

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

Larry B Hyman, Jr , Circuit Court Judge

RECEIVED

JUN 13 2012

S.C. Supreme Court

JAMIE GOSS,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

ROBERT M PACHAK
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

JOHN W MCINTOSH
Chief Deputy Attorney General

SALLEY W ELLIOTT
Senior Assistant Deputy Attorney General

ATTORNEY FOR PETITIONER

TYSON ANDREW JOHNSON, SR
Assistant Attorney General
P O Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF HORRY) INDICTMENT NO 06-GS-26-4735
3 STATE OF SOUTH CAROLINA,)
4 PLAINTIFF,)
5 -VS-) TRANSCRIPT OF RECORD
6 JAMIE GOSS A/KA JAMES GAUSE,)
7 DEFENDANT)
_____)

February 12 & 13, 2007
Conway, S C
March 22, 2007
Georgetown, S C

11 B E F O R E
12 HONORABLE EDWARD B COTTINGHAM, JUDGE, AND A JURY

14 A P P E A R A N C E S
15 SCOTT R HIXSON, ESQUIRE
Assistant Solicitor, Fifteenth Judicial Circuit
Attorney for the State
17 ORRIE E WEST, ESQUIRE
Public Defender for Horry County
Attorney for the Defendant
For Trial February 12 & 13, 2007
19 WILLIAM ISAAC DIGGS
Attorney for the Defendant
For Post-Trial Motions March 22, 2007

LINDA W MCCALL
OFFICIAL REPORTER

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EXHIBITS

4

EXHIBITS/FEBRUARY 12, 2007STATE

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DEFENDANT

NONE

COURT

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1 MONDAY, FEBRUARY 12, 2007

2 (The Court convenes the trial of this case with all parties
3 present other than the defendant)

4 THE COURT Good afternoon, ladies and gentlemen Please
5 be seated

6 Alright As a preliminary matter, I understand that we are
7 prepared to pick a jury for the case to be tried in the morning

8 MR HIXSON We are, Your Honor

9 THE COURT Ms Orrie West consents to going forward with
10 the trial with the selection of the jury in the absence of the
11 defendant, and I tell the jury there is absolutely no adverse
12 inference to be derived from the fact that the defendant is not
13 here

14 He lives out of town, and he'll be here for the trial of the
15 case, and Ms Orrie West has agreed to go forward with the
16 selection of the jury only at this time

17 So, do not conclude there's any adverse inference to the fact
18 that he's not here We just simply going to pick twelve of you for
19 a jury

20 Any further instructions on that issue, Ms West?

21 MS WEST Not from me, Your Honor

22 Thank you

23 THE COURT Alright, sir

24 You may call your case and hand me the indictment

25 MR HIXSON I believe Madame Clerk of Court has the

VOIR DIRE

6

1 original copy of the indictment

2 We're calling the matter of The State v Jamie Goss, Your
3 Honor Mr Goss has been indicted for trafficking in cocaine or
4 crack cocaine, cocaine base, and, obviously, Your Honor, this
5 indictment has been true-billed, and we're calling this case under
6 2006-GS-26-4735

7 VOIR DIRE

8 THE COURT Alright, sir

9 Ladies and gentlemen, this defendant and all defendants in
10 South Carolina are brought in to court to answer to an indictment
11 such as this that I hold in my hand

12 Now, this indictment is absolutely in no sense any evidence
13 It's simply the allegations of the State that they must prove to
14 your satisfaction unanimously beyond a reasonable doubt

15 I'm going to read the allegations of this complaint so that
16 you may respond to the following inquiries remembering that this
17 defendant to this indictment specifically pleads not guilty

18 - He is presumed innocent He doesn't have to prove a thing
19 The State of South Carolina has the burden of proving him guilty if
20 they can to your satisfaction beyond a reasonable doubt

21 The Solicitor's Office representing the State and Ms Orrie
22 West representing the defendant desire from your number twelve
23 folks with no friends to reward, no enemies to punish, twelve
24 people who say, Judge, I don't a thing about this case I don't
25 know any of the parties involved in it or I have no feelings for or

VOIR DIRE

7

1 against the charge If I am selected as one of the twelve jurors,
2 I state to you upon my oath that I will base my verdict on the law
3 and the evidence heard in this courtroom and from no other place "

4 Now, at the outset, let me say to you that in the course of
5 years we develop certain prejudices based on our experiences

6 As an analogy and as an example only, let me tell you of a
7 situation I had in another county some years ago

8 I was preparing to try a young man for felony DUI, it having
9 been alleged that while under - - while drunk or driving under the
10 influence, he killed a young girl

11 In selection of the jury I asked the same question

12 "Does anybody have any reason why they feel they cannot be a
13 fair juror in this case?"

14 A lady got up and said, "Judge, I can't be fair to this
15 defendant My daughter was killed by a drunk driver "

16 And I certainly understood that, and I appreciated her telling
17 me

18 In the same panel, though, a gentleman got up and said,
19 "Judge, I can't be fair to the State of South Carolina They
20 tried my son three times for a similar offense and finally found
21 him not guilty "

22 I use this as an example only to say that sometimes we develop
23 biases

24 Now, in this case, the defendant is charged with the offense
25 of trafficking in crack cocaine Trafficking merely means the

VOIR DIRE

8

1 possession of a certain quantity of cocaine

2 Now, my question to - - and to which he pleads specifically
3 not guilty

4 Now, my question to you is recognizing that it involves
5 possession or allegations of possession of a sufficient quantity of
6 cocaine, do any of you based on past experiences with loved ones,
7 your family or close friends or anybody have such strong feelings
8 that you feel like that you could not be a fair juror in a case
9 involving possession of a specific amount of crack cocaine If so,
10 stand up, and I'll discharge you at this moment

11 We got jurors working in other courtrooms here We've got
12 civil cases working

13 I just want to make sure and come forward, please

14 Come forward for me, please

15 (Counsel and juror approach Bench)

16 THE COURT And good afternoon to you

17 JUROR KOSKI I'm #178 It's been around three or four
18 years The criminal justice system and seventeen years in law
19 enforcement, nine years as a state police officer

20 THE COURT This will be enough

21 I'm going to excuse you

22 If you are selected for a criminal jury, tell the judge that
23 before he selects a jury

24 JUROR KOSKI Okay

25 THE COURT Come back at 9 30 Call in at 6 00 for

VOIR DIRE

9

1 instructions There may be another jury selection or there may
2 not After six

3 Thank you so much

4 Anyone else?

5 Yes, sir Come forward, please

6 Counsel, you are invited to come forward again

7 (Counsel and juror approach the Bench)

8 THE COURT What is your name?

9 JUROR OSTERHOUDT Joseph Osterhoudt

10 THE COURT What is your jury number?

11 JUROR OSTERHOUDT #235

12 THE COURT Juror #235

13 And what is your response?

14 JUROR OSTERHOUDT I have a son - - my stepson got involved
15 with crack cocaine That ruined his life and my business I don't
16 think I could be fair

17 THE COURT That's all I need to know

18 Okay I appreciate that and understand it

19 Based on that, I'm going to excuse

20 You just call in after 6 00 for further instructions We may
21 want some jurors in other cases not involving drugs, maybe a civil
22 case

23 Thank you for coming forward

24 JUROR OSTERHOUDT Thank you

25 THE COURT Anyone else

VOIR DIRE

228

10

1 For those of you who have stepped forward, I thank you for
2 that

3 And I continue to emphasize, ladies and gentlemen, we just
4 want a jury, everybody who can say to me, "Judge, if I am selected
5 as one of the twelve jurors, I will base my verdict on the law and
6 the evidence heard in this courtroom, not from some other place and
7 not from some prior former prejudice that I may or may not have "

8 So, my first inquiry is are any of you related by blood or
9 connected by marriage with the defendant Jamie Goss

10 Ms Orrie, Ms West, you want to tell us anything about him
11 so they can answer that question?

12 MS WEST James G-o-s-s, and he is from the Hemingway,
13 South Carolina area

14 He is, ah - - -

15 THE COURT Alright

16 Any of you know him?

17 Now, ladies and gentlemen, it is said that this occasion, this
18 incident occurred on October 9, 2006 Would any of you have heard
19 anything about it or discussed it or had it discussed in your
20 presence? It's not likely but you just raising your hand or just
21 scratching your nose?

22 JUROR No, sir

23 THE COURT Okay Thank you

24 The case is being prosecuted by the Solicitor's Office Have
25 any of you had an occasion to deal with the Solicitor's Office

VOIR DIRE

11

1 either as a victim or witness in a case in the last year or so?

2 Any of you have any close personal - - relatives employed by
3 the Solicitor's Office?

4 The, ah, defendant is represented by Ms Orrie West here Are
5 any of you have any involvement in any way with the Public
6 Defender's Office in the last year or so?

7 This case is made by what investigating agency, the State,
8 City or County?

9 MR HIXSON City of Myrtle Beach, Your Honor

10 THE COURT City of Myrtle Beach

11 This case is instituted by the City of Myrtle Beach

12 Any of you have any close personal relatives employed with the
13 City of Myrtle Beach or are you employed there?

14 Okay

15 Any other additional inquiries?

16 MR HIXSON None from the State, Your Honor

17 THE COURT How about it, Ms West?

18 MS WEST Your Honor, just - - you did touch on it
19 briefly Does anybody have a family member who was the victim of
20 a violent crime or the victim of a crime?

21 THE COURT I will ask that question

22 MS WEST Thank you, Your Honor

23 THE COURT Ah, has anybody - - well, this is not a violent
24 crime but I'll ask the question if you will have me to

25 MS WEST Would you, please, Your Honor?

VOIR DIRE

12

1 THE COURT I will
2 MS WEST Thank you
3 THE COURT Are any of you - - are you victims of a violent
4 crime or any members of your immediate family victims of a violent
5 crime? I say this for my information only, and good afternoon to
6 you
7 Talk a little louder for me, please
8 May I have your name?
9 JUROR FAULK Donna Faulk, Juror #93
10 THE COURT And what is your response?
11 JUROR FAULK My brother was killed a couple of years - - -
12 THE COURT Your brother what?
13 JUROR FAULK My brother was killed a couple of years ago
14 THE COURT How long ago was that, please?
15 JUROR FAULK Four years ago
16 THE COURT Four years ago
17 Would that impact on your ability to be fair in this case?
18 JUROR FAULK No, sir, it wouldn't
19 THE COURT I think not, and you know your jury number?
20 JUROR FAULK Yes, sir #93
21 THE COURT Alright Thank you so much
22 I accept that as information
23 Is there anyone else?
24 May I inquire who is this?
25 MS WEST Your Honor, this is Mr Goss

VOIR DIRE

13

1 He was running a little late

2 THE COURT I understand He's coming here from Hemingway

3 Mr Goss, would you please stand?

4 MR GOSS Oh, yes, sir

5 (Defendant stands and faces jury panel)

6 THE COURT This is the defendant who specifically pleads
7 not guilty to this charge

8 I ask you again Are any of you related by blood or
9 connected by marriage to Mr Goss?

10 Do any of you know this defendant in any capacity whatsoever?
11 If so, please stand

12 You may be seated

13 (Defendant resumes his seat)

14 THE COURT Ms West, was there any additional inquiry?

15 MS WEST No, Your Honor

16 THE COURT Alright, sir

17 The following is a proposed witness list who may be called by
18 one side or the other, and I need to know if any of you are related
19 to these folks

20 This is more for my information but if you have any close
21 personal relationships with any of them

22 Officer Brian Truex of the Myrtle Beach Police Department,
23 Christine H-o-u-t-e-n, is that Houten?

24 MR HIXSON Van Houten

25 THE COURT Houten of the Myrtle Beach Police Department,

JURY SELECTION

14

1 Lisa Floyd of the Regional Drug Analysis Laboratory

2 Anybody have any connection with those folks?

3 Alright

4 Give us a jury, and we'll have two alternates Strikes will
5 be one and two separately as to each alternate

6 You may proceed

7 Now, ladies and gentlemen, we propose to start this case at
8 9 30 in the morning So those of you who are selected will first
9 be shown to your jury room so that you will know where to report in
10 the morning

11 Those who are not selected are requested to call in after 6 00
12 tonight for further instructions There may be some other judge
13 who has need of a jury

14 Alright

15 You may proceed

JURY SELECTION

17 CLERK OF COURT As I call your name, please come forward
18 and stand in front of the Deputy and face the attorneys

19 #180, Dominic Landolfi

20 What says the State?

21 MR HIXSON Please present the juror

22 CLERK OF COURT The defense?

23 MS WEST Accept the juror

24 CLERK OF COURT Please have a seat in the jury box

25 #299, Sue Spivey

JURY SELECTION

15

1 What says the State?"

2 MR HIXSON Please present Ms Spivey

3 CLERK OF COURT The defense?

4 MS WEST Excuse the juror in this particular case

5 CLERK OF COURT You're excused in the trial of this case

6 #125, Cue Thi Bartley ,

7 What says the State?

8 MR HIXSON Please present the juror

9 CLERK OF COURT The defense?

10 MS WEST Accept the juror

11 CLERK OF COURT Please have a seat in the jury box

12 #227, Mary Nance

13 What says the State?

14 MR HIXSON Please present the juror

15 CLERK OF COURT The defense?

16 MS WEST Seat the juror

17 CLERK OF COURT Please have a seat in the jury box

18 #222, Gerald Motley

19 What says the State?

20 MR HIXSON Please present Mr Motley.

21 CLERK OF COURT The defense?

22 MS WEST Excuse the juror in this particular case

23 CLERK OF COURT You're excused from the trial of this

24 case

25 #88, Gary Ellison

JURY SELECTION

16

1 What says the State?

2 MR HIXSON Please present Mr Ellison

3 CLERK OF COURT The defense?

4 MS WEST Seat the juror

5 CLERK OF COURT Please have a seat in the jury box

6 THE COURT I'll ask that you take the Foreperson's chair
7 for me, Mr Ellison, please

8 CLERK OF COURT #81, Irene Domer

9 What says the State?

10 MR HIXSON Please present Ms Domer

11 CLERK OF COURT The defense?

12 MS WEST Excuse the juror in this particular case

13 CLERK OF COURT You're excused from the trial of this
14 case

15 #28, Kristina Boos

16 What says the State?

17 MR HIXSON Please present Ms Boos

18 CLERK OF COURT The defense?

19 MS WEST Seat the juror

20 CLERK OF COURT Please have a seat in the jury box

21 #347, Sharon York

22 What says the State?

23 MR HIXSON Please present Ms York

24 CLERK OF COURT The defense?

25 MS WEST Excuse the jury in this particular case

JURY SELECTION

17

1 CLERK OF COURT You're excused from the trial of this
2 case

3 #113, Martha Gouin

4 What says the State?

5 MR HIXSON Please present Ms Gouin

6 CLERK OF COURT The defense?

7 MS WEST Your Honor, if I might inquire? I don't have
8 down what Ms Gouin did for employment

9 THE COURT You may ask her

10 MS WEST What did you do for employment?

11 JUROR GOUIN Part-time bookkeeper

12 MS WEST Seat the juror

13 CLERK OF COURT Please have a seat in the jury box

14 #317, Nancy Tuttle

15 What says the State?

16 MR HIXSON Please present Ms Tuttle

17 CLERK OF COURT The defense?

18 MS WEST Seat the juror

19 CLERK OF COURT Please have a seat in the jury box

20 #359, Ferdinando Rotello

21 What says the State?

22 MR HIXSON Please present Mr Rotello

23 CLERK OF COURT The defense?

24 MS WEST Seat the juror

25 CLERK OF COURT Please have a seat in the jury box

JURY SELECTION

18

1 #243, Melody Pennington
2 What says the State?
3 MR HIXSON Please present Ms Pennington
4 CLERK OF COURT The defense?
5 MS WEST Seat the juror
6 CLERK OF COURT Please have a seat in the jury box
7 #181, Jeffrey Lane
8 What says the State?
9 MR HIXSON Please present Mr Lane
10 CLERK OF COURT The defense?
11 MS WEST Seat the juror
12 CLERK OF COURT Please have a seat in the jury box
13 #237, Christy Palermo
14 What says the State?
15 MR HIXSON Please present Ms Palermo
16 CLERK OF COURT The defense?
17 MS WEST Seat the juror
18 CLERK OF COURT Please have a seat in the jury box
19 #360, Bernetta Sanders
20 What says the State?
21 MR HIXSON Please present Ms Sanders
22 CLERK OF COURT The defense?
23 MS WEST Seat the juror
24 CLERK OF COURT Please have a seat in the jury box
25 How many alternates, Judge?

JURY SELECTION

19

1 THE COURT Two alternates
2 Strikes are one and two in each alternate
3 CLERK OF COURT #20, Robert Bellamy
4 What says the State?
5 MR HIXSON Please present Mr Bellamy
6 CLERK OF COURT The defense?
7 MS WEST Seat the juror
8 CLERK OF COURT Please have a seat in the jury box
9 #93, Donna Faulk
10 What says the State?
11 MR HIXSON Please excuse Ms Faulk
12 CLERK OF COURT You're excused from the trial of this
13 case
14 #364, Angela Cottingham
15 What says the State?
16 MR HIXSON Please present Ms Cottingham
17 MS WEST Your Honor, can I inquire if she's related to
18 the Cottingshams from Darlington?
19 THE COURT I have no relation unless it's a fifth or six
20 cousin off Cottingham Creek
21 JUROR COTTINGHAM My husband is distant
22 MS WEST Seat the juror
23 CLERK OF COURT Please have a seat in the jury box
24 THE COURT Alright
25 Anything further regarding the composition of the jury?

JURY SELECTION

20

1 MR HIXSON Nothing from the State.

2 MS WEST Nothing from the defendant, Your Honor

3 THE COURT Alright

4 Ladies and gentlemen of the jury panel, the Bailiff will
5 escort you to the jury room, and when you return at 9 30 in the
6 morning, do not return - - return to the courtroom Go to this
7 room that he will show you

8 We'll start promptly at 9 30

9 Now, you usually have some coffee and donuts or something for
10 you So be here a few minutes early, and we hope to get started
11 promptly at 9 30

12 Make sure you return, now, in the morning to your jury room

13 And please be promptly on time You would not necessarily
14 inconvenience the Court but you would inconvenience your fellow
15 jurors for the simple reason that we can't start without all of you
16 present

17 So, I look forward to seeing all of you at 9 30 in the
18 morning

19 Thank you so much

20 (Jury released to return at 9 30 a m on Tuesday)

21 THE COURT Now, for those of you please call in after 6 00
22 tonight for further instructions

23 (The remaining jury panel is released to call in after 6 00
24 p m for further instructions)

25 THE COURT Alright

JURY SELECTION

21

1 Anything further at this time?

2 MR HIXSON Not at all, Your Honor

3 THE COURT How about it, Ms West?

4 MS WEST Nothing, sir

5 Can I - - can we approach?

6 (Bench conference off record but with no jury present)

7 MS WEST May we be at ease, Your Honor?

8 THE COURT Ma'am?

9 MS WEST May we be at ease?

10 THE COURT Yes, I'm sorry Yes, ma'am

11 (The Court adjourns the trial of this case for the day to
12 resume this trial on Tuesday at 9 30 a m)

JURY SELECTION

22

TUESDAY, FEBRUARY 13, 2007.

(The Court convenes the trial of this case with all parties present in the courtroom except the defendant)

THE COURT Good morning, ladies and gentlemen Be seated, please

MS WEST And, Your Honor, my Assistant did call twice The defendant said he's on his way, and I'm ready to proceed with the Motion to Suppress

THE COURT Alright
He said he's on his way?

MS WEST Yes, sir

THE COURT Well, it was very clear

MS WEST I understand

THE COURT Let's get on the record with reference to this
This defendant was late yesterday morning for the selection of the jury process Everybody was told to be here promptly at 9 00

His lawyer advised me that he was suppose to meet her at nine himself It is now 9 35 He's still not here By and with the consent of the counsel for the defense, we're going to proceed with an in limine motion - -

MS WEST That's correct

THE COURT - - even at this time

MS WEST Can I clear the record up for yesterday?

THE COURT Please do

MS WEST Yesterday - - yesterday he didn't know he - -

MOTION TO SUPPRESS (IN CAMERA)

23

1 his jury was being pulled at 2 00 He was suppose to come see me

2 THE COURT I understand

3 MS WEST And so that was a little different

4 But today he did know he was suppose to be here at 9 30

5 THE COURT And you had told me - -

6 MS WEST I asked him - -

7 THE COURT - - you had told him to see you at 9 00

8 MS WEST - - to see me at 9 00 Yes, sir

9 THE COURT And he's not here.

10 You just talked to him a few moments ago?

11 MS WEST My Assistant talked to him at ten minutes ago

12 He said he was on his way

13 THE COURT And where abouts is he?

14 MS WEST'S ASSISTANT I'm not sure where he is but he said
15 he was five minutes away from Conway

16 THE COURT Well, we won't worry about him being late again
17 after I get my hands on him but it'll be alright

18 MOTION TO SUPPRESS (IN CAMERA)

19 THE COURT Alright You have a motion

20 MS WEST Yes, Your Honor

21 I'd like to move to suppress the drugs in this case I think
22 that the officer's stop on the defendant was without probable
23 cause, um, that it was pretextual and that anything that was
24 obtained afterwards should not be allowed to be introduced into
25 evidence

OFFICER TRUEX - DIRECT EXAMINATION BY MR. HIXSON (IN CAMERA) 24

1 THE COURT Please let the record reflect we're proceeding
2 with the in limini hearing outside of the presence of the jury

3 Call the witness Where is the Solicitor?

4 Where did he get to?

5 (Solicitor returns to courtroom)

6 THE COURT How about letting me know when you're leaving

7 MR. HIXSON Yes, sir

8 THE COURT Alright

9 She's made a motion for in limini to suppress the drugs on the
10 basis of a pretextual stop, and let's have your witnesses on the -
11 - with regards to that stop

12 MR. HIXSON The State of South Carolina calls Officer Brian
13 Truex as a witness

14 (The witness takes the witness stand)

15 OFFICER BRIAN TRUEX, being duly sworn,
16 testifies as follows (IN CAMERA)

17 CLERK OF COURT Please state your name and spell it for
18 the record

19 OFFICER TRUEX Officer Brian Truex, B-r-i-a-n T-r-u-e-x
20 DIRECT EXAMINATION BY MR. HIXSON

21 Q Good morning, sir

22 A Good morning

23 Q Could you please tell the Court what you do for a living?

24 A I'm a police officer in the Traffic Division at the Myrtle
25 Beach Police Department in Myrtle Beach, South Carolina

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON (IN CAMERA) 25

1 Q And about how long have you been in that role?

2 A Five and a half years

3 Q And were you working on August - - excuse me - - October 9th
4 of 2006?

5 A Yes, sir

6 Q And did you have the occasion to come across a, ah, a, ah, the
7 defendant in this case, Mr Jamie Goss?

8 A Yes, sir

9 Q Can you please tell the Court the facts that gave rise to
10 coming in contact with Mr Goss?

11 A I was on normal patrol in the area of 9th Avenue and Highway
12 15 in the City of Myrtle Beach doing my normal traffic duties which
13 was enforcing traffic laws, ah, on the highways in the City

14 I was sitting stationary in the Coastal Saver Gas Station at
15 Highway 15 and 9th Avenue South in the City Limits of Myrtle Beach
16 which is in Horry County

17 I observed the defendant's vehicle traveling southbound on
18 Highway 15 at which time I noticed that the tag light, the light
19 that illuminates the license plate tag in the rear of the motor
20 vehicle was extinguished and not functioning

21 Q Please describe what - - what vehicle you saw

22 A It was a white in color Dodge Caravan It was - - it was a
23 lighter colored Dodge Caravan, um, with a South Carolina tag on it
24 I don't exactly remember the tag number off hand, um, traveling
25 south on Highway 15, um, at which time I pulled out on the motor

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON (IN CAMERA) 26

1 vehicle

2 Once I got out of the illuminated area of the Coastal Saver
3 Gas Station, I turned off my headlights. My headlights were
4 illuminating the license plate. Just to confirm that the tag
5 light was out on the motor vehicle, I turned my headlights off very
6 briefly and then turned them back on, ah, concluding that the tag
7 light was not illuminated at which time I, ah, initiated a traffic
8 stop for that offense which would be license plate tag
9 illumination.

10 Q Okay

11 Did you effect a stop on the vehicle?

12 A Yes, sir

13 Q Did you activate your blue lights and siren to effect that
14 stop?

15 A Yes, sir

16 Q Could you please tell us what happened after you effected the
17 traffic stop?

18 A After I effected the traffic stop, the motor vehicle stopped
19 just east of the intersection of Pridgen Road and Highway 15 at
20 which time the vehicle stopped on the eastbound side of the roadway
21 on the shoulder of the road. I pulled up behind the motor vehicle,
22 exited my patrol car. Approached the motor vehicle at which time
23 when I reached the rear driver side corner of the motor vehicle I
24 observed the, um, subject driving the motor vehicle, the defendant
25 Jamie Goss looking in the mirror at me.

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON (IN CAMERA) 27

1 Q Did you get a good look at the defendant's - - -

2 MS WEST Your Honor - - objection, leading

3 Q - - the face of the driver?

4 MS WEST Objection, leading

5 THE COURT Well, no

6 MR HIXSON Let me - - if you don't mind - - -

7 THE COURT I'll accept that

8 Go ahead

9 MR HIXSON I don't mind clarifying that, Judge

10 Q Were you able to ascertain anything about the driver?

11 A Yes, sir

12 The subject was wearing a white shirt, um, and looking at the
13 driver in the motor vehicle in the window or through the window in
14 the mirror, um, could see the subject's face in the mirror at which
15 time when I reached that driver's side rear corner of the motor
16 vehicle, the subject shifted into park into drive and took off down
17 Bridgen Road

18 At that time I went back to my patrol vehicle, jumped in my
19 patrol vehicle and went after the subject down Bridgen Road, um, at
20 which time we crested the corner at Bridgen Road as it makes a
21 right-hand curve going southbound, and the subject exited into the
22 Carolina Cove Subdivision which is a housing complex at the corner
23 there

24 Q Okay

25 At some point in time were you able to, ah, at some point in

OFFICER TRUEX - DIRECT EXAMINATION BY MR. HIXSON (IN CAMERA) 28

1 time did the van stop? Were you able to come in contact with the
2 defendant again?

