McMAHAN & TAYLOR
ATTORNEYS LLC

January 7, 2020

Earnest Edward Vaughn Sr., #246912
F1-0182-B
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: Earnest Edward Vaughn Sr., #246912 vs. State of South Carolina
2019-CP-24-00160

Dear Mr. Vaughn:

I am in receipt of your letters from December and January. Thank you for the information in both of those letters. As to the Solicitor stating she was here to tell the truth, that is very helpful and I believe that is a strong argument.

As for the AG moving to dismiss claims, that is normal for them to file that in return. Keep in mind I will be amending your application to add any other claims that weren't originally in your application. I will be in touch again in the near future.

Should you have any questions I can be reached at the address listed below. Please note, I do not accept collect calls or calls from items that are considered contraband.

Best regards,

Ashley A. McMahan

ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM

Foot Note
PCR counsel failed to question trial counsel about failing to object to this vouching.

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she's pleading on some charges. She's looking at five years. She's pleading straight-up. She came in here and told the truth. Nothing on her record. Father died. She gets hooked up with the wrong crowd, starts doing a little bit of meth, the downward spiral began. It truly is a shame. Brandy's a user. Earnest Vaughn, this gentleman right here, this guy right here, he's the drug trafficker. Don't view Earnest Vaughn as him sitting here today. Him sitting over here in court. View him as the Earnest Vaughn in these letters, the manipulator, the drug trafficker, the individual that's responsible for what happened January the 27th. That's the Earnest Vaughn. Folks, when I came in here Monday or, I guess, we started Tuesday, I said the most important thing that you've got with you is your common sense, and you've got to use that over the course of this trial to ultimately make a determination as to what happened. Folks, this isn't rocket science. What we do isn't rocket science. Use your common sense. Find him guilty of all three charges, not because I'm asking you to, but because he's actually guilty of all three of these crimes. Thank you, so much.

THE COURT: Thank you, Solicitor. Ms. Merrill, you ready?

MS. MERRILL: Yes, sir. Thank you. When I had the opportunity to talk to you the other morning, I told you I

Foot Note:
During closing argument, The Prosecutor vouched for the credibility of a defense witness.

second letter, that's important, but there's no date on it. But the third letter, what's that date, 3/3/16. What's he doing in all of these letters. You heard that letter that got read in front of the jury, in front of you guys here in open court. It said how much I love you, talking about a bunch of other stuff, about how much he loves her and professing his love to her, and then starts laying out the groundwork one, say this, two, say this, three, say this, four, say this, get in touch with my lawyer; oh, baby, I love you; oh, baby, I love you. Manipulating her. Manipulating her. Absolutely, manipulating her. You got to do this for me, baby. That's what those letters are all about. What's the date on those letters? And what did Brandy do? She came up here and told the truth. She said she told the truth, and she swore on the Bible she told the truth. We talked about Brandy's record, 1997, possession of alcohol by a minor. That's all she's got, and then her father died. When did her father die, the end of 2014, and then the downward spiral began. Yeah, she's got a bunch of pending charges. She's getting a deal by testifying, absolutely. She's looking at five years. She's pleading on the burglary, possession with intent to distribute. She's pleading on a PWID meth, which is a step below the trafficking, and the unlawful neglect. She's pleading on,

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ATTORNEYS LLC

May 13, 2019

Earnest Edward Vaughn Sr., #246912
MA-0144-B
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29010

Re: Earnest Edward Vaughn Sr., #246912 vs. State of South Carolina
2019-CP-24-00160

Dear Mr. Vaughn:

I have been appointed to represent you in your Post-Conviction Relief Application filed in Greenwood County. First and foremost, you must notify me immediately if you are moved to a new correctional facility or even moved within the population. Please include a dorm assignment and room number with any updates.

I am not in control of the PCR court docket and those dockets are set by the South Carolina Attorney General's Office so there may be a significant amount of time before your hearing is set. I will be in contact with you to discuss your case prior to your hearing but I might not be able to contact you until significantly closer to your hearing date. I do not have a copy of your trial or plea transcript at this time and do not expect to be provided one until the State prepares its Return to your Application for Post-Conviction Relief. Once I am provided these documents I will forward them to you.

Please note, you cannot get a sentence reduction or "time cut" in a PCR matter. If you win your PCR you start over from the beginning as if you were just arrested. So in your case, the kidnapping charge would come back. If you win, it is possible you could end up with more time than what you are serving now. Should you have any questions I can be reached at the address listed below. Please note I do not accept collect calls or calls from items that are considered contraband.

Best regards,

K Myers
for

ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM/kmm
Enclosure

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I never had a kidnapping charge.

ATTENTION

Please be aware of the following:

1. I do not have any of your prior attorney's files or what you may call your "MOTION for DISCOVERY". Your prior attorney will have to have your file pulled from storage and, either copied and mailed to my office or I will have to go retrieve the file. I *will* MAIL you a copy, if my office RECEIVES it.

2. I do not have any documents from the SC Attorney General's Office. As soon as I receive the Return, Transcript, or any other documents, I will MAIL you a copy, as soon as, my office has RECEIVED it.

3. If you have any amendments to add to your PCR that you had someone to file for you or you did yourself, please be aware the Clerk of Court is not allowed to accept your amendments. This is the rule set by the SUPREME COURT. Further, I do provide notice to the SC Attorney General; HOWEVER, I will not file the amendment until I have received the FULL file from your prior attorney, the Attorney General's Return, and any other necessary documents.

4. My office will schedule conferences to discuss your case. I do this so I may focus on your case file in front of me. I try to research your issues prior to speaking with you so I can answer your questions. Your SCDC location has a process for me to request a conference call and required advance notice. Therefore, your family or you saying you want to speak requires setting the call up through the warden's office. If you have a list a questions, please list them and number each question (so that I or my staff can understand the question) and mail those questions to me. If you are going to send 10 pages, you will have a longer wait on your response. Also, if you send multiple letters in one week or every week, please understand you will not get a weekly response.

5. The SC Attorney General's Office will contact me about your scheduled court hearing. I do not control the cases the SC Attorney General calls for the term of court. Therefore, as soon as I hear, I will immediately send your written notice. Please do not have your family/friends bombarding my office with calls regarding the date of the hearing. This only disrupts my staff and myself from being able to work on files. You will receive the notice as soon as I receive it.

6. If you have witnesses you think would be pertinent to your case, please mail a list with their contact information to me at my office:

Ashley A. McMahan, Esquire
McMahan & Taylor, Attorneys, LLC
PO Box 5501
West Columbia, SC 29171

The Clerk accepted all of my amendments and the PCR Judge did also.

McMAHAN & TAYLOR
ATTORNEYS LLC

October 2, 2019

Earnest Edward Vaughn Sr., #246912
MA-0144-B
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29010

Re: Earnest Edward Vaughn Sr., #246912 vs. State of South Carolina
2019-CP-24-00160

Dear Mr. Vaughn:

Enclosed is the Return, Motion for More Definite Statement, and Partial Motion to Dismiss. I'll be in touch to discuss your case closer to when it will be called for a hearing. Also, included are the transcript pages you requested be returned. Please remember to notify me if you move institutions.

Should you have any questions I can be reached at the address listed below. Please note, I do not accept collect calls or calls from items that are considered contraband.

Best regards,

Ellen DuBois

Ellen DuBois
Paralegal for
ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM/erd
Enclosure

Foot Note:
I sent Ms. McMahan copies of all of these documents (evidence) to present at the evidentary hearing. She refused to present it on my behalf or raise the constitutional violations.

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McMAHAN & TAYLOR
ATTORNEYS LLC

May 11, 2020

Earnest E. Vaughn, #246912
F1-0182-B
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: Earnest E. Vaughn, #246912 vs. State of South Carolina
2019-CP-24-00160

Dear Mr. Vaughn:

Enclosed is the Order of Dismissal on your PCR application. I also went ahead and filed a Notice of Appeal for you. I reviewed the order and did not see a reason to file a 59€ as all the issued raised were addressed in the Order. Someone from the Office of Appellate Defense should be in touch with you about your appeal. Your appellate attorney will send you the appendix which will include the PCR transcript. I am closing my file on your case and will keep a copy of your file for six (6) years.

If you have any questions, please let me know. Please note I do not accept collect phone calls nor do I accept communications from items that are considered contraband.

Best regards,

ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM

Enclosures

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McMAHAN & TAYLOR
ATTORNEYS LLC

May 26, 2020

Earnest E. Vaughn, #246912
F1-0182-B
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: Earnest E. Vaughn, #246912 vs. State of South Carolina
2019-CP-24-00160

Dear Mr. Vaughn:

I am in receipt of your letter mailed on May 19, 2020. I cannot file a SCRCP 59(e) motion because jurisdiction of your case is now with the Supreme Court. I reviewed the order and did not see a reason to file a SCRCP 59(e) as I felt all the issues raised at the hearing were adequately addressed in the Order. I did not promise you I would file a 59(e) after the hearing. I told you I would file one if I felt one was needed. I do not think a 59(e) was needed in this case.

Someone from the Office of Appellate Defense should be in touch with you about your appeal. They are your attorneys now. Should you need a copy of anything out of your file that I have, please let me know.

Best regards,

Ashley A. McMahan

ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM

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ATTORNEYS LLC

December 20, 2019

Earnest Edward Vaughn Sr., #246912
MA-0144-B
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29010

Re: Earnest Edward Vaughn Sr., #246912 vs. State of South Carolina
2019-CP-24-00160

Dear Mr. Vaughn:

There was an error in my last correspondence to you. The letter stated Lexington County when it should have referenced Greenwood. My apologies for the mistake. The next term of court for the 8th Circuit is scheduled for March, 2020. If your case is to go forward in March, as I do not control the docket, it will be heard in a County within the circuit which may or may not be Greenwood.

I will set up a conference with you soon to discuss your case. It will most likely be early January.

Should you have any questions I can be reached at the address listed below. Please note, I do not accept collect calls or calls from items that are considered contraband. Happy Holidays!

Best regards,

Ellen DuBois

Ellen DuBois
Paralegal for
ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM/erd

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ATTORNEYS LLC

November 22, 2019

Earnest Edward Vaughn Sr., #246912
MA-0144-B
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29010

Re: Earnest Edward Vaughn Sr., #246912 vs. State of South Carolina
2019-CP-24-00160

Dear Mr. Vaughn:

Thank you for your correspondence received October 16, 2019. My apologies for the late response as I've been in and out of court for several weeks. In regards to your ex parte issue, the filings were not ex parte as I was served with the document as your attorney. Also, thank you for providing me with additional information, I am sending back the originals, and made a copy for your file.

Enclosed is an Authorization to Release File form for your signature, along with a self-addressed, stamped envelope for its return. This will allow us to obtain all documents in your file from your previous attorney that may aid in your PCR.

The next PCR term for Lexington County will be March of 2020. Please be advised that we do not have control over the docket as it is set by the Office of the Attorney General. Therefore, there is no guarantee that you will be on the docket for that term. When we have been given notification that your case has been set, we will promptly inform you. Court terms are set by the South Carolina Judicial Department, so we have no way to expedite this process.

Should you have any questions I can be reached at the address listed below. Please note, I do not accept collect calls or calls from items that are considered contraband.

Best regards,

Ellen DuBois

Ellen DuBois
Paralegal for
ASHLEY A. McMAHAN
ATTORNEY AT LAW

AAM/erd
Enclosure

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I sent her copies of all documents to present at the hearing. She would not present them on my behalf!

McMAHAN & TAYLOR
ATTORNEYS LLC

August 27, 2019

Earnest Edward Vaughn Sr., #246912
F-4-133
McCormick Correctional Institution
386 Redemption Road
McCormick, SC 29899

Re: Earnest Edward Vaughn Sr., #246912 vs. State of South Carolina
2019-CP-24-00160

Dear Mr. Vaughn:

Thank you for your letter dated 08/15/1019 and the information you shared. I will set a conference to discuss your case in depth closer to its hearing date.

Should you have any questions I can be reached at the address listed below. Please note I do not accept collect calls or calls from items that are considered contraband.

Best regards,

ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM/kmm

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McMAHAN & TAYLOR
ATTORNEYS LLC

February 17, 2020

Earnest Edward Vaughn Sr., #246912
F1-0182-B
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: Earnest Edward Vaughn Sr., #246912 vs. State of South Carolina
2019-CP-24-00160

Dear Mr. Vaughn:

Your PCR matter is set for a hearing on March 12, 2020, at the Laurens County Courthouse before the Honorable J. Mark Hayes. Court starts at 9:30am. All PCR matters within the circuit are held in one county, and this time the Judge picked Laurens. (It probably was the only place with an open courtroom.) I do not know if SCDC will bring you the day of to court or bring you the day before to the Greenwood Detention Center. Either way I will touch base with you prior to the hearing at the courthouse.

I am working on amending your PCR now and will send you a copy of it when I send it off to be filed. I did speak with Ms. Merrill and Mr. Gilliam about your case already. I also have another call set to talk to you on March 5, 2020.

Should you have any questions I can be reached at the address listed below. Please note, I do not accept collect calls or calls from items that are considered contraband.

Best regards,

ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM

P.O. BOX 5501 · WEST COLUMBIA, SC 29171
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In Re:
Vaughn v State
2019-CP-24-00160

Dear Ms. McMahan,
I am writing you about the above p.c.r. case. In your letter to me, you mentioned a kidnapping charge that could come back on me. It appears you have not reviewed my case. I have never had a kidnapping charge. Nothing can come back on me when we W.I.N this p.c.r. I would like to brief you on some of my issues listed on my p.c.r. app. and we will not waive any of those issues.

1. Judicial Misconduct and Abuse Of Discretion, 6th & 14th Amend Viol.
2. Prosecutoral Misconduct, 6th & 14th Amend Viol.
3. Police Misconduct, 4th 5th & 14th Amend Viol.
4. Ineffective Ass. Trial Counsel, 6th & 14th Amend Viol.
5. Ineffective Ass. Appellate Counsel, 6th & 14th Amend Viol.
6. I have also raised violations of my 4th, 5th, 6th and 14th Amendment Rights of the United States Constitution.

This conviction should have been vacated on my direct appeal on the 4th Amendment violation when the judge failed to suppress the fabricated evidence, claimed to have been seized during an unlawful traffic stop in violation of Terry v Ohio, and the search of the vehicle and my person in violation of Mapp v Ohio. No consent or search warrant I am sending you a copy of the suppression hearing for your review at this time.

As you can see, Brian Louis admitted that they made the stop because they thought there was an active arrest warrant for the driver of the vehicle

The fact he said, "he believed" he was speaking to Laurens County and he was told there was a warrant for her was hearsay and my Lawyer should have objected. She should have moved to suppress everything at this time.

Instead, she allowed them to say they had a warrant for me in hand at that time. Brian Louis said he believed he had it but not sure Then he later said every who 351 was had it That was Whitt Brooks who admitted he didn't have it. Josh Hood said he did not have it. No-one had this warrant. It did not exist at that time. The Prosecutor never entered that warrant into evidence because I could have impeached them on that. Heres a case on that, Mooney-v-Holohan-294-U.S. 103, 112 (1935). The Supreme Court made it clear that a deliberate-deception of a court and jurrors by the presentation of known false evidence is incompatible with rudimentary demands of justice, Also see, Riddle v Omzitt-631 S.E. 2d 70, Giglo v U.S.-405 U.S. 150, 153 (1972), Napue v Illinois-360 U.S. 264 (1957) We said the same results obtains when the State

although not soliciting false evidence, allows it to go uncorrected when it appears. Id at 269, 79 S.Ct. at 1177

You will also see where Prosecutor Micah Black with-held or illegally suppressed documents from the discovery, such as Debbie Tuckers prior crimina record, the first produced the name and record of another informant. Debbie Tuckers testimony was also heresay because it was uncorroberated an my hawyer was also ineffective for failing to objec and ask that it be removed from the record. Crivens V Roth - 172 F.3d. 991 citing United States. V. Bagley - 473 US 667, 676, 105 S. Ct. 3375, 87 LEd. 2d 481 (1985 found a brady violation when witness prior crimina record would have been used to impeach the credibility of the governments main witness. The Solicitors suppression or with-holding this evidence violates Due Process and the right to a fair trial.

The prosecutor also tampered with a defense witness Brandy Wilson just day's before the trial (3 days). He made her a promise of dismissing charges against her to change her statement she made clearing me of any knowlege of anything at the time she was stopped. They was not aware that I was in the vehicle until after the stop was made. They ran a N.C.I.C on us both that came back clear.

The police also used a pre-text reason for conducting ~~[illegible]~~ the search and detention of my person. It was the allegation of a sham arrest warrant that was used and dismissed after the trial. See State V Lacy 468 SE 2d 7

Whitt Brooks also brought up an arrest from Marc 2015 on a drug charge that was dismissed also and Brian Louis brought up the arrest warrant from Nov 23rd 2015. ~~[illegible]~~ They claimed this was unintential, My Lawyer only objected to one of them and moved for a mistrial. The judge gave a curritaive instruction but that was prejudic to my case and denied me the right to a fair trial

There's a case that says, you can't throw a skun in the box and not expect the jury to smell it. I don't have that case in hand at this time.

I also never made a statement to police as indicated by Jarvis Reeder. The police and prasecutor suppressed the audio from the vedio to keep me from proving this. They also shifted the burden of proof on the defense.

As you can see Chad Cox read me my rights it was recorded on the dash cam. I told him I would not answer questions and wanted my Lawyer

At that time Chad Cox walked away. Marinda 384454 Then Jarvis Reeder came into the vedio question me and threatening me, "You cannot hear this." State v Peay - 468 S.E. 2d 669 says you cannot enter a vedio tape without audio. It violates Rule 106 SCRE, Rule 401 and 403 SCRE also.

Riddick v Com. - 468 S.E. 2d 135, statement procured during custodial interrogation due to police's failure to scrupulously honor accused decission to remain silent is presumed to have been obtained by involuntary waiver of Fifth Amendment Rights and therefore is inadmissable.

The judge also intentionally erred by denying the defense's motion for a mistrial. See State v. King - 468 S.E. 2d 232. The trial court is required to declare a mistrial upon a defendants Motion if there occurs during the trial conduct, inside or outside courtroom, resulting in substantial and irreparable prejudice to the defendants case.

My Lawyer was ineffective for failing to move for a mistrial when contact was made with a juror inside the restroom. My Grand-Daughter was in the ladies room crying and a juror approached her and ask why she was crying. Hailey just responded and said she didn't want her papa to go to jail.

The judge (Hocker) discussed inadmissable evidens before this trial started with the State. He admitted he was told about the pretext, (Sham), arrest warrant and he was told it would not be used against me in court. Judge Hocker should have recused himself from the bench in this case He set an excessive bond of $100,000.00 that was later deemed excessive by Judge Houghston and reduced to a $20,000.00 bond. So judge Hocker abused his discretion throughout this trial on every personal decission he made on every issue

There was approx 4 issues preserved for appellate-review including the 4th amendment issues. I discussed them by mail and phone with my appellate defense lawyer and he told me he would raise them. Then when I saw he only raised one issue I called him and I ask him why he only raised one issue. He told me a 3rd party told him not to raise the 4th amendment violation. This violated our attorney/client relationship and it violated my 6th & 14th amendment right's. I filed a complaint against him with the S.C. Barr Ass., and with the Office of Disciplinary Counsel. Hopefully he will be disbarred very soon. That's Lawyer misconduct, conspicary and it was done to obstruct justice. The motive for it is clear. My conviction would have been vacated

Now the State is going to try to conspire in this p.c.r. and try to obstruct justice. They will delay the evidentary hearing, Try to block my issues from being heard etc. They will surely Judge shop to get another crook on the bench like they did in my trial.

