

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Jan 21 2021

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Mark J. Hayes, II, Circuit Court Judge

Appellant Case No. 2020-00750

Earnest E. Vaughn,..... Petitioner,

v.

State of South Carolina,..... Respondent.

APPENDIX
VOLUME I

Brianna L. Schill (SC Bar No.103380)
Assistant Attorney General
Office of the Attorney General
Rembert C. Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-3737
briannaschill@scag.gov

Scarlet B. Moore, SC Bar #72534
Post Office Box 17615
Greenville, S.C. 29606
(864) 214-5805
(864) 752-0930 (FAX)
scarlet28@msn.com

Attorney for Petitioner

Attorney for Respondent

INDEX

VOLUME I - PCR

1 st Pro Se Application for Post-Conviction Relief with Request for Appointment of Counsel outside of 8 th Circuit, dated January 1, 2019 filed	1
2 nd Pro Se Application for Post-Conviction Relief with Request for Appointment of Counsel outside of 8 th Circuit, dated February 8, 2019 filed	15
Order Appointing Ashley McMahan as Counsel filed May 3, 2019	31
Respondent's Return, Motion for More Definite Statement, and Partial Motion to Dismiss dated May 30, 2019	32
Vaughn Letter to Clerk Regarding Address Change dated June 18, 2019	43
Vaughn Letter and Filing of Petition for Writ of Mandamus involving his PCR Case dated September 20, 2019	44
Vaughn Letter to Clerk Regarding Filing Correspondence with Lawyer dated December 7, 2019, filed December 16, 2019.....	56
Vaughn Letter in Response to Ms. McMahan's Letter dated January 7, 2020 filed January 21, 2020.....	65
Ms. McMahan's Letter in Response to Vaughn dated January 7, 2020	72
Amended Application for Post-Conviction Relief dated March 3, 2020, filed March 9, 2020	73
Transcript of PCR Held March 12, 2020	79
Earnest Vaugh, Sr. Direct by Ms. McMahan.....	84
Earnest Vaugh, Sr. Cross by Ms. Schill.....	118
Earnest Vaugh, Sr. Redirect by Ms. McMahan	122
Jane Merrill Direct by McMahan.....	123
Jane Merrill Cross by Ms. Schill.....	145
Jane Merrill Redirect by Ms. McMahan	148
Micah Black Direct by Ms. Schill.....	155
Micah Black Cross by Ms. McMahan	162
Taylor Gilliam (SKYPE) Direct by Ms. Schill	169
Taylor Gilliam (SKYPE) Cross by Ms. McMahan.....	171

Vaughn Letter to the Clerk Submitting Documents to be Entered as PCR “Post Hearing” Exhibits Regarding “Misconduct and Constitutional Violations” dated April 20, 2020, filed April 30, 2020.....	176
4 th Amendment Violation - “Sham Warrant”	178
5 th , 6 th , and 14 th Amendment Violations - “Tainted Evidence”	185
4 th Amendment Violation - :”Illegal Searches”	210
6 th and 14 th Amendment Violations - “Broken Chain of Custody”	216
Order - Dismissal of PCR signed April 28, 2020, filed May 8, 2020.....	223
Vaughn Letter to Clerk Regarding Document Request dated June 14, 2020, filed June 18, 2020	252

VOLUME II - APPEAL

Notice of Appeal for case 2016-GS-24-539 and 2016-GS-24-514 filed November 14, 2016	253
Record on Appeal filed December 6, 2017.....	258
Trial Transcript Pages 12-28 - Originally Omitted from the Record on Appeal	636
Trial Transcript Pages 96-107 - Originally Omitted from the Record on Appeal	653
Final Brief of Appellant filed December 7, 2017	665
Final Brief of Respondent filed December 11, 2017	677
Unpublished Opinion No. 2018-UP-409 Submitted September 1, 2018 - Filed November 7, 2018	694
Remittitur filed November 27, 2019.....	696

VOULUME III - TRIAL COURT FILE

Incident Report dated January 27, 2016	697
Rap Sheet	706
Arrest Warrants dated January 28, 2016.....	727
First Appearance dated January 28, 2016	729
Commitment Form dated January 28.2016.....	730

Elizabeth Able Letter of Appointment with Rule 5 and Brady Motions filed February 11, 2016	731
Aaron Taylor Letter of Appointment with Rule 5, 6 and Brady Motions filed February 17, 2016	736
Notice of Mandatory Appearance and Record of Appearance	743
Bond Order filed March 28, 2016.....	745
Bail Proceeding Form dated April 1, 2016	753
\$50,000 Surety Bond dated April 5, 2016	754
Discharge /Release Form dated April 5, 2016.....	755
Installation of Electronic Monitoring Device dated April 5, 2016.....	756
Jane H. Merrill Letter of Representation with Rule 5 and Brady Motions filed June 21, 2016	757
Juror Roll Call List Dated October 31, 2016	763
Juror Random Strike List.....	765
Defendant's Voir Dire dated October 31, 2016.....	767
Witness List dated October 31, 2016.....	770
Sworn Juror and Witness List dated October 31, 2016	773
Bench Order Regarding Haley Debolt's Contact with Juror.	775
Trial Exhibit List & Exhibits	776
State's Exhibits 2-7 - Photos.....	779
State's Exhibits 10-12 - Photos.....	785
State's Exhibits 16-34 - Photos.....	788
State's Exhibits 35-37 - Letters.....	807
State's Exhibit 41 - Report Analysis.....	816
State's Exhibit 42 - Photo Samples Testing.....	817
State's Exhibit 43 - Chain of Custody	818
State's Exhibit 44 - SLED Report.....	820

Court's Exhibit 1 - Confidential Source Packet.....	823
Court's Exhibit 2 - Affidavit / Warrant.....	835
Court's Exhibit 3-5 - Letters	836
Court's Exhibit 6 - Jury Note.....	843
Court's Exhibit 7 - Prior Convictions	844
Sentencing Sheets, Indictments, Verdict Forms.	850
Notice of Appeal filed November 3, 2016.....	857
Pro Se Objection and Belated Motion for a Mistrial filed January 9, 2017.....	863
Pro Se Post-Trial / Belated Motion to Suppress Evidence filed January 27, 2017.....	865
Vaughn Letter to Clerk filed August 17, 2017	872
Clerk's Response to Vaughn's Letter dated August 18, 2017	873
Remittitur dated November 27, 2018.....	874
Attorney General's Letter to Solicitor closing Appellate File dated November 28, 2018	877

STATE OF SOUTH CAROLINA

COUNTY OF Greenwood

Earnest Vaughn, Sr.

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

(Please Print)

Submitted By: Earnest Vaughn, Sr.

Address: B.R.C.I. Ma. 144
4460 Broad River Rd.
Columbia SC. 29210

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-CP-

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Previous Notice of Intent Case #
20 -CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | ☐ Torts - Personal Injury
☐ Assault Slander Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| ☒ Inmate Petitions
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | ☐ Administrative Law Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| ☐ Special Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)
☐ Sexual Predator (610) | | |

Submitting Party Signature: Earnest Vaughn, Sr.

Date: Jan. 1st 2019

STATE OF SOUTH CAROLINA

County of Greenwood

In the Court of Common Pleas

Ernest Vaughn, Sr. - 246912
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention Broad River Corr. Inst.
2. Name and location of Court which imposed sentence Greenwood Co. General Sessions
528 Monument St. Greenwood S.C. 29642
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 16-GS-24-539 Trafficking Methamphetamine
 - (b) 16-GS-24-541 Unlawful Neglect of a Child
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Nov. 2nd 2016 30 years
 - (b) Nov. 2nd 2016 10 years
 - (c) _____

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty ✓
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
7. If you answered "yes" to (6), list:
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Affirmed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. Nov 7th 2018
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. unknown
 - ii. _____
 - iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Judicial Misconduct/Prosecutorial Misconduct, 6th & 14th amend viol. U.S. Const.
 - (b) Police Misconduct/Illegal Detention/Search & seizure, 4th 5th & 14th amend viol. U.S. Const.
 - (c) Ineffective Assistance of Trial & Appellate Counsel, 6th & 14th amend viol. U.S. Const.
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) Abuse of Discretion/Failed To Correct Perjured Testimony, etc. See Attachment A
 - (b) Marinda Violations/Perjury/Evidence Tampering. See Attachment B
 - (c) Failed To Properly Represent Professionally. See Attachment C
- I Reserve The Right To Amend! statement of facts.

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

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

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No

(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. Direct Appeal

ii. _____

iii. _____

iv. _____

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Affirmed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. Nov. 7th 2018

ii. _____

iii. _____

iv. _____

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

i. unknown

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) Ineffective Assistance of Appellate Counsel (Attorney Misconduct)
can't be raised on a direct appeal.

(c) _____

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

(a) your arraignment and plea? _____

(b) your trial, if any? Yes

(c) your sentencing? _____

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

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

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

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

i. Jane Merrill, Main St. Greenwood SC 29646

ii. Appellate Defense Taylor Gilliam

iii. _____

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

i. Jury Trial & Sentencing

ii. Direct Appeal

iii. _____

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

1. Suppress Evidence and vacate conviction. 2. New Trial.

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

No

STATE OF SOUTH CAROLINA

County of Greenwood

VERIFICATION

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

Earnest Vaughn, Sr.

SWORN to and subscribed before me this 2nd
day of January, 2019
Kemelt S. Mitchell (L.S.)
Notary Public

My Commission Expires: May 23, 2028

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

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

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Earnest Vaughn, Sr.
Applicant

SWORN or affirmed to and subscribed before me this

2nd day of January, 2019
Kemelt S. Mitchell
Notary Public

My Commission Expires May 23, 2028

Dear Clerk,

Please find enclosed for filing in your office.

1. My application for post conviction with attachments.

Would you please return me a clock stamped copy for my records?

I would also like to ask for the appointment of PCR Counsel. I would like to request one outside of the 8th Judicial Circuit to be appointed if possible due to many conflicts of interest in the past relating to my cases in the 8th Circuit, (Greenwood, Laurens and Abbeville Counties).

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

Please Respond!

Date 1-1-19

Sincerely
Earnest Vaughn, Sr.
Earnest Vaughn Sr.
B.R.C.I., Ma. 144
4460 Broad River Rd.
Columbia SC. 29210

Statement Of Facts

pg. 1
On Jan. 27th 2016, the petitioner was unlawfully detained as the passenger of a vehicle in Greenwood County. Police claimed that, an arrest-warrant was active from Laurens County against the driver was the reason for the stop. Then that proved to be a false allegation. This police misconduct is a unlawful traffic stop and the detention of the vehicle's occupant's and the search is in violation of the Fourth-Amendment of the United States Constitution.

In an effort to skirt around this illegal-traffic stop, police then claimed to have an active arrest warrant, "in hand" for the petitioner. Testimony shows this to be false also.

The day after the unlawful stop a sham/pretext warrant was obtained and back dated against the petitioner and served. This fabricated arrest warrant was used against the petitioner at several stages of the trial, (suppression hearing - and as "inadmissible evidence" before the jury), then the sham arrest warrant was dismissed.

The warrant was being challenged in a "not-guilty plea". However, the prosecutor would not allow the warrant to be adjudicated due to the facts and lack of evidence.

During this unlawful traffic stop and detention the petitioner was searched in front of the dash cam with audio and Chad Cox read the marinda rights. The petitioner stated that he wanted his attorney present before any questioning. Mr. Cox then walked away.

At this time the sound is taken out of the video of the dash cam. Nothing illegal was found in the first search and the petitioner made no statement to any law enforcement nor was any consent to search given by anyone. This was established in the trial. However, Mr. Cox claimed the petitioner did not request a lawyer. "At this point he lied." This is the reason the sound is taken from the video.

Jarvis Reeder then came into the video making threats to the petitioner. He then falsely claims he read the marinda rights a second time, and claims the petitioner made a statement to him. "This is a lie under oath also."

The record will also establish that, Brian - Louis, and Whitt Brooks, also, "lied under - oath" when they testified that they had an arrest warrant "in hand" at the time of the, unlawful traffic stop.

pg. 3
However, they both admit they did not have it, but claim someone did have it.

Then the record will show that the petitioner was taken off from in front of the dash cam for a second search to be conducted.

By law, these acts of police misconduct and the tampering with the video violates the 4th and 14th amendments of the United States Constitution and the video without the audio should have been deemed inadmissible, because it clearly violates Due Process!

The record will also show that, the evidence in this case claimed to have been seized by police was tainted, (tampered with) and was not supported with a proper chain of custody.

In the arrest warrant police listed an amount of 18 grams of substance. Then that was later changed to approx. 22 grams. Greg Allison stated the extra was not lost, or found on the floor, he just miscounted. However, he did a supplemental report that said he found a bag that weighed 3.4 grams the next morning and added it then. This supplemental report was removed from the discovery before trial.

pg. 4

The dates on the chain of custody also did not match the dates of the testimony given by Mr. Allison and SLED (Lynn Black).

Ms. Black also admitted that she did not properly test the substance that was sent to SLED for testing. She only tested the part (3.4 grams) that was added and only looked at the rest and considered it to be meth.

The Solicitor's Office never properly responded to the Rule 5 discovery. They with-held exculpatory evidence from the defense, in an attempt to obstruct justice and to deny the petitioner the right to a fair trial.

The prior criminal record of an uncredible/unreliable confidential informant was with-held and someone else's criminal record was provided. This was an intentional violation of the Rule 5 discovery process to obstruct justice.

The prosecutor (Micah Black) also tampered with a documented defense witness who had given a sworn statement vindicating the petitioner and conspired with the witness just 5 days before the trial to change her statement in exchange for the dismissal of charges.

pg. 5

These acts of prosecutorial misconduct is supported by the facts on record and the motive for doing so is clearly evident.

The acts of judicial misconduct can be clearly established also and the abuse of discretion. Judge Hocker was clearly biased in this case. This was known when he set an excessive bond of \$100,000.00 in a bondhearing of the petitioner. That bond was later reduced by another judge to a fair \$20,000.00 bond.

Judge Hocker also responded to some of the defense counsels objections with personal opinions and not with opinions supported by case law. Other objections he did not rule on them at all. He just abandon them and moved on with the trial. He abused his discretion by allowing inadmissible evidence and testimony be presented over the objections by the defense.

He clearly erred by not suppressing the evidence in the suppression hearing based on what he called an unchallenged arrest warrant. The defense counsel was challenging all allegations of probable cause and reasonable-suspicion under the 4th amendment of the United States Constitution.

Judge Hocker also abused his discretion when he suppressed the fact that, police admitted the fact that, they conducted an illegal traffic stop based on false allegations and he suppressed the issue of credibility of an undocumented confidential informant who was a convicted felon with an abundance of pending felony warrants also who was also allowed to give hearsay - testimony that was not supported by evidence.

Trial counsel was ineffective in this trial. She was not prepared for trial having been on the case only 3 months. She did not have full disclosure of discovery and she failed to subpoena 5 named defense witnesses. She also admitted during trial that, she didn't know what to do. She was trying the case without co-counsel.

She did not require the judge to give a full and lawful opinion on her objections, therefore, abandoned them for appellate review.

Appellate Counsel Taylor Gilliam failed to include issues preserved for review in my direct appeal specifically the 4th amendment issue and he told me by phone that he would include them.

Conclusion

pg. 7

I have included the facts of attachments A thru C in these statements of facts to be considered by the PCR Court in the evidentiary hearing in this case.

The PCR Attorney will follow up on these issues and facts of the case when one is appointed.

At this time I respectfully ask this Honorable P.C.R. Court to consider all issues listed in the application for Post-Conviction Relief and to give a lawful and full ruling on each issue to preserve them for any further review if needed.

Thank you very much Your Honor.

Date 1-1-18

Respectfully Submitted,
Ernest Vaughn Sr.
Ernest Vaughn Sr. 246912
BRCI, Ma. 144
4460 Broad River Rd.
Columbia SC 29210

STATE OF SOUTH CAROLINA

COUNTY OF

Greenwood

Earnest Vaughn #246912

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-CP - -

2019-CP-24-00160

Submitted By: _____

Address: _____

SC Bar #: _____

Telephone #: _____

Fax #: _____

Other: _____

E-mail: _____

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____
Inmate Petitions
☒ PCR (500)
☒ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____-NI-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____
Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____
Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Interpleader (690) | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____
Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Incapacitated Adult Settlement (790)
☐ Other (799) _____ | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____
Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____ |
|---|---|---|---|

Submitting Party Signature: _____

Date: _____

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

92:50:57 834/510Z
2019 FEB 14 05:12
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

Dear Clerk,

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

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

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

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

Please Respond.

Date 2-8-19

Sincerely

Ernest Vaughn

Ernest Vaughn -246912

B.R.C.I., Ma. 144

4460 Broad River Rd.

Columbia SC. 29210

STATE OF SOUTH CAROLINA

County of Greenwood

In the Court of Common Pleas

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

vs.

State of South Carolina
Name of Respondent.

2019-CP-24- 00160

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention Broad River Corr. Inst.
2. Name and location of Court which imposed sentence Greenwood County General - Sessions, 528 Monument St., Greenwood S.C. 29646
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 16-GS-24-539, Trafficking Meth
 - (b) 16-GS-24-541, Child Endangerment
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Nov. 2nd 2016, 30 years
 - (b) Nov 2nd 2016, 10 years
 - (c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

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

(c) after a plea of nolo contendere _____

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

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

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. Nov 7, 2018

ii. _____

iii. _____

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

i. unknown

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

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

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

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

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

(a) See Attachment A

(b) See Attachment B

(c) See Attachment C

I reserve the right to amend.

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

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

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

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

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

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

(a) the specific nature thereof:

i. Petition For New Trial (Direct Appeal)

ii. _____

iii. _____

iv. _____

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Affirmed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. Nov 7th 2018

ii. _____

iii. _____

iv. _____

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

i. Unknown

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

(a) Ineffective Assistance of Appellate Counsel

(b) _____

(c) _____

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

(a) your arraignment and plea? _____

(b) your trial, if any? Yes

(c) your sentencing? Yes

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

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

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

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

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

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

iii. _____

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

i. Jury Trial

ii. Direct Appeal

iii. _____

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

Vacate Conviction (Suppress Evidence) or New Trial

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

No

STATE OF SOUTH CAROLINA

County of Greenwood

VERIFICATION

I, Ernest Vaughn

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

Ernest Vaughn

SWORN to and subscribed before me this 8th

day of February, 2019

Jennifer Washington (L.S.)
Notary Public

My Commission Expires: March 8, 2020

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

I, Ernest Vaughn

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

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Ernest Vaughn
Applicant

SWORN or affirmed to and subscribed before me this

8th day of February, 2019

Jennifer Washington
Notary Public

My Commission Expires March 8, 2020

Facts and Statements
Judicial/Prosecutorial Misconduct
Abuse of Discretion
6th and 14th amendment violation

pg. 2 cont.

Filed 08/11/19
2019 FEB 14 AM 9:26

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

Based on the facts and circumstances surrounding the arrest of the petitioner and the testimony on record as a whole the following can be shown,

1. That the Court erred by failing to suppress tainted evidence claimed to have been seized by police during an unlawful traffic stop and an illegal detention of the petitioner and illegal search.
2. The Court abused it's discretion by denying defense counsel's motion for a mistrial after inadmissible testimony was given relating to a sham, (pretext), warrant was given to jury that prejudiced the petitioner.

pg. 2 cont.

3. That the Court failed to properly rule by law on objections made by defense counsel. It was resolved improperly with personal opinion's.
4. The Court was biased in this case! Judge Hocker should have recused himself after previously presiding over a bond-hearing and setting an excessive bond of \$100,000.00 that was later reduced to a reasonable \$20,000.00 bond.
5. Prosecutorial Misconduct when prosecutor failed to correct perjured testimony by police relating to probable cause.
6. Prosecutorial Misconduct when prosecutor with-held exculpatory evidence from defense and failed to fully respond to Rule 5 discovery motion before trial.
7. Prosecutor conspired with defense witness to change statements for a promise of dismissing felony charges not within 10 days before trial.
8. Prosecutor conspired to tamper with other evidence, (took sound out of video), dash cam!

Attachment B

pg. 2 cont.

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

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

Attachment C

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

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

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

I Reserve The Right To Amend.

Respectfully Submitted

Date 2-8-19

S. Earnest Vaughn
Earnest Vaughn

In Re: Vaughn-V-State
P.C.R.

Dear Clerk,

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

I had to send these separate due to the contents of the envelope's.

Would you please file them and return me a clock stamped copy for my records?

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

Date 1-1-19

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

Judicial/Prosecutorial Misconduct pg. 1
Abuse Of Discretion

1. The trial court erred by failing to suppress evidence claimed to have been seized by police during an illegal traffic stop, in violation of the 4th Amendment of the United States Constitution.
2. The trial court abused its discretion and erred by stating the police had an active and unchallenged arrest warrant for the petitioner. This was based on a personal opinion and not supported by case law or evidence.
3. The trial court abused its discretion by denying defense motion for a mistrial after the State submitted inadmissible testimony as evidence before the jury relating to a sham/-pretext arrest warrant.
4. The trial court abused its discretion by failing to rule according to law on other objections made by defense counsel. The opinions was made on personal opinions.
5. The trial court was biased in this case and should have recused himself. 1 thru 5 violated Due Process and denied the petitioner the right to a fair trial, 6th & 14 Amend Viol. U.S. Const.

Prosecutorial Misconduct

pg. 2

1. Prosecutorial Misconduct when prosecutor failed to correct perjured testimony by police and other witnesses during trial.
2. Prosecutorial Misconduct when prosecutor failed to adequately respond to Rule 5 and with-holding exculpatory evidence from the defense.
3. Prosecutorial Misconduct when prosecutor intentionally submits inadmissible and tainted evidence during trial.
4. Prosecutorial Misconduct when prosecutor conspires with a documented defense witness to change statement and lie under oath in exchange for the dismissal of charges and a reduced sentence on others.
5. Prosecutorial Misconduct when prosecutor vouches for the credibility of a states witness during closing argument.

The prosecutorial misconduct that was intentionally committed denied the petitioner the right to a fair trial and violated Due Process in violation of the 6th and 14th - Amendments of the United States Constitution, I reserve the right to amend.

Police Misconduct

pg. 1

1. Police Misconduct, when police conduct an illegal traffic stop in violation of 4th amendment United States Constitution.
2. Police Misconduct, when police violate petitioner's Miranda rights in violation of the 5th Amendment of the United States Constitution.
3. Police Misconduct, when police fabricate a sham/pretext arrest warrant to skirt around a 4th amendment violation.
4. Police Misconduct, when police lie under oath about the existence of an arrest-warrant being in hand at time of stop.
5. Police Misconduct, when police tamper with video to exclude the audio, and tamper with other evidence claimed to have been seized.
6. Improper chain of custody also constitutes acts of police misconduct.

These acts of police misconduct violated the petitioner's 4th, 5th, and 14th amendment rights of the United States Constitution.

I reserve the right to amend.

Ineffective Assistance Of Trial and Appellate Counsel.

1. Trial counsel ineffective for failing to properly prepare for trial.
2. Trial counsel ineffective for failing to object to inadmissible evidence and hearsay testimony.
3. Trial counsel ineffective for failing to properly follow up on objections made to require the court to fully rule in compliance with law.
4. Trial counsel ineffective for failing to properly challenge 4th amendment violations during suppression hearing.
5. Trial counsel ineffective for failing to properly challenge tainted evidence and chain of custody.
6. Trial counsel ineffective for failing to properly challenge 5th amendment Miranda violation.