3 A Yes, sir

4 As we went towards Carolina Cove and he rounded the corner, I
5 was a little bit of a distance behind him So as we went into
6 Carolina Cove, he made a left-hand - - the apartment complex makes
7 a square, in essence, um, that there's four buildings in the
8 center, and then there's a square of drive on the outside of the
9 apartment complex which in the opposite corner exits out onto 11th
10 Avenue South

11 MR. HIXSON Judge, I'm just handing up a diagram for
12 demonstrative purposes only It may aid the officer's testimony to
13 the Court and later to the jury

14 Q If it would help you to refer to that, feel free if that will
15 help you

16 A Correct

17 After he entered - - after he entered Carolina Cove - - you
18 can continue straight or you can make a left-hand turn both of
19 which make turns back into - - into the same point It makes a
20 square in the entire parking lot, and in that back corner there's
21 an exit to 11th Avenue South

22 As the subject drove into Carolina Cove, he made an immediate
23 left-hand turn, and knowing my normal patrol area, I know that if
24 I continued straight through that parking lot and made a left-hand
25 turn, I could beat the subject back to that corner and cut - -

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON (IN CAMERA) 29

1 effectively cutting off his route of escape to 11th Avenue South

2 Ah, when he made his left-hand turn, that allowed me time to
3 catch up that distance because he was making a turn and I was
4 continuing straight

5 And as we traveled through the parking lot, we traveled
6 parallel to each other, and as I was watching to my left, I watched
7 the vehicle continue past the first building, past the second
8 building in the breaks between the buildings I could visually see
9 the vehicle traveling

10 And as I got past that second building to go past the third
11 building, the vehicle wasn't there

12 At that time I observed the subject wearing the white shirt
13 that I observed in the vehicle running between that third break in
14 the buildings towards the fourth building that's in that center
15 complex area at which time the subject came near that building and
16 went to the face - - the front face

17 The front face, ah, blades the opposite direction of where my
18 vehicle is So I swung the outside of that turn around the parking
19 lot to meet the subject on the other side which would be the
20 natural course of running that he would do - - that I assumed that
21 he would do, and when I came to the other side of that building, I
22 observed the subject walking along that face of the building in the
23 direction of my vehicle from the, um, southwest corner, the bottom
24 apartment to which time I exited the vehicle and took the subject
25 into custody

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON (IN CAMERA) 30

1 Q And you placed him under arrest at that time?

2 A Yes, sir

3 Q Alright

4 And what did you place him under arrest for at that time?

5 A Ah, the reckless driving, the driving that he, ah, had driven
6 during the course of - - of fleeing from me

7 Q After your initial stop?

8 A After the initial stop

9 The reckless driving was when he was driving through the
10 parking lot of Coastal, ah, Carolina Cove He was driving in a
11 reckless manner with a willful and wanton disregard for safety

12 THE COURT Was he indicted for failure to stop for a blue
13 light?

14 MR HIXSON He has not been it's my understanding He has
15 a ticket for reckless and resisting arrest under the municipal
16 codes but not under a General Sessions charge, Your Honor

17 THE COURT Go ahead

18 Q Ah, now, subsequent to that arrest, did you have an
19 opportunity to, ah, ah, come in contact with the contents of that
20 van?

21 A Yes, sir

22 Ah, both per incident to arrest and due to the inventory of
23 the motor vehicle which is the policy of the Myrtle Beach Police
24 Department that we inventory any vehicles that are going to be
25 towed subsequent to arrest, um, I inventoried the interior contents

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON (IN CAMERA) 31

1 of that vehicle and located a off-white in color rock-like
2 substance in a cookie form, ah, laying between the front driver and
3 passenger seat on the floor board, um, along with a green leafy
4 substance that was wrapped in, um, brown paper, and, ah, a cell
5 phone that, ah, had the picture of the defendant on the wallpaper
6 of the screen

7 MR HIXSON May I approach, Your Honor?

8 Q Do you recognize that item?

9 A Yes, Your Honor

10 Yes, sir

11 Q And what is that?

12 A That is the substance that I recovered from the motor vehicle
13 in the center console - - or the center floor board area of the
14 motor vehicle

15 MS WEST And, Your Honor, for I D purposes only I
16 believe that we're doing this because there's no foundation laid
17 for chain of custody in this matter

18 MR HIXSON Absolutely Just for showing that - - just
19 merely for showing for the Court

20 THE COURT I will permit it for the purposes of this in
21 limini hearing

22 Go ahead

23 MR HIXSON Simply that, Your Honor

24 THE COURT I understand

25 (Court Reporter marks drugs as State's Exhibit #1 for I D

OFFICER TRUEX -- CROSS EXAMINATION BY MS WEST - (IN CAMERA)

32

1 only and the sketch as State's Exhibit #4 for I D only)

2 Q Does that appear to be the substance that you recovered from?

3 A Yes, sir

4 Q And how would you -- are there any indicators on there that
5 you would know that that was the substance?

6 A Yes

7 When I recovered the substance - - -

8 THE COURT We don't need to get into that at this time
9 anyway The question before me is whether or not the stop under
10 the totality of the circumstances was appropriate

11 You may examine

12 MR HIXSON Thank you, Your Honor

13 CROSS EXAMINATION BY MS WEST

14 Q Officer, you said you were a traffic officer now Have you
15 been a traffic officer for five and a half years?

16 A No, ma'am I've been a traffic officer for approximately
17 four years

18 Q Four years

19 A Yes, ma'am

20 Q So your vehicle is equipped for traffic stops?

21 A Yes, ma'am All of our vehicles are?

22 Q Does it have a camera?

23 A Yes, ma'am

24 Q And what's the protocol for the camera?

25 A Um, when you activate your blue lights, the camera activates

OFFICER TRUEX - CROSS EXAMINATION BY MS WEST - (IN CAMERA) 33

1 inside the motor vehicle

2 Q Did yours activate on this particular - - -

3 A Yes, ma'am

4 Q Did you get a picture?

5 A No, ma'am

6 Q And that would be because?

7 A Because after that traffic stop had occurred, when I took my
8 tape out, I had placed it back in the, ah, the machine after
9 viewing it and subsequently afterwards had accidentally been taped
10 over inside the, ah, inside the recording unit inside there

11 Um, after - - when I got done with all of my paperwork in that
12 kinds of stuff, it was inside my tape unit, and when I removed it
13 from my - - from the - - the trunk module I don't know what you'd
14 call The tape recording unit in the trunk, um, at some point it
15 had been recycled back into that - - my little cache of tapes
16 whatever I keep them in - - had been taped over accidentally

17 Q Now, how long have you been a traffic officer?

18 A Ah, four - - four years about

19 Q And how many times has this kind of mistake happened?

20 A Um, it's happened two or three times

21 We've recently changed camera systems so that those type of
22 errors haven't occurred Everything is digital now

23 Q So, first of all, your camera did work but - -

24 A Yes, ma'am

25 Q - - you don't have a copy of the tape - -

OFFICER TRUEX - CROSS EXAMINATION BY MS WEST - (IN CAMERA)

34

1 A Yes, ma'am

2 Q - - because it was erased accidentally by you?

3 A Yes, ma'am

4 Q Alright

5 Now, you said that you were sitting at or parked at a gas
6 station?

7 A Ah, the Coastal Saver Gas Station at 9 South and Highway 15,
8 yes, ma'am

9 Q And your car was facing in the same direction as the
10 defendant's car in the direction he was driving?

11 A In the general direction, yes, ma'am

12 Q Yes or no?

13 A Yes, ma'am

14 Q Okay

15 So you're sitting there with your lights on or off?

16 A Off, my headlights

17 Q Your headlights were off?

18 A Yes, ma'am

19 Q And you were in a marked or unmarked vehicle?

20 A Marked vehicle

21 Q And the defendant allegedly drove by?

22 A Drove by south on Highway 15, yes, ma'am

23 Q Speeding or not?

24 A I am not sure, ma'am I was not running radar

25 Q Based on you being a traffic officer for four and a half years

OFFICER TRUEX - CROSS EXAMINATION BY MS WEST - (IN CAMERA) 35

1 and knowing what the speed limit was on that street, would you
2 wildly guess that he was or wasn't doing the speed limit?

3 A I wouldn't be able to tell you I was not sitting at an angle
4 to estimate his speed

5 Generally, when I do traffic enforcement on Highway 15 that
6 area is very congested, and there's no feasible places to run radar
7 in that area

8 Q So congested meaning that there would have been other traffic?

9 A There were - - there was other traffic, yes, ma'am

10 Q So was he going below the speed limit?

11 A I have no idea

12 Q Anybody in the traffic doing anything that made you want to
13 stop them for their rate of speed?

14 A No, ma'am I wasn't estimating rate of speed for anybody

15 Q And you can't guess what he may or may not have been doing?

16 A No, ma'am I wasn't attempting to

17 Q But then you say you saw him drive by Now, where were his
18 traffic lights be? You've impounded the car, right? Where would
19 his tag lights be?

20 A Above the, ah, the license plate on the back of the motor
21 vehicle

22 Q And you could identify that the tag light was absolutely off?

23 A There was no illumination to the license plate indicating to
24 me that the light would have been out

25 Q Okay

OFFICER TRUEX - CROSS EXAMINATION BY MS WEST (IN CAMERA)

36

1 So, you put your blue lights on and your siren?

2 A No, ma'am

3 Once I saw him drive by without the -- the license plate tag
4 illuminated, I pulled out behind him and then double-checked that
5 the license plate light was out at which time I would have called
6 out my traffic stop, turned on my blue lights I have a habit of
7 barking my siren Just click the thing once so that at least if
8 the person's not paying attention

9 The majority of people I've found in my time on the police
10 department don't pay attention to what's going on behind them, and
11 even if you turn on blue lights, they don't pay attention to you
12 So I have a habit of barking my siren behind when I initiate, ah,
13 activate my blue lights

14 Q So, you said you first called in your stop?

15 A Yes, ma'am

16 Q What does that mean?

17 A Ah, that I advised our dispatch that a traffic stop was going
18 to be initiated on a certain vehicle at this place, um, and you do
19 that as habit before you do a traffic stop

20 Q And you told them what it was for?

21 A No You don't tell them what it's for Just the license
22 plate information, the area of where you're stopping them or the
23 location

24 Q So, now, at this point you say how far did he go before he
25 pulled over?

OFFICER TRUEX - CROSS EXAMINATION BY MS WEST - (IN CAMERA) 37

1 A Ah, between Pridgen Road and 9th Avenue South is approximately
2 five blocks

3 Q Are there lights on that road?

4 A Ah, after the Coastal Saver there's very sporadic overhead
5 lighting There's probably one at the intersection - - there is
6 one at the intersection of Pridgen Road and Highway 15, and I don't
7 even believe there is an overhead light between Pridgen Road and 9th
8 Avenue South

9 Q And at the point where you stopped him was there a light?

10 A Yes

11 There was also illumination from the apartment complex, Town
12 Square Apartments there

13 Q Now, you told a long involved story about what happened after
14 you said allegedly the vehicle drove away Correct?

15 A Yes, ma'am

16 Q Oh, by the way Who - - did he not own the vehicle?

17 A No

18 Q Ah, has the vehicle tag expired?

19 A Not that I can remember, ma'am

20 Q Did you bring any documentation concerning the vehicle?

21 A No, ma'am

22 Q Um, so at the point when you said that subsequently you
23 arrested this defendant at an apartment complex?

24 A Yes, ma'am

25 Q Based on the fact that he had on a white shirt?

1 A No, ma'am

2 Based on the fact that where I had seen him drive into the
3 complex the vehicle had been stopped and the subject was running
4 from the motor vehicle in the general direction of where I saw him
5 running

6 THE COURT We don't need to get into that at this time

7 Q But you gave him several tickets Is that correct?

8 A Yes, ma'am

9 Q But not one for his tag

10 A No, ma'am

11 Q And that would be because?

12 A Because in the mix of all the high court paperwork and all the
13 other tickets, I overlooked not writing him the violation for the
14 license plate light

15 Q But if you've still got the form that said - - the incident
16 report said it was for the tag, at what point did you forget it was
17 for the tag? How soon after the time that he was arrested did you
18 forget that you stopped him for his tag and forgot to write the
19 ticket for the tag?

20 A I never forgot that I stopped him for the tag I simply
21 overlooked writing him the summons for the tag while we were in the
22 jail, and there's - - it was just an oversight on my part

23 Q And how many tickets did you write him for locally?

24 A I can't recite you a number

25 Q Did you bring the paperwork with you concerning all these

OFFICER TRUEX - CROSS EXAMINATION BY MS WEST - (IN CAMERA) 39

1 tickets?

2 A There's paperwork here that I have but I don't exactly know
3 the number of the summonses that he was issued

4 Q Did you do the inventory of the vehicle?

5 A I was there for part of the inventory but Officer - - Officer
6 West actually filled out the form for the inventory

7 I was there for the inventory part where the drugs were
8 recovered and the cell phone was there

9 Um, basically, what I - - with him being in my motor vehicle
10 before I transport him up, doing the inventory making sure that
11 there's nothing that, ah, would be related to the subject in the
12 motor vehicle - - -

13 Q I just asked a question

14 Pursuant to the inventory exam - -

15 A Uh-huh

16 Q - - there's nothing that says the tag light was out

17 A We wouldn't - - -

18 Q You wouldn't write that down?

19 A No, ma'am

20 That's not - - when you're inventorying a vehicle, you're
21 inventorying for the contents and any exterior damage or - - -

22 Q If it's damaged, would you write down the damage?

23 A That wouldn't - - that wouldn't be damage That would be a
24 malfunction with the motor vehicle

25 Q Well, it says, "back tail light was out "

OFFICER TRUEX - EXAMINATION BY THE COURT (IN CAMERA)

40

1 But it didn't say anything about the tag light Now why would
2 that be?

3 A I don't know, ma'am I didn't write that down on that form

4 Q Okay

5 Did you take pictures of that tail light being out once you
6 inventoried the car?

7 A No, ma'am There'd be no need for that

8 Q And this doesn't indicate that the tag light was out and you
9 didn't give a ticket for the tag light Is that correct?

10 A I understand you Yes, ma'am

11 Q Is that correct?

12 A Yes

13 Q Thank you

14 EXAMINATION BY THE COURT

15 Q Let me ask you this

16 What kind of car was it?

17 A A Dodge Caravan

18 Q Had you ever seen that vehicle before?

19 A Seen that specific vehicle before?

20 Q Yes, sir

21 A No, sir

22 Q And had you ever had any connection with this particular
23 defendant before?

24 A No, sir

RULING OF THE COURT/JURY SWORN

41

1 RULING OF THE COURT

2 THE COURT No I would respectfully reject your motion
3 I find that it's not pretextual Based on what he said there was
4 certainly appropriate opportunity

5 And he should have stopped him and did

6 So, you may come down

7 (The witness leaves the witness stand)

8 THE COURT Any other motion?

9 MS WEST No, Your Honor

10 THE COURT Alright

11 Bring the jury in, please

12 Madame Clerk, swear this jury for me

13 (The jury returns to the courtroom at 10 07 a m and the Clerk
14 of Court swears the jury)

15 JURY SWORN

16 THE COURT Good morning, Mr Foreman, ladies and
17 gentlemen I trust that the ham biscuits were suitable to
18 everybody They were to me

19 REMARKS OF THE COURT

20 THE COURT Alright

21 You may have - - ladies and gentlemen, recognizing that for
22 many of you this is the first opportunity you've had to serve as a
23 juror in a criminal case, let me say at the outset two important
24 things

25 First, you and you alone are the finders of the facts in this

REMARKS OF THE COURT

42

1 case There's nobody in the wide world can tell you what the
2 facts are

3 By that same token I'm the instructor in the law, and I will
4 tell you what the law is with regards to this case

5 You take the facts as you find them to be and apply it to the
6 law as I give it to you

7 Some jurors have said, "Well, Judge, how are we to determine
8 the facts?"

9 Well, during the course of this trial there will be various
10 witnesses testifying here under oath Other documents may be and
11 such as pictures or whatnot will be introduced for your
12 consideration

13 You will judge the credibility and believability of the
14 witnesses You can believe all of what a witness say or none You
15 may believe one witness against that of many or the other way
16 around, and you determine based on your life experiences where the
17 truth lies

18 And that's what we want here to find the truth in this case in
19 judging credibility and believability

20 Now, we start by the Solicitor representing the State of South
21 Carolina He has the burden of proof

22 This defendant comes into this court under absolute
23 presumption of innocence He doesn't have to prove a thing The
24 State's got to prove him guilty to your satisfaction unanimously
25 beyond a reasonable doubt

OPENING STATEMENT BY MR HIXSON

43

1 He's going to make an opening statement to you which is not
2 evidence It's just his statement, and that's a guideline

3 He'll tell you a little bit about what he proposes to prove,
4 and that's a guideline to help you follow the introduction of
5 testimony

6 Ms Orrie West, a distinguished Public Defender of Horry
7 County, represents this defendant She'll give you an opening
8 statement as to their position

9 Following that, we'll take testimony of various witnesses and
10 at the conclusion of the testimony, we'll have final summation and
11 I will tell you what the law is remembering that you take the facts
12 as you find them to be, apply it to the law of the case and reach
13 that magical word unanimously that we call verdict Verdict comes
14 from the Latin word "verdicto" meaning to speak the truth

15 Let your verdict, therefore, speak the truth

16 Opening statement

17 MR HIXSON Thank you, Your Honor

18 OPENING STATEMENT BY MR HIXSON

19 MR HIXSON Trafficking crack cocaine, that's what this
20 case is about In a nutshell it's about as simply put as I can
21 think of a way to talk to you about it

22 On October 9th of 2006, this defendant, Jamie Goss, was
23 trafficking in crack cocaine

24 In South Carolina we call it trafficking in cocaine base, and
25 that's just a legal distinction without really much of a

OPENING STATEMENT BY MR. HIXSON : 44

1 difference That just means that the substance has a cocaine base
2 to it, and you'll hear testimony, of course, that that's what
3 cocaine is, um, what crack cocaine is It's a form of cocaine

4 So when you hear in the indictment and you get an opportunity
5 to see that, you'll see cocaine base That's what is commonly
6 referred to as crack cocaine

7 October 9th of 2006, Officer Brian Truex of the Myrtle Beach
8 Police Department was on routine patrol on - - at 15th Avenue South
9 and he had effected a traffic stop on the defendant, a vehicle, a
10 Dodge Minivan driven by Mr Jamie Goss

11 His tag light was out His license plate was out

12 Tried to pull him over You'll hear testimony about the
13 defendant taking off and fleeing the officer after he had stopped
14 him briefly with his blue light and flashers on And you'll hear
15 the details of that

16 You will - - you will hear about his subsequent arrest and the
17 recovery of a quantity - - what we call a "cookie" of crack
18 cocaine

19 Now, trafficking crack cocaine to describe that a little bit
20 is not a Miami Vice kind of picture on tv, a bunch of crazy drug
21 runners and a bunch of high speed boats and things like, a bunch of
22 cash in suitcases It's none of that

23 The State has to show that this defendant was in actual
24 possession in the van or, in constructive possession in an area that
25 was in his custody or control

OPENING STATEMENT BY MR HIXSON

45

1 An example might be like your purse or your wallet sitting in
2 a shopping cart It's not an actual possession You don't have a
3 hold of it but you've got dominion and control over your purse
4 It's your purse You're just not holding on to it at the time that
5 you try to find that - - we'll give you a little more detail of
6 that in closing argument That's it in general

7 Actual possession or constructive possession of a quantity
8 more than ten grams but less than twenty-eight grams of a substance
9 tested by a state laboratory that is proven by chemical analysis to
10 be crack cocaine

11 The evidence will show that our Regional Drug Analysis
12 Laboratory tested it, and it was 12 13 grams

13 It is intuitive that trafficking in crack cocaine is kind of
14 a distribution type thing but it doesn't have to be It's mere
15 possession based on a threshold weight Over ten grams is the
16 threshold weight

17 Actual - - actual or constructive possession of that, you're
18 guilty of trafficking of crack cocaine in the State of South
19 Carolina

20 You'll hear from about three witnesses It will be a fairly
21 straight-forward case to present to you all but one thing you don't
22 want to do is to start adding witness list together to try to
23 decide the importance of this case because this is the most
24 important thing going on in the world right now for the individuals
25 involved in this courtroom as well as yourselves

OPENING STATEMENT BY MS WEST

46

1 And we're all confident that you'll do your utmost to bring
2 that verdict as the judge has said that speaks the truth

3 Ms West will address you shortly We'll put the case up
4 Then we'll have an opportunity to come back before you and talk
5 about the law a little bit and about what you heard At that time
6 I'll ask you to return a verdict of guilty of trafficking in crack
7 cocaine against Mr Jamie Goss

8 Thank you

9 THE COURT Thank you

10 Ms West

11 OPENING STATEMENT BY MS WEST

12 MS WEST Good morning, ladies and gentlemen

13 As the Solicitor indicated, this case involves Mr Goss My
14 name is Orrie West This is a very important day for Mr Goss

15 I'm asking y'all to realize and recognize and pay close
16 attention to the fact that the State and only the State has the
17 burden to establish beyond a reasonable doubt the truth in this
18 matter, beyond a reasonable doubt

19 If you all use that as the standard which is, in fact, the
20 standard and the judge will tell you that, I think that you will
21 return a verdict of not guilty in this particular case against
22 Jamie Goss

23 Thank you

24 THE COURT Thank you, Ms West

25 Call your first witness

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON

47

1 MR HIXSON The State at this time would call Officer Brian
2 Truex

3 (The witness takes the witness stand)

4 OFFICER BRIAN TRUEX, being duly sworn,
5 testifies as follows

6 CLERK OF COURT Please state your name and spell it for
7 the record

8 OFFICER TRUEX Officer Brian Truex, B-r-i-e-a-n T-r-u-e-x
9 DIRECT EXAMINATION BY MR HIXSON

10 Q Good morning, sir

11 A Good morning

12 Q It's kind of obvious from your uniform but could you tell the
13 jury what you do for a living?

14 A Ah, I work for the Myrtle Beach Police Department in the City
15 of Myrtle Beach, South Carolina, and I am a Traffic Officer in the
16 Traffic Division

17 Q And about how long have you been in that capacity?

18 A I've been a police officer with Myrtle Beach for about five
19 and a half years, and a Traffic Officer for four

20 Q Okay

21 Were you, ah, were you working on October 9th of 2006?

22 A Yes, sir

23 Q And where were you assigned?

24 A I was assigned just to traffic duties in the City of Myrtle
25 Beach

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON

48

1 However, I doing traffic enforcement on Highway 15 in the area
2 of 9th Avenue South

3 Q And could you just describe to the jury? I don't know how
4 familiar with the area everybody is What area is that inside of
5 Myrtle Beach

6 A It's south of 501 and west of Highway 17 Business It's the
7 road that leads between the airport and 3rd Avenue South It's a
8 two-lane highway, two-lane road, one north and one southbound lane
9 between Harrellson Blvd and 3rd Avenue South in the City of Myrtle
10 Beach

11 Q Do you recall at some point of time that you came in contact
12 with the defendant in this case, Mr Jamie Goss?

13 A Yes, sir

14 Q And could you please describe to the jury how that happened?

15 A I was sitting stationary in the south end of the parking lot
16 of the Coastal Saver Gas Station which is at the corner of 9th
17 Avenue South and Highway 15

18 I was facing in a southern direction doing traffic enforcement
19 when the defendant drove by me in a Dodge Minivan southbound I
20 observed that the license plate illumination light that's on the
21 rear of your motor vehicle that illuminates the license plate was
22 extinguished and was not working So, I pulled out of the parking
23 lot after the defendant to initiate a traffic stop for that
24 offense

25 After I pulled out onto Highway 15, Coastal Saver at that

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON

49

1 intersection is fairly well lit So to confirm that the license
2 plate was out on his motor vehicle after I got a couple of hundred
3 feet out of that area, I extinguished my light Confirmed that the
4 light was out and then turned them back on again because if you're
5 driving behind the subject, it would - - it would make it appear
6 that it was working when it was not

7 So - - -

8 Q About what time of the day do you recall this was?

9 A Um, I can't recite the exact time but I believe it was right
10 around 8 30

11 Q And, ah, was this in Horry County? Did this happen in Horry
12 County?

13 A Yes, sir

14 Q I didn't mean to interrupt you

15 A That's okay

16 Q If, ah, let me hand you what's been marked State's Exhibit #4

17 A Uh-huh

18 MR HIXSON May I approach the witness, Your Honor?

19 Q Could you please take a look at that for me?

20 A Uh-huh

21 Q And could you describe that generally?

22 A This is a diagram of the entire area that was encompassed in
23 the traffic stop and subsequent arrest of the subject

24 Q Who created that diagram?

25 A I did

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON

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1 Q Is that a fair and accurate representation of the area we'll
2 be discussing?

