

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Horry County

Honorable H. Steven DeBerry IV, Circuit Court Judge

JAMES L. ARTHUR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001486

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2016-GS-26-02574, 02575
02576 AND 02577

STATE OF SOUTH CAROLINA,)
)
Plaintiff,) **Transcript of Record**
)
vs.)
) November 6-7, 2017
JAMES LAMONT ARTHUR,)
)
Defendant.)

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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

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C. Leigh Andrew, Esquire
Attorneys for State

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Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

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I N D E X

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Pg.

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7

E X H I B I T S

8

No.IDEV

9

S1 Black bag, scales, charger, jar with

10

Green leafy substance, cigarettes

53

11

S2 BEST kit H223684

53

12

S3 Gun, green Crown Royal bag #16040571

54

13

S3A Ammunition

117

14

S4 Chain of Custody H223684, #16040571

59

15

S5 Chain of Custody #16040571

59

16

S6 Sentencing Sheet 01-GS-26-02106

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18

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C1 Bail Proceeding from Form II

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VOIR DIRE

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1 **(NOVEMBER 6, 2017 - DAY ONE)**

2 VOIR DIRE:

3 THE COURT: All right, ladies and gentlemen, we are going
4 to pick the jury in the case of the State versus James Lamont
5 Arthur. Before I start that, I want to tell you that we did
6 have you fill out a short four-question jury questionnaire
7 form. That was for another case. That defendant in the
8 interim, while you were downstairs and we were up here, came
9 before the Court and pled guilty to his crime and he was
10 appropriately sentenced a term of years in the Department of
11 Corrections for that particular crime. So, to let you know
12 that questionnaire that y'all filled out will be destroyed by
13 the Clerk of Court's office. There will be no record of those
14 questions and answers since we did not go forward with that
15 case, so that will all be destroyed. Just so that you
16 understand and know that. Okay. All right.

17 So, going on to another matter, different -- different
18 matter, the State of South Carolina versus James Lamont
19 Arthur. The State of South Carolina has charged Mr. Arthur
20 with a number of offenses and those being trafficking cocaine
21 base, more than 10 grams, less than 28 grams; possession of a
22 Schedule I to V drug; unlawful possession of a pistol; and
23 unlawful carrying of a pistol. All those matters have been
24 presented to the Grand Jury and true bills were rendered in
25 that, meaning that the Grand Jury found that the case should

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VOIR DIRE

6

1 go forward. They only hear witnesses from the state; they
2 don't hear anything else. They also don't make any decisions
3 as to the proof that the state is required to give you to
4 convict the individual of this. It's basically a preliminary
5 decision whether or not the matter should go forward to a
6 trial or not. That's all that is, so it bears no weight in
7 this particular matter.

8 With that, these indictments are the charging documents,
9 the documents which bring the matter to court. They are not
10 evidence, cannot be considered by anyone as evidence in the
11 case. Now I'm gonna read to you the allegations. The charges
12 the state has brought against Mr. James Lamont Arthur, but
13 remember, these are the charges, they're not evidence that
14 would come during the course of the trial.

15 The state has charged that James Lamont Arthur, did, in
16 Horry County, on or about May 12th, 2016, knowingly sell,
17 deliver, purchase or bring into the state or did aid, abet,
18 attempt or conspire to sell, deliver, purchase or bring into
19 this state or was in active -- actual or constructive
20 possession or attempted to become in actual or constructive
21 possession of a quantity of cocaine base in the amount more
22 than 10 grams but less than 28 grams, this being in violation
23 of the Code of Laws of the State of South Carolina, 1976, as
24 amended.

25 The state has also charged that the defendant, James

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VOIR DIRE

7

1 Lamont Arthur, did, in Horry County, on or about May 12, 2016,
2 knowingly and intentionally possess a quantity of a drug
3 called Adderall, a -- one of the Schedule I to V drugs,
4 controlled substance, under the Code of Laws of the State of
5 South Carolina, 1976, such possession not having been
6 authorized.

7 Further, the state charges that James Lamont Arthur, did,
8 in Horry County, on or about May 12, 2016, knowingly possess
9 or acquire a pistol after having been convicted of a crime of
10 violence defined in the Code of Laws of the State of South
11 Carolina, 1976, as amended.

12 Further, the state charges that James Lamont Arthur, did,
13 in Horry County, on or about May 12, 2016, carry about the
14 person a pistol, such carrying not be authorized by law again
15 in violation of the Code of Laws of the State of South
16 Carolina, 1976, as amended.

17 Is there any member of the jury panel that knows anything
18 about this particular matter, has any information that they
19 need to give to the Court about these charges that have been
20 brought against the defendant? If so, please stand.

21 (REPORTER'S NOTE: No response.)

22 THE COURT: All right. The possible or potential
23 witnesses in this case are Marvin Cal Cox -- all these or of
24 the Horry County Police Department -- Marvin Cal Cox; James
25 Hafner, Donna Bell, Courtney Johnson, James Lamont Arthur.

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VOIR DIRE

8

1 Any member of the jury panel that's related by blood or
2 marriage, close personal friends, acquaintances, knows any of
3 these possible or potential witnesses, if you would please
4 stand?

5 (REPORTER'S NOTE: No response.)

6 THE COURT: Is there any member of the jury panel that
7 either you yourself or a member of your immediate family that
8 has ever had any matters of any kind handled, worked on,
9 touched in any way by the Fifteenth Circuit Solicitor's
10 office, that's the prosecuting office that covers Horry and
11 Georgetown Counties? If so, please stand.

12 THE COURT: Yes, ma'am, your name and juror number,
13 please, ma'am?

14 JUROR 184: Dawn M. Keator, 184.

15 THE COURT: All right. And just was it yourself or a
16 family member?

17 JUROR 184: My daughter.

18 THE COURT: Ma'am?

19 JUROR 184: My daughter.

20 THE COURT: All right. Can you give to the State of
21 South Carolina and to the defendant a fair and impartial, can
22 you be a fair and impartial juror in this case?

23 JUROR 184: Yes.

24 THE COURT: Thank you very much.

25 Is there any member of the jury panel that either you

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VOIR DIRE

9

1 yourself or a member of your immediate family is related by
2 blood or marriage, close personal friends or acquaintances of
3 anybody employed at the Fifteenth Circuit Solicitor's office
4 either in Horry or Georgetown Counties? If so, please stand.

5 All right. Counsel, if you would stand and identify
6 yourself. From the state first.

7 MS. WALTER: Good afternoon, my name is Mary-Ellen Walter
8 and this is my co-counsel, Leigh Andrew.

9 THE COURT: Okay. Defense?

10 MR. MASSEY: I'm Kenneth Massey and this is my law
11 partner, Keith Dame.

12 THE COURT: All right. Thank you.

13 All right. Ladies and gentlemen, is there any member of
14 the jury panel that's related blood or marriage, close
15 personal friends, acquaintances of these attorneys that have
16 introduced themselves and, regarding Mr. Massey and his law
17 partner; have y'all been represented in the past or currently
18 by that law firm? If so, please stand.

19 All right. Your name and ---

20 JUROR 184: Your Honor, I'm sorry, Dawn Keator. My son
21 is an Horry County police officer.

22 THE COURT: Well, we'll get to that question.

23 JUROR 184: All right. Well, that was in there.

24 THE COURT: All right. We'll get to that question, all
25 right, in just a second. All right.

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VOIR DIRE

10

1 So, next question is does any member of the jury panel
2 have any kind of personal, political, religious, philosophical
3 belief that you believe would prevent you from being a fair
4 and impartial juror? If so, please stand.

5 All right. Is there any member of the jury panel that
6 you yourself were a former law enforcement officer or you have
7 a current family member who is now in law enforcement or was
8 in the past in law enforcement? If any of that applies to
9 you, please stand.

10 JUROR 184: Now?

11 THE COURT: Yes, ma'am. You have to state your name and
12 juror number, please.

13 JUROR 184: Dawn Keator.

14 THE COURT: Juror number?

15 JUROR 184: 184.

16 THE COURT: All right, ma'am. And you said you had a
17 son?

18 JUROR 184: Yes.

19 THE COURT: And he works for which agency?

20 JUROR 184: Horry County Police Department.

21 THE COURT: Horry County Police Department. All right.
22 Can you give to the State of South Carolina and to the
23 defendant a fair and impartial, can you be a fair and
24 impartial juror in this case?

25 JUROR 184: Yes.

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VOIR DIRE

1 THE COURT: Thank you very much.

2 Yes, sir, in the center?

3 JUROR 278: Mark Pascarella, Juror Number 278. My wife
4 is a retired police officer from Prince George County,
5 Maryland.

6 THE COURT: All right, sir. Can you give to the State of
7 South Carolina and to the defendant a fair and impartial, can
8 you be a fair and impartial juror in this case?

9 JUROR 278: Yes, Your Honor.

10 THE COURT: Thank you.

11 Yes, sir?

12 JUROR 30: My uncle on my mother's side ---

13 THE COURT: Well, first I need your name and juror
14 number.

15 JUROR 30: Tony Bodger.

16 THE COURT: All right, sir.

17 JUROR 30: Juror 31.

18 THE COURT: All right, sir. My uncle, 31 years at the
19 Philadelphia Airport as a police officer. Yes, I can give a
20 fair trial.

21 THE COURT: Well, and I appreciate you that you can, but
22 I'm required by law to ask you the question. Can you give to
23 the State of South Carolina and to the defendant a fair and
24 impartial trial, can you be a fair and impartial juror in this
25 case?

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VOIR DIRE

12

1 JUROR 30: I can.

2 THE COURT: Thank you very much. Yes, ma'am?

3 JUROR 121: Lori Fuelling. I am a NYPD family.

4 THE COURT: All right. So, you have a number of
5 relatives that are currently officers in the New York ---

6 JUROR 121: Many.

7 THE COURT: All right. Very good. Can you give to the
8 State of South Carolina and to the defendant a fair and
9 impartial, can you be a fair and impartial juror in this case?

10 JUROR 121: I have to be honest, I don't know.

11 THE COURT: All right. If you can come up here and talk
12 to me please, ma'am. Thank you.

13 (REPORTER'S NOTE: Bench conference is held off the record in
14 the presence of but outside the hearing of the jury. Juror
15 121 excused by the Court.)

16 THE COURT: Thank you very much. What number was that
17 again?

18 MR. MASSEY: 121, Your Honor.

19 MS. WALTER: 121, Your Honor.

20 THE COURT: 121. All right. Very good.

21 Yes, sir, your name and juror number, please?

22 JUROR 350: My name is Hans Strand. I'm Number 350.

23 THE COURT: Yes, sir.

24 JUROR 350: When I lived in New York, I worked for two
25 police organizations, New York State Park Police as a Park

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VOIR DIRE

13

1 Ranger, and also County Sheriff's office in Kingston, New
2 York.

3 THE COURT: All right. Very good. Can you give to the
4 State of South Carolina and to the defendant a fair and
5 impartial, can you be a fair and impartial juror in this case?

6 JUROR 350: Yes, I can.

7 THE COURT: Thank you very much.

8 Yes, sir, your name and juror number, please?

9 JUROR 39: William Brinn, 39.

10 THE COURT: Yes, sir.

11 JUROR 39: My brother-in-law is retired from the
12 Sheriff's Department in Lee County, North Carolina.

13 THE COURT: All right, sir. Can you give to the State
14 of South Carolina and to the defendant a fair and impartial
15 trial, can you be a fair and impartial juror in this case?

16 JUROR 39: Yes, sir.

17 THE COURT: Thank you very much. All right. Next
18 question I'm gonna ask is, is there any member of the jury
19 panel or member of your immediate family a member of any kind
20 of victim's rights or law enforcement support organizations.
21 So, let me give you a couple of examples. This is not an
22 exhaustive list of any kind, I'm just trying to give you a
23 couple of examples here: Citizens Against Violent Crime,
24 Mothers Against Drunk Driving, South Carolina Law Enforcement
25 Officers Association, South Carolina Sheriff's Association,

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VOIR DIRE

14

1 just some kind of victim's rights or law enforcement support
2 organizations, either you yourself or member of your immediate
3 family a member? If so, please stand.

4 (REPORTER'S NOTE: No response.)

5 THE COURT: Very good. All right. The next question,
6 ladies and gentlemen, I am going to ask you whether you
7 yourself or a member of your immediate family has ever been
8 the victim of a crime. Now, I am not going to ask you what
9 occurred. I do not want you to volunteer any information to
10 me about what occurred. The question will be straightforward,
11 was it yourself or a family member, and then I'll ask the
12 qualification question.

13 So, is there any member of the jury panel, either you
14 yourself or a member of your immediate family, ever been the
15 victim of a crime? If so, please stand.

16 All right. Yes, sir. Your name and juror number please,
17 sir, at the end right there?

18 JUROR 398: William Worley and my juror number is 398.

19 THE COURT: All right, sir. Was it yourself or a family
20 member?

21 JUROR 398: It was a family member.

22 THE COURT: Can you give to the State of South Carolina
23 and to the defendant a fair and impartial, can you be a fair
24 and impartial juror in this case?

25 JUROR 398: Yes, sir.

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VOIR DIRE

15

1 THE COURT: Thank you very much.

2 Yes, sir?

3 JUROR 227: Richard Mariner, Number 227.

4 THE COURT: Yourself or a family member?

5 JUROR 227: Myself.

6 THE COURT: Can you give to the State of South Carolina
7 and to the defendant a fair and impartial, can you be a fair
8 and impartial juror in this case?

9 JUROR 227: Yes.

10 THE COURT: Thank you very much.

11 Yes, ma'am, you have to state your name and juror number
12 again, please?

13 JUROR 184: Dawn Keator, 184.

14 THE COURT: All right, ma'am, and was it yourself or a
15 family member?

16 JUROR 184: Family member.

17 THE COURT: Can you give to the State of South Carolina
18 and to the defendant a fair and impartial, can you be a fair
19 and impartial juror in this case?

20 JUROR 184: Yes.

21 THE COURT: Thank you very much. Yes, sir?

22 JUROR 116: 116, Richard Fletcher.

23 THE COURT: Yourself or a family member?

24 JUROR 116: Me.

25 THE COURT: Can you give to the State of South Carolina

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VOIR DIRE

16

1 and to the defendant a fair and impartial trial, can you be a
2 fair and impartial juror in this case?

3 JUROR 116: Yes, sir.

4 THE COURT: Thank you very much.

5 Yes, sir?

6 JUROR 117: James Forbes, 117.

7 THE COURT: Yourself or a family member?

8 JUROR 117: Family members.

9 THE COURT: Can you give to the State of South Carolina
10 and to the defendant a fair and impartial, can you be a fair
11 and impartial juror in this case?

12 JUROR 117: Yes, I can.

13 THE COURT: Thank you very much.

14 All right, ladies and gentlemen, I'm gonna ask you what I
15 call my general or catch-all question. Do you know of any
16 reason, have any question in your mind, any doubt in your
17 mind, that you cannot give to the State of South Carolina and
18 to the defendant a fair and impartial trial; that is for any
19 reason whatsoever, you believe you cannot be a fair and
20 impartial juror in this case? If so, please stand.

21 Further questions from the state?

22 MS. WALTER: No, Your Honor.

23 THE COURT: Further questions from the defense?

24 MR. MASSEY: None, Your Honor.

25 THE COURT: Very good.

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17

JURY SELECTION

1 JURY SELECTION:

2 THE COURT: All right, ladies and gentlemen, how the
3 process is going to go, your names were put basically in the
4 computer program and put it in a random order, not by
5 alphabetical or numerical or any fashion like that. The clerk
6 of court is going to call out a name. If, and when your name
7 is called, you will stand up, you will come forward, you will
8 come around to a place that is basically right in front of Ms.
9 Dixie, the court Reporter, right there. You'll stand, turn
10 and face to the back of the courtroom. At that point in time,
11 the clerk will inquire of the state to present or excuse the
12 juror. After that, the clerk will inquire of the defense, to
13 seat or to excuse the juror. If you are excused by the state
14 or the defense, you'll go back and have a seat from whence you
15 can. If you're presented by the state and seated by the
16 defense, the clerk will instruct you to go to the jury box and
17 have a seat in the jury box. If you happen to have any
18 personal items, book, purse, whatever the personal item may
19 be, please bring it with you in case you are presented and
20 seated, so you can go directly to the jury box.

21 All right, Madam Clerk.

22 CLERK: Number 46, Vicki Burdett.

23 What say the state?

24 MS. WALTER: Please present this juror.

25 CLERK: Defense?

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JURY SELECTION

18

1 MR. MASSEY: Please present the juror.
2 CLERK: Please be seated in the jury box.
3 Number 231, Robert Martin.
4 What say the state?
5 MS. WALTER: Please present this juror.
6 CLERK: Defense?
7 MR. MASSEY: Please present this juror.
8 CLERK: Please be seated in the jury box.
9 Number 350, Hans Strand.
10 What say the state?
11 MS. WALTER: Please present this juror.
12 CLERK: Defense?
13 MR. MASSEY: Please excuse this juror.
14 CLERK: You're excused from this particular case.
15 JUROR 350: Thank you.
16 CLERK: Number 278, Mark Pascarella.
17 What say the state?
18 MS. WALTER: Please present this juror.
19 CLERK: Defense?
20 MR. MASSEY: Please present the juror.
21 CLERK: Please be seated in the jury box.
22 Number 67, Angela Cole.
23 What say the state?
24 MS. WALTER: Please present this juror.
25 CLERK: Defense?

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JURY SELECTION

19

1 MR. MASSEY: Please present the juror.
2 CLERK: Please be seated in the jury box.
3 Number 157, Michael Hicks.
4 What say the state?
5 MS. WALTER: Please excuse this juror.
6 CLERK: You're excused from this particular case.
7 Number 373, Ashley Vermeer.
8 MR. MASSEY: What was that number again?
9 CLERK: 373.
10 MR. MASSEY: Thank you.
11 CLERK: What say the state?
12 MS. WALTER: Please present this juror.
13 CLERK: Defense?
14 MR. MASSEY: Please present this juror.
15 CLERK: Please be seated in the jury box.
16 Number 30, Tony Bodger.
17 What say the state?
18 MS. WALTER: Please excuse this juror.
19 CLERK: You're excused for this particular case.
20 Number 24, Ryan A. Bingham.
21 What say the state?
22 MS. WALTER: Please present this juror.
23 CLERK: Defense?
24 MR. MASSEY: Please excuse this juror.
25 CLERK: You're excused from this particular case.

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JURY SELECTION

20

1 Number 221, Jason Lynch.
2 What say the state?
3 MS. WALTER: Please excuse this juror.
4 CLERK: You're excused from this particular case.
5 Number 36, Gwynn Branton.
6 What say the state?
7 MS. WALTER: Please present this juror.
8 CLERK: Defense?
9 MR. MASSEY: Please excuse this juror, please.
10 CLERK: You're excused from this particular case.
11 Number 116, Richard Fletcher.
12 What say the state?
13 MS. WALTER: Please present this juror.
14 CLERK: Defense?
15 MR. MASSEY: Please excuse this juror.
16 CLERK: You're excused from this particular case.
17 Number 39, William Brinn.
18 What say the state?
19 MS. WALTER: Please present this juror.
20 CLERK: Defense?
21 MR. MASSEY: Please present this juror.
22 CLERK: Please be seated in the jury box.
23 Number 232, Dominic Mason.
24 What say the state?
25 MS. WALTER: Please present this juror.

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JURY SELECTION

21

1 CLERK: Defense?

2 MR. MASSEY: Please present this juror.

3 CLERK: Please be seated in the jury box.

4 Number 25, Joshua Binzen.

5 What say the state?

6 MS. WALTER: Please present this juror.

7 CLERK: Defense?

8 MR. MASSEY: Please present this juror.

9 CLERK: Please be seated in the jury box.

10 Number 398, William Worley.

11 What say the state?

12 MS. WALTER: Please present this juror.

13 CLERK: Defense?

14 MR. MASSEY: Please seat this juror.

15 CLERK: Please be seated in the jury box. The other way.

16 Number 314, George Samson.

17 What say the state?

18 MS. WALTER: Please present this juror.

19 CLERK: Defense?

20 MR. MASSEY: Please present this juror.

21 CLERK: Please be seated in the jury box.

22 Number 184, Dawn Keator.

23 What say the state?

24 MS. WALTER: Please present this juror.

25 CLERK: Defense?

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JURY SELECTION

22

1 MR. MASSEY: Please excuse this juror.
2 CLERK: You're excused from this particular case.
3 Number 216, Hubert Livingston.
4 What say the state?
5 MS. WALTER: Please present this juror.
6 CLERK: Defense?
7 THE COURT: Mr. Massey?
8 MR. MASSEY: Let him have a seat, Your Honor.
9 CLERK: Please have a seat in the jury box.
10 Number 227, Richard Mariner.
11 What say the state?
12 MS. WALTER: Please present this juror.
13 CLERK: Defense?
14 MR. MASSEY: Let him have a seat, Your Honor.
15 CLERK: Please be seated in the jury box.
16 THE COURT: We'll have one alternate, so it'll be one and
17 two on the alternate, please.
18 CLERK: All right.
19 THE COURT: One alternate.
20 CLERK: Number 93, Steven Delp.
21 What say the state?
22 MS. WALTER: Please present this juror.
23 CLERK: Defense?
24 MR. MASSEY: Please excuse this juror, Your Honor.
25 CLERK: You're excused from this particular case.