Appellate Counsel

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

These acts of being ineffective by counsel's violated the petitioner's 6th and 14th amendment rights, U.S. Const.

I reserve the right to amend.

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

Earnest Vaughn,
Plaintiff(s),
-vs-

South Carolina State of,
Defendant(s).

) IN THE COURT OF COMMON PLEAS
) 8th JUDICIAL CIRCUIT
) CASE NO.: 2019CP2400160
) APPOINTMENT OF COUNSEL OR GAL
) (Select one.)

) ☒ ORDER
) ☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- ☒ Post-Conviction Relief (PCR)/habeas case ☐ Adoption ☐ Juvenile
☐ SVP case ☐ Custody and/or Visitation ☐ Abuse and Neglect
☐ Minor Name Change ☐ Other: Post Convict Rel 500

It appears Earnest Vaughn, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- ☒ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
☐ court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
☐ Other:

Therefore, it is ordered that Ashley McMahan hereby is appointed as (Select one.)

☒ counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
May 3, 2019


☐ Circuit Judge ☒ Clerk of Court

Plaintiff Attorney:

Ashley A McMahan	Earnest Vaughn #246912
PO Box 5501	BRCU MA 144
West Columbia, SC 29169	4460 Broad River Rd
	Columbia, SC 29210

Defendant Attorney:

Janell H Gregory	
Attorney General's Office	
P.O.Box 11549	
Columbia, SC 29211	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

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

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

I. Procedural History

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

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

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

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

II. Factual Background

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

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

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

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

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

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

III. Current Application

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

A. Judicial Error / Abuse of Discretion

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

B. Prosecutorial Misconduct

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

C. "Police Misconduct"

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

D. Ineffective Assistance of Trial and Appellate Counsel

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

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

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

IV. Summary Dismissal for Allegations of Trial Court Error

Respondent moves Applicant's allegations of trial court error should be dismissed as non-cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160.

An applicant may commence a post-conviction relief action on the following grounds:

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

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

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

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

V. Summary Dismissal of Claims of Police Misconduct

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

VI. Response to Allegations of Prosecutorial Misconduct

In his application, Applicant asserts that prosecutors committed a Brady¹ violation by withholding exculpatory evidence. However, Applicant wholly fails to provide any specific allegations to support his claim, including what evidence prosecutors supposedly withheld from him. Accordingly, Respondent requests that Applicant, through appointed counsel, provide an amended Application on this allegation.

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

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

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

VII. Response to Ineffective Assistance of Counsel Allegations

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

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

VIII. Motion for More Definite Statement

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

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

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

IX. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to the Uniform Post-Conviction Relief Act² and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)–(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

X. Response to Any and All Other Allegations

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

² S.C. Code Ann. §§ 17–27–10 to –160.

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

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

Respectfully submitted,

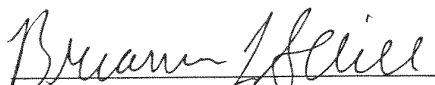
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

May 30, 2019

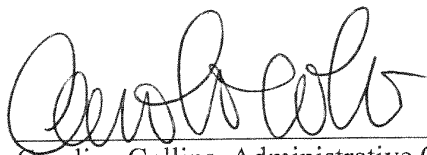
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	
	)	
	)	2019-CP-24-0160
	)	
EARNEST E. VAUGHN, SR., #246912,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

2019 MAY 24 PM 4:10
 2019 MAY 24 PM 4:10

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 **Return, Motion for More Definite Statement, and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan, Esquire
 McMahan & Taylor, Attorneys, LLC
 Post Office Box 5501
 West Columbia, South Carolina 29169

DATED this the 30th day of May, 2019.



Caroline Collins, Administrative Coordinator
 For Respondent

In Re:

Vaughn v State

Dear Clerk

I have a PCR case pending in Greenwood County. I have been transferred from Broad River Corr. Inst. to Mc Cormick Corr. Inst. so my address has changed.

Earnest Vaughn -246912
Mc C.I. F-4-133
386 Redemption Rd.
Mc Cormick SC 29899

Would you please advise all proper parties on my behalf?

Thank you very much

Date 7-19-19 / Earnest Vaughn
Earnest Vaughn

South Carolina Supreme Court
Columbia

Dear Clerk,

Columbia

pg. 1

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

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

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

Date 9-20-19

Respectfully Submitted

S. / ~~Ernest~~ Vaughn

Ernest Vaughn

M/C.I. F-42133

386 Redemption Rd.

M6, Cormick SC. 29899

C.C. File:

Greenwood Co. Clerk

SC. Attorney General

WOM/eev

South Carolina Supreme Court
Columbia

pg. 1

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

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

The Petitioner raised the following issues on the PCR application.

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

"The Petitioner also reserved the right - to amend."

pg. 2
The Attorney General's Office filed a partial return to the P.C.R. application. The Attorney General Employee asked that several issues raised on the P.C.R. application be dismissed and requested a more clear statement of facts be filed so they could make a more accurate return. However, they did not serve the Petitioner with a copy of that partial return. They also stated that any response or amendments not to be filed by the Petitioner himself.

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

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

Response To States Return
Statements Of Fact's

pg. 3

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

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

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

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

pg. 4

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

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

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

pg. 5
this unlawful detention and illegal search that was done by Agent Josh Hood and others. The search of the Petitioner by Agent Hood was recorded on the "dashcam" with video and audio. This search of the Petitioner violated the 4th amendment under Mapp v Ohio - 367 U.S. 643 (1961). This search was done without consent or a search warrant.

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

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

The Prosecutor Micah Black also with-held other exculpatory evidence. Chain of custody and the prior criminal records of a

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

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

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

pg. 7
a true billed indictment can take place. In the week of May 6th 2016 the court - calander for Greenwood Court shows that only the Court Of Common Pleas was in session and is vested with NO authority to take any action on matters pertaining to return of true billed criminal indictments. See, Dove v Gold Kist Inc. - 314 S.C. 235, 442 S.E. 2d, - 598, 600 (S.C. 1994); see also S.C. Constitution Artical V § 1. There is no true billed stamp affixed to either indictment in this case. Under Brown v State - 343 S.C. 342, 546 S.E. 2d 846 (2000) This issue can be raised at any time.

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

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

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

pending arrest warrant, in which, ^{pg 8}
was a pretext, (sham) warrant for
police not having a reason for
detaining the Petitioner in the
first place. This Warrant was
dismissed after the trial.

The Court abused its discretion
by giving a curative instruction.
The judge was aware that this was
done intentionally like throwing a
skunk in the box and asking the
jury not to smell it. This was
prejudice and it denied the
Petitioner a fair trial in violation of
the 6th & 14th amendment U.S. Constitution.

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

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

pg. 9

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

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

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

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

Sligh v Johnson - 283 S.C. 364, 342 S.E. 2d 620 (Ct App. 1986).
The burden of preserving an item or real
demonstrative evidence intact and free from
alteration is upon the party offering it in evidence.

pg. 10
The Court denied the Petitioner the right to challenge the authenticity of the evidence.

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

Conclusion

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

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

The charge's was later dismissed due to the 4th amendment violation and it was ordered to be expunged from the Petitioner's record.

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

pg. 11

case in Greenwood County,

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

Respectfully Submitted,
Date 9-20-19 S. Earnest Vaughn
Earnest Vaughn

Filed 12/8/19
2019 DEC 16 AM 11:12
JP 8th Jd Cr Greenwood, SC

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

Dear Clerk,

I would like to file these correspondence's between my lawyer and myself because it concern's an ex-parte filing to your office by the State. This is for future use.

Because I am a proper party to this case and the information the State was seeking, I should have been served with a copy of that document filed by the State.

I am also concerned about my Lawyer saying this P.C.R. will be held in Lexington County. "Has a change in - venue been granted in this case?"

Would you please return a clock stamped copy for my records?

Thank you for your time in this matter.

Date 12-7-19

Sincerely
Earnest Vaughn
Earnest Vaughn-246912
M^c C.T. F^u 1-182
386 Redemption Rd.
M^c Cormick S.C. 29899

McMAHAN & TAYLOR
ATTORNEYS LLP

November 22, 2019

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

Filed CP 8th Jud Cir Greenwood, SC
2019 DEC 16 AM 11:12

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

Dear Mr. Vaughn:

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

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

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

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

Best regards,

Ellen DuBois

Ellen DuBois
Paralegal for
ASHLEY A. McMAHAN
ATTORNEY AT LAW

AAM/erd
Enclosure

P.O. Box 5501 · WEST COLUMBIA, SC 29171
TEL 803-219-1110 · FAX 803-500-9140 · WWW.MCMAHANTAYLOR.COM

Dear Ms. M^cMahan,

pg. 1

I am in response to your letter dated 11-22-19. I have concerns about me not receiving a copy of the States partial return to my P.C.R. from either the State or by your office since I am a proper party to the case. "Therefore, this is ex-parte to me".

The State requested that some of my issues be dismissed because this is not a re-trial or it could have been raised on appeal. My Appellate Defense lawyer Taylor Gilliam admitted to me that, he was told not to raise the 4th amendment violation, although it was preserved for appellate review. That's 3rd party interference and "it violates his ethics".

Judge Hocker intentionally erred when he denied the motion to suppress evidence before my trial, when police admitted that they stopped the vehicle based on a false allegation about an active arrest-warrant on the driver. Anything (testimony or evidence) after that stop is poisonous fruits under the 4th amendment. If you have a difference in opinion on that fact you need to let me know now, please!

pg. 2

Because if your opinion is different,
you would be overturning the opinion
of many court's before my P.C.R. is held!

Judge Hocker testified from the bench
against me, saying that the police had
an unchallenged warrant for my arrest.
That was hearsay by him and other
officers that gave that testimony because
"no warrant was ever entered into evidence".

The testimony that they had Laurens Co.
on the phone was hearsay. They surely
did not have a reliable confidential informant
and no drug deal ever happen.

In fact, we can prove in this P.C.R. that
there was no drugs involved in this arrest.
The substance they claimed they seized
was field tested 11 times with negative
results and STED never tested it. They
only tested what Gregg Allison added to
it the next day. However, she later
stated she found meth in all 4 bags.

This is proof that, she lied under oath.
In fact, we can prove that all of the
police officers lied under oath.

pg. 3
"No-one had a warrant in hand for my arrest"! A N.C.I.C. was ran on me and Brandy Wilson and it was clear.

The Sheriff's Dept. does not have a record of that arrest warrant Brian-Louis claimed he signed. Louis also admitted he did not find drugs on me, he claims another officer said he did. So that was heresay also.

We can prove that this entire case against me is based on heresay, tainted-evidence, perjury, etc. My lawyer - Jane Merrill was clearly ineffective for not properly objecting and/or challenging all of this misconduct as it took place.

Chad Cox lied under oath when he said I did not ask for my Lawyer when he read me my rights. He wanted to question me. "However, he walked away"! This is when the sound was taken out of the dash-cam video, although Josh Hood said there was a microphone on the vehicle and his vest. So when he walked away that would not have affected the microphone connected to that dash-cam.

pg. 4
The police and prosecutor took the sound out of that video because of what I said and what Jarvis Reeder claims I said.

I never made a statement to police about any drugs and Jarvis Reeder did not read me my rights for a second time.

My lawyer should have objected to this. However, she requested a Jackson V-Dino hearing to suppress a statement that they did not have. Therefore, she was clearly ineffective at this time also.

The State shifted the burden of proof to the defense on all of these issues listed above but with-held the exculpatory - evidence from the defense before the trial. The Prosecutor also failed to correct any of the perjured testimony given under oath.

The Prosecutor (Micah Black) also tampered with my defense witness when she was under duress in jail on an abundance of charges. Micah Black promised her a favor in-exchange for her to change the truthful statement and lie under oath. This was also committed 3 days before the trial.

pg. 5

Since you have received the transcript of this trial, you should be able to determine that, everything I have listed above and what I have filed can be supported in my P.C.R. as true.

The act's of misconduct that was committed during my arrest and trial, "violated Due Process"! It clearly denied me equal protection of the law. All of the issues I have raised come as constitutional violations and should be heard in this evidentiary hearing.

By the Grace Of God and the fact, I have a Friend who work's in the Clerk's office, I was advised of the partial-return being filed by the State, I was able to get a copy of it and file a response with the format of a Writ of Mandamus because I know the Attorney General's Office does not intend to give me a fair evidentiary hearing. They stated that if a response was not filed, they wanted the P.C.R. to be dismissed. Therefore, with this letter you can also file a more definate statement of fact's response.

pg. 6
If you do file a response, you need to be sure to include the facts about the forged indictment's by the Prosecutor.

I need you to be ethical and professional in the handling of this case, because of the facts and circumstances as a whole we will get the relief I am seeking or the PCR Judge will err on all issues that are put before him.

I was not represented by the Public-Defenders Office. Aaron Taylor had the case first and he got the Rule 5. Then he claimed a conflict of interest due to being an ex-prosecutor, then Jane Merrill took over. Between that exchange of the discovery several documents was excluded. I told Ms. Merrill about this.

She was supposed to have asked for a continuance, because she was aware that she did not have all of the discovery. Instead she allowed the trial to begin; even though she was not prepared. She lied to me about 5 subpoenas she said she had served as a part of my defense. We will question her about this.

pg. 7

Since I expect more misconduct by the Attorney General's Office, I feel the need to file a copy of this letter with the Clerk's Office for future use if needed.

I want to make it clear that, I have not waived any of my constitutional rights during my arrest, trial, appeal, and I will not waive them in this P.C.R. evidentiary hearing, nor will I waive any issues I have raised.

We also need to subpoena all of the names listed above to be present at the evidentiary hearing.

Thank you very much Mam!
Please Respond.

Date 12-7-19

cc File;

Clerk Of Court

Sincerley

Ernest Vaughn

Ernest Vaughn

M^c C.I. F-1-182

386 Redemption Rd.

M^c Cormick S.C, 29899

Dear Ms. M^{rs} Mahan,

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

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

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

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

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

pg. 2

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

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

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

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

pg. 3

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

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

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

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

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

pg. 4.

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

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

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

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

pg. 5
It's obvious they tampered with the video,
and my lawyer should have objected to
it as inadmissible (tainted evidence).

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

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

This violated my 6th and 14th Amendment -
Rights and it rendered my trial fundamentally
unfair under the Due Process Clause.

It is also a fact that the Prosecutor, -
(Micah Black) tampered with a listed
defense witness just 3 days before the
trial, (Brandi Wilson) and conspired with
her to change her statement and lie under
oath in exchange for the dismissal of a
number of charges she was facing.

pg. 6

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

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

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

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

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

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

pg. 7

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

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

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

Date 1-14-20

Sincerely
Ernest Vaughn
Ernest Vaughn, 246912

McMAHAN & TAYLOR
ATTORNEYS LLC

January 7, 2020

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

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

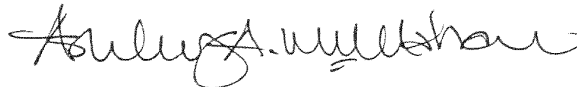
Dear Mr. Vaughn:

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

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

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

Best regards,



ASHLEY A. McMAHAN
ATTORNEY AT LAW

AAM

McMAHAN & TAYLOR
ATTORNEYS LLC

March 3, 2020

Chastity Copeland
Greenwood County Clerk of Court
ATTN: PCRs
528 Monument Street Rm #114
Greenwood, SC 29646

Re: Earnest E. Vaughn, Sr., #313102 v. State of South Carolina
2019-CP-24-00160

Dear Ms. Copeland:

Please find enclosed an amended application for the above-referenced matter. Kindly file this document and return a clocked copy to me in the enclosed envelope. Please note that because this is a PCR matter, it cannot be filed electronically.

Should you have any questions, I can be reached at the number listed below.

Best regards,



ASHLEY A. McMAHAN
ATTORNEY AT LAW

AAM

cc: Earnest E. Vaughn, Sr., #313102
AAG Brianna L. Schill

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

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

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

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

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

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

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

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

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

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

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

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

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

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

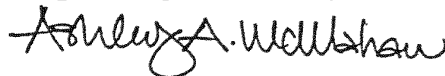
a. Mr. Black intentionally withheld the criminal record of the informant, Debbie Tucker. Furthermore, Mr. Black falsely indicated to the Court that the Applicant had made death threats against the informant.

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

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

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

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE

MCMAHAN & TAYLOR ATTORNEYS-LLC

PO Box 5501

West Columbia, SC 29171

803-219-1110

ashley@mcmahantaylor.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

March 3, 2020

OF SERVICE

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

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

This 3rd Day of March, 2020.

A handwritten signature in black ink, reading "Ashley A. McMahon". The signature is written in a cursive style with a horizontal line underneath the name.

ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant



Greenwood County Sheriff's Office

Dennis D. Kelly, Sheriff

Mr. Vaughn,

Enclosed is a copy of supplemental report 1600003053 you requested.

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

Respectfully,


Sam Watts

AGENCY I.D.
SC0240000

SUPPLEMENTARY REPORT

CASE NUMBER
1600003053

NCIC
INQ. ENTD.

☐ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☒ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 OF 1 PAGES

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

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

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

SUBJECT IDENTIFIED ☐ YES ☒ NO		SUBJECT LOCATED ☐ YES ☒ NO		☐ ACTIVE ☐ UNFOUNDED	☐ ADM. CLOSED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY							
REPORTING OFFICER ALLISON, G		DATE 01/29/2016	UNIT NUMBER 380	APPROVING OFFICER		DATE	UNIT NUMBER
				FOLLOW-UP OFFICER INVESTIGATION		☐ YES ☒ NO	

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

(IC) - Denotes In Camera
 (AW) - Denotes Applicant's Witness
 (SW) - Denotes State's Witness

(AW) Earnest Vaughn, Sr.

Direct examination by Ms. McMahan	6
Cross-examination by Ms. Schill	40
Redirect examination by Ms. McMahan	44

(AW) Jane Merrill

Direct examination by Ms. McMahan	45
Cross-examination by Ms. Schill	67
Redirect examination by Ms. McMahan	70

(SW) Micah Black

Direct examination by Ms. Schill	77
Cross-examination by Ms. McMahan	84

(SW) Taylor Gilliam (SKYPE)

Direct examination by Ms. Schill	91
Cross-examination by Ms. McMahan	93

Certificate of Reporter	97
-------------------------	----

E X H I B I T S

There were no exhibits introduced

1 THE COURT: We will now proceed with the case of
2 Vaughn versus the State. If Attorney Schill would
3 announce the case for me.

4 MS. SCHILL: Yes, Your Honor. The first case is
5 Earnest Edward Vaughn versus the State of South Carolina.
6 It's case number 2019-CP-24-0160. Applicant is presently
7 confined in the South Carolina Department of Corrections
8 pursuant to orders of commitment of the Greenwood County
9 Clerk of Court. During its May 2016 term, the Greenwood
10 County Grand Jury indicted Applicant for trafficking in
11 methamphetamine and unlawful neglect of a child. Jane
12 Merrill, Esquire represented the Applicant. Senior
13 Assistant Solicitor Elizabeth White and Assistant
14 Solicitor Micah Black of the Eighth Circuit Solicitor's
15 Office prosecuted the case. On October 31st, 2016 the
16 Applicant proceeded to a jury trial before the Honorable
17 Donald B. Hocker. The jury convicted Applicant on both
18 counts as indicted. Judge Hocker sentenced Applicant to
19 consecutive terms of 30 years imprisonment for trafficking
20 methamphetamine and 10 years imprisonment for unlawful
21 neglect of a child. Appellant Defense submitted a final
22 brief on behalf of Applicant on December 11th, 2017.
23 Assistant Attorney General J. Scott Matthews filed
24 Respondent's final brief on November 7th, 2018 in an
25 unpublished opinion and South Carolina Court of Appeals

1 affirmed the Applicant's conviction and subsequently the
2 remittitur was issued to the Greenwood County Clerk of
3 Court. Applicant filed this PCR action on February 14th,
4 2019 and subsequently filed an amended application
5 alleging various allegations of ineffective assistance of
6 Counsel as to Jane Merrill, his Defense Counsel.
7 Ineffective assistance of Appellant Counsel as to
8 Assistant Appellate Defender Taylor D. Gilliam and
9 prosecutorial misconduct as to Assistant Solicitor Micah
10 E. Black. And Applicant is present today and represented
11 by Ms. Ashley McMahan.

12 THE COURT: Thank you. Ma'am.

13 MS. MCMAHAN: Your Honor, just for the record, Mr.
14 Vaughn did file three pro se amendments to his
15 application. I tried to do my best in consolidating that
16 as concisely as possible but I've also asked that these be
17 construed as amendments. So Mr. Vaughn may be referencing
18 them. If that's the case, I will do my best to try to
19 direct you --

20 THE COURT: Has the State been provided a copy of it?

21 MS. SCHILL: Your Honor, the State wouldn't recognize
22 those amendments as he's represented by his Counsel. So
23 typically, when they have Counsel appointed, those are the
24 only amendments that the State considers.

25 THE COURT: Okay. We'll make it a part of the record

1 of the case.

2 MS. MCMAHAN: And also, just to note, one was filed
3 on September 26th of last year, one on December 16th of
4 last year and most recently on January 21st of this year.
5 Like I said, I did try to sort of consolidate these as
6 much as possible into my amended application.

7 THE COURT: All right.

8 MS. MCMAHAN: At this time we'll call Mr. Vaughn.

9 THE COURT: Mr. Vaughn, just come around up here, if
10 you would. Just come right up here, sir. Place your --
11 place your left hand on the Bible and raise your right
12 hand. The Clerk of Court will swear you in.

13 EARNEST VAUGHN, SR., being
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 By Ms. McMahan:

17 Q Could you state your full name for the record,
18 please?

19 A Earnest Vaughn.

20 Q Are you Senior?

21 A Yes, sir -- yes, ma'am.

22 Q And did you file this PCR application?

23 A Yes, ma'am.

24 Q And do you understand today, as I explained to you,
25 that you cannot get a time reduction on your case but you

1 can start over from the beginning with a new trial?

2 A Yes, ma'am.

3 Q Is that what you want?

4 A Yes, ma'am. Well --

5 THE COURT: I'm sorry. I missed that, sir.

6 A I wanted -- to start with, the first relief I asked
7 for was to vacate it and to suppress the evidence on me.

8 THE COURT: Okay. Sir --

9 MADAM COURT REPORTER: I can't hear him, Judge.

10 THE COURT: Sir, the lady way down there is the Court
11 Reporter.

12 THE WITNESS: Yeah.

13 THE COURT: She's taking down everything that's said.
14 So I need you to speak clearly and speak into the
15 microphone. And if you would, listen to your lawyer and
16 answer the questions that she ask you. Okay?

17 THE WITNESS: Okay.

18 THE COURT: Thank you, sir.

19 Q So you said your initial thing was you wanted the
20 conviction vacated and the drugs suppressed and I
21 discussed with you that this Court can't suppress the
22 drugs for you but they can vacate the convictions --

23 A Yeah.

24 Q -- so you can start over. Is that what you want?

25 A Yes, ma'am.

1 Q And you filed a couple of amendments, which I've, you
2 know, condensed for you. And you were represented by Jane
3 Merrill, is that correct?

4 A Yes, ma'am.

5 Q And what was your issues -- tell me your first issue
6 that you had with Ms. Merrill. Tell me about the --

7 A That she wasn't prepared for the trial.

8 Q Well, let's talk about --

9 A She didn't even have -- a lot of the discovery that
10 the State withheld and then some of it they started giving
11 it to her as the trial went on.

12 Q And in my summary I put that you had an issue with
13 her because she didn't adequately challenge the officer
14 related to the drugs that were found later on on the
15 floor.

