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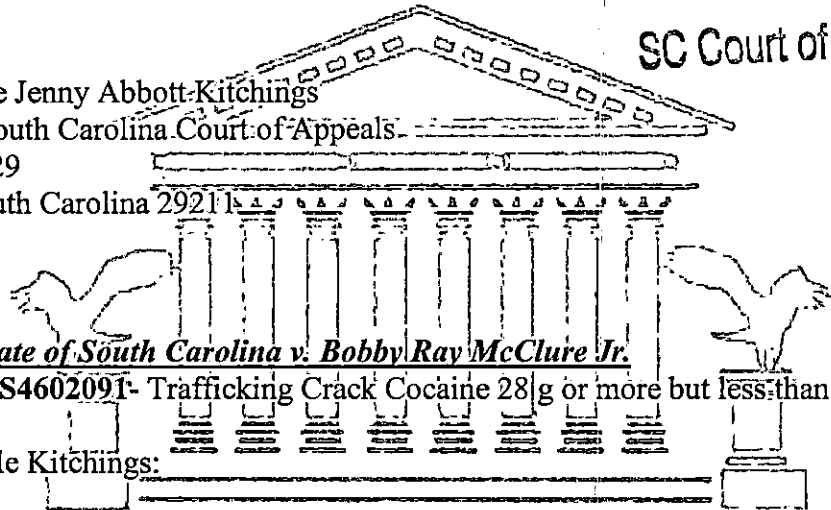
May 3, 2022

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MAY 09 2022

SC Court of Appeals

The Honorable Jenny Abbott-Kitchings
Clerk of the South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211



RE: The State of South Carolina v. Bobby Ray McClure Jr.
2021GS4602091- Trafficking Crack Cocaine 28g or more but less than 100 g, 2nd offense

Dear Honorable Kitchings:

I hope this letter finds you well. Enclosed please find a copy of the guilty plea court transcript from the proceeding that took place on March 7th, 2022 before the Honorable J. Derham Cole in the above referenced case.

Thank you, and with kindest regards, I am,

Twana Burriss Alcide
BURRIS
LEGAL GROUP

Twana Burriss- Alcide, Esquire

TNBA/vm

Enclosure

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF GENERAL SESSIONS
CASE NO. 2021-GS-46-02091

STATE OF SOUTH CAROLINA,)
)
Plaintiff,)
)
-vs-)
)
BOBBY RAY MCCLURE,)
JUNIOR,)
)
Defendant.)

TRANSCRIPT OF RECORD

March 7, 2022
York, South Carolina

B E F O R E:

Honorable J. Derham Cole, Judge.

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

Ms. Austin Smith
Assistant Solicitor
Mr. Dan Porter
Assistant Solicitor
York, South Carolina

Ms. Twana Burris-Alcide
Attorney at Law
Attorney for the Defendant
Rock Hill, South Carolina

Shannon E. McGilberry, CVR-M
Court Reporter

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SC Court of Appeals

1 THE COURT: All right. You're Bobby Ray McClure,
2 Junior?

3 MR. MCCLURE: Yes, sir.

4 THE COURT: And Ms. Burris-Alcide --

5 MS. BURRIS-ALCIDE: Alcide, Your Honor.

6 THE COURT: -- Alcide is your lawyer?

7 MR. MCCLURE: Yes, sir.

8 THE COURT: I have before me an indictment. Is this
9 on? (Referring to microphone.)

10 MR. MCCLURE: Yes, sir.

11 THE COURT: I have before me indictment 2021-02091. It
12 charges you with trafficking in crack cocaine. The State
13 alleges that you did on or about April the 1st of 2021, in
14 York County, knowingly traffic in 100 grams or more of crack
15 cocaine in violation of a particular statute.

16 If convicted of trafficking in crack cocaine in amount
17 greater than 100 grams, the law requires that you be
18 sentenced to not less than twenty-five years in jail. Do
19 you understand that?

20 MR. MCCLURE: Yes, sir.

21 THE COURT: Now, I understand through some discussions
22 with the prosecutor and your lawyer that you and your lawyer
23 and the prosecutor have agreed to allow you to plead guilty
24 to a lesser offense that would require the imposition of a
25 lesser sentence. Is that your understanding?

1 MR. MCCLURE: Yes, sir, Your Honor.

2 THE COURT: And what did they offer you in exchange for
3 your pleading guilty, if you did?

4 MR. MCCLURE: Seven years, Your Honor.

5 THE COURT: All right. And you understand it also
6 requires a mandatory fine of \$50,000?

7 MR. MCCLURE: Yes, sir, Your Honor.

8 THE COURT: All right. Have you had plenty of time to
9 talk to your lawyer about your decision as to whether you
10 want to plead guilty or have a jury trial?

11 MR. MCCLURE: Yes, sir, Your Honor.

12 THE COURT: Did she go over the indictment with you?

13 MR. MCCLURE: Yes, sir, Your Honor.

14 THE COURT: She explain the charge to you?

15 MR. MCCLURE: Yes, sir, Your Honor.

16 THE COURT: Did she tell you what kind of sentence
17 could be imposed if you were convicted of the crime for
18 which you're charged in this indictment?

