

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County
Lee S. Alford, Circuit Court Judge

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S.C. Supreme Court

JUSTIN NELSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212885

APPENDIX

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN NELSON,

APPELLANT.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	:	
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,	)	TRANSCRIPT OF RECORD
	:	2009-GS-46-2552
PLAINTIFF,	)	2009-GS-46-2553
	:	2009-GS-46-1717
VERSUS	)	2009-GS-46-1718
	:	2009-GS-46-1719
JUSTIN NELSON,	)	
	:	
DEFENDANT.)	)	

JULY 22, 2009
YORK, SOUTH CAROLINA

BEFORE:

THE HONORABLE JOHN C. HAYES III, JUDGE

APPEARANCES:

FOR THE STATE:
JENNY E. DESCH, ESQ., ASSISTANT SOLICITOR

FOR THE DEFENSE:
TWANA N. BURRIS, ESQ., STANDBY COUNSEL
JUSTIN NELSON, PRO SE

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

1 NO EXHIBITS WERE ENTERED INTO THE RECORD OF THIS CASE

2 COURT IN SESSION - 11:00 A.M.

3 THE COURT: IS THIS MR. NELSON?

4 MS. BURRIS: YES SIR, IT IS.

5 THE COURT: MS. DESCH, CALL YOUR CASE.

6 MS. DESCH: THANK YOU, YOUR HONOR.

7 MS. BURRIS: YOUR HONOR, I ACTUALLY HAVE A MOTION.

8 THE COURT: WELL, I'LL BE GLAD TO HEAR IT.

9 MS. BURRIS: THANK YOU.

10 THE COURT: FIRST THING IS, I UNDERSTAND MR. NELSON WAS
11 SUPPOSED TO BE AT 10:00 AND IT'S NOW 11:00, MS. BURRIS. DID---

12 MS. BURRIS: YOUR HONOR, I---

13 THE COURT: MS. BURRIS, JUST A MINUTE. DID YOU---

14 MS. BURRIS: I'M SORRY.

15 THE COURT: ---INFORM HIM AND MS. BURRIS THAT WE START AT
16 10:00?

17 MS. DESCH: I INFORMED HIM PERSONALLY TO BE HERE AT 9:30, YES
18 SIR.

19 THE COURT: HOW ABOUT MS. BURRIS?

20 MS. DESCH: I TALKED TO HER TWO WEEKS AGO, AND I TALKED-- SHE
21 WAS TOLD-- I CALLED HER THIS MORNING ON MY PHONE AND TOLD HER
22 YOU WERE EXPECTING HER, AND SHE SAID SHE'LL GET THERE WHEN SHE
23 GETS THERE. I HAD IT ON SPEAKER PHONE. CHRIS CAN VERIFY IT.

24 MS. BURRIS: I WAS--

25 MS. DESCH: AND SHE TOLD ME THAT I WASN'T THE BENCH.

1 MS. BURRIS: YOUR HONOR, I WAS ACTUALLY IN A MEETING WHEN SHE
2 CALLED ME UNEXPECTEDLY AND I TOLD HER I WOULD BE THERE WITHIN
3 THIRTY MINUTES OR AN HOUR. NOTHING---

4 THE COURT: LET ME ASK YOU THIS, MS. BURRIS: DO YOU REPRESENT
5 MR. NELSON?

6 MS. BURRIS: I REPRESENT MR. NELSON AS OF, AROUND 6:00 OR 6:30
7 YESTERDAY EVENING, YOUR HONOR.

8 THE COURT: DID HE TELL YOU HE WAS SUPPOSED TO BE HERE AT 9:30?

9 MS. BURRIS: HE TOLD ME THAT HE HAD TO COME. HE DID NOT TELL
10 ME A SPECIFIC TIME. AND WHAT I TOLD HIM AS SOON AS I GET IN THE
11 OFFICE IN THE MORNING TIME I WILL CALL MS. DESCH, AS SOON AS I GOT
12 THE MOTIONS FILED, AND THAT'S WHEN MS. DESCH CALLED ME, I THINK,
13 MAYBE 9:30 OR 10:00, AND I WAS IN THE MIDDLE OF A MEETING.

14 THE COURT: AND YOU WERE HIRED AT 6:00 LAST NIGHT?

15 MS. BURRIS: YES SIR.

16 THE COURT: WHAT'S THE MOTION?

17 MS. BURRIS: MY MOTION IS FOR A CONTINUANCE, YOUR HONOR. JUST
18 TO KIND OF GIVE YOU A QUICK RUN-THROUGH AT THIS STAGE, AND I'LL JUST
19 GIVE YOU THE---

20 THE COURT: MR. NELSON, YOU CAN SIT DOWN.

21 MR. NELSON: YES SIR.

22 MS. BURRIS: OF COURSE, YOUR HONOR, IT'S A MOTION FOR A
23 CONTINUANCE. AGAIN, AS I'VE STATED HERE, I WAS HIRED LAST NIGHT
24 AROUND 6:30 P.M. THE STATE WAS SERVED WITH BRADY AND DISCOVERY,
25 ON THIS MORNING, AROUND 9:00. 9:30. THE STATE PROVIDED HIS CASE FILE,

1 ROUGHLY AROUND 10:00, OR THIRTY TO FORTY-FIVE MINUTES AGO, YOUR
2 HONOR. THE DATE OF THE INCIDENT, I DID ACTUALLY LOOK AT THE
3 WARRANT, JANUARY 30 OF THIS YEAR, AND FEBRUARY 11, WAS WHEN THEY
4 ACTUALLY SERVED THE ARREST ON HIM, YOUR HONOR.

5 OF COURSE, I HAVEN'T HAD ADEQUATE TIME TO PREPARE THE CASE.
6 I'D LIKE TO LOOK AT THE DISCOVERY. I DON'T EVEN HAVE THE CASE FILE. I
7 WAS ABLE TO LOOK AT THE ARREST AND SEE WHEN THE WARRANT WAS
8 SERVED ON HIM. AND I UNDERSTAND THAT THEY ARE ACTUALLY WITHIN
9 THE TIME FRAME. IT'S MY UNDERSTANDING THEY ARE SUPPOSED TO HAVE
10 THEIR CASES MOVE WITHIN SIX MONTHS. IT HASN'T ACTUALLY BEEN SIX
11 MONTHS. AND THAT'S ONE OF THE THINGS I DID LOOK AT.

12 THE COURT: DON'T TALK TOO FAST. THE COURT REPORTER NEEDS TO
13 GET THIS.

14 MS. BURRIS: YES SIR, THANK YOU. BUT I'D CERTAINLY LIKE TO HAVE
15 HIM-- HE'S LOOKING AT A MINIMUM OF TWENTY-FIVE YEARS. IT'S A VERY
16 SERIOUS CASE. MY UNDERSTANDING, IT'S ABOUT NINE OR TEN WARRANTS.
17 HE'S AGAIN LOOKING AT A MINIMUM OF TWENTY-FIVE YEARS. AND I'D
18 CERTAINLY LIKE TIME TO BE ABLE TO GO OVER DISCOVERY, PREPARE THE
19 CASE AND ADVISE MY CLIENT TO THE BEST OF MY KNOWLEDGE.

20 I THINK IT WOULD CERTAINLY BE AN INJUSTICE TO MY CLIENT TO GO
21 FORWARD WHEN I HAVEN'T LOOKED AT THE DISCOVERY. AND I DID HAVE A
22 CONVERSATION WITH HER ABOUT TWO WEEKS AGO, BUT WE DIDN'T DISCUSS
23 THE SUBSTANCE OF THE CASE BECAUSE I WAS NOT ACTUALLY ON THE CASE,
24 YOUR HONOR. SO, THERE WASN'T ANYTHING FOR US TO DISCUSS. AS SOON
25 AS I WAS NOTIFIED--

1 I WOULD HAVE CALLED HER LAST NIGHT, BUT, 6:00, 6:30, YOUR HONOR,
2 AFTER I WAS DONE AT THE OFFICE, AND I HAD GONE HOME. BUT SHE DID
3 ACTUALLY CALL ME THIS MORNING AND I DID SPEAK WITH HER AND SAID I
4 WOULD BE UP AT THERE IN THIRTY MINUTES TO AN HOUR.

5 AND HE DID ACTUALLY TELL ME THAT SHE WANTED HIM TO COME UP
6 HERE, BUT HE DIDN'T TELL ME A SPECIFIC TIME. BUT I DID NOTIFY HIM THAT
7 I WOULD CALL HER ONCE I FILE A LETTER OF REPRESENTATION AND GOT
8 THE DISCOVERY SO THAT WE COULD CONTINUE THE CASE IN
9 COMMUNICATION.

10 THE COURT: WHAT'S THE STATE'S POSITION?

11 MS. DESCH: YOUR HONOR, MR. NELSON HAS ORIGINAL CHARGES
12 THAT DATE BACK TO JUNE OF '08. HE HAD ERIK DELANEY APPOINTED TO
13 HIM. HE WAS RE-ARRESTED AGAIN IN JANUARY OF THIS YEAR. HE HAD ERIK
14 DELANEY WORKING ON HIS CASE FROM JANUARY TO JUNE 22, WHEN HE
15 ASKED TO HAVE ERIK DELANEY REMOVED FROM THE CASE. JUDGE ALFORD
16 GRANTED THAT REQUEST AND REMOVED ERIK DELANEY FROM THE CASE AT
17 THE DEFENDANT'S REQUEST.

18 AT THAT TIME JUDGE ALFORD GAVE HIM HIS WAIVER OF ATTORNEY
19 RIGHTS AND TOLD HIM HE WAS ON NOTICE FOR TRIAL ON THE 7/6 TERM AND
20 7/13 TERM AND ON 7/20 TERM. HE WAS TOLD AT THAT TIME THAT HE HAD TO
21 BE PREPARED TO GO TO TRIAL WITH OR WITHOUT AN ATTORNEY.

22 OUT OF COURTESY-- HE'D BEEN TALKING TO MS. BURRIS THE ENTIRE
23 TIME. ERIK DELANEY REQUESTED THAT HE COME UP HERE AND VERIFY
24 WITH HIM HE HAD BEEN TALKING WITH MS. BURRIS THE ENTIRE TIME. SHE
25 WAS AWARE THAT THIS HAS BEEN GOING ON.

1 I SPOKE TO HER AT THE END OF JUNE AFTER HE RELEASED ERIK AND
2 EXPLAINED TO HER AND SHE CALLED ME AND SAID, WHAT'S THE OFFER. WE
3 DISCUSSED IT ON THE PHONE. SHE HAD HIM IN THE OFFICE. I SAID IF YOU
4 ARE GOING TO ACCEPT THIS YOUNG MAN'S MONEY YOU HAVE TO BE
5 PREPARED FOR TRIAL BECAUSE HE'S ON NOTICE FOR TRIAL THE 6TH AND
6 THE 13TH. I DIDN'T GET TO IT BECAUSE I HAD TWO OTHER TRIALS.

7 I HAVE SPOKEN TO THIS YOUNG MAN ON SEVERAL OCCASIONS. ON
8 THE 13TH I TALKED TO HIM. I CALLED HIM PERSONALLY AND REMINDED
9 HIM. HE SAID, YES, I KNOW I'M UP FOR TRIAL. ON THE 20TH ON MONDAY, I
10 CAME IN. WE HAD A LONG CONVERSATION. I SAID YOU'RE UP FOR TRIAL. HE
11 ASKED FOR HIS DISCOVERY YESTERDAY. I GAVE HIM A COPY OF DISCOVERY
12 BECAUSE SEVERAL ATTORNEYS CALLED---

13 THE COURT: YOU NEED TO SLOW DOWN, TOO.

14 MS. DESCH: I APOLOGIZE, YOUR HONOR. SO, THIS YOUNG MAN CAME
15 IN. HE CAME IN AND GOT HIS DISCOVERY YESTERDAY. HE SAID-- HE WAS
16 DUE HERE YESTERDAY AT 11:00 TO GO WITH US TO VIEW THE EVIDENCE. HE
17 CHOSE NOT TO COME WITH US, AND HE LEFT. HE DID NOT COME VIEW THE
18 EVIDENCE. HE CHOSE TO GO TO MS. BURRIS' OFFICE, BECAUSE THAT'S WHEN
19 APPARENTLY HE GAVE THE MONEY. WHEN HE GOT THERE--

20 I CALLED HIM IN THE DAY. IT WENT TO VOICE MAIL. HE CALLED ME
21 AT 4:30 YESTERDAY. I SAID, YOU ARE UP FOR TRIAL, YOU ARE DUE IN FRONT
22 OF JUDGE HAYES AT 9:30. HE WAS GIVEN-- ON MONDAY, AGAIN, HE WAS
23 GIVEN HIS RIGHTS, HIS WAIVER RIGHTS, AND HE WAS WARNED BY OUR
24 OFFICE THAT IF HE DID NOT SHOW UP WE WOULD GO FORWARD IN HIS
25 ABSENCE.

1 WE DISCUSSED IT YESTERDAY IN YOUR CHAMBERS. I REMINDED HIM
2 HE WAS UP TO BE HERE AT 9:30. I SPECIFICALLY TOLD HIM. HE WANTED TO
3 BRING TWANA TO COURT YESTERDAY AFTER 5:00. I SAID I DON'T NEED TO
4 SEE HER AFTER 5:00. HAVE HER SEND ME A LETTER OF REP, I'LL GET HER THE
5 DISCOVERY IN ADDITION TO WHAT I HAVE GIVEN HIM TO GIVE TO HER.

6 SHE HAS BEEN AWARE THIS WHOLE TIME. SHE IS MORE THAN AWARE
7 THAT WE WERE SCHEDULED FOR TRIAL THIS WEEK. AND SHE DID NOT CALL
8 ME LAST NIGHT. AND ON SEVERAL OCCASIONS SHE WOULD CALL ME AT 7:00,
9 8:00, 9:00 AT NIGHT. SO, YESTERDAY, SAYING SHE DIDN'T WANT TO CALL ME
10 LATE, SHE HAS CALLED ME NUMEROUS TIMES AFTER HOURS, AND I'VE
11 ALWAYS PICKED UP THE PHONE AND ANSWERED.

12 AND I KNEW THAT WE WERE ON FOR TRIAL. I WOULD HAVE GIVEN
13 HER DISCOVERY. I DID THAT MUCH FOR HIM THE LAST FOUR TIMES WE
14 TALKED TO HIM. AND WE ARE HERE TODAY. THIS IS A BLATANT
15 DISREGARD.

16 I CALLED HER THIS MORNING WHEN SHE DIDN'T SHOW UP TO REMIND
17 HER AND SHE WAS RUDE ON THE PHONE, SAID THAT SHE WOULD GET HERE
18 WHEN SHE COULD. MARIA SENT ME THE LETTER OF REP FROM TWANA'S
19 OFFICE AT 9:56 A.M. I RESPONDED WITH DISCOVERY WITHIN FIVE MINUTES,
20 YOUR HONOR, AND REMINDED THEM AGAIN THAT THEY WERE DUE IN FRONT
21 OF YOU AT 10:00. I PERSONALLY TOLD HER THAT YOU WERE WAITING ON
22 THE BENCH FOR HER THIS MORNING AND THAT WE WERE PREPARED TO GO
23 TO TRIAL. AND WE WOULD ASK THAT THAT MOTION TO CONTINUE BE
24 DENIED AND GO FORWARD.

25 THE COURT: BRIEF RESPONSE.

1 MS. BURRIS: YES SIR, JUST A BRIEF RESPONSE. I WOULD NOT HAVE
2 HAD A REASON TO HAVE KNOWN ABOUT WHEN THIS TRIAL WAS ACTUALLY
3 SCHEDULED TO GO FORTH. I JUST BRIEFLY SPOKE TO MY CLIENT. HE
4 INDICATED THAT HE DID GO BEFORE JUDGE ALFORD. HOWEVER, HE WAS
5 NOT GIVEN A SPECIFIC DATE.

6 I WOULD NOT HAVE BEEN IN THE KNOW AS TO WHEN THIS TRIAL WAS
7 SCHEDULED FOR BECAUSE I DIDN'T FILE A LETTER OF REPRESENTATION. I
8 WASN'T ON THE CASE. HE SPOKE WITH MYSELF AND SEVERAL OTHER
9 ATTORNEYS. SO, AS TO MYSELF KNOWING AND BEING NOTIFIED OF THE
10 TRIAL DATE, YOUR HONOR, I WOULD HAVE ADDRESSED THIS ISSUE EARLIER
11 IN THE WEEK, OF COURSE. CERTAINLY ON MONDAY OR LAST WEEK. I
12 WASN'T HIRED UNTIL 6:30 YESTERDAY. SO, I WOULDN'T HAVE HAD A
13 REASON TO EVEN KNOW OR TO EVEN CARE AS TO WHEN HIS TRIAL WAS
14 SCHEDULED FOR. THANK YOU.

15 THE COURT: WELL, THE ISSUE IS NOT WHEN YOU KNEW ABOUT IT, BUT
16 WHEN HE KNEW ABOUT IT. AND MS. BURRIS, IT'S PRETTY OBVIOUS TO THE
17 COURT, AND IT'S OBVIOUS TO THE PROSECUTOR, AND IT SHOULD BE
18 OBVIOUS TO YOU, THAT MR. NELSON'S TRYING TO GAME THE SYSTEM. YOUR
19 MOTION TO CONTINUE IS DENIED. HE KNEW HE WAS SUPPOSED TO BE READY
20 FOR TRIAL AND HE WAITED UNTIL THE LAST MINUTE. HE'S PLAYING A GAME
21 WITH THIS COURT AND THIS COURT DOESN'T PLAY GAMES. THIS IS THE
22 REAL WORLD. SO, THE TRIAL'S STARTING RIGHT NOW.

23 HAVE YOU GOT A JURY, READY FOR THE JURY?

24 MS. DESCH: YES, YOUR HONOR.

25 THE COURT: ANY PRE-TRIAL MOTIONS?

1 MS. BURRIS: YOUR HONOR, I NEED TO SPEAK WITH HIM. AT THIS TIME
2 I KNOW THAT I CANNOT ADEQUATELY REPRESENT HIM WITHOUT ANY
3 DISCUSSION, WITHOUT EVEN LOOKING AT WHAT I'VE GOTTEN.

4 THE COURT: WELL, YOU CAN DISCUSS IT WITH HIM SITTING RIGHT
5 THERE BECAUSE THE CASE IS TO BE TRIED, AND HE IS NOT LEAVE THE
6 COURTROOM.

7 MS. BURRIS: THANK YOU, YOUR HONOR.

8 THE COURT: WE'LL TAKE A FIVE MINUTE RECESS.

9 MS. DESCH: THANK YOU, YOUR HONOR.

10 THE COURT: HE'S HAD A MONTH TO DO THIS, SO FIVE MINUTES OUGHT
11 TO BE ENOUGH.

12 (WHEREUPON THE COURT WAS IN RECESS AT 11:20 A.M.)

13 COURT IN SESSION - 11:20 A.M.

14 THE COURT: MS. BURRIS, ARE YOU READY TO PROCEED?

15 MS. BURRIS: WELL, I'M NOT SURE AT THIS POINT, YOUR HONOR.

16 THE COURT: WELL, IS HE YOUR CLIENT OR ISN'T HE YOUR CLIENT?

17 MS. BURRIS: HE'S NOT MY CLIENT AT THIS MOMENT, YOUR HONOR.

18 MAY I ADDRESS THE COURT?

19 THE COURT: YES.

20 MS. BURRIS: I JUST SPOKE WITH HIM. I MENTIONED TO HIM, I SAID,
21 DID JUDGE ALFORD WHEN HE WAS BROUGHT BEFORE HIM TELL YOU THAT
22 THERE WAS A SPECIFIC DATE THAT YOU WERE GOING TO TRIAL; IN OTHER
23 WORDS, PUT YOU ON TRIAL NOTICE. AND HE SAID NO, THAT WHAT JUDGE
24 ALFORD SAID-- AND I TOLD HIM WE CAN PULL THE TRANSCRIPT BECAUSE
25 TRANSCRIPTS DON'T LIE. HE SAID THAT JUDGE ALFORD THAT IT'S GONNA BE

1 TO YOUR BEST INTEREST TO GO OUT AND HIRE AN ATTORNEY, OR
2 SOMETHING ABOUT THE PUBLIC DEFENDER, BECAUSE AT THIS TIME HE DID
3 HAVE MR. DELANEY. HE SAID HE NEEDED TO GO OUT AND FIND AN
4 ATTORNEY, BUT THAT HE NEVER PUT HIM ON SPECIFIC NOTICE AS TO HIS
5 TRIAL DATE. AND I TOLD HIM WE CAN PULL THE TRANSCRIPT AND IT'S NOT
6 GONNA LIE, SO ARE YOU TELLING THE TRUTH. AND HE SAID THAT JUDGE
7 ALFORD NEVER PUT HIM ON NOTICE THAT THERE WOULD BE A SPECIFIC
8 TRIAL DATE.

9 THE COURT: I THINK THE INFORMATION WAS TRIAL TERMS, MAYBE
10 NOT A TRIAL DATE. HE DIDN'T SAY JULY 22. BUT ACCORDING TO THE
11 SOLICITOR HE GAVE HIM THREE WEEKS, THE 20TH, 14TH, AND 7TH, THAT THIS
12 CASE COULD BE CALLED. AND HE WAS TOLD AT LEAST YESTERDAY, IF NOT
13 BY COUNSEL, BY THE SOLICITOR THAT YOU'VE GOT A TRIAL DATE. AND HE'S
14 GOING TO TRIAL. HE'S PLAYING A GAME WITH US AND WE DON'T PLAY
15 GAMES. THIS IS COURT. THIS IS SERIOUS STUFF. HE MIGHT NOT THINK IT IS.
16 HE MIGHT THINK THAT, BUT HE'S THE ONLY ONE WHO DOES. AND HE'S NOT
17 GOING TO GAME THE SYSTEM. HE'S GOING TO TRIAL TODAY.

18 MS. BURRIS: YOUR HONOR, IF I MAY. I'VE ALSO SPOKEN WITH HIM TO
19 MAYBE WORKING SOMETHING OUT. YOUR HONOR, THIS PUTS ME IN A VERY,
20 VERY UNEASY POSITION, WHERE AT THIS POINT THERE'S NOT MUCH THAT I
21 CAN DO FOR HIM. BUT ANYTHING I CAN DO FOR HIM I WOULD LIKE TO DO.
22 AND, YOU KNOW, ...

23 THE COURT: I KNOW. HE PUT YOU IN THIS POSITION. HE'S PLAYING A
24 GAME. I'M PUTTING THIS ON THE RECORD. HE'S PUT YOU IN THIS POSITION
25 OF BEING A PAWN IN HIS GAME WITH THE COURT. AND THAT'S

1 REGRETTABLE. I HATE TO SEE YOU INVOLVED IN THAT POSITION. BUT
2 WHETHER YOU WANT TO REMAIN IN THAT ROLE OR EXTRICATE YOURSELF
3 FROM IT, THAT'S UP TO YOU.

4 BUT HE IS NOT GOING TO PLAY GAMES WITH THE SYSTEM. WE'VE GOT
5 THE JURY READY TO COME UP. THEY'RE GOING TO COME UP IN JUST A
6 MINUTE AND HE'S GOING TO TRIAL.

7 MS. BURRIS: YOUR HONOR, MAY HE ADDRESS THE COURT?

8 THE COURT: SURE.

9 MR. NELSON: YOUR HONOR, LIKE, IN THE BEGINNING AND
10 EVERYTHING, LIKE, I DIDN'T HAVE THE FUNDS TO GET A LAWYER. I DIDN'T
11 HAVE A ATTORNEY AT THE BEGINNING.

12 THE COURT: THAT'S WHY YOU GOT A PUBLIC DEFENDER.

13 MR. NELSON: YEAH, THAT'S RIGHT. SO, WHEN I WENT IN FRONT OF
14 JUDGE ALFORD, THE WHOLE THING WAS, I TOLD HIM I NEEDED TIME TO GET
15 SOME MONEY FOR A ATTORNEY. AND HE WAS, LIKE, WHAT ATTORNEY, AND
16 EVERYTHING, LIKE, HE FELT LIKE HE MIGHT-- HE WAS, LIKE, THEY GOT YOU
17 ON THE TRIAL DOCKET, OR SOMETHING. AND IF THEY CALL YOU AND YOU
18 DON'T HAVE A ATTORNEY, YOU HAVE TO REPRESENT YOURSELF. BUT YOU
19 NEED TO HIRE SOMEBODY AND YOU NEED TO BE READY FOR TRIAL. BUT HE
20 NEVER ACTUALLY, LIKE, GAVE ME A SPECIFIC DATE OR TIME. HE NEVER,
21 LIKE, YOU KNOW,...