Everyone involved in this case so far had an ethical and moral duty to uphold the law's and the United States Constitution but have abused their powers to see that I was unlawfully arrested and convicted and denied the right to a fair direct appeal.

Therefore, we will file a Writ of Mandamus in the S.C. Supreme Court soon, just to ask for an order to preclude anyone in Greenwood County or the Attorney General's office from any inordinate delay or any unlawful interference in this p.c.r evidentary hearing, so we can preserve all issues for further review if I have to file a Writ Of Cert in the South Carolina Supreme Court.

However, I should get my relief I'm askin for in my p.c.r.. But since it is in Greenwood County we can expect the worse, but hope for the best. I've been there before!

Atlast, the so called evidence they claimed they seized is tainted and I told my Lawyer to challenge it. She admitted in court that she advised me against that.

If you will follow the facts and the chain of custody you will see the following. They claimed in the arrest warrant that they seized 18 grams when I was arrested. That's what they turned into evidence Greg Allison.. Mr. Allison put that amount into the computer.

The next day he adds 3.4 grams to the contents and says he just put it in the computer wrong. He said it wasn't lost or found in the floor of his office. However, he did a supplemental report that said he did find it in the floor the next morning. That report disappeared or was unlawfully suppressed from the discovery before the trial

But also take note that was the only bag of substance that was tested by SLED (Lynn Black). They also give different dates when it was taken to SLED and when SLED said they recieved it. The chain of custody is supposed to be precised with no break in the chain. Therefore, it is tainted.

Well, I have brought you up to date on the fact's and circumstances of my unlawful arrest and illegal conviction and issues I have raised in this case. I have supported most of what ive said with case law also.

I would like for you to do the amendments, file briefs as soon as you go over the transcript and review the discovery when you receive it please? I have a rutt copy of all of these document's I can send you now if you would like for me to send it to you.

Just let me know in your response to this letter please. I will be looking forward to hearing from you in the very near future.

Please Respond.

Sincerley

Date 6-12-19 Earnest Vaughan

Earnest Vaughn-246912
B.R.C.I., Ma. 144
4460 Broad River Rd.
Columbia S.C. 29210

CC File
LTL-EEV

Filed CP 8th Jud Cir Greenwood, SC
2020 JAN 21 AM 11:14

In Re: Vaughn v State
2019-CP-24-00160

Dear Ms. McMahan, pg. 1

I am in response to your letter dated 1-7-20. I'm sure you are aware of what the Attorney General's Office is trying to do. "DO NOT" fall for the trap they have set in the response they filed to my P.C.R. application.

This is an attempt for them to get my application deemed as moot if you amend my application. If you file anything on my case, please do not use the language "amendment" or "motion to amend".

They opened the door for us to respond and that's what I did in my Writ Of Mandamus I filed in the S.C. Supreme Court and the P.C.R. Court.

So if you file anything, use the language "Response To State's Return"! That way you can include your response with what I have filed and my filings won't be deemed as moot.

This is just a cheap way of them trying to get the issues I raised waived without my consent.

This is also an "attempt to obstruct justice" against me, in a case that, they are clearly aware, that, I can "meet my burden of proof" on all the misconduct and constitutional issue's, ineffective assistance of trial counsel, and ineffective assistance of appellate counsel.

We cannot underestimate the corrupt employee's that work in the Attorney-General's Office. They have no respect for the rule of law or the United-States Constitution when it comes to people outside the loop, (ME)! The employee's in the Solicitors Office had the same outlook during my jury trial. After all, my lawyer had me sitting outside the triangle during the trial and sentencing.

She also admitted during the trial, that "she did not know what to do" and "she was trying this case without co-counsel"

She admitted that she advised me against challenging the chain of custody altering the weight of the evidence and the lack of proper testing by S.L.E.D.!

So I can prove that, she intentionally failed to properly represent me at trial.

My Appellate Defense Lawyer (Taylor Gilliam, told me on the phone, that, someone told him not to raise the 4th amendment violation on my direct appeal. He only raised "one dead bang issue" on my direct appeal and he did so against what we discussed on the phone and what I stated in my letters to him.

So we need Jane Merrill and Taylor Gilliam subpoenaed to this P.C.R. hearing to put them under oath and question them about their failure to properly represent me like they was paid to do by the State.

On the 4th amendment violation, the Police clearly admitted that they made an unlawful traffic stop saying they had an active arrest warrant for the driver.

Although Jane Merrill let them "skirt around" that, the protection of the 4th amendment does not. Then they lied under oath saying they had a "warrant for my arrest, in hand" at the time of the stop. That is perjury.

Ethically, I don't see how the Attorney General's Office, the P.C.R. Court, or anyone sworn to uphold the law can allow this criminal misconduct to go uncorrected.

On the 5th amendment violation, Chad Cox lied under oath when he said I did not say, "I want my lawyer present before any questioning"! That's the reason Chad Cox turned and walked away. That is also the reason they took the sound out of the vedio.

Then Jarvis Reeder came up to me trying to ask me question's. He claim's I made a statement, saying I had drug's on me. That is heresay and also perjury. My lawyer was made aware, "I did not give a statement". However, she requested a Jackson v Dino hearing to suppress a statement that no-one had. She should have just objected to Reeders testimony

You could hear Chad Cox talking to me and I never moved and you could not hear me respond to him and you could not hear Jarvis Reeder talking and it was admitted that there was a microphone on the vehicle connected to the dash cam.

It's obvious they tampered with the vedio, and my lawyer should have objected to it as inadmissable (tainted evidence).

It was the burden of proof that a statement was made and the State did not meet that burden. If they could just say, a statement was made in a court of law, then they should just scrap the United States Constitution.

That's the same due to the fact that the Judge denied me the right to move to suppress the evidence based on, they tampered with the evidence and did not have a proper chain of custody.

This violated my 6th and 14th Amendment - Right's and it rendered my trial fundamently unfair under the Due Process Clause.

It is also a fact that the Prosecutor, - (Micah Black) tampered with a listed defense witness just 3 day's before the trial, (Brandy Wilson) and conspired with her to change her statement and lie under oath inexchange for the dismissal of a number of charge's she was facing.

Then in the Prosecutor's closing argument he vouched for her testimony. This clearly violated my 6th Amendment Right's, under Vaughn v State - 362 S.C. 163, 169, 607 S.E. 2d 72, 75, (2004)

We can also meet the burden of proof that, the indictment's are also tainted (forged). The indictment's do not have a Grand Jury - Seal on them for a reason. The Court of General Sessions was not in session on the date of May 6th 2016. Therefore the indictment's should have been quashed.

Infact, without that seal, the Clerk of Court should not have put her True Copy Seal on it.

Now it is clear to me, the reason the Attorney General's Office want's you to amend my P.C.R. application is to make my original application moot.

They are aware that I can meet the burden of proof to all of the fact's and constitutional violations I have listed above.

This is why I ask you in goodfaith to "RESPOND" to the State's return and to include all the constitutional issues I raised.

I wanted to respond to your letter since you said you intend to amend the application just to be sure you are aware of the affect an amendment will be. Therefore it should not be detramental to my case.

We will discuss this in the near future by phone or in person. However, I want to have this on the record in my case so I can show nothing in my case has been waived and all of these fact's and constitutional issues should be raised and ruled on by the P.C.R. Court in the evidentary hearing.

I also will file this letter with the Clerk so it will be binding in the evidentary hearing. I hope as the result of the Writ of Mandamus that's pending in the S.C. Supreme Court they will be compelled to put it on the next docket and I get a fair hearing under the Equal Protection of the Law.

Sincerley

Date 1-14-20. Earnest Vaughn

Earnest Vaughn, 246912

Dear Ms. McMahan, pg. 1

I want to thank you for the phone call. The reason I filed our letter's with the Clerks Office is because, I want to be transpearant about my case leading up to the evidentary hearing. I want to make it clear "I will not waive any of my right's" and "I will not waive any of the issues" I have raised in my PCR application, my writ of mandamus or any of the fact's I have listed in the many letters I have wrote you.

It is not proper for the Attorney General's Office to request that a PCR application be amended for a statement of fact's. This is a cheap way for them to try to get you to waive some of the issue's I have raised and I can surely meet my burden of proof on those issues.

The constitutional violations, and all the issues of misconduct, during my trial, (suppression hearing), and unlawful arrest, can be clearly be established. This is the reason the Police, Prosecutor and the biased judge staged this trial with my court appointed lawyer before I walked into that courtroom.

Now the State want's to claim that a court error can't be challenged in a P.C.R, and that I should have raised other issues at trial or on appeal.

I can show that, I have been denied proper access to the court in my trial, appeal and now they are trying to abuse their power to deny me a full and fair PCR Evidentary Hearing.

I understand you don't controll the court docket. However, you can assure that we, "properly and fully," present my case to the PCR court and under the, Due Process Clause, of the, 14th, - Amendment, of the, United States Constitution, I am entitled to Equal Protection of the law on the 4th, 5th, 6th and 14th, - Amendment violations that have been committed against me throughout this fabricated case against me as the result of a personal vendetta by the corrupt government officials of Greenwood Co.

I would like for you to please send me a copy of the "RESPONSE" you file on my behalf to the States partial return.

You should file an addendum as your response instead of an amendment, or if you amend you should include "all issues" that I listed on my P.C.R. application and the attachments that I have filed in this case. What you file will determine how I choose to proceed with this case.

I don't care how long it takes to hold this PCR hearing or how long the hearing last, I want all of my issues preserved for my Writ of Cert. in the South-Carolina Supreme Court. However I should get my relief in the PCR Court.

We need to subpoena trial counsel and appellate counsel Jane Merrill and Taylor Gilliam. I also requested a copy of my phone call's from the Broad River prison phone to Taylor Gilliam transcribed in writing from Global Tel; This evidence will prove that a 3rd party conspired with him to not raise the 4th-amendment violation in my direct appeal.

Now the same people are trying to interfer with your representation of

me in this PCR evidentary hearing.

I hope we will get a positive ruling on the writ of mandamus I have pending in the S.C. Supreme Court. That would assure me a full and fair hearing in Greenwood County.

I hope to see you in the very near future.

Please Respond.

Sincerley
Earnest Vaughn

Date 2-10-20 Earnest Vaughn

CC File:
LTL-EEV

Foot Note:
Global Tel said you could request the phone call record's I made to Appellate Defense Taylor Gilliam. It was recorded.

Dear Ms. McMahan, pg. 1

I am in response to your letter dated 2-17-20 advising me of a hearing date of 3-12-20. That is great as long as I get a full and fair evidentary hearing

However, we both know that, the Attorney General's Office has no intention of allowing that to happen. That is the reason they requested that my P.C.R. application be amended, and made the claim that Court error's can't be raised in a P.C.R. evidentary hearing.

They are refering to the ruling Judge - Hocker made in the suppression hearing, where, HE TESTIFIED, against me from the bench with heresay/perjured testimony that was also given by the Polide and it was, "intentionally - uncorrected by the Prosecutor"!

Surely, all of this and other mis-conduct by the Police, Judge, and the Prosecutor rendered my trial fundamentally unfair, inviolation of my 6th, and 14th Amendment Right's of the United State's Constitution and we have the fact's and evidence to meet the burden of proof on this.

The State expects you to assist them in blocking the constitutional-violations and issues of misconduct I have raised in this case, by getting it amended and not listing the issues in the amended complaint.

I am concerned about this because the only issue you have responded to me about as a "good arguement," is where the Prosecutor vouched for the credibility of a States witness.

However, that witness was a defense witness until 3 day's before this trial when the Prosecutor (Micah Black), conspired with her to change her statement in exchange for a lot of charges against her being dismissed and the promise of probation on other charges. This is witness tampering and abuse of power by the Prosecutor.

Certainly, ethically all of the criminal-misconduct and constitutional violations committed against me cannot be lawfully overlooked by anyone that is involved in holding this hearing, and that is sworn under oath to uphold the laws, (State and Federal).

In response to the State's return to my P.C.R. application, inwhich "I was not served a copy of," I responded to it with a, writ of mandamus, simply asking for an order to assure me, a timely and fair P.C.R. evidentary hearing.

I also listed most of my issues in that complaint to the S.C. Supreme Court and I supported those issues with caselaw the best I could do. I also sent evidence from the trial transcript to show the State's motive for trying to deny me adequate, meaningfull and effective access to the Court so I can properly exhaust my State Court remedies with my "one bite at the apple" on each issue I have raised.

The main issue we will attack is the fact that, these indictments are forged and are non binding. They was not obtained under jurisdiction of the General Sessions Court or Grand Jury. "We will move to quash the indictments." They also do not have a Grand Jury True Bill Stamp affixed to them and the law state's that the Clerk of Court should not put her True Copy Stamp without the Grand Jury Stamp.

We should also be able to get this, "fabricated evidence", suppressed as a matter of law based on the following.

We can prove that the Police conducted an unlawful traffic stop. Defense counsel was clearly ineffective for failing to, "move to suppress at that time"!

Anything after that stop is posionus-fruit's based on the 4th Amendment of the United States Constitution. "This trial should have ended here"!

Instead, we can show that the Police began lying under oath saying they had a warrant for my arrest, "in hand" when I was detained. However, testimony from Josh Hood, Brian Louis and Whitt-Brook's proves they lied about this.

Brian Louis said he signed the warrant for my arrest. However, he admitted he did not find drug's on me. "He claimed-someone else did". That was here,say. My Lawyer failed to object to this.

We can show my Lawyer was ineffective all through this trial in-violation of my 6th amendment rights.

We can also show that, I was denied the right to challenge the chain of - custody, the improper handling and testing of the evidence claimed to have been seized in this arrest.

We can prove that Gregg Allison and SLED's Lynn Black both lied under - oath about the handling and the testing of this tainted evidence.

The Constitution requires that this fabricated evidence be suppressed under the Due Process Clause of the 14th Amendment.

The bottom line to this case is, The Honorable Judge Hayes, the Attorney General's Offite, and you as my Lawyer should treat this case as if it were your Fathers, your Brothers or your Son's due to the fact, we are all entitled to equal protection of the laws, and this unlawful conviction should be vacated as a matter of law.

I know the S.C. Supreme Court will be honorable in this case and all of my issues should be preserved,

for my Writ of certorari if I am denied relief in my P.C.R.

I know the Attorney General's Office is going to try to block my issues from being heard and to delay the case as long as possible. That's the reason I filed the writ of mandamus and list my issues at that time.

This hearing should not be delayed. The Supreme Court is aware of the inordinate delay of 3 years in the last case of Vaughn-v-State and the fact that they also abused their power to block my issues from and being preserved for an appeal.

I can show a pattern of abuse of power by the Attorney General's Office, the Police, Solitors Office's, and the Judge's that have sat on my case's in the lower Court's in the past. It's time for US to stop it and have them held accountable for the criminal misconduct they committed against me. I hope to see you in the near future.

Sincerley

Date 2-20-20 Earnest Vaughn

2019-CP-24- 00160

Filed CP Ann. Juv Ctr Greenwood, SC
2019 FEB 14 AM 9:26

Dear Clerk,
Please find enclosed for filing in your office an original plus 2 copies of my P.C.R. with attachments.

Would you please return me a clock stamped copy for my records and serve a copy on the proper parties (the State) on my behalf.

I would also like to request the appointment of counsel. I would like to request counsel from outside the 8th Judicial Circuit if it is proper to do so, due to several conflict's of intrest in the past.

Thank you very much for your time and consideration in this matter.
Please Respond.

Sincerley

Date 2-8-19 Earnest Vaughn

Earnest Vaughn - 246912
B.R.C.I., Pa. 144
4460 Broad River Rd.
Columbia SC. 29210

STATE OF SOUTH CAROLINA

County of Greenwood

In the Court of Common Pleas

Earnest Vaughn - #246912
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.

2019-CP-24- 00160

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention Broad River Corr. Inst.

2. Name and location of Court which imposed sentence Greenwood County General - Sessions, 528 Monument St., Greenwood S.C. 29646

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
   (a) 16-GS-24-539, Trafficking Meth
   (b) 16-GS-24-541, Child Endangerment
   (c)

4. The date upon which sentence was imposed and the terms of the sentence:
   (a) Nov. 2nd 2016, 30 years
   (b) Nov 2nd 2016, 10 years
   (c)

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓ Jury Trial

(c) after a plea of nolo contendere _____

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

Yes

7. If you answered "yes" to (6), list

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. Nov 7, 2018

ii. _____

iii. _____

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

i. unknown

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Judicial/Prosecutoral Misconduct, Abuse of Discretion, viol. 6th & 14th Amend.

(b) Police Misconduct, viol. 4th 5th & 14th Amend.

(c) Ineffective Assistance of Trial and Appellate Counsel viol 6th & 14th Amend

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) See Attachment A

(b) See Attachment B

(c) See Attachment C

I reserve the right to amend.

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? Yes

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Petition For New Trial (Direct Appeal)

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Affirmed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. Nov 7th 2018

ii. _____

iii. _____

iv. _____

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

i. Unknown

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective Assistance of Appellate Counsel

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Jane Merrill, Main St. Greenwood SC. 29646

ii. Taylor Gilliam, S.C. Appellate Defense, Columbia SC, 29201

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Jury Trial

ii. Direct Appeal

iii. _____

18. State clearly the relief you seek in filing this application.

Vacate Conviction (Suppress Evidence) or New Trial

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

County of Greenwood

VERIFICATION

I, Earnest Vaughn, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Earnest Vaughn

SWORN to and subscribed before me this 8th day of February, A.D. 2019

Jennifer Washington (L.S.)
Notary Public

My Commission Expires: March 8, 2028

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Earnest Vaughn, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Earnest Vaughn
Applicant

SWORN or affirmed to and subscribed before me this 8th day of February, A.D. 2019

Jennifer Washington
Notary Public

My Commission Expires March 8, 2028

Attachments A-1

Facts and Statements pg. 2 cont.
Judicial/Prosecutoral Misconduct
Abuse of Discretion
6th and 14th amendment violation

Filed CP 8th Jud Cir Greenwood S.C.
2019 FEB 14 AM 8:25

In this present case for post conviction the petitioner request to be heard on all of the following issues relating to the unlawful-arrest and unfair jury trial that violated the petitioners 4th, 5th, 6th, and 14th Amendment-Rights of the United States Constitution.

Based on the fact's and circumstances surrounding the arrest of the petitioner and the testimony on record as a whole the following can be shown.

1. That the Court erred by failing to suppress tainted evidence claimed to have been seized by police during an unlawful traffic stop and an illegal detention of the petitioner and illegal search.

2. The Court abused it's discretion by denying defense counsel's motion for a mistrial after inadmissable testimony was given relating to a sham (pretext) warrant was given to jury that prejudiced the petitioner.

3. That the Court failed to properly rule by law on objections made by defense counsel. It was resolved improperly with personal opinion's.

4. The Court was biased in this case! Judge Hocker should have recused himself after previously presiding over a bond-hearing and setting an excessive bond of $100,000.00 that was later reduced to a reasonable $20,000.00 bond.

5. Prosecutorial Misconduct when prosecutor failed to correct perjured testimony by police relating to probable cause.

6. Prosecutorial Misconduct when prosecutor with-held excupatory evidence from defense and failed to fully respond to Rule 5 discovery motion before trial.

7. Prosecutor conspired with defense witness to change statement's for a promise of dismissing felony charges not within 10 day's before trial.

