

FILED: September 29, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUITNo. 20-6871, John Baccus v. SC Dept of Corrections
9:19-cv-00284-DCN

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. (www.supremecourt.gov)

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL:

Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 20-6871

JOHN BACCUS, a/k/a John Baccus Roosevelt,

Plaintiff - Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Beaufort.
David C. Norton, District Judge. (9:19-cv-00284-DCN)

Submitted: September 24, 2020

Decided: September 29, 2020

Before HARRIS and RICHARDSON, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

John Roosevelt Baccus, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John Baccus appeals the district court's order accepting the recommendation of the magistrate judge and dismissing Baccus' petition for a writ of mandamus.* We confine our review to the issues raised in Baccus' informal brief. See 4th Cir. R. 34(b); *Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014) ("The informal brief is an important document; under Fourth Circuit rules, our review is limited to issues preserved in that brief."). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Baccus v. S.C. Dep't of Corr.*, No. 9:19-cv-00284-DCN (D.S.C. May 4, 2020). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

* We vacated the district court's previous order accepting the magistrate judge's recommendation and dismissing Baccus' petition for a writ of mandamus, and remanded the case to permit the district court to conduct a de novo review of the portions of the recommendation to which Baccus timely objected. *Baccus v. S.C. Dep't of Corr.*, 793 F. App'x 193 (4th Cir. 2020). This appeal follows the district court's order dismissing Baccus' petition after considering Baccus' objections.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

John Baccus, <i>a/k/a John Roosevelt Baccus</i> ,) C/A No. 9:19-284-DCN-BM
)
Petitioner,)
vs.) REPORT AND RECOMMENDATION
)
South Carolina Department of Corrections,)
)
Respondent.)
_____)

This is a civil action filed by the Petitioner, John Baccus, also known as John Roosevelt Baccus, pro se, and is before the Court for pre-service review. Petitioner filed an Amended Petition for Writ of Mandamus on May 28, 2019. ECF No. 11.

Under established local procedure in this judicial district, a careful review has been made of the pro se Amended Petition for Writ of Mandamus pursuant to the procedural provisions of 28 U.S.C. § 1915 and § 1915A, the Prison Litigation Reform Act, Pub.L. No. 104-134, 110 Stat. 1321 (1996), and in light of the following precedents: Denton v. Hernandez, 504 U.S. 25 (1992), Neitzke v. Williams, 490 U.S. 319 (1989), Haines v. Kerner, 404 U.S. 519 (1972), Nasim v. Warden, Maryland House of Corr., 64 F.3d 951 (4th Cir. 1995), and Todd v. Baskerville, 712 F.2d 70 (4th Cir. 1983). Pro se complaints are held to a less stringent standard than those drafted by attorneys, Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978), and a federal district court is charged with liberally construing a pro se complaint to allow for the development of a potentially meritorious case. Erickson v. Pardus, 551 U.S. 89, 93 (2007) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-56 (2007)); Hughes v. Rowe, 449 U.S. 5, 9 (1980).

181

Discussion

Petitioner was indicted in February 2000 in Marion County for murder and burglary, first degree, in connection with the shooting death of his former girlfriend. After a jury trial in May 2003, he was found guilty as charged and sentenced by the trial judge to concurrent sentences of life without parole on each charge. See Baccus v. Burt, No. 06-1912, 2007 WL 1468700 (D.S.C. May 16, 2007). In his rambling Amended Petition and supporting documentation (ECF Nos. 11 and 11-1), Petitioner challenges numerous decisions of the South Carolina courts in civil cases filed by Petitioner and as to his criminal convictions. Petitioner requests that this Court direct the South Carolina courts to take certain actions, or alternatively that his civil state court cases be removed to this Court.

This action is subject to summary dismissal because Petitioner has not alleged any facts to support his request that this Court issue a writ of mandamus against the Respondent State of South Carolina (South Carolina Department of Corrections). A writ of mandamus is a drastic remedy which is infrequently used by federal courts, and its use is usually limited to cases where a federal court is acting in aid of its own jurisdiction. See 28 U.S.C. § 1361; Gurley v. Superior Court of Mecklenburg Cnty, 411 F.2d 586, 587–88 & nn. 2–4 (4th Cir. 1969). Moreover, a federal district court may generally issue a writ of mandamus only against an employee or official of the United States. Moye v. Clerk, DeKalb County Sup. Court, 474 F.2d 1275, 1275–76 (5th Cir. 1973)[federal courts do not have original jurisdiction over mandamus actions to compel an officer or employee of a state to perform a duty owed to the petitioner]; see also In re Campbell, 264 F.3d 730, 731 (7th Cir. 2001)[collecting cases]; In re Carr, 803 F.2d 1180, 1180 (4th Cir. Oct. 24, 1986)(unpublished opinion). In Davis v. Lansing, 851 F.2d 72 (2d Cir. 1988), the Court of Appeals for the Second

Circuit ruled that “[t]he federal courts have no general power to compel action by state officials[.]” Id. at 74; see also Craig v. Hey, 624 F.Supp. 414 (S.D.W.Va. 1985).

Petitioner may also be attempting to appeal certain state court action(s) to this Court. However, a writ of mandamus may not be used as a substitute for appeal. In re Lockheed Martin Corp., 503 F.3d 351, 353 (4th Cir. 2007). To the extent Petitioner is alternatively attempting to remove civil case(s) he filed in the South Carolina courts to this Court, he may not do so, as a state court action may be removed to federal court only by a defendant. See 28 U.S.C. §§ 1441(a)¹, 1443,² and 1446(a).³

Finally, it should be noted that Petitioner has also failed to bring his case into proper form. In an order dated April 12, 2019, Petitioner was given an opportunity to pay the filing fee or submit an Application to Proceed Without Prepayment of Fees and Affidavit (Form AO 240) and a Financial Certificate to bring the case into proper form for evaluation and possible service of process. ECF No. 6. He has failed to provide these documents. Petitioner was specifically warned that failure to provide the necessary information within the timetable set forth in the Order would

¹This statute provides:

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the **defendant or the defendants**, to the district court of the United States for the district and division embracing the place where such action is pending.

28 U.S.C. § 1441(a)(emphasis added).

²This statute provides that certain civil actions “commenced in a State court may be removed by the **defendant...**” 28 U.S.C. § 1443 (emphasis added).

³This statute provides:

A **defendant or defendants** desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States....

28 U.S.C. § 1446(a)(emphasis added).

subject the case to dismissal. See Fed. R. Civ. P. 41.⁴ Thus, in the alternative, it is recommended that this action be dismissed, without prejudice, in accordance with Rule 41, Fed.R.Civ.P. See Link v. Wabash R.R. Co., 370 U.S. 626 (1962); Ballard v. Carlson, 882 F.2d 93, 95-96 (4th Cir. 1989), cert. denied sub nom, Ballard v. Volunteers of America, 493 U.S. 1084 (1990) [holding that district court's dismissal following an explicit and reasonable warning was not an abuse of discretion].

Recommendation

Petitioner was previously given notice (ECF No. 6) that some of the above pleading deficiencies could possibly be corrected by factual amendment. See, e.g., Brockington v. South Carolina Dept. of Social Service, No. 17-1028, 2017 WL 1531633 (4th Cir. April 28, 2017)[Noting that pro se Plaintiff should be provided an opportunity to amend his complaint to cure defects prior to a dismissal]; Evans v. Richardson, No. 17-1144, 2017 WL 1531633 (4th Cir. May 25, 2017)[same]; Breyan v. All Medical Staff, No. 17-6186, 2017 WL 2365232 (4th Cir. May 31, 2017)[same]. Although he filed an Amended Petition, he is still attempting to obtain a writ of mandamus against the State of South Carolina, appeal state court actions, and/or remove state court cases to this court, which he may not do. Based on the foregoing, it is recommended that the Court **dismiss** the Amended Petition for Writ of Mandamus with prejudice and without issuance and service of process. Alternatively, the Petition should be dismissed without prejudice pursuant to Rule 41, Fed.R.Civ.P.