19 MR. MCCLURE: Yes, sir, Your Honor.

20 THE COURT: And did she also share with you all of the
21 discovery and the evidence that the State has that they
22 would present to a jury in the trial of your case if the
23 case went to trial before a jury?

24 MR. MCCLURE: Yes, sir, Your Honor.

25 THE COURT: And so you understand what the evidence is?

1 MR. MCCLURE: Yes, sir, Your Honor.

2 THE COURT: And did you and she discuss all that
3 evidence?

4 MR. MCCLURE: Yes, sir, Your Honor.

5 THE COURT: And did you tell her everything you know
6 about these allegations made against you and the event the
7 State claims occurred on April the 1st of last year?

8 MR. MCCLURE: Yes, sir, Your Honor.

9 THE COURT: And after you and she discussed it, did
10 y'all determine whether or not you had a defense to the
11 charge of trafficking in crack cocaine?

12 MR. MCCLURE: Yes, sir, Your Honor.

13 THE COURT: And do you have a defense to that charge?

14 MR. MCCLURE: I'm pleading Alford -- *North Carolina*
15 *versus Alford*.

16 THE COURT: Okay. But my question was are you aware of
17 any defense that you had to the charge?

18 MR. MCCLURE: Yes, sir, Your Honor.

19 THE COURT: You are?

20 MR. MCCLURE: Yes. Yes, sir, Your Honor.

21 THE COURT: All right. Well, do you understand that if
22 you plead guilty, you give up your right to assert any
23 defense that you might have?

24 MR. MCCLURE: Yes, sir, Your Honor.

25 THE COURT: In other words, if you have a defense that

1 could result in a verdict of not guilty, when you plead
2 guilty, you give up your right to assert a defense and that
3 just simply means that there's no chance, if you plead
4 guilty, that you'll walk out of here being found not guilty,
5 because when you plead guilty to a criminal charge, even if
6 it's pursuant to *North Carolina versus Alford*, you still
7 authorize me to impose a sentence just as if you had denied
8 your guilt, had a jury trial and the jury found you guilty
9 or just as if you had pled guilty and admitted your guilt.
10 You're still authorizing me to impose a sentence and you
11 will have a conviction for trafficking in crack cocaine.
12 You understand that?

13 MR. MCCLURE: Yes, sir, Your Honor. May I ask one
14 question?

15 THE COURT: Of course.

16 MR. MCCLURE: Is it -- it's twenty-eight grams. You
17 said a hundred grams.

18 THE COURT: That's what you're charged with.

19 MR. MCCLURE: Yes, sir.

20 THE COURT: I assume -- we're going to get into that,
21 but I assume if they're going to let you plead guilty to a
22 lesser amount, that's how you get out of the twenty-five
23 mandatory.

24 MR. MCCLURE: Yes, sir, Your Honor.

25 THE COURT: But I'm going to get there.

1 MR. MCCLURE: Yes, sir, Your Honor.

2 THE COURT: Okay. So you understand what your charge
3 is. You understand the potential sentence if you're
4 convicted of this offense. You've told me that you've been
5 over the evidence and the discovery with your lawyer that
6 the State provided, that you understand what they would
7 present, that you do have a defense to the charge, but you
8 wish to give up your right to assert that defense in order
9 to plead guilty to an agreement that you and your lawyer and
10 the State have reached. Is that true?

11 MR. MCCLURE: Yes, sir, Your Honor.

12 THE COURT: Did your lawyer explain to you that you
13 have a right to remain silent?

14 MR. MCCLURE: Yes, sir, Your Honor.

15 THE COURT: And you understand that that means that you
16 don't have to say anything? You don't have to make any
17 statement. You don't have to provide any testimony, even at
18 a trial of the case. You don't have to answer any questions
19 that might tend to prove your own guilt as to the charge and
20 you don't have to answer my questions that I'm asking you
21 right now unless you want to plead guilty, because if you
22 want to plead guilty, you have to give up your right to
23 remain silent, because I've got questions to ask you. The
24 purpose is for me to determine whether or not your decision
25 to plead guilty is freely and voluntarily made, that you

1 have a full understanding of that decision, that you have a
2 full understanding of the consequences of that decision and
3 that nobody's forcing you or coercing you or pressuring you
4 into that decision. So do you understand your right to
5 remain silent?

6 MR. MCCLURE: Yes, sir, Your Honor.

7 THE COURT: Do you understand you have to give that
8 right up if you want to plead guilty?

9 MR. MCCLURE: Yes, sir -- yes, sir, Your Honor.

10 THE COURT: Do you wish to give that right up in order
11 to plead guilty?

12 MR. MCCLURE: Yes. Yes, sir, Your Honor.

13 THE COURT: Did your lawyer also explain to you that
14 you have a right to confront and to examine any witness in
15 court that would provide evidence against you?

16 MR. MCCLURE: Evidence?

17 THE COURT: You understand that you have a right to
18 examine any witness that would come to court to present
19 evidence against you?

