

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable Roger L. Couch, Circuit Court Judge
Appellate Case Tracking No. 2018-001909

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MAR 12 2020

Respondent, SC Court of Appeal

The State,

vs.

Dana L. Morton,

Appellant.

MOTION TO REMAND FOR HEARING

Respondent, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

On November 14, 2019, Appellant served his Initial Brief of Appellant. In the brief, one of the primary issues raised related to the failure to give a Faretta warning by the trial judge prior to Appellant proceeding *pro se* at trial. (Initial Brief of App. 18-22). A defendant may waive his right to counsel, but he must do so knowingly and intelligently. Faretta v. California, 422 U.S. 806, 835, 95 S. Ct. 2525, 2541, 45 L. Ed. 2d 562, 581 (1975). For a knowing and intelligent waiver to occur, the defendant must be, “(1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation.” Prince v. State, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990) (citing Faretta, 422 U.S. at 835, 95 So. Ct. at 2541, 45 L. Ed. 2d at 581-82). “While a specific inquiry by the trial judge expressly addressing the disadvantages of a *pro se*

defense is preferred, the ultimate test is not the trial judge's advice but rather the defendant's understanding." Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990).

The State acknowledges the transcript fails to provide a colloquy between the judge and Appellant regarding the dangers of self-representation. (See Transcript pages 1-54, attached as Exhibit 1). As a result, the question would become whether Appellant knew of the dangers through other means, had prior experience such that he would have the requisite knowledge to make a valid waiver, or otherwise made a valid knowing and voluntary waiver of his right to counsel.

In State v. Dixon, 269 S.C. 107, 109, 236 S.E.2d 419; 420 (1977), the question presented was "[w]hether or not such waiver [of counsel] was intelligently made in this case" and the Court indicated the issue was "a subject of debate." The Court found the appropriate remedy was not a new trial, but instead "the appellant is entitled to a factual determination by the lower court on the 'intelligent waiver' issue." As a result, the Court remanded the case "to the lower court for a determination of whether the waiver was intelligently made" and allowed both the prosecution and the appellant to introduce relevant evidence. Id.

The South Carolina Supreme Court explained again in 1991: "We now hold that, except in **extraordinary cases** where it is clear that a hearing on remand would serve no useful purpose, the remedy when the record fails to show a knowing and intelligent waiver of the right to counsel will be a remand for a Dixon hearing." State v. Cash, 304 S.C. 223, 225, 403 S.E.2d 632, 634 (1991) (emphasis added). The Court explained the remand allowed "the trial judge to determine whether appellant knowingly and intelligently waived his right to counsel under the standard established in Prince and Wroten." Id. The standard requires the court to "look to the record to determine whether other facts show petitioner had sufficient background or was apprised of his rights by some other source." Wroten, 301 S.C. at 294-95, 391 S.E.2d at 576.

More recently in State v. Dial, Op. No. 27939 (S.C. filed Jan. 29, 2020), the South Carolina Supreme Court reiterated the appropriate remedy is not a new trial, but instead a remand to the trial court to make a determination of whether the waiver was knowing and voluntary:

[W]e remand Dial's case to the circuit court for the court to conduct an evidentiary hearing pursuant to Dixon to determine whether Dial knowingly and intelligently waived his right to counsel. At this hearing, both the prosecution and the defense are permitted to present evidence on the issue, and if the trial court finds the waiver was not knowing and intelligent, it shall grant the defendant a new trial.

Id.

The State believes this Court should issue an order to remand the case to allow the trial court to consider the issue of whether Appellant made a knowing and voluntary waiver of his right to counsel. This is not one of the "extraordinary cases" in which remand would serve no purpose, especially in light of Appellant's vast previous criminal history. (See Transcript pages 1084-1096, attached as Exhibit 2). The remand would allow the trial court to consider Appellant's background, including prior exposure to criminal trials and whether he ever proceeded before a court *pro se*. Remand would allow the trial court to explore whether Appellant was adequately warned by any other source, including another judge, his prior trial counsel, the solicitor's office, or others. Finally, Appellant would be able to testify and be cross-examined regarding his understanding at the time of his decision of the dangers of proceeding *pro se*.

Remanding the case now, as opposed to after full briefing and hearing by the Court, will allow for the most expeditious review of the issue and will allow those involved to be able to address the issue with the most current recollections. Notably, one of the prosecutors has already left the Seventh Circuit Solicitor's Office, so remand would allow the remaining prosecutor to

remain involved and present any information regarding the practice and procedures used in this case which may be unknown to other prosecutors and only available from those with first-hand knowledge.

Further, it is the State's understanding, after consultation with Solicitor Barnette and Assistant Solicitor Ghent that the Seventh Circuit has fully embraced the judicial control of the docket. As part of turning the docket over to the judicial department, a new procedure was established requiring appearances before trial. (See Administrative Order, attached as Exhibit 3). Based on information provided to the undersigned, defendants are frequently warned by the judges presiding over the appearances of any dangers related to proceeding *pro se*. The warnings may have previously been given to Appellant, which could be established during a hearing on remand.

In the alternative, if the State is unable to establish that it was a knowing and voluntary waiver of his right to counsel made by Appellant, then remand would enable the parties to proceed to a new trial sooner rather than later, and not require the delay of briefing and consideration on appeal. Further, it would allow for retrial while all memories are fresh and the evidence is all available, and expeditious review would prevent the possibility of time leading to missing evidence or inconsistent testimony from any involved.

II.

The State asks this Court to remand the case to the trial court for a determination of whether Appellant knowingly and voluntarily waived his right to counsel pursuant to Dixon, Cash, and Dial. The State believes remand could eliminate the danger of the passage of time eroding memories or circumstances in which required parties may not be available, and asks the Court to allow both parties the opportunity to present evidence and testimony related to the issue of whether Appellant knowingly and voluntarily waived his right to counsel at trial. This Court

could instruct the trial court that if the court finds Appellant did not knowingly and voluntarily waive his right to counsel, then the trial court should grant a new trial, which would foreclose the delay suffered by both Appellant and the State and allow retrial with much more contemporaneous recollections. If the trial court finds Appellant was aware of the dangers of proceeding pro se and made a valid knowing waiver, then the case would be allowed to proceed in the appellate courts on the other issues involved.

WHEREFORE, Respondent prays that the Court hold this matter in abeyance until ruling on this motion, and remand to the trial court to conduct a hearing pursuant to Dixon, Cash, and Dial for a determination of whether Appellant made a knowing and voluntary waiver of his right to counsel; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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March 12, 2020

EXHIBIT 1

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MAR 12 2020

SC Court of Appeals

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Dana L. Morton,) 2017-GS-42-4141;4142
6 Defendant.) October 15 - 19, 2018
7) Spartanburg, South Carolina

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MAR 12 2020

SC Court of Appeals

10 B E F O R E :

11 HONORABLE ROGER L. COUCH, JUDGE; and a jury

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

15 ALLISON M. MABBS, ESQUIRE
16 RUSSELL D. GHENT, ESQUIRE
Attorneys for the State

17 DANA L. MORTON, Pro Se
18 WILLIAM G. YARBOROUGH, III, ESQUIRE
19 CLAY T. ALLEN, ESQUIRE (Special appearance)
Attorneys for the Defendant

21 Linda D. Moffitt
22 Circuit Court Reporter

23
24 Transcribed by Pamela E. Green, Circuit Court Reporter
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E X H I B I T S

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>State's Exhibits</u>		
S-1	D.V.D.	128	245
S-2	Marijuana	128	606
S-3	Cocaine	128	596
S-4	scale	356	599
S-5	Marijuana	356	608
S-6	Chain of Custody Form	516	602
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1	<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Defendant's Exhibits</u>		
3				
4	D-1	Form B		460
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9	D-6	Analysis Request Form		524
10	D-7	Facebook Page	658	
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1	<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Court's Exhibits</u>		
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4	C-1	Proof of Service	787	
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6	C-3	Indictment	1093	
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1 P R O C E E D I N G S

2
3 THE COURT: Has he been arraigned on those charges?

4 MR. YARBOROUGH: He has been arraigned on these
5 charges.

6 THE COURT: All right. I assume he is still pleading
7 not guilty.

8 Is that correct?

9 MR. YARBOROUGH: That is correct, Your Honor.

10 THE COURT: I've got possession with intent to
11 distribute marijuana. Case 4141, 2017 case, and the
12 other's 2017-4142, and that's trafficking in cocaine.

13 So, he's pleading not guilty to both of those?

14 MR. YARBOROUGH: That's correct, Your Honor.

15 THE COURT: Is that right, sir?

16 Is that true?

17 THE DEFENDANT: I wish to not -- I'm here in a special
18 in -- I'm here for a special, for a special occasion, and
19 I'm representing Mr. Morton, but I wish to not proceed or
20 participate in this -- these functions against me.

21 THE COURT: well, now is your name Dana L. Morton?

22 THE DEFENDANT: I am the person that, I guess, is, is,
23 you know, describe on this -- these. Perhaps, sir.

24 THE COURT: So, you're the gentleman named in these
25 two indictments I just mentioned?

1 THE DEFENDANT: If this is not moral court, Your
2 Honor, no disrespect, I would not -- I would -- would not
3 like to participate period in this function.

4 THE COURT: well, you don't -- you, you have a lawyer
5 who's present, and he's here for you.

6 THE DEFENDANT: I would---

7 THE COURT: Let me finish for a second.

8 And he is -- he---

9 THE DEFENDANT: Thank you, Your Honor.

10 THE COURT: He is here representing you in this case,
11 and I have asked you a question, and you indicated you were
12 the person named in these indictments.

13 THE DEFENDANT: I am here by special appearance, Your
14 Honor.

15 THE COURT: Place him under oath.

16 THE CLERK: Raise your right-hand please. Raise your
17 right-hand please.

18 (WHEREUPON, the Defendant complies.)

19 THE CLERK: Do you solemnly swear that the testimony
20 you're about to give will be the truth, the whole truth,
21 and nothing but the truth so help you God.

22 THE DEFENDANT: I am here by special appearance,
23 ma'am.

24 THE COURT: All right. Let the record be reflected he
25 is refused to take the oath.

1 I'll ask the solicitor, is the gentleman standing at
2 the counsel table over there, is he the defendant in this
3 matter?

4 SOLICITOR MABBS: Yes, Your Honor.

5 THE COURT: The gentleman named in the two
6 indictments?

7 SOLICITOR MABBS: Yes, Your Honor.

8 THE COURT: Are you ready to go forward in those
9 indictments?

10 SOLICITOR MABBS: I am, Your Honor.

11 THE COURT: All right. You're calling those cases to
12 trial at this time?

13 SOLICITOR MABBS: I am, Your Honor.

14 THE COURT: All right. Your lawyer's indicated, Mr.
15 Morton, that -- you can be seated. You don't have to stand
16 any longer.

17 THE DEFENDANT: Thank you, sir.

18 THE COURT: Your lawyer indicated that you have been
19 previously arraigned on these charges. They are before
20 this Court, and I intend to go forward with the trial in
21 the matter. You can stay and participate if you wish to.
22 You have every right not to stay. However, at this point
23 in time, when I start the trial, your bond will be revoked.
24 If you do not wish to stay in the courtroom, I'll ask the
25 officers to take you into custody.