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BY THE COURT

23

1 Number 96, Angela Stinnett.
2 What say the state?
3 MS. WALTER: Please excuse this juror.
4 CLERK: You're excused from this particular case.
5 Number 117, James Forbes.
6 What say the state?
7 MS. WALTER: Please present this juror.
8 CLERK: Defense?
9 MR. MASSEY: Your Honor, may we approach?
10 THE COURT: Absolutely.
11 (REPORTER'S NOTE: Bench conference is held off the record in
12 the presence of but outside the hearing of the jury.)
13 CLERK: What say the state?
14 THE COURT: No, Defense?
15 CLERK: I'm sorry. Defense?
16 MR. MASSEY: Please excuse this juror.
17 CLERK: You're excused from this particular case.
18 Number 394, David Williams.
19 What say the state?
20 MS. WALTER: Please present this juror.
21 CLERK: Defense?
22 MR. MASSEY: Have him be seated.
23 CLERK: Please be seated in the jury box.
24 BY THE COURT:
25 THE COURT: All right, Mr. Williams, you are the

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BY THE COURT

24

1 alternate in this particular matter. Thank you, sir.

2 All right. Any objections to the jury an empaneled from
3 the state?

4 MS. WALTER: No, Your Honor.

5 THE COURT: From the defense?

6 MR. MASSEY: Your Honor, if we may approach one more
7 time?

8 THE COURT: Yes, sir, not a problem.

9 (REPORTER'S NOTE: Bench conference is held off the record in
10 the presence of but outside the hearing of the jury.)

11 THE COURT: All right, ladies and gentlemen of the jury
12 panel that's selected, I'm gonna ask that you go back to your
13 jury room in just a few minutes and do one thing for me, and
14 that's going to be select your foreperson.

15 So, let me tell you very briefly what the foreperson's
16 duties and responsibilities are. If we are here in the
17 courtroom and the jury needs attention to some matter, like
18 the witness needs to speak up, whatever it is, the foreperson,
19 they raise their hand and gets the Court's attention and we'll
20 handle the matter, whatever it is.

21 If you're back in the jury room, some matter comes up,
22 you will take the pad and pen provided to you, you will write
23 out a note, you will sign it, you will give it to the bailiff,
24 it'll come to me and, again, we'll handle that matter,
25 whatever it may be. When we have gone through the evidentiary

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25

1 portion of the trial, we've heard the witnesses in this case,
2 we've heard the closing arguments of the attorneys, then I
3 have given to you the law that you will apply to the facts and
4 evidence you find to be true in this particular case, and then
5 I'll submit the case to you for your deliberations and your
6 unanimous decision in this particular matter. The
7 foreperson's duties and responsibilities change in this
8 regard. The foreperson is gonna act like the chairperson at a
9 meeting. Guide the discussions, if necessary. Now the
10 foreperson's voice and vote carries no more weight than any
11 other member of the jury. Everybody is equal in that regard
12 but somebody needs to remain in charge. Again, if there's
13 some matter, write that note out, sign it, give it to the
14 bailiff, it'll come to me, and we'll handle the matter
15 whatever it is.

16 The final duty and responsibility of the foreperson is
17 once the jury has well and truly deliberated and you have
18 reached your unanimous decision in this particular case -- in
19 this particular matter, the foreperson will take the verdict
20 form that the Court will provide to you, check the appropriate
21 block or write out the appropriate word, thereafter sign your
22 name as the foreperson, indicating that that indeed is the
23 unanimous verdict of each and every member of the jury in this
24 particular case. So, understanding the duties and
25 responsibilities of the foreperson -- now, Mr. Williams, as

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BY THE COURT

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1 the alternate, you can't be the foreperson. You can vote on
2 who the foreperson is. Everybody is eligible to be the
3 foreperson. So, if you'll go back to the jury room, select
4 your foreperson, knock on the door and let the bailiff know
5 who it that is.

6 Thank you very much.

7 (REPORTER'S NOTE: Jury exits courtroom.)

8 THE COURT: All right, ladies and gentlemen, we need to
9 take a break for a short few minutes. So, if you'd just be at
10 ease. If the jury panel wants to go outside. Don't go
11 anywhere, I'll deal with you in a minute. All right.

12 Thank you.

13 *****OFF THE RECORD*****

14 (REPORTER'S NOTE: Court is recessed for the day due to
15 medical emergency with court reporter.)

16 (RECESS.)

17 END OF DAY ONE.

18 NOVEMBER 7, 2017 - DAY TWO

19 BY THE COURT:

20 THE COURT: All right. Is the state ready for the jury
21 to come in?

22 MS. WALTER: We are, Your Honor.

23 THE COURT: And defense?

24 MR. MASSEY: Yes, sir.

25 THE COURT: All right. Very good. All right. Before we

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NATALIE STEVENS - DIRECT BY WALTER

1 do that, let's go forward, you want to do this as a trial in
2 absence, so, Solicitor, I'll be glad to hear from you, ma'am.

3 PRETRIAL MOTIONS:

4 MS. WALTER: Thank you, Your Honor. And the state's
5 first witness would be Natalie Stevens.

6 THE COURT: All right. Please come around, ma'am.

7 CLERK: Please raise your left hand and put your right
8 hand on the Bible.

9 NATALIE STEVENS, HAVING BEEN SWORN

10 TESTIFIES AS FOLLOWS:

11 CLERK: State your full name and spell your last name?

12 MS. STEVENS: Natalie Stevens, S-T-E-V-E-N-S.

13 MS. WALTER: May I, Your Honor?

14 THE COURT: Yes, ma'am.

15 DIRECT EXAMINATION OF NATALIE STEVENS BY MS. WALTER:

16 Q: Ms. Stevens, good morning.

17 A: Good morning.

18 Q: Where do you work?

19 A: The clerk of court's office, Horry County Clerk of Court.

20 Q: As part of your duties working for the clerk of court, do
21 you keep business records related to criminal matters in the
22 regular course of your business?

23 A: Yes.

24 Q: Directing your attention specifically to this case, the
25 State of South Carolina, County of Horry versus James Lamont

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NATALIE STEVENS - DIRECT BY WALTER

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1 Arthur, did you have an opportunity to gather certain
2 documents related to the prosecution?

3 A: Yes.

4 MS. WALTER: And, Your Honor, if I may approach?

5 THE COURT: Please.

6 MS. WALTER: And this has been shown to counsel.

7 BY MS. WALTER:

8 Q: I'm showing you what's been marked Court's Exhibit 1, if
9 you could just take a minute and look at that and tell me if
10 you recognize it?

11 A: Yes, ma'am, it is the bond paperwork, the bond form, bill
12 proceeding form, too, along with the power, a bench warrant
13 that was issued on the individual and the order issuing bench
14 warrant that I certified.

15 Q: And directing your attention to Page 2 of the bond
16 paperwork. Does that paperwork in fact notify the defendant
17 that he has the right to appear at trial, but if he does not,
18 the trial may proceed in his absence?

19 A: Yes.

20 Q: And can you read, also, the date the bench warrant was
21 issued?

22 A: It looks like the bench warrant was issued on October the
23 9th of 2017.

24 Q: I have no further questions.

25 THE COURT: All right. Any objection to that document

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KAYLA FLEMING - DIRECT BY WALTER

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1 being received by the Court, Mr. Massey?

2 MR. MASSEY: No objection, Your Honor. No questions.

3 THE COURT: All right. Very good. You may step down.

4 Thank you.

5 COURT'S EXHIBIT NUMBER 1

6 ADMITTED INTO EVIDENCE

7 MS. WALTER: Thank you, Your Honor.

8 THE COURT: Anything further from the state?

9 MS. WALTER: Yes, Your Honor. The state's witness is
10 Kayla Fleming?

11 THE COURT: All right.

12 CLERK: Please raise your right hand and place your left
13 hand on the Bible.

14 KAYLA FLEMING, HAVING BEEN SWORN

15 TESTIFIES AS FOLLOWS:

16 CLERK: Please state your full name and spell your last
17 name.

18 MS. FLEMING: My name is Kayla Fleming, last name is F-L-
19 E-M-I-N-G.

20 THE COURT: Go ahead, Solicitor.

21 MS. WALTER: Thank you, Your Honor.

22 DIRECT EXAMINATION OF KAYLA FLEMING BY MS. WALTER:

23 Q: Ms. Fleming, good morning, where do you work?

24 A: I work for the Horry County Solicitor's office.

25 Q: And what is your position?

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KAYLA FLEMING - DIRECT BY WALTER

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1 A: I am an admin to two solicitors, Mary Ellen Walter and
2 Ms. Leigh Andrew.

3 Q: And as part of your duties as our administrative
4 assistant, do you send out subpoenas in cases that we are
5 calling for trial?

6 A: Yes, ma'am, quite regularly.

7 Q: Directing your attention specifically to State of South
8 Carolina, County of Horry versus James Lamont Arthur, did you
9 in fact issue several subpoenas or have the Clerk of Court
10 sign off on several subpoenas?

11 A: Yes, ma'am; I did.

12 Q: Did that include one for James Lamont Arthur?

13 A: Yes, ma'am.

14 MS. WALTER: And, Your Honor, if I may approach?

15 THE COURT: Yes, ma'am.

16 BY MS. WALTER:

17 Q: I showing you what's been marked as Court's Exhibit 2, is
18 that the subpoena you had issued in this case?

19 A: Yes, ma'am.

20 Q: And was that done at least two weeks in advance to give
21 the defendant plenty of notice?

22 A: Yes, ma'am, I believe I printed them on October 12th and
23 the Clerk may have taken a day or two and then they would've
24 gone out.

25 Q: Okay. And you also issued a notice to the defense

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KAYLA FLEMING - DIRECT BY WALTER

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1 attorney and all the other witnesses, correct?

2 A: Correct.

3 MS. WALTER: Your Honor, this has been shown to Defense.
4 I would ask that Court's Exhibit 2 be admitted?

5 THE COURT: Any objection?

6 MR. MASSEY: No objection, Your Honor.

7 THE COURT: All right. So admitted.

8 COURT'S EXHIBIT NUMBER 2

9 ADMITTED INTO EVIDENCE

10 THE COURT: Thank you, ma'am.

11 MS. WALTER: I have no further questions of Ms. Fleming.

12 THE COURT: All right.

13 Any questions, Mr. Massey?

14 MR. MASSEY: No, sir.

15 THE COURT: All right. You may step down, ma'am, thank
16 you.

17 MS. FLEMING: Thank you.

18 THE COURT: Anything further from the state?

19 MS. WALTER: Your Honor, the state's final witness is
20 Priscilla Spivey.

21 THE COURT: All right. Please come around. Will you
22 swear her, Madam Clerk, please?

23 CLERK: Please raise your right hand and place your left
24 hand on the Bible.

25 PRISCILLA SPIVEY, HAVING BEEN SWORN

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PRISCILLA SPIVEY - DIRECT BY WALTER

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1 TESTIFIES AS FOLLOWS:

2 CLERK: Please state your full name and spell your last
3 name.

4 MS. SPIVEY: Priscilla Spivey, S-P-I-V-as in Victor-E-Y.

5 THE COURT: Go ahead, Solicitor.

6 MS. WALTER: Thank you, Your Honor.

7 DIRECT EXAMINATION OF PRISCILLA SPIVEY BY MS. WALTER:

8 Q: Good morning, Ms. Spivey.

9 A: Good morning.

10 Q: How are you employed?

11 A: Huh?

12 Q: What do you do for a living?

13 A: Bail bondsman.

14 Q: What is the name of your Bail Bonds Company?

15 A: Beach Bonding Company, Dave and Priscilla's Bonding
16 Company.

17 Q: And as part of -- what do you do as a bail bondsman?

18 A: Get people out of jail.

19 Q: Did you in fact secure a bond for James Lamont Arthur in
20 the case that's at trial today?

21 A: Yes, I did.

22 Q: At some point, did -- was Mr. Arthur originally reporting
23 in to you on a fairly regular basis?

24 A: He was calling me every Monday like he was supposed to,
25 then eventually he just stopped calling.

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PRISCILLA SPIVEY - DIRECT BY WALTER

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1 Q: So, it was a condition of your posting his bond that he
2 call in once a week?

3 A: Yes.

4 Q: Do you know when he stopped calling in?

5 A: Not exactly the date, no, ma'am.

6 Q: Has it been a week?

7 A: Oh, it's been a couple of months.

8 Q: Okay. So the last time that you have heard from the
9 defendant was several months ago?

10 A: Uh-huh (affirmative response).

11 Q: Did the defendant notify you of any address changes or
12 any other thing that would make it possible ---

13 A: No, ma'am. I talked to his mother. I mean, he still
14 uses their -- her address, but he just stay here and there
15 sometimes. Sometimes he comes and sometime he don't.

16 Q: When you talked to his mother, did she -- was she able to
17 give you any information as to where he was?

18 A: She said I hadn't talked to him in a couple of weeks,
19 I'll see if I can get in contact with him. She did at one
20 point and told her he was supposed to be here and she say, he
21 said okay and she hasn't heard back from him.

22 Q: Okay. Thank you. Nothing further from this witness.

23 THE COURT: Any questions?

24 MR. MASSEY: No questions, Your Honor.

25 THE COURT: You may step down. Thank you.

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PRISCILLA SPIVEY - DIRECT BY WALTER

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1 A: Thank you, Your Honor.

2 THE COURT: Anything further, Solicitor?

3 MS. WALTER: Not at this time, Your Honor. The state
4 would ask that you find that the defendant did have notice,
5 that he had the right to appear at trial, but that if he did
6 not appear, that the trial would proceed in his absence, that
7 the state did provide sufficient notice that we were calling
8 this case for trial and we would ask to proceed.

9 THE COURT: All right. Mr. Massey, understanding it's
10 not your responsibility, but I understand that you also have
11 attempted to communicate with the defendant; is that correct?

12 MR. MASSEY: Yes, Your Honor. I'm just gonna give you a
13 little background. When I get a notice and I know that the
14 client has gotten a notice or subpoena, I copy that and send
15 it to them anyway. If we have come-back sheet, they have one
16 in court. I go across the street and the staff sends them one
17 out. We also call and remind them and let them know about
18 these court dates. I've tried to contact him every time we've
19 had court and last Thursday and Friday and yesterday and
20 today, I have left a text. His phone does not take voice
21 messages, it's not set up for that, and I've tried calling the
22 mother too. That's the only numbers I had is what Ms. Spivey
23 has.

24 THE COURT: All right. Thank you. And the result of
25 that is he's not been in contact with you?

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PRISCILLA SPIVEY - DIRECT BY WALTER

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1 MR. MASSEY: About two months, Your Honor.

2 THE COURT: All right. Very good. Thank you very much.

3 All right. The Court notes obviously that certainly that
4 the Sixth Amendment of the Constitution guarantees the right
5 of an accused to be present at every stage of his trial, but
6 this right may be waived. A person indicted as this
7 individual has been indicted for trafficking cocaine third,
8 possession of Schedule I to V drug, unlawful possession of a
9 weapon, unlawful carrying of a weapon, may voluntarily waive
10 his right to be present and may be tried in his absence upon a
11 finding by the Court that he has received notice of his right
12 to be present, that a warning was given regarding that notice
13 that the trial would proceed in his absence, should he fail to
14 attend court.

15 In this particular matter, as noted in Court's Exhibit
16 Number 1, the defendant received notice of the fact that -- it
17 states that I understand and have been informed that I have a
18 right and obligation to present at trial and should I fail to
19 attend court, the trial will proceed in my absence. It has
20 been explained to me that if I fail to appear before the Court
21 as required, a warrant for my arrest will be issued, and it
22 bears his name and signature right below that acknowledgment
23 by the defendant on the bond paperwork. I do find that the
24 Solicitor's office sent out the proper notices to the
25 defendant to the addresses set forth in the bond paperwork,

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PRISCILLA SPIVEY - DIRECT BY WALTER

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1 again, which is right next to his signature. The state having
2 not received notice of any change of address from the
3 defendant as is obligated to do so if that address changed.
4 Therefore, the Court finds that proper notice was given to the
5 defendant of his rights to a trial, that it could proceed in
6 his absence, that he's voluntarily waived his right to be
7 present. The Court relies on the cases of *State v. Fairey*
8 found at 646 S.E.2d 445, *City of Aiken v. David Michael Koontz*
9 at 629 S.E.2d 686, *State v. Ravenel*, 692 S.E.2d 544, and *State*
10 *v. Castineira*, as found at 535 S.E.2d 449.

11 All right.

12 MR. MASSEY: Your Honor, I would ask for a continuance
13 just out of caution for my client until he is picked up and
14 have his trial at that point, Your Honor.

15 THE COURT: All right. I appreciate that, but I do not
16 find that to be proper in this particular matter based upon
17 the circumstances. A bench warrant has been issued for some
18 time and this matter does have some age on it and it needs to
19 be resolved. Therefore, I respectfully decline to grant your
20 continuance.

21 MR. MASSEY: Thank you, Your Honor.

22 THE COURT: All right. Thank you very much.

23 Here's the Court's exhibits.

24 COURT'S EXHIBIT NUMBER 1 AND 2

25 MARKED FOR IDENTIFICATION

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BY THE COURT

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1 THE COURT: Thank you. I appreciate it. All right. All
2 right. So, with that then is the state ready for the jury to
3 come in?

4 MS. WALTER: We are, Your Honor.

5 THE COURT: And Defense?

6 MR. MASSEY: Yes, sir.

7 THE COURT: All right. As the jury to come in, please.

8 MS. WALTER: Your Honor?

9 THE COURT: Yes, ma'am.

10 MS. WALTER: May I give this to the Sheriff just to
11 secure? I forgot that they need to secure the firearm.

12 THE COURT: Yes, ma'am, please. Could somebody get the
13 -- thank you. Sorry.

14 (REPORTER'S NOTE: Jury enters courtroom @ 9:47 A.M.)

15 BY THE COURT:

16 THE COURT: All right. Good morning, ladies and
17 gentlemen. We are going to start the case of the State of
18 South Carolina versus James Lamont Arthur. The very first
19 thing that's gonna happen in this case is the clerk's
20 representative is going to administer your oath to you, so if
21 you would all please stand at this time.

22 (REPORTER'S NOTE: Jury duly sworn.)

23 THE COURT: All right. Is there any member of the jury
24 panel that did not affirmatively take the oath as just given
25 by the clerk of court? If so, please stand.

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BY THE COURT

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1 No juror having stood, I find the jury properly sworn in
2 this matter.

3 All right, ladies and gentlemen, I'm sure you're sitting
4 there wondering exactly what your duties and responsibilities
5 are. In this particular case, you will be the judges of the
6 facts. You will decide whether or not the state has proven to
7 you, by the evidence it presents, that the defendant is guilty
8 of the crime or crimes charged beyond a reasonable doubt.
9 That will be your duty and responsibility in this particular
10 matter. The defendant, as I told you, has been charged with
11 trafficking in cocaine base, weight 10 to 28 grams, possession
12 of a Schedule I to V drug, which the state alleges to be
13 Adderall, the unlawful possession of a pistol, and the
14 unlawful carrying of a pistol.

15 Now, I told you that those indictments were the charging
16 documents, the documents which bring the matter to court, not
17 evidence, can't be considered by you as evidence in the case.
18 The evidence that you will consider and the evidence that you
19 will judge the case on, will come from the witnesses that
20 testify before you under oath, any kind of documentary or
21 physical evidence that might be introduced in this particular
22 case, and that'll be the evidence that you will weigh and
23 judge in this particular matter.

24 To these indictments to these charges, the defendant pled
25 not guilty, and that immediately put the burden of proof on

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BY THE COURT

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1 the State of South Carolina to prove the defendant guilty
2 beyond a reasonable doubt. The state always has the burden of
3 proof. The defendant has nothing to prove to you; the
4 defendant has nothing to show to you. I always tell juries
5 that the defendant need not even show up for trial and in this
6 particular case, the defendant is not present and may not be
7 present during these proceedings. You may not use that in
8 your discussions. You may not use it in your mental
9 deliberations. It is not part of this case because the state
10 has the duty and responsibility to bring you the evidence.
11 The state has the duty and responsibility to prove the
12 defendant guilty beyond a reasonable doubt. The defendant has
13 no obligation. The defendant has no duties; the defendant has
14 nothing to show to you. It all rests upon the State of South
15 Carolina to carry forward with their burden of proof to prove
16 the defendant guilty of the crime or crimes charged beyond a
17 reasonable doubt.

18 Now, in carrying out your duties and responsibilities in
19 this matter, you will be called upon to judge the credibility
20 and that is the believability of the witnesses that come
21 before you. And if you're thinking, well, how do I judge
22 somebodies credibility and believability? You do it every
23 single day of your life. When somebody tells you something,
24 you're automatically judging whether or not you believe them.
25 Use your good common sense; use your good judgment that you

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BY THE COURT

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1 use in conducting your own affairs. Somebody tells you
2 something when they testify to something, use your common
3 sense in weighing that credibility, that believability as to
4 that person's truth or veracity as to what they are telling
5 you from the witness stand.

6 I remind you again, please do not talk about the case
7 until I give it to you at the end. If you would -- we take a
8 break and we've heard one or two witnesses or however many
9 witnesses and you just start talking about the case, you know,
10 it might be that the next witness, when you come back from
11 break, changes your mind in some way or brings up something
12 that -- that affects your decision in some way. So, you'll
13 have all the time you deem necessary to talk about it at the
14 end when I give it to you for your deliberations. So, please
15 don't talk about the case until I give it to you at the end.

16 And I understand, the parties understand we're asking you
17 to do a heavy duty and responsibility, but you've been
18 selected by the attorneys in this particular matter to examine
19 the facts in this matter and to render a true and just verdict
20 as to whether or not the state can prove the defendant guilty
21 beyond a reasonable doubt of these particular crimes charged.