20 (WHEREUPON, Ms. Burris-Alcide and Mr. McClure conferred
21 off the record.)

22 MR. MCCLURE: Yes; yes. Yes, sir, Your Honor.

23 THE COURT: Yes, sir, what?

24 MR. MCCLURE: I understand.

25 THE COURT: So you understand you have a right to

1 cross-examine each witness and every witness that would
2 provide evidence against you?

3 MR. MCCLURE: Yes, sir, Your Honor.

4 THE COURT: And that just simply means that you've got
5 a right to make the State prove your guilt. They bring the
6 witnesses to court, the witnesses take the witness stand.
7 They testify in your presence under oath. You can see them,
8 you can hear them and your lawyer can cross-examine them in
9 order to test -- excuse me -- in order to test each
10 witness's credibility and the reliability of the information
11 that they're providing to the Court and if you plead guilty,
12 that process doesn't take place. There is no examination of
13 witnesses. That only occurs during a jury trial.

14 Do you understand that right?

15 MR. MCCLURE: Yes, sir, Your Honor.

16 THE COURT: Do you wish to give up your right to
17 examine the witnesses?

18 MR. MCCLURE: Yes, sir, Your Honor.

19 THE COURT: Did your lawyer explain to you that you
20 have a right to have a jury trial and to have a jury decide
21 whether or not you're guilty of any crime the State claims
22 you committed?

23 MR. MCCLURE: Yes, sir, Your Honor.

24 THE COURT: Do you understand who selects the jury?

25 MR. MCCLURE: Yes, sir, Your Honor.

1 THE COURT: Who does?

2 MR. MCCLURE: I believe we do.

3 THE COURT: Well, your lawyer and the solicitor. Do
4 you understand how many jurors are selected?

5 MR. MCCLURE: Twelve?

6 THE COURT: Twelve. Do you know how many have to be
7 convinced of your guilt before they could find you guilty of
8 anything the State claims you committed?

9 MR. MCCLURE: All of them.

10 THE COURT: And do you understand that they all twelve
11 would have to be convinced of your guilt beyond a reasonable
12 doubt before they could find you guilty?

13 MR. MCCLURE: Yes, sir, Your Honor.

14 THE COURT: Do you also understand that you can have a
15 jury trial and still not take the witness stand and testify?

16 MR. MCCLURE: Yes, sir, Your Honor.

17 THE COURT: But you could call other witnesses if you
18 wanted to, but you still don't have to testify, because you
19 have a right to remain silent, even during a trial. You
20 understand your right to have a jury trial?

21 MR. MCCLURE: Yes, sir, Your Honor.

22 THE COURT: Do you wish to give that right up in order
23 to plead guilty?

24 MR. MCCLURE: Yes, sir, Your Honor.

25 THE COURT: Now, we're going to talk about the

1 agreement. Has anybody offered you anything, anybody
2 promised you anything in return for your decision to enter a
3 plea of guilty?

4 MR. MCCLURE: The only thing would be seven years, Your
5 Honor.

6 THE COURT: All right. So they offered -- let me see
7 if I'm correct in my assumption or my belief and you correct
8 me if I'm wrong. The State agreed to let you plead guilty
9 to trafficking in twenty-eight grams or more, but less than
10 100 grams and that would be a second offense under the
11 trafficking statute. That carries a potential sentence of
12 thirty years in jail and a fine of \$50,000. It requires a
13 mandatory minimum sentence of not less than seven years in
14 jail and a fine of \$50,000. So they agreed to let you plead
15 guilty to a lesser amount so that it would result in a
16 lesser sentence that could be imposed.

17 If you were convicted by trial or by plea of the
18 offense that's actually alleged in the indictment, you would
19 have to get a mandatory minimum sentence of twenty-five
20 years in jail and a fine of \$100,000. You understand?

21 MR. MCCLURE: That part I ain't really understanding.

22 THE COURT: What part?

23 MR. MCCLURE: I don't know (addressing Ms. Burris-
24 Alcide).

25 THE COURT: Wait a minute. I'm going to let y'all

1 talk, too, but I'm talking right now.

2 MR. MCCLURE: When you say that it's seven years, but
3 if I get -- if I plead guilty now, it could be twenty-five.

4 THE COURT: No. No; no. Here's the situation. Oh.
5 We're not through with the -- the indictment,---

6 MR. MCCLURE: Yes, sir.

7 THE COURT: ---right now you're charged with
8 trafficking in more than 100 grams.

9 MR. MCCLURE: Yes, sir, Your Honor.

10 THE COURT: That requires a mandatory minimum sentence
11 of twenty-five years in jail and a fine of \$100,000.

12 MR. MCCLURE: Yes, sir.

13 THE COURT: What I'm told is that you and your lawyer
14 and the solicitor have agreed that if you plead guilty,
15 they'll let you plead guilty to trafficking in a lesser
16 amount, in other words, less than a hundred grams, but more
17 than twenty-eight and it being a second offense, it still
18 carries up to twenty-five years in jail and a fine of
19 \$50,000. It also requires a mandatory minimum sentence of
20 not less than seven years in jail and a fine of \$50,000.
21 And y'all have agreed that I should impose the minimum
22 sentence, seven years and \$50,000. I'm trying to find out
23 if that was your agreement.