8. Prosecutor conspired to tamper with other evidence, (took sound out of video), dash cam!

Attachment B
pg. 2 cont.

Police Misconduct
violation 4th, 5th & 14th Amend.

1. Police Misconduct when police used false allegations to conduct unlawful traffic stop.

2. Police Misconduct when police use sham-(fabricated) pretext arrest warrant as probable-cause to unlawfully detain petitioner.

3. Police Misconduct when police tamper with evidence, improper chain of custody and testing of evidence.

4. Police Misconduct when police committ marinda violation, then tamper with video to exclude audio on dash cam.

5. Police Misconduct when police lie under-oath stating they had a sham arrest-warrant in hand at time of traffic stop.

6. The acts of misconduct listed in this case violated Due Process under the Equal Protection Clause of the 14th Amendment and rendered the trial fundamentally unfair.

Attachment C

Ineffective Assistance of Counsel pg. 2 cont.
6th and 14th Amend. Viol.

1. Trial counsel ineffective for failing to properly prepare the case for trial.

2. Trial counsel ineffective for failing to object to inadmissable and tainted evidence.

3. Appellate counsel ineffective for failing to include issues preserved for appellate review as instructed.

4. Trial counsel and appellate counsel violated attorney/client relationship.

Therefore, I ask in goodfaith that an evidentary hearing be held on all issues raised above along with the fact's and circumstances relating to this unlawful arrest and unfair jury trial.

I Reserve The Right To Amend.

Respectfully Submitted

Date 2-8-19 S/ Earnest Vaughn.

Earnest Vaughn

In Re: Vaughn v. State
P.C.R.

Dear Clerk,

I have enclosed attachments A, B, and C that I would like filed with my P.C.R. - application.

I had to send these seperate due to the content's of the envelope's.

Would you please file them and return me a clock stamped copy for my record's?

Thank you very much for your time and consideration in this matter.

Respectfully Submitted,

Date 1-1-19 S/ Earnest Vaughn, Sr

Earnest Vaughn Sr: 246912
B.R.C.I. Ma. 144
4460 Broad River Rd.
Columbia S.C. 29210

Judicial/Prosecutoral Misconduct
Abuse Of Discretion

1. The trial court erred by failing to suppress evidence claimed to have been seized by police during an illegal traffic stop, inviolation of the 4th Amendment of the United States Constitution.

2. The trial court abused it's discretion and erred by stating the police had and active and unchallenged arrest warrant for the petitioner. This was based on a personal opinion and not supported by caselaw or evidence.

3. The trial court abused it's discretion by denying defense motion for a mistrial after the State submitted inadmissable testimony as evidence before the jury relating to a sham/-pretext arrest warrant.

4. The trial court abused it's discretion by failing to rule according to law on other objections made by defense counsel. The opinions was made on personal opinions.

5. The trial court was biased in this case and should have recused himself. 1 thru 5 violated Due Process and denied the petitioner the right to a fair trial. 6th & 14 Amend Viol. U.S. Const.

Attachment A

Prosecutoral Misconduct

1. Prosecutoral Misconduct when prosecutor failed to correct perjured testimony by police and other witnesses during trial.

2. Prosecutoral Misconduct when prosecutor failed to adequately respond to Rule 5 and with-holding exculpatory evidence from the defense.

3. Prosecutoral Misconduct when prosecutor intentionally submitts inadmissable and tainted evidence during trial.

4. Prosecutoral Misconduct when prosecutor conspires with a documented defense witness to change statement and lie under oath in exchange for the dismissal of charges and a reduced sentence on others.

5. Prosecutoral Misconduct when prosecutor vouches for the credibility of a states witness during closing argument.

The prosecutoral misconduct that was intentionally committed denied the petitioner the right to a fair trial and violated Due Process inviolation of the 6th and 14th - Amendments of the United States Constitution.

I reserve the right to amend.

Attachment B

Police Misconduct pg. 1

1. Police Misconduct, when police conduct an illegal traffic stop invialation of 4th amendment United States Constitution.

2. Police Misconduct, when police violate petitioner's marinda right's inviolation of the 5th Amendment of the United States Constitution.

3. Police Misconduct, when police fabricate a sham/pretext arrest warrant to skirt around a 4th amendment violation.

4. Police Misconduct, when police lie under oath about the existance of an arrest-warrant being in hand at time of stop.

5. Police Misconduct, when police tamper with video to exclude the audio, and tamper with other evidence claimed to have been seized.

6. Improper chain of custody also constitutes act's of police misconduct.

These act's of police misconduct violated the petitioners 4th, 5th, and 14th, amendment right's of the United States Constitution.

I reserve the right to amend.

Ineffective Assistance Of Trial and Appellate Counsel.

1. Trial counsel ineffective for failing to properly prepare for trial.

2. Trial counsel ineffective for failing to object to inadmissable evidence and hearsay testimony.

3. Trial counsel ineffective for failing to properly follow up on objections made to require the court to fully rule in compliance with law.

4. Trial counsel ineffective for failing to properly challenge 4th amendment violations during suppression hearing.

5. Trial counsel ineffective for failing to properly challenge tainted evidence and chain of custody.

6. Trial counsel ineffective for failing to properly challenge 5th amendment marinda violation.

Appellate Counsel

1. Appellate counsel ineffective for failing to raise potential issues on direct appeal that was preserved at trial by trial counsel. Petitioner directed him to do so in advance of filing a brief.

These act's of being ineffective by counsel's violated the petitioner's 6th and 14th amendment right's, U.S. const.

I reserve the right to amend.

STATE OF SOUTH CAROLINA COUNTY OF GREENWOOD	)	IN THE COURT OF COMMON PLEAS FOR THE EIGHTH JUDICIAL CIRCUIT
Earnest Edward Vaughn, Sr., #246912, Applicant, v. State of South Carolina, Respondent.	)	2019-CP-24-0160 **RETURN, MOTION FOR MORE DEFINITE STATEMENT, AND PARTIAL MOTION TO DISMISS**

In response to the application for post-conviction relief (PCR) filed on February 14, 2019, the State (Respondent) would respectfully show this Court:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. During its May 2016 term, the Greenwood County Grand Jury indicted Applicant for trafficking in methamphetamine (indictment #16-GS-24-0539) and unlawful neglect of a child (indictment #16-GS-24-0541).[1] Jane Merrill, Esquire, represented Applicant. Senior Assistant Solicitor Elizabeth White and Assistant Solicitor Micah Black of the Eighth Circuit Solicitor's Office prosecuted the case.

On October 31, 2016, Applicant proceeded to a jury trial before the Honorable Donald B. Hocker. The jury convicted Applicant on both counts as indicted. Judge Hocker sentenced Applicant to consecutive terms of thirty years' imprisonment for trafficking methamphetamine and ten years' imprisonment for unlawful neglect of a child.

[1] Applicant was also indicted for possession of marijuana with intent to distribute (indictment #16-GS-24-0540), but was found not guilty for this charge.

Appellate Defense submitted a final brief on behalf of Applicant. On December 11, 2017, Assistant Attorney General J. Scott Mathews filed Respondent's final brief. On November 7, 2018, in an unpublished opinion (No. 2018-UP-409), the South Carolina Court of Appeals affirmed Applicant's conviction. Subsequently, the Remittur was issued to the Greenwood County Clerk of Court.

II. Factual Background

On January 27, 2016, agents with the Greenwood County Sheriff's Office utilized the services of a confidential informant, Debbie Tucker, to arrange a controlled buy of Methamphetamine. (Tr. 117). Tucker made a phone call to Brandy Wilson and arranged to purchase a half ounce of methamphetamine from Appellant and Ms. Wilson at a car wash in Greenwood that evening. (Tr. 134-135). Police were told by Debbie Tucker that they should be looking for a dark colored Chevrolet Tahoe. (Tr. 118). Law enforcement arrived early to set up surveillance at the buy location. Before Debbie Tucker could arrive, a dark colored Chevy Tahoe arrived driven by Brandy Wilson. (Tr. 119). Appellant was in the passenger seat, and Appellant's five year old grandchild was in the back. (Tr. 256). Law enforcement called off the controlled purchase and initiated a traffic stop on the Tahoe. (Tr. 119, 138). Appellant was seen "fidgeting" by law enforcement and it appeared to Captain Jarvis Reeder that Appellant was attempting to hide something. (Tr. 255-256). Appellant was read his *Miranda* rights and made a statement to law enforcement admitting that he did have drugs in his pants near his testicles. (Tr. 258-260). Law enforcement then searched Appellant's person and located two plastic bags of suspected drugs underneath Appellant's testicles. (Tr. 262). Appellant was then placed under arrest.

At trial Josh Hood, Chad Cox, and Jarvis Reeder each testified about finding drugs in Appellant's "crotch area." (Tr. 174-175, 187, 262). Furthermore, Jarvis Reeder testified that

Appellant made a Mirandized statement admitting he had drugs inside his pants. (Tr. 258-260). Brandy Wilson also testified Appellant sent her a letter encouraging her to make statements to Appellant's attorney regarding Appellant's lack of culpability. (Tr. 221-222). Appellant specifically urged Brandy Wilson to tell his attorney that Debbie Tucker had sold them a camper with drugs inside of it, and that they were merely returning Ms. Tucker's drugs to her. (Tr. 221-222).

Agent Bryan Louis testified about his involvement with the arrest as well. Agent Louis was asked by the State "Were Ms. Wilson and Mr. Vaughn placed into custody?" (Tr. 154, line 3). Agent Louis responded "They were. I had an active arrest warrant for Mr. Vaughn from a previous incident." (Tr. 154, line 4-5). Appellant immediately objected and the objection was sustained. After a short conference outside the presence of the jury, the trial judge issued the following curative instruction:

> Ladies and Gentlemen, the last testimony offered that was objected to by Defense that there was an active arrest warrant. The existence of that should not be considered by you at all. It should not even come up during your deliberations, and it should not even be discussed in the jury room when you begin your deliberations. This is not evidence for you to consider. We are here on three charges and three charges only, and it's those three charges that you are to consider and nothing else."

(Tr. 158). The state did not mention the active arrest warrant for the rest of the trial, nor did they attempt to do so. The jury found the Appellant guilty on two of three counts. Appellant then filed his appeal.

III. Current Application

In his Application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

A. Judicial Error / Abuse of Discretion

1. "The Court erred by failing to suppress tainted evidence claimed to have been seized by police during an unlawful traffic stop and an illegal detention of the petitioner and illegal search."
2. "The Court abused its discretion by denying defense counsel's motion for a mistrial after inadmissible testimony was given relating to a sham (pretext), warrant was given to jury that prejudiced petitioner."
3. "That the Court failed to properly rule by law on objections made by defense counsel. It was resolved improperly with personal opinions."
4. The Court was biased in this case! Judge Hocker should have recused himself after previously presiding over a bond-hearing and setting an excessive bond of $100,000."

B. Prosecutorial Misconduct

1. "...prosecutor failed to correct perjured testimony by police relating to probable cause."
2. "... prosecutor withheld exculpatory evidence from defense and failed to fully respond to Rule 5 discovery before trial."
3. "Prosecutor conspired to tamper with other evidence (took sound out of video), dash cam!"

C. "Police Misconduct"

1. "...police used false allegations to conduct unlawful traffic stop."
2. "when police use[d] sham (fabricated) pretext arrest warrant as probable cause to unlawfully detain petitioner.
3. police tamper[ed] with evidence, improper chain of custody and testing of evidence."
4. "police commit[ed] Marinda [sic] violation, then tamper[ed] with video to exclude audio on dash cam.
5. "police lie[d] under oath stating they had a sham arrest warrant in hand at the time of the traffic stop."
6. "The acts of misconduct listed in this case violated Due Process under the Equal Protection Clause of the 14th Amendment and rendered the trial fundamentally unfair."

D. Ineffective Assistance of Trial and Appellate Counsel

1. "Trial counsel ineffective for failing to properly prepare the case for trial."
2. "failing to object to inadmissible and tainted evidence"
3. "Appellate counsel ineffective for failing to include issues preserved for appellate review as instructed."
4. "Trial counsel and appellate counsel violated attorney/ client relationship."

Applicant requests that he receive a "vacate[d] conviction (Suppress evidence) or [a] new trial."

Attached to this return and incorporated herein are the Greenwood County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the appellate record (including the Record on Appeal), and the records of this current PCR action.

IV. Summary Dismissal for Allegations of Trial Court Error

Respondent moves Applicant's allegations of trial court error should be dismissed as non-cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentences;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A). However, because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the *overwhelming* majority of cognizable claims fall under the broad umbrella of "ineffective assistance of counsel," a contention under the

Sixth Amendment to the Constitution of the United States. Furthermore, trial court error is not a cognizable claim for PCR. Roscoe v. State, 345 S.C. 16 (2001); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973).

Applicant's allegations of trial court error are issues that could have been raised at in the trial or thereafter on appeal. As such, Applicant's claims for trial court error are not cognizable grounds for relief in a post-conviction relief action, and they should be summarily dismissed.

V. Summary Dismissal of Claims of Police Misconduct

Respondent moves Applicant's allegations of police misconduct should be summarily dismissed. As explained in the prior section, an application for post-conviction relief does not serve as a substitute for direct appeal, and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR. S.C. Code Ann. § 17-27-20(b); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Therefore, Applicant's allegations of police misconduct should be dismissed as non-cognizable under the Uniform Post-Conviction Procedure Act.

VI. Response to Allegations of Prosecutorial Misconduct

In his application, Applicant asserts that prosecutors committed a Brady[1] violation by withholding exculpatory evidence. However, Applicant wholly fails to provide any specific allegations to support his claim, including what evidence prosecutors supposedly withheld from him. Accordingly, Respondent requests that Applicant, through appointed counsel, provide an amended Application on this allegation.

Applicant alleges several other grounds for prosecutorial misconduct including failing to "correct perjured testimony by police," "conspir[ing] with defense witness," and "conspir[ing] to

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

tamper with other evidence." However, as discussed in the prior two sections, an application for post-conviction relief does not serve as a substitute for direct appeal, and an issue that could have been raised at applicant's trial or on appeal is non-cognizable in an application for PCR. S.C. Code Ann. § 17-27-20(b); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Accordingly, the remainder of Applicant's prosecutorial misconduct claims should be summarily dismissed.

VII. Response to Ineffective Assistance of Counsel Allegations

In his Application, Applicant asserts various allegations of ineffective assistance of counsel against both his trial counsel and appellate counsel. First, Applicant claims that trial counsel was ineffective for "failing to properly prepare the case for trial." To establish that counsel was inadequately prepared, an applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). Applicant fails to identify how this alleged lack of investigation or preparation has prejudiced him, nor does he present evidence of what counsel could have discovered that would have helped his case. Accordingly, it is impossible for Respondent to respond to these allegations.

Additionally, Applicant asserts that counsel was ineffective for: (1) "failing to object to inadmissible and tainted evidence"; (2) "for failing to include issues preserved for appellate review as instructed"; and (3) "violating attorney / client relationship." However, Applicant wholly failed to state with any specificity facts to support his general allegations, including what "inadmissible and tainted" evidence Applicant is referring to, what issues should have been preserved, and how counsel allegedly violated attorney-client privilege. Based on this, it is impossible for Respondent to discern how exactly Applicant believes counsel was ineffective. Respondent moves for Applicant, through counsel, to amend this allegation to include sufficient, specific facts to support his claim of ineffective assistance of counsel.

VIII. Motion for More Definite Statement

In his Application, Applicant fails to set forth with specificity the facts and circumstances upon which the aforementioned claims of prosecutorial misconduct and ineffective assistance of counsel are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must ". . . specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

In his Application, Applicant asserts that prosecutors withheld exculpatory evidence, but fails to specify what evidence prosecutors supposedly withheld. Additionally, Applicant asserts various claims of ineffective assistance of trial and appellate counsel, such as: (1) "failing to properly prepare the case for trial"; (2) "failing to object to inadmissible and tainted evidence"; (3) "failing to include issues preserved for appellate review as instructed"; and (4) "violating the

Additionally, Applicant asserts that counsel was ineffective for: (1) "failing to object to inadmissible and tainted evidence"; (2) "for failing to include issues preserved for appellate review as instructed"; and (3) "violating attorney / client relationship." However, Applicant wholly failed to state with any specificity facts to support his general allegations, including what "inadmissible and tainted" evidence Applicant is referring to, what issues should have been preserved, and how counsel allegedly violated attorney-client privilege. Based on this, it is impossible for Respondent to discern how exactly Applicant believes counsel was ineffective. Respondent moves for Applicant, through counsel, to amend this allegation to include sufficient, specific facts to support his claim of ineffective assistance of counsel.

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In his Application, Applicant asserts that prosecutors withheld exculpatory evidence, but fails to specify what evidence prosecutors supposedly withheld. Additionally, Applicant asserts various claims of ineffective assistance of trial and appellate counsel, such as: (1) "failing to properly prepare the case for trial"; (2) "failing to object to inadmissible and tainted evidence"; (3) "failing to include issues preserved for appellate review as instructed"; and (4) "violating the

attorney-client relationship." However, Applicant fails to provide any details, including how counsel allegedly failed to prepare the case for trial, what "tainted evidence" should have been objected to, what appellate issues were not addressed by appellate counsel, and how both trial and appellate counsel violated the attorney-client relationship. Accordingly, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

IX. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to the Uniform Post-Conviction Relief Act[2] and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)–(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

X. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

[2] S.C. Code Ann. §§ 17–27–10 to –160.

XI. Request for an Evidentiary Hearing, Amended Application, and Summary Dismissal

WHEREFORE, having made its return, Respondent request that the aforementioned allegations of prosecutorial misconduct, trial court error, and police misconduct be summarily dismissed. Respondent further requests that Applicant, through his counsel, amend the application to provide required specificity for his allegations of ineffective assistance of counsel and his *Brady* violation allegation. Applicant has not shown sufficient cause to warrant an evidentiary hearing on this application and requests a hearing not be scheduled until after an amended application is so filed.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL
Assistant Attorney General

By: Brianna L. Schill
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

May 30, 2019

South Carolina Supreme Court
Columbia

Dear Clerk, pg. 1

Please find enclosed for filing in your office, my Writ of mandamus involving my PCR case in Greenwood County.

Since I have gave a statement of facts as the State, (Attorney Generals office), requested in a partial return they filed, I am also serving a copy to the Greenwood County Clerk of Court and to the Office Of The Attorney General.

Thank you very much for your time and consideration in this matter.

Respectfully Submitted
Date 9-20-19 S/Earnest Vaughn
Earnest Vaughn
McC.I. F-44133
386 Redemption Rd.
McCormick S.C. 29899

C.C File:
Greenwood Co. Clerk
S.C. Attorney General
wo M/ eev

South Carolina Supreme Court
Columbia

Earnest Vaughn | Petition
-V- Petitioner | Writ Of Mandamus
State Of S.C. | In Re: Vaughn v State
Respondent | 2019-CP-24-00160
Greenwood County

The Petitioner in the above case will respectfully move before this Honorable Court at this time to ask in good faith for an order be issued to the S.C. Attorney General's Office and the 8th Judicial Circuit Court Of Common Pleas to assure the Petitioner a timely and fair evidentary hearing on all issues listed in the application for post conviction.

