

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to York County

S.C. SUPREME COURT

Honorable William A. McKinnon, Circuit Court Judge

BRETT THOMAS CURTISS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001767

APPENDIX

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Appellate Defender

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ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

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State of South Carolina.,) In the Court of General
) Sessions for York
)
 County of York.) Case No.: 2015-GS-46-01787
) 2016-GS-46-02653
) 2016-GS-46-02655

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
) Guilty Plea
 Brett Thomas Curtiss.,)
)
 Defendant.)
)
 _____)

July 10, 2017
 York, South Carolina

B E F O R E:

The Honorable J. Cordell Maddox, judge.

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

Ms. Jennifer Susan Kottka Colton
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 Sixteenth Circuit Solicitor's Office
 1675-1A York Hwy.
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 Attorney For the Defendant

Wanda S. Nelson, CVR-M
 Circuit Court Reporter
 Sixteenth Judicial Circuit
 Union and York Counties
 To the Honorable Daniel D. Hall

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

No witnesses were called.

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I-N-D-E-XE-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD.</u>
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No Exhibits were received into the record.

1 (COURT IN SESSION IN THE MATTER OF THE STATE VERSUS
2 BRETT THOMAS CURTISS MONDAY, JULY 10, 2017 AT 03:16 PM.)

3 SOLICITOR NEWKIRK: Can we have Brett Curtiss from the
4 holding cell, please?

5 (DEFENDANT, BRETT CURTISS, WHITE MALE, ENTERS
6 COURTROOM.)

7 THE COURT: Yes, sir.

8 SOLICITOR NEWKIRK: Thank you, your Honor. May it
9 please the court. Ryan Newkirk from the Solicitor's office
10 handling this matter for Senior Solicitor Jennifer Colton
11 also of our office.

12 The next matter for your consideration is State versus
13 Brett Curtiss. Mr. Curtiss is present in the courtroom
14 with his appointed counsel Mr. Derek Chiarenza of the York
15 County Bar upon three True Bill Indictments No. 2015-GS-46-
16 0-1-7-8-7, distribution or possession with intent to
17 distribute methamphetamine second offense which carries
18 five to thirty years and the possibility of a fine of
19 Thirty thousand dollars.

20 Indictment 2016-GS-46-2-6-5-3 originally trafficking
21 in methamphetamine twenty-eight grams but under a hundred
22 grams third offense; however, Mr. Curtiss is pleading to
23 the lesser included offense of trafficking methamphetamine
24 twenty-eight grams but under a hundred grams second offense
25 which is a statutory felony. It carries a minimum of seven

1 years up to thirty years.

2 And lastly Indictment 2016-GS-46-2-6-5-5 one count of
3 possession with intent to distribute marijuana first
4 offense. That carries up to five years and the possibility
5 of a fine of up to Five thousand dollars.

6 The negotiation in this case, your Honor, is for a
7 nine year active sentence. Mr. Curtiss has served one
8 hundred and sixteen days of incarceration.

9 Additionally, at the conclusion of the plea, the State
10 will be dismissing two related proximity offenses to these
11 charges.

12 THE COURT: Okay. All right, Mr. Curtiss, I need to
13 ask you some questions. If you need to stop me so you can
14 ask me a question and ask your lawyer a question that will
15 be fine. Do you understand that?

16 MR. CURTISS: Yes, sir.

17 THE COURT: How old are you?

18 MR. CURTISS: Forty-seven.

19 THE COURT: And how far did you go in school?

20 MR. CURTISS: I have a college education.

21 THE COURT: Okay. Where did you last work?

22 MR. CURTISS: TP in Rock Hill.

23 THE COURT: You've got trafficking charges. How did
24 you get started on this stuff?

25 MR. CURTISS: When I was young. It's just a -- its

1 part of being addicted. Its not necessarily the
2 trafficking part. It's the possession to use as opposed
3 for distribution.

4 THE COURT: All right. Are you married?

5 MR. CURTISS: Yes, sir.

6 THE COURT: Do you have children?

7 MR. CURTISS: Yes, sir.

8 THE COURT: How old?

9 MR. CURTISS: My oldest is twenty-nine and I have two
10 step children that are twelve and sixteen.

11 THE COURT: Okay. All right, has anybody threatened
12 you in any way or promised you anything to get you to plead
13 guilty today?

14 MR. CURTISS: No, sir.

15 THE COURT: Do you understand that if you want to
16 plead guilty you have to wave your Constitutional rights?

17 MR. CURTISS: Yes, sir.

18 THE COURT: And in particular are you waiving your
19 right to a jury trial?

20 MR. CURTISS: Yes, sir.

21 THE COURT: Do you waive your right to remain silent?

22 MR. CURTISS: Yes.

23 THE COURT: Are you waiving your right to put up a
24 defense to these charges?

25 MR. CURTISS: Yes, sir.

1 THE COURT: You also have the right to require the
2 State to bring in witnesses to testify and prove their case
3 against you and allow your attorney to cross-examine them.
4 That's your right to confrontation, you waiving that right
5 too?

6 MR. CURTISS: Yes, sir.

7 THE COURT: Have you had plenty of time to speak to
8 your lawyer?

9 MR. CURTISS: Yes, sir.

10 THE COURT: And has your lawyer done everything you
11 ask him to do?

12 MR. CURTISS: Yes.

13 THE COURT: Are you satisfied with his services?

14 MR. CURTISS: Yes, sir, I am.

15 THE COURT: Okay. And have you had plenty of time to
16 speak to your client and you think he understands the
17 elements of these charges and his waiver of Constitutional
18 rights?

19 MR. CHIARENZA: Yes, I do, your Honor.

20 THE COURT: All right, Mr. Curtiss, you want to plead
21 guilty to these three charges?

22 MR. CURTISS: Yes, sir.

23 THE COURT: And are you guilty?

24 MR. CURTISS: Yes, sir.

25 THE COURT: Okay. Yes, sir.

1 SOLICITOR NEWKIRK: Thank you, your Honor.

2 These Indictments come from two different dates.
3 factually. In chronological order on the 26th of March of
4 2015 officers with the Drug Enforcement Unit received a tip
5 htat the Defendant was located at 1811 Keith Drive in Rock
6 Hill, York County, South Carolina. At that time he had an
7 outstanding commitment order.

8 Officers saw the Defendant speaking with individuals
9 in a driveway and approached him. Officers spoke with the
10 individuals that were standing in the drive way and they
11 told offices that they were there to purchase
12 methamphetamine.

13 Officers then searched the home with consent from the
14 home owner and recovered methamphetamine from the bathroom
15 from where the Defendant was located. The Defendant at
16 that time told officers that the meth was his. There was
17 also additional scales and some text message that indicated
18 drug sales.

19 Additionally, your Honor, for the following two
20 Indictments, on May the 23rd of 2016 officers resopnded to
21 2055 McGee Road in Rock Hill, York County, South Carolina
22 to assist escorting a DSS employee regarding reports that a
23 nine year old was living in an apartment where meth was
24 being produced. A resident gave consent for officers to
25 look for the apartment and upon doing so they saw in plain

1 view a marijuana plant and methamphetamine.

2 Both the Defendant and a co-defendant were located in
3 the apartment. Officers conducted a search and found
4 forty-three grams of methamphetamine in the Defendant's
5 bedroom as well as additional marijuana, digital scales and
6 other indicia of intent to distribute.

7 Those would be the substantial facts related to the
8 case, your Honor. I failed to mention that the Defendant
9 was picked up on a series of Bench Warrants, numbers
10 2017B4600100130, 31, 32, 33, 88 and 89. At the conclusion
11 of the plea, your Honor, I would ask that those bench
12 warrants be lifted so the Defendant may proceed to the
13 Department of Corrections.

14 THE COURT: Yeah, I'll do that.

15 How many days have you been in jail?

16 Have y'all figured that out?

17 MR. CHIARENZA: One hundred and sixteen days.

18 SOLICITOR NEWKIRK: My apologies, your Honor, to
19 interrupt. Additionally he has a prior drug record that
20 would make these offenses against him.

21 THE COURT: Okay. But he does get one hundred and
22 sixteen days credit; is that right?

23 MR. CHIARENZA: Yes, your Honor, ---

24 SOLICITOR NEWKIRK: Yes, sir.

25 MR. CHIARENZA: --- on these charges.

1 THE COURT: All right, do you admit to all those
2 facts?

3 MR. CURTISS: Yes, sir.

4 THE COURT: Okay. Yes, sir, anything?

5 MR. CHIARENZA: Your Honor, just briefly for the
6 record. Obviously no mitigation as it's a negotiated plea,
7 but I just want the record to reflect that we did
8 thoroughly review the case for, you know, whether or not to
9 go to trial. Brett is really an intelligent guy. He
10 understands what we were looking at. He ask me some very
11 -- very perceptive questions about the evidence that was
12 here. A lot of this would have come down to circumstantial
13 evidence. He had a co-defendant who has pled, a forty-four
14 gram of meth case. I've explained to him that just because
15 one person has pled to that that doesn't preclude the
16 possibility that he could also be convicted at trial under
17 the particular circumstances that we had.

18 And just one, this is very unrelated to what we're
19 doing here in York County but I did tell Brett that I would
20 put it on the record, he has a pending charge in Lancaster
21 County. I spoke to the Circuit Public Defender there, who
22 is Mike Lifsey, last week. His Circuit Public Defender is
23 aware of that pending charge. It's their belief that once
24 this is concluded here that they will be able to resolve
25 that case either by dismissal or for some concurrent time.

1 It's not gonna add any time to his sentence.

2 THE COURT: Okay.

3 MR. CHIARENZA: So, I just wanted that to be on the
4 record that Brett is going forward today with the
5 understanding that I have had that conversation with his
6 Public Defender and I relayed that to him.

7 THE COURT: Okay. All right. Well, I mean you maned
8 up to these things but when you're forty-six it's time to
9 -- I mean your life expectancy ain't much ---

10 MR. CURTISS: Yes, sir.

11 THE COURT: --- if you don't change. I mean that's
12 just it. All right, I'll accept the plea.

13 Sentence on each of 'em's nine years to run
14 concurrent, credit for a hundred and sixteen days.

15 Good luck to you.

16 MR. CHIARENZA: Thank you very much, your Honor.

17 SOLICITOR NEWKIRK: Thank you, your Honor.

18 THE COURT: Thank you.

19 (END OF TRANSCRIPT OF RECORD.)
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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the General Sessions Court for York County, South Carolina, on the 10th day of July, 2017.

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

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

My Commission Expires: 1/21/2021

DATE: February 6 / 2018

FORM 5

STATE OF SOUTH CAROLINA)

County of YORK)

2017CP4603819

IN THE COURT OF COMMON PLEAS

BRETT THOMAS CURTISS #373259)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS READ CAREFULLY

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

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

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

1. Place of detention KIRKLAND CORR. FACILITY, Columbia, SC
2. Name and location of Court which imposed sentence YORK COUNTY GENERAL SESSIONS, York S.C. 29745
3. Name(s) of co-defendant(s) (if any) DAVIDA Dawn PUYAR, John EDWARD MALONEY, JARQUELINE ROSE SHORT (MAGISTRATE - POSS. OF MARIJUANA)
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-GS-46-02653 TRAFFICKING 28-100 gm 2nd

DECLERKED FILE COPY
2017 DEC 27 AM 10:30
FILED-RECEIVED
2017 DEC 27 AM 10:08
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

(b) 2010-GS-46-02655 P.W.I.D MARIJUANA 1st (15 Grams)

(c) 2015-GS-46-01787 P.W.I.D. METH 2nd (0.4 Gram)

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

(a) 7/10/17 9 Years

(b) 7/10/17 9 Years

(c) 7/10/17 9 Years

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

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

NO

8. If you answered Ayes@ to (7), list:

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

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) WAS NOT INFORMED THAT I COULD APPEAL!

- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: PLEASE SEE ATTACHED NOTARIZED PAPERS:
- (a) REFERENCE MATERIAL PAGES (1-3)
- (b) STATEMENT OF ISSUES PAGES (A & B)
- (c) ARGUMENTS, AND RELIEF (PAGES 1-15 AND EXHIBITS ²⁴ B.T.S.)
11. State concisely and in the same order the facts which support each of the grounds set out in (10): PLEASE ATTACHED NOTARIZED PAPERS:
- (a) REFERENCE MATERIAL PAGES (1-3)
- (b) STATEMENT OF ISSUES PAGES PAGES (A & B)
- (c) ARGUMENTS, AND RELIEF (PAGES 1-15 AND EXHIBITS 24)
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. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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 ADVISED OF ABILITY TO APPEAL + ONE NOT FILED
 (b) DID NOT HAVE DOCUMENTATION OR KNOW THE LAW TO PRESENT IT
 (c) COUNSEL WAS INEFFECTIVE

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? N/A
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (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. HARRY COLLINS, ROCK HILL SC. 29730
 ii. DEREK CHIAPRENZA, #BAR65326
422 E. MAIN ST. ROCK HILL SC 29730
 iii. N/A
 (b) the proceedings at which each such attorney represented you:
 i. ARRAIGNMENT
 ii. PLEA AND SENTENCING
 iii. N/A

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

PLEASE ATTACHED PACES NOTICIZED (PAGES 14 & 15)

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 CHARLE)

VERIFICATION

I, BRETT T. CURTISS, 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.

Brett T. Curtiss

SWORN to and subscribed before me this 18
day of December, 2017.

Melissa Ortiz (L.S.)
Notary Public

My Commission Expires: Dec 18, 2025

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

I, Brett T. Certiss, 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.

Brett T. Certiss
Applicant

SWORN or affirmed to and subscribed before me this
18 day of December, 2017.

Melissa Sprig
Notary Public

My Commission Expires: Dec. 01, 2025

REFERENCE MATERIAL

- ISSUES, STATEMENT OF (A AND B PAGES) ARGUMENT/RELIEF (1-15)
- AFFIDAVITS: 2016A4610201117, 2016A4610201119 AND 2015A4610200485

- ARREST WARRANT: 2016A4610201117 DATED 5/24/2016
44-53-0375(C)(1)(a) - TRAFFICKING IN METH - 10g BUT LESS THAN 28g, 2nd
2016A4610201119 DATED 5/24/2016
44-53-0370(b)(2) - MANUFACTURE, POSSESSION OF OTHER SUB. SCH I, II, III
OR FLUNITRAZEPAM OR ANALOGUE, (U.I.T.D) - 1st (15 Grams)
2015A4610200485
44-53-0375(b)(2) - DISTRIBUTION, ETC. OF METH - 2nd (0.4 Grams/ACTUAL)

BENCH WARRANTS 2017B4600100130, 2017B4600100132;

- BENCH WARRANT NO: 2017B4600100130
CASE NO. 2016GS4602LS3 - 2016A4610201117
TRAFFICKING IN METH - 10g OR MORE, BUT LESS THAN 28g - 1st (11 Grams)
DATE ISSUED: FEBRUARY 14, 2017
DATE SERVED: MAY 8, 2017

- BENCH WARRANT NO: 2017B4600100132
CASE NO. 2016GS4602LSS - 2016A4610201119
DRUGS/MANUFACTURE, POSSESSION OF OTHER SUB. IN SCH I, II, III OF
FLUNITRAZEPAM OR ANALOGUE, (U.I.T.D) - 1st (15 Grams)
DATE ISSUED: FEBRUARY 14, 2017
DATE SERVED: MAY 8, 2017

REFERENCE MATERIAL

- INDICTMENT: TRAFFICKING IN METHAMPHETAMINE,
DOCKET NO. 2016-GS46-02653
A/W NO. 2016A461070117
S.C. CODE § 44-53-375(C)
DATED: AUGUST 18, 2016
- INDICTMENT: POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA
DOCKET NO. 2016-GS46-02655
A/W NO. 2016A461020119
S.C. CODE § 44-53-370
DATED: AUGUST 18, 2016
- INDICTMENT: POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE
DOCKET NO. 2015-GS-46-01787
A/W NO. 2015A4610200485
S.C. CODE § 44-53-375(B)
DATED: JUNE 18, 2015
- SENTENCING SHEETS:
 - TRAFFICKING CRACK COCAINE 28g ORANGE POW / 9 Yrs
S.C. CODE 44-53-375(C)
SIGNED BY JUDGE MANUEX #2131 7-10-2017
SIGNED BY AND FILLED IN 7-30-2017, JENNIFER COLTON #68591
(20 DAYS AFTER DEFENDANT SENTENCED)
 - POSSESSION WITHIN MARIJUANA (SCHEN. I-II-III) 1st / 9 Yrs
S.C. CODE 44-53-370

REFERENCE MATERIAL

SIGNED BY JUDGE MAROX #2131, 7-10-2017

SIGNED BY AND FILLED IN, 7-30-2017, JENNIFER COLTON #68591
(20 DAYS AFTER DEFENDANT SENTENCE)

- POSSESSION U.I.T.V. METHAMPHETAMINE 2nd / 94RS
S.C. CODE 44-53-375(B)

SIGNED BY JUDGE MAROX 7-10-2017

SIGNED BY AND FILLED IN, 7-10-2017, JENNIFER COLTON #68591
(SAME DAY AS DEFENDANT SENTENCE)

- GENERAL SESSION CASE FILE & SUMMARY PAGE 1-3 (3 PAGES)
- CASE REPORT SUMMARY: THOMAS W. P PAGE 2 OF 3 (1 PAGE)
- YORK COUNTY SHERIFFS OFFICE FORENSIC / LABORATORY SHEET
INCIDENT NO. 201600018219 BY D.H. CLEVENGER (2 PAGES)
- REQUEST FOR LABORATORY EXAM - APE LOG (2 PAGES)
- YORK COUNTY SHERIFFS OFFICE FORENSIC (LABORATORY) SERVICES
CASE # 201600018219, REPORT SUBMISSION 6/21/2016 - (ALMOST
30 DAYS AFTER ARREST - WHY?) EXHIBIT 2 (2 PAGES)
- REQUEST FOR LABORATORY EXAM (BAGGIES FOR PRINTS) CASE NO.
201500009419 (1 PAGE)
- YORK COUNTY SHERIFFS OFFICE FORENSIC (LABORATORY) (RESULTS) SERVICES
EXHIBIT 1 (1 PAGE) (TOTAL WEIGHT 0.40)
- LETTER FROM CLERK OF YORK COUNTY COURT OCTOBER 10, 2017
IN S.C.D.C. 7-30-2017 NOT PRESENT WHEN SENTENCE SHEETS
ALTERED / FILLED IN, REQUEST FOR DOCUMENTS, AND VERIFICATION
ATTORNEY DEEKE CHURCHMAN #65376 FAILED TO FILE APPEAL AS
REQUESTED (IN EFFECTIVE COUNSEL / BRENDA CLAYTON, ET AL)

DEFENDANT RESPECTFULLY REQUESTS THIS HONORABLE COURT TO ASSES THE CIRCUMSTANCES OF THE CASE, APPOINT EFFECTIVE COUNSEL AND GRANT APPLICATION FOR PCR.

HERE DEFENDANT WAS WITHOUT EFFECTIVE COUNSEL AND PRODUCTION OF BRADY S/LO MATERIAL IN THE EXISTANCE OF INDICTMENTS, EVIDENCE, STATEMENTS, PRE-LOG REPORTS, PRE-LAB REPORTS, AND LABORATORY REPORTS OF ACTUAL EVIDENCE. DEFENDANT DID NOT KNOW THAT HIS ACTIONS ACTUALLY DID/DID NOT FIT THE CHARGE FOR WHICH HE WAS SENTENCED UNDER BY NEGOTIATION OF COUNSEL NERIK CHIRAPAZA S.C. BAR# 65326.

WHERE DEFENDANT BELIEVED THAT HE WAS PLEADING TO TRAFFICKING 1ST 10-28 GRAMS AS ARRESTED AND CHARGED. WHERE HE WAS NOT KNOW THE ACTUAL LAWS AND PENALTIES, EXCEPT FOR WHAT WAS REPORTED TO HIM FROM AN EFFECTIVE COUNSEL.

WHERE THE STATE CREATED BIAS AND PREJUDICE BY VIOLATING THE PROCESS RIGHTS OF DISCLOSURE OF BRADY S/LO MATERIAL AND ALTERING INDICTMENTS AND ENFORCING A NEGOTIATED PLEA WITH DEFENDANT'S COUNSEL WHERE THE NEGOTIATED PLEA FOR TRAFFICKING IS FOR A GREATER OFFENSE AND PENALTY FOR WHICH DEFENDANT BELIEVED HE HAD TO DEFEND AGAINST.

WHERE THE CHARGE UNDER D.U.I.D. MARIJUANA 1ST (15 GRAMS) IS CHARGED AS A FELONY AND GIVEN A GREATER SENTENCE THAN IS APPLICABLE UNDER CONSTITUTIONAL LAW. PLEA AGREEMENTS ARE GIVEN GREATER SCRUTINY THAN IT WOULD APPLY TO A COMMERCIAL CONTRACT BECAUSE A DEFENDANT'S FUNDAMENTAL AND CONSTITUTIONAL RIGHTS ARE IMPLICATED WHEN HE IS ENFORCED TO PLEAD GUILTY BY REASON OF A

PLEA AGREEMENT; AT BOTTOM, WHERE A PLEA REST IN ANY SIGNIFICANT DEGREE ON A PROMISE OR AGREEMENT OF THE PROSECUTOR, SO THAT IT CAN BE SAID TO BE PART OF THE INVOLVEMENT OR CONSIDERATION, SUCH PROMISE MUST BE FULFILLED.

HERE U.S. CONST. AMEND 5, PROSECUTOR VIOLATED AUE PROCESS BY REQUIRING DEFENDANT, IN PLEA AGREEMENT, TO PLEAD GUILTY TO A MORE OFFENSE GREATER THAN CHARGED WITH, TO A MORE OFFENSE THAT CARRIES MORE TIME THAN WHAT THE STATUTE AND LEGISLATIVE INTENT PROVIDED, U.S. V. BORE (92 FED. APPX. 105 (5-17-2017), U.S. V. WARNER 870 F.3d 128 (2016), THIS "SERIOUSLY AFFECTED" THE FAIRNESS, INTEGRITY, OR PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS." U.S. V. CLAND, 507 U.S. 725, 732; 113 S. Ct. 1770, 123 L. Ed 2d 508 (1993). ALSO, (FEDERAL CIVIL RULES - RULE 11(b)(5)(H), 11(b)(1)(C)(i)(c), 11(c), 11(h)

WHERE BY LANGUAGE OF THE LEGISLATURE ANYTHING UNDER ONE (1) GRAM(04) IS TO BE CHARGED AS A MISDOMANOR UNDER S.C. LAW 44-53-370(A) IN RESPECT TO THE SPECIFIC INCIDENT. WHERE S.C. LAW 44-53-370(B) IS FOR ONE (1) GRAM OR MORE TO SUBSTANTIATE P.W.I.D.

DEFENDANT WAS NOT INSTRUCTED AS TO HIS RIGHT TO APPEAL ANY DECISION OF THE COURT, INCLUDING SENTENCING OF PLEA BY THE COURT OR DEFENDANT'S COUNSEL WHERE DEFENDANT IS TO BE INSTRUCTED OF HIS RIGHT TO APPEAL. WHITE V. STATE 263 S.C. 110, 208 S.E. 2d 35 (1974); CHERY V. STATE 310 S.C. 115, 386 S.E. 2d 624 (1989).