24 MR. MCCLURE: Yes, sir, Your Honor.

25 THE COURT: Okay. And were you offered or promised

1 anything other than that?

2 MR. MCCLURE: No, sir, Your Honor.

3 THE COURT: All right. Now, you have told me that
4 you're pleading guilty pursuant to *North Carolina versus*
5 *Alford*. You also told me that you did have a defense to the
6 charge and you understood that you'd have to give up your
7 right to assert that defense if you pled guilty. So right
8 now what I'm trying to find out is the fact that you have a
9 defense, and I don't know what it is, but if you have a
10 challenge to the charge, if you have a challenge to any
11 search or seizure, if you have any legal challenge to your
12 arrest, if you have a challenge to any evidence that might
13 be introduced in court if your case goes to trial, that when
14 you plead guilty you give up your right to challenge any
15 search, seizure, arrest or introduction of evidence that
16 might be used against you.

17 Now, I'm guessing, and it's probably an educated guess
18 and if I'm wrong, y'all will tell me, but I'm guessing that
19 that's why the State is allowing you to plead guilty to a
20 lesser offense for a lesser sentence. In other words, if
21 you want to challenge any search or seizure, if you want to
22 challenge your arrest, if you want to move for a suppression
23 of evidence, if you're going to challenge that, then the
24 State's going to say, well, we're not agreeing -- we're not
25 going to agree to anything. We can have -- you can have

1 that hearing. If you win, the case is probably over. If
2 you lose, they're going to trial on the over a hundred grams
3 and if you are convicted by a jury of that offense, you'd
4 have to get twenty-five years. Nothing anybody could do
5 about it. I couldn't give any less if I wanted to.

6 MR. MCCLURE: Yes, sir, Your Honor.

7 THE COURT: Is that a fair statement of what y'all
8 talked about and what you understood?

9 MR. MCCLURE: Yes, sir, Your Honor.

10 THE COURT: All right. So understanding that the State
11 has agreed to a lesser amount, which would reduce -- which
12 would result in a lesser sentence and, in fact, to an agreed
13 sentence of seven years and \$50,000, are you wanting to give
14 up your right to contest any search or seizure, arrest or
15 move for a suppression of evidence?

16 MR. MCCLURE: Yes, sir, Your Honor.

17 THE COURT: All right. And you're satisfied with that
18 decision that you made?

19 MR. MCCLURE: Yes, sir, Your Honor.

20 THE COURT: Has anybody forced you into that decision
21 to plead guilty?

22 MR. MCCLURE: No, sir, Your Honor.

23 THE COURT: Has anybody threatened you in any fashion
24 that resulted in your decision?

25 MR. MCCLURE: No, sir, Your Honor.

1 THE COURT: Has anybody coerced you in any way that
2 resulted in your decision?

3 MR. MCCLURE: Want the truth?

4 THE COURT: Well, you're supposed to be telling me the
5 truth.

6 MR. MCCLURE: I think so.

7 THE COURT: All right. Tell me about the coercion.
8 Who do you contend has coerced you?

9 MR. MCCLURE: I'm not -- I take that back. No, I'm --
10 I'm okay. I agree.

11 THE COURT: Well, let me ask you this: you understand
12 there's a difference in, at least in some degree, to being
13 coerced and being pressured by the circumstances of the
14 situation?

15 MR. MCCLURE: Yes, sir.

16 THE COURT: In other words, you might be getting advice
17 that it's in your best interest to plead guilty even when
18 you might be inclined not to, but that's based upon the
19 realities of the situation, you see.

20 MR. MCCLURE: Yes. Yes, sir, Your Honor.

21 THE COURT: And so your lawyer might be advising you
22 that she thinks it's in your best interest to plead guilty,
23 because she has seen the evidence. She thinks there's a
24 reasonable probability that the evidence would be admissible
25 during the trial. She thinks there's a reasonable

1 probability that the judge would not exclude the evidence,
2 would not find an unconstitutional violation so far as any
3 search, seizure or arrest and, of course, nobody knows the
4 answer to that because we haven't had a hearing about it,
5 but the point is she knows what the evidence is and she --
6 you told me she has shared it with you.

7 MR. MCCLURE: Yes, sir, Your Honor.

8 THE COURT: And so I'm certain she has an opinion as to
9 what she thinks will happen.

10 MR. MCCLURE: May I say something about the -- I never
11 had a preliminary hearing.

12 THE COURT: Okay.

13 MR. MCCLURE: So I was trying to get the probable cause
14 factors in line. At that point in time I was never allowed
15 that opportunity.

16 THE COURT: All right. Well, let me ask you this: did
17 your lawyer explain to you that once the case gets indicted,
18 that preliminary hearing stuff don't matter? You can't get
19 a preliminary hearing -- once you've been indicted, you're
20 not going to have a preliminary hearing, because probable
21 cause has been determined by the grand jury and so you don't
22 have that preliminary hearing any longer unless it had
23 already been requested before the case went to the grand
24 jury.

