

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
Roger L. Couch, Circuit Court Judge

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MAR 18 2020

Appellate Case No. 2018-001909

SC Court of Appeals

The State,..... Respondent,

v.

Dana L. Morton, Appellant.

**MEMORANDUM IN OPPOSITION TO
STATE'S MOTION TO REMAND FOR HEARING**

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I. INTRODUCTION.

Dana Morton opposes the State's motion to remand this case for a hearing to determine whether he made a knowing and voluntary waiver of his right to counsel pursuant to *Faretta v. California*, 422 U.S. 806 (1975) because (1) the State's motion misstates the issue raised in Mr. Morton's Initial Brief of Appellant, (2) Mr. Morton requested a public defender and expressly did not waive his right to counsel, and (3) judicial economy militates in favor of this Court considering this appeal without additional delay.

II. PROCEDURAL HISTORY.

The State charged Dana Morton with possession with intent to distribute marijuana and trafficking cocaine for an incident occurring on February 2, 2017. On October 15, 2018, the State called Mr. Morton's case to trial before the Honorable Roger L. Couch and a jury. Tr. 9.¹ Allison M. Mabbs and Russell D. Ghent, both of the Seventh Circuit Solicitor's Office, represented the State. William G. Yarborough, III represented Mr. Morton. Mr. Morton moved the trial court to relieve Mr. Yarborough as counsel and to appoint a public defender. Judge Couch granted the motion to relieve Mr. Yarborough but denied the motion to appoint a public defender. Judge Couch, nevertheless, appointed Clay T. Allen, the Seventh Circuit Defender, as a legal advisor for Mr. Morton. Tr. 9-34, 42-43.

¹ Pages 1-54 and 1084-96 of the trial transcript are included as exhibits filed contemporaneously with the State's Motion for a Remand for a Hearing. Pages 108, 131-32, 141, 143, 154-57, 390-91, 393, 402-06, 632-40, 675, 727, 739, 877-78, 940, 947-51 of the trial transcript, which are cited in Mr. Morton's response to the State's motion, are attached to this pleading without duplicating the pages submitted by the State.

From October 15-19, 2018, the State tried Mr. Morton before Judge Couch and a jury. Ms. Mabbs and Mr. Ghent continued to represent the State. Solicitor Barry Barnette made a special appearance during a bench conference to argue a motion on behalf of the State. On October 19, 2019, the jurors convicted Mr. Morton of possession with intent to distribute marijuana and trafficking cocaine. Tr. 1084. Judge Couch sentenced Mr. Morton to concurrent sentences of ten years imprisonment for possession with intent to distribute marijuana and twenty-five years imprisonment for trafficking cocaine. Tr. 1094-95.

This appeal followed, and Mr. Morton raised the following issues in his Initial Brief of Appellate, filed on November 14, 2019:

1. Did the trial judge err, in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution, by requiring Dana Morton to represent himself when Mr. Morton did not affirmatively waive his right to counsel and the trial judge did not warn Mr. Morton about the dangers of self-representation as required by *Faretta v. California*, 422 U.S. 806, 807 (1975)?
2. Did the trial judge err, in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution, by failing to appoint a public defender to represent Dana Morton when the undisputed evidence demonstrated Mr. Morton could not afford an attorney and he was prepared to proceed to trial?
3. Did the trial judge err by overruling Dana Morton's objection to prosecution witnesses testifying that George Vaughn was a "reliable" confidential informant when such testimony constituted impermissible vouching for the credibility of the informant?
4. Did the trial judge err, in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution, by denying Dana Morton his rights to confront and cross-examine George Vaughn about his prior unadjudicated drug charges when that evidence was permissible impeachment?

On March 12, 2020, the State moved this Court for an order remanding this case for a hearing to determine whether Mr. Morton made a knowing and voluntary waiver of his right to counsel pursuant to *Faretta*. This response follows.

III. RELEVANT FACTUAL BACKGROUND.

When the State called his case to trial, Dana Morton informed the trial judge, “I would like to remove my lawyer from my case” because he had “a strong belief” his lawyer was “in cahoots with the State Solicitor” to persuade him to accept a guilty plea that would take him away from his family. Tr. 16. Trial counsel acknowledged he might have been “harsh with [Mr. Morton] about the possibility of taking a plea.” Tr. 28.

The trial judge misconstrued the request to relieve counsel as an indication Mr. Morton “might wish to no longer be represented by an attorney,” Tr. 14, and explained:

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

Now, the law says that you have the right to an attorney, but you also have the right not to proceed to have an attorney. If you wish to fire your lawyer, then there has to be just cause for you firing that lawyer. Otherwise, if there’s not just cause for you firing the lawyer, I can require you to go ahead to court without an attorney. And, so far, what you’ve told me, he did what he was supposed to do.

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

Now, the ball is in your court.

Tr. 24-25.

Mr. Morton objected because requiring him to proceed without counsel would be to “railroad” him. He argued, “[I]f I could get a public defender, five minutes, ten

minutes where I could prepare a case, that would be fine with me.” Tr. 25. The trial judge denied Mr. Morton’s request for a public defender, ruling:

You say you want a public defender, but you’ve paid him – paid for an attorney already. So, I mean I don’t think you’re gonna get a public defender. You’re not gonna qualify.

Why should the State pay for an attorney when you can afford to pay an attorney?

Tr. 29.

Mr. Morton informed the trial court that his wife “took a loan so” he could pay trial counsel. He represented, “I don’t have any money, and I still owe Mr. Yarborough money now, and he knows this.” Trial counsel confirmed Mr. Morton “hired [him] with an initial retainer, and was not able to pay after that.” Tr. 29-30. The trial judge did not further screen Mr. Morton for a public defender and ruled:

It seems to me, Mr. Morton, that I’ve have not heard a, a good reason why Mr. Yarborough should be fired. It appears to me that this is for the purpose of delaying the trial, and that will be my finding.

So I will allow you to proceed with the lawyer you that you have representing you or I’ll allow you, if you wish to fire him, and to go forward, but you would do so without a lawyer.

Tr. 30.

The details of the breakdown in the attorney-client relationship emerged when Mr. Morton called his former attorney as a witness during his case-in-chief. Counsel explained that Mr. Morton had three defenses: (1) “an entrapment defense,” (2) the “fake drug defense,” and (3) “mistreat[ment] by the police officers.” Mr. Morton immediately corrected his prior lawyer, “Now, mistreatment is not a defense when you done some wrong. So we can exclude that one.” Outside the presence of the jurors, Mr. Morton explained his prior lawyer tried “to feed [him] an entrapment” defense, but Mr. Morton

“didn’t want that” defense. Mr. Morton explained, “It wasn’t real drugs.”² Tr. 982-87. Prior counsel, in fact, refused to consider Mr. Morton’s fake drug defense. When Mr. Morton brought a package of fake drugs to his former counsel’s law office, counsel testified he told Mr. Morton, “I don’t know if those are drugs or not. I told you to get them out of my office.” Tr. 877-78.

Mr. Morton proceeded to trial without an attorney. The trial judge gave Mr. Morton “ten minutes” to meet with his former counsel to get his file materials. Despite the prior ruling that Mr. Morton did not qualify for the public defender, the trial judge appointed the Chief Circuit Defender, Clay Allen, to be available to Mr. Morton “to ask questions of during” his self-representation. Tr. 30-34.