1 How do you wish to proceed?

2 THE DEFENDANT: I would like to -- I would like to
3 show you that falsified documents has been created on me,
4 and that everything here is against me, against me as a
5 person. That's the reason why I say I would like to be
6 here on special appearance. I have falsified documents
7 some kind of way that showing that the drugs or the
8 substance, or whatever they want to call them, was actually
9 not drugs, and they know this, and they falsified the
10 documents, and---

11 THE COURT: Mr. Morton, let me explain to you. I'm
12 about to start the trial of the case. When I try your
13 case, you have the right to present a defense if you choose
14 to do that.

15 THE DEFENDANT: And I would like to---

16 THE COURT: Let me finish. That means, if you have
17 proof that the State has falsified documents or if you have
18 proof that the substances that were involved in this case
19 were not what the State says they are, you will be given an
20 opportunity, if you choose to, to present that information
21 to the jury. That's what a trial is all about.

22 So, if you have that information, you can let your
23 lawyer be aware of it, and he can present it to the Court
24 or you can testify yourself, but we'll talk about that
25 later on in the trial. We're not to that stage yet. It's

1 the State's obligation to prove the, the charges in the
2 indictment.

3 (WHEREUPON, the Defendant raises his hand.)

4 THE COURT: Put your hand down until I finish talking.

5 (WHEREUPON, the Defendant complies.)

6 THE COURT: Thank you, sir.

7 Now, it's the State's obligation to prove the
8 allegations contained in the indictments. You're not
9 required to prove anything. So, I'm not placing any burden
10 on you to prove anything. My issue here would be for the
11 State to prove the allegations contained in the indictments
12 by proof beyond a reasonable doubt.

13 We're gonna convene a trial. The jury will be
14 present. Their job is to determine whether or not the
15 State has made its -- met its burden of proof. And so, if
16 you wish to participate in that process, you have a right
17 to. If you do not feel that you wish to participate in
18 that process, you have a right not to, not to do that.

19 Now, again, I've indicated to you, if you do not wish
20 to be present for those proceedings, you're not required to
21 be present in the courtroom. However, once I start the
22 trial of this case, again, the conditions of your bond will
23 be completed, and, at that time, if you do not wish to stay
24 in the courtroom, I would have you taken into custody until
25 the end of the trial to determine your disposition.

1 So, again, my question to you is do you wish to stay
2 and be present or do you wish to not be present?

3 THE DEFENDANT: I would like to remove my lawyer from
4 my case, Your Honor.

5 THE COURT: All right. That's a whole different
6 matter, and you didn't answer my question. So, try
7 answering my question.

8 THE DEFENDANT: I am here, sir.

9 THE COURT: So, you -- you're here.
10 You do wish to be present?

11 THE DEFENDANT: In a special appearance.

12 THE COURT: Well, now -- however you call it, whatever
13 you want to call it, I don't care what you call it, I just
14 want to know if you want to be present or not, and you said
15 you do.

16 Is that right?

17 (WHEREUPON, the Defendant nods affirmatively.)

18 THE COURT: Let the record reflect he's shaking his
19 head yes.

20 Now, Ms. Mabbs, you have presented the indictments.
21 I assume you wish to go forward on those indictments?

22 SOLICITOR MABBS: I do, Your Honor.

23 THE COURT: All right. Now, Defendant's indicated
24 that he might wish to no longer be represented by an
25 attorney.

1 All right. Stand up, sir.

2 (WHEREUPON, the Defendant complies.)

3 THE COURT: You're under oath. I'll hear you on that
4 subject.

5 THE DEFENDANT: May I speak?

6 THE COURT: I said I'll hear you on that subject.

7 THE DEFENDANT: Okay. Well, like I say, Your Honor,
8 in the Court, if the record would record this, I have
9 falsified documents, and that the drugs and the evidence
10 that they have against me have been tampered with. I have
11 the evidence here.

12 I also have -- I have audio recordings of some guy
13 that the -- whoever was in cahoots with this case. They
14 sent them over to play like an intern at my lawyer's
15 office, and he obtained all of my information trying to
16 corner me, and get the jury and the judge in this courtroom
17 to find me -- persuade them to find me guilty in a
18 situation that I am not guilty in.

19 May I ask the Court, are they familiar with a, a Form
20 C, Rule 6 (sic) Brady motion?

21 THE COURT: I know what a Brady motion is.

22 THE DEFENDANT: Okay.

23 THE COURT: I have not -- I have not reviewed any of
24 the file as far as -- nobody's offered any evidence,
25 evidence to me. I don't even know, other than the

1 indictments, what they say. I don't know anything about
2 your case.

3 THE DEFENDANT: And I can assure you, Your Honor, that
4 they are lying.

5 THE COURT: well, you've pled not guilty to them.
6 You've said that they're not true.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I understand that.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You, you -- you were gonna fire -- tell me
11 why you wanted to fire your lawyer. Were you -- I still
12 am---

13 THE DEFENDANT: I am---

14 THE COURT: ---not hearing anything on that subject.

15 THE DEFENDANT: I have strong belief that my lawyer's
16 in cahoots with the State Solicitor here to, to entrap me
17 to get me taken away from my family, to take me away from
18 my job, and me as a person because those papers was it not
19 a part of the original file of my Brady motion, and, when
20 we suppose to came to court the last time, all of a sudden
21 they appeared. And, like I told him, with the Brady
22 motion, they have a mandate, and they have a page number.
23 This don't have say mandate or a page number.

24 So, these documents here are falsified through some
25 type of way. I do not have access to these files. I

1 cannot fake them myself.

2 THE COURT: Ms. Mabbs, did you receive a request for
3 information, Rule 5 request?

4 SOLICITOR MABBS: Yes, Your Honor, we did. I'm just
5 pulling this up quickly on my computer---

6 THE COURT: All right.

7 SOLICITOR MABBS: -- Your Honor, just to see if I
8 can -- this may be a case, as often as with narcotics
9 cases, where we send the initial discovery as soon---

10 THE COURT: Uh-huh. (Affirmative).

11 SOLICITOR MABBS: ---as we get the Rule 5 within the
12 required period of time. Often the drug reports aren't
13 ready at that point. Those are sometimes sent---

14 THE COURT: I understand.

15 SOLICITOR MABBS: ---as supplemental discovery. Your
16 Honor, I do know this case, early on, and it looks like I
17 have an email that I sent to Mr. Yarborough, for example,
18 on December 15th of 2017 with some still footage from the
19 buy videos --

20 THE COURT: Right.

21 SOLICITOR MABBS: -- so he would be able to share
22 those with Mr. Morton. Since, at the time, Your Honor,
23 obviously, that this is a case involving an informant, we
24 don't turn that information over initially.

25 THE COURT: I understand.

1 SOLICITOR MABBS: That's sent later, which, again, was
2 done in this case.

3 Your Honor, as far as the drug reports, I'm gonna---

4 THE COURT: All right. Mr. Yarborough, you apparently
5 did file a Rule 5 request.

6 Do you feel it was fully complied with?

7 MR. YARBOROUGH: Yes, sir, Your Honor. It was, it was
8 like one of those cases where we got the, the Rule 5. We
9 got all the Brady. There was -- and we were waiting on the
10 lab report, and we were also waiting on -- they didn't want
11 to show us the video until we had turned down the initial
12 offer, which was 15 years.

13 THE COURT: Uh-huh. (Affirmative).

14 MR. YARBOROUGH: After we turned that offer down, they
15 did send -- they -- well, right before they turned down --
16 right before, she sent me the still footage, which, at that
17 point, I, you know, it didn't look good. I got Mr. Morton
18 in.

19 I said look, this doesn't look good, and, and he -- he
20 actually did meet with a, with a clerk in, in my office.
21 It was a summer intern that was kind of helping me go
22 through the stuff, and we were showing him the, the, the
23 chain of custody, and, at that point, he, he became upset
24 with us. I went and got the rest of the chain of custody,
25 got him back in.

1 I didn't, at that point, took the clerk out of the
2 picture, and just met with Mr. Morton myself. I went
3 through everything, and made a copy of everything for him.
4 And so he's -- not only did -- has the State complied with
5 the Brady motion, I actually gave it to him too.

6 THE COURT: I see.

7 MR. YARBOROUGH: And I told the State I was gonna do
8 that.

9 THE COURT: I see.

10 All right.

11 SOLICITOR MABBS: And, Your Honor, for the record, I
12 have pulled it up on my computer. It does look like
13 initial discovery was sent in April of last year, and it
14 does look like that drug report wasn't available until
15 August.

16 THE COURT: I see.

17 Okay.

18 SOLICITOR MABBS: But all were provided, Your Honor.

19 THE COURT: All right. Mr. Morton, anything else
20 you'd like to share with me?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You do understand that your attorney
23 received that information from the solicitor, and passed it
24 along to you, as he's required to do. He, he -- sounds
25 like to me he's done what he was supposed to do in that

1 regard.

2 THE DEFENDANT: Okay. Is -- Your Honor, no disrespect
3 to you or the Court, but to sound like it's one thing, and
4 to actual (sic) be a part of it is something else.

5 THE COURT: Well, I want to hear some specifics.

6 THE DEFENDANT: Yes, sir. I specified that, in this
7 Brady motion, that it's, that's it's not a part of the
8 case. And if you can look, Your Honor, if I could step
9 forward or you could send your clerk, or however you want
10 to do it, if I can explain to you, you know, I don't know
11 the big terminology that's (sic) goes on here. All I know
12 is what I know. So, if y'all can bear with my words, and
13 give me a -- my life is on the line here. So, I'm kind of
14 nervous, you know.

15 So -- but this right here, Your Honor, and I
16 understand exactly what the solicitor is saying, but I got
17 a Brady motion from my lawyer. I had got a Brady motion
18 from my codefendant. And I also got a Brady motion that
19 was copied again from his lawyer. Neither of the Brady
20 motions had no analyzation to the, quote/unquote, drugs,
21 substance, or however they want to put it.

22 THE COURT: No what?

23 THE DEFENDANT: No, no chain of custody. No
24 analyzation to it, and if you---

25 THE COURT: Well, that information was provided by the

1 state, according to the state's records, later. And you
2 apparently got copies of that when it was provided.

3 THE DEFENDANT: Sir, may I speak?

4 THE COURT: I'm listening.

5 THE DEFENDANT: Okay. Yeah, I got them when they was
6 provided, and, and, you know, if you file a Rule 5 Brady
7 motion, that a date comes out on the top, which is 4/07/17.

8 Okay. Now, the, the defendant's name or whoever else
9 that's a part of this, I have nothing to do with that.
10 Never wanted that. They gave me that up just by just
11 anyway. But, anyway, sir, if you look at the Brady
12 information, if you going to decide this case, you'll be
13 able to see that each one, it's a page, and this page, this
14 document, everything they have against me, is 41 pages.