25 MR. MCCLURE: That's what I'm saying.

1 THE COURT: It was requested before it went to the
2 grand jury?

3 MR. MCCLURE: I requested a preliminary hearing.

4 THE COURT: Okay.

5 MS. BURRIS-ALCIDE: If we can approach, Your Honor,
6 briefly.

7 THE COURT: Well, let me just say this and maybe we
8 won't need to, maybe we will.

9 All right. Well, do you understand that if you had a
10 preliminary hearing, what the State has to do, they just got
11 to present enough evidence, just like they did when they
12 sent it to the grand jury, they've got just to present
13 enough evidence for the magistrate to believe there's a
14 probability---

15 MR. MCCLURE: Yes, sir, Your Honor.

16 THE COURT: ---that you have committed a crime.

17 MR. MCCLURE: Yes, sir, Your Honor.

18 THE COURT: It doesn't have to be to a certainty. It
19 doesn't have to be beyond a reasonable doubt. It doesn't
20 have to be by convincing evidence. It just has to be a
21 probability, a likelihood.

22 MR. MCCLURE: Yes, sir, Your Honor.

23 THE COURT: You understand that?

24 MR. MCCLURE: Yes, sir, Your Honor.

25 THE COURT: So is there anything else you need to tell

1 me about that?

2 MR. MCCLURE: No, sir, Your Honor.

3 THE COURT: Okay. So are you now waiving any challenge
4 you might have had to the lack of a having a preliminary
5 hearing?

6 MR. MCCLURE: Am I waiving?

7 THE COURT: Yes, sir.

8 MR. MCCLURE: (No response)

9 THE COURT: Mr. McClure, here's the situation, you see.
10 If you don't waive any challenge you have to an illegality
11 that you contend has occurred, then we can't go through this
12 plea process, but if we don't go through this plea process,
13 the State is not going to offer you anything is what I
14 understood. So if you want to take advantage of the State's
15 offer, then you have to give up something, too, but you
16
17 don't have to take their offer. You can challenge
18 everything if you want to.

19 MR. MCCLURE: Yes, sir, Your Honor.

20 THE COURT: So what do you want to do? Do you want to
21 give up your right to challenge the arrest and search and
22 seizure, lack of a preliminary hearing or anything else that
23 you might be able to contest? Do you want to give up your
24 right to contest the legality of those procedures and
25 processes or do you want to take advantage of the State's

1 offer in this case?

2 MR. MCCLURE: Can I speak with her?

3 THE COURT: You may.

4 (WHEREUPON, Ms. Burris-Alcide and Mr. McClure conferred
5 off the record.)

6 MR. MCCLURE: Yes. Yes, sir, Your Honor.

7 THE COURT: All right. So what do you want to do?

8 MR. MCCLURE: Yes, sir. I'm going -- I'm going to
9 waive it.

10 THE COURT: You want to go forward with your guilty
11 plea?

12 MR. MCCLURE: Yeah. I'm going forward with it.

13 THE COURT: You want to waive your right to any
14 challenge that you had to anything that's happened up to
15 this point as it relates to this case?

16 MR. MCCLURE: Yes, sir, Your Honor.

17 THE COURT: Okay. Are you pleading guilty freely and
18 voluntarily?

19 MR. MCCLURE: Yes, sir.

20 THE COURT: And you're satisfied with the decision that
21 you've made?

22 MR. MCCLURE: Yes, sir, Your Honor.

23 THE COURT: You're forty-one years old?

24 MR. MCCLURE: Yes, sir, Your Honor.

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

1 MR. MCCLURE: I got my GED and a little bit of college.

2 THE COURT: All right. And have you ever been married?

3 MR. MCCLURE: No, sir, Your Honor.

4 THE COURT: Have you ever had a child?

5 MR. MCCLURE: Yes, sir, Your Honor.

6 THE COURT: How many?

7 MR. MCCLURE: I have three.

8 THE COURT: And how old are they?

9 MR. MCCLURE: Fifteen, seventeen, and twenty-two.

10 THE COURT: And, of course, at least one's grown.

11 Where are the teenagers? Do they live with you or their

12 mothers or where?

13 MR. MCCLURE: They was living with me and I was -- had

14 joint custody when I was home.

15 THE COURT: Okay. And how long have you been in jail?

16 MR. MCCLURE: Now it's probably eleven months.

17 THE COURT: And what kind of work have you done?

18 MR. MCCLURE: Oh. When I was home?

19 THE COURT: Yes, sir.

20 MR. MCCLURE: I had my own entertainment company and I

21 worked at Meritor before and I worked at MacClean Power

22 before.

23 THE COURT: Have you ever been treated for any type of

24 substance abuse or addiction?

25 MR. MCCLURE: Yes, sir.

1 THE COURT: And when were you treated?

2 MR. MCCLURE: I would say -- I would say '97 and I
3 didn't do any real treatment when I was at home, but I
4 failed -- failed a test when I was out of the home.