22 I DON'T KNOW. I DON'T KNOW HOW TO WORK THE SYSTEM. I'M NOT
23 TRYING TO WORK THE SYSTEM, YOU KNOW. I JUST DIDN'T WANT TO PUT
24 MYSELF IN A POSITION TO GET, LIKE, YOU KNOW WHERE I DON'T KNOW
25 WHAT TO SAY OR DO. THAT'S WHY I HIRED TWANA. IT WASN'T NO, LIKE,

1 TRYING TO WAIT IT OFF. BECAUSE, LIKE I SAY, I DIDN'T HAVE THE MONEY
2 TO PAY FOR HER. BUT I JUST WANT TO LET YOU KNOW THAT, THAT IT WAS
3 NO SITUATION WHERE I WAS TRYING TO, YOU KNOW, WORK THE SYSTEM.

4 THE COURT: YOU AREN'T GOING TO WORK THE SYSTEM. YOU'RE
5 GOING TO TRIAL TODAY. I DON'T KNOW HOW MANY TIMES I HAVE TO SAY
6 THAT.

7 MS. BURRIS, ARE YOU IN OR OUT?

8 MS. BURRIS: YOUR HONOR, AFTER SPEAKING WITH HIM, I CANNOT PUT
9 MYSELF IN THIS POSITION. I CANNOT ADEQUATELY REPRESENT HIM
10 WITHOUT ADEQUATE DISCOVERY.

11 THE COURT: WELL, MY QUESTION TO YOU IS PRETTY SIMPLE. ARE
12 YOU IN OR OUT? YOU CAN'T BE SORT OF IN. YOU HAVE TO DIVE IN OR STAY
13 OUT.

14 MS. BURRIS: YOUR HONOR, I NEED TIME TO TALK TO MR. NELSON.

15 THE COURT: I KNOW YOU KEEP SAYING THAT, BUT THE TIME IS HERE.
16 THE TIME IS HERE. IT'S 11:27. I'LL GIVE YOU THREE MINUTES, TO 11:30.

17 MS. BURRIS: OKAY. I'LL STEP OUT WITH HIM.

18 THE COURT: NO, HE'S NOT GOING OUT OF THIS COURTROOM. YOU'LL
19 JUST HAVE TO TALK TO HIM RIGHT THERE. HE'S NOT GOING OUT OF THIS
20 COURTROOM.

21 MS. BURRIS: OKAY.

22 (WHEREUPON A THREE-MINUTE RECESS WAS TAKEN IN THE
23 COURTROOM FOR COUNSEL TO CONFER WITH DEFENDANT)

24 THE COURT: TIME IS UP, MS. BURRIS. ARE YOU IN OR OUT?

25 (NO RESPONSE)

1 THE COURT: MS. BURRIS, I'VE ASKED YOU A QUESTION. ARE YOU IN
2 OR OUT? DO YOU WANT TO BE RELIEVED OF COUNSEL OR DO YOU WANT TO
3 REPRESENT HIM IN THIS TRIAL?

4 MS. BURRIS: YOUR HONOR, I WILL HAVE TO BE RELIEVED.

5 THE COURT: ALL RIGHT. I WILL GRANT THAT MOTION TO RELIEVE
6 YOU OF COUNSEL. MR. NELSON, I AM GOING TO RELIEVE HER OF COUNSEL.
7 I'M NOT GOING TO PUT HER IN THE SITUATION THAT YOU'VE TRIED TO PUT
8 HER IN.

9 I FIND THAT BASED ON HIS CONDUCT MR. NELSON HAS WAIVED HIS
10 RIGHT TO COUNSEL. HE UNDERSTANDS THE BENEFIT OF COUNSEL. HE
11 UNDERSTANDS THE DANGERS OF SELF-REPRESENTATION. AND HE WILL GO
12 FORWARD PRO SE.

13 THANK YOU, MS. BURRIS.

14 MS. BURRIS: ONE MOMENT, YOUR HONOR.

15 THE COURT: IF YOU DON'T REPRESENT HIM, YOU SHOULDN'T BE
16 TALKING TO HIM. YOU CAN, BUT IF YOU DON'T REPRESENT HIM AND HE
17 ENTERS A PLEA OR SOMETHING, HE'LL BE FILING POST-CONVICTION SAYING
18 YOU DIDN'T REPRESENT HIM, BUT YET, YOU REPRESENTED HIM. YOU CAN'T
19 HAVE THAT. WE CAN'T HAVE THOSE HYBRIDS. YOU'RE EITHER IN OR OUT.

20 MS. BURRIS: I UNDERSTAND, YOUR HONOR.

21 THE COURT: YES MA'AM.

22 MS. BURRIS: HE JUST SAID HE WANTED ME TO LET HIS FAMILY KNOW.

23 THE COURT: WELL, IF YOU WANT TO DO A COURTESY CALL TO HIS
24 FAMILY, THAT'S FINE.

25 MS. BURRIS: YES SIR.

1 THE COURT: BUT YOU'RE NOW IN A POSTURE THAT YOU DON'T
2 REPRESENT HIM.

3 MS. BURRIS: YES SIR.

4 THE COURT: IS THE STATE READY?

5 MS. DESCH: THE STATE IS READY.

6 THE COURT: MR. NELSON, I'M NOT GOING TO ASK YOU IF YOU'RE
7 READY, BECAUSE YOU'RE SUPPOSED TO BE READY, AND YOU'RE GOING TO
8 TELL ME YOU'RE NOT READY. SO, WE'RE GOING TO TRY THIS CASE. BRING
9 UP THE JURY.

10 (WHEREUPON THE JURY WAS SUMMONED BY CLERK OF COURT)

11 MS. BURRIS, BEFORE YOU LEAVE, I WILL ASK MR. NELSON, DO YOU
12 WANT TO HAVE STANDBY COUNSEL? CAN YOU EXPLAIN THAT TO HIM, MS.
13 BURRIS?

14 MS. BURRIS: YES SIR.

15 (PAUSE FOR COUNSEL TO CONFER WITH DEFENDANT)

16 MS. BURRIS: YOUR HONOR, WOULD YOU INQUIRE OF MR. NELSON,
17 DOES WISH ME TO REMAIN AS STANDBY COUNSEL.

18 THE COURT: ALL RIGHT, THEN. MR. NELSON, MS. BURRIS WILL BE
19 STANDBY COUNSEL. THAT MEANS SHE WILL NOT BE EXAMINING WITNESSES.
20 SHE WILL NOT BE APPEARING BEFORE THE JURY. SHE WILL NOT BE MAKING
21 MOTIONS. SHE WILL SIMPLY BE THERE IF YOU HAVE SOME PROCEDURAL
22 QUESTION, YOU CAN ASK HER. DO YOU WANT HER TO DO THAT?

23 (PAUSE WITH NO RESPONSE)

1 THE COURT: HE WON'T SAY ANYTHING. I'M GOING TO APPOINT YOU
2 AS STANDBY COUNSEL AND WE'LL PAY YOU THROUGH THE INDIGENT
3 DEFENSE FUND FOR THE TIME THAT YOU HAVE TO SIT OVER HERE.

4 I'M GOING TO APPOINT MS. BURRIS AS STANDBY COUNSEL TO BE
5 AVAILABLE TO YOU, SHOULD YOU DESIRE TO ASK HER ANY PROCEDURAL
6 QUESTIONS.

7 (NO RESPONSE)

8 BRING IN THE JURY. MR. NELSON, WE'RE GOING TO DRAW THE JURY. I
9 BELIEVE THE STRIKES WILL BE FIVE AND TEN. YOU WILL HAVE TEN STRIKES
10 IN THIS CASE. MS. BURRIS WILL TELL YOU WHAT THAT MEANS, AS STANDBY
11 COUNSEL. THE STATE WILL HAVE FIVE STRIKES AND THEN WE'LL DRAW AN
12 ALTERNATE FOR EACH OF YOU. THE STATE WILL HAVE ONE STRIKE AND
13 YOU WILL HAVE TWO.

14 (NO RESPONSE)

15 ANY FURTHER REQUEST FOR VOIR DIRE AND WITNESS LIST?

16 MS. DESCH: YES, YOUR HONOR. I'VE PRESENTED IT AND HAVE
17 HANDED AS COPY TO THE DEFENSE.

18 THE COURT: MR. NELSON, BEFORE WE GET THE JURY IN HERE DO YOU
19 HAVE ANY PRE-TRIAL MOTIONS YOU WISH TO MAKE? MS. BURRIS HAS
20 ALREADY MADE HER MOTION FOR CONTINUANCE AND IT'S BEEN DENIED. DO
21 YOU HAVE ANY MOTIONS YOU WISH TO MAKE?

22 MR. NELSON: *I WANT TO OBJECT TO THE COURT, BECAUSE, LIKE, I
23 DIDN'T KNOW I WAS SUPPOSED TO BE IN COURT. AND, LIKE, GOING BACK
24 OVER HERE, THAT I DIDN'T KNOW. AND I WANT TO OBJECT.

1 THE COURT: WELL, WE HAVEN'T GONE TO TRIAL YET. MS. BURRIS HAS
2 TALKED WITH YOUR FAMILY.

3 MR. NELSON: I NEED THEM TO BE HERE.

4 THE COURT: SHE'LL CALL THEM OVER LUNCH. THIS TRIAL WON'T BE--
5 IT'S ALMOST LUNCHTIME NOW. THEY CAN COME THIS AFTERNOON IF THEY
6 WISH. SHE'LL BE IN TOUCH WITH THEM IF YOU GIVE HER THE PROPER
7 NUMBERS.

8 DO YOU HAVE ANY MOTIONS YOU WANT TO MAKE AT THIS TIME,
9 OTHER THAN WHAT YOU JUST SAID.

10 MR. NELSON: I DON'T UNDERSTAND WHAT A MOTION IS.

11 THE COURT: ALL RIGHT. YOU CAN ASK MS. BURRIS.

12 (PAUSE TO CONFER WITH COUNSEL)

13 MR. NELSON: I WANT TO MAKE A MOTION TO PROVIDE DISCOVERY.

14 THE COURT: SIR?

15 MR. NELSON: A MOTION TO PROVIDE DISCOVERY.

16 THE COURT: TO PROVIDE DISCOVERY. DID YOU PROVIDE DISCOVERY
17 TO MR. NELSON?

18 MS. DESCH: YOUR HONOR, I GAVE HIM A COPY OF THE INCIDENT
19 REPORT YESTERDAY. I GAVE EVERYTHING TO MS. BURRIS THIS MORNING.
20 AND I HAVE BEEN IN TOUCH WITH MY OFFICE, AND THEY ARE MAKING MORE
21 COPIES FOR WHAT'S BEEN REQUESTED BY THE DEFENDANT. I HAVE THAT.
22 AND WE'RE ALSO HAVING A COPY OF THE JURY LIST MADE FOR HIM, WHICH
23 SHOULD BE HERE SHORTLY.

1 THE COURT: ALL RIGHT. ALSO, WHEN HE WAS REPRESENTED BY MR.
2 DELANEY, DID YOU PROVIDE WITH MR. DELANEY WITH ALL THAT
3 INFORMATION AND DISCOVERY?

4 MS. DESCH: YES, YOUR HONOR.

5 THE COURT: THE STATE HAS COMPLIED WITH THE REQUIREMENTS
6 UNDER BRADY AND THE REQUIREMENTS OF THE RULES OF CIVIL
7 PROCEDURE, IN PARTICULAR, RULE 5.

8 MR. NELSON: JURY LIST?

9 THE COURT: THE JURY LIST IS COMING. I DON'T HAVE ONE EITHER, SO
10 WE WILL BOTH BE GETTING THE JURY LIST IN A MINUTE.

11 ANYTHING ELSE, MR. NELSON?

12 MR. NELSON: NO SIR.

13 THE COURT: ONCE WE GET THE JURY LISTS, WE'LL GET THE JURY IN
14 THE COURTROOM.

15 MS. DESCH: THE STATE HAS PROVIDED MR. NELSON WITH THE
16 CERTIFIED NOTICE, THAT SHOULD WE GET TO THAT STAGE, THAT THEY'LL
17 HAVE THAT.

18 THE COURT: ALL RIGHT. SO I'LL KNOW, WAS HE ARRESTED ON THIS
19 DATE, FEBRUARY 11? I'VE GOT DIFFERENT DATES ON THESE WARRANTS.
20 ALL THESE RISE FROM AN INCIDENT ON FEBRUARY 11. WAS HE ARRESTED
21 FOR FAILURE TO STOP?

22 MS. DESCH: YES, YOUR HONOR.

23 THE COURT: WELL, I COUNT THAT AS 154 DAYS, BY MY COUNT, TO
24 TODAY'S DATE.

25 MS. DESCH: I HAVE A MOTION, YOUR HONOR.

1 THE COURT: ALL RIGHT.

2 MS. DESCH: THE STATE WOULD MAKE A MOTION THAT THE
3 DEFENDANT SHOULD NOT MENTION ANY SENTENCE TO THE JURY. THAT IF
4 HE SPEAKS TO THE JURY THAT HE NOT MENTION THE POSSIBLE SENTENCES
5 FOR THE OFFENSES.

6 THE COURT: MR. NELSON, THESE SENTENCES APPLICABLE TO THESE
7 OFFENSES ARE NOT FOR THE JURY'S CONSIDERATION. THEY ARE ONLY TO
8 DECIDE WHETHER YOU COMMITTED THESE OFFENSES. SO, IT WOULD BE
9 IMPROPER FOR YOU TO TELL THE JURY THAT THEY SHOULD FIND YOU NOT
10 GUILTY BECAUSE YOU'ARE FACING X NUMBER OF YEARS IN JAIL. YOU CAN
11 TALK TO THE JURY AND TELL THEM WHAT YOUR OFFENSES, AND WHY YOU
12 FEEL YOU SHOULDN'T BE FOUND GUILTY, BUT YOU CAN'T TELL THEM THAT
13 IF YOU ARE FOUND GUILTY THAT YOU WILL SPENDING TIME IN JAIL, THAT
14 YOU ARE LOOKING AT TWENTY-FIVE YEARS, FIVE YEARS AND TWO MONTHS.

15 MR. NELSON: YES SIR.

16 MS. DESCH: YOUR HONOR, JUST FOR THE RECORD. SINCE THERE ARE
17 APPROXIMATELY TEN CHARGES AGAINST JUSTIN NELSON, THE STATE IS
18 GOING FORWARD TODAY ON 2009-1716, THE CHARGE OF TRAFFICKING IN
19 CRACK COCAINE, THIRD OFFENSE. WE'RE GOING FORWARD ON 2009-1717, THE
20 CHARGE OF FAILURE TO STOP FOR A BLUE LIGHT, FIRST OFFENSE; 2009-1718,
21 LEAVING THE SCENE OF AN ACCIDENT; AND 2009-2552, POSSESSION WITH
22 INTENT TO DISTRIBUTE CRACK COCAINE WITHIN THE PROXIMITY OF A PARK
23 OR A PLAYGROUND.

24 THE STATE NOW HAS PROVIDED THE DEFENDANT ANOTHER COPY OF
25 THE DISCOVERY INCLUDING ARREST WARRANTS, INDICTMENTS AND ALL

1 THE EVIDENCE SHEETS, AND INCIDENT REPORTS. WE'VE ALSO PROVIDED TO
2 HIM A JURY LIST SO THAT HE WILL HAVE THAT TO ASSIST HIM TO PICK A
3 JURY.

4 THE COURT: ARE WE READY FOR THE JURY PANEL?

5 MS. DESCH: YES SIR.

6 THE COURT: BRING IN THE JURY.

7 (WHEREUPON THE JURY ENTERED THE COURTROOM)

8 THE COURT: MEMBERS OF THE JURY PANEL, I'M JOHN HAYES. ALONG
9 WITH JUDGE ALFORD, WHO YOU'VE ALREADY MET, I AM ONE OF TWO
10 CIRCUIT JUDGES ASSIGNED HERE TO HOLD COURT THIS WEEK. THIS IS THE
11 FIRST TIME I'VE SEEN YOU UP HERE BECAUSE I'VE BEEN DOING MATTERS
12 THAT DID NOT REQUIRE THE USE OF A JURY. WE ALWAYS HAVE CERTAIN
13 THINGS THAT WE HAVE TO DO THAT DO NOT REQUIRE A JURY. THIS IS THE
14 START OF OUR FIRST TRIAL IN THIS COURTROOM.

15 THIS IS THE CASE OF THE STATE VERSUS JUSTIN ANTAVIOUS NELSON.
16 MR. NELSON, IF YOU WOULD STAND, SO THE JURY CAN SEE WHO YOU ARE.

17 (WHEREUPON DEFENDANT STANDS)

18 THIS IS MR. NELSON. YOU MAY BE SEATED.

19 (WHEREUPON DEFENDANT TAKES SEAT)

20 AND HE IS REPRESENTING HIMSELF. BY MY ORDER I HAVE FOUND
21 THAT HE IS TO GO FORWARD WITHOUT AN ATTORNEY, ALTHOUGH I HAVE
22 MS. TWANA BURRIS, A MEMBER OF THE YORK COUNTY BAR TO ASSIST HIM
23 IN PROCEDURAL MATTERS; THAT IS, WE CALL IT STANDBY COUNSEL. BUT
24 SHE WILL NOT BE REPRESENTING HIM, WILL NOT BE APPEARING BEFORE
25 YOU, WILL NOT BE ARGUING HIS CASE, MAKING MOTIONS TO ME. BUT SHE

1 WILL BE AVAILABLE IF HE NEEDS TO HAVE SOME ADVICE REGARDING ANY
2 KIND OF PROCEDURAL MATTERS.

3 I HAVE FOUND THAT WHERE WE ARE, AND I WON'T GO INTO IT WITH
4 YOU, THAT HE IS GOING TO REPRESENT HIMSELF. NOW, THE FACT THAT HE
5 IS REPRESENTING HIMSELF CANNOT BE USED AGAINST HIM; THAT IS, THE
6 FACT THAT HE DOES NOT HAVE AN ATTORNEY IS OF NO IMPORTANCE TO THE
7 JURY. THE JURY STILL HAS TO DETERMINE WHETHER OR NOT THEY CAN
8 PROVE HIS GUILT TO ANY OF THESE OFFENSES OR ALL THESE OFFENSES
9 BEYOND A REASONABLE DOUBT.

10 WITH OR WITHOUT AN ATTORNEY, HE IS PRESUMED INNOCENT OF
11 THESE CHARGES, AND IS PRESUMED INNOCENT BY OUR LAW, AND IS
12 ENTITLED TO A FULL TRIAL JUST AS IF HE HAD ONE OR TEN LAWYERS. SO,
13 DO NOT HOLD AGAINST HIM THE FACT THAT HE IS REPRESENTING HIMSELF
14 IN THIS MATTER.

15 HE IS CHARGED WITH FAILURE TO STOP FOR A BLUE LIGHT, LEAVING
16 THE SCENE OF AN ACCIDENT WHERE THERE WAS PROPERTY DAMAGE,
17 POSSESSION OF CRACK COCAINE OR COCAINE BASE WITHIN THE PROXIMITY
18 OF GLENCAIRN GARDENS, AND TRAFFICKING IN CRACK COCAINE.

19 ALL THESE CHARGES ARE ALLEGED TO HAVE OCCURRED IN ROCK HILL
20 ON FEBRUARY 11, 2009. TO THESE CHARGES, HE DID ENTER A PLEA OF NOT
21 GUILTY. AND AS I SAID EARLIER, THAT PLACES ON THE STATE THE BURDEN
22 OF PROVING HIS GUILT BEYOND A REASONABLE DOUBT.

23 I NEED TO ASK YOU SOME QUESTIONS CONCERNING YOUR
24 KNOWLEDGE THAT MAY AFFECT YOUR ABILITY TO SIT ON THIS CASE. IT'S IN

1 A SOMEWHAT SIMILAR FASHION BUT DIFFERENT QUESTIONS AS TO WHAT
2 JUDGE ALFORD DID DOWN IN THE JURY ASSEMBLY ROOM EARLIER.

3 FIRST: ARE ANY OF YOU RELATED BY BLOOD OR MARRIAGE, OR ARE
4 YOU A CLOSE, PERSONAL FRIEND OF JUSTIN A. NELSON? IF SO, PLEASE
5 STAND.

6 (NO RESPONSE)

7 NO ONE STANDS. ARE ANY OF YOU A FRIEND OF OR RELATED TO HIS
8 STANDBY ATTORNEY, TWANA BURRIS? IF SO, PLEASE STAND.

9 (NO RESPONSE)

10 NO ONE STANDS. THE STATE IS REPRESENTING BY MS. DESCH AND MR.
11 EPTING OF THE SOLICITOR'S OFFICE. ARE ANY OF YOU RELATED BY BLOOD
12 OR MARRIAGE OR ARE YOU A CLOSE PERSONAL FRIEND OR ACQUAINTANCE
13 OF EITHER OF THOSE INDIVIDUALS? IF SO, PLEASE STAND.

14 (NO RESPONSE)

15 NO ONE STANDS. POSSIBLE WITNESSES IN THIS CASE ARE
16 COMMANDER MARVIN BROWN, MARK SCHURIG, ALLEN KING, CLARA
17 PAINTER, AND CYNTHIA MITCHELL. THOSE WITNESSES WHO ARE HERE WILL
18 STAND, AND THE OTHERS YOU WILL MEET LATER.

19 I'LL ASK YOU IF ANY OF YOU RELATED BY BLOOD OR MARRIAGE OR
20 ARE YOU A CLOSE PERSONAL FRIEND OR ACQUAINTANCE OF ANY OF THOSE
21 FIVE INDIVIDUALS? THIS IS BROWN, SCHURIG, KING, PAINTER OR MITCHELL.

22 (NO RESPONSE)

23 NO ONE STANDS. WERE ANY OF YOU MEMBERS OF THE GRAND JURY
24 WHICH PASSED ON THIS INDICTMENT AT AN EARLIER TIME? IF SO, PLEASE
25 STAND.

1 (NO RESPONSE)

2 NO ONE STANDS. HAVE ANY OF YOU HEARD ABOUT THIS CASE, HAVE
3 ANY KNOWLEDGE ABOUT IT FROM ANY SOURCE WHATSOEVER? HAVE ANY
4 OF YOU FORMED OR EXPRESSED ANY OPINION ABOUT ANY MATTER OR
5 ISSUE WHICH WOULD BE INVOLVED IN THIS PARTICULAR CASE? IF SO,
6 PLEASE STAND.

7 (NO RESPONSE)

8 NO ONE STANDS. ARE ANY OF YOU AWARE OF ANY BIAS OR
9 PREJUDICE THAT YOU WOULD HAVE TOWARD THE STATE OR MR. NELSON OR
10 HIS COUNSEL? THAT IS, ANY BIAS OR PREJUDICE THAT WOULD AFFECT
11 YOUR ABILITY TO BE FAIR AND IMPARTIAL TO BOTH THE STATE AND MR.
12 NELSON? IF SO, PLEASE STAND.

13 (NO RESPONSE)

14 NO ONE STANDS. ARE ANY OF YOU MEMBERS OF OR CONTRIBUTORS
15 TO ORGANIZATIONS SUCH AS STUDENTS AGAINST DRUNK DRIVERS,
16 MOTHERS AGAINST DRUNK DRIVERS, CITIZENS AGAINST VIOLENCE,
17 TROOPERS' ASSOCIATION, SHERIFFS' ASSOCIATION, OR FRATERNAL ORDER
18 OF POLICE? IF SO, PLEASE STAND.