HERE WITHIN IN PLEASE FIND THE FOLLOWING ISSUES, ARGUMENTS AND FACTUAL BASIS FOR POST CONVICTION RELIEF. THE DEFENDANT STATES THE FOLLOWING IN SUPPORT OF HIS PCR APPLICATION:

DEFENDANTS REPRESENTING COUNSEL, DERICK CHIRAREAZA - SC BAR #05326 WAS INEFFECTIVE IN THE ASSISTANCE OF COUNSEL AS TO REPRESENTING DEFENDANTS ON AN ARRAY OF ISSUES IN THE PCR APPLICATION BEFORE THIS HONORABLE COURT.

COUNSEL FAILED TO ACQUIRE - PROVIDE ALL BRADY STAFF & MATERIAL AFFORDED UNDER THE PROTECTION OF THE U.S CONSTITUTION AND DUE PROCESS LAWS.

COUNSEL FOR DEFENDANT PREJUDICED DEFENDANT IN TO ACCEPTING A NEGOTIATED PLEA AGREEMENT UNDER HIS DIRECTION AND ADVISEMENT THAT WAS NOT FAVORABLE TO THE DEFENDANT BASED FROM THE STATES OWN EVIDENCE. WHERE IF DEFENDANT HAD HAD THE ACTUAL DOCUMENTATION OF THE STATES CASE (CONVICTION, EVIDENCE, PRE-LAB, LAB REPORTS) THERE IS REASONABLE PROBABILITY THAT BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, THE RESULT OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT, (AFLER V. CORDER, 182 L.Ed 2d 398 (2012)).

THE 6TH AMENDMENT REQUIRES EFFECTIVE ASSISTANCE OF COUNSEL AT CRITICAL STAGES OF CRIMINAL PROCEEDINGS, NOT SIMPLY TO PROTECT DEFENDANT AT TRIAL. DEFENDANTS HAVE THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AT EVERY STAGE OF THE COURT PROCESS INCLUDING PROPER COLLECTION OF DOCUMENTS, STATEMENTS OF OTHER DEFENDANTS, TANGIBLE OBJECTS, ANY RESULTS OF SCIENTIFIC TESTS OR EXPERIMENTS WHICH ARE WITHIN THE POSSESSION, CUSTODY OR CONTROL OF THE PROSECUTION, AS EVIDENCE IN CHIEF INTENDED FOR

ANY PROCEEDINGS LEADING UP TO TRIAL, INCLUDING TRIAL, WHICH ARE MATERIAL TO THE REPRESENTATION OF THE DEFENDANT'S DEFENSE. THE EXISTENCE OF WHICH IS KNOWN, OR BY THE EXERCISE OF DUE DILIGENCE MAY BECOME KNOWN, TO THE ATTORNEY FOR THE PROSECUTION, AND WHICH ARE MATERIAL TO THE REPRESENTATION OF THE DEFENSE OR ARE INTENDED FOR USE BY THE PROSECUTION AS EVIDENCE IN CHIEF DURING OR FOR ANY PART OF THE CASE UP TO TRIAL, INCLUDING PLEA NEGOTIATIONS AND AGREEMENTS. PLEA AGREEMENTS ARE GRANTED IN CONTRACT LAW, AND BOTH PARTIES TO A PLEA AGREEMENT SHOULD RECEIVE THE BENEFIT OF THEIR BARGAIN, UNITED STATES V. TATE, 845 F.3d 571 (4th Cir. 2017) AND CONTRACT TERMS MUST BE CONSTRUCTED TO GIVE MEANING AND EFFECT TO EVERY PART OF THE CONTRACT, U.S. V. McLAUGHLIN 813 F.3d 202 (2016).

PURSUANT TO RULE 6, S.C. Crim P, ANY REPORTS OR PAPERS MENTIONED IN SECTIONS (a) OR (b) OF 6, ADDITIONALLY ANY AND ALL EVIDENCE, DOCUMENTATION, NOTES, AFFIDAVITS, WARRANTS USED AT OR DURING THE GRAND JURY USED TO ARREST, CHARGE, INDICT OR USE IN ANY MANNER IN ANY PART OF DEFENDANT'S CASE. UNDER THE U.S. SUPREME COURT DECISION IN BRADY V. MARYLAND, 373 U.S. 83, 83 SUP. CT. 1194 (1963). THE SOLICITOR HAS AN OBLIGATION TO PRODUCE ALL BRADY MATERIAL FOR THE DEFENDANT WELL IN ADVANCE OF THE SCHEDULED TRIAL DATE, PLEA NEGOTIATIONS.

DEFENDANT CLAIMS UNDER BRADY AND ITS PROGENY, AS WELL AS THE LANGUAGE AND SPIRIT OF KYLES V. WHITLEY, 514 U.S. 419, 115 SUP. CT. 1555 (1995) AND GIGLIO V. U.S., 405 U.S. 105, 92 SUP. CT. 763 (1972), UNITED STATES V. TOSHMAN 478 F.2d 129 (5th Cir. 1973); WAPLE V. ILLINOIS, 360 U.S. 264, 79 SUP. CT. 1173 (1959); ALCONA V. TEXAS, 355 U.S. 28 (1957); MOORE V. HALLIHAM 294 U.S. 103 (1935); MOORE V. ILLINOIS 408 U.S. 786 (1962); THAT DEFENDANT

IS ENTITLED TO ANY AND ALL REPORTS, MEMORANDA AND DOCUMENTS AS WELL AS A STATEMENT OF THE CURRENT SOLICITOR AND ALL APPROPRIATE STATE, FEDERAL AND LEGAL LAW AGENCIES AS TO: ALL STATEMENTS, ALL HAND WRITTEN NOTES MADE BY POLICE OR OTHER INVESTIGATING OFFICERS OF THEIR INTERVIEW OR CONVERSATION WITH THE DEFENDANT OR ANY OTHER WITNESS.

ANY ORAL, WRITTEN OR RECORDED STATEMENTS MADE BY ANY PERSON TO THE SOLICITOR'S OFFICE, GRAND JURY, OR ANY LAW ENFORCEMENT AGENCY IN CONNECTION WITH THE CASE.

ANY AND ALL INVESTIGATION REPORTS, INFORMATION OR MATERIAL WHICH TENDS TO ESTABLISH THE DEFENDANT'S INNOCENCE TO MITIGATE PUNISHMENT, OR TO IMPEACH, DISCREDIT, OR CONTRADICT THE TESTIMONY OF ANY WITNESS WHERE THE STATE WILL OR MAY CALL TO THE GRAND JURY, USE TO CONTROL OR INDUCE PLEA NEGOTIATIONS OR AT TRIAL, GILES V. MANLAND, 360 U.S. 46, 87 SUP. CT. 793 (1967); NADGE V. JILLINGS, 360 U.S. 264, 79 SUP. CT. 1173 (1959); GIBLIO V. U.S.; KYLES V. WHITLEY SUPRA.

ANY AND ALL PHOTOGRAPHS TAKEN AT THE SCENE, ANY SCIENTIFIC OR MEDICAL REPORTS WHICH TENDS TO ESTABLISH THE DEFENDANT'S INNOCENCE, TO MITIGATE PUNISHMENT, OR IMPEACH, DISCREDIT OR CONTRADICT THE TESTIMONY OF ANY WITNESS OF THE STATE WHETHER OR NOT THE WITNESS MAY TESTIFY AT TRIAL, KYLES V. WHITLEY (1985) SUPRA, ASHLEY V. TEXAS 317 F.2d 80 (5TH CIR) CERT. DENIED, 325 U.S. 931, 84 SUP. CT. 331 (1963). DEFENDANT WAS/IS ENTITLED TO ANY REPORTS BY OR TO THE STATE LAW ENFORCEMENT DIVISION (SLED), CRIMINALISTIC LABORATORY, FBI LABORATORIES, COUNTY SHERIFF'S DEPT. LABORATORIES OR ANY OTHER LAW ENFORCEMENT LABORATORY CONCERNING AN EXAMINATION MADE BY SAID LABORATORIES AND/OR PERSONAL THEREOF, OF ANY PHYSICAL, PHOTOGRAPHIC, ORAL OR WRITTEN EVIDENCE

CONCERNING THE INVESTIGATION OF THIS CASE.

ALL "INCONSISTANT" STATEMENTS MADE BY A PARTICULAR OR
 BETWEEN WITNESS, WHETHER WRITTEN OR ORAL, THAT IS KNOWN TO
 THE SOLICITOR'S OFFICE OR ANY OTHER LAW ENFORCEMENT AGENCY,
 INCLUDING STATEMENTS AND OTHER EVIDENCE THAT RAISE QUESTIONS
 ABOUT THE RELIABILITY OR CREDIBILITY OF A PARTICULAR WITNESS
 OR THE INVESTIGATION, LYLES U. WHITLEY SUPRA.

ANY AND ALL PLEA BARGAINS, PROMISES, REWARDS, REDUCTIONS,
 DISMISSALS, AGREEMENTS NOT TO BRING CRIMINAL CHARGES OR ANY
 OTHER INDUCEMENTS MADE TO ANY WITNESS HEREIN, WHETHER OR
 NOT THEY HAVE TESTIFIED BEFORE ANY STATE OR FEDERAL GRAND
 JURY OR OTHER INVESTIGATING AGENCY, AND REGARDLESS OF WHETHER
 OR NOT THEY WILL TESTIFY AT TRIAL.

THAT THE INDIVIDUAL PROSECUTOR OR PROSECUTOR'S IN THIS CASE
 HAS A DUTY TO LEARN OF ANY FAVORABLE EVIDENCE KNOWN TO
 OTHERS ACTING ON THE GOVERNMENT'S BEHALF IN THIS CASE
 INCLUDING THE POLICE.

THAT RECOGNIZING THAT BREADY AND OTHER AUTHORITIES CITED
 REQUIRE THAT INFORMATION FAVORABLE TO THE DEFENDANT BE
 MADE AVAILABLE.

HERE DEFENDANT'S COUNSEL OF RECORD FAILED TO DO/PRODUCE
 THESE PROVISIONS OF LAW. WHEN A DEFENDANT OR DEFENDANT'S
 COUNSEL AT ANYTIME PRIOR TO SENTENCING UNDER THE DUE
 PROCESS CLAUSE AND THE U.S. CONSTITUTION REQUESTS ALL BREADY
 MATERIAL IT IS THE RESPONSIBILITY OF THE STATE TO MAKE SURE
 THAT ANY AND ALL EVIDENCE, MATERIAL IS PRESENTED TO THE
 DEFENDANT. JENNIFER COLTON S.C. BAR #68591 FAILED TO
 PROVIDE MATERIAL CASE EVIDENCE OF SPECIFIC SUBJECT
 MATTER UNDER JURISDICTION OF THE COURTS TO THE DEFENDANT

SPECIFICALLY IN THE NATURE OF THE INDICTMENTS OF THE CASE AT BAR, 2015-GS-46-01787, 2016-GS-46-02653, AND 2016-GS-46-02655. CASE SUMMARY REPORT FROM OFFICER THOMPSON, P. OF EVIDENCE COLLECTED, CASE SUMMARY REPORT OF ALL INDIVIDUALS INVOLVED, YORK COUNTY SHERIFFS OFFICE EVIDENCE/INVENTORY SHEET INCIDENT # 201600018269 DATED 5/23/16 AND SUPPLEMENTAL EVIDENCE/INVENTORY SHEET, REQUEST FOR LABORATORY EXAMINATION BY H. CLEVENGER - YORK COUNTY DEL DATED 5/23/2016 AND BUT NOT LIMITED TO YORK COUNTY SHERIFFS OFFICE FORENSIC LABORATORY SERVICES, CONFIDENTIAL LABORATORY REPORT COMPLETED 2/15/2017 BY CYNTHIA J. MITCHELL.

FAILURE - INEFFECTIVENESS OF COUNSEL FROM LACK OF DUE DILIGENCE WOULD OF PRODUCED THE DOCUMENTS WELL BEFORE PLEA NEGOTIATIONS THEREFOR. KNOWING AND UNDERSTANDING THE EXACT NATURE OF THE CHARGES BEFORE THE DEFENDANT AND NOT JUST WHAT DEFENDANT'S COUNSEL WAS OR WAS NOT WILLING TO TELL HIM TO ELICIT A PLEA UNDER DURESS.

CHARGES AND SENTENCING OF THE DEFENDANT IS/WAS IMPROPER AND THE PLEA BARGAIN THAT WAS NEGOTIATED FOR THE DEFENDANT WITHOUT COUNSEL PROVIDING ALL BRADY MATERIAL AS WELL AS ALL THE RECORDS OF THE GRAND JURY FOR THE DEFENDANT'S INSPECTION PRIOR TO, DURING PLEA NEGOTIATIONS, PREJUDICED THE DEFENDANT UNDER THE 8TH AMENDMENT - U.S.C.A. 11. THUS ESTABLISHING CAUSE AND PREJUDICE FOR STATE COURT DEFAULT IN REGARD TO INEFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING PHASE, PLEA NEGOTIATION PHASE AND BRADY CLAIM, PARKUS V. DELO 33 F.3d 933 (8th Cir. 1994) U.S.C.A.

CONST. AMEND 6, CRIMINAL DEFENDANTS ARE ENTITLED TO THE EFFECTIVE ASSISTANCE OF COMPETENT COUNSEL DURING THE PLEA BARGAIN PROCESS, MEYERBACHER V. SHEARIN 706 F.3d 356 (2013), LAFLER V. COOPER 182 L. Ed 2d 398 (2012). FOR THE INSTANT CASE, REASONABLE PROBABILITY THAT BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, THE RESULT OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT. THE 6TH AMENDMENT REQUIRES EFFECTIVE ASSISTANCE OF COUNSEL AT CRITICAL STAGES OF CRIMINAL PROCEEDINGS, NOT SIMPLY TO PROTECT DEFENDANT AT TRIAL. DEFENDANTS HAVE THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL AS WELL AS POST CONVICTION RELIEF.

BECAUSE PLEA NEGOTIATIONS ARE TREATED AS CONTRACTS AND DISCOVERY MATERIAL, BRADY S/O IS A RIGHT BY CONSTITUTIONAL LAW TO DEFENDANT, THE ASSISTANT SOLICITOR JENNIFER COTTON, BAR #108591 AND THE STATE DENIED DEFENDANT THE PROCESS UNDER MATERIAL DISCLOSURE LAWS, BRADY V. MARYLAND 373 U.S. 83, 83 SUP. CT. 1194 (1963), NAPUE V. ILLINOIS 360 U.S. 264, 79 SUP. CT. 1123 (1959), ALCALA V. TEXAS 355 U.S. 28 (1957), U.S. V. TOSHMAN 478 F.2d 129 (5th Cir 1973), KYLIE V. LOUISIANA 514 U.S. 419, 131 L. Ed 2d 490, 115 SUP. CT. 1555 (1995).

JENNIFER COTTON, ASSISTANT SOLICITOR, YORK COUNTY FAILED TO MEET THE REQUIRED STANDARDS FOR INDICTMENTS. THE STANDARD MUST BE BASED AND SUPPORTED FROM THE ORIGIN OF THE CASE, THE AFFIDAVIT, THE ARREST/WARRANT, POLICE SUMMARY, SEIZED EVIDENCE, FORENSIC LAB REPORTS, WITNESS IF ANY AND ALL OF THIS IS A REQUIREMENT OF CONSTITUTIONAL LAW TO PREVENT PREJUDICE AND BIAS OR MALICIOUS PROSECUTION.

THE VERY PURPOSE OF THE REQUIREMENT THAT A MAN BE INDICTED BY A GRAND JURY IS TO LIMIT HIS EXPOSURE TO

OFFENSES CHARGED BY A GROUP OF HIS FOLLOWING CITIZENS ACTING INDEPENDENTLY OF EITHER PROSECUTING ATTORNEY OR JUDGE
U.S. v. Jenkins (75 F. Supp. 2d 647 (2009)).

U.S.C.A. CONST. AMEND 5; FED. RULES CR. PROC. RULE 7(c) FED RULES - (c) (1) "FOR EACH COUNT, THE INDICTMENT OR INFORMATION MUST GIVE THE OFFICIAL OR CUSTOMARY CITATION OF THE STATUTE, RULE, OR REGULATION, OR OTHER PROVISION OF LAW THAT THE DEFENDANT IS ALLEGED TO HAVE VIOLATED"

U.S. v. PALM; (2017) WL 471381;

"ABSENT A CHARGE OF [E]VERY ESSENTIAL ELEMENT OF AN OFFENSE AN INDICTMENT IS INVALID. WHEN THE WORDS OF A STATUTE ARE USED TO DESCRIBE THE OFFENSE GENERALLY, THEY MUST BE ACCOMPANIED WITH SUCH A STATEMENT OF THE FACTS AND CIRCUMSTANCES AS WILL INFORM THE ACCUSED OF THE SPECIFIC OFFENSE, COMING UNDER THE GENERAL DESCRIPTION, WITH WHICH HE IS CHARGED"., U.S. v. BRANDON, 298 F.3d 307, 310 (4th Cir 2002 (QUOTING, HAMILTON v. U.S., 418 U.S. 87, 117-18 (1974)).

THE SOLICITORS OFFICE, STATE, FAILED PRESENTMENT OF EVIDENCE IN ACTUAL MATERIAL - PHYSICAL SUPPORT OF INDICTMENTS SPECIFICALLY CHARGED IN AFFIDAVIT 5/23/2016, ARREST/WARRANT #2016AL0020117, SIGNED BY HONORABLE JUDGE AUGUST W. SEXTON #7273, Bench Warrant #2017B4600100130, 10/31/2016 ISSUED BY DAVID HAMILTON, CLERK OF COURT YORK COUNTY, SC 2/14/2017 AND FORENSIC EVIDENCE FROM DEU OF YORK COUNTY DATED 5/23/2016 - LAB AND SUMMARY REPORT ALSO IN SPECIFIC LANGUAGE OF CHARGE AT 44-53-0315(C)(1)(a) TRAFFICKING MARIJUANA BUT LESS THAN 28 - 1ST OFFENSE.

WHERE SOLICITORS OFFICE, STATE, PRESENTED AFFIDAVIT BY INCORRECTLY CHARGING/INFORMING THE GRAND JURY OF ALLEGED

EVIDENCE / CRIME AGAINST DEFENDANT THAT CREATED BIAS AND VIOLATIONS OF DUE PROCESS PROCEDURES AS WELL AS BRADY 5/6 VIOLATIONS BY NOT PROVIDING DEFENDANT WITH ALL REQUIRED MATERIAL UNDER PROPER INSTRUCTION OF PROTECTED MATERIAL FOR PROPER PREPARATION OF DEFENDANT BEFORE - DURING ALBA NEGOTIATIONS, WHERE THE PROBABLE OUTCOME WOULD OF BEEN DIFFERENT IF ALL SUBJECT MATTER MATERIAL WOULD OF BEEN GIVEN TO DEFENDANT, AND AN AMENDED INDICTMENT RAISING THE PENALTY VIOLATES A COURT OF SUBJECT MATTER JURISDICTION GRANGER V. STATE 507 S.E.2d 322 SOUTH CAROLINA LAW REVIEW, CLAIR V. STATE 324 S.C. 144, 146, 478 S.E. 2d 54, 55 (1996), AMENDED INDICTMENT RAISING THE PENALTY VIOLATES A COURT, AND AMENDMENT OF THE INDICTMENT CHANGED THE NATURE OF THE OFFENSE.

AN AMENDMENT THAT INCREASES THE PENALTY CHANGES THE NATURE OF THE OFFENSE AND THEREFORE DEPRIVES THE COURT OF SUBJECT MATTER JURISDICTION. THE AMENDMENT IN THIS CASE CHANGED THE PENALTY INVOLVED SINCE IT INCREASED THE APPLICABLE SENTENCE AND FINE, HOPKINS V. STATE 317 S.C. 7, 451 S.E. 2d 389 (1994).

THE PROOF OFFERED BY THE GOVERNMENT DID ALTER THE CRIME CHARGED IN THE INDICTMENT, AND VARIANCE DID ALTER THE ELEMENTS OF THE ACTUAL CRIME CHARGED IN THE AFFIDAVIT AND ARREST WARRANTS, ET AL. U.S. V. MASON (4th Cir) 532 APPX 432 (7-15-2013), U.S. V. ROBINSON 627 F.3d 941, 958 (4th Cir 2010) Feom; U.S. V. LEE 658 Fed Appx 185 (8-11-2016) THE INDICTMENT OR INFORMATION IN GENERAL UNDER U.S. V. WARTEN 840 F.3d 163, ROBERT V. STATE AND U.S. V. KELLUM 508 F.3d 125 (2009), CLEARLY PROVIDE

INDICTMENT ERROR OR VARIANCE OF INDICTMENT BY OR THROUGH ILLEGAL ACTS OF CONSTRUCTIVE AMENDMENT OF INDICTMENT ARE TO BE ACTUAL PREJUDICE, FROM ACTUAL EVIDENCE - AFFIDAVIT TO CHARGE DEFENDANT TO EVEN CREATE A PLATFORM TO TAKE TO A GRAND JURY FOR QUESTION OF EVIDENCE FOR INDICTMENT. WHERE PREJUDICIAL VARIANCE WARRANTS REVERSAL OF ALFA, CONVICTION AND SENTENCE, U.S. V. MARION 532 FED APPX 432 U.S.C.A., AMENDMENT LE. CREATING SUBJECT MATTER JURISDICTION QUESTION THAT DEFENDANTS COUNSEL NIKOL CHIRAPENJA # 65326 MISSED IN CHALLENGING THE SOLICITORS OFFICE WHEN DEFENDANT WAS INSTRUCTED TO PLEA. THE PLEA IN QUESTION BEFORE THIS HONORABLE COURT WAS/IS TO ENHANCED PUNISHMENT FOR CHARGES HE CLEARLY DID NOT KNOW THE SEVERITY OF BECAUSE OF THE GENERAL STATUTE AND NOT SPECIFIC STATUTE LANGUAGE USED OF OR IN THE INDICTMENT, WHICH VARY FROM THE MATERIAL FACTS ORIGINALLY PROVIDED TO CHARGE DEFENDANT AND WHERE STILL THE CHARGES IN THE AFFIDAVITS, ARREST/WARRANTS, BENCH WARRANT INFORMATION OF TRAFFICKING METH 1ST OFFENSE 10 grams BUT LESS THAN 28 grams THAT WAS EVIDENCE LOGGED AND FORENSIC LAB REQUESTED SPECIFIC OF THE 11 grams OF METH FOR THE DEFENDANT EVIDENCE IS "MATERIAL" IF THERE IS REASONABLE PROBABILITY THAT, HAD THE EVIDENCE BEEN DISCLOSED TO THE (DEFENDANT) DEFENSE, THE RESULT OF THE PROCEEDING WOULD OF BEEN DIFFERENT STATE V. GIBBER 705 S.E.2d 441 (11-24-2010).

