

ORIGINAL

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2018-000627

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S.C. SUPREME COURT

TITUS L. ROUSE,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	2012-GS-23-06017
	)	2012-GS-23-06417
	)	2013-GS-23-00846
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
TITUS NICCOLA LEE ROUSE,	)	
DEFENDANT.	)	
	)	

August 6, 2014,
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE; and a jury.

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

JOYCE K. MONTS, ESQ.
Assistant Solicitor

RICHARD H. WARDER, ESQ.
C. RAUCH WISE, ESQ.
Attorneys for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

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E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: Do you all have any witness lists, and that sort of thing, voir dire, stuff like that?

(WHEREUPON, there was no response.)

THE COURT: Ms. Monts, do you have a witness list?

MS. MONTs: Yes, Your Honor.

THE COURT: Okay. What are the strikes in this case? Five and five?

MS. MONTs: Yes, Your Honor.

(WHEREUPON, a break was taken.)

THE COURT: Are you all ready?

Who -- I thought maybe you were on trial, Mr. Wise, but I guess not.

MR. WISE: Not this time, not this time.

THE COURT: Okay.

MS. MONTs: And, Your Honor, Mr. Warder just.

Informed me yesterday that Mr. Wise was associated on this case.

MR. WISE: I would like to put one matter on the record concerning jury selection.

THE COURT: Yes.

MR. WISE: I would move that the -- giving the Defendant in this case five strikes --

THE COURT: Wait a minute. Wait until they get your client in here.

1 (WHEREUPON, Defendant Titus Rouse entered the
2 courtroom.)

3 THE COURT: There's a motion?

4 MR. WISE: Right.

5 Giving the Defendant in this case five strikes, I
6 think, is a denial of equal protection when you consider
7 the fact that a person charged with perjury, which carries
8 seven years, grand larceny which carries substantially
9 less than 25 years, they all get 10 strikes in those
10 cases.

11 So the statute by which we allocate strikes, I think,
12 denies equal protection of the laws for someone who's
13 looking at a serious 25-year minimum offense. He only
14 gets five strikes. And there's no rhyme or reason why you
15 give 10 strikes to some people under the statute and deny
16 a -- deny 10 strikes to someone who's facing a 25-year
17 mandatory.

18 THE COURT: Well, I don't know that there's a
19 burglary charge that carries seven years.

20 MR. WISE: That's perjury, perjury.

21 THE COURT: Oh, perjury.

22 MR. WISE: Yes.

23 THE COURT: Oh, okay. Well, noted for record. But I
24 deny the motion.

25 Are you all ready to get a -- are you ready to go?

1 MS. MONTS: Yes, Your Honor.

2 Your Honor, we do have a Jackson v. Denno. I didn't
3 know if you wanted to do that after --

4 THE COURT: Well, let's get -- yes. We'll get the
5 jury picked, sworn. And then we'll do the Jackson v.
6 Denno.

7 (Pause.)

8 THE COURT: I would just note for the record, you've
9 got SCDC guards in the back. I don't want there to be any
10 question about the jury being prejudiced.

11 Is your client in the department of corrections?

12 MR. WISE: That's correct.

13 THE COURT: Okay. Well, what's your --

14 I'm afraid there could be some issue raised later
15 about undue prejudice if they see you and they may make a
16 connection. Do you all have some jacket or something you
17 can put on over your vest.

18 THE DEPARTMENT OF CORRECTIONS OFFICER: We can take
19 them off.

20 THE COURT: Okay. Yes. Do that while we're -- if
21 you don't mind, just so there's no question.

22 Are you all going to contest the admissibility of the
23 statement?

24 MR. WARDER: Yes, Your Honor.

25 (WHEREUPON, the jury panel entered the courtroom.)

1 THE COURT: Ladies and gentlemen, welcome up to
2 courtroom four. I think some of you have been here
3 before. Welcome back. Those of you who haven't been up
4 here yet, welcome for the first time. I'm glad to see
5 y'all again today.

6 We are -- as you all are aware, we qualified y'all to
7 serve on Monday, generally, for the week. And, now, we're
8 going to go through the process of qualifying you all to
9 serve, specifically, for this case. And so, based on
10 that, I need to go through some more questions with you.
11 And I need to introduce the case to you.

12 And this case is indictment number 2012-6017, the
13 State v. Titus Niccola Lee Rouse. It is an indictment for
14 trafficking heroin. It alleges that Titus Niccola Lee
15 Rouse did in Greenville County on or about the 27th day of
16 May of 2012, knowingly sell, manufacture, deliver, or
17 bring into South Carolina, or did knowingly provide
18 financial assistance or otherwise aid, abet, attempt, or
19 conspire to sell, manufacture, deliver, or bring into the
20 State, or was knowingly in actual or constructive
21 possession of more than 14 grams of heroin in violation of
22 the statutes and laws of the State of South Carolina.

23 Now, to this indictment, Mr. Rouse has pled not
24 guilty. And, as such, certain rights attach which belong
25 to each and every citizen in this country. And that is

1 that every person charged with a crime is presumed to be
2 innocent, unless and until the State, who is the charging
3 body, proves to a jury beyond any reasonable doubt each
4 and every element of each -- of the offense that that
5 person is charged with. Please keep that in mind
6 throughout the course of these proceedings.

7 I would, also, instruct you that this document is
8 nothing more than it appears to be, which is a piece of
9 paper containing allegations which allows this case to
10 resolve -- to wind its way through the court system to
11 arrive here in court for a resolution. And so you should
12 take no inference or make any presumption from the fact
13 that this document is issued, or any other charging
14 instrument like an arrest warrant. That is not evidence
15 of guilt in this case. Evidence of guilt will be
16 presented in court at trial.

17 Now, ladies and gentlemen, before I go any farther,
18 I'm going to ask the attorneys to stand and introduce
19 themselves and their clients.

20 Ms. Monts.

21 MS. MONTs: May it please the Court, Your Honor.

22 Ladies and gentlemen, my name is Joyce Monts. I work
23 for the Thirteenth Circuit Solicitor's Office. Seated
24 next to me is Deputy Mike Giovanni with the Greenville
25 County Sheriff's Office.

1 Thank you.

2 THE COURT: All right. Mr. Warder.

3 MR. WARDER: I'm Richard Warder. Seated next to me
4 is Mr. Rauch Wise. Together, the two of us have the
5 privilege of representing Titus Rouse, who's seated down
6 on the end.

7 THE COURT: Okay. Thank you very much.

8 JURY QUALIFICATION

9 THE COURT: Is there any member of the jury panel
10 related by blood or marriage, or who has a business,
11 personal, or social relationship with any of the attorneys
12 involved in this case or with any member of the Thirteenth
13 Circuit Solicitor's Office? If so, please, stand.

14 Yes, ma'am. What's your name and number?

15 JUROR #122, RACINE SANDERS: My name is Racine
16 Sanders. I'm 122.

17 I knew Richard when he was married to his first wife.

18 THE COURT: Richard -- you know Mr. Warder?

19 JUROR #122, RACINE SANDERS: Yeah.

20 THE COURT: All right. Thank you.

21 Would -- the fact that you know him, would that
22 impair your ability to be fair and impartial in this case
23 to either the State or the Defense?

24 JUROR #122, RACINE SANDERS: (Juror #122, Racine
25 Sanders, nodded.)

1 THE COURT: She responds positively.

2 All right. Thank you very much.

3 Is there any member of the jury panel related by
4 blood or marriage, or who has a business, personal, or
5 social relationship with Mr. Titus Niccola Lee Rouse? If
6 so, please, stand.

7 (WHEREUPON, there was no response.)

8 THE COURT: Okay. I'm going to read a list of
9 potential witnesses in the case, and I'll need to know the
10 same about these folks, so, please, listen carefully.
11 Deputy Michael Giovannit [sic] with the Sheriff's Office;
12 Deputy Al Cannon with the Sheriff's Office; Deputy Chris
13 Marchi with the Sheriff's Office; Deputy Matt May with the
14 Sheriff's Office; Deputy Steven Picone with the Sheriff's
15 Office; Deputy John Redman with the Sheriff's Office;
16 Sergeant Dale Silver with the Sheriff's Office; Deputy
17 Hans Weinmueller with the Sheriff's Office; Deputy John
18 White with the Sheriff's Office; Officer Dustin Kretschmar
19 with forensics; Tabitha Fricks with property and evidence;
20 Melanie Watson with property and evidence; Kara Bennick
21 with property and evidence; Sean F. Collins with the
22 Greenville County lab; Doug Wannemacher with the Sheriff's
23 Office; Ron Lendway with forensics; Esteban Vasallo, also
24 known as Steven Vasallo; Blair McAlister; and Zack
25 Gilstrap.

1 Is there any member of the jury panel related by
2 blood or marriage, or who has a business, personal, or
3 social relationship with any of those potential witnesses
4 whose names I have just read? If so, please, stand.

5 (WHEREUPON, there was no response.)

6 THE COURT: All right. Is there any member of the
7 jury panel who has any knowledge about the events alleged
8 in the indictment? If so, please, stand.

9 (WHEREUPON, there was no response.)

10 THE COURT: Is there any member of the jury panel who
11 has been charged -- any member of the jury panel or any
12 family member who has been charged with or the victim of
13 this type of offense? If so, please stand.

14 All right. Yes, sir. Your name and number?

15 JUROR #51, GEORGE FISH: George Fish, #51.

16 THE COURT: Okay. And, please, tell me.

17 JUROR #51, GEORGE FISH: I have a daughter that was
18 involved in a -- selling of her medications --

19 THE COURT: Okay.

20 JUROR #51, GEORGE FISH: -- last year. And she's
21 currently on probation --

22 THE COURT: All right. Don't -- all right. Would
23 that -- the fact that your daughter has that involvement,
24 would that impair your ability to be fair and impartial in
25 this case to either the State or the Defense?

1 JUROR #51, GEORGE FISH: No.

2 THE COURT: And could you follow the law as I would
3 give it to you under your oath?

4 JUROR #51, GEORGE FISH: Yes, sir.

5 THE COURT: Thank you very much.

6 Is there any member of the jury panel who's aware of
7 any bias or prejudice towards either the State or the
8 Defense? If so, please, stand.

9 (WHEREUPON, there was no response.)

10 THE COURT: Is there any member of the jury panel who
11 is a member of or a contributor to a group whose primary
12 concern is the promotion of law enforcement or victims
13 rights? Examples would be MADD, SADD, or CAVE. If so,
14 please, stand.

15 (WHEREUPON, there was no response.)

16 THE COURT: Is there any juror who knows of any
17 reason whatsoever why you should not serve in this case
18 with particular emphasis on your ability to be fair and
19 impartial to both the State and the Defense, and to judge
20 this case solely on the evidence presented in this
21 courtroom and the law as I would give it to you? If you
22 cannot do that, please, stand.

23 (WHEREUPON, there was no response.)

24 THE COURT: Anything else from the State?

25 MS. MONTS: No, Your Honor.

1 THE COURT: From the Defense?

2 MR. WARDER: No, Your Honor.

3 THE COURT: Now, ladies and gentlemen, Ms. Troop with
4 the clerk's office is going to call your name. When your
5 name is -- if your name is called, please, stand in place
6 and await further instructions.

7 Thank you.

8 JURY SELECTION

9 THE CLERK: Juror #48, Mark Fernandez.

10 (WHEREUPON, Mark Fernandez, a white male, stood.)

11 THE CLERK: What says the State?

12 MS. MONTS: Please present the juror.

13 THE CLERK: What says the Defendant?

14 MR. WARDER: Seat the juror, Your Honor.

15 THE CLERK: Sir, would you, please, bring your
16 things. Come have a seat in the jury box.

17 Juror #96, Shelton Middleton.

18 (WHEREUPON, Shelton Middleton, a white male, stood.)

19 THE CLERK: What says the State?

20 MS. MONTS: Please present the juror.

21 THE CLERK: What says the Defendant?

22 MR. WARDER: Please excuse the juror from the trial
23 of this matter.

24 THE CLERK: Thank you.

25 Please be seated. Sir, you have been excused from

1 this case.

2 Juror #86, Heidi McCarl.

3 (WHEREUPON, Heidi McCarl, a white female, stood.)

4 THE CLERK: What says the State?

5 MS. MONTS: Please present the juror.

6 THE CLERK: What says the Defendant?

7 MR. WARDER: Please seat the juror.

8 THE CLERK: Ma'am, please, bring your things. Come
9 have a seat in the jury box.

10 Juror #10, Susan Baughman Stack.

11 (WHEREUPON, Susan Baughman Stack, a white female,
12 stood.)

13 THE CLERK: What says the State?

14 MS. MONTS: Please present the juror.

15 THE CLERK: What says the Defendant?

16 MR. WARDER: Please seat the juror.

17 THE CLERK: Ma'am, please, bring your things. Have a
18 seat in the jury box.

19 Juror #119, Tracey Robson.

20 (WHEREUPON, Tracey Robson, a white female, stood.)

21 THE CLERK: What says the State?

22 MS. MONTS: Please present the juror.

23 THE CLERK: What says the Defendant?

24 MR. WARDER: Please excuse the juror from the trial
25 of this matter.

1 THE CLERK: Ma'am, you may be seated, please.

2 Juror #23, Jesse Hendrix.

3 (WHEREUPON, Jesse Hendrix, a white female, stood.)

4 THE CLERK: What says the State?

5 MS. MONTS: Please present the juror.

6 THE CLERK: What says the Defendant?

7 MR. WARDER: Please swear the juror.

8 THE CLERK: Ma'am, please, bring your things. Have a
9 seat in the jury box.

10 Juror #14, Miriam Berry.

11 (WHEREUPON, Miriam Berry, a white female, stood.)

12 THE CLERK: What says the State?

13 MS. MONTS: Please present the juror.

14 THE CLERK: What says the Defendant?

15 MR. WARDER: Please excuse the juror from the trial
16 of this case.

17 THE CLERK: Ma'am, please, be seated. You have been
18 excused from this case.

19 Juror #28 John Chandler.

20 (WHEREUPON, John Chandler, a white male, stood.)

21 THE CLERK: What says the State?

22 MS. MONTS: Please present the juror.

23 THE CLERK: What says the Defendant?

24 MR. WARDER: Please seat the juror.

25 THE CLERK: Sir, please, bring your things. Have a

1 seat in the jury box.

2 Juror #50, Anna Fisher.

3 (WHEREUPON, Anna Fisher, a white female, stood.)

4 THE CLERK: What says the State?

5 MS. MONTS: Please present the juror.

6 THE CLERK: What says the Defendant?

7 MR. WARDER: Please seat the juror.

8 THE CLERK: Ms. Fisher, please, bring your things.

9 Have a seat in the jury box.

10 Juror #68, Karen Hill Robinson.

11 MR. WISE: What was the number?

12 THE CLERK: #68.

13 (WHEREUPON, Karen Hill Robinson, a black female,
14 stood.)

15 THE CLERK: What says the State?

16 MS. MONTS: Please present the juror.

17 THE CLERK: What says the Defendant?

18 MR. WARDER: Please seat the juror.

19 THE CLERK: Ma'am, please, bring your things. Have a
20 seat in the jury box.

21 Juror #128, Ahjia Sullivan.

22 (WHEREUPON, Ahjia Sullivan, a black female, stood.)

23 THE CLERK: What says the State?

24 MS. MONTS: Please present the juror.

25 THE CLERK: What says the Defendant?

1 MR. WARDER: Please swear the juror.

2 THE CLERK: Ms. Sullivan, please, come have a seat in
3 the jury box.

4 Juror #117, Robert Ridgeway.

5 (WHEREUPON, Robert Ridgeway, a white male, stood.)

6 THE CLERK: What says the State?

7 MS. MONTIS: Please present the juror.

8 THE CLERK: What says the Defendant?

9 MR. WARDER: Please swear the juror.

10 THE CLERK: Sir, please, come have a seat in the jury
11 box.

12 Juror #135, Amos Valentine.

13 (WHEREUPON, Amos Valentine, a black male, stood.)

14 THE CLERK: What says the State?

15 MS. MONTIS: Please present the juror.

16 THE CLERK: What says the Defendant?

17 MR. WARDER: Please swear the juror.

18 THE CLERK: Sir, please, have a seat in the jury box.

19 Juror #150, Bruce Burgess.

20 (WHEREUPON, Bruce Burgess, a black male, stood.)

21 THE CLERK: What says the State?

22 MS. MONTIS: Please excuse the juror from this case.

23 THE COURT: All right. Please be seated, sir.

24 You've been excused from this case.

25 Juror #77, Nancy Jones.

1 (WHEREUPON, Nancy Jones, a white female, stood.)

2 THE CLERK: What says the State?

3 MS. MONTS: Please present the juror.

4 THE CLERK: What says the Defendant?

5 MR. WARDER: Please excuse the juror from the trial
6 of this matter.

7 THE CLERK: All right. Ma'am, please, be seated.
8 You have been excused from this case.

9 Juror #13, Russell Beard.

10 (WHEREUPON, Russell Beard, a white male, stood.)

11 THE CLERK: What says the State?

12 MS. MONTS: Please present the juror.

13 THE CLERK: What says the Defendant?

14 MR. WARDER: Please swear the juror.

15 THE CLERK: Sir, please, come have a seat in the jury
16 box.

17 Juror #138, Emily Weaver.

18 (WHEREUPON, Emily Weaver, a white female, stood.)

19 THE CLERK: What says the State?

20 MS. MONTS: Please present the juror.

21 THE CLERK: What says the Defendant?

22 MR. WARDER: Please seat the juror.

23 THE CLERK: Ma'am, please, come have a seat in the
24 jury box.

25 THE COURT: One alternate. One and one.

1 THE CLERK: Juror #33, William Colyer.

2 (WHEREUPON, William Colyer, a white male, stood.)

3 THE CLERK: What says the State?

4 MS. MONTS: Please present the juror.

5 THE CLERK: What says the Defendant?

6 MR. WARDER: Please excuse the juror from this trial.

7 THE CLERK: Sir, please, be seated. You've been
8 excused from this case.

9 Juror #25, Nicholas Calhoun.

10 (WHEREUPON, Nicholas Calhoun, a black male, stood.)

11 THE CLERK: What says the State?

12 MS. MONTS: Please present the juror.

13 THE CLERK: What says the Defendant?

14 MR. WARDER: Please swear the juror.

15 THE CLERK: Sir, please, come have a seat in the jury
16 box.

17 THE COURT: Any exception or objection to the jury as
18 impaneled from the State?

19 MS. MONTS: No, Your Honor.

20 THE COURT: From the Defense?

21 MR. WARDER: No, Your Honor.

22 THE COURT: All right. Ladies and gentlemen, we've
23 got the jury.

24 And, Mary, downstairs?

25 THE CLERK: Yes, sir, please, downstairs.

1 THE COURT: And I would excuse you all back to the
2 jury assembly room. And they'll give you further
3 instructions.

4 Thank you.

5 (WHEREUPON, the remaining jury panel members exited
6 the courtroom.)

7 THE COURT: Ladies and gentlemen, I want to thank
8 y'all for being here. I don't recognize any of you from
9 yesterday. So this is a new group. And I'm always happy
10 about that. Because it gives more people an experience to
11 serve on a jury, which is a great privilege and a great
12 responsibility.

13 Your role here, of course, is as the fact finders in
14 the case. And I want to tell you, we have a dispute about
15 the facts, which can't be resolved in any other fashion
16 other than to ask a jury to come up and listen to the
17 evidence and the law, and come to a decision that resolves
18 the dispute.

19 I would tell you and remind you again that the
20 indictment that I read to you, or what we call published
21 to you, is not evidence. And you should take no inference
22 or presumption from the fact that it issued with respect
23 to the question of guilt or innocence.

24 I, also, remind you that every person in this country
25 charged with an offense is presumed to be innocent, unless

1 and until the charging body, in this case the State of
2 South Carolina, proves to a jury, you all, beyond a
3 reasonable doubt each and every element of the offense
4 that that person is charged with. Please remember that
5 throughout the course of the proceedings.

6 I break a -- so you all have a procedural road map to
7 know where you are, I break a trial into five parts. You
8 can -- if you read some of these novels or you watch some
9 of these television shows, they break them into little
10 minutia.

11 But, for our purposes, we'll embark on the first part
12 of the trial -- I guess we're sort of embarking on it
13 right now, but -- or in a few minutes. And that will be
14 the opening statements to you by the attorneys. And those
15 are brief and non-argumentive statements from the lawyers.

16 The second part of this trial and every trial is
17 truly the meat and potatoes of the case. And that is the
18 presentation of the testimony and the evidence in the
19 case. And evidence will come to you in, generally, one of
20 three ways. I don't know the combination in this case.
21 But it's -- the most common form that we all think of is
22 oral testimony from the witness stand right here.

23 The second most common way is through the
24 presentation of tangible objects or documents.

25 And the third most common way is through -- when the

1 parties agree that some fact is so beyond dispute you
2 should accept it as true. And that's what we call a
3 stipulation.

4 I don't know how the evidence will be presented in
5 this case. Because I know as much about it right now as
6 you do. But they will -- it will come to you in one of
7 those ways.

8 The third part of the trial will be at the close of
9 the evidence when all the evidence is in, then the lawyers
10 get up and make their closing arguments to you. As I told
11 you, their opening statements are brief and
12 non-argumentative. The closing arguments is where the
13 attorney -- each attorney has an opportunity to advocate
14 their position and argue to you why you should resolve the
15 dispute in their favor.

16 The fourth part of the trial will be when I tell you
17 what the law is as it relates to this case.

18 And the fifth part of the trial will be when you all
19 retire to your jury room to deliberate the case, and make
20 a decision, and resolve the dispute.

21 So the parts are not of equal length. But, at least,
22 you'll have an idea of what's coming next and how the
23 trial is organized.

24 I'll ask you to do, I'm sure, a number of things
25 throughout the course of the trial. There are three main

1 things I ask you to do. The first is to keep an open
2 mind. We went through the -- this questioning period of
3 you all, the qualification process, to ensure that we have
4 a jury that is fair and impartial that does not come to
5 perform your duties with some predisposed notion about how
6 the case should be decided. It's not how we operate. We
7 want fair and impartial jurors who will listen to all the
8 evidence, and listen to all the law, and come to a fair
9 and impartial resolution.

10 In order to do that, the second thing I ask you to
11 do, which seems very simple, but can be difficult, is to
12 pay attention. I think I heard that my whole life, quit
13 looking out the window, young man. But, in any event, if
14 you let your mind wander off, you may miss a certain part
15 of testimony that -- or the inflection that a witness puts
16 into how they answer a question, or how they act on the
17 witness stand, what we call a witnesses demeanor, which
18 might -- and if you miss that, it might put you at a
19 disadvantage in your deliberations. So I ask you to,
20 please, pay attention throughout the course of the trial.

21 The last thing with emphasis that I ask you to do and
22 I instruct you to do is that you cannot discuss this case
23 with anyone until you are in the fifth part of the trial
24 deliberating. So I fully anticipate we'll go through
25 lunch.

1 So if you go to lunch and you have plans to meet a
2 friend, a family member, or a colleague of some type, you
3 can't talk about this case with them. And we all know
4 it's human nature to want to do that. If this case goes
5 more than one day and you go home tonight, whoever you
6 see, your family member, or friend will want to know about
7 this case. We know that. You know that. And you'll be
8 tempted to talk about it. Because I -- if you're like me,
9 I have trouble deciding what to have for dinner without
10 consulting with my family. So you can't do that with
11 respect to this case.

12 You can't go on the Internet and do research. You
13 can't go visit some location that's discussed here. You
14 cannot go on social media. You can't talk about the case.
15 And you say, well, why is that? Well, if you were to do
16 that, even an innocent comment from somebody who you like
17 and trust, or somebody who you don't like might impact
18 your state of mind. And I'll tell you this, that would be
19 unfair to these parties. It would be unfair to your
20 fellow jurors. It would be unfair to yourself, in
21 particular.

22 Because the person who makes that comment to you is
23 not making the sacrifices that you're making to be up
24 here. And that person is not listening to the evidence,
25 watching the testimony, and listening to the questions

1 that go on in the case. And they don't know what's going
2 on. And they have no right to insert themselves into this
3 case. Everything you're going to need to know to resolve
4 this case, you will hear in this courtroom. And it will
5 be subject to Constitutional protections and scrutiny. So
6 don't talk about the case.

7 I want to tell you that you all are the sole judges
8 of the facts in this case, the sole judges of who to
9 believe, what to believe, what not to believe. And a
10 trial judge by law is not allowed to have an opinion about
11 the facts in a case.

12 So don't think by anything I say or do throughout the
13 course of the trial that I have such an opinion. I do
14 not. The law does not allow it. And you all are the sole
15 judges of the facts.

16 Now, that same law makes me the sole judge of the
17 law. So if you think you have some idea as to what the
18 law is, or what the law should be and it disagrees with
19 what I tell you the law is throughout the trial and at the
20 end of the trial, you're going to swear an oath in just a
21 second to set aside your own opinion. That ensures that
22 everyone who is up here in court gets treated by the same
23 law. Okay. There's a very good reason why you all must
24 follow the law in this case.

25 A couple other things I'll tell you is that maybe

1 from time to time throughout the course of the trial, I'll
2 invite the attorneys to come up here to talk with me. We
3 call that a bench conference. You won't be able to hear.
4 And you might think, oh, well, they're trying to keep
5 something from us. And it could be I send you all back to
6 your jury room so I can discuss some point of law or the
7 admissibility of some piece of evidence. And I think you
8 can understand that, yes, we may be trying to keep
9 something from you. But we are, certainly, not trying to
10 deceive you in any way. If it's a piece of evidence that
11 shouldn't be admitted, then I think you can understand why
12 you shouldn't be here when we discuss it, and you
13 shouldn't hear about it.

14 I can't think of anything else. But what we're going
15 to do right now is I'm going to ask you all to stand and
16 take your oath. And then I'm going to excuse you all back
17 to your jury room. I have a couple of issues I've got to
18 talk about with the attorneys before we get started.

19 And, during that time, there's a -- some judges like
20 to pick their foreperson, and other judges, like me, like
21 to let you all decide who you want to be your foreperson.
22 So I'm going to ask you all to see if you can decide who
23 you'd like to serve as your foreperson.

24 And the Foreperson is the jury's spokesperson in the
25 courtroom, if that becomes necessary, and, also, the

1 moderator or the leader of the discussions and the
2 deliberations at the end of the case.

3 So if you all can decide who you'd like to do that,
4 that would be great. It has to be from the first 12. And
5 if you can't, I do have a scientific formula that I employ
6 when I do that. And it's put my hand over, finger down on
7 the list. It's a little more scientific than that. But
8 I, generally, don't have to do it because you all can
9 decide how to do it.

10 So, at this time, I'll get y'all to stand --

11 MS. MONTS: Your Honor, may we approach before that
12 Your Honor?

13 THE COURT: All right.

14 (WHEREUPON, a bench conference was held.)

15 THE COURT: Please stand and take the oath.

16 THE CLERK: Please raise your right hand. The proper
17 response is "I will."

18 (WHEREUPON, the jury was sworn at approximately
19 10:43 a.m.)

20 THE CLERK: Thank you.

21 Please be seated.

22 THE COURT: All right. No. Don't sit down.

23 THE CLERK: Sorry.

24 THE COURT: I'm going to get y'all -- I mean, you can
25 sit down if you want to. But you're going to get right

1 back up. It will be like an Episcopal church service.
2 Y'all go back to the jury room and see if you can elect a
3 foreperson.

4 (WHEREUPON, the jury was excused from open court at
5 approximately 10:44 a.m.)

6 THE COURT: All right. Motion to suppress the
7 statement. Let's go.

8 MR. WARDER: Your Honor, just one matter I'd like to
9 bring to the Court's attention. I don't hear real good on
10 the low tones when somebody whispers. And so bench
11 conferences are particularly difficult because everybody
12 comes up and whispers. And everybody else hears them and
13 I don't.

14 So I just bring that to the Court's attention if it
15 becomes necessary that I might -- we might need to send
16 the jury out a little more often than you would normally
17 so that I can --

18 THE COURT: Oh, Wise -- you've got the Wise man with
19 you. He can hear. But we'll see how it goes.

20 MR. WARDER: Yes. I've got the Wise man here. But I
21 sometimes like to hear, also.

22 THE COURT: All right. Well, we'll, certainly, keep
23 that in mind.

24 Go ahead. Jackson v. Denno.

25 MS. MONTS: Your Honor, there are some statements

1 that we believe are not -- are taken when the Defendant
2 was not in custody. So -- and then there was some
3 statements after that.

4 I don't know if the Defense objects to the ones prior
5 to him being in custody. These were -- the Defendant was
6 at the poolside at the hotel and approached the officers,
7 and asked -- told them what he thought was going on as far
8 as -- and, specifically, that the Defendant said that he
9 saw a black male jump out of the car and run. And then he
10 saw two police officers get out. And he kept asking the
11 officers what were going -- what was going on.

12 THE COURT: You know, I don't know anything about the
13 case, nothing. So are there --

14 What statements are y'all objecting to as being
15 Unconstitutionally --

16 MR. WARDER: Your Honor, if it please.

17 There would be two statements taken. The Defendant,
18 at one point, was handcuffed, and put on a bench before he
19 was taken to a police car. He was questioned at that
20 point in time without the benefit of Miranda. We would
21 object to those statements as in-custody questioning that
22 he was responding to without the Miranda warnings.

23 So we would think that that group of statements would
24 be inadmissible because of the failure to give Miranda
25 before. So we'd be moving on those.

1 There comes a group of statements that were taken
2 after the Defendant was taken to the car. And there's
3 some debate as to whether Miranda was given. He was taken
4 to the car so the statements could be recorded. As I
5 understand it, the camera was turned on and stuff. And
6 the Defendant was then questioned there.

7 The tape has miraculously disappeared. It was never
8 taken into custody and preserved by the officers
9 investigating the case. And we don't know that it was
10 ever taken into custody by anybody else.

11 THE COURT: Well, you know, here we are. We're
12 spinning our wheels. You've got -- if you have statements
13 from the Defendant, put the officer up who can testify to
14 it and let's see whether they're voluntarily and
15 intelligently made.

16 What you all tell me is not evidence. And I can't
17 make a judgment based on assertions from the attorneys.

18 So let's get cranking on this. Okay. There's no
19 reason the case needs to last any longer than you
20 indicate. Let's go.

21 MS. MONTS: Your Honor, the State calls Deputy Mike
22 Giovanni.

23 THE COURT: Deputy, I hope I didn't butcher your name
24 when I read it.

25 THE OFFICER: Just slightly, sir. No problem.

1 THE COURT: Okay.

2 THE CLERK: Place your left hand on the Bible and
3 raise your right hand.

4 WHEREUPON,

5 MICHAEL GIOVANNI,

6 after first having been duly sworn, testified as follows:

7 THE CLERK: Thank you.

8 Please be seated.

9 Please state your name for the record.

10 THE WITNESS: Michael Giovanni.

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MS. MONTS:

14 Q Deputy, where are you employed, and how long have you
15 worked there?

16 A I'm employed at the Greenville County Sheriff's
17 Office. And I have worked there since January of 2008.

18 Q And were you on duty on May 27, 2012?

19 A I was.

20 Q And did you come into contact with the Defendant on
21 that date?

22 A I did.

23 Q And do you recall having a conversation with him?

24 A I did, yes, ma'am.

25 Q What was the location of your first conversation with

1 him?

2 A My first contact with him was in the office of the
3 Hawthorn Suites.

4 Q And what were you doing in the office of the Hawthorn
5 Suites at that point?

6 A We were investigating this incident.

7 Q And what did you say to the Defendant?

8 A The only statements I made to the Defendant was I
9 asked him for his identification, which he provided one ID
10 to us. And I, also, indicated to him that I had
11 recognized that he was the same subject that was driving
12 the vehicle that was, subsequently, taken in this case as
13 well.

14 Q Were there other officers present when you were doing
15 this?

16 A Yes. Deputy White was with me as well.

17 Q Did you tell him what room you believed he was in?

18 A I did not, no.

19 Q What did you say to him?

20 A The only thing I told him, again, was that I knew
21 that he was the subject that was driving the car. I
22 recognized him.

23 Q And were you present when the Defendant was
24 Mirandized?

25 A I was, yes, ma'am.

1 Q Where was that?

2 A That was outside on the sidewalk close to where the
3 vehicle that he was driving was parked.

4 Q And who, actually, read the Defendant his rights?

5 A Deputy Cannon.

6 Q Were there other officers present?

7 A Yes, ma'am. There were several.

8 Q Can you name a few?

9 A It was myself, Deputy Cannon. Deputy Weinmueller was
10 there. And I believe Deputy Picone was there as well.

11 Q Did you discuss inside the office what hotel room the
12 Defendant was in?

13 A As far as with the Defendant?

14 Q Yes.

15 A I don't recall discussing the room with him,
16 specifically, no.

17 Q Did you discuss it with the other officers?

18 A Deputy White and I had talked about it briefly. The
19 Defendant did indicate that he was staying in Room #323
20 after Deputy White was talking to him about that. But I,
21 specifically, did not ask him about the room.

22 Q After the Defendant was Mirandized, did the Defendant
23 ask you something?

24 A He did. The only thing that he asked me was for a
25 phone number out of his phone, which was in the car.

1 Q Did you get him that phone number?

2 A I did. It was out of -- I believe it was an iPhone.
3 He asked me for a number that was listed under the name
4 "new wifey."

5 MS. MONTS: Your Honor, nothing further with this
6 witness.

7 THE COURT: Do you have any cross?

8 MR. WARDER: Your Honor, as I heard the testimony, I
9 didn't hear about any statement. So I have no objection.
10 I have no questions.

11 THE COURT: Well, he said he was in -- he was staying
12 in some room.

13 MR. WARDER: I have no objection to that.

14 THE COURT: Well, let me ask you this. You said you
15 were out there to investigate this incident. What
16 incident?

17 I don't have any idea why you were called out, what
18 the dispatch was for, or anything. Can you just give me a
19 little background on that?

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay.

22 THE WITNESS: We had, actually, received -- Deputy
23 May was working the desk that day. And he received a call
24 from an individual who told us about a subject staying at
25 that hotel who had a large amount of heroin.

1 THE COURT: Okay.

2 THE WITNESS: And that was the reason why we went out
3 there to investigate that. We were provided the
4 description for the suspect, as well as the possibility
5 that he would be driving a white Mercedes.

6 THE COURT: All right. Anything else?

7 MR. WISE: Just one thing. I would like to ask him
8 one question.

9 CROSS-EXAMINATION

10 BY MR. WISE:

11 Q Officer, actually, you received a report he was
12 staying at a C [phonetic] hotel in that area, didn't you?

13 A Yes.

14 Q Not necessarily the Hawthorn, but a hotel in that
15 area?

16 A Yeah. He was not sure about the name of the hotel,
17 but it was in that area.

18 THE COURT: Okay. Did he make any other statements
19 to you?

20 THE WITNESS: The only other thing he said to me was
21 he -- towards the end of us talking with him, he did admit
22 that he was driving the car. And he said he fled from the
23 car, apparently, because he thought he had warrants on
24 him.

25 THE COURT: He thought he had warrants on him?

1 THE WITNESS: Yes.

2 THE COURT: And what car is this you're talking
3 about?

4 THE WITNESS: This -- the white Mercedes.

5 THE COURT: Okay. Thank you, sir.
6 You can step down.

7 MS. MONTS: Your Honor, the State calls Deputy White.

8 THE CLERK: Sir, if you'll, please, place your left
9 hand on the Bible.

10 WHEREUPON,

11 JOHN WHITE,
12 after first having been duly sworn, testified as follows:

13 THE CLERK: Thank you.

14 Please be seated.

15 DIRECT EXAMINATION

16 BY MS. MONTS:

17 Q Deputy, where are you employed, and how long have you
18 worked there?

19 A I'm with the Greenville County Sheriff's Office. My
20 name is John White. I've been there about seven years.

21 Q And were you on duty on May 27, 2012?

22 A I was.

23 Q Please briefly describe how you got involved in this
24 incident.

25 A On my way to work, I was notified by my sergeant that

1 I was going to be riding with Deputy Giovanni in a cold
2 car, which is an unmarked vehicle. When I met up with
3 Deputy Giovanni, he advised me that we received a tip that
4 a black man would be at a hotel behind a Chinese
5 restaurant off of Orchard -- I believe it's Orchard
6 Boulevard -- Orchard Park Drive. And he would be in a
7 white Mercedes that had a large quantity of heroin in it.

8 Q Did you, eventually, see this vehicle?

9 A Yes, ma'am.

10 Q Did you approach the vehicle?

11 A We saw the vehicle coming off of Orchard and turn
12 into the Hawthorn Suites. Deputy Giovanni and I drove up
13 to the hotel. We drove down the side of the parking lot
14 where we saw him pull in and saw the car parked unoccupied
15 at the end of the complex.

16 We ran the license plate of the car. And the car
17 came back to an Infiniti. So we circled the parking lot
18 to come back around to verify that the tag we ran was
19 correct.

20 As we were coming down the driveway where the car
21 was, the car was backing out of its parking spot and
22 heading in our direction. As we passed the vehicle, it
23 was occupied by a black male wearing a white tank top and
24 had a large gold watch on his left wrist. He stared at us
25 as we drove by him. We turned around to try to catch back

1 up to him.

2 As we pulled in front of the hotel, the car was
3 spotted parked in a parking spot crooked and abandoned,
4 and left running.

5 Q Was the door open?

6 A I believe it was.

7 Q And continue. Did you -- when did you first see the
8 Defendant?

9 A We did a quick search of the area. We notified our
10 dispatchers that the driver fled on foot. They dispatched
11 backup.

12 And then as people were getting there, I went into
13 the hotel lobby and spoke to the clerk. And I asked them
14 if anybody registered a white Mercedes for a parking
15 permit there. The clerk said that he did not have a
16 Mercedes there. I told him that the vehicle was parked on
17 the back right corner of the complex, and we were looking
18 for a black male.

19 He stated that he only had one black male registered
20 in the area of the hotel and his name was Robert
21 Irvy [phonetic]. I asked him if he could describe Robert
22 Irvy. And he said he was a black male about 6'2" and 160
23 with tattoos on his arms.

24 I went back outside and found Deputy Giovanni and
25 briefed him on what the clerk told me. As we were

1 standing by the car, the Defendant approached the railing
2 to the pool. He had tattoos on both arms and on his chest
3 and he was holding a beer can. He asked us what was going
4 on. I just kind of just told him somebody ran. He said,
5 Yeah, I saw the car come around the corner at a high rate
6 of speed. A black male jumped out and went running down
7 the parking lot.

8 Q Did he mention he saw two police --

9 A Yes, ma'am. He said two police officers -- or one
10 car pulled up and two police officers got out and appeared
11 to be looking for that male.

12 Q Did you talk to him any more at that point?

13 A Not at that point, I didn't.

14 Q When is the next time you spoke with him?

15 A Deputy Giovanni saw me talking to him. And after I
16 was done talking to him, he said that he believed that he
17 was the one that was in the car, and asked me to go find
18 him just to get some more information about what he saw.

19 I went into the lobby and located him in the lobby.
20 And we continued to talk there. I just asked him again
21 what he saw. He told me the story again. And, as he was
22 talking, I just asked him what room he was staying in. He
23 told me 323, which was the room that Irvy was registered
24 to.

25 I asked him if he knew who Robert Irvy was. And he

1 said he did not. I told him I thought that was kind of
2 funny because that's who the room -- the registration was
3 under. He told me that Irvy was his boy. And that his
4 girlfriend drove him there earlier in the day and dropped
5 him off.

6 Q Whose girlfriend?

7 A The Defendant's girlfriend.

8 I said that I thought it was kind of funny if he was
9 his boy that he didn't know what his name was. And then
10 he admitted that he was Robert Irvy and the room was
11 registered to him.

12 That's when Deputy Giovanni walked in and just walked
13 over and looked at him and said, you know, Why did you
14 run? And he denied driving the car at first. But then,
15 eventually, he admitted to driving the vehicle. He said
16 he ran because he thought he had child support warrants.

17 Q Okay. And did the Defendant have more than one ID on
18 him?

19 A He did. He produced the first ID, which was Robert
20 Irvy. It was an ID card, [REDACTED].

21 Q Could that have been a driver's license?

22 A I believe it was -- in the report, I wrote down it
23 was an ID card. I'm sorry. That was the second one. The
24 first one was [REDACTED]. And that was the name with
25 Robert Irvy on it. Once he admitted that he was driving,

1 he produced the second ID, which was the first one I just
2 gave you, which had his name on it.

3 Q Which was what?

4 A Which was Titus Niccola Lee Rouse.

5 Q So only the driver's license was under the name
6 Robert Irvey?

7 A The first one was. I believe it was the driver's
8 license to the first one. And then the second one had his
9 real name.

10 Q Continue with the -- was there more to this
11 conversation?

12 A Once he admitted that he was driving, we placed him
13 in investigative detention and informed him he wasn't
14 under arrest. We had him seated on the bench. And Deputy
15 Giovanni went outside.

16 I stayed with him. And while we were there, we just
17 had small talk. I asked him how often he came to the
18 hotel. He said he comes to the hotel when he's having
19 problems with his girlfriend. He said most of the
20 problems at his house is because he doesn't have money and
21 the bills are piling up. And he said he came to the hotel
22 when he had to meet another woman. He said that he had a
23 female over there earlier in the day, that they had sex,
24 that he drove her home, and he was coming back to clean up
25 the room in fear that his girlfriend was going to come

1 check on him.

2 I asked him if there was anything illegal in the
3 room. He said, No. He said him and the girl smoked a
4 marijuana cigarette up there earlier and there might be a
5 blunt in the room. But, other than that, there was
6 nothing up there. He told me I could walk him back to the
7 hotel room and we could search it. I told him I believed
8 him. I didn't think anything was up there. Because I
9 figured if he ran to the room, he probably would destroy
10 any evidence that was there.

11 Q After you had this conversation, did Officer Cannon
12 come up?

13 A No, ma'am. He was outside. After that, we took
14 Mr. Rouse outside, took him by the patrol car. And that's
15 when Deputy Cannon read him his rights.

16 Q And were you present when Deputy Cannon read him his
17 rights?

18 A Yes, I was.

19 Q And did you hear any conversation after he was read
20 his rights?

21 A I did not. I walked away from there at that
22 point.

23 MS. MONTS: Thank you.

24 No further questions.

25 THE COURT: Cross.

CROSS-EXAMINATION

BY MR. WARDER:

Q You said that you put him in investigative detention;
is that correct?

A Yes, sir.

Q You handcuffed him?

A Deputy Giovanni handcuffed him, yes, sir.

Q Told him where he had to sit?

A Asked him to sit down, yes.

Q You were in your uniform or in plain clothes?

A Uniform.

Q Okay. And you stood by him while he was -- to see he
stayed on the bench?

A Yes, sir.

Q Okay. And what was he in investigative detention
for?

A Basically, for fleeing in the vehicle. The vehicle
had the wrong tag on it. And he matched the description
of the tip that was given to us for the person with the
heroin.

Q And you continued to question him at that time?

A We were, basically, just having small talk, but,
yeah.

Q Well, you were looking for particular points --
particular things, weren't you? Information?

1 A Actually, I was just trying to talk to him and make
2 the time pass while they were outside looking in the car.

3 Q And how long did you keep him in investigative
4 detention inside?

5 A Less than five minutes.

6 Q Okay. And you took him out then and turned him over
7 to another deputy. Is that what happened?

8 A I took him out there where Giovanni was, and Cannon
9 was, and the rest of them were and turned him over to
10 them.

11 Q Okay. And when was he under arrest?

12 A When he was taken outside. Deputy Cannon advised him
13 that he was under arrest.

14 Q Did he match any description that you were looking
15 for of any person?

16 A The vehicle matched the description of the tip. And
17 he matched the description that the clerk gave for the
18 person that was in the room.

19 Q Okay. The vehicle was described as a white Mercedes?

20 A Yes, sir.

21 Q No further description of any kind?

22 A A white Mercedes was supposed to be at that area of
23 the hotel, yes.

24 Q Did it say two-door? Four-door?

25 A No.

1 Q And that the man that you were looking for was
2 supposed to be in his 30s?

3 A I'm not sure. It was just a black male is what
4 Giovanni told me.

5 Q He matched the description of a black male, and the
6 car matched the description of a white Mercedes?

7 A Yes, with an improper tag displayed on it.

8 Q You weren't told it had an improper tag --

9 A No. But that's when we saw the vehicle. That was
10 why we were trying to speed up to -- catch up to it,
11 because it had an improper tag displayed on it.

12 MR. WARDER: Thank you.

13 MS. MONTIS: Nothing further of this witness.

14 THE COURT: Okay. So you never gave him the Miranda
15 warnings?

16 THE WITNESS: I did not.

17 THE COURT: You can step down.

18 Thank you.

19 MS. MONTIS: Your Honor, the State calls Deputy Al
20 Cannon.

21 THE CLERK: Sir, please, place your left hand on the
22 Bible.

23 WHEREUPON,

24 JAMES CANNON,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 Please be seated.

3 DIRECT EXAMINATION

4 BY MS. MONT'S:

5 Q Deputy, please, state where you're employed, and how
6 long you've worked there.

7 A My name is James Cannon. I'm employed with the
8 Greenville County Sheriff's Office. I've been employed
9 for 14 years.

10 Q Just so we're correct, do you go by "Al"?

11 A I do go by "Al," yes.

12 Q And were you on duty on May 27, 2012?

13 A I was.

14 Q And regarding this incident, how did you become
15 involved?

16 A I received a phone call from Sergeant Dale Silvers,
17 who is the sergeant on Echo shift, who advised me that a
18 call was made to the front desk by an anonymous caller
19 giving some information regarding a -- the sale of a large
20 quantity of heroin by a black male, who I was advised was
21 young and was driving a white Mercedes. He, also, advised
22 me that the location was at a hotel or motel off of
23 Orchard Park in Greenville city.

24 I was, also, advised that a couple of deputies who
25 ended up being Deputy Giovanni and White were to be placed

1 in a cold car. And I was to remain in my marked patrol
2 Tahoe, and kind of stay within the immediate area of that
3 particular location.

4 Q At what point did you come in contact with Deputy
5 Giovanni and White?

6 A Well, I heard over the radio that Deputy Giovanni and
7 Deputy White had a white Mercedes kind of, basically,
8 leave from there. They observed a white Mercedes. And
9 the Mercedes pulled off. And by the time they located
10 that Mercedes, it had been left abandoned in front of the
11 hotel there in front of the pool. And that a black male
12 subject with tattoos bailed out and ran from that vehicle.

13 Q What did you observe when you arrived on scene?

14 A Well, when I arrived on scene, I, actually, pulled up
15 to a white Mercedes in front of the pool area where I
16 started communicating with deputies over the radio. At
17 that point, it was decided to attempt to track this
18 individual with the use of a blood hound, which I got on
19 the radio and notified Deputy Redman, who has a blood
20 hound, to be en route or in location to attempt to track
21 the individual who left the white Mercedes.

22 Q And you don't need to go into this. But you have a
23 K9 with you as well; right?

24 A Yes, I do.

25 Q Please continue.

1 A At that point, basically, the vehicle was left
2 abandoned --

3 Q Was the door --

4 A -- at that point --

5 Q -- open?

6 A I'm sorry.

7 Q Was the white Mercedes door open?

8 A Yes, it was. I believe the driver's door was left
9 open. At this point, I retrieved my K9, Nero [phonetic],
10 from my patrol Tahoe.

11 K9 Nero is trained and certified in the areas of
12 marijuana, cocaine, methamphetamine, and heroin. He's,
13 also, certified nationally through the North American
14 Police Work Dog Association as a patrol K9, which includes
15 narcotic detection.

16 At that point, I utilized my K9 and deployed him
17 around the exterior of the abandoned white Mercedes, and
18 commanded him to sniff for the odor of illegal drugs.

19 Q Did you see anybody at this time?

20 A Not while I was deploying Nero.

21 Q Okay. After you did that, what did you observe?

22 A K9 Nero gave an alert to the vehicle to the odor of
23 illegal drugs at the front passenger door seam low down at
24 the bottom of the seam. At that point, I secured K9 Nero
25 and began a probable cause search of the vehicle based on

1 the alert.

2 While doing so, I did observe a black male with
3 tattoos at the pool area. And he, actually, walked over
4 to where I was at with the vehicle and asked kind of what
5 was going on. He was shirtless. And I kind of -- I told
6 him that we were looking for somebody who ran. And he
7 pointed. He said he thought he saw a black male
8 individual run. And he kind of kind of pointed in a
9 direction of the vehicle where he said he saw somebody
10 run -- or a black male run.

11 Q Did he say anything else to you at that time, or did
12 you --

13 A No. I just kind of, you know, blew him off pretty
14 much. And I started a search of the vehicle.

15 Q Did you -- when is the next time you saw the
16 Defendant?

17 A I saw him being brought out, I believe, from the
18 office area. I never left the area around the vehicle. I
19 saw the Defendant in handcuffs. I assumed he was advised
20 he was under arrest or placed under arrest at that point.

21 At that time, he was sitting down next -- on the
22 bench. But it was a -- he was sitting down on the roadway
23 up against the retaining wall, I guess, if you will, to
24 the pool area.

25 At that time, I introduced myself to Mr. Rouse. I

1 found out that his name was Mr. Rouse. And I did
2 Mirandize him. And I asked him if he understood his
3 rights that were read to him.

4 Q Can you, please, tell us what words you gave to him?

5 A Yes. I asked Mr. Rouse -- or I told Mr. Rouse that
6 he was -- he -- I read him his Miranda. And I told him
7 that he was -- he had a right to talk to an attorney, have
8 him or her present with you while you're being questioned.
9 That if he couldn't afford to hire an attorney, one will
10 be provided by the State of South Carolina at no cost to
11 you. I told him that at any time he could exercise his
12 rights and not answer any questions or make any
13 statements. And I asked him if he understood his rights.
14 And he said, Yes.

15 And, at that time, I asked him if he was willing to
16 talk to me. And he said, Yeah.

17 Q And what did you say to him?

18 A I was -- earlier, I was, actually, advised that
19 during the track, a set of slippers -- black slippers were
20 located during the track. I asked him where he lost his
21 black slippers at. And Mr. Rouse said that the slippers
22 were his, and that he ran out of them while he was
23 running.

24 Q Did you ask him anything else?

25 A No, I did not.

1 Q Did the Defendant agree later to talk to anybody
2 else?

3 A I'm unaware of that.

4 Q Please describe, specifically, when you read the
5 Defendant his rights what his response to you was.

6 A After I read his Miranda rights?

7 Q Yes, sir.

8 A I asked him, specifically, if he understood his
9 rights. And he said, Yes. And I asked him if he was
10 willing to talk to me. And he said, Yes -- or "Yeah" is
11 what he said.

12 Q And when you read him his rights, were there other
13 officers around?

14 A Yes, there were.

15 Q Name a few, please.

16 A Deputy Giovanni. I believe Deputy Weinmueller and
17 Picone were there as well.

18 MS. MONTS: Thank you.

19 No further questions.

20 THE COURT: So the only thing he said to you is he
21 ran out of his black slippers? That's all you asked him
22 about?