19 (NO RESPONSE)

20 NO ONE STANDS. ARE ANY OF YOU OR ANY OF YOUR IMMEDIATE
21 FAMILY INVOLVED IN LAW ENFORCEMENT AT ANY LEVEL? ANYTHING FROM
22 MP TO POLICE TO U. S. MARSHAL, OR IN THE PROSECUTION OF CRIMINAL
23 CASES AT ANY LEVEL? ANYTHING FROM SOLICITOR TO U. S. ATTORNEY TO
24 JUDGE ADVOCATE GENERAL? IF SO, PLEASE STAND.

25 (WHEREUPON JURORS STAND)

1 YOUR NAME AND NUMBER, PLEASE?

2 JUROR: TONY LAMB, NUMBER 134.

3 THE STATE: HOW ARE YOU RELATED TO SOMEONE?

4 JUROR: I HAVE A COUSIN THAT WORKS FOR THE YORK COUNTY
5 SHERIFF'S DEPARTMENT.

6 THE COURT: THIS IS NOT A YORK COUNTY CASE. I BELIEVE THIS IS A
7 ROCK HILL CASE. BUT WOULD THE FACT THAT YOU HAVE THAT RELATION
8 WITH THEM AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THE TRIAL
9 OF THIS CASE?

10 JUROR: NO.

11 THE COURT: OKAY. YOU MAY REMAIN WITH US. THANK YOU. YES
12 SIR, YOUR NAME AND NUMBER?

13 JUROR: NEIL HOGGARD, #107. MY SON IS A POLICE OFFICER IN KANSAS
14 CITY, KANSAS.

15 THE COURT: WOULD THAT AFFECT YOUR ABILITY TO BE FAIR AND
16 IMPARTIAL IN THE TRIAL OF THIS CASE?

17 JUROR: NO SIR.

18 THE COURT: ALL RIGHT. THANK YOU. NO ONE ELSE STANDS. DO ANY
19 OF YOU HAVE ANY RELIGIOUS, PHILOSOPHICAL OR DEEPLY HELD PERSONAL
20 REASON THAT WOULD PREVENT YOU FROM BEING FAIR AND IMPARTIAL IN
21 THE TRIAL OF THESE PARTICULAR CHARGES AGAINST THIS PARTICULAR
22 INDIVIDUAL? IF SO, PLEASE STAND.

23 (NO RESPONSE)

24 NO ONE STANDS. HAVE ANY OF YOU OR A MEMBER OF YOUR FAMILY,
25 AND I'M NOT GOING TO ASK YOU TO GO INTO DETAIL ON THIS, BECAUSE IT

1 WOULD BE SOMEWHAT PERSONAL. I'M SIMPLY GOING TO ASK YOU A
2 BLANKET QUESTION AND THEN I'LL FOLLOW UP WITH THOSE QUESTIONS
3 ABOUT YOUR ABILITY TO BE FAIR AND IMPARTIAL IF YOU DO NEED TO
4 STAND IN REGARD TO THIS QUESTION.

5 THE QUESTION IS: HAVE YOU OR A MEMBER OF YOUR FAMILY BEEN
6 INVOLVED IN A SITUATION WHERE YOU OR YOUR FAMILY HAVE BEEN
7 AFFECTED ABOUT ILLEGAL, CONTROLLED SUBSTANCES; THAT IS, YOU OR
8 SOMEONE, A FAMILY MEMBER HAVE THIS PROBLEM. OR THAT YOU HAVE
9 BEEN AFFECTED BY SOME EVENT IN YOUR LIFE THAT YOU FELT WAS
10 DIRECTLY OR INDIRECTLY RELATED TO SOMEBODY ELSE'S USE OF AN
11 ILLEGAL SUBSTANCE. IF SO, PLEASE STAND.

12 (NO RESPONSE)

13 NO ONE STANDS. ANYTHING FURTHER FROM THE STATE?

14 MS. DESCH: NOTHING FURTHER FROM THE STATE, YOUR HONOR.

15 THE COURT: MR. NELSON, YOU CAN CONFER WITH MS. BURRIS, AND
16 THEN I'LL ASK YOU IF YOU HAVE ANYTHING ELSE YOU WANT ME TO ASK
17 THE JURY PANEL.

18 (PAUSE TO CONFER WITH COUNSEL)

19 MR. NELSON: NO SIR.

20 THE COURT: THANK YOU. DO ANY OF YOU KNOW OF ANY REASON
21 WHATSOEVER WHY YOU COULD NOT OR SHOULD NOT SERVE AS A FAIR AND
22 IMPARTIAL JUROR IN THE TRIAL OF THIS CASE? IF SO, PLEASE STAND.

23 (NO RESPONSE)

24 NO ONE STANDS. YOUR NAME WILL BE DRAWN AT RANDOM AND
25 EACH SIDE, THE STATE AND THE DEFENSE, HAVE THE RIGHT TO EXERCISE

1 WHAT WE CALL STRIKES; THAT IS, EXCUSE YOU. THE STATE CAN EXCUSE UP
2 TO FIVE. THE DEFENSE, MR. NELSON, UP TO TEN. IF YOU HEAR YOUR NAME
3 CALLED, PLEASE COME FORWARD AND STAND BY THE BAILIFF UP HERE AND
4 TURN AROUND AND FACE THE TABLES WHERE THE ATTORNEYS AND MR.
5 NELSON ARE SEATED.

6 FACE FIRST THE TABLE WHERE THE SOLICITORS ARE SEATED, MS.
7 DESCH AND MR. EPTING ARE SEATED. ONE OF THEM WILL SAY EITHER
8 EXCUSE THE JUROR OR PRESENT THE JUROR. IF THEY SAY EXCUSE THE
9 JUROR, SIMPLY RETURN TO YOUR SEAT. IF THEY SAY PRESENT THE JUROR
10 TURN TO THE TABLE WHERE MR. NELSON IS SEATED AND HE WILL SAY
11 EITHER EXCUSE THE JUROR, AND THAT MEANS YOU MAY RETURN TO YOUR
12 SEAT. OR HE WILL SAY SWEAR THE JUROR, AND IF HE SAYS SWEAR THE
13 JUROR THAT MEANS YOU WILL TAKE YOUR SEAT IN THE JURY BOX. THE
14 BAILIFF WILL TELL YOU HOW MANY SEATS TO GO OVER AND TAKE YOUR
15 SEAT.

16 SO, WHEN YOU HEAR YOUR NAME CALLED COME FORWARD, AND
17 BRING WITH YOU ANYTHING YOU HAVE WITH YOU, A BOOK, YOUR PURSE,
18 OR ANY PERSONAL BELONGINGS YOU HAVE WITH YOU SO THAT YOU WILL
19 NOT HAVE TO GO BACK AND GET THEM IF YOU ARE SEATED.

20 MADAM CLERK.

21 CLERK OF COURT: NUMBER 86, MITCHELL GAULDEN. WHAT SAY THE
22 STATE?

23 MS. DESCH: PLEASE EXCUSE THE JUROR.

24 CLERK OF COURT: PLEASE RETURN TO YOUR SEAT. NUMBER 102,
25 TERESA HEWETSON. WHAT SAY THE STATE?

1 MS. DESCH: PLEASE PRESENT THIS JUROR.
2 CLERK OF COURT: WHAT SAY THE DEFENSE?
3 MR. NELSON: PLEASE SEAT THE JUROR.
4 CLERK OF COURT: TAKE YOUR SEAT IN THE JURY BOX.
5 CLERK OF COURT: NUMBER 23, CANDACE BUSBEE. WHAT SAY THE
6 STATE?
7 MS. DESCH: PLEASE PRESENT THIS JUROR.
8 CLERK OF COURT: WHAT SAY THE DEFENSE?
9 MR. NELSON: PLEASE SEAT THE JUROR.
10 CLERK OF COURT: TAKE YOUR SEAT IN THE JURY BOX. NUMBER 192,
11 RACHEL RYMAN. WHAT SAY THE STATE?
12 MS. DESCH: PLEASE PRESENT THE JUROR.
13 CLERK OF COURT: WHAT SAY THE DEFENSE?
14 MR. NELSON: PLEASE STRIKE THE JUROR.
15 CLERK OF COURT: RETURN TO YOUR SEAT. NUMBER 117, DINO
16 JACKSON. WHAT SAY THE STATE?
17 MS. DESCH: PLEASE PRESENT THIS JUROR.
18 CLERK OF COURT: WHAT SAY THE DEFENSE?
19 MR. NELSON: PLEASE EXCUSE THE JUROR.
20 CLERK OF COURT: RETURN TO YOUR SEAT. NUMBER 114, JOSEPH
21 ERWIN. WHAT SAY THE STATE?
22 MS. DESCH: PLEASE PRESENT THIS JUROR.
23 CLERK OF COURT: WHAT SAY THE DEFENSE?
24 MR. NELSON: STRIKE THE JUROR.

1 CLERK OF COURT: YOU'VE BEEN EXCUSED FROM THIS CASE. NUMBER
2 132, JACK KZYNSKI. WHAT SAY THE STATE?
3 MS. DESCH: PLEASE PRESENT THE JUROR.
4 CLERK OF COURT: WHAT SAY THE DEFENSE?
5 MR. NELSON: STRIKE THE JUROR.
6 CLERK OF COURT: YOU ARE EXCUSED FROM THIS CASE. NUMBER 174,
7 TINA PENDER. WHAT SAY THE STATE?
8 MS. DESCH: PLEASE EXCUSE THE JUROR.
9 CLERK OF COURT: YOU ARE EXCUSED. NUMBER 212, BARBARA
10 STAPLES. WHAT SAY THE STATE?
11 MS. DESCH: PLEASE PRESENT THE JUROR.
12 CLERK OF COURT: WHAT SAY THE DEFENSE?
13 MR. NELSON: STRIKE THE JUROR.
14 CLERK OF COURT: YOU'VE BEEN EXCUSED FROM THIS CASE. NUMBER
15 110, MICHAEL HUCKABEE. WHAT SAY THE STATE?
16 MS. DESCH: PLEASE PRESENT THE JUROR.
17 CLERK OF COURT: WHAT SAY THE DEFENSE?
18 MR. NELSON: SWEAR THE JUROR.
19 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX. NUMBER
20 205, JOHANNA SIPE. WHAT SAY THE STATE?
21 MS. DESCH: PLEASE PRESENT THE JUROR.
22 CLERK OF COURT: WHAT SAY THE DEFENSE?
23 MR. NELSON: STRIKE THE JUROR.
24 CLERK OF COURT: YOU ARE EXCUSED FROM THIS CASE. NUMBER 134,
25 TONY LAMB. WHAT SAY THE STATE?

1 MS. DESCH: PLEASE EXCUSE THIS JUROR.

2 CLERK OF COURT: YOU'VE BEEN EXCUSED FROM THIS CASE. NUMBER

3 193, PENELOPE SANDERS. WHAT SAYS THE STATE?

4 MS. DESCH: PLEASE PRESENT THE JUROR.

5 CLERK OF COURT: WHAT SAY THE DEFENSE?

6 MR. NELSON: SWEAR THE JUROR.

7 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX. NUMBER

8 8, STANCY BANKHEAD. WHAT SAY THE STATE?

9 MS. DESCH: PLEASE EXCUSE THE JUROR.

10 CLERK OF COURT: RETURN TO YOUR SEAT, SIR. NUMBER 64, SHERITA

11 DOUGLAS. WHAT SAY THE STATE?

12 MS. DESCH: PLEASE PRESENT THE JUROR

13 CLERK OF COURT: WHAT SAY THE DEFENSE?

14 MR. NELSON: SWEAR THE JUROR.

15 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX. NUMBER

16 11, MICHAEL BARRETT. WHAT SAY THE STATE?

17 MS. DESCH: PLEASE EXCUSE THE JUROR.

18 CLERK OF COURT: YOU ARE EXCUSED, SIR. NUMBER 10, LADSON

19 BARNES. WHAT SAY YOU FOR THE STATE?

20 MS. DESCH: PLEASE PRESENT THE JUROR.

21 CLERK OF COURT: WHAT SAY THE DEFENSE?

22 MR. NELSON: SWEAR THE JUROR.

23 CLERK OF COURT: PLEASE TAKE YOUR SEAT, SIR. NUMBER 74, ROB

24 EUDY. WHAT SAY THE STATE?

25 MS. DESCH: PLEASE PRESENT THE JUROR.

1 CLERK OF COURT: WHAT SAY THE DEFENSE?

2 MR. NELSON: STRIKE THE JUROR.

3 CLERK OF COURT: RETURN TO YOUR SEAT, SIR. NUMBER 136, JEFFREY

4 McCOY. WHAT SAY THE STATE?

5 MS. DESCH: PLEASE PRESENT THE JUROR.

6 CLERK OF COURT: WHAT SAY THE DEFENSE?

7 MR. NELSON: SWEAR THE JUROR. I MEAN, STRIKE.

8 CLERK OF COURT: YOU ARE EXCUSED FROM THE JURY. NUMBER 243,

9 MEREDITH HARMON WHAT SAY THE STATE?

10 MS. DESCH: PLEASE PRESENT THE JUROR.

11 CLERK OF COURT: WHAT SAY THE DEFENSE?

12 MR. NELSON: STRIKE THE JUROR.

13 CLERK OF COURT: YOU MAY RETURN TO YOUR SEAT. STRIKES ARE

14 FIVE FOR THE STATE AND NINE FOR THE DEFENSE. NUMBER 111, LORI

15 HOFFMAN, WHAT SAY THE STATE?

16 MS. DESCH: PLEASE PRESENT THE JUROR.

17 CLERK OF COURT: WHAT SAY THE DEFENSE?

18 MR. NELSON: SWEAR THE JUROR.

19 CLERK OF COURT: TAKE YOUR SEAT IN THE JURY BOX. NUMBER 107,

20 NEIL HOGGARD. WHAT SAY THE STATE?

21 MS. DESCH: PLEASE PRESENT THE JUROR.

22 CLERK OF COURT: WHAT SAY THE DEFENSE?

23 MR. NELSON: SWEAR THE JUROR.

24 CLERK OF COURT: HAVE A SEAT IN THE JURY BOX. NUMBER 119,

25 LAVON JENKINS. WHAT SAY THE STATE?

1 MS. DESCH: PRESENT THE JUROR, PLEASE.

2 CLERK OF COURT: WHAT SAY THE DEFENSE?

3 MR. NELSON: SWEAR THE JUROR.

4 CLERK OF COURT: HAVE A SEAT IN THE JURY BOX. NUMBER 178,

5 NANCY PHILLIPS. WHAT SAY THE STATE?

6 MS. DESCH: PLEASE PRESENT THE JUROR.

7 CLERK OF COURT: WHAT SAY THE DEFENSE?

8 MR. NELSON: SWEAR THE JUROR.

9 CLERK OF COURT: TAKE YOUR SEAT IN THE JURY BOX. NUMBER 176,

10 PARNELL PERRY. WHAT SAY THE STATE?

11 MS. DESCH: PLEASE PRESENT THE JUROR.

12 CLERK OF COURT: WHAT SAYS THE DEFENSE?

13 MR. NELSON: SWEAR THE JUROR.

14 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX. NUMBER

15 69, JEFFREY EDWARDS. WHAT SAYS THE STATE?

16 MS. DESCH: PLEASE PRESENT THE JUROR.

17 CLERK OF COURT: WHAT SAYS THE DEFENSE?

18 MR. NELSON: SWEAR THE JUROR.

19 CLERK OF COURT: TAKE YOUR SEAT IN THE JURY BOX.

20 THE COURT: ALTERNATE STRIKES WILL BE ONE FOR THE STATE AND

21 TWO FOR MR. NELSON.

22 CLERK OF COURT: NUMBER 49, ANDREA CONLON. WHAT SAYS THE

23 STATE?

24 MS. DESCH: PLEASE PRESENT THE JUROR.

25 CLERK OF COURT: WHAT SAYS THE DEFENSE?

1 MR. NELSON: SWEAR THE JUROR.

2 CLERK OF COURT: PLEASE TAKE YOUR SEAT IN THE JURY BOX..

3 THE COURT: ANYTHING FROM THE STATE INVOLVING THE STRIKING
4 OF THE PANEL?

5 MS. DESCH: NOTHING FROM THE STATE, YOUR HONOR.

6 THE COURT: ANYTHING FROM MR. NELSON INVOLVING THE STRIKING
7 OF THE PANEL?

8 MR. NELSON: NO SIR, YOUR HONOR.

9 THE COURT: ALL RIGHT. THOSE OF YOU WHO WERE NOT CHOSEN, I'M
10 GOING TO ALLOW YOU TO LEAVE AND YOU ARE EXCUSED FOR THE WEEK.
11 YOU DON'T HAVE TO COME BACK OR CALL BACK. WE APPRECIATE OUR
12 HELP. YOU WILL BE MAILED YOUR VERY GENEROUS CHECK FROM YORK
13 COUNTY AND WHILE THE CHECK IS NOT A LOT, OUR GRATITUDE IS.

14 SO, HAVE A PLEASANT AFTERNOON. PLEASE LEAVE QUIETLY SO WE
15 CAN START WORKING WITH THIS PANEL. THANK YOU VERY MUCH.

16 (WHEREUPON THE JURORS NOT CHOSEN EXITED THE COURTROOM)

17 THOSE OF YOU WHO WERE CHOSEN, IF YOU WILL STAND AND RAISE
18 YOUR RIGHT HAND AND THE CLERK WILL ADMINISTER THE OATH.

19 (WHEREUPON CHOSEN JURORS WERE PLACED UNDER OATH)

20 WHILE YOU'RE STANDING AND BEFORE YOU SIT, MS. SANDERS, I'M
21 GOING TO ASK YOU AND MR. DOUGLAS TO CHANGE SEATS. MS. SANDERS, I'M
22 GOING TO ASK YOU TO BE THE FORELADY OF THIS JURY. ONCE THEY SWAP
23 SEATS Y'ALL MAY SIT DOWN.

24 (WHEREUPON JURORS TOOK THEIR SEATS)

1 MEMBERS OF THE JURY PANEL, IT'S 12:30, SO AFTER I MAKE A FEW
2 LITTLE REMARKS, WE'RE GOING TO BREAK FOR LUNCH UNTIL 2:00. THAT'S
3 AN HOUR AND A HALF AND SOUNDS LIKE A LONG TIME FOR LUNCH, BUT WE
4 DON'T HAVE ANY PLACE YOU CAN WALK TO FOR LUNCH. YOU HAVE TO GET
5 IN YOUR CAR AND DRIVE SOMEWHERE IF YOU CHOOSE TO EAT LUNCH. SO
6 WE ALWAYS ALLOW AN HOUR AND FIFTEEN MINUTES TO AN HOUR AND A
7 HALF FOR LUNCH.

8 YOU ARE THE JURY PANEL NOW, AND I WILL GIVE YOU SOME MORE
9 REMARKS WHEN YOU COME BACK. I AM GOING TO GIVE YOU SOME
10 PRELIMINARY REMARKS NOW. SINCE YOU ARE ON THE JURY, I AM GOING TO
11 INSTRUCT YOU THAT YOU ARE NOT TO DISCUSS THE CASE AMONG
12 YOURSELVES; THAT IS, JOINTLY DELIBERATE. OR TRY TO MAKE UP YOUR
13 OWN MIND UNTIL WE REACH THE POINT IN THE TRIAL WHEN I INSTRUCT YOU
14 TO JOINTLY DELIBERATE AND RETURN A UNANIMOUS VERDICT.

15 PRIOR TO THAT TIME YOU ARE NOT EQUIPPED WITH ALL THE TOOLS
16 YOU NEED TO MAKE A FAIR AND REASONED DECISION. SO, DON'T DISCUSS
17 THE CASE OR EVEN TRY TO MAKE UP YOUR OWN MIND UNTIL WE GET TO
18 THAT POINT.

19 THIS CASE WILL PROBABLY GO OVER INTO THE MORNING TOMORROW.
20 I'M NOT SURE OF THAT BECAUSE I DON'T KNOW WHAT ALL THE EVIDENCE IS.
21 BUT I WOULD ANTICIPATE WE WILL NOT FINISH IT TODAY.

22 WHILE YOU ARE AWAY AT LUNCH AND WHILE YOU ARE OUTSIDE THE
23 COURTROOM DO NOT LET ANYONE DISCUSS THIS CASE WITH YOU. IF
24 ANYONE DOES TRY TO DISCUSS THIS CASE WITH YOU, TELL THEM YOU
25 CANNOT. IF THEY PERSIST, AGAIN REMIND THEM YOU CANNOT DISCUSS THE

1 CASE AS YOU ARE A SEATED JUROR. REPORT BACK TO ME IF ANYONE TRIES
2 TO DISCUSS THIS CASE WITH YOU, SO THAT YOU WILL BE IDENTIFY THAT
3 PERSON SO I CAN TAKE ACTION AGAINST THEM FOR TRYING TO TALK TO A
4 SEATED JUROR.

5 DON'T READ ANYTHING ABOUT THIS CASE, WATCH ANYTHING, OR
6 LISTEN TO ANYTHING THAT COULD REMOTELY DEAL WITH THIS TRIAL. YOU
7 HAVE TO BASE YOUR VERDICT HERE IN THE COURT ON THE LAW AND THE
8 EVIDENCE AS IT'S PRESENTED IN COURT.

9 WE DON'T KNOW WHERE THIS HAPPENED YET, BUT APPARENTLY IN
10 ROCK HILL, FROM WHAT I UNDERSTAND. ONCE WE ARE PRESENTED WITH
11 EVIDENCE AND YOU KNOW WHERE THIS LOCATION IS, DON'T GO BY AND DO
12 ANY INDEPENDENT INVESTIGATION. IT WOULD BE IMPROPER FOR YOU TO
13 GO AND SCOPE OUT THE SCENE, SO TO SPEAK, BECAUSE THINGS CHANGE.
14 THIS ONLY HAPPENED A FEW MONTHS BACK BUT IT MIGHT NOT BE EXACTLY
15 LIKE IT WAS. AND YOU MUST RECEIVE YOUR EVIDENCE HERE IN THE
16 COURTROOM.

17 ALONG THIS SAME LINE, THIS HAS HAPPENED, AND ALSO OUR CHIEF
18 JUSTICE JUST THIS WEEK INDICATED WHAT I HAVE BEEN DOING FOR
19 SEVERAL MONTHS NOW, AND THAT IS TO INSTRUCT YOU NOT TO GO ON LINE
20 AND DO ANY INDEPENDENT RESEARCH ON ANY ISSUES, OR ANY OF THE
21 LEGAL TERMS OR ANY OF THE FACTS. DON'T DO ANY INDEPENDENT
22 RESEARCH. DON'T LET YOURSELF BE EXPOSED TO ANYTHING OTHER THAN
23 WHAT YOU HEAR REGARDING THIS CASE AS FAR AS THE LAW AND THE
24 EVIDENCE IN THIS TRIAL.

1 THE CHIEF JUSTICE HAS ALSO INSTRUCTED US AND YOU HAVE BEEN
2 TOLD THAT YOU ARE NOT TO HAVE YOUR COMMUNICATION DEVICES WITH
3 YOU, YOUR CELL PHONES, YOUR TWITTERS, AND BLACKBERRIES OR
4 ANYTHING LIKE THAT. BUT WHILE WE ARE DOING THE TRIAL, YOU ARE NOT
5 TO TWEET OR EMAIL OR DO ANYTHING TO COMMUNICATE WITH ANYONE
6 ABOUT THE TRIAL. ONE CASE OCCURRED WHERE SOMEONE ON THE JURY
7 PANEL EMAILED A FRIEND THAT THE VERDICT WAS COMING OUT AT A
8 CERTAIN TIME AND CAUSED ALL KIND OF PROBLEMS.

9 SO, WE DON'T WANT ANY PROBLEMS. AND I FEEL SURE YOU WILL NOT
10 DO THAT, BUT THE CHIEF JUSTICE HAS INSTRUCTED US TO REMIND YOU
11 THAT IT WOULD BE IMPROPER FOR YOU TO TELL ANYBODY ANYTHING
12 ABOUT THIS CASE, OTHER THAN THAT YOU ARE ON THE JURY AND THAT
13 YOU CAN'T TALK ABOUT IT. AND CERTAINLY YOU CAN TELL YOUR SPOUSE
14 AND YOUR CHILDREN THAT YOU'VE GOT TO BE BACK IN COURT TOMORROW,
15 IF THAT'S THE CASE.