THE FAIRNESS AND ADEQUACY OF THE PROCEDURES ON ACCEPTANCE/ ACCEPTANCE OF PLEAS OF GUILTY ARE OF VITAL IMPORTANCE IN ACCORDING EQUAL JUSTICE TO ALL IN THE COURTS, MEKES V. U.S., 298 F.2d 204 (5th CIR. 1962), NUNLEY V. U.S., 294 F.2d 579 (10th CIR 1961) TO PROTECT A DEFENDANT WHO IS IN THE POSITION OF ALLEGING

VOLUNTARILY WITH AN UNDERSTANDING OF THE NATURE OF THE CHARGE BUT WITHOUT REALIZING THAT HIS CONDUCT DOES NOT ACTUALLY FALL WITHIN THE CHARGES, STINSON V. U.S. 316 F.2d 554 (5th Cir. 1963), U.S. V. MASTRADA 509 F.3d 652

DEFENDANT'S CONDUCT DOES NOT ACTUALLY FALL WITHIN THE CHARGES AND DEFENDANT'S COUNSEL DEPEK CHIRRENTA #65376 AGAIN INEFFECTUALLY REPRESENTED AND ADISED DEFENDANT WHERE THROUGH DUE DILLIGENCE OF THE BRADY MATERIAL A FILING TO HAVE THE TRAFFICKING IN METHAMPHETAMINE 10-28grams 1st OFFENSE DISMISSED BECAUSE THE STATES OWN FORENSIC LABORATORY REPORT (SEE REPORT ATTACHED). THE INDICTMENT ON ITS COVER ONLY APPROXIMATES THE GENERAL PROVISION OF THE STATUTE OF 44-53-375(C), WHERE THE GENERAL S.C CODE OF LAW 44-53-375(C) PERMITS THE DEFENDANT TO UNDERSTAND THAT HE WAS/IS BEING CHARGED WITH TRAFFICKING 1st OFFENSE 10-28 GRAMS AS ARRESTED, CHARGED AND BONDRED/RELEASED ON, EVIDENCE, CASE REPORTS, OFFICERS KING, CLEVENGER AND THOMPSON, PLUS FORENSIC LAB REPORT. THE INDICTMENTS GENERAL NOT SPECIFIC COVER IS FOR 44-53-375(C) WHICH COULD BE ANY OF THE MANY DIFFERENT LEVELS OF CRIME AND DIFFERENT PUNISHMENTS. ON THE ACTUAL INDICTMENT LANGUAGE AGAIN ITS GENERAL 44-53-375(C) BUT 28 GRAMS OR MORE AND DOES NOT CLARIFY 1st OFFENSE, 2nd OFFENSE OR 3rd OFFENSE.

CLEARLY DEFENDANT BELIEVED HE WAS DEFENDING AGAINST 1st OFFENSE OF TRAFFICKING 44-53-375(C)(1)(a) 10grams but LESS THAN 28 FOR WHICH HE WAS ARRESTED AND CHARGED WITH. THE MATERIAL ELEMENTS AND VARIANCE DID ALTER THE PARTS THAT MAKE UP A WHOLE CRIME CHARGES.

DEFENDANTS DUE PROCESS AND CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED BECAUSE AN INDICTMENT IS A CRITICAL DOCUMENT IN CRIMINAL DEFENSE PREPARATION THATS GROWED IN CONSTITUTIONAL AND STATUTORY PRINCIPALS S.C CONST ART. 1 § 11 STATE V. GENTRY 303 S.C 93, (110 S.E.2d 444 (2005),

HERE DEFENDANT DID NOT WAIVE HIS RIGHT TO GRAND JURY AND NOW BECAUSE THE NATURE AND SCOPE OF THE ACCUSATION ARE INCORRECT UNDER LAW DEFENDANT IS PERMITTED TO INQUIRE AS TO THE MANNER AND MEANS BY WHICH THE CHARGE IS PRESENTED.

HERE IN VIEW WITH A PRACTICAL EYE IT IS CLEAR THAT THE INDICTMENT FOR TRAFFICKING IN VIEW OF ALL THE SURROUNDING CIRCUMSTANCES AND EVIDENCE THAT EXISTED PRE-PLEA THAT DEFENDANT WAS PREJUDICED. THE INDICTMENT MUST CONTAIN SUFFICIENT FACTUAL ALLEGATIONS AND DO MORE THAN MERELY RECITE THE ELEMENTS OF THE OFFENSE CHARGED. STATE V. TUMOLTON (54 S.E.2d 849, 853 (2007)), STATE V. WADE 306 S.C. 79, 86, 409 S.E.2d 780, 784 (1991).

THE NEXT CHARGE IN THE NEGOTIATED PLEA BY DEFENDANT'S COUNSEL WAS/IS FOR POSSESSION WITH INTENT TO DISTRIBUTE 15 GRAMS OF MARIJUANA, WHERE DEFENDANT WAS CHARGED IN THE INDICTMENT UNDER THE GENERAL STATUTE OF 44-53-370 ON THE COVER AND IN THE LANGUAGE OF THE INDICTMENT IT ONLY PROVIDES GENERALIZATION AND IS ABSENT OF ESSENTIAL ELEMENTS OF MATERIAL RELEVANCE.

DEFENDANT ARGUES THAT THE D.W.I.D. 1st FOR MARIJUANA IS NOT SUPPORTED BY EVIDENCE WHERE 15 GRAMS OF MARIJUANA UNDER S.C. LAW 44-53-370(1)(4) IS A MISDEMEANOR PUNISHABLE UP TO 30 DAYS IN JAIL AND A \$500 FINE OR BOTH OR AT THE HIGHEST PENAL SENTENCE WITHSTANDING THE CLAIM UNDER 44-53-370(6)(2) CARRIES ONLY 0-5 YEAR SENTENCE. DEFENDANT'S COUNSEL NEGOTIATED A 9 YEAR SENTENCE, VIOLATING DEFENDANT'S 8th AMENDMENT RIGHTS AND SHOWING INEFFECTIVE ASSISTANCE OF COUNSEL. DEFENDANT'S COUNSEL SHOULD OF KNOWN, VIOLATING U.S. C.A 6th AMENDMENT.

"ABSENT A CHARGE OF [E]VERY ESSENTIAL ELEMENT OF AN OFFENSE"

AN INDICTMENT IS INVALID. "WHEN THE WORDS OF A STATUTE ARE USED TO DESCRIBE THE OFFENSE GENERALLY, THEY "MUST BE ACCOMPANIED WITH SUCH A STATEMENT OF THE FACTS AND CIRCUMSTANCES AS WILL INFORM THE ACCUSED OF THE SPECIFIC OFFENSE, COMMON UNDER THE GENERAL DESCRIPTION, WITH WHICH HE IS CHARGED"; U.S. V. BRADY, 298 F.3d 307, 310 4th Cir (2002) (QUOTING, HANLON V. U.S., 418 U.S. 87, 117-18 (1974)).

FAILURE OF DEFENDANT'S COUNSEL TO OBJECT TO ERRONEOUS INSTRUCTION/SENTENCE AS TO APPLICABLE PUNISHMENT DID NOT DEPRIVE DEFENDANT, EITHER BY WAIVER OR AGREEMENT, OF RIGHT TO BE SENTENCED WITHIN TERMS OF APPROPRIATE STATUTE FOR OFFENSE FOR WHICH HE WAS CONVICTED, STATE V. FLAUS 470 S.E. 2d 97 (1996). EVIDENCE IS "MATERIAL" IF THERE IS REASONABLE PROBABILITY THAT, HAD THE EVIDENCE BEEN DISCLOSED TO THE DEFENSE, THE RESULT OF THE PROCEEDING WOULD BE DIFFERENT. STATE V. COOPER 187 S.E. 2d 62 (2009), STATE V. COOPER 705 S.E. 2d 441 (2010). (SEE ATTACHED INDICTMENT, CASE REPORT, LAB, ETC.) DEFENDANT UNDER U.S.C.A. CONST. AMEND. 6 IS ENTITLED TO THE EFFECTIVE ASSISTANCE OF COMPETENT COUNSEL DURING THAT PROCESS (ALIA BARGAIN/NEGOTIATIONS), DUE PROCESS AND ALL STEPS/STAGES FROM AN APPEAL AS WELL AS POST CONVICTION RELIEF. AT SENTENCING IN GENERAL, THOUGH SENTENCING DOES NOT CONCERN INNOCENTS OR GUILT, THE EFFECTIVE ASSISTANCE OF COUNSEL DURING A SENTENCING HEARING CAN RESULT IN PREJUDICE, BECAUSE ANY AMOUNT OF ADDITIONAL JAIL TIME HAS SIXTH AMEND. SIGNIFICANCE. U.S.C.A. CONST. 6th, HARRIS V. UNITED STATES 398 F.3d 855, 858 (4th Cir 2008).

THE LAST CHARGE OF DEFENDANT IN THE NEGOTIATED PLEA

BY COUNSEL IS P.W.I.D. METH 2ND FOR .4 OF A GRAM,
9 YEARS. DEFENDANT REQUESTS RE-EXAMINATION OF THE
CHARGE TO POSSESSION OF METH 2ND OFFENSE.

WHERE THE INFORMATION IN THE INDICTMENT DOCKET
NO. 2015-GS-46-01787 PROVIDES 44-53-375(B) GENERAL
LANGUAGE NOT SPECIFIC. ON THE ACTUAL INDICTMENT
LANGUAGE IT IS GENERAL, NOT SPECIFIC, WHERE THERE IS NO
LISTING OF LEVEL OF OFFENSE (1ST, 2ND, 3RD) OR ACTUAL
AMOUNT/WEIGHT OF DRUG SEIZED TO CREATE MATERIAL
RELEVANCE AND THE INDICTMENT MUST CONTAIN SUFFICIENT
FACTUAL ALLEGATIONS AND NO MORE THAN MERELY RECITE
THE ELEMENTS OF THE OFFENSE CHARGED STATE V.

TUMBLETON (54 S.E. 2d 849, 853 (2007)), U.S. V. BRANNON
298 F.3d 307, 310 (4TH CIR 2002).

THE SPECIFIC LANGUAGE OF THE S.C. LAW 44-53-375(B)(2)
FOR OFFENSE STATES ONE (1) OR MORE GRAMS OF METHAMPHETAMINE
IN VIOLATION OF THIS SUB SECTION.

THE YORK COUNTY SHERIFFS OFFICE FORENSIC LABORATORY
SERVICES REPORT GIVES SPECIFIC DETAIL AS TO THE ACTUAL
EVIDENCE OF THE CASE WHERE DEA AGENT PATRICK
PATTERSON REQUESTED FINGER PRINTS OF THE EVIDENCE
BECAUSE OF ITS LOCATION IN A COMMON AREA OF A
RESIDENCE WHERE DEFENDANT DID NOT LIVE, CREATING
CONSTRUCTIVE POSSESSION AND THE ANALYSIS OF THE
EVIDENCE, CASE (LAB) # Y15-00332, RESULTS BY: 5-28-15
CRYSTIA J. MITCHELL STATE THAT THE ACTUAL WEIGHT
(TOTAL WEIGHT) 0.40 GRAMS (SEE ATTACHED LAB REPORT AND
INDICTMENT, ETC.)

WHERE UNDER THE SPECIFIC LANGUAGE OF 44-53-375(A)

THE LEGISLATURE GAVE EFFECT TO SPECIFIC TO LESS THAN ONE (1) GRAM OF METHAMPHETAMINE DEFINED IN SECTION 44-53-10 DEFINITIONS AND UNDER THIS PROVISION IS GUILTY OF A MISDEMEANOR.

DEFENDANT'S COUNSEL, DEREK CHIRAPENLA S.C. BAR #105326 WAS INEFFECTIVE IN ACQUIRING ALL BRADY MATERIAL, DISCLOSURE OF THE ACTUAL EVIDENCE AGAINST DEFENDANT, REPRESENTATION ON THE ACTUAL MATERIAL FACTS, NEGOTIATION OF ACTUAL CHARGE THAT FITS THE MATERIAL FACTS OF OFFENSE(S) AND FAILURE THROUGH THE ACT OF THE NEGLIGENCE OF THE BRADY MATERIAL, BIAS AND VIOLATIONS OF DUE PROCESS PROCEDURES AND BRADY S/6 VIOLATIONS BY THE STATE AND COUNSEL NOT PROVIDING DEFENDANT WITH ALL REQUIRED MATERIAL UNDER PROPER INSTRUCTION OF PROTECTED MATERIAL VIOLATING DEFENDANTS U.S.C.A. 4th, 5th, 6th, 8th AND 14th CONSTITUTIONAL AMENDMENTS OF DEFENDANT BEFORE - DURING PLEA NEGOTIATIONS WHERE THE PROBABLE OUTCOME WOULD OF BEEN DIFFERENT HAD THE EVIDENCE BEEN DISCLOSED TO THE DEFENDANT, STATE V. COOPER 107 S.E. 2d 107 (2009), STATE V. GREER 705 S.E. 2d 441 (2010).

- RELIEF -

DEFENDANT RESPECTFULLY REQUESTS THIS HONORABLE COURT TO GRANT HIS APPLICATION FOR POST CONVICTION RELIEF. THAT HE MAY ARGUE FOR DISMISSAL OF THE TRAFFICKING OR REDUCTION TO ORIGINAL CHARGE OF TRAFFICKING METH 1st 10 GRAMS BUT LESS THAN 28 GRAMS WHICH

(11)

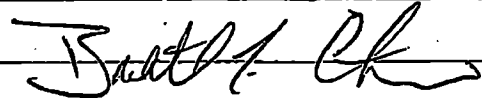
— RELIEF —

DEFENDANT WAS ARRESTED.

ARGUE FOR RE-EVALUATION OF THE A.W.I.A. MARIJUANA
1ST (15 GRAMS) TO A POSSIBLE MISDEMEANOR AND APPROPRIATE
SENTENCE.

ARGUE FOR RE-EVALUATION OF THE A.W.I.A. METH 2ND OF
0.4 OF A GRAM TO POSSESSION OF METH 2ND, WITH A
CONCURRENT PLEA OF THE 3 CHARGES TO A SENTENCE
OF 5 YEARS.

RESPECTFULLY SUBMITTED,



BRETT T. CRETISS #373259

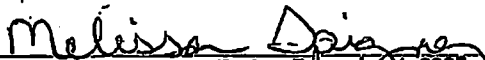
E-B2-15

KIRKLAND COT JUST.

4344 BREANDBRIDGE RD.

COLUMBIA, SC 29201

15 December 2017


My Commission Expires December 1, 2025

**CLERK OF COURT'S OFFICE***Post Office Box 649; York, South Carolina 29745*

October 10, 2017

Brett Curtiss #373259
Kirkland Corr Inst
4344 Broad River Road
Columbia SC 29210

Enclosed you will find the documents that were returned to the Clerk of Court from the post office due to an error in the mailing address in July 2017.

Also enclosed you will find copies of the sentence sheets for the cases from 2015 and 2016.

Also enclosed is a copy of our letter to you dated 09/07/17 regarding copies and the fact that an appeal was not filed here, but giving you the address for the court of appeals.

General Sessions Division

WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2016A4610201117

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 8-18-16

TRUE BILL

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS46- 02653

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

AUGUST 18, TERM 2016

THE STATE

VS.

BRETT THOMAS CURTISS

INDICTMENT FOR

TRAFFICKING IN METHAMPHETAMINE

SC Code: § 44-53-375(C)
CDR Code: 0349

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S. 1

STATE OF SOUTH CAROLINA
COUNTY OF YORK

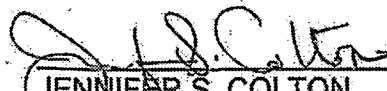
INDICTMENT

At a Court of General Sessions, convened on August 18, 2016, the Grand Jurors of York County present upon their oath:

TRAFFICKING IN METHAMPHETAMINE

The defendant, Brett Thomas Curtiss, did on or about May 23, 2016, in York County, South Carolina, knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of twenty-eight (28) grams or more of Methamphetamine as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2). All in violation of 44-53-375(C), *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.


JENNIFER S. COLTON
ASSISTANT SOLICITOR

COUNTY OF YORK

STATE VS.

BRETT THOMAS CURTISS

AKA:

Race: White

Sex: M

Age: 46

DOB: [REDACTED]

SS#: [REDACTED]

Address: 1000 Mecca Trail

City, State, Zip: Rock Hill, SC 29730

DL# [REDACTED]

SID# SC02046227

*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: Trafficking Crack Cocaine 28g or more 2nd Offense

In violation of § 44-53-375(C) of the S.C. Code of Laws, bearing CDR Code # 0389

☐ 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:

Jennifer S. Colton, Assistant Solicitor

68591
SC Bar #

Defendant

Attorney for Defendant

65326
SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 7 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: 7/30/17 pher☒ 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. 116 day☐ 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 (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 EmploymentPayment 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 FundOther: ☐ Appointed PD or appointed other counsel,

Proviso §61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: Judge Bar ID: Sentence Date: 7-10-17Judge Code: 7131Clerk of Court/Deputy Clerk: David HamiltonCourt Reporter: Wanda Wilson

SCCA/217 (07/2016)

Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso 61.6 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00§50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(I) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$

TOTAL

\$ 275.00

ARREST WARRANT

2016A4610201117

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

THE STATE
against

201600018269

Brett Thomas Curtiss

Address:

Rock Hill, SC 29732-

Phone: SSN: [REDACTED]
Sex: M Race: W Height: 5 9 Weight: 158

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: D H Clevenger - C8497

Offense: Drugs / Trafficking in meth. or cocaine base - 10 g
or more, but less than 28 g - 1st offense

Offense Code: 0450

Code/Ordinance Sec: 44-53-0375(C)(1)(a)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Brett T. Curtisson 5/23/16D.H. Clevenger
Signature of Court Clerk/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions
1675 York Hwy
York, SC 29745

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Personally appeared before me the affiant D H Clevenger whobeing duly sworn deposes and says that defendant Brett Thomas Curtissdid within this county and state on or about 5/23/2016State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of York)

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in meth. or cocaine base - 10 g or more, but less than 28 g - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:The defendant willfully and unlawfully obtained the State's property by trading signatures, match, and grams of methamphetamine
while at 2055 McGee Road, Rock Hill, South Carolina. Probable cause is based on the investigation and recovery of
evidence (approximately 11 grams of methamphetamine, scales, and baggies).

Signature of Affiant

D.H. Clevenger XCMD/EU

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Affiant's Address Moss Justice CenterYork, SC 29745-Affiant's Telephone (803)628-3059

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/23/2016 defendant Brett Thomas Curtiss

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of York) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in meth. or cocaine base - 10 g or more, but less than 28 g - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 5/24/2016

Signature of Issuing Judge

Douglas W SextonJudge Code: 7273Judge's Address 1675-3C York HighwayYork, SC 29745-Judge's Telephone (803)-628-30 x 95Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

CERTIFIED TRUE COPY

2017 FEB 14 AM 9:21

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

*Chavonja / DSS
Illegal Search*

York County General Sessions
COUNTY OF YORK
STATE OF SOUTH CAROLINA

BENCH WARRANT

2017B4600100130

THE STATE

VS.

Brett Thomas Curtiss

Rock Hill, SC 29732

(Last known address)

Date

Served

Served

By

Or

Date

Returned

Reason for

Return

Bench Warrant No. 2017B4600100130

Case No. 2016GS4602653

2016A4610201117

Drugs / Trafficking in meth. or cocaine base -
10 g or more, but less than 28 g - 1st offense

Date Issued February 14, 2017

Soc. Sec. No.

Sex M Race W DOB

Height 59

Weight 158

Eyes

Hair

Date Served

Served by

DL No.

DL State

SC

THE STATE OF SOUTH CAROLINA

COUNTY OF York

BENCH WARRANT
FAILURE TO APPEAR ON
10/31/2016

THE STATE
VS.
Brett Thomas Curtiss

2016GS4602653

2016A4610201117

Dismissal

Item #10: Agency letter 2/5/17

Drugs / Trafficking in meth. or cocaine base

- 10 g or more, but less than 28 g - 1st offense 3-10

Lab. result - Confirmed No Controlled Substance

To all and Singular the Sheriffs Deputy Sheriffs Constables and other Peace Officers of the said State Greeting:

WHEREAS, at the Term of Court of General Sessions County Court for the County aforesaid, it was among other things Ordained
that a Bench Warrant should be issued for the arrest of Brett Thomas Curtiss

THESE ARE, THEREFORE, to command you and every one of you to make diligent search after the said above named and him to take and safely keep until he be delivered to the keeper of the Common Jail of the County or discharged by due course of law. And this shall be a good and sufficient warrant for you doing so; and for the keeper of said Jail receiving said above named from you and keeping him safely until he be discharged by due course of law.

WITNESS, David Hamilton, Clerk of Court of General Sessions and Common Pleas for the County of York,

February 14, 2017.

David Hamilton
Judge 16th Judicial Circuit / Clerk of Court

WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2016A4610201119

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date: 8-18-16

TRUE BILL

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS46- 026 --

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

AUGUST 18, TERM 2016

THE STATE

VS.

BRETT THOMAS CURTISS

INDICTMENT FOR

**POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA**

SC Code: § 44-53-370
CDR Code: 0186

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

[Signature]
Defendant

Witness:

[Signature]
C.C.C. PDS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

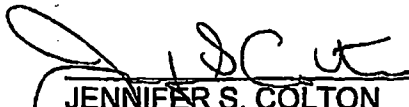
INDICTMENT

At a Court of General Sessions, convened on August 18, 2016, the Grand Jurors of York County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

The defendant, Brett Thomas Curtiss, did on or about May 23, 2016, in York County, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Marijuana, a schedule I, controlled substance, all in violation of Section 44-53-370, *Code of Laws of South Carolina* (1976, as amended).

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


JENNIFER S. COLTON
ASSISTANT SOLICITOR

COUNTY OF YORK
STATE VS.

BRETT THOMAS CURTISS

AKA: _____
 Race: White Sex: M Age: 46
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: Rock Hill, SC 29730

DL# _____ SID# SC02046227

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Possession with Intent to Distribute Marijuana (Sched I-III Drug) 1st Offense

In violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0186

INDICTMENT/CASE#: 2016GS4602655
 A/W: 2016A4610201119
 Date of Offense: 05/23/2016
 S.C. Code §: 44-53-370
 CDR Code #: 0186

SENTENCE SHEET

ORIGINAL

☒ 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:

J. Colton
 Jennifer S. Colton, Assistant Solicitor 68591
 SC Bar # _____

Brett Curtiss
 Defendant

Attorney for Defendant
 Attorney for Defendant 65326
 SC Bar # _____

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 9 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: 7/30/17 pher☒ 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. 116 days☐ 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 (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 _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ _____

TOTAL \$ 275.00

David Hamilton

Clerk of Court/Deputy Clerk: _____
 Court Reporter: Carla Nelson
 SCCA/217 (07/2016)

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,

Proviso §61.6 requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Presiding Judge: *[Signature]*Judge Bar ID: _____ Judge Code: 2131Sentence Date: 7-10-17

ARREST WARRANT

2016A4610201119

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

THE STATE

201600018269

against

Brett Thomas Curtiss

Address:

Rock Hill, SC 29732-

Phone: SSN: [REDACTED]

Sex: M Race: W Height: 5 9 Weight: 158

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: D H Clevenger - C8497

Offense: Drugs / Manufacture, possession of other sub. in Sch. I, II, III or flunitrazepam or analogue, w.i.t.d.