⁴On May 9, 2019, the undersigned issue a Report and Recommendation that this action be dismissed for Petitioner's failure to get his case into proper form. (ECF No. 9). Petitioner thereafter filed additional materials, and the previous report and recommendation was vacated (ECF No. 13) to allow review of the documents submitted by Petitioner. Review of those materials reveals that Petitioner failed to file the documents necessary to bring his case into proper form. Specifically, Petitioner has still not paid the filing fee or alternatively filed an Application to Proceed Without Prepayment of Fees and Affidavit (Form AO 240) with a completed and signed Financial Certificate.

Petitioner's attention is directed to the important notice on the next page.

A handwritten signature in black ink, appearing to be 'B. Marchant', written over a horizontal line.

Bristow Marchant
United States Magistrate Judge

May 30, 2019
Charleston, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

report and recommendation.

A de novo review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's report and recommendation is **AFFIRMED**, and the amended petition for writ of mandamus is **DISMISSED** with prejudice and without issuance and service of process.

IT IS FURTHER ORDERED that a certificate of appealability is denied because petitioner has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Norton', is written over a horizontal line.

David C. Norton
United States District Judge

June 20, 2019
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.

level of his failure to object to the magistrate judge's report.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

John Baccus, a/k/a John Roosevelt Baccus,)	C/A No.: 9:19-cv-0284 DCN
)	
Petitioner,)	
)	
-vs-)	
)	
South Carolina Department of Corrections,)	
)	
Respondent.)	
)	

The above referenced case is before this court upon the magistrate judge's recommendation that petitioner's amended petition for writ of mandamus be dismissed with prejudice and without issuance and service of process. The court originally affirmed the magistrate judge's recommendation on June 20, 2019 and judgment was entered on the same day. The Fourth Circuit Court of Appeals vacated the court's order and remanded the case to the court for consideration of petitioner's timely filed objections to the magistrate judge's recommendation.

This court is charged with conducting a de novo review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. Thomas v Arn, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the

appellate court level. United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).¹ **Petitioner timely filed objections on June 24, 2019.**

A de novo review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's report and recommendation is **AFFIRMED**, and petitioner's amended petition for writ of mandamus is **DISMISSED** with prejudice and without issuance and service of process.

IT IS FURTHER ORDERED that a certificate of appealability is denied because petitioner has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(b)(2).

AND IT IS SO ORDERED.



David C. Norton
United States District Judge

April 27, 2020
Charleston, South Carolina

¹In Wright v. Collins, 766 F.2d 841 (4th Cir. 1985), the court held "that a pro se litigant must receive fair notification of the consequences of failure to object to a magistrate judge's report before such a procedural default will result in waiver of the right to appeal. The notice must be 'sufficiently understandable to one in appellant's circumstances fairly to appraise him of what is required.'" Id. at 846. Plaintiff was advised in a clear manner that his objections had to be filed within ten (10) days, and he received notice of the consequences at the appellate level of his failure to object to the magistrate judge's report.

FILED: September 29, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6871
(9:19-cv-00284-DCN)

JOHN BACCUS, a/k/a John Baccus Roosevelt

Plaintiff - Appellant

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Defendant - Appellee

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.


/s/ PATRICIA S. CONNOR, CLERK

EXHIBITS

Inmate Search

First Name:	<input checked="" type="radio"/> Commitment	Name:	BACCUS, JOHN	SCDC ID:	<u>00187393</u>	LOC:	0191	Sex / Race:	M B	Birth Date:	06/06/1959	SID:	SC00386907	SSN:	251114078	Rec. Name Type:	A C
Last Name:	<input type="radio"/> Alias/Legal/Maiden	baccus															
SCDC ID:	SID:	Birth YR:															
SSN:	Sex:	Race:															
<input type="checkbox"/> Phonetic Match	<input checked="" type="checkbox"/> Incarcerated	Location: 191															
	<input type="checkbox"/> Released																
	<input type="checkbox"/> Archived Records																

[Advanced Search](#)

Identification	Personal	Case History	Movement	Escapes	Credits	Programs	Transfer Request
IDENTIFICATION	<u>Aliases</u>	<u>Previous SCDC IDs</u>					
	<u>SCDC Name</u>	BACCUS, JOHN	<u>Legal Name</u>				
	<u>SCDC ID</u>	00187393	<u>SID</u>	SC00386907			
	<u>SSN</u>	251-11-4078	<u>FBI #</u>	518556DA7			
	<u>DOB</u>	06/06/1959	<u>Citizenship</u>	CITIZEN - NATIVE BORN			
	<u>Height</u>	6' 0"	<u>Weight</u>	192 lbs.			
	<u>Race</u>	BLACK	<u>Ethnicity</u>	NOT HISPANIC			
	<u>Build</u>	MEDIUM	<u>Complexion</u>	MEDIUM			
	<u>Hair Color</u>	BLACK	<u>Eye Color</u>	BROWN			
	<u>Location</u>	PERRY	<u>Status</u>	INCARCERATED			
	<u>Security</u>	LEVEL 3	<u>Custody</u>	MINIMUM IN			
	<u>Religion</u>	BAPTIST	<u>Occupation</u>	AUTO MECHANIC			
	<u>Dorm-Room-Bunk</u>	Q2B-0215-T	<u>Picture Date</u>	05/02/2008			



Copyright © 2003-2012 South Carolina Department of Corrections. All rights reserved.

[Version: 2.2.0 Built: 10/21/2011 08:55:32 AM Time: 11:08:45 AM]

CLOSED CIRCUIT TELEVISION SECURITY
SYSTEM VIDEO MONITOR
L.C.C.T.S.S.V. "TAPE"
STATES EXHIBIT 13-J



STATES EXHIBIT 13-J

Exhibits #

SLCD EXHIBIT

STATE OF SOUTH CAROLINA.)
)
COUNTY OF MARION.)

IN THE MAGISTRATE'S COURT

The State,)

vs.)

PRELIMINARY HEARING

John Roosevelt Baccus,)

Defendant.)

A Preliminary Hearing was held February 16, 2000, in the above captioned matter, before the Honorable Lunette Cox, Magistrate. Appearing at the Hearing were:

FOR THE STATE: VON DEAN TURBEVILLE

FOR THE DEFENDANT: WILLIAM S. DERRICK

A. They were all three working together. I don't believe there were any one of the three were in charge.

Q. Have any reports from SLED been turned over to you or anything?

A. No sir.

Q. When you arrived at the house the first time before the search warrant and the defendant was there, did y'all just knock and ask, and wait and get him to the door? How did you get into the house?

A. He opened the door for Florence County Investigator Barry Prosser.

Q. O.K. Bear with me just a moment please. Was it noted that the house had surveillance by tape being made of the premises when people came on the premises?

A. What you mean by that?

Q. Was the residence, have taping equipment to show surveillance of the premises just a store such as Food Chief? Did the residence have that?