16 SO, I'M GOING TO EXCUSE YOU FOR LUNCH. BE BACK AT 2:00. WHERE
17 YOU ARE TO REPORT IS THE JURY ROOM ON THIS FLOOR, WHICH IS BEHIND
18 WHERE YOU ARE SEATED. THE BAILIFF WILL SHOW YOU WHERE THAT IS
19 AND HOW YOU ARE TO INGRESS AND EGRESS THE BUILDING WHILE YOU ARE
20 SERVING AS A JUROR.

21 SO, THAT'S WHERE YOU REPORT, NOT HERE AND NOT THE ROOM
22 DOWNSTAIRS. BE THERE AT 2:00.

23 MS. SANDERS AND MR. CONNELLY ARE THE ONLY ONES WITH
24 ASSIGNED SEATS. THE ALTERNATE ALWAYS SITS THERE AND THE
25 FOREPERSON ALWAYS SITS THERE. FOR THE REST OF YOU THERE IS NO

1 ASSIGNED SEATING, JUST WHEREVER YOU HAPPEN TO BE IN LINE WHEN YOU
2 COME IN, YOU TAKE THE FIRST SEAT AVAILABLE NOT BEYOND WHERE YOU
3 ARE NOW. AND THE REASON WE DON'T GO ALL THE WAY TO THE END OF
4 THE BOX HERE IS WE WANT YOU TO BE CLOSE AS POSSIBLE TO THE ACTION,
5 SO TO SPEAK, TO THE WITNESSES.

6 SO, HAVE A PLEASANT LUNCH AND WE'LL SEE YOU BACK AT 2:00.

7 (WHEREUPON THE JURY EXITED THE COURTROOM AT 12:35 P.M.)

8 ANYTHING FROM THE STATE BEFORE WE BREAK FOR LUNCH?

9 MS. DESCH: NOTHING FROM THE STATE, YOUR HONOR.

10 THE COURT: MR. NELSON, DO YOU HAVE ANYTHING BEFORE WE
11 BREAK FOR LUNCH?

12 MR. NELSON: NO SIR.

13 THE COURT: YOU WILL REMAIN INCARCERATED, BUT WE WILL
14 CERTAINLY LET MS. BURRIS HAVE ACCESS TO YOU. WE'LL BE BACK AT 2:00.

15 MS. DESCH: THANK YOU, YOUR HONOR.

16 (WHEREUPON COURT WAS RECESSED FOR THE LUNCH HOUR)

17

18

19

20

21

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24

25

1 CERTIFICATE

2 I, THE UNDERSIGNED PHYLLIS S. BARRETT, CIRCUIT COURT REPORTER
3 FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
4 FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THE
5 HEARING HELD IN THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE
6 COURT OF GENERAL SESSIONS FOR THE SIXTEENTH JUDICIAL CIRCUIT, YORK
7 COUNTY, SOUTH CAROLINA ON THE 22ND DAY OF JULY, 2009.

8 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR
9 INTEREST TO ANY PARTY HERETO.

10
11
12
13 PHYLLIS S. BARRETT

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	:	
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,	)	
	:	
PLAINTIFF,	)	
	:	
VERSUS	)	TRANSCRIPT OF RECORD
	:	09-GS-46-
JUSTIN NELSON,	)	
	:	
DEFENDANT.)	)	

JULY 22, 2009
YORK, SOUTH CAROLINA

BEFORE:

THE HONORABLE JOHN C. HAYES III, JUDGE

APPEARANCES:

FOR THE STATE:

JENNY E. DESCH, ESQ., ASSISTANT SOLICITOR

FOR THE DEFENSE:

TWANA N. BURRIS, ESQ.

ERIK D. DELANEY, ESQ., ASSISTANT PUBLIC DEFENDER

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

1
2 DEFENDANT WAS PLACED UNDER OATH PRIOR TO TAKING OF PLEA

3 NO EXHIBITS WERE ENTERED INTO THE RECORD OF THIS CASE

4 THE COURT: MR. NELSON, WE CHOSE A JURY IN YOUR CASE THIS
5 MORNING AND STARTED A TRIAL. AFTER MUCH DISCUSSION ABOUT YOU
6 AND WHETHER YOU WERE REPRESENTED BY WHO AND HOW, YOU
7 INDICATED TO THE COURT THAT YOU WISH TO PROCEED PRO SE WITH MS.
8 BURRIS AT STANDBY. AND YOU ALSO ASKED TO TALK TO MR. DELANEY
9 OVER LUNCH AFTER WHICH TIME YOU DECIDED TO PLEAD GUILTY TO
10 CERTAIN CHARGES. MS. BURRIS IS HERE TO STAND WITH YOU IN REGARD TO
11 THIS PLEA AND MR. DELANEY CONTINUES TO BE PRESENT IN THIS
12 COURTROOM.

13 MR. NELSON: YES SIR.

14 THE COURT: THERE IS ALSO A LADY HERE WHO WAS NOT HERE
15 EARLIER. IS SHE PART OF YOUR FAMILY?

16 MS. BURRIS: YES SIR, HIS GRANDMOTHER AND HIS MOTHER, AND HIS
17 AUNT ARE PRESENT.

18 THE COURT: THANK YOU. MS. DESCH, TELL ME WHAT HE'S PLEADING
19 TO.

20 MS. DESCH: YOUR HONOR, HE'S PLEADING GUILTY TO 2009-GS-46-2252, WITH
21 POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE IN THE PROXIMITY OF
22 A PARK; 2009-G-S46-1717, FAILURE TO STOP FOR A BLUE LIGHT; 2009-GS-46-
23 1716, TRUE BILLED AS TRAFFICKING COCAINE, THIRD OFFENSE; HE'S
24 PLEADING GUILTY TO THE LESSER INCLUDED OF SECOND OFFENSE; 2009-1718,

1 LEAVING THE SCENE OF AN ACCIDENT; AND 2009-GS-46-2553, POSSESSION
2 WITH INTENT TO DISTRIBUTE MARIJUANA, THIRD OFFENSE.

3 THE COURT: I UNDERSTAND THIS NEGOTIATED. WHAT IS THE
4 NEGOTIATED SENTENCE?

5 MS. DESCH: FIFTEEN YEARS, YOUR HONOR.

6 THE COURT: ALL RIGHT, MR. NELSON, HOW OLD ARE YOU?

7 MR. NELSON: TWENTY-ONE, SIR.

8 THE COURT: ARE YOU REPRESENTED BY MS. BURRIS?

9 MR. NELSON: YES SIR.

10 THE COURT: AND FOR THESE PURPOSES, YOU HAVE HAD DISCUSSIONS
11 WITH HER, FOR THE PURPOSE OF THIS PLEA AND I AM ALLOWING HER TO
12 APPEAR ON YOUR BEHALF.

13 MR. NELSON: YES SIR.

14 THE COURT: YOUR ARE CHARGED WITH TRAFFICKING CRACK
15 COCAINE, SECOND OFFENSE. IT IS ALLEGED THAT THIS ON OR ABOUT
16 FEBRUARY 11, WHEN YOU, HERE IN YORK COUNTY, DID PARTICIPATE IN
17 PROVIDING FINANCIAL ASSISTANCE, OR CONSPIRING OR DELIVERING, OR
18 HAD IN YOUR CONSTRUCTIVE POSSESSION, TEN GRAMS OR MORE OF CRACK
19 COCAINE, TRAFFICKING COCAINE, SECOND OFFENSE.

20 THIS CARRIES UP TO THIRTY YEARS IN JAIL AND THE POSSIBILITY OF A
21 FINE OF \$50,000. IT IS A FELONY. IT IS A SERIOUS OFFENSE, AND AS SUCH, IT
22 IS THE TYPE OF OFFENSE THAT IF IN YOUR LIFETIME YOU RECEIVE THREE
23 SERIOUS OR A COMBINATION OF THREE SERIOUS OR MOST SERIOUS
24 OFFENSES, YOU WOULD BE SUBJECT TO BEING INCARCERATED TO LIFE
25 WITHOUT PAROLE.

1 IT IS ALSO A PAROLE-INELIGIBLE OFFENSE AND A VIOLENT OFFENSE.
2 A VIOLENT OFFENSE IS THE TYPE OF OFFENSE THAT WHILE YOU ARE
3 INCARCERATED YOU WOULD BE PERMITTED TO PARTICIPATE IN CERTAIN
4 PROGRAMS THAT NON-VIOLENT OFFENDERS WOULD PARTICIPATE IN.

5 A NO-PAROLE OFFENSE MEANS YOU HAVE TO SERVE EIGHTY-FIVE
6 PERCENT OF WHATEVER SENTENCE YOU RECEIVE BEFORE YOU WOULD
7 ELIGIBLE FOR ANY EARLY RELEASE PROGRAM. AND IF YOU WERE PUT INTO
8 AN EARLY RELEASE OR WHAT IS REFERRED TO AS A COMMUNITY
9 SUPERVISION PROGRAM, YOU WOULD HAVE CERTAIN PROVISIONS THAT
10 YOU WOULD HAVE TO ABIDE BY AND IF YOU DID NOT, YOU WOULD BE SENT
11 BACK FOR UP TO A YEAR. AND THEREAFTER YOU WOULD BE IN THE
12 COMMUNITY SUPERVISION PROGRAM UNTIL YOU HAD SERVED THE FULL
13 AMOUNT OF YOUR TIME.

14 DO YOU UNDERSTAND ALL THAT ABOUT TRAFFICKING IN TRACK
15 COCAINE?

16 MR. NELSON: YES SIR.

17 THE COURT: HOW DO YOU PLEAD?

18 MR. NELSON: GUILTY.

19 THE COURT: YOU ARE CHARGED WITH POSSESSION OF MARIJUANA,
20 THIRD OFFENSE. THIS CARRIES FIVE TO TWENTY YEARS IN JAIL. IT ALSO IS A
21 FELONY. IT ALSO IS A PAROLE INELIGIBLE OFFENSE. IT DOES NOT ALLOW
22 ANY PROBATION OR SUSPENDED SENTENCE. AND IS A FELONY.

23 IT IS ALLEGED THAT THIS OCCURRED ON OR ABOUT JANUARY 30, OF
24 2009, WHEN YOU WERE IN THE POSSESSION OF MARIJUANA AND YOU HAD

1 THE INTENT TO DISTRIBUTE. DO YOU UNDERSTAND THAT CHARGE AND THE
2 POTENTIAL SENTENCE?

3 MR. NELSON: YES SIR.

4 THE COURT: HOW DO YOU PLEAD TO THAT?

5 MR. NELSON: GUILTY.

6 THE COURT: THE NEXT CHARGE IS ONE FOR POSSESSION OF CRACK
7 COCAINE WITHIN THE PROXIMITY OF A PARK OR SCHOOL. THAT CARRIES
8 TEN TO FIFTEEN YEARS IN JAIL AND A FINE OF NOT LESS THAN \$10,000. AND
9 IT IS NOT SUSPENDABLE. IT IS A FELONY. AND IT IS ALSO A SERIOUS
10 OFFENSE. DO YOU UNDERSTAND THAT CHARGE?

11 MR. NELSON: YES SIR.

12 THE COURT: IT IS ALLEGED THAT OCCURRED IN FEBRUARY 11, HERE IN
13 YORK COUNTY, THAT YOU POSSESSED COCAINE BASE OR CRACK COCAINE, A
14 CONTROLLED SUBSTANCE. AND IT IS ALLEGED THAT YOU POSSESSED THAT
15 WITHIN ONE-HALF MILE OF GLENCAIRN GARDENS, A PUBLIC PARK IN ROCK
16 HILL. DO YOU UNDERSTAND THAT?

17 MR. NELSON: YES SIR.

18 THE COURT: HOW DO YOU PLEAD TO THAT CHARGE?

19 MR. NELSON: GUILTY.

20 THE COURT: YOU ARE CHARGED WITH HIT AND RUN. IT IS ALLEGED
21 THAT OCCURRED ON OR ABOUT FEBRUARY 11, 2009, WHEN YOU WERE
22 INVOLVED IN A MOTOR VEHICLE ACCIDENT RESULTING IN DAMAGE TO
23 PROPERTY AND YOU FAILED TO STOP AND COMPLY WITH THE LAWS OF THE
24 STATE REGARDING WHAT TO DO WHEN AN ACCIDENT CAUSES PROPERTY

1 DAMAGES. THIS CARRIES UP TO A YEAR AND IS A MISDEMEANOR. DO YOU
2 UNDERSTAND THAT CHARGE?

3 MR. NELSON: YES SIR.

4 THE COURT: AND THE PENALTY?

5 MR. NELSON: YES SIR.

6 THE COURT: HOW DO YOU PLEAD TO THAT?

7 MR. NELSON: GUILTY.

8 THE COURT: FINALLY, YOU ARE CHARGED WITH FAILURE TO STOP FOR
9 A BLUE LIGHT. AGAIN, THIS IS A FIRST OFFENSE. IT IS ALLEGED THAT THIS
10 OCCURRED ON OR ABOUT FEBRUARY 11, 2009, WHEN YOU DROVE A MOTOR
11 VEHICLE ON THE ROADS, STREETS OR HIGHWAYS OF THIS STATE. IT IS
12 ALLEGED THAT YOU WERE SIGNALLED PROPERLY BY LAW ENFORCEMENT TO
13 STOP AND YOU FAILED TO DO SO. DO YOU UNDERSTAND THAT CHARGE?

14 MR. NELSON: YES SIR.

15 THE COURT: AND THE POTENTIAL PENALTY?

16 MR. NELSON: YES SIR.

17 THE COURT: HOW DO YOU PLEAD TO THAT?

18 MR. NELSON: GUILTY.

19 THE COURT: OTHER THAN THE RECOMMENDATION OF THE STATE
20 GIVEN TO ME A MOMENT AGO BY THE SOLICITOR ABOUT THE SENTENCE,
21 THE NEGOTIATED SENTENCE, I BELIEVE SOME OTHER CHARGES ARE BEING
22 DISMISSED?

23 MS. DESCH: YOUR HONOR, I WILL PUT ON THE RECORD THAT THE
24 ORIGINAL CHARGES FOR WARRANTS 16-5965, 64, 62, 58, AND 56, ARE BEING
25 DISMISSED. BUT I HAVE MADE IT CLEAR TO MS. BURRIS AND HAVE MADE IT

1 CLEAR TO MR. NELSON THAT IF THESE ARE, DO NOT WORK OUT WITH THE
2 NEGOTIATED SENTENCE, I WILL BRING THOSE CHARGES BACK.

3 THE COURT: OTHER THAN THOSE PROMISES ABOUT THE SENTENCE
4 AND THE OTHER CHARGES THAT THE SOLICITOR JUST STATED TO ME, HAS
5 ANYONE MADE ANY OTHER PROMISES OR THREATS TO CAUSE YOU TO
6 ENTER YOUR PLEA OF GUILTY TO THESE CHARGES?

7 MR. NELSON: SIR?

8 THE COURT: HAS ANYBODY PROMISED YOU ANYTHING ELSE?

9 MR. NELSON: NO SIR.

10 THE COURT: HAVE YOU BEEN THREATENED BY ANYONE TO GET YOU
11 TO ENTER YOUR PLEA TODAY?

12 MR. NELSON: NO SIR.

13 THE COURT: ARE YOU TODAY UNDER THE INFLUENCE OF ANYTHING
14 THAT WOULD CAUSE YOU TO BE INTOXICATED, ANY DRUGS OR ALCOHOL,
15 OR PRESCRIPTION MEDICINE?

16 MR. NELSON: NO SIR.

17 THE COURT: ARE YOU ENTERING YOUR PLEA TODAY FREELY AND
18 VOLUNTARILY?

19 MR. NELSON: YES SIR.

20 THE COURT: MR. NELSON, YOU HAVE A RIGHT TO A TRIAL BY JURY.
21 AND IN FACT, WE HAD DRAWN A JURY, AND I HAD ALREADY SPOKEN TO
22 THEM A LITTLE BIT, AND THEY ARE WAITING IN THE JURY ROOM AS I SPEAK.
23 YOU HAVE A RIGHT TO PROCEED WITH THE TRIAL, AND YOU ARE
24 PRESUMED INNOCENT OF THIS CHARGE, THESE CHARGES, UNTIL SUCH TIME
25 AS THAT JURY, AS TO THE FOUR CHARGES THAT WERE FILED TODAY, AND IN

1 FACT, YOU ARE PRESUMED INNOCENT OF ALL THESE CHARGES, INCLUDING
2 THESE AND THE ONES YOU WERE GOING TO GO TO TRIAL ON TODAY UNTIL
3 SUCH TIME AS THE STATE IS ABLE TO PROVE IF IT CAN YOUR GUILT BEYOND
4 A REASONABLE DOUBT.

5 AS TO THESE CHARGES, YOU HAVE THE RIGHT TO REMAIN SILENT, THE
6 RIGHT TO CONFRONT WITNESSES AGAINST YOU, AND YOU HAVE THE RIGHT
7 TO HAVE YOUR WITNESSES MADE TO COME TO COURT TO TESTIFY ON YOUR
8 BEHALF.

9 DO YOU UNDERSTAND YOU HAVE THESE RIGHTS?

10 MR. NELSON: YES SIR.

11 THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT THEM?

12 MR. NELSON: NO SIR.

13 THE COURT: I ADVISE YOU THAT BY ENTERING PLEAS OF GUILTY TO
14 THESE CHARGES, AS TO THESE CHARGES, YOU ARE GIVING UP THESE RIGHTS
15 AND YOU ARE ALSO GIVING UP ANY DEFENSE TO THESE CHARGES. DO YOU
16 UNDERSTAND THAT?

17 MR. NELSON: YES SIR.

18 THE COURT: KNOWING ALL THOSE THINGS, I ASK YOU AGAIN, HOW DO
19 YOU PLEAD TO TRAFFICKING IN CRACK COCAINE?

20 MR. NELSON: GUILTY.

21 THE COURT: HOW DO YOU PLEAD TO POSSESSION OF MARIJUANA,
22 THIRD OFFENSE AND POSSESSION WITH INTENT TO DISTRIBUTE?

23 MR. NELSON: GUILTY?

24 THE COURT: HOW DO YOU PLEAD TO POSSESSION OF CRACK COCAINE
25 WITHIN THE PROXIMITY OF GLENCAIRN GARDENS?

1 MR. NELSON: GUILTY.

2 THE COURT: HOW DO YOU PLEAD TO HIT AND RUN?

3 MR. NELSON: GUILTY.

4 THE COURT: AND FAILURE TO STOP FOR A BLUE LIGHT?

5 MR. NELSON: GUILTY.

6 THE COURT: TELL ME HIS RECORD AND THE FACTS.

7 MS. DESCH: YOUR HONOR, HIS RECORD DATES BACK TO JUNE OF '02,
8 WHERE HE RECEIVED A CONVICTION FOR ABHAN AND WAS SENT TO DJJ. IN
9 MAY OF '04, AT THE AGE OF FIFTEEN, HE WAS ACTUALLY CONVICTED AND
10 SENTENCED BY YOU. AT THE AGE OF SEVENTEEN, ON A PWID CRACK
11 COCAINE PROXIMITY AND MARIJUANA AND WAS GIVEN AN ACTIVE YOA. IN
12 MARCH OF '05, HE WAS VIOLATED ON THAT. IN JANUARY OF '07, HE GOT A
13 POSSESSION OF MARIJUANA, SECOND OFFENSE. AND JANUARY OF '08,
14 POSSESSION OF MARIJUANA.

15 THE INCIDENT THAT LED TO THE INDICTMENTS BEFORE YOU TODAY
16 AND THE GUILTY PLEA BEGAN ON JANUARY 30, 2009, AT APPROXIMATELY
17 5:30 WHEN OFFICERS WITH THE YORK COUNTY MULTI-JURISDICTIONAL DRUG
18 ENFORCEMENT UNIT EXECUTED A SEARCH WARRANT ON
19 , WHICH IS THE RESIDENCE OF JUSTIN NELSON, WHO STANDS
20 BEFORE YOU, AND JACQUELINE NELSON, HIS MOTHER.

21 AT THE TIME OF THE SEARCH WARRANT, JUSTIN WAS NOT HOME.
22 THERE WERE OTHER PEOPLE IN THE HOME, INCLUDING MRS. NELSON, WHO
23 GAVE CONSENT TO SEARCH THE HOME, EVEN IN ADDITION TO THE SEARCH
24 WARRANT THAT WAS OBTAINED BY DEU.

1 WHEN THE OFFICERS SEARCHED THE HOME, AMONG SOME OTHER
2 THINGS, THERE WAS SOME CRACK FOUND THAT WAS ATTRIBUTABLE TO
3 ANOTHER PERSON IN THE HOUSE. THEY DID GO INTO WHAT WAS POINTED
4 OUT WHAT WAS JUSTIN NELSON'S ROOM BY HIS MOTHER. THEY FOUND 151
5 GRAMS OF MARIJUANA IN A WHITE, PLASTIC BAG. THEY ALSO FOUND A
6 CELL PHONE AND A SCALE, SOME MONEY FROM VARIOUS PEOPLE AND AN ID
7 CARD.

8 AT THAT TIME, JUSTIN NELSON, THERE WAS A WARRANT OUT FOR HIS
9 ARREST THAT WAS FOUND IN HIS BEDROOM, BUT HE WAS NOT ARRESTED.

10 ON FEBRUARY 11, 2009, HE WAS SPOTTED BY MEMBERS OF THE DEU.
11 THEY SPOTTED HIM DRIVING A CAR. THEY GOT BEHIND AND ACTIVATED
12 THEIR BLUE LIGHTS. HE DID PULL OVER TO THE SIDE OF THE ROAD IN FRONT
13 OF SOME APARTMENTS AND WHEN THE OFFICERS GOT OUT OF THEIR CARS
14 TO SPEAK WITH HIM, MR. NELSON TOOK OFF DRIVING AGAIN. ALL THE
15 OFFICERS GOT BACK IN THEIR CARS. AT THIS POINT THERE WERE SEVERAL
16 OFFICERS CHASING HIM.

17 MR. NELSON WAS DRIVING WITH A PASSENGER IN THE CAR. AT SOME
18 POINT HE AND THE PASSENGER BOTH BALED OUT OF THE CAR, AND THE CAR
19 CONTINUED ACROSS THE STREET TO A TREE, HIT THE TREE, AND BOTH
20 PARTIES WENT IN OPPOSITE DIRECTIONS.

21 THE DEU OFFICERS SPLIT UP AND LOST SIGHT OF THE PASSENGER BUT
22 DID CATCH UP WITH MR. NELSON, WHO HAD RAN AND ATTEMPTED TO GET
23 INTO SOME PERSON'S HOUSE. COMMANDER BROWN REACHED MR. NELSON
24 FIRST AND ASKED HIM TO COMPLY WITH ORDERS TO GET DOWN ON THE

1 GROUND. WHEN COMMANDER BROWN SAID THAT HE DID ACTUALLY
2 FINALLY COMPLY. THE OTHER OFFICERS CAUGHT UP.

3 THE DEFENDANT WAS SERVED AT THE TIME. WHEN HE WAS SERVED,
4 HE WAS ORIGINALLY PATTED DOWN FOR WEAPONS, AND THEY FOUND
5 MONEY IN HIS POCKETS. THEY DID HAVE THE CELL PHONE AND THE SCALE
6 THAT WERE TAKEN NOT EVIDENCE.

7 HE WAS HANDCUFFED. HE WAS PUT IN THE BACK OF THE CAR. WHILE
8 HE WAS STILL SITTING ON THE EDGE OF THE SEAT WITH HIS FEET OUTSIDE,
9 HE BEGAN TO SQUIRM AND SHAKE LOOSE, AND HE SHOOK LOOSE A
10 QUANTITY OF CRACK. IT WAS SEIZED BY TWO OF THE DEU OFFICERS. IT
11 WAS LATER WEIGHED AND TESTED. IT CAME BACK APPROXIMATELY
12 TWELVE GRAMS OF CRACK COCAINE. IT WAS IN FACT TESTED AND IT WAS
13 CRACK COCAINE. THAT SHOULD BE SUFFICIENT FACTS FOR THE
14 TRAFFICKING FOR YOU TODAY.