22 How the case will proceed, we'll have the evidence from
23 the witnesses, the introduction of any kind of documentary or
24 physical evidence, closing arguments, the charge on the law,
25 and then I'll give it to you for your deliberations. When I

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OPENING BY WALTER

1 get done with these brief statements, we'll have the opening
2 statements of the attorneys. I'll remind you again, the
3 opening statements and closing arguments, that's not evidence.
4 Okay? Each side's opening, introduce their particular case
5 and what you to be looking at or to remind you about your
6 responsibilities and duties, closing arguments are their
7 comments about the case, but neither one of them are evidence.
8 You have to rely upon what is presented basically in the
9 middle as the evidentiary portion to make your decision, and I
10 will not in any way indicate to you what I think the facts of
11 this case are. That's not my job, not my responsibility. If
12 for some reason, there is some motion or objection made by
13 counsel during the course of the trial, if I make a ruling
14 right then in your presence, I'm just about one of my duties;
15 that is governing the conduct of the trial. I'm not making
16 any comments on the facts, not making any comments on the
17 credibility, believability, just whether or not that matter is
18 proper for you to hear or not. All right?

19 So, with that, Solicitor?

20 MS. WALTER: Thank you, Your Honor.

21 OPENING BY WALTER:

22 MS. WALTER: I was very fortunate when I was growing up
23 that I got to spend a lot of time with my grandmother and
24 although she loved many things, one of her favorite things to
25 do was to do jigsaw puzzles. Now, as you can imagine when I

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OPENING BY WALTER

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1 was young, we did those kinds that kids do that might have had
2 four pieces, but as time progressed and as I got older, the
3 puzzles had more and more pieces. I think the last puzzle
4 that we put together had probably 2500 pieces, at least. And
5 no matter how easy or how complicated the puzzle was, I always
6 used the picture on the puzzle box as my guide, because that
7 told me how the different pieces of the puzzle fit in. This
8 opening statement is very much like the picture on the puzzle
9 box. You will get the pieces of the puzzle from the witness
10 stand and from physical evidence that is entered. Those are
11 some pieces. The Judge, at the end of the trial, will give
12 you the law of the case; those are other pieces of the puzzle.
13 And when it's all done, the state hopes that you will put
14 those pieces together, the facts and the law, and it will be
15 the picture on the puzzle box that I'm giving you now that the
16 defendant is guilty of all of the charges.

17 Now, the Judge has told you what the charges are. I'm
18 not going to go in depth into the law, but just to give you an
19 idea, the defendant is charged with trafficking in cocaine
20 base. Some of you might have heard of crack; it's the same
21 thing, but just by a different name. In order to prove the
22 defendant guilty of trafficking, the state has to prove that
23 he possessed a substance that is crack cocaine and that it was
24 between those weights that you heard the Judge talk about,
25 more than 10 grams, less than 28 grams. And in this case, you

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OPENING BY WALTER

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1 will hear testimony from Officer Cox that he stopped the
2 defendant and recovered 13.4 grams of a substance. You will
3 then hear from forensic scientists, who will tell you that
4 that substance was in fact crack cocaine.

5 The defendant is next charged with possession of a
6 schedule I to V controlled substance. All drugs are
7 categorized in the schedule, Schedule I, II, III, IV, or V.
8 In this case we're dealing with a Schedule II controlled
9 substance that a trade name is Adderall; it's also known as an
10 amphetamine. You will hear testimony from Officer Hafner that
11 when he was assisting Officer Cox, he conducted a further
12 search of the defendant's car and located 14 blue tablets.
13 And you will again hear from Ms. Johnson, the forensic
14 scientist, who will tell you that those tested positive for
15 amphetamine. Then there are two other related charges; both
16 involving a weapon that was found.

17 And now I'm gonna go a little bit more into the facts of
18 the case. On May 12th last year about 2:20 in the morning,
19 Officer Cox was on patrol. And one of the things that
20 officers do as they were on patrol is they'll run license
21 plates of cars that are going by just to make sure that
22 everything is in order, insurance is paid, registration is
23 valid. On this morning, Officer Cox passed the car that the
24 defendant was driving, sole occupant and ran the tag and the
25 tag came back that it was suspended. So Officer Cox conducted

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OPENING BY WALTER

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1 what we call a traffic stop. He approached the car. As I
2 said, the defendant was the driver and sole occupant and he
3 asked the defendant for his license. As he was speaking with
4 the defendant, he could smell what he knew to be marijuana
5 coming from the car. The defendant said I don't have a
6 license, could you just write me a ticket and let me go.
7 Officer Cox cannot do that; that would be disobeying the law.
8 So, Officer Cox radios for backup and waits until another
9 officer arrives. He eventually takes the defendant out of the
10 car. At this point, he's confirmed that the license is
11 suspended and he places the defendant under arrest for driving
12 under a suspension. You don't have to worry about that charge
13 at all. When he is speaking with the defendant and he gives
14 the proper Miranda warnings, which you will hear, he asks the
15 defendant, where's the marijuana and the defendant says it's
16 in the passenger seat. When Officer Cox goes to the passenger
17 seat, he finds a black bag that contains a scale and mason jar
18 that has in it, among other things, two plastic baggies that
19 are eventually found to be crack cocaine, the 13.4 grams that
20 we spoke about. Officer Cox also notices some rounds of
21 ammunition and he says to the defendant, where's the gun and
22 based on what the defendant tells him, he finds the gun right
23 next to the seat easily accessible to the defendant.

24 So, those facts arise to the next two charges. The one
25 is unlawful carrying of a pistol and that simply means that

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OPENING BY MASSEY

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1 the defendant didn't have a license and wasn't carrying it in
2 a proper manner.

3 The second gun related charge is unlawful possession of
4 the pistol. There are certain people in the State of South
5 Carolina that are legally prohibited from carrying a firearm.
6 And in this case, you will hear, for the very limited purpose
7 of this charge, that the defendant was convicted in the past
8 of burglary in the third degree and that conviction can only
9 be used by you to determine whether or not the state has met
10 its burden of proof for unlawful possession of a pistol.
11 So, in a very rough summary, that is the facts. Those are the
12 facts that you will hear today and that is a little bit of the
13 law, although Judge John, who is the judge of the law will
14 give you the formal instructions at the close of the case, and
15 at that time, the state hopes you will convict the defendant
16 of all charges. Thank you.

17 THE COURT: Mr. Massey?

18 MR. MASSEY: Thank you, Your Honor.

19 OPENING BY MASSEY:

20 MR. MASSEY: Good morning. I'm here on behalf of my
21 client today and I'm asking that if you listen to the
22 testimony today, you listen to the facts, and you reach a
23 conclusion to acquit. We ask you to acquit our client today.

24 Thank you.

25 THE COURT: All right, Solicitor, if you would present

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MARVIN CAL COX - DIRECT BY WALTER

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1 your first witness please, ma'am?

2 MS. WALTER: Thank you, Your Honor.

3 The state calls Officer Marvin Cal Cox.

4 CLERK: Please raise your right hand and place your left
5 hand on the Bible.

6 MARVIN CAL COX, HAVING BEEN SWORN

7 TESTIFIES AS FOLLOWS:

8 CLERK: Please state your name and spell your last name.

9 MR. COX: Marvin Cal Cox, C-O-X.

10 MS. WALTER: May I, Your Honor?

11 THE COURT: Go ahead, Solicitor.

12 DIRECT EXAMINATION OF MARVIN CAL COX BY MS. WALTER:

13 Q: Good morning, Officer Cox?

14 A: Good morning.

15 Q: All right. And where are you employed?

16 A: I am employed with the Horry County Police Department.

17 Q: How long have you been with Horry County?

18 A: I have been with the Horry County Police Department for
19 four years; in law enforcement for a total of seven.

20 Q: So, prior to Horry County, where did you work?

21 A: I worked with the Aynor Police Department.

22 Q: Now, looking at your entire seven years as a police
23 officer, have you had any specific training?

24 A: I have been to numerous drug interdiction trainings,
25 which helped me with solving and helping with cases on the

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MARVIN CAL COX - DIRECT BY WALTER

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1 road.

2 Q: In those seven years, can you just give us an estimate of
3 how many drug related cases you've been involved in?

4 A: I'm gonna over a hundred.

5 Q: And during those seven years, have you had the
6 opportunity to speak both with drug dealers and with drug
7 users?

8 A: Yes, I have.

9 Q: Now, directing your attention back specifically to May
10 12th of 2016, were you on duty around 2:20 in the morning?

11 A: Yes, I was.

12 Q: Do you anything in particular as you're on patrol?

13 A: While I'm on patrol, I answer the calls that I'm
14 dispatched to and when I'm not being on a call, I like being
15 proactive and running tags on vehicles and enforcing the law.

16 Q: Why do you run tags on vehicles?

17 A: To make sure that the tags are sufficient, and they have
18 met the DMV requirements.

19 Q: Directing your attention again specifically to May 12th,
20 2016, sometime around 2:20 in the morning, did you in fact run
21 a license tag?

22 A: Yes, I did.

23 Q: And did -- when you ran that information, did it come
24 back with any particular information?

25 A: I observed that it was suspended for a cancellation of

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MARVIN CAL COX - DIRECT BY WALTER

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1 insurance.

2 Q: What did you do based on that information?

3 A: I stopped the vehicle.

4 Q: When you stopped the vehicle, how many people were in it?

5 A: Just one.

6 Q: And who was that; did you learn his identity?

7 A: I did.

8 Q: Who was it?

9 A: He had told me his name was James Lamont Arthur.

10 Q: And that was later verified that he was in fact James

11 Lamont Arthur?

12 A: That's correct.

13 Q: Can you tell us what happened as you approached the car?

14 A: Yes, as I approached the car, I asked the driver for his

15 license and registration and a proof of insurance. The driver

16 told me that he did not have a license; would it be okay to

17 just write him a ticket and let him go? While I was speaking

18 to the driver, I smelled the odor of marijuana coming from the

19 car.

20 Q: Okay. How did you know it was marijuana?

21 A: Based on my years in law enforcement, marijuana is easily

22 detected by smell.

23 Q: So, in other words, in your seven years as a police

24 officer, you had come across marijuana once or twice before?

25 A: Yes.

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MARVIN CAL COX - DIRECT BY WALTER

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1 Q: And again, you were saying the driver, was that James
2 Lamont Arthur who you were having this conversation with?

3 A: Yes.

4 Q: After you smelled the odor of marijuana and actually let
5 me back up. Were you working alone or with a partner at that
6 point?

7 A: I was by myself at that time.

8 Q: Did you do anything once you smelled marijuana?

9 A: Yes, I did. I did radio for Officer Hafner to assist me.

10 Q: And why do you do that?

11 A: Just for safety precautions because our policy states
12 that we are not allowed to search a vehicle just by ourself;
13 we have to have backup.

14 Q: Okay. So, what did you do while you were waiting for
15 your fellow officer to respond?

16 A: I went back to my vehicle and I ran the subject's name
17 and date of birth and did confirm that his license were
18 suspended. Whenever I was waiting on Officer Hafner to
19 arrive, I went back up to the vehicle, got Mr. James out of
20 the vehicle and he was placed under arrest for driving under
21 suspension.

22 Q: Did you ever ask Mr. Arthur anything about the smell of
23 marijuana?

24 A: Once he was handcuffed, he was Mirandized and I asked Mr.
25 Arthur where the marijuana was, after he was Mirandized, and

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MARVIN CAL COX - DIRECT BY WALTER

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1 Mr. Arthur told me that it was in the front passenger seat.

2 Q: So, let's back up. You said that he was Mirandized.

3 Once you placed him under arrest, did you read him the
4 standard Miranda rights?

5 A: Yes, I do, and I always read directly from a card that I
6 keep in my front pocket so I don't mess up and there's no
7 confusion.

8 Q: Do you have that card or a similar card with you today?

9 A: Yes, I do.

10 Q: Could you please tell the jury exactly what rights you
11 read to the defendant?

12 A: I will. This is a Miranda card and it states, you have
13 the right to remain silent. Anything you say can and will be
14 used against you in the court. You have the right to an
15 attorney and have that attorney present during questioning.
16 If you cannot afford an attorney, an attorney will be provided
17 to you at no cost. You can decide at any time to exercise
18 these rights and not answer any questions or make any
19 statements. It states, do you understand the rights I've
20 explained to you. Having these rights in mind, now do you
21 wish to talk?

22 Q: When you read those rights and asked Mr. Arthur that
23 question, did he indicate that he understood those rights?

24 A: He did.

25 Q: Did he tell you that he was willing to speak with you?

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MARVIN CAL COX - DIRECT BY WALTER

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1 A: He did and that is whenever he began to explain that the
2 marijuana was in the front passenger seat.

3 Q: Let me just finish up with the Miranda. Did you promise
4 him anything or threaten him in any way prior to having him
5 say that he would speak with you?

6 A: I did not.

7 Q: Once the defendant told you that the marijuana was in the
8 passenger seat, what did you do?

9 A: There was a highway patrolman on scene just to assist. I
10 then went to the passenger seat and there was a black bag.
11 The black bag was brought back to the front of my vehicle. In
12 that black bag was a mason jar, a set of scales and some
13 ammunition. I observed in the mason jar, marijuana, two bags
14 that appeared to be an off-white rock substance, and I set
15 them on the hood of my vehicle. I then asked Mr. Arthur where
16 the handgun was.

17 Q: And I'm sorry, just again, what led you to ask him about
18 a handgun?

19 A: Because the ammunition was in the bag, and most of the
20 time when there is ammunition, there is a gun.

21 Q: What did the defendant say once you asked him where the
22 handgun was?

23 A: He stated that he wasn't sure, but he thought that it was
24 under the seat.

25 Q: Did you go back to the car to try and locate the handgun?

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1 A: Yes, I did. I located the handgun to the right-hand side
2 of the seat. It was in between the driver's seat and the
3 middle seat; it was wedged between the two seats.

4 Q: So, in the same seat where the defendant ---

5 A: In the same seat.

6 Q: --- was sitting?

7 A: Yes.

8 Q: Okay. Now, if I may approach, Your Honor?

9 THE COURT: Yes, ma'am.

10 MS. WALTER: And I'll actually open in front of Mr.
11 Massey.

12 Your Honor, may I approach?

13 THE COURT: Yes, ma'am.

14 BY MS. WALTER:

15 Q: I'm approaching you with what's been marked State's
16 Exhibit 1. If you could look inside of it before you take
17 anything out and show the jury. Can you just tell me if you
18 recognize what's inside State's Exhibit 1?

19 A: Yes, I do.

20 Q: What do you recognize those items to be?

21 A: These were the items that were inside of the black bag.

22 Q: And then approaching you with State's Exhibit 2, do you
23 recognize some of the items that are contained in Exhibit 2?

24 A: Yes, I do. Those items were found to be the mason jar.

25 Q: And specifically, within Exhibit 2, what is it that you

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MARVIN CAL COX - DIRECT BY WALTER

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1 found in the mason jar?

2 A: The mason jar, there were several bags of off-white rock
3 substance that was in the mason jar.

4 Q: Okay. And now, if you can go into Exhibit 1 and just
5 take out what you found and describe it to the jury?

6 A: This is ---

7 MS. WALTER: I'm sorry, Your Honor, I would ask that
8 Exhibit 1 and Exhibit 2 be admitted and published.

9 THE COURT: Any objection to that?

10 MR. MASSEY: No objection.

11 THE COURT: All right. So it's in evidence without
12 objection, and you may show it to the jury and publish.

13 MS. WALTER: Thank you, Your Honor.

14 STATE'S EXHIBITS NUMBERS 1 AND 2

15 ADMITTED INTO EVIDENCE

16 BY MS WALTER:

17 Q: So, Officer, if you could show it to the jury now and
18 just describe what you're taking out?

19 A: This is actually the black bag that was sitting in the
20 front passenger seat and inside of the bag was a mason jar
21 that contained marijuana and inside of this mason jar there
22 were two packs or several packs of an off-white rock substance
23 along with the marijuana. There was some scales and there was
24 also ammunition inside of the bag.

25 Q: Okay. And once you -- well actually strike that. Let's

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MARVIN CAL COX - DIRECT BY WALTER

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1 move on to this and I have shown to this to counsel, Your
2 Honor.

3 THE COURT: Yes, ma'am.

4 MS. WALTER: And it's secured.

5 BY MS. WALTER:

6 Q: I'm showing you State's Exhibit 3, do you recognize the
7 items contained in State's Exhibit 3?

8 A: Yes, I do.

9 Q: What do you recognize them to be?

10 A: There's a handgun and the green bag was also inside of
11 the black bag.

12 Q: What was inside, if anything, the green bag?

13 A: There was ammunition inside of the green bag.

14 MS. WALTER: Your Honor, I would ask that Exhibit 3 be
15 admitted and published to the jury.

16 THE COURT: Any objection?

17 MR. MASSEY: No objection.

18 THE COURT: All right. And so that the jury understands
19 the weapon has been immobilized with a -- with a gun lock.

20 STATE'S EXHIBIT NUMBER 3

21 ADMITTED INTO EVIDENCE

22 BY MS. WALTER:

23 Q: So this gun is the one that you found in between the
24 driver seat and the center console?

25 A: That is correct.

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MARVIN CAL COX - DIRECT BY WALTER

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1 Q: When you -- when you were done collecting the black bag
2 with everything that it contained and the gun, at that point,
3 was your partner -- was Officer Hafner on scene?
4 A: Yes, Officer Hafner was on scene at that time.
5 Q: Did you direct him to do anything else?
6 A: Yes, I did. The highway patrolman that was with me, he
7 looked in the vehicle to make sure that there were no other
8 weapons in sight, and I advised Mr. Hafner that he may want to
9 search the vehicle due to the highway patrolman not searching
10 it.
11 Q: Did Officer Hafner in fact search the vehicle?
12 A: He did.
13 Q: Did he bring anything back to you?
14 A: He did. I was at the front of my vehicle and Officer
15 Hafner advised that he found some blue pills and some little
16 white pills, one which was located in the center console and
17 the one which was located in the front glove box.
18 Q: What did you do with all of this evidence that you at
19 this point had collected?
20 A: Once the vehicle was clear and we didn't find any more
21 evidence, all of the evidence that is before me today was
22 secured in the rear of my Tahoe.
23 Q: That saved me a question. I was gonna ask you what kind
24 of car you had. Now, let me also just cover this. Were you
25 wearing a body-worn camera at the time?

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MARVIN CAL COX - DIRECT BY WALTER

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- 1 A: I was.
- 2 Q: Do we have a that video?
- 3 A: We do not.
- 4 Q: What happened?
- 5 A: It got lost.
- 6 Q: Because it's not a perfect world, right?
- 7 A: That's correct.
- 8 Q: Did you attempt to retrieve it?
- 9 A: I did and it was purged off the system. After a certain
10 amount of time, the videos disappear.
- 11 Q: Okay. Thank you. Now, so when you -- after you secure
12 all the evidence in the back of your Tahoe, is there any type
13 of -- what do you do with it -- I'll start it that way -- what
14 do you do with the evidence once you secure it in the back of
15 your Tahoe?
- 16 A: The evidence is kept in the back of my Tahoe until the
17 defendant was carried to jail. Once the defendant was carried
18 to jail, the evidence was then transported to the M.L. Brown
19 Building, which is our evidence department and it was secured
20 there.
- 21 Q: As you're transporting -- well, once you and Officer
22 Hafner recovered the drugs, the bag, the mason jar, the gun,
23 did anyone else have any access to the evidence until you went
24 to the evidence room at Horry County?
- 25 A: Nobody did.

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MARVIN CAL COX - DIRECT BY WALTER

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1 Q: And you said it was secured in the back of your Tahoe.
2 Was the defendant in the backseat of your Tahoe?

3 A: He was in the middle section of my Tahoe.

4 Q: And is there anything to block access to the back from
5 the middle seat?

6 A: There is. I have a divider behind the driver's seat and
7 a divider between the middle seat, so nobody has access to the
8 rear of the Tahoe.

9 Q: So, no one had access to the evidence until you brought
10 it to Horry County?

11 A: That's is correct.

12 Q: And then is there paperwork that you fill out?

13 A: There is.

14 Q: Okay. If I may approach, Your Honor?

15 THE COURT: Yes, ma'am.

16 BY MS. WALTER:

17 Q: I'm showing you what has been marked State's Exhibit 4
18 and State's Exhibit 5. Can you tell me if you recognize those
19 documents?

20 A: Yes, this is items that I have filled out, one being an
21 evidence sheet for the handgun, the ammunition, the mason jar,
22 the black bag and the weapon, the pistol. The other ---

23 Q: And that was State's Exhibit 5?

24 A: That is State's Exhibit 5.

25 Q: Okay.

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MARVIN CAL COX - DIRECT BY WALTER

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1 A: And State's Exhibit 4 is a BEST kit. It contained the
2 two white rocks, the 14 blue tablets, and the two oval white
3 pills.

4 Q: Now, you said something that I know what you mean, but
5 the jury may not; you said it's a BEST kit. Can you describe
6 what do you mean by BEST kit?

7 A: A BEST kit, it contains every drug except for marijuana.

8 Q: And that's something that you submit to Ms. Johnson,
9 who'll be testifying, for testing?

10 A: That is correct.

11 Q: When you fill out these documents, do you have to sign
12 them to signify that they -- that they are a true and accurate
13 list of what you've submitted?

14 A: Yes, there is a chain of custody, which has been signed
15 from the date of arrest until it was brought to court.

16 Q: And did you in fact go back to property and evidence and
17 bring that to court at my request?

18 A: Yes, I did.

19 Q: So, does your signature appear at the bottom of these
20 forms in the chain of custody?

21 A: Yes, it does.

22 MS. WALTER: And Your Honor, permission -- I would ask
23 that these be admitted and published to the jury.

24 THE COURT: Any objection to State's 4 and 5?

25 MR. MASSEY: None, Your Honor.

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MARVIN CAL COX - CROSS BY MASSEY

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1 THE COURT: All right. So they're in evidence without
2 objection and you may publish or show them to the jury.