Offense Code: 0186

Code/Ordinance Sec: 44-53-0370(b)(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant

on 5/29/16

Brett T. Curtiss

D. H. Clevenger

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions
1675 York Hwy
York, SC 29745

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Personally appeared before me the affiant D H Clevenger

being duly sworn deposes and says that defendant Brett Thomas Curtiss

did within this county and state on or about 5/23/2016

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of York)

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Manufacture, possession of other sub. in Sch. I, II, III or flunitrazepam or analogue, w.i.t.d. - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The defendant willfully and unlawfully violated the State of South Carolina by possession approximately 15 grams of marijuana with the intent to distribute while at 205 [REDACTED] Road, Rock Hill, York County, SC. Probable cause is based on police investigation and recovery of evidence (approximately 15 grams of marijuana, scales, and baggies).

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Affiant's Address Moss Justice Center

York, SC 29745-

Affiant's Telephone: (803)628-3059

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/23/2016 defendant Brett Thomas Curtiss

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of York) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Manufacture, possession of other sub. in Sch. I, II, III or flunitrazepam or analogue, w.i.t.d. - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 5/24/2016

Signature of Issuing Judge

Douglas W Sexton

Judge Code: 7273

Judge's Address 1675-3C York Highway

York, SC 29745-

Judge's Telephone (803)-62-8-30 x 95

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

DEFENDANT
COPYForm Approved by
S.C. Attorney General
April 21, 2003
SCCA 516

50

CERTIFIED TRUE COPY

2017 FEB 14 AM 9:21

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

York County General Sessions
COUNTY OF YORK
STATE OF SOUTH CAROLINA

BENCH WARRANT

2017B4600100132

**THE STATE
VS.**

Brett Thomas Curtiss

1385 Mecca Trail
Rock Hill, SC 29732

(Last known address):

Date

Served:

05-08-17

Served

By

[Signature]

Or

Date

Returned

Reason for

Return

Bench Warrant No. 2017B4600100132

Case No. 2016GS4602655

2016A4610201119

Drugs / Manufacture, possession of other sub.
in Sch. I, II, III or flunitrazepam or analogue,
w.l.t.d. - 1st offense

Date Issued February 14, 2017

Soc. Sec. No.

Sex M Race W DOB

Height 59 Weight 158

Eyes Hair

Date Served Served by

DL No. DL State SC

THE STATE OF SOUTH CAROLINA
COUNTY OF York

BENCH WARRANT
FAILURE TO APPEAR ON
10/31/2016

THE STATE
VS.
Brett Thomas Curtiss

2016GS4602655

2016A4610201119

Plaint
Drugs / Manufacture, possession of other
sub. in Sch. I, II, III or flunitrazepam or
analogue, w.i.t.d. - 1st offense

To all and Singular the Sheriffs Deputy Sheriffs Constables and other Peace Officers of the said State Greeting:

WHEREAS, at the Term of Court of General Sessions County Court for the County aforesaid, it was among other things Ordained
that a Bench Warrant should be issued for the arrest of Brett Thomas Curtiss

THESE ARE, THEREFORE, to command you and every one of you to make diligent search after the said above named and him
to take and safely keep until he be delivered to the keeper of the Common Jail of the County or discharged by due course of law. And
this shall be a good and sufficient warrant for you doing so, and for the keeper of said Jail receiving said above named from you and
keeping him safely until he be discharged by due course of law.

WITNESS, David Hamilton, Clerk of Court of General Sessions and Common Pleas for the County of York,

February 14, 2017.

David Hamilton
Judge 16th Judicial Circuit / Clerk of Court

**YORK COUNTY MULTIJURISDICTIONAL
DRUG ENFORCEMENT UNIT
GENERAL SESSION CASE FILE SUMMARY**

Incident Report #: 201600018269

Case Agent: D. H. Clevenger

Defendant(s): Daniela Dawn Puyear
Brett Thomas Curtiss
Maloney John Edward
Jacqueline Rose Short (Magistrate)

Charge(s):

Puyear	Trafficking Methamphetamine Possession with Intent to Distribute Methamphetamine Possession with Intent to Distribute Hydrocodone Possession with Intent to Distribute Hydrocodone in Proximity to a School Possession with Intent to Distribute Marijuana Possession with Intent to Distribute Marijuana in Proximity to a School Possession of a Weapon During the Commission of a Violent Crime
Curtiss	Trafficking Methamphetamine Possession with Intent to Distribute Methamphetamine in Proximity to a School Possession with Intent to Distribute Marijuana Possession with Intent to Distribute Marijuana in Proximity to a School
Maloney	Trafficking Hydrocodone Possession with Intent to Distribute Hydrocodone in Proximity to a School Possession of Methamphetamine Possession of Alprazolam
Short	Possession of Marijuana (Magistrate)

Witness/Officer(s): Shealy (RHPD), Sams (RHPD), Nemtuda (RHPD), Proulx (RHPD), R. King

Summary By: D. H. Clevenger

Tape Number: 1888W

On Monday May 23rd, 2016 at approximately 6:15 PM, Officer Shealy, Officer Sams, and Sgt. Nemtuda with the Rock Hill Police Department responded to 2055 McGee Rd. Apt. A, Rock Hill, SC, in reference to an escort for South Carolina Department of Social Services employee's. Upon arrival, Officer Shealy spoke with DSS employees Tiffany Upchurch and Ailean Yount. Upchurch explained that there were reports of methamphetamine being manufactured in this residence where a nine year old child also resides. Yount knocked on the door where Jacqueline Short eventually answered the door. Yount explained why DSS and officers were present, and Short gave officers permission to search the residence for any other subjects. Short is a resident of the apartment. Officer Shealy located Daniela Puyear and Brett Curtiss in a secondary bedroom where a marijuana plant was being grown in plain view. Officer Shealy had Puyear and Curtiss exit the room and sit in the living room. No other subjects were in the apartment. Officers also saw methamphetamine and paraphernalia in plain view throughout the apartment. Investigator Proulx responded to conduct consensual searches of the females on-scene. John Maloney arrived at that location in his Ford Explorer. Since Maloney is the lessee of the apartment, officers explained the situation to him. Maloney signed a written consent to search form for the apartment as well as his vehicle. All parties stayed on scene and were cooperative with the investigation.

Investigator Clevenger with the York County Multijurisdictional Drug Unit arrived and took control of the scene. Investigator Clevenger confirmed with the officers on scene that they still had consent to search the property and went inside begin searching the residence. Investigator Proulx was photographing the residence and evidence. Upon entering the residence, the first bedroom on the right was the room that Curtiss and Puyear were staying in and they were also using the hall bathroom according to them. Maloney and Short were using the master bedroom and bathroom at the end of the hall. Puyear, Curtiss, Maloney and Short were all read their Miranda Warning by Investigator Clevenger.

After being read her Miranda Warning, Puyear stated that the methamphetamine in the first bedroom on the right belonged to her. Curtiss stated that the marijuana plant in the bedroom belonged to him. Curtiss stated that he didn't smoke marijuana; he just likes the way it smells. Approximately 43 grams of methamphetamine were located in this bedroom. This large amount of methamphetamine is trafficking level and a violent crime as prescribed by South Carolina Statute. Two and a half Hydrocodone pills were located in this bedroom. A silver in color Taurus PT99 semi-automatic pistol was located under the TV stand with a holster and a loaded magazine. Approximately 15 grams of marijuana were located in the bedroom. Scales and baggies were also located in the bedroom. Approximately 11 grams of methamphetamine were located in the bathroom in the hall used by Puyear and Curtiss. Investigator Clevenger interviewed Puyear after she was transported to the Rock Hill Police Department in front of Investigator King. Puyear stated that she purchased two ounces (approximately 56.7 grams) to turn around and sell. Neither party claimed possession of the methamphetamine in the bathroom. Curtiss had \$1508 cash in his possession at the time of his arrest. Curtiss stated that he did not have a job but that his aunt had given him \$4,000 to buy a car a couple of weeks prior to his

arrest. Puyear and Curtiss provided a different address for their residence but a stated to Investigator Clevenger that they had been staying at the apartment. The room was full of clothing, makeup, had bedding on the floor, food and candy around the room. There was a TV and a DVD player or game station connected to the TV.

Maloney stated that there was marijuana located in several locations in the master bedroom that belonged to Short. Short stated that the marijuana was hers. In a black box in a location described by Maloney, in the master bedroom, Investigator Clevenger located approximately .35 grams of methamphetamine, 6 Hydrocodone pills with each one broken up in half, and a marijuana grinder. Maloney gave permission to search his Ford Explorer. Maloney stated there would be some marijuana in the rear of the vehicle. When officers searched the vehicle, in the rear was a Crown Royal bag with approximately .77 grams of methamphetamine, 5 dose units of Alprazolam, and approximately 6.95 grams of Hydrocodone packaged in three separate bags, straws for sniffing drugs and pipes for smoking drugs.

Upon entering and leaving the main entrance to the apartment complex onto India Hook Rd., you are directly across the road from Ebinport Elementary School. The other entrance/exit accesses onto Ebinport Rd and is currently partially blocked due to construction. The entrance/exit onto Ebinport Rd is the furthest from the 2055 McGee Rd. Apt. A. This incident location is within one half mile of Ebinport Elementary School.

AD 2012-5
Nemo
2012-5

Case Report Summary

Print Date/Time: 05/31/2016 14:45
 Login ID: thompsonp
 Case Number: 2016-00018269

York County Sheriff's Office
 ORI Number: SC0460000

Date	Code	Type	Make	Model	Description	Tag No.	Item No.
05/27/2016	Evidence	EVID-Misc. Drugs			Hydrocodone	80582	1
05/27/2016	Evidence	EVID-Drugs-Meth			Methamphetamine and straws in container	80581	1
05/27/2016	Evidence	EVID-Misc. Drugs			(5) Dose units of Alprazolam	80580	1
05/27/2016	Evidence	EVID-Marijuana			Marijuana Plant	80579	1
05/27/2016	Evidence	EVID-Marijuana			Marijuana in pipe	80578	1
05/27/2016	Evidence	EVID-Marijuana			Marijuana in grinder	80577	1
05/27/2016	Evidence	EVID-Drugs-Meth			Methamphetamine	80576	1
05/27/2016	Evidence	EVID-Misc. Drugs			(6) Half pills of Hydrocodone	80575	1
05/27/2016	Evidence	EVID-Cellphones			White iPhone	80574	1
05/27/2016	Evidence	EVID-Marijuana			Marijuana	80573	1
05/27/2016	Evidence	EVID-Drugs-Meth			Methamphetamine	80572	1
05/27/2016	Evidence	EVID-Misc. Drugs			Hydrocodone	80571	1
05/27/2016	Evidence	EVID-Marijuana			Marijuana	80570	1
05/27/2016	Evidence	EVID-Marijuana			Marijuana	80569	1
05/27/2016	Evidence	EVID-Gun			Holster & Magazine for Taurus PT99	80568	1
05/27/2016	Evidence	Pis/Accessory					
05/27/2016	Evidence	EVID-Handgun	Taurus		PT99AFS	80567	1
05/27/2016	Evidence	Semi-Auto					
05/27/2016	Evidence	EVID-Misc. Drugs			(2) Hydrocodone	80566	1
05/27/2016	Evidence	EVID-Drugs-Meth			Methamphetamine	80565	1
05/27/2016	Evidence	EVID-Drugs-Meth			Methamphetamine	80564	1
05/27/2016	Evidence	EVID-Drug Para			Plastic Box containing item #2	80563	1
05/26/2016	Seized	Portable Electronic Commun			HTC smart phone in a black and blue case		
05/26/2016	Seized	Portable Electronic Commun			black Huawei smart phone		
05/26/2016	Seized	Portable Electronic Commun			gray & pink HTC smart phone		
05/26/2016	Seized	Portable Electronic Commun			white HTC smart phone		
05/26/2016	Seized	Drugs/Narcotics			approximately 15 grams of marijuana		
05/26/2016	Seized	Drugs/Narcotics			2 dose units of Hydrocodone and 6.9 grams Hydrocodone		
05/26/2016	Seized	Drugs/Narcotics			approximately 43 grams of methamphetamine plus 11 grams methamphetamine		

York County Sheriffs Office Evidence / Inventory Sheet

Incident Number 201600018269			Date 5/23/16		BIN #
Found or Recovered From: ☐ Victim ☒ Suspect ☐ Other _____ Name Daniela D. Puyear			Found or Recovered From: ☐ Victim ☒ Suspect ☐ Other _____ Name John E. Maloney		
Found or Recovered From: ☐ Victim ☒ Suspect ☐ Other _____ Name Brett T Curtis			Found or Recovered From: ☐ Victim ☒ Suspect ☐ Other _____ Name Jackie Short		
Incident/Seizing Location 2055 McGee St. Apt. A, Rock Hill, SC 29730					
Time	Officer	Item #	Description, Model, Serial No., Color, etc ...	Location Found/Seized	Evidence Use Only
7:55 PM	Clevenger	1	plastic box containing item #2	right bedroom of Puyear and Curtis	
7:55 PM	Clevenger	2	Methamphetamine	in item #1	
7:56 PM	Clevenger	3	Methamphetamine	right bedroom of Puyear and Curtis	
8:00 PM	Clevenger	4	(2) Hydrocodone	right bedroom of Puyear and Curtis	
8:02 PM	Clevenger	5	Taurus PT99 serial #TOF96764	right bedroom of Puyear and Curtis	
8:02 PM	Clevenger	6	holster & magazine for Taurus PT99	right bedroom of Puyear and Curtis	
8:03 PM	Clevenger	7	Marijuana	right bedroom of Puyear and Curtis	
8:03 PM	Clevenger	8	Marijuana	right bedroom of Puyear and Curtis	
8:21 PM	Clevenger	9	Hydrocodone	right-bedroom of Puyear and Curtis	
8:22 PM	Clevenger	10	Methamphetamine	bathroom in hall	
8:23 PM	Clevenger	11	Marijuana	master bedroom under dresser	
I hereby acknowledge that the above lists represent all taken from my possession and that I have received a copy report.			Item # _____ Processing request _____ Item # _____ Processing request _____ Comments (i.e., Bloodstains/Sharp/ Loaded Weapon/ Court Date) _____ Court Date: _____		
Signature X _____					
Item # (s) 1-20	From: (Sign) D. H. Clevenger	To: Sign Evidence Drop	Date and Time Received 5/23/16 - 11:50 PM		
Item # (s) 21-23	From: (Sign) D. H. Clevenger	To: Sign retained by DEU	Date and Time Received		
Item # (s)	From: (Sign)	To: Sign	Date and Time Received		
Item # (s)	From: (Sign)	To: Sign	Date and Time Received		
Item # (s)	From: (Sign)	To: Sign	Date and Time Received		
Item # (s)	From: (Sign)	To: Sign	Date and Time Received		
Item # (s)	From: (Sign)	To: Sign	Date and Time Received		
Item # (s)	From: (Sign)	To: Sign	Date and Time Received		
Type of Disposition: ☐ Release ☐ Disposal ☐ Other _____					
Item Vs _____ Date: _____		AUTHORIZATION FOR DISPOSITION Person Authorizing: _____ Name (print) _____ Signature _____ Date _____			
If released, property released to:					
Name _____					
Address _____					
I.D. # _____					
IT IS THE AUTHORIZING OFFICER'S RESPONSIBILITY TO RETURN PROPERTY TO AN AUTHORIZED OWNER WHITE - Evidence with Property CANARY - Department PINK - Officer GOLD - Defendant / Owner					

York County Sheriffs Office
Supplemental Evidence/Inventory Sheet

[illegible]

IT IS THE AUTHORIZING OFFICER'S RESPONSIBILITY TO RETURN PROPERTY TO AN AUTHORIZED OWNER .

WHITE - Evidence with Property	CANARY - Department	PINK - Officer	GOLD - Defendant Owner
--------------------------------	---------------------	----------------	--------------------------

Request for Laboratory Examination

Prelog Case #

Agency Information

Agency Name

York County DEU

Jurisdiction

York County

Officers

	Type	Name	Phone	Fax	Email
Edit / Delete	Investigating	Clevenger, Heath	(803)-628-3069		heath.clevenger@yorkcountygov.cc

Case Information

Agency Case #

201600018269

Offense Date

05/23/2016

Offense

44530370 - Controlled Substance - Distribute

Jury Trial Date

Victim / Suspect

	Type	First	Middle	Last	DOB	SEX	RACE	SID
Edit / Delete	Suspect	Daniela	Dawn	Puyear		Female	White	
Edit / Delete	Suspect	Brett	Thomas	Curtis		Male	White	
Edit / Delete	Suspect	John	Edward	Maloney		Male	White	

Business

Type	Name	Address
------	------	---------

(No Businesses)

Evidence

5/24/2016

Forensic Advantage Prelog

	Agency Item #	Prelog Item #	Description	Exam	Comment
Edit / Delete	2	1	methamphetamine	Controlled Substance	consented search
Edit / Delete	3	2	methamphetamine	Controlled Substance	consented search
Edit / Delete	4	3	hydrocodone	Controlled Substance	consented search
Edit / Delete	7	4	marijuana	Controlled Substance	consented search
Edit / Delete	8	5	marijuana	Controlled Substance	consented search
Edit / Delete	9	6	hydrocodone	Controlled Substance	consented search
Edit / Delete	10	7	methamphetamine	Controlled Substance	consented search
Edit / Delete	11	8	marijuana	Controlled Substance	consented search
Edit / Delete	13	9	hydrocodone	Controlled Substance	consented search
Edit / Delete	14	10	methamphetamine	Controlled Substance	consented search
Edit / Delete	17	11	marijuana plant	Controlled Substance	consented search
Edit / Delete	18	12	alprazolam	Controlled Substance	consented search
Edit / Delete	19	13	methamphetamine	Controlled Substance	consented search
Edit / Delete	20	14	hydrocodone	Controlled Substance	consented search
Add					

Statement of Facts

All evidence recovered as a result of consent to search a residence

GSC



2662

 Kevin R. Tolson Sheriff		York County Sheriff's Office Forensic Laboratory Services Moss Justice Center 1675-2A York Highway York, South Carolina 29745-7430	
Laboratory Report			
Lab Case #	Y16-00741	Agency Case #	201600018269
Reporting Section	Controlled Substances	Submission Agency	York County Sheriff's Office
Date of Report	February 15, 2017	Investigated by	Clevenger, Heath
Date of Submission	06/21/2016	Submitted by	Patterson, Patrick
		Delivery Method	Hand to Hand
Involved Subjects:			
Name	DOB	Type	
Daniela Puyear	[REDACTED]	Suspect	
Brett Curtis	[REDACTED]	Suspect	
John Maloney	[REDACTED]	Suspect	

List of Evidence:

- Item # 2: Crystal substance (Agency Item 80564)
- Item # 3: Powder substance (Agency Item 80565)
- Item # 4: White tablets (Agency Item 80566)
- Item # 7: Green plant material (Agency Item 80569)
- Item # 8: Green plant material (Agency Item 80570)
- Item # 9: Partial white tablet (Agency Item 80571)
- Item # 10: Crystal substance (Agency Item 80572)
- Item # 11: Green plant material (Agency Item 80573)
- Item # 13: Partial white tablets (Agency Item 80575)
- Item # 14: Crystal substance (Agency Item 80576)
- Item # 17: Plant (Agency Item 80579)
- Item # 18: Partial green tablet and peach tablets (Agency Item 80580)
- Item # 19: Unknown substance (Agency Item 80581)
- Item # 20: White tablets (Agency Item 80582)

CONFIDENTIAL REPORT

Lab Record #: Y16-00741 #1

Controlled Substances (Controlled
Substance)

Report Date:

Exhibit 2
February 15, 2017**Results of Analysis:**

Item 2 was determined to contain Methamphetamine (C-II), total weight 41.73 grams. *ANALYST CLAIMED ALL*

Item 3 was determined to contain Amphetamine (C-II), weighing 0.02 grams.

Item 10 was determined to contain no controlled substance. *11 Grams*

Item 14 was determined to contain Methamphetamine (C-II), weighing 0.08 grams.

Items 4, 7, 8, 9, 11, 13, 17, 18, 19, and 20 require no further analysis per the solicitor's office.

Cynthia J Mitchum

Cynthia J Mitchum
Drug Chemist
cynthia.mitchum@yorkcountygov.com

CONFIDENTIAL REPORT

WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2015A4610200485

ACTION OF GRAND JURY**TRUE BILL**

Shirley Sander
 Foreperson of Grand Jury
 Date: 6/18/15

VERDICT

Foreperson of Grand Jury
 Date:

DOCKET NO. 2015-GS-46-01787

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JUNE 18, TERM 2015

THE STATE

VS.

BRETT THOMAS CURTISS**INDICTMENT FOR****POSSESSION WITH INTENT TO
DISTRIBUTE METHAMPHETAMINE**

SC Code: § 44-53-375(B)
 CDR Code: 3199

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
 hereby appear in my own proper person and plead guilty to the within indictment or to _____

Defendant**Witness:**

Cindy Duck *C. Spee*
 C.C.C. PLS. AND G.S.

64
STATE OF SOUTH CAROLINA
COUNTY OF YORK

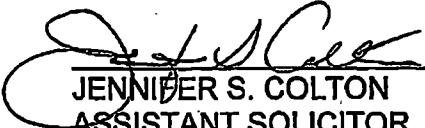
INDICTMENT

At a Court of General Sessions, convened on June 18, 2015, the Grand Jurors of York County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE

The defendant, Brett Thomas Curtiss, did on or about March 26, 2015, in York County, South Carolina, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to distribute, dispense, deliver, or purchase, or possess with the intent to distribute, dispense, deliver, or purchase Methamphetamine in violation of the provisions of Section 44-53-370. All in violation of 44-53-375(B) of the South Carolina Code of Laws (1976) as amended.

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


JENNIFER S. COLTON
ASSISTANT SOLICITOR

OF YORK

VS.

BRETT THOMAS CURTISS

RCA:

Race: White Sex: M Age: 46

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Rock Hill, SC 29730

DL# [REDACTED] SID# SC02046227

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Possession with Intent to Distribute Methamphetamine 2nd Offense

In violation of § 44-53-375(B) of the S.C. Code of Laws, bearing CDR Code # 3198

INDICTMENT/CASE#: 2015GS4601787
 A/W: 2015A4610200485
 Date of Offense: 03/26/2015
 S.C. Code §: 44-53-375(B)
 CDR Code #: 3198

SENTENCE SHEET

ORIGINAL

☐ CONVICTED OF or☒ PLEADS☒ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC w/minor 1st or Lewd Act)☐ §17-25-45The 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:

Jennifer S. Colton
 Jennifer S. Colton, Assistant Solicitor 68591
 SC Bar #

Brett Curtiss
 Defendant

[Signature]
 Attorney for Defendant 65326
 SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 9 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: 7/10/17 ph☒ 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. 116 days☐ 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 (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,

Proviso §61.6 requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Presiding Judge: *[Signature]*

Judge Bar ID: _____

Sentence Date: 7-10-17Judge Code: 2131Clerk of Court/Deputy Clerk: David HamiltonCourt Reporter: Wanda Wilson

SCCA217 (07/2016)

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ 50.00

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ _____

TOTAL \$ 275.00

ARREST WARRANT

2015A4610200485

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

THE STATE

2015/8419

against

Brett Thomas Curtiss

Address:

Rock Hill, SC 29730-

Phone: _____ SSN: _____
Sex M Race: W Height 5 10 Weight 152

DL State: _____ DL #: _____

DOB: _____ Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: D. Burkhardt - BUR

Offense: Drugs/ Distribution, etc. of methamphetamine, 2nd

Offense Code: 3199

Code/Ordinance Sec: 44-53-0375(B)(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
fealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Brett Thomas Curtisson 3/26/2015
Signature of Coroner/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions
1675 York Hwy
York, SC 29745

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518Personally appeared before me the affiant D. Burkhardt whobeing duly sworn deposes and says that defendant Brett Thomas Curtissdid within this county and state on or about 3/26/2015

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of York)

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs/ Distribution, etc. of methamphetamine, 2nd

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:Defendant did wilfully violate the SC Code of Laws by possessing with intent to distribute .8 gram methamphetamine while at 1811
Keith Drive, Rock Hill, York County, SC. Records indicate Defendant has one drug conviction.