15 AND THAT WAS ALL DONE AT THAT ADDRESS THAT WAS A HALF A
16 MILE FROM GLENCAIRN PARK.

17 THE COURT: DO YOU AGREE WITH THOSE FACTS, MR. NELSON?

18 MR. NELSON: YES SIR.

19 THE COURT: MR. NELSON, I ACCEPT YOUR PLEAS. I FIND THAT THEY
20 ARE FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY MADE, WITH
21 ADVICE FROM TWO ATTORNEYS, MR. DELANEY AND MS. BURRIS. EVEN
22 THOUGH YOU HAD ORIGINALLY WISHED TO GO TO TRIAL PRO SE, I HAVE
23 FOUND YOUR BEHAVIOR SUFFICIENT TO REQUIRE YOU TO HAVE AN
24 ATTORNEY.

1 YOU HAVE SIGNED PLEAS OF GUILT AND THE FACTS SUPPORT THOSE
2 PLEAS. I'LL BE GLAD TO HEAR NOW FROM YOUR ATTORNEYS AND YOU AND
3 FROM YOUR FAMILY IF THEY WISH TO SPEAK.

4 MS. BURRIS: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT.
5 MR. NELSON IS TWENTY-ONE YEARS OF AGE. HE ATTENDED ROCK HILL HIGH
6 SCHOOL AND GREW UP HERE IN YORK COUNTY, YOUR HONOR.

7 AS HAS BEEN PREVIOUSLY STATED, HE'S NEVER ACTUALLY DONE ANY
8 ADULT TIME, BUT HE HAS TAKEN RESPONSIBILITY FOR HIS ACTIONS AND HE
9 DID HAVE THE YOA YEARS AGO, THE YOUTHFUL OFFENDER ACT.
10 UNDERSTANDING THAT, HE IS TAKING RESPONSIBILITY FOR HIS ACTIONS
11 AND IS GOING TO BE SERVING EIGHTY-FIVE PERCENT, AND HE
12 UNDERSTANDS THAT, OF THE FIFTEEN YEARS.

13 HE DOES HAVE TWO SIBLINGS. HE HAS HAD NUMEROUS JOBS,
14 BASICALLY JOBS WITH FAMILY MEMBERS, CUTTING GRASS, AND MECHANIC
15 WORK. HE HAS WORKED AS A MECHANIC.

16 YOUR HONOR, WE ARE ASKING THE COURT TO GO ALONG WITH THE
17 NEGOTIATED PLEA. THIS IS A VERY, VERY HARD DECISION FOR SOMEONE TO
18 MAKE GIVEN THE FACT THAT THEY HAVE NOT ACTUALLY SPENT ANY ADULT
19 JAIL TIME. AND AGAIN, WE RESPECTFULLY ASK THAT YOU ACCEPT THE
20 NEGOTIATIONS.

21 HE IS SUPPORTED IN THE COURTROOM BY HIS MOTHER, HIS AUNT, AS
22 WELL AS HIS GRANDMOTHER, WHO ARE HERE, AND JUST FOUND OUT THIS
23 WEEK THAT JUSTIN HAD TO BE HERE, AND BE PREPARED TO FACE THESE
24 CHARGES TODAY. THEY ARE HERE TO SUPPORT HIM AND UNDERSTAND

1 THAT HE IS GOING FORWARD ON THESE CHARGES AND PLEADING GUILTY
2 VOLUNTARILY.

3 AGAIN, WE JUST RESPECTFULLY ASK THAT YOU GO ALONG WITH THE
4 NEGOTIATED PLEA OF FIFTEEN YEARS.

5 THE COURT: MR. NELSON, ANYTHING YOU WANT TO SAY?

6 MR. NELSON: YEAH. I UNDERSTAND THIS IS A SERIOUS CHARGE. I
7 UNDERSTAND THAT. BUT I TAKE MY LIFE SERIOUSLY. I KNOW WHAT I DID
8 HAS GOT A CONSEQUENCE. I'M ONLY TWENTY-ONE YEARS OLD. AND THAT'S
9 FIFTEEN YEARS OF MY LIFE RIGHT NOW. I AIN'T EVEN BEEN ABLE TO
10 ACTUALLY--

11 I AIN'T EVEN HAD THE CHANCE TO ACTUALLY GO OUT ON MY OWN
12 AND BE ABLE TO-- FIFTEEN YEARS, I AIN'T BEEN ABLE-- I AIN'T EVEN BEEN
13 OUT ON MY OWN FIFTEEN YEARS. I AIN'T BEEN GIVEN THE TIME AND
14 EXPERIENCE OF LIFE.

15 I UNDERSTAND THIS IS A SERIOUS CHARGE. I UNDERSTAND THAT I
16 HAVE TO TAKE THE CONSEQUENCES FOR MY ACTIONS. FIFTEEN YEARS,
17 THAT'S OVER THE TOP, MAN. IN PRISON, THAT'S JUST OVER THE TOP.

18 AND YOU KNOW, IT AIN'T NO SENSE IN GIVING ANYBODY FIFTEEN
19 YEARS FOR THIS, MAN. IT DON'T. I APOLOGIZE FOR MY ACTIONS, BUT I'M
20 TELLING THE TRUTH. IT'S RIDICULOUS, FIFTEEN YEARS RIGHT NOW.
21 TWENTY, THIRTY YEARS FOR ANYBODY WHO'S MY AGE.

22 AND I AIN'T EXPERIENCED NOTHING. I MEAN, I JUST BASICALLY GOT
23 OUT OF SCHOOL. I HAVEN'T FINISHED ANYTHING. I HAVEN'T ACCOMPLISHED
24 NOTHING, YOU KNOW, NONE OF MY GOALS. AND I AIN'T READY FOR WHERE I

1 GOT TO GO, BUT MAN, THIS JUST AIN'T THE WAY TO GO. THAT'S ALL I'M
2 SAYING, THIS AIN'T THE WAY TO GO.

3 THE COURT: WELL, I'M INCLINED TO AGREE. THIS ISN'T THE WAY TO
4 GO. AND IT WOULD SUIT ME FINE IF YOU HAD NOT GOTTEN INTO ALL THIS
5 TROUBLE. YOU HAVEN'T BEEN OUT ON YOUR OWN FOR MANY YEARS, BUT
6 THE LITTLE BIT OF TIME YOU'VE LIVED UP TO NOW TO THE AGE OF TWENTY-
7 ONE, YOU'VE SPENT YOUR TIME DOING THINGS YOU SHOULDN'T. SO, YOU
8 HAVE TO FACE THE CONSEQUENCES, JUST LIKE YOU SAID. SO, YOU ARE
9 FACING AN AWFUL LOT MORE THAN FIFTEEN YEARS.

10 THE SENTENCE ON TRAFFICKING IN CRACK COCAINE IS FIFTEEN
11 YEARS. ALL THESE ARE TO RUN CONCURRENT. POSSESSION WITH INTENT TO
12 DISTRIBUTE MARIJUANA, THIRD OFFENSE, FIFTEEN YEARS. POSSESSION
13 WITH INTENT TO DISTRIBUTE CRACK COCAINE WITHIN THE PROXIMITY OF A
14 SCHOOL OR PARK, FIFTEEN YEARS, AND A FINE OF \$10,000. HIT AND RUN, ONE
15 YEARS. FAILURE TO STOP, THREE YEARS. AND ALL THOSE ARE TO RUN
16 CONCURRENT.

17 MR. NELSON, WHEN YOU GET OUT, MAYBE YOU'LL HAVE A LIFE TO
18 LIVE, AND IF NOT, YOU CAN SPEND THE REST OF YOUR LIFE IN JAIL. THE
19 DECISION IS YOURS TO MAKE. THANK YOU.

20 MS. BURRIS: THANK YOU, YOUR HONOR.

21

22

23

24

25

1 CERTIFICATE

2 I, THE UNDERSIGNED PHYLLIS S. BARRETT, OFFICIAL COURT REPORTER
3 FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
4 FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD
5 OF THE HEARING HELD IN THE CAPTIONED CASE, RELATIVE TO APPEAL, IN
6 THE COURT OF GENERAL SESSIONS FOR THE SIXTEENTH JUDICIAL CIRCUIT,
7 YORK COUNTY, SOUTH CAROLINA, ON THE 22ND DAY OF JULY, 2009.

8 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR
9 INTEREST TO ANY PARTY HERETO.

10
11 
12 PHYLLIS S. BARRETT

WITNESSES

DEUSCHURG & Cashier

DOCKET NO. 2009-GS-46-0171b

The State of South Carolina

County of York

Defendant

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

COURT OF GENERAL SESSIONS

April 23, Term 2009

hereby appear in my own proper person and plead guilty to the within indictment or to

Trafficking Crack Cocaine.

2nd offense

ARREST WARRANT NUMBER

J-167551

Justin Nelson
Defendant

THE STATE

VS.

JUSTIN ANTAVIOUS NELSON

Witness:
Christy Beaulieu et al. spec.
C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

Indictment for

TRAFFICKING IN CRACK COCAINE

SC Code: §44-53-375

CDR Code: 0452

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

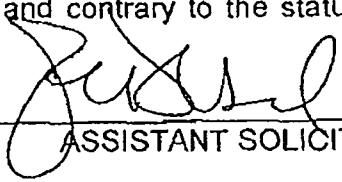
INDICTMENT

At a Court of General Sessions, convened on April 23, 2009, the Grand Jurors of York County present upon their oath:

TRAFFICKING IN CRACK COCAINE

That on or about February 11, 2009, in York County, South Carolina, the Defendant, Justin Antavious Nelson, did knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of 10 grams or more of crack cocaine, as defined and otherwise limited in Sections 44-53-110, 44-53-210(b)(4), 44-53-210(d)(1), or 44-53-210(d)(2), all in violation of Section 44-53-375, Code of Laws of South Carolina, (1976) as amended.

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



ASSISTANT SOLICITOR

WITNESSES

DEULubben

DOCKET NO. 2009-GS-46-01717

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

April 23, Term 2009

rk

ARREST WARRANT NUMBER

57938DM

THE STATE

vs.

ACTION OF GRAND JURY

JUSTIN ANTAVIOUS NELSON

TRUE BILL

John P. Beal
Foreperson of Grand Jury
Date: 4/23/09

VERDICT

Indictment for
FAILURE TO STOP FOR
BLUE LIGHT

Foreperson of Petit Jury
Date:

SC Code: 56-5-750
CDR Code: 0065

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Justin Nelson
Defendant

Witness:
John P. Beal
C.C.C. PLS AND GS

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

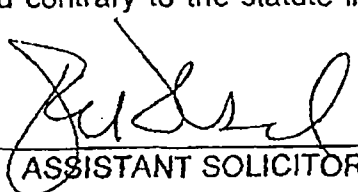
INDICTMENT

At a Court of General Sessions, convened on April 23, 2009, the Grand Jurors of York County present upon their oath:

FAILURE TO STOP FOR BLUELIGHT

On or about February 11, 2009, in York County, South Carolina, the Defendant, Justin Antavious Nelson, did while driving a motor vehicle on a road, street, or highway of the State, unlawfully fail to stop for a law enforcement vehicle after being signaled by a flashing light or a siren to do so, all in violation of Section 56-5-750, Code of Laws of South Carolina (1976), as amended.

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



ASSISTANT SOLICITOR

DOCKET NO. 2009-GS-46-01718

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

DEULubben

Defendant

The State of South Carolina
County of York

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

April 23, Term 2009

rk

ARREST WARRANT NUMBER

57939DM

THE STATE

vs.

Witness:
Christy Beardsley Ct. Sec.
C.C.C. PLS. AND DS.

ACTION OF GRAND JURY

JUSTIN ANTAVIOUS NELSON

TRUE BILL

John D. Smith
Foreperson of Grand Jury
Date: 4/23/09

VERDICT

Indictment for

LEAVING THE SCENE OF AN ACCIDENT

Foreperson of Petit Jury

Date:

SC Code: 56-5-1220
CDR Code: 2464

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on April 23, 2009, the Grand Jurors of York County present upon their oath:

LEAVING THE SCENE OF AN ACCIDENT

The Defendant, Justin Antavious Nelson, did in York County, South Carolina, on or about February 11, 2009, being the driver of a vehicle involved in an accident resulting in the damage of property, willfully and unlawfully failed to stop and remain at the scene of the accident and fulfill the requirement of Section 56-5-1230 of the Code of Laws of South Carolina (1976 as amended), relative to giving information and rendering aid, in violation of Section 56-5-1220 of the Code of Laws of South Carolina (1976), as amended.

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


ASSISTANT SOLICITOR

WITNESSES

DEUSCHUNG & Cashier

DOCKET NO. 2009-GS-46-02552

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

June 18, Term 2009

rk

ARREST WARRANT NUMBER

J-167553

THE STATE

VS.

ACTION OF GRAND JURY

JUSTIN ANTAVIOUS NELSON

TRUE BILL

For person of Grand Jury

6/18/09

VERDICT

Indictment for

POSSESSION OF COCAINE BASE (CRACK)
WITH INTENT TO DISTRIBUTE WITHIN
PROXIMITY OF A PUBLIC PARK OR
PLAYGROUND

SC Code: § 44-53-445

CDR Code: 0108

For person of Petit Jury
Date:

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

Christy Benfield Ct. Sec.
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

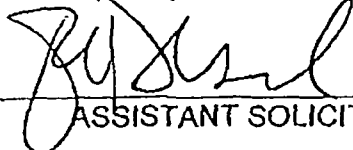
INDICTMENT

At a Court of General Sessions, convened on June 18, 2009, the Grand Jurors of York County present upon their oath:

**POSSESSION OF COCAINE BASE (CRACK) WITH INTENT TO DISTRIBUTE
WITHIN PROXIMITY OF A PUBLIC PARK OR PLAYGROUND**

That on or about February 11, 2009, in York County, South Carolina, the Defendant, Justin Antavious Nelson, did distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute a quantity of cocaine base, otherwise known as crack cocaine, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, within a one-half mile radius of the grounds of Glencairn Gardens, a public park located in Rock Hill, South Carolina, such possession with intent to distribute not having been authorized by law, all in violation of Section 44-53-445, Code of Laws of South Carolina (1976), as amended.

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


ASSISTANT SOLICITOR

DOCKET NO. 2009-GS-46-02553

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

Debuschong & Cashier

County of York

Defendant

The State of South Carolina

COURT OF GENERAL SESSIONS

June 18, Term 2009

I hereby appear in my own proper person and plead guilty to the within indictment or to

rk

ARREST WARRANT NUMBER

J-167554

THE STATE

vs.

JUSTIN ANTAVIOUS NELSON

Witness:

Charles Beaufield Ct Sec.
C.C.C. PLS AND GS

ACTION OF GRAND JURY

FILED B.T.L.

For person of Grand Jury
6/18/09

VERDICT

Indictment for

POSSESSION OF MARIJUANA WITH
INTENT TO DISTRIBUTE

For person of Petit Jury
Date:

SC Code: 44-53-370
CDR Code: 0188

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

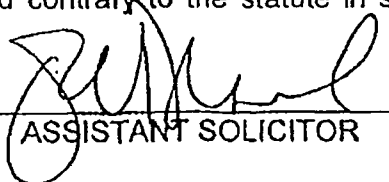
INDICTMENT

At a Court of General Sessions, convened June 18, 2009, the Grand Jurors of York County present upon their oath:

POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

That on or about January 30, 2009, in York County, South Carolina, the Defendant, Justin Antavious Nelson, did possess with intent to distribute, dispense, or deliver a quantity of marijuana, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, or did otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, or deliver marijuana, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976), as amended.

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

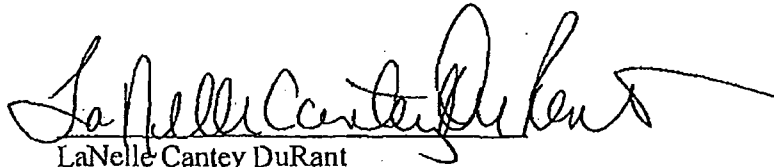


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 6th, 2010



LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

Hit and Run - 2009-GS-46-01718

3rd Offense #2009-GS-46-02553 - PWID Crack Cocaine Within Proximity
 of School/Park - 2009-GS-46-02552 - FTSBL - 2009-GS-46-01717

5. The date upon which sentence was imposed and the terms of the sentence:
 July 22, 2009 - 3 15-year sentences, 1 year and 3 years, all

(a) _____
 (b) are running concurrently.
 (c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty XXXXXXXXXX
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

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

Yes

8. If you answered Ayes@ to (7), 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. Appeal dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. Unknown

ii. _____

iii. _____

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

i. Unknown

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) N/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attached Memorandum
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- See Attached Memorandum
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

N/A

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

N/A

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

(a) which grounds have been presented:

N/A

i. _____

ii. _____

iii. _____

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

N/A

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) 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) This is the first opportunity that the Applicant has had to
 (b) present these issues.
 (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 (b) your trial, if any? Not represented by attorney at my trial.
 (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? No
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Twana Burris, Esquire of the York County Bar and Erik D.
Delaney, Esquire of the York County Public Defenders Office
 ii. LaNelle Canty Durant, Division of Appellate Defense, Post Office
Box 11589, Columbia, SC 29211
 iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Guilty Plea Hearing 18(a)(i)
 ii. Appeal 18(a)(ii)
 iii. _____

19. State clearly the relief you seek in filing this application:
Vacate sentences and guilty pleas, and remand for a new trial.

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of McCormick)

I, Justin Nelson #307730, 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.

Justin Nelson

SWORN to and subscribed before me this 14
 day of July, 2011.

Jake L Young (L.S.)
 Notary Public

My Commission Expires: 8-28-2011

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

I, Justin Nelson #307730, 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 thereof.

Justin Nelson
Applicant

SWORN or affirmed to and subscribed before me this
14 day of July, 2011.

Joyce L Young
Notary Public

My Commission Expires: 8-28-2011

STATE OF SOUTH CAROLINA
County of York

FILED-RECEIVED
2011 JUL 19 PM 2:09
DAVID HAMILTON
CLERK OF COURT

THE COURT OF COMMON PLEAS
16th Judicial Circuit

Justin Nelson, #307730
Applicant,)

Case No.: _____

vs.)

MEMORANDUM IN SUPPORT OF
APPLICATION FOR POST-CONVICTION
RELIEF

State of South Carolina,)
Respondent.)

Comes Now the Applicant, who submits this memorandum of law in support of his attached application for post-conviction relief. The Applicant contends that, his right to the effective assistance of counsel as guaranteed him under the Sixth Amendment of the United States Constitution and Article I, §14 of the South Carolina Constitution, and his right to due process of law as guaranteed him under the Fourteenth Amendment of the United States Constitution and Article I, §3 of the South Carolina Constitution were violated in this matter. The Applicant ask that this Court grant him a new trial in this matter. The Applicant submits that his arguments and supporting facts along with relevant case laws will justify this Court in granting the requested relief.

Relevant Facts of the Case

On January 30, 2009, officers of the Multi-Jurisdictional Drug Enforcement Unit chased a person that they were intending to arrest into the kitchen of a home located at

, which is where the Applicant in the instant case resided

with his mother. After arresting the person that the officers were interested in, they conducted a protective sweep of the immediate area where the suspect was arrested but, without permission, or a search warrant the officers expanded their search to other areas of the house. They went into a bed room that the officers alleged to have been the Applicant's where they allegedly found 151 grams of marijuana, a cell phone and a scale. The Applicant was not at home at the time. He was charged with trafficking in marijuana for the marijuana allegedly found in the bed room.

On February 11, 2009, the Applicant was arrested by the Drug Enforcement Unit while driving a car. During the arrest, the officers claimed to have found 12 grams of crack cocaine and charged the Applicant with trafficking in cocaine.

The Applicant was released on bond and had problems hiring an attorney, both because of his financial position at the the time and because he was not fully informed of when his case was going to be call to trial.

The Applicant was called before the Honorable John C. Hayes, III for trial on July 22, 2009. The Applicant attempted to retain the services of Twana N. Burris, Esquire but she refused to represent the Applicant on such a short notice, Attorney Burris informed the judge that she was hired to represent the Applicant at 6:30 p.m. the day before trial and she was not prepared, but the judge insisted on starting the trial and denied counsel's motion for a continuance. The trial began with selection of the jury. See trial transcript in this case. The trial was aborted

after the Applicant was coerced to plead guilty by attorney Burris and Delaney. See page two (2) of the guilty plea transcript.

There are two transcripts in this case, one is the transcript of the aborted trial, the other is the transcript of the guilty plea hearing.

The Applicant appeared pro-se, with Attorney Burris acting as "standby counsel", during the trial that was aborted. It don't make too much sense in that Attorney Burris was unprepared to represent the Applicant at trial, but was able to represent him at the guilty plea proceeding, which took place on the same day as the aborted trial.

These and other issues will be discussed infra.

Ineffective Assistance of Counsel

In Strickland v. Washington, 104 S.Ct. 2054 (1984), the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's performance was deficient and second that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Id. at 64. In the instant case, the Applicant submits that Attorney Burris's performance was deficient and he was prejudiced thereby.

In Hill v. Lockhart, 106 S.Ct. 366 (1985), the United States Supreme Court held that the two-part standard adopted in

Strickland v. Washington, supra, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors he would not have pled guilty and would have insisted on going to trial. Cf. Murdock v. State, 308 S.C. 143, 417 S.E.2d 534 (1992).

The Applicant will show that his plea of guilty was "not" knowingly and voluntarily made, and if not for counsel's deficient performance, he would not have pleaded guilty and would have insisted on going to trial. See the arguments on the followings pages:

COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE GUILTY PLEA HEARING JUDGE ACCEPTING THE APPLICANT'S GUILTY PLEAS WHEN THERE WERE NO FACTUAL BASIS FOR THE PLEAS, WHICH RENDERED THE APPLICANT'S PLEAS NOT KNOWINGLY AND VOLUNTARILY MADE, AND IS A VIOLATION OF DUE PROCESS OF LAW.

On July 22, 2009, the Applicant pled guilty in front of the Honorable Judge Hayes III to, among other things, possession of marijuana with intent to distribute - 3rd offense, trafficking in crack cocaine - 2nd offense, possession with intent to distribute crack cocaine within proximity of school/park. See guilty plea hearing transcript, (G.P.H.T.), page 3, lines 14-25 - p. 4, lines 1-25 - p. 5, lines 1-25 - p. 6, lines 1-18. The judge sentenced the Applicant to three (3) fifteen (15) years concurrent sentences for those offenses. See G.P.H.T., p. 14, lines 10-16.

The Applicant contends that, his pleas of guilty to the above mentioned drug charges were not knowingly and voluntarily made because there is no evidence in the record, other than the Solicitor stating that "it was in fact tested and it was crack cocaine", G.P.H.T., p. 11, lines 12-13, also, there is no evidence in the record that the alleged marijuana was in fact marijuana, further, there is no evidence of when, where or by whom the alleged illegal substances were tested, or whether either of the alleged illegal substances were weighed. Therefore, every one of the drug charges that the Applicant pled guilty to were based on the Solicitor's personal opinion that the alleged substances were in fact illegal, and to the Solicitor's personal opinion of their weigh.

In Murdock v. State, 426 S.E.2d 740 (1992), the plea counsel in that case was found to be ineffective for not distinguishing between counterfeit and imitation drugs. This resulted in the accused pleading guilty to a crime which she did not commit.

Because of counsel's actions in this case, advising the Applicant to plead guilty, the Applicant may have pleaded guilty to possession of imitation drugs, which is not a crime, because the Solicitor did not present any evidence, as required by Rule 6(a), SCRCrimP, Report of Chemical Analysis, that alleged substance involved in this matter was in fact marijuana or crack cocaine. The Applicant nor the Solicitor are chemists, the Solicitor did not present any evidence that any illegal substance were involved in this matter.

The Solicitor was required to present facts, and, at a minimum, the "Chemist's Report" to establish that the alleged substances were in fact illegal drugs, because of this omission, the factual basis for the pleas in this matter were never established. See State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), where the South Carolina Supreme Court held that before a guilty plea may be accepted, the court must be certain that the record indicates a factual basis for the plea. That was not done in this case.