23 THE WITNESS: Yeah. I asked him about his black
24 slippers.

25 THE COURT: And that was it? That's the statement?

1 THE WITNESS: And that's it.

2 THE COURT: Okay. Do y'all have any cross?

3 CROSS-EXAMINATION

4 BY MR. WARDER:

5 Q He was already in custody when you --

6 THE COURT: He testified he -- it was this officer's
7 opinion that he was under arrest when he approached him.

8 MR. WARDER: Yes, sir.

9 THE COURT: Okay.

10 BY MR. WARDER:

11 Q Was this preserved on a tape recorder of some kind?

12 A There was a tape, yes, sir. My audio and video was
13 activated.

14 Q Okay. And was that tape taken to the property and
15 evidence room by anybody?

16 A No, sir. It was turned into my -- the K9 office,
17 which, at that point, that was what our policy was. Our
18 supervisor at the K9 office kept videotapes there in the
19 office.

20 Q Okay. And if you needed a tape, would you go to the
21 office and get it? Is that what you do?

22 A Yes, sir.

23 Q Did you make an effort to get it in this case?

24 A I went up there and was found out that the vehicle --
25 or the video was purged after 90 days.

1 Q When you work a case that has a confession on a tape,
2 whose job is it to get that to property and evidence?

3 A That is my job.

4 Q Okay. And so, I guess, if anybody dropped the ball,
5 you would have dropped it in this case?

6 A Well, I took it up to what our -- what we were
7 supposed to do at that time with K9s. I took my video up
8 there and dropped it off at the office.

9 Q Okay. Was it their job to get it to property and
10 evidence?

11 A No.

12 Q Whose job would it be to get it to property and
13 evidence?

14 A That would be mine.

15 Q And you didn't do that?

16 A Not in this case. I took it where I was supposed to
17 take it.

18 MR. WARDER: Thank you.

19 MR. WISE: Just one second, please.

20 (Pause.)

21 BY MR. WARDER:

22 Q On the outside of the tape before you turned it in,
23 did you write on it what was on it? Did you make
24 notations for the people -- the division to know what was
25 on it?

1 A Yes. The -- I wrote the case number on the tape.

2 Q Okay. And did you write "confession" and the case
3 number?

4 A I didn't write "confession" on it. I wrote the case
5 number.

6 Q Okay. So you put the appropriate case number that
7 should have gotten it to the right place to preserve it?

8 A That's correct.

9 MR. WARDER: Thank you.

10 THE COURT: Okay. You can step down.

11 Do you have any more witnesses?

12 MS. MONTS: No, Your Honor.

13 THE COURT: Well, let's just take a five-minute
14 break.

15 (WHEREUPON, a break was taken.)

16 THE COURT: Have y'all got anything you want to put
17 up, Mr. Warder?

18 (WHEREUPON, there was no response.)

19 THE COURT: Anything?

20 MR. WARDER: No, sir.

21 THE COURT: Well, anything you want to tell me?

22 (WHEREUPON, there was no response.)

23 THE COURT: What is it you want to suppress?

24 MR. WISE: The statement we, originally, thought that
25 was in custody we thought was originally more damning than

1 what they testified to.

2 THE COURT: I didn't really hear a confession.

3 MR. WISE: Well, I don't think it necessarily has to
4 be a confession. But it just was not as we originally
5 thought it was.

6 THE COURT: So you don't have any objection?

7 MR. WISE: No.

8 THE COURT: Okay. Anything else before we get this
9 jury who's been sitting in there for an hour?

10 MS. MONTIS: Not from the State.

11 THE COURT: Are y'all ready to do your openings?

12 MR. WARDER: Yes.

13 THE COURT: And I would just remind you, as I have
14 mentioned several times to the jury, that they are brief
15 and non-argumentive.

16 MR. WARDER: Your Honor, I guess I do have just a
17 couple of little short things that really should...

18 THE COURT: Yes.

19 MR. WARDER: I would move to exclude the -- there was
20 some reference to having a child support warrant.

21 THE COURT: Yes.

22 Y'all don't talk about some other character evidence.

23 MR. WARDER: Yes. I wanted that excluded --

24 THE COURT: Any -- do you have a problem with that?

25 MS. MONTIS: No, Your Honor.

1 THE COURT: Okay.

2 MR. WARDER: And the same -- they testified as to
3 what the tip -- or somebody called in and what that caller
4 said. That's, obviously, hearsay. And we would want it
5 excluded and keep --

6 THE COURT: Yes.

7 Do as a result of what was said --

8 MR. WARDER: That's right, what they did --

9 THE COURT: -- they -- but don't say what the guy
10 said.

11 MS. MONTS: Your --

12 THE COURT: You can say they got a tip. And, as a
13 result, we went to investigate a white Mercedes, or
14 whatever they did. Okay. You can't say the tipster said
15 so and so. As a result of the tip, we went to investigate
16 a white Mercedes. And we were looking for a black male
17 6'2" and 160 feet -- 160 pounds with tattoos on his
18 forearms.

19 MR. WISE: But, one, that's not -- and, two, if you
20 say that, that's, in essence, saying what the tipster
21 said. If you say as a result of a tip, I went to look for
22 a white Mercedes, that's, in essence, saying that the
23 tipster said to look for a white Mercedes. If you -- if
24 they say I went to look for a black male -- and there was
25 no description of a black male. That description came

1 later. And if you --

2 THE COURT: Well, I don't know what was said. But --

3 MR. WISE: They went to look for a black male, then
4 that's, in essence, saying the tipster said look for a
5 black male.

6 MR. WARDER: I think is all they can say is, Your
7 Honor, they were dispatched to the area for a white
8 Mercedes. I don't think they can say it was a tip or that
9 it was a tipster, or something to give -- I think that
10 they can tell what they did. And what they did is they
11 were dispatched to that area. And then they conducted the
12 investigation they've told us about.

13 THE COURT: Well, isn't that what I just said?

14 MR. WARDER: I don't want them -- yeah. I don't want
15 them to say "tip," because that gives the idea that
16 somebody else would furnish them some kind of accurate
17 information.

18 MS. MONTS: Well, Your Honor, the reason they went to
19 this location was based on the information that came on
20 and that's -- that came in. And that's why they went to
21 this location. And what they're doing there is based on
22 the call. I understand you saying don't say exactly what
23 the caller said, but they --

24 THE COURT: Well, let me see y'all up here for a
25 quick second.

1 (WHEREUPON, a bench conference was held.)

2 MR. WARDER: Your Honor, could we have a minute or
3 two to talk to the Solicitor? How about five minutes?

4 THE COURT: Just briefly.

5 (WHEREUPON, a break was taken.)

6 MS. MONTS: Your Honor, they wanted to talk to each
7 other.

8 THE COURT: Okay. I'll give them two minutes.

9 (WHEREUPON, a break was taken.)

10 MR. WISE: Can he talk to his wife?

11 THE COURT: Yes, for about a minute. This jury has
12 been waiting.

13 DEFENDANT ROUSE: I'm going to try to speed it up,
14 Your Honor.

15 THE COURT: It's going to be sped up.

16 (WHEREUPON, there was a break taken.)

17 THE COURT: What are we doing?

18 (WHEREUPON, there was no response.)

19 THE COURT: I'll tell you, I was told by an old
20 outstanding trial lawyer that there were two reasons to go
21 to trial. One was if you had a dead, sure winner. And
22 two was if you had nothing to lose. And I've found
23 through all the years I did a lot of criminal defense work
24 that that proved to be true.

25 So you've got to decide if you've got a dead sure

1 winner, or if you're willing to risk, at least, 13 years
2 as a result. And the decision has to be made now. This
3 jury has been waiting long enough.

4 (Pause.)

5 THE COURT: Mr. Wise?

6 MR. WISE: Yes.

7 THE COURT: Okay. Sign him up. Let's get it done.

8 (WHEREUPON, a break was taken.)

9 THE CLERK: Your Honor, in the case of
10 2012-GS-23-6017, the State v. Titus Rouse indicted for
11 trafficking heroin, he's pleading to trafficking heroin
12 less than four grams. And this is true billed.

13 In the case of 2012-GS-23-6417, Mr. Rouse is indicted
14 as a habitual traffic offender, pleading to the same,
15 also, true billed.

16 In the case of 2013-GS-23-0846, Mr. Rouse is indicted
17 for driving under suspension, pleading to the same as a
18 third or subsequent offense, also, true billed.

19 Mr. Rouse, please, raise your right hand.

20 WHEREUPON,

21 TITUS NICCOLA LEE ROUSE,
22 after first having been duly sworn, testified as follows:

23 THE CLERK: Thank you.

24 THE COURT: In the last 24 hours, have you had any
25 drugs, alcohol, or medication?

1 DEFENDANT ROUSE: No, sir.

2 THE COURT: Speak up a little bit.

3 DEFENDANT ROUSE: No, sir.

4 THE COURT: Have you ever been treated for substance
5 abuse or mental illness?

6 DEFENDANT ROUSE: No, sir.

7 THE COURT: You're up here on three indictments. The
8 first one is 2012-6017. It alleges you did in Greenville
9 County on May 27, 2012, knowingly sell, manufacture,
10 deliver, or bring into South Carolina, or provide some
11 other assistance to do that, or you were in actual or
12 constructive possession of more than 14 grams of heroin.
13 You're pleading to trafficking in heroin greater than four
14 grams. What is -- I don't have my --

15 What's the sentence on this?

16 I don't have my book out here.

17 MR. WISE: I think it's three to 25.

18 THE COURT: Three to 25. And this is a violent
19 offense, which means no parole. It's a serious offense.
20 If you get convictions for three or more serious offenses,
21 you're eligible for life in prison without parole.

22 Do you understand that?

23 DEFENDANT ROUSE: Yes, Your Honor.

24 THE COURT: Okay. You're, also, up here on 2013-846.
25 It alleges you did in Greenville County on January 26th,

1 2012, drive a motor vehicle on a highway of this state
2 while your license was suspended. You've got, at least,
3 two prior DUS's in the last five years. That carries
4 90 days to six months.

5 Do you understand that?

6 DEFENDANT ROUSE: Yes, Your Honor.

7 THE COURT: You're, also, here on 2012-6417. It
8 alleges you did in Greenville County on January 26, 2012,
9 operate a motor vehicle while your license was suspended
10 after having been declared a habitual traffic offender.
11 That carries up to five years.

12 Do you understand that?

13 DEFENDANT ROUSE: Yes, Your Honor.

14 THE COURT: Understanding the nature of the charges
15 against you and the maximum possible punishment, how do
16 you want to plead?

17 DEFENDANT ROUSE: Guilty.

18 THE COURT: Is that your free and voluntary choice?

19 DEFENDANT ROUSE: Yes, Your Honor.

20 THE COURT: Do you understand you have an absolute
21 right to a trial by jury where you would be presumed
22 innocent, unless and until the State could prove you
23 guilty beyond any reasonable doubt of each and every
24 element of each offense you're charged with. You'd have a
25 right to confront and cross-examine the witnesses and the

1 evidence put up against you by the State. You'd have a
2 right to compel in court all relevant and competent
3 evidence in your own defense, or you can remain silent.
4 Your silence cannot be held against you. And you can
5 never be compelled to incriminate yourself.

6 Do you understand all those rights?

7 DEFENDANT ROUSE: Yes, Your Honor.

8 THE COURT: And you want to give them all up to enter
9 this plea?

10 DEFENDANT ROUSE: Yes, Your Honor.

11 THE COURT: Are you guilty?

12 DEFENDANT ROUSE: Yes, Your Honor.

13 THE COURT: Okay. Are you totally and completely
14 satisfied with the representation of your attorneys?

15 DEFENDANT ROUSE: Yes, Your Honor.

16 THE COURT: And have you had enough time to review
17 the evidence the State has against you?

18 DEFENDANT ROUSE: Yes, Your Honor.

19 THE COURT: Okay. Tell us about it, Ms. Monts.

20 MS. MONTS: May it please the Court, Your Honor.

21 Regarding the case that's on the trial docket for
22 today, this occurred on May 27th of 2012. Officers with
23 the Greenville County Sheriff's Office responded to
24 information of a tipster that a black male in a white
25 Mercedes was at a hotel off Orchard Park Road, and had a

1 trafficking weight of heroin in his possession.

2 Officers did go to that location. And after a good
3 while, they did observe the Defendant's vehicle, which
4 matched the description. They did run the tag, which did
5 not come back to that vehicle.

6 They then saw the Defendant driving the vehicle
7 again. And they made eye contact with the Defendant, who
8 then drove -- sped up, rode around the corner of the
9 parking lot of the hotel on Orchard Park Road, did bail
10 out of the car leaving the car running and the door open.
11 He then jumped over a -- about an eight- or 10-foot
12 embankment. And at the bottom of that embankment,
13 officers, subsequently, found 26.59 grams of heroin, and
14 about 10 feet away were two black slippers.

15 Officers did run a K9 around the car, which alerted,
16 but they didn't find anything inside the car. The
17 tracking dog did follow the Defendant's trail around the
18 apartment -- hotel complex, and did end up where the
19 cocaine -- excuse me, heroin and slippers were.

20 The Defendant was located at the pool area and did at
21 various times speak to different officers. And when he
22 was approached in the park -- in the office at the hotel,
23 he did give a false name, and did have false ID on him.
24 He did later admit to the slippers. He never did admit to
25 possession of the heroin.

1 That would be the State's showing, Your Honor.

2 THE COURT: Okay.

3 MS. MONTS: Regarding --

4 THE COURT: Tell me about the other two.

5 MS. MONTS: Your Honor, regarding the other two, they
6 occurred on the same day, January 26th, 2012. Officers
7 were called within Greenville County to a shooting. They
8 did arrive and saw different people dispersing from the
9 area. They did find the Defendant driving a vehicle at
10 that time. He was known to be driving under suspension
11 and a habitual traffic offender violator. He was arrested
12 at that time.

13 Your Honor, I have his prior record at the
14 appropriate time.

15 THE COURT: All right. Well, is all that true,
16 substantially true and correct?

17 DEFENDANT ROUSE: (There was no response.)

18 MR. WISE: There was a dispute as to the ownership of
19 the slippers. He's admitting the ownership of the
20 slippers. But, outside of that, it's substantially
21 correct.

22 THE COURT: Well, is that right, Mr. Rouse,
23 substantially true and correct what she tells me about the
24 case -- each of the two cases?

25 DEFENDANT ROUSE: Well, with the driving under

1 suspension, the reason I was driving was because I was
2 rushing my fiancée to the hospital. Her knee was broken.

3 THE COURT: Okay.

4 DEFENDANT ROUSE: And as far as the drugs, I never
5 jumped over an embankment or ran anywhere. I deny that
6 mostly with the slippers, and stuff. But, other than
7 that, yes, it's true.

8 THE COURT: Okay. You had the heroin? It was your
9 heroin?

10 DEFENDANT ROUSE: Yes, sir.

11 THE COURT: Okay. Tell me what his record is.

12 MS. MONTS: Your Honor, 2000, possession with intent
13 to distribute crack, and possession with intent to
14 distribute crack within a half mile of a school or
15 playground, possession of stolen goods; 2001, assault and
16 battery of a high and aggravated nature, failed to stop
17 for blue lights, driving under suspension second; 2010,
18 assault and battery of a high and aggravated nature,
19 violation of habitual traffic offender, distribution of
20 crack cocaine second offense; 2005, assault and battery;
21 2007, receiving stolen goods; 2007, possession of crack
22 cocaine.

23 THE COURT: 2007?

24 MS. MONTS: Yes, Your Honor.

25 THE COURT: Okay.

1 MS. MONTS: 2011, driving under suspension; and,
2 2014, habitual traffic offender.

3 THE COURT: Is all that accurate? Your prior
4 criminal history, is it accurate?

5 DEFENDANT ROUSE: Yes, Your Honor.

6 THE COURT: Deputy, anything you want to tell me?

7 THE DEPUTY: No, sir.

8 THE COURT: All right. Anything y'all want to say?

9 DEFENDANT ROUSE: Yes, Your Honor.

10 MR. WISE: I want to just point out one thing -- a
11 couple of things, Your Honor.

12 The deputies searched the hotel there where he was
13 staying and, also, with his permission went and searched
14 the house that he lived in. Nothing was found in way of
15 drugs in either one of those things [sic]. So it was --
16 you know, the amount of heroin may be, obviously, more
17 than, you know, you normally see. But there's nothing to
18 indicate that this was any really big time operation.

19 Another thing I want to point out to the Court is
20 that Mr. Rouse for the past three or four years has been
21 running a business -- a landscaping business called, I
22 think, appropriately Bush Whackers.

23 THE COURT: Bush Whackers.

24 MR. WISE: And he was running that at one time in
25 conjunction with someone else.

1 He, also, recently had been involved in the community
2 to a good extent, and had put on a concert in February --

3 Of what year?

4 DEFENDANT ROUSE: 2011.

5 MR. WISE: In 2011, basically, a stop the violence
6 concert that he helped promote. And this is his picture
7 up here in the left-hand corner.

8 THE COURT: Okay.

9 MR. WISE: So he -- you know, I -- he is in many
10 respects, I think, a contradiction. Because his record
11 simply belies the good things he's been doing the last
12 several years. And, hopefully, you know, when he gets
13 through with this, he'll be in his 40s. He can come out
14 and continue to do these good things, and continue to be,
15 I think, what he was in the process, I think, of becoming.

16 Dick and I went out and talked to him at the
17 Department of Corrections, what, a couple of weeks ago?
18 Three weeks ago. It was the first time I really had a
19 chance to meet him. Because I came into this case late.
20 But he's articulate. He's intelligent just, you know --
21 the prior record just didn't fit what I saw sitting in
22 there in the Department of Corrections, to be frank with
23 you.

24 THE COURT: Yes. It's a shame. It's a shame.

25 DEFENDANT ROUSE: Your Honor, I'd like to just take

1 this time to admit my wrongs. I meant good, you know.
2 Since then, I've been saved. So I have to admit to my
3 wrongs and suffer the consequences of things that I was
4 doing.

5 I was out there doing the best that I could for my
6 family. I have five kids that I'm the sole provider of.
7 And I worked hard every day trying to make something
8 positive out of my situation.

9 I'm an author, also. I write books. And my job with
10 my landscaping is I provided jobs for convicted felons out
11 there and --

12 THE COURT: Good.

13 DEFENDANT ROUSE: I just ask you to be as lenient as
14 you can on my sentence, Your Honor.

15 THE COURT: Okay.

16 DEFENDANT ROUSE: Just give me another chance at
17 life.

18 THE COURT: All right. Well, I'm going to give you
19 12 on the heroin, and five on the other, and six months on
20 the other. They're all concurrent. Credit for any time
21 you're legally entitled to.

22 Life ain't over. When you get out, be part of the
23 solution. Don't be part of the problem. Okay.

24 DEFENDANT ROUSE: Yes, Your Honor.

25 Would I have my time that I've been in the Department

1 of Corrections to be backdated?

2 THE COURT: Whatever you're entitled to legally, you
3 get.

4 DEFENDANT ROUSE: All right. Thank you.

5 THE COURT: Good luck to you.

6 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

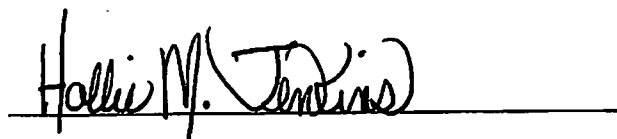
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 6th day of August, 2014.

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

February 6, 2015

A handwritten signature in cursive script, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)

IN THE COURT OF COMMON PLEAS

Titus Lee Rouse 287818)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2015-CP-23- 00995

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKERHILL
2015 FEB 9 3 13 PMINSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution
4460 Broad River Rd Columbia S.C 29210
2. Name and location of Court which imposed sentence Greenville County Courthouse
Greenville General Sessions 305 E. North St Greenville SC 29601
3. Name(s) of co-defendant(s) (if any) X-N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2012 GS 23 06017 Drugs/Trafficking in Heroin, morphine etc 28g or more

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 08-06-2014
- (b) 12 year sentence;
- (c) must serve a term of 85% of the time before release
6. Check whether a finding of guilty 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?
NO
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) Was not entitled to

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) 4th 5th 6th 14 Amendment - See-10(A) attached
- (b) 4th 5th 6th 14th Amendment - See-10(B) attached
- (c) 5th 6th 14th Amendment - See-10(C) attached
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Officers failed to read Miranda rights the officers failed to submit video - See-10(A)
- (b) State failed to present evidence to support charge accused - See-10(B)
- (c) Attorneys induced guilty plea under faulty legal advice from fake statement - See-10(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? X- No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? X- No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? X- No
- (d) any other petitions, motions or applications in this or any other Court? X- No
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

10(A) APPLICATION FOR POST CONVICTION RELIEF

Applicant files that Defense Counsels were ineffective for not motioning for a suppression of evidence after alleged reading of Miranda rights on video was never submitted as evidence. Violating their clients 4th Amendment Constitutional Rights. Dep. White Supple Report pages 4 of 4 states that Dep. Cannon Mirandized Subject on video. Dep. Giovanni Supple Report pages 4 of 4 states that Dep. Cannon read Subject Miranda Rights on Video. Page 12 of prelim. Dep. Giovanni states that subject confessed to bedroom slippers found on hotel grounds on the same video. During Evidentiary Hearing the State failed to produce any evidence to support alleged Miranda reading and slippers confession. Dep. Cannon admits to not following protocol in submitting evidence. Dep Cannon failed to follow procedure exculpatory good faith. Defense Counsels showed prejudice by allowing the State to violate their clients Constitutional Rights of the 4th Amendment. It is sufficient if the warnings reasonably convey to a suspect his "Miranda" rights. State v Easter 327 S.C 121 489 SE. 2d 617

10(b) Application for Post Conviction Relief

Applicant files that Defense Counsels were ineffective for inducing a guilty plea when the State has failed to meet its burden of proof for the offense accused.

To prove illegal possession of a controlled substance the State must prove the defendant 1.) Possessed the controlled substance 2.) Knew of the illegal nature of the controlled substance 3.) Had the intent to control the illegal controlled substance.

State V Attardo 263 S.C 546, 211 SE 2d State Vs Brown 267 SC 311, 227 SE 2d 674 If any of the elements is missing the conviction will not stand. The

State has failed to present evidence connecting

Subject to the illegal drugs or evidence of the contents found on the grounds of the public

hotel. State V Iolite 343 SC 580, 584, 541 SE 2d

reversing the defendant conviction where the

State did not present circumstantial evidence

and where the evidence merely raised a suspicion

of guilt. Although subject actions may have been

suspicious, mere suspicion is insufficient to

support

106b) Application for Post Conviction Relief
 the verdict. State V Arnold, 361 S.C 386. 605
 SE 2d 529 State V Hyder 242 S.C. 372 131
 SE 2d 96 The State has in essence said
 we have found these drugs on the ground
 now prove there not yours. Such burden
 shifting is improper. In re Stacy Ray A. 303
 S.C 291, 400 SE 2d 141 Conviction of possession
 requires proof of possession, either actual
 or constructive, coupled with knowledge of
 its presence - State V Hudson 284 S.E 2d 773
 Constructive possession is when the person
 charged with possession has dominion
 and control over either the drugs or the
 the premises upon which the drugs are
 found - see- State V Bullenger 470 SE. 2d
 851, 854 - citing- State V Ellis 207 S.E 2d
 408 In the present case the officers was
 never in hot pursuit of Subject, they were
 just unaware of his whereabouts. The officers
 never witnessed to the Subject in possession
 of illegal drugs found on ground. As the Honorable
 Judge Miller stated "no one has mentioned to seeing
 this man in possession of drugs."

10c) APPLICATION FOR POST CONVICTION RELIEF

Applicant files that Defense Counsel were ineffective for not investigating the statement Solicitor Joyce Monts gave them in closed conference before advising their client that they could not win and inducing a plea of guilt on their client. I have a typed and signed letter from Attorney Rauch C. Wise stating that because of the testimony we could not win. Stating because the K-9 Duke tracked to the drugs and the admittance of bedroom slippers. I've never admitted to anyone that the bedroom slippers were mine. The only evidence to support such a claim would be from the same video of alleged Miranda readings that officer Cannon failed to follow procedure and admit the video into evidence, exculpatory good faith because the officer failed to follow protocol. What Mr. Wise has spoken on actually never took place at the Evidentiary Hearing. Mr. Wise spoke on the statement of Solicitor Joyce Monts alone.

106) APPLICATION FOR POST CONVICTION RELIEF

Deputy Redman Sup Report pages 2 of 3 states the following: He and K-9 Duke came to an landscaped area that was below the pool and below the Subjects vehicle and circled. Officer Redman stated that "he" noticed a dark pair of slippers and a plastic bag laying on the ground in that area. "He" looked closer and "he" observed a brown substance. As stated you can see that K-9 Duke never tracked to the slippers or drugs found everything was observed by Dep. Redman. And through further investigation you would find that it would be impossible to reach the area Dep. Redman spoke of without noticing drugs first. Pages 3 of 3 of Dep. Redman Report states the Subject admitted to fleeing on foot into the complex resulting in him loosing slippers he then ran to his room and changed clothes then returned to pool. Pages 2 of 4 of officer Giovanni Sup. Rep states that he returned back to the original spot where the Mercedes was parked believing suspect might return to his hotel room. He then spoke to eye witness that stated "no one" returned to that room since he left the first time.

106) APPLICATION FOR POST CONVICTION RELIEF

Pages 2 of 3 of Officer Picone Sup. Report states that Officer Giovanni asked him to keep an eye on the hotel room in question and to take a written statement from the eye witness. As Supple Reports shows the Subject never returned to hotel room. Subject admits the statement Dep. Redman gave was untrue and that the two never had contact. His confirmation would also come from written statement from eye witness. The same clothing that the Subject was seen wearing when he first entered vehicle would be the same clothing of his arrest. This whole case was based on lies and assumptions. Defense Counsels induced a guilty plea on their client without doing any investigating to see if her statement was untrue.

-See- U.S. vs Streater, 70 F3d 1314, 1316 (D.C. Cir, 1995) guilty plea not knowing and voluntary when induced by counsels faulty legal advice regarding elements of possible defense.

10(e) APPLiCation For Post Conviction Relief

The court agreed that the 6th Amendment imposes on counsel a duty to investigate because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options.

If there is more than one plausible line of defense, the court held, counsel should ideally investigate each line substantially before making a strategic choice about which lines to rely on at trial. *Id.* at 1254

If counsel does not conduct a substantial investigation into each of several plausible lines of defense, assistance may nonetheless be effective. Counsel may not exclude certain lines of defense for other than "strategic reasons" *Id.* at 1257-1268

641.13(6) Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary 6. Amend

- iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

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

X - 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) Attorneys failed to do so
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
- (b) your trial, if any? X-11n
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? X-11n
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Richard Warder
16 Primrose St Greenville, SC 29616
- ii. Rauch C. Wise
305 Main St. Greenwood, SC 29646
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Richard Warder
Prelim, Evidentiary hearing, Sentencing
- ii. Rauch C. Wise
Evidentiary hearing, Sentencing
- iii. _____

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

Reversal (Vacate Sentence)

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

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

Titus Rouse

SWORN to and subscribed before me this 13th
day of January, 2015.

Arthur P. P. P. (L.S.)
Notary Public

My Commission Expires: Nov. 24, 2024

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

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

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

Lisa Lowe
Applicant

SWORN or affirmed to and subscribed before me this
13th day of January, 2015.

[Signature]
Notary Public

My Commission Expires: Nov. 24, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2015-CP-23-0995
COUNTY OF GREENVILLE	)	
	)	
Titus Niccola Lee Rouse,	)	
S.C.D.C. No. 287818,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed February 9, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the February 2014 term of General Sessions for trafficking heroin (2012-GS-23-6017), habitual traffic offender (2012-GS-23-6417) and driving under suspension (2013-GS-23-0846). Richard H. Warder, Esquire and C. Rauch Wise, Esquire represented the Applicant.

On August 6, 2014, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of 12 years for trafficking heroin (more than 4 grams), 5 years for habitual traffic offender, and 6 months for driving under suspension (third or subsequent offense). The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South

Carolina Department of Corrections, and the guilty plea transcript.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel failed to file for suppression of evidence “after alleged reading of Miranda rights on video was never submitted as evidence. Violating their clients 4th Amendment Constitutional Rights.”
 - b. Counsel “induc[ed] a guilty plea when the State has failed to meet its burden of proof for the offense accused.”
 - c. Counsel failed to investigate “the statement Solicitor Joyce Monts gave them in closed conference before advising there client that they could not win and inducing a plea of guilt on their client.”

In the “Amendment in Application for PCR” filed April 15, 2015, the Applicant makes the following allegations:

1. Ineffective assistance of counsel:
 - a. Failed to “move to suppress evidence where an alleged reading of Miranda rights as never admitted into evidence by video.”
 - b. “[I]nducing the guilty plea when the State had failed to meet its burden of establishing any proof of either ‘actual or constructive possession of the alleged drugs in this case.’”
 - c. Failed to “investigate the statement Solicitor Joyce Monts gave in a closed conference before advising the client they could not win which induced the plea of guilty.

III.

The Respondent asserts the Applicant’s allegation that his attorneys were ineffective is without merit. The Respondent asserts the Applicant’s attorneys rendered effective assistance well within the standard of “reasonableness within professional norms” for defense attorneys.

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 on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington 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, 265, 305 S.E.2d 247, 248 (1983).

IV.

The Respondent also construes the Applicant's allegations to be that his guilty plea was involuntary. The Respondent submits this issue is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the

right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

June 3, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2015-CP-23-0995

TITUS NICCOLA LEE ROUSE, 287818)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

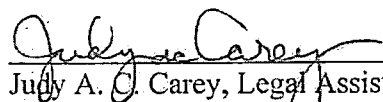
STATE OF SOUTH CAROLINA,)

Respondent.)

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

Titus Niccola Lee Rouse, 287818
 Broad River Correctional Institution
 4460 Broad River Road
 Columbia SC 29212

DATED this 3rd day of June, 2015.


 Judy A. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Titus Niccola Lee Rouse,
Applicant,

Vs.

Case No.: 2015CP33009

FILED-CLERK OF COURT
GREENVILLE CO. SC
PAUL B. WICKENSIMOR
2015 APR 15 AM 10:44

State of South Carolina,
Respondent. /

AMENDMENT IN APPLICATION FOR PCR.

This matter is being brought to the attention of this Honorable Court, by way of this pro-se applicant, seeking the liberal notation outlined in Haines v. Kerner, 404 U.S. 519 (1972). As he brings forth substantial claims for relief.

The Applicant filed his original PCR Application in Greenville County, South Carolina, on or about January 13, 2015. Outlining the following issues for resolution.

- (1) That counsel provided ineffective assistance by failing to move to suppress evidence where an alleged reading of Miranda rights was never admitted into evidence by video in violation of Applicant's Fourth and Sixth Amendment rights.
- (2) That counsel was ineffective for inducing the

guilty plea when the State had failed to meet its burden of establishing any proof of either "actual or constructive possession of the alleged drugs in this case".

- (3) That counsel was ineffective for failing to investigate the statement Solicitor Joyce Monts gave in a closed conference before advising the client they could not win which induced the plea of guilty.

AMENDING ISSUES

In accordance with South Carolina Rules of Civil Procedure, "a Applicant may amend his original filing as a matter of course, prior to any responsive pleading by the State". Thus far, the State has not filed any response or answer to the originally filed PCR Application.

(a) The history of this case on or about August 6, 2014, began as a trial in the Thirteenth Judicial Circuit, within the State of South Carolina. Where the Applicant was charged and indicted for Trafficking in Heroin, in violation of §44-53-370(e), accusing the Applicant of having in his possession more than "fourteen grams of heroin".

At the beginning of trial, in a pre-trial motion. The Applicant's attorney moved to have the alleged confession suppressed, which was claimed to "have been video recorded". At the conclusion of such hearing, the Court ruled to allow the damning evidence against the Applicant. Based on the court's ruling, coupled with

the Solicitor's statement, counsel advised the Applicant to plead guilty rather than proceed to trial. Whereupon pleading guilty, the Applicant was sentenced to twelve (12) years, under a violent statutory provision. Whether this plea was "knowingly and intelligently rendered, as well as voluntary, will be a mixed question of facts and law.

(b).

The following portion of the guilty plea colloquy sticks out in "plain view", as to whether the Applicant's sentence is constitutional, or whether it must be vacated as a matter of law. For that matter, "whether the Applicant's conviction for Trafficking, is valid", or must be reversed also, as a matter of law.

Turning the Court's Attention to page fifty eight (58) of the August 6, 2014 plea transcript. On lines 9 through 12. The following takes place, after the Court requests the Clerk to Publish the terms of the "plea".

THE CLERK: Your Honor, in the case of 2012-GS-23-6017, the State v. Titus Rouse, indicted for trafficking heroin, "he's is pleading to trafficking heroin 'less' than four grams. And this is true billed.

Based on the original charge for which the Applicant was proceeding to trial. Trafficking fourteen (14) grams "or more" of heroin. The Court simply "assumed" the plea took on the same "or more" as did the language in the statute in regards to the original indictment. However, since the Court is not cloaked with the authority "to charge a offense", the Clerk properly accorded the plea

"without objection" from the State. As being "less than four grams". In otherwords, "the Court has the authority to accept or reject the plea", as published by Clerk of Court, which is conveyed to it from the Solicitor. But the Court does not have the authority to "charge an offense the differs" from the charge appearing on the record.

For the above reason, the Applicant's conviction and sentence must be vacated "as a matter of law", which is vividly outlined in the following authorities.

(c). LEGAL ANALYSIS.

In general, a defendant's plea is more than an admission of conduct; rather it is a conviction that can deprive him of his liberty or other constitutionally protected interest. Mabry v. Johnson, 467 U.S. 504, 507, 104 S. Ct. 2543 ((1984) Therefore, the entry of a guilty plea implicates the protections of the Due Process Clause of "the Federal and State" Constitution. See U.S. Const., amend XIV. (providing that states may not deprive a person of life, liberty or property without due process of law).

Among these protections, the Due Process Clause requires that a defendant enter his guilty plea "voluntarily, knowingly and intelligently". Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000). See also State v. Hamilton, 333 S.C. 642, 511 S.E.2d 146 (S.C. App. 1999). And State v. Nesbitt, 411 S.C. 194, 768 S. E.2d 67 (S.C. 2015).

Here, as beforementioned, the Applicant "understood", accor-

ding to the advise of counsel, which was conveyed to counsel from the solicitor. Was that "the Applicant would be pleading to trafficking, less than four grams". Upon further investigation after the fact, such was "an illegal conviction as well as an illegal sentence".

It is also noteworthy to consider the "time line" from the short period when this case took on a new direction from being a trial to a guilty plea, which is attributable to the cause of the erroneous information which induced the guilty plea.

Nevertheless, the Court, on page 59, after the Clerk of Court had published "the terms for which the Applicant would be pleading", requested confirmation on a sentence as it pertains to a plea of guilty "for "trafficking heroin greater than four grams". A charge for which the Clerk "did not publish". And the Court was without proper authority to accuse.

The result of the Clerk publishing a trafficking charge for which the amount is stated as being "less than four grams of heroin, and the Court accusing at a later time when contemplating 'sentence' as being 'greater than four grams'. Creates an impermissible ambiguity as outlines in Bordeaux v. State, 410 S.C. 495, 765 S.E.2d 143 (S.C. 2014) In Bordeaux, the Supreme Court held; "whether a sentence transcript or sentencing sheet is ambiguous is a question of law". And a sentence is ambiguous "if it's pronouncement is susceptible of different interpretations based on the totality of the circumstances".

Also see Talley v. State, 371 S.C. 535, 640 S.E.2d 878 (2007), (whether a PCR Applicant is serving an illegal sentence based on an ambiguity, is a question of law)

According to S.C. Code, §44-53-370(e)(3)(a), "the most minimal amount a accused could possess to sustain a trafficking conviction is four grams or more, but less than fourteen grams". Therefore, because "the Clerk" clearly admonished the Court "exactly what the defendant would be pleading to". Based on the information and/or indictment, the Court had not authority to accept a guilty plea that would alter the charge by the State, from "less the four grams to greater than four grams". See Tr. tr. p 58, lines 9-12.

Even though the Court was expressing on page 59 "what sentence could be imposed for trafficking in greater than four grams", like that of what the original indictment read. The Applicant had no reason to believe "the greater than four grams applied in his case, (like the fourteen or more did not) based on his (1) guilty plea, and (2) the publishing of the charge by the Clerk of Court, on Tr. tr. pg. 58, lines 9-12.

For argument sake, the Applicant contends that "the Rule of lenity" requires where there is an ambiguity in criminal statutes that such doubt are to be resolved in favor of the accused, applies in this circumstance, as well as penalties. See U.S. v. Bass, 404 U.S. 336, 92 S. Ct. 515 (1971); and Bifulco v. U.S., 447 U.S. 381, 65 LEd 2d 205, 100 S. Ct. 2247 (1980) Even where here, the Applicant "was placed on notice by the proper authority", that "he was pleading to trafficking less than four grams".

(d). IN CONCLUSION

When inducing the plea, the Applicant was led to believe he would be convicted "of a lesser included offense of trafficking", as clearly published by the Clerk of Court. However, less than four grams of heroin being possessed under S.C. Code, §44-53-370, amounts to "possession with intent to distribute". As heroin is a Schedule I(c) narcotic.

Even where the sentence exposure is a maximum of fifteen (15) years, and the Court still could have imposed the twelve years it did impose. There nevertheless, is the matter of serving 85% as opposed to 51%, under South Carolina's non-violent scheme. As opposed to the trafficking statute's violent and non-parolable scheme. A difference worth litigation here.

Even in the abstract, there is no doubt that the plea exposes "ineffective assistance of counsel", where counsel failed "to correct" the wrong drug amount, or for that matter, the ambiguity between the Clerk's ~~publication~~ of the plea, and the Court's understanding of the available sentences.

In cases involving "less than four grams". Such is not violent, and is not trafficking under South Carolina laws. For these and the reasons cited within the originally filed application. The Applicant is clearly "serving an illegal sentence", as outlined in Talley v. State, 371 S.C. 535 (2007). And respectfully request that the conviction and sentence is vacated and remanded as a matter of law.

And for any further relief deemed just and proper. Whereas, had the Court been aware that Applicant's sentence exposure was 15 years as opposed to 25. Coupled with the sentence imposed being less than half the maximum of the 25 years thought to be correct. Resentencing would be proper in this case so the Court could determine what sentence to impose, with the new maximum being 15 years. Because if the Court remained to impose less than half of the maximum exposure. Such sentence would be approximately 7 years.

Respectfully Submitted,

/s/ 
Titus Niccola Lee Rouse, # 287818
Broadriver Corr. Institution
4460 Broadriver Road
Columbia, S.C. 29210

cc: filed
3/19/2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	C.A. No.: 2015-CP-23-00995
Titus Niccola Lee Rouse,	)	
	)	
Applicant	)	
	)	
v.	)	AMENDED PETITION FOR
	)	POST CONVICTION RELIEF
State of South Carolina	)	
	)	
Respondent.	)	

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2016 FEB 4 PM 2 42

The Defendant, by and through his counsel, Caroline M. Horibeck, respectfully amends his Petition for Post Conviction Relief to add the following allegations:

Supplemental Claim A-1

Appellant alleges omission of ineffective assistance of trial counsel in a cumulative effect; which such error of omission of ineffectiveness; rendered the applicants guilty plea involuntary not knowingly of intelligent choice; occur in violation of the applicants sixth and fourteenth Amendment rights of USC; when the applicants trial counsel failed to file a notice of an appeal to pursue the applicants appeal request from his guilty plea;

Claim A-2

Ineffective assistance of trial counsel in a cumulative effect; rendered the applicants guilty plea involuntary not knowingly and intelligent choice; based on trial counsel erroneous advice; by advising the applicant to plea guilty based on induced erroneous advice of actual information concerning the applicant case at bar;

Supplemental Claim A-3

Applicant contends in A-3 of his third supplemental claim of error of omission of ineffective assistance of trial counsel in a cumulative effect; such error of omission of ineffectiveness rendered the applicants guilty plea involuntary not knowingly and intelligent choice; when the trial judge imposed a sentence that was different from the one pronounced by the clerk of court; and the one that was agreed upon by the applicant.

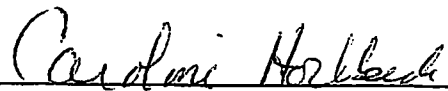
Supplemental Claim 4

Applicant contends in his fourth supplemental claim of error of omission of ineffective assistance of trial counsel in a cumulative effect; rendered the applicants guilty plea involuntary not knowingly and intelligent choice; based on the applicants trial counsel erroneous advice; by advising the applicant to plea guilty; after the applicant's trial counsel discovered that a fourth amendment violation had occurred.

Supplemental Claim A-5

Applicant contends in his fifth supplemental claim of error of omission of ineffectiveness assistance of counsel in a cumulative effect; rendered the applicant's guilty plea involuntary not knowing and intelligent choice; based on trial counsel erroneous advice; by advising the applicant to enter a plea of guilty; after counsels had learned knowledge of perjury testimony factual evidence information that was used in the search warrant affidavit in violation of the applicants' fourth Amendment right.

Respectfully submitted,


Caroline Horlbeck
Attorney for the Defendant
101 Whitsett Street
Greenville, S.C. 29601

Greenville, South Carolina

4th day of February, 2016

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
 DOCKET NO.: 2015-CP-23-0995

TITUS NICCOLA LEE ROUSE,)
 Applicant,)

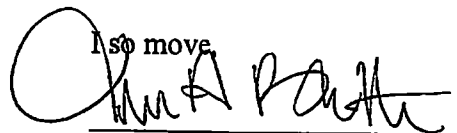
v.)

STATE OF SOUTH CAROLINA,)
 Respondent,)

AMENDMENT TO APPLICATION
 FOR POST CONVICTION RELIEF

This matter comes before the Court by way of an Application for Post Conviction Relief filed on May 22, 2015. The State filed a Return on June 3, 2015. On February 18, 2016, Tricia A. Blanchette was substituted in as Applicant's counsel. Applicant, through counsel, would move to amend his allegations, as follows:

1. Ineffective assistance of counsel for failure to properly prepare and investigate prior to trial, to include counsel's representation at the preliminary hearing, which induced an involuntary guilty plea.
2. Ineffective assistance of counsel for failure to effectively make all reasonable pre-trial motions and effectively represent Applicant on pre-trial motions made prior to the entry of Applicant's guilty plea.
3. Ineffective assistance of counsel for advising Applicant to forego trial and enter a guilty plea.
4. Ineffective assistance of counsel for failure to ensure that Applicant had a full understanding of the charge he was entering a plea to and failure to ensure that the oral pronouncement of the charge matched the sentencing sheet. Additionally, ineffective assistance of counsel for failure to ensure that Applicant's plea was being made to a proper lesser include offense.
5. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

I so move


Tricia A. Blanchette
 PO Box 12725
 Columbia, SC 29211
 Attorney for Applicant

October 5, 2016
 Columbia, SC

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-23-0995

TITUS NICCOLA LEE ROUSE,)
Applicant,)

v.)

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)
Respondent,)
_____)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I that placed in the mail 5th day of October 2016, a copy of an Amendment to Application for Post Conviction Relief to Patrick Schmeckpeper of the Attorney General's Office, at:

Office of the Attorney General
Att: Patrick Schmeckpeper, Ast. AG
PO Box 11549
Columbia, SC 29211



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008

October 5, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-23-0995

TITUS NICCOLA LEE ROUSE,)
Applicant,)

v.)

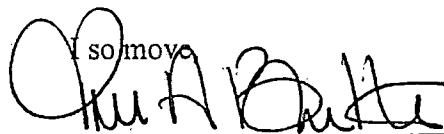
STATE OF SOUTH CAROLINA,)
Respondent,)

AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEF

FILED
CLERK OF COURT
PO BOX 2147
LEESVILLE SC 29070
2017 APR 12 PM 3:25

This matter comes before the Court by way of an Application for Post Conviction Relief filed on May 22, 2015. The State filed a Return on June 3, 2015. On February 18, 2016, Tricia A. Blanchette was substituted in as Applicant's counsel. Applicant, through counsel, would move to amend his allegations, as follows:

1. Ineffective assistance of counsel for failure to obtain a canine expert and/or fully investigate the canine evidence and prepare to move to suppress and/or move to suppress testimony and/or evidence derived from the deployment of canines. Ineffective assistance of counsel for errantly advising Applicant regarding testimony and evidence derived from the deployment of canines, which induced an involuntary guilty plea.

so move


Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
Attorney for Applicant

April 5, 2017
Columbia, SC

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
 DOCKET NO.: 2015-CP-23-0995

TITUS NICCOLA LEE ROUSE,)
 Applicant,)

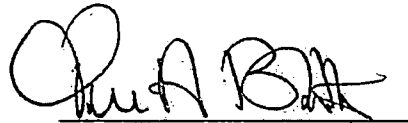
v.)

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)
 Respondent,)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I that placed in the mail 5th day of April 2017, an Amendment to Application for Post Conviction Relief to DeShawn Mitchell of the Attorney General's Office, at:

Office of the Attorney General
 Att: DeShawn Mitchell, Ast. AG
 PO Box 11549
 Columbia, SC 29211



Tricia A. Blanchette
 PO Box 2147
 Leesville, SC 29070
 Attorney for Applicant

April 5 2017
 Columbia, SC

FILED-CLERK OF COURT
 PAUL B. WICKES
 GREENVILLE, SC
 2017 APR 12 PM 2:25

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
 DOCKET NO.: 2015-CP-23-0995

TITUS NICCOLA LEE ROUSE,)
 Applicant,)

v.)

STATE OF SOUTH CAROLINA,)
 Respondent,)

MOTION FOR DISCOVERY

FILED-CLERK OF COURT
 GREENVILLE, S.C.
 PAUL A. BLANCHETTE
 2016 APR 4 AM 9:12

COMES NOW Applicant, by and through his undersigned attorney, and requests that this Court enter an Order for Production of Discovery pursuant to S.C. Code Ann. §17-27-150(a) (2008).

This matter comes before the Court by way of an Application for Post Conviction Relief filed on May 22, 2015. The State filed a Return on June 3, 2015. On February 18, 2016, Tricia A. Blanchette was substituted in as Applicant's counsel. Applicant's case appears on the Roster for an evidentiary hearing on April 21, 2016.

Upon receipt of the Order substituting her in as counsel, undersigned counsel sent a request to the Office of the Attorney General, Carolina Horlbeck, Esquire (appointed PCR counsel), and Richard Warder, Esquire (trial counsel) for a copy of Applicant's file. On March 24th, counsel received a paper copy of the Attorney General's Office, along with the Roster. Counsel has also received a partial copy of Attorney Horlbeck's file and has been informed the remainder, including work completed by a private investigator, will be mailed. After speaking with Rauch Wise, Esquire (trial counsel) and Applicant, reviewing the filings made prior to representation, and reviewing the documents provided by the Attorney General's Office, it is apparent that a request for discovery is needed to properly prepare Applicant's case for an evidentiary hearing and to determine what witnesses are necessary to be called at an evidentiary hearing. To ensure that Applicant

and his counsel have the case materials needed to properly prepare his case for an evidentiary hearing, Applicant would respectfully request the opportunity to issue subpoenas to the appropriate people, offices or agencies for the production of the following case files/materials pursuant to S.C. Code Ann. §17-27-150(a) (2008) limited to those files/materials that were subject to discovery during the underlying criminal proceeding:

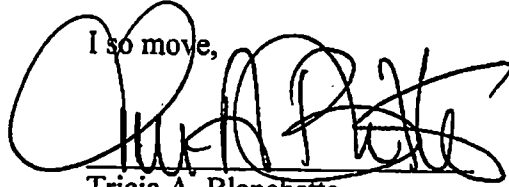
1. A complete copy of the file maintained by Richard Warder, Esquire.
2. A copy of the State Law Enforcement Agency (SLED) file.
3. A copy of Applicant's file maintained by the Greenville County Solicitor's Office, and if not contained therein: a copy of the Dorchester County Sheriff's Department file, to include all information related to the K-9 search conducted and the certification and accreditation of the K-9 and his handler.
4. The opportunity for Applicant's counsel, private investigator and potential experts to review the evidence maintained at the Greenville County Sheriff's Department and SLED (if needed).

Applicant would further request the opportunity for his counsel, private investigator and/or experts to review any and all requested materials that cannot be copied or provided to counsel. Additionally, Applicant would ask the Court to find that if a party fails to comply or does not have a file or requested item to produce, a written explanation must be provided for the failure to produce said file or item to Applicant's counsel.

Applicant, through undersigned counsel, submits that the above listed requests are necessary for counsel and his private investigator to properly prepare his case and to present his claims. Furthermore, the Applicant, through counsel, submits that this request is not being made as a fishing expedition, but it is only being submitted to the Court due to the importance of the requested materials in Applicant obtaining "one full bite of the apple."

THEREFORE, based upon the foregoing the Applicant respectfully requests that this Court convert the hearing scheduled for April 21, 2016 to a motion hearing and/or enter an Order for Discovery, which allows counsel to issue subpoenas to the appropriate parties, offices and agencies for the above requested case materials that are necessary for the presentation of Applicant's case.

March 29 2016
Columbia, SC

I so move,


Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
Attorney for Applicant

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

Titus Niccola Lee Rouse, #287818)
 Applicant,)

2015-CP-23-0995

v.)

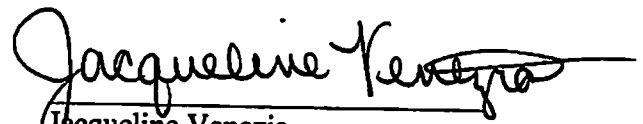
CERTIFICATE OF SERVICE

State of South Carolina,)
 Respondent.)

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL T. SCHMECKPEPER
 2016 APR 4 PM 9 12

I, Jacqueline Venezia, Clerk to Tricia A. Blanchette, Esq., hereby certify that placed in the mail this 29th day of March 2016, a copy of a Motion for Discovery to Patrick Schmeckpeper of the Attorney General's Office, at:

Office of the Attorney General
 ATTN: Patrick Schmeckpeper
 PCR Division
 P.O. Box 11549
 Columbia, SC 29211


 Jacqueline Venezia
 PO Box 12725
 Columbia, SC 29211
 (803) 988-0008
 Law Clerk to Tricia A. Blanchette

March 29, 2016

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2015CP2300995
	)	
Titus Rouse,	)	
	)	
Applicant,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

April 21, 2016
Greenville, South Carolina

B E F O R E:

HONORABLE R. KNOX McMAHON, Judge.

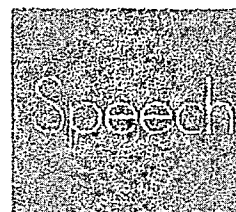
A P P E A R A N C E S:

TRICIA BLANCHETTE, Esquire
Attorney for the Applicant

PATRICK SCHMECKPEPER, Esquire
Attorney for the Respondent

Teresa B. Johnson, CVR-M
Certified Court Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
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produced via



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Motions	4		
Joyce Monts			
by Mr. Schmeckpeper	10		
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EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>

PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 21st day of April, 2016 at approximately 9:44 a.m.)

