARRANT

1. ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF _____

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Sprint PCS, Custodian of Records, Melanie Hall, Sprint Spectrum L.P.
6480 Sprint Parkway
Overland Park KS 66251

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

All originating and terminating calls to Sprint phone number 646-408-5502 between November 12, 2001 to November 13, 2001 and November 23, 2001 thru December 3, 2001. In particular cell site information is needed to show where these calls were made from (city, state etc..) and received at (city, state, etc..)

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

Judge Valerie R. Stroman-Boyd

within ten days from the date of this warrant; such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Columbia, S.C.

November 30, 2001

(6:05 P.M.)

Valerie R. Stroman-Boyd (S.)
Signature of Judge

AFFIDAVIT

COUNTY OF RICHLAND }

Personally appeared before me, one Inv. R. M. Gonzalez who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

All originating and terminating calls to Sprint phone number 646-408-5502 between November 12, 2001 to November 3, 2001 and November 23 thru December 3, 2001. In particular cell site information is needed to show where these calls were made from (city, state etc..) and received at (city, state, etc..)

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Sprint PCS, Custodian of Records, Melanie Hall, Sprint Spectrum L.P.
5480 Sprint Parkway
Overland Park KS 66251

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

During the late afternoon hours of November 21, 2001, in Richland County, the Richland County Sheriff's Department was notified of a shooting incident at 7441 Two Notch Rd. (Lowe's parking lot). Upon the deputies arrival at the scene, they observed one Nathaniel Casey Jr. shot one time in the head area which resulted in his death. The victims wife Consuelo Casey was present during this incident and indicated that the victim makes and receives calls on a Nokia cellular phone that was present at the scene. The victim had placed a call to the phone number 646-408-5502 just prior to his death. This is going to be a Sprint Spectrum Cell phone number. Law enforcement believes that information sought in this search will assist in the on going investigation into the death of Mr. Casey. Investigators feel that the information sought after will be located at the the location to be searched.

Sworn to and Subscribed before me

this 30th day of November, 2001

Valerie R. Thomas-Boyd (L.S.)
Signature of Judge

(6:05 P.m.)

Roby M. Sings
Affiant

Address Richland County Sheriff's Department5623 Two Notch Road, Columbia, S.C. 29223Phone (803) 691-9000

1598

RETURN

I received the attached Search Warrant 12-03, 2001, and have executed it as follows:

on 12-03, 2001 at 10:00 o'clock A M, I searched
(person) described in the warrant and (the premises)

I left a copy of the warrant with SPRINT (PAID TO 1-913-315-0236)
Name of person searched or "at the place of search" with
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

RECEIVED ALL ORIGINATING + TERMINATING CALLS FROM SPRINT
PHONE # (646) 408-5502 BETWEEN NOV 12, 2001 TO NOV 13, 2001
AND NOV 23 THRU DEC 3, 2001 ALONG WITH THE
SETUP INFO (CITY, STATE, ETC) MADE FROM + RECEIVED AT
CI

This inventory was made in the presence of SGT McDONALD, INV 6012942

AND

I swear that this Inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this 14th
day of December, 2001

Valerie Struman Boyd (L.S.)
Signature of Judge

8:00 P.M.

[Signature]
(Signature of Officer Executing Warrant)

STATE OF SOUTH CAROLINA

Ex. 4

County of Richland

SEARCH WARRANT

Date 12-7-01

Officer Sgt. McDonald

1600

SOUTH CAROLINA}

RICHLAND }

SEARCH WARRANT

ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Cellco Partnership DBA Verizon Wireless
Attn: Custodian of Records
180 Washington Valley Rd.
Bedminster, NJ 07921

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Subscriber information on Verizon phone # 718-299-6611. This subscriber information is to include such identifiers as the
subscriber's name, address, home telephone #, Drivers License number, Social Security number, etc..

This search is to also include all originating and terminating phone calls coming from Verizon phone # 718-299-6611
from 11-12-01 through 12-07-01. Specifically, cell site information is needed to show where these calls were made from
(City, State, etc..) and received at (City, State, Etc..)

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Columbia

S.C.

December 7

, 2001

3:00 PM

W. J. [Signature]

Signature of Judge

(L.S.)

STATE OF SOUTH CAROLINA}

1601

AFFIDAVIT

COUNTY OF RICHLAND }

Personally appeared before me, one S.E. McDonald who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Subscriber information on Verizon phone # 718-299-6611. This subscriber information is to include such identifiers as the subscribers name, address, home telephone #, Drivers License number, Social Security number, etc..

This search is to also include all originating and terminating phone calls coming from Verizon phone # 718-299-6611 from 11-12-01 through 12-07-01. Specifically, cell site information is needed to show where these calls were made from (City, State, etc..) and received at (City, State, Etc..)

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Cellco Partnership DBA Verizon Wireless
Attn: Custodian of Records
180 Washington Valley Rd.
Edminster, NJ 07921

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On November 21, 2001 in Richland County at 7441 Two Notch Rd. (Lowes' parking lot) the Richland County Sheriff's Department was notified of a shooting incident. Upon the deputies arrival at the scene, they observed one Nathaniel Casey Jr. shot one time in the head area which resulted in his death. The victims' wife Consuelo Casey was also present at the scene and indicated that the victim makes and receives calls on a Nokia cell phone that was present at the scene.

Sworn to and Subscribed before me

this 7th day of December, 2001

W.L. N. Oakes
Signature of Judge

(L.S.)

S.E. McDonald

Affiant

Address Richland County Sheriff's Department

5623 Two Notch Road, Columbia, S.C. 29223

Phone (803) 691-9000

STATE OF SOUTH CAROLINA}

1602

AFFIDAVIT

COUNTY OF RICHLAND }

prior to his death, the victim placed a call to a Spint PCS cell phone number, 646-408-5502. Investigating officers have done a search warrant on this cell phone number for subscriber information and were provided a contact phone number for the subscriber of 718-299-6611 which is going to be a Verizon cell phone number. Investigators feel that important information can be provided in order to help identify the suspect in this homicide by receiving subscriber information on this phone number as well as all originating and terminating calls associated with this cell phone number. Investigators feel that this information can be sought at the place of search.

Sworn to and Subscribed before me

this 2nd day of December, 2001

W. J. [Signature] (L.S.)

Signature of Judge

3:00 PM

Scott McNeil

Affiant

Address Richland County Sheriff's Department

5623 Two Notch Road, Columbia, S.C. 29223

Phone (803) 691-9000

1603

On _____, 20____ at _____ o'clock _____ M, I searched _____ person) described in the warrant and (the premises)

Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

1

UND

SWORN to before me this _____

day of _____, 20____

(Signature of Officer Executing Warrant)

(L.S.)}

Signature of Judge

10) 1604
H)

Applicants right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and South Carolina law was violated when the Court admitted alleged evidence from the applicants home in North Carolina into trial.

11) H)

Richland County, SC officers McDonald, Gonzalez, and Smith testified that on December 12, 2001, they went outside their jurisdiction to the home of the applicant in Charlotte, North Carolina, and as Private

CITIZENS they forced entry into¹⁶⁰⁵ the applicants home, then they arrested the applicant, searched the applicants home, and took alleged items back to South Carolina without lawful authority and used them against the applicant to gain a conviction.

The court erred in allowing any evidence from this search and seizure of the applicants property in North Carolina, because officers McDonald, Gonzalez and Smith acted outside their jurisdiction and acted as private citizens when they forced entry into the applicants home, arrested the applicant, searched and took items from the applicants home.

Richland County officers, acted outside
their jurisdictional power, therefore
this entire search and seizure
was illegal and all evidence seized
should not have been admitted
in trial and used to convict
the applicant. The trial court
abused its discretion in allowing
this alleged evidence into trial
as the court did not have
jurisdiction over the alleged
search warrant, and search and
seizure. North Carolina did.

This error requires no showing of
prejudice because applicants right
to due process was violated.
Johnson, Supra, Fulminate Supra

SEE ALSO: Tr. 561-569, 570, 578-585¹⁶⁰⁷,
849-856, 1018-1024, 1030

Pre Trial Transcript: 141-145

Inv. Stan Smith Report: pg 7-8

Inv. Scott McDonald Report: pg 14

Inv. Rodney Gonzalez Report: pg 14-15

10/16/08
I)

Applicant's right to the effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated by trial counsel's failure to have all alleged evidence seized from the applicants home in North Carolina by South Carolina Officers suppressed for officers acting outside their jurisdiction.

II)

As indicated above, South Carolina Officers McDonald, Gonzalez and Smith

acted outside of their jurisdictional police powers when they went to the applicants home in Charlotte, North Carolina, forced entry into the home, arrested the applicant, searched and seized items and used them to convict the applicant. Trial Counsel was ineffective for not moving to suppress this alleged evidence on the grounds of illegal search and seizure for the officers committing these illegal acts and abuse of powers, clearly out of their jurisdiction.

Strickland, supra, Gilchrist, supra,
Anderson, supra, Southerland supra
Cherry, supra.

Cooper replied yes, and Attorney Doug
1690 stated: "Mr. Crocker is a very spiritual
man and he has some things I wish
I had.

Once again, I respectfully ask was
this entire experience a conflict of
interest?

Please See: Officer Smith Report Page: 9
Trial Transcript Page: 1474-1478
Pre Trial Transcript: 147-148, 149, 150
151

10) I)

WAS applicants right to the effective assistance of counsel as guaranteed by the Sixth Amendment of the United States Constitution and South Carolina law violated by conflict of interest between trial counsel and applicant over spiritual, religious, and views of God?

11) I)

As Attorney Strickland (Trial Counsel) and I was preparing for trial, one day I told him: "Daug I know we have to go through this, but I am not here for what it appears, the True Truth and essence of why I am here is for my reawakening to who I truly am as immortality."

¹⁶¹²
He found interest and asked me to explain.

"Well, one night I was downtown Charlotte, North Carolina on a night out and a Angel in the form of a man came to me and said: "when your internal becomes tranquill, you will return consciously to know who you are in loyalty, power, and true soundness of mind".

"As months pasted from this blinding night, experiences of my path brought gradual awakening for my seeing that people, places and things were truly not as I perceived them to be. I was perceiving Fantasy as reality and reality as Fantasy, which was hurtful through the attachment of comfortability.

"After continued spiritual teachings and subtle shocks of conscious awakening, in July of 2001, my intuition spoke to Corey Baker and told him: "Corey, be prepared to take full control of H.O.O.P Family (Helping Others Overcome Pressure), because I have to go to Columbia, South Carolina, there is work I have to do there."

After months of very, very subtle spiritual process, I told the beautiful young lady whom I was dating, I would no longer be able to date her because I would be leaving to go on a spiritual journey. During these times, spiritual guides thought me the truth of prayer and to spiritually interpret the Books and Self.

The experience of 9/11 and the World Trade bombings greatly shook the

1614 The piece of Spiritual Foundation I
had through the confusion of Christians
blaming Muslims and Muslims blaming
Christians for what had took place.
This confusion sunk me to somber,
and increased surrender to My
Higher Self - GOD, confessing that
I was confused by each religion
stating they were true and the other
was false. I asked God, "please
show me the Truth, and God spoke
back and said, "If you want to know
the Truth of Truth - follow me
through the path I have set, and
you will see the hight of Truth.
I agreed.

On December, 12th, 2001, the angels rescued
me, of what carnality saw as a
arrest.

(KK)

of God spoke to me and told said¹⁶¹⁵
Remain calm, this is your spiritual
journey in return to your true self.
The officer found it strange for
me to be cordial in a situation he
perceived. During the ride back I
asked officer Smith if he was
familiar with the Book of Job
(Holy Bible), he stated he somewhat
was, it had been a while, would I
please refresh his memory. I told
him Job was a very beautiful man
who had pretty much everything a
mortal man could ask for, he was
then chosen by God for the path
of initiation to be reborn as

1616
dS God's Son for immortality and
he would have more Spiritually and
Materially than he had before his
Path of initiation. Officer Smith
ask me if I was paralleling the
Story of Job to my current
Situation? I smiled and fell
asleep for a nice ride to Columbia.

Approxitmatly 2 months before trial
I told Attorney Doug the God
of our Universe would deliver
me through these test, trials, and
preparations. He told me he belived
different concerning God.

In October of 2003, Attorney Doug
(Stricklar), Attorney, Fiddling Pringle,

Ms. Sandra Mardock, Tia Mardock, Corey Baker, and Tyrone Hardy met in a conference room inside the Richland County Court House, and at that time my attorney's presented me with a plea offer from the state for 5 years. At that time I looked the entire room in the eye and told them I could not accept the plea agreement for not only being not guilty, but the essence being the path of my spiritual journey was destined for me to go through trial and in no way would I fight God, but I would graciously obey his perfect will. I told them

1618 My Choice WAS Not a Choice of
unconsciousness propelled by ego,
but the Choice of God. Attorney
Pringle stated her faith was not
on that level. Attorney Doug
stated: "With you know how I feel
concerning this matter (faith/belief
in God) so I want tell you to
PRAY about it, I will tell you to
Sleep on it.

Over a month after this experience
Attorney Doug spoke to me again
about taking the plea offer, once
again I did not except and I
told him God would deliver me,
he said he bet God would not,
My reply said, I bet he will,

We confirmed our bet with a
handshake. (Holy Bible- Acts

After going through trial and the
jury's verdict, before the sentencing
Phase, Attorney Pringle stated for
me not to say anything when
we stood before Judge Cooper, because
no one wanted to hear my
spiritual philosophies.

Once we approached Judge Cooper
I thanked everyone for the
opportunity to see my innocence,
and I told them this was
something we all had to go through
at this time but we will all
be alright. Tr. Pg.

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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?

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

- i. _____
- 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) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petition, motion or applications with respect to this conviction, which you filed? yes (see Attachment)
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. Douglas Stricklar - 1701 Main St., Columbia, SC 29201
- ii. Fielding Pringle - 1701 Main St., Columbia, SC 29201
- iii. John Delgado - 914 Richland St, Suite A-102, Columbia, SC 29202
- iii. See Attachment
- (b) the proceeding at which each attorney represented you:
- i. Trial
- ii. Trial
- iii. Direct Appeal
- iii. See Attachment
19. State concisely the relief you seek in filing this application:

#. ~~18(2)~~ Attachment Name and address of each attorney who represented you:

- iii. Debra Y. Chapman - 2007 Lincoln St.
Columbia, SC 29202
- iii. Robert Boorda - 2007 Lincoln St.
Columbia, SC 29202
- iiii. John Mobley - 1331 Richland St.
Columbia, SC 29201
- iiii. Brett Mehalic - 1701 Main St.
Public Defenders Office
Columbia, SC 29201

#18 (b) Attachment: The Proceeding at which each
Attorney Represented You

iii. Bond Hearing (March 29, 2002)

iii. Bond Hearing (March 29, 2002)
(and May 17, 2002.)
(May 23, 2002)

iiii. Bond Hearing (June 25, 2003)

iiii. Preliminary Hearing (February 6, 2003)

19-1624 Attachment) Relief Sought

- 1) Order, the State to make Specific Findings of Fact, and state expressly it's Conclusions of law, relating to each Separately it's Conclusions of law, to each allegation raised, if not the Court shall see: S.C. Code Ann § 17-27-80 Druitt v. State, and McCray v. State
- 2) Inform applicant right away of whom has been appointed to represent him in this action
- 3) In addition to a South Carolina attorney appoint applicant attorneys licensed to practice law in the State of North Carolina and other appropriate states if necessary, being that the

applicant case is under the laws of
Multi-jurisdictions.

- 4) Appoint Applicant an expert.../
investigator to assist appointed
Counsels, when Counsels request. See:
S.C. Code Ann § 17-3-50(B)
Act No. 164 1993 S.C. Acts 531, OR
Ex parte, Pro-SE
- 5) Order, that applicant Phillip H. Crocker, II,
be allowed to conduct necessary
discovery
- 6) Order a investigation into the
violation of Statutory laws committed
by Richland County Sheriff officers

1020 Rodney Gonzales, Scott McDonald, and Stan Smith, pertaining to the acts they committed at the applicants home in Charlotte, North Carolina as stated within.

7.) If a evidentiary hearing is held, allow the applicant to wear his personal clothes so he is not seen before the jury (judge) in prison attire, which prejudice the applicant.

8.) Vacate Applicant's conviction and sentence and remand back to the Court of General Sessions, Richland County, S.C. and grant applicant "all" other reliefs as may be necessary to render a true and correct justice in this action.

Applicant seeks relief from his
convictions and sentences.
*SEE ATTACHMENT

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

Applicant is not under sentence from
any other court

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, PHILLIP H. CROCKER, III, 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 include 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.

Phillip H. Crocker III August 22, 2006

SWORN to and subscribed before me this 22nd
Day of August, 2006

DANIEL MARTIN (L.S.)
Notary Public

My Commission Expires: JANUARY 14, 2014

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

I, Phillip H. Crocker, III, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefore. 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.

Phillip H. Crocker, III
Applicant

SWORN to and subscribed before me this 22nd
Day of August, 2006

Daniel Martin (L.S.)
Notary Public

My Commission Expires: JANUARY 11, 2014

The Richland County Clerk of Court Office
 Ms. Barbara A. Scott, Clerk of Court
 1701 Main Street
 Columbia, SC 29210

RICHLAND COUNTY
 2006 OCT 17 PM 12:13
 BARBARA A. SCOTT
 C.C.C. & G.S.

September 29, 2006

Dear Ms. Scott,

Please find enclosed my Post-Conviction Relief Application that I am requesting at this time to be filed in your office.

Please send me a Returned-Clock-In-Copy of this PCR application to my address below. Thank you very kindly.

RECEIVED

OCT 04 2006

P-1 MAILROOM

Respectfully Submitted,

Phillip H. Crocker III

Phillip H. Crocker III #29842

PERRY CORR. INST.

Q1-B-102

430 OAKLAWN Rd.

Pelzer, SC 29669

Certificate of Service

1630

I hereby certify that I served the foregoing Post-Conviction-Relief Application on Ms. Barbara A. Scott, Clerk of Court for the Richland County Clerk of Court Office by depositing this document in a Certified [No. 7004 1160 0002 5557 6786] Postage-Paid Wrapper in the U.S. Mail Box at the Perry Correctional Institution Mail Room, at 430 Oaklawn Road, Pelzer, South Carolina 29669 This 4th Day of October, 2006, Addressed as follows:

Richland County Clerk of Court Office
Ms. Barbara A. Scott, Clerk of Court
1701 Main St.
Columbia, SC 29201

RICHLAND COUNTY
FILED
2006 OCT 17 PM 12:13
BARBARA A. SCOTT
C.C.C. & G.S.

Phillip H. Crocker III
Phillip H. Crocker, III

Notary Public

worn to and Subscribed before me
on this 4th day of October 2006

Theresa L. Ginn My Commission Expires May 12th 2014
Notary Public Signature

1631

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Phillip H. Crocker, III,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

2006-CP-40-6124

RETURN

FILED
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA
OCT 17 2006

The Respondent, making its Return to the Application for Post-Conviction Relief filed October 17, 2006, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was indicted at the January 2002 term of the Richland County Grand Jury for murder (02-GS-40-4561) and trafficking in marijuana (02-GS-40-9503). Applicant was represented by Douglas Strickler, Esquire, and E. Fielding Pringle, Esquire. Applicant proceeded to trial after which he was found guilty of murder and trafficking in marijuana – ten lbs. On December 5, 2003, Applicant was sentenced by the Honorable G. Thomas Cooper, Jr., to confinement for a period of thirty (30) years for murder and five (5) years consecutive for trafficking in marijuana.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by John Delgado, Esquiner, and Kathrine Hudgins, Esquire. The South

Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Crocker, Op. No. 4038 (filed October 31, 2005).

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records.

II.

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

1. "Applicant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and South Carolina law was violated because he is actually innocent of charges."
2. "Applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment of the United States Constitution and South Carolina law was violated by appellate counsel's failure to appeal trial counsel's objection to expert testimony offered by the State regarding cell phones."
3. "Applicant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and South Carolina law was not violated when he was not present for off the record communications between judge and jurors."
4. "Applicant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and the South Carolina Law, and to an impartial jury, as guaranteed by the Sixth Amendment of the United States Constitution and South Carolina Law, was violated when Judge Manning made it known to the jury he was from the same town (Dillon) as the victim in the case."
5. "Applicant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and the South Carolina Law was violated when the

judge excluded witness with testimony of third-party-guilt from testifying.”

6. “Applicant’s right to the effective assistance of counsel as guaranteed by the sixth Amendment to the United States Constitution and South Carolina law was violated by trial counsel’s failure to motion for a mistrial when witness violated the sequestration order and was excluded from testifying.” And
7. “Applicant’s right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated by trial counsel’s failure to move to vacate invalid search warrants and suppress the use in evidence of all evidence stemming from these search warrants which were issued to conduct searches outside the issuing magistrate jurisdictional issuing power and the investigators executing and return power.”

III.

In his first allegation, the Applicant alleges that he is being held in custody unlawfully based on actual innocence. The Court should summarily dismiss this ground for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The Respondent therefore moves for summary dismissal of this allegation pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

IV.

Applicant's second allegation involves a claim of ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir.

1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

V.

The Respondent interprets each of the Applicant's remaining allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged 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, 80 L.Ed.2d 674. The Applicant must

overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

VI.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of trial and appellate counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

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

VIII.

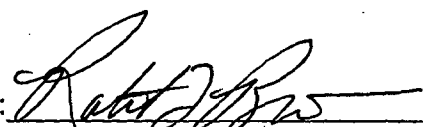
WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ROBERT L. BROWN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

May 4, 2007

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2006-CP-40-6124

Phillip H. Crocker, III, 298423

Applicant,

vs

State of South Carolina,

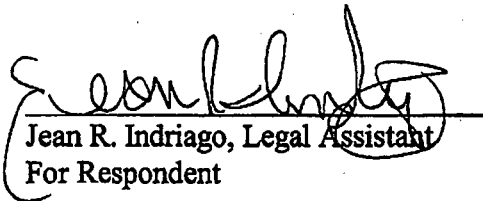
Respondent.

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) AFFIDAVIT OF SERVICE BY MAIL
)
)
)
)

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

Charlie J. Johnson, Jr., Esquire
Post Office Box 11212
3614 Landmark Drive, Suite D
Columbia, South Carolina 29204

DATED this 4th day of May, 2007.


Jean R. Indriago, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA) IN COMMON PLEAS
2 COUNTY OF RICHLAND) COURT
3)
4 PHILLIP H. CROCKER, III,)
5) TRANSCRIPT
6 -V-) OF
7) RECORD
8 STATE OF SOUTH CAROLINA,) 2006-CP-40-6124
9 DEFENDANT.)

10

11 OCTOBER 20, 2010

12 RICHLAND, SOUTH CAROLINA

13

14 B-E-F-O-R-E:

15 HONORABLE CASEY L. MANNING, JUDGE;

16

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

18 FOR THE PLAINTIFF:

19 TRICIA BLANCHETTE, ESQ.

20

21 FOR THE DEFENDANT:

22 BRIAN PETRANO, ESQ.

23

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I-N-D-E-X

MOTION:

CERTIFICATE OF REPORTER:

PG.

3

81

1 (The following proceedings were held on
2 October 20, 2010.)

3 THE COURT: Yes?

4 MS. BLANCHETTE: Your Honor, if my client may come
5 around?

6 THE COURT: Yes. I know you from a couple of
7 times, Mr. Crocker. I've never handled any of your cases?

8 THE DEFENDANT: Not, Your Honor, beyond this.

9 THE COURT: Beg your pardon?

10 THE DEFENDANT: Not beyond this.

11 THE COURT: Okay. All right. I've just seen you
12 before a couple of times, that's all.

13 Yes, ma'am.

14 MS. BLANCHETTE: Your Honor, this is Richland
15 County case 2006-CP-40-6124. Mr. Crocker has filed a PCR
16 application. I was appointed as his counsel. We appeared
17 in front of Your Honor on December 15th, 2009, which is
18 probably where you remember my client from.

19 THE COURT: Okay.

20 MS. BLANCHETTE: And at that hearing, we submitted
21 argument as to a motion for discovery and motion for
22 appointment of a private investigator. You asked that I put
23 that in writing. And the State and I have worked to narrow
24 down those grounds. I submitted a motion on May 25th, 2010,
25 and it's still pending at this time.

1 So our reason for coming before the Court today is
2 just to determine if the Court would like for me to prepare
3 an order on these requests and to determine the status on
4 this case.

5 MR. PETRANO: And briefly, Your Honor, one of the
6 reasons we set this for a status hearing is there was some
7 issues with Mr. Crocker, with all due respect, filing
8 numerous pro se matters even though he has an attorney. And
9 it's getting quite confusing as to what needs to be
10 addressed. Those could theoretically be construed as
11 amendments. There's some weird UCC claims made. All sorts
12 of odd pro se materials, somewhat related to this case, at
13 least, in the sense that they're being sent to me.

14 So I just wanted you to narrow it down and, at
15 least, if you can, respectfully, that there is no --
16 representation. Mr. Crocker should go through his
17 attorney -- with all due respect.

18 THE DEFENDANT: Okay.

19 THE COURT: What is it exactly that you want?

20 MS. BLANCHETTE: Your Honor, I just stand on the
21 motion that was filed regarding these other filings. I
22 think what was sent to the attorney general's office was
23 nothing that I was copied on by the clerk of court or the
24 attorney general's office.

25 THE COURT: Okay.

1 MS. BLANCHETTE: I mean, correct me if I'm wrong,
2 Brian, but I don't believe I received a copy of those.

3 MR. PETRANO: I don't know what he sent.

4 THE COURT: Okay. Yeah.

5 MS. BLANCHETTE: I would just stand on the motion
6 that we submitted where I narrowed down the requests with
7 Brian --

8 THE COURT: Do you have a copy of it?

9 MS. BLANCHETTE: Yes, I do.

10 THE COURT: You have an extra copy?

11 MS. BLANCHETTE: Yes, I do.

12 THE COURT: All right. I will consider this and
13 let y'all know in due course by the end of the week.

14 MS. BLANCHETTE: Your Honor, there's one more
15 thing I might mention. In there, we ask that Pete Skidmore
16 be --

17 THE COURT: You ask what?

18 MS. BLANCHETTE: We ask that Pete Skidmore be
19 appointed as the private investigator. Since that time,
20 I've actually been working with Michael Layton out of North
21 Carolina. He's also licensed in South Carolina.

22 THE COURT: What's going to pay him?

23 MS. BLANCHETTE: That would be the office of
24 indigent defense.

25 THE COURT: Good luck. They have no money.

1 MS. BLANCHETTE: Right. And as Your Honor --
2 actually requested at the last hearing, I did provide this
3 motion to Hugh Ryan at the office of indigent defense.
4 There are limited funds, so that's why we're trying to get
5 this moved as quickly as possible. But Mr. Layton is
6 licensed in North Carolina and South Carolina. Since the
7 majority of the events took place in Mecklenburg County, I
8 figured it would be much more efficient to have someone
9 that's actually located in North Carolina working on the
10 case.

11 THE COURT: All right. Anything further?

12 MR. PETRANO: I've already argued it's against the
13 discovery, so I'm not going to do that again.

14 THE COURT: Okay.

15 MR. PETRANO: Okay.

16 THE COURT: Thank you.

17 MS. BLANCHETTE: Thank you, Your Honor.

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1 COUNTY OF RICHLAND)

2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported
4 the preceding case entitled Phillip H. Cocker, III Vs. State
5 of SC, No. 2006-CP-40-6124, at the Richland County
6 Courthouse, October 20, 2010.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 7 constitute a true, accurate and full transcript of
9 said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 19th day of May, 2015.

15

16 _____
Crystal Holmes, Official Court Reporter

17

18

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1646

1 COUNTY OF RICHLAND)

2 CERTIFICATE OF REPORTER

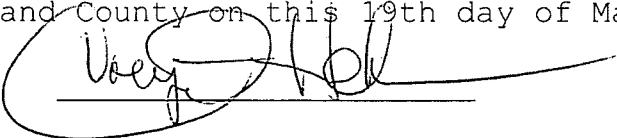
3 I, Crystal Holmes, hereby certify that I reported
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14 and seal at Richland County on this 19th day of May, 2015.

15

16 
Crystal Holmes, Official Court Reporter

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State of South Carolina

Court of Common Pleas

County of Richland

2006-CP-40-06124

Phillip H. Crocker, III

:

:

-VS-

:

TRANSCRIPT OF RECORD

:

The State of South Carolina

:

June 6, 2013

Columbia, South Carolina

B E F O R E:

The Honorable James R. Barber, III, Judge.

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

Tricia A. Blanchette, Esquire
Attorney for the Plaintiff

Megan E. Harrigan, Esquire
Attorney for the State

Daphne D. Helms
Circuit Court Reporter

1 **Ms. Harrigan:** Your Honor, we also have Ms. Blanchette's
2 motion as well as---

3 **The Court:** Hold on. Hold on.

4 **Ms. Harrigan:** As well as...

5 **The Court:** All right.

6 **Ms. Harrigan:** Your Honor, the State did provide a full
7 work packet, but really the substance is going to be the
8 motion filed by Ms. Blanchette.

9 **The Court:** A motion? What is the motion?

10 **Ms. Harrigan:** Her motion is two-part. Part of it is
11 for additional funds.

12 **The Court:** All right. Ms. Blanchette, this is the
13 matter of your motion on Crocker to pay you an additional
14 \$250.

15 **Ms. Blanchette:** What was that?

16 **The Court:** What the attorney general said, pay you up
17 to an additional \$250.

18 **Ms. Blanchette:** Yes, please.

19 **Ms. Harrigan:** May it please the Court? This is Phillip
20 Crocker versus the State of South Carolina, docket number
21 2006-CP-40-6124.

22 **The Court:** Hold on.

23 (Pause in proceedings.)

24 **Ms. Harrigan:** Mr. Crocker was indicted by the Richland
25 County grand jury in January of 2002 for murder and

1 trafficking in cocaine. He was represented by Doug Strickler
2 and Fielding Pringle on these charges. He went to a jury
3 trial before the Honorable G. Thomas Cooper, Jr., on
4 December 1st, 2003, and on December 5th was found guilty as
5 indicted. He received a 30-year sentence for murder and five
6 years consecutive for trafficking in marijuana.

7 Notice of appeal was filed and appeal perfected.
8 Remittitur was sent on November 16, 2005, after an
9 unsuccessful appeal. His P.C.R. was filed on October 17th,
10 2006. We're here today on Ms. Blanchette's supplemental
11 motion for discovery---

12 **The Court:** Are you from Charlotte?

13 **Mr. Crocker:** Yes, sir.

14 **The Court:** I heard something on this one time before.
15 I can't remember what it was.

16 **Mr. Crocker:** I was before you with Ms. -- over at Broad
17 River in a civil matter.

18 **The Court:** Oh, really?

19 **Mr. Crocker:** Yes, sir.

20 **Ms. Blanchette:** And you've heard a motion before I
21 believe at some point.

22 **The Court:** This is the thing that took place out there
23 off of Two Notch Road?

24 **Ms. Blanchette:** Uh-huh.

25 **The Court:** What was it? In the Lowe's parking lot?

1 **Ms. Blanchette:** Lowe's parking lot. Uh-huh. Yes.

2 **The Court:** All right.

3 **Ms. Harrigan:** We're here on Ms. Blanchette's
4 supplemental motion for discovery and authorization of
5 indigent funds, and it was filed on May 21st of this year.

6 **Ms. Blanchette:** Thank you, Your Honor. Tricia
7 Blanchette here on behalf of Phillip Crocker. I was
8 appointed to this case a number of years ago, and I believe
9 I've appeared in front of this Court before. And we actually
10 had a discovery motion that was heard and finally decided by
11 Judge Manning. It was a matter he had in front of him for a
12 couple of years, and once we had that discovery order, I was
13 allowed to issue subpoenas with a copy of that order to the
14 Richland County Sheriff's Department, the Richland County
15 Solicitor's Office, the Richland County Public Defender's
16 Office, the Court of Appeals, and then attempt to get his
17 file from the Charlotte Mecklenburg Police Department because
18 he was actually residing in Charlotte Mecklenburg at the time
19 of the search warrant and his arrest took place in Charlotte.

20 As of today -- actually as of this week I do have final
21 responses, I believe, from all of those agencies. One of the
22 things I had asked for in the supplemental motion was a copy
23 of the original Lowe's surveillance, and I actually receive4d
24 that on Monday from the sheriff's department, so I no longer
25 need that.

1 But at this time the one item that we would need a new
2 order for is a copy of the coroner's file from the death of
3 his father, Phillip Henry Crocker, Jr., which occurred during
4 the investigation of this case. We have contacted the
5 coroner's file, and Mr. Pete Skidmore was appointed and has
6 been working the case.

7 **The Court:** The coroner of what county?

8 **Man in the courtroom:** Horry.

9 **The Court:** Horry County?

10 **Man in the courtroom:** Yes, sir.

11 **Ms. Blanchette:** They informed you that it's been housed
12 where, I believe?

13 **Man in the courtroom:** In Columbia.

14 **Ms. Blanchette:** And we cannot get that without a court
15 order---

16 **The Court:** All right.

17 **Ms. Blanchette:** ---for discovery.

18 **The Court:** Do y'all have any objection to that?

19 **Ms. Harrigan:** No objection, Your Honor.

20 **The Court:** All right. Do me an order.

21 **Ms. Blanchette:** Okay. And then the final matter -- I
22 know this can be addressed ex parte, but Hugh Ryan, the
23 deputy of the Indigent Defense, informs me that my fee has
24 exceeded the cap and that there are new provisos in their
25 budget that if you exceed the cap, you have to get

1 preauthorization.

2 As I've set forth in the motion, I've already incurred
3 over 100 hours in this case with my fees totalling at this
4 time \$4,005, and I have to get prior authorization from this
5 court to be able to incur any more fees.

6 **The Court:** How much? How much?

7 **Ms. Blanchette:** Your Honor, I know that it can't exceed
8 whatever cap you set. I would hope that I could do this for
9 less than \$7,500, but I hope it's much less than that.

10 **The Court:** Additionally or...

11 **Ms. Blanchette:** No, in total. In total. So an
12 additional \$3,000 from where I'm at right now. I've had this
13 case for about six years.

14 **The Court:** All right. Well, we will -- we will
15 authorize up to \$10,000.

16 **Ms. Blanchette:** I appreciate that, Your Honor. The
17 other request that I have---

18 **The Court:** Including whatever you've incurred up to
19 this point.

20 **Ms. Blanchette:** Okay. Thank you, Your Honor.

21 **The Court:** And if you exceed that, before you do, come
22 back to court.

23 **Ms. Blanchette:** Okay. The other matter that I would
24 like to bring up is Mr. Skidmore has been also appointed for
25 a number of years. I was hoping that this Court would

1 authorize an additional \$1,500 for his services.

2 **The Court:** All right. We'll do that.

3 **Ms. Blanchette:** The second request I have---

4 **The Court:** Are you objecting to any of this?

5 **Ms. Harrigan:** No, Your Honor. The State has no
6 position.

7 **Ms. Blanchette:** The second request I have---

8 **The Court:** Ms. Blanchette is known for her frugality,
9 so...

10 **Ms. Harrigan:** Yes, Your Honor.

11 **Ms. Blanchette:** Well, you might take that back after
12 you hear all this.

13 **The Court:** She's up there in Illinois.

14 **Ms. Blanchette:** This is the curriculum vitae of Ron
15 Durrett (phonetic). He has been qualified in this state as a
16 criminal investigations expert, but the reason why I
17 contacted Mr. Durrett is I still have not gotten anything out
18 of Charlotte Mecklenburg. I have contacted their police
19 attorney's office, jumped through every hoop for the last
20 three years they've asked me to jump through, and now they
21 won't even return my phone calls, and they have refused to
22 turn over anything to me.

23 Mr. Durrett was with their police department, knows a
24 lot of the officers involved in this case. So I'd ask that
25 he be appointed to not exceed \$2500 to serve as an expert in

1 this case and my liaison to the Charlotte Mecklenburg Police
2 Department.

3 **The Court:** As an expert? What kind of expert?

4 **Ms. Blanchette:** He was actually qualified in York
5 County as a - correct me if I'm wrong, Pete - a crime scene
6 investigation expert.

7 **Mr. Skidmore:** That's correct.

8 **Ms. Blanchette:** And this case deals a lot with what
9 happened at the crime scene. Was it properly done? So he
10 would be a key expert for me in preparing this case.

11 **The Court:** All right. Well, we'll approve that, but
12 his fees up to that amount of money and his fees before being
13 paid up have to be approved by the Court.

14 **Ms. Blanchette:** So I can prepare an order up to \$2500?
15 And I believe he charges \$50 an hour. Would you like me to
16 include that in the order?

17 **The Court:** I don't care what he charges. I mean, he's
18 not going to get paid more than -- if you put \$50 an hour,
19 he'll be billing at \$50 an hour, but, I mean, I never approve
20 fees in blanket without having them approved by somebody
21 after the work is done.

22 **Ms. Blanchette:** Okay. But the preauthorization at
23 Indigent Defense---

24 **The Court:** I've had experts come to Columbia on Friday
25 to testify the following week and spend the weekend in

1 Charleston and bill us.

2 **Ms. Blanchette:** I wouldn't let that happen.

3 **The Court:** I didn't say you would. I've had experts
4 sit up here while a trial is going on, just sit here knowing
5 they're not going to testify.

6 **Ms. Blanchette:** I think I should be an expert as much
7 as I have---

8 **The Court:** Billing by the hour, so...

9 **Ms. Blanchette:** A final request -- this one just came
10 up this week because I got the surveillance footage. Homer
11 Fesperman, he used to be the voice of the Gamecocks, and
12 he---

13 **The Court:** He was the engineer, radio engineer.

14 **Ms. Blanchette:** At W.I.S. He -- he's an expert in
15 digital media, and I would like to provide the surveillance
16 video to Mr. Fesperman to see if he can tear it apart and
17 give us some better pictures. The original exhibit was a
18 V.H.S., and I have reviewed that here with---

19 **The Court:** How much do you want for that?

20 **Ms. Blanchette:** He doesn't think it will be very
21 costly. He thought it would only be about \$500 total, but I
22 was going to ask if we could go up to a thousand just in case
23 it entails more so I don't have to come back and bother the
24 Court for additional funding.

25 **The Court:** Well, if you put a thousand dollars out

1 there, they're going to figure out a way to get the thousand
2 dollars.

3 **Ms. Blanchette:** Well, he thought the testing would be
4 three to five hundred dollars, and then I reminded him he may
5 have to come testify. He's here in Columbia. He only
6 charged me \$75 the last time he came to testify, so he's not
7 the typical expert. But I'll put in the order whatever the
8 Court would like.

9 **The Court:** Let's stick with \$500---

10 **Ms. Blanchette:** Okay.

11 **The Court:** ---and you can always ask the Court...

12 **Ms. Blanchette:** Okay.

13 **The Court:** Didn't you get some real low offer to plead?
14 Ten years? Twelve years? Something like that?

15 **Mr. Crocker:** Five years nonviolent.

16 **The Court:** Five years?

17 **Ms. Blanchette:** The final matter, if this Court would
18 like to entertain this idea, is for Your Honor to retain
19 jurisdiction in this case. This case has stalled out because
20 it has at times sat on the administrative judge's desk for a
21 number of reasons, and at one time it stalled out for an
22 entire year. I'd like to see this case come to court, and I
23 know that Your Honor has a term in September, and the State
24 has also talked about if Your Honor would entertain this idea
25 of possibly setting it for a date certain during a common

1 pleas term because this is going to be a very lengthy case.
2 But I would just like to raise that issue to the Court and
3 see if in your discretion you would entertain retaining
4 jurisdiction in this case so we could get it moved.

5 **Ms. Harrigan:** The State also would like to get this
6 case moved. So if Your Honor is comfortable with retaining
7 jurisdiction, we would be---

8 **The Court:** First of all, I can't set a date certain;
9 only the administrative judge can. Second of all, I'm not
10 going to retain jurisdiction. But if -- you know, if you've
11 got a week that you know is coming up and y'all are ready to
12 go, you know, I have no problem if you come talk to me about
13 it and we'll see whether -- we'll see whether we can fit it
14 in.

15 I mean, this falls under non-jury common pleas, and
16 every week we do non-jury now it's common pleas jury slash
17 non-jury so that if we -- if we finish all the jury matters,
18 then the non-jury matters -- trials are heard, and this would
19 fall into that category. So, you know, we'd probably -- we'd
20 have to clear it with Judge Manning, but when you say a
21 lengthy trial, what do you mean? Multiple weeks?

22 **Ms. Blanchette:** Oh, I mean a lengthy P.C.R., probably a
23 full day. Maybe it will bubble over into the next.

24 **The Court:** Oh, I thought you meant it was going to go
25 on for weeks.

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1 **Ms. Blanchette:** No. I was speaking with Ms. Harrigan
2 and I think she was concerned about trying to fit it into a
3 regular P.C.R. term, but once I get investigated completed I
4 would---

5 **The Court:** When you're ready -- when you're ready, I'm
6 sure Judge Manning and I can accommodate you, barring some --
7 I just don't know what the situation would be, but it seems
8 to me like we ought to be able to put this down and put it
9 the first case up and especially if we've got two common
10 pleas judges one week. But I'm not the administrative judge,
11 so I can't tell you exactly that that would happen. But I
12 would think we can accommodate you, Ms. Blanchette, if --
13 once you get ready.

14 **Ms. Blanchette:** Okay. I appreciate that, Your Honor.

15 **The Court:** And in a relatively quick period of time. I
16 don't know what kind of notice you have to give to all these
17 experts and witnesses and... I mean, obviously we can get
18 Mr. Crocker here within several days, but whether you can get
19 your other people, I just don't know.

20 **Ms. Blanchette:** Okay. Yes. I will work on that, Your
21 Honor, so we can get it scheduled.

22 **Ms. Harrigan:** Thank you, Your Honor.

23 **Ms. Blanchette:** I have nothing further. Thank you.

24 **The Court:** I don't really have the authority to retain
25 jurisdiction, I don't think.

1 **Ms. Blanchette:** I didn't think you did, but I figured
2 it was worth asking.

3 **The Court:** But Judge Manning... Because I remember
4 this case. I remember it well.

5 **Ms. Blanchette:** Oh, I forgot -- Mr. Crocker, was there
6 anything? I usually give them an opportunity because it's a
7 case that he's been very involved in. Is there anything that
8 you would like to bring up to the Court that I failed to
9 today?

10 **Mr. Crocker:** No. You did a great job.

11 **Ms. Blanchette:** Okay.

12 **The Court:** She did a what?

13 **Mr. Crocker:** A great job.

14 **Ms. Blanchette:** Great job.

15 **The Court:** There goes the bill again. All right.

16 **Ms. Blanchette:** Your Honor, I do have one more request;
17 I'm just full of them today. I'm sorry.

18 **The Court:** You always make them with a smile.

19 **Ms. Blanchette:** You're not smiling back. See, I'm
20 smiling bigger and bigger. Is there any way Mr. Crocker can
21 meet with Mr. Skidmore since he came all the way from York so
22 we could knock out some of the investigative work that
23 he's...

24 **The Court:** Any way you can do what?

25 **Ms. Blanchette:** That Mr. Skidmore, the investigator,

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1 can meet with Mr. Crocker.

2 **The Court:** How long is that going to take?

3 **Ms. Blanchette:** I don't know. I could do it as quick
4 as I needed to though.

5 **The Court:** Well...

6 **Ms. Blanchette:** It can wait 'til they finish up and
7 then we could---

8 **The Court:** Well, clearly that will happen because we've
9 only got one jury room to put them in.

10 **Ms. Blanchette:** Okay.

11 **The Court:** But, I mean, are you talking about the rest
12 of the day?

13 **Ms. Blanchette:** Oh, no, no. Just to make sure they
14 touch base so that Mr. Skidmore can go over the...

15 **The Court:** Yeah, we'll do that.

16 **Ms. Blanchette:** Okay. I'll go check on what's going on
17 back there.

18 **The Court:** Have we got more than one jury room?

19 **Bailiff:** We've got one back there. That one is empty.

20 **The Court:** All right. Well, let's go ahead -- do you
21 need to be in there with him?

22 **Ms. Blanchette:** No. They'll be fine without me.

23 **The Court:** We need to figure out---

24 **Ms. Blanchette:** Yeah. I was going to go check in on
25 one.

1 **The Court:** If we do something, let's do it now---

2 **Ms. Blanchette:** Okay.

3 **The Court:** ---so that we don't have to sit around here
4 waiting on Ms. Shurling to have her hearing on the merits.

5 **Ms. Blanchette:** Ms. Shurling is always very brief.

6 (Pause in proceedings.)

7 **Ms. Blanchette:** Thank you, Your Honor. I appreciate
8 your patience.

9 **The Court:** All right. You have a good weekend.

10 (Whereupon, the proceedings were concluded. There were
11 no exhibits introduced.)

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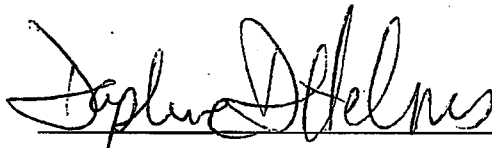
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25

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 6th of June, 2013.

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

January 11, 2014

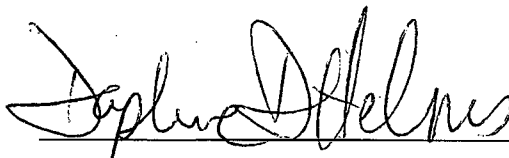
A handwritten signature in cursive script, reading "Daphne D. Helms", written over a horizontal line.

Daphne D. Helms, court reporter

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 6th of June, 2013.

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January 11, 2014

A handwritten signature in cursive script, reading "Daphne D. Helms", written over a horizontal line.

Daphne D. Helms, court reporter

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

C/A NO. 2006-CP-40-6124

RICHLAND COUNTY
FILED
2013 NOV -5 PM 1:44
JENNIFER W. MCNEEL
C.C.P. & G.S.

Phillip H. Crocker III -- Petitioner,

-Vs-

State of South Carolina -- Respondent,

AMENDED POST CONVICTION RELIEF APPLICATION
PURSUANT TO RULE 15, SCRCP

Phillip H. Crocker, III
SCDC# 298423
BRCI
4460 Broad River Rd.
Columbia, SC. 29210

SCANNED

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

C/A No. 2006-CP-40-6124

RICHLAND COUNTY
FILED
2013 NOV -5 PM 1:44
JANETTE W. MCNERIDE
C.C.P. & G.S.

