

THE STATE OF SOUTH CAROLINA
In The Supreme Court

PETITION FOR CERTIORARI FROM GREENWOOD COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes II., Circuit Court Judge
The Honorable Frank R. Addy, Jr., Trial Court Judge

Appellate Case No: 2020-000530

RECEIVED

Sep 08 2020

S.C. SUPREME COURT

MAUNWELL ERVIN,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA

PETITIONER.

APPENDIX

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INDEX

Suppression Motion Hearing Transcript Dated January 31, 2013	1
Trial Transcript Dated July 23-24, 2013	103
<i>Anders</i> Brief of Appellant	414
Order and Remittitur	426
Application for Post-Conviction Relief	429
Return.....	442
Post-Conviction Relief Hearing Transcript	447
Exhibits from PCR Hearing	503
Order	511
State’s Motion to Reconsider and to Alter and Amend Pursuant to Rule 59(e), SCRCF.....	526
State’s 59(e) Motion Hearing Transcript Dated October 1, 2019.....	536
Order	559
Sentencing Sheets and Indictments.....	562

1 jeopardy issue also, to save the Court the trouble have having
2 to look them up.

3 But we'd be happy to submit proposed orders in the case.

4 THE COURT: Y'all will be doing that?

5 MR. WISE: Yes.

6 MR. HUNTER: Yes, Your Honor.

7 THE COURT: Okay. And will the proposed orders cover
8 both the State's motion to dismiss as well as the substance
9 of --

10 MR. WISE: It will.

11 MR. HUNTER: Your Honor, I think just to keep them
12 separate, since there's two CP numbers, I think it should
13 probably have one that just addresses one CP number, one that
14 addresses the other.

15 MR. WISE: That would probably be better.

16 THE COURT: And there's two double jeopardy issues. One
17 deals with the sentence of the consecutive by Judge Addy, and
18 the other double jeopardy issue deals with the issue that the
19 jury had found him acquitted of the weapons charge.

20 MR. WISE: That's correct.

21 MR. HUNTER: Yes.

22 THE COURT: Okay. I think I got it.

23 MR. HUNTER: Thank you, Your Honor.

24 THE COURT: Thank you very much.

25 (The above hearing concluded.)

1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: Maunwell Ervin v. State of SC

3 2015-CP-24-1268

4 DATE OF PROCEEDING: March 2, 2018

5 COURT REPORTER: Tara Scott

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I, Bobbi J. Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

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Bobbi J. Fisher, RPR, CET

NCRA Registered Professional Reporter (RPR)

AAERT Certified Electronic Transcriber No. CET-1148

Prepared: September 24, 2019

COURT OF COMMON PLEAS AND GENERAL SESSIONS

EXHIBIT RECORD AND RECEIPT FORM

PLAINTIFF Maunwell J. Ervin DEFENDANT State of SC
 ATTORNEY C. Raveh Wise ATTORNEY Justin Hunter
 CASE NO. 2015-CP-24-1268 JUDGE J. MARK HAYES II
 DATE STARTED March 2 2018 COURT REPORTER Tara Scott
 DATE ENDED _____

PLAINTIFF'S EXHIBITS

1. Motion for Relief of Counsel
2. E-MAIL
3. Motion/Order Relieve Counsel
4. _____
5. _____
6. _____
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S/Tara Scott

Court Reporter

DEFENDANT'S EXHIBITS

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3. _____
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S/Lynn W. Lancaster

Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF GENERAL SESSIONS

NO. 11-GS-24-0781 ET AL

STATE OF SOUTH CAROLINA,
PLAINTIFF,

VS.

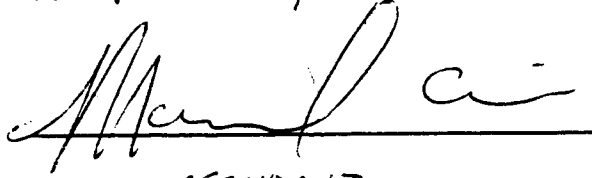
MOTION FOR RELIEF OF
COUNSEL

MAUNWELL JABAR ERVIN,
DEFENDANT.

FILED GENERAL SESSIONS
8th JUDICIAL CIRCUIT
GREENWOOD, SC
2015 APR 30 PM 4:15

PROCEEDING PRO SE, THE ABOVE NAMED DEFENDANT COMES
BEFORE THIS COURT, BY WAY OF MOTION, AND HEREBY MOVES TO HAVE
ATTORNEY LAUREN M. TAYLOR, ESQUIRE, OF THE SOUTH CAROLINA
BAR, RELIEVED AS COUNSEL.

RESPECTFULLY SUBMITTED



DEFENDANT

MARCH 17, 2015

REMBERT, SOUTH CAROLINA



STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

IN THE COURT OF GENERAL SESSIONS

NO. 11-GS-24-0781 ET AL

STATE OF SOUTH CAROLINA,
PLAINTIFF,

VS.

MAUNWELL JABAR ERYIN,
DEFENDANT.

AFFIDAVIT

FILED GENERAL SESSIONS
8th JUDICIAL CIRCUIT
GREENWOOD, SC
2015 APR 30 PM 4:15

IN SUPPORT OF THE ATTACHED MOTION TO HAVE ATTORNEY
LAUREN M. TAYLOR RELIEVED AS COUNSEL, I, MAUNWELL JABAR
ERYIN, THE DEFENDANT NAMED ABOVE, BEING DULY SWORN UPON MY
OATH, DO HEREBY STATE AND DEPOSE THE FOLLOWING :

1. LAUREN TAYLOR WAS APPOINTED TO REPRESENT ME IN THE ABOVE
REFERENCED CRIMINAL CASE ON SEPTEMBER 5, 2012.

2. MS. TAYLOR REPRESENTED ME AT A SUPPRESSION HEARING
THAT TOOK PLACE ON JANUARY 31, 2013 AND AT A TRIAL THAT TOOK
PLACE ON 22 THROUGH THE 24 OF JULY IN 2013.

3. AS OF THE DATE OF THE ATTACHED MOTION MS. TAYLOR IS
STILL THE ATTORNEY OF RECORD ON THE ONE CHARGE REMAINING TO
BE TRIED IN THE ABOVE REFERENCED CRIMINAL CASE.

4. MS. TAYLOR HAS PRETTY MUCH ABANDONED ME SINCE SHE
REPRESENTED ME AT TRIAL IN 2013.

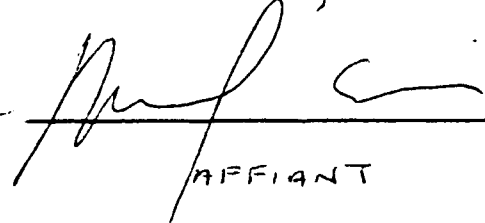
17. MS. TAYLOR HAS BEEN RUDE TO ME AND SHE HAS TREATED ME IN A DISRESPECTFUL MANNER.

18. I WILL NOT ALLOW MS. TAYLOR TO CONTINUE TO REPRESENT ME AND OR TO REPRESENT ME AT TRIAL.

FURTHER, THE AFFIANT SAYS TH NOT.

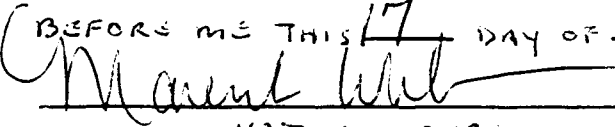
WHEREFORE, FOR JUST CAUSE SHOWN, THE HEREIN NAMED DEFENDANT / AFFIANT, PROCEEDING PRO SE, RESPECTFULLY REQUESTS THAT ATTORNEY LAUREN M. TAYLOR BE RELIEVED AS COUNSEL, AND THAT OTHER COUNSEL BE APPOINTED BY THE COURT.

RESPECTFULLY SUBMITTED



AFFIANT

SWORN OR AFFIRMED TO AND SUBSCRIBED

BEFORE ME THIS 17 DAY OF March, 2015


NOTARY PUBLIC

my commission expires : 3-8-2021

Subject: Fwd: Congrats!!!
From: Charles Grose <chasgrose@gmail.com>
Date: 5/26/2017 7:30 PM
To: "C. Rauch Wise" <rauchwise@gmail.com>

Sent from my iPhone

Begin forwarded message:

From: Lauren Taylor <taylor.lauren@gmail.com>
Date: February 1, 2013 at 6:07:01 PM EST
To: Charles Grose <chasgrose@gmail.com>
Subject: Re: Congrats!!!

Thank you so much! They forwarded the motion to me.

Lauren M. Taylor
Attorney at Law
P.O. Box 31553
Greenville, SC 29608
(864) 907.4444
(864) 751-4144 (fax)

NOTICE: This communication including any attachment is being sent by or on behalf of a lawyer or law firm and may contain confidential or legally privileged information. The sender does not intend to waive any privilege, including the attorney-client privilege, which may attach to this communication. If you are not the intended recipient, you are not authorized to intercept, read, print retain, copy, forward, or disseminate this communication. If you have received this communication in error, please notify the sender immediately by email and delete this communication and all copies.

On Feb 1, 2013, at 6:03 PM, Charles Grose <chasgrose@gmail.com> wrote:

Very good job!!!

You do have an interesting double jeopardy issue. Chelsea and I have some stuff on it. I also have some stuff on your entitlement to a transcript before they can try it again. You need to order that if they don't dismiss.

**IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENWOOD
EIGHTH JUDICIAL CIRCUIT**

STATE OF SOUTH CAROLINA,

Case No.: 2011-GS-24-0781 et al

Motion and Order to Be Relieved as Counsel

VS.

MANWELL ERVIN,

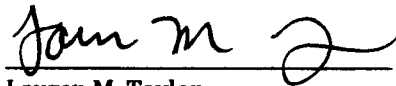
Defendant

PLEASE TAKE NOTICE THAT as soon as this matter may be heard, Lauren M. Taylor, Attorney will be making a Motion to be relieved from the representation of the Defendant for the above-captioned charges. The reasons for this Motion are:

1. A trial has been scheduled for the week of April 11, 2016 in the above case to try the Defendant on crack-cocaine charges.
2. Defendant filed a post-conviction relief in 2015 against Ms. Taylor stemming from his trial in 2012.
3. Due to the inherent nature of the conflict of the post-conviction relief on the grounds of ineffective counsel, the Defendant is putting the court on notice that Ms. Taylor will indeed be ineffective in the trial set for April 2016.
4. Pursuant to Rule 1.16(b)(1) of the South Carolina Rules for Professional Conduct, due to Defendant's post-conviction relief filing, "withdrawal can be accomplished without material adverse effect on the interests of the client."
5. Pursuant to Rule 1.16(b)(7) of the South Carolina Rules for Professional Conduct, other good cause for withdrawal exists.

Wherefore, it is requested that Lauren M. Taylor be relieved from representing the Defendant as there has been a potential post-conviction relief filed against Ms. Taylor by Defendant.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lauren M. Taylor", written over a horizontal line.

Lauren M. Taylor
Attorney at Law
Bar # 100417
Post Office Box 31553
Greenville, SC 29608
(864) 907-4444

April 7, 2016

**IN THE COURT OF GENERAL SESSIONS
COUNTY OF UNION
SIXTEENTH JUDICIAL CIRCUIT**

STATE OF SOUTH CAROLINA,

Case No.: 2011-GS-24-0781 et al

Motion and Order to Be Relieved as Counsel

vs.

MANWELL ERVIN,

Defendant

This matter came before the Court on the Applicant's Motion to be relieved as counsel. I find as follows:

1. Counsel for the Defendant seeks to withdraw as counsel of record in the above-referenced case.
2. Cause for withdraw is due to Defendant filing a post-conviction relief against Ms. Taylor on the grounds of ineffective counsel stemming from Defendant's trial in 2012.
3. Withdrawal in this matter will not adversely affect the Defendant in this matter.

For the foregoing reasons, I find that counsel for the Defendant shall be granted leave to withdraw as counsel of record in this case. I also find that Defendant shall be appointed another attorney from the Public Defender's office.

It Is So Ordered.

Dated this ____ day of _____, 20____
At _____, South Carolina

Presiding Judge, Eighth Judicial Circuit

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

Mauwell J. Ervin, Jr. № 3566337)

Applicant.)