15 These pages, you can tell that they've been Xeroxed
16 copied and everything, that they're not a part of the
17 original, all three of the original copies of the Brady
18 motion. And so I can understand that your holding, but I
19 have analyzation to the marijuana. I have analyzation to
20 some more marijuana. But it's no analyzation or no chain
21 of custody to the substance that I'm telling you---

22 THE COURT: That's all issues that can be raised
23 during the trial of the case.

24 THE DEFENDANT: Yes, sir, and like I told them from
25 the beginning, that I was selling him synthetic because he

1 had spunt (sic) counterfeit money with me, and now I'm
2 at---

3 THE COURT: He what?

4 THE DEFENDANT: He spunt (sic) counterfeit money.
5 Currency. United States currency.

6 THE COURT: Who did?

7 THE DEFENDANT: The guy that -- I guess police---

8 THE COURT: Oh.

9 THE DEFENDANT: ---officer---

10 THE COURT: Okay.

11 THE DEFENDANT: ---or informant or whatever, and, once
12 he understood that I was spending counterfeit -- he was
13 spending counterfeit money with me, and he knew that I knew
14 this, he go to his bag of treats, and add to the fact of
15 okay, we are, you know, we'll lock him -- we'll get him
16 locked up for this right where, but what he didn't know was
17 that the drugs, the, the stuff that I gave him, was
18 synthetic. It wasn't cocaine. So, I don't know what else
19 to tell you.

20 THE COURT: All right. Anything else you want to tell
21 me?

22 THE DEFENDANT: Your Honor, I would like to know are,
23 are you a moral judge, Your Honor?

24 THE COURT: Am I what?

25 THE DEFENDANT: A moral judge cause this a moral

1 court.

2 THE COURT: I'm a South Carolina Circuit Court judge.
3 I've been assigned by the Chief Justice to hold court in
4 Spartanburg this week.

5 THE DEFENDANT: Okay. So, you have jurisdiction?

6 THE COURT: I, I certainly do.

7 THE DEFENDANT: Okay. I got my paperwork, Your Honor,
8 if you would like to see it.

9 THE COURT: No, sir, I don't need to see the
10 paperwork. All the things you have discussed with me are
11 matters that could be raised as a defense in your case if
12 it's---

13 THE DEFENDANT: Yes, sir.

14 THE COURT: ---if it's a proper defense, and if it's
15 properly presented, and---

16 THE DEFENDANT: And I would like---

17 THE COURT: Let me finish. This is not the street.
18 When I finish, I'll call on you and let you have a chance
19 to talk to me.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: I'm not gonna keep you from saying
22 anything, but don't talk what I'm talking. This lady's
23 taking down everything we say, and, if two people talk at
24 the same time, she has a lot of trouble writing down what
25 two people say at the same time. So, we're gonna follow

1 the rule, okay, or I'm gonna lock you up.

2 okay?

3 (WHEREUPON, the Defendant nods affirmatively.)

4 THE COURT: Good. So we got an understanding now,
5 don't we?

6 (WHEREUPON, the Defendant nods affirmatively.)

7 THE COURT: Very good.

8 Now, the, the point I'm trying to make is, and trying
9 to get to, is you're telling me you want to fire your
10 lawyer. So far I have heard that the State -- he filed a
11 proper discovery motion. He got the discovery from the
12 State on two different occasions. He provided copies of
13 that, and I'm sure they're xeroxed copies of, of the
14 information that he got to you. I've not heard that he
15 withheld anything from you that the State gave him. And
16 whether you agree with that evidence or not, I imagine you
17 disagree with it because it came from the State. They're
18 on the other side of the case. I understand all of that.

19 And I understand that you feel like that you want to
20 present some type of defense, and I understand that too.
21 We're here to give you that chance. The issue becomes
22 whether or not you do so with or without an attorney.

23 Now, the law says that you have the right to an
24 attorney, but you also have the right not to proceed to
25 have an attorney. If you wish to fire your lawyer, then

1 there has to be just cause for you firing that lawyer.
2 otherwise, if there's not just cause for you firing the
3 lawyer, I can require you to go ahead to court without an
4 attorney. And, so far, what you've told me, he did what he
5 was supposed to do.

6 So, if you want to fire him, you can, but my ruling,
7 at this point in time, would be you can fire your lawyer,
8 but you're gonna go to trial today either way.

9 Now, the ball's in your court.

10 How do you wish to proceed?

11 Yes, sir, I said -- I asked you a question.

12 How do you wish to proceed?

13 THE DEFENDANT: Your Honor, like I stated earlier, I'm
14 here on a special appearance. This is not a moral court.
15 I don't believe that you a moral judge, but if y'all want
16 to go ahead and proceed and try to railroad me the best
17 that you can, you can go ahead, sir, because actually we'll
18 be taking in this matter because anyone can see, if I could
19 get a public defender, five minutes, ten minutes where I
20 could prepare a case, and put in y'all words where I won't
21 be speaking while you're speaking, where I don't have to be
22 locked up and taken away from my family, then I -- that
23 would be fine with me.

24 THE COURT: well, I can't guarantee you results on
25 anything, sir.

1 THE DEFENDANT: All right.

2 THE COURT: You're asking me to tell you the result
3 would be that you don't get put in jail. I can't do that.
4 That's, that's not my job to do that.

5 You got an attorney. I'll tell you Mr. Yarborough has
6 appeared in this court and in other courts in this state
7 over the last many years. He has an excellent reputation
8 in what he does. So far you haven't told me anything that
9 you -- that he's done improperly in your case.

10 So, you have a, a qualified attorney who's here to try
11 your case, and I -- I'll give you until two o'clock this
12 afternoon to start the trial of the case if you think
13 there's some evidence you need to show Mr. Yarborough.
14 I'll give you a chance to meet with him, and talk with him
15 about it.

16 Yes, sir.

17 THE DEFENDANT: I have audio recordings of me, and the
18 guy, Jake, where Jake states to himself that, you know, me
19 and him been texting back and forth where he showed that
20 these, these paperworks right here, I recorded our
21 conversation, he asked me well, how do you know that
22 they're fake. I say well, they don't have the mandate, and
23 they're not part of any of this case. And, therefore, I
24 been recording the conversations, and I got Jake and
25 Mr. Yarborough on three different occasions that they don't

1 represent me in no kind of ways, Your Honor. And I
2 understand Mr. Yarborough got a good record and all this.

3 THE COURT: Well, I'm, I'm willing to listen to your
4 tapes.

5 You got them?

6 THE DEFENDANT: Yeah, I got them. I can't bring a
7 cell phone in. I can email them to you real quick. I go
8 to my car, email them to you, or call my sister and she'll
9 email them to you.

10 THE COURT: No, sir, we're not doing anything by
11 email. We'll do it here in the courtroom.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Yarborough.

14 MR. YARBOROUGH: Your Honor, just to, just to be
15 clear.

16 THE COURT: Uh-huh. (Affirmative).

17 MR. YARBOROUGH: The, the person he's representing or
18 talking about is Jake Bolan, who was clerking for me during
19 the summer.

20 THE COURT: Right.

21 MR. YARBOROUGH: And he helped give him these, these
22 documents.

23 THE COURT: Right.

24 MR. YARBOROUGH: And, and after there was some
25 combativeness there---

1 THE COURT: Uh-huh. (Affirmative).

2 MR. YARBOROUGH: ---I took over and said look, these
3 are -- these were the, the chain of custody and stuff that
4 you were asking for us to get, and here is a copy of the,
5 the lab analysis. And, and I showed, I showed him all
6 that. And, and I -- he, he told me that he had -- that he
7 had given them fake drugs, and I said okay, that will be
8 your defense. I mean I, I -- and we've been over it.

9 THE COURT: So, you're aware of what he's saying?

10 MR. YARBOROUGH: Everything he's saying I'm aware of,
11 and, and I, I, I'm -- if I was harsh with him about the
12 possibility of taking a plea --

13 THE COURT: Uh-huh. (Affirmative).

14 MR. YARBOROUGH: -- that may, that may be the case.
15 But other than that, Mr. Morton and I have always gotten
16 along, and, and he told me about this defense, and he told
17 me about this when he, when he, when he came to my office
18 the other day. And I'm happy to help him in this trial.

19 THE COURT: Mr. Morton.

20 THE DEFENDANT: Yeah. He can be here because, like he
21 told me, he's too far in now, and I really do feel like
22 he's too far in because, if any, you know, like logical
23 judge, someone who really guess what, this is not how the
24 law's suppose to be. This is wrong. I don't feel that
25 y'all should be taking up my time or the Court's time with

1 this type of stuff with that y'all have to go back and try
2 to straighten this stuff out.

3 I told you the, the stuff I gave to this other guy
4 over here was synthetic drugs. We had something going on.
5 The police weren't no where involved. You done broke the
6 law all these times, and now, soon as you try to spend
7 counterfeit money with me, and I know---

8 THE COURT: Mr. Morton, I have a concern here.
9 You're, you're, you're wanting to fire your attorney.

10 THE DEFENDANT: I don't even want to---

11 THE COURT: Let me finish now. I'm talking.

12 You say you want a public defender, but you've paid
13 him -- paid for an attorney already. So, I mean I don't
14 think you're gonna get a public defender. You're not gonna
15 qualify.

16 why should the State pay for an attorney when you can
17 afford to pay an attorney?

18 Yes, sir.

19 THE DEFENDANT: Yes. If you look behind, Your Honor,
20 this is my wife, Alicia. She been working since we been in
21 high school with -- well, while she was in high school, and
22 she took a loan so I could pay Mr. Yarborough. I don't
23 have any money, and I still owe Mr. Yarborough money now,
24 and he knows this.

25 THE COURT: Yes, sir, Mr. Yarborough, you're shaking

1 your head on something.

2 MR. YARBOROUGH: I'm just gonna tell you, Judge, he,
3 he hired me with an initial retainer, and was not able to
4 pay after that. I, I felt like I had, I had filed my
5 notices. I never have tried to get out of it. Never tried
6 to tell him that I wouldn't represent him for money. I,
7 I'm---

8 THE COURT: Uh-huh. (Affirmative).

9 MR. YARBOROUGH: ---good with --.

10 THE COURT: So, you're, you're good with where you
11 are?

12 MR. YARBOROUGH: I am where I am, and that's---

13 THE COURT: All right. It seems to me, Mr. Morton,
14 that I have not heard a, a good reason why Mr. Yarborough
15 should be fired. It appears to me that this is for the
16 purpose of delaying the trial, and that will be my finding.

17 So, I will allow you to proceed with the lawyer that
18 you have representing you or I'll allow you, if you wish to
19 fire him, and to go forward, but you would do so without a
20 lawyer. And I understand that you have discussions
21 sometimes with your attorney, when you're talking about
22 strategy or pleas, and sometimes those discussions can get
23 pretty serious. I understand that. I practiced law for a
24 while. I've been there.

25 Do you want to take a few minutes and talk to

1 Mr. Yarborough or not?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. Then I guess I need to know
4 how you wish to proceed today.