Mr. Morton was nervous throughout his trial, Tr. 20, 108, 675, believing he was “fighting for [his] life,” Tr. 143, 390, 391, 393. At the end of the second day of trial, Mr. Morton informed the trial judge he did not have an opportunity to prepare because the jail “hustle[d]” him into a holding cell with “no blanket, no bed,” meaning he had to “lay with [his] face on the floor all night.” The trial judge promised “to fix that” if possible. Tr. 390-401. That night, the detention center gave Mr. Morton “a small little pencil” and let him “sit in a room for about [] 12 minutes.” The Detention Center did not give him a bed until 2:30 in the morning, but, as Mr. Morton informed the trial judge, “[T]hey did more than what they did the previous day.” Tr. 406.

Mr. Morton’s self-representation impacted his ability to call witnesses in his defense because his prior counsel did not serve subpoenas in anticipation of trial. Mr.

² At trial Mr. Morton consistently maintained that the purported cocaine was not really cocaine. These facts are developed in more detail in Mr. Morton’s Initial Brief of Appellant. In fact, Mr. Morton informed the trial judge he would accept a charge for selling fake drugs. Tr. 640.

Morton requested all of the police officers that participated in the investigation to be available in court to testify as witnesses. The trial judge did not issue a subpoena for any of these police officers and accepted law enforcement's explanation for the absence of the witnesses. Even though Mr. Morton was detained during the trial, the trial judge required him to figure out how to request the Clerk of Court to issue the subpoenas and find a way to serve them. Tr. 141, 154-57, 402-05, 947-51. Mr. Morton also wanted to call Jake Bolan, a law student that had worked for Mr. Morton's prior trial counsel, to testify as a witness. The trial judge issued a subpoena for Mr. Bolan, after he declined to appear voluntarily, but law enforcement was not able to serve it. Tr. 47, 131-32, 632-39, 727, 739. The trial judge noted "the case was up for trial twice before" and specifically found that the defense "[s]hould of been prepared for trial" and "had subpoenas out to all these people already," which would have been while Mr. Morton was represented by counsel. Tr. 940.

IV. ARGUMENT.

This Court should deny the State's motion for a remand for three reasons. First, the State's motion misstates the issue raised in Mr. Morton's Initial Brief of Appellant. Second, Mr. Morton requested a public defender and expressly did not waive his right to counsel. Third, judicial economy militates in favor of this Court considering this appeal without additional delay.

A. The State's motion misstates the issue raised in Dana Morton's Initial Brief of Appellant.

As seen above , Dana Morton raises the following issue on appeal to this Court:

Did the trial judge err, in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution, by requiring Dana Morton to represent himself when Mr.

Morton did not affirmatively waive his right to counsel and the trial judge did not warn Mr. Morton about the dangers of self-representation as required by *Faretta v. California*, 422 U.S. 806, 807 (1975)?

Thus, the issue is not whether Mr. Morton made a knowing and voluntary waiver of his right to counsel, but rather whether the trial court erred by requiring Mr. Morton to proceed to trial without counsel and without following proper procedures in violation of *Foretta* and other relevant constitutional law, caselaw, statues, and rules. The second issue in Mr. Morton's Initial Brief of Appellant addresses whether the trial court erred by "failing to appoint a public defender to represent Dana Morton when the undisputed evidence demonstrated Mr. Morton could not afford an attorney and he was prepared to proceed to trial," without delay, in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution. *See also Strickland v. Washington*, 466 U.S. 668 (1984); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Mangal v. State*, 421 S.C. 85, 99, 805 S.E.2d 568, 575 (2017) ("[T]he Sixth Amendment guarantee of effective assistance of counsel is a 'bedrock principle in our justice system.'"); S.C. Code Ann. § 17-3-5, *et. seq.*; Rule 602(b), SCACR.

B. Dana Morton requested a public defender and expressly did not waive his right to counsel.

As seen above, Dana Morton objected to the trial court's ruling because requiring him to proceed without counsel would be to "railroad" him, was prepared to proceed to trial after "five minutes, ten minutes" to prepare his case with a public defender, and explained why he was indigent. Tr. 25-30. Thus, the only evidence contained in the record is that Mr. Morton did not voluntarily waive his right to counsel. Any waiver of counsel was forced upon Mr. Morton by the trial judge.

The State's motion to remand acknowledges our state's precedent recognizes a remand is not appropriate when a "remand would serve no useful purpose." Motion to Remand for Hearing, p. 2 (citing *State v. Cash*, 304 S.C. 223, 403 S.E.2d 632 (1991) and *State v. Dixon*, 269 S.C. 107, 236 S.E.2d 419 (1977)). Here, remand would serve no useful purpose because the record unequivocally demonstrates Mr. Morton did not waive his right to counsel, affirmatively requested a public defender, and was prepared to proceed to trial with a public defender without delay.

This Court should consider the possibility the State seeks a remand in hopes of developing new evidence it did not present at the time the trial court required Mr. Morton proceed to trial unrepresented. *See, e.g.*, Motion to Remand for a Hearing, p. 3 ("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*.³ Remand would allow the trial court to explore whether Appellant was adequately warned by another source, including another judge, his prior trial counsel, the solicitor's office, or others. Finally, the Appellant would be able to testify and be cross-examined

³ Whether Mr. Morton waived counsel in unrelated proceedings is not relevant to the issue before this Court. He did not waive his right to counsel during his jury trial. *See, e.g. State v. Barnes*, 413 S.C. 1, 7, 774 S.E.2d 454, 457-58 (2015) ("We also note with concern the implication of the State's argument. The State's position is that the erroneous denial of a defendant's sixth amendment right to self-representation at the first proceeding results in that defendant having a diminished sixth amendment right in a second trial. In other words, the State seeks to punish the defendant whose constitutional rights have been violated, a concept that is contrary to both justice and common sense. Finally, it appears that the State's argument is an attempt to introduce a prejudice component into what is admittedly a structural error. . . . As the Supreme Court explained '[s]ince the right of self-representation is a right that when exercised usually increases the likelihood of a trial outcome unfavorable to the defendant, its denial is not amenable to "harmless error" analysis. The right is either respected or denied; its deprivation cannot be harmless.'").

regarding his understanding at the time of his decision of the dangers of proceeding *pro se*.”⁴ (footnotes added)). In fact, footnote 6, at p. 22, of the Initial Brief of Appellant anticipates the State might argue that Mr. Morton waived his right to counsel by his conduct. The record would not support this finding. Regardless, the trial judge did not follow the correct procedure for finding a waiver of right to counsel by conduct, to wit:

A defendant may waive his right to counsel through his conduct. Most courts have held that the defendant must first be warned that his misconduct will thereafter be treated as a waiver...[T]o the extent that the defendant’s actions are examined under the doctrine of waiver, there can be no valid waiver of the Sixth Amendment right to counsel unless the defendant also receives *Faretta* warnings. Any subsequent misconduct will be treated as a waiver by conduct.

State v. Thompson, 355 S.C. 255, 263, 584 S.E.2d 131, 135 (Ct. App. 2003) (internal citations and quotations omitted). Mr. Morton specifically and expressly objects to the State being allowed to further develop the record to create a defense to this appeal. As our Supreme Court recently reminded in *State v. Field*, our state’s strict error preservation rules also apply to the prosecution. No. 2018-001042, 2020 WL 1163967, at *2 (S.C. Mar. 11, 2020) (“A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground. A party may not argue one ground at trial and an alternate ground on appeal.”).

