

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Roger M. Young, Sr., Circuit Court Judge

JASON A. WEST,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001732

APPENDIX

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ATTORNEY FOR PETITIONER

RECEIVED

MAR 28 2019

S.C. SUPREME COURT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED JANUARY 7, 2016.....	1
APPLICATION FOR POST-CONVICTION RELIEF	17
RETURN AND PARTIAL MOTION TO DISMISS.....	24
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 21, 2018	31
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JULY 26, 2018	61
ORDER OF DISMISSAL.....	99
INDICTMENT AND SENTENCING SHEET	114

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) CASE NO. 2013-A10-10-205385
3)
4 STATE OF SOUTH)
CAROLINA,)
5 Plaintiff,) Transcript of Record
6 vs.)
7 JASON ANTONIO WEST,) Date: January 7, 2016
8 Defendant.)

9 * * * * *

10

11

12 B E F O R E:

ORIGINAL

13 THE HONORABLE DEADRA JEFFERSON

14

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16

17 * * * * *

18

19

20

21 Denise J. Lauder, RPR

22 Ninth Judicial Circuit

23

24

25

A P P E A R A N C E S

REPRESENTING THE STATE OF SOUTH CAROLINA:

CHRIS LIETZOW, ASSISTANT SOLICITOR
Ninth Circuit Solicitor's Office
101 Meeting Street, Suite 400
Charleston, SC 29401

REPRESENTING THE DEFENDANT:

JULIUS C. MOORE, ESQUIRE
27 Gamecock Avenue, #200
Charleston, SC 29407

INDEX

Page No.

PROCEEDINGS.....	4
REPORTER'S CERTIFICATE.....	16

INDEX OF EXHIBITS

(No exhibits were offered or
marked for identification.)

1 (The following proceedings were held
2 January 7, 2016, Charleston County Circuit Court.)

3 THE COURT: Jason West. Are there any
4 recommendations or negotiations?

5 MR. LIETZOW: Your Honor, there is a
6 negotiated five-year sentence associated with this
7 case.

8 THE COURT: Does he have any record?

9 MR. LIETZOW: 1993, distribution of
10 cocaine; 1994 --

11 THE COURT: I need you to slow down
12 please. '93, distribution of cocaine. What's
13 next?

14 MR. LIETZOW: '94, possession of crack,
15 parole revocation; 2000, two counts of DUS.

16 THE COURT: Mr. Moore, have you
17 explained to your client the charges contained in
18 the Indictment, the possible punishment, and his
19 constitutional rights?

20 MR. MOORE: Yes, Your Honor.

21 THE COURT: Do you believe he
22 understands the charge, the punishment, and his
23 rights?

24 MR. MOORE: I believe he does, yes.

25 THE COURT: Does he wish to plead

1 guilty or not guilty?

2 MR. MOORE: He wishes to plead guilty.

3 THE COURT: Do you agree with that
4 decision?

5 MR. MOORE: I do agree, Your Honor.

6 THE COURT: To your knowledge, has he
7 ever had to be evaluated to determine his
8 competency?

9 MR. MOORE: No, Your Honor.

10 THE COURT: Sir, raise your right hand
11 to be sworn.

12 JASON ANTONIO WEST,
13 being first duly sworn, testified as follows:

14 THE DEFENDANT: Yes.

15 EXAMINATION

16 BY THE COURT:

17 Q. You can put your right hand down.

18 Sir, state your full name for the
19 record.

20 A. Jason Antonio West.

21 Q. Mr. West, how old are you?

22 A. 42.

23 Q. How far have you gone in school?

24 A. GED, 1993. I was in the 12th grade.

25 Q. What do you do for a living?

1 A. ILA 1422, longshoreman.

2 Q. Are you married?

3 A. No, ma'am. I've been with the same
4 women for five years, been engaged.

5 Q. Do you have any children?

6 A. Yes.

7 Q. How many?

8 A. Six children, seven grand kids.

9 Q. How old are your children?

10 A. Ranging from 25 to the youngest, 13.

11 Q. And you said you had seven
12 grandchildren?

13 A. Yes, ma'am.

14 Q. Are you currently on probation or
15 parole?

16 A. No, ma'am.

17 Q. Have you ever been treated for the
18 abuse of alcohol, drugs, or mental illness?

19 A. No, ma'am.

20 Q. Have you had any drugs, alcohol, or
21 medication in the last 72 hours?

22 A. No, ma'am.

23 Q. Are you aware of any physical,
24 emotional, or nervous problem that would keep you
25 from understanding where you are right now or what

1 you're doing?

2 A. No, ma'am.

3 Q. On the charge of trafficking in
4 cocaine, 10 to 28 grams, how do you plead?

5 A. Guilty.

6 Q. Do you understand that that carries a
7 minimum of three years, a maximum of ten years, and
8 a fine of \$25,000?

9 A. Yes, ma'am.

10 Q. I want you to listen carefully to the
11 facts.

12 THE COURT: Mr. Lietzow.

13 MR. LIETZOW: This occurred October 1,
14 2013 at [REDACTED] in North Charleston,
15 South Carolina. North Charleston Police Department
16 detectives arrived at the residence executing a
17 search warrant.

18 The search warrant was based on the
19 fact that a CI bought narcotics from the residence
20 prior to the search warrant being executed. Inside
21 the house detectives located a digital scale in the
22 defendant's room, a white dinner plate with cocaine
23 residue in the defendant's room, 22.8 grams of lab
24 weight cocaine in numerous clear plastic bags
25 inside a pair of shorts inside the defendant's

1 bedroom, the defendant's wallet was inside the same
2 pair of pants the cocaine was found in, a cocaine
3 press that is used to compress cocaine into
4 packageable amounts, and a metal spoon with cocaine
5 residue also inside of the defendant's bedroom.

6 Post Miranda the defendant gave a
7 written statement claiming ownership of the cocaine
8 that was found inside the room. Additionally, he
9 corroborated where the cocaine was located, stating
10 it was inside the pant's pocket. Furthermore, he
11 stated that he had sold drugs out of the house and
12 that he had been selling drugs since he was
13 11 years old.

14 Your Honor, to give you a procedural
15 history of this case, this case has been on trial
16 dockets in the past. There have been offers made.
17 As offers have been made and expired, they have
18 gotten a little bit more severe each time. This
19 case was scheduled to go to trial next week.

20 Mr. West is charged with trafficking
21 cocaine, third offense, which carries a mandatory
22 minimum of a 25-year prison sentence. The State
23 believes this is a suitable resolution to the case
24 as we're reducing it down to a first offense and
25 negotiating a five-year sentence.

1 There are a few potential issues with
2 the search warrant. The State's opinion is that
3 the search warrant would stand up, but this is also
4 an opportunity for the State to mitigate the risk
5 of going to trial.

6 Thank you, Your Honor.

7 THE COURT: You're welcome.

8 BY THE COURT:

9 Q. Sir, do you agree or disagree with the
10 facts?

11 A. I agree.

12 Q. Do you feel anything needs to be
13 changed or added to the facts?

14 A. No.

15 Q. Are you pleading guilty, sir, because
16 you're guilty?

17 A. Yes, ma'am.

18 Q. Sir, do you understand that trafficking
19 in cocaine is classified as serious and violent?

20 A. Yes, ma'am.

21 Q. Do you understand that under South
22 Carolina law that subjects you to enhanced
23 penalties?

24 A. Yes.

25 Q. Do you understand if you receive two

1 additional serious offenses, you could face life
2 without the possibility of parole?

3 A. Yes, ma'am.

4 Q. Do you also understand that the violent
5 classification also affects how you will serve any
6 time you're sentenced to?

7 A. Yes, ma'am.

8 Q. Sir, you may have discussed parole or
9 parole eligibility with your lawyer or with others,
10 but until you're sentenced no one can tell you
11 when, if ever, you will be eligible for parole or
12 under what conditions. You should assume that you
13 will serve the entire time in jail that you're
14 sentenced to day for day. Do you understand?

15 A. Yes, ma'am.

16 Q. When you plead guilty, you give up your
17 constitutional rights. Those include your right to
18 a jury trial. At a jury trial, you're entitled to
19 a presumption that you're innocent. The State has
20 the burden of proving your guilt beyond a
21 reasonable doubt.

22 You would have the right to confront
23 and cross-examine the State's witnesses, call your
24 own witnesses, present any defenses that you may
25 have, challenge any statements you may have made,

1 as well as remain silent, and your silence cannot
2 be used against you.

3 Do you understand your rights?

4 A. Yes.

5 Q. Do you understand that you're giving up
6 those rights?

7 A. Yes.

8 Q. Other than what has been stated for the
9 record, have there been any other plea negotiations
10 made on your behalf? Are there any deals you're
11 relying on in pleading guilty that I've not been
12 told about?

13 A. No, ma'am.

14 Q. Have you been satisfied with your
15 lawyer's services?

16 A. Yes, ma'am.

17 Q. Has he answered all of your questions?

18 A. Yes, ma'am.

19 Q. Done everything that you've asked or
20 expected?

21 A. Yes, ma'am.

22 Q. Anything more you would have him do
23 that he has not already done on your behalf?

24 A. No, ma'am.

25 Q. Any complaints about his services?

1 A. No, ma'am.

2 Q. Has anyone promised you anything or
3 held out any hope of a reward to cause you to plead
4 guilty?

5 A. No, ma'am.

6 Q. Has anyone used threats, coercion,
7 intimidation, or duress to cause you to plead
8 guilty?

9 A. No, ma'am.

10 Q. Are you pleading guilty freely and
11 voluntarily and of your own will?

12 A. Yes, ma'am.

13 Q. Have you understood my questions?

14 A. Yes.

15 Q. Do you need to ask me about anything
16 that we have been over?

17 A. No, ma'am.

18 Q. Have you been truthful in your answers?

19 A. Yes, ma'am.

20 Q. Do you understand that you have the
21 right to appeal this guilty plea and sentence of
22 the Court, but you have to do that in writing
23 within ten days of today?

24 A. Yes, ma'am.

25 Q. Do you understand that if you cannot

1 afford an attorney for that process, one will be
2 appointed to you at no cost?

3 A. Yes, ma'am.

4 THE COURT: I find there is a
5 substantial factual basis for the plea, that the
6 defendant has entered the plea freely, voluntarily,
7 knowingly and intelligently, that he's had the
8 advice and assistance of counsel with whom he's
9 indicated to the Court he's satisfied. I will
10 accept the plea.

11 Anything further from the State?

12 MR. LIETZOW: Nothing. Thank you.

13 THE COURT: You're welcome.

14 Anything further, Mr. Moore? I've
15 accepted the negotiated plea.

16 MR. MOORE: Your Honor, my client did
17 want to address the Court briefly.

18 THE COURT: Sir, your lawyer has
19 explained to you that with a negotiated plea the
20 only option the Court has is to accept or reject
21 it. I can't change the sentence that you have
22 agreed to with the State. It's written in stone,
23 so to speak.

24 My only option is to either accept the
25 plea and enforce it or to reject it. I can't -- I

1 have no discretion in sentencing once you negotiate
2 a plea. Do you understand that.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Okay. So do you still
5 wish to address the Court?

6 THE DEFENDANT: I just wanted to -- I
7 was trying to be at the mercy of the Court for any
8 kind of leniency that --

9 THE COURT: They've taken away my
10 authority to sentence you basically. Once you
11 agree to a negotiated plea, you all have agreed to
12 what your sentence is going to be. My only option
13 is to accept it or reject it. And I have accepted
14 it.

15 Now, if you want me to reject it, the
16 time to speak is now, because if you reject it I
17 need to go ahead and put you on a trial roster to
18 try the case.

19 THE DEFENDANT: No, I'm ready to get
20 this over with.

21 THE COURT: Is there anything further,
22 sir, that you want to place on the record?

23 THE DEFENDANT: No.

24 THE COURT: Mr. Moore, anything
25 further?

1 MR. MOORE: Nothing further, Your
2 Honor.

3 THE COURT: Did your client serve any
4 pre-detention time?

5 MR. MOORE: Just one day, Your Honor.

6 THE COURT: Sir, pursuant to the
7 negotiated plea, you're sentenced to the State
8 Department of Corrections for a period of five
9 years. You'll get credit for any time that you've
10 served pursuant to 24-13-40.

11 Do you need drug or alcohol treatment
12 while you're at the facility?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: Okay. Thank you.

15 (These proceedings were concluded at
16 10:15 a.m.)

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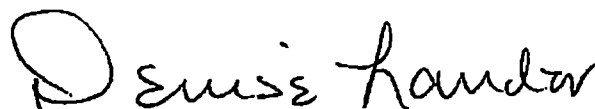
25

1 CERTIFICATE OF REPORTER
2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 19th day of January, 2018 at
13 Charleston, Charleston County, South Carolina.
14
15

16 
17

18 Carol Denise Lauder
19 Registered Professional
20 Reporter, CP
21 My Commission expires
22 August 2, 2017
23
24
25

FORM 5

STATE OF SOUTH CAROLINA)

County of Charleston)

2012-CP-10-6395

IN THE COURT OF COMMON PLEAS

Jason Antonio West 196740)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2016 NOV 30 PM 12:27
CLERK OF COURTINSTRUCTIONS 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 Goodman Correctional Institution
2. Name and location of Court which imposed sentence General Sessions
Charleston County
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) 2013 GS 1007264 Trafficking Cocaine

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) January 7, 2016 5 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty petitioner pled guilty
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- No
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. _____
- ii. N/A
- 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 inform me - unaware

- (b) _____
 (c) _____

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

- (a) 4th Amendment Violation - Respondents did not have search warrant
 (b) 6th " " - Counsel was unlicensed and failed to investigate
 (c) Petitioner ask for leave to Amend Application (See continuation)

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

- (a) Search warrant executed at residence does not exist
 (b) Counsel's license suspended at the time of representation/failed to investigate the existence of 2 search warrants
 (c) _____

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

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

13. If you answered 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. _____
 ii. N/A
 iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. N/A

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. _____

ii. N/A

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) was not aware
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? No
- (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. Leon E. STAVRINAKIS, One Cool Blow Street,
Suite 201 Charleston, South Carolina 29403
- ii. Louis J. Moore, 27 Gamecock Ave, Suite 200
Charleston, S.C. 29407
- iii. _____

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

- i. arraignment
- ii. guilty plea and sentence
- iii. _____

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

I, Jason Antonio West 196740, 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.

Jason West
Applicant

SWORN or affirmed to and subscribed before me this
28 day of November, 2016.

T. Echelberger
Notary Public

My Commission Expires: 8/30/2020

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

Evidentiary Hearing
Reversal of Conviction
Applicant ask for leave to Amend Application

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 Charleston)

VERIFICATION

I, Jason Antonio West 196740, 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.

Jason Antonio West

SWORN to and subscribed before me this 28
 day of November, 2016.

Terrell (L.S.)
 Notary Public

My Commission Expires: 8/30/2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Jason Antonio West, #196740,	)	Case No. 2016-CP-10-6395
	)	
Applicant,	)	
	)	RETURN AND PARTIAL MOTION
v.	)	TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent (the "State"), making its Return to the application for post-conviction relief filed on November 30, 2016, would respectfully show this Court:

I.

Jason Antonio West ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In December 2013, the Charleston County Grand Jury indicted Applicant for trafficking cocaine, 10-28 grams, third offense (2013-GS-10-7264). Julius C. Moore, Esquire, represented Applicant. Assistant Solicitor Chris Lietzow, Esquire, prosecuted the case. On January 7, 2016, Applicant pled guilty to the lesser included offense of trafficking cocaine, 10-28, first offense before the Honorable Deadra Jefferson. Pursuant to a negotiated sentence, Judge Jefferson sentenced Applicant to imprisonment for five years. Applicant did not appeal his conviction or sentence.

II.

On October 1, 2013, detectives from the North Charleston Police Department arrived at Applicant's residence to execute a search warrant. (Tr. p. 7). Law enforcement obtained the search warrant based on controlled narcotics purchases a confidential informant had made from Applicant at

his residence. (Tr. p. 8). Once inside Applicant's residence, detectives proceeded to his bedroom, where they discovered a digital scale, a plate with cocaine residue, 22.8 grams of cocaine in clear bags within a pair of shorts that also contained Applicant's wallet, a cocaine press, and a metal spoon containing cocaine residue. (Tr. pp. 7-8).

After being advised of his constitutional rights pursuant to Miranda, Applicant provided a statement admitting to ownership of the cocaine discovered by the detectives in his bedroom. (Tr. p. 8). Applicant continued on and identified the location of the found cocaine, within his shorts pocket. (Tr. p. 8). Applicant also admitted he had been selling drugs out of his residence since he was eleven years old. (Tr. p. 8).

