

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable Michael G. Nettles, Circuit Court Judge

DEANGELO CHRISTOPHER MICKELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001933

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
2009-GS-47-00005

STATE OF SOUTH CAROLINA

-vs-

DEANGELO CHRISTOPHER MICKELL:

:
:
: TRANSCRIPT OF RECORD
:

MONDAY, JANUARY 25, 2010
BEAUFORT, SOUTH CAROLINA

B E F O R E:

THE HONORABLE CARMEN T. MULLEN, JUDGE.

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

SUSAN PORTER, ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE STATE

ANTHONY DORE, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

1 I N D E X

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3 Certificate of Court Reporter 12

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7 E X H I B I T S

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9 (No exhibits were introduced during the guilty plea.)

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1 THE COURT: Solicitor.

2 MS. PORTER: Thank you, Your Honor. The state calls
3 Deangelo Christopher Mickell on indictment 2009-GS-47-05,
4 counts 1 and then count 17, I believe, Your Honor.

5 Your Honor, he's charged in count 1 with conspiracy to
6 traffic cocaine more than 400 grams. In late December of
7 2006 Abigail Maillefert began purchasing cocaine from
8 Ophelia Green Mickell at her residence, 12 Christopher
9 Drive, in the City of Hilton Head, Beaufort, South Carolina
10 -- County of Beaufort, South Carolina. And continued to
11 purchase until June 23, 2008. She would purchase anywhere
12 from 4 to 8 grams 2 to 3 times per week.

13 Deangelo Mickell upon our information and belief is
14 Ophelia Mickell's supplier. If Abigail arrived and Ophelia
15 did not have cocaine to sell, Deangelo would arrive and
16 shortly Ophelia would have cocaine to sell to Abigail.

17 The largest amount Abigail ever saw Ophelia with at
18 one time was 2 ounces. In total, she purchased
19 approximately 144 grams of cocaine over 1.5 years.

20 On September 17, 2008 an officer with the
21 Beaufort/Jasper Counties Drug Task Force observed Deangelo
22 Mickell carry a container of 355 grams from the trailer, 12
23 Christopher Drive, to the car that he was seen earlier that
24 day driving and placed that in the trunk of the car.

25 Together with the amount that was sold to Ms.

1 Maillefort, it was well over 400 grams.

2 We are allowing him to plead to the lesser included
3 charge of 28 to 100 grams of cocaine.

4 The remaining count, Your Honor, is that substantive
5 offense. Count 17 is the actually 355 grams. So we
6 charged him there, trafficking 2 to 400 grams, and are
7 allowing him to plead 28 to 100 grams.

8 THE COURT: Okay. All right. You are Deangelo
9 Christopher Mickell?

10 MR. MICKELL: Yes, ma'am.

11 THE COURT: Raise your right hand, sir.

12 (Complied.)

13 THE COURT: Do you swear or affirm the testimony you
14 give will be the truth, so help you God?

15 MR. MICKELL: Yes, ma'am.

16 THE COURT: You heard the facts as stated by the
17 attorney general?

18 MR. MICKELL: Yes, ma'am.

19 THE COURT: Are they correct, sir?

20 MR. MICKELL: Yes, ma'am.

21 THE COURT: Thank you. Sir, how old are you?

22 MR. MICKELL: 32.

23 THE COURT: How far did you go in school?

24 MR. MICKELL: Graduated high school, 2 years of
25 college.

1 THE COURT: What did you take in college?

2 MR. MICKELL: Business administration.

3 THE COURT: What type of work do you do?

4 MR. MICKELL: I was working at a warehouse and
5 barbershop.

6 THE COURT: Okay. Were you cutting hair or what were
7 you doing at the barbershop?

8 MR. MICKELL: Just cut.

9 THE COURT: Are you married, sir?

10 MR. MICKELL: No, ma'am.

11 THE COURT: Do you have any children?

12 MR. MICKELL: Yes, ma'am.

13 THE COURT: How many?

14 MR. MICKELL: 2.

15 THE COURT: How old are they?

16 MR. MICKELL: 6 and 4.

17 THE COURT: All right, sir. Sir, have you taken any
18 medication or drank any alcohol in the last 24 hours?

19 MR. MICKELL: No, ma'am.

20 THE COURT: Do you suffer from any mental or physical
21 problem that would prevent you from understanding what
22 we're doing here today?

23 MR. MICKELL: No, ma'am.

24 THE COURT: Sir, you understand that you are pleading
25 guilty to the offense of trafficking in cocaine between 28

1 and 100 grams by conspiracy in indictment 2009-GS-47-5,
2 count 1, which carries a sentence range between a minimum
3 of 7 years and up to 25 years in prison?

4 MR. MICKELL: Yes, ma'am.

5 THE COURT: And, sir, you understand that also
6 accompanies that is a possible fine of up to \$50,000 as
7 well. Do you understand that?

8 MR. MICKELL: Yes, ma'am.

9 THE COURT: Understanding that, sir, do you still wish
10 to plead guilty?

11 MR. MICKELL: Yes, ma'am.

12 THE COURT: Sir, you're also pleading guilty here
13 today to trafficking in cocaine 28 to 100 grams, first
14 offense. Again, it's the same indictment number. It is
15 count 17, sir, which again carries a sentencing range of at
16 least 7 years and up to 25 years and a fine of up to
17 \$50,000. Do you understand that, sir?

18 MR. MICKELL: Yes, ma'am.

19 THE COURT: Do you understand that when you are
20 sentenced eventually after some time has passed that, sir,
21 in fact you could be looking at 50 years in prison and a
22 fine of up to \$100,000?

23 MR. MICKELL: Yes, ma'am.

24 THE COURT: Understanding that, sir, do you still wish
25 to plead guilty?

1 MR. MICKELL: Yes, ma'am.

2 THE COURT: You also understand that the state is
3 making no recommendations regarding sentencing at this
4 time?

5 MR. MICKELL: Yes, ma'am.

6 THE COURT: Sir, do you also understand that this is
7 considered a violent and serious offense, which means, sir,
8 that you are going to have to do 85 percent of whatever
9 time you receive. Do you understand that?

10 MR. MICKELL: Yes, ma'am.

11 THE COURT: Also, additionally, sir, if you are
12 convicted of 2 more either serious or most serious
13 offenses, that you are going to possibly be looking at life
14 without parole if either the attorney general's office or
15 the solicitor's office chooses to seek it. Do you
16 understand that?

17 MR. MICKELL: Yes, ma'am.

18 THE COURT: Understanding all that, sir, do you still
19 wish to plead guilty?

20 MR. MICKELL: Yes, ma'am.

21 THE COURT: Sir, are you completely satisfied with how
22 Mr. Dore has represented you?

23 MR. MICKELL: Yes, ma'am.

24 THE COURT: Has he done everything you've asked him to
25 do?

1 MR. MICKELL: Yes, ma'am.

2 THE COURT: Have you understood all your conversations
3 with him?

4 MR. MICKELL: Yes, ma'am.

5 THE COURT: Do you have any complaints against Mr.
6 Dore whatsoever?

7 MR. MICKELL: No, ma'am.

8 THE COURT: Sir, do you understand when you plead
9 guilty, you are waiving your right to a jury trial?

10 MR. MICKELL: Yes, ma'am.

11 THE COURT: Mr. Mickell, you understand that you are
12 scheduled for a jury trial today. Do you understand that?

13 MR. MICKELL: Yes, ma'am.

14 THE COURT: Sir, do you understand that if you were to
15 go to a jury trial, you have the right to testify or not
16 testify in your own behalf. If you chose not to testify,
17 I'd tell the jury that they couldn't hold it against you.
18 And, again, that's because you're never required to prove
19 your innocence. The burden is on the state to prove your
20 guilt as to these charges beyond a reasonable doubt. Do
21 you understand that?

22 MR. MICKELL: Yes, ma'am.

23 THE COURT: Also, do you understand that Mr. Dore at a
24 jury trial would have the opportunity to cross examine the
25 state's witnesses and present witnesses in your behalf. He

1 could also attempt to suppress various evidence in the
2 case. I want to make sure you understand and appreciate
3 that by pleading guilty here today, you are waiving your
4 right to a jury trial and all the other constitutional
5 rights that go along with a jury trial. Do you understand
6 that, sir?

7 MR. MICKELL: Yes, ma'am.

8 THE COURT: Understanding all that, sir, do you still
9 wish to plead guilty here today?

10 MR. MICKELL: Yes, ma'am.

11 THE COURT: Additionally, sir, you understand that
12 when you plead guilty to a drug charge, you are going to
13 lose your driver's license for a period of time. Is that
14 correct?

15 MR. MICKELL: Yes, ma'am.

16 THE COURT: All right, sir. Sir, has anyone promised
17 you anything or held out any hope of reward to get you to
18 plead guilty here today?

19 MR. MICKELL: No, ma'am.

20 THE COURT: Has anyone pressured you or threatened you
21 or told you you had to plead guilty?

22 MR. MICKELL: No, ma'am.

23 THE COURT: Has anyone from law enforcement, the
24 attorney general's office, the state, SLED, the drug task
25 force with Beaufort and Jasper County mistreated you in any

1 way regarding any detention or investigation or anything
2 along those lines, sir?

3 MR. MICKELL: No, ma'am.

4 THE COURT: Sir, have you understood all my questions?

5 MR. MICKELL: Yes, ma'am.

6 THE COURT: Have you been truthful with all your
7 responses to The Court?

8 MR. MICKELL: Yes, ma'am.

9 THE COURT: Sir, you understand that pursuant to your
10 plea agreement, you have waived any right to an appeal or a
11 post-conviction relief filing. Do you understand that?

12 MR. MICKELL: Yes, ma'am.

13 THE COURT: You understand that we allow by contract
14 for you to waive those constitutional rights. You
15 understand that and you're willingly and freely doing that;
16 is that correct, sir?

17 MR. MICKELL: Yes, ma'am.

18 THE COURT: All right, sir. Thank you. Anything
19 further we need to put on the record other than I need to
20 accept his plea?

21 MS. PORTER: No, Your Honor.

22 THE COURT: Okay. I do find a substantial factual
23 basis for this plea, that your decision to plead guilty has
24 been made freely, voluntarily, knowingly, intelligently,
25 with the consent of competent counsel with whom you tell me

1 you're satisfied, and I'm going to accept your plea, sir.
2 Again, we're going to defer sentencing for 90 days or
3 whenever the attorney general brings it back up in front of
4 me. Okay. All right. Thank you.

5 MR. DORE: Thank you, Your Honor.

6 THE COURT: Yes, sir.

7 --- End of transcript of record ---

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1 I, the undersigned Dianne A. Rutledge, official court
2 reporter for the Fifth Judicial Circuit of The State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate, and complete transcript of the record of
5 the proceedings had and evidence introduced in the hearing
6 of the captioned case, relative to appeal, in the Circuit
7 Court for Beaufort County and Jasper County, South Carolina
8 on the 25th day of January 2010.

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

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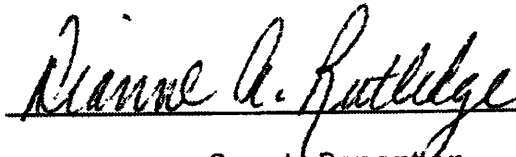
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August 16, 2012

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Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
2009 GS 47 05

State of South Carolina,
Plaintiff

VS

Deangelo Mickell,
Defendant

TRANSCRIPT OF RECORD
GUILTY PLEA

April 29, 2010
BEAUFORT COUNTY,
SOUTH CAROLINA

B E F O R E:

HONORABLE CARMEN T. MULLEN, Judge.

Deborah E. Everett
Official Court Reporter

 ORIGINAL

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

Susan Porter, Attorney at Law
Attorney General for State of South Carolina

Anthony Dore, Attorney at Law
Attorney for the Defendant

I N D E X

NO WITNESSES INTRODUCED

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EXHIBITS

NO EXHIBITS INTRODUCED

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1 (Whereupon Hearing began at 2:18 P.M.)

2 MS. SUSAN PORTER: We are here Your Honor, lastly
3 on State versus Deangelo Christopher Mickell. He is
4 here before you on two counts of the indictment 2009 GS
5 47 05.

6 Again, it's Count one, the conspiracy count, Your
7 Honor. We have reduced that from conspiracy to traffic
8 cocaine more than 400 grams down to 28 to 100 grams.
9 It is a first offense but in rereading his prior record
10 Your Honor, it should have been a second offense. But
11 we did allow him to plead to a first offense.

12 And then also Count seventeen which is trafficking
13 cocaine 28 to 100 grams, that is reduced from more than
14 200 grams or between 2 to 400 grams for the 355 grams
15 that we found on the day we executed the search
16 warrant.

17 He was not charged for the crack co --- his mother
18 was charged for the crack cocaine and the marijuana. I
19 don't know if you want -- you've heard a substantial
20 factual facts thus far with Ms. Mickell's plea but Your
21 Honor, our understanding was that Deangelo was the
22 source and he had the bigger source, Chico, whom we've
23 not been able to identify. Or at least gather enough
24 evidence to charge him.

25 From his interview -- and I think from what other

1 people said during Ms. Mickell's plea is he was working
2 and he had a barbershop -- which makes this worse --
3 cause he was lawfully and gainfully employed. And
4 chose to do this to make money and he admitted that
5 during his debriefing.

6 Again, this is a situation where we asked him to
7 cooperate on numerous occasions, didn't do it until the
8 week before trial. Then when he was debriefed he
9 minimized substantially. We had other leads that he
10 was selling to certain people that he wouldn't give up
11 -- wouldn't tell us about. Minimized his own
12 involvement. Did tell us that his mom would assist him
13 and that that's where they stored the drugs was in the
14 three -- three different cars at the trailer and that
15 the deals went down at the trailer.

16 Not only his source came to the trailer to supply
17 the cocaine, but that he dealt from the trailer and the
18 three cars were a 1993 Jeep Cherokee, a 1990 Chevy
19 Pick-up that she was picked up in, and a then a
20 Plymouth Hatchback, two-door, from the mid 80's.

21 So -- and he stated that the purpose for storing
22 the drugs in the cars were so that the trailer wouldn't
23 be robbed. So clearly he knew what he was doing,
24 clearly his intent was to make money. And he used his
25 mom to help. And when it came time to cooperate and

1 the opportunity to cooperate was given to him he failed
2 to do that.

3 I will let Lieutenant O'Neill address that if you
4 want but there were at least three occasions -- my
5 understanding -- at least three occasions that he was
6 called after the debriefing for which he failed to act
7 on.

8 So, he had opportunities and has not helped
9 himself. And had I known how this would play out, I
10 would have picked a jury on January the 25th. He is a
11 substantial dealer. He was caught with 355 grams which
12 is a heck of a lot of cocaine.

13 He admits in his interview to us that he was the
14 one that had cooked the crack cocaine in the trailer
15 just prior to us hitting the search warrant. And he
16 states -- Ya' know there was marijuana there as well,
17 and um, I think Abigail Maliford's testimony would have
18 been that really it began buying marijuana from him and
19 her marijuana habit, that he started and met Chico
20 through dealing marijuana. So that's what led to the
21 larger cocaine conspiracy, so... That's -- that's
22 where we are.

23 He does have a prior distribution of marijuana
24 from 1998 and then these charges.

25 THE COURT: Lieutenant O'Neil, what is the street

1 value of 355 grams?

2 MR. O'NEIL: You've got a street value -- depends
3 on where you are at -- from sixty to a hundred dollars
4 a gram.

5 THE COURT: Okay. All right, anything else ---

6 MR. O'NEILL: Other than just to further what the
7 prosecutor said. We did the initial interview. He
8 said he would get back with me. I -- he never called
9 me. I called him, I think, a week after we did this.
10 He didn't have anything. He was working on it. I
11 called him two more times. The last time I was
12 prompted to do that by Ms. Porter who said, Have you
13 heard anything from Deangelo? I said, The last time I
14 talked to him he said he was working on it. Said about
15 a month ago I called him again. He said, I'm working
16 on it. But, I never heard anything back from him.

17 MS. PORTER: Again, due to his involvement and the
18 trouble off that street, we would ask for upwards of
19 eighteen, nineteen, twenty years.

20 MR. ANTHONY DORE: May it please the Court, Your
21 Honor?

22 THE COURT: Yes, sir.

23 MR. DORE: Deangelo is thirty-three years old.
24 Born and raised over on Hilton Head Island. Graduated
25 from Hilton Head High School. He attended Savannah

1 State College for two years. He's got two children.
2 Young children, ages five and six. One is in pre-K and
3 one is in the first grade.

4 Um, he admits that he has made some mistakes, Your
5 Honor. But he is not the monster that the State makes
6 him out to be. He has made a lot of mistakes and he
7 realizes that. I think that his mother being sentenced
8 to twelve years is something he will never forget.
9 It's terrible. He feels responsible for ---

10 THE COURT: He should.

11 MR. DORE: He does. And he feels bad about it.

12 THE COURT: Let me ask you, Mr. Dore. Where does
13 he live?

14 MR. DORE: He lives over in Ridgeland, Your Honor.

15 THE COURT: Okay. His grandmamma -- or his mother
16 lives in a trailer down a dirt road where all this is
17 going on and he lives in Ridgeland?

18 MR. DORE: Yes.

19 THE COURT: Where does he live in Ridgeland?

20 MR. DORE: Roseland Road.

21 THE COURT: Roseland Road. Do you live in a
22 trailer or ---

23 MR. DEANGELO MICKELL: Trailer.

24 THE COURT: I'm sorry, Mr. Dore. I was just
25 wondering.

1 MR. DORE: That's okay, Your Honor. I was just
2 going to mention -- um, that Deangelo owns his own
3 barbershop and hair salon. He was a business person in
4 the community. Unfortunately he was also involved in
5 selling narcotics. And he regrets that. He realizes
6 the impact that he's had, not only on his family, but
7 also his community.

8 I've come to know him now since I began
9 representing him. We've talked at length on several
10 occasions. He's a very likable person, Your Honor.
11 Very likable. We've had very direct conversations.
12 He's always been honest with me when we've discussed
13 the case.

14 The State's position has been that he's not
15 cooperated and I take exception to that. Um, the State
16 wanted him to cooperate from the first day that he was
17 arrested. And he came to me and we talked about this
18 thing and we wanted the discovery first, Your Honor.
19 We wanted to know what the State's evidence is and I
20 think that's reasonable. I think it's reasonable that
21 before you sit down and start giving statements that
22 you know what you are faced with.

23 And so we wanted to receive discovery. After we
24 received discovery we sat down and he was debriefed
25 over at the Solicitor's office in Bluffton. We went

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1 over to Bluffton. We sat there for several hours. We
2 met with SLED agents and also JoJo Woodward of the
3 Beaufort County Sheriff's department.

4 He gave them information from about when he first
5 began selling drugs up until the present day. He's
6 given them all the information that he could give them.

7 THE COURT: Was he ever given an opportunity to
8 help his mother?

9 MR. DORE: That -- Your Honor, the reason that he
10 cooperated at all was so that he could help his mother.
11 That was his intention in cooperating with the State so
12 that they would be lenient with his mother. I mean, it
13 was very hard for him to come in and they wanted him to
14 not only implicate himself, but to give -- give
15 information about his mother.

16 THE COURT: No, they wanted to know who's above
17 him. That's what they want to know.

18 MR. DORE: They wanted everything, Judge. They
19 asked him for all sorts of information. We would -- he
20 was debriefed for many hours and the local law
21 enforcement was present and they were able to
22 corroborate some of the statements that he had given.
23 JoJo Woodward, who's the head of the narcotics over
24 here in Beaufort, asked him a lot of questions. He
25 answered all of the questions to the best of his

1 ability.

2 He has complied with his plea agreement, Your
3 Honor. This plea agreement is very specific. It's
4 several pages long. It sets out what his
5 responsibilities to the State are and we feel like
6 we've complied with them ---

7 THE COURT: And I think they've lessened his
8 charges as a result of it, certainly ---

9 MR. DORE: Well Your Honor, they ---

10 THE COURT: They've taken him out of the mandatory
11 minimum of twenty-five years.

12 MR. DORE: But they are asking for a substantial
13 sentence, Your Honor. And what he has done is -- this
14 plea agreement provides that he can be polygraphed.
15 The State says that he is not being truthful and honest
16 and has minimized his involvement. They had an
17 opportunity to polygraph him. They didn't. They could
18 come in here today, Your Honor, and say he failed the
19 polygraph. Here are the results -- here is the
20 polygraph examiner. We asked him these questions and
21 he failed the polygraph and they could revoke this
22 entire plea agreement if they wanted to. They're not
23 doing that. They just want to come in here and
24 ambiguously say that he didn't cooperate. Give him the
25 maximum. That's not fair. That is not fair. He has

1 done everything that they have asked him to do.

2 His cell phone was taken from him at the time of
3 his arrest. All of the phone numbers from anybody that
4 he knew that was involved in narcotics was in that cell
5 phone. He told them, You all have got my cell phone.
6 All of the numbers are in my cell phone.

7 When he was arrested it was on the front page of
8 the newspaper. Everyone in the community knew that he
9 had been arrested. There wasn't anybody that was gonna
10 deal with him. He couldn't sell drugs to anybody or
11 set anybody up in the community.

12 He gave them the name of his supplier as best he
13 could. He told what his name was. He told them where
14 they met.

15 THE COURT: How come they are telling me they only
16 know him by his nickname?

17 MR. DORE: Your Honor, he doesn't have an intimate
18 relationship with his suppliers so that he can give
19 them this guy's address and home phone number. He
20 doesn't know this guy's wife and kids and family.

21 THE COURT: Has he laid his eyes on him?

22 MR. DORE: He has not seen this person since he
23 was arrested. However, he told 'em -- he told 'em,
24 Judge, he said, We used to go to this club on Hilton
25 Head. This is where I met these folks. If you wanna

1 go to this club these is where -- it's the happening
2 seen where drugs are sold. This is where you can meet
3 these folks. He has done everything that he can, Your
4 Honor. And I think it's disingenuous for them to say
5 that he hasn't cooperated. I don't think that's fair
6 at all.

7 THE COURT: Where is the club on Hilton Head that
8 is apparently ---

9 MR. DORE: (To his client) What was it; Monkey?
10 (To the Court) Monkey Business.

11 MR. MICKELL: Use to be.

12 MR. DORE: Use to be Monkey Business, Your Honor.
13 I don't think that he has to be sentenced -- he doesn't
14 have any substantial prior record. He's got
15 convictions from 1998 ---

16 THE COURT: Distribution.

17 MR. DORE: Your Honor, he was a young -- twenty
18 years old at the time that thing happened. He was
19 twenty years ---

20 THE COURT: Did he do jail time?

21 MR. DORE: No, he had a suspended sentence, Judge.
22 He didn't do any jail time, but he was a young man. He
23 had suspended YOA is what the sentence was. Um, he has
24 made some mistakes. We admit that. I don't think that
25 in order for him to pay his debt to society it requires

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1 a substantial eighteen year sentence. That is just not
2 a reasonable under the circumstances. It's not
3 reasonable, Judge. And I ask you to consider his age.
4 The fact that he can be rehabilitated. The fact that
5 he owned a business. The fact that he has family who
6 love him and support him. I'd ask that you take that
7 into consideration when you sentence him.

8 THE COURT: I appreciate that. I also know he's
9 got some children that could benefit from a father who
10 is not doing any time. So, um...

11 Did you give him an opportunity to help his mother
12 in any way 'cause I would be shocked if that wasn't
13 part of what ya'll've talked about.

14 MS. PORTER: And I can't find my bond sheet. If
15 you could find that for me I could tell you the first
16 date that -- let me tell you a little bit as to how
17 this went down and I take exception to what Mr. Dore
18 has put on the record as far as the State.

19 First and foremost, I give a deadline and I don't
20 ever -- I want say ever -- I rarely extend that
21 deadline. At the bond hearing I met with Mr. Dore and
22 Mr. Tootle. I pulled them out separately with
23 Lieutenant Frank O'Neil and I said to them -- and this
24 was on May 27th, 2009 -- all right, we are arraigning
25 them on these indictments. I said, I've got 'em, I

1 have 'em. Let me help you because I don't make deals
2 without cooperation. Here's what cooperation is.
3 Here's what it entails. Tell them they need to
4 cooperate. That was in May and I got the same spiel
5 from Mr. Dore, We can't do this without knowing what
6 he's got. I prepared -- a month later -- a protective
7 order. Went and got a disclosure order and protective
8 order signed so that they could come up and meet with
9 me and look at the discovery. They never chose to do
10 it. We had a meeting scheduled and due to some
11 uncontrollable events it was cancelled. It was always
12 open. I begged them to cooperate.

13 MR. DORE: If, if ---

14 MS. PORTER: And they didn't do it until the week
15 before trial. The week before trial. The Thursday
16 before trial is when I got a phone call, Please let us
17 cooperate. We'll meet you at the Sheriff's office,
18 where we were doing trial prep. So this
19 characterization that the State has been unreasonable,
20 is completely false ---

21 MR. DORE: Your Honor, if I might ---

22 MS. PORTER: We have been more than reasonable by
23 taking the twenty-five years off the table. I have
24 more than enough evidence to convict him and was very
25 comfortable starting the trial on Monday, June 25th.

1 MR. DORE: Your Honor, if I might respond. An
2 arraignment, you know from criminal procedure, an
3 arraignment is very early to sit down and start giving
4 up information. At the arraignment, I mean, that's his
5 initial court appearance. They wanted him to come out
6 of his initial court appearance and sit down and start
7 giving up information on people. The first day.
8 That's not reasonable. I don't think it is and ---

9 MS. PORTER: Well, that's how -- that's how the
10 State Grand Jury works, Mr. Dore.

11 MR. DORE: It's not fair. It's the first day.

12 MS. PORTER: Well, I'll take exception to that --
13 the arraignment -- the indictment was substantially
14 after the arrest.

15 MR. DORE: Your Honor, I have a responsibility as
16 an attorney -- I have ---

17 THE COURT: I understand that ---

18 MR. DORE: I have responsibilities to my client
19 and to the Bar to adequately represent my client and at
20 an arraignment I am not prepared ---

21 THE COURT: Mr. Dore, there has been adequate time
22 since then though that your client has not -- and I
23 asked the simple question of was he afforded the
24 opportunity to help his mother. I see that he
25 certainly had tears after I sentenced her for twelve

1 years but again, that doesn't extend to if he could
2 have helped her ---

3 MR. DORE: Your Honor ---

4 THE COURT: And that's what I wanted to know.

5 MR. DORE: He cooperated in an effort to help his
6 mother. That was the reason for his cooperation, Your
7 Honor.

8 THE COURT: Okay. Sir, would you like to say
9 something to me?

10 MR. MICKELL: I know what I did was wrong. I just
11 kinda got in a situation where I needed to catch up on
12 bills and that was the way that I went -- I knew it
13 wasn't the right way to go but I did it. My mother
14 really didn't have anything to do with it.

15 In fact, I told them initially when they asked me
16 to help my mother, when they asked, Whose was it, I
17 told them it was all mine, it was all on me. That's
18 the only reason I came forward to them and when they
19 asked me for help -- he asked me to give him the guy's
20 number, I gave them the number so I don't know what
21 more help he wanted me to give them. I couldn't go
22 find him. I gave them what I had. I just don't know
23 what to say. I apologize. It's my first offense. I
24 just wish you could give me some leniency.

25 THE COURT: Anything further? Does anyone else

19

1 want to speak. I know and I did appreciate your words.
2 A few of them spoke, of course, on behalf of your
3 mother and yourself. Does anyone else want to speak on
4 Mr. Mickell's behalf?

5 MR. DORE: Your Honor, the mother of his children
6 has spoken, um, they are all pretty distraught over
7 this ---

8 THE COURT: I understand. All right.

9 UNKNOWN PERSON: I'll say something.

10 THE COURT: Yes, again, ma'am, if you'll just
11 again, for the record, state your name.

12 UNKNOWN PERSON: (did not state her name) For the
13 record, I do know financially -- it was something
14 financial for him. When I was pregnant with our second
15 child -- it was -- and he told me -- and he said, I
16 cannot afford it. You are going to have to get an
17 abortion. And I said, I can't. And money was um, he
18 was making money. Um, but it wasn't enough. And he
19 was doing what he was doing and -- I didn't have an
20 abortion. But it was a financial thing and he has a
21 lot on his plate. He takes care of his mother.

22 I be honest with you, a lot of people turn to
23 him. A lot of people. It's like a lot of people
24 leaned on him and he is not a person to say, No. He
25 will do whatever it takes to help them out. And

1 there's a few of the people, actually, whose in a
2 position now -- which I will not say their names -- a
3 lot of people are where they are now because of
4 Deangelo. They didn't take the same path that he took
5 but they leaned on him to get where they are. They
6 knew what he was doing but at the time it didn't matter
7 cause he was helping them and like I say, I won't say
8 their names.

9 But there is a few of them that's like that within
10 his family. Um, so I'm not saying what he did is
11 right. What he did is not right. Um, there's a lot of
12 decisions that was made that is not right. But he is a
13 good person. He takes care of his kids. He loves his
14 kids. Um, I just -- I'm upset. I'm more hurt because
15 of my kids, it's like -- DJ, he has a good relationship
16 with him. I'm daddy's little princess. He's a great
17 father, it's hard. He's a great provider.

18 UNKNOWN PERSON NUMBER TWO: Your Honor?

19 THE COURT: Yes ma'am?

20 UNKNOWN PERSON NUMBER TWO: Being his girlfriend,
21 he is an awesome provider. Of fourteen years being
22 with him also I mean my kids look up to him
23 tremendously. And my daughter texted me saying, Please
24 bring him home, please bring him home...(crying
25 uncontrollably and can't understand what is being

21

1 said). He help her with her homework...(more crying)
2 I'm just asking you to give some leniency and bring him
3 home as quickly as possible. (Crying and can't
4 understand).

5 THE COURT: Thank you, ma'am. Anything further?

6 MR. DORE: No ma'am.

7 THE COURT: On indictment number 2009 5 it is
8 Count 17 for trafficking cocaine more than 28 but less
9 than 100 grams the sentence of this Court is that you
10 be committed to the Department of Corrections for a
11 period of eighteen years.

12 On indictment number 2009 05, again Count 1, the
13 sentence of this Court is that you be committed to the
14 Department of Corrections, again, for a period of
15 eighteen years. Those are to run concurrent to each
16 other and I'm of course, going to give you credit for
17 time served. Good luck to you, sir.

18 MS. PORTER: Thank you, Your Honor.

19

20 (Whereupon the hearing concluded)

21

22 --- END OF TRANSCRIPT OF RECORD ---

23

24

25

I, the undersigned Deborah E. Everett, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Beaufort County, South Carolina, on the 29th day of April, 2010.

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

April , 2012


Deborah E. Everett
Official Court Reporter

 ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

C.A. Number 2011-CP-07-1538

DEANGELO MICKELL #340668)

Petitioner,)

v.)

STATE OF SOUTH CAROLINA)

Respondent.)

APPLICATION FOR POST-
CONVICTION RELIEF

[Note: This application follows SCRPC Appendix of Forms, Form 5, as required by Rule 71.1(b), SCRPC.]

1. Petitioner is detained at the Lee Correctional Facility.
2. The sentence was imposed by the Beaufort County Court of General Sessions, the Carmen T. Mullen, presiding.
3. The co-defendants are Abigail Joughin Maillefert, # 00340675 and Ophelia Green Mickell, #00340676.
4. The indictment number upon which the offenses for which sentences was imposed is:
 - (a) 2009-GS-47-05, Count I - Conspiracy to Traffic Cocaine 28 - 100 grams, first offense
 - (b) 2009-GS-47-05, Count XVII - Trafficking Cocaine 28-100 grams, first offense
5. The date upon which sentences were imposed and the terms of the sentence are:
 - (a) Sentenced on April 29, 2010 eighteen years, concurrent.
 - (b) Sentenced on April 29, 2010 eighteen years, concurrent.
6. A plea of guilty was entered on April 29, 2010.
7. The applicant did not appeal from judgment of conviction and sentence.
8. (a) The Courts to which petitioner appealed:

- (i) N/A
- (b) The result in each Court to which petitioner appealed:
 - (i) N/A
- (c) The date on which each Court affirmed the sentence or denied certiorari:
 - (i) N/A
- (d) Citations of any written opinion or orders entered pursuant to such results:
 - (i) N/A

9. Not applicable.

10 & 11 Grounds for Relief and Concise Statement of Supporting Facts.¹

Ground A

Petitioner was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law based upon trial counsel's deficient investigation of the facts supporting the charge against the defendant. Strickland v. Washington, 466 US 668 (1984) and Alexander v St., 402 SE2d 484 (SC 1991).

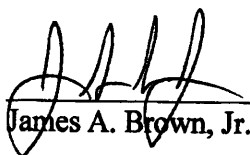
Supporting Facts for Ground A

- (1) Evidence supporting the charges against Mr. Mickell was obtained in violation of his constitutional rights.
 - (2) Law enforcement and prosecution documents obscured these violations.
 - (3) Trial counsel failed to conduct sufficient investigation to reveal these violations.
 - (4) But for counsel's deficient performance, Mr. Mickell would not have pled guilty.
- 12 & 13. Petitioner has not filed any petitions related to his convictions. Petitioner has not previously filed an application for post-conviction relief nor a petition for a writ of habeas corpus in state or federal court.
14. None of the grounds set forth in (10) have been presented to this or any other Court, state or federal.

¹ Petitioner reserves his right to further amend this application as allowed by law.

15. N/A
16. Generally claims of IAC are not cognizable on direct appeal.
17. (a) Petitioner was represented at the circuit court level by Anthony O Dore, of Dore Law Firm, P.O. Box 2478, Beaufort SC 29901.
18. Petitioner seeks the vacation of his convictions and sentences.
19. Petitioner is not under sentence from any other court.

Respectfully submitted,


James A. Brown, Jr.

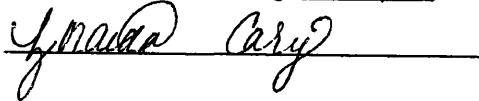
March 28th, 2011
Beaufort, SC

Law Offices of Jim Brown, P.A.
1600 Burnside Street, Suite 100
P.O. Box 592
Beaufort, SC 29901-0592
(843) 470-0003

Attorney for the Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading
was mailed to all parties of record in this
proceeding this 28 day of March, 2011.



State of South Carolina)
)
 County of Beaufort)

VERIFICATION

I, DeAngelo Mickell, 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.

DeAngelo Mickell
 DeAngelo Mickell, Petitioner

SWORN to and subscribed before me this 24th day of Mar 2011.
Janice L. Meltzer (L.S.)

Notary Public

My Commission Expires: 4-26-2014

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

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

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

DeAngelo Mickell
 DeAngelo Mickell, Petitioner

SWORN or affirmed to and subscribed before me this 24th day of Mar, 2011.

Notary Public

My Commission Expires: 4-26-2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 14 th JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	Case No.: 2011-CP-07-01538
DeAngelo Christopher Mickell, #340668,	)	
	)	
Applicant,	)	
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

RETURN

12 SEP 28, PM 4: 14
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

Respondent, making its Return to the application for post conviction relief (PCR) filed March 31, 2011, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the State Grand Jury Clerk of Court. Applicant was indicted at the May 2009, term of the State Grand Jury for: Count I – Conspiracy to Traffick Cocaine Greater than 400g and Count XVII – Trafficking Cocaine 200 - 400g (2009-GS-47-0005). Applicant was represented by Anthony O. Dore, Esquire. On January 25, 2010, the Applicant pled guilty to Conspiracy to Traffick Cocaine 28-100g and trafficking Cocaine 28-100g. Sentencing was deferred. On April 29, 2010, the Honorable Carmen T. Mullen concurrently sentenced him to confinement for a period of eighteen (18) years on both charges. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the State Grand Clerk of Court regarding the subject convictions, records from the South

Carolina Department of Corrections, and the plea transcripts.

II.

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

1. Ineffective assistance of counsel;
 - A. Failure to Investigate

III.

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), *citing* Strickland.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. Applicant must overcome this presumption in order to receive relief. Cherry, Id.

Where there has been a guilty plea, the applicant must prove prejudice by showing that, but for counsel's errors, there is a reasonable probability he would not have pleaded guilty and instead would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203, 210 (1985); Jordan v. State, 297 S.C. 52, 54, 374 S.E.2d 683, 684 (1988). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

Respondent submits that 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, 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.

Applicant also alleges that trial counsel failed to conduct a sufficient investigation into the case. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). However, this allegation probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VII.

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

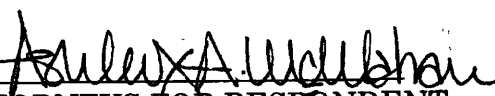
VIII.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

ASHLEY A. McMAHAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

SUPA. 27th, 2012

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

DEANGELO MICKELL #340668

Petitioner,

v.

STATE OF SOUTH CAROLINA

Respondent.

2013 AUG 19 PM 2:10
JEROME ROSENBAUM
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Number 2011-CP-07-01538

**FIRST AMENDED APPLICATION
FOR POST- CONVICTION RELIEF**

[Note: This application follows SCRCP Appendix of Forms, Form 5, as required by Rule 71.1(b), SCRCP.]

1. Petitioner is detained at the Lee Correctional Facility.
2. The sentence was imposed by the Beaufort County Court of General Sessions, the Carmen T. Mullen, presiding.
3. The co-defendants are Abigail Joughin Maillefert, # 00340675 and Ophelia Green Mickell, #00340676.
4. The indictment number upon which the offenses for which sentences was imposed is:
 - (a) 2009-GS-47-05, Count I - Conspiracy to Traffic Cocaine 28 - 100 grams, first offense
 - (b) 2009-GS-47-05, Count XVII - Trafficking Cocaine 28-100 grams, first offense
5. The date upon which sentences were imposed and the terms of the sentence are:
 - (a) Sentenced on April 29, 2010 eighteen years, concurrent.
 - (b) Sentenced on April 29, 2010 eighteen years, concurrent.
6. A plea of guilty was entered on April 29, 2010.
7. The applicant did not appeal from judgment of conviction and sentence.
8. (a) The Courts to which petitioner appealed:
 - (i) N/A

- (b) The result in each Court to which petitioner appealed:
 - (i) N/A
- (c) The date on which each Court affirmed the sentence or denied certiorari:
 - (i) N/A
- (d) Citations of any written opinion or orders entered pursuant to such results:
 - (i) N/A

9. Not applicable.

10 & 11 Grounds for Relief and Concise Statement of Supporting Facts.¹

Ground A

Petitioner was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law based upon trial counsel's deficient investigation of the facts supporting the charge against the defendant. Strickland v. Washington, 466 US 668 (1984) and Alexander v St., 402 SE2d 484 (SC 1991).

Supporting Facts for Ground A

- (1) Evidence supporting the charges against Mr. Mickell was obtained in violation of his constitutional rights.
- (2) Law enforcement and prosecution documents obscured these violations.
- (3) Trial counsel failed to conduct sufficient investigation to reveal these violations.
- (4) But for counsel's deficient performance, Mr. Mickell would not have pled guilty.

Ground B

Petitioner was denied the effective assistance of counsel as guaranteed by the Fourth, Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law based upon trial counsel's failure to challenge the search warrant. Strickland v. Washington, 466 US 668 (1984) and Alexander v St., 402 SE2d 484 (SC 1991) and State v Gentile, 646 SE2d 171 (SC Ct App 2007).