C. Judicial economy militates in favor of this Court considering this appeal without further delay.

The State argues, “Remanding the case now, as opposed to after a 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 this with the most current recollections.”

⁴ As already seen, Mr. Morton did not make a “decision” to proceed *pro se*. Rather he objected to the trial judge “railroad[ing]” him, affirmatively requested a public defender, and was prepared to proceed with the trial with a public defender without delay.

Motion to Remand for Hearing, p. 3. As seen above, the State misstates the issue raised in Dana Morton's Initial Brief of Appellant, and the trial court record establishes Mr. Morton did not waive his right to counsel, affirmatively requested a public defender, and was prepared to proceed to trial with a public defender without delay. Thus, no useful purpose would be served by a remand. *See Cash, supra*.

As seen above, Mr. Morton raises additional issues that would likely occur again at retrial. Although this Court might not be required to reach those issues, *see, e.g., Hughes v. State*, 367 S.C. 389, 409, 626 S.E.2d 805, 815 (2006) (appellate court need not address remaining issue when resolution of prior issue is dispositive), judicial economy might militate in favor of reaching those issues in order to prevent confusion at any retrial.

Finally, from Dana Morton's perspective, the State's motion for a remand asks this Court to decide an important issue based on an incomplete record. If the Court considers the issue after full briefing, then the State is free to argue for the relief sought in its motion, and this Court will have the opportunity to consider Mr. Morton's arguments in the context of a full record and the other issues raised in the Initial Brief of Appellant. Judicial economy, accordingly, militates in favor of this Court considering this appeal without further delay.

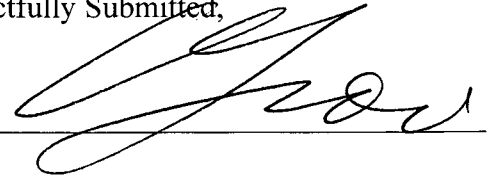
V. CONCLUSION.

This Court should deny the State's motion to remand this case for a hearing to determine whether Dana Morton made a knowing and voluntary waiver of his right to counsel pursuant to *Faretta* because (1) the State's motion misstates the issue raised in Mr. Morton's Initial Brief of Appellant, (2) Mr. Morton requested a public defender and

expressly did not waive his right to counsel, and (3) judicial economy militates in favor of this Court considering this appeal without additional delay. A remand would serve no useful purpose.

Respectfully Submitted,

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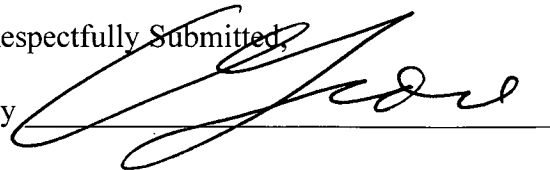
Dana L. Morton, Appellant.

**EXHIBITS TO DANA MORTON'S
MEMORANDUM IN OPPOSITION TO
STATE'S MOTION TO REMAND FOR HEARING**

Pages 1-54 and 1084-96 of the trial transcript are included as exhibits filed contemporaneously with the State's Motion for a Remand for a Hearing. Pages 108, 131-32, 141, 143, 154-57, 390-91, 393, 402-06, 632-40, 675, 727, 739, 877-78, 940, 947-51 of the trial transcript, which are cited in Mr. Morton's response to the State's motion, are attached to this pleading without duplicating the pages submitted by the State.

Respectfully Submitted,

By



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March 17, 2020.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You can't address -- directly address the
3 other lawyers. So, we don't have arguments between
4 attorneys.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You need to talk with me. If you have an
7 objection, just stand up and say I object, and then I'll
8 hear you out then.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: That's all you have to do is say I object.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And that will get me on that issue.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: So, you understand how we're gonna do
15 that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. And you'll be given a chance to
18 question these witnesses though once the State has
19 completed their questioning. You obviously have a
20 question, stand up, and I'll let you ask it.

21 THE DEFENDANT: This jury next -- I drunk a lot of
22 water. Been nervous all day, and that's---

23 THE COURT: well, I'm taking a break right now.

24 THE DEFENDANT: Okay.

25 THE COURT: I'm just trying to talk to you about the,

1 THE DEFENDANT: No, sir, not yet.

2 THE COURT: Okay. Is she aware we were starting at
3 nine o'clock?

4 THE DEFENDANT: Yes, sir, but I, I have kids, little
5 small babies, and she---

6 THE COURT: Oh, I understand. I just to be sure --
7 it's, it's after 9:00. I just wanted to be sure she knew
8 to be here.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay.

11 THE DEFENDANT: We stay all the way in Greenwood.

12 THE COURT: All right. Thank you.

13 (Pause.)

14 THE COURT: Yes, sir.

15 THE DEFENDANT: Your Honor, yesterday I was going over
16 the paperwork while I was sitting here, and I noticed that
17 it was at least like 12 or 13 officers involved in the, in
18 the actual takedown, and the transaction or whatever is
19 supposed to have transpired. And I wanted to get those
20 officers in, and -- because my adviser let me know that I
21 could call them forth too because I don't see no one here
22 besides just one officer, and the informant. And they gave
23 statements, written statements, narrating statements, that
24 need to be cross-examined or looked into because it's
25 conflicting -- the whole story is conflicting from them,

1 you see, and I would like to know if I could -- if we could
2 get those people here so we could ask them, Mr. Jake, and
3 the rest of the people that I asked about.

4 THE COURT: Talk to you about it.

5 (Pause.)

6 THE COURT: Can you tell me specifically who you're
7 talking about?

8 THE DEFENDANT: You had like Officer Gibbs, Officer
9 Lawrence, a bunch of officers. It was like seven or eight
10 of them that actually---

11 THE COURT: Well, if I don't know who they are, and I
12 don't have the names for them, I don't know who to ask for.
13 So, give me the names of who you want to have here.

14 THE DEFENDANT: Okay.

15 THE COURT: You said it was in your paperwork.

16 THE DEFENDANT: I'm --.

17 THE COURT: Yes, sir.

18 THE DEFENDANT: I'm waiting on the paperwork to get
19 here.

20 THE COURT: Okay. So, let's wait until it gets
21 here --

22 THE DEFENDANT: Okay.

23 THE COURT: -- so you can tell me.

24 SOLICITOR MABBS: And, Your Honor, in the meantime, I
25 realize I left the speaker upstairs in my office.

1 SOLICITOR MABBS: Your Honor, of the list that he
2 gave, I do intend to call both Jenna Harbin, and Dan Swad,
3 who Mr. Swad is present. I told Investigator Harbin that
4 she probably wouldn't need to be here until the afternoon.

5 THE COURT: Okay.

6 SOLICITOR MABBS: She will be made available.

7 AS to the other officers, I did not subpoena any of
8 them. I'm not sure if they would be available this week.
9 I don't know their schedules.

10 Your Honor, as to the receipts that I believe he's
11 referring to, those are from previous buys that this
12 informant did do. Those were turned over as part of the
13 C.I. packet that was provided to Mr. Yarborough.

14 THE COURT: So, that was part of his -- to show that
15 he was a confidential reliable -- confidential informant?

16 SOLICITOR MABBS: That's right, Your Honor, and Your
17 Honor---

18 THE COURT: So, those, those funds were not used in
19 this transaction?

20 SOLICITOR MABBS: That's correct, Your Honor, and,
21 Your Honor, just for the record as well, I did pull up my
22 notes in our system, and it does appear that, on June 4th,
23 is when I hand delivered the C.I. packet, including buy
24 videos, to Mr. Yarborough at his office, and that would
25 include things like those receipts.

