

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

MAY 09 2019

S.C. SUPREME COURT

CERTIORARI TO LEXINGTON COUNTY

HONORABLE J. CORDELL MADDOX, CIRCUIT COURT JUDGE

Appellate Case No. 2018-000781

David Lorange Adams

Petitioner

vs.

State of South Carolina

Respondent

PRO SE JOHNSON BRIEF FOR WRIT OF CERTIORARI

David Lorange Adams #271989
Petitioner, Pro-se.
Lee C.I. [F3A-2114]
990 Wisacky Hwy
Bishopville, SC 29010

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Argument

Did PCR Court err in allowing the reconstructed record to be used as meaningful appellate review?

Due Process of law requires a person shall have a reasonable opportunity to be heard before a legally appointed and qualified impartial tribunal before any binding decree, order, or judgment can be made affecting his rights to life, liberty, or property. (S.C. Cont. Art. I § 3); (*La Salle Bank National Ass'n vs. Davidson* (S.C. 2009) 386 S.C. 276, 688 S.E. 2d 121); (*Adams v. H.R. Allen, Inc.*, 726 S.E. 2d 9); (*South Carolina Dept. of Social Services vs. Wilson*, 574 S.E. 2d 730 (2002)).

Reconstruction of the record when transcript is unavailable, alternative methods of reporting the trial proceedings are permissible if they place before the Appellate Court an equivalent report of the events at trial from which the appellant's contentions arise (*State v. Caswell*, 295 P. 3d 1063 (2013)). However, no statement or formulation of the proceedings prepared by one party may be used in this respect without giving the opposing party an opportunity to be heard. (*U.S. vs. Chesapeake & O. Ry Co.*, 281 F. 2d 698 (4th Cir. 1960) If a transcript is altogether inaccurate and no adequate record of what transpired at trial can be reconstructed, the court must remand for a new trial. (re *Rholetter*, 592 S.E. 2d 237 (N.C. Ct. App. 2004).

Petitioner contends that the reconstruction hearing was a miscarriage of justice that violated Petitioner's 14th Amendment rights under the U.S. and S.C. Constitutions. The challenge to the indictment not being on the record as it was on the original record does not give Petitioner

the fair opportunity to be heard and makes the reconstructed record insufficient for a meaningful appellate review.

[Petitioner] (A) Adams: Solicitor read out the indictment and I pulled Mr. Madsen to the side and let him know, you know, the indictment isn't accurate.

[PCR Counsel] (Q) Mr. Allen: Okay. Did you at any point during the plea admit to the facts in the indictment?

[Petitioner] (A) Adams: No, sir. I – I tried to correct them.

[PCR Counsel] (Q) Mr. Allen: You tried to correct them on the record?

(Tr. pg. 55, LL. 19-25)

[Petitioner] (A) Adams: Yes, sir, but when I went to speak the judge told me I have to go through counsel.

[PCR Counsel] (Q) Mr. Allen: Okay. Did Mr. Madsen as your counsel say anything about correcting the facts?

[Petitioner] (A) Adams: No, sir.

(Tr. pg. 56, LL. 1-5)

Petitioner asserts that the witness most likely to remember the dialogue from May 4, 2015 is the Petitioner himself. All other parties involved have dealt with numerous cases over the last two and a half years prior to the reconstruction hearing that will cloud even the best memory. Petitioner contends that the extensive delay could have been rectified when the State had noticed that the trial transcripts were unavailable in December of 2015. The court reporter's delay in

disclosing the lack of a transcript made a bad situation worse, as the passage of time clearly dimmed the recall of the participants. (*State v. Ladson*, 373 S.C. 320, 644 S.E. 2d 271 (2007)) (See Tr. pgs. 10, LL. 2-5, 19-20; 14, LL. 17-19; 18, LL. 9, 14; 19, LL. 4-7; 21, LL. 17-20; 35, LL. 22-25) (see Exhibits A, B, C, D)

Petitioner contends that the reconstructed record was opposed by PCR counsel. Judge that did the reconstruction hearing acknowledged that reconstruction of a transcript like this is hard but he continued on and proceeded into PCR hearing. (Tr. pgs. 40, LL. 5-21; 41, LL. 19-20)

The waiver of Federal Constitutional rights cannot be presumed from a silent record. It cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts (*Boykin v. Alabama*, 395 U.S. 238, 895 S. Ct. 1709 (1969)); (*McCarthy vs. United States*, 394 U.S. 459, 465, 89, S. Ct. 1166). Petitioner contends that Petitioner was already incarcerated at the Detention Center when the “alleged” offense was taking place thus giving the reason why Petitioner never agreed to the facts. This is the reason why Petitioner brought it to the court’s attention that the indictment wasn’t accurate. (see exhibit E, F, G) The definition of the word ‘through’ from Black’s Law Dictionary and Merriam Webster’s Dictionary reads as follows:

Through – used as a function word to indicate a period of time: as (A): during the entire period < All ~ her life > (B): from beginning to end of < the tower stood ~ the earthquake >; (C): to and including < Monday ~ Friday >.

If a defendant argues in post-conviction proceeding that his plea was entered without his consent or without understanding of the plea’s nature and consequences, *Boykin* places a burden on the State to prove contrary. (*Roddy v. Black*, 516 F. 2d 1380 (1975)); (*Wood vs. Morris*, 544

P. 2d 1032) To determine whether a guilty plea was taken in accordance with constitutional standards, the Court will consider the entire record including facts presented at PCR hearing. (*Dover vs. State*, 304 S.C. 433 S.E. 2d 391) (Tr. pgs. 22, LL. 2-3; 91, LL. 5-15)

Petitioner contends no evidence was presented to ever show that Petitioner's plea was in accordance with the constitutional standards.

Argument

Did PCR court err in not complying with S.C. Ann § 17-27-80?

Petitioner request a remand to the circuit court and ask this court to require the circuit court to prepare an order that complies with section 17-27-80 (*Reese v. State*, 2018 WL5274720) (Appellate Case No. 2017-001110). Petitioner contends that the Order of Dismissal was signed by the judge on March 30, 2018. Petitioner wrote PCR counsel inquiring about filing a Rule 59 (e) (see exhibit H) Petitioner asserts that Petitioner's issues were addressed at PCR hearing. PCR judge only ruled on the first two issues. The last two issues were never ruled upon thus warranting a Rule 59 (e) motion that PCR counsel never filed. (Tr. pgs. 61, LL. 23-25; 62, LL. 1-22; 67, LL. 1-3; 76, LL. 17-25; 77, LL. 1-5)

The PCR court's general denial of all claims not specifically addressed in the PCR court's order does not constitute a sufficient ruling on any issue since it does not set forth specific findings of fact and conclusions of law. (*Simmons vs. State*, 416 S.C. 584, 592, 788 S.E. 2d 220, 225 (2016))

Petitioner asks the court in the interest of justice.

Argument

Did PCR court err in allowing a Fourth Amendment violation?

The prosecution bears the burden of proving voluntary consent. Consent is not voluntary if given only in response to a claim of lawful authority (*U.S. vs. Coleman*, 588 F. 3d 816, 819-20 (4th Cir 2009)) The State has the burden of showing voluntariness. (*State vs. Green*, Court of Appeals of S.C., 330 S.C. 551, 499 S.E. 2d 817 (1997)); (*U.S. vs. Rush*, United States Court of Appeals, 4th Cir., 808 F. 3d 1007 (2015)); (*Bumper vs. N.C.*, 391 U.S. 543, 88 S. Ct. 1788, 20 L. Ed. 2d 797 (1968)) (Tr. pg. 62, LL. 2-22)

Petitioner contends that the Attorney General never presented any evidence to show and prove that consent or a search warrant was given or issued. Petitioner contends that previous evidence was presented by the Attorney General, referring to the Ex-Parte Orders for Professional Services to show that they were filed. (see exhibit I – Keshawn Jeter’s consent to search form) (Tr. pgs. 64, LL. 3-6; 68, LL. 4-7)

South Carolina Constitution Art. I § 10 recognizes the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated. The Fourth Amendment protects against intrusions into the human body for taking of evidence absent a search warrant unless there are exigent circumstances, such as imminent destruction of evidence. (*Schmerber vs. California*, 384 U.S. at 767-70, 86 S. Ct. at 1834-35); (*State vs. Woods*, 376 S.C. 125, 654 S.E. 2d 867 (S.C. App 2007)); (*Re Snyder*, 308 S.C. 192, 417 S.E. 2d 572 (1992)) (S.C. Code Ann § 17-13-140); (*State vs. Baccus*, 367 S.C. 41, 625 S.E. 2d 216 (2006) South Carolina Statute 17-13-150 provides that a person served a search warrant be furnished a copy of warrant and supporting affidavit. When any person is served with a search

warrant, such person shall be furnished with a copy of the warrant along with the affidavit upon which such warrant was issued.

Argument

Did PCR court err in its ruling that Petitioner's guilty plea was entered voluntarily, knowingly, and intelligently?

Due Process of law requires that before a guilty plea can be entered voluntarily, knowingly, and intelligently, a defendant must be advised of his privilege against self-incrimination, the right to be tried by jury, and the right to confront one's accusers. (*Boykin vs. Alabama*, 395 U.S. 238, 89 S. Ct. 1709 (1969)) The record must show with certainty that the plea is "an intentional relinquishment or abandonment of a known right or privilege." (*State vs. Patterson*, 278 S.C. 319, 296 S.E. 2d 264 (1982).

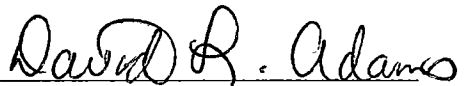
Petitioner contends that solicitor and trial counsel's memory lacked sufficiency as to whether Petitioner's plea was voluntarily, knowingly, and intelligently made. (Tr. pgs 10, LL. 2-7, 17-20; 14, LL. 14-19; 18, LL. 8-23; 19, LL. 4-7; 20, LL. 1; 21, LL. 17-20; 22, LL. 2-18; 28, LL. 25; 29, LL. 1-2; 35, 19-25; 36, LL. 1-2; 90, LL. 5-8; 94, LL. 18-²⁵95; 95, LL. 1-25; 96, LL. 21-25; 97, LL. 10-17).

CONCLUSION

For the foregoing reasons of fundamental importance, Petitioner's conviction should be reversed or, in the alternative, a new Reconstruction Hearing should be ordered and overseen by the *trial* judge in this case

For the foregoing reasons of fundamental importance, Petitioner PRAYS that this Court reverse and remand the final order of the PCR court denying Petitioner post-conviction relief.

Done this 3rd, Day of May 2019



David Lorance Adams #271989

Petitioner, Pro-se.

Lee C.I. [F3A-2114]

990 Wisacky Hwy

Bishopville, SC 29010



Exhibit A

State of South Carolina
The Circuit Court of the Second Judicial Circuit

Bethanie K. Creppon
Circuit Court Reporter

December 9, 2015

P.O. Box 85411
Lexington, SC 29073
bcreppon@sccourts.org

Ms. Lakesicha Gibbs
Legal Assistant
Office of the Attorney General
Post-Conviction Relief Division

In Re: State v. David L. Adams

Dear Ms. Gibbs:

I have received your request for the Transcript of Record in the above-referenced case. I regret to inform you that I will be unable to provide the transcript to you. My car was broken into on June 3, 2015, and all of my court reporting equipment was stolen, including my laptop containing transcript files, as well as my backup external hard drive.

I apologize for any inconvenience this may cause.

Sincerely,

Bethanie K. Creppon

Bethanie K. Creppon
Official Court Reporter

CC: Court Administration

Ms. Gibbs was made aware
of the missing transcripts.
Why wait 2 yrs 2 days
to have a reconstruction
hearing?



Exhibit B

State of South Carolina
The Circuit Court of the Second Judicial Circuit

Bethanie K. Creppon
Circuit Court Reporter

June 14, 2016

P.O. Box 85411
Lexington, SC 29073
bcreppon@sccourts.org

Ms. Deonna Rogers
Legal Assistant
Office of the Attorney General
Post-Conviction Relief Division

In Re: David L. Adams vs. State of South Carolina
2014-GS-32-1759

Dear Ms. Rogers:

I have received your request for the Transcript of Record in the above-referenced case. I regret to inform you that I will be unable to provide the transcript to you. My car was broken into on June 3, 2015, and all of my court reporting equipment was stolen, including my laptop containing transcript files, as well as my backup external hard drive.

I apologize for any inconvenience this may cause.

This transcript was also requested by Ms. Lakesicha Gibbs on December 2, 2015. I responded to her request on December 9, 2015, informing her that I would be unable to provide the transcript. Ms. Gibbs then asked me to provide a letter stating this so that she could add it to the file for the judge. I have enclosed a copy of that letter as well.

Sincerely,

Bethanie K. Creppon
Official Court Reporter

CC: Court Administration

Mr. Rogers was made aware about the missing transcripts. Why wait 1yr. 5 months and 27 days to have a reconstruction hearing?

(Keshawn D. Jeter's) Exhibit #C

MOTIONS AND MATTERS

1 Your Honor. Um, I I-- we can do this and the Court can
2 attempt to do it but I just don't believe his testimony would
3 be articulation in detail he's gonna have to do to describe
4 this issue is gonna be sufficient, I just don't think it
5 is. ---

6 THE COURT: Yes, sir.

7 MR. RICHEY: --- and I think he's hampered by not having
8 a record, ---

9 THE COURT: Okay.

10 MR. RICHEY: --- thank Your Honor.

11 THE COURT: ~~Well let me, let me just state that I I'm not~~
12 ~~gonna attempt to reconstruct the record, I I can't, I can't do~~
13 ~~that, I wasn't the trial judge, the trial judge was Judge~~
14 ~~Welmaker, who's retired at this point, ---~~

Exhibit # D

Edward Welmaker. Judge Welmaker sentenced Applicant to 200 months imprisonment for criminal sexual conduct with a minor - victim 11 to 14 years of age, second degree.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's petition in an Order dated December 3, 2014. State v. Keshawn Donte Jeter, Op. No. 2014-001929 (S.C. Ct. App. filed September 18, 2014). The Remittitur was issued on December 23, 2014.

The court reporter lost the tape for the trial and the following plea proceeding. Consequently, there was no guilty plea transcript from Applicant's proceeding. Further, Judge Welmaker passed away and would be unavailable to help reconstruct the record.

II. ALLEGATIONS

In his PCR application, Applicant alleged he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to investigate
 - b. Involuntary guilty plea

III. SUMMARY OF TESTIMONY

Applicant testified he pleaded guilty as advised by his attorney on the second day of trial. Applicant did not recall who testified, how many questions were asked, or what those questions were. Applicant testified he remembered the judge asking him a series of questions and he answered them, but could not recall what those questions were. Applicant testified he did not remember much from the trial or plea proceeding.

Counsel had notes on the trial to which he referred. Counsel testified Applicant changed his mind on whether to plead guilty or not before the trial. Counsel testified, after pre-trial, Applicant wanted to plead guilty. Counsel testified the judge went over Applicant's rights during

13 5

2018 JAN -8 PM 28
M. HOPE BLANCHARD

Exhibit E

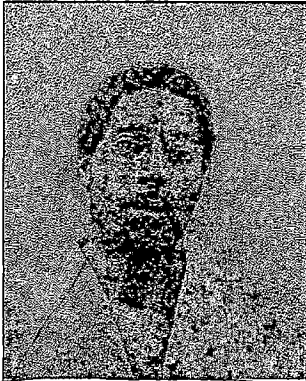
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Name Detail

DAVID LORANCE ADAMS



1 of 10
 4/15/2012 6:54:54 PM

Warnings: Jail

DOB: **2/10/1975** Age: **37 YEARS OLD**
 Race: **BLACK** Sex: **MALE**
 Ethnicity: **NON-HISPANIC** SSN: **248-27-9467**
 Hair: **BLACK** Eyes: **BROWN**
 Height: **5' 07"** Weight: **130 LBS.**
 DL State: **SOUTH CAROLINA** DL #: **004248408**
 Employer: Work #: _____
 Local #: State ID: _____
 FBI: **675842TA6** NCIC: _____

Alerts

Scars/Marks/Tattoos

ART on RIGH of ARM : PIT BULL
 ART on RIGH of ARM : DAISHAWN

Physical Characteristics

Mustache
 SMALL
 Polite
 Short

Street	City	State	Zip	Home #
736 MADERA RD	BATESBURG	SC	29006	

Jail: **1** Warrants: **1** Arrests: **5** Incidents: **1** Civil: **0** Felon: **0** Citations: **0** Other: **5**


Involvements **1** Files **1**

Type	Status	Event Date	Agency	Description	Relationship
JAIL BOOKING	Active	05/13/2012	LCSO	Jail Booking	JAIL BOOKING
ARREST		04/15/2012	BLPD	MUNICIPAL COURT BENCH WARRANT	ARRESTEE
ARREST		07/04/2011		HOLD FOR COURT	ARRESTEE
ARREST		07/04/2011		CONT COURT/VIOL PROP	ARRESTEE
ARREST		02/28/2010	DUS	BENCH WARRENT	ARRESTEE
ARREST		12/28/2007		BENCH WARRENT	ARRESTEE
INCIDENT/OFFENSE		05/18/2012	LCSO	12009210, SEX OFFENSE/FORCIBLE RAPE	OFFENDER (KNOWN)
NAME		04/17/2012	LCSO	ADAMS, EVA FAYE (MOTHER)	JAIL VISITATION
NAME		04/17/2012	LCSO	SMITH, STEPHANIE (W F)	JAIL VISITATION
OTHER (PH)		04/15/2012	LCSO	8036047378 PHONE DESC	PHONE
OTHER (LO)		04/15/2012	LCSO	736 MADERA RD, BATESBURG, SC	LOCATION
WARRANT		01/06/2012	LCSO	(M) CONTEMPT / CONTEMPT OF FAMILY COURT	SERVED, RETURNED
NAME		12/29/2011	LCSO	Inmate: ADAMS, JAMES FRANK	JAIL VISITATION

(view by pages)

Exhibit F

LEXINGTON COUNTY SHERIFF BOOKING REPORT	05/18/2012 16:01
--	------------------

Booking # 10154	* JM10154 *	Status Active	Active Hold  *IM294*	
Date/Time 05/13/2012 18:01	Cell Location NJL, BPOD, BPOD, 12PB02			
Booking Officer WILLIAMS, ABRAHAM DEVON	Name ID 294			
Fingerprint Officer GETHERS, DELORIS L	Prior Bookings None			
Search Officer GETHERS, DELORIS L	Security MIN			
Fingerprint N/A				
Property Bins 0813A				
INMATE INFORMATION				
Name ADAMS, DAVID LORANCE		Local ID (Names) N/A		
Address 736 MADERA RD BATESBURG, SC 29006		Race B		Sex M
		Hair BLK	Eye BRO	
DOB 02/10/1975	Age 37	Height 5'07	Weight 130	
SSN 248-27-9467	Marital Status Divorced, 4 Dependents		Time Lived In Area Unk	
Local ID (Jail) N/A	SID N/A	FBI # 675842TA6		
Juvenile Adult	Country of Birth United States		Citizenship United States	
Employer N/A			Religion Christian	
Employer Address N/A			Employer Phone # N/A	
Attorney Unk			Attorney Phone # N/A	
AKA None				
Jail Alerts None				

CHARGES										
Case ID	Date Arrested	Officer	Agency	Charge	UCR	Charge Type	Status	Bond Amount	Bond Status	Type
	04/15/2012	Bryant	BLPD	MUNICIPAL COURT BENCH WARRANT	99XX	M	PRET			
	04/15/2012	Bryant	BLPD	FAMILY COURT BENCH WARRANT	99XX	M	SENT			ACTI

NOTES

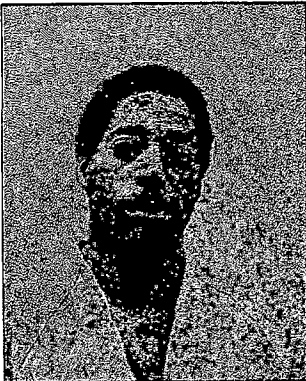
Exhibit G

• COMMAND CENTER
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 JMS

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BOOKING DETAIL

VIEW REPORT		DAVID LORANCE ADAMS - Booking ID #10154	
	Status: INACTIVE	Booking Date: 5/13/2012	Name Detail Race: BLACK Sex: MALE DOB: 02/10/1975 Age: 37 YEARS OLD
	Confinement Reason: PRE TRIAL	Security Class: MINIMUM	
	Bond Amount: N/A	Temporary Location:	
	Estimated Release Date: 5/25/2012	Next Court Date:	Assigned Location Facility: Section: Unit: Bed:
	Actual Release Date: 5/25/2012		

Charges	Visitation Log	Involvements	Files		
Charge	Status	Bond Status	Bond Type	Bond Amount	Posted By
MUNICIPAL COURT BENCH WARRANT	PRE TRIAL	INAC		N/A	
FAMILY COURT BENCH WARRANT	SENTENCED	INAC		N/A	

©2010 SUNGARD PUBLIC SECTOR - OSSI

Stephanie Smith 4/8 2/12

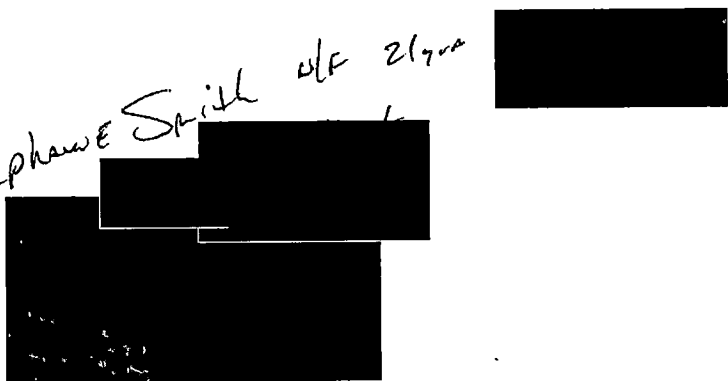


Exhibit H

Kellum W. Allen, Esq.*
Kellum@TheAllenLawFirm.org

David K. Allen, Esq.
David@TheAllenLawFirm.org



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P.O. Box 3241
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Office: (803) 764-2328
Toll Free: (844) 839-5170
Fax: (803) 764-2548

April 25, 2018

Mr. David Adams #271989
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

RE: *Your PCR Case*

Dear David:

Please find the enclosed letter from me to the Supreme Court with your notice of appeal and other documents related to your appeal. This should initiate your appeal of the denial of your PCR. I believe your appellate counsel should be in touch with you once they have received your file and appeal.

I received your April 6, 2018 letter requesting that I file a Rule 59(e) motion (commonly known as a Motion to Reconsider), but I do not see any grounds for such a Motion. Motions pursuant to Rule 59(e) are reserved for situations where a Judge did not make a ruling on an issue raised at your hearing. I do not see where that applies in your case. Moreover, it would only slow down your appeal process while we wait on a ruling on the 59(e) motion.

Again, I am sorry the PCR decision did not go our way. Do not ever hesitate to reach out to me if you think I can be of any help.

Sincerely,

David K. Allen

DKA/idi
Enclosures

Exhibit I



Case# 09-075612

Spartanburg Public Safety Department Consent Search Authorization

BEFORE ANY SEARCH IS MADE YOU MUST UNDERSTAND YOUR RIGHTS.

- 1) You may refuse to consent to a search and may demand that a search warrant be obtained prior to any search of the premises described below.
- 2) If you consent to a search, anything of evidentiary value seized in the course of the search can and will be used in court against you.

I, Keshawn Jeter, having read the above statements and being fully aware of my rights do hereby consent to a search without warrant by officers of the Spartanburg Public Safety Department of the following: (Describe premises or automobile to be searched).

Buccal swab from mouth area of
Keshawn Dont'e Jeter Blm 4/27/95

I hereby authorize the said officers to seize any article which they may deem to be of value as evidence.

This statement is signed of my own free will without any threats or promises having been made to me.

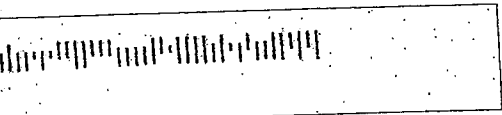
Person Giving Consent: x Keshawn Jeter
(Signature)

Witness: Russell Potts

Date: 9/30/12

Witness: _____

Time: 0601



, Pro-SE

I.

ky Hwy

le, S.C.

29010

DANIEL SHEAROUSE

P.O. Bx 11330

Atlanta, Ga