III.

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

1. "Fourth Amendment Violation- Respondents did not have a search warrant."
 - a. "Search warrant executed at residence does not exist."
2. "Sixth Amendment Violation- Counsel was unlicensed and failed to investigate."
 - a. "Counsels license suspended at the time of representation/failed to investigate the existence of 2 search warrants."
3. "Petitioner ask for leave to Amend Application."

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the post-conviction relief application. The State reserves the right to amend this Return upon receipt of any relevant materials.

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief 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, SCRPC. Pro se filings will not be considered at the post-conviction relief hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. See Rule 15(a), SCRPC.

IV.

Applicant's first allegation is a claim that his Fourth Amendment rights were violated due to the absence of a search warrant. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). Further, claims challenging the sufficiency of the evidence are specifically barred by §17-27-20(6) of the Uniform Post-Conviction Procedure Act.

Therefore, the State submits that this allegation must be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

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

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

“Fourth Amendment Violation- Respondents did not have a search warrant” is not a claim cognizable under the act. Applicant is not collaterally attacking his guilty plea or sentence, nor did he frame his allegation as one of ineffective assistance of counsel. Further, such issue is best suited for direct appeal. For these reasons and pursuant to Rule 12(b)(6), SCRPC, the Court shall dismiss the Application for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

V.

The State submits Applicant’s allegation of ineffective assistance of counsel is without merit. In a post-conviction relief 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 [it] 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. First, Applicant must prove counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). 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). The 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, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

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

VI.

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

VII.

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

VIII.

WHEREFORE, the State requests that an evidentiary hearing be held on the claim of ineffective assistance of plea counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

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June 21, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JASON ANTONIO WEST,
S.C.D.C. No. 196740,

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

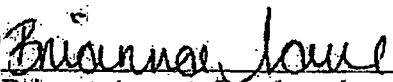
2016-CP-10-6395

AFFIDAVIT OF SERVICE BY MAIL

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

Christopher L. Murphy, Esquire
 Murphy Law Offices, LLC
 234 Seven Farms Drive, Suite 128
 Charleston, SC 29492

DATED this 21st day of June, 2017.


 Brianna Arnone, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2016-CP-10-06395

JASON WEST,	)	
Applicant,	)	TRANSCRIPT OF RECORD
-vs-	)	May 21, 2018
STATE OF SOUTH CAROLINA,	)	Charleston, South Carolina
Respondent.	)	

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

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

Christopher Murphy, Esquire
Attorney for the Applicant

Kelly Oppenheimer, Esquire
Attorney for the Respondent

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1	E X A M I N A T I O N S				
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Jason West	9	18	--	--
4	Chris Lietzow	23	26		
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1 (May 21, 2018.)

2 THE COURT: All right. This is Jason West?

3 THE APPLICANT: Yes, sir.

4 MS. OPPENHEIMER: This next matter is Jason
5 West versus the state of South Carolina, docket number
6 2016-CP-10-6395.

7 During its December 2013 term, the Charleston
8 County grand jury indicted applicant for trafficking
9 cocaine. Louis S. Moore, Esquire represented him on this
10 charge. Assistant solicitor Chris Lietzow of the ninth
11 circuit solicitor's office prosecuted the case.

12 On January 7, 2016, applicant appeared before
13 the Honorable Deadra L. Jefferson and pleaded guilty to
14 the lesser included offense of trafficking cocaine, 10 to
15 28 grams. Pursuant to a negotiated sentence, Judge
16 Jefferson sentenced applicant to a term of imprisonment
17 of five years. Applicant did not appeal his plea or
18 sentence.

19 On November 30, 2016, applicant filed an
20 application for post-conviction relief alleging a fourth
21 amendment violation in that the warrant executed at his
22 residence did not exist and ineffective assistance of
23 counsel and that counsel's license was suspended during
24 the course of his representation of applicant and for
25 failing to investigate the existence of two search

1 warrants.

2 On June 21st, 2017, respondent made its
3 return and partial motion to dismiss requesting an
4 evidentiary be held on the allegations of ineffective
5 assistance of counsel and requesting applicant's
6 allegation regarding fourth amendment violation be
7 dismissed for failing to state a cognizable claim.
8 Applicant is present today and is represented by Chris
9 Murphy.

10 THE COURT: All right. Mr. Murphy, your
11 client wants to go forward?

12 MR. MURPHY: Yes, Your Honor. I have
13 explained to him many times he faced a mandatory 25
14 years. He is out of jail, and despite that, he wants to
15 go forward. I have advised him not to do that as well.

16 THE COURT: Mr. West?

17 THE APPLICANT: Yes, sir.

18 THE COURT: It's an unusual posture in this
19 case. You pled guilty to an offense and got a sentence
20 which you asked the Court to impose of five years in the
21 department of corrections for trafficking cocaine first
22 offense; however, at the time, you were actually facing a
23 charge of trafficking cocaine third offense, which
24 carries a mandatory minimum of 25 years in prison. Not a
25 day less than 25 years would be the sentence.

1 You have asked the Court to set aside your
2 guilty plea. If the Court agrees that you are entitled
3 to have your guilty plea set aside, the State will then
4 have the right to go back and prosecute you on the charge
5 of trafficking, third offense, and, if you get convicted,
6 you'll get 25 years in jail minimum. Could get up to
7 life, but the minimum sentence could be 25.

8 So they don't have to come back and try you
9 on first offense trafficking. They have the right to
10 charge you, or to try you, on third offense trafficking.
11 So I understand that you've already served your time, and
12 I understand you not wanting to have the record of having
13 that trafficking conviction. That's the downside, but on
14 the -- I don't know what the evidence is against you, but
15 the downside of going forward and winning today might
16 very well mean that you go back to trial and get
17 convicted and face at least a 25-year sentence.

18 Do you understand that?

19 THE APPLICANT: Yes, sir.

20 THE COURT: And you still want to go forward?

21 THE APPLICANT: Yes, sir.

22 THE COURT: If you don't mind my asking, why
23 would you want to face that risk?

24 THE APPLICANT: Time restraints. I was
25 basically forced to get this plea. I had Leon

1 Stavrinakis at first, and he wasn't telling me anything
2 about my case. All he was telling me was stay out of
3 trouble and everything would work out, and all of a
4 sudden, I got a letter in the mail asking me to plead it
5 for three years, and I didn't know what was going on. I
6 told him my situation, what actually happened on that
7 date with the cops coming to my case, and he didn't do
8 any kind of investigation. I had to do everything myself
9 that he could have easily done in a few minutes, so I
10 fired him. Then I got Louis Moore, and Louis was
11 supposed to, pretty much --

12 THE COURT: We'll get into the merits of it
13 in a little bit, but I have to make sure that you
14 understand what you're doing, and just from the risk
15 versus reward side, I mean, if they have the right to
16 prosecute you for trafficking third offense, that means
17 you have some prior record, so it's not like you're
18 walking around without felony convictions.

19 So I guess I'm just -- I just need to make
20 sure you understand that you still got a record. There's
21 very little upside to winning. There's a huge downside
22 to winning, and I want to make sure you understand that.
23 I don't know about the merits of your case today. It's a
24 very unusual posture to be in, to say, well, I got five,
25 I've already served that sentence, but I want to put

1 myself at risk for a possible 25-year sentence.

2 Can you see that from my perspective?

3 THE APPLICANT: I've seen it from your
4 perspective I'm trying to see it from your perspective.
5 My charges from 1992 that was almost 20 years ago when I
6 was 17 years old and it took me 20 years to get my life
7 together, it's just like doing a 20-year sentence. You
8 can't get a job. You can't provide for people because of
9 that conviction.

10 So having this conviction has pretty much put
11 a whole other 20 years on the street, whether I'm free or
12 not. I can't do anything I want to do because of this
13 conviction, and when I found out all the stuff that was
14 presented at the preliminary, had I had one, which I
15 later found out was waived without my permission, I
16 wouldn't be sitting here talking to you right now. I
17 never would have gotten any time and been able to get on
18 with my life.

19 THE COURT: All right. I find that your
20 decision to go forward is freely, voluntarily, and
21 intelligently made, so let's go forward then.

22 MR. MURPHY: And, if I might, Your Honor,
23 just to add to that, I have taken -- the exact same
24 questions you've asked him, I've asked him many times,
25 and I'm kind of in a difficult position, because I think

1 his best interest is to dismiss this plea, or this
2 hearing, but he assures me he's convinced of the evidence
3 and wants to go forward, and I've explained to him all
4 the risks, so we don't really have any choice, I don't
5 think, to go forward as the client wants.

6 THE COURT: You're right.

7 MR. MURPHY: We would call Mr. West as our
8 first witness.

9 This is -- the validity of the warrant, this
10 is the only issue we're going to be discussing.

11 THE COURT: Well, I saw something that I read
12 as I was waiting here. Was Mr. Moore suspended at the
13 time?

14 MR. MURPHY: No, he was not.

15 THE COURT: Okay. That's pretty much a
16 no-brainer.

17 MR. MURPHY: It involves the validity of the
18 warrant, and there's two issues: The first is the time
19 frame does not discuss whether the information was stale
20 or not, so there's no time frame which the Court could
21 decide whether the info was fresh or stale, and, second,
22 there's no evidence about the reliability of their
23 confidential informant, and that's all we're going to be
24 discussing.

25 JASON ANTONIO WEST,

1 having been first duly sworn,
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MURPHY:

5 Q. All right. Mr. West, I just want to quickly go
6 through some background information for you for the
7 record, okay? Now, you were charged with trafficking
8 third offense in Charleston County; is that correct?

9 A. Yes, sir.

10 Q. And who did you hire to represent you on those
11 charges?

12 A. Leon Stavrinakis.

13 Q. You said Leon. Was he privately retained?

14 A. Yes.

15 Q. And tell me what Leon did for you.

16 A. He really got a bond reduction for me, and I was
17 already home. I didn't understand that.

18 Q. He lowered the bond. Do you know if he did
19 anything else for you?

20 A. I found out this information from Louis Moore that
21 he waived my right to a preliminary hearing.

22 Q. So you did not go forward with a preliminary
23 hearing.

24 A. No.

25 Q. Okay. And prior to -- I understand you

1 relieved -- Mr. Stavrinakis was relieved as your counsel;
2 is that correct?

3 A. Yes, sir, yes, sir.

4 Q. And, procedurally, were you relieved -- were you
5 up for a trial or up for a plea, that you know of?

6 A. I was up for a plea at the time.

7 Q. And did you have any plea negotiations that you
8 knew of with Mr. Stavrinakis?

9 A. No. He just -- I got a letter in the mail that
10 went to the wrong address. I kept it, though, because it
11 was sent to an address where I'm staying now, and whoever
12 wrote the letter to make sure I got it, he didn't even
13 contact me when I got the letter. I contacted him.

14 Q. When Mr. Stavrinakis was relieved, did you go
15 before a judge to have him relieved as counsel?

16 A. Yes. I went before Deadra Jefferson.

17 Q. And Judge Jefferson okayed his release; is that
18 right?

19 A. Yes, sir.

20 Q. And at that time did you have another lawyer?

21 A. Yes, sir, Louis Moore.

22 Q. Was he privately retained or appointed?

23 A. Privately retained.

24 Q. Tell me about Louis Moore. How did you go about
25 hiring him?

1 A. I got a reference. Someone knew his dad. His dad
2 wasn't studying law anymore, and he said go see what he
3 could do to assist me.

4 Q. Did you talk to Louis about your case?

5 A. Yeah. I talked to him about what the situation
6 was going on.

7 Q. I'm sorry?

8 A. I talked to him about what was going on with Leon
9 and I didn't get any information. I needed him to clue
10 me in on what was actually going on.

11 Q. You heard me tell the Court the issue revolves
12 around the search warrant today?

13 A. Yes, sir.

14 Q. And that's what we're talking about today,
15 correct?

16 A. Yes, sir.

17 Q. And specifically you've seen the search warrant?

18 A. Yes.

19 Q. And what issue do you take specifically with it?

20 A. I have two warrants, and they have different
21 signatures on them, and then there's -- on the warrant,
22 it's saying that the CI was brought to my residence and
23 bought something from me, but he never had a date and
24 time, so I couldn't defend these allegations.

25 Q. So we're talking about the CI in the search

1 warrant. Did you talk about the issues of the CI with
2 Mr. Moore?

3 A. No. He was supposed to check on it, and he told
4 me January 2nd that they had a CI that was willing to
5 testify, but he didn't give me any more information.

6 Q. Maybe that was a bad question, but that whole
7 issue of confidential informant, did you have any
8 discussion?

9 A. Yes. I told him I needed to get a motion to
10 suppress -- file a motion to suppress because of this
11 information.

12 Q. What did he say when you asked for that motion to
13 suppress?

14 A. He told me Deadra Jefferson denied the motion to
15 suppress.

16 Q. Did you think he filed a motion?

17 A. Yes, I did.

18 Q. Did he show you any motion that was filed?

19 A. No, sir.

20 Q. Why would you think it was filed?

21 A. Because I asked him, and he told me that it was
22 denied.

23 Q. Okay. Now, once you believed this motion to
24 suppress was denied, what happened?

25 A. He told me if I needed to proceed to trial -- I

1 told him I wanted to go to trial, and he told me he
2 didn't want to represent me so I would have to get a
3 public defender, and the judge was already pressuring me
4 to get this case closed because of the time frame. I was
5 already out three years, almost four years, so he's like,
6 well, I'm not going to be defending. You will have to
7 get another attorney and I got to start all over with
8 three attorneys, trying to handle my case.

9 And he's, like, well, the best thing you can
10 do is -- obviously, they got a CI that was willing to
11 testify, and I asked him about the pre-recorded money
12 they say he had. And he's, like, well, I don't know
13 about the pre-recorded, but I feel it's audio at the
14 minimum, and none of that was inside my Rule 5, so I
15 asked him all these questions.

16 He's, like, that's irrelevant. It's pretty
17 much your word against the word of the police officers,
18 and due to your record, I wouldn't take the chance and go
19 to trial.

20 Q. So Mr. Moore didn't want to try the case; is that
21 correct?

22 A. Yes.

23 Q. And --

24 A. Yes.

25 Q. And other than the defense of the CI in the search

1 warrant that was referenced, did you have any other
2 defense to the charge against you? Other than the
3 defense of the defective warrant, did you have any other
4 defenses to the charges brought against you?

5 A. Yes. Are you talking about the warrant itself?

6 Q. Yes.

7 A. The two signatures on the warrant.

8 Q. When you talk about two signatures, you're talking
9 about the magistrate's signatures?

10 A. Right.

11 Q. Now, you ended up doing a guilty plea, correct?

12 A. Yes.

13 Q. And at that time, what was your understanding
14 about whether the motion to suppress was entered or not?

15 A. He told me Judge Jefferson denied it. He told
16 me -- in the same breath, he said I would have to elicit
17 signatures from an expert to determine those signatures
18 weren't the same, and he told me she denied motion so
19 that was not -- what did he say? It's not a plea issue,
20 that's a trial issue, which I found out later that should
21 have been argued in a preliminary hearing.

22 Q. Okay. Now, you did end up doing a plea, correct?

23 A. Yes.

24 Q. And the judge asked you a number of questions, do
25 you remember that?

1 A. Yes.

2 Q. And one of the questions would have been if you
3 are guilty or not. Do you remember that?

4 A. Yes.

5 Q. And what was your answer?

6 A. Yes.

7 Q. And after you pled guilty, did you have any
8 discussions with Louis Moore about this case?

9 A. Yes.

10 Q. What were those questions?

11 A. I didn't get to talk to him right after because
12 they took me straight out, but I called him -- I couldn't
13 call but twice a week, so I had my family call. I
14 probably didn't get to contact him until three months in,
15 and I asked him to send me copies of the paperwork.

16 And he told my wife that he had it in
17 storage, and maybe six months of kept running me around
18 about the paperwork so I could see what really happened,
19 even a copy -- just a copy of the sentencing sheet, but
20 they never give me a copy of the sentencing sheet, and he
21 told her it was in storage, it was this and that.

22 I had to tell him my brothers was going to
23 come and get it, and he sent me six pieces of paperwork
24 that I had that I gave to you that he signed saying he
25 did this and that. When I wrote the clerk of court, she

1 said there was no record.