A. Yeah, the residence had a camera inside. A set up of the um, some type of surveillance camera.

Q. Alright.

A. That we found inside the house which we didn't bother it.

Q. You didn't bother the camera, but did you find the tape?

A. No sir. I'm not sure. To my knowledge we didn't

Q. You don't know what.

A. What kind of tape, I mean,

Q. A tape in the machine that if the camera was running there would be a recording being made of what was going on at that premises?

A. We looked at the tape that was in it, but, um,

Q. But you didn't find anything that you connected?

A. But, I don't believe we recovered or took a tape from the residence.

Q. So the tape would have been left in the residence if it was in the machine?

A. Yes sir.

Q. Did you find any other items in the house that were removed either before or after the execution of the search warrant?

A. Not that I am aware of.

Q. You don't know who discovered the tapes inside the house do you?

A. No sir. There were three of the SLED agents that processed the house and the yard.

Q. Was it determined whether or not the cameras were on at the time or before, you know had been running that if anything occurred at the house which would have been shown?

A. I'm not sure.

EXHIBITS



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

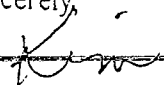
May 22, 2000

The Honorable E.L. Clements, III
Solicitor, Twelfth Judicial Circuit
180 N. Irby Street, MSC-Q
Florence, SC 29501

Dear Solicitor Clement:

Please find enclosed correspondence our office received from John Baccus, an inmate at the Marion County Detention Center, which I am referring to you for whatever action you deem appropriate.

Sincerely,


Kim S. Aydlette
Assistant Deputy Attorney General

KSA:thp
Enclosure

Billie C. Blackmon, P.A.

Attorney at Law
Post Office Box 66
Darlington, SC 29540

Telephone: (843) 383-4225

Facsimile: (843) 383-1613

CRIMINAL RETAINER AGREEMENT

I hereby retain and employ the firm of Billie C. Blackmon, Attorney at Law, to represent me in the defense of criminal charges in Marion County which arose on or about September or October 1999 and I agree to pay the above-named attorney for services rendered in accordance with the terms of this retainer and employment agreement. The sum for representation for Murder & Burglary I shall be Ten Thousand and 00/100 (\$10,000.00) Dollars. Said amount shall be paid according to the following schedule: 14 October 2000 Three Thousand and 00/100 retainer with balance paid in Two (2) equal installments of Three Thousand Five Hundred and 00/100 with the first due 15 December 2000 and the second due on 15 February 2000.


Said payment shall be subject to the following conditions: Failure to timely pay fee shall result in termination of representation.

I agree to be responsible for all investigative costs, court transcripts, and expert witness costs incurred on my behalf in connection with these charges except for the following: Defendant shall be responsible for all expenses, including a Two Thousand Five Hundred and 00/100 fee for a private investigator. The fee for the investigator shall be due upon notice by the investigator.

ALL FEES PAID ARE NON-REFUNDABLE. THIS FEE AGREEMENT DOES NOT APPLY TO ANY ADDITIONAL UNRELATED CHARGES. THIS FEE AGREEMENT DOES NOT APPLY TO THE LEGAL FEES OR COSTS OF AN APPEAL, IF SUCH PROCEEDING IS NECESSARY. I UNDERSTAND THAT ANY REPRESENTATION ON ANY ADDITIONAL CHARGES OR ON AN APPEAL AND ANY COSTS RELATED TO EITHER MUST BE SEPARATELY NEGOTIATED IN A SEPARATE AGREEMENT BETWEEN THE PARTIES.

State v. John Baccus - Murder and Burglary I (Marion County)

14 October 2000

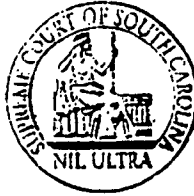

Gloria McPhail


Margaret Boatwright

I hereby accept the above case and agree to defend same.


Billie C. Blackmon

[illegible]



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

261

July 9, 2003

Frederick A. Hoefer, II, Esquire
Harwell Ballenger Barth & Hoefer, LLP
P.O. Box 107
Florence, SC 29503

02-448

03 JUL 14 PM 12:35
JUDGE OF PROBATE
DARLINGTON COUNTY, SC

FILED

Re: In the Matter of Billie C. Blackmon, deceased

Dear Mr. Hoefer:

Enclosed is a copy of the order issued by the Court on the Application for Termination of Appointment in the above matter. Please note the provisions in the order regarding the trust accounts. We are forwarding a copy of this order to the Lawyers' Fund for Client Protection and to the Probate Court for Darlington County for their information. ← 1704

On behalf of the Court, I would like to thank you for serving in this capacity and for your assistance to the Court. A certificate of appreciation from the Court is being sent to you under separate cover.

Very truly yours,


CLERK

DES/bcs
Enclosure

cc: Susan M. Johnston, Deputy Disciplinary Counsel
W. L. Blackmon
South Carolina Bar LFCP
Darlington County Probate Court

44

COPIES
11/11/03
JUL 14 2003
DARLINGTON COUNTY, SC
50

The Supreme Court of South Carolina

In the Matter of Billie C.
Blackmon,

Deceased.

262

ORDER.

By order dated September 11, 2002, Frederick A. Hoefer, II, was appointed, pursuant to Rule 31, RLDE, Rule 413, SCACR, to protect the interests of Ms. Blackmon's clients. Mr. Hoefer now seeks to be relieved of his appointment and to be reimbursed \$579.59 for costs incurred in fulfilling his duties.

Mr. Hoefer's appointment is hereby terminated. He shall deliver all remaining client files and related property, along with an inventory, to the Commission on Lawyer Conduct. With regard to the funds held in trust by Mr. Hoefer, he shall close the account, retain \$102.70 as partial reimbursement for his costs, and transfer the remaining \$19,110.13, ~~representing funds belonging to the late Gussie Rubin, to the Probate Court~~

TRUE COPY

Frederick A. Hoefer, II
JUDGE OF PROBATE
CHARLINGTON COUNTY, S.C.

for Darlington County. The Lawyers' Fund for Client Protection shall
reimburse Mr. Hoefer \$470.89, which represents the remainder of his costs.

IT IS SO ORDERED.

263

James S. Moon J.
John H. Wilson Jr. J.
EC Moore J.

Toal, C.J., and Pleicones, J., not participating

Columbia, South Carolina

July 9, 2003

FILE COPY

amir D...

46

S.C.

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

PROBATE COURT

IN THE MATTER OF (Decedent Name) BILLIE JEAN H. BLACKMON

CASE NUMBER 2002ES16448

APPLICATION FOR

(check any that apply)

INFORMAL
☐ PROBATE OF WILL
☒ APPOINTMENT

PETITION FOR

00328
FORMAL
☐ TESTACY
☐ APPOINTMENT

Applicant/Petitioner: W. L. BLACKMON
Address: 1801 SWIFT CREEK ROAD HARTSVILLE, SC 29550
Telephone: 843-383-5408

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Nature of interest of undersigned:

HUSBAND

2. Decedent Information

Name: BILLIE JEAN HOWLE BLACKMON
Social Security Number: 247-82-7442
Date of Birth: MARCH 7, 1949
Date of Death: AUGUST 27, 2002
Age at date of death: 53
Domicile at date of death: DARLINGTON COUNTY SOUTH CAROLINA
(county) (state)

02 DEC 19 PM 2:52
MARVIN L. LAWSON
JUDGE OF PROBATE
DARLINGTON COUNTY, SC

FILED

3. Venue for this proceeding is proper in this county because:

- ☒ Decedent was domiciled in this county at date of death.
☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.
☐ Decedent has a right to take legal action in this county because:

Names and addresses of devisees, including dates of birth of minors.