Further, the Applicant contends that his pleas of guilty to "trafficking in crack cocaine - 2nd offense and "possession with intent to distribute marijuana - 3rd offense, were not knowingly

and voluntarily made because the indictment in relations to the crack cocaine charge only charges the Applicant with "trafficking in crack cocaine", see Exhibit - A, attached, it does not state that this is the Applicant's second offense, also, the indictment for "possession of marijuana with intent to distribute", see Exhibit - B, attached, did not charge the Applicant with a third offense of that charge, therefore, there was no factual basis for the guilty plea to the second offense crack cocaine charge, nor was there a factual basis for the plea to third offense possession with intent to distribute marijuana charge. Accord U.S. v. Thompson, 680 F.2d 1145 (7th Cir. 1981), cert. denied 459 U.S. 1089, 103 S.Ct. 573, 74 L.Ed. 934 (1982), where the court held that the purpose requiring factual basis for guilty plea is to assure court that conduct which defendant admits by his plea of guilty constitutes offense charged in indictment or lesser offense included therein.

In the instant case, the offenses that the Applicant pled guilty to are not the offense alleged in the indictments, or lesser included offenses, in fact, the charges that the Applicant pled guilty to are greater offenses than that which are charged in the indictments.

For the foregoing reasons counsel was ineffective and if not for counsel's deficient performance, which was prejudicial to the Applicant, the Applicant would not have pleaded guilty and would have insisted on continuing with the trial.

COUNSEL WAS INEFFECTIVE FOR FAILING TO INFORM THE APPLICANT THAT HAD HE CONTINUED ON WITH TRIAL HE COULD HAVE CHALLENGED WHETHER OR NOT THE POLICE OFFICERS HAD PROBABLE CAUSE FOR THE SEARCH OF D, THE TRAFFIC STOP AND THE ARREST FOR THE ALLEGED MARIJUANA AND CRACK COCAINE CHARGES.

On Friday, January 30, 2009, at around 5:30 p.m. officers from the YCMDEU pursued Mike Marcell Caldwell into the residence at , Rock Hill, located in York County, South Carolina. The officers allegedly had several outstanding warrants for Caldwell's arrest. This is the residence where the Applicant lived with his mother. The Applicant was not home at the time.

While the officers were putting handcuffs on Caldwell, they observed Jarman White grab a plastic bag from the kitchen counter near the refrigerator and fled to the bathroom. The officers chased White into the bathroom where they allegedly found 2.4 grams of crack cocaine and placed White under arrest. Afterward, the officers allegedly received permission from Ms. Jacquelin Nelson, Applicant's mother, to search the residence. On the same counter top in the kitchen where White allegedly grabbed the bag the officer allegedly retrieved a "white plastic bag" that allegedly contained 151 grams of marijuana. See attached "Incident Report" - No.: 200900003268, which is mark as Exhibits C, D & E.

Nothing in the Incident Report connects the Applicant to the alleged 151 grams of marijuana allegedly found in the white plastic bag allegedly found on the kitchen counter top on Friday, January 30, 2009 during the search of the residence.

In an attempt too connect the Applicant with the alleged 151 grams of marijuana the Solicitor stated the following at the guilty plea hearing, referring to the search of

on January 30, 2009, the Solicitor stated that:

---"They did go into what was pointed out what was Justin Nelson's rooms by his mother. They found 151 grams of marijuana in a white, plastic bag."

See guilty plea transcript, page 10, lines 3-5.

The Solicitor also stated the following in an effort to show that the officers had probable cause to search the residence:

The incident that led to the indictments before you today and the guilty plea began on January 30, 2009, at approximately 5:30 when officers with the York County Multi-Jurisdictional Drug Enforcement Unit executed a search warrant on which is the residence of Justin Nelson, who stands before you, and Jacquelin Nelson, his mother.

First of all, the "white plastic bag" that allegedly contained the alleged 151 grams of marijuana was "not" found in the Applicant's room as the Solicitor stated. The attached "Incident Report" states that the white plastic bag that allegedly contained 151 grams of marijuana was found on a counter top in the kitchen, and the Applicant was not home at the time.

Also, the officers that conducted the search and submitted the "Incident Report" that relates to this incident does not state in that report that there was a search warrant that gave them the authority to enter the residence and search it. The officers were at this incident location for the purpose of arresting Mike Marcell Caldwell for whom the officers had several outstanding warrants. Caldwell was on the outside of the

residence when the officers were approaching, he saw them and ran inside the residence and the officer followed and arrested him. There was no search warrant.

The Solicitor also stated that:

At the time, Justin Nelson, there was a warrant out for his arrest that was found in his bedroom, but he was not arrested.

See guilty plea transcript, page 10, lines 8-9:

The Solicitor made the above statement at the guilty plea hearing to suggest that there was probable cause for the Applicant's arrest on February 11, 2009, when officers of the DEU spotted the Applicant driving a car and activated their blue light. G.P.H.T., p. 10, lines 10-12. Since there was no arrest warrant found in the Applicant's bedroom on January 30, 2009, and there was no other warrant out for his arrest at that time, there was no probable cause for the officers to activate their blue light and conduct a stop on the Applicant's car on February 11, 2009.

Had the Applicant continued on with trial, the Applicant could have challenged the probable cause for the arrest because of the misstatement of facts surrounding the case made by the Solicitor. See U.S. v. Wilson, 135 F.3d 291 (4th Cir. 1998), where the prosecutor misstated the facts of that case and the Court found it was reversal error.

The search, the traffic stop and the arrest of the Applicant are Fourth Amendment violations because there was no probable cause for the officers to conduct the search, stop or arrest in this case, or seized the crack cocaine. "Evidence seized in

violation of the Fourth Amendment must be excluded from trial".
State v. Weaver, 374 S.C. 313, 649 S.E.2d 479 (2007). See also
State v. Freiburger, 366 S.C. 125, 620 S.E.2d 737 (2005) cert.
denied, 547 U.S. 1147, 126 S.Ct. 2287, 164 L.Ed.2d 813 (2006).
Had the Applicant continued on with trial he could have moved to
have all the illegally seized alleged drugs suppressed.

COUNSEL WAS INEFFECTIVE FOR FAILING TO MOVE TO HAVE ALL THE DRUG RELATED CHARGES DISMISSED BECAUSE THE SOLICITOR FAILED TO COMPLY WITH RULE 6 (c), SCRCrimP, DISCLOSURE, BY FAILING TO DISCLOSE CHEMICAL ANALYSIS REPORTS AND THE CHAIN OF CUSTODY REPORT IN A TIMELY MANNER, WHICH MADE THE APPLICANT'S PLEAS OF GUILTY NOT KNOWINGLY AND VOLUNTARILY MADE AND DENIED THE APPLICANT DUE PROCESS OF LAW.

Rule 6(c) of the South Carolina Rules of Criminal Procedure states that "in a criminal prosecution any reports or papers mentioned in section (a) or (b) shall be made available to the defendant or his attorney at the preliminary hearing or if no hearing is held, not later than eleven (11) days prior to the trial of the case".

In the instant case, the Solicitor stated that the Applicant was provided with a copy of the discovery on the day before the trial began, which was aborted after the jury was selected. See trial trans. p. 6, lines 10-15. The Solicitor also stated that counsel for the Applicant was provided with the discovery on the morning of the aborted trial and the guilty plea hearing. See trial trans. p. 7, lines 4-19.

Rule 6(a) relates to the "Chemical Analysis Report" and Rule 6(b) relates to the "Chain of Custody Report" and, as previously stated, these documents should have been given to the Applicant or his attorney eleven (11) days before trial, or the guilty plea hearing. These documents are a part of the discovery, if the Applicant received the discovery containing these documents the day before trial or plea, or on the day of his trial or plea, he would have received them in violation of the mandates of Rule 6(c).

There is really no evidence in the record nor can the Applicant remember ever receiving any of the drug related documents in what ever material related to the discovery that he received from the Solicitor. The Solicitor stated during the beginning of the aborted trial that, "the State now has provided the defendant another copy of the discovery including arrest warrants, indictments and all the evidence sheets, incident reports, we've also provided to him a jury list so that he have that to assist him to pick a jury". Trial trans. p. 18, lines 24-25 - p. 19, lines 1-3. There is no mention of the Chemical Analysis Report" or the "Chain of Custody Report". Even if the discovery material did contain those document, but it did not, they were still provided to the Applicant and his attorney in an untimely manner.

Counsel's negligence in failing to move for dismissal of the drug related charges because these documents were not produced in a timely manner establishes that counsel was not functioning as an attorney required by the Sixth Amendment, Strickland v. Washington, supra and Hill v. Lockhart, supra. Counsel should not have allowed the Solicitor to play hide and seek with such critical documents, these documents would have allowed the Applicant to prepare a proper defense for trial or enable the Applicant to make an intelligent decision as to whether or not to plead guilty.

For the foregoing reasons counsel provided ineffective assistance of counsel, and if not for counsel's deficient performance, the Applicant would not have pleaded guilty and would have insisted on continuing on with the trial.

COUNSEL WAS INEFFECTIVE FOR FAILING TO ADVISE THE APPLICANT THAT HAD HE CONTINUED ON WITH TRIAL, HE COULD HAVE MOVE TO HAVE THE ALLEGED ILLEGAL DRUGS IN THIS MATTER SUPPRESSED IN A CHALLENGE TO THE CHAIN OF CUSTODY OF THE ALLEGED ILLEGAL SUBSTANCES, WHICH MADE THE APPLICANT'S PLEAS OF GUILTY NOT VOLUNTARILY, KNOWINGLY OR INTELLIGENTLY MADE, AND DENIED THE APPLICANT DUE PROCESS OF LAW.

Rule 6(b) of the South Carolina Rules of Criminal Procedure requires that "a certified sworn statement signed by each successive person having custody of the evidence that he or she delivered it to the person, stated is evidence that the person had custody and made delivery as stated without the necessity of the person who signed the statement being present in court provided: (1) the statement contains a sufficient description of the substance or its container to distinguish it; (2) the statement says the substance was delivered in substantially the same condition as when received."

In the instant case, there is no indication that a "chain of custody" was ever established in relation to the alleged illegal substances allegedly seized in this matter. There is also no evidence that the document as stated above were ever submitted in this case.

When real evidence is of the fungible type, the proponent must show a complete chain of custody, as far as practicable.

Raino v. Goodyear Tire, 309 S.C. 255, 422 S.E.2d 98 (1992); State v. Priester, 301 S.C. 165, 391 S.E.2d 227 (1990); State v. Williams, 297 S.C. 290, 376 S.E.2d 773 (1989). If the chain is insufficient the evidence should be excluded. Raino v. Goodyear

Tire, supra; State v. Joseph, 328 S.C. 352, 491 S.E.2d 275 (Ct. App. 1997).

In State v. Joseph, supra, there were inconsistencies in the dates and weights of the seized (marijuana and crack cocaine) contraband. Also, the state failed to produce the chemist who retrieved the marijuana and crack cocaine from the drop box and retained it for six month while analyzing it. The defendant objected to the state's use of the chemist's report at trial, which rendered the state's proof of the chain of custody of the marijuana and crack cocaine fatally deficient, and therefore, admission of such evidence was reversible error in prosecution for possession of contraband, though chemist had moved to another state.

In the instant case, the Applicant contends that the officers involved in this matter did not established any type of chain of custody, in fact, there were inconsistencies in the location of where the alleged 151 grams of marijuana was seized, whether it was found in the Applicant's bedroom as stated by the solicitor at the guilty plea hearing, or seized from a counter in the kitchen as stated in the police report, also there is no way for the Applicant to know if the substances he pled guilty to are the same substances allegedly seized in this matter.

For the aforementioned reasons, and for counsel's faulty advice to plead guilty, the Applicant would not have pleaded guilty and would have insisted on continuing on with the trial.

CONCLUSION

The Applicant submits that he has, in the attached pleadings, established that he was denied his constitutional right to the effective assistance of counsel and denied due process of law, he now believes that he is entitled to an evidentiary hearing to further develop these issues. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

The Applicant also request that this Court appoint counsel to represent him in this matter. See Rule 71.1 (d) of the South Carolina Rules of Civil Procedure.

Date: 07/14/11

Respectfully submitted,

Justin Nelson, #307730


McCI F-4 183-A
386 Redemption Way
McCormick, SC 29899
Applicant

JUSTIN NELSON #307730

McCI F-4 A-side
386 Redemption Way
McCormick, South Carolina 29899

July 14, 2011

Clerk of Court Office
Post Office Box 649
York, South Carolina 29745

RE: Original Application for Post Conviction Relief
Justin Nelson v. South Carolina

Dear Clerk:

Enclosed for filing is the original application for post-conviction relief and attachments in reference to the above entitled matter.

Please return to me a clock-stamped copy of the enclosed application and attachments at your earliest convenience.

Thank you very much for your attention and assistance in this matter.

cc: Personal files

Sincerely,

Justin Nelson

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
	)	2011-CP-46-2802
	)	
Justin Nelson, #307730,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 18, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted by the April 2009 term of the York County grand Jury with one count of Trafficking in Crack Cocaine (2009-GS-46-1716), one count of Failure to stop for a blue light (2009-GS-46-1717) and one count of Leaving the scene of an accident (2009-GS-46-1718). The Applicant then was indicted by the June 2009 term of the York County Grand Jury with one count of Possession of Marijuana with intent to distribute (PWID) (2009-GS-46-2553) and one count of Possession of Cocaine base with intent to distribute within proximity of a public park or playground (2009-GS-46-2552). On July 22, 2009, the Applicant pled guilty to Hit and Run, Failure to Stop for a blue light, Trafficking in Crack Cocaine 2nd Offense, PWID Marijuana 3rd

Offense, and PWID Crack Cocaine within proximity of a park or playground. The Applicant pled Pro Se but was appointed Twana Burris, Esquire, as standby counsel. The Honorable John C. Hayes, III sentenced the Applicant to a term of imprisonment for one (1) year for the Hit and Run, three (3) years for Failure to stop for a blue light, fifteen (15) years for Trafficking in Crack Cocaine 2nd Offense, fifteen (15) years for PWID Marijuana 3rd Offense, and fifteen (15) years for PWID Crack Cocaine within proximity of a park or playground. All sentences run concurrently.

A timely Notice of Appeal was filed and an appeal was perfected. The Applicant filed a brief on his own behalf pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Nelson, Op. No. 2011-UP-253 (S.C Ct, App. Filed June 1, 2011). The Remittitur was sent on June 24, 2011.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and Applicant's Appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Counsel was ineffective for failing to object to the guilty plea hearing judge accepting the Applicant's guilty plea when there were no factual basis for the pleas, which rendered the

Applicant's pleas not knowingly and voluntarily made, and is a violation of due process of law.

- b. "Counsel was ineffective for failing to inform the Applicant that had he continued on with trial he could have challenged whether or not the police officers had probable cause for the search of _____, the traffic stop and the arrest for the alleged Marijuana and Crack Cocaine charges."
- c. "Counsel was ineffective for failing to move to have all the drug related charges dismissed because the Solicitor failed to comply with Rule 6 (c) SCRCrimP, Disclosure, by failing to disclose chemical analysis reports and the chain of custody report in a timely manner, which made the Applicant's pleas of guilty not knowingly and voluntarily made and denied the Applicant due process of law."
- d. "Counsel was ineffective for failing to inform the Applicant that had he continued on with trial he could have move to have the alleged illegal drugs in this matter suppressed in a challenge to the chain of custody of the alleged illegal substances, which made the Applicant's pleas of guilty not voluntarily, knowingly, or intelligently made, and denied the Applicant due process of law."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

For purposes of this Return, Respondent interprets Applicant's allegations to be allegations of ineffective assistance of counsel. In a post-conviction relief action, the Applicant

bears the burden of proving the allegations in their 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 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 that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

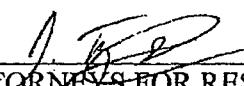
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Staff Attorney

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549

Columbia, SC 29211

Oct 12, 2011.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

2011-CP-46-2802

JUSTIN NELSON,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

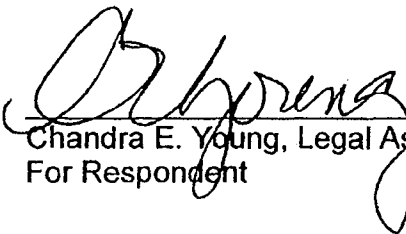
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

David Hadder, Esquire
 1516 Village Harbor Drive
 Lake Wylie, SC 29710

DATED this 13th day of October, 2011.


 Chandra E. Young, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF COMMON PLEAS

3
4 JUSTIN NELSON)
5 APPLICANT,) TRANSCRIPT OF RECORD
6 -vs-) 2011-CP-46-02802
7 STATE OF SOUTH) JANUARY 30, 2012
8 CAROLINA,) YORK, SOUTH CAROLINA
9 RESPONDENT.)

10
11 B E F O R E:

12 THE HONORABLE LEE S. ALFORD, JUDGE.
13
14

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

16 CHARLES T. BROOKS, III, ESQUIRE
17 ATTORNEY FOR THE APPLICANT

18 J. RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL
19 ATTORNEY FOR THE RESPONDENT

20 MICHAEL R. WATTS
21 CIRCUIT COURT REPORTER
22
23
24
25

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EXHIBITS

1	NO.	DESCRIPTION	ID.	EV.
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(PROCEEDINGS, JANUARY 30, 2012)

MR. JOHNSON: May it please court?

THE COURT: Counsel.

MR. JOHNSON: Your Honor, this is Justin Nelson,
case 2011-CP-46-2802.

Mr. Nelson was indicted at the April 2009 term of
the York Grand Jury for trafficking in cocaine; one count of
failure to stop for a blue light; one count leaving the
scene of an accident.

He was also indicted of the June 2009 term of the
York County Grand Jury for one possession of marijuana with
intent to distribute; one count of possession of cocaine
base with intent to distribute within proximity of a public
park or playground.

He was pro-se, but he had Twana Burris as standby
counsel.

He pled guilty on July the 22nd, 2009, before the
Honorable John C. Hayes, III to hit and run as indicted;
failure to stop for a blue light as indicted; the lesser
included of trafficking in cocaine, second offense; and
possession of marijuana with intent to distribute, third
offense, as indicted; and possession of marijuana, crack
cocaine, within proximity of a park or playground as
indicted. A negotiated sentence, he got one year on the hit
and run; three years for failure to stop for a blue light;

1 fifteen years for the possession with intent to distribute
2 within proximity; fifteen years for possession of marijuana,
3 third, with intent to distribute; and fifteen years for
4 trafficking in cocaine, second offense.

5 There was an appeal filed pursuant to Honors v.
6 California.

7 The remittitur was sent June 24th, 2011.

8 Mr. Nelson filed a timely PCR on July the 18th,
9 2011.

10 The State made its return on October 13th, 2011.

11 He's represented here today by Mr. Charles Brooks.

12 THE COURT: Mr. Brooks?

13 MR. BROOKS: If it please the court, judge, we are
14 ready to start. I'm ready to call Mr. Nelson to the stand.

15 THE COURT: Please call him.

16 MR. BROOKS: Mr. Nelson, come up and be sworn and
17 have a seat on the stand.

18 JUSTIN NELSON, having been first duly sworn,
19 testified as follows:

20 MR. BROOKS: Ready, judge?

21 THE COURT: Yes, sir.

22 DIRECT EXAMINATION BY MR. BROOKS:

23 Q. Mr. Nelson, how are you today?

24 A. Doing good.

25 Q. All right. I want to make sure that you speak up. The

1 court reporter has got to take down everything that you say,
2 okay?

3 And we are here for your post-conviction relief
4 application. And you understand that the only remedy that
5 Judge Alford can grant you today is to give you a new trial,
6 is that correct?

7 A. Yes, sir.

8 Q. And you still want your new trial, is that correct?

9 A. I want a new trial.

10 Q. Okay. Now, you understand that you basically got about
11 eight, nine, ten years to do, is that correct?

12 A. Correct.

13 Q. And you understand that if we convince Judge Alford
14 that you had ineffective assistance of counsel and you get
15 that new trial, you could go back and face a lot of time?

16 A. That's possible. It's possible now.

17 Q. I mean, but you understand that?

18 A. I understand that.

19 Q. Okay. All right.

20 Now, you pled guilty to these charges, is that correct?

21 A. Yes, sir.

22 Q. Why did you plead guilty?

23 A. I was under a lot' of pressure.

24 Q. Okay. What kind of pressure were you under?

25 A. Mental strain, anxiety. Do you feel me? I had my

1 family to think about. Do you feel me?

2 A lot of people, you know, they count on me to do
3 certain things, but at the same time I feel like I needed
4 better representation.

5 At the time I was ignorant to the law. I didn't know a
6 lot of things. Do you feel me? A lot of things wasn't to
7 my attention that should have been clarified to another
8 level, but they wasn't.

9 Q. What do you know now that if you had known then would
10 have caused you to change and not plead guilty and go
11 forward in a trial?

12 A. I would have never sold drugs.

13 Q. You would have what?

14 A. I would have never sold drugs.

15 Q. Okay. I understand that, but I'm not taking you that
16 far back. I'm talking about you went in front of Judge
17 Hayes and you pled guilty?

18 A. I know what you are saying.

19 Q. And you regret pleading guilty, is that right?

20 A. Oh, yeah.

21 Q. And you said you pled because you were ignorant of the
22 law.

23 A. Okay.

24 Q. What do you know now that if you were back at the time
25 that you pled guilty --

1 A. Okay.

2 Q. -- would have caused you not to plead guilty and gone
3 forward in a trial?

4 A. Okay. I want to know why didn't Jenny present any
5 evidence? Why wasn't the chain of custody presented?

6 Q. What would you have done?

7 A. I would have went to trial.

8 Q. Okay. And what do you know now?

9 A. I would have wanted the solicitor to prove without a
10 fact that everything that she said was true. There was no
11 factual bias in my case.

12 Q. Okay. What else?

13 A. Okay. What else?

14 Q. Now, I tell you what. Let me help you out, Mr. Nelson.
15 What was the situation between you and Ms. Burris?

16 A. Okay. I retained Ms. Burris 6:30 the day before trial.
17 She told me, "okay, look, I'm going to -- "I'm going to file
18 for your discovery. I'm going to look over your case and
19 review your case and then I'm going to go from there."

20 Okay. Twana called Jenny and she got my discovery.
21 And Jenny called her maybe like fifteen, twenty minutes
22 later and, okay, "we are ready to take Mr. Nelson to trial."
23 And Twana called me and she said, "okay, meet me up at the
24 courthouse. We got a problem. We are going to go up there
25 and get you a continuance. Don't worry about it. Just meet

1 me up here and we are going to get everything situated."

2 I said "okay, Twana, I trust you."

3 So I came up here and they put me under the gun. They
4 threw me under the bus.

5 Q. Who is they?

6 A. The solicitor, the prosecutor, everybody.

7 Q. Okay.

8 A. You feel me? I didn't have proper representation. I
9 couldn't represent myself. The judge put me in a situation
10 where he knew at the time it wasn't going to be good for me.

11 You know, I don't know nothing about the law. You
12 know, at the time, okay, I did something wrong, but at least
13 give me a chance to get knowledgeable of what's going on so
14 I can at least represent myself.

15 Okay, you gave me fifteen years, but you threatened me
16 with fifty. Okay, but what am I supposed to do? You
17 threatened me with fifty years. You do the math.

18 Q. Well, now, let me ask you, Justin. I don't want to
19 rain on your parade. I want to make sure you understand
20 that if Judge Alford does grant you your PCR, you are right
21 back in that same situation.

22 A. Okay, but now -- but now I know. But now I know.
23 That's just like riding a bike. You didn't know before.

24 Q. Okay.

25 A. But now you know how to ride a bike and you ain't going

1 to fall. I bet that.

2 Q. All right. Is there anything else you want to tell the
3 judge here today as to why you -- other than what you said
4 already as to why should have your guilty plea overturned?

5 A. I made a lot of mistakes in my life. I did a lot of
6 wrong stuff. I deserve to be punished, but I deserve
7 leniency too. You feel me? I ain't better than some of
8 them, but I ain't worse than others. Do you feel me? I
9 deserve leniency too. Everybody deserves a second chance.
10 I don't deserve no fifteen years, not for having in
11 possession crack that's only worth three, four hundred, five
12 hundred dollars. I see a lot of guys that was caught with a
13 kilo. That's a hundred thousand dollars. You feel me? I
14 don't deserve fifteen years. I'm not a kingpin. You feel
15 me? No, I don't deserve that.