1 Your Honor, I was speaking and telling you that the
2 falsified documents are right here and I asked you about---

3 THE COURT: I have already made a ruling about that,
4 the lawyer.

5 (WHEREUPON, the Defendant raises his hand.)

6 THE COURT: Put your hand down. You can talk to me.

7 THE DEFENDANT: Can I speak?

8 THE COURT: You gonna put your hand up again?

9 Now, you can -- yes, sir, I told you you can speak to
10 me.

11 THE DEFENDANT: Okay, sir. So, sir, I just don't want
12 to go through the -- well, we trying to talk with each
13 other, and I wind up getting locked up for something that
14 I'm not trying to provoke here, and I'm pretty sure
15 everyone in this courtroom sees that. But you got the most
16 highest power here, sir. That's the reason why I don't
17 want to look at you in your eyes. I don't want you to feel
18 like oh, who do you think you is.

19 Sir, I'm just a man here fighting for my life. That
20 what I am. And, if I could continue, I would like to say I
21 asked yesterday could I bring you the paperwork where it
22 shows that no case number, no page number, no mandate, it's
23 not a part of my original paperwork, and you never told me
24 that I could approach and bring this information so you
25 could see it so you can decide for yourself, and say no,

1 THE COURT: well, sir---

2 THE DEFENDANT: You can find---

3 THE COURT: I have not prevented you from calling any
4 witness that you have present.

5 THE DEFENDANT: Okay.

6 THE COURT: Now, again, I've been told that, of the
7 people you've named, how many are gonna be here testifying
8 anyway?

9 SOLICITOR MABBS: Two of them, Your Honor.

10 THE COURT: Two of them.

11 And how many has he asked for?

12 SOLICITOR MABBS: Your Honor, I believe it's two,
13 four -- seven.

14 THE COURT: Seven?

15 SOLICITOR MABBS: Yes, Your Honor.

16 THE COURT: Now, they're not under subpoena. You
17 haven't requested a subpoena for them at this point in
18 time. If you want a subpoena for them, I'll have the clerk
19 issue a subpoena for them.

20 THE DEFENDANT: Could you?

21 THE COURT: Now, whether they can arrive and be here
22 in time, that's a whole different matter, and whether they
23 could be served in time---

24 THE DEFENDANT: Okay.

25 THE COURT: ---that's a whole different matter.

1 THE DEFENDANT: Okay.

2 THE COURT: But, again, are you expecting them to
3 offer statements other than what their -- the statements
4 you've been provided---

5 THE DEFENDANT: No.

6 THE COURT: ---are gonna be?

7 THE DEFENDANT: May I speak?

8 THE COURT: Yes, sir, I'm asking you a question.

9 THE DEFENDANT: Yeah. Actually what I'm trying---

10 THE COURT: I'm not gonna prevent you from speaking.
11 I don't allow you to speak when I'm speaking. But go
12 ahead. I asked you a question.

13 what kind of information do you expect they'll provide
14 that might be different from the statement you've already
15 been given from them?

16 THE DEFENDANT: May I speak now?

17 THE COURT: I asked a question, didn't I?

18 THE DEFENDANT: Thank you.

19 Okay. So, what I'm saying is that if you
20 cross-referenced these, I'm the only person here that's
21 being prosecuted and facing 30 years of my life. These
22 people need to be subpoenaed here because their statements
23 are very important to this case, sir. And if I get 20, 30
24 years behind this without them speaking---

25 THE COURT: Address what their statements -- I know

1 you're in jeopardy for going to jail. I understand all
2 that. I've tried these cases before. I understand all of
3 that, but I'm trying to find out what importance they have
4 in your case.

5 THE DEFENDANT: Your Honor?

6 THE COURT: I'm trying to decide whether or not I'm
7 gonna go -- get after the State and make them produce these
8 people or not.

9 THE DEFENDANT: Yes.

10 THE COURT: I'm trying to find out if I need to help
11 you or not, but you're not helping me.

12 THE DEFENDANT: May I speak?

13 THE COURT: Yes, sir, I asked you a question a while
14 ago. I need an answer.

15 THE DEFENDANT: Okay. Your Honor, like I say, you can
16 cross-reference they statement with each other, even with
17 the analysis of everything that was found there, this will
18 show that a bunch of deceit, and a bunch of, you know,
19 curvery (phonetic) is being played here, and that's a big
20 part. If the jury's gonna decide my fate, they need to
21 know this.

22 They need to ask these people why would you sit here
23 in a court of law, and make a statement like this and you
24 know is not true?

25 You see what I'm saying?

1 That's so they can understand that something is not
2 correct because, if this man/officer gave a statement, in
3 reality, this man/officer supposed to be here.

4 You see what I'm saying?

5 Because all them have the right.

6 THE COURT: well, again, the State has the right to
7 present their case. I can't tell them to call people or
8 not call people.

9 THE DEFENDANT: Okay.

10 THE COURT: They decide who they present as witnesses.

11 THE DEFENDANT: May I have them subpoenaed, Your
12 Honor?

13 THE COURT: May you have what?

14 THE DEFENDANT: May I have them subpoenaed?

15 THE COURT: Are they available?

16 SOLICITOR MABBS: Your Honor, I, I have not checked
17 with, other than Investigator Swad and Harbin---

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

19 SOLICITOR MABBS: ---those two I, I do know.

20 THE COURT: If I have the clerk issue a subpoena, I'm
21 gonna hand it to the sheriff's Office to serve them. I
22 suspect, suspect they work for the Sheriff's Office.

23 SOLICITOR MABBS: Yes, Your Honor. The only thing
24 would be if they're on vacation or training, then I'm not,
25 I'm not sure, but I can certainly --.

1 because I am sitting here fighting for my life trying to
2 get this paperwork in order. And, Your Honor, I don't know
3 if you know or ever went over, after hours, over at the
4 county jail, you don't have an opportunity to get your
5 stuff together. All they do is hustle you in a room, throw
6 you in there, no blanket, no bed, no nothing, and you sit
7 there on the floor until they come get you again, Your
8 Honor.

9 Like I say, I will stay in -- if I please?

10 THE COURT: I'm listening.

11 THE DEFENDANT: Yes, sir. Like I say, I will go
12 through the process of, if you wanted to issue me a
13 different bond, or if you wanted to get someone---

14 THE COURT: You mean you were placed in a location
15 that had no bed, you sat on the floor all night long---

16 THE DEFENDANT: I laid on the floor all night, Your
17 Honor.

18 THE COURT: There was no bed in that---

19 THE DEFENDANT: No bed.

20 THE COURT: ---in that location?

21 THE DEFENDANT: I didn't get a, get a sheet. I had to
22 beg for a blanket just to put my head on the -- I had to
23 lay with my face on the floor all night.

24 THE COURT: well, I'll see what I can do to fix that.

25 THE DEFENDANT: Yes, sir, and---

1 THE COURT: I'll get you a bed.

2 THE DEFENDANT: Okay. Well, what about -- see another
3 thing too, Your Honor, I asked the jailors to also keep me
4 from around the other inmates because you got a lot of
5 stuff that goes on in jail. Like a lot of gangs, a lot of
6 different stuff, and I know, if I'm sitting there trying to
7 get this together, people gonna want to know what you got
8 going on. I don't want to talk to nobody cause I'm
9 fighting for my life here in this courtroom.