-vs-)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015-CP-24-01268

Order

This matter comes before me upon the application for Post-Conviction Relief filed by the applicant on November 30, 2015 as amended by filing on June 1, 2017. The allegations of ineffective assistance of counsel raises five issues:

1. Was trial counsel ineffective in failing to object to a jury charge that impermissibly told the jury they may infer knowledge and control over the drugs if the defendant had knowledge and control over the premises where the drugs were found?
2. Was trial counsel ineffective in failing to object to a jury charge that improperly defined constructive possession that effectively eliminate a mens rea as to the possession of the drugs?
3. Was trial counsel ineffective in failing to object on Double Jeopardy grounds to the consecutive sentence for possession with intent to distribute marijuana within proximity to a school that was consecutive to the charge of possession with intent to distribute marijuana?
4. Was trial counsel ineffective in failing to object to the opinion testimony of several law enforcement officers when none of them was ever qualified as an expert?
5. Was trial counsel ineffective in failing to object to the closing argument of the



prosecuting attorney when the argument expressed his personal opinion as to the credibility of the officers involved?

Mauwell J. Ervin was appointed counsel to represent him on several drug charges and one count of possession of a firearm while engaged in a drug trafficking offense. His first trial, held in January of 2013, resulted in a not guilty on the possession of a firearm while engaged in a drug trafficking offense and a hung jury on all other charges. He was subsequently tried in July of 2013. That trial resulted in a conviction of possession of marijuana with intent to distribute, possession of marijuana with intent to distribute within proximity to a school and possession of Benzylpiperazine. The jury again was unable to reach a verdict on the two drug trafficking charges.

The facts giving rise to these charges occurred on December 9, 2010 when Mr. Ervin was arrested as a result of a search of a house he was renting. During the search the police found sufficient drugs to charge him with possession of marijuana with intent to distribute, possession of marijuana with intent to distribute within proximity to a school, trafficking crack cocaine, trafficking crack cocaine within proximity to a school, possession of Benzylpiperazine, and possession of a firearm while engaged in a drug trafficking offense. Appointed counsel represented Mr. Ervin in both trials. She did not represent him on the appeal. There are no allegations of ineffective assistance of appellate counsel.

Was trial counsel ineffective in failing to object to a jury charge that impermissibly told the jury they may infer knowledge and control over the drugs if the defendant had knowledge and control over the premises where the drugs were found?

A. Such an Inference Charge is not Supported by the Prior Decisions in South Carolina

The historical basis for so instructing a jury is simply not supported by a logical reading of the prior cases in South Carolina. The basis for such a charge is generally attributed to *State v. Adams*, 291 S.C. 132, 352 S.E.2d 483 (1987). In *Adams*, the Supreme Court said, “The proper charge on constructive possession is to instruct the jury that the defendant’s knowledge and possession may be inferred if the substance was found on premises under his control.” *Id.* at 135, 352 S.E.2d at 486. In support of this statement the Court cited *State v. Hudson*, 277 S.C. 200, 284 S.E.2d 773 (1981). But *Hudson* does not support such a charge. All *Hudson* holds is that if a defendant is exercising dominion and control over the premises, then the case should be submitted to the jury. The Court in *Hudson* said, “Where contraband materials are found on premises under the control of the accused, this fact in and of itself gives rise to an inference of knowledge which may be sufficient to carry the case to the jury.” *Id.* at 203, 284 S.E.2d at 775. The Court in *Hudson* did not refer to a jury charge. For the jury to reach such a conclusion on their own without an instruction from judges is certainly permissible. To give the State the edge by telling, and thus encouraging, the jury that they may make such an inference, is not permissible. In this case, while Mr. Ervin leased the house, there was a dispute as to whether he lived there on a regular basis or if it were the primary residence of another individual. Tr. at 222, l 23 to 223, l 11

In *Leary v. United States*, 385 U.S. 6 (1969) the United States Supreme Court addressed the question of whether congress could constitutionally pass a statute that established a presumption of knowledge of illegal importation from the mere fact that the defendant possessed a small amount of marijuana. In rejecting such a presumption, the Court held “Such information is ‘not within specialized judicial competence or completely common place.’” *Id.* at 38.

Likewise, when drugs are found in a residence occupied by two or more people there is no reason to infer the drugs belong to one or the other. As there is no basis in fact to support such an inference, the charge also violates the due process clause of Article I, § 3 of the Constitution of the State of South Carolina and the Fourteenth Amendment of the Constitution of the United States of America.

To what use did the jury use the inference? While this question obviously cannot be answered with certainty, the Court can only assume the jury followed the judge's instructions. That being true, the reasonable assumption is that the jury used the inference if the case were close simply because that is the effect of the charge. The jury would be less likely to use the inference if the evidence against a defendant is very strong. When the jury decides that in a close case, they will use the inference to persuade them the case has been proven beyond a reasonable doubt, then the burden of proof required of the State has been lessened. Moreover, the record in this case establishes it is in fact a close case. One jury was not able to reach a verdict on any of the drug charges. The second jury reached a verdict on the marijuana charges but was unable to reach a verdict on the crack cocaine charges. When the only means the State has to win a case is to tell the jury they may infer guilt from the proof of certain facts, the State has not proven its case beyond a reasonable doubt. This would violate the principles established in *In Re Winship*, 397 U.S. 358 (1970). Arguably, when two equally plausible conclusions can be drawn from the same set of fact, the government has not met its burden of eliminating other reasonable hypothesis and therefore has not met its burden of proof.

In discussing the use of presumptions and inferences, the United States Supreme Court has said "But where the inference is so strained as not to have a reasonable relation to the

circumstances of life as we know them it is not competent for the legislature to create it as a rule governing the procedure of courts.” *Tot v. United States*, 319 U.S. 463, 468 (1943). Common knowledge and experience would require one to conclude that few, if any, are fully aware of the contents of a house they share with another. If the legislature may not create such a rule, then neither may the courts.

The Supreme Court of Washington has also discussed the question of a permissive inference in the context of an inference of intent to steal from breaking into a residence. The Court said, “Because it was not the sole and sufficient proof of intent in these consolidated cases, the inference is constitutional if intent to commit a crime more likely than not flows from unlawful entry.” *State v. Brunson*, 128 Wash.2d 98, 112, 905 P.2d 346, 353 (1995). And again certainly knowledge of the contents of a house shared with someone else is not a fact that more likely than not flows from such possession.

The Mississippi Supreme Court, and several others, have said “When the State’s case is based entirely upon circumstantial evidence the State is required to prove the defendant guilty not only beyond a reasonable doubt but to the exclusion of every reasonable hypothesis consistent with innocence.” *Cotton v. State*, 144 So.3d 137, 140 (Miss. 2014). This obligation cannot be met by telling a jury they may infer one version of the facts over another. *See, also, Owen v. State*, 432 So.2d 579, 581 (Fla.App. 2 Dist. 1983) (“It is not sufficient that the facts create a strong probability of, and be consistent with, guilt. They must also eliminate all reasonable hypotheses of innocence.”); *People v. Wolter*, 396 N.E.2d 1102, 1106, 33 Ill.Dec. 378, 382, 78 Ill.App.3d 32, 38 (Ill.App. 1 Dist., 1979) (“The undoubted rule in such case is that, before a conviction can properly be had upon purely circumstantial evidence, the guilt of the accused must

be so thoroughly established as to exclude every reasonable hypothesis of his innocence.”); *Davis v. State*, 90 So.2d 629, 632 (Fla. 1956) (“Even though the circumstantial evidence is sufficient to suggest a probability of guilt, it is not thereby adequate to support a conviction if it is likewise consistent with a reasonable hypothesis of innocence.”); *Clemmer v. Commonwealth*, 208 Va. 661, 666, 159 S.E.2d 664, 667(1968) (“The Commonwealth's evidence must exclude every reasonable hypothesis of innocence.”). South Carolina does not apply such a high standard of review on appeal. *State v. Larmand*, 415 S.C. 23, 780 S.2d 892 (2015). This does not mean a court should approve a charge to the jury that instructs them to give a preference to the State’s theory of the case.

No doubt eliminating a charge that the jury may infer knowledge, dominion and control of the drugs when one is the leaseholder of the house where the drugs are found will result in some guilty individuals not being convicted. But it will also assure that some innocent individuals will not be convicted. The Pennsylvania Supreme Court has said:

It is true, of course, that permitting the Commonwealth to introduce the out-of-court assertions ... against the defendant ... would make it easier to convict the guilty. Unfortunately, it would also make it easier to convict the innocent. If such a trade-off is acceptable, why not suspend the hearsay rule entirely when the Commonwealth introduces evidence in a criminal case? More defendants, guilty and innocent alike, would undoubtedly be convicted. The same result would obtain if we allowed the Commonwealth to introduce coerced confessions.

However, such a trade-off is not acceptable. It is a fundamental precept of law in Pennsylvania that one charged with crime, be it murder, child abuse, or keeping a public nuisance, comes to trial clothed in the presumption of innocence. If we bear this in mind, we will be less tempted to distort the law of evidence in favor of the Commonwealth in order to increase the conviction rate. The Commonwealth should be bound by the same rules of evidence, including the hearsay rule, as other litigants. *Commonwealth v. Bujanowski*, 418 Pa. Super. 163, 172, 613 A.2d

1227, 1232 (1992).

B. Charging the Jury They may Infer Knowledge, Dominion and Control of Drugs Found in the Resident Rented by Mr. Ervin is a Charge on the Facts in Violation of Article V, § 21 of the Constitution of the State of South Carolina.

Article V, § 21 of the Constitution of the State of South Carolina provides “Judges shall not charge juries in respect to matters of fact, but shall declare the law.” This provision simply means that judge may not tell a jury to place emphasis on one fact over another. To do so is to instruct the jury as to the importance of certain facts to the exclusion of others.” In interpreting this provision, our Supreme Court has held that a trial court may not charge a jury that they can infer acceptance by the railroad of a package left on their loading dock for a period of time. As the Court said:

The circuit judge laid down in the charge of the proposition that the jury might properly infer the consent of the railroad company to the placing of property on its platform from the fact that an agent has notice of its being placed there and makes no objection. In view of the issues made on the trial, we think this was a charge on the facts. *Yarborough v. Southern Ry.*, 78 S.C. 103, ___, 58 S.E. 936, 937 (1907).

The Court held that charging such an inference is a comment upon the facts in violation of the State constitution.

In *Finch v. Atlanta and C Airline Ry.*, 87 S.C. 190, 69 S.E. 208 (1907) the South Carolina Supreme Court held that instructing a jury they may infer negligence from particular facts was a comment on the facts in violation of our State constitution. The Court said:

What inferences may be drawn from the circumstances appearing on the trial, from the direct evidence, from the manner of the witnesses, the introduction of evidence, or the failure to introduce it-all are for the jury. The Constitution does not allow the presiding judge to state the evidence, much less does it allow him to single out any particular act or omission of the defendant, and instruct the jury that, if that appears, then they may infer that the defendant was

negligent. *Id.* at ____, 69 S.E. at 209.

In this case the trial judge singled out a particular fact - who rented the house - and instructed the jury they may infer he was the possessor of the drugs. Such a charge is a charge on the facts in violation of our constitution. The charge takes one particular fact and heightens it above all the others. No trial court would ever charge that a jury can infer the defendant did not possess the drugs because he was not the owner of the house or automobile where the drugs are found. Why is the State the only party to achieve such an inference charge?