Police investigation

Seized evidence[.8 gram meth, scales, packaging material]

Signature of Affiant



STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Affiant's Address Moss Justice CenterYork 29745-7428

Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/26/2015 defendant Brett Thomas Curtiss

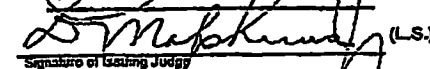
did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of York) as set forth below:

DESCRIPTION OF OFFENSE: Drugs/ Distribution, etc. of methamphetamine, 2nd

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 3/26/2015
Signature of Issuing Judge (L.S.)

Lewis Daniel Malphrus Jr.

Judge Code: 5071Judge's Address Moss Justice CenterYork, SC 29745-7423Judge's Telephone (803)628-3095Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

FA Web Prelog AuthXAccess

Logged In as: Harrelson, Hugh

Request for Laboratory Examination

Prelog Case # Search

Agency Information

Agency Name

Jurisdiction

Officers

Type	Name	Phone	Fax	Email
Edit / Delete	Investigating	Harrelson, Hugh	(803)-329-7276	hugh.harrelson@yorkcountygov.co

[Add](#)

Case Information

Agency Case #

Offense Date

Offense

Jury Trial Date

Victim / Suspect

Type	First	Middle	Last	DOB	SEX	RACE	SID
Edit / Delete	Elimination	Brett	Thomas	Curtiss	Male	White	

[Add](#)

Business

Type	Name	Address
------	------	---------

(No Businesses)

[Add](#)

Evidence

Agency Item #	Prelog Item #	Description	Exam	Comment	
Edit / Delete	1	1	methamphetamine	Controlled Substance, Latent Print	Could you check the baggies for prints due to locating the baggies on the bathroom.

 Bruce M. Bryant Sheriff		York County Sheriff's Office Forensic Laboratory Services Moss Justice Center 1675-2A York Highway York, South Carolina 29745-7430	
Laboratory Report			
Lab Case #	Y15-00332	Agency Case #	201500009419
Reporting Section	Controlled Substances	Submission Agency	York County Sheriff's Office
Date of Report	May 28, 2015	Investigated by	Harrelson, Hugh
Date of Submission	04/14/2015	Submitted by	Patterson, Patrick
		Delivery Method	Hand to Hand
Involved Subjects:			
Name	DOB	Type	
Brett Curtiss	[REDACTED]	Suspect	

List of Evidence:

Item # 1: Crystal substance (Agency Item 73701)

Item # 4: Crystal substance (Agency Item 73705)

Results of Analysis:

Item 1 was determined to contain Methamphetamine (C-II), total weight 0.40 grams.

Item 4 was determined to contain residue of Methamphetamine (C-II).

Cynthia J Mitchum

Cynthia J Mitchum
 Drug Chemist
 cynthia.mitchum@yorkcountygov.com

CONFIDENTIAL REPORT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
	)	
Brett Thomas Curtiss,	)	2017-CP-46-3819
SCDC #373259,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed on December 27, 2017, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently in the South Carolina Department of Corrections. Applicant was indicted at the August 2016 term of the York County Grand Jury for possession with intent to distribute marijuana (2016-GS-46-2655) and trafficking in methamphetamine (2017-GS-46-2653). Applicant was indicted at the June 2015 term of the York County Grand Jury for possession with intent to distribute methamphetamine (2015-GS-46-1787). Derek Chiarenza, Esquire, represented Applicant. Assistant Solicitors Jennifer Colton and Ryan Newkirk, prosecuted the case. On July 10, 2017, Applicant appeared with his counsel before the Honorable J. Cordell Maddox, Jr., and pled guilty as indicted. Pursuant to a negotiated sentence, Applicant was sentenced to imprisonment for nine years on each charge, to run concurrently. Applicant did not appeal his guilty plea or sentence.

II. FACTUAL HISTORY

The following facts were presented at the plea hearing:

For indictment 2015-GS-46-1787: On the March 26, 2015, officers with the Drug

Enforcement Unit received a tip that Applicant was located at 1811 Keith Drive in Rock Hill, York County, South Carolina. At that time he had an outstanding commitment order.

Officers saw Applicant speaking with individuals in a driveway and approached him. Applicant spoke with the individuals that were standing in the drive way and they told officers that they were there to purchase methamphetamine.

Officers then searched the home with consent from the home owner and recovered methamphetamine from the bathroom from where Applicant was located. Applicant at that time told officers that the meth was his. There were also additional scales and some text message that indicated drug sales.

For Indictments 2016-GS-46-2655 and 2017-GS-46-2653: On May 23, 2016, officers responded to 2055 McGee Road in Rock Hill, York County, South Carolina to assist escorting a DSS employee regarding reports that a nine year old was living in an apartment where meth was being produced. A resident gave consent for officers to look for the apartment and upon doing so they saw in plain view a marijuana plant and methamphetamine.

Both Applicant and a co-defendant were located in the apartment. Officers conducted a search and found forty-three grams of methamphetamine in Applicant's bedroom as well as additional marijuana, digital scales and other indicia of intent to distribute.

Guilty Plea hearing transcript p. 10, l. 1 – 11, l. 3.

Applicant informed the plea court that he agreed with the facts presented by the assistant solicitor. Guilty Plea hearing transcript p. 10.

III. PCR APPLICATION

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

1. Ineffective assistance of counsel
 - a. Counsel failed to acquire the Brady material
 - b. Counsel accepted plea agreement that was not favorable to Applicant.
2. Brady Violation
 - a. Failed to produce case summary reports, evidence/inventory sheet, lab reports
3. Due Process violation
 - a. State required Applicant to plead guilty to drug offense greater than what he was charged with.

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

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), SCRCP. 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, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be

sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

IV.

Applicant alleges ineffective assistance of counsel. These allegations are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the Applicant must prove that counsel’s performance was deficient. Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel’s

unprofessional errors, he would not have pleaded guilty, but would have insisted on going to trial. Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

V.

Applicant alleges the State committed a Brady v. Maryland¹ violation by failing to produce the lab reports, case summaries, and evidence sheets. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based on the requirement of due process. The accused must show: “(1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment.” Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)). The Supreme Court of the United States has identified three distinct categories of Brady violations: (1) cases that include nondisclosed evidence of perjured testimony about which the prosecutor knew or should have known, (2) cases in which the defendant specifically requested the nondisclosed evidence, and (3) cases in which the defendant made no request or only a general request for Brady material. Gibson v. State, 334 at 524–25, 514 S.E.2d at 325 (citing United States v. Agurs, 427 U.S. 97 (1976)). Respondent contends this allegation is without merit; however Respondent would request an evidentiary hearing be held to resolve the issue.

VI.

Each and every allegation contained within the application not expressly admitted,

¹ Brady v. Maryland, 373 U.S. 83 (1963).

qualified, or explained in this Return is hereby denied.

VII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

March 14, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
	)	
	)	2017-CP-46-3819
	)	
BRETT THOMAS CURTISS, #373259,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Leah B. Moody, Esquire
 Law Office of Leah B. Moody, LLC
 Post Office Box 1015
 Rock Hill, South Carolina 29730

DATED this the 14th day of March, 2018.



Caroline Collins, Administrative Coordinator
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-46-03819

BRETT THOMAS CURTISS)
vs.) TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA)

JULY 31, 2018
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE WILLIAM MCKINNON

APPEARANCES:

LEAH B. MOODY, ESQUIRE
ROCK HILL, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

JANELL GREGORY, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
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Brett Thomas Curtiss				
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By Ms. Moody	9			
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By The Court	21			
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By Ms. Moody (contd)	22			
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By Ms. Gregory		43		
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Derek Chiarenza				
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By Ms. Gregory	45			
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By Ms. Moody		57		
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E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(NO EXHIBITS)

1 THE COURT - All right, counsel, which matter are
2 we taking up first?

3 MS. GREGOGY - May it please the Court. We are
4 going to take up the matter of Brett Thomas Curtiss.

5 THE COURT - Okay.

6 MS. GREGORY - 2017-CP-46-3819.

7 THE COURT - All right.

8 MS. GREGORY - May it please the Court, Your
9 Honor.

10 THE COURT - Yes, ma'am.

11 MS. GREGORY - Applicant is currently incarcerated
12 with the South Carolina Department of Corrections pursuant
13 to York County Clerk of Court's Order of Commitment.

14 Applicant was indicted in the July, 2015 term of York
15 County Grand Jury for possession with intent to
16 distribution methamphetamine second offense. Applicant was

17 also indicated by the August 2016 term of the York County
18 Grand Jury for possession with intent to distribute

19 marijuana first offense and trafficking in methamphetamine
20 third offense. Derek Chiarenza, Esquire, represented him.

21 Assistant Solicitor Ryan Newkirk with the Sixteenth Circuit
22 Solicitor's office prosecuted the case. On July 10th, 2017
23 applicant entered a guilty plea before The Honorable J.

24 Cordell Maddox. Applicant pled guilty as indicted to all
25 charges except the trafficking in methamphetamine. For

1 that charge applicant pled guilty to a lesser included
2 offense of trafficking in methamphetamine 28 grams but
3 under a 100 grams second offense. Applicant was sentenced
4 to nine years on each charge to run concurrently.
5 Applicant filed a timely application for post-conviction
6 relief on December 27th, 2017. The allegations alleged is
7 ineffective assistance of trial counsel, Brady violations
8 and due process violation. The State filed a return on
9 March 14th, 2018. Applicant is represented by Leah Moody.
10 She is here today.

11 THE COURT - Okay, and counsel, I just want to
12 say, I'm not on Facebook or whatever; I take notes on the
13 computer, so that's what I'm doing up here.

14 MS. GREGORY - Okay.

15 MS. MOODY - No problem.

16 May it please the Court, Your Honor. I am here
17 with Mr. Curtiss and just a housekeeping matter that we
18 discussed with you in chambers with regard to one of his
19 sentences. He was charged with the trafficking 28 to 100
20 grams second offense and the PWID marijuana first and PWID
21 meth second. As to the PWID marijuana, the sentence
22 exceeds the actual amount of time in which the Court could
23 sentence him, and on the sentencing sheets all of them
24 state nine years. Based on my conversation with the State,
25 they consent to the amendment of his sentencing sheet as it

1 -- as it reflects nine years as to the PWID marijuana. And
2 so I've informed my client of that, and that should carry
3 the five years. Now, Your Honor, you're going to hear
4 testimony from my client here regarding his other charges,
5 and the State has not consented to that, but this is as to
6 his sentencing, he has a position as to that.

7 Also, Your Honor, just for the record, outside of
8 the Court signing a -- the consent order where we discussed
9 the sentencing sheets being corrected by the sentencing
10 judge or Your Honor may decide to correct the sentencing
11 sheet, but I -- I'm of the opinion that it's the sentencing
12 judge that has to correct the sentencing sheet and issue it
13 back to department of corrections. I would ask the Court
14 to -- I've discussed this with my client and let him know
15 that going forward today the Court can't change his
16 sentence like a lawful sentence that occurred in general
17 sessions. Um, ---

18 THE COURT - What -- what is the State's position.
19 I mean I -- what is the -- it's clearly an illegal
20 sentence, so ---

21 MS. GREGORY - It is, and we are ---

22 THE COURT - --- well, I mean -- I appreciate --
23 what -- who has the authority to -- I mean is it
24 correctable by the PCR order?

1 MS. GREGORY - It is. It is correctable by the
2 PCR judge I believe. We have the code section 17-27-80
3 that um ---

4 THE COURT - Hold on one second, 17- ---

5 MS. GREGORY - 27-80.

6 THE COURT - Nothing like the whole books.

7 Okay, I've got 17-27-80.

8 MS. GREGORY - Okay. If the Court finds in favor
9 of the applicant, it shall enter an appropriate order with
10 respect to the conviction or sentence in the former
11 proceeding, so I feel like you would have the authority to
12 correct that.

13 THE COURT - Ms. Moody, any objection to doing it
14 that way?

15 MS. MOODY - No, sir, Your Honor, and that's as to
16 the marijuana charge.

17 MS. GREGORY - Correct.

18 THE COURT - Yes, ma'am. Yeah, that's in the
19 marijuana charge, yeah.

20 MS. MOODY - Okay. So as to charges where it's
21 changing the sentence that is a lawful sentence, I'm not
22 sure of the State's position on that one.

23 MS. GREGORY - No, we aren't consenting to
24 changing -- ---

25 THE COURT - No, I'm not ---

1 MS. MOODY - No, I'm saying your position, not to
2 whether you consent. I know you wouldn't consent. I'm
3 saying a lawful sentence -- it's my understanding the Court
4 cannot change a lawful sentence issued by a judge in ---

5 MS. GREGORY - That's correct.

6 MS. MOODY - Okay. So I just want to make sure
7 that -- because my client -- in this document -- I would
8 hand up to the Court, the client -- my client has handed to
9 me that there were -- it's a little bit of a different
10 situation, and I guess ---

11 THE COURT - Right.

12 MS. MOODY - --- he would have to prove that his
13 was not lawful. He thinks that -- or he's of the opinion
14 that the Court can change his sentence here today if the
15 Court granted relief. My position is, and this is what
16 I've advised him, is the Court cannot change a lawful
17 sentence if ---

18 THE COURT - Now I understand what you're saying,
19 Ms. Moody.

20 MS. MOODY - Okay.

21 MS. GREGORY - Correct.

22 THE COURT - Okay, so yes, and that is a correct
23 statement -- I don't have the power to change your sentence
24 unless it's an illegal sentence. I mean there -- so that's
25 -- that's a correct statement of the law, but just -- so

1 we're all on the same page, both sides are in agreement
2 that however I order on the rest of the PCR, the order will
3 include a statement saying without any objection that
4 sentence is corrected to five years ---

5 MS. GREGORY - Five years, yes, sir.

6 THE COURT - --- on the marijuana?

7 MS. MOODY - Okay.

8 THE COURT - Okay, and let make sure -- and that's
9 indictment -- make sure I have it right now. Indictment
10 2016-GS-46- ---

11 Okay, yes, ma'am, Ms. Moody.

12 MS. MOODY - Thank you, Your Honor. At this time
13 I would call Mr. Curtiss to the stand.

14 THE COURT - Okay.

15 BRETT THOMAS CURTISS, AFTER BEING FIRST DULY

16 SWORN, TESTIFIES AS FOLLOWS -

17 DIRECT EXAMINATION

18 BY MS. MOODY -

19 Q Mr. Curtiss, could you please speak into the mic and
20 give the Court your full name?

21 A My name is Brett Thomas Curtiss.

22 Q Okay, and where are you currently incarcerated?

23 A Kirkland Correctional facility.

24 Q And what are you in Kirkland for?

BRETT THOMAS CURTISS - DIRECT BY MS. MOODY

10

1 A Marijuana possession first offense, PWID point four of
2 a gram second offense and trafficking second.

3 Q For what drug?

4 A Methamphetamine.

5 Q For trafficking for methamphetamine.

6 A Yes.

7 Q Okay, and your other PWID is for?

8 A Point four of a gram of methamphetamine, yes.

9 Q Okay. All right, and who was your attorney related to
10 those charges?

11 A At first I started with Harry Collins, and then Harry
12 Collins was relieved, and Derek Chiarenza was appointed.

13 Q How long did Harry Collins represent you?

14 A Couple months. I retained him and then retaining was
15 removed from Judge Hall and, um, because of some situation
16 and then it was passed to Mr. Chiarenza.

17 Q Okay, and you were appointed Mr. Chiarenza?

18 A Yes.

19 Q Okay. And -- so do you recall the date of when Mr.
20 Chiarenza started representing you?

21 A Some time in August.

22 Q Okay, and had you had any kind of court appearances at
23 that time?

24 A No.

1 Q So it's basically like he started from the beginning
2 with you.

3 A Yes, ma'am.

4 Q Okay. And did you have an opportunity to meet with
5 Mr. Collins? I mean, not Mr. Collins, Mr. Chiarenza, I'm
6 sorry.

7 A I spoke with Mr. Chiarenza one time on the phone. He
8 said that he hadn't received anything of my file yet and
9 that he was busy, not to contact him, he would contact me
10 when he got a hold of the file, and he never contacted me.

11 Q Now, at the time when you talked to him on the phone,
12 where were you located?

13 A In Rock Hill.

14 Q Okay. And are you -- were -- at the time were you a
15 permanent residence of Rock Hill?

16 A I have a residence here in Rock Hill. I also live in
17 Ponca City, Oklahoma.

18 Q And did her ever go back to Oklahoma?

19 A Yes, ma'am.

20 Q Do you recall when?

21 A December.

22 Q So in August you talked to Mr. Chiarenza.

23 A Yes.

24 Q And in December you went back to Oklahoma.

25 A Yes, ma'am.

1 Q And in that time period from August to December, what,
2 if any, conversations did you have with Mr. Chiarenza?

3 A None.

4 Q Did you have any court appearances?

5 A No, ma'am.

6 Q Did you receive any of your discovery?

7 A No, ma'am.

8 Q At what point do you recall having received any
9 discovery in your case?

10 A I was extradited from Oklahoma; I got back here May
11 8th of 2017. Approximately a few weeks after being in the
12 county Mr. Chiarenza showed up, spoke with me for a few
13 minutes and three weeks later I -- three weeks later I
14 ended up getting partial of my discovery. This is -- he
15 brought it, said this is what was in it, this is what he
16 got from the solicitor, to review it and they'll go from
17 there. Uh, approximately three or four weeks later I end
18 up being contacted by Leslie Robinson from the civil
19 department for York County, and at that time I was being
20 served forfeiture papers, and when I got back to the cell
21 house going through the forfeiture papers trying to
22 understand the things with it, uh, during that time
23 Chiarenza had showed up and I'd asked him a question on how
24 to answer the forfeiture papers, but within the
25 documentation was the lab reports that the State had

1 received back from their -- Cynthia -- I forget her name --
2 that stated that the 11 grams of methamphetamine in which I
3 was being charged for came back as no drugs at all, and I
4 asked Mr. Chiarenza about the documents, he asked me where
5 I -- where did I get those at, because he'd never given
6 them to me and the State had never given them to him
7 obviously, because they've (sic) never turned over to me in
8 any discovery whatsoever.

9 Q Okay, well, let's -- let's slow up on that. We'll
10 come back to that. So between the time August and
11 December, did Mr. Chiarenza know that you had -- well, you
12 went back to Oklahoma in December.

13 A Correct.

14 Q Okay, and is it your testimony that you did not have
15 any conversation with Mr. Chiarenza or have any meetings --

16 -

17 A Nothing.

18 Q Okay. So in December, when you left for Oklahoma, did
19 you contact Mr. Chiarenza about going back to Oklahoma?

20 A Calling his phone and I did leave messages on his
21 phone. He doesn't answer his phone. And contact him back
22 -- I understand that, you know, attorneys are busy or
23 whatever, but, you know, if -- if an individual's requested
24 material from you and he states that he's waiting for a
25 file to go over it, and then he doesn't contact you back

BRETT THOMAS CURTISS - DIRECT BY MS. MOODY

14

1 pertaining to issues -- um, I've got a family to take care
2 and so forth, so I went home to go to work rather than sit
3 around here, and that's what took place.

4 Q So you got back -- you came back by way of
5 extradition.

6 A Yes, ma'am.

7 Q Okay, and how did you learn of the extradition
8 process?

9 A They come to my residence. One of -- my brother-in-
10 law was pulled over in his pickup truck at my residence,
11 and at that point in time the officer had ran my name and
12 said, well, you have a warrant in South Carolina, and uh, I
13 was like, okay, so I signed for extradition and everything.
14 I didn't contest it or anything else, and I came back here
15 to face the charges. I didn't even know I had court.

16 Q Okay, so after you came back from -- with extradition,
17 that's when you spoke with Mr. Chiarenza?

18 A Correct.

19 Q Okay. And what, if anything, did you discuss with Mr.
20 Chiarenza?

21 A The possible pertinent fact of the case. For one,
22 like I told him, I said, none of the stuff was -- the only
23 thing that I claimed at the house was the pot plant. I
24 brought that when I came to the apartment 20 minutes before
25 ---

1 Q Say -- say again. What was it that you claimed?

2 A I brought a pot plant. Okay? I showed up with a
3 friend of mine. He was sitting outside in the parking lot
4 waiting to take me to my house on 901. I just stopped in
5 to see Dani to visit. I just came from Myrtle Beach. I
6 had a pot plant with me because, um, she had requested it.
7 You know, I -- I like pot plants. I like the way they
8 smell. I don't smoke it, but that's just what it is. Um,
9 next thing I know there's a knock on the door. Jackie went
10 and answered the door; two DSS ladies came in and couple of
11 a sheriffs behind, and the pot plant was in plain view, so
12 that's what took place. I'm not a -- I wasn't a residence
13 (sic) of the place. Um, ---

14 Q Well, let's go back. So who is Jackie?

15 A Jackie Short was the owner of the place or the ---

16 Q Of the house?

17 A Yeah.

18 Q Okay. And then who is Danielle?

19 A Danielle's my sister-in-law. She goes by Daniella
20 Pryor or Daniella Curtiss.

21 Q Okay. And so you went by -- that was the first day
22 that you'd come back to Rock Hill?

23 A No, that was -- this was in 2016.

24 Q Okay. That led to the charges.

25 A Yes, ma'am.

BRETT THOMAS CURTISS - DIRECT BY MS. MOODY

16

1 Q Okay. So you explained that to Mr. Chiarenza.

2 A Sure, and uh, in the -- I had let him know that
3 everybody had accepted their own stuff that day. He said,
4 well, he didn't have the discovery from the State, that,
5 you know, they -- we'd go over this and that when -- you
6 know -- but he was pretty agitated. He really didn't even
7 want to talk to me. He just basically was like, you know,
8 just listen to what I got to say, shut up or I'll walk out
9 of here.

10 Q And this is when you had come back to South Carolina
11 on extradition warrants.

12 A Yes, ma'am.

13 Q Okay. So did you have an opportunity to look at any
14 of the discovery that Mr. Chiarenza ultimately received?

15 A Yeah, it was, uh, -- it had Daniella's statement in
16 it, the -- the one police report from -- I have the copies
17 in my paperwork.