The Petitioner raised the following issues on the PCR application,

1. Judicial Misconduct, 6th & 14th amend. viol. U.S. Const., and "Abuse Of Discretion"!
2. Prosecutorial Misconduct, 6th & 14th amend viol. U.S. Const.
3. Police Misconduct, 4th, 5th & 14th amend viol. U.S. Const.
4. Ineffective Assistance Of Trial Counsel, 6th & 14th amend. viol. U.S. Const.
5. Ineffective Assistance Of Appellate Counsel, 6th & 14th amend. viol. U.S. Const.
6. Violations of the 4th, 5th, 6th & 14th amendments of the United States Constitution.

"The Petitioner also reserved the right to amend."

The Attorney General's Office filed a partial return to the P.C.R. application. The Attorney General Employee asked that several issues raised on the P.C.R. application be dismissed and requested a more clear statement of fact's be filed so they could make a more accurate return. However, they did not serve the Petitioner with a copy of that partial return. They also stated that any response or amendments not to be filed by the Petitioner himself.

This is an attempt to delay the evidentary hearing and to obstruct justice in this case where they are aware that the Petitioner can meet the burden of proof to all of the constitutional violations and to all allegation's of misconduct. Infact most of the misconduct committed is criminal in nature and should be heard in this case, and also dealt with in a court of law.

These violations of codes of South Carolina Laws include, perjury, fraud/forgery, tampering with a defense witness, "tampering with and fabricating evidence" conspiracy, and obstruction of justice. This was also an abuse of power's!

Statements Of Fact's

On Jan. 27th 2016 in Greenwood County the Petitioner was a passenger in a vehicle unlawfully stopped by police. Police claimed that there was an active arrestwarrant for the driver. In the suppression hearing, police admitted that, it was not true".

This traffic stop was inviolation of the 4th amendment under Terry v Ohio -392 U.S. - 1, 88 S Ct. 1868, 20 L.Ed. 889 (1968). Trial counsel was ineffective for failing to move for the dismissal of the charges at this time.

Instead, she allowed police to falsely testify that they also had an arrestwarrant "IN HAND" (per Brian Louis). Louis stated he was not sure if he had it or if someone else had it. This warrant was never entered into evidence. Brian Louis later stated ever who 351 was had the warrant.

That 351 was the arresting officer on these present charges Whitfield Brooks. Brook's later testified in the trial that, he did not have the arrestwarrant but he stated that someone did. Agent Louis and Brooks lied under oath because they both knew that no-one had that warrant.

The Prosecutor Micah Black failed to correct this perjured testimony inviolation of the 6th and 14th amendment under, Mooney v Holohan-294 U.S. 103, 112, (1935) The Supreme Court made it clear that, a deliberate deception of a court and jurrors by the presentation of known false evidence is incompatible with rudimentary demands of justice. Also see, Riddle v Ormint-631 S.E. 2d. 70, Giglo v U.S.-405 U.S. 150, 153 (1972), Napue v Illinois-360-U.S. 264, 79 S.Ct. 1173 (1957), We said the same result's obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears. Id at 269, 79-S.Ct. at 1177. However, the Prosecutor was aware that this was a "sham arrest warrant," and intentionally used it against the Petitioner in the suppression hearing and during the trial "before the jury" and then "dismissing the warrant" after the trial.

The Prosecutor told the Judge (Hocker) that the warrant would not be used and also told defense counsel before the trial started. This warrant was used to obstruct justice.

The Court also abused it's discretion and intentionally erred for failing to suppress evidence claimed to have been seized during

this unlawful detention and illegal search that was done by Agent Josh Hood and others. The search of the Petitioner by Agent Hood was recorded on the "dashcam - with video and audio". This search of the Petitioner violated the 4th amendment under, Mapp v Ohio - 367 US 643 (1961) This search was done without consent or a searchwarrant.

Police and Prosecutor also tampered with the dashcam video to exclude the audio (sound) after Agent Chad Cox read the Petitioner his rights. Petitioner told Cox he wanted his Lawyer before any questioning. At that time Cox ceased on questioning and walked away.

After that, Jarvis Reeder can be seen comming up to the Petitioner questioning and threatening the Petitioner. This is the reason the audio was removed from the video. This video without audio was inadmissable and defense counsel was ineffective for failing to object to it. This misconduct violated my 5th 6th & 14th amendment rights of the United States Constitution.

The Prosecutor Micah Black also with-held other excupatory evidence, Chain of custodies and the prior criminal records of a

government witness (Debbie Tucker). Instead, he gave defense counsel a false prior criminal record. Crivens v Roth - 172 F 3d 991, citing, United States v Bagley - 473 US 667, 676, - 105 S. Ct. 3375, 87 L. Ed. 2d. 481 (1985) found a brady violation when witness prior criminal-record would have been used to impeach the credibility of a government witness. The Solicitor's suppression or with-holding this evidence violates Due Process and the right to a fair trial in violation of the, 6th & 14th Amendment of the United States Constitution.

Brandy Wilson was also named as a defense witness who gave a written statement in favor of the Petitioner. Wilson was later incarcerated on many charges. The Prosecutor tampered with this defense witness and conspired with her to lie under oath and change her statement in exchange for several charges being dismissed and the promise of a light sentence on other charges.

The indictments can also be shown to be tainted (Forged) outside the jurisdiction of the Court Of General Sessions. Section 14-9-210 requires strict compliance with its provisions, and mandates that the grand jury must be impanled under the jurisdiction of the Court of General Sessions before a lawful return of

a true billed indictment can take place. In the week of May 6th 2016 the court-calander for Greenwood County shows that only the Court Of Common Pleas was in session and is vested with NO authority to take any action on matters pertaining to return of true billed criminal indictments. See, Dove v Gold Kist Inc. - 314 S.C. 235, 442 S.E 2d. - 598, 600 (S.C 1994); see also S.C. Constitution Artical V § 1. There is no true billed stamp affixed to either indictment in this case! Under Brown v State - 343 S.C. 342, 540 S.E 2d 846 (2001) This issue can be raised at any time.

The Judge (Hocker) also violated the Petitioners 4th & 14th amendment right's when he forced the Petitioner to submitt to a drug test before the trial began based on a personal opinion. This was an illegal search for evidence of a crime, (the illegal use of drugs).

When the Petitioner passed the test it angered the judge and he revoked the Petitioners bond and ordered the Petitioner into custody even though Petitioner had on an ankle bracelet for the past 8 months.

The Court also erred by denying the defense counsels motion for a mistrial after the State mentioned an

pending arrest warrant, in which, was a pretext, (Sham) warrant for police not having a reason for detaining the Petitioner in the first place. This warrant was dismissed after the trial. The Court abused it's discretion by giving a curritave instruction. The judge was aware that this was done intentionally like throwing a skunk in the box and asking the jury not to smell it. This was prejudice and it denied the Petitioner a fair trial inviolation of the 6th + 14th amendment U.S. Constitution.

The Court also erred by not removing a juror after an incident outside the courtroom with one of the jurrors. The State ask that the juror be removed. Defense counsel stated she did not know what to do, she was without co-counsel. This was also, ineffective assistance of counsel, inviolation of the 6th amendment United States Constitution.

The evidence in this case can also be shown to have been fabricated and tainted by the improper handling and improper testing by the Sheriff's Dept and S.L.E.D.

This is the reason the, Prosecutor Micah-Black, with-held the chain of custody and the drug report's until the day of the trial.

Lynn Black of SLED and Gregg Allison both lied under oath about the fabricated evidence. From the time claimed to have been seized, (18.22 grams) until it was taken to SLED it was approx. 22 gram's because Allison added 3.4 gram's after he done 11 field test on the initial 18.22 grams with negative results as being drugs.

ms. Black stated, she only tested one bag, (3.4 grams), she said the rest looked like meth." She later said she found meth in all 4 bags!

mr. Allison said the drug's was never lost and he didn't find them on the floor of his office or add anything to it. He said he just entered it in the computer wrong. However, he had filed a supplemental-report stating that he found a bag of substance on the floor of his office the next day that weighed 3.4 grams.

Sligh v Johnson-288 S.C. 364, 342 S.E 2d 620 (Ct App. 1986). The burden of preserving an item or real demonstrative evidence intact and free from alteration is upon the party offering it in evidence.

The Court denied the Petitioner the right to challange the authinicity of the evidence

Trial counsel admitted she warned the Petitioner against challenging the chain of custody or the testing of the drugs.

Conclusion

The Petitioner was the victim of an unfair PCR evidentary hearing that was delayed for 3 years because he would not waive all issues except ineffective assistance of counsel and the Ass. Attorney General still blocked the issues from being heard by conspiring with the judge to only hear the one issue.

Despite all of the abuse of power and misconduct committed in that case, this honorable court reversed and remanded and granted a new trial.

The charges was later dismissed due to the 4th amendment violation and it was ordered to be expunged from the Petitioners record.

Therefore, a writ of mandamus was filed 2 times in that case and was granted and was violated by the Attorney General's Office. Therefore, I ask in goodfaith that an order be granted in this case to assure me a fair and timely evidentary hearing in this

case in Greenwood County.

This request would not be overly burdensome. It would only assure the Petitioner a fair evidentary hearing on the right to preserve all issues to be heard by this Honorable Court on a Writ of Cert. because regardless of the facts and circumstances surrounding the unlawful arrest and all of the constitutional violations and misconduct (criminal & ethical) the Petitioner don't expect a fair hearing or the relief that has been requested. Although, as a matter of law, the relief should be granted in this case.

Respectfully Submitted,

Date 9-20-19 S./Earnest Vaughn

Earnest Vaughn

Filed CP 8th Jud Cir Greenwood, SC
2020 MAR 9 PM 1:09

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	FOR THE 8th JUDICIAL CIRCUIT
COUNTY OF GREENWOOD)	Case No.: 2019-CP-24-00160
Earnest E. Vaughn, Sr., #313102,)	
)	
Applicant,)	**AMENDED POST-CONVICTION RELIEF APPLICATION**
)	
v.)	
)	
State of South Carolina.)	
)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on February, 14, 2019, to clarify the following allegations:

1. *Ineffective assistance of counsel of Jane H. Merrill, Esquire*:

a. Trial counsel failed to adequately cross examine and challenge the officer related to the tainted evidence that was seized by the police. When the drugs were initially turned in the officer noted there were 18 grams but then later supplemented it with 3.4 grams that were found on the floor.

b. Trial counsel failed to move to recuse Judge Hocker from presiding over the trial as Judge Hocker had already shown bias against the Applicant when he set an excessive bond of $100,000 (that was later reduced to $20,000). Judge Hocker also had forced the Applicant to take a drug test.

c. Trial counsel failed to adequately move for a mistrial after one of Applicant's family members made contact with a juror in the bathroom.

d. Trial counsel should not have allowed the Applicant's prior overturned conviction to be mentioned during sentencing.

e. Trial counsel failed to adequately challenge the chain of custody on the substances seized from the Applicant. The chain of custody on these drugs was broken. The date the drugs were taken to SLED and received by SLED are different dates. Furthermore, Josh Hood admitted to detaining and searching the Applicant without consent or without a search warrant.

f. Trial counsel failed to adequately challenge the State's witness about the deal she was making with the State to testify at the Applicant's trial.

g. Trial counsel failed to adequately challenge the issue related to the dash-cam and it's lack of audio at certain points.

2. *Ineffective Assistance of Appellate Counsel, Assistant Appellate Defender Taylor D. Gilliam*:

a. Counsel failed to raise valid and preserved arguments on appeal, particularly that the Court erred in failing to suppress the tainted drugs that were seized by the police.

b. Failed to petition the issue related to the mistrial to the Supreme Court.

3. Prosecutorial Misconduct of Assistant Solicitor Micah E. Black:

a. Mr. Black intentionally with held the criminal record of the informant, Debbie Tucker. Furthermore, Mr. Black falsely indicated to the Court that the Applicant had made death threats against the informant.

b. Mr. Black failed to turn over as part of Discovery, the report made by Greg Allison where Allison admitted to finding a bag of substance on the floor of his office and adding it to the contents of the Applicant's case. (Please see the attached supplemental report obtained by the Applicant.)

c. Mr. Black attempted to withhold the field test of the substance seized from the Applicant at the time of his arrest that shows that the substances tested negative for drugs.

Furthermore, Applicant requests that the documents filed by the Applicant on September 26, 2019; December 16, 2019; and January 21, 2020, be construed as amendments to his PCR application. Applicant also requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See* Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,

ASHLEY A. MCMAHAN, ESQUIRE
MCMAHAN & TAYLOR ATTORNEYS LLC
PO Box 5501
West Columbia, SC 29171
803-219-1110
ashley@mcmahantaylor.com
SC Bar No. 71676
ATTORNEY FOR APPLICANT

March 3, 2020

OF SERVICE

I certify that I have served this document via email to:

Brianna L. Schill
Assistant Attorney General
briannaschill@scag.gov

This 3rd Day of March, 2020.

Ashley A. McMahan

ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

Filed CP 8th Jud Cir Greenwood, SC
2020 MAY 8 PM 3:28

STATE OF SOUTH CAROLINA COUNTY OF GREENWOOD	)	IN THE COURT OF COMMON PLEAS FOR THE EIGHTH JUDICIAL CIRCUIT
Earnest Edward Vaughn, Sr., #246912,	)	
Applicant,	)	2019-CP-24-0160
v.	)	**ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

The matter before this Court is an action for post-conviction relief (PCR). Earnest Edward Vaughn (Applicant) commenced this PCR action February 14, 2019. The State made its return on May 30, 2019. On March 3, 2020, Applicant, through PCR counsel, submitted an amended PCR application. The Court held an evidentiary hearing March 12, 2020, at the Laurens County Courthouse before the undersigned. Applicant was present and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Brianna L. Schill of the South Carolina Attorney General's Office represented the State.

At the PCR hearing, Applicant testified on his own behalf. Jane H. Merill, Esquire, (Trial Counsel), Taylor D. Gilliam, Esquire (Appellate Counsel), and Assistant Solicitor Micah E. Black (Black) of the Eighth Circuit Solicitor's Office also testified at the hearing. After reviewing the testimony presented and the relevant portions of the record before the Court, for the reasons discussed below, this Court finds Applicant's allegations are without merit and concludes Applicant failed to meet his burden. Therefore, this Court denies relief and dismisses this action with prejudice.

Foot Note:
I submitted 3 amendments that was filed in the Clerks Office and Judge Hayes ruled that he would accept all pro/se amendments.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. During its May 2016 term, the Greenwood County Grand Jury indicted Applicant for trafficking in methamphetamine (16-GS-24-0539), possession of marijuana with the intent to distribute (PWID) (16-GS-24-0540), and unlawful neglect of a child (16-GS-24-0541). Jane Merrill, Esquire, represented Applicant. Senior Assistant Solicitor Elizabeth White and Assistant Solicitor Micah Black of the Eighth Circuit Solicitor's Office prosecuted the case.

On October 31, 2016, Applicant proceeded to a jury trial before the Honorable Donald B. Hocker. The jury convicted Applicant on the trafficking in methampethamine and unlawful neglect of a child charges, but found Applicant not guilty of PWID. Judge Hocker sentenced Applicant to consecutive terms of thirty years' imprisonment for trafficking methamphetamine and ten years' imprisonment for unlawful neglect of a child.

Subsequently, Applicant timely appealed his sentences and convictions. Appellate Defender Taylor D. Gilliam of the South Carolina Commission on Indigent Defense—Office of Appellate Defense submitted a final brief on behalf of Applicant. On December 11, 2017, Assistant Attorney General J. Scott Matthews filed Respondent's final brief. On November 7, 2018, in an unpublished opinion (No. 2018-UP-409), the South Carolina Court of Appeals affirmed Applicant's conviction. On November 27, 2018, the Remittitur was issued to the Greenwood County Clerk of Court.

FACTUAL BACKGROUND

On January 27, 2016, agents with the Greenwood County Sheriff's Office utilized the services of a confidential informant, Debbie Tucker, (CI) to arrange a controlled buy of

Foot Note:
I was denied the right to a full and fair direct appeal. The 4th & 5th amendment violations should have been raised. They was preserved!

methamphetamine. (Tr. 117). Tucker made a phone call to Brandy Wilson and arranged to purchase a half ounce of methamphetamine from Applicant and Ms. Wilson at a car wash in Greenwood that evening. (Tr. 134-135). Police were told by Debbie Tucker that they should be looking for a dark colored Chevrolet Tahoe. (Tr. 118). Law enforcement arrived early to set up surveillance at the buy location. Before Debbie Tucker could arrive, a dark colored Chevy Tahoe arrived driven by Brandy Wilson. (Tr. 119). Applicant was in the passenger seat, and Applicant's five year old grandchild was in the back. (Tr. 256). Law enforcement called off the controlled purchase and initiated a traffic stop on the Tahoe. (Tr. 119, 138). Applicant was seen "fidgeting" by law enforcement and it appeared to Captain Jarvis Reeder that Applicant was attempting to hide something. (Tr. 255-256). Applicant was read his Miranda[1] rights and made a statement to law enforcement admitting that he did have drugs in his pants near his testicles. (Tr. 258-260). Law enforcement then searched Applicant's person and located two plastic bags of suspected drugs underneath Applicant's testicles. (Tr. 262). Applicant was then placed under arrest.

At trial Josh Hood, Chad Cox, and Jarvis Reeder each testified about finding drugs in Applicant's "crotch area." (Tr. 174-175, 187, 262). Furthermore, Jarvis Reeder testified that Applicant made a Mirandized statement admitting he had drugs inside his pants. (Tr. 258-260). Brandy Wilson also testified Applicant sent her a letter encouraging her to make statements to Applicant's attorney regarding Applicant's lack of culpability. (Tr. 221-222). Applicant specifically urged Brandy Wilson to tell his attorney that Debbie Tucker had sold them a camper with drugs inside of it, and that they were merely returning Ms. Tucker's drugs to her. (Tr. 221-222).

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

Foot Note: Chad Cox admitted that no Mirandized statement was made. Josh Hood testified he did not find drugs in his warrantless search

Agent Bryan Louis testified about his involvement with the arrest as well. Agent Louis was asked by the State "Were Ms. Wilson and Mr. Vaughn placed into custody?" (Tr. 154, line 3). Agent Louis responded "They were. I had an active arrest warrant for Mr. Vaughn from a previous incident." (Tr. 154, line 4-5). The jury found the Applicant guilty on two of three counts. Applicant then filed his appeal.

ALLEGATIONS RAISED

On February 14, 2019, Applicant filed an application for post-conviction relief, alleging he is being held in custody unlawfully for the following reasons:

A. Judicial Error / Abuse of Discretion

1. "The Court erred by failing to suppress tainted evidence claimed to have been seized by police during an unlawful traffic stop and an illegal detention of the petitioner and illegal search."
2. "The Court abused its discretion by denying defense counsel's motion for a mistrial after inadmissible testimony was given relating to a sham (pretext), warrant was given to jury that prejudiced petitioner."
3. "That the Court failed to properly rule by law on objections made by defense counsel. It was resolved improperly with personal opinions."
4. The Court was biased in this case! Judge Hocker should have recused himself after previously presiding over a bond-hearing and setting an excessive bond of $100,000."

B. Prosecutorial Misconduct

1. "…prosecutor failed to correct perjured testimony by police relating to probable cause."
2. "… prosecutor withheld exculpatory evidence from defense and failed to fully respond to Rule 5 discovery before trial."
3. "Prosecutor conspired to tamper with other evidence (took sound out of video), dash cam!"

C. "Police Misconduct"

1. "…police used false allegations to conduct unlawful traffic stop."
2. "when police use[d] sham (fabricated) pretext arrest warrant as probable cause to unlawfully detain petitioner.
3. police tamper[ed] with evidence, improper chain of custody and testing of evidence."
4. "police commit[ed] Marinda [sic] violation, then tamper[ed] with video to exclude audio on dash cam.