5 THE DEFENDANT: I would like---

6 THE COURT: I got a jury waiting. We're ready to
7 start.

8 Yes, sir.

9 THE DEFENDANT: Yeah, I would like to proceed, sir,
10 but I don't -- I wish not to have Mr. Yarborough on my
11 side. He could -- if he could give me my case load, and I
12 could sit down right here in front of y'all, I don't have
13 to go to no bathroom or nothing, and we can proceed.

14 THE COURT: All right. Mr. Yarborough, I think he's
15 dismissing you. I'm not sure. He really hasn't said that
16 yet.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you asking Mr. Yarborough to get off
19 your case?

20 Yes, sir.

21 THE DEFENDANT: Yes.

22 THE COURT: Okay. Mr. Yarborough, I'll give you ten
23 minutes to meet with him or whatever you need to decide
24 what documents he might need from your file. But he's
25 releasing you from any further responsibility on the case.

1 MR. YARBOROUGH: Okay.

2 THE COURT: All right. Court will be in recess for
3 about ten or fifteen minutes.

4 If you'll let me know, Mr. Yarborough, when you're
5 ready to start.

6 MR. YARBOROUGH: Okay. Thank you, Your Honor.

7 (WHEREUPON, a short recess was taken at this time.)

8 THE COURT: All right. Mr. Yarborough, have you had
9 an opportunity to meet with Mr. Morton about his case?

10 MR. YARBOROUGH: I have, Your Honor.

11 THE COURT: Have you gone over the documentation that
12 you had and prepared for trial?

13 MR. YARBOROUGH: I have not given him all of my
14 preparation.

15 THE COURT: All right. Has he had -- have you
16 answered all the questions that he had concerning those
17 matters?

18 MR. YARBOROUGH: I believe so, yes, sir, Your Honor.

19 THE COURT: All right. And you feel there's any
20 reason for you to further consult with him if you're not
21 going to be representing him in this trial?

22 MR. YARBOROUGH: No, sir.

23 THE COURT: All right. Then I'm gonna relieve you as
24 his attorney at his request. I find, however, that it's
25 been done without just cause. I don't find that you've

1 done anything that would prejudice his case, and I also
2 find that you were prepared to go forward with the trial
3 today.

4 Am I correct?

5 MR. YARBOROUGH: I am correct, Your Honor. In fact,
6 he has taken my trial notes and he thinks they're good. He
7 wants to use them.

8 THE COURT: Okay. So, I find that you were prepared
9 and ready to go to trial. The information that he gave to
10 me concerning his reasons for releasing you I find were not
11 sufficient. However, I'll allow him to do so if he chooses
12 to do that.

13 MR. YARBOROUGH: All right.

14 THE COURT: And I will find, however, that this is
15 primarily for the purpose of delaying the trial. So, I'm
16 going to allow him to go forward without counsel, and, at
17 this time, you're released from any further responsibility
18 in the case.

19 MR. YARBOROUGH: Thank you, Your Honor.

20 THE COURT: Thank you, sir. Appreciate your coming
21 today.

22 Now, Mr. Morton, in my absence from the courtroom, I
23 have contacted the Public Defender's Office. I intend to
24 have an attorney here to meet with you shortly. Now, that
25 attorney is not going to be required to represent you in

1 this case. However, I am going to have that attorney to be
2 available to you for you to ask questions of your -- during
3 your representation of yourself.

4 Do you understand what I'm going to do?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Now, sir, do you agree that
7 you've received the documents that you think are necessary
8 for you to go forward?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Anything else you need to
11 discuss with the Court before we take a break for lunch at
12 this time?

13 THE DEFENDANT: No, sir.

14 THE COURT: All right. Now, I'm going to ask that the
15 officers take you into custody at this time. They're going
16 to make you available to whoever comes over here from the
17 Public Defender's Office so that they can become familiar
18 with your case. You told me, if you had five minutes with
19 a public defender, you would be ready to go forward.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. So, I'm going to have that
22 person come in to answer your questions, and then, once
23 you've had an opportunity to do that, it's my intention to
24 pick a jury some time around two o'clock this afternoon. I
25 have released the jury until that time.

1 So, we're in recess until two o'clock.

2 The, the police officers or the officers who are in
3 charge of the jail room will let you know when the public
4 defender has arrived, and you will be given an opportunity
5 to discuss this matter with that person.

6 So, we're in recess until two o'clock. Thank you very
7 much.

8 SOLICITOR MABBS: Thank you, Your Honor.

9 THE DEFENDANT: May I give this to my wife?

10 THE COURT: Sir?

11 THE DEFENDANT: May I give my, my paperwork---

12 THE COURT: Your documentation?

13 THE DEFENDANT: Yes, sir, to my wife.

14 THE COURT: well, I have no problem with him actually
15 keeping that information or at least it being, it being
16 given to him when the public defender arrives cause he's
17 gonna need to discuss that with the public defender -- I'm
18 talking to the officer. But he needs -- he'll need to be
19 able to discuss that with the public defender when the
20 public defender arrives.

21 Yes, sir, what's your question?

22 THE DEFENDANT: May I please give my paperwork to my
23 wife?

24 That way it won't be misplaced.

25 THE COURT: I don't have any problem with her holding

1 it, but now you may want to have that to talk to this
2 lawyer with.

3 THE DEFENDANT: She will be here, sir.

4 THE COURT: She's not gonna be in the jail holding
5 cell with you.

6 THE DEFENDANT: Okay. So, basically, I'm getting
7 locked up for no apparent reason?

8 THE COURT: No, sir, you did not appear this morning
9 when trial started. You weren't present when I called the
10 roll this morning.

11 THE DEFENDANT: Say, sir---

12 THE COURT: And you did not appear when I called the
13 roll this morning. You appeared in my courtroom after I
14 called the roll.

15 Yes, sir.

16 THE DEFENDANT: Yes, sir, my lawyer stated that I had
17 time to get here, but well, the person who was representing
18 me cause I stay in a whole different county.

19 THE COURT: Yes, sir, and you did that---

20 THE DEFENDANT: And I work third shift.

21 THE COURT: And I am -- I want to be assured that you
22 have a chance to talk to this lawyer. And if you're not
23 present when he gets here -- I want you to be present when
24 he gets here.

25 THE DEFENDANT: Sir, I was sitting right here. Won't

1 even use the bathroom. But it's okay. All I want to do is
2 give the proper paperwork to my wife if it's okay.

3 Could you please---

4 THE COURT: Give it to her. I don't care who you give
5 it to. I just said you may want to have it to let your
6 lawyer look at it.

7 THE DEFENDANT: Yeah, he would -- she'll be here. If
8 that's possible, she'll be in the courtroom while y'all
9 gonna -- she'll be in---

10 THE COURT: I'm starting the trial of the case. Your
11 bond is now completed.

12 THE DEFENDANT: I'm ready for that, Your Honor.

13 THE COURT: I know you are.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And I'm asking them to hold you until the,
16 the public defender gets here.

17 THE DEFENDANT: It's no problem, sir. I came here
18 willingly this morning.

19 THE COURT: Okay, sir.

20 THE DEFENDANT: I'm willing to come here any day.

21 THE COURT: All right, sir. Thank you very much.

22 Court's in recess until two o'clock.

23 (Whereupon, Court was in recess for the lunch hour.)

24 THE COURT: We are back on the record in the case of
25 The State of South Carolina versus Dana L. Morton.

1 Mr. Morton, before we took our break, I had asked that
2 you be taken into custody. I probably didn't explain
3 myself fully at that time.

4 Of course, I indicated to you the trial was about to
5 begin, and the terms of your bond had been fulfilled.
6 Also, I would point out that your position throughout the
7 morning, when I've talked with you, has been that this
8 Court does not have, unless we're some kind of moral court
9 or moral judge, that we have no authority over you. You
10 refused to answer my questions regarding the indictments.
11 In fact, you refused to recognize that you were even the
12 person on the indictments.

13 So, it appeared, to me, from your act -- your
14 positions that you've took, that you do not recognize the
15 authority of this Court to compel you to do anything was
16 one of the factors that entered into my decision that I
17 should hold you until such time as you have talked to an
18 attorney who I asked to step over. I believe that's
19 occurred now. You've had an opportunity to do that. And
20 also I wanted to assure myself that you appeared.

21 You did not appear for the roll call. I know you
22 indicated your lawyer told you you didn't have to. I
23 didn't try that. I just know that you did not appear for
24 the morning session, and I did note also that your position
25 has been, so far this morning, that, unless somehow I am

1 some type of a moral judge, that I don't have authority
2 over you.

3 So, that's the reason I made the decision to hold you
4 over the, the break to, to assure that we can proceed
5 because, it's been my finding, it remains my finding, that
6 your efforts this morning have been designed to try to
7 delay this trial. And so that's the reason why I did what
8 I did.

9 Now, I will ask that you please stand. Remind you
10 that you have been placed under oath with our proceedings,
11 and I -- Mr. Allen, who is the Circuit Public Defender, has
12 been so kind, at my direction, to come in and to consult
13 with you. I will point out to you that he does not
14 represent you, and is not your lawyer. You've asked to
15 represent yourself, and I'm going to allow you to do that.

16 Now, let me ask you a couple of questions, Mr. Morton.

17 Do you have all the documents present that you need to
18 proceed in your case?

19 (No response.)

20 THE COURT: Are you aware of any other documents that
21 you need?

22 Yes, sir, I'm asking you a question.

23 THE DEFENDANT: I don't want to make it like I'm
24 trying to overtalk you, Your Honor. I don't want to do no
25 more time than I have to.

1 THE COURT: well, I, I just told you not to talk when
2 I'm talking, but, when I ask a question, I'm ready to hear
3 from you.

4 THE DEFENDANT: Your Honor, I have other evidence
5 meaning like stuff that I could bring the same thing that I
6 gave the, I don't know how to put it, informant or police
7 officer. The same thing that I gave him, the, the
8 synthetic drugs. I have that to show the jury, but what I
9 mean by the stuff that, that, I guess, they'll possibly see
10 on the screen so I can show them it's real easy to go spend
11 \$3.00 at your local convenience store, get this stuff, and
12 put in it a bag.

13 THE COURT: You said you have that stuff though.
14 Is that right?

15 THE DEFENDANT: Yes, sir, I didn't bring it to me
16 because I wasn't driving. I couldn't drive. I don't have
17 a valid driver's license.

18 THE COURT: well, you indicated your wife is here.
19 She could retrieve that for you at the appropriate
20 time, could she not?

21 THE DEFENDANT: Yes, she can.

22 THE COURT: Okay.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Anything else you feel that
25 you might need to try, to try the case?

1 THE DEFENDANT: Yes, I need my cell phone so I can
2 play the, play the---

3 THE COURT: You indicated that was in your automobile
4 as well.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you indicated your wife drove you
7 here, and I believe she's seated right behind you.