16 Q. And you understand, I told you, the judge can't change
17 the sentence to cut your time? Do you understand that?

18 A. Once I learn what I need to learn and I do things I
19 need to do, then I will worry about that when it comes, but
20 for now I need to -- I need to get to a better position.

21 Q. Which means get your guilty plea overturned, is that
22 right?

23 A. Yes, sir.

24 Q. And start over?

25 A. Start over, reach that button.

1 Q. Okay. Like we talked about, the video game, reach that
2 button?

3 A. Reach that button. I like that term.

4 Q. Okay. You got anything else that you want to say about
5 it?

6 A. (Shaking head no).

7 Q. Is that a no? The court reporter can't take down a nod
8 of the head?

9 A. No, sir.

10 Q. All right. Answer any questions that the Attorney
11 General has.

12 MR. JOHNSON: Thank you, Your Honor.

13 May it please the court?

14 THE COURT: Yes, sir.

15 CROSS EXAMINATION BY MR. JOHNSON:

16 Q. Mr. Nelson, you received fifteen years for all these
17 charges combined?

18 A. Yes, sir.

19 Q. But you are facing up to about fifty, isn't that right?

20 A. Fifty.

21 Q. But you also got some charges dropped. Didn't the
22 solicitor drop some charges in this case?

23 A. Those charges -- those charges right there, they really
24 wasn't -- wasn't on my -- wasn't really -- you know, them
25 charges right there, she dropped them charges to make it

1 look good.

2 Q. You were indicted for two different sets of charges in
3 this case, isn't that correct?

4 A. (Shaking head yes).

5 Q. And you understand that the solicitor can try each one
6 of those cases separately? Do you understand that?

7 A. Yes, sir.

8 Q. And do you realize that if you are convicted on one set
9 of charges and then she comes back, she can get you with
10 enhancement, which increases your sentence expedientially?
11 Do you understand that?

12 A. Those are two separate charges, right?

13 Q. Yes, sir.

14 A. Yeah, I understand.

15 Q. Do you remember pleading guilty?

16 A. I remember.

17 Q. You told the judge that you were pleading freely and
18 voluntarily? Did you tell the judge that?

19 A. That plea wasn't voluntarily made. There wasn't no
20 factual bias in my case.

21 Q. But you agreed with the State's facts in the case,
22 didn't you?

23 A. At the time I did, because I didn't know anything about
24 the law.

25 Q. But you did agree with the facts?

1 A. Those weren't the facts. Those are the only solicitor
2 saying what she thought was the facts.

3 Q. But you didn't tell the judge that, did you?

4 A. Because at the time I didn't that. Since I have been
5 incarcerated, I have studied the law and I know a little bit
6 more about the law.

7 Now I know that at least some facts -- some kind of
8 evidence should have been presented. There was no evidence
9 presented, no chain of custody, no chemical analysis. That
10 could have been counterfeit drugs. We don't know that. I'm
11 not a chemical analysis tech. I don't -- I'm not -- I'm not
12 a chemist. You're not a chemist. So how would I know that
13 those drugs are really even real?

14 Q. But you waived that defense, didn't you?

15 A. But at the time I didn't know. I was just looking at
16 that fifty years and I was just thinking, man, fifty years.
17 Fifty years my people are going to be dead.

18 Q. But there were no threats or coercion in this case,
19 were there? Nobody made you plead guilty, did they?

20 A. It wasn't no threat, but there was plenty of coercion.

21 Q. But you accepted responsibility for your actions,
22 didn't you?

23 A. (Shaking head yes).

24 THE COURT: Please answer the questions, Mr.
25 Nelson.

1 A. Yeah. Yes, sir.

2 BY MR. JOHNSON:

3 Q. And you stated "exactly. I understand that I have to
4 take the consequences for my actions," isn't that correct?

5 A. Yes, sir, that's true.

6 Q. "And I apologize for my actions."

7 A. I do.

8 Q. So you accept responsibility for what you did?

9 A. But at the same time even if you accept the
10 responsibility, right, there was no reason for what happened
11 to happen.

12 Q. So you are saying that you didn't possess these drugs?

13 A. How do we know them are drugs? There was no chemical
14 test took. How do we know they was drugs?

15 Q. But you waived that defense to the guilty plea, didn't
16 you?

17 A. Well, that's why we are here today, sir.

18 Q. I agree.

19 MR. JOHNSON: No further questions, Your Honor.

20 MR. BROOKS: No, other questions, judge.

21 THE COURT: Thank you, sir. You may stand down.

22 MR. BROOKS: We call Ms. Burris to the stand.

23 TWANA BURRIS, ESQUIRE, having been first duly
24 sworn, testified as follows:.

25 MR. BROOKS: Ready, judge?

1 THE COURT: Yes, sir.

2 DIRECT EXAMINATION BY MR. BROOKS:

3 Q. Ms. Burris?

4 A. Yes, sir.

5 Q. How are you today?

6 A. I'm good. How are you?

7 Q. Now, your name is in the transcript, but -- you
8 presented him, but you didn't represent him. Tell us what
9 happened.

10 A. I was actually retained by Mr. Nelson at 6:30 the night
11 before I actually received a phone call from Ms. Desch.

12 I saw Ms. Desch in the hallway probably about a month
13 prior to and asked her about Mr. Nelson's case. She
14 indicated that he was actually at that time represented by a
15 public defender.

16 And when I say 6:30, he didn't actually come to my
17 office at 6:30. That was just the time of approximately I
18 remember us being in the office, so I couldn't call Ms.
19 Desch to ask her what was the status of the case, which was
20 around, I believe, July the 21st.

21 I received a phone call in my office probably about
22 9:30 -- between 9:30 and ten a.m. that morning. I was
23 actually in a consultation with another attorney -- with
24 another client, and she indicated to me that "we are
25 picking -- I had called her previous, like around eight or

1 8:30, to ask her about discovery and to let her know that I
2 was going to send my letter of representation over, as well
3 as the motion for discovery, so that I could actually get
4 all the discovery, the drug reports, etcetera. And she
5 called me back around 9:30, ten o'clock, indicated to me
6 that they were actually picking -- about to pick a jury for
7 Mr. Nelson's case. I told her that I would be right over.
8 I was unaware that the case was about to be in trial
9 posture, and she indicated that I needed to come right away.
10 So at that time I put everything aside.

11 I called Mr. Nelson and asked Mr. Nelson to meet me at
12 the courthouse, we're -- that Ms. Desch had actually called
13 me and indicated that the case was about to be in trial
14 posture. She had already prepped and they were about to
15 pick a jury.

16 So at that time I proceeded to go before the Honorable
17 John Hayes and I asked him for a motion to continue. At
18 this time Ms. Desch had begun to give me all the discovery,
19 the incident report, the drug reports, the chemist analysis,
20 the -- of course, the True Billed Indictment, because it was
21 actually prepared to go to trial. And so I began to read
22 all this information, but at that time I made a motion to
23 continue. The judge denied my motion and indicated that Mr.
24 Nelson was basically playing a game with the system and that
25 he desired me not to be a part of that and asked me if I

1 desired to be relieved. At that time I did let the judge
2 know that I desired to be relieved, because it put me in a
3 very uncomfortable position. So the judge relieved me. And
4 as I was on my way out the door the judge indicated "well,
5 I'm going to appoint you as standby counsel for procedural
6 purposes. And then the question became to me to what extent
7 is my obligation to Mr. Nelson.

8 So, at this time we began to look at the jury list. I
9 sat beside Mr. Nelson. I explained to him the picking of
10 the jury and that process. And I even began to take notes,
11 and anything he inquired of me I answered his questions.
12 And I believe it was actually in the middle of actually
13 picking the jury, or as we were about to finish picking the
14 jury, that's when Ms. Desch came to me and began to speak to
15 me about potential plea negotiations.

16 Also present in the courtroom was an attorney who was
17 previously representing Mr. Nelson. So I was able to speak
18 to him as to, you know, "where were you all, you know, in
19 negotiations and recommendations." We kept taking a lot of
20 breaks, because at this time things were moving really fast.
21 We were picking the jury. I began to speak to Mr. Nelson
22 about any potential pretrial motions.

23 The drug report was actually given to us. Of course, I
24 know, as a former prosecutor, the drug report is actually
25 attached to the indictment prior to it actually being True

1 Billed. And so he did not actually waive the presenting of
2 the drug report, because the drug report actually goes with
3 the indictment for the purpose of having an indictment True
4 Billed, because you have to ensure that the chemical is that
5 for which he's actually charged with. And so we had the
6 drug report for the marijuana, which he was actually charged
7 with PWID marijuana and PWID marijuana within proximity of a
8 school and/or park. And the drug report was also for the
9 trafficking. It was on a separate drug report. And so we
10 did actually have all of that in our possession.

11 We began to read through everything and I advised him
12 when he asked me questions, since Judge Hayes had actually
13 appointed me as standby counsel.

14 Q. Now, at some point a plea was struck?

15 A. Yes. We were -- we had actually taken a recess. The
16 judge asked that we take a recess, because at this time I
17 was speaking to Mr. Nelson. And the prosecutor --

18 He was actually facing a third offense of trafficking
19 third, which I knew that carried twenty-five to thirty in
20 and of itself. In addition, he had other drug charges; a
21 PWID marijuana, third; failure to stop for a blue light. It
22 was leaving the scene of an accident. And I believe he had
23 some PWID marijuana within proximity of school and/or park.

24 So I explained to him the exposure in going forward to
25 a jury trial. I'm not a novice at this, so as I was reading

1 the incident report, you know, in my mind the question
2 become as to what potential legal defenses would he have
3 that he could potentially raise in pretrial. And so we
4 began to just briefly discuss those things.

5 And then, again, as I stated, Ms. Desch came to me and
6 she began to talk to me about a plea. And I asked Mr.
7 Nelson, you know, did he want to discuss a plea. I
8 explained to him again the penalty, what he was looking at,
9 his exposure, and he voluntarily agreed to a plea.

10 Now, the fifteen year sentence or the fifteen year plea
11 offer wasn't the initial offer. Again, we were in
12 negotiations in the middle of the courtroom. The judge had
13 actually taken -- it was -- we were on recess. Mr. Delaney
14 was involved. I, myself, was involved, and Ms. Desch was
15 actually involved, and she had actually offered more than
16 the fifteen years, because she indicated that the fifteen
17 years, I believe, was what she had previously offered, so
18 now, you know, the case was prepped for trial. We are in
19 trial posture. We have actually had a jury to come up here
20 and we were picking the jury. So that's why it actually
21 became negotiated, because it was a negotiation. It
22 actually started higher than the fifteen years, and finally
23 we were able to agree on the fifteen years.

24 I explained it many times to Mr. Nelson and answered
25 all questions that he had for me at that time. And so he --

1 I do believe that at this time we had actually gone back
2 into the cell and we had a very thorough conversation in
3 regards to his exposure in going to trial. He would have
4 been going to trial on third offenses, but we had negotiated
5 second offenses, which would actually decrease the amount of
6 time that he would serve.

7 I did explain to him, though, that it was a serious
8 offense in which he was pleading guilty to in regards to the
9 trafficking second, and then the PWID marijuana.

10 But the greater penalty, of course, was for the
11 trafficking. And, of course, the indictments, of course,
12 were True Billed, so the drug report was actually there.

13 But my position that day was standby counsel, as the
14 judge made me standby counsel, and that means just answer
15 any questions that Mr. Nelson may have had at that
16 particular time.

17 So it as a trial that turned into a plea and he
18 voluntarily pled guilty to the facts, because, again, we
19 were going through the facts of the cases as I was advising
20 him in regards to any potential pretrial issues that he had.

21 Q. Could you give a brief summary of what the State's case
22 was against him?

23 A. Sure. On January the 30th there was an indication --
24 there were several co-defendants involved in this. I want
25 to say it was four to five. I know Mr. Caldwell was

1 actually one of the co-defendants involved.

2 The police officers actually went to this home. I'm
3 not sure if it was a CI buy, but the Drug Enforcement Unit
4 had actually done the investigation. They went to this
5 home. This home, I believe, was actually Mr. Nelson's home.

6 As I was going through the incident report, I recall it
7 indicated that Ms. Jacqueline Nelson, who was Mr. Nelson's
8 mother, had signed a consent form for a Drug Enforcement
9 Unit to actually come in to search the home. Okay. When
10 they actually went in and searched the home, they actually
11 found I believe it was 151 grams of marijuana in the home.

12 There was a statement. And, of course, Mr. Nelson and
13 I discussed this, because at this time the question was
14 whether or not, you know, his parents or his family was
15 actually on notice that he was going to trial. And so I
16 indicated in the incident -- in the incident report it
17 indicated that Ms. Jacqueline Nelson gave the Drug
18 Enforcement Unit permission, you know, to search the home.
19 Of course, that was something that we would have, or I would
20 have advised him, if he would have asked, during pretrial,
21 you know, whether or not you can challenge the search, you
22 know, as to whether or not she voluntarily gave consent to
23 search the home.

24 So the marijuana was actually found. There was an
25 indication that Mr. Nelson's ID was actually found in the

1 house, as she indicated that she and Mr. Nelson were the
2 only two that actually lived in that particular home.

3 There was a guy, Mr. Mickey Caldwell, I believe, that
4 was actually arrested that day. They did not arrest Mr.
5 Nelson on that day, because Mr. Nelson was actually not
6 present in the home. They did find 151 grams of marijuana
7 along with Mr. Nelson's ID. I believe they actually found
8 the marijuana, it was either in a common area or his
9 bedroom. I don't recall, but I actually do have the
10 incident report present with me. But, anyway, they found
11 the marijuana. She indicated he was the only one that lived
12 there, and also found the ID.

13 And so they saw Mr. Nelson on February the 11th driving
14 and attempted to stop Mr. Nelson and they end up charging
15 him with driving under suspension. They knew they had
16 previous arrest warrants for him because of the January 30th
17 search and the marijuana in which they actually recovered
18 and took into evidence. And so as they tried to stop him, I
19 believe there was a hit and run, which I believe was
20 actually -- yeah, there was a hit and run charge. They
21 stopped him. They charged him with driving under
22 suspension. That was a TIA, trial in absence, in which he
23 was actually found guilty.

24 And then they end up finding Mr. -- or getting Mr.
25 Nelson into custody and there was crack cocaine that was in

1 his pant leg and there was also money found. It was only
2 nine hundred and seventy some dollars, and the crack cocaine
3 they took off Mr. Nelson, it was over eleven grams. The
4 drug report indicated that it was over eleven grams, and I
5 did see the drug report that day.

6 Q. The drug analysis had been done?

7 A. Yes, it had, and we had a copy of the drug analysis.
8 And, like I said, from my experience, in order to True Bill
9 an indictment you must present the drug analysis with that
10 indictment for it to go to the Grand Jury.

11 (Off the record)

12 (Back on the record)

13 MR. BROOKS: No other questions, judge.

14 MR. JOHNSON: May it please the court?

15 CROSS EXAMINATION BY MR. JOHNSON:

16 Q. I just have a few questions for you, Ms. Burris.

17 A. Yes, sir.

18 Q. Do you feel that Mr. Nelson understood the charges that
19 he was facing?

20 A. Certainly.

21 Q. And you explained to him that he could be tried on
22 these two different sets of charges at separate trials?

23 A. We were in the process of proceeding forward on all of
24 those charges and they would have actually been third
25 offense. So part of the negotiation was to have him plead

1 to a second, as opposed to a third, but we were going
2 forward, which there would have been a mandatory minimum of
3 twenty-five years that he would have been required to serve
4 by statute on the trafficking third crack.

5 Q. And do you feel that he understood the plea offer as
6 well?

7 A. Certainly.

8 Q. And he understood the consequences of that plea?

9 A. Yes, he did understand the consequences.

10 Again, I explained to him that exposure, if we were to
11 proceed to trial, versus, you know, would it be to his
12 advantage to actually accept a second offense, in which he
13 had actually been offered, which would decrease the amount
14 of time that he would be required to serve, because, again,
15 it was negotiated and it was the fifteen, as opposed to a
16 mandatory minimum of twenty-five.

17 Q. And he understood that he had the right to go to trial?

18 A. Certainly. We were in the process of picking the jury.

19 Q. And Mr. Nelson said that he was feeling anxious and
20 under a lot of pressure and that was one of the reasons that
21 he pled guilty. But wouldn't you say that most people who
22 were going pro-se would feel anxious about trying their own
23 case?

24 A. It was a very uncomfortable position. Things were
25 moving really fast that day.

1 As to whether or not, you know, he had actually been
2 notified he was going to trial that morning still remains a
3 mystery, but I know that when he came to my office, I did
4 not know that we were proceeding to trial, but, you know, we
5 came to court that morning. When I made a motion for
6 continuance, I didn't know all the background or the history
7 of what had actually been discussed between Mr. Delaney and
8 Ms. Jenny Desch, who was the assistant solicitor actually
9 assigned, but --

10 I mean, of course, when you are facing drug charges --
11 when any person is facing drug charges mandatory minimum of
12 twenty-five to thirty, which he certainly knew, because I
13 advised him, I mean, that's normal to be under a lot of
14 pressure and to know -- especially if you have not spent a
15 significant time in jail, which I did, and we discussed his
16 previous record and he did actually have previous drug
17 charges on his record, to make sure that it was indeed a
18 true third in which we were proceeding forth.

19 But, you know, the question is -- you know, I'm sure
20 that he was anxious. And, again, it was just -- it was just
21 things moved pretty fast that day, so I can understand.

22 Q. And that third offense could be consecutive to any
23 other time that he may be facing as well?

24 A. Absolutely.

25 Q. And ultimately whose decision was it to plead guilty?

1 A. It was his decision to plead guilty.

2 MR. JOHNSON: No further questions, Your Honor.

3 MR. BROOKS: No other questions, judge.

4 THE COURT: All right. Thank you, ma'am.

5 THE WITNESS: Yes, sir. Thank you.

6 MR. BROOKS: Judge, that's the applicant's case.

7 MR. JOHNSON: The State has no further witnesses.

8 MR. BROOKS: Briefly, judge, you know, this young
9 man really was not with counsel at the time that he pled.
10 Obviously this was a very awkward situation. And for that
11 regard we would ask the court to set aside his guilty plea.
12 Obviously he didn't have effective assistance of counsel.
13 He didn't have any counsel. He had standby counsel that he
14 really only had for a very short period of time. And for
15 that reason alone we think this is proper for the court to
16 grant his PCR.

17 MR. JOHNSON: Your Honor, the State's position is
18 that Mr. Nelson knew what he was doing. Nobody threatened
19 or coerced his guilty plea. He, in fact, had counsel and
20 had him relieved, a public defender, Mr. Erik Delaney.

21 He was appointed -- he retained Ms. Burris. He
22 had plenty of time to retain her prior to trial, and now
23 he's claiming that he didn't know he was going to trial.

24 The State's position is that Ms. Burris was, in
25 fact, effective, and that Mr. Nelson has failed to carry his

1 burden of proof today.

2 THE COURT: One thing about it, when somebody
3 represents themselves, it's hard to allege ineffective
4 assistance of counsel, because they are their own counsel.

5 Mr. Nelson, primarily what he wants is he said he
6 didn't -- he got too much time. He wants less time. I
7 can't give him less time. That's not within my purview to
8 do.

9 If he goes back to trial, he would be facing
10 probably maybe a hundred years is what he would be facing.
11 He would be facing a mandatory minimum of twenty-five to
12 thirty years, no parole, if he were to be successful in what
13 he says he wants to do, but I cannot reduce his time. I
14 don't have that authority and that's not part of what you
15 can get on a PCR, just to reduce his time. You know, that's
16 not something that I could do. The only thing I could do is
17 grant him a new trial.

18 The problem here is it's not unusual for a
19 defendant who is facing a lot of time and a lot of pressure,
20 and he was facing a lot of time in this case, to not be
21 happy with his attorney who is not getting him what he wants
22 to get, so he decides then after that attorney has
23 represented him and gotten the information and discovery and
24 all that, he is not happy with what he's getting, and so he
25 decides to fire that attorney and get his own attorney,

1 and -- or get -- or have that attorney relieved. He got
2 what he wanted, but the court -- when the case is already
3 set for trial -- it doesn't get set for trial a month after
4 somebody gets charged. It takes a while to get these cases
5 ready for trial. So he -- so the court will rarely allow
6 someone to hire somebody at the last minute when his trial
7 is already set and scheduled. They are not going to delay
8 the trial because he's decided at the last minute, when he's
9 had all this time to hire an attorney, to hire an attorney
10 at the last minute, prevent the trial from going forward,
11 once it's already scheduled, witnesses are called and
12 everybody is ready to go to trial. The court is reluctant
13 then, and usually will not, just because somebody runs out
14 and hires an attorney at the last minute, delay the trial,
15 and continue the trial, just because he's got a new
16 attorney.

17 Ms. Burris was with the solicitor's office for
18 quite a while. She does -- she represents a lot of people
19 in defense cases. She does a good job, tries those cases,
20 represents people very, very well. She certainly can advise
21 him perfectly what the law, trial, etcetera, and I'm sure
22 she did all that. Even though she was standby counsel, she
23 effectively represented him by providing him a lot of
24 information, negotiating for him.

25 Mr. Delaney was still here. Mr. Delaney was still

1 working with her and working with the solicitor's office
2 trying to get the best deal they could for him; started out
3 with something higher and they came in something lower.

4 This was not his first case. He's been convicted
5 of drug charges before. He's been through all this before.
6 He knows how it works. It was -- he says there was no drug
7 report and he's entitled to have all that. What you are
8 entitled to have at a guilty plea is for them to tell what
9 they have got or their version of the facts. He can agree
10 with them or disagree with them. He didn't disagree with
11 them. They gave their version of the facts. He didn't
12 disagree with them.

13 They negotiated what appears to me to be a good
14 deal for him. Mr. Delaney was helping. Ms. Burris was
15 helping, even though she was just standby counsel, really,
16 and didn't have to do that, but she did that to try to help.

17 So the court finds that he entered into this plea
18 freely and voluntarily, with full knowledge of the
19 consequences and his right to go to trial. He would have
20 gone to trial, Ms. Burris was prepared to go to trial. She
21 had all the discovery. There is no question but that there
22 was a drug report and drug analysis report issued, even
23 though he said it wasn't and he didn't get that. Ms. Burris
24 says it was and I'm sure they had all that to him. So he
25 had all that information at the time.

1 So he's not asking for any relief that I could
2 grant today, that I could see, so I would ask the Attorney
3 General to please prepare me an order denying and dismissing
4 the petition.

5 MR. JOHNSON: Yes, Your Honor.

6 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth 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 the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for YORK County, South Carolina, on the 30TH day of JANUARY, 2012.

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

NOVEMBER 4, 2012

Michael R. Watts

Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

FILED - RECEIVED
2012 MAR -6 PM 2:44

Justin Nelson, #307730,

2011-CP-46-2802

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY SC
Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 18, 2011. The Respondent made its Return on October 13, 2011. An evidentiary hearing into the matter was convened on January 30, 2011, at the Moss Justice Center in York, SC. Charles T. Brooks, III, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Twana Burris, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted by the April 2009 term of the York County grand Jury with one count of Trafficking in Crack Cocaine (2009-GS-46-1716), one count of Failure to stop for a blue light (2009-GS-46-1717) and one count of Leaving the scene of an accident (2009-GS-46-1718). The Applicant then was indicted

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by the June 2009 term of the York County Grand Jury with one count of Possession of Marijuana with intent to distribute (PWID) (2009-GS-46-2553) and one count of Possession of Cocaine base with intent to distribute within proximity of a public park or playground (2009-GS-46-2552). On July 22, 2009, the Applicant pled guilty to Hit and Run, Failure to Stop for a blue light, Trafficking in Crack Cocaine 2nd Offense, PWID Marijuana 3rd Offense, and PWID Crack Cocaine within proximity of a park or playground. The Applicant pled Pro Se but was appointed Twana Burris, Esquire, as standby counsel. The Honorable John C. Hayes, III sentenced the Applicant to a term of imprisonment for one (1) year for the Hit and Run, three (3) years for Failure to stop for a blue light, fifteen (15) years for Trafficking in Crack Cocaine 2nd Offense, fifteen (15) years for PWID Marijuana 3rd Offense, and fifteen (15) years for PWID Crack Cocaine within proximity of a park or playground. All sentences run concurrently.