Phillip Crocker, III -- Applicant,

-Vs-

State of South Carolina -- Respondent,

CERTIFICATE OF SERVICE

The undersigned does hereby certify he has served a true and correct copy of the enclosed Amended Post Conviction Relief application on attorney for Respondent, Mr. Donald J. Zelenka, Assistant Attorney General, P.O. Box 11549, Columbia, SC, 29211

by placing the aforesaid in a properly addressed envelope, first-class postage affixed and placed in the U.S. Mail this 1st day of November, 2013.

Sworn to and Subscribed Before Me

This 1 day of NOV, 2013

Eugene Keefe
NOTARY PUBLIC

My Comm. Expires

My Commission Expires April 4, 2016

Respectfully Submitted,

/s/ Phillip Crocker, III

Phillip Crocker, III

1666

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

2013 NOV -5 PM 1:44
JEANETTE H. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

Phillip H. Crocker, III
Petitioner,

C/A No. 2006-CP-40-6124

-Vs-

AMENDED APPLICATION FOR POST

State of South Carolina
Respondent,

CONVICTION RELIEF PURSUANT TO
RULE 15, SCRCP

COMES NOW, above captioned Petitioner, Phillip H. Crocker, III, by and through attorney of record, respectfully moves this Honorable Court to amend the Original Application in the above captioned case number.

Respectfully Submitted,

/s/ Phillip H. Crocker, III
Phillip H. Crocker, III

ISSUE () WAS COUNSEL INEFFECTIVE FOR FAILING TO MOTION THE COURT TO SUPPRESS ALL THE EVIDENCE OBTAINED FROM THE SEARCH WARRANTS, WHERE THE MAGISTRATE JUDGE LACKED AUTHORITY TO ISSUE OUT OF STATE/NATION WIDE SEARCH WARRANTS?

Facts

During trial the following colloquy of Investigator McDonald was recorded:

Q). And the next day you were able to get from the victim's phone in this case?

A). Yes, I prepared search warrants for the calls coming in and out from the victim's cell phone which ended up being a singular cell phone. I also prepared a search warrant on "a possible suspect phone". The last phone call the victim had received by a person only identified as "Croc" in the saved portion of the phone.

Q). What number were you getting search warrants for?

A). (646)(408-5502), that would be a Sprint phone.

Q). How can you tell it's a sprint phone?

A). There's actually a web site I've been provided with, Primers.com. You can go and put the prefix in. A 646 or 408, it will tell you what company that phone is associated with.

Q). And that day, did you forward these search warrants to sprint and to singular?

A). Yes, I had them signed that night by a magistrate, [Tr.p.832, L.20-25, -p.833, L.1-4]

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As is seen in the above, McDonald prepared the out-of-state/nation wide "search warrants" and had the Magistrate sign the warrants the very same night.

The warrants in question read as follows:

Sprint PCS, Custodian of Records, Meianie
Hall, Sprint Spectrum, L.P.
6480 Sprint Parkway
Overland Park, Kansas, 66251
(see attached exhibit (A))

Cellco Partnership DBA Verizon Wireless
Att: Custodian of Records
180 Washington Valley Rd.
Bedminster, NJ., 07921
(see attached exhibit (B))

Cingular Wireless Compliance Center
Attention: Custodian of Records
5600 Glenridge Dr., Suite G418
Atlanta, GA., 30342
(see attached exhibit (C))

As is seen all of the search warrants are for (3) three different States, to which Petitioner asserts the Magistrate [lacked] authority to issue out-of-state/nation wide search warrants.

Coming directly after McDonalds's testimony, the State called Lieutenant James Smith, and the following colloquy was recorded:

Q). Over the course of the next week, were you able to develop the name of Willie Jennings as someone you needed to talk with in the case?

A). Yes, I did.

Q). And how did that come about?

A). Well, what happened was that through the records that were back from the phone in question, what's been referred to as the "Croc" phone, we did locate a couple Columbia

numbers which were called on the phone. Of course, that is right in our jurisdiction so we could try to make contact with those individuals to find out who it was that called. We were successful in doing that with Marvin Flemming and Monica McClain. We learned that the common denominator to them was Willie Jennings, [Tr.p.1012, L.20-25, p.1013, L.1-14].

On the 11th we actually prepared a search warrant affidavit based on the information we had gotten. Mr. Jennings had fully identified the defendant, [Tr.p.1018, L.16-18].

As is seen during Lt. Smith's testimony, Petitioner's name and identity was provided to law enforcement by "Willie Jennings" whose name was only discovered by the information obtained by the search warrants, and the Magistrate under S.C. Code Ann §17-13-140 lack[ed] authority to issue, and therefore Counsel should have motioned to suppress [all] the evidence and information gathered therefrom as "fruit of the poisonous tree".

According Section 17-13-140 states in pertinent part:

Section 17-13-140, Issuance, executions and Return of Search Warrants for property connected with the Commission, Inventory of Property Seized:

Any Magistrate or recorded or city judge having the powers of magistrates, or any judge of any court of record of the State having jurisdiction over the area where the property sought is located, may issue a search warrant for a seizure...

As is seen in the underlined portions of 17-13-140, the Magistrate of "the State having jurisdiction over the area where the property is located" has jurisdiction to issue a search

warrant. In the instant matter the Magistrate clearly did not have the authority to issue out-of-state/nation wide search warrants for (Overland Park, Kansas); (Bedminister, New Jersey); and (Atlanta, Georgia)(emphasis supplied).

Petitioner asserts the Magistrate according to S.C. Code Ann. §17-13-140 lacked authority to issue three (3) out-of-state/nation wide search warrants and therefore Counsel should have moved to suppress all the evidence and information obtained from those search warrants, i.e. The pretrial and in-court identification testimony of Shannon Miles [Tr.p.62-p.87; Tr.p.519-p.551]; the pretrial and in-court identification testimony of Consuelo Casey [Tr.p.104-p.132; Tr.p.552-p.585]; the testimony of Rodney Gonzales [Tr.p.89-p.104]; the trial testimony of Lt. James Smith [Tr.p.133-p.137]; the in-court identification and trial testimony of Willie Jennings [Tr.p.626-p.717]; Sgt. Earles [Tr.p.734-p.739]; the trial testimony of Ms. Howell [Tr.p.799-p.816] and trial testimony of Investigator McDonald [Tr.p.832-p.997; Tr.p.1361-p.1374] and most importantly trial exhibits

(12),(13),(48-70),(90),(91),(97),(99),(100),(102-117),(119) et al. as "fruit of the poisonous tree" (emphasis supplied).

Petitioner would further assert he was denied his Sixth Amendment Constitutional right to the effective assistance of counsel and his Fourteenth Amendment right to a fair trial when counsel failed to motion the Court to suppress all three (3) search warrants and the evidence and information obtained therefrom, including but not limited to the pretrial, trial

testimony, in-court identification and trial exhibits cited above.

Discussion

While the Magistrate did have authority to issue [a] search warrant for the "information in the victim's phone found at the scene, in the State of South Carolina, Petitioner's argument is premised on the belief that the Magistrate lacked authority and jurisdiction to issue three (3) out-of-state/nation wide "search warrants" for the phone records out-side the jurisdiction of a State of South Carolina Magistrate, See §17-13-140.

The three (3) search warrants issued by the South Carolina Magistrate which were executed in the States of Kansas, New Jersey, and Georgia, were clearly outside the scope and jurisdiction of 17-13-140, as well as outside of South Carolina's jurisdiction all together (emphasis supplied).

§17-13-140 clearly states in pertinent part: "the State having jurisdiction over the area where the property is located may issue a search warrant for seizure." In determining the intent of the legislature one must turn to the principles of statutory construction.

Principles of Statutory Construction

The cardinal rule of statutory interpretation is to determine the intent of the legislature, Georgia-Bail Bonds Inc. v. County of Aiken, 354 S.C. 18, 579 S.E.2d 334 (Ct.App.2003), see also Gordon v. Phillips Utils. Inc., 362 S.C. 403, 406, 608 S.E.2d

425, 427 (2005)("The primary purpose in construing the a statute is to ascertain legislative intent"). All rules of statutory construction are subservient to the one that the language used, and that language must be construed in the light of the intended purpose of the statute, *McClanahan v. Richland County Co. v. School Dist. of Greenville*, 331 S.C. 19, 501 S.E.2d 725 (1998); *State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct.App.2002); *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct.App.1999).

The legislature's intent should be ascertained primarily from the "plain language" of the statute, *State v. Landis*, 362 S.C. 97, 606 S.E.2d 503 (Ct.App.2004), *Morgan*, supra 352 S.C. at 366, 574 S.E.2d at 206; *Stephen v. Avins Constr. Co.*, 324 S.C. 334, 478 S.E.2d 74 (Ct.App.1996). The Court's primary function in interpreting a statute is to ascertain the intent of the General Assembly, *Smith v. South Carolina Ins. Co.*, 350 S.C. 82, 564 S.E.2d 358 (Ct.App.2002). Once the legislature has made a choice, there is no room for the courts to impose a different judgement based upon their own notions of public policy, *South Carolina Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct.App.1989).

When a statute's terms are clear and unambiguous on their face, there is [no] room for statutory construction and a court must apply the statute according to it's literal meaning, *Carolina Power & Light Co. v. City of Bennettsville*, 314 S.C. 137, 442 S.E.2d 177 (1994). If a statute's language is unambiguous and clear, there is no need to employ the rules of

statutory construction and this Court has no right to look for or impose any other meaning, *Tilley v. Pacesetter Corp.*, 355 S.C. 361, 585 S.E.2d 292 (2003); *Pachal v. State Election Comm'n Brassell*, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct.App.1997)("Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into which are not in the legislature's language"). What the legislature says in the text of a statute is construed the best evidence of the legislative intent or will, *Bayle v. South Carolina Dept. of Tranp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct.App.2001).

A "warrant" is a judicial authorization to law enforcement to search and seizure persons or things. To preserve advantages of speed and surprise, the order is issued without prior notice and is executed often by force, with an unannounced and unanticipated "physical" intrusion, See *Marshall v. Barlow's Inc.*, 436 U.S. 307, 316, 98 S.Ct. 1816 (1978)(recognizing that search warrants may be executed without delay and without prior notice, thereby preserving the element of surprise).

Because the intrusion is both an immediate and substantial invasion of privacy, a warrant may only be issued by a judicial officer upon demonstration of probable cause -- the safe guard required by the Fourth Amendment,, See U.S. Const. amen XIV ("no warrant shall issue but upon probable cause"), see also *Camara v. Municipal Court*, 387 U.S. 523, 528-29, 87 S.Ct. 1727 (1967).

The demonstration of probable cause to a neutral judicial officer places a "check point" between the government and the

citizen where there otherwise would be no judicial supervision, *Steagald v. U.S.*, 451 U.S. 204, 212, 101 S.Ct. 1642 (1981).

In the instant case the Magistrates according to S.C. Code Ann. §17-13-140 lack[ed] authority and jurisdiction to issue three (3) out-of-state/nation wide search warrants for three (3) different State(s). Here the case becomes problematic as it cannot be said that the Investigator in the instant case presented evidence sufficient to establish probable cause because the very purpose of requesting the information (phone records) is to ascertain whether probable cause even exists. As was noted *supra*, the Magistrate had the authority to issue [a] search warrant for the information inside the victim's cell phone found at the scene in the State of South Carolina, but, the Magistrate lacked authority to issue nation-wide search warrants for the phone records in three (3) States themselves. Petitioner is not arguing this as a Fourth Amendment claims, but rather as a statutory violation as well as an ineffective assistance of counsel claim.

The South Carolina Supreme Court has recognized, Section 17-13-140 of the South Carolina Code actually imposes stricter requirements than constitutional provisions, See *State v. Jones*, 342 S.C. 121, 128, 536 S.E.2d 675, 678 (2000)(citations omitted). The more appropriate remedy for the State's "fishing expedition" would have been to "subpoena" the phone records, but the Officers instead elected and chose to prepare "search warrants" instead

which are distinctly different and have different functions from "subpoenas", See *In Re Subpoena Duces Tecum*, 228 F.3d 341, 346-47 (4th Cir.2000).

The fruit of the poisonous tree doctrine provides that evidence must be excluded if it would not have come to light, but for the illegal actions of the police, and the evidence has been obtained by exploitation of that legality, *State v. Copeland*, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996)(citing *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407 (1963)).

One contesting the legality of a search of a defect under Section 17-13-140 need only show that the State is attempting the introduce the evidence against him, See *State v. McNight*, (S.C.1987), 291 S.C. 110, 352 S.E.2d 471, at 474 (emphasis original).

When considering Counsel's failure to move to suppress, the defendant must show that the verdict would have been different, absent the evidence that should have been excluded, *Kimmelman v. Morrison*, 477 U.S. 365, 106 S.Ct. 2574 (1986).

Here there can be no doubt that the evidence was "fruit of the poisonous tree" and should have been suppressed. Had it not been for the information obtained by the unlawful statutory violations and actions of the Magistrate issuing out-of-state/nation wide search warrants for the State's "fishing expedition", Petitioner would never have been considered a suspect much less the alleged perpetrator in the incident in question.

If Counsel would have motioned to suppress all the evidence and information obtained by the out-of-state search warrants, there is more than a reasonable probability the jury would have returned a different verdict, as Petitioner would not have ever been sitting before the jury from the on set.

Petitioner is entitled to a new trial on this issue with instructions to suppress the evidence and information obtained through the phone records.

ISSUE () WAS COUNSEL INEFFECTIVE FOR FAILING TO MOVE TO
SUPPRESS WILLING JENNING'S STATEMENTS AND TRIAL TESTIMONY DUE TO
POLICE CONDUCTING AN EXTRA-TERRITORIAL INVESTIGATION WITHOUT
HAVING MULTI-JURISDICTIONAL AGREEMENTS, AND THEREFORE ALL THE
INFORMATION GATHERED THEREFROM IS FRUIT OF THE POISONOUS TREE?

Facts

Applicant asserts he was denied his Sixth Amendment right to counsel and his Fourteenth Amendment right to a fair trial when counsel failed to motion the Court to suppress multiple statement(s) and Trial testimony given by State's witness Willie Jennings ("Jennings") where law enforcement conducted an extra-territorial investigation without multi-jurisdictional agreements.

During trial the State called Willie Jennings to testify. Jennings testified he really didn't know what happened, Tr.p.657, 11.1-12. Jennings said once he learned the police were looking for him he came to Columbia, Tr.p.657, 13-17. Jennings testified that when the Police Department told him the Investigator that was looking for him was on a trip, so he (Jennings) went back home to Latta, in Dillon County, Tr.p.657, 11.18-25-p.658, 11.1-10.

Jennings testified that the Police contacted him at his mother's. Thereafter, the Richland County Sheriff's Department [came to Dillon] County and brought him [back] to Columbia with

them, Tr.p.658. During cross-examination, Jennings admitted that he gave a "couple of statements" to Investigator McDonald, Tr.p.662, 11.1-25.

Jennings testified the first statement was given to Investigator McDonald [in Dillon County], Tr.p.663, 11.1-9. In the first statement Jennings admitted that his house was in Dillon County and that December 10, 2001, he told Investigator McDonald that Applicant drove a Range Rover with Georgia tags, and that he met Applicant a couple of years ago in Atlanta, Tr.p.663-p.664.

Jennings further admitted, that [part] of this conversation was given at his mother's house in Dillon County, Tr.p.665, 11.1-4. Trial Counsel further questioned Jennings if he recalled calling Lt. Smith and if he agreed to come to Columbia to speak with them, Tr.p.666, 11.1-8. The following was recorded:

Q). But the fact is, you didn't end up coming back to Columbia? They ended up coming down to Dillon or Latta and met you there, right?

A). Right, [Tr.p.666, 11.9-14].

Jennings further testified that "then they got back into contact with him. They (Investigator McDonald & Lt. Smith) came back to his mother's house in Dillon County, Tr.p.666, 11.15-16.

Applicant asserts counsel should have motioned to suppress this the statements and testimony of Willie Jennings as fruit of the poisonous tree where the information obtain from Willie Jennings was obtained during a extra-territorial investigation

without multi-jurisdictional agreements in place between Richland and Dillon Counties for the purposes of criminal investigation.

Here, Applicant asserts that Richland County did not have the respective statutory required "written agreements", before traveling from Richland County to Dillon County and conducting an extra-territorial investigation and therefore, any evidence obtained therefrom should have been suppressed. In support of Applicant's assertion Richland County did not have the "required written agreement", see Applicant's attached exhibit (D).

S.C. Code Ann. §23-1-215 states:

§23-1-215, Agreements between multiple law enforcement Jurisdictions for purposes of Criminal Investigation; jurisdiction of Law Enforcement Officers.

(A). In the event of a crime in multiple jurisdictions, either county or municipal, are involved law enforcement officers are authorized to exercise jurisdiction with other counties or municipalities for the purpose of criminal investigation only if a written agreement between or among the law enforcement agencies involved has been executed. This limitation on law enforcement activity shall not apply to anything authorized by §17-13-40.

(B). Any law enforcement officer working under this agreement is vested with equal authority and jurisdiction outside his resident jurisdiction for the purpose of investigation, arrest or any other activity related to the criminal activity for which the agreement was drawn.

(C)...

(D). The agreement authorized by this section may be terminated in writing at the discretion of any of the law enforcement agencies involved. The termination must be

mailed to the appropriate agencies with return receipt requested. The agreement shall terminate at the conclusion of the investigation for which it was executed.

(E). The respective governing bodies of the political subdivisions where each of the law enforcement agencies entering into the agreement authorized in subsections (A) is located must be notified by it's agency of the agreements execution and termination. The notification must be in writing and accomplished within seventy-two hours of the agreements executions and within seventy-two hours of the agreements termination.

As is seen in the above underlined portions of §23-1-215 a "written agreement" between to two counties for purposes of extending jurisdiction to the Officers of each County, [is] a mandatory requirement of South Carolina Law.

Discussion

Applicant asserts Richland County officers were without jurisdiction to conduct extra-territorial investigations in Dillon County and the evidence obtained from the unlawful investigation should have been suppressed. It is thus premised that counsel rendered ineffective assistance, and the prejudice incurred is easily seen as had, counsel appropriately moved to suppress the evidence based on the unlawful investigation, and in the event trial court agreed with Applicant and suppressed the evidence, the jury would have been subjected to Willie Jennings' testimony and there is a reasonable probability the jury could have returned with a different verdict minus this evidence.

Principles of Statutory Construction

The cardinal rule of statutory interpretation is to determine

the intent of the legislature, *Georgia-Bail Bonds Inc. v. County of Aiken*, 354 S.C. 18, 579 S.E.2d 334 (Ct.App.2003), see also *Gordon v. Phillips Utils. Inc.*, 362 S.C. 403, 406, 608 S.E.2d 425, 427 (2005)("the primary purpose in construing a statute is to ascertain legislative intent"). All rules of statutory construction are subservient to the one that the language used and that language must be construed in the light of the intended purpose of the statute, *McClanahan v. School Dist. of Greenville*, 331 S.C. 19, 501 S.E.2d 725 (1998); *State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct.App.2002); *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct.App.1999).

The legislature's intent should be ascertained primarily from the "plain language" of the statute, *State v. Landis*, 362 S.C. 97, 606 S.E.2d 503 (Ct.App.2004), *Morgan*, *supra*, 352 S.C. 334, 574 S.E.2d at 206; *Stephen v. Avins Constr. Co.*, 324 S.C. 334, 478 S.E.2d 74 (Ct.App.1996). The Court's primary function in interpreting a statute is to ascertain the intent of the General Assembly, *Smith v. South Carolina Ins. Co.*, 350 S.C. 82, 564 S.E.2d 358 (Ct.App.2002). Once the legislature has made a choice, there is no room for the courts to impose a different judgement based upon their own notions of public policy, *South Carolina Farm Bureau Mur. Ins. Co. v. Mumford*, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct.App.1989).

When a statute's terms are clear and unambiguous on their face, there is [no] room for statutory construction and a court

must apply the statute according to it's literal meaning, Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 442 S.E.2d 177 (1994). If a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction and this Court has no right to look for or impose any other meaning, Tilley v. Pacesetter Corp., 355 S.C. 361, 585 S.E.2d 292 (2003); Pachal v. State Election Comm'n Brasell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct.App.1997)("where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into which are not in the legislature's language"). What the legislature says in the text of a statute is construed the best evidence of the legislative intent or will, Bayle v. South Carolina Dept. of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct.App.2001).

In State v. Boswell, 391 S.C. 592, 707 S.E.2d 65 (2011), Boswell contended the trial judge should have suppressed his confessions to Capt. Quig as they were the product of an unlawful arrest by Lexington County officers acting outside their territorial jurisdiction. Boswell asserted that neither the 1999 multi-jurisdictional agreement nor any provision of South Carolina law authorized the Lexington County deputies to arrest Boswell in Calhoun County, and because the arrest was unlawful, Boswell argued that his confessions were inadmissible as they were fruit of the poisonous tree. In Boswell the Court found that Lexington County Sheriff James Metts and Calhoun County Sheriff

Dennis Jones signed a written agreement "for purposes of securing to each other the benefits of mutual aid in the event of a natural disaster, disorder, or other emergency situations..." The terms of the agreement incorporate the test of sections 23-1-210 and 17-35-45 of the South Carolina Code, which governs the agreement involving the temporary transfer of law enforcement officers. In 2000, the Legislature promulgated section 23-20-50 to "require County approval of multi-jurisdictional agreements. In Boswell the Court found that none of the above out-lined requirements were present. The Court noted that, Lexington County Officers "cleared" their surveillance operation with the Sheriff of Calhoun County. Although Sheriff Summers and several officers were present at the begining of the surveillance operation. Sheriff Summers did not feel that it was necessary for his county officers to remain at the surveillance site. The Court further noted that, no Calhoun County officers were present at the time of Boswell's arrest. The Court concluded the 1999 agreement did not authorize the Lexington County officers to arrest Boswell in Calhoun County. Id

The instant case is distinguishable from Boswell with respect that Applicant's arrest arouse after 2000 and therefore §23-20-50 is applicable here, where the Legislature promulgated §23-20-50 to "require County approval of multi-jurisdictional agreements. In Boswell an agreement did exist, but in the instant case no agreement exists, nor was a written agreement submitted to County Council for approval. While the Boswell Court found Lexington

County officers did not have the authority to arrest Boswell in Calhoun County, they found so because the 1999 agreement did not authorize it. In the instant case, here there was no agreement in existence at all, and therefore, Richland County officers were without jurisdiction to conduct an extra-territorial investigation in Dillon County and the information (statements) obtained from Willie Jennings as well as his trial testimony should have been suppressed as fruit of the poisonous tree. Richland County officer's illegal actions is exploited to the max since they "failed" to even contact Dillon County Sheriff's Department to put them on notice that Richland County Officers were investigating in their County, or at least have a Dillon County officer present while questioning Willie Jennings.

The fruit of the poisonous tree doctrine provides that evidence must be excluded [if] it would not have come to light, but for the illegal actions of the police, and the evidence has been obtained by exploitation of that legality, State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996)(citing Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407 (1963)).

When considering counsel's failure to move to suppress, the defendant must show that the verdict would have been different, absent the evidence that should have been excluded, Kimmelman v. Morrison, 477 U.S. 365, 106 S.Ct. 2574 (1986).

For the aforementioned, Applicant respectfully prays this Court will grant the requested relief of a new trial, with instructions to suppress the evidence in question.

ISSUE () WAS COUNSEL INEFFECTIVE FOR FAILING TO REQUEST THE TRIAL COURT TO GIVE A SPECIAL JURY INSTRUCTION REGARDING STATE'S WITNESS CONSEULO CASEY RECEIVING "IMMUNITY" FROM PROSECUTION FOR HER TESTIMONY?

Facts

Applicant asserts he was denied the effective assistance of counsel when counsel failed to request the trial court to instruct the jury regarding the credibility of State's witness Consuelo Casey ("Casey") , and the fact Casey was receiving "immunity" for her testimony.

Applicant asserts that Casey was not only the State's star witness, but Casey also claimed to be an eye witness to the incident at hand. Therefore, Casey's testimony was critical for the State. It should be noted that Casey gave the Police numerous inconsistent statement(s) during the investigation. It is for this reason, Applicant would assert the "cautionary" instruction would have been helpful to Applicant, and his right to a fair trial.

Applicant would further assert that the evidence in this case was not overwhelming and had the jury been properly instructed regarding Casey and the "immunity" she received from the Police may have reasonably unearthed any underlying allegiance Casey may have had with the State and a reasonable expectation of her testimony in the outcome of the trial.

Discussion

A criminal defendant in this country is entitled to a fair, but not a perfect trial. "[G]iven the myriad safeguards provided to assure a fair trial, the focus on fairness, rather than perfection, *Delaware v. Van Arsdall*, 475 U.S. 673, 106 S.Ct. 1431 (1986).

In reviewing jury charges for error, the Court should construe the court's charge as a whole in light of the evidence and issues presented at trial, *Keaton v. ex rel. Foster v. Greenville Hosp. Sys.*, 334 S.C. 488, 497, 514 S.E.2s 570, 575 (1999). Jury instructions must be viewed as a whole and there is error when the Applicant proves that there is a reasonable likelihood that the jury applied the challenged instruction in a way that violates due process, *Boyde v. California*, 494 U.S. 370, 380-81, 110 S.Ct. 1190 (1990); also see *Weeks v. Angelone*, 528 U.S. 225, 236, 120 S.Ct. 727 (2000).

An instruction that the testimony is to be weighed with greater care to determine if testimony is affected by interest or prejudice need only be given if the witness is informant, i.e. is paid for services, or is receiving immunity, or other benefit, *United States v. Brooks*, 928 F.2d 1403 (4th.Cir.), cert. denied, 60 U.S.L.W. 3260 (U.S.1991).

While there are no South Carolina Cases directly on point, however, the more generally a pattern jury instruction has been developed to address the credibility of testimony, by informants and individuals obtaining "immunity" for their testimony, See *Edward J. Devitt, et al., Federal Jury Practice and Instructions* §15.02 (1992).

The South Carolina Code of Laws applicable here is S.C. Code Ann. §8-13-705, offering, giving, soliciting, or receiving anything of value to influence action of public employee, member or official, or to influence a witness, exceptions, penalty for violations, Code of Ethics. As is seen it is against South Carolina Code of Laws to offer anything of value to influence the testimony of a witness. Here a reasonable juror could agree that the fact Consuelo Casey was receiving immunity for her testimony that she could have tailored her testimony to fit the State's theory of the case.

The federal counter-part here is defined in §201(c)(2), the general protection of §201(c)(2) -- "whoever... gives... anything of value to a person, for or because of the testimony to be given by such a person as a witness at trial, United States v. Anty, 203 F.3d 310 (4th Cir.2000).

Here there is a reasonable probability that had counsel requested a cautionary instruction that Court no doubt would have given the instruction and there is a reasonable probability the jury could have returned a different verdict.

Counsel was clearly aware that Casey had been given "immunity" from the Officers, as Counsel clearly extracted this information from Investigator McDonald while testifying. Had the jury been given the instruction there is a reasonable probability that the jury would have given great difference to Casey's damaging testimony in a different light.

As this Court knows, "a properly instructed jury is believed to follow the trial judge's instructions, Richardson v. Marsh,

481 U.S. 200 (1987). A court should evaluate counsel's conduct from counsel's perspective at the time, Strickland v. Washington, 466 U.S. at 689.

For the aforementioned reasons, Applicant respectfully prays this Court will grant the requested relief of a new trial.

Conclusion

WHEREFORE, based on the foregoing, Petitioner respectfully prays this Honorable Court will grant the requested relief of a new trial.

Respectfully Submitted,

/s/ Phillip H. Crocker, III
Phillip H. Crocker, III

Exhibit (A)

FROM CINCULAR WIRELESS. COURT ORDERS

(THU) 11 22 2001 18:57/ST. 18:57/NO. 0000000784 P 2

Ex. 2

STATE OF SOUTH CAROLINA

County of Richland

SEARCH WARRANT

Date 11-22-01Officer Sgt. McDonald

BSCC0111S1628**RECD 11/22/01**

STATE OF SOUTH CAROLINA}

COUNTY OF RICHLAND }

SEARCH WARRANTTO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF _____

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED**

Cingular Wireless Subpoena Compliance Center
Attention: Custodian of Records
5600 Glenridge Dr. Suite G418 Atlanta, GA, 30342

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

All originating and terminating calls to Cingular phone number 843-615-3711 between November 15, 2001 through November 22, 2001

This Search Warrant shall not be valid for more than ten days from the date of issuance.
 A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Colt. _____, S.C.
November 22 _____, 2001

[Signature] _____ (L.S.)
 Signature of Judge

STATE OF SOUTH CAROLINA)

AFFIDAVIT

COUNTY OF RICHLAND)

Personally appeared before me, one Sgt. McDonald who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

All originating and terminating calls to Cingular phone number 843-615-3711 between November 15, 2001 through November 22, 2001.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Cingular Wireless Subpoena Compliance Center
Attention: Custodian of Records
5600 Glenridge Dr. Suite G418 Atlanta, GA. 30342

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

During the late afternoon hours of November 22, 2001, in Richland County, the Richland County Sheriff's Department was notified of a shooting incident at 7441 Two Notch Rd. (Lowe's parking lot). Upon the deputies arrival at the scene, they observed one Nathaniel Casey Jr. shot one time in the head area which resulted in his death. The victim's wife Consuelo Casey was present during this incident and indicated that the victim makes and receives calls on a Nokia cellular phone that was present at the scene. The service provider for this phone is Cingular Wireless. Law enforcement believes that information sought in this search will assist in the on going investigation into the death of Mr. Casey. Investigators feel that the information sought after will be located at the the location to be searched.

Sworn to and Subscribed before me)

this 22 day of November, 2001

[Signature] (L.S.)
Signature of Judge

6:11 P.M.

[Signature]

Affiant

Address Richland County Sheriff's Department5623 Two Notch Road, Columbia, S.C. 29223Phone (803) 691-9000

FROM CIRCULAR WIRELESS. COURT ORDERS

(THU)11 22 2001 10:57/97. 10:57/NO. 0000000784 P 5

I received the attached Search Warrant _____, 20____, and have executed it as follows:

I left a copy of the warrant with _____
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

100

This inventory was made in the presence of _____

AND _____

I swear that this Inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this _____

day of _____, 20____)

(Signature of Officer Executing Warrant)

Signature of Judge

Exhibit (B)

1696

STATE OF SOUTH CAROLINA

Ex. 4

County of Richland

SEARCH WARRANT

Date 12-7-01

Officer Sgt. McDonald

SOUTH CAROLINA}

1697

SEARCH WARRANT

RICHLAND }

ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Cellco Partnership DBA Verizon Wireless
Attn: Custodian of Records
180 Washington Valley Rd.
Bedminster, NJ 07921

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Subscriber information on Verizon phone # 718-299-6611. This subscriber information is to include such identifiers as the
subscriber's name, address, home telephone #, Drivers License number, Social Security number, etc..

This search is to also include all originating and terminating phone calls coming from Verizon phone # 718-299-6611
from 11-12-01 through 12-07-01. Specifically, cell site information is needed to show where these calls were made from
(City, State, etc..) and received at (City, State, Etc..)

This Search Warrant shall not be valid for more than ten days from the date of issuance.
A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Columbia

S.C.

December 7

2001

3:00 PM.

W. J. [Signature]

Signature of Judge

(L.S.)

STATE OF SOUTH CAROLINA}

1698

COUNTY OF RICHLAND }

AFFIDAVIT

Personally appeared before me, one S.E. McDonald who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Subscriber information on Verizon phone # 718-299-6611. This subscriber information is to include such identifiers as the subscribers name, address, home telephone #, Drivers License number, Social Security number, etc..

This search is to also include all originating and terminating phone calls coming from Verizon phone # 718-299-6611 from 11-12-01 through 12-07-01. Specifically, cell site information is needed to show where these calls were made from (City, State, etc..) and received at (City, State, Etc..)

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Cellco Partnership DBA Verizon Wireless
Attn: Custodian of Records
180 Washington Valley Rd.
Edminster, NJ 07921

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On November 21, 2001 in Richland County at 7441 Two Notch Rd. (Lowes' parking lot) the Richland County Sheriff's Department was notified of a shooting incident. Upon the deputies arrival at the scene, they observed one Nathaniel Casey Jr. shot one time in the head area which resulted in his death. The victims' wife Consuelo Casey was also present at the scene and indicated that the victim makes and receives calls on a Nokia cell phone that was present at the scene.

Sworn to and Subscribed before me

this 7th day of December, 2001

W. N. Orndorff
Signature of Judge

(L.S.)

S.E. McDonald
Affiant

Address Richland County Sheriff's Department

5623 Two Notch Road, Columbia, S.C. 29223

Phone (803) 691-9000

prior to his death, the victim placed a call to a Sprint PCS cell phone number, 646-408-5502. Investigating officers
obtained a search warrant on this cell phone number for subscriber information and were provided a contact phone
number for the subscriber of 718-299-6611 which is going to be a Verizon cell phone number. Investigators feel that
important information can be provided in order to help identify the suspect in this homicide by receiving subscriber
information on this phone number as well as all originating and terminating calls associated with this cell phone number.
Investigators feel that this information can be sought at the place of search.

Sworn to and Subscribed before me

this 7th day of December, 2001

W. J. [Signature] (L.S.)
Signature of Judge

3:00 PM

[Signature]

Affiant

Address Richland County Sheriff's Department

5623 Two Notch Road, Columbia, S.C. 29223

Phone (803) 691-9000

Exhibit (C)

On _____, 20____ at _____ o'clock _____ M, I searched _____ person) described in the warrant and (the premises)

Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

This inventory was made in the presence of

ND

I swear that this Inventory is a true and detailed account of all property taken by me on the warrant.

WORN to before me this _____

y of _____, 20_____}

(L.S.)}

Signature of Judge

(Signature of Officer Executing Warrant)

STATE OF SOUTH CAROLINA}

AFFIDAVIT

COUNTY OF RICHLAND }

Personally appeared before me, one Sgt. McDonald who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

All originating and terminating calls to Sprint phone number 646-408-5502 between November 14, 2001 to November 22, 2001. In particular cell site information is needed to show where these calls were made from (city, state etc..) and received at (city, state, etc..)

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED**

Sprint PCS, Custodian of Records, Melanie Hall, Sprint Spectrum L.P.
5480 Sprint Parkway
Overland Park, KS 66251

**REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**

During the late afternoon hours of November 21, 2001, in Richland County, the Richland County Sheriff's Department was notified of a shooting incident at 7441 Two Notch Rd. (Lowe's parking lot). Upon the deputies arrival at the scene, they observed one Nathaniel Casey Jr. shot one time in the head area which resulted in his death. The victim's wife Consuelo Casey was present during this incident and indicated that the victim makes and receives calls on a Nokia cellular phone that was present at the scene. The victim had placed a call to the phone number 646-408-5502 just prior to his death. This is going to be a Sprint Spectrum Cell phone number. Law enforcement believes that information sought in this search will assist in the on going investigation into the death of Mr. Casey. Investigators feel that the information sought after will be located at the the location to be searched.

sworn to and Subscribed before me }

is 26th day of November, 2001

Clive R. Roman Boyd (L.S.)
Signature of Judge

Sgt. McDonald
Affiant

Address Richland County Sheriff's Department
5623 Two Notch Road, Columbia, S.C. 29223
Phone (803) 691-9000

STATE OF SOUTH CAROLINA}

1703

COUNTY OF RICHLAND }

SEARCH WARRANT

ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Sprint PCS, Custodian of Records, Melanie Hall, Sprint Spectrum L.P.
6480 Sprint Parkway
Overland Park, KS 66251

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

originating and terminating calls to Sprint phone number 646-408-5502 between November 14, 2001 to November 22, 2001. In particular cell site information is needed to show where these calls were made from (city, state etc..) and received at (city, state, etc..)

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

Judge Valerie R. Stroman-Boyd

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Columbia, S.C.

November 26, 2001

(6:14 P.M.)

Valerie Stroman-Boyd (L.S.)
Signature of Judge

RETURN

I received the attached Search Warrant 11-26-01, 2001, and have executed it as follows:
 On 11-26, 2001 at 7:30 o'clock 9 M, I searched
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with AT The Place of Search
 Name of person searched or "at the place of search" with
 Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

All originating and terminating calls to Sprint phone number
646-408-5502 between Nov. 14 2001 to Nov. 22, 2001
with cell site providers

This inventory was made in the presence of Sgt. McDonald / INV. R.H. Gonzalez

AND

I swear that this Inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this 14th
 day of December, 2001

Valerie Thomas Boyd (L.S.)
 Signature of Judge

(8:00 p.m.)

Rodriguez
 (Signature of Officer Executing Warrant)

STATE OF SOUTH CAROLINA}

SEARCH WARRANT

COUNTY OF RICHLAND }

ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF _____

appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Print PCS, Custodian of Records, Melanie Hall, Sprint Spectrum L.P.
480 Sprint Parkway
Overland Park, KS 66251

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

All originating and terminating calls to Sprint phone number 646-408-5502 between November 12, 2001 to November 3, 2001 and November 23, 2001 thru December 3, 2001. In particular cell site information is needed to show where these calls were made from (city, state etc..) and received at (city, state, etc..)

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

Judge Valerie R. Stroman-Boyd

Within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of each search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Columbia, S.C.

November 30, 2001

(6:05 P.M.)

Valerie R. Stroman-Boyd (S.)
Signature of Judge

1706

STATE OF SOUTH CAROLINA

Ex. 1

County of Richland

SEARCH WARRANT

Date 11-30-01

Officer Inv. R. M. Gonzalez

Exhibit (D)

Dan Johnson
Solicitor

Paulette Edwards
Deputy Solicitor

SOLICITOR
Fifth Judicial Circuit
Post Office Box 192
1701 Main Street
Columbia, South Carolina 29201

Phone: (803)576-1800
Fax: (803) 576-1718

Daniel R. Goldberg
Deputy Solicitor

October 10, 2012

Tricia Blanchette, Esquire
Law Office of Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211

RE: Subpoena in a Civil Case
Phillip Crocker, III, Plaintiff
Case Number: 2006-CP-40-6124

Dear Ms. Blanchette:

The Richland County Solicitor's Office has received your subpoena requesting discoverable materials from the State v. Phillip Crocker, III case. Dana Outen, my paralegal, has provided all the materials that you requested except for the following items:

- 1) We do not have copies of the subpoenas that were served in this case;
- 2) We do not have a copy of the statement taken by the applicant's father; and
- 3) Item Number 8 in your subpoena which reads "any and all multi-jurisdictional agreements, including but not limited to proof of the appropriate state, county or local law enforcement authority's chief executive officer's approval, the county's governing body's approval and proof of notice of a copy to the Governor and Executive Director of the State Budget and Control Board, for the jurisdictions involved in the investigation and arrest of the Applicant, including but not limited to: Richland and Dillon Counties and Richland and Charlotte Mecklenberg Counties. See S.C. Code §23-20-50(A), (B) (2007).

This office does not have any of these items in our possession. If you need any additional information, please feel free to contact Dana at 803-576-1800. Thank you.

Sincerely,

A handwritten signature in cursive script, reading "Kathryn Luck Campbell".

Kathryn Luck Campbell
Assistant Solicitor
Richland County Solicitor's Office

KLC/tby

State of South Carolina)
)
 County of Richland)

In the Court of Common Pleas
 Fifth Judicial Circuit
 2006-CP-40-6124

Phillip H. Crocker,
)
)
 Applicant,)

vs.)

Transcript of Record

State of South Carolina,
)
)
 Respondent.)

November 18, 2013
 Columbia, South Carolina

B E F O R E:

The Honorable Robert E. Hood, Judge

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

Tricia A. Blanchette, Esquire
 Attorney for the Applicant

Megan E. Harrigan, Esquire, Assistant Attorney General
 Attorney for the Respondent

Elizabeth B. Harris, CVR-M
 Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Motion by Ms. Blanchette.	6
Certificate Page.	13

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>
	No Exhibits Introduced.	

1 MS. HARRIGAN: Your Honor, this is the matter of
2 *Phillip Crocker vs. the State*, docket number
3 2006-CP-40-6124. It's the very large packet in front of
4 Your Honor.

5 THE COURT: Okay.

6 MS. HARRIGAN: We're here on Ms. Blanchette's motion,
7 which should be at the top of that packet, and I'll turn it
8 over to Ms. Blanchette. It is her motion.

9 THE COURT: I don't have a motion. Maybe I do. I
10 just...

11 MS. BLANCHETTE: Your Honor, I have a copy right here
12 because I knew it was a large packet.

13 THE COURT: She's got it.

14 MS. BLANCHETTE: Okay.

15 THE COURT: Thank you.

16 MS. BLANCHETTE: I'm Tricia Blanchette, appointed PCR
17 counsel for Phillip Crocker. I had filed a motion on
18 October 18, 2013. It was a supplemental motion for
19 discovery. We've had several discovery motions in this
20 case.

21 I have been given access to the Richland County Public
22 Defender's file, the Richland County Sheriff's Department's
23 file, the Richland County Coroner's Office's file, and then
24 some other things such as SLED, some other agencies, but
25 there were two specific items we did not have that we

1 needed to submit to a ballistics expert.

2 THE COURT: Okay.

3 MS. BLANCHETTE: Thursday of last week, I obtained
4 both of those items that are listed in the motion.

5 THE COURT: Okay.

6 MS. BLANCHETTE: The color photographs, along with --
7 Jim Truett was kind enough to let me take some pictures of
8 a diagram that we were requesting.

9 THE COURT: Okay.

10 MS. BLANCHETTE: And, and the only remaining item that
11 I'd like to make sure is on the record, in previous motion
12 and hearing we discussed getting a copy of the verdict form
13 for the trafficking charge in this case. I reviewed the
14 microfilm or microfiche again on Thursday. For some
15 reason, it is not in the Richland County clerk's file.

16 THE COURT: It may have been done on the indictment.

17 MS. BLANCHETTE: Oddly enough, there is one for the
18 other charge. So, I checked that, too, to see if it was
19 written on the indictment.

20 THE COURT: Okay.

21 MS. BLANCHETTE: It's not, and there's one on the
22 murder charge.

23 THE COURT: Okay.

24 MS. BLANCHETTE: I asked Ms. Harrigan if she could
25 just double check her file to see if she had a copy, and

1 it's my understanding she's going to do that. But I just
2 wanted to put on the record that I had checked that, the
3 Richland County clerk of court's files, twice now and
4 cannot find that verdict form.

5 MS. HARRIGAN: And yes, Your Honor, this file is, as
6 you can imagine, quite voluminous, and I will check after
7 this term and go through all our files and see if we have
8 it. As to my knowledge, we don't, but I will do a thorough
9 investigation and let Ms. Blanchette know.

10 THE COURT: Okay, what was he charged with?

11 MS. HARRIGAN: His original charges were murder and
12 trafficking in marijuana.

13 Does that cover everything?

14 Yes.

15 THE COURT: When did you get convicted, or when did he
16 get convicted approximately?

17 APPLICANT: 2003.

18 THE COURT: 2003?

19 MS. BLANCHETTE: Yes, Your Honor, and I have the
20 folder.

21 THE COURT: Who was your prosecutor?

22 APPLICANT: Ms., Ms. Campbell.

23 THE COURT: Ms. Campbell? You look familiar to me,
24 and who represented you?

25 APPLICANT: Douglas ---

1 THE COURT: Mr. Strickler?

2 APPLICANT: Mr. Strickler and Ms. Pringle.

3 MS. HARRIGAN: Fielding Pringle.

4 THE COURT: Fielding Pringle, okay. All right, so
5 tell me exactly what you want, Ms. Blanchette.

6 MS. BLANCHETTE: The -- starting of the bottom of page
7 2 of the motion, we are asking for additional funding
8 because this is an Indigent Defense case. Pete Skidmore
9 has been working on the case for a number of years, and I
10 have asked the state to place this on the January 21st
11 roster, and at this time, Mr. Skidmore has gone through
12 all the funds that have previously been approved. So,
13 we're asking for \$2,500 for him to complete this
14 investigation.

15 This has been a complicated case. We've used Mr.
16 Skidmore in Rock Hill because the majority of what occurred
17 happened in Charlotte and Dillon. Only the actual murder
18 happened here in Richland County. So, he has been working
19 the case in Dillon and Charlotte for us.

20 I'm also asking for the authorization of funds for
21 Wayne Hill, Sr., who is a ballistics expert. I have
22 attached his curriculum vitae to the motion. I had
23 anticipated being able to use Don Gertz, who is a local
24 expert.

25 THE COURT: Right.

1 MS. BLANCHETTE: And he has a conflict with all
2 Richland County cases because he is now employed by USC.

3 Mr. Gertz, along with several other attorneys that I
4 consulted with, told me that Mr. Hill would be our best
5 option. The only problem is he is located in Illinois.
6 So, along with the funding, I have to ask for travel
7 expenses.

8 I have discussed this with Hugh Ryan. I believe he's
9 the deputy director over at Indigent Defense, and he's
10 explained to me that the expert has to incur all of his
11 travel expenses, and then those will be reimbursed by OID.
12 But I have outlined those requests at the bottom of page 2.

13 It's \$2,500 for his analysis and report, \$900 per day
14 for testimony and travel. Unfortunately with him flying,
15 it may be a two-day event where we have to fly him one day
16 to give his testimony, fly him back out the other day.
17 He's already discussed with me he may not charge for that
18 second travel day, and he'll try to work with me on those
19 fees. And then if we have to get him a hotel room, a plane
20 ticket, a rental car, those would be the expenses, along
21 with his food.

22 THE COURT: Okay.

23 MS. BLANCHETTE: What I have done is I've prepared a
24 proposed order regarding those two funding requests that I
25 provided to Ms. Harrigan, if this court would like me to

1 hand it up at this time.

2 THE COURT: Do you have a position on this, Ms.
3 Harrigan?

4 MS. HARRIGAN: No, Your Honor. The state would like
5 to put on the record that they did request Ms. Blanchette
6 speak with the Office of Indigent Defense regarding the
7 funding request, and she has done so.

8 THE COURT: Good.

9 MS. HARRIGAN: And leave it at the discretion of the
10 court.

11 THE COURT: Okay. All right. Now, when is this
12 scheduled to go?

13 MS. HARRIGAN: We anticipated it would actually go
14 this term, and then this discovery motion was filed. The
15 next term of court is the week of January 20th. We are
16 hoping that it will go at that time.