8 THE DEFENDANT: Uh-huh. (Affirmative).

9 THE COURT: So, she can get that for you as well,
10 could she not?

11 THE DEFENDANT: Yeah, the, the synthetic drugs, I
12 didn't even put them in the car this morning because see I
13 done been through this procedure like five times already.
14 I come to court, hold on, don't come, come to my office
15 type thing. I been wanting to come to court. I been
16 wanting to take a jury trial. Every time I got to the---

17 THE COURT: well, I'll, I'll point out to you,
18 Mr. Morton, right now your case will begin once the State
19 has completed its case. You would not be in a position to
20 enter any evidence until whatever case you decide to put
21 up. You're not required to put anything up.

22 THE DEFENDANT: Okay.

23 THE COURT: I just want to know if you have anything
24 that you need, that you need at the present time to proceed
25 with the trial of your case. If there's some document or

1 something, I understand the two things you've mentioned,
2 and I think we've determined they're available to you.

3 Anything else?

4 THE DEFENDANT: Yes, sir, one is in Greenwood, South
5 Carolina.

6 THE COURT: What is that?

7 THE DEFENDANT: That's the synthetic drugs, and I have
8 my cell phone in the vehicle that we rode in this morning.

9 THE COURT: Anything else?

10 THE DEFENDANT: That's all.

11 THE COURT: Okay. Now, you've had an opportunity to
12 talk to Mr. Allen. Mr. Allen will remain here as the trial
13 proceeds. He is here to answer questions that you might
14 have concerning the procedure that we're following, to
15 assist you in, in, in being able to present the case that
16 you want to present. But he does not represent you, and
17 will not be engaging in strategy discussions, and things of
18 that nature.

19 So, you understand the purpose he's serving is to be a
20 technical adviser, I guess, as to what's going on in the
21 courtroom, and the procedure we're following, and, if you
22 have a question of him, I'm sure you can pose it. If he
23 feels that's something that he cannot answer, I'd ask that
24 Mr. Allen let -- get the Court's attention. We'll be glad
25 to take a break and work out whatever problems you might

1 have at that time.

2 Do you understand how we're going to proceed?

3 (WHEREUPON, the Defendant nods affirmatively.)

4 THE COURT: You have to answer verbally. See, she
5 takes this down, but she only takes down verbal
6 communications.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: So, if you shake your head, that doesn't
9 go on the, the recordings.

10 So, are you ready to proceed?

11 THE DEFENDANT: I am ready to proceed, Your Honor,
12 just by special appearance.

13 THE COURT: Well, sir, I understand that you're taking
14 the position that you're making a special appearance, and,
15 of course, the Court has informed you you're here for your
16 jury trial.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And you do not have to participate if you
19 do not wish to. You've indicated to me that you wish to do
20 so.

21 Is that what you wish to do?

22 Do you wish to participate in this trial?

23 (WHEREUPON, the Defendant raises his hand.)

24 THE COURT: You don't have to raise your hand when I
25 ask a question.

1 THE DEFENDANT: Your Honor, like I stated earlier, I
2 feel that this courtroom, that you -- that -- that it don't
3 have the jurisdiction over me, but it's like -- almost like
4 I'm being forced into it. So, I have no other---

5 THE COURT: No, sir, you are not being forced into it.
6 I have given you the opportunity, on a couple of occasions,
7 if you wish to withdraw from this proceeding, you can
8 withdraw from this proceeding. Now, that doesn't mean I'm
9 gonna release you because you're here for your trial.

10 THE DEFENDANT: I would like to be present if anything
11 is gonna be done to Dana Morton because I'm here on special
12 appearance, and I don't---

13 THE COURT: Well, again, you're here for your trial.

14 THE DEFENDANT: Uh-huh. (Affirmative).

15 THE COURT: Do you want to participate in the trial?

16 THE DEFENDANT: We can go forward, Your Honor.

17 THE COURT: Do you wish to participate in your trial?

18 THE DEFENDANT: Can I speak with the adviser?

19 THE COURT: Yes, sir, please do.

20 (Pause.)

21 THE COURT: Yes, sir.

22 THE DEFENDANT: Yes, I wish to proceed.

23 THE COURT: In the trial of the case?

24 THE DEFENDANT: Yes, and then I would like to go with
25 a motion.

1 THE COURT: well, is this a pretrial motion?

2 THE DEFENDANT: I wish I was smart enough to know this
3 stuff.

4 Sir, it would be -- I would ask for to -- for you, as
5 the judge, to, to almost -- to -- to, to make yourself
6 smaller almost in a sense, sir. To, to dis -- what is it,
7 sir, again?

8 Excuse me.

9 (Pause.)

10 THE DEFENDANT: I would ask for you to discuss
11 (phonetic) yourself as a judge, and because I feel that the
12 Court have no jurisdiction over me in this matter, Your
13 Honor.

14 THE COURT: Okay. That motion has been heard, and
15 I'll deny the motion. I find that we do have jurisdiction
16 over you, and that I have jurisdiction to try the case.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Any others matters that you
19 need to take up with me?

20 Now, what we're gonna do -- anything else you need to
21 take up with me at this time?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right. We're going to go into jury
24 selection in the case.

25 Now, do you have a list of people or can you tell me

1 anybody you intend to call as a witness in your trial of
2 the case?

3 THE DEFENDANT: Yes.

4 THE COURT: Tell me who they are.

5 THE DEFENDANT: It's the defendant, George Vaughn.

6 THE COURT: George Vaughn?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. He is on the State's witness
9 list.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Anyone else?

12 THE DEFENDANT: That will be all.

13 THE COURT: So, you don't intend to call any other
14 witnesses?

15 THE DEFENDANT: Yes, sir, I do.

16 THE COURT: Okay. Who else?

17 THE DEFENDANT: Jake. I don't know Jake name. I know
18 he ain't from State Farm, but he Jake.

19 THE COURT: Jake?

20 THE DEFENDANT: Yeah, he was a part of my --.

21 THE COURT: Let me ask the State.

22 Do you know who he might be talking about?

23 SOLICITOR MABBS: Your Honor, I believe what

24 Mr. Yarborough was saying earlier was he was a summer law
25 clerk in Mr. Yarborough's office. He had some interaction

1 with Mr. Morton. I believe he's a law student at South
2 Carolina, but I'm not quite sure.

3 THE COURT: Okay. Have you issued a subpoena to this
4 individual?

5 THE DEFENDANT: No, sir, I have -- I will if I can.

6 THE COURT: Well, so, Jake was employed by
7 Mr. Yarborough?

8 SOLICITOR MABBS: Okay. Your Honor, he's talking --
9 there was a Jacob Bolan, who I believe was a law clerk with
10 Mr. Yarborough this summer.

11 THE COURT: B-O-W-E-N?

12 SOLICITOR MABBS: B-O-L-A-N.

13 THE COURT: All right. Anyone else?

14 I need to ask the jury if they know these people. I'm
15 trying to find out if there's anybody who would be a
16 potential witness that I need to ask them about.

17 So then -- you named, you named George Vaughn and Jake
18 Bolan.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Is that it?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay.

23 THE DEFENDANT: That I know by name. I don't know
24 people by name.

25 THE COURT: Well, are there other people?

1 THE DEFENDANT: I wouldn't mind calling a couple of
2 people that, that knows the informant, and could speak and
3 know that he was spending counterfeit money with more than
4 just me.

5 THE COURT: Well, I assumed that there's going -- I, I
6 don't know your case. I'm looking at the list that we've
7 already been given, and it looks like we have several
8 people from the Sheriff's Office on here. And you -- if
9 they testify, you will be given an opportunity to
10 cross-examine them.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: So, you'll be given a chance to ask
13 questions of those people who testify in the case.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And then, once that's completed, then --
18 well, I guess my question is do you have anybody that you
19 know that you'll call in your defense, and you're not
20 required to even put up a defense.

21 THE DEFENDANT: Yeah.

22 THE COURT: But do you know of somebody that you would
23 call if that -- you decided to do that?

24 THE DEFENDANT: No, sir.

25 THE COURT: Okay. All right. Now, I'm going to ask a

1 series of questions of the jurors. Once I finish asking
2 those questions, I'll be asking you if you have any
3 additional questions that you'd like for the Court to ask.
4 You'll need to address me. Don't ever address the jury
5 unless I tell you to address the jury.

6 Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. And what we're going to be doing
9 is, once we have a jury list picked, we'll be giving you an
10 opportunity to strike people from that jury. They'll be
11 called in front of us, and you'll have the right to strike
12 from that list. I believe the strikes are going to be---

13 SOLICITOR MABBS: Five.

14 THE COURT: Five and five?

15 SOLICITOR MABBS: I believe, Your Honor, because it's
16 a 25 year charge, I believe he gets ten.

17 THE COURT: He gets ten.

18 SOLICITOR MABBS: So---

19 THE COURT: Okay. I have not looked it up, but I'll
20 check on that when we get to that point.

21 All right. Let's bring the jury panel in. You can be
22 seated, Mr. Morton.

23 THE DEFENDANT: If it's not a problem, Your Honor, may
24 I stand?

25 THE COURT: You can be seated, Mr. Morton. When you

1 are talking you stand. You don't stand the whole trial.

2 THE DEFENDANT: Okay. I just got to urinate real bad,
3 and I know if I sit down---

4 THE COURT: Well, wait a second then. Take him to the
5 restroom.

6 Don't bring the jury in until he is returned, and, if
7 you would, stop them in the hallway so they don't see him
8 crossing to go to the restroom please.

9 (WHEREUPON, a short recess was taken at this time.)

10 THE BAILIFF: Okay. I am bringing them around.

11 THE COURT: All right.

12 (WHEREUPON, the following takes place in the presence
13 of the jury venire.)

14 THE COURT: All right. The record will reflect that
15 the jury panel has returned to the courtroom, and we're
16 about to begin the trial of the case of the State of South
17 Carolina versus Dana L. Morton.

18 I have been presented with two indictments in the
19 case. I'm going to go over the indictments with you. An
20 indictment is simply the document that brings the case into
21 this court. It informs the defendant of the charges that
22 have been lodged against him. It informs this Court of the
23 charges that are to be tried.

24 Indictments are not evidence and can't be used by a
25 jury in any manner whatsoever in determining the guilt or

1 the innocence of a person named in that indictment. Again,
2 it's simply an informational document that informs us of
3 the charges that have been lodged. I'm going over the
4 indictments with you for the purpose of explaining to you
5 what the charges are, when the allegations indicate that
6 these particular events occurred. That information may be
7 of some use to you later on in answering some questions
8 that I'm going to ask you that will pertain to this case.

9 The first indictment I will discuss with you, again,
10 is Case 17-4141. That's possession with intent to
11 distribute marijuana.

12 The indictment states, in part, that Dana L. Morton
13 did, in Spartanburg County, on or about February the 2nd,
14 2017, manufacture, distribute, dispense, deliver, purchase,
15 aid, abet, attempt, or conspire to manufacture, distribute,
16 dispense, deliver, or purchase, or possess with the intent
17 to manufacture, distribute, dispense, deliver, or purchase
18 a quantity of marijuana, a Schedule I controlled substance,
19 in violation of Section 44-53-370 of the Code of laws of
20 South Carolina, 1976, as amended, as amended, against the
21 peace and dignity, and contrary to the statute in such case
22 made and provided.

