

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF Oconee County)

Timothy Blessingame, # 213064)

CLERK OF COURT
SEVERLY H. WHITE
CLERK OF COURT

CIVIL ACTION COVERSHEET

Plaintiff(s))

2019 MAY 30 P 3:57

2019 -CP- 37-315

vs.)

The State of South Carolina)

Defendant(s))

Submitted By: Timothy Blessingame #213064

SC Bar #: _____

Address: Marion Unit, Rm # 127

Telephone #: _____

4460 Broad River Rd

Fax #: _____

Columbia, SC 29210

Other: _____

E-mail: _____

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Fraud/Bad Faith (150) <input type="checkbox"/> Failure to Deliver/Warranty (160) <input type="checkbox"/> Employment Discrim (170) <input type="checkbox"/> Employment (180) <input type="checkbox"/> Other (199) _____ <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input checked="" type="checkbox"/> Other (599) _____ | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20 ____ -NL- ____ - <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) _____ <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture—Consent Order (850) <input type="checkbox"/> Other (899) _____ <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) _____ <input type="checkbox"/> Sexual Predator (510) <input type="checkbox"/> Permanent Restraining Order (680) <input type="checkbox"/> Interpleader (690) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Pre-Suit Discovery (670) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Assault/Battery (370) <input type="checkbox"/> Slander/Label (380) <input type="checkbox"/> Other (399) _____ <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Incapacitated Adult Settlement (790) <input type="checkbox"/> Other (799) _____ | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) _____ <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) _____ |
|---|--|--|--|

Submitting Party Signature: Timothy Blessingame

Date: May 20, 2019

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Timothy Blessingam #213064
Applicant,

- vs. -

The State of South Carolina
Defendant.

C/A NO: 2019 CP37.315

FILED OCTOBER 30 2019
CLERK OF COURT
OCONEE COUNTY

Rule 60 (b) (4), S.C.R. Civ. Proc.
Motion w/ Attached Affidavits /
And MEMORANDUM OF LAW IN
SUPPORT OF SUMMARY JUDGMENT

Comes now Applicant, above named 'Pro se' Applicant Timothy Blessingame, #213064, hereby makes "Rule 60 (b) (4), S.C.R. Civ. Proc., Motion w/ Attached Affidavits / And MEMORANDUM OF LAW IN SUPPORT OF SUMMARY JUDGMENT on Defendant."

Defendant Cannot show that the Court of Common Pleas applied S.C. Code Ann. § 17-27-80, and Rule 52 (a) S.C.R. Civ. Proc., in determining the 'Credibility' of applicant P.C.R. Witness - ('Major') Francis Steve Pruitt, Jr., - The Director of the Oconee County Detention Center, in it's 'Order of Dismissal' dated: May 26, 2011, in Violation of 'Due Process of Law'

In Support of this Motion, Applicant would show this Court the following:

FILED OCTOBER 30 2019
CLERK OF COURT
OCONEE COUNTY

MAY 30 P 3:57

1. PROCEDURAL HISTORY

Applicant is currently confined at the Broad River Correctional Institution in the South Carolina Department of Corrections pursuant to Order of Commitment from the Clerk of Court for Oconee County.

Applicant was Indicted by the Oconee County

Grand Jury during the July 20, 2009, Term of the Oconee County Court of General Sessions for One Count of Distribution of Crack Cocaine, Third offense (2009-GS-37-820). Applicant was represented by Scott Sprouse, Esquire. The state was represented by Assistant Solicitor Lindsey S. Simmons with the Tenth Judicial Circuit Solicitor's office. Applicant proceeded to trial by Jury before the Honorable Alexander S. Ma Caulay, Circuit Court Judge on October 26-28, 2009. On October 28, 2009, Applicant was found guilty of distribution of Crack Cocaine, Judge Ma Caulay sentenced Applicant to thirty years confinement.

Direct Appeal

On November 5, 2009, Applicant filed and served a timely Notice of Appeal. In a Affidavit dated March 17, 2010, Applicant requested that his appeal be dismissed due to his trial counsel's failure to preserve his Constitutional Claims for Direct Appellate Review in accordance with state law. By order filed April 15, 2010, the South Carolina Court of Appeals dismissed applicant's appeal. The Remittitur was issued on May 5, 2010.

PCR Action

On April 30, 2010, Applicant filed an Application for Post-Conviction Relief (2010-CP-37-531), asserting a Number of Constitutional Claims, including: "Ineffective Assistance of Trial Counsel - Failure to Investigate and / or Subpeona Witnesses"⁽¹⁾ to Corroborate that the state's Key witness Sept. 28, 2009, [recounting] statement⁽²⁾ was written "Voluntary and Without Threat", and, to refute the Key witness trial testimony that he made "Complaints" to Jail Staff that his life could be in danger if he didn't write and sign his statement [e]xonerating the plaintiff of distributing him any drugs". < see / Affidavit To Attachment - A >, this Exhausted Claim appears in state court (PCR) order of dismissal as "Failure To Call Additional Witnesses". < see / Affidavit To Attachment - B >.

Footnote:

(1) ("Major") - Francis Steve Pruitt, Jr., - The Director of the Oconee County Detention Center - Where both ("Walker") and Applicant was housed.

(2) See / Affidavit To Attachment - S

On May 26, 2011, the (PCR) court filed its Order of Dismissal. In its Order, the PCR Court noted it had the Opportunity to review the record in its entirety and had heard the testimony at the post-conviction relief hearing.

The PCR court had further had the Opportunity to observe the witnesses⁽¹⁾ presented at the hearing, closely pass upon their Credibility and weigh their testimony accordingly. *Id.* (See/Affidavit To Attachment - B, pg. 3 of 10, 1A(s) 1 thru 5). In its Order the PCR Court found the testimonies of ("ONLY") Jonathan Bryson ("Bryson"), and Justin Diggs ("Diggs") lacking Credibility. (See/Affidavit To Attachment - B, pg. 9 of 10, 1A(s) 1 thru 3). *Id.*

Footnote:

(1) ("Major") Francis Steve Pruitt, Jr., The Director of the Oconee County Detention Center; Jonathan Bryson ("Bryson") and Justin Diggs ("Diggs") - Former Oconee County inmates that was (were) housed with (Walker) and (Blasingame) at the Oconee County Detention Center.

59(e) MOTION

On June 3, 2011, Applicant filed a Notice of Motion and Motion for Reconsideration. (see/Affidavit To Attachment-C). In the Motion, Applicant Counsel argued under the PCR claim 'Failure To Call Additional Witnesses'- "That there has been no findings established that the witness, Notedly, and the 'Most Relevant' witness at this point- ('Major') Francis Steve Pruitt, Jr., were not Admissible". ("Are for that matter credible"). By Order filed July, 14, 2011, the PCR Court denied the applicant Motion For Reconsideration 'Rule 59(e), S.C.R. civ. Proc. .

II. MERITS

A. STANDARD OF REVIEW

The standard review under 'Rule 60(b)(4), S.C.R. Civ. Proc., states that:

"[O]n motion and upon such terms are just, the court may relieve a party's legal representative from a final Judgment, Order, or proceeding [if] . . . the Judgment is [V]oid . . ." S.C.R. Civ. Proc. Rule 60(b)(4).

A judgment is not void merely because it is erroneous. A judgment is void if the court acted in a manner inconsistent with "Due Process of Law". (see / For example: Bryson v. State, 328 S.C. 236, 493 S.E.2d 500 (1997) (Vacating a PCR Order and Remanding the matter back for specific findings of facts and conclusions of law pursuant to S.C. Code Ann. §17-27-80, and Rule 52(a), S.C.R. Civ. Proc.)).

Rule 60(b)(4), is not subject to any time limitations, and the court has no discretion in determining whether to grant or deny a Rule 60(b)(4), motion -- if the judgment is void, it is a Nullity, and the court must grant relief. (see / Orner v. Stalala, 30 F.3d 1307, 1310 (10th Cir. 1994) ("The reasonable time criterion of Rule 60(b)(4), as it relates to void judgment means no time limit because the judgment is a Nullity")).

III. EQUITABLE JUSTIFIABLE REASON TO EXCUSE DELAY

What remedies does an applicant have to correct an applicant Post-Conviction Relief Order of Dismissal, and to have it's order remanded back to the Lower Court for a proper ruling that should have been made in the first place?

Once an inmate has his state court post-conviction relief, he is entitled to "Several Avenues" of attacking a Jurisdictional Defect in which occurred in his state post-conviction relief order, by way of:

- <a> S. C. R. Civ. Proc., Rule 59(e), (providing a venue for any party to Alter or Amend a judgment)
- Notice of Appeal to the South Carolina Supreme Court for a Writ of Certiorari
- <c> Federal Habeas Corpus Petition, (pursuant to 28 U.S.C.A. §2254 on behalf of a person in state custody).
- <d> United States Court of Appeals for the Fourth Circuit
- <e> United State Supreme Court, (petition for a Writ of Certiorari)

EQUITABLE TOLLING / DUE DILIGENCE

- <a> On April 30, 2010, Applicant filed a Timely Application for Post-Conviction Relief (2010-CP-37-00531).
- On May 26, 2011, The (PCR) court filed its Order of Dismissal < See/Affidavit To Attachment - B >
- <c> On June 3, 2011, Applicant filed a Timely Notice of Motion and Motion for Reconsideration pursuant to S.C.R. Civ. Proc., Rule 59(c), < See/Affidavit To Attachment - C >
- <d> On June 28, 2011, the (PCR) court denied the applicants Motion, S.C.R. Civ. Proc., Rule 59(c), < See/Affidavit To Attachment - D >
- <e> On July 1, 2011, Applicant Timely served and filed a Notice of Appeal for a Writ of Certiorari.
- <f> By order filed September 18, 2013, The South Carolina Supreme Court denied the applicant petition for Writ of Certiorari < See/Affidavit To Attachment - E >.
- <g> On July 9, 2014, Applicant Timely served and filed a Federal Habeas Corpus Petition on the District Court of South Carolina, < See/ CIA No: 4:14-CV-02814 / ECF No. 1 >
- <h> On December 17, 2014, The state Attorney General filed a Return and Memorandum of Law in Support of Motion for Summary Judgment, < See/ CIA No. 4:14-CV-02814 / ECF No. 20 >

<i> On March 20, 2015, Applicant Timely served and filed a Original Draft of his 'Opposition Motion for Summary Judgment w/ a Memorandum in Support... and Attached Affidavits'. < see/ Affidavit To Attachment - F >

<j> On May 20, 2015, The Magistrate Judge filed its Report and Recommendation Reporting that petitioner's petition for Writ of Habeas Corpus be dismissed without an evidentiary hearing. < see/ C/A No. 4:14-CV-02814/ ECF No. 46 >

<k> On June 5, 2015, Applicant Timely filed an 'Objection' to the Magistrate Judge's Report and Recommendation. < see/ Affidavit To Attachment - G / ECF No. 43 >

<l> On September 21, 2015, The District Court (Adopted) the Magistrate Judge's Report and Recommendation, and Ordered that petitioner's petition for Writ of Habeas Corpus be Dismissed without an evidentiary hearing. < see/ 4:14-CV-02814/ ECF No. 46 >

<m> On October 19, 2015, Applicant Timely filed and served a Motion To Alter / set Aside Judgment pursuant to Fed. R. Civ. Pro., 59(e). < see/ C/A No. 4:14-CV-02814/ ECF No. 49 >

<n> On December 22, 2015, Applicants Notice of Motion To Alter/ set Aside Judgment was denied. < see/ Affidavit To Attachment - H >

<o> On August 19, 2016, Applicant Timely filed a Notice of Appeal to the Fourth Circuit Court of Appeals w/ Brief. < see/ C/A No. 15-8006/ 4:14-CV-02814/ see. Affidavit To Attachment - I >

- < P > On August 30, 2016, The Fourth Circuit Court of Appeals denied applicant a 'Certificate of Appealability'. < see Affidavit To Attachment - J >
- < Q > On November 23, 2016, The Applicant Timely filed and served a Petition for a Writ of Certiorari to the Supreme Court of The United States. < see Affidavit To Attachment - K >
- < R > On February 21, 2017, The Applicants petition for Writ of Certiorari was denied. < see Affidavit To Attachment - L >
- < S > On March 27, 2017, (37) Thirty-seven days after applicants final decision from the United States Supreme Court, applicant filed a S.C.R. Civ. Proc., Rule 60(b)(4), Motion. < see Affidavit To Attachment - M >
- < t > On March 20, 2018, Applicant filed a Motion for Summary Judgment attached to his S.C.R. Civ. Proc., Rule 60(b)(4), Motion because the respondent did not respond to applicant motion that were filed on March 27, 2017. < see Affidavit To Attachment - N >
- < U > On December 10, 2018, The court Ordered To Strike applicants Pro se motion. < see Affidavit To Attachment - O >
- < V > On January 23, 2019, applicant filed a Timely Rule 59(c), S.C.R. Civ. Proc., motion. < see Affidavit To Attachment - P >
- < W > On February 14, 2019, The applicant received a letter from the Clerk of Court explaining why applicants Rule 60(b)(4), motion was given it old (PCR) case number. < see Affidavit To Attachment - Q >

IV. FACTUAL RECORD BACKGROUND

In a Indictment filed July 20, 2009, Applicant was charged with distribution of Crack Cocaine 3rd offense. At trial, the state's case held "NO OVERWHELMING EVIDENCE" <See/Affidavit To Attachment - R>, therefore, the prosecution relied primarily on its Criminal Confidential Informant.

A.

• 2009-PRETRIAL EVIDENCE •

<i> On Sept. 28, 2009, Mr. Walker - (The state's Key Witness) prepared a statement [e]xonerating the applicant of distributing him any drugs. <See/Affidavit To Attachment - S >

<ii> On Oct. 25, 2009,⁽¹⁾ the night before applicant's trial was to commence, the Solicitor Forward defense Counsel an "e-mail" Asserting that she would challenge both the "Validity and Admissibility" of its Key witness [recanting statement] based upon "Coercion/Duress" inflicted by the applicant, Allegedly, While both was detained together at the Oconee County Detention Center. <See/Affidavit To Attachment - T >

Footnote:

<1> Applicant trial commenced on October 26, 2009

<iii> On October 26, 2009, the first day of trial - the solicitor presented plaintiff defense counsel a document entitled the "STATE'S POTENTIAL WITNESS LIST". <see/ Affidavit To Attachment - 4>, a list that just happens to identify - in accordance with the state's Key witness - (Walker) - 2009 trial testimony - ("Major") Francis Steve Pruitt, Jr., <1> director at the Oconee County Detention Center. <2>

B.