¹ Petitioner reserves his right to further amend this application as allowed by law.

Supporting Facts for Ground B

- (1) Evidence supporting the charges against Mr. Mickell was obtained in violation of his constitutional rights.
- (2) Law enforcement and prosecution documents obscured these violations.
- (3) Trial counsel failed to conduct sufficient investigation to reveal these violations.
- (4) But for counsel's deficient performance, Mr. Mickell would not have pled guilty.

Ground C

Petitioner was denied the effective assistance of counsel as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law based upon the prosecution's failure to comply with the due process requirements announced in Brady v. Maryland and its progeny. Brady v Maryland, 373 US 83 (1963) and Gibson v State, 514 SE2d 320 (SC Ct App 1999).

Supporting Facts for Ground C

- (1) Evidence supporting the charges against Mr. Mickell was obtained in violation of his constitutional rights.
- (2) Law enforcement and prosecution documents obscured these violations.
- (3) Trial counsel failed to conduct sufficient investigation to reveal these violations.
- (4) But for counsel's deficient performance, Mr. Mickell would not have pled guilty.

Ground D

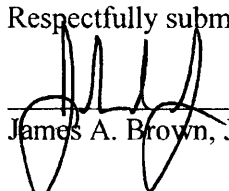
Petitioner was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law based upon trial counsel's failure to provide Petitioner sufficient information for the Petitioner to knowingly, intelligently and voluntarily waive his Boykin rights and enter a valid guilty plea. Strickland v. Washington, 466 US 668 (1984) and Alexander v St., 402 SE2d 484 (SC 1991)

Supporting Facts for Ground D

- (1) Evidence supporting the charges against Mr. Mickell was obtained in violation of his constitutional rights.

- (2) Law enforcement and prosecution documents obscured these violations.
 - (3) Trial counsel failed to conduct sufficient investigation to reveal these violations.
 - (4) Trial counsel failed to inform Petitioner of this information.
 - (5) But for counsel's deficient performance, Mr. Mickell would not have pled guilty.
- 12 & 13. Petitioner has not filed any petitions related to his convictions. Petitioner has not previously filed an application for post-conviction relief nor a petition for a writ of habeas corpus in state or federal court.
14. None of the grounds set forth in (10) have been presented to this or any other Court, state or federal.
15. N/A
16. Generally claims of IAC are not cognizable on direct appeal.
17. (a) Petitioner was represented at the circuit court level by Anthony O Dore, of Dore Law Firm, P.O. Box 2478, Beaufort SC 29901.
18. Petitioner seeks the vacation of his convictions and sentences.
19. Petitioner is not under sentence from any other court.

Respectfully submitted,


James A. Brown, Jr.

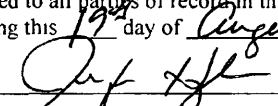
Law Offices of Jim Brown, P.A.
1600 Burnside Street, Suite 100
P.O. Box 592
Beaufort, SC 29901-0592
(843) 470-0003

Attorney for the Petitioner

August 19th, 2013
Beaufort, SC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was mailed to all parties of record in this proceeding this 19th day of August, 2011.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 14 th JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	Case No.: 2011-CP-07-01538
DeAngelo Christopher Mickell, #340668,	)	
	)	
Applicant,	)	
	)	
vs.	)	AMENDED RETURN AND
	)	MOTION TO DISMISS
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed March 31, 2011, incorporates by reference the previous Return filed by Respondent on or about September 28, 2012, and adds the following:

1.

The Applicant waived his right to file a post-conviction relief action in his plea agreement signed on January 25, 2010 and filed with the State Grand Jury Clerk of Court on the same day. The filed Plea Agreement is attached to this Amended Return and also incorporated by reference.

The plea court questioned the Applicant regarding his waiver of his right to appeal and to file a PCR. Applicant indicated that he was waiving his right to file an appeal and PCR willingly and freely. See transcript from January 25, 2010, page 10, lines 9-17 attached to the Respondent's original Return.

The Applicant's waiver of his right to file a direct appeal and PCR have been established by the record as voluntary and knowing through a colloquy between the court and Applicant at the guilty plea as well as through the plea agreement.

Therefore, since the waiver of his right to file a PCR was knowingly, willingly, and voluntarily made, the Respondent requests pursuant to Spoone v. State, 379 SC 138, 665 SE2d 605 (2008) and Narciso v. State, 397 SC 24, 723 SE2d 369 (2012) that this matter be dismissed.

II.

WHEREFORE, having made its Amended Return, the State requests that the PCR Court abide by the underlying plea agreement and enforce the waiver of PCR and summarily dismiss the application for post-conviction relief.

Respectfully submitted,

ALAN WILSON
Attorney General

ASHLEY A. McMAHAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Mar 26th, 2013

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOR THE 14th JUDICIAL CIRCUIT
) Case No.: 2011-CP-07-01538

DeAngelo Christopher Mickell, #340668,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

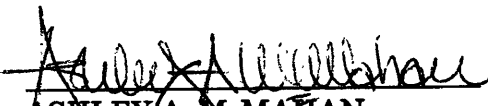
AFFIDAVIT OF SERVICE BY MAIL

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 Amended Return and Motion to Dismiss and in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

James A. Brown, Jr., Esquire
Law Offices of Jim Brown, PA
PO Box 592
Beaufort, SC 29901-0592

And also via jimbrownlaw@hargray.com

DATED this 26th day of March, 2013.


ASHLEY A. McMAHAN

Assistant Attorney General

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

IN THE COURT OF
 GENERAL SESSIONS FOR
 THE FOURTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
)

CASE NOS. 2009-GS-47-5 Count I, XVII

-VERSUS-)
)

DEANGELO CHRISTOPHIS MICKELL,)
)

DEFENDANT.)
)

PLEA AGREEMENT

FILED

JAN 25 2010

JAMES R. PARKS
 CLERK, STATE GRAND JURY

AGREEMENT made this 25 day of January, 2010, between and among the State of South Carolina, as represented by Attorney General Henry McMaster, Susan O. Porter, Chief of Prosecution, and the Defendant, and his attorney, Anthony O. Dore, Esquire.

1. The Defendant, DeAngelo Christopher Mickell, agrees to plead guilty to the offense of Trafficking Cocaine 28 - 100 grams by conspiracy, first offense, a violation of S.C. Code Ann. § 44-53-370(e)(2)(b), a lesser-included of that alleged in Indictment Number 2009-GS-47-05 Count I, which carries a sentence range from seven (7) years to twenty-five (25) years, and a fine of fifty thousand (\$50,000) dollars. The State will not make any further recommendations regarding sentencing at this time. This is considered a violent and serious offense.

2. The Defendant, DeAngelo Christopher Mickell, agrees to plead guilty to the offense of Trafficking Cocaine 28 - 100 grams, first offense, a violation of S.C. Code Ann. § 44-53-370(e)(2)(b), a lesser-included offense of that alleged in Indictment Number 2009-GS-47-05 Counts XVII, which carries a sentence range from seven (7) years to twenty-five (25) years, and a fine of fifty thousand (\$50,000) dollars. The State will not make any further recommendations

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level.

4. The Defendant, DeAngelo Christopher Mickell, understands and agrees that any and all assets or portions thereof acquired or obtained as a result of illegal trafficking in drugs shall be surrendered to the South Carolina Law Enforcement Division (SLED), and/or other law enforcement related organizations in South Carolina to be designated by the South Carolina Attorney General, in portions to be determined by the South Carolina Attorney General. The assets so surrendered to South Carolina authorities will be disposed of according to South Carolina law. The assets to be surrendered include, but are not limited to, cash, stocks, bonds, certificates of deposit, personal property, and real estate. Further, the Defendant agrees to fully assist the Office of the Attorney General and SLED in the recovery and return to SLED, and/or other designated law enforcement agencies in South Carolina of any drug-related assets or portions thereof, either domestic or foreign, which have been acquired or obtained either indirectly or directly through unlawful drug activities. The Defendant must prevent the disbursement and immediately and voluntarily surrender to the Office of the Attorney General, SLED, and/or other designated law enforcement agencies in South Carolina, all other domestic and foreign assets in which he has any direct or indirect interest or control, if the assets are the proceeds of unlawful drug activities or are directly or indirectly related to the unlawful drug activities. The Defendant further agrees to immediately and voluntarily surrender to the Office of the Attorney General, SLED, and/or other designated law enforcement agencies in South Carolina, in portions to be determined by the South Carolina Attorney General, all conveyances including but not limited to, aircraft, vehicles, or vessels, which have been used or were intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or

concealment of controlled substances. By signing this Agreement, the Defendant consents to civil forfeiture of all assets currently in the possession of the government and further consents to civil forfeiture of all drug related assets seized by law enforcement agents in connection with this investigation.

5. The Defendant, DeAngelo Christopher Mickell, further agrees to submit to polygraph examination(s) by any qualified state polygraph examiner should he be requested to do so regarding his knowledge of and involvement in drug-related activities, other related unlawful activities, and any and all assets and conveyances acquired and/or used by the Defendant or others, whether drug-related or not. This Plea Agreement is expressly contingent upon successful completion, to the satisfaction of the State, of the polygraph examination(s).

6. The Attorneys for the State reserve the right to summarize all evidence, which would have been presented at trial to establish a factual basis for the plea.

7. The Attorneys for the State agree to advise any Court or other authority of the extent and value of the Defendant's cooperation if called upon to do so by the Defendant.

8. The Defendant, DeAngelo Christopher Mickell, agrees that as a part of the consideration for this plea he will not appeal his plea of guilty or any sentence he receives in General Sessions Court in South Carolina. The Defendant, DeAngelo Christopher Mickell, acknowledges that he understands that he has a right of direct appeal of his guilty plea or sentence and that he knowingly, voluntarily and expressly waives this right of direct appeal. Additionally, the Defendant, DeAngelo Christopher Mickell, understands that he has a right to file a post conviction relief (PCR) action in this case but agrees to knowingly and voluntarily waive any post conviction relief action.

9. The Defendant, DeAngelo Christopher Mickell, understands that the State's obligations under this Plea Agreement are expressly contingent upon the Defendant's abiding by state and federal laws, and complying with the terms and conditions of this Agreement, both before and after sentencing, and any bond executed in this case. This Agreement in no way limits or affects the Defendant's potential exposure to further prosecution by any Solicitor's Office in the State of South Carolina or the United States Attorney for conduct which is not a basis for his indictment and prosecution by the State Grand Jury of South Carolina.

10. The parties hereby agree that this Plea Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements, whether made prior to or after this Agreement, are null and void.

1/25/10
DATE

DeAngelo Mickell
DeAngelo Christopher Mickell
Defendant

1-25-110
DATE

Anthony O. Dore
Anthony O. Dore
Attorney for Defendant

Henry McMaster
Attorney General of South Carolina

1/21/10
DATE

By: Susan O. Porter
Susan O. Porter
Chief of Prosecution

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF BEAUFORT) CASE NO.: 2011-CP-07-01538

DEANGELO MICKELL,)
)
 APPLICANT,)
)
 vs.) TRANSCRIPT OF RECORD
)
 THE STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)
 _____)

TELEPHONE HEARING HELD ON MAY 7TH, 2014
 HEARING HELD AT COLLETON COUNTY COURTHOUSE ON MAY 8TH, 2014
 WALTERBORO, SOUTH CAROLINA
 BEFORE THE HONORABLE PERRY M. BUCKNER, III, JUDGE.

APPEARANCES:

MR. JIM BROWN, ESQUIRE
 Attorney for the Applicant

MS. ASHLEY McMAHAN, ESQUIRE
 Attorney for the State of South Carolina

MR. WHITSETT, ESQUIRE,
 SLED Attorney

MS. ALLYSON COPPAGE, ESQUIRE
 Attorney for the County of Beaufort

Rebecca H. Hill
 Official Court Reporter

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1 THE COURT: Good afternoon, this is Judge Buckner. I
2 have Becky Hill, my resident court reporter, in my office,
3 along with my law clerk, Wilder Harte, and my JOE program
4 participant, Barnwell Fishburne.

5 I have scheduled two motions for 2:00 p.m. That would
6 be two motions to quash a subpoena. One on behalf of
7 Beaufort County, represented by Ms. Coppage; and one on
8 behalf of SLED, who is represented by Mr. Whitsett. Who is
9 on the phone, please?

10 MS. COPPAGE: Your Honor, this is Allyson Coppage with
11 Beaufort County.

12 THE COURT: Good afternoon, Allyson; who else?

13 MS. MCMAHAN: Ashley McMahan

14 THE COURT: Good afternoon, Ashley.

15 MR. WHITSETT: Agent Whitsett with SLED.

16 THE COURT: Wonderful. It appears that I have Jim
17 Brown for the Applicant. I have SLED. I have Beaufort
18 County, and I have Ashley McMahan for the State of South
19 Carolina.

20 My court reporter has the caption of this case. It is
21 a 2011 post-conviction-relief matter from Beaufort; 2011 at
22 01538, DeAngelo Mickell, who is the Applicant, vs. the State
23 of South Carolina. Mr. Mickell is represented by James
24 Brown, and The State of South Carolina is represented by
25 Ashley McMahan.

1 I'm going to take the motions in the order that I
2 received them. The first motion that I received was yours,
3 Ms. Coppage, which is a motion to quash subpoena. Because
4 of time, I am not going to allow anyone to argue more than
5 five minutes. Now, I'm going to give an argument to Ms.
6 Coppage. I will give an argument to Ms. McMahan, and then
7 to Mr. Brown. And Mr. Brown, I will let you go after I've
8 heard from both the moving party and the State, so that you
9 get one argument in reply to both. I'll do the same thing
10 for the motion to quash by SLED, which will be the second
11 motion we hear. Ms. Coppage, do you understand?

12 MS. COPPAGE: Yes, Your Honor.

13 THE COURT: Mr. Brown, do you understand?

14 MR. BROWN: Crystal clear, yes, sir.

15 THE COURT: Wonderful, Mr. Brown, then we may get along
16 today. All right. Let me make sure I have both motions in
17 front of me, because I have a lot of paper. Mr. Whitsett,
18 do you understand the conditions of argument?

19 MR. WHITSETT: Yes, Your Honor.

20 THE COURT: Wonderful. All right. Finally, Ms.
21 McMahan, do you understand the conditions of argument?

22 MS. MCMAHON: Absolutely.

23 THE COURT: Wonderful. Ms. Coppage, Becky can hear
24 you, but please speak up. I've turned the speaker all the
25 way up on my phone. Y'all know I talk loud because I'm

1 deaf. I've shot a shotgun all of my life, but some of you
2 have meek voices. I expect my court reporter to be able to
3 hear you just as you can hear me right now. Please remember
4 no one interrupts a lawyer during their argument. You will
5 each get a turn.

6 Ms. Coppage, you have the floor. Happy to hear from
7 you on your motion to quash subpoena.

8 MS. COPPAGE: Thank you, Your Honor. Can you hear me
9 okay?

10 THE COURT: I can hear you loud and clear, Allyson.

11 MS. COPPAGE: Thank you. Your Honor, my motion is
12 primarily based on your Order dated April 16th, 2013, in
13 which discovery was pursuant to 17-27-150, in the Court's
14 discretion. The subpoena that was issued as to Magistrate
15 Fitzgibbons to appear on May 7th, 2014, requests that
16 testimony and the production of documents. Based on that
17 alone, I think the motion should be quashed, but absent
18 quashing the motion on that, I believe that the Court stated
19 with specificity that the Applicant failed to meet the
20 requirements of In Re: Whetstone. Specifically, the
21 testimony of Beaufort County Magistrate Fitzgibbons should
22 not be required to testify over a case in which he
23 previously presided, unless the testimony is critical and
24 may be obtained by no other means.

25 Counsel for Mr. Mickell has failed to show that the

1 testimony is critical and not obtainable from another
2 source. I believe that the warrant itself is the best
3 evidence fact to be proved by the testimony of the judge,
4 and there is a presumption that the judge should not be
5 called for information that can be obtained by another
6 source.

7 This information that is being requested by the
8 subpoena could be obtained either from a records custodian
9 or the requesting officer of the warrant. I think that
10 these two grounds alone are sufficient to quash the motion,
11 and I'm gonna go with your five-minute rule and stay very
12 brief on this point, Your Honor.

13 THE COURT: First of all, Ms. Coppage, when I ruled
14 before, I had before me a request by Mr. Brown for discovery
15 in this case that dealt with the deposition of a SLED
16 officer, deposition of a sheriff's department employee, and
17 it also dealt with, I assume, this same magistrate; am I
18 correct?

19 MS. COPPAGE: That is my understanding, Your Honor.

20 THE COURT: All right. So you believe my Order of
21 April 2013 covers this situation and for that reason alone I
22 should quash the subpoena. You concede, Ms. Coppage, that
23 17-27-150 does allow, under certain circumstances, some
24 discovery in a post-conviction relief proceeding; do you
25 not?

1 MS. COPPAGE: Yes, sir, I do believe it is in the sound
2 discretion of Your Honor to allow some discovery. And I do
3 want to say that I did not rely solely on your Order; I
4 believe your Order was very specific that there was to be no
5 discovery as to the magistrate; but secondarily, if you do,
6 in your discretion, allow discovery, I do not believe the
7 magistrate should be the party that is subpoenaed because we
8 don't reach the threshold requirements of In Re: Whetstone.

9 THE COURT: And you believe the second prong of
10 Whetstone, which you believe, of course, can be obtained by
11 no other means and is not met in this case; is that correct?

12 MS. COPPAGE: Yes, Your Honor.

13 THE COURT: Thank you very much, Ms. Coppage. I
14 believe I understand your argument completely. Ms. McMahan?

15 MS. McMAHAN: Your Honor, I adopt Ms. Coppage's
16 argument.

17 THE COURT: Good job, Ms. McMahan. Succinct and to the
18 point.

19 THE COURT: Mr. Brown, your time begins now on this
20 motion.

21 MR. BROWN: Yes, sir. Briefly in response, Your Honor.
22 Your Honor pointed out that the motion that was ruled on was
23 a motion for discovery, specifically for depositions power.
24 It was actually requested in an effort to reduce the in-
25 court time for testimony and any inconvenience that would go

1 to those witnesses. Any actual Whetstone issues were not
2 presented at the hearing by me, so I can't argue that I met
3 the threshold there, because I didn't actually put up
4 argument on that issue. I didn't suggest, because there has
5 been a motion to quash the subpoena at that point, that
6 there is no ruling on, because this is not the first time
7 this judge was subpoenaed. That's my response as to the
8 prior Order motion.

9 THE COURT: Let's talk about whether or not you comply
10 -- you agree that In Re: Whetstone, and tangentially there's
11 also a real older case that I'm sure you've looked at, Mr.
12 Brown, from 1893, State v. Talbert. I'm sure you've
13 reviewed that, a good Berkeley County case. Tell me your
14 position in regards to the second argument that I hear Ms.
15 Coppage, and adopted by Ms. McMahan, made and that is that
16 you don't comply with the criteria of what's known to permit
17 this subpoena and that I should quash it, and for that
18 reason, in addition to the argument they've made on my prior
19 Order.

20 MR. BROWN: Your Honor, as to the credibility from any
21 other source, I can't initially say they were pled to the
22 Clerk as a magistrate order, all of copies -- all documents
23 related to this subpoena, which there is a provision that
24 provides how long those documents are to be kept. In
25 response, we received a notification that all those

1 documents have been destroyed.

2 And those documents that I'm seeking to authenticate is
3 a document that is not contained in either trial counsel's
4 file, which means that there is no existing copy or original
5 of those documents that I'm aware of anywhere on the face of
6 the earth.

7 THE COURT: Hold on a second, Mr. Brown, before you
8 want to tell me that it's not available. What is the
9 document and where did you find it?

10 MR. BROWN: It is a signature page providing the
11 appropriate scope of the search as allowed by the
12 magistrate. It is different from the ones that are
13 available, because it does not allow permission to search
14 the trunk of the car in which the substantial amount of
15 trafficking cocaine was found that in turn led to my
16 clients' conviction.

17 The documents that are available show a handwritten
18 modification. In other words, the only ones that are
19 available, someone has written in that there is permission
20 to search the trunks of the cars. Now, I can't concede that
21 those are originals, because I can't find those originals.
22 But Your Honor, mine has an original blue signature from the
23 judge who told me in person, to my face, with my associate
24 attorney there that that was in fact his signature; and in
25 fact, counsel for the county, the magistrate, Mr. Gruber,

1 agrees that that is the judge's signature on the one that
2 does not give sufficient authority for the search that led
3 to my client's conviction.

4 THE COURT: All right. Ms. Coppage, I need to ask you
5 now, was an effort made in regards to Judge Fitzgibbons to
6 have him do an affidavit as to authentication of the
7 signature on this document that Mr. Brown says is critical
8 to his proceeding on this application?

9 MS. COPPAGE: I know that conversations have been had
10 between Mr. Brown and Mr. Gruber as to whether or not he
11 would be willing to do an affidavit. However, because we
12 still believe that the document may be authenticated as a
13 public record, by the records custodian, or the requesting
14 officer, we have not gone so far as to do that at this time,
15 Your Honor.

16 THE COURT: Let me ask you this, under whose theory is
17 this -- do you have a copy of the document, Ms. Coppage?

18 MS. COPPAGE: No, sir, I do not.

19 THE COURT: Well, how would you know whether or not it
20 could be authenticated as a public record if you don't have
21 it?

22 MS. COPPAGE: I believe that the investigating officer
23 may be able to authenticate it, Your Honor.

24 THE COURT: It is your understanding, you've talked to
25 the investigating officer, who can authenticate the document

1 that Mr. Brown says is critical and cannot be obtained by
2 any other means; is that what you're telling me?

3 MS. COPPAGE: No, sir. I have not spoken to the
4 investigating officer.

5 THE COURT: Well, how can you tell me that, that you
6 believe this, or is this your belief by what you've been
7 told by other people?

8 MS. COPPAGE: We have no reason to believe that it's
9 not authentic, Your Honor.

10 THE COURT: Mr. Brown, do you have any witness that's
11 going to say the document is not authentic?

12 MR. BROWN: We assert it is authentic, Your Honor. Our
13 argument is ---

14 THE COURT: Hold on a second, Mr. Brown; I'm asking
15 questions. I'm not asking for argument yet. I'm
16 interrupting you. Ms. McMahan, does the State of South
17 Carolina take a position on the authenticity of this
18 document? Are you willing to stipulate to the authenticity
19 of this document? Are you willing to stipulate to the
20 authenticity?

21 MS. McMAHAN: I'm confused. I'm not sure -- are we
22 talking about the search warrant that Mr. Brown brought with
23 him to Court?

24 THE COURT: See, Ms. McMahan, I don't know either.
25 That's why I asked Mr. Brown the question. Mr. Brown, have

1 you sent this document to Ms. McMahan?

2 MR. BROWN: Your Honor, I have not. When discovery was
3 denied, I figured we could exchange documents during the
4 proceeding.

5 THE COURT: I see. Well ---

6 MR. BROWN: I think discovery would've helped. I know
7 you didn't ask that.

8 THE COURT: Well, Mr. Brown, do you have a fax machine
9 in your office?

10 MR. BROWN: I absolutely do.

11 THE COURT: Ashley, give me your fax number.

12 MS. McMAHAN: 803 ---

13 THE COURT: Write it down, Jim, because you're getting
14 ready to fax it to me and to her.

15 MR. BROWN: Yes, sir. We also have a scanner if you'd
16 like for us to e-mail it.

17 MS. COPPAGE: That would be great if you could e-mail
18 it.

19 THE COURT: You may e-mail it as well. You know my e-
20 mail address, Jim.

21 MR. BROWN: Absolutely, and my associate attorney is
22 right now getting up from her seat right now to go do that.

23 THE COURT: Ashley, do they have your e-mail address?

24 MS. McMAHAN: Yes, sir.

25 THE COURT: Now, hold on. Do you have Allyson's e-mail

1 address, Jim?

2 MR. BROWN: Yes, sir. And Mr. Gruber's -- I don't
3 think Mr. Whitsett has gotten an e-mail from us, because I
4 know he is brand new. He's like on his third day on the job
5 or something. Let me try to get that e-mail address, also.

6 THE COURT: I'm only requiring you to send it to
7 Allyson and Ashley and to me, at this point, by e-mail, so
8 we can take a look at it.

9 MR. BROWN: Yes, sir. And it's scanned as black and
10 white, but, again, mine does have a blue signature from the
11 judge.

12 And Judge, I'm sorry, you had asked where it came from?

13 It was left at the house searched in compliance with
14 the magistrate.

15 THE COURT: Ashley, would you rather have it e-mailed
16 to your computer?

17 MS. McMAHAN: Yes, sir.

18 THE COURT: All right. How about you, Allyson?

19 MS. COPPAGE: Yes, sir. I'm sitting in front of my
20 computer.

21 MR. BROWN: Your Honor, you want us to send it to
22 Wilder's e-mail or yours?

23 THE COURT: Wilder is in my office with me. I want to
24 take a look at this document, which is the subject matter of
25 this motion, which it appears Ms. McMahan nor Ms. Coppage

1 have seen at this point.

2 MR. BROWN: Yes, sir, that's true. And while that's
3 going on, Your Honor, I did speak with Mr. Gruber about an
4 offer to authenticate -- a certificate of authenticity as
5 part of the acknowledgement prong at 902-8 and they are more
6 than willing to accept that.

7 (Brief pause.)

8 MR. BROWN: Your Honor, I'm going to step away to help
9 my associate attorney with these e-mail addresses.

10 THE COURT: Absolutely, Mr. Brown. We are all waiting
11 on you to send it.

12 (Brief pause while e-mail is being sent to respective
13 parties.)

14 MR. BROWN: I'm back, Your Honor. We are trying to get
15 it sent out.

16 THE COURT: Ashley, you and Allyson let me know when
17 you've gotten it, because I want you to answer my question
18 for purposes of this hearing; Ashley, do you understand?

19 MS. McMAHAN: Yes, sir.

20 THE COURT: All right. Jim, I have it; I hope they do.

21 MR. BROWN: Yes, sir.

22 MS. McMAHAN: Your Honor, I believe the person who can
23 best authenticate this would be Chris Cankowski who is the
24 affiant on this piece of paper. He is a master sergeant
25 with Beaufort County.

1 THE COURT: Boy, you can read better than I can.
2 Ashley, you can read the signature?

3 MS. McMAHAN: Yes, sir. I just happen to know that's
4 his signature because I've been in contact with him before
5 on this case.

6 THE COURT: All right. Well, what I'm showing is a
7 signature that says "affiant," and then a signature of a
8 judge, and then a date; is that what you're looking at?

9 MS. McMAHAN: Yes, sir.

10 THE COURT: So the judge, you tell me, is the same
11 judge that is the subject matter of this motion, Judge
12 Fitzgibbons?

13 MS. McMAHAN: Yes, Your Honor.

14 THE COURT: All right. Do you agree, Ms. Coppage, that
15 the affiant is someone who Ms. McMahan has identified?

16 MS. COPPAGE: I am not as great at reading that
17 signature, but I would agree that it was affirmed by an
18 officer.

19 THE COURT: All right. And that officer is still
20 employed by Beaufort County?

21 MS. COPPAGE: He was at that time. I would have to
22 check with the status of his employment.

23 THE COURT: Ashley, you've talked with him recently?

24 MS. McMAHAN: I talked to him a couple of months ago,
25 yes, sir.

1 THE COURT: And he was still employed with Beaufort
2 County a few months ago?

3 MS. McMAHAN: As far as I'm aware, yes, sir. I have
4 communicated with him by e-mail at Beaufort County.

5 THE COURT: So you believe, then, that the officer
6 could testify as to the authenticity, who you understand to
7 still be an employee of Beaufort County?

8 MS. McMAHAN: Yes, Your Honor. Even if he is not an
9 employee of Beaufort County, if he is still located within
10 South Carolina, he can still be subpoenaed.

11 MS. COPPAGE: Ashley, I apologize for interrupting you.
12 He is still employed with Beaufort County. I just confirmed
13 that he is still employed with Beaufort County

14 THE COURT: Thank you, Allyson; that answers my
15 question. All right, Jim, I'm ready to hear back from you
16 now. It appears that you're telling me that the second
17 prong of Whetstone, that it can be obtained by no other
18 means other than subpoenaing the judge is not factually
19 correct, based on what I've just been told.

20 MR. BROWN: In response, Your Honor, I'm looking to
21 authenticate the judge's signature and not the signature of
22 the affiant or anything else, just that that is the judge's
23 signature. I don't think he could be qualified as an expert,
24 considering that I have read the entire 850-page file of the
25 prosecutor, that they gave me as their entire file; it does

1 not have this document in there. I actually don't believe
2 that Officer Cankowski can authenticate it and I think it's
3 speculation that he could, given the absence of any
4 knowledge of this, except by me, before 10 minutes ago.

5 MS. COPPAGE: Your Honor ---

6 THE COURT: All right. Hold on. Nobody is going to
7 start jumping in and talking. Mr. Brown has the floor
8 unless I ask you a question and direct it to you.

9 Now, Mr. Brown, I understand that you feel like you
10 know, just as apparently Ms. Coppage thinks, both of y'all
11 have been elected judge, and can decide what can and what
12 cannot be authenticated, but that is neither one of your
13 jobs. That happens to be the Courts.

14 Now, what I'm being told is, certainly, this officer
15 can authenticate his own signature, and what you're trying
16 to do is seek the admission, you told me, of the document,
17 and what we're here on is whether or not you have to
18 subpoena the judge. You tell me you have no witness that
19 will testify that the signature is not authentic, and all
20 you wish to do is to authenticate this document, which
21 you've sent us; is that correct or not?

22 MR. BROWN: I can't answer that with a yes or no.

23 THE COURT: Why not?

24 MR. BROWN: Because I seek to authenticate that that is
25 what the judge signed.

1 THE COURT: Anything else you want to tell me, Mr.
2 Brown?

3 MR. BROWN: No, sir. But I would like to proffer this
4 document in relation to this argument at the appropriate
5 time.

6 THE COURT: Well, I have it on my e-mail. Ms. McMahan
7 has it on her e-mail. Ms. Coppage has it on her e-mail, and
8 I'll be happy -- I'm sending it to my law clerk. I will
9 have my law clerk make a copy for the court reporter and
10 have her make it as an attachment if there is no objection
11 from anyone that is a party to this hearing; Ms. Coppage?

12 MS. COPPAGE: No, objection, Your Honor.

13 THE COURT: Ms. McMahan?

14 MS. McMAHAN: None, Your Honor.

15 THE COURT: Very well. I've just sent it to my law
16 clerk and will have him make a copy and give to Becky,
17 without objection.

18 (COURT EXHIBIT NUMBER ONE, SIGNATURE PAGE, IS RECEIVED
19 INTO EVIDENCE.)

20 THE COURT: It appears to me, Ms. McMahan, what you
21 seek to do is to subpoena this magistrate, Judge
22 Fitzgibbons, for purposes of this post-conviction relief
23 proceeding. I think everyone agrees that In Re: Whetstone
24 deals with when a judge might be compelled to testify
25 regarding a case in which he previously presided over a

1 proceeding.

2 The older case actually did involve an arrest warrant,
3 which is why I referenced Talbert to you. However, I do not
4 believe that you've convinced this Court that you cannot
5 obtain this authentication by other means. Therefore, your
6 motion, Ms. Coppage, is respectfully granted. Please, Ms.
7 Coppage, you will prepare an Order. I'm granting your
8 motion to quash the subpoena.

9 I base it on two grounds. Mr. Brown is correct when he
10 says that I did not address the merits. I was dealing with
11 a general motion for discovery in 2013, and discovery in a
12 non-capital post-conviction relief proceeding is permitted
13 to some extent under 17-27-150. However, I certainly dealt
14 with the issue concerning Judge Fitzgibbons; and Whetstone
15 deals with the issue of compelling a judge to testify. The
16 criteria are that it has to be -- the testimony has to be
17 critical and that it can be obtained by no other means.

18 I don't see that any showing has been made to me
19 sufficient to convince this Court that Judge Fitzgibbons'
20 knowledge of anything involving whether or not there was
21 effective assistance of counsel is beyond this document. I
22 have no showing that this document constitutes a forgery,
23 and because of that, I feel that Mr. Brown can obtain this
24 information by other means. I, therefore, quash the
25 subpoena.

1 I'll expect your Order to be consistent with the ruling
2 I've placed on the record. You will prepare it and copy all
3 the parties, both Ms. McMahan and Mr. Brown. You will send
4 it to me at Post Office Drawer 470, Walterboro, 29488. I'll
5 expect your Order within 7 days of today and please include
6 a self-addressed, stamped envelope with sufficient postage
7 affixed thereto for the return of the Order.

8 At Mr. Brown's request, I am making a copy of the
9 document he e-mailed into me and to you a part of the record
10 of this hearing, without objection, which the Order should
11 reflect so it's clear what I'm ruling on and what I've been
12 told are the conditions of the people on the document, that
13 is, Mr. Fitzgibbons, and the name of the officer who is
14 still employed with Beaufort County; you understand my
15 ruling, Ms. Coppage, for the purposes of preparing the
16 Order?

17 MS. COPPAGE: Yes, Your Honor, thank you.

18 THE COURT: Any questions on the proposed Order
19 procedure from the State of South Carolina?

20 MS. McMAHAN: No, Your Honor.

21 THE COURT: Any questions on the proposed Order
22 procedure from counsel for the Applicant?

23 MR. BROWN: Just want to make clear that the ---

24 THE COURT: I'm not asking for anymore argument. I'm
25 talking about a proposed Order. Do you have a question

1 about that?

2 MR. BROWN: Well, will it reflect that Officer
3 Cankowski is available for testimony?

4 THE COURT: That was not discussed. He is still
5 employed with Beaufort County, according to Ms. Coppage, and
6 the Order will reflect what was said, Mr. Brown, on the
7 record. Any questions about the proposed Order procedure,
8 other than that?

9 MR. BROWN: No, sir.

10 THE COURT: We will now move to the second motion,
11 which is SLED's motion. Hold on and let me get a copy of
12 it.

13 (Brief pause as The Court obtains documents.)

14 THE COURT: All right. Mr. Whitsett, are you still
15 there?

16 AGENT WHITSETT: I am, Your Honor.

17 THE COURT: Wonderful. I have your motion to quash the
18 subpoena in front of me. Happy to hear from you at this
19 time.

20 AGENT WHITSETT: Thank you, Your Honor. May it please
21 the Court? I can be extremely brief in my arguments. The
22 two grounds to quash this subpoena, the first is the failure
23 of the form of the subpoena itself, as I read Rule 45, and
24 it is (a)(1)(d).

25 THE COURT: Yes, sir. The little known paragraph

1 45(a)(1)(d), which states set forth the text of subdivision
2 c and d of this rule.

3 AGENT WHITSETT: That is correct, Your Honor. I
4 believe this rule requires strict adherence and the complete
5 current versions of c and d are not contained in this
6 subpoena.

7 THE COURT: All right. So you believe the subpoena
8 violates the rule because it doesn't comply with 45
9 (a)(1)(d)?

10 AGENT WHITSETT: That is correct, Your Honor

11 THE COURT: All right.

12 AGENT WHITSETT: The second ground also relates to the
13 discovery issue that it is my understanding that discovery
14 has not been authorized, or has been, in fact, prohibited,
15 and the subpoena also commands a records custodian from SLED
16 to produce certain documents at the hearing. We believe
17 that is prohibited at this time, and as such would
18 constitute an undue burden under 45(d)(1).

19 THE COURT: Now, Mr. Whitsett, let me ask you this, I'm
20 assuming SLED's involvement -- I'm actually going to ask Mr.
21 Brown, or I might could ask Ms. McMahan, although they both
22 are probably familiar with the transcript. SLED's
23 involvement here on records on chain of custody would be for
24 the testing of some contraband; is that correct?

25 AGENT WHITSETT: That is certainly my understanding,

1 Your Honor

2 THE COURT: All right. In all cases in which I've had
3 SLED canvass on what happened was -- although there is
4 certainly a record made, I want to make sure I understand
5 this request, and I can address this to Mr. Brown if you're
6 not familiar, but I want you to generally tell me your
7 knowledge. Is there any record kept by SLED, other than the
8 normal chain of custody receipt, which is normally when the
9 alleged substance is sent back to a requesting agency,
10 normally a law enforcement agency. then there is a sign-off
11 by people at SLED who have handled it and then resealed it.
12 Is there any record kept in that to your knowledge?

13 AGENT WHITSETT: To my knowledge, no, Your Honor.

14 THE COURT: All right. So you believe that on the
15 basis of 45(a)(1)(d), and on the basis of 45(c)(1), because
16 the subpoena fails to avoid imposing an undue burden -- you
17 know, it's very true, Mr. Whitsett, that the burden, or
18 expense of discovery, can outweigh any benefit and the party
19 seeking discovery has to have had opportunity to obtain the
20 information from any other source. I don't know what Mr.
21 Brown has, but he is asking, as I understand it, that a
22 subpoena for any records on chain of custody that are in the
23 possession of SLED; is that your understanding as well?

24 AGENT WHITSETT: Yes, Your Honor,

25 THE COURT: Anything else you want to tell me?

1 AGENT WHITSETT: No, Your Honor.

2 THE COURT: All right. Ms. McMahan, happy to hear from
3 you. SLED is moving to quash the subpoena that was served
4 upon their custodian on the grounds that he has alleged to
5 me. Happy to hear from you.

6 MS. McMAHAN: Your Honor, a few things. First and
7 foremost, because this was a State Grand Jury investigation,
8 the actual file is housed here in the AG's office.

9 THE COURT: It's housed in the Attorney General's
10 office?

11 MS. McMAHAN: Yes, Your Honor, because it's part of the
12 underlying State Grand Jury investigation. I actually
13 brought it to court the last time we were at court.

14 THE COURT: Did you give a copy of that to Mr. Brown,
15 at my request?

16 MS. McMAHAN: Yes, sir. He was allowed to go through
17 it. And I've given him a copy of it on CD, also.

18 THE COURT: Speak up a little bit for us. We're having
19 a hard time hearing you.

20 MS. McMAHAN: I'm sorry. I backed away from my phone.
21 The original file, the SLED investigative file, I brought to
22 court with me the last time we were in court. You
23 instructed Mr. Brown to sit back in the courtroom and go
24 through it. At the same time, I gave him a CD with stamped
25 copies of what is in that file.

1 Now, I didn't make the CD and I had nothing to do with
2 this investigation, nor did I prosecute it. That's why I
3 got this disclosure Order to allow Mr. Brown access to this
4 file. I still have the file if he wants to go through it; I
5 can bring it to Court. He is more than welcome to go through
6 it if he wants to again.

7 THE COURT: All right. So in telling me that, now, Ms.
8 McMahan, are you telling me that you believe that file
9 contains any and all custody records, or records of chain of
10 custody, that could involve anyone in the chain who is
11 employed with SLED?

12 MS. McMAHAN: I can't speak for the large quantity. I
13 would have to go through each one, but I know there were
14 several drug purchases done and there were analysis request
15 forms in some of these, and photos of the drugs that were
16 purchased. As to where the drugs are now, I don't know. I
17 would assume they would have been consumed in testing, but I
18 do have the lab reports, and I have certificates for chain
19 of custody on one.