17 THE COURT: How long has the PCR been pending?

18 APPLICANT: Seven, seven -- October 17th, maybe seven
19 years.

20 THE COURT: Okay. All right. I mean, I'm happy to
21 sign this if you want to bring it up here.

22 Y'all listen to me. Y'all, we need to get this PCR
23 heard, okay?

24 MS. HARRIGAN: Absolutely.

25 THE COURT: And I'm not saying that just for Mr.

1 Crocker. I am saying that for Mr. Crocker, but I'm also
2 saying that on behalf of the state and the witnesses and
3 everything else.

4 And, Mr. Crocker, I say that, and I don't mean to be
5 disingenuous about that. I mean, obviously Ms. Blanchette
6 is doing something, okay?

7 APPLICANT: I won't lie.

8 THE COURT: Okay, which is good and which is positive
9 for you.

10 APPLICANT: Yes, sir.

11 THE COURT: And I'm going to help her out by signing
12 this order for funds.

13 But, you know, if this is going to -- if y'all need to
14 -- for the scheduling of it, if it's going to be one of
15 those things that's going to be most of the day, you need
16 to know that when you put your docket together so you can
17 tell Judge Manning or whoever is in charge of the docket.

18 MS. HARRIGAN: Yes, sir.

19 THE COURT: You know, this is going to be a while.
20 It's going to be an all day kind of thing so he can put it
21 together. But I really would, for the state's interest and
22 for Mr. Crocker's interest, really like to get this done at
23 the next term of court.

24 MS. HARRIGAN: Yes, Your Honor, and Ms. Blanchette and
25 I have been working on that since I took over the Fifth

1 Circuit almost a year ago. We are actively pursuing trying
2 to put this case on our roster.

3 THE COURT: Okay.

4 MS. HARRIGAN: And move forward with his circuit case.

5 THE COURT: And I'm not going to keep you from -- or
6 her from doing the investigation that she needs to do, but,
7 you know, we need to get this done.

8 You want it done right, but you also, you know, you
9 want your hearing because regardless of what happens in the
10 hearing, more than likely you've got another year or two
11 years' worth of appeals, and that's if you get a timely
12 decision from whoever does your hearing on top of that.
13 So, you're still looking at, you know -- even if it goes in
14 January, let's say you get a decision from the circuit
15 court within six months, you're still looking at another
16 year or two years on top of that before the appellate court
17 reviews something.

18 So, I really, I'm happy to sign this and happy to do
19 this, but I really did want us to try to push to get it
20 done in January.

21 MS. BLANCHETTE: And, Your Honor, the reason why I
22 asked you to sign this today is I hope to have everything
23 to the ballistics expert by the end of this week.

24 THE COURT: Wonderful.

25 MS. BLANCHETTE: And they're going to do a rush to get

1 his report in two weeks so the state has the opportunity to
2 review that and respond if necessary because we need to get
3 a plane ticket scheduled, and we have to have the court
4 date to do that, and it obviously gets more expensive to
5 get a plane ticket, you know, closer to the court date.
6 So, I'd like to get all that taken care of in the next
7 couple of weeks.

8 THE COURT: That's great, and none of that is me
9 fussing. I just ---

10 MS. BLANCHETTE: Oh, I understand.

11 THE COURT: --- for the interest of everybody
12 involved, I think that's, you know, what we need to do.

13 Who wants to file this?

14 MS. BLANCHETTE: I can take care of it, and I'll get a
15 copy back to Ms. Harrigan.

16 MS. HARRIGAN: And the state would just request we get
17 a copy from the ballistics expert, a copy of his report in
18 ample time for the hearing.

19 THE COURT: You good?

20 MS. BLANCHETTE: Yes.

21 THE COURT: All right, you good?

22 APPLICANT: Yes. Thank you so much.

23 MS. BLANCHETTE: And, Your Honor, in the interest of
24 having this go forward as soon as possible, since Mr.
25 Skidmore came all the way from Rock Hill today, would it be

1 okay if we spent some more time in the jury room discussing
2 some matters so we don't have to reconvene at the prison?

3 THE COURT: What's the word, boss? You okay with
4 that? Okay. All right, that's fine with me. Just, Deputy
5 Brewer, just so you know what's going on, and SCDC and the
6 sheriff's department say it's okay, I'm fine with it, okay.

7 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 18TH DAY OF NOVEMBER, 2013.

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

S/Elizabeth B. Harris, CVR-M

COLUMBIA, SOUTH CAROLINA

FEBRUARY 1ST, 2015

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	FOR THE FIFTH JUDICIAL CIRCUIT
Phillip H. Crocker, III)	
Applicant,)	2006-CP-40-6124
v.)	
State of South Carolina,)	AMENDMENT TO APPLICATION
Respondent.)	FOR POST CONVICTION RELIEF

2014 JAN -9 PM 3:30
 JEANETTE W. BRYCE
 C.C.P. & C.G.
 FILED

This matter comes before this Court pursuant to an Application for Post Conviction Relief, which was filed on October 17, 2006. The State submitted a Return on or about May 14, 2007. Applicant, through his undersigned attorney, hereby moves to amend his Application by adding the following allegations of ineffective assistance of trial and appellate counsel:

1. Trial counsel rendered ineffective assistance of counsel when he failed to move to suppress the information obtained from the warrantless search of the victim's cell phone. S.C. Code 17-13-140; See State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987), United States v. Wurie, 728 F.Supp.3d 1 (1st Cir. 2013), United States v. Quintana, 594 F.Supp. 2d 1291 (M.D. Fla. 2008), United States v. Gibbs, 2013 U.S. App. Lexis 23412 (4th Cir. 2013)
2. Trial counsel rendered ineffective assistance when he failed to present a suppression motion or enter contemporaneous objections on the basis that the search warrants obtained for cell phone records (Sprint Number: 646-408-5502, Cingular Number 843-615-3711, Verizon Number: 718-299-6611) were the fruit of the poisonous tree of the warrantless search of the victim's cell phone and/or in violation of S.C. Code 17-13-140; therefore, the cell phone records, tower information and testimony should have been excluded. Transcript p. 615-618, 749-753, 833. S.C. Code 17-13-140; See State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987), Kimmelman v. Morrison, 477 U.S. 365, 106 S.Ct. 2574 (1986).
3. Trial counsel rendered ineffective assistance of counsel when he failed obtain / investigation all surveillance footage from Lowe's and failed to argue that the video surveillance obtained from Lowe's (Trial Exhibit #8) should have been suppressed due to chain of custody and other defects.

4. Trial counsel rendered ineffective assistance of counsel in matters involving Consuelo Casey, specifically but not limited to:
 - a. Counsel failed to argue that immunity was improperly granted to Consuelo Casey by a law enforcement officer in exchange for her testimony and ask for a specific jury instruction on immunity. Transcript p. 958, lns. 16-25. United States v. Brooks, 928 F.2d 1403 (4th Cir. 1991).
 - b. Counsel failed to properly cross-examine Consuelo Casey on her "immunity" and the prescription medications she was on at the time of her interviews with law enforcement. Transcript pp. 311, ln. 20-312, ln. 10, 288; See State v. Thrift, 312 S.C. 282, 440 S.E.2d 341(1993).
 - c. Counsel failed to fully explore the issue of Consuelo's involvement and guilt in the crimes committed.
 - d. Counsel failed to utilize Consuelo Casey's prior record.
5. Trial counsel rendered ineffective assistance when he failed to obtain multi-jurisdictional agreements prior to trial and argue that law enforcement conducted an extra-territorial investigation. S.C. Code § 23-1-215, See State v. Burgess, 393 S.C. 396, 712 S.E.2d 1 (S.C. Ct. App. 2011), State v. Boswell, 391 S.C. 592, 707 S.E.2d265 (2011).
6. Trial counsel rendered ineffective assistance when he failed to obtain multi-jurisdictional agreements prior to trial and argue that the execution of the search warrant and arrest of Applicant at his residence in Charlotte, North Carolina violated requirements set forth for extra-territorial jurisdiction and investigations, along with Applicant's 4th Amendment rights. Trial counsel also failed to argue for suppression of the evidence obtained during the search of Applicant's residence in North Carolina. Transcript pp. 562-70, 580-3, 734-5, 849-70, 963, 972, 1019-24; S.C. Code § 23-1-215; N.C. Code § 15A-247, 15A-251, 15A-252, 15A-254; See State v. Burgess, 393 S.C. 396, 712 S.E.2d 1 (S.C. Ct. App. 2011), State v. Boswell, 391 S.C. 592, 707 S.E.2d265 (2011), State v. Jones, 97 N.C.App. 189, 388 S.E.2d 213 (1990).
7. Trial counsel rendered ineffective assistance when he failed to utilize a ballistics expert as was requested in writing by Applicant. Trial counsel rendered ineffective assistance of counsel when he failed to object to her initial qualification as an expert, failed to object to improper direct-examination and properly cross-examine Dr. Vandersteenhoven since she was not qualified as a forensic pathologist. Transcript pp. 782-7.

8. Trial counsel rendered ineffective assistance when he failed to fully investigate Applicant's case and utilize necessary witnesses at trial.
9. Trial counsel rendered ineffective assistance of counsel when he failed to file notice of and argue an alibi defense. Alternatively, trial counsel failed to request a jury charge on alibi. Trial counsel also failed to properly utilize Applicant's testimony to establish his defense.
10. Trial counsel rendered ineffective assistance of counsel when he failed to prepare and argue a viable third party guilt defense. Transcript pp. 235, 1240-42. See Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727 (2006). Alternatively, ineffective assistance of counsel for failure to request a third party guilty instruction.
11. Trial counsel rendered ineffective assistance of counsel when he failed to utilize the cross-examination of Willie Jennings to show Jennings' true level culpability and expose his role in the matter. Trial counsel rendered ineffective assistance of counsel when he failed to move for a new trial based upon the plea entered by Willie Jennings post trial. Transcript pp. 672-3.
12. Trial counsel rendered ineffective assistance when he failed to request a curative instruction when the solicitor improperly cross-examined Applicant and/or committed improper pitting. See Issue #18(a) below.
13. Trial counsel rendered ineffective assistance of counsel when he failed to object to vouching during the solicitor's closing argument; alternatively, Applicant alleges prosecutorial misconduct. Transcript pp. 1391, ln. 24 – 1392, ln. 12. State v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001).
14. Trial counsel rendered ineffective assistance of counsel when he failed to object the solicitor's closing argument regarding the charge of murder. Transcript pp. 1383-1385. In her closing, the solicitor informed the jury that malice can express, implied and inferred. Applicant submits that this argument is not only confusing but an improper statement of the law that results in burden shifting and a presumption of malice. State v. Van Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996), State v. Wilds, 355 S.C. 269, 584 S.E.2d 138 (Ct. App. 2003), Sandstrom v. Montana, 442 U.S. 510, 524, 99 S. Ct. 2450, 61 L. Ed. 2d 39 (1979) (holding that "burden-shifting presumption[s]" or "conclusive presumption[s]" deprive a defendant of the "due process of law" and are therefore unconstitutional),. The solicitor also improperly argued the concept of "felony murder" and submitted to the jury that finding Applicant guilty of a felony / trafficking should amount to a automatic finding of guilty for murder. Transcript pp. 1385, 1439, 1441-2. See Gore v. Leek, 261

S.C. 308, 199 S.E.2d 755 (1973), State v. Norris, 285 S.C. 86, 328 S.E.2d 339 (1985), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). Alternatively, Applicant alleges prosecutorial misconduct on these grounds.

15. Trial counsel rendered ineffective assistance of counsel when he failed to request a proper instruction on murder during the charging conference and failed to object to the Court's instruction on murder since it was burden shifting and created an impermissible presumption of malice. Transcript p. 1344, 1346-38, 1452-1454; Sandstrom v. Montana, 442 U.S. 510, 524, 99 S. Ct. 2450, 61 L. Ed. 2d 39 (1979) (holding that "burden-shifting presumption[s]" or "conclusive presumption[s]" deprive a defendant of the "due process of law" and are therefore unconstitutional), State v. Van Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996), State v. Wilds, 355 S.C. 269, 584 S.E.2d 138 (Ct. App. 2003), Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Applicant submits that the trial court's charge was more than a slight deviation from the charge approved in State v. Elmore, 279 S.C. 417, 421, 308 S.E.2d 781, 784 (1983), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991).
16. Trial counsel rendered ineffective assistance of counsel when he failed to request a limiting or specific instruction on the trafficking charge consistent with the pre-trial and directed verdict argument.
17. Trial counsel rendered ineffective assistance of counsel when he failed to object to the trial court's instruction providing examples of express malice, which amounted to an unconstitutional comment on the facts. Transcript p. 1453, lns. 14-20; S.C. Const. Art. V, § 21, State v. Hartley, 307 S.C. 239, 414 S.E.2d 182 (Ct. App. 1992). The State's theory and argument immediately preceding the court's charge was that Applicant had set up / planned a drug deal days prior that culminated in the Lowe's parking lot and the victim's death. See Transcript pp. 1434, 1439, 1441. Additionally, the charge given by the court falls outside the standard / recommended charge for murder. See Ralph King Anderson, Jr., South Carolina Request to Charge – Criminal, 2012, § 2-1.
18. Appellate counsel rendered ineffective assistance of counsel by limiting the appellate review to only the drug conviction and sentence and by failing to raise all meritorious issues on appeal, as detailed below:
 - a. Improper pitting / improper cross-examination of Applicant: During Applicant's testimony, trial counsel continuously objected to pitting, and his objection was sustained and bench conference was held. Transcript pp. 1260-161. Thereafter, the State continued with the same line of questioning, counsel continued with his objections, and his objection was overruled. Transcript pp. 1261-3. At a later

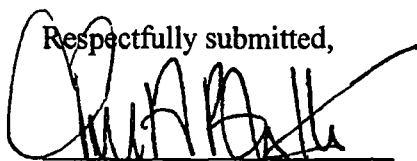
point, counsel also moved for a mistrial. Transcript p. 1336. Counsel's timely and proper objection to pitting and motion for mistrial were not raised on appeal. Applicant submits pursuant to State v. Brown, 297 S.C. 27, 374 S.E.2d 699 (1988), and State v. Sapps, 295 S.C. 484, 389 S.E.2d 145 (1988), he was prejudiced as a result of appellate counsel's failure to raise this preserved issue.

- b. Appellate counsel failed to raise the trial court's denial of trial counsel's request to suppress the testimony of Paula Jones. Transcript pp. 36-41.
- c. Appellate counsel failed to address the court's ruling regarding the admission of the cell site information and the qualification of the witness (Sgt. McDonald). Transcript pp. 875-892, 898-920.

19. Alternatively to the above stated issues, Applicant alleges ineffective assistance due to trial counsel's overall performance pursuant to United States v. Chronic, 466 U.S. 648, 104 S.Ct. 2039 (1984).

20. Pursuant to Rule 15(b), SCRCP, Applicant would respectfully move to amend to conform to any and all evidence and testimony presented at the evidentiary hearing.

Respectfully submitted,



Tricia A. Blanchette
Attorney for Applicant
PO Box 12725
Columbia, SC 29211

January 1, 2014
Columbia, SC

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Phillip H. Crocker, III, 298423,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2006-CP-40-6124

CERTIFICATE OF SERVICE

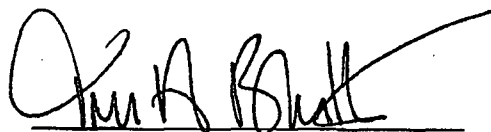
JEANETTE W. M. M. DE
C.C.P. & G.

2014 JAN -9 PM 3:30

FILED

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the mail this 9th day of January 2014, a copy of an Amendment to Application for Post Conviction Relief, to Megan Harrigan of the Attorney General's Office, at:

Office of the Attorney General
ATT: Megan Harrigan, Ast. AG
PO Box 11549
Columbia, SC 29211



Tricia A. Blanchette
Attorney for Applicant
PO Box 12725
Columbia, SC 29211
(803) 988-0008

January 9, 2014

1 STATE OF SOUTH CAROLINA) IN THE FIFTH JUDICIAL CIRCUIT
 2 COUNTY OF RICHLAND) COURT OF COMMON PLEAS
 3 PHILLIP H. CROCKER,) CASE NO. 2006-CP-40-06124
 4 III,)
 5 Plaintiff,) Transcript of Record
 6 vs.) (PCR Hearing)
 7 STATE OF SOUTH)
 8 CAROLINA,) Date:
 9 Defendant.) January 21-23, 2014

10 * * * * *

11 B E F O R E:

12 The Honorable James R. Barber, III

13 A P P E A R A N C E:

14 TRICIA A. BLANCHETTE, ESQUIRE
 15 Attorney for the Plaintiff

16 MEGAN E. HARRIGAN, ESQUIRE
 17 Assistant Attorney General

18 * * * * *

19 Denise J. Lauder, RPR
 20
 21 Ninth Judicial Circuit
 22
 23 Family Court
 24
 25

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1 (The following proceedings were held
2 January 21, 2014.)

3 (PLF. EXH. 1 - 50, were marked for
4 identification.)

5 THE COURT: All right. This is in the
6 matter of Phillip Crocker -- is it the third or the
7 fourth?

8 MS. HARRIGAN: The third, your Honor.

9 THE COURT: -- the Third, versus State
10 of South Carolina. We had a status conference in
11 my office last week, and I was trying to streamline
12 a little bit about what we're going to do here
13 today. One of the things I asked -- do you-all
14 need to take up anything before -- that I'd ask
15 each side to make a short, but concise opening
16 statement if they would not mind, but do you need
17 to take up some things before we get to that?

18 MS. HARRIGAN: No, Your Honor. I was
19 just going to put the background of the case on the
20 record, like I traditionally do, and then turn it
21 over to Ms. Blanchette for a more detailed
22 background summary, and if I need to add anything,
23 then I will when she completes.

24 THE COURT: All right. If you would --

25 MS. BLANCHETTE: Your Honor, the only

1 thing I would like to add is we do have the issue
2 of the three pro se amendments that we need to put
3 on the record. I don't know if you'd like to do
4 this after we do our introductions.

5 THE COURT: We can do it now.

6 MS. BLANCHETTE: Okay. Your Honor,
7 it's --

8 THE COURT: I was advised that
9 Mr. Crocker had filed an Amendment to the
10 Application seeking to add three additional
11 grounds, and I've informed the attorneys that we
12 don't have hybrid representation in South Carolina
13 and I would not allow those things to go forward in
14 this form.

15 I was told by Ms. Blanchette she
16 believes her application has or will cover all the
17 issues that were raised by Mr. Crocker, but I'll
18 let you proceed, Ms. Blanchette.

19 MS. BLANCHETTE: Thank you, Your Honor.
20 Just recently, and I believe it was November --
21 maybe you can correct me if I'm wrong, because she
22 did a letter -- I was notified via letter from Ms.
23 Harrigan that she received notice that my client
24 had filed an Amendment with the Richland County
25 Clerk of Court's Office.

1 Upon receiving that letter from her, I
2 actually went to the Richland County Clerk of
3 Court's Office and discovered that there were three
4 Amendments that had been filed. I believe, if I'm
5 reading the clocked stamp right, there were two on
6 February 26th of 2013, and then there is one that
7 was filed November 5th of 2013. The letter in
8 November was the first notice that I had that these
9 had been filed.

10 My client had forwarded them to me and
11 I thought they were working drafts that I was
12 supposed to be using in preparing this case. We
13 weren't on the same page that he had actually
14 submitted these two to Richland County Clerk of
15 Court's Office.

16 When I got Ms. Harrigan's letter, I
17 told her I was willing to adopt these and do
18 whatever was necessary to make these part of the
19 records since they had been filed and had not been
20 stricken after being filed. She informed me -- at
21 that time we were coming up for November term of
22 court -- that it would be best to bring it up in
23 front of the judge that was actually going to hear
24 the case, which would be, Your Honor. So that's
25 why we discussed it with you Friday in chambers.

1 At this time I would move to adopt
2 these. I would agree with your statement that the
3 20 issues that are in the Amendment that I filed
4 does address each of these issues presented in
5 these three Amendments, but what is different is
6 Mr. Crocker has gone into a detailed legal analysis
7 using case cites and transcript cites that I think
8 could be a resource for Your Honor in reviewing
9 those issues.

10 So I would move to adopt these and keep
11 these in the record as they had been filed, even if
12 not properly filed, in the Richland County Clerk of
13 Court's Office.

14 MS. HARRIGAN: Your Honor, if the State
15 could briefly respond. The State would object to
16 the Amendments coming into the record. There is no
17 hybrid representation in South Carolina. Ms.
18 Blanchette has been properly appointed to represent
19 Mr. Crocker. I believe that most of the issues
20 that are in these three Amendments dated -- two
21 dated February 25th that were filed with the Clerk
22 of Court and one in November are encompassed in her
23 filed Amended Application.

24 And our office did object when we
25 received the November Amendment putting Ms.

1 Blanchette on notice that we did not consider these
2 part of the record in this case and we would object
3 to that becoming apart of the record.

4 THE COURT: I'm going to -- I'm going
5 to deny the motion that they -- these Amendments be
6 adopted. You have indicated to the Court,
7 confirmed by the State, that everything that Mr.
8 Crocker has alleged in his, at least, grounds are
9 covered in your 20 grounds. So I will allow them
10 to be covered -- whatever they are, to be covered
11 in the presentation that you are making.

12 If you believe there is something that
13 relates to either case law or whatever it is that
14 might be helpful to the Court, then you'll have to
15 submit it and submit it under your name. And if
16 you think that's the case, I will give you the
17 opportunity to have some time to do that at the end
18 of this process.

19 MS. BLANCHETTE: Thank you, Your Honor.
20 And, very briefly, because I understand the Court
21 has made your ruling, I have explained to my client
22 that he's free to go into and make these
23 explanations to the Court during his testimony
24 today. Just because these won't be considered
25 properly filed does not mean that he can't provide

1 the explanations that he's provided in here.

2 Furthermore, he's just indicated to me
3 that he would appreciate the opportunity to address
4 the Court if you would give him a moment or two.
5 If not, if I could just consult with him for a
6 second so that I can see what he seems to think I
7 have failed to relay to the Court.

8 THE COURT: You're his lawyer, you will
9 address the Court; Ms. Harrigan is the State's
10 lawyer, she will address the Court and that's the
11 limit to that. Your client will have the
12 opportunity to testify and he can testify pursuant
13 to whatever direction you give him in your direct
14 examination.

15 MS. BLANCHETTE: Your Honor, then can I
16 beg the Court's indulgence one moment to make sure
17 that I've covered everything on the record for him?

18 THE COURT: Yes, ma'am.

19 MS. BLANCHETTE: Your Honor, and this
20 is an issue that I think I briefly touched on, the
21 State has not filed a formal motion. I don't think
22 that's going to affect this Court's opinion, and my
23 client would just like to present or would like for
24 me to present -- and I do agree, I've reviewed the
25 case law, that it could be construed as waiver if

1 they did not make a formal motion that these were
2 actually filed and they haven't been stricken, but
3 it would be my understanding today that Your
4 Honor's ruling today supercedes all of that.

5 THE COURT: That's correct.

6 MS. BLANCHETTE: Thank you.

7 THE COURT: You are his lawyer. You
8 will present whatever it is that's going to be
9 presented in this courtroom.

10 MS. BLANCHETTE: And I'm more than
11 happy to do so.

12 THE COURT: Nobody else.

13 All right. You want to make your
14 opening statement?

15 MS. BLANCHETTE: I believe the State
16 was going to go first and I would follow, Your
17 Honor.

18 MS. HARRIGAN: May it please the Court.
19 This is the matter of Phillip Crocker the Third
20 versus the State of South Carolina, docket number
21 2006-CP-40-6124. Mr. Crocker was indicted during
22 the January 2002 term of the Richland County Grand
23 Jury for murder and trafficking in marijuana,
24 greater than ten pounds, but less than 100 pounds.
25 He was represented by Douglas Strickler and

1 Elizabeth Fielding Pringle of the Richland County
2 Public Defender's Office.

3 On December 1 through 5, 2003, Your
4 Honor, Mr. Crocker proceeded to a jury trial before
5 the Honorable G. Thomas Cooper, Junior, where he
6 was convicted as indicted on both counts. Judge
7 Cooper sentenced Mr. Crocker to 30 years
8 imprisonment for murder and a consecutive five
9 years for the trafficking in marijuana offence.

10 A notice of appeal was filed and an
11 appeal was perfected on Mr. Crocker's behalf by
12 Appellate Counsel John Delgado. The South Carolina
13 Court of Appeals confirmed Mr. Crocker's
14 convictions and sentence in an opinion filed on
15 October 23, 2005; thereafter, the remittitur was
16 sent on November 16 of 2005.

17 On October 17, 2006, Mr. Crocker filed
18 a timely application for a postconviction relief.
19 The State made its return on May 4, 2007,
20 requesting an evidentiary hearing be held.
21 Thereafter, Mr. Crocker filed numerous discovery
22 requests and other similar motions which we have
23 had hearings and orders have been entered.

24 On January 9th of 2014, Mr. Crocker
25 through his appointed counsel, Patricia Blanchette,

1 filed an Amended Application alleging various
2 allegations of ineffective assistance of trial
3 counsel against Mr. Strickler and Ms. Pringle, as
4 well as ineffective assistance of appellate counsel
5 against John Delgado.

6 At this time, I will turn it over to
7 Mr. Crocker's counsel, Ms. Blanchette.

8 THE COURT: What's the date of the
9 incident?

10 MS. HARRIGAN: The incident took place
11 on November 21, 2001. He was indicted January 2002
12 for murder and trafficking in marijuana, and he
13 proceeded to trial before Judge Cooper December 1st
14 through the 5th of 2003.

15 THE COURT: Wait a minute. All right.

16 MS. BLANCHETTE: And, Your Honor, he
17 was sentenced on November 5th of that year, 2003.

18 THE COURT: And he was given 35 years.

19 MS. HARRIGAN: Yes, Your Honor; 30
20 years for murder and five consecutive years for
21 trafficking in marijuana.

22 THE COURT: All right. Ms. Blanchette.

23

24 MS. BLANCHETTE: Thank you, Your Honor.
25 I would like to thank you in advance for hearing

1 testimony and evidence on the 20 issues listed in
2 the Amendment. I can go through each of these if
3 you would like at the conclusion of every overview
4 of the facts, but it is my understanding that you
5 have a copy and I won't put that on the record
6 unless needed.

7 I would love to give you a brief oral
8 argument on each one of the issues and move through
9 them quickly, but, unfortunately, that is not one
10 of the requirements in a PCR. What we do have to
11 do is present testimony and evidence on each issue,
12 and we will do that and do what is required under
13 the current PCR code and case law and, hopefully,
14 Your Honor will see fit as a result to grant a new
15 trial.

16 To summarize the case and the 20
17 allegations in their simplest form, we have several
18 viable legal arguments and objections that the
19 defense counsel failed to make that would have
20 affected the outcome of the trial, and a number of
21 the issues would fall under that category.

22 Secondly, we have several issues that
23 involved failure to investigate, utilize evidence,
24 and call witnesses that could have established a
25 defense; and, specifically, we are going to focus

1 on the area of third-party guilt. We also hope to
2 show the true level of culpability of some of the
3 State's witnesses, specifically Willie Jennings and
4 Consuela Hastings.

5 Finally, we have several issues
6 involving ineffective assistance of appellate
7 counsel, because in this case only the drug
8 conviction was attacked on appeal.

9 I would like to provide the Court with
10 a brief overview of some of the facts that will
11 help put into context the testimony that will be
12 heard today. We have been provided tons of
13 discovery in this case, thousands of pages. The
14 transcript itself with the pretrial transcript is
15 about 1,700 pages, but what I've poured through are
16 portions of the Solicitor's file, the Public
17 Defender's file, the Clerk of Court's file, Horry
18 and Richland County Coroner's file, the SLED file,
19 and the Richland County Sheriff's file.

20 And I would just like to give the Court
21 some facts. I don't mean to spin these one way or
22 the other; they're just going to be facts that we
23 will be dealing with today.

24 The first thing that this Court should
25 know is that Consuela Hastings owned a beauty shop

1 in the Dillon area and an individual named Carla
2 Brown worked for Consuela. Consuela and her
3 husband, Nathaniel, who is the victim in this case,
4 wanted to buy some land to build a home.

5 Consuela had a conversation with an
6 individual named Willie Jennings about whether or
7 not the baby that Carla Brown had recently had was
8 his child. Somehow that conversation evolved into
9 a conversation about getting a large amount of
10 drugs to help them make some money to buy the land
11 to build that house.

12 As a result, Willie Jennings and the
13 suspect in this case supposedly came into the
14 beauty shop on the evening of 11/20/2001 and met
15 with the victim to begin setting up this drug deal.
16 That is the first time the victim was supposedly
17 introduced to the suspect.

18 The next morning Willie and Consuela
19 both admit that he comes by the shop, and then
20 phone calls are made between the suspect and
21 Nathaniel to set up the actual drug deal which
22 brings both parties to the Lowe's parking lot on
23 Two Notch in Columbia. And that is the first
24 involvement we see here in Richland County.

25 During this drug deal that supposedly

1 goes bad, which is the phrase used over and over at
2 trial, Consuela is in the vehicle, she's in the
3 passenger seat. Once her husband is shot, she
4 gives several versions of the events to law
5 enforcement and eye witnesses, including her
6 version that the suspect was just a stranger asking
7 for help. She eventually does give three written
8 statements.

9 The only other eye witness, James
10 Davis, was a painter who was just coming out of
11 Lowe's. He provided a personal Georgia tag to a
12 bank -- a bank security guard that came running
13 over. He also gave a description of the vehicle, a
14 suspect's description, but he was not able to
15 identify Mr. Crocker in or out of court. Only
16 after law enforcement began focusing on Willie
17 Jennings -- and he gave -- he gave several
18 statements which ultimately implicated Consuela --
19 did she give her final version of events that
20 implicated Willie. So they both finally confessed
21 they had been involved in setting this up.

22 Willie was the key suspect, and that is
23 based on my review of all of those files, along
24 with his buddy, Marty Morgan. Consuela's mother
25 actually provided information that his buddy,

1 Marty, had been in the Dillon area trying to
2 purchase a nine-millimeter the night of the murder.
3 She also provided information that people in the
4 community were saying that the composite matched
5 Marty.

6 Throughout the entire case, and this is
7 in the State's opening and close, cell phone
8 records are supposedly the key. The officers get
9 the victim's cell phone from the hospital and they
10 helped themselves to scroll through it. Now
11 there's a lot of records, but I just want to focus
12 in on some calls made to a Croc, C-R-O-C.

13 They find it in his phone, that he put
14 the person's name in or, like, the contact was
15 saved under the name Croc, C-R-O-C. And there are
16 phone calls made to that Croc immediately before
17 the murder.

18 They traced those records to an
19 individual named Jonathan Luck, and the officers,
20 it appears, used a lot of man-hours to look into
21 him and find information about him. And we will be
22 presenting an affidavit that he did have some
23 information on him.

24 Officers also obtained several cell
25 phone records as a result of that cell phone that

1 they obtained from the victim, but the actual phone
2 associated with that number that was listed as Croc
3 was never found. Also when they later did a search
4 of Mr. Crocker's home, they find phones and one of
5 these claims to be his. And he repeatedly asked
6 people to get those phone records, and those were
7 never obtained.

8 Now, the phone associated with the
9 number labeled as Croc, they did get those phone
10 records and they show calls made to Marvin Fleming
11 and Monica McClain. Those are two individuals here
12 in Richland County. When they spoke with those
13 individuals, they both confirmed that in the days
14 before the murder they received calls from Willie
15 Jennings on that phone, which is what led to Willie
16 Jennings becoming the prime suspect.

17 It wasn't a result of the fact that
18 Consuela originally gave his name, it was they
19 followed the trail of the phone records back to
20 Willie Jennings.

21 Eventually, a search warrant was
22 obtained and executed in North Carolina at
23 Mr. Crocker's residence and he was arrested, which
24 we'll discuss at length. From the scene of where
25 the murder occurred, the only evidence that they

1 truly had, that can connect to Mr. Crocker in any
2 way, is they had like a blue Rubbermaid container
3 and they found some fingerprints on that. And
4 those fingerprints actually matched his father.
5 They didn't match Mr. Crocker, they matched his
6 father.

7 In the files we obtained, there was
8 information about an interview that was conducted
9 with his father asking, why were your prints on
10 this container? Did you have any involvement? I
11 spent several discovery motions and several
12 discovery hearings trying to get a copy of the
13 statement that was taken at that interview of the
14 father. As of today, we do not have that. So that
15 is something the Court will hear us talking about
16 because his father is now deceased, so we don't
17 have the advantage of calling him as a witness.

18 The case ultimately went to trial
19 December 1, 2013, as the State said. It appears
20 that the Defendant's argument revolved around the
21 lack of evidence; no gun was ever recovered, the
22 cell phone was never recovered; and the good
23 character of Mr. Crocker. At the time, he was
24 running a nonprofit basketball organization for
25 youth, and it appeared that the primary focus was

1 to help the youth get scholarships and get into
2 college.

3 The State made it clear that they
4 believed that the Defendant's motive was money and
5 that the phone records were the key, as I've
6 already stated. The Court did give a manslaughter
7 charge in this case, but Mr. Crocker was found
8 guilty as charged.

9 Like I said, I can go over each of the
10 20 amendments or allegations, but I plan to do that
11 in Mr. Crocker's testimony. I just have a couple
12 of errors that I noticed in the filed amendment I
13 would like to put on the record, if the Court
14 doesn't mind.

15 THE COURT: Go ahead.

16 MS. BLANCHETTE: On issue number 1,
17 Your Honor, the cite from United States v. Wrie,
18 W-R-I-E, is incorrect. It should be 612 F.2D 104.
19 And I have copies of all these cases for the Court.
20 I just wanted to note that for the record. On
21 number 3, it should actually refer to trial
22 Exhibit 71 instead of trial Exhibit Number 8. On
23 issue 4B, I failed to reference South Carolina Code
24 8-13-705. And we have included a Rule 15, the
25 allegation to conform to the evidence presented.

1 I would just like to note on issue
2 number 10 dealing with third-party guilt, there is
3 some question of whether or not a motion was fully
4 argued on that. If testimony comes out from the
5 State's witnesses as to information I do not have,
6 that issue may evolve more into an ineffective
7 assistance of appellate counsel issue more so than
8 an ineffective assistance of trial counsel issue,
9 but I just don't have the information to make that
10 change at this time.

11 So I just wanted to make sure I brought
12 that to the Court's attention ahead of time.

13 THE COURT: All right.

14 MS. BLANCHETTE: Your Honor, that is
15 all I have prepared as an introduction. If the
16 Court has any questions, I will be happy to answer
17 those.

18 THE COURT: Do you have anything you
19 want to say?

20 MS. HARRIGAN: No, Your Honor. For the
21 most part, the State would agree with the
22 background facts as presented by Ms. Blanchette,
23 absent her characterization of the nature of true
24 evidence and labelling Willie as the prime suspect,
25 but the overall factual background she put on the

1 record is consistent with the records in the case.

2 THE COURT: All right. Ms. Blanchette,
3 if you would please, ma'am.

4 MS. BLANCHETTE: Yes; my first witness
5 is Wayne hill. And as we previously discussed, we
6 have to place a call to Mr. Hill because he is
7 currently in Illinois.

8 THE COURT: All right. We're going to
9 do this on a cell phone; is that correct?

10 MS. BLANCHETTE: That is my
11 understanding, Your Honor. I have my cell phone, I
12 do have it silenced, but I have it here next to me
13 to make the call.

14 How do you want to physically locate
15 this?

16 MS. BLANCHETTE: I'm open to whatever
17 is best for the court reporter.

18 THE COURT: I assume that you're going
19 to question him and so you need to have access to
20 the phone, and I need to hear him, so ...

21 MS. BLANCHETTE: Would you like me to
22 call and make sure that he's available while we get
23 set up?

24 THE COURT: Yes.

25 (Off-the-record conference.)

1 (Whereupon, the witness was contacted
2 via cellular phone.)

3 MS. BLANCHETTE: Hi, Wayne. We are
4 going to do some tests to see if everybody can hear
5 you. Okay?

6 THE WITNESS: Okay.

7 MS. BLANCHETTE: Do you want to --

8 THE COURT: Put it right up here.

9 MS. BLANCHETTE: Okay. Can you hear
10 me, Wayne?

11 THE WITNESS: Yes, ma'am, I can, and I
12 can pretty well hear the judge.

13 MS. HARRIGAN: Can you hear me as well,
14 Mr. Hill?

15 THE WITNESS: Yes.

16 THE COURT: Madame Court Reporter, can
17 you hear? Do you need to stand as well?

18 THE COURT REPORTER: I like to watch
19 their faces when they speak.

20 MS. BLANCHETTE: I can face you if you
21 like.

22 THE COURT: Well, you can turn around
23 because your voice has got to carry back here so --
24 do you have a chair for you to sit in?

25 MS. BLANCHETTE: I'm fine standing.

1 THE COURT: All right. Mr. Hill, this
2 is Judge Barber, and this is a little bit unusual.
3 So we just want to make sure that everybody can
4 hear you; both lawyers need to hear you and the
5 court reporter needs to hear you, Mr. Crocker wants
6 to hear you, and I need to hear you. If all of
7 these folks can hear us, we're pretty well covered.
8 I would ask you to speak up. I know it's maybe not
9 your normal tone of voice, but we will do the best
10 we can.

11 Ms. Blanchette, if you would.

12 MS. BLANCHETTE: Thank you, Your Honor.
13 Could you please state your name for
14 the record?

15 THE WITNESS: (No response)

16 MS. BLANCHETTE: Mr. Hill? He's gone.

17 THE COURT: Did you pay your bill?

18 MS. BLANCHETTE: Yeah. We need to
19 swear him in anyway.

20 THE COURT REPORTER: Is there a court
21 reporter with him?

22 MS. BLANCHETTE: No. We have to swear
23 him in.

24 (Off-the-record conference. Whereupon,
25 the witness was contacted via cellular phone.)

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 THE COURT: All right. Mr. Hill.

2 THE WITNESS: Morning again, Your
3 Honor.

4 THE COURT: I need you to raise your
5 right hand, if you would please, sir.

6 WAYNE HILL,
7 being first duly sworn, testified as follows:

8 THE WITNESS: You are breaking up very
9 badly. I'm getting one tenth of what you're
10 saying.

11 THE COURT: I'm trying to put you under
12 oath.

13 THE WITNESS: I do, Your Honor. My
14 right hand is raised.

15 THE COURT: All right. Thank you.

16 It may be that we're going to have to
17 go into my office, as much as I prefer not to.

18 DIRECT EXAMINATION

19 BY MS. BLANCHETTE:

20 Q. Could you please state your name for
21 the record?

22 A. Yes, ma'am. Wayne, W-A-Y-N-E, Hill,
23 H-I-L-L, Senior.

24 Q. And, Mr. Hill, you have previously
25 provided myself a copy of your resume or curriculum

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 vitae; is that correct?

2 A. Yes, ma'am, I have.

3 MS. BLANCHETTE: And, Your Honor, I
4 will go over some of the highlights, but I would
5 like to move this in as Applicant's Exhibit Number
6 1 to save us all some time.

7 MS. HARRIGAN: No objection from the
8 State.

9 THE COURT: So admitted.

10 (PLF. EXH. 1 in evidence.)

11 BY MS. BLANCHETTE:

12 Q. And, Mr. Hill, Judge Barber does have a
13 copy of your curriculum vitae, but if you could
14 just briefly go over your educational background
15 for me.

16 A. Yes, ma'am. I have an Associate of
17 Applied Science, Police Science that I received
18 from Rock Valley College in Rockford, Illinois.
19 That's a two-year degree in police science. I also
20 trained there as an emergency medical technician
21 under the DOT training program, after which I also
22 performed some ambulance technician driving as well
23 as a field training officer for two years. During
24 that time -- I also have education in firearms from
25 the North American School of Firearms, which is a

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 distance training course, which is the fancy term
2 now for a correspondence course.

3 I've had training in firearms from law
4 enforcement training, to United States Marine Corps
5 training in fully automatic weapons including the
6 50-caliber gunnery machine gun on an aircraft, to
7 the M16, M14 rifles, M79 grenade launcher. I have
8 fired on service with the federal government the M3
9 machine gun, submachine gun I should say, as well
10 as the M14, again, and the M16.

11 I have researched firearms on an
12 individual basis. I've been a licensed gunsmith
13 since 1989, as well as a three-year period as a
14 licensed gun manufacturer.

15 Q. And, Mr. Hill, could you just highlight
16 please your work experience?

17 A. I have roughly 14 years of law
18 enforcement ranging from dispatcher to chief in a
19 very small community. I have -- I've not
20 investigated any homicide as a police officer, but
21 since 1989, I have been recognized as a forensic
22 expert reconstructing homicides which is -- I use
23 the term homicide reconstruction which is actually
24 a subspecialty of crime scene reconstruction. I
25 prefer to restrict my practice -- yes. Did

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 somebody ask a question?

2 Q. No. I'm sorry, keep going.

3 A. Okay. I prefer to restrict my practice
4 to homicides as opposed to the typical civil
5 barroom brawl, bar-fight type of thing.

6 Q. Have you had the opportunity to author
7 any -- any works in this area?

8 A. Yes. I did two studies on the actual
9 effects of handgun ammunition, comparing some stock
10 ammunition, like hollow points and blank bullets
11 compared to the Glaser Safety Slug at the time,
12 based on actual autopsies -- the autopsies from
13 actual gunfights using the various ammunition also
14 performed some human tissue one and two.

15 I've also written a pamphlet
16 interviewing people that you suspect have been
17 abused for long periods of time; how do you
18 understand their mindset and how to work with them
19 to elicit information.

20 I have written a pamphlet on the
21 mammalian body alarm, the flight-or-fight response
22 for police officers so they understand it before
23 they get into a situation where they will have
24 those physical effects and not have it be a
25 distraction.

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 I wrote a 544-page textbook on homicide
2 events reconstruction using the various disciplines
3 involved and followed that up with a second edition
4 that was 624 pages, which has been purchased by the
5 University of Cebu and made to be a standard
6 reference text for their forensic science program.
7 The University of Cebu is in the Philippines.

8 The Illinois State Police Forensic
9 Science Library bought a copy. The Hawaiian -- the
10 Maui County Prosecutor's Office purchased a copy.
11 The -- the Interior Department of the Republic of
12 China, which would be Taiwan, also purchased a copy
13 for their library. Various other people purchased
14 it.

15 Q. And you indicated already that you are
16 a board certified forensic examiner. Do you hold
17 any other certifications or memberships?

18 A. I'm also a member of -- well, the Board
19 Certified Forensic Examiners through the American
20 Board of Forensic Examiners and the American
21 College -- a Fellow of the American College of
22 Forensic Examiners, like memberships. I'm also a
23 member of the International Association of Forensic
24 Scientists -- I probably need to look that title up
25 to get it perfectly correct.

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 THE WITNESS: If I may refer, Your
2 Honor --

3 THE COURT: Yes, sir. According to
4 your CV, it's the International Academy of Forensic
5 Examiners and Investigators.

6 THE WITNESS: That's the one. Thank
7 you. That's what I was going to check. Yes.

8 BY MS. BLANCHETTE:

9 Q. And, Mr. Hill, since you've been
10 working as a homicide reconstruction specialist,
11 about how many cases have you consulted on?

12 A. I have been consulted on 208 cases
13 domestically in the US, as well as five
14 internationally, two from Belgium, one from
15 Ireland, and one from Israel. And I have actually
16 reconstructed a shooting and been invited and
17 testified before the Philippines Senate regarding
18 the gunshot death of Ensign Philip Pestano, which
19 they subsequently declared to be a murder with a
20 Naval cover-up. And in 2012, Naval personnel were
21 arrested for murder.

22 Q. Of those 250 cases you consulted on,
23 how many times have you testified?

24 A. Okay. That was 213, 213 cases total.

25 Q. Oh, I'm sorry. Of those 213 cases, how

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 many times have you been called to testify?

2 A. I have been requested to testify -- I
3 have been qualified and testified in two federal
4 district courts; one, the Southern District of
5 Illinois and the other, the US District Court of
6 Minnesota. I have testified 41 times in 20 states
7 as well as the two federal district courts, so
8 that's 45. And then also the Philippines Senate
9 testimony.

10 Q. I think of most interest here, have you
11 been qualified as an expert and testified in the
12 State of South Carolina?

13 A. Yes, ma'am; eight times.

14 Q. Okay. And most recently that was in
15 2012; is that correct?

16 A. Yes, ma'am; twice.

17 Q. Okay. Could you please tell us about
18 those two cases in 2012, what kind of cases they
19 were and what county they were in?

20 A. One was Lexington County, and if I may
21 I would go back to my list again. That would be --
22 the first one would have been Bobby Wayne Stone,
23 that's B-O-B-B-Y, W-A-Y-N-E, S-T-O-N-E, a PCR
24 hearing in Sumter County; and the second one would
25 be Joseph Ard on a retrial after the overturning of

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 a death penalty sentence, Lexington County. The
2 Defendant would be J-O-S-E-P-H, P, initial, as in
3 Paul, A-R-D, and that was 2012 also.

4 Q. Have you had the opportunity to consult
5 with attorneys here in the state of South Carolina,
6 but not be called as a witness at the hearing?

7 A. Yes, ma'am, on several occasions.

8 Q. Were any of those recent?

9 A. Pardon me. The -- I don't remember the
10 exact dates, but they were pre 2011. I had one
11 gentleman who was accused of stabbing a person to
12 death, and after my reconstruction and conferring
13 with the medical examiner, Joel Sexton, we came to
14 an agreement, I forwarded my report, the prosecutor
15 dismissed the charges on the gentleman. That's --
16 both I and the medical examiner felt he had not
17 done the stabbing in his apartment.

18 I also had a case, a young gentleman
19 that was -- a store clerk that was shot with a
20 12-gauge shotgun. I did my reconstruction. I was
21 not called to testify because my opinion was --
22 well, based on my findings, he shot the clerk first
23 and then had to actually walk over, lean over,
24 deliberately put the shotgun against the man's head
25 before he fired. So they didn't ask me to testify

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 obviously.

2 I've also had a case where a black
3 gentleman was chasing his Caucasian girlfriend
4 around the trailer and shooting at her and finally
5 put one in the back of her head and killed her.
6 They found her daughter, I believe she was about
7 13, sitting on the couch in a semi-fetal position
8 with two bullets behind the ear.