In *State v. Hartley*, 307 S.C. 239, 414 S.E.2d 182 (1992) the defendant requested that a charge to the jury simply stating that the absence of motive “is to be duly considered by you in weighing the question of guilt regarding him.” *Id.* at 240, 414 S.E.2d at 183. The Court held that such a charge was improper, as it was a charge on the facts in violation of the state constitution. As the Supreme Court held “Thus, the trial judge was requested, in effect, to charge that particular evidence (*i.e.* evidence of lack of motive) is entitled to receive weight or consideration. The requested charge is clearly a charge on the fact that the jury was to determine.” *Id.* at 241, 414 S.E.2d at 184. Any inference charge is legally no different. A judge in essence would tell the jury that particular evidence is entitled to receive special weigh or consideration

In *State v. Bagwell*, 201 S.C. 387, 23 S.E.2d 244 (1942)¹ the defendant had requested a simple charge that the testimony of a co-defendant was to be “received by the jury with caution and should be scrutinized by the jury with great caution.” *Id.* at ____, 23 S.E.2d at 249. In

¹

T. FELDOR DORN, GUNS OF MEETING STREET (The University of South Carolina Press 2006) chronicles this murder and trial in detail.



holding the trial court did not commit error, the South Carolina Supreme Court said “A judge cannot express in his charge, or intimate any opinion as to the *weight or sufficiency* of testimony of accomplice without violating the prohibition of the Constitution as to charging upon the facts.” *Id.* (emphasis added). When a judge instructs a jury that they may infer guilt from the fact that the lease is in the defendant’s name, that judge is both expressing and intimating an opinion as to the weight and sufficiency of the evidence. He is making a comment on the facts and telling a jury what they may do with those particular facts. Such a statement violates the State Constitution in that it is a comment on a particular fact of the case. The comment as to an inference tells the jury to place special emphasis on one fact above all others. The cases establishing this principle are over 100 years old. Trial counsel should have made an objection to the charge. Her failure to do so rendered his representation of Mr. Ervin was ineffective. Her failure to object was prejudicial to Mr. Ervin.

Was trial counsel ineffective in failing to object to a jury charge which improperly defined constructive possession so as to eliminate a mens rea as to the possession of the drugs?

The indictment in this case charged Mr. Ervin did “willfully, unlawfully, and knowingly possess with intent to distribute, . . . Marijuana . . .”. The State alleged he committed a specific intent crime. The State did not allege he committed this crime recklessly or with willful blindness. The State is required to prove he specifically knew the marijuana was in the residence and that he intended to and did in fact possess the marijuana.

The charge to the jury in this case simply eliminated the mens rea the State was required to prove. The trial judge charged the jury “Constructive possession means the defendant had dominion and control, over either the crack cocaine and/or marijuana itself *or the property on*

which the drugs were found.” Tr. at 285, ll 18-21. (Emphasis added). The State did not indict him for having control over the house. What this charge means is that the jury can convict Mr. Ervin based solely on his being the person that rented the house. The charge does not require that the jury find Mr. Ervin have actual knowledge of the presence of the drugs or any intent to possess the drugs. The mens rea is supposed to be knowledge that the drugs are on the property and one has the intent to possess them. It does not mean an intent to be in possession of the house where drugs are found. A charge that eliminates a required mens rea lessens the burden upon the state and is a violation of *In Re Winship*, 397U.S. 358 (1970). As one Court has said, “Although the legislature may punish an act without regard to any particular (specific) intent, the State must still prove general intent, that is, that the defendant intended to do the act prohibited.” *State v. Oxx*, 417 So. 2d 287, 290 (Fla. Dist. Ct. App. 1982). The act prohibited was the possession of the drugs and not the house. Trial counsel should have object to this charge and the failure to do so prejudiced Mr. Ervin as it lessened the burden upon the State.

Was trial counsel ineffective in failing to object on Double Jeopardy grounds to the consecutive sentence for possession with intent to distribute marijuana within proximity to a school that was consecutive to the charge of possession with intent to distribute marijuana?

In addition to making the possession of marijuana with intent to distribute illegal, the legislature has enacted a crime for possession with intent to distribute within proximity to a school. It is defined as “(A) It is a separate criminal offense for a person to distribute, sell, purchase, manufacture, or to unlawfully possess with intent to distribute, a controlled substance while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or

technical educational center; or a public or private college or university.” This section found in S. C. Code § 44-53-445. While the legislature states it is a separate crime it does not call for consecutive punishment from the possession with intent to distribute.

To give consecutive sentences for such a violation violates the Double Jeopardy provision of the Fifth Amendment to the Constitution of the United States of America and Article I, § 12 of the Constitution of the State of South Carolina. In *Blockburger v. United States*, 284 U.S. 299 (1932) the Court held Double Jeopardy is not violated if each crime required the proof of a fact that the other one did not.² A simple explanation of the case is if one crime requires the proof of facts A and B and the other crime requires the proof of facts A and C, then there is no Double Jeopardy violation if a defendant is convicted of both crimes in one trial.³ In this case there is no separate fact to be proven that is different in each case. To convict Mr. Ervin of the possession of marijuana with intent to distribute, the state must prove he possessed the marijuana and that he did so with the intent to distribute. Other words, they must prove facts A and B. To prove the proximity charge the state must prove Mr. Ervin possessed the marijuana, that he did so with the intent to distribute and he did so within one-half mile of a school. Other words, they must prove facts A, B, and C. Properly understood, the possession of marijuana with intent to distribute is a lesser included of the proximity charge. Thus, the state can no more convict a defendant of the two charges here than they could convict a defendant of both possession of

² While courts commonly refer to *Blockburger* as a “same elements” test, this is not correct. The word “element” only appears one time in the case. The Court discussed the different facts that need to be proven.

³ If the cases were to be tried separately and the first verdict was not guilty, there would be an issue preclusion issue under Double Jeopardy as the defendant would have been acquitted of fact A which is common to both cases.



marijuana and possession with intent to distribute.

This case is controlled by *Brown v. Ohio*, 432 U.S. 161 (1977). In that case, the defendant entered a plea to joy riding under the applicable Ohio statute. The State subsequently convicted him of the theft of the same automobile. The Supreme Court held the joy-riding statute, while a separate crime, was a lesser included offense of the theft and that to permit prosecution for both was a violation of Double Jeopardy. The same principle was also established in *Rutledge v. United States*, 517 U.S. 517 (1996). In that case, the Supreme Court held a conviction for both conspiracy and a separate crime, continuing criminal enterprise, to violate Double Jeopardy based upon the fact that both crimes required the proof of a conspiracy. The conspiracy under the CCE statute would satisfy the conspiracy under the general conspiracy statute even though the reverse would not be true.

Trial counsel should have raised the Double Jeopardy argument before the trial judge. Such an argument is meritorious and the failure to raise it is ineffective assistance of counsel. Mr. Ervin was prejudiced as the trial judge ran the two charges consecutive. If the issue had been raised, the State would have been required to elect as to which charge they wished to proceed. Mr. Ervin would not have received a consecutive sentence.

Was trial counsel ineffective in failing to object to the opinion testimony of several law enforcement officers when none of them was ever qualified as an expert?

Generally, a witness may not give an opinion about the evidence. The one exception is the lay opinion rule that is not involved in this case. *See*, Rule 701, South Carolina Rules of Evidence. Under that rule, an opinion by a non-expert witness is very limited and is based on common sense. For example, when a non-expert witness testified a defendant is or is not

intoxicated, it is an opinion, but it is the type of opinion lay people make in their ordinary life.

The same is true for statement such as “he was angry” or “he was upset.” As stated by the rule, such observations do not require “special knowledge, skill, experience or training.”

During the examination of the applicant’s trial attorney, counsel for Mr. Ervin pointed out numerous examples of an opinion given by the officers. These examples consisted of three of the officers who testified and one SLED expert who testified to matters for which she was not qualified. These examples are found on the following transcript pages. 84, ll 15-23; 87, ll 19-24; 92, ll 14 to 93, l 1; 94, ll 7-25; 141, l 21 to 142, l 1; 171, ll 7-15; 218, l 25 to 219, l 5; and 245, ll 1-10. Except for the last page reference, the opinions all helped the state to build a case for possession of marihuana with intent to distribute. The last page referenced was asked on cross-examination. During that cross Mr. Ervin’s trial counsel elicited the following exchange involving an opinion of Officer Courtney Smith:

Q. Based on your training and experience and being at that location and hearing that, how did you take that?

A. I took it as an admission of guilt that he was taking responsibility for the things that were found inside the home
Tr. at 245, ll 1-10

Here trial counsel elicited an opinion from the officer that her client was guilty. Had she not asked for an improper opinion evidence this admission would not have been made. No valid trial strategy was given for asking this question. No valid reason was given for not objecting to the other opinion testimony. When this opinion is considered together with the opinions given by the other officers as to the intent with which they contend Mr. Ervin possessed the marijuana, prejudice is shown. Mr. Ervin is entitled to a new trial based upon the failure to object to improper opinion testimony.

Was trial counsel ineffective in failing to object to the closing argument of the prosecuting attorney when the argument expressed his personal opinion as to the credibility of the officers involved?

During the closing argument, the solicitor said to the jury “Are these guys perfect? Absolutely not. None of us are. But I’m proud to be their solicitor and the job that they’re doing here and the job they did in this case. Tr. at 256, ll 16-19. In a closing argument, an attorney is not to express their personal belief in the credibility of the witnesses or the cause. By stating that he is proud of “the job they did in this case” the solicitor has expressed his personal belief in the investigation and integrity of the officers. This was improper. Rule 3.5 of Rule 407 concerning professional conduct states, in part, a lawyer shall not “assert personal knowledge of facts in issue . . . or state a personal opinion as to the justness of a cause, the credibility of a witness”

In *Tappeiner v. State*, 416 S.C. 239, 785 S.E.2d 471 (2016) the South Carolina Supreme Court granted post-conviction relief because cause of improper argument of the prosecuting attorney who vouched for the credibility of the. In that case, he did not argue his personal belief but argued a witness had vouched for the credibility of another witness. The same principle should apply here. The solicitor in his closing argument did convey to the jury his belief in the integrity of the officer witnesses who testified in this case.

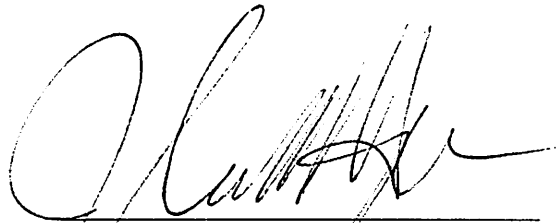
Trial counsel defended her position by saying she did not like to object to the closing argument of opposing counsel. This is generally true for virtually any attorney who tries cases on a regular basis. But there comes a time when such an objection is necessary to protect the integrity of the system. This was one.

Mr. Ervin is entitled to a new trial based upon the failure to object to improper opinion testimony. Because the solicitor personally vouched for the credibility of the officers, Mr. Ervin was prejudiced. Such a comment could have been the basis for the jury deciding to convict in this case. If they did, it was an improper basis.

THEREFORE, it is hereby Order, Adjudged and Decreed that Mauwell J. Ervin is entitled to a new trial in this matter.

IT IS SO ORDERED

August 27, 2018



J. Mark Hayes, II
Presiding Judge
8th Judicial Circuit



ALAN WILSON
ATTORNEY GENERAL

October 1, 2018

The Honorable Chastity Copeland
Clerk of Court, Greenwood County
528 Monument Street, Room #114
Greenwood, South Carolina 29646

Re: Maunwell Ervin, #356337 v. State of South Carolina
2015-CP-24-1268

Dear Ms. Copeland:

Enclosed please find the original **Motion to Reconsider and to Alter and Amend Pursuant to Rule 59(e), SCRCP** in the above-captioned case for filing in your office.

Sincerely,


Christian Saville
Assistant Attorney General

CS/cc
Enclosure

cc: The Honorable J. Mark Hayes, II, Presiding Judge
C. Rauch Wise, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
Maunwell Ervin, #356337,	)	Case No. 2015-CP-24-1268
Applicant,	)	
	)	
v.	)	MOTION TO RECONSIDER AND
	)	TO ALTER AND AMEND
	)	PURSUANT TO RULE 59(e), SCRPC
	)	
State of South Carolina,	)	
Respondent.	)	
_____	)	

The State (Respondent) hereby moves for this Court to alter or amend its judgment granting Maunwell Ervin (Applicant) post-conviction relief by order filed on September 13, 2018, and served on Respondent on September 21, 2018. Respondent submits the following in support of its motion:

This Court's order lacks findings of fact regarding multiple allegations

In its order granting post-conviction relief, this Court determined Trial Counsel was constitutionally ineffective for failing to object to a jury charge instructing the jury it may infer knowledge and control over the drugs if Applicant had knowledge and control over the premises where drugs were found. Respondent respectfully submits this Court's order wholly fails to make any specific finding of fact as to prejudice for this allegation, as the order merely states in a conclusory fashion, "Her failure to object was prejudicial to Mr. Ervin."