5 THE COURT: And what was the treatment for?

6 MR. MCCLURE: Cocaine.

7 THE COURT: And is that what you have some issues with?

8 MR. MCCLURE: Yes, sir, Your Honor.

9 THE COURT: And you hadn't had anything since you've
10 been in custody, have you?

11 MR. MCCLURE: No, sir, Your Honor.

12 THE COURT: Was there anything about some issue you
13 might have had in the past that would effect in any way your
14 ability to understand fully what you're doing right now?

15 MR. MCCLURE: Not at the moment, Your Honor.

16 THE COURT: Have you ever been treated for any type of
17 mental illness or emotional disturbance?

18 MR. MCCLURE: Yes, sir, Your Honor.

19 THE COURT: And when were you treated?

20 MR. MCCLURE: Catawba Mental -- Catawba Mental --
21 Mental Health on Cherry Road, right off Cherry Road.

22 THE COURT: When was that?

23 MR. MCCLURE: Maybe -- I've been in here eleven months,
24 so maybe two -- a year and a half, two years ago.

25 THE COURT: And what were you being treated for?

1 MR. MCCLURE: PTSD.

2 THE COURT: And do you have an idea of the cause of
3 that?

4 MR. MCCLURE: Just a lot I been through in my life.

5 THE COURT: All right. Is there anything about that
6 condition that in any way prohibits you from understanding
7 fully what you're doing here today?

8 MR. MCCLURE: Not at the moment, Your Honor.

9 THE COURT: Okay. Now, the solicitor's going to tell
10 me about the facts that relate to your case. You listen to
11 what she -- and your criminal history. Listen to what she
12 tells me, because when she's through, I'll ask you some more
13 questions about it.

14 MS. SMITH: Your Honor, on April 1st of 2021, officers
15 executed a search warrant at 1521 Greenwood Lane in York
16 County. In the defendant's bedroom they located \$2,175, a
17 bag of crack, a small amount of marijuana, three digital
18 scales, packaging materials, small pieces of crack, a white
19 plate with crack residue, a razor blade, a money counting
20 machine and a ledger with what we would allege to be
21 documented drug sales. They also located a vacuum sealer in
22 the kitchen.

23 When they transported the defendant and his co-
24 defendant to the Rock Hill Police Department, the State
25 would allege that the defendant retrieved something out of

1 the back of his pants and passed it to the co-defendant.
2 When they searched the co-defendant, they found 101.83 grams
3 of crack in his back right pocket. When he was searched
4 prior to transport, he did not have the contraband in his
5 back right pocket.

6 When officers searched the defendant at the Rock Hill
7 Police Department, they located 2.52 grams of crack
8 concealed in his groin area.

9 I will say that a test was done of that crack and it
10 weighed a little over one gram, a secondary test.

11 As to his rap sheet, in 1998, he has possession of
12 crack, 1st; in 2000, he has a strong-arm robbery, a
13 conspiracy and a stolen pistol; in 2004, he has possession
14 of marijuana, 1st, and in 2010, he has a distribution of
15 cocaine base and a distribution of fifty grams or more of
16 cocaine base. Those are on two different incident dates and
17 those are what we would use to enhance this.

18 THE COURT: All right. You heard what she just told me
19 about your criminal history?

20 MR. MCCLURE: Yes, sir, Your Honor.

21 THE COURT: Is that accurate?

22 MR. MCCLURE: Yes, sir, Your Honor.

23 THE COURT: And you heard what she told me about the
24 facts that relate to your case, that is, what she would
25 offer to show in court if you went to trial before a jury?

1 MR. MCCLURE: Yes, sir, Your Honor.

2 THE COURT: And knowing what she would present in
3 court, do you believe that if that evidence was presented to
4 a jury, that there's a reasonable likelihood that they would
5 find you guilty of trafficking in crack cocaine?

6 (WHEREUPON, Ms. Burris-Alcide and Mr. McClure conferred
7 off the record.)

8 MR. MCCLURE: Yes, sir, Your Honor.

9 THE COURT: So you think you would be convicted at
10 trial?

11 MR. MCCLURE: (No response)

12 THE COURT: Well, it's just what your opinion is.

13 MR. MCCLURE: My -- my opinion, I would be --

14 (WHEREUPON, Ms. Burris-Alcide and Mr. McClure conferred
15 off the record.)

16 MR. MCCLURE: Yes, sir, Your Honor.

17 THE COURT: Yes, sir; what do you mean?

18 MR. MCCLURE: Yes. I understand, Your Honor.

19 THE COURT: Well, my question was if you -- if your
20 case went to trial and the solicitor presented her evidence
21 as you've heard it to be to a jury and if you wanted to
22 present evidence, you could present it, too, do you think
23 that after the jury considered all the evidence presented in
24 the case, that there's a reasonable probability that they
25 would---

1 MR. MCCLURE: A reasonable doubt?

2 THE COURT: ---find you guilty? Sir?

3 MR. MCCLURE: A reasonable doubt?

4 THE COURT: Well, it'd have to be beyond a reasonable
5 doubt.

6 MR. MCCLURE: Yes.

7 THE COURT: Do you think there's a reasonable
8 probability that the jury would find you guilty of
9 trafficking in greater than 100 grams of crack cocaine
10 beyond a reasonable doubt?