3 A It's not to scale but it is a representation of the roadways
4 in general

5 Q Would that aid your testimony and help to avoid confusion of
6 the jury?

7 A Yes, sir

8 MR HIXSON At this time, Your Honor, the State would like
9 to allow the witness to refer to this

10 THE COURT Ms West, have you seen this?

11 MS WEST Yes, I have, and I have no objection to the
12 diagram

13 THE COURT Without objection

14 MR HIXSON Thank you, Your Honor

15 (Court Reporter accepts State's Exhibit #4, the diagram/sketch
16 into evidence)

17 MR HIXSON And we're referring to State's 4

18 THE COURT Alright, sir

19 Q Um, it's a little bit small but, ah, please describe please to
20 the jury if you can what transpired - - since - - I believe you got
21 behind the defendant to exercise a traffic stop

22 A On the bottom left of the diagram is Highway 15 and 9th Avenue
23 South where I was sitting stationary when the subject passed me
24 This bottom roadway is what I diagramed as Highway 15, and the road
25 going east and west here is Pridgen Road where the actual traffic

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON

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1 stop occurred

2 Um, as we traveled down Highway 15 was where I checked to make
3 sure that the license plate illumination light was out and
4 initiated a traffic stop at which time he turned east on Pridgen
5 Road and stopped on the side of the roadway just east of Highway 15
6 on Pridgen Road on the side of the roadway

7 Q Could you please continue, I guess, from the point of the
8 traffic stop?

9 A Okay

10 Um, after I confirmed that the light was out, I called my
11 dispatch and advised them of the license tag and the location that
12 I'd be doing the traffic stop at at which time I initiated my blue
13 lights and, um, do what I call barking the siren

14 When I initiate my blue lights, I take the siren and just
15 crank it into the on position for just a second to give an audible
16 illumination - - an audible sound to the driver that way indicating
17 if they weren't looking and seeing the blue lights in their
18 rearview mirror, they'd at least hear the noise and look up and be
19 able to see that they were - - that I was attempting a traffic stop
20 on them

21 Um, at which time we approached the intersection of Pridgen
22 Road and Highway 15, and he made a left-hand turn onto Pridgen Road
23 pulling off on the southern side of Pridgen Road off of the
24 roadway

25 Um, I pulled up behind him as I normally would during a

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON

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1 traffic stop, exited my motor vehicle and attempted to approach - -
2 or started to approach the subject's vehicle on the side of the
3 roadway

4 As I got to, um, towards the driver's side rear corner of the
5 motor vehicle, I was watching the vehicle and observed the subject,
6 the defendant in a white shirt in the driver's seat looking into
7 the rearview mirror at me in the rearview mirror at which time when
8 I reached the driver's side back corner of the motor vehicle where
9 the tail lamp was, the vehicle shifted into drive, and he took off
10 down Pridgen Road away from me at that time

11 Um, at that time, I ran back to my patrol vehicle, jumped in
12 and started after the subject down, ah, down Pridgen Road
13 eastbound, um, at which time Pridgen Road, um, on the diagram you
14 can see that as you go down Pridgen Road, it makes a ninety degree
15 turn south and heads toward 17th Avenue South

16 As you're traveling down Pridgen Road it makes that right-hand
17 turn and in the apex of that turn on the eastbound side of the road
18 is the entrance to the Carolina Cove Apartment Complex

19 As we were rounding that corner, the subject entered into
20 Carolina Cove and turned into the actual apartment complex there

21 The apartment complex makes - - has four buildings in the
22 center Um, there's basically a square driveway around the outside
23 of four interior buildings that the roadway connects You can
24 drive in a complete square around those four buildings

25 When we entered in on the south - - southwest corner of that

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON

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1 square on the northeast corner of that square directly diagonal to
2 that, there's an exit to 11th Avenue South that exits out of the
3 apartment complex in the opposite direction

4 Q Where is that represented on there?

5 A On the top left corner of the parking lot That's the exit to
6 11th Avenue South

7 We entered in the bottom right-hand corner on this diagram
8 technically So kitty-cornered to that is the exit to 11th Avenue
9 South when we entered in

10 Q Are you able to drive all the way through out back onto a city
11 street?

12 A You can drive directly back out onto the city streets and head
13 out to Kings Highway which is U S 17 Business

14 Um, at that time when he entered in to the - - to the complex,
15 I was a little bit of a distance behind him, and as we traveled
16 into the Carolina Cove Subdivision, he made a left turn, the
17 immediate first left turn into the - - that square, made the left-
18 hand turn, and I knew that from working my patrol shift and having
19 been there numerous times that if I continued straight and went to
20 the other corner, I could beat him to that other corner and
21 preferably cut off his route of escape through 11th Avenue South
22 when he was trying to escape through 11th Avenue South on the other
23 side

24 When he made a left-hand turn, he had to slow down and make
25 his left-hand turn and then slow down to make a right-hand turn

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON

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1 which, allowed me in that time to, um, gain the distance that I was
2 already behind him

3 So, when he was making his right-hand turn, I was just
4 cresting the corner of the - - where I would have made a left-hand
5 turn to follow him

6 As we went parallel through the - - through the parking lot,
7 I observed the van to my left as I was driving through the parking
8 lot I observed him as we passed the first building and then saw
9 the van between the gap between the first building and the second
10 building, then saw the van again between - - in the gap between the
11 second building and the third building, and then when I reached the
12 gap between the third building and the fourth building the van did
13 not appear, and the same subject, the defendant, was running from
14 between that building in a southeasterly direction

15 So, as you can see on the lines showing, basically, my line of
16 sight as we were driving through, the red line that goes off to the
17 left indicates where his vehicle was traveling The blue line
18 indicates where my vehicle was traveling, and as we traveled
19 parallel to each other those black lines indicate where I could see
20 the van, the same van traveling through the parking lot parallel to
21 the buildings through the parking lot

22 During that third break when the van didn't appear and the
23 defendant did running southeast through the parking lot towards
24 that fourth building, the fourth building, ah, the buildings aren't
25 square as you would look at them if I was driving through The

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON

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1 buildings aren't laid out square They're at diagonal angles to
2 each other like this So they blade facing the, ah, the direction
3 that he was

4 So as he was running toward the building the natural direction
5 to travel if he saw my patrol vehicle or just my experience knowing
6 that people running from me, they generally run in the opposite
7 direction of your patrol car So if he was running toward that
8 building, I was - - I would assume that he would turn and make a
9 left-hand turn along the edge of that building in an attempt to get
10 out - - away from my patrol car assuming that I would get out of my
11 patrol car and chase him on foot

12 So what I did was I continued around the square and headed him
13 off at the edge of that building at which time when I crested that
14 corner of that building, he was - - had stopped running and was
15 walking in the direction that I thought he would be going towards
16 the 11th Avenue South exit

17 I got out of my patrol vehicle, ordered him to the ground and
18 took him into custody at that time

19 Q Did you recognize the person that was - - was walking at that
20 time?

21 A Yes, sir

22 Q And who was that?

23 A The defendant

24 Q Was that the person you saw driving the van?

25 A Yes, sir, the person that was in the mirror

OFFICER TRUEX - DIRECT EXAMINATION BY MR. HIXSON

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1 Q And you took him into custody at that time?

2 A Yes, sir

3 Q And, ah, for what at that time?

4 A For numerous violations including reckless driving which would
5 have been his driving conduct after he fled from me on the traffic
6 stop, ah, driving through Carolina Cove which is a fairly well
7 populated apartment complex with people standing outside, um - - -

8 Q Now, after you place an individual - - generally speaking, if
9 you place an individual under arrest that has been driving a motor
10 vehicle - -

11 A Uh-huh

12 Q - - is that person able to drive that vehicle at that time?

13 A No, sir That - - that vehicle becomes in our care and
14 custody and control

15 Q What is your - - the department policy as it relates to
16 someone arrested and then they have a vehicle that you have to deal
17 with?

18 A Ah, we call Auto Body Works which is the city tow service We
19 subsequently inventory the motor vehicle for its contents, um,
20 related to anything that would be valuable in the motor vehicle so
21 that when the vehicle is towed, all of the contents that were in
22 the vehicle when it was towed are in the vehicle when they pick it
23 up, and that's our way of annotating that all of that property is
24 there

25 Q Did you, in fact, do an inventory search of this Dodge Caravan

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON

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1 on that day?

2 A Yes, sir

3 Q And could you please describe that scene for us?

4 A Immediately - - immediately inside the motor vehicle on the
5 center floorboard - - the Dodge Caravan had two bucket seats
6 There's no center console that runs down the middle

7 On the floorboard between the driver's seat and the front
8 passenger seat, there was a what I call a 'cookie" of crack
9 cocaine, a white off - - it's an off-white in color substance that
10 ends up testing later for the presence of cocaine, being crack
11 cocaine

12 Um, located that object in plain view on the floorboard
13 between the driver's side and the - - the driver's and passenger
14 seat on the floorboard

15 Um, next to that substance was a cell phone and then also in
16 the passenger compartment was a, ah, what we call a joint or a
17 burned part of a joint which was marijuana wrapped in brown paper
18 commonly' used to smoke marijuana

19 MR HIXSON May I approach the witness, Your Honor?

20 Q I show you what has been marked - - for demonstrative purposes
21 only an exhibit, State's Exhibit #1 Alright

22 THE COURT Proceed

23 Q Do you recognize that item?

24 A Yes, sir

25 Q And what does that appear to be to you?

OFFICER TRUEX -- DIRECT EXAMINATION BY MR HIXSON

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1 A That is the cookie of crack cocaine that I recovered from the
2 motor vehicle from the floorboard

3 MR HIXSON Um, and I'm referring to what's been marked as
4 State's Exhibit #1 at this time, Your Honor

5 Q That appears to be it?

6 A Yes, sir

7 Q Now, after you see that, I think you indicated a cell phone
8 also?

9 A Yes, sir

10 Q Um, did you ascertain the ownership of the cell phone?

11 MS WEST Your Honor, I'm going to object, and I might
12 need to have a sidebar on that

13 THE COURT Yes I'll be glad to listen to you

14 (Bench conference off record but in the presence of the jury)

15 MR HIXSON Beg the Court's indulgence for a very brief
16 moment

17 I apologize

18 Q Now, during the course of your search inventory in impounding
19 the vehicle and arresting the driver, did you locate a cell phone?

20 A Yes, sir

21 Q Alright

22 Please describe what you saw on that cell phone Where was it
23 located?

24 A It was located sitting right next to the substance that I
25 recovered from the motor vehicle and while looking at the cell

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON

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1 phone, the display picture on the cell phone that displays on the
2 phone on at any time was a picture of the defendant, his face
3 cropped approximately just a normal face picture of the defendant
4 That was located directly next to the substance

5 Q For - - for those that may not be that technically astute as
6 in myself, what do you mean by a picture of the - - can you
7 describe that?

8 A The phone was a camera phone and allows you to take pictures
9 with the phone, and when you have a phone like that, the majority
10 of the phones will allow you to assign the pictures or send the
11 pictures, and when I say, "assign the pictures" meaning that you
12 can assign it to display on your phone when it's not being used as
13 a call

14 It's called "wallpaper" like the wallpaper on the desktop of
15 your computer or an item like that, but that's how it was
16 displayed In the background of your normal startup screen it was
17 the picture of the defendant

18 Q So, the user of the cell phone, in essence, can personalize it
19 - -

20 A Correct

21 Q - - if a person wants to?

22 A Correct

23 Q Was that taken? Where's the cell phone? What happened to
24 the cell phone?

25 A The cell phone was inventoried on the tow sheet and left in

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON

60

1 the motor vehicle

2 Q Now, did you by chance run, in essence, a license search on
3 the van?

4 A Yes, sir

5 Q And what - -what came back on that?

6 A The license search came back out of - - the subject out of
7 Hemingway I'm - - I'd have to look at the lady's direct name
8 Um, however, the address that the van came back registered to was,
9 ah, was in, I believe, ten house numbers of the subject and on the
10 same street in Hemingway Um, I don't remember the exact - - I
11 was physically looking at the license plate tag but, um, it was
12 within the same block of the subject's residence that was the owner
13 of the motor vehicle

14 I also subsequently called the owner of the motor vehicle

15 MS WEST I'm going to object to any hearsay that he
16 might attempt to say

17 MR HIXSON Absolutely

18 Q Officer, you can't testify to anything that anybody else said
19 other than the defendant but that's a different issue

20 A Alright

21 Q So, just don't talk about hearsay about what somebody else
22 said

23 A Okay

24 Q But I can ask you Did you follow up with the owner of the
25 vehicle?

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON

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1 A Yes, sir

2 Q And did you have any indication to believe that that vehicle
3 was stolen in anyway?

4 A Not at that time

5 Q Based on that was it your understanding that the defendant was
6 properly in possession of that vehicle?

7 A Correct

8 Q Now, ah, let's go back briefly to the point that you arrested
9 the defendant Was he wearing the same thing that you saw in the
10 rear side view mirror?

11 A Yes, sir

12 Q And what was his demeanor?

13 A When I approached the subject, I made him lie on the ground
14 upon immediately making to him, with him The subject was
15 slightly out of breath, um, from the running that he had just
16 incurred of the short distance, um, and was just very slightly out
17 of breath from running that distance

18 Q Now, subsequent to that arrest, do you search the defendants
19 you place under arrest?

20 A Yes, sir

21 Q And did that search reveal anything?

22 A Yes In the right front pocket of the subject was the key to
23 the motor vehicle, the Dodge Caravan

24 MR HIXSON My approach, Your Honor?

25 Q Do you recognize that?

OFFICER TRUEX - DIRECT EXAMINATION BY MR HIXSON

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1 A Yes That's the key that was recovered from his pocket

2 Q Is that a key to the van?

3 A Yes, sir

4 MR HIXSON May I place State's #3 into evidence, Your
5 Honor?

6 THE COURT Okay

7 MS WEST Your Honor, I don't know if I have a chain here
8 on this one, ah, but he didn't say where he got it from He
9 didn't say where he put it

10 THE COURT Well, the jury - - there's testimony in the
11 record for the jury's consideration as to where he said he got it
12 from I'll leave that to the jury to determine

13 MS WEST I'd like to object to that ruling

14 THE COURT Sir?

15 MS WEST I'd like to object to that ruling, Your Honor

16 MR HIXSON Your Honor, the State would argue that it's not
17 non- *** (unintelligible) evidence We don't have to prove a
18 chain on it

19 THE COURT My view is it's admissible for the jury's
20 consideration

21 MR HIXSON Thank you, Your Honor

22 (Court Reporter accepts State's Exhibit #3, key, into
23 evidence)

24 Q Briefly, Officer, you're an official but could you please
25 describe, ah, the interior of the vehicle, the substance that you

OFFICER TRUEX - CROSS EXAMINATION BY MS WEST

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1 saw, how was that packaged?

2 A It was packaged, ah, in a cookie form with a small piece
3 broken off of it, and it was contained in a clear plastic baggy

4 Q So, you could see through the packaging?

5 A You could see through it It was in plain view when you
6 looked in the motor vehicle

7 Q Ah, when you -- when you were sitting in the van driving the
8 vehicle --

9 A Correct

10 Q -- would you be able to see that crack cocaine where, ah, in
11 plain view if you were driving that vehicle?

12 A If you were sitting in the motor vehicle and if at any time
13 you looked down, you would see that baggy there with the substance
14 in it It was in -- it was sitting on top of the floorboard in
15 plain view, yes, sir

16 MR HIXSON Your Honor, I have no further questions of this
17 witness at this time

18 Please

19 THE COURT Ms West, you may examine

20 CROSS EXAMINATION BY MS WEST

21 Q Officer Truex, you said that you were a Traffic Officer for
22 about four years Is that correct?

23 A Yes, sir

24 Q And here in Horry County or somewhere else?

25 A In Myrtle Beach, South Carolina, in Horry County

OFFICER TRUEX - CROSS EXAMINATION BY MS WEST

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1 Q And you indicated that on the night in question you were
2 sitting at a convenience store?

3 A Yes, the Coastal Saver at the intersection of 9th Avenue South

4 Q In a marked or unmarked vehicle?

5 A Marked vehicle

6 Q Were your lights on or off?

7 A My headlights were off and my blue lights were off

8 Q I didn't hear you

9 A My headlights were off and my blue lights were off

10 Q And didn't you say and the registration light - - the tag
11 registration light was off Right?

12 A Yes, ma'am

13 Q Now, you indicated at that point you cut the lights on and
14 went after him?

15 A And pulled out onto Highway 15 behind him, yes, ma'am

16 Q With your blue lights and your siren?

17 A No, ma'am

18 Q Ah, just your headlights?

19 A Just my headlights at that time, yes

20 Q So at that point the person did not know that you were
21 following him?

22 A Correct

23 Q Now, at what point did you put on your blue lights and siren?

24 A Um, after I double-checked to make sure that the license plate
25 illumination light was out and called in my traffic stop to my

OFFICER TRUEX - CROSS EXAMINATION BY MS WEST

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1 dispatch, the area where I was at and the license tag on the motor
2 vehicle

3 Q When you say you called in a traffic stop, did you just say,
4 'I'm making a traffic stop'?

5 Did you say, I'm making it for speeding I'm making it for
6 a tag light'?

7 Did you say, "I'm making a traffic stop'?"

8 A Just my number, traffic stop and then the license plate and
9 the location

10 Q Now, the traffic vehicles, are they the ones that have those
11 cameras that come on automatically when the lights and the sirens
12 come on?

13 A Yes, ma'am All of our vehicles are equipped with that

14 Q And did your vehicle have a light and a siren and a camera?
15 Does it have a camera?

16 A Yes, ma'am

17 Q Yours had a camera on that night?

18 A Yes, ma'am

19 Q And was your camera working that night?

20 A Yes, ma'am

21 Q And do you have any pictures to show that the light, ah, that
22 illuminates the tag was off?

23 A No, ma'am

24 Q And why is that?

25 A Ah, the tape was accidentally taped over, ah, during the course

1, of my tour of duty over the next, ah, I don't know when it actually
2 occurred over the next period of time after that the tape was
3 accidentally recycled back into my, um, - - all my tapes that I use
4 for, ah, traffic stops in my normal course of duty, um, it was
5 somehow accidentally recycled back into that section of tapes

6 Q Okay

7 Now, so, you effected an arrest on October 10th and the tape
8 that would show the stop, the chase and all of that, you did what
9 with it?

10 A It was October 9th, and - - -

11 Q The 9th, and you did what with it?

12 A It was put back into my section of tapes, accidentally was left
13 in my - - it was left in my actual recorder

14 Q I'm asking Is there protocol like you stop somebody, you've
15 got a tape? Do you have a protocol that you, Officer Truex,
16 follow with your tapes? Do you put the tapes somewhere? Did
17 someone else do something with the tape?

18 A No I'm the one with the care, custody and control of it

19 Q Okay

20 So, you had care, custody and control of the tapes, and what
21 did you do with that tape?

22 A Ah, it was just continued to be used and then, subsequently,
23 obviously, put back in the recycled version of my tapes that are
24 then rewound and taped over

25 Q Okay

OFFICER TRUEX - CROSS EXAMINATION BY MS WEST

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1 So we don't have a copy of the tape showing what happened that
2 night?

3 A No, ma'am

4 Q A tape would have been made We just don't have it?

5 A Correct

6 Q Okay

7 Now, you also said at some point you ascertained ownership if
8 the vehicle?

9 A With the owner of the motor vehicle, yes, ma'am

10 Q Is Mr Goss the owner of the vehicle?

11 A No, ma'am

12 Q You also indicated that the vehicle was inventoried?

13 A Yes, ma'am

14 Q Sounded like you said you inventoried?

15 A I did initially

16 Q Okay

17 So when you initially inventoried it, did you take any
18 pictures?

19 A No, ma'am

20 Q Of anything?

21 A No, ma'am

22 Q Did anybody take any pictures of anything in the vehicle?

23 A No

24 Q Okay

25 So when you say you found a cell phone?

OFFICER TRUEX - CROSS EXAMINATION BY MS WEST

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1 A Yes, ma'am

2 Q Why did you ascertain it was the defendant's?

3 A Because the wallpaper on the cell phone had his picture on it
4 which I held up to his face sitting in the back of the motor
5 vehicle to confirm that it was him

6 Q Now, after four and a half years of police work, did you do
7 anything else to actually ascertain that it was his cell phone?

8 A No, ma'am

9 After - - I asked him if it was his cell phone, and he
10 adamantly denied that it was him However, I mean, it was his
11 picture

12 Q But I asked you a different question Did you, Officer
13 Truex, do anything to ascertain that that was his cell phone?

14 A Besides asking him? No, I wouldn't have anything else to do

15 Q No Like call the phone company and find out what - - whether
16 or not it was his phone?

17 A No, ma'am

18 Q Ask for telephone records?

19 A There - - there's no reason for me to keep the phone It's
20 not evidence in the case However - - -

21 Q Except for today you're actually testifying it's, in fact,
22 crucial evidence in this case You're saying you know that it was
23 his dope because his camera with his picture on it was next to it
24 Right?

25 A No, ma'am I said that his picture was on the phone that was

OFFICER TRUEX - CROSS EXAMINATION BY MS WEST

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1 next to the - - -

2 Q Right

3 A - - next to the - -

4 THE COURT Okay Let him answer

5 A - - next to the narcotics Not necessarily that it was his,
6 that he owned the phone

7 Q You didn't say that to these jurors?

8 A I said that I observed his picture on the phone that was in
9 the motor vehicle

10 Q Alright

11 And so you're using that as part of your case to establish it
12 was his phone, number one, which you haven't established, and his
13 drugs Correct?

14 A I'm not understanding what you're saying

15 Q Okay

16 You said that in the vehicle we found the drugs and next to it
17 a phone with the defendant's picture on it Okay?

18 A Correct

19 Q Okay

20 Meaning that it had to be his phone?

21 A I never said that

22 Q Okay

23 And you never established that, in fact, it was his phone
24 through any independent procedure?

25 A No, ma'am Just that I observed his picture was on the

1 wallpaper of the phone

2 Q Did you take a picture of that cell phone?

3 A No, ma'am

4 Q Because?

5 A Because - - there's no reason for me to

6 Q Okay

7 Now, you also said that as part of the inventory, ah, - - at
8 any point did you take - - how long did this vehicle stay
9 impounded?

10 A I have no idea, ma'am Once it's released to the tow company,
11 it's up to them to release it to the owner

12 Q When did you realize that your picture of what happened that
13 night was gone?

14 A Um - - to be honest with you, I'm not exactly sure when Ah,
15 I know in talking to Mr Hixson was the first time I realized that
16 upon checking for it that it was not there

17 Q Okay

18 And at any point did you - - do you have cameras in your
19 possession in your vehicle other than the camera that is mounted to
20 your car?

21 A No, ma'am

22 Q Okay

23 Um, at any point did you when you inventoried the vehicle go
24 back and take a picture of subsequent to the arrest the car to show
25 that the tag light was out?

OFFICER TRUEX ~ CROSS EXAMINATION BY MS WEST

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1 A No, ma'am

2 Q Now, as a part of the inventory they talk about damage and
3 remarks Did you make this report?

4 A Officer West actually wrote down the actual report

5 Q In your presence or outside of your presence?

6 A Ah, the actual - - which part of it? The damage part was
7 outside of my, um, me being there The actual inventory part
8 would have been when I was there

9 Q Now, under the damage part, it doesn't say anything about a
10 tag light out, does it?

11 A Correct That's not damage to the motor vehicle

12 MR HIXSON Your Honor, I just want to know if Ms West is
13 going to introduce that into evidence or going to refer to that
14 without it being in evidence

15 THE COURT I'll let her make that decision

16 MR HIXSON Thank you, Your Honor

17 MS WEST Thank you, Your Honor

18 Q It doesn't say anything about the tag light being out?

19 A Correct That's not damage to a motor vehicle That's - - -

20 Q Well, it says something about a brake light?

21 A And I can't testify whether or not that brake light was broken
22 or whether it was out

23 Q So, now, we have your camera unavailable, taped over
24 accidentally or misused accidentally No photographs to establish the
25 tag light Right?

OFFICER TRUEX - CROSS EXAMINATION BY MS WEST

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1 A It's not standard protocol for us to take pictures of, ah,
2 that would - - that would have actually been indicated on the tape,
3 ah, with the in-car video tape it would have been displayed on
4 there

5 Q I agree

6 Now, but we don't have it Right?

7 A No, ma'am

8 Q Now, were you the officer that actually gave tickets to the
9 defendant the night the incident occurred?

10 A Yes, ma'am

11 Q Did you give a ticket for no tag light?

12 A No, ma'am

13 Q No?

14 A No

15 Q And that would be because?

16 A It was an oversight on my part during the issuance of the
17 summons that I didn't issue a summons for the tag light being out

18 Q So, the camera's out and you definitely didn't give a ticket
19 for the tag light?

20 A There was no summons issued for that No, ma'am

21 Q Would that have been done by another officer or would that
22 have been done by you?

23 A No That would be done by me, by the officer that stopped
24 him

25 Q Okay

OFFICER TRUEX - CROSS EXAMINATION BY MS WEST

73

1 Um, now let's go to on the night this happened, you said you
2 pulled out of a parking lot and established that the tag light was
3 out and then put on your blue light and your siren and somebody in
4 that van pulled over to the side?

5 A Correct

6 Q You said you got maybe as far as the back?

7 A If I could have reached out, I would have been able to touch
8 the tail light Yes, ma'am

9 Q And you saw a face in the mirror of the vehicle?

10 A Yes, ma'am

11 Q A face in the mirror of the vehicle Right?

12 A Yes, ma'am

13 Q But then you said you saw his clothes?

14 A The white shirt Yes, ma'am

15 Q In the mirror of the vehicle?

16 A Yes, ma'am Around the neck area

17 Q Around the neck area?

18 A Uh-huh

19 Q So, are we talking like the same kind of mirror I have on my
20 car about this big?

21 A It was about that big Yes, ma'am

22 Q And you said you saw his shirt?

23 A Yes, ma'am

24 Q Okay

25 So - - and the face His whole face and shirt?

OFFICER TRUEX - CROSS EXAMINATION BY MS WEST

74

1 A Not his whole face but whatever part of it that I could see to
2 recognize it?

3 Q What part did you see?

4 A The - - from the eyes To be able to see and recognize his
5 face

6 Q Alright

7 And then you said, ah, well, let me see if I'm right on this
8 other part

9 Did you actually lose sight of the vehicle?

10 A For a brief moment as he arced the corner around Pridgen Road,
11 um, as I was attempting to catch up to him, ah, but as I arced the
12 corner and regained visual contact with him, the same vehicle was
13 traveling in the same direction at the high rate of speed that he
14 was traveling into the - - -

15 Q So my question Did you actually lose sight of the vehicle,
16 the answer was?

17 A For a moment, yes

18 Q Okay

19 And at any - - did you - - could you tell whether there were
20 one or two people or how many people were in there?

21 A From what I observed on the traffic stop and my lights
22 illuminating the vehicle, there was - - I did not observe a second
23 person in that vehicle

24 Q And about when it went by you initially when you, ah, were
25 sitting at the convenience store?

OFFICER TRUEX - CROSS EXAMINATION BY MS WEST

75

1 A No, ma'am

2 Q No, ma'am, you couldn't ascertain or no, ma'am, you didn't see
3 anybody else?

4 A No, ma'am, I didn't see anybody else

5 Q But, then, at some point you lost sight of the vehicle Is
6 that correct?

7 A For a brief moment around that corner, yes

8 Q Okay

9 When you, in fact, arrested the defendant, he wasn't in the
10 vehicle?

11 A No, ma'am He was in the complex running

12 Q But he wasn't in the vehicle?

13 A Correct

14 Q Okay

15 And at that point your identification of him was based on the,
16 ah, what you saw in a rearview mirror?

17 A Uh-huh

18 Q And a white shirt?

19 A Yes, ma'am

20 Q Key, there's a key

21 You said you took a key from this defendant?

22 A From his right front pocket

23 Q And did you, in fact, ascertain that it was a key to the
24 vehicle?

25 A He told me that it was a key to the vehicle

OFFICER TRUEX - REDIRECT EXAMINATION BY MR HIXSON

76

1 Q Did you ascertain that it was a key to the vehicle?

2 A Yes

3 Q How did you do that?

4 A I asked him He told me that it was the key to the motor
5 vehicle

6 Q Did you actually put it in the - - -

7 A No, ma'am, not at the time

8 MS WEST Court's indulgence

9 I have no further questions of this witness, Your Honor

10 MR HIXSON Briefly, Your Honor

11 THE COURT Yes, sir

12 REDIRECT EXAMINATION BY MR HIXSON

13 Q There's been a lot of discussion about inventory - -

14 A Uh-huh

15 Q - - about that

16 Um, when you do an inventory and you take into custody and
17 it's your responsibility, do you maintain custody and control of
18 that item, whatever's taken?