20 THE COURT: I'm not asking you about where the drugs
21 are. I'm asking you whether it's your opinion that the
22 entire chain of custody documents are contained within the
23 file that you've already provided to Mr. Brown.

24 MS. McMAHAN: I am under the opinion that the vast
25 majority of it is probably here. I have not had the

1 opportunity to look through the file yet. I'm about a third
2 of the way through.

3 THE COURT: You know, Ms. McMahan, it's the funniest
4 thing about lawyers; you sound like Mr. Brown. You can't
5 answer a judge's question yes or no. So the answer is you
6 don't know; is that correct?

7 MS. McMAHAN: I don't know.

8 THE COURT: All right. Tell me anything else you want
9 to tell me.

10 MS. McMAHAN: Your Honor, that's it. I'll be happy to
11 bring all of it to Court tomorrow and let Mr. Brown look
12 through the file. I can pull up the ones I know were drug
13 buys.

14 THE COURT: What all was he charged with, Ashley?

15 MS. McMAHAN: Mr. Mickell was charged with conspiracy
16 to traffic greater than 400 grams, and then traffic, 200 to
17 400. He pled to 28 to 100.

18 THE COURT: So he pled to the lesser trafficking
19 offense?

20 MS. McMAHAN: Yes, sir.

21 THE COURT: And what happened to the conspiracy?

22 MS. McMAHAN: That's what he pled to. He pled to both
23 of them.

24 THE COURT: So he pled to conspiracy and trafficking 28
25 to 100?

1 MS. McMAHAN: Yes, Your Honor.

2 THE COURT: All right. Anything else you want to tell
3 me in regards to SLED's motion to quash the subpoena, on
4 behalf of the State of South Carolina?

5 MS. McMAHAN: None, Your Honor.

6 THE COURT: Mr. Brown, happy to hear from you.

7 MR. BROWN: Your Honor, very succinctly. The only
8 reason I need these documents is the drugs that they
9 attributed to him came from the car at issue in the search,
10 because we don't do paragraph by paragraph admission or
11 denials like in a true civil summons and complaint, there's
12 no opportunity to whittle these facts down, and if that's
13 not an issue, I don't need the documents, as that's all I'm
14 trying to prove.

15 THE COURT: All right. Then, let me ask Ms. McMahan a
16 question. Ashley, can the State stipulate that as to the
17 drugs, which formed the subject matter of this case, or of
18 his plea, at least, that they were located in the trunk of
19 the car that was searched? Or are you not in a position at
20 this time to answer that question?

21 MS. McMAHAN: I'm not in the position until I get to
22 that point. If you can allow me just a few minutes, I think
23 I can find that folder.

24 THE COURT: I understand and I certainly would be
25 willing to do that. How much time do you need, Ashley?

1 MS. McMAHAN: I've got the folder right here; one
2 second.

3 (Brief pause while Ms. McMahan reviews file.)

4 MS. McMAHAN: Okay. I can stipulate that inside the
5 trunk of the car, there was a powder bottle (sic), two clear
6 plastic bags, a prada bag. Inside the prada bag contained
7 additional scales, a white plastic container with Ziploc
8 bags. A clear plastic container with a quantity of white
9 powder in brick form. A clear plastic container of rock
10 substances; another clear plastic container GPM. There also
11 was a white box containing a quantity of cut pennies and
12 straws, a digital scale, a Crown Royal bag, another Crown
13 Royal bag containing a sifter, spoons, scissors, and
14 toothbrushes, and another box of clear bags. So the white
15 powder brick form was, in fact, found in the trunk. As to
16 what the weight of that was -- if you give me one second,
17 let me see if I can find the lab report. Give me one
18 second.

19 THE COURT: Well, another way to ask this questions was
20 anything else found in the way of contraband, or drugs; I
21 assume was this cocaine, crack or powder?

22 MR. BROWN: It was powder cocaine.

23 THE COURT: Powder cocaine; was any powder cocaine
24 found anywhere other than in the trunk?

25 MS. McMAHAN: Yes, Your Honor, I believe there was some

1 marijuana found inside the house.

2 THE COURT: But he didn't plead to marijuana, and
3 that's not the subject of this PCR.

4 MS. McMAHAN: Here's the chain on the clear plastic
5 container of white substance. Here's the drug analysis
6 report. My apologies, Your Honor, some of these officers
7 have pretty bad handwriting. Oh, here we go: large, white
8 brick of powder. Yes, I can stipulate that the brick powder
9 taken from the car was what was used in the underlying
10 conviction in the charge.

11 THE COURT: So you could stipulate that the contraband
12 came from the trunk of the car?

13 MS. McMAHAN: Yes, Your Honor.

14 THE COURT: Well, Mr. Brown, I assume that moots your
15 motion; is that correct?

16 MR. BROWN: I will withdraw my subpoena in light of
17 that confession.

18 THE COURT: Well, I'm sure that just warms Mr.
19 Whitsett's heart after we've spent 45 minutes in a hearing.
20 Mr. Whitsett, I'm putting on the record that the motion was
21 withdrawn from Mr. Brown. Therefore, I won't need to rule
22 on it, and I want to thank you for your kind patience while
23 we waited to get to the bottom of this.

24 AGENT WHITSETT: Thank you, Your Honor.

25 MS. COPPAGE: Judge Buckner?

1 THE COURT: Yes, who is this?

2 MS. COPPAGE: This is Allyson Coppage. In light of the
3 stipulation by the State, we have Officer Teo (sic) who is
4 also our records custodian. The stipulation would take care
5 of his subpoena also if Mr. Brown is willing to release him
6 from his subpoena.

7 THE COURT: Mr. Brown, are you willing to release him
8 from the subpoena, also, in light of the State's
9 stipulation?

10 MR. BROWN: Absolutely.

11 THE COURT: Do you hear that Ms. Coppage? My court
12 reporter has taken it down.

13 MS. COPPAGE: Thank you, Your Honor.

14 THE COURT: Ashley, I will see you and Mr. Brown on
15 your motion to dismiss in Colleton County tomorrow. Thank
16 you all for your time and patience. Have a nice day.

17 (End of telephone hearing in chambers.)

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1 THE COURT: I thank you folks from the South Carolina
2 Department of Corrections for being here. I assure you that
3 I will not waste your time.

4 This is 2011-07-01538. This is DeAngelo Christopher
5 Mickell, who is the Applicant, vs. the State of South
6 Carolina. Present before me is the Applicant, along with
7 representatives of the South Carolina Department of
8 Corrections, and his attorney, James Brown. Present for the
9 State of South Carolina is Ms. Ashley McMahan.

10 I understand that what is scheduled for today is the
11 State's motion to dismiss. Therefore, Ms. McMahan, you now
12 have the floor. I'm happy to hear from you.

13 MS. McMAHAN: Yes, Your Honor. The State filed this
14 motion back in 2013 ---

15 THE COURT: Hold on, Ashley. Bring your file and come
16 up here. Your voice, when you hold your head down -- you
17 can use my rostrum; turn it around. Gerald will do that for
18 you. That way you can put your file on the rostrum. Tap it
19 for me, Gerald, to make sure it's on.

20 (Bailiff adjusts the rostrum for the State.)

21 MS. McMAHAN: My apologies, Your Honor. I forgot that
22 I need to be very loud with you.

23 THE COURT: Lawyers like to look down. You don't
24 realize that, because you and Mr. Brown -- you both always
25 have a file and you're always constantly trying to look at

1 it or your notes. And when you look down, that's when Becky
2 looks at me, because you don't realize what you're doing is
3 speaking very softly. So we want to make sure we can hear
4 you. Go ahead.

5 MS. McMAHAN: Your Honor, I have a case that I would
6 like to hand up.

7 THE COURT: Have you given Mr. Brown a copy?

8 MS. McMAHAN: (HANDS COPY TO MR. BROWN AND THE COURT.)
9 Your Honor, what I've just handed up is the Spoone v. State
10 case; I've also included the lower court record that is
11 associated with that case.

12 THE COURT: For the record, this is 665 S.E. 2d, 605,
13 and it is Spoone v. State of South Carolina. Go ahead, Ms.
14 McMahan.

15 MS. McMAHAN: Your Honor, this case is almost analogous
16 to that one in that Mr. Mickell was allowed to plead to the
17 lesser of 28 grams to 100, trafficking and conspiracy, to
18 traffic, two separate charges. In exchange for that, in a
19 written plea agreement, he agreed to waive his right to a
20 direct appeal and to a PCR; that is attached to my amended
21 return and motion to dismiss, and that that is item number
22 eight on the plea agreement.

23 In the Spoone case ---

24 THE COURT: Well, that's actually reflected, is it not,
25 in the transcript on page 10?

1 MS. McMAHAN: Yes, Your Honor, I was about to touch
2 base on that as well. It is -- Judge Mullen does ask on
3 page 10, "Are you waiving your right? Do you understand?
4 Are you doing it freely?" He replied "yes" on all of those.
5 But in the Spoone case, if you've reviewed the appendix in
6 that ---

7 THE COURT: Now, what did you say of the plea
8 agreement? I'm sorry if I don't have a copy of that, what
9 you're referring to.

10 MS. McMAHAN: Your Honor, the plea agreement is
11 attached to my amended return and motion to dismiss.

12 THE COURT: Hold on a second. (THE COURT REVIEWS
13 DOCUMENTS.) Ah, you are correct. I now see attached to your
14 amended return and motion to dismiss, a document which is
15 six pages in length entitled "Plea Agreement"; and where in
16 this agreement are you referring?

17 MS. McMAHAN: Number eight, Your Honor.

18 THE COURT: All right. I've reviewed paragraph number
19 eight of the Plea Agreement, as well as the transcript of
20 the plea on page 10. Go ahead.

21 MS. McMAHAN: Your Honor, the reason why I handed you
22 the appendix to Spoone is I wanted you to see the
23 correlation between the two and the similarities. The
24 biggest difference here is instead of the solicitor coming
25 to enforce the plea agreement, I'm here on behalf of the

1 State Grand Jury, not just on the prosecution side, but as
2 the PCR attorney.

3 On page 9 of that appendix, you will see where the
4 judge asked if they agreed to waive all PCR Applications, et
5 cetera.

6 THE COURT: Hold on a second. All right. I'm on page
7 9. What line?

8 MS. McMAHAN: We're looking at line 17.

9 THE COURT: Page 9, line 17.

10 MS. McMAHAN: Then if you go forward to page 59, big
11 number 59; actually starting on big number 58, line 21
12 through page 59, line 13. This is where the solicitor came
13 in at the PCR hearing and asked that the PCR be dismissed
14 and that the plea agreement be enforced. That's essentially
15 why I'm here today is I'm asking that the PCR be dismissed
16 and that the plea agreement be enforced based on the waiver,
17 not only in writing, but also on the record as asked by
18 Judge Mullen. And in the Spoone case, it's almost the exact
19 same situation. It was affirmed by the Supreme Court. It
20 was held to be a valid waiver.

21 THE COURT: All right. So the reason you handed me
22 this case, as well as the appendix, and I'm referring to the
23 Spoone case, is because you believe this case dealt with the
24 same issue that's before me today involving Mr. Mickell?

25 MS. McMAHAN: As to the waiver, Your Honor; not

1 necessarily the underlying charges, yes.

2 THE COURT: All right. Anything else?

3 MS. McMAHAN: Nothing further, Your Honor.

4 THE COURT: Thank you very much. Mr. Brown, come on up
5 to my microphone and bring your file if you need it.

6 MR. BROWN: May it please the Court?

7 THE COURT: Yes, sir.

8 MR. BROWN: Almost immediately, within one week of her
9 filing the amended return -- for what it's worth, this was
10 filed in the late winter, early spring of 2011, the
11 application for post conviction was, she filed the amended
12 return two years, plus, later, and we filed a motion to
13 dismiss the amended return as not being appropriate based on
14 the issue of laches, etc. She never asserted the
15 affirmative defense of waiver in her return. And so,
16 there's never been a motion to accept her amended return
17 under Rule 15. I know things are more ---

18 THE COURT: But you never filed any written motion
19 yourself saying -- or did you?

20 MR. BROWN: Yes, I absolutely did.

21 THE COURT: Okay. And what was the nature of the
22 motion that you're referring to?

23 MR. BROWN: If I may hand that up, Your Honor. I do
24 have a copy of all of that.

25 MS. McMAHAN: Your Honor, you should have a copy of it

1 in your packet.

2 THE COURT: All right. Hold on a second, Jim. She
3 says I have a copy. In my packet?

4 MS. McMAHAN: Yes, Your Honor. It's entitled "Motion
5 to deny respondent's amended pleadings."

6 THE COURT: I have it in front of me. It's dated March
7 28th, 2013, Jim?

8 MR. BROWN: Absolutely, yes, sir.

9 THE COURT: Give me a moment to look at it.

10 (BRIEF PAUSE AS THE COURT REVIEWS DOCUMENT.)

11 THE COURT: All right. I've had the chance to look at
12 your motion, and basically, you argue that because of the --
13 and it's dated March 28th, 2013, basically you argue that
14 because she didn't raise it as an affirmative defense that
15 you believe it should be waived. It's definitely waivable;
16 and you believe it should be waived under this case; why?

17 MR. BROWN: Well, quite frankly, because the two
18 years and plus of prep for litigation was done without
19 awareness that that was gonna be their issue. And in fact,
20 you know, more so in their return they ask -- well, first
21 they make a general denial of everything and then ask at the
22 end as a catch-all that the Court convene a merits issue to
23 resolve the issue in their favor.

24 So not only did they waive it by not asserting it, they
25 did in turn ask the Court to have a hearing so they could

1 prove these allegations were true. And it's boiler plate in
2 the sense that every return I get has that language in
3 there. It's kind of like a general denial, so to speak, and
4 so, in other words, then in turn I didn't work, and Mr.
5 Mickell, etc., we've worked together, prepped this case, in
6 the manner that we were not opposing a waiver assertion, but
7 in fact, prepping for the hearing they asked for. And so we
8 think that's significant because we actually took steps in
9 reliance upon their request for a hearing.

10 THE COURT: So your argument is when they responded to
11 your initial application for PCR, they requested an
12 evidentiary hearing?

13 MR. BROWN: Absolutely.

14 THE COURT: And then two years later, they moved to
15 amend their return and dismiss this case on the basis of the
16 written plea agreement waiver, as well as the transcript,
17 and your argument today is that you feel like because waiver
18 is something -- or because this is an affirmative defense,
19 you believe it can be waived and it should be waived under
20 the circumstances in this case. Have I succinctly made your
21 argument?

22 MR. BROWN: Absolutely. The only thing that I ---

23 THE COURT: Thank you, Mr. Brown.

24 MR. BROWN: Yes, sir.

25 THE COURT: Anything else you want to tell me?

1 MR. BROWN: Beyond that, if the Court does seek to
2 allow them to assert the waiver, then we would ask for the
3 opportunity to prove that that was not a knowing waiver,
4 which is an exception. And I have to tell you, including
5 Spoone, which actually talks about the fact that as long as
6 it is a knowing, intelligent, voluntary waiver, etc., and so
7 we would ask to be able to present very brief testimony from
8 Mr. Mickell and his lawyer regarding what they talked about
9 on an issue that's important, because as an officer of the
10 Court there's going to be testimony that this issue wasn't
11 discussed. If it would have been discussed, the advice
12 would have been different in that he would not have even
13 taken the plea. And in that respect, there is going to be a
14 stipulation that the search warrant page is authentic; if I
15 may present that an appropriate time. And so that's one
16 less witness, I'm sorry.

17 THE COURT: Of course, Mr. Brown, normally, on a motion
18 to dismiss, which is usually a matter of law, and I'm
19 confined to the pleadings, we don't normally take testimony,
20 recognizing this is a civil matter, a PCR. I realize that
21 you are suggesting that somehow I might need to take
22 testimony as if there were some dispute of fact. I
23 understand the argument. I'm not sure I agree that it's
24 necessary, but that's conditioned upon how the Court might
25 rule and that might require that you file other pleadings to

1 prepare people to get ready for whatever it is that you
2 think might be necessary from an evidentiary standpoint; but
3 I understand your argument. Anything else?

4 MR. BROWN: No, sir. And I would suggest that it would
5 be very brief testimony, less than 30 minutes total. It's
6 just these two witnesses.

7 THE COURT: Thank you.

8 MR. BROWN: Thank you, Your Honor.

9 THE COURT: All right. Ms. McMahan, in reply.
10 Apparently, number one, Mr. Brown believes that you have
11 waived the affirmative defense because you didn't plead it
12 originally, and that if I'm inclined to allow you to go
13 forward on the fact that there is a waiver of his PCR
14 application, he wants to present testimony today. So I need
15 to hear you on both matters.

16 MS. McMAHAN: Your Honor, as to your first issue, I'll
17 separate that into as the State as the PCR attorney, and the
18 State as a State Grand Jury attorney.

19 As the PCR attorney, I'm certainly allowed to amend my
20 pleadings whenever I feel necessary to, and to raise my
21 affirmative defenses, which is what I did six months after I
22 filed the return.

23 THE COURT: You did it on -- if I'm correct, Ashley,
24 your amended return was May the 26th, 2013; is that correct?

25 MS. McMAHAN: I believe it was March 26th, yes, Your

1 Honor.

2 THE COURT: I'm sorry, you're right, it is. I looked
3 at it and I'm reading an "r" as "y". March 26th, 2013, and
4 your original return was ---

5 MS. McMAHAN: September of 2012.

6 THE COURT: All right. So approximately six months?

7 MS. McMAHAN: Yes, Your Honor. And keep in mind that
8 in our office, procedurally, we had some change up as the
9 way State Grand Jury PCR's were handled. Typically, it
10 stayed with the PCR section, which would have been Ms.
11 Wilson. At the time all this was kind of happening, I was
12 told by superiors that since there were people in Grand Jury
13 who had done PCR's in the past, we were now keeping them to
14 ourselves. I was told to handle this case in late 2012,
15 noticed there was no return, so I made one as soon as I
16 could.

17 When I reviewed the file and I was able to pull the
18 rest of the clerk's records with it, along with the plea
19 agreement, is when I noticed that and that's why I raised
20 that six months later. Now, as the State Grand Jury
21 attorney, I'm here to tell you that he made an agreement.
22 He was asked by the Court on the record, unless for some
23 reason he wasn't telling the truth on the record, that he
24 didn't agree to waive that, then I see no reason for
25 testimony and I ask that the plea agreement be enforced.

1 THE COURT: So you don't believe that the doctrine --
2 basically, what Mr. Brown is arguing is laches, and he
3 thinks there has been an unreasonable delay. You don't
4 believe six months is unreasonable, number one, so you don't
5 think there's been any waiver, and number two, you don't
6 think it's necessary for me to go behind the transcript and
7 the plea agreement and take testimony as to the
8 voluntariness of this waiver. And obviously, Mr. Brown,
9 it's like the last hearing I had. Lawyers want to always
10 anticipate something else and bring it up, even though
11 nobody -- the only thing you've been noticed for today --
12 Mr. Brown was noticed to be here because your return says
13 you want to dismiss it. And he's arguing against dismissal,
14 which I certainly understand, on behalf of his client, but
15 he also wants to bring up the fact that he objected to your
16 filing an amended return and he wants to use waiver as a
17 reason. And he thinks that you can't use the defense, and
18 I, of course, it's a little confusing, call it waiver, but
19 he's saying you're asserting waiver because the Applicant
20 waived the PCR allegedly by plea agreement and in the
21 transcript.

22 Now, as to the second prong of his argument, which is,
23 "Oh, Judge, I've got a motion now if you're inclined to
24 grant her motion. My motion is I want you to take testimony
25 today and we have a substantive hearing as to whether or not

1 there was a knowing and intelligent and voluntary waiver."
2 What's your position on that?

3 MS. McMAHAN: Your Honor, again, as you've stated, this
4 is a matter of law. It can be read from the pleadings,
5 unless, of course, for some reason Mr. Mickell was not
6 telling the truth on that transcript, then I see no reason
7 for any type of testimony.

8 THE COURT: Now, when Mr. Mickell pled in this
9 transcript, Mr. Dore was his attorney; is that right?

10 MS. McMAHAN: Yes, Your Honor.

11 THE COURT: All right. And Mr. Dore was present when
12 Mr. Mickell pled?

13 MS. McMAHAN: Yes, Your Honor.

14 THE COURT: And it was in front of Judge Mullen; is
15 that right?

16 MS. McMAHAN: That's correct. It was a bifurcated plea
17 and then a sentence a few months later in April. So he pled
18 in January and he was sentenced later in April.

19 THE COURT: Oh, bifurcated between the time of taking
20 of the plea and the time of sentencing?

21 MS. McMAHAN: Yes, Your Honor.

22 THE COURT: Were there any codefendants?

23 MS. McMAHAN: Yes, Your Honor. His mother was a
24 codefendant, as well as another individual.

25 THE COURT: Now, the transcript reflects on an issue

1 that Mr. Brown wants this Court to weigh into today, he was
2 asked under oath whether anybody promised him anything,
3 whether anybody threatened him in any manner, whether he was
4 pressured into pleading guilty, and he responded "No"; is
5 that correct?

6 MS. McMAHAN: That's correct, Your Honor. He also
7 admitted that he was guilty and that he was pleading freely
8 and voluntarily.

9 THE COURT: So your position, then, is number one, if I
10 allow your amended return and grant your motion to dismiss,
11 you believe the record is satisfactory without taking
12 testimony at this time on the issue of whether or not a
13 waiver existed as to PCR?

14 MS. McMAHAN: Yes, Your Honor.

15 THE COURT: Even though Mr. Brown suggests that he
16 thinks that from testimony that he could create an issue of
17 fact as to whether or not this was a voluntary and an
18 intelligent waiver. Have you ever been on notice by Mr.
19 Brown of such a position before he argued it to me today?
20 Other than his motion, which y'all handed me, to deny your
21 amended pleadings?

22 MS. McMAHAN: Other than that motion, no, Your Honor.

23 THE COURT: Well, counsel, I love lawyers that try to
24 anticipate everything. Mr. Brown, I believe you're a little
25 bit premature, even though you think it's necessary for me

1 to go behind. I believe, number one, the first issue for me
2 today is on the State's motion to dismiss. That motion is
3 based on the fact that there is a written plea agreement,
4 which is a part of the file and that the plea Court
5 questioned the applicant regarding his waiver of his right;
6 not only to his right to file a PCR, but his right to file a
7 direct appeal. And he indicated on the record on page 10 of
8 the transcript that he was waiving his right to file an
9 appeal and a PCR and that he was doing so willingly and
10 freely. That's at lines 9 through 17 on page 10 of the
11 transcript from January 25th, 2010. There is also a written
12 plea agreement, which at paragraph number eight indicates
13 identically that.

14 Now, Mr. Brown argues that because there was a time
15 period from September until March that this Court should
16 find that in your amended pleading, Ms. McMahan, where you
17 attempt to assert this waiver that occurred on the record
18 and in writing, that because the time had gone by and in
19 your proposed amended pleadings, that waiver should have
20 been pled originally as an affirmative defense. And while I
21 agree with Mr. Brown that affirmative defenses can be
22 waived, no question about that, I don't believe there has
23 been any showing to me that the time alone was sufficient
24 for me to say that the equitable doctrine of laches,
25 unreasonable delay should be applied here in this situation.

1 We're talking about from September of 2012 until March of
2 2013. I think the record adequately addresses the issue.

3 Now, Mr. Brown, there very well be may be an issue that
4 needs to be noticed concerning this transcript, but nobody
5 is here today prepared for that. That's just like lawyers
6 trying to put the cart before the horse, and while I
7 appreciate that sometimes, it's not fair to either side,
8 because I'm not going to let them do that to you, when you
9 haven't had the chance to prepare for that. Just like you
10 want me to go ahead and have a mini-trial today because of
11 her motion.

12 I well understand your opposition. I grant the State's
13 motion to dismiss. I deny Mr. Brown's motion to deny the
14 respondent's amended pleading. I do not believe there is
15 sufficient time to constitute waiver under the facts of this
16 case and I believe the transcript and the plea agreement
17 adequately show an indication, under oath, by the Applicant
18 to waive any application for post-conviction relief in
19 connection with this hearing.

20 Ms. McMahan, I'll expect you to prepare an Order
21 consistent with my ruling. I'll expect you to forward that
22 Order to me at P.O. Drawer 470, Walterboro, South Carolina,
23 29488. I'll expect you to copy Mr. Brown on that
24 transmittal to the Court. I'll expect you to include a
25 self-addressed, stamped envelope with sufficient postage

1 affixed thereto for the return of that Order.

2 I do not reach the issue today of the voluntariness of
3 the waiver because I think the transcript speaks for itself.
4 That does not mean, however, that that issue cannot be
5 raised if appropriate and if timely in the future. I make
6 no comment about that for purposes of today's hearing.

7 Ms. McMahan, do you understand my ruling?

8 MS. McMAHAN: Absolutely, Your Honor.

9 THE COURT: Very well. Mr. Brown, do you -- I'm not
10 giving you an opportunity to reargue it, Mr. Brown, because
11 I've ruled. And one of the things I'm going to tell you,
12 because I teach this in judge's school. Mr. Brown, I know
13 you and Mr. Dore know this. Both of you -- even though this
14 is a civil proceeding, both of you are familiar with the
15 rules of criminal procedure, are you not?

16 MR. BROWN: Yes, Your Honor.

17 THE COURT: Mr. Dore?

18 MR. DORE: Yes, Your Honor.

19 THE COURT: All right. And I don't know why this was
20 omitted from the Rules of Civil Procedure. I ask that
21 question every year and nobody has ever been able to give me
22 an answer, Mr. Brown. But turn to the Rules of Criminal
23 Procedure and I want you to take a look at Rule 18(a):
24 "Counsel shall not attempt to further argue any matter after
25 it has been heard and the ruling of the Court has been

1 pronounced." Although that is in the Rules of Criminal
2 Procedure, it should apply to civil court as well, and that
3 is the reason I call that to your attention. There are
4 interesting rules there and people forget about them.

5 Now, Mr. Brown, having gone over that, and I want to
6 make sure Barnwell learns that, because there are lawyers
7 that always want to say after a judge rules, "But," there is
8 no but; time for appeal.

9 Now, Mr. Brown, do you understand my proposed Order
10 procedure that I've directed Ms. McMahan to do?

11 MR. BROWN: Absolutely, Your Honor.

12 THE COURT: Any questions about that proposed Order
13 procedure?

14 MR. BROWN: No, sir. I have the document to proffer
15 that we stipulated to that is not in the record yet.

16 THE COURT: And that would be -- we already made that a
17 part of the record yesterday.

18 MR. BROWN: I need the original to be proffered not
19 that it has been authenticated.

20 THE COURT: Any objection to that?

21 MS. McMAHAN: No objection, Your Honor.

22 THE COURT: You want to make it a part of yesterday's
23 record, because that's when we did it without objection.
24 All right. Becky has the copy that my law clerk gave to her
25 after the hearing, but I'll allow you. Show it to Ms.

1 McMahan. Ms. McMahan, do you have any objection? We will
2 give it to Becky and it will be a part of the record she
3 prepares from yesterday's hearing.

4 MS. McMAHAN: I've already seen it, Your Honor, and
5 agree to it.

6 THE COURT: All right. Hand it to my court reporter.
7 Becky, please mark that. But that's part of what we marked
8 yesterday, without objection, and it's without objection by
9 Ms. McMahan today and she has reviewed the document.

10 I want to thank y'all for our patience and your time.
11 Ms. McMahan, I'll look forward to receiving your Order. Mr.
12 Brown, thank you for your patience and your time. As well
13 as yours, Mr. Mickell. Everyone have a nice day.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON) CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department 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 in the hearings of the captioned case, in the Court of Common Pleas, non-jury, for Colleton County, South Carolina, on the 7th and 8th day of May 2014.

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

November 20, 2018

Rebecca H. Hill

Rebecca H. Hill,
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP0701538

Deangelo Mickell

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/Perry M. Buckner
Circuit Court Judge

2122
Judge Code

05/14/2014
Date

For Clerk of Court Office Use Only

This judgment was entered on the **21st day of May, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on the **22nd day of May, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

James Arthur Brown Jr. PO Box 592 Beaufort, SC 29901

ATTORNEY(S) FOR THE PLAINTIFF(S)

Ashleigh Rayanna Wilson PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Lynn Geren - Staff

Court Reporter

Jerri Ann Roseneau - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

See attached Order

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

DeAngelo Christopher Mickell, #340668,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

THE COURT OF COMMON PLEAS
FOR THE 14th JUDICIAL CIRCUIT
Case No: 2011-CP-07-01538

**ORDER OF DISMISSAL
WITH PREJUDICE**

CLERK OF COURT
COLLETON COUNTY, S.C.
MAY 21 PM 2:35

#1
PMB
This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 31, 2011. The Respondent filed an Amended Return and Motion to Dismiss on or about March 26, 2013. The Applicant filed a Motion to Deny Respondent's Amended Pleading on or about March 28, 2014. A hearing was convened at the Colleton County Courthouse on May 7, 2014. The Applicant was present and represented by James A. Brown, Jr., Esquire. Assistant Attorney General Ashley A. McMahan was present on behalf of the State.

Respondent's Motion to Dismiss

At the hearing the Respondent requested that the plea agreement be enforced and moved to dismiss the PCR application based upon this plea agreement signed by the Applicant on January 25, 2010. (See subsection 8 of the plea agreement.) Respondent noted that the waiver is also reflected in the plea transcript. The plea court questioned the Applicant regarding his waiver of his right to appeal and to file a PCR. Applicant indicated that he was waiving his right to file an appeal and PCR willingly and freely. See transcript from January 25, 2010, page

10, lines 9-17.

This Court agrees and grants Respondent's Motion to Dismiss. The Applicant's waiver of his right to file a direct appeal and PCR have been established by the record as voluntary and knowing through a colloquy between the court and Applicant at the guilty plea as well as through the plea agreement. Therefore, since the waiver of his right to file a PCR was knowingly, willingly, and voluntarily made, the PCR application is dismissed pursuant to Spoone v. State, 379 SC 138, 665 SE2d 605 (2008).

Motion to Deny Respondent's Amended Pleading

#2
P.B.
Applicant argued through his motion that the Respondent's pleading addressing the plea agreement should not be allowed based on waiver because of the six month time period between filing the Return and the Amended Return and Motion to Dismiss. This Court does not believe the time between the two pleadings is sufficient enough to trigger laches.

Applicant also argues that his plea agreement and the plea itself were not voluntary. This Court declines to reach the voluntariness issue raised because the transcript speaks for itself. Therefore, the Court denies the Applicant's Motion to Deny Respondent's Amended Pleading.

CONCLUSION

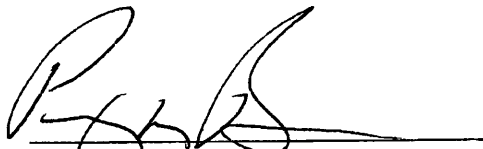
Based on all the foregoing, this Court finds and concludes that the Respondent's motion to dismiss the PCR application is well taken. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions 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), SCRCR, 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 Respondent's Motion to Dismiss is hereby **GRANTED** and the post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**;
2. The Applicant's Motion to Deny Respondent's Amended Pleading is **DENIED**; and
3. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



Perry M. Buckner
Presiding 14th Circuit Court Judge

5/14

, 2014

Walterboro

, South Carolina

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF BEAUFORT)

COURT OF COMMON PLEAS NONJURY

3
4 DeANGELO MICKELL,)

5 APPLICANT,)

6 vs.)

7 STATE OF SOUTH CAROLINA,)

8 DEFENDANT.)

TRANSCRIPT

OF

RECORD

2011-CP-07-1538

9
10 October 19th, 2016
11 Beaufort, South Carolina
12

13 B E F O R E:

14 THE HONORABLE MICHAEL G. NETTLES, Judge.
15

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

17 JIM BROWN

ESQ.

Attorney for the Applicant

19 CLAY MITCHELL

ASSISTANT ATTORNEY GENERAL

Attorney for the Defendant

21 WANDA ROWE

22 Circuit Court Reporter
23

24 Transcribed by Pamela E. Green, Circuit Court Reporter
25

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P R O C E E D I N G S

(WHEREUPON, Applicant's Exhibit Nos. 1 through 6 were marked for identification purposes only at this time.)

THE COURT: Before we proceed, I need to put on the record the fact that, that I rent a, a piece of real estate from Mr. Brown's parents. Mr. Brown's parents are from my hometown. I do not know them. They are significantly older than I, 15, 16 years older than I, and I don't know Jim Brown. He never lived in Lake City. I think they grew up in Sumter. I -- but by virtue of the fact that I rent from their parents, I think that I need to -- rent from his parents, I need to place that on the record.

I've never had a social relationship with Jim Brown. He's never been to my house. I've never shared dinner with him. I've never done any social things with him. I've only known him within the confines of this -- within the confines of the courthouse.

The rules say that, if there's a conflict, if I evaluate it to, to such an extent that I feel like there would be a conflict, then I need to recuse myself. But if that -- and I don't think that, by virtue of the fact I rent from his parents, it would preclude me from hearing the case. And I don't think that it would create the appearance of impropriety for me to do that. However, out of an

1 abundance of precaution, I will put that on the record.

2 I explained that to Mr. Mitchell, counsel for the
3 State, and I asked that he discuss it with the arresting
4 officers, the Solicitor's Office, or anybody else who might
5 be involved in it, and see if they have an objection to my
6 hearing the case.

7 Mr. Mitchell.

8 MR. MITCHELL: And, Judge, just like you said, you let
9 us know this earlier, and we've talked about it. I've
10 spoken with law enforcement.

11 THE COURT: And you've done so outside of my presence?

12 MR. MITCHELL: Yes, sir, outside of your presence.
13 Spoke with law enforcement, and we, we see no problem with
14 you hearing this case.

15 THE COURT: Very good.

16 Mr. Brown, do you -- obviously, do -- you have no
17 objection to my hearing the case?

18 MR. BROWN: No objection, Your Honor.

19 THE COURT: Very good.

20 All right. We'll proceed forward.

21 All right. I'll be glad to hear from you, Mr. Mickell
22 mike.

23 MR. BROWN: May it please the Court, Your Honor.

24 I represent Mr. DeAngelo Mickell, and this is a PCR.
25 It's a PCR from a guilty plea in a State Grand Jury matter.

1 Mr. Mickell pled to a conspiracy as well as a
2 substantive trafficking. The sentence he ended up getting
3 was 18 years. They did reduce the level. He originally had
4 been facing a mandatory 25 on the substantive part of it.

5 And, and it's, essentially, and I'm gonna say that --
6 I'm gonna do this as an opening, but I think they're gonna
7 agree to some of this.

8 Essentially, the evidence against Mr. Mickell is a
9 search was at his mother's house where drugs were found in
10 the trunk of a Dodge Intrepid that was parked across from
11 the residence, on the same piece of property, but not right
12 up against it. And, and I mention that because there had
13 been some other buys that were conducted.

14 This was an investigation. SLED came down. In fact,
15 it's a little unusual. SLED actually acted as the -- as
16 undercover for some of this stuff. They also employed an
17 informant who was the third defendant on this indictment.

18 But long story short, Mr. Mickell was never implicated
19 in any of those sales. Now, his name did come up I think
20 maybe one time as having been at the house at the time that
21 the informant bought drugs from his mother.

22 So, long story short, he's at the house on
23 September 17th, 2008, when they execute a search warrant
24 or are involved in a search. There is a search warrant
25 they've got. They find the drugs in the Intrepid at that

1 point in time, and that's what he essentially is charged
2 with. He's charged with this conspiracy because, obviously,
3 he doesn't have to know all the actions to be part of that
4 conspiracy.

5 He did plead guilty. We're not contesting that part of
6 the case. There is a plea agreement that contained a waiver
7 of his PCR rights. That actually was subject of a motion
8 that was granted by the judge that previously heard it. It
9 went to the Supreme Court, and they sent it back, and,
10 essentially, the idea is that, if the plea is challenged and
11 is found to be invalid, then the plea waiver would also be.

12 And we filed an, an original application that just put
13 in there deficient investigation. We amended that
14 application back in August of 2013, August 19th, 2013, to
15 add a few more claims. One of which is a Brady claim. We
16 are -- we have withdrawn that. Since that time, we've been
17 provided some information that was not previously provided,
18 but we don't believe it was -- fit the Brady category as
19 being material and exculpatory.

20 And in that -- that claim, you'll see, essentially at
21 Ground C, we're not asserting that anymore, but we are
22 asserting the challenges in, in the primary challenge claim
23 of Ground D, which says that he wasn't provided sufficient
24 information to enter a knowing and intelligent plea,
25 including a waiver of his rights in this case, to challenge

1 the search which led to the drugs which was the basis for
2 his guilt or factual basis for his guilt.

3 And so we believe that, while they -- or I assume he's
4 still gonna assert his PCR waiver. It's our argument that,
5 should we win on Ground D, we -- the way -- the plea's no
6 good. So, the waiver's no good. And we believe the
7 evidence -- that we would challenge their motion regarding
8 the plea waiver would be the same evidence we put up for the
9 merits of the case. So, we think it's efficient to just
10 present it that way, Your Honor, should that be the way Your
11 Honor wants to proceed.

12 The Grounds B -- the Ground B essentially says that the
13 lawyer should of done a better job of challenging the search
14 warrant or the search, and that's the basis of what we're
15 saying led to the involuntary nature of the plea.

16 We, we -- I am gonna, in this little opening, kind of
17 anticipate a couple of things. There's also a consent to
18 search that same Intrepid that was signed by his mother. We
19 do concede, to, to make this hearing efficient, that she is
20 the registered owner of the car. We would suggest that Mr.
21 Mickell has standing. You're gonna hear from him and his
22 mother about his use of that vehicle, and use of the
23 vehicle's to store the drugs was explicitly asserted at his
24 plea by the Attorney General's Office as part of the factual
25 basis for his conviction. That they decided not to store

1 the drugs in, in the trailer at that house or at that
2 location because they were afraid it'd get robbed. So they
3 were storing it in the cars.

4 And, for what it's worth, storing stuff in your car
5 still creates some expectation of privacy. You go shopping.
6 You go to the first store, buy some items. You go out to
7 the car, and put them in the trunk, drive somewhere else
8 cause, you know, you don't want somebody to break into your
9 car and take, take your Christmas goods out or something
10 like that. So, we do put items in the car.

11 It's his mother's car. He does not live at that house.
12 It is registered in her name, but I would suggest that the
13 title alone is not dispositive. Quite frankly, I think
14 every car at my house is titled in my name because I went to
15 buy it. I signed the documents. My wife may have a marital
16 interest in it. My children don't. They're adult. They
17 drive these cars, or at least two of them are adults, and I
18 would assert that they have a privacy interest in that car
19 even though the title is in my name because they regularly
20 drive those cars.

21 And I think it's the same way with real estate as well.
22 You don't actually have to be the owner or tenant of a house
23 to have an expectation of privacy. You might have to have
24 more than a commercial interest. Some of the cases talk
25 about the delivery man for the pizza place might not have an

1 interest in your home, but that somebody else can through
2 use.