THE COURT: All right. If you would, prep the record for me please, Mr. Attorney General?

MR. SCHMECKPEPER: Yes, Your Honor. May it please the Court. This is the matter of Titus Rouse versus the State of South Carolina, 2015-CP-23-09995. Mr. Rouse was indicted in February of 2014 in Greenville County for Trafficking Heroine and Habitual Traffic Offender and Driving Under Suspension. He was represented by Richard Warder and Rauch Wise.

He pled guilty on August 6th, 2014 and was sentenced by Judge Miller to concurrent terms of 12 years for Trafficking Heroine, 5 years for Habitual Traffic Offender and 6 months for Driving under Suspension. Applicant did not appeal.

Thereafter, he filed an application for post-conviction relief on February 9th, 2014. At this point, I believe his attorney has a motion to make.

THE COURT: Thank you.

Ms. Blanchette.

1 MS. BLANCHETTE: May it please the Court,
2 Your Honor. I just wanted to verify that you
3 did have a copy of the motion for discovery in
4 your packet. I brought an additional copy if
5 you needed it.

6 THE COURT: Give me just one moment.

7 (Pause.)

8 MS. BLANCHETTE: There's a copy.

9 THE COURT: Thank you, ma'am.

10 THE COURT: All right. Yes, ma'am.

11 MS. BLANCHETTE: Your Honor, as is
12 addressed in this motion, I was substituted in
13 as counsel during the last PCR term here in
14 Greenville. After being substituted in, I
15 immediately sent a request to Richard Warder
16 and Rauch Wise for a copy of their files along
17 with Caroline Horlbeck, his prior PCR attorney.

18 When I filed the motion at the beginning of
19 April, due to the fact that this was appearing
20 on this roster, I had not received complete
21 responses to any of those requests. Since that
22 time, I have received -- which is different
23 from the information contained in the motion, I
24 have received the complete file of Ms.
25 Horlbeck. She did turn that over. Last

1 Thursday, I went to Mr. Warder's office and
2 obtained a copy of what is, uh, -- what was
3 told to me to be his file, but he's in Ireland,
4 so I didn't get to speak with him about it
5 specifically.

6 Yesterday, I went to Broad River to meet
7 with my client to try to go over that file, see
8 if it appeared everything that he was looking
9 for was in that file. But he was,
10 unfortunately, in a hallway getting ready to
11 get on a bus to come here, so we weren't able
12 to go over that. But we have made a motion for
13 discovery.

14 Based upon my conversations with Mr. Wise,
15 he was a second chair or co-counsel in this
16 case. And they were called for trial and, on
17 the day trial, he became aware of some evidence
18 that he previously said he did not know about
19 specifically regarding a K-9 dog that was used.
20 He had written Mr. Rouse about that. That's
21 part of the prior pleadings that Mr. Rouse has
22 filed. As a result of my conversations with Mr.
23 Rouse regarding that and Mr. Wise, we have made
24 a discovery request so that we can get a
25 complete copy of the Greenville County

1 Solicitor's Office -- and I apologize. There is
2 a typo in the motion.

3 It should say and a copy of the Greenville
4 County Sheriff's Department file that's not
5 contained in the Solicitor's file to include
6 any information related to the K-9 search
7 conducted and the certification and
8 accreditation of the K-9 and his handler in
9 this case and the SLED file, if one does exist,
10 and I believe the Solicitor is here to address
11 that today. And then, if needed, the ability
12 for a private investigator or potential experts
13 to review any evidence remaining at the
14 Sheriff's Department or SLED.

15 The first request on our motion was for a
16 copy of Mr. Warder's file. As I've already
17 addressed, we have received that, so that is no
18 longer needed. So we are simply here before the
19 court asking for the ability to get a complete
20 copy of the discoverable materials that were
21 contained in the Solicitor's file; and, if not
22 contained therein, a copy of the Sheriff's
23 Department file; and, if one exists, the copy
24 of the SLED file so that I could properly
25 prepare this case, go through the numerous

1 allegations Mr. Rouse has already alleged in
2 work with his prior attorneys to prepare those
3 allegations potentially for the very next term
4 of court. I understand this is an older case
5 and the Attorney General would like for it to
6 be heard as soon as possible.

7 **THE COURT:** Thank you. Thank you,
8 Ms. Blanchette.

9 **MS. BLANCHETTE:** Thank you, Your Honor.

10 **THE COURT:** Mr. Schmeckpeper.

11 **MR. SCHMECKPEPER:** Your Honor, I beg the
12 Court's indulgence. Also present with me is
13 Joyce Monts of the Solicitor's Office. If I may
14 confer with her for just one moment.

15 **THE COURT:** All right. Certainly. Of
16 course.

17 (WHEREUPON, there is a pause.)

18 **MR. SCHMECKPEPER:** Your Honor, may it
19 please the Court?

20 **THE COURT:** Yes, sir.

21 **MR. SCHMECKPEPER:** Responding to each of
22 Ms. Blanchette's request in turn. Concerning
23 Number 1, copy of the file maintained by Mr.
24 Warder. My understanding she is withdrawing
25 that request because she's gotten it.

1 Concerning Number 2, I'd object to that
2 request on the grounds that no one here even
3 actually knows if there is a SLED file. My
4 understanding is it is not a SLED file. My
5 request is that if she finds out there is a
6 SLED file, then she can make a more specific
7 discovery request and request it in the future.

8 Concerning Number 4, the opportunity to --
9 for counsel to review -- the opportunity for
10 applicant's counsel, private investigator or
11 potential expert to review the evidence
12 maintained at the Greenville County Sheriff's
13 Department and SLED. Your Honor, we just ask
14 that those be limited to the specific
15 allegations that she's bought.

16 Concerning Number 3, we don't have any
17 objection to her obtaining any discoverable
18 material from the Solicitor's office that
19 should have been turned over to his defense
20 attorney. However, we do have a specific
21 objection to the information relating to the K-
22 9 search. And for that, I would call Ms. Monts
23 as a witness.

24 **THE COURT:** All right.

25 **THE CLERK:** Ms. Monts, please place your

1 left hand on the Bible and raise your right
2 hand.

3 JOYCE MONTS

4 having first been duly sworn, testifies as follows:

5 THE CLERK: Thank you. Please be seated
6 and state your full name for the record.

7 MS. MONTS: Joyce Monts.

8 DIRECT EXAMINATION

9 BY MR. SCHMECKPEPER:

10 Q Good morning, Ms. Monts. I just have a
11 couple of questions for you. Concerning K-9 files,
12 particularly the K-9 certification, is that something
13 the Solicitor's office normally turns over to defense
14 counsel?

15 A We usually -- if defense requests for it,
16 we usually have hearing about that.

17 Q As a result. So it's not immediately turned
18 over in initial discovery. There has to be good cause
19 shown specifically for a K-9 certification?

20 A Yes, or the officer will testify about it
21 at court in the trial.

22 MR. SCHMECKPEPER: Thank you. I have no
23 further questions.

24 THE COURT: Ms. Blanchette?

25 MS. BLANCHETTE: Very briefly, Your Honor.

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CROSS-EXAMINATION

BY MS. BLANCHETTE:

Q Ms. Monts, are you aware if those were turned over to defense counsel in this case, the documents that you were referencing on direct?

A I'm not aware. I don't know.

MS. BLANCHETTE: Your Honor, I have no further questions.

THE COURT: Is that the policy of the Solicitor's office to not turn over -- I'm not saying it's a good or bad policy, I'm just asking the question. Is that policy?

MS. MONTs: Your Honor, if the, uh, -- if the defense attorney requests it, then we will address it. But many times, they don't request it. If that's not a main issue in the facts, a lot of times, they don't request it. If they do, we'll address it. Sometimes we'll turn it over right away. If there's any reason not to, we'll just ask for a hearing on it.

THE COURT: Then some certain judge will hear it?

MS. MONTs: Yes, Your Honor.

THE COURT: What -- generally, what's the, uh, -- I've never held one. What's the basis of

1 the hearing?

2 MS. MONTS: Your Honor, not necessarily
3 the certification of the animal -- the dog or
4 the handler, but as far as how much records, as
5 far as how far back and what specific records
6 and to take out personal information of the
7 handler and his family ---

8 THE COURT: Of course.

9 MS. MONTS: --- and other things like
10 that.

11 THE COURT: So let me make sure I'm
12 tracking right since this is just a motion.
13 Tracking -- that's great. If it's limited to a
14 time frame and all personal information as to
15 the officer that handles -- the K-9 officer is
16 limited or purged, it would be turned over?

17 MS. MONTS: Uh --

18 THE COURT: Generally?

19 MS. MONTS: Generally, yes, Your Honor,
20 if there's a request for it that seemed
21 appropriate in that particular trial and also
22 regarding whether it's training records or
23 medical records or execution records. There's
24 just so many different types of records that
25 handlers keep on their dogs. It can get

1 voluminous especially over a period of time.

2 THE COURT: Are there for K-9 officers a
3 certification?

4 MS. MONTS: There is a diploma, yes, Your
5 Honor.

6 THE COURT: And are there accreditations?
7 And I'm just using the language from the motion.

8 MS. MONTS: Your Honor, I believe so. I
9 believe there's kind of a certificate saying
10 that they have qualified through whatever K-9
11 training program that department uses.

12 THE COURT: You have any followup, Mr.
13 Attorney General? I just wanted to kind
14 understand.

15 MR. SCHMECKPEPER: I have no followup.

16 THE COURT: Ms. Blanchette?

17 MS. BLANCHETTE: Not for this witness, Your
18 Honor. Just to the court, I do.

19 THE COURT: All right. Thank you. Thank
20 you very much, Solicitor.

21 Yes, sir.

22 MR. SCHMECKPEPER: Your Honor, in looking
23 at some of the allegations brought forth in the
24 hearing, it doesn't appear that any of the
25 allegations specifically target certifications

1 of the dog. I don't know if there's any actual
2 basis for questioning the certification of the
3 K-9s. It feels more like a fishing expedition. I
4 don't feel that she has shown good cause to
5 support turning this over.

6 THE COURT: All right. Thank you.

7 Ms. Blanchette?

8 MS. BLANCHETTE: Yes, Your Honor. As I
9 stated before, I just recently came into this
10 case. So at this time, we have the number of
11 filings that were done by his appointed
12 attorney. I have not revised those or filed an
13 amendment in this case.

14 But through those filings, Mr. Rouse, has
15 made a number of allegations that deal with the
16 K-9. And the basis of those allegations is a
17 letter he received from Rauch Wise on August 7th
18 of 2014 post-plea essentially telling him that
19 the number one reason foregoing trial was the
20 K-9 evidence. Then I've spoken with Mr. --

21 THE COURT: For going to trial?

22 MS. BLANCHETTE: Foregoing trial. They were
23 actually starting trial that day and he entered
24 a plea after some pretrial motions.

25 THE COURT: Yes, ma'am.

1 **MS. BLANCHETTE:** And he also has raised
2 some allegations that I have interpreted to be
3 closer to prosecutorial misconduct about, uh,
4 Ms. Monts saying there was K-9 evidence and that
5 not being established in the record. So in
6 reading what he has filed, I do see some
7 allegations regarding the K-9. I plan to refine
8 those. But I thought the best way to do those is
9 not to go out on a fishing expedition to find
10 out exactly what was in the file, to find out
11 what they had regarding the K-9, sit down with
12 the defense attorneys, go over that to see if
13 there is a proper allegation to be made versus
14 the allegations that Mr. Rouse has made with the
15 limited materials that he had.

16 **THE COURT:** And, of course, your reference
17 to prosecutorial misconduct, uh, I take it that
18 was the, uh, the factual basis for the plea
19 included K-9?

20 **MS. BLANCHETTE:** That's correct, Your
21 Honor, as well as -- and I'm not sure if it's --
22 because I've seen a number of filings that
23 haven't actually been filed by appointed counsel
24 that Mr. Rouse has just prepared himself
25 additionally. Then I believe there are three or

1 four that have actually been filed by the Clerk
2 of Court's office, amended petitions. But I
3 believe I can properly state that it's his
4 position that Ms. Monts told his attorneys that
5 there was K-9 evidence. And I have confirmed
6 that with Mr. Wise that up until that point, he
7 wasn't aware of any K-9 evidence. So that kind
8 of turned the case on its head for Mr. Wise.

9 So I'm not trying to go on a fishing
10 expedition. I'm trying to find out what was the
11 evidence regarding the K-9 at the time leading
12 up to trial that caused him to forego the trial.
13 And in his allegations, I think he has -- it
14 could be interpreted as prosecutorial
15 misconduct. I am not making that claim myself
16 here today. I'm just trying to get to the bottom
17 of what was in the file to determine what claims
18 are appropriate.

19 And, Your Honor, I apologize too. I was
20 unaware of the Solicitor's position when we
21 began this hearing. So I can't cite to specific
22 portions of his amendments. But I'll be happy to
23 look through those at this time. (Pause.)

24 And as a followup to that, Your Honor, I
25 found it in his amendment and application for

1 PCR, time stamped April 15th, 2015. Number 3
2 speaks to what I was just saying about the
3 solicitor's comments in closed conference.

4 MR. SCHMECKPEPER: And Your Honor, if I may
5 respond briefly to that specific point, that was
6 a pro se allegation. It's not in compliance with
7 Rule 11. As a result, I don't think it's
8 properly before this Court. In any event, I
9 would just request that in the event this Court
10 grants discovery, it limits it to discovery that
11 -- in terms of the Solicitor's file, anything
12 that was discoverable and also is supported by
13 good cause.

14 I think good cause includes -- good cause
15 precludes discovery of items that were already
16 turned over by Mr. Warder or Mr. Wise. So
17 anything that's in their file, I don't think the
18 Solicitor's required to turn over again.
19 Concerning the actual dog certifications, I
20 don't think the allegations that have been made
21 actually require that. I don't think a good
22 cause showing has been made.

23 THE COURT: Thank you.

24 (WHEREUPON, there is a pause.)

25 THE COURT: Well, on page 62 -- that could

1 not just have been a conversation between the
2 Solicitor and Mr. Wise. On page 62 of the
3 transcript that I have before me indicates
4 Solicitor Monts giving the factual basis for the
5 plea to Judge Miller. Officers did run a K-9
6 around the car, which alerted. But they didn't
7 find anything inside the car.

8 The tracking dog did follow the defendant's
9 trail around the apartment, hotel complex and
10 ended up where the cocaine -- excuse me --
11 heroine and slippers were. So that was, uh, --
12 so that was in the record at the time that, uh,
13 Judge Miller took the plea. That's all. I was
14 just trying to look through the record quickly.
15 All right.

16 Anything further, Ms. Blanchette?

17 **MS. BLANCHETTE:** Your Honor, I do
18 appreciate you going through the record and
19 locating that for me. I'd just like to note for
20 the record that the State did not file a
21 responsive pleading. So I wasn't aware of this
22 objection or concern until today. Typically,
23 these are rather agreeable type of motions.

24 I had prepared an order just because it was
25 my understanding that the State intended to

1 schedule this for the June term. So I had
2 prepared an order today to provide to the Court
3 just based upon the working knowledge I had of
4 the case as of yesterday. In that, it authorized
5 the SLED file, which I understand now the State
6 is saying there is not a SLED file in this case.
7 So if the Court does see fit to bring --

8 **THE COURT:** I don't think he said that.

9 **MR. SCHMECKPEPER:** Your Honor, I don't want
10 any false representations. Upon information and
11 belief, I don't think there is one. But if there
12 is one, SLED --

13 **THE COURT:** I'm going to rule on that in a
14 minute, Mr. Wilson -- I mean, Mr. Attorney
15 General -- Mr. Wilson -- Mr. Schmeckpeper.

16 Go right ahead, Ms. Blanchette.

17 **MS. BLANCHETTE:** I did prepare just a basic
18 order that goes directly off the motion. It does
19 include the ability to get the K-9 evidence that
20 we were requesting for. I can hand that up to
21 the Court. I typically don't prepare these. I
22 was trying to expedite the matter since we have
23 this term coming up so quickly.

24 **THE COURT:** Thank you, Ms. Blanchette.

25 **MS. BLANCHETTE:** Thank you, Your Honor.

1 **THE COURT:** All right. Mr. Attorney
2 General, as far as looking at page two of the
3 motion for discovery, as you pointed out and as
4 Ms. Blanchette also pointed out, she had
5 received Mr. Warder's file. As to a copy of the
6 SLED file, I would, uh, order you to check and
7 see if there is one. You can obviously do it
8 easier, quicker or more expeditious than Ms.
9 Blanchette.

10 **MR. SCHMECKPEPER:** Yes, sir.

11 **THE COURT:** All right. So if there is one,
12 I'm not going to order you today to turn it
13 over. Review it. Notify Ms. Blanchette that one
14 does exist if you have objections to turning any
15 part of it over. If one exists, notify Ms.
16 Blanchette. If there's nothing objectionable to
17 the State, turn it over. Some time -- it could
18 be CI information and such like that. I don't
19 know. I don't know. But as I said, I'm not
20 ordering you to turn it over. Just find out if
21 it exists and notify Ms. Blanchette. If you have
22 objections to turning it over, you ought to have
23 another motion before another judge.

24 **MR. SCHMECKPEPER:** If I have any
25 objections, I'll make them well in advance.

1 THE COURT: Sure. Of course.

2 Secondly, on the, uh, -- let's see, no,
3 third, I guess, a copy of applicant's file
4 maintained by the Greenville County Solicitor's
5 office. Turn over everything that's discoverable
6 that you have agreed to.

7 As far as the K-9, Ms. Blanchette please,
8 uh, limit -- give some time limitations on that.
9 I don't know much about tracking dogs in the
10 last couple of decades because I haven't ran
11 behind one in about 20 years. But see if you can
12 limit some time frame to it. As the Solicitor
13 says, Solicitor Monts, you know, we don't know
14 the age of the dog, we don't know the voluminous
15 records. I mean, limit it towards the time frame
16 of when this event occurred and say -- typically
17 what time frame do y'all use, Solicitor?

18 MS. MONTS: Your Honor, usually within a
19 year.

20 THE COURT: Okay. Within a year of the
21 incident?

22 MS. MONTS: Yes, Your Honor.

23 THE COURT: All right. Limit it -- if you
24 limit it like that, I'll be delighted to order
25 that. Any objections?

1 MR. SCHMECKPEPER: Your Honor, I believe
2 the Solicitor has something she would like to
3 say.

4 THE COURT: All right. Yes, ma'am.

5 MS. MONTS: Your Honor, there were two
6 dogs in this case. There was the one that
7 alerted on the car and then there's ---

8 THE COURT: And then the tracking dog.

9 MS. MONTS: --- the tracking dog.

10 THE COURT: Okay.

11 MS. MONTS: So if we need --

12 THE COURT: I didn't know if one
13 multitasked or not. You know, I didn't know if
14 he was cross-trained.

15 MS. MONTS: Yes, Your Honor. In this
16 case, it was two separate dogs. I just want to
17 make sure it's just the tracking dog or is it
18 both dogs?

19 THE COURT: Ms. Blanchette?

20 MS. BLANCHETTE: It's just been given to me
21 by the attorneys as K-9. They have not
22 differentiated between the two. So I think to be
23 safe, I need to ask for both.

24 THE COURT: I would too. I would say both.

25 MS. MONTS: And Your Honor, there are

1 many different types of records. There's medical
2 records.

3 THE COURT: I would just --

4 MS. MONTS: There's training records.

5 THE COURT: I would go with what the order
6 is asking for -- or the motion, certification
7 and accreditation.

8 MS. MONTS: And Your Honor, that would
9 not be a time limit. That would -- if that's all
10 they're asking for, that would just be a, you
11 know, possibly one or two sheets of paper.

12 THE COURT: I'm just -- I'm just -- oh, I
13 see. All information related to the K-9 search.
14 Well, that would be the event itself, correct?

15 MS. MONTS: Yes, Your Honor.

16 THE COURT: So if there is -- if they do
17 incident or supplemental reports or --

18 MS. MONTS: And all that would have been
19 turned over. Any reports would have been turned
20 over. So I just want to make sure I'm getting
21 any extra documents that are being required at
22 this point.

23 THE COURT: Ms. Blanchette?

24 MS. BLANCHETTE: Your Honor, I'm happy to
25 work with the Solicitor's Office and make those

1 as minimal as possible. I'm just trying to get
2 the K-9 evidence. Obviously, that would have
3 been part of the discovery. And it's my
4 understanding, from my limited cases involving
5 tracking dogs, the accreditations and
6 certifications wouldn't be too complicated to
7 turn over.

8 THE COURT: All right. And if -- have
9 y'all hit an impasse?

10 MS. MONTS: I think we're fine, Your
11 Honor.

12 THE COURT: Just, uh, take it before
13 another judge. I don't mind hearing it, but I'm
14 not going to be here. I'm going to be gone.
15 So, uh, just take it before another judge if you
16 can't, uh, get on the same shoot. As far as
17 reviewing --

18 What about Number 4, Mr. Attorney General?
19 Did we address that? You addressed that?

20 MR. SCHMECKPEPER: I believe we did, Your
21 Honor. I don't think we have a problem with it
22 as long as that's something she already has
23 available through counsel's records.

24 THE COURT: All right.

25 MS. BLANCHETTE: Your Honor, in other PCR

1 cases that I handled, it's my understanding that
2 certain evidence remains at the Sheriff's
3 Department that isn't admitted at trial. That's
4 what I was seeking, just the opportunity to
5 review any of that evidence. Sometimes evidence
6 remains at SLED. I don't know if that helped
7 clarify what we're asking for. But that's
8 simply what I'm asking for is evidence remains
9 and that we have the opportunity to review --

10 THE COURT: The clerk?

11 MS. BLANCHETTE: Yes. Typically, I don't
12 have to have a court order to review the clerk's
13 file. I used to put that in there. A number of
14 judges told me that was overkill, so I started
15 dropping that and just asking for the ability to
16 review the Sheriff's evidence or SLED's
17 evidence.

18 THE COURT: No such thing as overkill for
19 good trial lawyers, Ms. Blanchette and Mr.
20 Schmeckpeper.

21 Yes, Mr. Attorney General?

22 MR. SCHMECKPEPER: I have no objection.

23 THE COURT: All right. Y'all want to do
24 an order? Kind of flesh it out. I'll be
25 delighted to sign it. All right.

1 What next, Ms. Blanchette?

2 **MS. BLANCHETTE:** Nothing further from me,
3 Your Honor. Thank you.

4 **MR. SCHMECKPEPER:** Nothing, Your Honor.

5

6 **(WHEREUPON, the proceedings conclude at**
7 approximately 10:10 a.m.)

8

9

10

11

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth 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 Court of Common Pleas for Greenville, South Carolina, on this 21st day of June, 2016.

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

Teresa B. Johnson

Official Court Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

TITUS NICCOLA LEE ROUSE,)
 Applicant,)

v.)

STATE OF SOUTH CAROLINA,)
 Respondent,)

IN THE COURT OF COMMON PLEAS
 DOCKET NO.: 2015-CP-23-0995

ORDER AUTHORIZING DISCOVERY

FILED - CLERK OF COURT
 GREENVILLE, S.C.
 PAUL H. MONTGOMERY
 2016 JUN 2 PM 1:11

2W

This matter comes before the Court by way of an Application for Post Conviction Relief filed on May 22, 2015. The State filed a Return on June 3, 2015. On February 18, 2016, Tricia A. Blanchette was substituted in place of Caroline Horlbeck, Esquire, as Applicant's counsel

On April 21, 2016, a motion hearing was conducted in front of the Honorable R. Knox McMahon at the Greenville County Courthouse. Applicant was present and was represented by Tricia A. Blanchette, Esquire. Respondent was represented by Patrick Schmeckpeper, Assistant Attorney General. Respondent called Joyce Monts of the Greenville County Solicitor's Office to the stand.

At the motion hearing, Applicant's counsel referenced the filed Motion and explained that she had recently picked up a copy of the file from Attorney Warder's office and had received the remainder of the file from Attorney Horlbeck. She further explained that based upon consultation with Rauch Wise, Esquire (trial/plea counsel) and Applicant, reviewing the filings made prior to representation, and reviewing the documents provided by the Attorney General's Office, it is apparent that a request for discovery is needed to properly prepare Applicant's case for an evidentiary hearing and to determine what witnesses are necessary to be called at an evidentiary hearing.

Based upon a showing of good cause, this Court finds, as stated from the bench, that Applicant's request shall be granted to ensure that Applicant, through counsel, can properly prepare his Application for an evidentiary hearing. Therefore, Applicant, through counsel, shall be allowed to issue subpoenas to the appropriate people, offices or agencies for the production of the following case files/materials pursuant to S.C. Code Ann. §17-27-150(a) (2008) limited to those files/materials that were subject to discovery during the underlying criminal proceeding:

1. A copy of the State Law Enforcement Agency (SLED) file if determined by the Office of the Attorney General that a file exists.
2. A copy of discoverable items under Rule Five, SCRCrimP, and Brady in Applicant's file maintained by the Greenville County Solicitor's Office, to include all information related to the K-9 search conducted and the certification and accreditation of the K-9 and his handler.
3. The opportunity for Applicant's counsel, private investigator and potential experts to review the evidence maintained at the Greenville County Sheriff's Department and SLED (if needed).

This Court further grants the Applicant's request for his counsel, private investigator and/or experts to review any and all requested materials that cannot be copied or provided to counsel. This Court finds that Applicant, through counsel, should provide Respondent with all discovery received pursuant to this Order. This Court further finds that if a party fails to comply or does not have a file or requested item to produce, a written explanation must be provided for the failure to produce said file or item to Applicant's counsel.



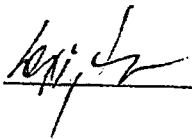
IT IS THEREFORE ORDERED:

1. That Counsel for Applicant is permitted to serve a subpoena and/or submit a written request, along with a copy of this Order, upon the above listed agencies or entities for the production of the above listed items.
2. That any parties in receipt of a subpoena pursuant to this Order may file a timely objection, which will be addressed by this Court.

AND, IT IS SO ORDERED this 2nd day of June, 2016.



Honorable R. Knox McMahon
Presiding Circuit Court Judge


_____, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	DOCKET NO.: 2015-CP-23-0995
TITUS NICCOLA LEE ROUSE,	)	
Applicant,	)	
v.	)	MOTION FOR SUPPLEMENTAL
	)	DISCOVERY
STATE OF SOUTH CAROLINA,	)	
Respondent,	)	
_____	)	

COMES NOW Applicant, by and through his undersigned attorney, and requests that this Court enter an Order for Production of Discovery pursuant to S.C. Code Ann. §17-27-150(a) (2008).

This matter comes before the Court by way of an Application for Post Conviction Relief filed on May 22, 2015. The State filed a Return on June 3, 2015. On February 18, 2016, Tricia A. Blanchette was substituted in as Applicant's counsel. On April 4, 2016, Applicant, through counsel, filed a Motion for Discovery.

On April 21, 2016, a motion hearing was conducted in front of the Honorable R. Knox McMahon at the Greenville County Courthouse. Applicant was present and was represented by Tricia A. Blanchette, Esquire. Respondent was represented by Patrick Schneckpeper, Assistant Attorney General. Respondent called Joyce Monts of the Greenville County Solicitor's Office to the stand. In explanation to the Court, counsel explained that Applicant was concerned with and would be making allegations involving the canine usage in the underlying case due in part to advice received and a letter obtained from trial/plea counsel.

On June 2, 2016, the Honorable R. Knox McMahon issued an Order Authorizing Discovery, which was filed on June 22, 2016. By way of this Order, Applicant was authorized to obtain the following:

1. A copy of the State Law Enforcement Agency (SLED) file if determined by the Office of the Attorney General that a file exists.
2. A copy of discoverable items under Rule Five, SCRCrimP, and Brady in Applicant's file maintained by the Greenville County Solicitor's Office, to include all information related to the K-9 search conducted and the certification and accreditation of the K-9 and his handler.
3. The opportunity for Applicant's counsel, private investigator and potential experts to review the evidence maintained at the Greenville County Sheriff's Department and SLED (if needed).

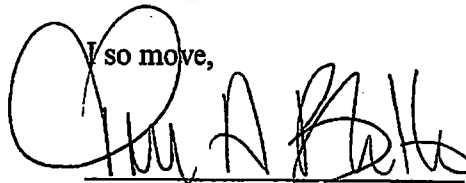
In response, Applicant's counsel received a one page certificate naming each canine and officer involved in the underlying case. Thereafter, Michael Gould, an expert out of New York, provided a review of the case documents pertaining to the canine deployment and searches for Applicant. Upon review of the available case documents, Mr. Gould has informed counsel that in order to properly review and provide his expert opinion, the following items are needed and typically provided in cases involving canine deployment and searches:

1. As listed on the certificates provided, for John Redman and K9 Duke and Al Cannon and K9 Nero, the following:
 - a. Training records prior to and after certification;
 - b. Records pertaining to the dogs specific type of training tracks, scents, and articles;
 - c. All records related to the canine team's training and certification for this particular dog(s) to answer what odors this dog(s) has been trained to detect (i.e. drugs, explosives, human odor);
 - d. Records of tracks completed successfully or unsuccessfully by the dog and/or all records indicating how many positive alerts, both in training and the field, the dog has had;
 - e. Any statistics kept on the dogs/handler by the department or accreditation body; and

- f. Any additional credential of the dogs/handlers.
2. For the Greenville County Sheriff's Office, the following:
- a. Department policy for dog handler and canine deployment, such as is there a supervisor that reviews all canine deployment and reports regarding such.

Applicant, through counsel, submits that this supplemental discovery request is not being made as a fishing expedition, but the records and information requested are necessary for Applicant's retained expert to review prior to the issuance of his expert opinion and/or testimony on the matter. Additionally, this request is being made to ensure that Applicant obtains "one full bite of the apple." See Ramirez v. State, 413 S.C. 351, 776 S.E.2d 101 (S.C. Ct. App. 2015)

THEREFORE, based upon the foregoing the Applicant respectfully requests that this Court hold a discovery hearing and grant Applicant's request.

I so move,


Tricia A. Blanchette
 PO Box 12725
 Columbia, SC 29211
 Attorney for Applicant

October 5 2016
 Columbia, SC

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
 DOCKET NO.: 2015-CP-23-0995

TITUS NICCOLA LEE ROUSE,)
 Applicant,)

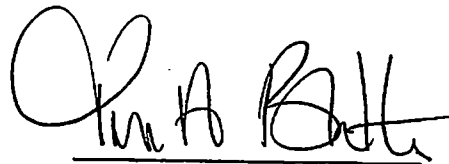
v.)

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)
 Respondent,)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I that placed in the mail 5th day of October 2016, a copy of a Motion for Supplemental Discovery to Patrick Schmeckpeper of the Attorney General's Office, at:

Office of the Attorney General
 Att: Patrick Schmeckpeper, Ast. AG
 PO Box 11549
 Columbia, SC 29211



Tricia A. Blanchette
 PO Box 12725
 Columbia, SC 29211
 (803) 988-0008

October 5, 2016.

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
 DOCKET NO.: 2015-CP-23-0995

TITUS NICCOLA LEE ROUSE,)
 Applicant,)

v.)

STATE OF SOUTH CAROLINA,)
 Respondent,)

ORDER GRANTING
 SUPPLEMENTAL DISCOVERY

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL D. WICKENS
 2016 NOV 18 AM 11:58

This matter comes before the Court by way of an Application for Post Conviction Relief filed on May 22, 2015. The State filed a Return on June 3, 2015. On February 18, 2016, Tricia A. Blanchette was substituted in as Applicant's counsel. On April 4, 2016, Applicant, through counsel, filed a Motion for Discovery.

On April 21, 2016, a motion hearing was conducted in front of the Honorable R. Knox McMahon at the Greenville County Courthouse. Applicant was present and was represented by Tricia A. Blanchette, Esquire. Respondent was represented by Patrick Schmeckpeper, Assistant Attorney General.

On June 2, 2016, the Honorable R. Knox McMahon issued an Order Authorizing Discovery, which was filed on June 22, 2016. By way of this Order, Applicant was authorized to obtain the following:

1. A copy of the State Law Enforcement Agency (SLED) file if determined by the Office of the Attorney General that a file exists.
2. A copy of discoverable items under Rule Five, SCRCrimP, and Brady in Applicant's file maintained by the Greenville County Solicitor's Office, to include all information related to the K-9 search conducted and the certification and accreditation of the K-9 and his handler.
3. The opportunity for Applicant's counsel, private investigator and potential experts to review the evidence maintained at the Greenville County Sheriff's Department and SLED (if needed).

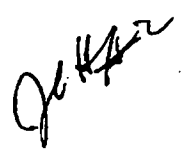


On October 5, 2016, Applicant, through counsel, submitted a Motion for Supplemental Discovery, which was filed on October 17, 2016. A motion hearing was scheduled and conducted on October 24, 2016 at the Greenville County Courthouse in front of the Honorable John C. Hayes. Applicant was not present due to transportation matters. Tricia A. Blanchette, Applicant's counsel, was present and waived Applicant's appearance on the record. The State was represented by Patrick Schmeckpeper, Assistant Attorney General.

As is stated in the written motion, Applicant's counsel explained that she received a one page certificate naming each canine and officer involved in the underlying case in response to the Order Authorizing Discovery. Michael Gould, an expert out of New York, provided a review of the case documents pertaining to the canine deployment and searches for Applicant. Upon review of the available case documents, Mr. Gould informed counsel that in order to properly review and provide his expert opinion, counsel needed to request additional documents and/or items that are typically provided in cases involving canine deployment and searches.

On the basis of good cause being shown in the written motion and at the hearing, this Court finds that the requested items shall be turned over to Applicant's counsel to properly prepare with the expert and prepare Applicant's case for an evidentiary hearing. Therefore, Applicant's counsel may issue subpoenas for the following items that were in existence on or before May 27, 2012 (incident date):

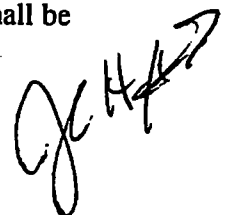
1. As listed on the certificates provided, for John Redman and K9 Duke and Al Cannon and K9 Nero, the following:
 - a. Training records prior to and after certification;



- b. Records pertaining to the dogs specific type of training tracks, scents, and articles;
 - c. All records related to the canine team's training and certification for this particular dog(s) to answer what odors this dog(s) has been trained to detect (i.e. drugs, explosives, human odor);
 - d. Records of tracks completed successfully or unsuccessfully by the dog and/or all records indicating how many positive alerts, both in training and the field, the dog has had;
 - e. Any statistics kept on the dogs/handler by the department or accreditation body; and
 - f. Any additional credential of the dogs/handlers.
2. From the Greenville County Sheriff's Office, the following:
- a. Department policy for dog handler and canine deployment, such as is there a supervisor that reviews all canine deployment and reports regarding such.

In response to the request of the Greenville County Solicitor's Office, this Court directs counsel that all subpoenas and/or requests for discovery made pursuant to this Order shall be submitted to the Greenville County Solicitor's Office to the attention of Joyce Monts, Esquire. This Court finds that Applicant, through counsel, should provide Respondent with all discovery received pursuant to this Order. This Court further finds that if a party fails to comply or does not have a file or requested item to produce, a written explanation must be provided for the failure to produce said file or item to Applicant's counsel.

Additionally, Applicant's counsel requested and the State did not object to Applicant's expert out of New York not being required to appear in person to provide testimony at the evidentiary hearing. As a result this Court finds that Applicant's request for Michael S. Gould to testify via phone or computer at the evidentiary hearing shall be



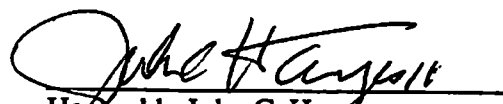
granted to forego unnecessary expense and to lessen the complications in scheduling the evidentiary hearing.

IT IS THEREFORE ORDERED:

1. That Counsel for Applicant is permitted to serve a subpoena and/or submit a written request, along with a copy of this Order, upon the above listed agencies or entities for the production of the above listed items and that all subpoenas and/or requests shall go through the Greenville County Solicitor's Office.
2. That any parties in receipt of a subpoena pursuant to this Order may file a timely objection, which will be addressed by this Court.
3. That Applicant will not be required to provide the in person testimony of Michael S. Gould at the evidentiary hearing to be scheduled in Greenville County and the parties will obtain his testimony at the evidentiary hearing via phone or computer.

AND, IT IS SO ORDERED this 3rd day of November, 2016.

York, South Carolina


Honorable John C. Hayes
Presiding Circuit Court Judge 

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-23-0995

TITUS NICCOLA LEE ROUSE,)
Applicant,)

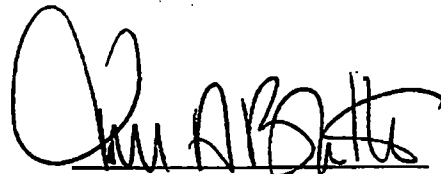
v.)

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)
Respondent,)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I that placed in the mail 15th day of November 2016, an Order Granting Supplemental Discovery to Patrick Schmeckpeper of the Attorney General's Office, at:

Office of the Attorney General
Att: Patrick Schmeckpeper, Ast. AG
PO Box 11549
Columbia, SC 29211



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008

November 15, 2016

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

TITUS L. ROUSE,)
)
APPLICANT,)
)
-VS-)
)
STATE OF SOUTH CAROLINA,)
)
RESPONDENT.)
_____)

2015-CP-23-00995

TRANSCRIPT OF RECORD

APRIL 21, 2017
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE PERRY H. GRAVELY

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

ATTORNEY FOR APPLICANT:

TRICIA A. BLANCHETTE, ESQ.

ATTORNEY FOR RESPONDENT:

DeSHAWN MITCHELL
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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1 (Whereupon Plaintiff's exhibits 1 - 5 were marked for
2 identification)

3 **THE COURT:** We're here on Titus Rouse versus the State
4 of South Carolina. I'd be glad to hear from you.

5 **MR. MITCHELL:** May it please the Court, Your Honor?
6 This is Titus Rouse versus the State of South Carolina,
7 2015-CP-23-0995. Mr. Rouse was indicted by the February
8 2014 term of Grand Jury for trafficking of Greenville County
9 -- pardon me, for trafficking heroin, habitual traffic
10 offender and driving under suspension. He was represented
11 by Dick Warder and Mr. Rauch Wise.

12 On August 6th, 2014 the Applicant pled guilty. The
13 Honorable Edward W. Miller sentenced the Applicant to
14 concurrent terms for twelve years for trafficking heroin,
15 five years for habitual traffic offender and six months for
16 driving under suspension. He is present in the courtroom
17 today, Your Honor, represented by Ms. Tricia Blanchette.

18 **THE COURT:** All right.

19 **MS. BLANCHETTE:** Thank you, Your Honor. May it please
20 the Court?

21 **THE COURT:** Yes.

22 **MS. BLANCHETTE:** Tricia Blanchette here on behalf of
23 Mr. Titus Rouse.

24 **THE COURT:** Mr. Rouse, how are you this morning?

25 **MR. ROUSE:** Good, sir.

1 **THE COURT:** Good.

2 **MS. BLANCHETTE:** Thank you. Your Honor, just
3 housekeeping, we have a witness that will be coming in from
4 New York this morning, but he's going to be coming in via
5 Skype.

6 **THE COURT:** Okay.

7 **MS. BLANCHETTE:** And that was previously ordered by
8 Judge Hayes when he was here for a discovery hearing. And
9 we've already done a test call. So hopefully that will run
10 smoothly this morning. I intended to call him as the first
11 witness just so we can knock that out and make sure ---

12 **THE COURT:** Okay.

13 **MS. BLANCHETTE:** --- that was taken care of.

14 I did have a couple of documents, just that I wanted to
15 ensure that you had by way of procedural history because
16 even though this is a guilty plea case, we've had a bit of a
17 complicated procedural history on PCR.

18 **THE COURT:** Okay.

19 **MS. BLANCHETTE:** First, after I was substituted in, I
20 filed a motion for discovery on March 29th of 2016. And
21 just in case those aren't in your packet, I have a copy of
22 every one of these to hand up after I reference them ---

23 **THE COURT:** All right. I think ---

24 **MS. BLANCHETTE:** --- for you, Your Honor.

25 **THE COURT:** --- I have that. I've got a lot of

1 different things, though.

2 MS. BLANCHETTE: All right.

3 THE COURT: I think I may have them.

4 MS. BLANCHETTE: No problem. Well, if you do, then you
5 can just have an extra copy ---

6 THE COURT: Oh, okay.

7 MS. BLANCHETTE: --- to do whatever you'd like with,
8 Your Honor.

9 Then there was an order authorizing discovery that was
10 issued by Judge McMahon. And I have a copy of that as well.
11 That was after a discovery hearing where I raised the issue
12 Mr. Rouse had raised through his appointed attorney of
13 concerns regarding the use of K-9s in this case and the K-9
14 evidence. And at that hearing is when I indicated that we
15 would be utilizing the service of a K-9 expert.

16 Subsequent to that we realized there was additional
17 discovery we needed in the area of the K-9 evidence. So we
18 filed a motion for supplemental discovery on October 5th of
19 2016. And we had a second hearing in front of Judge Hayes
20 where he granted supplemental discovery and then addressed
21 the issue of the expert coming in today via the internet
22 versus having to travel here from New York.

23 Following that, Your Honor, I did an amendment to the
24 application for Post Conviction Relief, which was dated
25 October 5th, 2016 and filed on October 17th, 2016.

1 And then most recently I did a one allegation amendment
2 on April 5th of 2017. And just due to the newness of that,
3 I didn't know if that was also included in your packet.

4 And then finally, Your Honor, I had obtained, just to
5 make sure we had a complete record, a copy of the first
6 discovery hearing that we had in this case on April 21st,
7 2016 in front of Judge McMahon. And I have a copy for you
8 ---

9 **THE COURT:** Okay.

10 **MS. BLANCHETTE:** --- as well of that. So if you need
11 these, you're welcome to them. If not, they will just ---

12 **THE COURT:** Thank you.

13 **MS. BLANCHETTE:** And, Your Honor, I have talked with
14 the attorney general, and there are three exhibits that, I
15 believe, we're in agreement with admitting at this point.

16 **THE COURT:** Okay.

17 **MS. BLANCHETTE:** The first would be -- through Mr.
18 Warder, I received -- and my client and I received a copy of
19 the preliminary hearing in this case. I believe my client
20 has already attached this through some of his filings, but I
21 wanted to make sure that was part of the record in this
22 case. And I'd move to admit that now as Plaintiff's exhibit
23 1.

24 **MR. MITCHELL:** Without objection, Your Honor.

25 **THE COURT:** All right. Have y'all already got them

1 marked?

2 **MS. BLANCHETTE:** I do, Your Honor.

3 **THE COURT:** Okay.

4 **MS. BLANCHETTE:** Yes.

5 (Whereupon Plaintiff's exhibit 1 was admitted into
6 evidence)

7 **MS. BLANCHETTE:** And I have a copy for you as well if
8 you'd like those.

9 **THE COURT:** All right.

10 **MS. BLANCHETTE:** And then, Your Honor, in response to
11 the discovery order, Joyce Monts, who is an assistant
12 solicitor in this circuit agreed to provide me a list of all
13 the discovery that was originally turned over to the defense
14 attorneys so I could go through their files and just
15 identify the items that were needed to complete the
16 discovery. So at this time I'd like to admit Applicant's
17 number 2, which are the discovery lists that were turned
18 over to me by Joyce Monts in response to the discovery
19 order.

20 **MR. MITCHELL:** No objection, Your Honor.

21 **THE COURT:** All right.

22 (Whereupon Plaintiff's exhibit 2 was admitted into
23 evidence)

24 **MS. BLANCHETTE:** Your Honor, can -- Your Honor, I'd
25 also move to admit Applicant's number 3. It is two pages of

1 K-9 certificates. These were the documents that were
2 originally received when we asked for any items pertaining
3 to the K-9s. Subsequent to that we received approximately
4 five hundred pages that our expert has reviewed, but I'd
5 like to admit these two documents as Applicant's number 3.

6 **MR. MITCHELL:** Without objection, Your Honor.

7 **THE COURT:** All right. So 1, 2 and 3 are in without
8 objection.

9 (Whereupon Plaintiff's exhibit 3 was admitted into
10 evidence)

11 **MS. BLANCHETTE:** Your Honor, my final preliminary
12 exhibit would be Applicant's number 4. Since this is a
13 guilty plea case, I had recently put together a memorandum
14 of law for Judge Goldsmith that pretty much outlined the
15 body of case law that I thought was pertinent to guilty plea
16 cases.

17 So in lieu of making a lengthy argument at the end or
18 if Your Honor would prefer that, I'm happy to do it. I do
19 have a memorandum of law that consists of five pages that
20 I've premarked as Applicant's number 4 just to provide to
21 the Court as to the cases that we're submitting in support
22 of our position today.

23 **THE COURT:** All right. And I'm not sure that'd be an
24 exhibit, though.

25 **MS. BLANCHETTE:** Yeah, I did -- I premarked it. I

1 didn't know ---

2 **THE COURT:** Okay.

3 **MS. BLANCHETTE:** --- if you would just want me to hand
4 it up ---

5 **THE COURT:** That'd be fine. And you've got a copy of
6 this?

7 **MR. MITCHELL:** Thank you.

8 **THE COURT:** That sounds like something you need to keep
9 in your file. All right. And that's like -- we're not
10 going to consider that an exhibit. I think we ---

11 **MS. BLANCHETTE:** That's fine.

12 **THE COURT:** Yeah.

13 **MS. BLANCHETTE:** We can unmark that. I was just -- we
14 were trying to prepare the best ---

15 (Whereupon Plaintiff's exhibit 4 was withdrawn)

16 **THE COURT:** No, I understand. I mean, I appreciate it,
17 but I'm just going to ---

18 **MS. BLANCHETTE:** Okay. And, Your Honor, I will have
19 several cases to hand up at the end ---

20 **THE COURT:** All right.

21 **MS. BLANCHETTE:** --- of the day as well, but I just
22 wanted to hand this up ahead of time so that you would have
23 that.

24 **THE COURT:** All right.

25 **MS. BLANCHETTE:** One more thing, Your Honor, and then

1 I'll be prepared to call my first witness, if I could beg
2 the Court's indulgence just one moment.

3 (Pause)

4 **MS. BLANCHETTE:** Your Honor, there are two cases that
5 were pertinent to the first witness in this issue of K-9
6 evidence, State versus White and State versus Tapp. If Your
7 Honor would like, I could hand those up at this time for
8 your ---

9 **THE COURT:** That's fine.

10 **MS. BLANCHETTE:** --- law clerk because I do plan to
11 refer to State versus White in my questioning.

12 Your Honor, I'm prepared to set up and attempt to call
13 ---

14 **THE COURT:** Yeah, whatever you need to do to set that
15 up.

16 **MS. BLANCHETTE:** Okay. I will be happy to get that
17 started.

18 **THE COURT:** I guess for the court reporter's purposes,
19 it may be best to set that up up here.

20 **MS. BLANCHETTE:** No, I was telling -- my expert popped
21 up. I was telling him one second ---

22 **THE COURT:** Oh, okay.

23 **MS. BLANCHETTE:** --- because I was listening to you,
24 Your Honor.

25 **THE COURT:** Oh, okay. Set that up up here and then we

MICHAEL GOULD - DIRECT EXAMINATION BY MS. BLANCHETTE

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1 can stand around or -- just so the court reporter can hear
2 ---

3 MS. BLANCHETTE: Okay.

4 THE COURT: Whatever is most convenient for her.

5 MS. BLANCHETTE: Okay.

6 (Pause)

7 MADAME CLERK: Mr. Gould, raise your right hand.

8 Michael S. Gould, being
9 duly sworn testified as follows;

10 MADAME CLERK: Please state your full name for the
11 record.

12 MR. GOULD: Michael S. Gould.

13 MADAME CLERK: Thank you.

14 MR. GOULD: G-o-u-l-d.

15 THE COURT: All right. And before we begin
16 questioning, Mr. Gould, I'm Perry Gravely here. We're in
17 Circuit Court, Common Pleas in Greenville County, South
18 Carolina. It's my understanding that this Skype testimony
19 has been pursuant to a previous order in this matter. And
20 thank you for joining us. And make sure -- now, you're in
21 New York?

22 MR. GOULD: Yes, sir.

23 THE COURT: Just make sure that you let people know in
24 New York that we're not as backwards in South Carolina as
25 everybody thinks, that we're allowing a Skype testimony.

MICHAEL GOULD - DIRECT EXAMINATION BY MS. BLANCHETTE

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1 This actually does sound like some futuristic movie,
2 actually, but ...

3 MR. GOULD: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. GOULD: Yeah, this is a little awkward for me.
6 This is my first time testifying by computer. But I will
7 say the commute was great this morning.

8 THE COURT: That's right. All right.

9 MR. MITCHELL: Judge, before we get started, I have my
10 K-9 officer from the actual case. Do you mind if he comes
11 up ---

12 THE COURT: No, that's fine.

13 MR. MITCHELL: --- and listens?

14 MS. BLANCHETTE: That's what I was going to ask Your
15 Honor ---

16 THE COURT: If y'all want to -- if y'all want to pull
17 chairs up or something, I don't have a problem with that, I
18 mean, so you don't have to feel like you're standing.

19 (Pause)

20 MS. BLANCHETTE: Would you like me to ---

21 THE COURT: Yes, you may ---

22 MS. BLANCHETTE: --- go forward ---

23 THE COURT: --- proceed.

24 MS. BLANCHETTE: --- with my examination at this time?

25 Direct Examination by Ms. Blanchette:

MICHAEL GOULD - DIRECT EXAMINATION BY MS. BLANCHETTE

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1 Q. You've already stated your name for the record, is that
2 correct?

3 A. Yes, I did.

4 Q. Okay. And, Mr. Gould, today the intent was to qualify
5 you in the area of K-9 procedure and deployment. So I just
6 want to ask you some background questions and some
7 experience questions first.

8 A. Sure.

9 Q. Before we ask the Court to qualify you. Can you first
10 take me through your professional experience, please?

11 A. So my professional K-9 career began in 1982 with the
12 New York City Police Department. I was one of the founding
13 members of the New York City Police Department at which time
14 we would train with the Philadelphia Police Department.

15 So from 1982 to 1986 I was assigned to the New York
16 City Police K-9 Unit as the K-9 trainer. My duties were to
17 teach other members of the police department, supervise the
18 proper deployment of dogs. Essentially I was the expert
19 witness for the New York City Police Department from 1982 to
20 1986. And my role was in training and teaching other
21 officers, as I said, in the proper deployment of police K-9
22 teams.

23 Q. And in the course of your career there how many times
24 approximately do you think you testified?

25 A. Well, after the New York City Police Department I was

MICHAEL GOULD - DIRECT EXAMINATION BY MS. BLANCHETTE

15

1 the commanding officer of the Nassau County Police
2 Department. I was a lieutenant and I then was supervising
3 there. So between both law enforcement agencies I testified
4 internally for the department as their expert over a hundred
5 times.