2 Q. And what were you looking for, specifically?

3 A. The motion to suppress so I could see the reason
4 why the judge denied my motion to suppress.

5 Q. Now, you served your sentence, correct?

6 A. Still on parole.

7 Q. But you're free? You're out of jail right now?

8 A. Yes.

9 Q. And you understand if the Court agrees with you,
10 you would be facing a 25-year minimum?

11 A. Yes, sir.

12 Q. And facing that, you still want to go forward?

13 A. Yes, sir.

14 Q. Now, the defect in the warrant, your allegation
15 revolves around the reliability of the CI; is that
16 correct?

17 A. Yes.

18 Q. All right. And is there any other issues that you
19 think Louis Moore did improperly in representing you?

20 A. Yes. He didn't tell me to just go ahead and get
21 the signature of the expert, like I asked him. He told
22 me I would have to do it instead of him letting me do
23 that. They didn't allow me -- it was an irrelevant
24 issue, which come to find out, that was a lie.

25 Q. And is there anything else that you allege that he

1 did?

2 A. Well, he didn't file any paperwork. He didn't
3 present any challenge at all, even when the solicitor
4 said it was an issue with the warrant.

5 Q. And what we're talking about -- and I want to
6 summarize this and have you agree.

7 What you're saying is that if you filed the motion
8 to suppress for the fatal warrant, the charges would have
9 been dismissed; is that your position?

10 A. Yes, sir.

11 Q. And failure to move to suppress that evidence
12 based on the warrant is the error?

13 A. Yes, also with the date of occurrence, because I
14 was sentenced for October 1 crime being committed on
15 October 1, 2013, which no crime was committed.

16 Q. I understand. And that was -- Judge Jefferson
17 ruled that was a scrivener's error on that?

18 A. She ruled it was a scrivener's error for my
19 transcript reading that I was represented by Julius C.
20 Moore instead of Louis C. Moore. Julius C. Moore is a
21 nonexistent person.

22 Q. Anything else, sir?

23 A. No.

24 MR. MURPHY: That's all I have, Your Honor.

25 THE COURT: Cross?

CROSS-EXAMINATION

BY MS. OPPENHEIMER:

Q. So Leon Stavrinakis was your first attorney?

A. Yes, ma'am.

Q. Do you recall discussing the search warrant with him?

A. Only thing I told him after I fired him was that they had two different signatures. He told me -- he texted me that he could get me a better deal, and this is after he told me I didn't have a Rule 5. I asked him, did I have a Rule 5 for my pleas? He had sent it to me, and so we have our case. 2013, I got the e-mail, which I still have the date of the e-mail, 2015, like, a month when I got that letter for me to go to court.

Q. So you take issue with the two different signatures on the warrant?

A. Yes, that and the issues with the CI.

Q. Have you ever hired a handwriting expert to look at the warrant?

A. No. I talked to a handwriting expert. Louis Moore told me not to proceed, so I didn't follow it.

Q. But since then, you haven't hired an expert to look at these warrants?

A. No.

Q. So you don't really know if they're different or

1 not?

2 A. No. I actually have -- from the judge, I have the
3 signatures that I got off the e-mail, and he has a very
4 distinct signature there. Even a signature expert -- I
5 wouldn't have to be a signature expert to know that he
6 didn't sign any of these warrants.

7 Q. So you're not a handwriting expert?

8 A. No, I'm not a handwriting expert.

9 Q. You don't have any training in deciphering?

10 A. No, ma'am.

11 Q. Did you ever give Mr. Moore or Mr. Stavrinakis any
12 leads to investigate?

13 A. Yes.

14 Q. Who did you give them?

15 A. The CI, the CI, the information on the CI.

16 Q. Did you know who the CI was?

17 A. No. He told me he was supposed to get that
18 information.

19 Q. Did you discuss any other possible defenses to
20 this charge?

21 A. No, because that was supposed to up to them. I
22 told them the whole scenario with the police actually
23 planting the evidence and everything, and not Louis, but
24 Leon told me that is something that North Charleston was
25 known to do. That's why I even got him in the first

1 place, thinking he was going to investigate, and I found
2 out the law, that's his job to do that, not me, that's
3 why in due diligence I hired an attorney because I do not
4 know the law.

5 Q. Now, do you recall your plea proceeding?

6 A. Yes.

7 Q. Okay. And you told Judge Jefferson that you were
8 satisfied with the services of Mr. Moore, right?

9 A. Yes.

10 Q. And you said that Mr. Moore had answered all of
11 your questions?

12 A. Yes.

13 Q. Okay. And he had done everything that you had
14 asked of him?

15 A. I don't remember her even asking me that. I got
16 the transcript, but I don't remember that, so I can't
17 answer that question. I have to see the transcript to
18 know if I actually answered that question.

19 Q. Would looking at the transcript help you remember?

20 A. Yes, yes.

21 Q. Do you see lines 19 and 20? Page 11, lines 19
22 through 20, and you said that he had done everything that
23 you asked of him?

24 A. Yes.

25 Q. And that you had no complaints, correct?

1 A. Yes.

2 Q. Now, was it your decision to plead guilty?

3 A. I had to plead guilty. There was no alternative.
4 I don't have no one to represent me. Getting another
5 lawyer wouldn't look good in my favor, so I couldn't
6 take -- I had to do what he said because he said she
7 denied my motion so it was like I couldn't argue.

8 Q. But do you remember Judge Jefferson asking you if
9 it was your decision and you told her that it was?

10 A. Yeah, it was my decision. It was a coerced
11 decision. If someone gives you a decision to make when
12 they told you they did something for you that they didn't
13 do, you rely on their word, so I was relying on his word.
14 So it was my decision off of his word that he filed but
15 he actually didn't file.

16 Q. Did you want a trial?

17 A. Yes, I wanted a trial.

18 Q. Do you remember Judge Jefferson going over each of
19 your rights at trial with you?

20 A. Yes.

21 Q. And you understood you were waiving those rights
22 by pleading guilty?

23 A. Yes.

24 Q. Now, do you recall the solicitor going over the
25 facts of the case?

1 A. No. They just said they had potential issues. I
2 think the exact words, they had potential issues with the
3 warrant. They didn't have no specifics that they
4 discussed, nothing, not about the CI, the date of the
5 transaction or anything.

6 Q. But he did say that a search warrant was executed
7 at your residence, right?

8 A. Yeah. He said for a fact -- I'll find the page.
9 I don't want to misquote him. He said, this occurrence,
10 October 1, 2013 at North Charleston, South Carolina,
11 North Charleston police department detectives arrived at
12 this residence, executing a search warrant. The search
13 warrant was based on the fact that a CI bought narcotics
14 from the residence prior to the search warrant being
15 executed, but no date, no specifics, or anything on
16 there.

17 Q. But you agree with those facts, correct?

18 A. I think he was asking that to Louis. I didn't --

19 Q. Page nine of the transcript, when the Court asked
20 if you agree with those facts, you said yes, correct?

21 A. Yes, yes.

22 MS. OPPENHEIMER: No further questions.

23 THE COURT: Redirect?

24 MR. MURPHY: Nothing further, Your Honor.

25 THE COURT: Okay. You can step down. Do you

1 have any other witnesses?

2 MR. MURPHY: No, Your Honor. The applicant
3 would rest.

4 THE COURT: Any witnesses from the State?

5 MS. OPPENHEIMER: The State calls assistant
6 solicitor Chris Lietzow.

7 CHRIS LIETZOW,
8 having been first duly sworn,
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. OPPENHEIMER:

12 Q. Good morning, Mr. Lietzow. How are you?

13 A. Good, thanks.

14 Q. So how long have you been an assistant solicitor?

15 A. A little over five years.

16 Q. Okay. And about how long would it have been when
17 Mr. West pled guilty?

18 A. I had been on the job about three years at that
19 point.

20 Q. Was this your first trafficking case?

21 A. No.

22 Q. And was it your first case in which there was a
23 search warrant executed on a residence?

24 A. No.

25 Q. Do you recall how the search warrant was obtained?

1 A. North Charleston indicated a confidential
2 informant had purchased drugs from Jason West's house,
3 and based on that, he used that information to get a
4 search warrant and execute it.

5 Q. And during the plea, you mentioned to Judge
6 Jefferson that there may have been some issues with the
7 search warrant?

8 A. Correct.

9 Q. What were those issues?

10 A. When I was working through the case with
11 Mr. Stavrinakis, he and I discussed some potential issues
12 with the search warrant. The main two issues that we had
13 highlighted were that there was some discrepancies in the
14 addresses. For example, in the title page was the
15 defendant's address, but then in the subsequent page,
16 there was another address that must have been left in
17 there per boilerplate, and North Charleston just forgot
18 to take it out, but there was one time the address was
19 incorrect, and then all the other times in the warrant
20 the address was correct, and then the search warrant
21 return was outside of the ten days required by law, but I
22 had indicated to Mr. Stavrinakis that the first issue was
23 a scrivener's error, and the second issue, there was no
24 prejudice in the ten-day return issue, and I told him
25 that it was my opinion that the search warrant was not

1 fatal and the search warrant would be upheld.

2 Q. So you had multiple conversations about the search
3 warrant with Mr. Stavrinakis?

4 A. Multiple.

5 Q. Did you ever discuss the warrant with Mr. Moore?

6 A. I don't recall off the top of my head.

7 Q. I want to kind of address your attention to the
8 different signatures Mr. West is claiming. Can you kind
9 of describe what he may be complaining about?

10 A. Yeah. I received several letters from Mr. West
11 while he was incarcerated, and several motions as well,
12 and I investigated through all of those. In making my
13 responses to those, he never really did a good job
14 clarifying exactly what his position was, but my
15 assumption was that there were two different signatures
16 on the signature line for the search warrants. They were
17 both of the same judge's signature; however, there was
18 some slight alterations on the signature.

19 For example, on one of the signature lines, the
20 signature started a little bit farther to the left, or
21 the loop was a little bit different on one of the
22 signatures, so in looking into that, it was my
23 determination that when the search warrant was being
24 signed by the magistrate, the magistrate signs multiple
25 copies of the same warrant, and so they were the same

1 signatures of the same person, they were just done in
2 slightly different manners, and that was done when the
3 magistrate was signing the different copies, one being a
4 copy for Mr. West, one being a copy for the case file,
5 and one being a copy for North Charleston's file.

6 Q. Did you provide Mr. Moore with a copy of the
7 search warrant in discovery?

8 A. Yes. He was provided a copy of everything that I
9 had.

10 Q. And that would have been prior to the plea?

11 A. Yes.

12 MS. OPPENHEIMER: I have no further
13 questions.

14 THE COURT: Cross?

15 MR. MURPHY: Yes, Your Honor, very briefly.

16 CROSS-EXAMINATION

17 BY MR. MURPHY:

18 Q. Mr. Lietzow, you testified you talked to
19 Mr. Stavrinakis several times about search warrant
20 issues; is that correct?

21 A. Yes.

22 Q. All right. Did Mr. Stavrinakis ever indicate that
23 he was going to file a motion to suppress or a motion to
24 dismiss based on the faulty search warrant?

25 A. Yes, he did.

1 Q. Did he actually ever file one?

2 A. No.

3 Q. Okay. And then I assume he would have been
4 relieved as counsel and Mr. Moore took over, correct?

5 A. Yes, sir.

6 Q. And did Mr. Moore ever file a motion based on a
7 faulty search warrant?

8 A. No.

9 Q. And do you recall ever talking with him about that
10 issue?

11 A. The search warrant?

12 Q. Yes.

13 A. I have all of the e-mails I sent Mr. Moore. I
14 could look back in them, but I don't recall off the top
15 of my head.

16 Q. Do you recall the plea where the search warrant
17 issue -- or you actually raised the search warrant issue
18 at the plea before the Court. Do you remember that?

19 A. I do.

20 Q. All right. And did that have anything to do with
21 the offer you made to Mr. West?

22 A. Absolutely.

23 Q. Did you have any conversations with Mr. West about
24 the search warrant issues?

25 A. No. I didn't talk with him since he was

1 represented.

2 MR. MURPHY: That's all I have. Thank you,
3 Your Honor.

4 THE COURT: Redirect?

5 MS. OPPENHEIMER: Nothing further.

6 THE COURT: You can step down. Anything else
7 from the State?

8 MS. OPPENHEIMER: No other witnesses, Your
9 Honor. We would ask, if you're so inclined to do so, to
10 keep the record open for 30 days so we could depose Mr.
11 Moore.

12 THE COURT: I think it probably would be good
13 to hear from Mr. Moore since the basis of this is the
14 applicant says, I wouldn't have pled, in essence, but for
15 the fact that my lawyer told me he filed these motions.
16 A hearing was held and they were denied, and it doesn't
17 appear that was so.

18 No question, it sounds like one of his prior
19 lawyers talked to the State about the offer, or the
20 problems with the search warrant, but there's nothing in
21 the record to indicate that motions were actually filed
22 or that there were hearings on it or that the judge
23 denied it, and right now I have uncontradicted testimony
24 by the applicant that he was told by his lawyer that he
25 filed his motions. Hearings were held, and they were

1 denied, so I think we need to have some testimony from
2 Mr. Moore on that.

3 So let's keep that order, coordinate with my
4 office and Mr. Moore. When he gets back from his
5 daughter's graduation, we'll squeeze it in somewhere or
6 another. Okay?

7 MR. MURPHY: And, Judge, just for the record
8 about the issue of signatures, that's not an issue we're
9 raising. I have spoken with Judge Duffy and confirmed
10 both of his signatures on there, so I don't want to muck
11 up the record with issues that really don't have anything
12 to do with this.

13 THE COURT: Okay. We'll keep it open then
14 and coordinate with my law clerk and we'll fit it in.

15 - - -

16 (Whereupon, the proceedings were concluded.)

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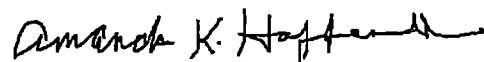
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I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 21st of May 2018.

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

June 18, 2018



Circuit Court Reporter

1 State of South Carolina

Court of Common Pleas

2 County of Charleston

3
4
5 Jason Antonio West)

6 Applicant,)

v.)

7 State)
8)
9 _____)

Transcript of Record
16-CP-10-6395

10 July 26, 2018

11 Charleston, South Carolina

12
13 B E F O R E:

14 The Honorable Roger M. Young, Sr., Judge.
15

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

17 Christopher Murphy, Esquire
Attorney for the Applicant

18 Kelly Oppenheimer, Assist. Attorney General
19 Attorney for the State
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24

25 Stacy L. Sheppard, RPR
Official Court Reporter

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I N D E X

WITNESSESDIRECTCROSSREDIRECTRECROSS

(There were no witnesses.)

E X H I B I T S

NO.DESCRIPTIONID.EVD.

(There were no exhibits.)

1 (The following proceedings were held on July
2 26, 2018.)

3 **THE COURT:** All right. Are we ready?

4 **MS. OPPENHEIMER:** Yes, Your Honor.

5 **THE COURT:** Are you ready, Mr. Murphy?

6 **MR. MURPHY:** I am, Your Honor.

7 **THE COURT:** All right. We're back on West
8 versus South Carolina, continuation of a PCR. We're
9 supposed to hear from Mr. Louis Moore today; is that
10 right?

11 **MS. OPPENHEIMER:** That's correct, Your Honor.

12 **THE COURT:** All right. Are you ready?

13 **MS. OPPENHEIMER:** The State calls Louis Moore.

14 LOUIS MOORE,

15 having been duly sworn, testified as follows:

16 **MS. OPPENHEIMER:** May it please the Court.

17 DIRECT EXAMINATION

18 BY MS. OPPENHEIMER:

19 **Q** Good afternoon, Mr. Moore. How long have you
20 been practicing law?

21 **A** I started practicing in 2002.

22 **Q** And about what percentage of your practice is
23 criminal law?

24 **A** Initially, it was right around, I don't know, I
25 would say 40 percent; now it's down to about 20

1 percent.

2 Q And were you appointed or retained to represent
3 Mr. West?

4 A I was retained.

5 Q And do you recall were you his first attorney?

6 A His first attorney was Leon -- I always
7 struggle with his name -- Stavrinakis. Is that
8 right? Yeah, Leon Stavrinakis. And then he
9 retained me thereafter.

10 Q So you were his second attorney?

11 A I was his second attorney, correct.

12 Q And do you recall about what date you were
13 retained?

14 A I don't recall the date. I do know that by the
15 time that I was retained, Mr. West had already
16 rejected an offer on the record by the solicitor,
17 and it just kind of went forward from there.

18 Q And did you receive any discovery from
19 Mr. Stavrinakis?

20 A No, I did not. I think, actually, I got all of
21 my discovery from Chris Lietzow.

22 Q So you received that from the State?

23 A Correct.

24 Q And did you review that with Mr. West?

25 A I did.

1 **Q** Were there any issues regarding the search
2 warrant?