16 A Yeah.

17 Q Tell us about that.

18 A Well, it's in the transcript where he says that, on
19 the scene where the drugs -- the substance that he seized
20 was placed on the hood of the car. And the evidence man
21 was out there and several other officers and two of them
22 done the inventory and they put down a certain amount that
23 totaled something like 18.22 grams or something. And then
24 he said he done another inventory at that time, when they
25 turned it over to him, to make sure it was accurate. And

1 then he said it was accurate.

2 Q And when you say he, are you talking about Greg
3 Allison?

4 A Greg Allison. Yes, ma'am. Okay. Now, the next
5 morning, he said -- he told the lawyers on my case, before
6 Ms. Merrill was, that he came in his office the next
7 morning and found a bag on the floor. And he said that he
8 added it to mine. But then in his testimony he said it
9 was just a logging error. That it wasn't nothing that he
10 had added to it.

11 Q And we had -- and you had supplied me with that
12 amended report. Is that correct?

13 A Yes, ma'am.

14 Q And that was attached to your --

15 A Yes, ma'am.

16 Q -- amended application? And is the contention today
17 that this -- it kind of explains what you were just
18 telling the Court about?

19 A Yes, ma'am. It says in there that he says he found
20 it. You know, talking about the next day. He said he
21 found it but then in his testimony at trial he says it was
22 never lost and it wasn't on the floor.

23 Q He says there was just an error logging it in. Is
24 that right?

25 A That's what he said. Yeah.

1 Q So then we move to be -- that you have an issue about
2 recusing Judge Hocker about -- related to your bond and
3 all that? Tell the Court about that.

4 A Yeah. Well, he was the only one -- where I had to go
5 back several times to get -- my bond was denied one time.
6 I went back and it was set at \$100,000.00 dollars and I
7 couldn't get out. I went back and it was set at
8 \$50,000.00 dollars. I think -- I'm not sure if he was the
9 one that denied my bond or if he was the one that reduced
10 it or put it at \$100,000.00 or the \$50,000.00. I know
11 Judge Hughston is the one that reduced it to the
12 \$20,000.00 or whatever it was when I got out.

13 Q So what was your issue that you felt -- because Mr.
14 -- because Judge Hocker had already addressed you a couple
15 of times in your bond that he already had a bias against
16 you when it came to trial time?

17 A Yeah.

18 Q Is that correct?

19 A Yeah. That and several other things that he done
20 too, you know.

21 Q What were the other things?

22 A I mean, he forced me to take a drug test before the
23 trial started, just on a personal opinion of his that he
24 thought I might have been on drugs then or something. I
25 don't know. But they done a drug test even though my

1 lawyer objected to it and he never did rule on that
2 objection. He just went ahead and drug tested me. And
3 then it came back and I wasn't on -- there wasn't no
4 illegal drugs in my system. The only thing that was --
5 showed up was -- he said amphetamines, which that could be
6 the cold medicine I was taking or it could have been like,
7 you know, the pain medication I was on.

8 Q And then was any -- and so at this point you felt
9 that because of that Judge Hocker, in his sentencing, was
10 a little harsher than he would have been?

11 A Oh, yeah.

12 Q And Ms. Merrill never moved to have him recused or
13 anything like that?

14 A No. And Mr. Black -- this right here is really not
15 even supposed to be on my record, it was supposed to have
16 been expunged. But I had a conviction overturned prior
17 back in 2004 and that was later dismissed on me and it was
18 expunged -- supposed to have been expunged. But then he
19 brought it up against me also at the sentencing. So I
20 mean, really that violated the expungement order.

21 MS. MCMAHAN: And Your Honor, just so you can follow
22 along, that's issue 1D that he's talking about right now.

23 Q And Ms. Merrill never really objected to that at all,
24 did she?

25 A No, ma'am.

1 Q And tell me about the issue with the family member
2 and the juror in the bathroom?

3 A Well, my granddaughter told me that she was in the
4 bathroom and she said a woman came in and she was crying
5 because she was upset because she thought I was going --
6 you know --

7 Q Who was crying? Your granddaughter or the woman --

8 A My granddaughter was. Yes, ma'am. And the juror
9 asked her -- the woman, you know, her name was Ms. Carter.
10 She asked her what was the matter with her and she told
11 her. She said she didn't want her papa to go to jail.
12 And then when she realized that she was my granddaughter
13 she went back out there and tells the bailiff that my
14 granddaughter approached her. But she lies about that
15 because she said that my granddaughter told her that it
16 was her daddy. And they said, well, couldn't she have
17 said granddaddy. And the woman said, well, she could have
18 said it but I'm sure. But my granddaughters -- none of my
19 grandkids call me granddaddy. They call me Papa.

20 Q So I mean, was that addressed by Judge Hocker during
21 the trial? Did he do anything about that?

22 A The State moved to have her removed from the jury.
23 Okay. Because I think Mr. Black said that he felt that
24 she couldn't be fair and impartial, you know. And then
25 the Judge said, well -- he asked my lawyer if she had a

1 position on that. And my lawyer said, Your Honor, I'm
2 trying this case without co-counsel. She said, I don't
3 have a position on that. So she didn't know what to do.
4 And so since she said she didn't know what to do on it,
5 then he went ahead and said, Well, I'm just going to leave
6 her on the jury. He said, I'm just going to ask her if
7 she can still be fair and impartial and if she says she
8 can, then I'm just going to leave her on. So he left her
9 on there.

10 Q And so -- and the basis for her not -- for Ms.
11 Merrill not being effective was because she didn't
12 adequately address that issue during the trial?

13 A That's one thing. Yeah.

14 Q Just talking about the juror in the bathroom?

15 A Yeah.

16 Q And then, we already talked about your overturned
17 conviction. What about the chain-of-custody on the drugs
18 and all that? What was your issue with Ms. Merrill with
19 that?

20 A Okay. Well, we talked about the changing -- the
21 altering of the evidence before and what was in her
22 office. And I told her that I said -- I said, I believe
23 -- because they had arrested me about a year before that
24 and two of the officers that arrested me then was
25 fabricating the evidence. They was caught fabricating

1 evidence against me. And then they -- the money that they
2 took from me, they kept it and they claimed they turned it
3 over to John Long with the Sheriff's Department, right,
4 for deposit. Well, I wrote and had them put under
5 investigation.

6 Q And who in particular are those two people you're
7 talking about?

8 A That's Robbie Byrd and Brandon Strickland.

9 Q And they're no longer with --

10 A No, ma'am. They got fired. They was -- they was
11 charged with embezzling and misconduct in office. And
12 several of the same agents that arrested me on this charge
13 here was the ones that was involved with them on that
14 arrest. And see, that charge was dismissed on September
15 the 12th, a month before I went to court. But they still
16 brought it up against me in the testimony in that trial.

17 Q And was that at the beginning of the trial, during
18 the trial? When did they bring it up against you?

19 A Well, I think they brought it up during the
20 suppression hearing and during the trial. And see, my
21 lawyer didn't object to none of that. The only time she
22 objected to any prior act being brought up against me was
23 the one -- the sham arrest warrant that they used -- they
24 admitted using it to skirt around, not having probable
25 cause for the stop and not having a reliable informant.

1 Q And that's on this current charge that you're --

2 A Yes, ma'am.

3 Q -- speaking of right now?

4 A Yes, ma'am.

5 Q And so that arrest warrant kind of, you know, seques,
6 (phonetic) into this. And that was the warrant they said
7 that they had out for you at the time that the car was
8 pulled over, or explain that to me.

9 A Yeah. Well see, they said they pulled the car over
10 to start with because they was talking to Laurens County
11 and Laurens County told them that they had a warrant for
12 the driver. Okay. And then he turned around and admitted
13 that that was false. So Ms. Merrill should have moved for
14 the dismissal of the charges at that point.

15 Q These current charges?

16 A Yeah, because it was an unlawful traffic stop. And
17 it's in the transcript. Two places where they mentioned
18 -- Ms. Merrill mentions that they're using that warrant to
19 skirt around not having a reliable informant. Okay. And
20 then later I got it where -- I don't know if it's Ms.
21 White or Mr. Black said -- also used the phrase that it
22 come up when we was trying to skirt -- skirt around --

23 Q So the phrase, skirt around, was used?

24 A Yeah.

25 Q Is that what you're saying?

1 A Yeah.

2 Q And did Ms. Merrill object to that phrase?

3 A No, ma'am. She said -- what she said was, she told
4 the Judge -- she said, Your Honor -- they said something
5 to the effect that they had a pretext arrest warrant and
6 they used it to try to get around not having a reliable
7 informant or a reason for the stop.

8 Q Okay.

9 A But then see, she should have -- somehow or another
10 she should have moved to separate. Mr. Black never would
11 have put that warrant on the docket for me to adjudicate
12 it.

13 Q Say that again. Mr. Black should have put that
14 warrant on the docket?

15 A He wouldn't do it. He would not do it. And I tried
16 to get Ms. Merrill to get him to -- to get up to put that
17 -- you know, if they wanted to bring it up. I tried to
18 get them to let me adjudicate. But see, the reason -- I
19 mean --

20 Q So you wanted Ms. Merrill to get that warrant on the
21 docket to adjudicate it?

22 A Yeah, because -- because the guy that said he signed
23 the warrant against me, he said -- and she should have
24 objected to this. He said that he signed the warrant
25 based on an incident report that another officer made and

1 --

2 MS. SCHILL: Your Honor, I'm sorry to interrupt. I'm
3 going to object. I think he's kind of going outside of
4 the scope of his allegations. I don't know where he's
5 going with all this.

6 THE COURT: I'll let him -- I'll let him proceed if
7 Counsel can lay a foundation.

8 Q Well, let's -- let's just move on for just a second
9 and maybe come back in a minute.

10 A Okay.

11 Q What -- okay. So we'd already talked about that the
12 chain-of-custody on the drugs was -- and the seisure and,
13 you know, Ms. Merrill not objecting to all that. And
14 there was the issue about, I guess, Josh Hood admitting to
15 detaining and searching you without consent. Is that
16 correct?

17 A Yes, ma'am.

18 Q And Ms. Merrill never really brought that up, did
19 she?

20 A Well, she did move to suppress because she said it
21 was an illegal search.

22 Q And that was what the first half of your trial was
23 about was the suppression, right?

24 A Yes, ma'am.

25 Q And then -- so the next one is, what was the deal

1 with the State's witness that was testifying against you?

2 How did she not adequately address that?

3 A Well, see, that witness was originally a Defense
4 witness. And she had got into a lot of trouble after she
5 -- me and her was in a relationship and we split up and
6 she was with my son, and him and her got into a bunch of
7 trouble. Something -- I don't know what all they done.
8 But when the -- when was arrested she give a statement
9 saying that I wasn't involved in nothing, that she was
10 involved with it with that Tucker girl, which the Tucker
11 girl said I wasn't never involved. She said she never saw
12 me or never talked to me, but --

13 Q So let me back up just for clarification. You're
14 talking about who was listed as the confidential informant
15 that called Ms. Tucker --

16 A Yeah.

17 Q -- to try to make a drug deal. Is that correct?

18 A Yeah.

19 Q And so the confidential informant never had any
20 charges brought, is that right, for organizing this sale
21 with Ms. Tucker.

22 A The girl that was with me, they brought charges
23 against her.

24 Q Yeah. But the girl that called the girl with you,
25 the confidential informant.

1 A Yeah.

2 Q She never had any charges brought against her for
3 that, did she?

4 A Not for that, but she had a bunch of charges --

5 Q Yeah.

6 A -- against her.

7 Q And she said -- and basically it came out that she
8 was working off those charges --

9 A Yeah.

10 Q -- by setting this up. Is that correct?

11 A Well, she denied the fact that she was working the
12 charges off. But then, it's in the transcript where Mr.
13 Black says that him and Ms. White could verify what offers
14 they made her. But then in her testimony, she testified
15 that she was not promised that there would be any charges
16 dismissed against her for her testimony.

17 Q But in your -- in the pretrial hearings they did talk
18 about that she was a CI that they had used a couple of
19 times. Is that right?

20 A Well, yeah. And they also -- Ms. Merrill brought it
21 up, when she got the CI packet that the two officers that
22 signed her up in 2013 was the two that was indicted for
23 the embezzlement and the misconduct in office.

24 Q Yeah. Mr. Byrd and Mr. Strickland?

25 A Yes, ma'am.

1 Q And so is it -- today -- Ms. Merrill, when all of
2 this was going on during your trial, she didn't adequately
3 either talk to the witness about her, you know, I guess
4 revealing the deal on the record or it wasn't adequately
5 brought up during the trial that she was working on
6 charges and all that?

7 A Well, she -- my lawyer questioned her about it. But
8 then she denied that it was going to help her in any way.

9 Q So who's she denying? You mean, Ms. Merrill denied
10 --

11 A Debbie Tucker.

12 Q Debbie Tucker.

13 A Debbie Tucker. Now but as far as the -- Brandy
14 Wilson, she was originally a Defense witness that gave a
15 statement in my defense because she was in jail without
16 bond in Greenwood County. And that's when Mr. Black got
17 her to go back on her statement in exchange for the
18 dismissal of a bunch of charges that she had pending
19 against her. That's where I raise the tampering with a
20 Defense witness.

21 Q Yeah. So that kind of goes into the issue against
22 Solicitor Black. But let's -- we'll get to that --

23 A Yeah. Okay.

24 Q -- a little bit later on.

25 A Okay.

1 Q So my last issue I have about Ms. Merrill is that --
2 the issue related to the dash cam and the audio. How is
3 she ineffective to that?

4 A Well, Mr. Black and them admitted that they cut the
5 dash cam video down to, it says in the transcript, 19.

6 Q You mean, the audio down? Oh, you mean, they
7 actually cut the video shorter. Okay.

8 A The video down to -- it says 19, 21, then it says 19
9 again, which it was originally had been probably about
10 between a 45 minute to an hour video altogether.

11 Q And so did Ms. Merrill just go ahead and consent to
12 that being chopped down? Is that -- did she do that?

13 A She never -- she never objected to it. But let me
14 tell you. What they did was, okay, Josh Hood had,
15 testified that the dash cam comes on automatically. And
16 he said that there was a microphone on his vehicle. And
17 he said that he also had a microphone on his person, you
18 know. Now, the sound -- when Chad Cox told me, he said, I
19 want to ask you some questions. He said, But you're not
20 under arrest. He said, But I want to ask some questions.
21 And I told him, I said, Well, I ain't answering no
22 questions, man. I said, I want my lawyer. Okay. Now, he
23 denied the fact that I told him I wanted a lawyer, in his
24 testimony. But he turns and walks away at that time. But
25 -- and from the time he read me my rights to the time I

1 said I want my lawyer the sound goes out on the video. So
2 you can't hear me say, I'm not going to answer no
3 questions. I want my lawyer. Okay.

4 Q Yeah.

5 A Then you can see Jarvis Reeder come into the video
6 and I'm still standing right there in the same spot right
7 at the front of the camera. And he's making threats
8 towards me and trying to question me and all this, you
9 know.

10 Q And this was also at the same time when there was no
11 sound?

12 A There was no sound. Okay. Now -- and see, Chad Cox
13 says -- he testifies that you can't hear us talking when
14 he's talking to me. Okay. And then when he walks away --
15 after I told him I wanted my lawyer, he walks away.

16 Jarvis Reeder walks right into the picture in the same
17 spot and starts questioning me. And he says, Well, I'll
18 read him his rights a second time. He never read me no
19 rights the second time. He just comes into the picture
20 and you can't -- and my lawyer said, Well, can you hear
21 your conversation with my client. And he said no.

22 Q So it's your assertion that Ms. Merrill was not
23 adequate in her representation regarding to either
24 suppressing the entire dash cam or adequately getting
25 appropriate testimony from the officers during the trial

1 about why there was no audio in the dash cam and the fact
2 that they weren't being consistent about whether or not
3 they had read you your rights?

4 A Yeah. But see -- now, there's a case -- I can't
5 remember what it is. But it says that -- I mean, she -- I
6 think she said it violated Rule 403 or something like
7 that, you know. But she should have objected to the dash
8 cam and some pictures that they had. They took me off the
9 camera and then taking pictures, you know, that she should
10 have objected to that.

11 Q Let's move on to Mr. Gilliam. So he was your
12 attorney that represented you on your appeal. Is that
13 correct?

14 A Yes, ma'am.

15 Q And I think you had a couple of issues related to
16 him. I think one was that he didn't raise some issues
17 that you wanted him to raise on appeal that was preserved.

18 A Yeah. Well, see --

19 Q What were those issues?

20 A One of them was the Fourth Amendment violation were
21 -- I mean, I explained to him the facts about the stop,
22 that it was an unlawful stop and that they used a sham
23 arrest warrant trying to justify detaining me.

24 Q And he didn't -- but he didn't bring that up on
25 appeal?

1 A No, but it was preserved.

2 Q And what was -- what were the other issues preserved
3 for appeal that he didn't bring up?

4 A Well, wait a minute. Let me tell you this. When I
5 -- when I got the brief filed and I seen that he didn't
6 raise that Fourth Amendment issue, I asked him why didn't
7 he raise it. And he said because he was told not to raise
8 it.

9 Q What other ones were preserved that weren't raised
10 that could have been raised?

11 A Well, the issue with the evidence. See, when I
12 brought it up at trial my lawyer told me that, she advised
13 me against challenging the chain-of-custody. All right.
14 So I brought it up to the Judge anyway and I told the
15 Judge that I wanted to put it on the record that they
16 tampered with that evidence and that the evidence that
17 they took to SLED is not the evidence that they claimed
18 they seized from me. And then he said, Well, if Ms.
19 Merrill sees an issue with the chain-of-custody that she
20 will -- I guess she will bring it up, right. But she
21 never brought it up. She said -- she told him that I was
22 bringing that up against her advice.

23 Q And so that issue, it was put on the record, correct?

24 A Yes, ma'am.

25 Q But did Mr. Gilliam bring it up in an appeal?

1 A No, ma'am.

2 Q Is there another -- any other issues that were
3 preserved that you felt he should have argued on appeal?

4 A Let me see. She objected several other times. I
5 told him that I wanted him to do a brief on each objection
6 that, you know, each issue that she preserved. And I
7 said, Look, whether your opinion it wouldn't be -- metris,
8 (ph) or not. But we want to get the ruling from the Court
9 of Appeals and get their opinion on it.

10 Q But he didn't do that?

11 A And he didn't do it.

12 Q And also, you had an issue with the fact that the
13 Court of Appeals ruled on the mistrial issue. But Mr.
14 Gilliam didn't take it up further to the Supreme Court.
15 Is that correct?

16 A Well, when they mentioned that warrant from a
17 previous incident on me, Ms. Merrill objected. And she
18 said, I would object to any mention of that warrant
19 whatsoever. And she went through the process of telling
20 him why -- what the reason was for the objection. And she
21 came up and she cited a case that she said, State versus
22 Kraft, but it wasn't, it was Raymond Kraft. See, she
23 didn't even know what case to cite relating to them
24 bringing up that prior bad act against me in front of the
25 jury. Okay. But she moved for a mistrial on it and the

1 Judge denied the motion for the mistrial. And I discussed
2 it with Mr. Gilliam. And I told him, I said, Well, if you
3 don't raise an abuse of discretion with that issue it's
4 not going to be -- they're not going to mess with that
5 anyway. So the Judge said that he was just going to do a
6 curative instruction, you know. But see, they done
7 brought up two other prior arrests that had been dismissed
8 against me.

9 Q And that was why she moved for the mistrial, right?

10 A Prior to that, but she never --

11 Q Yeah.

12 A -- said anything about those coming out. The only
13 one that she said anything about was the sham arrest
14 warrant. And then instead of them letting me adjudicate
15 that warrant after they used it against me at trial, he
16 turned around and dismissed it.

17 Q Mr. Black, you mean?

18 A Yeah.

19 Q Well, let's move on to Mr. Black because you've got a
20 couple of issues with him.

21 A Okay.

22 Q So one was that he -- what was the issue with him
23 withholding the record of Ms. Tucker?

24 A Okay. He sent her somebody else's prior record.
25 Now, he said that he withheld it because he felt that it

1 would put -- in so many words, he said that he felt that
2 it would put some people in danger or something. Because
3 he had said prior -- trying to get my bond revoked prior
4 to the trial. He tried to say that I made a death threat
5 toward the confidential informant, which was a lie. And
6 the Judge said, I'm not going to revoke your bond. You
7 don't have nobody here to say that he made a threat and
8 you don't have no evidence that he made a threat. I mean,
9 he was just trying to get my bond revoked --

10 Q Yeah.

11 A -- where he could get me back in jail and then hold
12 me -- try to stress me out so he could -- he could try to
13 negotiating and try to get me coerced into a guilty plea
14 of some kind.

15 Q Well, let's talk about that for a second. Were there
16 any plea offers given to you?

17 A Yeah.

18 Q What was the plea offer?

19 A Well, to start with, the first lawyer that was on my
20 case that took me to a bond hearing.

21 Q That was not Ms. Merrill, correct?

22 A That was -- no, ma'am. That was Aaron Taylor. Okay.
23 Now, we in there waiting to go in front of the Judge about
24 a bond hearing. And he asked me, he said, Well, what
25 would you take on a negotiated plea. And I told him, I'm

1 not pleading guilty to nothing.

2 Q And you never had any other conversations about plea
3 offers with Mr. Taylor after that?

4 A Not with Mr. Taylor. No, ma'am.

5 Q So then who else did you have plea conversations
6 with?

7 A Okay. So then -- so what happened then is, Brandy
8 sent the statement to Aaron Taylor. Okay. And then Aaron
9 Taylor turned around and said that since he got that
10 letter from her he was going to have to be a witness for
11 me. And that's when he conflicted it out to Ms. Merrill.

12 Q Did you have another attorney between Mr. Taylor and
13 Ms. Merrill?

14 A I had an attorney before Mr. Taylor.

15 Q I'm sorry.

16 A It was Joshua Nasrollahi.

17 Q And so Aaron Taylor was really your second lawyer and
18 Ms. Merrill was the third. Correct?

19 A Yes, ma'am.

20 Q And so Josh Nasrollahi, did he come to you with any
21 type of plea offers?

22 A No, ma'am.

23 Q And then Mr. Taylor's -- the only discussion you had
24 with him about the offers was him asking you if you would
25 plead to anything?

1 A Yeah.

2 Q And then Ms. Merrill, when she came in, what was the
3 conversations you had with her about plea offers from Mr.
4 Black?

5 A Well, she said that they was offering me 15 years to
6 plea.

7 Q And then what did you tell her about that?

8 A I told her -- I said, look, these charges are
9 fabricated up against me. I mean, the drugs -- SLED never
10 tested anything that he said he found when he arrested me.
11 They never tested any of that. The only thing they tested
12 -- and Ms. Black testified that she only tested one bag --

13 Q When you say Ms. Black, I don't want to get it
14 confused, Mr. Black, you mean SLED Ms. Black?

15 A SLED Ms. Black. Yeah. And she testified -- I've got
16 her testimony in the transcript.

17 Q Well, the Court has all that too.

18 A Yeah.

19 Q So let me just focus you for one second so we can
20 finish this one issue --

21 A Okay.

22 Q -- before we kind of get --

23 A All right.

24 Q -- into that. The offer that you had from Ms.
25 Merrill was 15 years?

1 A Yes, ma'am.

2 Q What was your reason for not taking that offer? Was
3 it because you felt like these were fabricated charges --

4 A Yeah.

5 Q -- and you didn't want to plead to anything?

6 A Yeah. Yeah.

7 Q And then --

8 A I mean, I knew that I was arrested in violation of my
9 Fourth Amendment rights. I mean, I knew that.

10 Q And so let's step back a second to talk about the
11 Solicitor, Mr. Black. So what was the issue -- you
12 alluded to this earlier in your testimony about the
13 discovery issues.