19 Q Like an item that we seized from the vehicle?

20 A Yes

21 Q For instance, would you maintain custody and control and
22 protect the integrity of the substance in here that you took the -

23 -

24 A Yes

25 Q - - crack cocaine

OFFICER TRUEX - REDIRECT EXAMINATION BY MR HIXSON

77

1 Ah, now, what is really the purpose of an inventory sheet or
2 log? What is that?

3 A To keep track of the items that are in the motor vehicle, ah,
4 for the person that owns the vehicle or that subsequently recovers
5 the vehicle so that no items are missing or anything of value is
6 not annotated on the sheet so that, ah, you know what the vehicle
7 when you stopped it and know what's in the vehicle when they give
8 it back, when the tow company gives it back to the subject

9 Q Are sometimes - - are there concerns over liability sometimes
10 with - - -

11 MS WEST Your Honor, I object to leading

12 THE COURT I will permit that

13 Q Are there concerns over liability sometimes - - in impounded
14 vehicles?

15 A Yes That's why the department has a policy in place

16 Q Okay

17 And now the - - if the item is taken in the inventory or
18 placed into evidence versus impound lot, what are those procedures
19 like?

20 A It would be annotated on the actual tow sheet that - -
21 there's a section on the tow sheet that says, 'Items removed from
22 the vehicle "

23 It's annotated on there, and then it's, subsequently, the
24 items are placed into our Property and Evidence Section with - -
25 there's either a Property and Evidence Section for all items or

OFFICER TRUEX - REDIRECT EXAMINATION BY MR. HIXSON

78

1 there's a section for, specifically, drugs and money

2 Q Now, you mentioned earlier Are you a detective?

3 A No, ma'am No, sir

4 Q You're a Traffic Officer?

5 A Yes, sir

6 Q Ah, and so your main responsibility lies in what?

7 A Ah, working traffic collisions and issuing summonses for
8 traffic violations

9 Q Are you provided with photographic equipment, that type thing?

10 A No No, sir

11 Q Subsequently, investigate the case?

12 A No, sir If we need that, we can - - the supervisors have
13 digital cameras or they can call Crime Scene out from home

14 Q And approximately how many traffic stops do you think you made
15 during shift? That's a tough question to answer

16 A Approximately on a normal day, ah, fifteen

17 Q So, traffic - - initially, you maintain the video That's
18 something that happens pretty constantly for you?

19 A There's a lot - - we go through a lot of tapes

20 Q Now, the evidence - - so you're in a narcotics case in this
21 one Correct?

22 A Correct

23 Q So is there difference things you have to do for the evidence
24 you admit into this one?

25 A No I - - the same thing We do the same thing for every

OFFICER TRUEX - REDIRECT EXAMINATION BY MR HIXSON

79

1 case There's a standard for everything

2 Q Okay

3 The - - how did you maintain custody and control of this
4 substance in this case

5 A I kept it in my possession until I returned to the, ah, police
6 department at which time I secured it in an Horry County Best
7 packet which is the packet that we label all drugs in or secure it
8 in That's annotated with a number on it so we can identify it as
9 to what the actual specific substance was, and then it's submitted
10 into Property and Evidence to be sent off for testing and kept

11 Q And where is the last part of that chain that you have?
12 Where does that end for you as it relates to narcotics?

13 A Placing it into what we call a Drug Lock Box It's a hopper,
14 a secured hopper in our jail that you place it in, and it's removed
15 by a Property and Evidence Technician normally

16 Q So does the - - the - - the general public have access to
17 these things?

18 A No, sir

19 Q Do most officers have access to that?

20 A Nobody has access to it except for specified people with a key
21 would - - I believe it's only Property and Evidence but I, you
22 know

23 Q And is that to maintain the integrity of the item?

24 A Yes, sir Maintain the chain of custody

25 Q And did you, in fact, maintain the integrity of it?

OFFICER VAN HOUTEN - DIRECT EXAMINATION BY MR HIXSON

80

1 A Yes

2 MR HIXSON I have no further questions

3 THE COURT Alright

4 Anything on further redirect?

5 MS WEST Nothing further

6 THE COURT You may come down, Officer

7 OFFICER TRUEX Thank you, Your Honor

8 (The witness leaves the witness stand)

9 THE COURT You may call your next witness

10 MR HIXSON Officer Christina Van Houten from the Myrtle
11 Beach Police Department

12 (The witness takes the witness stand)

13 OFFICER CHRISTINA VAN HOUTEN being duly sworn,
14 testifies as follows

15 CLERK OF COURT Please have a seat

16 Please state your name and spell it for the record

17 OFFICER VAN HOUTEN Christina Van Houten, C-h-r-i-s-t-i-
18 n-a V-a-n H-o-u-t-e-n

19 DIRECT EXAMINATION BY MR HIXSON

20 Q Good morning, ma'am

21 A Good morning

22 Q Would you please tell the jury what you do for a living?

23 A I'm a Property and Evidence Clerk at Myrtle Beach Police
24 Department

25 Q And what in the world is that?

OFFICER VAN HOUTEN - DIRECT EXAMINATION BY MR HIXSON

81

1 A That is a custodian of evidence It could be evidence or
2 found property, and we collect evidence from where officers have
3 dropped evidence or found property into lock boxes It's a normal
4 part of our duties

5 I collect the evidence Take it to my office, ah, enter it in
6 the computer and put it in a cash vault where it stays until the
7 officer tells me what he wants to do with it

8 Q Did you have an opportunity to come in contact with some
9 evidence that was generated in the case we're referring to, and
10 that's The State v Jamie Goss?

11 A Yes

12 MR HIXSON May I approach the witness, Your Honor?

13 THE COURT Yes, sir

14 Q Let me show you what's already been marked It's not in
15 evidence yet It's State's Exhibit #1

16 I can't publish this to the jury yet

17 A Okay

18 Q Do you recognize that item?

19 A Yes

20 Q And did you have an opportunity to handle that item at some
21 point in time?

22 A Yes

23 Q And could you please tell the jury what you did with that?

24 A Ah, it, ah, it first was dropped in the drug drop by the
25 officer I picked it up from the drug drop as a normal part of my

OFFICER VAN HOUTEN - DIRECT EXAMINATION BY MR. HIXSON

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1 duties I collect drugs every morning from this drug drop that's
2 in the jail, and, ah, there is another technician that has access
3 to it and myself

4 I collected the drugs, um, took it to my office Entered it
5 in the computer and, um, put it in a bin ready to go over to the
6 Horry County Lab where it would be tested

7 Q Now, are these items just loose and free in these bins or how
8 are they packaged?

9 A No

10 The drugs were in what's called an Horry County Best package
11 It's a manila envelope Inside is a sealed plastic bag with a blue
12 border It has a number There's a number on the actual plastic
13 bag that matches the number on the manila envelope, and the drugs
14 had been sealed in that plastic bag with the blue border

15 Q Are things written on the packaging for any purpose?

16 A There is - - there is a, um, I believe the date of the
17 incident and the officer's name in print, and he had signed the
18 package

19 Q Are there package numbers of any kind?

20 A There is an Horry County Best number It would be H00 and
21 then whatever the next number of the package - - that the officer
22 picked up

23 Q Okay

24 A And that's imprinted in blue on the package

25 Q In this area Is that correct?

OFFICER VAN HOUTEN - DIRECT EXAMINATION BY MR HIXSON

83

1 A Yes

2 Q Did you maintain the integrity of this bag the whole time it
3 was in your possession?

4 A Yes, I did

5 Q And did you protect the integrity to make sure no one tampered
6 with it or anything?

7 A Yes

8 Q What did you subsequently do with this item?

9 A I took it to the Horry County Lab where the chemist, um, I
10 signed it over to her There's a chain of custody sheet I signed
11 the chain of custody She signed the chain of custody sheet that
12 shows that she was receiving it from me, and I left it with her

13 Q And did you receive it from Officer Truex?

14 A From the drug drop where he had dropped it He didn't hand it
15 to me It went into the drug drop

16 Q And then you handed it when it was in your custody and control
17 to Lisa Floyd?

18 A That's right

19 Q Okay

20 MR HIXSON I have no further questions, Your Honor

21 MS WEST No questions

22 THE COURT Alright

23 Come down Thank you

24 (The witness leaves the witness stand)

25 MR HIXSON Your Honor, at this time the State would call

MS. FLOYD DIRECT EXAMINATION BY MR. HIXSON

84

1 Lisa Floyd of the Horry County Police Department, Drug Lab

2 (The witness takes the witness stand)

3 LISA FLOYD, being duly sworn, testifies as
4 follows

5 CLERK OF COURT Please have a seat

6 State your name and spell it for the record

7 MS FLOYD Lisa Floyd, L-i-s-a F-l-o-y-d

8 Q Good morning, ma'am

9 A Good morning

10 Q Would you please tell the jury what you do for a living?

11 A I run the Horry County Police Department Regional Drug
12 Analysis Laboratory

13 Q And could you please describe for the jury what that resource
14 is?

15 A Ah, we are a laboratory open to the agencies to the Horry and
16 Georgetown Counties They can submit any item that they believe is
17 a controlled substance to me for testing, and then I return a
18 report to them that states whether or not it is

19 Q And when you say "controlled substance" what do you mean by
20 that?

21 A Something that they suspect that is controlled by or which is
22 a controlled substance by DEA, drugs or they can also submit things
23 that they might think are poisons, anything that may have an
24 illegal use

25 Q Okay

MS FLOYD - DIRECT EXAMINATION BY MR HIXSON

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1 Briefly, what type of analysis do you do on, say in a
2 situation like this where it's allegedly crack cocaine?

3 A Um, the general procedure for any item that I receive is it
4 gets a type of presumptive testing, and as an example for crack, I
5 would take it and do a couple of color tests on it and get a
6 presumptive result which would indicate to me that yes, it is or
7 no, it isn't potentially going to be crack cocaine, and based on
8 those presumptive results, then I do what's called a confirmatory
9 analysis, and that's done with a gas chromatograph with a mass
10 selective detector which is a standard forensic instrument and is
11 used across the nation

12 Q That seems like a highly technical type area Do you any
13 training in order to be able to hold the job that you have?

14 A Um, yes I trained for fourteen weeks with the Spartanburg
15 County Sheriff's Office Forensics Lab with a former SLED Agent He
16 use to work as a drug chemist at SLED

17 Q Do you have any specialized education or something that you
18 have to be able - - for you to be able to do this?

19 A I have a Bachelor of Science Degree from Clemson University in
20 Biochemistry and approximately twenty-four' hours in Biochemistry
21 from Clemson as well

22 Q And how about the practical experience? How long have you
23 been in that position? I think you indicated that earlier and
24 have you testified in court also?

25 A I have testified in court over ten times previously, ah, I

MS FLOYD - DIRECT EXAMINATION BY MR HIXSON

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1 worked in the lab since September of 2002, and I've been a chemist
2 for over nine years

3 MR HIXSON At this time, Your Honor, the State would move
4 the witness, Lisa Floyd, to be presented to the jury as an expert
5 in the area of controlled substance chemical analysis

6 THE COURT She is qualified as an expert having testified
7 in this and other courts of this State So she is qualified

8 MR HIXSON Thank you, Your Honor

9 Q Did you have an opportunity to test any substance submitted to
10 you in this case, and we're referring to The State v Jamie Goss?

11 A Yes, I did

12 Q Did you, in fact, test any of those items, and, specifically,
13 let me - - let you take a look at what's been marked for exhibit
14 only as State's 1

15 A Yes, sir I recognize the lab number

16 Q Okay

17 Um, did you, in fact, take custody and control of this from -
18 - from, ah, Myrtle Beach Police Department from Christina Van
19 Houten?

20 A Yes, I did

21 Q And while you had it, did you maintain the integrity of it
22 prior to testing?

23 A Yes It was stored in a secure facility

24 MR HIXSON Your Honor, at this time the State would move
25 State's #1 into evidence

MS FLOYD - DIRECT EXAMINATION BY MR HIXSON

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1 MS WEST I have no objection at this point

2 THE COURT Yes, sir

3 (Court Reporter accepts State's Exhibit #1 into evidence)

4 Q Now, Ms Floyd, I believe - - did you perform testing on
5 that?

6 A Yes, I did

7 Q And based on that were you able to render an expert opinion as
8 it relates to what that substance is?

9 A Um, yes The off-white rock substance was found to be cocaine
10 and a base one commonly referred to as crack cocaine Um, the
11 weight of that substance was 12 13 grams which is 187 16 grains

12 Q Did you take that opinion and render that into any type of
13 writing or report?

14 A Yes, sir A report was issued for this lab number

15 MS WEST No objection

16 MR HIXSON Your Honor, I'm approaching the witness with
17 State's Exhibit #2

18 Q Do you recognize that?

19 A Yes It is a copy of the original report

20 Q And that is - - that is a legitimate copy of it?

21 A Yes, it is

22 MR HIXSON At this time the State would move State's 2
23 into evidence

24 MS WEST No objection

25 THE COURT Without objection

THE STATE RESTS

88

1 (Court Reporter accepts State's Exhibit #2, drug report, into
2 evidence)

3 Q And what - - and what are the finding embodied into that
4 written report also?

5 Can you just reiterate what the findings of that report
6 indicate? I'm sorry

7 A It was cocaine in a base form commonly referred to as crack
8 cocaine, and the weight was 12 13 grams or 187 16 grains

9 MR HIXSON Your Honor, I have no further questions of this
10 witness

11 MS WEST I have no questions of this witness

12 THE COURT Alright

13 You may come down

14 (The witness leaves the witness stand)

15 MR HIXSON Bet the Court's indulgence, briefly

16 Your Honor, at this time the State of South Carolina rests

17 THE STATE RESTS

18 THE COURT Alright, sir

19 Ladies and gentlemen, Foreman, this would be a good time to
20 take the morning break, and we'll have some refreshments and coffee
21 for you

22 It's 11 00 Please go to your jury room I'll be calling you
23 back in about fifteen minutes

24 Now, listen If anybody needs to smoke, I will have them go
25 outside in the presence of a bailiff and let them have the

MOTIONS AND RULING OF THE COURT

89

1 opportunity to smoke

2 Thank you

3 (The jury retires to the jury room at 11 04 a m)

4 MOTIONS AND RULING OF THE COURT

5 THE COURT Alright

6 Anything further - - outside the presence of the jury - - any
7 further motions at this time on behalf of the State?

8 MR HIXSON No, Your Honor

9 THE COURT How about it from the defendant?

10 MS WEST Not just - - well, no, Your Honor Well, the
11 standard motions for a directed verdict

12 THE COURT Alright, sir

13 Obviously, I would - - it's a question for the jury

14 Let me ask you this

15 You now would be ready to present your defense?

16 MS WEST Well, yes

17 Do you want to talk to my client?

18 THE COURT Does he intend to testify?

19 MS WEST No, he does not, Your Honor

20 THE COURT Alright

21 CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT

22 THE COURT Mr Defendant, I have previously told the jury
23 in my initial charge to them that you are absolutely considered you
24 innocent and the State would have to prove you guilty if at all by
25 evidence unanimously beyond a reasonable doubt

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 90

1 I, of course, at the appropriate time will emphasize those
2 instructions again

3 Now, you are at that stage in this case where you have the
4 right, first, to testify, and, secondly, to present any witnesses
5 that you desire on your behalf

6 Do you understand that?

7 Sir? You need to say yes or no

8 MR GOSS Yes, sir I'm sorry

9 THE COURT Alright

10 So that she - - -

11 Now, with reference to your right to testify, you have the
12 absolute right to get on this stand and testify under oath to be
13 examined by your attorney and to be also examined by the State's
14 attorney That's your absolute right

15 You equally have an absolute right to remain silent and not
16 testify That's your constitutional right

17 If in the event you elect not to testify, I would charge the
18 jury that the fact that you did not testify cannot and must not be
19 used against you in any way I would charge the jury that the fact
20 that you did not testify must not even enter into their
21 deliberations in the jury room

22 Do you understand that?

23 COURT REPORTER Your Honor, I need him to speak

24 MR GOSS Yes, sir

25 COURT REPORTER Thank you

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 91

1 THE COURT Please say yes or not We can't get a nod

2 MR GOSS Yes, sir I'm sorry

3 THE COURT Alright

4 Now, obviously, you would discuss the issue of testifying or
5 not testifying with your attorney, Ms West, but the final decision
6 to testify or not to testify rests with you

7 You understand?

8 MR GOSS Yes, sir

9 THE COURT I have had defendants subsequent to a trial say
10 to the Court of Appeals, "Well, my attorney wouldn't let me
11 testify "

12 I use that as an example but your attorney cannot not let you
13 testify I don't say to you that you should or should not The
14 only thing I say to you is, sir, that that question relates
15 ultimately to you and to you alone

16 Do you understand that?

17 MR GOSS Yes, sir

18 THE COURT Alright

19 Now, do you have any questions about this issue, and I'll be
20 glad to answer them for you at this time? Any question about your
21 right to testify or not to testify?

22 MR GOSS No, sir

23 THE COURT Alright

24 Ms West, is there any further interrogations that you would
25 have me make of this defendant on this important issue?

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT

92

1 MS. WEST No, Your Honor

2 THE COURT Can you tell me, then, at this time whether or
3 not you propose to put up any testimony?

4 MS WEST No testimony

5 THE COURT Alright

6 Then, obviously, you will have the last argument

7 MS WEST Thank you

8 THE COURT Alright

9 MS WEST Can we have a few minutes break?

10 THE COURT Sure I will but let me ask you this

11 As you know, Ms West, over the last few years I've taken to
12 charging the jury even before summation, and does anybody object to
13 that

14 Jurors have said to me, "Judge, I wish I'd have known what the
15 law was I believe I could have followed the attorneys "

16 And, ah, as to my charge I'll have summations and then at the
17 appropriate time I'll send the jury out and any additional charges
18 and corrections but let me talk to you just very briefly

19 Is anybody - - obviously, we're going to charge trafficking in
20 marijuana It's either trafficking or nothing I don't see - -
21 crack - - base cocaine

22 Ah, I will charge failure to testify, I will charge expert
23 witness, and I will charge the usual charge with reference to
24 trafficking I will charge possession, too

25 Anything further?

THE DEFENSE RESTS/MOTIONS AND RULING OF THE COURT

93

1 MR HIXSON Ah, mere presence?

2 THE COURT I will charge mere presence

3 MR HIXSON Yes

4 THE COURT In fairness to the defendant I'm going to
5 charge that

6 Okay

7 MR HIXSON Yes, sir

8 THE COURT Yes I'm going to charge mere presence

9 I am not going to charge simple possession

10 She's - - in fairness to her, she's not requested that

11 Alright

12 I tell you what You tell me when you ready to start in
13 fairness to you

14 MS WEST It's about ten after Twenty after - - ten
15 minutes?

16 THE COURT Why certainly

17 We'll start at 11 20

18 Okay

19 If you're ready then, I'll give you some additional time

20 MS WEST Okay

21 THE DEFENDANT RESTS/MOTIONS AND RULING OF THE COURT

22 MR HIXSON Your Honor, if we might put on the record - -
23 if we might get on the record that the defense rests

24 THE COURT Yes

25 Now, I also want to get on the record at this time

THE DEFENSE RESTS/MOTIONS AND RULING OF THE COURT

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1 At the conclusion of the State's case, the defendant has
2 rested

3 She also makes a motion for a directed verdict on the basis of
4 insufficiency of evidence which motion was respectfully denied

5 Do you have any other things since you have now rested?

6 MS WEST No, sir

7 THE COURT The record will reflect, however, that you have
8 renewed your appropriate motions for the directed verdict based on
9 the insufficiency

10 Alright

11 Thank you

12 DEPUTY Your Honor, is the defendant in our custody at this
13 time or no?

14 THE COURT The defendant is now in custody The jury has
15 been sworn

16 (The defendant is taken into custody during the break)

17 (The court recesses the trial of this case for a short break
18 and thereafter reconvenes the trial of this case)

19 THE COURT Be seated, please

20 Let's put on the record just a moment

21 Recently, some attorneys in this circuit though I disagree
22 have taken the position that where the individual has a prior
23 record and the sentence will be based on more than one prior
24 offense that the State has the burden of proving that initially
25 unless consent to the jurisdiction

THE DEFENSE RESTS/MOTIONS AND RULING OF THE COURT

95

1 I've always taken the position that's a sentencing issue and
2 not an issue of proof

3 What would be the position of the defendant here?

4 MS WEST Well, Your Honor, I know my client has a
5 conviction for drugs out of Georgetown and probably simply
6 possession both in Horry County

7 MR HIXSON I have a packet prepared for the Court as well
8 as I provided a copy to Ms West

9 He has a conviction out of Georgia that actually probation has
10 warrants on him from Georgia also

11 THE COURT Jurisdiction of the Court absent proof by the
12 State

13 MS WEST He's got two South Carolina convictions I
14 know those I know they were - -

15 MR HIXSON As well as a Georgia conviction

16 MS WEST - - talking about a Georgia conviction

17 THE COURT Alright That's fine, then

18 I just - - it's clear to me that it's a sentencing issue
19 anyway but since somebody raised it recently in Georgetown, I don't
20 want to raise it in here

21 Alright

22 Is there anything further we need to discuss before we bring
23 the jury in?

24 MS WEST Not from the defense

25 MR HIXSON No, Your Honor

CHARGE OF THE COURT

96

1 THE COURT Alright
2 Bring the jury in, please

3 (The jury returns to the courtroom at 11 39 a m)

4 CHARGE OF THE COURT

5 THE COURT Mr Foreman and ladies and gentlemen, the
6 defendant in this case has elected not to testify and has elected
7 not to put up any evidence at all which is his absolute right

8 You will recall that when we started the trial of this case,
9 and I'm emphasizing to you again This defendant and all
10 defendants are presumed innocent, and that innocence remains with
11 them from the time of arraignment throughout the trial and until a
12 jury has convicted them by evidence to their satisfaction
13 unanimously beyond a reasonable doubt

14 Now, in that connection, the defendant, as his right has not
15 testified, does not testify and does not put up any evidence He
16 says, 'The State's got to prove me guilty beyond a reasonable
17 doubt I don't have to prove a thing "

18 And that's his absolute right and the absolute law

19 Now, in that connection, I tell you as follows This
20 defendant has not testified This is his constitutional right, and
21 it is not a circumstance that you can take into your consideration
22 or even allow it to enter into your discussions in the jury room

23 Under the Constitution of South Carolina and under the United
24 States Constitution it is his constitutional right not to testify
25 The burden of proof is on the State of South Carolina to establish

CHARGE OF THE COURT

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1 his guilt by competent testimony to your satisfaction unanimously
2 beyond a reasonable doubt

3 The fact that this defendant did not take the witness stand
4 and testify in his own behalf does not create any inference against
5 him The jury must not be - - not permit that fact to weigh in the
6 slightest degree against him nor should that fact, Mr Foreman,
7 enter into their discussions

8 Do not let the discussion of the fact that he did not testify
9 enter into your discussions

10 I tell you as strongly as I can He doesn't have to testify
11 You don't have to testify nor do I The State has the burden of
12 proving him guilty beyond a reasonable doubt

13 Now, the State of South Carolina has - - where's the
14 indictment - - has upon this indictment charged this defendant with
15 on or about October 9th of 2006 knowingly having in his possession
16 a quantity of crack cocaine said to contain in weight ten grams or
17 more

18 To this charge this defendant specifically pleads not guilty
19 Therefore, the burden is upon the State of South Carolina as I
20 continue to emphasize of proving him guilty if they can to your
21 satisfaction beyond a reasonable doubt

22 A person charged with committing a criminal offense in South
23 Carolina is never, ever required to prove his innocence They got
24 to prove him guilty

25 I charge you that it is a vital, important rule of law of

CHARGE OF THE COURT

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1 evidence that a defendant in a criminal case no matter how great or
2 serious may be the charge must always be presumed innocent until
3 his guilt has been established to your satisfaction beyond a
4 reasonable doubt unanimously, meaning all twelve of you, and this
5 presumption of the defendant - - with the defendant remains with
6 him at all times throughout the trial until you, the jury, have
7 upon evidence and the law in this courtroom found him guilty beyond
8 a reasonable doubt

9 Now, I continue to use the term "reasonable doubt" The State
10 of South Carolina has the burden of proving the defendant guilty
11 beyond a reasonable doubt as I have said Some of you may have
12 served as jurors in civil cases where you were told that it is only
13 necessary to prove that a fact is more likely true than not

14 In criminal cases the government's proof must be more powerful
15 than that It must be as I've indicated beyond a reasonable doubt

16 Now, Mr Foreman, ladies and gentlemen, proof beyond a
17 reasonable doubt is proof that leaves you firmly convinced of the
18 defendant's guilt

19 There are very few things in this world that we know with
20 absolute certainty, and in criminal cases the law does not require
21 proof that overcomes every possible doubt

22 If, based on your consideration of the evidence, you are
23 firmly convinced that the defendant is guilty of the crime, you
24 must under oath find him guilty

25 If, on the other hand, you think that there is a real

CHARGE OF THE COURT

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1 possibility that he is not guilty, you must give him the benefit of
2 that doubt and find him not guilty

3 Now, ladies and gentlemen of the jury, as I have said earlier
4 and I continue to emphasize, under the Constitution of this state,
5 you are the sole and only finders of the facts in this I as trial
6 judge am not entitled to a factual opinion, and I have none

7 If any word, ruling or mannerism of mine might indicate to any
8 of you how I feel about any factual dispute between these
9 litigants, please disregard that I am not entitled to a factual
10 opinion, and I have none You twelve are the sole and only judges
11 of the facts in this case in the entire wide world

12 I may also tell you that you are the sole judges of the
13 credibility meaning the believability of every witness you heard
14 testify

15 You didn't leave your common sense on the streets of Conway,
16 South Carolina when you came into this courtroom this week, and we
17 all know that in everyday pursuits be it at work or raising our
18 families or talking to our children, whatever we do, when folks
19 tell us things, we - - we kind of size them up We decide whether
20 they telling the truth or not We decide whether we want to
21 believe them or not

22 We always ask ourselves, "Hey, does this person have some
23 cause or reason to want me to believe one thing or another?"

24 And this we do when we say we judge credibility, believability
25 of people, and I say to you that you are the sole judges of the

CHARGE OF THE COURT

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credibility, the believability of every witness who testified

Some of the tools in addition to those that you may have used in every day life may be the appearance and manner of a witness, his demeanor. We would always ask ourselves, "Did this particular witness know what he was talking about? Was his testimony corroborated by other witnesses?"

Obviously, in determining the truth or falsity of a matter you would always ask yourselves, "Hey, did this person - - did this witness have some personal reason to want me to believe one way or the other or was that witness biased or prejudiced or was he telling the truth?"

You may believe one witness against that of many or the other way around. You may believe all of what a witness says or none. You may believe a small portion and disregard the larger

Mr. Foreman, ladies and gentlemen, throughout this entire process you have but one single objective, just one, to seek the truth, to judge the credibility and believability of the witnesses, to seek the truth and, thereafter, let that truth result in your verdict.

Verdict comes from the Latin word "verdictum" meaning to speak the truth.

Let your verdict, therefore, in judging credibility and believability simply speak the truth.

All of these things you will consider bearing in mind that you shall give the defendant the benefit of every reasonable doubt.