6 Q. And, Mike, how many years total were you with law
7 enforcement?

8 A. From 1979 to 2004.

9 Q. Okay. And then after you left law enforcement what
10 career did you undertake?

11 A. Well, I have been involved in dogs, the dog world, in
12 every capacity. I ran a K-9 detection business during --
13 right prior to 9/11. I had some of the first detective
14 dogs, explosive detective dogs at Ground Zero.

15 And when I retired in 2004 I continued teaching
16 seminars, I worked with shelters, I worked with law
17 enforcement agencies in evaluating police K-9s, and I also
18 testified as an expert in various different cases. Since my
19 -- and I'm pretty selective. So I didn't -- since I retired
20 in 2004 I was qualified to either provide written or oral
21 testimony in fourteen cases.

22 Q. And in what states were those primarily in, Mike?

23 A. Primarily in New York, however, Connecticut -- if you
24 don't mind, I'm just checking my notes. Primarily in New
25 York, Connecticut. I've done consultations in Minnesota, in

MICHAEL GOULD - DIRECT EXAMINATION BY MS. BLANCHETTE

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1 other various states, Pennsylvania and Connecticut.

2 Q. Okay. And have you owned any private companies since
3 your time in law enforcement?

4 A. I have. I have. So I owned a scent detection
5 business, as I said, that trained explosive and narcotics
6 dogs to be deployed in private industry for companies. We
7 were hired by Princess Cruise Lines, The American Stock
8 Exchange and various other clients in private industry.

9 Since then, because the bomb dog world got very
10 competitive since 9/11. So I own now a pet care franchise,
11 Hounds Town USA, where we take care of private people's dogs
12 for them. We manage them in a fully interactive
13 environment.

14 And since I started that franchise in 2001,
15 simultaneous with the police department, we've cared for
16 over six hundred thousand dogs, pets, family pets, as well
17 as we do evaluations, as I said earlier, for all the
18 municipal shelters pretty much all over the United States.

19 Q. And do you have any experience with the Navy?

20 A. Yes, I do. I was -- I was also involved in the Navy.
21 That -- I joined the Navy in 1973. And around 9/11 I was
22 deployed to Naples, Italy where I was responsible for
23 overseeing the military working dogs or I was part of the
24 military working dog program in Naples, Italy right after
25 9/11.

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17

1 In November of 2011 I was deployed to Italy. And there
2 I worked. And I was in the Navy as well as a reservist. I
3 did seminars and training, et cetera.

4 And I'm also a graduate of the FBI Academy in 1998
5 where most all my focus for the last thirty-five -- I
6 literally, you know, it has to do with dogs, whether it's
7 working dogs or private -- privately owned dogs.

8 Q. And you mentioned that you were a graduate of the FBI
9 National Academy in 1998. Can you take us through some of
10 your other education?

11 A. I have a Bachelor's Degree in Human Psychology from the
12 State University of New York. I graduated from the NYPD
13 Police Academy. I'm looking at my notes. Is that okay?

14 Q. Yes, that's fine. And, you know, the Judge has
15 actually asked us to move on. So if the State has questions
16 on that, we'll let them question you on that, and we will
17 move on. Can you just briefly tell us about your licenses
18 and certifications?

19 A. Right. So I'm certified by the State of New York by
20 the Bureau of -- Bureau of -- sorry, Bureau of Municipal
21 Police as a certified K-9 -- police K-9 trainer and
22 examiner, which means I'm certified to train police dogs as
23 well as evaluate them for the purposes of use as a service
24 dog within a law enforcement agency in the State of New
25 York.

MICHAEL GOULD - VOIR DIRE BY MR. MITCHELL

18

1 **MS. BLANCHETTE:** Your Honor, at this time I would move
2 to qualify Mr. Gould as an expert in the area of K-9
3 procedure and deployment based upon his expertise and
4 experience.

5 **THE COURT:** All right. Any questions? Any voir dire?

6 **MR. MITCHELL:** Just a few, Your Honor.

7 **Voir Dire by Mr. Mitchell:**

8 Q. Mr. Gould, just a few questions. I think I met with
9 you briefly earlier.

10 A. Yes, sir.

11 Q. What is your experience dealing with tracking or
12 trailing?

13 A. So one thing I'm going to testify about today is it's a
14 lot of -- everything is the same. So tracking dogs --
15 trailing dogs are slightly different. We'll talk about a
16 Bloodhound. But everything I've done involves teaching a
17 dog to follow a scent, whether it's trailing a suspect,
18 human scent or locating explosives. So all the dogs I've
19 trained -- and we'll talk about, if we can go forward,
20 utility dogs, the difference between multi-purpose dogs,
21 single purpose dogs.

22 So all my experience is based on the predatory drive of
23 the dog and how we take that and utilize it for the purposes
24 in our human world to do good things with. So whether it's
25 a trailing dog or a tracking, you know, all the patrol dogs

MICHAEL GOULD - VOIR DIRE BY MR. MITCHELL

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1 I've trained or have been involved with are tracking or
2 trailing dogs.

3 Q. It's my understanding that there is a national
4 organization that certifies individuals for tracking and
5 trailing. Are you a member of that organization?

6 A. No, I'm not. I think you're referring to the National
7 -- I don't know the -- the acronym is NAPWDA, the National
8 -- the North American Police Working Dog Association. So
9 that's a fraternal organization. And there's two primary
10 organizations like that in the United States.

11 I was affiliated and still I'm an associate member of
12 the United States Police Canine Association, USPCA. And
13 they have similar roles. And their goals are, obviously,
14 very good because very few municipalities have an in-house
15 certification.

16 So dog handlers are trained and certified by these
17 fraternal organizations unlike, for example, the Department
18 of Motor Vehicle, which will certify you to drive a car.
19 So, yes, I am familiar with the North American Police
20 Working Dog Association.

21 Q. You're just not a member of it, correct?

22 A. That is correct.

23 Q. Okay.

24 **MR. MITCHELL:** Your Honor, I would just object to him
25 being a qualified expert in this field. The standard

MICHAEL GOULD - DIRECT EXAMINATION BY MS. BLANCHETTE

20

1 organization in which Greenville County sheriff's deputies
2 are certified in and other officers around the country are
3 members of this organization. And after reading the resume,
4 I just don't believe that his expertise lends itself to the
5 area in which the course of this trial is going.

6 **THE COURT:** All right. And I think that based on his
7 experience and his training that -- I think they've probably
8 shown that he qualifies as an expert in K-9 procedure and
9 deployment. So I'm going to overrule your objection and
10 have him qualified as an expert.

11 **MS. BLANCHETTE:** Thank you, Your Honor.

12 Direct Examination by Ms. Blanchette Continued:

13 Q. Mr. Gould, now we're going to continue with your direct
14 examination at this time.

15 A. Okay.

16 Q. Can you please explain to the Court how you got
17 involved in this case with Mr. Rouse?

18 A. Well, you had contacted me, I believe, on what I would
19 describe as a search and seizure case using the use of a
20 police K-9 in South Carolina. So that's how -- we had a
21 telephone conference. You explained some of the facts of
22 the case, just very briefly gave me an overview.

23 And in our conversation I just kind of noted some
24 things that were questionable to me. And we went forward
25 that way. You provided me with as much documentation as you

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1 could, which I have in front of me. And I reviewed it and I
2 saw certain things that kind of jumped out at me as it
3 relates to the use of scent detection dogs.

4 Q. Okay. And originally do you recall that I provided you
5 with -- I had limited -- I had the incident reports, and
6 some photographs, and some discovery documents that were
7 turned over by the solicitor's office. Do you recall
8 receiving and reviewing those?

9 A. Yes, I do.

10 Q. And then secondary to that I sent you a medium sized
11 priority box full of documents that were turned over to us
12 as training records and documents pertaining specifically to
13 the two dogs and officers that were deployed in this case.
14 And did you review those as well?

15 A. I certainly did.

16 Q. Okay. Mr. Gould, at this time I'm going to provide the
17 Court with just a couple of the photographs that you have
18 that you reviewed so that you -- when you refer to the scene
19 that he will have something to look at and understand what
20 you'll be referring to.

21 A. Certainly.

22 **MS. BLANCHETTE:** Your Honor, at this time I would move
23 to admit Applicant's number 5. It's six photographs taken
24 from the photographs that were turned over in discovery in
25 this case. And I have previously provided those to the

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22

1 State, and he's reviewed those this morning, I believe.

2 THE COURT: All right. Any objection?

3 MR. MITCHELL: Without objection, Your Honor.

4 THE COURT: All right. In -- number 5 is in without
5 objection.

6 (Whereupon Plaintiff's exhibits 5A - 5F were admitted
7 into evidence)

8 MS. BLANCHETTE: Would you like an additional copy,
9 Your Honor?

10 THE COURT: However you want to do it.

11 MS. BLANCHETTE: Well, whatever's easiest for you.

12 THE COURT: I guess you need to use that, the official
13 exhibit.

14 MS. BLANCHETTE: Okay.

15 Q. Mr. Gould, I'm just going to take you through these
16 photographs. Can you see these at all? It's hard to see.

17 A. Oh, I have them right in front of me.

18 Q. Okay. The first photograph is of the scene. It says
19 Greenville Forensics at the top as they all do. And it's of
20 a black slipper and then a rock walkway, one black slipper.

21 A. Right.

22 Q. The second one is looking down from an elevated walkway
23 with a white officer's head in the picture and a plastic bag

24 ---

25 A. Raise that one a little bit, please.

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23

1 Q. Okay.

2 A. Great.

3 Q. Is that better?

4 A. Got it. Yep.

5 THE COURT: Can we mark these like A, B and -- just so
6 we can ---

7 MS. BLANCHETTE: I'll be happy to do that, Your Honor,
8 yeah. The first one we'll mark as 5A, the second one as 5B,
9 sorry. The third picture is of the bottom of a stairwell
10 and two slippers. And that'll be 5C.

11 A. Yep.

12 Q. The fourth picture is a vertical photo and it shows a
13 dog's head with his tongue sticking out.

14 A. Yep.

15 Q. And then the gravel walkway with a plastic bag and one
16 slipper in the scene as well?

17 A. Right.

18 Q. The next picture is of the same scene, but you see
19 almost the full body of an officer ---

20 A. Yep.

21 Q. --- with something red in his hands and a small head of
22 a dog.

23 A. Yes.

24 Q. And then the final picture is zoomed in on that same
25 rocky area and you primarily just see a plastic bag.

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24

1 A. Yes.

2 **MS. BLANCHETTE:** So , Your Honor, ---

3 **THE COURT:** So that'll be 5F.

4 **MS. BLANCHETTE:** Thank you. I was going to go back
5 through and make sure I said the numbers. And I can mark
6 those subsequent to testimony if that's okay, Your Honor,
7 and keep going.

8 Q. Mr. Gould, I know that you have reached several
9 opinions in your review. So I'd like to start with the fact
10 that did you review all the officers' reports in this case?

11 A. Yes, I did, the ones that were provided to me.

12 Q. Okay. And I just want you to take us through those
13 reports and let you ascertain as far as what happened at the
14 scene.

15 A. Okay. So my first impression of viewing everything --
16 and I tried to reduce it down to a very common denominator.
17 So what I see initially, if we go back to the original crime
18 scene, well, the entire area is a crime scene, but where the
19 car was found abandoned, running with the door open.

20 So this is significant. It had mixed plates on it. It
21 wasn't the right plates for the car. And it was, in my
22 view, abandoned with the, as I said, running with the door
23 open.

24 And then -- and, of course, I didn't hear radio
25 transmissions, but I'm sure that there was a lot of -- there

MICHAEL GOULD - DIRECT EXAMINATION BY MS. BLANCHETTE

25

1 was -- as most crime scenes, they're chaotic, there's a lot
2 of chaos. People are running around doing things because
3 this wasn't a shoplifting case, this was more of a -- or
4 potentially a more serious drug trafficking case from what I
5 gathered.

6 So I saw a very contaminated scene. Not only was it
7 contaminated by humans, but another dog. And, frankly, one
8 thing I want to say, I don't think anything that I've read,
9 including a training record, I don't think anybody
10 intentionally did anything wrong, but I see a crime scene,
11 as I said, that was chaotic and confused. And things should
12 have been slowed down a little bit.

13 So when we start from that point of view, there was no,
14 from what I understand, no eyewitness to anybody fleeing the
15 vehicle. They just turned around and found the car, the
16 door was open and they ran a drug dog, a narcotics dog, K-9
17 Nero, Officer Cannon and K-9 Nero, which, by the way, is
18 what we call a utility dog or a multi-purpose patrol dog.

19 It does many things. It finds odor whether it's drug,
20 whatever it's trained to find, specific odors. It's also a
21 tracking dog capable of tracking human scent. And it's also
22 capable of criminal apprehension.

23 So the -- there's a difference between K-9 Nero and K-9
24 Duke. Duke is a single purpose human scent detection dog.
25 So -- and that's going to come into play, I think, a little

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1 bit further down the road when we talk.

2 So -- and again, I'm just visualizing the scene. I
3 didn't visit the scene. As I said, I didn't hear radio
4 transmissions, but from what I read, we come upon this car
5 that's abandoned with the car running.

6 So the fact that the car is running and open, the door
7 is open is significant here because, you know, and I'm not
8 familiar with the exact laws of the State of South Carolina,
9 but an abandoned vehicle on private property, illegally
10 parked, actually it was parked at an angle with the door
11 open, it's almost -- I'm not sure you need probable cause to
12 run a narcotics dog through that to inventory and safeguard
13 the vehicle because it was abandoned with, as I said,
14 without plates on -- there was really no explanation. So
15 anyway, they chose to run a narcotics dog.

16 Now, if you run the dog on the car with the car
17 running, there's the possibility the dog is going to, you
18 know, inhale, obviously, the carbon monoxide coming out of
19 the exhaust pipe. So it would be prudent if you -- and I'm
20 not sure if the door was open why, you know, you didn't --
21 anyway, somebody had to run -- somebody had to reach in, I'm
22 assuming, and turn the car off because if the car was
23 running it would be very difficult for the dog to work
24 through the carbon monoxide, not that it's impossible.

25 And a lot of the things that I'm going to talk about is

1 not that these things are impossible, it's just things are
2 sometimes very difficult and the probability of these things
3 being accurate are in -- and many of these things we'll talk
4 about is unlikely that they are going to be accurate. So if
5 -- and again, if we look at the dog as a scientific
6 instrument like a telescope or a microscope, it's only as
7 good as what the technicians is looking at or reading. So
8 if I look through a telescope at the moon, I don't know
9 what, I mean, I don't know what I'm looking at, but an
10 astronomer would.

11 So this K-9 team is a dog that's a scientific
12 instrument that takes air samples from very specific things.
13 It, you know, and a lot of times the police dog is viewed as
14 Rin Tin Tin or Lassie that can, you know, put a whole case
15 together, and they really can't. We're just tapping into
16 the mammalian brain, the drive of a dog, the predatory drive
17 of the dog and what we can realistically do with it. Dogs
18 do amazing things, there's no doubt, but they have
19 limitations, definite limitations ---

20 Q. And let me just stop you real quick. In your
21 experience is that why dogs are oftentimes used in nighttime
22 scenes?

23 A. Right. Well, their value is always -- a dog's value,
24 because they're not using their eyes, that's the big -- so
25 they almost give us x-ray vision because they can see

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1 through things, they -- with their nose. So not, obviously,
2 with their eyes. So, yeah.

3 So we deploy dogs mostly at times where we can't see
4 something and many times at night. So I'm not saying that
5 this was inappropriate, but very frankly when you start
6 breaking this scene down, in my view, not only do I don't
7 understand completely why dogs were used at all, I didn't
8 see -- I don't see any connection between the dogs,
9 contraband and the Defendant nowhere.

10 And I, as I said, I was up at 6:00 in the morning
11 preparing for this trying to see if I missed something,
12 something that I -- I overlooked. Meaning, where is the
13 testimony? Where is the alert by the dog? How did the dog
14 get -- and I'll go back to the ---

15 Q. Yeah, and I think we're jumping ahead. So let's go
16 back to the car and take us to the car scene where they ran
17 the first dog and your opinions or findings regarding that,
18 please. Thank you.

19 A. So very -- so very naturally for all dogs, another
20 animal is a huge distractor. It's a huge distractor. You
21 can think of your family pet if you're walking the dog, he
22 could be great on a walk until he sees a squirrel or another
23 dog.

24 So in this case the K-9, Nero, was brought to the scene
25 for the purposes of doing this narcotic search of the

1 vehicle. And it alerted to the passenger's side,
2 passenger's side door, which I believe he -- he did do that,
3 he alerted. But -- so then they did a consequence -- a
4 subsequent search with negative results. There was no
5 narcotics in the car, but the dog did alert.

6 So some of this has to be put in contents [sic]. Your
7 car, if you valet parked your car within the last week and
8 the valet had the odor of marijuana on his clothes, that
9 residual odor is going to be in the car if you had your car
10 washed.

11 So my point is the alert, which is fine, which is fine,
12 and very frankly it's very difficult for law enforcement now
13 because the odor of marijuana is the predominant odor.
14 Heroin and cocaine is going to be less -- how should I say
15 it? It's a less powerful odor.

16 So now with the laws, so, you know, with marijuana
17 laws, there's marijuana all over the place. I think that's
18 something that law enforcement's going to have to re-look at
19 because the dogs are alerting now to many times a legal
20 substance.

21 So that's one -- I'm sorry, do you have a question?

22 Q. No. I was just coming back into the scene so ---

23 A. Oh, okay.

24 Q. But you're talking about the hit on the vehicle and
25 then subsequently no drugs were found as a result, is that

1 correct?

2 A. None were found.

3 Q. Okay. And then did they do further work in the vehicle
4 to attempt to obtain what they deemed the scent of Mr.
5 Rouse?

6 A. Yes, they did. But in my view -- and again, it's hard
7 for me to see -- to follow the chronological order of these
8 things, but it seems to me that K-9 Nero was around the
9 vehicle, then other officers did a subsequent search.

10 And, of course, at some point in time the vehicle had
11 to be turned off. So there were people, human beings in the
12 driver's compartment of the car. And very -- it's possible
13 just by virtue of leaning into that and touching the
14 steering wheel, perhaps, and it's not even a critical issue,
15 but, of course, if somebody else touched the steering wheel
16 other than the Defendant, that's going to -- usually
17 contaminate the scene. But even the odor, all these mixed
18 odors are inside the vehicle.

19 So then when the trailing dog, Duke, came on the scene
20 -- and I don't know, again, the time-line, if it was -- all
21 happening at the exact same time. It really couldn't
22 because you really can't have two dogs in close proximity.

23 And they did a sample from the steering wheel, a swab.
24 They swiped the steering wheel and dropped it and they did
25 what they call drop scented, which the dog presumably will

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1 take that odor, and in this case, trail the person whose
2 that odor is.

3 And that can happen in a very perfect world, but that
4 is a very limited sample, very limited sample. And the dogs
5 are trained to do it. And somewhere down the road I do want
6 to talk about the training and the difference between
7 training and reality and the difference between a training
8 environment and a real street situation.

9 Q. Okay. Let's go through this scene first.

10 A. Okay.

11 Q. And just to be clear, all this information you gathered
12 from -- we were provided one, two, three, four -- well, I'll
13 just put their names in the record. We were provided
14 Officer John White's report, and you reviewed that. Officer
15 James Cannon's report, and you've reviewed that. Officer
16 Michael Giovanni, if I'm saying that correctly's report, and
17 you've reviewed that. Officer John Redman's report, and you
18 reviewed that. And officer Steven Picone's (ph.) report,
19 and you reviewed that. Is that correct?

20 A. Yes, I did.

21 Q. Okay. And that's where you were gathering and the
22 additional discovery that we were given consisted of a
23 search warrant, some pictures and then the training records,
24 is that correct?

25 A. That's correct.

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1 Q. And that's where you were gathering and your assertions
2 of what you saw happened at the scene, is that correct?

3 A. That's correct.

4 Q. Okay. And you also have reviewed the transcript from
5 the preliminary hearing as well as some pretrial transcripts
6 where some of these officers testified?

7 A. I did. I think all but one, Officer Deputy Giovanni's.

8 Q. Okay. So you've indicated that they took the scent
9 from the vehicle, which am I correct in stating that your
10 opinion is that would -- that vehicle would have been
11 contaminated at that point?

12 A. I see a lot -- highly likely that there's a lot of
13 contamination. And I can further suggest that a lot of the
14 training done with particular K-9 Duke, it was done, you
15 know, utilizing other officers. So I -- so, anyway, yeah.
16 So, yeah. So I believe that that scene was highly
17 contaminated by other officers and a dog, which is going to
18 be distracting to the proficiency of K-9 Duke.

19 Q. Okay. And since you started talking about training we
20 might as well go down that road and then I'll pick us up
21 with the scents dog. But why don't you share with us what
22 your findings were as far as the training records and the
23 hundreds of pages you reviewed that were turned over to us
24 by Greenville County.

25 A. Right. So there's a huge discrepancy in the training

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1 and experience of the two dogs. Officer -- Deputy Cannon
2 and K-9 Nero is actually -- has a very well documented
3 experience in both training and deployment. And I've
4 prepared the numbers of that.

5 And I might -- I have to go back and forth a little
6 bit. But K-9 Nero, the narcotics -- the multi-purpose
7 utility dog in the three years prior to this incident was
8 utilized four hundred and twenty-four times and made eighty-
9 four apprehensions.

10 So experience is going to play a big role. So that was
11 a very experienced K-9 team by everything I said. And they
12 have great records, great documentation. And that's
13 commendable to this K-9 teams and units that they do
14 document their work very well.

15 But conversely or in comparison, K-9 Duke, the
16 Bloodhound, in four years, if I have my facts correct, was
17 deployed on fifty-three times in a four year period of time
18 and had a total of nine apprehensions, many of which was
19 missing persons or emotionally disturbed people. So he --
20 they -- these contrasts is stark in the experience level.
21 And experience in dog work is very important. In most
22 careers your experience trumps your academic knowledge of
23 something. So there was a drastic difference in the
24 training of Duke.

25 And one of the things I also pointed out or observed

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1 was -- and police officers get in the habit of using other
2 officers as their decoy. So they were doing plenty of
3 training. There's no doubt that they were doing plenty of
4 training, but training is only, you know, it's like being a
5 firearms, it's only as good as what you do with it. So one
6 of the fundamental mistakes police officers make is using
7 coworkers as their decoy.

8 So at 2:00 in the morning they want to practice to do a
9 trail or a track, they get one of their partners, their
10 buddies to run a track. But when you do this consistently,
11 you're almost -- because police officers have a very
12 individual scent picture, they have things in common.
13 They're usually wearing a leather gun belt, they have gun
14 powder, they have ammunition on them. So it's very -- so
15 this is another powerful odor to a dog.

16 So if -- and dogs don't -- they see things in a
17 picture. It's a puzzle they put together. So if you have a
18 dog that consistently tracks another police officer, you
19 don't know for certain what the dog is actually trailing or
20 tracking. Is he tracking -- can he be -- can he be ---

21 **THE COURT:** Let me stop you there.

22 **MS. BLANCHETTE:** Just a second, Mr. Gould.

23 **THE COURT:** We need to get in a more of a question and
24 answer here.

25 **MS. BLANCHETTE:** Okay.

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1 **THE COURT:** This is getting to sound like a seminar.

2 **MS. BLANCHETTE:** Okay. I'd be happy to do that, Your
3 Honor.

4 **Q.** Would you just maybe jump to your concerns when you
5 reviewed -- have you addressed everything regarding the
6 records as far as the second dog and his experience?

7 **A.** Yes. And there was a drastic -- a stark contrast. The
8 experience level of the trailing dog was very limited,
9 extremely limited.

10 **Q.** Okay. I'm going to take you on what you have in front
11 of you there to Officer John Redman's report. And he
12 indicates in there, I put on latex gloves and took a sterile
13 gauze pad and wiped the steering wheel area of the vehicle.
14 I placed the gauze pad into a Ziploc bag and placed it next
15 to the vehicle.

16 I then harnessed K-9 Duke. And it talks about his
17 certifications. I opened the bag and drop scented Duke.

18 **MS. BLANCHETTE:** And we'll try to not make this like a
19 seminar, Your Honor.

20 **Q.** But could you just briefly explain to us what it means
21 when he says he drop scented Duke.

22 **A.** So -- so briefly he just needs to get a scent sample of
23 what he's looking for. And this dog, I'm assuming, was
24 trained to identify a specific scent. So, in other words,
25 this was the scent sample.

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1 And it was a small scent sample. It wasn't like a
2 shirt that was sweaty. So the dog -- they don't work
3 miracles, they work with what they have. So this forensic
4 evidence that this dog, this Bloodhound was working with was
5 limited at best if not the wrong sample.

6 If somebody else was in the car or touched the steering
7 wheel, that invalidates this test and, you know, this would
8 just be an invalidation and the dog would be tracking
9 another officer or whoever touched it. So it's -- it's
10 confusing.

11 Q. Okay. And you've already, I think, explained in
12 sufficient detail, but if you have not and there's something
13 further you'd like to address regarding contamination and
14 concerns that can happen when you're doing a drop scent.
15 Are there other factors such as weather, anything that can
16 cause issues with a drop scent?

17 A. Sure. Everything potentially is, heat, you know, the
18 humidity, heat, wind conditions. All these things are going
19 to affect the working ability of the dog. And this was in
20 daylight. So, you know, again, yeah, there's many factors.
21 It's not one thing.

22 So it's not like the old movies where, you know, you
23 give a dog the prisoner's shirt and they track twenty miles,
24 you know, through the woods, et cetera. So dogs can be
25 confused just like humans can be confused. As I said, my

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1 initial point was that this was a chaotic and confusing
2 scene not only to the dogs, but to the officers.

3 Q. Okay. And ---

4 MS. BLANCHETTE: Your Honor, do you mind if I just read
5 from the report ---

6 THE COURT: That's fine.

7 MS. BLANCHETTE: --- so that we can directly answer ---

8 THE COURT: Yes.

9 MS. BLANCHETTE: --- these questions? Okay.

10 Q. The report then continues after he drop scents Duke --
11 and are you following along with me in Redman's report ---

12 A. Not specifically, but I ---

13 Q. Okay.

14 A. --- recall it pretty well.

15 Q. You're very familiar with it? Okay. He says here that
16 Duke pulled to the fence directly in front of the vehicle
17 and pulled down the parking lot. He turned right into the
18 first opening and continued down the sidewalk. He came to
19 the end of the sidewalk area and circled in the parking lot.
20 He then pulled back towards Haywood Road and entered the
21 complex again.

22 We exited in the area of the room that Deputy Giovanni
23 said that the subject was believed to be staying in. There
24 were multiple officers and people in that area. Duke
25 circled in the parking lot and then pulled back to the

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1 center of the complex.

2 Duke turned left in the middle of the complex and came
3 to the pool area. We passed several people walking as we
4 traveled. Duke came to a landscaped area that was below the
5 pool and below the subject's vehicle and he circled.

6 I noticed a dark pair of slippers and a plastic bag
7 laying on the ground in that area. I looked closer and
8 observed a brown substance inside the bag that appeared to
9 possibly be heroin.

10 You have reviewed that series of events as reported by
11 Officer Redman and then discussion of it in two transcripts
12 that we have. Can you take us through that, for lack of a
13 -- better words, track and explain to us any issues or
14 concerns that you had with it?

15 A. Well, okay. So it was a little confusing to me because
16 I wasn't physically at the scene. So making a right turn
17 this way to turn that way, I was trying to visualize it.
18 But one of the things that I think are important to note is
19 everything -- this contraband was found between ten to
20 twenty feet from the front of the vehicle, which would have
21 been a natural exit from -- for any -- not only a fleeing
22 criminal, but for an employee. So it's a natural path.

23 It's not that they were out in the woods and -- so --
24 and these things -- the dog, at least from what I read, it
25 was never that the dogs alerted to any of these things.

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1 Officer Redman said, I saw the slippers, then I saw the
2 drugs.

3 So the question is in the little -- this alleyway,
4 which an alleyway is designed for people to go through it
5 whether it's employees or visitors of this small hotel. And
6 this is a relatively small crime scene. One of the
7 officers, Officer White said he did a cursory search of the
8 area and he didn't find anything, but yet this stuff was,
9 you know, right over this retaining wall.

10 But the point is with this track or trail, we had --
11 the dog was in all kinds of human scent. And he's going
12 back and forth. And then he gets back into a motor. I'm
13 not certain who he was trailing. Was he trailing the
14 Defendant or was he trailing a deputy that he's familiar
15 with? So I'm not certain about that. So I question the
16 validity of that.

17 And it's never mentioned that the dog alerted to this
18 -- to the slippers. The officer said, I saw them. And
19 that's not what we use dogs for. We use -- if we -- if we
20 can see them, we don't need dogs. If you can see heroin,
21 you don't need a dog. So as far as that part of it, I see
22 no value in what is the dog actually doing there? We're
23 walking around a relatively small hotel -- motel complex
24 outside in daylight.

25 Q. And from this report and the information you've looked

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1 at it appears that the dog comes in contact with several
2 officers and other human beings and possibly even the
3 Defendant on this trail.

4 A. Right. Right.

5 Q. Okay. And what was your take-away from that?

6 A. I didn't see anything -- any testimony by Officer
7 Redman that said he saw a change in the dog's behavior. He
8 needs to be alert. Sometimes it's the tail stiffening up,
9 but something has to change.

10 So my visual of this, he's just kind of, oh, a walk
11 through the motel, a confused dog trying to figure out what
12 he's being asked to do. So, yeah. And so if he was at the
13 suspect, I'm not sure why they -- they didn't conclude their
14 search then. It really came down to when you break this all
15 down, when you cut through all of this, it was really just
16 old fashioned police work.

17 And if you remove the dog from this, if there was no
18 K-9 units working, let alone two K-9 units, the results of
19 this investigation would have been identical. There's no
20 connection. There's no nexus between the contraband and the
21 Defendant that I could see.

22 You know, there's no constructive possession, no --
23 there's no surveillance cameras that saw somebody throw
24 something. I don't know about DNA or fingerprint evidence,
25 but I don't see the dog as a scientific instrument, either

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1 dog having any value in this case. I don't see what they
2 did, unless, again, I'm maybe missing something.

3 Q. Well, just to be clear, since you keep saying you may
4 be missing something, and I know you're just saying you're
5 not perfect, will you have -- we have court orders for
6 Greenville County to turn over all of the discovery and all
7 of their K-9 records, and you have reviewed all of those.

8 A. Okay. That's -- it's just a little confounding to me.

9 Q. Right. So there were -- additional reports or anything
10 of that nature the State failed to turn those over? You've
11 reviewed everything they've turned over, correct?

12 A. I've reviewed everything over and over.

13 Q. Okay. And just I want to ask potentially one last
14 question, well, two questions. One is based upon your
15 expert opinion. Did you find this dog track to be reliable?

16 A. No, not at all.

17 Q. Okay. And would you have concerns if you were the dog
18 handler testifying and being able to testify regarding this
19 track in court?

20 A. I'm sorry, say that again. If I ---

21 Q. If you were the one having to testify regarding the --
22 the dog handling in this case would you have concerns
23 regarding whether or not that would be valid and reliable?

24 A. Well, you know, I just want to make it clear, I -- the
25 answer is no, I don't think so. But as I said, I want to

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1 make it clear that law enforcement tries their best. And
2 most of this comes down to a failure in training and
3 experience.

4 So my point is just like -- I don't think anything was
5 intentionally done, but I think it was poor training and a
6 misunderstanding of the capability of this particular dog.
7 Whether it's a Bloodhound or a German Shepherd, they're not
8 Rin Tin Tin, but they can put all the -- connect all the
9 dots. They're just a little air sampler.

10 And we have to use our -- our human brain has to
11 interpret the dog's body movements. And that's why in these
12 reports it should be articulated as Officer Cannon did with
13 Nero. He noticed a change in the dog's behavior. And
14 that's all there is in alerts, not a big bark, it's not
15 saving Timmy from the well. It's a very -- these are very
16 subtle things that dog handlers have to be very aware of.

17 Q. Did you raise any concerns when you were consulting
18 with me regarding the supervision of the K-9 handlers and
19 deployment in this case?

20 A. Supervision. Just refresh my ---

21 Q. Did you inquire of me whether there were any reports of
22 supervising officers ---

23 A. Oh, right.

24 Q. --- or officers that reviewed in a supervisory
25 function?

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1 A. Right, right. So in a case like this, as I said, this
2 isn't a shoplifting case or some DWI. And I just don't see
3 reports where a supervisor took over.

4 So in fairness to the deputies and police officers
5 there, they're kind of, you know, running around -- and,
6 again, this is the sense I got. And there's no place that
7 said sergeant so and so directed -- other than the initial
8 instructions to look for this suspect, there was nobody on-
9 scene.

10 There wasn't a police supervisor on-scene with all of
11 these moving parts, an abandoned vehicle, somebody running
12 supposedly through a hotel area. So there are potential --
13 this is a potentially serious situation, but yet I didn't
14 see supervisors taking over and, you know, taking charge of
15 the scene and directing officers to do this and to do that.

16 Now, that may have happened, I just didn't see any
17 evidence of it. I saw kind of a -- a very sporadic -- a lot
18 of hearsay, officer this said officer that told me this, I
19 didn't actually do that, but he told me he did. So it was
20 pretty scrambled to say the least, confused.

21 Q. And, Mike, I know you spent a lot of time on this case.
22 I know you said you had three main points at the beginning.
23 I believe we've gone over those. Is there anything further
24 that I have failed to ask you about that in your review of
25 the extensive documentation that you would like to share

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1 with the Court?

2 A. No. Just fundamentally that -- I'm not sure -- I
3 always look at these cases, what if the dog wasn't there,
4 what would the outcome or conclusion of this be? And I just
5 don't see any value that the dog brought to this incident.

6 Q. Okay. Now since we're here for PCR I've got to ask you
7 a couple of questions about how you could have assisted in
8 this case. In this case Mr. Rouse was going to trial and he
9 was represented by attorneys Dick Warder and Rauch Wise out
10 of South Carolina. If they would have contacted you such as
11 I did would you have been willing to review documentation
12 for them in this case?

13 A. If they -- if they asked me to?

14 Q. Yes.

15 A. Yes.

16 Q. Okay. And would you have reviewed the documentation
17 for them as you have done for me in preparation for this
18 PCR?

19 A. I would have.

20 Q. Okay. And upon review of it do you believe you would
21 have reached the same conclusions you've reached today?

22 A. Completely.

23 Q. Okay. And would you have been willing to assist them
24 either as a consultant pretrial or testify at a trial in
25 this case?

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1 A. Yes.

2 Q. Okay.

3 MS. BLANCHETTE: Your Honor, if I could beg the Court's
4 indulgence just one moment.

5 THE COURT: Okay.

6 (Pause)

7 MS. BLANCHETTE: Your Honor, I have no further
8 questions of Mr. Gould.

9 THE COURT: All right. Cross examination.

10 MR. MITCHELL: Thank you, Your Honor. I'll be very
11 brief.

12 Cross Examination by Mr. Mitchell:

13 Q. Mr. Gould, just again for the record, could you tell me
14 your overall conclusion about your investigation?

15 A. My overall conclusion that the K-9 teams, both K-9
16 teams, didn't add value or scientific evidence to the entire
17 scene, so to speak, where the incident had took place at
18 this -- at this location.

19 Q. And I know this is probably a little bit of Monday
20 morning quarterbacking, but who do you think is in the best
21 possible position to be able to analyze the crime scene and
22 take the necessary steps to preserve evidence and all those
23 things, somebody who's presently there or somebody who
24 reviews the evidence?

25 A. Well, completely -- completely. Probably the first

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1 officer on the scene and then secondly a supervisor would be
2 the best persons to manage this -- manage this crime scene.
3 Absolutely.

4 Q. Okay. And, I guess, the last question is you said your
5 conclusion was that the dogs necessarily weren't needed. So
6 what's your overall assessment? Did somebody do something
7 wrong?

8 A. Not intentionally wrong. There was no -- but, yeah, a
9 lot of things that didn't -- again, and I don't want to be a
10 Monday back [sic] quarterback -- Monday night quarterback,
11 yeah. So, yeah, I think a lot of things -- one of the
12 things that happened in these situations is -- is the police
13 officers get all amped up. You have a fleeing felon, you've
14 got a car abandoned, you've got a radio transmission. This
15 actually directly connects the ability of the dog to work,
16 when the sirens are on.

17 So the -- what I don't see is somebody slowing things
18 down. They did somewhere -- somebody did create a
19 perimeter, which is good solid police work. But there was
20 -- should not have been a rush to do these things. And it
21 seemed rushed to me.

22 Because the truth of the matter is if we're looking for
23 a particular suspect, as long as he's contained, it's -- the
24 longer the better because his body is -- he's going to
25 perspire. So the point was this was rushed.

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1 Q. That's all ---

2 A. And it ---

3 Q. --- the questions ---

4 A. --- should have been slowed down, deescalated rather
5 than rush through.

6 THE COURT: All right.

7 Q. Thank you, Mr. Gould.

8 THE COURT: Any redirect?

9 MS. BLANCHETTE: Very briefly, Your Honor.

10 Redirect Examination by Ms. Blanchette:

11 Q. Since the State kind of asked you about your ultimate
12 conclusion in this case, one thing that I directed your
13 attention to was in the transcript where the solicitor tells
14 the court, the tracking dog did follow the Defendant's trail
15 around the apartment, hotel complex, and did end up where
16 the cocaine, excuse me, heroin and slippers were. In your
17 opinion is it reliable that this dog, in fact, tracked the
18 Defendant as the solicitor states?

19 A. No.

20 MS. BLANCHETTE: Your Honor, I have no further
21 questions.

22 THE COURT: All right.

23 MR. MITCHELL: No further questions.

24 THE COURT: All right. Thank you, Mr. Gould or Dr.
25 Gould ---

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1 **MR. GOULD:** Thank you, Your Honor.

2 **MS. BLANCHETTE:** Thank you, Your Honor. Your Honor,
3 can I beg the Court's indulgence one moment just to get ---

4 **THE COURT:** Yes.

5 **MS. BLANCHETTE:** --- this all ---

6 **THE COURT:** Yeah, that's fine.

7 **MS. BLANCHETTE:** --- switched over here and get back to
8 live. Thank you.

9 **MR. GOULD:** Thank you. Have a good day.

10 **MS. BLANCHETTE:** You too.

11 **THE COURT:** Yeah, let's take a -- we'll take a -- just
12 a five minute break.

13 **MS. BLANCHETTE:** That would be perfect. Thank you,
14 Your Honor.

15 (Whereupon court was in recess at 10:32 am)

16 (Whereupon court reconvened at 10:38 am)

17 **THE COURT:** All right. Ready to proceed?

18 **MS. BLANCHETTE:** Yes, Your Honor. Your Honor, I would
19 call the Honorable Robert F. Simms to the stand, Greenville
20 County Magistrate.

21 **THE COURT:** All right.

22 **MADAME CLERK:** Mr. Simms, would you please place your
23 left hand on the Bible and raise your right hand.

24 **Robert F. Simms,** being
25 duly sworn testified as follows;

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1 **MADAME CLERK:** Thank you. Please state your full name
2 for the record.

3 **MR. SIMMS:** Robert F. Simms.

4 **MADAME CLERK:** Thank you. You may be seated.

5 **THE COURT:** This is a first. How are you doing?

6 **MR. SIMMS:** Good, Judge.

7 **Direct Examination by Ms. Blanchette:**

8 Q. Mr. Simms, do you recall handling the preliminary
9 hearing in the case of Titus Rouse?

10 A. Basically, generally, vaguely, yes.

11 Q. Okay. And if we have a transcript that's already been
12 introduced here today, that would be -- you would ask the
13 Court to rely upon that, is that correct?

14 A. I would.

15 Q. Okay. And did you have a chance post hearing and in
16 2016 to have communication with Mr. Rouse?

17 A. I did.

18 Q. Okay. And how did he contact you?

19 A. By letter.

20 Q. Okay. And did you respond?

21 A. I did.

22 **MS. BLANCHETTE:** Your Honor, may I approach the
23 witness?

24 **THE COURT:** Yes, you may.

25 Q. Mr. Simms, I'm going to hand you a document. Can you

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1 identify that for the record, please?

2 A. That is a letter I wrote on January 25th of last year
3 to Mr. Rouse.

4 Q. Okay. And is there something on the back of that as
5 well? It's two-sided. I apologize.

6 A. There is.

7 Q. Okay. And what's on the back side of that?

8 A. That is a page from my personal copy of the docket for
9 that day whereon I wrote notes for speaking at the end of
10 preliminary hearing. And on that one, only one out of the
11 six hearings I wrote notes on the one where Mr. Rouse was
12 the defendant.

13 Q. Okay. And can you read your notes there? I don't want
14 to read them ---

15 A. I can.

16 Q. --- if you can read them better.

17 A. I wrote -- this was for speaking, and either verbatim
18 or very close to what I wrote. I wrote, nothing about how
19 the officers proceeded is destructive to the legitimacy of
20 the probable cause for the searches or arrest.

21 The proximity of the drugs and slippers, and the
22 circumstances and admissions concerning the slippers and the
23 flight make it highly probable that both, meaning drugs --
24 both while meaning -- anyway, this is what I wrote. Highly
25 probable that both were in Defendant's possession.

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1 Q. And you affirm today that is your handwriting?

2 A. Yes, it is.

3 Q. Okay. And if you could turn back to the letter dated
4 January 25th, 2016. What was essentially the substance of
5 your response to Mr. Rouse?

6 A. I was telling him that I did not have the document that
7 he requested. The way we handle prelims in this County is
8 that magistrates don't hold preliminary hearings out in the
9 hinterlands and send copies of whatever they do over here.
10 I keep a copy of the docket on the bench. And I would sign
11 that copy and hand it to Donna Bearden, who -- that was the
12 only document I transmitted to her. And -- but after that
13 -- after that, I don't know.

14 MS. BLANCHETTE: Your Honor, if I could just check real
15 quick, I believe I may have skipped an exhibit number.

16 THE COURT: Okay. What was the document -- 4 was the
17 law memo to me.

18 MS. BLANCHETTE: Okay. I just didn't know if you
19 wanted me to go back to 4 or just leave that as ---

20 THE COURT: Okay.

21 MS. BLANCHETTE: We'll go ahead and do 6, Your Honor.
22 At this time I would move the letter of the Honorable Robert
23 F. Simms dated January 25th, 2016 with the second page
24 including his docket notes in as Applicant's number 6.

25 MR. MITCHELL: Without objection, Your Honor.

ROBERT SIMMS - DIRECT EXAMINATION BY MS. BLANCHETTE

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1 **THE COURT:** All right. Without objection.

2 (Whereupon Plaintiff's exhibit 6 was marked and
3 admitted into evidence)

4 **THE COURT:** That's 6, 7 and 8, did you say?

5 **MS. BLANCHETTE:** Just 6, Your Honor.

6 **THE COURT:** Oh, okay.

7 **MS. BLANCHETTE:** Your Honor, do you want an extra copy
8 of all these ---

9 **THE COURT:** No.

10 **MS. BLANCHETTE:** --- records? Okay. I don't want to
11 give you extra paper.

12 Q. Mr. Simms, I have no further questions from me at this
13 time.

14 **MR. MITCHELL:** Judge, I have no questions.

15 **THE COURT:** All right. Thank you.

16 **MS. BLANCHETTE:** Your Honor, Mr. Simms came today under
17 my subpoena. I'd ask that he be released.

18 **THE COURT:** All right. He can be released.

19 **MR. MITCHELL:** Your Honor, I've consulted with counsel.
20 And if I could call a witness out of order ---

21 **THE COURT:** All right.

22 **MR. MITCHELL:** --- on the State's side.

23 (Pause)

24 **THE COURT:** All right.

25 **MS. BLANCHETTE:** Your Honor, I have one more brief

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1 witness. And then ---

2 **THE COURT:** Okay.

3 **MS. BLANCHETTE:** --- I have no issue with the State
4 calling ---

5 **THE COURT:** Okay.

6 **MS. BLANCHETTE:** --- a witness out of order as long as
7 Your Honor does not ---.

8 **THE COURT:** No, that's fine. Whatever y'all agree to
9 is fine with me.

10 **MS. BLANCHETTE:** Your Honor, I would call Edward Cooper
11 to the stand.

12 **THE COURT:** Okay.

13 **MADAME CLERK:** Mr. Cooper, please step around to the
14 witness booth and place your left hand on the Bible and
15 raise your right hand.

16 **Edward Cooper,** being duly
17 sworn testified as follows;

18 **MADAME CLERK:** Thank you. Please state your full name
19 for the record.

20 **MR. COOPER:** Edward N. Cooper.

21 **MADAME CLERK:** Thank you. You may be seated.

22 **Direct Examination by Ms. Blanchette:**

23 Q. Mr. Cooper, what is your profession?

24 A. Private investigator.

25 Q. Okay. And did you formerly work with Upstate Private

EDWARD COOPER - DIRECT EXAMINATION BY MS. BLANCHETTE

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1 Investigators?

2 A. Yes, ma'am.

3 Q. Okay. And during that time did you conduct some work
4 for Mr. Titus Rouse?

5 A. Yes, ma'am.

6 Q. Okay. Can you explain to us what work you did?

7 A. Yes, ma'am.

8 Q. Well, let me narrow that down for you. I apologize.

9 **MS. BLANCHETTE:** Your Honor, may I approach the
10 witness?

11 **THE COURT:** Yes.

12 Q. Mr. Cooper, can you identify that document for the
13 record?

14 A. Yes, ma'am.

15 Q. Okay. And what does that appear to be?

16 A. This is my affidavit.

17 Q. Okay. And what's the date on that affidavit?

18 A. It's the 10th day of March, 2015.

19 **MS. BLANCHETTE:** Your Honor, at this time I would move
20 Mr. Cooper's affidavit in as Applicant's number 7.

21 **MR. MITCHELL:** Without objection, Your Honor.

22 **THE COURT:** All right. Without objection.

23 (Whereupon Plaintiff's exhibit 7 was marked and
24 admitted into evidence)

25 Q. Mr. -- I'm sorry. Mr. Cooper, your affidavit's in the

1 record, but will you just summarize for us the work that you
2 did that's recounted in this affidavit?

3 A. Yes, ma'am. I was asked on March 2nd, 2015 to visit
4 Hawthorn Suits [sic] by Wyndham located at 48 McPrice Court
5 of Greenville, South Carolina, which I did and searched the
6 entire property and the premises looking for signs, postings
7 or notice on the property that showed that it was under
8 police jurisdiction. This investigator could not locate any
9 signs, posting or notice of anything on the property.

10 After searching I made contact with Mr. John Davis,
11 which was the manager on duty, contact number if needed.
12 Mr. Davis conformed [sic] that Hawthorn Suits [sic] is a
13 private property, there having been never no signs, posting
14 or notices on the property. Mr. Davis also confirmed
15 although the property is private, he requested six months
16 due to the date that I went that he did request that the --
17 the Greenville County Sheriff's Department start doing ride-
18 throughs of that property.

19 Q. Okay. And so was the gist of your purpose that day
20 trying to determine if that hotel located at 48 McPrice
21 Court was considered private property and if there were any
22 police jurisdiction signs posted?

23 A. Right. Yes, ma'am.

24 Q. And your conclusion was that it was, in fact, private
25 property?

25 Q. What was your involvement in this case?

JOHN REDMAN - DIRECT EXAMINATION BY MR. MITCHELL

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1 A. First of all, I'm a deputy with Greenville County.

2 Been there since 2003. And at that time I was assigned as a
3 master deputy on Charlie Platoon. And I also was a K-9
4 handler as a special team assignment in addition to my
5 regular duties.

6 Q. And what K-9 do you work with or do you handle?

7 A. At that time, K-9 Duke.

8 Q. K-9 Duke. And how long had you been with him?

9 A. He came to me in 2008.

10 Q. What type of training do you have in order to be able
11 to work with a K-9?

12 A. We train every Wednesday ten hours or six hours,
13 depends on which day. That's supervised by our K-9 team,
14 which I'm added to part of. And in addition to the K-9
15 training we also go to seminars, which are nationwide.

16 And every year we're certified by the North American
17 Police Work Dog Association who comes in outside of us and
18 does a -- they basically test our skills with our K-9s. And
19 we do that so it's not just inside training with our own
20 people. We have somebody come outside and certifies. And
21 we've been doing that ever since I've been a part of the
22 program. I started in 2007.

23 Q. Very good. Turning our attention to the incident
24 actually in question. What was your first involvement when
25 you got there?

JOHN REDMAN - DIRECT EXAMINATION BY MR. MITCHELL

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1 A. I heard the call come out. We were coming on the shift
2 if I remember correctly. I don't have my report. So I'm
3 just kind of -- kind of being vague. But I knew a call came
4 out, and I heard that a subject had fled. At that point we
5 had information, but we didn't have a person. I knew Deputy
6 Cannon was also going to that call as well.

7 Q. And Deputy Cannon was another K-9 officer?

8 A. That was -- he was the one that had K-9 Nero.

9 Q. Okay. And your understanding of, if you remember, of
10 what happened -- what happened once you got there?

11 A. When we got there the vehicle was left alone for us.
12 One of the first things that I like to do, and you can see
13 in my report, I put on latex gloves and I use the sterile
14 gauze pad that we get from EMS. It's the same ones used for
15 anybody that has an injury in Greenville County. And I
16 wiped that and put it into a plastic bag similar to a Ziploc
17 to preserve that scent.

18 Q. Is it safe to say that the crime scene wasn't
19 contaminated?

20 A. It was, to our knowledge, that nobody had disturbed the
21 car. And we wanted to preserve that scent.

22 Q. Was the car running at the time?

23 A. I believe it was running.

24 Q. Okay.

25 A. I don't remember because I don't have my report.

JOHN REDMAN - CROSS EXAMINATION BY MS. BLANCHETTE

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1 Q. Okay.

2 A. So -- it's been a while.

3 Q. All right. And you said that there had been a tip that
4 came in about someone selling drugs?

5 A. I remember a tip came into the front desk. As a result
6 of that we responded to that tip to see if we could
7 determine anything.

8 Q. Okay. That's all the questions I have ---

9 A. Okay.

10 Q. --- for you today.

11 **THE COURT:** All right. Cross examination.

12 **MS. BLANCHETTE:** Yes, Your Honor.

13 **Cross Examination by Ms. Blanchette:**

14 Q. Officer Redman, I know you said you didn't review your
15 report for today.

16 A. Yes, ma'am.

17 Q. But I have in front of you, and I don't know the best
18 way to describe this, but we don't have a jury.

19 **MS. BLANCHETTE:** So, Your Honor, I have ---

20 **THE COURT:** I'm beginning to think we need one. It
21 sounds like we're retrying the whole case.

22 **MS. BLANCHETTE:** I apologize, Your Honor. I appreciate
23 your patience.

24 Q. These are the documents that were turned over in our
25 second supplemental discovery report regarding K-9 training

JOHN REDMAN - CROSS EXAMINATION BY MS. BLANCHETTE

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1 and different things like that. Did you have an opportunity
2 to review that file before coming in here today?

