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i N THE COURT OF GENERAL SESSIONS

COUNTY OF YORK

State of South Carolina

Plaintiff,

2015 SEP 29 AMJO: 04

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MOTION FOR CONTINUANCE UNTIL CRJTICAL EVIDENCE

-vs- )

IS DISCLOSED AND PRODUCED

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Defendant. )

 )

Indictment Nos:

TO: TEASA WEAVER, Assistant Solicitor for the 16th Judicial Circuit

PLEASE TAKE NOTICE that the Defendant, Savalas Dodd, hereby movesfor a continuance in the above entitled matter until such time as the State discloses and produces critical e\i dence. The basis of this Motion is set forth herein.

**FACTUAL BACKGROUND**

 vas arrested op November 8, 2013, and charged with; possession with intent to dist ribut e cocaine (warrant no: 2013A461020179), forgery (warrant no: 2013A4610201792), failure to stop for a blue light (ticket no: 69930 GM), violation of ABC

Lmv (ticket no: 69931 GM), and no seat belt (ticket no: 69928 GM). At his arrest, Mr.

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**j**,**e**, **ll** phone was seized and **- lo**longer had possession of or access to this cell

phone. A search warrant was execut ed on November 12, 2013 authorizing a search of:

*"all text messages, sent, drafted, received, deleted, all incoming calls, all out going calls, all photographs, videos, audio files, and all other electronic data stored, deleted and ca pable of being transmitted".*

A return ofthe search warrant is executed on November 26, 2013indicating "data pending".

As of September 24, 2015, the State provided a PDF. file with five hundred eighty-

# -seven-(5"8;}-pages-of-text-messages;-ostensiblyrecovered--a,rn-result-af-the searc:hwarranc· Included within these are forty-six (46) **"sent"** messages which were outgoing texts **sent**

on November 9, 2013; the day after

7vas incarcerated and after the phone had

been seized by the- County Sheriff's Department. The only conclusion that can be

drawn, is that one day after L\_. • · ost possession of the cell phone and three (3) days

prior to the search warrant being sought or authorized, someone was sending messages from this cell phone.

**LEGAL IMPLICATIONS**

The State has indicated that it will attempt to use alleged texts to and from this phone as evidence against =:)n this matter. For such evidence to be admissible, the State will have to lay a foundation as to the integrity of this evidence in terms of accuracy, reliability and its probative value versus prejudicial impact. The cell phone and it contents have clearly been compromised by either:

A Hacking,

B. Tampering

Either the State did not maintain the integrity of this important piece of evidence by allowing persons known or unknown to use it in an extra-legal manner, or the State purposely choose to use it in such a manner. In either event, such activity raises or would raise a serious question as to the integrity of the investigation via cross examination. *As* the United States Supreme Court is recognized, "a common trial tactic of defense lawyers is to discredit the caliber of the investigation or the decision to charge the defendant". Kyles v.

Whitley, 514 U.S. 419, 446, 115 S.Ct., 1555, 1571 (1995).

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. The State further seeks to require l presumablywith the advice of defense

counsel, to accept or reject a plea offer in these cases. Should l\ ..::)eject this offer, the State has indicated that it intends to seek life without the possibility of parole should Mr.

 ,,, convicted. Defense counsel is thereby placed in a position of recommending for or against acceptance of this offer without full knowledge of the facts of the case or evidence. This is exactly what the United States Supreme Court found to be violative of the defendant's Sixth

Amendment right to counsel in Lafler v. Cooper,

U.S.

, 132 S. Ct., 1376, 182 L.E2d,

398 (2012).

**RELIEF SOUGHT**

The Defendant seeks this Court to preclude the State from bringing this case to trial until such time as it discloses who compromised the integrity of the cell phone, whether such was intentional, who authorized such a compromise, whether such compromise was a unique event or an on-going policy of practice within th«-- ounty Sheriffs Department and how such a compromise took place. The Defendant further seeks this Court to preclude the State from setting any deadlines or "drop-dead" dates for acceptance or rejection of any plea offers until the above information is provided.

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Respfctfr1)ly submitte :

September27 2015

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