18 Q Okay. But I'm just asking you did you have an
19 opportunity to review them?

20 A Yes, except for the laboratory reports from the
21 forensic labs that was excluded from it that -- the charge
22 I was originally charged with was trafficking first offense
23 C -- ClA, ten grams but less than 28. I was arrested for
24 it, made bond for it, everything else. It was -- my bench
25 warrants were for it also. When I got the -- when I ended

1 up getting the lab reports from Leslie Robinson from the
2 civil department, which was never given to me by the -- by
3 Mr. Newkirk or Jennifer Colton or Mr. Chiarenza, I
4 confronted him with it. He said, where the hell did you
5 get that? And then he said that he was going to go talk to
6 Ms. Colton immediately about the issue. Inside the lab
7 report, item number 10, it specifically states that what I
8 was charged with, the 11 grams of methamphetamine came back
9 as no drugs whatsoever. And so what the State did upon
10 that point in time was what Dani was being charged with of
11 the -- the 43 grams that she claimed at the apartment
12 because it was hers and her -- where she lived at, they end
13 up putting that charge on me at the same time. I was --
14 she pled guilty two months prior before me even coming back
15 from Oklahoma to a plea to the same trafficking and the
16 same marijuana charge, got seven years and five years, and
17 I'm brought back on the same charges for something I
18 originally wasn't even charged for, and I get a nine and a
19 nine. That was ---

20 Q Okay, so let's go back.

21 A --- negotiated by my attorney.

22 Q Let's talk about you said you were originally charged
23 with ---

BRETT THOMAS CURTISS - DIRECT BY MS. MOODY

18

1 A Trafficking first offense C1A. It's in my bench
2 warrants and everything else that were issued in February
3 and May of 2017, and then I get here and ---

4 Q Wait -- wait a minute, slow down. You got originally
5 charged with the trafficking C1A, and ---

6 A Yes, ma'am.

7 Q --- that was for methamphetamine?

8 A Eleven grams of methamphetamine, yes, ma'am.

9 Q Okay, and did you get any other charges on that day?

10 A The two proximities and ---

11 Q Proximity of a park or a school or ---

12 A Yeah, something like that, whatever it was.

13 Q Okay, so you had two of those charges.

14 A And the possess -- I guess the possession of
15 marijuana.

16 Q Okay. Did you have any other charges?

17 A No, not today (sic); It was just the for charges.

18 Q Okay, so what you're testifying here today is that
19 when you got charged with the trafficking methamphetamines,
20 the C1 ---

21 A A.

22 Q --- , that was for 11 grams.

23 A Yes, ma'am.

24 Q Okay, and the drug results -- drug analysis that came
25 back for that was zero. It was not drugs.

1 A Correct, from Cynthia Mitchell (sic) from the forensic
2 lab report from York County.

3 Q Okay, and then the charge that you got for the
4 marijuana, PWID marijuana ---

5 A Was for 15 grams of marijuana. The picture that they
6 took and provided me with Mr. Chiarenza for the discovery
7 showed one single bud that was in a glass jar. Um, it
8 wasn't packaged; it wasn't broken up.

9 Q Okay.

10 THE COURT - Ms. Moody, is it okay if I ask a
11 couple of questions?

12 MS. MOODY - Yes, I was trying to like make this
13 clear. I'm only focusing on the charges, and if I could
14 just finish up this line right here ---

15 THE COURT - Sure.

16 Q I just want to focus on the charges that you were
17 originally charged with and then the charges that you
18 ultimately were charges with ---

19 A Okay.

20 Q --- because you made a point of that.

21 A Okay.

22 Q So you had the trafficking methamphetamine. That was
23 the 11 grams that came back as no drugs.

24 A Yes, ma'am.

1 Q Okay. Then there was the PWID marijuana. I get that
2 you're saying that it wasn't the amount maybe, but you were
3 originally charged with a PWID marijuana.

4 A First offense, yes, ma'am.

5 Q Okay. And then you had two proximity charges.

6 A Yes, ma'am.

7 Q Okay. You didn't have another trafficking in
8 methamphetamines for any amount.

9 A No.

10 Q Okay. All right. And so when you testified about
11 Danielle pleading to charges two months ahead of you, she
12 pled to the other amount of methamphetamines that were
13 found ---

14 A Yes, ma'am.

15 Q Okay, and what was that amount?

16 A Forty-three grams.

17 Q Okay. And so you -- are -- is it your testimony that
18 you did not claim that methamphetamine?

19 A No, ma'am. No.

20 Q But ultimately when it came down to pleading to the
21 charges, you ended up getting faced with those charges.

22 A Under advisement from my counsel, yes.

23 Q Okay.

1 A It was the -- he advised me to do so, it was the best
2 I was going to get, sorry about your luck, or to take 30
3 years.

4 Q Okay. And so did you at any time question him about
5 how you got charged with the forty-some-odd grams of
6 methamphetamine?

7 A Yeah.

8 Q And what was his response?

9 A He said the State can do that.

10 MS. MOODY - If you have any questions, Judge.

11 EXAMINATION

12 BY THE COURT -

13 Q Mr. Curtiss, this was a negotiated plea, which means
14 you went in knowing exactly what you were going to get,
15 and, in fact, you're asking the Judge for that sentence.
16 Do you understand that?

17 A I do now, now that I've had the chance to actually
18 read a law book and find other cases, which attune certain
19 specifics beforehand.

20 Q Mr. Curtiss, a Judge -- didn't the Judge ask you if
21 this was what you wanted to do?

22 A Yeah, but the part of it is, is -- is I was only
23 knowingly what my counsel advised me and ---

24 Q Are you telling me now that you would not have wanted
25 -- in order for this proceeding to go forward this morning,

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1 you have to tell me you didn't want to plead guilty, that
2 you ---

3 A No, ---

4 Q --- wanted a trial.

5 A If I would've known what I know now, specifically
6 pertaining to the classification of the charge and the
7 evidence pertaining to it, there's no way I would've took
8 that plea.

9 THE COURT - Okay. That's it then.

10 DIRECT EXAMINATION

11 BY MS. MOODY (contd.) -

12 Q So going back to the -- you're saying -- going off of
13 what the Judge just asked you, you're saying there's no way
14 you would've take (sic) the plea. All right, I guess
15 another way of saying it is, you were not -- you would not
16 have accepted responsibility for the 46 grams, because you
17 have two charges that, I guess you're disputing that you
18 were originally charged with, which would be the
19 trafficking 28 grams to 100 second offense, and then the
20 PWID marijuana -- excuse me -- PWID meth second which was
21 like four -- point four?

22 A Point four of a gram. That was from 2015.

23 Q Okay, so that -- is that -- are you disputing that
24 charge?

1 A The -- the only thing in that was for -- what I put in
2 there was for actually reconsideration of it, because of
3 the fact that it was point four of a gram found in a
4 general common area inside my mother-in-law's house.

5 Q The same -- was this the same day that the police
6 came?

7 A This was a year earlier.

8 Q Okay. So you pled to those charges on the same day --
9 -

10 A Yes, ma'am.

11 Q --- you got the nine years.

12 A Yes, ma'am.

13 Q Okay. And it's your testimony here today is based on
14 what your lawyer told you, you accepted the negotiated
15 sentence that -- or you went forward with the negotiated
16 plea.

17 A Yes, ma'am.

18 Q Okay.

19 A See the original negotiation on the PWID was for five
20 years, and then at the end -- the PWID meth, the original
21 one, the negotiation for it was for five years non-violent,
22 and in the end with the two cases being combined together
23 and because of the trafficking, then everything was changed
24 to nines, and uh, he was telling me if I -- he was advising
25 me that this was the best that I was going to get and --

1 underneath the circumstances, and the only thing that I
2 knew was what he was advising me.

3 Q Okay.

4 A You know, I mean I -- I'm not a trained lawyer. I
5 don't have access to law books in the facility.

6 Q Okay. So you state that your lawyer failed to give
7 you adequate advice as to the charges, ---

8 A Yes, ma'am.

9 Q --- as well as what you were charged with.

10 A Yes, ma'am.

11 Q Okay. Now, as to your Brady violations, you said your
12 attorney failed to produce or provide a case -- the case
13 summary reports, the evidence, the inventory sheets and lab
14 reports to you, and ---

15 A Well, ---

16 Q --- you testified about the lab report on the one
17 charge ---

18 A Yeah.

19 Q --- where it wasn't drugs, but can you tell the Court
20 what you mean he failed to produce by your attorney failing
21 to produce the summary reports?

22 A That -- that there, the summary I don't know if that
23 was just a continuation of the sentence I put in there
24 beforehand, but it pertained to the lab reports, the
25 statement from Cynthia ---

1 Q McCorkle?

2 A --- Mitchell (sic) yeah, Cnythia Mitchell (sic), the
3 lab -- it was like three or four pieces of paper that I
4 didn't get that was given to me by Ms. Leslie that was
5 never given to me by Derek, or Mr. Chiarenza, so if Mr.
6 Chiarenza didn't give it to me, then obviously the State
7 had never given it to him, because when I -- when I asked
8 him about it, he was actually surprised that I had the
9 documentations, because the -- the way that he stated,
10 where did you get that, it showed true surprise, and he
11 stated that he was going to confront Ms. Colton with the
12 issue when he left me at visitation that day.

13 Q Okay. So I guess you're realizing when you're coming
14 in here in this action you're saying that your attorney
15 failed to provide you with adequate legal counsel, and that
16 that because of that you're prejudiced. Are you stating to
17 the Court here today that your attorney never went over
18 discovery -- all of the discovery with you?

19 A Yeah, the -- the lab reports -- when we had our
20 discussions, the lab report wasn't in there, so it wasn't
21 part of the discussion, and the -- when I confronted him
22 with it, he -- he said it didn't matter, and that was the
23 end of the conversation, and then he said he was going to
24 confront Ms. Colton why she didn't put the discovery
25 material in with what he had given me, because I told him

1 that I'd received it from Ms. Leslie on the civil
2 complaint.

3 Q Okay, so like when you showed it to him, did y'all not
4 discuss it at that time?

5 A He said he didn't matter.

6 Q Did you ask him why it didn't matter?

7 A Um, he said he'd already negotiated a plea, that we
8 could either go forward with it at this point in time or on
9 Monday we'd go to trial.

10 Q And so based on that you decided not to go to trial.

11 A Yeah, because he was basically not wanting to
12 represent any issue in it at that point in time. Part of
13 the -- the advocacy part is to investigate all
14 probabilities of the case including criminal history, the
15 lab reports, anything that's key to it, not just tell the
16 client, hey, you know, you're S-O-L. I mean -- and the
17 thing about it is, is when you're faced with looking at 60
18 years for -- for charges that, you know, you really didn't
19 do and this is the guy that's supposed to be protecting you
20 with his advocacy and he's telling you you're S-O-L, I
21 mean, you know, it really -- it's really a scary situation,
22 so in that point right there you're looking at, well,
23 what's my best choice, you know, and then you don't realize
24 til later on when you get to a facility and you got access
25 to a law book and, you know, reading certain things that,

1 you know, prejudicial issues are prejudicial issues, and he
2 should've represented me to the fullest. Irregardless of
3 whether Jennifer Colton wanted to go to Court on Monday, he
4 should've postponed it; it should've filed a motion; he
5 shouldn't done something, and he failed to do so.

6 Q So, okay, y'all are getting ready to go to -- you have
7 this impending trial that's going to happen on Monday,
8 Jennifer Colton's getting ready to call it, to call the
9 case before the Court. What, if anything, did you all
10 discuss about any kind of trial strategy if you decided to
11 go forth on a trial?

12 A Um, he told me that Daniella at her -- and I've never
13 seen any statement. I was -- I requested the statement ---

14 Q Well, we'll come back to that.

15 A Okay.

16 Q What did he tell you about Danielle?

17 A He said that she had already given an open court
18 statement. This is what was told to him supposedly from --
19 from the solicitor. This is what he's telling me, that
20 she'd gave an open court statement stating that I had knew
21 about what narcotics were in the house and that she was
22 willing to testify. That's why her sentence was reduced
23 from a 12 to a seven.

24 Q So she was going testify against you ---

25 A Allegedly.

1 Q Okay, so ---

2 A This was the advisement from him to me stating that --
3 that Jennifer Colton had advised to him, so ---

4 Q So why are you saying allegedly? You didn't believe
5 him at that point?

6 A Nobody produced anything to me. The thing about it
7 is, is if a -- if a person writes a statement against you,
8 then you have the right to see that statement.

9 Q But she didn't write a statement against you. She
10 gave a open court statement.

11 A Which also is transcribed into the court records.
12 Just like when we did sentencing, it was given into a
13 transcription. Correct? So this was done months before I
14 went into even had the negotiated plea. So why wasn't the
15 court transcript transcribed by my attorney's request at
16 that point in time? He had months to do so. I mean if it
17 was actually done in the courtroom, then it should've been
18 proffered as part of the record to given (sic) to me to
19 show that. It ---

20 Q So now, let's -- slow down. So I guess what I'm
21 trying to understand is, what else did he tell you that
22 obviously convinced you to plead? What else did he tell
23 you from Daniella? What else was she going to say?

24 A Nothing, that was it.

1 Q So the one statement that you knew about the drugs
2 that were in the house? Is that ---

3 A That -- that was it.

4 Q Okay. And so did y'all -- what, if anything, did
5 y'all discuss as to the impact of that one statement on
6 your case?

7 A That -- he's telling me that this is the best you're
8 going to get; she's not doing anything else, you know, take
9 it or leave it.

10 Q So did -- what, if anything, did you all discuss about
11 -- like if you decided not to, what would your trial
12 defense be?

13 A He, uh, -- um, actually he had another trial that was
14 going on at the time that he was engorged in, that he
15 wasn't really going to have time to prepare for it, that he
16 -- he had a family thing that was going on up in New York
17 that he was going to -- either he was going to have to push
18 it in immediately or it was going to have to be put off
19 until September or October, because whatever was going on
20 in New York was vital pertaining to his family ---

21 Q Okay, but what did he discuss with you about your
22 trial defense?

23 A Nothing.

24 Q Okay, so you didn't have a defense for trial.

25 A No.

1 Q Okay. Did you ask him about what he thought your
2 defense was?

3 A All the questions that every time that was prudent to
4 the case that I brought up about things was the simple fact
5 that it was a non-winner, that based off of Dani's supposed
6 proffered thing at sentencing -- and I'd asked him twice,
7 said, hey, you known, can you get this statement, because
8 that's -- I mean if -- she -- she claimed everything
9 original. That means she would had to been changing her
10 complete statement to two police officers in front of all
11 four of us that were sitting there when she claimed
12 everything, in front of four cops, all four of us that were
13 sitting there, so, yeah, I knew what was in the house,
14 because she made the statement in front of three other
15 officers about what was in the house, so, technically,
16 yeah, I knew what was in the there, because she said it
17 right in front of the officers and the rest of us, me,
18 Jackie Short and John Maloney, so, technically, yeah, I
19 knew what was in the house, but Chiarenza kept saying that
20 she made this open court statement pertaining to things and
21 I kept requesting it. I requested it twice, and it was
22 never given to me, and he was like, well, you know, if you
23 go to Court, they're going to call her, they're going to
24 subpoena her, they're going to bring her into Court and

1 she's going to testify against you, and you're going to
2 lose.

3 Q So outside of not receiving Jackie -- I mean
4 Daniella's statement, the transcript, and not receiving the
5 lab reports, drugs results that you received from Ms.
6 Robinson, was there anything other Brady violation that you
7 need to inform the Court of?

8 A I don't think so. The summary was basically the
9 paperwork and stuff from her that I'd requested and the lab
10 ---

11 Q Who is her?

12 A The -- from Chiarenza pertaining to Danielle.

13 Q Okay. All right. So in your application you also
14 state that your attorney failed to -- or the State required
15 you to plead guilty to a drug offense greater than --

16 A That was ---

17 Q --- greater than what you were charged with.

18 A Yes, ma'am.

19 Q Okay. And are you -- that goes back to the charges
20 that you actually pled to in Court which was the
21 trafficking 28 to 100 grams second and a PWID
22 methamphetamine second.

23 A The -- well, in the paperwork that I wrote, I asked
24 for the Court for reconsideration, because it was point
25 four of a gram. The room that I -- where I was at the

1 house, there was no scales, there was no baggies; I had
2 nothing on me. It wasn't even found in my possession, and
3 point four of a gram is less than a gram; it's a
4 misdemeanor. For PWID -- and there's a statement in the
5 file -- in Mr. Chiarenza's file that I gave to him, from
6 the actual individual that drove the vehicle that day to
7 the house where that took place, and he states in the
8 statement that they were not there to buy any drugs, and I
9 gave that statement to Mr. Chiarenza, and it was put in my
10 file, and he said it didn't matter.

11 Q Okay. So let's go back -- I know that's as to point
12 four gram. The 28 to 100 grams second ---

13 A Yes, ma'am.

14 Q --- that's the charge you indicated that Danielle took
15 -- Daniella took credit for ---

16 A Had already pled guilty to two months before me even -
17 - yes, ma'am.

18 Q Okay. And so you state that the State required you to
19 plead to a greater offense. Can you explain to the Court
20 why you say a second degree is a greater offense for you?

21 A Well, I have no priors for trafficking, and there's a
22 case law that specifically states -- and even though 44-53-
23 470 is part of the statute that allows priors to be used as
24 sentencing scheme for enhancement, there's a Greenwood case
25 that I gave you that came out of Greenwood, South Carolina,

1 where an individual had PWID marijuana and PWID, I believe,
2 cocaine, and the Courts ruled underneath Burton (phonetic)
3 and Scott specifically that trafficking has -- underneath
4 44-53-375, trafficking has its own built-in enhancement
5 code based off of the weight. No other -- no other
6 classification has it based off of weight. So in then
7 doing so, it's -- not only is it based off of weight, but
8 the classification for enhancement is also built within it.
9 The legislature never changed any amendments to it since
10 the original enactment of it. So unless an individual has
11 a prior for trafficking, trafficking can't be enhanced off
12 of any other simple possession charge or a PWID, and the
13 case that I gave you emphatically states that. The thing
14 about ---

15 Q So ---

16 A So, but ---

17 Q --- let's slow down, let's ---

18 A --- but the other part of it is this, is the fact ---

19 Q Mr. Curtiss, let's slow down for one second.

20 A Okay.

21 Q The case that you're speaking of that you gave me was
22 an order. Correct?

23 A Yes, it's it a PCR order ---

24 Q Right. Let me just ask my questions.

25 A Okay.

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1 Q It's a order granting post-conviction relief where
2 there was an illegal -- a sentence that exceeded the
3 maximum authorized by the law. Correct?

4 A (Indicating yes)

5 COURT REPORTER - He needs to answer verbally.

6 Q Yes?

7 A Yes, ma'am.

8 Q Okay. And in that that ---

9 MS. MOODY - We can hand this up to you, Your
10 Honor, for you to review.

11 Q But in that it goes through that individual's prior
12 record.

13 A Yes, ma'am.

14 Q Okay. And what you're saying here today is that you
15 don't have a prior record for drugs?

16 A Oh, I -- I have simple possession charges and stuff,
17 yes, ma'am, and I have a manufacturing charge from 2002.
18 Manufacturing falls underneath possession with intent to
19 distribute classification in South Carolina.

20 Q Okay, and so your understanding is that it has to be a
21 trafficking charge for the Court to enhance -- or for the
22 solicitor to enhance your case to a second offense? Is
23 that what you're testifying ---

24 A Yes, ma'am, and the document states it emphatically in
25 there.

1 Q I'm just asking you what your understanding is.

2 THE COURT - Ms. Moody, your client ---

3 A My understanding ---

4 THE COURT - Sir, you need to be quiet for a
5 second.

6 MR. CURTISS - Okay.

7 THE COURT - Your client's making legal arguments
8 from the stand. We need to get the fact questions out.

9 MS. MOODY - I'll try to ---

10 THE COURT - I mean that's -- I mean, sir, you
11 have a lawyer to make legal arguments ---

12 MR. CURTISS - Okay.

13 THE COURT - --- about what cases mean and that
14 sort of thing and that's -- so, if we can just focus on the
15 facts, ---

16 MR. CURTISS - My apologies.

17 THE COURT - --- that'll be helpful.

18 MS. MOODY - Okay.

19 Q So you're stating that your attorney did not discuss
20 with the State your prior record.

21 A No. He didn't even discuss it with me.

22 Q Okay. And so you didn't ask him about why you were
23 being charged with a second offense.

24 A According to the documentation that I received after I
25 got to the department of corrections, in the transcript it

1 stated that I was originally charged with trafficking third
2 and that I pled to a lesser included offense of second, and
3 nowhere on my sentencing sheet does it state that I pled to
4 a lesser included offense or that I waived presentment to a
5 grand jury, and so I was trying to figure out how I was
6 pleading to a lesser included offense when it's nowhere on
7 any documentation.

8 Q So when you met with Mr. Chiarenza, I mean did you
9 give him any of your background or your history as to if
10 you had any kind of criminal -- prior criminal record?

11 A He told me if I had a drug conviction and stuff they
12 could legally do whatever, but the thing about it is, is he
13 never told me that I was being indicted for trafficking
14 third or that it was trafficking second. I still believed
15 the entire time that I was doing trafficking first. See
16 when they -- because all the paperwork he gave me from the
17 discovery was for that. I was never given the indictments.

18 Q Right, but when you went forward with him, did y'all
19 discuss the charges and the penalties you were facing?

20 A He told me the maximum penalty and stuff would be 30
21 years. The first offer that the State gave and stuff, I
22 thought -- because the maximum penalty for possession --
23 for trafficking first C1A is ten years, and then the
24 marijuana's five, and so that's what I thought it was. So

25 ---

1 Q Okay. And so did you have opportunity to go over your
2 rights with your attorney before you entered your plea?

3 A (No response)

4 Q Before you entered your plea before the Judge and he
5 gave you the sentence of the nine years, did you have a
6 opportunity to discuss what you would be dealing with in
7 terms of a plea with the Judge?

8 A Just what he told me, basically like with a trial and
9 stuff, he said if you go to trial you're screwed, so --
10 those are the only discussions we had. There was no --
11 there was no speaking of for mitigating factors or my
12 criminal history, bringing it up to the Judge. You know, I
13 was -- that day when I came into the courtroom, I didn't
14 even hear Mr. Newkirk give the presentment stating that I
15 was originally charged with trafficking third. When I
16 actually got the documentation from you that was sent from
17 the attorney general's office, that really -- I mean that
18 really surprised me.

19 Q I guess what I'm asking you is, when your attorney
20 prepared you to come before the Court, did you all discuss
21 what the questions might be that the Court ---

22 A No.

23 Q --- would ask you? Did you go over your legal rights
24 with the Court and did ---

1 A He -- he told me just -- just agree with the State
2 that's part -- it's part of the negotiated plea.

3 Q So based on all of these -- your allegations stated in
4 your application, what relief are you asking from the Court
5 here today?

6 A Reduced to -- I would like the charge back at the
7 first charge it was. If I got charged with the trafficking
8 the first offense and the evidence substantiates it, then
9 take it back to the first offense. Nowhere does the
10 criminal history and stuff from which I got for the
11 possession charges, even the manufacturing PWID from 2002
12 substantiate trafficking third to being indicted, and I
13 didn't even know I was indicted for trafficking third. I
14 was never advised of that whatsoever, um, and the -- I can
15 understand the situation pertaining to the PWID from 2015.
16 It was point four of a gram. The girl there that day said
17 she was there to do whatever, but the driver said he had no
18 knowledge of -- of being the -- the statements -- the
19 statement given by the driver was given to Mr. Chiarenza by
20 me. He said it didn't mean anything.