3 **A** There was an issue -- there were a couple of
4 issues: One was with respect to what looked like
5 different signatures. And Mr. West was convinced it
6 was different judges or something along those lines,
7 but we were able to confirm that it was the same
8 judge who just signed it differently on that day for
9 whatever reasons. I imagine he's got a stack of
10 warrants he signs on a daily basis and -- but,
11 anyway, we were able to confirm that it was the same
12 judge that signed off on it.

13 **Q** Did you ever talk about suppressing the
14 warrant?

15 **A** We did talk about that. I didn't think there
16 was a basis for it. His contention was the address,
17 but in all the other paperwork, it had the correct
18 address listed as the property to be searched; and
19 then, of course, the issue with the signature on it,
20 and I didn't think that that was -- I thought that
21 was going to be a frivolous motion and I didn't want
22 to appease that. And, of course, judge -- I think
23 Judge Jefferson at the time had already made some
24 determination that there was no basis for that. And
25 that was at plea, that wasn't at another hearing, it

1 was just at plea.

2 Q So just to be clear, she made the determination
3 that there were no issues with the warrant at the
4 plea?

5 A At the plea, correct.

6 Q Not prior to?

7 A No, not prior to that, correct.

8 Q Did you explain your concerns with raising a
9 motion to suppress with Mr. West?

10 A I did. And, again, we had the conversation,
11 but I didn't file because I just thought it would be
12 baseless. We wouldn't have any -- and he -- and
13 there was also a time element involved.

14 By the time I got the case, I think it was
15 already two, maybe three years old. The solicitor's
16 office was very insistent about going forward to
17 trial and taking the five-year offer off of the
18 table, and so I was very concerned about that time
19 element, five-year plea versus a 25-year
20 possibility. And so, you know, I impressed that
21 upon Mr. West, and he agreed to move forward,
22 obviously, with the plea.

23 Q All right. Now, do you recall what the search
24 warrant was based off of?

25 A It was based off a confidential informant. And

1 I don't recall the details, but, essentially, that's
2 what the -- what law enforcement relied on to
3 proceed with arrest. And, obviously, Mr. West --
4 one of the other issues or problems with the case
5 was that Mr. West had signed a statement, a sworn
6 statement, that he had committed the offense.

7 Q Was there audio and video of the CI buy?

8 A There was audio. I believe there was video.
9 I'm not -- I can't recall, but there was definitely
10 audio. And Mr. -- the solicitor's -- me and
11 Mr. Litzeow talked about that, and -- so they
12 definitely had that also as a piece of evidence to
13 implicate Mr. West.

14 Q Based on your review of that audio, was there
15 ever any question that Mr. West was the person
16 selling drugs?

17 A To me, the question was taken off the table
18 when he did the sworn statement, so...

19 Q Were you prepared for trial had he insisted on
20 going forward?

21 A Yeah. I would have been -- I would have
22 readily gone to trial on his behalf, even though I
23 didn't think it was in his best interest. We
24 didn't -- we would not have had a witness to
25 present. It would just be all the State witnesses,

1 which would have been law enforcement.

2 I wouldn't have felt comfortable putting
3 Mr. West on the stand because of his criminal
4 history. Among other things he admitted in his --
5 that he stated in his affidavit was that he had been
6 selling drugs since he was 11 years old, so I
7 certainly wouldn't have wanted to put him on the
8 stand. It would have been questioning the
9 procedures of law enforcement, and I didn't see
10 where there was a misstep. They had been observing
11 him for a while.

12 **Q** And did you explain your concerns to Mr. West?

13 **A** I did. We had many conversations about it.
14 And I think that he was agreeable that, you know,
15 the offer of plea versus facing potential minimum 25
16 years made good sense to him at that time, and so we
17 went forward with the plea.

18 **Q** And, ultimately, was it Mr. West's decision to
19 plead guilty?

20 **A** Oh, absolutely, it was his decision.

21 **MS. OPPENHEIMER:** Beg the Court's indulgence.

22 (Pause.)

23 **Q** Did you ever tell Mr. West that he would have
24 to hire a handwriting expert on his own?

25 **A** We may have had a conversation about that. I

1 didn't -- yes, he would have had to have retained a
2 handwriting expert himself. I wouldn't have just
3 paid for that.

4 **Q** But, again, you were able to confirm that the
5 different signatures --

6 **A** Yeah, it was confirmed. So there was no issues
7 to resolve with that.

8 **THE COURT:** Could you say that again? I
9 couldn't hear you.

10 **THE WITNESS:** There were no issues with the
11 signatures, in my opinion, at the time. And we were
12 able to confirm, at some point, that it was the same
13 magistrate that signed off on the warrants. I don't
14 think there's any dispute there.

15 **MS. OPPENHEIMER:** I believe that's all the
16 questions I have. Please answer any questions
17 Mr. Murphy may have.

18 **THE WITNESS:** Sure.

19 **THE COURT:** Mr. Murphy.

20 **MR. MURPHY:** Thank you, Your Honor. May it
21 please the Court.

22 **CROSS-EXAMINATION**

23 **BY MR. MURPHY:**

24 **Q** Mr. Moore, tell me about Mr. West. He was out
25 on bond when you got assigned to this case or when

1 he retained you?

2 **A** Correct.

3 **Q** And when you got the case from Leon, what was
4 the situation? How did it -- how did it get turned
5 over to you from Leon?

6 **A** Mr. West hired me. At some point, Leon had to
7 be relieved as counsel. And I think, at that point,
8 the case had already had some age on it, already
9 had, like, a few years on it.

10 **Q** And do you know -- and I don't know the answer
11 to this -- did Mr. West have any disagreement with
12 Leon or what was -- was he not happy with his
13 services or --

14 **A** My understanding, he wasn't happy with his
15 services. I think I may have even suggested to him
16 to talk with Leon about getting a refund of monies.
17 I don't know if that ever happened. I didn't really
18 get involved with that.

19 **Q** And did you ask Mr. West, specifically, what he
20 was not happy with Leon about?

21 **A** I think -- I can't recall honestly, but I think
22 that there was an issue with -- he was unhappy with
23 the offer that was presented. That's the best way I
24 can summarize it.

25 **Q** And that was going to be my next question. Did

1 you and Leon talk about it? Specifically, was it
2 the offer that -- from the State that he was not
3 happy with?

4 **A** No. I didn't -- Leon was running for mayor at
5 the time. It was very difficult to get a hold of
6 him. And I think that was one of the points of
7 contention with Mr. West was that he couldn't really
8 get a hold of Leon. And I know that in my attempts,
9 I couldn't -- I didn't speak with Leon about it at
10 all.

11 **Q** You eventually got the file from Leon?

12 **A** Correct.

13 **Q** And, in the file, he had already moved for a
14 discovery request or the Brady request; is that
15 correct?

16 **A** That's correct, but I did my own filing or
17 request for that.

18 **Q** Did you refile a Brady request?

19 **A** I didn't refile. I just -- I did an e-mail --
20 I didn't file with the clerk; I e-mailed the
21 solicitor's office.

22 **Q** And that's what I meant, made a request to the
23 solicitor.

24 **A** Uh-huh.

25 **Q** And the solicitor that was handling this case

1 was Chris Lietzow?

2 A Correct.

3 Q Now, in terms of -- with Mr. West, I know I've
4 had a lot of conversations and e-mails back and
5 forth with him since I've been appointed.

6 A Sure.

7 Q Did you have a lot of back and forth with him
8 in terms of communication?

9 A I can't remember the level of communication. I
10 do know some of that involved e-mails, some of that
11 involved telephone conversations, maybe some text
12 messages.

13 Q Did you bring your file with you today?

14 A I did not. I explained to the State that we
15 had water damage in my office suite and there were
16 multiple files that were damaged and his was one of
17 them.

18 Q I got you.

19 Would your file contain timeframes or
20 references or notes about when you met him or time
21 you spent on the case?

22 A I'm sure it would have, probably, most likely
23 on whatever legal pad or notes I took, that would
24 have been in the file as well.

25 Q Now, do you remember, approximately, how many

1 times you met with Mr. West prior to his guilty
2 plea?

3 **A** It was multiple times, because, at that time, I
4 was at -- I was in my office in West Ashley, and
5 whether it was him coming there when he could come,
6 it was also meeting at his job at ILA,
7 Longshoremen's Association -- Longshoremen's Hall,
8 to meet. He would make a payment and then we would
9 also discuss his case. And that was multiple times.

10 **Q** All right. Now, specifically, with the
11 charges, did you talk about the burden of proof
12 required for him to be convicted of these charges?

13 **A** Sure. I mean, he understood that it had to be
14 beyond a reasonable doubt and, of course, that
15 burden was on the State.

16 **Q** Okay. And did you go over the elements of the
17 charges against him, what the State would have to
18 prove?

19 **A** Yeah, I did at that time. And we also
20 discussed the issue or the problem of him having
21 already provided a statement.

22 **Q** And I will talk about -- I'm just trying to --
23 now, in terms of the elements, we have a statement,
24 we have a search warrant?

25 **A** Uh-huh.

1 Q You mentioned that there wasn't any witnesses
2 that could have testified on his behalf. You said
3 -- would it have been all State's witnesses?

4 A It would have been all State's witnesses. I
5 can't imagine anybody else who -- at least in our
6 conversations, he didn't tell me about a scenario
7 where it was somebody else's drugs that was
8 involved. And among other things, he mentioned, as
9 I recall, that he felt the drugs were counterfeit,
10 but when -- when things came back, eventually, from
11 the lab, it was tested positively.

12 Q And that would have been the SLED lab?

13 A The SLED lab, correct.

14 Q Now, you went over the burden of proof, the
15 elements. Now, there was a search warrant that
16 originally led to the drugs being confiscated from
17 his house?

18 A Correct.

19 Q And did you go over that search warrant with
20 him?

21 A I did. And in going over -- we did have a
22 conversation about maybe the issue of the signatures
23 of the magistrate. I didn't feel -- eventually, I
24 got to the place where I didn't feel that was fatal.
25 And then there was also the -- there was an issue

1 with the address. I forget, it was -- it was
2 some -- whatever address they had in one of the
3 warrants, it was an empty lot or vacant lot, but
4 there were other documents that supported, including
5 a detailed description of how they got to the house
6 and where to get to that house and all that other
7 stuff.

8 Q And I believe Judge Jefferson, for lack of a
9 better word, addressed the address issue?

10 A She did. She did address that. And, you know,
11 she pretty much thought it was, like, harmless.

12 Q And in terms of the signatures, Judge Duffy
13 signed those warrants; is that correct?

14 A That's correct.

15 Q Now -- and there was -- did you have any
16 information that he did not sign those warrants?

17 A I didn't have any indication that he didn't
18 sign it.

19 Q Now, what about the affidavit, the -- the
20 affidavit in support of the warrant -- or the search
21 warrant? Did you have any questions about the
22 sufficiency of that affidavit?

23 A No. I felt it was pretty detailed, outside of
24 the scrivener's error involved with the warrants
25 themselves. I -- I didn't feel there was any flaw

1 in the affidavit supporting the warrant.

2 Q And had you assumed or had you thought that
3 there was a flaw, would the proper vehicle to
4 represent Mr. West, would that be a motion to
5 suppress based on a flawed affidavit?

6 A That would have been a motion to suppress,
7 correct.

8 Q Now, you obviously -- you did not file that
9 motion, a motion to suppress?

10 A That's correct.

11 Q And I assume it's because you did not see any
12 flaws with the affidavit, the body of the affidavit?

13 A Yeah. I didn't see any flaws with the body of
14 the affidavit. And in addition to that, we were in
15 a short timeframe to make decisions because they
16 were pressing for trial.

17 And, in fact, one of the things that had
18 happened is that they took the -- he was offered
19 three years when he was with Leon, and they took
20 that off the table. We had a hearing in front of
21 Judge Jefferson that I requested. And Judge
22 Jefferson required that they make an offer to me and
23 put something on the table. She didn't require the
24 same offer, but she required that they make some
25 offer. And that's when Chris Lietzow made the offer

1 for the five years.

2 Q And let me ask you: Did you have any
3 conversations with the assistant attorney, Chris
4 Lietzow, about any issues with the warrant?

5 A Yeah, we did. We did have that conversation.
6 We felt that there may have been an issue, but,
7 again, it was scrivener's error. It wasn't
8 something so fairly flawed that would have tossed
9 the case out of court.

10 Q And let me ask you this: In representing --
11 and I'm asking you a standard. If you thought there
12 was a flaw in the affidavit, would you consider it
13 your duty or the objective standard to file that
14 motion to suppress based on the flaw?

15 A Sure. Yeah, I would have absolutely -- if I
16 found that there was a flaw that was fatal that
17 would have helped Mr. West's case, I would have
18 filed it.

19 Q Now, was there any conversation with -- back
20 and forth from Mr. Lietzow, about if you lost a
21 motion to suppress, how that would impact an offer
22 at all?

23 A Yes. They totally would not have offered him
24 anything at that point and would have sought to
25 prosecute, seeking the minimum/maximum time for a

1 term in prison.

2 Q And let me ask you: Did you ever tell Mr. West
3 that you would file a motion to suppress based on
4 the affidavit?

5 A We discussed it. I know I didn't tell him I
6 had filed anything. I certainly would have if I
7 found that there was merit. I just didn't feel
8 there was any merit to it. And we would have lost
9 the benefit of the offer that was presented by the
10 solicitor's office.

11 Q Let me ask you -- this is a little bit off --
12 did you talk to Mr. West about a preliminary hearing
13 at all?

14 A I don't recall. Again, his case, when I got
15 it, it was already three years old. I feel that any
16 preliminary request might have been waived at that
17 point when he was with Leon.

18 Q That would have been after -- the preliminary
19 hearing would have been done or handled before --

20 A Yeah, a lot early on in the case, yeah.

21 Q Okay. Did you ever ask Mr. Lietzow for the
22 identity of the confidential informant mentioned in
23 the affidavit?

24 A I did, and we talked about that. Like, I
25 think, as I recall it, the state of the law, at that

1 point, they didn't have to disclose the CI.

2 Q And refresh my memory, did you have a
3 conversation with Judge Jefferson about the CI at
4 all, or with any judge for that matter?

5 A I don't recall having that discussion at a
6 hearing with --

7 COURT REPORTER: What was the last part?

8 THE WITNESS: Oh, Judge Jefferson. I don't
9 recall having a hearing or discussion with Judge
10 Jefferson about that at all.

11 BY MR. MURPHY:

12 Q And how many trafficking charges had you
13 handled prior to Mr. West's charges?

14 A I think I've handled at least four trafficking
15 charges, one that actually went to trial in -- not
16 in Charleston County, but it was in -- it was in
17 front of Hicks Harwell, wherever he was at the time.

18 Q Florence County.

19 A Yeah, that was very colorful.

20 But, yeah, we -- so I had that, and then
21 eventually that went to plea midway through and then
22 that resulted in a plea.

23 Q Thank you.

24 MR. MURPHY: One moment.

25 (Pause.)

1 Q Mr. Moore, do you remember talking to Mr. West
2 about getting the identity of the confidential
3 informant at all?

4 A We did -- I feel we did. I honestly can't
5 recall specifically, but I do know that he felt he
6 knew who the CI was maybe -- I honestly don't recall
7 the specifics. I didn't feel like it was...

8 Q Did you do any investigation to try and find
9 out who the CI was?

10 A I did talk with Chris Lietzow about it at some
11 point. And their position was that they did not
12 have to disclose who the CI was at that time.

13 Q Other than asking the prosecutor, Chris
14 Lietzow, did you try and ascertain who the CI was at
15 all on your own?

16 A That would have been in the discovery request,
17 that would have been in a Rule 5 and a Brady.

18 Q And if that informant was not in the discovery
19 motion, then, clearly, you wouldn't have been able
20 to discuss that with Mr. West?

21 A We had -- I would have discussed it with him if
22 it wasn't provided in the discovery. I don't recall
23 that it was provided. I don't think it was.

24 Q And I guess that's my -- my question is, is
25 other than the discovery that was prepared by the

1 State and sent to you, I can't imagine that there
2 was any information -- any additional information
3 that you would have discussed with Mr. West outside
4 of that discovery?

5 **A** Right. That's correct.

6 **Q** And --

7 (Pause.)

8 **MR. MURPHY:** Thank you, sir. That's all I
9 have.

10 **THE COURT:** Anything on redirect?

11 **MS. OPPENHEIMER:** Just very briefly, Your
12 Honor.

13 REDIRECT EXAMINATION

14 BY MS. OPPENHEIMER:

15 **Q** Did Mr. West ever give you any leads to
16 investigate?