CHARGE OF THE COURT

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1 Now, the same Constitution and law which makes unto you the
2 finders of the facts makes unto me the instructor in the law, and
3 under your oath you must accept the law as I charge it to you
4 Even though you or I for that matter might disagree with what the
5 law is or ought to be, please for the purposes of this trial under
6 your oath accept the law as I tell it to you, you applying the
7 facts as you find them to be to the law as I now charge it to you

8 In criminal cases there are two types of evidence which are
9 generally presented during a trial, direct evidence and
10 circumstantial evidence

11 Direct evidence is the testimony of a person who asserts or
12 claims to have actual knowledge of a fact such as an eyewitness

13 Circumstantial evidence is proof of a chain of facts and
14 circumstances indicating the existence of fact

15 The law makes absolutely no distinction between the weight or
16 value to be given either direct or circumstantial evidence nor is
17 a greater degree of certainty required of circumstantial evidence
18 than of direct evidence

19 You must weigh all of the evidence in this case After
20 weighing all of the evidence if you are not convinced of the guilt
21 of the defendant beyond a reasonable doubt, you must find him not
22 guilty

23 Now, I have qualified one witness in the trial of this case as
24 an expert witness, and in that connection I charge you as follows

25 Witnesses who by training, education and experience may be

CHARGE OF THE COURT

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1 considered as experts in particular field and may give opinions in
2 that field based upon the facts of the matter Their conclusions
3 and opinions constitute evidence to be considered by you in
4 connection with all the other testimony and evidence in the case
5 You, the jury, may give such testimony such weight as you in your
6 experience and discretion may determine appropriate

7 Now, the defendant in this indictment is charged with
8 trafficking in crack cocaine or cocaine base The law of
9 trafficking is simply possession in certain quantities which gives
10 possession - - causes simple possession to raise to the level of
11 trafficking by the weight of that substance if that substance is
12 also a controlled substance

13 Any person who knowingly sells, manufactures, delivers, brings
14 into this state or who has in his possession actually or
15 constructive ten grams or more of cocaine base or crack cocaine is
16 guilty of a felony which is known as trafficking in crack cocaine

17 This indictment charges in substance that this defendant in
18 Horry County on or about October 9th of 2007 possess either actually
19 or constructively or bring into this state a quantity of cocaine
20 base an amount of more than ten grams but less than twenty-eight
21 grams, and to this indictment this defendant has pled not guilty

22 That is the charge as against this defendant

23 Now, there are certain elements of this offense which the
24 State must prove beyond a reasonable doubt before the defendant can
25 be convicted and found guilty

CHARGE OF THE COURT

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1 Each of these elements must be found by you, the jury, beyond
2 a reasonable doubt and should you fail to find any of them beyond
3 a reasonable doubt, then your verdict must be not guilty

4 First, the State must prove that this defendant did possess a
5 quantity of controlled substance at the time and place and in the
6 manner alleged in this indictment

7 Possession requires that a person be in the actual or
8 constructive possession of a controlled substance with actual
9 knowledge of its possession

10 Actual possession of a controlled substance exists when the
11 controlled substance is found in the actual physical custody of the
12 person charged with possession

13 Constructive possession of a controlled substance exists when
14 a person although not in actual physical possession of a controlled
15 substance exercises dominion and control over the controlled
16 substance or has the right to exercise dominion and control over
17 the controlled substance

18 A person has possession of a controlled substance within the
19 meaning of the law when he has the power and intent to control its
20 disposition or use

21 It must be shown that the defendant had possession of the
22 controlled substance and that the defendant knew he had the
23 controlled substance in his possession either actual or
24 constructive Knowledge of the presence of the controlled
25 substance by the defendant is essential

CHARGE OF THE COURT

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1 Now, secondly, the State must prove that the substance was
2 cocaine base or crack cocaine which I charge you is a controlled
3 substance

4 And, thirdly, the State must prove that the quantity of the
5 controlled substance was in excess of ten grams but less than
6 twenty-eight grams

7 All elements of this must be found beyond a reasonable doubt

8 Again, the State must prove that this defendant was in actual
9 or constructive possession

10 Two, the State must prove that that substance was cocaine base
11 or crack cocaine

12 And, thirdly, the State must prove that the amount of
13 possession, if any, was ten grams or more and less than twenty-
14 eight, it being alleged in this matter that the quantity was 12 9
15 and that, of course, is for the State to prove as with all other
16 elements beyond a reasonable doubt

17 Now, I charge you that mere presence of a person in an area
18 where an object is found is not enough in and of itself to give
19 rise to the necessary inference of possession

20 The State must prove dominion or control over a controlled
21 substance beyond a reasonable doubt either actual or constructive

22 Now, ladies and gentlemen, you have been selected as fair and
23 impartial jurors sworn to impartially try the facts of this case,
24 and when you comply with your oath to do so, then no one will have
25 a right to criticize your verdict and you will have fully

CHARGE OF THE COURT

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1 discharged your duties as jurors

2 You should not and must not be influenced by opinions or
3 expressions of opinions, if any, which you may have heard on the
4 outside but, ladies and gentlemen, you are to decide this case
5 according to the testimony that you have heard from the lips of the
6 sworn witnesses along with other evidence in this case

7 Mr Foreman, there are two possible verdicts in this case,
8 either not guilty or guilty Either one of these verdicts must be
9 determined by you, the jury, unanimously, meaning all twelve of
10 you It cannot be a verdict of the majority Obviously, it would
11 not be one of the minority It must be the unanimous verdict of
12 all twelve of you

13 Once your jury has reached a unanimous verdict of not guilty
14 or guilty, please turn to the back of this indictment under the
15 word "verdict" and write either not guilty or guilty and sign your
16 name remembering that whatever your verdict is, it must be the
17 unanimous verdict of all twelve

18 Now, in this case the Solicitor will make his first final
19 summation followed by summation of counsel for the defense at which
20 time you will retire to begin your deliberations, and these matters
21 which I have introduced into evidence will be with you, Mr
22 Foreman, in the jury room during your deliberations

23 You will preside during the discussions, and you will be the
24 jury's spokesman in the courtroom

25 You may have your concluding remarks

SUMMATION BY MR HIXSON

THE STATE OF TEXAS

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1 SUMMATION BY MR HIXSON

2 MR HIXSON Thank you, Your Honor

3 There it is 12 13 grams of crack cocaine

4 I told you before That's what it's all about, one of the big
5 social poisons that we have That's what this case is about

6 You heard the judge give you a charge on law as it relates to
7 the issues in this case, and maybe the best way to do it is let's
8 get rid of the things that we already know

9 Jamie Goss was driving the Dodge Caravan Officer Truex
10 stopped him He ran from the scene trying to get away The key
11 to the van is in his pocket Crack cocaine is in his possession in
12 the van in plain view

13 We know that this is crack cocaine You heard testimony that
14 an analysts analyzed it at the Regional Drug Lab and this is a
15 controlled substance known as crack cocaine So, we're not - -
16 that element is proven

17 We also have to show the threshold amount, and if you'll
18 recall That threshold amount was more than ten grams but less
19 than twenty-eight grams Twenty-eight or more would be a separate
20 category The category of offense we're dealing with is ten to
21 twenty-eight

22 So if that's all we have to concern ourselves with to get over
23 that threshold, also in evidence there's her report, and you'll see
24 on that 12 13 grams That's over ten That element has been
25 proven

SUMMATION BY MR HIXSON

107

1 And so the real question it comes down to is possession Ah,
2 that's what it really all boils down to That's conceded, I think,
3 pretty much that that's cocaine That's over twelve - - ten grams

4 That's possession right there, the car key Literally and
5 symbolically, that shows the dominion and control over that
6 vehicle

7 Y'all have car keys in your pocket, and that's a symbol of
8 dominion and control over the vehicle and the contents in that
9 vehicle

10 You walk down No one else has one Oh, maybe a spare key,
11 that's possible Certainly, that's true

12 But you walk in and you assume that what you put in that car,
13 you unlock that door You don't have actual possession of your
14 jumper cables or your purse or your day-timer or something like
15 that but if you knew it was in there, you can expect dominion and
16 control over the items in there

17 So, then the question becomes, "Well, do you know everything
18 that's in your car?"

19 Well, if it's in plain view in your car right beside what is
20 alleged to be the subject's own cell phone right where you took
21 your stuff and set it in your car when you borrowed it from a
22 friend or whoever it might be that he borrowed it from to drive it,
23 it's kind of hard to say that you didn't know or it's plain that
24 you did know what was in a clear plastic baggy right beside the
25 cell phone right there That's, um, hard to miss in a clear

SUMMATION BY MR HIXSON

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1 plastic bag That knowing, knowing being in actual or
2 constructive possession

3 Perhaps if it was in the trunk, "I didn't know it was there "

4 If it was anywhere else, "I didn't know it was there "

5 It's a little hard to say, "I didn't know that was there "

6 We have one other thing We have his cell phone

7 Defense council may argue it's not his cell phone I don't
8 know how many other cell phones there would be in the world that
9 would have the defendant's picture on it

10 There may be Maybe family members or something like that
11 had the defendant's own picture on the phone We don't need the
12 cell phone We got crack cocaine at the driver's seat in clear,
13 plain view right beside there but we also do have the cell phone

14 And that's circumstantial evidence You decide whether or not
15 you really believe that's somebody else's cell phone That's his

16 He had a bad day He got stopped He didn't intend to get
17 stopped Didn't think anybody, a police was suddenly going to get
18 in that car He suddenly did Whoa! Holy cow!

19 And, you know, probably the worst thing? How we knew? That
20 thin blue line That's consciousness of guilt running from that
21 cop Guilty, guilty, guilty all the way around

22 He knew it was right there He knew he couldn't get stopped
23 He's got trafficking in cocaine "I got to get out of there "

24 He didn't have any reason to run right there - - or should - -
25 I should say right there Got stopped Running the whole way

SUMMATION BY MR HIXSON

109

1 Tried to abandon the vehicle to run away from it
2 Fortunately, the officer was close enough he could see what was
3 going on

4 Now, I am confident if the officer could do it over again, I'm
5 sure he wished that he had a copy of the video tape that he had
6 A church or a group of nuns could watch the entire thing and come
7 testify - - testify for you on all that we had

8 Unfortunately, it's real life Officer Truex didn't know
9 that was going to happen, didn't know what was coming up next and
10 did a wonderful job We don't have a video tape I'm sure that
11 Officer Truex wishes that would be the case but we don't We
12 don't

13 Um, I'm also confident that during the course of his
14 investigation, Officer is a trained Traffic Officer He's not a
15 detective The result, he doesn't have camera equipment He
16 called a detective in to do that and sometimes cases are absolutely
17 straight-forward as they seem

18 I like watching movies and stuff on tv, and, um, they sell a
19 lot of tickets for two hour shows with twist and turns and weird
20 little plot things and pretty much sometimes they are what they
21 are Those are paid writers who try to think of clever little
22 reasons why things are thrown You think it's this guy, and it's
23 really that guy in the end

24 This is real life, and, you know what? Most of the time
25 things are exactly as they seem

SUMMATION BY MS WEST

110

1 The defendant didn't know he was going to get arrested that
2 day Driving around with 12 13 grams of crack cocaine Borrowed
3 a van, apparently, didn't know the tag light was out Got pulled
4 over Said, "Oh, no!"

5 Tried to take off running Tried to ditch the van Tried to
6 run as fast as he could Officer was close enough, he couldn't get
7 rid of anything else at the last minute Officer got him

8 Thank you for your time Thank you for your attention

9 Please return a verdict of guilty against this man, Jamie
10 Goss

11 Thank you

12 THE COURT Thank you, Solicitor

13 Ms West

SUMMATION BY MS WEST

14 MS WEST Sometimes it is just that simple But you
15 know how - - when the State has to establish that it was drugs and
16 a certain amount This is what they did They had this person
17 say they got it from here, and they gave it to this person, and
18 then this person weighed it They fill out a little piece of
19 paper that says this is what it is, and they come into court and
20 they show it to you
21

22 Because that's what the State needs to do They need to
23 establish things beyond a reasonable doubt No question Beyond
24 a reasonable doubt

25 We have real good evidence that we've got 12 grams of crack

SUMMATION BY MS WEST

111

1 cocaine and it's crack cocaine So they were really good at
2 establishing that fact of their case

3 Now, let's back up

4 It starts off with an officer, a Traffic Officer, no question,
5 saying that he stopped a vehicle or saw a vehicle with no tag
6 light

7 When he said he called it in to say, "I'm making a traffic
8 stop," even at that point he doesn't say it's license plate xyz
9 He just says it's a traffic stop

10 He says he walked up to his vehicle It was the rear of a
11 Dodge Caravan I don't know Maybe it was that long, and says he
12 sees a person's face at night in the rearview mirror

13 Okay Y'all get to decide if that's a statement that you
14 think is credibility

15 Okay Saw a person's face and his shirt That person takes
16 off The van moves and then later on based on the officer's own
17 testimony he lost vision of the vehicle and by the officer's own
18 testimony when this defendant was arrested he wasn't in the
19 vehicle

20 Okay Let's talk about that, too

21 So, he says he sees something in the rearview mirror He says
22 that's the whole face but he doesn't have that little camera thing
23 going because he accidentally erased it

24 The officer doesn't take a picture of the van afterwards to
25 show the tail light out because he said he didn't have to do that

SUMMATION BY MS WEST

112

1 But on their little sheet, not mine, theirs, they talk about
2 broken tail light They don't say anything about defective tag
3 light

4 So, you don't know that the van they're talking about is even
5 the same van You know maybe the officer saw somebody Maybe he
6 didn't but he saw what he saw in a rearview mirror, and, ah, at
7 some point he lost sight of this particular van

8 "So, officer, is that defendant's van?"

9 "No, he doesn't own the van "

10 They talk about a key The defendant said that this was his
11 key

12 'Well, officer, does this key open the van?'

13 The officer said he didn't try to open the van

14 Did the defendant say it was a key to the van?"

15 "Well, he just said it was his key "

16 So, we have a key but we don't have any evidence from the
17 officer or anybody else that that key opens the door to the van,
18 and we don't know if that van is the same van that the police
19 officer initiated a stop on because he doesn't have the tape and he
20 doesn't have any pictures but we do know that at the time of the
21 arrest, he didn't give the defendant a ticket for no tag light We
22 know that for fact There was no cite for the light

23 Alright

24 Now, we also have a issue when the officer says that there is
25 this whole other chase happening, and this is at 8 30 or 9 00 at

SUMMATION BY MS WEST

113

1 night, and there's no question He even says that he did not, did
2 not actually see the defendant actually get out of the van

3 So, when we start talking about beyond a reasonable doubt we
4 are at the point where the most damaging evidence we have is this
5 which the State's clearly established beyond a reasonable doubt,
6 and we had one other piece of evidence

7 The police officer said that he found a cell phone in the car
8 that belongs to the defendant

9 Okay

10 Well, I said, "How did you know it belonged to the defendant?"

11 He said, "It had his picture on the wallpaper "

12 Okay

13 So did he take a picture of the cell phone? Did he get the
14 cell phone number and follow up with some kind of police procedure
15 to establish that it was the defendant's cell phone with his
16 picture on the wallpaper? No No No No

17 If, for instance, when the police officer initiated the stop
18 and said, "This a white Dodge It's got a license tag number," he
19 could have brought that in and said, "When I initiated my traffic
20 stop and called it in, and I got Dispatch to prove it, and it's
21 this van "

22 Okay?

23 Without this - - without the tape, without the car tape which
24 accidently is not available to us, we don't have that We don't
25 have when he initiated the stop the license plate tag

SUMMATION BY MS WEST

114

1 When you go back to the jury, you go back to the jury room and
2 start deciding what we have in this case, it's going to be about
3 beyond a reasonable doubt

4 Drugs are the bane of our existence but the State always,
5 always, always has the burden to establish that those drugs belong
6 to this defendant beyond a reasonable doubt The only thing, the
7 only thing y'all have here today is the drugs and a report on some
8 drugs

9 The police officer with no ticket for the tag light, no
10 picture of the tag light, no tag light written to support, no
11 picture of the cell, no cell phone records, no evidence that,
12 "After this was over, I went to my chief investigating officer, and
13 he said, 'What you need to do, go get that cell phone because you
14 need to prove that it was his cell phone that was sitting there
15 when you found this, and the vehicle - - since the vehicle doesn't
16 belong to him and since your tape is gone '"

17 We don't have anything

18 I'm sure Officer Truex is a fine Traffic Officer, and I
19 appreciate Traffic Officers because people do need to obey traffic
20 laws We got a Traffic Officer making a stop on a vehicle and
21 allegedly finding this in the vehicle

22 When you go back to the jury room, think about some of the
23 stuff I said Think about why there's no camera tape Think about
24 why there's no picture of the tag Think about why there's no
25 ticket for the tag light Think about the fact that the police

SUMMATION BY MS WEST

115

1 officer said that he was at the back of the van, and he saw the
2 defendant's face on a rearview mirror, a rearview mirror you and I
3 have on our car Think about the fact that the police officer
4 said that this is what he saw but he didn't bring it here to you to
5 prove it

6 Okay?

7 Here to prove - - here to prove that his picture was on the
8 cell phone, that it was, in fact, his cell phone

9 That, in fact, his key even opened up the car

10 Okay?

11 Every case is different, and as the Solicitor said sometimes
12 it's just - - it's just as simple as it seems

13 It could be just as simple as it wasn't even the same person's
14 car that he was chasing It could be just as simple as all these
15 things he's told you without anything other than his statement, no
16 pictures, no cell phone proof

17 It definitely needs to be dealt with the fact that it's not
18 the defendant's vehicle No proof this key even opens up the car
19 Nothing Nothing

20 That doesn't make drugs not bad but what that means is you
21 have to make a decision about whether or not in South Carolina in
22 this particular case based on what they actually presented to you
23 has established that he's not the owner of the vehicle with a key
24 that you don't know opens the vehicle that he doesn't own, and an
25 officer that testified he didn't see him get out of the vehicle

FINAL CHARGE OF THE COURT

116

1 There's no tape to establish that it was his vehicle that he
2 was following and nothing to establish the phone that the officer
3 said was his that was by this that was right beside it was his
4 beyond a reasonable doubt

5 Is it beyond a reasonable doubt? Is whether or not the State
6 of South Carolina established that these belong to the defendant,
7 and that really is their job today, beyond a reasonable doubt

8 Thank you

9 THE COURT Thank you, Ms West, and thank you, Solicitor

FINAL CHARGE OF THE COURT

11 THE COURT Mr Foreman, ladies and gentlemen, you've heard
12 the summations of counsel in the case You've got all of the
13 evidence I've given you the instructions in the law, and you
14 would understand that you are the finders of the fact and I am the
15 instructor of the law

16 Take the facts as you find them to be Apply those facts to
17 the law of this case and thereafter reach a unanimous verdict of
18 either not guilty or guilty

19 You may go to the jury room at this time

20 Do not begin your deliberations until I send this indictment
21 in to you It will be coming in in just a moment

22 Reach your unanimous verdict Knock on the door and let us
23 know

24 Thank you

25 Come forward, please, and let's agree on what's going into

ALTERNATES SEPARATED/EXHIBITS AGREED UPON

117

1 evidence

2 ALTERNATES SEPARATED/EXHIBITS AGREED UPON

3 THE COURT The alternate will remain outside, please

4 Mr Bailiff, have the alternate stay outside The alternate
5 stay outside and stay in a separate place

6 Make sure both alternates

7 Yes, bring the alternates back in so there will be no question
8 about it

9 Bring the alternates back here

10 First, is there any exceptions or additions to the charge?

11 MR HIXSON No, Your Honor

12 MS WEST No, Your Honor

13 THE COURT Alright Bring the alternates back in

14 Y'all have agreed on the exhibits?

15 MR HIXSON We have, Your Honor

16 I think we've agreed - - -

17 MS WEST Yes

18 THE COURT Make sure

19 MS WEST Yes, those are fine There are four

20 THE COURT Bring the alternates back in, please

21 (Alternates return to courtroom)

22 THE COURT We're going to put you in a separate place I
23 wish our rules permitted you to go back there but they do not

24 Everybody looks well but I've seen things happen before So,
25 I'm going to leave you separate in case I need one of you

JURY BEGINS DELIBERATIONS AT 12 22 P M

118

1 Just last week I had to have an extra one at 2 30 in the
2 morning

3 We'll take care of you, though

4 Mike, I need to speak to you

5 But you may return Okay

6 Mike, let me - - I need to speak to you, please

7 JURY BEGINS DELIBERATIONS AT 12 22 P M

8 THE COURT Let the record reflect that I had chosen two
9 alternates Both are withdrawn from the jury during their
10 deliberations

11 You agree with that?

12 MR HIXSON Absolutely, Your Honor

13 MS WEST Yes, sir

14 THE COURT Are We are in recess subject to the call of
15 the Court

16 The case was very professionally tried by both sides, and I
17 appreciate it, Ms West, and, Solicitor

18 MR HIXSON Thank you, Your Honor

19 MS WEST Thank you, Your Honor

20 (The Court recesses this case awaiting the jury's advice and
21 thereafter reconvenes the trial of this case to respond to a jury
22 question)

23 JURY QUESTION

24 THE COURT You may be seated

25 Bring the jury in

JURY QUESTION

119

1 (The jury returns to the courtroom at 12 54 p m)

2 Where are the alternates?

3 (Alternates return to the courtroom and sit with the jury)

4 THE COURT Mr Foreman, ladies and gentlemen, you have
5 asked for a transcript of the officer's testimony

6 I tell you that this Court does not have the capability of
7 instantaneously transcribing a witness' testimony nor do any courts
8 - - very few courts in this whole country That's something you
9 may see on tv

10 But we do have the capability of replaying that officer's
11 testimony for you, and we are delighted to that

12 Now, Mr Foreman, it's been my experience that sometimes
13 jurors want to hear all of the testimony which is certainly
14 accessible and in certain instances a juror or jurors may want to
15 hear some small portion of a witness' testimony

16 If that be the case and you have heard the testimony that you
17 wanted, raise your hands and we'll stop

18 If, however, you wish to hear all of the testimony and the
19 cross-examination, we'll do that to

20 That's for you to decide, and we're perfectly willing to let
21 you hear any or all portions of it

22 I tell you this simply because your time is valuable, and if
23 there's a certain portion of the testimony that you hear - - want
24 to hear, there's no need in taking your time to hear all of it

25 If you want to hear all of it, though, we are welcome to do

JURY ADVISES VERDICT REACHED AT 1 38 P M

120

1 that for you

2 Play the testimony, Mrs McCall

3 (Testimony of Officer Truex played back at the jury's request
4 The portion played was Tape #1, Count 2076 through 2463 and Count
5 2535 through 2773 Bench conference was omitted from the portion
6 replayed to the jury)

7 THE COURT, Thank you so much

8 The alternates, now, will remain outside the presence of the
9 jury during their deliberations Keep the alternates here

10 Thank you, Mr Foreman

11 Let us know if there's any other way we can help you

12 (Jury returns to jury room at 1 17 p m to continue their
13 deliberations)

14 THE COURT Counsel for the State and the defendant, I
15 would suggest that you remain in the courtroom now because we - -
16 they may have some other questions

17 Alright

18 (The Court recesses this case and thereafter reconvenes the
19 case upon the jury advising a verdict has been reached

20 JURY ADVISES VERDICT REACHED AT 1 38 P M

21 THE COURT I want to make sure, now, that whatever the
22 verdict is I don't want to have any comments from anybody, and if
23 you hear any comments from anybody, arrest them immediately

24 Alright Bring the jury in

25 (The jury returns to the courtroom at 1 40 p m)

VERDICT

121

1 VERDICT

2 THE COURT Mr Foreman, have you and your jury reached a
3 unanimous verdict?

4 FOREMAN OF THE JURY We have, Your Honor

5 THE COURT Alright

6 Please accept the indictment from the jury, and I thank you
7 for this

8 Ladies and gentlemen, if this be the unanimous verdict of all
9 twelve, please signify by raising your right hand

10 Let the record now reflect that the jury has so signified that
11 the verdict is the unanimous verdict of all

12 Please publish the verdict

13 CLERK OF COURT The State of South Carolina v Jamie Goss,
14 2006-GS-26-4738

15 We, the jury, by unanimous consent find the defendant guilty
16 of trafficking cocaine base

17 Signed by Gary L Sullivan, Foreman, 2/13/07

18 THE COURT For the jury's edification please recite for
19 them the former record of this defendant

20 MR HIXSON Mr - - this is a indicted, Your Honor, as a
21 trafficking, third offense, Your Honor, and, ah, he has a
22 conviction out of Green County, Georgia as well as several
23 convictions out of Georgetown County, South Carolina, Your Honor

24 Okay

25 Is there anything further for the jury before I discharge the

VERDICT

122

1 jury?