14 A Yes, ma'am.

15 Q So let's talk about that now.

16 A Okay.

17 Q So what were some of the things that you all didn't
18 get until the last minute?

19 A Well, the chain-of-custody on several things, the
20 prior criminal record, the confidential informant. But
21 which the Judge said -- in the suppression hearing, he
22 said that the credibility of the confidential informant
23 wouldn't be an issue in this case because she never had
24 anything to do with the arrest. I mean, basically, she
25 said -- testified that she never talked to me and she

1 never saw me. But basically, all of her testimony would
2 have been hearsay because -- I mean, Ms. Merrill said,
3 Well, did you record the phone call?

4 Q Yeah.

5 A He said, no. She said, Could you have recorded it?
6 He said, Yes, I could have recorded it.

7 Q And when you say he, you're talking about the officer
8 that dealt with the confidential informants, correct?

9 A Yeah. Whitfield --

10 Q Yeah.

11 A -- Brooks.

12 Q And he's the one that testified about the fact that
13 she was a confidential informant and was working off some
14 charges, right?

15 A Yeah.

16 Q So Mr. Black, in discovery, he didn't -- well, you
17 also talk about he didn't initially give you guys the
18 supplemental report that's attached to this about the --

19 A Yeah.

20 Q -- drugs?

21 A Yeah.

22 Q And that he didn't give you the right --

23 A And see, he wouldn't -- he would never -- even though
24 the allegation about that sham warrant come out, he
25 wouldn't -- he used that warrant against me. But he never

1 entered into evidence to give my lawyer a chance to
2 challenge it.

3 Q So by entering it in evidence, do you mean making it
4 a Court's exhibit so that the jury didn't see it or did
5 you want the jury to see it?

6 A Well, I mean, for the --

7 Q You mean like just turning it over to Ms. Merrill in
8 general?

9 A Under the rules of -- rules of evidence, before you
10 can put it into evidence in court, you've got to do it
11 properly.

12 Q You need to lay a foundation for it?

13 A Yes, ma'am.

14 Q So would you have wanted that warrant to come into
15 evidence so that the jury would have seen it, is my
16 question.

17 A No. But, I mean, I thought that they would have to
18 follow the same rules of evidence in the suppression
19 hearing. I mean, it should have been suppressed in the
20 suppression hearing.

21 Q So you wanted it to come in in the suppression
22 hearing as basically what we call a Court's exhibit so
23 that the Judge can view it and everybody else but the jury
24 would not have seen it?

25 A So my lawyer could have challenged it.

1 Q I got you.

2 A Yeah.

3 Q And then what was the issue with the Solicitor and
4 the field testing of the substance that he withheld?

5 A Okay.

6 Q Let's talk about that.

7 A That's something else that wasn't in the discovery
8 that was initially sent to Jane Merrill. But it was in
9 the discovery when Aaron Taylor was on my case. Okay.
10 There was a picture where Greg Allison field tested the
11 substance that they claim they seized when I was arrested.
12 Eleven times there was -- like it was --

13 Q It looked like a little paint tray kind of --

14 A Yes, ma'am. And there was 11 -- like 11 slots in
15 there where he tested each one of them and you can see
16 that it tested negative.

17 Q And why is that? Because what -- what color did it
18 come back as?

19 A And then -- black. And then -- and see, he never
20 even -- or the State never even mentioned that they field
21 tested anything.

22 Q So the State never brought up during the trial that
23 they had initially field tested it and it came back as
24 nothing?

25 A No.

1 Q And Ms. Merrill didn't really bring that up, did she?

2 A No. Well, see, I mean, I don't really think that she
3 knew about the field testing.

4 Q So any --

5 A I got that -- I got that -- and see, what I did,
6 after I got my time and got down to Broad River, I started
7 collecting documents, evidence for my discovery on this
8 right here --

9 Q Yeah.

10 A -- from the Sheriff's Department and from -- and I
11 wrote -- okay. The Sheriff's Department, the warrant that
12 they claimed they had on me, the Sheriff's Department
13 don't have a record of that warrant.

14 Q You mean for this particular charge that you're
15 serving or for something else?

16 A No. For the warrant that they said that was for an
17 incident on 11/23.

18 Q You're talking about when they're -- they were on the
19 phone with Laurens or what incident?

20 A No. It's where they come to that house and said he
21 found something in the floor.

22 Q Yeah. That was a totally different separate
23 incident, correct?

24 A Yeah.

25 Q Was that warrant ultimately dismissed?

1 A Yes, ma'am. After they used it against me at trial,
2 then they dismissed it after the trial.

3 Q And that was from Greenwood County?

4 A Yes, ma'am.

5 Q And that's the one you were asking to get a copy of
6 and they said they didn't have it --

7 A Yes, ma'am.

8 Q -- after the fact?

9 A Yes, ma'am. And I wrote -- I wrote -- the Clerk
10 wouldn't respond. I asked the Clerk for a copy of it and I
11 asked the Magistrate's Office for a copy, and my
12 girlfriend went up there and --

13 MS. SCHILL: Sorry to interrupt, but I'm going to
14 object. Once again, I think he's going outside the scope
15 of his allegations. I don't know where he's going with
16 all this.

17 THE COURT: Well, I'll allow him to go into it, but
18 he can't say what other people have said to him. So if
19 you would --

20 Q So you wrote to the Clerk, the Clerk didn't respond
21 and when -- and when you wrote to the Sheriff ultimately
22 you were not able to get a copy of it. Is that correct?

23 A Yeah. The Sheriff said, We don't have a copy of
24 that.

25 Q Let's not talk about what the Sheriff --

1 A Okay.

2 Q -- is telling you because you can't say that. But
3 ultimately you were never able to get a copy of it from
4 the Sheriff. Is that correct?

5 A No, ma'am.

6 Q And that's the prior incident, not the one that you
7 were tried on, right?

8 A Yes, ma'am.

9 Q Anything else that I didn't bring up about Ms.
10 Merrill?

11 A Well, just the fact that they said, when they made
12 the stop --

13 Q Who's they?

14 A Brian Lewis.

15 Q And remember, you can't talk about specifically what
16 they told you. But you can talk about what you learned at
17 the stop.

18 A Okay.

19 Q So this was the traffic stop with you and Brandy?

20 A This is -- yeah. Okay. They used -- they used that
21 warrant. They said they had the warrant in-hand.

22 MR. SCHILL: I'm going to object.

23 THE COURT: The way it's answered, I will sustain the
24 objection.

25 A Okay. They said --

1 Q Remember, you can't talk about what they said.

2 A Okay.

3 Q You can only tell me what you learned. So at the
4 traffic stop -- from what your understanding was after
5 talking to Ms. Merrill and your prior attorneys is that
6 the basis for the stop was that they had a warrant in-hand
7 for the arrest of one of y'all. Is that correct?

8 A In-hand for me.

9 Q And that was for the prior incident at the house, is
10 that correct?

11 A Yes, ma'am.

12 Q But it had nothing to do with this traffic stop --

13 A No, ma'am.

14 Q But that was the warrant that was ultimately -- that
15 you were not able to get a copy of and was dismissed?

16 A Yeah. And then -- I mean, can I say that they never
17 -- anybody -- they all admitted later in their testimony
18 that --

19 Q Well, it's in the -- it's in the record, right?

20 A -- they didn't have the warrant.

21 Q And that's in the trial transcript, right?

22 A Yes, ma'am.

23 Q Yes. You can reference the trial transcript.

24 A Okay.

25 Q Anything else in particular with Ms. Merrill that you

1 felt she should have done, but did not do?

2 A Well, when I went to -- see, I gave her the name of
3 five witnesses that was going to say that Brandy just had
4 picked me up from a couple's house that -- that was two of
5 the names I gave her. And then the other names, which was
6 my son, his wife and her daddy --

7 MS. SCHILL: Your Honor --

8 Q Don't talk about what they're going to say.

9 A Well --

10 MS. SCHILL: I'm still going to object. I haven't
11 heard this alleged at all. I think he's just --

12 THE COURT: I don't know what he's going to testify
13 to, so I can't say that it's out of bounds yet.

14 Q So you gave her the name of five witnesses that you
15 wanted to come to your trial and say, hey, Brandy had just
16 picked you up from that place and that you really didn't
17 know what you were getting picked up for?

18 A And that I wasn't in the car with Brandy when she
19 picked up my grandson.

20 Q So when --

21 MS. SCHILL: I would renew my objection.

22 THE COURT: I'll let him go ahead. Go ahead.

23 Q So what was -- so your issue is that Ms. Merrill
24 didn't subpoena these people?

25 A She told me she did.

1 Q Did they show up?

2 A And two of them rode down there with me the first day
3 and --

4 THE COURT: Sir, if you would, answer the question
5 that the lawyer is asking you and then you can explain.

6 Q Did they show up?

7 A Two of them did the first day. And then they didn't
8 come back the second day.

9 Q So by the time it was y'all's turn to present your
10 case, they didn't show back up?

11 A No. I asked -- no, ma'am. I asked Ms. Merrill did
12 she subpoena them and she told me --

13 Q Is it your understanding that Ms. Merrill had
14 subpoenaed them?

15 A Yes, ma'am.

16 Q Anything -- so we've already talked about Mr.
17 Gilliam. I think we're kind of limited on what we can
18 discuss because he's an appellant attorney. Mr. Black,
19 we've talked about what you felt was his misconduct.
20 Anything else that I have not addressed with Mr. Black as
21 far as his misconduct that you need to bring up that I've
22 forgotten. We already talked about the Defense witnesses,
23 about him talking to Brandy, about withholding the record
24 and about the issue with --

25 A Yeah. And then --

1 Q -- the field tests and all that.

2 A -- lying to the Judge about me threatening the life
3 of the --

4 Q Yeah. We brought that up.

5 A Yeah.

6 MS. MCMAHAN: Answer any questions Ms. Schill has,
7 okay.

8 THE WITNESS: Okay.

9 CROSS-EXAMINATION

10 By Ms. Schill:

11 Q Mr. Vaughn, how many times did you meet with Ms.
12 Merrill prior to your trial? Do you recall?

13 A Three times.

14 Q Were those in person meetings or over the phone or
15 how did --

16 A In her office.

17 Q Was it your testimony that Ms. Merrill did not review
18 your discovery with you? Is that what you testified to
19 earlier?

20 A She -- what little bit she had, she went over with me
21 and -- okay. They come up with some letters on the Friday
22 before the trial, okay, that Brandy said she received from
23 me. All right. And I told her that she should object to
24 them because I couldn't have wrote her --

25 Q Sorry. I'm going to cut you off. The question just

1 was, did you -- did your attorney review -- Ms. Merrill
2 review discovery with you? It sounds like that was a yes.
3 Is that --

4 A What little bit she had.

5 Q Did Ms. Merrill discuss the elements of the offenses
6 with you? The offenses that you were being charged with?

7 A I mean, she told me what I was charged with. She
8 didn't, you know -- I mean, basically, I already knew what
9 I was charged with.

10 Q Did she go over the elements with you? Like what the
11 State would need to prove to convict you.

12 A No, ma'am.

13 Q Did you and Ms. Merrill discuss your trial strategy
14 for your trial?

15 A Well, when I went to the Court House that morning, I
16 had asked her to get a continuance. I went down there
17 thinking that she was going to get a continuance because
18 she hadn't been on my case but about three months, you
19 know, and I knew she was not prepared for the trial. I
20 mean, she even admitted to the Judge that -- she said,
21 Your Honor, I'm trying -- she said, I'm trying this case
22 without co-counsel. You know, basically telling him, you
23 know, she don't -- she don't know really what to do in
24 certain stages of what was going on. And then when they
25 brought up the warrant on me that didn't have nothing to

1 do with that trial. She flat out told him that she -- she
2 said, I don't have a position on that. Telling him that
3 she didn't -- I mean, Mr. Black moved to have the juror
4 removed and the Judge said, can I hear from the Defense
5 lawyer, Ms. Merrill. And she said, Your Honor, I don't
6 have no position on that.

7 Q So is it -- are you testifying that Ms. Merrill did
8 not go over your overall trial strategy with you? Did she
9 sit down with you prior to the trial at any point and say
10 this is the angle we're taking, this is --

11 A No, ma'am.

12 Q -- these are your defenses? Okay. Did she review
13 the possible sentences with you? The possible
14 ramifications if you were convicted of --

15 A Yeah, she --

16 Q -- the charges?

17 A Yeah.

18 Q Do you recall admitting to an officer Jarvis Reeder,
19 Reeder, excuse me, at the scene that you had drugs on your
20 person? Do you recall that?

21 A I never told him I had drugs on me. That's another
22 thing that -- see, that's why they took the sound out of
23 the video because if the original video had of been played
24 in that courtroom then you would have -- it would have
25 showed that Jarvis Reeder never read me my rights the

1 second time like he said he did. And I never told him I
2 had drugs on me.

3 Q I'm sorry. You named some witnesses you at some
4 point told Ms. Merrill you wanted to come to your trial.
5 Who were they?

6 A That was my son, Earnest Vaughn, Jr., Stacey Vaughn,
7 Ricky Gunnells.

8 Q I'm sorry. Ricky --

9 A Ricky Gunnells.

10 THE COURT: Tell me that last name again.

11 A Danny Rogers.

12 Q I'm sorry. Ricky's last name was?

13 A Gunnells.

14 Q Can you spell that?

15 A G-U-N-N-E-L-L-S.

16 Q Sorry. You can keep going.

17 A And then Danny Rogers and Teresa Rogers. Now, them
18 two rode down there with me on the first day of the trial
19 when the Judge revoked my bond. He revoked my bond after
20 he made me take a drug test. Well, I passed the drug
21 test. There wasn't no illegal drugs in my system, but --
22 and the probation officer who gave me the drug test, he
23 said I showed positive for amphetamines, which that could
24 have been from the cold medication, the sinus medication I
25 had been taking, or some of the medication -- like the

1 pain medicine that I was on from the doctor because -- I
 2 mean, I was on blood pressure medicine and I've got COPD.
 3 So I take medication for that, and I have problems with my
 4 sinuses and stuff. So I was taking sinus medicine, too.
 5 I mean, that's amphetamines. Just about anything will
 6 show up there. I mean, it's over-the-counter stuff, you
 7 know.

8 MS. SCHILL: Beg the Court's indulgence, Your Honor.
 9 Those are all the questions I have. Thank you.

10 THE COURT: Any redirect limited to what she went
 11 into?

12 REDIRECT EXAMINATION

13 By Ms. McMahan:

14 Q So, Mr. Vaughn, the issue with the drug test was that
 15 you felt like even though it said amphetamines, you were
 16 on some prescription medication that the trial Counsel
 17 didn't adequately address with the Court?

18 A Yes, ma'am.

19 MS. MCMAHAN: I have nothing further, Your Honor.

20 THE COURT: Thank you, ma'am. Sir, thank you very
 21 much. Watch your step as you're stepping down. Mr.
 22 Vaughn, watch your step, sir.

23 THE WITNESS: Can I say one thing? I mean --

24 THE COURT: Your lawyer ask the questions.

25 THE WITNESS: I mean, can we state -- like put on the

1 record that this violated my Constitutional rights? I
2 mean --

3 MS. MCMAHAN: We've done that. It's in your
4 amendments.

5 THE WITNESS: It's in my -- yeah.

6 MS. MCMAHAN: Yeah. It's in all the stuff that's in
7 the record already.

8 THE COURT: Thank you, Mr. Vaughn.

9 (Whereupon, the witness stepped down from the witness
10 stand).

11 MS. MCMAHAN: Your Honor, the Applicant calls Ms.
12 Merrill.

13 JANE MERRILL, being
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 By Ms. McMahan:

17 Q Would you state your full name for the record,
18 please?

19 A Jane Merrill.

20 Q And were you the attorney that represented Mr. Vaughn
21 in his trial?

22 A Yes.

23 Q And he alluded to the fact that there had been two
24 other prior attorneys that represented him. So were you
25 the third person to represent him?

1 A I thought that I was perhaps the fourth, and then he
2 had a public, public defender. But I might have just been
3 the third. But I was aware of Mr. Taylor being the
4 attorney immediately before me.

5 Q So you were aware that Aaron Taylor had represented
6 him for a little while before you ended up taking it over?

7 A Yes. And another attorney, Andrew Hodges,
8 represented him on different charges.

9 Q And those were some of the charges that he alluded to
10 earlier about the other warrants and everything that were
11 ultimately dismissed?

12 A I don't know if they're the exact same ones.

13 Q And --

14 MADAM COURT REPORTER: Hey, Jane. I need you to
15 scoot up and talk loud.

16 THE WITNESS: Scoot up closer?

17 MADAM COURT REPORTER: Just talk loud.

18 THE WITNESS: Okay.

19 Q And when you got appointed, were you aware that the
20 trial was coming up shortly?

21 A Yes. I was appointed on June 16th, 2016 and the case
22 was on the trial docket for July. I talked to Mr. Black
23 about the possibility of continuing it because I had just
24 gotten it and he said that he was not willing to do that.
25 So I emailed -- of course copied Mr. Black on that. Judge

1 Hocker, I believe, was the Chief Administrative Judge and
2 he did continue it because I had just gotten it. So it
3 was originally scheduled for July.

4 Q And was Mr. Vaughn out on bond when you were
5 representing him?

6 A Yes.

7 Q And then ultimately I guess it got stepped in like
8 September, right?

9 A It was October 31st, November 1st and November 2nd of
10 2016.

11 Q And do you feel like you were adequately prepared for
12 that trial?

13 A I do.

14 Q And how long have you been practicing law?

15 A Twelve and a half years.

16 Q And so at this point it would have been --

17 A Eight and a half years.

18 Q About eight and a half. Okay. And what percentage
19 of your cases are typically criminal?

20 A At that time, I was actually doing more criminal
21 work. I don't know the percentage but in 2015 I know I
22 tried a murder case and then I tried several other things
23 in '15 and '16. So I would say maybe 30 to 35 percent was
24 criminal in my practice.

25 Q And so -- and Mr. Vaughn alluded to some issues with

1 discovery. Did you see any issues with discovery?

2 A We did not have some information about the
3 confidential informant until closer to trial and there
4 were also some letters that Mr. Vaughn wrote that the
5 Solicitor provided to me. As I understand it, the
6 Solicitor provided them to me the day after he received
7 them and that was in mid to late October before the trial.

8 Q And those were the letters that Mr. Vaughn was
9 talking about earlier --

10 A Yes.

11 Q -- that supposedly he had written to somebody?

12 A Yes.

13 Q And were those letters brought out at the trial? Do
14 you remember?

15 A Some of them were, I believe. I know we talked about
16 redacting some of them because Mr. Vaughn and I disagreed.
17 He thought some of them -- some of the letters actually
18 helped him and I disagreed about that.

19 MS. MCMAHAN: Your Honor, can I take a break briefly?

20 THE COURT: All right. You can step down just for a
21 second.

22 (Whereupon, the witness stepped down from the witness
23 stand.)

24 THE COURT: We'll stand at ease. I just need to
25 remind you not to have any discussion about the case.

1 THE WITNESS: Yes, sir.

2 (Whereupon, a short break was taken.)

3 (Whereupon, the witness returned to the witness
4 stand.)

5 Q So you said you did not have some information about
6 the CI until closer to the trial?

7 A That's correct.

8 Q You were talking about --

9 A We were talking about the letters, I think.

10 Q Yeah, yeah, yeah. And some of them were used against
11 them and some of them weren't?

12 A Yes. Well, I think what we did is in the pretrial
13 hearing we put all of them in as a Court's exhibit and
14 then we reached a redaction of some things. And I thought
15 they were fairly damning and I wanted some of those things
16 redacted. Mr. Vaughn disagreed with me and did not think
17 that anything should be redacted from the letters.

18 Q So he -- so you felt some of the information in there
19 should have been redacted out regardless just because of
20 -- like was not relevant or it was just super damning?

21 A Honestly, without looking at them, I can't tell you
22 exactly what we redacted. But, I mean, if I looked at it
23 I could explain my reasons for doing that. Yeah.

24 Q Did the State agree with your redactions or was it
25 basically the Judge said you can redact this?

1 A Yes. We -- I talked to the State's Counsel and we
2 agreed to redact certain parts of the letters. And I
3 thought that was in Mr. Vaughn's best interest to redact
4 some of the things.

5 Q But Mr. Vaughn felt that they were actually helpful
6 to him -- more helpful to him if they were not redacted?

7 A I guess you could say that. Yeah.

8 Q And you heard his contention earlier about those
9 letters that he had alluded to the fact that he couldn't
10 have written them to her while he was in jail or
11 something. When were these letters supposedly written?

12 A I can't recall if they were dated. Do you have a
13 copy of them?

14 Q You don't remember if the letters were even dated.
15 Do you know who they were sent to?

16 A They were sent to his co-defendant, Brandy Wilson,
17 and they were from Mr. Vaughn.

18 Q Did he deny that he ever wrote those?

19 A Can you give me a minute to look at my notes --

20 Q Sure.

21 A -- from discussing that with him?

22 My notes don't reference whether the letters were
23 dated but I did actually have Mr. Vaughn come to my office
24 the same day I received them and go over those with him.

25 Q And that was pretty close to trial, wasn't it?

1 A It was on the 26th of October. So, yes. It was
2 close to trial.

3 Q And I'm sorry. Let me back up a little bit and maybe
4 do this in a more chronological form.

5 A Okay.

6 Q So you got appointed and when was the first time you
7 met with him?

8 A On June 29th, 2016.

9 Q And that was because initially, it was supposed to go
10 to trial in July?

11 A That's correct.

12 Q Do you recall how long you met with him that day or
13 what you guys discussed or anything?

14 A Give me a minute to look at my notes.

15 Most of our meetings lasted at least an hour but
16 typically longer. And in this meeting, the client also
17 wanted to talk to one of his other attorneys. So I was
18 able to, while he was in my office, get that attorney on
19 the phone. And so -- on speakerphone, and we spoke with
20 him about his other charges because he --

21 Q Because he did have other charges --

22 A His charges somehow relate to the ones that I
23 represented him on. And so we ended up speaking for
24 awhile that day. And then, also, after that called this
25 attorney with Mr. Vaughn in the room and spoke with him

1 about it.

2 Q I think that kind of goes to his issue about the
3 warrants. So there were warrants from another arrest or
4 an issue that happened at a house. Is that correct?

5 A I don't recall exactly what the warrants were about.
6 But Andrew Hodges is the attorney that represented him on
7 that and my notes reflect that Andrew Hodges agreed that
8 the charges that he represents Mr. Vaughn on and the
9 charges I represent him on are not related.

10 Q So the warrant -- when you heard Mr. Vaughn today
11 talk about his issue with the warrants and all that
12 dealing with this trial, did you see any issues with
13 moving to suppress the warrants or trying to get them
14 kicked out? Was he already indicted by the time you got
15 him?

16 A I'm pretty certain he was, but I don't want to
17 misspeak and I don't have the indictments right in front
18 of me.

19 Q Do you recall if you saw any issues with those
20 indictments when you represented him?

21 A I don't recall seeing any issues with the
22 indictments.

23 Q It looks like he was indicted in May of 2016.

24 A Okay.

25 Q So he was already indicted by the time you got to

1 him.