17 **A** Not necessarily, just -- we went into this
18 coming out of a hole because he already did a sworn
19 statement to law enforcement. And the only lead, if
20 you will, was just his concerns over the warrant and
21 the different address.

22 **Q** And you looked into those?

23 **A** I looked into that and I didn't feel like it
24 had any merit. I mean, law enforcement had a
25 detailed account of how to get to the house,

1 described the house, everything else, so I didn't
2 feel like it was going to be -- there was a case at
3 the time, I don't recall it, but, clearly, a
4 scrivener's error was not going to be fatal to the
5 warrant itself.

6 **Q** All right. And one last question: Just to be
7 clear, the State did not have to reveal who their
8 confidential informant was?

9 **A** They didn't have to reveal it.

10 **MS. OPPENHEIMER:** No further questions, Your
11 Honor.

12 **THE COURT:** Recross?

13 **RECROSS-EXAMINATION**

14 **BY MR. MURPHY:**

15 **Q** Sir, I think you said you were -- got this
16 case, you were in the hole because of the late
17 representation or the late timing in this case. Did
18 you file for any continuances to try and get a
19 better grasp on the matter?

20 **A** I think we did file for a continuance. I don't
21 think -- you know, Judge Jefferson had pretty much
22 been the judge that's been most involved, and,
23 really, at all times involved with this case, as far
24 as I recall. She would not grant any extended
25 continuance. The only thing that she did do, I

1 think, as I recall, is she required them to make
2 another offer before trial. And so we had a small
3 window where we got an offer or go to trial or he
4 would lose the benefit of that offer.

5 Q Do you have an opinion as to whether or not you
6 needed more time or would the -- or was that
7 unnecessary to...

8 A That's a 50/50. I mean, more time may have
9 involved sitting down with doing some investigation
10 with law enforcement, trying to figure out the
11 truthfulness of what they presented in the
12 affidavits and so forth. That might have been
13 beneficial, but we don't know because we didn't get
14 the benefit of that time.

15 MR. MURPHY: Thank you. That's all I have.

16 THE COURT: All right. You can step down.

17 MS. OPPENHEIMER: Your Honor, we'd ask that
18 Mr. Moore be released from his subpoena.

19 MR. MURPHY: No objection.

20 THE COURT: Free to go. Thank you.

21 THE WITNESS: Thank you.

22 THE COURT: All right. Do you have anything
23 else from the State?

24 MS. OPPENHEIMER: The State would rest, Your
25 Honor.

1 **THE COURT:** Mr. Murphy, do you have anything
2 else?

3 **MR. MURPHY:** One second, Your Honor, please.

4 (Pause.)

5 **MR. MURPHY:** Your Honor, we would just recall
6 Mr. West very briefly.

7 **THE COURT:** You're still under oath.

8 **THE WITNESS:** Yes, sir.

9 JASON ANTONIO WEST,
10 having been previously duly sworn, resumed the
11 witness stand and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. MURPHY:

14 **Q** Now, Mr. West, you heard the testimony of
15 Mr. Moore, correct?

16 **A** Yes, sir.

17 **Q** Did you have any conversations with Mr. Moore
18 about filing a motion to suppress?

19 **A** Yes.

20 **Q** What -- how did those conversations go?

21 **A** The conversations were, I needed to find out
22 the CI, the reliability of the CI, because the
23 search warrant is solely based on the CI. And I'm
24 just learning now that that was his job to do that;
25 it wasn't my job to do this.

1 As far as the CI, everything's based solely on
2 the CI. You know, no date and time, everything is
3 omitted. And he said on the record -- he said on
4 record that they had audio. I got text messages --
5 e-mails from him telling me that there wasn't no
6 audio. So my whole thing was to question him. I
7 need the motion to suppress because the date and
8 time should have at least been on there. And
9 according to the procedures of the CIs, all of that
10 information was supposed to have been in there.

11 The State had no grounds to withhold that
12 because the CI wasn't in harm's way. And me and him
13 never even discussed that. He's just telling me
14 that's frivolous, not to file something, when I'm
15 seeing the problem with not just the address, the
16 signature issue. There was a bunch of other things
17 that I told him about the warrant, just the body of
18 the warrant itself.

19 Q All right. So you're talking about the body of
20 the warrant was flawed?

21 A Yes.

22 Q All right. Now, prior to going to the plea,
23 did you have an understanding as to whether or not
24 that motion to suppress was filed?

25 A No. As far as he told me, Jefferson was --

1 Jefferson denied it.

2 **Q** You thought it was filed and denied?

3 **A** Yeah, I thought it was filed, because I asked
4 him this, actually, in November -- November 4th
5 exactly, I asked him. And he told -- I still got
6 the text message where I asked him the question.
7 And he told me on the phone conversation when I met
8 him that she denied it. That's before he even
9 announced he was my attorney, so.

10 **Q** Had you known that the motion was not filed,
11 would you have pled guilty?

12 **A** No.

13 **Q** And did you tell Mr. West that?

14 **A** Mr. Moore?

15 **Q** I'm sorry. Mr. Moore.

16 **A** Yeah. Actually, the day before I was supposed
17 to go to trial, I told him I wanted to go to trial.
18 And he told me he was in a squeeze -- I don't want
19 to misquote him. I got the e-mail sitting right
20 there. He told me he was squeezed for time, so he
21 had to -- I had to make a plea; then if he wasn't
22 going to do any further investigation, I would have
23 to actually hire someone else to do that. And this
24 is the day before I have to put in my plea.

25 **Q** And when you're talking about hire somebody

1 else, are you talking about another attorney?

2 **A** Hire another attorney.

3 **Q** And were you in a position to do that?

4 **A** No, sir.

5 **MR. MURPHY:** Thank you. That's all I have.

6 **THE COURT:** Cross?

7 **MS. OPPENHEIMER:** Beg the Court's indulgence.

8 (Pause.)

9 CROSS-EXAMINATION

10 BY MS. OPPENHEIMER:

11 **Q** You told the plea court that you were pleading
12 of your own free will, correct?

13 **A** Yes.

14 **MS. OPPENHEIMER:** No further questions, Your
15 Honor.

16 **MR. MURPHY:** Nothing, Your Honor.

17 **THE COURT:** You can step down.

18 Anything else?

19 **MR. MURPHY:** That would be all, Your Honor.

20 **THE COURT:** All right. Well, let's hear your
21 argument.

22 **MR. MURPHY:** Thank you, Your Honor. Two
23 issues: I had previously told the Court that the
24 signatures was not an issue, and I still take that
25 position, but, for the record, there's different

1 signatures from Judge Duffy. And I spoke with Judge
2 Duffy about them, and he said he signed them, the
3 warrants. And I think he signed three or four
4 warrants instead of making copies of them. I don't
5 think there's anything wrong.

6 But being that as it may, I've talked to
7 Mr. West and there's some confusion as to whether or
8 not he legally signed the warrants, which I've said
9 that's -- he signed them. The question is whether
10 the warrants contained the necessary information
11 which is part of the record. So, therefore, I don't
12 believe they're part of the record or they're
13 relevant to this matter, but Mr. West wants to keep
14 them in the record.

15 Secondly, the affidavit on its face does not
16 talk about the times of the CI's -- or the dates as
17 to which time they got this information. And the
18 law says that you need to know these dates and times
19 because the judge needs to determine whether that
20 information is stale or not. And without that, he
21 didn't have proper grounds to make a determination
22 as to when the CI gave this information.

23 And thus if the motion to suppress was filed,
24 it's more than likely that he would have been
25 granted that motion. And then with the drugs

1 dismissed, his statement is dismissed, and thus the
2 State would have no evidence against him.

3 And his understanding was that he would not
4 have pled absent knowing the outcome of this motion
5 to dismiss; therefore, if he was led to believe it
6 was done already, then he would not have pled
7 guilty. And we would argue that that is the error
8 and there is that prejudice as a result of that
9 error. Thank you, Judge.

10 **THE COURT:** Okay.

11 **MS. OPPENHEIMER:** May it please the Court, Your
12 Honor. Mr. Moore testified that he investigated the
13 warrant and the potential issues early. He did not
14 see any fatal flaws. The signatures he said were
15 merely scrivener's errors, if you could even
16 classify them as such.

17 On the record at the plea, Judge Jefferson
18 specifically said that there would be no issues with
19 the warrant in which a motion to suppress would have
20 been successful. Mr. Moore had very clear grounds
21 not to file that frivolous motion based on his
22 investigation. He thoroughly discussed that with
23 Mr. West. He never said that he had filed it and
24 he -- it had been denied. He explained to him the
25 issues that he had.

1 Your Honor, based on all of this, we'd say that
2 his performance was not deficient. Also, there's no
3 prejudice, as Mr. West clearly waived his rights to
4 trial at the plea. He said he was doing it freely
5 and voluntarily. It was his decision to plead
6 guilty. And we'd say that based on that, there's no
7 prejudice because there's no indication that he
8 would have gone to trial, particularly, with respect
9 to the record, all the information within the record
10 that this was freely and voluntarily made. So we'd
11 ask that you deny the application for
12 post-conviction relief.

13 **THE COURT:** You have the last argument.

14 **MR. MURPHY:** Very briefly, Your Honor. I think
15 this is solely a legal issue, is the Court looks --
16 needs to look at the body of the affidavit and
17 determine whether or not it has legal merit. If it
18 does have legal merit, obviously, Mr. West loses.
19 If it does not have legal merit, as Mr. Moore said,
20 he would have filed a motion to dismiss, which I
21 think would have been -- would have been proper in
22 this case.

23 So whether or not he thought there was merit or
24 not really isn't an issue for this Court, it's to
25 look at that affidavit to determine whether or not

1 the Court could determine the staleness of this.

2 Mr. Moore -- Mr. West went to the plea thinking
3 that the motion was filed and ruled upon, and thus
4 if he did not -- if he was led to believe something
5 incorrect, we don't believe that that would be the
6 grounds for a voluntary plea.

7 **THE COURT:** Well, Mr. Moore says that he did
8 not tell him that a motion had been filed.

9 **MR. MURPHY:** Yes. There is conflicting
10 testimony because Mr. West said that was the case.
11 But I think that regardless of whether or not it was
12 filed, you still look to the body to determine
13 whether or not there was grounds to file that motion
14 to dismiss based on the body of the affidavit.

15 **THE COURT:** Well, I don't know that I'm
16 prepared to say that the motion, if it had been
17 filed, would have been granted. It's not that clear
18 to me that it would have been an open and shut
19 motion to dismiss or suppress.

20 And, you know, I've got his word versus his
21 attorney's word. There was, you know, the lawyer
22 says he did not tell him that a motion to suppress
23 had been filed and heard. In fact, he told him that
24 it had -- well, he says he -- they never discussed
25 the matter as far as whether or not a hearing had

1 been heard. He denies that he told him that a
2 motion had been filed. So it goes without saying
3 that he would not have told him that it hadn't been
4 heard.

5 I don't think that, under the circumstances,
6 that he's met his burden of proving that what the
7 lawyer did in this case fell below an objective
8 level of what an attorney would do. The lawyer said
9 he studied the motion to suppress and that he made a
10 decision that there was not -- did not have merit.
11 And there was a sworn statement that was
12 problematical to Mr. West's case. And --

13 So they had an offer. It was an extremely
14 generous offer, considering what his exposure was.
15 And at trial, he told the plea court judge that he
16 did not have any complaints about what had been done
17 or any motions or anything that needed to be heard.
18 So he was apprised of all of his rights, told the
19 judge he was ready to go forward and -- so he took
20 the plea. So I will have to deny his application.

21 **MR. MURPHY:** Thank you, Judge.

22 **THE COURT:** I'll have the State prepare an
23 order.

24 **MS. OPPENHEIMER:** Yes, Your Honor.

25 END OF PROCEEDINGS

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned, Stacy L. Sheppard, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Charleston County, South Carolina, on the 26th of July, 2018.

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

November 22, 2018

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR
Official Court Reporter

1

11 [1] - 8:6
16-CP-10-6395 [1] - 1:6

2

20 [1] - 3:25
2002 [1] - 3:21
2018 [4] - 1:10, 3:2, 33:14, 33:18
22 [1] - 33:18
25 [1] - 8:15
25-year [1] - 6:19
26 [2] - 1:10, 3:2
26th [1] - 33:14

4

40 [1] - 3:25
4th [1] - 26:4

5

5 [1] - 20:17
50/50 [1] - 23:8

A

able [5] - 5:7, 5:11, 9:4, 9:12, 20:19
absent [1] - 29:4
absolutely [2] - 8:20, 17:15
according [1] - 25:9
account [1] - 21:25
accurate [1] - 33:9
addition [1] - 16:14
additional [1] - 21:2
address [8] - 5:16, 5:18, 15:1, 15:2, 15:9, 15:10, 21:21, 25:15
addressed [1] - 15:9
admitted [1] - 8:4
affidavit [16] - 8:5, 15:19, 15:20, 15:22, 16:1, 16:5, 16:12, 16:14, 17:12, 18:4, 18:23, 28:15, 30:16, 30:25, 31:14
affidavits [1] - 23:12
afternoon [1] - 3:19
age [1] - 10:8
agreeable [1] - 8:14
agreed [1] - 6:21
announced [1] - 26:9
answer [2] - 9:16, 10:10

Antonio [1] - 1:5
ANTONIO [1] - 24:9
anyway [1] - 5:11
appeal [1] - 33:12
appease [1] - 5:22
Applicant [2] - 1:6, 1:17
application [2] - 30:11, 32:20
appointed [2] - 4:2, 12:5
apprised [1] - 32:18
argue [1] - 29:7
argument [2] - 27:21, 30:13
arrest [1] - 7:3
ascertain [1] - 20:14
Ashley [1] - 13:4
assigned [1] - 9:25
Assist [1] - 1:18
assistant [1] - 17:3
Association [1] - 13:7
assume [1] - 16:11
assumed [1] - 16:2
attempts [1] - 11:8
attorney [9] - 4:5, 4:6, 4:10, 4:11, 17:3, 26:9, 27:1, 27:2, 32:8
Attorney [3] - 1:17, 1:18, 1:19
attorney's [1] - 31:21
audio [6] - 7:7, 7:8, 7:10, 7:14, 25:4, 25:6

B

based [12] - 6:24, 6:25, 7:14, 16:5, 17:14, 18:3, 24:23, 25:1, 29:21, 30:1, 30:6, 31:14
baseless [1] - 6:12
basis [3] - 5:10, 5:16, 5:24
beg [2] - 8:21, 27:7
behalf [2] - 7:22, 14:2
below [1] - 32:7
beneficial [1] - 23:13
benefit [3] - 18:9, 23:4, 23:14
best [2] - 7:23, 10:23
better [2] - 15:9, 22:19
beyond [1] - 13:14
bit [1] - 18:11
body [7] - 16:12, 16:13, 25:17, 25:19, 30:16, 31:12, 31:14
bond [1] - 9:25

Brady [3] - 11:14, 11:18, 20:17
briefly [3] - 21:11, 24:6, 30:14
bring [1] - 12:13
bunch [1] - 25:16
burden [4] - 13:11, 13:15, 14:14, 32:6
buy [1] - 7:7
BY [7] - 3:18, 9:23, 19:11, 21:14, 22:14, 24:13, 27:10