10 You see what I'm saying?

11 If I could get some time to, you know, somewhere where
12 I could sit and study, if you gonna hold me, I'm, I'm fine
13 with that. I just need to be able to prepare my case so I
14 can present it in a, in a, in a good manner so I can try to
15 help save my own life in this situation because I mean---

16 THE COURT: well, now, correct me if I'm wrong, but I
17 thought you said you sent those papers home to your wife?

18 THE DEFENDANT: Oh, yes, sir, I did. But what I'm
19 saying is that---

20 THE COURT: Doesn't she go back to Greenwood?

21 THE DEFENDANT: sir?

22 THE COURT: Didn't she go back to Greenwood?

23 THE DEFENDANT: Yes, sir, she did.

24 THE COURT: That's a---

25 THE DEFENDANT: See---

1 you in the jail that doesn't have a bed. I've been over
2 there many times, and I've not seen a pod over there that
3 has no beds in it.

4 THE DEFENDANT: Yes, sir, I was in a holding cell all
5 night.

6 THE COURT: Did you ask to be put in solitary away
7 from the other prisoners?

8 THE DEFENDANT: No, I asked that -- I asked the---

9 THE COURT: You said you wanted to be away from them.
10 what did you ask them for?

11 THE DEFENDANT: No, I asked her -- she asked me, she
12 say ah -- she say ah, come up here and take your picture.
13 I say ma'am, but I haven't broke the law. I'm here on
14 General Sessions charges, and I'm going to trial. She was
15 like well, then you heard what I said. I say well, ma'am,
16 you know, I don't mind. I'll come take the picture.
17 Matter of fact, just come on down here and get in this
18 room.

19 So, at that point, it became kind of, you know,
20 aggravating towards me. I been sitting up here in this
21 jail, came to this courthouse fighting for my life, and the
22 lady -- like I don't know if she was mad because of
23 something else or what was going on. But I mean, 20, 30
24 years, should deserve enough time to try to prepare in some
25 sense to get my order together, you know.

1 The first, I failed to ask, after his testimony, but
2 Mr. -- may Mr. Vaughn be excused from his subpoena at this
3 point?

4 THE COURT: Do you want to release him from the
5 subpoena?

6 SOLICITOR MABBS: Yes, Your Honor.

7 THE DEFENDANT: Objection.

8 THE COURT: Okay. There's been an objection. So, no,
9 he can't be released.

10 SOLICITOR MABBS: Okay. And then also, Your Honor, we
11 spoke earlier this morning that Mr. Morton wanted some of
12 the other deputies to be available for trial.

13 THE COURT: Yes.

14 SOLICITOR MABBS: I did contact Captain Gist at the
15 Sheriff's Office. First, Jenna Harbin is here. She'll be
16 here again in the morning.

17 THE COURT: Okay.

18 THE DEFENDANT: Deputy Gilbert---

19 THE COURT: well, I'm not telling you that you have to
20 call them. They need to be available when he starts his
21 case --

22 SOLICITOR MABBS: Yes, sir.

23 THE COURT: -- if he wishes to call them.

24 SOLICITOR MABBS: Yes, Your Honor.

25 THE COURT: He doesn't have to call them.

1 SOLICITOR MABBS: Yes, Your Honor.

2 THE COURT: But he's indicated that he does, and if
3 I'm going to this trouble, I assume that he's going to.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Otherwise I won't go to the trouble.

6 SOLICITOR MABBS: He, he---

7 THE DEFENDANT: I'm gonna call them.

8 SOLICITOR MABBS: Yes, Your Honor. The only two
9 responses that I have gotten so far that I wanted to make
10 sure Mr. Morton was aware of is Deputy Keith Gibbs, he will
11 be out of town on Friday. He is available Wednesday and
12 Thursday.

13 THE COURT: All right.

14 SOLICITOR MABBS: And Captain Gist did inform me that
15 Deputy Price is no longer with the Sheriff's Office.

16 THE COURT: Okay. Now, we have no control over that
17 gentleman.

18 THE DEFENDANT: Which gentleman?

19 THE COURT: Price.

20 THE DEFENDANT: So, you won't be able to subpoena him?

21 THE COURT: Well, I didn't say that. I can issue a
22 subpoena.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: The clerk can issue a subpoena. I don't
25 subpoena anybody.

1 THE DEFENDANT: Okay.

2 THE COURT: You can request that the clerk prepare a
3 subpoena --

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

5 THE COURT: -- if you want us to, and it will be
6 ready, and we'll give it to you.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Then it's up to you to get it served.

9 THE DEFENDANT: How will I go about that being
10 incarcerated?

11 THE COURT: You call -- give it to the Sheriff's
12 Office and ask them to serve it.

13 THE DEFENDANT: Okay. So -- all right.

14 THE COURT: But I can't guarantee that it will get
15 served during this trial.

16 THE DEFENDANT: Yeah, especially is you have friends
17 on the force too, sir.

18 THE COURT: Well, I didn't say that. I just said that
19 it would be delivered to be served or you can employ a
20 private process server. There are people in our community
21 that serve papers for a living. You do not have to use the
22 Sheriff's Office. So, if you want to employ someone, other
23 than a family member---

24 THE DEFENDANT: I just---

25 THE COURT: ---to serve that paper, you can have that

1 done.

2 THE DEFENDANT: Okay.

3 THE COURT: Okay?

4 THE DEFENDANT: Yes, sir, I just want to subpoena --
5 subpoena everybody that's a part.

6 THE COURT: Well, they say that everybody else can be
7 produced without a subpoena except for this gentleman who
8 no longer works for the Sheriff's Office.

9 THE DEFENDANT: Okay. Can I put this into evidence---

10 THE COURT: No.

11 THE DEFENDANT: ---or whatever?

12 Okay. So, it will stay with me.

13 THE COURT: We don't put things -- talk to Mr. Allen.
14 You're asking me to -- this --.

15 MR. ALLEN: You want him to talk to me after the
16 Court?

17 THE COURT: Yes, sir.

18 I'm gonna go ahead and adjourn. If he has something
19 he wants to take up with me in the morning, then we'll do
20 that then.

21 Everyone have a good evening. We're adjourned at this
22 time.

23

24 (WHEREUPON, Court was in recess for the evening.)

25

1 THE DEFENDANT: Yeah.

2 THE COURT: Okay. That's what I'm trying to
3 determine.

4 THE DEFENDANT: Okay.

5 THE COURT: Okay. Do you need a few minutes to get
6 your papers in line before you start because you haven't
7 been in here to do that. I'll give you a chance to prepare
8 yourself for this.

9 (Pause.)

10 THE DEFENDANT: Your Honor?

11 THE COURT: Yes, sir.

12 THE DEFENDANT: I ask for a -- someone to be
13 subpoenaed here today. I wanted to know what, what was
14 the, the outcome of that, Your Honor.