9 And when I went down to SLED and looked
10 at the clothing and evidence in the case
11 personally, I found a blood spot in the middle of
12 the back of the blood stain on her blouse which was
13 perfectly dry -- well, when it hit the shirt it did
14 not diffuse out on the fabric; therefore, the shirt
15 was dry. That told me that was not the mother's
16 blood. It was probably the daughter's. The
17 daughter was no more than 18 inches away at the
18 time; therefore, she was probably kneeling down
19 next to mother before she got the two shots in the
20 back of the ear and was posed on the couch. Again,
21 obviously, they didn't call me to testify.

22 Q. You mentioned the name, Joel Sexton.
23 Have you had the opportunity to -- have you been
24 afforded the opportunity to view any autopsies
25 performed by Dr. Sexton?

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 A. Yes. In the first case, which was
2 Stacy Bernard Jackson, I reviewed his autopsy
3 report, met with him and the prosecutor and
4 conferred my observations with him. We exchanged
5 our opinions back and forth, called him later on
6 with some other stuff I had seen in the crime scene
7 photographs and discussed with him those items.
8 And at trial, I testified, when the prosecutor
9 tried to ask Dr. Sexton about the items I had
10 discussed with him, and offered that he would
11 probably want to see the crime scene photographs
12 himself, he refused to testify on that because he
13 had never received those photographs.

14 Q. Did you have the opportunity to observe
15 any autopsies performed by Dr. Sexton?

16 A. Yes. Subsequent to that period of
17 time, the next time I came down to testify in
18 Bamberg County, I spent the next day with Dr.
19 Sexton observing him perform autopsies and
20 discussing the various sights we saw or didn't see.

21 Q. You mentioned SLED. Have you had the
22 opportunity to go to the SLED laboratory and work
23 with anyone at SLED?

24 A. Oh, yes, numerous occasions. It got to
25 the point where if Lieutenant Parnell knew I was on

WAYNE HILL - VOIR DIRE EXAM BY MS. HARRIGAN

1 a case, knew that I would probably be coming down
2 to examine a firearm or firearms evidence, he would
3 hold off on doing any testing he needed to do until
4 I got there and we would do it together. Kind of
5 an instant full discovery type thing. We would
6 both see what we saw and the results.

7 I had one case where SLED lab was
8 closed to outsiders, and it's my understanding that
9 Lieutenant Parnell spoke in my favor, and I was
10 able to go down and see the evidence at the crime
11 lab. And we would go out to lunch afterwards. I
12 mean, it was fairly open, you know. We're two
13 scientists; there is no politics involved.

14 Q. Mr. Hill, I have done my best to
15 briefly go over the highlights in your curriculum
16 vitae and allowed you to speak on some of your
17 experience. I would ask that you answer any
18 questions that the State has for you.

19 A. Yes, ma'am.

20 VOIR DIRE EXAMINATION

21 BY MS. HARRIGAN:

22 Q. Mr. Hill, can you hear me okay?

23 A. Yes, ma'am.

24 Q. Okay. What would you say your primary
25 area of focus is, Mr. Hill? That your expertise is

WAYNE HILL - VOIR DIRE EXAM BY MS. HARRIGAN

1 most often sought?

2 A. The majority -- I'll put it this way.
3 The majority of my caseload has been firearm
4 status. I deal with weapons as well, bludgeons,
5 basically anything vile. If you have toxicological
6 death, don't call me; it's not my field, I won't
7 take it. Anything like that. I deal in violent
8 deaths.

9 It's the -- overall, I do work with
10 blood splatter, I work from the autopsy reports,
11 findings that -- the evidence collected from the
12 body.

13 In the Hawaiian case, I put the x-ray
14 up and showed how you could actually see the path
15 of the bullet through the gentleman's tissues
16 because of the blood accumulation that made it
17 lighter around the disrupted tissue hole, and then
18 determined the caliber of the bullet based upon a
19 comparative x-ray with a line of bullets laid out
20 and x-rayed at the same distance. Those were all
21 admitted into evidence and not refuted by State's
22 experts.

23 Q. Regarding your educational background,
24 it looks like according to your CV, the last time
25 you had any formal education was in 1980; is that

WAYNE HILL - VOIR DIRE EXAM BY MS. HARRIGAN

1 correct?

2 A. (No response)

3 THE COURT: Hello? Are you there?

4 THE WITNESS: I'm -- I'm going through
5 -- yeah. I would say, yes, ma'am.

6 BY MS. HARRIGAN:

7 Q. Okay. So since 1980, you haven't had
8 any formal education regarding firearms or homicide
9 reconstruction?

10 A. Sitting down in a classroom -- let's
11 see. 1988, whenever there were -- we had annual
12 training on crime scene evidence briefly with the
13 department I was with at the Rock Island Arsenal.
14 So '88 would have been the last time I sat down.

15 Q. And that would have --

16 A. 1988 would have been the last time I
17 sat down in a law enforcement training classroom.

18 Q. So beyond formal education, your law
19 enforcement training in a classroom for any sort of
20 formal training was in 1988?

21 A. '88 or 1990, yes.

22 Q. And beyond your two-year experience as
23 an EMT, do you have any medical background, any
24 formal training regarding medicine or medical
25 technique.

WAYNE HILL - VOIR DIRE EXAM BY MS. HARRIGAN

1 A. Not formal training, no, but during the
2 two years that I was working in the ambulance, when
3 we would roll into the emergency room with an
4 interesting injury, so to speak, somebody hit the
5 steering wheel, fractured six ribs, the radiologist
6 frequently would come out and show -- they would
7 show me where the fractures were and why they were
8 in the back and not the front, and you learn to
9 read the x-rays from the radiologist. So it's
10 informal training, but it's training all same.

11 The ER doctors would, you know, tell
12 you about this and come out and say, well, that
13 could have done this or that instead of coming
14 here. It's not formal training, but it's training.

15 Q. And that was during your two years as
16 an EMT; is that correct?

17 A. I missed the first part of that
18 sentence. If you said was that during my two-year
19 period, yes.

20 Q. And what period of time -- what period
21 of time were you an EMT?

22 A. 1975 to 1977.

23 Q. Do you have any formal education or
24 training regarding pathology?

25 A. No, ma'am.

WAYNE HILL - VOIR DIRE EXAM BY MS. HARRIGAN

1 Q. And since no pathology, no forensic
2 pathology either?

3 A. Let me back up just a moment there.
4 Strictly as a pathologist, no. As a breathalyzer
5 operator, I received training in the toxicological
6 effects of alcohol and other substances, that type
7 of thing, but not as a formal pathology degree, no.
8 Or a formal semester of pathology training, no.

9 Q. And you touched briefly on your past
10 employment. I think you said it was anywhere from
11 a dispatcher to a chief of a very small community.
12 Could you go over in a little more detail for the
13 Court your past employment history in law
14 enforcement and the dates?

15 A. Okay. Long time back. The chief of a
16 small town was Lindon, Illinois, a small town of
17 650; I worked there for ten months. And --

18 Q. And were you chief there?

19 A. -- that was 1977.

20 Q. And, Mr. Hill, is that the town where
21 you were the police chief?

22 A. Yes, ma'am.

23 Q. Okay.

24 A. As I said a very small community.
25 1978, I worked part-time for Porteyron Police

WAYNE HILL - VOIR DIRE EXAM BY MS. HARRIGAN

1 Department, Porteyron, Illinois, P-O-R-T-E-Y-R-O-N,
2 a temporary appointment while they were looking for
3 a new chief. They found a new chief and that was
4 my three months.

5 I also worked for Black Hawk College
6 Police Department for approximately nine months,
7 then went to work full time at McClaire Police
8 Department as a dispatcher and was there until
9 October 1979, when I took a job with the Rock
10 Island Arsenal Police Department, Department of --
11 Department of Defense slash Department of Army
12 Civil Service position.

13 I worked there until February of 1988
14 when I left law enforcement and started teaching
15 empty-handed defensive tactics to -- empty-handed
16 lethal tactics for arrests and defense situations
17 for police officers. I taught that around the
18 cities of Illinois.

19 I also started teaching homicide events
20 reconstruction to the Illinois police officers and
21 put on two seminars approved by the Illinois and
22 Iowa Supreme Courts for CLE credits for public
23 defenders, investigators, et cetera, and lawyers.

24 Q. Mr. Hill, if I can briefly interrupt
25 you, what were the dates of those CLE seminars?

WAYNE HILL - VOIR DIRE EXAM BY MS. HARRIGAN

1 A. (No response)

2 MS. BLANCHETTE: I'm worried about my
3 batteries, too. I didn't bring my charger. I
4 think we just got disconnected.

5 THE COURT: Are you going to object to
6 his being qualified in anything?

7 MS. HARRIGAN: Possibly, depending on
8 where he goes.

9 MS. BLANCHETTE: We just got
10 disconnected.

11 (Off-the-record conference. The
12 witness was contacted via mobile telephone.)

13 THE WITNESS: Hello.

14 MS. BLANCHETTE: Yes. Mr. Hill?

15 THE WITNESS: Yes.

16 MS. BLANCHETTE: Okay. Can you hear me
17 all right?

18 THE WITNESS: Yes. We're going to
19 resume. The State was asking you a question I
20 believe.

21 BY MS. HARRIGAN:

22 Q. Mr. Hill, when we were cut off, I was
23 asking you -- you were telling the Court about the
24 two seminars for CLEs on homicide reconstruction.
25 Can you give the Court the dates of those two CLEs?

WAYNE HILL - VOIR DIRE EXAM BY MS. HARRIGAN

1 A. Yes. I believe they were 1990 or 1991.

2 Q. Have you had any other teaching
3 experience since 1991.

4 A. Well, let me check the date on this.
5 In March of 1997, I was approved by the
6 Commonwealth of Massachusetts Department of
7 Education. We have approved this candidate to
8 teach in your private occupational schools as an
9 instructor of homicide events reconstruction, crime
10 scene investigation, and crime scene photography.

11 Nobody ever signed up for the class,
12 but I was approved to teach it for the -- the --
13 it's going to be one of those days.

14 Q. If we can jump back to your past
15 employment. Were you ever an investigator during
16 your, it looks like, 18 years in law enforcement?

17 A. Avon, Illinois, and that's A-V-O-N,
18 Police Department. I worked part-time there with
19 an investigator's title and photographed one crime
20 scene.

21 Q. Did you just say you photographed one
22 crime scene, Mr. Hill?

23 A. Yes.

24 Q. Have you ever investigated any
25 homicides?

WAYNE HILL - VOIR DIRE EXAM BY MS. HARRIGAN

1 A. As a police officer?

2 Q. Yes.

3 A. No.

4 Q. Have you ever been the lead
5 investigator on a crime involving a shooting?

6 A. No.

7 Q. Regarding your publications, it looks
8 like from your CV and the initial testimony you
9 gave, most of the publications were from the 1990s.
10 Would that be a correct characterization?

11 A. Yes.

12 Q. Have you published anything since 1997?

13 A. The 624-page textbook the courts of
14 Massachusetts approved, 1997.

15 Q. But since 1997, you've had no
16 publications in the past 16 years?

17 A. Probably, yes.

18 Q. I believe you testified that most of
19 your training was informal self-study. What books
20 or publications do you read regularly to stay up to
21 date in the field?

22 A. Vincent, J. M. -- let me get -- Vincent
23 J. M. DeMaio's book on practical aspects of gunshot
24 wounds. He's a medical examiner from Bexar County
25 Texas, and his first and second edition of the

WAYNE HILL - VOIR DIRE EXAM BY MS. HARRIGAN

1 gunshot wounds practical aspects books are both
2 considered standard reference material.

3 Q. And when was that -- when was that --

4 A. Go ahead.

5 Q. When were those books published? I
6 think you said you've read the first and second
7 edition. When was the second edition published?

8 A. The book itself, the copyright date is
9 1989, by C. R. C. Press.

10 Q. Regarding the professional
11 organizations that you're a member of let's start
12 with the American Board of Forensic Examiners.
13 What was the application process to be an admitted
14 member?

15 A. When I applied, I was required to
16 submit my formal reports -- any formal reports that
17 I had already created and submitted to courts and
18 submit a list of the courts that I had been
19 qualified by and given testimony in. I had to list
20 my publications, MENSA, also a list of references
21 from lawyers, and there was I believe a 50-question
22 ethics test.

23 Q. In what year were you admitted as a
24 member to this organization?

25 A. That would have been 19 -- 1994? That

1 doesn't make sense. Wait a minute. 1993.

2 November 1993.

3 Q. And is this a lifetime membership or do
4 you do something annually or every few years to
5 renew this membership?

6 A. When I became a member, the lifetime
7 membership was a lifetime membership. And as I
8 understand it now, they also have annual CLE type
9 requirements and stuff.

10 Q. And are you subject to those
11 requirements for CLEs?

12 A. No, I haven't.

13 Q. What was the last CLE or any other type
14 of continuing education you attended regarding
15 homicide reconstruction or forensic examination?

16 A. I believe it would have been the 1994
17 International Conference. And I attended some of
18 the presentations by the other members as well as
19 presenting myself. And my presentation was
20 attended by pathologists, investigators, and other
21 forensic experts.

22 Q. And you testified that you have been
23 qualified as an expert in court 45 times, correct?

24 A. Say that number again, please.

25 Q. 45.

WAYNE HILL - VOIR DIRE EXAM BY MS. HARRIGAN

1 A. Yes.

2 Q. What specific subfields were you
3 qualified as an expert in or have you been
4 qualified as an expert in?

5 A. Most of the time homicide events
6 reconstruction, other times it would be firearms
7 expert. In Idaho, I was also qualified to speak
8 about the fight or flight reflex and body alarm.

9 Q. Have you ever been offered, but not
10 admitted as an expert in court?

11 A. Yes, ma'am.

12 Q. I'm sorry, I didn't hear you, sir.

13 A. I answered affirmative, yes, ma'am.

14 Q. What courts were those?

15 A. Once in Milwaukee, Wisconsin. The
16 judge said I didn't have a four-year science
17 degree, so he wouldn't qualify me. Once in
18 Kentucky -- wait a minute, Tennessee. And I
19 believe the judge there, if I recall correctly,
20 said he wasn't sure -- he had never heard the title
21 before and he wasn't sure about it so he wasn't
22 going to qualify me.

23 And once in Illinois, which I was still
24 allowed to introduce into evidence a 45-caliber
25 bullet that I recovered from a scene over nine

WAYNE HILL - VOIR DIRE EXAM BY MS. HARRIGAN

1 months later and identified that through an
2 associate who did paint sample testing, that the
3 paint on the nose on the bullet identified it was
4 shot the night of the shooting and, therefore, it
5 was relevant to the shooting. And they said I was
6 allowed to testify to that.

7 Q. What years were --

8 A. That was Kankakee, Illinois.

9 Q. What years were you ruled unqualified
10 to testify as an expert?

11 A. First two I believe would have been
12 '90, '91; Kankakee, '92 or '93. No, wait. Let's
13 see. Yeah, I think '92.

14 Q. And regarding the self study informal
15 training that you testified prior is what you're
16 using to keep up to date, can you elaborate on what
17 that self study includes currently?

18 MS. BLANCHETTE: Your Honor, I believe
19 that's been asked and answered.

20 THE WITNESS: Yes. I would take
21 various types of -- maybe dirt, sheet metal, pig
22 skin, pig shoulder, glass, plastic, and shoot them
23 with commercial ammunition, with ammunition I
24 loaded up to higher levels or lower levels of
25 various ballistic armor, body armor. See how it

WAYNE HILL - VOIR DIRE EXAM BY MS. HARRIGAN

1 did that, looking at the effects, looking at the
2 powder -- the residues at various distances, the
3 different penetrations. I've shot truck tailgates
4 to determine what caliber went threw them.

5 Initially, when I first got my firearms
6 dealer's license and gunsmith in '79, I also had a
7 three-year period as a licensed ammunition
8 manufacturer, but -- don't picture a factory with
9 that. I custom loaded ammunitions for various
10 people, while I shot competitively as well.

11 I have tested the cutting force of the
12 gasses coming out of a cylinder gap of a 38 or a
13 357. I had a gentleman bring me rifles, a gunsmith
14 did -- he fired one round every year, and then
15 ripped the base off the case of the cartridge.

16 When I finally managed to extract the
17 rest of the case out, I realized the problem; the
18 rifling was down too far. When you fired, the neck
19 of the bullet got squeezed up into the rifling so
20 you had to cork screw -- you had to twist the
21 cartridge to bring it back out where the bullet
22 just ripped the base off. It was a factory defect
23 on a Remington. And then when I consulted with
24 Brownell, they said just call them up and tell them
25 we got another one to fix, don't ask. So, I mean,

WAYNE HILL - VOIR DIRE EXAM BY MS. HARRIGAN

1 it's just things like that throughout.

2 I've had one surgeon bring me his
3 antique pistol. And I sent him a two-page letter
4 back saying, I can probably get this to function,
5 but if I do, I will not be responsible for your
6 career because this gun is about ready to severe
7 its frame and take your finger off.

8 MS. HARRIGAN: I don't have any further
9 questions at this time.

10 MS. BLANCHETTE: I don't have any
11 further questions. I would like to move to have
12 him qualified as an expert in homicide -- as a
13 homicide reconstruction specialist I believe is the
14 proper title.

15 MS. HARRIGAN: And the State would
16 object at this time to him coming in as an expert
17 in homicide reconstruction specialist. He's had no
18 formal education since 1980. He testified that he
19 hasn't had any training since either 1993 or 1994.
20 He's not published any materials since 1997 in this
21 issue.

22 He has never acted as a homicide
23 investigator and, furthermore, he testified that
24 his only experience as an investigator for law
25 enforcement was taking photos of a non-homicide

WAYNE HILL - VOIR DIRE EXAM BY MS. HARRIGAN

1 scene in the 1980s. He testified that the most
2 recent publication in the area that he's read was
3 published in 1999, which is 15 years ago, and he
4 testified that his training now primarily is
5 shooting various types of weapons into various
6 materials and looking at the effects of this.

7 So the State would submit that he is
8 not qualified to be an expert in regards to
9 homicide reconstruction.

10 MS. BLANCHETTE: Would you like me to
11 respond?

12 THE COURT: Please.

13 MS. BLANCHETTE: Your Honor, I believe
14 what's most telling is he's testified that he's
15 recently been qualified in this state as -- or as
16 recently as 2012, one of those being in a capital
17 case. The State did provide me the transcript from
18 that capital PCR case, and I read through where he
19 was duly qualified.

20 THE COURT: Qualified as what?

21 MS. BLANCHETTE: A homicide
22 reconstruction specialist, exactly what I'm asking
23 this Court to do. He's been qualified in this
24 state eight times. He shared with the Court the
25 only times he's not been qualified and the reasons

1 for that, and none of those were recently. Also,
2 none of those were in the state of South Carolina.

3 The focus -- the things that the State
4 has asked you to focus on I do not believe are
5 requirements in the State. When we read our Rules
6 under 700 for the qualifications of an expert, it
7 does not say that you have to have a four-year
8 degree. We don't have any case law that she has
9 cited to to that effect, nor was that an issue in
10 the state in 2012.

11 I would say his qualifications haven't
12 changed from 2012, even though it's now
13 January 2014, and that he is duly qualified at this
14 time. If you would like me to address each of her
15 specific points, I would be happy to. I think his
16 curriculum --

17 THE COURT: I'm going to ahead and
18 qualify him as a homicide reconstruction
19 specialist. I think all of this would go to the
20 weight. It's a limited field, so make sure he's
21 only offering opinions in that limited area of his
22 expertise.

23 MS. BLANCHETTE: Yes, Your Honor. And
24 I assume the State will object if I go outside of
25 that.

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 THE COURT: Well, I might.

2 Go ahead.

3 CONTINUING DIRECT EXAMINATION

4 BY MS. BLANCHETTE:

5 Q. Mr. Hill, you were originally contacted
6 by myself in this case; is that correct?

7 A. Yes, ma'am, that's correct.

8 Q. And did you provide me a list of items
9 that you would like to review?

10 A. Yes, ma'am.

11 Q. Okay. And could you please tell the
12 Court what items you reviewed in this case?

13 A. I reviewed the police crime reports
14 with some of the statements -- with the statements
15 as to -- people were giving statements about what
16 happened or they think happened. I had read the
17 police -- or, excuse me, I read the autopsy report.
18 I reviewed the autopsy photographs, I reviewed the
19 same photographs -- I reviewed parts of the trial
20 transcripts.

21 Q. And, Mr. Hill, to make sure we're
22 completely clear for the record, I had access to
23 the complete -- or what was purported to be the
24 complete Richland County Sheriff's Department file,
25 the SLED file, and the coroner's file that I shared

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 with you. And you also required that I obtain
2 colored photographs of the coroner's file; is that
3 correct?

4 A. Yes.

5 MS. BLANCHETTE: Your Honor, at this
6 time I would like to move in Applicant's Number 2
7 through 5, which are just four documents which
8 represent the primary documents that he reviewed
9 and that he would be referring to today, instead of
10 introducing the hundreds of pages that he reviewed.
11 I have provided those to the State.

12 MS. HARRIGAN: The State has no
13 objection to Plaintiff's 2, no objection to 3 --

14 THE COURT: How many exhibits are
15 there?

16 MS. BLANCHETTE: In total I have
17 premarked 50 exhibits.

18 THE COURT: No. That you are moving
19 into evidence.

20 MS. BLANCHETTE: I have handed her
21 four.

22 MS. HARRIGAN: No objection to
23 Plaintiff's 4 and no objection to Plaintiff's 5,
24 Your Honor.

25 THE COURT: All right. So admitted.

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1 (PLF. EXH. 2 in evidence.)

2 (PLF. EXH. 3 in evidence.)

3 (PLF. EXH. 4 in evidence.)

4 (PLF. EXH. 5 in evidence.)

5 MS. BLANCHETTE: Your Honor, would you
6 like a copy of those to review?

7 THE COURT: Okay.

8 BY MS. BLANCHETTE:

9 Q. Mr. Hill, I will do my best to describe
10 these to you. I just introduced Plaintiff's
11 Exhibit Number 2, which is a picture of the crime
12 scene, and it shows the black of the Chevrolet
13 vehicle, and there are two pictures on that page.
14 You were familiar with that; is that correct?

15 A. Yes, ma'am.

16 Q. Okay. The second page includes two
17 pictures of a victim and it has a probe, or you can
18 correct me on the proper technical term, going
19 through his brain. Are you familiar with those
20 pictures?

21 A. Yes, ma'am.

22 Q. Applicant's Number 3 is a SLED report
23 regarding the GSR kit for the victim. Are you
24 familiar with that document?

25 A. Yes, ma'am, I am.

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 Q. Applicant's Number 4 is the autopsy
2 report. Are you familiar with that document?

3 A. Yes, ma'am, I am.

4 Q. And Applicant's Number 5 is entitled, a
5 Death Scene Investigation Review Points, and
6 attached to it is a diagram. Are you familiar with
7 that document?

8 A. Yes, I am.

9 Q. And are those all documents that you
10 reviewed in your work on this case?

11 A. Yes, ma'am, they are.

12 Q. Okay. Now, Mr. Hill, if you could just
13 take me through the observations that you made as
14 you were reviewing this case, any observations that
15 you shared with me.

16 A. Okay. When you reconstruct a physical
17 event, the more evidence you have, the more finite
18 you make your opinion. Because when you look at
19 evidence, blood splatter is created by a certain
20 force; the type of blood splatter, certain type of
21 force, a certain direction, et cetera. So the more
22 information you have, the more specific you can be.

23 In this case you've got a shooting in a
24 Lowe's parking lot, only one video feed is taken by
25 the sheriff's department. Had I been retained by

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 original defense counsel, I would have asked him to
2 get all of the video feed so that I could see all
3 of them, and I could determine if there was nothing
4 in those others that we needed, or that defense
5 counsel needed, et cetera, that showed the shooting
6 itself or how the gentleman's cell got into, you
7 know, the view or whatever.

8 So that was absent, and I would have
9 advised counsel, please try to get these for me.

10 Q. And you, in fact, asked me if there was
11 any additional evidence that I could provide to
12 you; is that correct?

13 A. That's correct. And --

14 Q. And specifically --

15 A. -- when you said no --

16 Q. Go ahead.

17 A. Go ahead.

18 Q. Specifically, you asked me if there was
19 -- I'm sorry. Mr. Hill, I will go ahead with my
20 question. Specifically, you asked me if there was
21 additional evidence regarding the projection of the
22 bullet, blood splatter, or any other photographs,
23 or diagrams, or videos of the scene; is that
24 correct?

25 A. Yes. If there were any reports of

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 blood splatter observations, photographs analysis,
2 the clothing analysis, et cetera. Yes, I asked for
3 those things.

4 Q. Okay. And if you would have been
5 consulted by his original defense team, you would
6 have asked them to further look into those matters;
7 is that correct?

8 A. Exactly. These are the standard things
9 I ask for in every case.

10 Q. Okay. And you can continue with your
11 observations that you were able to make with what
12 you were provided.

13 A. Okay. They didn't appear to find any
14 blood splatter pattern. On a black top, it's
15 understandable, but if they might have, it would
16 have told us something. He bled heavily; that may
17 or may not have covered splatter patterns from the
18 initial gunshot, but I would have actually expected
19 some splatter patterns from the jaw wound from
20 blowback. That might have been obliterated by the
21 subsequent bleeding, but it may not have. That
22 would have told us something. I did look for and
23 found the GSR test kit, which was found to be
24 negative by the SLED lab, and I have no question
25 about their quality of work, obviously.

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 No vehicles were found to have been
2 penetrated by the exiting projectile. That tells
3 us something else too that we'll get to later in
4 the diagrams. The autopsy didn't show any
5 stippling from the unburned powder particle of an
6 intermediate-range wound. There also didn't appear
7 to be any soot from a close-range wound.

8 I was looking at the autopsy to find
9 the addressing by the autopsy person: Doctor, did
10 you find any trace of gunpowder, gunpowder
11 particles, soot, et cetera, within the wound tract
12 inside that tunnel through the head. That
13 indicates a near contact-to-contact wound. You can
14 also get shielding. The guy had -- the deceased
15 had no GSR on his hands, which indicates his hand
16 weren't up in the area of the gunshot at the time
17 it was fired.

18 I didn't see any -- the medical
19 examiner did not specifically discuss the absence
20 or presence of those particles in the wound track
21 which I'm used to seeing from forensic pathologists
22 because, again, that's critical information. And,
23 you know, the autopsy is written so that you
24 understand -- that the subsequent reader and
25 reviewer understand they looked for this, it wasn't

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 there or it was.

2 You don't have to go, did they forget
3 to note this or they didn't look for it? They
4 specifically say, no such things observed, no
5 gunpowder observed in wound tract or on the
6 microslides, et cetera, and I didn't see that.

7 So this all tended to indicate a
8 distant wound. And a distance wound -- if you know
9 the weapon that fired and the ammunition used, you
10 would go and test fire into test mediums, like a
11 20-pound bond paper, et cetera to see --

12 THE COURT REPORTER: Twenty-pound what?

13 MS. BLANCHETTE: Mr. Hill --

14 THE WITNESS: -- where you get the --

15 THE COURT: Mr. Hill?

16 THE WITNESS: Yes.

17 BY MS. BLANCHETTE:

18 Q. Could you begin again where you said 20
19 pounds? The Court Reporter lost you there. When
20 you said you would test fire into something 20
21 pounds, if you could repeat from there?

22 A. Yes, ma'am. I can get to speaking
23 quickly sometimes; please interrupt me if I do, and
24 I will slow down.

25 When you do a distance test fire, you

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 use the same -- you prefer to use the same weapon
2 and any remaining ammunition, or a very close
3 exemplar that you have in stock, and you fire at
4 measured distances into such things as 20-pound
5 bond paper, 20-pound artist paper, sketch paper
6 type thing, pig skin, an acceptable stimulant, even
7 ballistic gel.

8 And then you look at the patterns you
9 create with each shot at a known distance. You
10 compare that to the autopsy photograph and you see
11 which stippling, density, and spread matches what
12 you have over in the photograph. When you get to
13 the point where you have no stippling, no soot,
14 that then becomes a distant wound and you know -- a
15 proper expert will never sit there and tell you,
16 oh, that gun was fired from exactly 18 inches away.
17 It's always a range, because you never -- you'll
18 usually never quite match that pattern. So you've
19 got, it was fired from not less than a distance nor
20 or depth of any distance.

21 On average, however, medical examiners
22 and folks like us, where you will have more data
23 will say, okay, distant wound on average generally
24 starts at about 18 inches. So since this wound
25 doesn't show any of the nearer distances, the

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 sudden stippling, et cetera, the gun can be no more
2 than within 18 inches, which it has to be at least
3 18 inches or farther away.

4 Now, when you get into -- pardon me.

5 MS. BLANCHETTE: We lost him. Give it
6 a second.

7 (The witness was contacted via cellular
8 phone.)

9 MS. BLANCHETTE: Mr. Hill.

10 THE WITNESS: Where did we leave off?

11 BY MS. BLANCHETTE:

12 Q. You were explaining the 18 inches.

13 A. You have the gun, you test fire, and
14 you get the rate of -- a good forensic examiner
15 will give you -- you'll never have a specific,
16 like, oh, this gun was fired from exactly 24
17 inches. It's always a range because you never
18 quite match that category when you test fire. So
19 it would be, like, the weapon was fired from not
20 closer than a distance to not less than per -- not
21 more than a distance.

22 In this particular case, we do not have
23 the firearm and we actually don't have solidly what
24 type of ammunition was fired, what caliber. We
25 have a 9-millimeter casing at the scene, but we

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1 have -- we can't tie this -- that casing to this
2 actual gunshot. So you start with -- we assume the
3 two people are in an upright facing-each-other
4 position. That's the beginning assumption.

5 You follow that rod that the medical
6 examiner placed through the head that gives you the
7 approach of that bullet, its trajectory. You go
8 out at least 18 inches and you put the nuzzle at
9 the end of that line. That's where you start from.

10 Q. And, Mr. Hill, if I may interrupt you.
11 You've prepared a diagram that corresponds with
12 what you're testifying to; is that correct?

13 A. Yes, ma'am.

14 MS. BLANCHETTE: Your Honor --

15 THE WITNESS: It helps visualize this,
16 yes.

17 MS. BLANCHETTE: Your Honor, at this
18 time I would move in Applicant's Number 6.

19 MS. HARRIGAN: No objection from the
20 State.

21 THE COURT: So admitted.

22 (PLF. EXH. 6 in evidence.)

23 THE WITNESS: I would clarify for the
24 Court, this diagram is only for illustrative
25 purposes to help the reviewer to visualize the

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 dynamics I'm talking about now in the body
2 movements.

3 BY MS. BLANCHETTE:

4 Q. Okay. If you could take us through the
5 diagram then, along with your findings.

6 A. Okay. Counsel gave me the defendant as
7 being six foot, eight, or 80 inches, and the
8 deceased as five foot, seven inches. So that's
9 your first two people on the left-hand side of the
10 diagram. She then also asked me to consider a
11 subject six feet tall, or 72 inches, and one five
12 foot, 11 inches tall. So that's your next two
13 people standing there, the difference in heights.

14 Now, you know, the first two figures,
15 you see where the bullet -- we've got the bullet
16 projected through the head like it was in the
17 autopsy, that extended the line down approximately
18 18 inches in scale, and we put the gun there.

19 Now we can look at the other person and
20 see how that arm would have to either extend or
21 flex and the wrist bend to grasp the gun where it
22 sits right there. A six foot, eight person it
23 would appear would have a difficult time achieving
24 that position for that orientation of the two
25 people. If the attorney general's -- we agreed, I

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 amended --

2 Q. Wayne, I believe she may ask you about
3 that on cross and enter those diagrams. If you
4 could just focus on this one right now.

5 A. Okay.

6 Q. Thank you.

7 A. So working from this diagram, you see
8 where this position would be basically just
9 physically impossible for him to have shot him in
10 that orientation. Now, because the human body is
11 moveable, we can change their poses so that the
12 deceased leans his head back or leans his shoulder
13 and torso back to the point where he starts to
14 fall. The only thing that doesn't change is that
15 gun and the trajectory in relation to the head.
16 When you tilt the head, that's going to move like
17 the bar through his head in the autopsy with the
18 gun staying at the end.

19 If you tilt his head back and lean him
20 back further, it becomes a little easier for the
21 six-footer to grasp the pistol where it has to be
22 held at. I pictured basically the deceased has got
23 to be going -- basically, falling. He's almost at
24 a 45-degree angle, or more, toward the ground, as
25 at that point the six-footer can be holding the gun

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 and that be a straight line through his head,
2 through the deceased's head.

3 Q. And the only --

4 A. It's much easier for short in stature
5 people to do it.

6 Q. The only testimony that we have in the
7 transcript that I referenced you to was that
8 Consuela saw the suspect standing; is that correct?

9 A. That's correct. There were no -- no
10 witnesses that I read that actually witnessed the
11 instant of the shot or him collapsing from the
12 shot. It was just -- they heard the bang, they
13 looked and the A subject was standing there and the
14 other one was on the ground.

15 Q. And, Wayne, is it true that by looking
16 at the actual victim's body and the position of the
17 bodies you would have been able to make further
18 findings, but we don't have any pictures of the
19 victim's exact location?

20 A. Yes. When a person takes a head wound
21 like this, they will collapse like a puppet with
22 the strings cut; therefore, whatever way the body
23 is laying -- if they're standing straight up, the
24 knees will buckle, the hips will buckle and they'll
25 crumble down and fall wherever they fall.

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 If they're vertical like this and
2 they're leaning in any direction and they have 51
3 percent of their body weight off the center line of
4 gravity from their body, that's the direction the
5 body will fall. If you're leaning back when this
6 happens, you fall backwards. If you were leaning
7 forwards, you fall forwards. If you lean left or
8 right, you fall left or right.

9 So if he's face down on the ground, we
10 know he was leaning forward. If he's face up with
11 his back on the ground, he was pretty much leaning
12 back, straight backwards. If he's crumbled over on
13 his side, he was leaning to whichever side he fell
14 down toward; however, we have witness statements
15 and the deceased wife as well, saying she handled
16 the body; she tried to stop the bleeding, she was
17 holding him.

18 So we have a body that's -- without any
19 ill attempt was moved, but it's moved. So,
20 therefore, the hard and fast of the evidence is now
21 a little more flexible. As he was diagrammed, he
22 was on his back and turned about a 45-degree angle
23 to the center line of the vehicle behind it and
24 cross ways in that parking space. So I would
25 picture he was standing up facing about 45 degrees

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 -- in the box of the parking spot about 45 degrees
2 to the center line around.

3 Q. I believe you've already touched on
4 this, but you weren't able to find any of the
5 typical evidence you would look for for somebody
6 being in a defensive posture; is that correct?

7 A. That's correct. He had no GSR or
8 stippling, any gunshot evidence on his hand. If he
9 grabbed the weapon, assuming it's a pistol, when it
10 fired, the slide will cycle and that front side is
11 going to cut the palm generally, abrade it,
12 lacerate it. You'll have an indication that it
13 cycled through his hand, and it's not there.
14 There's no evidence of contact with the gun.

15 Q. So based upon the evidence that was
16 available, you were able to determine that he --
17 the angle was not caused by a defensive position
18 just based upon what you have; is that correct?

19 A. That's correct.

20 Q. Okay. Is there anything else regarding
21 the diagram that you would like to explain before I
22 move on?

23 A. I believe we've already touched on the
24 other two varying heights of people. When you look
25 at the diagram, the big thing you look at is you

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 look at where the elbow is on each of the potential
2 shooters, because the forearm obviously -- that's
3 its pivot point. If you brought it up straight and
4 level where it made an L shape, the forearm can't
5 get lower or higher than that attachment to the
6 elbow.

7 Plus, you've got to have the flexion of
8 the wrist, which you have -- those two choices are
9 all you have to work with to get hold of that gun
10 as you see him standing there.

11 Q. Did you say you would address it later
12 on? Because you can address it at this point.

13 A. Yeah. I started to go to the other
14 diagram and you said that she would --

15 Q. That's perfectly fine. I'm sorry, let
16 me ask you another question. Is it fair to say
17 that you were limited in your findings based upon
18 the evidence I was able to provide you with?

19 A. Yes, ma'am. As I said, the more data
20 -- from a science point of view, the more data you
21 have, the more concise you can bring your opinion
22 to. If we had back splatter, blowback, or castoff
23 splatter on the vehicle's tailgate, that would tell
24 us something because blood splatter only goes out
25 so far. The pattern would tell you -- you bring it

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 back to the point of origin which we would have --
2 again we'd have that.

3 If the bullet had hit a vehicle behind
4 him, we know that exit wound is going to be
5 connected to where -- the next impact point in the
6 environment; then you have his orientation in
7 relation to that stuff; blood splatter on the
8 clothing, again, that helps tell the angulation of
9 his body, et cetera; GSR on the clothing, et
10 cetera. The more data you have, the more concise
11 you can have it. This case has a lot of no
12 evidence.

13 Q. If you had been contacted by the
14 defense team prior to trial, would you have been
15 willing to consult with them on this case?

16 A. Definitely.

17 Q. And would you have pointed those things
18 out that you just mentioned, the omission of
19 evidence or the need for more evidence to defense
20 counsel at that time?

21 A. Yes, sir.

22 Q. Did you also have concerns when you
23 reviewed the autopsy report and were you limited by
24 the information in the autopsy report?

25 A. Somewhat, yes.

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 Q. Could you please explain?

2 A. I mentioned to you that I had suspected
3 that -- based on the terminology and the read of
4 the autopsy report, that that had probably not been
5 a forensic pathologist conducting it, but a
6 hospital pathologist. And I subsequently found out
7 that was true.

8 Q. And were there specific points you
9 would have brought to defense counsel's attention
10 that were specific issues contained in that autopsy
11 report that limited your work in this case?

12 A. Yes, ma'am. I would have pointed out
13 to them that it sounded like it's a hospital
14 pathologist, clinical pathologist, and not a
15 forensic pathologist. You should check the
16 qualifications that she has to be doing a forensic
17 autopsy, and I would let them go with it from
18 there. That's one of the things I would have
19 looked at because, again, of the stuff that wasn't
20 addressed that -- I'm used to seeing, okay, this
21 was not here, that wasn't here, wasn't there. She
22 made no comments to any of the absence of materials
23 and the wound tract, and just -- the overall read
24 is not what I'm used to after 20 some years of
25 doing this.

WAYNE HILL - DIRECT EXAM BY MS. BLANCHETTE

1 Q. And, Mr. Hill, I think this would be my
2 final question. Just going back to the diagram, in
3 your expert opinion, based upon the positions of
4 the first two individuals, the six-foot, eight
5 individual and the five-foot, seven individual, the
6 path -- the trajectory that you've made with the
7 red marking, the location of the gun, is it
8 possible in this position for the six-foot, eight
9 person to have fired that shot, standing in that
10 current position?

11 A. In the -- in the orientation that they
12 are displayed in, in the master diagram, no.

13 Q. And --

14 A. You can't get his wrist flexed and his
15 forearm down low enough to have done that, from
16 that -- those two positions depicted right there.
17 There would have to be adjustments.

18 Q. If you would have been consulted by
19 defense counsel, would you have been willing to
20 testify, if properly qualified, to that at the
21 trial in 2003?

22 A. Yes, ma'am. My -- my entire career, if
23 I put in a formal report, I'll testify to it
24 anywhere, anytime, to anybody that's backed up by
25 science.

WAYNE HILL - CROSS EXAM BY MS. HARRIGAN

1 MS. BLANCHETTE: Your Honor, I have no
2 further questions of the witness.

3 THE COURT: Do you-all need to take a
4 break? Are you going to be a while?

5 MS. HARRIGAN: I'm fine. I shouldn't
6 be that long, Your Honor.

7 THE COURT: All right. Ms. Harrigan.

8 CROSS-EXAMINATION

9 BY MS. HARRIGAN:

10 Q. Mr. Hill, I'm going to try to speak up,
11 but if you can't hear me, let me know. Okay?

12 A. Okay.

13 Q. Mr. Hill, did you visit the crime scene
14 in this case?

15 A. No, ma'am. I was retained long after
16 it was closed up.

17 Q. But you didn't visit it to look and see
18 the layout of the parking lot or the conditions of
19 the pavement or anything like that?

20 A. No, ma'am.

21 Q. And did you speak to anyone related to
22 the underlying case?

23 A. Would you be referring specifically to
24 like the medical examiner or SLED or --

25 Q. Or the attorneys involved. Anyone

WAYNE HILL - CROSS EXAM BY MS. HARRIGAN

1 beyond Ms. Blanchette in the PCR.

2 A. No. Other than the conversation that
3 you and she and I had earlier, no.

4 Q. And you've referred to some additional
5 diagrams that you made during your direct
6 testimony. How many initial diagrams did you
7 prepare after speaking with Ms. Blanchette and
8 myself last Thursday?

9 A. When we spoke Thursday, I had done the
10 one that's been introduced into evidence. That was
11 it. As we talked and -- I got the impression it
12 would be easier if I went and drew some other
13 potential positions to take it out to where the
14 shot might have been fired from.

15 So I did three more amending the master
16 diagram there so that the deceased body was tilted
17 more and the gentleman's wrist gripped the gun in a
18 proper orientation. And I forwarded those on to
19 counsel.

20 Q. And, Mr. Hill, for everyone's clarity,
21 including yours since you can't visually see the
22 diagrams, could you -- I plan to get that marked as
23 evidence. I want to make sure that we're all
24 speaking of the same diagram.

25 A. Yes.

WAYNE HILL - CROSS EXAM BY MS. HARRIGAN

1 Q. If you could first look at your diagram
2 that only has two different suspects. It has a
3 six-foot, eight-inch suspect and a five-foot,
4 11-inch suspect and he's bent -- the victim in this
5 case is bending almost at a 45-degree angle. If we
6 could refer to that one first.

7 A. Okay. You say the victim is leaning
8 back at a 45.

9 Q. Yes. Yes, Mr. Hill.

10 A. Okay.

11 Q. And there is --

12 A. For clarity, the first additional
13 diagram I did, just his head is tilted back. Then
14 we get to the torso tilt and you're talking about
15 the torso tilt?

16 Q. Yes. So the first diagram you provided
17 was just the head tilt.

18 MS. HARRIGAN: At this time I would
19 like to get this marked as Defendant's or
20 Respondent's Number 1.

21 MS. BLANCHETTE: No objection, just as
22 long as she has a copy for me because I wasn't able
23 to print out a copy.

24 (DFT. EXH. 1, Diagram, was marked for
25 identification.)

WAYNE HILL - CROSS EXAM BY MS. HARRIGAN

1 (DFT. EXH. 2, Diagram, was marked for
2 identification.)

3 MS. HARRIGAN: There goes Mr. Hill.

4 (Off-the-record conference.)

5 THE COURT: Let's get this guy on the
6 phone.

7 MS. BLANCHETTE: Trying.

8 (The witness was contacted via mobile
9 phone.)

10 MS. BLANCHETTE: Mr. Hill, we lost you.
11 So Ms. Harrigan will resume her questioning.

12 THE WITNESS: Okay.

13 BY MS. HARRIGAN:

14 Q. Sorry about that, Mr. Hill. We're all
15 referring to what's been marked as Defendant's
16 Exhibit Number 1, which includes the three possible
17 suspects with the head tilt. Do you have that in
18 front of you?

19 A. Yes.

20 Q. And did you prepare that in
21 anticipation of this hearing today?

22 A. Say that again.

23 Q. Did you prepare this at Ms.
24 Blanchette's and I's request in anticipation of
25 this hearing?

WAYNE HILL - CROSS EXAM BY MS. HARRIGAN

1 A. Yes.

2 MS. HARRIGAN: At this time I would
3 move Defendant's Exhibit Number 1 into evidence.

4 MS. BLANCHETTE: No objection, Your
5 Honor.

6 THE COURT: So admitted.

7 (DFT. EXH. 1 in evidence.)

8 BY MS. HARRIGAN:

9 Q. Mr. Hill, can you explain the head tilt
10 going on in this diagram regarding the six-foot,
11 eight-inch suspect?

12 A. Okay. Now, this would be the diagram
13 where the upper body is leaning back, not just the
14 head?

15 Q. Yes. The upper torso, but not the
16 waist, and it's got the three suspects, one at
17 six-foot, eight, and one at six-foot, and one at
18 five-foot, 11?

19 A. Right. We have taken the deceased and
20 we've tilted his head back in somewhat a defensive
21 reaction, and we also tilted his upper torso back
22 like he's laying back getting away from a threat,
23 which obviously this would be. We've moved the
24 six-foot individual's arm toward the pistol. The
25 pistol has to stay in that orientation for that --

WAYNE HILL - CROSS EXAM BY MS. HARRIGAN

1 the trajectory. It's still awkward for the
2 six-foot, eight-inch gentleman to fire from this
3 position. You can see the grip is still not fully
4 in his hand.

5 Q. When you say, awkward, does it make it
6 more possible that the shot could have come through
7 the victim's head at that angle if he was leaning
8 backward?

9 A. Yes. It's getting closer to possible.

10 Q. When you say, getting closer to
11 possible, it's not impossible. I believe you
12 testified it would be an awkward grip, correct?

13 A. Correct.

14 Q. But it is possible?

15 A. We're getting into that range, yes.

16 Q. But not impossible. Just so we're
17 clear for the record, it's not impossible for a
18 six-foot, eight person to have shot the five-foot,
19 seven victim if his head and torso are leaned back,
20 correct?

21 A. That's correct. And in my opinion, he
22 needed to be a little bit further back than he
23 currently is, but that's -- we are approaching that
24 point.

25 Q. And when you refer to, need to be back

WAYNE HILL - CROSS EXAM BY MS. HARRIGAN

1 a little bit further, if you could look at what's
2 been premarked as Defendant's Exhibit Number 2,
3 which for your clarity since you're not in front of
4 this, is the diagram that you had prepared
5 involving two suspects, the six-foot, eight-inch
6 suspect and the five-foot, 11 suspect, and in the
7 center shows the victim leaned back more --
8 severely, almost a full body lean?

9 A. Yes. Yes. He would be falling back
10 from that angle, yes.

11 MS. HARRIGAN: At this time, the State
12 would move to introduce that into evidence,
13 Defendant's Exhibit 2.

14 MS. BLANCHETTE: No objection.

15 THE COURT: So admitted.

16 (DFT. EXH. 2 in evidence.)

17 BY MS. HARRIGAN:

18 Q. Would you please describe the victim's
19 location in this diagram?

20 A. Yes, ma'am. In this diagram, the
21 victim has achieved an orientation to the ground,
22 approximately, oh, more than 45 degrees falling
23 backwards with a straight body, perhaps like he had
24 been shoved or jumped falling backwards. The head
25 is still back as it was in a defensive response.