Similarly, as to this Court's finding that Trial Counsel was constitutionally ineffective in failing object to a jury charge defining constructive possession to as allegedly eliminate a mens rea for possession of the drugs, this Court finds, "...the failure to do so prejudiced Mr. Ervin as it lessened the burden upon the State." However, the Order does not make an adequate or specific finding as to how the burden upon the State was lessened. This Court cited In re Winship, 397

U.S. 358 (1970) to support the proposition a charge that eliminates the required mens rea lessens the burden upon the State. However, the Order does not explain *how* the charge at issue, which is a standard charge uniformly and routinely given in South Carolina, wrongfully eliminated the required mens rea.

This Court's order also vaguely grants relief on the allegation that Trial Counsel was ineffective for failing to object to lay opinion testimony by law enforcement officers. However, the Order does not specifically address or analyze the selections of testimony allegedly improper. Instead, the Order merely quotes one selection in which Officer Courtney Smith *properly* testifies as to their present impression of a statement given by Applicant. Accordingly, the order made no sufficient findings of fact regarding the allegations of lay opinion testimony.

The Order does not consider well-established dispositive case law regarding the jury charge

In addition to failing to make specific findings of fact regarding the jury charge, Respondent respectfully submits this Court erred in not considering the fact this jury charge was and remains good law in South Carolina. This charge is directly from the South Carolina Judicial Department's Circuit Court standard jury charge book and simply defines constructive possession. State v. Adams, which is controlling precedent and has not been overturned, is dispositive of this exact issue, holding:

The proper charge on constructive possession is to instruct the jury that the defendant's knowledge and possession may be inferred if the substance was found on premises under his control. State v. Hudson, 277 S.C. 200, 284 S.E.2d 773 (1981); State v. Brown, 267 S.C. 311, 227 S.E.2d 674 (1976). The trial judge should explain to the jury that it is free to accept or reject this permissive inference of knowledge and possession depending upon its view of the evidence.

State v. Adams, 291 S.C. 132, 135–36, 352 S.E.2d 483, 486 (1987) (emphasis added).

Furthermore, the Court held in State v. Heath, "In order to prove constructive possession, the State must show a defendant had dominion and control, or the right to exercise dominion and

control...The defendant's knowledge and possession may be inferred if the substance was found on premises under his control." State v. Heath, 370 S.C. 326, 329–30, 635 S.E.2d 18, 19 (2006).

The trial judge in this case even went a step further to ensure the permissive inference was properly charged, by telling the jury, "however this inference is simply an evidentiary fact to be taken into consideration by you along with the other evidence in this case and be given the weight you decide it should have." Tr. 286, ll. 1-4. See State v. Neva, 300 S.C. 450, 452, 388 S.E.2d 791, 792 (1990) ("Evidentiary presumptions must be charged as permissive inferences with specific instructions that the jury may accept or reject them.")

Respondent submits this Court should reconsider this issue as South Carolina case law conclusively refutes Applicant's allegations of deficiency when the jury charge given was proper. Moreover, while the Order does not explain how Applicant was prejudiced by the jury charge, Applicant clearly was not prejudiced by a proper jury charge.

The Order did not consider well-established case law regarding the "Double Jeopardy" allegation

In its order granting post-conviction relief, this Court held Trial Counsel should have raised a Double Jeopardy argument before the trial judge in order to avoid consecutive sentences for possession with intent to distribute marijuana within proximity to a school ("PWID Proximity") and possession with intent to distribute marijuana ("PWID marijuana").

The proximity statute reads as follows:

It is a separate criminal offense for a person to distribute, sell, purchase, manufacture, or to unlawfully possess with intent to distribute, a controlled substance while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university.

S.C. Code Ann. § 44-53-445(A) (emphasis added).

Riley v. South Carolina dealt with this exact same issue. Riley found no double jeopardy

violation occurred when the defendant was charged with purchasing crack cocaine and a corresponding proximity charge. Riley found the language in State v. Brown controlling in denying the defendant's double jeopardy argument, citing "We wish to emphasize that there is **no prohibition against the contemporaneous prosecution** by the State for both possession with intent to distribute and distribution of crack cocaine and the related school charges where, like this case, they arise out of the same conduct." Riley v. South Carolina 82 F. Supp. 2d 474, 478–79 (D.S.C. 2000) (emphasis added) (citing State v. Brown, 319 S.C. 400, 408, 461 S.E.2d 828, 832 (Ct. App. 1995)).

In this case, Applicant's PWID charge and the related proximity charge arose out of the same conduct. Pursuant to our law, there was no error in the State pursuing both of these charges or in Applicant's consecutive sentence.

Furthermore, our state legislature has made it clear that these two charges are not the same by the wording used in the statutes. Riley analyzed the defendant's State appellate case, where the court also looked to the language in the trafficking and proximity statutes to show no double jeopardy violation occurred. The court noted that the proximity statute had been specifically amended to read "it is a separate criminal offense" rather than its previous language of "it is unlawful." Id. The court held, "[t]his change further represents the intent for section 445¹ to impose punishment that is cumulative to punishment under section 375²." Id. Thus, it is even clearer after looking at the statutory language that there is no double jeopardy violation. As no violation occurred, Counsel cannot be ineffective for failing to object. Therefore, this Court should reconsider and alter its ruling and deny relief as to this allegation.

This Court did not consider the actual absence of prejudice regarding Applicant's allegation of

¹ S.C. Code § 44-53-445 Distribution of controlled substance within proximity of a school.

² S.C. Code § 44-53-375. Possession, manufacture, and trafficking of methamphetamine and cocaine base and other controlled substances; penalties.

The Order contains erroneous findings opinion testimony by law enforcement officers

In its order granting post-conviction relief, this Court held Trial Counsel was ineffective for failing to object to alleged opinion testimony by law enforcement officers. While the Order makes no specific findings regarding the specific selections of challenged testimony, there can be no finding of prejudice as Applicant's convictions were justified by the weight of drugs recovered alone, not the additional circumstances such as the presence of scales or bagged drugs.

Respondent also submits no testimony from the law enforcement officers was outside of knowledge common to any person regardless of their involvement in law enforcement. It is common knowledge that scales may be used by drug dealers to weigh drugs. This testimony did not constitute opinion testimony. Furthermore, it is common knowledge and not opinion testimony to observe that crack-cocaine packaged in small baggies may be sold in those quantities.

As to law enforcement's testimony regarding Applicant's statement to police, Officer Smith testified, "[b]ased on [his] training and experience and being at that location and hearing [Applicant]" that Applicant made an "admission of guilt that he was taking responsibility for the things that were found inside the home." Tr. 245, ll. 1-10. This testimony does not constitute improper opinion testimony that would require the officers to have been qualified as an expert. This testimony is not an "opinion" as outlined in the Rules of Evidence. Clearly, when reading the testimony in context, the State is asking the officer how he interpreted the statement Applicant made to him. The officer should certainly be able to give his present sense impression of Applicant's words spoken to him without being qualified as an expert and without it being considered an improper "opinion." Furthermore, his impression and interpretation was based on his training, experience, and hearing the words first-hand. Objecting to this would not have

changed the outcome of the case. Even if the objection was sustained as to Officer Smith's interpretation of Applicant's words, Applicant's actual words were still presented to the jury for them to decipher. As this testimony was not objectionable and an objection would not have changed the outcome of the case, Counsel was not ineffective in this regard. For these reasons, this Court should reconsider these allegations and deny relief.

The Order ignores Trial Counsel's testimony that she did not object to law enforcement testimony as a matter of trial strategy.

At the PCR hearing, Trial Counsel testified she strategically did not object to the testimony of law enforcement because she wanted to be able to challenge them on cross-examination. This significant testimony was not addressed in the Order's discussion. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). In this case, Trial Counsel specifically declared the conduct at issue to be a trial strategy, but this was not addressed by the Court. Respondent submits that although no testimony by law enforcement was improper lay opinion testimony, Trial Counsel's lack of objection to any such testimony was part of the valid trial strategy to leave witnesses subject to calculated cross-examination. This Court should reconsider these arguments and deny relief.

The Order fails to address relevant case law and Trial Counsel's testimony regarding Solicitor's closing argument

The Order failed to address important testimony and case law regarding Solicitor's closing argument. During the closing argument the Solicitor made reference to the officers who testified saying "I'm proud to be their solicitor and the job that they're doing here and the job that they did in this case." Tr. 256, ll. 17-19. Trial Counsel testified at the PCR hearing that she did not object to this sentence because she had done a good job discrediting the officers and she

saw this as the solicitor trying to “save face” in front of the jury. She testified she believes objecting during closing arguments has a negative effect and she did not see this comment as an improper bolstering statement.

A solicitor’s closing argument must be carefully tailored so as not to appeal to the personal biases of the jury. Smith v. State, 375 S.C. 507, 522, 654 S.E.2d 523, 531 (2007) (citing State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996)). The relevant question is whether the solicitor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.” *Id.* (internal citations omitted). A solicitor may argue the credibility of the State’s witnesses if the argument is based on the record and its reasonable inferences. Matthews v. State, 350 S.C. 272, 275, 565 S.E.2d 766, 768 (2002). However, “[a] solicitor may not vouch for the credibility of a State’s witness based on personal knowledge or other information outside the record.” Smith, 375 S.C. at 523, 654 S.E.2d at 531-32 (quoting Matthews at 276, 565 S.E.2d at 768 (2002)). “A prosecutor improperly vouches for a witness’ credibility and places the government’s prestige behind a witness by making explicit personal assurances, or indicating that information not presented to the jury supports the testimony.” Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004).

Here, the Solicitor did not commit improper bolstering or vouching. The State is making no personal assurances to the jury that would indicate the Solicitor’s statement is based on some sort of information not known to them. When read in context, the Solicitor is simply saying he is proud to be working with the officers. He never says “I believe them” or “trust me” or anything that would constitute improper vouching by making personal assurances based on information outside of the record.

Respondent submits this Court should reconsider its decision based on these arguments which were not adequately addressed in the Order.

Conclusion

WHEREFORE, having made its motion to amend, the State respectfully requests that this Court reconsider the State's arguments and deny Applicant's application for Post-Conviction Relief.

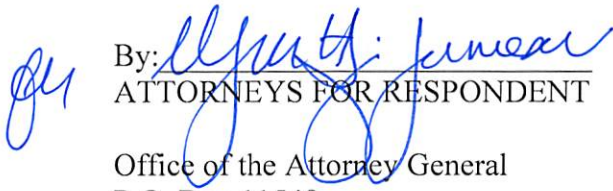
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

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Senior Assistant Deputy Attorney General

CHRISTIAN SAVILLE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
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Telephone: (803) 734-5844

10/1, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	
	)	
	)	2015-CP-24-1268
	)	
MAUNWELL ERVIN, #356337,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Motion to Reconsider and to Alter and Amend Pursuant to Rule 59(e), SCRCP** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

C. Rauch Wise, Esquire
305 Main Street
Greenwood, South Carolina 29646

DATED this the 1st day of October, 2018.

Caroline Collins, Administrative Coordinator
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENWOOD) COURT OF COMMON PLEAS NONJURY

3
4 MAUNWELL J. ERVIN, JR. NO. 3566337) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 STATE OF SOUTH CAROLINA,)
8 DEFENDANT.) 2015-CP-24-1266
2017-CP-24-0754

9
10 October 1st, 2019
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE J. MARK HAYES, II, Judge.

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

16 C. RAUCH WISE
17 ESQ.
18 Attorney for the Plaintiff

19 JANELL GREGORY
20 ASSISTANT ATTORNEY GENERAL
21 Attorney for the Defendant

22
23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

I N D E X O F W I T N E S S E S

(WHEREUPON, there were no exhibits marked or testimony taken during this hearing.)

P R O C E E D I N G S

1
2
3 THE COURT: Mr. Wise, are we -- is your client going to
4 be transported?

5 MR. WISE: We waived his being here. I have talked to
6 him.

7 THE COURT: Oh, you did?

8 MR. WISE: And it, it -- for -- just for this hearing
9 it wasn't necessary for him to be here. He, he just -- he
10 didn't want anything to go wrong to prevent it being heard.