11 MS. BURRIS: Your Honor, I think in regards to
12 trafficking, Your Honor, I think his -- the hesitation,
13 reservations was we actually went through, hired an
14 independent chemist who tested -- who tested the drugs that
15 were originally reported as 101.83, when re-weighed went to
16 93.192 and so that's why I believe that the State gave us
17 the benefit of the 28 grams or more, which is under the 100
18 grams.

19 THE COURT: Well, what would -- what's the State's
20 position that you could prove at trial, over a hundred or
21 less than a hundred?

22 MS. SMITH: Your Honor, both our expert and her expert
23 says that it is possible that some of the drugs evaporated.
24 So that would be -- we would elicit that testimony that the
25 original weight was, in fact, correct at 101.83, so we would

1 still be going forward on that weight.

2 THE COURT: And who -- what agency is the agency that
3 weighed that evidence?

4 MS. SMITH: The York County Sheriff's Office, their
5 chemist weighed it.

6 THE COURT: And that was prior to any testing being
7 performed by the chemist?

8 MS. SMITH: They did testing as to the substance and
9 the weight at the same time and then she hired an expert to
10 come in and weigh it. It had been several months. The
11 substance had gone from a hard piece of crack about that big
12 (indicating) to what now looks like pancake batter. It is
13 like a liquid mixture. So both experts agree that there
14 could have been -- it could have evaporated some of that
15 weight and that's the reason for the weight change.

16 THE COURT: Okay; all right. So, Mr. McClure, what I'm
17 told now is that there's a legitimate potential for a jury,
18 in considering the evidence, to decide that you, in fact,
19 did not have more than a hundred, you had less than a
20 hundred, but it's close to a hundred 'cause it's ninety-
21 something grams.

22 MR. MCCLURE: Yes, sir, Your Honor.

23 THE COURT: If that were the case, then, a jury
24 couldn't find you guilty of the offense that would result in
25 the mandatory minimum twenty-five years in jail, but they

1 would be able, if they deemed it appropriate, to convict you
2 of trafficking in an amount greater than 28, but less than a
3 hundred and that'd be back where you are now. You could get
4 up to 30 years for that.

5 MR. MCCLURE: Yes, sir, Your Honor.

6 THE COURT: But the State, in return for your pleading
7 guilty and not challenging all that, they've agreed to the
8 minimum sentence that you could receive.

9 MR. MCCLURE: Yes, sir, Your Honor.

10 THE COURT: Is that what your understanding is?

11 MR. MCCLURE: Yes, sir, Your Honor.

12 THE COURT: All right. Well, do you still want to go
13 forward and plead guilty like you indicated?

14 MR. MCCLURE: Yes, sir, Your Honor.

15 THE COURT: And so do you believe, then, that if the
16 evidence was presented, there's at least a reasonable
17 probability that you would be convicted of trafficking in
18 greater than 28 grams, but less than a hundred grams?

19 MR. MCCLURE: Yes, sir, Your Honor.

20 THE COURT: And is it then fair for me to believe that
21 since the State has agreed to the minimum sentence for that
22 offense, you'd rather take the offer in the known than
23 subject yourself to the unknown?

24 MR. MCCLURE: Yes, sir, Your Honor.

25 THE COURT: In other words, you'd rather take the seven

1 than take the chance of getting more than that,---

2 MR. MCCLURE: Yes, sir, Your Honor.

3 THE COURT: ---if convicted?

4 MR. MCCLURE: Yes, sir, Your Honor.

5 THE COURT: Isn't that true?

6 MR. MCCLURE: Yes, sir, Your Honor.

7 THE COURT: And you still want me to accept your plea
8 of guilty?

9 MR. MCCLURE: Yes, sir, Your Honor.

10 THE COURT: All right. I'll accept it and hear from
11 you and your lawyer.

12 MS. BURRIS-ALCIDE: Thank you, Your Honor. May it
13 please the Court. It is my position, Your Honor, I have
14 fully advised Mr. McClure. We spent time together watching
15 the video, the BW seizures, the body-worn cameras,
16 numerous body-worn cameras, from the execution of the search
17 warrant. We've actually gone through the process and hired
18 an independent forensic scientist in the weighing of the
19 drugs as requested by Mr. McClure, as well as a handwriting
20 forensic expert. There was allegedly a letter which was
21 kiting back and forth allegedly between Mr. McClure as well
22 as the co-defendant, Mr. Torres, who the State had on their
23 witness list and expected to testify against Mr. McClure.

24 We have gone through the details of discussing what I
25 could ask each witness that the State presents in terms of

1 testimonial evidence and what I could ask them on cross-
2 examination. We have gone through each defense that we
3 would have in presenting this case before a jury. We have
4 talked about numerous defenses.