3 And so we believe that those three things will
4 establish his standing regarding his privacy interest in the
5 car or reasonable expectation of privacy. Again, the
6 factual basis asserted at his plea, as well as the, the
7 testimony we believe you'll hear on that.

8 As to the search warrant, the simplest challenge we
9 have is that, on the face of the warrant, the body, the
10 cause for searching the house or the cause asserted to get
11 the warrant does not reference cars at all. No automobiles
12 are referenced in it. There's no information contained in
13 that affidavit that says we saw activity regarding the cars,
14 et cetera. And so we believe that it's deficient on its
15 face.

16 I do have a case I plan to hand up at the appropriate
17 time. I don't want to get too bogged down in it. I will
18 tell you I can find no law in South Carolina. I will be
19 candid. There is conflicting law across the country about
20 whether or not a search warrant for a house allows a search
21 of the cars that are out in the yard.

22 I have a Texas case that says that that's not enough,
23 and it also kind of dovetails into a particular area
24 requirement as well because, in this case, we don't believe
25 that there's probable cause to search the car. But, in that

1 case, they go a step further and actually say that -- they
2 never talk about the car to be searched. And, in this case,
3 that's also true because it's a little interesting. The
4 page---

5 THE COURT: Which states say that you can search a car
6 if you have a search warrant for the house?

7 MR. BROWN: Well, because it doesn't authorize that
8 search.

9 THE COURT: I say which states.

10 MR. BROWN: Well, I will tell you there's reference in
11 North Carolina to a case very recently as well as our, and
12 I'll be candid, a Fourth Circuit case, which I did not read
13 the Fourth Circuit case.

14 THE COURT: You didn't like the outcome of it?

15 MR. BROWN: I didn't read it when it was referenced in
16 a, a bad case for me, but I will tell you the cases even
17 talk about a wide divergence including a divergence within
18 the U.S. Court of Appeals. So, it's not like it's just some
19 liberal states like Texas that are saying that it's bad.

20 There's some Federal Courts, you know, with very vetted
21 judges, that have, have also said the same thing. Some of
22 the cases discuss whether or not the car is close enough to
23 the house to be within the curtilage.

24 So, it's considered curtilage of the house or not,
25 which is -- that's an interesting argument. I don't -- but

1 they do also talk about whether the car arrived after the
2 search, and that's not the case here. That Texas case also
3 mentions that, but it, it goes through a three part analysis
4 and says, even if we're wrong about this other stuff, that
5 also this car drove up. That's not the case here. But they
6 also hold that the search warrant for the house does not
7 cover the car, and it's not particularly referenced in the
8 places to be searched.

9 So, it's -- there's no law in South Carolina on that.
10 We do assert it, just like the Texas case, under our State
11 Constitution as well because we believe there's a little
12 difference. We have an explicit expectation of privacy or a
13 privacy interest in our, our Article 1 Section 10 or
14 something like that, I use to know it, but, under our State
15 Constitution, we have explicit right to privacy that is not
16 contained in the U.S. Constitution. So, we would assert
17 that as well.

18 But, Your Honor, in this case, the description of the
19 premises to be searched, we have at least three versions of
20 that, and that will develop as something that the trial
21 lawyer did not, and we assert, respectfully, to, to, to Mr.
22 Dore, that he didn't consider that whether he had seen it or
23 not or the reason he didn't consider it we're not exactly
24 clear, but there is a search warrant that only says the
25 home.

1 And so I think, at some point in time before I get too
2 bogged down, we're gonna have three versions of that as well
3 as a consent. Fortunately, all of the times that this took
4 place are not laid out.

5 And so that's the essence of our argument. We believe
6 that he did have an expectation of privacy, that the search
7 warrant did not lawfully convey the authority to go into the
8 trunk of that car, and that the consent is not a valid
9 consent. And that's why we did bring his mother here as
10 well cause she's the one that signed that. Mr. Mickell did
11 not sign the consent.

12 We do plan to put up his mother, and, and the
13 Petitioner or Applicant as well as Mr. Dore. We know that
14 the affiant on the search warrant is also here in the
15 courtroom. We don't believe there's any authentication
16 issue regarding the search warrant pages.

17 That's been -- this is not the first Attorney General.
18 Mr. Mitchell's not the first one on this case, but we've
19 been through that issue, and at a previous hearing with
20 Judge Buckner when they granted the motion. At that point
21 in time, they did agree to the authentication of the
22 signature contained on, and, and the best way I can -- could
23 say it, it's contained on the original search warrant page
24 that I made a color copy of, and I'm gonna hand up
25 Applicant's 2, is a transcript of that hearing with that

1 attached, and, for what it's worth, Your Honor, the original
2 signature page, according to the court reporter, is in the
3 Clerk's vault, and it is not only designated as the Exhibit
4 1 from that hearing, but she also said she clocked it in to
5 make sure there was no question about it, and kept a clocked
6 copy. The court reporter did.

7 So, that original is in this building. We located it
8 two days ago. It's in the vault here if Your Honor would
9 like to see it, but, at the very back of, of Applicant's 2,
10 we have a color copy of that, which does not have that
11 information written in, and it is our understanding that
12 this -- that that page is the only original blue inked
13 signature search warrant page left on the face of the earth.
14 We have tried to locate other ones, and been unable to, to
15 locate that.

16 And, Your Honor, that's our case in a nutshell.
17 Essentially, we think it boils down -- I know there's some
18 preliminary issues, but we think it, essentially, boils,
19 boils down to whether the search was any good or not. If
20 the search was no good, Mr. Dore should of challenged --
21 should of told Mr. Mickell that he didn't think it was any
22 good, not to plead guilty, and then brought a challenge,
23 Your Honor.

24 THE COURT: All right. Is this the last matter that we
25 have for the day?

1 MR. MITCHELL: Yes, sir.

2 THE COURT: All right. Mr. Mitchell, I'm gonna allow
3 you to address, in sort of summary fashion, the issues that
4 you see that we need to address, and we're gonna break for
5 lunch and be back at two o'clock. But I'm gonna give you an
6 opportunity to sort of summarize your position.

7 MR. MITCHELL: Okay. May it please the Court.

8 And I agree with most of what Mr. Brown said. The only
9 thing I do kind of have an issue with is, when the Supreme
10 Court remanded the case, it said, specifically, to hold a
11 hearing on whether the -- whether PCR was waived knowingly
12 and voluntarily by Mr. Mickell. So, that's kind of the
13 threshold question we have, whether he was advised of what
14 PCR was.

15 He, he waived PCR and his appeal in his plea agreement.
16 This is a written plea agreement made part of the record
17 before you. And I note that he, he was indicted with an 18
18 count indictment with two other codefendants. So, as part
19 of the plea agreement, he agreed to waive PCR and direct
20 appeal.

21 So, the issue, I think, threshold issue here, is
22 whether that was knowingly and voluntarily made, whether he
23 understood what he was waiving. I think, if you get past
24 that, then you go to Step B, and Step B would be he pled
25 guilty. So, he waived any challenges to the evidence by

1 pleading guilty. I think the case law's pretty clear on
2 that.

3 You know, I, I try to hammer that here just as---

4 THE COURT: It's a legitimate challenge. If he gives
5 it up, then the plea is still valid if he understood what he
6 was giving up.

7 MR. MITCHELL: Right. Right.

8 But, you know, and I think the case law's a little
9 murky on that because I think if -- even if you didn't know
10 about it, I think you admit your guilt. So, the challenge
11 is to the evidence coming in. You say, you know, you swear
12 the judge that you committed the crime even if you could of,
13 theoretically, challenged certain pieces of evidence coming
14 in.

15 So, I think he, he may be blocked there. So, that's
16 kind of threshold too.

17 And getting down to the merits, you know, start with
18 the warrant. You know, there's different versions of the
19 warrants. We'll have the officer testify to that. I think
20 we'll have Mr. Dore testify to that as well, but maybe, most
21 importantly, the Dodge Intrepid was owned by Mr. Mickell's
22 mother. It was on her property.

23 I don't think -- I'm not -- I think there's a question
24 of standing. I don't think he would of had standing to
25 challenge that search warrant at that phase.

1 So, if we take this back and say Mr. Dore had all this
2 information back at trial level, he files a pretrial motion
3 to suppress this evidence, he presents this evidence, I
4 still think the motion would of been denied. The drugs
5 would of come in.

6 So -- and that's where we are on the merits of that.
7 There's some other things that we'll flesh out through the
8 case, but that's the quick and dirty issues.

9 THE COURT: All right. Well, we're gonna recess until
10 one o'clock.

11 MR. BROWN: And may I just ask about one procedural
12 thing?

13 Just so we're clear, we would like to put up, if, if
14 we're gonna do the threshold waiver of PCR, frankly, we're
15 gonna put up the -- every single same bit of evidence
16 because the challenge is to the voluntariness are
17 intelligent nature of that waiver. And it's the same
18 waiver. I mean it's the waiver of rights according to the
19 plea agreement and other law. And so---

20 THE COURT: We're gonna do it all.

21 MR. BROWN: Thank you.

22 THE COURT: Okay.

23 MR. BROWN: And I just was trying to see if we're gonna
24 have two hearings or one.

25 THE COURT: All right. We'll, we'll reconvene at one

1 o'clock.

2 MR. BROWN: Thank you, Your Honor.

3 (WHEREUPON, Court was in recess for the lunch hour.)

4 THE COURT: Mr. Brown, you're recognized.

5 MR. BROWN: Thank -- thank you, Your Honor.

6 And, actually, to facilitate the Department of
7 Corrections folks, I'm gonna -- I think I'm gonna put or
8 call Ms. Ophelia Mickell to the stand.

9 THE COURT: Ms. Mickell, please come forward. I'm
10 gonna ask, if you could, to place your left-hand on the
11 Bible, and raise your right-hand so the clerk administers
12 the oath.

13 OPHELIA MICKELL, being first duly
14 sworn, testified as follows:

15 THE COURT: I'll ask you to come around and have a seat
16 in the witness chair. I'm gonna ask that you pull up real
17 close to that microphone, and speak loudly, clearly, and
18 slowly in order that we can hear everything that you have to
19 say. Let's start with your full name, and spell your last.

20 THE WITNESS: Ophelia Mickell. M-I-C-K-E-L-L.

21 MR. BROWN: May it please the Court?

22 THE COURT: Yes.

23 DIRECT EXAMINATION

24 BY MR. BROWN:

25 Q Ms. Mickell, do you recall this case with your son---

Ophelia Mickell - Direct examination
by Mr. Brown

- 1 A Yes.
- 2 Q ---DeAngelo?
- 3 A I do.
- 4 Q Okay. And do you recall a Dodge Intrepid car?
- 5 A I do.
- 6 Q Okay. And you lived at 12 Christopher Lane?
- 7 A Christopher Drive.
- 8 Q Christopher Drive. I apologize.
- 9 On Hilton Head Island?
- 10 A Yes.
- 11 Q Okay. And do you remember being stopped by law
- 12 enforcement?
- 13 A Yes, I do.
- 14 Q And you were stopped in a truck after you -- you were
- 15 not on that premises at the time?
- 16 A I was not.
- 17 Q Is that right?
- 18 A No.
- 19 Q Okay. And do you remember being taken back to your
- 20 house?
- 21 A After about an hour or so being hassled on the side of
- 22 the road, yes.
- 23 Q Okay. And, and let me ask you.
- 24 was it about 9:10 when you got pulled over?
- 25 A It was---

1 Q Do you remember that?

2 A ---about that time.

3 Q Okay. And if I told you you got back to the house
4 about 10:50, does that sound about right?

5 A It could be. It seemed longer to me, but --.

6 Q Okay. And, when you got there, what was going on in
7 the house?

8 Do you remember?

9 A Well, when I got there, they were in my room. They
10 were tearing the place apart.

11 Q And where was DeAngelo at that time?

12 A He was in the house sitting in the living room.

13 Q Okay.

14 A They had him handcuffed.

15 Q Okay. All right. And did they ask you about
16 consenting to a search of the house?

17 Do you remember that?

18 A They asked me on the side of the highway.

19 Q Okay.

20 A And I refused at first.

21 Q Okay. And tell, tell me a little bit about that
22 request to consent to the search of the home.

23 A He said -- they came -- he came over to the truck, and
24 he said we need you to sign this, and I said what it is.
25 And he told me that it was a search warrant. And then I

Ophelia Mickell - Direct examination
by Mr. Brown

1 said I'm not signing it. And he said well, it don't matter
2 if you sign it because they're at your house searching it as
3 we speak.

4 Q And, and then did you sign that---

5 A If that's---

6 Q ---consent?

7 A That's when I -- that's why it looks like it looks.

8 Q Okay. All right. And did -- if I may approach, Your
9 Honor?

10 THE COURT: Yes.

11 Q And I'm gonna show you what's been marked as
12 Applicant's Exhibit 6, I'm sorry, and if you could take a
13 look at that?

14 A (Witness complies.)

15 Q And let me know when you've had a chance to look over
16 it.

17 A Okay.

18 Q Okay. And do you see where that says that it's a
19 consent to search?

20 Do you see that at the top of that form?

21 A Uh-huh. (Affirmative).

22 Q And do you see the handwritten part in there where it
23 says there was a Dodge Intrepid?

24 A No. When I signed a paper like this, it was nothing on
25 the bottom of this---

1 Q Tell, tell me what you mean.

2 A ---when I signed this.

3 Q Tell -- explain that a little more please.

4 A The only thing is on this paper was whatever that says.

5 I don't have my glasses. And this -- and it was nothing

6 about no car, and my daughter will testify to that, this car

7 thing. It was just a blank, like I said, with this stuff on

8 the top. Nothing about a car. And I signed it.

9 Q And, and let me ask you this.

10 where were you when you signed that document?

11 A This document, I signed -- it was at the, the house.

12 Q You were at the house---

13 A Was at the house.

14 Q ---at that time?

15 Okay. So, you did not sign the Applicant's 6 when you

16 were still outside the house?

17 A I signed one, and that was the house.

18 Q Okay. All right.

19 And, Your Honor, I don't know if there's gonna be an

20 objection cause they actually had pointed this out to me. I

21 would move to introduce Applicant's 6.

22 THE COURT: Any, any objection to the introduction of
23 this document?

24 MR. MITCHELL: No objection.

25 THE COURT: Applicant's 6, 6 is into evidence without

Ophelia Mickell - Direct examination
by Mr. Brown

1 objection from the State.

2 (WHEREUPON, Applicant's Exhibit No. 6 was received into
3 evidence at this time.)

4 Q Now, let me ask you a little bit about the Dodge
5 Intrepid.

6 Your son, DeAngelo, did he ever drive that car?

7 A Yes, he's driven it.

8 Q Okay. And you let him drive it?

9 A He's not the only one. There were a couple other
10 people that has keys to the -- to that car. My car was
11 probably the only car the whole family would use it because
12 I'm the only one that had a car.

13 Q Okay. And that wasn't the only car you had, was it?

14 A No.

15 Q Okay. So, it wasn't just like you shared that car?
16 You had more than one car out in the yard?

17 A Uh-huh. (Affirmative).

18 Q You have to say yes or no.

19 A Oh, I'm sorry. Yes.

20 Q Okay. And so he had his own set of keys to that car?

21 A Yes.

22 Q And he was allowed to drive it---

23 A Yes.

24 Q ---whenever he needed it?

25 Is, is that -- I need to make sure I get a yes or no.

Ophelia Mickell - Direct examination
by Mr. Brown

1 A Yes.

2 Q Okay. All right. Was there any limitation on his
3 ability to use that car?

4 A None.

5 MR. BROWN: Okay. I don't have any other questions for
6 this witness, Your Honor.

7 THE COURT: Cross-examination, Mr. Mitchell.

8 MR. MITCHELL: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. MITCHELL:

11 Q Good afternoon, Ms. Mickell.

12 A Hello.

13 Q So, you were a codefendant in this case.

14 Is that correct?

15 A Yes.

16 Q Okay. And you were charged in the same indictment as
17 your son?

18 A Yes.

19 Q And this is your son sitting here, Mr., Mr. DeAngelo---

20 A Yes, it is.

21 Q ---right?

22 Okay. So, you also pled guilty to the same conspiracy
23 that he pled to, correct?

24 A I did, but I'm -- when I signed the, the -- what do you
25 call it?

1 The --?

2 Q Plea agreement?

3 A The plea agreement.

4 Q Uh-huh. (Affirmative).

5 A It wasn't explained to me either cause I never would of
6 signed anything that was gonna say I can't sign for a PCR or
7 go back to Court.

8 Q Okay. Okay.

9 A I wouldn't have signed it.

10 Q No, I, I understand that, and you, you filed a PCR too,
11 right?

12 A Yes.

13 Q Okay.

14 A When I found out I could.

15 Q And you withdrew that, right?

16 A Yes.

17 Q Okay. So, the Dodge Intrepid was your vehicle though,
18 correct?

19 A Yes, it was.

20 Q Okay. Now, you were pulled over on the side of the
21 road, and then you've testified today that this consent was
22 signed there?

23 A The, the warrant for the house.

24 Q The warrant for the house?

25 A Yes.

- 1 Q Okay. So, there was two separate consents, correct?
- 2 A Well, I didn't know that that was a consent.
- 3 Q Okay.
- 4 A He just said he needed me to sign this and I signed it.
- 5 Q Have you seen this document that we're talking about
- 6 here?
- 7 A This right here?
- 8 Q Yeah, up there with you.
- 9 A Yes.
- 10 Q Okay. Is, is that your signature there?
- 11 A That's my signature, yes.
- 12 Q Okay. So, you would of signed that, correct?
- 13 A I wouldn't have signed it if it stated, you know, had
- 14 the car.
- 15 Q Okay. So, it's your---
- 16 A No.
- 17 Q ---testimony that that's not what was written on---
- 18 A It wasn't written---
- 19 Q ---when you consented?
- 20 A ---when I signed it.
- 21 Q Okay. Now, at the plea hearing, the prosecutor went
- 22 through their version of the facts.
- 23 Do you recall that?
- 24 A They, they---
- 25 Q So, the prosecutor put up what they thought the facts

1 were against you, right?

2 They, they, they said a little brief outline of what
3 they thought happened, correct?

4 A I guess they did.

5 Q Okay.

6 A I don't recall.

7 Q And, in that, they stated that you consented to the
8 search of the home and of the vehicle?

9 A Well, they consented.

10 Q Is that right?

11 A But I didn't. They consent I -- when they told me that
12 my house was being searched as we speak, that's when I
13 signed that warrant for the house.

14 Q Okay.

15 A This, like I said, did not have car on it when I signed
16 it. This was the blank page.

17 Q Okay. But that wasn't -- you didn't bring that to
18 anyone's attention before today.

19 Is that correct?

20 A No, because I'm already -- they already did what they
21 were gonna do to me.

22 Q Okay. But I mean you know this is something you could
23 of talked with your lawyer about, right?

24 well, you didn't say anything at the plea hearing to
25 say I never signed this consent cause they're talking about

1 consents, right?

2 A At the plea hearing.

3 Q Right.

4 At the plea hearing, it asked whether you agreed with
5 all the facts as stated by the solicitor, right?

6 A I didn't have -- wasn't able to say a whole lot of
7 anything. According to my attorney, let him do all the
8 talking, and I agreed.

9 Q Okay. So, your son, he had access to the car.

10 A Yes, he did.

11 Q Is that -- that's your testimony?

12 A He had access.

13 Q Okay. So, he drove the car?

14 A Yeah, he's driven the car.

15 Q He's driven it.

16 How often would he drive it?

17 A I don't know how often cause a lot of times I'd just
18 leave the car in the yard.

19 Q Right.

20 A Like I said, it's two, three sets of keys to my car.

21 Q How, how close was the car parked to your house?

22 A In the driveway. Like on the end of the driveway.

23 Q Okay. And in the, in the back -- in the trunk is where
24 a substantial portion of the drugs were found, correct?

25 A That's what they tell me. I don't know.

Ophelia Mickell - Cross-examination
by Mr. Mitchell

1 Q Okay.

2 A I wasn't there when they found them.

3 Q And that's what you pled guilty to though, right?

4 A But not -- like I said, I pleaded to what my lawyer
5 told me to just go ahead and agree with what he said, and he
6 would explain things to me later --

7 Q Okay. So, you didn't know---

8 A -- which he never did.

9 Q But you never knew the drugs were found there?

10 A I didn't know they, they were found in the trunk of the
11 car.

12 Q Okay. So, you, you know how much drugs were found?

13 A No, I don't. I don't know that either.

14 Q So, no one's ever told you this before?

15 A No.

16 Q This is all news to you, eight years later.

17 Is that right?

18 A Eight years later.

19 Q Okay.

20 A Like now.

21 MR. MITCHELL: No further questions.

22 THE COURT: Redirect?

23 MR. BROWN: Just briefly.

24 REDIRECT EXAMINATION

25 BY MR. BROWN:

1 Q Just to clarify, that consent that I've shown you,
2 which is Applicant's 6 --

3 A Uh-huh. (Affirmative).

4 Q -- that was signed at 12 Christopher Lane, and not on
5 the side of the road?

6 A Not on the side of the road. I only signed one paper
7 on the side of the road.

8 Q Okay. Thank you.

9 THE COURT: You may step down. Thank you.
10 Any objection to this witness being excused?

11 MR. BROWN: No objection. That's why I put up her --
12 so they could leave.

13 THE COURT: You're free to leave.

14 Mr. Brown.

15 MR. BROWN: I will call Anthony Dore to the stand.

16 THE COURT: Mr. Dore, please come forward.

17 Y'all are free to leave.

18 THE OFFICER: Thank you. Thank you.

19 THE COURT: Place your left-hand on the Bible. Raise
20 your right-hand as the clerk administers the oath.

21 ANTHONY DORE, being first duly
22 sworn, testified as follows:

23 THE COURT: Let's have quiet.

24 THE CLERK: You may be seated.

25 THE COURT: Mr. Dore, have a seat in the witness chair.

Anthony Dore - Direct examination
by Mr. Brown

1 I'm gonna ask you to pull up real close to that microphone.
2 Speak loudly, clearly, and slowly in order we can hear
3 everything you have to say, and let's start with your full
4 name.

5 THE WITNESS: Anthony O'Neal Dore. D-O-R-E.

6 THE COURT: Mr. Dore.

7 Mr. Brown.

8 MR. BROWN: May it please the Court.

9 DIRECT EXAMINATION

10 BY MR. BROWN:

11 Q Mr. Dore, do you remember the general outline of this
12 case?

13 A I do.

14 Q Okay. And Mr. Mickell pled guilty to two counts. One
15 in conspiracy, and one in trafficking.

16 A That's correct.

17 Q Okay. And there was a reduction. They let him plead
18 to a lower level on this.

19 A That's correct.

20 Q Okay. And do you recall the drugs that were attributed
21 to him being found in the trunk of the Dodge Intrepid?

22 A The weight of it exactly?

23 Q Well, do you recall that that large amount was found
24 there?

25 A That's correct.

1 Q Okay. And do you recall any other drugs that they
2 attributed to being on his person or anything else besides
3 what was in the trunk of that car?

4 A No, there was some marijuana in the house, but I don't
5 think it was attributable to him.

6 Q And he didn't plead to the marijuana?

7 A No, he didn't.

8 Q Okay. And then let me ask you about there being --
9 cause this was a State Grand Jury investigation, right?

10 A Yes.

11 Q And, Ms. Mickell, his mother, was one of the
12 defendants?

13 A That's correct.

14 Q And then there was another lady that was also a
15 defendant on this indictment?

16 A Yes.

17 Q And there were actually some other folks who got kind
18 of caught up as the investigation went along.

19 Do you remember, during the discovery, there being
20 other people?

21 A There was some other people.

22 Q Okay. And some of those involved these controlled
23 buys.

24 Do you remember that?

25 A Yes.

Anthony Dore - Direct examination
by Mr. Brown

1 Q And including his mother?

2 A That's correct.

3 Q Okay. No controlled buys from DeAngelo were there?

4 A Right.

5 Q Okay. All right. So, primarily the evidence was
6 whether they could tie him in to the drugs in the, in the
7 Dodge Intrepid?

8 A Right. Exactly.

9 Q Okay. And, Your Honor, if I may approach?
10 I'm gonna show you what's been marked as Applicant's 3.

11 A Okay.

12 Q And ask you to take a look at that.

13 A All right.

14 (Witness complies.)

15 Okay.

16 Q All right. Now, if you'll look at what is marked as
17 the Exhibit A, and do you see, at the bottom of that page,
18 it starts reason for affiant's belief that the property
19 sought is on the subject premises?

20 A I'm sorry.

21 On what page?

22 Q Well, it's not paginated, but I think it's the one,
23 two---

24 A I see the first page.

25 Q Fourth page. It's got Exhibit A on the right, top

1 right or middle right.

2 A I see Exhibit A, the search warrant?

3 Q That's correct. Yes.

4 A Okay.

5 Q Okay. And you see, starting at the bottom, it's got
6 reason for affiant's belief?

7 A Yes.

8 Q Okay. And if you'll take a look at the -- and there's
9 some. Let's see. Five, six, seven, eight, nine, ten,
10 eleven. Eleven -- it's got 11 alphabetically numbered
11 paragraphs.

12 A Yes.

13 Q Okay. And I'm gonna ask you to take a look at that,
14 but before you do it, I'm gonna, I'm gonna ask you to look
15 for any evidence regarding the storage of drugs in vehicles.
16 And I also want to ask if you can look through it for any
17 information regarding the voracity or reliability of any
18 informants. And just let me know when you've had a chance
19 to look through that.

20 A Okay.

21 Q Okay. And do you see anything in the probable cause
22 section that addresses motor vehicles?

23 A I do not.

24 Q And do you see anything in there that addresses the
25 reliability of any informant or the voracity of any

Anthony Dore - Direct examination
by Mr. Brown

1 informant?

2 A I do not.

3 Q In fact, do you see anything that actually says there
4 was a controlled buy conducted within 72 hours of the
5 signing of this warrant?

6 A I do not.

7 Q Cause it actually, on the next page, does it, in fact,
8 say that an individual had been stopped leaving the
9 residence, and it's on the top of the page at that -- the
10 second page right above the A?

11 A Yes.

12 Q Okay. Now, did you ever discuss with Mr. Mickell
13 whether or not there needed to be some indicia of
14 reliability or voracity of the informant before it developed
15 probable cause?

16 A I did not.

17 Q And did you ever discuss with him that the cause may
18 not exist to search a car based on that?

19 A Did not.

20 Q Now, I want you to look over at page -- the Part C.
21 It's a few pages further on the search warrant.

22 A Okay. Exhibit 2?

23 Q That's correct. Yes, I'm sorry.

24 A Okay.

25 Q And do you see where somebody has handwritten in some

1 information?

2 A I do.

3 Q And, in that handwritten part, it allows the warrant or
4 the warrant allows the search of some vehicles?

5 A That is correct.

6 Q And does it say what vehicle they're allowing be
7 searched?

8 A It does not.

9 Q So, any vehicle on that property to be searched no
10 matter who owned it, whether it had been there before?

11 A Yes, that's correct.

12 Q Now, did you discuss with Mr. Mickell the particularity
13 requirement of the Fourth Amendment and South Carolina
14 Constitution that requires the place to be searched to be
15 described with particularity?

16 A I did not.

17 Q And, in -- and, in fact, we do have some particularity
18 on the actual house, don't we?

19 A We do.

20 Q Cause it's got color. It's got color of the house, and
21 color of the trim, et cetera.

22 A That's correct.

23 Q Okay. And nothing about which car, how many cars, or
24 anything like that?

25 A No, it didn't.

Anthony Dore - Direct examination
by Mr. Brown

1 Q Okay. Now, keep it open to that Exhibit C page, and
2 I'm gonna ask you to take a look at what's been marked as
3 Applicant's 1.

4 Now, would you say that those are similar?

5 A They do look similar.

6 Q Would you look at the round circle at the end of the
7 handwritten sentence that has initials from the magistrate?

8 A Yes.

9 Q And would you compare that circle to the circle that's
10 on Exhibit C on Applicant's 3?

11 A Does not appear to be the same. It looks similar, but
12 not the same.

13 MR. MITCHELL: Objection. He's got no personal
14 knowledge of what the signature seems like. I mean the --.

15 THE COURT: Okay. If it looks different to him, he can
16 testify to that. I'm not sure what weight that would give,
17 but he says it looks different. I saw it. That's a
18 legitimate thing to ask him.

19 Q And I'm gonna ask you about that.

20 Does that raise a question right now?

21 A It does now at this time, yes.

22 Q And, let me ask you, if you had ever seen an actual
23 blue signature copy ever of the search warrant, Exhibit C,
24 that had the vehicle search permission written in it?

25 A No, one was not provided in discovery in that little

1 handwriting.

2 THE COURT: Did you give that to me?

3 MR. BROWN: Yes, sir, I've got more copies though.

4 THE COURT: Okay.

5 MR. BROWN: It's the transcript.

6 THE COURT: Oh, here it is marked 2, Applicant's 2.

7 MR. BROWN: Yes, sir.

8 THE COURT: I was looking for it.

9 MR. BROWN: Yes, sir.

10 THE COURT: All right. The transcript.

11 MR. BROWN: And if I may approach the witness, Your
12 Honor?

13 THE COURT: You may.

14 Q And I'm gonna ask that you take a look at the
15 attachment to Applicant's 2, and it's the back page.

16 A Okay.

17 Q Now, the typed portion, how is the typed portion of
18 Exhibit C on Applicant's 2 compared to the typed portions on
19 the other two pages, which are Applicant's 1, and
20 Applicant's 3?

21 A Well, the description of the premises to be searched in
22 Exhibit C does not have any handwritten portion on it.

23 Q And that copy actually is a color copy?

24 A That's correct.

25 Q And it's got a blue inked signature from the judge?

Anthony Dore - Direct examination
by Mr. Brown

1 A That is correct.

2 Q Now, if I were to show you the original exhibit to
3 that, would you be aware of any other originals besides that
4 one?

5 A I'm not aware of any other originals.

6 MR. BROWN: And, and, Your Honor, at some point in time
7 I do need the clerk to bring that original down here. I
8 don't -- I, I think, for what it's worth, it's -- that's a
9 copy of a transcript that---

10 THE COURT: Can we agree that -- can we agree to
11 substitute this copy as opposed to having to bring the
12 original here?

13 MR. MITCHELL: And that's fine with me.

14 MR. BROWN: And it is in the -- it's down in the vault,
15 but yes.

16 THE COURT: Yeah, I think this is an accurate
17 representation of it.

18 Is that correct?

19 MR. MITCHELL: It is. It is.

20 THE COURT: Okay.

21 MR. BROWN: And that's, that's why---

22 THE COURT: If everybody stipulates, we will agree to
23 that, and alleviate the necessity of having to take the
24 original out of the file.

25 MR. BROWN: Thank -- thank you. Thank you, Your Honor.

1 And let me ask you this.

2 Would your opinion about a challenge to this search
3 warrant change knowing that the only blue inked copy does
4 not give permission to search the vehicles?

5 A Yes.

6 Q And, and let me ask you a little bit. There's a
7 consent document that was discussed as you were sitting in
8 the courtroom for Mr. Mickell's testimony?

9 A I was.

10 Q Okay. And I believe it may still be up there. It's
11 Applicant's 6.

12 A Yes.

13 Q Okay. And I want you to, to, to take a look at that,
14 and then I'm gonna ask you to take a look at two other
15 documents to kind of get some timing.

16 But do you recall Ms. Mickell testifying that she
17 signed what's marked as Applicant's 6 back at the house at
18 12 Christopher Drive?

19 A That is my recollection of her testimony, yes.

20 Q Okay. And I'm gonna approach and hand you what's been
21 marked as Applicant's 4.

22 A Okay.

23 Q And I'm just gonna go ahead and ask that you flip over
24 to Page 3, and look at the second full paragraph that begins
25 at approximately 10:30.

Anthony Dore - Direct examination
by Mr. Brown

1 A Yes.

2 Q And would you read the last sentence in that paragraph?

3 A At approximately 10:35PM, Ophelia Mickell was
4 transported to her residence located at 12 Christopher
5 Drive, Hilton Head, Beaufort County, South Carolina.

6 Q And then the next sentence that starts the next
7 paragraph please?

8 A At approximately 10:50PM, this agent, Lieutenant
9 O'Neal, Lieutenant Woodward, S.A. Leslie, S.A. Strange, S.A.
10 Creech, and Ophelia Mickell arrived at 12 Christopher Drive,
11 Hilton Head, Beaufort County, South Carolina where a lawful
12 search warrant was being executed.

13 Q Okay. And I want to go back.

14 That says 10:50PM is when she arrived?

15 A That is correct.

16 Q Okay. And then would you look two paragraphs after
17 that at approximately 12:36AM?

18 A would you like me to read it?

19 Q If you don't mind.

20 A At approximately 12:36AM, Ophelia Mickell made the
21 following statement to Lieutenant Frank O'Neal. why is
22 DeAngelo, Ophelia Mickell's son, being arrested because all
23 of the drugs in the car are mine. Lieutenant Frank O'Neal
24 then asked Ophelia Mickell are all of the drugs yours, and
25 Ophelia Mickell replied yes.

1 Q Okay. And is that consistent with your information
2 about the timing of when DeAngelo was arrested?

3 A It is.

4 Q And then I want you to ask that -- I ask that you take
5 a look at Applicant's 5.

6 If I may approach, Your Honor?

7 And I'm gonna ask that you read the paragraph that is
8 at the bottom of the first page, and you, you don't have to
9 read it out loud, loud.

10 A Okay.

11 (Witness complies.)

12 Okay.

13 Q And does that paragraph not indicate that Ophelia
14 Mickell signed that consent form upon the arrival of the
15 search warrant at 12 Christopher Drive?

16 A It does.

17 Q And the other document says she arrived at 10:50PM?

18 A That is correct.

19 Q And the consent indicates otherwise on the signing of
20 the signature, doesn't it?

21 A Yes.

22 Q That would be Applicant's 6.

23 And, Your Honor, before I forget this, I'm gonna ask
24 that all of these items be moved into evidence.

25 THE COURT: which are?

Anthony Dore - Direct examination
by Mr. Brown

1 MR. BROWN: which are, and I've got to get the ones
2 that have not been previously entered, I believe Applicant's
3 2 is already in because that's a transcript. And so it
4 would be Applicant's 5, Applicant's 4, Applicant's 3, and
5 Applicant's 1 because I believe Applicant's 6---

6 THE COURT: All right.

7 MR. BROWN: ---is already in.

8 THE COURT: All right. Mr. Mitchell, have you seen 5,
9 4, 3, and 1?

10 MR. MITCHELL: I have, Your Honor.

11 THE COURT: All right. Do you have any objection to
12 there being produced into evidence?

13 MR. MITCHELL: No objection.

14 THE COURT: Applicant's, Applicant's 5, 4, 3, and 1 are
15 in evidence.

16 (WHEREUPON, Applicant's Exhibit Nos. 1, 3, 4, and 5
17 were received into evidence at this time.)

18 Q Now, Mr. Dore, do you recall discussing with Mr.
19 Mickell what a plea meant?

20 A Yes.

21 Q Okay. And you told him that, when you plead, you give
22 up any challenge you have?

23 A I did.

24 Q Okay. And do you remember also talking about the plea
25 agreement with him?

1 A Yes, he and I read the plea agreement together.

2 Q And it does contain a waiver of his PCR rights, doesn't
3 it?

4 A It does.

5 Q Okay. Now, having seen all of the items that I've
6 pointed out and this information, does your opinion about
7 the challenge to the search warrant, is it different today
8 then it was back at the time you advised Mr. Mickell?

9 A It is.

10 Q And how would you advise him regarding the waiver of a
11 search warrant or a search challenge in light of this
12 information if you had to do that today?

13 A I don't think that the search warrant issue should of
14 been waived. I think there's definitely an issue that
15 should of been raised.

16 Q And you would of told him that if you had known all
17 this information?

18 A I would have, yes. Definitely.

19 Q Okay. And did he seem to follow your advice?

20 A He certainly seemed to.

21 Q Okay. All right. I don't have any other questions.

22 THE COURT: Cross-examination, Mr. Mitchell.

23 CROSS-EXAMINATION

24 BY MR. MITCHELL:

25 Q All right. Good afternoon, Mr. Dore.

Anthony Dore - Cross-examination
by Mr. Mitchell

1 A Good afternoon.

2 Q Appreciate you being here today.

3 A Yes, sir.

4 Q How did you come to represent Mr. Mickell?

5 A Mr. Mickell and I entered into a employment contract,
6 and began representing him.

7 Q So, this is a State Grand Jury case, and you handled
8 one like this before?

9 A I have -- this was my First State Grand Jury case.
10 I've handled cases in Federal Court before, and it's very
11 similar.

12 Q Okay. You handled drug cases in Federal Court before?

13 A Yes.

14 Q On somewhat similar to this scale possibly?

15 A Oh, yes. Even larger. Much larger.

16 Q Okay. So, in your discussion with Mr. Mickell, did you
17 review the discovery with him?

18 A I did.

19 Q Okay. And that would of included a lot of these
20 documents that we're looking at today.

21 Is that right?

22 A That is correct.

23 Q Okay. So, you would of reviewed all of those that---

24 A Let me -- one of the search warrant exhibits was never
25 in my possession, the one that's in the blue ink obviously.

1 Q Okay. So, you were operating under the assumption that
2 that handwritten what's called an amendment was the only
3 version of that search warrant, correct?

4 A Exactly.

5 Q Okay. All right. So, how would you characterize the
6 evidence against Mr. Mickell?

7 I mean is it strong, weak?

8 A There was evidence -- I mean there was, there was
9 evidence against Mr. Mickell obviously. He and I discussed
10 the facts and my position would be though that the only real
11 evidence against him was the drugs that were found in the
12 trunk of the vehicle.

13 Q Okay. So, that was kind of make or break in your
14 opinion?

15 A Right, that's make or break.

16 Q Okay. In considering whether to reject or accept the
17 plea offer, what was your advice to Mr. Mickell?

18 A I advised him to accept the plea.

19 Q Okay. And what considerations were taken into account
20 for that?

21 A The fact that he was initially looking at a mandatory
22 25 year sentence. And, if he cooperated with the
23 Government, that he would be reduced to a range between
24 seven to twenty-five. And if he cooperated and gave
25 information, he would be looking at potentially serving even

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by Mr. Mitchell

1 nothing at all falling into the lower range of seven to
2 twenty-five year sentence.

3 Q Okay.

4 A In addition, you know, the strength of the evidence
5 also takes into consideration based on what I---

6 Q What about consideration---

7 A ---based on what I knew at that time.

8 Q What about consideration with his mother?

9 A He was very protective of his mother. He wanted to
10 help his mother as much as he could. I think that was a
11 factor.

12 Q His mother was protective of him as well?

13 A She was. I think they obviously loved each other very
14 much, and found themselves in a very difficult situation.

15 Q You were aware of that statement that she made,
16 something along the lines of those drugs were mine, kind of
17 claiming the drugs during the arrest?