11 THE COURT: So, his presence wound of prevented it from
12 being---

13 MR. WISE: Well---

14 THE COURT: ---from it going right?

15 MR. WISE: Well, if something came up and he -- who
16 knows.

17 THE COURT: All right.

18 MR. WISE: So --.

19 THE COURT: We -- so, your client waives his right to
20 be present---

21 MR. WISE: That---

22 THE COURT: ---at this hearing?

23 MR. WISE: That's correct.

24 THE COURT: Okay. That will suffice. We got that on
25 the record.

1 All right. Okay. Then we'll go on the record. I've
2 got that this is Maunwell -- M -- and it's M-A-U-N-W-E-L-L,
3 initial J., Ervin, E-R-V-I-N, versus the State. I've
4 actually got that these are two PCRs. These are motions
5 for -- 59(e) motions filed by the State.

6 So, I'll be more than happy to hear from the State.

7 MS. GREGORY: Your Honor, I have judge's packets if
8 you'd like me to approach and provide these.

9 THE COURT: Sure.

10 MS. GREGORY: And, as you mentioned, it was two CP
11 numbers. So, I don't know if you have a preference of which
12 we, which we start with. I would prefer the guilty plea.
13 That one's a little bit shorter.

14 THE COURT: That would be the 2017?

15 MS. GREGORY: Yes, CP-24-00754.

16 THE COURT: Yes, sir.

17 MS. GREGORY: Sorry about my voice. If you can't
18 understand me---

19 THE COURT: You need some water?

20 MS. GREGORY: ---whether -- thank you.

21 Your Honor, we would ask that the -- we have some
22 specific amendments that are noted in the 59(e).

23 First, we would ask that the Order be amended to
24 reflect the offense of possession of a firearm, I'm sorry,
25 possession of a firearm while -- possession of a weapon

1 during the commission of a violent crime. Currently it says
2 possession of a firearm while engaged in drug trafficking
3 offense, which kind of muddies the water for the double
4 jeopardy claim. So, we would ask that that be amended in
5 the order to reflect the actual charge of possession of a
6 weapon during the commission of a violent crime.

7 And, under the remedy section -- there are no page
8 numbers on this Order. So, I can't give you a page member.
9 But, under the remedies section, Your Honor, Mr. Ervin is
10 actually referred to as Mr. Yeager, which I think also
11 confuses the double jeopardy issue.

12 The very last page -- last sentence of the first
13 paragraph, Your Honor, and, as you mentioned, Maunwell has a
14 unique spelling, and that spelling is incorrect on that same
15 paragraph for Maunwell. Sorry. It might be the next
16 paragraph. I'm sorry. It's the last sentence on that page,
17 Your Honor. Maunwell's misspelled. So, we would just ask
18 that that be amended as well.

19 Regarding the guilty plea, the State is asking the
20 Court to reconsider the Motion to Dismiss. This Application
21 was filed outside of the statutory limitations of one year,
22 and the Application did not set forth any allegations that
23 would allow him to overcome the Statute of Limitations.

24 First, he alleged that he had a conflict with plea
25 counsel, but that conflict, the alleged conflict, was known

1 by Applicant at the time of his guilty plea. So, he had a
2 year from the time of the guilty plea, and counsel
3 testified, during the PCR hearing, that she did discuss that
4 he had -- she had a pending PCR with him. So, he def -- and
5 he filed the PCR. So, he was definitely aware of that
6 potential conflict at the time of that guilty plea. So,
7 that would not overcome the Statute of Limitations.

8 Second, the defense that he just discovered is not a
9 claim under the Uniform Post-Conviction Relief Act that
10 would allow him to again overcome the Statute of
11 Limitations. The just discovered defense was known to plea
12 counsel. She evaluated it, determined that it was not a
13 meritorious claim that she should use in Applicant's case,
14 and she made that determination, which was reasonable
15 considering that, that she would of had to argue Yeager,
16 which we also believe does not apply to Applicant's case.

17 So, the defense that he's alleging he just discovered
18 and is meritorious would not overcome that Statute of
19 Limitations since the defense that he's alleging he just
20 discovered was not actually meritorious, and considered by
21 his counsel, and determined also not to be meritorious.

22 And going to the Yeager issue, I know you said you had
23 a copy of Yeager when we discussed this on the phone, but we
24 do not believe Yeager applies. So, we would ask you to
25 reconsider the finding of double jeopardy in this matter.

1 In Yeager, Yeager was acquitted of fraud charges, and
2 the jury hung on the insider trading and the money
3 laundering, money laundering charges in reaching their
4 verdict. On the fraud charges, the jury effectively found
5 that Yeager did not possess a key material that he would of
6 needed in order to pursue the insider trading and the money
7 laundering, which was, as the Court found, effectively
8 determining the critical issue of material fact when the --
9 when they acquitted Yeager of the fraud charges.

10 Here in Yeager's or, I'm sorry, in Applicant's case,
11 the jury acquitted Applicant of only possession of a firearm
12 during the commission of a violent crime, which is why that
13 needs to be quoted that way, which is not a critical issue
14 of material fact in evaluating the trafficking charges since
15 having a firearm is not an element in the trafficking
16 cocaine charges. So, we'd ask that you reconsider the
17 double jeopardy argument in that case -- in Applicant's
18 case.

19 The State would also ask that the Court reconsider a
20 finding that plea counsel had a conflict. The Order does
21 not address the Applicant had full knowledge of his pending
22 PCR action against plea counsel at the time of his guilty
23 plea. Yet, he proceeded with his guilty plea. The Order
24 also fails to address Applicant's own comments to the plea
25 judge during the colloquy that he was satisfied with plea

1 counsel, and he had enough time to speak with her, and he
2 never informed the plea judge of any issues regarding
3 counsel's representation.

4 The Order also fails to address plea counsel's
5 testimony that Applicant never asked her, on the day of the
6 plea, why she was still representing him, why is, why is he
7 going forward with her, again, effectively waiving his
8 motion to have her relieved or any conflict with the pending
9 PCR, and the Order also fails to address that plea counsel's
10 testimony that Applicant's previous PCR filed had no effect
11 on her, and that she liked Applicant and worked really hard
12 on this case, and had no ill will towards him.

13 We would say that Applicant effectively waived his
14 motion to relieve counsel by going forward, and knowingly,
15 intelligently, and voluntarily entering his guilty plea with
16 that same counsel that he filed that motion to relieve on,
17 and the Order should reflect that.

18 So, we would just ask, for the guilty plea, Your Honor,
19 for you to reconsider the Motion to Dismiss cause Applicant
20 failed to put forward any grounds that would overcome the
21 one year statutory filing limitation as the alleged conflict
22 was effectively waived by coun -- by Applicant as he
23 proceeded to his guilty plea, conducted the colloquy with
24 the plea counsel -- with the plea Court indicating he was
25 satisfied with his attorney. She negotiated a very

1 favorable deal for him changing his exposure from a minimum
2 of 25 years to a sentencing range of 7 to 25, which he got
3 the minimum, seven years, which was set to run concurrent
4 with his previous charges. So, those charges were backdated
5 three years, and the proximity charge, which was carrying up
6 to 10 years, was also dismissed.

7 So, we would ask that you reconsider your judgment on
8 the guilty plea, Your Honor.

9 THE COURT: Thank you.

10 MR. WISE: Your Honor, I, I would just point out that,
11 at the PCR hearing, there was absolutely no evidence to
12 substantiate any position that Ms. Taylor informed Mr. Ervin
13 of the Yeager defense. Her testimony, when asked, was did
14 you ever discuss with Mr. Ervin the Yeager case. I don't
15 recall.

16 Were you aware that Mr. Ervin -- let me see. Then it
17 goes on to say did you ever discuss any double jeopardy,
18 possible double jeopardy, did you ever mention the Yeager
19 case. I'm not sure.

20 So, there's no evidence that he was even aware of it.
21 The testimony at the hearing clearly shows that he became
22 aware of it when I informed him of it, which was well within
23 a year of the time that we were able to file this.

24 I don't think entering a guilty plea waives a conflict
25 unless there's such a clear waiver that, on the record, that

1 you can establish the, the conflict has been waived. The
2 conflict is really not the problem here, however. The
3 problem here is the fact that there was a very, very valid
4 double jeopardy argument that was not raised by defense
5 counsel, and should of been raised by defense counsel.

6 So, I think, in that, that fact alone, there's
7 grounds -- certainly grounds to sustain a finding of the
8 judge that he was not informed of the Yeager defense, that
9 it was, in fact, timely because it was well within a year of
10 the time that he was -- first learned that he had a valid
11 defense. I don't think Mr. Ervin's required to even
12 remotely be attributed to having the knowledge of a regular
13 practicing lawyer in, in any case, much less this one. And
14 so I think there's certainly evidence in the record to
15 sustain the Court's finding, finding on that.

16 And then the other grounds in the case I think are
17 adequately set forth in the Court's order that, that, you
18 know, there were numerous errors that, that she did not call
19 attention to, and allowed the solicitor to basically vouch
20 for his witnesses, which is, is very much, very much im --
21 improper.

22 THE COURT: Any reply?

23 MS. GREGORY: Yes, sir, the vouching for the witnesses,
24 that's in the next motion, Your Honor. That's from the
25 trial. This is just the guilty plea.

1 MR. WISE: Okay.

2 MS. GREGORY: Okay. Okay.

3 MR. WISE: That's good. I, I, I misunderstood.

4 MS. GREGORY: I'll get to that. I'll get to that.

5 But regarding her bringing up the double jeopardy claim
6 to the Applicant, she evaluated it as his attorney, and,
7 under Strickland, she has a strong presumption that she
8 provided reasonable assistance, and she evaluated it with
9 her mentor, Jack Swerling, and apparently other attorneys
10 that were not named, and they evaluated it to be a
11 non-meritorious claim. And as I mentioned, we don't -- the
12 State also does not believe that is a valid double jeopardy
13 claim since Yeager deals with a critical issue of material
14 fact in pursuing prosecution on hung charges.

15 In here, when they acquitted him of the possession of a
16 weapon during the commission of a violent crime, that does
17 not find a critical material fact precluding a subsequent
18 prosecution for a hung trafficking cocaine charge. There is
19 not an element of firearms within the trafficking cocaine
20 statute, and I have a copy of that statute if you'd like to
21 see it. But the -- certainly there's no preclusion issue
22 there as the acquittal of the firearm charge does not relate
23 to the cocaine charge. You can absolutely traffic cocaine
24 without a firearm.

25 THE COURT: All right. And to the other issue -- to

1 the other PCR?

2 MS. GREGORY: Yes, thank you, Your Honor.

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

4 MS. GREGORY: We would ask that Order be amended. The
5 Court lacks finding on facts regarding multiple allegations.
6 On Allegation B, which is on Page 7 -- do you have a copy of
7 the order?

8 THE COURT: I do.

9 MS. GREGORY: On Page 7, there's no analysis regarding
10 the prejudice prong on Strickland on this allegation. Order
11 the State's -- her failure to object was prejudicial to Mr.
12 Ervin. According to the Uniform Post-Conviction Relief Act,
13 which is Section 17-27-80, it requires the Order to make
14 specific findings of fact and state expressly his
15 conclusions of law relating to each issue presented.

16 Here, there's no finding of facts as it relates to the
17 prejudice prong in the analysis. Just a conclusionary,
18 conclusionary -- conclusion statement finding that Mr. Ervin
19 was prejudiced on Page 9.

20 Regarding the opinion testimony of the law enforcement
21 officers, which I believe is on Page 13, that Order appears
22 to address multiple sections, about 10 sections, of law
23 enforcement testimony that was purportedly inappropriate
24 opinion testimony. However, Your Honor, the Order does not
25 sets forth the sufficient -- a sufficient finding regarding

1 the allegations of the lay opinion testimony. It just cites
2 these areas of inappropriate testimony without actually
3 providing testimony, and any analysis regarding that
4 testimony. So, we would ask that there be additional
5 finding of fact regarding that testimony.

6 And, on Page 14, one of the analysis statements is
7 incomplete. It is on the top paragraph, and it starts with
8 Court granted Post-Conviction Relief, and that sentence ends
9 with the word the. So, we would ask that that be completed.

10 Moving on to the next issue regarding the Court's
11 finding that the jury charge should of been objected to---

12 THE COURT: I'm sorry. Take me back to---

13 MS. GREGORY: Sorry.

14 THE COURT: ---Page 14---

15 MS. GREGORY: I'm sorry.

16 THE COURT: ---one more time once again.

17 MS. GREGORY: Okay. In the tab note, it's the second
18 full paragraph.

19 THE COURT: I see it, yes. Okay.

20 MS. GREGORY: Okay. We would ask that you reconsider
21 your finding on the jury charge that it should of been
22 objected to on finding that -- we would ask that you look at
23 State v. Adams, which I have a copy of, Your Honor.