2 MS WEST My motions now

3 THE COURT We can have your motions, but anything else?

4 MS WEST No

5 THE COURT Mr Foreman, ladies and gentlemen, none of you
6 asked to sit on this particular juror and having come in and did
7 so, you've done your duty in accordance with the law

8 Ah, the finding of facts that was for you to determine and you
9 have made it

10 Ms Orrie West gave this defendant every defense he's entitled
11 to and has done an excellent job but I can tell you without fear of
12 contradiction I don't believe a jury of his brothers could have
13 found him not guilty on the overwhelming evidence in this case, and
14 defendants need to know that they're going to get a fair trial in
15 this courtroom in Horry County but defendant also need to know that
16 jurors have a responsibility

17 Jurors are really the custodians of law and order in this
18 country and in this county And by jurors by their verdict, they
19 tell us what is and is not acceptable, and in this case, I tell you
20 that the evidence was just simply overwhelming

21 I am going to discharge you now and ask for you to report back
22 in the morning at 9 30 through the main jury room, not up here but
23 in the main jury room There will be jurors selected for the
24 criminal and civil court at 9 30 in the morning

25 So, I'll excuse you for the rest of the day

MOTIONS AND RULING OF THE COURT

123

1 Is the whole - - where is the whole panel coming tomorrow?

2 CLERK OF COURT Courtroom 3-B

3 THE COURT Why are they not downstairs?

4 CLERK OF COURT That's where we were told

5 THE COURT Courtroom 3-B?

6 I apologize to you It will be Courtroom 3-B at 9 30 in the
7 morning

8 The jury - - the panel, the entire panel is assembling there?

9 CLERK OF COURT Yes, sir

10 THE COURT Alright

11 You are now excused to be back in the morning at 9 30

12 Thank you

13 (Jury released from this trial and for the day to return at
14 9 30 a m on Wednesday)

MOTIONS AND RULING OF THE COURT

16 THE COURT Ms West, I'll be delighted, now, to hear your
17 motions

18 MS WEST Well, Your Honor, I - - I make the standard
19 post-trial motions A motion for a new trial, ah, and motion to
20 overturn the verdict

21 THE COURT Ms West, you gave, as I say again, you gave
22 this defendant an excellent defense but the evidence here is just
23 simply overwhelming, and I would respectfully deny your motions

24 As I said, there's no way in the world in my view given this
25 overwhelming evidence that twelve people sworn to find the truth

SENTENCE OF THE COURT 124

1 could find other than what they did but it's their call, and they
2 made their decision

3 But I thank you for your services and it's just wonderful that
4 in our fine country that an individual who can't afford an attorney
5 can get this wonderful help such as you provided here today, and I
6 thank you for that personally

7 Have the defendant come forward

8 MS WEST You mean stand up

9 THE COURT No, I want him up here before the Court

10 Just stand there

11 SENTENCE OF THE COURT

12 THE COURT Mr Defendant, anything you wish to say?

13 MR GOSS UM - - -

14 THE COURT Sir?

15 MR GOSS No, sir

16 THE COURT Alright

17 Let me say to you that the law requires me The law says that
18 one convicted of trafficking with two prior convictions for drugs
19 must be sentenced to twenty-five years and can be sentenced to
20 thirty, no part of which may be suspended

21 The law requires me to put you in jail for at least twenty-
22 five years with your significant prior record

23 It is, therefore, the judgment of this Court that you be
24 confined for a period of twenty-eight years and pay a fine of
25 \$50,000

SENTENCE OF THE COURT

125

1 That will be the judgment of the Court

2 MR HIXSON Your Honor, may I address the issue as to - -

3 I have certified records

4 THE COURT Yes Put that on the record

5 Wait a minute Have him stay here right now

6 You have previously that just prior to her motion Let's do
7 it again on the record

8 MR HIXSON Your Honor, I have the sentencing sheets

9 Your Honor, just to clarify for the record, this is,
10 obviously, has been discussed, and Your Honor is well aware of the
11 information I'm just placing it on the record

12 I'm handing to the Court to make it a part of the exhibit a
13 certified copy of a sentencing sheet from Green County, Georgia
14 where the defendant was convicted of possession of marijuana with
15 intent to distribute That's in April, 2003, and those are
16 certified copies

17 Also, Your Honor, out of Georgetown County, those indictments
18 are 2003-GS-22-417 That is an indictment for possession with
19 intent to distribute marijuana, and the accompanying sentencing
20 sheet Those are certified from the Clerk of Court from
21 Georgetown

22 Also, on Indictment 2003-GS-22-413 That's an indictment for
23 possession with intent to distribute powder cocaine, Your Honor,
24 and the accompanying sentencing sheet Those are all certified

25 It's the State's assertion that these occurred all at one

SENTENCE OF THE COURT

FROM THE TO CHAIR

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1 time, Your Honor, and the Green County is a prior

2 THE COURT Make these a Court's Exhibit, please

3 Also make the Jury Question a Court's Exhibit

4 (Court Reporter accepts certified records as Court's Exhibit
5 #1 and Jury Question as Court's Exhibit #2)

6 THE COURT Now, Ms West, there were some prior
7 negotiations which the Court could or could not have accepted in
8 connection with this case

9 I found from experience that when a defendant is convicted
10 such as this he files a post-conviction relief, and one of the
11 assertions always is that his attorney never advised him of prior
12 opportunities for negotiation

13 I want the record to reflect, if true, that you presented to
14 him any theories of negotiations which were available

15 Can you assert that for me on the record?

16 MS WEST The client can

17 Tell him what I told you we could plea out for

18 MR GOSS Fifteen

19 THE COURT Sir?

20 MR GOSS Fifteen years

21 THE COURT Alright

22 You were advised of that under a lesser included but the law
23 says that one who is convicted of trafficking of third offense such
24 as you, there is a minimum mandatory of at least twenty-five years,
25 no part of which can be suspended

SENTENCE OF THE COURT

127

1 Did you advise him of that?

2 MS WEST Yes, sir

3 THE COURT You were advised of that?

4 MR GOSS Yes, Your Honor

5 THE COURT Well, I just want the record to reflect that
6 that was your call and you made it

7 But from my perspective I have no - - I have no discretion in
8 a case where one is found guilty with a record such as yours I
9 just want you to know that that the law specifically says it must
10 be at least twenty-five years, no part of which may be suspended

11 I want to do that in case there is a post-conviction relief
12 issue

13 Alright

14 Thank you

15 We are in recess

16 (The Court adjourns the trial of this case and adjourns court
17 for the day to reconvene on Wednesday morning to address other
18 matters before the Court)

POST-TRIAL MOTIONS AND RULING OF THE COURT

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THURSDAY, MARCH 23, 2007

POST-TRIAL MOTIONS AND RULING OF THE COURT

THE COURT Good afternoon, be seated, please, or good morning

Mr Hixson, let's hear your matter first, please

MR HIXSON Thank you, Your Honor

Your Honor, we're before the Court today on a matter, The State of South Carolina v Jamie Goss, and that's Docket 2006-GS-26-4735, and we're before the Court today on a case out of Horry County, South Carolina Your Honor, I believe we may have to have a discussion later of jurisdiction for Your Honor to hear it hear if Your Honor feels that's appropriate

Also, the defendant is, I believe, in the South Carolina Department of Corrections at this time As a result he's not present in the court Perhaps, we need to query a waiver of his presence at the hearing My understanding is that Mr Diggs filed this motion for a new trial, and that's what we're here for on his motion

THE COURT Mr Diggs, first, do you waive the presence of the defendant?

MR DIGGS Well, Your Honor, we do I mean, I would like for him to be here but it's not essential, and it's something, ah, he and I both are eager to go ahead and get on down the road with the evidence

THE COURT Let it be clear now If you prefer him here,

POST-TRIAL MOTIONS AND RULING OF THE COURT

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1 I will continue this, and we'll deal with it in Horry three weeks
2 now I'll get him here if you insist

3 MR DIGGS Your Honor, we are - - we are prepared to go
4 ahead and proceed

5 THE COURT Alright, sir

6 And, of course - -

7 MR DIGGS Thank you very much

8 THE COURT - - jurisdiction is in Horry County, and we sit
9 here in Georgetown Will you accept the jurisdiction of this
10 Court at this time?

11 MR DIGGS Yes, sir

12 THE COURT Of course, as now Chief Administrative Judge,
13 I really think I got jurisdiction over the Fifteenth Circuit

14 MR DIGGS I agree with that, Your Honor

15 THE COURT I have just been assigned that title I don't
16 know whether you know that or not

17 But, anyway, I'm going to hear it

18 What's before me?

19 MR HIXSON Defense counsel's motion for a new trial, Your
20 Honor

21 THE COURT Mr Diggs, good morning Let me hear from
22 you

23 MR DIGGS Yes, sir

24 THE COURT I have your motion for a new trial and the
25 basis for it - -

POST-TRIAL MOTIONS AND RULING OF THE COURT

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1 MR DIGGS Okay

2 THE COURT - - if you care to - - should I make this a
3 part of the record, too?

4 MR DIGGS Yes, ma'am Yes, sir

5 THE COURT Mrs McCall, I have before me a Memorandum in
6 Support of Motion for a New Trial in the case as stated It is
7 specifically made a part of this proceeding

8 You may proceed

9 (Court Reporter accepts Court's Exhibit #1)

10 MR DIGGS Thank you, Your Honor

11 There also was an Affidavit that was filed at that time, ah,
12 at the time we filed the motion, and, ah, Your Honor, that
13 Affidavit is part of an evidentiary showing we want to make for
14 Your Honor today along with the - - that Affidavit - - -

15 THE COURT May I have that Affidavit? I haven't seen it
16 It was not included in the - - in your motion for a new trial

17 MR DIGGS I'll hand these up, Your Honor

18 They are - - you already have one from Mr Terrill Carr

19 THE COURT I have - - I've got your defendant's motion,
20 and I've got your memorandum You did not - - include any
21 Affidavits

22 MR DIGGS Alright

23 I believe there was an Affidavit, ah - - -

24 THE COURT Wait a minute There may be one

25 No, sir None was sent

POST-TRIAL MOTIONS AND RULING OF THE COURT

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1 MR DIGGS We left - - Your Honor, we left the original
2 back on your desk, I believe

3 THE COURT Why wasn't it included in what was sent to me?

4 MR DIGGS Your Honor, we didn't have the Affidavit until
5 after the motion was prepared *

6 THE COURT Alright

7 Let me ask you

8 Have you had the opportunity to read this Affidavit?

9 MR HIXSON I have not, Your Honor I just - - I'm looking
10 at a copy of that

11 THE COURT Well, let's take a look at it together

12 MR HIXSON Kendrick Sumpter, as well as an Affidavit of
13 Terrill Cox - - Carr, excuse me, Your Honor

14 I've scanned it briefly, and all the information None of
15 this is new information, Your Honor This was tested out during
16 the course of the trial preparation

17 So, although I just looked at the Affidavits, nothing comes as
18 a particular surprise during my preparation during the underlying
19 trial

20 MR DIGGS Your Honor, in addition to the Affidavit of
21 Terrill Carr, I have an original from Mr Kendrick Sumpter

22 THE COURT I frankly don't see how the Affidavit of
23 Terrill Carr helps you in any way That puts the defendant at the
24 time and place and in the car where the testimony was he was with
25 the drugs

POST-TRIAL MOTIONS AND RULING OF THE COURT

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1 How does this help you?

2 MR DIGGS These two Affidavits, if I could refresh the
3 Court's memory, and you probably remember and have a better
4 knowledge than I do, of course

5 But there was a police officer that followed this van - -

6 THE COURT I remember

7 MR DIGGS - - for a few blocks, and because of the tail
8 light being out or something like, the van was pulled over

9 As the officer was approaching the van, the van, ah, pulled
10 off and left The police officer got in the car and gave chase

11 The van ended up going into an apartment complex in Myrtle
12 Beach called the Carolina Cove Apartments

13 At that point the defendant was seen out in the parking lot
14 He was acting nervous and acting like he was trying to get away
15 The officer came up, and that's when he was arrested That's when
16 the defendant was arrested in this case

17 In the trial Your Honor will recall that the police officer
18 said that he could look in the mirror and he got a good look at the
19 driver of the car, and it was - - it appeared to be the same fellow
20 that he arrested there on the spot at the Carolina Cover parking
21 lot in the parking lot of the apartment complex

22 What these two Affidavits is show that my client, that this
23 defendant, Mr Goss, was in the parking lot He was there before
24 the van arrived in the parking lot and, specifically, he was in
25 Apartment 18-C at the home of a lady named Patsy Goss, no relation

POST-TRIAL MOTIONS AND RULING OF THE COURT

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1 Also, Mr Terrill Carr who is in the courtroom, and I would
2 ask him to stand, was in Miss Goss' apartment that evening, and he
3 was there when Mr Jamie Goss came in - - thank you very much - -
4 came in and knocked on the door, and Patsy Goss got up and went to
5 the door and saw the defendant, and Jamie Goss - - -

6 THE COURT This is all well and good but - - and I don't
7 mean to interrupt you

8 This trial - - this defendant's trial lawyer was Orrie West,
9 one of the outstanding Public Defender's in this state

10 MR DIGGS Right Right

11 THE COURT This defendant at the trial of the case was
12 examined exhaustively by me as to whether or not he desired to
13 testify, and he said no, as to whether or not he desired to put up
14 any testimony or any witnesses He clearly said no

15 I asked again Ms West did they have - - they said, "No, we
16 rest '

17 What's concerning me about your Affidavit about this position
18 is simply this That defendant and his attorney had one trial
19 strategy The jury unanimously found him guilty beyond a
20 reasonable doubt, and now you want to change the defendant's trial
21 strategy

22 MR DIGGS Well, in some respects you could say that, but
23 that would assume that Ms West was aware of these witnesses and
24 that the defendant understood the importance of the witnesses

25 THE COURT I understand that

POST-TRIAL MOTIONS AND RULING OF THE COURT

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1 Let me see what the Solicitor who was the trial counsel

2 MR DIGGS Your Honor, the other Affidavit - -

3 THE COURT Excuse me Go ahead

4 MR DIGGS - - we have there from Mr Sumpter indicates
5 that he is the individual that drove Jamie Goss to the apartment
6 complex at 6 00 that evening before the arrest, and the point that
7 I make is that these two witnesses can show that Jamie Goss did not
8 drive that van into the apartment complex

9 THE COURT Are you aware of the fact that one of the
10 witnesses you talked about was in the courtroom during the trial?

11 MR DIGGS I don't know if they were, Your Honor

12 THE COURT Is that true Didn't that come up at pretrial
13 a moment ago?

14 MR HIXSON My understanding was that was another
15 individual that was purported to provide an Affidavit - - an alibi
16 witness It was not the individuals on the Affidavits in this,
17 Your Honor

18 THE COURT Okay

19 Let me hear your position

20 I've read the Affidavit I make it a part of the record
21 I've read your motion It's part of the record

22 MR DIGGS Thank you, Your Honor

23 THE COURT I understand pretty much what your position is
24 But let me hear from you for the record

25 MR HIXSON Your Honor, just to state we simply concur with

POST-TRIAL MOTIONS AND RULING OF THE COURT

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1 the position of the Court and that being that Ms West represented
2 the defendant in an admirable manner That was the trial strategy
3 based on the defendant has a prior criminal record of this type of
4 activity I'm sure she didn't want to expose him to that - - to
5 that cross examination

6 Also, Your Honor, if Your Honor requires, on direct
7 examination the officer indicated he saw one individual in that
8 van, that he saw the face of the defendant in the side view mirror
9 as he initiated the initial traffic stop and clearly saw the
10 defendant's face in the side view mirror as well the white clothing
11 that he was wearing, that he was out running through the apartment
12 complex, surrendered the key to the van subsequent to his arrest in
13 J Reuben Long

14 Obviously, Your Honor, those factual circumstances just for
15 this record would indicate that the jury came to a proper decision
16 as to the defendant's guilt However, we don't need to argue the
17 facts in this hearing

18 All of that was properly before the jury at the initial trial
19 All of this information was known to the defendant, known to Ms
20 West and in existence at time of that trial As such, all of this
21 is trial strategy as Your Honor indicated

22 All of this is, ah, was talked out by the defense No new
23 evidence has been presented as it relates to this case As such,
24 we believe it was proper The trial was proper The verdict of
25 the jury should stand, and Your Honor should respectfully deny the

POST-TRIAL MOTIONS AND RULING OF THE COURT

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1 defendant's motion for a new trial

2 MR DIGGS If I may just - - just follow up quickly, Your
3 Honor

4 All of those circumstantial pieces of evidence that the
5 Solicitor refers to are addressed in our memorandum

6 We know who was driving the van I have a picture of the
7 young man who was driving the van that evening We named him in
8 the memorandum He resembles the defendant in this case

9 Ah, this was a van that was used - - -

10 THE COURT Why didn't the - - you want to tell me what the
11 defendant didn't choose to testify then?

12 MR DIGGS Your Honor, I don't - - I don't think he
13 understood the severity of the case

14 THE COURT Well, he knew and she knew that his prior
15 record with reference to drugs was not coming in

16 MR DIGGS But, you know, these witnesses could have
17 testified without the need to put the defendant on the stand

18 THE COURT Mr Diggs, the problem I'm having with your
19 argument is over the years I've concluded that if twelve people
20 think one way and I might think another and that twelve thinking
21 unanimously, chances are I'm wrong

22 Now, in this case based on the evidence presented those twelve
23 good folks upon their oath found him guilty beyond a reasonable
24 doubt I will not go behind the verdict of the jury, and I
25 conclude there was substantial evidence upon which their verdict

POST-TRIAL MOTIONS AND RULING OF THE COURT

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1 was based

2 So, I'm going to respectfully, most respectfully, deny your
3 motions

4 MR DIGGS Your Honor, thank you very much for hearing us
5 today, and I would appreciate - - I know we jumped ahead of a lot
6 of people today here in Georgetown, and I appreciate everybody's
7 time

8 THE COURT You are a distinguished attorney and always
9 good to have you here in my Court as is Mr Hixson

10 MR DIGGS Thank you very much

11 MR HIXSON Thank you, Your Honor

12 THE COURT Thank you

13 Prepare me an order, Mr Hixson

14 MR HIXSON Yes, sir

15 THE COURT Thank you

16 COURT REPORTER Your Honor

17 THE COURT Ma'am?

18 COURT REPORTER Before we - - -

19 THE COURT Wait a minute Hold Gentlemen, wait a
20 minute

21 Excuse me, Mrs McCall

22 COURT REPORTER The Court has made two or three things a
23 part of the record as Court's Exhibits

24 THE COURT Yes, ma'am

25 COURT REPORTER And since this is Horry County, we need to

POST-TRIAL MOTIONS AND RULING OF THE COURT

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1 make arrangements to get them to the Horry County Clerk

2 MR DIGGS Your Honor, I can do that

3 THE COURT And as long as the attorneys - - as long as the
4 attorneys agree

5 MR HIXSON Your Honor, I will do that

6 THE COURT Okay

7 MR DIGGS We'll work with Mr Hixson

8 THE COURT I want the memorandum and I want all Affidavits
9 attached as a part of this hearing

10 (Court Reporter accepts two Affidavits as Courts Exhibits #2
11 and #3)

12 MR DIGGS Thank you, Your Honor

13 MR HIXSON Thank you, Your Honor

14 You may - - thank you, Mr Diggs

15 (Court Reporter delivers the exhibits pursuant to order of the
16 Court to Mr Hixson for his delivery to the Clerk of Court of Horry
17 County)

18 NOTE FOR THE RECORD Clerk of Court for Horry County
19 thereafter forwarded a receipt for these exhibits to this Court
20 Reporter

21 (The Court adjourns this proceeding to address other matters
22 before the Court)

23 - - - END OF TRANSCRIPT - - -

GENERAL SESSIONS JURY SELECTION

CASE NO. 066526-4735 DATE 2-12-07
PLAINTIFF State ATTORNEY Scott Hixson AS
DEFENDANT Jamie Goss ATTORNEY Drie West PD
a.k.a. Jamie Gause
PRESIDING JUDGE Edward B. Cottrell COURT REPORTER LINDA W MCCALL

STRIKES

[illegible]

CERTIFICATE OF COURT REPORTER

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3
4 I, the undersigned Linda W McCall, Official Court
5 Reporter for South Carolina Court Administration, do hereby
6 certify that the foregoing is a true, accurate and complete
7 Transcript of Record of all the proceedings had and evidence
8 introduced in the trial of the captioned case, relative to
9 appeal, in the Court of General Sessions of Horry County, South
10 Carolina and Georgetown County

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

13 May 19, 2007

14
15 Linda W McCall

16 Linda W McCall

17 Official Reporter
18
19

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Horry)JAMIE GROSS 294925)

Full name and prison number if any of applicant)

v)

State of South Carolina)

Name of Respondent)

20 10 CP26 10057

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legally, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

- 1 Place of detention LCT 990 Wiscovy Hwy Bishopville SC 29010
- 2 Name and location of Court which imposed sentence Court of General Sessions, Horry County
- 3 The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed.
 - (a) 2006-BS-26-4735
 - (b) _____
 - (c) _____
- 4 The date upon which sentence was imposed and the terms of the sentence
 - (a) February 13, 2007 28 years without
 - (b) _____
 - (c) _____

5 Check whether a finding of guilty was made yes

(a) after a plea of guilty _____

(b) after a plea of not guilty Yes _____

(c) after a plea of nolo contendere _____

6 Did you appeal from the judgment of conviction or the imposition of sentence? Yes _____

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed.

i State of South Carolina In the Court of Appeals

ii _____

iii _____

(b) the result in each such Court to which you appealed:

i Advers Brief

ii _____

iii _____

(c) the date of each such result

i December 22, 2009

ii _____

iii _____

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

i _____

ii _____

iii _____

8 If you answered "no" to (6) state your reasons for not so appealing

(a) _____

(b) _____

(c) _____

9 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully

(a) US Constitutional violation 6th Amendment

(b) Lack of probable cause determination

(c) Lack of evidence to support the conviction

10 State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Counsel's performance was deficient, behind the scheduled

(b) No physical evidence or denial he probably cause the denying violation. No documentation, summons, brief, arrest warrant, ~~no~~ No videotape.

(c) Because of the above mistakes there is no evidence that conclusively puts
Applicant in and out.

11 Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law?

Yes

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

(c) any petitions in the United States Supreme Court for certiorari other than petitions if any already specified in (7)

(d) any other petitions motions or applications in this or any other Court?

12 If you answered "yes" to any part of (11), list with respect to each petition, motion or application

(a) the specific nature thereof,

i

In the Court of Appeals

ii

iii

iv

(b) the name and location of the Court in which each was filed.

Liberty County

ii

iii

iv

(c) the disposition thereof

i

ii

iii

iv

(d) the date of each such disposition

I

II

III

IV

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

I

II

III

IV

13 Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14 If you answered "yes" to (13), identify
(a) which grounds have been presented

I

II

III

(b) the proceedings in which each ground was raised

I

II

III

15 If any ground set forth in (9) has not previously been presented to any Court, State or Federal set forth the ground, and state concisely the reasons why such ground has not previously been presented.

(a) Could not be addressed in appeal court

(b)

(c)

16 Were you represented by an attorney at any time during the course of,

(a) your arraignment and plea?

(b) your trial if any? ARRIE E. Hest

(c) your sentencing? " "

(d) your appeal if any from the judgment of conviction or the imposition of sentence?

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? William Isaac Briggs

17 If you answered "yes" to one or more parts of (16), list

(a) the name and address of each attorney who represented you

- i ARLE E. West
 ii William Isaac Duggs
 iii _____

(b) the proceedings at which each such attorney represented you

- i ARLE E. West at trial
 ii William Isaac Duggs Post trial motions
 iii _____

18 State clearly the relief you seek in filing this application

Conviction set aside / Vacation of sentence / New trial

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

None

STATE OF SOUTH CAROLINA

COUNTY OF Horry

VERIFICATION

20 10 GP26 10057

I, Jamie Goss, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application, that I know the contents thereof, that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application, and that the matters and allegations therein set forth are true

Jamie Goss

Sworn to and subscribed before me

This 14 day of Oct 2010

Abraham Dena L S
Notary Public for South Carolina

My Commission Expires 5-16-17

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

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

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

Jamie Goss
Applicant

Sworn to and subscribed before me

This 14 day of Oct 2010

Abraham Dena L S
Notary Public for South Carolina

My Commission Expires 5-16-17

FILED
2010 OCT 26 AM 9 31
MELANIE J. GIBBS, CLERK
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Jamie Goss, (aka James Gause), # 294885,

Applicant,

v

State of South Carolina,

Respondent

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2010-CP-26-10057

RETURN
(Attorney Appointment Requested)

Respondent, making its Return to the Application for post-conviction relief filed October 26, 2010, by Jamie Goss, a k a "James Gause," would respectfully show this Court

I – Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County. The Applicant was indicted in November 2006 for trafficking in crack cocaine, 10-28 grams (2006-GS-26-4735). Orrie E. West, Esquire, represented the Applicant. On February 12-13, 2007, the Applicant was tried and convicted pursuant to a jury trial before the Honorable Edward B. Cottingham. Judge Cottingham sentenced the Applicant, as a third-time drug offender, to 28 years. The Applicant subsequently filed a motion for new trial based upon newly-discovered evidence. A hearing was held on the motion on March 22, 2007. The Applicant was represented by William I. Diggs, Esquire, at this hearing. Judge Cottingham denied the motion for new trial. Thereafter, a notice of appeal was timely filed, and an Anders Brief was submitted on the Applicant's behalf by Kathrine H. Hudgins, Esquire. The South Carolina Court of Appeals affirmed the conviction on December 22, 2009 (2009-UP-610). The case was remitted to the circuit court on January 7, 2010.

Incorporated herein by reference are the records of the Horry County Clerk of Court regarding the conviction, the Applicant's records from the Department of Corrections, the trial

transcript and post-trial hearing transcript, and the appeal opinion and remittitur. Respondent reserves the right to amend this Return upon receipt of any relevant materials

II – Allegations and Relief Sought

In his Application, Mr Goss alleges that his custody is unlawful for the following reasons

- (1) U S constitutional violation – 6th amendment – counsel's performance was deficient below the standard,
- (2) Lack of probable cause determination – no physical evidence or documentation regarding driving violations,
- (3) Lack of evidence to support the conviction – no evidence conclusively putting the Applicant in the car

The Applicant states he is seeking to have the conviction set aside, the sentence vacated, and to have a new trial

III

In a post-conviction relief action, the applicant bears the burden of proving his or her allegations by a preponderance of the evidence Stalk v State, 375 S C 289, 297, 652 S E 2d 402, 405 (Ct App 2007) (citations omitted), Rule 71 1(e), SCRCP “Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that ‘counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result ’” Dalton v State, 654 S E 2d 870, 873 (Ct App 2007) (citing Strickland v Washington, 466 U S 668, 669 (1984), Butler v State, 286 S C 441, 334 S E 2d 813 (1985)) The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases Id

A two-pronged test is used to evaluate allegations of ineffective assistance of counsel Dalton v State, 654 S E 2d 870, 873 (Ct App 2007) “In order to prove that counsel was ineffective, a PCR applicant must show that (1) counsel's performance was deficient, and (2) there is a reasonable probability that, but for counsel's errors, the result of the trial would have

been different ” Smith v State, 375 S C 507, 515, 654 S E 2d 523, 527-28 (2007) (citations omitted) “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial ” Id (citations omitted) “Furthermore, when a defendant's conviction is challenged, ‘the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt Id (citations omitted) “There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case ” Id (citations omitted) The applicant must overcome this strong presumption in order to obtain relief Stalk, supra (citation omitted)

Respondent submits that the Applicant will not be able to meet his burden of proof as to any of his claims However, because some of the allegations may raise questions of fact that the record does not conclusively refute, Respondent requests an evidentiary hearing to fully resolve the issues See Sharper v State, 279 S C 264, 305 S E 2d 247 (1983)

IV

Each and every allegation, claim, or statement contained within the Application not expressly admitted, qualified, or explained is denied

V

WHEREFORE, having made its Return, the Respondent requests that counsel be appointed and an evidentiary hearing held

Respectfully submitted,

HENRY D McMASTER
Attorney General

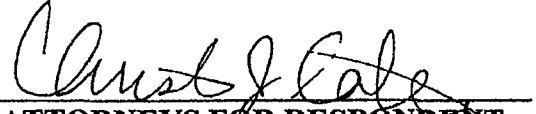
JOHN W McINTOSH
Chief Deputy Attorney General

SALLEY W ELLIOTT

Assistant Deputy Attorney General

CHRISTINA J CATOE

Assistant Attorney General



ATTORNEYS FOR RESPONDENT

Office of the Attorney General

Post Office Box 11549

Columbia, South Carolina 29211

(803) 734-3737

December 23 2010

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
2010-CP-26-10057

COUNTY OF HORRY

JAMIE GOSS,

- vs -

STATE OF SOUTH CAROLINA,

Defendant

November 7, 2011

B E F O R E

HONORABLE LARRY B HYMAN

A P P E A R A N C E S

DANIEL A SELWA, II , Esquire
Attorney for the Petitioner

CHRISTINA J COTE, Esquire
Attorney for the Defendant

Henry P Young
Court Reporter

I - N - D - E - X

WITNESS

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JAMIE GOSS

Direct Examination by Mr Selwa
Cross Examination by Ms Catoe

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ORRIE WEST

Direct Examintion by Mr Selwa
Cross Examination by Ms Catoe

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1 P-R-O-C-E-E-D-I-N-G-S

2 (Convened at 2 12 p m)

3 THE COURT All right, ready to proceed?

4 MR SELWA Yes, Your Honor

5 THE COURT Okay You may call your witness

6 MR SELWA Your Honor, I would call Jamie
7 Goss to the stand

8 Let me clarify something before we start,
9 Your Honor

10 THE COURT Yes, sir

11 MR SELWA Last term of court it was
12 continued, Mr Diggs previously represented Mr
13 Goss, they hired him to argue some post trial
14 motions, there was some confusion as to whether he
15 was to represent Mr Goss in a post conviction
16 relief Judge John ordered me to find out from Mr
17 Diggs to determine if he did in fact represent him
18 I wrote Mr Diggs and got a response If you would
19 like to see that letter I can certainly hand it to
20 you

21 THE COURT What did Mr Diggs say?

22 MR SELWA Mr Diggs said basically they had
23 talked to him but ultimately had not paid him the
24 fee and did not retain him for the post conviction
25 relief

1 THE COURT Very well Then you were
2 appointed to represent him?

3 MR SELWA Yes, Your Honor

4 THE COURT All right, Mr Goss, what do you
5 say about that?

6 MR GOSS Well, Your Honor, what I would
7 like to say, good afternoon to everyone in the
8 courtroom, and as far as what he's saying, portions
9 of it is true and the other portions is false
10 because when we hired him he was hired for that
11 PCR

12 THE COURT Well, he says he was not, so what
13 do we do about that?

14 MR GOSS What do we do?

15 THE COURT Yes He tells me Mr Diggs,
16 according Mr Selwa, that he was not hired for that
17 purpose, so what does that leave for me to do here
18 today?