23 The second indictment is Case Number 17-GS-42-4142.
24 This indictment is for the offense of trafficking in
25 cocaine.

1 This indictment states, in part, that Dana L. Morton
2 did, in Spartanburg County, on or about February 2nd, 2017,
3 knowingly sell, manufacture, deliver, purchase, or bring
4 into the state, or did provide financial assistance, or did
5 otherwise aid, abet, attempt, or conspire to sell,
6 manufacture, deliver, purchase, or bring into the state, or
7 did knowingly, actually or constructively, possess, or did
8 knowingly attempt to actually or constructively possess
9 more than 100 grams of cocaine, a Schedule II controlled
10 substance, in violation of Section 44-53-370 of the Code of
11 Laws of South Carolina, 1976 as amended, against the peace
12 and dignity of the state, and contrary to the statute in
13 such case made and provided.

14 Now, to those indictments, the Defendant has pled not
15 guilty, and has requested a trial by a jury. Again, I go
16 over that information with you solely for the purpose of
17 explaining to you the nature of the charges, and then the
18 events alleged to have, to have occurred.

19 Now, I'm going to ask a series of questions about the
20 case, and, again, it's important that the information that
21 you provide, in answer to these questions, is truthful,
22 honest, and complete because that information will be used
23 to determine your eligibility to serve on this case as well
24 as can be used by the attorneys in jury selection.

25 So, again, I'm going to ask that the clerk place you

1 under oath concerning the answers that you're about to give
2 in this case.

3 Madam Clerk, place the jury panel under oath for me.

4 (WHEREUPON, the jury was duly sworn at this time.)

5 THE CLERK: Thank you.

6 THE COURT: Now, if any of you either failed or
7 refused to take the oath just administered by the clerk,
8 please stand at this time.

9 (No response.)

10 THE COURT: The record then will reflect that all
11 potential jurors have been sworn for purposes of this
12 particular case.

13 Before I begin my questioning, I'm going to have the
14 parties introduce themselves. First of all, the state will
15 be introduced through its attorneys.

16 If you would please introduce yourselves to the jury.

17 SOLICITOR MABBS: Thank you, Your Honor.

18 I'm Allison Mabbs. I'm with the Seventh Circuit
19 solicitor's office. This is Russell Ghent. He's also with
20 the Seventh Circuit solicitor's office.

21 THE COURT: Thank you.

22 SOLICITOR MABBS: And, Your Honor, would you like me
23 to introduce my witnesses at this point or---

24 THE COURT: well, I'll call them later. Thank you.

25 All right. And, for the defense, I will point out

1 that Mr. Morton has -- is representing himself in this
2 case.

3 Mr. Morton, if you would please stand and face the
4 jury panel so that they can put your face with your name.

5 (WHEREUPON, the Defendant complies.)

6 THE COURT: This is Mr. Dana L. Morton.

7 Thank you very much. You can be seated.

8 (WHEREUPON, the Defendant complies.)

9 THE COURT: And I have appointed a public defender to
10 be present, and be of technical assistance to Mr. Morton.
11 But, technically, they do not represent him. Mr. Clay
12 Allen is stand -- is over here to the right, and he is here
13 to be of any assistance Mr. Morton might need in
14 understanding the procedures that we're following here in
15 the courtroom.

16 Now, again, I'm going to ask a series of questions.
17 I'm gonna do it like we did in jury qualification. I'll be
18 asking a question. I'll ask you to stand if you have a
19 response to the question. If you do, I'll need your name
20 and juror number on the record first before we discuss
21 whatever the response is that you might have to my
22 question.

23 First of all, is there any member of the jury panel
24 who has ever been related by marriage or are you related by
25 blood to the Defendant, Mr. Dana L. Morton?

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1 THE COURT: All right. Bring the jury in.

2 (Whereupon, the jury returned to the courtroom at
3 11:17AM.)

4 THE COURT: All right. The record will reflect that
5 the jury has returned to the courtroom.

6 Has the jury reached a verdict, Madam Forelady?

7 THE FORELADY: Yes, sir.

8 THE COURT: Pass the form to Mr. Alford please.

9 (WHEREUPON, the forelady complies.)

10 THE COURT: Thank you very much.

11 Madam Clerk, you may publish the verdict.

12 THE CLERK: State of South Carolina, County of

13 Spartanburg, State of South Carolina versus Dana Morton.

14 In the Court of General Sessions, Seventh Judicial
15 Circuit, we, the jury, unanimously find as the following
16 indictment:

17 In Case Number 2017-GS-42-4141, possession with intent
18 to distribute, guilty.

19 In the Case 2017-GS-42-4142, trafficking in cocaine,
20 guilty.

21 I certify this is the decision of the, of the --
22 unanimous decision of the jury signed by Melissa Morton
23 today, October the 19th, 2018.

24 Ladies and gentlemen of the jury, is this your verdict
25 and still your verdict, if so, please raise your

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1 right-hand.

2 (WHEREUPON, all juror raise their right-hands at this
3 time.)

4 THE CLERK: So say you all.

5 THE COURT: Thank you.

6 Anything further from the State before I release the
7 jury?

8 SOLICITOR MABBS: Nothing from the State, Your Honor.

9 THE COURT: Anything from the defense?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Yes, sir.

12 THE DEFENDANT: I would like a poll.

13 THE COURT: All right. Madam Clerk, we'll poll the
14 jury.

15 Ladies and gentlemen of the jury, we're gonna call
16 your names. You need to follow the clerk's instructions as
17 to how to respond to her question.

18 Madam Clerk.

19 THE CLERK: Ladies and gentlemen, I'll be asking you
20 the question, and the question is is this your verdict and
21 still your verdict. Once I call your name and number, if
22 you'd just please raise your right-hand, and answer yes or
23 no.

24 Juror 163, Brittney Sarratt, is this your verdict and
25 still your verdict?

1 THE JUROR: Yes.
2 THE CLERK: Juror 123, Melissa Morton.
3 THE JUROR: Yes.
4 THE CLERK: Juror Number 80, Robert Hartranft.
5 THE JUROR: Yes.
6 THE CLERK: Juror Number 33, Sarah Clemons.
7 THE JUROR: Yes.
8 THE CLERK: Juror Number 90, Edna Jackson.
9 THE JUROR: Yes.
10 THE COURT: Juror Number 155, Matthew Shields.
11 THE JUROR: Yes.
12 THE CLERK: Juror Number 13, David Bowyer.
13 THE JUROR: Yes.
14 THE CLERK: Juror Number 11, Crystal Bland.
15 THE JUROR: Yes.
16 THE CLERK: Juror Number 104, Jordan Lawson.
17 THE JUROR: Yes.
18 THE CLERK: Juror Number 123, Thai Nguyen.
19 THE JUROR: Yes.
20 THE CLERK: Sorry.
21 Juror Number 22, William Morris.
22 THE JUROR: Yes.
23 THE CLERK: And Juror 179, Kelsey West.
24 THE JUROR: Yes.
25 THE CLERK: So say you all.

1 THE COURT: All right. After polling, it appears the
2 verdict is unanimous.

3 (WHEREUPON, the jury panel was released at this time.)

4 THE COURT: Mr. Morton, you can stand.

5 (WHEREUPON, the Defendant complies.)

6 THE COURT: Mr. Morton, I have received the sentencing
7 sheets in your case, and you have been found guilty by a
8 jury of your peers of the two charges that are before this
9 Court, which is possession with the intent to distribute
10 marijuana, and trafficking in cocaine.

11 Now, it does not -- I note that you have signed the
12 sentencing sheet. There's a blank for the -- there's a
13 blank for an attorney for the Defendant, and, of course,
14 you were representing yourself.

15 Do you have any objection to my adding that you were
16 pro se, that's a Latin word that meant you were for
17 yourself?

18 THE DEFENDANT: No.

19 THE COURT: Do you have any objection to me adding
20 that to the sheet?

21 THE DEFENDANT: No.

22 THE COURT: All right, sir.

23 All right. At this time, the Court is considering the
24 appropriate sentencing in this case. I will tell you that
25 I have been informed that the offense of trafficking in

1 cocaine 100 grams or more, but less than 200 grams is
2 classified in this state as a violent and a serious
3 offense. As such, it carries certain restrictions
4 concerning availability of parole, and things of that
5 nature. This Court does not determine parole. At this
6 point in time, my job is to determine the appropriate
7 sentencing in this case.

8 Now, I'll talk to the State.

9 Ms. Mabbs, my understanding of the sentencing for
10 trafficking in cocaine at that level is a mandatory 25
11 years.

12 Is that correct?

13 SOLICITOR MABBS: Correct, Your Honor, and a---

14 THE COURT: And a fine of \$50,000.

15 SOLICITOR MABBS: That's correct, Your Honor.

16 THE COURT: All right.

17 MR. ALLEN: Your Honor?

18 THE COURT: And the other offense, which is possession
19 with the intent to distribute marijuana, and I believe that
20 you're asking that this be classified as a second offense.

21 SOLICITOR MABBS: That's correct, Your Honor, and I do
22 have the certified convictions if Your Honor---

23 THE COURT: Okay. I'll let you put that in at the
24 appropriate time.

25 My understanding of the maximum sentence on that

1 particular charge is anywhere from zero up to ten years
2 and/or a fine of zero up to \$10,000.

3 SOLICITOR MABBS: That's correct, Your Honor.

4 THE COURT: Is that your understanding?

5 SOLICITOR MABBS: Yes, Your Honor.

6 THE COURT: Yes, sir, Mr. Allen.

7 MR. ALLEN: May he make a posttrial motion, Your
8 Honor?

9 THE COURT: Yes, sir, I'll be glad -- I, I just wanted
10 to go over it to be sure we had an agreement as to the
11 potential penalties.

12 MR. ALLEN: Okay.

13 THE COURT: And do you have a disagreement with what
14 we said about that, either Mr. Morton or Mr. Allen,
15 concerning those potential penalties?

16 MR. ALLEN: No, Your Honor. That's my understanding
17 of the law.

18 THE COURT: Is that your understanding as well, Mr.
19 Morton?

20 THE DEFENDANT: I assume so.

21 THE COURT: Okay. Now, you -- I understand you do
22 wish to introduce or place in the record posttrial motions.
23 I'll hear from you at this point in time.

24 THE DEFENDANT: I move for a new trial on the grounds
25 as I have previously stated in my motions for direct

1 verdict based upon all the previous motions, and objections
2 made during this -- during the trial, and rule against the
3 defenses, Defendant, which is me.

4 THE COURT: Yes, sir.

5 All right. I note those motions, motion for new
6 trial. I have been present and reviewed the evidence
7 throughout the trial. I see no reason to disturb or
8 overturn the verdict or for me to act as a 13th juror. So,
9 at this point in time, the motions will be denied.

10 MR. ALLEN: Yes, sir.

11 THE COURT: I'll allow the conviction to stand at this
12 time.

13 Now, Mr. Morton, I'm going to give you an opportunity
14 to speak to me about sentencing --

15 THE DEFENDANT: Uh-huh. (Affirmative).

16 THE COURT: -- at this point in time. And, once
17 you've finished, I'm going to talk with the State about the
18 situation. They're going to go over with me your prior
19 criminal record, and some other information they want to
20 share. I'll come back to you and give you a chance to
21 respond to that once they've finished.