24 If I can approach?

25 I have one for you as well.

1 MR. WISE: I got it.

2 MS. GREGORY: Okay. And I'm gonna give you State v.
3 Heath.

4 Do you have that one too?

5 MR. WISE: States v. what?

6 MS. GREGORY: Heath. Heath.

7 MR. WISE: No, I don't think I have that one.

8 MS. GREGORY: Okay. I highlighted, I highlighted
9 these. So --.

10 But, Your Honor, the issue here is that the jury
11 instruction that was provided, which you have a copy of the
12 transcript in front of you, I believe it's on Page 384, 385,
13 regarding constructive possession, and I believe that's
14 referring to the bigger -- like the appendix. Not the
15 actual page numbers, which is 285, 286.

16 We would argue that State v. Adams is controlling law,
17 and is actually setting forth the proper charge on
18 constructive possession, and it says the proper charge on
19 constructive possession is to instruct a jury that the
20 defendant's knowledge, possession may be inferred if the
21 substance was found on premises under his control. The
22 trial judge should explain to the jury that it is free to
23 accept or reject the permissive inference of knowledge and
24 possession depending on its view of the evidence. That was
25 the jury charge provided.

1 State v. Adams is still good law. It is controlling
2 law. State v. Heath addresses, in order to prove
3 constructive possession, the State must show a defendant had
4 dominion and control or the right to exercise dominion and
5 control over the illegal substance. Again, a mere presence
6 charge was also given on Page 387. Counsel should not have
7 been found ineffective because counsel testified she was
8 familiar with State v. Adams, believed it set forth the
9 proper charge, which we would say is still the proper charge
10 on constructive possession, and she requested a mere
11 presence charge, which was also given. And since this is a
12 proper charge, Applicant can not be found to have been
13 prejudiced, and counsel certainly can not be found to be
14 deficient.

15 Moving on to the next issue regarding double jeopardy,
16 sorry, the Court's finding that counsel should of raised a
17 double jeopardy argument to avoid consecutive sentencing. I
18 have case law for this one as well, Your Honor.

19 It is regarding the proximity charge as well as the
20 underlying trafficking charge. I'm gonna hand up to you
21 Missouri v. Hunter and Riley v. South Carolina.

22 Do you have those?

23 Do you want a copy of this?

24 MR. WISE: I don't need it.

25 MS. GREGORY: Okay. Again, these are highlighted, Your

1 Honor, to the areas that I'm going to touch on. And, again,
2 legislative intent, even if it fails the Blockburger same
3 elements test, legislative intent controls, and that's what
4 the two cases I passed up to you says, and I realize we're
5 running out of time. So, I've highlighted the important
6 sections there.

7 But, briefly, clear legislative intent, the two
8 separate sections, ultimately the existence of double
9 jeopardy depends on whether the legislative intent to create
10 one crime or more than one crime. So, we would argue that
11 the legislative intent trumps any double jeopardy arguments
12 seeing as how the statute starts with this is a separate
13 criminal offense. The intended separate punishments that
14 could run consecutive, Your Honor.

15 Regarding the finding that the opinion testimony by law
16 enforcement officers was improper, Your Honor, there are a
17 ton of citations regarding this. But what I will say is
18 digital scales is not something that the ordinary juror
19 would not know was involved in trafficking or distribution
20 of drugs. I think that is absolutely not needed to be
21 expert as is not a scientific fact that is being found or an
22 opinion on. It's quite common knowledge that digital scales
23 are used in distribution of drugs.

24 The testimony about the cocaine, that officer did not
25 testify that his opinion is that the Applicant was a drug

1 dealer. Regardless, that officer could of been deemed an
2 expert witness. Had they gone that route, he would of
3 been -- he would of qualified as an expert witness. So,
4 that information would of come in regardless, and none of
5 the testimony that's been outlined is actually im, improper.

6 Officer testimony, none of it's going to anything
7 scientific like the intoxication level of or the
8 intoxication dose of cocaine or testifying about the effects
9 of drugs on the body. But, regardless, those officers could
10 of been deemed expert witnesses, and that testimony was --
11 still would of come in. So, the Applicant can not show a
12 prejudice.

13 And regarding Agent Smith's statement to mean that he
14 was taking responsibilities for the drugs, I believe the
15 Order improperly says that the trial counsel for Applicant
16 solicited the opinion testimony, which is on Page 245 of the
17 transcript, I'm sorry, on Page 31 of the PCR transcript.

18 Do you have that PCR transcript, Your Honor?

19 THE COURT: We do.

20 MS. GREGORY: Okay. On Page 31, she clarifies I
21 believe. There's -- her last name's Taylor and the
22 solicitor's last name is Taylor. So, there's confusion as
23 to who's saying what. After cross-examination starts right
24 after, he elicited that opinion testimony from that officer.
25 So, we would ask that the Order be fixed to reflect that she

1 did not solicit or elicit that opinion testimony from that
2 witness. It was her -- it was the solicitor, and then she
3 cross-examined him on the remaining of that page, which is
4 what she said was her valid trial strategy that she wanted
5 that information in so that she could show that the witness
6 never said or her, her client, I'm sorry, her client never
7 said the drugs belonged to me.

8 So, she actually articulated valid trial strategy for
9 why she wanted that opinion in, and then explained that she
10 wanted to cross-examine on it, which she did on the
11 remaining of that page.

12 And then regarding the Solicitor's closing arguments,
13 the Order briefly cites Tapner. Tapner is distinguishable
14 from that case because the solicitor in that case repeatedly
15 implied the officers and the rape crisis counselors believed
16 the victim, and he misrepresented evidence that was adduced
17 at trial meaning he alluded to facts that weren't in
18 evidence. And there was multiple other issues with the
19 Tapner closing argument, but here the Court found that one
20 sentence isolated, which was not even vouching based on
21 Bond, was inappropriate. And when that one sentence
22 properly evaluated in the context of the entire record, it
23 is -- definitely does not go as far as to infect the entire
24 trial with unfairness and prevent the Applicant from getting
25 due process.

1 So, we would ask that you reevaluate your findings on
2 that as well, Your Honor.

3 THE COURT: All right. Yes, sir.

4 MR. WISE: If I may, first of all, on the double
5 jeopardy argument, it seems incredible to me that a Court
6 seriously means if the legislature intended to violate
7 double jeopardy they could do it. But if they don't intend,
8 that double jeopardy applies. It really makes no sense.

9 But the point is this. I don't think the Legislature,
10 if they had specifically said a proximity case shall run
11 consecutive to the substantive crime of possession with
12 intent to distribute, that they could do that legally and
13 not violate double jeopardy. It's just -- seems to me
14 impossible.

15 Secondly, clearly, under the analysis of Blockburger,
16 the, the proximity charge requires one additional element
17 that's not present in a possession with intent to distribute
18 charge. It does not contain -- the, the possession with
19 intent to distribute does not contain an element different
20 from the proximity charge. It -- the proximity charge
21 requires an additional evidence -- additional element, not
22 one that's different. So, in that respect, it clearly, you
23 know, violates double jeopardy.

24 The, the Adams case, which they cite, is, is probably
25 one of the, to me, one of the worst interpretations of cases

1 I've seen in a long time. They don't even cite a case in
2 there involving a jury charge. They cite cases where a
3 Court, upon review of the Lower Court finding by a jury,
4 said it was proper for the jury to draw that inference, but
5 without being instructed as to it. Adams is the first time
6 they talk about instructing it.

7 It clearly, clearly violates those two old railroad
8 cases cited in the Order, which have clearly held that an
9 inference shall not be charged to a jury because it's a
10 charge on the facts. When you tell a jury that basically,
11 because someone rents a house, they possess the drugs in it,
12 is certainly prejudicial to, to say, to say the least in
13 that, and, therefore, it, it almost goes without saying how
14 prejudicial it is.

15 I will agree that I did -- that the Order does misquote
16 Ms. Taylor instead of Mr. Taylor, but the same principle
17 applies, that he was allowed to ask an expert opinion that
18 probably had the individual been qualified as an expert
19 would not have been out -- able to give because it is an
20 opinion on the ultimate issue of the guilt of the defendant
21 in this case, that he was able to opine that the statement
22 by Mr. Ervin was an admission of guilt. And I know of no
23 authority that would allow that, and certainly that is very
24 prejudicial even without much beyond that.

25 And, of course, in the closing argument too, that he

1 was able to just basically say he's proud of these officers
2 and what they did, and I think that's, that's vouching as
3 clearly as, as anything in any of the cases that are cited
4 in the, in the Order.

5 So, I don't see where there's anything that's really
6 missed by the Court in the Order that the -- the charge,
7 quite frankly, is, is pointed out in the Order where they
8 tell a jury that you can -- that mere presence isn't
9 sufficient, but then tell the jury, on the other hand, that
10 if the, if the house is rented in your name, that's, that's
11 something basically for inferring guilt, and it just seems
12 to be grossly inconsistent under those circumstances, and,
13 and confusing to the jury.

14 The Heath case is -- suffers from the same, the same
15 error. And, basically, what it boils down to on this
16 charge, Judge, be candid with you, what that inference
17 charge tells a jury is that a person borrows another
18 person's car, and gets stopped for speeding, and the
19 officers find a small amount of cocaine on the back
20 floorboard of the car, the jury can infer the driver of that
21 car is in direct possession of that cocaine, and that's not
22 an inference that even is logical much less legal, and an
23 inference has to have some degree of logic behind it if
24 you're even gonna give an inference charge, which I don't
25 think you can in South Carolina without, without a state

1 statute.

2 But to tell a jury that simply because Mr. Ervin's name
3 is on the lease, you can infer everything in there is his
4 even though it's clear, from the record, that he had a, a
5 brother that was living there also or, or a good bit of the
6 time is just, to me, very, very much misleading, and,
7 obviously, very prejudicial to, to Mr. Ervin.

8 So, I think all the issues were adequately covered in
9 the Order, and I think, with one correction of -- that's
10 Mr. Taylor making the statement, not Ms. Taylor, I think the
11 Order adequately covers all the issues.

12 THE COURT: In reply?

13 MS. GREGORY: No, Your Honor. I thank you for fitting
14 us in today. Sorry about my mistake on Friday.

15 THE COURT: That's all right. Thank y'all for coming.
16 I will take a look at it, and let you know.

17 MR. WISE: All right.

18 MS. GREGORY: Thank you.

19 THE COURT: Thank y'all very much.

20 MR. WISE: Okay.

21

22

23 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

24

25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Greenwood County, South Carolina, on the 1st day of October, 2019.

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

May 7th, 2020

PAMELA E. GREEN, Court Reporter

gm

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS

Mauwell J. Ervin, Jr. № 3566337)

Applicant.)

2015-CP-24-01268

-vs-)

Order

State of South Carolina,)

Respondent.)

The State of South Carolina filed a Rule 59 Motion requesting this Court to alter or amend the previous order issued in this matter. A hearing was held on October 1, 2019. The Court reviewed the motion filed by the State and listened to argument of both counsel. The Court declines to maned the previous order with one exception. As to Issue 3, discussed beginning on page 10 of the order, the Court amends the order to find that trial counsel was not ineffective in failing to raise the Double Jeopardy issue.

The Court has again reviewed controlling South Carolina law and concluded that this Court is bound by the holding of the South Carolina Court of Appeals when the Court said, "We wish to emphasize that there is no prohibition against the contemporaneous prosecution by the State for both possession with intent to distribute and distribution of crack cocaine and the related school charges where, like this case, they arise out of the same conduct." *State v. Brown*, 319 S.C. 400, 408, 461 S.E.2d 828, 832 (Ct. App. 1995). *See, also Riley v. South Carolina*, 82 F. Supp. 2d 474 (D.S.C. 2000). The previous order in this matter is hereby modified to hold that trial counsel was not ineffective in failing to raise the Double Jeopardy issue.