18 A I was.

19 Q Okay. All right. So, there's a written plea
20 agreement, right?

21 A There is a written agreement.

22 MR. MITCHELL: Okay. And that's part of the record,
23 Your Honor.

24 In that written plea agreement, did you review that
25 paragraph or paragraph with Mr. Mickell?

1 A I did.

2 Q Okay. Now, in that, I mean there's a paragraph where
3 he waives any direct appeal or possible PCR matter.

4 Is that right?

5 A I think that's very unfair.

6 Q Okay. But, you know, fairness aside, you -- he agreed
7 to that, correct?

8 A He did.

9 Q And that's pretty standard in federal cases, correct?

10 A It's standard in federal cases. It is.

11 Q Okay. You know if it's standard in these types of
12 Grand Jury cases?

13 A I believe it -- my understanding is that it is---

14 Q Okay.

15 A ---in these State Grand Jury cases.

16 Q So, did you review that with him, that specific --

17 A We discussed it.

18 Q -- waiver, right?

19 Okay. Did you advise him what PCR was?

20 A I think we talked about it briefly.

21 Q I mean like generally like you can---

22 A Generally.

23 Q ---come back and challenge something like that?

24 A Generally we talked about it.

25 Q Okay. Did he seem to understand that advice there?

Anthony Dore - Cross-examination
by Mr. Mitchell

1 A I believe he did.

2 Q All right. So, moving to the warrant, Ms. Mickell
3 owned the vehicle though, right?

4 I think that's kind of been established, correct?

5 A I, I think she's on the registration. That's my
6 understanding.

7 Q Okay. What was your understanding of Mr. Mickell's
8 usage of the vehicle?

9 A I understood that he used the vehicle.

10 Q That he did use the vehicle?

11 A He did.

12 Q Okay. And it was kind of the State's position that he
13 was using this vehicle to store drugs on the property,
14 correct?

15 A That was the State's position.

16 Q So, it was that, that he put the drugs in the vehicle
17 so, if he got robbed, he wouldn't have the stuff in the
18 mobile home, correct?

19 A I'm not sure about what their theory --

20 Q Okay.

21 A -- was except that they thought that he was storing --
22 using the vehicle to store drugs.

23 Q Okay. Now, the property we're talking about, 12
24 Christopher Street or whatever it is, that's Mr. Mickell's
25 mother's property, correct?

- 1 A That's correct.
- 2 Q Okay. Now, seeing these versions of the warrants, you
- 3 noted that there were discrepancies on the initials, right,
- 4 or in the ink let me ask?
- 5 A There appeared to be three different search warrants --
- 6 Q Okay.
- 7 A -- which seems unusual to me.
- 8 Q So, it would be three separate signatures, correct?
- 9 A Three separate documents. I mean the documents don't
- 10 appear to be the same. I mean they're not photocopies.
- 11 Q Okay. So, they're not photocopies, right?
- 12 A They don't---
- 13 Q So, the judge would of signed that -- I think we all
- 14 agree the judge did sign it, but he is -- sort of signed
- 15 three separate copies, correct?
- 16 A I don't know who signed it.
- 17 Q Okay. But that signature appears in three separate
- 18 variations, right?
- 19 A That's correct.
- 20 Q So, two of them have the handwritten portion including
- 21 the vehicles, right?
- 22 A You're making reference to Exhibit 1?
- 23 Q Is---
- 24 A Let me try to locate those if you don't mind?
- 25 Q Sure. It would be Exhibit 1, the last page, and then

Anthony Dore - Cross-examination
by Mr. Mitchell

1 whatever page that is in the search warrant.

2 So, even the two with the addendum or amendments on it,
3 that is a separate written out sentence, correct?

4 A I found two.

5 Q Okay. There was one that the -- last page of that
6 transcript?

7 Do you have that in front of you?

8 That's just the one without. So, I guess I'm really
9 just asking you to compare the---

10 A Okay.

11 Q ---Exhibit 1, and then Exhibit 3, Page Number 10 or so
12 of that?

13 A Not Exhibit 1. Then I've got another one that appears
14 to be different.

15 Q Okay. So, be -- just be handwritten twice, correct?

16 A That's correct.

17 Q All right. Now, I know we talked a lot about the, the
18 original.

19 Are you usually provided originals in discovery?

20 A Not normally, no.

21 Q Okay. So, I mean you, you usually just get
22 photocopies, right?

23 A I normally get photocopies, but it was unusual to
24 get -- have different copies of the same search warrant that
25 had changes in them.

1 Q Okay. Right.

2 So, I mean you testified that, you know, that would
3 change your opinion on maybe how you would advise Mr.
4 Mickell though.

5 Is that right?

6 A I -- I've got some definite concerns about the search
7 warrant. I mean it raises some issues.

8 Q Okay.

9 A This is a -- I've been practicing now almost 20 years,
10 and I've never had this situation here before.

11 Q Okay. So, what -- the procedure in challenging the
12 search warrant would be to file motions to suppress,
13 correct, and, at that point, we're kind of heading to trial,
14 right?

15 A Not necessarily. I mean pretrial motions to suppress
16 evidence before you get to trial.

17 Q And, you know, the offer could be moved -- could be
18 revoked at that point?

19 A It's possible.

20 Q Along the line, right?

21 A I mean the issue is that the search warrant is the
22 whole case.

23 Q Okay.

24 A I mean it's important enough---

25 Q Right:

1 A ---that if that issue arose, you'd want to make sure
2 you're making the right decision that it was valid.

3 Q Okay. So, the way you get at it is you file a motion
4 to suppress, correct, and then have a hearing to determine
5 that.

6 what, what would be the grounds, in your eyes now, to
7 suppress the evidence?

8 A I am not sure that I -- what I would say is that I've
9 got some questions about the search warrant.

10 Q Okay. Right.

11 So, I mean you're still -- you still have issues with
12 standing, right?

13 A What do you mean?

14 Q Mr., Mr. Mickell would have issues asserting his
15 constitutional rights were violated in the search if he
16 doesn't own the vehicle.

17 Is that --?

18 A I'm not sure that that's accurate.

19 Q Okay. I mean not the factual, but he -- you'd have to
20 have standing to challenge the warrant, right?

21 A I'm not sure that he doesn't have standing based on his
22 usage of the vehicle.

23 Q Okay. And I'm not trying -- I'm not asking you to make
24 a determination, but, you know, you would -- you would have
25 to argue that you have standing, right?

1 A Yes, and he has a privacy interest in that vehicle.

2 Q Okay. And that he, his interest, were violated, which
3 you had run into a possible issue with his mother owning the
4 car, correct?

5 A I'm not sure that that's determinative.

6 Q Okay. And -- well, he also raises an issue of the
7 consent, correct?

8 A That consent is an issue?

9 Q Okay. So, the consent would also be an issue, right?

10 A Yes.

11 Q In your eyes now?

12 A Yes.

13 Q Okay. Had you spoken to Ms. Mickell before about this
14 consent?

15 A Ms. Mickell?

16 No, I did not speak with Ms. Mickell about consent.

17 Q Did, did you ever speak to her attorney about this case
18 leading up to the disposition of Mr. Mickell's case?

19 A She was represented by Ken Tottle, and, he and I, we
20 had some discussions, but not, not very many.

21 Q Okay. So, no joint defense or anything like that?

22 A No, not at all.

23 Q So, Ms. Mickell consented to -- well, what this
24 document says is she consented to the search of the vehicle,
25 correct?

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by Mr. Mitchell

1 A That is correct.

2 Q And she also consented to the search of the house.

3 Is that correct?

4 A That's my understanding.

5 Q Okay. And that's in Summary Court. I'm, I'm not sure
6 we have that before us right here.

7 So -- and a lot of this -- some of this would be what
8 we talked about earlier discrepancies in the time and
9 whatnot.

10 And that goes more towards impeachment of the officers,
11 correct?

12 I mean if they say she signed it on the side of the
13 road. The other -- and then a separate officer writes that
14 she signed it upon arriving. That's something that would be
15 for impeachment value, right?

16 A There is some question about whether or not the house
17 was searched or the vehicle was searched before there was a
18 search warrant obtained.

19 Q All right.

20 A That question would be raised I think.

21 Q So, that's something you probably -- you could of
22 raised?

23 A Yes. And whether the initial search warrant called for
24 her vehicle being searched or whether it didn't.

25 Q I'm sorry.

1 what was that?

2 The initial search warrant what?

3 A Whether, whether the initial search warrant called for
4 the vehicle to be searched at all.

5 Q So, in your discussions with Mr. Mickell, he accepted
6 this plea deal to take advantage of the lesser sentencing
7 range, correct?

8 A He pleaded to a lesser included.

9 Q If he would of stayed with the original charge, he was
10 looking at a mandatory minimum of 25 years?

11 A Exactly.

12 Q Correct?

13 Okay. So then the range drops down to 7 to 25, right?

14 A That's correct.

15 Q In the hopes, in him pleading guilty for it, that he
16 would receive a -- well, maybe a lesser sentence than what
17 he got, right?

18 A He wanted to cooperate to help both himself and his
19 mom.

20 Q Okay. And the State took strong opposition that he had
21 provided helpful cooperation, right?

22 A I disagree.

23 Q Well, the State---

24 A Yeah, that is---

25 Q Yeah.

Anthony Dore - Cross-examination
by Mr. Mitchell

1 You insisted -- he was good at the conclusion, right?

2 A That is correct.

3 Q Okay. So, did that seem to be the crux of the
4 reasoning for deciding to plead guilty?

5 A He wanted to help himself, and his mother, and I think
6 he was sentenced very harshly.

7 MR. MITCHELL: Okay. No further questions. Thank you.

8 THE COURT: Any redirect?

9 MR. BROWN: Just want to ask very briefly.

10 REDIRECT EXAMINATION

11 BY MR. BROWN:

12 Q The seven to twenty-five range he pled to is better
13 than the mandatory 25?

14 A Definitely.

15 Q All right. Suppression of the drugs is better than
16 seven to twenty-five?

17 A Exactly.

18 Q And if you had a strong claim on that, would you have
19 advised him that way?

20 A Definitely.

21 Q And do you believe that this information that we
22 provided today makes that strong claim?

23 A It does.

24 Q And let me ask you.

25 As far as information about that consent form that

1 they'd given you, had you ever heard, before today when Ms.
2 Mickell testified, that she didn't sign that form filled
3 out?

4 A No.

5 Q And you could of, in fact, called her as a witness,
6 couldn't you?

7 A I could have.

8 MR. BROWN: I don't have any other questions.

9 THE COURT: You may step down.

10 THE WITNESS: Thank you.

11 THE COURT: Any objection to Mr. Dore being excused?

12 MR. BROWN: No, no objection, Your Honor. Thank you.

13 THE COURT: You're free to leave, Mr. Dore. You may
14 stay with us if you would like.

15 THE WITNESS: Thank you, judge.

16 Judge, these documents, do I leave them here or --?

17 THE COURT: Yeah.

18 MR. BROWN: Thank you. And he's released from my
19 subpoena. I don't know if you heard that.

20 I'd call DeAngelo Mickell to the stand.

21 THE COURT: Mr. Mickell, please come forward. I'm
22 gonna ask, if you could, to, to place your left-hand on the
23 Bible, and raise your right-hand as the clerk administers
24 the oath.

25 DeANGELO MICKELL, being first duly

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by Mr. Brown

1 sworn, testified as follows:

2 THE CLERK: You may be seated.

3 THE COURT: Please come forward and have a seat in the
4 witness chair, and I'm gonna ask that you pull up to the
5 microphone, and speak loudly, clearly, and slowly in order
6 that we can hear everything that you have to say, and let's
7 start with your full name.

8 THE WITNESS: DeAngelo Christopher Mickell.

9 THE COURT: Very good.

10 MR. BROWN: May it please the Court, Your Honor?

11 THE COURT: Yes, sir.

12 DIRECT EXAMINATION

13 BY MR. BROWN:

14 Q You've heard the testimony of your mother here today?

15 A Yes, sir.

16 Q And you've heard the testimony Mr. Dore gave?

17 A Yes, sir.

18 Q Okay. I'm not gonna try to backtrack on that. So, I'm
19 gonna keep this kind of succinct.

20 If Mr. Dore would of told you that you had a challenge
21 to the search of that car, would you have pled guilty?

22 A No, sir.

23 Q And if you weren't gonna plead guilty, would you have
24 signed the PCR waiver?

25 A No, sir.

1 Q Cause you wouldn't have waived PCR and gone to trial,
2 would you?

3 A No, sir.

4 Q And you wouldn't of waived PCR to go challenge that
5 search warrant, would you?

6 A No, sir.

7 Q Now, I want to ask you a little bit about the car
8 itself.

9 Tell me -- tell the Court about your use of that Dodge
10 Intrepid and what access you had, et cetera.

11 A I had a spare key myself. So, maybe three or four
12 times a week that I would drive it.

13 Q And that's not the primary car that your mother drove,
14 was it?

15 A No, sir.

16 Q Okay. So, that car -- I mean when she was out driving
17 her car, that car's still sitting there?

18 A Yes, sir.

19 Q Okay. And, with that key, could you lock that door?

20 A Yes, sir.

21 Q Okay. And could you unlock that door and let other
22 people in?

23 A Yes, sir.

24 Q So, you had what we consider to be some -- the bundle
25 of sticks of property rights, you had the ability to let

DeAngelo Mickell - Direct examination
by Mr. Brown

1 people onto the property, into the car, and you had the
2 ability to exclude people from that vehicle?

3 A Yes, sir.

4 Q And you had full use of that vehicle?

5 A Yes.

6 Q Of any limitations your mom gave you on the use?

7 A No, sir.

8 Q Okay. Tell me a little about the timing.

9 were you there at 12 Christopher Drive, I hate to keep
10 mixing that up, but were you there at the time that law
11 enforcement first arrived on September 17th?

12 A Yes, I was.

13 Q And can you give me some idea about what time of day
14 that was?

15 A 7:45, eight o'clock.

16 Q And was it around sunset?

17 A Yes, sir.

18 Q Okay. And, when they arrived, what did they do with
19 you?

20 A They sat me down and I asked them if I was under
21 arrest, and they told me no. So, I asked if I could leave,
22 and the officer told me no. When they brought me out the
23 house, the officer went in the house. And then, when they
24 were finished and they came out, they took me back in.

25 Q And where was your mother at that time?

1 A She hadn't gotten there yet.

2 Q Okay. So, how many officers went in?

3 A Three.

4 Q Okay. And they kept you outside?

5 A Yes, sir.

6 Q Okay. And how long -- about how long would you believe
7 that those three were inside the house?

8 A Twenty to thirty minutes, and then they took me back
9 inside.

10 Q After they went through there, they brought you back
11 inside?

12 A Yes, sir.

13 Q Okay. And had you been given a search warrant?

14 A No, sir.

15 Q Okay. And do you recall where you were when your
16 mother was brought back to the property?

17 A I was sitting in the living room on my mama couch.

18 Q Okay. And what did they do when they brought her in?

19 A They brought her in and sat her down beside me.

20 Q And what can you tell me about any documents -- were
21 there any documents presented to her?

22 A Well, they brought a paper to her, and asked her if she
23 wanted to, I guess, fight to get the car back. And she said
24 no, she was just waiving her right for the car. So, they
25 did impound it, and that was it.

DeAngelo Mickell - Direct examination
by Mr. Brown

1 Q Okay. So, they were talking about seizing that car?

2 A Yes, sir.

3 Q And let me ask you this.

4 Did y'all -- did you or your mother, did she ever get
5 that Dodge Intrepid back?

6 A No, sir.

7 Q And you never have got it back to this day?

8 A No, sir.

9 Q All right. Now, let me ask you about the truck that
10 she was stopped in.

11 Do, do you remember that truck?

12 A Yes.

13 Q And they gave that truck back, didn't they?

14 A Yes, sir.

15 Q Okay. But not the one that they'd approached her with
16 the papers with back at that house?

17 A No, sir.

18 MR. BROWN: Okay. All right. I beg the Court's
19 indulgence.

20 (Pause.)

21 Q And let me ask you this.

22 About what time was it or how long after your mom
23 arrived do you believe that y'all were actually placed under
24 arrest?

25 A Fifteen, twenty minutes.

1 Q Okay. So, she comes back, and then, about 20 minutes
2 later, they arrest you?

3 A Yes, sir.

4 Q Was that after the paperwork was filled out?

5 A Yes, sir.

6 Q Okay. All right. So, they sat y'all -- you were
7 seated. Then they brought her in. Seated her.

8 A Yes, and they told her that they found the drugs in the
9 car, and that they were placing us under arrest, and asked
10 her if she wanted to waive the rights of the car.

11 Q Okay. And that -- and it was in that order?

12 A Yes, sir.

13 MR. BROWN: Okay. I don't have any other questions.

14 THE COURT: Cross-examination, Mr. Mitchell.

15 MR. MITCHELL: Thank you.

16 CROSS-EXAMINATION

17 BY MR. MITCHELL:

18 Q Good afternoon, Mr. Mickell.

19 A Good afternoon.

20 Q All right. So, Mr. Dore was your lawyer, right?

21 A Yes, sir.

22 Q And did he go through the indictment with you, and
23 explain these charges that you had against you?

24 A Yes, sir.

25 Q Okay. So, you understood what you were being charged

1 with. You understood from -- the severity of the possible
2 consequences.

3 Right?

4 A Yes, sir.

5 Q Okay. Did you -- he went over your rights with you?

6 A Yes, sir.

7 Q Okay. And that had been, you know, your right to the
8 trial, right to cross-examine witnesses, things like that,
9 right?

10 A Yes, sir.

11 Q And you understood that?

12 A To an extent.

13 Q Okay. And he reviewed the evidence with you, right?

14 A Yes, sir.

15 Q So then these reports and things like that, right?

16 A Yes, sir.

17 Q You pled before Judge Mullen, correct?

18 A Excuse me?

19 Q You, you pled guilty before Judge Mullen, right?

20 A Yes.

21 Q Okay. And she asked you a series of questions at the
22 plea, right?

23 A Yes, sir.

24 Q About whether you -- kind of the same things I just
25 asked you about. Whether you understood that you were

1 waiving those rights by pleading guilty, right?

2 A Yes, sir.

3 Q Okay. And you understood that you were waiving your
4 right to post-conviction relief, right?

5 A Yes, I did understand that, but, if I had more
6 information that I needed, I wouldn't of.

7 Q Okay. So, kind of if you knew there was something out
8 there, would of, could of---

9 A Changed it, yes.

10 Q -- changed the outcome of trial, then, you know, you
11 would not of waived that.

12 Is that right?

13 A Yes, sir.

14 Q Fair to say?

15 A Yeah.

16 Q Okay. All right. But -- so, at the time, you
17 understood the concept of post-conviction relief, right?

18 A Yes, sir.

19 Q And, you know, kind of like this. It's been going on
20 for a while, and I'm sure you're more familiar with it now.

21 But you understood what would take place kind of at a
22 hearing on this, right?

23 A Yes, sir.

24 Q And the allegations you could bring against say
25 Mr. Dore, right?

DeAngelo Mickell - Cross-examination
by Mr. Mitchell

1 A Yes, sir.

2 Q Okay. And Mr. -- now, Judge Mullen noted that, by
3 contract, you can waive those rights.

4 Is that right?

5 A Yes.

6 Q Okay. So, that would of been appeal and PCR, right?

7 A Yes, sir.

8 Q Okay. Now, there's a written plea agreement, correct?

9 A Yes, sir.

10 Q Now, did you initial each page of that?

11 A I -- yes, I did.

12 MR. MITCHELL: Okay. Well, may I approach with a copy,
13 Your Honor?

14 (Pause.)

15 Q Is that your initials down there?

16 It's kind of hard to see it. I, I just --.

17 A I don't --.

18 Q Not sure?

19 A No, I'm not. Definitely don't know about that.

20 Q Okay. Let's go to the back page. I think you did sign
21 it at some point, yeah.

22 Is, is that your signature there?

23 A Yes, sir.

24 Q Okay. Now, that may be Mr. Dore's initials and not
25 yours.

1 A Yeah.

2 Q I'm just kind of curious about it myself.

3 So, did he -- did you review that plea agreement with
4 Mr. Dore?

5 A Yes, sir.

6 Q Did y'all go through it and kind of talk back and forth
7 about what things meant and --?

8 A I mean we did it in January. We didn't really have a
9 lot of time. I was actually going into Court, and then he
10 postponed it until April.

11 Q Okay. So, you pled and then sentencing was---

12 A In April.

13 Q ---deferred, right?

14 A Right.

15 Q Yeah, I mean it's various things they enter on it. You
16 know, you could be polygraphed, and things like that.

17 Did y'all -- do you remember that?

18 A No, sir.

19 Q You don't remember that?

20 A No.

21 Q Okay. All right. So, you are not the registered owner
22 of the Dodge Intrepid?

23 A No, sir.

24 Q Okay. Now, that was your mother's vehicle, correct?

25 A Yes, sir.

1 Q And it's your testimony that you have access to it, and
2 will drive around occasionally?

3 A Yes, sir.

4 Q Okay. And that's where drugs were stashed a lot of the
5 time, right?

6 A No, sir. You'll have to ask her.

7 Q Okay. But you admitted that, that those were your
8 drugs in the car, right?

9 A Well, it was a lot of things in that I did not know in
10 my case until I got, you know, my, my attorney. So, it
11 would of been -- I'm sure I would of did it a lot different
12 if I knew a lot of the things that he's filed in his works
13 on my case.

14 Q Right. Right. No, I understand that. I mean that's
15 fair.

16 But you admit, when you pled guilty, you admitted to
17 all that though, right?

18 I mean that's kind of how it goes, isn't it?

19 A Yeah, but I wouldn't of pled guilty then.

20 Q Okay. So, that's your testimony today.

21 So, you know, in deciding whether to take the case to
22 trial or plead guilty, you know you, you -- it was a
23 consideration that you'd be facing less time cause they
24 would drop the range down for you, right?

25 A Yes.

1 Q Okay. So, you know, you're looking at 20. Now looking
2 at seven to---

3 A Twenty-five.

4 Q ---twenty-five, right?

5 So then you received 17, correct?

6 A Eighteen.

7 Q I'm sorry. Eighteen.

8 And your mother received 12.

9 Is that correct?

10 A Yes.

11 Q And the State took the position that you were not --
12 you did not provide helpful testimony to build other cases.

13 Is that fair?

14 A Yes.

15 Q Okay. And then, then I think the prosecutor on the
16 case asked for something around 17 or 18.

17 Is that right?

18 A Nineteen or twenty.

19 Q Okay. She asked for the upper range due to the fact
20 that she didn't believe you had cooperated in the way that
21 you could, right?

22 A Yes.

23 Q Okay. So, you went in thinking that if, you know, you
24 get say eight years, and you can live with that.

25 Is that fair?

DeAngelo Mickell - Cross-examination
by Mr. Mitchell

1 A Yeah, that's reasonable.

2 Q I mean that was part of the -- your thinking, right?

3 Like take this case to trial. If I get convicted, I
4 get 25 years or, you know, we'll shoot for the lower range
5 of that. The other -- the lower range, right?

6 A Yes.

7 Q Okay. And the evidence, you know, as, as we look at
8 it, you know, you, you were kind of caught in the act,
9 right?

10 A Caught in the act of what?

11 Q I mean they had surveillance on you putting those drugs
12 into the vehicle though, correct?

13 A I never saw any surveillance.

14 Q Okay. You never saw any videos, but you were aware
15 that there was an allegation that you had placed those drugs
16 into the vehicle, right?

17 A That's what the officer said.

18 Q Okay. Yeah, yeah, yeah.

19 So, that would of been his testimony if the case went
20 to trial, right?

21 A Yes.

22 Q Okay. And you may of disputed that, right?

23 A Yes.

24 Q Well, that's kind of part of what you waived by
25 pleading guilty, right?

1 You waived challenges to the evidence?

2 A Once again, if I would of known the information that I
3 have now, I would have not.

4 MR. MITCHELL: Okay. One second, Your Honor.

5 THE COURT: Okay. Take your time.

6 (Pause.)

7 Q And did you plea also hoping to maybe take some of the
8 say heat off your mother?

9 A Well, the way it was explained to me by Anthony, there
10 was -- that he had all the information in the case, and that
11 would probably be in my best interest.

12 Q Okay. So, y'all's discussions were that, you know, you
13 maybe not risk the, risk the mandatory sentence?

14 A Yes, sir.

15 Q Okay. Because, in y'all's view, the evidence was
16 strong at that point?

17 A That's what he had, yes.

18 Q Right.

19 Okay. So, your testimony today is that you would have,
20 I guess number one, not waived PCR had you known this was
21 out there, right?

22 A Correct.

23 Q And then, number two, that you would not have pled
24 guilty, and had gone to trial if you---

25 A Yeah, that I had some kind of basis that would help me.

DeAngelo Mickell - Cross-examination
by Mr. Mitchell

1 Q If you thought he had a challenge to suppress the---

2 A Yes.

3 Q ---evidence, right?

4 All right. No further questions. Thank you.

5 THE COURT: Any redirect?

6 MR. BROWN: Just very briefly.

7 REDIRECT EXAMINATION

8 BY MR. BROWN:

9 Q Do you recall, at your -- there were two different
10 Court hearings, right, in your case?

11 One in January of 2010?

12 A And one in April.

13 Q And one in April.

14 Do you recall the State telling the judge, at both of
15 those hearings, that you had been seen driving in that car?

16 A Yes.

17 Q Okay. And they tell you -- the State took that
18 position before the judge that you had been seen driving the
19 car that had the drugs in it?

20 A Yes, sir.

21 Q Okay. And that was their information that you had
22 driven that car around?

23 A Yes, sir.

24 Q And, and that one thing that you had -- that had come
25 up before, you're thinking about the plea deal has changed

1 since you've gotten---

2 A The materials---

3 Q ---been able to take a look at the details?

4 A Yes, sir.

5 MR. BROWN: Okay. No further questions, Your Honor.

6 THE COURT: All right. You may step down.

7 You may call your next witness.

8 MR. BROWN: Your Honor, the Applicant would rest at
9 this time. We would make the appropriate motion. We move
10 for a summary judgment -- well, a directed verdict. I
11 think -- I don't know if it's on these facts, but I would
12 just suggest, Your Honor, to the extent that that blue ink
13 signature can be considered a Brady item, because, for the
14 first time we have now testimony from Mr. Dore that he's
15 never seen that item before, we do believe it would fit
16 under our Ground C that we previously asserted. And I
17 didn't know he was gonna say he'd never seen it before.

18 I mean I did -- do know he never talked to him about
19 it, but, on the stand, he went a little bit further, and
20 actually said he never -- doesn't believe -- never been
21 provided with that copy at all.

22 And so, to the extent that that issue's in play, and I,
23 I can't say that a search warrant affidavit would be
24 necessarily impeachment or exculpatory in the traditional
25 sense. I do think, in a case like this where it's primarily

1 a search and that's it as to Mr. Mickell, to the extent that
2 that's a viable claim, I believe that I need to ask, under
3 Rule 15, to go back and amend the application to include
4 that as part of our Ground C even though, right before this,
5 I told you I wasn't gonna assert Ground C anymore. But I am
6 faced with that fact, and I didn't even -- I don't believe I
7 even asked that question. I think that came out on cross
8 examination.

9 THE COURT: I'm gonna allow you to amend, amend to
10 assert that cause.

11 MR. BROWN: Thank you.

12 THE COURT: Do you have any witnesses you'd like to
13 present?

14 MR. MITCHELL: Yes, Your Honor.

15 We'd obviously oppose the motion for directed verdict,
16 but, just for the record, and we would call Chris Sankowski
17 to the stand.

18 MR. BROWN: And assuming I'd get a ruling, I'm, I'm
19 not -- I just don't want to waive anything on the -- I mean
20 --.

21 THE COURT: All right. The motion for directed verdict
22 is denied.

23 MR. BROWN: Thank you, Your Honor.

24 THE COURT: Ask if you'd come forward, and place your
25 left-hand on the Bible, and raise your right-hand so the

Chris Sankowski - Direct examination
by Mr. Mitchell

1 clerk can administer the oath.

2 CHRIS SANKOWSKI, being first duly
3 sworn, testified as follows:

4 THE CLERK: You may be seated.

5 THE COURT: Ask you to have a seat in the witness
6 chair. Pull up real close to that microphone. Speak
7 loudly, clearly, and slowly in order for me to hear
8 everything that you have to say.

9 THE WITNESS: Yes, sir.

10 THE COURT: Mr. Mitchell.

11 MR. MITCHELL: Okay. Please the Court.

12 DIRECT EXAMINATION

13 BY MR. MITCHELL:

14 Q Good afternoon, Mr. or is it Lieutenant?

15 A Yes.

16 Q Lieutenant Sankowski.

17 All right. Where are you currently employed?

18 A Beaufort County Sheriff's Office.

19 Q Okay. How long have you been employed there?

20 A Going on 27 years.

21 Q Twenty-seven years.

22 A Going on 27.

23 Q Okay. How were you involved in Mr. Mickell's case
24 here?

25 A I actually was assigned to get the search warrant for

Chris Sankowski - Direct examination
by Mr. Mitchell

1 the residence at 12 Christopher Drive.

2 Q Okay. Can we kind of, you know, back up a little bit
3 before that.

4 What, what was your involvement with this investigation
5 prior to you getting the search warrant from the magistrate?

6 A This was sort of a joint investigation between the Drug
7 Task Force and SLED. SLED did a majority of purchases, from
8 my understanding, and we assisted during those purchases.
9 And, again, at the time of the search warrant, you had two
10 different agencies doing different things, and several
11 different people doing different things.

12 Q Okay. And you were part of that drug task force at the
13 time?

14 A Yes, sir.

15 Q All right. Let's talk about the warrant.

16 Why did you suspect drugs to be at the residence?

17 A From my recollection, we were doing surveillance on the
18 residence. I had previous knowledge, previous knowledge
19 that the drugs had been purchased either from the residence
20 or from the area of the residence. During surveillance, one
21 of the deputies observed someone walk in or walk out of the
22 residence. And that another deputy stopped that individual,
23 and he confessed that he just purchased marijuana, and
24 cocaine from the residence.

25 Q Okay. So, was that before or after Ms. Mickell was

1 stopped on the -- was stopped in her truck?

2 A And I, I do not know. I was not the case officer. I
3 just pretty much handled this part of it.

4 Q Were you aware of Ms. Mickell's role in this operation?

5 A From what I've been told, she was the one selling the
6 illegal drugs from the residence.

7 Q So, that was kind of the theory of the case that she
8 would sell out of the house, Mr. Mickell would sell and
9 supply some of these drugs?

10 A From my understanding, yes, sir.

11 Q Okay. All right. So, have you had an opportunity to
12 look at these search warrants that we've been talking about
13 all day?

14 A I have. I don't know about a third---

15 Q Okay.

16 A ---copy.

17 Q Let's -- do you have the exhibits in front of you right
18 there?

19 A I don't.

20 Q Oh, okay. Let's see if we can get Exhibit 1, 2, and 3.

21 May I approach, Your Honor?

22 THE COURT: Yes.

23 Q Okay. For the record, are you looking at, I guess,
24 three variations of this search warrant?

25 Is that correct?

Chris Sankowski - Direct examination
by Mr. Mitchell

1 A That's correct.

2 THE COURT: All right. Let's have quiet.

3 Q Okay. And now there are -- okay. So, you, you were
4 tasked with obtaining the warrant.

5 How, how did that work?

6 Did you go to the courthouse to get the magistrate's
7 signature?

8 A The best of my recollection, I went back to my office
9 where I had a computer where I could type the search
10 warrant.

11 Q Okay.

12 A And I was fed information from the, the scene.

13 Q So, you were in constant contact with the field while
14 you were inputting this information.

15 Is that right?

16 A Correct.

17 Q Okay. So, this, this is -- what, what time did this
18 take place if you recall?

19 You don't have -- I'm talking about afternoon, morning.

20 A Evening.

21 Q Okay. Evening.

22 So, you know, this -- was is after hours?

23 A Correct.

24 Q Okay. How would you get a magistrate's signature on a
25 warrant if it's, you know, after 5:30 or so?

1 A We would either go through dispatch and have the
2 on-duty magistrate call us or maybe have their cell phone
3 and call them directly.

4 Q Okay. So, they're pretty accessible to sign these
5 types of warrants?

6 A Yes.

7 Q Okay. Have you presented warrants to -- well, who --
8 what judge is this here?

9 A Judge Fitzgibbons.

10 Q Have you presented warrants to Judge Fitzgibbons
11 before?

12 A I have.

13 Q Okay. So, if this was signed some time of the night of
14 October 17th, 2008, how would you have obtained his
15 signature on this?

16 A I believe I would of met him at his residence, and he
17 would of signed it.

18 Q Okay. So, is that common, to go to his residence?

19 A After hours, yes.

20 Q Okay.

21 A Some judges will come out -- back out to the
22 courthouse, but sometimes we go to the, the residence.

23 Q Okay. So, looking at these warrants, it looks like
24 there's three different signatures or three different
25 variations of the signature and the amendment.

Chris Sankowski - Direct examination
by Mr. Mitchell

1 Is that fair to say?

2 A That's correct.

3 Q Okay. How many of these -- how many copies of this
4 would the judge have signed?

5 A He would of signed two.

6 Q So, he would of signed?

7 A The evening of the 17th, he would of signed two.

8 Q Okay. But these don't seem to be copies, do they?

9 I mean is it possible he would of signed three?

10 A It's possible that he would of signed a third one
11 either the next morning or that evening.

12 Q Okay. Okay. So, on one of the warrants, we're, we're
13 missing a part about any vehicles or outbuildings.

14 Is that kind of standard language included in warrants?

15 A We normally do put that in there, but it was deleted on
16 this search warrant originally.

17 Q Okay. Do you recall -- can you explain this
18 discrepancy from your recollection?

19 A I cannot specifically explain, but I can tell you that
20 the search warrant that was turned in to Beaufort County
21 Sheriff's Office records had the judge's initials on it, and
22 that he would of been the one to add that vehicles and
23 structures. And that's what I swore to when I returned the
24 search warrant back to the judge.

25 Q Okay. Do you know whose handwriting that is on the,

1 let's see, amendment?

2 A I cannot positively say, but it -- I know Judge
3 Fitzgibbons. He wouldn't allow someone else to write
4 something on a search warrant.

5 Q Okay. So, you're saying when you return -- when you
6 make the return, he would of reviewed the warrant, and if he
7 would of noted any inconsistencies or an addition, that
8 would of been likely---

9 MR. BROWN: Calls for speculation.

10 THE COURT: Sustained.

11 Q Okay. So, in your experience with Judge Fitzgibbons,
12 he's meticulous you say?

13 A Yes.

14 Q Okay. Do you, do you -- the timing of when these were
15 signed, do you have any specific recollection of exactly
16 when?

17 A Not exactly. I know that the stop of the individual,
18 again, was probable cause was somewhere around seven
19 o'clock.

20 Q Okay.

21 A And I do know that the, according to the execution of
22 the search warrant, was right around 10:15 I think.

23 Q Okay.

24 A Somewhere in-between that time would of given me time
25 to get the search warrant signed.

Chris Sankowski - Direct examination
by Mr. Mitchell

1 Q So, you would of had this search warrant signed before
2 the search was conducted?

3 A Correct.

4 Q Okay. Are you familiar with Judge Fitzgibbons'
5 signature?

6 A Only other then looking at it on other documents.

7 Q Okay. I mean that -- does that matter?

8 It doesn't look like -- is that similar to his
9 signature in your---

10 A His initials---

11 Q ---experience?

12 A ---and signature looks identical to the ones I've seen
13 on other documents.

14 MR. MITCHELL: Okay. One second, Your Honor. I'm
15 sorry.

16 (Pause.)

17 Q Is, is it common for you to call a magistrate, and get
18 maybe oral permission to input something on a warrant?

19 A It's not common, but it has occurred before. Once we
20 get to a location and something's omitted from the search
21 warrant---

22 Q And we would be talking about before it was executed,
23 right?

24 A Correct.

25 Q Okay. So, is it possible that that happened here?

1 MR. BROWN: Calls for speculation.

2 THE COURT: Sustained.

3 MR. MITCHELL: Judge, I think -- well, sorry.

4 So, you have no personal certain knowledge of exactly
5 how there's a copy without the amendment?

6 Is that --?

7 A No, I understand how it could be.

8 Q Okay.

9 A When I went to the judge at his residence, there would
10 of been two copies. The judge would of signed each copy in
11 blue cause I don't believe he would have a copier at the
12 residence. And one of those copies would of probably not
13 had the amendment written on it, and left -- that could of
14 been left at the residence because SLED handled a lot of the
15 execution of the search warrant. So, they may of -- that
16 maybe of been where that part got mixed up.

17 Q Okay. So, you were responsible for getting the search
18 warrant, but you were not responsible for conducting the
19 search, the seizure.

20 Is that right?

21 A I was, I was there during the search and the seizure.

22 Q You weren't responsible for serving the warrant, were
23 you?

24 A No.

25 Q Okay. Did you serve the warrant?

Chris Sankowski - Direct examination
by Mr. Mitchell

1 A No.

2 Q Okay. Do you know who did?

3 A Aaron Rawl with SLED.

4 Q What was his role in this?

5 A My understanding, he was the case officer.

6 Q Okay. So, you would have gotten the judge's signature,
7 then passed these to Aaron Rawl, correct?

8 A Correct.

9 Q And then he would of served the warrant on Ms. Mickell.
10 Is that right?

11 A Yes.

12 Q Okay. All right. No further questions. Thank you.

13 THE COURT: Any cross-examination, Mr. Brown?

14 MR. BROWN: May it please the Court?

15 THE COURT: Yes.

16 CROSS-EXAMINATION

17 BY MR. BROWN:

18 Q Not getting into specifics, Judge Fitzgibbons lives on
19 this side of the county?

20 A Correct.

21 Q On the north side of the Broad River?

22 A Yes.

23 Q Okay. And this search was on Hilton Head Island?

24 A Correct.

25 Q Okay. And tell me how Agent Rawl got that warrant from

1 you?

2 A I brought it to the residence.

3 Q You drove it.

4 Okay. And can you just ballpark the amount of time it
5 takes to drive from Judge Fitzgibbons' house to Hilton Head?

6 Just --.

7 A Forty, forty minutes to an hour.

8 Q Okay. All right.

9 I beg the Court's indulgence.

10 (Pause.)

11 Q And I just want to ask you one last thing.

12 Did you have anything to do with any purported consent
13 to search?

14 A No.

15 Q Thank you.

16 No further questions, Your Honor.

17 THE COURT: Any redirect?

18 MR. MITCHELL: And one last question.

19 REDIRECT EXAMINATION

20 BY MR. MITCHELL:

21 Q That's, that's not your handwriting on those warrants,
22 the handwritten addendum?

23 A Absolutely not.

24 Q Okay.

25 A Also it wouldn't be uncommon for a search warrant to

Chris Sankowski - Redirect examination
by Mr. Mitchell

1 start before I got to the residence.

2 Q And the judge would be able to sign it, and you could
3 call and say it was signed---

4 A Yes.

5 Q ---and then they get to go, right?

6 A Correct.

7 Q All right.

8 THE COURT: You may step down.

9 Any objection to this witness being excused?

10 MR. MITCHELL: No, Your Honor.

11 THE COURT: You're free to leave. Thank you, sir.

12 You may call your next witness.

13 MR. MITCHELL: Your Honor, the State has no further
14 witnesses.

15 THE COURT: All right.

16 MR. BROWN: No further evidence from the Applicant,
17 Your Honor.

18 THE COURT: Very good.

19 I have a good understanding of the issues in this
20 matter.

21 MR. BROWN: Yes, sir.

22 THE COURT: But I do want to take some time to, to
23 study this thing, and give it some consideration. And, in
24 the mean time, I'm gonna ask that both of you prepare a
25 proposed order.