3 A. Not before I came in here.

4 Q. Okay. So you ---

5 A. 'Cause nobody knew why I was here.

6 Q. Okay. So you can't speak to the specific training that
7 you did with the K-9 leading up to this incident?

8 A. I can speak to those -- I mean, are those mine or are
9 those ---

10 Q. This was turned over by the whole Greenville County
11 Sheriff's Department regarding the two K-9s used in this
12 incident.

13 A. Okay. I mean, I know about my records if that's what
14 you're asking.

15 Q. Okay. But you didn't review those coming into the
16 courtroom today?

17 A. No.

18 Q. All right.

19 A. I mean, I review them, if that makes sense. I know
20 them, but I did not review them right before I walked in.

21 Q. Okay. And you said you didn't have your report with
22 you. And I just like to make sure we're always really clear
23 for the record and there's no questions later on. Can you
24 identify that document for us?

25 A. Yes.

JOHN REDMAN - CROSS EXAMINATION BY MS. BLANCHETTE

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1 Q. And what ---

2 A. It's ---

3 Q. --- does that appear to be?

4 A. That's my report. And it's approved by Sergeant
5 Kellett, who's over the K-9 team at that time.

6 Q. Okay.

7 **MS. BLANCHETTE:** Your Honor, at this time I would move
8 to admit Officer Redman's report as Applicant's number 8.

9 **MR. MITCHELL:** Without objection, Your Honor.

10 **THE COURT:** All right. In without objection.

11 (Whereupon Plaintiff's exhibit 8 was marked and
12 admitted into evidence)

13 Q. Now, I'm going to ask you about the second half --
14 second paragraph in this report where you go through the
15 track ---

16 A. Okay.

17 Q. --- that you'd taken with the dog. Do you need a
18 second to review that?

19 A. Are we on the next page?

20 Q. Yes. I'm sorry.

21 A. Okay.

22 Q. Page 2, paragraph 2, the body of the report.

23 A. Sorry.

24 Q. Beginning with I put on latex gloves.

25 A. Okay.

JOHN REDMAN - CROSS EXAMINATION BY MS. BLANCHETTE

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1 Q. Does that help?

2 A. Yes, ma'am.

3 Q. Okay.

4 (Pause)

5 A. And did you have a question or ...

6 Q. Yes. I was wondering -- just in reading this I had
7 some confusion. Did the dog do any type of alert or do you
8 recall if you saw ---

9 A. What was confusing to me during our previous testimony
10 is I don't know if the expert has no training with a
11 Bloodhound, but Bloodhounds are only found -- they only find
12 people. That's all we train them to alert to.

13 So he didn't testify -- it was really confusing because
14 he kept on talking about a Bloodhound alert. I'm not sure
15 if he's not familiar with how Bloodhounds work, but our
16 Bloodhounds alert to the person they're looking for
17 sometimes.

18 Q. Right. So what I'm asking is was there an alert from
19 your dog that the scent of Mr. Rouse had been located or did
20 you just spot the drugs and the slippers in this case?

21 A. We -- he was not in the area when we stopped trailing.
22 So there was no way he could alert to him because he wasn't
23 there anymore.

24 Q. So in reading this and in your testimony today am I
25 accurate in saying that the dog did not alert to the scent

JOHN REDMAN - CROSS EXAMINATION BY MS. BLANCHETTE

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1 of Mr. Rouse?

2 A. No. There's no way that the dog could have alerted to
3 him because he wasn't there. So the accurate thing is Mr.
4 Rouse was not in the area when we stopped trailing to be
5 alerted to.

6 Q. Okay. And if you could just ---

7 **MS. BLANCHETTE:** If the Court could give me one moment
8 here.

9 A. It's not the same type of -- the dogs do not show the
10 same alert -- if you're confused from what the testimony was
11 previously, the narcotics -- and I'm not going to testify
12 into all those things, but, obviously, if narcotics were
13 just in a vehicle, based on our training and experience with
14 K-9s, they will still alert to that odor.

15 Q. Okay.

16 A. It's not the same as with a person.

17 Q. Okay. And you had been working with the solicitor's
18 office in preparing this case because there was -- actually
19 in pretrial motions before he pled guilty. So were you
20 getting -- had you worked with the solicitor's office and
21 been prepared to testify in Mr. ---

22 A. I did.

23 Q. --- Rouse's trial? Okay. So at the conclusion of his
24 hearing the solicitor states, the tracking dog did follow
25 the Defendant's trail around the apartment/hotel complex and

JOHN REDMAN - CROSS EXAMINATION BY MS. BLANCHETTE

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1 did end up where the cocaine, excuse me, heroin and slippers
2 were. So are you saying today that he wasn't following the
3 trail and there wasn't a hit at that ---

4 A. I've not ---

5 Q. --- point?

6 A. --- said anything about a trail. You asked about an
7 alert.

8 Q. Okay.

9 A. So an alert is totally different than running a trail.
10 A lot of times -- and what -- and what Duke is used for up
11 in that point with that supervisor, we were the missing
12 child, all timers [sic] or the person that had just fled
13 depending on the circumstances. So if your child is missing
14 or your grandparent, that's what we use Bloodhounds for at
15 that time, which is why the usages were where they were.

16 For this particular case, a K-9 alert doesn't warrant a
17 patrol dog tracking somebody and biting them. Therefore,
18 since I was available and I was in the area, I came and
19 responded because my dog doesn't do anything but either jump
20 on the person or sit next to the person when they locate
21 them. And that's the true alert if they're there to do so.

22 So we can run a trail. And if the person's already
23 been picked up in a car or left the area, we're never going
24 to see an alert, but our dog will still run the trail.

25 Q. Okay. And how are you confident in this case that your

JOHN REDMAN - CROSS EXAMINATION BY MS. BLANCHETTE

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1 dog was, in fact, trailing the Defendant? Or was he just
2 trailing the scent that you obtained from the steering
3 wheel?

4 A. If you remember in the earlier testimony they mentioned
5 that there was a perimeter up. So we had a perimeter up on
6 this whole hotel area. We also had deputies that were
7 standing by in the corners. And then I had a team that went
8 with me.

9 Based on the fact that my dog went towards the fence
10 but didn't try to jump over it, which is what I've got here,
11 and then when he came in he cut back over to that area, when
12 he circles. And the gentleman earlier was asking about
13 things. And we testify to these. But when my dog begins to
14 circle, he has no longer found the scent, and then he
15 returns to that area. So if we get out of a scent area,
16 he's going to circle, and I hold onto him until he starts
17 pulling hard again.

18 Q. Is there any reason you chose to use a -- the gauze, am
19 I saying that correctly, and wipe the steering wheel versus
20 obtaining a scent directly from Mr. Rouse?

21 A. We had no right to do anything with Mr. Rouse at that
22 time because none of us had identified him. At least me.
23 Like, I didn't know who he was.

24 Q. Okay. So you weren't aware that he was potentially
25 being held in the lobby at that point?

JOHN REDMAN - CROSS EXAMINATION BY MS. BLANCHETTE

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1 A. I was not.

2 Q. Okay.

3 A. We found out later.

4 Q. Okay.

5 A. So during my trail all I'm doing is -- the way that we
6 have been trained through the National Police Bloodhound
7 Association and our trainers with the North American Police
8 Work Dog Association, if we have a contaminated area like a
9 hotel, then I'm going to do every step possible, which means
10 putting on fresh latex gloves out of my trunk, a unused
11 plastic bag and a sterile gauze pad, the same one that would
12 have been put on a patient. And we get those from EMS. So
13 we did every protection possible.

14 The guys in our unit and -- they know that if we're
15 coming to track that we want that area as uncontaminated as
16 it can be because he's right, there's a lot of
17 contamination. However, we took every step possible that we
18 learned through training to reduce any risk of
19 contamination.

20 And the vehicle had just fled from the officers, which
21 wasn't presented earlier. And that's when they found it
22 abandoned. They were behind the vehicle that saw the
23 vehicle. And it was that fast. There was no delay in
24 securing that crime scene area.

25 Q. But your job, would you agree, was following just the

JOHN REDMAN - CROSS EXAMINATION BY MS. BLANCHETTE

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1 drop scent that you acquired from the steering wheel of this
2 abandoned vehicle?

3 A. I -- I presented the gauze pad from the steering wheel
4 to my dog, who then went through the complex, would not
5 leave the area. He never left the area. He got excited
6 over at the room where there was all those officers and then
7 continued back.

8 Q. Would you have at any time in your interactions with
9 the solicitor as she was preparing to try this case
10 indicated to her that your dog tracked from the Defendant to
11 the drugs in this case?

12 A. From the Defendant ---

13 Q. To the ---

14 A. --- to the drugs?

15 Q. --- drugs in this case.

16 A. What do you mean by that?

17 Q. That exact statement. Would you have said that
18 statement, that the -- that you were able to track from the
19 Defendant to the drugs in this case?

20 A. I could have. I don't -- I don't know.

21 Q. All right. Did that -- did that, in fact, happen in
22 this case?

23 A. We -- we tracked from the Defendant's location, which
24 is where I got a gauze pad back to those drugs. And that --
25 we circled that entire complex and came back to that area.

JOHN REDMAN - CROSS EXAMINATION BY MS. BLANCHETTE

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1 Q. And how is it that you -- so at that point you were
2 following your -- the dog was following the trail, you're
3 saying, of the Defendant ---

4 A. I'm just following the gauze pad scent that I
5 presented. I'm holding on. I give him a command to track
6 and I just follow it.

7 Q. Did he continue to follow anywhere after you came
8 across the drugs and the slippers?

9 A. He circled in the area below the pool. And that's
10 somewhere during that time-frame, and I don't have radio
11 recordings, is when we determined -- we found out later that
12 the person that was questioning us when we were first there
13 was inside the lobby.

14 Q. And that was going to be my next question. Did your
15 dog then trail to the Defendant? Did he ever trail to the
16 Defendant in this case?

17 A. We stopped at that point.

18 Q. And why was it stopped at that point if he's trailing
19 the Defendant, if that's the purpose?

20 A. If -- if we already have him and we have already
21 located the slippers and he's identified the slippers are
22 his, and I'm tracked to the last area -- literally we have a
23 pool and we have a lobby here.

24 Q. And where did you get the information that he'd
25 identified the slippers were his?

JOHN REDMAN - CROSS EXAMINATION BY MS. BLANCHETTE

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1 A. Through another officer.

2 Q. Okay. And were you aware that there's conflicting
3 reports from officers including Officer Giovanni testifies
4 on the record that he didn't admit the slippers were his?

5 A. If -- I don't know if Deputy Giovanni reviewed
6 everything or if he was told the other information. There
7 was a lot of officers out there.

8 Q. Um-hum (affirmative).

9 A. So they may not have all talked to each other and
10 known. If Deputy Giovanni was not with the interview that
11 Master Deputy Cannon was, then he may not have known that.

12 Q. Okay. But your dog, in fact, never went from the drop
13 scent to the Defendant, Mr. Rouse, in this case?

14 A. We went to the location where the Defendant was.

15 Q. And when was that?

16 A. When we stopped.

17 Q. I thought you said you stopped when you got to where
18 the drugs and the slippers were.

19 A. Okay. There's a -- if we want to look at the pictures,

20 ---

21 Q. Um-hum (affirmative).

22 A. --- the pool is right here on the other side of the
23 wall. So ---

24 **THE COURT:** Are we -- let me ask you this. Are we
25 trying this case or having a PCR hearing? It's -- I'm

JOHN REDMAN - CROSS EXAMINATION BY MS. BLANCHETTE

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1 really getting kind of confused on that.

2 **MS. BLANCHETTE:** Well, Your Honor, our primary
3 allegation, and this may make more sense once Mr. Wise takes
4 the stand, is he wrote a letter to my client that's been
5 introduced at prior hearings indicating that but for the
6 solicitor informing him of this K-9 evidence and the
7 slippers, he would have continued on with the trial. And
8 essentially he abandoned the trial or advised my client to
9 enter the guilty plea, and we have it in his letter, and
10 he's going to testify about it today, because of the K-9
11 evidence.

12 So what we're looking into is if he would have properly
13 reviewed the K-9 evidence, consulted an expert, would he
14 have advised my client to continue with the trial or enter
15 the guilty plea? So this all goes to the voluntary nature
16 of the guilty plea and the advice rendered by his ---

17 **THE COURT:** Well, ---

18 **MS. BLANCHETTE:** --- counsel.

19 **THE COURT:** --- I think you have well established that.
20 I mean, I'll let you go a little further into it, but, I
21 mean, I don't think we need to retry the case.

22 **MS. BLANCHETTE:** No. And, Your Honor, I actually -- I
23 did not intend to call Mr. Redman today, but since he was
24 here, I didn't want to fall short ---

25 **THE COURT:** All right.

JOHN REDMAN - CROSS EXAMINATION BY MS. BLANCHETTE

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1 **MS. BLANCHETTE:** --- addressing the issues since he was
2 on the stand.

3 **THE COURT:** Okay.

4 **Cross Examination by Ms. Blanchette Continued:**

5 Q. Were you still answering the question? I apologize.

6 A. I don't -- I don't remember.

7 Q. Okay. You were explaining, because I had some
8 confusion, you had picked up the pictures to explain where
9 the dog had stopped because I'd asked if he'd went all the
10 way to the Defendant in this case.

11 A. And for us in trailing it's not like foot for foot, and
12 I'm not trying to get -- we just keep on expanding more and
13 more. But, you know, when we locate somebody who's a
14 criminal who could be dangerous, at that point I don't even
15 let -- like it's consistent for us to let somebody else take
16 that person into custody because my -- my Bloodhound has no
17 protection for me whatsoever, none.

18 So it is consistent with us to be in that area, locate
19 somebody and that's where we stop. So I just wanted you to
20 know that once a person's taken into custody, we don't go
21 any further.

22 Q. But as far as you know Mr. Rouse wasn't standing in
23 that area where you all stopped your trail?

24 A. We observed him standing right above that area.

25 Q. Okay. But he was not in that area ---

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1 A. Yes, ma'am. I mean, the rock wall is right there,
2 that's the pool, that's where he was standing.

3 Q. Okay. And what is your K-9 trained to detect?
4 Narcotics or he was just a trailing ---

5 A. Just a single purpose trailing dog.

6 Q. Okay. So he wasn't detecting the smell of the
7 narcotics ---

8 A. Not at all. He would not care about it at all.

9 Q. Okay.

10 **MS. BLANCHETTE:** Your Honor, if I could beg the Court's
11 indulgence one moment.

12 (Pause)

13 **MS. BLANCHETTE:** Your Honor, I apologize. I'm just
14 trying to find the right document here to see if I have any
15 further questions.

16 (Pause)

17 Q. Officer Redman, are you familiar with the fact that
18 Officer John White was also at this scene?

19 A. I am.

20 Q. Okay. I'd ask that you review what I have here. It
21 says report -- well, I'll let you look through it to see if
22 it appears to be his report and if you're familiar with it.
23 And specifically this paragraph here on page 3. But I'll
24 allow you to flip through it if you'd like.

25 A. I mean, what am I -- you just want me to read his ---

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1 Q. I just ---

2 A. --- report?

3 Q. --- wanted to ask you a question about that paragraph
4 in his report regarding your track.

5 (Pause)

6 A. Okay.

7 Q. Okay. And in looking at that report he indicates here
8 that the track went through the hotel complex ending at the
9 side where the subject's room was said to be. And then he
10 observed the male subject at the pool. And then it goes on
11 to further say that he was detained in the lobby in the next
12 sentence there.

13 A. Correct.

14 Q. Would that be an accurate -- did the track end at -- by
15 the subject's room or did you continue on at that point?

16 A. No. If you read, I mean, if you go back to where we
17 were earlier, it says he circled that -- circled in that
18 area and then came back.

19 Q. Okay. And Officer White there is reporting then that
20 the Defendant is seen by the pool and then detained in the
21 lobby. Did your K-9 ever track to Mr. Rouse at the pool at
22 that time?

23 A. The pool is like I described, right there.

24 Q. Did he ever physically go to the pool where this
25 officer's reporting Mr. Rouse was and tracked to him?

JOHN REDMAN - CROSS EXAMINATION BY MS. BLANCHETTE

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1 A. When we -- when we stopped at the slippers and we had
2 information that the Defendant claimed the slippers and I'm
3 in that area, we stopped. He came to the area next to the
4 pool where we saw him when we were first pulling up to the
5 car. And then you have this alleyway, you have a pool and
6 you have a lobby.

7 Q. And maybe I wasn't ---

8 A. I don't know what ---

9 Q. I'm not trying to be argumentative ---

10 A. Well, no, I'm just trying to figure out what -- this is
11 the same exact thing that I just said.

12 Q. Okay. So you agree with what's in his report there?

13 A. I mean, I'm going to read it just so we're ---

14 Q. Okay.

15 A. --- so we're on the same page. It says due to the
16 nature of the call, Kilo 10, which is referring to Deputy
17 Cannon, could not deploy his dog on a track. I've explained
18 that because his dog will apprehend somebody at the end of
19 the track whereas mine is just going to sit or jump on
20 somebody and get a reward. But Charlie 12 could, and that's
21 me.

22 A track was started at the abandoned vehicle and we
23 went through the hotel complex ending on the side where the
24 suspect room was said to be. At this point Echo 58 observed
25 the male subject that was speaking to us at the pool and

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1 stated that he believed that this was the subject we were
2 looking for. He asked me to contact the suspect again and
3 get further information from him.

4 Q. And my question to you was did your trail ever take you
5 to the suspect at the pool as he is reporting there? He
6 says the suspect was located by the pool, is that correct?

7 A. I don't understand where you're getting -- he's over
8 here at the room. So he knew we came to the room. But
9 we've -- it's well -- everybody else's report says that we
10 came over to the pool. So I guess I'm confused as to what
11 you're asking. Are you asking about Deputy White's
12 paragraph?

13 Q. I'm asking you did your K-9 ever go ---

14 **MR. MITCHELL:** Judge, I'm going to object. I think
15 these questions have been asked and answered.

16 **THE COURT:** Yeah, I think it has too.

17 **MS. BLANCHETTE:** Okay, Your Honor. I'll move on.
18 That's fine.

19 A. I mean, we've ---

20 **THE COURT:** That's fine.

21 **MS. BLANCHETTE:** Your Honor, if I could beg the Court's
22 indulgence for a moment, one more moment, please.

23 (Pause)

24 Q. Just to be clear, did K-9 -- your K-9, and I apologize,
25 you had Duke?

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1 A. Yes, ma'am.

2 Q. Okay. I didn't want to confuse their names. K-9 Duke,
3 I just want to be clear from your testimony, he didn't ever
4 trail directly to Mr. Rouse? You never ended up at Mr.
5 Rouse?

6 A. I never gave him the opportunity.

7 Q. Okay.

8 A. He was never -- he was in -- he was over in an area
9 being detained by the time we got there. So it's not that
10 the dog didn't. We stopped when we found the slippers next
11 to the pool where we determined it was the same person
12 standing there who then -- whatever the other reports
13 reflect 'cause I wasn't there, I was holding onto the dog,
14 wherever they went with him to wherever he was. We stopped
15 at that location. We took pictures that you can see. That
16 was those on our team. You can see the dog is still there.

17 Q. And that was -- I'm glad you mentioned that. So is
18 that your dog? Can you tell just by the ---

19 A. Duke?

20 Q. --- very brief picture ---

21 A. Yeah, he's a Bloodhound.

22 Q. Okay.

23 A. Yeah.

24 Q. That's Duke that's there in the pictures? So was he --
25 when was he put up in the vehicle then? When did he leave

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1 the scene?

2 A. After we had somebody secure that area. And -- and
3 then once that area's secured, we walked back around and
4 secured him back in the vehicle.

5 Q. Okay.

6 A. He never alerted. He didn't have the opportunity to
7 alert. There was nothing for him to alert to.

8 MS. BLANCHETTE: Your Honor, I have no further
9 questions of this witness.

10 THE COURT: All right. Any redirect?

11 MR. MITCHELL: None, Your Honor.

12 THE COURT: All right. You may step down. Thank you.

13 MS. BLANCHETTE: Your Honor, I apologize. But with the
14 witness being called out of turn could I just have a five
15 minute ---

16 THE COURT: Yeah, ---

17 MS. BLANCHETTE: --- break ---

18 THE COURT: --- that'll be fine.

19 MS. BLANCHETTE: --- to kind of regroup and get ---

20 THE COURT: Yeah.

21 MS. BLANCHETTE: --- my documents together so I can
22 more effectively do the next witness?

23 THE COURT: Yeah, that'd be fine.

24 MS. BLANCHETTE: Okay. Thank you, Your Honor.

25 (Whereupon court was in recess at 11:10 am)

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1 (Whereupon court reconvened at 11:12 am)

2 **MS. BLANCHETTE:** I'm prepared to call Attorney Rauch
3 Wise at this time.

4 **THE COURT:** All right. Mr. Wise, if you'll come
5 forward.

6 **MADAME CLERK:** Mr. Wise, please place your left hand on
7 the Bible and raise your right hand.

8 **Clarence Rauch Wise,**
9 being duly sworn testified as follows;

10 **MADAME CLERK:** Thank you. You may be seated. And
11 please state your full name for the record.

12 **MR. WISE:** Full name is Clarence Rauch, that's R-a-u-c-
13 h, Wise, W-i-s-e.

14 **Direct Examination by Ms. Blanchette:**

15 Q. And, Mr. Wise, since I butchered your first name I'll
16 call you by formal name. What is your current profession?

17 A. I practice law.

18 Q. And how long have you been practicing law?

19 A. Since 1969.

20 Q. And what has been the primary focus of your criminal
21 or, sorry, of your practice?

22 A. It has been criminal defense and appeals.

23 Q. Okay. Do you have any idea approximately how many
24 cases you've been involved with?

25 A. I wouldn't even try to guess.

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1 Q. Can you remember how you became involved in the case of
2 Titus Rouse?

3 A. Mr. Rouse called -- I can't remember if he called me or
4 somebody on his behalf called me about representing him in
5 this matter that Dick Warder was already involved in.

6 Q. And what was their communication to you? How did you
7 then become involved?

8 A. Just to assist Dick in the case. And it was -- it was
9 in 2014. And I could not tell you the exact date right now.

10 Q. And was that shortly before the trial came up in this
11 case?

12 A. It was a good many months before the trial. I wouldn't
13 say shortly before. It was somewhere at the end of May,
14 first of June.

15 Q. Okay. And ---

16 A. Now if you want the exact date, I would say June 4th.

17 Q. And, Mr. Rouse, -- Mr. Rouse, I apologize. I read this
18 document. Mr. Wise, could you identify that document for
19 the record, please.

20 A. It's the letter I wrote Dick Warder on the 5th of June.

21 Q. Okay. And by way of that letter are you notifying him
22 that you've been retained to assist in the case?

23 A. I'm thinking I had talked with Dick before I wrote this
24 letter, but, yes, that and I sent him a copy of a brief that
25 I had prepared in a somewhat similar circumstantial evidence

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1 case.

2 Q. Okay. And I'll get into that in just a moment, but
3 you're ---

4 **MS. BLANCHETTE:** Your Honor, at this time I would move
5 the letter with the brief attached dated June 5th, 2004
6 between Mr. Wise and Mr. Warder as Applicant's number 9.

7 **THE COURT:** All right. Any objection?

8 **MR. MITCHELL:** Without objection, Your Honor.

9 **THE COURT:** All right. In without objection.

10 (Whereupon Plaintiff's exhibit 9 was marked and
11 admitted into evidence)

12 Q. Now if you could explain to us your reasoning in
13 sending this brief to Mr. Warder and how it pertains to this
14 case.

15 A. The brief involved a case out of Greenwood in which the
16 sole evidence against the defendant was a fingerprint found
17 on the bottom of a dish under a house next to where the
18 defendant lived and the cocaine involved in the case was
19 found on top of the dish. And the South Carolina Supreme
20 Court -- the South Carolina Court of Appeals ultimately held
21 that was not substantial circumstantial evidence that would
22 justify a conviction.

23 Q. And why did you think that was pertinent to your
24 representation or your joint representation of Mr. Rouse and
25 why did you send that to ---

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1 A. Well, the fingerprint -- the fingerprint on the bottom
2 of a dish with cocaine on top of it raised a suspicion of
3 guilt and probably enough to get it past a preliminary
4 hearing, but the Court ruled very clearly it wasn't
5 sufficient to convict.

6 I thought it was very analogous to this case where a
7 shoe that allegedly belonged to Mr. Rouse was found within
8 the few feet of the drugs which may be suspicious, but in
9 keeping with the Watts case would not have been sufficient
10 to convict.

11 Q. And did you have the opportunity to review the
12 discovery in this case?

13 A. Yes and no. I thought I did, but we'll get to that
14 later. But I was given some discovery, I think, from Dick
15 before he and I went down and met with Titus at Edgefield.

16 Q. Okay. And I'm going to hand you a document and see if
17 you can identify what this is for the record.

18 A. I don't have a specific recall, but it looks like the
19 County of Greenville drug examination report.

20 Q. All right. And does that second page also have some
21 latent reports regarding fingerprints?

22 A. Yes.

23 Q. Okay.

24 **MS. BLANCHETTE:** Your Honor, at this time I would move
25 the County of Greenville drug analysis report, which is a

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1 one page document and the crime scene investigation report
2 regarding ---

3 **THE COURT:** I mean, have y'all talked about -- can
4 y'all not stipulate, I mean, he's not objecting. Can y'all
5 just stipulate so we have to skip this part?

6 **MR. MITCHELL:** Absolutely. I'll stipulate to any of
7 those documents.

8 **THE COURT:** All right. Then they're in. Just ---

9 **MS. BLANCHETTE:** Thank you, Your Honor.

10 **THE COURT:** --- make it a little easier.

11 **MS. BLANCHETTE:** I appreciate that.

12 (Whereupon Plaintiff's exhibit 10 was marked and
13 admitted into evidence)

14 Q. Let me give you -- oh, you have a copy ---

15 A. Yeah.

16 Q. --- in front of you? Now were you -- in your
17 representation you said you reviewed some of the discovery.

18 A. Right.

19 Q. Were you familiar with the fact that they didn't find
20 any fingerprint evidence ---

21 A. Yes.

22 Q. --- on the drugs?

23 A. No fingerprint evidence on the drugs, no DNA on the
24 shoe.

25 Q. And did that factor into the reasoning in sending that

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1 brief to Mr. Warder? Is that what you ---

2 A. Particularly no fingerprints on the drugs, yes. The
3 fingerprints on the drug bag would not make it the same as
4 the Watts case that I sent the brief in.

5 Q. Now were you all preparing this case for a trial?

6 A. Yes.

7 Q. And typically do your cases go to trial or are you more
8 involved with guilty plea cases?

9 A. Most of mine go to trial.

10 Q. Okay. And was it your understanding that you were
11 brought on to help prepare this case for trial?

12 A. That's correct. That and, you know, to kind of make
13 sure it's ready for appeal if necessary too.

14 Q. Okay. Was a guilty plea ever discussed with Mr. Rouse
15 prior to the day that he entered a guilty plea?

16 A. I don't recall discussing it with him if -- when we
17 were in Edgefield, when Dick and I went down to Edgefield.
18 If we discussed it with him it was simply very much in
19 passing and not in the sense of what is the plea offer,
20 okay, and move on. So it was no -- no serious discussions,
21 no.

22 Q. Okay. So the obvious question is did you see this as a
23 trial track case or a plea track ---

24 A. Try case. Trial case.

25 Q. Okay. And you already indicated that you reviewed some

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1 of the discovery.

2 A. Um-hum (affirmative).

3 **MS. BLANCHETTE:** Your Honor, the State does not object
4 to this. Would you still like me to formally have him
5 identify it for the record?

6 **THE COURT:** No, that's fine. Y'all can just stipulate
7 to it, then you skip that. That's the whole purpose of it.

8 Q. I've handed you a document. What is -- do -- can you
9 identify that document?

10 A. Yeah, it's a statement from a witness. I believe if my
11 memory is correct this is a gentleman from North Carolina
12 that Dick called -- ran down too.

13 Q. Okay. And I'll ask you literally about this statement
14 in a moment.

15 **MS. BLANCHETTE:** But, Your Honor, at this time I'd move
16 this as State's, or sorry, Applicant's number 11.

17 **THE COURT:** And you've stipulated to it?

18 **MR. MITCHELL:** I have, Your Honor.

19 **THE COURT:** All right. Then you don't even need to
20 move, it's stipulated as evidence number 10 [sic].

21 (Whereupon Plaintiff's exhibit 11 was marked and
22 admitted into evidence)

23 **MS. BLANCHETTE:** I will say stipulated next time ---

24 **THE COURT:** Well, that just -- yeah, just trying to
25 move things along.

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1 Q. Do you need a minute to review this statement?

2 THE COURT: 11.

3 (Pause)

4 A. Okay.

5 Q. Is this something you reviewed in preparation for Mr.
6 Rouse's trial?

7 A. Yes.

8 Q. Okay. And what was the information that you took from
9 this statement in preparation for trial?

10 A. I'm going to have trouble recalling that. It seems to
11 me that Dick had some additional information because he had
12 run this guy down in North Carolina. But this was basically
13 saying that he had come out of his room when this gentleman
14 saw him.

15 Q. Okay. So this was an eyewitness that had given a
16 statement?

17 A. Right.

18 Q. Okay. And were you -- did you assist Mr. Warder in
19 putting together the Defendant's witness list in this case?

20 A. I think Dick did all that.

21 Q. Okay. Now you referenced you had a meeting with Mr.
22 Rouse. Will you take us through what happened in that
23 meeting?

24 A. We went down to -- he was in the Department of
25 Corrections on some other offense. And we went down to

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1 Edgefield where he was and spent, I guess, about two hours
2 or so with him one morning into early afternoon.

3 Q. And we have spent this morning mostly talking about K-9
4 evidence.

5 A. That's correct.

6 Q. During that meeting did K-9 evidence come up?

7 A. It did not.

8 Q. When did you first recall hearing about K-9 evidence
9 being a factor in this case?

10 A. When Joyce Krolack told me that the drug dog had
11 tracked from the car to where the drugs were.

12 Q. Okay. And when was that told to you?

13 A. That was told while we were sitting around getting
14 ready to try the case.

15 Q. Okay. So then that morning you began pretrial motions,
16 is that correct, or you began the trial of the case?

17 A. That was -- yeah, it was pretrial motions, yes.

18 Q. Okay. So during the pretrial motions on the trial date
19 of August 6th, 2014 that was conveyed to you. What did you
20 do with that information?

21 A. That, to me, from my viewpoint, became a game changer
22 because if the jury believed that a drug dog -- not a drug
23 dog, a tracking dog went from Titus Rouse's car to the
24 drugs, then I think the jury was going to believe he had the
25 drugs.

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1 Q. Okay. Prior to today I had the opportunity to meet
2 with you ---

3 A. Right.

4 Q. --- in your office, is that correct? And at that time
5 I provided you the incident reports to review and
6 specifically Officer Redman's report that testified here
7 today.

8 A. Right. And I'd seen that the day of the plea.

9 Q. Okay. And I was going to ask, when did you first see
10 Officer Redman's report regarding ---

11 A. Day of ---

12 Q. --- the tracking dog?

13 A. The day of the plea.

14 Q. Okay. And that was a game changer for you?

15 A. That's -- it went from a case in which I thought the
16 jury was going to have a -- the judge was going to have a
17 problem letting the case get to the jury to where it not
18 only gets to the jury, but the jury -- high probability the
19 jury would convict.

20 Q. Okay. And I want -- I want to say to you too the day
21 that I was in your office did we review Officer Redman's
22 report together ---

23 A. Yes, we did.

24 Q. --- at that time? And what was your takeaway from the
25 report when you sat down and went over it that day?

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1 A. Well, actually I think we sat down and went over it
2 looking at a Google map of the scene trying to trace the
3 aerial photograph with the route that was described in
4 there.

5 Q. And what was your conclusion after you undertook that
6 exercise in trying to follow the report with a Google Earth
7 image of the scene?

8 A. It seemed not to be what I call a direct route from the
9 car to the drugs.

10 Q. All right. And what issue did you see with it?

11 A. Excuse me?

12 Q. Let me rephrase that question. That wasn't a good
13 question. Based upon the review of Officer Redman's report
14 that day did you have concern with the understanding you had
15 about the K-9 evidence on the day of trial?

16 A. The understanding I had of the evidence at the day of
17 the trial, which was put on the record, frankly, the exact
18 representation for all practical purposes that was made to
19 me by Joyce Krolack was put on the record that -- that for
20 all practical purposes it was a direct shot from the car to
21 the drugs.

22 Q. Okay. Now if you would have -- and correct me if I'm
23 wrong, but you did thoroughly review that report before the
24 trial date, is that correct?

25 A. No, because I didn't -- I had not seen it until the day

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1 of the trial.

2 Q. If you had reviewed that report would you have
3 consulted with potentially an expert in the area of K-9s or
4 what would you have done with that report?

5 A. I would have discussed it with Dick, what are we going
6 to do about that? And, you know, what can we do to combat
7 it? How we going to get around it? And the only way you
8 could get around it is with another -- obviously some sort
9 of drug dog expert.

10 Q. Okay. And you have been in the courtroom today and
11 heard the expert's testimony, ---

12 A. Yes.

13 Q. --- is that correct?

14 A. Um-hum (affirmative).

15 Q. Okay. And that was something I had reviewed with you
16 prior to today as well to be completely candid?

17 A. To -- well, to be completely candid, I thought his
18 synopsis was not as informative as his testimony.

19 Q. Okay. And I was going to ask you about his testimony
20 today. Is that something that you would have utilized in
21 your preparation for this trial?

22 A. Yes.

23 Q. Can you explain that? Probably better than I can ask.

24 A. Well, I mean, two things from listening to the
25 testimony in the courtroom today. One, Officer Redman's --

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1 if he said it, I did not get a clear impression of literally
2 the dog tracking to the drugs. I got the impression of the
3 dog tracking in the area and then they saw the drugs. So if
4 there was testimony from Officer Redman that the dog tracked
5 to the drugs, I, you know, I wasn't paying attention to be
6 frank with you. I didn't hear that.

7 Also notice of interest that we do not know if the
8 scent the dog was tracking was, in fact, Titus Rouse's
9 scent. We all only know that the dog was tracking a scent
10 somewhere in there from -- and, you know, I'm not an expert
11 on dogs, but from what I learned today had the dog then gone
12 up the steps on the pool and jumped up on Titus Rouse and
13 (sniff) basically or whatever he does when he gets to the
14 person, then that would have been a little more substantive
15 evidence that the dog was, in fact, tracking Titus Rouse and
16 not some other scent.

17 **THE COURT:** I mean, are you going to qualify him as an
18 expert on this? That's like where he's going.

19 **MS. BLANCHETTE:** Your Honor, ---

20 A. I'll concede I'm not an expert. I'm just ---

21 **THE COURT:** No, I mean, I understand what you consider,
22 but don't need to be testifying about ---

23 A. Yeah, I understand. I'm just -- I think -- let me
24 rephrase it. That was my observation of strategy based upon
25 ---

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1 **THE COURT:** Okay.

2 A. --- the testimony I heard in the courtroom.

3 **MS. BLANCHETTE:** And, Your Honor, I apologize ---

4 A. I think it's the best way of putting it.

5 **THE COURT:** Okay.

6 **MS. BLANCHETTE:** --- too.

7 Q. I should have said how would this have impacted your
8 defense ---

9 A. Yeah.

10 Q. --- strategy in this case. Mr. Wise, I'm going to hand
11 you a letter.

12 A. Yes.

13 Q. Can you review that for a second and ---

14 A. Sure.

15 Q. --- identify that for the record?

16 A. I -- take a second to review it.

17 Q. Okay.

18 A. All right.

19 **MS. BLANCHETTE:** And the State has stipulated to the
20 entrance of this as Applicant's number 12. It's a letter
21 dated August 7th, 2014 for the record.

22 (Whereupon Plaintiff's exhibit 12 was marked and
23 admitted into evidence)

24 (Pause)

25 A. All right.

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1 Q. If you could look on the second page, the second full
2 paragraph that begins as we discussed.

3 A. Um-hum (affirmative).

4 Q. And review that for me.

5 A. Yeah.

6 Q. This is a letter you wrote to Mr. Rouse shortly after
7 he entered his guilty plea, is that correct?

8 A. That's correct.

9 Q. And what are you addressing in this paragraph to him?

10 A. The issue of the dog trail that the -- and telling him
11 what I told him on the day of the plea, that the dog trail,
12 I think, would create a high probability of conviction. And
13 the minimum sentence if he got convicted was substantially
14 more than -- than what he was looking at on a plea offer.
15 And that if the dog trail or the dog tracking did not
16 happen, then that's a different case.

17 Q. Okay.

18 A. Words to that effect.

19 Q. Now you wrote that letter a couple of days after he
20 entered the guilty plea. Would your advice be different to
21 him now that you have reviewed Officer Redman's report and
22 had the privilege of hearing the information from the
23 consulted expert?

24 A. My advice to him at what point?

25 Q. The advice that you gave him prior to the entry of his

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1 guilty plea that you're recounting there about ---

2 A. Right.

3 Q. --- the dog evidence.

4 A. The advice in the letter would not change, all right?

5 If the information from Mr. Gould was available prior to the

6 time of the selection of the trial, I would have gone over

7 that with him in great detail. And then he would have,

8 obviously, made the choice to do the plea or not do the

9 plea, go to trial or not.

10 I would have felt much more comfortable with his

11 decision to go to trial with the testimony of Dr. Gould. I

12 did not feel comfortable with his decision to go to trial

13 without an expert and just the representation that the

14 tracking dog went to the drugs.

15 Q. Did you advise him that you thought a plea was his best

16 option ---

17 A. Yes.

18 Q. --- due to this change in the evidence?

19 A. Yes.

20 Q. Okay. And here today my question is this. Would your

21 advice to him had been the same? Do you still see the

22 evidence the way you did that day?

23 A. No, I do not.

24 Q. Okay. And if you could just explain that briefly.

25 Maybe you've already gone over it, but if there's anything

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1 further ---

2 A. Well, ---

3 Q. --- you would like to add.

4 A. The testimony of Mr. Gould makes it a much more
5 defendable case as well as the testimony of Mr. Redman. I
6 think both of them -- without Mr. Gould and just the
7 testimony of Mr. Redman, I probably would have said the same
8 thing, all right? Because it's -- still there's nothing to
9 refute the dog went to the -- went to the drugs in a sense.

10 Although it wasn't as strong as I anticipated, but with
11 expert testimony to basically take away the value of Mr.
12 Redman's testimony, I would, you know, I could easily defend
13 his decision to go to trial. But I could not defend a
14 decision to go to trial based upon the representation made
15 about the dog going to the drugs.

16 Q. And that representation was made to you by the
17 solicitor that ---

18 A. Right.

19 Q. --- day in court?

20 A. Like I say, you know, consistently as on the record was
21 what we were told before the plea.

22 Q. And when you're referring to the record that would be
23 page 62 that I read earlier ---

24 A. Yes.

25 Q. --- in the sentencing portion of the transcript, is

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1 that correct?

2 A. Yes. And this hearing today, yes.

3 Q. Okay. And are you familiar with the case of State
4 versus White that is out of Richland County dealing with the
5 admissibility of K-9 evidence?

6 A. Actually I'm not, but I would be shocked if K-9
7 evidence, you know, wasn't admissible. But, no, I'm not
8 familiar with it right now.

9 Q. Okay.

10 **MS. BLANCHETTE:** Your Honor, if I could hand this to
11 him to review just very briefly.

12 **THE COURT:** Well, what's the basis?

13 **MS. BLANCHETTE:** I was going to ask him about the five
14 factors and if he felt that he would have had an argument or
15 a defense based upon ---

16 **THE COURT:** Well, he said he's not familiar with it, he
17 didn't know it at the time of the trial. I don't think that
18 being able to say that now after reviewing this case has any
19 impact on that.

20 **MS. BLANCHETTE:** I appreciate that, Your Honor. I'll
21 move on.

22 Q. Mr. Wise, I was just going to ask you about some of the
23 other preliminary hearing motions that were undertaken and
24 defense strategies in this case. Is there anything further
25 regarding the K-9 evidence, though, that you would like to

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1 explain or testify about today?

2 A. Not that I can think of. I just always thought that
3 was the, you know, the key thing in the whole thing.

4 Q. Do you recall ever going to the scene in this case?

5 A. Yes.

6 Q. Okay. And what did you do at the scene?

7 A. I went there. I think later Dick and I both went
8 there. We took a bunch of pictures, looked at it, looked at
9 where the drugs were found, looked at the location of the --
10 location of where -- of the pool in relation to where the
11 drugs were found.

12 An argument could be made -- the drugs were not hidden,
13 all right? So in the case of somebody running with drugs in
14 their hand and throwing them where they could be hidden,
15 they obviously were either dropped accidentally or somebody
16 sitting on the pool threw them down there to get them away
17 from the pool area. They were out in the open.

18 Q. And did you, when you were at the scene, did you look
19 into the issue that you heard the private investigator
20 discussing whether or not it was private property?

21 A. We really didn't. I didn't ever think that was that
22 big an issue.

23 Q. Okay. Did you ever address the purpose and the reason,
24 delineate the reason why Mr. Rouse was detained in this
25 case?

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1 A. Why he was detained?

2 Q. Um-hum (affirmative).

3 A. He was detained in part because he didn't have a
4 driver's license if my memory is correct.

5 Q. Now in the Jackson versus Denno hearing and Officer
6 White is called and he says that the investigative detention
7 -- he gives a number of reasons. This is on page 42 of the
8 transcript ---

9 A. Um-hum (affirmative).

10 Q. --- if anybody would like to reference it. He says he
11 fled the vehicle, the vehicle had the wrong tag and he
12 matched the description of the tip. When further questioned
13 by defense counsel he says that they were trying to catch up
14 with the vehicle because of an improper tag. Was it your
15 understanding that he was detained because of an improper
16 tag?

17 A. I'd forgotten about the improper tag. I'm not sure why
18 he was really detained because the description was about as
19 generic as you could get.

20 Q. And if he was, in fact, detained for an improper tag
21 would that be a traffic violation?

22 A. That would be a traffic violation, yeah.

23 Q. Okay. And would it be proper for them to detain him
24 for that if he was, in fact, on private property?

25 A. Good question. I don't know if I have a quick answer

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1 to it. You can drive an untagged car on private property.

2 So it would not be a basis until he got onto the main --

3 until he got onto a public highway.

4 Q. Okay. But you're saying today that you all didn't look
5 into the basis for his detention?

6 A. I don't recall doing it. Dick may have, but I did not.

7 Q. Okay. Let me ask you an issue about an in-car video
8 that came up in this case.

9 A. All right. You'll probably have to ask Dick about that
10 because there was a statement about an in-car video, but
11 Dick was never able to find it. And beyond that statement
12 about it being videotaped, I don't know -- know anything
13 about it.

14 Q. And that's going to be my question. Were you involved
15 in the preliminary hearing where that issue came up?

16 A. No, I was not.

17 Q. Okay.

18 A. Dick told me about that as we were getting ready for
19 the case.

20 Q. Were you aware if there was a CI or the nature of the
21 tip in this case? What was ---

22 A. I gather the nature of the tip was more of an anonymous
23 tip than a CI, but I could be wrong on that.

24 Q. Okay. Do you have a copy of the transcript there in
25 front of you?

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1 A. No, I do not.

2 Q. Okay. I will provide you my copy.

3 **THE COURT:** We've got one.

4 **MS. BLANCHETTE:** Thank you, Your Honor.

5 **THE COURT:** We've got enough copies floating around
6 here. Is that number 1?

7 **MS. BLANCHETTE:** I -- oh, the actual transcript, Your
8 Honor. I'm sorry, Your Honor. I can give him my copy.

9 Q. And I want to direct your attention to the bottom of
10 page 55.

11 A. Sure.

12 Q. And it's you, I believe, talking. But you may review
13 that if you'd like.

14 A. All right.

15 Q. And this is shortly before the guilty plea on page 55
16 there.

17 A. Right.

18 Q. And it appears you're making an argument to the court
19 regarding the tip.

20 A. Right. We're making an argument, I think, about what
21 the officer could say at trial in relation to why they were
22 going -- stopping this car.

23 Q. And if you could just flip through to page 57 there.
24 It appears to me from the transcript it ends with a bench
25 conference.

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1 (Pause)

2 A. Okay.

3 Q. And do you recall what transpired from when you're
4 making that argument to what transpired at the bench
5 conference?

6 A. No, I do not. I would gather from what follows that
7 there was some discussion about his doing the plea, but
8 that's sheer speculation on my part. I do not have an
9 independent recall of what we discussed at the bench
10 conference.

11 Q. Okay. And then shortly after that bench conference is
12 when it transitions into the plea.

13 A. That's correct.

14 Q. Okay. Do you recall meeting then with Mr. Rouse or how
15 did it change from pretrial motions to bench conference to
16 plea?

17 A. Right after that is when I say can he have a moment to
18 talk to his wife? Which leads me to believe there was some
19 talk about the plea. And we went and took the back side
20 room and talked with his wife in some detail about it.

21 And it was during that period of time that the -- there
22 was a discussion about the dog tracking the -- to the drugs.
23 I don't think I had heard that before that bench conference.

24 Q. Okay. So that may be where it came up about the
25 solicitor informing you of the information regarding the

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1 dog?

2 A. For some reason my recall is she informed me outside
3 the door in the back conference room.

4 Q. Okay.

5 A. But I could be wrong on that.

6 Q. And what I'm truly asking is your recall of how we go
7 from pretrial motions that you're litigating to a bench
8 conference to a guilty plea.

9 A. It was pretty quick. And, no, I do not know -- I do
10 not recall what we said at the bench conference.

11 Q. Okay. Do you have in front of you your letter dated
12 August 7th still?

13 A. Yes.

14 Q. Okay. In that same paragraph you mentioned ---

15 **THE COURT:** Exhibit what number?

16 **MS. BLANCHETTE:** Exhibit number -- I apologize, Your
17 Honor.

18 **THE COURT:** Is that 12? Yeah, exhibit ---

19 **MS. BLANCHETTE:** 12, yes.

20 Q. In that same paragraph where you talk about the dog
21 tracking you also talk about the shoes. And it claimed that
22 you admitted the shoes were yours. Do you see that there?

23 A. Yep.

24 Q. Okay. What did you know about these shoes or slippers
25 in your pretrial preparation?

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1 A. What did I -- say again.

2 Q. What did -- what did you know or look into regarding
3 these shoes or slippers in your pretrial preparation?

4 A. One, there was no DNA test done on it. It was that --
5 quite obviously would have a DNA -- if you can't get DNA out
6 of shoes somebody's been wearing, you can't get DNA out of
7 anything. So if the government had been concerned about
8 whose shoes they were, they could have done DNA and
9 determined whose they were or who they were not, belonged
10 to.

11 Q. And you -- that was going to be part of your defense?

12 A. Yes.

13 Q. Okay. Now ---

14 A. I think -- I think, in fact, when we discussed with the
15 State about doing -- why didn't you do DNA on the shoes, the
16 comment was made it was too expensive. And I made, I'm
17 sure, some sarcastic comment back about that, but that's --
18 but that was what we were told.

19 Q. Okay. Now ---

20 A. And to be frank with you, if they were going to say
21 that in front of a jury, I was happy with -- for a jury to
22 hear that.

23 Q. Do you recall reviewing the preliminary hearing
24 transcript with Mr. Warder prior to the trial?

25 A. I'm reasonably sure I did. I don't have a specific

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1 recall, but ...

2 Q. All right. And in that transcript specifically on
3 pages 16 and 17 Mr. Warder is cross examining Officer
4 Giovanni. And you're familiar with his involvement in this
5 case, ---

6 A. Right.

7 Q. --- is that correct?

8 A. Um-hum (affirmative).

9 Q. And he first says that an Officer Cannon had told him
10 that Mr. Rouse ran out of the slippers. Then he further
11 goes on to say there was no identification of the slippers.
12 He also says on cross examination that the Defendant never
13 showed them the slippers. And then he finally says he never
14 admitted possession of the slippers.

15 A. Um-hum (affirmative).

16 Q. Now you had a Jackson versus Denno hearing, is that
17 correct?

18 A. Correct.

19 **MS. BLANCHETTE:** And it begins on page 27 just for your
20 reference, Your Honor.

21 **THE COURT:** Okay.

22 Q. And at that point there's some question of what
23 statements are going to be admitted. Do you remember that?

24 A. Well, a simple question of whether or not it was a
25 confession or -- yeah, there was.

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1 Q. Okay. So on page 28 to 29 it starts out -- and that's
2 where the issue of the destruction of the tape comes up
3 because supposedly these admissions or statements were on a
4 ---

5 A. That's correct.

6 Q. --- tape. And did you all have that tape to review?

7 A. No.

8 Q. And do you know the reason why you did not have it to
9 review?

10 A. I do not know why. It disappeared.

11 Q. Now ---

12 MS. BLANCHETTE: And, Your Honor, I would just
13 summarize unless you'd like me to go more ---

14 THE COURT: That's fine.

15 MS. BLANCHETTE: --- further through the transcript.

16 Q. But during the Jackson versus Denno hearing Officer
17 Giovanni gets up on page 33 and says the only statement he
18 heard was an admission that Mr. Rouse was staying in the
19 room and you all say you have no objection to that. Do you
20 recall that?

21 A. Yeah. I can't remember what that admission was about.
22 Yeah.

23 Q. That he had been staying at a hotel ---

24 A. Right. Yeah. Yeah, there was no objection to that
25 because the records showed that.

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1 Q. And then Officer White testified that it was his
2 understanding that Mr. Rouse had admitted that he ran
3 because of warrants. And it appeared you all had no
4 objection to that as well.

5 A. I'm thinking warrants or no driver's license. I can't
6 remember which right now. But, yeah, that was -- that was
7 -- that was a very good reason for him to leave the car once
8 he saw the police behind him other than being in possession
9 of drugs. And I can't remember whether it was warrants or
10 his driver's license was suspended, but it was something in
11 that range. And if it was a warrant, it wasn't a serious
12 warrant. Like child support or something.

13 Q. And then Officer Cannon testifies in the Jackson versus
14 Denno hearing that you all were having. And specifically on
15 page 49, lines 18 through 23, he says, Mr. Rouse said the
16 slippers were his and he ran out of them while he was
17 running.

18 A. Um-hum (affirmative).

19 Q. Thereafter you actually state on the record that you
20 originally thought whatever the admission was going to be
21 ---

22 A. Um-hum (affirmative).

23 Q. --- was more damning.

24 A. Um-hum (affirmative).

25 Q. And you essentially forego and say you have no

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1 objection ---

2 A. Right.

3 Q. --- to that coming in? My very long to get to question
4 is this. In your letter you say that but for the K-9 and
5 the slippers.

6 A. Um-hum (affirmative).

7 Q. Did you evaluate the fact that Mr. Warder had gotten
8 Officer Giovanni to admit that Mr. Rouse had not confessed
9 to those slippers?

10 A. Yeah. I mean, the slippers, you know, the admission of
11 the slippers is going to get it to -- help get it to the
12 jury with the dog evidence, right? I don't think admission
13 of the slippers by themselves were going to be sufficient to
14 get it -- because all you say there is, I mean, you could
15 have had a towel near the drugs, and whoever dropped the
16 towel belonged to the drugs? I think that's a stretch on --
17 on being substantial circumstantial evidence that would get
18 it to the jury.