Foot Note:
Evidence and tesimony shows ~~that~~ no-one had a warrant for an arrest. Not even the Sheriffs Dept.

5. "police lie[d] under oath stating they had a sham arrest warrant in hand at the time of the traffic stop."
6. "The acts of misconduct listed in this case violated Due Process under the Equal Protection Clause of the 14th Amendment and rendered the trial fundamentally unfair."

D. Ineffective Assistance of Trial and Appellate Counsel

1. "Trial counsel ineffective for failing to properly prepare the case for trial."
2. "failing to object to inadmissible and tainted evidence"
3. "Appellate counsel ineffective for failing to include issues preserved for appellate review as instructed."
4. "Trial counsel and appellate counsel violated attorney/ client relationship."

Applicant subsequently filed three pro se amendments re-stating his allegations.

On March 3, 2020, Applicant, through PCR counsel, submitted an amended application, alleging the following claims:

A. Ineffective Assistance of Counsel of Jane H. Merrill, Esquire:

1. "Trial counsel failed of adequately cross-examine and challenge the officer related to the tainted evidence that was seized by police. When the drugs were initially turned in the officer noted there were 18 grams but then later supplemented it with 3.4 grams that were found on the floor."

2. "Trial counsel failed to recuse Judge Hocker from presiding over the trial as Judge Hocker had already shown bias against the Applicant when he at an excessive bond of $100,000 (that was alter reduced to $20,000). Judge Hocker also had forced the Applicant to take a drug test."

3. "Trial counsel failed to adequately move for a mistrial after one of Applicant's family members made contact with a juror in the bathroom."

4. "Trial counsel should have not allowed the Applicant's prior overturned conviction to be mentioned during sentencing."

5. "Trial Counsel failed to adequately challenge the chain of custody on the substances seize from the Applicant. The chain of custody on these drugs was broken. The date on the drugs were taken to SLED and received by SLED are different dates. Furthermore, Josh Hood admitted to detaining and searching the Applicant without consent or without a search warrant."

6. "Trial Counsel failed to challenge the State's witness about the deal she was making with the State to testify at the Applicant's trial."

7. "Trial Counsel failed to adequately challenge the issue related to the dash-cam and its lack of audio at certain points."

B. Ineffective Assistance of Appellate Counsel as to Assistant Appellate Defender Taylor D. Gilliam

1. "Counsel failed to raise valid and preserved arguments on appeal, particularly that the Court erred in failing to suppress the tainted drugs that were seized by police."

2. "Failed to petition the issue related to the mistrial in Supreme Court."

C. Prosecutorial Misconduct as to Micah E. Black

1. "Mr. Black intentionally withheld the criminal record of the informant, Debbie Rucker. Furthermore, Mr. Black falsely indicated to the Court that the Applicant had made death threats against the government."

2. "Mr. Black failed to turn over as part of Discovery, the report made by Gregory Allison where Allison admitted to finding a bag of substance on the floor of his office and adding it to the contents of the Applicant's case. (Please see attached supplemental report obtained by the Applicant.)"

3. "Mr. Black attempted to withhold the field test of the substance seized from the Applicant at the time of his arrest that shows that the substances tested negative for drugs."

A hearing was held on March 12, 2020, at the Laurens County Courthouse. At the outset of the hearing, Applicant stated he was going forward on the allegations of ineffective assistance of trial and appellate counsel, and prosecutorial misconduct, as contained in his original and amended applications. Accordingly, this Court finds the allegations of police misconduct and judicial error are hereby waived and abandoned.

APPLICABLE LAW

Ineffective Assistance of Trial Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove

Foot Note:
I did not waive any of my issues. Judge Hayes agreed to consider all pro/se amendments and Lawyer amendment.

that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 300 S.C. 115.

Ineffective Assistance of Appellate Counsel

A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). However, the right to appellate counsel does not extend to a discretionary appeal. See Evitts v. Lucey, 469 U.S. 387, 394 (1985) (stating the right to appellate counsel "is limited to the first appeal as of right . . ."). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (emphasis added). "For [courts] to second-guess reasonable professional

judgments and impose on [appellate] counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . . ." Jones v. Barnes, 463 U.S. 745, 754 (1983).

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. Southerland, 337 S.C. at 616, 524 S.E.2d at 836. Thus, the question becomes (1) whether appellate counsel's performance was deficient, and (2) whether the applicant was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). As for proving prejudice from appellate counsel's lack of pursuing a discretionary appeal, "[The applicant] must prove prejudice by showing he would have prevailed on appeal had a writ been filed by counsel and granted by [the Supreme Court]." Id.

Prosecutorial Misconduct / Brady Violation

The Brady[2] disclosure rule requires the prosecution to provide a defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Brady v. Maryland, 373 U.S. 83, 87 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676 (1985). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

[2] Brady v. Maryland, 373 U.S. 83, 87 (1963).

The Prosecutor Micah Black admitted to cutting the video down to 19 minutes. Thats tampering with evidence.

The Supreme Court of South Carolina has recognized that:

> A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment.

Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (internal citations omitted).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Ineffective Assistance of Trial Counsel

1. *Failure to Adequately Cross-Examine and Challenge the Officer Related to the Tainted Evidence that Was Seized by Police.*

Applicant alleges Trial Counsel failed to cross-examine Greg Allison, who testified that, due to an oversight, he inadvertently failed to include two different bags of drugs in his original inventory check. (Trial Tr. 296-99).

"Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Strickland, 466 U.S. at 690. There is a strong presumption that counsel's decisions are based on tactical strategy rather than neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (quoting Massaro v. United States, 538 U.S. 500 (2003)). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). See also Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy). Further, decisions primarily involving trial strategy and tactics may be made by

Mr. Allison said it was a logging error not lost evidence.

trial counsel. Sexton v. French, 163 F.3d 874, 885 (4th Cir. 1998). Examples of such decisions include, "which jurors to accept or strike, which witnesses should be called on the defendant's behalf, what evidence should be introduced, whether to object to the admission of evidence, [and] whether and how a witness should be cross-examined." Abney, 408 S.C. at 48, 757 S.E.2d at 547 (Ct. App. 2014) (Pieper, J., concurring).

Applicant testified he believed the drug evidence was "tainted" and Trial Counsel did not adequately cross-examine Allison regarding this tainted evidence. Trial Counsel testified Allison inadvertently excluded two bags of methamphetamine from his initial inventory count: one bag containing .34 grams and another bag containing 3.6 grams. (Supp. Report). Trial Counsel testified she received Greg Allison's supplemental report from the Solicitor's Office through her Brady / Rule 5 motion. Trial Counsel testified she asked Allison about the error during cross-examination, but strategically chose not to "harp" on Allison's error, because she did not want the jury to repeatedly be reminded of the substantial quantity of drugs law enforcement found in Applicant's possession.

This Court finds Trial Counsel's testimony on this issue very credible, while also finding Applicant's testimony not credible. As Trial Counsel credibly testified, she cross-examined Allison regarding the inventory error, and therefore, the jury was aware of the error and was able to weigh Allison's credibility accordingly. Additionally, Trial Counsel credibly testified she strategically chose to refrain from over-emphasizing the inventory error because doing so would require Allison to repeatedly remind the jury of the large quantity of drugs that were found on Applicant. Moreover, even if the two supplemented drug bags had not been added to the original inventory report, the amount of drugs found in Allison's initial inventory report were sufficient to

support Applicant's drug charge.[3] This Court finds Trial Counsel's strategic decision was a valid and reasonable strategic decision. Accordingly, Applicant has failed to meet his burden as to deficiency.

Applicant has also failed to establish any resulting prejudice from Trial Counsel's alleged deficiency. Applicant did not show this Court how any additional questioning would have changed the outcome of his case, nor did he state what specific questions he believed Trial Counsel should have asked Allison. Applicant merely testified that Trial Counsel did not "adequately" question Allison on cross-examination. Importantly, Allison's initial inventory yielded an amount of drugs sufficient to support Applicant's indictment and conviction, and therefore, the supplemental bags of drugs were not crucial to Applicant's case. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Trial Counsel and, therefore, this allegation is denied and dismissed with prejudice.

2. *Failure to Recuse Judge Hocker*

Applicant alleges Trial Counsel was ineffective for failing to move to recuse Judge Hocker after Judge Hocker ordered Applicant to take a drug test prior to trial and revoked his bond, and that this drug test ultimately negatively affected his sentence.

Canon 3(C)(1)(a) of the Code of Judicial Conduct, Rule 33, Rules of Practice of the Supreme Court, requires the judge to recuse himself when he "has a personal bias or prejudice concerning a party." The alleged bias must stem from an extrajudicial source and result in a decision based on other than what the judge learned from his participation in the case. Payne v. Holiday Towers, Inc., 283 S.C. 210, 321 S.E.2d 179 (Ct.App.1984). It is not enough for a party

[3] Allison's initial inventory consisted of 7.66 grams in Bag #2, which was later supplemented with .34 grams, and 10.62 grams in Bag #1, which was later supplemented with 3.6 grams.

to allege bias; a party seeking disqualification of a judge must show some evidence of bias or prejudice. Lyvers v. Lyvers, 280 S.C. 361, 312 S.E.2d 590 (Ct.App.1984). When no evidence is presented other than claimed "adverse" rulings by the judge, the judge is not required to recuse himself. Payne, 283 S.C. 210, 321 S.E.2d 179 (Ct.App.1984). Adverse rulings, even if erroneous, are insufficient to establish a trial judge's bias or prejudice. Butler v. Sea Pines Plantation Company, 282 S.C. 113, 317 S.E.2d 464 (Ct.App.1984).

Applicant testified Judge Hocker denied Applicant bond initially, but eventually set a bond of $100,000. Applicant testified Judge Hocker eventually lowered the bond to $50,000. According to Applicant, Judge Hocker was biased against Applicant, evidenced by the fact that Judge Hocker forced him to take a drug test. Applicant testified that the test came back negative for illegal drugs, but was positive for amphetamines, which could have been due to his cold medicine. Applicant testified this further affected his case as it relates to the sentence he received from the Court.

Trial Counsel testified she did not see any valid legal reason to request that Judge Hocker to recuse himself from Applicant's case, nor did Applicant ask her to make a motion to recuse Judge Hocker. Trial Counsel testified that starting at the beginning of trial, Applicant appeared to be asleep and was inattentive. Trial Counsel testified claimed he was on medication for COPD and that it made him "sleepy." Trial Counsel testified she called to the detention center to inquire as to Applicant's demeanor before trial, and officials at the detention center stated he had not acted in that manner while at the detention center. Trial Counsel also testified she objected to Judge Hocker's request to take a drug test, but Judge Hocker ultimately required Applicant to take the drug test. Trial Counsel testified Applicant tested positive for amphetamines.

This Court finds Trial Counsel's testimony very credible, while also finding Applicant's testimony not credible. This Court finds there was no legal basis for Trial Counsel to move to recuse Judge Hocker. Trial Counsel objected to the Court's request to test Applicant for drugs, but Judge Hocker ordered Applicant to take the drug test due to his questionably intoxicated demeanor. (Trial Tr. 94; 99). Due to Applicant testing positive for amphetamines and due to his "sleepy demeanor," Judge Hocker revoked Applicant's bond. (Trial Tr. 97). Applicant informed the trial court that he tested positive for amphetamines due to a medical condition, but did not elaborate further. (Trial Tr. 99). However, Judge Hocker discussed this with Applicant on the record and informed him that he could not consider this alleged explanation because he did not have any evidence to support Applicant's assertion that he tested positive for amphetamines due to the medical condition. (Trial Tr. 99). Accordingly, Applicant has failed to show that Judge Hocker's order for Applicant's drug test and subsequent bond revocation was based on any extraneous bias.

Furthermore, Applicant faced a twenty-five to thirty year sentence for indictment 16-GS-24-539, and up to ten years' imprisonment for indictment 16-GS-24-541. Applicant received a sentence of thirty years for indictment 539 and a consecutive sentence of ten years for indictment 541. (Trial Tr. 406). Applicant did not receive an unlawful sentence, and his sentence appropriately reflected not only that this was Applicant's third drug offense, but also the fact that Applicant has an extensive criminal history, including, *inter alia*, convictions of burning not subject to arson, possession of marijuana and drug paraphernalia, criminal domestic violence, auto breaking and grand larceny, forgery, and two other charges of possession of methamphetamine. Accordingly, this Court finds Trial Counsel was not deficient for failing to request Judge Hocker's recusal.

Applicant has also failed to establish any resulting prejudice from Trial Counsel's alleged deficiency because Applicant has failed to credibly show there is a reasonable probability that the

motion would have been granted and any recusal would have changed the outcome of Applicant's case. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Trial Counsel and, therefore, this allegation is denied and dismissed with prejudice.

3. *Failure to Move for a Mistrial after Incident with Juror*

Applicant alleges Trial Counsel was ineffective for failing to move for a mistrial after Applicant's granddaughter (Granddaughter) approached a juror (Juror) in the restroom during Applicant's trial.

When an error occurs, one remedy available to a trial judge is to grant a mistrial. State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999). However, the granting of a mistrial is an extreme remedy that should only be imposed when an incident occurs during trial that is so grievous its prejudicial impact cannot be removed through any other means. State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999). "The power of the court to declare a mistrial should be used with the greatest caution and for plain and obvious causes." Earley v. State, 418 S.C. 255, 267, 792 S.E.2d 226, 232–33 (2016) (internal citations omitted). In determining whether to grant a mistrial, the trial court should consider whether the mistrial is dictated by manifest necessity and must exhaust all other methods to cure any possible prejudice that occurred prior to stopping the trial. State v. Simmons, 352 S.C. 342, 354, 573 S.E.2d 856, 862 (Ct. App. 2002); see Council, 335 S.C. at 13, 515 S.E.2d at 514 ("[T]he trial judge should exhaust other methods to cure possible prejudice before aborting a trial."); State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983) ("The less than lucid test is therefore declared to be whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment."). Significantly, a mistrial should **not** be granted unless

"absolutely necessary." Harris, 340 S.C. at 63, 530 S.E.2d at 627-628; see State v. Brown, 389 S.C. 84, 94, 697 S.E.2d 622, 627 (Ct. App. 2010) ("A manifest necessity must exist for the trial court to discharge the jury and declare a mistrial.").

Applicant testified Granddaughter was crying in the restroom during a brief trial recess when a Juror entered and asked Granddaughter why she was upset. Applicant testified Granddaughter informed Juror she was Applicant's granddaughter and told Juror "she didn't want her papa to go to jail." Applicant testified Juror informed the bailiff regarding this interaction and the State moved to have Juror removed from the jury because the State felt Juror could no longer be impartial. Applicant testified Trial Counsel "didn't know what to do," and Judge Hocker ruled to keep Juror on the jury because Juror testified to the trial court that she could still be fair and impartial.

Trial Counsel testified that Juror gave the bailiff a message indicating that she had an interaction with Granddaughter. Trial Counsel testified she did not move to excuse Juror because Juror was questioned by the Court, and indicated that she could remain fair and impartial. Trial Counsel testified she did not see any reason the juror could not be fair and impartial to her client such that it would offend Applicant's right to a fair trial.

This Court finds Trial Counsel's testimony very credible, while also finding Applicant's testimony credible only to the extent Applicant testified his Granddaughter approached Juror in the restroom. This Court finds Applicant has failed to establish how Trial Counsel was deficient in any way regarding the incident concerning Juror and Granddaughter. The Court confirmed with Juror that she was still able to be fair and impartial, and it was further determined that Juror did not inform the other jurors about the encounter. (Trial Tr. 281-82). There is no reasonable likelihood a mistrial would have been granted. There was no manifest necessity requiring the grant

of a mistrial, as the trial court questioned the juror regarding her ability to remain fair and impartial. Therefore, Trial Counsel was not and cannot be deficient for failing to move to excuse a juror or failing to move for a mistrial. See State v. Green, 301 S.C. 347, 354 (1990) ("The ultimate consideration is that the juror be unbiased, impartial and able to carry out the law as it is explained to him."). Accordingly, Applicant has failed to meet his burden as to deficiency.

Applicant has also failed to establish any resulting prejudice from Trial Counsel's alleged deficiency. Given that Juror confirmed her ability to be fair and impartial, Applicant has not shown that a motion for a mistrial would have been granted. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Trial Counsel and, therefore, this allegation is denied and dismissed with prejudice.

4. *Failure to Object to Applicant's Overturned Conviction Being Mentioned During Sentencing*

Applicant alleges Trial Counsel was ineffective for failing to object the mention of his overturned drug conviction during his sentencing.

Applicant testified he had a conviction that was expunged in 2004 that was used against him in sentencing. Applicant testified Trial Counsel did not object to that charge being mentioned during sentencing, and that this negatively impacted his sentence.

Trial Counsel testified Applicant was granted PCR relief for one of his previous drug crimes. Trial Counsel testified she was not concerned about whether this conviction would affect his sentencing because it was specifically mentioned to the Trial Court that Applicant received PCR relief for that charge, and because that drug charge was not used to enhance his charge in this case. Trial Counsel testified the State used two other methamphetamine charges, for which Applicant did not receive PCR relief, to enhance the charge in this case.

This Court finds Trial Counsel's testimony very credible, while also finding Applicant's testimony not credible. This Court finds Applicant has failed to establish how Trial Counsel was deficient in any way regarding the sentencing phase of his case. Applicant had several other drug charges, which were not overturned on PCR, including: (1) a simple possession of marijuana charge in 1983; (2) possession of marijuana charge from 2005; (3) possession of a controlled substance in 2012; (4) possession of methamphetamine in 2010; (5) a possession of marijuana in 1989; (6) possession of methamphetamine in 2008; and (7) possession of a controlled substance, schedule 1-5 and possession of methamphetamine in 2012. The 2008 and 2012 possession of methamphetamine charges were the specific charges used to enhance this charge as a third-offense. (Trial Tr. 405). As Trial Counsel testified, the conviction for which Applicant received PCR relief was not used to enhance his charge, and, the Solicitor specifically informed the trial court: "1997 he was actually tried for and convicted, I believe it was in Anderson County on a possession with intent to distribute marijuana, or methamphetamine. Judge, that charge ultimately got overturned on a PCR so there was no conviction for that." (Trial Tr. 405). As Trial Counsel testified, there was no valid reason to object to the Solicitor's mention of the 1997 drug charge, as it was mentioned only to the judge during sentencing, not in the presence of the jury, and because the judge was informed that Applicant received PCR relief for that charge. Accordingly, Applicant has failed to prove Trial Counsel was deficient for failing to object to the mention of his overturned conviction.

Applicant has also failed to establish any resulting prejudice from Trial Counsel's alleged deficiency. Applicant has not shown this Court how any objection to his overturned conviction being mentioned would have affected the outcome of his case. Additionally, as discussed above, Applicant had an extensive criminal history containing other convictions that were not overturned,

The mention of the overturned conviction violated the expungement order.

that could be considered by the trial court when considering sentencing. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Trial Counsel and, therefore, this allegation is denied and dismissed with prejudice.

5. *Failure to Object to the Challenge the Chain of Custody*

Applicant alleges Trial Counsel was deficient for failing to challenge the chain of custody in his case.