3 STATE'S EXHIBITS NUMBERS 4 AND 5

4 ADMITTED INTO EVIDENCE

5 BY MS. WALTER:

6 Q: All right. I forgot one of the most important things.
7 We've gone over that this happened on May 12th, 2016 at about
8 2:20 in the morning. Where did it happen?

9 A: It happened in the County of Horry on Highway 701 near
10 Highway 65.

11 Q: Okay. Thank you. Nothing further at this time.

12 THE COURT: All right.

13 Mr. Massey?

14 MR. MASSEY: May it please the Court, Your Honor?

15 CROSS EXAMINATION OF MARVIN CAL COX BY MR. MASSEY:

16 Q: Good morning, Officer?

17 A: Good morning.

18 Q: Take us back in time before you saw Mr. Arthur, where
19 were you; I know you told us the road, but give us a landmark,
20 where were you?

21 A: I was near the intersection of Highway 701 where Highway
22 319 meets Highway 701.

23 Q: Out past the jail; is that correct?

24 A: On the Conway side of the jail, yes.

25 Q: And what time of morning was it?

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MARVIN CAL COX - CROSS BY MASSEY

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- 1 A: Around 2 o'clock maybe, 2:30.
- 2 Q: Where were you sitting or were you driving?
- 3 A: I was driving. I had just left the jail and I was on the
- 4 way to the M.L. Brown Building to drop off more evidence and
- 5 Mr. Arthur was in front of me.
- 6 Q: How far in front of you?
- 7 A: He was visible; I could read his license plate.
- 8 Q: How far would you say that is?
- 9 A: Maybe 25, 30 foot.
- 10 Q: About where that table is?
- 11 A: Maybe a little bit further.
- 12 Q: And your eyesight is what?
- 13 A: It's 20/20.
- 14 Q: And the last time you had it checked?
- 15 A: About a year ago.
- 16 Q: All right. You called it in about where on that road?
- 17 A: Where?
- 18 Q: Uh-huh (affirmative response).
- 19 A: I called it in about where Highway 701 meets Highway 319.
- 20 That's about where I ---
- 21 Q: Okay. Where did you make the stop at?
- 22 A: Near Homewood Gas Station.
- 23 Q: Okay. And that's where you pulled him over?
- 24 A: That is.
- 25 Q: Now, the name of that South Carolina Highway Patrol

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MARVIN CAL COX - CROSS BY MASSEY

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1 Officer, his name is who?

2 A: I can't recall his name right off.

3 Q: Did he just happen by or did you call him?

4 A: He just happened to stop by.

5 Q: But we don't know his name?

6 A: I can't recall his name, sir.

7 Q: In fact, he searched the vehicle; is that correct?

8 A: I can't recall. I mean, I do remember him being there

9 while I placed Mr. Arthur under arrest. He was there.

10 Q: Well, you advised Officer Hafner to look in the car; is

11 that correct and do a search?

12 A: I did; I did.

13 Q: Because you said that South Carolina Highway Patrol

14 didn't search it well; is that correct?

15 A: Yes, I ---

16 Q: Those were your words ---

17 A: Yes. Yes.

18 Q: But you can't remember his name?

19 A: I can't remember his name right off.

20 Q: We know he's a corporal, right?

21 A: I believe so.

22 Q: And we don't have that body cam; is that correct?

23 A: No, sir; we do not.

24 Q: Just disappeared; is that correct?

25 A: Somewhere along the line, it did.

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MARVIN CAL COX - REDIRECT BY WALTER

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1 Q: Thank you, Officer.

2 No further questions, Your Honor.

3 A: Thank you.

4 THE COURT: Redirect?

5 MS. WALTER: Just very briefly, Your Honor.

6 REDIRECT EXAMINATION OF MARVIN CAL COX BY MS. WALTER:

7 Q: The Highway Patrol, this Corporal or Officer, he really
8 just stopped by because you were on the side of the road
9 alone, correct?

10 A: To make sure I was okay, and I actually stated to him
11 that I was going to place the subject under arrest and, when
12 that happened, he got out with me to make sure everything was
13 gonna be okay.

14 Q: He didn't recover any evidence?

15 A: He did not.

16 Q: He did not place the defendant under arrest?

17 A: He did not.

18 Q: He did not read the defendant his Miranda rights?

19 A: He did not.

20 Q: Did he do anything that was essential to the case?

21 A: Not that I'm aware of.

22 Q: And counsel asked about the distance between your car and
23 the car that the defendant was driving. Was there anything
24 blocking your view of the license tag on the defendant's car?

25 A: Nothing and when I ran the vehicle license plate, it came

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MARVIN CAL COX - RECROSS BY MASSEY

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1 back to the exact vehicle that it was showing on. So, I know
2 I ran the license plate correctly.

3 Q: Okay. So, the same make and model?

4 A: The same make and model.

5 Q: Thank you. Nothing further.

6 THE COURT: Anything else, Mr. Massey?

7 MR. MASSEY: Yes, sir.

8 RECROSS EXAMINATION OF MARVIN CAL COX BY MR. MASSEY:

9 Q: You asked a South Carolina Highway Patrolman to look in
10 that vehicle; is that correct?

11 A: No, I did not.

12 Q: He looked in that vehicle after you looked in that
13 vehicle; is that correct?

14 A: I can't recall if the highway patrolman looked in it or
15 not. I know he was standing there with me while I was getting
16 the black bag out. I can't recall if the highway patrolman
17 actually went inside of that vehicle or not.

18 Q: You said he didn't do the search well?

19 A: I can't recall.

20 Q: Those were your words, though.

21 No further questions, Your Honor.

22 THE COURT: All right. Thank you very much. You may
23 step down, sir.

24 A: Thank you.

25 THE COURT: Thank you. All right. Next witness please,

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NATALIE STEVENS - DIRECT BY WALTER

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1 ma'am?

2 MS. WALTER: Your Honor, the State would call Natalie
3 Stevens.

4 THE COURT: All right. Please come around to be sworn.

5 MS. WALTER: I'm just gonna leave the evidence up here.

6 THE COURT: All right. Thank you.

7 CLERK: Please raise your right hand and place your left
8 hand on the Bible.

9 NATALIE STEVENS, HAVING BEEN DULY
10 SWORN TESTIFIES AS FOLLOWS:

11 CLERK: Please state your full name and spell your last
12 name.

13 MS. STEVENS: Natalie Stevens, S-T-E-V-E-N-S.

14 DIRECT EXAMINATION OF NATALIE STEVENS BY MS. WALTER:

15 Q: Good morning, Ms. Stevens?

16 A: Good morning.

17 Q: I've seen -- well, the jury may not be able to see you
18 sitting there, but I've seen you sitting in court all morning.
19 Can you tell us where you work?

20 A: The Horry County Clerk of Court's office.

21 Q: As part of your duties for the clerk of court's office,
22 do you maintain records related to criminal matters in the
23 regular course of your duties?

24 A: Yes.

25 MR. MASSEY: Your Honor, objection, Your Honor.

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NATALIE STEVENS - DIRECT BY WALTER

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1 May we approach?

2 THE COURT: Absolutely.

3 (REPORTER'S NOTE: Bench conference is held off the record in
4 the presence of but outside the hearing of the jury.)

5 BY MS. WALTER:

6 Q: Ms. Stevens, at my request, did you -- are you familiar
7 with a record of conviction related to the defendant in this
8 matter being James Lamont Arthur?

9 A: Yes.

10 MS. WALTER: If I may approach, Your Honor, with State's
11 Exhibit 6. And can you look at that and can you tell just in
12 general, let's not get specific yet, in general, what is that?

13 A: It is a sentencing sheet where a defendant either pled
14 guilty or was convicted, found guilty, of a charge.

15 Q: And is that the type of certified record that is kept in
16 the ordinary course of the clerk of court's business?

17 A: Yes.

18 Q: Can you tell us the caption of the case that that
19 pertains to?

20 A: Indictment Number 2001-GS-26-2106, State of South
21 Carolina, County of Horry versus James Arthur.

22 Q: And that sentencing sheet reflects that the defendant was
23 in fact convicted of something?

24 A: Yes.

25 Q: What charge was he convicted of?

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NATALIE STEVENS - DIRECT BY WALTER

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1 A: Burglary third.

2 Q: And does that contain a date of conviction?

3 A: Yes, and its date was 2/13 of 2003.

4 Q: Thank you. Nothing further at this time.

5 I would ask that that exhibit be admitted?

6 THE COURT: And based on the objection of the defense,
7 I'm gonna allow into evidence over the objection of the
8 defense and we'll place it on the record at a later
9 opportunity.

10 MR. MASSEY: Thank you, Your Honor.

11 THE COURT: All right. Thank you.

12 STATE'S EXHIBIT NUMBER 6

13 ADMITTED INTO EVIDENCE

14 THE COURT: All right. Thank you.

15 MR. MASSEY: And no questions, Your Honor.

16 THE COURT: All right. Thank you. All right. You may
17 step down, ma'am. Thank you.

18 MS. ANDREW: Your Honor, the state calls Officer James
19 Hafner.

20 THE COURT: All right, sir, please come around.

21 CLERK: Please raise your right hand and place your left
22 hand on the Bible.

23 JAMES HAFNER, HAVING BEEN DULY SWORN
24 TESTIFIES AS FOLLOWS:

25 CLERK: Please state your full name and spell your last

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JAMES HAFNER - DIRECT BY ANDREW

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1 name.

2 MR. HAFNER: My name is James Hafner, H-A-F-N-E-R.

3 DIRECT EXAMINATION OF JAMES HAFNER BY MS. ANDREW:

4 Q: Officer Hafner, where are you currently employed?

5 A: Horry County Police Department.

6 Q: How long have you been employed with the Horry County
7 Police Department?

8 A: A little over four years.

9 Q: Where were you employed prior to that?

10 A: A -- car sales.

11 Q: Were you employed -- what do you do as a Horry County
12 Police Officer currently?

13 A: Currently, I'm assigned to a Traffic Division and a
14 motorcycle team.

15 Q: And what do you do as part of your duties?

16 A: Mainly, we go to the complaints areas and enforce traffic
17 laws.

18 Q: And on May 12th, 2016, were you employed in the same
19 capacity with the Horry County Police Department?

20 A: No, ma'am, I actually worked on the road. As Officer Cox
21 explained, we answered calls for service and on down time work
22 proactive in traffic.

23 Q: Okay. Directing your attention to May 12th, 2016, and
24 the incident at hand in this trial, did you receive a call for
25 backup from Officer Cox on that date?

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JAMES HAFNER - DIRECT BY ANDREW

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1 A: Yes, ma'am.

2 Q: And did you respond to that call?

3 A: Yes, ma'am.

4 Q: Okay. And where did you go?

5 A: I responded to Highway 701 close to the intersection of
6 Highway 65 at the Homewood Gas Station.

7 Q: And when you arrived, what did you find?

8 A: Officer Cox had the vehicle stopped. A highway patrolman
9 was on scene. Upon my arrival, Mr. Arthur was already under
10 arrest and placed in the rear of his vehicle.

11 Q: Do you recall what time of day that was?

12 A: Roughly 2:45 in the morning.

13 Q: We've heard previous testimony from Officer Cox that he
14 asked you to search the vehicle. Did you perform a search of
15 the vehicle?

16 A: I did; yes, ma'am.

17 Q: And what did you find?

18 A: During the search of the vehicle, I located 14 blue pills
19 in the center console in the front of the vehicle and two
20 white oval pills that were located in the front glove box.

21 Q: Okay. I'm gonna show you what's been previously admitted
22 into evidence and marked as State's Exhibit 2.

23 May I approach the witness, Your Honor?

24 THE COURT: Yes, ma'am.

25 Q: Taking a look at that bag, can you tell me if the pills

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JAMES HAFNER - CROSS BY MASSEY

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1 that you found in the car are located in that bag?

2 A: Yes, ma'am.

3 Q: And what -- which ones?

4 A: The two oval white pills and the 14 blue pills behind it,
5 both in the clear bags.

6 Q: What did you do with the pills after you located them in
7 the car?

8 A: They were released to Officer Cox to be placed into
9 evidence.

10 Q: Okay.

11 I have no further questions for this witness, Your Honor.

12 THE COURT: Cross examination?

13 MR. MASSEY: May it please the Court, Your Honor?

14 THE COURT: Yes, sir.

15 CROSS EXAMINATION OF JAMES HAFNER BY MR. MASSEY:

16 Q: Good morning, Officer, how are you?

17 A: Good, yes, sir.

18 Q: There was a State Highway Patrol Officer there, too,
19 wasn't there?

20 A: Yes, sir.

21 Q: Do you recall his name?

22 A: No, sir.

23 Q: Did you have a body cam?

24 A: Yes, sir.

25 Q: You had one that night?

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DONNA BELL - DIRECT BY WALTER

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1 A: Yes, sir.

2 Q: But we don't have it here?

3 A: It was purged off the system; no, sir.

4 Q: It was purged off the system?

5 A: Yes, sir.

6 Q: Thank you, Officer. No further questions.

7 THE COURT: Anything on those questions?

8 MS. ANDREW: No, Your Honor.

9 THE COURT: You may step down, sir.

10 All right. Next witness please, ma'am?

11 MS. WALTER: Your Honor, the State calls Donna Bell.

12 THE COURT: Please come around to be sworn, ma'am.

13 CLERK: Please raise your right hand and place your left
14 hand on the Bible.

15 DONNA BELL, HAVING BEEN DULY SWORN

16 TESTIFIES AS FOLLOWS:

17 CLERK: Please state your full name and spell your last
18 name?

19 MS. BELL: My name is Donna Bell, B-E-L-L.

20 THE COURT: Go ahead.

21 MS. WALTER: Thank you, Your Honor.

22 DIRECT EXAMINATION OF DONNA BELL BY MS. WALTER:

23 Q: Ms. Bell, where do you work?

24 A: I work at Horry County Police Department in evidence.

25 Q: In evidence?

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DONNA BELL - DIRECT BY WALTER

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1 A: Yes, ma'am.

2 Q: What is your job there; what do you do?

3 A: I key and release evidence that officers turns in.

4 Q: So, if an officer recovers evidence, he brings it in to

5 you and you log it into the system?

6 A: Yes, ma'am.

7 Q: Is there a paper record made of that as well?

8 A: Yes, ma'am.

9 Q: And I'm going to approach you with what's admitted as

10 Exhibit State's 4 and 5. Do you recognize those documents?

11 A: Yes, ma'am; I do.

12 Q: And I see you have your own copies there?

13 A: Yes.

14 Q: If you could just look at State's Exhibit 4 and 5, were

15 those documents produced when Officer Cox turned evidence into

16 you related to this case?

17 A: Yes, ma'am.

18 MS. WALTER: And if I may approach?

19 THE COURT: Yes, ma'am.

20 BY MS. WALTER:

21 Q: With Exhibits 2, 3 and 4, these have all been admitted.

22 Do these appear, just based on the descriptions, to be the

23 evidence that you received from Officer Cox?

24 A: Yes, ma'am.

25 Q: Once you receive the evidence from Officer Cox, first of

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1 all, do you sign the forms, the chain of custody forms as
2 well?

3 A: Yes, ma'am.

4 Q: Does your signature in fact appear on Exhibits 4 and 5?

5 A: Yes, ma'am.

6 Q: Once Officer Cox relinquishes the evidence to you, what
7 do you do with the actual evidence?

8 A: Well, on this case, Officer Cox had placed the evidence
9 in Locker Number 2. It's a secure locker, and I retrieved and
10 then I, you know, always check the chain to confirm whatever
11 is in, he -- is on my chain is the evidence that we received.

12 Q: And did in fact the evidence that he had placed into the
13 locker match what was on the chain of custody form?

14 A: Yes, ma'am.

15 Q: And you said that that evidence is secured. So, does
16 that mean that other than the staff in evidence, no one can go
17 into those lockers ---

18 A: Correct.

19 Q: --- and tamper with any of the evidence?

20 A: Yes, ma'am.

21 Q: And is there any type of system of tape or anything that
22 you use to ensure that no one tampers with the evidence?

23 A: Yes, ma'am, we use evidence tape.

24 Q: And is that -- I'm holding up State's Exhibit 3, this red
25 evidence tape and likewise on what's already been opened, but

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1 does this exhibit the evidence tape?

2 A: Yes, ma'am.

3 Q: And that would show if it had been tampered with?

4 A: Yes, ma'am; it would.

5 Q: And to the best of your knowledge, had any of the
6 evidence in this case been tampered with?

7 A: No, ma'am.

8 Q: I have nothing further, Your Honor.

9 THE COURT: Cross examination?

10 MR. MASSEY: May it please the Court, Your Honor?

11 THE COURT: Yes, sir.

12 CROSS EXAMINATION OF DONNA BELL BY MR. MASSEY:

13 Q: Good morning, Ms. Bell, how are you?

14 A: Fine.

15 Q: You receive all the evidence; is that correct?

16 A: Yes, sir.

17 Q: Did you receive the body cams?

18 A: No, sir.

19 Q: None at all?

20 A: No, sir.

21 Q: Well when you received all the evidence, that wouldn't be
22 all the evidence, would it?

23 A: Well, sometimes our body cams, they don't -- I believe,
24 I'm not -- pretty sure, the officers might can -- I'm not
25 really sure how they do that; if it might be -- if they keep

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1 it somewhere else; I'm not really sure how that works.

2 Q: Do you ever get any of the body cams?

3 A: Yes, sir; we do.

4 Q: Okay. So, you would've had two from these two officers;
5 is that correct? If there were any, you would have had two;
6 correct? You had two officers, two body cams?

7 A: It's just according what they are -- I'm not really sure.
8 Like I said, I'm just the custodian in evidence.

9 Q: I understand. So, you don't have all the evidence or you
10 didn't have all the evidence that day?

11 MS. WALTER: Objection, Your Honor.

12 THE COURT: Rephrase your question.

13 BY MR. MASSEY:

14 Q: If you didn't have all the body cams, you didn't have all
15 the evidence, did you?

16 A: How we tell by what -- normally they turn in a disc, a
17 body -- you know, what's ever on the disc, and if -- and how
18 we tell if it's by the case number. All evidence is assigned
19 a case number and that's what we go by.

20 Q: And you don't have the body cams, do you?

21 A: No, sir.

22 MR. MASSEY: No further questions, Your Honor.

23 THE COURT: Redirect?

24 MS. WALTER: No, Your Honor.

25 THE COURT: You may step down then.

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1 A: Thank you.

2 THE COURT: Thank you.

3 Further witnesses?

4 MS. WALTER: Yes, Your Honor. The state calls Courtney
5 Johnson to the stand, please?

6 THE COURT: Please come around and be sworn, please,
7 ma'am.

8 CLERK: Please raise your right hand and place your left
9 hand on the Bible.

10 COURTNEY JOHNSON, HAVING BEEN DULY
11 SWORN TESTIFIES AS FOLLOWS:

12 CLERK: Please state your full name and spell your last
13 name.

14 MS. JOHNSON: My name is Courtney Johnson, J-O-H-N-S-O-N.

15 DIRECT EXAMINATION OF COURTNEY JOHNSON BY MS. WALTER:

16 Q: Ms. Johnson, where do you work?

17 A: I work at the Horry County Police Department in the drug
18 analysis lab.

19 Q: What is your job there?

20 A: I'm a forensic chemist.

21 Q: What does a forensic chemist do?

22 A: My primary responsibilities are to analyze and identify
23 suspected controlled substances that are submitted to me.

24 Q: Did you have any specialized training or education that
25 suited you to that position?

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1 A: Yes, ma'am. I received my Bachelor's in forensic Science
2 from Southern Wesleyan University as well as my Bachelor's in
3 chemistry and a Bachelor's in biology from Southern Wesleyan
4 University. Upon being hired on by the Horry County Police
5 Department, I completed my training at the South Carolina Law
6 Enforcement Division in the analysis of controlled substances.
7 I've also attended the Drug Enforcement Administration's
8 Forensic Chemist Training Seminar as well as the agilent gas
9 chromatograph mass spectrometry training seminar, and the
10 Horry County Police Department Drug Lab also participates in a
11 yearly proficiency testing through collaborative testing
12 services.

13 Q: Have you testified before?

14 A: Yes, ma'am.

15 Q: And you've been qualified as an expert in the chemical
16 analysis of controlled substances?

17 A: Yes, ma'am.

18 Q: How many times?

19 A: Five times.

20 MS. WALTER: And, Your Honor, I believe that there is a
21 stipulation by and between counsel that Ms. Johnson is in fact
22 an expert in the chemical analysis of controlled substances.

23 MR. MASSEY: That is correct, Your Honor.

24 THE COURT: All right. So, she is qualified to give her
25 opinion in that field. You may proceed.

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1 MS. WALTER: Thank you.

2 BY MS. WALTER:

3 Q: Ms. Johnson, were you so employed back in July of 2016?

4 A: Yes, ma'am; I was.

5 Q: As part of your duties, did you receive evidence
6 pertaining to the case that's on trial here today?

7 A: Yes, ma'am; I did.

8 MS. WALTER: Your Honor, if I may approach?

9 THE COURT: Yes, ma'am.

10 BY MS. WALTER:

11 Q: With State's Exhibit 2. Do you recognize that?

12 A: May I refer to my notes?

13 Q: Yes.

14 A: Yes, ma'am; I do.

15 Q: What do you recognize it to be?

16 A: This is a kapak bag is the outer bag, which is what I
17 used to seal the evidence back into, and the inside bag with
18 the blue swirl patterns on the outside, that's what we refer
19 to as a BEST kit.