19 Q. So is it fair to say at this point when you said, wait,
20 I thought that was going to be more damning, ---

21 A. Um-hum (affirmative).

22 Q. --- you no longer have an objection, ---

23 A. Um-hum (affirmative).

24 Q. --- you weren't aware of the K-9 evidence ---

25 A. Correct.

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1 Q. --- that was going to be coupled with that?

2 A. That's correct.

3 Q. Okay. And once you knew that that K-9 evidence was
4 going to be coupled with the slippers, would you have
5 abandoned this Jackson versus Denno on the slipper
6 confession?

7 A. To be frank with you I probably would have because I
8 just thought the K-9 evidence was just that -- that damning.

9 Q. Okay.

10 MS. BLANCHETTE: Your Honor, if I could beg the Court's
11 indulgence ---

12 THE COURT: Yes.

13 MS. BLANCHETTE: --- one moment, please.

14 (Pause)

15 A. If I may add, in re-reading my paragraph about the
16 slippers.

17 Q. Yes.

18 A. It was a combination of the testimony that the tracking
19 dog went to the drugs and the admission the slippers were
20 his, those two factors together clearly, I think, gets it to
21 the jury and makes it a very difficult case to win.
22 Eliminate the dog, the slippers are just not that important.

23 Q. And based upon what you know today, that would have
24 affected your defense strategy?

25 A. Yes.

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1 Q. I just want to briefly ask you about an issue my client
2 has actually -- he raised prior before I came on board. And
3 I ---

4 A. Yeah.

5 Q. --- just wanted to address this with you. In his
6 indictment it alleges more than fourteen grams of drugs.

7 A. Right.

8 Q. The transcript -- will you turn to page 58. And I can
9 provide that to you.

10 A. All right.

11 Q. And this is line 11. The clerk is stating here what
12 he's pleading to, 58, line 11. There it appears the clerk
13 says less than four grams. But then if you turn over to
14 page 59 the court says more than four grams.

15 A. Right.

16 Q. What was your understanding of what he was entering his
17 plea to?

18 A. It was more than four grams, but less than fourteen.

19 Q. Okay.

20 A. I think I addressed that in my letter to him also on
21 August the 7th.

22 Q. And what -- what did you address in that letter
23 regarding this -- what he was pleading to in this
24 sentencing?

25 A. Well, the statute -- the statute under which he pled

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1 was four grams, but less than fourteen. And at a minimum of
2 seven years, no parole.

3 Q. If on page 59 the court says the sentencing is three to
4 twenty-five years would that be an error?

5 A. I think it would be. I'd have to get the statute back
6 out and look at it again, but I think it would be because
7 when I wrote in this letter I had the statute in front of me
8 because I sent him a copy. And it was seven to twenty-five.
9 I don't know where the three came from.

10 Q. Okay. Is there any reason you didn't interject when
11 the clerk, it appears from the transcript, said less than
12 four grams and when the judge gave that sentencing range at
13 the plea?

14 A. And it may be simply because if it's, you know, not
15 paying close attention for her to say four grams or I
16 thought it was four grams and that's, you know, just didn't
17 catch that she said less than.

18 Q. I'm going to show you a letter that you wrote on August
19 8th, 2014 that the State has stipulated to enter as
20 Applicant's number 13.

21 A. Right. Okay.

22 Q. I'm just going to give the court reporter a moment to
23 ...

24 (Whereupon Plaintiff's exhibit 13 was marked and
25 admitted into evidence)

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1 Q. And in looking at this what does it appear that you're
2 discussing and who are you discussing it with?

3 A. Well, Joyce Krolack -- I'd forgotten about that. And I
4 can't remember -- she said something about parole
5 eligibility. And I went back and checked the statute, and I
6 wrote him and sent it to him and said it wasn't parole
7 eligible because that's what I had told Titus in my letter
8 of August the 7th. And I don't know how Joyce and I were
9 having that conversation some two months after the plea, but
10 obviously we were.

11 Q. And as far as you remember, and I know this has been a
12 while, was there any confusion over what he was pleading to
13 and whether or not it would be parole eligible and those
14 type of consequences?

15 A. There wasn't in my mind.

16 Q. Do you recall what you advised Mr. Rouse that day
17 regarding the plea?

18 A. That -- I'm sure I advised him it was not parole
19 eligible. It would be eighty-five percent of the sentence.
20 Because he had -- he had called -- I'm thinking my August
21 7th letter was prompted by a call he made in which we
22 discussed it at some length. And I thought the best thing
23 to do was to send him the actual statutes showing which ones
24 were parole eligible, which ones weren't and how it all came
25 about.

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1 **MS. BLANCHETTE:** Your Honor, if I could beg the Court's
2 indulgence just to consult with my client briefly.

3 **THE COURT:** Yes.

4 (Pause)

5 Q. Mr. Wise, I appreciate your time in preparing for ---

6 A. Um-hum (affirmative).

7 Q. --- today and your time on the stand today. Is there
8 anything else further regarding your representation that I
9 failed to ask you about that you would like to testify to
10 today?

11 A. No. I mean, I -- Titus and I had many nice
12 conversations. I think one of the things I always liked
13 about him is he had his own landscaping business, and I
14 always will remember the name Bushwhacker.

15 Q. Somehow I knew you were going to work that in today,
16 Mr. Wise.

17 **MS. BLANCHETTE:** Your Honor, I have no further
18 questions.

19 **THE COURT:** All right. Cross examination.

20 **MR. MITCHELL:** Thank you, Judge.

21 **Cross Examination by Mr. Mitchell:**

22 Q. I'll try to be brief, Mr. Wise. I know you've been on
23 the stand quite some time.

24 A. I am in Greenville for the day. Makes no difference.

25 Q. I just have some questions about the course of your

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- 1 representation ---
- 2 A. Sure.
- 3 Q. --- of Mr. Rouse.
- 4 A. Um-hum (affirmative).
- 5 Q. I know you said that you had only been involved or
- 6 gotten involved briefly before the actual trial?
- 7 A. I got involved in June. The plea was -- I've forgotten
- 8 when -- August?
- 9 Q. August. If I ---
- 10 A. Yeah.
- 11 Q. If I were to say August would that sound correct?
- 12 A. Yeah.
- 13 Q. Okay.
- 14 A. So ---
- 15 Q. And when ---
- 16 A. --- two months, three months.
- 17 Q. Had you been provided a copy of all of the discovery in
- 18 the case?
- 19 A. I was provided a copy of some of the discovery that I
- 20 got and read before we went down and -- and I got to talk to
- 21 Titus a couple of times over the phone. And what I had I
- 22 read before I went down there ---
- 23 Q. Um-hum (affirmative).
- 24 A. --- to Edgefield to talk to him, but I had not --
- 25 either through inadvertence or I didn't get it, I don't know

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1 which right now because I had given all the discovery back,
2 I did not have any of the discovery involving the drug
3 tracking -- the dog tracking.

4 Q. Okay. Fair enough. But did discovery, I guess this
5 question, to your knowledge -- knowing now, was it available
6 beforehand, before ---

7 A. Yeah.

8 Q. Okay. So ---

9 A. Oh, yeah. I had since seen it. And we were up here
10 for the -- the day we entered the plea, I -- it was -- I
11 read it.

12 Q. Okay.

13 A. So, yeah, it was available.

14 Q. Okay. I guess I want to talk a little bit about the
15 facts surrounding the crime itself, and the drug dog, and
16 the slippers. In your mind what other evidence was there to
17 be able to find him guilty if it went to trial?

18 A. The fact he allegedly got out of the car and ran,
19 that's not much.

20 Q. Um-hum (affirmative).

21 A. The evidence against him that was really substantive
22 was right literally down to the dog tracking.

23 Q. Down to -- so the case turned on the dog track?

24 A. My frank opinion, yes. 'Cause there's a case that came
25 down that I had in my file, State versus Heath, in which

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1 drugs were found in a washing -- abandoned old washing
2 machine in the back of the house that he stayed in with some
3 other people. And they said that wasn't sufficient to
4 convict him. I just didn't see how heroin on the ground
5 near some shoes that may have belonged to him by itself was
6 sufficient to get this case to the jury.

7 Q. Okay. So you had the Jackson v. Denno hearing with all
8 the pretrial ---

9 A. Right.

10 Q. --- pretrial motions.

11 A. Um-hum (affirmative).

12 Q. There was this -- this brief before you were actually
13 about to start trial ---

14 A. Um-hum (affirmative).

15 Q. --- before the guilty plea. And you said that you
16 found out information that ---

17 A. Right.

18 Q. --- essentially changed your mind?

19 A. Um-hum (affirmative).

20 Q. Could you talk a little bit more about that for me
21 again.

22 A. Well, again, we were -- my recall is if something was
23 said about dog tracking in a conference with the judge, I
24 don't recall it. But I remember about that time we were in
25 the back, and I'm thinking we were in one of the conference

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1 rooms, and Joyce Krolack started talking about the dog
2 tracking to the drugs. And I think I asked Dick what's that
3 about. And he went and pulled out the little report about
4 that. And I told Titus I thought that took us away from
5 even a remote chance at a directed verdict.

6 Q. Okay.

7 A. Because it would. I mean, if -- if a jury believed
8 that they tracked from that car directly to those drugs with
9 the dog on the ground and moving to -- directly to the
10 drugs, it means that whoever was in that car went right
11 where those drugs were. And that's a pretty, you know,
12 that's certainly enough evidence to get to the jury.

13 Q. I think this question's been asked previously already.
14 Does your mind change now knowing what you know now as
15 opposed to then? Or would you advise him differently?

16 A. I would probably advise him differently.

17 Q. How so?

18 A. Because the dog tracking is not as strong as I was led
19 to believe.

20 Q. Okay. And you don't believe that the other -- the
21 admission of the slippers belonging ---

22 A. No, the slippers -- hey, I can deal with the slippers.
23 I'm not worried about that. I mean, that didn't -- that
24 didn't concern -- slippers by themselves didn't concern me.
25 Slippers coupled with dog tracking does concern me.

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1 Q. What about the tip about someone driving a white
2 Mercedes selling drugs at the property?

3 A. That wasn't going to come in.

4 Q. That -- okay.

5 A. No way -- no way that was going to come into evidence.
6 I don't care -- if that came into evidence, the appeal would
7 be successful guaranteed.

8 MR. MITCHELL: Could I get a moment of the Court's
9 indulgence, please?

10 THE COURT: Yes.

11 (Pause)

12 MR. MITCHELL: That's all the questions I have, ---

13 A. Okay.

14 MR. MITCHELL: --- Your Honor. Thank you.

15 THE COURT: Anything on redirect?

16 MS. BLANCHETTE: Very briefly, Your Honor.

17 THE COURT: All right.

18 **Redirect Examination by Ms. Blanchette:**

19 Q. The State had just asked you about the strength of the
20 evidence. But referring to just the K-9 evidence that you
21 told us you became aware of ---

22 A. Um-hum (affirmative).

23 Q. --- that day in the midst of the trial, were you able
24 to at that time evaluate any factors such as contamination
25 of the scene? The ---

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1 A. No. I ---

2 Q. --- day of trial?

3 A. I mean, I'll give you my frank opinion from what I've
4 heard. No, I haven't had a chance to evaluate the
5 contamination of the scene, but I -- I think contamination
6 of the scene can be a hard thing to -- to argue in this
7 case. The battleground is that there's really no proof that
8 the dog tracked to the drugs.

9 Q. And did you have a chance -- you saw earlier I pulled
10 out several hundred pages that had been pulled over --
11 turned over on discovery ---

12 A. Um-hum (affirmative).

13 Q. --- in this case regarding the two K-9s that were
14 utilized. Did you have a chance to review those records ---

15 A. Oh, no.

16 Q. --- of their training and experience?

17 A. No.

18 Q. Okay. So you weren't prepared to argue that day
19 regarding the dogs and the handlers' training and
20 experience?

21 A. No.

22 Q. Okay.

23 MS. BLANCHETTE: Your Honor, I have no further
24 questions.

25 THE COURT: All right. Thank you. You may step down.

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1 A. Okay.

2 MS. BLANCHETTE: Your Honor, my next witness would be
3 Richard Warder.

4 THE COURT: Mr. Warder, if you'll come around.

5 MADAME CLERK: Mr. Warder, please place your left hand
6 on the Bible and raise your right hand.

7 Richard Warder, being
8 duly sworn testified as follows;

9 MADAME CLERK: Thank you. Please state your full name
10 for the record.

11 MR. WARDER: Richard Harold Warder.

12 MADAME CLERK: Thank you. You may be seated.

13 MR. WARDER: Thank you.

14 Direct Examination by Ms. Blanchette:

15 Q. Mr. Warder, how -- what is your current profession?

16 A. I'm a lawyer.

17 Q. And how long have you been a lawyer?

18 A. Forty-three years, I think.

19 Q. All right. And during those forty-three years what has
20 been the primary area of your practice?

21 A. Criminal defense.

22 Q. And can you even give me a guesstimate on how many
23 cases you think you've handled?

24 A. I'm not sure I could even guess.

25 Q. Do you recall ---

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1 A. Several.

2 Q. Sorry. Do you recall how you became involved in Mr.
3 Rouse's case?

4 A. I've known Mr. Rouse -- Mr. Rouse in the week that he
5 came -- I don't really remember the details or the first,
6 you know, the first time he came on this case, but he came
7 to me.

8 Q. And do you recall from your interactions with him --
9 was this a case that you were preparing for a guilty plea or
10 was it more of a trial track case?

11 A. Well, it's a case when we started off more preparing
12 him -- and I don't have two tracks. I don't have this stack
13 of pleas and this stack -- I try and look at what the
14 evidence is and what we can prove and then decide which
15 track it should try and be on. I think -- I don't know.

16 You know, for me it wasn't always on a trial track. I
17 felt at one point it was going to be or should be a plea.
18 And I told Titus that. And that's kind of when Rauch got
19 involved. He wanted a second opinion.

20 Q. Okay.

21 A. And I recommended Rauch Wise as the person to give him
22 a second opinion.

23 Q. So that was going to be my next question. Was it your
24 understanding that your client wanted a guilty plea or did
25 he want to go to trial?

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1 A. He wanted to go to trial.

2 Q. Okay.

3 A. But he wanted advice too. And, you know, and because
4 it's what a client wants, I give him advice. I mean, I
5 don't say what they want to hear, I say what I think is
6 accurate.

7 Q. Do you remember how many times you met with him leading
8 up to the trial date of August 6th?

9 A. Many. I don't know, but many.

10 Q. Okay. And during that time do you remember if he was
11 detained or if he was out on the street?

12 A. He was on the street.

13 Q. Okay. And at some point, though, did he get detained
14 on other charges?

15 A. I think -- think on down the road, yeah, some charges
16 he did get incarcerated then before the ---

17 Q. And Mr. Wise has already testified today. Do you
18 recall meeting -- a joint meeting with Mr. Wise and Mr.
19 Rouse at SCDC?

20 A. Sure.

21 Q. Okay. Do you recall what you all went over that day?

22 A. I think everything we had.

23 Q. Okay. And you handled the preliminary hearing in this
24 case, is that correct?

25 A. I -- from what they said today, I guess the answer is

1 yes.

2 Q. Okay. I'm going to hand you a copy of that. That's
3 already been admitted into the record just for your
4 reference.

5 A. Okay.

6 Q. And in that preliminary hearing the issue comes up on
7 page 10, 12, 22 and 23. And I can just summarize. But the
8 issue comes up that there was an in-car video that
9 supposedly had a confession by your client and that has been
10 destroyed. Can you take us through what you recall of that?

11 A. I don't recall much. Of course, I don't recall
12 anything about them being destroyed because I didn't know.
13 I mean, it come up that one was made. And then when it come
14 up for time to get it produced for us, they couldn't do it.

15 Q. Okay. And I misspoke. I apologize. At the
16 preliminary hearing there's references to this in-car video.

17 A. Yes.

18 Q. And then later at the pretrial in the Jackson versus
19 Denno hearing on pages 51 through 52 it comes up that it was
20 destroyed because they're purged after ninety days and you
21 get the officer to essentially admit that he didn't properly
22 preserve it. And that's just my summation. Do you recall
23 that?

24 A. Yes.

25 Q. Okay. Now at the time that the -- you're at the

1 preliminary hearing, that was within this ninety day period
2 where they're saying the video would have still existed. Is
3 there any reason why you didn't inquire at that point as to
4 why you did not have the video in your possession?

5 A. I probably didn't have a lot of the discovery in my
6 possession at that time.

7 Q. Okay.

8 A. The solicitor's office doesn't give all discovery out
9 by the first thirty days, I think, which the rule requires.
10 I think more typically they give it out as they start to
11 prepare the case.

12 Q. Now I've already admitted the discovery that was turned
13 over to you and the dates because I [sic] was provided to me
14 in the discovery process as well and at no time it lists the
15 video, but you'd heard reference of it at the preliminary,
16 is that correct? You knew one existed?

17 A. I don't know that. I could have been fishing. I'm not
18 sure.

19 Q. Okay. Do you think that video would have been a key
20 part of your defense or your defense strategy reviewing that
21 video?

22 A. I'd have to review it to know whether it was a key part
23 of my strategy.

24 Q. Okay. I appreciate that. Mr. Wise testified that you
25 all went to the scene. Do you have any independent memory

1 of that?

2 A. Sure. I remember two incidences. And there might have
3 been -- I remember once we were at a seminar and came back,
4 I think, maybe and -- and then another time we went out and
5 walked through it when we had all the photographs and were
6 trying to look at the photographs, and where the ground was
7 and where the drugs would have been laying and the shoes
8 would have been to get a good mental picture.

9 Q. Do you recall looking into the issue of the basis for
10 Mr. Rouse being detained and whether or not he was detained
11 on private property?

12 A. Private property, no, I never had any issue there. He
13 was detained at some point. And -- but they said first,
14 yeah, taken into detention, but not arrested. And that was
15 after, I think, he had admitted to them the shoes.

16 They had initially stopped him for having a Lexus
17 license -- Lexus license plate on his Mercedes Benz. They
18 told him he had two identifications at that time. He had
19 rented the room in an alias name. And it was just kind of
20 that point they put him in detention.

21 Q. Okay. Would you agree in reviewing the officers'
22 reports that I've referenced here today that there was some
23 conflicting information regarding the time period from when
24 -- that all this transpired?

25 A. I guess I hadn't paid particular attention or can't

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1 remember particularly. I don't know how much time the
2 discrepancies were, but it wouldn't surprise me because
3 there quite often was ---

4 Q. Okay.

5 A. --- minor discrepancies.

6 Q. And that leads me to my next question. What was the
7 different strategy going into the day of trial in August of
8 2014?

9 A. Well, we certainly hoped that we could get a directed
10 verdict because of the lack of direct evidence and it was a
11 circumstantial case. And so the defense strategy would have
12 been to try and limit the attack on the parts -- points that
13 hurt and get as most favorable position we could be in to
14 make the directed verdict motion.

15 Q. Now you all were making pretrial motions during what I
16 would call the motion regarding the tip or the tipster. A
17 bench conference was conducted. There's some further
18 discussion on the record and then you proceed into a plea.
19 Do you have any specific recall of how it transpired from a
20 pretrial motion to a plea in this case?

21 A. I think that Judge Miller indicated that we should talk
22 to the solicitor.

23 Q. And do you recall those discussions?

24 A. With ---

25 Q. With the solicitor?

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1 A. I think that we got a twelve year, I mean, a twelve
2 year plea on it. That had been a pretrial, I think, offer.
3 And I think that we got that back.

4 Q. Do you recall your discussions with Mr. Rouse before he
5 entered the guilty plea?

6 A. Not exactly, but, yeah, the substance of them, I think.

7 Q. Okay. And what was the substance of the advice that
8 you gave him or the discussions you had with him?

9 A. At the -- when I advised him that time I told him that
10 I thought it was time to fold them, to fold his cards and
11 take what was there.

12 Q. Okay. And what was the basis for that advice, telling
13 him it was time to fold the cards?

14 A. Well, we hadn't -- I thought that it was a lot of
15 evidence against us in the sense that I thought the shoes
16 were bad, I think the admission that -- from him that they
17 were his and they were right with the drugs. There was all
18 the other stuff that -- the jump out of the car, he had
19 admitted to them he was driving the car, I think, before he
20 was taken into -- into custody. So I have him driving a car
21 that is parked diagonally with the engine left running and
22 to leave, and his shoes taken off at the sidewalk or come
23 off at the sidewalk, his statement to the officer that he
24 ran out of them.

25 The thing that seemed like -- I hadn't placed much

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1 weight on the dog. I don't know whether I associated -- but
2 I had assumed that the dog track had not produced anything.
3 This was a case that neither dog had played a particular
4 role. And so I wasn't concerned of the dog.

5 I was more concerned with the facts of his being there,
6 the running, the drugs in the location, his renting the room
7 in another name and him changing the license plate on his
8 car. I felt all of that together would indicate somebody
9 that might be involved in drugs and would have a chance that
10 the jury would convict him.

11 Q. So that was your advice to him as to considering taking
12 a guilty plea?

13 A. Sure. And in that regard Joyce had told me that her
14 officer that day was going to say that he trailed -- the dog
15 trailed him right to my client.

16 Q. And based upon your review of Officer Redman's report
17 in conjunction with his testimony today and the expert
18 testimony that's been offered today are you in agreement
19 with that statement?

20 A. No. I assumed what I -- you always assume that the dog
21 was just out there with the officer when the drugs were
22 spotted. And I didn't realize they didn't.

23 Q. Were you all prepared -- had you obtained the dog
24 records and the training records and were you prepared ---

25 A. No.

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1 Q. --- to cross examine the officer?

2 A. No. The dog was a non-issue. The dog didn't -- didn't
3 lead to either the drugs or my client. The two things that
4 a dog usually -- you worry about a dog is if it first
5 identifies your client or, second, if it is what gets the
6 drugs, finds the drugs.

7 Q. Okay. And ---

8 A. The dog was no issue. And Mr. Gould says that, you
9 know, whether the dog was there that day would make no
10 difference.

11 Q. Okay.

12 A. And ---

13 Q. So you would agree with that opinion?

14 A. I agree with that. It's finding that the dog just
15 wouldn't have made a difference.

16 Q. Let me ask you about one thing. When you were going
17 through the list of things that you advised him were
18 concerns as far as continuing to proceed with trial, you
19 mentioned the slippers and admission. At the preliminary
20 hearing you actually got Officer Giovanni to admit that he
21 didn't -- that Mr. Rouse didn't admit those were his
22 slippers.

23 You also had the -- the issue of the video being
24 destroyed where this admission is supposedly made. If this
25 admission was such a big deal and you have those two things

1 going for you, why did you all abandon the Jackson versus
2 Denno hearing on that admission?

3 A. I don't know. You know, it's hard to go back and think
4 why you did something two years ago. And I honestly don't
5 know what, you know, what my thinking at that time was.

6 Q. So you don't have an independent memory of why you all
7 decided to forego the Jackson versus Denno hearing?

8 A. I have the standard seventy-three year old memory.

9 Q. Sure.

10 A. CRS sets in.

11 Q. I don't mean to be redundant, but I asked Mr. Wise
12 about the reading of my client's -- what he was pleading to
13 on the record. And there was some discrepancy where the
14 clerk said less than four grams, the judge said more than
15 four grams. What was it, your understanding, that he was
16 pleading to that day?

17 A. You know, my real understanding was that we had twenty-
18 five on the table and he was getting about half of that.

19 Q. Okay. That's fair.

20 **MS. BLANCHETTE:** Your Honor, if I could beg the Court's
21 indulgence one moment.

22 **THE COURT:** Yes.

23 (Pause)

24 Q. Mr. Warder, I believe you referenced in the factors
25 that you brought up to Mr. Rouse in advising him about a

1 guilty plea was him fleeing. Do you recall what evidence
2 there was of him fleeing the scene, Mr. Rouse, specifically
3 fleeing the scene?

4 A. Well, the testimony was, as I recall it, the police
5 noticed the white Mercedes as it backed out and they passed
6 each other going the other -- opposite direction. And the
7 police looked at him and got the license number.

8 And as they come around again the car was then -- and
9 one of the officers says he looked and stared at him like he
10 recognized them as police or suspected they were police.

11 And as they came back around the car was parked and doors
12 left open and he was gone. And they believed he was later
13 standing at the pool kind of with a towel over him acting
14 like nonchalant.

15 And I think that's fleeing from the scene, you know, or
16 getting your -- running and getting rid of your shoes to
17 whatever.

18 Q. But just to be clear, there wasn't eyewitness testimony
19 that physically saw Mr. Rouse running from the vehicle?

20 A. No. He wasn't -- they don't think they saw him from
21 the vehicle, but it was evident from all the circumstances,
22 I think, that it had been hastily parked and left.

23 MS. BLANCHETTE: Your Honor, I have no further
24 questions. If I could just ask the Court something briefly.
25 I had the remaining police officers under subpoena today for

1 1:00 just in case either party would need them. I didn't
2 want it to be an issue. I didn't know if I could inquire at
3 this time if they'd be needed and not have all of them show
4 up at 1:00. I was just noticing the time ---

5 **THE COURT:** I think we should have been informed of how
6 long this is going to last. I don't think the Court was
7 notified of the ---

8 **MS. BLANCHETTE:** Your Honor, I apologize. I had
9 informed the State it could be a full day.

10 **THE COURT:** Oh. Well, I guess I never was informed
11 because I had plans at two that ---

12 **MS. BLANCHETTE:** I'm so sorry, Your Honor.

13 **THE COURT:** --- I'd have to make changes on.

14 **MR. MITCHELL:** I apologize about that, Judge. I
15 thought we were going to wrap up around twelve or one. I
16 didn't think it was going to ---

17 **THE COURT:** I mean, that's fine, but, I mean, that's
18 something the Court needs to know, you know, exactly ---

19 **MS. BLANCHETTE:** Absolutely, Your Honor. Especially
20 with the Skype, I didn't know if that would take up some
21 time ---

22 **THE COURT:** No, I mean, so you're talking about it
23 being -- I need to make arrangements. Is this going to be a
24 full day? We have how many more witnesses?

25 **MS. BLANCHETTE:** I just have Mr. Rouse left. I just

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1 didn't want those officers all showing up here, you know, in
2 the next thirty minutes ---

3 **THE COURT:** Well, if you've got them subpoenaed and
4 you're not using them, that's going to be your problem if
5 they show up.

6 (Laughter)

7 **MS. BLANCHETTE:** I understand, Your Honor. I just had
8 noticed the time and hadn't had a chance to inquire to see
9 if the State needed them. I do not need them.

10 **THE COURT:** Okay.

11 **MR. MITCHELL:** I do not.

12 **THE COURT:** Yeah, I can't imagine why he would. But,
13 all right. Well, you need to release them? But you --
14 cross examination.

15 **MS. BLANCHETTE:** Cross examination.

16 **THE COURT:** Hold on, Mr. Warder. You're not quite
17 through.

18 **MR. MITCHELL:** Just briefly, I promise.

19 **Cross Examination by Mr. Mitchell:**

20 Q. Mr. Warder, how are you this afternoon?

21 A. I'm fine.

22 Q. Good. I just want to -- I just have a few questions
23 for you. You were the attorney at the original conception
24 of this case, correct?

25 A. Yes.

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1 Q. Okay. And you did all the standard procedures, you
2 received all the discovery from the solicitor's office,
3 correct?

4 A. I believe, right.

5 Q. Okay. And you reviewed all of that information,
6 correct?

7 A. Yes.

8 Q. Okay. I just want to talk about a few things. During
9 direct opposing counsel asked you about factors that
10 contributed to you offering your opinion or rendering your
11 opinion that the defendant should plead guilty. Do you
12 still stand by that today even after hearing the testimony
13 from the expert witness?

14 A. I think I would because the dogs seemed like such a
15 non-issue to me in the sense that I think the case could --
16 without the dog, while it's purely circumstantial, I think
17 it had -- it had some merit. The dog -- the dog testimony I
18 don't think would have -- would have helped either way
19 because the dog, in my mind, played such a little part.

20 Q. And the other factors were, if you could again for me,
21 the factors that you thought that probably would convict him
22 or potentially could ---

23 A. I think the factors again, I think, was his action that
24 -- the actions that I would category is his flight, in other
25 words, when he sees the officers, he quickly avoids them

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1 all, and I think that the false ID, the renting the room in
2 another name, the -- changed admissions to the officer,
3 didn't -- the car -- doesn't first admit that he's the
4 driver, I think, later on when they questioned, the big
5 watch on his hand noticed before and afterwards.

6 And I just think it would have been a case that could
7 have gone either way. And I didn't think that it would have
8 been a case where we might well not have put up a client had
9 we went to trial.

10 Q. Did you pressure him into taking the plea?

11 A. No. I gave him my advice.

12 Q. Okay.

13 A. Gave him my advice to the best of my ability at the
14 time.

15 Q. Do you believe that it was his decision to make -- take
16 the plea freely and voluntarily?

17 A. Certainly his decision.

18 Q. Okay. And you discussed with him all of his rights
19 that he was giving up by taking the plea, correct?

20 A. He knew exactly what he was doing.

21 Q. Okay. And ultimately it was his decision to plead
22 guilty?

23 A. Sure.

24 **MR. MITCHELL:** That's all the questions I have.

25 **THE COURT:** All right. Any redirect?

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1 **MS. BLANCHETTE:** No, nothing, Your Honor.

2 **THE COURT:** All right. All right. You may step down.

3 A. Thank you.

4 **THE COURT:** All right. We'll take a three minute
5 break.

6 **MS. BLANCHETTE:** Your Honor, I've actually taken care
7 of the issue with the officers.

8 **THE COURT:** Okay.

9 **MS. BLANCHETTE:** So if you were taking it for me, I do
10 not need that.

11 **THE COURT:** No, I ---

12 **MR. MITCHELL:** I could use a restroom break.

13 **THE COURT:** Right.

14 **MS. BLANCHETTE:** Okay. I just didn't want to be
15 wasting ---

16 **THE COURT:** No, no.

17 **MS. BLANCHETTE:** --- time on my behalf.

18 **THE COURT:** No. That's fine.

19 (Whereupon court was in recess at 12:19 pm)

20 (Whereupon court reconvened at 12:26 pm)

21 **THE COURT:** Whenever you're ready.

22 **MS. BLANCHETTE:** Thank you, Your Honor. I would call
23 Titus Rouse to the stand.

24 **THE COURT:** Mr. Rouse, if you'll come forward to be
25 sworn.

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1 **MADAME CLERK:** Mr. Rouse, step around to the witness
2 booth. Place your left hand on the Bible and raise your
3 right hand.

4 **Titus Rouse,** being duly
5 sworn testified as follows;

6 **MADAME CLERK:** Thank you. You may be seated. Please
7 state your full name for the record.

8 **MR. ROUSE:** Titus Lee Rouse.

9 **Direct Examination by Ms. Blanchette:**

10 Q. And, Mr. Rouse, you have filed the PCR application that
11 we're here on today, 2015-CP-23-0995?

12 A. Yes, ma'am.

13 Q. Okay. And before we begin, have you brought a copy of
14 the transcript or anything that you need to reference while
15 you're on the stand?

16 A. I think I can pretty much remember my case.

17 Q. Okay. I just wanted to make sure before we began. Now
18 we're here today about an incident that took place on May
19 27th of 2012 at the Hawthorn Suites at that time that was
20 located at 48 McPrice Street in Greenville, is that correct?

21 A. Yes, ma'am.

22 Q. Okay. And you were subsequently charged for
23 trafficking in heroin greater than fourteen grams?

24 A. That's correct.

25 Q. Okay. Now I want to talk with you a little bit about

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1 the time before you proceeded to a trial. After you
2 received these charges did you retain counsel or were you
3 appointed counsel?

4 A. I retained counsel.

5 Q. And who did you retain?

6 A. Attorney Richard Warder. He was actually representing
7 me on a driving under suspension charge.

8 Q. Okay. And do you know how many times you met with him
9 and over what course of time?

10 A. I met with him, strictly payments. In a course of
11 making payments I probably briefly talked to him two, three
12 minutes. And he'd just tell me that he's trying to keep me
13 out of jail and not go to court.

14 Q. Okay. And where did those meetings primarily take
15 place?

16 A. In his office.

17 Q. Okay. And did you ever have any roll call appearances
18 or times that you met him up here at the Greenville County
19 Courthouse?

20 A. Actually, I did. That didn't go quite well because I
21 -- I was asking him questions about my case or I would ask
22 him -- acquire him things that I wanted him to do, and he
23 would get upset and yell at me.

24 Actually, he yelled at me and told me that, well, we're
25 just going to go in and throw your name on the docket and

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1 you'll go to court and go to jail from here. And I'm like,
2 I'm paying you. Why you talking to me like that? I didn't
3 feel like I wanted him to represent me anymore because of
4 the conflict we kept having with each other.

5 Q. Okay. And did you -- were you expressing to him that
6 you wanted to go forward with a guilty plea or a trial in
7 this ---

8 A. Oh, ---

9 Q. --- this case?

10 A. --- trial definitely.

11 Q. Okay. And was he advising you about pursuing a guilty
12 plea?

13 A. Not at all. He was aware that I wanted to pursue a
14 trial. And I asked him several times of certain motions to
15 suppress. And he kept telling me we're not suppressing
16 because there's no evidence to suppress. So I took that as,
17 okay, everything is okay, we can proceed with trial.

18 Q. Did you review the discovery with him?

19 A. No, ma'am, I didn't until him and Mr. Wise came to see
20 me like two months prior to the trial. He went over a few
21 things. They stayed probably about a hour, but it wasn't
22 enough for me to know exactly what's going on, or he never
23 discussed a trial strategy, or he was pretty much non-
24 responsive. Mr. Wise did most of the talking.

25 Q. Okay. And let's talk a little bit about how Mr. Wise

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1 got involved in this case. How did you get him retained in
2 this case?

3 A. Well, I actually didn't want Mr. Warder to represent me
4 anymore from arguing in the hallway outside these -- the
5 courtroom, telling me, you know, I'm just going to send you
6 over to court, you know, like he didn't want to represent
7 me. So I didn't feel comfortable with him.

8 And I retained Mr. Wise and he reviewed the case. And
9 he was like, I don't even know why you're still even going
10 to court. This is a easy case, you know. It should have
11 been at the preliminary hearing ended.

12 So he was like, I don't want you to fire Mr. Warder
13 because he's been on your case for so long, and they
14 probably won't allow me to, you know, you to retain me. So
15 just hire me as a -- to assist him. And so I took that
16 advice to, you know, just do it that way.

17 Q. When you hired Mr. Wise was it with the intention that
18 you needed two attorneys to work out a guilty plea for you?

19 A. Oh, no, ma'am. I don't -- I wouldn't waste my money.
20 I sold my business to hire Mr. Wise. I didn't -- there was
21 no intentions to go to a guilty plea at all.

22 Q. Okay. So you were fully intending to go to trial when
23 you appeared with your attorneys on August 6th of 2014?

24 A. Yes, ma'am.

25 Q. Okay. Is there anything else regarding the retainer of

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1 your two attorneys, your interaction with them in your
2 review of discovery in advance of trial that you would like
3 to testify about?

4 A. I really wasn't aware of anything about any K-9s either
5 as far as discovery because I guess he didn't get a copy of
6 it, the supplemental reports from the police until two years
7 later. And the copy that I had of the discovery was absent
8 of anything like that. And once we met at Trenton
9 Correctional Facility he never mentioned anything about a
10 dog like Mr. Wise had told us.

11 Q. And so you didn't specifically go over Officer Redman's
12 report or any information regarding the K-9 deployment in
13 this case?

14 A. We didn't go over any supplemental reports.

15 Q. Okay. Did you attend your preliminary hearing with Mr.
16 Warder?

17 A. Yes, ma'am.

18 Q. Okay. Did you have a copy of the transcript of it
19 leading up to the time of your trial?

20 A. I did. I asked for it.

21 Q. Okay. And did you have the opportunity to review that
22 with Mr. Warder or with Mr. Wise?

23 A. No, ma'am, I did not.

24 Q. Okay. In that preliminary hearing there's discussion
25 of an in-car video. And that preliminary hearing, the date

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1 on it is within ninety days of when you were arrested. Do
2 you agree with that?

3 A. Yes, ma'am.

4 Q. Okay. And would you also agree that we have copies of
5 when the discovery was turned over? And some of the
6 discovery was turned over within ninety days of when you
7 were arrested?

8 A. Yes, ma'am. I do agree.

9 Q. Okay. Did you ever review that in-car video with Mr.
10 Warder and Mr. Wise?

11 A. Well, he always told me that there was no video. He
12 told me that numerous times when I was on the street that
13 there was no video to obtain. So I pretty much, you know, I
14 don't know the law like that or whatever. So when he tell
15 me there's no video -- 'cause I told him numerous of times,
16 I never confessed to anything. And they're saying it was on
17 video. So I told him what video? How can there be a video
18 when I never confessed to anything?

19 Q. And on pages 51 through 52, transcript -- pretrial
20 hearing's taking place, and Officer Cannon on page 52 admits
21 that it very well could have been his fault for not making
22 sure that the video was properly preserved and put into
23 evidence. Were you aware of that leading up to your trial?

24 A. No, ma'am.

25 Q. Okay. If you would have been what would you have

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1 wanted to discuss with your attorneys?

2 A. Well, I guess a proper defense if he lost the tape. Or
3 from my knowledge there never was a tape. And my attorney
4 had the discovery and the discovery was absent of a
5 videotape from the beginning. He never sought to find one.

6 And, you know, if that was the main reason for you
7 telling me we shouldn't go to trial, then I would think that
8 he would at least try to get this tape or question him
9 better or show him the discovery was absent from it.

10 Q. Earlier today we called the magistrate regarding some
11 communication he had with you. Did you reach out to the
12 magistrate in your case?

13 A. Yes, ma'am, I did.

14 Q. Why did you do that?

15 A. Just from Mr. Wise telling me that he doesn't see why
16 that my case even proceeded to trial. I just wanted to know
17 why did I proceed to trial or why did you bind my case over
18 to General Sessions and went through the retention period
19 and he -- he gave me a answer.

20 Q. Okay. And that answer has already been marked into
21 evidence and he identified it today. One moment here. It's
22 been marked as Applicant's or Plaintiff's number 6?

23 A. Yes, ma'am.

24 Q. Okay. And upon reviewing that did this alleged
25 admission that you made about the slippers become an even

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1 more important factor for you?

2 A. Yes, it did.

3 Q. Please explain.

4 A. Well, to my understanding of what the Honorable Judge
5 Simms said is if it wasn't for the admission of the
6 slippers, which was allegedly on audio/video and the alleged
7 flight that this case would never have been bound over to
8 General Sessions Court. And my attorney knew that no
9 confession occurred on audio/video 'cause none was never
10 submitted.

11 Q. And we've already -- you've already answered that you
12 were at the preliminary, you've reviewed the transcript.
13 And would you agree that on multiple occasions throughout
14 that preliminary hearing Officer Giovanni references this
15 in-car video where an admission has been made?

16 A. Yes, ma'am.

17 Q. Okay. So that was evidence that was presented to the
18 magistrate that the video existed to corroborate your
19 admission?

20 A. Yes, ma'am.

21 Q. And as of today you've never seen that video?

22 A. Never. Not even my lawyers, solicitor, no one has ever
23 witnessed it.

24 Q. And did your attorneys raise any motion regarding the
25 destruction of that video evidence?

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1 A. I think -- I don't know what -- exactly what the
2 Jackson/Denno was for, but maybe it was statements that was
3 alleged to be on that audio/video. But they never did
4 object to anything that was said during the hearing.

5 Q. Okay. I want to ask you about an issue you looked
6 into. Before I began representing you you had hired a
7 private investigative firm, is that correct?

8 A. Yes, ma'am.

9 Q. Okay. And did you ask them to go out to the scene and
10 look at the scene?

11 A. I did.

12 Q. And what was your intention and reasoning for that as
13 far as an allegation for your PCR?

14 A. Well, I didn't -- I didn't know what was their reason
15 for pursuing me because from my knowledge I didn't know that
16 the tag was not proper on the vehicle. It was actually
17 given to me for a payment for doing work on my landscape.
18 So I haven't had the car more than forty-eight hours.

19 So when I had knowledge that the tag was improper and
20 Officer White testified that that was his reason for trying
21 to turn the car around and pursue my vehicle, I inquired
22 about, you know, did the police have jurisdiction to place
23 me in handcuffs and detain me for this improper tag on this
24 private property? So that was my intentions of getting him
25 to go out there.

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1 Q. Okay. And was that an issue that you discussed with
2 your attorneys prior to your trial?

3 A. No, ma'am.

4 Q. Okay. Is that an issue that you're alleging today you
5 would have wanted to have discussed with them and have them
6 raise in your pretrial motions?

7 A. Yes, ma'am, of course.

8 Q. And why is that?

9 A. Well, if the police did not have jurisdiction to even
10 pursue me or place me in handcuffs for a improper tag, then
11 everything followed behind that, you know, wasn't --
12 wouldn't be legal, I guess. I don't know, you know.

13 Q. But that was not an issue you were able to discuss with
14 your attorneys before your trial?

15 A. No, ma'am.

16 Q. Okay. I want to jump a little bit here because there's
17 a question I typically ask at the beginning or the end and I
18 don't want to forget to ask you this. We've been talking a
19 lot about the fact that you went to trial in this case.

20 What's the relief you're asking the Judge to give you today?

21 A. Well, for a chance to have my case properly heard and
22 seek a new trial.

23 Q. Okay. And do you understand that by asking him for a
24 new trial, and I'm going to specifically ask this because
25 you entered a guilty plea and have a twelve year sentence,

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1 you understand that would be set aside? Your current
2 sentence?

3 A. Yes, ma'am.

4 Q. And you could get up to the maximum amount of time for
5 your original indictment?

6 A. Yes, ma'am, I do.

7 Q. Okay. And just to be clear for the record, that is the
8 relief that you want him to give you and you do want to go
9 forward under that relief?

10 A. Yes, ma'am, because I was ill-advised by my attorneys.

11 Q. Okay. And we'll keep going through that, but I just
12 wanted to make sure that we touched on that before we moved
13 on.

14 Now we've been talking about pretrial motions and
15 strategies, but what was your understanding was the defense
16 strategy or your defense going into this trial?

17 A. Well, we never discussed a strategy. So I didn't know
18 what their -- all I knew that I was ready to go to trial.
19 But a strategy was never discussed with me as far as what
20 they was going to do or they never prepped me to testify,
21 get on the stand or nothing. So I wasn't aware of anything,
22 what I was going to have to do or what they was going to do.

23 Q. What was discussed with you as far as whether there was
24 a confidential informant or the nature of the tip in this
25 case?

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1 A. At one time I think he did say that there is no
2 confidential informant, but it was later down the line. But
3 he did know that, you know, one didn't exist.

4 Q. Okay. Did you have any discussions regarding the tip
5 because they start a pretrial motion regarding the tip in
6 this case? Did you have any discussions with your attorneys
7 about that?

8 A. No, ma'am.

9 Q. Okay. Is that something that you've looked into since
10 and are there any concerns or issues you would have wanted
11 to discuss with your attorneys?

12 A. Well, I would have -- would have wanted my attorneys to
13 follow through when they raised the issue. As Mr. Wise
14 stated before, he don't think that that would have been
15 admitted in the case at all.

16 From their discussion during trial and the pre-motion
17 where he was arguing about the tipster's information as
18 being inadmissible hearsay, I kind of understood at the time
19 that it was a good thing for us at the moment, but we never
20 actually discussed it ourselves. But it would have been
21 something that I wanted to challenge.

22 Q. What discussions did you all have regarding the basis
23 for your arrest and detainment?

24 A. They never did question or look into of why I was
25 detained. It was never a discussion about why I was

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1 detained. I didn't find that out until the actual trial
2 date, why I was detained.

3 **MS. BLANCHETTE:** Your Honor, the State has stipulated
4 to the admission of the search warrant as Applicant's number
5 14.

6 **THE COURT:** Okay.

7 (Whereupon Plaintiff's exhibit 14 was marked and
8 admitted into evidence)

9 Q. Mr. Rouse, I'm going to hand you a copy of the search
10 warrant. Is that a document that you have reviewed as part
11 of the discovery in your case?

12 A. Yes, ma'am.

13 Q. Okay. And in reviewing that did you identify any
14 concerns with the basis given there and the search warrant
15 that factored into this issue of the reason why you were
16 detained?

17 A. Yes, ma'am.

18 Q. Okay. Please explain.

19 A. Well, the -- Officer Giovanni, he used -- stated that
20 he used a confidential informant throughout the search
21 warrant. And there never was a confidential informant in
22 this case. He also stated that I ran on foot from the
23 vehicle, but further testified at the prelim or -- that he
24 never actually saw anyone running from the vehicle.

25 Also, I think from the notes here that it was some

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1 concerns about that I was in possession -- actual possession
2 of the narcotics that was found. And he used that inside
3 the search warrant, and that was never the case.

4 I was never chased. I never ran. I never had anything
5 on my person/vehicle or my hotel or even my home. They
6 actually went to my house, never found any paraphernalia or
7 anything. I just had concerns with, you know, just the
8 whole thing.

9 Q. You heard Mr. Warder's testimony today. And I think
10 this kind of ties into where I was going with this line of
11 questioning. And he gave like a list of factors as to the
12 things that he pointed out to you, the evidentiary factors
13 he pointed out to you and giving you advice about entering a
14 guilty plea.

15 A. Yes, ma'am.

16 Q. Were you -- when you heard those today and in review of
17 your discovery were you in agreement with all those
18 evidentiary factors he listed?

19 A. That was the first time he ever mentioned that at all
20 or that that was his concerns. The whole time that I was on
21 the street making payments, he kept saying you don't have
22 anything to worry about. You don't have anything to worry
23 about. They didn't find anything on you.

24 Was you wearing gloves when they found it? I was like,
25 no. He said, well, where are the fingerprints? We don't

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1 have anything to worry about. So by him having concerns
2 with a flight that no one actually saw or -- that was just
3 new to me because he never spoken about it.

4 Q. So the list of the kind of evidentiary factors that he
5 went through today, you all didn't review those prior to
6 trial to evaluate whether or not you should go forward with
7 a trial or guilty plea?

8 A. No. No, ma'am.

9 Q. Did that happen here in the courthouse when you took a
10 break from trial and then you transitioned into guilty plea?

11 A. Actually, the only thing that was said to me once they
12 came back into the courtroom from their meeting was we can't
13 win.

14 Q. And then what transpired from there?

15 A. I asked them, you know, why? Everything sounded like
16 it was going good, you know. I was like, why we can't win?
17 And he was like, you need to plead or you're going to get
18 twenty-five years.

19 Q. And at that time were you -- was it conveyed to you the
20 concern about the K-9 evidence?

21 A. Well, that didn't come til afterwards because I asked
22 Mr. Wise what went wrong? Why -- what happened? And that's
23 when he wrote me the letter telling me that it's because of
24 the dog. If it wasn't for that, you know, we would have
25 went on to trial. That's why we told you to plead guilty.

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1 Q. Okay. Just because you have one day in court, I want
2 to make sure we have a clear record. I asked you about the
3 transition from the tip motion to when you pled guilty. But
4 do you recall they were having a bench conference, then some
5 comments were made and your attorneys say we're going to
6 speed it up and then they essentially ask for you to get to
7 meet with your wife. What transpired? How did those events
8 take place?

9 A. Well, like I say, everything was pretty much going in
10 our favor, like everything that my attorney was asking for,
11 the judge was agreeing to them by using the language yes.
12 And after Solicitor Joyce Monts disagreed with one of the
13 rulings, Mr. Miller, excuse me, Honorable Judge Miller, a
14 bench conference was called.

15 And during that bench conference, you know, the
16 microphone was still, you know, by his mouth. And he was
17 asking them like, what are y'all doing? I'm going to have
18 to let him go. And I looked back at my wife and was like,
19 okay, we winning this. And after that he pushed the
20 microphone away, they discussed a few things and both
21 attorneys and my solicitor just left.

22 So I don't know what happened during that point, but
23 when he came back in they came to me and told me you need to
24 plead guilty. And I didn't know what was going on. It just
25 happened so fast. I'm like why? My wife crying. I'm

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1 tending to her like, just calm down, you know. Everything
2 going to be all right. They was like, you need to plea or
3 you're going to get twenty-five years, I'm sorry.

4 And I didn't get that explanation until I was able to
5 actually talk to one of my attorneys, and that was Mr. Wise.
6 And that's when he explained to me and sent me a letter
7 telling me this is why. As a matter of fact, I received the
8 letter before I gave him a call of this is why we're, you
9 know, telling you to plead guilty.

10 Q. Would you have wanted your attorneys to have reviewed
11 the K-9 evidence with you and obtained all the records
12 regarding their training and deployment?

13 A. From my understanding the -- from what -- I thought he
14 was saying it as if he did review it. You know, for someone
15 to tell you something like that, I would think that you had
16 looked into it before telling me this is the reason why we
17 told you to plea, and they didn't.

18 As a matter of fact, Mr. Wise told me he'd never seen
19 anything about any K-9s. Let alone, I -- from the discovery
20 that Richard Warder sent me while I was locked up for
21 driving under suspension, it was absent of that.

22 Q. If your attorneys would have come to you and said you
23 retained us, but it seems clear that we need a K-9 expert to
24 come and consult with us, potentially testify at trial,
25 would you have made available funds for them to retain an

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1 expert?

2 A. Definitely.

3 Q. Okay. And did you, in fact, do that for your PCR case?

4 A. Yes, ma'am, I did.

5 Q. Okay. Would you have wanted an expert utilized to
6 assist your attorneys in preparing for trial and potentially
7 at your trial in the area of the K-9 evidence and
8 deployment?

9 A. Yes, ma'am.

10 Q. We've talked about the K-9. Is there anything further
11 regarding the K-9 that you would like to address, Mr. Rouse?

12 A. Well, other than it was just a lot of conflict with it
13 and everybody's testimony just -- it just seemed it was just
14 -- it was just scattered everywhere, like nothing matched,
15 like everybody had their own version of what was going on
16 there, you know.

17 Q. Are you referring to the preliminary hearing in the
18 pretrial motion testimony?

19 A. Yes, ma'am.

20 Q. Okay. Now we've talked about the K-9s, but the other
21 kind of component to that is the slippers. At the somewhat
22 end of your transcript -- at that point they'd already
23 abandoned the Jackson versus Denno and the hearing had
24 transitioned into the guilty plea. And then the State gives
25 the facts to the Court. And your attorney is asked if

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1 there's any -- any issue.

2 On page 63 beginning on line 18 Attorney Wise says that
3 you do dispute the ownership of the slippers in admitting
4 ownership of the slippers. And then you specifically on
5 page 64, lines 4 through 7, say I deny that mostly with the
6 slippers and stuff. Please ---

7 A. Well, ---

8 Q. --- explain.

9 A. During that part I was confused with the questioning.
10 When I started explaining myself, like, Richard Warder,
11 like, you know, looked at me, like, no, you know, you can't
12 do that because you not going to get your guilty plea. So I
13 stopped, you know, explaining myself during my plea because
14 I didn't think I was allowed to.

15 So I just, you know, basically you got to own up to
16 this stuff or you not going to get your plea. Yeah, but I
17 -- I denied the slippers and everything revolving around the
18 case.

19 Q. Okay. Mr. Rouse, when you were detained in this case
20 where were you originally detained?

21 A. In the hotel lobby. I was actually going to check out
22 of the hotel room. When I went in there he wasn't there.
23 So ---

24 Q. When you say he -- I'm sorry.

25 A. Oh, excuse me. The clerk, the hotel clerk, he wasn't

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1 in the office. I came back outside and witnessed police
2 running past me, they're just running. And I'm like, what
3 are they doing? So I went back in the hotel 'cause I knew I
4 didn't have any license.

5 I went back in the hotel and went to the pool and seen
6 a guy that was there earlier when me and a friend of mine
7 was swimming. I just -- I went swimming and drunk a beer
8 and just hung out until, you know, I saw them messing with
9 my car.

10 Q. And then what happened after you saw them messing with
11 your vehicle?

12 A. Well, I asked them what was they doing. And they were
13 kind of brushing me off, like it's none of your business.
14 So I was like, okay. I sat down.

15 And then I was like, man, you know what, it's just
16 driving under suspension. I was kind of scared to admit
17 that I was driving because Richard Warder was already
18 representing me on a habitual driving offense. So I didn't
19 want -- I knew that that would have messed me up even worse
20 with the driving. And I just went ahead and told them, you
21 know, I drove that vehicle.

22 Q. And then where were you first detained? Where did they
23 put you as far as you understood in custody?

24 A. In the hotel lobby.

25 Q. At any time when you were at the pool and in the hotel

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1 lobby did any K-9s come up to you and did you have any
2 interaction with the K-9s?

3 A. No, ma'am.

4 Q. Did you see the K-9s being deployed when you were in
5 that area?

6 A. At the pool I seen the K-9 -- I think I seen one when I
7 was sitting down drinking a beer.

8 Q. Okay. But at no time did a dog come and, sorry, but
9 this is kind of how you see it on TV, with its nose to the
10 ground and sniffing, end up directly at you and having a
11 type of reaction?

12 A. No, ma'am.

13 Q. Okay. But prior to trial did you have the opportunity
14 to discuss what the K-9s did or didn't do at the scene and
15 what the reports indicated with your attorneys?

16 A. I didn't even know they was involved.

17 Q. Mr. Rouse, you had filed lengthy amendments before I
18 was involved. I have filed two on your behalf. I had spent
19 a lot of time preparing with you today and we've spent a lot
20 of time today going over your allegations.

21 I have one further allegation to ask you about which is
22 what was stated on the record, some discrepancies regarding
23 what you were pleading to, but is there anything else you
24 want to testify about regarding your pretrial preparations
25 with your attorneys and how you proceeded to trial that day?

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1 A. Well, I figured I was going to trial. I was ready for
2 trial. That's what we, you know, my intention was to go to
3 trial. That's why I hired a second attorney.

4 The plea just pretty much came out of the blue to me to
5 the point it scared me to death, you know. I'd just had a
6 son. He just turned one a few months before. So when he
7 offered the plea and he telling me I basically didn't have a
8 choice because of my attorneys telling me we can't win,
9 like, what is my options?

10 So I asked him, I was like, well, is it -- is it non-
11 violent, you know? And he was like, I'm not sure. I don't
12 know. I was, you know, if it's non-violent, I would accept
13 a plea. So after that, you know, I accepted their advice of
14 telling me to plea because we couldn't win and here I am.

15 Q. Mr. Rouse, but for your attorneys' advice would you
16 have entered a guilty plea that day or would you have
17 continued on with the trial that you all had begun?

18 A. I would have continued with trial. Like, the record
19 shows that this was, you know, we wanted to go to trial, but
20 once the bench conference was held, then the meeting
21 outside, everything changed.

22 So it wasn't my intentions. I never stopped trial or
23 objected or said, no, I don't want to do this. I wanted to
24 go to trial. I was ready. I picked the jurors. I was
25 ready to proceed. Like, let's do it. I didn't do this.

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1 And that's when they came back and said you need to plea.

2 We can't win.

3 Q. Now, I want to talk about the guilty plea itself. By
4 way of the amendment we have made or you have made an
5 allegation of ineffective assistance of counsel for failure
6 to ensure that you had a full understanding of the charge
7 you were entering a guilty plea to and failure to ensure
8 that the oral pronouncement matched the sentencing sheet.
9 Take us through that allegation and what you want the Court
10 to understand regarding it.

11 A. Well, Your Honor, from my understanding of the
12 transcript, once it was read from the clerk, I think that
13 when the guilty plea is entered I think the only person to
14 entered the guilty plea is the solicitor. I'm not sure. I
15 don't know how that works.

16 But when she gave it to the clerk of court to read, she
17 stated that it was less than four grams. So I asked, you
18 know, my lawyer is that non-violent? And he's shaking his
19 head yeah. So I proceeded on.

20 Once getting the transcript back and looking over that
21 I seen that Judge Miller had pronounced it different from
22 what the clerk of court had stated and he sentenced me from
23 there. And he asked my lawyers did they know how much this
24 carried. And, you know, they told him three to twenty-five
25 or something like that.

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1 So it was my understanding that I was pleading to some
2 -- a lesser included offense of the charge I was, which was
3 -- it would have been PWI. But, yeah, that was my
4 understanding of it.

5 Q. And did you have a full understanding when you entered
6 your guilty plea or are you alleging today that it was not
7 knowing and voluntarily ---

8 A. No, it was not. I actually asked Mr. Wise about it
9 like, you know, is this non-violent or whatever. And he
10 sent me a letter explaining afterwards.

11 Q. Mr. Rouse, I believe we've gone over every allegation
12 and everything that was my understanding you wanted to
13 present to the Court today. Is there anything further that
14 you would like to explain in support of your allegations?

15 A. I just want to make it clear to the Court, Your Honor,
16 that I didn't advise my attorneys that I wanted to plead.
17 Like, if you look at the record you could see that it was a
18 trial and everything changed from the bench conference.

19 And I didn't know what was said. And I asked my
20 attorneys what was said. They acted like they didn't know
21 what was said. But whatever was said changed their look on
22 the trial.

23 And from my understanding it was because of a dog,
24 which Solicitor Joyce Monts, you know, stated that was the
25 factual basis was because of a dog trailing to some drugs.

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1 And Mr. Wise explained to me, you know, this is why I told
2 you to plead. If it wasn't for this, I wouldn't have told
3 you to plea. We probably would have got a direct verdict.
4 If not a direct verdict, we would have definitely won on
5 appeal. And, yeah, that was -- that was my understanding of
6 the whole situation. That's all I wanted to say to you,
7 Your Honor.

8 **THE COURT:** All right.

9 Q. One final question. Based upon your understanding of
10 the evidence you have today would you have entered the
11 guilty plea or proceeded to trial?

12 A. I would have definitely proceeded to trial.

13 **MS. BLANCHETTE:** Your Honor, I have no further
14 questions of Mr. Rouse.

15 **THE COURT:** All right. Cross examination.

16 **MR. MITCHELL:** Thank you, Your Honor. Very briefly.

17 **Cross Examination by Mr. Mitchell:**

18 Q. Good afternoon, Mr. Rouse. How are you?

19 A. Good afternoon.

20 Q. I just have a few questions for you. You said that you
21 weren't very satisfied with your attorneys, is that correct?

22 A. I wasn't satisfied with their advice after knowing that
23 it wasn't true.

24 Q. After knowing that it wasn't true?

25 A. Yes. And their performance leading up to trial. After

TITUS ROUSE - CROSS EXAMINATION BY MR. MITCHELL

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1 having knowledge that they didn't prepare for a trial, I'm
2 not satisfied that they wasn't prepared.

3 Q. You seem pretty -- pretty outspoken. Why didn't you
4 let the judge know or tell your lawyer that you didn't want
5 him to represent you anymore?

6 A. Well, I made that aware to Mr. Wise that was why I
7 hired him, but he advised me not to fire Mr. Warder.

8 Q. I mean, it's your liberty, correct? So, I mean, you --
9 you decided it was in your best interest to go forward as
10 opposed to retaining another attorney?

11 A. I did obtain another attorney; Mr. Wise.

12 Q. Okay. And so you took Mr. Wise -- why didn't you fire
13 Mr. Warder?

14 A. He wouldn't allow me to fire Mr. Warder. He told me
15 that being that I hired him so late in the case that they
16 probably wouldn't let him take over. So since he's been on
17 it so long, he was going to take over. And he also stated
18 that he don't even know why I'm still proceeding to court
19 because there is no evidence against you.

20 Q. Okay. Do you remember you standing in front of the
21 judge and the judge asking you if you were taking this plea
22 freely and voluntarily?

23 A. I remember, blatantly.

24 Q. Do you remember your answer?

25 A. Well, I took the advice of my counsel. My counsel told

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1 me to plea. So that's why I pled guilty because my
2 attorneys advised me to do it. I didn't have another -- any
3 other choice but to plead.

4 Q. I appreciate that answer, but the question I asked was
5 do you remember when the judge asked you if you were
6 pleading freely and voluntarily? What did you -- what did
7 you say to him? Did you say yes or no?

8 A. I don't know. I'd have to look at the record.

9 Q. Okay.

10 MR. MITCHELL: Your Honor, I would -- would reference
11 page 60 of the transcript, lines 18 through 19, which the
12 Applicant affirms yes, that he's pleading freely and
13 voluntarily.

14 Q. Let me ask you this. The judge also asked you if you
15 were satisfied with your attorney. Do you know what your
16 response was to that?

17 A. Everything happened so fast. From my understanding, if
18 I don't agree with what's being said, I wasn't going to be
19 able to get my sentencing of, you know, twelve years, less
20 than twelve years.

21 So my understanding at the time of the guilty plea is
22 that once you plead guilty you have to own up. I was never
23 explained that you could plead guilty and say that -- but
24 I'm not, you know, confessing to it. I was never explained
25 that that was an option.

TITUS ROUSE - CROSS EXAMINATION BY MR. MITCHELL

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1 Q. So you admitted that those were your drugs?

2 A. Once my attorney, you know, pretty much told me that
3 you need to stop. You know, I was explaining that there
4 [sic] wasn't my slippers. And, you know, he kind of like,
5 you know, you got to own up to get this guilty plea.

6 Q. I guess the next question is -- I think Ms. Blanchette
7 asked you how many times you met with Mr. Warder or Mr.
8 Wise?

9 A. The only time -- every time that I met with Mr. Warder
10 was just to make a payment. And if he had time we would
11 speak briefly, no longer than fifteen minutes.

12 But actually sitting down and going over the case, you
13 know, I actually did some of my own homework out there,
14 which I was blind to the fact that I didn't know anything
15 about the law. But a lot of the pictures that was entered
16 in this case I took myself just referring over things that I
17 thought stood out to me. I just -- every time I would make
18 a payment I would give it to him.

19 Q. Well, just for the record's purposes, you weren't under
20 the influence of any type of drug or narcotic when you
21 accepted this plea, were you?

22 A. No, sir, I was not.

23 MR. MITCHELL: A moment of the Court's indulgence, Your
24 Honor.

25 THE COURT: All right.

1 (Pause)

2 **MR. MITCHELL:** That's all the questions I have, Judge.

3 **THE COURT:** All right. Any redirect?

4 **MS. BLANCHETTE:** No, Your Honor.

5 **THE COURT:** All right. Thank you, Mr. Rouse. Anything
6 else?

7 **MS. BLANCHETTE:** Your Honor, I have no further
8 witnesses. At the beginning of the hearing I handed up a
9 memorandum of law. I did indicate I had some additional
10 cases, but I'd be happy to address those at the time the
11 Court feels is appropriate.

12 **THE COURT:** All right. Okay. So the Petitioner rests
13 or Applicant? Are you through with your case?

14 **MS. BLANCHETTE:** Yes. We have ---

15 **THE COURT:** Okay.

16 **MS. BLANCHETTE:** --- no further witnesses, Your Honor.

17 **THE COURT:** All right. Any witnesses from the State?

18 **MR. MITCHELL:** None, Judge.

19 **THE COURT:** All right. Anybody want to -- any
20 additional information you'd like to give me at this time?

21 **MS. BLANCHETTE:** Your Honor, even though I know this
22 was much longer than anticipated, and I apologize ---

23 **THE COURT:** That's fine.

24 **MS. BLANCHETTE:** --- for that not being communicated,
25 especially on a Friday. I appreciate your patience. As you

1 know, this is Mr. Rouse's one day in court. And I
2 appreciate you for giving him that full day.

3 I handed up a memorandum of law at the beginning. It
4 does not apply the facts of this case to the law. It just
5 goes through the body of law. As I said, I do have a couple
6 of additional cases.

7 **THE COURT:** Okay.

8 **MS. BLANCHETTE:** And then I would be happy to provide
9 argument, answer questions, whatever would benefit the Court
10 best at this time.

11 **THE COURT:** All right.

12 **MS. BLANCHETTE:** But I have a copy of Cole versus
13 State, which actually goes to some of the questions that Mr.
14 Rouse was asked on cross examination. And I don't believe
15 it was included in my memorandum.

16 **THE COURT:** Okay.

17 **MS. BLANCHETTE:** So I'm going to have to provide a copy
18 of that. I have a copy of, and, I'm sorry, I'll slow down,
19 Reeves versus State, R-e-e-v-e-s versus State. It's a case
20 that was just recently upheld by our Supreme Court dealing
21 with the utilization of an expert and whether or not counsel
22 could be found ineffective for failing to utilize an expert.

23 And then we did reference today this issue of whether
24 or not the location was private property and what was the
25 basis for the stop. I have Stone versus State, which is a

1 South Carolina Supreme Court case, and United States versus
2 Sanders, which is a Fourth Circuit case were the two cases I
3 found best on point regarding that issue, Your Honor.

4 **THE COURT:** All right.

5 **MS. BLANCHETTE:** And, again, I would be happy to
6 respond in any way that the Court would like at this point.

7 **THE COURT:** All right. Anything from the State?

8 **MR. MITCHELL:** Nothing, Your Honor. If briefly I could
9 get some time to review the memorandum from -- from Ms.
10 Blanchette and provide any additional memorandums to you for
11 our side.

12 **THE COURT:** All right. How long -- you mean by 2:00?

13 **MR. MITCHELL:** Yes, sir.

14 **THE COURT:** No, I'm just kidding. I can't believe you
15 agreed to that. It was like, yes, of course, I'll be glad
16 to have it -- have it for you in fifty-five minutes.

17 **MR. MITCHELL:** Whatever you'd like, Judge. If I could
18 -- I don't know when Your Honor anticipates on making a
19 ruling, but I ---

20 **THE COURT:** Okay. I'll let both sides present any --
21 and let's limit to, I mean, I don't want any huge briefs. I
22 mean, I think y'all can limit your -- any kind of
23 memorandum. And I'll let you -- if you want to add anything
24 to yours.

25 **MS. BLANCHETTE:** Your Honor, I had just done it

1 strictly as a memorandum of law ---

2 THE COURT: Right.

3 MS. BLANCHETTE: --- with a recitation of the facts.

4 If you would like that, I'd be happy to ---

5 THE COURT: No, not the facts. If you want -- let's
6 just limit it to just any additional authority that you want
7 to provide. I will give you until next Friday.

8 MR. MITCHELL: That's fine, Your Honor.

9 THE COURT: Would that be sufficient for everybody?

10 MS. BLANCHETTE: That is perfectly fine, Your Honor. I
11 appreciate that.

12 MR. MITCHELL: By 2:00 next Friday?

13 THE COURT: Yeah, by 2:00 next Friday. And just shoot
14 it to my email or to my law clerk.

15 MS. BLANCHETTE: Okay. We'll be happy to do that.

16 THE COURT: All right. Anything else?

17 MR. MITCHELL: Nothing further.

18 THE COURT: And then I'll -- I will review the matters
19 that y'all submit at that point along with the record. And
20 then I will indicate my ruling. I'll let y'all know ---

21 MS. BLANCHETTE: Thank you, Your Honor.

22 THE COURT: All right.

23 MS. BLANCHETTE: We really do appreciate it.

24 (Hearing Ended at 1:09 pm)

25 (End of Requested Transcript of Record)

Certificate of Reporter

I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth 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/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 21st day of April 2017.

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

July 19, 2017

s/Susan W. Hudgins

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
OF THE THIRTEENTH JUDICIAL
CIRCUIT

Titus Rouse, # 287818,

Case No.: 2015-CP-23-0995

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

FILED-CLERK OF COURT
PAID \$10.00
2017 DEC -1 PM 11:12

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed February 9, 2015. Respondent made its Return on June 3, 2015. An evidentiary hearing into the matter was convened on April 21, 2017, at the Greenville County Courthouse before the Honorable Perry H. Gravely. Tricia Blanchette, Esquire, represented Applicant. DeShawn Mitchell, Esquire of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Applicant testified on his own behalf. The following people also testified: C. Rauch Wise, Esquire, Richard H. Warder, Esquire, the Honorable Robert F. Simms, Edward Cooper, John Redman and Michael Gould who testified via Skype videoconference. This Court had before it a copy of the records of the Greenville County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In February of 2014, the Greenville County Grand Jury indicted Applicant for trafficking heroin (2012-GS-23-6017), habitual traffic offender (2012-GS-23-6417) and driving under suspension (2013-GS-23-0846). Richard H.

Warder, Esquire and C. Rauch Wise, Esquire represented the Applicant. On August 6, 2014, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of 12 years for trafficking heroin (more than 4 grams), 5 years for habitual traffic offender, and 6 months for driving under suspension (third or subsequent offense). Applicant did not further appeal his guilty plea or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Counsel failed to file for suppression of evidence "after alleged reading of Miranda rights on video was never submitted as evidence. Violating their clients 4th Amendment Constitutional Rights."
 - b. Counsel "induc[ed] a guilty plea when the State has failed to meet its burden of proof for the offense accused."
 - c. Counsel failed to investigate "the statement Solicitor Joyce Monts gave them in closed conference before advising there client that they could not win and inducing a plea of guilt on their client."

On April 15, 2015 Applicant filed an "Amendment in Application for PCR" making the following allegations:

1. Ineffective assistance of counsel:
 - a. Failed to "move to suppress evidence where an alleged reading of Miranda rights as never admitted into evidence by video."
 - b. "[I]nducing the guilty plea when the State had failed to meet its burden of establishing any proof of either 'actual or constructive possession of the alleged drugs in this case.'"
 - c. Failed to "investigate the statement Solicitor Joyce Monts gave in a closed conference before advising the client they could not win which induced the plea of guilty."

On February 4, 2016 Applicant filed an "Amended Petition for Post-Conviction Relief" making the following allegations:

1. Appellant alleges omission of ineffective assistance of trial counsel in a cumulative effect; which such error of omission of ineffectiveness; rendered the applicant's guilty

plea involuntary not knowingly of intelligent choice; occur in violation of the applicants sixth and fourteenth Amendment rights of USC[sic]; when the applicant's trial counsel failed to file a notice of an appeal to pursue the applicant's appeal request from his guilty plea;

2. Ineffective assistance of trial counsel in a cumulative effect; rendered the applicant's guilty plea involuntary not knowingly and intelligent choice; based on trial counsel erroneous advice; by advising the applicant to plea guilty based on induced erroneous advice of actual information concerning the applicant case at bar;
3. Applicant contends in A-3 of his third supplemental claim of error of omission of ineffective assistance of trial counsel in a cumulative effect; such error of omission of ineffectiveness rendered the applicant's guilty plea involuntary not knowingly and intelligent choice; when the trial judge imposed a sentence that was different from the one pronounced by the clerk of court; and the one that was agreed upon by the applicant.
4. Applicant contends in his fourth supplemental claim of error of omission of ineffective assistance of trial counsel in a cumulative effect; rendered the applicant's guilty plea involuntary not knowingly and intelligent choice; based on the applicant's trial counsel erroneous advice; by advising the applicant to plea guilty; after the applicant's trial counsel discovered that a fourth amendment violation had occurred
5. Applicant contends in his fifth supplemental claim of error of omission of ineffectiveness assistance of counsel in a cumulative effect; rendered the applicant's guilty plea involuntary not knowing and intelligent choice; based on trial counsel erroneous advice; by advising the applicant to enter a plea of guilty; after counsels had learned knowledge of perjury testimony factual evidence information that was used in the search warrant affidavit in violation of the applicants' fourth Amendment right.

On October 5, 2016 Applicant filed an "Amendment to Application for PCR" making the following allegations:

1. Ineffective assistance of counsel for failure to properly prepare and investigate prior to trial, to include counsel's representation at the preliminary hearing, which induced an involuntary guilty plea.
2. Ineffective assistance of counsel for failure to effectively make all reasonable pretrial motions and effectively represent Applicant on pre-trial motions made prior to the entry of Applicant's guilty plea.
3. Ineffective assistance of counsel for advising Applicant to forego trial and enter a guilty plea.
4. Ineffective assistance of counsel for failure to ensure that Applicant had a full understanding of the charge he was entering a plea to and failure to ensure that the oral pronouncement of the charge matched the sentencing sheet. Additionally, ineffective assistance of counsel for failure to ensure that Applicant's plea was being made to a proper lesser included offense.

On April 12, 2017 Applicant filed an "Amendment to Application for PCR" making the following allegations:

1. Ineffective assistance of counsel:
 - a. Ineffective assistance of counsel for failure to obtain a canine expert and/or fully investigate the canine evidence and prepare to move to suppress and/or move to suppress testimony and/or evidence derived from the deployment of canines. Ineffective assistance of counsel for errantly advising Applicant regarding testimony and evidence derived from the deployment of canines, which induced an involuntary guilty plea.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

Applicant testified he retained Richard Warder (Counsel #1) as he was already representing him on a different unrelated charge. Applicant testified he only met with Counsel #1 strictly for payment purposes and during the course of those payments he would talk to Applicant briefly for two or three minutes. He testified Counsel #1 would yell at him when he asked question or wanted Counsel #1 to do certain things for him. Applicant testified that he wanted to pursue a trial as opposed to a guilty plea. He testified Counsel #1 did not review discovery with him until he retained C. Rauch Wise (Counsel #2). He testified he retained Counsel #2 who suggested he be retained to assist Counsel #1. Applicant testified there was never a discussion of a defense strategy. Applicant testified his Counsel told him he needed to plea because of the evidence related to the K-9 finding drugs; however, Applicant testified that Counsel #1 and #2 did not discuss or review the contents of the supplemental K-9 reports. Furthermore, Applicant testified that he was never fully advised about whether the offense to which he was pleading was violent or non-violent.

Counsel's Testimony

Counsel #1 and Counsel #2 testified at the evidentiary hearing. Counsel #2 testified he was retained to assist Counsel #1 and he had only been involved for 2 months before the guilty plea

took place. Counsel #2 did not recall looking into the basis of Applicant's detention, nor did he object to Applicant's alleged statement regarding the ownership of the slippers despite contradictory evidence that Applicant did not make a confession. Counsel #2 testified he had a chance to review some of the discovery. Counsel #2 testified that he and Counsel #1 were preparing for trial, citing the lack of fingerprint evidence on the drugs and lack of DNA on the shoe that officers found. However, Counsel #2 testified that, on the day of trial, he and Counsel #1 received information related to K-9 evidence. Counsel #2 testified the evidence related to the K-9 was a game changer and would probably make a jury believe Applicant possessed the drugs. Nevertheless, Counsel #2 testified that after hearing the testimony of Dr. Gould in conjunction with Officer Redman's report, his advice as to whether Applicant should take the State's plea would have changed.

Counsel # 1 testified he was the original attorney on Applicant's case. Counsel #1 testified when taking cases he looks at the evidence and then decides if he should be pursuing a guilty plea or trial. Counsel #1 testified that Applicant's case was not always on a trial track and he felt at one point it was going to be or should be a plea. Counsel #1 told Applicant this and that's when Applicant wanted a second opinion and Counsel #1 recommended Counsel #2. However, Counsel #1 testified Applicant wanted to go to trial. Counsel #1 further testified Applicant wanted advice as well and that he does not just tell clients what they want to hear but what is accurate. Counsel #1 further testified he met with Applicant many times. Counsel #1 testified he advised Applicant to plead guilty because there was a lot of evidence against him. Counsel #1 testified independent of the K-9 evidence he was concerned with the other factors that tied the Applicant to the drugs. Specifically, Counsel #1 was concerned about the alleged admission concerning ownership of the shoes, the Applicant fleeing from the car, the Applicant renting a room under an alias; and the

Applicant changing the license plate upon the car. Counsel #1 testified that the K-9 was a non-issue. Counsel #1 also testified he reviewed all of the discovery in this case. Counsel #1 testified he did not pressure Applicant into taking the plea and that it was Applicant's decision to plead guilty.

Michael Gould's Testimony

Applicant's expert, Michael Gould, initially testified about his experiences and background. After Mr. Gould's initial testimony and *voir dire*, this Court qualified him as an expert in the field of K-9 procedure and deployment. Mr. Gould testified he had been provided with incident reports, photographs and discovery documents to review prior to testifying. He testified that the scene where Applicant's arrest took place was a chaotic and confused. Specifically, Mr. Gould cited the absence of a supervisor's report, or someone taking control and direction of the crime scene. Mr. Gould also expressed concerns about contamination of the scent because of car exhaust; other humans (i.e. police at the crime scene); and the presence of another police dog. He testified that he did not understand why dogs were used at all in Applicant's case since the evidence could have been found without assistance of the dog. Mr. Gould testified that in his opinion there was a drastic contrast in the experience level of the two K-9 dogs used on the scene of Applicant's arrest. While Nero, a multi-purpose drug detection and suspect apprehension dog, had an extensive history; Duke, the single purpose human scent dog, had a relative lack of experience in suspect apprehension. Mr. Gould testified that in his opinion there was no nexus between the contraband that was found and the defendant's apprehension; it was not reliable that the dog tracked the defendant, nor that the dog tracked the defendant's scent to the contraband.

John Redman's Testimony

John Redman testified he was a deputy with Greenville County and was also a K-9 handler

at the time of Applicant's arrest. He testified that he and his K-9 were certified by the North American Police Work Dog Association and he had been with the K-9 since 2008. He testified he and Nero train every Wednesday for either six or ten hours, and go to seminars throughout the country. He testified he was called to the scene of the Applicant's arrest because of a tip. Deputy Redman testified about the mechanics of using a K-9 during a search; how Officer Redman used latex gloves, applied a gauze pad to the steering wheel to obtain a scent, and placed the gauze pad in a Ziploc bag. Additionally, Deputy Redman testified about how he used the K-9 once he was deployed on the scene. Specifically, Deputy Redman testified that Nero did not alert him to the Defendant's scent, and that Nero stopped trailing at or near the Defendant's slippers. However, Nero never ended up or alerted Deputy Redman to the Applicant.

Edward Cooper's Testimony

Mr. Cooper testified he was a private investigator who had done some work for the Applicant. Mr. Cooper testified about an affidavit that he wrote which detailed his visit to Hawthorn Suites in Greenville, South Carolina where the Applicant was arrested. He testified he searched the property looking for signs that showed it was under police jurisdiction. He testified he could not find any signs nor notice indicating this. He testified that he also spoke with the manager on duty to confirm that Hawthorn Suites is a private property, and that there have never been signs or postings indicating as such. He also testified that although the property is private, the manager requested Greenville Sheriff's Department to start riding through the property.

Honorable Robert F. Simms's Testimony

Judge Robert F. Simms, a magistrate judge in Greenville County, testified he handled the preliminary hearing for Applicant. He testified he had communication with Applicant in 2016, which would have been after the preliminary hearing and after his guilty plea. He testified

Applicant wrote him a letter requesting certain documents and he responded in a letter dated January 25th, 2016, indicating that he did not have the documents he was requesting. He also testified he had made notes on his personal copy of the docket that day concerning the Applicant's case. Judge Simms' notes indicated that nothing about how the officers proceeded is destructive to the legitimacy of probable cause for the search warrant. In light of the proximity of the drugs and slippers, it was highly likely both were in Defendant's possession.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Involuntary Guilty Plea

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C.

115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). 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. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

As an initial impression this Court notes after a review of the transcript of the Guilty Plea and the colloquy between Judge Edward W. Miller and the Applicant, it provides a strong indication that the plea was entered into knowingly and voluntarily and meets the requirements as set out in Pittman v. State, 524 S.E.2d 623 (1991) and Roddy v. State, 528 S.E.2d 418 (2000). This Court is aware that it must also consider all other evidence presented at the PCR hearing, but this Court would note that the Applicant was very clear and concise in his answers to Judge Miller's

questions and assumed all responsibility for the particular crime for which he was charged. Nonetheless, the analysis does not end with such an admission.

This Court must also consider whether "counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trials." Rolen v. State, 683 S.E.2d 471 (2009). This Court will apply this analysis to each of the issues raised in the Application. Counsel for Applicant indicated that Applicant was only pursuing those contained in the Amendment to Application dated October 5, 2016 (2016 Amendment) and the Amendment to Application dated April 5, 2017 (2017 Amendment) with all other issues asserted in the original Application and subsequent amendments being withdrawn or abandoned.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. Applicant also failed to prove he was prejudiced by the alleged deficiencies. Below are this Court's specific finding regarding each of Applicant's allegations of ineffective assistance of counsel:

Allegation #1

The Applicant asserts that his counsel failed to properly investigate and prepare prior to trial and the preliminary hearing. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported

only by mere speculation as to result." Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). At the hearing, Counsel #1 and Counsel #2 indicated they went to the location where the incident took place and conducted their own investigation. Both also stated they were ready for trial; however, when they were aware of Officer Redman's report and the K-9 evidence they believed it prudent to pursue a guilty plea. While Counsel #1 and Counsel #2 may not have identified the weaknesses in the K-9 evidence described by Mr. Gould, the Court does not find that Mr. Gould's testimony is completely exculpatory in light of the fact the dog stopped trailing at the Applicant's slippers. Furthermore, the fact that Counsel #1 and Counsel #2 failed to investigate the private-nature of the property where the Applicant's car was found is irrelevant because the property owner consented to police patrol, and the Applicant left the car running in the parking lot. Therefore, even if the Applicant showed that his counsel may have missed some issues in preparation and investigation, this Court does not find that the Applicant has met his burden in showing that this would have made a difference in his decision to plead guilty.

Allegation #2

The Applicant asserts that counsel failed to make certain pre-trial motions. Specifically, the Applicant asserts, among other things, that trial counsel failed to address: mere presence, tip, probable cause, the legality of the arrest, the search warrant, the canine search and evidence, and the Jackson v. Denno hearing and the "slipper confession." The Applicant has failed to show that any additional motions would have been granted or would have changed his decision to plead guilty. Moreover, the Court bears in mind the strategic decisions made by Counsel #1 and Counsel #2. Accordingly, this Court finds Applicant has failed to prove Counsel was deficient or that

Applicant was prejudiced by Counsel's performance. Accordingly, this Court denies and dismisses this allegation.

Allegation #3

The Applicant provides a general allegation that his counsel was ineffective for advising him to plead guilty. This Court finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge explained the charges to Applicant, including the maximum penalties for each. The plea judge also went through Applicant's constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant admitted he was guilty of these offenses and did not challenge the facts presented by the State at the plea. Applicant told the plea judge that he was satisfied with his attorney, that Counsel had done everything Applicant had asked of him, and he did not need any more time to discuss this matter with Counsel. Applicant further told the plea judge no one had threatened him or made him any promises to get him to plead guilty, and he was doing so of his own accord. Additionally, Applicant told the plea judge he did not have any physical or mental issues which would prevent him from understanding the proceeding, and Applicant indicated he understood all of the plea judge's questions and had answered them honestly. This Court therefore finds that Applicant understood the terms of the plea and the possible sentences he could receive. Further, as to the claim that counsel was ineffective for advising him to plead guilty is based on the other allegations addressed in this order.

Allegation #4

The Applicant asserts that his counsel were ineffective for not ensuring that he had a full "understanding of the charge he was entering a plea to" and that there was a discrepancy on the charge read by the Clerk of Court. This Court finds even though the Clerk of Court may have read

an incorrect lesser charge prior to the plea, Judge Miller's colloquy in connection with the plea clearly explains the correct charge to which he was entering his plea and the consequences. In addition, the "Sentence Sheet" which the Applicant signed lists the proper charge. At all points, the Applicant gave every indication that he clearly understood the correct charge to which he was entering the plea and the consequences. Accordingly, this Court finds Applicant has failed to prove Counsel was deficient or that Applicant was prejudiced by Counsel's performance in this regard. Accordingly, this Court denies and dismisses this allegation.

Allegation #5

In the 2017 Amendment, the Applicant asserts that his counsel was ineffective for failing to retain a canine expert or fully investigate the canine evidence in the case. This may have been a more compelling argument if the case had gone to trial and the sole evidence tying the Applicant to the crime was the tracking by the dog. This case involved more than canine evidence as testified to by Counsel #2 and even if suppressed, it would not have been the end of the case and the Applicant would have been facing the same dilemma as most all defendants in a criminal trial—should he take his chances at trial or plea to a reduced sentence. The Court has considered the holding of State v. White, 382 S.C. 265, 676 S.E.2d 684 which sets out the analysis for qualifying a canine expert. Since this matter did not go to trial, the Court does not find this as compelling and a basis for the granting of the Applicant's PCR. Even the Applicant's Expert witness, Michael Gould, testified at the evidentiary hearing stated that he did not understand why dogs were used at all in Applicant's case since the evidence could have been found without assistance of the dog. Furthermore, as mentioned above, Mr. Gould's testimony does not negate Officer Redman's report indicating the dog stopped trailing at the Applicants slippers and last known whereabouts. The Court finds a jury may find this evidence probative of the Applicant's guilt despite Mr. Gould's

testimony. Moreover, the Court notes that while Officer Redman was not qualified as an expert in dog tracking at the Applicant's Post-Conviction Relief hearing, here merely testified concerning the procedure he used in his investigation. Officer Redman did not provide any opinions outside the realm of his or a lay person's knowledge. Therefore, the Applicant has failed to meet his burden on this issue as well. Further, that the failure to establish Officer Redman as an expert does not invalidate this argument at the PCR evidentiary hearing. He merely stated what the dog had done, but since it was not the trial of the case, there was no need to have a "battle of experts", but merely lay the basis for the Officer's initiation of the case.

Conclusion

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. Furthermore, the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both."). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from his statements made during the plea colloquy. See Dalton, 376 S.C. at 137, 654 S.E.2d at 874 ("[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements."). This Court concludes Applicant has not met his burden

of proving Counsel failed to render reasonably effective assistance. The allegations are denied and dismissed.

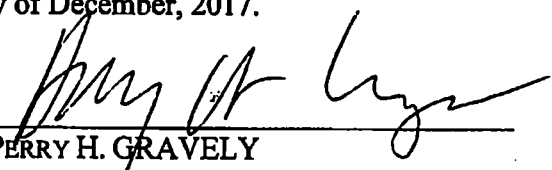
Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his plea and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCRCP, provides that if Applicant wishes to seek appellate review, Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant is to remain in the custody of State.

AND IT IS SO ORDERED this 18 day of December, 2017.


PERRY H. GRAVELY
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
 DOCKET NO.: 2015-CP-23-0995

TITUS NICCOLA LEE ROUSE,)
 Applicant,)

v.)
 STATE OF SOUTH CAROLINA,)
 Respondent,)

MOTION PURSUANT TO
 RULE 59, SCRCP

FILED-CLERK OF COURT
 PAUL B. WICKENS
 GREENVILLE, SC

2016 JAN -8 PM 1:30

Pursuant to Rule 59(a) and (e) of the South Carolina Rules of Civil Procedure,

Applicant would move before this Court for relief as follows.

This matter comes before the Court by way of an Application for Post Conviction Relief filed on May 22, 2015. The State filed a Return on June 3, 2015. On February 18, 2016, Tricia A. Blanchette was substituted in as Applicant's counsel. On October 17, 2016, Applicant, through counsel, filed an Amendment to his Application, as follows:

1. Ineffective assistance of counsel for failure to properly prepare and investigate prior to trial, to include counsel's representation at the preliminary hearing, which induced an involuntary guilty plea.
2. Ineffective assistance of counsel for failure to effectively make all reasonable pre-trial motions and effectively represent Applicant on pre-trial motions made prior to the entry of Applicant's guilty plea.
3. Ineffective assistance of counsel for advising Applicant to forego trial and enter a guilty plea.
4. Ineffective assistance of counsel for failure to ensure that Applicant had a full understanding of the charge he was entering a plea to and failure to ensure that the oral pronouncement of the charge matched the sentencing sheet. Additionally, ineffective assistance of counsel for failure to ensure that Applicant's plea was being made to a proper lesser include offense.
5. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

On April 5, 2017, Applicant, through counsel, submitted an additional
 Amendment to his Application, as follows:

copy A.G.

1. Ineffective assistance of counsel for failure to obtain a canine expert and/or fully investigate the canine evidence and prepare to move to suppress and/or move to suppress testimony and/or evidence derived from the deployment of canines. Ineffective assistance of counsel for errantly advising Applicant regarding testimony and evidence derived from the deployment of canines, which induced an involuntary guilty plea.

On April 21, 2017, an evidentiary hearing was conducted at the Greenville County Courthouse in front of the Honorable Perry H. Gravely. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by DeShawn Mitchell, Assistant Attorney General. Applicant called Michael Gould, Hon. Robert Simms, Edward Cooper, C. Rauch Wise, Esquire, Richard Warder, Esquire, and Titus Rouse. Respondent called John Redman. Applicant introduced fourteen exhibits and provided a Memorandum of Law, which is attached.

Thereafter, the Honorable Perry H. Gravely requested that Respondent propose an Order of Dismissal. Upon receipt of the proposed Order of Dismissal, Applicant's counsel sent a letter to Judge Gravely detailing concerns with the Order on October 6, 2017. On December 1, 2017, an Order of Dismissal was signed and filed. Applicant, through counsel, received notice of entry of the Order on December 11, 2017, from which this Motion timely follows.

As a threshold matter, in Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post-conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. As stated in counsel's letter dated October 6, 2017, Applicant is very concerned that the standing Order fails to address the

issues raised in the Amendments and addressed at the evidentiary hearing and makes incomplete conclusory findings. Applicant would ask this Court to make findings on each issue raised as listed above.

The Order fails to properly address the testimony elicited from the witnesses. The brief summaries and references to the testimony even misstate the testimony, which is properly reflected in the transcript that has been provided to Judge Gravely and is being provided in conjunction with this Motion.

The Order does address Respondent's failure to qualify Officer John Redman as an expert in the area of canines and seems to reason how his testimony was admissible under State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009), but the Order fails to find that his testimony should not be given any weight as argued by Applicant. The Order also appears to discount the testimony of Applicant's expert and Rauch Wise, Esquire, while deferring to the testimony of Office Redman, which Applicant submits is error. Additionally, the Order erroneously reasons that the track ending at the "Applicant's slippers and last known whereabouts" is dispositive of the issue of counsel's ineffectiveness when the record does not support these factual findings. As noted at the evidentiary hearing, it was testified to by law enforcement at the preliminary hearing that Applicant never admitted possession of the slippers and Applicant testified to this fact at the evidentiary hearing. Preliminary Hearing p. 16-17. Furthermore, one of the issues summarily addressed in the standing Order was counsel's ineffective assistance for the handling of pre-trial motions to include the Jackson v. Denno hearing.

Turning to the issue of counsel's ineffective assistance in the handling of the pre-trial motions, the standing Order summarily states the matters Applicant alleged counsel

failed to properly address, but fails to provide specific reasoning on each using such language as “among other things.” Applicant submits that under Marlar such conclusory findings are in error. Additionally, Applicant would ask the Court to thoroughly consider the testimony and evidence offered and find counsel was ineffective in the handling of pre-trial motions prior to the entry of Applicant’s guilty plea.

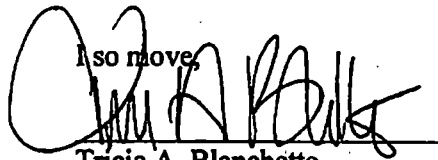
The Order fails to address all allegations made regarding counsel’s failure to prepare, investigate and properly represent Applicant at the preliminary hearing. The findings fail to address the testimony of the Hon. Robert Simms, defense attorneys, and Applicant. The Order also fails to address the allegations made regarding counsel’s handling of the destruction of the evidence.

The Order fails to address Applicant’s allegation that counsel failed to ensure that his plea was being made to a proper lesser included offense as was addressed during Applicant’s testimony.

Finally, the Order fails to properly address the deficient assistance provided by counsel, as conceded by Rauch Wise, Esquire, when Applicant was advised to enter a guilty plea due to the canine evidence when counsel did not have a full understanding nor had prepared to defend against the canine evidence as portrayed by the Solicitor prior to the entry of the plea. It appears the Court finds dispositive Mr. Gould’s testimony that the canine evidence offered nothing to the case, without recognizing that point was the exact point missed by counsel in errantly advising Applicant to forego trial due to the strength of the canine evidence. Applicant submits that the record supports a finding that counsel was ineffective due to counsel’s lack of understanding regarding the canine evidence, failure to utilize a canine expert, and advice to forego trial due to the canine evidence. At

the evidentiary hearing, Mr. Wise testified that he was unaware of the canine evidence until he was told about it by the Solicitor at trial, that he would have used the canine expert called, and he would not have advised Applicant to forego trial now that he had a proper understanding of the canine evidence and the case as a whole. See Evidentiary Hearing Testimony of Rauch Wise, Esquire, Transcript pp. 86-94, 99-100, 106-107, 113-117. As a result, Applicant would urge the Court to reconsider and/or make proper findings on this primary issue.

Therefore, based upon the foregoing and the records before the Court (including the evidentiary hearing transcript), Applicant would urge the Court to hold a hearing on this Motion and/or reconsider, alter or amend the standing Order of Dismissal.

Also move,

Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
Attorney for Applicant

December 19, 2017

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
 DOCKET NO.: 2015-CP-23-0995

TITUS NICCOLA LEE ROUSE,)
 Applicant,)
 v.)

MEMORANDUM OF LAW

STATE OF SOUTH CAROLINA,)
 Respondent,)
 _____)

It is well established that a guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969). In South Carolina, the courts have consistently held that that a defendant must have a full understanding of the consequences of his plea and the charges against him. Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997), Simpson v. State, (317 S.C. 506, 455 S.E.2d 175 (1995)). Additionally, a defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution.¹ See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). In examining the assistance provided by counsel, "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007).

In a PCR stemming from a guilty plea, an applicant alleging a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v.

¹ The "Sixth Amendment guarantees a defendant the right to have counsel present at all 'critical' stages of the criminal proceedings." Montejo v. Louisiana, 556 U.S. 778, 786, 129 S. Ct. 2079, 173 L. Ed. 2d 955 (2009) (quoting United States v. Wade, 388 U.S. 218, 227-228, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967)). Critical stages include arraignments, post-indictment interrogations, post-indictment lineups, and the entry of a guilty plea. See Hamilton v. Alabama, 368 U.S. 52, 82 S. Ct. 157, 7 L. Ed. 2d 114 (1961)(arraignment); Massiah v. United States, 377 U.S. 201, 84 S. Ct. 1199, 12 L. Ed. 2d 246 (1964) (postindictment interrogation); Wade, *supra* (postindictment lineup); Argersinger v. Hamlin, 407 U.S. 25, 92 S. Ct. 2006, 32 L. Ed. 2d 530 (1972) (guilty plea).

State, 338 S.C. 354, 527 S.E.2d 742 (1999). Therefore, an applicant that entered a plea on the advice of counsel may only attack the voluntary nature of that plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, applicant would not have pled guilty and insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985), Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000). In Hill, the Supreme Court of the United States made it clear that the "voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." 474 U.S. at 57, 106 S.Ct. at 369. In Hill and Padilla v. Kentucky, 559 U.S. 356, 130 S.Ct. 1473 (2010), the Supreme Court of the United States examined the role of advising a client about a plea offer and ensuing guilty plea as was discussed in Missouri v. Frye, 132 S. Ct. 1399, 1405-06 (2012)(emphasis added), as follows:

Hill established that claims of ineffective assistance of counsel in the plea bargain context are governed by the two-part test set forth in Strickland. See Hill, supra, at 57, 106 S. Ct. 366, 88 L. Ed. 2d 203. As noted above, in Frye's case, the Missouri Court of Appeals, applying the two part test of Strickland, determined first that defense counsel had been ineffective and second that there was resulting prejudice.

In Hill, the decision turned on the second part of the test. There, a defendant who had entered a guilty plea claimed his counsel had misinformed him of the amount of time he would have to serve before he became eligible for parole. But the defendant had not alleged that, even if adequate advice and assistance had been given, he would have elected to plead not guilty and proceed to trial. Thus, the Court found that no prejudice from the inadequate advice had been shown or alleged. Hill, supra, at 60, 106 S. Ct. 366, 88 L. Ed. 2d 203. In Padilla, the Court again discussed the duties of counsel in advising a client with respect to a plea offer that leads to a guilty plea. Padilla held that a guilty plea, based on a plea offer, should be set aside because counsel misinformed the defendant of the immigration consequences of the conviction. The Court made clear that "the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel." 559 U.S., at ___, 130

S. Ct. 1473, 176 L. Ed. 2d 284, 298. It also rejected the argument made by petitioner in this case that a knowing and voluntary plea supersedes errors by defense counsel. Cf. Brief for Respondent in Padilla v. Kentucky, O. T. 2009, No. 08-651, p. 27 (arguing Sixth Amendment's assurance of effective assistance "does not extend to collateral aspects of the prosecution" because "knowledge of the consequences that are collateral to the guilty plea is not a prerequisite to the entry of a knowing and intelligent plea").

In South Carolina, a substantial number of cases have developed a body of case law that establish which consequences must be explained to a defendant by counsel prior to a plea. Generally speaking, a defense attorney must only inform a defendant of the direct consequences of his plea, and counsel has no obligation to inform his client of the collateral consequences of his plea. See Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983), Frasier v. State, 351 S.C. 395, 570 S.E.2d 172 (2002) (Finding that a defendant need not be informed of the collateral consequences of his sentence such as parole eligibility; however if an attorney undertakes to advise a defendant of the collateral consequences of his sentences, then the advice must be accurate).

Direct consequences have a "definite, immediate, and largely automatic effect on the range of the defendant's punishment." Cuthrell v. Director, Paxtuent Institution, 475 F.2d 1364, 1366 (4th Cir. 1973). If a criminal defendant does not properly understand the direct consequences of his plea, then the plea is invalid. State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). A defense counsel's failure to advise a client of the direct consequences of a guilty plea constitutes ineffective assistance counsel. Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). Additionally, constitutionally defective performance is found when defense counsel offers erroneous advice concerning an issue that is central to the defendant's decision to plead guilty. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991)

In Glover v. United States, 531 U.S. 198, 203 (2003), the Supreme Court of the United States held "any amount of [additional] jail time has Sixth Amendment significance." In Davie v. State, 381 S.C. 601, 613, 675 S.E.2d 416, 422-23 (2009), the South Carolina Supreme Court reasoned that it is not always necessary for a defendant to offer objective evidence to support a claim of actual prejudice. Instead, depending on the facts of the case, a defendant's self-serving statement may be sufficient to establish actual prejudice. See Jackson v. State, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000) (Rejecting objective evidence requirement established in Judge and finding Petitioner proved he was prejudiced by counsel's deficient performance in failing to properly advise the Petitioner that he was pleading to a felony rather than a misdemeanor where Petitioner's uncontradicted testimony established that he would not have pled had he known the charge was a felony), overruling Judge v. State, 321 S.C. 554, 562, 471 S.E.2d 146, 150 (1996) ("The second prong of the ineffective assistance inquiry--prejudice--is shown by demonstrating through objective evidence . . . [the existence of] a reasonable probability that, but for counsel's advice, [the defendant] would have accepted the plea. Mere statements by the PCR petitioner that he would have accepted the plea agreement but for counsel's incompetence are insufficient to show prejudice because they are self-serving and inherently unreliable.") (citation omitted); See also Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) ("The defendant's undisputed testimony that he would not have pled guilty to the charges but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty."), Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000) (Holding that there was enough evidence to demonstrate that there was a reasonable probability that defendant would not have pled guilty even though defendant

did not specifically testify that he would have insisted upon going to trial if he had known the solicitor was going to make a recommendation.).

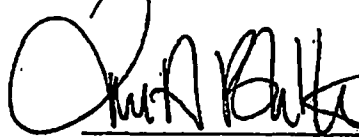
Similarly, in Ray v. State, 303 S.C. 374, 401 S.E.2d 151 (1991), counsel was found to be ineffective for erroneously advising the defendant regarding the sentence he could receive, thus inducing a guilty plea. On appeal, the State agreed that the advice given was erroneous but argued that the lack of prejudice required reversal. Ray, 303 S.C. at 376, 401 S.E.2d at 153. In addressing the difference between the sentence Ray was advised he could receive (life) versus the actual sentence he could receive (possible 75 years without parole) and the issue of prejudice the Court reasoned:

We hold this distinction is sufficient to satisfy prong two of the Hill v. Lockhart test. Ray's steadfast maintenance of his innocence; his uncontroverted testimony that he would not have pled guilty absent the erroneous advice of counsel; and the real distinction between the penalty Ray faces and the advice given him, convince us to *REVERSE* the lower court and *REMAND* for a new trial.

Ray v. State, 303 S.C. 374, 376, 401 S.E.2d 151, 153 (1991).

"In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). "Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tricia A. Blanchette', written over a horizontal line.

Tricia A. Blanchette
Post Office Box 2147
Leesville, SC 29070
Attorney for Applicant

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-23-0995

TITUS NICCOLA LEE ROUSE,)
Applicant,)

v.)

STATE OF SOUTH CAROLINA,)
Respondent,)

CERTIFICATE OF SERVICE

2018 JAN -8 11:30
FILED-CLERK OF COURT
PAUL B. WICKES
GREENVILLE, SC

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I have placed in the mail 19th day of December 2017, a Motion, Pursuant to Rule 59, SCRCP, DeShawn Mitchell of the Attorney General's Office, at:

Office of the Attorney General
Att: DeShawn Mitchell, Ast. AG
PO Box 11549
Columbia, SC 29211



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
Attorney for Applicant

December 19, 2017

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
 DOCKET NO.: 2015-CP-23-0995

TITUS NICCOLA LEE ROUSE,)
 Applicant,)

v.)

STATE OF SOUTH CAROLINA,)
 Respondent,)

ORDER GRANTING APPLICATION
 FOR POST CONVICTION RELIEF

JW

ENTERED COMPUTER

This matter comes before the Court by way of an Application for Post Conviction Relief filed on May 22, 2015. The State filed a Return on June 3, 2015. On February 18, 2016, Tricia A. Blanchette was substituted in as Applicant's counsel. On October 17, 2016, Applicant, through counsel, filed an Amendment to his Application, as follows:

1. Ineffective assistance of counsel for failure to properly prepare and investigate prior to trial, to include counsel's representation at the preliminary hearing, which induced an involuntary guilty plea.
2. Ineffective assistance of counsel for failure to effectively make all reasonable pre-trial motions and effectively represent Applicant on pre-trial motions made prior to the entry of Applicant's guilty plea.
3. Ineffective assistance of counsel for advising Applicant to forego trial and enter a guilty plea.
4. Ineffective assistance of counsel for failure to ensure that Applicant had a full understanding of the charge he was entering a plea to and failure to ensure that the oral pronouncement of the charge matched the sentencing sheet. Additionally, ineffective assistance of counsel for failure to ensure that Applicant's plea was being made to a proper lesser include offense.
5. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

ALP

On April 5, 2017, Applicant, through counsel, submitted an additional Amendment to his Application, as follows:

1. Ineffective assistance of counsel for failure to obtain a canine expert and/or fully investigate the canine evidence and prepare to move to suppress and/or move to suppress testimony and/or evidence derived from the deployment of canines. Ineffective assistance of counsel for errantly advising Applicant regarding testimony and evidence derived from the deployment of canines, which induced an involuntary guilty plea.

On April 21, 2017, an evidentiary hearing was conducted at the Greenville County Courthouse in front of the Honorable Perry H. Gravely. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by DeShawn Mitchell, Assistant Attorney General. Applicant proceeded on the allegations set forth above. Applicant called Michael Gould, Honorable Robert Simms, Edward Cooper, C. Rauch Wise, Esquire, Richard Warder, Esquire, and Titus Rouse. Respondent called John Redman. Applicant introduced fourteen exhibits and provided a Memorandum of Law to the Court addressing cases involving post conviction relief stemming from a guilty plea.

On December 1, 2017, an Order of Dismissal was signed and filed. Applicant, through counsel, received notice of entry of the Order on December 11, 2017. Thereafter, Applicant, through counsel submitted a Rule 59(a) and (e), Motion via mail to the Honorable Perry H. Gravely, the Greenville County Clerk of Court and Respondent on December 19, 2017. As acknowledged by the Greenville County Clerk of Court the Motion was erroneously returned to counsel, and it was resubmitted and filed on January 8, 2018.

After careful reconsideration of the Applicant's Motion, the record before this Court, to include the evidentiary hearing transcript, and the controlling case law, this

Court finds that the previously issued Order of Dismissal is rescinded and relief shall be granted as addressed below.

SUMMARY OF GENERAL SESSIONS PROCEEDINGS

On May 27, 2012, Applicant was arrested for trafficking in heroin, 28 grams or more, at a hotel located on McPrice Street in Greenville, South Carolina.¹ A preliminary hearing was conducted in front of the Honorable Robert Simms on July 12, 2012.²

Applicant was present and he was represented by Richard H. Warder, Esquire. The State was represented by Brennan Townsend, Esquire, of the Thirteenth Judicial Circuit.

Deputy Michael Giovanni was the sole witness for the State. Deputy Giovanni offered testimony regarding the tip that was received and the surveillance conducted on May 27, 2012. Preliminary Hearing pp. 5-6. He saw a white Mercedes pull into the hotel location, decided to check the tag, circled back around the parking lot and found the car had been abandoned. Preliminary Hearing pp. 7-8. He requested additional officers and a canine unit to respond to the scene. Preliminary Hearing p. 8.

Thereafter, additional officers arrived, including a canine unit that began a track. Preliminary Hearing p. 8. He explained that he did not see Applicant jump out of the car. Preliminary Hearing p. 8. About fifteen minutes into the track, he saw Applicant with a towel around his neck head into the hotel office area. Preliminary Hearing p. 9. He recalled the canine officer speaking with Applicant during the track near the pool area. Preliminary Hearing p. 17, lns. 14-21.

¹ Applicant was also issued tickets for the offenses of habitual traffic offender and driving under suspension, which were not subject of the present PCR Application.

² At the evidentiary hearing, the preliminary hearing transcript was admitted as Applicant's Exhibit 1.

He later stated that it was about fifteen minutes into the track that the drugs were found. Preliminary Hearing p. 16. He explained where the drugs were found and that "the narcotics were left there in a bag, and his slippers were also there." Preliminary Hearing p. 11, ln. 17- p. 12, ln. 12. He detailed his conversation with Applicant and decision to detain him.

When cross-examined about his testimony on direct that Applicant claimed ownership of the slippers, he testified: "He did not admit possession of those particular slippers. He said that he had run out of his slippers, and, of course, he denied having any association with narcotics directly to me. Now what he told the narcotics investigator or anybody else, I don't know." Preliminary Hearing pp. 17, lns. 4-11. He also testified that he did not show the slippers to Applicant. Preliminary Hearing p. 16, ln. 20 – p. 17, ln. 1.

He obtained a search warrant for Applicant's hotel room. Preliminary Hearing p. 11. No evidence was found in Applicant's hotel room. Preliminary Hearing p. 11, lns. 9-13.

At the conclusion of the hearing, Judge Sims found probable cause to bind the case over. Preliminary Hearing p. 23.

Subsequently, Applicant was indicted for the offense of trafficking heroin by the Greenville County Grand Jury (Indictment No. 2012-GS-23-06017). On August 6, 2014, Applicant was called to trial in Greenville County in front of the Honorable Edward W. Miller and a jury. Applicant was represented by Richard H. Warder, Esquire, and C. Rauch Wise, Esquire. The State was represented by Joyce K. Monts, Assistant Solicitor.

After the jury was selected and sworn, a Jackson v. Denno hearing was conducted. Transcript p. 27. During the Jackson v. Denno hearing, the State called

Michael Giovanni, John White, and John Cannon to the stand. The hearing concluded with the following discussion:

Court: Well, anything you want to tell me? What is it you want to suppress?

Mr. Wise: The statement we, originally, thought that was in custody we thought was originally more damning than what they testified to.

The Court: I didn't really hear a confession.

Mr. Wise: Well, I don't think it necessarily has to be a confession. But it just was not as we originally thought it was.

The Court: So, you don't have any objection?

Mr. Wise: No.

Transcript p. 53, ln. 21 – p. 54, ln. 7.

Following the Jackson v. Denno hearing, the State agreed to exclude character evidence and a discussion was put on the record regarding "the tip." Transcript pp. 54-56.

A bench conference was conducted, and the record reflects that counsel requested the opportunity to speak with the Solicitor and to speak with Applicant. Transcript p. 57.

Upon return to the courtroom, Judge Miller provided Applicant with his opinion of when a defendant should proceed to trial, after which the guilty plea proceeding began.

Transcript pp. 58-9.

During the plea proceeding, the Assistant Solicitor stated

Officers did run a K9 around the car, which alerted, but they didn't find anything inside the car. The tracking dog did follow the Defendant's trail around the apartment -- hotel complex, and did end up where the cocaine -- excuse me, heroin and slippers were.

pin

Transcript p. 62, lns. 15-19. The plea was accepted, and Applicant was sentenced to a term of twelve years. Transcript p. 67. A direct appeal was not filed on Applicant's behalf.

SUMMARY OF THE EVIDENTIARY HEARING TESTIMONY

At the evidentiary hearing, Applicant testified, and Applicant, through counsel, called the following witnesses: Michael Gould, Robert Sims, Edward Cooper, C. Rauch Wise, Esquire, and Richard Warder Esquire. Respondent called John Redman. Below is a summary of the evidentiary hearing transcript, which is reflected in complete detail in the transcript of the evidentiary hearing that was considered by this Court in rendering this Order.

At the start of the evidentiary hearing, Michael Gould of New York was called to the stand via SKYPE, pursuant to prior order of the PCR court. PCR p. 12. Mr. Gould was properly sworn and qualified as an expert in the area of canine procedure and deployment.³ PCR p. 20. Mr. Gould identified the materials he had been provided and addressed the photographs, which were admitted into evidence. PCR pp. 21-24. Mr. Gould acknowledged that he reviewed all law enforcement reports from the case, and he provided his initial general opinion, as follows:

So, I saw a very contaminated scene. Not only was it contaminated by humans, but another dog. And, frankly, one thing I want to say, I don't think that anything that I have read, including a training record, I don't think anybody intentionally did anything wrong, but I see a crime scene, as I said, that was chaotic and confused. And things should have been slowed down a little bit.

³ Mr. Gold was qualified over the State's objection. PCR pp. 19-20.

PCR p. 25, lns. 6-12. He also provided further explanation regarding his concerns with the contamination of the scene. PCR pp. 26, 30, 32, 36. He stated: "So dogs can be confused just like humans can be confused." PCR p. 36, lns. 24-25.

Mr. Gould addressed the two dogs utilized (Nero and Duke), and explained that Nero was a utility or multi-purpose dog and Duke was a single purpose human scent detection dog. PCR p. 25. He expressed concerns with the presence of two canines at the scene, the handling of the canines and the reports generated from the scene. PCR p. 28-30, 33, 42, 43. He explained how a canine is truly a scientific instrument and even though the canines are capable of "amazing things" they have "definite limitations." PCR p. 27. He further explained that a canine's value is really tapped into in a nighttime scene. PCR pp. 27-28.

Throughout his testimony, Mr. Gould opined that he did not understand completely why the canines were utilized and he found no connection or nexus between the canine, the Applicant, and the drugs that were located by the officer. PCR pp. 28, 40-41. He addressed the drop scent procedure that was utilized and the dogs trail; he opined that he could not determine what the dog was trailing. PCR p. 35-39. He noted that the drugs were found in a natural path and he found nothing in Officer Redman's report that the dog's behavior changed or he alerted. PCR p. 38, 40. He opined that the track was not reliable. PCR p. 41. In sum, he found no value the canines brought to the scene, he stated: "My overall conclusion that the K-9 teams, both K-9 teams, didn't add value or scientific evidence to the entire scene." PCR pp. 44, 45, lns. 15-18.

He agreed that he would have been willing to provide his services to counsel if contacted prior to Applicant's trial, and he would have rendered the same opinions. PCR

p. 44. He further agreed that he would have been willing to testify at trial, if needed. PCR pp. 44-45. When asked about the Assistant Solicitor's statement regarding the utilization of the canines during the plea proceeding, and, specifically, if he agreed that the canine tracked from Applicant to the drugs, he simply stated: "No." PCR p. 47, lns. 11-19.

When the Honorable Robert F. Sims, Greenville County Magistrate Judge, was called to the stand, he acknowledged that he vaguely remembered handling Applicant's preliminary hearing. PCR p. 49. He recalled Applicant contacting him via letter in 2016, and the written communication exchanged with Applicant was addressed and entered into evidence. PCR pp. 49-50. He read what he contemporaneously had written regarding his findings from the preliminary hearing. PCR pp. 50-1.

Edward Cooper, of Upstate Private Investigators, took the stand, and he identified his Affidavit dated March 10, 2015 regarding his work on behalf of Applicant. PCR pp. 53-54. He explained that he went to the hotel location at issue, did a visual inspection, spoke with the manager on duty and confirmed that the property is considered a private property. PCR p. 55.

C. Rauch Wise, Esquire took the stand, and he recalled being hired by Applicant well in advance of trial to join Mr. Warder in his representation of Applicant. PCR p. 79. He identified a letter he wrote Mr. Warder, which included a brief he had written in a case involving circumstantial evidence that was not sufficient to convict. PCR pp. 79-80. He explained that he sent Mr. Warder the brief because he found it analogous to the slipper evidence in the instant case. PCR p. 81.

He indicated that he now is aware that he only received a portion of the discovery from Mr. Warder, but he was aware that no matches to Applicant's prints were found on

the drugs and no DNA on the slippers. PCR pp. 83, 102, 112-113. In particular, he explained that the lack of matching prints on the drugs was similar to the case brief he provided Mr. Warder. PCR p. 83.

When asked, he responded that most of his cases go to trial, and it was his understanding that he was brought on to get the case ready for trial and "appeal if necessary too." PCR p. 83, lns. 7-13. He stated that they were preparing the case for trial. PCR p. 83, lns. 5-6. He recalled a plea was never seriously discussed until the day Applicant entered a guilty plea. PCR p. 83.

He recalled having a statement from a witness at the hotel, but he noted that Mr. Warder looked into it. PCR p. 85. He recalled going to the scene, but he conceded that they did not look into the issue of it being private property. PCR pp. 96-7. He could not recall looking into the basis of Applicant's detention, and he agreed that it may be an interesting issue if he was detained on private property for a traffic violation. PCR pp. 97-8.

He recounted meeting with Applicant for several hours in Edgefield prior to trial, and he remembered that the canine evidence was not discussed. PCR pp. 85-6. The first time he heard about the canine evidence was the day of trial when the Assistant Solicitor told him "that the drug dog had tracked from the car to where the drugs were. PCR p. 86, lns. 8-14. He explained that from his viewpoint the Solicitor's statement was a game changer. PCR p. 86, lns. 21-25. Simply put, he thought the jury would believe that Applicant had the drugs. PCR p. 86, lns. 21-25.

He recalled seeing Officer Redman's report regarding the canine track for the first time the day of trial. PCR p. 87, 112-113. He further recalled reviewing it in conjunction

with a map in his office with PCR counsel and determining that the track was not a direct route from the car to the drugs in contrast to what he believed on the day of the plea. PCR pp. 87-88. He explained that he would have raised the issue to co-counsel if he had reviewed the report prior to trial and looked into getting a canine expert. PCR p. 89. He was present for Mr. Gould's testimony and stated that he would have utilized him as an expert at trial. In explanation, he addressed his current concern that the canine possibly was not even tracking Applicant's scent and that he did not get a clear impression from hearing Mr. Redman's testimony that the dog tracked to the drugs. PCR p. 89, ln. 24 – p. 90, ln. 16.

After being provided a copy of a letter he wrote Applicant shortly after his plea, he explained that the letter reiterated the information he was provided by the Solicitor and his belief that due to the canine evidence, as he understood it on the day of trial, Applicant was likely to be convicted. PCR pp. 91-93. Then, he explained that based upon the expert testimony and his current understanding of the canine evidence, the case was much more "defensible" and he could "easily defend his (Applicant's) decision to go to trial." p. 93, ln. 4 to 94, ln. 18.

In sum, he stated the canine evidence was the "key thing in the whole thing." PCR P. 96, lns. 2-3. When asked about essentially abandoning the Jackson v. Denno hearing, he explained that he was not aware of that canine evidence at that juncture or he would not have abandoned it. He further explained his interpretation of the importance of the slipper and canine evidence, as follows:

It was a combination of the testimony that the tracking dog went to the drugs and the admission of the slippers were his, those two factors together clearly, I think, gets it to the jury and makes it a very difficult case to win. Eliminate the dog, the slippers are just not that important.

PCR p. 107, lns. 18-22.

On cross-examination, Mr. Wise was asked if he would have advised Applicant differently, and he responded: "I would probably advise him differently." PCR p. 115, lns. 13-16. He explained that the dog tracking "is not as strong as I was led to believe." PCR p. 115, lns. 17-19. He also reiterated his prior testimony regarding the weakness of the slipper evidence standing alone, he explained: "I can deal with the slippers. I am not worried about that – Slippers coupled with dog tracking does concern me." PCR p. 115, lns. 20-25. He also explained that he was confident the tip was not going to come in as evidence. PCR p. 116. On redirect, he conceded that he was not prepared on the day of trial to defend against the purported canine evidence. PCR p. 117.

When asked about the offense pled to and reported on the sentencing sheet, he indicated that he understood Applicant was pleading to 4-14 grams. PCR p. 108. He reviewed his letter to Applicant following his plea regarding parole eligibility, and he explained that the letter was written in response to an inquiry from Applicant and not due to confusion on his part. PCR pp. 109-110.

Following Mr. Wise, Richard Warder, Esquire, was called to the stand. PCR p. 118. After being asked about his retainer by Applicant, he answered that he remembered that Applicant came to him. PCR p. 119, lns. 2-7. He explained that he began discussing pursuing a plea with Applicant, and Applicant wanted to go to trial. PCR p. 119-120. At that juncture, Applicant wanted a second opinion, and Mr. Warder recommended Mr. Wise. PCR pp. 119-120. He recalled having a meeting with Applicant and Mr. Wise, and he stated that he thought they went over "everything we had." PCR p. 120, lns. 17-22.

When asked about the preliminary hearing, he indicated that must have handled it from what he had heard. PCR pp. 120-121. Specifically, when asked about questions he posed at the preliminary hearing, he stated that he likely did not have complete discovery and he may have been fishing. PCR p. 121-122. He could not recall what he did to look into obtaining the video referenced at the preliminary hearing that was destroyed prior to trial. PCR pp. 121-123.

Mr. Warder recalled going to the scene with Mr. Wise, but not looking into the matter of private property. PCR p. 123. He explained his understanding for the reason Applicant was detained, yet he admitted that he had not paid particular attention to the details regarding it in the police reports. PCR pp. 123-4.

Regarding the Jackson v. Denno hearing, he indicated that he could not remember why they chose to not make an objection. PCR pp. 127-8. He followed up by explaining he had a "standard seventy three year old memory." PCR p. 128, lns. 3-8.

He explained that the trial strategy was to "get a directed verdict because of the lack of direct evidence and it was a circumstantial case." PCR p. 124, lns. 9-11. Based upon his memory, he believed the case turned in the direction of a plea following a bench conference where the Judge recommended that they speak with the Solicitor. PCR p. 12.

After that conference, he advised Applicant it was "time to fold them" and take a plea.⁴ PCR p. 125, lns. 7-11. He outlined the evidence that was not favorable and said he had not given much "weight on the day" since he assumed the dog track had not produced anything. PCR p. 126. But, he explained the day of the trial the Solicitor told him "that her officer that day was going to say that he trailed – the dog trailed him right

⁴ On cross-examination, he testified that he thinks he would advise Applicant to take the plea "today." PCR p. 132, lns. 8-19.

to my client.” PCR p. 126, lns. 13-15. He conceded that he had not obtained the dog records nor prepared to cross-examine the officer. PCR pp. 126-127.

The final witness called to the stand was Applicant. Applicant recalled retaining Mr. Warder and his limited interactions with him prior to the retainer of Mr. Wise. PCR pp. 136-137. He recalled reviewing some discovery items during a joint meeting with both attorneys. PCR p. 137. He recalled Mr. Wise doing most of the talking during their meeting. PCR p. 137.

He made it clear that his attorneys were well aware that he wanted a trial, and he explained that would not have hired two attorneys known for handling trials if he wanted to pursue a guilty plea. PCR pp. 137-138, 156. He confirmed that he intended to go forward with a trial on August 6, 2014. PCR p. 138. He explained that he had just turned down a plea and the plea really came out of the blue. PCR p. 156, lns. 1-14. He further explained that he entered the plea solely on the advice of counsel. PCR p. 156, lns. 10-14.

Regarding the discovery he had reviewed on his own and/or with counsel prior to trial, he explained that counsel did not review the preliminary hearing transcript with him nor was he aware of the canine evidence. PCR pp. 138-139. As was stated by Mr. Wise, he affirmed that any matters involving canines were not discussed with him prior to his trial. PCR pp. 138-139. He remembered seeing the canine while at the pool, but he was never approached by the canine. PCR p. 154-155.

Turning to the destruction of the in car video mentioned at the preliminary hearing, he explained that he asked about the in car video that he believed would show he did not confess to anything. PCR p. 140. He recalled Mr. Warder telling him it did not exist. PCR p. 140. He explained that Mr. Warder had knowledge of the video during the

90 day period prior to destruction, but he was unaware of him trying to obtain it. PCR pp. 139-143. He also explained his written communication with Judge Sims regarding the preliminary hearing and the importance of the alleged slipper confession. PCR pp. 141-142.

In addressing his allegation regarding the location being private property, he explained that he retained a private investigator to look into the matter prior to his PCR hearing. PCR p. 143. He alleged that counsel should have raised the matter in conjunction with an argument regarding his detention and arrest. PCR pp. 143-144, 146-147.

As to trial strategy, he could not recall being aware of the trial strategy, but he recalled knowing that he was ready to go trial. PCR p. 145. He stated that his attorneys did not prepare him to testify or be involved in the trial. PCR p. 145.

When asked about the factors outlined by Mr. Warder regarding his reasons for advising Applicant to enter a guilty plea, Applicant responded that the first he heard of those factors was in the courtroom today. PCR pp. 148-149. He recalled the only explanation given him on the day of the trial was "we can't win." PCR p. 149, Ins. 9-13.

Applicant confirmed that he would have provided funds for a canine expert if his counsel would have told him one was needed to prepare for trial. PCR p. 151-152. He also confirmed that he would have wanted an expert utilized as was done for his PCR. PCR p. 152.

Regarding the oral pronouncement of the charge in contrast to the sentencing sheet, Applicant noted that the charge announced by the clerk at the outset of the plea was different than what was reflected on the sentencing sheet. Transcript p. 58, PCR p. 157. He indicated that he had confusion regarding whether the charge was non-violent

and referenced the letter he received from Mr. Wise regarding the statute and parole eligibility. PCR pp. 157-158.

Applicant was directed to his comments during the plea, and he explained that he was trying to deny ownership of the slippers and "everything revolving around the case." PCR pp. 152, 153, lns. 15-18. He explained that he admitted to ownership of the drugs since counsel told him "you have to own up to this stuff or you not going to get your plea." PCR p. 153, lns. 15-16.

At the conclusion of his direct testimony, he reiterated that he did not want to plead guilty and he wanted to proceed to trial. PCR pp. 158-159. He also remembered his attorneys' outlook on trial being changed due to what was communicated by the Solicitor regarding the dog evidence and entering the plea due to the advice of his attorneys. PCR pp. 158-159.

Respondent called John Redman to the stand. He explained his certification and training, along with his involvement in Applicant's case. PCR pp. 56-58. He stated that he did not have his report, so he qualified his recollection as "vague." PCR p. 58. He briefly recalled a second canine officer being at the scene, that the car was running and a tip had come into the front desk. PCR pp. 58-9.

On cross-examination, he responded that he did not review the canine records provided in discovery prior to the hearing. PCR p. 60. He identified his report, which was admitted into evidence. PCR p. 61. When asked whether or not the canine alerted, he provided a lengthy response, which he concluded by saying: "There was no way he could alert to him because he wasn't there anymore." PCR p. 62. He explained that his dog's "true alert" would be to "either jump on the person or sit next to the person." PCR p. 64,

Ins. 18-24. Specifically, he stated: "He never alerted. He didn't have the opportunity to alert. There was nothing for him to alert to." PCR p. 77, Ins. 6-7.

When asked if he was confident that his dog was trailing Applicant, he explained that his dog was trailing the scent from the gauze pad taken from the steering wheel of the car. PCR pp. 65-66, 68. In response to why he did not obtain a scent directly from Applicant, he responded that he did not know that Applicant was on the scene. PCR pp. 65-66. He was asked about his interactions with the Solicitor's Office prior to the trial, and he stated that he was unsure if he would have stated that his dog was "able to track from the Defendant to the drugs." PCR p. 67, Ins. 8-20. He explained that he stopped the track upon location of the drugs and the dog did not trail to Applicant's location on the scene. PCR p. 68, 76. He later stated, "We went to the location where the Defendant was." PCR p. 69, Ins. 12-15. When asked when that occurred, he responded: "When we stopped." PCR p. 69, Ins. 15-16.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Even though this Court finds the testimony of Officer Redman credible, this Court makes its findings with the following facts in mind. Officer Redman admitted he had not reviewed anything pertaining to the case prior to his testimony, and the State failed to qualify Officer Redman as an expert pursuant to State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009) or establish any of the White factors for the admissibility of the canine evidence he addressed.⁵ As a result, Officer Redman's testimony provides limited value as to the core issue in this matter.

⁵ In State v. White, 382 S.C. 265, 272, 676 S.E.2d 684, 687 (2009), the South Carolina Supreme Court held, as follows:

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In a PCR stemming from a guilty plea, an applicant alleging a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). Therefore, an applicant that entered a plea on the advice of counsel may only attack the voluntary nature of that plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, applicant would not have pled guilty and insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985), Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000). In Hill, the Supreme Court of the United States made it clear that the "voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." 474 U.S. at 57, 106 S.Ct. at 369.

In Hill and Padilla v. Kentucky, 559 U.S. 356, 130 S.Ct. 1473 (2010), the Supreme Court of the United States examined the role of advising a client about a plea offer and ensuing guilty plea as was discussed in Missouri v. Frye, 132 S. Ct. 1399, 1405-06 (2012)(emphasis added), as follows:

Hill established that claims of ineffective assistance of counsel in the plea bargain context are governed by the two-part test set forth in Strickland.

To provide uniformity, we think it advisable to adopt the following evidentiary framework to guide our bench and bar concerning dog tracking evidence. By extrapolating from our case law and other authorities, we conclude a sufficient foundation for the admission of dog tracking evidence is established if (1) the evidence shows the dog handler satisfies the qualifications of an expert under Rule 702; (2) the evidence shows the dog is of a breed characterized by an acute power of scent; (3) the dog has been trained to follow a trail by scent; (4) by experience the dog is found to be reliable; (5) the dog was placed on the trail where the suspect was known to have been within a reasonable time; and (6) the trail was not otherwise contaminated. See State v. Childs, 299 S.C. at 476-77, 385 S.E.2d at 842-43; State v. Brown, 103 S.C. at 443-45, 88 S.E. at 22-23; see also State v. Taylor, 337 N.C. 597, 447 S.E.2d 360, 368-69 (1994); Jay M. Zitter, Annotation, Evidence of Trailing by Dogs in Criminal Cases, 81 A.L.R. 5th 563 (2000).

See Hill, supra, at 57, 106 S. Ct. 366, 88 L. Ed. 2d 203. As noted above, in Frye's case, the Missouri Court of Appeals, applying the two part test of Strickland, determined first that defense counsel had been ineffective and second that there was resulting prejudice.

In Hill, the decision turned on the second part of the test. There, a defendant who had entered a guilty plea claimed his counsel had misinformed him of the amount of time he would have to serve before he became eligible for parole. But the defendant had not alleged that, even if adequate advice and assistance had been given, he would have elected to plead not guilty and proceed to trial. Thus, the Court found that no prejudice from the inadequate advice had been shown or alleged. Hill, supra, at 60, 106 S. Ct. 366, 88 L. Ed. 2d 203.

In Padilla, the Court again discussed the duties of counsel in advising a client with respect to a plea offer that leads to a guilty plea. Padilla held that a guilty plea, based on a plea offer, should be set aside because counsel misinformed the defendant of the immigration consequences of the conviction. The Court made clear that "the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel." 559 U.S., at ___, 130 S. Ct. 1473, 176 L. Ed. 2d 284, 298. It also rejected the argument made by petitioner in this case that a knowing and voluntary plea supersedes errors by defense counsel. Cf. Brief for Respondent in Padilla v. Kentucky, O. T. 2009, No. 08-651, p. 27 (arguing Sixth Amendment's assurance of effective assistance "does not extend to collateral aspects of the prosecution" because "knowledge of the consequences that are collateral to the guilty plea is not a prerequisite to the entry of a knowing and intelligent plea").

Here, Applicant's allegations are best addressed in a three part discussion, as follows: 1) Whether counsel was ineffective for his failure to investigate and handle pre-trial / trial matters, not including the canine evidence; 2) Whether counsel was ineffective for failure to ensure that Applicant had a full understanding of the charge he was pleading to and failure to ensure that the oral pronouncement of such matched the sentencing sheet; and 3) Whether counsel was ineffective for advising Applicant to enter a guilty plea due to the canine evidence when counsel did not have a full understanding nor had prepared to defend against the canine evidence prior to trial.

1. Counsel was not ineffective for failure to investigate and handle pre-trial / trial matters (not including the canine evidence).

By way of his Amendment and at the evidentiary hearing, Applicant alleged that counsel was ineffective in his representation at the preliminary hearing and in the handling of pre-trial investigation and matters including the destruction of evidence, the legality of his arrest, the tip, and alleged confession. This Court will address these matters in total, but all findings regarding the pre-trial handling of matters involving the canine evidence will be addressed below.

As summarized above and reflected in the evidentiary hearing transcript, Applicant testified that Mr. Warder handled the preliminary hearing. Applicant explained that counsel failed to look into obtaining the in car video and failed to investigate the basis for his detention and arrest provided at the preliminary hearing. At the time of trial, testimony was offered that the video was purged (destroyed) 90 days after Applicant's arrest. Transcript pp. 51-53.

Additionally, Applicant explained that he did not claim ownership of the slippers in question nor make a confession. He noted and counsel was asked about the portions of the preliminary hearing transcript addressing the slippers, whereby Deputy Giovanni conceded that Applicant did not admit possession of the particular slippers to him. Applicant was not aware of the reason why his attorneys did not make an argument at the end of the Jackson v. Denno hearing.

Applicant retained a private investigator to determine if the property was considered private property. At the evidentiary hearing, Edward Cooper testified that he went to the property and confirmed with management that it was private property. PCR p. 55.

At the evidentiary hearing, the attorneys explained the trial strategy revolved around the insufficiency of the evidence and the aim was to obtain a directed verdict. Counsel conceded that they did not look into any legal arguments regarding private property, but they did go to the scene together. Regarding the Jackson v. Denno hearing, Mr. Wise, specifically testified, that he would not have chosen to abandon the challenge to the alleged slipper confession if he had been aware of the canine evidence at that juncture. Mr. Wise also explained that the tip was not coming in at trial.

This Court is not convinced that Applicant has shown that counsel was deficient in his representation at the preliminary hearing. Counsel thoroughly cross examined the officer at the hearing, which resulted in favorable information being obtained for trial preparation.

This Court is also not convinced that counsel was ineffective for failing to obtain the video or investigate the matter of private property prior to trial. During the Jackson v. Denno hearing, it was addressed that the video had been purged by law enforcement, and counsel even got the officer to admit that the destruction could have been his fault. Transcript pp. 51-52. Counsel did admit that the private property matter may be an interesting issue, but this Court finds that Applicant has failed to establish how counsel's failure to explore this issue was deficient and rendered his guilty plea involuntary.

Finally, this Court finds that counsel was prepared to address the admission of the tip at trial, and the abandonment of the Jackson v. Denno hearing was tainted by counsel's failure to understand and prepare to defend against the canine evidence at trial,

which is discussed below. Therefore, standing alone, this Court cannot find that counsel was deficient in the handling of the tip or alleged confession at trial.⁶

As a result, this Court finds that Applicant's claims regarding the preliminary hearing and pre-trial matters, excluding the canine evidence, fail in that Applicant has failed to show that counsel was ineffective and but for such ineffective assistance he would not have pled guilty and would have continued with trial.

2. Counsel was not ineffective for failure to ensure that Applicant had a full understanding of the charge he was pleading to and failure to ensure that the oral pronouncement of such matched the sentencing sheet.

After the trial turned into a plea proceeding, the Clerk read the charge, as follows:

"Your Honor, in the case of 2012-GS-23-6017, the State v. Titus Rouse indicted for trafficking heroin, he's pleading to trafficking heroin less than four grams." Transcript p. 58, lns. 9-12. Thereafter, the Court informed the Applicant as follows:

You're up here on three indictments. The first one is 2012-6017. It alleges you did in Greenville County on May 27, 2012, knowingly sell, manufacture, deliver or bring into South Carolina, or provide some other assistance to do that, or you were in actual or constructive possession of more than 14 grams of heroin. You pleading to trafficking in heroin greater than 4 grams.

Transcript p. 59, lns. 7-14. The sentencing sheet reflected "Drugs / Trafficking in Heroin > 4 grams."

At the evidentiary hearing, Applicant testified that he was confused by the difference between what the Clerk announced and what was reflected on the sentencing sheet. He further testified that he asked his attorneys during the plea proceeding whether it was a non-violent offense, and Mr. Wise wrote him to clarify after his plea.

⁶ This Court finds persuasive the admission by Mr. Wise that he did not understand the importance of the alleged slipper confession since he did not have a proper understanding of the State's interpretation of the canine evidence nor the canine evidence in general at the time of trial. This factor is part of the Court's reasoning in finding counsel deficient in regards to the canine evidence and plea advice as discussed below.

While on the stand, both defense attorneys did not seem to recall any confusion regarding the charge being pled to and the direct or collateral consequences of the charge. Mr. Wise acknowledged writing the letter to the Solicitor discussing parole eligibility dated August 8, 2014 and the letter to Applicant regarding the statue and collateral consequences on August 7, 2014, but he recalled doing so in response to Applicant's inquiry not due to confusion on his part.

In South Carolina, a substantial number of cases have developed a body of case law that establish which consequences must be explained to a defendant by counsel prior to a plea. Generally speaking, a defense attorney must only inform a defendant of the direct consequences of his plea, and counsel has no obligation to inform his client of the collateral consequences of his plea. See Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983), Frasier v. State, 351 S.C. 395, 570 S.E.2d 172 (2002) (Finding that a defendant need not be informed of the collateral consequences of his sentence such as parole eligibility; however if an attorney undertakes to advise a defendant of the collateral consequences of his sentences, then the advice must be accurate).

Direct consequences have a "definite, immediate, and largely automatic effect on the range of the defendant's punishment." Cuthrell v. Director, Paxtuent Institution, 475 F.2d 1364, 1366 (4th Cir. 1973). If a criminal defendant does not properly understand the direct consequences of his plea, then the plea is invalid. State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). A defense counsel's failure to advise a client of the direct consequences of a guilty plea constitutes ineffective assistance counsel. Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999).

pitt

Based upon the record and testimony offered, this Court finds that Applicant has failed to show any deficiency on the part of counsel for failing to properly advise him regarding the direct consequences or advising him incorrectly regarding the collateral consequences of his plea. Furthermore, this Court finds that the plea court did properly inform Applicant of the charge during the plea proceeding, as was also reflected on the sentencing sheet. As a result, this claim must fail for failure to establish ineffective assistance.

3. Counsel was ineffective for advising Applicant to enter a guilty plea due to the canine evidence when counsel did not have a full understanding nor had prepared to defend against the canine evidence prior to trial.

"Where, as here, a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice 'was within the range of competence demanded of attorneys in criminal cases.'" Hill v. Lockhart, 474 U.S. 52, 56 (1985) (quoting McMann v. Richardson, 397 U.S. 759, 771 (1970)). "[T]he defendant can show prejudice by demonstrating a 'reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'" Lee v. United States, 137 S. Ct. 1958, 1965 (2017) (quoting Hill, 474 U.S. at 59).

As was testified to at the evidentiary hearing and set forth in the letter written by Mr. Wise shortly after the entry of the plea, Applicant entered his guilty plea as a result of counsel's advice to forego the trial due to the strength of the evidence, specifically the canine evidence. The advice to forego trial was in complete contrast to counsel's pre-trial strategy to obtain a directed verdict due to the insufficiency of the evidence. This Court

pk

finds as a result of thorough review of the record, testimony and evidence offered that this advice was deficient and amounts to ineffective assistance of counsel.

The record supports a finding that counsel was ineffective due to counsel's failure to review and discuss the canine evidence, lack of understanding regarding the canine evidence, failure to utilize a canine expert, and advice to forego trial due to the canine evidence.⁷ At the evidentiary hearing, Mr. Wise testified that he was unaware of the canine evidence until he was told about it by the Solicitor at trial, that he would have used the canine expert called, and he would not have advised Applicant to forego trial now that he had a proper understanding of the canine evidence and the case as a whole.⁸ PCR pp. 86-94, 99-100, 106-107, 113-117. Constitutionally defective performance is found when defense counsel offers erroneous advice concerning an issue that is central to the defendant's decision to plead guilty. Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991). This Court cannot ignore the admitted erroneous advice that caused Applicant to abandon trial and enter a guilty plea. Plea counsel's advice, which was not based upon a proper review of the discovery or utilization of an expert but solely upon the Solicitor's view of the evidence, was not "within the range of competence demanded

⁷ As summarized above and reflected in the evidentiary hearing transcript, Applicant called Michael Gould, and he was qualified as an expert in the area of canine procedure and deployment. PCR p. 20. Based upon the opinions and testimony offered by Mr. Gould, this Court is persuaded that counsel's advice was deficient and that counsel was ineffective for failing to utilize Mr. Gould to prepare to defend against the canine evidence. See Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015) (Reversing the denial of post conviction relief reasoning that trial counsel was deficient for failing to discuss with Reeves hiring a medical expert to more thoroughly challenge the State's medical evidence presented at trial and finding that trial counsel did not present a legitimate trial strategy for failing to consult with an expert before trial or call an expert at trial.). Here, counsel did not provide a trial strategy for failure to utilize an expert. On the other hand, counsel admitted that an expert should have been utilized and stated that he would have utilized Mr. Gould.

⁸ As detailed above, Mr. Warder testified that he thought they went over all the discovery during the joint meeting with Applicant, but both Applicant and Mr. Wise recalled the canine evidence and reports were not discussed. Mr. Warder also explained that the Solicitor's comments about the canine evidence were different than the weight he had given the evidence, and he had not prepared to cross-examine the officers about the canine evidence. PCR pp. 120, 125-127.

of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985) (quoting McMann v. Richardson, 397 U.S. 759, 771 (1970)).

Turning to the prejudice prong, it is clear that Applicant wanted to proceed to trial and only chose to forego trial based upon the advice of counsel. This finding is supported by the following evidence in the record before this Court. As testified to at the evidentiary hearing, Applicant hired a second attorney (Mr. Wise) who stated that he was brought on board with the belief that the case was proceeding to trial. The case did proceed to trial, with the jury being sworn and pre-trial motions being made. The trial turned into a guilty plea only after Applicant met with his attorneys and received the advice discussed above. Most importantly, Mr. Wise, Mr. Warder and Applicant testified that Applicant wanted to proceed to trial and only chose to enter a guilty plea after their meeting regarding their discussion with the Solicitor about the canine evidence. At the evidentiary hearing, Applicant repeatedly stated that but for the advice of counsel he would have proceeded to trial and wants the opportunity to proceed to trial. PCR pp. 137-8, 156, 159. This Court finds this testimony to not be merely self-serving, but it is supported by the testimony of both attorneys and the record before this Court. Therefore, this Court finds that prejudice has sufficiently been established.

As a result of these findings, this Court finds a new trial must be granted.

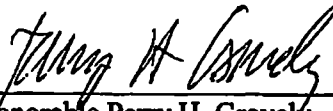
CONCLUSION

Based upon the foregoing, this Court orders that the Application for Post Conviction Relief is hereby granted. This Court further finds that no other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

IT IS THEREFORE ORDERED:

1. That Applicant has met his burden of proof as to his specific allegation of ineffective assistance of trial counsel as detailed above, but has failed to meet his burden of proof as to all other allegations of ineffective assistance of trial counsel as detailed above;
2. That the Application for Post Conviction Relief be granted and the Applicant's convictions be vacated and he be granted a new trial;
3. That Applicant be transferred from the custody of South Carolina Department of Corrections to the custody of Greenville County pending the disposition of his criminal case, with normal bond proceedings.

AND IT IS SO ORDERED this 28th day of March, 2018.



Honorable Perry H. Gravelly
Circuit Court Judge

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Titus Niccola Lee Rouse

AKA: _____
 Race: BLACK Sex: M Age: 33
 DOB: 1981 SS#: _____
 Address: _____
 City, State, Zip: Greenville, SC 29607
 DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Drugs / Trafficking in Heroin > 4 grams

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2306017
 A/W#: N201021
 Date of Offense: 5/27/2012
 S.C. Code § : 44-53-0370(E)(3)
 CDR Code #: 0149

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 44-53-0370(E) of the S.C. Code of Laws, bearing CDR Code # 2361
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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

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

ATTEST: Joyce K. Monts 65331 Richard Rouse 05827
 Monts, Joyce K. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

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

SPECIAL CONDITIONS:

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

Recipient: _____

*Fine: _____ \$
 § 14-1-206 (Assessments 107.5 %) _____ \$
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$
 § 56-5-2995 (DUI Assessment) \$12 \$
 § 56-1-286 (DUI Breath Test) \$25 \$
 Proviso 47.9 (Public Def/Prob) \$500 \$
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00
 § 50-21-114 (BUI Breath Test Fee) \$50 \$
 § 56-5-2942(J) (Vehicle Assessment) \$40/ca \$
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 8.40
 TOTAL \$ 288.40

_____ days/hours Public Service Employment

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

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

Clerk of Court/ Deputy Clerk
 Court Reporter: Paul B. Wikenheim
 SCCA/217 (03/2011)

Presiding Judge 2012 W. M. Rouse
 Judge Code: 2130
 Sentence Date: 8-6-14

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 TRAFFICKING HEROIN

At a Court of General Sessions, convened on
 County present upon their oath:

FEB 18 2014

the Grand Jurors of Greenville

That TITUS NICCOLA LEE ROUSE did in Greenville County, on or about the 27th day of May, 2012, knowingly sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 14 grams of Heroin. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

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

Joey Monts
 SOLICITOR

WITNESSES

Michael Giovanni

Greenville County Sheriffs Office

5/28/2012

ARREST WARRANT NUMBER
N201021

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-23-

JLK

006017

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February

TERM 2012

THE STATE

vs.

TITUS NICCOLA LEE ROUSE

Indictment for

0287

TRAFFICKING HEROIN

VIOLATION § 44-53-0370

ENTERED
ACCT.

RECEIVED

AUG 03 2012

Clerk of Court
Greenville County

372

ARREST WARRANT **5531**
N-201021 **5-30-12**

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville

THE STATE **2012-077095**
against

Titus Niccola Lee Rouse

Address: **[REDACTED]**

Greenville, SC 29607-

Phone: **[REDACTED]** SSN: **[REDACTED]**

Sex: **M** Race: **B** Height: **6** 3 Weight: **181**

DL State: **SC** DL #: **[REDACTED]**

DOB: **[REDACTED] 1981** Agency ORI #: **SC0230000**

Prosecuting Agency: **Greenville County Sheriffs Office**

Prosecuting Officer: **Michael Giovanni - 1117**

Offense: **Drugs / Trafficking in Heroin, morphine, etc., 28 g or more**

Offense Code: **0149**

Code/Ordinance Sec: **44-53-0370(e)(3)(**

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

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

(L.S.)

Signature of Judge

Date: **[REDACTED]**

RETURN

A copy of this arrest warrant was delivered to
defendant **Titus N. Rouse**
on **5/28/12**

FE FLOWD +1247 C20
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
Greenville General Sessions (West Grv)
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville

AFFIDAVIT
Personally appeared before me the affiant **Michael Giovanni** who
being duly sworn deposes and says that defendant **Titus Niccola Lee Rouse**
did within this county and state on or about **05/27/2012** violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of **Greenville**)
in the following particulars:

DESCRIPTION OF OFFENSE: **Drugs / Trafficking in Heroin, morphine, etc., 28 g or more**

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

That the defendant was found to be in possession of approx 31 grams of a light brown substance consistant with that of heroin after
a lawful investigation. The substance was field tested and indicated a positive test for heroin. This incident occurred at **McPrice**
Ct (Hawthorne Suites) in Greenville County, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville

Affiant's Address **4 Mcgee Street**
Greenville, SC 29601-
Affiant's Telephone **(864)271-5210**

ARREST WARRANT

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

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

on or about **5/27/2012** defendant **Titus Niccola Lee Rouse**
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of **Greenville**) as set forth below:

DESCRIPTION OF OFFENSE: **Drugs / Trafficking in Heroin, morphine, etc., 28 g or more**

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on **05/28/2012**
Signature of Issuing Judge **[Signature]** (L.S.)
Shirley Keaton
Judge Code: **5701**
Judge's Address **20 Mcgee St**
Greenville, SC 29601-
Judge's Telephone **[REDACTED]**
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

373

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Titus Niccola Lee Rouse

AKA:

Race: BLACK Sex: M Age: 33DOB: 1981 SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Greenville, SC 29607DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Traffic / Habitual Traffic Offenders, DUS as per Habitual Traffic Offender status

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2306417A/W#: 51944FODate of Offense: 1/25/2012S.C. Code § 56-01-1100CDR Code #: 0057

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 56-01-1100 of the S.C. Code of Laws, bearing CDR Code # 0057
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Moys, Joyce K.

65331

SC Bar#

Defendant

Attorney for Defendant

SC Bar# 05422WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL		\$ 133.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter: Jenkin

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2130Sentence Date: 2-6-14

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
HABITUAL TRAFFIC OFFENDER

At a Court of General Sessions, convened on

FEB 18 2014

the Grand Jurors of Greenville

County present upon their oath:

That TITUS NICCOLA LEE ROUSE did in Greenville County, on, or about the 26th day of January, 2012, operate a motor vehicle in this State while his driver's license was suspended, and after having been declared to be an Habitual Traffic Offender. This is in violation of §56-1-1100 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

J L Seegars

Greenville County Sheriffs Office

1/25/2012

ARREST WARRANT NUMBER
51944FQ

ACTION OF GRAND JURY

TRUE BILL

Ricky T. Hall
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS-23-

JLK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February

2014
TERM 2012

THE STATE

vs.

TITUS NICCOLA LEE ROUSE

Indictment for

0057

HABITUAL TRAFFIC OFFENDER

VIOLATION § 56-01-1100

**ENTERED
ACCT.**
AM

RECEIVED

AUG 24 2012

Clerk of Court
Greenville County



376

006417

Form 8-430
Rev. 3/09STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET5005
2-17-12

CITY OR COUNTY OF		VERSUS	
FIRST NAME	MIDDLE NAME	LAST NAME	
Titus	Nicolas	Rous	
STREET AND NO.		STATE	ZIP CODE
[REDACTED]		Taylor's SC	29687
STATE LICENSED	DRIVER'S LICENSE NO.	CDL	DRL LIC. CLASS
SC	[REDACTED]	☐ YES ☐ NO	ID
VEH. LIC. NO.	STATE	MAKE OF VEH	YEAR
[REDACTED]	SC	Dodge	
		COMM. VEH.	AUTO
		HAZ. MT.	MOPED
		MTRCYCL.	OTHER
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT			
NAME OF TRIAL COURT		STREET AND NO.	
Garrett		2501 Wade Hampton Blvd	
DATE OF TRIAL	TIME OF TRIAL	CITY	STATE
3/21/2012	1000	Taylor's	SC
VIOLATION - COURT APPEARANCE REQUIRED		VIOLATION SECTION NO.	
YES NO		51-1-110 a	
OWNER OF VEHICLE		DATE OF ARREST	
Tameka Thomas		1/26/2012	
ADDRESS OF OWNER		DATE OF VIOLATION	
Sage		1/26/2012	
MAIL DEPOSITED	NAME OF ARRESTING OFFICER		RANK
Jail	Sergeant JC *1262 D21		DE
DESCRIPTION OF ACCUSED		COUNTY	NUMBER
SEX	DATE BIL. REC'D. BY	Greenville	23
B	12/21/11	BADGE	TRIOF
		D21	DE
CASE BEFORE		TIME OF VIOLATION	
MAGISTRATE ☐ MUN. COURT ☐		0500 PM-2:11	
CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐		WEATHER	
NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE		DISTANCE IN FEET FROM INTERSECTION OF	
		B. H. S. L. L. L. L.	
DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐		MILES	
NOLLE PROSSO ☐ DISPOSITION		HWY NO.	
GUILTY ☐ PLED: NOLLO CONTENDERE ☐		CITY	
FORFEITED BOND ☐		Lat	
TRIAL BY: TRIAL JUDGE ☐ JURY ☐		Long	
VERDICT OF TRIAL IF ANY		OFFENSE CODE	
GUILTY ☐ NOT GUILTY ☐		87	
DATE OF TRIAL IF ANY		B.A. LEVEL	
20		/	
JAIL	FINE	AMT. COLLECTED	AMT. SUSPENDED
COMMITTED TO:		Vehicle Searched	Arrested for Cause of Collision
CERTIFIED CORRECT		DATE	

51944 FQ

DRIVER RECORDS COPY

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Titus Niccola Lee Rouse

AKA:

Race: BLACK Sex: M Age: 33DOB: 1981 SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Greenville, SC 29607DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: DUS / Driving under suspension, license not suspended for DUI - 3rd or sub. offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2300846A/W#: 51943FQDate of Offense: 1/26/2012S.C. Code §: 56-01-0460(3)CDR Code #: 0175

SENTENCE SHEET

in violation of § 56-01-0460(3) of the S.C. Code of Laws, bearing CDR Code # 0175
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Monica Joyce K.65331
SC Bar#x [Signature]
Defendant[Signature]
Attorney for Defendant05822
SC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 6 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2130Sentence Date: 3-6-14

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
DRIVING UNDER SUSPENSION

At a Court of General Sessions, convened on
County present upon their oath:

FEB 18 2014

the Grand Jurors of Greenville

That TITUS NICCOLA LEE ROUSE did in Greenville County, on or about the 26th day of January 2012, drive a motor vehicle on a public highway of this state when his license to drive was suspended, such not being the first such offense within a period of five years including and immediately preceding the foregoing date. This is in violation of §56-1-460 of the South Carolina Code of Laws (1976) as amended.

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

Joyce Monts

SOLICITOR

WITNESSES

J. L. Seegars

Greenville County Sheriffs Office

1/28/2012

ARREST WARRANT NUMBER
51943FQ

ACTION OF GRAND JURY
TRUE BILL

Ricky T. Hall
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-23-
JLK

000846

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February

TERM 2013

THE STATE

vs.

TITUS NICCOLA LEE ROUSE

Indictment for

0175

DRIVING UNDER SUSPENSION

VIOLATION § 56-01-0460

ENTERED
ACCT. M

FILED

FEB 25 2013

Clerk of Court
Greenville County

380

Form 9-433
Rev. 5/00

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Greenville **5005**
12-7-12

FIRST NAME Titus MIDDLE NAME Nicola LAST NAME Rose

STATE SC ZIP CODE 29687

STATE LICENSE SC CDL NO DR. LIC. CLASS 1D

VEH. REG. NO. SC STATE SC MAKE OF VEH. YEAR 2000 COM. VEH. NO AUTO. YES MOPED NO MOTORCYCLE NO OTHER NO

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT District Court COUNTY AND NO. (20) White Hampton Blk

DATE OF TRIAL 5-1-12 TIME OF TRIAL 1000 CITY Greenville STATE SC ZIP CODE 296

VIOLATION - COURT APPEARANCE REQUIRED NO VIOLATION SECTION NO. 56-1-160

OWNER OF VEHICLE Therese Thomas DATE OF ARREST 1-26-12

ADDRESS OF DRIVER SC DATE OF VIOLATION 1-26-12

BAILED FOR 200 NAME OF ARRESTING OFFICER Stacy A. Davis, D71 RANK DET

DATE BAIL PAID 5-1-12 BY SC COUNTY Greenville JUDGE SC

CASE REPORTED NO MAGISTRATE NO JURY NO TRIAL COURT NO DISTRICT COURT NO FEDERAL COURT NO

NAME OF TRIAL COURT SC JUDGE SC JURY NO

DEFENDANT DID NOT APPEAR NO APPEARED NO

DATE PROMISED SC DATE SC PLEA NO HOLD CONTENDERS NO

TRIAL BY SC JUDGE NO JURY NO

VERDICT OF SC DATE OF TRIAL SC

TRIAL BY SC JUDGE NO JURY NO

COMMITTED TO SC DATE SC OFFENSE CODE 96 RAY LEVEL SC

CERTIFIED CORRECT SC DATE SC **51943 FO**

TRIAL COURT COPY

STR