Applicant testified he believed the drug evidence in his case had been altered because he was previously arrested on unrelated drug charges, and in that case, two of the officers were caught fabricating evidence against him. Applicant further testified that these two officers were eventually charged with embezzlement and misconduct in office. According to Applicant, these officers that were involved in his previous case were involved in the underlying charges in this case, and based on that, the chain of custody must have been tainted. Trial Counsel testified she did not believe there was a meritorious argument regarding the chain of custody, and that the witnesses established chain of custody through their testimony. Trial Counsel testified she made a motion to suppress the drug evidence based on what she felt was the most legitimate argument: that the stop was not based on the arrest warrant, but was pretextual.

This Court finds Trial Counsel's testimony regarding this allegation credible, while also finding Applicant's testimony not credible. This Court finds Applicant has failed to establish how Trial Counsel was deficient in any way regarding the chain of custody of the drugs in this case. Even assuming *arguendo* the assertions concerning the officers in Applicant's case were true,[4] a

[4] This Court was not presented with any independent evidence to substantiate Applicant's claim that two of the officers in this case were involved in embezzlement or misconduct in a previous case of Applicant's.

PCR counsel failed to present that evidence to support my claim of tainted evidence and video.

prior instance of misconduct in an unrelated criminal case, is not sufficient grounds for alleging a flawed chain of custody. Applicant has not shown this Court there was a valid basis to challenge the chain of custody. Accordingly, Applicant has failed to meet his burden as to deficiency on behalf of Trial Counsel.

Applicant has also failed to establish any resulting prejudice from Trial Counsel's alleged deficiency. Applicant has failed to establish that a motion to suppress based on a flawed chain of custody would have been granted and would have changed the outcome of his case. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Trial Counsel and, therefore, this allegation is denied and dismissed with prejudice.

6. *Failure to Suppress the Evidence Based on the Search Warrant*

Applicant alleges that Trial Counsel was ineffective for failing to suppress the evidence based on a "sham arrest warrant."

Applicant testified he believed Trial Counsel was ineffective for failing to object to a "sham" search warrant. Applicant testified the State admitted that law enforcement used the "sham" arrest warrant to "skirt around" the fact that law enforcement did not have probable cause to make the traffic stop and for not having a reliable confidential informant. Applicant testified Trial Counsel raised this issue in her pre-trial motion to suppress the drugs. Applicant testified law enforcement pulled his car over because they were told that there was a warrant out for him, which was not true, and he felt Trial Counsel should have moved to suppress the evidence on that basis.

Trial Counsel testified that Applicant also had warrants arising out of a different drug crime, and that Andrew Hodges represented Applicant on those other charges. Trial Counsel testified she reviewed the warrants and indictments applicable to Applicant's case and did not see

any errors that would make them facially invalid. However, Trial Counsel testified she made a pre-trial motion to suppress the drugs, but that motion was denied.

This Court finds Trial Counsel's testimony regarding this issue credible, while also finding Applicant's testimony credible only to the extent Applicant admits Trial Counsel made this argument to the trial court. This Court finds Applicant has failed to establish how Trial Counsel was deficient in any way regarding the motion to suppress in Applicant's case. Applicant has failed to articulate what specific argument regarding his "sham arrest warrant" Trial Counsel should have made but did not. Trial Counsel credibly testified she reviewed the applicable arrest warrants, and did find any errors that would make them facially invalid. Furthermore, as both Trial Counsel and Applicant credibly testified, she still made a motion to suppress the drugs, during which she argued the traffic stop made pursuant to the arrest warrant was pre-textual, and therefore, the drugs should have been suppressed due to the unreliability of the CI. (Trial Tr. 84-91). However, the trial court denied Trial Counsel's motion. Accordingly, Applicant has failed to meet his burden as to deficiency.

Applicant has also failed to establish any resulting prejudice from Trial Counsel's alleged deficiency. Applicant has failed to establish that challenging the search warrant would have changed the outcome of his case. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Trial Counsel and, therefore, this allegation is denied and dismissed with prejudice.

7. *Failure to Adequately Cross-Examine the Confidential Informant About Deal Made With Prosecutors*

Applicant alleges Trial Counsel was ineffective for failing to adequately question CI regarding the deal she made with prosecutors in exchange for her testimony against Applicant.

Police did not have a search warrant.

Applicant testified CI was caught with drugs prior to his trial, but she never received formal charges due to the fact that she testified against him at his trial. Applicant testified Trial Counsel did not adequately question CI regarding this deal she made with the Solicitor's Office. Trial Counsel testified she was aware of the agreement between the CI and the State, and that she in fact questioned the CI regarding the agreement on cross-examination so the jury could assess her credibility accordingly.

This Court finds Trial Counsel's testimony regarding this issue credible, while also finding Applicant's testimony credible only to the extent he testified CI faced drug charges from an incident that occurred prior to his trial. This Court finds Applicant has failed to establish how Trial Counsel was deficient in any way regarding her cross-examination of CI. As Trial Counsel credibly testified, she questioned CI regarding the benefit she received in exchange for her testimony against Applicant. During cross-examination, CI revealed that she received several drug charges pending, and she hoped her testimony against Applicant would benefit her. (Trial Tr. 147-149). Therefore, the jury was aware of the benefit the CI received and could evaluate the CI's credibility accordingly. (Trial Tr. 144-50). Furthermore, Applicant did not state what additional questions he believed Trial Counsel should have asked CI on cross-examination. Accordingly, Applicant has not met his burden as it pertains to any deficiency on behalf of Trial Counsel.

Applicant has also failed to establish any resulting prejudice from Trial Counsel's alleged deficiency. Applicant did not show this Court how any additional questioning would have changed the outcome of his case, nor did he state what specific questions he believed Trial Counsel should have asked. Applicant merely testified that Trial Counsel did not "adequately" question the CI on cross-examination. Based on the standard set forth above, this Court finds Applicant has failed to

meet his requisite burden of establishing constitutional ineffectiveness of Trial Counsel and, therefore, this allegation is denied and dismissed with prejudice.

8. *Failure to Adequately Challenge the Issue Related to the Dashboard Camera and Its Intermittent Lack of Audio*

Applicant alleges Trial Counsel was ineffective for failing to challenge the statement he made to law enforcement, on the basis that the dashboard camera lacked audio during certain points.

Applicant testified Trial Counsel was ineffective for failing to move to suppress Applicant's statement to law enforcement. More specifically, Applicant argues he invoked his Sixth Amendment right by asking for an attorney and informing law enforcement he would not make a statement until he spoke with an attorney. Applicant testified that this statement was not heard on the dashboard camera video because the audio cut out of the dashboard at the exact moment he made that statement.

Trial Counsel testified there was some issues with the audio on the dashboard camera. Trial Counsel testified she verified with Black that the State's copy also contained the same audio issues. Trial Counsel said that based on her review of the video, she did not believe the intermittent lack of audio was crucial or helpful to Applicant's case. Trial Counsel testified that she still attempted to suppress the statements made by Applicant during a Jackson v. Denno[5] hearing, but her motion was unsuccessful.

This Court finds Trial Counsel's testimony credible, while also finding Applicant's testimony not credible. As Trial Counsel testified, Commander Chad Cox and Captain Jarvis Reeder, the two officers whom Applicant made statements to at the scene, testified during a pre-

[5] Jackson v. Denno, 378 U.S. 368 (1964).

trial Jackson v. Denno hearing. Both Cox and Reeder testified that they read Applicant his Miranda rights, and that Applicant did not ask for a lawyer when was read his Miranda rights. (Trial Tr. 67-68; 78-79). Moreover, Trial Counsel cross examined each officer during the pre-trial hearing. (Trial Tr. 69-75; 79-114). Based on the credible testimony, the trial court denied Applicant's motion to suppress, finding that Applicant voluntarily made the statements and that there were no Miranda violations. (Trial Tr. 91). Moreover, despite the fact that the statement was admissible based on the trial court's ruling on trial counsel's motion, trial counsel was able to question the officers regarding the audio issues, which allowed the jury to assess the credibility of the evidence accordingly. Accordingly, Applicant has failed to meet his burden as to deficiency.

Applicant has also failed to establish any resulting prejudice from Trial Counsel's alleged deficiency. Applicant did not show this Court what additional arguments Trial Counsel should have raised regarding the alleged Miranda violations but did not. Further, Applicant has not shown this court how any additional arguments or cross-examination would have changed the outcome of his case. Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Trial Counsel and, therefore, this allegation is denied and dismissed with prejudice.

II. Ineffective Assistance of Appellate Counsel

1. Failure to Raise Fourth Amendment Issue on Appeal

Applicant alleges Appellate Counsel was ineffective for failing to raise a Fourth Amendment argument on appeal.

Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decisions to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

Appellate Counsel is not required to raise each and every non-frivolous issue preserved for appeal. See Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990).

Applicant testified he spoke with Appellate Counsel and described the details of the arrest warrant because he wanted Appellate Counsel to make the argument that the motion to suppress should have been granted due to the fact that, according to Applicant, the stop was predicated on the "sham" arrest warrant. Applicant testified Appellate Counsel informed him he could not bring that issue on appeal, but that Applicant wanted Appellate Counsel to raise that issue because it was preserved for appeal.

Appellate Counsel testified he spoke with Applicant regarding his case seven times by telephone. Appellate Counsel testified he recalled having a fourth amendment discussion with Applicant, but did not believe they specifically discussed the arrest warrant. Appellate Counsel testified Applicant did not ask him to raise any specific issues that Appellate Counsel did not raise. Appellate Counsel testified that even if Applicant had requested he raise particular issues, he would not have raised any non-meritorious claims. Appellate Counsel testified he does not raise each and every single issue preserved for appeal. Appellate Counsel testified he raised the following issue on appeal:

> "The Trial Court erred in failing to declare a mistrial upon the mention of an active arrest warrant in Applicant's name which was unrelated to his trial and improperly influenced the jury to decide the case on prejudice instead of the evidence presented."

Appellate Counsel testified that, after reviewing the record, he raised this issue because it was the most possible meritorious issue in Applicant's case. Appellate Counsel testified he does not raise every issue preserved for appeal due to the page limit set by the Appellate Court Rules. Appellate Counsel testified that if he were to raise more issues than necessary, he would be limiting the number of pages he could use on more meritorious arguments.

This Court finds Appellate Counsel's testimony credible, while also finding Applicant's testimony not credible. As Appellate Counsel credibly testified, he raised the most meritorious issue for appeal, and does not raise each and every single issue that is preserved for appeal. See Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). Accordingly, Applicant has not met his burden requiring him to show this Court how Appellate Counsel was deficient.

Applicant has also failed to establish any resulting prejudice from Appellate Counsel's alleged deficiency. Applicant has not shown this Court that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Appellate Counsel and, therefore, this allegation is denied and dismissed with prejudice.

2. *Failure to Petition the Supreme Court of the United States*

Applicant alleges Appellate Counsel was ineffective for failing to file a Petition for a Writ of Certiorari in the Supreme Court of the United States.

There is no duty on appellate counsel to pursue a rehearing and/or certiorari following the decision of the Court of Appeals in a criminal direct appeal. Douglas v. State, 369 S.C. 213, 631 S.E.2d 542 (2006). The decision whether to pursue certiorari is a matter left solely to the appellant's attorney's professional discretion. Id.

Appellate Counsel testified he did not appeal to the South Carolina Supreme Court, nor would he have ultimately appealed to the Supreme Court of the United States (SCOTUS) because he did not see any valid legal reason to do so. Appellate Counsel testified that, based on the record and applicable law, he did not believe the South Carolina Supreme Court would grant certiorari and reverse the decision of the South Carolina Court of Appeals, nor did he believe there was a

legitimate meritorious argument such that SCOTUS would ultimately grant certiorari in Applicant's case. Appellate Counsel testified he will not file a writ of certiorari in a supreme court, whether state or federal, for every case because these courts rarely grant certiorari, and because these courts only grant certiorari when certain criteria are present, which were not present in this case.

This Court finds Appellate Counsel's testimony very credible. As Appellate Counsel testified, he used his professional judgment and knowledge of the record and ultimately determined that he should not continue the appeal process for Applicant's case. Appellate Counsel credibly testified he did not see any valid reason to file a writ of certiorari in the South Carolina Supreme Court, nor did he see a valid reason to ultimately file a petition in SCOTUS.

This Court finds the South Carolina Court of Appeals properly determined that the trial court did not err by refusing to grant Applicant's motion to mistrial. Our appellate courts have consistently held that the standard of review for determining whether a mistrial should have been granted is an abuse of discretion. "The decision to grant or deny a mistrial is within the sound discretion of the trial judge." State v. Thompson, 352 S.C. 552, 560, 575 S.E.2d 77, 82 (Ct. App. 2003). "The court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." Id. "The power of a court to declare a mistrial ought to be used with the greatest caution under urgent circumstances, and for very plain and obvious causes" stated into the record by the trial judge. Thompson, 560, 575 S.E.2d at 82, citing State v. Kirby, 269 S.C. 25, 28, 236 S.E.2d 33, 34 (1977). "A mistrial should not be granted unless absolutely necessary." State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999). Instead, the trial judge should exhaust other methods to cure possible prejudice before aborting a trial. Id. In order to receive a mistrial, the defendant must show error and resulting prejudice. Id. The court properly determined the trial

court did not abuse its discretion by refusing to grant Applicant a mistiral. Trial Counsel cannot be found deficient for failing to further appeal Applicant's case merely because Applicant was not satisfied with the result of his appeal. Accordingly, Applicant has not met his burden requiring him to show deficiency on behalf of Appellate Counsel.

Applicant has also failed to establish any resulting prejudice from Appellate Counsel's alleged deficiency. Applicant has not shown this Court that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). Based on the standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Appellate Counsel and, therefore, this allegation is denied and dismissed with prejudice.

III. Prosecutorial Misconduct

1. Brady Violations[6]

Applicant alleges Black committed Brady violations by withholding the criminal record of the CI, Greg Allison's supplemental report, and field drug tests allegedly performed at the scene.

Trial Counsel testified she filed a Brady / Rule 5 motion in this case, and that the State was generally compliant with this motion. Trial Counsel testified there was a misunderstanding regarding the CI's criminal history, but Black provided the defense with the CI's criminal history prior to the start of trial as soon as the error was discovered. Trial Counsel testified she was able to review the criminal history and question the CI accordingly. Trial Counsel also testified Black provided Greg Allison's supplemental report in response to her Brady / Rule 5 motion. Trial Counsel testified she could not recall whether a field test was done on the drugs at the scene, and did not recall that being an issue in the case.

[6] This section addresses all three claims of prosecutorial misconduct.

Black testified the State was compliant with Trial Counsel's Brady / Rule 5 violation, and continued to provide discovery throughout the trial as it became available. Black testified he initially inadvertently put the criminal record of another CI in Applicant's case file but remedied the error immediately upon realizing that the criminal history provided was not the correct one. Black testified he provided the correct criminal record to the defense immediately following pre-trial motions, and that Trial Counsel had time to review the criminal record. Black testified he recalled Trial Counsel questioning the CI about her criminal history during cross-examination. Black testified he did not recall a field test being done in this case, but even if a field test had been done in this case, the drug evidence would have been subsequently tested by SLED's laboratory analysts. Black testified that even if SLED did not specifically test the drugs contained in each of the bags recovered by law enforcement, SLED had tested enough of the bags to support the trafficking charge. Black testified the SLED analyst tested the drugs contained in four of the Ziploc bags contained in exhibit 1.1, and each bag tested positive for methamphetamine, totaling 13.51 grams of methamphetamine. Therefore, according to Black, even if SLED had not tested the remaining bags, there was still enough methamphetamine tested to support Applicant's indictment for trafficking in methamphetamine, of 10 grams or more, but less than 28 grams.

This Court finds the testimony of Trial Counsel and Black very credible. Both Black and Trial Counsel testified the defense received both documents in a timely manner, which is reflected in the trial transcript. (Trial Tr. 85-86). Trial Counsel was able to review each of these documents and cross-examine the applicable witness accordingly. Therefore, based on the aforementioned test set forth in Gibson[7], Applicant has failed to establish a Brady violation occurred. Accordingly, this Court finds Applicant has failed to establish a Brady violation.

[7] Gibson v. State, 334 S.C. 515 (1999).

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief pursuant to the Uniform Post Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10 to -160. Neither Trial Counsel nor Appellate Counsel were deficient in any manner regarding their performance, nor was Applicant prejudiced by either counsel's representation. Additionally, Applicant failed to meet his burden as to his prosecutorial misconduct claims. Accordingly, all allegations are denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Further, Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall be remanded to the custody of SCDC.

AND IT IS SO ORDERED.

J. MARK HAYES, II
Presiding Circuit Court Judge
Eighth Judicial Circuit

April 28, 2020

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Attachment B

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

May 24, 2017

Earnest Edward Vaughn, ##246912
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: Your Case

Dear Mr. Vaughn:

I am in receipt of your letter. Thank you for pointing out all of those issues. I will be sure to consider them when I begin working on your case.

Please do not hesitate to call or write if you have any additional questions or concerns.

Sincerely,

Taylor D Gilliam
Appellate Defender

TDG/tg

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenwood County

Donald B. Hocker, Circuit Court Judge

EARNEST EDWARD VAUGHN, SR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2020-000750

RETURN TO THE MOTION TO APPOINT OUTSIDE COUNSEL

Undersigned counsel files this return to what this Court has construed as a Motion to Appoint Outside Counsel, and would show the Court the following:

1) On October 31, 2016, Petitioner Vaughn proceeded to a jury trial before the Honorable Donald B. Hocker in Greenwood County South Carolina on drug and unlawful neglect of a child indictments. Jane Merrill, Esquire, represented petitioner. The overwhelming amount of information in this Return is taken from the post-conviction relief order of dismissal of the Honorable J. Mark Hayes, II in this case.

2) The jury convicted petitioner of trafficking methamphetamine and unlawful neglect of a child. The jury found petitioner not guilty of a possession with intent to distribute charge.

3) Judge Hocker sentenced petitioner to consecutive terms of thirty years' imprisonment

for trafficking methamphetamine and ten years' imprisonment for unlawful neglect of a child.

4) Subsequently, petitioner timely appealed his convictions. Appellate Defender Taylor D. Gilliam of the Appellate Division of the South Carolina Commission on Indigent Defense represented petitioner in his direct appeal, and he submitted a final brief on behalf of petitioner.

5) On December 11, 2017, Assistant Attorney General J. Scott Matthews filed a final brief on behalf of the state.

6) The Court of Appeals affirmed petitioner's convictions in State v. Earnest Edward Vaughn, Sr, 2028-UP-409 (November 7, 2018).

7) In his application for post-conviction relief, petitioner alleged, inter alia, that Appellate Defender Gilliam provided ineffective assistance of counsel for failing to raise a Fourth Amendment argument on appeal, and for failing to seek certiorari from the South Carolina and the United States Supreme Court after his convictions were affirmed on direct appeal. Appellate Defender Gilliam testified at the post-conviction relief hearing before the Honorable J. Mark Hayes, II, that he raised what he considered the most meritorious issue on appeal:

> The Trial Court erred in failing to declare a mistrial upon the mention of an active arrest warrant in Applicant's name which was unrelated to his trial and improperly influenced the jury to decide the case on prejudice instead of the evidence presented.

8) Appellate Defender Gilliam also testified that he did not see any meritorious reason to seek certiorari from the Supreme Court in petitioner's case. The PCR court ruled that Appellate Defender Gilliam was not ineffective, and therefore, with the denial of all other PCR grounds, it denied petitioner's application for post-conviction relief.