20 Q: Okay. And showing you State's Exhibit 4. Do you
21 recognize State's Exhibit 4?

22 A: Yes, ma'am.

23 Q: What do you recognize that to be?

24 A: This is the BEST kit paperwork. It includes all of the
25 necessary numbers for the case as well as what is inside the

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1 BEST kit and a chain of custody at the bottom of it.

2 Q: So, can you explain -- let me back up. How are you
3 assigned to a case?

4 A: Well, I test all the drugs that come into Horry County.

5 Q: I was going to say, there's no one else to assign it to,
6 right?

7 A: No, ma'am; there's not.

8 Q: You do it all?

9 A: Yes, ma'am.

10 Q: You get a lot of calls from me, right?

11 A: I do.

12 Q: Does the chain of custody paper -- so, once you're aware
13 that drugs need to be tested, what do you do?

14 A: Donna Bell signs them over to me or Ms. Sharon Lilly.

15 Q: So, in this case, we've heard testimony from Ms. Bell
16 that she was on the chain of custody, she took in the drugs.
17 Once you're notified of an assignment, can you just kind of
18 walk us through what you do?

19 A: I visit the evidence room, and every day we pick up BEST
20 kits from them.

21 Q: So, at some point, did you pick up the BEST kit in this
22 case?

23 A: Yes, ma'am; I did.

24 Q: And again, just for the jury's understanding, if we look
25 at Exhibit 2, when we say BEST kit, are you referring to this

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COURTNEY JOHNSON - DIRECT BY WALTER

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1 kind of ---

2 A: The inside bag, yes, ma'am.

3 Q: When you -- so did you, at some point, retrieve the BEST
4 kit for this case?

5 A: Yes, ma'am; I did.

6 Q: How is that you know that that BEST kit goes with this
7 case?

8 A: There are two specific numbers that I look for when I'm
9 looking at this evidence. So, there is a control number, you
10 can see it printed on the top up here. The control number for
11 this case, what I have in my notes is H223684 and that's
12 consistent. This number is printed from the factory, never to
13 be printed on another BEST bag. So, this is specific to this
14 BEST kit. There is also a lab number that I write on here,
15 C160378, which is also consistent with my notes and that's
16 assigned by the lab.

17 Q: Do you -- when you first get a BEST kit, prior to doing
18 any analysis, do you any type of checking on it?

19 A: Yes, ma'am. These bags are tamper-evident and so what I
20 look for is this outer blue swirl pattern that you see on the
21 outside, I check to make sure they are no distortions in those
22 patterns. There is also a line up top, which you can't read
23 it very well, but it says warning attempt to open this seal
24 will distort these lines. I check up there as well that the
25 seal is intact and if there are any discrepancies or anything

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1 like that, I would reject evidence and send it back, It would
2 never enter into the lab.

3 Q: And in this specific case, did you in fact examine this
4 seal on the BEST kit?

5 A: Yes, ma'am.

6 Q: Was there any evidence that it had been tampered with at
7 any time?

8 A: No, ma'am.

9 Q: So, once you ensure the integrity of the seal, what do
10 you do?

11 A: I place it in a secure location inside of the drug lab
12 until I'm ready to begin analysis.

13 Q: At some point, did you perform an analysis on these
14 items?

15 A: Yes, ma'am.

16 Q: Can you tell the jury about your analysis and your
17 conclusions?

18 A: Sure. After I retrieve it back from the secure location
19 in the drug lab, I check to make sure the seals are still
20 intact and nothing has happened to it. I then take all of the
21 evidence out, which is what you're seeing on the back back
22 here. I itemize the evidence. And based on what type of
23 evidence it is, I take a representative sample, I take a
24 weight of whatever the item is. Also, if it's a
25 pharmaceutical, I have to take a count how many there are,

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COURTNEY JOHNSON - DIRECT BY WALTER

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1 record the imprints and stuff like that. After I take the
2 weight, take the representative sample, I do an extraction and
3 then I place it on the gas chromatograph mass spectrometer for
4 confirmatory results. And once those are achieved, I will
5 review all of the data and generate a report for the case as a
6 whole.

7 Q: Okay. So, now you've performed all of that with this
8 BEST kit?

9 A: Yes, ma'am.

10 Q: So, let's look at exhibit -- you said you itemized the
11 items in the BEST kit ---

12 A: Yes, ma'am.

13 Q: --- so what did you make as Exhibit 1.1, excuse me, Item
14 1.1?

15 A: Item 1.1 was an envelope containing a cellophane wrapper
16 containing two white oval tablets with imprints IP272, and I
17 did not do analysis on those.

18 Q: What about Item 1.2?

19 A: That was an envelope containing a zip lock bag containing
20 14 round blue tablets with the imprint core132 and a plus mark
21 on the back. The results were amphetamine Schedule II found
22 in the sample tested, and one was tested.

23 Q: And would that amphetamine be the sort of medical name,
24 but it could also be called Adderall?

25 A: Yes, that is a brand name; yes, ma'am.

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COURTNEY JOHNSON - DIRECT BY WALTER

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1 Q: So, Adderall is the brand name of an amphetamine?

2 A: Yes.

3 Q: And then directing Item 1.3, what was Item 1.3?

4 A: That was an envelope containing two plastic corner bags
5 containing rock substance. The results were cocaine base or
6 crack Schedule II found with a combined weight of 13.4 grams
7 or 206.7 grains.

8 Q: When you do the weight for in this case, the cocaine
9 base, do you -- is it a weight just of the substance or is it
10 the substance in the bag? Can you just describe how do you
11 get that weight?

12 A: We empty all packaging and it's just the substance itself
13 to be weighed.

14 Q: So, just the cocaine base from both bags combined was
15 13.4 grams?

16 A: Yes, ma'am, but the way that we weigh that is all of the
17 items remain separate until confirmatory results are approved.
18 So, for each of those two bags that were in Item 1.3, they
19 were weighed separately, the representative sample is taken
20 separately and those weights were not combined until after I
21 received results from the gas chromatograph mass spectrometer
22 that they both were cocaine base.

23 Q: And these conclusions that you made, are they to a
24 reasonable degree of scientific certainty?

25 A: Yes, ma'am.

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COURTNEY JOHNSON - CROSS BY MASSEY

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1 MS. WALTER: If I may approach, Your Honor?

2 THE COURT: Yes, ma'am.

3 BY MS. WALTER:

4 Q: I'm approaching with State's Exhibit 7, do you recognize
5 that?

6 A: Yes, ma'am.

7 Q: And is -- what do you recognize it to be?

8 A: This is my lab report generated for this case.

9 Q: So, that's a true and accurate copy of the report that
10 you generated?

11 A: Yes, ma'am; it is.

12 MS. WALTER: Your Honor, I would ask that that be
13 admitted?

14 THE COURT: Any objection?

15 MR. MASSEY: No objection, Your Honor.

16 THE COURT: All right. State's 7 is in evidence without
17 objection.

18 STATE'S EXHIBIT NUMBER 7

19 ADMITTED INTO EVIDENCE

20 MS. WALTER: I have no further questions for Ms. Johnson.

21 THE COURT: All right. Cross examination?

22 MR. MASSEY: May it please the Court, Your Honor?

23 THE COURT: Yes, sir.

24 CROSS EXAMINATION OF COURTNEY JOHNSON BY MR. MASSEY:

25 Q: Good morning.

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COURTNEY JOHNSON - CROSS BY MASSEY

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1 A: Good morning.

2 Q: In fact, you didn't test all the drugs, did you?

3 A: What do you mean by that?

4 Q: You didn't test 1.1, did you?

5 A: No, sir.

6 Q: Why not?

7 A: It's not a controlled substance.

8 Q: You knew that by just looking at it?

9 A: We use published literature.

10 Q: Okay. And you just did a sample of the cocaine; is that

11 correct?

12 A: Yes, sir, of both bags.

13 Q: Again, you didn't do all the cocaine, did you?

14 A: No, sir.

15 Q: And you don't know anything about the body cams or

16 anything like that, you just know about the drugs; is that

17 right?

18 A: I'm just the drug lady.

19 Q: And you don't know anything about the South Carolina

20 Highway Patrolman?

21 A: No, sir; I do not.

22 Q: No further questions.

23 THE COURT: All right.

24 MS. WALTER: Just very briefly, Your Honor.

25 THE COURT: Yes, ma'am.

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COURTNEY JOHNSON - REDIRECT BY WALTER

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1 REDIRECT EXAMINATION OF COURTNEY JOHNSON BY MS. WALTER:

2 Q: Mr. Massey was saying cocaine. The analysis that was
3 performed in this case actually showed cocaine base?

4 A: Cocaine base.

5 Q: Okay. Thank you.

6 THE COURT: All right. Do you wish this witness to be
7 excused?

8 MS. WALTER: Yes, please, Your Honor.

9 THE COURT: And the prior witness as well?

10 MS. WALTER: Ms. Bell, as well.

11 THE COURT: All right. Any objection to that, Mr.
12 Massey?

13 MR. MASSEY: None, Your Honor.

14 THE COURT: All right. Y'all are released to go back to
15 your regular duties and activities. Thank you very much.

16 MS. JOHNSON: Thank you.

17 THE COURT: Make sure you don't take any exhibits.

18 MS. WALTER: I think I took them all away from her.

19 THE COURT: All right. Good.

20 All right. Further witnesses on behalf of the State?

21 MS. WALTER: No, Your Honor, I believe all of the
22 exhibits have been admitted and as long as that is correct,
23 the state would rest.

24 THE COURT: All right. Very good.

25 BY THE COURT:

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BY THE COURT

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1 THE COURT: All right, ladies and gentlemen, at this
2 point in time, when the state rests its presentation of the
3 evidence, it's always necessary for the Court to go over
4 certain matters, legal matters and motions with the attorneys.
5 I need to do that outside your presence. There are several
6 things that I have to go over with them. I will call you back
7 in as soon as I can. All right. If you can please go to your
8 jury room. Thank you very much.

9 Remember, don't talk about the case.

10 Thank you.

11 (REPORTER'S NOTE: Jury exits courtroom @ 10:49 A.M. The
12 following takes place outside the presence of the jury.)

13 THE COURT: The first objection you had when Ms. Natalie
14 Stevens testified, you had an objection and I noted it and
15 told you that we would argue it at a break. I'll be glad to
16 hear you regarding that objection at this time.

17 MR. MASSEY: Your Honor, I was given a list of witnesses,
18 and I understand why she had to testify this morning and not
19 being on that witness list because my client is TIA, but she's
20 not here listed on that witness list and she was talking about
21 a prior conviction, and I think that should've been listed.

22 THE COURT: All right, sir.

23 MR. MASSEY: That's why I asked that.

24 THE COURT: All right. Very good. I understand the
25 objection.

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BY THE COURT

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1 Any response from the state?

2 MS. WALTER: Your Honor, as I stated at sidebar, I would
3 just note that defense has been on notice that one of the
4 charges is based on the defendant having a prior conviction.
5 The state's not in a position to always know which clerk of
6 court would be testifying and the defendant -- the defense,
7 excuse me, has not set forth any prejudice that's occurred.

8 THE COURT: All right. Very good. In this particular
9 matter, the witness that testified was merely representative
10 of the elected clerk of court, in her capacity as a records
11 keeper and allowed the Court to receive the certified true
12 copy of the record. I do not find that her -- that she was
13 not listed on the proposed witness list, I do not find that to
14 be -- that the defendant has shown any prejudice to him
15 regarding the allowance of the testimony regarding the records
16 keeper. So, I overrule your objection.

17 I did want to ask you, that was State's Exhibit 6. Could
18 we find that, please?

19 All right. State's Exhibit 6 is two pages. One is the
20 sentencing sheet and the other one was the indictment. The
21 indictment actually was for burglary second degree non-violent
22 and the sentencing sheet shows that he pled guilty to burglary
23 in the third degree. I don't find it necessary to have the
24 second page of State's Exhibit 6 to show the certified true
25 copy of the conviction, that being the guilty plea, to

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1 burglary third. So, the Court would order the court reporter
2 to remove the second page from Exhibit 6, to mark that for
3 identification purposes only not to go to the jury, doing that
4 solely on the issue of prejudice to the defendant so that
5 there would not be any undue prejudice in that he is actually
6 charged with a greater crime than what he actually pled to.

7 All right?

8 MR. MASSEY: Thank you, Your Honor.

9 COURT REPORTER: Would that be Court's or State's?

10 THE COURT: Put it for State's ID. I don't know if it's
11 gonna 6A or however you want to label it for identification
12 purposes only.

13 STATE'S EXHIBIT NUMBER 6A

14 MARKED FOR IDENTIFICATION

15 THE COURT: All right. The state having rested in this
16 particular matter, Mr. Massey, any motions?

17 MOTIONS:

18 MR. MASSEY: I would make the motion to dismiss based on
19 the fact that we do not have the body cams and we do not have
20 the state highway patrol officer who was here at the scene or
21 there at the scene.

22 THE COURT: All right, sir.

23 MR. MASSEY: I think that evidence would be very crucial
24 in the chain of custody for the car being inspected for
25 evidence and also about what happened at the incident with the

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1 two body cams. And I'm sort of concerned, one officer says
2 purged and another says disappeared, and I'm not trying to say
3 anything to these officers, I know them, but it concerns me,
4 Your Honor.

5 THE COURT: All right, sir. Thank you very much.

6 All right, Solicitor, your response, please?

7 MS. WALTER: Your Honor, if I'm understanding Mr. Massey,
8 I believe he's asking for a directed verdict.

9 THE COURT: Yes, ma'am.

10 MS. WALTER: Okay. So, in that case, the state would
11 certainly argue that there is substantial evidence at this
12 point that the defendant did commit each of the crimes with
13 which he is charged. Certainly, the absence of the body-worn
14 camera footage is something that Mr. Massey can argue in his
15 closing, but it does nothing to dispel the guilt of the
16 defendant and, certainly, the state is not required to call
17 every potential witness to every single charge, and we would
18 ask that Your Honor deny the motion.

19 THE COURT: All right. Regarding the motion by the
20 defense for a directed verdict, based upon the failure of the
21 state to produce certain evidence, what I am charged with is
22 to look at the existence or the non-existence of evidence and
23 not judging its credibility or believability. Here, even
24 though the body camera videos are not available for view by
25 the jury, nor the testimony of the highway patrolman that

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BY THE COURT

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1 appeared on the scene, I do not find that to be sufficient to
2 grant a directed verdict in this matter. That is obviously
3 something that could be argued to the jury that those, that
4 evidence was not presented, but what the state has presented
5 is more than sufficient, direct and circumstantial evidence,
6 that would prove the guilt of the accused of the crimes
7 charged in this particular matter. I do find that the -- by
8 the evidence that does exist in this matter, there is more
9 than sufficient evidence to deny the motion for a directed
10 verdict in this matter. I therefore would respectfully
11 decline to grant the defendant's motion for directed verdict,
12 based upon the non-existence of certain evidence.

13 Anything further, Mr. Massey?

14 MR. MASSEY: Nothing, Your Honor. Thank you.

15 BY THE COURT:

16 THE COURT: All right. All right. Why don't we take a
17 short break for about 5-10 minutes or so and then we'll come
18 back in and talk about the charge and the arguments. Okay?

19 MS. WALTER: Your Honor, I had sent over to your law
20 clerk this morning, the state's proposed jury instructions.

21 THE COURT: She -- I will not say that I've kinda got my
22 own out and she has been reviewing -- my law clerk has been
23 reviewing the ones that you have sent and, in the interim,
24 we'll talk about that. All right?

25 MS. WALTER: Okay. Yes. Thank you.

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1 THE COURT: So, then we'll take a short break and we'll
2 come back and go over that. All right?

3 Thank you very much.

4 **(RECESS - 10:57 A.M.)**

5 *******OFF THE RECORD*******

6 **(On the Record - 11:27 A.M.)**

7 MOTIONS:

8 THE COURT: All right. Regarding the -- I'm sorry. Mr.
9 Massey?

10 MR. MASSEY: Yes, sir.

11 THE COURT: Assuming that the defense has no witnesses;
12 is that correct?

13 MR. MASSEY: That's correct.

14 THE COURT: All right, sir. So, for the purposes of this
15 hearing then the defense would rest; is that correct?

16 MR. MASSEY: That is correct, Your Honor.

17 THE COURT: All right. So, we'll do that in front of the
18 jury again, but are you renewing your motions for a directed
19 verdict ---

20 MR. MASSEY: Yes, sir.

21 THE COURT: --- at this time?

22 MR. MASSEY: Yes, sir, for the record.

23 THE COURT: All right. Very good.

24 Based upon the reasons that the Court set forth
25 previously, I again respectfully decline to grant your motion

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CHARGE CONFERENCE

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1 for a directed verdict, having found that there's more than
2 sufficient evidence, if that evidence is believed by the jury,
3 to find the defendant guilty of the crime or crimes charged in
4 this particular matter.

5 CHARGE CONFERENCE:

6 THE COURT: Now, in this -- I'm just gonna go over the
7 jury charge with you and you can tell me if you have any
8 exceptions or deletions, additions, to it. I'm gonna talk to
9 the jury basically about what we normally talk to them about;
10 credibility, believability of the witnesses, the -- obviously,
11 talk to them about the defendant did not appear, that could
12 not be considered by them in their consideration of the
13 crimes; direct and circumstantial evidence; presumption of
14 innocence; reasonable doubt, the kind of doubt that would
15 cause an ordinary reasonable person to hesitate to act; the
16 statement of the defendant; the expert witness charge; and
17 then go into the trafficking in cocaine base; the state having
18 has to prove beyond a reasonable doubt the defendant knowingly
19 sold, manufactured, cultivated, delivered, purchased or
20 brought into the state or attempted or otherwise aided,
21 abetted, or attempted to conspire to sell, manufacture,
22 cultivate, deliver, purchase or bring into the state or was
23 knowingly in actual or constructive possession or knowingly
24 attempted to become in actual or constructive possession;
25 define actual possession; tell them that constructive

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CHARGE CONFERENCE

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1 possession requires a showing that the accused had knowledge
2 of and dominion or control over either the drugs or the
3 premises where the drugs were found; that can be proven by
4 circumstantial evidence. The state also has to prove beyond a
5 reasonable doubt that the amount of the cocaine or any mixture
6 containing the cocaine was 10 grams or more, but less than 28
7 grams. The simple possession of Adderall. Give a definition
8 of constructive possession; unlawful possession of a pistol,
9 the state having to prove beyond a reasonable doubt the
10 defendant was in possession of the firearm and that he was
11 previously convicted of a crime of violence. A firearm means
12 any weapon which is designed to or may readily converted to
13 expel a projectile and is designed to fire from the hand. The
14 state must also prove the defendant was previously convicted
15 of crime of violence and third-degree burglary is a crime of
16 violence under the law of the State of South Carolina. And
17 again, tell them that, that prior convictions only as to the
18 element of that particular crime and can't be used for any
19 other purpose. The unlawful carrying of a pistol, and a
20 weapon is about the defendant's person if it is readily
21 accessible and convenient for immediate use, the pistol need
22 not actually be touching the person of the defendant. And
23 there is no statutory exceptions as set forth in the statute
24 in this particular matter that would apply.

25 And the verdict form is basically straightforward. It

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CHARGE CONFERENCE

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1 has trafficking cocaine base more than 10 grams but less than
2 28 grams. On the charge of trafficking cocaine base, we, the
3 jury, by unanimous consent, find the defendant, you got two
4 choices; not guilty or guilty. Same for possession of
5 schedule I to V drug, Adderall, then the unlawful possession
6 of a pistol, and the last one is the unlawful carrying of a
7 pistol.

8 Anything else the state would want me to charge or add to
9 or delete from what I've talked about?

10 MS. WALTER: No, Your Honor.

11 THE COURT: From the defense?

12 MR. MASSEY: Nothing, Your Honor.

13 THE COURT: All right. Very good. All right. When we
14 bring the jury back out, I'll ask you, Mr. Massey, is there
15 anything further from the defense, and tell me the defense
16 rests, and then I'll just tell them very briefly where we are
17 and then we'll go into the closing arguments. Obviously, the
18 state must give its full and complete argument and then the
19 defense will have their argument, and then I'll charge the
20 law.

21 MR. MASSEY: Thank you.

22 THE COURT: All right. Ask the jury to come in please.

23 (REPORTER'S NOTE: Jury enters courtroom @ 11:37 A.M.)

24 BY THE COURT:

25 THE COURT: All right, Mr. Massey, anything further from

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BY THE COURT

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1 the defense at this point in time?

2 MR. MASSEY: At this point, Your Honor, the defense
3 rests.

4 THE COURT: All right. Thank you very much.

5 MR. MASSEY: Thank you.

6 THE COURT: All right, ladies and gentlemen, you have
7 heard all the evidence in this case for your consideration as
8 to whether or not the state has proven to you guilt of the
9 accused, of the four crimes beyond a reasonable doubt. What
10 we're gonna go into now are the closing arguments of the
11 attorneys. Now, those closing arguments, again, those are the
12 attorneys' comments on the facts and evidence. They are
13 important but you remember, of course, that they are no
14 evidence. You've already received all of the evidence in this
15 case.

16 Now, after that, I will give you the law that you will
17 apply to the facts and evidence you find to be true in this
18 matter and then I'll submit the case to you for your
19 deliberations and your unanimous decision.

20 Solicitor?

21 MS. WALTER: Thank you, Your Honor.

22 CLOSING BY WALTER:

23 MS. WALTER: So, as puzzles go, this was probably the
24 easier and the more straightforward end, not 2500 pieces. As
25 I told you, we laid out the facts through the testimony that

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CLOSING BY WALTER

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1 was given on the witness stand and the physical evidence that
2 you will have access to during your deliberations. And in a
3 moment, Judge John will instruct you on the law, but let's
4 just go over what we've learned today.