2 A I thought that was correct.

3 Q In review of the arrest warrant and the indictment,
4 did you see any reason to move to have those quashed or
5 anything like that? Was there anything facially wrong
6 with them?

7 A Not that I recall.

8 Q Did you see any reason to believe that the Grand Jury
9 did or did not meet on 5/6/16?

10 A No.

11 Q Are the Grand Jury dates set by the same dates that
12 are listed on the Court Administration website as to terms
13 of court?

14 A As far as I know. I don't have a lot of personal
15 knowledge about the Grand Jury.

16 Q So you get him in, you meet with him and you talk
17 about the fact that there's a trial coming up. What kind
18 of defenses and trial strategy did you talk about with
19 him?

20 A So on this first day we met, we talked about the
21 trial. We also talked about his case. He brought up to
22 me about his concern with Officer Strickland and Byrd
23 being fired. Those are the officers related to his other
24 case. I think we really didn't start talking trial
25 strategy though until probably a later meeting.

1 Q And what was your basic trial strategy?

2 A This case was very strong against Mr. Vaughn and I
3 told him that several times. And so it was -- I did move
4 to suppress the drugs. It was more legal arguments were,
5 you know, our best strategy. And to address his concerns
6 about the witnesses, I did send subpoenas to the witnesses
7 and -- if I may look at my notes.

8 Q Uh-huh.

9 A I believe I talked to at least one of the witnesses
10 beforehand with Mr. Vaughn in my office. But I didn't
11 know that he was going to bring that up. So I didn't have
12 time to find it in my notes. But on the date of -- so on
13 the third day of trial his son, Earnest Vaughn, Jr. was
14 brought over to the Court House pursuant to a subpoena.
15 He was represented. He was brought over from the
16 Greenwood County Detention Center. He was represented by
17 Elizabeth Able with the Public Defender's Office. I spoke
18 with her and she said that Mr. Vaughn, Jr. would plead the
19 Fifth if I put him on the stand.

20 Q So with the son getting up and pleading the Fifth,
21 did you feel like that was going to help your case?

22 A I did not feel like that would help the case at all.
23 We also -- Mr. Vaughn and I stepped into a conference room
24 and called Mr. Gunnells. And in talking to Mr. Gunnells
25 he was going to say that he thought that it was Mr. Vaughn

1 in the car when Brandy came to pick the child up.

2 Q Did you think that was going to help you?

3 A I did not think that would help him and I told -- my
4 notes reflect that on the same date, I told Mr. Vaughn
5 several times that I did not think it would help him if
6 his own witnesses say the same thing that the State was
7 saying about him being with Brandy Wilson picking up the
8 child. And that went to the unlawful neglect charge.

9 Q So the issue about whether or not Mr. Vaughn was in
10 the car at the time Brandy picked him up came down to
11 whether or not the kid was also in the car at the same
12 time. Because if the kid was in the car when Brandy came
13 to pick him up it was definitely unlawful neglect, or if
14 it was later, it was --

15 A Well, the child had just been picked up and the
16 question was whether or not Mr. Vaughn was in the car when
17 Ms. Wilson went to pick up the child and retrieve the
18 child.

19 Q Okay, okay. I am sorry. And then just to kind of
20 back up. So I guess the main issue you alluded to was the
21 suppression of the drugs that you were trying to get
22 through?

23 A Yes.

24 Q But before that, you were -- the trial was in front
25 of Judge Hocker. Did you see any reason to try to move to

1 recuse Judge Hocker or did you feel Judge Hocker had any
2 biased against Mr. Vaughn at this point?

3 A I did not and I looked back at my notes and I didn't
4 have anything in them where my client had asked me to do
5 that. And I do have some other notes where, you know,
6 client suggested this and I explained why that was or
7 wasn't a good idea and things like that. So my notes
8 don't reflect that. And also, Judge Hocker was actually
9 the Judge on September 15th, 2016 that denied the State's
10 motion to revoke his bond.

11 Q So he was the Judge that also set the \$100,000.00
12 dollar bond, but then later denied revoking it?

13 A I don't know who set the bond without looking at the
14 paperwork. So I don't want to misspeak on that. But on
15 September 15th, 2016 Judge Hocker was the presiding Judge
16 at the bond revocation hearing.

17 Q And then at the beginning of the trial Mr. Vaughn
18 talked about the drug test. What was that in reference
19 to?

20 A So during the trial when it first started through the
21 pretrial hearings and things, Mr. Vaughn appeared to be
22 asleep and not really paying attention. And Judge Hocker
23 called the Counsel up to the bench and expressed his
24 concerns. And I explained that I had not ever seen Mr.
25 Vaughn like this. Mr. Vaughn told me that he was taking

1 medicine for COPD and that made him sleepy. And he
2 continued to do that really kind of throughout the trial,
3 what appeared to be falling asleep. And that was actually
4 something I had a concern about, about whether or not I
5 needed to, you know, possibly do something different. And
6 so I ended up calling over to the jail to ask how he was
7 doing there and if he was exhibiting the same behavior
8 there. And they indicated that he was not doing that at
9 the jail and that he was receiving breathing treatments
10 there.

11 Q So is that -- so Judge Hocker ultimately requested a
12 drug test on him, I guess?

13 A Yes. And I did object to that.

14 Q When it came back positive for amphetamines, was
15 there any kind of explanation you could give Judge Hocker
16 to kind of justify that, that Mr. Vaughn had told you
17 about?

18 A Give me one minute to look through my notes. The
19 only information I have in my notes is that I actually, I
20 guess, had written Mr. Vaughn a note and in his
21 handwriting he said, Take some medicine for my COPD that
22 makes me drowsy.

23 Q That was the only indication of what he was taking
24 during the trial?

25 A Yes.

1 Q And during the trial, I guess, there was also an
2 issue related with the juror in the bathroom. Can you
3 tell me about that?

4 A Yes. I'm trying to recall which date that was so I
5 can refer to the correct notes. Do you recall if that was
6 November 1st or November 2nd?

7 Q I think it was the 2nd.

8 A Okay. Yes, okay. I've got my notes for that. Do
9 you have a specific question or do you want me just to
10 tell you what I recall about that?

11 Q Just what you recall about it.

12 A Juror 29, I guess she got a message to the bailiff.
13 But told the Judge that she was in the bathroom and that
14 Mr. Vaughn's granddaughter approached her and asked if she
15 was a juror. Ms. Carter said yes and the granddaughter
16 said that, you know, she wanted to talk to her or
17 something. And then in looking at the transcript, Judge
18 Hocker brought Ms. Carter and questioned her. And then he
19 brought her in again just to ask her if she could be, you
20 know, fair and unbiased.

21 Q And she indicated that she could still be fair and
22 impartial?

23 A She did.

24 Q And I believe the State made a motion to have her
25 excused as a juror. Is that correct?

1 A That is correct.

2 Q And that you had -- Mr. Vaughn earlier alluded to the
3 fact that you did not give a statement, I guess, to the
4 Judge as to what your position was, that you'd rather --
5 you took no position on it and alluded to the fact that
6 you had no co-counsel. Do you remember anything about
7 that?

8 A The co-counsel, the only time that was mentioned was
9 when I needed to do a little bit of research. I just
10 needed a break to be able to look up and go get the Court
11 some case law and that was my only reference to not having
12 co-counsel. I just can't research and talk to the Judge
13 at the same time.

14 Q Yeah.

15 A So I asked for a minute to look at that. That's the
16 only time I think that's referenced in there. And as far
17 as my notes, looking at them, I believe I talked to Mr.
18 Vaughn, you know, briefly when this was occurring about
19 it. And he didn't have a strong position that he wanted
20 me to ask for her to be removed. And then when the State
21 did I figured that motion was, at that point, before the
22 Court.

23 Q So you kind of agreed, I guess, essentially with what
24 the State was doing?

25 A Yeah. I mean, I didn't specially agree or disagree

1 because she had already testified that she could be fair
2 and impartial. And I think that's really as far as the
3 Court could go with that questioning.

4 Q And prior to the trial did you guys discuss any plea
5 offers?

6 A We did.

7 Q What was the plea offer?

8 A Mr. Vaughn was offered 15 years. We discussed that
9 several times. The State, I asked if they would please
10 leave it open until they provided me the CI information
11 and I had an opportunity to discuss that with my client.
12 And they did leave it open and we discussed that several
13 times. And every time Mr. Vaughn did not want to plead
14 guilty to anything.

15 Q Did you explain to him what he was facing if he was
16 convicted of this?

17 A Yes. I absolutely did, several times.

18 Q And did you explain to him what the elements were
19 that the State had to meet in order to find him -- get a
20 guilty finding?

21 A Yes. We discussed that, again, numerous times.
22 Prior to his trial I met with him six different times.

23 Q What -- in your opinion, what -- not your opinion.
24 What was Mr. Vaughn's biggest issue with this case that he
25 had?

1 A He had a lot of different issues with the case. I
2 think -- and I guess he's mentioned some of them, but the
3 drugs being -- you know, something about them being on the
4 floor. As part of the discovery I did receive a -- give
5 me just a minute, a supplemental report that referenced
6 Greg Allison inventorying them and it being slightly
7 different or -- let's see. Yeah. He basically says in
8 looking at them and he missed one of the individual bags
9 in the one labeled bag one, and also the one labeled bag
10 two. And that incident report is dated January 27th,
11 2016. And a copy of this was given to Mr. Vaughn. He
12 asked for a copy of his file and I mailed it to him, and
13 that document was mailed to Mr. Vaughn.

14 Q And is that the same document that's attached to the
15 amended application?

16 A Yes, it is. And so I did have that before trial.

17 Q And did you discuss that with Mr. Allison about the
18 issue with the amounts of drugs and all that during the
19 suppression hearing?

20 A I made a strategic decision and I told Mr. Vaughn
21 that my concern in us harping on that and making a big
22 deal of it was that it would just emphasize to the jury
23 the amount of the drugs. I thought it would place a lot
24 of emphasis on that. Particularly since after the
25 suppression hearing the trial Court had ruled that, you

1 know, they were admissible.

2 Q So strategically, you were like, hey, I'm not going
3 to keep bringing this up over and over again because I
4 don't want the jury necessarily to keep hearing about the
5 weight of these drugs repeatedly?

6 A Correct.

7 Q And did you see an issue with the chain-of-custody of
8 those drugs or what SLED testified to?

9 A No. The information that I was provided in discovery
10 shows that Greg Allison on February the 8th, 2016 took the
11 drugs to SLED. SLED's chain-of-custody matches that they
12 were received on February the 8th of 2016.

13 Q So Allison -- Greg Allison says he took it there on
14 February what, 8th?

15 A February the 8th. And that's a report that he
16 created that's kept at the Greenwood County Sheriff's
17 Office. And then SLED's chain-of-custody form said that
18 they were submitted on February the 8th of 2016. The same
19 day.

20 Q And then within SLED's chain, you didn't see anything
21 with that, like within the analyst and all that?

22 A I did not.

23 Q And what was the issue about the deal that this
24 confidential informant was making with the State in order
25 to testify?

1 A The information I had from Solicitor Black was sent
2 via email that Ms. Tucker had a three year offer to
3 resolve her charges made by a former Assistant Solicitor.
4 A different Solicitor had been -- and Mr. Black believed
5 that she had rejected that three year offer. And so that
6 was my understanding of what had been offered and, you
7 know, while she was on the stand, I certainly asked if she
8 thought it would help her if she testified. And one time
9 she kind of admitted it did and another time she kind of
10 denied that. But I certainly explored that with her on
11 the stand.

12 Q And what was the issue with the dash cam and the
13 audio?

14 A So there were -- part of the video did not have sound
15 or audio and I verified with the Solicitor that -- you
16 know, I asked if this was how the video came or did they
17 change anything. And he indicated that that is how they
18 received it and it was not altered. And that for some
19 reason -- and I believe the officer testified to some of
20 that. But I would need to look at the transcript to
21 recall the officer's point about the audio.

22 Q So Mr. Black had indicated that nobody at the
23 Solicitor's Office had altered it?

24 A Correct. And I'd have to find that email, I don't
25 want to misspeak, to tell you if he mentioned whether or

1 not he had any concerns. But I don't think he had any
2 concerns that the Sheriff's Department had changed
3 anything.

4 Q So there was nothing -- nobody was in dispute about
5 the fact that the video was missing some crucial sound
6 portions to it?

7 A I'm not sure if it was crucial, I guess, because it
8 wasn't there. So it's hard to answer that.

9 Q And as much as the allegations from Mr. Vaughn about
10 these were the incident times where he was advised of his
11 Miranda rights and he said he didn't want to speak to
12 anybody. And then Reeder coming up to him and trying to
13 get him to state something else. And he says, no, I don't
14 want to talk to you all. I want my attorney. So like
15 that was the issue, I think he said, where there was no
16 sound. So, you know, besides that --

17 A Right. And that's what, you know, Mr. Vaughn says.
18 He said, I think -- I'm going to have to look at the
19 transcript to be certain. But -- I can't recall exactly
20 what Officer Reeder said. But I know the officers
21 testified. I can't remember exactly which one. But they
22 did read him his, you know, Miranda rights and things of
23 that nature. And we did also have a Jackson V. Denno
24 hearing pretrial. So that was done as well.

25 Q And what was the statement that he made in the

1 Jackson V. Denno hearing? Do you recall?

2 A I don't.

3 Q Do you feel like you're on the stand and I'm asking a
4 lot of like exam questions right now?

5 A No. It's fine. I just don't know right off the top
6 of my head without looking. And I don't know what page of
7 the transcript that might be on.

8 Q I think it starts at page 32.

9 A Thank you. On page 32 is --

10 Q I think it starts with a direct, Josh Hood. I mean,
11 the Jackson V. Denno hearing was -- I mean, I believe it
12 was kind of more of a suppression kind of Jackson V. Denno
13 hearing combo thing, would you say?

14 A Yes. That's fair.

15 Q And ultimately, whatever the statement was and the
16 drugs, the Court ruled that they should come in. Is that
17 correct?

18 A That's correct. And I apologize. I don't recall the
19 exact statement without finding it in here and I don't
20 want to waste the Court's time flipping pages.

21 Q And what was the issue with the overturned conviction
22 that was allowed to be mentioned during sentencing?

23 A So he did have a prior charge that was overturned at
24 a PCR hearing. And that was mentioned but it was
25 mentioned and said that that was, you know, overturned at

1 a PCR hearing. And then Mr. Vaughn had concerns that that
2 was one of the convictions upon which the State was
3 relying on for this to be a third offense. He wrote me a
4 letter and asked me for that information and I wrote him
5 back and sent him a copy of the three sentencing sheets
6 that the State presented to support their contention that
7 this was a third offense and none of them were the one
8 that was overturned on PCR.

9 Q I got you. Okay. And did you object to them even
10 bringing up the fact that he had a prior conviction that
11 was overturned?

12 A I did not. You're talking during sentencing, right?

13 Q Yes.

14 A I did not.

15 Q Was it mentioned to the Court that that conviction
16 had actually been overturned?

17 A Yes.

18 MS. MCMAHAN: Give me one minute, Your Honor.

19 Q What was the sham warrant he keeps referencing?

20 A I believe that is the one that the officers said they
21 had that was going to -- that they also served on him at
22 this buy bust.

23 Q So the one that Mr. Hodges represented him on but it
24 was from a prior incident?

25 A It's from a prior incident. I don't know which

1 attorney represented him exactly on that one.

2 Q But it had nothing to do with the buy bust that he's
3 currently serving time on? It was a total separate
4 incident that I guess he alluded that it was at the house?

5 A Yes. I don't recall exactly the incident. But yes,
6 it was related to a separate incident.

7 Q And did you represent him on that separate incident?

8 A I did not.

9 Q And do you recall if you brought up whether or not
10 that there was some sort of pretext issue for them pulling
11 him over or anything because of that warrant?

12 A Can you give me a minute to check my notes? I
13 skimmed the transcript but I don't want to misspeak. I
14 honestly don't recall if I brought that up or not at the
15 pretrial.

16 MS. MCMAHAN: Answer any questions Ms. Schill may
17 have.

18 CROSS-EXAMINATION

19 By Ms. Schill:

20 Q If you don't mind, could you just give the Court sort
21 of a background on the underlying charge and the facts of
22 the case?

23 A So law enforcement had arranged a buy bust with the
24 CI, Ms. Tucker. And they agreed to meet at this car wash
25 location near BI-LO on Highway 25 North. And pursuant to

1 that arrangement and setting that up Ms. Wilson and Mr.
2 Vaughn were in the car with a child that I believe is
3 related to Ms. Wilson. And then Tucker was suppose to
4 arrive and officers came in and arrested Mr. Vaughn and
5 found the drugs. I mean, stopped the car and all that.
6 And then they found methamphetamine and marijuana. And
7 they found methamphetamine on his person in his pants and
8 they took pictures of that, of where they located the
9 drugs.

10 Q You probably heard Mr. Vaughn talk about field tests.
11 Do you recall getting any information about these field
12 tests?

13 A I don't recall that. And the way he was describing
14 that it sounds to me like the marijuana testing, but I
15 don't want to -- I don't recall anything about field
16 testing. I don't recall it being an issue and I don't
17 recall it being mentioned.

18 Q But just for the record. So SLED still testified as
19 to their own separate analysis for the methamphetamine.
20 That would be separate from the field test. Is that fair
21 to say?

22 A Yes.

23 Q Just to sort of summarize for the record. Did you
24 file a Rule 5 or, slash, Brady motion in this case?

25 A I did.

1 Q Is it fair to say the State was compliant with that
2 motion?

3 A Yes. Yes. I mean, they got information to me that
4 they had fairly quickly. And then the CI information and
5 the letters, you know, came closer to trial. If you'll
6 give me one minute.

7 Q Sure.

8 A I was trying to see if my notes indicate -- I believe
9 I had discovery at least by the second time I met with Mr.
10 Vaughn and we began looking at it then.

11 Q I believe you testified earlier that the State's case
12 against Mr. Vaughn was strong. Is that correct?

13 A Yes.

14 Q And why do you say that?

15 A The pictures of where the drugs were located, I
16 think, were very clear that he was the one carrying the
17 drugs. I felt like there might be some issues with the
18 stop. But I told him that I thought it was likely I would
19 make those motions. But I thought it, you know, was quite
20 possible the Judge would allow the evidence in. He also
21 -- this was definitely a third conviction. So in
22 considering offers I reminded him of that numerous times.
23 But I think it was just strong based on the pictures, the
24 video, the number of officers there. I don't feel like
25 there was an issue with the chain-of-custody. I mean,

1 just numerous ways that you might otherwise be able to
2 challenge it.

3 Q And so just to summarize for the record. So you had
4 a motion to suppress hearing at the beginning to suppress
5 the drugs and the Judge denied that. Is that correct?

6 A That's correct. If I could add one other thing.
7 Also, found on -- I can't recall exactly if it was in the
8 car or on his person, but there were other -- there was
9 drug related like scales and things like that also found
10 at the buy bust.

11 MS. SCHILL: Beg the Court's indulgence, Your Honor.
12 Those are all the questions I have. Thank you.

13 THE COURT: Any redirect limited to what she went
14 into?

15 MS. MCMAHAN: No, Your Honor.

16 THE COURT: Thank you, ma'am. Watch your step as
17 you're stepping down. Any reason why the witness cannot
18 be excused? Did you say you didn't have any?

19 MS. MCMAHAN: I am sorry. I thought she said wait
20 one moment.

21 THE COURT: Okay.

22 REDIRECT EXAMINATION

23 By Ms. McMahan:

24 Q The issue with the chain-of-custody. Greg Allison
25 obviously dropped it off on the 8th and SLED indicates

1 they received it on the 8th. But there's a page on there
2 that talks about Jarvis Reeder and something on June -- I
3 mean, January 27th. Did you see any issues with any of
4 this stuff up here?

5 A I mean, you're saying this stuff, you're talking
6 about like before it got to SLED?

7 Q Yeah. Do you see any issues with the Greenwood
8 chain? And then when it gets to SLED, obviously, you know
9 -- on the SLED report, the chain report, there are
10 signatures from the Greenwood sheriffs. Is that correct?

11 A That's correct. Yes.

12 Q The different ones involved?

13 A And Greg Allison, who is the one who took it to SLED,
14 is the one who signed it --

15 Q Yeah.

16 A -- and that shows on the SLED chain-of-custody.

17 Q So did Greg Allison fill out this chain report or did
18 Jarvis Reeder fill out this chain report?

19 A I honestly can't tell you. If it says Jarvis Reeder
20 on the top, I assume it would be and there's Mr. Reeder's
21 signature. I have no reason to doubt what it says. And
22 then Mr. Allison is the one who signs it later.

23 Q So the initial report was filled out by Jarvis Reeder
24 for evidence. And then when Mr. Allison picked it up he
25 would have filled out one of the lines saying he picked it

1 up and took it somewhere. Is that your understanding of
2 the--

3 A That's my understanding. I mean, he -- Jarvis Reeder
4 fills out the first section, certifies this and then
5 leaves it in the evidence locker. And then Greg Allison
6 gets it from an evidence locker.

7 Q Is Greg Allison one of the evidence custodians?

8 A Yes.

9 Q So it's his job to take it from the evidence locker
10 where Jarvis Reeder has just put it and to indicate on
11 Jarvis Reeder's form that, yeah, this is what Jarvis
12 Reeder has submitted. And I -- like I'm concurring with
13 that, except that we have a supplemental report where it
14 says that he mislabeled some stuff?

15 A I'm sorry. I didn't quite follow you.

16 Q So when Jarvis Reeder fills out this form with the
17 drugs and he's submitting it into the evidence locker --
18 which is what he said he did, right?

19 A Yes.

20 Q And then Greg Allison saying he -- the same day, he
21 had taken it out of the evidence locker and has moved it
22 and put it there. And then he moves it again on the 8th.
23 He takes it out of the evidence locker and then takes it
24 to SLED on the 8th?

25 A Yes.

1 Q So this initial part is Jarvis Reeder, I guess, is
2 the one who was on-scene that collected this. Is that
3 your understanding?

4 A Yes.

5 Q And then when you go to the SLED worksheet, the
6 signatures are from Greg Allison, correct?

7 A That's what it appears to be.

8 Q But there's no signatures from any SLED, you know,
9 individuals on there, correct?

10 A I don't think so. I can't -- yes, because it looks
11 like Greg Allison signed it when he submitted it. And
12 then on March 3rd of 2016 it says return to agency and
13 person. And it looks like he signed it saying he received
14 it.

15 Q And then below that is what SLED did with it in the
16 meantime?

17 A Yes.

18 Q Their internal chain?

19 A Well, I think it also is different pieces of evidence
20 --

21 Q Yeah.

22 A -- because then they say it's still returned on --

23 Q On a different --

24 A And so Mr. Allison has signed in other places, I
25 think, for different pieces of evidence.

1 Q And you didn't see any issue with that?

2 A No.

3 Q And was the chain adequately testified to at trial
4 since some of this is fungible material?

5 A Yes.

6 Q Did you review Ms. Black's testimony from SLED?

7 A Did I review Ms. Black's testimony to prepare for
8 today? Yes.

9 Q Did you see any issue with the problem that she
10 testified that she only supposedly tested the meth out of
11 one bag but then said there was meth in all four bags?

12 A Can you point me to where it is in the transcript?

13 Q Yes.

14 A If you don't mind.

15 Q She starts testifying on page 318 and I believe it
16 starts on 324, line 15 and 16. So it looks like the
17 internal chain was submitted as an exhibit.