• 2009 - TRIAL PROCEEDING •

<i> During "direct-examination", Mr. Walker <3> testified to the Jury that the applicant had asked him to write a statement denying that the applicant was the person he had received crack cocaine from. "Walker, explained, 'So I did because I didn't want to lay in the cell knowing that my "Life could be in danger"!" <see/ Affidavit To Attachment - V >

Footnote 2

<1> See/ Affidavit To Attachment - (W), TMS 24-25

<2> It can be inferred, by the state placing "Francis S. Pruitt, Jr." on the state's potential witness and Walker's 2009 trial testimony, this said witness allegedly, could "Corroborate" that Walker made "Complaints", as a result of him writing his Sept. 28, 2009, [recanting statement] under "Duress" inflicted by the applicant Allegedly.

<3> The state's Key witness

<ii> On "Cross-examination", In Support of his direct testimony Mr. Walker testified:

[Defense Counsel - Sprouse]: "... "as a result of that incident there were (was) NO [C]omplaints to the jail authorities?"

[Walker]: "YEAH". They got complaints. I mean "Roger from the Jail on Second shift, Ms. Beverly Gillispie. "All you got to do is ask them and they'll tell you. The 'Major' <1> got them too. You can [ask] him to. < See/ Affidavit To Attachment - W >

After a "Hung Jury", <2> < See/ Affidavit To Attachment - X > applicant was convicted of the indicted charge.

Footnote:

<1> ("Major") Francis Steve Pruitt, Jr., < See/ Affidavit To Attachment - U >

<2> REASONABLE DOUBT

C.

• 2011 PCR PROCEEDING •

<i> On April 30, 2010, the applicant filed an Application for post-conviction relief, (Case No. 2010-CP-37-531). Applicant amended his (PCR) application asserting among other grounds "Ineffective Assistance of Counsel" - "Failure To Investigate and/or Subpoena Witnesses - To Corroborate that the State's Key witness Sept. 28, 2009, recanting statement ^{<1>} was written 'Voluntary and Without Threat', and, to refute the Key witness (Walker) trial testimony that he made 'Complaints' to Jail staff that his life could be in danger if he didn't write and sign his statement [e]xonerating the applicant of distributing him any drugs." <See/ Affidavit To Attachment - A >, this Exhausted Claim appears in the Court (PCR) Order of Dismissal as "Failure To Call Additional Witnesses". <See/ Affidavit To Attachment - B >

<ii> In Support of this issue, (PCR) Defense Counsel presented three (3) (PCR) witnesses to testify, Notably, and the Most Important and Relevant Witness at this time - ("Major") Francis Steve Pruitt, Jr, the same witness that was presented on the state's Potential Witness List in applicants 2009 trial ^{<2>}, and the same witness that the state's Key witness ^{<3>} testified, who could corroborate his trial testimony that - he made 'Complaints' to ("Major") Francis Steve Pruitt, Jr, as a result of him writing his 2009 [r]ecanting statement ^{<3>}.

Footnote:

<1> See/ Affidavit To Attachment - S

<2> See/ Affidavit To Attachment - U

<3> See/ Affidavit To Attachment - W

(iii) UNDERLYING (PCR) FACT FINDING

• 2011 (PCR) Witness - ("Major") Francis Steve Pruitt, Jr., testimony in Relevant and Pertinent parts, Where in:

(a) [Pruitt]: Testified that Walker and the Applicant were housed together in cell block "A" between Sept. 26th until Oct. 2, 2009⁽¹⁾,
< See/ Affidavit To Attachment - Y >

(b) [Pruitt]: Furthered testified; that if he was aware of a threat against Mr. Walker from the applicant he would have "Seperated" the two immediately. < See/ Affidavit To Attachment - Z >

(c) [Pruitt]: Continued to testify that; if an inmate alleges that there's a threat against him or her at his facility, the inmate has two (2) ways to make a "Complaint":

(1) the inmate will file a "Written Request" stating a problem with another inmate, and;

(2) the inmate may tell an officer "Verbally" during their rounds,
< See/ Affidavit To Attachment - 1 >

(d) [Pruitt]: Furthered testified; that he reviewed the file and did not see any indication that (Walker) and the applicant should not stay together during that time period. < See/ Affidavit To Attachment - 2 >

Footnote :

< 1 > See/ Affidavit To Attachment - 3 (Walker was released on Bond)

(c) Moreover, On "Cross-Examination", by the "Assistance Attorney General, Ms. Williams, Esq." put forth the direct question:

* [Ms. Williams]° Do you normally keep record of each threat that is reported (or) each inmate "Complaint" that is made?

* [Pruitt]: We will keep either a copy of the inmate request or if there's an actual incident of some sort, the officer will file an incident report.

* [Ms. Williams]° " . . . and you have 'NO RECORD' of him (Walker) making a "Complaint" to your knowledge"?

* [Pruitt]° " I'm Not aware of him identifying a specific threat or a Specific individual ⁽¹⁾. < See/ Affidavit To Attachment - 4 >

Footnote°

<1> The testimony given by ("Major") Francis Steve Pruitt, Jr, if investigated, and called by defense counsel at applicant's (2009) trial would have 'directly Contradicted' the prosecution assertion, and the State's Key witness 2009 trial testimony . . . "that Walker made "Complaints" to jail staff as a result of him writing his "recanting statement" < See/ Affidavit To Attachment - W >. Moreover, ("Major") Pruitt testimony would have been crucial, as Substantive Evidence that Walker's Sept. 28, 2009 recanting statement was written "Voluntary and Without Coercion / or Duress" inflicted by applicant, Allegedly, Which inturn, would have created further "Reasonable Doubt" in the minds of the Jurors that a distribution by applicant occurred, and as evidence to further impeach the State's Key witness Credibility.

D.

After the evidentiary hearing the PCR court denied plaintiff's post-conviction relief application w/ prejudice. (See/ Affidavit To Attachment - B, Reference pg. 10). In its Order, the PCR court noted it had the "Opportunity" to review the record in its entirety and had heard the testimony at the post-conviction relief hearing.

The PCR court had further had the "Opportunity" to observe the Witnesses⁽¹⁾ presented at the hearing, closely pass upon their "Credibility and Weigh" their testimony accordingly. I.d. (See/ Affidavit To Attachment - B, pg. 3 of 10, 1N.(s) 1 thru 5).

In its Order, the PCR court found the testimony (ONLY) ("Bryson") and ("Diggs") Lacking Credibility. (See/ Affidavit To Attachment - B, pg. 9 of 10, 1N.(s) 1 thru 3). I.d.

Unfortunately, Blassingame presented three (3) PCR Witnesses to establish prejudice for not calling his Witnesses for his 2009 trial. Therefore, Judge R. Lawton McIntosh's Order denying relief is "Void", because the PCR court err in failing to give a "Credibility Determination" for applicant PCR Witness - ("Major") Francis Steve Pruitt, Jr., Pursuant to S.C. code Ann § 17-27-80, and Rule 52(a), S.C. R. civ. Proc. .

Footnote:

(1) The Most Relevant and Most Important (PCR) Witness of this point is (Major) Francis Steve Pruitt, Jr.

E. DUE PROCESS

<i> Applicant argues that the court of common pleas deprived him of "Due Process", by neglecting to provide a "Credibility Determination" of his state (PCR) Witness - ("Major") Francis Steve Pruitt, Jr, in accordance with S.C. code Ann. §17-27-80 and Rule 52(a), S.C.R. Civ. Proc.

Which provides that... " [a] State PCR court shall make specific findings of fact, and state expressly its Conclusion of law relating to each issue presented. Moreover, the (PCR) court shall observe the Witnesses presented at the hearing, and shall closely pass upon their Credibility and weigh their testimony accordingly. Id.

<ii> When a PCR court fails to closely pass upon a defendant's PCR witnesses and weigh their testimony in accordance with S.C.R. Civ. Proc., Rule 52(a), and S.C. code Ann. §17-27-80, it forever precludes future review. <See/ Marshall v. Lonberger, 459 U.S. 422, 434 (1983) ("Giving Federal habeas courts no license to determine Credibility of witnesses whose demeanor should have been observed by the state trial court in the first place"). >

<iii> The South Carolina Supreme Court construed S.C. code Ann. §17-27-80, and Rule 52(a), S.C.R. Civ. Proc., as existing when a state post-conviction relief ("PCR") Court's failure to "make specific findings of facts and state expressly its conclusions of law relating to each issue presented". <see/ Bryson v. State, 328 S.C. 236, 493 S.E. 2d 500 (1997) >

F.

Blassingame presented facts to support the prevailing legal premises of S.C.R. Civ. Proc., Rule 60(b)(4), that the (PCR) court Order is "VOID" because the alleged error is "Substantially Uncontested" by the record evidence - and as Blassingame's core claim is that no sufficient record evidence of the Post-Conviction relief Court's "Credibility Determination" of the applicant's PCR Witness - ("Major") Francis Steve Pruitt, Jr., Pursuant to S.C. Code Ann. § 17-27-80, and Rule 52(a), S.C.R. Civ. Proc., [e]xist within the court's record. The defendant in this action is not entitled to entry of its "Order of Dismissal" based upon a "VOID" Judgment as outlined above.

CONCLUSION

WHEREFORE, having made this Motion, Applicant submits there is a genuine issue of Material Fact and the state is not entitled to prevail as a matter of law. Thus, Applicant respectfully requests that this Court grant its Motion For Summary Judgment, and Rule 60(b)(4); for the Above-stated reasons, Applicant further requests that the court re-open this claim where the Judgment entered on May 26, 2011, Order of Dismissal in this case Violated the Mandated of S.C. Code Ann. § 17-27-80, and Rule 52(a), S.C.R. Civ. Proc., and shall remand back to the Court of Common Pleas for a fair ruling on the above-stated post-Conviction relief Witness - ("Major") Francis Steve Pruitt, Jr. .

Respectfully Submitted,

s/ Timothy Blassingame

5-20-19
DATE

19 of 19

• AFFIDAVIT TO ATTACHMENT - A

• I, Timothy Blassingame, #213064, Declare and Affirm-Under the Penalty of 28 U.S.C.A. §1746 ("Perjury")-that the document bearing "ATT. A" designation is a True & Exact Copy of the Amendment to Blassingame (PCR) hearing; such amendment is in the same photo copied form as appears within applicants (PCR) transcript within this court records.

- Respectfully Submitted,

1st Timothy Blassingame

5 -20-19
DATE

Timothy Blassingame v. State 2010-08-04-9598
Opening Statements

9

1 During the trial there was an aspect, you know, a request
2 for the definition of distribution or distribute. And we
3 believe that was incorrect.

4 On the day of the trial the witness list was
5 actually submitted to defense counsel. There's no
6 objection or time to investigate each of the witnesses.

7 There's an allegation that there's no objection to
8 the fact that the jury pool primarily excluded my
9 client's race, to question to make sure that the jury was
10 drawn in a manner that, you know, protected his due
11 process rights.

12 Ineffective assistance of counsel for failure to
13 admit evidence that was exculpatory. Failure to
14 introduce impeaching evidence against the State's
15 witness. Failure to investigate or subpoena witnesses to
16 corroborate the witness who's a State's witness in that
17 case who basically corroborated that the recantment was
18 voluntary and without threat.

19 Failure to challenge the sufficiency of the
20 indictment. Failure to suppress and investigate the
21 illegal use of evidence as, you know, alleged by my
22 client.

23 There's a violation of Rule 6, failure to preserve
24 issues for appellate review.

25 On prosecutorial misconduct, my client has alleged

• AFFIDAVIT TO ATTACHMENT - B

• I, Timothy Blassingame, # 213064, Declare and Affirm - Under the Penalty of 28 U.S.C.A. § 1746 ("Perjury") - that the document bearing "ATT. B" designation is a True & Exact Copy of a 'Order of Dismissal' given by the Court of Common Pleas (dated: May 26, 2011); such order is in the same photo copied as appears within this court case file.

- Respectfully Submitted,

151. Timothy Blassingame

5 - 20 - 19
DATE

"ATT.B"⁹⁹

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)
)
Timothy Blassingame, #213064,)
)
) Applicant,)
)
) v.)
)
State of South Carolina,)
)
) Respondent.)

IN THE COURT OF COMMON PLEAS

2010-CP-37-0531

ORDER OF DISMISSAL

FILED
DEPARTMENT OF COURT REPORTERS
2011 MAY 25 A 0:52

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 30, 2010. The Respondent made its Return on or about August 4, 2010. An evidentiary hearing into the matter was convened on March 14, 2011, at the Oconee County Courthouse. The Applicant was present at the hearing and was represented by Keith Denny, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Robert S. Sprouse, Esquire ("Counsel"). Applicant also presented testimony from Assistant Solicitor Lindsay Simmons, Major Steve Pruitt of the Oconee County Detention Center, Justin Diggs, and Jonathan Bryson. This Court had before it the records of the Oconee County Clerk of Court, the trial transcript, the appellate records, the Applicant's records from the South Carolina Department of Corrections, and exhibits introduced at hearing.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of the Oconee County Clerk of Court. Applicant was indicted for Distribution of Crack Cocaine (Cocaine Base) 3rd Offense (2009-GS-37-

"ATT. B"

0820). Robert S. Sprouse, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable Alexander S. Macaulay. Applicant was found guilty and sentenced to thirty (30) years imprisonment.

A Notice of Appeal was filed. Applicant's appeal was dismissed by the South Carolina Court of Appeals in a written order dated April 15, 2010. The Remittitur was sent on May 7, 2010.

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

1. Prosecutorial misconduct.
2. "Illegal use of evidence, violation of chain of custody, Rule 6 and 36."
3. Brady violation.
4. "Admission of false testimony + bolstering of state's witnesses + vouching for state's witness, improper comments."
5. "6th Amendment and due process violations, discrimination of jury venire because his race was excluded."
6. Ineffective assistance of counsel.
 - a. "Failure to object to untimely witness list."
 - b. "Failure to object to preserve for appellate review." (Mis.)
 - c. "Failure to object to State's evidence that was not in the record." (Mis.)
 - d. "Failure to object to discriminatory jury venire."
 - e. "Failure to subpoena witness and enter exculpatory evidence." (Statement)
 - f. "Failure to investigate case and chain of custody."

In an Amended PCR Application Brief filed February 23, 2011, Applicant set forth the following additional grounds:

1. "Prosecutorial misconduct as evidenced by the prosecutor's improper comment."
2. "Conflict of interest as evidenced by trial counsel's failure to subpoena witnesses and enter exculpatory evidence." (Statement)

In an Amended PCR Application Brief filed February 25, 2011, Applicant set forth the following additional grounds:

1. "Trial counsel failed to enter favorable impeaching evidence."
2. "Trial counsel failed to investigate favorable impeaching evidence."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300

"ATT. B"

S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Failure to Object to Racial Composition of Jury Panel

Applicant argues that Counsel should have challenged the racial composition of the jury venire because only three (3) of the thirty-six (36) potential jurors were black. Of the three (3), only one (1) was drawn during jury selection, and the juror was selected as an alternate. Assistant Solicitor Lindsay Simmons ("Simmons") has been employed in the Tenth Circuit since 2005. Simmons stated that having only three (3) black jurors in a jury pool would not be unusual in Oconee County. Simmons believed that there were probably about a dozen black jurors on any master list, but having only three (3) to seven (7) black jurors in any given jury pool would not be out of the ordinary. Counsel also stated that he did not consider the racial composition of the jury pool to be atypical. Counsel stated that in a typical jury pool of sixty (60) to seventy (70) potential jurors, typically only eight (8) or nine (9) would be black. Counsel noted that the three (3) black jurors did not come up in random jury selection. Counsel stated that he did not feel this was prejudicial to Applicant.

Based on the evidence before this court, I find that Applicant has failed to meet his burden of demonstrating that Counsel's failure to challenge the jury pool on the basis of racial composition was unreasonable under professional norms. Both Simmons and Counsel, attorneys experienced in

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practicing in the area, stated that such a makeup was not unusual. As stated in State v. Patterson, 324 S.C. 5, 21, 482 S.E.2d 760, 767-68 (1997):

In order to establish a prima facie violation of the fair cross-section requirement, the defendant must show that 1) the group excluded is a "distinctive" group in the community; 2) the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and 3) this underrepresentation is due to a systematic exclusion of the group in the jury selection process.

While a racial group may be a distinctive group, Applicant has failed to demonstrate that the number of black jurors in the jury pool was not "fair and reasonable in relation to the number of such persons in the community" or that there was a "systematic exclusion of the group in the jury selection process." See State v. Ravenell, 387 S.C. 449, 459, 692 S.E.2d 554, 560 (Ct. App. 2010). Therefore, I find further that Applicant has failed to demonstrate prejudice in that had such a challenge been made, there is no evidence that it would have been successful.

Failure to Object to Comments by Solicitor

Applicant asserts that Counsel failed to object to comments by the solicitor at trial. Applicant specifically points to the solicitor's arguments at p. 156, lines 2-8 and at p. 158 where the solicitor argues regarding confidential informant James Walker's ("Walker") credibility. Applicant argues that these passages constitute improper vouching. "A solicitor's argument based on the record and its reasonable inferences is not error." State v. Caldwell, 300 S.C. 494, 505, 388 S.E.2d 816, 822 (1990). "A solicitor may not vouch for the credibility of a State's witness based on personal knowledge or other information outside the record." Matthews v. State, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002). Counsel stated that he did not believe that the solicitor's comments constituted improper vouching and were not objectionable. I agree. I find that the solicitor did not

vouch in this matter but based her closing comments upon evidence in the record or inferences reasonably arising from that evidence. For example but not exclusively, I refer to Officer Crum's testimony found at pages 54, 55, 57, 59, 60, 63, 66, 67, 74, 75 and 83, also Mr. Walker's testimony found at pages 87, 88, 89, 92, 95, 98, 101 and 102. Therefore, I find Counsel's performance well within reasonable professional norms in this regard. Moreover, any objection would have been fruitless.

Chain of Custody

Applicant argues that Counsel should have objected to the drug evidence on the basis of chain of custody. Applicant's claim is based on testimony by Walker that he handed the narcotics from the transaction to Officer John Michael Crum ("Crum"). Both Crum and Officer Timothy Hunnicutt ("Hunnicutt") testified that Walker handed the narcotics to Hunnicutt and that Hunnicutt passed them to Crum. (Tr. p. 66, lines 14-16; p. 113, lines 1-17.) Applicant argues that the discrepancy between the testimony of Walker and that of Hunnicutt and Crum compromises the chain of custody. Such discrepancy raises an issue of credibility, not admissibility. See State v. Mathis, 359 S.C. 450, 465-466, 597 S.E.2d 872, 880-881 (Ct. App. 2004). I find Counsel's failure to object in this instance not unreasonable under professional norms.

Witness List/Prosecutorial Misconduct

Applicant further asserts that Counsel should have objected when the solicitor provided the State's witness list on the day trial commenced. Applicant relies on Rule 5(e)(2), SCCrimP. Rule 5(e), SCCrimP, addresses a notice of alibi. Alibi was not an issue in this case. Moreover, Counsel was aware of the witnesses that would be called in support of the State's case. When Counsel assumed representation, the solicitor and investigating officer Crum met with Counsel and reviewed

the State's evidence. Counsel was given an opportunity to observe the audio and visual recordings in the case. The solicitor stated that she provided Counsel with all names in the discovery and that Counsel had access to everything remotely relevant. Counsel confirmed that there were no surprises on the witness list. Based on the foregoing, I find Counsel's performance to be well within reasonable professional norms. Further, Applicant has pointed to no evidence or witness which would have been procured but for the alleged shortcoming. Therefore, I find that Applicant has failed to demonstrate ineffective assistance of counsel. I also find no evidence of vindictiveness which would support a claim of prosecutorial misconduct.

Failure to Present James Walker's Written Statement

Applicant asserts that Counsel erred in failing to enter the written statement of confidential informant James Walker ("Walker") into evidence. Walker, Applicant's cousin, testified at trial that Applicant gave him crack cocaine. Walker stated that, while they were in prison together, Applicant had asked him to write a statement denying that Applicant was the person he had received crack cocaine from. (Tr. p. 95, lines 3-20.) At trial, Walker disavowed the written statement and affirmed his trial testimony. (Tr. p. 95, line 21 – p. 96, line 10; p. 105, lines 11-19.) Counsel cross-examined Walker on the subject. (Tr. p. 101-103.) Counsel testified at PCR hearing that he placed the Walker's statement on an overhead projector so that the jury could see the document during his cross-examination. Counsel stated that the solicitor did not object to the statement for some minutes. Counsel stated that he chose not to enter the statement into evidence so as not to lose last argument, especially since the jury had seen the statement while it was displayed.

I find Counsel's performance to be well within reasonable professional norms. Counsel articulated a valid reason for choosing not to place the statement into evidence. See for example

"ATT.B"

Whitehead v. State, 308 S.W. 3d 417 S.E.2d 550 (1992) (where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel). Moreover, any failure in this regard was harmless inasmuch as the jury saw the document and Walker testified to recanting his statement and his reasons for doing so.

Failure to Call Additional Witnesses

At PCR hearing, Applicant presented three (3) additional witnesses who he believes should have been called on behalf of the defense at trial. Walker testified at trial that he had copied a statement written by Applicant at Applicant's request. Walker stated that he complied because he "didn't want to lay in the cell knowing that my life could be in danger." (App. p. 95, lines 13-14. See also p. 103, lines 8-10.) Walker testified that he made complaints to jail staff. (App. p. 102, lines 20-25.) Applicant asserts that the testimony from additional witnesses - Major Steve Pruitt of the Oconee County Detention Center ("Pruitt") and former Oconee County inmates Justin Diggs ("Diggs") and Jonathan Bryson ("Bryson") - would have impacted the outcome of his trial.

Pruitt provided records of where Applicant and Walker were housed at the Oconee County Detention Center ("OCDCC"). Walker was in Cell A from July 31, 2009, until October 2, 2009. Applicant was in Cell A from September 26, 2009 until October 29, 2009. Therefore, the two were in Cell A together from September 26, 2009, until October 2, 2009, a little less than one week. Walker's written statement is dated September 28, 2009.

Bryson and Diggs testified that they did not see any threats made to Walker by Applicant. Bryson estimated that Walker was in a cell with them for about three (3) months. Bryson stated that he saw Walker write a statement but did not see any coercion. Diggs stated that he, Applicant, and Walker were housed together for three (3) to four (4) months and that the group would play cards

"ATT. B"

together. Diggs and Bryson admitted their criminal convictions and that they did not observe Walker and Applicant the entire time. Notably, their estimates of time incarcerated together vary significantly from the jail's records. I find the testimony of Bryson and Diggs lacking credibility.

Counsel noted that Walker's testimony did not make mention of any specific threat made but rather was a blanket statement that he was afraid of consequences if he did not comply with Applicant's request to write the statement. Counsel did have concerns over an incident alleged to have occurred the weekend before trial wherein Applicant made a threatening call to Walker through a three-way phone call. (Tr. pp. 26-34.) It was agreed that incident would not be raised at trial. Counsel also noted that Applicant had not mentioned Diggs or Bryson as potential witnesses in their meetings. Counsel reported that Applicant told him that Walker wrote the statement to "make things right." After listening to the testimony presented at PCR hearing, Counsel still felt that preserving last argument was more important than the testimony offered from Pruitt, Diggs, and Bryson, especially since Walker did not testify about any specific threat. Counsel attacked Walker's credibility on cross-examination through, *inter alia*, evidence of drug use and his criminal record.

I find Counsel's performance in this regard not unreasonable under professional norms. I further find that even if Counsel should have known of and called the witnesses, the outcome of trial would not likely have been affected. Therefore, I find Applicant has failed to carry his burden in this regard.

Failure to Object to Testimony by Officer Crum and Walker

Applicant also argues that Counsel should have objected to testimony by Officer Crum that Walker said "thank you, thank you, I appreciate that," because the testimony was not accurate. Counsel stated that this statement was not grounds for an objection but provided fodder for an

"ATT. B"

argument on credibility. Counsel pointed out the inconsistency in his closing argument. (Tr. p. 165, lines 2-8.) Applicant also points to testimony by Walker about what was said on the video. (See for example Tr. p. 92, lines 16-17.) Counsel felt that any discrepancies between the testimony and the actual tape were factual disputes, and he used the audio tape as impeachment. The tape was played for the jury multiple times. I find Counsel's performance well within reasonable professional norms in this regard.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

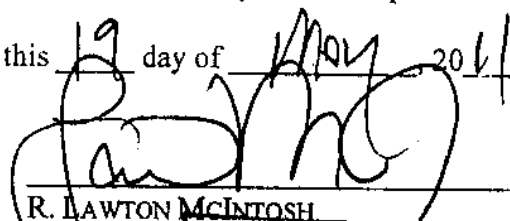
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19 day of May 2011.


 R. LAWTON MCINTOSH
 10 of 10

A TRUE COPY
 MAY 26 2011

FILED O'CONNOR, SC
 DEVERLY H. WINTFIELD
 CLERK OF COURT
 2011 MAY 26 A 8:52

• AFFIDAVIT TO ATTACHMENT - C

• I, Timothy Blassingame, # 213064, Declare and Affirm -
Under the Penalty of 28 U.S.C.A. § 1746 ('Perjury') - that
the document bearing "ATT. C" designation is a True &
Exact Copy of a 59(e), Motion given by (PCR) Attorney
Keith G. Denny, Esq. (dated: June 3, 2011); such motion
is in the same photo copied form as appears within this
Court case file.

- Respectfully Submitted,

1st Timothy Blassingame

5-20-19
DATE

"ATT. C"

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

Timothy Blassigame
 Plaintiff

2010-CP-37-0531

CASE NO.
2010-CP-37-0531

State Of South Carolina
 Defendant.

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Keith G. Denny, Bar No.
Address:
PO Box 490, Walhalla, SC 29691
phone: 638-2930 fax: 638-2922
e-mail: other:

Defendant's Attorney:
Bar No.
Address:
phone: fax:
e-mail: other:

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

SECTION I: Hearing Information

Nature of Motion: Motion To Reconsider

Estimated Time Needed: 1 hour Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

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

Signature of Attorney for Plaintiff / Defendant

June 3, 2011

Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: 0
- EXEMPT:
 - Rule to Show Cause in Child or Spousal Support
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter:
- Other:

JUDGE'S SECTION

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

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by:

Date Filed:

- MOTION FEE COLLECTED:
- CONTESTED - AMOUNT DUE:

comments inviting jury to prematurely discuss the case was not "strategic" where error of law involved and such comments are inherently prejudicial).

Failure to Object to Comments By Solicitor ✓

The Applicant was prejudiced by Counsel's failure to preserve the objections for the record and have his matter heard before the South Carolina Court of Appeals. In this matter, this Court has acknowledged Counsel failed to object on numerous times throughout the trial. The Court has concluded that any objection by Counsel to the alleged vouching would have been "fruitless." This Court has found that the Solicitor's reliance upon the testimony of the State's witnesses, Officer Crum and Mr. Walker, sufficient to establish the foundation for the solicitor's closing arguments. This would not be an issue had the solicitor used the characterization or comments provided by the testimony presented to the court during the Applicant's trial.

In this case, the Solicitor specifically stated that Mr. Walker could have "shoved that 40 bucks somewhere they could have never found it because he needed the money." (Tr. p. 158, lines 13-17) There is nothing in the record that speaks to Mr. Walker's capability to hide any objects from the officers conducting the operation. The Solicitor never elicited testimony from Mr. Walker or from Officer Crum as to whether it was possible for Mr. Walker – or any confidential informant – to hide an item on their person without the officer's knowledge. The Applicant elicited testimony at the PCR hearing which established that the Solicitor did not have the basis for her statements. Therefore, this Court's finding is against the laws of this State. *Matthews*, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002) (a solicitor may not vouch for the credibility of a State's witness based on personal knowledge or other information outside the record.)

"ATT.C"

Failure to Present James Walker's Written Statement

Counsel provided testimony at the PCR Hearing that his strategy was to basically slip Mr. Walker's statement to the jury by inadvertently leaving the statement on the overhead projector during his closing statements so the jury could read it. Counsel would have this Court believe that a handwritten statement displayed across the room from the jury during his closing argument was sufficient rather than provide the statement into evidence. Counsel's sole contention for not entering the written statement into evidence was to preserve the last closing argument. However, the Applicant provided testimony that he advised Counsel that he wanted to testify in his own defense even though he ultimately waived his right to testify. Furthermore, the Applicant provided testimony that he wanted witnesses called on his behalf acknowledging that his request to Counsel was to present a defense. Given that the Applicant communicated to his Counsel to call witnesses on his behalf, Counsel's failure to admit Mr. Walker's written statement to preserve last closing argument is without merit.

Failure To Call Additional Witnesses ✓

This Court determined that the Applicant's witnesses lacked credibility; however, there has been no finding established that the witnesses were not admissible. Therefore, the credibility of the witnesses were for the jury to decide and Counsel's failure to present them during the Applicant's criminal trial prejudiced the Applicant. Furthermore, this Court asserted that Counsel's desire to preserve last argument supported Counsel's decision to not call on any witnesses for the Applicant. According to the Applicant's testimony at the PCR Hearing, the Applicant had already communicated to Counsel that he wanted testify on his own behalf and have witnesses called; therefore, a decision by Counsel regarding not calling witnesses to preserve last argument is baseless.

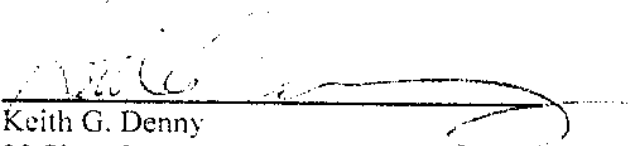
"ATT.C"

WHEREFORE, Applicant requests that the Order of Dismissal be amended to find that the Applicant should be granted a new trial. In the alternative, the Applicant requests a hearing on this matter and the Order of Dismissal be reconsidered.

ISO MOVE!

June 3, 2011
Walhalla, South Carolina

NORTON & BALLENGER, P.A.



Keith G. Denny
30 Short Street
Walhalla, S.C. 29691
Tel.: 864-638-2930
Fax : 864-638-2922
Attorney for Applicant

• AFFIDAVIT TO ATTACHMENT - D

• I, Timothy Blassingame # 213064, Declare and Affirm - under the Penalty of 28 U.S.C.A. § 1746 ("Perjury") - that the document bearing "ATT. D¹⁵" designation is a True & Exact Copy of the Courts Denial of Blassingames Rule 59(e), Motion given by the (PCR) presiding Judge R. Lanton McIntosh, (dated: June 28, 2011); Such motion is in the same photo copied form as appears within the court record.

- Respectfully Submitted,

151 Timothy Blassingame

5-20-19
DATE

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Timothy Blassingame, #215004,

Applicant,

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

2010-CP-57-0531

ORDER DENYING APPLICANT'S MOTION
MOTION TO ALTER OR AMEND

This post-conviction relief matter came before the Court for an evidentiary hearing at the Oconee County Courthouse on June 1, 2011. The Applicant was present in court and represented by Keith Bradley, Esquire, and the State was represented by Mary S. Williams, Assistant Attorney General. After taking the matter under advisement, this Court issued an Order of Dismissal dated May 19, 2011, and filed May 20, 2011. The Order was mailed to Applicant on May 26, 2011, and he filed a timely Motion to Alter or Amend the Judgment on June 1, 2011.

The Applicant asks the court to reconsider its rulings on the following issues: (1) ineffective assistance of counsel in failing to object to the solicitor's comments and testimony of Officer Crum, (2) failure to object to portions of the solicitor's closing argument, and (3) failure to call additional witnesses. Having carefully reviewed the entire record in this matter, this Court finds that no basis for altering or amending is present. Therefore, this Court hereby denies the Applicant's Rule 59 Motion in its entirety, and affirms the previous Order of Dismissal.

This Court advises that if the Applicant desires to secure appellate review of this Order and the

¹ The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

• AFFIDAVIT TO ATTACHMENT - E

• I, Timothy Blessingame, #213064, Declare and Affirm - under the Penalty of 28 U.S.C.A. § 1746 ("Perjury") - that the document bearing "ATT. E" designation is a True & Exact copy of the Denial of Blessingames (Petition) and (order) is in the same photo copied form as appears within this court record.

-Respectfully Submitted,

19 Timothy Blessingame

5-20-19
DATE

"A.H. E"

The Supreme Court of South Carolina

Timothy Blassingame, Petitioner,

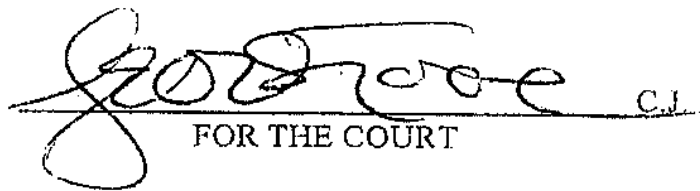
v.

State of South Carolina, Respondent.

Appellate Case No. 2011-196572

ORDER

Petitioner seeks a writ of certiorari from the denial of his application for post-conviction relief. The petition is denied.

 C.J.
FOR THE COURT

Columbia, South Carolina

September 18, 2013

cc:

Susan Barber Hackett

John W. Whitmer

RECEIVED

SC OFFICE OF
APPELLATE DEFENSE

• AFFIDAVIT TO ATTACHMENT - F

• I, Timothy Blassingame, #213064, Declare and Affirm - under the Penalty of 28 U.S.C.A. § 1746, ("Perjury") - that the document bearing "ATT.F" designation is a True & Exact copy of Blassingame's 'Original Draft'... (in pertinent part).. Opposition Motion For Summary Judgment, litigated the PCR record does not reflect (PCR) witness (Major) Francis Steve Pruth, Jr., Credibility Findings (dated: March 20, 2015); such motion is in the same photo copied form as appears within the District court record.

-Respectfully Submitted,

151 Timothy Blassingame

5-20-19

DATE

"ATT. F"

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Timothy BLOSSINGAME, # 213064,
PETITIONER,
vs.
WARDEN LEROY CARTLEDGE,
RESPONDENT,

CIA NO: 4:14-2814-JMC-TER

OPPOSITION MOTION FOR
SUMMARY JUDGMENT

ABOVE CAPTIONED PETITIONER ('Blossingame') duly opposes the December 17, 2014 'Motion For Summary Judgment' filed by Respondent in this action, as required by the Federal Rules of Civil Procedure ('Fed. R. Civ. P.') 56(c), Constructions as applicable to this action.

For brevity purposes, Blossingame expands upon his assertions of Respondent not entitled to entry of Summary Judgment based on the pleadings within the conjoined 'Memorandum Supporting Opposition Motion For Summary Judgment'.

~~Timothy Blossingame~~

Timothy Blossingame, # 213064

M^cC. I. F-1-256-A

386 Redemption Way

M^cCornick, SC 29849

3-20-2015
DATE

"ATT.F"

that the quoted GROUND SIX Challenges Trial Counsel's Failure to object to the Trial Solicitor's Misrepresentation of the state's evidence during Closing Argument(s) - as exhaustively asserted by Blessingame in GROUND THREE.

- (g) - Respondent further errs in stating GROUND SEVEN is "... without merit" < Resp. Sum. Judg., Pg. 40, ln. 20. >, and by stating Blessingame "... cannot show the denial of relief was the result of an unreasonable determination of the facts" < Resp. Sum. Judg., Pg. 41, ln. 8-4 >, When:
- (i) - Respondent has, again, failed to address the actual substance of Blessingame's allegation(s) as outlined within the MEMORANDUM entry designated as GROUND SEVEN, for the claim of Trial Counsel 'Failing to properly investigate and present mitigating circumstances' relates to Trial Counsel failing to Produce witnesses/documents to refute state's witness Walker's claim(s) of being Coerced into Writing a document that Exonerates Blessingame in the alleged Distribution. As to the document that exonerates Blessingame, Walker hand wrote and signed a statement claiming he falsely accused Blessingame (see. ATT. E)

"ATT. F"

ON or about October 25, 2009 at 2:23 p.m., Walker attempted to recount the September 28, 2009 statement (ATT. F) to Sgt. Crum and INV. T Hunnicutt, in a Voluntary Statement, where-in Walker stated he told Blessingame "... that they were looking to send me down the road on my Charges and I had to do what I had to do" (See ATT. F) (quoted in part) - which, being interpreted, the law enforcement (prosecution) will send Walker to prison, on his own Charges, for trying to help Blessingame by telling the truth. Trial Solicitor Simmons obviously had the heads up on Walker's attempt to exonerate Blessingame as can be seen in a draft of an e-mail Simmons sent to Trial Counsel at 2:16 p.m. on the same date (October 25, 2009); the noted wording in the e-mail draft alludes to Walker as, by implication, the "C.I.", who states Blessingame allegedly gave Walker a "... Script of Sort..." to have Walker "... recopy in his own hand - writing", and that "[i]t states something to the effect that the C.I. was drunk/high @ time of the deed and it wasn't Blessingame." (ATT. G (quoted in relevant part)).

"ATT. F"

Briefly, Simmons's e-mail, if referencing what is noted herein as (ATT. E), Contradicts actual facts of Walker's words -- Walker, in (ATT. E), never says anything about being 'drunk/high @ time of the deal' -- and that measure of Simmons's dishonesty should've alerted Trial Counsel of the necessity to investigate Walker for any Coercion employed by police. Trial Counsel had what is noted (ATT. E) herein during Blessingame's trial, and was attempting to read it into the record until, Succinctly, Simmons objected (See APP. 100, ln. 9-10); Trial Counsel, instead of moving the matter into the record as a defense exhibit, then evidence, stated that he would move on to something else (APP. 100, ln. 11-12). Further, off of Trial Counsel's Knowledge of Walker Claiming Blessingame would clearly be seen as Coercing the document noted as (ATT. E) herein, Trial Counsel, if inquiring into the Nature of the Coercion (asking the "how," "when," "where," etc.), as any reasonable attorney, would've focused on those people who were around Walker and Blessingame in the Duane County Detention Center, and even would've gleaned the Detention Center records on . . .

->

"ATT. F"

Walker and Blessingame for any reports of assaultive or threatening activity between the two. Now, as Blessingame raised this claim in his state PCR action, the PCR Judge rendered an "Unreasonable determination", for purposes of § 2254, by acknowledging PCR witness Jonathan Bryson's testimony of seeing "Walker write a statement but did not see any coercion" (See APP. 833, ln. 20-21 (input)). Bryson's PCR testimony further holds that he observed Walker and Blessingame talking "... all the time like friends really". (APP. 821, ln. 9-12 (quoted input)). The PCR Judge's act of still holding Bryson to be "... lacking credibility" (APP. 834, ln. 3) when, considering it is Trial Counsel's job to investigate potential witnesses, and nothing in the record indicates (Pruitt), (Bryson) to not be credible, the PCR Judge's decision on the merits of the allegations supporting GROUND SEVEN was an "Unreasonable determination".

(h). Respondent have not established the absence of a genuine issue of material fact, as required by Celotex Corporation, Supra, as to GROUND EIGHT having merits, Where:

"ATT.F"

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Timothy Blessingame, #213064,
PETITIONER,
— VS —
LEROY CARTLEDGE, WARDEN
RESPONDENT,

CIA NO: 4:14-2814-JMC-TER

AFFIDAVIT OF SERVICE

PERSONALLY appeared before me, Timothy Blessingame, #213064, who under oath states that he did mail with the proper postage affixed thereto a copy of the following, which are being served on you along with his Affidavit of Service:

1.) Original Draft of my 'Opposition Motion For Summary Judgment' with a 'Memorandum Supporting...', and 'ATTACHMENTS'.

That said pleadings were addressed to - Clerk, U.S. District Court as follows:

• Clerk, U.S. District Court
P.O. Box 2317
Florence, SC 29503

Sworn to and Subscribed before
me this 20 day of MARCH, 2015

J. A. Minkler
Notary Public of South Carolina
MY Commission Expires: 12-16-2019

Timothy Blessingame
Timothy Blessingame, #213064
M.S.C. F.I. 256-4
386 Redemption way
M.C. McCormick, SC 29899

3 - 20 - 2015
DATE

<cc: copy>

MAILED
MAY 11 2015

• AFFIDAVIT TO ATTACHMENT - G

• I, Timothy Blassingame, #213064, Declare and Affirm - under the Penalty of 28 U.S.C.A. § 1746 ("Perjury") - that the document bearing "ATT. G" designation is a True, Exact copy of Blassingame's "Specific Objections To Magistrate Judge's Report and Recommendation," (in pertinent parts), Integating the (PCR) record "does not" reflect PCR Witness (Major) Francis Steve Pruitt, Jr, Credibility Findings (dated: June 5, 2015); such motion is in the same photo copied form as appears within the District Court record. (CIA No. 4:14-CV-02814-Jmc-TER)

- Respectfully Submitted,

1st Timothy Blassingame

5-20-19

DATE

"ATT. 6"

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

TIMOTHY BLOSSINGAME, #213064,
PETITIONER,
vs.
WARDEN LEROY CATLEDGE,
RESPONDENT

C.A. No. 4:14-2814-JMC-TER

SPECIFIC OBJECTIONS
TO MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

ABOVE-CAPTIONED PETITIONER ("Blossingame"), pursuant to receiving (by Mail Service completed on May 28, 2015) the Report and Recommendation of the Honorable U.S. Magistrate Judge Thomas E. Rogers, III, do raise Specific Objections to particular portions of the Report and Recommendation ("R.R.", Pg. , ln.(s) ") as outlined below, for urging the District Court to Not adopt Judge Rogers' Report and Recommendation where such adoption would forever preclude review of Blossingame's claims of being incarcerated in violation of guarantees within the U.S. Constitution, as alleged in Blossingame's Habeas Corpus petition brought under 28 U.S.C. § 2254.

I.

SPECIFIC OBJECTIONS

"ATT.G"

- In relevant order:

1) Blasingame Objects to Judge Rogers stating, in reference to Ground Seven, § 2254 petition, that Blasingame "... argues that trial counsel should have presented a written statement written by the informant, James Walker, in which Walker asserted Petitioner was not the person that he received the crack cocaine from.", < see R.R., Pg. 29, ln. (s) 4-6 >, where

(a) - Blasingame's allegation under Ground Seven, § 2254 petition does not allege what the Magistrate states; and in direct reference to the § 2254 petition itself, Blasingame alleges "Failure to properly investigate and present mitigating circumstances (witnesses)" under Ground Seven, while also noting therein as "Supporting Facts" that "Major Pruitt testified at the PCR to the contrary" of "state's key witness" testimony that "statement was written [taken in] under duress". Blasingame expounded further upon § 2254 petition in Memorandum that, as Defense (Trial) Counsel had Notice of Walker alleging making statement (benefitting Blasingame in defending against state's charge(s) under duress, he could've properly "investigate", as stated in Strickland vs. Washington < 466 U.S.

668, 104 S.Ct. 2052, 80 L.Ed 2d 674 (1984) >, into the stated 'Witnesses' which was immediately surrounding Walker (For example; the § 2254 petition Memorandum cites, in support of Ground Seven, (1) - Major Pruitt's state PCR testimony of having no record of Walker making a complaint while housed with Blessingame at the Detention Center during some time period alleged covered statement derived.

That factual point is supported by the record, and unaddressed by Judge Rogers) to, then, 'present' such witnesses in premises for Mitigating Circumstances regarding evidence (Walker) brought against Blessingame. Judge Rogers' mischaracterization of, and failure to 'Report' upon, Blessingame's actual § 2254 allegation under Ground Seven should convince this court to Not adopt Judge Rogers' 'Recommendation'.

(b) - Blessingame's compliance with Federal Rules of Civil Procedure ('FRCP') 56(e) compelled him to "go beyond the pleadings" of Ground Seven of § 2254 petition and Memorandum, to explain that the state PCR court rendered a decision facilitated by an "unreasonable determination of the facts" < see "Memorandum Supporting Opposition Motion For Summary Judgment" [Doc. #38], Pp. 13-16 > by ruling against

"ATT. 6"

Blassingame after observing an uncontestedly-credible witness (Jonathan Bryson) testify to seeing Walker in their housing unit writing a statement in a coercion-free setting, and testified to observing Walker and Blassingame talking all the time like friends < see Doc. #38, Pg. 16 >, then the state PCR record itself does Not contain any factual position rendering both (Pruitt) and (Bryson) "Not credible" (for they told No lies in the state PCR, nor was admonished by PCR judge). Judge Rogers' "Report" does Not acknowledge the factual claim(s) of Doc. #38, as regards Ground Seven of § 2254 petition, and Blassingame presented documentary support for position under FRCP 56(e) which have Not been addressed in Judge Rogers' "Report".

(c) - In summary, Judge Rogers' "Report and Recommendation" does Not fairly assess the cognizable basis of Ground Seven, § 2254 petition, allowing the District Court to conduct de novo review of Ground Seven as Blassingame presents within the § 2254 petition, the Memorandum, and Doc. #38, for grant of Habeas relief.

"ATT. G"

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Timothy Blossingame, #213064
PETITIONER,
— vs. —
LEROY CARTLEDGE, WARDEN
RESPONDENT.

C-A No: 4:14-2814-JMC-TER

AFFIDAVIT OF SERVICE

PERSONALLY appeared before me, Timothy Blossingame, #213064, who under oath states that he did mail with the proper postage affixed thereto a copy of the following, which are being served on you along with this Affidavit of Service:

- 1). Original Draft of My 'Specific Objections to Magistrate Judge's Report and Recommendation'.

That said pleading were addressed to - Clerk, U.S. District Court as follows:

- Clerk, U.S. District Court
P.O. Box 2317
Florence, SC 29503

Sworn to and Subscribed before me
This 05 day of June, 2015

[Signature]
Notary Public of South Carolina

MY Commission Expires: 12-16-2019

1s/ Timothy Blossingame
Timothy Blossingame #213064
M.E.C.I. F-1-256-A
386 Redemption Way
McCormick, SC 29849

June - 5 - 2015
DATE

<Copy>

• AFFIDAVIT TO ATTACHMENT-H

• I, Timothy Blassingame, # 213064, Declare and Affirm-Under the Penalty of 28 U.S.C.A. § 1746 ("Perjury") that the document bearing "ATT. H" designation is a True & Exact copy of the Denial of Blassingame 59(e), Fed. R. Civ. Proc, Motion (dated: Dec. 22, 2015); such Order is in the same photo copied form as appears within the District Court record.

-Respectfully Submitted,

1s/ Timothy Blassingame

5-20-19
DATE

"ATT. H"

Orders on Motions
4:14-cv-02814-JMC Blassingame
v. Cartledge CASE CLOSED on
09/21/2015

APPEAL, CLOSED, TER-Inmate

U.S. District Court
District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 12/22/2015 at 1:49 PM EST and filed on 12/22/2015

Case Name: Blassingame v. Cartledge

Case Number: 4:14-cv-02814-JMC

Filer:

WARNING: CASE CLOSED on 09/21/2015

Document Number: 58

Docket Text:

ORDER: It is therefore ORDERED that Petitioner's Motion to Alter/Set Aside Judgment (ECF No. [49]) be DENIED. The legal standard for the issuance of a certificate of appealability has not been met. IT IS SO ORDERED. Signed by Honorable JMichelle Childs on 12/22/2015. (mcot,)

4:14-cv-02814-JMC Notice has been electronically mailed to:

Donald John Zelenka dzelenka@scag.gov, lbrawley@scag.gov

Alphonso Simon, Jr asimon@scag.gov

4:14-cv-02814-JMC Notice will not be electronically mailed to:

Timothy Blassingame
#213064
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

• AFFIDAVIT TO ATTACHMENT - I

• I, Timothy Blassingame, # 213064, Declare and Affirm - under the Penalty of 28 U.S.C.A. § 1746, ('Perjury') - that the document bearing "ATT. I" designation is a True & Exact copy of an 'Affidavit' filed by Blassingame as evidence that he did file a Notice of Appeal to the Fourth Circuit Court of Appeal (dated: Oct. 19, 2015); such Affidavit is in the same photo copied form as appears within the District Court record.

- Respectfully Submitted,

1st Timothy Blassingame

5 - 20 - 19
DATE

"ATT. I"

AFFIDAVIT OF SERVICE

CASE NUMBER:
4:14-CV-02814-JMC

PERSONALLY appeared before me, Timothy Blessingame, #213064, who under oath did mail with proper postage affixed thereto copies of the following,

- a) Motion to Alter or Amend Judgment;
- b) Copies of my 'Notice of Appeal', for each parties involved.

That said pleadings were addressed to clerk office as follow

Robin L. Blume, Clerk
P.O. Box 2317
Florence, S.C. 29503

1st Timothy Blessingame
Timothy Blessingame, #213064

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 19 DAY OF October, 2015

JC Frankler
NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES: 12/16/2019

< My copy
cc: filed >

• AFFIDAVIT TO ATTACHMENT- I

• I, Timothy Blassingame, # 213064, Declare and Affirm - under the Penalty of 28 U.S.C.A. § 1746 ("Perjury") - that the document bearing "ATT. I" designation is a True & Exact copy of the Fourth Circuit Court of Appeal Order denying Blassingame a 'Certificate of Appealability' (dated: Aug. 30, 2016); such Order is in the same photo copied form as appears within that court records.

- Respectfully Submitted,

1st Timothy Blassingame

5 -20-19

DATE

"ATT. J"

FILED: August 30, 2016

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-8006
(4:14-cv-02814-JMC)

TIMOTHY BLASSINGAME

Petitioner - Appellant

v.

LEROY CARTLEDGE, Warden

Respondent - Appellee

J U D G M E N T

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

1-A

"ATT. J"

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-8006

TIMOTHY BLASSINGAME,

Petitioner - Appellant,

v.

LEROY CARTLEDGE, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Florence. J. Michelle Childs, District Judge. (4:14-cv-02814-JMC)

Submitted: August 19, 2016

Decided: August 30, 2016

Before MOTZ, KING, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Timothy Blassingame, Appellant Pro se. Alphonso Simon, Jr., Assistant Attorney General, Donald John Zelenka, Senior Assistant Attorney General, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

2-A

"ATT. J"

PER CURIAM:

Timothy Blassingame seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C. § 2254 (2012) petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. See 28 U.S.C. § 2253(c)(1)(A) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Blassingame has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal

§ A

2

"ATT. J"

contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

4-A

x

• AFFIDAVIT TO ATTACHMENT-K

• I, Timothy Blassingame #213064, Declare and Affirm-Under the penalty of 28 U.S.C.A. § 1746, ("Perjury")-that the document bearing "ATT. K" designation is a True & Exact Copy of Blassingame's 'Affidavit' of proof of his Petition for a Writ of Certiorari to the Supreme Court of The United States (dated: Nov. 23, 2016); such evidence is in the same photo copied form as appears in that Court records.

-Respectfully Submitted,

1st Timothy Blassingame

5-20-19
DATE

"ATT. K"

AFFIDAVIT OF SERVICE

PERSONALLY appeared before me, Timothy Blessingsme #213064, who did mail with the proper postage affixed thereto a copy of the following which are being served on you:

- (1) Motion for Leave to proceed in Forma Pauperis;
- (2) Petition for a Writ of Certiorari

These said pleadings were addressed to:

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

WASHINGTON, DC 20543-0001

st. Judy Bluz

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 23 DAY OF November 2016

JC Franklin

NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES: 12-16-2019

[cc:filed]

• AFFIDAVIT TO ATTACHMENT - L

• I, Timothy Blassingame, # 213064, Declare and Affirm - under the penalty of 28 U.S.C.A. § 1746 ("Perjury") - that the document bearing "ATT. L" designation is a True & Exact copy of the Denial of Blassingames Petition for Writ of Certiorari to the United States Supreme Court (dated: Feb. 21, 2017); Such Order is in the same photo copied form as appears within that Court records.

- Respectfully Submitted,

1st Timothy Blassingame

5 - 20 - 19
DATE

"ATT. L"

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

February 21, 2017

Mr. Timothy Blassingame
Prisoner ID #213064
4556 Broad River Road
Columbia, SC 29201

Re: Timothy Blassingame
v. Leroy Cartledge, Warden
No. 16-7048

Dear Mr. Blassingame:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

• AFFIDAVIT TO ATTACHMENT - M

• I, Timothy Blessingame, # 213064, Declare and Affirm - under the penalty of 28 U.S.C.A. § 1746 ("Perjury") - that the document bearing "ATT. M" designation is a True & Exact copy of Blessingame's 'Stamped Clocked Cover letter proof' of his filed S.C.R. Civ. Proc., Rule 60(b)(4), Motion (dated: March 27, 2017); such document is in the same photo copied form as appears within this court record.

- Respectfully Submitted,

1st Timothy Blessingame

5 - 20 - 19

DATE

"ATT. M"

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2017 MAR 30 A 11:35

2017 MAR 30 A

Beverly H. Whitfield, Clerk of Court
Oconee County
P.O. Box 678
Wellbelle, S.C. 29691

2010-CP-37-531

Dear Clerk,

Please find enclosed a copy of my Rule 60(b)(4), S.C.R. Civ. P.,
MOTION FOR RELIEF FROM JUDGMENT (w/attachment(s) "A-P" of
Record Evidence), and AFFIDAVIT OF SERVICE, which is filed by
the plaintiff today.

Please send me back a "Stamped Clock Copy" for filing.

If you should have any questions, please contact me.

Sincerely,

3-27-2017

DATE

1st Timothy Blessingme

Timothy Blessingme, #213064

Monticillo, Rm. # 215

4556 Broad River Road

Columbia, SC 29201

[cc. filed]

• AFFIDAVIT TO ATTACHMENT - N

• I, Timothy Blassingame, # 213064, Declare and Affirm - under the Penalty of 28 U.S.C.A. § 1746 ("Perjury") - that the document bearing "ATT.N" designation is a True & Exact Copy of Blassingame's Motion for Summary Judgment w/ Att. Affidavits attached to his Rule 60(b)(4), Motion (dated: March 20, 2018); such said document is in the same photo copied form as appears within this court record.

- Respectfully Submitted,

151 Timothy Blassingame

5-20-19
DATE

"ATT. N"

FILED OCENEE COUNTY, SC
CLERK OF COURT
MAY 26 2017

Timothy Blessingame, #213064 Applicant	C/A No: 2010-CP-37-531
vs.	Rule 60(b)(4), S.C.R. Civ. Proc. MOTION w/ Attached Affidavits / And MEMORANDUM OF LAW IN SUPPORT OF SUMMARY JUDGMENT
The State of South Carolina Defendant.	

Comes now Applicant, above named 'Pro se' Applicant Timothy Blessingame, #213064, hereby makes 'Motion For Summary Judgment' w/ Attached Affidavits on Defendant. Applicant previously filed a 'Rule 60(b)(4), S.C.R. Civ. Proc. Motion, C/A No: 2010-CP-37-531, on March 30, 2017. Defendant cannot show that the Court of Common Pleas applied S.C. Code Ann. § 17-27-80, and Rule 52(a), S.C.R. Civ. Proc., in determining the 'Credibility' of applicant P.C.R. Witness - ('Major') - Francis Steve Pruitt, Jr., - The Director of the Oconee County Detention Center - (O.L.E.C.), in its 'Order of Dismissal' dated: May 26, 2011, in violation of 'Due Process of Law and Rule 60(b)(4), S.C.R. Civ. Proc.,

In support of this Motion, Applicant would show this Court the following:

I. PROCEDURAL HISTORY

Applicant is currently confined at the Broad River Correctional Institution in the South Carolina Department of Corrections pursuant to Order of Commitment from the Clerk of Court for Oconee County. Applicant was indicted by the Oconee County

• AFFIDAVIT TO ATTACHMENT-0

• I, Timothy Blessingsme, # 213064, Declare and Affirm under the penalty of 28 U.S.C.A. § 1746 ("Perjury") - that the document bearing "ATT. 0" designation is a True & Exact copy of the Court Order To Strike applicants Pro Se motion, Rule 60 (b)(4) (dated: Dec. 10, 2018); such Order is in the same photo copied form as appears within this court record.

- Respectfully Submitted,

151 Timothy Blessingsme

5 -20 -19
DATE

"Att. 0"

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

FILED OCONEE COUNTY, SC
COURT OF COMMON PLEAS
2018 JUL 10

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Timothy Blassingame, #213064,
Applicant,

Case No. 2010-CP-37-00531

**ORDER STRIKING APPLICANT'S
PRO SE MOTION**

State of South Carolina,
Respondent.

This matter comes before this Court by way of Timothy Blassingame's (Applicant) post-conviction relief application filed April 30, 2010. A hearing into the matter was convened on March 14, 2011, at the Oconee County Courthouse before the Honorable R. Lawton McInnis. Applicant was present at the hearing and represented by Keith G. Denny, Esquire. After hearing all of the testimony presented, this Court issued an order of dismissal on May 19, 2014, denying and dismissing the application with prejudice. Thereafter, through his counsel, Applicant filed a motion to alter or amend the judgment pursuant to Rule 59(e), SCRPC. This Court denied Applicant's motion on June 27, 2011. On March 26, 2018, Applicant filed a document captioned: "Rule 60(b)(4), S.C. R. Civ. Proc., Motion w/ Attached Affidavit(s) and Memorandum of Law in Support of Summary Judgment." Respondent submitted its Motion to strike said motion on or about November 27, 2018, requesting the *pro se* motion be stricken for violating Rule 11, SCRPC.

This Court finds Applicant's *pro se* motion filed on March 26, 2018, should be stricken as the records before this Court indicate Applicant is represented by counsel in this action. Rule 11, SCRPC, requires every pleading, motion, or other paper of a party represented by counsel to be signed by at least one attorney of record who is an active member of the South Carolina Bar. If a pleading, motion or other paper is not signed, "it shall be stricken unless it is signed

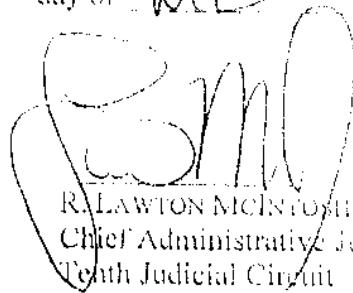
"Att. 0"

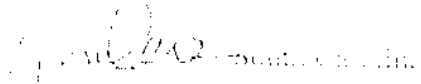
...with the... to the attention of the...
...of the...
...was directly...
...I drafted... reviewed the...
...document...
...violating Rule 11, SCRPC.

IT IS THEREFORE ORDERED that the Clerk of Court shall strike the...
...Application on March 21, 2018 from the record

AND IT IS SO ORDERED this

4 day of Dec


R. LAWTON MCINTOSH
Chief Administrative Judge
Tenth Judicial Circuit



CERTIFIED TRUE COPY
CLERK OF COURT
CONCORD, NORTH CAROLINA

• AFFIDAVIT TO ATTACHMENT - P

• I, Timothy Blessingame, # 213064, Declare and Affirm - under the penalty of 28 U.S.C.A. § 1746 ("Perjury") - that the document bearing "ATT. P" designation is a True & Exact copy of Blessingame's Timely Filed Rule 59(e), S. C.R. Civ. Proc., Motion (dated: Jan. 23, 2019); such document is in the same photo copied form as appears within this court records.

- Respectfully Submitted,

151 Timothy Blessingame

5-20-19
DATE

~~ALL~~
"AHP"

STATE OF SOUTH CAROLINA
County of Oconee

Timothy Blessingame, #213064
Plaintiff,

vs.

State of South Carolina
Respondent.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C/A No: 2010-CP-37-00531

NOTICE OF MOTION AND
MOTION FOR RECONSIDERATION

2019 FEB 14 AM 11:14

Pursuant to the South Carolina Rules of Civil Procedure, SCRPC, Rule 59(e), Plaintiff hereby moves for this court to reconsider the Order Striking plaintiff's PRO SE Motion issued on December 4, 2018. The plaintiff requests a hearing on the specific and general matters referenced herein.

Attorney of Record

In this matter, the court finds that the plaintiff's PRO SE Motion filed on March 26, 2018, should be Stricken as the records before this Court indicates plaintiff is represented by Counsel in this action.

To the contrary, the plaintiff on April 30, 2010 filed an application for Post-Conviction Relief, C/A No: 2010-CP-37-00531 ⁽¹⁾.

Footnote

(1) The clerk erroneously filed plaintiff's Rule 60(b)(4), SCRPC, motion under plaintiff's (PAST) P.C.R. case number. In which, plaintiff motion should have been given it's own case number!

"Att. P"

A hearing into the matter was convened on March 14, 2011, at the Oconee County Court house before the Honorable R. Lawton McIntosh. Plaintiff was present at the hearing and represented by Keith G. Denny, Esquire. On May 19, 2011, the court issued its Order of Dismissal.

Thereafter, through counsel, filed a Rule 59(e), S.C.R. Civ Proc. This court denied plaintiff's motion on June 7, 2011. On July 1, 2011, Counsel of record at that time (Keith G. Denny) filed a "Notice of Appeal", and, a "Motion To Be Relieved As Counsel" ^{<1>}. Therefore, as stated above, and within this court very records, Counsel of records ^{<2>} for - C/A No: 2010-CP-37-00531 was relieved as Counsel on or about July 1, 2011, after filing plaintiff's "Notice of Appeal" to the South Carolina Supreme Court.

Rule 11, S.C.R. Civ. Proc.

In this matter, the court contends that the plaintiff violated Rule 11, S.C.R.C.P., because the record before this court indicates plaintiff is represented by Counsel

Footnote:

<1> - Sec / Court Documents Under C/A No: 2010-CP-37-00531

<2> - Keith G. Denny, Esq.

"Att. P"

When plaintiff filed a document captioned: Rule 60 (b)(4), S.C.R.C.P. Motion w/ Attached Affidavits / and Memorandum of law in support of Summary Judgment.

To the contrary, as stated above, Counsel of records for C/A No: 2010-CP-37-00531 (Keith G. Denny, Esq.) was relieved as counsel of records when said counsel filed plaintiff's "Notice of Appeal" to the South Carolina Supreme Court on or about July 1, 2011.

To the extent, the state clearly and unreasonably applied clearly established state and Federal Rules of Courts mandates wherein:

Pursuant to Rule 11, S.C.R. Civ. Proc., [In Pertinent Part]:

- Rule 11, S.C.R.C.P., requires every pleading, motion, or other paper shall be signed by at least one attorney of record, ...
Or, "IF THE PARTY IS NOT REPRESENTED BY AN ATTORNEY, SHALL BE SIGNED BY THE PARTY".

"Att.P"

WHEREFORE, Plaintiff requests that the Order To Strike be amended to find that the plaintiff be granted his Rule 60(b)(4), S.C.R. Civ.Proc. Motion / and Motion For Summary Judgment.

In the alternative, the plaintiff requests a hearing on the matter and the Order to Strike be reconsidered.

I SO MOVE!

1-23-2018
DATE

s/ Timothy Blassingame
Timothy Blassingame, #213064

• AFFIDAVIT TO ATTACHMENT- Q

• I, Timothy Blassingame, #213064, Declare and Affirm- under the penalty of 28 U.S.C.A. § 1746 ("Perjury")- that the document(s) bearing "ATT. Q" designation is a True & Exact Copy of letter(s) from the Clerk of Court explaining why Blassingame's Rule 60(b)(4), Motion was given his old (PCR) case number, and that he needs to re-file with a coversheet, these document(s) was (dated: Feb. 14, 2019; and March 20, 2019); such document(s) is in the same photo copied form as appears within this court records.

-Respectfully Submitted,

151 Timothy Blassingame

5-20-19
DATE

'Att.G'

CIRCUIT COURT
(864)638-4280 EXT 3

BEVERLY H. WHITFIELD

CLERK OF COURT
P.O. BOX 678
WALHALLA, S.C. 29691
FAX (864)638-4282
E-MAIL: bwhitfield@oconeesc.com

FAMILY COURT
(864)638-4280 EXT 3

Date: February 14, 2019

To: Timothy Blassingame

Re: motion for reconsideration

I have today received your motion for reconsideration that we are filing. I have made you 3 copies so you can forward two to the Attorney General's Office so they can schedule a hearing if necessary and send a copy to the Judge.

In looking back at your file I do find the Rule 60 Motion for Relief from judgment. The reason it was given your old case number was that it did not have the coversheet to indicate it was a new case please understand that we receive many documents without case numbers on them and when we see you have a pending case or case on file we use that number.

Yours truly,



Beverly Whitfield
Clerk of Court
Oconee County

"A.H.Q."

CIRCUIT COURT
(864)638-4280 EXT 3

BEVERLY H. WHITFIELD

CLERK OF COURT
P.O. BOX 678
WALHALLA, S.C. 29691
FAX (864)638-4282
E-MAIL: bwhitfield@oconeesc.com

FAMILY COURT
(864)638-4280 EXT 3

Date: *March 20, 2019*

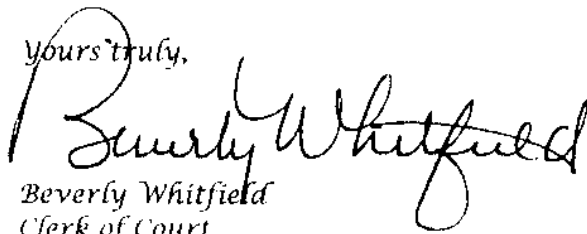
To: *Timothy Blassingame*

Re: *motion*

I am enclosing a copy of the motion that was filed in your PCR back in March 2018. You will need to refile along with the coversheet and Forma Pauperis.

Once it is approved, we will send you copies.

Yours truly,



*Beverly Whitfield
Clerk of Court
Oconee County*

• AFFIDAVIT TO ATTACHMENT- R

• I, Timothy Blessingame, #213064, Declare and Affirm under the penalty of 28 U.S.C.A. § 1746 ("Perjury") - that the document(s) bearing "ATT. R" designation is a True & Exact Copies of "Transcript(s)", Noting, "No Overwhelming Evidence", Such copies is in the same photo copied form as appears within (Blessingames (Tric1) and (PCR) Transcript.

- Respectfully Submitted,

1s Timothy Blessingame

5-20-19
DATE

"A.H.R."

... AND YOU'VE GOT TO PROVE TO ME WHAT A REASONABLE DOUBT
... YOU'VE GOT TO PROVE TO ME BEYOND A
1 REASONABLE DOUBT THAT IN SENECA THESE OFFICERS SET
2 UP THE UNLAWFUL TRAP THAT THE PROSECUTOR
3 DESCRIBED THAT I TOLD YOU. THEY'RE GONNA HAVE TO PROVE
4 THAT BEYOND A REASONABLE DOUBT. THEY HAVE TO PROVE EVERY
5 ELEMENT OF THAT TRAP TO A REASONABLE DOUBT.

6 ... AND WE'VE GOT TO HEAR TESTIMONY. WE'RE GOING TO
7 SEE VIDEOS, OR A VIDEO. WE'RE GOING TO HEAR AN
8 WITNESS. WE'RE GOING TO SEE STILL PHOTOS THAT THE
9 STATE IS SUPPOSE TO PROVIDE.

10 ... AND WHEN YOU GET THROUGH ALL THAT, YOU'RE GOING
11 TO HAVE TO DECIDE TO DO IT YOURSELF OR NOT. YOU
12 HAVE TO DECIDE IF YOU WANT TO GO TO JAIL OR NOT.
13 THAT'S WHAT THIS IS ALL ABOUT TO ME.

14 ... WHEN YOU HEAR THIS EVIDENCE AND WHEN YOU WEIGH IT,
15 YOU'VE GOT TO DECIDE IF YOU WANT TO GO TO JAIL OR NOT.
16 YOU'VE GOT TO DECIDE IF YOU WANT TO GO TO JAIL OR NOT.
17 YOU'VE GOT TO DECIDE IF YOU WANT TO GO TO JAIL OR NOT.

18 ... NOW AS YOU HEAR THESE THINGS ON -- AND THE SOLICITOR IS
19 ABSOLUTELY CORRECT. THEY ARE LONG THINGS. THESE VIDEOS
20 ARE PROBABLY 45 MINUTES LONG. BUT I ASK YOU TO PLEASE
21 PAY CLOSE ATTENTION TO THEM BECAUSE, THE OLD SAYING, A
22 PICTURE IS WORTH A THOUSAND WORDS. WHAT CAN BE PROVEN BY
23 A PICTURE OR TAPE. WHAT CAN BE PROVEN? NOW DOES THAT BACK

"A.H.R."

1 HERE, TURNED BACK AND MADE A LOOP BACK AROUND TO THE
2 APARTMENT COMPLEX, IS IT NOT?

3 A. NO. HE APPROACHED FROM THE -- IF WHERE THE ARROW
4 IS ON THE SCREEN, THERE, HE CAME FROM THE SOUTH SIDE
5 THERE. THEY CONTINUED STRAIGHT. AND THEN HE CIRCLED THE
6 BLOCK ON UP AND CAME BACK FACING THE DIRECTION OF THE
7 ARROW THERE.

8 Q. HE WOULD HAVE HAD TO -- IF HE WENT THE ROUTE THAT
9 I AM SUGGESTING, HE WOULD HAVE HAD TO HAVE MADE FIVE
10 TURNS, FOUR OR FIVE TURNS, DEPENDING ON THAT LAST CURVE,
11 WOULD HE NOT?

12 A. YES.

13 Q. AND THERE ARE AT LEAST FOUR TURNS IN THE VIDEO?

14 A. CORRECT.

15 Q. AND IF HE MADE THOSE FOUR TURNS THE WAY I SUGGEST,
16 HE STILL WOULD HAVE ENDED UP ON THE RIGHT SIDE OF THE
17 ROAD WHERE THE APARTMENT COMPLEX IS ON HIS RIGHT SIDE, IS
18 THAT NOT CORRECT?

19 A. HE WOULD HAVE HAD TO TURN AROUND TO HAVE DONE
20 THAT, YES.

21 Q. AND THREE MINUTES IN A CAR AT 35 MILES AN HOUR, HE
22 HAD AMPLE TIME TO HAVE MADE THAT LOOP?

23 A. CORRECT.

24 Q. SO IN A NUTSHELL, OFFICER CRUM, IF JAMES WALKER
25 ISN'T TELLING YOU THE TRUTH, THEN YOU CAN'T PROVE TIM

1 BLASSINGAME COMMITTED THIS CRIME?

2 A. THAT ROADWAY ON [REDACTED] IS IN THE CITY. THE
3 PROPERTY IN THE WHITE IS NOT THE CITY LIMITS. SO ONLY IF
4 IT WAS THERE ON THE ROADWAY AND IT WAS DONE INSIDE THE
5 CITY LIMITS.

6 Q. OKAY. NOW YOU DIDN'T ANSWER MY QUESTION. IF TIM
7 BLASSINGAME IS TO BE PROVEN GUILTY, YOU HAVE TO HAVE
8 JAMES WALKER TELLING YOU THE TRUTH?

9 A. CORRECT.

10 Q. THANK YOU.

11 THE COURT: RE-EXAM?

12 MS. SIMMONS: THANK YOU, JUDGE.

13 REDIRECT EXAMINATION BY MS. SIMMONS:

14 Q. SERGEANT CRUM, YOU INDICATED THAT BASED ON YOUR
15 DEALING WITH THIS INFORMANT, HE SAID, "THANK YOU, I
16 APPRECIATE IT, MAN," AT THE END OF THE DEAL?

17 A. CORRECT, YES, MA'AM.

18 Q. AND THAT, THAT STATEMENT FOLLOWS WHAT DISCUSSION?

19 A. THAT A PURCHASE HAS BEEN MADE OR A DISTRIBUTION
20 HAS BEEN MADE.

21 Q. I DON'T THINK I WAS CLEAR. THAT STATEMENT FOLLOWS
22 WHAT DISCUSSION BETWEEN THE DEFENDANT AND THE INFORMANT
23 REGARDING THAT?

24 A. ASKING FOR SOME CRACK, THE 40, THE DUB, THE 10,
25 THROUGH THE CONVERSATION THEY HAD.

"AH-R"

1 THAT WOULD STILL BE TRANSFER OR DELIVERY TO ANOTHER
2 PERSON.

3 THE COURT: MR. SPROUSE, ANYTHING ELSE ON THAT
4 POINT?

5 MR. SPROUSE: YOUR HONOR, AGAIN, WE SIMPLY, OTHER
6 THAN TESTIMONY FROM MR. WALKER, WHICH CERTAINLY IS NOT
7 CREDIBLE, THAT THE ARRESTING OFFICER, THE OFFICER MAKING
8 THE CHARGE, WOULDN'T GIVE ANY INFORMATION REGARDING
9 TRANSFER, AND I FEEL THAT IS A FUNDAMENTAL BURDEN OF
10 PROOF THAT THEY HAVE, AND I WOULD DISAGREE THAT IF IT
11 WERE IN THE CONSOLE AND MR. WALKER SIMPLY PICKED IT UP,
12 THAT CONSTITUTES A TRANSFER FROM ONE PARTY TO ANOTHER.

13 THE COURT'S RULING ON MOTION:

14 THE COURT: WELL, AGAIN, AT THIS STAGE IN THE CASE,
15 I'M ONLY CONCERNED WITH THE EXISTENCE OR NON-EXISTENCE OF
16 THE EVIDENCE AND NOT THE WEIGHT. I THINK IT COMES DOWN
17 TO THE CREDIBILITY OF THE WITNESSES. AND SO I'LL DENY
18 YOUR MOTION FOR A DIRECTED VERDICT ON WHETHER OR NOT
19 THERE IS CREDIBLE EVIDENCE ON THE TRANSFER OF THIS
20 DISTRIBUTION.

21 NEXT?

22 MR. SPROUSE: THOSE ARE MY TWO MOTIONS, YOUR HONOR.

23 THE COURT: VERY GOOD. ALL RIGHT. THOSE MOTIONS
24 ARE ADDRESSED UNDER RULE 19 OF THE RULES OF CRIMINAL
25 PROCEDURE.

1 unreliable confidential informant, a confidential
2 informant that had an extensive RAP sheet, many
3 convictions for crimes involving dishonesty which we were
4 able to bring out at trial.

5 Now, in furtherance of that defense, when Officer
6 Crumb testified and Officer Hunnicutt testified, what I
7 was seeking to do was to show that they lost control of
8 the situation. And the case in point, when the informant
9 got in the vehicle. And the videotape shows that there
10 was several turns made and the vehicle was driving around
11 the block. I didn't anticipate we were going to be
12 successful with it, but I made a jurisdictional argument
13 since there was a little part on the road that wasn't
14 actually in the city limits. And I did that more to just
15 show that they didn't plan out their operation very well.

16 Then they dropped -- Mr. Walker was dropped off at
17 an apartment complex in Seneca that the officers admitted
18 was a drug infested area. There's -- on the video, you
19 could see Mr. Walker approaching a window sill, putting
20 his hands up on it, having contact with other people.
21 There was plenty of opportunity, as far as our argument
22 went, for the transaction to have been tainted. I cross-
23 examined the officers on that.

- 24 Also, I was pleased with cross-examination in that
- 25 Officer Crumb had to admit that the case boiled down to

"A.H.R."

Timothy Blasingame v. State 2010-GS-04-0598
Scott Sprouse - Direct Examination by Ms. Williams

1 the credibility of Mr. Walker. If he was lying to them,
2 then they really had no case. There was no actual video
3 footage of the crack cocaine being handed to Mr. Walker.
4 The audiotape, it was able -- you could discern on the
5 audiotape what was being said.

6 And I realize there's testimony today about the
7 audiotape. But there was no, thank you very much, or, I
8 appreciate it, statement, which I pointed that out to the
9 jury in my closing argument. I did not consider that
10 prosecutorial misconduct. I considered that the State
11 not having their case together and the officers were
12 confused as to what actually happened. And the jury
13 heard that audiotape a number of times, and they saw the
14 videotape a number of times. This was a distribution by
15 constructive -- there wasn't an actual handing of the
16 drugs on video. You could tell -- he said something to
17 the effect, I love you, man, or something to that effect
18 on the audio. And that's when the State was claiming
19 that the crack cocaine was transferred. Our argument was
20 he could have gotten it at the apartment complex when he
21 made the contact with the other people. But Officer
22 Crumb was cross-examined on the issue of that. He also
23 was cross-examined on the credibility of Mr. Walker.

24 Q. Were there any surprises in terms of the witness
25 list?

• AFFIDAVIT TO ATTACHMENT- S

• I, Timothy Blessingame, #213064, Declare and Affirm- under the penalty of 28 U.S.C.A. ("Perjury")- that the document bearing "ATT. S" designation is a True & Exact Copy of a 'Voluntary Recanting Statement' written by the states Key Witness - James Walker (dated: Sept. 28, 2009); such document is in the same photo copied form as appears within (Solicitor) and (Defense) discovery files.

- Respectfully Submitted,

14 Timothy Blessingame

5-20-19
DATE

"A.H.S"

This is a Voluntary written Statement -

James Walker is voluntarily written this statement to confess that on February 29, 2009 and I was working under the Supervision of the Agent John Crum as a Confidential Informant. I was Suffered to Attempt to make a Purchase of Cocaine from Tim Blessingame, because that's who I told John Crum who I could make a buy from. James Walker is confessing that it was not Tim Blessingame that I meet with, I did not purchase Cocaine and was given any Crack from Tim Blessingame. And I am willing to take the stand at a Jury Trial to verify that this State ment is true I am sorry to falsely accuse Mr. Blessingame but it was not him who ~~is~~ is my James Walker voluntary written statement

Witness

Signature James Walker
James Walker
September 28, 2009
9/28/2009

• AFFIDAVIT TO ATTACHMENT- T

• I, Timothy Blessingame, #213064, Declare and Affirm- under the penalty of 28 U.S.C.A. §1746 ("Perjury") - That the document bearing "ATT. T" designation is a True & Exact copy of a form draft of an e-mail State Solicitor Lindsey Simmons sent to Trial Counsel Robert S. Sprouse on (Oct. 25, 2009) at 2:16 p.m.; such e-mail draft is in the same photo copied form as appears within case (Discovery) files of the State (Solicitor) and (Defense) Attorney.

- Respectfully Submitted,

151 Timothy Blessingame

5-20-19

DATE

"A.H.T"

10/17/2014

10/17/2014

10/17/2014
10/17/2014
10/17/2014

... Walker was not under the influence that day.
... He also presented CI with a script or scribble of receipt in his own handwriting. It states something to the effect that the CI was drunk on the day of the deal and it wasn't Blassingame. The CI told me this and explained that he signed the document but did so out of coercion/duress and it is not true. He said he was housed with your client of 14 or so others and did not want to be afraid to sleep @ night. He was not under the influence of the alcohol specifically knows Blassingame "his cuzco" as referenced on the audio. Walker was not under the influence that day.

10/17/2014

10/17/2014

° AFFIDAVIT TO ATTACHMENT- U

• I, Timothy Blessingame, #213064, Declare and Affirm - under the penalty of U.S.C.A. §1746 ("Perjury") - that the document bearing "ATT. U" designation is a True & Exact copy of the 'Potential State Witness List' given to Trist Counsel on (Oct. 26, 2009) the day of applicant trist; such witness list is in the same photo copied form as appears within this court records.

- Respectfully Submitted,

151 Timothy Blessingame

5-20-19
DATE

"Att. W"

STATE OF SOUTH CAROLINA)
)
)
)
)
State of South Carolina)
)
)
vs.)
)
)
Timothy Lee Blassingame,)
)
)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT

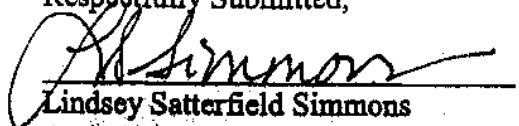
2009-GS-37-0820

State's Potential Witness List

SGT. TIM HUNNICUTT
SGT. JOHN CRUM
SGT. MELINDA NICHOLSON
SGT. MIKE TERRAMANO
RANDY SMITH
SGT. ROGER FOSTER
MAJOR STEVE PRUITT
SGT. MIKAL FOSTERVALD
AGENT MEREDITH LANFORD
OFFICER BENNY OWENS
JAMES WILLIE WALKER
RODNEY JOHNSON

SENECA POLICE DEPARTMENT
SENECA POLICE DEPARTMENT
SENECA POLICE DEPARTMENT
SENECA POLICE DEPARTMENT
SENECA POLICE DEPARTMENT
OLEC
OLEC
OLEC
ANDERSON-OCONEE FORENSICS LAB
SCDNR

Respectfully Submitted,



Lindsey Satterfield Simmons
Assistant Solicitor
Tenth Judicial Circuit

Dated: 10/21/09
Walhalla, South Carolina

• AFFIDAVIT TO ATTACHMENT - V

• I, Timothy Blessingame, #213064, Declare and Affirm - under the penalty of 28 U.S.C.A. § 1746 ("Perjury") - that the document bearing "ATT. V" designation is a True & Exact Copy of a 'Trial Transcript Testimony' given by the States Key Witness - James Walker at applicants 2009 trial; such transcript testimony is in the same photo copied form as appears in this court records.

- Respectfully Submitted,

1st Timothy Blessingame

5 -20-19
DATE

"A.H.V"

1 PLACE IN FEBRUARY?

2 A. YEAH, IN THE COUNTY JAIL.

3 Q. OKAY. TELL ME WHAT HAPPENED WHEN Y'ALL WERE
4 TOGETHER AT THE COUNTY JAIL.

5 A. I WENT TO THE COUNTY JAIL FOR, STAYING THERE LIKE
6 TWO MONTHS AND A HALF. AND THE WHOLE TIME I LEFT THE
7 HALF MONTH, HE CAME TO "A" CELL. WE WAS IN "A" CELL
8 TOGETHER. AND WE WAS TALKING, AND HE TOLD ME TO TELL HIM
9 THAT IT WASN'T HIM. HE WAS GONNA WRITE A STATEMENT AND
10 HE WANTED ME TO COPY IT DOWN AND SIGN IT.

11 SO I DID BECAUSE I KNEW THAT HE KNEW I HAD DONE
12 GOT HIM ON DRUG CHARGES AND HE KNEW WHY HE WAS ARRESTED
13 WAS BECAUSE OF ME. SO I DIDN'T WANT TO LAY IN THE CELL
14 KNOWING THAT MY LIFE COULD BE IN DANGER. THAT'S WHY I
15 DID IT.

16 Q. SO YOU WERE -- THE JAIL PUT YOU ALL IN A CELL
17 TOGETHER?

18 A. YES, MA'AM.

19 Q. HOW LONG WERE YOU IN THERE WITH HIM?

20 A. PROBABLY ABOUT TWO WEEKS.

21 Q. ANY STATEMENT -- THE STATEMENT YOU ARE TALKING
22 ABOUT THAT YOU GAVE TO HIM, SAYING IT WASN'T HIM -- IS
23 THAT WHAT YOU ARE SAYING?

24 A. YES, MA'AM.

25 Q. IS THAT TRUE?

• AFFIDAVIT TO ATTACHMENT - W

• I, Timothy Blessingame, # 213064, Declare and Affirm - under the penalty of 28 U.S.C.A. § 1746 ("Perjury") - that the document bearing "ATT. W" designation is a True & Exact copy of a 'Trist Transcript Testimony' given by the States Key Witness - James Walker on Cross-Examination at applicants 2009 trial; Such Transcript document is in the same photo copied form as appears within this court records.

- Respectfully Submitted,

151 Timothy Blessingame

5-20-19

DATE

"All-W"

1 COPIED IT DOWN FROM WHERE HE WROTE.

2 Q. IS THAT YOUR SIGNATURE ON IT?

3 A. YES, SIR.

4 Q. AND THAT'S IN YOUR HANDWRITING?

5 A. YES, SIR.

6 Q. AND DOES THAT HAVE SEPTEMBER THE 28TH?

7 A. YES, SIR.

8 Q. AND YOU SAID (READING): I, JAMES WALKER --

9 MS. SIMMONS: YOUR HONOR, I OBJECT TO HIM READING
10 SOMETHING HE'S NOT GONNA OFFER AS AN EXHIBIT.

11 MR. SPROUSE: I'LL MOVE ON TO SOMETHING ELSE, YOUR
12 HONOR.

13 BY MR. SPROUSE:

14 Q. MR. WALKER, THE NOTE THAT YOU TESTIFIED ABOUT WAS
15 IN YOUR HANDWRITING?

16 A. YEAH, BUT THOSE WORDS, I MEAN, ARE COPIED FROM
17 WHAT HE WROTE.

18 Q. AND IT'S TRUE THAT AS A RESULT OF THAT INCIDENT
19 THERE WAS NO COMPLAINT BY YOU TO THE JAIL AUTHORITIES?

20 A. YEAH. THEY GOT COMPLAINTS. I MEAN, ROGER FROM
21 THE JAIL ON SECOND SHIFT SUPERVISOR, HE GOT A COMPLAINT,
22 MS. GILLISPIE (PHONETIC), BEVERLY. ALL OF THEM, ROGER
23 AND ALL OF THEM GOT COMPLAINTS. ALL YOU GOT TO DO IS ASK
24 THEM AND THEY'LL TELL YOU. THE MAJOR GOT THEM, TOO. YOU
25 CAN ASK HIM, TOO.

• AFFIDAVIT TO ATTACHMENT-X

• I, Timothy Blassingame, # 213064, Declare and Affirm - under the penalty of 28 U.S.C.A. § 1746 ("Perjury") - that the document bearing "ATT. X" designation is a True & Exact copy of a "Trial Transcript" Noting, A 'Hung Jury' of applicants 2009 trial; Such transcript document is in the same photo copied form as appears within this court records.

- Respectfully Submitted,

151 Timothy Blassingame

5-20-19

DATE

1 UNTIL APPROXIMATELY 2:45 P.M., WHEN THE JURY
2 SENT OUT A NOTE THAT THEY ARE UNABLE TO REACH
3 A VERDICT.)
4 (COURT'S EXHIBIT 5, A NOTE FROM THE JURY
5 STATING THEY ARE UNABLE TO REACH A VERDICT,
6 WAS MARKED FOR IDENTIFICATION AND RECEIVED
7 INTO COURT'S EVIDENCE.)
8 **THE COURT:** ALL RIGHT. IT'S MY UNDERSTANDING THAT
9 THE FORELADY HAS ADVISED THE BAILIFF THAT THE JURY IS
10 HUNG. I DON'T KNOW WHAT THE NUMBERS ARE, BUT THEY DIDN'T
11 ASK FOR ANY FURTHER INSTRUCTIONS, SO WHAT I'LL DO IS
12 BRING THEM OUT, GIVE THEM THE ALLEN CHARGE, AND THEN SEND
13 THEM BACK.
14 NOW, OF COURSE, UNDER OUR STATUTE, IF THEY COME BACK
15 AGAIN AND SAY THEY CAN'T REACH A VERDICT WITHOUT ASKING
16 FOR FURTHER INSTRUCTION, THEN I WILL HAVE TO DISCHARGE
17 THEM.
18 IS THERE ANYTHING FROM THE STATE?
19 **MS. SIMMONS:** NO, YOUR HONOR.
20 **THE COURT:** FROM THE DEFENSE?
21 **MR. SPROUSE:** NO, YOUR HONOR.
22 **THE COURT:** VERY GOOD. ASK THE JURY TO JOIN US,
23 PLEASE.
24 (THE JURY ENTERED THE COURTROOM AT
25 APPROXIMATELY 2:50 P.M.)

• AFFIDAVIT TO ATTACHMENT - Y

• I, Timothy Blassingame, #213064, Declare & Affirm - under the penalty of 28 U.S.C.A. §1746 ("Perjury") that the document bearing "ATT. Y" designation is a True & Exact copy of a "PCR Transcript Testimony" given on Direct-Examination by applicants (PCR) Witness ("Major") Francis Steve Pruitt, Jr.; such PCR transcript is in the same photo copied form as appears within this court records.

- Respectfully Submitted,

151 Timothy Blassingame

5-20-19

DATE

"ALLY"

Timothy Blassingame v. State 2010-GS-04-0598
Francis Stevenson Pruitt, Jr. - Direct Examination by Mr. Denny

40

1 Q. Major Pruitt, I'm handing you -- can you identify
2 what this exhibit is?

3 A. This is an Inmate Housing History Report for Timothy
4 Lee Blassingame.

5 Q. Okay. Just as I asked you before about Mr. Walker,
6 can you tell me where Mr. Blassingame was housed at the
7 Oconee Detention Center from April 1st until, say,
8 September 26th?

9 A. From April 6, 2009, to September 26, 2009, he was
10 housed in "B" cell.

11 Q. Okay. And from September 26th until October 29th,
12 where was Mr. Blassingame housed?

13 A. He was housed in "A" cell.

14 Q. Okay. Now, if we go back over to the report for Mr.
15 Walker, was there any period of time in which Mr. Walker
16 and Mr. Blassingame were housed together? If you look at
17 the period from 7/31 to October 2nd of 2009 for Mr.
18 Walker, and then from 9/26 to October 29th for Mr.
19 Blassingame. Are they both housed in cell "A"?

20 A. There was a brief period on July the 29th when they
21 were both housed in "B" cell. And then a longer period,
22 from September the 26th to October the 2nd, they were
23 housed in "A" cell.

24 Q. And again, just with -- well, let me ask you. With
25 Mr. Walker's record we just talked about and Mr.

• AFFIDAVIT TO ATTACHMENT - (2)

• I, Timothy Blassingame, #213064, Declare and Affirm - under the penalty of 28 U.S.C.A. § 1746 ("Perjury") - that the document bearing "ATT. Z" designation is a True & Exact Copy of a "PCR Transcript Testimony on Direct-Examination" given by applicant (PCR) Witness - ("Major") Francis Steve Pruitt, Jr., at applicants PCR hearing; such document is in the same photo copied form as appears within this court records.

- Respectfully Submitted,

1st Timothy Blassingame

5-20-19
DATE

"A.H.Z"

Timothy Blassingame v. State 2010-GS-04-0598
Francis Stevenson Pruitt, Jr. - Direct Examination by Mr. Denny

1 get moved to another cell, to be with a friend or, you
2 know, an acquaintance, somebody they know. So the
3 officers generally will do a brief inquiry to determine
4 the credibility or legitimacy of the request. Then the
5 inmate will be moved to another housing unit if it is
6 thought that there's a potential for some conflict or
7 assault or other problem. Often that means we have to
8 override classification, either put them in a cell of a
9 higher classification or a lower classification, which we
10 don't like to do. But we often have to do it because
11 we're overcrowded.

12 Q. If there was a threat -- I mean, just if I
13 understood you correctly, basically if there's a threat,
14 once you've investigated it -- if there's a threat, would
15 you have the person making the threat and the potential
16 victim in the same cell block?

17 A. No. We would do our best to separate those either
18 by moving the person that is the source of the threat or
19 the person making the request.

20 Q. And I just want to go back. You previously
21 testified that from September 26th until October 2nd that
22 Mr. Blassingame and Mr. Walker were housed together in
23 cell block "A", I believe; is that correct?

24 A. Yes. From September 26th to October the 2nd, they
25 were both housed in "A" cell.

ON BACK ==>

• AFFIDAVIT TO ATTACHMENT-(1)

• I, Timothy Blessingame, #213064, Declare and Affirm-under the penalty of 28 U.S.C.A. §1746 ("Perjury") - that the document bearing "ATT. 1" designation is a True & Exact copy of a "PCR Transcript Testimony on Direct-Examination" given by applicant (PCR) Witness - ("Major") - Francis Steve Pruitt, Jr, at applicants PCR hearing; such document is in the same photo copied form as appears within this court records.

- Respectfully Submitted,

151 Timothy Blessingame

5-20-19
DATE

"All-1"

Timothy Blasingame v. State 2010-GS-04-0598
Francis Stevenson Pruitt, Jr. - Direct Examination by Mr. Denny

1 on your records, there have been multiple refusals for
2 protective custodies ---

3 THE COURT: Objection. I'm not letting you go
4 there. That is not properly in the record.

5 MR. DENNY: Okay. All right.

6 Q. Major Pruitt, you do recognize that there is a
7 process and you will clarify that there's a process if an
8 inmate wants to not have protective custody; is that
9 correct?

10 A. Yes, sir.

11 Q. All right. And one of the forms that was shown to
12 you, Plaintiff's Exhibit 4, is a sample of that form that
13 you allow to be, you know, filled out by an inmate; is
14 that correct?

15 A. Yes, sir, that's correct.

16 Q. All right. Okay. Mr. Pruitt, if an inmate alleges
17 that there is a threat against him or her at your
18 facility, what are your procedures?

19 A. Normally, an inmate will file a written request
20 stating a problem with another inmate. Sometimes it may
21 come to an officer verbally during rounds. Sometimes it
22 happens during the booking process. Anyway, we -- the
23 supervisor sometimes will attempt to establish whether
24 there is indeed a conflict or a problem because sometimes
25 inmates will make a claim of that nature in an effort to

• AFFIDAVIT TO ATTACHMENT- 2

• I, Timothy Blassingame, #213064, Declare and Affirm - under the penalty of 28 U.S.C.A. §1746 ("Perjury") - that the document bearing "ATT. 2" designation is a True & Exact copy of a 'PCR Transcript Testimony on Direct- Examination' given by applicant (PCR) Witness - ("Major") Francis Steve Pruitt, Jr, at applicants PCR hearing; such document is in the same photo copied form as appears within this court records.

- Respectfully Submitted,

1s) Timothy Blassingame

5-20-19

DATE

1 immediately and let us know that they're back in the cell
2 with somebody they don't want to be, and we'll move them
3 accordingly.

4 A. Yes, that's correct. Your testimony here today -- and
5 I asked you to pull your file when I subpoenaed back last
6 September and then also once again back in this past
7 February, and you reviewed the file. Did you see any
8 indication that, you know, there's a mistake in that, you
9 know, that there was an indication that there was should have
10 been a copy put in there?
11 A. Not during that period of time, no.

12 Q. Okay.

13 MR. DENNY: No further questions, Your Honor.

14 MS. WILLIAMS: May it please the Court.

15 THE COURT: Yes, ma'am.

16 CROSS-EXAMINATION

17 BY MS. WILLIAMS:

18 Q. Do you normally keep records of each threat that is
19 reported on each inmate complaint that is made?

20 A. We will keep either a copy of the inmate request, or
21 if there's an actual incident of some sort, the officer
22 will file an incident report.

23 Q. In what kind of situations would you generate a
24 Refusal of Protective Custody Form?

25 A. There would actually be two. One would be if a

• AFFIDAVIT TO ATTACHMENT-3

• I, Timothy Blessingame, #213064, Declare and Affirm-under the penalty 28 U.S.C.A. §1746, ("Perjury")-that the document bearing "ATT. 3" designation is a True & Exact copy of a 'Order of Release for Bond for (Walker) (dated: Oct. 2, 2009); Such document is in the same photo copied form as appears within Case Discovery.

- Respectfully Submitted,

1st Timothy Blessingame

5-20-19
DATE

AH.3

ORDER OF RELEASE

TO: MAJOR STEVE PRUITT
OCONEE COUNTY DETENTION CENTER

YOU ARE HEREBY COMMANDED BY THIS COURT TO IMMEDIATELY
RELEASE FROM CUSTODY THE FOLLOWING INDIVIDUAL:

James Wlesie Walker
NAME

ADDRESS

WHO IS CHARGED WITH THE OFFENSE OF: Burglary, 2nd
Petty Larceny BY

WARRANT/TICKET NUMBER V452547
V452548

AMOUNT: 11,000⁰⁰
RECOGNIZANCE

TYPE: PERSONAL

~~CASH~~
 SURETY

AMOUNT OF FINE: _____

TIME OF BOND ARRAIGNMENT: 2:35 AM
PM

PROVIDED, HOWEVER, THAT YOU MAY, AFTER NOTICE OF THIS COURT
CONTINUE CUSTODY OF THE ABOVE NAMED PERSON IF THERE ARE
OTHER CRIMINAL CHARGES OUTSTANDING AGAINST THIS PERSON
THAT BY LAW REQUIRE CUSTODY.

DATE: 10, 2, 09

[Signature]
JUDGE, SENECA MUNICIPAL COURT

• AFFIDAVIT TO ATTACHMENT- 4

• I, Timothy Blassingame, #213064, Declare and Affirm- under the penalty of 28 U. S. C. A. §1746 ("Perjury")- that the document bearing "ATT. 4" designation is a True & Exact Copy of a 'PCR Transcript Testimony on Cross- Examination' given by applicant (PCR) Witness- ("Major") Francis Steve Prustt, Jr., at applicants PCR hearing; such document is in the same photo copied form as appears within this court records.

- Respectfully Submitted,

1st Timothy Blassingame

5-20-19
DATE

1 immediately and let us know that they're back in the cell
2 with somebody they don't want to be, and we'll move them
3 accordingly.

4 Q. In preparation for your testimony here today -- and
5 I asked you to pull your file when I subpoenaed back last
6 September and then also once again back in this past
7 February, and you reviewed the file. Did you see any
8 indication that, you know, there's a mistake or that, you
9 know, there was some indication that these two should not
10 have been put together?

11 A. Not during that period of time, no.

12 Q. Okay.

13 MR. DENNY: No further questions, Your Honor.

14 MS. WILLIAMS: May it please the Court.

15 THE COURT: Yes, ma'am.

16 CROSS-EXAMINATION

17 BY MS. WILLIAMS:

18 Q. Do you normally keep records of each threat that is
19 reported or each inmate complaint that is made?

20 A. We will keep either a copy of the inmate request, or
21 if there's an actual incident of some sort, the officer
22 will file an incident report.

23 Q. In what kind of situations would you generate a
24 Refusal of Protective Custody Form?

25 A. There would actually be two. One would be if a

1 person had already been moved to different housing. For
 2 instance, if they were not in administrative segregation
 3 because of protective custody, they might fill out a
 4 "Request for Transfer" because they want to get moved back in to
 5 general population. The second case might be where an
 6 officer is aware of a potential conflict and questions
 7 the individual about that potential conflict, but the
 8 individual says, "No, it'll be fine, and he signs a
 9 refusal of protective custody.

10 I'm not sure if you could have any personal knowledge about
 11 the "Request for Transfer" form regard to the preparation of
 12 these forms, and I don't have records of him making a
 13 "Request for Transfer" form.

14 A. I'm not aware of him identifying a specific threat
 15 to a specific individual.

16 Q. All right. Thank you, sir.

17 THE COURT: All right. We'll proceed to the next witness.

18 MR. DENNY: Yes, Your Honor.

19 THE COURT: Thank you, sir.

20 MR. DENNY: Your Honor, the Plaintiff would
 21 like to now call Dustin Eiggs. I believe he is in
 22 the lineup.

23 THE COURT: All right. How many witnesses do you
 24 propose to have?

25 MR. DENNY: Eiggs and Mr. Bryson are the only