15 THE COURT: well, I told you to get with the Clerk's
16 Office, and tell them who you wanted to have subpoenaed.

17 THE DEFENDANT: I was incarcerated, Your Honor. In
18 custody.

19 THE COURT: well, the clerk has an officer here in the
20 courtroom at all times.

21 THE DEFENDANT: Okay. So, I could speak with her?

22 THE COURT: Certainly.

23 THE DEFENDANT: Jake Blake. Jake Didim (phonetic). I
24 don't know his last name, ma'am. Odom. Lyles.

25 THE COURT: Is that a name we---

1 THE DEFENDANT: we discussed---

2 THE COURT: ---heard before?

3 THE DEFENDANT: ---it in the trial.

4 SOLICITOR MABBS: Your Honor, I believe that was Mr.
5 Yarborough's former summer law clerk.

6 THE COURT: Oh. Oh.

7 THE CLERK: Did he say he was in school at U.S.C.?

8 THE COURT: I understood that he might not be in --
9 working for Mr. Yarborough any longer.

10 THE CLERK: All right.

11 THE COURT: I think he said that he was back in
12 Columbia in school.

13 THE DEFENDANT: Yes, sir, if --.

14 MR. ALLEN: Your Honor, for what it's worth?

15 THE COURT: Yes, sir.

16 MR. ALLEN: I spoke with Jake Bolan. Mr. Yarborough
17 gave him my cell phone number.

18 THE COURT: Right.

19 MR. ALLEN: And we spoke to him -- I guess it was
20 Monday evening.

21 THE COURT: Yes, sir.

22 MR. ALLEN: And he is a student at the University of
23 South Carolina School of Law. I asked him if he'd be able
24 to come up here and testify. He said he had classes Monday
25 and Tuesday or he had classes on Tuesday and Wednesday. I

1 didn't ask about Thursday. I don't know his address. I
2 don't know.

3 THE COURT: well, you have his cell phone number if he
4 called you?

5 MR. ALLEN: In my -- I got his cell phone number from
6 which he called.

7 THE COURT: Yes.

8 MR. ALLEN: But I don't know how --.

9 THE COURT: well, sir, I, you know, I'd, I'd like for
10 you to determine if he'll voluntarily appear before we go
11 to the trouble of issuing a subpoena, and then, of course,
12 Mr. Morton will have to figure out how to get it served.

13 MR. ALLEN: Right.

14 THE COURT: But if he's gonna appear voluntarily,
15 there's no need to do that.

16 MR. ALLEN: I can try and call him, but I'd have to go
17 out to my car and get my cell phone to call.

18 THE COURT: I understand. well, why don't you step --
19 yes, sir.

20 SOLICITOR GHENT: Your Honor, before Mr. Allen does
21 that, may I put something on the record that that concerns?

22 THE COURT: Certainly.

23 SOLICITOR GHENT: This gentleman is talking about
24 calling Mr. Yarborough's clerk --

25 THE COURT: Yes.

1 SOLICITOR GHENT: -- who would of been in his employee
2 assisting in, as I understand it, preparation and defense.
3 From the time that young man goes on the stand, all
4 privileges are waived. I just want---

5 THE COURT: I'll, I'll---

6 SOLICITOR GHENT: ---be clear that he understands
7 that.

8 THE DEFENDANT: No, sir.

9 THE COURT: I, I think -- I have not done the research
10 on that cause that's the first time I heard he planned to
11 call him.

12 SOLICITOR GHENT: Yes, sir.

13 THE COURT: I hadn't heard that until now. But,
14 anyway -- or at least I didn't remember hearing that until
15 right now. But, at any rate, we'll look at it, but, I
16 suspect, if you put him on the stand, and you ask him
17 questions, that you are, in fact, waiving your
18 attorney/client privileges by doing that.

19 THE DEFENDANT: Yes, he was never -- I never paid him
20 to represent me in no type of way or form.

21 THE COURT: No, you paid his employer, and he worked
22 for the, the law firm.

23 THE DEFENDANT: Yeah, and, from my understanding, he
24 wasn't never employed with Mr. Yarborough. He was only
25 there as an intern. So, his time there---

1 THE COURT: well, that would mean he was working at
2 the direction of Mr. Yarborough. I would suspect he's not
3 doing things that he wasn't -- Mr. Yarborough didn't
4 authorize him to do. I suspect. Of course, we can get him
5 here and ask him --

6 THE DEFENDANT: Yeah.

7 THE COURT: -- if he comes, and he'll tell us who he
8 worked for.

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

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

11 THE DEFENDANT: Yes, sir.

12 SOLICITOR GHENT: Thank you, Your Honor.

13 THE COURT: So, you don't -- do you understand what
14 that means?

15 That means that will be an issue that I would have to
16 look at because then, if the attorney/client privilege has
17 been waived in rebuttal, the State might call
18 Mr. Yarborough.

19 SOLICITOR GHENT: Yes, sir, that's where I was going.

20 THE COURT: So, if you want to open that door, you
21 might want to talk to Mr. Allen about it before you do.

22 THE DEFENDANT: Your Honor?

23 THE COURT: I can't advise you one way or the other.

24 THE DEFENDANT: Your Honor?

25 THE COURT: Yes, sir.

1 THE DEFENDANT: It doesn't.

2 THE COURT: I certainly will research that, and find
3 out what I can find out about it before the issue comes
4 before me because I wasn't really expecting that issue.
5 That's new.

6 THE DEFENDANT: Can I suppress -- can I, can I put
7 another motion in then?

8 Can I say that or could I go on record stating
9 something the same way that this gentleman did?

10 THE COURT: He didn't make a motion. He just said
11 that he wanted to make us aware that they would take that
12 position.

13 Am I right?

14 Isn't that what you said?

15 SOLICITOR GHENT: Yes, sir.

16 THE COURT: I'm not granting any motion.

17 SOLICITOR GHENT: You can't---

18 THE COURT: I'm not, I'm not deciding a motion for
19 him.

20 THE DEFENDANT: Yeah. well---

21 THE COURT: He said that will become an issue in the
22 case if that person testified. I believe---

23 SOLICITOR GHENT: I'm not trying to stop him.

24 THE COURT: Let me talk.

25 SOLICITOR GHENT: Yes, sir.

1 THE COURT: And I've agreed that that will be an
2 issue, and I want to do the research on it, but, when I
3 dealt with it in the past, I would suspect that, if you put
4 someone who is entitled to the privilege on the stand and
5 begin to ask them questions, you've opened that privileged
6 door up, and people can ask questions in spite of the
7 privilege. I suspect that's the way that's gonna work, but
8 I'll look it up and make sure before we get there.

9 THE DEFENDANT: Yes, sir.

10 May I go on record and state something?

11 THE COURT: Sure.

12 THE DEFENDANT: Okay. I would like to state that the
13 individual that we're talking about, Jake, and
14 Mr. Yarborough, I know for a fact, because I have text
15 messages, I have voice recordings of them being in cahoots
16 with the State, and falsifying documents in this issue, in
17 this Court right here that we submitted evidence that they
18 actually had something to do with the, the, the false
19 doctoring of these, of these papers. And I would like to
20 go on record so it would be known that they -- the both
21 offices of my own lawyer and the State was in cahoots.
22 That's the reason why the, the intern is -- can not be
23 here. And, if he does, then they will make it where it's
24 bad for me, but it won't be bad for me because the drugs
25 that this individual received was actually not drugs.

1 So, either way it swings is that maybe I may go to
2 jail for something that's not real, but I have an
3 opportunity to pull this stuff back up, and they'll be able
4 to look at it and punish whoever was a part of this.