18 A Yes. That's what it appears.

19 Q She talks about what she does at SLED. Do you recall
20 what exactly she testified about the weight -- or did you
21 ever get a specific report about the weight of the drugs?

22 A I know I got a SLED report and it would have the
23 weight on it. So, yes, I got that.

24 Q You did have that before trial?

25 A Yes. I had that before trial. Without looking at

1 it, I don't recall the weight off the top of my head. But
2 yes, it did contain that.

3 Q And so she says on page 334 --

4 A Thank you.

5 Q -- that the total weight -- net weight of all four of
6 these together is 13.5 grams?

7 A Yes.

8 Q She talks about on the page before, on 333 on line
9 15, there were two Ziploc bags. One of them was labeled
10 number one and one was labeled number two. The first one
11 -- the first bag I actually got in to test, it had four
12 Ziploc bags inside and each of those bags had another
13 plastic bag in there. So essentially, four plastic bags
14 that had a crystal substance in them and I tested each one
15 of those.

16 A Yes. I see that.

17 Q Did you see any issue with her testimony in follow-up
18 cross-examination as to her testing some of the packages
19 versus not testing others? She did talk about the
20 confidence level.

21 A Yes. I see on page 337 that's what she talks about.

22 Q And you did object to -- under the pretrial
23 suppression and you renewed your objection at that point,
24 did you not?

25 A That's correct. Yes.

1 Q And she says there were 13 baggies total?

2 A Yes.

3 Q And she said, There were 13 bags that I did not test
4 -- that I did not test. All weighed less than a gram
5 each. That's on the bottom of page 337.

6 A Yes.

7 Q And I believe on 338, you start cross-examining her
8 about that slightly?

9 A Yes. I ask her about whether she tested every single
10 bag or just one of them.

11 Q And she said, I did not test them to prove that it
12 was meth. But based on my experience and the way they
13 looked it was a pretty good chance they were.

14 A Yes.

15 Q And then you followed up with, Did you do any
16 scientific testing on those 13? No.

17 A Yes. I see that.

18 Q So based on your questions that you're reviewing now,
19 did you see -- are there any other questions you could
20 have followed-up on her?

21 A About the weight of it?

22 Q About the weight or the fact that she just presumed
23 that those 13 bags were meth. Because she admits there's
24 13. She just presumed that they were meth, that she
25 hasn't tested them. Is that correct?

1 A Yes. That's what it appears on 338.

2 MS. MCMAHAN: Your Honor, I'd just direct your
3 attention to Ms. Black's testimony and if you would just
4 review it.

5 THE COURT: I have it. Thank you.

6 MS. MCMAHAN: Thank you. I have no further
7 questions, Your Honor.

8 THE COURT: Thank you, ma'am. You may step down.
9 Watch your step as you're stepping down.

10 (Whereupon, the witness stepped down from the witness
11 stand).

12 MS. MCMAHAN: Your Honor, the Applicant rests.

13 THE COURT: Any reason why this witness cannot be
14 excused?

15 MS. SCHILL: I have no objection.

16 MS. MCMAHAN: No objection, Your Honor.

17 THE COURT: Thank you, ma'am. You may be excused, as
18 well. Thank you for coming. Does the State wish to call
19 any witnesses?

20 MS. SCHILL: Yes, Your Honor. I guess, first we'll
21 call is Mr. Micah Black.

22 MICAH BLACK, being
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 By Ms. Schill:

1 Q Thanks for coming, Mr. Black. I'll try to keep this
2 short. Where are you currently employed?

3 A I work at the Eighth Circuit Solicitor's Office in
4 the Greenwood/Abbeville side of the Eighth Circuit's
5 office.

6 Q And were you employed at the Eighth Circuit
7 Solicitor's Office in 2016?

8 A I was.

9 Q Were you one of the prosecutors on Mr. Vaughn's case?

10 A I was.

11 Q In your opinion, do you feel that the State had a
12 strong case against Mr. Vaughn?

13 A Yes. We had a very strong case against him.

14 Q What makes you say that?

15 A Well, this case was -- it was a buy bust case.
16 Essentially, a confidential informant was used to set up a
17 drug deal. The arrival of Mr. Vaughn and Ms. Wilson, the
18 co-defendant, they arrived at the scene before the CI was
19 able to get there. So law enforcement went ahead and
20 conducted a stop. Mr. Vaughn had an outstanding warrant
21 for a possession of meth charge. They identified him
22 being in the vehicle. So they went ahead and made a stop
23 to keep the CI basically out of things. I think it would
24 be safer, is what they explained to me. When they
25 ultimately made the stop and pulled Mr. Vaughn out of the

1 vehicle, they Mirandized him. And according to their
2 testimony and the reports, he ultimately confessed where
3 the drugs were. He said he had the drugs on him. They
4 pulled the drugs out of his groin area. Obviously, that
5 was kept in the chain-of-custody of law enforcement. They
6 ultimately sent that down to SLED to be tested and it did
7 come back for methamphetamine.

8 Q Do you recall the issues with the dash cam and the
9 audio of the video?

10 A Yeah. I was looking at the transcript briefly
11 yesterday and then when the issue came up I was reviewing
12 it as well. From my recollection, I think it was Officer
13 Hood's vehicle, if I'm not mistaken, was the dash cam
14 video they used. Back in the day, and I still think so
15 now depending on how old the car is, they will -- the
16 camera is outfitted with a microphone. And whoever is
17 driving the car or whoever's outfitted with that car, the
18 microphone goes with the car. So if an individual whose
19 car is associated with steps away from that vehicle, then
20 you're not going to get any audio. So in this case, the
21 officer who initially -- whose car they were using, whose
22 car they were standing in front of, like I said, I think
23 it was Officer Hood's vehicle, he stepped away at a
24 certain point. And so when Mr. Reeder -- when Officer
25 Reeder would have been talking to Mr. Vaughn, that would

1 not have picked up on the microphone since the microphone
2 was away from the conversation.

3 Q And I'm sure you've heard Mr. Vaughn testify about
4 field testing.

5 A Yes.

6 Q Do you recall a field test being done?

7 A I don't remember that coming up at all. I mean, I
8 would guess that it was done, they typically do that. But
9 I don't remember anything about a field test and I don't
10 remember us bringing it up -- that up at trial. If a
11 field test was -- I mean, we can't go on a field test. It
12 has to be confirmed by SLED. So regardless of what the
13 results are on a field test they're typically when there's
14 -- when it's a drug case or when there's a suspicion of
15 drugs, it's always sent down to SLED for confirmatory
16 testing.

17 Q And was that tested by SLED in this case?

18 A It was.

19 Q We'll move to just the few allegations against you
20 specifically. Did -- I'm sure you heard Ms. Merrill
21 testify about the fact that she filed a Rule 5 and Brady
22 motion. Is that how you also recall that she filed a
23 motion -- a Rule 5 motion?

24 A Correct, yes.

25 Q And is it fair to say that you were compliant with

1 the Rule 5 Brady motion?

2 A Yes. We turned over everything that we had. We had
3 turned over everything to Ms. Merrill that we had given to
4 Mr. Vaughn's previous attorneys. I think he had gone
5 through PD. I know he had Mr. Taylor. I know he had Mr.
6 Nasrollahi and then Ms. Merrill. Everything that we
7 provided them we continued to turn that over to Ms.
8 Merrill. And then we continued to provide discovery as
9 more information came to light. For example, I think in
10 one of the allegations, and this may be your next question
11 about the CI packet, I was looking back in our computer
12 system and there was an error. I asked for the CI
13 information to be run. And so when I pulled it up in the
14 computer the other day when I got this request to be here,
15 I pulled it up and the person -- the individual was a
16 different -- it was a different CI. It wasn't Ms. Tucker.
17 So at that point I pulled out the notepad. We realized
18 that during the course of the trial that the CI that we
19 had -- that the criminal history that we had provided was
20 incorrect. We remedied that during the course of the
21 trial. Looked back at the testimony during the trial.
22 Her record was brought up. The charges that she had
23 pending, they were brought up, and any kind of deals that
24 we had associated or were in the process of making with
25 her, any kind of -- that was all brought up. So that was

1 something that we corrected during the course of the
2 trial. And I don't remember exactly when that was. I
3 think it was early on in the trial. Maybe like the first
4 day that Jane -- Ms. Merrill had requested. I think she
5 told us, hey, this isn't the right record. So we remedied
6 that.

7 Q And what about the death threats against the
8 informant? Do you recall stating to the Court that the
9 Applicant made death threats against the informant?

10 A I think the informant had told us, when we were
11 discussing with her -- kind of, you know, telling her,
12 hey, you're a potential witness. We gave her a subpoena.
13 We asked her to show up to Court. I think -- if I'm
14 remembering correctly, she had conveyed to us that she had
15 received some death threats. So all we did was
16 communicate that to the Court just to let the Court know
17 what was going on. But I really don't think anything came
18 of it. I don't know if -- I don't even know if a formal
19 warning was sent down by the Judge just to say, hey,
20 everybody calm down. I don't -- I don't really remember
21 what exactly happened. But I believe that we did convey
22 that to the Court based on the CI's concerns and the
23 threats that she was receiving.

24 Q Was that outside the presence of the jury?

25 A It was.

1 Q Just a couple more things. The supplemental report
2 from Mr. Greg Allison --

3 A Yes.

4 Q -- is that something you gave to the Defense along
5 with your discovery?

6 A It was. We gave it to Ms. Merrill as well as the
7 other attorneys that were on the case.

8 MS. MCMAHAN: Your Honor, I would just ask -- my
9 client informed me that he really needs to use the
10 restroom. I was just wondering if we could take a break
11 and let him do that.

12 THE COURT: All right. Step down. Sir, I just need
13 to remind you not to have any discussions with anybody
14 subject to your testimony.

15 THE WITNESS: Thank you.

16 (Whereupon, a short break was taken.)

17 CONTINUE DIRECT EXAMINATION

18 By Ms. Schill:

19 Q Just a few more questions. Do you recall how many of
20 the plastic bags were actually tested by SLED?

21 A Yeah. Well, I pulled up the report a minute ago.
22 Let me refer to this. There's two items that were sent
23 down. Item 1.1 and item 1.2. Item 1.1 is a Ziploc bag
24 and it's labeled number two and it was containing four
25 Ziploc baggies, each containing plastic bags containing

1 crystal substances. It looks like -- it says,
2 "Methamphetamine found in the sample tested," and it says,
3 "Four tested." So I believe she tested all four of those
4 baggies and I think that's what the transcript also shows.
5 The total weight of that is 13.51, which is the threshold
6 of what he was charged with, the 10 to 28 grams and her
7 confidence for the weight was 99.7 percent. In the next
8 item, which is item 1.2, and those are the Ziploc bag one
9 containing the 14 Ziploc bags. That was the smaller
10 amount of methamphetamine and the total weight was 3.44
11 grams. She did only test one of those bags, but I believe
12 her testimony -- she indicated during the trial that the
13 appearance of all those Ziploc baggies were similar. And
14 because the weight still kept it in that threshold of 10
15 to 28 grams. There was really no need for her to test
16 every single one of those 14 bags. She just tested one.
17 Since they all looked alike and were similar in kind of
18 what the components were, she just tested one and that one
19 did test positive for methamphetamine.

20 MS. SCHILL: Thank you. Those are all the questions
21 I have.

22 CROSS-EXAMINATION

23 By Ms. McMahan:

24 Q So you testified earlier that she had only tested one
25 of the bags out of the 14 and the other 13 were not

1 tested?

2 A That's according to her report. And if I'm
3 remembering her testimony, I believe that's what she said
4 on the stand.

5 Q And so the field testing, you said that wasn't
6 necessarily something you would use at trial because you'd
7 have to have it confirmed by SLED?

8 A I mean, I have before, but I also haven't before.
9 But I don't remember anything in any reports and I don't
10 remember it being brought up at all. So regardless, the
11 SLED results, that's what controls.

12 Q So even if it had field tested negative, but then
13 sent to SLED and SLED was like, oh no, this really is
14 whatever, you would use whatever SLED told you it was?

15 A Yes.

16 Q And then the issue with Ms. Tucker. When did you
17 give the RAP sheet of Ms. Tucker to trial Counsel?

18 A I'm not exactly sure. I want to say it was, you
19 know, in the first part of the week but it was certainly
20 before she testified. And I'll say this. That's --
21 typically, we don't hand over CI packets and the CI
22 criminal history on the front end. Typically it's our
23 office policy to wait usually the week before, before all
24 that stuff gets turned over just to protect confidential
25 informants as best we can. But obviously it's -- it's

1 Brady and we have to -- we have to turn it over. If we go
2 to trial it's something we turn over, we just do it
3 usually the week before.

4 Q And that's consistent with some U.S. Supreme Court
5 case law that says that you can protect the confidential
6 informant?

7 A I believe so. I haven't read those cases
8 specifically, but it sounds familiar. Yeah.

9 Q But there's some people in your office that have told
10 you about all that, right?

11 A That's right. That's right.

12 Q Hold on one second. Let me get my amendment. And so
13 did Ms. Tucker ultimately ever plead to three years or
14 were her charges dismissed?

15 A I don't remember what she pled to and I was trying to
16 -- I was trying to figure that out earlier. But we have
17 switched case management systems and it's a little bit
18 unclear how all that data got transferred over. So I
19 don't know, remember what she pled to or what she
20 received.

21 Q This would have been in Greenwood County, right?

22 A It would have been.

23 Q So if there's something in the public index that
24 shows that she would have pled to something, would you
25 dispute that?

1 A I would not.

2 Q And then do you recall if you dismissed any charges
3 because of her testimony?

4 A I don't remember. It's possible. I was able to look
5 up the co-defendant and saw kind of what we did with her.

6 Q And then the issue with -- and I can't recall if Ms.
7 Schill has already brought this up, but the discovery with
8 -- you did talk about the supplemental report. And that
9 was turned over to Ms. Merrill, correct?

10 A Yeah. It was turned over to everybody. It was
11 turned over to Mr. Taylor, Ms. Merrill, all the attorneys
12 he had. It was in the primary discovery pack that we sent
13 out to everybody.

14 Q And that -- was that discussed at the suppression
15 hearing? Do you recall?

16 A I believe it was discussed during the suppression
17 hearing. I also -- I know that it was discussed during
18 our case-in-chief.

19 Q And did you meet with any of the witnesses beforehand
20 and try to like coerce them into testifying a certain way?

21 A No.

22 Q Do you normally meet with them just to kind of --
23 like kind of go over what they can expect at trial?

24 A It just depends on the witnesses. I don't remember
25 what we did here. I do remember this being an issue

1 because several of his attorneys mentioned that to us. So
2 we did -- I remember that we did talk to Greg Allison
3 who's the evidence custodian in Greenwood, to kind of
4 confirm what his supplemental report was saying and I do
5 remember that discussion occurring.

6 Q And so when you said I remember this, just for the
7 record, you pointed to the supplemental report, correct?

8 A That's correct. The supplemental report issued by
9 Greg Allison and that report is dated January the 29th,
10 2016. So that would have been two days after this
11 incident that occurred on January the 27th, 2016.

12 MS. MCMAHAN: And that's the same supplemental report
13 that's attached to the amended application, just for the
14 record, Your Honor.

15 Q And did you see any other major issues with this case
16 as far as trying it? Were there any other -- was it your
17 standard run of the mill kind of drug case for you guys?

18 A It was. I mean, it was a little bit different
19 because it was a buy bust and they -- Mr. Vaughn and his
20 co-defendant arrived before the transaction took place.
21 So the CI wasn't there when law enforcement showed up. He
22 had an outstanding arrest warrant for this possession of
23 methamphetamine. I think that's what he keeps referring
24 to as a sham warrant. But he had an outstanding warrant.
25 So law enforcement had the warrant. So they went ahead

1 and stepped in, arrested him and he had this additional
2 methamphetamine in his groin area when they searched him.

3 Q So when the cops got there, Mr. Vaughn and his
4 co-defendant are already sitting there, the CI hasn't
5 shown up yet. But they knew that Mr. Vaughn had an arrest
6 warrant for that prior incident at the house?

7 A Correct.

8 Q And that's what they ultimately were like, hey, we've
9 got this -- was that warrant ultimately dropped?

10 A Against Mr. Vaughn?

11 Q Uh-huh.

12 A It was. When he -- that case was -- he actually -- I
13 think he overdosed. And so when law enforcement showed
14 up, they found some methamphetamine in the room. And
15 there was some case law that came out after this that
16 basically said if somebody overdoses and EMS has to come
17 out and tend to a person, you can't really use that to
18 charge somebody. So -- and I think that was even after I
19 dismissed the case. But we dismissed that case after the
20 conviction occurred.

21 Q And was that also the one that Byrd and Strickland
22 were involved in?

23 A I'm not sure if they were involved in that one or
24 not. I can check, if you would like. On that possession
25 case it looks like that was just a road deputy that showed

1 up and dealt with that and his name is Steve Owens.

2 Q And that's the one where you said you suspect that he
3 had overdosed. But you ultimately dropped it after the
4 trial, but even then there was a case that came out that
5 said you wouldn't have been able to do much with it
6 because if EMS is coming out to treat somebody, then --

7 A That's my understanding of how that case reads.

8 MS. MCMAHAN: That's all I have.

9 THE COURT: Any redirect limited to what she went
10 into?

11 MS. SCHILL: No, Your Honor.

12 THE COURT: Thank you, sir. You may step down.
13 Watch your step as you're stepping down. Any reason why
14 the witness cannot be excused? Any reason why the witness
15 cannot be excused?

16 MS. MCMAHAN: No, Your Honor.

17 THE COURT: Thank you, sir. You may be excused.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Thank you for coming.

20 (Whereupon, the witness stepped down from the witness
21 stand).

22 THE COURT: Does the State have any other witness?

23 MS. SCHILL: Yes, Your Honor. Just one more. Mr.
24 Taylor Gilliam will be testifying via SKYPE.

25 THE COURT: Y'all got it set up so she can record?

1 MS. SCHILL: Okay.

2 (Whereupon, a short break was taken.)

3 THE COURT: For purposes of the record, will you
4 identify the witness one more time?

5 MS. SCHILL: Yes, Your Honor. This is Mr. Taylor
6 Gilliam of the Appellate Defense.

7 TAYLOR GILLIAM, being
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 By Ms. Schill:

11 Q Thanks, Mr. Gilliam. It's Brianna Schill from the
12 AG's Office speaking. Where are you currently employed?

13 A The South Carolina Commission on Indigent Defense.

14 Q Were you employed there in 2016 and 2017?

15 A Yes.

16 Q Were you the Assistant Appellate Defender who was
17 assigned to draft the briefs of Mr. Vaughn's case?

18 A Yes.

19 Q Did you ever talk to Mr. Vaughn regarding his appeal?

20 A Yes. My phone log indicates that we spoke
21 approximately seven times.

22 Q What occurred during those conversations? Do you
23 have notes of those conversations?

24 A I do have notes. The very first call was in response
25 to the letter that I had sent him introducing myself and

1 informing him that I would be representing him. I wrote
2 down that he was jubilant and upbeat and that we had a
3 brief discussion of the facts and the Fourth Amendment.
4 We planned on discussing his case in more detail in May.
5 We spoke in May of 2017. He called me. It was his
6 birthday. We floated the discussion of the transcript one
7 more month due to my heavy workload. In June of 2017 we
8 spoke. Mr. Vaughn described an Ohio case that had a
9 similar issue as his. I was unable to find it on Westlaw.
10 He did not have any details other than it was from the
11 Ohio Court of Appeals. I searched then and I searched
12 again when drafting and was unable to find the case from
13 the Ohio Court of Appeals. We spoke in August of 2017 and
14 I wrote down that Mr. Vaughn called wanting to hear my
15 voice and wondered whether there were any updates in his
16 case. I informed him that the brief would be filed later
17 that month and we spoke about the transcript. The brief
18 -- the initial brief was filed on August 22nd and there
19 were three calls that occurred after that. He indicated
20 that he had never received the State's brief. So our
21 office sent it. He left a voicemail in May of 2018 asking
22 for two pages of the transcript which were sent. And in
23 January of 2019 Mr. Vaughn called and indicated that he
24 had never received the closing documents. So those were
25 resent.

1 Q Can you sort of inform the Court of what issue you
2 brought on appeal in the brief?

3 A Yes. So in the initial brief of Appellant, which I
4 filed, I raised one issue and that was whether the mention
5 of an arrest warrant, an active arrest warrant, in
6 Appellant's name was sufficient to grant a mistrial and
7 whether the trial court erred in not doing so.

8 Q Did you see any other possible meritorious issues for
9 appeal?

10 A I did not.

11 Q Did the Applicant try to -- during your discussions,
12 did Mr. Vaughn ever try to bring up other issues that he
13 thought you should bring?

14 A He did not.

15 MS. SCHILL: Beg the Court's indulgence, Your Honor.
16 Mr. Gilliam, those are all the questions I have. Please
17 answer any questions from Ms. Ashley McMahan.

18 CROSS-EXAMINATION

19 By Ms. McMahan:

20 Q Did you --

21 THE WITNESS: Thank you.

22 Q Did you see any reason to try to send that case up by
23 certiorari to the Supreme Court?

24 A I did not.

25 Q And why is that?

1 A That's generally a rule-based determination. Rule
2 242 of the Appellate Court Rules, Section B lists a
3 non-exhaustive couple of factors for why you would see
4 certiorari at the South Carolina Supreme Court. I did not
5 see any of those present, nor did I believe that the South
6 Carolina Supreme Court would grant certiorari and reverse
7 the Court of Appeals in this case.

8 Q And did you ever talk to Mr. Vaughn and him kind of
9 tell you issues that he wanted you to raise that you did
10 not?

11 A My notes does not reflect in any of those
12 conversations.

13 Q Did he ask you to raise an issue about a sham
14 warrant?

15 A I do not recall that. No.

16 Q And did you see any reason to try to appeal any
17 issues related to the chain-of-custody?

18 A I did not.

19 Q And do you recall if you ever had a conversation with
20 Mr. Vaughn telling you that he wanted you to brief every
21 objection Ms. Merrill made on the record?

22 A That is something I hear from clients often. But
23 that is not something that I recall Mr. Vaughn requesting
24 in this case.

25 Q And why is that something that you generally don't

1 do?

2 A When assigning issues to brief before the South
3 Carolina Court of Appeals, I tend to brief ones that are
4 only meritorious. If you include too many issues, you
5 weaken your meritorious issues. And so for that reason, I
6 never brief all preserved objections and motions.

7 Q Do you have a page limit that you're bound by
8 typically when you're filing an initial brief?

9 A Outside of the page limit with the Appellate Court
10 Rules, no, I do not.

11 Q So basically, what you're saying is that you go
12 through and see what the preserved issues are and you
13 raise the ones that you believe are the most meritorious?

14 A After doing research on the issues, yes.

15 Q And just because something's objected to and it's
16 preserved, doesn't necessary mean it's an issue that
17 should be raised on appeal?

18 A That's right.

19 Q Is there anything else you want to tell the Court
20 today?

21 A No, thank you for accommodating me.

22 MS. MCMAHAN: That is all the questions I have, Your
23 Honor.

24 THE COURT: Any redirect limited to what she went
25 into?

1 MS. SCHILL: No.

2 THE COURT: Thank you, sir.

3 MS. SCHILL: The State rest, Your Honor.

4 THE COURT: Anything in reply from the Applicant?

5 MS. MCMAHAN: No reply, Your Honor.

6 THE COURT: All right, I will take a look at it and
7 let you know. Thank you very much.

8 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

State of South Carolina)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Greenwood, South Carolina on the 12th day of March, 2020.