5 It is my belief that Mr. McClure is making an informed,
6 voluntary, intelligent decision to give up his right to go
7 to trial or to proceed to trial, knowing what we have
8 discussed and gone over. He has written numerous letters in
9 terms of things he wanted me to look into. We've talked
10 about the legality of the search warrant affidavit. We
11 discussed that in detail, the return, the dates, the content
12 of the affidavit. We've gone through everything in detail.
13 In terms of the testimonial evidence that the State would
14 actually present, we've gone through everything and what I
15 would ask in cross-examination.

16 He is giving up his right. I have advised him fully.
17 I have advised him thoroughly and so I believe that he is
18 making a informed decision.

19 Your Honor, we -- understanding that even though we had
20 the forensic scientist to weigh the drugs and the forensic
21 scientist did find that the drugs came back to be less than
22 100 grams, because of Mr. McClure's prior convictions, he
23 would be proceeding on trafficking third, looking at a
24 mandatory minimum twenty-five to thirty and \$50,000 and so
25 in advising Mr. McClure, he has agreed to give up the right

1 to go forward in a trial, knowing what the evidence the
2 State has and having seen and reviewed all of the evidence
3 in terms of body-worn cameras, in terms of videos, and
4 taking advantage of the mandatory minimum of seven on a
5 second offense.

6 There are three charges that have been dismissed as a
7 result of this plea agreement, he is pleading guilty to one
8 and even in adding up the three charges and the additional
9 charges, we've gone through that, he was looking at, Your
10 Honor, the -- of course, the trafficking cocaine, the
11 possession with intent to distribute marijuana within
12 proximity of a park or school, as well as possession with
13 intent to distribute crack cocaine within proximity of a
14 park or school and also possession with intent to distribute
15 marijuana. The State, as a part of the plea agreement, has
16 agreed to dismiss the three indictments and have him to
17 plead guilty to one indictment.

18 I have advised Mr. McClure -- and there is a difference
19 between advising and coercing -- I have advised Mr. McClure
20 of all his rights, his defenses, advantages and
21 disadvantages of going before the jury and the likelihood of
22 whether or not the State could prove their case and each
23 element of their case beyond a reasonable doubt. So as his
24 attorney, I have advised him that I think he is making the
25 right decision. I maintain my position that I believe that,

1 according to the law and according to what the State
2 presents to the jury, that he is making the right decision.

3 Your Honor, we respectfully ask that you would go along
4 with the seven years.

5 He -- Mr. McClure actually attended York High School.
6 He indicates that he had an entertainment business,
7 Ambarjan, in 2016, where he promoted entertainment shows.
8 He did go to York Technical College, where he majored in
9 business management. He also does, as he stated to Your
10 Honor, has a two-year-old, eighteen-year old and sixteen-
11 year old and he actually attended high school in York. He
12 was born and raised in York. He has lived with his mother.
13 He's lived independently on his own. He has been gainfully
14 employed in the past in addition to the entertainment
15 business and he's worked for York, MacClean Power as well as
16 Meritor.

17 Respectfully, Your Honor, we would ask that Your Honor
18 will accept the seven years and I don't know if Mr. McClure
19 would like to say anything, but again, it maintains my
20 position that on *North Carolina versus Alford*, I've
21 explained that to him, that it will -- even though it will
22 register as a guilty plea, we do understand that he's
23 pleading guilty under *North Carolina versus Alford*, he's
24 maintaining his innocence, however, with the understanding
25 that if the State were -- the State could go forward before

1 a jury and prove their case beyond a reasonable doubt and so
2 with that being said, that he's taking advantage of the
3 seven years under *North Carolina versus Alford*. Thank you.

4 THE COURT: All right. Mr. McClure, did your lawyer
5 state it correctly?

6 MR. MCCLURE: Yes, sir, Your Honor.

7 THE COURT: Do you have anything you'd like to add?

8 MR. MCCLURE: No, sir, Your Honor.

9 THE COURT: All right. On indictment 2021-02091, the
10 sentence is you, Bobby Ray McClure, Junior, be confined to
11 the South Carolina Department of Corrections for a period of
12 seven years and pay a fine of \$50,000, the defendant to be
13 given credit for any time he's entitled to pursuant to 24-
14 13-40.

15 MS. BURRIS-ALCIDE: That's 340 days, Your Honor,
16 respectfully. 340 days.

17 THE COURT: Y'all agree on 340?

18 MS. SMITH: Yes, sir.

19 THE COURT: Okay. Good luck to you.

20 MS. BURRIS-ALCIDE: Thank you, Your Honor.

21 THE COURT: Court is in recess until 10:00 in the
22 morning.

23 (END OF REQUESTED TRANSCRIPT)

24 * * * * *

25

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

The Honorable J. Derham Cole, Circuit Court Judge

Case No.: 2021-GS-46-02091
Sentence Date: March 7, 2022
Post-Trial Motion Date: March 10, 2022

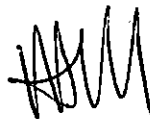
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Bobby Ray McClure, Jr. APPELLANT
The State of South Carolina, Respondent
v.
Bobby Ray McClure Jr., Appellant

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