21 Q So what are you asking the Court to do here today?
22 Just tell me what you're asking the Court to do. What
23 relief are you seeking?

24 A For a correction in the sentence, you know.

25 Q As to which charge?

1 A Um, the State's already agreed for the marijuana
2 charge; thank you. The correction of classification and
3 possible reevaluation of sentence on the trafficking and
4 reevaluation of the PWID from 2015.

5 THE COURT - Mr. Curtiss, -- Ms. Moody, what were
6 all of the charges he was facing at the time he pled
7 guilty?

8 MS. MOODY - What he pled to -- is that what
9 you're asking?

10 THE COURT - No, what -- not just what he pled to
11 but all of the charges that he was facing at the time he
12 pled guilty.

13 MS. MOODY - Oh, that he pled guilty.

14 THE COURT - Yes, ma'am.

15 MS. MOODY - So he was facing the trafficking 28
16 to 100 grams second offense ---

17 THE COURT - Okay, which is maximum 30. Is that
18 correct?

19 MS. MOODY - I believe that's correct, Your Honor.
20 I'm trying to look at my notes here. I believe that's
21 correct.

22 THE COURT - Okay.

23 MS. MOODY - The second charge that he has is the
24 PWID marijuana first, and then he has on his application,

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1 the 2015 charge of PWID meth -- PWID with intent to
2 distribute meth second.

3 THE COURT - Okay, and then didn't he have prox
4 charges, as well?

5 MS. GREGORY - Yes. Yes, sir, two.

6 MS. MOODY - Yes, sir.

7 THE COURT - Okay.

8 MS. MOODY - And those were dismissed.

9 THE COURT - Right, but it -- four other charges
10 before the plea, what were -- yes, ma'am, do you want to --
11 do you have ---

12 MS. GREGORY - He had two proximity charges that
13 were dismissed as a result of the negotiated ---

14 THE COURT - Okay. Do you have the total number
15 of years he was facing?

16 MS. GREGORY - It was up to -- five to 30 for the
17 -- five to 30 for the distribution with possession --
18 distribution or possession with intent to distribute
19 methamphetamine second offense. He got to plead to the
20 lesser included offense for the methamphetamine
21 trafficking, which he pled to the 28 grams but under 100
22 grams which carries seven up 30 years, and then the five
23 years which we've corrected with the PWID first.

24 THE COURT - And two prox charges.

25 MS. GREGORY - I'm not sure what the sentence ---

1 MS. MOODY - But those were dismissed because they
2 didn't discuss that on the record at all.

3 THE COURT - Right. I'm just asking what he was
4 facing.

5 MS. MOODY - Oh, they would've been ten years.

6 THE COURT - Okay. Right, so that's --

7 Okay, Mr. Curtiss, you understand at the time you
8 pled guilty you were facing charges that you could've been
9 sentenced to 85 years in prison?

10 MR. CURTISS - I do now.

11 THE COURT - And do you want -- and what you're
12 asking -- the only thing I can do is go back -- if I agree
13 with you and say that your attorney messed up, I can put
14 you back and you will be facing 85 years again with no --
15 and that's all I can do. I can't change your sentences.
16 All I can do is say, your attorney messed up your plea or
17 you didn't know what you should've been informed of at your
18 plea, and I have the power to undo your plea, but if I do
19 that, it reinstates all the charges and you're looking at
20 charges that carry 85 years again. If there -- I mean
21 that's what I have the power to do.

22 MR. CURTISS - Okay.

23 THE COURT - And if you think you have a defense
24 to those charges and you want to go to trial on those
25 charges, then your attorney can ask me to do that. I'm not

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1 saying I'm going to agree with you, but I'm saying -- but
2 the only thing I have the power to do here today is undo
3 your plea, and if I undo your plea, then that's what
4 happens, you're back facing all the charges you were facing
5 before the plea.

6 MR. CURTISS - Okay.

7 THE COURT - Okay. Does that make sense?

8 MR. CURTISS - Yeah.

9 Q I guess the question is, is that what you want the
10 Court to do here today?

11 A Yeah, because I don't think the charges that I got
12 were statutorily correct. I don't -- the prior criminal
13 history and everything else should've been filed and
14 questioned on by my attorney at the time, and the original
15 charges, what I was charged for was ClA, according to the
16 lab reports came back as no narcotics, and I got stuck with
17 the charge in which my sister-in-law had already pled
18 guilty to and had claimed from the beginning. It wasn't on
19 my possession. It wasn't -- you know, I -- it wasn't found
20 on my person or anything else, and she'd already claimed it
21 was in her residence, you know. That just -- I don't see
22 that's right.

23 MS. MOODY - No further questions for this
24 witness. Please answer any questions the State may have.

25 MS. GREGORY - Good morning, Mr. Curtiss.

1 MR. CURTISS - Hi, ma'am.

2 MS. GREGORY - Very briefly.

3 CROSS EXAMINATION

4 BY MS. GREGORY -

5 Q Do you recall telling the plea judge that you were
6 satisfied with your attorney's services?

7 A I was satisfied with what he had told me at that point
8 in time, because I didn't know anything else until I got to
9 a facility where I got to read other material.

10 Q Do you recall telling him you had no complaints about
11 your attorney?

12 A Again, I didn't know the specifics of any law. I
13 didn't have access to law books. I had to go off of what
14 he was telling me.

15 Q Mr. Newkirk read the facts of the case and you were
16 asked after that if you wished to plead guilty. Do you
17 remember anything that you did?

18 A I agreed to it, yeah.

19 Q You do remember telling the plea judge that you were,
20 in fact, guilty of what Mr. Newkirk had read into the
21 record?

22 A That's what I was advised to do, was tell the judge
23 that as part of the plea.

24 Q At the time of this plea hearing, were you also facing
25 charges in Lancaster County?

BRETT THOMAS CURTISS - CROSS BY MS. GREGORY

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1 A I had a charge pending in Lancaster County, yes.

2 Q Did you receive a benefit by pleading to these charges
3 also in Lancaster County?

4 A I was convicted and sentenced to that charge after
5 this one. As a matter of fact --

6 Q To run concurrent. Correct?

7 A Yes, ma'am.

8 MS. GREGORY - Okay. No further questions, Your
9 Honor.

10 THE COURT - Any re-direct, Ms. Moody?

11 MS. MOODY - No re-direct, Your Honor.

12 THE COURT - Thank you, sir. You may step down.
13 Have a seat next to your attorney.

14 (WHEREUPON, WITNESS COMPLIES)

15 THE COURT - Yes, ma'am.

16 MS. MOODY - No further witnesses at this point.

17 THE COURT - Yes, ma'am.

18 MS. GREGORY - The State would call Derek
19 Chiarenza, please.

20 DEREK CHIARENZA, AFTER BEING FIRST DULY SWORN,

21 TESTIFIES AS FOLLOWS -

22 MR. CHIARENZA - Good morning, Judge.

23 THE COURT - Good morning, Mr. Chiarenza.

24 MS. GREGORY - Good morning, Mr. Chiarenza.

25 MR. CHIARENZA - Good morning.

1 DIRECT EXAMINATION

2 BY MS. GREGORY -

3 Q How long have you been practicing law?

4 A Since '92, so 20 ---

5 Q Has it all been criminal law?

6 A For the most part, yes.

7 Q Did you have an opportunity to represent Mr. Curtiss?

8 A Yes, I did.

9 Q And how did you come to do that?

10 A He was appointed to me. There was some issue that I'm
11 still even asked speaking to the attorney, not completely
12 clear, but he had other counsel I think at the very least
13 in his Lancaster pending trafficking charge, ---

14 Q Okay.

15 A --- and ultimately that attorney was relieved. I was
16 appointed to the York County cases, and it's my
17 understanding the Lancaster County public defender was
18 appointed to the Lancaster trafficking charges.

19 Q Okay. Can you tell me the facts of the case, like how
20 did his charges ---

21 A Well, these are two distinct cases that we're dealing
22 with today that are more than a year apart in their
23 occurrence. The first case occurred in March of 2015.

24 That's a possession with intent to distribute
25 methamphetamine case, and the allegations in this case are

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1 that law enforcement approached a residence that Mr.
2 Curtiss was residing in at the time. They encountered Mr.
3 Curtiss in the driveway what they believed to be a drug
4 transaction. They, I think, attempted to apprehend Mr.
5 Curtiss at that time or at least yelled out to him. They
6 alleged that he ran away, ran up into the house; they gave
7 chase, and then he was attempting to dispose of narcotics
8 once they got into the house. Ultimately, they found a
9 small amount of methamphetamine, and it's my understanding
10 that the reason they charged him with possession with
11 intent to distribute methamphetamine there is because --
12 and I explained this to Mr. Curtiss -- while what they
13 found didn't reach what we call the inference level to
14 assume that he was going to deal drugs, they felt
15 circumstantially that they had intel that he was a drug
16 dealer; they saw what they believed to be a drug
17 transaction; they questioned at least one of the
18 individuals in the driveway who said they were there to buy
19 dope; they found a meth pipe in that individual's car, and
20 they found Mr. Curtiss attempting to dispose of evidence,
21 and they found some meth on him, so it -- I think it's
22 their option at that point. They could've charged him with
23 simple possession just for what he had, but they charged
24 him with PWID based on the circumstances, so -- so that's
25 that case.

1 Q Okay.

2 A A year -- something more than a year later, law
3 enforcement is doing a -- they're assisting with a DSS
4 welfare check of some sort, and they go to a residence; Mr.
5 Curtiss is residing in this residence now at the time -- I
6 believe this is a different residence from the one a year
7 back -- and they encounter Mr. Curtiss. They determined
8 that he is sharing a front bedroom with this woman,
9 Danielle, who during my involvement with Mr. Curtiss he
10 referred to as his wife. Here he's called her his sister-
11 in-law, but at any rate, they found forty-some-odd grams of
12 methamphetamine in that bedroom and the marijuana plant.
13 Law enforcement determined that that was the bathroom that
14 that couple was staying in, Mr. Curtiss and Danielle. They
15 were both charged from that incident. Mr. Curtiss was --
16 what he eluded to earlier about being charged with, I
17 think, ten or 11 grams of meth that was found in the
18 bathroom, it was, ultimately, found to be no controlled
19 substance, so a lot of what he said is right, and a lot of
20 what he said contributes, I think, to some of his what he's
21 trying to formulate today as, you know, having pled on a
22 negative or a no-drug controlled substance. And I was
23 surprised, and I was aggravated when he first showed me
24 this drug report that said no controlled substance. Now,
25 at that point it might be instructive just to go back to

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1 the time-line of my involvement. I got the case, I
2 believe, in September of 2016.

3 Q Right.

4 A I was up here for roll-call or for something, and I
5 just received the case, and Ms. Colton advised me like that
6 term of Court that she needed to move these cases; she was
7 ready to go forward, you know, Harry Collins had gotten
8 relieved and now -- you know, her older case was a year and
9 a half old at this point, the March, 2015 case. I know
10 that that office likes to -- you know, they get to a year
11 and a half, that's like a witching hour, so she was ready
12 to move things. I said, all right, well, get me the
13 discovery; I'll talk to my guy. You know, I -- I don't
14 even know who he is yet; I just got this case. Ultimately,
15 I received some discovery, and I reviewed it with Mr.
16 Curtiss, went down to see him at the jail. At some point
17 there he fled the jurisdiction. I mean he was out on three
18 bonds, including Lancaster, and he -- he left. I had no
19 way to contact him. I didn't know where he was.

20 Q And the discovery that you received, was it in both
21 case?

22 A Yes, but I didn't get any drug reports, and -- and I
23 think at the time they were getting drug reports -- you
24 know, the summaries come from law enforcement, then the
25 drug reports come from the chemist.

1 Q Okay.

2 A So for whatever reason, the drug reports hadn't made
3 it into her file, and I didn't have them yet. So ---

4 Q Were you aware at that time that you were not aware
5 that some of the drugs had not test positive as a ---

6 A I was not aware until I saw the drug report he had
7 that was connected to his civil forfeiture. They took some
8 money off of him, and that's a completely directly process.
9 So when he showed me that, I -- I was like, where did this
10 come from, you know, and I was -- I'm guessing that same
11 day I came upstairs and confronted Ms. Colton with that,
12 said, the drug reports are negative, and, ultimately, that
13 one was, but the other ones weren't. There was a positive
14 drug report for 41 grams.

15 Q Okay. So the charges that he had with the weights
16 that he had were substantiated by drug reports that you
17 received later?

18 A Yes, the PWID tested positive for point four grams, --
19 -

20 Q Okay.

21 A --- and then the 41 gram case -- whether or not he was
22 initially charged with that in his warrant -- and he may be
23 correct about that. Their -- this would be the anomaly
24 from my twenty-something years experience with York County
25 Drug Enforcement. They tend to charge everybody with

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1 everything that they can, but if, indeed, in this scenario
2 they chose to only charge him with the 11 grams of not
3 drugs and they charge Danielle with the 41 grams of meth,
4 then that may, in fact, have been what he was originally
5 charged with, however, he was indicted by a grand jury for
6 over 28 grams, so what Ms. -- and Ms. Colton told me this,
7 she said what -- the indictment she sent up made the
8 factual allegations that he was like a co-defendant or a
9 co-conspirator or also a co-trafficker on the 41 grams.
10 Initially, she wanted -- she offered me 15 years. I felt
11 like that was a little much. It's very difficult to get
12 somebody to be excited about pleading to 15 years no
13 parole. I did meet with Mr. Curtiss a couple of times down
14 at the jail. We went over the incident reports. We went
15 over potential defenses, and I did tell him I felt like it
16 was a circumstantial case, you know, that we could go in
17 there and make the defense that he didn't know anything
18 about this 40 grams of dope in the bedroom he was sharing,
19 and that the money that he had on him was legitimate money,
20 and that, you know, the other circumstances we could just
21 paint them as just that, circumstantial, but if he lost,
22 he'd get 30 -- in all likelihood -- he was certainly facing
23 30 years no parole and he could get it.

24 Q And at the time you met with him you had a full
25 discovery you felt like from the state?

1 A I gave him everything I had or at least reviewed it
2 all with him. And these cases weren't terribly
3 complicated. I mean they were law enforcement walking into
4 a residence. Mr. Curtiss was one of the individuals
5 present at the residence, and -- you know, they weren't
6 super slam-dunkers like where he had 40 grams of meth in
7 his pocket, but you've got a weigh do we go to trial and
8 face 30 or do we get -- do we cut the best deal we can, and
9 ultimately, given the fact that Ms. Inzerillo, who was the
10 attorney for his co-defendant, Danielle, and Ms. Colton
11 both advised me that that individual had pled pursuant to a
12 negotiated deal and had agreed to testify against him,
13 despite what she may or may not have told law enforcement
14 initially. And their position was going to be that she was
15 just covering for him on the front-end. You know, whether
16 he put her up to that or whatever -- I mean they -- you
17 know, they would've tried whatever case they had. Again, I
18 didn't think it was worth risking, but I told him it was
19 his decision, and I did tell him it was the best thing he
20 was going to see, because we pled on -- this case was set
21 for trial July 10th, which was a Monday. We pled that
22 Monday, and the situation was -- it was -- it was do or
23 die. It was take your plea or else the offer's off the
24 table; I'm going to call the case Monday. Now, in reality
25 she may not have called the case Monday. There's a lot of

1 jockeying for position there with trials, but I have no
2 doubt that the offer would've been gone, ---

3 Q Right.

4 A --- so that would've put us in the status of having to
5 plead straight-up, where the best we could've gotten, a
6 miracle sentence would've been seven years, you know, and
7 his offer was nine, so, you know, having explained all that
8 to him, we, ultimately, pled.

9 Q It was his decision though to plead after you ---

10 A It's always his -- it's always the client's decision.
11 I mean I can advise them and tell them what I would do and
12 what I think the better decision is, but if he wants to go
13 to trial -- I go home either way, so if he wants to go to
14 trial, that would've been his choice.

15 Q Did you feel like you had enough time with the
16 applicant prior to entering that plea for him to understand
17 the charges that he was facing and his criminal history and
18 maybe how that was playing into it?

19 A Yes, Brett was an intelligent guy; he still is an
20 intelligent guy. I have no doubt that he understood what
21 was -- you know, what the pros and cons were of going to
22 trial. We did discuss the fact that Ms. Colton even eluded
23 to me that she may put together a historical case and try
24 and get -- you know, try and get all these allegations into
25 one thing to show an on-going activity. I think,

1 ultimately, she -- I don't think she ever presented
2 anything like that to the grand jury. That wouldn't been
3 her option as well. Had we not gone forward on the July
4 10th, you know, she could've presented anything to a grand
5 jury if she wanted to, and had she gotten an indictment,
6 conceivably, that could've strengthened her PWID case,
7 because she would've been making an over -- painting an
8 overall picture that, you know, he's been doing this for a
9 while and that this has been going on for a year and a
10 half.

11 Q Had applicant wanted to proceed to a trial, would you
12 have taken the case to a trial?

13 A If that's what he wanted to do, absolutely. I mean --
14 and, again, the pros and cons there were simply -- I think
15 even in the plea I told the Judge the case was largely
16 circumstantial, but the circumstances were potentially very
17 damaging. Then when I'm told by two attorneys, you know,
18 counsel for the co-defendant and the prosecutor that they
19 have worked out a deal -- and clearly they did, because she
20 got the minimum sentence -- you know, and -- in this
21 circuit it's pretty rare to get the minimum sentence on a
22 trafficking unless you have -- there's some quid pro quo,
23 and so all the signs pointed to the fact that that was
24 going to be a cooperating witness for the State. I
25 would've not been doing my job if I'd ignored all those

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1 things and encouraged Brett to go to trial or to in the
2 alternative just not stressed to him how I really felt it
3 was in his best interest to go to trial.

4 Q And did he ever explain that he didn't understand
5 something that you were explaining to him regarding his
6 charges or what he was facing or ---

7 A No, I think ---

8 Q --- the State had to prove?

9 A No, I think if there was ever any point where, you
10 know, we had to work hard to perceive an issue, it was this
11 think with -- you know, the fact that that 11 grams tested
12 negative, and, you know, I think for a long time Brett was
13 stuck on the fact that, you know, how can they prosecute me
14 for that when it's negative, and my thing is they're not
15 prosecuting for that. So he said a lot of times I would
16 say things like, it doesn't matter, you know, forget about
17 that, I'm not worried, but -- and that's just -- that's my
18 rapport; that's how I speak; I try and be direct and very
19 matter of fact, and I would've said things like that to
20 him, because it didn't matter, the fact that those -- that
21 tested negative, because that was a non-issue at that
22 point. They were going to try and make a case showing that
23 he was knowledgeable and aware and really was the guy who
24 was doing the 42 gram drug transaction, you know. And in
25 trafficking all they got to show is that you had knowledge

1 and constructive possession. They didn't have to say --
2 show he ever sold any of that stuff, just that he had
3 constructive possession, access to it, you know, could've
4 sold it if he wanted to, knew where it was and, you know,
5 he was a co-owner of it. So again, with his two priors,
6 manufacturing from early 2000s and possession of cocaine
7 second offense in Kansas, I believe the state of the law is
8 that those would enhance and that -- well, you don't get
9 indicted here for trafficking first, second or third; you
10 get indicted for trafficking, and then you get sentenced
11 for second or third based on, you know, what the State
12 proves up with your prior record.

13 Q And his prior record substantiated his second offense?

14 A Again, if -- if -- if my understanding of the law is
15 correct, then had we gone to trial and lost to trafficking,
16 he could've been sentenced for trafficking third. He pled
17 to trafficking second. Based on either one of those things
18 as a prior -- and in terms of -- you know, none of us had
19 any control over what occurred in Lancaster County, but as
20 a practical matter -- and I told Brett that I had a very
21 good relationship with the Lancaster County Public
22 Defender, that I would advise him of what we were doing and
23 that in all likelihood, you know, I had great confidence in
24 the Lancaster PD being able to work out his charges there
25 with that solicitor's office to something concurrent which

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1 wouldn't cost him anymore time. I think I even put that on
2 the record, so, again, this solicitor's office, it wasn't
3 part of their deal, but as a practical matter I wanted
4 Brett to be assured that, look, we're probably killing two
5 birds with one stone here, you're not going to have to
6 worry about Lancaster as far as it giving you anymore time,
7 and it's my understanding that he did plead to something
8 concurrent for less time that he's doing on these York
9 County charges.

10 Q Okay, so in addition to the benefit that he received a
11 negotiated sentence in the plea, he also received a benefit
12 in Lancaster.

13 A Again, and I can't -- again, that wasn't part of the
14 deal. I can't completely take credit for it, but, you
15 know, it was and it wasn't if you get what I'm saying. I
16 mean it was -- I wanted him to know and I gave him my
17 assurance that I felt very strongly that once we addressed
18 his York County charges, his Lancaster charge was not going
19 to create anymore incarceration for him. You know, I
20 thought they might just flat-out dismiss it completely, but
21 I certainly didn't give him any assurances about that, but
22 I did tell him it was my strong opinion that that wouldn't
23 cause him any more time in Lancaster.

24 MS. GREGORY - A moment's indulgence, Your Honor

25 (WHEREUPON BRIEF PAUSE)

1 MS. GREGORY - No further questions. Thank you.

2 THE COURT - Ms. Moody?

3 MS. MOODY - Thank you.

4 CROSS EXAMINATION

5 BY MS. MOODY -

6 Q Mr. Chiarenza, as far as the trafficking, you indicate
7 -- you just testified that you understand that he would've
8 been enhanced, and it would've been a third offense.

9 Correct?

10 A Yes.

11 Q Did you discuss that with him?

12 A You know, I'm sure we discussed what he had been
13 indicated for, and, you know, if we pled him to a second,
14 then we would've discussed the fact that he was pleading to
15 a second.

16 Q So during the period of time in which you became
17 appointed -- I guess that was August or September -- up
18 until December when he was extradited back to South
19 Carolina, did you have any communication with him?

20 A I think we spoke on the phone maybe once or twice, but
21 there were issues with communication, and then he was just
22 gone. I didn't know where he was or have any way of
23 getting in touch with him. And that's when we were in
24 discussions with the solicitor's office. You know, she was
25 telling me she was going to bench warrant him and go to

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1 revoke his bonds and extradite him and all this and that.

2 Ultimately, he was brought back here though.

3 Q So all of that occurred where they bench warrant him

4 and then sent the extradition papers to the Governor's

5 office and went through ---

6 A I assume so, because he was extradited back, yeah.

7 Q Okay. And when you were able to speak to him when he

8 was brought back to South Carolina, had the charges been

9 indicted then at that point in time?

10 A He was indicted before I was even appointed.

11 Q Okay.

12 A Yeah.

13 Q So when you came into the case there had been a

14 preliminary hearing, all of those kind of events that

15 occurred.

16 A Can't speak to that absolutely, but he -- he was

17 indicted on the earlier case I think in 2015, actually, and

18 then in the second case he was indicted in 2016, so not

19 long after they occurred those cases were true billed.

20 Q And so as to the charges, the 2015 and 2016 charges,

21 your original negotiation with Ms. Colton was that it would

22 all be ran concurrent, nine years is the amount of time.