A timely Notice of Appeal was filed and an appeal was perfected. The Applicant filed a brief on his own behalf pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Nelson, Op. No. 2011-UP-253 (S.C Ct. App. filed June 1, 2011). The Remittitur was sent on June 24, 2011.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Counsel was ineffective for failing to object to the guilty plea hearing judge accepting the Applicant's guilty plea when there were no factual basis for the pleas, which rendered the Applicant's pleas not knowingly and voluntarily made, and is a violation of due process of law.
 - b. Counsel was ineffective for failing to inform the Applicant that had he continued on with trial he could have challenged whether or not the police officers had probable cause for the search of , the traffic stop

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and the arrest for the alleged Marijuana and Crack Cocaine charges.

c. Counsel was ineffective for failing to move to have all the drug related charges dismissed because the Solicitor failed to comply with Rule 6 (c) SCRCrimP, Disclosure, by failing to disclose chemical analysis reports and the chain of custody report in a timely manner, which made the Applicant's pleas of guilty not knowingly and voluntarily made and denied the Applicant due process of law.

d. Counsel was ineffective for failing to inform the Applicant that had he continued on with trial he could have move to have the alleged illegal drugs in this matter suppressed in a challenge to the chain of custody of the alleged illegal substances, which made the Applicant's pleas of guilty not voluntarily, knowingly, or intelligently made, and denied the Applicant due process of law.

At the hearing, the Applicant proceeded on his claim of ineffective assistance of counsel.

SUMMARY OF TESTIMONY

The Applicant testified he received fifteen years for all charges and has about eight to ten more years to serve. The Applicant testified he was under pressure when he pled guilty because there are a lot of people that count on him. He further claims he was ignorant of the law and many things have been clarified since he pled, although he could not name specifics. The Applicant also claimed "they" threw him under the bus, and he was threatened with fifty years incarceration. He claimed the trial judge put him in a bad situation when he relived Ms. Burris as counsel and allowed the Applicant to proceed *pro se*.

On cross examination, the Applicant admitted he received only fifteen years for all of his charges, when he was facing over fifty years. He also admitted he agreed with the facts the State presented in the guilty plea. The Applicant claimed no evidence was presented as to the chain of custody and no drug analysis was provided by the State. He did admit he apologized for and took responsibility of his actions.

Counsel testified she was retained by the Applicant around 6:30 pm on the night before the Applicant's trial. She also stated she called the solicitor around 8:30 am the next day to inquire about discovery. Counsel testified she received a call around 9:30 am from the solicitor on the day of trial, who informed her the State was ready to pick a jury for trial. She then called the Applicant to meet her at the courthouse. Counsel testified she requested a continuance, but that request was denied because, as the trial court stated, the Applicant was attempting to play games with the court. She then stated she successfully moved to be relieved as counsel, but was appointed as standby counsel for the Applicant. Counsel testified she explained how to pick a jury to the Applicant. She was also involved with plea discussions between the solicitor and the Applicant. Counsel further testified she spoke with the Applicant concerning pretrial motions.

Counsel testified that during a recess, she explained the drug analysis to the Applicant, which was attached to the indictment, as needed for a true bill indictment. Counsel also stated she discussed with the Applicant the potential sentences the Applicant could receive as well as any potential defenses and pre-trial motions. Counsel testified the Applicant agreed to plea pursuant to a negotiated plea. She testified she explained to the Applicant that he was pleading to a second offense, which could have been tried as a third offense. Counsel then explained if the Applicant was convicted of a third offense for trafficking crack cocaine, he would serve a mandatory minimum twenty-five years in prison.

On cross examination, Counsel testified, in her opinion, the Applicant understood the charges he was facing, including the mandatory minimum of twenty-five years if convicted of the third offense for trafficking crack cocaine. She stated the Applicant understood the plea offer and the consequences of pleading guilty to a negotiated sentence of fifteen years. Counsel also testified the

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also testified the Applicant understood the right to a jury trial. She testified, however, that she did not know the trial was the next day. She then stated it would be normal for a person facing twenty-five years in prison to feel pressured. Counsel lastly testified it was ultimately the Applicant's decision to plead guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.

Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

This Court finds the Applicant had more than enough time to hire an attorney. This Court notes the Applicant had a public defender, but had him relieved as counsel. This Court also acknowledges there is no claim for ineffective assistance of counsel when an Applicant proceeds *pro se*. However, this Court finds Counsel was effective in her role as standby counsel. Counsel worked diligently for a plea offer on behalf of the Applicant as well as explained the potential outcomes of trial to the Applicant. This Court further finds Counsel was able to work out a plea deal that was beneficial to the Applicant. Moreover, the Applicant pled knowingly and voluntarily, agreed with the State's facts presented and took responsibility for his actions. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. This Court finds the Applicant has

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failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address

these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so.

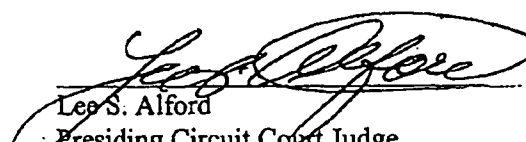
Therefore, any and all remaining allegations are denied and dismissed.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!


 Leo S. Alford
 Presiding Circuit Court Judge
 16th Judicial Circuit
 16th
 RB

March 2, 2012

Yace, South Carolina

#8
2012

Josie Ball

From: Rutledge Johnson [RJohnson@scag.gov]

Sent: Tuesday, August 28, 2012 10:32 AM

To: Josie Ball

Subject: Nelson, Justin- Order of Dismissal

Attachments: 74570_1.PDF

Josie,

They sent the Nelson Order to the wrong attorney. So, attached is his order. I will follow up on the Mobley order. Thanks!

J. Rutledge Johnson
Assistant Attorney General
South Carolina Attorney General's Office
(803) 734-1867
rjohnson@scag.gov

CHARLES T. BROOKS, III
THE BROOKS LAW OFFICE, LLC
POST OFFICE BOX 3512
SUMTER, S. C., 29151

Charles T. Brooks, III

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN NELSON,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES**Cases**

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<u>State v. Armstrong</u> , 263 S.C. 594, 211 S.E.2d 889 (1975)	6
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STATEMENT OF ISSUE ON APPEAL

Did the trial court err by accepting appellant's guilty plea when it was not voluntarily and knowingly entered into?

STATEMENT OF THE CASE

In April 2009, the York County Grand Jury indicted Justin Antavious Nelson on the charges of trafficking in crack cocaine more than ten grams, failure to stop for a blue light (FTSBL), and leaving the scene of an accident. In June 2009, the York County Grand Jury indicted Nelson on the charges of possession of marijuana with intent to distribute (PWID), and possession of crack cocaine with intent to distribute within the proximity of a park. On July 22, 2009, Nelson proceeded to trial before the Honorable John C. Hayes, III, and a jury. Nelson proceeded *pro se* with standby counsel. After jury selection, Nelson entered a guilty plea to the charges as indicted. The state offered a negotiated sentence of fifteen years. Judge Hayes accepted the negotiated plea offer and sentenced Nelson to the fifteen years. R. p. 39, ll. 3 – 5; R. p. 50, ll. 3 – 20. Nelson filed an appeal. This appeal follows.

ARGUMENT

The trial court erred by accepting appellant's guilty plea when it was not voluntarily and knowingly entered into.

On January 30, 2009, law enforcement officers served a search warrant on the home of Justin Nelson and his mother who consented to the search. In Nelson's room, officers found 151 grams of marijuana, a scale, and money. When Nelson was arrested on February 11, 2009, he stopped the car he was driving, but then took off again when the officers approached. He was eventually apprehended. When he was placed in the back of the police car, crack cocaine fell from his clothing. R. p. 45, ll. 1 – 25; R. p. 46, ll. 1 – 25; R. p. 47, ll. 1 – 24.

Nelson was proceeding to trial on July 22, 2009 on all of the charges. He was represented by Twana Burris, Esquire. R. p. 1. His attorney asked for a continuance as she was retained at 6:00 P.M. the evening before. She was served with discovery the morning of the trial. R. p. 3, ll. 1 – 25. She argued that it would be an injustice to her client for her to go forward when she had not looked at the discovery. R. p. 4, ll. 1 – 25.

Judge Hayes denied counsel's motion for a continuance because he said Nelson was "trying to game the system." R. p. 8, ll. 1 – 25. Nelson told the court that he did not have the money to hire an attorney before, and that the previous judge did not tell him a specific date for his trial. R. p. 11, ll. 7 – 25; R. p. 12, ll. 1 – 25. Defense counsel told the court that she could not put herself in this position as she could not adequately represent him without adequate discovery. R. p. 12, ll. 7 – 10. The judge granted her motion to be relieved. He told Nelson that he would go forward *pro se*. R. p. 13, ll. 1 – 12.

Judge Hayes appointed Ms. Burris to be Nelson's standby counsel during the trial. R. 14, ll. 1 - 25; R. 15, ll. 1 - 7. When the judge asked Nelson if he had any pretrial motions, Nelson told the court that he wanted to object because he did not know he was supposed to be in court that day. He said he did not know what a motion was. R., p. 15, ll. 18 - 25; R. p. 16, ll. 1 - 12.

After the jury was selected, Nelson decided to enter a guilty plea to the negotiated sentence of fifteen years offered by the state. R. p. 38, ll. 1 - 25; R. p. 39, ll. 1 - 25. The judge appointed two attorneys to represent him on his guilty plea: Ms. Burris and Erik Delaney of the Public Defender's Office. R. p. 47, ll. 19 - 24.

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709 (1969). The record must show with certainty that the plea is "an intentional relinquishment or abandonment of a known right or privilege". State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982). Judges are required to give the defendant an explanation of the defendant's waiver of his constitutional rights and a realistic picture of all sentencing possibilities. State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975).

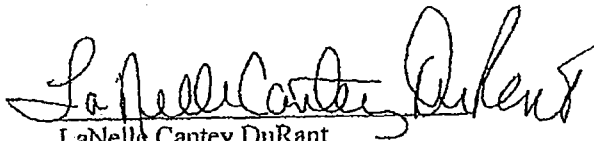
Nelson's guilty plea was not voluntary nor knowing as he wanted a trial since he had gone through the process of selecting a jury. He objected when the judge was about to start the trial. At the end of the guilty plea, Nelson told the court that he knew these were serious charges, but fifteen years was "over the top." He said he had not even started to live his life and had not accomplished any of his goals. R. p. 49 ll. 1 - 25; R. p. 50, ll. 1 - 20.

His attorney asked for a continuance as she had just received discovery the day of trial. And he was being forced to represent himself.

CONCLUSION

Based on the above, the convictions and sentences should be reversed and the case remanded for a new trial.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of December, 2010.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN NELSON,

APPELLANT

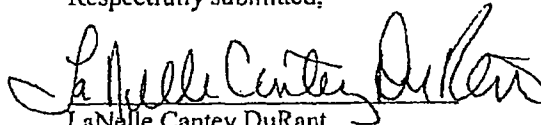
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Justin Nelson states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge John C. Hayes, III, which was held on July 22, 2009, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Justin Nelson.

Respectfully submitted,

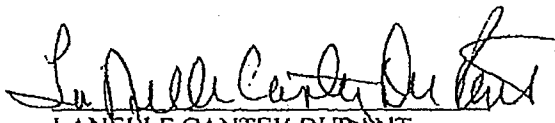

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th Day of December, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



LANELLE CANTEY DURANT
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

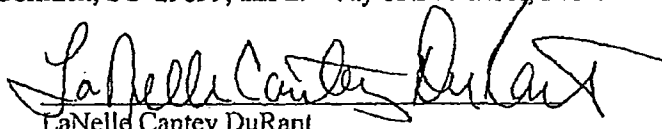
V.

JUSTIN NELSON,

APPELLANT

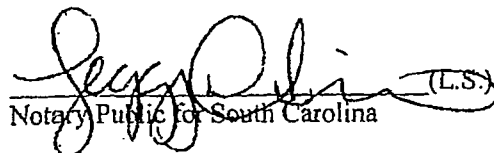
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201; and on Justin Nelson, #307730 at McCormick Correctional Institution 386 Redemption Way, McCormick, SC 29899, this 29th day of December, 2010.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of December, 2010.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

Copy

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN NELSON,

APPELLANT.

Pro-se ANDERS BRIEF OF APPELLANT

JUSTIN NELSON #307730
Appellant, pro-se

McCI F-4 A-side
386.Redemption Way
McCormick, South Carolina 29899

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STATEMENT OF ISSUE ON APPEAL

APPELLANT WAS COERCED INTO THE GUILTY PLEA BY THE ACTION OF
THE TRIAL COURT.

STATEMENT OF THE CASE

In April 2009 the York County Grand Jury indicted Justin Antavious Nelson on the charges of trafficking in crack cocaine more than ten grams, failure to stop for a blue light (FTSBL), and leaving the scene of an accident. In June 2009, the York County Grand Jury indicted Nelson on the charges of possession of marijuana with intent to distribute (PWID), and possession of crack cocaine with intent to distribute within the proximity of a park. On July 22, 2009, Nelson proceeded to trial before the Honorable John C. Hayes, III, and a jury. Nelson proceeded pro-se with standby counsel. After jury selection, Nelson entered a guilty plea on the charges as indicted. The state offered a negotiated sentence of fifteen years. Judge Hayes accepted the negotiated plea offer and sentenced Nelson to the fifteen years. R. p. 39, ll. 3 - 5; R. p. 50, ll. 3 - 20. Nelson filed for an appeal. Appellate counsel Lanelle Cantey Durant filed an Anders Brief. This Court gave Nelson forty (45) five days to submit a response showing why appellate counsel's Anders Brief should not be considered and further briefing ordered.

This pro-se Anders Brief by Nelson follows:

APPELLANT WAS CORRCED INTO THE GUILTY PLEA BY THE ACTION OF THE TRIAL COURT.

It is evident that the guilty plea was coerced because the Appellant was denied counsel during his aborted trial, but allowed to proceed with counsel once he decided to plead guilty.

On July 22, 2009, the Appellant decided to go to trial with the assistance of counsel. See trial transcript, pages 2-35, but the trial judge granted trial counsel's motion to be relieved. See trial transcript, page 13, lines 1-12. However, the trial judge allowed the Appellant to plead guilty with the assistance of the same attorney that the court granted the motion to be relieved. See guilty plea transcript, pages 2-15. Here, the trial court is apparently telling the Appellant that if he goes to trial, he has to do so pro-se, but if he wish to plead guilty, he can with the assistance of counsel.

The Appellant had the right to the assistance of counsel during a jury trial. The trial court's insisting that the Appellant go to trial with or without an attorney was enough pressure to induce a guilty plea because the Appellant knew that he could not handle a trial pro-se.

The record should show with certainty that the plea is "an intentional relinquishment or abandonment of a known right or privilege". State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982). Here, the record shows that Appellant was coerced into

pleading guilty. The Appellant did not intentionally relinquished or abandon his right to a jury trial, he only decide to plead guilty because of the trial judge's actions.

Although appellate counsel believes that because the Appellant was denied his right to counsel is not reversible error, appellate counsel does acknowledge that the trial court's action was a constitutional violation.

In light of all of the foregoing argument and the issues raised in the Final Anders Brief of Appellant, this Court should find that this case should not be dismissed at this point because it is evident that the trial court's action coerced the Appellant into pleading guilty.

CONCLUSION

The Appellant has set forth several credible reasons why his guilty pleas were not knowingly and voluntarily made. Therefore, he ask that this Court deny counsel's motion to be relieved as counsel and order further briefing in this matter.

This ____ day of January, 2011

Respectfully submitted,

Justin Nelson #307730

McCI F-4 A-side.
386 Redemption Way
McCormick, SC 29899
Appellant, pro-se

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JUSTIN NELSON,

APPELLANT.

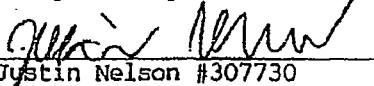
PETITION REQUESTING THE COURT TO DENY
COUNSEL'S MOTION TO BE RELIEVED AS COUNSEL

Pro-se Petitioner Justin Nelson states:

1. He is the Appellant in this case and is proceeding pro-se.
2. He has reviewed the record of the guilty plea hearing before the Honorable Judge John C. Hayes, III, which was held on July 22, 2009, and, in his opinion, the appeal has legal merits and he should be granted a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1976), presented a pro-se brief pointing out to this Court that this case does has legal merits that's sufficient to warrant a new trial.

Wherefore, he ask that this Court deny counsel's motion to be relieved and order further briefing in this matter.

Respectfully submitted,


Justin Nelson #307730
Appellant, pro-se

This 22 day of Feb 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JUSTIN NELSON,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned pro-se Appellant certifies that a true-copy of the attached pro-se Anders Brief in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201, this 17 ^{Feb.} day of January, 2011.

SWORN to and subscribed before me

17 of Feb, 2011

Joyce L. Young
Notary Public of South Carolina

My Commission Expires 8-28-2011

Justin Nelson
Justin Nelson #307730
Appellant, pro-se

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Justin Nelson,

Appellant.

Appeal From York County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2011-UP-253
Submitted May 1, 2011 – Filed June 1, 2011

APPEAL DISMISSED

Appellate Defender LaNelle Cantey Durant, of
Columbia, for Appellant.

Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, and Assistant
Attorney General Salley W. Elliott, all of Columbia;
and Solicitor Kevin S. Brackett; of York, for
Respondent.

PER CURIAM: Justin Nelson appeals his guilty plea, arguing that it was not given voluntarily and knowingly. Additionally, Nelson filed a pro se brief. After a thorough review of the record and all briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

FEW, C.J., KONDUROS, J., and CURETON, A.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

York

VS.

Justin Nelson

INDICTMENT/CASE#: 2009GS4601716

A/W#: J167551

Date of Offense: 2/11/2009

S.C. Code § : 44-53-0375(C)(1)(c)

CDR Code #: 0452

AKA:

Race: B

Sex: M

Age:

DOB:

SS#:

Address:

2011 JUL 20 PM 12:08

DL#:

SID#:

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: TRAFFICKING IN CRACK COCAINE 2ND OFFENSE☐ CONVICTED OF or ☒ PLEADS

in violation of § 44-53-0375(C)(1)(b)

of the S.C. Code of Laws, bearing CDR Code # 0451

☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation,☒ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Desch, Jenny E.

SC Bar# 72806

Defendant

Attorney for Defendant

SC Bar# 7200

WHEREFORE, the Defendant is committed to the

☒

State Department of Corrections,

☐

County Detention Center,

for a determinate term of

15

days/months/years or

☐

under the Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

;

provided that upon the service of

days/months/years and/or payment

of \$

;

plus costs and assessments as applicable*; the balance is suspended with probation

for

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

	\$
	\$
\$100	\$ 100.00
\$100	\$
\$12	\$
\$25	\$
\$500	\$
\$25	\$ 25.00
\$100	\$ 100.00
\$50	\$
\$40/ea	\$
\$5	\$ 5.00
\$	\$
\$	\$ 230.00

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

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

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §47.12
requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

David Hamilton

Court Reporter:

Phyllis Barnett

SCCA/217 (06/2009)

PRESIDING JUDGE

Judge Code:

Sentence Date:

210

7/22/09

STATE OF SOUTH CAROLINA
COUNTY OF York
STATE VS.
Justin Nelson

IN THE COURT OF GENERAL SESSIONS

163

AKA: CERTIFIED TRUE COPY
Race: B Sex: M Age: 21
DOB: SS# 2011 JUL 20 PM 12:08
Address:

INDICTMENT/CASE#: 2009GS4601717
A/W#: 57938DM
Date of Offense: 2/12/2009
S.C. Code § : 56-05-0750(B)(1)
CDR Code #: 0065

DL#: SID#: DAVID HAMILTON
CLERK OF COURT
YORK COUNTY SC

SENTENCE SHEET #5

In disposition of the said indictment comes now the Defendant who was
TO: FTSBL

☐ CONVICTED OF or ☒ PLEADS

in violation of § 56-05-0750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0065
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: 72806 Defendant 72010 Attorney for Defendant SC Bar#
Deach, Jenny E.

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 7/22/09
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:
☐ set by SCDPPPS

Recipient:

*Fine: \$
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
§ 47.12 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$100 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
§ 90.7 (SCCA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$
TOTAL \$ 30.00

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

☐ Appointed PD or appointed other counsel, \$47.12
requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David Hamilton

Court Reporter: Phyllis Barrett
SCCA/217 (06/2009)

PRESIDING JUDGE

Judge Code: 2101717
Sentence Date: 7/22/09

COUNTY OF York
STATE VS.
Justin Nelson
AKA:
Race: B Sex: M Age: 21 DOB: SS#: 2 Address: 2011 JUL 20 PM 12:09

INDICTMENT/CASE#: 2009GS4601718

A/W#: 57939DM

Date of Offense: 2/12/2009

Code §: 56-05-1220

CDR Code #: 2464

DL#: SID#:

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant, Justin Nelson, YORK COUNTY, SC ☐ CONVICTED OF or ☒ PLEADS TO: HIT AND RUN

in violation of § 56-05-1220 of the S.C. Code of Laws, bearing CDR Code # 2464
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST: Desch, Jenny E. 72806 SC Bar# Defendant Attorney for Defendant 7200 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 7/22/09☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
§ 47.12 (Public Def/Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$
§ 14-1-213 (Drug Court Surcharge)	\$100 \$ 25.00
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90.7 (SCCJA Surcharge)	\$5 \$ 5.00
3% to County (if paid in installments)	\$
TOTAL	\$ 30.00

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$47.12
 requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

David Hamilton

Phyllis Barrett

John C. Hays
 2/10/14/19
 7/22/09

STATE OF SOUTH CAROLINA
COUNTY OF York
STATE VS.
Justin Nelson

IN THE COURT OF GENERAL SESSIONS

165

INDICTMENT/CASE#: 2009GS4602552

A/W#: J167553

Date of Offense: 2/11/2009

S.C. Code § : 44-53-0445(B)(2)

CDR Code #: 0108

AKA:

Race: B

Sex: M

Age: 21

DOB:

SS#:

Address:

DL#:

SID#:

DAVID HAMILTON
CLERK OF COURT

SENTENCE SHEET

#3

In disposition of the said indictment comes now the Defendant, JUSTIN NELSON, SC
TO: PWID CRACK COCAINE WITHIN PROXIMITY OF SCHOOL/PARK

☐ CONVICTED OF or ☒ PLEADS

in violation of § 44-53-0445(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0108

☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The pleas: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Desch, Jenny E.

SC Bar# 72806

Defendant

Attorney for Defendant

SC Bar# 72010

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ 10,000; provided that upon the service of _____ days/months/years and/or payment

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 7/22/09

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine: \$ 10,000

§ 14-1-206 (Assessments 107.5 %) \$ 10,750

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

§ 47.12 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$ 100.00

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

§ 90.7 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$

TOTAL \$ 20,980

Clerk of Court/ Deputy Clerk

David Hamilton

Court Reporter:

Phyllis Barrett

SCCA/217 (06/2009)

PRESIDING JUDGE

Judge Code: 2

Sentence Date: 7/22/09

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

COUNTY OF
STATE

York

VS.

Justin Nelson

AKA:

Race: B

Sex: M

Age:

DOB:

SS#:

Address:

2011 JUL 20 PM 12:09

INDICTMENT/CASE#: 2009GS4602553

A/W#: J167554

Date of Offense: 1/30/2009

§ : 44-53-0370(b)(2)

CDR Code #: 0188

SENTENCE SHEET #2

DL#:

SID#:

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SCIn disposition of the said indictment comes now the Defendant
TO: PWID MARIJUANA 3RD OFFENSECONVICTED OF or ☒ PLEADS

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0188

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Desch, Jenny E.

SC Bar# 72806

Defendant

Attorney for Defendant

SC Bar# 72010

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

§ 47.12 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$ 100.00

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

§ 90.7 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$

TOTAL \$ 230.00

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

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

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

David Hamilton

Court Reporter:

Rhylis Barrett

SCCA/217 (06/2009)

PRESIDING JUDGE

Judge Code:

Sentence Date:

John C. Taylor
2009 JUL 21
7/22/09