19 MR GOSS Well, last time Mr John, the
20 judge, informed Mr Daniel to get my record from
21 him As you can see with the receipts, if he has
22 the record that he pulled and supposed to subpoena
23 my two alibi witnesses and the actual person with
24 him that he have with the picture

25 THE COURT Mr Selwa, is there anything,

1 have you got Mr Diggs' file?

2 MR SELWA No, I don't

3 THE COURT Okay So, I mean, I don't
4 understand what you're telling me, Mr Goss Mr
5 Diggs says he does not represent you Now, who
6 talked to Mr Diggs?

7 MR GOSS Who talked to him?

8 THE COURT Yes, who hired him for you?

9 MR GOSS My mom She's right there

10 THE COURT All right, let's have her come
11 around Come around here, take the stand, please,
12 ma'am

13 JACKQUELINE GOSS,
14 after being first duly sworn, stated as follows

15 THE COURT You may be seated, Mr Selwa
16 Ma'am, your name is?

17 THE WITNESS Jacqueline Goss

18 THE COURT And you are the defendant's
19 mother?

20 THE WITNESS Yes, sir

21 THE COURT There has been some confusion
22 here about whether or not Mr Diggs represents your
23 son or Mr Selwa represents your son Mr Selwa is
24 appointed by the Court to represent him He tells
25 me that you have paid Mr Diggs to represent Mr

1 Goss on this post conviction relief application
2 Now, tell me about it

3 THE WITNESS Sir, I paid him, Mr Diggs,
4 \$10,000 When I went to talk to him, I don't
5 understand court rules, PCR's or whatever, but he
6 told me I had five days in which to, after Jamie
7 was sentenced, to get an appeal, I think

8 THE COURT Okay

9 THE WITNESS So I scraped up the money and
10 got the \$10,000 and went and took it to him He
11 said he would take it from there

12 THE COURT Well, he did your appeal?

13 THE WITNESS Yes

14 THE COURT Is that what you paid him for?

15 THE WITNESS That is what he said

16 THE COURT Okay How about this proceeding
17 here, this post conviction relief application, did
18 you talk with him about that?

19 THE WITNESS No, sir, I didn't

20 THE COURT You talked with him back right
21 after the trial, is that correct?

22 THE WITNESS That's correct

23 THE COURT All right

24 Mr Selwa, do you need to ask her anything?

25 MR SELWA I don't have any questions

1 THE COURT All right, you may step down
2 (Witness excused)

3 THE COURT All right It is clear to me
4 from Miss Goss' testimony that what she did she
5 went to see Mr Diggs immediately following the
6 trial, within five days, she said, and that she
7 paid him for the purposes of an appeal

8 Mr Goss, this is not an appeal, this is a
9 separate proceeding filed post appeal Your appeal
10 was heard in the Supreme Court or the Court of
11 Appeals, one of the two, and this proceeding
12 doesn't have anything to do with that

13 Mr Selwa, you're his attorney Call your
14 first witness

15 MR SELWA Your Honor, I would call Mr Goss
16 to the stand

17 THE COURT All right, Mr Goss

18 JAMIE GOSS,
19 after being first duly sworn, testified as follows

20 THE CLERK Please be seated

21 THE COURT All right, Mr Selwa

22 DIRECT EXAMINATION

23 BY MR SELWA

24 Q Mr Goss, you're here in a post conviction
25 relief Is that correct?

1 A Yes, Your Honor

2 Q I'm your attorney, I'm not Your Honor

3 Your attorney in the original matter was

4 Orrie West is that right?

5 A Correct

6 Q And did you have a trial on that?

7 A Yes, sir

8 Q Okay And what was the outcome of that

9 trial?

10 A Guilty

11 Q All right And you're alleging basically

12 that your attorney was deficient in his

13 representation of you, is that right?

14 A Correct

15 Q Can you tell the Court in what ways she was

16 deficient in representing you?

17 A She was ineffective by her not doing, fully

18 investigating of the trial, and the case, during

19 jury selection, right here on this page of my

20 transcript, on page, where the day that I met with

21 her on, the day that I met with her we never, we

22 never talked about the trial until 15 minutes

23 before jury selection

24 Q Okay So you're stating to the Court, let me

25 try to get this straight, you're saying that you

1 didn't have sufficient time to meet with Miss West?

2 A Yes We never talked about this case, never,
3 and for the record to reflect, if you turn to the
4 transcript, and it was stated that I supposed to
5 meet with her at 9 00 o'clock and she, for the
6 record, to say I didn't even know what was the
7 purpose of me meeting with her and all that is in
8 the transcript

9 Q Okay So you're saying you didn't have
10 sufficient time to prepare for trial?

11 A Correct

12 Q During the trial did she put up witnesses for
13 you?

14 A I spoke with her about a witness

15 Q Had you spoken with her previously about your
16 witnesses that you wished to call?

17 A The only time we ever talked was the day,
18 fifteen minutes, the day we pulled the jury, that's
19 the only day we ever speak about this trial

20 Q Did you have an initial appearance and your
21 roll call?

22 A We never talked because if I'm not mistaken,
23 that the paperwork that I have and a lot of it got
24 damaged from me being shipped from Bishopville to
25 Columbia to Horry County Detention Center, with my

1 case log I have, a lot of it got misplaced and what
2 I'm saying today is that Miss West have not given
3 me, have not did a full, not did a full
4 investigation of the case

5 Q Okay Which witnesses would you have called
6 had you had time to meet with her?

7 A Terrell Carr and Kendrick Sumter That is
8 the last time we talked, Judge John had give you
9 the order to collect my whole files from Mr Diggs
10 and if you would see the file that you collect from
11 Mr Diggs, he has the memorandum with the actual,
12 he has the memorandum with the actual person that
13 was driving the vehicle, the pictures and
14 everything, and the two witnesses that said that
15 the reason why I was at the apartment complex that
16 day but apparently he haven't sent you the file so
17 you can fully investigate it

18 Q So you are saying that there was another
19 person driving the car that was stopped?

20 A Of course if you, I will repeat myself in the
21 courtroom once again, that Judge John give you an
22 order to get my whole file and if you have my file
23 you would see where in the memorandum, with the two
24 alibi witnesses that I have

25 Q Okay You're talking about the memorandum

1 that he filed with the court for the post trial
2 motions, is that right?

3 A Correct

4 Q Okay And the memorandum, the information
5 that he submitted, that is the information that
6 you're claiming that Miss West did not consider
7 when she was representing you?

8 A Correct, because me and her, all she told me,
9 because I was late for the jury trial, I mean for
10 the selection of the jury and for the trial, all
11 she tell me was this is an old time judge, don't
12 say nothing, so I was scared to death right there,
13 that is why I froze up, that is all we talked about
14 the fifteen minutes, she has known the dude I
15 mentioned, she has that wrote down on some of the
16 paperwork I have that have got missing with the
17 memorandum with that person We have spoken from
18 that

19 Q And to clarify for the Court, the post trial
20 motions, can you tell the Court what those were
21 about? What did you hire Mr Diggs for?

22 A To my knowledge, I hired him for PCR, to my
23 knowledge, because he keep telling, every time I
24 talk to him he says, "There is nothing I can do,
25 nothing I can do until the appellate court can make

1 their decision, then we will go forward " That is
2 what he keep telling me Right here is where the
3 appellate court --

4 THE COURT Sit down, Mr Goss Go ahead

5 A The appellate court, they put in two orders
6 for the judge, filed post trial constitution
7 evidence, I mean evidence warranting a new trial,
8 and they also put in where the State had to prove
9 me guilty without a reasonable doubt about the
10 crack cocaine that was found in the vehicle and
11 what they used was nothing into evidence, where my
12 attorney have let them speak about they were
13 speaking about a cell phone, something that I never
14 seen, they never seen, saying that it was a cell
15 phone with my picture on it, next to the drugs,
16 that me and my attorney Miss West have not
17 received, have no clue about this

18 Q Okay And you did not prevail on those
19 motions, is that correct?

20 A Excuse me?

21 Q You did not prevail, you didn't win those
22 motions, is that right?

23 A They put it off for a hearing

24 Q Okay Did you have that hearing?

25 A No, I never had the hearing

1 Q All right So to your knowledge they didn't
2 make a decision on these post trial motions?

3 A No They was supposed to, that is the last
4 time we was in the courtroom, John give you an
5 order to pull the records and subpoena my two
6 witnesses and the dude that is in the memorandum
7 with the pictures he have

8 Q Now, you're here today to basically say that
9 Miss West was deficient in her representation
10 Were those witnesses alibi witnesses?

11 A Excuse me I don't understand what you're
12 saying

13 Q Did those witnesses have information stating
14 that you were with them at the time of the alleged
15 crime?

16 A Yes, that they seen me at the alleged crime
17 before this even happened, before this even
18 happened, because --

19 THE COURT I don't think I understand what
20 you're asking him, Mr Selwa

21 Q Who did Miss West call during the trial?

22 A Who did she call?

23 Q Yes, as witnesses

24 A We only talked about one guy, that is the guy
25 that was in the memorandum

1 Q Okay, was he present in court?

2 A No We only talked fifteen minutes because I
3 had other charges that I was going to court for
4 To tell you the truth, we just, that fifteen
5 minutes, that was something brand new to me because
6 the case I was going to trial for was some older
7 cases, on some cases that I actually did and they
8 dismissed the case The fifteen minutes, this
9 trial right here was not set up for that date on
10 February 12, or the 14th, I'm not sure, it is not
11 set up, this trial here wasn't, because that is the
12 little time she had to prepare the case, within
13 those fifteen minutes

14 Q Okay And because she did not call those
15 witnesses to testify in your behalf you're claiming
16 that her representation was deficient?

17 A Yes If she would have done a, fully
18 investigate of the whole case I would think the
19 outcome would have been different

20 Q And you feel that if those witnesses had come
21 and testified they would have exonerated you from
22 these charges?

23 A Yes, sir

24 Q Okay Is there anything else you would like
25 to tell the Court?

1 A Yes I would like to tell the Court numerous
2 of things For one, I would like to say that when
3 I went to trial I was late and before I got to
4 trial they found me guilty, basically because the
5 judge, it is right here on page --

6 Q You were tried in your absence, is that
7 right?

8 A Huh?

9 Q Were you tried in your absence?

10 A The beginning, the beginning I did, because I
11 was late because of an accident and the traffic on
12 the highway, that the judge said, "I won't have to
13 worry about Mr Goss being late again, once I get
14 my hands on him it will be okay " That is in the
15 transcript, on page --

16 Q So they started the trial without you, is
17 that what you're saying?

18 A Correct, trial and jury selection and like I
19 said, I had a lot of cases to quote, like with my
20 lawyer, when I came, I was also late during the
21 jury selection, she spoke and said this is an old
22 time judge, I repeat myself, "This is an old time
23 Judge, you can't say nothing," so I'm new to this,
24 I have no idea about trials or nothing and she
25 picked all twelve of my jury, out of fourteen

1 jurors I have one American black, it was fourteen
2 total, the State strike African Americans, I have
3 case law to support that, but somehow that got
4 demolished on the transfer, I'm missing like three
5 exhibits that I had for the courtroom today dealing
6 with this case

7 Q Okay So, your testimony was Miss West
8 conducted the trial without you there?

9 A Correct

10 Q Okay And that she had gone through the jury
11 selection, is that correct?

12 A She didn't go through the whole jury
13 selection but when I got there she tell me just
14 don't say nothing, and that is all I know, I just
15 be quiet and just listen to her because she was my
16 attorney

17 Q Okay And is there anything else you would
18 like to tell the Court?

19 A Another thing I would like to tell the Court,
20 that I have a lot of investigating going on dealing
21 with Myrtle Beach Police Department where, for one,
22 the key to the vehicle that they submitted into
23 evidence, that she let them submit it into
24 evidence, that have no way of proving that this key
25 can open the vehicle or crank the vehicle or start

1 the vehicle, the whole nine I also have words I
2 like to put on the record

3 Q Let me ask you a question about that real
4 quick You're saying that the evidence that she
5 allowed, she didn't object to that, the
6 admissibility of the key?

7 A With the key

8 Q Okay And there was no proof offered of
9 whether that key actually started the car or opened
10 the car or even belonged?

11 A The officer even admitted he never even take
12 the key and, he never take the key and put the key
13 in the car, he never seen the key crank, he never
14 fingerprint the key or nothing

15 Q Okay All right

16 A And I have one more thing I would like to put
17 on the record today is that, that the witnesss with
18 the State have never, that the officer also
19 repeated to Miss Orrie West about the officer,
20 Officer Bryant Truex, that he was the arresting
21 officer, he searched the vehicle, fully searched
22 the vehicle, came out with a Bowie knife and some
23 other stuff but one thing before that, I can say
24 that he never found drugs in this vehicle The
25 vehicle was pulling off, the police car was pulling

1 off with me leaving it, going to Myrtle Beach
2 Police Department and that the officer stopped and
3 said, I remember this clearly, his name is Officer
4 West, I wanted him today, that is why I was waiting
5 on you to come speak with me because the letter I
6 have received from you that you going to contact
7 me, because I would like to have him subpoenaed to
8 this trial, I mean to this PCR hearing today, that
9 Officer West was the officer that actually found
10 the drugs and, because all I see in my bed laying
11 down at night is, I'm not saying, I'm going to say
12 I saw the drugs but the whole thing is where he got
13 it from, that is what I'm saying, where he got it
14 from, and with the video of the officer's car, that
15 he had the video in, and that is the only reason
16 why I see why the State did not allow that video
17 into the courtroom and said that they recorded over
18 the videotape of a traffic stop, he admitted they
19 recorded over the type because there was those
20 reasons, if he didn't found the drugs, second of
21 all he never had probable cause to stop the
22 vehicle

23 Q Did you get a chance to go over that
24 discovery information with Miss West?

25 A Well, Miss West, this is God's honest truth,

1 I don't think Miss Orrie West had enough time
2 really for this trial because she got my case, I
3 got locked up on October 6, or October 9th, I'm not
4 for sure, I really do not think she had enough time
5 to fully investigate this case because when she got
6 the case, she got the case at November 14th or
7 November 16th, that I seen the paperwork

8 Q The previous year?

9 A No, the same year

10 Q You're saying --

11 A Then 90 days later I went to trial, so she
12 had her own clients to deal with and she had, there
13 is no way in the world she could have fully
14 investigated this case in the time the State give
15 her

16 Q Answer my question Did you have a chance to
17 go over your discovery information with her?

18 A I don't know nothing about discovery until I
19 got locked up, no

20 Q Okay None of that information was gone over
21 with you and Miss West?

22 A None --

23 Q By her?

24 A The only thing, about the fifteen minutes, I
25 explained to her what happened

1 Q Did you have a chance to meet with her at her
2 office, did she call you, did she set up
3 appointments?

4 A We never talked about this trial date until
5 the jury selection

6 Q Did you talk about anything?

7 A No, sir The only thing we talked about was
8 fifteen minutes on the jury selection that day and
9 I think that was February the 12th, if I'm not
10 mistaken

11 Q Okay So you're saying there was no
12 appointment set or anything?

13 A No appointment because the whole conflict got
14 twisted with the Solicitor's office, with my old
15 cases, the old cases that I have, that is where,
16 because that is what I supposed to be going to
17 trial for on February the 12th but when we got
18 there, when I got there it was this case, when the
19 date for the February 12th, with the jury
20 selection, that was the date I find out that I was
21 going for this case right here because I just had
22 got out and no later than 90 days they was taking
23 me to trial for this case

24 Q Do you think if you had time to review the
25 case with Miss West you would have been able to

1 locate your witness that you're claiming?

2 A Of course

3 Q Do you think that had you had time to locate
4 that witness and have Miss West present that
5 testimony that that would have set you free?

6 A Of course, of course, sir

7 Q Do you think you would have been convicted if
8 he had testified?

9 A No, sir, because the State had to prove me
10 with a reasonable doubt because the Court charged
11 me for not testifying when she tell me not to
12 testify, because the only thing they charge me was
13 not to testify and not to put up any witnesses,
14 that is what the Court charge me with

15 Q Is there anything else you would like to tell
16 the Court?

17 A Yes I would like to tell the Court that,
18 another thing that I would like to say when the
19 State had an eyewitness, the State also had an
20 eyewitness that they never bring to court and I got
21 someone in Georgetown kind of investigating that as
22 we speak, about that witness, because that's
23 another witness, a witness that could have set me
24 free

25 Q And who is that witness?

1 A Tonya All I can remember is Tonya When
2 the officer, it was the officers in Myrtle Beach
3 Police Department, Auto Body Works was right there,
4 and when he asked them why was I running from the
5 area of the vehicle, stated right here on this
6 incident report, saying the guy jumped out of the
7 vehicle with a gun, that is why he seen me running
8 in the area of the vehicle, because the vehicle
9 came full force into the apartment complex and I
10 ran
11 Q And that witness would have testified?
12 A Of course
13 Q That witness was -- I'm a little confused as
14 to who that witness was and --
15 A Do you want to read this to the Court? This
16 is the incident report that took place
17 Q An incident report?
18 A That took place on the scene with the
19 witnesses that the State never brought to court
20 Q You're saying that that witness is listed in
21 the incident report as having seen you run from the
22 car, is that right?
23 A Correct
24 Q Okay And you're saying that the prosecution
25 never called that witness or Miss West didn't call

1 that witness?

2 A Well, I'm going to tell you the truth, this
3 the first time, I just had request to the office to
4 get this paperwork, the last discovery I got this
5 wasn't in there, so I just got this one dated from
6 the court office on October 27, 2011 I never seen
7 this, this is the original, this is exactly what
8 happened at the scene, right here

9 Q Okay Are you asking the Court for a new
10 trial on all your charges?

11 A There is only one charge, sir

12 Q Okay You had mentioned other charges with
13 the Solicitor's office

14 A The other charges was dismissed

15 Q So you're asking the Court for a retrial, is
16 that right?

17 A Yes, sir

18 Q Okay

19 A Because like, I repeat myself once again, the
20 State has to prove me with a reasonable doubt and
21 everything that was informed as evidence, like the
22 sketch diagram that they put into evidence, the
23 Solicitor sat right there in the courtroom and
24 drew up that and I'm just waiting on them to mail
25 me the brochure because in my mind there is no way

1 in the world there is four buildings inside the
2 circle, to my knowledge there is three and put that
3 into evidence to make his testimony reliable to the
4 twelve jurors

5 Q You're saying that the diagram, that Miss
6 West didn't object to that as well?

7 A Correct, she did not object

8 Q Anything else?

9 A There is a lot more things I would like to
10 say but right now just when you in here it is just
11 things float out at this moment, yes, that's about
12 it

13 MR SELWA Please answer any questions Miss
14 Catoe has or the Court may have

15 MS CATOE May it please the Court

16 CROSS EXAMINATION

17 BY MS CATOE

18 Q Good afternoon, Mr Goss Just a few
19 questions for you You mentioned, you said
20 something like you were charged not to testify
21 Would you agree that the record reflects that the
22 Court went over with you your right to testify and
23 told you that you had the absolute right to
24 testify?

25 A Also when the Court said that my attorney

1 told me not to say anything, so I was scared to
2 death from day one when she told me that She was
3 my attorney, that is who I was listening to, that
4 is why I stated, because like I said, I'm a newborn
5 baby when it comes to trials, something I have no
6 idea about

7 Q All right And would you agree that Miss
8 West did in fact make a motion to suppress based
9 upon the lack of probable cause for the vehicle
10 stop?

11 A If I had the right case laws with me here
12 today, she did but if I had the right case laws to
13 support that, that fact that she speaks, she didn't
14 did a full investigation of the case with that
15 probable cause, because an attorney that seen that
16 would have a case law behind it because there is
17 numerous of case laws My paperwork got lost I
18 would like to present today in court, on the
19 transportation run

20 Q All right And you mentioned the key to the
21 vehicle that was found in your pocket Would you
22 agree that the officer testified on page 75 of the
23 transcript that you told him that it was the key to
24 the vehicle in question?

25 A Yes, I do have a question If I can get

1 Myrtle Beach Police Department booking camera
2 recording and officers in this courtroom today,
3 there is no way he sit up on the stand and just
4 tell a false one He told a false one I'm
5 requesting for that now but they tell me I'm
6 waiting on my indigent, I'm indigent, I'm waiting
7 on them, so because Myrtle Beach Police Department,
8 they want to charge me for that I wish I had that
9 today in court to prove that, that one proven fact,
10 that no way possible they tell the truth, that's
11 false, and if I can get Officer Kane, because I
12 remember his name clearly, because that was false,
13 all that is false

14 Q All right And you mentioned something about
15 Miss West not objecting to admission of the key
16 Would you agree that on page 62 of the transcript
17 in fact she did object to admission of that key?

18 A On page 62?

19 Q Yes Specifically lines seven through
20 fifteen

21 A "There is testimony in the record for the
22 jurors' consideration as to where he said he got it
23 from, I leave that to the jury to determine "

24 Miss West "I'd like to object to the
25 ruling "

1 The Court, "Sir?"

2 Miss West "I would like to object to that
3 ruling, Your Honor "

4 Mr Hixon "Your Honor, the state would
5 argue it is not non --" I can't even pronounce
6 that "-- evidence, we don't have to prove a chain
7 on it "

8 Q So, would you agree she did object to
9 admission of the key? "I'd like to object to that
10 ruling," is that the phrase you're concerned about?

11 A Yes I'm still lost when you say, "I'd like
12 to object to that ruling " I can't pronounce it

13 MS CATOE I have nothing further, Your
14 Honor

15 THE COURT Counsel?

16 MR SELWA I have no further questions

17 THE COURT You may step down, Mr Goss
18 (Witness excused)

19 THE COURT Any further witnesses, Mr Selwa?

20 MR SELWA I would like to call Miss West to
21 the stand

22 THE COURT Very well Come around, Miss
23 West

24 ORRIE WEST,
25 after being first duly sworn, testified as follows

1 DIRECT EXAMINATION

2 BY MR SELWA

3 Q Miss West, you have had the chance to hear
4 the testimony today from Mr Goss How much time
5 did you spend with Mr Goss in preparation for the
6 trial?

7 A If I'm not mistaken, if I could just make a
8 bit of a statement, Mr Goss had three files at the
9 time The State went to trial on one of his files
10 He was in fact out on bond at the time the case
11 went to trial But I had a file from '05 and --
12 two files from '05 and one from '06, and while he
13 was out on bond I had sent him letters to come see
14 me, which he did not Now, on the date of the
15 trial, he was correct that by the time he got there
16 the case had, we were in the process of pulling the
17 jury

18 Q Did he try to call you at any point?

19 A We had had some phone contact at some point
20 but we did not have an interview on the telephone,
21 and my record reflects he never actually came in
22 the office for an interview I have three separate
23 letters One was for him to come in on January 19,
24 2006 Another letter was for November 30, 2006
25 And the third letter was for December 1st, 2005

1 Q Okay And when was he charged with this
2 crime?

3 A The one they actually went to trial on, my
4 file was opened up November of 2006 and he went to
5 trial February of 2007

6 Q Okay The first day, I'm sorry?

7 A My file was opened up November of 2006

8 Q Okay And you testified that the letters
9 went out when?

10 A Well, the letter for the November file went
11 out, requested that he come in for an interview
12 between November 30, 2006, and 9 of 12

13 Q Being that you didn't meet with him in those
14 conversations, I know you said you did conduct an
15 interview?

16 A Did not conduct an interview

17 Q Did he at any point tell you about any alibi
18 witnesses or witnesses that would help his case?

19 A Some of the names he mentioned, he mentioned
20 when we met just before trial

21 Q Okay Did you have a chance -- well, at that
22 point did you ask the Court for a continuance?

23 A I don't believe so I don't believe so

24 Q Okay And at what point did he arrive, where
25 at in the trial process were you?

1 A It was, if I'm not mistaken, it was during
2 jury selection

3 Q During the jury selection? So, had you
4 presented that evidence to the Court in a motion
5 for continuance do you think the Court would have
6 granted you that?

7 A I really can't speculate on that I'm not
8 sure why I didn't or why I did, there must have
9 been a reason but I can't remember what it was

10 Q After his conviction you informed him of his
11 right to appeal, correct?

12 A Yes, sir

13 Q And did Mr --

14 MS CATOE The Court's indulgence just one
15 second

16 Q Miss West, can I see the document that you're
17 referring to when you testified about the letter
18 that went out for this last charge, for the
19 appointment?