5 On May 12th, 2016, Officer Cox was on routine patrol
6 enforcing the law as he always does. He ran a tag, it came
7 back suspended, and that is what brought him into contact with
8 the defendant. When he approached, he had confirmed that the
9 license plate was suspended. He asked the defendant for a
10 license and then the defendant said, I don't have a license,
11 can you just write a ticket and let me go? Luckily, Officer
12 Cox didn't do that. He smelled the marijuana and once he was
13 able to secure the scene, secure his safety, he was able to
14 retrieve again, what you will have access to, the black bag
15 from the passenger seat. The defendant told him that's where
16 the marijuana is. And in the black bag, you have a digital
17 scale and a mason jar, that also in addition to what it now
18 contains, contained the reason why you're here today, 13.4
19 grams of cocaine base.

20 Officer Cox also when the defendant said -- admitted
21 where it was, recovered State's Exhibit 3, a handgun. A
22 handgun that was easily accessible to the defendant as the
23 sole occupant of the car. You'll recall that Officer Cox said
24 that the firearm was just shoved in between the seat and the
25 center console. You will recall that Officer Cox said that he

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CLOSING BY WALTER

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1 advised the defendant of his Miranda Rights, the defendant
2 told him where the drugs were, told him where the gun was,
3 there was no one else in the car, and that's what we call
4 possession.

5 Now, there is a saying the law if you have the facts on
6 your side, argue the facts; if you have the law on your side,
7 argue the law. And if you don't have either on your side,
8 just argue. Part of my job as a prosecutor, especially
9 because in this jurisdiction, I have to go first and then Mr.
10 Massey will have the last opportunity to address you.

11 So, what I have to do, is I have to think to myself, well
12 I wonder what he's going to argue; what is he going to say to
13 you to try to convince you to acquit a clearly guilty
14 defendant. So, thinking back to that, if you have the facts,
15 argue the facts, he doesn't. The facts were all against the
16 defendant. The defendant was the sole occupant of the car.
17 The defendant knew and admitted to where 13.4 grams of cocaine
18 base were, and the defendant admitted where the gun was. So,
19 he doesn't have the facts on his side.

20 He doesn't have the law on his side, because based on all
21 the facts that have been laid out and the law that I'll cover
22 in just a moment, the defendant is guilty. So, what's left?
23 To just argue.

24 Now, sometimes I talk about to jurors ahead of time
25 about, do you watch Law & Order, CSI, shows of that sort, NCIS

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CLOSING BY WALTER

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1 is one now, also. I think a lot of people get their idea of
2 what happens at a trial, what happens in the criminal world
3 from those shows. But life isn't perfect. Life isn't a T.V.
4 show. We don't get retakes; we can't fix mistakes that
5 happen. And in this case, that's the one thing that I think
6 Mr. Massey can argue, that the body-worn camera was purged
7 from the system. And that's simply a matter of every officer
8 wears a body camera. If it is not tagged specifically
9 correctly, after a certain amount of time -- there is just not
10 enough storage in this world to contain all the body-worn
11 camera footage. But in the end, would it be nice to have it?
12 Maybe. But Officer Cox's testimony is uncontradicted.
13 Uncontradicted that he stopped the defendant, that the
14 defendant said, I don't have a license, can you just give me a
15 ticket.

16 The drugs are on the passenger seat. The gun is under
17 the seat, I think; uncontradicted testimony by Officer Cox.
18 So really, the body-worn camera would just be redundant at
19 this point.

20 Now, let me touch back on the law. As I explained to you
21 in the beginning and as Judge John will explain in just a
22 moment, the defendant is charged with four crimes and you must
23 consider each of those crimes separately.

24 So, the first crime, I'll deal with the drugs first and
25 then with the gun. So, the first crime is trafficking in

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CLOSING BY WALTER

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1 cocaine base. The state has to prove, as I told you just a
2 short time ago, that the defendant possessed a substance and
3 that substance was cocaine base and then that last little part
4 that it was between 10 grams and 28 grams. So, what evidence
5 have you seen to establish that charge? You have the
6 testimony of Officer Cox that the defendant was the sole
7 occupant of the car, that he readily pointed Officer Cox to
8 where the drugs were secreted in the black bag. And then you
9 have the unbroken chain of custody that Officer Cox recovered,
10 these two little baggies of cocaine, carried them to Horry
11 County, they were secured the entire time, entered into
12 evidence, secured until Ms. Johnson was able to test them.
13 She testified to you as an expert witness using words that I
14 always used to have to practice, just the gas spectrometer --
15 no, the gas chromatograph mass spectrometer. I said that a
16 lot as I walked my dogs in the morning, but she testified that
17 she performed the analysis on this and it came up as cocaine
18 base. She told you that she weighed just the substance and it
19 was 13.4 grams. So, right there, the defendant is guilty. I
20 would submit to you, of trafficking in cocaine based between
21 10 and 28 grams.

22 The next charge also fairly straightforward is possession
23 of a Schedule I up to V drug, I, II, III, IV, V. In this
24 case, as Ms. Johnson testified, there was 14 blue pills are a
25 Schedule II drug. They are an amphetamine, known also by the

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CLOSING BY WALTER

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1 trade name, Adderall. And you heard testimony from Officer
2 Hafner, that he recovered those from within the defendant's
3 car where the defendant was the sole occupant.

4 And then lastly, we deal with the handgun. The handgun
5 that was within easy reach of the defendant and that's really
6 all it needs to be. The defendant doesn't have to be holding
7 the gun, he doesn't have to be waiving it around, it doesn't
8 have to be tucked into his waistband. As long as it is
9 readily accessible to the defendant, that is sufficient for a
10 possession.

11 Now, as I told you, there are two different charges that
12 are based off of this gun. You heard testimony from Ms.
13 Stevens regarding the defendant's prior conviction for a
14 third-degree burglary, and I will tell you again that the only
15 thing that you can use that for, the only way you can consider
16 that prior conviction, is to determine whether or not the
17 state has proven beyond a reasonable doubt that the defendant
18 could not legally possess that gun. That's the only thing you
19 can use it for.

20 But I would submit to you that through the testimony of
21 Officer Cox and Officer Hafner, the state has proven that the
22 defendant was in possession of that gun. That gun was right
23 next to him as he drove in that car. And the fact that he had
24 that conviction, means he was not legally permitted to possess
25 a gun.

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CLOSING BY WALTER

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1 And then the second charge related to the gun, is simply
2 -- and I'm just gonna refer very quickly -- the defendant did
3 not have a license to carry; it wasn't being carried in the
4 way that is supposed to be carried.

5 So, as I said, this a fairly straightforward puzzle, not
6 too many moving parts. You have a defendant, who is driving
7 in a car with no license, suspended plate, who happened to be
8 stopped by a diligent officer on routine patrol and found to
9 be in possession of 13.4 grams of cocaine base, 14 pills of
10 amphetamine or Adderall, a Schedule II controlled substance
11 and the gun that he had no business possessing. And the
12 state's burden is to have proven all of that to you beyond a
13 reasonable doubt. And the Judge will give you a definition of
14 reasonable doubt. One of those definitions is that it is
15 doubt that would cause a reasonable person to hesitate. But,
16 another way to describe reasonable doubt is if the evidence
17 has left you firmly convinced that the defendant committed
18 these crimes, then the state has carried its burden of proving
19 his guilt beyond a reasonable doubt.

20 And so the state is asking you to consider, the
21 uncontradicted testimony of Officer Cox and Officer Hafner,
22 along with the physical evidence and the analysis performed by
23 Ms. Johnson and convict the defendant of all charges.

24 Thank you.

25 THE COURT: All right, Mr. Massey?

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CLOSING BY MASSEY

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1 MR. MASSEY: May it please the Court, Your Honor?

2 THE COURT: Yes, sir.

3 CLOSING BY MASSEY:

4 MR. MASSEY: Good afternoon, well good morning still.
5 Back in the day, I used to listen to Paul Harvey and he a
6 statement saying the rest of the story, and you'd listen to
7 his program and by the end of it, he would take the rest of
8 the story that he started telling you at the beginning. Well,
9 we started out with a puzzle this morning. And in that
10 puzzle, I think we have some missing pieces.

11 We had Officer Cox talk about -- on the stand, about a
12 body cam. And he said, in his words, it disappeared. We also
13 had Officer James Hafner on there with a body cam and he says
14 it was purged from the system. Then we had Donna Bell, who
15 was taking the evidence and locking it in a file, and she was
16 asked if she had all the evidence. Well, she had all the
17 evidence that she was given, minus two body cams. You've got
18 to understand that some of these cases or, sometimes, we have
19 a rush to judgment. You make a judgment in the beginning and
20 then the facts come out or the facts don't come out.

21 We also have the lady who was testing, Courtney Johnson,
22 who was testing the drugs. And from her own admission and on
23 the Horry County Police Department tests, she said in one of
24 these that she didn't test, and that's 1.1, didn't run an
25 analysis on 1.1. She also stated on the stand that she didn't

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CLOSING BY MASSEY

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1 test all of the crack cocaine. And if you understand how
2 you're testing, if you just test the oil of something and it
3 has oil and water in it, then you haven't tested everything.
4 She only tested a portion of a cocaine base, crack cocaine.
5 So, what we have here is some missing puzzle pieces; two body
6 cams, and we also have a state highway patrol officer, who was
7 there on the scene that night, came there before Officer
8 Hatfield was there, who's assisting Officer Cox and making
9 sure he's safe, that everything is taken care. We don't know
10 if he was in the car or not at the car. We have a statement
11 saying that he thought, Mr. Cox thought, the state highway
12 patrol did not investigate that car as it should've been and
13 got the other officer, Mr. Hafner, to take a look at that car.
14 So, we don't have all the evidence. We don't have all the
15 body cams; don't have them. Don't have any of them. Don't
16 have all the drugs tested. The lady who collects all the
17 evidence doesn't have all the evidence, and she clearly says
18 that she sometimes gets the body cams, but then here one
19 officer states one is purged, the other one says disappeared.
20 Well, that concerns me and that should concern you all. That
21 to me is a reasonable doubt in this case and if you have a
22 reasonable doubt, you should acquit.

23 Thank you.

24 THE COURT: Thank you very much.

25 MR. MASSEY: Thank you, Your Honor.

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CHARGE TO JURY

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1 CHARGE TO JURY:

2 THE COURT: All right, ladies and gentlemen, it's my duty
3 and responsibility now to give you the law that you will apply
4 to the facts and evidence you find to be true in this
5 particular matter. As I indicated to you, earlier, it has
6 been addressed to you that you are, in essence, deciding four
7 pieces in one, because they are four charges and those four
8 charges again are trafficking cocaine base, more than 10 grams
9 but less than 28 grams; possession of a Schedule I to V drug,
10 Adderall; an indictment for unlawful possession of a pistol;
11 and unlawful carrying of the pistol. Now, each one of those
12 is a separate charge and each one of them, as I will explain
13 to you, has different elements that the state has to prove to
14 you beyond a reasonable doubt. So, in your consideration of
15 the evidence, if you find the defendant guilty or not guilty
16 of one particular crime, that does not mean the same verdict
17 has to be reached on the next one or the other ones. Each one
18 of them is separate. You have to make a separate decision on
19 each one of them based upon the evidence presented and the law
20 that I will now charge to you.

21 I told you at the beginning, you had a job of being the
22 judges of the facts. You listen to the facts in evidence and
23 see whether or not the state can prove the defendant guilty
24 beyond a reasonable doubt, and that included the credibility
25 and believability of the witnesses. You examine that

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CHARGE TO JURY

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1 credibility and believability by looking at whether or not the
2 witness had any kind of interest, motive, bias, prejudice they
3 might have in giving you the testimony, obviously the
4 opportunity for knowledge, how'd they come about that
5 information. You can believe one against several, several
6 against one. You can believe a portion of what a witness says
7 and disregard the remaining portion. If you've got a good
8 sound reason for doing so, you can disregard it in its
9 entirety, the testimony of a particular witness. You don't
10 have any friends to reward, you don't have any enemies to
11 punish, your verdict can't be the result of any kind of
12 passion, prejudice, or sympathy. It has to be an examination
13 of the facts in evidence to find whether or not the state has
14 proven to you, the guilt of the defendant, beyond a reasonable
15 doubt.

16 I qualified one witness, sometimes they're called an
17 expert witness, or they're qualified to give their opinion.
18 That doesn't give them any special status; you judge all the
19 witnesses the same. You judge their credibility and
20 believability the same.

21 In this particular matter, a statement alleged to have
22 been made by the defendant was part of the evidence in this
23 case. Now, you make the decision collectively whether or not
24 -- and there are several things that you have to make a
25 decision on -- whether or not the defendant made the

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CHARGE TO JURY

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1 statement. If he made a statement, you have to determine
2 whether it was voluntarily and of his own free will. That
3 means the statement wasn't caused by any kind of pressure,
4 force, fear, threats, coercion, intimidation, hope or promise
5 of any leniency or reward of any kind. You can consider the
6 characteristics of the and the details of the questioning, you
7 could consider obviously the advice or lack thereof of the
8 constitutional rights and, again, not limited to the right to
9 remain silent, that any statement that you make can and will
10 be used against you in a court of law. You have the right to
11 have a lawyer present. If you cannot afford one, one will be
12 appointed to represent you. You can stop making a statement
13 at any point in time that you wish to. You can consider the
14 nature of the questioning, the length and the attention of the
15 defendant during the questioning, all of the surrounding
16 circumstances.

17 And again, the state has the burden of proof on
18 everything. Everything we're talking about here, the state
19 must prove to you beyond a reasonable doubt. So, all of these
20 things about the statement of the defendant, the state has to
21 prove that to you beyond a reasonable doubt, and you determine
22 whether or not that occurred. If you do, you give the
23 statement whatever weight you want to. If you determine it
24 wasn't the free and voluntary statement of the defendant, you
25 don't consider it at all.

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CHARGE TO JURY

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1 I told you at the very beginning that the state has the
2 total and complete responsibility for the burden of proof,
3 proving the defendant guilty beyond a reasonable doubt and the
4 defendant has no duty and responsibility. And in this case,
5 the defendant did not appear. I told you at the very
6 beginning and I'm telling you again, that's not part of your
7 considerations at all. It's not part of your deliberations at
8 all, cannot be used by you in any shape, manner, or form to
9 make your decision in this case. Even mentally, you cannot
10 use it to make your decision. The defendant has
11 constitutional rights. All Americans have constitutional
12 rights. One of them is the right to remain silent. The
13 defendant did not appear. Remaining silent, that cannot be
14 used against him in any shape, manner, or form. The state, as
15 I've told you several times, has the burden of proof. The
16 state has to prove the defendant guilty beyond a reasonable
17 doubt.

18 Two types of evidence that is presented in virtually
19 every single case we have, direct and circumstantial evidence.
20 Direct evidence, that's the testimony of a person who claims
21 or asserts to know a fact, something that happened in their
22 presence, they saw, heard, something that occurred that they
23 can tell you about. Circumstantial evidence is proof of a
24 chain of facts indicating the existence of a fact. The law
25 doesn't make any distinction between the two, a greater degree

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CHARGE TO JURY

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1 of certainty of one over the other is not required. But to
2 the extent that the state relies on any circumstantial
3 evidence, all those circumstances have to be consistent with
4 each other and taken together, point conclusively to the guilt
5 of the accused, beyond a reasonable doubt. If the
6 circumstances would merely portray the defendant's behavior as
7 suspicious, then the state's burden and proof has failed.

8 I told you about this a little bit, but I'm gonna go back
9 over it again. Presumption of innocence. The defendant pled
10 not guilty to these indictments. That put the burden of proof
11 on the State of South Carolina to prove the defendant guilty
12 beyond a reasonable doubt. The defendant was presumed
13 innocent at that point in time. The defendant was presumed
14 innocent at the start of the trial. The defendant is presumed
15 innocent right now. This defendant is not guilty of the
16 crimes charged unless and until you, the jury, believe the
17 state has proved to you by the evidence that's presented, the
18 guilt of the defendant of the crime or crimes charged, beyond
19 a reasonable doubt. We give you the example of the robe of
20 righteousness. Presumption of innocence is likened to the
21 robe of righteousness. It's placed on the shoulders of the
22 defendant at the start of the trial, stays on the shoulders of
23 the defendant unless and until the state can rip that robe
24 righteousness from the defendant's shoulders by proof that
25 leaves you firmly convinced that the defendant is guilty of

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1 the crimes charged, that the state has proven his guilt beyond
2 a reasonable doubt.

3 So, reasonable doubt. Reasonable doubt is the kind of
4 doubt that would cause an ordinary, reasonable person to
5 hesitate to act. Proof beyond a reasonable doubt is proof
6 that leaves you firmly convinced of the defendant's guilt.
7 Now, there are very few things we can know with absolute
8 certainty and the law doesn't require the State of South
9 Carolina to give you that kind of proof. But what is required
10 is based upon your consideration of the evidence, you are
11 firmly convinced the defendant is guilty of the crime or
12 crimes charged, you must find the defendant guilty. On the
13 other hand, if you are not firmly convinced that the defendant
14 is guilty of the crime or crimes charged, based upon your
15 consideration of the evidence, you must give the defendant the
16 benefit of the doubt and find him not guilty of that
17 particular crime or crimes charged.

18 What's the defendant charged with? The first one is
19 trafficking cocaine base, more than 10 grams, less than 28
20 grams. So, the state has to prove to you beyond a reasonable
21 doubt that the defendant knowingly sold, manufactured,
22 cultivated, delivered, purchased, or brought into the state,
23 or otherwise aided, abetted, attempted, or conspired to sell,
24 manufacture, cultivate, deliver, or purchase, or bring into
25 the state, or was knowingly in actual or constructive

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1 possession of the drug, or knowingly attempted to become in
2 actual or constructive possession of the cocaine base. Actual
3 possession of the cocaine base means it was in the actual
4 physical custody of the defendant.

5 Constructive possession means that the -- there's a
6 showing that, beyond a reasonable doubt, that the defendant
7 had knowledge of and dominion or control of either the drugs
8 or where the drugs were found. Constructive possession can be
9 proved by circumstantial evidence, and also the state has to
10 prove to you beyond a reasonable doubt that the amount of
11 crack cocaine or any mixture thereof, was more than 10 grams,
12 but less than 28 grams.

13 The Defendant's also charged with the simple possession
14 of Adderall, a Schedule I to V drug. And again, the state has
15 to prove beyond a reasonable doubt that the defendant
16 knowingly or intentionally possessed the Adderall. Knowingly
17 means with knowledge, consciously, not accidentally.

18 Intentionally means willfully intending the result which
19 actually occurs, again, not by accident. Intent may be shown
20 by acts and conduct of the defendant or any other
21 circumstances from which you could reasonably infer the
22 intent. The state has to prove beyond a reasonable doubt that
23 the defendant again had both power and the intent to control
24 the disposition or use of the drug, the Adderall. And again,
25 that possession can be actual or constructive. Actual means

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CHARGE TO JURY

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1 it's in the actual physical custody of the defendant.
2 Constructive means the defendant has the dominion and control
3 or the right to exercise dominion or control of either the drugs
4 or where the drugs were found. Mere presence at the scene
5 where drugs are found, that's not enough to prove possession.
6 But, the defendant's knowledge and possession can be inferred
7 when the substance is found on property under the defendant's
8 control. That's just an evidentiary fact you take into
9 consideration with all the other facts and give it the weight
10 you decide it should have. And again, the state has to prove
11 all of this to you beyond a reasonable doubt.

12 Unlawful possession of a pistol, the state has to prove
13 to you beyond a reasonable doubt the defendant was in
14 possession of a firearm and that he was previously convicted
15 of a crime of violence. A firearm means any weapon which is
16 designed to or may readily be converted to expel a projectile
17 and is designed to be fired from the hand. The state also has
18 to prove the defendant was previously convicted of a crime of
19 violence and I tell you that third-degree burglary is a crime
20 of violence under South Carolina Law.

21 Now, evidence that the defendant was convicted of that
22 burglary third-degree charge in the past is considered by you
23 only for the purpose of whether it's an essential element of
24 the possession of a firearm as just previously defined and
25 whether or not that's been proved to you beyond a reasonable

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BY THE COURT

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1 doubt. You can't use it for any other reason. You can't
2 factor it in your decision of whether he's guilty or not
3 guilty of these particular crimes, only whether or not the
4 state proved to you an element of that particular crime.

5 And the last one is unlawful carrying of a pistol. The
6 state has to prove beyond a reasonable doubt the defendant
7 carried a pistol about his person, whether concealed or not.
8 A weapon is about the defendant's person if it is readily
9 accessible and convenient for immediate use. The pistol need
10 not be actually touching the person of the defendant. This
11 statute has certain exceptions, but none of those exceptions
12 apply in this particular matter. So, you have to decide
13 whether or not the state has proven to you beyond a reasonable
14 doubt whether or not the defendant unlawfully carried a
15 pistol.

16 BY THE COURT:

17 THE COURT: That's the law, ladies and gentlemen. That's
18 the law that you've got to apply to the facts and evidence in
19 this case and decide whether or not the state has proven to
20 you beyond a reasonable doubt whether the defendant is guilty
21 or not guilty of each one of these four charges.

22 So, I have prepared for you a verdict form. There's a
23 separate charge or separate offense on each page. The first
24 one is trafficking in cocaine base more than 10 grams, less
25 than 28 grams. On the charge of trafficking cocaine base, we,

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BY THE COURT

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1 the jury, by unanimous consent, find the defendant -- there's
2 two choices, I put one before the other, don't assign anything
3 to that, I've got to put one before the other one -- not
4 guilty or guilty. Decide that one, you go on to the
5 possession of the Schedule I to V drug, Adderall. Again on
6 the charge of possession of a Schedule I to V drug, we, the
7 jury, by unanimous consent, find the defendant not guilty or
8 guilty. Unlawful possession of a pistol. On the charge of
9 unlawful possession of a pistol, we, the jury, by unanimous
10 consent, find the defendant not guilty or guilty. On the
11 charge of unlawful carrying of a pistol, we, the jury, by
12 unanimous consent, find the defendant not guilty or guilty.