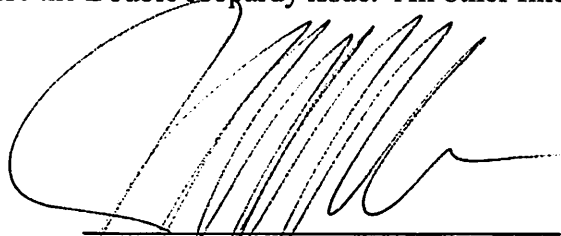


In all other respects, the previous Order has been carefully reviewed and the Court finds no error of law or facts that were overlooked in ruling on this matter.

Therefore it is hereby Ordered that the previous order is hereby modified to reflect that trial counsel was not ineffective in failing to rise the Double Jeopardy issue. All other findings in the Order are not modified or changed.

~~December 2019~~

February 14, 2020



J. Mark Hayes, II
Presiding Judge
8th Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOODMauwell J. Ervin, Jr. No 3566337,

Plaintiff,

vs.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUITCASE NO.: 2015 -CP-24-01268**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

C. Rauch Wise, Bar No. 06188

Address:

305 Main Street, Greenwood SC 29646Phone: 864-229-5010 Fax 864-229-2665E-mail: rauchwise@gmail.com Other: _____

Defendant's Attorney:

Janell H. Gregory, Bar No. 103176

Address:

PO Box 11549, Columbia, SC 29211-1549Phone: 803-734-3737 Fax _____E-mail: jgregory@scag.gov Other: _____☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)****SECTION I: Hearing Information**

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO**SECTION II: Motion/Order Type**☐ Written motion attached☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff/☐ Defendant _____ Date submitted _____**SECTION III: Motion Fee**☐ PAID - AMOUNT: \$ _____☐ EXEMPT:

(check reason)

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

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

WITNESSES

Courtney Smith
Greenwood County Sheriff

WARRANT NUMBER

M077589

True Bill

Philip R. Nicks

Foreman of the Grand Jury

Date: 3/25/11

VERDICT

Guilty.

Charlotte
Foreman 7/24/13

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

March Term, 2011

Indictment # 11GS24- 783

THE STATE

vs.

Maunwell Jabaar Ervin

INDICTMENT FOR

POSSESSION OF MARIJUANA
WITH INTENT TO DISTRIBUTE
44-53-0370

ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

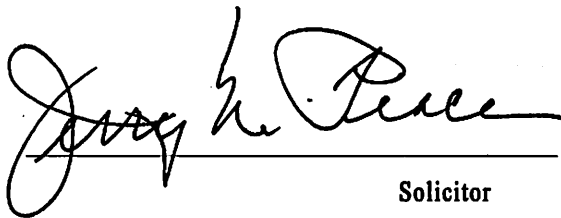
INDICTMENT FOR**POSSESSION OF MARIJUANA
WITH INTENT TO DISTRIBUTE**

44-53-0370

At a Court of General Sessions, convened on the 25th day of March, 2011 the Grand Jurors of Greenwood County present upon their oath:

That Maunwell Jabaar Ervin, did in Greenwood County, state aforesaid, on or about the 9th day of December, 2010 willfully, unlawfully, and knowingly possess with the intent to distribute, dispense, or deliver and/or did otherwise, aid, abet, attempt, or conspire to possess with the intent to distribute, dispense, or deliver, a controlled substance defined in Schedule I, II, or III, flunitrazepam or a controlled substance analogue, to wit: Marijuana, a Schedule I controlled substance, in violation of the provisions of Section 44-53-370 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

ARREST WARRANT

M-077589

11-783

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenwood

THE STATE

10-35867

against

Maunwell Jabaar Ervin

Address: 219 W Creswell Ave

Greenwood, SC 29646-3846

Phone: SSN: 2 [REDACTED]

Sex: M Race: B Height: 5 11 Weight: [REDACTED]

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0240000

Prosecuting Agency: Greenwood County Sheriff

Prosecuting Officer: Courtney Smith - 0157

Offense: Drugs / Dist. other than listed in Schedules I through V. excluding I(b), (c), LSD and Schedule

Offense Code: 3128

Code/Ordinance Sec: 44-53-0440

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant
onMAUNWELL J. ERVIN
12-10-10

[Signature of Constable/Law Enforcement Officer]

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Bond Court
528 Edgefield Street
Greenwood, SC 29646ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

on 12/10/2010

[Signature of Issuing Judge]
Walter Rutledge Martin

Judge Code: 7097

(L.S.)

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenwood

Personally appeared before me the affiant Courtney Smith

who

being duly sworn deposes and says that defendant Maunwell Jabaar Ervin

did within this county and state on or about 12/09/2010

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenwood)

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Dist. other than listed in Schedules I through V. excluding I(b), (c), LSD and Schedule II drugs

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On December 9, 2010 at 2114 hours, Officers from the Greenwood Drug Enforcement Unit executed a lawful search warrant at the residence of 316 Lawson Street, Greenwood, SC 29646. From this search Agents seized approximately 291 grams of Marijuana, 127 grams of Crack Cocaine and 21 Dosage Units of MDMA along with 2 Semi-automatic Handguns from Maunwell ERVIN. This incident occurred within 1/2 mile proximity of Lander University. This incident occurred in the County of Greenwood. Investigation by Agents with the Greenwood Drug Enforcement Unit.

Signature of Affiant

[Signature of Affiant]

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenwood

Affiant's Address 528 Edgefield Street

Greenwood, SC 29646-

Affiant's Telephone (864)942-8600

FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
2010 DEC 13 AM 9 48

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/9/2010 defendant Maunwell Jabaar Ervin

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenwood) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Dist. other than listed in Schedules I through V. excluding I(b), (c), LSD and Schedule II drugs

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me

Judge's Address Greenwood County Courthouse

Greenwood, SC 29646-2634

Judge's Telephone (864)942-8655

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

BAIL set by

WITNESSES

565

Judge

on

Type and Amount:

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney:

Decision:

DISPOSITION before

Judge

on

by

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

CODEFENDANTS

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

COUNTY OF GreenwoodSTATE SCVS.
Manwell Jabaar Ervin

AKA:

Race: B Sex: M Age: [REDACTED]DOB: [REDACTED] SS#: [REDACTED]Address: 316 Lawson St.City, State, Zip: Greenwood, SC 29649DL# [REDACTED] SID# [REDACTED]INDICTMENT/CASE#: 11 -GS- 24-783A/W#: M-077589Date of Offense: 12/9/10S.C. Code § 44-53-370CDR Code #: 0187

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: PWID Marijuana, 2nd offensein violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0187☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kanan Taylor Bar# 78745
Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10(ten) days/months/years or under the ☐ Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. Credit 14 dgs - jail.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐☐ set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Recipient: _____ Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211 (A) (1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A) (2) (DUI Surcharge)	\$100	\$ _____
§56-5-2995 (A) (2) (DUI Assessment)	\$12	\$ _____
§35.13 (Public Def/Prob)	\$500	\$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$ <u>100.00</u>
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942 (J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to Country (If paid in installments)	\$50	\$ <u>8.40</u>
§90.11 TP (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
TOTAL		\$ <u>288.40</u>

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ paid to the Public Defender Fund

Other: _____

ATTEST A TRUE COPY

Chastity Copeland

CHASTITY COPELAND

CCCP AND GS

GREENWOOD COUNTY

S.C.

☐ Appointed PD or appointed other counsel, §35.13 TP☐ Requires \$500 be paid to Clerk during probation.Angela Woodhurst
Clerk of Court/Deputy ClerkPRESIDING JUDGE [Signature]Judge Code: 2159Sentence Date: 7/24/2013Court Reporter: Tara Scott

WITNESSES

Courtney Smith
Greenwood County Sheriff

WARRANT NUMBER

M077587

True Bill

Philip R. Mink

Foreman of the Grand Jury

Date: 3/25/11

VERDICT

Guilty

Chastity Copeland

Foreman

7/24/13

ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

March Term, 2011

Indictment # 11GS24- 784

THE STATE

VS.

Maunwell Jabaar Ervin

INDICTMENT FOR

VIOLATION SECTION

44-53-0445

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR**

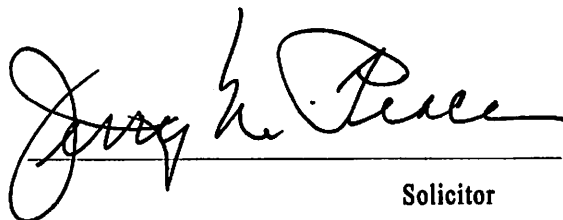
COUNTY OF GREENWOOD

**VIOLATION SECTION
44-53-0445**

At a Court of General Sessions, convened on the 25th day of March, 2011 the Grand Jurors of Greenwood County present upon their oath:

That Maunwell Jabaar Ervin, did in Greenwood County, state aforesaid, on or about the 9th day of December, 2010 did willfully, unlawfully and knowingly distribute, sell, purchase, manufacture, or possess with intent to distribute, a controlled substance, to wit: Marijuana, while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical education center; or a public or private college or university in violation of Section 44-53-445 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

ARREST WARRANT

M-077587

11-784

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenwood

THE STATE

10-35867

against

Maunwell Jabaar Ervin

Address: 219 W Creswell Ave

Greenwood, SC 29646-3846

Phone: _____ SSN: _____

Sex: M Race: B Height: 5 11 Weight: 217DL State: SC DL #: _____DOB: _____ Agency ORI #: SC0240000Prosecuting Agency: Greenwood County SheriffProsecuting Officer: Courtney Smith - 0157Offense: Drugs / Distribute, sell, purchase, manuf. drug
other than crack cocaine, or pwid, near schoolOffense Code: 0107Code/Ordinance Sec: 44-53-0445(B)(1)This warrant is CERTIFIED FOR SERVICE in the☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant MAUNWELL J. ERVIN
on 12-10-10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Bond Court
528 Edgefield Street
Greenwood, SC 29646ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenwood

Personally appeared before me the affiant Courtney Smith whobeing duly sworn deposes and says that defendant Maunwell Jabaar Ervindid within this county and state on or about 12/09/2010

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenwood)

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Distribute, sell, purchase, manuf. drug other than crack cocaine, or pwid, near schoolI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:On December 9, 2010 at 2114 hours, Officers from the Greenwood Drug Enforcement Unit executed a lawful search warrant at the
residence of 316 Lawson Street, Greenwood, SC 29646. From this search Agents seized approximately 291 grams of Marijuana,
127 grams of Crack Cocaine and 21 Dosage Units of MDMA along with 2 Semi-automatic Handguns from Maunwell ERVIN.
This incident occurred within 1/2 mile proximity of Lander University. This incident occurred in the County of Greenwood.
Investigation by Agents with the Greenwood Drug Enforcement Unit.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenwood

Affiant's Address 528 Edgefield Street
Greenwood, SC 29646-Affiant's Telephone (864)942-8600

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/9/2010 defendant Maunwell Jabaar Ervin

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenwood) as set forth below:DESCRIPTION OF OFFENSE: Drugs / Distribute, sell, purchase, manuf. drug other than crack cocaine, or pwid, near schoolHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 12/10/2010Signature of Issuing Judge Walter Rutledge Martin (L.S.)Judge Code: 7097Judge's Address Greenwood County CourthouseGreenwood, SC 29646-2634Judge's Telephone (864)942-8655Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL
569
Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
210 DEC 13 AM 9 47

Judge

on

Type and Amount:

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney:

Decision:

DISPOSITION before

Judge

on

by

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS

COUNTY OF Greenwood
STATE _____INDICTMENT/CASE#: 11 -GS- 24-7PXManwell vs ErvinA/W#: M-077587AKA: _____
Race: B Sex: M Age: _____Date of Offense: 12/9/10

DOB: _____ SS#: _____

S.C. Code § 44-53-445Address: 316 Lawson StCDR Code #: 0107City, State, Zip: Greenwood, SC 29649

DL# _____ SID# _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: PWED Marijuana in Proximity of a School
in violation of § 44-53-445 of the S.C. Code of Laws, bearing CDR Code # 0107☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Manwell Ervin
Solicitor Defendant Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 (five) days/months/years or under the ☐ Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 11-65-24-783☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCDPPPS _____Attend Voc. Rehab. or Job Corp. Chastity Copeland

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling ☐ GREENWOOD COUNTY S.C.