WAYNE HILL - CROSS EXAM BY MS. HARRIGAN

1 The gun is so oriented as it must be with the
2 trajectory, but now he's far enough back and angled
3 enough that the six-foot, eight individual with a
4 comfortable forearm position and pistol, you know,
5 normal grip in his hand can fire that round, and,
6 as you can see, it would go through the deceased's
7 head as it did.

8 And that orientation is absolutely
9 physically possible; however, that bullet now exits
10 at -- at slightly above -- well, a short distance
11 above the ground. Key point being, it will travel
12 down the parking lot and hit anything of car height
13 in front of it. Keeping -- if there's a car in
14 front of it, it would hit it. So that would be
15 confirmation again of this position, if we had such
16 an impact.

17 Q. And I believe you testified that you
18 were -- that you reviewed the trial transcript in
19 addition to the various files from the Public
20 Defender's Office, the Solicitor's Office, and the
21 Richland County Sheriff's Department, correct?

22 A. Yes.

23 Q. There was no definitive position of the
24 shooter in this case, was there?

25 A. There was no definitive position?

WAYNE HILL - CROSS EXAM BY MS. HARRIGAN

1 Q. There was no eye witness to say whether
2 the shooter was standing upright; correct?

3 A. Correct.

4 Q. And there was no testimony to also --
5 or evidence to show that he wasn't perhaps
6 crouching down at the time of the shot, correct?

7 A. Correct. Actually, I would address
8 that directly. If you put him in a kneeling
9 position, obviously the elbow now drops to a
10 comfortable position.

11 Q. So if in a kneeling position, it would
12 be comfortable to fire the shot even if the victim
13 was standing upright?

14 A. Correct.

15 Q. And we also don't know the position of
16 the victim, based on the evidence and testimony,
17 correct?

18 A. To a large extent, yes; however, as we
19 just saw in this last diagram, if he was leaning
20 way back like this where the wound was coming out
21 below orientation, we'd expect it to hit some of
22 the cars pictured in the background or something
23 down range that way.

24 If he's more upright, as you can see
25 from the other torso, the bullet goes up in the air

WAYNE HILL - CROSS EXAM BY MS. HARRIGAN

1 and can travel half, three-quarter mile away; you
2 would never find it unless it hit somebody else.
3 So he's not that far back --

4 Q. But, Mr. Hill, we don't definitely know
5 because he don't have the bullet trajectory after
6 it left the victim's brain or head, correct?

7 A. It would have been traveling in a
8 straight line unless affected by some other object.

9 Q. But we don't have that bullet or where
10 it landed, correct?

11 A. There were vehicles behind the deceased
12 in the photographs and none of those were hit.

13 Q. Based on the evidence that you were
14 provided?

15 A. Correct.

16 Q. Regarding your testimony on the lack of
17 blood splatter, I believe you testified that since
18 it was on blacktop the lack of blood splatter is
19 understandable. Was I correct in hearing that in
20 your testimony?

21 A. The lack of observing it is
22 understandable.

23 Q. Can you elaborate on that?

24 A. You could do luminol at night and find
25 it, something like that, but, I mean, it's -- not

WAYNE HILL - CROSS EXAM BY MS. HARRIGAN

1 finding a micro miss on a black top surface is
2 understandable, yes.

3 Q. Is it common to not find blood splatter
4 on blacktop?

5 A. I'm sorry, say it again, please.

6 Q. Is it common to not find any blood
7 splatter on blacktop?

8 A. I would say it's not uncommon not to.

9 Q. Regarding your testing of the
10 ammunition and weapons used into various types of,
11 I think you said, 20-pound bond paper at known
12 distances, your testimony was you prefer to use the
13 same weapon that was used to commit the crime,
14 correct?

15 A. Correct.

16 Q. And, to your knowledge, the weapon was
17 never located, correct?

18 A. Correct. The best evidence is to use
19 the weapon involved. If you don't have that
20 weapon, but you know what it was, to use a similar
21 weapon and open your findings up a little bit so
22 they're not so finite. If you have no idea, you
23 have no idea. And we have no idea.

24 Q. And based on your review of the trial
25 transcript, there was testimony presented to the

WAYNE HILL - CROSS EXAM BY MS. HARRIGAN

1 Court that this was a distance wound that had to
2 have been at least 18 inches from the point of
3 impact, correct?

4 A. Yes. The chief forensic pathologist
5 did testify and the medical examiner's firearms
6 expert said, we've got nothing. We know as a
7 general rule, very general rule, 18 inches starts
8 the distant range.

9 Q. And, in fact, this is the range that
10 you used when preparing your diagrams, correct?

11 A. That's correct.

12 MS. HARRIGAN: Court's indulgence.

13 THE WITNESS: And for clarity, where
14 that pistol is now is theoretically approximately
15 the minimum distance from the wound it has to be.
16 You can take it all the way down to the ground, or
17 when you tilt it like this, you obviously can take
18 it much further back. It just can't be closer than
19 what you're seeing.

20 BY MS. HARRIGAN:

21 Q. Regarding your testimony that -- I
22 believe you said if the victim was found lying on
23 his face, he was likely leaning forward, but if the
24 victim is found on their back, they were likely
25 leaning back at the time of impact, correct?

WAYNE HILL - CROSS EXAM BY MS. HARRIGAN

1 A. That's correct.

2 Q. And in the case here, there is some
3 evidence and testimony from the eye witnesses that
4 the victim was lying on his back, correct?

5 A. He was found lying on his back after
6 his wife handled him, yes. I will say I expect, at
7 worst, he was on one of his sides on his --
8 oriented towards his back.

9 Q. When you say at worst, can you
10 elaborate what you mean by that for the Court?

11 A. If he was leaning slightly sideways or
12 toward the back and he collapsed down pretty much
13 onto his side, kind of leaning forward, she would
14 tend to lay him back on his back and tried to stop
15 the bleeding and stuff. Again, it's not finite.
16 It's just -- okay. That orientation may be a
17 little toward his side, but could well have been on
18 his back, and she didn't do anything other than
19 just press on his head.

20 Q. Based on your review of the various
21 materials provided to you by Ms. Blanchette, is
22 there any testimony or evidence tending to show
23 that the victim fell face first and landed on his
24 face as opposed to his back?

25 A. No. I didn't see any clear indication

WAYNE HILL - CROSS EXAM BY MS. HARRIGAN

1 of that.

2 Q. And, finally, regarding your testimony
3 about the autopsy that was performed here by Dr.
4 Vander Steven Hoven, you have a limited medical
5 background, correct? Regarding -- I think you said
6 it was EMT work, but nothing in pathology, no
7 formal training in pathology?

8 A. Following the EMT training, the OJT,
9 and informal stuff at the hospital, et cetera, do I
10 have any classroom formal pathology training? No.

11 Q. And no forensic pathology --

12 A. With the exception of the toxicology
13 type stuff, the breathalyzer and that. But what
14 you're asking, no.

15 Q. How many autopsies and -- how many
16 autopsies have you physically been present for and
17 witnessed?

18 A. I think Dr. Sexton did -- did two,
19 maybe three that day. Two for sure.

20 Q. And that's your only experience with
21 being present for a live autopsy?

22 A. Yes.

23 Q. What types of crimes were these?
24 Homicides?

25 A. The one gentleman was startled by a

WAYNE HILL - CROSS EXAM BY MS. HARRIGAN

1 snake dropping in a fishing boat. He went into the
2 water and drowned. The second autopsy -- I'll give
3 you a description and the Court can decide. The
4 family called up very upset, the deceased was about
5 to be cremated and had not been autopsied and they
6 were very strongly claiming that her death was very
7 suspicious.

8 So Dr. Sexton called over, and they
9 were just about to put her in the crematorium, and
10 got them to ship her over to his office for an
11 autopsy. We found a large bruise on the side of
12 rib cage. We found fractured ribs. We found a --
13 she had bled to death because the rib ends had been
14 shoved in far enough to puncture her liver and she
15 had, therefore, bled to death over a long period of
16 time in a very painful manner.

17 So that was questionable whether that
18 was an accident.

19 Q. But neither of these autopsies that you
20 witnessed involved a shooting homicide, correct?

21 A. Correct.

22 Q. How many autopsies have you reviewed or
23 reviewed the reports of an autopsy, not being live
24 there in person? I know you were live there for
25 those two. How many autopsy reports have you

WAYNE HILL - REDIRECT EXAM BY MS. BLANCHETTE

1 reviewed over your career?

2 A. Let's see, I would say approximately
3 206.

4 Q. And, approximately, how many of those
5 were homicides by shooting?

6 A. The vast majority at least; 190.

7 MS. HARRIGAN: No further questions,
8 Your Honor.

9 THE COURT: All right. Where is Ms.
10 Blanchette? Anything further?

11 MS. BLANCHETTE: Very briefly, Your
12 Honor.

13 REDIRECT EXAMINATION

14 BY MS. BLANCHETTE:

15 Q. Mr. Hill, this is Ms. Blanchette again.
16 Just briefly. When the State was asking you
17 questions about how the victim could have fallen
18 back, there was evidence of only one gunshot in
19 this case; is that correct?

20 A. That's correct.

21 Q. So it couldn't be a case where he had
22 been shot and falling back, based upon the
23 evidence?

24 A. Given his wound, I guarantee he
25 collapsed. What evidence we do have would indicate

WAYNE HILL - REDIRECT EXAM BY MS. BLANCHETTE

1 he went backwards.

2 Q. There was only one shot that was
3 delivered to cause him to go backwards, correct?

4 A. That's correct.

5 Q. Okay. And just briefly about this
6 autopsy issue. You typically review autopsies in
7 the course of your consultation and you rely upon
8 those to make your findings?

9 A. Yes. That's actually usually the first
10 document I go to to review, and the photographs.

11 Q. And you would have pointed out any
12 concerns you had with that to the person that you
13 were consulting with, whether that be defense
14 counsel or a state agency?

15 A. That's correct.

16 Q. I sent you the entire transcript in
17 electronic format, so if the Court wouldn't mind, I
18 just want to refer to a small portion of the
19 transcript and I'll read it for you. It's
20 page 1004 and 1005.

21 A. I read that this morning again.

22 Q. And in there Dr. Nichols is testifying,
23 and the State asks him, beginning on line 20:

24 And one more thing, Doctor, I want to
25 clear up. On this case there was kind of an upward

WAYNE HILL - REDIRECT EXAM BY MS. BLANCHETTE

1 angle in this case?

2 ANSWER: Yes.

3 QUESTION: And say in a case where a
4 person firing the gun is actually taller than the
5 person that's shot, can it still be a shot at an
6 upward angle?

7 ANSWER: Yes.

8 And then he goes on to give a brief
9 explanation of how that could happen. Could you
10 have assisted trial counsel in addressing that on
11 cross examination, the testimony there?

12 A. Yes, ma'am. I would simply refer you
13 to the diagrams we've already dealt with show you
14 how I would have done that.

15 Q. And would you have also been willing to
16 testify in response to that testimony by Dr.
17 Nichols?

18 A. Absolutely.

19 MS. BLANCHETTE: Your Honor, I have no
20 further questions.

21 MS. HARRIGAN: Nothing additional.

22 THE COURT: All right. Thank you very
23 much.

24 MS. BLANCHETTE: Thank you, Mr. Hill.

25 THE WITNESS: Thank you, ladies.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 THE COURT: All right. Let's take a
2 ten-minute break and let everybody chill for a few
3 minutes and we'll come back at noon. How about
4 that?

5 (A recess transpired.)

6 THE COURT: Ready to go?

7 MS. BLANCHETTE: Yes, Your Honor.

8 Your Honor, I would call Phillip
9 Crocker to the stand. He may need some assistance.

10 THE COURT: All right. Mr. Crocker,
11 stand and raise your right hand.

12 PHILLIP CROCKER,
13 being first duly sworn, testified as follows:

14 THE COURT: State your full name.

15 THE WITNESS: Phillip Henry Crocker,
16 the Third.

17 DIRECT EXAMINATION

18 BY MS. BLANCHETTE:

19 Q. And, Mr. Crocker, you are here today on
20 a PCR Application that you filed back in 2006; is
21 that correct?

22 A. That's correct.

23 Q. And what is the relief that you're
24 asking the Court to give you as a result of that
25 PCR application?

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 A. I'm asking the Court to give me the
2 relief of a new trial upon certain issues, a
3 vacation of the charges.

4 Q. Okay. And you understand by asking the
5 judge to vacate your current sentence, set that
6 aside, and to give you a new trial that you could
7 potentially face the risk of more time for the
8 charges that you were given in this case?

9 A. Yes, I do.

10 Q. Because you're not currently serving
11 the maximum sentence; is that correct?

12 A. That's correct.

13 Q. Knowing that there is a risk involved,
14 you still want to go forward today, Mr. Crocker?

15 A. Yes, I do.

16 Q. Okay. Now, we're here today about a
17 murder that took place on November 21, 2001 here in
18 Richland County; is that correct?

19 A. That's correct.

20 Q. Do you remember the date of your arrest
21 or, approximately, when you were arrested?

22 A. Yes, ma'am.

23 Q. Okay. What was that?

24 A. That was December 12, 2001.

25 Q. Okay. And then you proceeded to trial

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 in December of 2003; is that correct?

2 A. Yes. December 5th.

3 Q. Who represented you at that trial?

4 A. Mr. Douglas Strickler was the lead
5 attorney and Ms. Fielding Pringle was second chair.

6 Q. And prior to working with Mr. Strickler
7 and Ms. Pringle, had you retained a private
8 attorney?

9 A. Yes, I did.

10 Q. Who was that?

11 A. Ms. Deborah Chapman.

12 Q. But she did not appear or work on your
13 trial; is that correct?

14 A. That's correct.

15 Q. Okay. Now, when you were arrested, did
16 you give a statement to law enforcement?

17 A. No, I didn't.

18 MS. BLANCHETTE: Okay. Your Honor, may
19 I approach the witness?

20 THE COURT: Yes, ma'am.

21 MS. BLANCHETTE: Would you like me to
22 ask every time?

23 THE COURT: No, ma'am.

24 BY MS. BLANCHETTE:

25 Q. Mr. Crocker, I'm going to show you what

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 has been previously marked for identification
2 purposes as Applicant's Number 7. Could you
3 identify that document for the record?

4 A. Yes. This is the statement that I
5 would like not -- I would not like to speak without
6 my attorney.

7 Q. Okay. And it is an Interrogation
8 Advice of Rights form for Richland County Sheriff's
9 Department; is that correct?

10 A. That's correct.

11 MS. BLANCHETTE: Your Honor, at this
12 time, I would move this in as Applicant's Number 7.

13 MS. HARRIGAN: No objection the State.

14 MS. BLANCHETTE: Would you like these
15 up here?

16 THE COURT: So admitted.

17 (DFT. EXH. 7 in evidence.)

18 BY MS. BLANCHETTE:

19 Q. Mr. Crocker, with that information in
20 the record I was going to dive into the 20
21 allegations that are set forth in your Amendment
22 and take those each, and as I say, throughout that
23 you will have the opportunity to give the judge all
24 the facts and information that support your
25 application.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 So if you could, I would like to first
2 address issue number one with you. There it is
3 alleged that trial counsel rendered ineffective
4 assistance of counsel when he failed to move to
5 suppress the information obtained from the
6 warrantless search of the victim's cell phone, and
7 several cases are cited in support of that.

8 If I could have you turn to page 721 of
9 the transcript where this issue comes up.

10 A. Okay. Just give me one second.

11 MS. BLANCHETTE: And if the Court does
12 not mind and the State doesn't object, I would be
13 happy to summarize the transcript section and the
14 citations I'm referring to and then ask questions.

15 THE COURT: Whatever you want to do.

16 BY MS. BLANCHETTE:

17 Q. Are you there, Mr. Crocker?

18 A. Yes, ma'am..

19 Q. On page 721 through approximately 724,
20 there Sergeant Weeks is testifying and he indicates
21 that Consuela Casey, who is the victim's wife, gave
22 them the phone at the hospital and then they looked
23 up the last dialed numbers. And in the last ten
24 calls, there was a call to an individual that is
25 saved in the phone as Croc, C-R-O-C. And then they

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 wrote down that information.

2 If you turn to page 732?

3 A. Yes, I'm here.

4 Q. He further indicates that they wrote
5 down that information to use later in their
6 investigation. Okay. Now, if you could go back to
7 page 708, please.

8 THE COURT: 700 what?

9 MS. BLANCHETTE: Eight.

10 BY MS. BLANCHETTE:

11 Q. On page 708 through 711, your attorney
12 objected to a PowerPoint presentation that they
13 wanted to use that showed how they scrolled through
14 that phone, and the State argued that he had been
15 provided some pictures of that.

16 My question to you is this: Did you
17 and your attorneys ever discuss before trial the
18 fact that the officers had accessed the victim's
19 phone, taken pictures, prepared a PowerPoint
20 presentation, and had written down that
21 information?

22 A. No, my attorneys did not discuss that.

23 Q. If you would have discussed that and
24 not heard about that for the first time at trial
25 and heard his objection to the PowerPoint coming in

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 for the first time at trial, what would you have
2 asked him to look into? Was there an issue there
3 that you would have asked him to look into or
4 present on your behalf?

5 A. Yes. I would have asked him to look
6 into the illegal search of the contents of the cell
7 phone that they-- Mr. Weeks got the information out
8 of the cell phone without a search warrant in
9 violation of 17-13-140. And I would have asked him
10 to suppress all the evidence that was obtained from
11 that search.

12 Q. And, Mr. Crocker, you've done extensive
13 legal research so I'm going to kind of speak to you
14 in legal terms. I typically do not, but you've
15 done research and you understand that you don't
16 have a Fourth Amendment right to that phone, but
17 you're arguing that that still could have been
18 suppressed for violation of search warrant
19 requirements; is that correct?

20 A. Yes. Yes. I would ask them to bring
21 it forth as a statutory violation, which is more
22 stricter in the State of South Carolina than the
23 Fourth Amendment, according to State v McKnight.
24 And I didn't have to have a standing that it was my
25 cell phone in order to object to it, I just needed

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 to show that it was being used against me.

2 MS. BLANCHETTE: Your Honor, at this
3 time I have made a copy of each one of the statutes
4 that are listed in the amendment, each one of the
5 cases and -- all the statutes and cases that he
6 would most likely refer to. I have a copy of those
7 with me right now if that would aid you in this
8 case, or if you would like those at the conclusion
9 of the case.

10 THE COURT: Well, I'm trying to
11 understand what he's -- he's alleging that he has
12 some right to contest this information?

13 MS. BLANCHETTE: Right. According to
14 the McKnight case, which is the first case I have a
15 copy of here, he doesn't have Fourth Amendment
16 standing to move to suppress for lack to get a
17 search warrant. So those cases would help as we're
18 going through them and then I would be happy to
19 provide argument at the end to tie this all
20 together.

21 THE COURT: All right.

22 BY MS. BLANCHETTE:

23 Q. So just to be sure I understand what
24 you're saying, you would have asked Mr. Strickler
25 to move to suppress due to the way in which these

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 other -- this evidence was obtained; is that
2 correct?

3 A. Yes.

4 Q. And what are you saying is wrong about
5 how this was obtained, what law enforcement did
6 incorrectly that would have led to suppression?

7 A. What they did was not obtain a search
8 warrant for searching the phone and extracting the
9 information from it.

10 Q. And that number that they said belonged
11 to the Croc individual, if you turn to pages 833
12 and then also 870, and I will just summarize for
13 you, they never located that actual phone, did
14 they?

15 A. No.

16 Q. That was connected to the phone number?

17 A. No.

18 Q. Okay. They were able to trace it back
19 to the individual. Do you know his name? They
20 testified about that on page 833 through 835, who
21 the phone was traced back to.

22 A. I'm not there yet. Willie Jennings.

23 Q. Who was the actual subscriber --

24 A. Excuse me.

25 Q. -- on pages 833 through 835?

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 A. Excuse me. Okay. John Seaman. Mr.
2 John Seaman.

3 THE COURT: John who?

4 THE WITNESS: Seaman.

5 BY MS. BLANCHETTE:

6 Q. And he's also referred to as Jonathan
7 Love; is that correct?

8 A. Yes, ma'am.

9 Q. Okay. And at trial, pages 929 through
10 about 937, the State focuses a lot of time and
11 attention on showing the phone calls that were made
12 by this -- and I'll call it the Croc phone.

13 A. Okay.

14 Q. And all the cell sites it hit off on;
15 is that correct?

16 A. Yes.

17 Q. Okay. Mr. Crocker, as part of your
18 case, we were afforded the opportunity to get a
19 complete copy of the Public Defender's file and the
20 Richland County Sheriff's Department file; is that
21 correct?

22 A. That's correct.

23 Q. Okay. Let me show you these three
24 investigative reports that have been premarked as
25 Applicant's Number 8, Applicant's Number 9, and

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 Applicant's Number 10. If you could just identify
2 what each of those appear to be for the record.

3 What is Number 8?

4 A. Number 8 is the investigative report
5 from investigator Samson; number 9 is the
6 investigative report of investigator Gonzales; and
7 number 10 is the investigative report of
8 investigator McDonald.

9 MS. BLANCHETTE: Your Honor, at this
10 time I would move Applicant's Number 8 through 10
11 into the record, please.

12 MS. HARRIGAN: No objection from the
13 State.

14 THE COURT: So admitted.

15 (DFT. EXH. 8 in evidence.)

16 (DFT. EXH. 9 in evidence.)

17 (DFT. EXH. 10 in evidence.)

18 BY MS. BLANCHETTE:

19 Q. Mr. Crocker, we have to make a record,
20 but we've got thousands of pages of discovery in
21 this case. In each of the reports it records the
22 process in which they obtained the victim's cell
23 phone, scrolled through it, and then subsequently
24 got records from it; is that correct?

25 A. That's correct.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 Q. Okay. Is there anything specifically
2 you want to highlight out of these reports that
3 refer to how they scrolled through the cell phone
4 and got that information in which you're alleging
5 was done improperly?

6 A. Ms. Weeks -- Ms. Weeks, as I stated,
7 she received the cell phone from someone and then
8 she started scrolling through it, getting
9 information out, and the last calls that were made,
10 that particular information that related to other
11 evidence.

12 Q. Which essentially leads us to number
13 two, the procurement of that cell phone that you
14 would like to address to the court, just the fact
15 that they took that cell phone and scrolled through
16 it. Is there anything else that you would like to
17 inform the Court?

18 A. No.

19 Q. Let's turn then to issue number two --

20 A. I would --

21 Q. Okay. I'm sorry, go ahead.

22 A. I would like to say about them getting
23 this cell phone and going through it without a
24 warrant in violation of 17-13-140, my attorney
25 should have moved to suppress all evidence that

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 came from that search, which would entail all the
2 identifications, the identification that was
3 entered by Ms. Consuela Casey, the identification
4 that was entered by Mr. Willie Jennings, the
5 identification entered by Ms. Shannon Myles.

6 There was more evidence -- the evidence
7 that they obtained from my home in Charlotte, North
8 Carolina would have also been suppressed and
9 additional testimony would have been suppressed.

10 Q. So the receipt of this cell phone, the
11 taking of this cell phone, scrolling through it was
12 kind of the first step in the process that led all
13 the way to your arrest and trial; is that correct?

14 A. Yes.

15 Q. That's why we've listed it as issue
16 number one?

17 A. Right.

18 Q. This is kind of the linchpin that
19 started everything rolling; is that correct?

20 A. That's correct.

21 Q. Okay. And one thing I would like to
22 briefly touch on, and I'll have the opportunity to
23 argue to the Court and the cases are listed here,
24 but this has been kind of a hot-button issue
25 currently, whether or not law enforcement can just

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1 take a cell phone and help themselves to it; is
2 that correct?

3 A. That's correct.

4 Q. And I would like the Court to take
5 judicial notice that just as of this week, the
6 United States Supreme Court has granted certiorari
7 on two more cases that are not listed in these
8 cases that I put in the amendment.

9 All right. Turning to issue number
10 two --

11 MS. HARRIGAN: If you could give us
12 those cases then if you're asking the Court to take
13 judicial notice of.

14 MS. BLANCHETTE: I have it in an
15 e-mail. I will provide that.

16 MS. HARRIGAN: If the Court could hold
17 off on taking judicial notice until we get the case
18 cites then, we would prefer that.

19 MS. BLANCHETTE: I would be happy to do
20 that.

21 THE WITNESS: Excuse me, Ms.
22 Blanchette, I would like to say one more thing. By
23 my attorney failing to move to suppress the
24 evidence that was obtained by illegal search of the
25 cell phone, my Sixth Amendment rights of effective

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 assistance of counsel was violated in addition to
2 the 14th Amendment right to a fair trial.

3 Q. Okay. Thank you, Mr. Crocker. Then I
4 will touch on issue number two. You're alleging
5 that trial counsel rendered ineffective assistance
6 when he failed to issue a suppression motion or
7 enter contemporaneous objections on the search
8 warrant obtained for cell phone records for Sprint
9 number 646/408-5502, Cingular number 843/615-3711,
10 and Verizon 718/299-6611 were the fruit of the
11 poisonous tree of the warrantless search of the
12 victim's cell phone and in violation of South
13 Carolina Code 1713-140; therefore, all the
14 information that came in subsequently should have
15 been excluded?

16 A. Yes, ma'am.

17 Q. Okay. Let's turn please to page 615 of
18 the transcript.

19 THE COURT: Back up.

20 MS. BLANCHETTE: Yes.

21 THE COURT: You-all acknowledge there
22 is no Fourth Amendment right of this individual
23 here?

24 THE WITNESS: Yes.

25 THE COURT: It wasn't his cell phone,

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 but you say that this is a violation of the statute
2 because the cell -- the warrant was issued
3 improperly, correct? And that, that is something
4 that he has the right to contest, if the warrant
5 was issued improperly, even though he's not the
6 owner of the phone, it's not his phone, correct?

7 MS. BLANCHETTE: Almost, Your Honor.
8 There was no warrant issued. They helped
9 themselves to that phone without a warrant, so it
10 was a warrantless search of --

11 THE COURT: At no time was the warrant
12 ever issued?

13 MS. BLANCHETTE: In our second issue
14 we're going to go into how the warrant was issued
15 as to how to get the cell phone records, but there
16 was no warrant for the search where they scrolled
17 through, take pictures, put together that
18 PowerPoint presentation, and then write down all
19 the names and numbers.

20 THE COURT: You're saying they had to
21 get a warrant to be able to go through that cell
22 phone.

23 MS. BLANCHETTE: Exactly, Your Honor.
24 And that's why I provided the cases that aren't
25 directly on point, the federal case cited there,

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 because those deal with whether or not you have to
2 get a warrant. And they actually specifically say
3 you do have to get a warrant. But all these cases
4 deal with is the defendant's phone. And it says
5 you have to get a warrant and goes more into the
6 Fourth Amendment more than we can go into with this
7 issue here.

8 THE COURT: There is a big difference,
9 isn't there?

10 MS. BLANCHETTE: There is a difference
11 and the cases are interesting, but I picked three
12 instead of the 25 that have been decided recently
13 because they make it clear over and over again you
14 need to have a warrant.

15 It doesn't say, because it's the
16 defendant's phone you have to have a warrant. So I
17 think that's at least on point enough to our issue
18 where we're saying they should have had a warrant
19 before they helped themselves to that phone.

20 THE COURT: There are no cases that
21 involve the defendant's phone.

22 MS. BLANCHETTE: Yes, I will
23 acknowledge that, Your Honor. We do not have a
24 case that I could find right now that deals with
25 this exact scenario, but I do think it's something

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 to consider and especially a lot of the reasoning
2 in there.

3 THE COURT: All right. Issue number
4 two --

5 MS. BLANCHETTE: Uh-huh.

6 THE COURT: -- the warrant was
7 ultimately secured for purposes of what?

8 MS. BLANCHETTE: The warrant was
9 secured and sent to actually the phone company to
10 get the phone records. They get a warrant to get
11 the records, and we're going to go into arguing,
12 one, that's the fruit of the poisonous tree that
13 first warrantless search, and then, two, whether
14 that -- the search warrants were obtained properly
15 under 1713140.

16 THE COURT: All right.

17 BY MS. BLANCHETTE:

18 Q. All right. If you could look at pages
19 615 through 618. There a Sharon Davis is called
20 from Verizon.

21 THE COURT: These investigative reports
22 that you've submitted, are these -- were these made
23 exhibits?

24 MS. BLANCHETTE: They were, Your Honor.
25 They were 8 through 10. And those are probably our

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 most important exhibits. I'll be referring to
2 those all day.

3 THE COURT: Well, I just want to mark
4 them.

5 BY MS. BLANCHETTE:

6 Q. Are you at 615, Mr. Crocker?

7 A. Yes, I am.

8 Q. There Sharon Davis was called from
9 Verizon. The State marked and introduced records
10 from John Williams. Does your attorney object?

11 A. No, he does not.

12 Q. Did he previously move to suppress
13 those records?

14 A. No.

15 Q. And do you have any idea who John
16 Williams is?

17 A. No.

18 Q. And I've asked you to thoroughly review
19 everything we have in your case, and so do you have
20 any idea still who John Williams is?

21 A. No.

22 Q. Your attorney made no objection based
23 on relevance either; is that correct?

24 A. No, he did not.

25 Q. Okay. If you could turn to page 749

1 through 753.

2 A. Okay.

3 Q. There Mr. Dicky is called from
4 Cingular. He identifies records belonging to a
5 Willie Jennings and he identifies cell site
6 information. Does your attorney enter any type of
7 objection?

8 A. No, he doesn't.

9 Q. Does he conduct any cross-examination
10 regarding the cell site information?

11 A. No.

12 Q. Did he enter a pretrial motion to
13 suppress the records?

14 A. No, he did not.

15 Q. If you could turn to 795 through 798,
16 Rhett Trimble testified. He's from Sprint. You
17 have reviewed that testimony previously. Does he
18 ever say what number or records he's there to
19 introduce?

20 A. No, he does not.

21 Q. But he does, in fact, go into a
22 detailed explanation of how the cell site towers
23 work and how the signal gets hit off and they can
24 tell where the subscriber is located; is that
25 correct?

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 A. Yes.

2 Q. Does your attorney enter an objection?

3 A. No, he doesn't enter an objection.

4 Q. Does he do a cross-examination after
5 Mr. Trimble goes into a detailed explanation of how
6 cell site information works?

7 A. No, he does not.

8 Q. And just go back, did he enter a
9 pretrial suppression motion regarding those
10 records?

11 A. No, he did not.

12 Q. If the Court and State does not mind,
13 Sergeant McDonald testified on pages 833, 873, 875
14 through 897, 898 through 920, and 929 through 937,
15 regarding how those records were obtained, what he
16 did with the records, and then, most importantly,
17 in 898 through 920, and 929 through 937, he goes
18 into how the records could be interpreted?

19 A. Yes.

20 Q. Okay. Now, let me show you -- at any
21 time did your attorney object to the introduction
22 of those records and the discussion of those
23 records?

24 A. No, he did not.

25 Q. Okay. He did object as far as how

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1 qualified Mr. McDonald was to go into an
2 explanation of those records, but he never objected
3 to the records themselves; is that correct?

4 A. That's correct.

5 Q. Okay. Let me show you, if I can, what
6 was premarked as Applicant's Number 11 through 13.
7 Could you identify those and give us the dates on
8 the front so we know what you're talking about?

9 A. Okay. Exhibit 11 is dated 12/7/01 --

10 Q. What does it say on the front?

11 A. It's a search warrant, South Carolina
12 Search Warrant. It's out of the County of
13 Richland.

14 Q. You can keep going. What is the next
15 one?

16 A. Search warrant dated 12/7/01, issued to
17 Sergeant McDonald; Number 12 is a search warrant of
18 the State of South Carolina, County of Richland, it
19 was issued on 11/30/01; and number -- Exhibit
20 Number 13 is --

21 Q. You should just have three there.

22 A. Yes. State of South Carolina Search
23 Warrant out of Richland County, dated 11/22/01.

24 MS. BLANCHETTE: Your Honor, at this
25 time I would move Applicant's number 11, 12, and

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 13, which are three search warrants, into the
2 record.

3 MS. HARRIGAN: No objection from the
4 State.

5 THE COURT: So admitted.
6 (DFT. EXH. 11 in evidence.)
7 (DFT. EXH. 12 in evidence.)
8 (DFT. EXH. 13 in evidence.)

9 THE COURT: Which one is Exhibit
10 Number 11 dated, 11/22/01?

11 THE WITNESS: 12/7/01?

12 THE COURT: That is number 11?

13 MS. BLANCHETTE: Uh-huh.

14 THE COURT: All right. What is 12?

15 MS. BLANCHETTE: 11/30/01, and number
16 13 is 11/22/01.

17 THE COURT: All right.

18 BY MS. BLANCHETTE:

19 Q. All right. Mr. Crocker, these search
20 warrants that we just introduced, are these the
21 search warrants that correspond with these three
22 phone numbers and the records that were introduced
23 at trial?

24 A. Yes, ma'am.

25 Q. Did you review those search warrants

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 with Mr. Strickler and talk about those prior to
2 trial?

3 A. No, ma'am.

4 Q. If you'd had that opportunity, what
5 would you have pointed out to him or what is the
6 problem with those search warrant that you would
7 like to bring to the Court's attention today?

8 A. I would like to bring to the Court's
9 attention, it goes into trial transcript page 832,
10 lines 20 through 25, and page 833, lines 1 through
11 4, where it goes into -- do you want me to read
12 that?

13 THE COURT: I have to find it. 832,
14 what line?

15 THE WITNESS: It's 832, line 20 through
16 25, and page 833, line 1 through 4.

17 THE COURT: All right.

18 THE WITNESS: The question is, and the
19 next day you were able to --

20 THE COURT: I read those.

21 THE WITNESS: Oh, you read it? I
22 apologize.

23 THE COURT: Thank you.

24 THE WITNESS: And so what I would have
25 asked my attorney to do was move to suppress these

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1 search warrants and all evidence that came from
2 these search warrants, based on the fact that the
3 magistrate judge lacked authority and jurisdiction
4 to issue these search warrants, based on the fact
5 that the search warrants were issued for searches
6 out of state; one being in Overland Park, Kansas,
7 another in Bedminster, New Jersey, and one in
8 Atlanta, Georgia.

9 And the magistrate's jurisdiction is
10 limited to the county they're in unless they go to
11 another county -- being out of state, she had no
12 jurisdiction to issue search warrants for out of
13 state. I would have asked my attorney to suppress
14 the search warrants and all evidence.

15 BY MS. BLANCHETTE:

16 Q. And in your research you are familiar
17 with the fact that law enforcement can move under
18 some federal guidelines under exigent
19 circumstances, but we have no evidence of that?

20 A. That's correct.

21 Q. These are standard South Carolina
22 search warrants?

23 A. Yes, ma'am.

24 Q. So just correct me if I'm wrong. Are
25 you alleging that these search warrants are invalid

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1 and they should have actually obtained a search
2 warrant in the state or the location where these
3 entities are located?

4 A. Yes. It's a violation of South
5 Carolina Code of Law 1713-140, which states the
6 jurisdiction of the magistrate and -- where they
7 have jurisdiction over.

8 Q. And, Mr. Crocker, I read issue number
9 two into the record, but we need to explain it to
10 meet your burden. Would you also have concerns as
11 to how obtaining these records ties back into law
12 enforcement helping themselves to the victim's
13 phone?

14 A. Yes. It ties back into it because them
15 illegally getting the information out of the
16 victim's cell phone, it led them to get these -- to
17 move to get the records and from these records the
18 cell sites. It then led to them finding Monica
19 McClain and Marvin Fleming, and leading to Willie
20 Jennings who informed the police that I was the
21 individual that he introduced to the victim.

22 So my lawyer should have moved to
23 suppress all the information that came because it
24 was the identification of Willie Jennings that was
25 put in by Willie Jennings; it was the

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1 identification that was put in by Consuela Casey;
2 it was the identification put in by Sharon Myles.
3 That evidence should have been suppressed based on
4 the fact that the magistrate judge lacked
5 jurisdiction and was without authority to issue
6 search warrants for nationwide, out-of-state
7 searches.

8 Q. And you just highlighted some of the
9 factual information, and it doesn't have to be your
10 opinion because the State said in opening and
11 close, the cell phone records are key. That's in
12 the transcript over and over again. That's not
13 just your opinion; is that right?

14 A. That's right. Mr. Lakey, when he
15 opened up, said that's the -- one of the main
16 points that he made, that he would be using the
17 cell phone and the cell phone records to -- as the
18 basis of the main foundation of his case.

19 MS. BLANCHETTE: And, Your Honor, if I
20 may beg the Court's indulgence this is a little bit
21 of a tricky issue. Jim Truett was kind enough to
22 bring us some of the trial exhibits. We're also
23 going to mark those as PCR exhibits. This is the
24 evidence that came in as a result of these search
25 warrants. This is the physical, or paper evidence,

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 that came in regarding these phone records. I'm
2 not sure how exactly the Court Reporter wants to do
3 that or if Mr. Truett wants double stickers put
4 on or how is best to proceed, but I can identify
5 what those are.

6 MS. HARRIGAN: The only issue is one of
7 the exhibits is missing a sticker, and we were
8 trying to track down the number for it.

9 THE COURT: That would have been lost
10 while it was in the custody of Mr. Truett?

11 MS. BLANCHETTE: It may be when he was
12 copying it for myself and Mr. Petrano.

13 THE COURT: Regardless, he would be the
14 one at fault for that not being there.

15 MS. HARRIGAN: This is the first time I
16 have seen these records. I would defer to Ms.
17 Blanchette.

18 MS. BLANCHETTE: And I would defer to
19 Mr. Truett, but I have previously reviewed these
20 and he made a copy --

21 THE COURT: Well, I know you made a
22 self-serving statement for Mr. Truett; I'm trying
23 to get to the bottom of this and find out -- this
24 may go further than just today.

25 MS. BLANCHETTE: I don't think it is of

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1 issue further than today, I can say that with
2 confidence, Your Honor. He previously provided all
3 of these to me and copied them and they are the
4 same ones that I have copies of. I can say that.

5 THE COURT: Okay. Well, he destroyed
6 an exhibit that was in the trial. Oh, he's back
7 there. I don't care how you-all -- Mr. Truett
8 mentioned to me this morning he didn't want to
9 jeopardize these trial exhibits because -- but I
10 think I pointed out to him that all of the appeals
11 have been exhausted in this case. I don't know if
12 the original exhibit stickers are all that
13 critical, but we will mark them however Mr. Truett
14 and Ms. Kelly want them marked.

15 (Off the record.)

16 (PLF. EXH. 59, Cell phone record, was
17 marked for identification.)

18 (PLF. EXH. 60, Cell phone record, was
19 marked for identification.)

20 (PLF. EXH. 61, Cell phone record, was
21 marked for identification.)

22 (PLF. EXH. 62, Cell phone record, was
23 marked for identification.)

24 (PLF. EXH. 63, List of names and cell
25 phone numbers, was marked for identification.)

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1 (PLF. EXH. 64, Cell phone record, was
2 marked for identification.)

3 (PLF. EXH. 65, Cell phone record, was
4 marked for identification.)

5 THE COURT: Do you have a lot of stuff
6 to mark?

7 MS. BLANCHETTE: I have two more. Do
8 you want to take a break while I finish this up
9 with her?

10 THE COURT: No. We're going to break
11 in about five minutes for lunch.

12 MS. BLANCHETTE: I can finish these up
13 and then we can pick up here when we come back.

14 THE COURT: All right. Let's do that.
15 Is that all right? We'll come back here at 2:00.

16 MS. BLANCHETTE: Sounds good, Your
17 Honor.

18 (A luncheon recess transpired.)

19 THE COURT: Are you ready?

20 MS. BLANCHETTE: I am, Your Honor.

21 THE COURT: Ready?

22 MS. HARRIGAN: Yes, Your Honor.

23 THE COURT: Ready?

24 THE WITNESS: Yes, I'm ready, Your
25 Honor.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 THE COURT: All right. Let's proceed.

2 MS. BLANCHETTE: Thank you, Your Honor.

3 BY MS. BLANCHETTE:

4 Q. Mr. Crocker, right before we broke for
5 lunch I was marking a number of exhibits that were
6 introduced at the trial.

7 A. Okay.

8 Q. And these have been marked as
9 Applicant's Exhibit 59 through 65. These represent
10 the phone records that were introduced at trial,
11 along with a diagram that was made on a large piece
12 of paper and cell site information that they
13 introduced.

14 If you like, I can go through each one,
15 but I would move to introduce 59 through 61, and I
16 can give a brief description on the record.

17 MS. HARRIGAN: If you wouldn't mind --

18 MS. BLANCHETTE: Or 65.

19 MS. HARRIGAN: -- on the record.

20 MS. BLANCHETTE: Okay. Number 59 is a
21 one-page cell phone record with the name John
22 Williams on it, and it was previously marked as
23 trial Exhibit 97.

24 THE COURT: Do you have copies?

25 MS. BLANCHETTE: I do not have copies

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1 of these, Your Honor.

2 THE COURT: Okay.

3 MS. BLANCHETTE: Applicant's Number 60
4 is a multipage Cingular Wireless phone record
5 previously marked as trial Exhibit 99. Exhibit 61
6 is a three-page handwritten document with cell, and
7 the numbers listed underneath, and an address, and
8 that was previously marked as Exhibit 100. Number
9 62 is a four-page cell phone record previously
10 marked as 101. Exhibit 63 is a large piece of
11 white paper with names and cell phone numbers
12 written on it, and it was previously marked as 129,
13 and that's scratched out from trial, and then it
14 says 119. Exhibit Number 64 is a two-page document
15 that says, cell to site information, and it has
16 Sprint. It was marked at trial as Exhibit 119A.
17 Exhibit Number 65 is a 104-page document of cell
18 phone records. We do not have the number that it
19 was marked at trial, but it came out of the trial
20 exhibits.

21 MS. HARRIGAN: No objection from the
22 State to Applicant's 59 through 65.

23 THE COURT: All right. So
24 admitted.

25 (PLF. EXH. 59 in evidence.)

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1 (PLF. EXH. 60 in evidence.)

2 (PLF. EXH. 61 in evidence.)

3 (PLF. EXH. 62 in evidence.)

4 (PLF. EXH. 63 in evidence.)

5 (PLF. EXH. 64 in evidence.)

6 (PLF. EXH. 65 in evidence.)

7 BY MS. BLANCHETTE:

8 Q. Mr. Crocker, we've introduced these
9 records for demonstrative purposes mostly so the
10 Court can see the amount of the cell phone records
11 that were introduced and put this with the
12 testimony as to how those were used at trial. Is
13 there anything else that you would like to point
14 out about these exhibits that were introduced at
15 trial and how they were utilized?

16 A. First, I would like to go back to the
17 custodian's records for Sprint. He came in and he
18 testified on cellular triangulation and he wasn't
19 an expert. He wasn't qualified to do that. And I
20 feel that my attorneys should have objected to the
21 records -- to that testimony. And I think he
22 should have objected to the records coming in being
23 that no number was given as to what the records
24 were.

25 Q. And you're referring to Brett Trembles'

1 testimony?

2 A. Brett Trembles, yes. Thanks. And also
3 there was a lot of testimony that came from those
4 records. As we were stating before, the State said
5 in their opening statement that was the foundation
6 of their case, and so it was very important. They
7 obtained a lot of witnesses from those phone
8 records.

9 I felt if my attorney would have moved
10 and objected to have those records suppressed, I
11 wouldn't have been at trial.

12 Q. Is there anything else that you would
13 like to say regarding the two cell phone issues
14 that were listed before I move on to issue number
15 three in your Amendment?

16 A. No. Other than, my attorneys' failure
17 to object to the records coming in violated my
18 Sixth Amendment right to effective assistance of
19 counsel and my Fourteenth Amendment right to a fair
20 trial.

21 Q. And just to save you the breath, if the
22 Court would like, are you going to make that
23 allegation to each one of these issues that
24 violated your Six and Fourteenth Amendments rights?

25 A. Yes, on each.

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1 MS. BLANCHETTE: Your Honor, I just
2 would ask if we could take notice that that applies
3 to each of these issues, or would you like him to
4 repeat that each time.

5 THE COURT: No. The basis from my
6 reading, it is ineffective assistance of counsel
7 pretty much all the way through there.

8 MS. BLANCHETTE: That is correct, Your
9 Honor.

10 THE COURT: All right.

11 BY MS. BLANCHETTE:

12 Q. If you could just turn to issue number
13 three, and I'll just summarize it. Here you're
14 alleging that your attorney was ineffective when he
15 failed to obtain or investigate the surveillance
16 footage from Lowe's.

17 A. Yes.

18 Q. And failed to argue for suppression as
19 to chain of custody and other defects.

20 A. That's right.

21 Q. And in the Amendment, that's actually
22 marked as trial Exhibit Number 71, which we have
23 here in the courtroom with us. If you could turn
24 to page 822, please, of the transcript. Beginning
25 on page 822, approximately line 21, investigator

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1 McDonald testifies through page 825 how he goes
2 into Lowe's, reviews the surveillance footage,
3 takes some surveillance footage to the sheriff's
4 department and eventually makes a tape for the
5 Solicitor that's played in court. Are you with me
6 there?

7 A. Yes, I'm with you.

8 Q. Okay. Is there an objection you feel
9 that your attorney should have made as to those
10 chain of events that McDonald has related, as far
11 as obtaining it and taking it to the Solicitor's
12 Office and making the VHS that was essentially
13 played in court?

14 A. Well, if we could go to the
15 investigative report, it will show that Mr. --
16 investigator McDonald wasn't the one who went into
17 Lowe's. I think he went back to Lowe's.

18 Q. Okay. If you could turn to
19 investigator Smith's report, page 1. Do you need a
20 copy of the report?

21 A. It's right here. Okay. I'm here.

22 Q. And in paragraph 1, fourth sentence
23 from the bottom, who does it actually say was sent
24 in to retrieve the Lowe's surveillance tape?

25 A. Ewing.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 Q. Ewing?

2 A. Yes.

3 Q. Was that a question or something that
4 your attorney never brought up at trial?

5 A. No, he didn't.

6 Q. Okay.

7 THE COURT: What's -- this is --
8 you-all are arguing a chain of custody?

9 MS. BLANCHETTE: Essentially, Your
10 Honor, yes.

11 THE COURT: All right.

12 BY MS. BLANCHETTE:

13 Q. Now, if you could look at McDonald's
14 own report on pages 1 to 2.

15 A. Okay.

16 Q. And beginning at the bottom of the
17 page, the very last paragraph, does he indicate in
18 his report that the tape went somewhere besides the
19 sheriff's department and the Solicitor's Office?