1 MR. BROWN: Yes, sir.

2 THE COURT: And send it to me here in Beaufort with a
3 self-addressed stamped envelope.

4 MR. BROWN: Yes, sir.

5 THE COURT: And we'll stand adjourned.

6 MR. BROWN: And, and, Your Honor, before you do that,
7 may I just hand Your Honor the Texas case I referenced?

8 THE COURT: Yes.

9 MR. BROWN: As well as a South Carolina case regarding
10 search warrants, and reliability of the informant. The
11 Texas case is State of Texas versus Jimmy Ray Barnette. And
12 I've got a copy for the Attorney General, and a copy for
13 Your Honor. And then the other case is State versus Willie
14 Lee Johnson.

15 Thank you, Your Honor.

16 THE COURT: Very good.

17 All right. We'll stand adjourned.

18 MR. MITCHELL: Thank you.

19

20

21 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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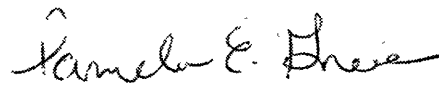
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Beaufort County, South Carolina, on the 19th day of October, 2016.

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

January 2nd, 2019



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

EXHIBIT C

DESCRIPTION OF PREMISIS (PERSON, PLACE OR THING)
TO BE SEARCHED

A single wide mobile home located at #12 Christopher Drive Hilton Head Island, South Carolina. The residence is further described as beige in color with burgundy trim. The residence has had a canine located in the front of the residence in the past. The residence has wooden steps leading to the front door. The residence also has a white in color front door. INCLUDED IN THIS WARRANT ARE ALL Vehicles, outbuildings AND OTHER STRUCTURES ON THIS PROPERTY. (P)

Affiant

[Signature]

Signature of Judge

[Signature]

(U.S.)

Date

9-17-09



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF COLLETON) CASE NO.: 2011-GS-07-01538

DEANGELO MICKELL,)

APPLICANT,)

vs.)

TRANSCRIPT OF RECORD

THE STATE OF SOUTH CAROLINA,)

RESPONDENT.)

TELEPHONE HEARING HELD ON MAY 7TH, 2014
 HEARING HELD AT COLLETON COUNTY COURTHOUSE ON MAY 8TH, 2014
 WALTERBORO, SOUTH CAROLINA
 BEFORE THE HONORABLE PERRY M. BUCKNER, III, JUDGE.

APPEARANCES:

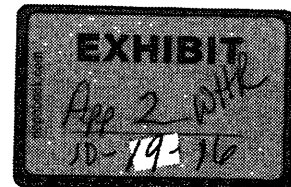
MR. JIM BROWN, ESQUIRE
 Attorney for the Applicant

MS. ASHLEY McMAHAN, ESQUIRE
 Attorney for the State of South Carolina

MR. WHITSETT, ESQUIRE,
 SLED Attorney

MS. ALLYSON COPPAGE, ESQUIRE
 Attorney for the County of Beaufort

Rebecca H. Hill
 Official Court Reporter



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1 THE COURT: Good afternoon, this is Judge Buckner. I
2 have Becky Hill, my resident court reporter, in my office,
3 along with my law clerk, Wilder Harte, and my JOE program
4 participant, Barnwell Fishburne.

5 I have scheduled two motions for 2:00 p.m. That would
6 be two motions to quash a subpoena. One on behalf of
7 Beaufort County, represented by Ms. Coppage; and one on
8 behalf of SLED, who is represented by Mr. Whitsett. Who is
9 on the phone, please?

10 MS. COPPAGE: Your Honor, this is Allyson Coppage with
11 Beaufort County.

12 THE COURT: Good afternoon, Allyson; who else?

13 MS. MCMAHAN: Ashley McMahan

14 THE COURT: Good afternoon, Ashley.

15 MR. WHITSETT: Agent Whitsett with SLED.

16 THE COURT: Wonderful. It appears that I have Jim
17 Brown for the Applicant. I have SLED. I have Beaufort
18 County, and I have Ashley McMahan for the State of South
19 Carolina.

20 My court reporter has the caption of this case. It is
21 a 2011 post-conviction-relief matter from Beaufort; 2011 at
22 01538, DeAngelo Mickell, who is the Applicant, vs. the State
23 of South Carolina. Mr. Mickell is represented by James
24 Brown, and The State of South Carolina is represented by
25 Ashley McMahan.

1 I'm going to take the motions in the order that I
2 received them. The first motion that I received was yours,
3 Ms. Coppage, which is a motion to quash subpoena. Because
4 of time, I am not going to allow anyone to argue more than
5 five minutes. Now, I'm going to give an argument to Ms.
6 Coppage. I will give an argument to Ms. McMahan, and then
7 to Mr. Brown. And Mr. Brown, I will let you go after I've
8 heard from both the moving party and the State, so that you
9 get one argument in reply to both. I'll do the same thing
10 for the motion to quash by SLED, which will be the second
11 motion we hear. Ms. Coppage, do you understand?

12 MS. COPPAGE: Yes, Your Honor.

13 THE COURT: Mr. Brown, do you understand?

14 MR. BROWN: Crystal clear, yes, sir.

15 THE COURT: Wonderful, Mr. Brown, then we may get along
16 today. All right. Let me make sure I have both motions in
17 front of me, because I have a lot of paper. Mr. Whitsett,
18 do you understand the conditions of argument?

19 MR. WHITSETT: Yes, Your Honor.

20 THE COURT: Wonderful. All right. Finally, Ms.
21 McMahan, do you understand the conditions of argument?

22 MS. MCMAHON: Absolutely.

23 THE COURT: Wonderful. Ms. Coppage, Becky can hear
24 you, but please speak up. I've turned the speaker all the
25 way up on my phone. Y'all know I talk loud because I'm

1 deaf. I've shot a shotgun all of my life, but some of you
2 have meek voices. I expect my court reporter to be able to
3 hear you just as you can hear me right now. Please remember
4 no one interrupts a lawyer during their argument. You will
5 each get a turn.

6 Ms. Coppage, you have the floor. Happy to hear from
7 you on your motion to quash subpoena.

8 MS. COPPAGE: Thank you, Your Honor. Can you hear me
9 okay?

10 THE COURT: I can hear you loud and clear, Allyson.

11 MS. COPPAGE: Thank you. Your Honor, my motion is
12 primarily based on your Order dated April 16th, 2013, in
13 which discovery was pursuant to 17-27-150, in the Court's
14 discretion. The subpoena that was issued as to Magistrate
15 Fitzgibbons to appear on May 7th, 2014, requests that
16 testimony and the production of documents. Based on that
17 alone, I think the motion should be quashed, but absent
18 quashing the motion on that, I believe that the Court stated
19 with specificity that the Applicant failed to meet the
20 requirements of In Re: Whetstone. Specifically, the
21 testimony of Beaufort County Magistrate Fitzgibbons should
22 not be required to testify over a case in which he
23 previously presided, unless the testimony is critical and
24 may be obtained by no other means.

25 Counsel for Mr. Mickell has failed to show that the

1 testimony is critical and not obtainable from another
2 source. I believe that the warrant itself is the best
3 evidence fact to be proved by the testimony of the judge,
4 and there is a presumption that the judge should not be
5 called for information that can be obtained by another
6 source.

7 This information that is being requested by the
8 subpoena could be obtained either from a records custodian
9 or the requesting officer of the warrant. I think that
10 these two grounds alone are sufficient to quash the motion,
11 and I'm gonna go with your five-minute rule and stay very
12 brief on this point, Your Honor.

13 THE COURT: First of all, Ms. Coppage, when I ruled
14 before, I had before me a request by Mr. Brown for discovery
15 in this case that dealt with the deposition of a SLED
16 officer, deposition of a sheriff's department employee, and
17 it also dealt with, I assume, this same magistrate; am I
18 correct?

19 MS. COPPAGE: That is my understanding, Your Honor.

20 THE COURT: All right. So you believe my Order of
21 April 2013 covers this situation and for that reason alone I
22 should quash the subpoena. You concede, Ms. Coppage, that
23 17-27-150 does allow, under certain circumstances, some
24 discovery in a post-conviction relief proceeding; do you
25 not?

1 MS. COPPAGE: Yes, sir, I do believe it is in the sound
2 discretion of Your Honor to allow some discovery. And I do
3 want to say that I did not rely solely on your Order; I
4 believe your Order was very specific that there was to be no
5 discovery as to the magistrate; but secondarily, if you do,
6 in your discretion, allow discovery, I do not believe the
7 magistrate should be the party that is subpoenaed because we
8 don't reach the threshold requirements of In Re: Whetstone.

9 THE COURT: And you believe the second prong of
10 Whetstone, which you believe, of course, can be obtained by
11 no other means and is not met in this case; is that correct?

12 MS. COPPAGE: Yes, Your Honor.

13 THE COURT: Thank you very much, Ms. Coppage. I
14 believe I understand your argument completely. Ms. McMahan?

15 MS. McMAHAN: Your Honor, I adopt Ms. Coppage's
16 argument.

17 THE COURT: Good job, Ms. McMahan. Succinct and to the
18 point.

19 THE COURT: Mr. Brown, your time begins now on this
20 motion.

21 MR. BROWN: Yes, sir. Briefly in response, Your Honor.
22 Your Honor pointed out that the motion that was ruled on was
23 a motion for discovery, specifically for depositions power.
24 It was actually requested in an effort to reduce the in-
25 court time for testimony and any inconvenience that would go

1 to those witnesses. Any actual Whetstone issues were not
2 presented at the hearing by me, so I can't argue that I met
3 the threshold there, because I didn't actually put up
4 argument on that issue. I didn't suggest, because there has
5 been a motion to quash the subpoena at that point, that
6 there is no ruling on, because this is not the first time
7 this judge was subpoenaed. That's my response as to the
8 prior Order motion.

9 THE COURT: Let's talk about whether or not you comply
10 -- you agree that In Re: Whetstone, and tangentially there's
11 also a real older case that I'm sure you've looked at, Mr.
12 Brown, from 1893, State v. Talbert. I'm sure you've
13 reviewed that, a good Berkeley County case. Tell me your
14 position in regards to the second argument that I hear Ms.
15 Coppage, and adopted by Ms. McMahan, made and that is that
16 you don't comply with the criteria of what's known to permit
17 this subpoena and that I should quash it, and for that
18 reason, in addition to the argument they've made on my prior
19 Order.

20 MR. BROWN: Your Honor, as to the credibility from any
21 other source, I can't initially say they were pled to the
22 Clerk as a magistrate order, all of copies -- all documents
23 related to this subpoena, which there is a provision that
24 provides how long those documents are to be kept. In
25 response, we received a notification that all those

1 documents have been destroyed.

2 And those documents that I'm seeking to authenticate is
3 a document that is not contained in either trial counsel's
4 file, which means that there is no existing copy or original
5 of those documents that I'm aware of anywhere on the face of
6 the earth.

7 THE COURT: Hold on a second, Mr. Brown, before you
8 want to tell me that it's not available. What is the
9 document and where did you find it?

10 MR. BROWN: It is a signature page providing the
11 appropriate scope of the search as allowed by the
12 magistrate. It is different from the ones that are
13 available, because it does not allow permission to search
14 the trunk of the car in which the substantial amount of
15 trafficking cocaine was found that in turn led to my
16 clients' conviction.

17 The documents that are available show a handwritten
18 modification. In other words, the only ones that are
19 available, someone has written in that there is permission
20 to search the trunks of the cars. Now, I can't concede that
21 those are originals, because I can't find those originals.
22 But Your Honor, mine has an original blue signature from the
23 judge who told me in person, to my face, with my associate
24 attorney there that that was in fact his signature; and in
25 fact, counsel for the county, the magistrate, Mr. Gruber,

1 agrees that that is the judge's signature on the one that
2 does not give sufficient authority for the search that led
3 to my client's conviction.

4 THE COURT: All right. Ms. Coppage, I need to ask you
5 now, was an effort made in regards to Judge Fitzgibbons to
6 have him do an affidavit as to authentication of the
7 signature on this document that Mr. Brown says is critical
8 to his proceeding on this application?

9 MS. COPPAGE: I know that conversations have been had
10 between Mr. Brown and Mr. Gruber as to whether or not he
11 would be willing to do an affidavit. However, because we
12 still believe that the document may be authenticated as a
13 public record, by the records custodian, or the requesting
14 officer, we have not gone so far as to do that at this time,
15 Your Honor.

16 THE COURT: Let me ask you this, under whose theory is
17 this -- do you have a copy of the document, Ms. Coppage?

18 MS. COPPAGE: No, sir, I do not.

19 THE COURT: Well, how would you know whether or not it
20 could be authenticated as a public record if you don't have
21 it?

22 MS. COPPAGE: I believe that the investigating officer
23 may be able to authenticate it, Your Honor.

24 THE COURT: It is your understanding, you've talked to
25 the investigating officer, who can authenticate the document

1 that Mr. Brown says is critical and cannot be obtained by
2 any other means; is that what you're telling me?

3 MS. COPPAGE: No, sir. I have not spoken to the
4 investigating officer.

5 THE COURT: Well, how can you tell me that, that you
6 believe this, or is this your belief by what you've been
7 told by other people?

8 MS. COPPAGE: We have no reason to believe that it's
9 not authentic, Your Honor.

10 THE COURT: Mr. Brown, do you have any witness that's
11 going to say the document is not authentic?

12 MR. BROWN: We assert it is authentic, Your Honor. Our
13 argument is ---

14 THE COURT: Hold on a second, Mr. Brown; I'm asking
15 questions. I'm not asking for argument yet. I'm
16 interrupting you. Ms. McMahan, does the State of South
17 Carolina take a position on the authenticity of this
18 document? Are you willing to stipulate to the authenticity
19 of this document? Are you willing to stipulate to the
20 authenticity?

21 MS. McMAHAN: I'm confused. I'm not sure -- are we
22 talking about the search warrant that Mr. Brown brought with
23 him to Court?

24 THE COURT: See, Ms. McMahan, I don't know either.
25 That's why I asked Mr. Brown the question. Mr. Brown, have

1 you sent this document to Ms. McMahan?

2 MR. BROWN: Your Honor, I have not. When discovery was
3 denied, I figured we could exchange documents during the
4 proceeding.

5 THE COURT: I see. Well ---

6 MR. BROWN: I think discovery would've helped. I know
7 you didn't ask that.

8 THE COURT: Well, Mr. Brown, do you have a fax machine
9 in your office?

10 MR. BROWN: I absolutely do.

11 THE COURT: Ashley, give me your fax number.

12 MS. McMAHAN: 803 ---

13 THE COURT: Write it down, Jim, because you're getting
14 ready to fax it to me and to her.

15 MR. BROWN: Yes, sir. We also have a scanner if you'd
16 like for us to e-mail it.

17 MS. COPPAGE: That would be great if you could e-mail
18 it.

19 THE COURT: You may e-mail it as well. You know my e-
20 mail address, Jim.

21 MR. BROWN: Absolutely, and my associate attorney is
22 right now getting up from her seat right now to go do that.

23 THE COURT: Ashley, do they have your e-mail address?

24 MS. McMAHAN: Yes, sir.

25 THE COURT: Now, hold on. Do you have Allyson's e-mail

1 address, Jim?

2 MR. BROWN: Yes, sir. And Mr. Gruber's -- I don't
3 think Mr. Whitsett has gotten an e-mail from us, because I
4 know he is brand new. He's like on his third day on the job
5 or something. Let me try to get that e-mail address, also.

6 THE COURT: I'm only requiring you to send it to
7 Allyson and Ashley and to me, at this point, by e-mail, so
8 we can take a look at it.

9 MR. BROWN: Yes, sir. And it's scanned as black and
10 white, but, again, mine does have a blue signature from the
11 judge.

12 And Judge, I'm sorry, you had asked where it came from?

13 It was left at the house searched in compliance with
14 the magistrate.

15 THE COURT: Ashley, would you rather have it e-mailed
16 to your computer?

17 MS. McMAHAN: Yes, sir.

18 THE COURT: All right. How about you, Allyson?

19 MS. COPPAGE: Yes, sir. I'm sitting in front of my
20 computer.

21 MR. BROWN: Your Honor, you want us to send it to
22 Wilder's e-mail or yours?

23 THE COURT: Wilder is in my office with me. I want to
24 take a look at this document, which is the subject matter of
25 this motion, which it appears Ms. McMahan nor Ms. Coppage

1 have seen at this point.

2 MR. BROWN: Yes, sir, that's true. And while that's
3 going on, Your Honor, I did speak with Mr. Gruber about an
4 offer to authenticate -- a certificate of authenticity as
5 part of the acknowledgement prong at 902-8 and they are more
6 than willing to accept that.

7 (Brief pause.)

8 MR. BROWN: Your Honor, I'm going to step away to help
9 my associate attorney with these e-mail addresses.

10 THE COURT: Absolutely, Mr. Brown. We are all waiting
11 on you to send it.

12 (Brief pause while e-mail is being sent to respective
13 parties.)

14 MR. BROWN: I'm back, Your Honor. We are trying to get
15 it sent out.

16 THE COURT: Ashley, you and Allyson let me know when
17 you've gotten it, because I want you to answer my question
18 for purposes of this hearing; Ashley, do you understand?

19 MS. McMAHAN: Yes, sir.

20 THE COURT: All right. Jim, I have it; I hope they do.

21 MR. BROWN: Yes, sir.

22 MS. McMAHAN: Your Honor, I believe the person who can
23 best authenticate this would be Chris Cankowski who is the
24 affiant on this piece of paper. He is a master sergeant
25 with Beaufort County.

1 THE COURT: Boy, you can read better than I can.
2 Ashley, you can read the signature?

3 MS. McMAHAN: Yes, sir. I just happen to know that's
4 his signature because I've been in contact with him before
5 on this case.

6 THE COURT: All right. Well, what I'm showing is a
7 signature that says "affiant," and then a signature of a
8 judge, and then a date; is that what you're looking at?

9 MS. McMAHAN: Yes, sir.

10 THE COURT: So the judge, you tell me, is the same
11 judge that is the subject matter of this motion, Judge
12 Fitzgibbons?

13 MS. McMAHAN: Yes, Your Honor.

14 THE COURT: All right. Do you agree, Ms. Coppage, that
15 the affiant is someone who Ms. McMahan has identified?

16 MS. COPPAGE: I am not as great at reading that
17 signature, but I would agree that it was affirmed by an
18 officer.

19 THE COURT: All right. And that officer is still
20 employed by Beaufort County?

21 MS. COPPAGE: He was at that time. I would have to
22 check with the status of his employment.

23 THE COURT: Ashley, you've talked with him recently?

24 MS. McMAHAN: I talked to him a couple of months ago,
25 yes, sir.

1 THE COURT: And he was still employed with Beaufort
2 County a few months ago?

3 MS. McMAHAN: As far as I'm aware, yes, sir. I have
4 communicated with him by e-mail at Beaufort County.

5 THE COURT: So you believe, then, that the officer
6 could testify as to the authenticity, who you understand to
7 still be an employee of Beaufort County?

8 MS. McMAHAN: Yes, Your Honor. Even if he is not an
9 employee of Beaufort County, if he is still located within
10 South Carolina, he can still be subpoenaed.

11 MS. COPPAGE: Ashley, I apologize for interrupting you.
12 He is still employed with Beaufort County. I just confirmed
13 that he is still employed with Beaufort County

14 THE COURT: Thank you, Allyson; that answers my
15 question. All right, Jim, I'm ready to hear back from you
16 now. It appears that you're telling me that the second
17 prong of Whetstone, that it can be obtained by no other
18 means other than subpoenaing the judge is not factually
19 correct, based on what I've just been told.

20 MR. BROWN: In response, Your Honor, I'm looking to
21 authenticate the judge's signature and not the signature of
22 the affiant or anything else, just that that is the judge's
23 signature. I don't think he could be qualified as an expert,
24 considering that I have read the entire 850-page file of the
25 prosecutor, that they gave me as their entire file; it does

1 not have this document in there. I actually don't believe
2 that Officer Cankowski can authenticate it and I think it's
3 speculation that he could, given the absence of any
4 knowledge of this, except by me, before 10 minutes ago.

5 MS. COPPAGE: Your Honor ---

6 THE COURT: All right. Hold on. Nobody is going to
7 start jumping in and talking. Mr. Brown has the floor
8 unless I ask you a question and direct it to you.

9 Now, Mr. Brown, I understand that you feel like you
10 know, just as apparently Ms. Coppage thinks, both of y'all
11 have been elected judge, and can decide what can and what
12 cannot be authenticated, but that is neither one of your
13 jobs. That happens to be the Courts.

14 Now, what I'm being told is, certainly, this officer
15 can authenticate his own signature, and what you're trying
16 to do is seek the admission, you told me, of the document,
17 and what we're here on is whether or not you have to
18 subpoena the judge. You tell me you have no witness that
19 will testify that the signature is not authentic, and all
20 you wish to do is to authenticate this document, which
21 you've sent us; is that correct or not?

22 MR. BROWN: I can't answer that with a yes or no.

23 THE COURT: Why not?

24 MR. BROWN: Because I seek to authenticate that that is
25 what the judge signed.

1 THE COURT: Anything else you want to tell me, Mr.
2 Brown?

3 MR. BROWN: No, sir. But I would like to proffer this
4 document in relation to this argument at the appropriate
5 time.

6 THE COURT: Well, I have it on my e-mail. Ms. McMahan
7 has it on her e-mail. Ms. Coppage has it on her e-mail, and
8 I'll be happy -- I'm sending it to my law clerk. I will
9 have my law clerk make a copy for the court reporter and
10 have her make it as an attachment if there is no objection
11 from anyone that is a party to this hearing; Ms. Coppage?

12 MS. COPPAGE: No, objection, Your Honor.

13 THE COURT: Ms. McMahan?

14 MS. McMAHAN: None, Your Honor.

15 THE COURT: Very well. I've just sent it to my law
16 clerk and will have him make a copy and give to Becky,
17 without objection.

18 (COURT EXHIBIT NUMBER ONE, SIGNATURE PAGE, IS RECEIVED
19 INTO EVIDENCE.)

20 THE COURT: It appears to me, Ms. McMahan, what you
21 seek to do is to subpoena this magistrate, Judge
22 Fitzgibbons, for purposes of this post-conviction relief
23 proceeding. I think everyone agrees that In Re: Whetstone
24 deals with when a judge might be compelled to testify
25 regarding a case in which he previously presided over a

1 proceeding.

2 The older case actually did involve an arrest warrant,
3 which is why I referenced Talbert to you. However, I do not
4 believe that you've convinced this Court that you cannot
5 obtain this authentication by other means. Therefore, your
6 motion, Ms. Coppage, is respectfully granted. Please, Ms.
7 Coppage, you will prepare an Order. I'm granting your
8 motion to quash the subpoena.

9 I base it on two grounds. Mr. Brown is correct when he
10 says that I did not address the merits. I was dealing with
11 a general motion for discovery in 2013, and discovery in a
12 non-capital post-conviction relief proceeding is permitted
13 to some extent under 17-27-150. However, I certainly dealt
14 with the issue concerning Judge Fitzgibbons; and Whetstone
15 deals with the issue of compelling a judge to testify. The
16 criteria are that it has to be -- the testimony has to be
17 critical and that it can be obtained by no other means.

18 I don't see that any showing has been made to me
19 sufficient to convince this Court that Judge Fitzgibbons'
20 knowledge of anything involving whether or not there was
21 effective assistance of counsel is beyond this document. I
22 have no showing that this document constitutes a forgery,
23 and because of that, I feel that Mr. Brown can obtain this
24 information by other means. I, therefore, quash the
25 subpoena.

1 I'll expect your Order to be consistent with the ruling
2 I've placed on the record. You will prepare it and copy all
3 the parties, both Ms. McMahan and Mr. Brown. You will send
4 it to me at Post Office Drawer 470, Walterboro, 29488. I'll
5 expect your Order within 7 days of today and please include
6 a self-addressed, stamped envelope with sufficient postage
7 affixed thereto for the return of the Order.

8 At Mr. Brown's request, I am making a copy of the
9 document he e-mailed into me and to you a part of the record
10 of this hearing, without objection, which the Order should
11 reflect so it's clear what I'm ruling on and what I've been
12 told are the conditions of the people on the document, that
13 is, Mr. Fitzgibbons, and the name of the officer who is
14 still employed with Beaufort County; you understand my
15 ruling, Ms. Coppage, for the purposes of preparing the
16 Order?

17 MS. COPPAGE: Yes, Your Honor, thank you.

18 THE COURT: Any questions on the proposed Order
19 procedure from the State of South Carolina?

20 MS. McMAHAN: No, Your Honor.

21 THE COURT: Any questions on the proposed Order
22 procedure from counsel for the Applicant?

23 MR. BROWN: Just want to make clear that the ---

24 THE COURT: I'm not asking for anymore argument. I'm
25 talking about a proposed Order. Do you have a question

1 about that?

2 MR. BROWN: Well, will it reflect that Officer
3 Cankowski is available for testimony?

4 THE COURT: That was not discussed. He is still
5 employed with Beaufort County, according to Ms. Coppage, and
6 the Order will reflect what was said, Mr. Brown, on the
7 record. Any questions about the proposed Order procedure,
8 other than that?

9 MR. BROWN: No, sir.

10 THE COURT: We will now move to the second motion,
11 which is SLED's motion. Hold on and let me get a copy of
12 it.

13 (Brief pause as The Court obtains documents.)

14 THE COURT: All right. Mr. Whitsett, are you still
15 there?

16 AGENT WHITSETT: I am, Your Honor.

17 THE COURT: Wonderful. I have your motion to quash the
18 subpoena in front of me. Happy to hear from you at this
19 time.

20 AGENT WHITSETT: Thank you, Your Honor. May it please
21 the Court? I can be extremely brief in my arguments. The
22 two grounds to quash this subpoena, the first is the failure
23 of the form of the subpoena itself, as I read Rule 45, and
24 it is (a)(1)(d).

25 THE COURT: Yes, sir. The little known paragraph

1 45(a)(1)(a), which states set forth the text of subdivision
2 c and d of this rule.

3 AGENT WHITSETT: That is correct, Your Honor. I
4 believe this rule requires strict adherence and the complete
5 current versions of c and d are not contained in this
6 subpoena..

7 THE COURT: All right. So you believe the subpoena
8 violates the rule because it doesn't comply with 45
9 (a)(1)(d)?

10 AGENT WHITSETT: That is correct, Your Honor

11 THE COURT: All right.

12 AGENT WHITSETT: The second ground also relates to the
13 discovery issue that it is my understanding that discovery
14 has not been authorized, or has been, in fact, prohibited,
15 and the subpoena also commands a records custodian from SLED
16 to produce certain documents at the hearing. We believe
17 that is prohibited at this time, and as such would
18 constitute an undue burden under 45(d)(1).

19 THE COURT: Now, Mr. Whitsett, let me ask you this, I'm
20 assuming SLED's involvement -- I'm actually going to ask Mr.
21 Brown, or I might could ask Ms. McMahan, although they both
22 are probably familiar with the transcript. SLED's
23 involvement here on records on chain of custody would be for
24 the testing of some contraband; is that correct?

25 AGENT WHITSETT: That is certainly my understanding,

1 Your Honor

2 THE COURT: All right. In all cases in which I've had
3 SLED canvass on what happened was -- although there is
4 certainly a record made, I want to make sure I understand
5 this request, and I can address this to Mr. Brown if you're
6 not familiar, but I want you to generally tell me your
7 knowledge. Is there any record kept by SLED, other than the
8 normal chain of custody receipt, which is normally when the
9 alleged substance is sent back to a requesting agency,
10 normally a law enforcement agency, then there is a sign-off
11 by people at SLED who have handled it and then resealed it.
12 Is there any record kept in that to your knowledge?

13 AGENT WHITSETT: To my knowledge, no, Your Honor.

14 THE COURT: All right. So you believe that on the
15 basis of 45(a)(1)(d), and on the basis of 45(c)(1), because
16 the subpoena fails to avoid imposing an undue burden -- you
17 know, it's very true, Mr. Whitsett, that the burden, or
18 expense of discovery, can outweigh any benefit and the party
19 seeking discovery has to have had opportunity to obtain the
20 information from any other source. I don't know what Mr.
21 Brown has, but he is asking, as I understand it, that a
22 subpoena for any records on chain of custody that are in the
23 possession of SLED; is that your understanding as well?

24 AGENT WHITSETT: Yes, Your Honor,

25 THE COURT: Anything else you want to tell me?

1 AGENT WHITSETT: No, Your Honor.

2 THE COURT: All right. Ms. McMahan, happy to hear from
3 you. SLED is moving to quash the subpoena that was served
4 upon their custodian on the grounds that he has alleged to
5 me. Happy to hear from you.

6 MS. McMAHAN: Your Honor, a few things. First and
7 foremost, because this was a State Grand Jury investigation,
8 the actual file is housed here in the AG's office.

9 THE COURT: It's housed in the Attorney General's
10 office?

11 MS. McMAHAN: Yes, Your Honor, because it's part of the
12 underlying State Grand Jury investigation. I actually
13 brought it to court the last time we were at court.

14 THE COURT: Did you give a copy of that to Mr. Brown,
15 at my request?

16 MS. McMAHAN: Yes, sir. He was allowed to go through
17 it. And I've given him a copy of it on CD, also.

18 THE COURT: Speak up a little bit for us. We're having
19 a hard time hearing you.

20 MS. McMAHAN: I'm sorry. I backed away from my phone.
21 The original file, the SLED investigative file, I brought to
22 court with me the last time we were in court. You
23 instructed Mr. Brown to sit back in the courtroom and go
24 through it. At the same time, I gave him a CD with stamped
25 copies of what is in that file.

1 Now, I didn't make the CD and I had nothing to do with
2 this investigation, nor did I prosecute it. That's why I
3 got this disclosure Order to allow Mr. Brown access to this
4 file. I still have the file if he wants to go through it; I
5 can bring it to Court. He is more than welcome to go through
6 it if he wants to again.

7 THE COURT: All right. So in telling me that, now, Ms.
8 McMahan, are you telling me that you believe that file
9 contains any and all custody records, or records of chain of
10 custody, that could involve anyone in the chain who is
11 employed with SLED?

12 MS. McMAHAN: I can't speak for the large quantity. I
13 would have to go through each one, but I know there were
14 several drug purchases done and there were analysis request
15 forms in some of these, and photos of the drugs that were
16 purchased. As to where the drugs are now, I don't know. I
17 would assume they would have been consumed in testing, but I
18 do have the lab reports, and I have certificates for chain
19 of custody on one.

20 THE COURT: I'm not asking you about where the drugs
21 are. I'm asking you whether it's your opinion that the
22 entire chain of custody documents are contained within the
23 file that you've already provided to Mr. Brown.

24 MS. McMAHAN: I am under the opinion that the vast
25 majority of it is probably here. I have not had the

1 opportunity to look through the file yet. I'm about a third
2 of the way through.

3 THE COURT: You know, Ms. McMahon, it's the funniest
4 thing about lawyers; you sound like Mr. Brown. You can't
5 answer a judge's question yes or no. So the answer is you
6 don't know; is that correct?

7 MS. McMAHAN: I don't know.

8 THE COURT: All right. Tell me anything else you want
9 to tell me.

10 MS. McMAHAN: Your Honor, that's it. I'll be happy to
11 bring all of it to Court tomorrow and let Mr. Brown look
12 through the file. I can pull up the ones I know were drug
13 buys.

14 THE COURT: What all was he charged with, Ashley?

15 MS. McMAHAN: Mr. Mickell was charged with conspiracy
16 to traffic greater than 400 grams, and then traffic, 200 to
17 400. He pled to 28 to 100.

18 THE COURT: So he pled to the lesser trafficking
19 offense?

20 MS. McMAHAN: Yes, sir.

21 THE COURT: And what happened to the conspiracy?

22 MS. McMAHAN: That's what he pled to. He pled to both
23 of them.

24 THE COURT: So he pled to conspiracy and trafficking 28
25 to 100?

1 MS. McMAHAN: Yes, Your Honor.

2 THE COURT: All right. Anything else you want to tell
3 me in regards to SLED's motion to quash the subpoena, on
4 behalf of the State of South Carolina?

5 MS. McMAHAN: None, Your Honor.

6 THE COURT: Mr. Brown, happy to hear from you.

7 MR. BROWN: Your Honor, very succinctly. The only
8 reason I need these documents is the drugs that they
9 attributed to him came from the car at issue in the search,
10 because we don't do paragraph by paragraph admission or
11 denials like in a true civil summons and complaint, there's
12 no opportunity to whittle these facts down, and if that's
13 not an issue, I don't need the documents, as that's all I'm
14 trying to prove.

15 THE COURT: All right. Then, let me ask Ms. McMahan a
16 question. Ashley, can the State stipulate that as to the
17 drugs, which formed the subject matter of this case, or of
18 his plea, at least, that they were located in the trunk of
19 the car that was searched? Or are you not in a position at
20 this time to answer that question?

21 MS. McMAHAN: I'm not in the position until I get to
22 that point. If you can allow me just a few minutes, I think
23 I can find that folder.

24 THE COURT: I understand and I certainly would be
25 willing to do that. How much time do you need, Ashley?

1 MS. McMAHAN: I've got the folder right here; one
2 second.

3 (Brief pause while Ms. McMahan reviews file.)

4 MS. McMAHAN: Okay. I can stipulate that inside the
5 trunk of the car, there was a powder bottle (sic), two clear
6 plastic bags, a prada bag. Inside the prada bag contained
7 additional scales, a white plastic container with Ziploc
8 bags. A clear plastic container with a quantity of white
9 powder in brick form. A clear plastic container of rock
10 substances; another clear plastic container GPM. There also
11 was a white box containing a quantity of cut pennies and
12 straws, a digital scale, a Crown Royal bag, another Crown
13 Royal bag containing a sifter, spoons, scissors, and
14 toothbrushes, and another box of clear bags. So the white
15 powder brick form was, in fact, found in the trunk. As to
16 what the weight of that was -- if you give me one second,
17 let me see if I can find the lab report. Give me one
18 second.

19 THE COURT: Well, another way to ask this questions was
20 anything else found in the way of contraband, or drugs; I
21 assume was this cocaine, crack or powder?

22 MR. BROWN: It was powder cocaine.

23 THE COURT: Powder cocaine; was any powder cocaine
24 found anywhere other than in the trunk?

25 MS. McMAHAN: Yes, Your Honor, I believe there was some

1 marijuana found inside the house.

2 THE COURT: But he didn't plead to marijuana, and
3 that's not the subject of this PCR.

4 MS. McMAHAN: Here's the chain on the clear plastic
5 container of white substance. Here's the drug analysis
6 report. My apologies, Your Honor, some of these officers
7 have pretty bad handwriting. Oh, here we go: large, white
8 brick of powder. Yes, I can stipulate that the brick powder
9 taken from the car was what was used in the underlying
10 conviction in the charge.

11 THE COURT: So you could stipulate that the contraband
12 came from the trunk of the car?

13 MS. McMAHAN: Yes, Your Honor.

14 THE COURT: Well, Mr. Brown, I assume that moots your
15 motion; is that correct?

16 MR. BROWN: I will withdraw my subpoena in light of
17 that confession.

18 THE COURT: Well, I'm sure that just warms Mr.
19 Whitsett's heart after we've spent 45 minutes in a hearing.
20 Mr. Whitsett, I'm putting on the record that the motion was
21 withdrawn from Mr. Brown. Therefore, I won't need to rule
22 on it, and I want to thank you for your kind patience while
23 we waited to get to the bottom of this.

24 AGENT WHITSETT: Thank you, Your Honor.

25 MS. COPPAGE: Judge Buckner?

1 THE COURT: Yes, who is this?

2 MS. COPPAGE: This is Allyson Coppage. In light of the
3 stipulation by the State, we have Officer Teo (sic) who is
4 also our records custodian. The stipulation would take care
5 of his subpoena also if Mr. Brown is willing to release him
6 from his subpoena.

7 THE COURT: Mr. Brown, are you willing to release him
8 from the subpoena, also, in light of the State's
9 stipulation?

10 MR. BROWN: Absolutely.

11 THE COURT: Do you hear that Ms. Coppage? My court
12 reporter has taken it down.

13 MS. COPPAGE: Thank you, Your Honor.

14 THE COURT: Ashley, I will see you and Mr. Brown on
15 your motion to dismiss in Colleton County tomorrow. Thank
16 you all for your time and patience. Have a nice day.

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1 THE COURT: I thank you folks from the South Carolina
2 Department of Corrections for being here. I assure you that
3 I will not waste your time.

4 This is 2011-07-01538. This is DeAngelo Christopher
5 Mickell, who is the Applicant, vs. the State of South
6 Carolina. Present before me is the Applicant, along with
7 representatives of the South Carolina Department of
8 Corrections, and his attorney, James Brown. Present for the
9 State of South Carolina is Ms. Ashley McMahan.

10 I understand that what is scheduled for today is the
11 State's motion to dismiss. Therefore, Ms. McMahan, you now
12 have the floor. I'm happy to hear from you.

13 MS. McMAHAN: Yes, Your Honor. The State filed this
14 motion back in 2013 ---

15 THE COURT: Hold on, Ashley. Bring your file and come
16 up here. Your voice, when you hold your head down -- you
17 can use my rostrum; turn it around. Gerald will do that for
18 you. That way you can put your file on the rostrum. Tap it
19 for me, Gerald, to make sure it's on.

20 (Bailiff adjusts the rostrum for the State.)

21 MS. McMAHAN: My apologies, Your Honor. I forgot that
22 I need to be very loud with you.

23 THE COURT: Lawyers like to look down. You don't
24 realize that, because you and Mr. Brown -- you both always
25 have a file and you're always constantly trying to look at

1 it or your notes. And when you look down, that's when Becky
2 looks at me, because you don't realize what you're doing is
3 speaking very softly. So we want to make sure we can hear
4 you. Go ahead.

5 MS. McMAHAN: Your Honor, I have a case that I would
6 like to hand up.

7 THE COURT: Have you given Mr. Brown a copy?

8 MS. McMAHAN: (HANDS COPY TO MR. BROWN AND THE COURT.)
9 Your Honor, what I've just handed up is the Spoone v. State
10 case; I've also included the lower court record that is
11 associated with that case.

12 THE COURT: For the record, this is 665 S.E. 2d, 605,
13 and it is Spoone v. State of South Carolina. Go ahead, Ms.
14 McMahan.

15 MS. McMAHAN: Your Honor, this case is almost analogous
16 to that one in that Mr. Mickell was allowed to plead to the
17 lesser of 28 grams to 100, trafficking and conspiracy, to
18 traffic, two separate charges. In exchange for that, in a
19 written plea agreement, he agreed to waive his right to a
20 direct appeal and to a PCR; that is attached to my amended
21 return and motion to dismiss, and that that is item number
22 eight on the plea agreement.