9) Since petitioner: (a) raised the issue of ineffective assistance of counsel in his post-conviction relief application, and, (b) because Appellate Defender Gilliam testified during the post-conviction relief hearing, and, (c) since the PCR judge made findings of fact and conclusions of law regarding Appellate Defender Gilliam's performance, albeit that appellate counsel was not

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenwood County

Donald B. Hocker, Circuit Court Judge

EARNEST EDWARD VAUGHN, SR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2020-000750

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Return to Purported Pro Se Motion to Appoint Outside Counsel in the above-referenced case has been served upon William M. Blitch, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), and on Earnest Edward Vaugh, Sr., at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 9th day of June, 2020.

Robert M. Dudek
Chief Appellate Defender

June 9, 2020

4th Amend Viol.
Sham Warrant

No one had a warrant for an arrest. They lied under oath.

Greenwood County Sheriff's Office

Dennis D. Kelly, Sheriff

Mr. Vaughn,

Enclosed is a copy of supplemental report 1600003053 you requested.

We did not locate a copy of the arrest warrant here. The Magistrates Office (issuing office) or Clerk of Court Office should be able to help you with that.

Respectfully,

Sam Watts

Sam Watts

Foot Note:
The Sheriffs Dept. did not have a warrant for my arrest. I was not arrested until after they claimed to have found drugs without a search warrant.

Telephone 864-942-8600 • Fax 864-942-8589 • 528 Edgefield Street • Greenwood, SC 29646

question. I guess Deputy Hood searched him when he first got out of the vehicle, correct?

A Correct.

Q Was he further searched after that?

A He was.

Q And were you present for that search?

A I was.

Q What were you doing while he was being searched?

A I was, as Captain Reeder was preparing to search him, I was doing photos.

MS. WHITE: May I approach the witness, sir?

THE COURT: You sure can.

(Whereupon, State's Exhibits 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 were marked for identification.)

Q I'm going to hand you first what's been marked for identification as State's 16 through 25. Are those pictures you took that evening?

A Yes, ma'am.

Q And are those accurate depictions of the search as it was taking place?

A Yes, ma'am.

Q Now, was Mr. Vaughn's search directly in front of the vehicle?

A No, ma'am. We, Captain Reeder, I think, is the one that come up with, let's move him over between the two

to remain silent. If you give up the right, anything you say can and will be used in a court of law. You have the right to an attorney.

MS. WHITE: Wait, slow down just a tad. She's got to keep up.

MR. COX: I'm sorry.

Q Okay.

A As I continued on, I made sure Mr. Vaughn knew that he could talk to us with or without his lawyer present.

Q Did he appear to understand those rights?

A He did. I'll ask Mr. Vaughn his age, you know, if he went to school. So he, to make sure he's understanding and make sure he's coherent and make sure he understands what's going on.

Q Did he appear to be under the influence of anything when you spoke to him?

A Not to my knowledge.

Q Did he ask for a lawyer at any point?

A No, ma'am.

Q Did he say anything; did he give you any statements?

A No, not that I recall.

Q Now, ultimately, was he searched by another agent on the scene?

A Mine is--

Q Wait a minute, I'm sorry. That wasn't a specific

Foot Note:
I did ask that my Lawyer be present and Mr. Cox ceased questioning and walked away. This can be seen on the video but not heard.

Q Did you have knowledge of an arrest warrant that was active for Mr. Vaughn?
A Yes, ma'am.
Q And how did you know that there was a warrant for Mr. Vaughn?
A I signed that warrant.
Q And did someone in your group have that warrant on them?
A I believe I had it. I'm not totally positive on that. We did have the warrant in hand at that time.
Q What about Ms. Wilson, did you have knowledge that there was a warrant out for her?
A I believe I was speaking to the Laurens County Warrant Officer about a possible warrant for Ms. Wilson.
Q And did you have information that there was a warrant for her?
A I was told there was a warrant for her.
Q Did that later prove to be not true?
A That is correct, it was not true.
Q But when you pulled the vehicle over, did you believe that there was a warrant, an active warrant for her?
A Yes, ma'am.
Q About what time did the traffic stop take place, do you recall?
A I want to say around 5:00 o'clock p.m., around about

Q Is that the one you're talking about?
A Yes, ma'am.
Q Okay. And is that your signature at the bottom there?
A As serving it, no.
Q Do you know who did serve it?
A Whoever was 351, and I'm not sure who that is.
Q And do you know about if number 351 is in the Drug Unit?
A I believe, yes. I believe it might be Agent Brooks.
MS. MERRILL: And, Your Honor, if I may, I'd like to make this Court's Exhibit 2, but I'll make a copy of it in just a minute.
THE COURT: Okay. That's fine.
(Whereupon, Court's Exhibit 2 was marked for identification.)
Q Did you have any dealings with Debbie Tucker prior to this?
A I have, yes.
Q When have you had dealings with her?
A Without the incident reports, I wouldn't be able to tell you. I have had dealings with her in the past.
Q And have you been, have you ever used her as a CI?
A I don't believe I have used her.
Q Okay. So if you say dealings, maybe you've arrested

Ms. Tucker wasn't with me.

Q Did you see Ms. Tucker there at all?

A I did not.

Q Okay. And you really didn't know beforehand who would be driving?

A I did not.

Q Okay.

MS. MERRILL: Your Honor, may I beg the Court's indulgence?

THE COURT: Sure.

Q Officer, when was the incident, where did the incident occur that you said you had an arrest warrant that hadn't been served yet?

A I'm not sure of the date. I know Deputy Owens, Steve Owens was the one that took that report.

Q But you got the warrant, right?

A Correct. I was made aware of that report the next morning, I believe, at which time I advised Mr. Owens, Agent Owens, Investigator Owens that I'd be going, and I'd received the warrant for him.

MS. MERRILL: Your Honor, may I approach the witness?

THE COURT: You can.

Q I'm going to hand you the arrest warrant from the incident that occurred in November 23rd, 2015.

A Yes, ma'am.

A There were.
Q And did a member of your team have those in hand?
A Yes, ma'am. We had an accurate arrest warrant for Earnest Vaughn for possession with intent to distribute methamphetamine, and I don't remember specifically which one of us had it, but we had that warrant with us.

MS. WHITE: Please answer any questions Ms. Merrill has for you.

THE COURT: Ms. Merrill, any cross?

MS. MERRILL: Yes. Thank you, Your Honor.

CROSS-EXAMINATION

By Ms. Merrill:

Q I got a little confused there. You were talking about summer of 2015. Did you use Ms. Tucker as a CI then?
A No, ma'am.
Q Okay. Have you ever used Ms. Tucker as a CI before?
A Before the incident where Mr. Vaughn was arrested in January?
Q Yes.
A Once before, yes ma'am.
Q When?
A I don't recall the specific date. It was within pretty close proximity. I'll say a week or two before.
Q And was that involving Mr. Vaughn or someone else?

A Someone else.
Q Okay. When was she caught with this marijuana?
A Sometime early January 2016. I don't have that report in front of me.
Q And you said she wasn't charged. So she wasn't arrested?
A She was not.
Q Tell me a little bit more about that incident?
A I was conducting surveillance of a location that I had received information regarding being involved in drug activity. I observed the vehicle pull up to the house and one of the occupants go inside the house, return back out within two or three minutes and then leave. From my training and experience, that is consistent with drug activity. I then initiated a traffic stop on the vehicle after it left the area. Ms. Tucker was one of the occupants. A quantity of marijuana was also located in the vehicle. I seized the quantity of marijuana. Ms. Tucker indicated that she was willing to do work as an informant in order to work off those charges. Based on that I gave her my phone number. She left the scene. I turned the drugs into evidence and filed an incident report and documented and, essentially, that's, I think in summary, that's what happened.
Q Do you have a copy of that incident report with you

Q Okay. What time was this when you responded?
A I would have to look at the report to give you anything like that.
Q Now, the incident report says, time arrived, 17:26. Does that sound about right?
A I would assume so.
Q Okay. Was it dark when you first stopped?
A No.
Q Did it get darker as y'all were out there?
A Yes. I, typically, any day would.
Q Okay. For what reason did you search Mr. Vaughn's person?
A Well, I believe he had an arrest warrant as we began, as well as there was probable cause based on the information the Drug Enforcement Unit had obtained.
Q Did you have a copy of that arrest warrant to be served on him with you?
A I didn't. I did not. I'm not sure if anybody else did.
Q Did you have a search warrant?
A I did not.

MS. MERRILL: Thank you.

THE COURT: Solicitor, any redirect?

REDIRECT EXAMINATION

By Mr. Black:

Q When you were searching Mr. Vaughn, Officer Hood, did you notice anything like falling out of his pockets or anything?

A At one point, when I was getting items out of his pocket, it seemed like there was a powder or some type of something that didn't match what else was in the pocket that was coming out. But I wasn't able to identify it for sure, I mean, you know.

MR. BLACK: Nothing further.

THE COURT: Recross?

MS. MERRILL: No, sir.

THE COURT: Step down, sir. Thank you.

MS. WHITE: The State calls Whit Brooks.

WHIT BROOKS, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Ms. White:

Q Tell us your name for the record.

A Whit Brooks.

Q Were you employed with the DEU back in January of 2016, Mr. Brooks?

A I was.

Q And turning directly to January 27th of 2016, were you working with an informant named Debbie Tucker?

A I was.

of phone calls and things provided to the Defendant. And, Your Honor, I'd just move to suppress the, well, we've kind of talked over the reliability argument. So I've got to move to suppress based on that and that the arrest warrant was pretext for, you know, trying to get around not having a reliable CI. And I would say that the stop and the search violates his constitutional rights particularly in the Fourth Amendment and ask that the drug be suppressed.

THE COURT: Okay. All right. Thank you very much, Ms. Merrill. I will deny your motion to suppress. I find that the search was conducted pursuant to a lawful arrest of, due to the existence of an unchallenged, therefore, presentably legal arrest warrant. So I'll deny your motion to suppress. And concerning the statement made to Captain Reeder, I assume, are you making any motions related to that, Ms. Merrill?

MS. MERRILL: I beg the Court's indulgence. Your Honor, we'd just request that the statement be suppressed based on his being in custody and not being voluntarily made.

THE COURT: Okay. All right. I find that the statement made to Captain Reeder was voluntarily made and that there were no Miranda violations. Miranda was properly given, I think, as he even indicated giving it

Judge Hocker denied the motion to suppress. The sham arrest warrant was dismissed after the jury trial. It was not an unchallenged arrest warrant. They used it

Q How did you come to be involved with Ms. Tucker?
A I came to be involved with Ms. Tucker after I had initiated a traffic stop on the vehicle occupying Ms. Tucker. During the course of that traffic stop, I found a quantity of marijuana. Ms. Tucker was essentially working off the marijuana charges for me.
Q Okay. And were you meeting with Ms. Tucker on the 27th?
A I did, kind of late afternoon.
Q Okay. You said she was working off the charges for you. Was she doing anything towards that end on the 27th?
A She was.
Q And what did she do on the 27th?
A She communicated with Defendant, Mr. Earnest Vaughn, and also Brandy Wilson and was arranging to purchase a half ounce of methamphetamine from Vaughn and Wilson.
Q Okay. And were you present, how did she set up that meeting?
A By phone call.
Q Were you present when she made that phone call?
A To the best of my memory, I was seated in a room with Ms. Tucker when she made that phone call.
Q Okay. What were the arrangements for the deal?
A If I remember correctly, Ms. Tucker was speaking with Ms. Wilson on the phone. The information that was being

Foot Note:
Ms. Tucker testified that she never talked to me and never saw me. Mr. Brooks committed perjury.

passed to me by Ms. Tucker via this phone was that Ms. Wilson and Mr. Vaughn were together. Ms. Tucker was arranging to purchase a half-ounce of methamphetamine and as the conversation progressed, the drug deal was set to occur at the, around the carwash which is off Furman Burton Drive, kind of right beside the Bi-Lo on the north end of Greenwood.

Q So this, I guess, would be behind the convenience store?

A There's a 7-Eleven on the corner. It's directly behind it.

Q Did you know what sort of vehicle Mr. Vaughn and Ms. Wilson would be in?

A Yes, ma'am.

Q What vehicle was that?

A I forget if it was dark navy blue or black, but it was a Chevrolet Tahoe.

Q Okay. And approximately what time were they supposed to be at that location?

A If I remember correctly, about 5:30 in the evening.

Q Okay. Now, turning to --

MS. MERRILL: Your Honor, in hearing some of this, some of this information I've not been provided.

THE COURT: Okay.

MS. MERRILL: Such as that she was working off a

The Prosecutor with-held exculpatory evidence from the defense to obstruct justice!

at the Sheriff's Department?
A It was late in the afternoon just, it was like between 4:00 and 6:00, something like that. I don't remember, really remember the time.
Q And do you know about how long that you were supposed to meet them at the carwash, and then how long it was supposed to take?
A They was on their way there, and I was supposed to have went and give them the money and everything, but they got there early.
Q Okay. And so before you get into all that, you said you made a phone call, is that right?
A Yes.
Q Were you on speaker phone? Did you have it on speaker phone?
A Yes.
Q And do you know if it was on speaker phone on Brandy's phone or could you tell?
A I don't know. I couldn't tell.
Q And you spoke with Brandy?
A Yes.
Q Did you ever speak with Earnest?
A No.
Q Okay. Could you hear anybody else on the other, on the other line or was it just Brandy?

A She did.
Q And what was the nature of that conversation?
A That we was setting up to buy a half-ounce of ice from them, and they was going to meet me at the carwash on 25 North.
Q Okay. And just breaking that down, a half-ounce, do you know about how much that is?
A I don't even know what it weighs.
Q Okay. But it's a half-a-ounce of?
A Ice.
Q Okay. And ice is what?
A Meth.
Q All right. And do you know how much you were going to be paying for that?
A $750.00 dollars.
Q And it was supposed to take place you said at the Bi-Lo, right, or the --
A Yes.
Q -- carwash?
A At the carwash.
Q And where is that; can you describe that?
A On 25 North.
Q Is that in Greenwood County?
A Yes.
Q And do you know about what time you had this meeting

EARNEST VAUGHN, being first duly sworn, testified as follows:

THE COURT: Mr. Vaughn, what would you like to tell me as it relates to the suppression matter?

MR. VAUGHN: Well, Your Honor, it is possible tampering with the evidence that they claimed that they seized from me where there is issue about how much they seized and then they added to it later on. They said there was like five bags in one bag or four bags in one bag. And if you count they are lying about the evidence that they seized.

THE COURT: Anything else?

MR. VAUGHN: And I would like to put that on the record, to preserve it for a later review with direct appeal or whatever.

THE COURT: Do you have any evidence that the police officers, I think your position is that they increased the amount of drugs at some point and time?

MR. VAUGHN: It is on the record, yes sir.

THE COURT: Do you have any evidence that they did that?

MR. VAUGHN: Yes sir, it is in the discovery.

THE COURT: Okay. Well, I am sure, Ms. Merrill, if that needs to be brought out during this case then I am sure she will bring it out, whatever evidence that you may

Foot Note:
I was denied the right to challenge the chain of custody and the tainted evidence. They increased the drugs the next day. The total weight tested was 3.4 grams.

have. It doesn't necessarily go to the issue of suppression or not. Okay. But as far as the amount of drugs it could be relevant concerning the charge itself. But whether or not the Court should suppress, I have already made a ruling and that really would not go on that issue. Okay.

MR. VAUGHN: The evidence that they claim they seized from me is not the evidence they sent to SLED.

THE COURT: I understand, I understand. But the suppression dealt with whether or not there was an illegal search and seizure of that evidence. So the amount really would not be determinable of that particular issue. Do you understand, sir?

MR. VAUGHN: Yes, sir.

THE COURT: Okay. The Court, Mr. Vaughn, has had a lot of concern as far as your demeanor this entire day as far as appearing that you are very sleepy. I have noticed starting at 10:00 o'clock, when we had the panel out all the way to now there have been numerous times where you had your eyes closed. It looks like to me you were dozing off to some extent. And so I am going to have you drug tested to see if there is anything in your system that would cause that. So, and I have asked Agent Williams from the probation office to do that. And I am going to ask that Officer Warren and Officer Douglas escort the

A No, ma'am; has not.

MS. WHITE: The State moves Exhibit 40 into evidence, Your Honor.

THE COURT: What says the Defense?

MS. MERRILL: No objection.

(Whereupon, State's Exhibit number 40 was admitted into evidence.)

Q And you said you found this is in the fuse box. Where is that exactly in the vehicle?

A If you opened the driver side door, there is a compartment on the dash and it has a inlay button. And if you pop that button that door would come off and that is a very safe haven for a lot of your drug paraphernalia, drugs as well.

Q All right. So you actually found this Crown Royal bag and pipe. The rest of the evidence that was collected that day, who was the submitting officer on that, do you recall?

A The submitting officer on the evidence was Jarvis Reeder.

Q So did you collect everything from Captain Reeder, and then put it into evidence?

A Once he turned it over to me, I inventoried everything to make sure it was correct. And it was correct, and I took possession of it.

Q All right. I'm going to split this up into smaller chunks.

MS. WHITE: May I approach the witness, Your Honor?

THE COURT: Sure.

Q I'm going to hand you what's been marked as Exhibits 8, 9 and 14.

A Yes, ma'am.

Q Did you receive all of those from Captain Reeder on the scene?

A Let me get my focus.

Q Sure.

A Everything was turned in and once it was turned over to him, it was turned over to me. That's correct.

Q Okay. And have those three exhibits been in your care, custody, and control since January the 27th of 2016?

A Yes, ma'am; they have.

Q Have any of those been altered or changed in any way?

A No, ma'am; they have not.

MS. WHITE: The State moves numbers 8, 9 and 14 into evidence, Your Honor.

THE COURT: What says the Defense?

MS. MERRILL: Just subject to our prior objections, Your Honor.

THE COURT: Okay. All right. So noted. 8, 9, and 14 into evidence on behalf of the State.

AGENCY I.D.
SC0240000

SUPPLEMENTARY REPORT

CASE NUMBER: 1600003053

NCIC: INQ. | ENTD.

☐ ORIGINAL REPORT ☑ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY

PAGE 1 OF 1 PAGES

NARRATIVE

On January 27, 2016 I, Greg Allison, conducted an inventory of the drugs submitted to GCSO Evidence that pertain to GCSO case #16-3053. During the initial inventory of the items I counted and weighed what I believed to be all items in Bag #2 which totaled 13 individual clear plastic bags of off-white crystalline substance, having a total weight of 7.66 gms, and all items in Bag #1 which totaled 3 individual clear plastic bags of off-white crystalline substance, having a total weight of 10.62 grams. This was conducted for initial reporting purposes.

On the following day, I conducted a second inventory of the evidence, for accuracy purposes, where I found that an additional clear plastic bag (from bag#2) containing .34 gms of off white crystalline substance(N) had been overlooked during the initial inventory conducted by me, bringing the combined weight of these 14 bags to 8.0 gms. Also found was an additional bag in the combined "Bag #1", of off white crystalline substance weighing approximately 3.60 gms (D); now totaling 14.22 grams in "Bag #1".

The property section of the report will be amended for an accurate account of all inventory.

Foot Note:
The only evidence that SLED tested is the substance that Mr. Allison found the next day on the floor of his office.