20 A. Where it's 11/21/01, right there?

21 Q. Is there something you want to point
22 out at the bottom of the report as far as the tape
23 and where it went?

24 A. Okay.

25 THE COURT: Is it your position that

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 this tape was falsified or altered?

2 MS. BLANCHETTE: There is some issue
3 with the tape. It's going to take me a minute to
4 get there, but I can summarize if you like.

5 THE COURT: Well, I'm trying to
6 understand. I mean, this is -- this is an
7 identifiable object.

8 MS. BLANCHETTE: As part of the
9 discovery we've asked for the original tape, but
10 never been provided it, and we have an audio video
11 expert. And we could never get the actual
12 original. So it's the original they were
13 discussing, we've never seen it; we just have a
14 copy of the Court exhibit.

15 Richland County Sheriff's Department
16 provided me a copy of the envelope it should have
17 been in, but they've never been able to give us the
18 tape.

19 And, first, we were going through what
20 the tape did that wasn't presented at trial because
21 this was all in the information that Mr. Strickler
22 should have had.

23 THE COURT: Well, I know that's one of
24 the allegations, that they didn't put all of it in.
25 I hadn't heard that you had gotten into that part

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1 yet. What I kept hearing is, there's a chain of
2 custody situation, that somebody picked it up and
3 that's not the person that subsequently identified
4 it.

5 MS. BLANCHETTE: Correct. I was going
6 to do that first, and -- there's kind of two
7 subparts to it, Your Honor.

8 THE COURT: All right.

9 BY MS. BLANCHETTE:

10 Q. And if you would look at the bottom of
11 that page 1, does it indicate that the video or the
12 footage supposedly went somewhere else, too?

13 A. Oh, yes. Oh, yes, Major Wilson. Okay.
14 Okay. It goes to the top. Yes, I do.

15 Q. Okay. And where does it indicate in
16 the report that the tape was also brought to?

17 A. SLED.

18 Q. Okay. And then on page 7 of the
19 report, about the third paragraph from the
20 bottom --

21 A. Yes.

22 Q. -- does it indicate that the tape went
23 somewhere else?

24 A. Yes. It went to Captain Stewart at the
25 Knoxville, Tennessee Police Department.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 Q. And it indicates there they attempted
2 to enhance it; is that correct?

3 A. Yes, ma'am.

4 Q. Did your attorney ask McDonald any
5 questions about that when he was explaining what
6 had been done to this video?

7 A. No, he did not.

8 Q. Did he make any motions regarding chain
9 of custody or any defects because of that?

10 A. No, he did not.

11 Q. Okay. Now, if you could look back at
12 McDonald's testimony on page 824, line 14.

13 A. Okay.

14 Q. He's explaining that there is at least
15 15 to 16 different cameras, but this is only one
16 camera; is that correct?

17 A. Yes.

18 Q. Does your attorney ever go out to
19 Lowe's or have you had any knowledge of there being
20 any other cameras -- the footage from the other
21 cameras?

22 A. No. I've never seen footage of other
23 cameras.

24 Q. And if you turn to 825, lines 3 through
25 9, he explains that he reviewed all the footage and

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 no camera actually took in what happened, but did
2 anybody from your defense team ever go look at all
3 the footage and make that determination?

4 A. No, they did not.

5 Q. Now, if you could turn to pages 827
6 through 828, he explains it's not been altered in
7 any way.

8 A. Right.

9 Q. Did your attorney ask him any specific
10 questions about that, how it got from the original
11 footage to the product they showed in court?

12 A. No, he did not.

13 Q. If you can, turn to page 829.

14 A. Uh-huh.

15 Q. And specifically look at lines 18
16 through 21.

17 A. Uh-huh.

18 Q. Who was it that identified the vehicle
19 on the video as your vehicle? Who identified that
20 for them?

21 A. Mrs. Consuela Casey, the victim's wife.

22 Q. And earlier on page 296, she actually
23 does like an in-court identification of the vehicle
24 and says it was your vehicle that is shown on this
25 Lowe's video; is that correct?

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 A. That's correct.

2 Q. Now, as a result of preparation for
3 your PCR, you asked that I obtain, and I requested
4 through discovery, the original footage, and then
5 you also asked that I obtain an audio video expert;
6 is that correct?

7 A. Yes, ma'am.

8 Q. And as I've already stated to the
9 Judge, we've only been provided a copy of what the
10 Court's exhibit was?

11 A. Right.

12 Q. We've never seen the original footage
13 it appears that Mr. McDonald -- that officer
14 McDonald is referring to?

15 A. No.

16 Q. And as a result, I provided the footage
17 that we had to Homer Fetzerman, who is an expert in
18 that area, and he provided us a letter regarding
19 the findings; is that correct?

20 A. That's correct.

21 MS. BLANCHETTE: Your Honor, at this
22 time I would move this letter in as Applicant's 14?

23 THE COURT: Do you have any objection?

24 MS. HARRIGAN: No objection from the
25 State.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 (PLF. EXH. 14 in evidence.)

2 BY MS. BLANCHETTE:

3 Q. And due to the quality -- and this
4 letter speaks for itself, but due to the quality,
5 he was unable to enhance it or do any of the work
6 that we requested; is that correct?

7 A. That's correct.

8 MS. BLANCHETTE: Your Honor, at this
9 time, if the Court would like, we have the exhibit
10 here to be played. If you would like to do that at
11 a later time, not in the courtroom --

12 THE COURT: What is it that you want me
13 to see, if I look at it?

14 MS. BLANCHETTE: Just so you know what
15 it is that was played and what it is that we're
16 talking about. I'm not going to point anything out
17 or --

18 THE COURT: Tell me what was played.

19 MS. BLANCHETTE: It's just clips of a
20 vehicle that supposedly is the suspect's vehicle
21 entering and exiting the parking lot. What they
22 did is they slowed it down and they put some
23 captions on it, so you can tell it's not the
24 original footage. That's why I asked for more than
25 the Court exhibit because I knew it wasn't the

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 original footage.

2 THE COURT: I will be happy to look at
3 it if you want me to.

4 MS. BLANCHETTE: It's very brief, Your
5 Honor.

6 (Off-the-record conference.)

7 MS. BLANCHETTE: Your Honor, if you
8 would like to wait until we take a break, I can
9 have it keyed up when we come back from a break.

10 THE COURT: That's fine.

11 MS. BLANCHETTE: Okay. I'll move on.

12 BY MS. BLANCHETTE:

13 Q. Mr. Crocker, I think you sufficiently
14 covered this issue, but is there anything -- we
15 went through the transcript where it comes in and
16 how Consuela identified that as your vehicle that
17 is shown in the video, and also went through the
18 fact that we obtained an expert that was not able
19 to do anything further with the footage that we
20 provided, and where the video went that your
21 attorney failed to bring out in court. Was there
22 anything else regarding the video that you would
23 like to put on the record?

24 A. He stated that it was not altered, but
25 the time was one hour off.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 Q. And McDonald actually admits that on
2 page 827 and 828; is that correct?

3 A. That's correct.

4 Q. Okay. He admits that the time is one
5 hour off?

6 A. Yes. And no camera took in actually
7 what happened, page 825, lines 3 through 9.

8 Q. Correct. And I directed your attention
9 to that, that he said no camera actually took it
10 in?

11 A. Okay. Then we covered -- did we do
12 still shots of the suspect's vehicle?

13 Q. You can't ask me a question, but if
14 there's something that you would like to testify to
15 further, you go right ahead.

16 A. Yes. That the camera produced still
17 shots of the suspect's vehicle from the video.

18 Q. This video -- can you explain the
19 importance that you saw it play at trial? I mean,
20 was it just a video that they put up for a minute
21 or two or did it tie into the State's argument?

22 A. It tied into the State's argument. It
23 was corroborated by the search of my home when they
24 got documents that I had a vehicle, I guess, would
25 be similar to that particular vehicle. That's how

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 they tried to tie it in.

2 Q. Okay. So they were trying to say that
3 you, in fact, owned a vehicle that was similar to
4 that vehicle?

5 A. Yes.

6 Q. All right. Now turning to issue number
7 four -- and we have a number of issues here
8 involving Consuela Casey, who is the victim's wife
9 and was present on the scene?

10 A. Uh-huh.

11 Q. The first issue, you're alleging your
12 attorney was ineffective for failing to argue that
13 immunity was unlawfully granted to Mrs. Casey by
14 law enforcement officers in exchange for her
15 testimony. If you could turn to the page citation
16 there, page 958, and look at lines 16 through 25,
17 please.

18 A. Okay. I'm here.

19 Q. And there Mr. Strickler is asking, is
20 he -- you know, you're the chief investigating
21 officer, are you the one that told Consuela Casey
22 that she would have immunity?

23 A. Uh-huh.

24 Q. And that issue is discussed there?

25 A. Yes.

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1 Q. Okay. But you're alleging today there
2 is something further that your attorney should have
3 done as far as granting immunity to Consuela Casey.
4 Could you explain that?

5 A. Yes. First, I felt like my attorney
6 should have moved to suppress Mrs. Casey's
7 statements based on the fact that 8-13-705
8 prohibits anything of value in exchange for
9 testimony.

10 Q. And I'm sorry, just so we're all on the
11 same page, is that a South Carolina Code that you
12 were referring to?

13 A. Yes, that's a South Carolina Code.
14 First and foremost, Officer McDonald didn't have
15 authority to offer Mrs. Casey immunity; second,
16 there was a violation of 8-13-705 of the South
17 Carolina Codes of Law.

18 And so my attorney should have moved to
19 suppress that evidence that came in based off of
20 that from -- of Mrs. Casey and identification of --
21 by Shannon Myles also.

22 And also my attorney, once he didn't do
23 that, he should have moved for an immunity
24 instruction based on the testimony from
25 investigator McDonald's statement that he had

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1 granted Mrs. Casey immunity.

2 Q. All right. And we received a copy of
3 investigator Stan Smith's report that was in the
4 Public Defender's file?

5 A. Uh-huh.

6 Q. If you could turn to page 3 and look at
7 the second to last paragraph. And is there a note
8 there discussing the fact that she had been granted
9 immunity?

10 A. Yes, there is.

11 Q. So this is something that is in the
12 discovery that could have been known by your
13 attorney prior to trial; is that correct?

14 A. Yes, ma'am.

15 Q. Okay. And he did not make any motions
16 regarding it or attempt to address it pretrial; is
17 that correct?

18 A. That's correct.

19 Q. He just merely asked McDonald about it
20 on cross-examination?

21 A. Right.

22 Q. Okay. Now, are you also alleging that
23 he improperly cross-examined Consuela Casey himself
24 on that issue?

25 A. Yes.

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1 Q. Give me a second here, I'll give you a
2 citation. I believe it's page 311, if you want to
3 turn there.

4 A. Yes. That's where it is.

5 Q. And at the bottom of page 311, Mr.
6 Strickler's, in fact, asking her about that.

7 A. Uh-huh.

8 Q. So what is it further, that you're
9 saying, he should have done in that regard? It
10 begins on line 20, on page 311.

11 A. He should have used the -- he should
12 have used the report from investigator Smith to
13 impeach her in this case -- impeach her testimony.

14 Q. Because she was apparently trying not
15 to acknowledge that she had immunity; is that
16 correct?

17 A. Yes, ma'am.

18 Q. Okay. Is there anything else regarding
19 this immunity issue involving Mrs. Casey that you
20 would like to put in the record today?

21 A. Not -- no, not at the moment.

22 Q. Why did it matter, Mr. Crocker, that
23 she was given immunity? Why is this an issue that
24 you wanted your attorney to bring out at your
25 trial?

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1 A. Yeah. It mattered -- it mattered she
2 was getting immunity because she had a reason to
3 testify -- more of a reason to testify on the
4 State's behalf in order to save herself. She had a
5 record coming into the case.

6 She also was indirectly given immunity
7 on a pistol charge, a pistol, because she wasn't a
8 legal gun owner and she admitted it was hers and
9 found at the scene, and -- to avoid charges. She
10 said she was trying to avoid charges to keep her
11 kids.

12 Q. And did she make an in-court
13 identification of you?

14 A. Yes, ma'am.

15 Q. Did she make an in-court identification
16 of the vehicle that was supposedly yours?

17 A. Yes.

18 Q. And the other person who provided an
19 in-court identification was Shannon Myles?

20 A. Yes.

21 Q. How was Ms. Myles connected with Mrs.
22 Casey?

23 A. Mrs. Casey -- well, it's been said Ms.
24 Myles was a customer of Mrs. Casey at the -- Mrs.
25 Casey owned a beauty salon and Ms. Myles was a

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 customer. Ms. Myles testified that she saw me come
2 to that beauty salon on a particular night.

3 Q. And it was argued at length and fully
4 vetted out at the pretrial in front of Judge Cooper
5 on August 20th of 2003, that Consuela Casey was
6 actually the one that brought Ms. Myles to do her
7 out-of-court identification on you; is that
8 correct?

9 A. Yes. She sat at the table with
10 investigator Gonzales and Mrs. Casey while she did
11 the identification.

12 Q. Now, there's another issue you have
13 here regarding Mrs. Casey in 4B, that your attorney
14 failed to properly cross-examine her regarding
15 medications that she was on during the course of
16 this investigation when she was giving statements
17 and assisting law enforcement.

18 A. Yes.

19 Q. And if you could turn to 288 through
20 289. There on direct she's being asked about the
21 treatment she received and the medication she was
22 on during the course of this initial investigation.

23 A. Uh-huh, yes. Line 19?

24 Q. I have two -- I have 288 through 289.
25 Is there something specific you want to direct our

1 attention to?

2 A. Yes; it's 288. She speaks of the
3 medication she was on, and it goes into 289.

4 Q. Okay. If you could turn -- if you
5 could look at Gonzales's report, it's a 15-page
6 report, on page 7.

7 A. Uh-huh.

8 Q. And where it says, 1730.

9 A. Okay.

10 Q. Does it provide information that she'd
11 had some type of breakdown and she was on Lorazepam
12 and Temazepam?

13 A. Yes.

14 Q. And these reports were in the Public
15 Defender's file, would have been provided to him
16 prior to trial; is that correct?

17 A. Yes.

18 Q. And then if you could also look at
19 Smith's report, page 3, second paragraph. Does he
20 also indicate that they received information that
21 she was on Lorazepam and Temazepam, if I'm saying
22 that correctly?

23 A. Yes. Her mother brought the medication
24 bottles in to them.

25 Q. And in preparation for the

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 postconviction release hearing, did you write to
2 the Department of Health and Human Services to
3 obtain some information regarding those drugs?

4 A. Yes.

5 Q. Could you identify that for the record,
6 please?

7 A. Yes.

8 Q. What does that appear to be?

9 A. It's from the FDA and it tells all
10 about Temazepam. Tells all the warnings and
11 everything about it. Tells everything about the
12 drugs.

13 Q. And this is the information that you
14 received as a result of your written request; is
15 that correct?

16 A. Yes.

17 MS. BLANCHETTE: Your Honor, at this
18 time I would move this in as Applicant's 15.

19 MS. HARRIGAN: No objection.

20 THE COURT: So admitted.

21 (PLF. EXH. 15 in evidence.)

22 THE WITNESS: It talks about the side
23 effects also.

24 BY MS. BLANCHETTE:

25 Q. Now, this is information that you

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 requested. These drugs were listed in the report,
2 but did Mr. Strickler ever ask her specific
3 questions about these drugs and being on these
4 drugs?

5 A. No, he did not.

6 Q. And this was the individual who was
7 essentially the only other witness at the scene
8 when the shooting took place, the individual that
9 gave your name?

10 A. Yes.

11 Q. And the individual that identified you
12 as the suspect in this case; is that correct?

13 A. That's correct.

14 Q. Okay. Is there anything else regarding
15 the drug issue that you would like to address?

16 A. Yes, ma'am. Yes, ma'am. I would like
17 to point out on page 289, lines 1 through 3, that
18 she states that she had four different medications.
19 So we know of two, but my attorney never looked in
20 to see what was the other two and what could
21 possibly have been the effects of all those drugs
22 -- if she had taken all the drugs at once, possibly
23 obtain an expert to testify to the effects of the
24 drugs.

25 Q. And, Mr. Crocker, we've been touching

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 on this and hitting at it, but issue 4C is alleging
2 that your attorney failed to expose or explore Mrs.
3 Casey's true involvement and guilt in the crimes
4 committed.

5 It's a pretty vague statement. Can you
6 explain to the Court what you mean by that
7 allegation, what you're saying your attorney should
8 have done differently?

9 A. I think he should have cross-examined
10 and went into more of the evidence that was
11 available, as far as bringing forth Latoya Hunter
12 who made a statement that Mrs. Casey and
13 Mr. Jennings were in contact, when she was -- when
14 she didn't come forth to the police to state that
15 her and Willie had been in contact, that she was
16 supposed to meet Willie Jennings two nights after
17 her husband was murdered. She was supposed to meet
18 him here in Columbia and --

19 Q. And the record clearly shows that she
20 was the one that knew Willie Jennings set this into
21 motion --

22 A. Right.

23 Q. -- and not her husband --

24 A. Yes.

25 Q. -- is that correct?

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 A. Yes.

2 Q. Let me hand you what's been marked for
3 identification as Applicant's Number 16. Can you
4 identify what that appears to be for the record,
5 please?

6 A. Yes. This is the statement of Monica
7 McClain.

8 Q. Do you see a date on that statement?

9 A. Yes. It's taken on December 2, 2011.

10 MS. BLANCHETTE: Your Honor, at this
11 time I would move the statement in as Applicant's
12 Number 16.

13 MS. HARRIGAN: No objection.

14 THE COURT: So admitted.

15 (PLF. EXH. 16 in evidence.)

16 BY MS. BLANCHETTE:

17 Q. Mr. Crocker, this was in the Public
18 Defender's file?

19 A. Yes.

20 Q. This is information available before
21 the trial?

22 A. Yes.

23 Q. What is it about this statement that
24 you feel your attorney should have used to explore
25 the culpability or the involvement of Consuela

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 Casey in this case? And take your time to review
2 it.

3 A. That this young lady -- the phone was
4 linked in some way to this young lady from the
5 suspect's cell phone and that she identified that
6 it is from Willie Jennings and that, you know,
7 Consuela's relationship with Willie Jennings, you
8 know, that ties up -- that puts them together.

9 Q. So you wanted your attorney to focus on
10 information obtained in this statement that goes to
11 Willie Jennings having the suspect's number?

12 A. Right.

13 Q. Was Consuela ever asked about any phone
14 calls she had made or received from Willie Jennings
15 and about this phone number in particular? And
16 phone calls Consuela got, did your attorney bring
17 that out and ask her, were you ever called by this
18 number, by Willie Jennings?

19 A. No.

20 Q. Because these phone calls that Willie
21 Jennings is making were made on 11/19 of '01; is
22 that correct?

23 A. Right.

24 Q. And the meeting supposedly took place
25 at the shop on 11/20?

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 A. Right.

2 Q. Okay. Now, you also mentioned a Tonya
3 -- Latonya Hunter?

4 A. Right.

5 Q. Let me show you this and ask if you can
6 identify this for the record.

7 A. Yes.

8 Q. What does that appear to be?

9 A. Latonya Hunter's statement dated
10 December 5, 2001.

11 MS. BLANCHETTE: Your Honor, at this
12 time I would move this in as Applicant's Number 17.

13 MS. HARRIGAN: No objection.

14 THE COURT: So admitted.

15 (PLF. EXH. 17 in evidence.)

16 BY MS. BLANCHETTE:

17 Q. And we've briefly already brought up
18 this statement, it was in the Public Defender's
19 file. What is it that you wanted Mrs. Casey asked
20 about at trial?

21 A. Had she been in contact with Willie
22 Jennings after her husband's death? And from this
23 statement she had, according to Ms. Hunter; Willie
24 was calling her mother's house and they was in
25 contact and he was telling her where he was.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 Q. So these two statements, Ms. Hunter's
2 and Ms. McClain's statements, do they match up with
3 the story that Consuela is saying about how her and
4 Willie got in contact and that she didn't really
5 have any involvement in this drug deal, it was just
6 her husband?

7 A. No, it doesn't add up. Willie has the
8 suspect's phone so that -- also Consuela was
9 supposed to meet like on that Friday and showed
10 that they were in contact and things that she had
11 never told the investigators --

12 Q. Okay.

13 A. -- as if she was trying to hide it.

14 Q. Is this your position today, and was it
15 your position to your defense counsel, that
16 Consuela Casey was not an innocent party in this
17 matter?

18 A. Yes, it was.

19 Q. Okay. What did you tell them or what
20 was the theory you wanted them to pursue as far as
21 that went?

22 A. I wanted them to -- I wanted them to do
23 a deeper investigation to find out more about this
24 case, more about the relationship with
25 Mr. Jennings, and just more of her background.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 Q. Now, in a minute we'll talk about the
2 reports and about the statements she gave. She
3 gave three written statements also; is that
4 correct?

5 A. Yes.

6 Q. Okay. I'm going to give you what's
7 been marked as Applicant's 18, 19 and 20. If you
8 could identify what each of those appear to be and
9 give me the date on those for the record please.

10 A. Okay. Exhibit 18 is the statement of
11 Consuela Casey, dated November 21, 2011.

12 Q. Okay. What is Number 19?

13 A. Oh, Number 19 is the statement of
14 Consuela Casey, dated November 5, 2001.

15 Q. And Number 20?

16 A. The statement of Consuela Casey, dated
17 December 11, 2001.

18 MS. BLANCHETTE: Your Honor, at this
19 time, I would move to introduce these as
20 Applicant's Numbers 18 through 20.

21 MS. HARRIGAN: No objection.

22 THE COURT: So admitted.

23 (PLF. EXH. 18 in evidence.)

24 (PLF. EXH. 19 in evidence.)

25 (PLF. EXH. 20 in evidence.)

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 BY MS. BLANCHETTE:

2 Q. Mr. Crocker, they're in evidence and
3 the judge can read them. I'm not going to ask you
4 to read them and beat a dead horse when we have the
5 evidence in. These statements are ever evolving;
6 is that correct?

7 A. Yes.

8 Q. Mrs. Casey goes from no involvement to
9 being -- you know, essentially she's giving the
10 information that Willie Jennings has incriminated
11 you in this matter and she does too; is that
12 correct?

13 A. That's correct.

14 Q. And she testified, and your attorney
15 thoroughly cross-examined her on her credibility
16 and her continuously-changing story; is that
17 correct?

18 A. That's correct.

19 Q. Okay. But you wanted to make sure that
20 these statements were in the record as part of your
21 PCR proceeding, the three statements that she gave?

22 A. Yes.

23 Q. Now, if you could also look at the
24 reports that we have introduced.

25 A. Uh-huh.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 Q. Stan Smith's report goes into extensive
2 -- spends multipages about the interviews that he
3 had with Mrs. Casey; is that correct?

4 A. That's correct.

5 Q. Gonzalez's report, if you could turn to
6 that and look at pages 1 through 2.

7 A. Okay.

8 Q. It begins there that he's told that the
9 suspect approached them and asked for help loading
10 something; is that correct? That's essentially the
11 first story she gives to everybody?

12 A. Right.

13 Q. That the suspect was a complete
14 stranger?

15 A. Right.

16 Q. And then on page 2, he goes through
17 more of her versions of her events, and then it's
18 referenced on page 10. These officers also in
19 their report are not believing her, they see the
20 evolution of her story, and one of them goes so far
21 as to say that her body language shows she's lying;
22 is that correct?

23 A. That's correct.

24 Q. And all this information was available
25 in these reports to your attorney prior to trial?

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 A. Yes.

2 Q. And then, finally, if you could look at
3 McDonald's report on page 12.

4 A. Okay. I'm here.

5 Q. And this is addressing their interview
6 with Willie Jennings when he comes forward and
7 talks to police?

8 A. Yes, ma'am.

9 Q. If you could look at the fourth
10 paragraph down.

11 A. Okay.

12 Q. If you could just read that paragraph,
13 I'm going to ask you some questions about it. Just
14 read it out loud for us.

15 A. He says, Jennings goes on to say he
16 first found out about the victim being killed when
17 he spoke to Consuela on Friday, November 23rd. He
18 had called Consuela to see if she was coming to the
19 Mr. Cheeks concert in Columbia that night.

20 THE COURT REPORTER: I'm sorry, Mr.
21 What?

22 THE WITNESS: Mr. Cheeks concert in
23 Columbia that night. Consuela told him, your boy
24 killed Junior. This is according to the case
25 because it shows that Consuela did know the shooter

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 as being the same person as being introduced to the
2 night before the homicide at her salon. This
3 corroborates the story Jennings is telling.

4 BY MS. BLANCHETTE:

5 Q. So the story starts coming together for
6 law enforcement right here in this paragraph?

7 A. Yes.

8 Q. And Willie Jennings was involved in the
9 music business and he was traveling with Mr. Cheeks
10 who was a Universal artist?

11 A. That's correct.

12 Q. And that's how they eventually tracked
13 him down; they called Universal and said, hey, we
14 need Willie Jennings?

15 A. Yes.

16 Q. So he was admitting here that he spoke
17 to Consuela on Friday, the 23rd, because they were
18 supposed to be meeting up at the Mr. Cheeks
19 concert?

20 A. Right.

21 Q. Is that information that Consuela
22 volunteered to law enforcement?

23 A. No.

24 Q. Is that information that your attorney
25 went into at trial to show the connection between

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 Consuela and Willie?

2 A. No, he did not.

3 Q. Okay. Now, you indicated this very
4 briefly before, something about not using her prior
5 record. Let me show you this document. And can
6 you identify that for the record, please?

7 A. Yes. This is the record of Consuela
8 Casey.

9 Q. Okay. And this is contained in the
10 Public Defender's file?

11 A. Yes.

12 MS. BLANCHETTE: Your Honor, at this
13 time, I would move this -- I believe it's a rap
14 sheet for lack of a better word -- in as
15 Applicant's Number 21. And that has four pages
16 front and back, right?

17 MS. HARRIGAN: No objection.

18 THE COURT: So admitted.

19 (PLF. EXH. 21 in evidence.)

20 MS. BLANCHETTE: Beg the Court's
21 indulgence one moment.

22 BY MS. BLANCHETTE:

23 Q. This was the information as far as the
24 criminal history that was in your attorney's file?

25 A. Yes.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 Q. Did you-all ever discuss her criminal
2 history?

3 A. No.

4 Q. Did you-all discuss Mrs. Casey very
5 much?

6 A. Not much, no.

7 Q. Okay. What did you discuss about her?

8 A. Just pretty much the statements, you
9 know, that she had given multiple statements. And
10 in investigator Gonzales' report, that she had
11 given, like, five statements prior to giving her
12 first written statement.

13 Q. Okay. Now, as far as this record, what
14 is it that you would want or what is it that you
15 would have pointed out to Mr. Strickler or thought
16 he could have used in court?

17 A. I would have pointed out to
18 Mr. Strickler that at that time Mrs. Casey was a
19 convicted felon, and that it was very beneficial
20 for her to have received the immunity and
21 cooperated with the State because, being that she
22 was given immunity indirectly on the pistol charge
23 that was found at the scene and on the marijuana
24 charge, that would have placed Mrs. Casey as a
25 three-time felony and she could have been facing

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 life without parole in the South Carolina
2 Department of Corrections.

3 Q. And just so we're all clear on what
4 you're referring to, is there a specific charge on
5 that sheet that you're basing this allegation upon?

6 A. Yes, the felony. I went over this
7 before. It's an arrest charge, controlled
8 substance near a school and park.

9 Q. And were any questions asked of her
10 about that charge and conviction at your trial?

11 A. No, there wasn't.

12 Q. Now, Mr. Crocker, we will continue to
13 talk about Consuela Casey throughout the course of
14 this case --

15 THE COURT: Where is the charge on the
16 document?

17 MS. BLANCHETTE: I'm sorry, I was --

18 THE WITNESS: Oh, okay. It's right
19 here, Your Honor, the Court charge, possession of
20 28 grams of marijuana.

21 THE COURT: What page are you talking
22 about?

23 THE WITNESS: These pages are not
24 numbered. It's the second page. It's the second
25 page, right down to --

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 MS. BLANCHETTE: And he's actually
2 looking at the third page because his is two-sided.

3 THE WITNESS: Oh, the third page, I'm
4 sorry.

5 MS. BLANCHETTE: It's two-sided, so
6 he's actually looking at the third page.

7 THE WITNESS: It's CIT 4453370D, DOC 96
8 GS17011351F21 --

9 THE COURT: Wait a minute. Wait a
10 minute. Tell me what you're arguing, 4453370D3?
11 Show me where you're talking about.

12 MS. BLANCHETTE: This one here
13 (Indicating) and then there's a conviction one
14 year.

15 MS. HARRIGAN: Your Honor, may I
16 approach to make sure that we're all looking at the
17 same charge, because mine says misdemeanor on it?

18 MS. BLANCHETTE: It's the same charge.

19 THE COURT: And tell me how that would
20 come into play.

21 MS. BLANCHETTE: That's what I was
22 asking him to explain, how he would have asked
23 Mr. Strickler to use that.

24 THE WITNESS: Because it would have
25 been enhanced, Your Honor. Another drug charge

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 would have enhanced it on the second --

2 THE COURT: Tell me how that's life
3 without parole.

4 THE WITNESS: Pistol -- she got
5 immunity on the pistol. She was found with the
6 pistol at the scene of the crime that they didn't
7 charge her with.

8 THE COURT: Tell me how having
9 possession of a pistol, even if it's true, would
10 give you life without parole.

11 THE WITNESS: Oh, I may have misspoke,
12 but that would have been a third strike.

13 THE COURT: Tell me how that would be
14 her third strike.

15 THE WITNESS: Because the misdemeanor
16 would have been enhanced by the trafficking charge.

17 THE COURT: Third strikes don't work
18 like that.

19 THE WITNESS: Oh, I'm sorry.

20 THE COURT: Third strikes have to be
21 either serious or the most serious or violent.

22 THE WITNESS: I apologize.

23 THE COURT: The marijuana charge would
24 not qualify, that I'm aware of.

25 THE WITNESS: She would have been

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 facing prison time.

2 BY MS. BLANCHETTE:

3 Q. The fundamental issue there, though, is
4 that you-all never discussed her record; is that
5 correct?

6 A. Right.

7 Q. And how that played into her being
8 granted immunity in this charge?

9 A. Right.

10 Q. Okay. Is there anything else that you
11 would like to say --

12 THE COURT: She testified at trial,
13 right?

14 MS. BLANCHETTE: She did.

15 THE COURT: Was her record brought out
16 in the testimony?

17 MS. BLANCHETTE: It was not.

18 THE COURT: Nothing was ever mentioned
19 that she had a prior record?

20 MS. BLANCHETTE: No prior drug charge.

21 THE COURT: I didn't say drug charge.
22 That she had a prior record?

23 MS. BLANCHETTE: The State can correct
24 me if I'm wrong, but I believe she was not, no
25 prior --

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 MS. HARRIGAN: No, Your Honor, and we
2 intend to get into that with Mr. Strickler, based
3 on this prior record.

4 THE COURT: All right.

5 BY MS. BLANCHETTE:

6 Q. Mr. Crocker, we'll talk about
7 Mrs. Casey throughout, but as to the issues set
8 forth in number 4, dealing with the granting of her
9 immunity, the medications that she was on, her true
10 level of culpability and her prior record, is there
11 anything else that you would like to explain to the
12 Court?

13 A. That if my attorney would have brought
14 these issues out, there's a reasonable probability
15 that it would have created more doubt with the
16 jury.

17 MS. BLANCHETTE: If I could just beg
18 the Court's indulgence one moment?

19 THE COURT: Sure. Sure.

20 BY MS. BLANCHETTE:

21 Q. Mr. Crocker, law enforcement utilized
22 Mrs. Casey a lot, she spoke to them a lot and gave
23 them a lot of versions of events. Are you aware of
24 any investigation that your attorney ever did into
25 Mrs. Casey?

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 A. No.

2 Q. Okay. And did you ask -- did we
3 attempt to do an investigation at this time, all
4 these years later, into Mrs. Casey and find
5 specific information?

6 A. Yes, I did. I also asked him about
7 doing that.

8 Q. So you asked him to investigate her?

9 A. Yes, I did.

10 Q. All right. Now, turning to the next
11 issue -- and the next two issues are going to deal
12 with a term I didn't really know before I met you,
13 extraterritorial jurisdiction.

14 A. Okay.

15 Q. First, you're alleging that law
16 enforcement here in Richland County exceeded their
17 jurisdiction in their investigation; is that
18 correct?

19 A. That's correct.

20 Q. And you have already mentioned the name
21 Shannon Myles?

22 A. Yes.

23 Q. If you could turn to her testimony on
24 page 528, please. 528 through 530, she testified
25 just as she did pretrial -- well, I take that back,

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 not that she did as pretrial, but on the same
2 topic, she met Gonzales at a McDonald's outside of
3 Bishopville, South Carolina to do a photo lineup;
4 is that correct?

5 A. That's correct.

6 Q. And in the photo lineup, she identified
7 you?

8 A. That's correct.

9 Q. Okay. And if you could turn to
10 page 570 through 573, there we have Gonzales
11 testifying about the same event.

12 A. Okay.

13 Q. And there he testifies that he met with
14 Consuela and Shannon Myles on 12/21, outside of the
15 McDonald's at Bishopville, where they both
16 essentially identified you; is that correct?

17 A. That's correct.

18 Q. In cross-examination, and you don't
19 have to turn here, but it's pages 545 through 547,
20 your attorney asked her about her pretrial
21 testimony in a Neil vs. Biggers hearing, and she
22 said it was Columbia that this had happened?

23 A. Right.

24 Q. Okay. Let me show you this document.
25 Can you identify it please for the record?

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 A. Yes.

2 Q. Whose name is on there and the date?

3 A. Okay. It's dated -- oh, 12/20/01, and
4 it's an investigative report submitted by
5 Investigator R. M. Gonzales.

6 Q. Okay. And Gonzales's report is in the
7 record. How many pages is this one?

8 A. One.

9 MS. BLANCHETTE: Your Honor, at this
10 time I move the one-page report by Investigator
11 Gonzales in as Applicant's 22.

12 MS. HARRIGAN: No objection from the
13 State.

14 THE COURT: So admitted.

15 (PLF. EXH. 22 in evidence.)

16 BY MS. BLANCHETTE:

17 Q. In this report, it indicates that
18 Gonzales went and met with her in Bishopville.

19 A. Yes.

20 Q. So this was in the attorney's file that
21 the meeting took place in Bishopville, even though
22 Shannon Myles said Columbia pretrial; is that
23 correct?

24 A. Yes.

25 Q. Why does that matter and what would you

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 have asked your attorney to do regarding this
2 meeting that took place in Bishopville, Mr.
3 Crocker?

4 A. It matters because in the State of
5 South Carolina Code of Laws, 23-12-15, agreements
6 between multiple law enforcement jurisdictions for
7 the purpose of criminal investigations,
8 jurisdiction of law enforcement officers states
9 that in the event of a crime and multiple
10 jurisdictions, either county or municipality, are
11 involved, law enforcement officers are authorized
12 to exercise jurisdiction with other counties and
13 municipal ties for the purpose of criminal
14 investigation only if a written agreement between,
15 or among, the law enforcement agencies involved has
16 been executed.

17 So I would ask my attorney to first
18 investigate to see if there were any
19 multi-jurisdiction --

20 THE COURT: Is it your position that
21 because somebody interviewed a witness in Lee
22 County, South Carolina they didn't have the
23 authority to do that?

24 THE WITNESS: Yes, sir. And I would --
25 I think the statute is clear --

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 MS. BLANCHETTE: And, Mr. Crocker,
2 we've also cited the cases of State v. Burger and
3 State vs. Boswell, both 2011 South Carolina cases.

4 A. Uh-huh.

5 Q. You would agree that those aren't
6 directly on point, but they both deal with the
7 issue of extraterritorial jurisdiction?

8 A. Yes, they do. Different facts -- in
9 Boswell, the officers went to -- they left
10 Lexington County and went to Calhoun County to
11 conduct a criminal investigation. In Boswell, they
12 contacted -- the Lexington officers contacted
13 Calhoun County.

14 In this particular case, no officers
15 was contacted -- Richland County officers didn't
16 contact anyone in Lee County, nor were there
17 agreements in place for them to travel there and
18 conduct a criminal investigation.

19 Q. Let's talk a little bit about Willie
20 Jennings. And the judge has a complete copy of the
21 transcript, so I would just refer to pages 657
22 through about page 671. There it's recounted these
23 meetings and interviews that are done with Willie
24 Jennings, and then also Stan Smith testifies about
25 the meetings with Willie Jennings on 10/16 though

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1 10/18. He summarizes their interaction.

2 Also in McDonald's report on page 11
3 and Smith's report on page 6, it goes into the --
4 I'm just going to ask you a general question
5 because I know you've reviewed all of this ahead of
6 time.

7 A. Uh-huh.

8 Q. It appears, and the record will speak
9 for itself, that Willie Jennings catches word
10 through Universal that they are looking for him and
11 he does make contact with Richland County.

12 A. Yes.

13 Q. For some reason, though, he goes back
14 to the Dillon area, and that is where they first
15 interview him at his mother's house. And there's
16 some testimony that a statement may have been taken
17 there -- it's kind of vague whether a statement was
18 actually taken there in Dillon or Richland County,
19 but he has a second meeting with law enforcement.
20 As a result of those, we have the two Willie
21 Jennings' statements.

22 A. Uh-huh.

23 Q. I would allow you to kind of summarize
24 what you see from the record as to their
25 interaction with Willie Jennings, and please

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1 explain, as far as extraterritorial jurisdiction,
2 what is the issue with their interactions with
3 Willie Jennings?

4 A. From the transcript, page 663, lines 1
5 through 9, Jennings testified the first statement
6 was given to Investigator McDonald in Dillon. In
7 the first statement, Jennings admitted that his
8 house was in Dillon and that December 10 -- that
9 Investigator McDonald -- and the Applicant drove a
10 Range Rover with Georgia tags and that he met
11 Applicant a couple of years ago in Atlanta, trial
12 transcript page 63 and 64.

13 That ties in -- it goes -- according to
14 23-12-15, that was a violation for Richland County
15 investigators to travel from Richland County to
16 travel to Dillon, South Carolina without
17 multijurisdictional agreements in place.

18 My attorney should have motioned the
19 Court to suppress all evidence that was obtained
20 for the violation of that statute and no
21 multijurisdictional agreements being in place,
22 which would have been the photo line-up
23 identification and some of the testimony of Willie
24 Jennings, the identification of Consuela Casey, the
25 identification of Shannon Myles. And it prejudiced

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1 me, because with that evidence excluded there is
2 really no case left.

3 MS. BLANCHETTE: All right. Your
4 Honor, if I could beg the Court's indulgence, I
5 might have one further question on this issue.

6 Your Honor, I don't want to waste the
7 Court's time. I can come back to it on our break.

8 THE COURT: I want somebody to explain
9 how this is a multijurisdictional matter.

10 MS. BLANCHETTE: Your Honor, in State
11 v. Boswell, it deals with actually arresting a
12 defendant outside of one's jurisdiction there, and
13 I was going to re-read it again last night, but I
14 believe it's Lexington.

15 THE COURT: Say Richland and Lexington
16 County decide they're going to have a -- they're
17 going to combine and have a task force and they're
18 going to look at some drug situation. And they
19 have an agreement that Richland County officers can
20 go into Lexington and investigate crimes that are
21 committed in Lexington, Lexington officers can go
22 -- all arising out of this. This is a situation
23 where the crime allegedly occurred in Richland
24 County, the murder.

25 MS. BLANCHETTE: Correct, Your Honor.

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1 THE COURT: It's not a multicounty
2 investigation. I mean --

3 MS. BLANCHETTE: Your Honor --

4 THE COURT: -- Lee county is not
5 investigating this crime.

6 MS. BLANCHETTE: The Lee county one I
7 think is tenuous, at best, I'll be honest, but I
8 wanted to make sure we have it on the record. What
9 concerns me here is Dillon County -- because you
10 have the opportunity to read the pretrial
11 transcript from October 20th and also the pretrial
12 in this case. In there, counsel gave a very
13 effective, I would submit, argument regarding
14 subject matter jurisdiction and personal
15 jurisdiction. The whole issue whether this should
16 have been tried in Richland County was thoroughly
17 argued.

18 THE COURT: It was ultimately
19 determined this was a Richland County crime.

20 MS. BLANCHETTE: That that is where the
21 ultimate act took place. Judge Cooper said, and
22 I'm just paraphrasing, that the conspiracy itself
23 took place in Dillon County.

24 THE COURT: But it's a Richland County
25 crime and Richland County officers are

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1 investigating a Richland County crime, correct?

2 MS. BLANCHETTE: That's correct, yes.

3 THE COURT: So the fact that they go to
4 Dillon County and talk to somebody, they're not
5 investigating a Dillon County crime that's being
6 tried in Dillon County.

7 MS. BLANCHETTE: Your Honor, when I say
8 correct, I would like to preface that by, I agree
9 with the arguments made by defense counsel
10 regarding subject matter jurisdiction and personal
11 jurisdiction in this case. Everything in this
12 case --

13 THE COURT: But they lost.

14 MS. BLANCHETTE: They did, Your Honor.

15 THE COURT: So --

16 MS. BLANCHETTE: But I'm conceding as a
17 PCR attorney that they made a good argument.

18 THE COURT: But that's not an issue
19 that I'm to address.

20 MS. BLANCHETTE: Correct.

21 THE COURT: I'm just trying to
22 understand the concept that you-all are putting
23 forth.

24 MS. BLANCHETTE: Correct. And the best
25 way is to put it in the context of that argument

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1 where they say, everything occurred in Dillon
2 County, this should have been tried, this should
3 have been charged in Dillon County, if anywhere
4 jurisdiction was proper, in Dillon County.

5 So I think we have more of an issue
6 here of when they're going into Dillon and
7 investigating the portions of the crime that deal
8 with what happened in Dillon. Consuela shoplifting
9 in Dillon County --

10 THE COURT: It's a conspiracy.

11 MS. BLANCHETTE: Where the conspiracy
12 was hatched.

13 THE COURT: The murder occurred here.

14 MS. BLANCHETTE: Correct, which is why
15 Judge Cooper ruled it could be heard here.

16 THE COURT: My guess is that if Mr.
17 Crocker prevailed on the conspiracy issue, but lost
18 on the murder issue, he would not be a happy
19 person.

20 MS. BLANCHETTE: Which is part of our
21 issue of ineffective assistance of appellate
22 counsel, because really only that --

23 THE COURT: I'm trying to understand
24 this thing right here.

25 MS. BLANCHETTE: Right. I'll be

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1 honest, it's a confusing case at the end of the day
2 for me because everything we've had to do is
3 outside of Richland County essentially. All you
4 have in Richland County is the shooting. Mr.
5 Crocker resided in Charlotte-Mecklenburg, all your
6 key players are out of Dillon County in this case.

7 THE COURT: Well, that's not usual
8 where there's a crime in one county and everybody
9 else is from somewhere else. Lexington, Fairfield
10 --

11 MS. BLANCHETTE: It's just not a
12 neighboring county. You know, we have Dillon and
13 Richland. I don't know that that's usually a --
14 did I answer the Court's question?

15 THE COURT: I understand what you're
16 saying now.

17 MS. BLANCHETTE: Okay. And I
18 referenced those arguments for the fact that I
19 think it gives some context, instead of me
20 rehashing what they argued. We have that in the
21 record, as to why they believed and argued that
22 jurisdiction was proper in Dillon.

23 THE COURT: I understand, but all of
24 that is history. Right now we have to show they
25 made their argument and lost.

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1 MS. BLANCHETTE: Correct.

2 THE COURT: And now we have that Mr.
3 Crocker is alleging ineffective assistance of
4 counsel because they failed to allow this thing to
5 go because this was a multijurisdictional
6 investigation. Well --

7 MS. BLANCHETTE: And that's why I
8 brought it up too, Your Honor, I'm glad you said
9 that, because I was going to address this at the
10 end. They came so close. They argued for almost
11 100 pages at two different hearings, all of this
12 happened in Dillon, we shouldn't even be here in
13 Richland, and they failed to bring to Judge
14 Cooper's attention whether it violated a
15 multijurisdictional agreement or did one exist.

16 I think it's information that he should
17 have had. I'm not saying he would have ruled
18 differently, but the two issues tied them together.
19 I don't know if I've been clear on that.

20 THE COURT: Wasn't that issue appealed?

21 MS. BLANCHETTE: It was, Your Honor.

22 THE COURT: And the Supreme Court
23 affirmed Judge Cooper.

24 MS. BLANCHETTE: Yes, the court of
25 appeals. Yeah. It wasn't taken up on cert.

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1 THE COURT: Court of appeals.

2 MS. HARRIGAN: And, Your Honor, if I
3 could just briefly put on the record, this
4 discussion regarding multijurisdictional agreements
5 and extraterritorial only really deals with the
6 trafficking charge. There is no contention that
7 the murder took place anywhere other than Richland
8 County and was properly tried in Richland County.

9 THE COURT: That's why I say, that if
10 he one that and he lost the verdict, he still would
11 not be happy.

12 MS. BLANCHETTE: It would have changed
13 the outcome, Your Honor. And I think our burden is
14 to show that this is prejudicial and would have
15 changed the outcome of the trial.

16 THE COURT: It would have changed the
17 outcome of what? The verdict?

18 MS. BLANCHETTE: I think at the trial
19 in this case, what if they would have argued it
20 pretrial because they were so close, and the
21 ultimate outcome.

22 MS. HARRIGAN: Your Honor, may we have
23 a brief moment so I can speak to Mr. Delgado about
24 --

25 THE COURT: I don't understand how you

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1 say you're so close. How do you know they're so
2 close?

3 MS. BLANCHETTE: It's just how I read
4 it, Your Honor. They were very close to making the
5 assumption, but they didn't make it. And we will
6 have them here to ask I'm sure.

7 THE COURT: Are you going to bring in
8 the court of appeals and Judge Cooper in?

9 MS. BLANCHETTE: I mean, defense
10 counsel was so close. They teetered on the edge of
11 this argument throughout their pretrial arguments.