23 In the Spoone case ---

24 THE COURT: Well, that's actually reflected, is it not,
25 in the transcript on page 10?

1 MS. McMAHAN: Yes, Your Honor, I was about to touch
2 base on that as well. It is -- Judge Mullen does ask on
3 page 10, "Are you waiving your right? Do you understand?
4 Are you doing it freely?" He replied "yes" on all of those.
5 But in the Spoone case, if you've reviewed the appendix in
6 that ---

7 THE COURT: Now, what did you say of the plea
8 agreement? I'm sorry if I don't have a copy of that, what
9 you're referring to.

10 MS. McMAHAN: Your Honor, the plea agreement is
11 attached to my amended return and motion to dismiss.

12 THE COURT: Hold on a second. (THE COURT REVIEWS
13 DOCUMENTS.) Ah, you are correct. I now see attached to your
14 amended return and motion to dismiss, a document which is
15 six pages in length entitled "Plea Agreement"; and where in
16 this agreement are you referring?

17 MS. McMAHAN: Number eight, Your Honor.

18 THE COURT: All right. I've reviewed paragraph number
19 eight of the Plea Agreement, as well as the transcript of
20 the plea on page 10. Go ahead.

21 MS. McMAHAN: Your Honor, the reason why I handed you
22 the appendix to Spoone is I wanted you to see the
23 correlation between the two and the similarities. The
24 biggest difference here is instead of the solicitor coming
25 to enforce the plea agreement, I'm here on behalf of the

1 State Grand Jury, not just on the prosecution side, but as
2 the PCR attorney.

3 On page 9 of that appendix, you will see where the
4 Judge asked if they agreed to waive all PCR Applications, et
5 cetera.

6 THE COURT: Hold on a second. All right. I'm on page
7 9. What line?

8 MS. McMAHAN: We're looking at line 17.

9 THE COURT: Page 9, line 17.

10 MS. McMAHAN: Then if you go forward to page 59, big
11 number 59; actually starting on big number 58, line 21
12 through page 59, line 13. This is where the solicitor came
13 in at the PCR hearing and asked that the PCR be dismissed
14 and that the plea agreement be enforced. That's essentially
15 why I'm here today is I'm asking that the PCR be dismissed
16 and that the plea agreement be enforced based on the waiver,
17 not only in writing, but also on the record as asked by
18 Judge Mullen. And in the Spoone case, it's almost the exact
19 same situation. It was affirmed by the Supreme Court. It
20 was held to be a valid waiver.

21 THE COURT: All right. So the reason you handed me
22 this case, as well as the appendix, and I'm referring to the
23 Spoone case, is because you believe this case dealt with the
24 same issue that's before me today involving Mr. Mickell?

25 MS. McMAHAN: As to the waiver, Your Honor; not

1 necessarily the underlying charges, yes.

2 THE COURT: All right. Anything else?

3 MS. McMAHAN: Nothing further, Your Honor.

4 THE COURT: Thank you very much. Mr. Brown, come on up
5 to my microphone and bring your file if you need it.

6 MR. BROWN: May it please the Court?

7 THE COURT: Yes, sir.

8 MR. BROWN: Almost immediately, within one week of her
9 filing the amended return -- for what it's worth, this was
10 filed in the late winter, early spring of 2011, the
11 application for post conviction was, she filed the amended
12 return two years, plus, later, and we filed a motion to
13 dismiss the amended return as not being appropriate based on
14 the issue of laches, etc. She never asserted the
15 affirmative defense of waiver in her return. And so,
16 there's never been a motion to accept her amended return
17 under Rule 15. I know things are more ---

18 THE COURT: But you never filed any written motion
19 yourself saying -- or did you?

20 MR. BROWN: Yes, I absolutely did.

21 THE COURT: Okay. And what was the nature of the
22 motion that you're referring to?

23 MR. BROWN: If I may hand that up, Your Honor. I do
24 have a copy of all of that.

25 MS. McMAHAN: Your Honor, you should have a copy of it

1 in your packet.

2 THE COURT: All right. Hold on a second, Jim. She
3 says I have a copy. In my packet?

4 MS. McMAHAN: Yes, Your Honor. It's entitled "Motion
5 to deny respondent's amended pleadings."

6 THE COURT: I have it in front of me. It's dated March
7 28th, 2013, Jim?

8 MR. BROWN: Absolutely, yes, sir.

9 THE COURT: Give me a moment to look at it.

10 (BRIEF PAUSE AS THE COURT REVIEWS DOCUMENT.)

11 THE COURT: All right. I've had the chance to look at
12 your motion, and basically, you argue that because of the --
13 and it's dated March 28th, 2013, basically you argue that
14 because she didn't raise it as an affirmative defense that
15 you believe it should be waived. It's definitely waivable;
16 and you believe it should be waived under this case; why?

17 MR. BROWN: Well, quite frankly, because the two
18 years and plus of prep for litigation was done without
19 awareness that that was gonna be their issue. And in fact,
20 you know, more so in their return they ask -- well, first
21 they make a general denial of everything and then ask at the
22 end as a catch-all that the Court convene a merits issue to
23 resolve the issue in their favor.

24 So not only did they waive it by not asserting it, they
25 did in turn ask the Court to have a hearing so they could

1 prove these allegations were true. And it's boiler plate in
2 the sense that every return I get has that language in
3 there. It's kind of like a general denial, so to speak, and
4 so, in other words, then in turn I didn't work, and Mr.
5 Mickell, etc., we've worked together, prepped this case, in
6 the manner that we were not opposing a waiver assertion, but
7 in fact, prepping for the hearing they asked for. And so we
8 think that's significant because we actually took steps in
9 reliance upon their request for a hearing.

10 THE COURT: So your argument is when they responded to
11 your initial application for PCR, they requested an
12 evidentiary hearing?

13 MR. BROWN: Absolutely.

14 THE COURT: And then two years later, they moved to
15 amend their return and dismiss this case on the basis of the
16 written plea agreement waiver, as well as the transcript,
17 and your argument today is that you feel like because waiver
18 is something -- or because this is an affirmative defense,
19 you believe it can be waived and it should be waived under
20 the circumstances in this case. Have I succinctly made your
21 argument?

22 MR. BROWN: Absolutely. The only thing that I ---

23 THE COURT: Thank you, Mr. Brown.

24 MR. BROWN: Yes, sir.

25 THE COURT: Anything else you want to tell me?

1 MR. BROWN: Beyond that, if the Court does seek to
2 allow them to assert the waiver, then we would ask for the
3 opportunity to prove that that was not a knowing waiver,
4 which is an exception. And I have to tell you, including
5 Spoone, which actually talks about the fact that as long as
6 it is a knowing, intelligent, voluntary waiver, etc., and so
7 we would ask to be able to present very brief testimony from
8 Mr. Mickell and his lawyer regarding what they talked about
9 on an issue that's important, because as an officer of the
10 Court there's going to be testimony that this issue wasn't
11 discussed. If it would have been discussed, the advice
12 would have been different in that he would not have even
13 taken the plea. And in that respect, there is going to be a
14 stipulation that the search warrant page is authentic; if I
15 may present that an appropriate time. And so that's one
16 less witness, I'm sorry.

17 THE COURT: Of course, Mr. Brown, normally, on a motion
18 to dismiss, which is usually a matter of law, and I'm
19 confined to the pleadings, we don't normally take testimony,
20 recognizing this is a civil matter, a PCR. I realize that
21 you are suggesting that somehow I might need to take
22 testimony as if there were some dispute of fact. I
23 understand the argument. I'm not sure I agree that it's
24 necessary, but that's conditioned upon how the Court might
25 rule and that might require that you file other pleadings to

1 prepare people to get ready for whatever it is that you
2 think might be necessary from an evidentiary standpoint; but
3 I understand your argument. Anything else?

4 MR. BROWN: No, sir. And I would suggest that it would
5 be very brief testimony, less than 30 minutes total. It's
6 just these two witnesses.

7 THE COURT: Thank you.

8 MR. BROWN: Thank you, Your Honor.

9 THE COURT: All right. Ms. McMahan, in reply.
10 Apparently, number one, Mr. Brown believes that you have
11 waived the affirmative defense because you didn't plead it
12 originally, and that if I'm inclined to allow you to go
13 forward on the fact that there is a waiver of his PCR
14 application, he wants to present testimony today. So I need
15 to hear you on both matters.

16 MS. McMAHAN: Your Honor, as to your first issue, I'll
17 separate that into as the State as the PCR attorney, and the
18 State as a State Grand Jury attorney.

19 As the PCR attorney, I'm certainly allowed to amend my
20 pleadings whenever I feel necessary to, and to raise my
21 affirmative defenses, which is what I did six months after I
22 filed the return.

23 THE COURT: You did it on -- if I'm correct, Ashley,
24 your amended return was May the 26th, 2013; is that correct?

25 MS. McMAHAN: I believe it was March 26th, yes, Your

1 Honor.

2 THE COURT: I'm sorry, you're right, it is. I looked
3 at it and I'm reading an "r" as "y". March 26th, 2013, and
4 your original return was ---

5 MS. McMAHAN: September of 2012.

6 THE COURT: All right. So approximately six months?

7 MS. McMAHAN: Yes, Your Honor. And keep in mind that
8 in our office, procedurally, we had some change up as the
9 way State Grand Jury PCR's were handled. Typically, it
10 stayed with the PCR section, which would have been Ms.
11 Wilson. At the time all this was kind of happening, I was
12 told by superiors that since there were people in Grand Jury
13 who had done PCR's in the past, we were now keeping them to
14 ourselves. I was told to handle this case in late 2012,
15 noticed there was no return, so I made one as soon as I
16 could.

17 When I reviewed the file and I was able to pull the
18 rest of the clerk's records with it, along with the plea
19 agreement, is when I noticed that and that's why I raised
20 that six months later. Now, as the State Grand Jury
21 attorney, I'm here to tell you that he made an agreement.
22 He was asked by the Court on the record, unless for some
23 reason he wasn't telling the truth on the record, that he
24 didn't agree to waive that, then I see no reason for
25 testimony and I ask that the plea agreement be enforced.

1 THE COURT: So you don't believe that the doctrine --
2 basically, what Mr. Brown is arguing is laches, and he
3 thinks there has been an unreasonable delay. You don't
4 believe six months is unreasonable, number one, so you don't
5 think there's been any waiver, and number two, you don't
6 think it's necessary for me to go behind the transcript and
7 the plea agreement and take testimony as to the
8 voluntariness of this waiver. And obviously, Mr. Brown,
9 it's like the last hearing I had. Lawyers want to always
10 anticipate something else and bring it up, even though
11 nobody -- the only thing you've been noticed for today --
12 Mr. Brown was noticed to be here because your return says
13 you want to dismiss it. And he's arguing against dismissal,
14 which I certainly understand, on behalf of his client, but
15 he also wants to bring up the fact that he objected to your
16 filing an amended return and he wants to use waiver as a
17 reason. And he thinks that you can't use the defense, and
18 I, of course, it's a little confusing, call it waiver, but
19 he's saying you're asserting waiver because the Applicant
20 waived the PCR allegedly by plea agreement and in the
21 transcript.

22 Now, as to the second prong of his argument, which is,
23 "Oh, Judge, I've got a motion now if you're inclined to
24 grant her motion. My motion is I want you to take testimony
25 today and we have a substantive hearing as to whether or not

1 there was a knowing and intelligent and voluntary waiver."
2 What's your position on that?

3 MS. McMAHAN: Your Honor, again, as you've stated, this
4 is a matter of law. It can be read from the pleadings,
5 unless, of course, for some reason Mr. Mickell was not
6 telling the truth on that transcript, then I see no reason
7 for any type of testimony.

8 THE COURT: Now, when Mr. Mickell pled in this
9 transcript, Mr. Dore was his attorney; is that right?

10 MS. McMAHAN: Yes, Your Honor.

11 THE COURT: All right. And Mr. Dore was present when
12 Mr. Mickell pled?

13 MS. McMAHAN: Yes, Your Honor.

14 THE COURT: And it was in front of Judge Mullen; is
15 that right?

16 MS. McMAHAN: That's correct. It was a bifurcated plea
17 and then a sentence a few months later in April. So he pled
18 in January and he was sentenced later in April.

19 THE COURT: Oh, bifurcated between the time of taking
20 of the plea and the time of sentencing?

21 MS. McMAHAN: Yes, Your Honor.

22 THE COURT: Were there any codefendants?

23 MS. McMAHAN: Yes, Your Honor. His mother was a
24 codefendant, as well as another individual.

25 THE COURT: Now, the transcript reflects on an issue

1 that Mr. Brown wants this Court to weigh into today, he was
2 asked under oath whether anybody promised him anything,
3 whether anybody threatened him in any manner, whether he was
4 pressured into pleading guilty, and he responded "No"; is
5 that correct?

6 MS. McMAHAN: That's correct, Your Honor. He also
7 admitted that he was guilty and that he was pleading freely
8 and voluntarily.

9 THE COURT: So your position, then, is number one, if I
10 allow your amended return and grant your motion to dismiss,
11 you believe the record is satisfactory without taking
12 testimony at this time on the issue of whether or not a
13 waiver existed as to PCR?

14 MS. McMAHAN: Yes, Your Honor.

15 THE COURT: Even though Mr. Brown suggests that he
16 thinks that from testimony that he could create an issue of
17 fact as to whether or not this was a voluntary and an
18 intelligent waiver. Have you ever been on notice by Mr.
19 Brown of such a position before he argued it to me today?
20 Other than his motion, which y'all handed me, to deny your
21 amended pleadings?

22 MS. McMAHAN: Other than that motion, no, Your Honor.

23 THE COURT: Well, counsel, I love lawyers that try to
24 anticipate everything. Mr. Brown, I believe you're a little
25 bit premature, even though you think it's necessary for me

1 to go behind. I believe, number one, the first issue for me
2 today is on the State's motion to dismiss. That motion is
3 based on the fact that there is a written plea agreement,
4 which is a part of the file and that the plea Court
5 questioned the applicant regarding his waiver of his right;
6 not only to his right to file a PCR, but his right to file a
7 direct appeal. And he indicated on the record on page 10 of
8 the transcript that he was waiving his right to file an
9 appeal and a PCR and that he was doing so willingly and
10 freely. That's at lines 9 through 17 on page 10 of the
11 transcript from January 25th, 2010. There is also a written
12 plea agreement, which at paragraph number eight indicates
13 identically that..

14 Now, Mr. Brown argues that because there was a time
15 period from September until March that this Court should
16 find that in your amended pleading, Ms. McMahan, where you
17 attempt to assert this waiver that occurred on the record
18 and in writing, that because the time had gone by and in
19 your proposed amended pleadings, that waiver should have
20 been pled originally as an affirmative defense. And while I
21 agree with Mr. Brown that affirmative defenses can be
22 waived, no question about that, I don't believe there has
23 been any showing to me that the time alone was sufficient
24 for me to say that the equitable doctrine of laches,
25 unreasonable delay should be applied here in this situation.

1 We're talking about from September of 2012 until March of
2 2013. I think the record adequately addresses the issue.

3 Now, Mr. Brown, there very well be may be an issue that
4 needs to be noticed concerning this transcript, but nobody
5 is here today prepared for that. That's just like lawyers
6 trying to put the cart before the horse, and while I
7 appreciate that sometimes, it's not fair to either side,
8 because I'm not going to let them do that to you, when you
9 haven't had the chance to prepare for that. Just like you
10 want me to go ahead and have a mini-trial today because of
11 her motion.

12 I well understand your opposition. I grant the State's
13 motion to dismiss. I deny Mr. Brown's motion to deny the
14 respondent's amended pleading. I do not believe there is
15 sufficient time to constitute waiver under the facts of this
16 case and I believe the transcript and the plea agreement
17 adequately show an indication, under oath, by the Applicant
18 to waive any application for post-conviction relief in
19 connection with this hearing.

20 Ms. McMahan, I'll expect you to prepare an Order
21 consistent with my ruling. I'll expect you to forward that
22 Order to me at P.O. Drawer 470, Walterboro, South Carolina,
23 29488. I'll expect you to copy Mr. Brown on that
24 transmittal to the Court. I'll expect you to include a
25 self-addressed, stamped envelope with sufficient postage

1 affixed thereto for the return of that Order.

2 I do not reach the issue today of the voluntariness of
3 the waiver because I think the transcript speaks for itself.
4 That does not mean, however, that that issue cannot be
5 raised if appropriate and if timely in the future. I make
6 no comment about that for purposes of today's hearing.

7 Ms. McMahan, do you understand my ruling?

8 MS. McMAHAN: Absolutely, Your Honor.

9 THE COURT: Very well. Mr. Brown, do you -- I'm not
10 giving you an opportunity to reargue it, Mr. Brown, because
11 I've ruled. And one of the things I'm going to tell you,
12 because I teach this in judge's school. Mr. Brown, I know
13 you and Mr. Dore know this. Both of you -- even though this
14 is a civil proceeding, both of you are familiar with the
15 rules of criminal procedure, are you not?

16 MR. BROWN: Yes, Your Honor.

17 THE COURT: Mr. Dore?

18 MR. DORE: Yes, Your Honor.

19 THE COURT: All right. And I don't know why this was
20 omitted from the Rules of Civil Procedure. I ask that
21 question every year and nobody has ever been able to give me
22 an answer, Mr. Brown. But turn to the Rules of Criminal
23 Procedure and I want you to take a look at Rule 18(a):
24 "Counsel shall not attempt to further argue any matter after
25 it has been heard and the ruling of the Court has been

1 pronounced." Although that is in the Rules of Criminal
2 Procedure, it should apply to civil court as well, and that
3 is the reason I call that to your attention. There are
4 interesting rules there and people forget about them.

5 Now, Mr. Brown, having gone over that, and I want to
6 make sure Barnwell learns that, because there are lawyers
7 that always want to say after a judge rules, "But," there is
8 no but; time for appeal.

9 Now, Mr. Brown, do you understand my proposed Order
10 procedure that I've directed Ms. McMahan to do?

11 MR. BROWN: Absolutely, Your Honor.

12 THE COURT: Any questions about that proposed Order
13 procedure?

14 MR. BROWN: No, sir. I have the document to proffer
15 that we stipulated to that is not in the record yet.

16 THE COURT: And that would be -- we already made that a
17 part of the record yesterday.

18 MR. BROWN: I need the original to be proffered not
19 that it has been authenticated.

20 THE COURT: Any objection to that?

21 MS. McMAHAN: No objection, Your Honor.

22 THE COURT: You want to make it a part of yesterday's
23 record, because that's when we did it without objection.
24 All right. Becky has the copy that my law clerk gave to her
25 after the hearing, but I'll allow you. Show it to Ms.

1 McMahan. Ms. McMahan, do you have any objection? We will
2 give it to Becky and it will be a part of the record she
3 prepares from yesterday's hearing.

4 MS. McMAHAN: I've already seen it, Your Honor, and
5 agree to it.

6 THE COURT: All right. Hand it to my court reporter.
7 Becky, please mark that. But that's part of what we marked
8 yesterday, without objection, and it's without objection by
9 Ms. McMahan today and she has reviewed the document.

10 I want to thank y'all for our patience and your time.
11 Ms. McMahan, I'll look forward to receiving your Order. Mr.
12 Brown, thank you for your patience and your time. As well
13 as yours, Mr. Mickell. Everyone have a nice day.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON) CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the
Judicial Department 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 in the
hearings of the captioned case, in the Court of Common
Pleas, non-jury, for Colleton County, South Carolina, on the
7th and 8th day of May 2014.

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

October 22, 2014

Rebecca H. Hill

Rebecca H. Hill,
Official Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORTSEARCH WARRANTDATE September 17, 2008OFFICER MSgt C. Sankowski

COUNTY OF Beaufort

Personally appeared before me, one MSgt. C. Sankowski
who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHTSee Attached Exhibit B**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED**See Attached Exhibit C**REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**See Attached Exhibit A

Sworn to and Subscribed before me

this 17th day of September 2008[Signature]
Signature of Judge

(L.S.)

[Signature]
AffiantAddress 201 Duke StBeaufort S.C. 29901Phone 757-6575

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort

SEARCH WARRANT

Form Approved 1
S.C. Attorney General
Section 17-13-1
March 15, 1974

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY

~~OF Beaufort County~~

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED**

See Attached Exhibit C

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

See Attached Exhibit B

This Search Warrant shall not be valid for more than ten days from the date of issuance.

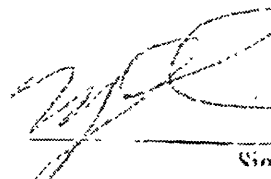
A written inventory of all property seized pursuant to this Search Warrant shall be made to

Beaufort County Magistrate

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Beaufort, S.C.
September 17th 1988



Signature of Judge (L.S.)
MS



P. J. Tanner
Sheriff

**OFFICE OF SHERIFF
BEAUFORT COUNTY**

POST OFFICE BOX 1758

BEAUFORT, SOUTH CAROLINA 29904

AREA CODE (843)

SHERIFF	470-3200
CHIEF DEPUTY	470-3192
CRIMINAL RECORDS	470-3186
CIVIL RECORDS	470-3188
JUDGMENTS	470-3189
FAX #	470-3187

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT**

EXHIBIT A

SEARCH WARRANT AFFIDAVIT:

Personally appeared before, Master Sergeant Chris Sankowski, who being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of section 17-13-140, 1976 Code of Law of South Carolina, as amended, is located on the following premises in this county

I have been employed as a certified South Carolina Police Officer since 1991. I have participated in and conducted numerous narcotics and criminal investigations over the past eighteen (18) years. These investigations resulted in numerous arrests and drug seizures of drugs and other illegal activity. I am currently assigned as a Narcotics Investigator with the Beaufort/Jasper County Multi Agency Drug Task Force.

I have attended several law enforcement schools related to the enforcement of controlled substances, and I have read papers, articles, and books dealing with illegal drugs and their effects. I have worked numerous hours with more tenured drug and criminal investigators and participated in the preparation of drug related search warrants throughout both Beaufort and Jasper County in the state of South Carolina.

The information provided herein is based upon my own investigation, as well as the investigations of agents assigned to the of the Beaufort/Jasper County Multi-Agency Drug Task Force and other members of the Beaufort County Sheriff's Office whose results have been provided to me

**Reason for Affiant's Belief That The
Property Sought Is On the Subject Premises**

Within the last 72 hours members of the Beaufort/Jasper Multi Agency Drug Task Force conducted a drug investigation at a residence located at Christopher Drive on Hilton Head Island, South Carolina. Drug Task Force members had information that the residence was being used to store and distribute illegal drugs

[Handwritten signature]

Within the last 72 hours Drug Task Force members obtained a quantity of Marijuana and Cocaine that was purchased from the above listed residence. Drug Task Force members stopped a individual immediately after leaving the residence and this subject was found to possess Marijuana and Cocaine that was obtained from the residence. The investigation revealed that more illegal drugs have been seen at the residence over the last several months

- a) That drug traffickers maintain books, records, receipts, notes, ledgers, money orders, and other papers relating to the negotiation, purchase, transportation, and distribution of controlled substances. That drug traffickers commonly "front" (provide on consignment) controlled substances. That the aforementioned books, records, receipts, notes, ledgers, etc , are maintained where the traffickers have ready access to them.
- b) That drug traffickers of controlled substances commonly maintain addresses and/or telephone numbers in books or papers, which reflect names, addresses and/or telephone numbers of their associates in the trafficking organization.
- c) That drug traffickers maintain paraphernalia for manufacturing, weighing cutting, packaging, storing, and distributing controlled substances, including scales, baggies, utensils, etc
- d) That drug traffickers take or cause to be taken, photographs of themselves, their associates, their property, and their product, and that these photographs are usually in their possession
- e) That drug traffickers must maintain on hand, large amounts of U.S. Currency in order to maintain and finance their on-going narcotics business
- f) That drug traffickers very often place assets in names other than their own to avoid detection/seizure of these assets by law enforcement authorities.
- g) That even though these assets are in the name of others, the drug trafficker actually owns and continues to use these assets and exercise dominion and control over them.
- h) That it is common for drug traffickers to hide contraband proceeds of drug sales, and records of drug transactions in secure locations within their residence for the ready access, and to conceal them from law enforcement authorities.
- i) That persons involved in drug trafficking conceal in their residence, large amounts of currency, items of value and/or proceeds of drug transactions, evidence of financial transactions relating to obtaining, transferring, secreting, or spending large amounts of money made from engaging in drug trafficking activities

[Handwritten signature]
[Handwritten initials]

j) That people in general, drug traffickers included, maintain evidence of residency, occupancy and/or ownership of premises and locations described in the warrant to include: telephone and utility bills, canceled checks, bank statements, keys, rental/lease agreements, tax returns, etc.

k) That drug traffickers commonly have in their possession that is on their person, at their residence or place of business, firearms, including but not limited to: handguns, revolvers, rifles, shotguns, and other weapons. Said property may include, but not limited to: narcotics, jewelry, narcotic paraphernalia, books, records, U S Currency, etc

Base on this officer's experience that drug traffickers commonly have other associates holding the illegal narcotics, to avoid detection by law enforcement officers, this officer asked that all persons present during the execution of this search warrant, be subjected to search

Additionally, this officer's experience and knowledge reflects that drug traffickers when confronted with advanced warning of police presence, will often attempt to destroy or otherwise conceal illegal narcotics, which can be destroyed easily. A "No-knock" service is requested to prevent the anticipated destruction of critical evidence and officer safety

Affiant

Signature of Judge

(L.S.)

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

EXHIBIT B

DESCRIPTION OF PROPERTY SOUGHT

Any and all illicit narcotics or drugs, to include, but not limited to: Marijuana, Cocaine, and Crack Cocaine. Any items, devices, containers, implements, or tools commonly associated with the use, sale, manufacturing, storage, transportation, or distribution of illicit narcotics or drugs. Any proceeds or records of proceeds of illicit narcotic or drug transactions to include, but not limited to, currency, ledgers, or magnetic media. Any items, which would tend to identify persons, found in the place to be searched. Any and all firearms present.

Affiant

Signature of Judge

(L.S.)

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

EXHIBIT C

DESCRIPTION OF PREMISIS (PERSON, PLACE OR THING)
TO BE SEARCHED

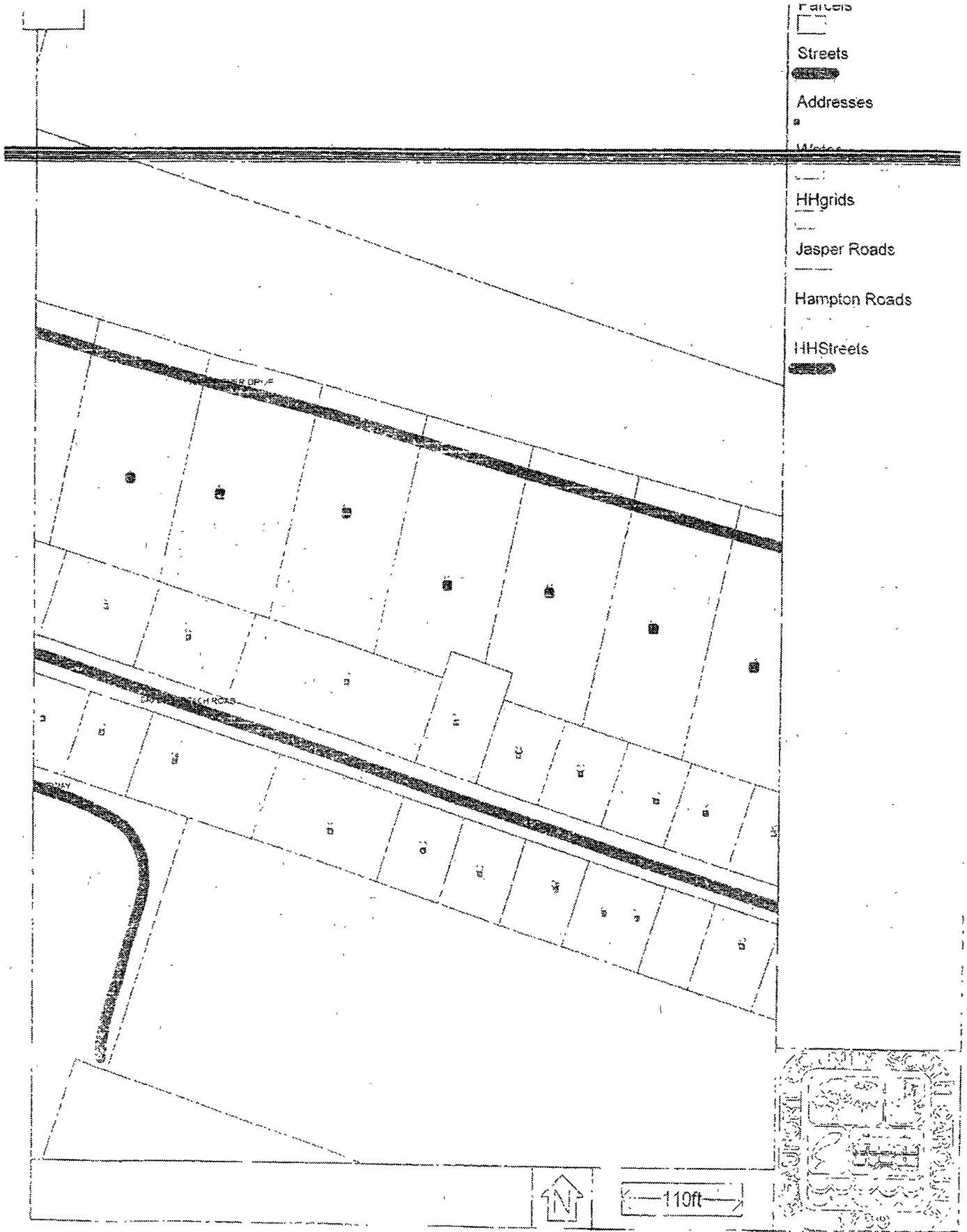
A single wide mobile home located at: Christopher Drive Hilton Head Island, South Carolina. The residence is further described as beige in color with burgundy trim. The residence has had a canine located in the front of the residence in the past. The residence has wooden steps leading to the front door. The residence also has a white in color front door. INCLUDED IN THIS WARRANT ARE ALL VEHICLES, BOAT BUILDINGS AND OTHER STRUCTURES ON THIS PROPERTY.

Affiant

Signature of Judge

(L.S.)

Date 9-27-05



RETURN

I received the attached Search Warrant 9-17, 2008, and have executed it as follows:
On 9-17, 2008 at 22:17 o'clock P M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with VENUGO MICHAEL AT
Name of person searched or "at the place of search" with
Together with a receipt for the items seized.

CHRISTOPHER DR
MILTON HEAR, S

The following is an inventory of property taken pursuant to the warrant: SEE ATTACHED EVIDENCE
LIST

This inventory was made in the presence of AARON BONE
AND CHRIS SANKOWSKI

I swear that the Inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this 23RD
DAY OF September, 2008

[Signature] (L.S.)
Signature of Judge

[Signature]
(Signature of Officer Executing Warrant)

Date 9-17-08

Page No. 1

STATEMENT OF:

Item #	Descrip	Loc	Officer	Time
(1)	SC 139 KBY	Silver Dodge	Rawl	
(1)	Inositol Powder	Trunk	Rawl	
(2)	Clear Plastic Bags Containing white Powder Substance			
(1)	Pelouze Scale Box	Prada Bag		
(1)	White plastic ~~box~~ Container containing			
	(2) Ziplock Bags w/ GPM,			
(1)	Clear Plastic Bag Containing Brick quantity of a white powder sub			
(1)	Clear Plastic Bag Containing off white rock sub			
(1)	Clear Plastic Bag Containing GPM			
(1)	Box w/pennies & stamps	White Plastic Container Box	Rawl	
(1)	CO Digital Scales			
(1)	Empty Crown Royal Bag			
(1)	Crown Royal Bag Container (1) Sifter, (1) Spoon, (2) Sippers, (2) Toothbrushes.			
(1)	Bottle of Inositol Powder			
(1)	Box of clear Value Plastic Bags		Rawl	
(1)	Q-Tip Box containing ID	Center Console	O'Neal	

12 Christopher Drive
Hilton Head, SC

Date 9-17-08

Page No. 2

STATEMENT OF:

ITEM #	Desc.	Loc.	Off.
(1)	CD "Don Hardin" digital scales	Kitchen counter	Rawl
(2)	\$1287.00 loose cash	Black leather bag	
(3)	\$315.00 in cash in white envelope with "Jay" written on it and \$102.00 in checks		
(4)	\$880.00 in cash in white envelope with "ML1" "\$875 cash" on it		
(5)	Misc. paper documents	Kitchen counter	Garst
(6)	clear plastic bag with GPM	Nike shoe	Menendez
(7)	ceramic statue containing roach butts	top of night stand	
(8)	Black leather digital scale pouch		
(9)	Empty Inositol bottle	inside of	
(10)	cell phone case with clear plastic bags	night stand	
(11)	straws		
(12)	ledger	Black briefcase	
(13)	digital scales		
(14)	1 Clarion stereo face case	desk-back bedroom	Florencio



SC LAW ENFORCEMENT DIVISION (SLED)

REPORT OF INVESTIGATION

SLED Case # 48-08-0005

SGJ #

Codename:

Reporting Agent:

S/A Bradley G. Godfrey *BB*

Other Personnel Involved:

Lt. Frank O'Neal, S/A David Leslie, S/A Brandon Moss, S/A Todd Strange, S/A Genia Creech (SLED), and Lt. Joey Woodward (Beaufort/Jasper Multi Agency Drug Task Force).

Report Re:

Arrest of Ophelia Mickell on Wednesday, September 17, 2008 in Beaufort County.

Attachments:

- 1.) Consent to Search Form
- 2.) SLED Lab Request (L08-14260)
- 3.) Receipt for Property Form

Evidence:

- 1.) One (1) CD-R (Pictures of Evidence)
- 2.) Eleven (11) Digital Images

Body of Report:



On Wednesday, September 17, 2008, Ophelia Mickell was arrested for Conspiracy to Traffic Cocaine over 100 grams, two counts of Trafficking Cocaine 10-28 grams, Distribution of Cocaine, and Unlawful Carrying of a Firearm.

On Wednesday, September 17, 2008, at approximately 9:10 pm, Lt. Frank O'Neal, S/A David Leslie, S/A Brandon Moss, S/A Todd Strange, S/A Genia Creech, Lt. Joey Woodward, and this agent conducted a traffic stop on a white Chevy Silverado truck bearing South Carolina License plate _____ on Highway 278 Hilton Head, Beaufort County, South Carolina. The above-mentioned vehicle had been surveilled leaving the

residence of Ophelia Mickell located at 12 Christopher Drive, Hilton Head, Beaufort County, SC. The above-mentioned vehicle was occupied by Ophelia Mickell and Roberta Ann Blake. Ophelia Mickell was the driver of the vehicle and Roberta Ann Blake was the passenger. At approximately 9:20 pm, Ophelia Mickell was given her Miranda Rights by Lt. O'Neal. At approximately 9:21 pm, Ophelia Mickell signed a consent to search form for her residence located at Christopher Drive, Hilton Head, SC. At approximately 9:30 pm, S/A Strange and S/A Leslie searched the above-mentioned vehicle incident to arrest. At approximately 9:35 pm, S/A Leslie located a Taurus Millennium Pro Model PT111, serial number TWA31138, caliber 9 millimeter handgun. The handgun was located behind the driver's seat. The above-mentioned handgun was contained in the manufacturer's case with one loaded magazine, with ten unfired 9 millimeter cartridges. S/A Leslie then located one Crown Royal whiskey bag containing \$384.00 US currency. The \$384.00 US currency was separated as followed: (\$230.00 bound by a rubber band, \$104.00 bound by a rubber band, and \$50.00 loose bills). S/A Leslie then located a clear zip-lock bag containing \$2,000.00 US currency behind the driver's seat. The \$2,000.00 US currency was separated as followed: (\$1,000.00 bound by a rubber band and \$1,000.00 bound by a rubber band). The total amount of US currency located in the above-mentioned vehicle was \$2,384.00. This agent and S/A Leslie both counted the above-mentioned US currency to verify the total amount. This agent then took custody of the above-mentioned handgun and US currency. S/A Leslie then documented the following contacts, which were located in Ophelia Mickell's Motorola cellular phone

<u>Contact</u>	<u>Number</u>
Eight Bal	
Zanx	
Black	
EG	
Scohtie	
Hill	
Abo	
AT	
B	
BD	
Betha	
Bigdog	
Bos	
Boss	
Bump	
Car	
Carrabbas	
Dad	
EK	
FS	
GI	
HN	
Homeboy	
Hump	
J5	
KB	
Six	
Snackbar	

CONFIDENTIAL INFORMATION

This report is the property of the South Carolina Law Enforcement Division (SLED).
Neither the report nor its contents may be disseminated outside the agency to which it is issued.

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This agent then located a Regions Bank statement addressed to Deangelo Mickell, Roseland Road, Ridgeland, South Carolina, 29935, and a Social Security Administration letter addressed to Vanessa N. Cuyler, Roseland Road, Ridgeland, South Carolina, 29935 (Both items were located in the passenger side seat of the above-mentioned white Chevy Silverado truck bearing South Carolina License plate

At approximately 10:30 pm, Lt. Woodward released the white Chevy Silverado truck bearing South Carolina License plate to Ophelia Mickell's daughter, Sophia L. Christopher, Muddy Creek Road, Hilton Head, SC, SCDL cell phone number. At approximately 10:35 pm, Ophelia Mickell was transported to her residence located at 12 Christopher Drive, Hilton Head, Beaufort County, SC.

At approximately 10:50 pm, this agent, Lt. O'Neal, Lt. Woodward, S/A Leslie, S/A Strange, S/A Creech, and Ophelia Mickell arrived at Christopher Drive, Hilton Head, Beaufort County, SC, where a lawful search warrant was being executed. S/A Moss who assisted with the initial traffic stop departed earlier to assist law enforcement with the lawful search warrant located at Christopher Drive, Hilton Head, Beaufort County, SC

On Thursday, September 18, 2008, at approximately 12:04 am, this agent relinquished \$2,384.00 US currency, which was located in the above-mentioned white Chevy Silverado truck bearing South Carolina License plate to Sgt. Chris Sankowski (Beaufort County Sheriffs Department).

At approximately 12:36 am, Ophelia Mickell made the following statement to Lt. Frank O'Neal: "Why is Deangelo (Ophelia Mickell's son) being arrested, because all of the drugs in the car are mine". Lt. Frank O'Neal then asked Ophelia Mickell, "Are all of the drugs yours", and Ophelia Mickell replied "yes".

On September 19th, 2008, this writer relinquished (1) Taurus Millennium Pro Model PT111, serial number caliber 9 millimeter handgun, (1) Taurus Handgun Case, (1) 9 mm magazine, and (10) unfired 9 mm cartridges to the SLED Laboratory to be submitted for latent print and firearm analysis (L08-14260). All photographs of the arrest of Ophelia Mickell were downloaded to a CD-R, and remain with the file.

END OF REPORT

CONFIDENTIAL INFORMATION

This report is the property of the South Carolina Law Enforcement Division (SLED).
It and its contents must be disseminated outside the agency to which it is loaned.