22 Do you understand that?

23 THE DEFENDANT: Yeah.

24 THE COURT: All right. Mr. Morton, anything you'd
25 like to say to me concerning sentencing, I'll be happy to

1 hear from you.

2 THE DEFENDANT: No, sir.

3 THE COURT: Okay. Now, the State, can you tell me
4 some information please, ma'am?

5 SOLICITOR MABBS: Yes, sir, Your Honor.

6 Would you like to start with his prior record?

7 THE COURT: That would be fine, yes, ma'am.

8 SOLICITOR MABBS: Your Honor, his prior record is, in
9 1997, possession of cocaine.

10 1999, driving under suspension.

11 2000, giving false information, and a Court charge
12 that was not submitted. It appeared the arrest was for
13 loud music.

14 2001, failure to stop for a blue lights.

15 2002, simple assault and battery.

16 2003, fraudulent check.

17 2005, malicious injury to personal property.

18 2006, criminal domestic violence first, and simple
19 assault and battery.

20 2007, simple possession of marijuana, and giving false
21 information.

22 2011, possession with intent to distribute marijuana,
23 possession with intent to distribute cocaine base third
24 offense, and receiving stolen goods.

25 And, Your Honor, as I did mention, I do have certified

1 convictions from Greenwood. Your Honor, those are for the
2 possession of crack cocaine from 2010, or was it -- I'm
3 sorry, Your Honor, 2011. And then I do have the possession
4 of marijuana with intent to distribute as well, Your Honor.

5 THE COURT: All right.

6 SOLICITOR MABBS: I believe it would---

7 THE COURT: If you would, please let's pass those over
8 to let him look at those.

9 (Pause.)

10 THE COURT: Have you had a chance to look at those,
11 Mr. Morton?

12 THE DEFENDANT: Uh-huh. (Affirmative).

13 THE COURT: They're asking that I put that in the
14 record concerning your prior record primarily because they
15 are asking that you be charged, on the marijuana charge,
16 it's a second offense.

17 Is that correct, ma'am?

18 SOLICITOR MABBS: That's correct, Your Honor.

19 THE COURT: All right. Do you understand that?

20 THE DEFENDANT: I guess so.

21 THE COURT: Well, that's to establish the fact you do
22 have prior convictions.

23 THE DEFENDANT: Uh-huh. (Affirmative).

24 THE COURT: Because they're claiming that that charge
25 would be -- constitute a second offense. At least a second

1 offense.

2 All right. You may put those into the record.

3 SOLICITOR MABBS: Thank you.

4 (WHEREUPON, the indictments were marked as Court's
5 Exhibit Nos. 3 and 4 and received into evidence at this
6 time.)

7 THE COURT: Mr. Mabbs, any other information the State
8 would like to share concerning sentencing?

9 SOLICITOR MABBS: Your Honor, as far as sentencing
10 goes, I believe this was mentioned briefly before we
11 started the trial. Mr. Morton was placed on a list by the
12 Spartanburg County Sheriff's Office narcotics team that we
13 quickly refer to as the target list.

14 Your Honor, that was a list that our office spoke to
15 the Sheriff's Office about, and asked them to pick
16 basically their four biggest targets in Spartanburg County
17 that they were concerned about bringing drugs into
18 Spartanburg County. Mr. Morton was on that list, Your
19 Honor. As I believe I mentioned earlier, that's how the
20 structure of the previous offers was done. We did that for
21 all of the targets on that list.

22 Your Honor, since he was such a high target, we would
23 request consecutive sentencing.

24 THE COURT: All right. Any -- I told you I'd let you
25 speak to me after she did. If there's something you'd like

1 to respond to or correct.

2 THE DEFENDANT: Your Honor, I'd like to get it all in
3 one. That way it can be 40 years, or whatever it is, all
4 in one instead of doing two. I'd be able to go down, get
5 my G.E.D., high school diploma, whatever I got to do.

6 THE COURT: Okay, sir. I know he has been out on bond
7 while this charge was pending.

8 Do you know how much time he may have served already?

9 SOLICITOR MABBS: Your Honor, let me pull his bond
10 sheet, and I can confirm that.

11 THE COURT: Thank you, ma'am.

12 SOLICITOR MABBS: Your Honor, he was arrested on
13 February 2nd, 2017. It appears he posted bond on
14 February 3rd, 2017.

15 THE COURT: Okay. One day?

16 SOLICITOR MABBS: Yes, sir, Your Honor.

17 THE COURT: Mr. Morton, I know that you've been in
18 custody during the trial of this case. So, I am giving you
19 credit for six days of time already served.

20 All right. Mr. Morton, in the Case 2017-4142, the
21 trafficking in cocaine, it's the Sentence of this Court
22 that you be confined in the State Department of Corrections
23 for a period of 25 years, and pay a fine of \$50,000. Give
24 him credit for six days. I have run that concurrently with
25 the other sentence. That sentence is ten years, again

1 concurrent, with credit for six days on the marijuana
2 charge.

3 Good luck to you, sir.

4 THE DEFENDANT: Thank you.

5 SOLICITOR MABBS: Thank you, Your Honor.

6 THE COURT: Thank you very much.

7 Court is adjourned at this time.

8

9 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 15th, 16th 17th, 18th, and 19th days of October, 2018.

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

February 18th, 2019



PAMELA E. GREEN, Court Reporter

EXHIBIT 3

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1. Any preliminary hearing timely requested pursuant to Rule 2 of the South Carolina Rules of Criminal Procedure will be held by the appropriate court issuing the warrant or by a magistrate court designated for that purpose.

2. The Circuit Solicitor or his/her delegate will be responsible for representing the State at all preliminary hearings.

3. Any continuance of a preliminary hearing may be granted only in extraordinary circumstances upon good cause being shown to the presiding magistrate.

4. The defendant or his/her counsel of record must be present for any preliminary hearing to be conducted. If a hearing has been requested on a warrant signed by an individual private citizen affiant, the failure of that affiant to appear and provide testimony may result in the dismissal of the warrant upon motion made or *sua sponte* by the Court.

C. Initial Appearance

1. A defendant's Initial Appearance shall be held at the Cherokee County Courthouse. A Roll Call will be conducted as necessary to ensure compliance and to determine attendance by all defendants who have been noticed and ordered to appear for their Initial Appearance upon their release from pre-trial detention. The Clerk of Court is authorized to issue a bench warrant to be signed by the Chief Administrative Judge, for any defendant who fails to appear at his/her Initial Appearance and has not been excused from that appearance by the Chief Judge for Administrative Purposes for the Court of General Sessions.

2. No continuance may be granted for a defendant's Initial Appearance.

3. A preliminary hearing, if desired, must be requested in writing on or before the Initial Appearance date in accordance with Rule 2 of the South Carolina Rules of Criminal Procedure.

4. The following matters are to be addressed at the Initial Appearance:

a) Whether a defendant, who has not retained private counsel by his/her Initial Appearance date, requests and qualifies for the appointment of counsel by the Court or intends to retain private counsel.

b) If a defendant has been qualified and accepted for representation by the Public Defender or has retained private counsel prior to the Initial Appearance date, the Public Defender or the retained counsel shall file a general Notice of Representation with the Clerk of Court with a copy being contemporaneously provided to the Office of the Circuit Solicitor.

c) If a defendant has been accepted for representation by the Public Defender or has retained private counsel prior to the Initial Appearance date and a Notice of Representation has been filed with the Clerk of Court with a copy provided to the Office of the Circuit Solicitor, the defendant's physical appearance may be waived provided the defendant's counsel has filed a First Appearance Report form (Appendix Form A) with the Clerk of Court by the Initial Appearance date.

d) Where a defendant is not represented by counsel and desires to have court appointed counsel, (s)he shall remain in court until completion of the Roll Call and make application with

the Public Defender to determine whether (s)he qualifies for court-appointed counsel. The Public Defender will have appropriate personnel present for the purpose of accepting applications for those requesting court-appointed representation and upon qualification assign counsel to the defendant as soon thereafter as is practicable.

e) Any defendant who remains unrepresented by counsel at the Initial Appearance must make a Second Appearance on the date scheduled and noticed at the Initial Appearance and shall be required to appear at all subsequent terms of court as may be required by the conditions of bond until disposition of his/her case(s).

f) Any mental health issues including, but not limited to, the need for an examination and evaluation of the defendant for a determination as to competency and/or criminal responsibility with such need being timely determined by counsel as soon as is practicable after being appointed or retained for representation.

g) Any issues related to the analysis of drugs or other types of evidence.

h) Any other issue that may affect the timing of the disposition of the criminal case in accordance with the requirements and provisions of this Order.

5. In all cases where the defendant is represented by or qualifies for representation by the Public Defender, the Public Defender will assess the case at the Initial Appearance or as soon thereafter as is practicable for a determination as to potential conflicts of interest and resolve those conflicts of interest that are readily identifiable. Where a conflict of interest is determined to exist, the Public Defender shall notify the Chief Judge for Administrative Purposes for the Court of General Sessions of such conflict. At the direction of the Chief Judge for Administrative Purposes for the Court of General Sessions, the Clerk of Court shall appoint a contract attorney under contract with the South Carolina Commission on Indigent Defense for that purpose as court-appointed counsel for the defendant, and if none is available, the Clerk of Court shall appoint the next attorney from the conflict list established pursuant to Rule 608, SCACR, as court-appointed counsel. The Clerk of Court shall notify a defendant of the identity of his/her court-appointed counsel and shall notify court-appointed counsel of his/her appointment.

6. Pursuant to this Administrative Order the Circuit Solicitor and defendants' counsel of record shall be obligated to engage in the exchange of discovery material in a timely manner and as soon as practicable upon the engagement of counsel. Accordingly, when feasible, defendants' attorneys and the Circuit Solicitor will begin negotiations concerning the entry of pleas pursuant to an agreement at a defendant's Initial Appearance. If, in the discretion of the Circuit Solicitor, (s)he decides not to engage in negotiations or decides not to extend a plea offer to facilitate a disposition of the case, that decision shall be communicated to a defendant by the Circuit Solicitor at least fourteen (14) days prior to a defendant's Second Appearance. Any plea offer to be made by the Circuit Solicitor must be communicated to a defendant at least fourteen (14) days prior to the defendant's Second Appearance. Any such plea offer extended by the Circuit Solicitor must be accepted or rejected not later than the defendant's Second Appearance unless an extension of time is agreed to by the Chief Judge for Administrative Purposes for the Court of General Sessions upon a showing of good cause.

7. The Circuit Solicitor shall provide all discovery to a defendant by his/her Initial Appearance date in every case where a request has been made by proper motion pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure or any other applicable rule, statute, or case law filed with the Clerk of Court and a copy provided to the Circuit Solicitor contemporaneously therewith.