Name	Date of Birth	Address	Relationship to Decedent

(use additional sheet if necessary)

4b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors:

Name	Date of Birth	Address	Relationship to Decedent
W. L. BLACKMON	ADULT	1801 SWIFT CREEK RD. HARTSVILLE, SC 29550	HUSBAND

TRUE COPY

(use additional sheet if necessary)

JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

457

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of the Will (if one exists), or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)
☒ NO ☐ YES If yes, please explain on page 3.
6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?
☒ NO ☐ YES If yes, please explain on page 3.
7. Has a guardian or conservator ever been appointed for this person?
☒ NO ☐ YES If yes, please explain on page 3.
8. Has a personal representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?
☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative, on page 3.
9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?
☒ NO ☐ YES If yes, please state details, including names and address, on page 3.
10. Have more than ten years passed since the decedent's death?
☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.
11. The decedent died with a personal estate of about the value of to be furnished within 90 days and real estate of about the value of to be furnished within 90 days. (A full inventory and appraisement, form #350PC, must be filed within 90 days.) If decedent was a non-resident, please attach South Carolina Tax Commission form ET 101.
12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?
☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will: **NO WILL**
☐ the original is attached
☐ the original is in the Court's possession
☐ an authenticated copy of a will probated in another jurisdiction is attached
☐ an authenticated copy of a will not probated in another jurisdiction is attached
☐ the will is lost, destroyed, or otherwise unavailable; however, a description of its contents is attached
2. Do you believe, to the best of your knowledge, the will described above was validly executed?
☐ YES ☐ NO If no, please explain on page 3.
3. The date of execution of the will was _____
codicil(s): _____
4. Are you aware of any instrument or document amending or revoking the will?
☐ NO ☐ YES If yes, please explain on page 3.
5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?
☐ YES ☐ NO If no, please explain on page 3.
6. Do you believe the will defined in "1" above is the decedent's last will?
☐ YES ☐ NO If no, please explain on page 3.

TRUE COPY
[Signature]
JULIO
CAROLINA COUNTY, S.C.

HARWELL, BALLENGER, BARTH & HOEFER, L.L.P.

ATTORNEYS AT LAW

205 NORTH IRBY STREET

POST OFFICE BOX 107

FLORENCE, SOUTH CAROLINA 29503

MICHAEL BALLENGER
R. BRYAN HARWELL
KEVIN M. BARTH
FREDERICK A. HOEFER, II

PHONE: 843-662-6301
FAX: 843-664-8384

July 3, 2002

HAND DELIVERED

Robert E. Lee, Esquire
Aiken-Bridges Law Firm
Post Office Drawer 1931
Florence, South Carolina 29503

Re: State of South Carolina v. John Roosevelt Baccus, Jr.
00-GS-33-004

Dear Robert:

I am writing to follow up the conference with the Solicitor, Marion County Sheriff's office and Florence County Sheriff's office on June 21, 2002. As you know, Don Girndt, Al Brown and myself met with these agencies in the Solicitor's conference room. One of the issues was the whereabouts of the video from the security system set up in John Baccus' home. Amber McDaniel, Florence County Sheriff's Department, advised me that although there was a tape in the machine, it had "ejected" and was not recording anything. Be that as it may, she did indicate that she viewed that tape, along with some other tapes, but that "none of them showed anything". She was unable to tell me what they did in fact have on them other than she did not recall anything significant. I did talk with John Black from SLED who was one of the agents processing the Baccus home. He was not present at the meeting, but we spoke with him by telephone during the course of the meeting.

John Black advised that he viewed the tape in the machine and was aware that Sheriff's deputies watched some, or all, of the tapes, but that he only saw bits and pieces. He indicated to me that in the portions that he saw, it did not show any activity to his recollection. Apparently, the last page of his crime scene notes dated November 15, 1999 was omitted from the materials provided to us, and the solicitor. That was faxed directly to us and I am enclosing a copy with this letter. (This should be page 21.) John Black indicated that when he went into the master bedroom he noted the overhead light was on, the fan was off, the video monitor was on showing a view of the front yard from the security camera and the tape was in the VCR but had been ejected. He also indicates that the answering machine shows "04". No one seems to know what that number means. When I asked if perhaps it could mean there were four messages on the machine, they all denied any knowledge of whether or not there were in fact messages on that machine for John. Apparently, nobody bothered to listen to the machine.

Robert E. Lee, Esquire
July 3, 2002
Page Two

Also enclosed herewith are photos taken by the Marion County Sheriff's office and the Florence County Sheriff's office. The eleven photos taken by the Marion County Sheriff's office were Polaroids in their original form. The Solicitor took these to Kolor Quick and had them duplicated for us. The batch of eight photographs were taken from negatives and were taken by Keith Lutken with the Florence County Sheriff's office. These apparently depict the "burn pile" behind John's home. These actually appear to be better photos than those taken by the SLED agent. At any rate, we have been provided only with one copy of these photos and I am forwarding them to you to be kept in your file.


Finally, I have a copy of the 911 tape with the original call from Priscilla Ham to Florence 911 and then to Marion County Sheriff's recorded line. Again, they have only provided us with one copy of these tapes. I will keep them in the file and provide them to you at our next meeting.

Last, but not least, I am enclosing the "jailhouse confession" which was provided to me at this meeting. As indicated by the correspondence, Mr. Wilson wrote to the Marion County Sheriff's office around November 1, 2001. Based on that letter, they interviewed him and took the written statement which is enclosed for your reference. He claims to have been John's "vent buddy" and got this confession from him. It is obvious that he indicates that John felt that the fact that Brenda Godbold's car was in his driveway (which it was not) and that he had some of her mail (which apparently he did not) he would never have gotten caught. So that is somewhat inconsistent with the facts of this case. However, we do have to deal with the fact that he claims that John admitted to some involvement with the murder. I got them to give me a copy of his rap sheet which indicates that he was in jail awaiting trial on armed robbery charges. Apparently he did not ask for nor did he receive, any consideration for being a rat. He got a straight 20 year sentence on the armed robbery charge.

Please give me a call after you have had a chance to review this.

With best regards, I am

Very truly yours,



FREDERICK A. HOEFEL II

FAHII:jm
Enclosures

EXHIBIT #

The State of South Carolina



E.L. Clements, III
Solicitor

OFFICE OF SOLICITOR

Twelfth Judicial Circuit
City-County Complex, Room 1101
180 North Irby Street, MSC-Q
Florence, South Carolina 29501

Telephone (843) 665-3091
Fax (843) 669-3947
solicitor@florenceco.org

March 19, 2003

Mr. Motte Talley
Assistant Director
S.C. Court Administration
1015 Sumter Street 2nd Floor
Columbia, S.C. 29201

IN RE: State v. John Roosevelt Baccus
Indictment No.: 00-GS-33-4

Dear Motte:

I am writing in regards to a Death Penalty case in Marion County, which is the State v. John Roosevelt Baccus. The indictment number is 00-GS-33-04. He was arrested on November 16, 1999, charged with Burglary, First Degree, and Murder. He was noticed with the Death Penalty on November 6, 2000. The Honorable Paul M. Burch has been assigned as the trial judge in this case and the attorneys for John Baccus are Robert E. Lee and F.A. Hoefer, II, of the Florence County Bar. He was originally represented by Ms. Billie Blackmon of the Darlington County Bar before her untimely demise due to cancer.

I am writing to request that you please try to assign us a week for this Death Penalty case with Judge Burch in Marion County as soon as possible. This defendant has caused a multitude of problems at the Marion County Detention Center, which, for the sake of time, I will not delineate here, but rest assured it is a long list of problems. He has also filed grievances on his attorneys and has been most uncooperative. They have asked me to please try and have this case set for trial as soon as possible. They are ready and have been ready for quite some time, and the State is ready and has been ready for quite some time. We all traveled to Pageland and met with Judge Burch last year regarding this case to make sure that all issues were covered and that we were ready to proceed. We are just awaiting court time.

ROBERT E. LEE, ESQ.
RECEIVED

MAR 21 2003

ATTORNEY-CLIENT
COMMUNICATION

52.

18983

March 19, 2003
Page Two of Two Pages

If you can give me any indication of when a special term of court might be scheduled so that we can hold this Death Penalty case, I would be most appreciative, and I am sure the defense attorneys would be as well. I assume that Mr. Baccus wants to go ahead and "have his day in court", also. I understand the problems we are all dealing with, with the current budget constraints, and I appreciate any consideration you can give me in this matter.

Should you need any further information, please do not hesitate to contact me.

Respectfully yours,



E.L. Clements, III
Solicitor

ELCIII:pa

cc: The Honorable Paul M. Burch
Robert E. Lee, Esquire
F.A. Hoefer, II, Esquire

15 N 13 E
The Supreme Court of South Carolina

The State of South Carolina,

Prosecutor,

v.

John Roosevelt Baccus,

Defendant.

Marion County

00-GS-33-0004

ORDER

The Honorable James E. Brogdon, Jr. is vested with exclusive jurisdiction to hear and dispose of the above case. Judge Brogdon shall decide all matters pertaining to the referenced case, including motions to appoint or relieve counsel. The prior Order dated January 24, 2001 giving exclusive jurisdiction of this case to the Honorable Paul M. Burch is rescinded.

IT IS SO ORDERED.

S/Jean Hoefer Toal

Jean Hoefer Toal
Chief Justice

March 27, 2003
Columbia, South Carolina

FILE NO. 18983
ROBERT E. LEE, ESQ.
RECEIVED

APR 01 2003

ATTORNEY-CLIENT
COMMUNICATION
PRIVILEGED & CONFIDENTIAL

STATE OF SOUTH CAROLINA
COUNTY OF MARION

COURT OF GENERAL SESSION

STATE OF SOUTH CAROLINA

VS.

TRANSCRIPT OF RECORD
00-GS-33-004

JOHN ROOSEVELT BACCUS, JR.)

May 13, 2003
Marion, South Carolina

B E F O R E :

THE HONORABLE JAMES E. BROGDON, JR., JUDGE

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

E.L. CLEMENTS, III, ESQ.
Attorney for the State

FREDERICK A. HOFFER, II, ESQ.
ROBERT E. LEE, ESQ.
Attorneys for the Defendant

FRANCES A. BAKIS, RPR
Circuit Court Reporter

65 I N D E X

	Page
Direct examinations by Mr. Clements:	
Barry Prosser	
Von Dean Turbeville	37
John Black.	50
Cross-examinations by Mr. Hoefer:	
Barry Prosser	20
Von Dean Turbeville	43
John Black.	53
Redirect examination by Mr. Clements:	
John Black.	59
Remarks by Mr. Hoefer	59
Remarks by Mr. Clements	60
Motions by Mr. Lee.	61

E X H I B I T S

DEFENDANT'S:

1	Photo	32
2	Photo	54

1 Robert Lee, who had come on board to help
2 Ms. Blackmon in the case. Mr. Baccus was there.
3 Judge Burch got Ms. Blackmon on the phone. She was
4 too ill to come to court at that time. There was an
5 order relieving her as counsel and appointing Mr.
6 Frederick A. Hoefer, II to also represent Mr. Baccus.
7 That order was issued on 15th of January 2002 by
8 Judge Burch.

9 We have attempted on numerous times with Court
10 Administration to get a special term of court to set
11 aside to hold this case. This death penalty case has
12 been delayed due to Ms. Blackmon's illness, and also
13 it's been delayed due to the nature of the budget
14 situation and being able to schedule court with
15 available resources and assets to have court.
16 Subsequent to our request to get court schedule with
17 Judge Burch, I think Court Administration several
18 weeks ago issued a order relieving Judge Burch from
19 having responsibility for this case and appointing
20 Your Honor to represent the State as the judge in the
21 case of State versus Baccus.

22 Based on all that, Your Honor, and in the
23 interest of expediting justice and to give Mr. Baccus
24 his right to a trial, we determined that by talking
25 with Court Administration that we did not know when a

1 special term of court could be scheduled to have this
2 as a death penalty case knowing all the different
3 things that we have to meet to have a death penalty
4 case with jurors being notified well in advance and
5 the number of jurors. It was a difficult situation
6 logistically. Your Honor, for that reason I met with
7 the family members of the victim, discussed it with
8 them, and we have decided, Your Honor, at this time
9 that we want to go ahead and bring this case to trial
10 as quickly as possible for the State of South
11 Carolina, for the family members of the victim, and
12 also for Mr. Baccus. So at this time, Your Honor,
13 the State of South Carolina would rescind the death
14 penalty notice and would like to set this trial for
15 Monday, May 19 in front of Your Honor.

16 THE COURT: Thank you, sir.

17 ~~MR. CLEMENTS: Your Honor, it's also my~~
18 understanding that there are some motions that the
19 Defendant wish to make and the Defense attorneys wish
20 to make at this time.

21 THE COURT: Mr. Lee, Mr. Hoefer.

22 MR. HOEFER: If Your Honor please, we do
23 have several motions. First is a motion to compel
24 production of evidence. We had -- on Mr. Baccus'
25 behalf motions have been filed under Brady and under

1 Rule 5. And quite candidly, I'll advise the Court
2 that the Solicitor has had an open file policy,
3 allowed me to go to his office and view the evidence.
4 But there are a couple of things that -- that at this
5 stage are still not in our possession. We want to
6 make sure we've done everything that we can to obtain
7 these items. First, Judge, a search warrant was
8 issued for Mr. Baccus' home subsequent to his arrest.
9 As a result there -- the law enforcement officers
10 discovered a security camera system. This consists
11 of outdoor cameras, a monitor, and a tape recording
12 device. The monitoring and the tape recording device
13 of course are indoors. And in that tape recording
14 device was a tape. We know that for a fact because
15 they took a photograph of the monitor and the
16 recording device with the tape in the bay. We had
17 requested to view the contents of that tape primarily
18 because it goes to alibi. If the security camera is
19 running and shows people coming and going at a
20 particular, any given time, of course it would
21 substantiate the defendant's presence at his property
22 at the time this homicide occurred.

23 Although they have photographs of this device,
24 this machine, the recording machine and the monitor,
25 and the tape -- the tape has not been produced to the

1 defendant. As a result we're asking the Court to
2 require the Solicitor to turn that information over.
3 We believe it's exculpatory. And as a result, we
4 believe we're entitled to have that tape, at least
5 the ability to view the tape and make a copy of it
6 for ourselves.

7 In addition, Judge, in photographs taken by law
8 enforcement, and I don't believe these were taken by
9 SLED because it's not on SLED's marked sheets. There
10 is a piece of stationary that is headed Walden's
11 Pond, and it seems to have some book information on
12 it with some phone numbers, but there's some
13 handwritten notes on this. And part of it is an
14 apology, "Sorry Mom and Dad." Well, I can't read it,
15 Judge, but at any rate, they made a photograph of
16 this letter and we've requested a copy of that and
17 have not been provided with that. I show the Court a
18 copy of the photograph, and this is -- I don't have
19 the original photograph, but I believe you can see
20 what I'm discussing.

21 THE COURT: All right.

22 MR. HOEFER: Judge, those are the two items
23 that we feel like should be provided to us and would
24 ask the Court to require the Solicitor to turn those
25 over.

FRANCES A. BAKIS, RPR

60

1 THE COURT: Mr. Clements.

2 MR. CLEMENTS: Your Honor, we're prepared
3 to offer testimony about the video tape. Nothing was
4 seized with the video tape. It's our belief that
5 probably someone if the tape exists and if someone
6 who had access to Mr. Baccus' home and he had access
7 to it after his arrest probably has that tape in
8 their position. We can present testimony by the
9 agents who viewed the tape. There was nothing of any
10 evidentiary value on that tape. It's not listed on
11 the return; it wasn't seized. It was left in the
12 house by law enforcement. And I will ask them, Your
13 Honor, also about this picture that was made of that
14 item. Your Honor, if I may ask if I may see that.

15 THE COURT: Sure you may, sir.

16 MR. CLEMENTS: But I know from what we
17 have, any evidence that was seized, I don't think
18 this was seized. We don't have it that I know of. I
19 can go back and check again. As Mr. Hoefer has
20 stated we met with, he at my office, members of the
21 law enforcement brought all the physical evidence
22 that they had and everything was reviewed by he and I
23 that same time. And my file is open to him and
24 continues to be open to him. I don't know if this is
25 anything that they would say was exculpatory or not,

FRANCES A. BAKIS, RPR

61

1 but I don't believe that we have this, Your Honor,
2 but I'll ask the agents about that. They were there.
3 That's for certain. And I'm ready to call them to
4 testify at this time. Do you think this is the
5 appropriate time or do we need to know what other
6 motions we may have?

7 THE COURT: Do you wish to take any
8 testimony in regards to those items, Mr. Hoefer?

9 THE DEFENDANT: Can I speak on my behalf,
10 Your Honor?

11 THE COURT: No, sir. You have lawyers
12 right now, Mr. Baccus, and those lawyers represent
13 you. There may be a time a little later I'll give
14 you a chance to tell me any ---

15 THE DEFENDANT: But how can they represent
16 me when they are defendants in a civil case that I am
17 proceeding with.

18 THE COURT: Mr. Baccus.

19 THE DEFENDANT: How can they represent me,
20 Your Honor, when these are defendants?

21 THE COURT: Mr. Baccus ---

22 THE DEFENDANT: I commenced a civil
23 action ---

24 THE COURT: Mr. Baccus ---

25 THE DEFENDANT: And they have to ---

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Mr. Baccus ---

THE DEFENDANT: How can they represent me in a capital case?

THE COURT: They're going to represent you in your absence if you don't keep quiet. I want to make it clear that you have the absolute right to be in this courtroom when your case is being heard whether it be motions or the trial. But I also want to make it absolutely clear that by your conduct you may waive your right to be present. Now I'll hear from you a little later but not at this point, sir. These gentlemen have been appointed and are your lawyers right now.

THE DEFENDANT: All I'm saying, Your Honor, is they are defendants in a civil case that I have commenced.

THE COURT: And I have before me ---

THE DEFENDANT: That's all I'm saying.

THE COURT: ---and I have before me ---

THE DEFENDANT: (Inaudible), Your Honor.

THE COURT: ---no folks -- Mr. Baccus, when I talk you stop talking. Am I clear?

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: Thank you. These gentlemen in this record are your lawyers. There's nothing before

1 this Court that would ask that they be relieved from
2 your -- as your attorneys in this case.

3 Mr. Hoefer, do you wish to take any testimony?

4 MR. HOEFER: Yes, Your Honor. If it please
5 the Court.

6 THE COURT: All right.

7 MR. HOEFER: For the record, I wasn't aware
8 I was the defendant in any kind of civil action till
9 Mr. Baccus just spoke but...

10 THE COURT: All right. If you will ---

11 THE DEFENDANT: Liar.

12 THE COURT: ---call the witness in regards
13 to this tape.

14 MR. CLEMENTS: Thank you, Your Honor. The
15 first witness we call will be Investigator Barry
16 Prosser, Florence County Sheriff's Department.

17 ~~WHEREUPON,~~

18 Barry Prosser,
19 having been first duly sworn by the Deputy Clerk
20 of Court, testified as follows:

21 THE COURT: And before you, Mr. Prosser
22 takes the stand, let me point out to the folks in the
23 audience. You need to sit still. You need to be
24 absolutely quiet so I can hear what's going on in the
25 front of the courtroom. All right, sir.

1 Q. How did Ms. Ham tell you that she knew what
2 kind of car Mr. Baccus was driving that night?

3 A. She was acquaintance with Ms. Godbolt and
4 Mr. Baccus' friends and acquaintances.

5 Q. But your testimony was that you said you
6 told Mr. Prosser about the vehicle he was driving
7 that night.

8 A. She knew ---

9 Q. How did you know ---

10 A. ---what kind of vehicle he was driving.

11 Q. How did you know he was driving that
12 particular vehicle that night?

13 A. She told me he had been driving it earlier
14 that day is the information she gave me.

15 Q. Okay. She'd seen it earlier that day?

16 A. That's what he was driving.

17 Q. Okay. Other than what Ms. Ham told you,
18 what other evidence did you have at that point that
19 would lead you to think that Mr. Baccus was involved
20 in this homicide?

21 A. Nothing, just what Ms. Ham told me at the
22 time.

23 Q. And that was based on a telephone
24 conversation she had with Ms. Godbolt?

25 A. Right.

1 Q. Did you go to a magistrate at that point
2 obtain an arrest warrant for John Baccus?

3 A. No, sir.

4 Q. Are there magistrates in Marion County?

5 A. Yes, sir.

6 Q. Magistrates on call?

7 A. Yes, sir.

8 Q. Any reason you could not have gone to a
9 magistrate at that point to obtain an arrest warrant
10 for John Baccus?

11 A. Well, at that point I was trying to focus
12 my attention on finding him and finding more evidence
13 which I needed.

14 Q. Finding him and finding more evidence?

15 A. Yes, sir.

16 Q. You're the only officer working for the
17 department -- Marion County Sheriff's office at that
18 time?

19 A. No, sir.

20 Q. Any reason some other officer could have
21 gone in your place to the magistrate to obtain a
22 warrant for Mr. Baccus' arrest?

23 A. Well, at the time I was the only one that
24 was pursuing Mr. Baccus.

25 MR. CLEMENTS: Your Honor, that's all kind

1 MR. CLEMENTS: Not at this time, Your
2 Honor.

3 THE COURT: Anything further, Mr. Hoefer?

4 MR. HOEFER: Judge, simply to say that
5 there's no question that these two items exists.

6 This document and this tape existed at the time Mr.
7 Baccus was arrested. The testimony was he was
8 handcuffed. He's been in jail ever since. He

9 certainly didn't have control over this once he was
10 taken from the residence. They had -- they looked at
11 it; they reviewed the tape. And clearly, Judge, if
12 that tape shows Mr. Prosser coming to a residence but
13 doesn't show Mr. Baccus leaving or coming to the
14 residence, it's exculpatory. Argue if you want to
15 that, well, we have no way of knowing what the time

16 is. If we had the tape we might be able to tell the
17 time because if you look at the photograph of the
18 monitor it dates and time stamps the thing. Without
19 the tape we can't prove his alibi. We can't prove he
20 was in the house when this crime happened. This is a
21 crucial piece of evidence. And for the police -- for
22 law enforcement to say we didn't think it had any
23 evidentiary value because it didn't prove what we
24 wanted it to prove is ridiculous. The evidence is
25 evidence. And they had it; they looked at it. And I

67

1 think they've still got it. That's at least my
2 argument, and we ask you to require the State to
3 produce it.

4 THE COURT: Well, obviously the State is
5 required if it has possession of that tape or the
6 document shown in the other photograph to produce
7 those items. Or if they're in the possession of law
8 enforcement the State is required pursuant to this

9 order to produce those documents. Mr. Clements, I'm
10 going to require that you question the folks involved
11 in the investigation of this case to determine
12 whether or not that document was seized or tape was
13 seized. Obviously there's a return in the
14 magistrate, and I only know what Agent Black has
15 testified to which was that tape at least was not one

16 of those items that was indicated on the return.

17 MR. CLEMENTS: Your Honor, I'll be happy to
18 question everybody involved with it again. And for
19 the record, Your Honor, I wish they had seized it
20 because then we could show the alibi is a fiction
21 because if you look at the picture of the equipment
22 you can cut it off, walk out the door, leave, come
23 back, and cut it back on. And Your Honor, it's not
24 on the return. I state as an officer of the Court
25 they told me numerous times we never seized it, we

60-668

1 MR. CLEMENTS: Not at this time, Your
2 Honor.

3 THE COURT: Anything further, Mr. Hoefer?

4 MR. HOEFER: Judge, simply to say that
5 there's no question that these two items exists.
6 This document and this tape existed at the time Mr.
7 Baccus was arrested. The testimony was he was
8 handcuffed. He's been in jail ever since. He
9 certainly didn't have control over this once he was
10 taken from the residence. They had -- they looked at
11 it; they reviewed the tape. And clearly, Judge, if
12 that tape shows Mr. Prosser coming to a residence but
13 doesn't show Mr. Baccus leaving or coming to the
14 residence, it's exculpatory. Argue if you want to
15 that, well, we have no way of knowing what the time
16 is. If we had the tape we might be able to tell the
17 time because if you look at the photograph of the
18 monitor it dates and time stamps the thing. Without
19 the tape we can't prove his alibi. We can't prove he
20 was in the house when this crime happened. This is a
21 crucial piece of evidence. And for the police -- for
22 law enforcement to say we didn't think it had any
23 evidentiary value because it didn't prove what we
24 wanted it to prove is ridiculous. The evidence is
25 evidence. And they had it; they looked at it. And I

FRANCES A. BAKIS, RPR

1 MR. CLEMENTS: Not at this time, Your
2 Honor.

3 THE COURT: Anything further, Mr. Hoefer?

4 MR. HOEFER: Judge, simply to say that
5 there's no question that these two items exists.
6 This document and this tape existed at the time Mr.
7 Baccus was arrested. The testimony was he was
8 handcuffed. He's been in jail ever since. He

9 certainly didn't have control over this once he was
10 taken from the residence. They had -- they looked at
11 it; they reviewed the tape. And clearly, Judge, if
12 that tape shows Mr. Prosser coming to a residence but
13 doesn't show Mr. Baccus leaving or coming to the
14 residence, it's exculpatory. Argue if you want to
15 that, well, we have no way of knowing what the time
16 is. If we had the tape we might be able to tell the
17 time because if you look at the photograph of the
18 monitor it dates and time stamps the thing. Without
19 the tape we can't prove his alibi. We can't prove he
20 was in the house when this crime happened. This is a
21 crucial piece of evidence. And for the police -- for
22 law enforcement to say we didn't think it had any
23 evidentiary value because it didn't prove what we
24 wanted it to prove is ridiculous. The evidence is
25 evidence. And they had it; they looked at it. And I

1 think they've still got it. That's at least my
2 argument, and we ask you to require the State to
3 produce it.

4 THE COURT: Well, obviously the State is
5 required if it has possession of that tape or the
6 document shown in the other photograph to produce
7 those items. Or if they're in the possession of law
8 enforcement the State is required pursuant to this
9 order to produce those documents. Mr. Clements, I'm
10 going to require that you question the folks involved
11 in the investigation of this case to determine
12 whether or not that document was seized or tape was
13 seized. Obviously there's a return in the
14 magistrate, and I only know what Agent Black has
15 testified to which was that tape at least was not one
16 of those items that was indicated on the return.

17 MR. CLEMENTS: Your Honor, I'll be happy to
18 question everybody involved with it again. And for
19 the record, Your Honor, I wish they had seized it
20 because then we could show the alibi is a fiction
21 because if you look at the picture of the equipment
22 you can cut it off, walk out the door, leave, come
23 back, and cut it back on. And Your Honor, it's not
24 on the return. I state as an officer of the Court
25 they told me numerous times we never seized it, we

1 MR. CLEMENTS: Not at this time, Your
2 Honor.

3 THE COURT: Anything further, Mr. Hoefer?

4 MR. HOEFER: Judge, simply to say that
5 there's no question that these two items exists.

6 This document and this tape existed at the time Mr.
7 Baccus was arrested. The testimony was he was
8 handcuffed. He's been in jail ever since. He

9 certainly didn't have control over this once he was
10 taken from the residence. They had -- they looked at
11 it; they reviewed the tape. And clearly, Judge, if
12 that tape shows Mr. Prosser coming to a residence but
13 doesn't show Mr. Baccus leaving or coming to the
14 residence, it's exculpatory. Argue if you want to
15 that, well, we have no way of knowing what the time
16 is. If we had the tape we might be able to tell the
17 time because if you look at the photograph of the
18 monitor it dates and time stamps the thing. Without
19 the tape we can't prove his alibi. We can't prove he
20 was in the house when this crime happened. This is a
21 crucial piece of evidence. And for the police -- for
22 law enforcement to say we didn't think it had any
23 evidentiary value because it didn't prove what we
24 wanted it to prove is ridiculous. The evidence is
25 evidence. And they had it; they looked at it. And I

1 think they've still got it. That's at least my
2 argument, and we ask you to require the State to
3 produce it.

4 THE COURT: Well, obviously the State is
5 required if it has possession of that tape or the
6 document shown in the other photograph to produce
7 those items. Or if they're in the possession of law
8 enforcement the State is required pursuant to this

9 order to produce those documents. Mr. Clements, I'm
10 going to require that you question the folks involved
11 in the investigation of this case to determine
12 whether or not that document was seized or tape was
13 seized. Obviously there's a return in the
14 magistrate, and I only know what Agent Black has
15 testified to which was that tape at least was not one
16 of those items that was indicated on the return.

17 MR. CLEMENTS: Your Honor, I'll be happy to
18 question everybody involved with it again. And for
19 the record, Your Honor, I wish they had seized it
20 because then we could show the alibi is a fiction
21 because if you look at the picture of the equipment
22 you can cut it off, walk out the door, leave, come
23 back, and cut it back on. And Your Honor, it's not
24 on the return. I state as an officer of the Court
25 they told me numerous times we never seized it, we

96

1 A. I saw the monitor when they was playing the
2 tape, yes, sir.

3 Q. So you were standing -- whatever it was, if
4 that's not it or if that is it, whatever it was, you
5 were standing in front of it watching what was on that
6 videotape, were you not?

7 A. I -- yes, sir, I was probably right in -- in
8 the vicinity of that.

9 Q. And you've already testified earlier that in
10 watching that videotape you actually saw Mr. Prosser
11 on the tape come into Mr. Baccus's home, did you not?

12 A. Yes, sir.

13 Q. This camera was set out so that it -- it --
14 it took pictures of the outside of the house, right?

15 A. Yes, sir, it took a picture of the front
16 door.

17 Q. So if Mr. Prosser was on the tape, we know
18 that the unit was working, do we not?

19 A. Yes, sir.

20 Q. Did you see anything else on that tape?

21 A. No, sir.

22 Q. Before SLED arrived -- you were in the house
23 before SLED arrived.

24 A. No, sir.

25 Q. No, sir?

FRANCES A. BAKIS, RPR

609

34
80

1 A. No, sir.

2 Q. Ever.

3 A. I was in the house the morning and I took
4 custody of Mr. Baccus. When I came back from Marion I
5 did not go back in the house ---

6 Q. Until SLED arrived?

7 A. ---until SLED arrived.

8 Q. Or until Ms. Thompson arrived with the
9 warrant?

10 A. Until SLED arrived.

11 Q. Did you go in the yard at all?

12 A. No, sir. I parked my patrol car across the
13 road in a graveyard, and that's where we parked at
14 until SLED arrived. I didn't even park in the yard.

15 Q. All right. Did you remove the videotape from
16 Mr. Baccus's home?

17 A. No, sir.

18 Q. Where was it the last time you saw it?

19 A. It was in -- undoubtedly it was in the
20 machine.

21 Q. Undoubtedly does that mean you're not
22 sure ---

23 A. I mean, I did not operate the VCR. No, sir.
24 I did not have anything to do with the operation of
25 the -- the playing of the tape. I was standing in the

FRANCES A. BAKIS, RPR

16 70

1 same room watching the monitor, but I did not operate
2 the tape.

3 Q. Do you recall who did?

4 A. One of the SLED agents.

5 Q. Mr. Black?

6 A. Could have been.

7 Q. At any time did you ever observe John Baccus
8 driving a white Nissan?

9 A. No, sir.

10 Q. How about the white Nissan that's been
11 testified here to today?

12 A. Did I ever see him driving it?

13 Q. Yes, sir.

14 A. No, sir.

15 Q. All right. Did you have a tag number for the
16 one you were curious about?

17 A. No, sir.

18 Q. Did you have any physical description, color
19 of interior, whether or not it had a sunroof, VIN
20 number, any -- any identifying characteristics?

21 A. Nothing but the color, and I believe it was a
22 four-door.

23 Q. Now Ms. Ham's already testified today and you
24 heard her testimony, but you said that he was seen
25 driving it earlier that day? Was that -- was that

FRANCES A. BAKIS, RPR

71

1 your testimony?

2 A. She had told me. Ms. Ham had told me that
3 was the car he was driving that day.

4 Q. That day?

5 A. The day of the incident.

6 Q. Was he -- all right. So your testimony is
7 here today that Ms. Ham told you that she actually saw
8 John Baccus that day?

9 A. No, sir. I asked her did she know what kind
10 of car he was driving.

11 Q. Uh-huh.

12 A. She told me a white Nissan that he had been
13 driving. She knew that's what he was driving. How
14 she knew that I don't ---

15 Q. That's my point. You don't know, do you?

16 A. No, sir, I don't know when the last time she
17 saw him.

18 Q. All right. So if you're telling everybody
19 like Mr. Prosser that he was seen driving it that day,
20 that isn't really what Ms. Ham told you, is it?

21 A. Well, I didn't say he -- he was seen driving
22 it that day. Now she told me that's what he was
23 driving on the day of the incident. How she knew that
24 I do not know.

25 Q. Did you ask her how she knew that?

FRANCES A. BAKIS, RPR

72

1 A. I did not ask her, no, sir.

2 Q. Well -- so ---

3 A. I took her word for it.

4 Q. How -- how do you know that she was reliable
5 about it then if you just took her word for it and
6 didn't ask her what her source of knowledge was?

7 A. Sir, that's what we have to do. We have to
8 go on people's testimonies.

9 Q. Had you ever had any dealings with Ms. Ham
10 before?

11 A. No, sir.

12 Q. Did you know her personally?

13 A. No, sir.

14 Q. Did you know anything about her?

15 A. No, sir.

16 Q. Would it be fair to say that -- that based on
17 your knowledge of Ms. Ham you didn't know whether she
18 was an honest, forthright citizen, or a triple ax
19 murderer, did you?

20 A. I did not.

21 Q. You had no way of knowing if -- if perhaps
22 she might have been a cocaine dealer, did you?

23 A. I did not know.

24 Q. And you didn't ask any questions to give you
25 an indication of her veracity, did you?

FRANCES A. BAKIS, RPR

73

1 A. No, sir.

2 Q. So everything you knew was based on what she
3 told you, correct?

4 A. Yes, sir.

5 Q. You weren't at the crime scene when the crime
6 allegedly occurred, correct?

7 A. No, sir.

8 Q. Were there any witnesses who saw John Baccus
9 come to or leave the crime scene?

10 A. Not to my knowledge.

11 Q. And at that point everything you had was
12 based on what Ms. Ham told you.

13 A. Yes, sir.

14 Q. And you imparted that information to Mr.
15 Prosser and -- and he took the information and made
16 the arrest for you.

17 A. Yes, sir.

18 Q. Okay. And then you imparted the information
19 to Ms. -- it was then Thompson, now McDaniel, and she
20 obtained a search warrant as a result of it.

21 A. Yes, sir.

22 Q. Did you make any phone calls from Mr.
23 Baccus's home?

24 A. No, sir.

25 Q. What, if anything, did you do to corroborate

FRANCES A. BAKIS, RPR

74

1 A. Yes, sir.

2 Q. All right. And the evidence consisted of the
3 shoe ---

4 A. The ---

5 Q. ---and a car key?

6 A. The shoe as well as some other burned
7 clothing items and a car key from inside the
8 residence.

9 Q. All right. Why didn't you take that tape?

10 A. Sir?

11 Q. Why didn't you secure that videotape?

12 A. It was viewed by law enforcement present on
13 the scene. Everyone agreed that it was of no value

14 investigatively. Forensically we didn't need it. We
15 didn't need the fingerprint because it was in Mr.
16 Baccus's home so as forensic examiners we did not
17 collect the tape.

18 Q. All right. Had that tape shown John Baccus
19 leaving his home at 11 o'clock the night before and
20 coming back at 12:30 or 1 o'clock that morning, would
21 you have thought that that was significant and -- and
22 justified taking that tape as evidence?

23 A. It didn't show that.

24 Q. That's my point. It showed Mr. Prosser,
25 didn't it?

FRANCES A. BAKIS, RPR

75

1 A. I've heard statements that Mr. Prosser was
2 seen in the front of the residence ---

3 Q. All right. Now ---

4 A. ---after we were at the scene.

5 Q. ---when you got to 2616 Alligator Road where
6 was John Baccus?

7 A. I assume he was still in the jail because we
8 had just left him.

9 Q. All right. And as we sit here to this day,
10 to your knowledge do you know if he's ever been
11 released from jail?

12 A. I do not know.

13 Q. Were you the very last man out of that house?

14 A. I don't recall.

15 Q. Is it possible that a Florence County Deputy
16 Sheriff stayed and -- and stayed in that house and
17 closed up after you departed?

18 MR. CLEMENTS: Your Honor, I would ---

19 THE COURT: I sustain that. He doesn't know.

20 BY MR. HOEFER:

21 Q. Could you tell this jury that you were the
22 last man out of that residence and that you locked the
23 door behind you?

24 A. No, I can't tell you that.

25 MR. HOEFER: Can I ask the Court's

FRANCES A. BAKIS, RPR

76

**Additional material
from this filing is
available in the
Clerk's Office.**