5 THE COURT: I have not told you you can't call him,
6 have I?

7 THE DEFENDANT: Not yet.

8 THE COURT: No, sir. Well, I'm not going to.

9 THE DEFENDANT: Okay.

10 THE COURT: You can call him.

11 THE DEFENDANT: I'm just making a---

12 THE COURT: You just need to be aware---

13 THE DEFENDANT: ---you know, where this stands.

14 THE COURT: ---of the possible consequences of that
15 though. I don't -- I'm not telling you you can't call him.

16 THE DEFENDANT: Yeah, I'm not in a --.

17 THE COURT: There's one other thing, I think, perhaps
18 you ought to talk over with Mr. Allen before you testify.

19 THE DEFENDANT: I'm not testifying.

20 THE COURT: Oh, that's right. You've decided not to
21 testify. That's fine.

22 SOLICITOR GHENT: Your Honor?

23 THE COURT: Before you argue your case though before
24 the jury, the statements by a -- in a court of law can be
25 used against you in later trials.

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

2 THE COURT: The sale of analogue drugs is a crime in
3 this State.

4 THE DEFENDANT: When you say analogue, Your Honor,
5 could you---

6 THE COURT: Fake drugs.

7 THE DEFENDANT: Oh, that's fake drugs?

8 THE COURT: Yes, sir.

9 THE DEFENDANT: It's a crime?

10 THE COURT: Yes, sir.

11 THE DEFENDANT: Okay. Yes, sir.

12 Will it be lesser than the---

13 THE COURT: I can't advise you. I said you might want
14 to talk to Mr. Allen about that before you --.

15 THE DEFENDANT: I'll take that charge any day, Your
16 Honor.

17 THE COURT: All right.

18 SOLICITOR GHENT: It's not on the table.

19 May I, may I---

20 THE COURT: I didn't say it was on the table. I just
21 said that he needs---

22 SOLICITOR GHENT: Yes, sir.

23 THE COURT: ---he needs to be aware that he made a
24 statement---

25 SOLICITOR GHENT: Yes, sir.

George Vaughn - Direct examination
By The Defendant

1 let's step back in the jury room, and we will ask you not
2 to discuss the case at this time.

3 THE DEFENDANT: Okay.

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Yes, ma'am.

7 SOLICITOR MABBS: Your Honor, I have some very serious
8 concerns. I believe he's about to hand what he's said is
9 fake drugs up to Mr. Vaughn.

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

11 SOLICITOR MABBS: Your Honor, I'm -- I have some
12 concerns about a substance that we don't know what it is
13 being passed around in the courtroom, Your Honor. I just
14 wanted to address that issue before we bring it out in
15 front of the jury.

16 Your Honor, this is a substance that clearly has not,
17 as far as I know, has been -- has not been tested by our
18 office. I don't know exactly what that substance is. It
19 might be fake drugs. It might be real drugs. It might be
20 a combination. We don't know. And I don't think it's
21 appropriate to be presented in court.

22 THE COURT: Yes, sir, Mr. Morton.

23 THE DEFENDANT: I think that it's very---

24 THE COURT: I don't know what the deal is with all
25 this hide and seek stuff. You got a cup upside down.

1 you would be here at nine o'clock, we'll try to start as
2 close as we can on time. I hope you have a great evening.
3 You're free to go at this time.

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right. I have gotten some reports on
7 the subpoena. The last information that I got was that
8 they're getting the subpoena to -- is it Columbia Police
9 Department, Richland County?

10 THE OFFICER: Richland County.

11 THE COURT: The Richland County Police, and they --
12 their warrant serving group is basically not working
13 probably at five o'clock I think is when that ended. They
14 start back at, they start back at eight o'clock in the
15 morning. And, as far as I know, they'll attempt to serve
16 it in the morning.

17 THE DEFENDANT: Yes, sir, fine by me.

18 THE COURT: That's where we are.

19 THE DEFENDANT: Fine by me, Your Honor.

20 THE COURT: Okay. And I, I think the Sheriff's
21 Office, from what I can tell, here in Spartanburg has made
22 a reasonable effort to get it served.

23 THE DEFENDANT: That subpoena down to Jake, I agree.

24 THE COURT: So, hopefully -- it's been sent to
25 Richland County.

1 THE DEFENDANT: Will Jake be here?

2 THE COURT: You got to stand up.

3 (WHEREUPON, the Defendant stands at this time.)

4 THE DEFENDANT: Will Jake---

5 THE COURT: I don't know. We have -- I've done
6 everything I know to get that subpoena served. It is, as
7 far as I know, in the hands of the authorities in Richland
8 County. I'm sure I'll get a report at some time this
9 morning about it, but I have not yet received a report on
10 that.

11 THE DEFENDANT: Thank you.

12 THE COURT: So, we're doing all we can to serve it,
13 but, you know, I didn't hear that you wanted a subpoena for
14 him until yesterday afternoon about 3:30.

15 THE DEFENDANT: No, sir, I brought him up when I first
16 started.

17 THE COURT: Well, it didn't get a request for a
18 subpoena cause I issued it as soon as I got a request for a
19 subpoena.

20 THE DEFENDANT: Thank you.

21 THE COURT: Yes, sir. You're still standing and must
22 have something else you want to talk to me about.

23 THE DEFENDANT: No, sir.

24 THE COURT: Okay. Thank you.

25 Bring the jury in.

Anthony Lachica - Direct examination
By The Defendant

1 THE DEFENDANT: Thank you. Yes, sir.

2 Do you straighten out a lot of problems that come your
3 way, officer?

4 A I try to do the best I can every single day.

5 Q How often do you come in contact with people that may
6 get up under your skin?

7 SOLICITOR GHENT: Objection, Your Honor.

8 What does this have to do with relevance?

9 THE COURT: Overrule the objection. He can ask, ask
10 that question.

11 THE DEFENDANT: Thank you.

12 THE COURT: Go ahead.

13 A Very rarely.

14 Q So, you very rarely get upset?

15 A That's correct. I'm---

16 Q Okay.

17 A ---very calm.

18 Q And if you was to get upset, how would you even a score
19 with someone?

20 A I wouldn't. I'm very forgiving, and my beliefs are, if
21 someone does something bad to me or slaps me in face, I'll
22 turn the other cheek.

23 Q Oh, that's good. That's very good.

24 So, you and this drug dealer informant guy, you
25 would -- would you protect him?

Anthony Lachica - Direct examination
By The Defendant

1 A I'll protect anybody.

2 Q We're talking about him.

3 A I think he includes everybody.

4 Q Okay. So, you would protect him.

5 A I would protect you, sir.

6 Q Thank you, but I don't need it.

7 Okay. So, so, you say you knew him for how many years,
8 sir?

9 A Probably two or three now.

10 Q About two or three now.

11 And two or three years, would you consider him to be
12 acquaintance or friend or family member?

13 A He's a confidential reliable informant.

14 Q Okay. And so what would happen if that confidential
15 reliable informant was to tamper with your evidence or, or,
16 or, or, or, or mess up your case?

17 A I would arrest him.

18 Q You arrest him.

19 Okay. So, you wouldn't try to help him straighten it
20 back out at no point?

21 A Absolutely not. He broke the trust that we have.

22 Q Okay. So, you actually do trust him?

23 A There's different levels, sir.

24 Q Okay. So, did you witness this confidential informant
25 walk off camera when you was stationed in the back of this

1 SOLICITOR MABBS: And, Your Honor, for the record, the
2 last time, the week of June 11th, we were literally next up
3 for that afternoon. Mr. Barnette was in a trial that
4 morning that ended up having some juror misconduct issues
5 that delayed that for an extra day or two.