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A) (1) (Conv. Surcharge)	\$100	<u>100.00</u>
§14-1-211 (A) (2) (DUI Surcharge)	\$100	
§56-5-2995 (A) (2) (DUI Assessment)	\$12	
§35.13 (Public Def/Prob)	\$500	
§73.3, 1B TP (Law Enforce. Funding)	\$25	<u>45.00</u>
§33.7, 1B TP (Drug Court Surcharge)	\$100	<u>130.00</u>
§50-21-114 (BUI Breath Test Fee)	\$50	
§56-5-2942 (J) (Vehicle Assessment)	\$40/ea	
3% to Country (If paid in installments)	\$50	<u>8.40</u>
§90.11 TP (SCCJA Surcharge)	\$5	<u>5.00</u>
TOTAL		<u>288.40</u>

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning
\$ _____ paid to the Public Defender Fund
Other: _____☐ Appointed PD or appointed other counsel, §35.13 TP
☐ Requires \$500 be paid to Clerk during probation.Angela Woodhurst
Clerk of Court/Deputy Clerk Jim WellsPRESIDING JUDGE Fulbright, Jr.Court Reporter: Tara ScottJudge Code: 2159Sentence Date: 7/24/2013ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S.C.

COUNTY OF
STATEGreenwood

AKA:

Race: 16 Sex: M Age: 32DOB: [REDACTED] SS#: [REDACTED]Address: 316 Lawson St.City, State, Zip: Greenwood, SC 29649DL# SID# INDICTMENT/CASE#: 13 -GS- 24 - 293A/W#: Direct IndictmentDate of Offense: 12/9/10S.C. Code § 44-53-370CDR Code #: 0180

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Possession of Schedule I Controlled Substance 2nd offense
in violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0180☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Mary Taylor Bon #78745
Solicitor

Defendant

Attorney for Defendant

SC Bar # _____

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☒ County Detention Center,for a determinate term of 14 (days/months/years) or under the ☐ Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,

which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. Credit 14 days - jail☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A) (1) (Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A) (2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (A) (2) (DUI Assessment)	\$12	\$
\$35.13 (Public Def/Prob)	\$500	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$ 100.00
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942 (J) (Vehicle Assessment)	\$40/ea	\$
3% to Country (If paid in installments)	\$50	\$
\$90.11 TP (SCCJA Surcharge)	\$5	\$ 5.00
TOTAL		\$ 288.40

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ paid to the Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE FulbrightJudge Code: 2159Sentence Date: 7/24/2013Court Reporter: Tara Scott

ATTEST A TRUE COPY

Angela Woodhurst

ANGELA WOODHURST

CCCP AND GS

GREENWOOD COUNTY

S.C.

WITNESSES

Courtney Smith
Greenwood County Sheriff

WARRANT NUMBER

2012D2400100065
DIRECT INDICTMENT

Joe Bill
Joe Bill
Foreman of the Grand Jury

Date: 2/22/13

VERDICT

Guilty
Charles George
Foreman

ATTEST A TRUE COPY
Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S. C.

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

February Term, 2013
Indictment # 13GS24- 293

THE STATE

vs.
Manwell Jabaar Ervin

INDICTMENT FOR

POSSESSION OF A CONTROLLED
SUBSTANCE ~~WITH INTENT TO DISTRIBUTE~~
44-53-0370

THE STATE OF SOUTH CAROLINA

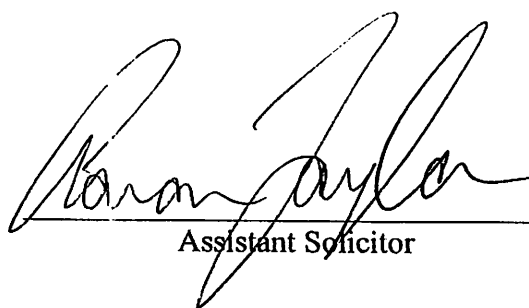
COUNTY OF GREENWOOD

INDICTMENT FOR**POSSESSION OF A CONTROLLED
SUBSTANCE WITH INTENT TO DISTRIBUTE
44-53-0370**

At a Court of General Sessions, convened on the 22nd day of February, 2013 the Grand Jurors of Greenwood County present upon their oath:

That Manwell Jabaar Ervin, did in Greenwood County, state aforesaid, on or about the 9th day of December, 2010 willfully, unlawfully, and knowingly possess with the intent to distribute, dispense, or deliver, and/or did otherwise possess with the intent to distribute, dispense, or deliver a controlled substance analogue, or a controlled substance defined in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug, to wit: Benzylpiperazine, a Schedule I controlled substance, in violation of the provisions of Section 44-53-370 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Assistant Solicitor

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR**

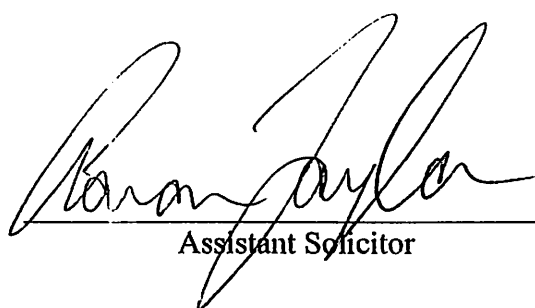
COUNTY OF GREENWOOD

**POSSESSION OF A CONTROLLED
SUBSTANCE WITH INTENT TO DISTRIBUTE
44-53-0370**

At a Court of General Sessions, convened on the 22nd day of February, 2013 the Grand Jurors of Greenwood County present upon their oath:

That Manwell Jabaar Ervin, did in Greenwood County, state aforesaid, on or about the 9th day of December, 2010 willfully, unlawfully, and knowingly possess with the intent to distribute, dispense, or deliver, and/or did otherwise possess with the intent to distribute, dispense, or deliver a controlled substance analogue, or a controlled substance defined in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug, to wit: Benzylpiperazine, a Schedule I controlled substance, in violation of the provisions of Section 44-53-370 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Assistant Solicitor

THE STATE OF SOUTH CAROLINA

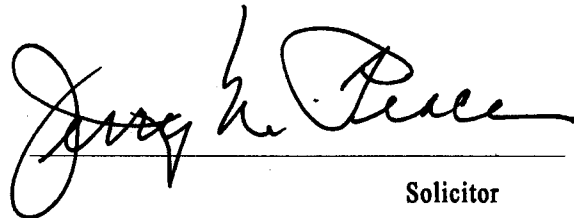
COUNTY OF GREENWOOD

INDICTMENT FOR**VIOLATION SECTION
16-23-0490**

At a Court of General Sessions, convened on the 25th day of March, 2011 the Grand Jurors of Greenwood County present upon their oath:

That Maunwell Jabaar Ervin, did in Greenwood County, state aforesaid, on or about the 9th day of December, 2010 possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Trafficking in Crack Cocaine, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Solicitor

WITNESSES

Courtney Smith
Greenwood County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

March Term, 2011

Indictment # 11GS24- 787

WARRANT NUMBER

M077592

True Bill

THE STATE

Vs.

Maunwell Jabaar Ervin

Philip R. Nickerson

Foreman of the Grand Jury

Date: 3/25/11

VERDICT

Not Guilty.

James T. Burmeister

Foreman

INDICTMENT FOR

VIOLATION SECTION

16-23-0490

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

578

COUNTY OF Greenwood
 STATE VS.
Manwell Jabaar Ervin

AKA:

Race: AFRICAN AME Sex: M Age: 35DOB: [REDACTED] SS# [REDACTED]Address: 219 W Creswell AveCity, State, Zip: Greenwood, SC 29646-3846DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Trafficking in cocaine, 28 g or more, but less than 100 g - 2nd offenseINDICTMENT/CASE#: 11GS24-0785A/W#: M077586Date of Offense: 12/9/2010S.C. Code § : 44-53-0375CDR Code #: 0368

SENTENCE SHEET

in violation of § 44-53-0370 of the S.C. Code of Laws, bearing CDR Code # 0388
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☒ Recommendation by the State.
 ATTEST: Brown, C. Yates SC Bar# 78607 Defendant Manwell Jabaar Ervin Attorney for Defendant 100417 SC Bar#
WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ ~~CONSECUTIVE~~ to sentence on: 11 GS 24-0784 + 783☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Since July 24, 2013 + 14 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: *Fine: \$

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00§ 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 8.40TOTAL \$ 288.40PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning \$ paid to Public Defender FundOther:

ATTEST A TRUE COPY

Chastity Copeland

CHASTITY COPELAND

CCCP AND GS

GREENWOOD COUNTY

S.C.

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Kayla InyerCourt Reporter: Jay Holston

SCCA/217 (03/2011)

Presiding Judge JEANJudge Code: 2154Sentence Date: 4-11-16

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

TRAFFICKING IN COCAINE BASE
(CRACK COCAINE)
44-53-0375

At a Court of General Sessions, convened on the 25th day of March, 2011 the Grand Jurors of Greenwood County present upon their oath:

That Maunwell Jabaar Ervin, did in Greenwood County, state aforesaid, on or about the 9th day of December, 2010 willfully, unlawfully, and knowingly traffic in cocaine base (crack cocaine), to wit: that the said defendant(s) did sell, manufacture, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was in actual or constructive possession or did knowingly attempt to become in actual or constructive possession of more than 100 grams, but less than 200 grams of cocaine base (crack cocaine), in violation of Section 44-53-375 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

GREENWOOD COUNTY
CLERK OF COURT
CHASLIE O. CLEVELAND
03-27-2011
VILEST V. ERVIN
COLLA

1

WITNESSES

Courtney Smith
Greenwood County Sheriff

WARRANT NUMBER

M077586

True BillPhilip R. Nickl

Foreman of the Grand Jury

Date: 3/25/11

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

March Term, 2011

Indictment # 11GS24- 785

THE STATE

vs.

Maunwell Jabaar Ervin

INDICTMENT FOR

TRAFFICKING IN COCAINE BASE
(CRACK COCAINE)
44-53-0375

ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

ARREST WARRANT

M-077586

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenwood

THE STATE

10-35867

against

Maunwell Jabaar Ervin

Address: 219 W Creswell Ave

Greenwood, SC 29646-3846

Phone: SSN: [REDACTED]

Sex: M Race: B Height: 5 11 Weight: 217

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0240000

Prosecuting Agency: Greenwood County Sheriff

Prosecuting Officer: Courtney Smith - 0157

Offense: Drugs / Trafficking in ice, crank or crack - 100 g or more, but less than 200 g

Offense Code: 0368

Code/Ordinance Sec: 44-53-0375(C)(3)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on 12-10-10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Bond Court
528 Edgefield Street
Greenwood, SC 29646

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenwood

Personally appeared before me the affiant Courtney Smith

being duly sworn deposes and says that defendant Maunwell Jabaar Ervin

did within this county and state on or about 12/09/2010

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenwood

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Trafficking in ice, crank or crack - 100 g or more, but less than 200 g

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On December 9, 2010 at 2114 hours, Officers from the Greenwood Drug Enforcement Unit executed a lawful search warrant at the residence of 316 Lawson Street, Greenwood, SC 29646. From this search Agents seized approximately 291 grams of Marijuana, 127 grams of Crack Cocaine and 21 Dosage Units of MDMA along with 2 Semi-automatic Handguns from Maunwell ERVIN. This incident occurred within ½ mile proximity of Lander University. This incident occurred in the County of Greenwood. Investigation by Agents with the Greenwood Drug Enforcement Unit.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenwood

Affiant's Address 528 Edgefield Street

Greenwood, SC 29646-

Affiant's Telephone (864)942-8600

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/9/2010 defendant Maunwell Jabaar Ervin

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenwood) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in ice, crank or crack - 100 g or more, but less than 200 g

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable
Sworn to and subscribed before me

on 12/10/2010

Signature of Issuing Judge
Walter Rutledge Martin (L.S.)

Judge Code: 7097

Judge's Address Greenwood County Courthouse

Greenwood, SC 29646-2634

Judge's Telephone (864)942-8655

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
C. Attorney General
April 21, 2003
SCCA 518

ORIGINAL 581

ATTEST A TRUE COPY
CHASTITY COPELAND
CCCP AD GS
GREENWOOD COUNTY
S.C.

who violate the criminal laws of the

RECEIVED
DEC 13 AM 9 47
GREENWOOD, SC
JUDICIAL CIRCUIT
GENERAL SESSIONS

BAIL set by

WITNESSES

582

Judge

on 12-10-2010

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge

on 12-10-2010

Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

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Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