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

July 6, 2020

Joy E. Holston

Joy E. Holston, Court Reporter

My Commission expires: May 2, 2026

Dear Clerk,

I came before this Honorable Court,
The Honorable Judge Hayes on 3-12-20
for a P.C.R. evidentiary hearing and I
was represented by Ashley McMahon.

The next day, due to the Covid 19 virus
the Courts, State, etc. have been closed
and a decision on this PCR hearing
has not been made by Judge Hayes.

I had the enclosed documents at the
PCR hearing and I asked Ms. McMahon
to enter them as exhibits in support
of my case. She would not do it. She
said the Judge would review the
transcript when a decision was made.

However, I would like to respectfully
submit these documents as "post hearing -
exhibits" to be reviewed by Judge Hayes,
in this format, in support of the issues
of "misconduct, and constitutional violations,"
I raise in my P.C.R. application, and
other, Pro/Se documents, (amendments), I filed.

My lawyer filed an amendment also,
(copies enclosed) and Judge Hayes,
"agreed to accept all amendments"
over the objection by the State.

pg. 2

Before going into the courtroom, my lawyer instructed me to, "just answer-questions" and she would take care of the rest. "I did as instructed!"

I have highlighted most of the main parts of the trial transcript showing the perjury, tampering with evidence, etc. by the Police, Prosecutor and SLED. That violates Due Process and my right to a fair trial in Greenwood County.

I understand that all of these documents are on file in, Greenwood County, but not in Laurens County. Therefore, to be sure this, Honorable Court, will review them, I would like to respectfully resubmit them for the record.

Please Respond.

Respectfully Submitted
Date 4-20-20 S. / Earnest Vaughn
Earnest Vaughn
MSC.I. F-12/82
386 Redemption Way
MSCormick S.C. 29899



4th Amend Viol.
Sham Warrant

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

Greenwood County Sheriff's Office

Dennis D. Kelly, Sheriff

Mr. Vaughn,

Enclosed is a copy of supplemental report 1600003053 you requested.

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

Respectfully,


Sam Watts

1 Q Is that the one you're talking about?

2 A Yes, ma'am.

3 Q Okay. And is that your signature at the bottom
4 there?

5 A As serving it, no.

6 Q Do you know who did serve it?

7 A Whoever was 351, and I'm not sure who that is.

8 Q And do you know about if number 351 is in the Drug
9 Unit?

10 A I believe, yes. I believe it might be Agent Brooks.

11 MS. MERRILL: And, Your Honor, if I may, I'd like to
12 make this Court's Exhibit 2, but I'll make a copy of it in
13 just a minute.

14 THE COURT: Okay. That's fine.

15 (Whereupon, Court's Exhibit 2 was marked for
16 identification.)

17 Q Did you have any dealings with Debbie Tucker prior to
18 this?

19 A I have, yes.

20 Q When have you had dealings with her?

21 A Without the incident reports, I wouldn't be able to
22 tell you. I have had dealings with her in the past.

23 Q And have you been, have you ever used her as a CI?

24 A I don't believe I have used her.

25 Q Okay. So if you say dealings, maybe you've arrested

1 Q Going back to Mr. Vaughn and Ms. Wilson, did you, had
2 you encountered them previous to January 27th of 2016?

3 A Yes, ma'am.

4 Q And in what circumstances was that?

5 A As far as the exact date, I don't recall. To the
6 best of my memory, it was the previous summer. It would
7 have been summer of 2015. We had received information
8 that Earnest Vaughn was going to be delivering a quantity
9 of drugs to an individual with Bare Bonz BBQ, which is
10 located on Emerald Road in Greenwood, South Carolina. We
11 set up surveillance in that area. Upon the arrival of Mr.
12 Vaughn, he'd exited his vehicle, went in the store. We
13 then convened on the location, took Mr. Vaughn into
14 custody, as well as Ms. Wilson, who was with him that day,
15 and recovered a significant quantity of methamphetamine.

16 Q From your information, was it common for Ms. Wilson
17 to be Mr. Vaughn's driver?

18 A Yes.

19 Q So you said, I'm sorry. What time was it that you
20 said they were supposed to be at the carwash?

21 A It was about 5:30 in the evening, if I remember
22 correctly.

23 Q Okay. What did the DEU do with that information?

24 A I notified other members of my unit. Also, we
25 notified a couple of members of the Criminal Investigation

1 A Someone else.

2 Q Okay. When was she caught with this marijuana?

3 A Sometime early January 2016. I don't have that
4 report in front of me.

5 Q And you said she wasn't charged. So she wasn't
6 arrested?

7 A She was not.

8 Q Tell me a little bit more about that incident?

9 A I was conducting surveillance of a location that I
10 had received information regarding being involved in drug
11 activity. I observed the vehicle pull up to the house and
12 one of the occupants go inside the house, return back out
13 within two or three minutes and then leave. From my
14 training and experience, that is consistent with drug
15 activity. I then initiated a traffic stop on the vehicle
16 after it left the area. Ms. Tucker was one of the
17 occupants. A quantity of marijuana was also located in
18 the vehicle. I seized the quantity of marijuana. Ms.
19 Tucker indicated that she was willing to do work as an
20 informant in order to work off those charges. Based on
21 that I gave her my phone number. She left the scene. I
22 turned the drugs into evidence and filed an incident
23 report and documented and, essentially, that's, I think in
24 summary, that's what happened.

25 Q Do you have a copy of that incident report with you

1 A There were.

2 Q And did a member of your team have those in hand?

3 A Yes, ma'am. We had an accurate arrest warrant for
4 Earnest Vaughn for possession with intent to distribute
5 methamphetamine, and I don't remember specifically which
6 one of us had it, but we had that warrant with us.

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

9 THE COURT: Ms. Merrill, any cross?

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

11 CROSS-EXAMINATION

12 By Ms. Merrill:

13 Q I got a little confused there. You were talking
14 about summer of 2015. Did you use Ms. Tucker as a CI
15 then?

16 A No, ma'am.

17 Q Okay. Have you ever used Ms. Tucker as a CI before?

18 A Before the incident where Mr. Vaughn was arrested in
19 January?

20 Q Yes.

21 A Once before, yes ma'am.

22 Q When?

23 A I don't recall the specific date. It was within
24 pretty close proximity. I'll say a week or two before.

25 Q And was that involving Mr. Vaughn or someone else?

1 Division. I requested for assistance. The plan that we
2 were enacting was to have several agents in the area of
3 that carwash surveilling the area. They were to be in
4 position about twenty or thirty minutes before the deal
5 was to take place. Myself and my supervisor, Lieutenant
6 Cox, were with the informant, Ms. Tucker. The other
7 agents had gone ahead of us to get in the area, take up
8 their position and set surveillance. Ms. Tucker was not
9 going to arrive in the area until closer until time for
10 the deal to take place. We were actually traveling on Old
11 Greenwood Road heading in the direction of the deal when
12 we received information over the radio that Mr. Vaughn and
13 Ms. Wilson had arrived early.

14 Q And do you recall what vehicle, the information you
15 had of what vehicle they were in when they arrived?

16 A It was that Tahoe, the dark black or navy blue Tahoe.

17 Q When you say they had arrived, where were they
18 specifically?

19 A If I remember correctly, agents observed them coming
20 through the parking lot of the Bi-Lo which connects to
21 that carwash.

22 Q And what did agents decide to do at that point?

23 A To go ahead and initiate a traffic stop on the Tahoe.

24 Q Now, were there any active arrest warrants for Mr.
25 Vaughn or Ms. Wilson?

1 Ms. Tucker wasn't with me.

2 Q Did you see Ms. Tucker there at all?

3 A I did not.

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

6 A I did not.

7 Q Okay.

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

10 THE COURT: Sure.

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

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

16 Q But you got the warrant, right?

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

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

22 THE COURT: You can.

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

25 A Yes, ma'am.

AGENCY I.D.
SC0240000

Tainted Evidence 5th 6th + 14th Amend Viol.
SUPPLEMENTARY REPORT

CASE NUMBER

1600003053

NCIC

INQ. ENTD.

☐ ORIGINAL
REPORT

☒ SUPPLEMENTAL
REPORT

☐ ADDITIONAL
VICTIMS

☐ ADDITIONAL
STOLEN PROPERTY

PAGE 1 OF 1 PAGES

☐ MODIFIES
ORIGINAL

☐ CASE STATUS
CHANGE

☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
RECOVERED PROPERTY

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

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

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

NARRATIVE

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☒ NO		SUBJECT LOCATED ☐ YES ☒ NO		☐ ACTIVE ☐ UNFOUNDED	☐ ADM. CLOSED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY							
REPORTING OFFICER ALLISON, G		DATE 01/29/2016		UNIT NUMBER 380	APPROVING OFFICER		DATE
					FOLLOW-UP INVESTIGATION		UNIT NUMBER
					☐ YES ☒ NO		

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

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

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

12 THE COURT: Anything else?

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

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

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

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

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

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

1 A No, ma'am; has not.

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

4 THE COURT: What says the Defense?

5 MS. MERRILL: No objection.

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

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

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

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

19 A The submitting officer on the evidence was Jarvis
20 Reeder.

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

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

1 39, did you take that down to SLED yourself?

2 A Yes, ma'am; I did.

3 Q Do you recall what date you took that to SLED?

4 A Not exactly. I had the packaging date on it where I
5 actually packaged it on March the 2nd. But it should be
6 on these submission forms with the paperwork. I initially
7 try to go twice a month, so it's not every day or every
8 case. My job duty is more complex than just one case or
9 crime scene investigation. I am over a large mass of
10 items which I have to return to victims who also come in
11 and they need their items back from other cases.

12 Q Now, if I hand you the chain-of-custody, would that
13 refresh your recollection on the dates?

14 A Yes, ma'am. Here we show that I did deliver it on
15 the 2nd month, the 8th day of 2016.

16 Q Thank you. Between January, I guess, 27th and
17 February the 8th, where would that item have been sitting?

18 A This item, in particular here, would be sitting in,
19 probably spent most of the time in the lab in the SLED
20 box, which I keep it separate from all the other evidence.
21 So when I get ready to prepare this item for SLED, I can
22 go directly to the SLED box, prepare it, and then send it
23 to SLED, and it is in a secure area.

24 Q And, again, you sealed this on February 2nd, it looks
25 like?

1 A Yes, ma'am. And this is the one pack that contained
2 the four packages of what's believed to be marijuana. And
3 that one was by Bryan Louis.

4 Q And what did you do with that when you received it
5 from Bryan Louis?

6 A It went through the same process with the rest of it.
7 Once I collected everything, I put it in one of the bags
8 and I transported it back to the Sheriff's Office to
9 process it.

10 Q And so would that have also remained in the evidence
11 room until Officer Love analyzed it?

12 A That is correct.

13 Q Did anybody with regards to State's 13 or 38, would
14 these have been tampered with or altered in any way while
15 they were in your possession?

16 A No, ma'am; other than being analyzed by Wes Love.
17 That's the only time.

18 Q When you were out there or when you were handling
19 State's 13 and 38, well, let me back up. Are you familiar
20 with the odor of marijuana from your experience as a law
21 enforcement officer?

22 A Yes, ma'am; I am.

23 Q In handling Exhibits 13 and 38, did these smell to
24 you like marijuana?

25 A Yes, ma'am.

1 lockers kind of like the ones you have in high school, but
2 they're a little smaller. And, well, it's just put in
3 there and it's locked into evidence with our tracking, a
4 tracking system. Once it's locked, no one gains access to
5 it but me.

6 Q So once, say, Agent Brooks puts something in the
7 locker, he can't get that back out, is that correct?

8 A Not unless he, not unless he signs for it.

9 Q But he would have to come to you to do that?

10 A He would have to come to me and he would have to sign
11 for me to release it, which would be in that evidence
12 file, as well.

13 Q So if they wanted to, once the evidence is locked in,
14 there is no way they can do anything to it, is that
15 correct?

16 A No, ma'am. They cannot. No, ma'am. Not without my
17 knowledge.

18 MS. WHITE: Please answer any questions Ms. Merrill
19 has.

20 THE COURT: Ms. Merrill, any cross-examination?

21 MS. MERRILL: Yes, sir.

22 CROSS-EXAMINATION

23 By Ms. Merrill:

24 Q When the evidence comes into the evidence room, do
25 you note that on a form?

1 disposals right here.

2 Q Okay. So from here, like from this screen, can you
3 click on one of these items and you'll have more detail
4 about --

5 A Yes, ma'am; you will.

6 Q -- exactly when it was entered and all of that?

7 A Yes, ma'am.

8 Q Okay.

9 A That's just the first page.

10 Q Okay. Thank you.

11 A Yes, ma'am.

12 MS. MERRILL: Beg the Court's indulgence, please.

13 THE COURT: Sure.

14 MS. MERRILL: Your Honor, may we approach?

15 THE COURT: Sure.

16 (Whereupon, a bench conference was held in the
17 presence of the jury but out of the hearing of the
18 jury.)

19 Q Okay. So that screen shot I just showed you, you
20 said it's kind of --

21 A Yes, ma'am.

22 Q -- it's kind of got a listing, right?

23 A Yes, ma'am.

24 Q And if you click on one of these, it will tell you
25 the details for each particular?

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

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

6 A Yes, ma'am.

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

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

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

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

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

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

22 Q And then when something comes back from SLED?

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

1 the evidence back at the Sheriff's Department.

2 Q Okay. And then the next day you did another count
3 for accuracy?

4 A Yes, ma'am. I was getting it prepared to go to SLED.

5 Q Okay. That's, so that's when you did the second.
6 Okay. That's what I was trying to figure out when you did
7 the second one. And then the difference, as I understand
8 you recorded, was that in your initial inventory, the
9 weight of one bag was 7.66 grams, and then you discovered
10 a fourteenth packet and the weight went to 8 grams, is
11 that right?

12 A That's correct. It was .34 was the actual weight of
13 that. It was over sighted and not logged in.

14 Q Okay. And then the other bag, when you did the
15 inventory the second time, you had 10.62 grams, and then
16 it became 14.22 grams, is that right?

17 A That's correct. That particular bag weighed out at
18 3.6 grams.

19 Q And you did that report discussing those changes on
20 January 29th, so just a few days after the incident?

21 A That is correct. Once I had noticed, once I noted
22 the oversight that I had made, I contacted my supervisor
23 immediately and let him know what the situation was. And
24 then I proceeded with the supplemental and went forward
25 with the processing of the evidence.

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

6 MS. WHITE: The State calls Wes Love.

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

9 DIRECT EXAMINATION

10 By Ms. White:

11 Q Introduce yourself to the jury, please.

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

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

16 A Approximately over, a little over eight years.

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

18 A I am currently an investigator with the Investigation
19 Division.

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

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

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

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

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

8 A Yes, that's correct.

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

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

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

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

1 A I do.

2 Q And who issued that report?

3 A I issued this report.

4 Q Okay. And when exactly did you issue it?

5 A On February 23rd of 2016.

6 Q And the test you used to test the items again, I

7 believe you said the chemical test and an infrared?

8 A Correct; the chemical or color test and the FTIR.

9 Q And what were your findings, Ms. Black, on the items

10 that you tested?

11 A And would you like me to just read what's here or

12 explain or?

13 Q Yes, ma'am. If you could read it and explain it to

14 the jury, if you can.

15 A Inside the tamper evident bag, there were two Ziploc

16 bags. One of them was labeled number one and one was

17 labeled number two. The first one, the first bag that I

18 actually got into to test, items, well, the Ziploc number

19 two, it had four Ziploc bags inside that and each of those

20 Ziploc bags had another plastic bag in there that

21 contained the crystal substance. So, essentially, four

22 plastic bags that had crystal substance in them. And I

23 tested each one of those and each of those,

24 methamphetamine was found in each of those.

25 Q And what was the exact weight on that, in that

1 A Correct.

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

5 THE COURT: Ms. Merrill?

6 MS. MERRILL: Just subject to my pretrial objection.

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

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

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

14 A There was 13.

15 Q Thirteen baggies and the total weight of that was
16 13.11?

17 A 3.11.

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

20 A If I may refer to my notes?

21 Q Yes, ma'am.

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

1 that first bag.

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

4 A No, sir.

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

7 THE COURT: Cross-examination.

8 MS. MERRILL: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 By Ms. Merrill:

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

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

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

19 A No, there was not.

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

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

1 particular bag of those four different items that you
2 tested?

3 A Now, the total net weight which is all four of them
4 together was 13.51 grams.

5 Q And was there a confidence level based on your
6 testing?

7 A There, there is. The 13.51 is what they weighed, and
8 then we also have what we call the measurement of
9 uncertainty, which is plus or minus .02 grams. And then
10 the confidence level goes with the weight, that weight.
11 And the confidence level is 99.7 percent.

12 Q And that's just the weight of the drugs?

13 A Correct.

14 Q And so there is really no doubt about what the drugs
15 are once you do the test?

16 A That's correct.

17 Q When you're actually weighing these particular drugs,
18 are you weighing them in the packing that they are
19 received in or are you weighing them separate and apart
20 from the packaging?

21 A I'm weighing them apart from the packaging. These
22 are net weights. So that means that I took, say if you
23 get plastic bag number one, and so I place a piece of
24 weight paper on the balance. And then I hit the button
25 that says tear, and so that zero's out that weight paper

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

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

5 A Yes, I did.

6 Q The same exact type of testing?

7 A Yes.

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

11 A Correct.

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

14 A 3.11 grams.

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

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

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

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

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

23 A 13.51 grams.

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

1 A Correct. Only when he is, you know, on vacation or
2 currently, you know, not available.

3 Q As part of your duties with the Sheriff's Office, are
4 you, have you ever been trained in the analysis of
5 marijuana?

6 A Yes.

7 Q Approximately, when were you first, well, what sort
8 of training do you have to go through for that?

9 A You go to the State Law Enforcement Division and you
10 have, you're required to, at one-hundred percent test 50
11 unknown samples at one-hundred percent. And also as well
12 as pass a written exam. And then once that is done, you
13 can be certified to test marijuana.

14 Q How long ago did you complete that?

15 A In 2013.

16 Q And since 2013, have you ever been qualified as an
17 expert in the field of marijuana analysis?

18 A Yes.

19 Q And approximately how many times?

20 A One time.

21 Q And was that in General Sessions?

22 A Yes.

23 Q How many, in addition to your training, how many
24 analyses would you say you've performed, just kind of a
25 ballpark?

1 MS. MERRILL: Okay. I think that's all the questions
2 I have subject to being able to ask him.

3 THE COURT: All right. Any redirect?

4 MS. WHITE: Very briefly, Your Honor.

5 REDIRECT EXAMINATION

6 By Ms. White:

7 Q When you did the initial count on the 27th, I think
8 you said one bag was 10.62 grams?

9 A That's the total weight of that whole bag, not that
10 particular one that was missing.

11 Q And then the other one was 7.66, is that correct?

12 A And that's also the total weight of that bag with the
13 other missing envelope.

14 Q And the cutoff for trafficking marijuana is how many
15 grams, I mean, excuse me, methamphetamines? I'm sorry.

16 A I don't have a clue. That's not my department.

17 Q The marijuana, if it never left the evidence room,
18 would there have been a notation in the computer about it
19 being checked out?

20 A Yes, ma'am; it would. It would be taken out just
21 like it was anything else. Anything, even items that are
22 being disposed of is logged as going out.

23 MS. WHITE: Thank you.

24 THE COURT: Okay. Recross?

25 MS. MERRILL: Not at this time, Your Honor.

1 Q Okay. When you count, were counting the packages on
2 January 27th outside on the hood of the car, were you able
3 to weigh them there?

4 A No, ma'am; I was not.

5 Q Okay. So in this initial report where it talks about
6 weighing them, were you just gathering the evidence then?

7 A And when I was out on the crime scene, I just
8 actually did a count for the actual packages. And then
9 put them back in their original state or more or less
10 counted in the package and left them in their original
11 state where I can get an accuracy on the notation of it.

12 Q Okay. And then you go back to your office, I guess,
13 and that's when you did the--

14 A We returned it back to the evidence room at the
15 Greenwood County Sheriff's Department where I began to
16 process it.

17 Q Okay. And then I know you said there was a mistake
18 on your part with different amounts?

19 A Actually, yes, ma'am. It was, the amount is also, I
20 was lacking one in each of the crystal-like substance
21 packs.

22 Q Okay. And, I guess, I'm just trying to figure out
23 when was the first time you weighed it was that day back
24 at your office?

25 A Yes, ma'am. It was actually during the processing of

1 A Yeah, it will show if it was checked out or not.

2 Q Okay.

3 A But depending on when that screen shot was taken, we
4 also enter it back in once it's returned.

5 Q Right. Okay.

6 A Just like a chain-of-custody, we have a
7 chain-of-custody, we have a chain-of-custody also from the
8 SLED Department. We have a chain-of-custody that goes
9 down, it comes back and that's just, that's an inventory,
10 as well.

11 Q Okay. And from this inventory sheet, by clicking on
12 it, you could give the exact chain-of-custody for any
13 particular item?

14 A That's correct.

15 Q And this is just kind of a summary of what's in
16 evidence?

17 A That's your front screen shot just showing your
18 inventory and letting you know, in general, where the item
19 is located. It will tell you the shelf number, it will
20 tell you if it's been disposed. And it will also tell you
21 where it's located. If Captain Jarvis Reeder was to
22 request some of the evidence and I turned it over to him,
23 the proper authority, then he would have to sign off on it
24 and it would also be in that computer verifying Jarvis
25 Reeder has that evidence with the weight. And I will

1 A It's admitted on the form. It's noted in the
2 computer, ma'am.

3 Q In the computer system?

4 A Yes, ma'am.

5 Q So any time evidence comes in and out, that's where
6 it's logged?

7 A Yes, ma'am. Even evidence that is to be destroyed
8 has to be, has to have a tracking number.

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

10 THE COURT: You sure can.

11 Q Do you recognize that?

12 A Yes, ma'am.

13 Q What is it?

14 A This is the log in of the computer which tells us
15 exactly what's on file in that case.

16 Q Okay. So that's the computer program you were
17 talking about?

18 A Yes, ma'am.

19 Q And is that like a screen shot of your computer
20 screen, I guess?

21 A Yes, ma'am; it is.

22 Q Okay. And then it tells if the evidence is in or if
23 it's checked out, for example, to SLED?

24 A Yes, ma'am. It will show, it won't show on, yeah, it
25 will show on here as well just like you have your

1 Q Turning back to Exhibit 39, I did have one more
2 question about that.

3 A Yes, ma'am.

4 Q When I look at some of the individual bags, it says
5 January 26th instead of January 27th. Can you explain
6 that?

7 A Yes, ma'am. A lot of times, I deal with a lot of
8 dates from 1978 all the way up to the current dates, and I
9 also process the day after evidence which my evidence
10 starts 7:00 in the morning until I finish. A lot of
11 times, I do get the dates mixed up.

12 Q So is that just a mistake in writing down?

13 A It's a common error on my part; yes, ma'am.

14 Q And when you collected all of this evidence, did you
15 take it back to the Sheriff's Department that night?

16 A Yes, ma'am. It was in my custody for the duration
17 and I also started processing it that night, as well.

18 Q And would it have been under lock-and-key from that
19 point until today, essentially?

20 A Yes, ma'am. It has been.

21 Q Just generally speaking, when one of the drug agents
22 makes a case and they turn drugs into your custody, how is
23 that done?

24 A It's done through the locker system. We have a lobby
25 that's down in our Evidence Department where there are

1 A That's correct.

2 Q Now, you mentioned counting it again to make sure the
3 inventory is correct. Did you have an issue when you
4 recounted this one?