6 THE COURT: well, in talking to the docket clerk,
7 I've, I've learned that the case was up for trial twice
8 before to the point of trial. Should of been prepared for
9 trial. Again, should of had subpoenas out to all these
10 people already.

11 THE DEFENDANT: May I speak, Your Honor?

12 THE COURT: You can speak.

13 THE DEFENDANT: Okay. I been asking, four months ago,
14 five months ago, asking my attorney that I, I -- I even got
15 phone records saying that I do not want nobody from your
16 office to represent me period once I---

17 THE COURT: well, you should of filed a motion to fire
18 him immediately.

19 THE DEFENDANT: I don't know how to do that, Your
20 Honor.

21 THE COURT: well, you did it the other day.

22 THE DEFENDANT: How?

23 In court.

24 THE COURT: well, it was on the docket twice to come
25 up for trial.

1 certainly let you.

2 THE DEFENDANT: Thank you, Your Honor.

3 THE COURT: Thank you.

4 Yes, sir. Yes, ma'am.

5 DIRECT EXAMINATION

6 BY SOLICITOR MABBS:

7 Q Captain Gist, I don't know if we got your name for the
8 record.

9 A Yes, Raymond Gist.

10 Q And can you explain to us what your position at the
11 Sheriff's office is?

12 A I'm a captain on special services division.

13 Q And, Captain Gist, did I contact you at some point this
14 week about getting a status on several deputies---

15 A That's correct.

16 Q ---in reference to this case?

17 A Yes, ma'am.

18 Q And did I send you a list of -- I believe the initial
19 list had probably five or six names on it?

20 A That's correct.

21 Q And were you able to instruct those deputies or those
22 superiors to get in contact with me about their
23 availability?

24 A Yes, ma'am, I actually forward the email to all the
25 officers that you request---

1 Q I don't---

2 A ---to respond -- to respond back to you as soon as
3 possible.

4 Q And I believe you informed me that I believe Deputy
5 Price is no longer with the Sheriff's Office?

6 A That's correct. He's retired from the Sheriff's
7 Office.

8 Q And, Captain Gist, as far as Deputy Soucoup is
9 concerned, can you tell us about his current status to
10 the---

11 A Deputy Soucoup is, is on -- first of all, he's on light
12 duty. He's averaging about two or three days of work a
13 week -- a work day for the week. He, he is not available
14 per his supervisor. He had a procedure yesterday.

15 THE DEFENDANT: Objection, Your Honor. She stated
16 earlier that -- the D. A. stated earlier that he would be
17 available for, for this trial, and that she had spoke to
18 his supervisor, and that he -- she, she assured you that he
19 would be here.

20 THE COURT: I did not hear a basis for me to rule on
21 anything, and you're just arguing with the information.
22 You'll have a chance to argue that later. Overruled.

23 You may proceed.

24 Q Captain Gist, did I ever ask you to get any kind of
25 documentation or further information from, excuse me,

1 Deputy, Deputy Soucoup --

2 A You did.

3 Q -- regards---

4 A Yes.

5 Q ---his availability, and what steps have you taken to
6 get that information?

7 A I spoke with his immediate supervisor today, who is
8 Lieutenant, I'm sorry, who is Corporal Tim Amsler. He spoke
9 with Master Deputy Soucoup. He had -- Soucoup had a
10 procedure yesterday. It's my understanding he is on
11 medicine. He is not available to come to court. We're
12 waiting on a doctor excuse that's in the process of being
13 faxed to the Clerk's Office from his doctor's office. I
14 personally have not spoke to Deputy Soucoup myself. So,
15 that's where we're at at this point.

16 Q And then what about in regards to Deputy Branson?

17 A Deputy Branson's out today. He called in sick. He had
18 a procedure also yesterday. Thought he was gonna be able to
19 make it to work today. Was not able to make it to work.
20 So, he took a sick day today. He's out sick, and I didn't
21 realize I had a excuse emailed on my phone. So, I provided
22 to the Court today.

23 Q And is that the email I referred to the judge about
24 earlier that's gonna be printed off and made available?

25 A Yes, ma'am.

Raymond Gist - Cross-examination
By The Defendant

1 THE COURT: All right. Thank you.

2 You wish to ask any questions of the deputy?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY THE DEFENDANT:

7 Q Could you state your name again for the record, sir?

8 A Raymond Gist.

9 Q Raymond Gist.

10 How long have you been an officer?

11 A Thirty-two years, Spartanburg County Sheriff's Office.

12 Q Thirty-two years.

13 Okay.

14 A That's correct.

15 Q Okay. So, in reality, you say that you had excuse on
16 your phone?

17 A Yes.

18 Q That was sent from who?

19 A It was forwarded to my phone from my first lieutenant,
20 Richie Strawn, who he received it from Lieutenant Dill, and
21 Lieutenant Dill received it from Deputy Brady Branson, who,
22 I believe, that's who you wanted in court.

23 Q Okay. So, ain't none of these people of actual
24 physically, physically a doctor or none of that?

25 A I'm sorry.

Raymond Gist - Cross-examination
By The Defendant

1 Q Are any of those people that you just named a physical
2 doctor?

3 A No, they're all law enforcement officers.

4 Q Okay. So, all of them law enforcement officers?

5 A That's correct.

6 Q And you're a law enforcement officer too, right?

7 A I -- yes.

8 Q Thank you.

9 No further questions.

10 THE COURT: All right. You may step down, Officer
11 Gist.

12 THE WITNESS: Thank you, Judge.

13 THE COURT: I will ask you that, upon your receipt of
14 that documentation and the copy from your phone --

15 THE WITNESS: Yes, sir.

16 THE COURT: -- that you turn that over to the Clerk's
17 office to be placed in this file.

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you.

20 SOLICITOR MABBS: And may Captain Gist be excused,
21 Your Honor?

22 THE COURT: Beg your pardon?

23 SOLICITOR MABBS: May he be excused, Your Honor, to---

24 THE COURT: Yes, he can be excused.

25 Thank you very much.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
Roger L. Couch, Circuit Court Judge

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Appellate Case No. 2018-001909

The State,..... Respondent

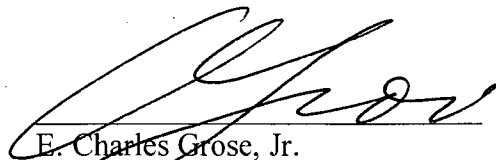
v.

Dana L. Morton, Appellant.

Certificate of Service

I certify that I have served this pleading on the State of South Carolina by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed to:

William M. Blich, Jr., Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211



E. Charles Grose, Jr.
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March 17, 2020.

The Grose Law Firm, LLC

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March 17, 2020

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *State of South Carolina v. Dana L. Morton*
Appellate Case No. 2018-001909

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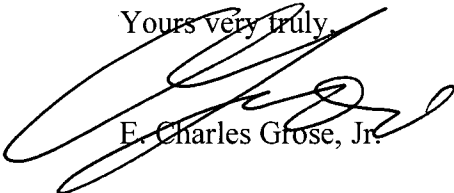
Dear Ms. Kitchings:

Enclosed for filing, please find Mr. Morton's Memorandum in Opposition to State's Motion to Remand for a Hearing, along with a certificate of service.

Thank you for your attention to this matter. Please let me know if you have any questions or require additional information.

With kindest regards, I am

Yours very truly,


E. Charles Grose, Jr.

cc: Mr. Dana Morton
William M. Blich, Jr., Esquire

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