23 A Yeah, when we -- and it took a lot of heavy lifting to

24 get there. She was stuck on 15 for a long time, and I

25 think what -- we, ultimately, benefited from the fact that

1 her cases were old. You know, at that point they -- they
2 were really old for that office. The 2015 case was more
3 than two years old, so, you know, it's just simply a matter
4 of, you go in there and you beg and you do whatever you
5 can, and I think I'm remembering this correctly, that -- I
6 think Brett told me if you can get her under ten, I'll take
7 it. I think that's -- you know, so nine became the magic
8 number, and after his co-defendant had pled for seven, that
9 sorta kinda set the bar a little bit, you know. I think
10 his record was probably a little worse than hers, and I'm
11 certain the State perceived him as more of the, you know,
12 the head of whatever was going on, but still if seven was
13 an okay sentence for her and hers is no-parole as well,
14 then I -- that's how I negotiated with Ms. Colton and said,
15 all right, maybe he needs a little bit more than her, but,
16 you know, come on, 15's not going to get it, and we got it
17 to nine. I was happy with nine. I tried to make Brett
18 happy with nine, and that conversation certainly would've
19 taken the tone of, this is as good as it's going to get,
20 because come July 10th, the offer goes away, and we can go
21 to trial, but you're looking at 30 if we lose at trial.

22 Q So you advised -- did you advise him of his rights in
23 terms of -- when you go into a negotiated plea you
24 explained to him what a negotiated plea was. Did you do
25 that?

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1 A Yeah, I told him, you know, it would be the exception
2 to the rule, but a judge could decide not to take the plea,
3 but we'd just be back at square one again, and -- and in
4 all likelihood we'd just find a judge who wouldn't take it,
5 because that's not his fault. You know, we accept the plea
6 and the State's okay with it -- I would've told him that
7 he's not going to get more; he's not going to get less,
8 that we have, basically, -- you know, all sides have agreed
9 that nine is going to be the number, and that's what we're
10 pleading to, and that's what you're going to get.

11 Q And outside of him understanding that, did he seem to
12 be pleased or content with going forward with that?

13 A I don't think anybody's ever happy about pleading to
14 nine years no-parole, but, you know, I hope that I
15 communicated, again, the pros and cons, and you've got to
16 weigh the risk of going to trial versus cutting the best
17 deal you can cut, and like I said, if we went to trial and
18 lost, the best thing -- a sentence that would've just
19 absolutely floored me would've been seven years mandatory
20 minimum, you know, so it's almost like there's virtually no
21 benefit to going to trial when you've got a deal for nine,
22 you know, other than you feel like you have a real strong
23 case at acquittal, and given all the circumstances and the
24 fact that they could've tried him twice, you know, two
25 bites at the apple -- I'd do it again today. I would do

1 everything I could to get him to take that deal again
2 today, because I feel it's in his best interest.

3 MS. MOODY - No further questions for this witness

4 THE COURT - Any re-direct?

5 MS. GREGORY - No.

6 THE COURT - Any objection to excusing Mr.
7 Chiarenza?

8 MS. MOODY - No, sir.

9 MS. GREGORY - No.

10 THE COURT - Thank you, Mr. Chiarenza.

11 MR. CHIARENZA - Thank you, Your Honor.

12 THE COURT - Any other witnesses from the State?

13 MS. GREGORY - No, sir.

14 THE COURT - Counsel, would y'all like argument?

15 MS. MOODY - Your Honor, I guess so going forward.

16 Your Honor, as Mr. Curtiss has indicated to the
17 Court, he had an issue with his attorney for multiple
18 reasons -- beg the Court's indulgence -- of his allegations
19 and what he's requesting. He argued that his attorney was
20 ineffective assistances of counsel, that he failed to
21 acquire the Brady material and that has been uncontradicted
22 in terms of like the drug report and the lab report as to
23 whether it was a negative report, and based on what he
24 accepted responsible for and stuff like that, he was
25 inappropriately convicted or indicted of the charges that

1 carried the larger amount of drugs in this particular case.
2 He indicates that he was visiting to that house and there
3 was, you know, no reason for him to be charged for the
4 drugs that were contained in that house. He also indicated
5 that his lawyer -- counsel accepted the plea agreement that
6 was not favorable to the applicant. In that he is talking
7 in regards to he had a prior drug report given to him that
8 dealt with zero grams and that he was not -- at that point
9 he felt like he should've had charges dismissed against
10 him, and he would not have been responsible for any drugs
11 found in that house as it was not his apartment based on
12 his testimony. Also, in light of the -- I guess there's
13 the meth second which was point four grams. He felt like
14 that he was unfairly given a sentence on that amount based
15 on the amount, and I think you've heard the testimony that
16 he gave with regards to that, and I'll leave it at that,
17 because I do not want to misquote it. As far as the Brady
18 violation, Your Honor, I think that goes into the first
19 matter that we talked about, not receiving case summary
20 reports and that goes to the drug report, the evidence and
21 inventory sheet of lab reports. Your Honor, you heard the
22 testimony as to what he felt his counselor should've given
23 him and should've discussed with him that was not discussed
24 with him. I believe his testimony was -- initially, he
25 talked to him by the phone, and he was told to contact him

1 anymore. He went back to Oklahoma and then he was
2 extradited which he gave no issue with and came back to
3 South Carolina. He felt like his attorney should've
4 advocated on his behalf going back to ineffective
5 assistance of counsel and putting the Brady together. He
6 felt based on evidence that his attorney received from the
7 State and the evidence that he produced that he received
8 another action which was civil, that his attorney should
9 have vigorously or diligently fought to get the charges
10 dismissed and not allowed him to be charged with the
11 ultimate charges that he is here with the department of
12 corrections on now. In that basis, Your Honor, he alleged
13 that the house was not his; Daniella, the individual who
14 took responsibility in front of everybody gave a statement
15 and that statement was that it was all hers and he never
16 claimed it, nor did she claim that it was his. His other
17 issue begins that he did not have a copy of the transcript
18 or the actual statement that was made in order for him to
19 make a knowingly, I guess, intelligent choice as to whether
20 he should go forward for a trial, and that her testimony
21 was -- I guess he would've asked his lawyer to impeach that
22 witness based on her prior given statements. So he felt
23 like his attorney did not defend him to the level that he
24 should have. As to the due process violation, he says he
25 was charged with one charge initially, and he feels that

1 that charge was inappropriate -- his second charge that he
2 received -- arguably he stated that the first charge was
3 dismissed because there were no drugs, but the second
4 charge comes into play and that he should not have been
5 charged with drugs that he did not accept responsibility
6 for, and that goes back into the Brady violation, and I
7 guess, Your Honor, based on that he's asking the Court to
8 reconsider his indictments going along with his prior
9 record. You've heard the testimony, and I think this is
10 where you instructed that we needed to move on with the
11 facts and that he was arguing case law. Your Honor, there
12 is an enhancement statute in the trafficking section which
13 goes to whether you are trafficking second, (sic) first or
14 second, and it's based on weight. We all know that
15 trafficking is based on the amount of drugs that you have
16 in possession. It's not like PWID marijuana where you
17 would have some kind of drug paraphernalia, scales, all
18 that kind of indication of possession with intent to
19 distribute and the packaging, and so -- and in his
20 argument, Your Honor, even though I will state for the
21 Court that I have a different understanding, his argument
22 is that because he did not have a prior trafficking on his
23 record, which I reviewed his record that was given to me
24 through the State, he feels that he should not have even
25 gotten to the point where he would have a trafficking third

1 or even a second, and I believe he points to his sentencing
2 sheets, and the issues with the sentencing was not just the
3 five years that he would've -- he should've received on the
4 PWID marijuana, but he says that he did not agree to plead
5 to trafficking second as to the methamphetamine, and so
6 based on that, Your Honor, his position is that based on
7 the code section in the State of South Carolina, that he
8 should only have -- if he were to have something, that the
9 technically correct charge he would have would be the first
10 offense, but again, that goes back to -- it still goes back
11 to the fact that he never accepted responsibility for the
12 meth and the trafficking with the 46 grams, and that he
13 should not have been put in a position where he would have
14 to go to trial or plead to those charges, and he felt based
15 on that, that his attorney did not provide adequate
16 assistance, and he is prejudiced by the simple fact that he
17 is in custody at this point.

18 THE COURT - Thank you, Ms. Moody.

19 MS. MOODY - Thank you.

20 THE COURT - Yes, ma'am.

21 MS. GREGORY - Applicant must show that counsel is
22 deficient and that he was prejudiced by it. I think when
23 counsel (sic) testified today, he indicated he met with
24 applicant; he went over the charges with the applicant.
25 The applicant understood what he was facing and the charges

1 and the sentence that he was facing, and, ultimately, it
2 was his decision to plead guilty, and the trial judge did a
3 great job on the colloquy making sure Mr. Curtiss
4 understood what he was being charged with, what sentences
5 he was facing, and clearly Mr. Chiarenza's opinion it was
6 to his benefit to take the plea agreement, so that he was
7 facing a substantial amount of time otherwise if they went
8 to trial and lost. Further, he's not prejudiced by this.
9 He received not only a benefit in York County, but he
10 received a benefit in Lancaster County on additional
11 charges that he was facing, so he, actually, received a
12 major benefit to pleading and, therefore, is not able to
13 meet either prong of the Strickland test for deficiency or
14 prejudice. So the State would ask that you not grant PCR
15 in this case.

16 THE COURT - Anything in reply, Ms. Moody?

17 MS. MOODY - No, sir, Your Honor.

18 THE COURT - Okay. Thank you, counsel. I'll take
19 this under advisement.

20 MS. MOODY - Thank you.

21 (END OF TRANSCRIPT)
22
23
24
25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 66 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Brett Thomas Curtiss vs. State of South Carolina, as taken by me in Court of Common Pleas for the Sixteenth Judicial Circuit on July 31, 2018, and provided by me this the 15th day of November, 2018.

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



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

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

2017-CP-46-3819

Brett Thomas Curtiss, 373259,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER GRANTING PARTIAL RELIEF

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

2018 SEP 12 PM 3:40

FILED-RECEIVED

This matter comes before the Court by way of an Application for post-conviction relief filed on December 27, 2017, by Brett Thomas Curtiss ("Applicant"). The State filed a Return on March 14, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on July 31, 2018, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office appeared on behalf of the State. Two witnesses testified at the hearing: Applicant and his trial counsel, Derek Chiarenza. After a review of the record and all evidence presented, this Court finds Applicant's allegation that he was sentenced above the statutory maximum for the possession of marijuana charge is meritorious. However, this Court finds Applicant has failed to meet the requisite burden of proof on the remaining allegations in his application. Therefore, this Court denies and dismisses with prejudice Applicant's remaining allegations in the application.

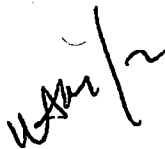
PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's order of commitment. Applicant was indicted at the August 2016 term of the York County Grand Jury for possession

with intent to distribute marijuana (2016-GS-46-2655) and trafficking in methamphetamine (2017-GS-46-2653). Applicant was indicted at the June 2015 term of the York County Grand Jury for possession with intent to distribute methamphetamine (2015-GS-46-1787). Derek Chiarenza, Esquire, represented Applicant. Assistant Solicitors Jennifer Colton and Ryan Newkirk of the Sixteenth Circuit Solicitor's Office prosecuted the case. On July 10, 2017, Applicant appeared with his counsel before the Honorable J. Cordell Maddox, Jr., and pled guilty to trafficking methamphetamine, possession with intent to distribute methamphetamine, and possession with intent to distribute marijuana. Pursuant to negotiations between Applicant and the State, Applicant's trafficking methamphetamine charge was reduced from over 100 grams to between 28 and 100 grams. Applicant also had two corresponding proximity charges dismissed as part of plea negotiations. Judge Maddox sentenced Applicant to imprisonment for nine years on each charge to run concurrently. Applicant did not appeal his guilty plea or sentence.

SUMMARY OF FACTS

For indictment 2015-GS-46-1787: On the March 26, 2015, officers with the Drug Enforcement Unit received a tip that Applicant was located on Keith Drive in Rock Hill, York County, South Carolina. (GP Tr. 8.) At that time he had an outstanding commitment order. Officers saw Applicant speaking with individuals in a driveway and approached him. (GP Tr. 8.) Applicant spoke with the individuals that were standing in the drive way and they told officers that they were there to purchase methamphetamine. (GP Tr. 8.) Officers then searched the home with consent from the home owner and recovered methamphetamine from the bathroom from where Applicant was located. (GP Tr. 8.) Applicant at that time told officers the meth was his. (GP Tr. 8.) There were also additional scales and some text message that indicated drug sales. (GP Tr. 8.)



For Indictments 2016-GS-46-2655 and 2017-GS-46-2653: On May 23, 2016, officers responded to 2055 McGee Road in Rock Hill, York County, South Carolina to assist escorting a DSS employee regarding reports that a nine year old was living in an apartment where methamphetamine was being produced. (GP Tr. 8.) A resident gave consent for officers to enter the apartment and upon doing so they saw in plain view a marijuana plant and methamphetamine. (GP Tr. 8-9.) Both Applicant and a co-defendant were located in the apartment. (GP Tr. 9.) Officers conducted a search and found forty-three grams of methamphetamine in Applicant's bedroom as well as marijuana, digital scales, and other indicia of intent to distribute. (GP Tr. 9.) Applicant informed the plea court that he agreed with the facts presented by the assistant solicitor. (GP Tr. 10.)

ALLEGATIONS RAISED

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

1. Ineffective Assistance of Counsel
 - a. Counsel failed to acquire the Brady¹ material in Applicant's case.
 - b. Counsel accepted a plea agreement that was not favorable to Applicant.
2. Due Process Violation
 - a. Applicant received a greater sentence than the statutory maximum for possession with intent to distribute marijuana, first offense.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, and Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the

¹ Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963).

attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 300 S.C. 115. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

1. Ineffective Assistance of Counsel

a. Counsel failed to acquire Brady material in Applicant's case

Applicant alleges that Counsel was ineffective for failing to acquire Brady material in Applicant's case. Specifically, Applicant alleged Counsel failed to provide him lab reports that analyzed the drugs that were the basis of his charges. Counsel testified that he obtained all discovery material from Assistant Solicitor Jennifer Colton, including the lab reports, and he provided all of those materials to Applicant. Counsel further testified that he believes he received all materials from the State in Applicant's case.

Counsel testified one of the lab reports showed some of the material collected and tested by law enforcement did not test positive for drugs. Counsel testified that the non-drug material was not calculated in the drug weights that led to Applicant's charges.

Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Under this requirement, "favorable" evidence includes both exculpatory evidence and impeachment evidence. State v. Kennerly, 331 S.C. 442, 453, 503 S.E.2d 214, 220 (Ct. App. 1998). "Determining whether evidence withheld by the state is 'material' under Brady turns on whether the cumulative effect of the withheld evidence results in a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." State v. Hill, 368 S.C. 649, 661, 630 S.E.2d 274, 280-81 (2006). Put another way, to establish a Brady violation, the aggrieved party must show "that the favorable

Wm/S

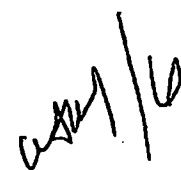
evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.” Kyles v. Whitley, 514 U.S. 419, 434 (1995).

This Court finds Applicant failed to present evidence substantiating his claim that Counsel failed to acquire Brady material from the State, or that the State withheld any discovery from Counsel. This Court finds Counsel’s testimony credible that he received and shared Brady material with Applicant. This allegation is denied and dismissed.

b. Counsel accepted a plea agreement that was not favorable to Applicant

Applicant alleges Counsel was ineffective for failing to negotiate a favorable plea agreement on his behalf. Applicant testified he pled guilty to possession with intent to distribute marijuana, but that he was only in possession of one “pot plant.” Applicant testified he did not smoke marijuana, but had the plant because he enjoyed the way it smelled. Applicant testified he pled guilty to trafficking methamphetamine and possession with intent to distribute methamphetamine, but he did not feel he was guilty of those offenses. Applicant’s trafficking methamphetamine charges stemmed from a valid search conducted in an apartment bedroom that Applicant shared with a female. Applicant testified the female claimed the methamphetamine was hers and he should not have been charged with it. Lastly, Applicant testified that he did not get any charges dismissed as part of his plea agreement.

Counsel testified the female that Applicant shared a room with had “cut a deal” with the State and, as part of that agreement, had agreed to testify against Applicant regarding the methamphetamine. Counsel testified he reviewed the facts and evidence against Applicant and believed it was in his best interest to negotiate a plea agreement with the State. Counsel testified the State extended a fifteen year plea offer to Applicant, which would include the dismissal of the two proximity charges. Counsel testified he discussed this plea offer with Applicant and



Applicant told Counsel if he could get the sentence below ten years, he would take it. Counsel negotiated with the State and was able to secure a nine year concurrent sentence on all charges for Applicant. This Court notes that at the time Applicant pled guilty he was facing a total possible sentence of up to 85 years in prison. Counsel testified he would have proceeded to trial if that is what Applicant wanted. Counsel further testified it was Applicant's decision to accept the plea offer and that is was in Applicant's best interest to plead guilty. Additionally, Counsel testified Applicant had similar charges pending against him in Lancaster County. Counsel testified he spoke to the public defender handling Applicant's case in Lancaster and was able to assist Applicant in receiving a concurrent sentence in Lancaster County.

"The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea." Hyman v. State, 397 S.C. 35, 43, 723 S.E.2d 375 (2012) (citing Hill v. Lockhart, 474 U.S. 52, 58 (1985)). "The second, or 'prejudice,' requirement...focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. "In the guilty plea context, the inquiry with respect to the counsel's alleged deficiency turns on whether the plea was voluntarily, knowingly, and intelligently entered." Hyman, 397 S.C. at 43 (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000)). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decision in the case." Hyman, 397 S.C. at 43 (citing Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007)).

Applicant has failed to establish Counsel was ineffective regarding plea negotiations. This Court finds that Counsel negotiated a favorable plea agreement for Applicant at Applicant's request and Applicant entered the guilty plea knowingly, intelligently, and voluntarily. Accordingly, this allegation must be dismissed.

Due Process Violation

Applicant alleged he received a higher sentence on his possession with intent to distribute marijuana charge than is allowed by statute. During the plea hearing, Judge Maddox sentenced Applicant to a concurrent term of nine years on each of his three charges. Applicant asserts that a nine year sentence for a possession of marijuana, first offense, is above the five year statutory maximum for that offense. (S.C. Code Ann. § 44-53-0370(b)(2)). This Court finds Applicant's assertions are correct and Applicant was improperly sentenced during the plea hearing. Pursuant to the Uniform Post-Conviction Procedure Act, this Court ^{amends 450} ~~amended~~ the sentence of Applicant to five years, which is the maximum sentence appropriate for this charge. (S.C. Code Ann. §17-27-80.)

CONCLUSION

Based on the foregoing, the Court amends applicant's possession with intent to distribute sentence to five (5) years, to run concurrent with his nine (9) year sentences for trafficking methamphetamine and possession with intent to distribute methamphetamine. Applicant's remaining allegations are dismissed with prejudice as discussed above.

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

Wan/8

Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. Applicant's sentence for possession with intent to distribute marijuana is hereby amended to five (5) years, to be run concurrent with his nine (9) year sentences for trafficking methamphetamine and possession with intent to distribute methamphetamine;
2. Applicant's remaining allegations are dismissed with prejudice; and
3. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 10 day of September, 2018.

William A. McKinnon #2761
 WILLIAM A. MCKINNON
 Presiding Judge
 Sixteenth Judicial Circuit

York, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP4603819

Brett Thomas Curtiss

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

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

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

S/William McKinnon
Circuit Court Judge

2761
Judge Code

09/10/2018
Date

For Clerk of Court Office Use Only

This judgment was entered on September 12, 2018, and a copy mailed first class or placed in the appropriate attorney's box on September 12, 2018, to attorneys of record or to parties (when appearing pro se) as follows:

Leah B. Moody 235 E. Main St., Ste 115 PO Box 1015 Rock Hill, SC 29730

Justin James Hunter PO Box 12519 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

Court Reporter:

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

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

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

STATE OF SOUTH CAROLINA CERTIFIED TRUE COPY

COUNTY OF YORK

2017 DEC 28 PM 2:58

INDICTMENT

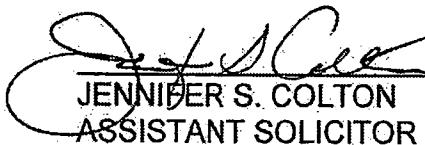
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on June 18, 2015, the Grand Jurors of
York County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE

The defendant, Brett Thomas Curtiss, did on or about March 26, 2015, in York County, South Carolina, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to distribute, dispense, deliver, or purchase, or possess with the intent to distribute, dispense, deliver, or purchase Methamphetamine in violation of the provisions of Section 44-53-370. All in violation of 44-53-375(B) of the South Carolina Code of Laws (1976) as amended.

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


JENNIFER S. COLTON
ASSISTANT SOLICITOR

WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2015A4610200485

ACTION OF GRAND JURY

TRUE BILL

Shirley Sander
Foreperson of Grand Jury
Date: 6/18/15

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2015-GS-46-01787

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JUNE 18, TERM 2015

THE STATE

VS.

BRETT THOMAS CURTISS

INDICTMENT FOR

**POSSESSION WITH INTENT TO
DISTRIBUTE METHAMPHETAMINE**

SC Code: § 44-53-375(B)
CDR Code: 3199

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Brett Curtiss
Defendant

Witness:

Cindy Mull & Spee
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA

CERTIFIED TRUE COPY

COUNTY OF YORK

2017 DEC 28 PM 2:58

INDICTMENT

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on August 18, 2016, the Grand Jurors of York County present upon their oath:

TRAFFICKING IN METHAMPHETAMINE

The defendant, Brett Thomas Curtiss, did on or about May 23, 2016, in York County, South Carolina, knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of twenty-eight (28) grams or more of Methamphetamine as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2). All in violation of 44-53-375(C), *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.


JENNIFER S. COLTON
ASSISTANT SOLICITOR

WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2016A4610201117

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date: 8-18-16

TRUE BILL

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS46- 02653

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

AUGUST 18, TERM 2016

THE STATE

VS.

BRETT THOMAS CURTISS

INDICTMENT FOR

TRAFFICKING IN METHAMPHETAMINE

SC Code: § 44-53-375(C)
CDR Code: 0349

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

[Signature]
Defendant

Witness:

[Signature]
C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

CERTIFIED TRUE COPY
2017 DEC 28 PM 2:58
INDICTMENTDAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on August 18, 2016, the Grand Jurors
of York County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

The defendant, Brett Thomas Curtiss, did on or about May 23, 2016, in York County, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Marijuana, a schedule I controlled substance, all in violation of Section 44-53-370, *Code of Laws of South Carolina* (1976, as amended).

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


JENNIFER S. COLTON
ASSISTANT SOLICITOR

WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2016A4610201119

ACTION OF GRAND JURY

Joseph F. Hager
Foreperson of Grand Jury
Date: 8-18-16

TRUE BILL

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS46- 026 55

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

AUGUST 18, TERM 2016

THE STATE

VS.

BRETT THOMAS CURTISS

INDICTMENT FOR

**POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA**

SC Code: § 44-53-370
CDR Code: 0186

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Brett Thomas Curtiss
Defendant

Witness:

Andrew C. P. Lee
C.C.C. PLS. AND G.S.