5 A Yes, ma'am; I did. I was off on one package of one
6 that was, had three in it. And it actually had four which
7 was initially from the drug stop. And the other one was
8 the one with the 14 packs in it, I was missing a small one
9 which was a .34. The missing part was a logging error
10 when I was doing, when I was doing the counts and I was
11 doing the weights. It never left the office. It never
12 was lost. It wasn't on the floor. It just wasn't logged
13 in. It was already processed, packaged, and it was also
14 labeled.

15 Q So was that just an error in counting?

16 A It was a, yeah, it was a writing error on my behalf
17 and that's the reason I always do a second one.

18 Q And when you did the second one, did you come up with
19 the same numbers that SLED had?

20 A Yes, ma'am. I did come up with the additional
21 numbers and the additional packs, which was at the scene
22 with everything with the incident report.

23 Q Now, do you weigh the substances as part of when
24 you're packaging it up?

25 A Yes, ma'am. I weigh for accuracy on the weights. A

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

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

4 THE COURT: Sure.

5 Q I'm going to hand you what's been marked as Exhibits
6 8, 9 and 14.

7 A Yes, ma'am.

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

10 A Let me get my focus.

11 Q Sure.

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

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

16 A Yes, ma'am; they have.

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

18 A No, ma'am; they have not.

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

21 THE COURT: What says the Defense?

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

24 THE COURT: Okay. All right. So noted. 8, 9, and
25 14 into evidence on behalf of the State.

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

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

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

14 MR. VAUGHN: Yes, sir.

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

Illegal Searches, 4th Amend Viol.

Josh Hood - Direct by Mr. Black

37

1 Q Okay. I'm going to show you what's been marked as
2 State's number 1.

3 MR. BLACK: May I approach, Your Honor?

4 THE COURT: You sure can.

5 Q Do you recognize this video?

6 A Yes.

7 Q Have you had a chance to partially review that?

8 A I did.

9 Q And can you tell us what that is?

10 A Okay. This is a copy of the video from my patrol
11 car, that video of the incident that you're speaking of.

12 Q Is that a fair and accurate representation of what
13 transpired out there on that day?

14 A Yes, it is.

15 MR. BLACK: Your Honor, for the purposes of this
16 hearing, the State moves State's number 1 in.

17 THE COURT: The tape will be number 1 for the limited
18 purposes of this hearing.

19 (Whereupon, State's Exhibit 1 was admitted into
20 evidence.)

21 Q Did you ever talk to Mr. Vaughn once you stopped him?
22 Did you question him or anything?

23 A I didn't question him. I probably asked him if he
24 had any weapons or anything like that on him and was
25 asking him, that's probably the extent of what I was

1 Q Okay. What time was this when you responded?

2 A I would have to look at the report to give you
3 anything like that.

4 Q Now, the incident report says, time arrived, 17:26.
5 Does that sound about right?

6 A I would assume so.

7 Q Okay. Was it dark when you first stopped?

8 A No.

9 Q Did it get darker as y'all were out there?

10 A Yes. I, typically, any day would.

11 Q Okay. For what reason did you search Mr. Vaughn's
12 person?

13 A Well, I believe he had an arrest warrant as we began,
14 as well as there was probable cause based on the
15 information the Drug Enforcement Unit had obtained.

16 Q Did you have a copy of that arrest warrant to be
17 served on him with you?

18 A I didn't. I did not. I'm not sure if anybody else
19 did.

20 Q Did you have a search warrant?

21 A I did not.

22 MS. MERRILL: Thank you.

23 THE COURT: Solicitor, any redirect?

24 REDIRECT EXAMINATION

25 By Mr. Black:

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

3 A Correct.

4 Q Was he further searched after that?

5 A He was.

6 Q And were you present for that search?

7 A I was.

8 Q What were you doing while he was being searched?

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

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

12 THE COURT: You sure can.

13 (Whereupon, State's Exhibits 16, 17, 18, 19, 20, 21,
14 22, 23, 24 and 25 were marked for identification.)

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

18 A Yes, ma'am.

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

21 A Yes, ma'am.

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

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

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

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

6 MR. COX: I'm sorry.

7 Q Okay.

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

10 Q Did he appear to understand those rights?

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

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

17 A Not to my knowledge.

18 Q Did he ask for a lawyer at any point?

19 A No, ma'am.

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

21 A No, not that I recall.

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

24 A Mine is--

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

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

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

9 MR. BLACK: Nothing further.

10 THE COURT: Recross?

11 MS. MERRILL: No, sir.

12 THE COURT: Step down, sir. Thank you.

13 MS. WHITE: The State calls Whit Brooks.

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

16 DIRECT EXAMINATION

17 By Ms. White:

18 Q Tell us your name for the record.

19 A Whit Brooks.

20 Q Were you employed with the DEU back in January of
21 2016, Mr. Brooks?

22 A I was.

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

25 A I was.

1 asking him.

2 Q Okay. Did you read, you didn't read him Miranda,
3 though, did you?

4 A I did not.

5 Q Okay.

6 MR. BLACK: I don't have any further questions of
7 this witness, Your Honor.

8 THE COURT: Ms. Merrill, any cross-examination for
9 this hearing?

10 MS. MERRILL: Beg the Court's indulgence.

11 CROSS-EXAMINATION

12 By Ms. Merrill:

13 Q Did you search the car at all?

14 A I did look in the vehicle a couple of times, yeah. I
15 did search parts of the vehicle, yes.

16 Q Okay. And did you assist in helping to, after drugs
17 were found, did you assist in counting any of that?

18 A Counting the money?

19 Q No, counting the drugs or inventorying them?

20 A I would have been standing there. I don't, I mean, I
21 don't know what you mean by counting or any, take
22 possession of them, is that what you're asking?

23 Q No, not like take possession, but were you there when
24 another officer was inventorying everything?

25 A I mean, I was standing right there in the area, yes.

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

Control No. B255811

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED
CERTIFICATION OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL

This is to certify that I JARVIS READER ^{Initial Custody} am employed by GREENWOOD COUNTY SHERIFF'S OFFICE and that on JAN 27, 2016 I seized from EARNEST VAUGHN pursuant to OTHER WISE at or near FURMAN BURTON DRIVE GREENWOOD SC 29616

The following substance(s) or container(s): (Describe the substance or container to sufficiently distinguish it)
 BAG #1 - CLEAR BAG CONTAINING 14 BAGS OF A CRYSTAL LIKE SUBSTANCE TOTAL WEIGHT 8.9 GRMS
 BAG #2 - CLEAR BAG CONTAINING 4 BAGS OF A CRYSTAL LIKE SUBSTANCE TOTAL WEIGHT 14.22 GRMS

Signed [Signature] Print Name: JARVIS READER Date: 1-27-16

Sworn before me this _____ day of _____
 My commission expires: _____ County: _____

Notary Public for South Carolina Signature

Subsequent Chain of Custody Following Seizure:

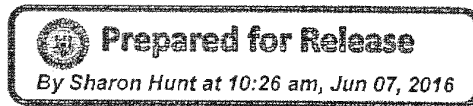
The item(s) listed above were delivered in substantially the same condition as when it was received according to the following chain:

Signature	Print Name	Company	Date/Time
1.) <u>[Signature]</u>	<u>THOMAS READER</u>	<u>GREENWOOD CO SO</u>	<u>1-27-16</u>
<u>EVIDENCE LOCKER</u>	<u>GREG L. ALLISON</u>	<u>GREENWOOD CO SO</u>	<u>1-27-16</u>
2.) <u>EVIDENCE LOCKER</u>	<u>GREG L. ALLISON</u>	<u>GREENWOOD CO SO</u>	<u>2-8-16</u>
<u>GREG L. ALLISON</u>	<u>GREG L. ALLISON</u>	<u>GREENWOOD CO SO</u>	<u>2-8-16</u>
3.) <u>GREG L. ALLISON</u>	<u>GREG L. ALLISON</u>	<u>GREENWOOD CO SO</u>	<u>2-8-16</u>
<u>SLED</u>	<u>SLED</u>	<u>SLED</u>	<u>2-8-16</u>
4.)			
5.)			

Sworn before me this _____ day of _____
 My commission expires: _____ County: _____

Notary Public for South Carolina Signature

SOUTH CAROLINA LAW ENFORCEMENT DIVISION



Chain Of Custody

L16-01758

Item 1: One (1) sealed BEST Evidence Pouch containing BEST Kit Evidence

Submissions

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

Item Chain of Custody

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

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

Item 1: Ziplock bag "42" containing four (4) ziplock bags, each containing plastic bag containing crystal substance

Submissions

Item Chain of Custody

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

SOUTH CAROLINA LAW ENFORCEMENT DIVISION



Prepared for Release

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

Chain Of Custody

L16-01758

Item 1: One 1000 BSA Evidence Pouch containing BSA Evidence

Submissions

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

Item Chain of Custody

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

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

Item 1: Ziplock bag #22 containing four (4) Ziplock bags each containing plastic bag containing crystal substance

Submissions

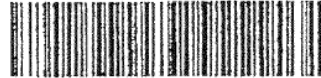
Item Chain of Custody

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

Laboratory Analysis Electronic Packing Slip

Case Information

Sent electronically to Lab: (02/03/2016 @ 16:40)

SLED Forensic Services**Department Case: 163053 Submission # 1**

- Department: Greenwood County Sheriff's Office [SC0240000] / User Name: Greenwood County Sheriff's Department
- Department Case: 163053
- Submission Number: 1
- Officer Name: Jarvis Reeder
- Officer Email: jreeder@greenwoodsc.gov
- Officer Phone: 864-943-8600
- Offense Date: 01/26/2016
- Offense Location: Furman Burton Drive
- County: Greenwood
- Case Type: DRUG EVIDENCE

L16-01758

Sub# 1 Received (02/08/2016)
Greenwood County Sheriff's Office
Agency Case #: 163053

Submission Information

- Delivery Type: Hand Delivered
- Date Sent: 02/03/2016
- Tracking #: B255811

Name Information

Name Type	Full Name	Date Of Birth	Sex	Race
Suspect	Vaughn, Earnest Edward	■■■■/1959	Male	White/Caucasian
Suspect	Wilson, Brandy Lee	■■■■/1978	Female	White/Caucasian

Analysis Request Information

Item #	Package	Item Type Code	Item Description	Serial Number	Exam Requests	Date Collected
13313-1,2	BEST Evidence Pouch	[BEST]BEST Kit Evidence			DC-Drug Analysis	02/03/2016 16:39

Tox Questions**Death:**

☐ Yes, if yes: ☐ Traffic Fatality ☐ Child Fatality ☐ Accident ☐ Natural ☐ Unexplained

☒ No

Traffic Fatality:

☐ Driver ☐ Passenger ☐ Pedestrian ☐ Motorcyclist ☐ Bicyclist ☐ Boating ☐ Other

Other Causes:

☐ Gunshot ☐ Stabbing ☐ Beating ☐ Strangulation/Suffocation ☐ Drug/Poison/Alcohol ☐ Fire

This Space Reserved For Lab Receipt Barcode



SLED LABORATORY FORENSIC SERVICES REQUEST

SLED LAB No. L16-01758
Submission: 1 2/8/2016 9:17:56AM

Name of Investigating officer: <u>JarvisReeder</u>	ORI No: <u>SC0240000</u>
Agency: <u>Greenwood County Sheriff's Office</u> Phone No: <u>942-8588</u>	Agency Case No: <u>163063</u>
Fax No: _____ Email: _____	Offense: <u>DRUG EVIDENCE</u>
Mailing Address: <u>528 Edgefield Street</u>	County: <u>Greenwood</u>
City / State / Zip: <u>Greenwood, SC 29646</u>	Offense Date: <u>01/26/2016</u>
CC: _____	Officer Involved Shooting ☐ Yes
	Rush: ☐ Yes

Is this evidence related to another lab number?

☐ Yes ☒ No

If yes, Lab Number:

SLED ITEM No. LAB ONLY	Agency Item No.	Description of Evidence	Analysis Requested
1	13313-1,2	BEST Kit Evidence -	DRUG ANALYSIS

Subject(s)	Sex	Race	DOB	SSN
Earnest Edward Vaughn	M	W	██████1959	
Brandy Lee Wilson	F	W	██████1978	

Comments

All sealed evidence packages accepted by the laboratory are assumed to contain what they are "said to contain" by the submitter. The laboratory does not conduct a detailed inventory of evidence package contents during the evidence intake process.

Submitted By :

Received By :

Greg Allison
B255811

Doris Yarbrough
Forensic Technician

Printed: 02/08/2016 9:28

Page 1 of 1

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

SLED DRUG ANALYSIS REQUEST

LAB NO. _____ CONTROL NO. 13-255811
COUNTY. _____ WARRANT NO. _____

INCIDENT

Contributing Agency ORI SCO _____ Contributing Agency Case No. _____
New Case ☒ Additional Evidence ☐ Case No. 16-3853
Type of Crime TRAFFICKING METH MORE 10 LBS
Incident Date 01-27-2016
Incident Address FURMAN BURTON DRIVE
GREENWOOD SC 29646

Report should be mailed to:
JARVIS REEDER CAPT.
Name of Individual Receiving Report Rank 864
GREENWOOD Co. Sheriff 912-860
Department Telephone No.
528 Edgefield Street
Street Address or Post Office Number
Greenwood SC 29646
City State Zip Code

SUBJECTS

VAUGHN FARNEST EDWARD
LAST FIRST MIDDLE
WILSON BRANDY LEE
LAST FIRST MIDDLE

LAST FIRST MIDDLE

Race W Sex M DOB _____
DL, SS or FBI No. _____
Race M Sex F DOB _____
DL, SS or FBI No. _____
Race _____ Sex _____ DOB _____
DL, SS or FBI No. _____

EVIDENCE

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

Specimens submitted for examination: BAG #1 1- CLEAR BAG CONTAINING
14- CLEAR PLASTIC BAGS CONTAINING AT TOTAL OF 8.9gms
OF A CRYSTAL LIKE SUBSTANCE.
BAG #2 1- CLEAR BAG CONTAINING
4- CLEAR PLASTIC BAGS CONTAINING A TOTAL OF 14.22gms
OF A CRYSTAL LIKE SUBSTANCE.

GREG L. ALTON
PRINT Name of Requesting Officer

[Signature]
SIGNATURE of Requesting Officer

EVSLED: OAR.1 3/00

SOUTH CAROLINA LAW ENFORCEMENT DIVISION



Chain Of Custody

L16-01758

3/2/16	9:53	Evidence Room (150)	Drugs For Return Shelf
3/3/16	10:01	Forensic Technician	Jackie M. Davis
3/3/16	10:03	Evidence Disposition	Returned to Agency in person
Greg Allison-Greenwood C.S.O. JMD 3/3/16			

~~Item 1.1 Ziplock bag #1 containing fourteen (14) ziplock bags, each containing plastic bag containing crystal substance.~~

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
2/17/16	16:44		Forensic Scientist	Lynn D. Black
3/2/16	9:48		Forensic Technician	Jackie M. Davis
3/2/16	9:53		Evidence Room (150)	Drugs For Return Shelf
3/3/16	10:01		Forensic Technician	Jackie M. Davis
3/3/16	10:03		Evidence Disposition	Returned to Agency in person
Greg Allison Greg Allison-Greenwood C.S.O. JMD 3/3/16				

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

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

) IN THE COURT OF COMMON PLEAS
) FOR THE EIGHTH JUDICIAL CIRCUIT
)

Earnest Edward Vaughn, Sr., #246912,

)
)
) 2019-CP-24-0160
)

) Applicant,
)

) v.
)

) **ORDER OF DISMISSAL**
)

) State of South Carolina,
)

) Respondent.
)

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

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

PROCEDURAL HISTORY

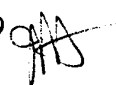
Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. During its May 2016 term, the Greenwood County Grand Jury indicted Applicant for trafficking in methamphetamine (16-GS-24-0539), possession of marijuana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

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

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

FACTUAL BACKGROUND

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



methamphetamine. (Tr. 117). Tucker made a phone call to Brandy Wilson and arranged to purchase a half ounce of methamphetamine from Applicant and Ms. Wilson at a car wash in Greenwood that evening. (Tr. 134-135). Police were told by Debbie Tucker that they should be looking for a dark colored Chevrolet Tahoe. (Tr. 118). Law enforcement arrived early to set up surveillance at the buy location. Before Debbie Tucker could arrive, a dark colored Chevy Tahoe arrived driven by Brandy Wilson. (Tr. 119). Applicant was in the passenger seat, and Applicant's five year old grandchild was in the back. (Tr. 256). Law enforcement called off the controlled purchase and initiated a traffic stop on the Tahoe. (Tr. 119, 138). Applicant was seen "fidgeting" by law enforcement and it appeared to Captain Jarvis Reeder that Applicant was attempting to hide something. (Tr. 255-256). Applicant was read his Miranda¹ rights and made a statement to law enforcement admitting that he did have drugs in his pants near his testicles. (Tr. 258-260). Law enforcement then searched Applicant's person and located two plastic bags of suspected drugs underneath Applicant's testicles. (Tr. 262). Applicant was then placed under arrest.

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

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

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

ALLEGATIONS RAISED

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

A. Judicial Error / Abuse of Discretion

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

B. Prosecutorial Misconduct

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

C. "Police Misconduct"

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

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

D. Ineffective Assistance of Trial and Appellate Counsel

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

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

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

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

1. "Trial counsel failed of adequately cross-examine and challenge the officer related to the tainted evidence that was seized by police. When the drugs were initially turned in the officer noted there were 18 grams but then later supplemented it with 3.4 grams that were found on the floor."
2. "Trial counsel failed to recuse Judge Hocker from presiding over the trial as Judge Hocker had already shown bias against the Applicant when he at an excessive bond of \$100,000 (that was alter reduced to \$20,000). Judge Hocker also had forced the Applicant to take a drug test."
3. "Trial counsel failed to adequately move for a mistrial after one of Applicant's family members made contact with a juror in the bathroom."
4. "Trial counsel should have not allowed the Applicant's prior overturned conviction to be mentioned during sentencing."
5. "Trial Counsel failed to adequately challenge the chain of custody on the substances seize from the Applicant. The chain of custody on these drugs was broken. The date on the drugs were taken to SLED and received by SLED are different dates. Furthermore, Josh Hood admitted to detaining and searching the Applicant without consent or without a search warrant."
6. "Trial Counsel failed to challenge the State's witness about the deal she was making with the State to testify at the Applicant's trial."

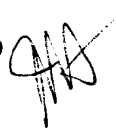
7. "Trial Counsel failed to adequately challenge the issue related to the dash-cam and its lack of audio at certain points."
- B. Ineffective Assistance of Appellate Counsel as to Assistant Appellate Defender Taylor D. Gilliam
1. "Counsel failed to raise valid and preserved arguments on appeal, particularly that the Court erred in failing to suppress the tainted drugs that were seized by police."
 2. "Failed to petition the issue related to the mistrial in Supreme Court."
- C. Prosecutorial Misconduct as to Micah E. Black
1. "Mr. Black intentionally withheld the criminal record of the informant, Debbie Rucker. Furthermore, Mr. Black falsely indicated to the Court that the Applicant had made death threats against the government."
 2. "Mr. Black failed to turn over as part of Discovery, the report made by Gregory Allison where Allison admitted to finding a bag of substance on the floor of his office and adding it to the contents of the Applicant's case. (Please see attached supplemental report obtained by the Applicant.)"
 3. "Mr. Black attempted to withhold the field test of the substance seized from the Applicant at the time of his arrest that shows that the substances tested negative for drugs."

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

APPLICABLE LAW

Ineffective Assistance of Trial Counsel

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



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

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

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

Ineffective Assistance of Appellate Counsel

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

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

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

Prosecutorial Misconduct / Brady Violation

The Brady² disclosure rule requires the prosecution to provide a defendant any evidence in the prosecution’s possession that may be favorable to the accused and material to guilt or punishment. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Brady v. Maryland, 373 U.S. 83, 87 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676 (1985). “Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

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

The Supreme Court of South Carolina has recognized that:

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Ineffective Assistance of Trial Counsel

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

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

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



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

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

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



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

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

2. Failure to Recuse Judge Hocker

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

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

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

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

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

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

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

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

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

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

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

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

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

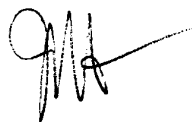


“absolutely necessary.” Harris, 340 S.C. at 63, 530 S.E.2d at 627-628; see State v. Brown, 389 S.C. 84, 94, 697 S.E.2d 622, 627 (Ct. App. 2010) (“A manifest necessity must exist for the trial court to discharge the jury and declare a mistrial.”).

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

A handwritten signature in black ink, appearing to be the initials 'JM' followed by a long, sweeping horizontal stroke.

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

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

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



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

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

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

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

Trial Counsel testified there was some issues with the audio on the dashboard camera. Trial Counsel testified she verified with Black that the State's copy also contained the same audio issues. Trial Counsel said that based on her review of the video, she did not believe the intermittent lack of audio was crucial or helpful to Applicant's case. Trial Counsel testified that she still attempted to suppress the statements made by Applicant during a Jackson v. Denno⁵ hearing, but her motion was unsuccessful.

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

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

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

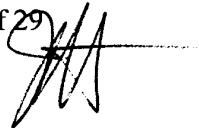
Applicant has also failed to establish any resulting prejudice from Trial Counsel's alleged deficiency. Applicant did not show this Court what additional arguments Trial Counsel should have raised regarding the alleged Miranda violations but did not. Further, Applicant has not shown this court how any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

II. Ineffective Assistance of Appellate Counsel

1. Failure to Raise Fourth Amendment Issue on Appeal

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

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



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

III. Prosecutorial Misconduct

1. Brady Violations⁶

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

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

⁶ This section addresses all three claims of prosecutorial misconduct.

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

This Court finds the testimony of Trial Counsel and Black very credible. Both Black and Trial Counsel testified the defense received both documents in a timely manner, which is reflected in the trial transcript. (Trial Tr. 85-86). Trial Counsel was able to review each of these documents and cross-examine the applicable witness accordingly. Therefore, based on the aforementioned test set forth in Gibson⁷, Applicant has failed to establish a Brady violation occurred. Accordingly, this Court finds Applicant has failed to establish a Brady violation.

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

CONCLUSION

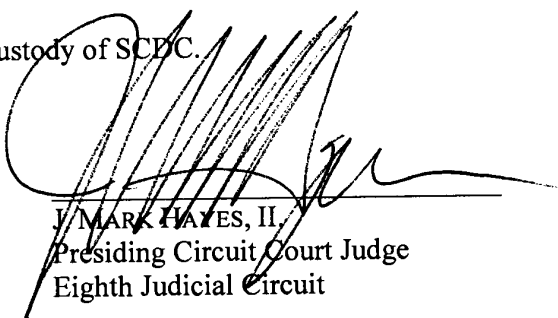
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief pursuant to the Uniform Post Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10 to -160. Neither Trial Counsel nor Appellate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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.


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

April 28, 2020

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

Dear Clerk,
would you please send me a copy
of the following documents that is on
file in your office in the above case?

Filed 8th Judicial District
2020 JUN 18 PM 2:43

1. The amendment filed by PCR Attorney Ashley McMahon.
2. The 3 pro/se amendment's I filed.
3. The PCR application I filed pro/se.
4. The return filed by the State.

Thank you very much.

Please Respond.

Date 6-14-20 S. / ~~Earnest~~ Vaughn
Earnest Vaughn
MC I F-1-182
386 Redemption Way
McCormick SC 29899