13 Mr. Foreman, once your jury have reached its unanimous
14 verdict on each one of these four charges, you will knock on
15 the door and let the bailiff know that your jury has reached a
16 unanimous verdict on these matters.

17 Now, I have said unanimous a number of times. It means
18 exactly what you think it means. It means 12/0; it does not
19 mean 11/1, 10/2 any combination thereof. So, Mr. Foreman, you
20 check the appropriate block, you sign on your name on each one
21 of the verdict forms, you're telling the Court that each and
22 every member of the jury agrees that's their verdict. So, if
23 called upon by the clerk's representative in the courtroom to
24 raise their right hand to say that that indeed is my verdict,
25 all of them will be able to do so.

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BY THE COURT

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1 At this point in time, Mr. Foreman, what I'm gonna ask
2 that you do is take your jury to the jury room. The alternate
3 -- and that is Mr. Williams, I'm sorry. Mr. Williams, if
4 you'll stay with us, please, sir.

5 Mr. Foreman, take the rest of the jury to the jury room.
6 Do not, do not begin your deliberations until the bailiff
7 hands to you the verdict forms and the exhibits. When those
8 come into the jury room, then you may begin your
9 deliberations. I'll just tell you that the clerk's office,
10 they've -- hold on one second. All right. Very good. They
11 ordered a bunch of different pizza for your lunch and it'll be
12 done approximately around 12:30 or so, and then they'll have
13 to go pick it up. Just so that you know that. Okay?

14 All right. So with that, Mr. Foreman, take your jury
15 back to the jury room. Do not begin your deliberations until
16 you get all of the exhibits. Thank you.

17 (REPORTER'S NOTE: Jury exits courtroom @ 12:10 P.M. The
18 following takes place outside the presence of the jury.)

19 THE COURT: All right. As to the alternate, Mr.
20 Williams, any reason the Court should not excuse Mr. Williams
21 at this time from the state?

22 MS. WALTER: No, Your Honor.

23 THE COURT: From the defense?

24 MR. MASSEY: No, Your Honor.

25 THE COURT: All right. Mr. Williams, I want to thank you

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BY THE COURT

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1 for your service. I'll tell you don't know how many times we
2 have to substitute in an alternate for a regular member of the
3 jury. It happens all the time. It didn't happen in this
4 particular case, maybe because it was relatively short, but
5 that was your job to step in their shoes, but they're all
6 ready, willing, and able to go forward, so I'm able to excuse
7 you. You've got your exemption now for coming back for three
8 years for coming here for Circuit Court jury duty, but with
9 that, you are now excused. If you would, just go back that
10 way and give your badge to the bailiff back there. Okay?

11 JUROR 394: Thank you, sir.

12 MR. WILLIAMS: Thank you.

13 THE COURT: Exceptions, deletions, additions to the
14 charge from the state?

15 MS. WALTER: No, Your Honor.

16 THE COURT: From the defense?

17 MR. MASSEY: None, Your Honor.

18 THE COURT: All right. Thank you very much.

19 All right, counsel, if you'd please come up and get with
20 the court reporter and make sure we have all of the proper
21 exhibits, please.

22 Thank you.

23 COURT REPORTER: Judge, do we take the ammunition out of
24 this box?

25 THE COURT: All right. So, how is it -- where is it?

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BY THE COURT

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1 MS. WALTER: This is the ammunition.

2 THE COURT: All right. Mr. Massey?

3 MR. MASSEY: Yes, sir.

4 THE COURT: We do not normally, even though the weapon is
5 secured with a lock, okay, we do not normally send a weapon
6 into the jury with ammunition. All right?

7 MR. MASSEY: That would not be a good idea.

8 THE COURT: So, it is my intention to remove the
9 ammunition from the bag and send the bag in, but -- remove the
10 ammunition. We'll keep it as part of the evidence. You might
11 need to label it. Do we have a little plastic bag or
12 something or can we find one somewhere? We'll find a little
13 plastic bag and we'll put the ammunition in there and the
14 court reporter will label it with whatever that exhibit is A,
15 I guess, or B whatever she determines it should be.

16 All right?

17 MS. WALTER: Your Honor, I'm told. I don't want to point
18 that in the wrong direction. I'm told that, by my officers,
19 that it may still be possible for the gun to close and they're
20 suggesting that we ---

21 THE COURT: Yeah, it should be going through the barrel.

22 MS. WALTER: --- through the barrel. If you don't mind,
23 I'm gonna have them ---

24 THE COURT: Can y'all do that, please? Can we unlock
25 that and put it through the barrel please because that's

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BY THE COURT

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1 normally the way I see them. I don't really know why it was
2 that way, but yeah, so if you can run it through and then run
3 it through the barrel, that'd be great.

4 All right. Thank you.

5 MS. WALTER: Your Honor, who ---

6 THE COURT: Give those to the Court Reporter. All
7 right. And the bullets, take those out, put the bag back in
8 there.

9 MS. WALTER: I can probably -- you want me to run down to
10 my office and get an envelope.

11 COURT REPORTER: I have a zip lock.

12 THE COURT: Yeah, that's great. That's good. Let's just
13 do that. Good deal. And just label it as you need to. All
14 right. Thank you, ma'am.

15 STATE'S EXHIBIT NUMBER 3A

16 MARKED FOR IDENTIFICATION

17 THE COURT: Thank y'all. We'll be at ease until the jury
18 needs us.

19 (REPORTER'S NOTE: Counsel confers and consents to exhibits
20 submitted to jury. Deliberations commence @ 12:17 P.M.)

21 **(RECESS - 12:17 P.M.)**

22 *******OFF THE RECORD*******

23 **(On the record - 12:34 P.M.)**

24 BY THE COURT:

25 THE COURT: Thank you. All right. Counsel, I understand

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VERDICT OF JURY

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1 that the jury has reached a verdict in this matter. Is the
2 state ready to receive it?

3 MS. WALTER: Yes, Your Honor.

4 THE COURT: And the defense?

5 MR. MASSEY: Yes, sir.

6 THE COURT: All right. Very good. Ask the jury to come
7 in, please.

8 (REPORTER'S NOTE: Jury enters courtroom @ 12:35 P.M.)

9 VERDICT OF JURY:

10 THE COURT: All right. Mr. Foreman, has your jury
11 reached a verdict in these four matters?

12 JUROR 231: We have.

13 THE COURT: All right, sir. Could you hand the verdict
14 forms to the Clerk's representative, please, sir.

15 All right, ma'am, you may publish the verdicts.

16 CLERK: Indictment numbers 2016-GS-26-02574, 2016-GS-26-
17 02575, 2016-GS-26-02576, 2016-GS-26-02577, State of South
18 Carolina, County of Horry versus James Arthur, on the charge
19 of trafficking cocaine base, we, the jury, by unanimous
20 consent, find the defendant guilty.

21 On the charge of possession of Schedule I to V drug, we,
22 the jury, by unanimous consent, find the defendant guilty.

23 On the charge of unlawful possession of a pistol, we, the
24 jury, by unanimous consent, find the defendant guilty.

25 On the charge of unlawful carrying of a pistol, we, the

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BY THE COURT

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1 jury, by unanimous consent, find the defendant guilty.

2 Signed by foreperson Robert Martin, dated November 7th,
3 2017.

4 Ladies and gentlemen of the jury, if this is your
5 verdict, so signify by raising your right hand.

6 THE COURT: All right. The jurors, excuse me, ma'am.
7 The jurors having affirmed their verdict by the raising of
8 their right hand, does the state wish the jury polled?

9 MS. WALTER: No, Your Honor.

10 THE COURT: Does the defense wish the jury polled?

11 MR. MASSEY: No, sir.

12 THE COURT: All right. Thank you very much.

13 BY THE COURT:

14 THE COURT: All right, ladies and gentlemen, I want to
15 thank you for your service in this particular matter. You did
16 exactly what the Court asked you to do, that is to well and
17 truly listen to and deliberate and render a true and just
18 verdict in this particular matter. You've earned an exemption
19 now for coming back for three years for coming to Circuit
20 Court jury duty. So, if the clerk of court sends you a notice,
21 you can let her know that you served this particular week.
22 And I want to thank you for your service.

23 I believe that the pizza is basically almost here. So,
24 if you want to go to your jury room, or it might be here, I
25 don't know; it depends on if they've brought it upstairs or

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MOTIONS

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1 not. If you want to go to your jury room and have some of it,
2 fine. If that's not your cup of tea and you want to, you
3 know, go to Panera Bread or do something on your own, you're
4 welcome to do that. So, but again, I thank you for your
5 service and I appreciate it very much.

6 You're excused from your jury duty for the week. This is
7 it. Thank you very much.

8 (REPORTER'S NOTE: Jury exits courtroom @ 12:39 P.M.)

9 THE COURT: All right, Mr. Massey, I'll hear you on your
10 motion for a new trial.

11 MOTIONS:

12 MR. MASSEY: Your Honor, I would ask for a new trial
13 based on the evidence that came out about the body cams and
14 about the testing of the drugs and the non-appearance of the
15 state highway patrolman.

16 THE COURT: All right, sir. Very good.

17 All right. Regarding the motion for a new trial, the
18 Court's looking at whether or not there's a competent evidence
19 to sustain the jury's verdict. If I have denied your motion
20 for a directed verdict, I cannot substitute my judgment for
21 that of the jury and overturn the verdict as to whether or not
22 there's competent evidence to sustain the jury's verdict, and
23 I so find that there was more than sufficient evidence to
24 sustain the jury's verdict in this particular matter based
25 upon the testimony and evidence presented and respectfully

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SENTENCING BY THE COURT

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1 decline to grant your motion for a new trial.

2 MR. MASSEY: Thank you, Your Honor.

3 THE COURT: Thank you very much.

4 SENTENCING BY THE COURT:

5 THE COURT: All right. Solicitor, is the state ready for
6 or with the sentencing sheets for a ---

7 MS. WALTER: Ms. Andrews is printing them now, Your
8 Honor.

9 THE COURT: All right.

10 MS. WALTER: I do have to present to Your Honor, and I
11 will show them to Mr. Massey first.

12 Your Honor, in addition to the record of conviction that
13 was admitted during trial, the state has just four other
14 certified convictions. The top two or the ones that make the
15 eligible as a third offense.

16 THE COURT: All right. Very good.

17 MS. WALTER: He also has petty larceny and a possession
18 of marijuana.

19 THE COURT: All right. Very good.

20 MS. WALTER: In addition to the burg third.

21 THE COURT: All right. So, the -- the ones that would
22 make this a trafficking cocaine base third offense, that would
23 be a possession of cocaine base first offense on May 21 of
24 2009, the defendant pled guilty to that offense, and that was
25 in 2009-GS-26-339, and the possession of less than one gram of

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SENTENCING BY THE COURT

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1 ice, crank or crack cocaine second offense in 2013-GS-26-1943,
2 the defendant pled guilty to that offense on May 14 of 2014.

3 So, any question, Mr. Massey, that this now is a
4 trafficking cocaine base third offense?

5 MR. MASSEY: No question, Your Honor.

6 THE COURT: All right, sir. Very good.

7 All right. Understanding what will happen is when we get
8 the sentencing sheets that the Court will issue sealed
9 sentences that will be sealed and, whenever the defendant is
10 found on the bench warrant -- and I understand the bench
11 warrants were previously issued, correct, Solicitor?

12 MS. WALTER: Yes, Your Honor.

13 THE COURT: All right. When he's picked up on the bench
14 warrant, then he'll be brought back before the Court for the
15 opening of the sentences. At that point in time, the
16 defendant may challenge the, the sentences at that point in
17 time or say anything to the Court that the defendant would
18 like presented to amend those sentences, if they are to be
19 amended.

20 But with that, is there anything, Mr. Massey, you'd want
21 to say currently on behalf of the defendant or wait until that
22 ---

23 MR. MASSEY: I would wait until that time, Your Honor.

24 THE COURT: All right. Very good. So you'd have an
25 opportunity to speak with him and present anything to the

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SENTENCING BY THE COURT

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1 Court?

2 MR. MASSEY: That's correct, Your Honor.

3 THE COURT: All right. Very good.

4 All right. So we'll just wait for a minute for the
5 sentencing sheets then.

6 You want to mark these as a Court's exhibits, those
7 certified copies. Why don't you make those.

8 COURT'S EXHIBIT NUMBER 3

9 MARKED FOR IDENTIFICATION

10 THE COURT: All right. I have issued the sentences in
11 this matter. I have sealed them and signed my name over the
12 back of the seal of the envelope only to be opened when the
13 defendant is brought before the Court for reading of the
14 sentence.

15 Thank you very much.

16 MS. WALTER: Thank you, Your Honor.

17 MR. MASSEY: Thank you, Your Honor.

18 (ADJOURNED - 12:54 P.M.)

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CERTIFICATE OF COURT REPORTER

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C E R T I F I C A T E

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I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina v. James Lamont Arthur, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on November 6-7, 2017, as taken by Dixie C. Eubank and Kay H. Richardson.

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

Kay H. Richardson

Official Court Reporter

April 20, 2018.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2016-GS-26-02574, 02575
02576 AND 02577

STATE OF SOUTH CAROLINA,)
)
Plaintiff,) **Transcript of Record**
)
vs.)
) December 18, 2017
JAMES LAMONT ARTHUR,)
)
Defendant.)

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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

Marry-Ellen Walter, Esquire
Attorney for Plaintiff

Kenneth B. Massey, Esquire
Attorney for Defendant

TAKEN BY:

Dixie C. Eubank
Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

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I N D E X

DECEMBER 18, 2017

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E X H I B I T S

No.

ID

EV

(No exhibits were marked or admitted.)

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SENTENCE OF THE COURT

3

1 (DECEMBER 18, 2017)

2 JAMES LAMONT ARTHUR, HAVING BEEN DULY

3 SWORN, TESTIFIED AS FOLLOWS:

4 THE COURT: Yes, Solicitor?

5 MS. WALTER: Your Honor, this is State of South Carolina,
6 County of Horry vs. James Lamont Arthur. Your Honor may
7 recall that this was a trial in absentia conducted in the
8 November term in front of Your Honor. The defendant was
9 convicted of all charges and Your Honor sealed the sentence.

10 THE COURT: All right. Very good.

11 MS. WALTER: He was picked up by the U.S. Marshalls Task
12 Force.

13 THE COURT: All right. Thank you.

14 In this matter, this is 2016-GS-26-2574, 2575, 2576,
15 2577, trafficking cocaine third, possession of Schedule I to V
16 drug, unlawful possession of a stolen gun, unlawful carrying
17 of a weapon. The trial was conducted on November 6 and 7 of
18 this year, and the jury having found the defendant guilty, the
19 Court issued a sentence and the sentence was sealed. So,
20 we're going to open the sealed sentence at this time.

21 All right. Again, 2016-GS-26-2574, State of South
22 Carolina, County of Horry versus James Lamont Arthur,
23 regarding trafficking in cocaine base 10 to 28 grams, third
24 offense, sentence of the Court was the defendant is committed
25 to the State Department of Corrections for a determinate term

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SENTENCE OF THE COURT

4

1 of 25 years. 2016-GS-26-2575, possession of a Schedule I to V
2 drug, it was a six-month sentence concurrent with 2016-2574.
3 The 2016-GS-2576, unlawful possession of a pistol, it's a
4 five-year sentence concurrent with 2016-GS-26-2574. And 2016-
5 GS-26-2577, unlawful carrying of a pistol, again, it was a
6 one-year sentence concurrent with 2016-GS-26-2574. So, in
7 essence, the Court issued a -- the minimum 25-year sentence in
8 the trafficking in cocaine base 10 to 28 grams, third offense.

9 Mr. Massey, I'll be glad to hear from you regarding
10 sentencing at this time.

11 MR. MASSEY: Your Honor, may it please the Court, my
12 client is now 35 years old. He has seven children. His
13 family is here with him today. And, Your Honor, I've made it
14 clear to him and I made it clear before we had the trial to be
15 here. I sent him the mail, I sent the text messages, tried
16 calling him. Talked to his mother, talked to at least one of
17 the girlfriends. And, Your Honor, I'm asking for mercy today
18 on behalf of my client. This is a tragic thing for him at his
19 age of 35, and 25 years is a long time, and I understand that
20 and he understands that, and we would ask for mercy today,
21 Your Honor.

22 THE COURT: All right.

23 Mr. Arthur, anything you want to say to the Court?

24 MR. ARTHUR: Yes, sir. I know the things I was doing out
25 there wasn't right and I know should've showed up for court,

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SENTENCE OF THE COURT

5

1 but I was -- thought that I was getting drug court, that's
2 what the whole -- when we first talked about when I hired him
3 to be my lawyer is for me to get drug court, and that's what I
4 thought I was getting. But the day I had supposed to had came
5 to court, he told me that they was offering me seven years,
6 I'm like, well, I thought I was getting drug court, you know
7 what I mean? That's -- my public defender offered me seven
8 years, so I hired a paid lawyer to try to get something a
9 little different. So, that's why I hired him to get me drug
10 court.

11 THE COURT: Well, Mr. Arthur, I appreciate that fact, but
12 the fact of the matter is you had an offer. You chose, for
13 whatever reason not to accept it and to exercise your
14 constitutional rights and have a jury trial. The matters were
15 scheduled, you were given notice. The case was tried before a
16 properly picked jury. And, the jury having found you guilty
17 of the crime of trafficking cocaine base 10 to 28 grams, third
18 offense, as I'd indicated, I gave you the minimum sentence
19 that the law allows, 25 years. That is the sentence.

20 Thank you very much.

21 MR. MASSEY: Thank you, Your Honor.

22 (ADJOURNED)

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25C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina v. James Lamont Arthur, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on December 18, 2017, as reported by Dixie C. Eubank.

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

Kay H. Richardson
Official Court Reporter

April 20, 2018.

WITNESSES

Calvin Cox Horry County Police Department

Small

ARREST WARRANT NUMBER

2016A2610500190

CDR: 2364 16-23-0030, 0050(A)(1)

DOA: 5/12/2016

ACTION OF GRAND JURY

TRUE BILL

Ben Harris

Foreperson of Grand Jury

Date: JUL 21 2016

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-26- *02576*

The State of South Carolina

County of Horry

David P. Caraker, Jr.
16H02446

COURT OF GENERAL SESSIONS

June, 2016 TERM

THE STATE

vs.

James Lamont Arthur

B/ M

Oak Grove Ch Rd
Nichols, SC 29581ATTORNEY: *Ken Massey*

Indictment for

UNLAWFUL POSSESSION OF A PISTOL

Jimmy A. Richardson, II, Solicitor

FILED
HORRY COUNTY

2016 JUL 26 PM 12:55

MELANIE HUGGINS-WARD
CLERK OF COURT

DATE RECEIVED FROM

GRAND JURY

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

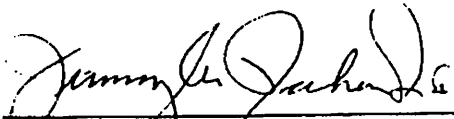
At a Court of General Sessions, convened on June 30, 2016, the Grand Jurors of Horry County present upon their oath:

UNLAWFUL POSSESSION OF A PISTOL

CDR: 2364 16-23-0030(B), 16-23-50

That James Lamont Arthur did in Horry County on or about May 12, 2016 knowingly possess or acquire a pistol after having been convicted of a crime of violence defined in Section 16-23-10, S. C. Code of Laws, 2003, as amended, in violation of Section 16-23-0030(B), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Calvin Cox Horry County Police Department

*Small*DOCKET NO. 2016-GS-26- 02577

The State of South Carolina

County of Horry

David P. Caraker, Jr.
16H02446

COURT OF GENERAL SESSIONS

June, 2016 TERM

ARREST WARRANT NUMBER

2016A2610500191

CDR: 0044 16-23-0020, 0050(A)(2)

DOA: 5/12/2016

ACTION OF GRAND JURY

TRUE BILL

*Barbara*Foreperson of Grand Jury
Date: JUL 21 2016

VERDICT

Foreperson of Petit Jury
Date:James Lamont Arthur
B/ M
[REDACTED] Oak Grove Ch Rd

vs.

ATTORNEY: *Ken Massey*

Indictment for

UNLAWFUL CARRYING OF PISTOL

Jimmy A. Richardson, II, Solicitor

FILED
HORRY COUNTY

2016 JUL 26 PM 12:55

MELANIE HUGGINS-WARD
CLERK OF COURTDATE RECEIVED FROM
GRAND JURY ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on June 30, 2016, the Grand Jurors of Horry County present upon their oath:

UNLAWFUL CARRYING OF PISTOL

CDR: 0044 16-23-0020,0050(A)(2)

That James Lamont Arthur did in Horry County on or about May 12, 2016, carry about the person a pistol, such carrying not being authorized by law, in violation of Section 16-23-0020, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Calvin Cox Horry County Police Department

*Thomas D. Garcia*DOCKET NO. 2016-GS-26- 02575

The State of South Carolina

County of Horry

David P. Caraker, Jr.
16H02446FILED
2016 JUL -7 AM 8:23

CLERK OF COURT

DATE RECEIVED FROM
GRAND JURY

COURT OF GENERAL SESSIONS

June, 2016 TERM

ARREST WARRANT NUMBER

2016A2610500188

CDR: 0180 44-53-0370(d)(2)

DOA: 5/12/2016

THE STATE

vs.