C

captioned [1] - 33:12
Carolina [5] - 1:1, 1:11, 3:8, 33:8, 33:13
CAROLINA [1] - 33:3
case [20] - 6:14, 7:4, 9:25, 10:3, 10:8, 11:25, 12:21, 13:9, 17:9, 17:17, 18:14, 18:20, 22:2, 22:16, 22:17, 22:23, 30:22, 31:10, 32:7, 32:12
certainly [2] - 8:7, 18:6
certify [2] - 33:8, 33:15
charges [6] - 13:11, 13:12, 13:17, 19:12, 19:13, 19:15
Charleston [4] - 1:2, 1:11, 19:16, 33:13
CHARLESTON [1] - 33:4
Chris [6] - 4:21, 12:1, 16:25, 17:3, 20:10, 20:13
Christopher [1] - 1:17
CI [4] - 7:7, 19:1, 19:3, 20:6, 20:9, 20:12, 20:14, 24:22, 24:23, 25:1, 25:2, 25:12, 28:22
CI's [1] - 28:16
Circuit [2] - 33:7, 33:12
circumstances [1] - 32:5
CIs [1] - 25:9
classify [1] - 29:16
clear [4] - 6:2, 22:7, 29:20, 31:17
clearly [3] - 20:19, 22:3, 30:3
clerk [1] - 11:20
colorful [1] - 19:19

comfortable [1] - 8:2
coming [2] - 13:5, 21:18
committed [1] - 7:6
Common [1] - 1:1
communication [2] - 12:8, 12:9
complaints [1] - 32:16
complete [1] - 33:9
concerned [1] - 6:18
concerns [3] - 6:8, 8:12, 21:20
confidential [4] - 6:25, 18:22, 20:2, 22:8
confirm [4] - 5:7, 5:11, 9:4, 9:12
confirmed [1] - 9:6
confiscated [1] - 14:16
conflicting [1] - 31:9
confusion [1] - 28:7
consider [1] - 17:12
considering [1] - 32:14
contain [1] - 12:19
contained [1] - 28:10
contention [2] - 5:16, 11:7
continuance [2] - 22:20, 22:25
continuances [1] - 22:18
continuation [1] - 3:8
conversation [7] - 6:10, 8:25, 14:22, 17:5, 17:19, 19:3, 26:7
conversations [8] - 8:13, 12:4, 12:11, 14:6, 17:3, 24:17, 24:20, 24:21
convicted [1] - 13:12
conviction [1] - 30:12
convinced [1] - 5:5
copies [1] - 28:4
correct [20] - 3:11, 4:11, 4:23, 5:17, 6:5, 6:7, 10:2, 11:12, 11:15, 11:16, 12:2, 14:13, 14:18, 15:13, 15:14, 16:7, 16:10, 21:5, 24:15, 27:12
counsel [2] - 10:7, 33:16
counterfeit [1] - 14:9
County [4] - 1:2, 19:16, 19:18, 33:13
COUNTY [1] - 33:4
couple [1] - 5:3
course [3] - 5:19,

5:22, 13:14
court [3] - 17:9, 27:11, 32:15
Court [12] - 1:1, 1:25, 3:16, 9:21, 27:23, 29:11, 30:15, 30:24, 31:1, 33:7, 33:13, 33:22
COURT [22] - 3:3, 3:5, 3:7, 3:12, 9:8, 9:19, 19:7, 21:10, 22:12, 23:16, 23:20, 23:22, 24:1, 24:7, 27:6, 27:17, 27:20, 29:10, 30:13, 31:7, 31:15, 32:22
Court's [2] - 8:21, 27:7
criminal [2] - 3:23, 8:3
CROSS [3] - 2:2, 9:22, 27:9
cross [1] - 27:6
CROSS-EXAMINATION [2] - 9:22, 27:9

D

daily [1] - 5:10
damage [1] - 12:15
damaged [1] - 12:16
date [4] - 4:12, 4:14, 25:2, 25:7
dates [2] - 28:16, 28:18
decision [4] - 8:18, 8:20, 30:5, 32:10
decisions [1] - 16:15
deficient [1] - 30:2
definitely [2] - 7:9, 7:12
denied [4] - 26:1, 26:2, 26:8, 29:24
denies [1] - 32:1
deny [2] - 30:11, 32:20
described [1] - 22:1
DESCRIPTION [1] - 2:15
description [1] - 15:5
detailed [3] - 15:5, 15:23, 21:25
details [1] - 7:1
determination [3] - 5:24, 6:2, 28:21
determine [5] - 28:19, 30:17, 30:25, 31:1, 31:12
different [5] - 5:5, 5:6, 9:5, 21:21, 27:25
differently [1] - 5:8
difficult [1] - 11:5

DIRECT [3] - 2:2, 3:17, 24:12
disagreement [1] - 10:11
disclose [2] - 19:1, 20:12
discovery [8] - 4:18, 4:21, 11:14, 20:16, 20:18, 20:22, 20:25, 21:4
discuss [2] - 13:9, 20:20
discussed [7] - 13:20, 18:5, 20:21, 21:3, 25:13, 29:22, 31:24
discussion [2] - 19:5, 19:9
dismiss [4] - 29:5, 30:20, 31:14, 31:19
dismissed [2] - 29:1
dispute [1] - 9:14
documents [1] - 15:4
done [3] - 18:19, 29:6, 32:16
doubt [1] - 13:14
down [4] - 3:25, 23:9, 23:16, 27:17
drugs [8] - 7:16, 8:6, 14:7, 14:9, 14:16, 28:25
Duffy [3] - 15:12, 28:1, 28:2
duly [2] - 3:15, 24:10
duty [1] - 17:13

E

e-mail [2] - 11:19, 26:19
e-mailed [1] - 11:20
e-mails [3] - 12:4, 12:10, 25:5
early [2] - 18:20, 29:13
element [2] - 6:13, 6:19
elements [3] - 13:16, 13:23, 14:15
empty [1] - 15:3
END [1] - 32:25
enforcement [5] - 7:2, 8:1, 8:9, 21:19, 21:24, 23:10
error [5] - 15:24, 17:7, 22:4, 29:7, 29:9
errors [1] - 29:15
Esquire [1] - 1:17
essentially [1] - 7:1
EVD [1] - 2:15
eventually [4] - 11:11, 14:10, 14:23, 19:21

evidence [3] - 7:12, 29:2, 33:11
exactly [1] - 26:5
EXAMINATION [6] - 3:17, 9:22, 21:13, 22:13, 24:12, 27:9
exhibits [1] - 2:19
expert [2] - 8:24, 9:2
explain [2] - 6:8, 8:12
explained [2] - 12:14, 29:24
exposure [1] - 32:14
extended [1] - 22:24
extremely [1] - 32:13

F

face [1] - 28:15
facing [1] - 8:15
fact [2] - 16:17, 31:23
fairly [1] - 17:8
far [4] - 22:23, 25:1, 25:25, 31:25
fatal [4] - 14:24, 17:16, 22:4, 29:14
fell [1] - 32:7
felt [5] - 8:2, 14:9, 15:23, 17:6, 20:5
few [1] - 10:9
figure [1] - 23:10
file [15] - 6:11, 11:11, 11:13, 11:20, 12:13, 12:19, 12:24, 16:8, 17:13, 18:3, 22:18, 22:20, 25:14, 29:21, 31:13
filed [15] - 17:18, 18:6, 25:24, 26:2, 26:3, 26:10, 28:23, 29:23, 30:20, 31:3, 31:8, 31:12, 31:17, 31:23, 32:2
files [1] - 12:16
filing [2] - 11:16, 24:18
first [2] - 4:5, 4:6
five [3] - 6:17, 6:19, 17:1
five-year [2] - 6:17, 6:19
flaw [5] - 15:25, 16:3, 17:12, 17:14, 17:16
flawed [3] - 16:5, 17:8, 25:20
flaws [3] - 16:12, 16:13, 29:14
Florence [1] - 19:18
following [1] - 3:1
follows [2] - 3:15, 24:11

foregoing [1] - 33:9
forget [1] - 15:1
forth [4] - 12:5, 12:7, 17:20, 23:12
forward [5] - 4:17, 6:16, 6:21, 7:20, 8:17, 32:19
four [2] - 19:14, 28:3
free [2] - 23:20, 27:12
freely [2] - 30:4, 30:10
frivolous [3] - 5:21, 25:14, 29:21
front [2] - 16:20, 19:17

G

General [1] - 1:18
generous [1] - 32:14
grant [1] - 22:24
granted [2] - 28:25, 31:17
grasp [1] - 22:19
grounds [5] - 25:11, 28:21, 29:20, 31:6, 31:13
guess [1] - 20:24
guilty [5] - 8:19, 13:1, 26:11, 29:7, 30:6

H

Hall [1] - 13:7
handled [3] - 18:19, 19:13, 19:14
handling [1] - 11:25
handwriting [2] - 8:24, 9:2
happy [4] - 10:12, 10:14, 10:20, 11:3
harm's [1] - 25:12
harmless [1] - 15:11
Harwell [1] - 19:17
hear [3] - 3:9, 9:9, 27:20
heard [5] - 24:14, 31:23, 32:1, 32:4, 32:17
hearing [8] - 5:25, 16:20, 18:12, 18:19, 19:6, 19:9, 31:25, 33:11
held [1] - 3:1
helped [1] - 17:17
hereby [1] - 33:8
hereto [1] - 33:16
Hicks [1] - 19:17
himself [1] - 9:2
hire [4] - 8:24, 26:23, 26:25, 27:2
hired [1] - 10:6

history [1] - 8:4
hold [2] - 11:5, 11:8
hole [2] - 21:18, 22:16
honestly [3] - 10:21, 20:4, 20:6
Honor [18] - 3:4, 3:6, 3:11, 9:20, 21:12, 22:11, 23:17, 23:25, 24:3, 24:5, 27:15, 27:16, 27:19, 27:22, 29:12, 30:1, 30:14, 32:24
Honorable [1] - 1:14
house [5] - 14:17, 15:5, 15:6, 21:25, 22:1

I

ID [1] - 2:15
identity [2] - 18:22, 20:2
ILA [1] - 13:6
imagine [3] - 5:9, 14:5, 21:1
impact [1] - 17:21
implicate [1] - 7:13
impressed [1] - 6:20
including [1] - 15:4
incorrect [1] - 31:5
indication [2] - 15:17, 30:7
indulgence [2] - 8:21, 27:7
informant [5] - 6:25, 18:22, 20:3, 20:18, 22:8
information [9] - 15:16, 21:2, 25:10, 28:10, 28:17, 28:20, 28:22, 30:9
insisted [1] - 7:19
insistent [1] - 6:16
instead [1] - 28:4
interest [2] - 7:23, 33:16
introduced [1] - 33:11
investigate [1] - 21:16
investigated [1] - 29:12
Investigation [4] - 20:8, 23:9, 26:22, 29:22
involved [9] - 6:13, 10:18, 12:10, 12:11, 14:8, 15:24, 22:22, 22:23, 23:9
issue [12] - 5:3, 5:19, 10:22, 13:20, 14:22, 14:25, 15:9, 17:6,

25:16, 27:24, 30:15, 30:24
issues [11] - 5:1, 5:4, 6:3, 7:4, 9:6, 9:10, 17:4, 27:23, 29:13, 29:18, 29:25
itself [2] - 22:5, 25:18

J

Jason [1] - 1:5
JASON [1] - 24:9
Jefferson [11] - 5:23, 15:8, 16:21, 16:22, 19:3, 19:8, 19:10, 22:21, 25:25, 26:1, 29:17
job [3] - 13:6, 24:24, 24:25
Judge [5] - 5:8, 5:12, 5:22, 19:4, 22:22, 28:19, 32:15, 32:19
Judge [15] - 1:14, 5:23, 15:8, 15:12, 16:21, 19:3, 19:8, 19:9, 22:21, 28:1, 29:9, 29:17, 32:21
judges [1] - 5:6
Judicial [1] - 33:7
July [3] - 1:10, 3:1, 33:14

K

keep [1] - 28:13
Kelly [1] - 1:18
kin [1] - 33:15
kind [1] - 4:17
knowing [1] - 29:4
known [1] - 26:10

L

lab [3] - 14:11, 14:12, 14:13
lack [1] - 15:8
last [3] - 19:7, 22:6, 30:13
late [2] - 22:16, 22:17
law [10] - 3:20, 3:23, 7:2, 8:1, 8:9, 18:25, 21:19, 21:24, 23:10, 28:18
lawyer [3] - 31:21, 32:7, 32:8
lead [1] - 21:19
leads [1] - 21:15
learning [1] - 24:24
least [3] - 14:5, 19:14, 25:8

led [3] - 14:16, 29:5, 31:4
 legal [5] - 12:23, 30:15, 30:17, 30:18, 30:19
 legally [1] - 28:8
 Leon [15] - 4:6, 4:8, 10:3, 10:5, 10:6, 10:12, 10:16, 10:20, 11:1, 11:4, 11:8, 11:9, 11:11, 16:19, 18:17
 level [2] - 12:9, 32:8
 Lietzow [8] - 4:21, 12:1, 16:25, 17:4, 17:20, 18:21, 20:10, 20:14
 likely [2] - 12:22, 28:24
 lines [1] - 5:6
 listed [1] - 5:18
 Litzeow [1] - 7:11
 Longshoremen's [2] - 13:7
 look [3] - 30:16, 30:25, 31:12
 looked [3] - 5:4, 21:22, 21:23
 looks [1] - 30:15
 lose [1] - 23:4
 losses [1] - 30:18
 lost [2] - 17:20, 18:8
 Louis [2] - 3:9, 3:13
 LOUIS [1] - 3:14

M

magistrate [2] - 9:13, 14:23
 mail [2] - 11:19, 26:19
 mailed [1] - 11:20
 mails [3] - 12:4, 12:10, 25:5
 matter [4] - 19:4, 22:19, 28:13, 31:25
 mayor [1] - 11:4
 mean [3] - 13:13, 21:24, 23:8
 meant [1] - 11:22
 meet [1] - 13:8
 meeting [1] - 13:6
 memory [1] - 19:2
 mentioned [3] - 14:1, 14:8, 18:22
 merely [1] - 29:15
 merit [8] - 18:7, 18:8, 21:24, 30:17, 30:18, 30:19, 30:23, 32:10
 message [1] - 26:6
 messages [2] - 12:12,

25:4
 met [4] - 12:20, 13:1, 26:7, 32:6
 midway [1] - 19:21
 might [2] - 18:16, 23:12
 minimum [1] - 8:15
 minimum/maximum [1] - 17:25
 misquote [1] - 26:19
 misstep [1] - 8:10
 moment [1] - 19:24
 monies [1] - 10:16
 Moore [15] - 3:9, 3:13, 3:19, 9:24, 20:1, 23:18, 24:15, 24:17, 26:14, 26:15, 29:12, 29:20, 30:19, 31:2, 31:7
 MOORE [1] - 3:14
 most [2] - 12:22, 22:22
 motion [28] - 5:21, 6:9, 16:4, 16:6, 16:9, 17:14, 17:21, 18:3, 20:19, 24:18, 25:7, 25:24, 26:10, 28:23, 28:25, 29:4, 29:19, 29:21, 30:20, 31:3, 31:8, 31:13, 31:16, 31:19, 31:22, 32:2, 32:9
 motions [1] - 32:17
 move [1] - 6:21
 moved [1] - 11:13
 MR [19] - 3:6, 9:20, 9:23, 19:11, 19:24, 21:8, 22:14, 23:15, 23:19, 24:3, 24:5, 24:13, 27:5, 27:16, 27:19, 27:22, 30:14, 31:9, 32:21
 MS [17] - 3:4, 3:11, 3:13, 3:16, 3:18, 8:21, 9:15, 21:11, 21:14, 22:10, 23:17, 23:24, 27:7, 27:10, 27:14, 29:11, 32:24
 multiple [3] - 12:16, 13:3, 13:9
 Murphy [5] - 1:17, 3:5, 9:17, 9:19, 24:1
 MURPHY [19] - 3:6, 9:20, 9:23, 19:11, 19:24, 21:8, 22:14, 23:15, 23:19, 24:3, 24:5, 24:13, 27:5, 27:16, 27:19, 27:22, 30:14, 31:9, 32:21

N

name [1] - 4:7
 necessarily [1] - 21:17
 necessary [1] - 28:10
 need [2] - 25:7, 28:18
 needed [3] - 23:6, 24:21, 32:17
 needs [2] - 28:19, 30:16
 never [3] - 25:13, 29:23, 31:24
 next [1] - 10:25
 Ninth [1] - 33:7
 NO [1] - 2:15
 notes [2] - 12:20, 12:23
 nothing [1] - 27:16
 November [3] - 26:4, 33:18

O

oath [1] - 24:7
 objection [1] - 23:19
 objective [2] - 17:13, 32:7
 observing [1] - 8:10
 obviously [4] - 6:22, 7:3, 16:8, 30:18
 OF [3] - 32:25, 33:3, 33:4
 offense [1] - 7:6
 offer [16] - 4:16, 6:17, 8:15, 10:23, 11:2, 16:22, 16:24, 16:25, 17:21, 18:9, 23:2, 23:3, 23:4, 32:13, 32:14
 offered [2] - 16:18, 17:23
 office [5] - 6:16, 11:21, 12:15, 13:4, 18:10
 Official [3] - 1:25, 33:6, 33:22
 old [3] - 6:15, 8:6, 18:15
 omitted [1] - 25:3
 one [10] - 5:4, 7:4, 11:6, 12:16, 15:2, 16:17, 19:15, 19:24, 22:6, 24:3
 open [1] - 31:18
 opinion [2] - 9:11, 23:5
 Oppenheimer [1] - 1:18
 OPPENHEIMER [17] - 3:4, 3:11, 3:13, 3:16,

3:18, 8:21, 9:15, 21:11, 21:14, 22:10, 23:17, 23:24, 27:7, 27:10, 27:14, 29:11, 32:24
 order [1] - 32:23
 originally [1] - 14:16
 outcome [1] - 29:4
 outside [2] - 15:23, 21:3
 own [4] - 8:24, 11:16, 20:15, 27:12