20 THE DEFENDANT There is no certify, no
21 stamps on that I just got this file

22 THE COURT Mr Goss, your attorney can speak
23 for you

24 MR GOSS I'm sorry

25 BY MR SELWA

1 Q Miss West, was that produced to Mr Goss in
2 his recent request for his file from your office?

3 A I would assume that it was Whenever a
4 person asks for their file they get a copy of
5 everything that we have in it

6 Q Okay

7 A It says -- now, Mr Goss had three, three
8 actual files, so this file is the file that was the
9 file that went to trial, so if I gave him a copy it
10 would have probably included that letter

11 Q And for my understanding, every paper is
12 stamped when there is a request? Is it stamped in
13 the clerk's office when it is sent to the
14 prisoners? Is that correct?

15 A No We have these files and we open them up,
16 we send a letter to the client saying, "Dear sir,
17 you have been appointed an attorney," we hope we
18 have a correct address We send them a letter
19 about their attorney

20 Q My question was, when an inmate asks for his
21 file from your office --

22 A Yes

23 Q -- do you clock it at the Clerk's office?

24 A No No, sir

25 MR SELWA No further questions, Your Honor

1 THE COURT All right, Miss Catoe

2 CROSS EXAMINATION

3 MS CATOE May it please the Court

4 CROSS EXAMINATION

5 BY MS CATOE

6 Q Miss West, you were able to speak with Mr
7 Goss for fifteen minutes, or whenever he arrived,
8 he was late, is that correct, during jury
9 selection?

10 A That's correct

11 Q All right And when were you actually able
12 to speak with him? Was it during jury selection?

13 A I think I had a few minutes before At some
14 point I distinctly remember sitting in the,
15 possibly even after we did jury selection, sitting
16 in one of the waiting rooms and discussing the case
17 with him

18 Q All right

19 A Can I say also he was in fact out on bond at
20 the time this case was called to trial

21 Q All right And did he have notice of trial
22 in advance?

23 A I believe so I believe his last, he knew
24 about it, he showed up, so obviously he heard from
25 me and/or the Solicitor's office that this case was

1 going to trial, because he showed up for trial

2 Q All right And you had tried to set up
3 meetings with him previously but he did not attend,
4 is that correct

5 A He did not attend, that's correct At some
6 point Mr Goss did spend some time at the detention
7 center but at the time this case was called to
8 trial he was out on bond

9 Q All right And there was some point after
10 jury selection probably where you were given some
11 time to talk to him and did he tell you about
12 specific witnesses at that time? Do you recall
13 that discussion?

14 A Yes, I do

15 Q Okay And I guess -- what was your
16 impression of the things he was telling you about?

17 A I don't recall if it was witnesses, as much
18 as a witness I'm not certain that I had the
19 ability to do anything with it at that particular
20 time

21 Q Did you believe it would have been helpful to
22 the defense?

23 A I just really can't say It had to do with
24 whether or not he was seen at the site at the time

25 Q All right

1 MS CATOE I have nothing further, Your
2 Honor

3 THE COURT You may step down, Miss West

4 THE WITNESS I'm sorry?

5 THE COURT You may step down

6 Do you have any further questions of Miss
7 West?

8 MR SELWA No, Your Honor

9 THE COURT You may step down
10 (Witness excused)

11 THE COURT Mr Selwa

12 MR SELWA No further witnesses, Your Honor

13 THE COURT Miss Catoe?

14 MS CATOE No witnesses, Your Honor I
15 would like to make an argument

16 THE COURT I will allow that I will allow
17 Mr Selwa to go first

18 MR SELWA Your Honor, you have heard the
19 testimony Miss West did admit she did not ask for
20 a continuance, and a continuance in the matter
21 might have allowed for her to discover the
22 whereabouts of some key witnesses in the trial We
23 would ask that a new trial be granted for Mr Goss

24 THE COURT I haven't heard yet who the key
25 witnesses are or what they would actually testify

1 to and how that would have helped his case and of
2 course Mr Goss chose not to offer up the same
3 testimony in a trial, but tell me, I mean, I
4 haven't yet heard what the surprise witness or the
5 key witness was going to say and how that would
6 have helped him I mean, sure, if you have ten
7 years to find a witness and delay a trial
8 indefinitely, you know, you could get other
9 witnesses but I haven't heard yet what this witness
10 was going to testify to There is vague reference
11 about him being at the scene but I would like to
12 know what that witness was going to say and how it
13 was going to affect the trial

14 MR SELWA Your Honor --

15 THE COURT Or the outcome

16 MR SELWA Your Honor, that was part of the
17 reason that Mr Diggs filed his post trial motion,
18 post trial motions, and that is in fact what those
19 post trial motions were about There were two
20 affidavits in his post trial motions, with the two
21 different witnesses

22 THE COURT What post trial motions did he
23 make?

24 MS CATOE If I may, Your Honor, I believe
25 it is in the court's file that has been provided

1 today

2 THE COURT I have the transcript

3 MS CATOE And if the Court needs another
4 copy I believe I can get one for you

5 May I approach, Your Honor?

6 THE COURT Okay Kendrick Sumter and Gerald
7 Cox?

8 MS CATOE Yes, Your Honor

9 THE COURT Or Carr

10 MR SELWA It was a motion for new trial,
11 Your Honor

12 THE COURT It looks like there was a
13 spoiliation motion that was denied, is that
14 correct, a motion based on spoiliation

15 Go ahead, Mr Selwa

16 MR SELWA Your Honor, not to complicate
17 this process here, but as there were post trial
18 motions and those affidavits were considered, you
19 know, I'm not sure, I didn't want to duplicate the
20 process to the Court but we would ask you to
21 consider those already in the record and have those
22 act as testimony about what they would have offered
23 at trial We would ask that you respectfully grant
24 a new trial to Mr Goss

25 THE COURT Well, were those motions

1 considered on direct appeal, the denial of those
2 motions, in those affidavits?

3 MR SELWA I'm not really sure, Your Honor

4 MS CATOE Yes, Your Honor, that was one of
5 the issues on appeal

6 THE COURT Okay All right, Miss Catoe

7 MS CATOE Thank you, Your Honor First I
8 would submit that the defendant failed to provide
9 this information about the witnesses sufficiently
10 in advance even though he had the opportunity to
11 meet with his attorney

12 Secondly, he has failed to prove prejudice
13 These affidavits that the Court has now received
14 essentially just put him at the scene of the crime
15 around that time They don't negate that he
16 committed the crime Now, if I understand his
17 position, he is claiming that there was another
18 party, not one of the people in the affidavits,
19 another party that was actually the person driving
20 the car, who would have been the one possessing the
21 drugs We still have not heard from that person
22 and therefore he has completely failed to prove any
23 prejudice for failure to call him at trial, because
24 we have no idea what that person would say

25 And that would be the State's position, Your

1 Honor

2 THE COURT Well, what is the State's
3 position on the fact that these affidavits were
4 presented post trial to the trial judge for the
5 purposes of obtaining a new trial and he denied it
6 and that issue was taken on direct appeal and
7 apparently the appellate review resulted in a
8 finding that the judge acted appropriately under
9 those circumstances?

10 Is that correct?

11 MS CATOE Thats correct, Your Honor

12 THE COURT What would you say about that,
13 Mr Selwa?

14 MR SELWA Could the Court indulgence one
15 minute?

16 THE COURT Sure

17 MR SELWA Your Honor, I'm sorry, what was
18 the question?

19 THE COURT The question was, you know, we
20 have had appellate review of Judge Cottingham's
21 denial of a motion for new trial based directly on
22 the issue of these two affidavits and these
23 affidavits not having been introduced at trial
24 I'm not sure exactly what Mr Diggs was doing when
25 he made these motions I don't know whether he was

1 trying to say this was after acquired evidence or
2 that -- do you know exactly what he was doing and
3 what the basis of his motion was?

4 MR SELWA I don't

5 THE COURT Or was he just saying, "I've got
6 some more evidence I want you to consider?" I'm
7 not sure what Mr Diggs is doing here

8 MR SELWA I think it was born out of the
9 fact my client didn't have much time to meet with
10 Miss West and this was an attempt to bring that
11 information in to be considered

12 THE COURT Well, first of all we've got
13 Judge Cottingham saying that the affidavit that
14 Gerald Carr, he says, "It doesn't help you at all
15 It puts you in the vicinity and puts you where the
16 car was, both time and place, and where the drugs
17 were " Then he goes on to say, in the trial
18 transcript, "Essentially these just don't help "

19 MR SELWA Your Honor, I would ask that --

20 THE COURT If we look at Mr Sumter's, isn't
21 Mr Sumter the one that just says that he -- let me
22 look at it precisely

23 MR SELWA Your Honor, I would submit that
24 the jury should make a determination as to what
25 kind of weight they would assign to those

1 affidavits, or actually the testimony that would
2 come from those witnesses

3 THE COURT Mr Sumter says, "I picked him up
4 off Third Avenue, took him to the home of his
5 mother and that was it "

6 We look at Mr Carr's affidavit, he says at
7 6 00 o'clock he knocked on the door and asked if
8 his mother's son, obviously that is another son,
9 was at home and that was it I mean, that is all
10 these affidavits seem to say and your client could
11 have easily taken the stand and provided the same
12 information to the jury, could he not?

13 MR SELWA He could have, Your Honor It is
14 his right not to and thereby taking the stand he
15 obviously opens himself up to cross-examination
16 which I'm sure was a procedural and tactical
17 decision Miss West made

18 THE COURT I'm sure Tell me again exactly
19 what your client's complaint is That Miss West
20 didn't call these two witnesses?

21 MR SELWA Yes, Your Honor, that he didn't
22 have enough time to meet with Miss West

23 THE COURT He had been out on bond, why
24 hadn't he made time to go see Miss West? She had
25 sent him three letters, why in the world hadn't he

1 gone to see her? I mean, you heard her say that
2 she had been trying to get him to come in and he
3 just wouldn't come in It is not like he was
4 incarcerated?

5 MR SELWA No, Your Honor Your Honor, my
6 client had stated to me that he didn't have a copy
7 of that letter, and that was the questioning about
8 the clock

9 THE COURT Well, he certainly knew he was
10 charged

11 MR SELWA Yes

12 THE COURT And he knew who his attorney was
13 I'm going to deny relief

14 Miss Catoe, prepare an order

15 MS CATOE Yes, Your Honor

16 THE COURT All right

17 (Hearing concluded)

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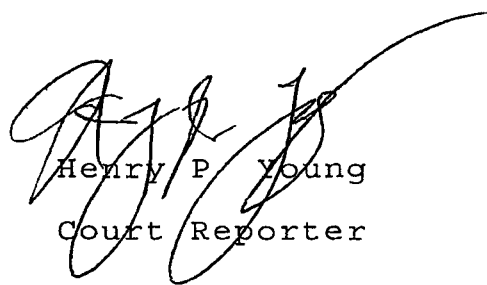
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I, the undersigned Henry P Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Horry County, South Carolina, on the 7th day of November, 2011

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

April 6, 2012



Henry P Young
Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
)
Jamie Goss, # 294885,)
)
Applicant,)
)
v)
)
State of South Carolina,)
)
Respondent)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2010-CP-26-10057

**ORDER DENYING
POST-CONVICTION RELIEF**

HORRY COUNTY
CLERK OF COURT
11 DEC 16 PM 2 17

This matter came before the Court pursuant to an Application for post-conviction relief filed October 26, 2010, by Jamie Goss, a k a "James Gause" Respondent made a Return on December 23, 2010. An evidentiary hearing was convened at the Horry County Courthouse on November 7, 2011. The Applicant was present in court and represented by Daniel A. Selwa, II, Esquire. The Respondent was represented by Christina J. Catoe, Assistant Attorney General.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County. The Applicant was indicted in November 2006 for trafficking in crack cocaine, 10-28 grams (2006-GS-26-4735). Orrie E. West, Esquire, represented the Applicant. On February 12-13, 2007, the Applicant was tried and convicted pursuant to a jury trial before the Honorable Edward B. Cottingham. Judge Cottingham sentenced the Applicant, as a third-time drug offender, to 28 years. The Applicant subsequently filed a motion for new trial based upon newly-discovered evidence. A hearing was held on the motion on March 22, 2007. The Applicant was represented by William I. Diggs, Esquire, at this hearing. Judge Cottingham denied the motion for new trial. Thereafter, a notice of appeal was timely filed, and an Anders Brief was submitted on the Applicant's behalf by Kathrine H. Hudgins, Esquire. The South Carolina Court of

Appeals affirmed the conviction on December 22, 2009 (2009-UP-610) The case was remitted to the circuit court on January 7, 2010

STANDARD OF REVIEW

In a post-conviction relief proceeding, the applicant bears the burden of proving his or her allegations by a preponderance of the evidence Caprood v State, 338 S C 103, 109-110, 525 S E 2d 514, 517 (2000), Rule 71 1(e) Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U S 668 (1984), Butler v. State, 286 S C 441, 334 S E 2d 813 (1985) The correct measure of performance is whether the attorney provided representation within the range of competence required in criminal cases Butler, supra. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case " Caprood, supra, at 109, 525 S E 2d at 517 (citations omitted) The Applicant must overcome this presumption to receive relief Cherry v State, 300 S C 115, 386 S E 2d 624 (1989)

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel First, the Applicant must prove that counsel's performance was deficient Under this prong, attorney performance is measured by its "reasonableness under professional norms " Cherry, 300 S C at 117, 385 S E 2d at 625 (citing Strickland) Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different " Cherry, 300 S C at 117-18, 386 S E 2d at 625 When a defendant challenges his conviction after a trial, the proper consideration is whether there is a reasonable probability that, absent the errors, the fact-finder would have had a reasonable doubt respecting guilt Smith v State, 375 S C 507, 515, 654 S E 2d

523, 527-28 (2007) (citations omitted) In order to receive relief, an applicant must prove both ineffective assistance and resulting prejudice See, e.g., Suber v State, 371 S C 554, 558, 640 S E 2d 884, 886 (2007)

ALLEGATIONS

In his Application, Mr Goss alleged that his custody was unlawful for the following reasons

- (1) U S constitutional violation 6th amendment – counsel’s performance was deficient below the standard,
- (2) Lack of probable cause determination – no physical evidence on record for probable cause for the driving violation, no documentation, summons, ticket, arrest warrant, no videotape, and
- (3) Lack of evidence to support the conviction – because of the above mentioned there is no evidence that conclusively puts Applicant in said car

The Applicant stated he was seeking to have the conviction set aside, the sentence vacated, and to have a new trial

Summary of Relevant Trial Facts

At trial, the following facts were developed On October 9, 2006, around 8 30 pm, the Applicant was stopped for having a tag light out As the officer approached the Applicant’s van, he saw the Applicant’s face in the mirror looking at him and he also saw that the Applicant was wearing a white shirt At that point, the Applicant sped off and the officer got back into his vehicle and gave chase He followed the van into an apartment complex where the Applicant finally stopped the van, got out, and started running away The officer caught up with him and arrested him for reckless driving A key was found in the Applicant’s pocket, and the Applicant told the officer that it was the key to the van in question When he inventoried the van, the officer discovered crack and marijuana in the center floor board area. The drugs were found beside a cell phone with the Applicant’s picture on the cell phone’s display background The officer did not give the Applicant a ticket for the tag light since he was charging him with general sessions-level

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offenses, however, the Applicant was ticketed for reckless driving and resisting arrest. The Applicant turned out not to be the registered owner of the van. The officer also testified that, although the stop had been recorded by his in-car video camera, the tape had been accidentally recorded over and could not be presented at trial.

The PCR Hearing

At the PCR hearing, the Applicant testified that he was found guilty of trafficking crack cocaine following a trial. Orrie West was his attorney. He stated that counsel was ineffective for failing to fully investigate his case. He stated that he believed counsel had insufficient time to prepare for trial because a trial on this particular charge was not set up in advance. He stated that he would have had time to locate his witnesses if he and counsel had more notice of trial and more time to prepare. The Applicant testified that he never talked about the trial with counsel until about fifteen minutes before the jury selection. The reason he did not have much time to talk to counsel before trial was because he was late for both jury selection and trial. However, he stated that during their brief pre-trial meeting, he told counsel about a potential witness for the defense. He indicated that this witness was the person actually driving the car that night and was therefore the person to whom the drugs belonged. He stated that this person was not present at trial and did not testify for the defense. The Applicant stated that he did not testify at trial because his attorney told him that he was before an "old time judge" and that he should not say anything. He acknowledged that the judge went over his right to testify or not testify and advised him that he had an absolute right to testify at trial.

The Applicant indicated that he felt the drugs should have been suppressed based upon officer misconduct and destruction of the videotape of the stop. He acknowledged that his counsel did make a motion to suppress the drugs based on lack of probable cause/pretextual stop, and the record reflects that counsel brought out information about the destroyed videotape during cross-

examination of the officer. The Applicant also testified that his counsel failed to object to the admission of the van key into evidence. He stated that the officer never checked to see if the key actually opened the van. However, on the Applicant's cross-examination it was revealed that the officer testified that the Applicant told him that it was the key to the van. The Applicant's cross-examination also revealed that Ms. West did make an objection to the key on the ground of a lack of foundation.

The Applicant testified that he hired attorney Bill Diggs to represent him for purposes of post-trial motions. Mr. Diggs filed a timely motion for a new trial, along with a supporting memorandum, on February 23, 2007, based upon destruction of the videotape of the stop and upon a mistake of identity as to the perpetrator. In his motion, he asserted that the real perpetrator in the case was Mark Anthony Wright. The memorandum asserted that Mr. Wright was driving the van that night and that the Applicant, who happened to be in the parking lot already, also ran because he did not want to become involved in the events occurring. Thus, Mr. Diggs contended, the officer stopped the wrong person on foot in the parking lot. Mr. Diggs submitted two affidavits in support of his motion for new trial, one from Kendrick Sumpter and one from Terrill Carr. No affidavit from Mark Anthony Wright was presented. Mr. Sumpter's affidavit states that in the early evening on October 9, 2006, he picked up the Applicant and gave him a ride to the home of Nakima Goss and Patsy Goss in the apartment complex in question. The affidavit does not provide a specific time frame. The affidavit of Terrill Carr states that on October 9, 2006, Mr. Carr was visiting the home of Nakima Goss and Patsy Goss. Around 6:00 pm, the Applicant knocked on the door and asked if Nakima was at home. The affidavit states that the Applicant did not appear to be running from the police and simply left the apartment.

At the hearing on the Applicant's motion for new trial, Mr. Diggs argued that the affidavits showed that the Applicant was already in the parking lot when the van in question pulled in, and

that he had been at the home of Patsy Goss. Mr. Diggs also argued that the young man who was the real perpetrator resembles the Applicant. The judge pointed out that the Applicant could have testified to those facts at trial but he declined to do so after extensive questioning by the court. The judge also pointed out that the Applicant was now trying to change his trial strategy as presented by Ms. West. In a written Order filed on April 10, 2007, Judge Cottingham denied the motion for a new trial, concluding that the information presented was not "new" and did not warrant a new trial because the information was known to the defendant prior to trial.

The Applicant also called his former trial counsel to testify at the PCR hearing. Orrie West, Esquire, testified that she represented the Applicant at his trial in February 2007. She stated that she had three open files on the Applicant at the time, including two files from 2005 and one file from 2006. She stated that she sent letters to the Applicant asking him to come to meet with her, but he failed to come to any meetings. She stated that she had some phone contact with him. Ms. West testified that the Applicant was late for trial and therefore they had a brief pre-trial meeting. At this meeting, the Applicant, for the first time, mentioned a potential witness to her. She did not feel like she could do anything about it at that point. Ms. West stated that there must have been a reason that she did not move for a continuance, but she could not recall what the reason was.

The Applicant did not present the testimony of any alibi witnesses or any other fact witnesses at the PCR hearing.

Set forth below are the relevant findings of fact and conclusions of law, as required by S.C. Code Ann. § 17-27-80 (2003).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In considering the Applicant's case, this Court had before it the Applicant's PCR file, including all pleadings filed, the records of the Horry County Clerk of Court regarding the convictions, the Applicant's records from the South Carolina Department of Corrections, the trial

transcript, the post-trial motion filings and the post-trial hearing transcript, and the direct appeal records. This Court carefully listened to all of the testimony presented at the hearing and weighed the same according to credibility. This Court found the testimony of Orrie West, Esquire, to be highly credible in all respects, while the Applicant's testimony was lacking in credibility, particularly with respect to his asserted alibi defense.

The Applicant's overarching contention at the PCR hearing was that counsel failed to interview and present his potential witnesses at trial. This Court finds that the Applicant failed to establish prejudice as to this allegation. See Strickland v. Washington, 466 U.S. 668, 697 (1984) (holding that if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed). In order to support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. The applicant's mere speculation regarding the witnesses' testimony cannot satisfy the applicant's burden of showing prejudice. Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995), see also Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992) (where applicant did not offer witnesses at PCR hearing but merely alleged they would have provided him with alibi defense, he failed to establish prejudice), Porter v. State, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) ("Mere speculation of what a witness' testimony may be is insufficient to satisfy the burden of showing prejudice in a petition for PCR."), Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) ("A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence.")

In this case, the Applicant failed to present the testimony of any fact or alibi witnesses at the PCR hearing. This Court finds that the two affidavits contained in the post-trial motion filings are

insufficient to sustain the Applicant's burden of proof, where these witnesses were not called at the PCR hearing and could not be subjected to cross-examination. In any event, the affidavits do not necessarily refute the crime or establish an alibi for the Applicant at the time of the crime, i.e., around 8:30 pm. Therefore, the Applicant failed to prove that any potential witness would have actually been helpful to his defense at trial. Accordingly, this Court concludes that the Applicant failed to establish any entitlement to relief on the ground that counsel failed to interview and call potential witnesses at trial. See, e.g., Bannister v. State, 333 S.C. 298, 303-304, 509 S.E.2d 807, 809-810 (1998).

As to the Applicant's second allegation in his PCR Application, regarding a "lack of probable cause determination," and the Applicant's third allegation, regarding a "lack of evidence to support the conviction," this Court finds that these issues are not appropriate for PCR because they involve allegations of trial court error. See, e.g., Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001), see also Humbert v. State, 345 S.C. 332, 338, 548 S.E.2d 862, 866 (2001) (citation omitted) ("PCR is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal"). In any event, the officer's testimony regarding the tag light being out supported probable cause for the stop, as the trial court implicitly concluded following counsel's motion to suppress. Therefore, allegation # 2 is without merit. Allegation # 3 is similarly without merit because there is, in fact, evidence supporting the conviction and placing the Applicant in the van in question, including the officer's testimony identifying the Applicant as the driver of the van and his testimony that he saw the Applicant's picture on the cell phone found in the car beside the drugs. Therefore, these allegations are also denied and dismissed.

CONCLUSION

In conclusion, based upon the entire record, this Court finds and concludes that the Applicant failed to meet his burden of proof as to any of his claims. Therefore, the Application for

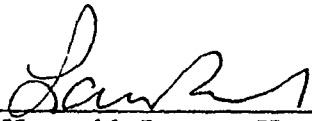
post-conviction relief must be denied and dismissed with prejudice for failure to meet the burden of proof under Strickland v Washington, 466 U S 668 (1984), and Butler v State, 286 S C 441, 334 S E 2d 813 (1985)

Counsel's attention is directed to Marlar v State, 375 S C 407, 653 S E 2d 266 (2007), and Rule 59(e), SCRCR, regarding the filing of a Motion to Alter or Amend should counsel believe this Order fails to adequately address all issues raised as required by S C Code Ann § 17-27-80 (2003) This Court further advises that if Applicant desires to secure appellate review of this Order, a notice of appeal must be filed and served **within thirty (30) days** of the service of this Order Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed

IT IS THEREFORE ORDERED THAT

- 1 The Application for post-conviction relief is **DENIED and DISMISSED with PREJUDICE**
- 2 The Applicant must remain in the custody of the State for completion of his sentence

AND, IT IS SO ORDERED this 6 day of Dec, 2011


 The Honorable Larry B Hyman, Jr
 Presiding Judge
 Fifteenth Judicial Circuit

Conway, South Carolina

WITNESSES

B Truex/MBPD

ARREST WARRANT NO K-002194

CDR 0452 44-53-0375(C)(1)(c)

DOA 10-09-06

ACTION OF GRAND JURY

NOV 30 2006

TRUE BILL

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury Date

DOCKET NO 2006-GS-26- 4735

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY

SRH 83130

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2006

THE STATE
VS

JAMIE GOSS M/B

HEMINGWAY, SC 29554

DOB

SS#

ATTORNEY ORRIE WEST

INDICTMENT FOR

TRAFFICKING COCAINE BASE

(10 - 28 GRAMS)

ORIGINAL

J GREGORY HEMBREE, SOLICITOR

CERTIFIED COPY
 2007 FEB 15 AM 11 52
 2007
 CLERK OF COURT
 HORRY COUNTY

OW
 06-11-3540

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

HORRIS

VS

JAMIE GOSS

A

Race B Sex M Age DOB 11-15-81 SS# [REDACTED]

Address

City, State, Zip

SID#

INDICTMENT/CASE#
2006 GS 26 4735
 AWW# K-002194
 Date of Offense 10-9-06
 S C Code § 44-53-375 (C)(1)(C)
 CDR Code # 0 1 4 1 5 1 2
☐ CASE RESTORED
☐ SENTENCE
☐ PLEA ☒ TRIAL

disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSAggravated Robbery 3rd OFFENSE (25 yrs - 30 yrs)violation of § 44-53-375(C)(1)(C) of the S C Code of Laws, bearing CDR Code # 0 1 4 1 5 1 2☐ NON VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ 17 25 45The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand JuryThe plea is ☐ Without Negotiations or Recommendation ☐ Negotiated Sentence, ☐ Recommendation by the State

TEST

Solicitor

Defendant

Attorney for Defendant

HEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 28 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$50,000, provided that upon the service of _____ days/months/years and/or payment

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

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

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

SPECIAL CONDITIONS

☐ RESTITUTION ☐ Heard ☐ Waived, ☐ Ordered

Total \$ _____ plus 20% fee \$ _____

Payment Terms

☐ set by SCDPPPS

Recipient

Fine \$50,00014 1 206 (Assessments 107 5%) \$53,75014 1 211(A)(1) (Conv Surcharge) \$100 \$10014 1 211(A)(2) (DUI Surcharge) \$100 \$56 5 2995 (DUI Assessment) \$12 \$35 13 (Public Def/Prob) \$500 \$73 3 1B TP (Law Enforce Funding) \$25 \$2533 7 1B TP (Drug Court Surcharge) \$100 \$10030 21 114(BUI Breath Test Fee) \$50 \$36 5 2942(J) (Vehicle Assessment) \$40/ea \$to County (if paid in installments) \$319.25TOTAL \$107,044.25

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc Rehab or Job Corp

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd in equal, consecutive weekly/monthly

pmts of \$ 250 beginning 3/13/07

\$ _____ paid to Public Defender Fund

Other _____

☐ Appointed PD or appointed other counsel, §35 13 1a
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code

Sentence Date

Melanie Higgins
Clerk of Court/ Deputy ClerkCourt Reporter Linda McCall