ADMINISTRATIVE

SUBJECT IDENTIFIED	SUBJECT LOCATED				
☐ YES ☑ NO	☐ YES ☑ NO	☐ ACTIVE ☐ UNFOUNDED	☐ ADM. CLOSED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
ALLISON, G	01/29/2016	380			
			FOLLOW - UP INVESTIGATION OFFICER ☐ YES ☑ NO		

39, did you take that down to SLED yourself?
A Yes, ma'am; I did.
Q Do you recall what date you took that to SLED?
A Not exactly. I had the packaging date on it where I actually packaged it on March the 2nd. But it should be on these submission forms with the paperwork. I initially try to go twice a month, so it's not every day or every case. My job duty is more complex than just one case or crime scene investigation. I am over a large mass of items which I have to return to victims who also come in and they need their items back from other cases.
Q Now, if I hand you the chain-of-custody, would that refresh your recollection on the dates?
A Yes, ma'am. Here we show that I did deliver it on the 2nd month, the 8th day of 2016.
Q Thank you. Between January, I guess, 27th and February the 8th, where would that item have been sitting?
A This item, in particular here, would be sitting in, probably spent most of the time in the lab in the SLED box, which I keep it separate from all the other evidence. So when I get ready to prepare this item for SLED, I can go directly to the SLED box, prepare it, and then send it to SLED, and it is in a secure area.
Q And, again, you sealed this on February 2nd, it looks like?

A That's correct.
Q Now, you mentioned counting it again to make sure the inventory is correct. Did you have an issue when you recounted this one?
A Yes, ma'am; I did. I was off on one package of one that was, had three in it. And it actually had four which was initially from the drug stop. And the other one was the one with the 14 packs in it, I was missing a small one which was a .34. The missing part was a logging error when I was doing, when I was doing the counts and I was doing the weights. It never left the office. It never was lost. It wasn't on the floor. It just wasn't logged in. It was already processed, packaged, and it was also labeled.
Q So was that just an error in counting?
A It was a, yeah, it was a writing error on my behalf and that's the reason I always do a second one.
Q And when you did the second one, did you come up with the same numbers that SLED had?
A Yes, ma'am. I did come up with the additional numbers and the additional packs, which was at the scene with everything with the incident report.
Q Now, do you weigh the substances as part of when you're packaging it up?
A Yes, ma'am. I weigh for accuracy on the weights. A

weigh it again once it comes back to make sure it was exactly as when it left.

Q Okay. So if after you testified there was a few of these that I'd like to see the specific details about items, you would be able to do that?

A Yes, ma'am.

Q Okay. Thank you. Is it typical for you to be called out to a scene like you were on this case?

A Yes, ma'am. I'm also the driver of the S.W.A.T team, so we do do warrants where I am called out to a drug bust.

Q Okay. But in this one you were called out just to log evidence?

A Yes, ma'am. I am listed under Investigations, and I am called out for anything they will ask me to do.

Q When you take any evidence to SLED, do you then have to sign something noting that you're leaving it into their custody at that time?

A Yes, ma'am. I also get a custody sheet back from SLED which is a copy from SLED with my signature on it and also the submitting officer from SLED. It also comes to me.

Q And then when something comes back from SLED?

A It's the same thing. I have a general listed, and I have each item return slip, as well, that goes into the evidence log once I return back from SLED.

Allison testified he packaged it on March 3rd 2016 to take to SLED, SLED testified they received it on Feb. 2nd 2016

Q Okay. When you count, were counting the packages on January 27th outside on the hood of the car, were you able to weigh them there?
A No, ma'am; I was not.
Q Okay. So in this initial report where it talks about weighing them, were you just gathering the evidence then?
A And when I was out on the crime scene, I just actually did a count for the actual packages. And then put them back in their original state or more or less counted in the package and left them in their original state where I can get an accuracy on the notation of it.
Q Okay. And then you go back to your office, I guess, and that's when you did the--
A We returned it back to the evidence room at the Greenwood County Sheriff's Department where I began to process it.
Q Okay. And then I know you said there was a mistake on your part with different amounts?
A Actually, yes, ma'am. It was, the amount is also, I was lacking one in each of the crystal-like substance packs.
Q Okay. And, I guess, I'm just trying to figure out when was the first time you weighed it was that day back at your office?
A Yes, ma'am. It was actually during the processing of

Foot Note!
The chain of custody was broken several times!

Broken Chain of Custody
6th & 14th Amend. Viol.

Control No. B255811

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

CERTIFICATION OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL

Initial Custody

This is to certify that I JARVIS Reeder (Name) am employed by GREENWOOD COUNTY SHERIFF'S OFFICE (Name of Agency of Department) and that on JAN 27, 2016 (Date), I seized from EARNEST VAUGHN (Name) pursuant to OTHER WISE (State whether Subject to a Warrant, Lawful Arrest or Otherwise) at or near FURMAN BURTON DRIVE GREENWOOD SC 29646 (Place where seized)

The following substance(s) or container(s): (Describe the substance or container to sufficiently distinguish it)

BAG #1 1- CLEAR BAG CONTAINING 14 BAGS OF A CRYSTAL LIKE SUBSTANCE TOTAL WEIGH 8.9 GRMS

BAG #2 1- CLEAR BAG CONTAINING 4 BAGS OF A CRYSTAL LIKE SUBSTANCE TOTAL WEIGH 14.22 GRMS

Signed [signature] Print Name: JARVIS REEDER Date: 1-27-16

Sworn before me this ____ day of ____, ____ Notary Public for South Carolina Signature

My commission expires: ____ County: ____

Subsequent Chain of Custody Following Seizure:

The item(s) listed above were delivered in substantially the same condition as when it was received according to the following chain:

	Signature	Print Name	Company	Date/Time
1.)	Relinquished By: [signature]	JARVIS REEDER	GREENWOOD CO SO	1-27-16
	Received By: EVIDENCE LOCKER	GREG L. ALLISON	GREENWOOD CO SO	1-27-16
	Sworn before me this ____ day of ____, ____ My commission expires: ____ County: ____		Notary Public for South Carolina Signature:	
2.)	Relinquished By: EVIDENCE LOCKER	GREG L. ALLISON	GREENWOOD CO SO	2-8-16
	Received By: GREG L. ALLISON	GREG L. ALLISON	GREENWOOD CO SO	2-8-16
	Sworn before me this ____ day of ____, ____ My commission expires: ____ County: ____		Notary Public for South Carolina Signature	
3.)	Relinquished By: GREG L. ALLISON	GREG L. ALLISON	GREENWOOD CO SO	2-8-16
	Received By: SLED		SLED	2-8-16
	Sworn before me this ____ day of ____, ____ My commission expires: ____ County: ____		Notary Public for South Carolina Signature	
4.)	Relinquished By:			
	Received By:			
	Sworn before me this ____ day of ____, ____ My commission expires: ____ County: ____		Notary Public for South Carolina Signature	
5.)	Relinquished By			
	Received By			
	Sworn before me this ____ day of ____, ____ My commission expires: ____ County: ____		Notary Public for South Carolina Signature	

Foot Note: SLED did not sign chain of custody on 2-8-16.

EVBSLED. FRMC.2 3/10

USE BALLPOINT PEN AND PRESS FIRMLY, PRINT ALL INFORMATION
EXCEPT WHERE SIGNATURE IS REQUIRED

SLED DRUG ANALYSIS REQUEST

LAB NO. _____ CONTROL NO. 13-255811

COUNTY. _____ WARRANT NO. _____

INCIDENT

Contributing Agency ORI SCO _____ Contributing Agency Case No. _____

New Case [X] Additional Evidence [ ] Case No. 16-3055

Type of Crime TRAFFICKING METH MORE TO LESS THAN

Incident Date 01-27-2016

Incident Address FURMAN BURTON DRIVE GREENWOOD SC 29646

Report should be mailed to:

JARVIS REESDER CAPT. 864
Name of Individual Receiving Report Rank

GREENWOOD Co SHERIFF 942-8600
Department Telephone No.

528 EDGEFIELD STREET
Street Address or Post Office Number

GREENWOOD SC 29646
City State Zip Code

SUBJECTS

[redacted] VAUGHN FARNEST EDWARD
LAST FIRST MIDDLE
Race W Sex M DOB [redacted]
DL, SS or FBI No. _____

WILSON BRANDY LEE
LAST FIRST MIDDLE
Race W Sex F DOB [redacted]
DL, SS or FBI No. _____

LAST FIRST MIDDLE
Race _____ Sex _____ DOB _____
DL, SS or FBI No. _____

EVIDENCE

The items submitted below will be examined with your assurance that the submitted specimens have not been nor will be submitted to any other laboratory or agency for Technical or Scientific examination.

Specimens submitted for examination: BAG #1 1- CLEAR BAG CONTAINING 14- CLEAR PLASTIC BAGS CONTAINING AT TOTAL OF 8. 9RMS OF A CRYSTAL LIKE SUBSTANCE.

BAG #2 1- CLEAR BAG CONTAINING 4- CLEAR PLASTIC BAGS CONTAINING A TOTAL OF 14.22 9RMS OF A CRYSTAL LIKE SUBSTANCE.

GREG L. ALLISON
PRINT Name of Requesting Officer

SIGNATURE Of Requesting Officer

EVBGLED: DAR, 1 3/00

Foot Note: The arrest warrant states 18.22 grams was seized.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Prepared for Release
By Sharon Hunt at 10:26 am, Jun 07, 2016

Chain Of Custody

L16-01758

Item 1: One (1) plastic bag containing [illegible] evidence

Submissions

Date	Time	Submitted by
2/8/16	9:17	Greg Allison of the Greenwood County Sheriff's Office

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
2/8/16	9:17		Forensic Technician	Doris Yarbrough
2/8/16	9:18		Evidence Room (150)	Drug evidence intake storage
2/9/16	13:43		Forensic Technician	Jackie M. Davis
2/9/16	13:44		Forensic Scientist	Lynn D. Black
3/2/16	9:48		Forensic Technician	Jackie M. Davis
3/2/16	9:53		Evidence Room (150)	Drugs For Return Shelf
3/3/16	10:01		Forensic Technician	Jackie M. Davis
3/3/16	10:03		Evidence Disposition	Returned to Agency in person

Greg Allison-Greenwood C.S.O.
JMD 3/3/16

Item 1-1: Ziploc bags #7, containing four (4) ziplock bags, each containing plastic bag containing crystal substance

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
2/17/16	16:43		Forensic Scientist	Lynn D. Black
3/2/16	9:48		Forensic Technician	Jackie M. Davis

A Correct.

MR. BLACK: Your Honor, at this point, the State moves the report which I believe is number 44 into evidence.

THE COURT: Ms. Merrill?

MS. MERRILL: Just subject to my pretrial objection.

THE COURT: So noted. 44 is in evidence for the State.

(Whereupon, State's Exhibit number 44 was admitted into evidence.)

Q Ms. Black, just a couple of more questions. The items that you didn't test, how many baggies, again, were those?

A There was 13.

Q Thirteen baggies and the total weight of that was 13.11?

A 3.11.

Q 3.11, I'm sorry. What were the size of this particular crystal-like substance, was it big or small or?

A If I may refer to my notes?

Q Yes, ma'am.

A The 13 bags that I did not test were all, all weighed less than a gram each, whereas the very first bag that I tested and that was 3.44 grams. So a substantial size difference between those, so they were much smaller than

that first bag.

Q As an expert in forensic chemistry, any doubt that the items in that bag was meth?

A No, sir.

MR. BLACK: That's all the questions I have. Please answer any Ms. Merrill might have for you.

THE COURT: Cross-examination.

MS. MERRILL: Thank you, Your Honor.

CROSS-EXAMINATION

By Ms. Merrill:

Q Item 1.2, the remaining 13 that you didn't test, you can't say if that was methamphetamine?

A I did not test them to prove that it was methamphetamine, but based on my experience and the way that they looked, I would say it's a pretty good chance that they are methamphetamine.

Q But there was no scientific testing done to prove that on those 13?

A No, there was not.

Q Okay. And as far as the weight, do you do an initial weight with the packaging and without or only weigh them without the packaging?

A I usually weigh, you know, if I'm reporting this weight, it's going to be a net weight and sometimes, I do weigh things as a gross weight. But like the 13, I could

shows. The weight of the weight paper has no, you know, is not listed on here. It says zero. So then I take the contents of that plastic bag and place it on that weight paper, and that gives me the net weight. So what's what I did with all four of those.

Q And this is a procedure that you always typically use?

A Yes, that's correct.

Q Let's talk about the other bag, the baggie. What was in that particular baggy that you tested then?

A The other Ziploc bag, this is what's called number one, it had 14 Ziploc bags. And each of those had the plastic bag that had the crystal stuff. And so, essentially, 14 plastic bags with crystal substance in them. So for that one, I weighed one of them, and then I did a net weight on one of them and that was 3.44 grams. and did the testing on that bag and methamphetamine was found. And then the other 13, I did weigh each of those separately net weights without the bags. But I did not do any testing on those, and those altogether weighed 3.11 grams.

Q And so in the first bag, in the second bag that was actually labeled as bag number one, what was the total weight of the drugs in that bag?

A The total weight of the drugs that I tested was 3.44,

and then the other, as I said, the other 13 weighed 3.11 grams in weight.

Q And the bag that you tested, did you use the same testing that you did in the previous bag?

A Yes, I did.

Q The same exact type of testing?

A Yes.

Q So the total weight with the one that you tested, and then I believe you said there were 13 other bags that you did not test?

A Correct.

Q Okay. And what was the weight of the other 13 that you didn't test?

A 3.11 grams.

Q So that weight of those drugs combined would be 6.55, is that right?

A Wait a minute. Which one are you speaking of now?

Q In Item 1.2 that's listed on the report.

A 1.2; we had 3.44, and then I test, and 3.11 that I did not test. My notes 6.55, yes.

Q And then in the first bag that we were talking about previously, what was the total weight of that again?

A 13.51 grams.

Q So the total weight would have been, for all of the crystal-like substance would have been 13.51 plus 6.55?

Video Tampering and Indictments

be a recording and it will tell you what to do. Chances are it is going to tell you to call in again after 6:00 o'clock tomorrow evening but I can't promise that to you. You just follow the instructions on when to be back. If it gives you an instruction on when to come back then you be sure to come back at the time indicated. Okay. You are free to go.

(Whereupon, the remaining jury panel was excused from open court.)

THE COURT: We have got some pretrial matters. Do you have a rough idea how long that may take.

MR. BLACK: Judge, I didn't know if you wanted to watch the video or not, we have cut the video down to about 21, 19, 21 minutes. I am ready to go, I need to check on that, Judge.

THE COURT: We will take a break, ten minutes, get a feel for how long that will take. Kind of what I am thinking is go ahead and do pretrial matters, break for lunch and then have them come back at 2:00, 2:30. Let's take a break.

(Whereupon, a short break was taken.)

THE COURT: Let's bring the jury in.

(Whereupon, the jury came into open court at approximately 12:15 p.m.)

THE COURT: Ladies and gentlemen, here is the plan.

Foot Note:
Mr. Black testified at the PCR hearing ~~that~~ ~~the~~ that the video shown in court was the same video at the Sheriff's Dept. That's perjury.

the lawyers have made their closing arguments and I have instructed you on the law applicable to this case. So, before I tell you to begin your deliberations you are prohibited from having any discussion among yourselves. That will also apply and I will remind you of this again, when you are excused for a lunch break or at the end of the day, no discussions among anybody that you come into contact with, whether it is family members or friends or whomever. That is so very, very important. So please keep that in mind. Go back to the jury room for just a few moments and we will get you back out shortly.

(Whereupon, the jury was excused from open court.)

THE COURT: Does the State have any exceptions or objections to jury selection?

MR. BLACK: No sir, Your Honor.

THE COURT: From the Defense?

MS. MERRILL: No, sir.

THE COURT: All right, ladies and gentlemen of the remaining jury panel, I assume, at least some of you are disappointed that you were not selected, some of you are probably glad you were not selected. We are not done with you yet, we may very well start a second trial later on in the week. What you will need to do, on the information sheet is a phone number, it is a call in number. After 6:00 o'clock this evening call that number and there will

THE COURT: Okay. All right. Officer Allison, can you leave and go get those requested documents that Ms. Merrill is looking for and bring them back. And he would be subject to re-call, if necessary. Thank you, sir. All right. Solicitor?

MS. WHITE: The State calls Wes Love.

WES LOVE, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Ms. White:

Q Introduce yourself to the jury, please.

A I'm Wes Love and am employed with the Greenwood County Sheriff's Office as an investigator.

Q How long have you been employed with the Sheriff's Office?

A Approximately over, a little over eight years.

Q And what are your current duties? I'm sorry.

A I am currently an investigator with the Investigation Division.

Q Have you ever held any other duties with the Sheriff's Office?

A Prior, I did do evidence technician that currently Greg Allison is doing.

Q And are you one of the people who he just testified about who also has access to the evidence room?

Foot Note: The evidence man Mr. Allison's records was with-held from the defense (chain of custody etc.).

A Correct. Only when he is, you know, on vacation or currently, you know, not available.
Q As part of your duties with the Sheriff's Office, are you, have you ever been trained in the analysis of marijuana?
A Yes.
Q Approximately, when were you first, well, what sort of training do you have to go through for that?
A You go to the State Law Enforcement Division and you have, you're required to, at one-hundred percent test 50 unknown samples at one-hundred percent. And also as well as pass a written exam. And then once that is done, you can be certified to test marijuana.
Q How long ago did you complete that?
A In 2013.
Q And since 2013, have you ever been qualified as an expert in the field of marijuana analysis?
A Yes.
Q And approximately how many times?
A One time.
Q And was that in General Sessions?
A Yes.
Q How many, in addition to your training, how many analyses would you say you've performed, just kind of a ballpark?

Circuit Number	5/2/2016	5/9/2016	5/16/2016	5/23/2016	5/30/2016
8	Common Pleas/Common Pleas Nonjury Laurens Griffith, Eugene HOLSTON 2, 3, 4, 5 SCOTT 3, 4, 5 NO CR NEEDED 6 Common Pleas Non-Jury 5 Hocker, Donald NEVERS 5 General Sessions Non-Jury 5 Hocker, Donald NEVERS 5	General Sessions Greenwood Addy, Frank SCOTT Common Pleas/Common Pleas Nonjury Laurens Hughston, Thomas HOLSTON 9 NO CR NEEDED 11, 12, 13 Common Pleas Non-Jury 12 Hocker, Donald WATTS 12 am SCOTT 12 am	General Sessions Greenwood Addy, Frank SCOTT General Sessions Newberry Hocker, Donald NEVERS 16, 17, 18 SMITH 19 am, 20 am General Sessions Non-Jury 18, 19, 20 Griffith, Eugene HOLSTON 18, 19, 20	Common Pleas/Common Pleas Nonjury Greenwood Addy, Frank SCOTT 23, 24, 25, 26 NO CR NEEDED 27 General Sessions Laurens Hocker, Donald NEVERS General Sessions Abbeville Sprouse, R. CROSS General Sessions Non-Jury 23, 24 Griffith, Eugene SCOTT 23 NO CR NEEDED 24 Common Pleas Non-Jury 23, 24 Griffith, Eugene NO CR NEEDED 23, 24	Common Pleas Non-Jury Griffith, Eugene HOLSTON General Sessions Laurens Hoeker, Donald HERRON 31, 1, 2 NO CR NEEDED 3 Common Pleas Non-Jury 31, 1 Addy, Frank SCOTT 31 NO CR NEEDED 1 General Sessions 2 Laurens Addy, Frank NO CR NEEDED 2 General Sessions Non-Jury 2 Hocker, Donald HERRON 2

Foot Note;
Evidence shows a indiotment could not have been legally obtained on may 6th 2016. ms. McMahan would not raise this to the P.C.R. Court when I asked her to.