12 THE COURT: I thought you were saying
13 so close to prevailing.

14 MS. BLANCHETTE: I don't have the
15 authority or wisdom or knowledge to make that call.

16 THE COURT: That's what I'm trying to
17 figure out, how you know that.

18 MS. HARRIGAN: If I could have a
19 moment's break to speak to Mr. Delgado?

20 (Off-the-record conference.)

21 THE COURT: Mr. Crocker, when you were
22 arrested, did you remain in jail until trial or was
23 a bond set?

24 THE WITNESS: I remained in jail until
25 trial, and then, eventually, like a month before

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1 trial, they gave me a million dollar bond.

2 THE COURT: Did you make bond?

3 THE WITNESS: No, sir.

4 THE COURT: All right.

5 MS. BLANCHETTE: Thank you, Your Honor.

6 THE COURT: Yes, ma'am.

7 What's going on with number 6 here?

8 THE WITNESS: Your Honor, if you don't
9 mind, I'd like to say something else.

10 THE COURT: Sure.

11 THE WITNESS: I want to say that the
12 statute is clear on it. You made a point that with
13 -- that the case took place in Richland County. In
14 Boswell, it was a Lexington County case that they
15 were going to Calhoun County to investigate. And
16 in Boswell, they still agreed that
17 multijurisdictional agreements were needed and --

18 THE COURT: I'm going to look at it.

19 THE WITNESS: And I would also like to
20 say in response to Ms. Harrigan, that we're saying
21 that the evidence that was obtained from the
22 evaluation of the -- not having the
23 multijurisdictional agreements should have been
24 suppressed.

25 My counsel should have moved to

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1 suppress that evidence based on the lack of
2 multijurisdictional agreements.

3 BY MS. BLANCHETTE:

4 Q. And, ultimately, Mr. Crocker, that
5 would have been the identification by Shannon Myles
6 and the statement of Willie Jennings?

7 A. Yes. And the identification of Willie
8 Jennings and identification of Mrs. Consuela Casey
9 also.

10 MS. BLANCHETTE: And, Your Honor, if I
11 could just point this out to the Court, this is the
12 reference I was looking for earlier. It's
13 something I wanted to refer to when you were asking
14 me questions. On page 1013, Stan Smith is
15 explaining how they got the phone records and they
16 found that there were phone calls to two 803
17 numbers. Lines 4 through 14, he explains that they
18 were Columbia numbers. We decided to look into
19 that because that was right in our jurisdiction.

20 And I think that's interesting, that
21 from his comments it can be inferred that he
22 believed his jurisdiction was confined to the 803
23 or Columbia area code.

24 THE COURT: I don't have a copy of
25 Boswell.

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1 MS. BLANCHETTE: Do you have Burgess?

2 THE COURT: I have Burgess. Oh, here
3 it is. I'm sorry.

4 All right. Are you ready to continue?

5 MS. BLANCHETTE: Yes, Your Honor.

6 THE COURT: Proceed.

7 BY MS. BLANCHETTE:

8 Q. Mr. Crocker, I cited a couple of cases
9 and some statutes under this issue, five and six.
10 Were there some additional cases that you wanted to
11 bring to the Court's attention?

12 A. No. It's mainly Boswell, is the
13 leading case on it.

14 Q. Well, let's go to issue number 6.

15 A. Okay.

16 Q. There we are also dealing with
17 multijurisdictional agreements and the allegation
18 regarding that, but the argument is that your
19 counsel should have addressed the execution of the
20 search warrant and your arrest in Charlotte, North
21 Carolina. It violated extraterritorial
22 jurisdictional along with your Fourth Amendment
23 rights. He also failed to suppress the evidence on
24 that ground. He did move to suppress it on other
25 grounds, but he failed to suppress it on that

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1 specific ground.

2 Mr. Crocker, before I ask you a
3 question on that, was there something you wanted to
4 add on that other issue?

5 A. Yes. Thanks a lot. Thanks a lot. I
6 apologize. Yeah. I wanted to bring up a couple of
7 points that Your Honor brought up, that if there
8 was a multijurisdictional task force, they would
9 have had statewide jurisdiction --

10 THE COURT: I didn't say statewide. It
11 would have been whatever the agreement says.

12 THE WITNESS: Okay. But in this case,
13 it wasn't a multijurisdictional task force.

14 THE COURT: I understand. I
15 understand.

16 THE WITNESS: Okay. And I just wanted
17 to touch on a few cases with the principle of
18 statutory construction. I know you're totally
19 familiar with them. I just wanted to put on the
20 record that this particular statute is clear. It's
21 not -- it's clear. It's not unambiguous.

22 BY MS. BLANCHETTE:

23 Q. All right. Let's talk about what
24 happened in North Carolina.

25 A. Okay.

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1 Q. As a result of the investigation that
2 happened inside South Carolina, what happened in
3 North Carolina, you asked that I obtain copies of
4 any and all multijurisdictional agreements; is that
5 correct?

6 A. Yes, ma'am.

7 Q. And we had a discovery motion and we
8 received an order allowing us to request those; is
9 that correct?

10 A. Yes, ma'am.

11 Q. Okay. If I could show you what has
12 been premarked Applicant's 23, could you identify
13 that for the record, please?

14 A. Yes. This is a letter from Ms.
15 Katherine Luck Campbell, Assistance Solicitor for
16 the Fifth Judicial Circuit of South Carolina.

17 Q. Does that address whether or not she
18 has multijurisdictional agreements in her file?

19 A. Yes, it does address it. She states
20 she does not have any multijurisdictional
21 agreements in her file.

22 Q. Do we also ask for any and all
23 documents regarding the actions that were taken in
24 North Carolina?

25 A. Yes, you did.

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1 Q. And did she provide us a packet of
2 those?

3 A. Yes.

4 Q. Could you identify these for the
5 record?

6 A. Yes.

7 Q. What does that appear to be?

8 A. It appears to be, excuse me, a State of
9 North Carolina, Mecklenburg County Search Warrant.

10 Q. And you have reviewed those. Is that
11 the packet that we received from the Solicitor's
12 office in response to our discovery order?

13 A. Yes.

14 MS. BLANCHETTE: Your Honor, at this
15 time, I would move Applicant's 23 and 24 into the
16 record.

17 MS. HARRIGAN: Is 23 the letter and 24
18 is the --

19 MS. BLANCHETTE: Yes.

20 MS. HARRIGAN: No objection from the
21 State.

22 THE COURT: So admitted.

23 (PLF. EXH. 23 in evidence.)

24 (PLF. EXH. 24 in evidence.)

25 BY MS. BLANCHETTE:

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1 Q. Let me show you what has been premarked
2 as Applicant's Number 25.

3 THE COURT: 23 is Ms. Campbell's
4 letter?

5 MS. BLANCHETTE: Yes. And 24 is the
6 packet of North Carolina documents.

7 BY MS. BLANCHETTE:

8 Q. I show you what has been previously
9 marked as Applicant's Number 25. Could you
10 identify what that appears to be for the record?

11 A. Yes. It's a letter from the Office of
12 the Public Defender, Attorney Douglas S. Strickler,
13 stating, please find a copy of the 911 tape in this
14 matter as requested in your Subpoena. You also
15 requested copies of any multijurisdictional
16 agreements. A search of our file has not turned up
17 any such document. If you believe we actually have
18 these documents, you're welcome to come and search
19 the file yourself.

20 Q. Could you identify what has been marked
21 as Applicant's 26?

22 A. This is my waiver of extradition, and
23 it's another search warrant from Mecklenburg
24 County, North Carolina.

25 Q. Does that appear to be documents that

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 were contained in the complete copy of the Public
2 Defender's file that we received as part of the
3 discovery?

4 A. No.

5 Q. No. Does that appear to be the
6 documents that we got from the Public Defender?

7 A. Yes, ma'am, excuse me.

8 MS. BLANCHETTE: Your Honor, at this
9 time I would move Applicant's 25 and 26 into the
10 record.

11 MS. HARRIGAN: No objection.

12 THE COURT: So admitted.

13 (PLF. EXH. 25 in evidence.)

14 (PLF. EXH. 26 in evidence.)

15 BY MS. BLANCHETTE:

16 Q. Mr. Crocker, I'm going to hand you
17 what's been marked as Applicant's Number 27. As a
18 result of a Court Order from a discovery motion, we
19 received an order that instructed
20 Charlotte-Mecklenburg to provide us the documents
21 from their file. Being in South Carolina that's
22 all the order could do. I forwarded that to them
23 and over the course of two years made that request,
24 and just last week they sent us a packet of
25 documents; is that correct?

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1 A. That's correct.

2 Q. Could you identify what I just handed
3 you?

4 A. Yes. This is a letter from Mr. Chuck
5 Freeman, police paralegal for the
6 Charlotte-Mecklenburg Police Department stating
7 what documents they have on file.

8 Q. And this has how many pages of
9 documents attached to it?

10 A. It has 1, 2, 3, 4, 5, 6, 7, 8.

11 Q. Eight pages of documents?

12 A. Yes.

13 MS. BLANCHETTE: Your Honor, at this
14 time, I would move the letter that is addressed to
15 myself and the documents attached to the back in as
16 Applicant's Number 27.

17 MS. HARRIGAN: Just want to make sure.
18 No objection.

19 THE COURT: Admitted.

20 (PLF. EXH. 27 in evidence.)

21 MS. BLANCHETTE: For the record, as an
22 officer of the court, I reviewed the Public
23 Defender's file at the invitation of Mr. Strickler,
24 along with Brian Petrano who was the Assistant
25 Attorney General for Richland County at the time.

1 Mr. Petrano provided me with a CD of all the
2 documents that we asked to have copied. I have
3 thoroughly reviewed that multiple times and set my
4 own eyes on the file and I did not come across any
5 multijurisdictional agreements, but I did take his
6 invitation.

7 BY MS. BLANCHETTE:

8 Q. Mr. Crocker, I heard you reference the
9 beginning of the pretrial hearing in October of
10 2003. It's my understanding the judge has a copy
11 of that in his packet.

12 A. Uh-huh.

13 Q. On page 25, your attorneys made a
14 lengthy argument to suppress the items found in the
15 search, but they made that argument under the South
16 Carolina Rules of Evidence Rule 403 and 404; is
17 that correct?

18 A. Yes.

19 Q. At any time, pretrial or during the
20 course of the trial, did they ever bring up the
21 issue of multijurisdictional agreements or asking
22 for those or a violation of extraterritorial
23 jurisdiction?

24 A. No, they did not.

25 Q. On pages 20 through 21 of your trial,

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 if you could turn to that.

2 A. Okay.

3 Q. There I believe the Solicitor gives an
4 explanation of all the evidence that they found in
5 your home that your attorneys are trying to
6 suppress; is that correct?

7 A. Yes.

8 MS. BLANCHETTE: Okay. Your Honor, I
9 believe the transcript speaks for itself so we
10 won't go through each item of evidence.

11 BY MS. BLANCHETTE:

12 Q. But, essentially, the evidence that
13 came in that they used -- that the State used to
14 tie into this crime was the 9-millimeter
15 ammunition; is that correct?

16 A. That's correct.

17 Q. Paperwork that showed that you had at
18 one time owned a vehicle that was similar to the
19 vehicle of the suspect on the video --

20 A. Yes.

21 Q. -- and that Consuela Casey identified?

22 A. Yes.

23 Q. Okay. And they also obtained and
24 gained access to a shed where they found similar
25 Rubbermaids that they introduced at trial; is that

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 correct?

2 A. Yes, ma'am.

3 Q. And, Mr. Crocker, I was just trying to
4 summarize those pages. Is there any other major
5 pieces of evidence? I mean, they introduced them
6 and we referred to 20 and 21 for everything that
7 they introduced. Is there anything else that you
8 specifically felt like they spent a lot of time on?

9 A. The marijuana, the cell phones.

10 Q. And how many cell phones did they find
11 at your residence?

12 A. I think they said six.

13 Q. Were any of those the number for the
14 Croc phone?

15 A. No.

16 Q. And your attorneys argued strenuously
17 about the prejudice of these items coming in that
18 were found in the search; is that correct?

19 A. Yes. Also the book on marijuana law,
20 they were trying to keep that out.

21 Q. Okay. But in making that argument and
22 arguing the prejudice, which I'm not going to
23 repeat because it's in the record, they never made
24 an argument about the facts that Richland County
25 may have overstepped their bounds in executing the

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1 search warrant and your arrest?

2 A. No, they did not.

3 THE COURT: So it's your position
4 without a multijurisdictional agreement that
5 Charlotte-Mecklenburg -- Richland County could not
6 ask to get a search warrant in the State of North
7 Carolina?

8 MS. BLANCHETTE: First, we believe
9 there should have been some type of agreement in
10 place and, second, we're going to go through how it
11 was done --

12 THE COURT: Let's assume there is not
13 one.

14 MS. BLANCHETTE: Right.

15 THE COURT: We don't have to worry
16 about whether there should have been one. Is it
17 your position in that aspect of the grounds, that
18 because there was no multijurisdictional agreement,
19 Richland County did not have the ability to ask to
20 get a search warrant in the State of North
21 Carolina?

22 MS. BLANCHETTE: I would submit that,
23 but I don't want to stand on that alone. I would
24 go through how -- the actual procedure that they
25 did and say, even if a multijurisdictional

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 agreement wasn't needed, that they didn't follow
2 procedure as they said was required.

3 THE COURT: So part one of that
4 question you're acknowledging.

5 MS. BLANCHETTE: Yes.

6 THE COURT: I know it's hard to limit
7 yourself to this question.

8 MS. BLANCHETTE: To be agreeable?

9 THE COURT: And then you would go a
10 step further and say, if the agreement was not
11 necessary, Richland County did not follow proper
12 procedure in getting the search warrant.

13 MS. BLANCHETTE: And executing it, yes,
14 Your Honor.

15 THE COURT: I'm not sure -- you'll have
16 to explain the executing.

17 MS. BLANCHETTE: I'll be happy to.

18 BY MS. BLANCHETTE:

19 Q. If we could turn to page 582 of the
20 transcript, there we have Gonzales on
21 cross-examination discussing the search warrant.
22 If you could turn there to page 583. And Gonzales
23 -- I'm sorry, page 582. He explains and
24 acknowledges that they do not have jurisdiction in
25 North Carolina. So North Carolina must obtain a

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1 search warrant and gain entry.

2 But then, interestingly, if you look at
3 page 583, he essentially admits that he was the
4 one, being Richland County Sheriff's Department,
5 that pops the lock on the shed to gain entry to it,
6 and that would be the shed where they found not
7 only the Rubbermaid containers but the marijuana;
8 is that correct?

9 A. Yes. But he also testified that he
10 gained entry through my back door.

11 Q. And that's when they each recount what
12 they did in their report?

13 A. Yeah. It's in his --

14 THE COURT: All right. This is phase
15 three of this, they didn't have the
16 intergovernmental agreement. Even if they didn't
17 need it, they didn't do it right in securing the --
18 getting North -- North Carolina to secure the
19 search warrant. And now you're at the point where
20 -- and then it was executed incorrectly because a
21 Richland County officer participated in it.

22 What about part B? What did they not
23 do --

24 MS. BLANCHETTE: Your Honor, I will go
25 back to part B.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 BY MS. BLANCHETTE:

2 Q. Mr. Crocker, in order to ascertain
3 exactly what was done apart from the testimony in
4 the police reports, we attempted to get a complete
5 copy of all North Carolina documents specifically
6 from North Carolina; is that correct?

7 A. Yes.

8 Q. And if you could look at that exhibit
9 that we just entered -- do you still have it up
10 there? Yes. This packet. (Indicating)

11 THE COURT: What exhibit is that?

12 MS. BLANCHETTE: Exhibit Number 27. I
13 was going to have him look at the
14 Charlotte-Mecklenburg documents I just got last
15 week.

16 BY MS. BLANCHETTE:

17 Q. If you could look at -- there's pages
18 marked 1 and 2 and then starts a series of pages
19 and there is handwriting. Whose handwriting is
20 that?

21 A. Mine.

22 Q. And if you flipped through the
23 remainder of the document, is that your handwriting
24 at the top of the remainder of the pages?

25 A. Yes, it is.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 Q. As a result of your Postconviction
2 Relief, that's all we've gotten from
3 Charlotte-Mecklenburg?

4 A. Yes.

5 Q. Have you been trying since your
6 conviction to get the paperwork from
7 Charlotte-Mecklenburg so we could connect the dots
8 to see exactly what happened in their obtaining of
9 the search warrant, the execution of the search
10 warrant and your arrest?

11 A. Yes.

12 Q. Okay. Have you ever received anything
13 more than what we're introducing to the Court
14 today?

15 A. I received letters stating they didn't
16 have any investigative reports. I requested chain
17 of custody forms.

18 Q. As a result, have you filed a complaint
19 against Charlotte-Mecklenburg County?

20 A. Yes, I have.

21 Q. Okay.

22 THE COURT: All right. So phase B of
23 this question -- part B, because you have not been
24 on the security thing from Mecklenburg County,
25 you're not in a position to say whether they

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 correctly or incorrectly secured the search
2 warrant?

3 MS. BLANCHETTE: We can point out some
4 issues we see in the documents, which is where I
5 was going to go next, but I was first establishing
6 why we don't have everything.

7 THE COURT: All right. Don't make this
8 too complicated now.

9 MS. BLANCHETTE: This is probably our
10 most complex issue. I appreciate your patience
11 with it. This is the one that gives me a headache.
12 BY MS. BLANCHETTE:

13 Q. Mr. Crocker, could you identify this
14 document for the record, please?

15 A. Yes. This is the complaint that I
16 filed with the Charlotte-Mecklenburg Police
17 Department Internal Affairs.

18 Q. And in this complaint do you set forth
19 your allegations and attach a number of documents
20 demonstrating what you believe they did
21 incorrectly?

22 A. Yes.

23 MS. BLANCHETTE: Your Honor, I would
24 like to move this in as Applicant's Number 28.

25 I'm not sure if the State has an

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 objection.

2 MS. HARRIGAN: The State does have an
3 objection. His peripheral suit that he's filed or
4 complaint that he's filed against
5 Charlotte-Mecklenburg is not dispositive in this
6 case here. We object.

7 THE COURT: What's the basis of this
8 being admitted?

9 MS. BLANCHETTE: I'm asking that this
10 be admitted because I think it completes the trail
11 that Your Honor was asking me about.
12 Unfortunately, Charlotte-Mecklenburg didn't respond
13 to my discovery request until this week, and they
14 sent me a bunch of documents that had my client's
15 handwriting on it that actually come from this
16 Complaint, so that -- I think I can match the two
17 to this case and be relevant.

18 And, furthermore, what he has done in
19 the Complaint, and I was just going to go ahead and
20 have him briefly summarize it for the Court, he
21 sets forth the exact things that he has found in
22 the documents that we do have that
23 Charlotte-Mecklenburg has done wrong. So part B is
24 essentially the Complaint.

25 THE COURT: Well, I'm going to sustain

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 the objection, but maybe let your client testify as
2 to how he thinks part B has not been complied with
3 here.

4 BY MS. BLANCHETTE:

5 Q. Okay. And, Mr. Crocker, this won't
6 come in for purposes of this report, but I'm going
7 to give it to you for you to use as a resource, if
8 that's okay with the Court. And if you could
9 answer the Judge's question, because he's asking it
10 very clearly and I don't want to restate. What is
11 wrong? What is wrong with how they executed -- and
12 we'll go through the testimony so you don't have to
13 get to the part C that he was referring to, but
14 upon review of the documents, what are you alleging
15 they did wrong? Why have you filed this Complaint?
16 Why is this a problem for you?

17 A. First -- first and foremost --

18 THE COURT: I understand the Complaint.
19 The complaint is, hey, I need these documents and
20 you're not providing them, right?

21 MS. BLANCHETTE: Correct, but he also
22 goes into in the Complaint, and correct me if I'm
23 wrong, what he has alleged that they had done wrong
24 which ties into your question about part B. And he
25 does it much better than --

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 THE COURT: Tell me what it is that you
2 believe is wrong about North Carolina securing the
3 search warrant.

4 THE WITNESS: Not so much about them
5 securing the search warrant, Your Honor, but when
6 it comes to the search warrant, they say they --
7 that Officer Fiore went before the magistrate to
8 obtain the search warrant. I have written numerous
9 documents, letters to Charlotte-Mecklenburg asking
10 for Officer Fiore's investigative report, given
11 that they weren't in the original discovery.

12 Officer Fiore never testified at trial
13 that he went to the magistrate for a search
14 warrant. I feel like my attorneys should have
15 moved to keep that out based on confrontation and
16 hearsay. That's as far as the search warrant goes.

17 Secondly, the forced entry --

18 THE COURT: I understand that. I
19 understand that's part C of this question.

20 THE WITNESS: Okay. All right.

21 THE COURT: I understand that aspect of
22 it, but you're alleging that Richland County
23 officers were up in North Carolina actually
24 affecting this search warrant --

25 THE WITNESS: Yes, Your Honor.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 THE COURT: -- when it wasn't their
2 search warrant and that Charlotte-Mecklenburg
3 should have been the officers that were going
4 forward. I understand that. I understand A. I'm
5 trying to understand B and I'm not sure -- I mean,
6 the burden's on you.

7 MS. BLANCHETTE: I got it.

8 BY MS. BLANCHETTE:

9 Q. Mr. Crocker, was there also an issue --
10 did you receive -- we got the copy from the Public
11 Defender, we got the copy from the Solicitor, and
12 we essentially got nothing from North Carolina.
13 Was there some inconsistencies in the documents, as
14 far as signatures and things like that, that you
15 asked North Carolina to help clarify?

16 A. Right. The particular search warrant
17 we got, the one we got from the -- what's that, 24?
18 I'll show you, Your Honor.

19 MS. BLANCHETTE: Your Honor, this is
20 all highlighted in the Complaint; he goes through
21 the search warrants and those documents. So that's
22 why I was attempting to introduce it is he actually
23 goes through each of the errors that he's alleging.

24 THE WITNESS: Like, for instance, Your
25 Honor, right here on this particular search

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 warrant, it has Detective C. R. Williams, the
2 returning -- officer making the return. Nowhere in
3 the investigate reports of the South Carolina
4 officers did they say Mr. C. R. Williams was even
5 present. And he's saying that he executed the
6 search warrant. So I went and --

7 THE COURT: C. R. Williams is a
8 Charlotte-Mecklenburg officer?

9 MS. BLANCHETTE: Supposedly, yes.

10 THE WITNESS: Supposedly?

11 THE COURT: Do you believe he's not?

12 MS. BLANCHETTE: I have no proof that
13 he is or is not.

14 THE COURT: Okay. Don't you have to
15 prove that he isn't?

16 THE WITNESS: So I wrote the letters
17 asking for Mr. Williams' investigative report. I
18 received nothing. So once I did ask for that, they
19 sent me back another search warrant and
20 Mr. Williams' signature was removed from it. So we
21 have a total of like three different search
22 warrants. If you look at them closely, you'll see
23 in the search warrant return the signatures are
24 different.

25 THE COURT: The same search warrant?

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 THE WITNESS: Same search warrant.

2 THE COURT: Same search warrant,
3 different names appear.

4 THE WITNESS: Different names appear;
5 they've been altered. This one right there, that
6 was 21:43. The date and time was 12/12/01, 21:43,
7 as the date and time of the execution. This one
8 was 12/12/01, 21:40. If you look at the
9 handwriting on the search warrant return, the
10 signature -- the signatures are different.

11 So it's -- you know, can't say if there
12 was ever a real search warrant or a legal search
13 warrant in place.

14 THE COURT: Okay. And from this search
15 warrant it appears the Tupperware -- what do you
16 call that stuff? Tupperware --

17 MS. BLANCHETTE: Basically, there's a
18 huge list of items, Your Honor. We have the list
19 of the exhibits, but the Tupperware, yes, was on
20 the list.

21 THE COURT: But you think -- there were
22 certain items that you think were critical to the
23 State getting a conviction; one, the Rubbermaid
24 items, cell phones. What else?

25 MS. BLANCHETTE: The -- and I

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 apologize, I didn't make an exhaustive list. The
2 marijuana, the 9-millimeter ammunition. They find
3 9-millimeter ammunition in the holster. And in the
4 State's opening, they argue -- they say he got rid
5 of the gun, but he didn't get rid of the holster.
6 So the holster actually becomes pretty important.

7 THE COURT: And the book.

8 MS. BLANCHETTE: The book on marijuana
9 laws, Your Honor.

10 THE WITNESS: And the 32 exhibits in
11 the trial.

12 MS. BLANCHETTE: Yeah. There's 32
13 exhibits that get introduced. They were more Judge
14 Cooper did limit -- I mean, did not allow in some
15 of the exhibits, but also they find the paperwork
16 that shows that he, after the murder, had sold a
17 vehicle that they say is the suspect's vehicle.

18 And then they -- we have the exhibits
19 in the courtroom, but there was a number of
20 exhibits with paperwork and bill of sale and
21 pictures of the vehicle and -- that they also found
22 in the home and that he gives to them in the home.

23 THE COURT: All right.

24 MS. BLANCHETTE: Your Honor, if I
25 may --

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 THE COURT: Hold on a second.

2 MS. BLANCHETTE: Yes.

3 THE COURT: Madame Attorney General.

4 MS. HARRIGAN: Yes, Your Honor.

5 THE COURT: Do you acknowledge there
6 are some inconsistencies with the warrants.

7 MS. HARRIGAN: No. I don't see where
8 Mr. Crocker's pointing that out in my review, and
9 perhaps Ms. Blanchette or Mr. Crocker could show me
10 where these differences are. Because the only
11 difference I see between 25 and 24, it looks like
12 the first page on 25, there isn't a signature in
13 the return box. I can't tell what he's --

14 MS. BLANCHETTE: And, Your Honor,
15 actually he's not comparing the exhibits. He's
16 actually referring to what's in the Complaint. So
17 I was going to ask you if I could just take the
18 documents, the search warrants and things off the
19 Complaint and attempt to move those in. If I take
20 off the legal filing, would the State still object
21 to those?

22 MS. HARRIGAN: The State would still
23 object. Those are documents that came from Mr.
24 Crocker. We don't know if those have been altered
25 in any way.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 THE COURT: I thought the search
2 warrants were already admitted?

3 MS. BLANCHETTE: We have these two
4 packets introduced, which is what I got from the
5 Public Defender's Office and the Solicitor's
6 Office.

7 THE COURT: And those are the search
8 warrants.

9 MS. BLANCHETTE: Correct. I could have
10 him check to see what he was referring to is in
11 these two packets --

12 THE COURT: My concern is the
13 inconsistencies that have different people signing
14 the warrants at different times.

15 MS. HARRIGAN: And if Ms. Blanchette or
16 Mr. Crocker could show me what they're talking
17 about, then I can respond, but it's not apparent to
18 me, Your Honor, and it hasn't been when I've
19 reviewed these.

20 THE COURT: All right. Ms. Blanchette?

21 MS. BLANCHETTE: Yes, Your Honor.

22 THE COURT: Can you help? Can you show
23 her --

24 MS. BLANCHETTE: I'll be honest, I was
25 relying on the Complaint coming in and using that.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 I haven't gone through the other two to see where
2 they're at. I would need a couple minutes.

3 THE COURT: Okay. At this point in
4 time, I want you to get with the Attorney General
5 and see if you-all can --

6 MS. BLANCHETTE: I can do that really
7 quickly with Mr. Crocker --

8 THE WITNESS: Yeah, I've got it right
9 here. It's H -- if you'll go to Exhibit H of the
10 Complaint.

11 MS. BLANCHETTE: Right. But the
12 Complaint isn't in so if you refer to them --
13 that's why I think he's confused. He's referring
14 to the Complaint.

15 THE WITNESS: I'm sorry. I'm sorry.

16 MS. BLANCHETTE: Could you refer to
17 them as they are in Applicant's Number 26 and
18 Number 24?

19 THE WITNESS: Okay. Yes. 26 I have a
20 copy of, and I also have a copy -- it's one there
21 that wasn't signed, the return. I have a copy --

22 THE COURT: These are the returns --

23 MS. HARRIGAN: Are we speaking of the
24 first page on 25 from the Public Defender's file
25 and 24, which is from the Solicitor's file?

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 MS. BLANCHETTE: I have 24 marked as
2 the packet we got from the Solicitor's office and
3 26 is the packet we got from the Public Defender's
4 Office and that's how the Court has them worked.

5 MS. HARRIGAN: 26 is marked as the
6 items received from Charlotte-Mecklenburg Police
7 Department. I had it marked as 25 and was
8 corrected.

9 THE COURT: I have 25 as a letter
10 from Douglas Stickler.

11 MS. BLANCHETTE: I'm just going off of
12 the stickers.

13 THE COURT REPORTER: 26 is the
14 Solicitor's packet, 25 is Strickler's letter, 24 is
15 the North Carolina State letter, 27 is the North
16 Carolina packet as well.

17 MS. BLANCHETTE: Right. Then the next
18 two came in.

19 THE COURT REPORTER: The numbers are
20 off.

21 THE COURT: I have the same numbers as
22 the Court Reporter.

23 THE WITNESS: I have a letter that I
24 wrote to Mr. Williams --

25 MS. BLANCHETTE: Just one second, let

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 me check with the Court Reporter. We need to get
2 the stickers back on first.

3 (Off the record.)

4 THE COURT: We don't need to do that
5 right now, but at some point before we finish, I
6 want you to see if you can reconcile what you and
7 your client say versus what the Attorney General
8 believes the documents say.

9 MS. BLANCHETTE: And if we break
10 tonight and he's still on the stand, can I attempt
11 to reconcile that with him or do you want me to do
12 that -- remember, I'm not supposed to speak to him.

13 MS. HARRIGAN: The State would object
14 to that.

15 THE COURT: You're going to have to get
16 him to do it. No coaching or helping him, he's
17 clearly knowledgeable about --

18 MS. BLANCHETTE: Correct. No problem.

19 THE COURT: -- probably better than
20 anybody else in this room.

21 MS. BLANCHETTE: Do you mind if we
22 revisit this issue and we can move on at this
23 point, so we can keep moving for today? And then
24 I'll have him look back over these --

25 THE COURT: Depending on what the

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 situation is. You have alleged there's some
2 inconsistencies with the warrants.

3 THE WITNESS: Yes, sir.

4 THE COURT: And Ms. Attorney General,
5 in reviewing the warrants, has not been able to
6 identify those inconsistencies.

7 THE WITNESS: Okay.

8 THE COURT: Your attorney has been
9 relying on your investigation and inquiry and
10 testimony as TO the evidence as to this issue, and
11 I've asked the two of these lawyers to see if they
12 can reconcile where, if any, the difference is.

13 It may be that we're going to -- we're
14 not going to complete this issue right now, and
15 we'll have to come back. And she may have to ask
16 you questions for you to point those out. In
17 reviewing your paperwork, you might look for
18 wherever that is.

19 She's not allowed to talk to you once
20 you get on the stand. She's not allowed to
21 question you and talk to you and prepare you for
22 any of these things, so we're just going to skip
23 number 6 and come back to it.

24 THE WITNESS: Okay. I have everything
25 right here.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 MS. BLANCHETTE: I apologize, Your
2 Honor. I had based my preparation on the Complaint
3 coming in, and that just threw me off a little bit
4 when it didn't come in so I apologize.

5 THE COURT: That's no problem. It does
6 concern me a little bit.

7 MS. BLANCHETTE: Correct. And if we're
8 going to make those allegations, we need to make
9 them correctly.

10 THE COURT: And if that is true, we may
11 need to do some other things.

12 MS. BLANCHETTE: Your Honor, if I could
13 just beg the Court's indulgence one moment. I
14 could continue to part C of this issue or do you
15 want me to just leave this issue alone and move on?

16 THE COURT: We'll come back totally.
17 Number seven you've already addressed this morning.

18 MS. BLANCHETTE: I just have one or two
19 questions of Mr. Crocker.

20 BY MS. BLANCHETTE:

21 Q. Had you requested, Mr. Crocker, that
22 your attorney utilize a ballistics expert?

23 A. Yes, I did.

24 Q. And you actually did that in writing;
25 is that correct?

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 A. Yes, I did.

2 Q. Okay. And we're going to get to a
3 point where we're going to introduce some letters,
4 and you specifically asked him to do that; is that
5 correct?

6 A. That's correct.

7 Q. And in closing arguments on page 1410,
8 the State emphasized -- I'm sorry, in your
9 attorney's closing argument, page 1410, he
10 emphasized the angle of the shot and the importance
11 of looking at the angle of the shot, but he never
12 got a ballistics expert, as far as you know?

13 A. He told me he was, but he didn't.

14 Q. Please explain that.

15 A. I asked him in writing -- I asked him
16 in person, I asked him in writing to utilize -- to
17 get a ballistics expert. And he told me that he
18 would hire one, get one, you know, for me. And
19 around about that Thursday before trial I said,
20 what's going on, are we going to have a ballistics
21 expert? He say, no, I'm going to do that and that
22 was the end of that. And that's where that
23 testimony came from.

24 Q. And you also had requested that he call
25 a number of witnesses on your behalf, correct?

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 A. Yes.

2 Q. And this is a case where you did put up
3 a defense and there were witnesses called?

4 A. Yes.

5 Q. Mr. Crocker, if you could identify what
6 has previously been marked as Applicant's 29, what
7 does that appear to be?

8 A. This is the Defendant's list of
9 potential witnesses.

10 MS. BLANCHETTE: Okay. Your Honor, at
11 this time we would move Applicant's Number 29 into
12 the record.

13 MS. HARRIGAN: No objection.

14 THE COURT: So admitted.

15 (PLF. EXH. 29 in evidence.)

16 THE COURT: What is 28?

17 MS. HARRIGAN: I believe it was the
18 Complaint.

19 MS. BLANCHETTE: Oh, and these were
20 previously marked, Your Honor. I apologize.

21 THE COURT: All right.

22 BY MS. BLANCHETTE:

23 Q. Mr. Crocker, the transcript will speak
24 for itself, but were all of the witnesses called at
25 trial?

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 A. No, they were not.

2 Q. And, specifically, are there any
3 witnesses on there that you would like to point out
4 to the Court that weren't called and the reason you
5 wanted them called?

6 A. Yes. I wanted Mr. Jeff McInnis --
7 excuse me, Cynthia McInnis called. And I wanted
8 her called because she was familiar when -- her son
9 had pretty much got put out the NBA. I seen
10 something in Jeff that I could help with, and I
11 started mentoring Jeff. Things, you know, started
12 picking up and he got back into the NBA and he went
13 on to have a good career. And she was just around
14 when I started the Hoop Family, the nonprofit
15 organization.

16 THE COURT: So that would have been a
17 character witnesses?

18 THE WITNESS: Yes, sir.

19 BY MS. BLANCHETTE:

20 Q. And you actually asked me to get in
21 touch with her and have her here today?

22 A. Yes.

23 Q. I did have the opportunity to speak
24 with her, but she's unable to be here today. And
25 she's also in North Carolina, so I could not issue

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 a valid Subpoena to get her here today; is that
2 correct?

3 A. That's correct.

4 MS. BLANCHETTE: Your Honor, as a
5 result of doctor's appointments and some family
6 obligations, Mrs. Cynthia McInnis informed me
7 yesterday she would not be able to be here. I
8 received a faxed notarized statement from her
9 during our lunch break; I just provided a copy to
10 the State. Since I couldn't speak to my client, he
11 actually hasn't seen this yet, but I would at this
12 time move this in as --

13 MS. HARRIGAN: The State would object.
14 She would need to be here so I could cross-examine
15 her, so I would object.

16 THE COURT: I'll sustain it; that's
17 hearsay.

18 MS. BLANCHETTE: Thank you, Your Honor.

19 BY MS. BLANCHETTE:

20 Q. But you wanted Cynthia McInnis called;
21 is that correct? As a character witness?

22 A. Yes.

23 Q. Mr. Crocker, there were some other
24 witnesses, and you can specifically give their
25 names, that you wanted to be at your PCR and you

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 wanted to testify at trial, but there are a couple
2 of witnesses that are now deceased; is that
3 correct?

4 A. Yes.

5 Q. And they don't have to be on that list,
6 it can be somebody that you originally asked
7 Mr. Crocker (sic) to call, but are there some
8 witnesses that are now deceased?

9 A. I need to see my list.

10 Q. Well, I'll wait until I get to that and
11 ask you that question.

12 A. I did want Monica McClain called. I
13 did want Marvin Clemmon and Latoya Clemmon. I
14 asked that they be investigated to be called.

15 Q. Okay. Let me show you what's been
16 marked as Applicant's Number 30.

17 A. Okay. Yes.

18 Q. Can you identify that for the record?

19 A. Yes. This is a letter from my trial
20 attorney, Douglas S. Strickler, concerning
21 Ms. Patty Rickborn, who was my private
22 investigator.

23 Q. Did you meet with Patty Rickborn
24 regarding your case?

25 A. Yes, I did.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 Q. Did you discuss your case with her?

2 A. Yes, I did.

3 Q. Did you explain to her the things you
4 wanted investigated and the people you wanted to
5 talk to?

6 A. Yes.

7 Q. Was she present at your trial?

8 A. No, she wasn't. She was present the
9 first day and maybe the second day, and then when
10 it was time for her to testify, she was -- I don't
11 know where she went. She didn't testify.

12 Q. Okay. Had you had conversations with
13 her about your case?

14 A. Yes.

15 Q. Was it your understanding based upon
16 those conversations that she had any information
17 that was helpful to your case?

18 A. Yes.

19 Q. And as a result of that, did you ask us
20 as part of your PCR to get in touch with Ms.
21 Rickborn?

22 A. Yes, I did.

23 Q. Were we able to get any information as
24 a result of that?

25 A. No, ma'am.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 Q. I'm going to hand you what's been
2 previously marked as Applicant's Number 31 through
3 36. I would ask that you identify what each one of
4 these are and give us the date for the record.

5 A. All right. Exhibit 31 is a letter that
6 I personally prepared and sent to Mr. Strickler
7 outlining investigations that I wanted conducted
8 for my case prior to trial.

9 And Exhibit 32 is another letter that I
10 sent to Mr. Strickler --

11 Q. And what's the date on that?

12 A. Excuse me, June 16th.

13 THE COURT: Which number is it? You
14 just handed me another letter from Mr. Strickler to
15 Mr. Crocker?

16 MS. BLANCHETTE: Correct.

17 THE COURT: He's testifying about a
18 letter he wrote.

19 MS. BLANCHETTE: This is the last one
20 that came in, Your Honor. I just forgot to give
21 you your copy.

22 THE COURT: All right. What is -- what
23 is this one?

24 MS. BLANCHETTE: That is the letter
25 that he just testified about getting from the

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 investigator --

2 THE COURT: What is that number?

3 MS. BLANCHETTE: 30.

4 THE COURT: This is 30.

5 MS. BLANCHETTE: Yeah, it's the letter.

6 THE COURT: All right. Thank you.

7 MS. BLANCHETTE: Your Honor, at this
8 time I would move Applicant's 30 into the record.

9 MS. HARRIGAN: No objection.

10 THE COURT: So admitted.

11 (PLF. EXH. 30 in evidence.)

12 BY MS. BLANCHETTE:

13 Q. All right. Mr. Crocker, if you could
14 go back and explain what's in those letters. I'm
15 sorry for the interruption.

16 A. Okay. I want to go back and say
17 Exhibit 31 is dated May 13, 2003; and Exhibit 32 is
18 another letter that I prepared and sent to Mr.
19 Strickler, dated June 16, 2003; and Exhibit 33 is
20 another letter that I prepared and sent to Mr.
21 Strickler, dated June 16, 2003; Exhibit 34 is
22 another letter that I prepared and sent to Mr.
23 Strickler, dated August 8, 2003; and Exhibit 35 is
24 another letter that I prepared and sent to Mr.
25 Strickler, dated August 28, 2003; and Exhibit 36 is

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 another letter I prepared and sent to Mr.
2 Strickler, dated September 23, 2003.

3 MS. BLANCHETTE: Your Honor, at this
4 time I would move Applicant's 31 through 36 into
5 the record.

6 MS. HARRIGAN: The State would object
7 to Applicant's 31, 33, and 35. The State objects
8 to Number 31 and --

9 THE COURT: Hold on a second. Let me
10 take a look.

11 MS. HARRIGAN: The State objects to
12 Applicant's 31, a letter dated May 13, 2003,
13 because it's not signed by Mr. Crocker. The State
14 also has an objection to Number 33 which is a
15 letter dated June 16th, 2003. It's the two-page --
16 this is -- it appears to be a four-page letter;
17 again, it is not signed by Mr. Crocker. The State
18 would object to Number 35 coming in; it appears
19 that the date has been altered. The original date
20 of June 16th has been -- of 2003 has been crossed
21 out and August 28, 2003 has been written on the
22 top. The State would object to those three.

23 THE COURT: All right. Anything you
24 want to say?

25 MS. BLANCHETTE: I can ask, Your Honor,

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1 further questions --

2 THE COURT: With respect to the letter
3 dated May 13, 2003 and June 16, 2003, I'm going to
4 sustain the objection, but I'm going to allow you
5 to question your client about these and certain
6 requests of -- to admit the letters in unsigned.

7 With respect to the letter that is -- the date is
8 changed, I'm going to let you ask him about that.

9 And depending on his answer, you may get that
10 admitted at that time.

11 Do you understand what I'm saying?

12 MS. BLANCHETTE: Yes, I do.

13 THE COURT: And the other ones will be
14 admitted.

15 (PLF. EXH. 32 in evidence.)

16 (PLF. EXH. 34 in evidence.)

17 (PLF. EXH. 35 in evidence.)

18 (PLF. EXH. 36 in evidence.)

19 MS. BLANCHETTE: Thank you, Your Honor.

20 BY MS. BLANCHETTE:

21 Q. Mr. Crocker, and please correct me if
22 I'm wrong, what's been marked for identification
23 was not admitted to the record. Could you review
24 that, please?

25 A. Yes.

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1 Q. Did you write that letter?

2 A. Yes. I prepared this.

3 Q. And did you send it to Mr. Strickler?

4 A. Yes, I did.

5 Q. Could you look at the last page there.

6 You don't have a signature in the signature block.

7 Could you explain why there isn't a signature on
8 that?

9 A. Just forgot. Evidently, just forgot.
10 I thought I had a copy with a signature on it, and
11 I will check when I go back.

12 Q. When you prepared the letter were you
13 incarcerated?

14 A. Yes, ma'am.

15 Q. Do you have access to a copying machine
16 at all times?

17 A. No.

18 Q. And do you oftentimes the way you keep
19 a copy is just printing off of another copy?

20 A. Yes.

21 Q. You can't actually make a copy of the
22 letter that was sent; is that correct?

23 A. Yes.

24 Q. Okay. But is this a copy you made for
25 yourself of the letter that was sent and does it

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 accurately reflect the letter that was sent?

2 A. Yes, ma'am.

3 MS. BLANCHETTE: Your Honor, at this
4 time I would again move to introduce Applicant's
5 Number 31.

6 MS. HARRIGAN: Your Honor, for clarity
7 on Your Honor's ruling, I thought Your Honor wasn't
8 revisiting 31 and 33, but allowing Ms. Blanchette
9 to revisit the letter with the changed date --

10 THE COURT: I said that she could -- he
11 could say that he wrote the letter and he could say
12 what he requested in the letter, I wasn't going to
13 admit the letter.

14 MS. BLANCHETTE: Oh, I'm sorry, Your
15 Honor.

16 THE COURT: But he can outline what it
17 is that he requested in that letter and based on
18 the unsigned copy that he has here refreshing his
19 memory.

20 MS. BLANCHETTE: Okay. I would proceed
21 to do that, Your Honor.

22 THE COURT: But you'll have to do that
23 tomorrow.

24 MS. BLANCHETTE: I will proceed to do
25 that first thing in the morning.

PHILLIP CROCKER - DIRECT EXAM BY MS. BLANCHETTE

1 THE COURT: We're going to have to
2 recess now.

3 (These proceedings were recessed
4 January 21, 2014, to be continued January 22,
5 2014.)
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1 (Whereupon, the following proceedings
2 were held January 22, 2014.)

3 THE COURT: Mr. Crocker, I remind you
4 you're still under oath from yesterday.

5 THE WITNESS: Yes, sir.

6 THE COURT: Ms. Blanchette, it's all
7 yours.

8 MS. BLANCHETTE: Your Honor, Mr. Arturo
9 has the video evidence that was State's
10 Exhibit Number 71 up and ready to go that we
11 couldn't watch yesterday. Would you like to watch
12 that?

13 THE COURT: I would like to do whatever
14 you all want to do. This is your case.

15 MS. BLANCHETTE: So let's take care of
16 it right now so it doesn't cause us any delay.

17 THE COURT: Right now?

18 MS. BLANCHETTE: Right now. And for
19 the record, this is the video exhibit that was
20 played at trial from the Lowe's parking lot.

21 (Video was played in open court.)

22 MS. BLANCHETTE: Your Honor, at this
23 time, I would move this VHS cassette tape that was
24 marked as trial Exhibit 71 in as Applicant's Number
25 67.

1 MS. HARRIGAN: No objection from the
2 State.

3 THE COURT: So admitted.
4 (PLF. EXH. 67 in evidence.)

5 MS. BLANCHETTE: Your Honor, this is
6 the actual Court Exhibit. Ms. Harrigan today came
7 up with two VHSS that were in the Public Defender's
8 file. Am I correct they don't have -- or they do
9 have the captions on it?

10 MS. HARRIGAN: Ms. Blanchette and I
11 watched them both over the lunch break. I believe
12 it's both. I believe there are some that don't
13 have -- they're labeled, Your Honor, good copy and
14 bad copy. And from what Ms. Blanchette and I saw,
15 it's the same video. It's just, apparently, they
16 have one that's better than the other. I couldn't
17 discern a difference between the two of them.

18 THE COURT: But those are different
19 from this?

20 MS. HARRIGAN: No. It appears that
21 they have -- yes, Your Honor, they do have the
22 video with the captions on them, but I think there
23 is some raw footage on there as well.

24 MS. BLANCHETTE: And, Your Honor, I may
25 have misspoke yesterday. Ms. Harrigan pointed out

1 to me that I said the expert only had a copy of the
2 captioned video. I have the DVD that has this
3 exact footage on it and then I have a DVD where you
4 just see like the raw footage, just the vehicle
5 without all the stopping and resized photographs.

6 He had both of these videos to review
7 and I may have unintentionally misspoke yesterday
8 and said he only had one. And I apologize on the
9 record for that. She pointed it out to me that I
10 do have two.