P

pad [1] - 12:23
 paid [1] - 9:3
 paperwork [1] - 5:17
 part [3] - 19:7, 28:11, 28:12
 particularly [1] - 30:8
 party [1] - 33:16
 Pause [3] - 8:22, 19:25, 27:8
 pause [2] - 21:7, 24:4
 payment [1] - 13:8
 PCR [1] - 3:8
 percent [2] - 3:25, 4:1
 percentage [1] - 3:22
 performance [1] - 30:2
 person [1] - 7:15
 phone [1] - 26:7
 piece [1] - 7:12
 place [1] - 14:24
 plea [21] - 5:25, 6:1, 6:4, 6:5, 6:19, 6:22, 8:15, 8:17, 13:2, 19:21, 19:22, 25:22, 26:21, 26:24, 27:11, 29:17, 30:4, 31:2, 31:6, 32:15, 32:20
 plead [2] - 8:19, 30:5
 pleading [1] - 27:11
 Pleas [1] - 1:1
 pled [3] - 26:11, 29:4, 29:6
 point [7] - 9:12, 10:6, 10:7, 17:24, 18:17, 19:1, 20:11
 points [1] - 11:6
 position [3] - 20:11, 27:3, 27:25
 positively [1] - 14:11
 possibility [1] - 6:20
 post [1] - 30:12
 post-conviction [1] - 30:12
 potential [2] - 8:15, 29:13

practice [1] - 3:22
 practicing [2] - 3:20, 3:21
 prejudice [3] - 29:8, 30:3, 30:7
 preliminary [3] - 18:12, 18:16, 18:18
 prepare [1] - 32:22
 prepared [3] - 7:19, 20:25, 31:16
 present [1] - 7:25
 presented [3] - 10:23, 18:9, 23:11
 pressing [1] - 16:16
 pretty [3] - 15:11, 15:23, 22:21
 previously [2] - 24:10, 27:23
 prison [1] - 18:1
 problem [2] - 13:20, 25:15
 problematical [1] - 32:12
 problems [1] - 7:4
 procedures [2] - 8:9, 25:9
 proceed [1] - 7:3
 PROCEEDINGS [1] - 32:25
 proceedings [2] - 3:1, 33:10
 proof [2] - 13:11, 14:14
 proper [3] - 16:3, 28:21, 30:21
 property [1] - 5:18
 prosecute [1] - 17:25
 prosecutor [1] - 20:13
 prove [1] - 13:18
 provided [3] - 13:21, 20:22, 20:23
 proving [1] - 32:6
 put [3] - 8:7, 16:23, 26:24
 putting [1] - 8:2

Q

questioning [1] - 8:8
 questions [5] - 9:16, 15:21, 22:10, 27:14

R

raising [1] - 6:8
 readily [1] - 7:22
 ready [4] - 3:3, 3:5, 3:12, 32:19
 really [4] - 10:17, 11:7, 22:23, 30:24

reasonable [1] - 13:14
 reasons [1] - 5:9
 receive [1] - 4:18
 received [1] - 4:22
 Record [1] - 1:6
 record [1] - 4:16,
 25:3, 25:4, 27:25,
 28:11, 28:12, 28:14,
 29:17, 30:9, 33:10
 recross [1] - 22:12
 RECROSS [2] - 2:2,
 22:13
 RECROSS-
 EXAMINATION [1] -
 22:13
 REDIRECT [2] - 2:2,
 21:13
 redirect [1] - 21:10
 references [1] - 12:20
 refill [2] - 11:18,
 11:19
 refresh [1] - 19:2
 refund [1] - 10:16
 regarding [1] - 5:1
 regardless [1] - 31:11
 rejected [1] - 4:16
 relative [1] - 33:12
 released [1] - 23:18
 relevant [1] - 28:13
 reliability [1] - 24:22
 relied [1] - 7:2
 relief [1] - 30:12
 relieved [1] - 10:7
 remember [3] - 12:9,
 12:25, 20:1
 Reporter [3] - 1:25,
 33:7, 33:22
 REPORTER [1] - 19:7
 represent [2] - 4:2,
 16:4
 representation [1] -
 22:17
 representing [1] -
 17:10
 request [7] - 11:14,
 11:17, 11:18, 11:22,
 18:16, 20:16
 requested [1] - 16:21
 require [1] - 16:23
 required [4] - 13:12,
 16:22, 16:24, 23:1
 resolve [1] - 9:7
 respect [2] - 5:4, 30:8
 rest [1] - 23:24
 result [1] - 29:8
 resulted [1] - 19:22
 resumed [1] - 24:10
 retained [7] - 4:2, 4:4,
 4:9, 4:13, 4:15, 9:1,

10:1
 reveal [2] - 22:7, 22:9
 review [2] - 4:24, 7:14
 rights [2] - 30:3, 32:18
 Roger [1] - 1:14
 RPR [2] - 1:24, 33:21
 Rule [1] - 20:17
 ruled [1] - 31:3
 running [1] - 11:4

S

scenario [1] - 14:6
 scrivener's [4] -
 15:24, 17:7, 22:4,
 29:15
 search [7] - 5:1, 6:23,
 13:24, 14:15, 14:19,
 15:20, 24:23
 searched [1] - 5:18
 second [3] - 4:10,
 4:11, 24:3
 secondly [1] - 28:15
 see [4] - 8:9, 16:11,
 16:13, 29:14
 seeing [1] - 25:15
 seeking [1] - 17:25
 selling [2] - 7:16, 8:6
 sense [1] - 8:16
 sent [1] - 21:1
 services [2] - 10:13,
 10:15
 Sheppard [3] - 1:24,
 33:6, 33:21
 short [1] - 16:15
 shut [1] - 31:18
 sign [2] - 15:16, 15:18
 signature [2] - 5:19,
 25:16
 signatures [8] - 5:5,
 9:5, 9:11, 14:22,
 15:12, 27:24, 28:1,
 29:14
 signed [9] - 5:8, 5:12,
 7:5, 9:13, 15:13,
 28:2, 28:3, 28:8,
 28:9
 signs [1] - 5:10
 sitting [2] - 23:9,
 26:19
 situation [1] - 10:4
 SLED [2] - 14:12,
 14:13
 small [1] - 23:2
 so.. [1] - 7:18
 solely [3] - 24:23,
 25:1, 30:15
 solicitor [3] - 4:16,
 11:23, 11:25
 solicitor's [4] - 6:15,

7:10, 11:21, 18:10
 someone [1] - 26:23
 sorry [1] - 26:15
 sought [1] - 17:24
 SOUTH [1] - 33:3
 South [5] - 1:1, 1:11,
 3:8, 33:8, 33:13
 specifically [5] -
 10:19, 11:1, 13:10,
 20:5, 29:18
 specifics [1] - 20:7
 spent [1] - 12:21
 squeeze [1] - 26:18
 squeezed [1] - 26:20
 Sr [1] - 1:14
 stack [1] - 5:9
 Stacy [3] - 1:24, 33:6,
 33:21
 stale [1] - 28:20
 staleness [1] - 31:1
 stand [3] - 8:3, 8:8,
 24:11
 standard [2] - 17:11,
 17:13
 started [1] - 3:21
 state [1] - 18:25
 STATE [1] - 33:3
 State [18] - 1:1, 1:7,
 1:19, 3:13, 4:22,
 7:25, 11:2, 12:14,
 13:15, 13:17, 21:1,
 22:7, 23:23, 23:24,
 25:11, 29:2, 32:22,
 33:8
 State's [2] - 14:3, 14:4
 statement [8] - 7:5,
 7:6, 7:18, 13:21,
 13:23, 21:19, 29:1,
 32:11
 Stavrinakis [3] - 4:7,
 4:8, 4:19
 step [2] - 23:16, 27:17
 still [4] - 24:7, 26:5,
 27:24, 31:12
 struggle [1] - 4:7
 studied [1] - 32:9
 stuff [1] - 15:7
 subpoena [1] - 23:18
 successful [1] - 29:20
 sufficiency [1] - 15:22
 suggested [1] - 10:15
 suite [1] - 12:15
 summarize [1] - 10:24
 support [1] - 15:20
 supported [1] - 15:4
 supporting [1] - 16:1
 supposed [3] - 3:9,
 25:10, 26:16
 suppress [15] - 6:9,
 16:5, 16:6, 16:9,

17:14, 17:21, 18:3,
 24:18, 25:7, 25:24,
 28:23, 29:19, 31:19,
 31:22, 32:9
 suppressing [1] - 5:13
 sworn [6] - 3:15, 7:5,
 7:18, 21:18, 24:10,
 32:11

T

table [4] - 6:18, 7:17,
 16:20, 16:23
 telephone [1] - 12:11
 term [1] - 18:1
 terms [4] - 12:3, 12:8,
 13:23, 15:12
 tested [1] - 14:11
 testified [4] - 3:15,
 14:2, 24:11, 29:12
 testimony [2] - 24:14,
 31:10
 text [3] - 12:11, 25:4,
 26:6
 THE [28] - 3:3, 3:5,
 3:7, 3:12, 9:8, 9:10,
 9:18, 9:19, 19:8,
 21:10, 22:12, 23:16,
 23:20, 23:21, 23:22,
 24:1, 24:7, 24:8,
 27:6, 27:17, 27:20,
 29:10, 30:13, 31:7,
 31:15, 32:22
 themselves [1] - 15:25
 thereafter [1] - 4:9
 therefore [2] - 28:11,
 29:5
 thinking [1] - 31:2
 thoroughly [1] - 29:22
 three [4] - 6:15, 16:19,
 18:15, 28:3
 timeframe [1] - 16:15
 timeframes [1] - 12:19
 timing [1] - 22:17
 to.. [1] - 23:7
 today [2] - 3:9, 12:13
 took [4] - 12:23,
 16:18, 16:19, 32:19
 tossed [1] - 17:8
 totally [1] - 17:23
 trafficking [2] - 19:12,
 19:14
 Transcript [1] - 1:6
 transcript [1] - 33:10
 trial [12] - 6:17, 7:19,
 7:22, 16:16, 19:15,
 23:2, 23:3, 26:17,
 30:4, 30:8, 32:15
 true [1] - 33:9
 truthfulness [1] -

23:11
 try [3] - 20:8, 20:14,
 22:18
 trying [2] - 13:22,
 23:10
 turned [1] - 10:4
 two [2] - 6:15, 27:22

U

ultimately [1] - 8:18
 under [2] - 24:7, 32:5
 undersigned [1] -
 33:6
 understood [1] -
 13:13
 unhappy [1] - 10:22
 unnecessary [1] -
 23:7

V

vacant [1] - 15:3
 vehicle [1] - 16:3
 versus [4] - 3:8, 6:19,
 8:15, 31:20
 video [2] - 7:7, 7:8
 voluntarily [2] - 30:5,
 30:10
 voluntary [1] - 31:6

W

waived [2] - 18:16,
 30:3
 wants [1] - 28:13
 warrant [19] - 5:2,
 5:14, 6:3, 6:24,
 13:24, 14:15, 14:19,
 15:20, 15:21, 16:1,
 17:4, 21:20, 22:5,
 24:23, 25:17, 25:18,
 25:20, 29:13, 29:19
 warrants [10] - 5:10,
 9:13, 15:3, 15:13,
 15:16, 15:24, 28:3,
 28:4, 28:8, 28:10
 was.. [1] - 20:7
 water [1] - 12:15
 West [3] - 1:5, 3:7,
 13:4
 west [37] - 4:3, 4:15,
 4:24, 5:5, 6:9, 6:21,
 7:3, 7:5, 7:13, 7:15,
 8:3, 8:12, 8:23, 9:24,
 10:6, 10:11, 10:19,
 11:7, 12:3, 13:1,
 16:4, 18:2, 18:12,
 20:1, 20:20, 21:3,
 21:15, 24:6, 24:14,

26:13, 28:7, 28:13,
29:23, 30:3, 30:18,
31:2, 31:10

WEST ^[1] - 24:9

west's ^[4] - 8:18,

17:17, 19:13, 32:12

whole ^[1] - 25:6

window ^[1] - 23:3

withhold ^[1] - 25:11

WITNESS ^[5] - 9:10,

9:18, 19:8, 23:21,
24:8

witness ^[2] - 7:24,

24:11

WITNESSES ^[1] - 2:2

witnesses ^[5] - 2:5,

7:25, 14:1, 14:3,
14:4

word ^[3] - 15:9, 31:20,
31:21

Y

year ^[2] - 6:17, 6:19

years ^[7] - 6:15, 8:6,

8:16, 10:9, 16:19,
17:1, 18:15

Young ^[1] - 1:14

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jason A. West,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2016-CP-10-6395

ORDER OF DISMISSAL

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CLERK OF COURT

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed November 30, 2016, by Jason A. West (Applicant). The State (Respondent) made its Return and Partial Motion to Dismiss on June 21, 2017, requesting an evidentiary hearing be held on Applicant's allegations of ineffective assistance of counsel and requesting Applicant's allegation regarding an illegal search warrant be summarily dismissed for failing to state a cognizable claim. An evidentiary hearing into the matter was convened on May 21, 2018, and July 26, 2018, at the Charleston County Courthouse before the Honorable Roger M. Young, Sr. Applicant was present at the hearing and was represented by Christopher L. Murphy, Esquire. Assistant Attorney General Kelly Oppenheimer, of the South Carolina Attorney General's Office, represented Respondent.

During its December 2013 term, the Charleston County Grand Jury indicted Applicant for trafficking cocaine, more than ten grams but less than twenty-eight grams, third offense (2013-GS-10-07264). Louis S. Moore, Esquire, represented him on this charge. Assistant Solicitor Chris Lietzow, of the Ninth Circuit Solicitor's Office, prosecuted the case. On January 7, 2016, Applicant appeared before the Honorable Deadra L. Jefferson and pled guilty to the

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lesser-included offense of trafficking cocaine, more than ten grams but less than twenty-eight grams, first offense. Pursuant to a negotiated sentence, Judge Jefferson sentenced Applicant to a term of imprisonment of five years. Applicant did not appeal his plea or sentence.

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

1. "4th Amendment violation – Respondents did not have a search warrant;" and
 - a. "Search warrant executed at residence does not exist."
2. "6th Amendment violation – Counsel was unlicensed and failed to investigate."
 - a. "Counsels [sic] license suspended at the time of representation/failed to investigate the existence of 2 search warrants."

At the evidentiary hearing, Applicant proceeded forward on the allegation of ineffective assistance of counsel—specifically that counsel was ineffective for failing to investigate the search warrant(s) raised in his application for post-conviction relief.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented the testimony of Assistant Solicitor Chris Lietzow and plea counsel, Louis S. Moore, Esquire, (hereinafter "Counsel"). This Court also had before it a copy of Applicant's plea transcript, the records of the Charleston County Clerk of Court, Applicant's records from the South Carolina Department of Corrections,¹ and the transcript from the first portion of Applicant's post-conviction relief hearing.

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified that he was charged with trafficking cocaine, third offense, and hired Leon Stavirnakis, Esquire to represent him on this charge. He testified that Mr. Stavirnakis obtained a bond reduction for Applicant, though he was already released on bond at the time. He further testified that Mr. Stavirnakis also waived his right to a preliminary hearing, which Applicant discovered through

¹ At the time of this hearing, Applicant was no longer incarcerated.

Counsel. Applicant also testified that he had Mr. Stavirnakis relieved as his counsel, at which time he was up for a plea. He elaborated that he had also retained Counsel at that time to represent him. Applicant testified that the only thing with regards to the search warrant that he discussed with Mr. Stavirnakis was that the warrants had two different signatures. He explained that he informed Mr. Stavirnakis of this after Applicant had fired him.

Applicant testified he received Counsel's name through a friend, and he and Counsel discussed his situation. He elaborated he explained to Counsel the situation with Mr. Stavirnakis and that he was not receiving any information.

Applicant also testified that he takes issue with the search warrant in this case. He elaborated that he had two warrants with different signatures. He further elaborated the warrant describes a confidential informant (CI), who alleged to have bought drugs at Applicant's home, but it does not indicate the time or date of this buy. He testified he did not discuss the CI with Counsel, but he was supposed to look into it. He elaborated Counsel informed him on January 2nd that the CI was willing to testify, but Counsel did not give him any additional information. Applicant further testified he told Counsel he needed to file a motion to suppress. He explained when he asked Counsel to do this, Counsel informed him Judge Jefferson had denied the motion. He further explained this led him to believe Counsel had filed the motion. Applicant also testified at this time, he told Counsel he wanted to proceed to trial, to which Counsel responded he did not want to represent Applicant, therefore Applicant would need to have a public defender represent him. He testified he also asked Counsel about the pre-recorded money, to which Counsel informed him he was unaware of pre-recorded money, but the State had audio of the CI-buy. Applicant elaborated that none of this information was in his discovery, so he asked Counsel about it. He further elaborated that Counsel told him it was irrelevant, and that it was



Applicant's word against the word of the law enforcement officers. Applicant testified Counsel told him given Applicant's prior record, he would not take the chance at trial.

He further testified he told Counsel to investigate the CI, but he did not know who the CI was. He elaborated Counsel was supposed to obtain that information. He testified he and Counsel did not discuss any other defenses, as that was supposed to be Counsel's decision. He explained he told Counsel what happened—that law enforcement had planted evidence. He further explained Mr. Stavirnakis told him the North Charleston Police Department was known to plant evidence.

Applicant also testified other than the information regarding the defective warrant, he also had a defense to the charge, in that there were two different signatures from the magistrate judge on the warrant². He testified Counsel told him he would have to hire an expert to determine whether or not those signatures were the same. He elaborated Counsel indicated Applicant would have to hire the expert. He further testified he later discovered he should have argued this point at a preliminary hearing. He also testified Counsel told him this point was irrelevant, which was a lie. Applicant testified he has never hired a handwriting expert to look at the warrants, but he talked with one. He elaborated Counsel told him not to proceed with this expert, so he never followed through. He further elaborated he has not hired an expert since his plea. Applicant also testified he would not have to be an expert to determine the magistrate judge did not sign the warrants, but he is not a handwriting expert and has no training in handwriting.

He testified Counsel did not present any challenge to the warrant whatsoever, even when Assistant Solicitor Lietzow said there was an issue with the warrant. He further testified had

² Applicant, however, concedes there was no issue with the warrant with respect to the signatures, as he has confirmed with the magistrate judge those were, indeed, his signatures. May 21, 2018 PCR Tr. 29.

Counsel filed a motion to suppress, the charges against Applicant would have been dismissed. He testified Judge Jefferson determined there was a Scrivener's error to the transcript, in that it indicated Applicant was represented by Julius C. Moore, rather than Louis S. Moore.

Applicant testified he indicated he was guilty at the plea. He further testified he indicated to the plea court he was satisfied with the services of Counsel, and Counsel had answered all of his questions. He elaborated he indicated at the plea that Counsel had done everything he asked of him. He further elaborated he had no complaints about Counsel at the plea. Applicant also testified he had to plead guilty because he had no alternative. He explained he had no one who would represent him, as getting another attorney would not look good for him. He further explained he had to do what Counsel told him to do, because Counsel told him the motion to suppress had been denied and he could not argue. Applicant further testified, however, it was his decision to plead guilty, but it was a coerced decision. He elaborated when he decided to plead guilty he was relying on Counsel's word that the motion to suppress had been denied.

Applicant testified he did not recall Assistant Solicitor Lietzow reviewing the facts at his plea, but he did recall Assistant Solicitor Lietzow saying they had potential issues with the warrant. He elaborated the State did not have any specifics, nor discussed any specifics regarding the CI or the transaction. He further elaborated the State indicated on October 1, 2013, North Charleston Police Department detectives arrived at his residence, executing a search warrant. He testified the State indicated this search warrant was based on the CI-buy, but did not specify the date of this transaction. Applicant further testified he did agree with the facts at the plea.

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a smaller 'S'.

He testified he wanted a trial. He further testified he recalled the plea court reviewing each of his rights at trial with him. He elaborated he understood he was waiving those rights by pleading guilty.

He also testified he discussed his case with Counsel after the plea. He explained he had his family call Counsel, and he contacted Counsel approximately three months after his plea. He further explained he asked Counsel for copies of his paperwork. He testified Counsel said he had his file in storage, but Applicant never received a copy of anything, including his sentencing sheet. He further testified when he told Counsel he was going to have his brothers collect his file, Counsel sent him six pieces of paper. He also testified he wrote the Clerk of Court for his file, who responded there was no record. He testified in these attempts, he was looking for the motion to suppress in order to discern the court's reasoning for denying the motion.

After Applicant rested his case, Respondent presented the testimony of Assistant Solicitor Chris Lietzow. Assistant Solicitor Lietzow testified he has been an assistant solicitor for a little over five years, and at the time of Applicant's plea, he would have been working as an assistant solicitor for three years. He testified this was not his first trafficking case and was not his first case in which there was a search warrant executed at a residence.

He further testified North Charleston Police Department indicated a CI had purchased drugs from Applicant's home, which led to them getting a search warrant. Assistant Solicitor Lietzow testified during the plea he mentioned to the plea court there might have been some issues with the search warrant. He elaborated he and Mr. Stavirnakis discussed potential issues with the search warrant, specifically that there may have been some discrepancies in the address. He further elaborated the title page of the warrant had Applicant's address, but a subsequent page had a different address. He explained this address must have remained on the warrant because it



was a boilerplate form, and law enforcement merely forgot to remove it. He further explained there was only one instance in which the address was incorrect, and it was correct everywhere else in the warrant. He testified this first issue was merely a Scrivener's error. Assistant Solicitor Lietzow also testified there was an issue that the search warrant return was outside the ten days required by law. He testified, however, there was no prejudice from this timeframe, as the search warrant was not fatal and would have been upheld. He testified he had multiple conversations with Mr. Stavimakis about the warrant, but could not recall whether or not he discussed the warrant issues with Counsel. Assistant Solicitor Lietzow also testified Mr. Stavimakis indicated he would file a motion to suppress based on the warrant, but one was never filed. He testified Counsel never filed a motion with respect to the search warrant. He testified the potential issues with the search warrant played a part in the offer made to Applicant.

He also testified he received several letters and motions from Applicant while Applicant was incarcerated, in which Applicant alleged there were two different signatures on the warrants. He elaborated he investigated, but the signatures were that of the same judge. He further elaborated there were only slight alterations in the signatures. He explained one signature started a little farther to the left than the other, and on the other a loop was slightly different. He further explained the magistrate judge would have signed multiple copies of the same warrant, and the signatures were that of the same person, but slightly different. He further testified he provided Counsel with a copy of the search warrant in discovery prior to the plea.

Respondent then presented the testimony of Counsel.³ Counsel testified he has been practicing law since 2002. He testified that initially, approximately forty percent of his practice was criminal law, but now about twenty percent involves criminal law. He testified he had handled at least four trafficking cases prior to Applicant's case, at least one of which that

³ This testimony was taken on the second day of the hearing, July 26, 2018.

proceeded to trial. Counsel also testified he was retained by Applicant, but he did not recall the date on which he was retained. He elaborated by the time he was retained, Applicant had already rejected one plea offer for three years on the record, because he was not happy with the offer presented. He further testified by the time he got the case, it was about two or three years old, and the State was insistent on proceeding to trial. Counsel also testified at that point, the five-year offer was off the table. He elaborated Judge Jefferson required the State to make the same offer after Counsel was retained.

He also testified he met with Applicant multiple times, during which they would discuss Applicant's case. He elaborated he explained to Applicant the burden of proof, and Applicant understood the beyond a reasonable doubt standard. He further elaborated he explained the elements of the offense to Applicant. Counsel testified the major problem to overcome with Applicant's case was the fact Applicant had provided a statement to law enforcement.

Counsel testified he received the discovery materials from the State, which he reviewed with Applicant. He explained he made *Brady*⁴ motions via electronic mail to the State, and Mr. Stavirnakis had also made *Brady* motions. He testified Applicant was convinced there were two different signatures on the warrant, but Counsel confirmed the signatures were that of the same magistrate judge. Counsel also testified a handwriting expert would have had to be retained to challenge the signatures; but he confirmed the same magistrate signed the warrants, so there were no issues. He further testified he and Applicant discussed suppressing the search warrant and the evidence therefrom, but there was no basis. He elaborated all of the paperwork had the correct address. He further elaborated he believed it would have been a frivolous motion, and Judge Jefferson confirmed there was no basis for a motion to suppress at the plea. He explained

⁴ *Brady v. Maryland*, 373 U.S. 83 (1963).

Judge Jefferson made this determination at the plea, not prior. Counsel testified he explained this to Applicant.

He further testified he reviewed the search warrant with Applicant. He testified the magistrate judge actually signed the warrant. He also testified there was an issue with address on the warrant, as it was for an empty lot. He explained, however, there were other documents to support how law enforcement got to Applicant's house. He further explained Judge Jefferson addressed this issue, and it was harmless. Counsel also testified there was no question as to the affidavit of the warrant. He elaborated the affidavit was detailed and was not flawed. He further elaborated the affidavit would have been the basis for his motion to suppress, but he did not file such a motion, as there were no flaws in the body of the affidavit.

Counsel also testified this was based off a CI-buy, and Applicant signed a statement indicating he committed this offense. He testified there was an audio recording, and he believes a video recording, of the transaction as well. He elaborated any question with regards to this recording was taken off the table by Applicant's sworn statement. Counsel further testified he discussed obtaining the CI's identity with Applicant, but Applicant believed he knew the CI. He testified he discussed the identity of the CI with the State, which responded it did not have to disclose the identity of the CI.

Counsel testified he had a conversation about the warrant with Assistant Solicitor Lietzow. He testified there was merely a Scrivener's error on the warrant, which would not have required the dismissal of the case. He further testified had there been a flaw in the affidavit of the warrant, he would have filed a motion to suppress. He explained he and Applicant discussed filing this motion, but he never told Applicant he had filed it. Counsel also testified he asked the State to provide him with information about the CI. He explained the State was not required to



provide him with such information. He testified he does not recall having a conversation with Judge Jefferson regarding the CI.

He further testified he would have been prepared for trial, though he did not believe it was in Applicant's best interest. He elaborated there were no witnesses to present, and he would not have been comfortable having Applicant testify. He further elaborated Applicant's prior criminal history concerned him. Counsel further testified Applicant never told him the drugs were someone else's, but Applicant believed the drugs were counterfeit. He explained, however, the drugs were tested, and the results were positive. Counsel testified Applicant did not provide him with any leads to investigate. He elaborated the only lead he had to look into was the warrant, which after researching any issues, had no merit. He further elaborated law enforcement had a detailed account of the house. He also testified at trial his only strategy would have been to question the procedure. He testified he explained all of his concerns with proceeding to trial with Applicant. He explained after that discussed, Applicant agreed the plea offer, rather than facing twenty-five years, made good sense. Counsel further testified it was Applicant's decision to plead guilty.

Respondent rested, and Applicant testified further on his own behalf. Applicant testified he had a conversation with Counsel about filing a motion to suppress, because the search warrant was solely based on the CI. He also testified there was no date or time of the alleged CI-buy. He testified Counsel told him there was an audio recording of the transaction. He further testified the State had no grounds for this warrant, and the body of the warrant was flawed. Applicant also testified Counsel told him he had filed the motion to suppress, which Judge Jefferson had denied. He explained had the motion been filed, he would not have pled guilty. He further



explained he told Counsel he wanted to proceed to trial, but Counsel told him he would have to hire someone else.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "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. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption 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. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*,

300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

After careful review based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel's alleged failure to challenge the search warrant

Applicant alleges Counsel was ineffective for failing to challenge the evidence the State had against Applicant. Specifically, Applicant alleges Counsel was ineffective for failing to file a motion to suppress when the search warrant did not specify the date or time of the CI-buy. As an initial matter, this Court finds Counsel's testimony and the testimony of Assistant Solicitor Lietzow, with respect to this issue, very credible, whereas Applicant's testimony is not credible.

"A guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses." *State v. Thomason*, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000) (citing *State v. Munsch*, 287 S.C. 313, 338 S.E.2d 329 (1985)). Through a plea, a defendant admits all of the elements of the offense charged and waives all defenses, except for the sufficiency of the indictment. *Id.* At Applicant's plea, Applicant indicated the facts as recited by the State were correct. Tr. 9. Furthermore, when given the opportunity to add to the State's rendition of the facts, Applicant indicated he had nothing to add. Tr. 9. Moreover, Applicant indicated to the



plea court he understood by pleading guilty he would not have a jury trial, would not be able to confront the witnesses against him, and would be waiving his right to remain silent. Tr. 10-11. Based on Applicant's solemn admission of guilt at the plea, this Court finds Applicant has failed to establish Counsel was deficient.

Similarly, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. "Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client." *Tucker v. Ozmint*, 350 F.3d 433, 442 (4th Cir. 2003) (quoting *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998)). Moreover, "failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), *abrogated on other grounds* by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003). "The prosecution in a criminal case is ordinarily privileged to withhold from an accused disclosure of the identity of persons who furnished information relative to violations of law to officers charged with the enforcement thereof." *State v. Wright*, 322 S.C. 484, 487, 472 S.E.2d 642, 644 (Ct. App. 1996).

Typically, the State is not required to disclose the identity of a confidential informant who is merely a tipster and has only peripheral knowledge of the crime, but may be required to

disclose the identity of an informant when he is an active participant in the crime. *State v. Bultron*, 318 S.C. 323, 330, 457 S.E.2d 616, 620 (Ct. App. 1995).

Here, Counsel testified Applicant did not give him any independent leads or witnesses to investigate, but Counsel did research any issues with respect to the search warrant. As outlined above, Counsel attempted to obtain the identity of the CI from the State, but the State was not required to disclose that information. He further testified Applicant believed he knew who the CI was, thereby rendering the disclosure of such a witness moot. Indeed, Applicant admitted he did not provide Counsel with any leads to investigate, other than the CI.

Moreover, even if the search warrant excluded the date and time of the drug transaction, a defendant "must make a preliminary showing [law enforcement] included a deliberate falsehood or recklessly disregarded the truth in an effort to make the affidavit misleading to the magistrate." *State v. Gore*, 408 S.C. 237, 245-46, 758 S.E.2d 717, 721 (Ct. App. 2014) (citing *State v. Missouri*, 337 S.C. 548, 554, 524 S.E.2d 394, 398 (1999)). Applicant has failed to make such a showing. In fact, Counsel testified although the address on the warrant was that of a vacant lot, law enforcement provided detailed accounts of Applicant's home. He further testified based on his investigation, there were no flaws in the body of the affidavit supporting the warrant. Accordingly, this Court finds Applicant has wholly failed to meet his burden, and this allegation must be denied and dismissed with prejudice.

A handwritten signature in black ink, appearing to be a stylized 'M' or 'W' with a long diagonal stroke extending from the bottom right.A handwritten signature in black ink, appearing to be a stylized 'P' or 'R' with a long diagonal stroke extending from the bottom right.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this _____ day of 6/4, 2018.

 ROGER M. YOUNG, SR.
 Presiding Judge
 Ninth Judicial Circuit

CLB, South Carolina

BMW20131007520

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2013033155

ARREST WARRANT NUMBER

2013A1010205385

DATE OF ARREST

October 2, 2013

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date:

DEC 10 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1007264

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

December Term 2013

THE STATE

vs.

JASON ANTONIO WEST

DOB: [REDACTED]

B/M

Indictment for

Trafficking Cocaine

FILED12/12/2013 11:38:33 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on December 9, 2013 the Grand Jurors of Charleston County present upon their oath:

Trafficking Cocaine

That in Charleston County, South Carolina, on or about October 2, 2013, the Defendant, JASON ANTONIO WEST, unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: cocaine, in excess of 10 grams but less than 28 grams; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

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


BURNS WETMORE
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

JASON ANTONIO WEST

AKA:

Race: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED]SID# SC00819397*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or☒ PLEADSTO: Traff Cocaine 10g but <28g 1stIn violation of § 44-53-0370(e)(2)(a)1 of the S.C. Code of Laws, bearing CDR Code # 0278☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☐ As indicted,☒ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☒ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Chris Lietzow, Assistant Solicitor

100521
SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: _____ \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)

\$100

\$100.00

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$100.00

§14-1-211 (A)(2)(DUI Surcharge)

\$12

\$12.00

§56-5-2995 (DUI Assessment)

\$25

\$25.00

§56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

\$500

\$500.00

§14-1-212 (Law Enforce. Funding)

\$25

\$25.00

§14-1-213 (Drug Court Surcharge)

\$150

\$150.00

§50-21-114 (BUI Breath Test Fee)

\$50

\$50.00

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$40.00

Proviso 90.5 (SCCJA Surcharge)

\$5

\$5.00

3% to County (if paid in installments)

\$

\$8.40

TOTAL

\$288.40

Clerk of Court/Deputy Clerk: Annalyn CroyCourt Reporter: Denise LanderPresiding Judge: W. JeffersonJudge Code: 2128Sentence Date: 1/7/16