SC LAW ENFORCEMENT DIVISION (SLED)

REPORT OF INVESTIGATION

SLED Case # 48-08-0005

SGJ #

Codename:

Reporting Agent:

S/A Aaron T. Rawl *[Signature]*

Other Personnel Involved:

S/A Aaron Rawl, S/A Brad Godfrey, Lt. Frank O'Neal, S/A Brandon Moss, S/A Todd Strange, S/A Melanie Payne, S/A Genia Creech, S/A David Leslie (SLED), Lt. Joe Woodward, Sgt. Chris Sankowski, Inv. Rich Menendez, Inv. Ryan Garst, Sgt. Andre Florencio (BCSO)

Report Re:

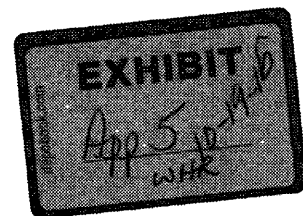
Search Warrant of Christopher Dr., Hilton Head Island, SC.

Attachments:

- 1.) Search Warrant
- 2.) Receipt for Property Form
- 3.) (4) SLED Lab Forensic Services Request Forms (1.08-14257)
- 4.) (2) Inventory Receipts
- 5.) Consent to Search Form
- 6.) Chain of Custody Form

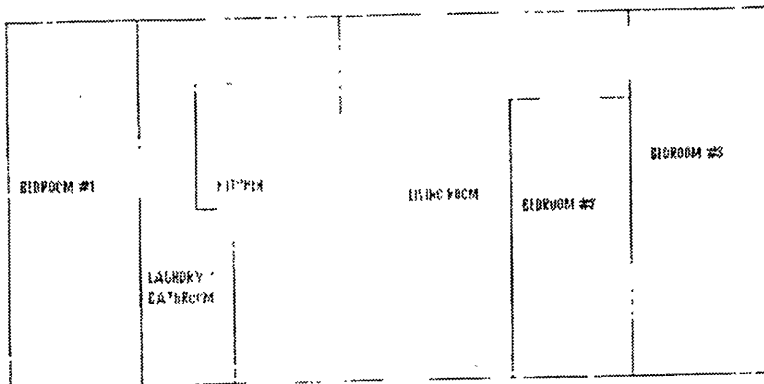
Evidence:

1.) See Body of Report



Body of Report:

On Wednesday, September 17th, 2008, a search warrant was executed on the residence of Ophelia Green Mickell located at Christopher Drive, Hilton Head Island, South Carolina. The residence was secured to prevent the loss or destruction of evidence after a legal traffic stop was made of Ophelia Mickell and Sgt. Sankowski obtained a search warrant. Upon the arrival of the search warrant at Christopher Dr., a consent to search form was also signed for the search of a silver Dodge Intrepid. SC Tag#: by Ophelia Mickell. During the search the following items were seized:

LAYOUT OF 12 CHRISTOPHER DR.

*Layout not to scale

DODGE INTREPID SC TAG#:

MILEAGE: 119,109

Trunk:

1.) (1) GNC Inositol Powder Bottle containing (2) clear plastic bags containing white powder substance (located by this writer).

2.) (1) Prada bag containing:

- a. (1) Pelouze digital scale box with scale inside.
- b. (1) White plastic container with a white lid containing (2) Ziploc bags containing GPM.
- c. (1) Clear plastic bag containing a quantity of white powder substance in "brick" form.
- d. (1) Clear plastic bag containing an off-white rock substance.
- e. (1) Clear plastic bag containing GPM.

(located by this writer)

3.) (1) White plastic box containing:

- a. (1) Planter's Peanut can containing a quantity of pennies and cut straws.
- b. (1) CD Form digital scale
- c. (1) Empty purple Crown Royal bag
- d. (1) Purple Crown Royal bag containing a sifter, spoon, (2) scissors, and (2) toothbrushes.
- e. (1) Inositol Powder bottle
- f. (1) Box of Clear Value plastic bags

(located by this writer)

BEDROOM #1

Nike Shoe on Wall:

1.) (1) Clear plastic bag containing GPM (located by Menendez).

Top of Night Stand:

1.) (1) Ceramic statue containing multiple "roach butts" emptied into evidence bag (located by

CONFIDENTIAL INFORMATION

Menendez).

- 2.) (1) Black leather pouch containing owner's manual to CD digital scale (located by Menendez).

Inside of Night Stand:

- 1.) (1) Empty Inositol 500 bottle (located by Menendez).
- 2.) (1) Leather cell phone case containing clear plastic corner bags (located by Menendez)
- 3.) (2) Clear plastic cut straws (located by Menendez)
- 4.) Miscellaneous paper documents (located by Menendez)

Black Case Next to Night Stand:

- 1.) (1) Black leather ledger (located by Menendez)
- 2.) (1) off-white digital scale (located by Menendez)

BEDROOM #3

Top of Makeshift Night Stand:

- 1.) (1) Clarion stereo face case sectioned off with labels indicating "20's, 1/2 gr., and uncut & grs." (located by Florencio).

KITCHEN

Top of Kitchen Counter:

- 1.) (1) CD "Don Hardin" digital scale (located by this writer)
- 2.) Miscellaneous paper documents (located by this writer)

Dinner Table:

- 1.) (1) Black leather bag containing:
 - a. \$1287.00 loose US currency (located by this writer).
 - b. (1) White envelope with "Jay" written on it containing \$315.00 US currency and \$102.00 in checks (located by this writer)
 - c. (1) White envelope with "ML1, \$875 cash" written on it containing \$880.00 US currency (located by this writer)

All the evidence was secured and taken by this writer. The search warrant was ended after all evidence was obtained. On September 19th, 2008 drug evidence was turned over to the SLFD Forensic Laboratory by this writer for analysis. SLED Lab Number is as follows. L08-14257 ([4] Separate Requests under the same Lab number). The remaining evidence was turned over to Jill Turner of SLED for storage in the SLED Evidence Room on October 9th, 2008. The items turned over were as follows: 001: white plastic box containing: (1) Planter's box with pennies and cat straws; (1) CD Digital scales; (1) empty Crown Royal bag; (1) Crown Royal bag containing (1) sifter, (1) spoon, (2) scissors, (2) toothbrushes; (1) Inositol bottle; (1) box of Clear Value plastic bags; (1) clear plastic container holding miscellaneous items 002: brown paper bag containing: (1) CD Digital scale; miscellaneous paper documents, "roach butts;" digital scale pouch and owner's manual; (1) Inositol bottle; (1) cell phone case with corner bags, cut straws; (1) ledger; (1) digital scale; (1) Clarion stereo face case; (1) Prada bag; (1) Pelot ze digital scale. All US currency was turned over to Sgt. Sankowski of the Beaufort County Sheriff's Office. All picture and video evidence was maintained by Beaufort County Sheriff's Office, for further documentation: see Beaufort County Sheriff's Office.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION



MARK SANFORD
Governor

ROBERT M. STEWART
Chief

S. C. LAW ENFORCEMENT DIVISION
CONSENT TO SEARCH

DATE. 7-17-2013

COUNTY: DeKalb

I, (WE) _____

HAVING BEEN INFORMED OF MY (OUR) CONSTITUTIONAL RIGHTS NOT TO HAVE A SEARCH MADE OF MY (PREMISES, VEHICLE, PERSON) HEREIN AFTER DESCRIBED WITHOUT A SEARCH WARRANT AND BEING FULLY AWARE THAT I (WE) MAY REFUSE TO CONSENT TO SUCH A SEARCH DO HEREBY VOLUNTARILY WAIVE MY (OUR) CONSTITUTIONAL RIGHTS AND CONSENT AND AUTHORIZE OFFICER (S) (HEREIN LIST OFFICER (S) MAKING SEARCH).

LT. Frank C. Calkins

only name Paul

OK. BPA 1000 1000

MEMBERS OF S.E.D. / 25 AUGUST 86 DEPARTMENT TO SEARCH THE
FOLLOWING DESCRIBED (PREMISES, VEHICLE, PERSON) WITHOUT A SEARCH WARRANT.

(HEREIN DESCRIBED PROPERTY OR PERSON TO BE SEARCHED)

DEJIF INTERVIEW (2nd) - 2nd Stage SITAC:

SIGNED:

DATE: 11-10-38 TIME: 9 45 PM

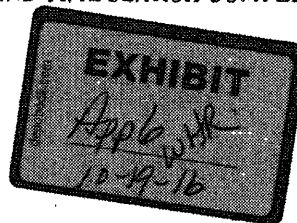
WITNESS: *3/4 B. R. G. W. W. 1953*

WITNESS:

9:46 PM 9-17-2003

DATE AND TIME SEARCH STARTED

DATE AND TIME SEARCH COMPLETED 1000 PM 9-17-68



(N-041)



An Accredited Law Enforcement Agency

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP0701538

Deangelo Mickell		South Carolina State Of	

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order

☐ Statement of Judgment by the Court:

Order of Dismissal

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note:** Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/ M. G. Nettles
Circuit Court Judge

2140
Judge Code

12/1/2017
Date

For Clerk of Court Office Use Only

This judgment was entered on December 8, 2017, and a copy mailed first class or placed in the appropriate attorney's box on December 11, 2017, to attorneys of record or to parties (when appearing pro se) as follows:

James Arthur Brown Jr. PO Box 592 Beaufort, SC 29901

Ruston Wesley Neely PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Melissa Kilby

Court Reporter

Jerri Ann Roseneau - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

DeAngelo Mickell, #340668,

Applicant,

vs.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT

2011-CP-07-01538

ORDER OF DISMISSAL

2011 DEC - 8 PM 12:25
JENNIFER ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 31, 2011. Respondent filed a Return on September 28, 2012, requesting an evidentiary hearing be convened. James A. Brown, Jr., Esquire, was retained to represent Applicant. Respondent filed an Amended Return and Motion to Dismiss on April 1, 2013, arguing that Applicant waived his right to PCR because it was waived as part of his plea agreement. A hearing was convened on the motion the Colleton County Courthouse on May 7, 2014. After hearing arguments, the Honorable Perry M. Buckner dismissed the application and denied relief.

Applicant filed a notice of appeal challenging whether the PCR court properly dismissed the application. A Petition for Writ of Certiorari was filed on March 4, 2015. Respondent filed a Return on March 17, 2015. The South Carolina Supreme Court issued an opinion reversing the dismissal and remanding the case to the PCR court in light of the court's recent holding that applicants who waive PCR are able to challenge the advice received in agreeing to waiver. Mickell v. State, 2015-MO-037 (S.C. June 24, 2015). The remittitur was returned on July 13, 2015.

A hearing was held before this Court on October 19, 2016, at the Beaufort County Courthouse. Applicant was present and represented by Counsel Brown. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying were Applicant's counsel, Anthony O. Dore, Esquire, Applicant's mother, Ophelia Mickell, and Lieutenant Christopher Sankowski of the Beaufort County Sheriff's Office. This Court had before it the State Grand Jury Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the transcripts.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the State Grand Jury Clerk of Court. Applicant was indicted at the May 2009, term of the State Grand Jury for: Count I – Conspiracy to Traffic Cocaine Greater than 400g and Count XVII – Trafficking Cocaine 200 - 400g (2009-GS-47-0005). Applicant was represented by Anthony O. Dore, Esquire. On January 25, 2010, Applicant pled guilty to Conspiracy to Traffic Cocaine 28-100g and Trafficking Cocaine 28-100g. Sentencing was deferred. On April 29, 2010, the Honorable Carmen T. Mullen concurrently sentenced him to confinement for a period of eighteen (18) years on both charges. Applicant did not appeal his conviction or sentence.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Applicant was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law based upon:
 - a. Trial counsel's deficient investigation of the facts supporting the charge against the defendant.
 - b. Trial counsel's failure to challenge the search warrant.
 - c. The prosecution's failure to comply with the due process requirements announced in Brady v. Maryland and its progeny.
 - d. Trial counsel's failure to provide Applicant sufficient information for Applicant to knowingly, intelligently, and voluntarily waive his Boykin rights and enter a valid guilty plea.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the Clerk of Court records regarding the subject convictions, the records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon the information presented.

Applicant waived his right to seek post-conviction relief and pleaded guilty knowingly, voluntarily, and intelligently.

Applicant argues that due to Counsel's deficiencies and unreasonable advice, his plea and his decision to waive his right to PCR was not knowingly, voluntarily, and intelligently made. Applicant argues he would not have pleaded guilty had Counsel provided him with sufficient information for him to knowingly, voluntarily, and intelligently plead guilty. Applicant argues that Counsel failed to adequately investigate the facts supporting the charges against him and that he was deficient in failing to challenge the search warrant used to search the residence and vehicle at Applicant's mother's house. These allegations will be discussed in turn.

Relevant Law

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the 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, 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. Applicant must overcome this presumption in

order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Post-conviction relief “is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction.” S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (“It is uniformly held that an application for post-conviction relief is not a substitute for an appeal.”). Applicant’s allegations regarding the charges against her are an inappropriate challenge to the sufficiency of the evidence. Simmons, 264 S.C. at 423, 215 S.E.2d at 885 (“[T]he Uniform Post-conviction Procedure Act ‘shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.’” (citing Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973))).

Under South Carolina law, a criminal defendant can choose to waive his right to collateral review of his conviction. Spoone v. State, 379 S.C. 138, 665 S.E.2d 605 (2008) (holding that a waiver of appellate rights is valid and enforceable as long as it is knowing and voluntary). Plea agreements in general operate under contractual principles, and are upheld when each party receives the benefit of the bargain. State v. Thrift, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994).

However, recent South Carolina case law holds that, while appellate waivers are enforceable, a criminal defendant who has waived his appellate rights is still entitled to raise the very narrow issue of challenging his attorney’s conduct in advising him to enter into the waiver. Sanders v. State, 412 S.C. 611, 617, 773 S.E.2d 580, 583 (2015) (“Consequently, we hold that although a defendant may waive his right to collateral review, he is nevertheless still entitled to challenge whether the advice he received in agreeing to that waiver was constitutionally defective.”).

Discussion

At the PCR hearing, Applicant testified that had he known he had a meritorious challenge to the search of the vehicle and the seizure of the drugs, then he would not have waived PCR,

would not have pleaded guilty, and would have proceeded to trial. (PCR Tr. p. 65). Counsel testified that he explained the plea agreement and the PCR and appeal waiver and believed that Applicant understood those waivers. (PCR Tr. pp. 48-49; 53-54). Counsel's advice that Applicant should plead guilty was reasonable under the professional norms. Applicant was facing a mandatory minimum of twenty-five (25) years if convicted at trial. This Court finds Applicant's testimony to be self-serving and not credible.

Counsel's failure to challenge the search warrant was reasonable because there were no viable challenges to suppress the evidence. The search warrant was valid on its face and provided probable cause. Counsel's decision not to challenge to the underlying probable cause supporting the search of the vehicle and seizure of the drugs was also reasonable under the circumstances because it lacked merit.

Applicant introduced into evidence three search warrants with seemingly different signatures showing that none are copies. Two of the search warrants include the following language in a handwritten sentence with any accompanying initial: "included in this warrant are all vehicles, outbuildings and other structures on this property." There are distinctive initials under the handwritten sentence on the two search warrants. The other had no such language or accompanying initials. See Applicant's Ex. 1; 2 (last page); 3. While Applicant has identified a discrepancy between these search warrants, Lt. Sankowski testified and explained that the magistrate signed multiple copies of the search warrant. He explained that the warrant that was turned into the Beaufort County Sheriff's Office and the one returned to the magistrate had the magistrate's initials below the hand written sentence. Lieutenant Sankowski's testimony is credible and persuasive on the issue. If this issue was raised to the trial court, then Lt. Sankowski would have explained the situation and his involvement as he did at the hearing. The trial court would not have suppressed the evidence because there was a discrepancy in the versions of the warrants. Lieutenant Sankowski's testimony that the initials and signature look identical to other

documents signed by that particular magistrate is also credible and persuasive. This Court finds that the search warrant with the handwritten sentence was properly presented to and approved by the magistrate and that Applicant failed to meet his burden in proving otherwise. Applicant has also failed to meet his burden to prove that the evidence would have been suppressed had a challenge been made.

Moreover, Applicant did *not* have standing to challenge the search or seizure because the vehicle belonged to his mother who had given valid consent to search the vehicle. This is dispositive of Applicant's case because he would have no route to suppress the drug evidence. While Applicant's mother testified vaguely that she may not have consented to the search, this Court finds her testimony inconsistent, suspect and not credible. See Applicant's Ex. 6 (signed Consent to Search form). Applicant's mother is a biased witness who pleaded guilty as Applicant's major distributor and codefendant. Her testimony would *not* have supported an argument that her signed and verbal consent to search the vehicle was not valid. This Court finds the consent to search the vehicle was lawful, valid, and would not have been deemed otherwise if challenged by Counsel. In any event the good faith exception would apply and would cure any deficiencies in the warrant itself because law enforcement believed the magistrate signed and initialed the handwritten sentence explicitly authorizing such a search of the vehicle. Additionally, law enforcement's search would have been within the scope of the warrant because the vehicle was within the curtilage of the home.

Applicant also alleges that Counsel was ineffective in his investigation into the case and that had he performed an adequate investigation, then he would have uncovered the search warrant without the vehicle language and would have been able to mount a successful challenge to the search of the vehicle and seizure of the drugs. This allegation is denied and dismissed for the reasons stated above and below.

Notably, Applicant chose to plead guilty and agreed to waive his appellate and post-

conviction relief rights in exchange for a more favorable sentencing range. Both parties received a benefit of the bargain, and the plea agreement is valid under contractual law. It is clear from the testimony and evidence that Applicant fully understood his rights to PCR and chose to waive them in hopes of receiving a more lenient sentence. (PCR Tr. p. 76). Applicant's testimony that he would have proceeded if he knew he could challenge the search and seizure is not credible. This Court finds that Applicant knowingly, voluntarily, and intelligently waived his right to collaterally attack his convictions and sentences.¹

Finally, Applicant pleaded guilty, admitted to the allegations against him and should not now be able to challenge the suppression of evidence. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). "Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Id. at 138, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir.1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir.1976)). It is noteworthy that Applicant stipulated to the State's factual recitation at his plea hearing, including to the fact that he was observed by the drug task

¹ The Court addresses the issues of whether Applicant knowingly, voluntarily, and intelligently waived his right to PCR and whether he knowingly, voluntarily, and intelligently pleaded guilty together in this case. While this would normally require separate analysis, here, we consider the same testimony and evidence in each issue. There can be instances where an applicant did not knowingly, voluntarily, and intelligently waive his right to PCR but did nevertheless knowingly, voluntarily, and intelligently plead guilty. Here, Applicant's supporting grounds go to both issues.

force carrying a container of 355 grams of cocaine. (Plea Tr. p. 3-4). Simply put, Applicant hoped to receive a more lenient sentence by pleading guilty and now is upset that the plea court did not employ its discretion in his favor. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) (Wishful thinking regarding sentencing does not equal a misapprehension of the constitutional effectiveness of counsel's performance.).

The State did not violate Brady v. Maryland.

Finally, Applicant alleges that the prosecution failed to comply with requires set forth in Brady v. Maryland in failing to turn over a version of the search warrant that did not include the initialed handwritten sentence: "included in this warrant are all vehicles, outbuildings and other structures on this property." This Court finds there was no Brady violation.

Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

"[T]he Brady rule does not apply if the evidence in question is available to the defendant from other sources.' ... [W]here the exculpatory information is not only available to the defendant but also lies in a source where a reasonable defendant would have looked, a defendant is not entitled to the benefit of the Brady doctrine." United States v. Wilson, 901 F.2d 378, 380, 381 (4th Cir. 1990) (citation omitted)). The Fourth Circuit Court of Appeals' decision in Wilson

is followed in South Carolina and other jurisdictions. See Anderson v. Leeke, 271 S.C. 435, 438-39, 248 S.E.2d 120, 122 (1978) ("Although not expressly stated in the opinion, we think it is implicit that the Brady rule applies only to favorable evidence which the prosecution has but which is Unavailable to the defendant") (citation omitted).

Here, Applicant fails to meet any of the requirements to prove a Brady violation. The search warrant is not favorable evidence to Applicant as it only shows that the magistrate signed multiple copies of the search warrant. The circumstances and procedure of how it was procured and executed were explained by Lt. Sankowski as noted above. Applicant has presented no evidence that the search warrant was in the possession of or known to the prosecution and then suppressed by the prosecution. Finally, the search warrant is not material to Applicant's guilt. At most, it provides a weak argument that the copies of the search warrant contained a discrepancy. Lastly, the search warrant was not material to the case.

All Other Allegations

As to any and all allegations that were raised in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

III. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

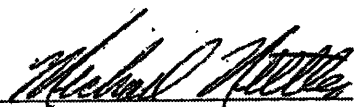
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate

appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 1 day of Dec, 2017.


MICHAEL G. NETTLES
Presiding Judge

 South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
)
) Case Number: 2011-CP-07-01538

DEANGELO MICKELL)
 Applicant)

VS.)

STATE OF SOUTH CAROLINA)
 Respondent)

**MOTION TO ALTER OR AMEND
 THE JUDGEMENT PURSUANT
 TO SCACR RULE 59**

2017 DEC 28 PM 2:56
 CLERK OF COURT
 S.C.

THE APPLICANT MOVES THE COURT for an Order altering and amending the Judgement in this case, received by undersigned counsel from the Clerk of Court on December 14, 2017.

INTRODUCTION

Counsel requests the Court accept this Rule 59 motion as both a request to alter or amend judgement and as an objection to the Court's adoption of the State's proposed Order. Even though counsel is required by duty imposed by case law¹ from the state's Supreme Court to file objections to any orders which the Court intends to adopt; Applicant's collateral counsel never had such opportunity. While both parties submitted proposed Orders, the Court never provided notice as to which order would be adopted.

Neither party filed any objections to the proposed Orders. It is equally plausible that the

¹See Pruitt v. State, 423 SE2d 127 (SC 1992)("Counsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order, and the PCR judge should carefully review the order prior to signing it. Even after an order is filed, counsel has an obligation to review the order and file a Rule 59(e), SCRCR, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings...")

Court would have granted Applicant's proposed Order and that any pre-signing objections would have been the obligation of the State's counsel. Thus, Applicant requests that the record be preserved regarding Applicant's counsel's inability to perform the duties imposed by law.

GENERAL OBJECTIONS

A general objection is taken to the drafting of the Order by the State and the wholesale adoption by the trial judge. The South Carolina Supreme Court disapproves of such wholesale adoption of a proposed Order. Further, as noted above, undersigned counsel had no opportunity to object to the proposed Order after indication of the Court's intention to adopt the Order but before the signing and filing of this document.

SPECIFIC OBJECTIONS

Page	Statement/Finding/Conclusion	Objection/Problem(s)
5	"Applicant testified that had he known he had a meritorious challenge to the search of the vehicle..."	Applicant testified that he would have rejected the plea if he knew he had a challenge at all. The Applicant never indicated the challenge had to be meritorious before making this decision.
6	"Counsel's advice that Applicant should plead guilty was reasonable under the professional norms."	Trial counsel testified at the merits hearing that his advice would have been different and that he would have advised the Applicant to challenge the search warrant had trial counsel known about the original search warrant which did not authorize the search of the vehicle.

6	"The search warrant was valid on its face and provided probable cause"	In fact, the only blue inked search warrant made no reference to authorization to search an automobile. Further, the recitation of cause to justify the search contained no reference to any automobiles at all, much less an cause to search an automobile. Thus, while the search warrant was technically valid as to a search of the third party's home, it was not valid as to the search of the automobile.
6	"Applicant introduced into evidence three search warrants with seemingly different signatures showing that none are copies." <i>If Counsel, in spite of this, advised that Applicant could be eligible for parole after service of 85% of the sentence, this advice was clearly incorrect."</i>	The Applicant objects to the assumption that the two xerox copied search warrants containing information handwritten at the end are authentic. In fact, it is uncontradicted that the deficient search warrant previously hidden from the Applicant and his trial counsel is the only known search warrant with a blue ink signature. The other copies which fix the deficiencies complained of suggests that someone attempted to fix the deficiency after the search. The Applicant repeatedly attempted to subpoena the magistrate to discuss this handwriting but these attempts were quashed at the request of the State.

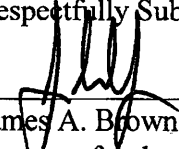
7	"Moreover, Applicant did not have standing to challenge the search or seizure because the vehicle belonged to his mother who had given valid consent to search the vehicle."	This portion of the order incorrectly states the law regarding search and seizure analysis. Since at least 1978, the US Supreme Court has eliminated the concept of standing; instead relying upon a one-step analysis concerning a reasonable expectation of privacy. See Rakas v. Illinois, 429 US 128 at 139 (1978). Even a passenger has a reasonable expectation of privacy in a motor vehicle. Further, in this case, the State specifically referenced the Applicant's use of the vehicle as proof of his possession of the drugs found in the trunk and the only testimony regarding the vehicle in question is that the Applicant had a set of keys and used it regularly.
7	"While Applicant's mother testified vaguely that she may not have consented to the search...."	In fact, Applicant's mother testified that she signed a blank consent form and that the vehicle search had already taken place before she was specifically asked to consent to this vehicle search.
7	"Additionally, law enforcement's search would have been within the scope of the warrant because the vehicle was within the curtilage of the home."	The testimony indicates the vehicle was parked some distance away from the home and not in the area traditionally considered curtilage. Further, there is no South Carolina law allowing for a vehicle search which is within the curtilage when no cause exists to search the vehicle.
7	"In any event the good faith exception would apply and would cure any deficiencies in the warrant itself because law enforcement believed the magistrate signed and initialed the handwritten sentence explicitly authorizing such a search of the vehicle."	There is no testimony regarding good faith. To the contrary, the only blue-linked original search warrant was in the possession of law enforcement. This search warrant did not reference any vehicle search. In fact, there is no reference to vehicles in any cause section at all.

10	"Applicant has presented no evidence that the search warrant was in the possession of or known to the prosecution and then suppressed by the prosecution."	To the contrary, the blue inked search warrant bore the signature of Lt. Sankowski as the affiant. The uncontradicted testimony of the Applicant's trial counsel is that he had never seen this version of the search warrant before. In fact, Applicant's trial counsel was quite indignant because he believed this warrant had been hidden from him for nefarious reasons.

CONCLUSION

Based upon the support presented above, the Applicant urges this Court to alter or amend its Order, conduct a review not starting from the framework of the State's proposed order and, instead, generate an Order more accurately reflecting the evidence presented by the record.

Respectfully Submitted,

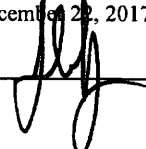


 James A. Brown, Jr.
 Attorney for the Applicant

December 22, 2017
 Beaufort, South Carolina

CERTIFICATE OF SERVICE

I certify that a copy of this document
 was served upon all parties in this proceeding
 on December 22, 2017



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT

DeAngelo Mickell, #340668,

2011-CP-07-01538

Applicant,

vs.

State of South Carolina,

Respondent.

**RETURN TO APPLICANT'S MOTION
TO ALTER OR AMEND THE JUDGMENT
PURSUANT TO SCACR RULE 59**

This matter comes before the Court by way of Applicant's "Motion to Alter or Amend the Judgement Pursuant to SCACR Rule 59." Respondent, making its Return to the motion, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the State Grand Jury Clerk of Court. Applicant was indicted at the May 2009, term of the State Grand Jury for: Count I – Conspiracy to Traffic Cocaine Greater than 400g and Count XVII – Trafficking Cocaine 200 - 400g (2009-GS-47-0005). Applicant was represented by Anthony O. Dore, Esquire. On January 25, 2010, Applicant pled guilty to Conspiracy to Traffic Cocaine 28-100g and Trafficking Cocaine 28-100g. Sentencing was deferred. On April 29, 2010, the Honorable Carmen T. Mullen concurrently sentenced him to confinement for a period of eighteen (18) years on both charges. Applicant did not appeal his conviction or sentence.

II.

Applicant filed an application for post-conviction relief on March 31, 2011. Respondent filed a Return on September 28, 2012, requesting an evidentiary hearing be convened. James A.

Brown, Jr., Esquire, was retained to represent Applicant. Respondent filed an Amended Return and Motion to Dismiss on April 1, 2013, arguing that Applicant waived his right to PCR because it was waived as part of his plea agreement. A hearing was convened on the motion at the Colleton County Courthouse on May 7, 2014. After hearing arguments, the Honorable Perry M. Buckner dismissed the application and denied relief.

Applicant filed a notice of appeal challenging whether the PCR court properly dismissed the application. A Petition for Writ of Certiorari was filed on March 4, 2015. Respondent filed a Return on March 17, 2015. The South Carolina Supreme Court issued an opinion reversing the dismissal and remanding the case to the PCR court in light of the court's recent holding that applicants who waive PCR are able to challenge the advice received in agreeing to waiver. Mickell v. State, 2015-MO-037 (S.C. June 24, 2015). The remittitur was returned on July 13, 2015.

A hearing was held before this Court on October 19, 2016, at the Beaufort County Courthouse. Applicant was present and represented by Counsel Brown. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

III.

Respondent submits this Court properly ruled on all issues presented at the post-conviction relief hearing and Applicant's motion should be denied. In his motion, Applicant asserts that several of his allegations are not addressed sufficiently and asks this Court to reconsider its ruling. Respondent submits that this Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRCP. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

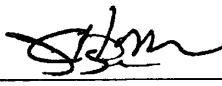
IV.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

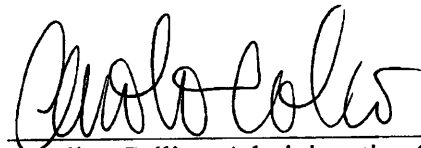
4/12, 2018

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF BEAUFORT 2018 APR 06 PM 1:17
)
) 2011-CP-07-01538
)
 DEANGELO MICKELL, #340668,)
)
 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 to Applicant's Motion to Alter or Amend the Judgment pursuant to SCACR Rule 59** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James Arthur Brown, Jr., Esquire
Law Offices of Jim Brown, P.A.
Post Office Box 592
Beaufort, South Carolina 29901

DATED this the 12th day of April, 2018.



Caroline Collins, Administrative Coordinator
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011- CP-07-01538

DeAngelo Mickell, #340668

State of South Carolina

APPLICANT

RESPONDENT

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE. ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

Circuit Court Judge

2140

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 4th day of Oct., 2018 and a copy mailed first class or placed in the appropriate attorney's box on this 5th day of Oct., 2018 to attorneys of record or to parties (when appearing pro se) as follows:

J. Brown, Jr

C. Saville

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Melvin N. R.
CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This matter comes before the Court by way of Applicant's Motion to Alter/Amend Judgment, Pursuant to Rule 59(e), SCRCP." Applicant asks this Court to reconsider its order dated December 8, 2017. Respondent made its Return to this motion requesting it be denied and dismissed. The Court received oral argument on Applicant's motion on July 25, 2018.

This Court's Order of Dismissal denying and dismissing Applicant's post-conviction relief application was filed on December 8, 2017. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's motion, Respondent's return, and the oral arguments of both parties, this Court is not persuaded to alter or amend the judgment. Therefore, this Court finds that the original Order of Dismissal shall stand as it was written.

MAY 13 2009

JAMES R. PARKS
CLERK, STATE GRAND JURY STATE GRAND JURY OF SOUTH CAROLINA

2009ES 47 05 1

STATE OF SOUTH CAROLINA

VS.

ABIGAIL JOUGHIN MAILLEFERT,
OPHELIA GREEN MICKELL,
DEANGELO CHRISTOPHER MICKELL,

DEFENDANTS.

CASE NO.

~~SGJ 2009-192~~

**INDICTMENT FOR
UNLAWFUL DRUGS**

Trafficking Cocaine (Conspiracy)
> 400 grams

S.C. Code Ann. § 44-53-370 (e)(2)(c)

Trafficking Cocaine 200 – 400 grams
S.C. Code Ann. § 44-53-370 (e)(2)(d)
Two Counts

Trafficking Cocaine 28 - 100 grams
S.C. Code Ann. § 44-53-370 (e)(2)(b)

~~Two Counts~~
~~THREE SG~~

Trafficking Cocaine 10 - 28 grams
S.C. Code Ann. § 44-53-370 (e)(2)(a)

Trafficking Crack Cocaine 10 – 28 grams
S.C. Code Ann. § 44-53-375 (C)(1)

Distribution of Cocaine
S.C. Code Ann. § 44-53-370 (a)(1);
(b)(1)

~~Five Counts~~
~~Four SG~~

Possession with Intent to Distribute
Cocaine
S.C. Code Ann. § 44-53-370 (a)(1);
(b)(1)

Possession with Intent to Distribute
Crack Cocaine
S.C. Code Ann. § 44-53-375 (B)(1)

Possession with Intent to Distribute
Marijuana
S.C. Code Ann. § 44-53-370 (a)(1);
(b)(1)
Two Counts

) Unlawful Carrying of a Handgun
) S.C. Code Ann. § 16-23-20
)

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on May 13, 2009, the State Grand Jurors present upon their oath:

COUNT I
TRAFFICKING COCAINE > 400 GRAMS
(CONSPIRACY)
S.C. Code Ann. § 44-53-370 (e)(2)(e)

That ABIGAIL JOUGHIN MAILLEFERT, OPHELIA GREEN MICKELL, DEANGELO CHRISTOPHER MICKELL, and other persons whose names are both known and unknown to the State Grand Jury, did in Beaufort County and Jasper County of South Carolina, during the period of time extending from on or about May 1, 2008 to September 17, 2008, conspire to sell, manufacture, deliver, purchase, or who provides financial assistance or otherwise aids, abets, or bring into this State, more than four hundred (400) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT II
DISTRIBUTION OF COCAINE
S.C. Code Ann. § 44-53-370 (a)(1); (b)(1)

That ABIGAIL JOUGHIN MAILLEFERT did in Beaufort County, on or about May 1, 2008, knowingly distribute, dispense, or deliver cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring

and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT III
DISTRIBUTION OF COCAINE
S.C. Code Ann. § 44-53-370 (a)(1); (b)(1)

That ABIGAIL JOUGHIN MAILLEFERT did in Beaufort County, on or about May 15, 2008, knowingly distribute, dispense, or deliver cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT IV
DISTRIBUTION OF COCAINE
S.C. Code Ann. § 44-53-370 (b)(1)

That ABIGAIL JOUGHIN MAILLEFERT did in Beaufort County, on or about June 12, 2008, knowingly distribute, dispense, or deliver cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT V
TRAFFICKING COCAINE 10 - 28 GRAMS
S.C. Code Ann. § 44-53-370 (e)(2)(a)

That ABIGAIL JOUGHIN MAILLEFERT, did in Beaufort County, on or about June 16, 2008, sell, manufacture, deliver, purchase, or bring into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell,

manufacture, deliver, purchase, or bring into this State more than ten (10) grams but less than twenty-eight (28) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT VI
TRAFFICKING COCAINE 28 - 100 GRAMS
S.C. Code Ann. § 44-53-370 (e)(2)(b)

That ABIGAIL JOUGHIN MAILLEFERT, did in Beaufort County, on or about ~~June 16~~²⁰, 2008, sell, manufacture, deliver, purchase, or bring into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State more than twenty-eight (28) grams but less than one hundred (100) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT VII
TRAFFICKING CRACK COCAINE 10-28 GRAMS
S.C. Code Ann. § 44-53-375 (C)(1)

That ABIGAIL JOUGHIN MAILLEFERT, did in Beaufort County, on or about June 23, 2008, sell, manufacture, deliver, purchase, or bring into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State more than ~~twenty-eight (28)~~^{ten (10)} grams but less than ~~one hundred (100)~~^{twenty eight (28)} grams of crack cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended,

such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT VIII
POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA
S.C. Code Ann. § 44-53-370 (a)(1); (b)(2)

That ABIGAIL JOUGHIN MAILLEFERT, did in Beaufort County, on or about June 23, 2008, possess with intent to distribute, dispense, or deliver marijuana, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT IX
POSSESSION WITH INTENT TO DISTRIBUTE COCAINE
S.C. Code Ann. § 44-53-370 (a)(1); (b)(1)

That ABIGAIL JOUGHIN MAILLEFERT, did in Beaufort County, on or about June 23, 2008, possess with intent to distribute, dispense, or deliver cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT X
TRAFFICKING COCAINE 28-100 GRAMS
S.C. Code Ann. § 44-53-370 (e)(2)(b)

That OPHELIA GREEN MICKELL did in Beaufort County, on or about June 27, 2008, sell, manufacture, deliver, purchase, or bring into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State more than twenty-eight (28) grams but less than one hundred (100) grams of cocaine, a controlled substance under provisions of § 44-53-

110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XI
DISTRIBUTION OF COCAINE
S.C. Code Ann. § 44-53-370 (a)(1); (b)(1)

That OPHELIA GREEN MICKELL did in Beaufort County, on or about July 2, 2008, knowingly distribute, dispense, or deliver cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XII
TRAFFICKING COCAINE 28 - 100 GRAMS
S.C. Code Ann. § 44-53-370 (e)(2)(b)

That OPHELIA GREEN MICKELL, did in Beaufort County, on or about July 9, 2008, sell, manufacture, deliver, purchase, or bring into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State more than twenty-eight (28) grams but less than one hundred (100) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XIII
TRAFFICKING COCAINE 200 - 400 GRAMS
S.C. Code Ann. § 44-53-370 (e)(2)(d)

That OPHELIA GREEN MICKELL, did in Beaufort County, on or about September 17, 2008, sell, manufacture, deliver, purchase, or bring into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of more than two hundred (200) grams but less than four hundred (400) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XIV
POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE
S.C. Code Ann. § 44-53-375 (B)(1)

That OPHELIA GREEN MICKELL, did in Beaufort County, on or about September 17, 2008, possess with intent to distribute, dispense, or deliver crack cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XV
POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA
S.C. Code Ann. § 44-53-370 (a)(1); (b)(2)

That OPHELIA GREEN MICKELL, did in Beaufort County, on or about September 17, 2008, possess with intent to distribute, dispense, or deliver marijuana, a

controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

**COUNT XVI
UNLAWFUL CARRYING OF A HANDGUN
S.C. Code Ann. § 16-23-20**

That OPHELIA GREEN MICKELL, did in Beaufort County, on or about September 17, 2008, unlawfully possess a Taurus Millennium Pro Model PT111, serial number TWA31138, caliber 9 millimeter handgun, to wit: the Defendant was driving a white Chevy Silverado truck with the handgun lying behind the driver's seat, in violation of § 16-23-20, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

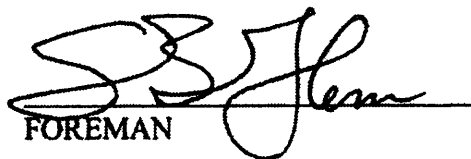
**COUNT XVII
TRAFFICKING COCAINE 200 - 400 GRAMS
S.C. Code Ann. § 44-53-370 (e)(2)(d)**

That DEANGELO CHRISTPHER MICKELL, did in Beaufort County, on or about September 17, 2008, sell, manufacture, deliver, purchase, or bring into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of more than two hundred (200) grams but less than four hundred (400) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by

law and such activity occurring and/or having significance in more than one county of this State.

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

A TRUE Bill


FOREMAN


HENRY McMASTER (sop)
ATTORNEY GENERAL