8. All law enforcement agencies are required to forward all existing case reports, investigative reports, incident reports, as well as any other discovery materials to the Circuit Solicitor within thirty (30) days of an arrest warrant being issued, but not later than fifteen (15) days prior to a defendant's Initial Appearance if the scheduled Initial Appearance is less than thirty (30) days from the date the warrant was issued.

Where a law enforcement agency fails to timely provide discovery within the time period required by this Order, the warrant(s) may be dismissed without prejudice upon motion made or *sua sponte* by the Chief Judge for Administrative Purposes for the Court of General Sessions or his designated judicial representative.

Where a warrant has been dismissed by the Court pursuant to this provision, notification of such dismissal will be provided to the defendant directly or through counsel of record and the defendant's bondsman that the defendant is not required to appear at the Initial Appearance when the warrant(s) is/are dismissed prior to that date. Before the issuance of another warrant after dismissal without prejudice of the original warrant for failure to timely comply with discovery transmittal, the requesting law enforcement agency must establish good cause to the Chief Judge for Administrative Purposes for the Court of General Sessions for its initial failure to timely transmit discovery. A failure to establish good cause will result in a refusal to issue the second warrant.

9. At the Initial Appearance each case will be assigned to a one hundred and eighty (180) day track for disposition. Any case where a defendant is charged with "Murder" or "Criminal Sexual Conduct" is exempt from the requirements and guidelines of this Order except that such cases will be assigned to a three hundred and sixty-five (365) day track for disposition. Any deviation from an assigned case track or extension of time beyond the assigned track schedule must be approved by the Chief Judge for Administrative Purposes for the Court of General Sessions.

D. Second Appearance

A defendant's Second Appearance will be scheduled for a date within one hundred and twenty (120) days of the defendant's arrest. At the Second Appearance each defendant himself/herself or through counsel of record will inform the court whether a case will be disposed of by way of guilty plea, bench or jury trial, or by way of participation in a diversionary program. Where defendant's counsel announces the manner of the disposition of a case (s)he represents to the Court that (s)he has consulted with the client and that the client is in agreement with the stated disposition of his/her case(s).

A defendant's physical appearance at his/her Second Appearance may be waived if defendant's counsel has consulted with the client and the client has made a decision as to the manner of the disposition of his/her case(s) and counsel makes an appearance on behalf of client and informs the Court as to the manner of disposition of his/her client's cases(s). A waiver of appearance of both client and counsel of record may be permitted where counsel of record has filed with the Clerk of Court by the Second Appearance date a Second Appearance Report form approved by the Court. (Appendix B)

If disposition of a case is to be by way of guilty plea the General Sessions Court Coordinator will schedule the date for disposition and notify the defendant or counsel of record and the Circuit Solicitor of the date and time of disposition. The General Sessions Court Coordinator will accommodate scheduling requests for the entry of guilty pleas that are timely made, reasonable, and do not conflict with the guidelines and requirements imposed by this Order. All sentencing sheets, restitution orders, forfeiture orders, injunctions, protection orders, restraining orders, and any other documents relevant to the disposition of the case must be completed by the defendant and/or his counsel of record and the

Circuit Solicitor and submitted to the General Sessions Court Coordinator not later than the day prior to the scheduled disposition date.

If any plea negotiations are unsuccessful by the Second Appearance date, the case will be placed on a trial docket for the next available scheduled term of General Sessions Court. Upon request of counsel of record, the Chief Judge for Administrative Purposes for the Court of General Sessions or his/her designee may, in the exercise of discretion upon good cause being shown, permit a re-status of a case to be completed not later than the next scheduled Second Appearance date where such allowance is deemed necessary to conform to the requirements of this administrative order, to permit the reasonable disclosure and sharing of discovery, to facilitate a resolution of a case pursuant to a negotiated plea agreement, or some other compelling reason.

Any case may be resolved and disposition made at any time prior to the guidelines provided for in this order.

E. General Sessions Court Practice and Court Dockets for Scheduled Terms of Court

1. The presiding judge will be available from 9:00 AM until 9:30 AM on Tuesday through Friday of each General Sessions term of court for the purpose of holding status conferences with reference to the cases appearing on the court docket with counsel of record upon request of either party or as required by the presiding judge.

2. At least twenty-eight (28) days prior to a scheduled term of court, the Chief Judge for Administrative Purposes for the Court of General Sessions will have prepared and published a docket of all cases that are subject to call during that scheduled court term. Making the published docket available in the Office of the Clerk of Court or placement on the Clerk of Court's internet site shall be deemed effective publication.

The General Sessions Court Coordinator will cause to be distributed the published court docket to all counsel of record, sureties, and parties to a bond undertaking or their designated agent, on docketed cases appearing on the published trial docket by either Fax, US Mail, hand delivery, or electronic delivery. It shall be the responsibility of the Circuit Solicitor, a defendant's counsel of record, and sureties on bond undertakings to monitor the status of pending case(s) and where a case appears on a published docket a defendant's counsel and surety shall be responsible for notifying the defendant and ensuring his/her timely presence at the scheduled term of court.

At least forty-five (45) days prior to a scheduled term of court and the publishing of the court docket for that scheduled term of court as provided for above, the General Sessions Court Coordinator shall cause to be distributed to all counsel of record a draft of the docket to be published so that counsel may confer and determine whether there exists circumstances that will conflict with or interfere with the disposition of a case proposed to be included on the published docket. In the event such a circumstance exists, counsel shall notify the General Sessions Court Coordinator as soon as practicable prior to the publishing date of the docket.

3. The Circuit Solicitor shall have discretion in the scheduling of ten percent (10%) of a published trial docket for each term of court to accommodate the scheduling of particular cases where circumstances dictate a need for special priority treatment of a case over other pending cases.


4. The Chief Judge for Administrative Purposes for the Court of General Sessions shall have discretion in requiring a status conference or the providing of a status report in any case(s) that

has/have passed the deadline for disposition. Any status report required to be submitted shall be provided on a form approved by the Chief Judge for Administrative Purposes for the Court of General Sessions. (Appendix C)

F. Bench Warrants

The issuance of any bench warrant for the failure of a defendant to comply with any obligation required by court order shall only be issued in the discretion of and at the direction of the presiding circuit judge or upon the approval of the Chief Judge for Administrative Purposes for the Court of General Sessions.

IT IS SO ORDERED.



J. Derham Cole
Chief Judge for Administrative Purposes
Of The Court of General Sessions
The Seventh Judicial Circuit Court

CLERK OF COURT
CHIEF CLERK
BRANDY W. MOBBEE
2018 DEC -4 PM 3:59

#6

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)
The STATE,)
-vs-)
John Henry DOE,)
DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS

FIRST COURT APPEARANCE REPORT

TO: THE CIRCUIT SOLICITOR *and* THE CLERK OF COURT

This letter shall serve as notice that the undersigned has been retained by the defendant, **JOHN HENRY DOE**, for representation on the below-referenced criminal warrant(s) and/or indictment(s) and provides the following information pursuant to Administrative Order(s) providing for the management of criminal cases in the Court of General Sessions.

Charge(s): _____

Warrant(s)/Indictment Number(s): _____

- A preliminary hearing has been requested. () Yes () NO
- A discovery request has been filed and served. () Yes () NO
- Discovery has been provided. () Yes () NO
- A mental health evaluation is necessary. () Yes () NO
- A drug analysis report has been provided. () Yes () NO
- There is a conflict in representation. () Yes () NO
- The 180 day track is affected by an issue(s). () Yes () NO

Joseph Henry Roe, attorney for the defendant
123 Main Street, Spartanburg, SC 29302
Post Office Box 123 Spartanburg, SC 29304
Telephone Number: 864 596 0000
Fax Number: 864 596 0001
E-mail Address: JHR@lawyer.com

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)
)
 The STATE of South Carolina,)
)
 Prosecutor,)
)
 -vs-)
)
 _____)
)
 _____)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS

SECOND APPEARANCE REPORT

and

NOTICE of INTENT as to DISPOSITION

TO: The CHIEF JUDGE, COURT OF GENERAL SESSIONS and The CLERK OF COURT

This Second Appearance Report is submitted and filed with the Clerk of Court at least 24 hours in advance of the defendant's Second Appearance in lieu of his/her physical attendance as required by Administrative Order for the disposition of cases in the General Sessions Court. Discovery has been provided in accordance with all applicable rules and law. This report shall serve as NOTICE that the defendant, after being fully advised by counsel, intends to enter a PLEA of GUILTY to the following charge(s) on the following numbered indictment(s), or to OTHER DISPOSITION, as indicated below:

1. The defendant will enter a PLEA of GUILTY (or *nolo contendere*) on:

Indictment Number 2018-GS-11-00000 to _____

Indictment Number 2018-GS-11-00000 to _____

Indictment Number 2018-GS-11-00000 to _____

with sentence negotiated with sentence recommended without sentence negotiated or recommended

Preferred Date for entering Plea _____ Presiding Judge _____

2. OR the defendant has agreed to OTHER DISPOSITION as indicated below:

transfer court pre-trial intervention drug court conditional discharge batterer's treatment program

After having been fully advised by counsel, I AGREE with the Solicitor to ENTER a PLEA of GUILTY or *nolo contendere* to the indictment(s) and charge(s) referenced above OR to OTHER DISPOSITION of my case(s) as indicated above.

 Defendant

 Solicitor for the State

3. OR the defendant DEMANDS a JURY TRIAL

NO PLEA OFFER to be extended PLEA OFFER was extended and REJECTED by the defendant

4. OR the defendant is MOST LIKELY to PLEAD GUILTY but the TERMS of the plea agreement have NOT been FINALIZED.

A RESTATUS of the case is requested in order to finalize the terms of the plea agreement.

 Attorney for the Defendant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable Roger L. Couch, Circuit Court Judge
Appellate Case Tracking No. 2018-001909

RECEIVED
MAR 12 2020
SC Court of Appeals

The State,

Respondent,

vs.

Dana L. Morton,

Appellant.

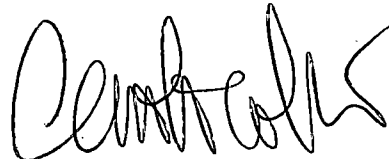
PROOF OF SERVICE

I, Caroline Collins, certify that I have served the Motion to Remand on Appellant by depositing a copy of same in the United States mail, postage prepaid, addressed to:

E. Charles Grose, Jr., Esquire
The Grose Law Firm, LLC
404 Main Street
Greenwood, South Carolina 29646

I further certify that all parties required by Rule to be served have been served.

This 12th day of March, 2020.



CAROLINE COLLINS
Administrative Coordinator
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

March 12, 2020

RECEIVED

MAR 12 2020

SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. Dana L. Morton
Appellate Case No. 2018-001909

Dear Ms. Kitchings:

After consultation with Claire Allen, Deputy Clerk of Court, please find the original with attachments of a Motion to Remand along with proof of service for filing in the above-referenced appeal.

Sincerely,

William M. Blitch, Jr.
Senior Assistant Deputy Attorney General

Enclosures

cc: E. Charles Grose, Esquire (with Exhibits)
Victim Advocacy Division (without Exhibits)