11 MS. HARRIGAN: And that would be
12 consistent with -- please correct me if I'm wrong
13 -- with what is found in these videos in the public
14 defender's file.

15 MS. BLANCHETTE: That's correct, Your
16 Honor.

17 THE COURT: Very well.

18 MS. BLANCHETTE: Your Honor, just for a
19 point of reference for everyone, yesterday, when we
20 concluded, we were deep into issue number 6
21 involving the North Carolina jurisdictional issues
22 and the search warrant. What I did in response to
23 the State's question, I went back through my file
24 last night -- if the Court would like, in five
25 minutes I can go through and explain the issue to

1 the Court and then elicit some minimal testimony
2 from my client. I have already shared with the
3 State my findings. The Court asked me to
4 specifically go through and point out the issues
5 with the documents and I would be happy to do that.

6 THE COURT: Do you have any objection
7 to that, Ms. Harrigan?

8 MS. HARRIGAN: No, Your Honor. We have
9 discussed Ms. Blanchette's intention. If there is
10 any objection, which I don't foresee, I'll let the
11 Court know.

12 THE COURT: All right.

13 MS. BLANCHETTE: Your Honor, yesterday
14 you asked that I help connect the dots on this
15 issue and I felt the best way to do that would be
16 to go back into the discovery file that I have.
17 And the first thing that I would like to introduce,
18 because it's my understanding it's not in your
19 packet, is the Amended Order for discovery that was
20 filed February 14, 2012. That was signed by Judge
21 Manning.

22 And in that, item number two, that I
23 was given permission to see, were all the material
24 received by Richland County Sheriff's Department
25 and/or SLED, from Charlotte Mecklenburg County

1 Government, Charlotte-Mecklenburg Police
2 Department, Mecklenburg County Sheriff's
3 Department, and the North Carolina Bureau of
4 Investigation, and/or all court documents,
5 investigative reports, notes, or reports generated
6 by said agency in connection with the surveillance
7 and search of Applicant's home and Applicant's
8 arrest and Applicant's extradition to South
9 Carolina.

10 And, at this time, I would like to move
11 this in as Applicant's Number 68.

12 MS. HARRIGAN: No objection from the
13 State. And I will note that, while that is not
14 included in Your Honor's Judge's packet, it's part
15 of the record as a properly filed document with the
16 Court.

17 THE COURT: All right. So
18 admitted.

19 (PLF. EXH. 68 in evidence.)

20 MS. BLANCHETTE:

21 Q. After receiving that signed order,
22 which was only amended because the indigence --
23 Office of Indigent Defense had issues with the
24 funding language, I issued Subpoenas, one to
25 Charlotte-Mecklenburg Police Department, and I

1 issued this on March 1st 2012, which was two weeks
2 after the Order was issued.

3 At this time, I would like to move the
4 Subpoena in as Applicant's Number 69.

5 MS. HARRIGAN: No objection from the
6 State.

7 THE COURT: So admitted.

8 (PLF. EXH. 69 in evidence.)

9 BY MS. BLANCHETTE:

10 Q. As a point of reference for Charlotte-
11 Mecklenburg giving the Subpoena, I attached two
12 documents that I had in my file at the time, both
13 of those -- the first one is missing the signature
14 of the Applicant. The second one is missing the
15 return signatures. I gave those to them as a point
16 of reference because that was really what had
17 piqued my interest.

18 I was hoping they could give me the
19 complete file with the proper signatures on it. I
20 also issued a Subpoena on the same date to the
21 Richland County Solicitor's Office asking for the
22 exact materials that were provided for in the
23 Order.

24 At this time, I would like to move this
25 in as Applicant's Number 69?

1 THE COURT: I thought this was 69.

2 MS. BLANCHETTE: I'm sorry, 70.

3 MS. HARRIGAN: No objection from the
4 State.

5 THE COURT: So admitted.

6 (PLF. EXH. 70 in evidence.)

7 MS. HARRIGAN: And Ms. Blanchette, just
8 so we're clear, the responsive material you
9 received from Applicant's Number 69 are Applicant's
10 Number 27, correct?

11 MS. BLANCHETTE: Yes. That's where I
12 was going next, yes.

13 Your Honor, I also prepared and
14 submitted and actually had to serve three times the
15 Subpoena to Richland County Sheriff's Department.
16 Prior to our last discovery hearing in this case,
17 they turned over 499 pages on a CD and I provided a
18 copy of that to the Attorney General's Office.

19 In response, Scott Hayes, who is their
20 professional standards employee, he's also a
21 lawyer, from the Richland County Sheriff's
22 Department also provided me a letter this week
23 indicating that he had provided me a complete copy
24 of their file.

25 I would like to introduce that now as

1 Applicant's Number 71.

2 MS. HARRIGAN: No objection from the
3 State.

4 THE COURT: So admitted.

5 (PLF. EXH. 71 in evidence.)

6 MS. BLANCHETTE: Your Honor, I also
7 issued a Subpoena to the public defender's office.
8 In all fairness, Douglas Strickler did allow myself
9 and Brian Petrano to come and review the file.
10 What I did, I went through the entire file, made a
11 stack of everything that I wanted copied. I then
12 received a CD that had a scanned copy that was
13 purported to be of everything that I asked to be
14 copied.

15 Now I would like to jump to the
16 exhibits that were introduced yesterday. I did not
17 introduce in the exhibits containing North Carolina
18 documents from the Richland County Sheriff's
19 Department because the only thing contained in the
20 499 pages I received from them were pictures of the
21 evidence. I do not have any documents that were
22 search warrants or anything of that nature, so I
23 didn't introduce anything from the Richland County
24 Sheriff's Department.

25 What I did introduce was Applicant's

1 Number 27, which were the documents that I received
2 just last week from the Charlotte-Mecklenburg
3 Police Department in response to that Subpoena. I
4 also introduced Applicant's Number 26, which was a
5 packet of materials that I received from the public
6 defender's office on that scanned file, and then
7 Applicant's Number 24, which were the documents I
8 received from the Richland County Solicitor's
9 Office.

10 THE COURT: Number 24 you received from
11 the Richland County -- I mean Solicitor's Office?

12 MS. BLANCHETTE: Yes, Your Honor.

13 THE COURT: That would be leading to
14 the search warrant, correct?

15 MS. BLANCHETTE: Yes. These are the
16 documents they gave me in response to my request
17 under the Subpoena for all North Carolina
18 documents.

19 THE COURT: Okay.

20 MS. BLANCHETTE: Do you want me go --
21 to go back through all three or do you have those?

22 THE COURT: I have them.

23 MS. BLANCHETTE: Okay. Now, Your
24 Honor, I will be referring to each of those
25 documents and the discrepancies and issues that we

1 have spotted in those documents, and I will take
2 them in the order they were introduced. And I will
3 start with Applicant's 24, which were the documents
4 we received from the Solicitor's Office.

5 MS. HARRIGAN: Do you mind if I come
6 over and look, so it would be easier?

7 MS. BLANCHETTE: Yeah.

8 Your Honor, for the record, and I won't
9 repeat that every time, on page 1, the signature of
10 the officer making the return, there is no
11 signature there. Even though it's checked, I don't
12 see the items listed on the attached inventory.

13 THE COURT: All right.

14 MS. BLANCHETTE: Page 8 of my packet,
15 which at the top, it says, Richland County
16 Sheriff's Office Property and Evidence Section. It
17 states there is a -- it should be three pages, but
18 my packet has two pages and it is an inventory
19 listing. And I would like to point out that, one,
20 it says Richland County Sheriff's Office at the top
21 and, two, it is signed by a Scott McDonald.

22 THE COURT: Okay.

23 MS. BLANCHETTE: Your Honor, you can
24 skip all the diagrams, which would bring us to the
25 page which says State of North Carolina,

1 Mecklenburg County, on the top. It appears to be
2 an inventory of -- Seized Property Sheet is what
3 it's titled. It says, see attached property
4 sheets. Property seized, taken back --

5 THE COURT: Whoa, whoa, whoa, whoa,
6 whoa.

7 MS. BLANCHETTE: I'm sorry.

8 THE COURT: All right.

9 MS. BLANCHETTE: It says, property
10 seized, taken back and stored at the Richland
11 County Sheriff's Office in Columbia, South
12 Carolina. The signature on there appears be a C.
13 R. Williams with badge number 774. If we flip back
14 to the first page, Mr. Williams' signature is not
15 present on the signature of the officer making the
16 return.

17 THE COURT: All right.

18 MS. BLANCHETTE: If we go to the next
19 page after that inventory sheet, it appears to be
20 another copy of the search warrants.

21 THE COURT: Okay.

22 MS. BLANCHETTE: This time there's no
23 signature in that middle block, where it says, the
24 search warrant was returned to me on this date.

25 If you could turn to the next page, we

1 do not have a signature of the applicant, but it
2 appears we have a signature of the magistrate. The
3 remaining pages, Your Honor, the same issue
4 appears; there is a signature of a magistrate, but
5 no signature of an applicant.

6 Now, before I turn to Applicant's
7 Number 26 --

8 THE COURT: What is the significance of
9 that?

10 MS. BLANCHETTE: Your Honor, I was
11 going to point out all of the inconsistencies and
12 then tie that together at the end, but I'd be happy
13 to right now.

14 THE COURT: Just tell me about these.

15 MS. BLANCHETTE: Our overall position
16 is that there was a detailed motion to suppress
17 this evidence that was seized, but Counsel never
18 made a motion to suppress on the grounds of a
19 defective search warrant or execution of the search
20 warrant. No officers were ever called from North
21 Carolina.

22 I'm going to point out the testimony --
23 just four highlights of the testimony of the
24 officers in South Carolina that is inconsistent
25 with these documents. It's our position that these

1 North Carolina officers -- we understand there's a
2 good faith exception to the Fourth Amendment, but
3 these officers were never called to establish or
4 even go after a good faith exception.

5 These documents are defective. This
6 issue was not raised and should have been raised;
7 therefore, Counsel was ineffective.

8 THE COURT: Okay.

9 MS. BLANCHETTE: Turning to Applicant's
10 Number 26, which is the documents that came off of
11 the CD I got from the public defender's office. If
12 Your Honor could turn to page 3, which is the
13 search warrant. There, even though the copy
14 appears different, we have no signature of the
15 officer making the return and no signature of the
16 Court official.

17 On the very next page, we're missing
18 the signature of the applicant. The following
19 page, we're missing the signature of the applicant.

20 THE COURT: These are the same
21 documents that --

22 MS. BLANCHETTE: This appears to be.
23 The font's a little bit different and some of the
24 handwriting is different, to be completely honest,
25 Your Honor.

1 THE COURT: All right.

2 MS. BLANCHETTE: And that continues;
3 the signature of the applicant is missing on the
4 next page. Then on the application for the search
5 warrant, there we do have a signature and, again,
6 we have one that does not have a signature on it.
7 Turning to the next page, we have another copy of
8 what appears to be the same search warrant. There
9 we have the signature of the judge on the middle
10 block. And then if you turn to what appears to be
11 the Richland County Sheriff's Office evidence
12 sheet.

13 THE COURT: Let me see that again? All
14 right.

15 MS. BLANCHETTE: Here we have an
16 evidence sheet that is 1, 2, 3, 4 pages long.
17 Whereas in the other one we had a different
18 evidence sheet that was only two pages long. I
19 would like to direct the Court's attention that all
20 these evidence sheets were signed by McDonald and
21 they are not North Carolina documents.

22 Then we have a two-page evidence sheet
23 that was in the other packet; again, Richland
24 County Sheriff's Office signed by McDonald. And I
25 have no issues with the diagrams at the back.

1 Finally, in the packet that I received
2 from the Charlotte-Mecklenburg Police Department --

3 THE COURT: All right. Tell me the
4 significance of that. Does that go back to the
5 same thing about the defective search warrant?

6 MS. BLANCHETTE: Exactly, Your Honor.
7 I'm just pointing out the problems in each one of
8 these packets, because they are all different, so I
9 want to make sure that I point them out in each
10 packet. I don't have one packet that was the same.

11 Ideally, I wish they'd sent me all 725
12 pages marked the same, with the same date and the
13 same information on them. They did not. And we
14 don't have an explanation for that. And Counsel
15 didn't raise that issue. I think that's the heart
16 of our Ineffective Assistance of Counsel issue.
17 This is what we're being given now, and I know a
18 lot of time has passed, but there is no reason all
19 these documents should be different.

20 These agencies, when I give them the
21 Subpoena with a Court Order, should have all
22 provided me with the same thing.

23 And just briefly in the --

24 THE COURT: Well, they are consistent
25 in that the signatures are either consistent or --

1 consistently there or consistently not there.

2 MS. BLANCHETTE: They do have
3 consistent defects, they do, Your Honor, but they
4 are not consistent in the materials that I was
5 provided. And then the most inconsistent is what
6 Charlotte-Mecklenburg provided. My client already
7 testified it's his handwriting at the top, but we
8 see the same problems evidenced in this package,
9 it's just a much smaller package, but once again we
10 have the inventory sheet, the last page signed by a
11 C. R. Williams.

12 And I would just like to point out the
13 transcript testimony where this C. R. Williams is
14 never mentioned. It's our position that C. R.
15 Williams and Agent Fiore should have been there to
16 testify to clarify these defects. Counsel didn't
17 make the necessary motion to bring this to Judge
18 Cooper's attention. They made a motion that all of
19 this evidence, you see the long list of evidence,
20 should have been excluded just based upon the
21 prejudicial value. It was a Rule 403, 404
22 argument.

23 MS. BLANCHETTE: Your Honor, do you
24 have any questions regarding these documents?

25 THE COURT: What does The State say

1 about this?

2 MS. HARRIGAN: Your Honor, going
3 through the different packets, it appears that
4 Applicant's 24 is just from the Solicitor's file
5 and Applicant's 26, for the most part, it is -- it
6 appears that there was a copy of the search warrant
7 which has a middle box signed in each -- in the
8 accompanying pages, and then another copy of a
9 search warrant that -- when I say, wasn't signed,
10 I'm talking about the middle bottom that says, this
11 search warrant was returned to me on the date and
12 time. One copy has a magistrate's signature, the
13 other doesn't. I think that is consistent between
14 the Solicitor's file of documents, which is
15 Applicant's 24 and Applicant's Number 25.

16 I will note that there is an additional
17 page in Applicant's Number 26, which is the
18 documents received from the PD's file. There are
19 four pages. The Solicitor's file indicates there
20 should be three pages, and one's missing. So the
21 documents from the Public Defender's file, it
22 looked like there is a full page 1 to page 7 in
23 here, page 2 which is also page 8, and then it
24 looks like page 10 is the third page.

25 It looks like page number 9, that Ms.

1 Blanchette was referencing, appears to be just
2 another officer's handwriting documenting the same
3 thing. If you look at the top, it says, item
4 number 8. And if you flip over, item number 8 has
5 already been inventoried on page number 2. So I
6 think there is an additional page, but the
7 handwriting is consistent on pages 1, 2, and the
8 third page there, so that's an additional page.

9 And the Charlotte - Mecklenburg page is
10 consistent with the same block of material, but
11 between the Public Defender's file and the
12 Solicitor's file, it does appear that there are
13 just two copies, more or less --

14 THE COURT: Well, what do you say about
15 the no signature on the return?

16 MS. HARRIGAN: I think that --

17 THE COURT: Sometimes there's no
18 signature of a magistrate. Sometimes there is no
19 signature of an applicant.

20 MS. HARRIGAN: I think the no
21 signature --

22 THE COURT: About whether it's
23 defective or not.

24 MS. HARRIGAN: -- on the return, where
25 the magistrate and the officer who did the return,

1 I think under South Carolina law, under 17-13-140,
2 I think that's an administerial defect and I don't
3 think that would result in any suppression. And I
4 think there's good faith here. I think under
5 McKnight and the other cases, there is a good faith
6 exception so that these items would not have been
7 suppressed had Mr. Strickler made a Fourth
8 Amendment ground or moved for suppression under
9 17-13-140.

10 THE COURT: All right.

11 MS. BLANCHETTE: Your Honor, I just
12 have a little further to add on this issue. On
13 number six of the Amendment, we have given all the
14 transcript pages where the testimony is elicited.
15 I'm not going to waste the Court's time going
16 through that testimony. I know you can read it for
17 yourself, but I did want to point out a couple of
18 cites.

19 Yesterday, before we adjourned, I
20 briefly mentioned that in Officer Gonzales's cross
21 on page 582 through 583, when asked, he said North
22 Carolina must obtain a search warrant to gain
23 entry, but then his testimony gets kind of vague as
24 to whether or not he was the one who popped the
25 lock on the shed to gain entry to where the

1 Rubbermaid and the marijuana was found.

2 Mr. Strickler didn't ask him any further questions
3 on that or confront him with any of the documents.

4 On page 735, when asked, Officer Earls
5 makes it clear that he was not the scrivener, he
6 was not the one writing down the evidence, unlike
7 what the other officers had said, because he had no
8 jurisdiction in North Carolina to be the one doing
9 that.

10 When Officer McDonald was asked about
11 this issue on page 853, he said they had no
12 jurisdiction. Agent Fiore was in charge.

13 On page 849, he said they followed all
14 North Carolina rules and procedure. There was no
15 one from North Carolina to say that. That was
16 Agent McDonald that said that. He also said that
17 everything was turned over to Fiore because it was
18 his search warrant, on page 853. The documents do
19 not have Fiore's signature as the one who did the
20 inventory.

21 On the return, it has C. R. Williams'
22 signature. There is no mention of him in the
23 testimony. He also says that Fiore was the
24 scrivener, not him. We see McDonald's name on the
25 inventory sheets, we do not see Fiore's name, but

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 he said that was because Charlotte had the lead,
2 and that's on 972 of the transcript. I think that
3 testimony shows the importance of these documents.
4 It shows the importance of this issue having been
5 properly raised to the Court.

6 Essentially there were no North
7 Carolina documents introduced. There were no North
8 Carolina witnesses. All we have is the testimony,
9 and I've highlighted a couple of points, but there
10 is lengthy testimony from the officers that I would
11 say is not consistent with these, and if we're
12 going to say there's a good faith exception, I
13 would say that is based purely on speculation
14 without testimony from the North Carolina officers.

15 Finally, Your Honor, my client
16 yesterday was attempting to reference a search
17 warrant, and if I could approach with those at this
18 time?

19 THE COURT: Uh-huh.

20 CONTINUING DIRECT EXAMINATION

21 BY MS. BLANCHETTE:

22 Q. Mr. Crocker, can you identify what that
23 appears to be, for the record?

24 A. North Carolina, Mecklenburg County,
25 search warrant.

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 Q. Okay. And is that the search warrant
2 that you were referencing in your testimony
3 yesterday?

4 A. One of them. I have another one.

5 Q. Okay. And is this search warrant
6 different than the ones we were just discussing?
7 Is there a different signature on this? And I can
8 show you a copy of what we were just discussing.

9 A. Okay.

10 Q. Is there a different signature on that
11 first page?

12 A. Yes, there is.

13 Q. Okay. And is there a signature for the
14 officer that actually did the inventory?

15 A. Yes, there's a signature here.

16 Q. And, Mr. Crocker, you just heard me
17 explain the documents that I received from these
18 agencies, but in the letter that I got from the
19 Charlotte-Mecklenburg Police Department, it
20 actually says that they have been corresponding
21 with you and providing documents to you. Do you
22 know where this document came from, why you had it
23 in your file?

24 A. This here?

25 Q. Yes.

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 A. This one -- I think this one might have
2 been --

3 THE COURT: I need you to speak up.

4 THE WITNESS: Excuse me. This one was
5 in discovery, but I received another one when I
6 wrote them personally.

7 BY MS. BLANCHETTE:

8 Q. So you had some search warrants that
9 were in the original discovery packets?

10 A. Yes, there were two different ones.

11 Q. Your Honor, I would move the search
12 warrant, and I have a copy for the State, as
13 Applicant's Number -- if I could just remember
14 numbers -- 72.

15 MS. HARRIGAN: Your Honor, the State
16 would object. It appears there is an Exhibit H on
17 this. I think this is from -- I'm pretty certain
18 this is from the packet that Ms. Blanchette
19 attempted to introduce yesterday and the State
20 objected to the complaint filed by Mr. Crocker
21 against Charlotte-Mecklenburg County Police
22 Department. So the State would object.

23 It's clearly got additional writing,
24 and there's no one here to authenticate it. We
25 would object on those grounds.

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 And if Your Honor will notice, the rest
2 of the pages also have what appears to be
3 Mr. Crocker's handwriting throughout the labeling
4 of the different exhibits.

5 MS. BLANCHETTE: Your Honor, I think
6 he's already said this came from his file. I can
7 have him authenticate his handwriting if you would
8 like.

9 THE COURT: All right. Well, I'm going
10 to -- wherever his handwriting is, we'll redact it
11 and I'm going to admit it.

12 (PLF. EXH. 72 in evidence.)

13 MS. BLANCHETTE: Do you want yours
14 redacted as well?

15 THE COURT: If you tell me what's going
16 to be redacted, I'll --

17 MS. BLANCHETTE: I believe where it
18 says, exhibit, and --

19 THE COURT: Exhibit H2?

20 MS. BLANCHETTE: Yes. And I believe on
21 some of the other pages, it says exhibit at the
22 top.

23 THE COURT: So that's what you want
24 redacted, that handwriting exhibit?

25 MS. HARRIGAN: Yes. The State would

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 also -- just for the record, Your Honor, we're also
2 objecting that there is no one here from
3 Charlotte-Mecklenburg to attest that this was
4 delivered to Mr. Crocker by them.

5 THE COURT: All right.

6 BY MS. BLANCHETTE:

7 Q. Mr. Crocker, you've heard my
8 explanation of the defects in the documents that we
9 received from the agencies via Subpoena, but this
10 document here was not contained in any of those.
11 Could you just point out for the record what is the
12 major difference with this document?

13 A. This one and -- can I see the other
14 one?

15 Q. Yes. This is the other one that we've
16 been referring to.

17 MS. HARRIGAN: Ms. Blanchette, can you
18 identify what the other exhibit is?

19 MS. BLANCHETTE: I'm sorry. I've
20 handed him 24, that has a copy of the search
21 warrant on top.

22 MS. HARRIGAN: The first page?

23 MS. BLANCHETTE: Yes.

24 BY MS. BLANCHETTE:

25 Q. And what is the major difference that

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 you see?

2 A. There's no signature on the officer's
3 return. And when we go to the date executed and
4 date and time, it's -- on this one in my left hand,
5 it's 12/12/01, 21:40 is the time.

6 Q. And that's Applicant's Exhibit 72;
7 correct? That's in your left hand?

8 A. Okay. Exhibit 72. It says 21:40. On
9 Exhibit 24, it says 21:43, and the Judge's
10 signature at the bottom is clearly different. And
11 the time down at -- where the search warrant was
12 returned, was -- the 9:43, that time is different.
13 And it appears that the X in the P. M. box is
14 different.

15 Q. Mr. Crocker, you heard me explain the
16 defects and you heard the discussion between myself
17 and Judge Barber, and the State's responses as
18 well. Is there anything else regarding the defects
19 with the search documents -- I'm going to ask you
20 to explain what happened during the search, but is
21 there any other defects that I failed to point out
22 on your behalf?

23 A. No, I don't see any. Pending the
24 others and the ones I just spoke of.

25 Q. Now, Mr. Crocker, we have asked the

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 Judge to review the transcript and there's a lot of
2 testimony about what happened, but could you just
3 briefly take me through the details that you
4 disagree with? You were there when it was
5 executed.

6 If you would have been called to the
7 pretrial hearing about whether or not this evidence
8 was suppressed, what information would you have
9 shared with the Court that would either refute or
10 be different as to what the officers testified to?

11 A. That I never seen anyone from Charlotte
12 there. I just only recall seeing -- other than the
13 patrol car, the white-and-blue patrol car. Okay?
14 That's what was different. Okay. You say what was
15 different or what was --

16 Q. Yes. If you had been called to the
17 suppression hearing to refute what these officers
18 were saying happened, what information would you
19 have provided to the Judge for his consideration?

20 A. All right.

21 Q. What don't you agree with what they
22 said happened during that search?

23 A. Okay. I don't agree -- well, they
24 forced entry. South Carolina officers -- Richland
25 County officers admitted they forced entry into my

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 home; that they put me to the ground, that they
2 arrested me; that they searched and seized my
3 property, that they placed it in my vehicle --
4 well, before that, Officer Gonzales --

5 THE COURT: Wait a minute. Wait a
6 minute. Your position is the South Carolina law
7 enforcement officers, which would be Richland
8 County, arrested you in North Carolina?

9 THE WITNESS: Yes. It's right here. I
10 have a page number for you right here.

11 THE COURT: What page? Do you know,
12 Ms. Blanchette?

13 THE WITNESS: I think it's 563.

14 MS. BLANCHETTE: Your Honor, I just
15 have those couple of pinpoint cites. I would have
16 to find it myself.

17 THE WITNESS: I can find it. Right
18 here on 563, Your Honor, line 16. Officer Gonzales
19 stated on line 16, I brought him to the ground. I
20 advised him that he was under arrest.

21 THE COURT: What page?

22 THE WITNESS: 563.

23 THE COURT: All right.

24 THE WITNESS: And if we just could go
25 over to 562 -- I got ahead of myself -- line 10,

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 Officer Gonzales states, first of all, we looked at
2 the residence.

3 THE COURT: Let me read this.

4 THE WITNESS: Oh, okay.

5 THE COURT: All right. Go ahead and
6 tell me what you think is -- what you believe is
7 not right about this.

8 THE WITNESS: Okay. One more place,
9 583, line 2 through 14, Officer Gonzales states
10 that he broke into my shed, that he popped the
11 lock.

12 THE COURT: All right.

13 THE WITNESS: What I see is wrong with
14 this, Your Honor, from the beginning, Richland
15 County officers had no authority or jurisdiction to
16 force entry into my home, neither to arrest me in
17 my home, neither to commit search and seizure of my
18 personal property, a Fourth Amendment violation,
19 entry, arrest and search and seizure.

20 Not only was it a Fourth Amendment
21 violation, it was a North Carolina statutory
22 violation. And I have those particular statutes
23 with me.

24 MS. BLANCHETTE: Your Honor, the
25 statutes are all cited in the Amendment and I

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 provided a copy of those in the packet of cases I
2 gave you yesterday.

3 THE COURT: All right.

4 THE WITNESS: I would say, pursuant to
5 Payne versus New York Supreme Court, direct entry
6 and search and seizure were all illegal and that my
7 attorney should have moved to suppress all --

8 THE COURT: All right.

9 MS. BLANCHETTE: Your Honor, would you
10 like me to move on to the next issue?

11 THE COURT: Sure.

12 BY MS. BLANCHETTE:

13 Q. I'm sorry, Mr. Crocker, did I cut you
14 off? I'm sorry.

15 A. Yes. And that my attorney should have
16 moved to suppress all tangible items and testimony
17 that came from the illegal entry, arrest, and
18 search and seizure. Your Honor, the items that
19 were taken from my home during this event, there
20 were items that the jury could have easily inferred
21 things from, as far as the blankets and Tupperware
22 found at the scene, and they could have inferred
23 these were -- the blankets and the Tupperware were
24 at my house.

25 And the marijuana, they could have

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 inferred that I was a drug dealer because they
2 found marijuana -- said they found marijuana at my
3 house. The marijuana book had different things
4 that --

5 THE COURT: I understand all that. I'm
6 concerned about the validity of the search warrant.
7 BY MS. BLANCHETTE:

8 Q. And, Mr. Crocker, one of the items that
9 they seized, do you recognize this, a Pontiac User
10 Manual 6000?

11 A. Yes.

12 Q. This was introduced at trial as State's
13 Exhibit Number 94. If you could just flip through
14 this and see if there is anything strange in that.

15 A. Yes; it's a picture.

16 Q. What is depicted in the picture?

17 A. This is me and --

18 THE COURT: When you talk down --

19 BY MS. BLANCHETTE:

20 Q. Could you speak up? I might sound like
21 I'm yelling, but that's because --

22 A. It's a picture of me and Anthony Mason,
23 he played for the Hornets, he's pawing a girl's
24 buttocks, and another one of my partners has a
25 cigar in his hand.

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 Q. And this was inside that user manual;
2 is that correct?

3 A. Yes.

4 Q. This was an exhibit provided to the
5 jury?

6 A. Yes.

7 Q. Did you know that picture was in there?

8 A. No, I didn't know.

9 Q. And this was one of the items taken
10 from your home, items they introduced at trial?

11 A. Yes, ma'am.

12 Q. And the whole thrust of your defense
13 was your good character -- you're not the kind of
14 guy that's a club-hopping, fancy-dressing -- trying
15 to refute all these things that the State said
16 about you; is that correct?

17 A. Yes, that's correct.

18 Q. Does that picture cut against your
19 defense?

20 A. Yes, it cut against my defense.
21 Anthony pawing the girl's butt doesn't look well at
22 all.

23 Q. Had you seen that before today?

24 A. No, ma'am.

25 MS. BLANCHETTE: Your Honor, at this

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 time, I would like to move this in as Applicant's
2 Number 73.

3 MS. HARRIGAN: The book or the picture?

4 MS. BLANCHETTE: If we'd like to just
5 do the picture -- is Mr. Truett still here? I
6 don't know if he wants it to stay intact as he had
7 it.

8 MS. HARRIGAN: No objection to either.

9 THE COURT: So admitted.

10 (PLF. EXH. 73 in evidence.)

11 MS. BLANCHETTE: I will admit the book
12 with the picture exactly where it was so it stays
13 intact.

14 THE COURT: What was the basis of the
15 admission of the book during the trial?

16 MS. BLANCHETTE: It was introduced to
17 show that he owned a similar model vehicle as to
18 what was shown.

19 THE COURT: So that vehicle that
20 allegedly was gone through was a Pontiac?

21 MS. BLANCHETTE: They gave several
22 different descriptions of the vehicle, but they
23 actually introduced some pictures and some stuff
24 they pulled off the Internet at trial to show that
25 the models were very close. And they introduced

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 the book and then some paperwork that he had as
2 well, that they found in the home.

3 Your Honor, if you would like, I can go
4 through all the prejudice, but, like I said
5 yesterday, they argued heavily pretrial the
6 prejudice of these items coming in. So I don't
7 think there's any reason for me to remake that
8 prejudice argument, but I would like to point it
9 out because we have to show prejudice at a PCR.

10 Your Honor, we were on issue eight
11 actually when we ended yesterday, and Mr. Crocker
12 was attempting to discuss some letters that he had
13 sent to his defense attorney.

14 BY MS. BLANCHETTE:

15 Q. Mr. Crocker, I would like to show you
16 this packet. Could you please identify every page
17 in that packet and explain how those came into your
18 possession?

19 A. This is a letter dated May 13, 2003,
20 from myself to Attorney Strickler, I have his name
21 and all. I went back through my legal documents
22 last night, my legal box, and found the one that
23 had my signature on this letter, this letter right
24 here. And the next letter is dated June 16, 2003,
25 to Attorney Douglas Strickler; this one is four

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 pages and it has my signature.

2 And I have another letter dated
3 June 16, 2003, and it has my signature. And then
4 September 10th, 2003, that letter also has my
5 signature. And this one is re-sent August 28,
6 2003, with my signature and August 8th, 2003, with
7 my signature. All letters to Douglas Strickler.

8 Q. Whose handwriting are on those
9 documents?

10 A. Right here, this particular -- right
11 here, the first letter, this is my handwriting;
12 second one, that's my handwriting; the third one,
13 you see SPM, that's Ms. Sandra Murdock. I had
14 given her permission to sign a copy and she sent it
15 certified. And this one right here to Mr.
16 Strickler, Ms. Murdock signed that one for me. And
17 the one on the 28th, that's the same letter as the
18 16th, this is re-sent. And August --

19 Q. Who scratched out the date on this
20 letter?

21 A. Ms. Murdock.

22 Q. And that was at your direction?

23 A. Yes, ma'am.

24 Q. And where did you locate these letters?

25 A. In my legal box.

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 Q. That was at the Court's direction at
2 the end of the hearing; is that correct?

3 A. Yes, ma'am.

4 MS. BLANCHETTE: At this time I would
5 move this packet of letters in as Applicant's
6 Number 74.

7 MS. HARRIGAN: If I could have a chance
8 to review the packet? I don't have a copy.

9 MS. BLANCHETTE: I apologize, Your
10 Honor. These are the only copies since he just
11 handed it to me when he came into court today.

12 MS. HARRIGAN: I beg the Court's
13 indulgence for just a moment. No objection.

14 THE COURT: Do you want to --

15 MS. HARRIGAN: No objection from the
16 State, Your Honor. Thank you.

17 THE COURT: So admitted.

18 (PLF. EXH. 74 in evidence.)

19 BY MS. BLANCHETTE:

20 Q. Mr. Crocker, these letters are in
21 evidence, so you don't need to read them, but are
22 there some specific things that you asked Mr.
23 Strickler to do in these letters to assist you in
24 preparing your defense, that he failed to do? Just
25 the things that he failed to do.

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 A. Yes.

2 THE COURT: What exhibit is that?

3 MS. BLANCHETTE: That would be 74. And
4 I'll make a note to make a copy for all the
5 parties.

6 THE COURT: Go ahead.

7 THE WITNESS: Yes. First, I asked Mr.
8 Strickler to take a trip to Dillon to take pictures
9 of the hair salon --

10 THE COURT: You asked him what?

11 THE WITNESS: I asked him to travel --
12 to get the investigator to go to Dillon, South
13 Carolina to take pictures and investigate this hair
14 salon of Mrs. Consuela Casey, that they say I was
15 at the night of the victim's death. I asked
16 Attorney Strickler to go interview Ms. Consuela
17 Casey and possibly try to get a statement from her.
18 I asked him to go interview and try to get a
19 statement from Mr. Willie Frederick Jennings, also
20 from Ms. Latoya A. Hunter, from Ms. Lutheran
21 Williams, from Mr. Larry Forth, from Ms. Carla
22 Brown, from Mr. James Davis, from Ms. Monica N.
23 McClain, from Mr. Gibson, from Phillip and Marcus
24 Williams of Dillon, who, according to Ms. Lutheran
25 Williams, would give statements providing details

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 leading up to the murder of Nathaniel Casey. Ms.
2 Lutheran Williams had stated his brothers knew a
3 lot of what he was trying to --

4 THE COURT REPORTER: I'm sorry, say
5 that again.

6 THE WITNESS: I asked him to go try to
7 locate and get a statement -- interview and get a
8 statement from Mr. Phillip and Marcus Williams of
9 Dillon, South Carolina, and Mrs. Lutheran Williams
10 was the mother-in-law of Mrs. Consuela Casey, to
11 get statements providing details leading up to the
12 murder of Nathaniel Casey.

13 Lutheran Williams had stated that the
14 brothers knew Marty Morgan and Willie Jennings was
15 trying to buy a 9-millimeter the day before the
16 murder.

17 BY MS. BLANCHETTE:

18 Q. And that actually appears in
19 Investigator Gonzales's report on page 8?

20 A. That's correct.

21 Q. He recounts that Lutheran Williams had
22 given him information, she was Consuela Casey's
23 mother, that Marty Morgan had been in Dillon trying
24 to purchase a 9-millimeter. And in that report it
25 also states that he -- the people in the area said

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 he was trying to put a dent in the wallet; is that
2 correct?

3 A. Yes. Well, Mr. Casey and
4 Mrs. Williams.

5 Q. And does it also state that individuals
6 had told Mrs. Williams that Marty Morgan matched
7 the composite?

8 A. Yes, ma'am.

9 Q. Okay. We'll get into that a little
10 more, but those are the reasons?

11 A. Yes, ma'am. I also asked Mr. Strickler
12 to have an investigator to go interview Bryant
13 Bethay and Tyler Murphy, Ms. Deon M. Bethay, who is
14 the mother of the victim's daughter, I believe, and
15 Mr. Harvey Rogers and Mrs. Shirley Mills.

16 I also asked Mr. Strickler to obtain a
17 ballistics expert to give a report of the scene
18 scenario and autopsy report and a trajectory of the
19 shooting, because, according to Investigator
20 Gonzales, the victim's wife's scenario of the scene
21 does not match and he feels like the shot had to
22 come from a waist high like speed rocket effect
23 whereas the struggle ensued from the gun.

24 Please also advise ballistics expert to
25 give a conclusion report in the report on the scene

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 scenario, autopsy report, bullet trajectory and the
2 possibilities of myself committing this murder due
3 to my height and the victim's height.

4 I asked Mr. Strickler to investigate
5 the Dillon, South Carolina, Police Department for
6 all accident reports filed for the 1635 Clover
7 Lane, Dillon address and any reports filed by
8 Nathaniel Casey and Consuela Casey. I asked him to
9 obtain a complete background report of Consuela and
10 Nathaniel Casey, William F. Jennings, and Lutheran
11 Williams.

12 I asked him to obtain my criminal
13 record. I asked him also to arrange to visit me in
14 order to obtain a list of potential character
15 witnesses to discuss evidence that I discovered
16 from phone records in my discovery materials and to
17 also confirm with me the hotel record from
18 Virginia, and to inform me what their case
19 investigator would discover.

20 I asked about transcript number eight.
21 I asked him to obtain a complete report from St.
22 Eugene, South Carolina, Emergency Room where
23 Consuela Casey was treated on November 21, 2001,
24 after a suicide attempt, including a list of her
25 prescribed medications. I also asked him to obtain

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 an expert witness that could testify to the effects
2 of Lorazepam and Temazepam that were prescribed to
3 Consuela Casey in the emergency room November 21,
4 2011.

5 I asked him to Subpoena the phone
6 records of Lutheran Williams from November to
7 December 2011. And that was the first letter of
8 requests that I asked Mr. Strickler.

9 Q. And, Mr. Crocker, if you repeated your
10 requests, you don't need to repeat them to the
11 Court; you can just highlight if there were
12 additional requests.

13 A. Yes. I asked him to get my telephone
14 -- my personal telephone, I asked him to get the
15 records to those and the cell site information to
16 support my alibi to prove where I was. And in this
17 letter of June 16th I asked for a lot of the same
18 things, I requested a lot of the same things.

19 Oh, and then in my letter to Mr.
20 Strickler June 16, 2003, I asked him to please add
21 the following individuals to our list of character
22 witnesses, Mr. Don Haskins -- Don Haskins was my
23 former college basketball coach.

24 Q. And is he still living?

25 A. No, he's not. When I spoke to him, he

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 told me that if my attorney got in touch with him,
2 he would come and testify on my behalf. Also Ms.
3 Deanna Gidones of El Paso -- University of Texas,
4 El Paso. She was the former secretary of the men's
5 basketball team while I was there.

6 I also asked Mr. Strickler to come see
7 me to discuss photo lineups. I asked Mr. Strickler
8 to take me in for a bond reduction on several
9 occasions, and I asked him for the autopsy report
10 and the scene report. And I asked him to add to
11 the witness list more character witnesses for me.
12 I asked him to add Ms. Cynthia McGinnis, Ms.
13 Katherine Randolph, which he did both of those. He
14 put those on the list; he didn't call them.

15 Mrs. Ebony Roach, who was one of the
16 supervisors at Charlotte Johnson YMCA where my
17 organization Hoop Family held free basketball camps
18 for youth, Mr. Thomas Guy's son, Mr. Thomas Guy,
19 Junior, my coach and mentor, Mr. Corey Baker, who
20 we attended prep school together and had known each
21 other for --

22 Q. And he did testify.

23 A. Which he did testify, excuse me. And
24 Debra Robinson, whose son, Travis Robinson, I
25 coached, and other children from the Gastonia area,

1 and her son. Ms. Katherine Randolph who has known
2 me since I was baby.

3 Q. And is she still living?

4 A. Yes.

5 Q. But she was unavailable to be here for
6 your PCR hearing; is that correct?

7 A. That's correct. And Mr. Dennis Graham,
8 and he did speak with Ms. Sandy Murdock about
9 testifying, and Mr. Tony Smith. We were childhood
10 friends, been knowing each other since we was five
11 years old. He played professional basketball for
12 13 years overseas; and Ms. Betty and Tonya White
13 whom I have known from Charlotte. I asked him to
14 add them to my character list of witnesses.

15 Q. And we introduced yesterday the witness
16 list; the Court has the transcript, which will
17 speak for what Mr. Strickler did. But a number of
18 these things you asked him to do, he failed to do;
19 is that correct?

20 A. That's correct.

21 Q. And at trial, you testified; is that
22 correct?

23 A. That's correct.

24 Q. And in your testimony, were you trying
25 to present an alibi to this charge?

PHILLIE CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 A. Yes, I was.

2 Q. Do you feel that you were properly
3 prepared and effectively used at trial?

4 A. No, not when it came to my alibi. I
5 felt my phone records -- I knew my phone orders --
6 if my phone records were obtained, that it would
7 prove my alibi.

8 Q. And you and I both tried to get those
9 records, and what did they tell us?

10 A. It was too late. Two years, they only
11 hold them for two years. If you don't obtain them
12 in two years, they're destroyed.

13 Q. Did you also ask him -- I'm sorry if
14 you said this already, I don't meant to be
15 redundant, to get the alarm records for your home?

16 A. Yes, I did.

17 Q. And despite from your testimony
18 appearing your alibi was your main defense, did
19 your attorney ask for an alibi charge?

20 A. No, he did not.

21 Q. Mr. Crocker, at this time, I would like
22 to focus your attention to the defense of
23 third-party guilt.

24 MS. BLANCHETTE: Your Honor, this is
25 issue number ten. I have cited a number of pages

1 from the transcript, as well as Holmes v. South
2 Carolina. I would like to concede that State v.
3 Holmes was first heard in our South Carolina
4 Supreme Court on 2/19/04 and filed on 11/01/04,
5 which was three years after the trial date, as well
6 as the U. S. Supreme Court decision reversing
7 Holmes was not argued until 2/22/06, it was filed
8 on 5/1/06, I would like to point out that the
9 appellate decision wasn't filed here, though, until
10 10/31 of '05.

11 We -- dependent upon the testimony
12 offered by the State, if Counsel states that he
13 properly preserved the issue, we'd alternatively
14 argue that this could have been raised on appeal.
15 I understand that Holmes hadn't been decided, but
16 the issue was unsettled at the time that this
17 appeal was pending.

18 Furthermore, if the Court would allow,
19 I have spoken with the State about this, I would
20 like to point out the issue of whether or not
21 third-party guilt would be admitted in the pretrial
22 and trial transcript. It first comes up in
23 pretrial on page 57. The State introduces a motion
24 to bar third-party guilt.

25 Your Honor, at this time, I would move

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 to introduce what's been premarked as Applicant's
2 Number 37.

3 MS. HARRIGAN: No objection from the
4 State.

5 THE COURT: What page are you talking
6 about?

7 MS. BLANCHETTE: Do you have the
8 pretrial transcript? It's a separate packet. I
9 have one if you'd like it.

10 THE COURT: I have it.

11 MS. BLANCHETTE: It's part of your
12 court packet. Your Honor, on page 57, it appears
13 that they begin talking about it and Ms. Campbell
14 refers to a motion she has prepared. This motion
15 was in the packet I received. It is -- it is --
16 the date isn't filled out and it's not filed, but
17 this is the only copy that I do have.

18 Then eventually Judge Cooper says on
19 page 69 that he'll pick it up later, he needs to
20 know more, that he doesn't want to hear it in a
21 vacuum. In response, Douglas Strickler indicates
22 on pages 59 through 60 that he needs to do a brief,
23 but it will probably be the same cases as
24 referenced in the State's motion.

25 Then if you flip to pages 159 through

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 171, is the next time that I find that the issue of
2 third-party guilt comes up pretrial. There defense
3 counsel gives a list of names, because they had
4 just received a lot of evidence, and they get a
5 continuance, just to give you that background
6 information.

7 He says, off the top of his head, he
8 knows the names Marty Morgan and Willie Jennings
9 will probably be part of their third-party guilt
10 claims, but the cell phone records that he just
11 received may need to include many more people. He
12 agrees that he will submit a brief within 10 days.

13 As of today, I have not seen a copy of
14 that brief.

15 At trial, the first place I see the
16 issue come up is on page 234. They're discussing
17 whether or not the lineup of Marty Morgan can come
18 in; I do not see a pretrial motion on third-party
19 guilt and I have consulted with the State on that
20 as well. Page 238 is the only other place that I
21 could find --

22 MS. HARRIGAN: Your Honor, if I could
23 just briefly object. I know Ms. Blanchette is
24 trying to move on, but we're talking about stuff
25 that Doug Strickler and other State witnesses may

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 or may not present and this would be better suited,
2 the State would submit, at closing argument and not
3 make the argument in the middle of a witness being
4 on the stand.

5 THE COURT: Well, if you're trying to
6 argue, you are right about that. We are limited in
7 time and --

8 MS. HARRIGAN: I understand, Your
9 Honor. I just don't want the State to be
10 prejudiced by Ms. Blanchette being able to make
11 argument throughout her case and the State hasn't
12 had an opportunity to respond yet.

13 THE COURT: Whenever you think she's
14 making argument, you yell argument.

15 MS. HARRIGAN: Yes, Your Honor. The
16 State would preserve its argument until after the
17 entire case has been presented, not partially.

18 MS. BLANCHETTE: And, Your Honor, I was
19 just trying to -- the State had said Mr. Strickler
20 may respond to that. I just have one more
21 transcript cite. Page 238, Judge Cooper goes over
22 the third-party guilt standard in South Carolina at
23 the time and he cites to the Gay case, which was
24 the standard prior to Holmes' reversal in the
25 United States Supreme Court.

PHILLIP CROCKER - CONTINUING DIRECT EXAM BY MS. BLANCHETTE

1 He indicates there that he can't limit
2 cross -- and I'm just summarizing him -- but the
3 State will have to object when Mr. Strickler goes
4 into any cross-examination. The Court has the
5 record. I don't mean this in the form of argument.
6 I have reviewed the record, and I do not see any
7 objections on the part of the State as far as
8 third-party guilt is concerned.

9 THE COURT: All right.

10 BY MS. BLANCHETTE:

11 Q. Now, Mr. Crocker, as far as your alibi
12 and third-party guilt claims, there was a
13 description given of the suspect in this case; is
14 that correct?

15 A. Yes.

16 Q. Okay. And there was a composite done
17 as well?

18 A. Yes.

19 Q. And we have a copy of a BOLO, or be on
20 the lookout, that Richland County put together; is
21 that correct?

22 A. Uh-huh.

23 MS. HARRIGAN: Is that a yes?

24 THE WITNESS: Yes.

25 BY MS. BLANCHETTE: