

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable J. Cordell Maddox, Jr., Circuit Court Judge

RECEIVED

AUG 15 2018

S.C. SUPREME COURT

KENYON JEMEL BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000713

APPENDIX

LAURA R. BAER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JANELL GREGORY
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRANSCRIPT OF PARTIAL TRIAL AND GUILTY PLEA HELD APRIL 26, 2016	1
APPLICATION FOR POST-CONVICTION RELIEF	71
STATE’S RETURN.....	80
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	85
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING HELD NOVEMBER 8, 2017	88
ORDER OF DISMISSAL.....	121
INDICTMENTS	135

State of South Carolina.,)	In the General Sessions
)	Court of York
)	
County of York.)	Case No. 2015-GS-46-02138
	2015-GS-46-03022
	2015-GS-46-03023
	2015-GS-46-03024
	2015-GS-46-03025

State of South Carolina.,)	
)	
Plaintiff.,)	
)	Transcript of Record
)	Pretrial Testimony
Kenyon Jemel Brown.,)	Plea
)	
Defendant.,)	
_____)	
	York, South Carolina
	April, 26, 2016

B E F O R E:

The Honorable John C. Hayes, III, judge.

Ms. Marina Hamilton, Assistant Solicitor
 Sixteenth Circuit Solicitor's Office
 1675-1A York Hwy.
 York, South Carolina 29745
 803-628-3020
Marina.hamilton@yorkcountygov.com
 For the Plaintiff

Ms. Melissa Anne Inzerillo
 Sixteenth Circuit Public Defender
 Moss Justice Center
 1675-1E York Hwy.
 York, SC 29745
melissa.inzerillo@yorkcountygov.com
 803-628-3031
 For the Defendant

ORIGINAL

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

I-N-D-E-XE-X-A-M-I-N-A-T-I-O-NWITNESSBY:PAGE NO.

Investigator Leland Harrelson

Solicitor Hamilton . . . P.11-15

. . . P.36-40

Ms. Inzerillo. P.15-17

. P.40-43

Marie Sledge

Solicitor Hamilton . . . P.27-31

Ms. Inzerillo. P.31-35

Plea P.58-69

Court Reporter Certificate Page P.70

I-N-D-E-X

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

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
------------	--------------------	------------	-------------

No Exhibits were received into the record.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 (ON THE RECORD AT 01:05 PM.)

2 (STATE V. MITCHELL JOHNSON PLEA W. ATTORNEY MINDY
3 LIPINSKI.)

4 (ON THE RECORD IN THE CASE OF STATE V. KENYON JEMEL
5 BROWN AT 01:12 PM.)

6 SOLICITOR HAMILTON: Your Honor, we are calling the
7 case pretrial then with the jury selection beforehand. The
8 jury is gonna be here at 1:30.

9 THE COURT: Let's go ahead and start with pretrial.
10 Do you have the defendant?

11 SOLICITOR HAMILTON: Yes, your Honor. He's back
12 there. We're waiting on getting him out. If it's okay
13 with the Court we can go ahead and bring him out and start
14 doing pretrial.

15 I have my witness list, your Honor. May I hand this
16 up?

17 THE COURT: Bring him on out.

18 (DOCUMENTS RECEIVED UP FROM THE STATE BY THE COURT.)

19 THE COURT: Ms. Inzerillo, do you have voir dire?

20 MS. INZERILLO: Yes, your Honor.

21 THE COURT: Witness list and motions?

22 (DOCUMENTS RECEIVED UP FROM THE DEFENSE BY THE COURT.)

23 (DEFENDANT KENYON BROWN, BLACK MALE, ENTERS COURTROOM
24 AT 01:14 PM.)

25 THE COURT: All right, Mr. Brown is present.

1 SOLICITOR HAMILTON: May it please the Court, your
2 Honor. The State would like to call the case on Kenyon
3 Jemel Brown. He is charged under Indictment 2015-GS-46-0-
4 3-0-2-2 to possession with intent to distribute crack
5 cocaine. Also charged with possession with intent to
6 distribute cocaine Indictment Number 2015-GS-46-0-3-0-2-3.

7 Also charged with possession with intent to distribute
8 Clonazepam. The State intends to move forward in trial
9 with the lesser on that one; that's with possession of
10 Clonazepam.

11 THE COURT: On which one? Which number?

12 SOLICITOR HAMILTON: It is 2015-GS-46-0-3-0-2-4. And
13 the last indictment is 2015-GS-46-0-3-0-2-5 possession of
14 Oxycodone. Your Honor, these indictments were True Billed
15 by the state Grand Jury on October 22nd, 2015 and the
16 Defendant has indicated he is pleading not guilty to all
17 indictments.

18 THE COURT: All right. Help me a little bit with
19 going forward on 3024. Is that the one you said's a
20 lesser?

21 SOLICITOR HAMILTON: Yes, your Honor.

22 THE COURT: We do you mean by that?

23 SOLICITOR HAMILTON: We wanted to just go forward with
24 possession of Clonazepam not as indicted as possession with
25 intent to distribute.

1 THE COURT: That would really a charge issue.

2 SOLICITOR HAMILTON: Do what? I'm sorry.

3 THE COURT: Issue with the charge.

4 SOLICITOR HAMILTON: I just wanted to make the defense
5 aware and the Court aware that in the event the indictments
6 are sent back to the jury that they did not - -

7 THE COURT: We'll do a verdict form.

8 SOLICITOR HAMILTON: Exactly. Okay. Thank you, your
9 Honor.

10 THE COURT: Ms. Inzerillo, do you have any comment on
11 that issue?

12 MS. INZERILLO: No, your Honor.

13 THE COURT: Now, we have motions from the Defendant.
14 Do you have a copy of them Ms. --

15 SOLICITOR HAMILTON: I received a copy from the
16 Defense, your Honor.

17 THE COURT: All right. Number one: Discovery.

18 SOLICITOR HAMILTON: The State has complied with Rule
19 5 and Brady, your Honor.

20 MS. INZERILLO: Your Honor, may I make a more specific
21 request ---

22 THE COURT: Yes.

23 MS. INZERILLO: --- on this case? Your Honor, Mr.
24 Brown has a series of cases, the first two are alleged
25 distribution and a confidential informant out of allegedly

1 the same hotel and possibly the same hotel room. Officer
2 Harrelson was the case agent on the entire case. It was
3 those warrants for which Mr. Brown was arrested and
4 subsequent to that arrest a search was conducted and the
5 after mentioned drugs were found and he was later charged
6 with that.

7 Your Honor, I have been told by the State that it is
8 their intention not to turn over any other discovery on the
9 other two charges until after this case has been completed
10 one way or another. Your Honor, I first would make a
11 general motion to ask for the discovery in those cases,
12 but, your Honor, I would ask at this time if the State
13 intends to go into any aspects of this case that would
14 implicate those prior cases. For example, the officers
15 knowledge of how they knew he was in the room at the hotel.
16 There's a cell phone that was taken from Mr. Brown in his
17 arrest for the confidential warrants if the state intends
18 to use any of that.

19 And, your Honor, with my general motion I would also
20 note for the court as Mr. Brown is considering now whether
21 to exercise his right to remain silent or testify that
22 because all the cases are interlocked and I think time and
23 place not having that information affects my ability to
24 answer any questions he may have about what his testimony
25 would be in terms of opening any doors. And so for those

1 reasons, your Honor, we would ask not only for the
2 discovery on the other two cases but any limitations on the
3 State to not go into anything that would implicate those

4 THE COURT: Its coming back to me now, motions on
5 discovery earlier in this set of charges. Ms. Hamilton, to
6 the extent that these other cases for which he's not on
7 trial if they overlap and you intend to use any
8 overlapping then I would say you'd have to divulge anything
9 underlying those cases.

10 SOLICITOR HAMILTON: Yes, your Honor. We are not - -
11 The other cases we do not intend to use any of that in this
12 case. The officers's just gonna testify that he was going
13 to the hotel room to ask about Kenyon Brown. That's about
14 as far as we're gonna go and that's the extent that we're
15 moving forward. And I've told Ms. Inzerillo this that at
16 the conclusion of this case we'll decide how to move
17 forward on the other ones and if we do move forward on the
18 other distribution charges that he will get that discovery
19 at that time, your Honor, but we're just gonna deal with
20 this case since this is a case in which the CI is relevant.
21 Then I told her that we would not be handing over that
22 discovery at this time, we will not be bringing it up in
23 this trial.

24 THE COURT: Well I'm not gonna require them to give
25 the defendant any discovery on any case other than the

1 fourth. Those associated with the four indictments which
2 currently before me in which Mr. Brown is currently today
3 on trial for. If during the trial Ms. Inzerillo, anything
4 pops up that tags an issue that we need to revisit this
5 just let me know.

6 MS. INZERILLO: Thank you, your Honor.

7 THE COURT: All right, the second, prior record of Mr.
8 Brown were he to chose to testify.

9 SOLICITOR HAMILTON: Your Honor, we have -- and these
10 are not charges in which we could state the nature of
11 because they are distribution of crack in proximity but he
12 has four priors from 1999 on two counts of crack first, two
13 counts of distribution of crack in proximity that we would
14 ask him about but not the nature of the charges.

15 And then also in 2007 failure to stop for a blue
16 light, your Honor. And I believe also in 2007 a possession
17 of crack second.

18 THE COURT: All right, tell me about 1999 when he was
19 seventeen years old.

20 SOLICITOR HAMILTON: Yes, your Honor, I'm sorry we
21 will not be using those. The 2007 failure to stop for a
22 blue light. A 2007 possession of crack second offense, a
23 2011 possession of prescription drugs and a 2011 possession
24 of crack second offense.

25 THE COURT: Does that answer your request under Number

1 two, Ms. Inzerillo?

2 MS. INZERILLO: Yes, your Honor. And just so the
3 record is clear, I'm assuming the State is just gonna ask
4 him if he's been convicted of a felony because of the
5 nature - - -

6 THE COURT: Well the failure to stop is a misdemeanor.

7 MS. INZERILLO: I'm sorry, the drug related one.

8 THE COURT: It is?

9 SOLICITOR HAMILTON: Yes, your Honor, that's correct.

10 THE COURT: Motion for criminal history of non-law
11 enforcement witnesses.

12 MS. INZERILLO: Your Honor, --

13 THE COURT: That looks like the lady from the
14 Econo-Lodge.

15 MS. INZERILLO: I apologize, I didn't mean to
16 interrupt. I did just receive a rap sheet for Ms. Marie
17 Sledge who is on the list.

18 THE COURT: Good enough. Sequestration. We'll grant
19 that reciprocally. Any Lyle testimony?

20 SOLICITOR HAMILTON: No, your Honor, we do not intend
21 to introduce any Lyle.

22 THE COURT: Any statements?

23 SOLICITOR HAMILTON: We do have statements and we do
24 need to do a *Jackson versus Denno*.

25 THE COURT: All right. We'll come back to that.

OFFICER LELAND HARRELSON: DIRECT BY SOLICITOR HAMILTON

-11-

1 Motion to suppress the drugs found. I guess that's a
2 search warrant issue?

3 MS. INZERILLO: Yes, your Honor, it's a search issue.

4 THE COURT: All right. The last one has to do with
5 the phone. The testimony about a phone found on the
6 defendant at his arrest and contents thereof.

7 Let's do the *Jackson versus Denno* first.

8 SOLICITOR HAMILTON: Your Honor, the State would call
9 our case agent Officer Leland Harrelson.

10 (WHEREUPON, LELAND HARRELSON,
11 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

12 MS. INZERILLO: Your Honor, I would ask if any
13 witnesses are in the courtroom that . . .

14 SOLICITOR HAMILTON: May it please the Court, your
15 Honor.

16 THE COURT: Yes, ma'am.

17 DIRECT EXAMINATION

18 OFFICER LELAND HARRELSON BY SOLICITOR HAMILTON:

19 Q. Officer Harrelson, did you interview the defendant
20 Mr. Kenyon Brown and get a statement from him?

21 A. Yes I did.

22 Q. And when you took a statement from him was anyone
23 else from law enforcement from you?

24 A. No.

25 Q. And when did this interview take place?

1 A. Can I check my date in my notes? I'm sorry.

2 It took place July the 17th, 2015.

3 Q. Where did this interview take place?

4 A. At the York County Moss Justice Center.

5 Q. And could you tell us about the environment in
6 which he was interviewed?

7 A. It was the interview room at a table and four chairs.

8 Q. And how many people were present?

9 A. Just myself and Mr. Brown.

10 Q. Was anyone pointing a weapon at the defendant?

11 A. No.

12 Q. Was anyone threatening the defendant?

13 A. No.

14 Q. Were people pleasant and nice to him?

15 A. Yes.

16 Q. Was he handcuffed?

17 A. He was not.

18 Q. Did he appear clear headed and sober?

19 A. He did.

20 Q. Did he appear hurt or injured in any way?

21 A. He did not.

22 Q. Did he appear to be reasonably intelligent and
23 understanding what was going on and what was being said?

24 A. Yes.

25 Q. Did anyone make any promises, specifically you, to

OFFICER LELAND HARRELSON: DIRECT BY SOLICITOR HAMILTON

-13-

1 him to get him to talk to you?

2 A. No I did not.

3 Q. Okay. Did you read him his rights according to
4 Miranda?

5 A. I did.

6 Q. Can you please tell us his rights as you read them
7 to him that day?

8 A. Yes, I read them off of my Miranda Rights Card that
9 I keep in my wallet.

10 Q. Okay. Could you read that for the Court?

11 A. Absolutely.

12 "You have the right to remain silent. Anything
13 you say can and will be used against you in a court of
14 law. You have the right to talk to an attorney; have
15 him or her present with you while you are being
16 questioned. If you cannot afford to hire an attorney
17 one will be appointed to represent you before any
18 questioning if you want. You can decide at any time
19 to exercise these rights not answer any questions or
20 make any statements. Do you understand the rights
21 I've explained to you? Having these rights in mind
22 do you wish to talk to us now?"

23 Q. Did he indicate that he understood those rights?

24 A. Yes he did.

25 Q. Did he waive those rights and agreed to talk to you?

1 A. Yes he did.

2 Q. Did you actually interview and talk with him about
3 the incident of July 17th, 2015?

4 A. Yes I did.

5 Q. And did he tell you his story?

6 A. He did.

7 Q. Okay. I'm gonna ask you one more time, did anyone
8 make any threats or promises to him after he did state that
9 he understood his rights and agreed to talk? Did anyone
10 make any threats or promises in any way to make him speak
11 to you?

12 A. No.

13 Q. Can you please tell us what the defendant said to you?

14 A. I ask him about a black bag that I located in his
15 property. He told me that it belonged to him. I stated
16 there were drugs in the bag. He stated to me that he did
17 have drugs and that he used -- he was selling drugs for
18 money, girls. And he was also using drugs as well.

19 Q. And he was also -- I'm sorry, I didn't hear you. He
20 was also doing what with the drugs?

21 A. Using.

22 Q. Okay. Did he say anything else in that statement?

23 A. Can I take a look at my Case Summary?

24 Q. Yes.

25 A. He stated he had purchased marijuana, crack cocaine

OFFICER LELAND HARRELSON: DIRECT BY SOLICITOR HAMILTON
CROSS BY MS. INZERILLO

-15-

1 and pills from Lucky. Mr. Brown also stated that he had
2 been buying drugs from Lucky for approximately one year.
3 Mr. Brown also stated that he would re-up from Lucky every
4 day.

5 Q. Okay. And did he state something before he said
6 he's re-up from Lucky every day?

7 A. Yes. Mr. Brown stated that he was selling drugs for
8 money, girls and so he could get high.

9 Q. Thank you.

10 SOLICITOR HAMILTON: That's the proffer from the
11 State, your Honor.

12 THE COURT: All right. Ms. Inzerillo.

13 MS. INZERILLO: May it please the Court, your Honor.

14 CROSS-EXAMINATION

15 OFFICER LELAND HARRELSON BY MS. INZERILLO:

16 Q. Investigator Harrelson, you -- I'm gonna say arrested
17 -- you arrested Mr. Brown for these charges on July 17th;
18 is that right?

19 A. That is correct.

20 Q. He was already in custody on another set of charges?

21 A. That is correct.

22 Q. And that's why he's out at Moss Justice?

23 A. Correct.

24 Q. And you had arrested him on these other set of
25 charges?

1 A. Correct.

2 Q. Okay. The -- You interviewed him about what time
3 in the afternoon; do you recall?

4 A. Later on that evening. I don't recall a specific
5 time.

6 Q. Okay. Had you already served him with his warrants?

7 A. I do not recall.

8 Q. Did you record this statement?

9 A. I did not.

10 Q. Did you make any notes as to what the conversation
11 was?

12 A. I jotted down some notes which I transferred over to
13 my Case Summary.

14 Q. So that would page 4. Is that what you're reading
15 from your Case Summary?

16 A. Yes, that is correct.

17 Q. Okay. Do you recall if that's the entirety of any
18 statements he gave?

19 A. Yes, to my knowledge.

20 Q. Did you ask him about anything else related to this
21 case?

22 A. No, I did not.

23 Q. Did you ask him to write out a statement?

24 A. I did not.

25 Q. Did you have to check out Mr. Brown from the jail in

OFFICER LELAND HARRELSON: CROSS BY MS. INZERILLO

-17-

1 order to interview him? Or do you recall the interview?

2 A. We did interview in a interview room there at the
3 Moss. I would assume he was either in a holding facility
4 and, you know, they brought him to me and him and I went to
5 an interview room.

6 Q. Did you show him the black mesh bag when you
7 interviewed him?

8 A. No, I did not.

9 Q. Did yo show him anything or was it just a
10 conversation?

11 A. Just a conversation.

12 MS. INZERILLO: I have no further questions, your
13 Honor.

14 THE COURT: Anything further, Ms. Hamilton?

15 SOLICITOR HAMILTON: Nothing further.

16 THE COURT: You can step down.

17 (WITNESS LEAVES WITNESS STAND.)

18 THE COURT: Next.

19 SOLICITOR HAMILTON: The State would just ask that
20 these statements be admissible. As he stated no one has
21 threatened him --

22 THE COURT: Well right now that's all your witnesses?

23 SOLICITOR HAMILTON: That's all my witnesses', your
24 Honor.

25 THE COURT: Okay. Ms. Inzerillo, what's your

1 position?

2 MS. INZERILLO: Your Honor, we would ask the Court to
3 make a finding as to the voluntariness of the statement.

4 THE COURT: All right. Well I find by a preponderance
5 of the evidence that prior to the giving of the statement
6 that Mr. Brown was advised of his *Fifth* and *Sixth Amendment*
7 rights pursuant to *Miranda versus Arizona*.

8 There is nothing about the interview room in the
9 presence of just the two individuals which has any negative
10 effect on the issue. I find there -- no handcuff; that he
11 was not handcuffed. Mr. Brown was not handcuffed; that Mr.
12 Brown appeared to be clear headed and sober. Mr. Brown did
13 not appear to be injured. Mr. Brown was not offered any
14 promises nor was he threatened in any way prior to the
15 giving of the statement.

16 And that he appeared, Mr. Brown did, to Mr. Harrelson
17 to be capable of understanding; that prior to giving the
18 statement Mr. Brown was properly advised under Miranda that
19 he had the right to remain silent and that any statement
20 that he made would be used against him in a court of law.
21 That he had the right to have an attorney and talk with the
22 attorney and have the attorney present during any
23 interrogation and if he could not afford one the State
24 would be required to appoint an attorney to represent Mr.
25 Brown at no expense to him.

-19-

1 He was told he could exercise these rights at any time
2 and that Mr. Brown appeared to Officer Harrelson to
3 understand those rights; that Mr. Brown thereafter freely
4 voluntarily knowingly and intelligently agreed to talk with
5 Mr. Harrelson, Officer Harrelson, concerning the item, the
6 black bag and I therefore find that the statement given in
7 that interview, it's addressed by the witness, is
8 admissible. Again I find that by a preponderance of the
9 evidence and the jury will have the obligation to review
10 the statement for voluntariness beyond a reasonable doubt
11 at the end of the trial.

12 MS. INZERILLO: Your Honor, I have an additional
13 motion as to the statement now that the Court has
14 determined the voluntariness of it. As the Court's heard
15 the entirety of the statement that would be entered, it's
16 the position of the defense that it touches on items
17 outside the purview of this case.

18 First being Mr. Brown mentions purchasing marijuana.
19 There was marijuana found in this case but it was never
20 tested and the State's not intending -- did not indict him
21 for and is not intending to go forward so we would ask that
22 any mention of marijuana in regards to this statement and I
23 guess by extension by any witness be excluded.

24 Secondly, your Honor, also in this statement
25 Investigator Harrelson will testify that Mr. Brown has been

1 buying drugs from Lucky for about one year. I would ask
2 that that be excluded as previous bad acts or a course of
3 conduct. That would be interpreted as prejudicial toward
4 the defendant. Your Honor, I do have also a request that
5 the following line that Mr. Brown indicated he was selling
6 money for girls -- drugs for money, girls, and so he could
7 get high and is not sufficiently specific enough to the
8 drugs that were found implicates a wider course of conduct
9 and I would also ask that that be excluded.

10 Your Honor, the last line that he would re-up from
11 Lucky everyday I think implicates the same concern, the
12 prejudicial nature of prior bad acts. And it's not
13 specific as to these drugs in this case.

14 THE COURT: All right. Ms. Hamilton.

15 SOLICITOR HAMILTON: I'll try to address each
16 statement she has concerns about. This is a distribution
17 case in which the State has to prove evidence of
18 distribution. The defendant did state that he was selling
19 drugs. We say that that is relevant as to the selling of
20 the drugs.

21 THE COURT: Okay. But let me just help you. As to
22 the selling girls and for his own use I won't allow that
23 in. I'm gonna exclude that. How about the marijuana and
24 the buying from Lucky for a year and re-up? That gives me
25 some concern. I have no problem with that statement about

1 money, girls, and for his own use.

2 SOLICITOR HAMILTON: Okay. The marijuana. We're fine
3 with that about him purchasing the marijuana that's fine
4 with us.

5 THE COURT: So that will be redacted?

6 SOLICITOR HAMILTON: Yes, your Honor. But we do have
7 an issue as to if Ms. Inzerillo does open the door in
8 saying that officers implying to the jury the officers had
9 no reason to go into these bags or look for this mesh bag.
10 He's gonna testify to the search issue regarding marijuana
11 and I just want to be clear that if she does open the door
12 as to marijuana found because it is relevant as to why they
13 found this bag. He will testify to that and the search
14 warrant issue as I said before and we would ask that he be
15 allowed to speak to that.

16 THE COURT: If the door's open, it's open.

17 SOLICITOR HAMILTON: Okay. Thank you, your Honor.

18 MS. INZERILLO: Your Honor, I would obviously not wish
19 for that to happen and I would ask the Court to hear the
20 search issue and then we can revisit that.

21 THE COURT: Well I don't know if we need to revisit.
22 The quaint use of if the door is opened which we all use we
23 all know what it means we understand that and I can't go
24 through a trial and determine what questions will open the
25 magic door and which will not so I don't know if we can

1 revisit it. I'll be glad to hear your after the search
2 issue. Okay.

3 Go ahead. What about Lucky?

4 SOLICITOR HAMILTON: Okay. In regards to Lucky he
5 stated him buying drugs from Lucky for approximately one
6 year, your Honor. That goes up to the date. It's
7 continuous that he had been buying these drugs from him up
8 to the date possible that these drugs were found and it
9 goes to evidence of possession by him that he had been
10 buying these drugs. We also have relevance into that by
11 Ms. Sledge who is the general manager of Econo-Lodge who
12 has seen him with Lucky before this event.

13 THE COURT: But that's not the issue, the issue is
14 whether or not that falls under Lyle basically.

15 SOLICITOR HAMILTON: We believe that is a continuous
16 act in that it goes towards possession in this case and we
17 would ask that it be admitted, your Honor.

18 THE COURT: All right. What was the exact statement?

19 SOLICITOR HAMILTON: His exact statement -- And then
20 also the statement which she mentioned Brown stated that he
21 would re-up from --

22 THE COURT: Let's do it one at a time.

23 SOLICITOR HAMILTON: Okay.

24 THE COURT: Help my poor mind. Let's stick on this
25 statement about buying from Lucky.

1 SOLICITOR HAMILTON: Okay. The statement -- Well
2 there's Brown stating that he purchased the drugs in the
3 black mesh bag from a black male who goes by the name
4 Lucky. So he stated that the drugs were in the bag that
5 were seized --

6 THE COURT: I've got no problem with that.

7 SOLICITOR HAMILTON: Okay.

8 THE COURT: I'm talking about the one year.

9 SOLICITOR HAMILTON: And then the next one is Brown
10 stated that he purchased the crack cocaine and pills from
11 Lucky before and had been buying drugs from Lucky for
12 approximately one year.

13 THE COURT: All right. I'm going to require you to
14 redact for a period. The full word before. Just that he
15 bought from Lucky. Not that he bought them for a year and
16 bought them before. Just that he bought 'em from Lucky.

17 SOLICITOR HAMILTON: Okay. So just say he bought them
18 from Lucky, your Honor.

19 MS. INZERILLO: And just to clarify, the statement
20 says Brown stated he has been buying drugs from Lucky.
21 Nothing specific in that statement about these drugs. And
22 I just want to be clear there is no -- nothing being read
23 into that statement from what allegedly Mr. Brown said.

24 THE COURT: I think that's a matter of cross-
25 examination that you can certainly call to the officer's

1 attention and the jury's attention that that statement
2 doesn't indicate that he bought those particular ones from
3 Lucky. And I know what you're also saying is that it's
4 irrelevant if he bought -- once he had the ones he bought
5 from unlucky -- that Lucky would be irrelevant - - not
6 relevant. Is that sort of what you're saying?

7 MS. INZERILLO: Well, and I'm concerned about the past
8 tense of that that he has been buying drugs from Lucky. I
9 think it tells the jury that he's been in this situation
10 for a while which I think is outside the purview of this
11 particular case and I would be concerned of the prejudicial
12 nature of it.

13 THE COURT: Well I'm gonna allow that. I'm gonna
14 allow what I've already redacted. What about the re-up?

15 SOLICITOR HAMILTON: About the next statement, your
16 Honor?

17 THE COURT: Well the statement that he would re-up.

18 SOLICITOR HAMILTON: That goes to the same nature of
19 the statement before that he would get his drugs from Lucky
20 every day. We would ask that that be admitted because it
21 goes also the fact that he has stated he got his drugs from
22 Lucky that were found in the black mesh bag so that
23 verifies the statement. We would ask that that be admitted
24 because every day would be also the day before that this
25 happened. We're arguing that those drugs were in his

1 possession that day.

2 THE COURT: Read the statement one more time. What
3 were the exact words.

4 SOLICITOR HAMILTON: Brown stated that he would re-up
5 from Lucky every day.

6 THE COURT: Why is that relevant to the fact that he
7 had these drugs?

8 SOLICITOR HAMILTON: Your Honor, that goes --

9 THE COURT: Does it really matter where he got 'em
10 from?

11 SOLICITOR HAMILTON: It does because he stated that he
12 purchased the drugs in a black mesh bag from a black male
13 who goes by the name of Lucky. We also have someone who is
14 an independent witness who does confirm his association
15 with Lucky and therefore confirms the validity of the
16 statement, your Honor.

17 THE COURT: I'm not gonna let you go into the re-up.
18 There again that I think creates an issue pretty close to
19 Lyle. Now, the search issue. What's the issue on the
20 search?

21 MS. INZERILLO: Your Honor, in this case Mr. Brown was
22 arrested the day before the bag was found so July 16th
23 Investigator Harrelson goes to the hotel the next day after
24 the hotel room and is emptied out and there hotel is
25 holding Mr. Brown's items. Investigator Harrelson

1 indicated that the hotel employee gave him permission to
2 consent to search the bag and once they searched the bag
3 they found the drugs. We would challenge the search.

4 THE COURT: Let's have testimony on that.

5 SOLICITOR HAMILTON: We do have - We actually have two
6 witnesses for that. Your Honor, the state would like to
7 hand over two cases relevant on this issue.

8 THE COURT: All right.

9 SOLICITOR HAMILTON: If I can hand this up to you.

10 THE COURT: All right.

11 (DOCUMENTS RECEIVED UP BY THE COURT.)

12 THE COURT: Well of course it looks like we're looking
13 at expectation of privacy for one thing in a motel room
14 that he's not occupying. And also the expectation of
15 privacy of an individual who's incarcerated at the time
16 that the place was searched. I guess any expectation of
17 privacy could extend where it his home but I don't know
18 about a rental.

19 All right. Do you want this gentleman to come up?

20 Oh, I can't see back there. If you'll stop right here
21 and put your left hand on the Bible and raise your right.

22 ((WHEREUPON, MARIE SLEDGE,
23 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:))

24 THE COURT: All right, you may proceed.

25 SOLICITOR HAMILTON: May it please the Court, your

MARIE SLEDGE: DIRECT BY SOLICITOR HAMILTON

-27-

1 Honor.

2 DIRECT EXAMINATION

3 MARIE SLEDGE BY SOLICITOR HAMILTON:

4 Q. Would you please state your full name for the court?

5 A. Sure. My name is Elizabeth Marie Sledge.

6 Q. And, Ms. Sledge, where do you work?

7 A. Econo-Lodge.

8 Q. And where is the Econo-Lodge located?

9 A. Rock Hill, South Carolina 29730.

10 Q. And that's in York?

11 A. York County yes, ma'am.

12 Q. And what is your position at the Econo-Lodge?

13 A. I'm the General Manager.

14 Q. And are you familiar with the defendant Kenyon Brown?

15 A. Yes, ma'am.

16 Q. How are you familiar with him?

17 A. He was a registered guest at our property registering
18 in Room 360.

19 Q. How was the defendant paying for his room specifically
20 Room 316?

21 A. He was paying by cash day by day on a daily basis.

22 Q. And on July 17th, 2015 was he a resident?

23 A. He wasn't a resident anymore because we had to vacate
24 the room for non-payment of the room.

25 Q. Okay. Could you explain the policy as to that and

1 why he was . . .

2 A. Vacated?

3 Q. Yes.

4 A. The police is that if they have not come to pay --
5 Check out's at 11:00 am. If they have not paid for the
6 room we give 'em 'till twelve o'clock; if the room's not
7 paid for we then contact the local police department, Rock
8 Hill Police Department. We ask them to assist us so we can
9 go in and check the room. And if there's nobody in the
10 room we empty out the room and it gets held downstairs.

11 Q. And was the police department there with you?

12 A. At the time they came to look the room they left and
13 they gave us permission to vacate the room.

14 Q. So they were gone when you started emptying the room?

15 A. Yes, ma'am.

16 Q. And so when someone has failed to pay rent who takes
17 care of collecting items from the room?

18 A. I collect the items. The housekeeper that is due to
19 clean that room will come with me and we will actually
20 stand there and I'm the one that bags everything up while
21 they witness and then it gets stationed down in my room -
22 my office.

23 Q. And it gets stationed where?

24 A. In my office.

25 Q. Okay. And I just want to be clear. Officers with

MARIE SLEDGE: DIRECT BY SOLICITOR HAMILTON

-29-

1 the police department, they are not searching the room?

2 A. No not at all.

3 Q. And they're not present during the search of the room?

4 A. No, ma'am.

5 Q. So you emptied his room out. Did you specifically
6 find a black mesh bag within the defendant's hotel room?

7 A. Yes, ma'am.

8 Q. What did you do with that bag?

9 A. I placed it in the clear bag as well as the rest of
10 the other belongings that we saw in the room.

11 Q. And the clear bag is?

12 A. Its our large thirty-three gallon trash bags that the
13 hotel uses.

14 Q. And you said you put those in your office?

15 A. Yes, ma'am.

16 Q. Okay. Where's that officer located?

17 A. The office is located behind the front desk through
18 three locked secured doors with cameras.

19 Q. And who has access to those rooms?

20 A. Just to my office would be myself and the owner
21 who is not present at the time of the taking of the
22 belongings.

23 Q. And how owns the trash bags in which those belongings
24 were bagged?

25 A. The defendant.

1 Q. The trash bags.

2 A. Oh. We own the trash bags.

3 SOLICITOR HAMILTON: Beg the Court's indulgence.

4 Q. Now the items that were taken out of the defendant's
5 hotel room, does he still have a right to come pick
6 up those belongings?

7 A. He has up to thirty days to pick up his belongings.

8 Q. Okay. And what happens after the thirty days?

9 A. After thirty days they go straight to the dumpster.

10 Q. And when officers came to the hotel on July 17th,
11 2015, did you speak with them?

12 A. Yes, ma'am, I did.

13 Q. And in speaking with them what happened next after
14 you spoke with them?

15 A. I escorted him to my office where the belongings were
16 held.

17 Q. Okay. And when did they come? Do you - -

18 A. It was later that afternoon.

19 Q. So that same day?

20 A. Yes, ma'am.

21 Q. Okay. And you escorted them back to your hotel
22 room?

23 A. Back to the office.

24 Q. Okay. Back to the office. I'm sorry.

25 A. Yes.

MARIE SLEDGE: DIRECT BY SOLICITOR HAMILTON
CROSS BY MS. INZERILLO

-31-

1 Q. And what happened after that?

2 A. They ask if it was okay to go through the belongings
3 and I gave them permission to go through the belongings
4 cause it was abandoned.

5 Q. Okay.

6 SOLICITOR HAMILTON: Please answer any questions the
7 defense may have.

8 MS. INZERILLO: May it please the Court, your Honor.

9 THE COURT: Yes, ma'am.

10 CROSS-EXAMINATION

11 MARIE SAVAGE BY MS. INZERILLO:

12 Q. Okay, so, Ms. Sledge, in relation to Kenyon he was
13 paying you guys either by the day or every couple of days
14 leading up to this; is that right?

15 A. Yes, ma'am.

16 Q. Okay. So on this particular day you guys had not
17 gotten that day's payment?

18 A. Correct.

19 Q. So in y'all's view he's essentially checked out; he's
20 no longer staying there.

21 A. Correct.

22 Q. Okay. And at any time when you were making this
23 decisions to clean out his room, were you aware of where
24 he was?

25 A. No.

1 Q. Okay. The -- So you indicated that usually when
2 you need to clear a room you call Rock Hill P.D. to come
3 clear the room and they did?

4 A. Yes, ma'am.

5 Q. Okay. And at that point they did not take anything
6 into evidence? Black mesh bag or anything?

7 A. No, ma'am.

8 Q. So when you are in the room you're soul purpose is
9 to clean out the room so that you can rent it to somebody
10 else; correct?

11 A. Correct.

12 Q. So really you're just putting stuff in a bag to clean
13 out the rooms so the next guest can come in. And were you
14 with Mr. Patel on this day?

15 A. Manager of the hotel; correct.

16 Q. And so were you supervising him in that he ---

17 A. No.

18 Q. --- gathering the stuff?

19 A. No.

20 Q. You gathered ---

21 A. No, ---

22 Q. --- the stuff?

23 A. --- I'm the one that gathered everything.

24 Q. Okay. And then Mr. Patel cleaned the room?

25 A. Yes, ma'am.

MARIE SLEDGE: CROSS BY MS. INZERILLO

-33-

1 Q. To make it ready for the next guest?

2 A. Correct.

3 Q. Okay. And did you log everything you took out of
4 that room?

5 A. Did we log it? No.

6 Q. Okay.

7 A. I mean it was just two large trash bags and two shoe
8 boxes. That was all that was taken from the room.

9 Q. Okay. But you don't have any idea exactly and you
10 can't recall today exactly what was taken out of the room?

11 A. I know that there was a bunch of clothes. There was
12 shoes.

13 Q. Uh-huh.

14 A. Along with some other personal hygiene products. Two
15 shoe boxes. There were shoes that we threw in the bag.

16 Q. Uh-huh.

17 A. The shoe boxes we didn't put in the bag. I just
18 opened it up just to see what it was if it was trash or
19 not.

20 Q. Uh-huh.

21 A. And that's when I discovered other items in the box
22 as well.

23 Q. Okay.

24 A. And --

25 Q. And then what did you do with that box?

1 A. It was brought down to the office as well. It was
2 not in the bag cause it was a bunch of loose stuff in
3 there.

4 Q. Okay.

5 A. Like scales and chargers and glow sticks and so forth.

6 Q. Okay. So you then took that bag and put it in the
7 office where you were?

8 A. Two bags and two shoe boxes yes, ma'am.

9 Q. Okay. And that door has the --

10 A. Security code.

11 Q. Security code. Okay. You said it's just a regular
12 trash bag?

13 A. Yes, ma'am. It's a normal thirty-three gallon clear
14 trash bag.

15 Q. Okay. And you did this probably about - - You said
16 around noon is when you guys had decided - -

17 A. Yes, ma'am.

18 Q. Okay. So sometime around noon and three o'clock when
19 Mr. Harrelson comes - - Investigator Harrelson comes to see
20 you?

21 A. More or less about twelve thirtyish yeah.

22 Q. Afternoon. Okay. So then you take it and you put
23 it in the room and then Investigator Harrelson comes and
24 talks to you?

25 A. Correct.

MARIE SLEDGE: CROSS BY MS. INZERILLO

-35-

1 Q. Now, the police of the hotel is to hold it for
2 thirty days?

3 A. Uh-huh.

4 Q. Okay. And Mr. Brown didn't owe you any back rent;
5 is that right?

6 A. That's correct.

7 Q. He was just paying day to day. Okay. The - When
8 the investigators came did they request to have the bag or
9 did you offer it to them?

10 A. No, I offered.

11 Q. Okay. Did you give them all the bags and the shoe
12 boxes?

13 A. Everything that was in the room.

14 Q. All right. And at any point did you have them sign
15 anything or log what was taken?

16 A. No.

17 Q. Okay. When you looked through the bag did you look
18 through the black mesh bag?

19 A. No I didn't look through anything.

20 Q. Look through anything?

21 A. No.

22 Q. Okay.

23 A. It was just one of the items that we threw in there.

24 Q. Okay.

25 MS. INZERILLO: Your Honor, I have no further

1 questions.

2 THE COURT: Okay. Any redirect?

3 SOLICITOR HAMILTON: No, your Honor.

4 THE COURT: All right. You can step down and step
5 outside. Don't leave. Thank you.

6 (WITNESS LEAVES WITNESS STAND.)

7 THE COURT: Do you have another witness?

8 SOLICITOR HAMILTON: Yes, your Honor. The State would
9 call Officer Harrelson to the stand. Leland Harrelson.

10 THE COURT: All right, you're still under oath.

11 OFFICER HARRELSON: Yes, sir.

12 SOLICITOR HAMILTON: May it please the Court, your
13 Honor.

14 THE COURT: Yes, you may.

15 DIRECT EXAMINATION

16 INVESTIGATOR LELAND HARRELSON BY SOLICITOR HAMILTON:

17 Q. Would you please state your full name for the court?

18 A. Hugh Leland Harrelson, Junior.

19 Q. And what is your occupation?

20 A. I'm a police officer with the city of Rock Hill.

21 Q. And what type of work do you do on that position?

22 A. I'm currently assigned to the York County Multi-
23 Jurisdictional Drug Enforcement Unit.

24 Q. And were you employed in that present capacity the
25 afternoon of July 17th, 2015?

OFFICER LELAND HARRELSON: DIRECT BY SOLICITOR HAMILTON

-37-

1 A. Yes I was.

2 Q. What were you doing that afternoon?

3 A. I went to the Econo-Lodge to do some followup
4 investigation on an arrest I made on Mr. Brown.

5 Q. And what happened when you arrived?

6 A. I arrived I talk to the lady at the front desk Ms.
7 Sledge, she stated that Mr. Brown had been renting a room
8 there. She stated that they did have his property; that
9 they had cleaned the room out earlier that day and had it
10 in an office and stated we could come back and take a look
11 at the bags.

12 Q. So she gave consent?

13 A. Yes, she did.

14 Q. And could you explain to the Court what the setting
15 was like when you went to see the bags after speaking with
16 her?

17 A. We were in the hotel lobby she came around and let us
18 into a door, you know, to kind of get back behind the front
19 desk and we walked to an office which was, you know, just a
20 short piece away and the bags were there in the floor in an
21 office.

22 Q. Were these doors secured in any way?

23 A. I know that the very front door was because she had
24 to come let us in. I don't recall if any of the other
25 doors behind there were secure. I just wasn't paying

1 attention.

2 Q. Okay. So you get back there. What happens next once
3 you see those bags?

4 A. We saw the bags, they were tied up, and myself and
5 another investigator, Investigator Spencer, started to look
6 through the property.

7 Q. And what happened when you looked in the trash bags
8 specifically you, not Officer Spencer?

9 A. Yeah. When I opened the trash bag that I was looking
10 through I could immediately smell the odor of marijuana. I
11 started taking out all the items and just looking at them.
12 When I did get to the black mesh bag and pulled it out I
13 could tell the odor of marijuana was coming from that bag.
14 I could also see green marijuana inside the bag and also
15 see a white substance which through my training and
16 experience I knew it would either be crack or cocaine.

17 Q. And did you open those bags at all?

18 A. I --

19 Q. Before you saw in your plain view as you stated did
20 you open the bags to observe before? Or did you just see
21 this in plain view through the bags is what I'm asking?

22 A. No, I saw the drugs in plain view before I opened up
23 the black mesh bag to take 'em out to examine 'em.

24 Q. Okay.

25 A. I could already tell that it was marijuana in there

OFFICER LELAND HARRELSON: DIRECT BY SOLICITOR HAMILTON

-39-

1 and I could already tell it was either crack or cocaine and
2 I could also see some pills. I did not know the origin of
3 the pills. I had to look those up later when I got back to
4 the office.

5 Q. What did you do with the black mesh baggie once you
6 realized that there were possibly illegal drugs in it?

7 A. I took it into my possession.

8 Q. Okay. And what did you do with it after that?

9 A. After that I went back to the Rock Hill Law Center
10 which our office is out of and I weighed the marijuana and
11 the crack and the cocaine and I counted the pills. And
12 also I photographed the marijuana, the crack cocaine, and
13 the pills.

14 Q. Do you remember how many pills, what kind of pills,
15 and how many pills you found in that black mesh bag?

16 A. Can I take a look at my notes?

17 I found twenty Oxycotin pills and thirteen Clonazepam
18 pills.

19 Q. Okay. And how much approximately --

20 A. I found approximately -- approximately one point
21 six grams of cocaine.

22 Q. And how much approximately crack?

23 A. Approximately two grams ---

24 Q. Okay.

25 A. --- of crack.

OFFICER LELAND HARRELSON: DIRECT BY SOLICITOR HAMILTON
CROSS BY MS. INZERILLO

-40-

1 Q. And what were the pills? Was it -- not the
2 Clonazepam. What was the name on the other pills?

3 A. The name on the other pills? Oxycodine.

4 Q. Okay. When you took the bag into your possession,
5 the black mesh bag that Ms. Sledge had stated she took
6 from the defendant's hotel room did you inform Ms. Sledge
7 that you were taking this bag?

8 A. I did tell her that we found drugs in the property
9 and that we were taking the drugs. I didn't go into any
10 detail about what we found.

11 Q. And I just want to clarify. When you found that bag
12 that bag was not in any shoe boxes, in any contained item?

13 A. No it was not.

14 Q. It was just placed within that trash bag?

15 A. That is correct.

16 SOLICITOR HAMILTON: Please answer any questions the
17 Defense may have for you.

18 MS. INZERILLO: May it please the Court, your Honor.

19 THE COURT: Yes, ma'am.

20 CROSS-EXAMINATION

21 OFFICER LELAND HARRELSON BY MS. INZERILLO:

22 Q. Investigator Harrelson, you were the officer that
23 arrested Kenyon the night before on outstanding warrants;
24 is that correct?

25 A. That is correct.

OFFICER LELAND HARRELSON: CROSS BY MS. INZERILLO

-41-

1 Q. And you arrested him at 10:10 the night before?

2 A. I'd have to go back and look at my notes on the
3 exact time.

4 MS. INZERILLO: May I approach the witness, your
5 Honor.

6 Q. I'm gonna show you your General Sessions Case Summary.

7 A. Okay. Thank you.

8 Q. Is that what's indicated as 10:10 pm?

9 A. That is correct.

10 Q. Okay. And you went back to the - - -

11 Thank you.

12 A. Uh-huh.

13 Q. You went back to the hotel at about three the next
14 afternoon; was that correct?

15 A. That is correct.

16 Q. And when you got there about three you spoke to Ms.
17 Sledge?

18 A. Yes I did.

19 Q. And you spoke to Ms. Sledge to further the
20 investigation; is that correct?

21 A. That is correct.

22 Q. Not because she had called complaining about anything
23 in the room?

24 A. No.

25 Q. Okay. The bag that you saw do you still have those

1 items?

2 A. Which bag?

3 Q. All the items that were in the bag - - -

4 A. Yes, the evidence that I collected?

5 Q. Not just this but all of the items that were in the
6 bag do you still have them?

7 A. And are you referring to the mesh bag or the trash
8 bag?

9 Q. Trash bag.

10 A. No I do not.

11 Q. Okay. Did you photograph any of the items in those
12 bags?

13 A. I did not.

14 Q. Did you log any of those items anywhere?

15 A. I did not.

16 Q. Okay. And your testimony was you looked in the trash
17 bag and you could see through this bag, this mesh bag?

18 A. When I picked it up and looked at it, yes.

19 Q. Okay. When you discovered the drugs in the hotel
20 that was according to your case report summary about 3:25;
21 is that correct?

22 A. I believe that is correct.

23 Q. And it was at that point that you booked Mr. Brown
24 the same day at three thirty.

25 MS. INZERILLO: May I approach, your Honor?

OFFICER LELAND HARRELSON: CROSS BY MS. INZERILLO

-43-

1 Q. I'm handing you the booking report.

2 That's the booking report that you filled out in
3 this case; is that right?

4 A. Yes, that is correct.

5 Q. And that indicates a booking time of 7-17-15 at 3:30?

6 A. That is correct.

7 Q. Okay. And then I think I questioned you on an
8 earlier hearing about it was sometime later on that evening
9 that you questioned him about the stuff that was found?

10 A. Yes.

11 Q. Okay. You were aware at the time that you were
12 at the hotel that Mr. Brown was -- had been arrested on
13 your warrant's; is that right?

14 A. Yes.

15 Q. And you knew to go to the Moss Justice Center to ask
16 him questions about that; is that right?

17 A. That is correct.

18 Q. And at no point did you get a warrant for anything
19 to search the bag?

20 A. I did not.

21 Q. And at no point did you take the items from the
22 hotel showed them to Mr. Brown? Not just the black mesh
23 bag but the entirety of the items and get his consent to
24 look through the hotel's trash bag?

25 A. I did not.

1 Q. Okay.

2 MS. INZERILLO: Your Honor, I have no further
3 questions.

4 THE COURT: All right. Any redirect?

5 SOLICITOR HAMILTON: No, your Honor.

6 THE COURT: You can step down. Thank you.

7 (WITNESS LEAVES WITNESS STAND.)

8 THE COURT: Anything else from the State?

9 SOLICITOR HAMILTON: We'd just like to respond to
10 argument if she makes any --

11 THE COURT: Any witnesses for the Defense?

12 MS. INZERILLO: No, your Honor.

13 THE COURT: All right. What's your position, Ms.
14 Inzerillo?

15 MS. INZERILLO: Your Honor, we would argue that this
16 search does not fall into any recognized exceptions to the
17 warrant less search. Certainly the -- I think the tendency
18 of the Court might be to lean towards abandoned property.
19 I would argue that this is not abandoned property for
20 several reasons. Almost all the case law that deal with
21 abandoned property in terms of someone leaving a hotel room
22 and it being searched deals with the search of the room in
23 which case I think it can be argued that a hotel does have
24 a pecuniary, a privacy interest in a room. As Ms. Sledge
25 indicated they routinely go through and clean out the rooms

1 so they can re-rented to guest and I think the majority of
2 case law that's close to - - factually close to Mr. Brown's
3 case deals with managers and officers going into a hotel
4 room gaining consent from the hotel to do that certainly -

5 THE COURT: Do you have copies of those cases for me?

6 MS. INZERILLO: I do have a copy of White, your Honor,
7 which I can hand up. There's none really on point to this
8 case, your Honor, and I would distinguish these cases with
9 the Court's permission, essentially in the prevalent case
10 law we see are two different tracks of argument. We see
11 the first track which is the manager allows law enforcement
12 to go into a hotel room where I think it can be argued they
13 have the privacy in a pecuniary interest in that room and
14 the -- another set of cases I think sort of over lapping
15 that does deal with the event of the arrest by a person
16 that how officers can then search the room if it's search
17 incident to arrest or not.

18 Your Honor, I think Mr. Brown's case is factually
19 distinctive from those cases. What we have here are cases
20 that do not deal with abandoned property in two incidences
21 where it's found in a hotel room or where it's being held
22 under a hotel's right to collect money for it.

23 There's a case U.S. v. Croft, your Honor, that deals
24 with the arrest of Mr. Croft being away from the room and
25 then officers being allowed to go in and search the room

1 and take items. But that case specifically cites a Kansas
2 statute that allows for hotels to turn over any abandoned
3 goods or take possession of it specifically for collection
4 of back rent. Ms. Sledge was very clear that Mr. Brown did
5 not owe any back rent and in her view that what would
6 typically happened in this case is that it has to be held
7 for thirty days and then at the end and I think she said it
8 would just be thrown away.

9 So I think inherent the hotel policy there is a
10 understanding that they do not have any possessory rights
11 to any items taken out of the room immediately.

12 Your Honor, I would hand up that I think is a little
13 bit more relevant to this State v. Brown. It deals with
14 requirements to get a search through a phone which is not
15 entirely on point but does deal with a temporal proximity
16 of abandoned property ---

17 (DOCUMENTS RECEIVED UP BY THE COURT.)

18 MS. INZERILLO: --- and the intent of its owner
19 therein. Your Honor, in State v. Brown the court looked
20 very closely at the fact that a person had a phone but had
21 not come back to reclaim it for five days and had shown no
22 interest in coming back and reclaim the property. The
23 court did in it's reliance in it's facts did look very
24 closely at the fact that it was held for five days and it
25 was not -- it was not reclaimed by the Mr. Brown in the

1 case; not my Mr. Brown.

2 Your Honor, so I do think the time - - -

3 THE COURT: Who was holding the phone?

4 MS. INZERILLO: The officers. It was thrown away and
5 I think the officers found it. The court notes that no one
6 tried to get it back. It was in property I think.

7 Your Honor, this case I think also has a temporal
8 element to it. By all testimony Mr. Brown was arrested at
9 10:10 the night before this search happened. About noon
10 the room was cleaned out. At about three o'clock that
11 afternoon DEU comes and takes possession of the property
12 pursuant to a consent to search by the hotel. That's about
13 eighteen hours later. I think that's too close in time too
14 for the Court to read into any intent by Mr. Brown to
15 abandon the property.

16 It appears to me from the testimony of Ms. Sledge that
17 it did not appear that her position was that it was their
18 property that they could give out they had to hold it for
19 thirty days which would imply a belief that at some point
20 Mr. Brown could come reclaim his property any time in that.
21 And it's clear that that policy was not even followed in
22 this case. It was given to DEU within about eighteen hours
23 after his arrest.

24 Your Honor, as I indicated and I think it may be in
25 that stack of cases, there are cases that deal with the

1 arrest of the defendant and that that does not necessarily
2 negate that they ----- the property. I think this case
3 would be distinctive to that. As well, your Honor, I would
4 ask the court to keep in mind that Officer Harrelson is
5 continually the case agent on this case so he's the one
6 that effectuates the arrest. And then he is the one that
7 goes back the next day and takes possession of the
8 property. And one case a court relies very strongly on the
9 type of warrant that the defendant was served with, it was
10 a murder warrant and a fugitive from justice, in
11 determining that there was no way that person could come
12 back and claim the property. At the time that Mr. Brown
13 was arrested he had a bond so there would be a chance he
14 could get out and reclaim his property.

15 Your Honor, I also would call into question that logic
16 as well in that I think in less than various circumstances
17 if I rented a hotel cause a car accident and was in a coma
18 I don't think in any fairness anyone would say because I
19 was unable to arrange for my property that it would then be
20 the next logical step in some of these cases.

21 I failed to note for the record, your Honor, that I
22 think none of these cases are Fourth Circuit; they are all
23 outside the circuit, the State v. Brown case which is the
24 cell phone search warrant case that deals with a temporal
25 consideration is a case out of Court of Appeals of South

1 Carolina, but I think that's the only one that's on point
2 for this.

3 Your Honor, I think Mr. Brown's case falls sort of in
4 a little bit of a empty space. It's not a situation where
5 they search the hotel room, the officer, and took from the
6 hotel room and it's not a situation where the hotel could
7 give consent because they have a pecuniary interest in the
8 property for a term of type of lien. What we have here are
9 items that the hotel recognizes they don't have a
10 possessory interest in for at least thirty days after which
11 they would just get rid of the property. And so I -- It's
12 the Defense's position that Mr. Brown still had privacy
13 interest in the contents of those bags and the hotel
14 because it did not have the requisite interest that would
15 allow it to have standing to give consent did not give
16 informed consent or should not have given consent and that
17 what should have happened in this case is that the officer
18 should have taken the items, gone to Mr. Brown and ask for
19 consent or gotten a search warrant to look through the
20 items.

21 Your Honor, I would also ask the court to note we
22 don't know what was in the bags or the shoe boxes or
23 anything else that was logged or photographed or placed
24 into evidence or anything like that. I'm not quite sure of
25 the court's position on opening the bag that has the mesh

1 bag in it but I have viewed that bag and it does not appear
2 to me to be see through as was testified to so I think - -

3 THE COURT: Does not appear to be what?

4 MS. INZERILLO: To be seen through where you would
5 just look at it and be able to look through it. It's
6 called a black mesh bag but it appears to be dark. So I
7 would ask the court to take that into consideration as
8 well.

9 I will try to answer any - That is my presentation,
10 your Honor. I'll try to answer any concerns that the court
11 may have.

12 THE COURT: What's the State's --

13 SOLICITOR HAMILTON: Your Honor, I do want to state
14 that I have a picture of this mesh bag, a place you can see
15 that you can actually see through that but that I would
16 later in my argument. But the State's position I don't
17 have any other cases other than the Brown case that she
18 handed up to you. I don't have copies so I can't really
19 respond to the hand full of cases that she handed up to
20 you. But I can respond to the Brown case which is
21 completely different from our case because it's the State's
22 position based on the two cases that I have handed up and
23 provided to the defense, it was not actually a search in
24 this case.

25 The *Nettles, U.S. versus Nettles* case, the facts are

-51-

1 similar to this, pretty on point. The officers went to the
2 hotel room, went to the hotel to look through belongings
3 the hotel staff had already removed from the defendant's
4 room. That search of the property within the hotel storage
5 room was without a warrant. The court ruled there was no
6 search in which the *Fourth Amendment* would kick in. The
7 hotel manager seizing the property belonged -- bringing it
8 into the store office was a private action not governed by
9 the *Fourth Amendment* so our position is it was no search in
10 the initial taking of the items of the room by the hotel
11 staff was a private action. When they brought those items
12 down to the office area they were stored in a storage room
13 which there was no reasonable expectation of privacy at
14 that point. Additionally they were bagged in hotel staff
15 trash bags.

16 If we are looking at this as a search in which the
17 State's argument is this was not a search, the hotel
18 manager Ms. Sledge did testify that she gave consent to
19 open these trash bags which did belong to the hotel
20 management. These trash bags contained the belongings of
21 the defendant. Upon opening the hotel's property at that
22 time Officer Harrelson did testify that he saw in plain
23 view at that time which is not a search also plain view
24 straight through this mesh bag that they were illegal drugs
25 at that point.

1 It is stated that in *Smith versus State* the court
2 finds that once inside this premises upon seeing marijuana
3 there in plain view that authorized it's seizure. We find
4 that consistent in our case as once the trash bags were
5 opened when he saw, that is Officer Harrelson, once he saw
6 in plain view these illegal drugs he was authorized to
7 seize it at that point. But the State's position is there
8 was no search. *Smith versus State* also that I handed up
9 that is a case where the defendant failed to pay rent
10 because he was in jail. He was evicted from his room at
11 that point. That is a little different from our case
12 because I believe in State law enforcement did go into that
13 room, but that's again, the case in which it states there
14 was no search in that case as to the initial entry into the
15 room because it was a private citizen.

16 So, your Honor, we would state that there was no
17 expectation of privacy once those items were in the hotel
18 storage room in their possession and that there was no
19 search in this case in which to suppress these drugs.

20 THE COURT: What about Ms. Inzerillo's some what
21 analogous situation, someone who was in an accident and
22 comes out and has stuff that the Econo-Lodge and supposed
23 to check out at eleven, goes to breakfast and gets in an
24 accident and they don't come back by eleven, in fact they
25 don't get back that day, they can take my stuff out of my

1 room and put it in their storage room, have I lost - - I
2 don't have any right of privacy? They let somebody look at
3 my things? *

4 SOLICITOR HAMILTON: That's our argument, your Honor.

5 That is our argument. Our position and the State's
6 position in Nettles is they can't open boxes which they did
7 not do. They did not open the shoe boxes to search
8 through. They did not open items such as brief cases --

9 THE COURT: Then they can come in and they can look at
10 my luggage but not --

11 SOLICITOR HAMILTON: Exactly, your Honor, they can
12 look at the outside and that's exactly what he did. He
13 opened this bag and he found this, looked at it in it's
14 view, and, your Honor, I would like to hand this up so you
15 can actually see --

16 THE COURT: Well it's not in evidence I can't consider
17 it.

18 SOLICITOR HAMILTON: But there -- The State would
19 argue that you can see through this bag. He testified on
20 the stand under oath that he could see through this bag and
21 see the contents of it in plain view therefore there was no
22 actual search of items and he did state that this bag was
23 not I a shoe box. It was not in a container that needed to
24 be searched. It was in plain view upon opening the hotel's
25 trash bags that belonged to them and they had consent to

1 enter into.

2 THE COURT: Any last followup?

3 MS. INZERILLO: Your Honor, just briefly. I would
4 argue that the mesh bag isn't entirely in plain view
5 because it is in a container. It was not --

6 THE COURT: But it wasn't in his container.

7 MS. INZERILLO: Well it was with his items and I don't
8 know that just because the trash bags were by the hotel
9 that that takes this out of what his privacy interest would
10 be.

11 THE COURT: Well he didn't put 'em in there. He
12 didn't put 'em in there. He didn't even know they were in
13 there so he didn't have any expectation as to whether
14 somebody was looking in a trash bag because he didn't know
15 that even existed.

16 MS. INZERILLO: I think he still does because I don't
17 think it's sort of the absence of his intent to abandon
18 from which case he would still have the - - -

19 THE COURT: The absence of his what?

20 MS. INZERILLO: Of his intent to abandon the property;
21 that he would still retain privacy and interest in the
22 items that are in the bag. Position of the state of all
23 his items and so I don't know if hotel trash bag that that
24 would make a difference between whether I give consent or
25 whether the hotel could give consent just the name that's

1 on the bag.

2 THE COURT: What if they had taken the things and just
3 put -- not put 'em in any container, just stacked 'em up
4 set them by the wall and the police came in and smelled
5 marijuana or saw marijuana?

6 MS. INZERILLO: Your Honor, I think that's factually
7 different because --

8 THE COURT: Well I know its factually different but
9 that's through the analogy of what if. I don't see how it
10 can be factually different.

11 MS. INZERILLO: And -- Well I -- my hesitance with
12 that is I think they opened the bag to look in it which
13 constitutes a search.

14 THE COURT: But I ask you what if they

15 MS. INZERILLO: I think depending on whether the mesh
16 was it might still be a search if they had to go through a
17 couple of a pair of jeans to get to the bag but I don't
18 think its necessarily in plain view. There's testimony
19 that Rock Hill P D was in the room earlier and didn't make
20 any -- take anything or evidence or anything like that.

21 THE COURT: I'm gonna allow the State to utilize the
22 mesh bag and it's contents. The hotel had a right to
23 remove regardless of whether they -- regardless of where
24 Mr. Brown was and whether or not he had the intention to
25 abandon them and whether they were even abandoned, they

1 were in a room which he had no right to occupy. He hadn't
2 paid for that day so whether he intended to abandon them or
3 just a victim of circumstances they were in the hotel room
4 and the hotel had a right to remove them so they -- a motel
5 is in the business of renting rooms, not storing someone
6 else's items regardless of why they are there unless
7 there's been rent paid.

8 So the hotel had every right to remove those items;
9 they had every right to take them to their -- to the office
10 where they took them to, a storage area. They had every
11 right to bag them in their bags and they had every right to
12 allow the officers to look into the hotel's bags. They
13 consented to search the hotel bags and once the search of
14 that bag was undertaken the officer had sufficient -- he
15 had sufficient reasonable suspicion of the presence of
16 contraband when he smelled the marijuana. But he also had
17 reason to believe contraband was present based on the plain
18 view through the mesh bag.

19 So I find that the State may introduce and place into
20 evidence -- Let me say it a better way. I do not find
21 there is any invalidity in the seizure to whatever extent
22 there was a search, there had to be a search, you couldn't
23 find it, that the search was proper under the circumstances
24 the seizure of the bag was appropriate and therefore there
25 would be no suppression of that evidence.

1 MS. INZERILLO: Thank you, your Honor. And just I
2 have another question now that the court has heard this.
3 If the testimony is going to be what we've heard in terms
4 of smelling marijuana --

5 THE COURT: Yeah. I --

6 MS. INZERILLO: I mean there is --

7 THE COURT: Well he's not charged with marijuana, I
8 understand that, but I do find that that evidence is
9 sufficient in the context of what happened in regard to the
10 obtaining the search and the seizure of the black bag.

11 So the specter that that throws into the case that he
12 also had in addition to some other pharmacy, some
13 marijuana, I think -- I'm going to not suppress that part
14 of the testimony even though it does raise a specter of
15 another violation under the law being in possession of
16 marijuana. The witness can certainly be cross-examined
17 regarding the lack of any charge if the defense wants to go
18 there.

19 So something about the phone. Motion to exclude the
20 testimony regarding a phone. The final motion.

21 SOLICITOR HAMILTON: The State does not intend to
22 introduce any; correct.

23 THE COURT: All right. And is that everything before
24 we get the jury up? We'll take a break before we get the
25 jury up.

1 MS. INZERILLO: I believe so, but may I confer with
2 the State just for one final moment?

3 (SIDE BAR BETWEEN THE STATE AND THE DEFENSE.)

4 THE COURT: All right. We'll take a break. Let's
5 take - Why don't we go ahead and -- Is the jury assembled?

6 All right. Let's have the jury up here at a quarter
7 'till three. We'll take a break until then. Let me know
8 when the jury's up.

9 (COURT IN RECESS AT 02:27 PM.)

10 (COURT BACK IN SESSION AT 04:09 PM.)

11 THE COURT: Thank you. You may take your seats.

12 SOLICITOR HAMILTON: May it please the Court, your
13 Honor. This is Kenyon Brown, he is appearing today with
14 his attorney Melissa Inzerillo.

15 THE COURT: You're gonna need to speak up a little bit
16 please, ma'am.

17 SOLICITOR HAMILTON: This is *State versus Kenyon*
18 *Brown*. He is appearing today with his attorney Melissa
19 Inzerillo from the Public Defender's Office. He is
20 pleading guilty to two counts of distribution of crack
21 third offense. One count of possession with intent to
22 distribute crack third offense. One count of possession
23 with intent to distribute cocaine third offense; possession
24 with intent to distribute Clonazepam third offense and
25 possession of Oxycodone second offense.

1 He is also pleading guilty to a charge from 2014 which
2 is a habitual traffic offender offense. The State has
3 negotiated with the defense a ten year offer. The
4 defendant served two hundred and eighty-seven days.

5 THE COURT: How old are you, Mr. Brown?

6 MR. BROWN: Thirty-four.

7 THE COURT: You represented by Ms. Inzerillo?

8 MR. BROWN: Yes, sir.

9 THE COURT: You satisfied with her service?

10 MR. BROWN: Yes, sir.

11 THE COURT: I have in front of me several charges, I'm
12 gonna try to go through 'em efficiently as I can. I'm
13 going over first the indictment wherein you're charged with
14 possessing Oxycodone on July 17th, 2015 here in York County
15 where at that time you were in possession of Oxycodone in
16 violation of the laws of this state.

17 This is a felony it carries up to five years in jail.
18 Do you understand that charge and the potential penalty?

19 MR. BROWN: Yes, sir.

20 THE COURT: How do you plead to that?

21 MR. BROWN: Guilty, sir.

22 THE COURT: You're charged in a separate indictment
23 with possession with intent to distribute Clonazepam third
24 offense. It's alleged that that occurred on or about July
25 17th, 2015 here in York County when you were in possession

1 of Clonazepam with the intent to distribute it. This
2 carries five to twenty years; it is a felony, it is a no-
3 parole offense. That means that you would have to under
4 this sentence serve at least eighty-five percent of your
5 sentence before you would be eligible for early release
6 into early release program. If you were found to be
7 eligible for early release and granted early release it
8 would be into a community supervision program with
9 conditions similar to that of probation. And if you
10 violated those probations while you were out on early
11 release you could be re-incarcerated for up to a year.
12 You would then re-release again; if you violated again you
13 could go back for a year and that pattern could continue
14 until you served the entire time of your sentence.

15 Do you understand that?

16 MR. BROWN: Yes, sir.

17 THE COURT: How do you plead to possessing Clonazepam
18 with intent to distribute it?

19 MR. BROWN: Guilty, sir.

20 THE COURT: You're charged with a count of
21 distribution of -- possession with intent to distribute
22 crack cocaine and it's alleged that that occurred on or
23 about July 17th, here in York County when you possessed
24 crack cocaine with intent to distribute that substance in
25 violation of the laws of this state. That carries from ten

1 to thirty years in jail. It is a serious offense. A
2 serious offense is the type of offense which if in your
3 life time you received three serious or a combination of
4 three serious -- I'm sorry, you receive two serious - - you
5 receive three serious of a combination of three serious and
6 most serious offenses you would be subject to being
7 incarcerated for life without parole. That is a true life
8 sentence.

9 Do you understand that penalty and the charge?

10 MR. BROWN: Yes, sir.

11 THE COURT: How do you plead to that?

12 MR. BROWN: Guilty, sir.

13 THE COURT: You're charged with a distribution of
14 crack cocaine on or about June 9th, 2015. It's alleged
15 that on that date you did distribute crack cocaine in
16 violation of the laws of this state. This is a felony;
17 it's a serious; parole ineligible offense, and like the
18 last charge carries from ten to thirty years in jail.

19 Do you understand that charge and the potential
20 penalty?

21 MR. BROWN: Yes, sir.

22 THE COURT: How do you plead to that charge?

23 MR. BROWN: Guilty, sir.

24 THE COURT: You're charged with distribution of crack
25 cocaine third or subsequent offense. It's alleged that

1 that occurred on May 28th, 2015 here in York County when
2 you distributed crack cocaine in violation of the laws of
3 this state. That carries from ten to thirty years in jail;
4 it's a serious offense and it is parole ineligible offense
5 just like the last two.

6 Do you understand that?

7 MR. BROWN: Yes, sir.

8 THE COURT: How do you plead to that charge?

9 MR. BROWN: Guilty, sir.

10 THE COURT: You're charged with third offense
11 distribution of narcotic -- a distribution of cocaine.
12 It's alleged that on or about July 17th, 2015 here in York
13 County you possessed cocaine with the intent to distribute
14 it. This carries from ten to thirty years in jail. It too
15 is a serious offense; it too is a parole ineligible
16 offense. Do you understand that charge and the potential
17 penalty?

18 MR. BROWN: Yes, sir.

19 THE COURT: How do you plead to that charge?

20 MR. BROWN: Guilty, sir.

21 THE COURT: The last charge is one of violating the
22 habitual offender act. This carries up to five years and
23 it's alleged that this occurred on or about June 19th here
24 in York County when you operated a motor vehicle on the - -
25 in this state after being found to be a habitual offender

1 by the South Carolina Department of Motor Vehicles.

2 Do you understand that charge and the potential
3 penalty/

4 MR. BROWN: Yes, sir.

5 THE COURT: How do you plead to that charge?

6 MR. BROWN: Guilty, sir.

7 THE COURT: As to these charges other than the --

8 SOLICITOR HAMILTON: Your Honor, I do want to state
9 that the Clonazepam is discharged on there. It is -- the
10 CDR Code is essentially wrong on the sentencing sheet.

11 THE COURT: All right. Wait just a minute, give me
12 time to get to it. I've got a stack here.

13 SOLICITOR HAMILTON: It should be CDR Code 1-9-0.
14 That's gonna be Indictment ending in 2-4, 3-0-2-4.

15 THE COURT: Wait. Wait, just give me a second.
16 Clonazepam you got 188.

17 SOLICITOR HAMILTON: And it should be 190. And it's a
18 schedule four rather than a schedule three.

19 THE COURT: Well is the code section right on that?

20 SOLICITOR HAMILTON: It should be a 0-3-7-0 (b) (3). I
21 don't know if that's what the sentencing sheet says.

22 THE COURT: You got (b) (2).

23 SOLICITOR HAMILTON: Okay. It should be (3).

24 THE COURT: Okay. I'm gonna change that.

25 SOLICITOR HAMILTON: And the indictment, the CDR Code

1 on the indictment would be -- needed to be amended to ...

2 THE COURT: You trailed off.

3 SOLICITOR HAMILTON: I'm sorry, your Honor. The CDR
4 Code on the indictment would need to be 1-9-0 amended as
5 1-9-0.

6 THE COURT: All right.

7 SOLICITOR HAMILTON: The statute is correct on the
8 indictment.

9 THE COURT: All right, except it's got (b)(2) so I
10 need to change that to (b)(3)?

11 SOLICITOR HAMILTON: Yes, your Honor.

12 THE COURT: Any objection to that, Ms. Inzerillo?

13 MS. INZERILLO: No, your Honor.

14 THE COURT: All right. So I wrong or let me see if
15 I was wrong. This section I told you carried ten years and
16 up or at least ten years and that charge only carries five
17 years. Do you understand that?

18 MR. BROWN: Yes, sir.

19 THE COURT: And how again do you plead to that charge?

20 MR. BROWN: Guilty, sir.

21 THE COURT: Other than the recommendation or a
22 negotiation for a ten year sentence has anyone made any
23 other promise or threats to cause you to enter today your
24 plea of guilt to these charges, Mr. Brown?

25 MR. BROWN: No, sir.

1 THE COURT: Are you today under the influence of
2 anything that would cause you to be intoxicated?

3 MR. BROWN: NO, sir.

4 THE COURT: Are you entering your plea today to these
5 charges freely and voluntarily, Mr. Brown?

6 MR. BROWN: Yes, sir.

7 THE COURT: Mr. Brown, you have a right to a trial by
8 a jury on these charges and you are presumed innocent of
9 these charges until such time as the State is able to prove
10 if it can your guilt beyond a reasonable doubt. As to the
11 charges you have the right to remain silent, the right to
12 confront the witnesses against you, and you have the right
13 to have your witnesses made to come to court to testify for
14 you. Do you understand you have these rights?

15 MR. BROWN: Yes, sir.

16 THE COURT: Do you have any questions about them?

17 MR. BROWN: No, sir.

18 THE COURT: I advise you that by entering a plea of
19 guilt you're giving up these rights and you're also giving
20 up any defense that you might have to these charges.

21 Do you understand that?

22 MR. BROWN: Yes, sir.

23 THE COURT: Knowing all those things I ask again, how
24 do you plead to possessing with intent to distribute crack
25 cocaine on July 17th of 2015?

1 MR. BROWN: Guilty, sir.

2 THE COURT: How do you plead to possessing Oxycodone
3 on July 17th, 2015?

4 MR. BROWN: Guilty, sir.

5 THE COURT: How do you plead to distribution of crack
6 cocaine on June 19th, 2015?

7 MR. BROWN: Guilty, sir.

8 THE COURT: How do you plead to possession with intent
9 to distribute Clonazepam on July 17th, 2015?

10 MR. BROWN: Guilty, sir.

11 THE COURT: How do you plead to distribution of crack
12 cocaine on May 28th, 2015?

13 MR. BROWN: Guilty, sir.

14 THE COURT: How do you plead to possession with intent
15 to distribute cocaine on July 17th, 2015?

16 MR. BROWN: Guilty, sir.

17 THE COURT: How do you plead to violating Habitual
18 Traffic offender Act on June 19th, 2014?

19 MR. BROWN: Guilty, sir.

20 THE COURT: All right, I'm gonna ask you to listen
21 while I'm given the facts.

22 SOLICITOR HAMILTON: Thank you, your Honor.

23 On June 19th of 2014 officers of the Rock Hill Police
24 Department pulled over the defendant in York County for
25 speeding. Upon review of his driving record officers found

1 the defendant's license was suspended on September 29th of
2 2011 and remained suspended until September 29th, 2016
3 after being deemed a habitual traffic offender. He had
4 three separate convictions within a three year period all
5 that making this a habitual traffic offender.

6 As to the drug charges, your Honor, on May 28th of
7 2015 the defendant did distribute to a confidential
8 informant point one grams of crack in exchange for twenty
9 dollars. This did occur at [REDACTED] within York
10 County. On June 19th the defendant did distribute to a
11 confidential informant at [REDACTED] point one
12 grams of crack in exchange for forty dollars.

13 On July 17th of 2015 officers located in the
14 defendant's belongings at the Econo-Lodge in York County
15 one point five grams of cocaine, one point five seven grams
16 -- I'm sorry, one point five seven grams of cocaine; one
17 point five eight grams of crack cocaine.

18 They also located twenty Oxycodone tablets and
19 thirteen Clonazepam tablets. The defendant did admit that
20 those drugs within that mesh bag were his and that he did
21 sell drugs, your Honor.

22 And his priors to meet this enhancible he has a 1999
23 distribution of crack cocaine. Two separate offenses and
24 two proximity's associated with those distributions of
25 crack cocaine.

1 THE COURT: All right. Do you agree with those facts,
2 Mr. Brown?

3 MR. BROWN: Yes, sir.

4 THE COURT: Mr. Brown, I accept your pleas. I find
5 they are freely voluntarily knowingly and intelligently
6 entered; entered with the advice of competent counsel with
7 whom you are satisfied. I find the facts support your plea
8 and you've signed pleas of guilt. I'll be glad to hear
9 from your attorney and anyone else on your behalf and then
10 from you.

11 MS. INZERILLO: Your Honor, we would ask the court to
12 accept the negotiated sentence in this case. I can forgo
13 mitigation if the Court is going to accept them.

14 THE COURT: I've accepted it. So anything you want to
15 say, Mr. Brown?

16 MR. BROWN: No, sir.

17 THE COURT: All right, on the 2015-3023 possessing
18 with intent to distribute cocaine on July 17th, 2015 the
19 sentence is ten years. All of these are to run concurrent
20 and I'll give you credit for two hundred and eighty-seven
21 days on every one of them.

22 On the distribution of crack cocaine from May 28th,
23 2015 the sentence is ten years. It will be concurrent with
24 credit for those days. And that was 2015-3020.

25 2015-3025 possessing Oxycodone on July 17th, 2015 the

1 sentence is five years. Again concurrent with credit.

2 On 2015-3021 distribution of crack cocaine June 19th,
3 2015 the sentence is ten years concurrent with credit.

4 On possessing with intent to distribute Clonazepam the
5 sentence is five years to run concurrent with credit.

6 Habitual Traffic Offender Act the sentence is five
7 years; giving you credit and concurrent. And the
8 Clonazepam the indictment was 2015-3024,

9 2015-3022 possessing with intent to distribute crack
10 cocaine on July 17th, 2015 the sentence is ten years.
11 Again that's all to run concurrent and I recommending you
12 receive treatment through the Addiction Treatment Unit. And
13 I'm giving you credit for two hundred and eighty-seven
14 days.

15 MS. INZERILLO: Thank you, your Honor.

16 THE COURT: Ms. Inzerillo and Ms. Hamilton, I want you
17 all to check these real close since I know we've already
18 had to make one correction. Make sure that everything is
19 in order and the clerk will check.

20 And let me know what's up for in the morning.

21 (COURT IN EVENING RECESS AT 04:30 PM.)

22 (END OF TRANSCRIPT OF RECORD.)

23

24

25

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 11th and 12th days of August, 2010.

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

Wanda Nelson

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

My Commission Expires: 1/21/2021

DATE:

December 16 / 2016

FORM 5

STATE OF SOUTH CAROLINA

County of

YORK

CERTIFIED TRUE COPY IN THE COURT OF COMMON PLEAS

2016 OCT 12 AM 11:36

KENYON JEMEL BROWN

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

DAVID HAMILTON
C.C.O.P.S.
YORK COUNTY, SC

2016 OCT 12 AM 11:12

FILED-RECEIVED

INSTRUCTIONS READ CAREFULLY

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

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

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

1. Place of detention YORK COUNTY DETENTION CENTER
2. Name and location of Court which imposed sentence JOSEPH R. MOSS JUSTICE CENTER, 116th Circuit Court, YORK SOUTH CAROLINA, 29745
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2015 GS 4603022, 2015 GS 4603025, 2015 GS 4603021

(b) 2015GS4603024, 2015GS4602138, 2015GS4603020

(c) 2015GS4603023

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

(a) April 26, 2016, 10 years, non-violent

(b) Run Concurrent with Consecutive Charges Sentencing

(c) INDICTMENTS

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. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) Counsel FAILED to Provide me with Instructions to Proceed

- (b) _____
- (c) _____

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) VIOLATION(S) OF 4th, 5th, 6th, 14th CONSTITUTIONAL RIGHT(S)
- (c) ILLEGAL/UNLAWFUL ARREST. INVASION OF PRIVACY

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

- (a) • FAILURE TO ARTICULATE A FOURTH ^{AND FIFTH} AMENDMENT CLAIM, (SEE ATT. Pg.)
- (b) • FAILURE TO ARTICULATE AND ASSERT FOURTEENTH AMENDMENT CLAIM,
- (c) • DEFECTIVE ARREST AFFIDAVIT, WARRANTLESS ARREST & SEIZURE OF PROPERTY

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

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

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

- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____

A) THE RIGHT OF THE people to be Secure in their persons, houses, papers and effects against unreasonable Searches And Seizures Shall not be Violated and no warrants shall issue but upon probable Cause, Supported by Oath or affirmation, and particularly describing the place to be Searched, and the persons or things to be Seized.

The Doctrines of the Fourth and Fifth Amendments apply to all invasions on the part of the government and its employees of the Sanctity of a man's home and the privacies of life. It is not the breaking of his doors and the rummaging of his drawers that constitutes the essence of the offense, but it is the invasion of his indefeasible right of personal Security, personal liberty, and private property. Breaking into a house and opening boxes and drawers are circumstances of Aggravation; But any forcible and Compulsory extortion of a man's own testimony or of his private papers to be used as evidence to Convict him of Crime or to forfeit his goods is within the Condemnation of the Amendments.

B.) My fourteenth Amendment Right to Due process was Violated where State failed to Establish Competant Complete Chain of Evidence pursuant to Rule 4(B) GRCRimp. A Double Jeopardy issue arose where Counsel allowed state Solicitor to Sentence me twice for the Count of HTO Charge.

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

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?

NO

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

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) First Opportunity of Appeal Since Court disposition
 (b) First Opportunity of Appeal Since Court disposition
 (c) First Opportunity of Appeal Since Court disposition

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? YES.
 (c) your sentencing? YES.
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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. MELISSA INZARILLO
 ii. MELISSA INZARILLO
 iii. MELISSA INZARILLO

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

i. PRELIMINARY HEARING, Bond Hearing
 ii. PRE-TRIAL
 iii. PLEA- SENTENCING

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

REMAND AND VACATE SENTENCE

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

NO

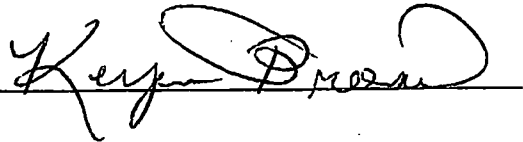
Revised 3/2003

STATE OF SOUTH CAROLINA)

County of YORK)

VERIFICATION

I, KENYON JEMEL BROWN, 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.



SWORN to and subscribed before me this 9
day of August, 2016.

 (L.S.)
Notary Public

My Commission Expires: 2/17/24

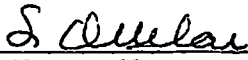
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

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

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


Applicant

SWORN or affirmed to and subscribed before me this
9 day of August, 2016


Notary Public

My Commission Expires: 2/17/24

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

KENYON J. BROWN, #257742)

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-46-3011

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Nathan J. Sheldon, Esquire
 Address: Law Office of Nathan J. Sheldon, LLC
PO Box 36682
Rock Hill, SC 29732-0510
 Phone: _____ Fax: _____
 E-mail: _____ Other: _____

Defendant's Attorney: Justin J. Hunter, AAG
 Bar No. 101254
 Address: PO Box 11549
Columbia, SC 29211
 Phone: (803) 734-3737 Fax: (803) 734-4113
 E-mail: _____ Other: _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

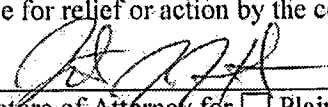
SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO**SECTION II: Motion/Order Type**

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for ☐ Plaintiff / ☒ Defendant

January 18, 2017
 Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT: \$ _____
☒ EXEMPT: _____
 (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

- ☐ MOTION FEE COLLECTED: \$ _____
☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Kenyon J. Brown, #257742,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

2016-CP-46-3011

RETURN

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed on October 12, 2016, would respectfully show this Court:

I.

Applicant is presently confined to South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the July 2015 term of the York County Grand Jury for habitual traffic offender (2015-GS-46-2138). Applicant was subsequently indicted at the October 2015 term for two counts of distribution of crack cocaine (2015-GS-46-3020 and 3021), possession with intent to distribute crack cocaine (2015-GS-46-3022), possession with intent to distribute cocaine (2015-GS-46-3023) possession with intent to distribute clonazepam (2015-GS-46-3024); and possession of oxycodone (2015-GS-46-3025). Mellissa Inzerillo, Esquire, represented Applicant. On April 26, 2016, Applicant pled guilty as indicted before the Honorable John C. Hayes III. Pursuant to a negotiated sentence, Judge Hayes sentenced Applicant to imprisonment for concurrent terms of ten years for each count of distribution of crack cocaine, ten years for possession with intent to distribute crack cocaine, ten years for possession with intent to distribute cocaine, five years for habitual traffic

offender, five years for possession with intent to distribute clonazepam, and five years for possession of oxycodone. Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein by reference are the records of the York County Clerk of Court regarding the subject convictions, the transcript from Applicant's guilty plea, and Applicant's records from the South Carolina Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance of Counsel
 - a. "failure to articulate a fourth and fifth amendment claim"
2. "Violation(s) of 4th, 5th, 6th, 14th constitutional right(s)"
 - a. "failure to articulate and assert fourteenth amendment claim"
3. "Illegal/unlawful arrest. Invasion of privacy"
 - a. "Defective arrest affidavit, warrantless arrest and seizure of property"

III.

Applicant alleges ineffective assistance of counsel. These allegations are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117,

386 S.E.2d 624, 625 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, he would not have pleaded guilty, but would have insisted on going to trial. Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual

authorized to file amendments to this application. See Rule 11, SCRCF. *Pro se* filings will not be considered at the PCR hearing. Respondent will move to strike any amendments withheld until the last minute where such amendments result in prejudice to Respondent. See Rules 15(a)-(b), SCRCF.

V.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

January 18, 2017

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2016-CP-46-3011

KENYON J. BROWN, #257742,

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:

Nathan J. Sheldon, Esquire
The Law Office of Nathan J. Sheldon, LLC
PO Box 36682
Rock Hill, SC 29732-0510

DATED this 18th day of January, 2017.


Jocelyn Baker, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Kenyon Brown,)
Applicant,)
vs.)
State of South Carolina,)
Defendant.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-46-3011

AMENDED PETITION

FILED-RECEIVED
2017 OCT 26 AM 10:57
CLERK OF COURT
YORK COUNTY, SC

NOW COMES the applicant, by and through his undersigned attorney, and amends his PCR petition to include the following:

INEFFECTIVE ASSISTANCE-DENNO

Applicant alleges that counsel's performance was ineffective during the pretrial Jackson v. Denno hearing. Counsel failed to advise client that he could testify on his behalf at the pretrial hearing. Applicant maintains that he informed counsel that he never made the statement in question to law enforcement. Counsel's cross-examination focused solely on the voluntariness of the statement, but never addressed the allegation that the statement was never made. The statement itself was incriminatory in nature. Had applicant been informed that he could testify, he would have stated that the statement was never made at all and that law enforcement was not being truthful. Instead, the Court's only option was to consider the testimony of law enforcement without defendant's assertion that law enforcement was not being truthful. Had applicant testified, then the Court would have had to consider the credibility of each witness testifying including applicant.

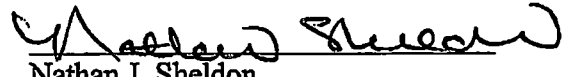
INEFFECTIVE ASSISTANCE- SUPPRESSION

Applicant further alleges that trial counsel was ineffective for failing to properly argue issues the suppression hearing. Specifically, counsel failed to do three things: 1- Counsel failed to cross-examine the hotel employee and/or law enforcement officer about the inconsistency in the testimony and the law enforcement narrative. 2- Counsel failed to investigate and inquire as to the State's failure to produce the actual luggage bag that was allegedly searched when the drugs were recovered. 3- Counsel failed to advise defendant of his right to testify to the facts and circumstances surrounding his stay at the hotel and subsequent arrest prior to the drugs being found.

INEFFECTIVE ASSISTANCE-APPEAL

Applicant alleges that trial counsel was ineffective in failing to handle the issues surrounding an appeal properly. First, trial counsel failed to inform applicant that if he pled guilty, then he would abandon his right to appeal the outcome of both the Denno hearing and the suppression hearing. In other words, counsel never informed applicant that there are no conditional guilty pleas in South Carolina. Counsel further failed to speak with applicant about his right to appeal the guilty plea and never filed an appeal on his behalf. Applicant didn't have the opportunity to make informed decision about his appeal because he never saw counsel after the guilty plea. Had applicant known that the plea was not conditional, applicant would have proceeded with a trial. Had applicant known that he had a right to appeal, he would've appealed his guilty plea.

Respectfully Submitted,



Nathan J. Sheldon

Attorney for Applicant

331 E. Main St., Suite 200

Rock Hill, SC 29730

803-909-9343

October 25, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-46-03011

KENYON JEMEL BROWN)
vs.)
STATE OF SOUTH CAROLINA)

TRANSCRIPT OF RECORD

NOVEMBER 8, 2017
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE J. CORDELL MADDOX

APPEARANCES:

JUSTIN HUNTER, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

NATHAN SHELDON, ESQUIRE
ROCK HILL, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
MELISSA INZERILLO				
By Mr. Sheldon	5			
By Mr. Hunter		20		
KENYON BROWN				
By Mr. Sheldon	26			
By The Court		30		

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

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	EVD.
------------	--------------------	------------	------

(NO EXHIBITS)

1 MR. HUNTER - May it please the Court, Your Honor,
2 the last case this week is Kenyon Brown vs. State of South
3 Carolina, 2016-CP-46-3011. Your Honor, he was indicted in
4 -- he was indicted for seven charges total -- I'll read
5 them out -- habitual traffic offender, distribution of
6 crack cocaine third or subsequent, another distribution of
7 crack cocaine third or subsequent, PWID crack cocaine third
8 offense, PWID cocaine third offense, PWID Clonazepam third
9 offense and possession of Oxycodone. He was represented by
10 Ms. Melissa Inzerillo. On April 26th, 2016 he, actually,
11 entered pre-trial posture before Judge Hayes. After pre-
12 trial hearings he then pled guilty and pursuant to a
13 negotiation he was sentenced five years for habitual
14 traffic offender, PWID Clonazepam and possession of
15 Oxycodone. For the remaining four charges he was
16 sentenced to ten years on each, everything to run
17 concurrently, did not file a direct appeal. Filed this
18 current action April 23rd, 2015. He's present today
19 represented by Mr. Nathan Sheldon.

20 THE COURT - Okay. Yes, sir.

21 MR. SHELDON - Thank you, Your Honor. May it
22 please the Court. Just for the record I did file an
23 amended petition in this case which should be in the Court
24 file. Judge, some of these issues -- well, most of the
25 issues stem from legal issues. I'm going to switch it up.

1 I'm going to, actually, call Ms. Inzerillo to the stand
2 first to try to walk through some of this before we call
3 Mr. Brown.

4 THE COURT - Okay. All right.

5 MELIZZA INZERILLO, AFTER BEING FIRST DULY SWORN,
6 TESTIFIES AS FOLLOWS -

7 MR. SHELDON - Thank you, Your Honor. May it
8 please the Court.

9 THE COURT - Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. SHELDON -

12 Q Ms. Inzerillo, please state your name for the record.

13 A Melissa Inzerillo.

14 Q And you represented Mr. Kenyon Brown. Is that
15 correct?

16 A That's correct.

17 Q And the solicitor read a host of charges that he ends
18 up pleading guilty to, most of them PWID sub-substance
19 (sic) third offense. Is that right?

20 A That's correct.

21 Q And was that (sic) carry a mandatory minimum five,
22 maximum thirty. Is that right on those?

23 A I think there was a mandatory minimum of ten in there,
24 but if I'm wrong, I'll defer to you.

1 Q Okay. Okay, so but ten -- five to thirty or ten to
2 thirty. Is that right?

3 A Right.

4 Q Ultimately, he ends up pleading guilty in this case,
5 but clearly at some point this case was in a trial posture,
6 wasn't it?

7 A That's correct.

8 Q And, in fact, you go to trial in front of Judge Hayes
9 and you have -- I -- it doesn't look like -- was the jury
10 sworn yet when you were making the suppression motions and
11 things or no?

12 A No, I think we were just doing pre-trial.

13 Q Okay. So but you get to the stage of pre-trial
14 hearing, which means trial is -- is that week, basically.
15 Is that right?

16 A Well, we were going to start the trial.

17 Q Okay. And there's, actually, I think what we have,
18 essentially, two different pre-trial hearings, a
19 suppression hearing for the drugs, ---

20 A Right.

21 Q --- and a Denno hearing for a statement given to law
22 enforcement. Is that right?

23 A That's correct.

24 Q Okay, I want to start with the Denno hearing and back
25 up just a little bit. Did you represent Mr. Brown,

1 essentially, through the whole life of the case, didn't
2 you?

3 A I did.

4 Q And -- and law enforcement's position was that he gave
5 a statement implicating himself in possession of the drugs.
6 Is that right?

7 A Um, yes, that's how it would've been portrayed to this
8 jury.

9 Q And just -- you can give the Court a little background
10 information about this case, but, basically, the way that I
11 -- my understanding of it is, is that Mr. Brown is -- has
12 purchased a hotel room here in Rock Hill I think and gets -
13 - gets arrested on some charge and then the maid or
14 whomever is clearing out the hotel room and finds a bag and
15 then police, eventually, end up searching that bag after
16 he's already been arrested on unrelated charges, in that
17 bag drugs are found. Is that right?

18 A In general, yeah. (Indicating yes)

19 Q Okay. What -- so what -- when you first begin meeting
20 with Mr. Brown, what did he tell you about the statement
21 that was given to law enforcement?

22 A He denied making the statement.

23 Q Okay, so from the very get-go he denied making the
24 statement. Is that right?

25 A That's correct.

1 Q And you would agree that there is no statement in
2 written form, law -- even in law enforcement's hands, it
3 certainly wasn't audio-record or video-recorded.

4 A The only recitation of the statement I have is in the
5 case summary.

6 Q There is absolutely no evidence whatsoever that he
7 gave a statement other than the officer saying he did.

8 A Um, that and in the plea he admitted to giving the
9 statement.

10 Q Okay. At -- but at the time of the suppression
11 hearing, at the time you're meeting with him there is no
12 evidence whatsoever. Is that right?

13 A Right. That's correct.

14 Q Okay. So we get to -- and he maintained that he did
15 not make that statement at all. Is that right?

16 A That is what he told me.

17 Q We get to the Denno hearing -- you agree that at a
18 Denno hearing the defendant has a right to testify if they
19 choose to.

20 A That is correct.

21 Q Okay. He does not testify at the Denno hearing.

22 A That is correct.

23 Q Do you also agree that as sort of a threshold hearing
24 in that where the judge is, essentially, the gatekeeper of

1 whether by a preponderance of the evidence the statement
2 was given freely and voluntarily.

3 A That is correct.

4 Q But you -- but as part of that, would -- do you agree
5 or disagree that as part of a Denno hearing the trial judge
6 can find that it was not given freely or voluntarily if he
7 finds no statement was given at all?

8 A I -- I think that would be an option for a judge. I'd
9 have to have a judge weigh in, but I would agree with that.

10 Q Well, the judge is there, essentially, at -- at least
11 at the Denno hearing is the finder of fact. Right?

12 A For that -- just for the voluntariness of the
13 statement.

14 Q That's right. It -- you're -- Mr. Brown is saying, I
15 never made that statement at all.

16 A That's right.

17 Q And -- at that time that's what he is saying.

18 A Right.

19 Q At the Denno hearing, you don't call Mr. Brown.

20 A Did not.

21 Q Did you discuss Mr. Brown's right to testify at the
22 Denno hearing?

23 A Yeah, and -- in my notes it appears we had a
24 discussion not only about the trial but about pre-trial

1 motions, and my recollections I would've discussed it with
2 him at that time.

3 Q So we have a situation where at a pre-trial hearing,
4 you agree that the judge's job is a fact finder at the
5 Denno hearing as to the voluntariness of the statement.

6 A That's right.

7 Q As part of that job is to weigh the credibility of the
8 testimony.

9 A That is correct.

10 Q It's impossible to get out at that Denno hearing as
11 presented by you Mr. Brown's version of events that he
12 never gave that statement without him testifying.

13 A I mean I think there's probably other ways it could've
14 come out, but, no, him testifying to that would've been the
15 clearest.

16 Q And do you agree or disagree that it did not come out,
17 that at no point in time was the trial judge presented with
18 anything that resembled a claim that the statement wasn't
19 given at all? Not only was is not freely and voluntary,
20 just doesn't exist, is made up.

21 A I agree with that.

22 Q But that was your client's position.

23 A That's what he told me.

1 Q And -- but there's really, other than the officer
2 testifying, nothing else to suggest that the statement was
3 given. Right?

4 A I mean ---

5 Q Even if it's in a case summary, that's just written by
6 the officer.

7 A That's correct. I mean there's nothing that Mr. Brown
8 wrote that would -- you know, that he signed or anything
9 like that. The statement itself is, I think, pretty
10 general. It's -- it comes up after the officers find the
11 drugs, and sort of, based on my discussions with Mr. Brown,
12 I think there was probably a discussion in the room where
13 they were talking about Mr. Brown being an addict and what
14 was going on in the room. One of the things with the
15 statement is I wasn't sure how the statement was going to
16 make it relevant either, because it's -- it's going to be
17 presented as (sic) law enforcement as a confession and an
18 admission, but if you read the statement itself,
19 essentially, what he's saying is, during this time I was
20 doing this, and so I think there would've been a relevancy
21 argument, as well.

22 Q Ultimately, though, we have a situation where drugs
23 are found in a bag purported to belong to Mr. Brown but not
24 really ever connected to him other than the fact it's in a

1 hotel room that was in his name and him saying the bag
2 belonged to him.

3 A That's correct.

4 Q He's not found with any drugs in this case.

5 A I agree with that.

6 Q In fact, he's in the jail at the time the drugs were
7 found. Right?

8 A I agree. (Indicating yes)

9 Q So -- and that's -- it creates a little bit of a
10 bazaar fact pattern. It's kind of hard to understand,
11 because he's not even there at the time that the drugs are
12 found. Right?

13 A I agree. I think we would've presented it to the jury
14 that the officers, essentially, manufactured his absence,
15 because the unrelated warrant was a distribution to a
16 confidential informant, which is something that they -- I
17 mean it wasn't like he was out breaking into cars doing
18 something of his own volition, it was a warrant that they
19 chose to serve, I think, thirteen hours before they were
20 called about the drugs being found in the room and knew
21 where he was, because it was their warrant -- I think the
22 same officer -- and they that he wouldn't have been in the
23 room, and I have to look at the file more closely, but my
24 recollection is I don't know that they could've connected

1 him to it through a key or excluded anyone going in and out
2 of the room.

3 Q And we know that if the -- we know that the -- if the
4 trial judge's job is to gage credibility of witnesses, it's
5 impossible to present his version of the statement or lack
6 thereof the statement, basically, saying the officers are
7 lying. Right? I mean that -- that was his position; they
8 are making this up.

9 A That was his position.

10 Q It's impossible to present that to the trial judge and
11 let him gage the credibility for -- he or she -- gage the
12 credibility for themselves without Mr. Brown testifying.

13 A I agree with that.

14 Q Okay. And that didn't happen in this case.

15 A It did not.

16 Q Okay. I want to move now to the suppression hearing
17 that was held, which was, essentially, held right after the
18 Denno hearing. Is that right?

19 A That's correct.

20 Q And at that suppression hearing, you, essentially,
21 argued that the drugs should be suppressed. Right?

22 A That's correct.

23 Q And this is an extremely complicated version of facts,
24 just -- we've kind of touched on it. Just very briefly
25 explain it to the judge kind of what happened in this case.

1 A Do you want me to explain ---

2 Q Yes.

3 A --- what happened? Okay. So Mr. Brown was arrested,
4 I believe, thirteen hours prior to the discovery of the
5 drugs. He was arrested on an outstanding distribution
6 warrant that involved distribution of drugs to a CI. He
7 was arrested by a DEU. I believe it was the same officer,
8 but I know it was at least the same unit. He is in custody
9 at the time. My investigation and knowledge of the case is
10 that he had been staying in this hotel room, essentially,
11 living there for some amount of time, and that he was
12 paying -- essentially, what the hotel told me is he pays
13 sort of every other day, so he was routinely paying but
14 every other day. And, so, he's -- when he is arrested and
15 put in the jail the next day by 11:00 o'clock when normally
16 they would've expected to see him to pay the rent, he did
17 not come in and pay. So to free up the room for the next
18 customer, they cleaned out the room. My understanding is,
19 I think, it was a janitor that did it. Somewhere along the
20 line the hotel manager was alerted that there was some
21 drugs in the room. The items -- all of his items that he'd
22 left behind in the room, including this mesh bag where
23 drugs was thrown into a trash bag, it was thrown into a
24 storage room that the witnesses would've maintained were --
25 was locked and not accessible by anyone else, and then they

1 called the police, because drugs were found in the room.
2 And so the police, the officer that talked to Mr. Brown,
3 went to the hotel, looked through the items and found the
4 drugs that was -- that was in the bags that they're
5 alleging was in his room.

6 Q Did the police ever produce the actual luggage for
7 inspection during discovery or anything?

8 A No. My understanding is they, essentially, just got
9 rid of it. They took the drugs out; they kept the drugs in
10 evidence, and the mesh bag and everything else was gone.

11 Q So there's a -- there's a pretty complex search issue
12 you guys caught, and Judge Hayes, eventually, finds that
13 the search is good because it's not really in the bag, it's
14 kind of in the hotel bag and they had -- there's no right
15 to privacy in that and, essentially, the drugs come in.
16 Right?

17 A Right. I think ---

18 Q Or are going to inevitably come in at trial.

19 A I think part of that is there was a ruling that Mr.
20 Brown had abandoned the drugs under a legal definition.
21 Certainly I think I would've argued to the jury this -- I
22 don't think he abandoned it, I think he was arrested, and
23 as I indicated, Judge Hayes could've made bond, and so I
24 don't know that it was clearly indicated that he would've
25 abandoned it.

1 Q And it's unclear from the -- from the pre-trial
2 transcript, but did -- was Judge Hayes aware that the
3 luggage had been completely discarded and thrown away and
4 that we were left with nothing but drugs?

5 A I -- I don't know what he -- how he took the
6 situation, but I know there was -- all the State had was a
7 picture of the mesh bag that contained the drugs, so I
8 think it ---

9 Q But not the -- not the actual luggage bag.

10 A I think his stuff -- my impression of the -- of the
11 room was that he had left it the way it was when he left
12 the room before he was arrested, so my impression was there
13 would've been stuff all over the room. It wasn't neatly
14 packed up. It was -- they went in and cleaned out the
15 room, because he had left it expecting to come back.

16 Q Okay. You didn't advise him -- I'm sorry -- did --
17 what did you do by way of advising -- you agree that he
18 also has a right to testify at a suppression hearing.

19 A Yes.

20 Q And what was your advice given to him regarding
21 testifying at that hearing?

22 A I know we talked about, again, both pre-trial hearings
23 -- I know suppression was -- I think on the forefront of
24 Mr. Brown's mind -- that was the motion we talked about the
25 most, and I think he wanted to have the suppression hearing

1 prior to trial, but we don't do that in this county, so we
2 had to wait for a trial to get that done.

3 Q Essentially, bifurcated ---

4 A Exactly.

5 Q Okay.

6 A And, um, you know, we discussed everything entailing
7 with that motion just like with all other motions.

8 Q You agree that if this would've been -- that -- at the
9 time that Judge Hayes rules that the statement comes in and
10 the drugs come in, that at that point in time the plea --
11 or I'm sorry -- any appeal would've been interlocutory,
12 that you could not appeal until after a verdict came out
13 for Mr. Brown?

14 A I agree with that.

15 Q Okay. What were the conversations you had with --
16 and, ultimately, he ends up pleading guilty and we don't
17 have conditional pleas, so those issues are abandoned at
18 this point. Right? On appeal.

19 A That's right.

20 Q What were the conversations you had with Mr. Brown
21 regarding the appealability of pre-trial suppression
22 motion, the Denno hearing and after -- before, and or after
23 a guilty plea?

1 A That if he entered a guilty plea, he couldn't appeal,
2 that, essentially, cut that part off, that, um, he could
3 not go back and appeal and re-open that, um, ---

4 Q And do you have in your notes that that was made clear
5 to him, that there are no -- prior to pleading guilty, that
6 he would lose his right to appeal any of these decisions?

7 A I would've gone over that with a plea affidavit,
8 because there's language in the plea affidavit about
9 challenging the voluntariness of the statements, and so I
10 want my clients to understand that if they stop and they
11 decide to plead, then that sort of cuts off what we've been
12 doing, and he -- after the pre-trial motion he asked me,
13 would the State offer anything. He opened discussions as
14 to a guilty plea, and I wanted to make sure he would be
15 clear on that.

16 MR. SHELDON - Beg the Court's indulgence just for
17 one second.

18 THE COURT - Sure.

19 Q So, essentially, from the plea waiver form that you --
20 and you did -- and there was one done in this case. I
21 believe it was, um -- looks like it was clocked on October
22 12th of 2016.

23 A It was done between the pre-trial and the entrance of
24 the plea.

1 Q So as part of that when he's waiving his right to --
2 and I mean -- essentially, you're saying you give up -- for
3 each of the charges listed above my right to a jury trial,
4 a bench trial, confront and cross examine witnesses, remain
5 silent, including my right to testify on my own behalf, I
6 am waiving all defenses including but not limited to the
7 right to challenge any evidence the State may have
8 including the voluntariness of any statements made to law
9 enforcement.

10 A I -- I'm sorry -- I usually tell people, I mean if
11 there's not a plea affidavit, but I know that that language
12 sometimes reminds me to make sure.

13 Q Okay. So you're saying that you also tell them that
14 they're abandoning their right to appeal those issues, ---

15 A Right, the ---

16 Q --- not just --- not just giving up your trial rights
17 but your appellate rights, as well.

18 A That the appeal would pretty much cover the guilty
19 plea.

20 MR. SHELDON - Thank you. Your Honor, I don't
21 think -- beg the Court's indulgence for just one second,
22 but I don't think I have any other questions. (Pause) No
23 more questions, Your Honor.

24 THE COURT - All right, yes, sir.

25 MR. HUNTER - Just a few things.

1 CROSS EXAMINATION

2 BY MR. HUNTER -

3 Q As far as his statement's concerned, I guess, the
4 Denno hearing, can you just go over again, you discussed
5 his right to testify at that hearing?

6 A Yeah, my notes indicated we went over the pre-trial
7 motions and that would've been, of course, one of them, and
8 that we had discussed, as well, his right to testify in the
9 trial. I think I in one of the motions also mentioned that
10 to Judge Hayes, that he was still considering all that,
11 but, yeah, we did have a discussion about the pre-trial
12 motions.

13 Q Okay. And, I guess, just analyzing prejudice in this
14 case where the outcome would've been different, do you
15 believe that if he had testified that the outcome of the
16 Denno hearing changes?

17 A I don't.

18 Q Why is that?

19 A I mean I -- I think he would've taken the stand and
20 denied making the statement, but I'm not sure that that
21 would've changed Judge Hayes' mind. I can't walk around in
22 Judge Hayes' mind, but I've not ever seen just a flat
23 denial by a client cause Judge Hayes to exclude a
24 statement.

1 Q Okay. And so if you had proceeded to trial, would you
2 have argued that the statement didn't exist, that he never
3 made it?

4 A Yes, as a -- also, Judge Hayes redacted out parts of
5 the statement, so it was a limited version of the statement
6 that the jury would've heard. I had questions as to
7 whether it was relevant, because the statement is given
8 sort of in generalities. I mean even as the detective
9 wrote down the statement, he is saying, you know, I -- I
10 purchase and buy and I do these things in general, but I --
11 I did not hear anything and I wouldn't have expected to
12 hear in the trial how that is relevant to the drugs they
13 found in the room. It didn't appear to me that the
14 statement was specific to, these are the drugs I bought,
15 these are the drugs that I use, and I had talked to Mr.
16 Brown about going in front of the judge and doing,
17 essentially, a simple possession defense, because I do
18 think that the weight of the drugs was barely over a gram,
19 that even if the jury heard the statement, that the tenor
20 of the statement is that he was living in this room and
21 he's a drug addict and he's using drugs and partying a lot,
22 that coupled with the fact that the officers did not come
23 to the room as a result of any complaints of drug activity,
24 they came because the hotel called and said, hey, we found
25 drugs in this person's room, and, you know, there was

1 nothing that I saw in the file where they indicated that
2 they had seen him deal from outside the room or, you know,
3 they went there because the hotel was complaining about
4 that, so I think it would've been a simple possession.

5 Q Okay, and in your meetings with him prior to pre-trial
6 hearings, did you guys discuss his version of events?

7 A We did. He, of course, denied -- did deny making the
8 statements. I wasn't sure what to think about that. I
9 have clients deny a lot of things to me all the time, but
10 he also sort of in some of the discussions indicated he was
11 using at the time. I think he wrote a letter to the head
12 of drug court asking to be admitted into drug court and the
13 tenor of the letter seemed to indicate that he was not
14 really dealing but using. From sort of interacting with
15 Mr. Brown, my take is that he was using a lot of drugs at
16 one time and -- forget what you asked me. I'm sorry.

17 Q It's all right. Did you discuss with him, I guess ---

18 A The case and the ---

19 Q Right, and, specifically, about how the drugs were
20 found in his room.

21 A Yes. In fact, that was the issue that Mr. Brown
22 focused on the most. A lot of his correspondence with me
23 was him discussing that. I think he was, actually, looking
24 up case law, everything he could find, and I kind of agreed
25 with him. I mean it was an interesting sort of wrinkle in

1 the law, couldn't find anything really on point, and I
2 think, even though we lost it at suppression, part of my
3 strategy with the jury would've been to kind of put it out
4 there in layman's terms. I mean I don't -- I would've
5 hoped that the jury would've thought it was odd that the
6 police essentially manufacture his absence and then go and
7 take advantage of that by keeping the drugs and bringing
8 the drugs in and saying, see, look what we got, and I kind
9 of wanted to put that out there that it's not -- they
10 didn't get it off of him in terms of any buys or deals,
11 they got it because the hotel didn't want drugs in their
12 place.

13 Q Okay. And about this luggage bag, you said the State
14 had a picture -- or the State had a picture of the bag but
15 not the actual bag?

16 A There was um -- right, the drugs were found in a mesh
17 bag that was -- and then that bag was contained, I think,
18 with his other belongings in this trash bag, and in the,
19 um, -- my understanding, my recollection is that they had
20 taken the drugs out of the mesh bag, but didn't have the
21 mesh bag, and, of course, I -- my plan was to cross examine
22 the officers on that, because why not keep -- especially,
23 if there's a question about if I'm looking through a bag,
24 can I see through the bag, could I have determined
25 immediately if there was drugs, and they don't keep the bag

1 to bring into Court to say, see, I could've seen these
2 drugs or it was immediately apparent to me, to question him
3 about that in front of the jury.

4 Q Okay. And as far as the decision to plead guilty or -
5 - were there any plea offers done after the end of the
6 suppression motion?

7 A There was -- yes. We took a break, and there was some
8 discussion, because Mr. Brown was interested to know what
9 they would offer, and they made several offers. I did
10 note, I think, a few of them. I think one was, maybe,
11 straight-up, which he rejected. There was -- I have to
12 find my notes -- there was some discussion going back. I
13 think he was proposing numbers of maybe around six or
14 something like that, which the State rejected. Ultimately,
15 I think they offered ten to take care of everything, and he
16 agreed with that. The danger Mr. Brown had is that we
17 didn't want him to get, potentially, into a life without
18 parole situation and certainly didn't want him to get
19 something really high. I mean he was looking at up to
20 thirty years, and if he was just an addict using drugs in a
21 room of, you know, something towards the high-end of that
22 range seemed really disproportionate.

23 Q And so, ultimately, it was his decision to plead
24 guilty. You agree with that?

25 A That's correct.

1 Q And did he ever raise any concerns to you during that
2 plea hearing?

3 A Uh, no.

4 Q Okay. Did he ever raise any concerns after the plea
5 hearing to you?

6 A No. I mean it was a pretty straight-forward plea
7 hearing.

8 Q Did he ever say he wanted to appeal?

9 A No. I, um, as general practice go over the right of
10 appeal with clients. I explain to them they have ten days
11 from the date of the sentence, which is usually that day,
12 to appeal, that if they do wish to appeal to let me know in
13 plenty of time, because my office has to file the
14 paperwork, and Mr. Brown had been pretty prolific in
15 writing me. He kept constant contact with me when he was
16 in jail and didn't get a request for appeal from him.

17 MR. HUNTER - That's all I have. Thank you.

18 MR. SHELDON - No re-direct, Your Honor.

19 THE COURT - Okay. Thank you, ma'am. You may
20 step down.

21 MR. SHELDON - And I have no objection to Ms.
22 Inzerillo being excused. I think that's her ---

23 THE COURT - Okay. Thank you.

24 MR. HUNTER - No objection.

KENYON BROWN - DIRECT BY MR. SHELDON

26

1 THE COURT - Thanks for sitting here all morning.
2 I appreciate it.

3 MS. INZERILLO - That you, Judge. Have a nice
4 day.

5 THE COURT - You too.

6 MR. SHELDON - Judge, very briefly, we'd call Mr.
7 Brown.

8 THE COURT - Okay. Come on around, Mr. Brown.

9 KENYON BROWN, AFTER BEING FIRST DULY SWORN,
10 TESTIFIES AS FOLLOWS -

11 DEPUTY CLERK - Have a seat there, and just watch
12 your step up there.

13 THE COURT - Be careful.

14 MR. SHELDON - May it please the Court.

15 DIRECT EXAMINATION

16 BY MR. SHELDON -

17 Q Mr. Brown, please state your name for the record.

18 A Kenyon Brown.

19 Q And you're currently doing ten years on all these
20 charges. Is that right?

21 A Yes, sir.

22 Q Just before we get started, I've been down to visit
23 you a few times -- or at least once, haven't I?

24 A Yes, sir.

1 Q You understand that if the Court grants this relief
2 today, that the only thing that's going to happen is you're
3 going to be facing all this time all over again.

4 A Yes, sir.

5 Q And the judge -- you're not bound by ten years. You
6 could be sentenced to -- it looks like about a hundred and
7 fifty years if a judge wanted to if you were convicted.

8 A Yes, sir.

9 Q Knowing all that, you still want to go forward?

10 A Yes, sir.

11 Q All right. You've heard what Ms. Inzerillo testified
12 to. What concerns do you have about her representation?

13 A Well, actually, sir, my concerns revolved around when
14 I was requesting her to investigate the actual luggage, the
15 circumstances surrounding when the officers saying they
16 found the luggage and how they found the luggage. I also
17 had discrepancies with Ms. Inzerillo when -- with my
18 initial arrest. The police said I had outstanding warrants
19 for distribution and come to find out, the whole narrative
20 of the actual affidavit was speaking in terms of a
21 different individual with a unrelated number, so I brought
22 these issues forward to Ms. Inzerillo to ask her what
23 remedy could we do to have this issue brought forth and had
24 it reviewed ---

1 Q Okay, let me -- let me stop you just for a minute.

2 Let's fast-forward when you, actually, get to the Denno
3 hearing and the suppression hearing that we've been talking
4 about all morning.

5 A Yes, sir.

6 Q Did you and Ms. Inzerillo have a conversation about
7 you testifying at trial at all?

8 A No, sir.

9 Q You admit that you were about to go to trial. Right?
10 I mean were on the doorstep of trial at this point.

11 A Yes, sir.

12 Q Did you discuss with her about testifying at the Denno
13 hearing?

14 A No, sir.

15 Q Which would've been the voluntariness of your
16 statement hearing?

17 A No, sir.

18 Q Did you have -- did you maintain that you never made
19 this statement to law enforcement?

20 A Yes, sir, I maintained it from the very moment that,
21 um, our first initial meeting, from then on I maintained
22 that.

23 Q And everything she described about the suppression
24 hearing, you would agree with that -- right? -- that the
25 bag was gone and there was no luggage, no nothing. Right?

1 A There was nothing, just the officer ---

2 Q Do you feel she did a good enough job presenting that
3 to the judge?

4 A No, sir.

5 Q What -- what concerns do you have about that?

6 A Um, well, actually, I mean in proving the position I
7 would think they would have to, actually, have something
8 that's indicating that the property is mines, identifying
9 that, actually, the property is mines, first and foremost.
10 Without us having that and to me being able to say, well,
11 yeah, that's mines or no, that's not mines, I don't think -
12 - I don't think that would've been sufficient enough to
13 say, you know, I could've been charged with possession.

14 Q What cover -- did you discuss with her after those
15 hearings -- I mean, obviously, you're discussing some sort
16 of plea offer -- but after the hearings, prior to the trial
17 beginning. Right?

18 A Right.

19 Q And, ultimately, you end up pleading guilty in this
20 case.

21 A Right.

22 Q Did you discuss with her about your rights to appeal
23 the denial of this -- or I'm sorry -- the voluntariness of
24 the statement and the -- and the judge allowing the drugs
25 to come in, denying the suppression motion?

KENYON BROWN - BY THE COURT

1 A No, sir, I didn't, sir.

2 Q Okay. Would you have appealed this -- would you have
3 -- would you have continued with trial to appeal these
4 issues had you known that you couldn't do it other than
5 have a trial?

6 A Um, yes, sir.

7 MR. SHELDON - Your Honor, I don't have any ---

8 Q And are you asking this Court to grant your relief and
9 vacate these convictions to go back to have a trial?

10 A Yes, sir, I am.

11 MR. SHELDON - Thank you, Your Honor. No more
12 questions.

13 MR. HUNTER - Nothing for this witness, Your
14 Honor.

15 THE COURT - All right, I have one question.

16 EXAMINATION

17 BY THE COURT -

18 Q You never filed an appeal. Right?

19 A No, sir.

20 THE COURT - Okay. All right, thank you.

21 MR. BROWN - Thank you, sir.

22 MR. SHELDON - And, Your Honor, that's my case in
23 this one.

24 Q When's your max-out date, do you know?

1 A I think like '20, '23, '24, beginning of '24 or
2 something.

3 Q Are you getting any substance abuse counseling down
4 there?

5 A No, sir. Not as of now, sir.

6 THE COURT - Okay. All right, be safe. Thank
7 you. I'll take it under advisement and let you know.

8 MR. SHELDON - Thank you, Your Honor.

9 THE COURT - Y'all don't dispute the facts on this
10 that, basically, he didn't go back to the hotel and they
11 cleaned it up and ---

12 MR. SHELDON - I don't -- none of that's disputed
13 at all I don't think. And he's incarcerated the whole time
14 -- from the -- the initial arrest was from a confidential
15 informant. The charges and the confidential informant --
16 the State doesn't go forward on those at trial. They go
17 forward on the drugs that are found subsequent to his
18 arrest from the bag itself.

19 THE COURT - Okay.

20 MR. SHELDON - That's, essentially, where it's at.

21 THE COURT - All right, I got the transcript.
22 I'll read it and let you know.

23 MR. BROWN - Thank you, sir. You have a nice day.

24 THE COURT - Yeah, you too. Be safe.

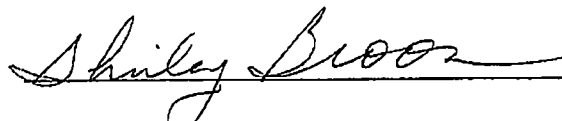
1 MR. SHELDON - And I think it's relatively clear
2 from the transcript what's going on.

3 (END OF TRANSCRIPT)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 32 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Kenyon Jemel Brown vs. State of South Carolina, as taken by me in Court of Common Pleas for the Sixteenth Judicial Circuit on November 8, 2017, and provided by me this the 8th day of June, 2018.

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



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

FILED-RECEIVEDSTATE OF SOUTH CAROLINA
COUNTY OF YORKTHE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Kenyon J. Brown, #257742

2016-CP-46-3011

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed October 12, 2016. An evidentiary hearing into the matter was convened on November 6, 2017, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Nathan Sheldon, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Melissa Inzerillo, Esquire, also testified. This Court also had before it a copy of Applicant's PCR application and amendment, the records of the York County Clerk of Court regarding the subject convictions, Respondent's Return, and the plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined to South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the July 2015 term of the York County Grand Jury for habitual traffic offender (2015-GS-46-2138). Applicant was subsequently indicted at the October 2015 term for two counts of distribution of crack cocaine (2015-GS-46-3020 and 3021), possession with intent to distribute crack cocaine (2015-GS-46-3022), possession with intent to distribute cocaine (2015-GS-46-3023) possession with intent to distribute clonazepam (2015-GS-46-3024); and possession of oxycodone (2015-

GS-46-3025). Mellissa Inzerillo, Esquire, represented Applicant. On April 26, 2016, Applicant pled guilty as indicted before the Honorable John C. Hayes, III. Pursuant to a negotiated sentence, Judge Hayes sentenced Applicant to imprisonment for concurrent terms of ten years for each count of distribution of crack cocaine, ten years for possession with intent to distribute crack cocaine, ten years for possession with intent to distribute cocaine, five years for habitual traffic offender, five years for possession with intent to distribute clonazepam, and five years for possession of oxycodone. Applicant did not appeal his guilty plea or sentence.

Allegations

In his application for post-conviction relief, and the amendment filed thereto, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "failure to articulate a fourth and fifth amendment claim"
2. "Violation(s) of 4th, 5th, 6th, 14th constitutional right(s)"
 - a. "failure to articulate and assert fourteenth amendment claim"
3. "Illegal/unlawful arrest. Invasion of privacy"
 - a. "Defective arrest affidavit, warrantless arrest and seizure of property"

Applicant, through his counsel, filed an amendment, adding the following grounds for relief:

1. Counsel was ineffective during the pretrial Jackson v. Denno¹ hearing. Counsel failed to advise client that he could testify on his behalf at the pretrial hearing.
2. Counsel was ineffective for failing to properly argue issues during the suppression hearing.
 - a. Counsel failed to cross-examine the hotel employee and/or law enforcement officer about the inconsistency in the testimony and the law enforcement narrative.
 - b. Counsel failed to investigate and inquire as to the State's failure to produce the actual luggage bag that was allegedly searched when the drugs were recovered.

¹ Jackson v. Denno, 378 U.S. 368 (1964).

- c. Counsel failed to advise defendant of his right to testify to the facts and circumstances surrounding his stay at the hotel and subsequent arrest prior to the drugs being found.
- 3. Counsel was ineffective in failing to handle the issues surrounding the appeal effectively.
 - a. Counsel failed to inform applicant that if he pled guilty, then he would abandon his right to appeal the outcome of both the Denno hearing and the suppression hearing.
 - b. Counsel failed to speak with applicant about his right to appeal the guilty plea and never filed an appeal on his behalf

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel’s performance was deficient. Id. Under this prong, courts measure an attorney’s performance by its “reasonableness under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that “there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

III. SUMMARY OF THE TESTIMONY AT PCR HEARING

Counsel Melissa Inzerillo's Testimony

Counsel testified law enforcement said Applicant gave a statement implicating himself with the drugs. She testified Applicant denied making the statement and there was no physical evidence of this statement, but she was unsure whether she believed Applicant because he did admit to using drugs regularly. Counsel testified Applicant did not testify at the Denno hearing. She testified she discussed with Applicant his right to testify at the Denno hearing. She testified the judge was never presented with Applicant's denial of making the statement. Counsel testified the statement was general and she was not sure how relevant it was. She testified the statement just said Applicant was doing drugs during this time but was not specific to the drugs found in the room.

Counsel testified she had a strategy to argue that the offers manufactured Applicant's absence from the hotel where the drugs were found. She testified at the suppression hearing the actual luggage was not produced. Counsel testified she argued that the luggage was not clearly abandoned property. Counsel testified she discussed with Applicant his right to testify at the suppression hearing.

Counsel testified all appeals stemming from motions would have to be interlocutory appeals. She testified they discussed that if Applicant pled guilty then he could not appeal and

reopen those motions. She testified they would have gone over this in the plea affidavit. Counsel further testified Applicant initiated the discussions concerning pleading guilty. She testified Applicant asked about the plea offers after the suppression motion concluded. She testified Applicant rejected a straight up plea but took the ten-year plea. Counsel further testified she went over Applicant's appellate rights and he never asked for an appeal.

Applicant's Testimony

Applicant testified he never had a conversation with Counsel about testifying at trial or at the Denno hearing. He testified he never made a statement to police. He testified he requested Counsel investigate the luggage and how the officers found it. He testified officers arrested him and told him he had outstanding warrants, but he believed this was for another individual. Applicant testified Counsel did not do well at the suppression hearing and the State could not show the property was his.

Applicant testified Counsel did discuss plea offers with him. He further testified Counsel did not discuss appealing the judge's decision from the Denno and suppression hearings. He testified he would have gone to trial had he known that would be the only way to appeal those rulings. Applicant further testified he never filed an appeal.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and amendment, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the

following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

Counsel failed to advise client that he could testify at the Jackson v. Denno hearing

Applicant alleged Counsel failed to advise him about his right to testify at the Denno hearing. He alleged if Counsel had properly advised him, then he would have taken the stand to refute that the statement was ever made. He further alleged if he had testified then the court could consider the other witnesses' credibility. Applicant also alleged Counsel failed to advise him of his right to testify to the facts and circumstances surrounding his stay at the hotel and subsequent arrest prior to the drugs being found.

This Court finds Applicant has failed to meet his burden of proving Counsel was deficient for failing to advise him that he could testify at the Denno hearing and testify to the facts and circumstances surrounding his stay at the hotel. This Court finds Counsel's testimony persuasive that she did discuss with Applicant his right to testify at the Denno hearing, and thus she was not deficient. This Court finds Applicant has failed to show that Counsel's actions were unreasonable or that she gave incorrect advice concerning his right to testify. Furthermore, this Court finds Applicant has failed to show that he was prejudiced by Counsel's actions. Applicant testified his failure to testify at the hearing prevented him from contesting that he made the statement. This Court finds it is unlikely the statement would have been kept out, given the officer's testimony at the hearing, simply because Applicant would have testified that he did not make the statement. This Court finds Applicant has failed to prove he was prejudiced by Counsel's actions, and this allegation must be dismissed.

At the suppression hearing, Counsel failed to cross-examine the hotel employee and/or law enforcement officer about the inconsistency in the testimony and the law enforcement narrative

Applicant alleged Counsel was ineffective during the suppression hearing. Applicant

alleged Counsel failed to cross-examine the hotel employee and law enforcement about the inconsistency in the testimony and the law enforcement narrative. Cross-examination is a matter of trial strategy, and as such, this Court must presume that counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). In making a fair assessment of attorney performance, a court must make every effort to “eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” Strickland, 466 U.S. at 689. There is a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance and the “[applicant] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.” Id.

This Court finds Counsel’s cross-examination was not unreasonable and was not deficient where she questioned Marie Sledge, General Manager of the Econolodge, about her version of events, that she did not look through Applicant’s items, and that she did not know where Applicant was when she cleaned out Applicant’s room. This Court finds Counsel also adequately cross-examined Investigator Leland Harrleson about his version of events on the days in question. Applicant has failed to show what inconsistencies Counsel should have cross-examined these witnesses about. Furthermore, this Court will not speculate whether a “better” cross examination would have helped Applicant. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997). As Applicant has failed to show Counsel’s cross-examination was deficient, or that different cross-examination would have changed the outcome of his case, this Court finds Counsel was not ineffective and this allegation must be dismissed.

Counsel failed to investigate and inquire as to the State's failure to produce the actual luggage bag that was allegedly searched when the drugs were recovered

Applicant alleged Counsel failed to investigate and inquire as to the State's failure to produce the actual mesh bag that was searched where the drugs were found. This Court finds this allegation is without merit. Counsel testified, and the record reflects, that Counsel argued extensively at the suppression hearing that the drugs were found as a result of a warrantless search of a trash bag that contained Applicant's personal items including a mesh bag, and Applicant still had possessory and privacy rights in the bag. Counsel also argued the mesh bag was not see-through and the plain-view doctrine should not apply. Counsel also cross-examined Investigator Harrleson concerning the fact that he did not log any of the items in the trash bag. Transcript 42. Counsel also cross-examined Officer Harrleson concerning the fact he did not show any of the items, including the mesh bag, to Applicant. Transcript 43.

This Court finds Applicant has failed to meet his burden of proving Counsel's actions were deficient. This Court finds Counsel argued to the Court and elicited testimony on cross-examination concerning the mesh bag and the officers' search. This Court finds Counsel's actions concerning the mesh bag were not unreasonable. Furthermore, this Court finds Applicant has failed to prove he was prejudiced by Counsel's actions in this regard. This Court finds the outcome of the suppression hearing would not have been different had Counsel more effectively inquired as to the mesh bag's whereabouts when she elicited testimony concerning the search of the bag, the officer testified he smelled marijuana coming from the bag and could see it through the bag, the State produced a picture of the bag, the court ruled the hotel had a right to remove the bag and the officers had every right to search the bags, and the court ruled the officers had sufficient reasonable suspicion to search upon smelling the marijuana. As Applicant has failed to prove Counsel's performance was deficient, or that different cross-examination would have

changed the outcome of his case, this Court finds Counsel was not ineffective and this allegation must be dismissed.

Counsel failed to inform applicant that if he pled guilty, then he would abandon his right to appeal the outcome of both the Denno hearing and the suppression hearing.

Applicant alleged Counsel failed to inform him that if he pled guilty, he would abandon his right to appeal the outcome of the Denno hearing and the suppression hearing. Applicant testified he would have gone to trial had he known that would be the only way to appeal those rulings. This Court finds Applicant has failed to meet his burden of proving Counsel's performance was deficient in this regard. Counsel testified she discussed with Applicant that if he pled guilty then he could not appeal and reopen those motions, and she testified they would have gone over this in the plea affidavit. This Court finds Counsel's testimony to be credible that she discussed this with him and finds she was not deficient. Furthermore, the plea waiver form reflects Applicant acknowledged he understood he would waive challenging the evidence and the voluntariness of his statement if he pled guilty. Plea Affidavit Form, p. 5. The plea court also advised Applicant he would be giving up any defenses by pleading guilty. Transcript p. 65.

This Court further finds Applicant has failed to meet his burden of proving he was prejudiced by Counsel's actions. He has failed to show that appealing the ruling from the Denno and suppression hearings would have been meritorious after a trial. As Applicant has failed to prove Counsel was deficient and that he was prejudiced by Counsel's actions in this regard, this allegation must be dismissed.

Counsel failed to speak with applicant about his right to appeal the guilty plea and never filed an appeal on his behalf

Applicant alleged Counsel was ineffective for failing to discuss Applicant's appellate rights and file an appeal on his behalf. This Court finds this allegation is without merit. This

Court finds Counsel provided credible testimony that she went over Applicant's appellate rights and he never asked for an appeal.

Counsel has a constitutionally-imposed duty to consult with defendant about appeal when there is reason to think either (1) that rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000). Although not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings. Id. 528 U.S. at 480, 120 S. Ct. at 1036. Furthermore, "there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). Our courts have held relief will only be granted when the defendant has shown "proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal." Id. "One extraordinary circumstance which would require counsel to advise a defendant of the right to appeal from a guilty plea would arise when the defendant inquires about an appeal." Id. This Court finds Counsel's testimony to be credible that Applicant did not ask for an appeal from his negotiated guilty plea. This Court would also point out Applicant pled guilty to a negotiated minimum sentence on his charges. As Applicant has failed to show Counsel's actions were deficient, or that he did in fact ask for an appeal, he has failed to prove both prongs of Strickland and this Court finds this allegation must be dismissed.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any

constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 30 day of March, 2018.


 J. CORDELL MADDOX, JR.
 Presiding Judge
 Sixteenth Judicial Circuit

Anderson, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED-RECEIVED

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-46-3011

2018 APR -4 AM 11: 27

KENYON J. BROWN, #257742

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.

DAVID HAMILTON
C.C.C.P. & S.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA

Defendant.

Plaintiff's Attorney: Nathan J. Sheldon, Bar No. _____ Address: Post Office Box 36682 Rock Hill, South Carolina 29732 Phone: _____ Fax: _____ E-mail: _____ Other: _____	Defendant's Attorney: Justin J. Hunter, Bar No. _____ Address: Post Office Box 11549 Columbia, South Carolina 29211 Phone: _____ Fax: _____ E-mail: _____ Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion/Order Type	
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☐ Plaintiff / ☒ Defendant March 20, 2018 Date submitted	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP4603011

Kenyon Jemel Brown

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

**ORDER INFORMATION
ORDER OF DISMISSAL**

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/ J CORDELL MADDOX JR
Circuit Court Judge

2131
Judge Code

4/4/2018
Date

For Clerk of Court Office Use Only

This judgment was entered on 4/4/2018, and a copy mailed first class or placed in the appropriate attorney's box or 4/4/2018, to attorneys of record or to parties (when appearing pro se) as follows:

Nathan James Sheldon PO Box 36682 Rock Hill, SC 29732

Justin James Hunter PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

CERTIFIED TRUE COPY

INDICTMENT

2016 OCT 12 PM 1:45

DAVID HAMILTON
CLERK OF COURT

At a Court of General Sessions convened on July 23, 2015, the Grand Jurors of York County present upon their oath:

HABITUAL TRAFFIC OFFENDER

The defendant, Kenyon Jemel Brown, did in on or about June 19, 2014, York County, operate a motor vehicle after having been found to be a habitual offender by the South Carolina Department of Motor Vehicles and while the decision of the Department of Motor Vehicles prohibiting the operation of a motor vehicle was in effect, all in violation of Section 56-01-1100, *Code of Laws of South Carolina* (1976, as amended).

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



HANNAH R. GROVE
ASSISTANT SOLICITOR

WITNESSES

RHPD

Witnessing Officer: *Dugan*

ARREST WARRANT NUMBER

2015A4620306091

ACTION OF GRAND JURY

TRUE BILL

Chisea Cinceln
Foreperson of Grand Jury
Date: *7-23-15*

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2015-GS-46- *02/38*

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JULY 23, TERM 2015

THE STATE

VS.

KENYON JEMEL BROWN

INDICTMENT FOR

HABITUAL TRAFFIC OFFENDER

SC Code: § 56-01-1100
CDR Code: 0057

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

136

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

X Kenya Broderick
Defendant

Witness:

Pat Pittsford Ct. Spec.
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

CERTIFIED TRUE COPY
INDICTMENT

2016 OCT 14 PM 1:45

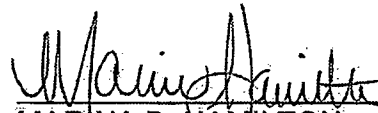
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on October 22, 2015, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF CRACK COCAINE

The defendant, Kenyon Jemel Brown, did on or about May 28, 2015, in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Crack Cocaine, a cocaine base, in violation of the provisions of Section 44-53-370. All in violation of 44-53-375(B) 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.


MARINA B. HAMILTON
ASSISTANT SOLICITOR

WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2015A4610200891

ACTION OF GRAND JURY

TRUE BILL

Shuley Sanders
Foreperson of Grand Jury
Date: 10/22/15

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2015-GS46- 03020

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

OCTOBER 22, TERM 2015

THE STATE

VS.

KENYON JEMEL BROWN

INDICTMENT FOR

DISTRIBUTION OF CRACK COCAINE

SC Code: § 44-53-375(B)
CDR Code: 3039

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

138

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Kenyon Brown
Defendant

Witness:

Robert Rutledge - G. Spec.
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

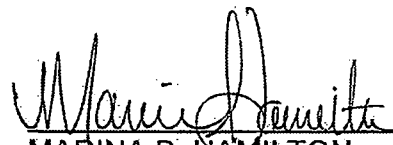
CERTIFIED TRUE COPY INDICTMENT
2015 OCT 12 PM 1:45DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions convened on October 22, 2015, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF CRACK COCAINE

The defendant, Kenyon Jemel Brown, did on or about June 19, 2015, in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Crack Cocaine, a cocaine base, in violation of the provisions of Section 44-53-370. All in violation of 44-53-375(B) 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.


MARINA B. HAMILTON
ASSISTANT SOLICITOR

WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2015A4610200978

ACTION OF GRAND JURY

TRUE BILL

Shuley Sander
Foreperson of Grand Jury
Date: 10/22/15

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2015-GS46- 03021

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

OCTOBER 22, TERM 2015

THE STATE

VS.

KENYON JEMEL BROWN

INDICTMENT FOR

DISTRIBUTION OF CRACK COCAINE

SC Code: § 44-53-375(B)
CDR Code: 3039

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

140

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Kem Brown
Defendant

Witness:

R. D. Patterson - C. Spec.
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

CERTIFIED TRUE COPY
2016 OCT 12 PM 1:45

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on October 22, 2015, the Grand Jurors of York County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE

The defendant, Kenyon Jemel Brown, did on or about July 17, 2015, in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Crack Cocaine, a cocaine base, in violation of the provisions of Section 44-53-370. All in violation of 44-53-375(B) 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.


MARINA B. HAMILTON
ASSISTANT SOLICITOR

WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2015A4610201126

ACTION OF GRAND JURY

TRUE BILL

Shuley Jordan
Foreperson of Grand Jury
Date: 10/22/15

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2015-GS46- 03022

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

OCTOBER 22, TERM 2015

THE STATE

VS.

KENYON JEMEL BROWN

INDICTMENT FOR

**POSSESSION WITH INTENT TO
DISTRIBUTE CRACK COCAINE**

SC Code: § 44-53-375(B)
CDR Code: 3039

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

142

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

X *Ken Brown*
Defendant

Witness:

By P. Rutledge C. Spec.
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

CERTIFIED TRUE COPY
INDICTMENT
2016 OCT 12 PM 1:45

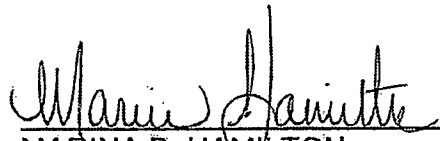
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on October 22, 2015, the Grand Jurors of York County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE COCAINE

The defendant, Kenyon Jemel Brown, did on or about July 17, 2015, in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Cocaine, a schedule II controlled substance narcotic. All in violation of 44-53-370, *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.


MARINA B. HAMILTON
ASSISTANT SOLICITOR

WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2015A4610201128

ACTION OF GRAND JURY

TRUE BILL

Shirley Sanders
Foreperson of Grand Jury
Date: 10/22/15

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2015-GS46- 03023

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

OCTOBER 22, TERM 2015

THE STATE

VS.

KENYON JEMEL BROWN

INDICTMENT FOR

**POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE**

SC Code: § 44-53-370
CDR Code: 0185

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

144

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

X *Kenyon Brown*
Defendant

Witness:

A. J. Rutledge Ct. Spec.
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

CERTIFIED TRUE COPY INDICTMENT

2016 OCT 12 PM 1:45

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on October 22, 2015, the Grand Jurors of York County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE CLONAZEPAM

The defendant, Kenyon Jemel Brown, did on or about July 17, 2015, in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Clonazepam, a schedule IV controlled substance. All in violation of 44-53-370, *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.


MARINA B. HAMILTON
ASSISTANT SOLICITOR

WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2015A4610201130

ACTION OF GRAND JURY

TRUE BILL

Shirley Sanders
Foreperson of Grand Jury
Date: 10/22/15

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2015-GS46- 03024

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

OCTOBER 22, TERM 2015

THE STATE

VS.

KENYON JEMEL BROWN

INDICTMENT FOR

**POSSESSION WITH INTENT TO
DISTRIBUTE CLONAZEPAM**

SC Code: § 44-53-370
CDR Code: 0188

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

146

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

X Kenyon Brown
Defendant

Witness:

Clayton A. Speer
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

CERTIFIED TRUE COPY
2016 OCT 12 PM 1:45

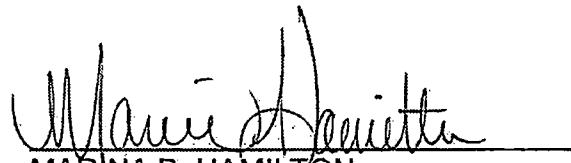
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on October 22, 2015, the Grand Jurors of York County present upon their oath:

POSSESSION OF OXYCODONE

The defendant, Kenyon Jemel Brown, did on or about July 17, 2015, in York County, South Carolina, knowingly or intentionally possess Oxycodone, a schedule II controlled substance narcotic. All in violation of 44-53-370, *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.


MARINA B. HAMILTON
ASSISTANT SOLICITOR

WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2015A4610201134

ACTION OF GRAND JURY

TRUE BILL

Shuley Jones
Foreperson of Grand Jury
Date: 10/22/15

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2015-GS46- 03025

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

OCTOBER 22, TERM 2015

THE STATE

VS.

KENYON JEMEL BROWN

INDICTMENT FOR

POSSESSION OF OXYCODONE

SC Code: § 44-53-370
CDR Code: 0177

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

148

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

X *K B Key Brown*
Defendant

Witness:

By Rutter - Ct. Spec.
C.C.C. PLS. AND G.S.