ACTION OF GRAND JURY

TRUE BILL

James Lamont Arthur

B/M

Oak Grove Ch Rd
Nichols, SC 29581*Jack Smith*
Foreperson of Grand Jury

Date: JUN 30 2016

ATTORNEY: *Ken Massey*

VERDICT

Indictment for

POSSESSION OF SCHEDULE I - V DRUG
(ADDERALL)

Jimmy A. Richardson, II, Solicitor

Jack Smith
Foreperson of Petit Jury

Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

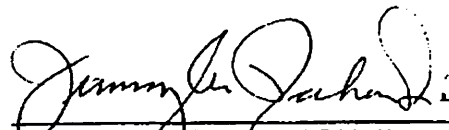
At a Court of General Sessions, convened on June 30, 2016, the Grand Jurors of Horry County present upon their oath:

POSSESSION OF SCHEDULE I-V DRUG
(ADDERALL)

CDR: 0180 44-53-0370(d)(2)

That James Lamont Arthur did in Horry County on or about 2016-05-12, knowingly and intentionally possess a quantity of ADDERALL, a Schedule II controlled substance under provisions of Section 44-53-0110, S.C. Code of Laws, 1976, as amended, such possession not having been authorized by law, in violation of Section 44-53-0370(d)(2), S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Calvin Cox Horry County Police Department

*Thomas Delpeiro*DOCKET NO. 2016-GS-26- 02574

The State of South Carolina

County of Horry

David P. Caraker, Jr.
16H02446FILED
Horry County

2016 JUL -7 AM 8:23

CLEAN

DATE RECEIVED FROM
GRAND JURY

COURT OF GENERAL SESSIONS

June, 2016 TERM

ARREST WARRANT NUMBER

2016A2610500186

CDR: 0452 44-53-0375(C)(1)(c)

DOA: 5/12/2016

ACTION OF GRAND JURY

TRUE BILL

Jack Smith

For person of Grand Jury

Date:

JUN 30 2016

VERDICT

Jack Smith

For person of Petit Jury

Date:

THE STATE

vs.

James Lamont Arthur

B/M

Oak Grove Ch Rd

ATTORNEY:

Ken Massey

Indictment for

TRAFFICKING COCAINE BASE MORE THAN 10
GRAMS, LESS THAN 28 GRAMS

Jimmy A. Richardson, II, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

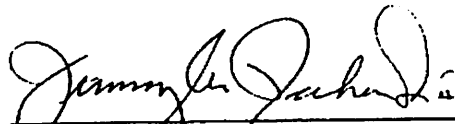
At a Court of General Sessions, convened on June 30, 2016, the Grand Jurors of Horry County present upon their oath:

TRAFFICKING COCAINE BASE
MORE THAN 10 GRAMS, LESS THAN 28 GRAMS

CDR: 0452 44-53-0375(C)(1)(c)

That James Lamont Arthur did in Horry County on or about May 12, 2016, knowingly, sell, deliver, purchase, or bring into this state; or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this state, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Cocaine Base in an amount of more than ten grams but less than twenty-eight grams, same being a controlled substance all within the meaning of Section 44-53-110, et seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized and in violation of Section 44-53-375(C)(1), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

139

COUNTY OF
STATE

Horry

VS.

James Lamont Arthur

AKA:

Race: BLACK Sex: M Age: 35

DOB: 03-03-1982 SS#: 010-00-0100

Address: Oak Grove Ch Rd

City, State, Zip: Nichols, SC 29581

DL#: 011101556 SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Trafficking in Cocaine Base/Meth, 10 to 28 grams, 3rd offense

INDICTMENT/CASE#: 2016GS2602574

A/W#: 2016A2610500186

Date of Offense: 5/12/2016

S.C. Code §: 44-53-0375(C)(1)(c)

CDR Code #: 0452

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

25-30 yrs + \$50,000

in violation of § 44-53-0375(C)(1)(c) of the S.C. Code of Laws, bearing CDR Code # 0452

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Walter, Mary-Ellen SC103036

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-63 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 8.25

TOTAL

\$283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

FILED
Horry County
17 DEC 18 PM 4:06
CLERK OF COURT
RECEIVED

 days/hours Public Service EmploymentObtain 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 \$ 25.00 beginning 12/7/2016\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code:

Sentence Date:

140
STATE OF SOUTH CAROLINA

COUNTY OF Horry
STATE VS.

James Lamont Arthur

AKA:

Race: BLACK Sex: M Age: 35

DOB: SS#:

Address: Oak Grove Ch Rd

City, State, Zip: Nichols, SC 29581

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Unlawful Possession of a Pistol (By Minor/Stolen/etc)

in violation of § 16-23-0030, 0050(A)(1) of the S.C. Code of Laws, bearing CDR Code # 2364

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SC103036

Walter, Mary-Ellen

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; 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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20(B)(3) Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	
§ 56-5-2995 (DUI Assessment)	\$12	
§ 56-1-286 (DUI Breath Test)	\$25	
Proviso 61.6 (Public Def/Probation)	\$500	
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	
§ 50-21-114(BUI Breath Test Fee)	\$50	
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	
3% to County (if paid in installments)		\$3.75

TOTAL

\$128.75 + \$40.00 =
\$168.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS 260 276

A/W#: 2016A2610500190

Date of Offense: 5/12/2016

S.C. Code § : 16-23-0030, 0050(A)(1)

CDR Code #: 2364

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Up to 5 yrs +/or not more than \$2,000

in violation of § 16-23-0030, 0050(A)(1) of the S.C. Code of Laws, bearing CDR Code # 2364

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SC103036

Walter, Mary-Ellen

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; 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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20(B)(3) Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	
§ 56-5-2995 (DUI Assessment)	\$12	
§ 56-1-286 (DUI Breath Test)	\$25	
Proviso 61.6 (Public Def/Probation)	\$500	
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	
§ 50-21-114(BUI Breath Test Fee)	\$50	
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	
3% to County (if paid in installments)		\$3.75

TOTAL

\$128.75 + \$40.00 =
\$168.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

11/7/17

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

James Lamont Arthur

AKA:

Race: BLACK Sex: M Age: 35

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Oak Grove Ch Rd

City/State/Zip: [REDACTED] Nichols, SC 29581

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Unlawful Carrying of Pistol not more than 1yr *1/yr not more than \$1,000

in violation of § 16-23-0020, 0050(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0044

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST [Signature] SC103036

Walter, Mary-Ellen

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 1 ~~day/month~~ years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 61.6 (Public Def/Probation) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ 3% to County (if paid in installments) \$ 8.75TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

141

INDICTMENT/CASE#: 2016GS2602577

A/W#: 2016A2610500191

Date of Offense: 5/12/2016

S.C. Code § : 16-23-0020, 0050(A)(2)

CDR Code #: 0044

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSThe charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST [Signature] SC103036

Walter, Mary-Ellen

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 1 ~~day/month~~ years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 61.6 (Public Def/Probation) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ 3% to County (if paid in installments) \$ 8.75TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

FILED
Horry County
2017 DEC 18 PM 4:06
RENEE N. ELVIS
CLERK OF COURT
Horry County

12/7/2017

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

[Signature]

Presiding Judge

Judge Code:

Sentence Date:

142

STATE OF SOUTH CAROLINA

COUNTY OF

Horry

STATE

VS.

James Lamont Arthur

AKA:

Race: BLACK Sex: M Age: 35

DOB: SS#

Address: Oak Grove Ch Rd

City, State, Zip: Nichols, SC 29581

DL#: STD#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Poss. of ecstasy or other controlled sub. in Sch. I - V / > 1oz marijuana - 2nd offense

in violation of § 44-53-0370(d)(2) of the S.C. Code of Laws, bearing CDR Code # 0180

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Walter, Mary-Ellen SC103036

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 6 months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; 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 §17-25-133

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$150.00

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$8.25

TOTAL

\$283.25 + \$40.00 = \$323.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Renee N. Elvis

Dixie Eubank

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2602575

A/W#: 2016A2610500188

Date of Offense: 5/12/2016

S.C. Code § : 44-53-0370(d)(2)

CDR Code #: 0180

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Up to 6 months or not more than \$1000

in violation of § 44-53-0370(d)(2) of the S.C. Code of Laws, bearing CDR Code # 0180

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Walter, Mary-Ellen SC103036

SC Bar#

Defendant

Attorney for Defendant

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WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 6 months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; 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.

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SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

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§ 14-1-206 (Assessments 107.5 %) \$

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§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$8.25

TOTAL

\$283.25 + \$40.00 = \$323.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Renee N. Elvis

Dixie Eubank

Presiding Judge

Judge Code:

Sentence Date:

11/7/17

FORM 5

STATE OF SOUTH CAROLINA)

County of Horry)James Lament Arther # 301001)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

20 W CP26 0648

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
Horry County
JAN 27 P 1:36
RENEE H. ELYS
CLERK OF COURT
Horry County, SCINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly 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 clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application 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 the applicant was convicted.

1. Place of detention Broad River Correctional Institution 4460
Broad River Road Columbia, SC 29210 MDN-255
2. Name and location of Court which imposed sentence Horry County General
Courthouse Sessions
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016652602574, 2016652602575, 2016652602576, 2016652602577
 - (b) Trafficking Cocaine, Possession of Schedule I.V drug Addenol

- (c) unlawful possession of a pistol, unlawful carrying of a pistol
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 11-7-17 25 years, 5 years, 1 year, 6 months
- (b) All Concurrently
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty yes
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted October 1st, 2019 - ~~Set~~ Filed November 13th, 2019
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished opinion
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

No objections To The Black bag p. 51, L. 10

No objections To The marijuana P. 51, L. 13

No Chain of Custody To The black bag - No objections

No Chain of Custody To Marijuana - No objections

No Chain of Custody on offwhite Back Substance - no obj. P. 51, L. 14

evidence submitted in evidence with No Chain of Custody, and No objections. page 53, L. 1-13.

no objections to items in The black bag, or Green bag, and No Chain of Custody, The also was No Foundation For Chain of Custody, Page ⁵⁴ 54, L. 1-17

There was No Chain of Custody due To Officer H. F. Net Finding and Collecting The Blue-white Pills, page 55, L. 1-25

There was No Chain of Custody on The Collecting of The evidence, and There was No body camera To Verify a Complete Chain of Custody.

again Counsel did not object To State's exhibit #3, page 54, L. 1-25.

No Chain of Custody was established at The Crime scene during The Collecting of The evidence, pages 54, 55, 56, 57.

Counsel made no objections To The Tainted evidence exhibit exhibits 4 and 5, page 58, L. 1-25.

FILED
HORRY COUNTY
JAN 27 P. 1:36
RENEE N. ELYS
CLERK OF COURT
HORRY COUNTY, SC

2

Counsel made no objections to police officer ^{COX} omissions that the body - cam just disappeared. page 61, L. 1-25.

Counsel made no objections to police officer COX not knowing the name of the Highway Patrol officer that assisted him. page 61, L. 1-25.

Judicial error when the Judge allowed in exhibit 6 (Feb. 13, 2003) conviction over defense attorney objections. page 65, L. 1-25, page 66, L. 1-13.

There was no chain of custody established when officer James Hafner turned over 2 white pills / 14 blue pills that he released to officer COX whom did not establish a chain of custody either. page 68, L. 1-25, page 69, L. 1-14.

Counsel did not object to the omissions of Police officer Hafner. Said that he did not recall the Highway Patrolman's officer name, and asked did he have a body cam that night, Hafner said yes, but it was purged off the system. page 69, L. 15-25, page 70, L. 1-14.

Defense Counsel made no objections to the omissions of the Clerk Donna Bell, page 71, L. 1-25, page 72, L. 1-25, page 73, L. 1-11.

even after the Clerk stated that no evidence of the body

3

Coms was Turned in, Defense Counsel Still Failed To
object. page 73, L. 1-12-25, page 74, L. 1-25, page 75, L. 1-14.

Defense Counsel made no objections To The Drug analysis
conducted by Courtney Johnson. page 75, L. 15-25, page
76, L. 1-25, page 77, L. 1-25, page 78, L. 1-25, page 79, L. 1-25, pages
80, 81, 82, page 83, L. 1-17

Defense Counsel made no objections To state's exhibit number 7
when it was admitted into evidence, even though The Fact is MS.
stated She did not Test all of The drugs. Defense Counsel Failed to
object to its ~~admi~~ being admitted into evidence. page 83, L. 18-25.
page 84, L. 1-25. p. 85, L. 1-5.

The Court Lacked Subject matter Jurisdiction To Charge defendant
with a Third offense without presentment by The Grand Jury.
page 121, L. 1-25, page 122, L. 1-25, page 123, L. 1-18.

RECEIVED

DEC 23 2019

APPELLATE DEFENSE

γ

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Please see Attachment sheets
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

16. If any ground set forth in (10) 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) This is Initial PIR
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? No
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Kenneth B. Massey 200 Elm Street Conway, SC
29526
 ii. Kathrine H. Hudgins Division of Appellate Defense
1330 Lady Street, Suite 401 Columbia, SC 29201
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Trial, Sentencing
 ii. Direct Appeal
 iii. _____

19. State clearly the relief you seek in filing this application:

For convictions and Sentences vacated and to be released
from custody or sentencing and convictions reversed
and remanded for new trial

20. Are you now under sentence from any other court that you have not challenged?

NO

Petitioner Believes he has additional claims, for post conviction
Relief, but does not yet have collateral counsel, access to discovery
process, or funds for expert services to investigate these claims
As such, the petitioner would respectfully reserve the right to Amend
Application for further issues.

STATE OF SOUTH CAROLINA)

County of Horry)

VERIFICATION

20 20 CP26-0048

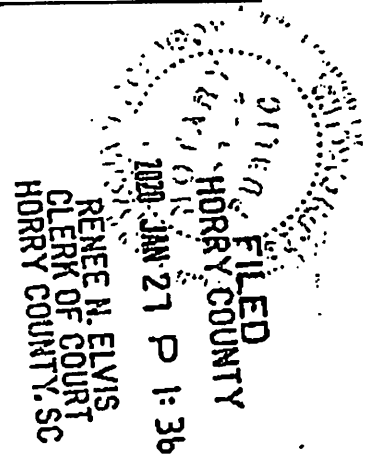
I, James Arther, being duly sworn
upon my oath, depose and say that I have subscribed to the foregoing application; that I know the
contents thereof; that it includes every ground known to me for vacating, setting aside or
correcting the conviction and sentence attacked in this application; and that the matters and
allegations therein set forth are true.

James Arther

SWORN to and subscribed before me this 23rd
day of January, 2000.

Kanzena Robinson (L.S.)
Notary Public

My Commission Expires: 8/5/2004



20 20 CP26 0648

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, James Lament Arther # 301601, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

James L. Arther
Applicant

SWORN or affirmed to and subscribed before me this
19th day of December, 2019.

Kangera Robinson
Notary Public

My Commission Expires: 8/5/2024

FILED
HORRY COUNTY
2020 JAN 27 P 1:36
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

James L. Arthur, #301001,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-26-0648

RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT

FILED
2020 JUL 29 PM 1:03
CLERK OF COURT
HORRY COUNTY, SC

NOW COMES Respondent, moving for a more definite statement and making its return to the post-conviction relief (hereafter "PCR") application filed on January 27, 2020, by James L. Arthur (hereafter "Applicant"). Respondent offers the following in support of its Return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of Court. During its June 2016 term, the Horry County Grand Jury indicted Applicant for Trafficking Cocaine Base More than Ten Grams, Less than Twenty-Eight Grams (2016-GS-26-02574), Possession of Schedule I – V Drug (2016-GS-26-02575), Unlawful Possession of a Pistol (2016-GS-26-02576), Unlawful Carrying of a Pistol (2016-GS-26-02577). Applicant was represented by Kenneth B. Massey, Esquire. Assistant Solicitors Mary-Ellen Walter and C. Leigh Andrew of the Fifteenth Circuit Solicitor's Office prosecuted the case. On November 6-7, 2017, Applicant proceeded to trial before the Honorable Steven H. John, circuit court judge, and a jury. Applicant was found guilty as charged. Judge John sentenced Applicant to a total of twenty-five years' imprisonment.

Applicant filed a timely Notice of Appeal on December 19, 2017 that was perfected by Kathrine H. Hudgins, Esquire, through filing a brief pursuant to *Anders v. California*, 386 U.S.

738 (1967) and a motion to be relieved as counsel. The South Carolina Court of Appeals dismissed Applicant's appeal and granted the motion to be relieved by unpublished opinion. *State v. Arthur*, 2019-UP-364 (S.C. Ct. App. Nov. 13, 2019). The Remittitur was issued on December 3, 2019.

II. Statement of Facts

On May 12, 2016, an officer was on patrol, running license plates. (Tr. 43). The officer passed Applicant's car, ran the license plate, and the plate came back as suspended. (Tr. 43). The officer stopped Applicant's car, approached Applicant, and smelled marijuana coming from the car. (Tr. 43-44). Applicant was ultimately forced to step out of the car, was given his *Miranda* warnings, and thereafter told the Officer the marijuana was in the passenger seat when asked. (Tr. 44). The Officer went to the passenger seat and found a black bag containing a scale, a mason jar, plastic baggies containing 13.4 grams of crack cocaine, ammunition, and a pistol. (Tr. 44). Applicant was previously convicted of third degree burglary, rendering his possession of the pistol unlawful. (Tr. 45).

III. Current Action before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. Defense counsel was ineffective because:
 - a. "no objections to the black bag."
 - b. "no objections to the marijuana."
 - c. "no chain of custody to the black bag – no objections."
 - d. "no chain of custody to marijuana – no objections."
 - e. "no chain of custody on off white back substance – no objection."
 - f. "evidence submitted in evidence with no chain of custody and no objection."
 - g. "no objections to items in the back bag or green bag and no chain of custody."
 - i. "Also no foundation to the chain of custody."
 - h. "There was no chain of custody due to officer findings and collecting the blue-white pills."
 - i. "there was no chain of custody on the collecting of the evidence and there was no

- body camera to verify a complete chain of custody”
- j. “Counsel did not object to State’s Exhibit #3”
 - k. “No chain of custody was established at the crime scene during the collecting of the evidence.”
 - l. “Counsel made no objections to the tainted evidence and State’s exhibits 4 and 5.”
 - m. “Counsel made no objections to police officer omissions that the body-cam just disappeared.”
 - n. “Counsel made no objections to Police Officer Cox not knowing the name of the Highway patrol officer that assisted him.”
 - o. “Judicial error when the Judge allowed in exhibit 6. . . Conviction over defense attorney objections.”
 - p. “there was no chain of custody established when officer James Hafner turned over 2 white pills/14 blue pills that he released to Officer Cox whom did not establish a chain of custody.”
 - q. “Counsel did not object to the omission of police officer Hafner said that he did not recall the highway patrolman’s officer name, and asked did he have a body cam that night, Hafner said yes, but it was purged off the system.”
 - r. “Defense Counsel made no objections to the omissions of the Clerk Donna Bell.”
 - s. “Even after the clerk stated that no evidence of the body cams was turned in defense counsel still failed to object.”
 - t. “Defense counsel made no objections to the drug analysis conducted by Courtney Johnson.”
 - u. “Defense Counsel made no objections to State’s exhibit number 7 when it was admitted into evidence even though the fact is [the officer] stated she did not test all of the drugs defense counsel failed to object to its being admitted into evidence.”
 - v. “The Court lacked subject matter jurisdiction to charge defendant with a third offense without presentment by the Grand Jury.”

Attached to and incorporated herein are Applicant’s Horry County Clerk of Court Records, Applicant’s South Carolina Department of Corrections Records, the trial transcript, and the current PCR application. Respondent reserves the right to amend this Return upon receipt of additional relevant information.

IV. Argument

Ineffective Assistance of Counsel

In a PCR action, the petitioner bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When a petitioner asserts ineffective assistance of counsel as a ground for relief, the petitioner must show “counsel’s

conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the petitioner must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the petitioner must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRCP (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the petitioner so 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. “A reasonable probability is

a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694.

The court makes this determination based upon the totality of the evidence. *Id.* at 695.

Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

These standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to Object

Applicant makes many allegations concerning Counsel’s failure to object to various testimonies, exhibits, and pieces of evidence. Whether failure to object to testimony constituting deficient performance generally hinges on whether or not a valid trial strategy was utilized. *See Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (finding Counsel was deficient because the failure to object was not related to an otherwise valid trial strategy); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where “counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel”).

Applicant fails to state what exactly Counsel failed to object to, how Counsel acted unreasonably by failing to object, and what impact, if any, the objections would have had on the trial outcome. Thus, a more definite statement is needed for Respondent to ascertain whether or

not these allegations have merit.

Lack of Subject Matter Jurisdiction/Waiver of Presentment

Applicant claims the court lacked subject matter jurisdiction because of lack of presentment to the grand jury. Challenges to the indictment must be raised before a jury is sworn in. S.C. Code Ann. §17-19-90 (2003). If non-jurisdictional defects apparent on the face of the document are not raised before then, they are waived. *Hooks v. State*, 353 S.C. 48, 577 S.E.2d 211, (2003), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *State v. Young*, 243 S.C. 187, 133 S.E.2d 210 (1963). Sufficiency of indictment is found when the offense is stated with enough specificity that the court knows what judgement to announce and the defendant knows what he has to answer to and whether he can plead acquittal or conviction upon it and whether it appraises defendant of offense that is intended to be charged. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) *citing State v. Wilkes*, 353 S.C. 462, 465, 578 S.E.2d 717, 19 (2003).

Based upon Respondent's review of the indictments, Applicant seemingly was true bill indicted by the grand jury and, thus, his claim is blatantly meritless. Additionally, there is no indication Applicant was asserting indictment flaws prior to resolution of the case through the plea process. If he did not assert these claims prior to the resolution of the case, he waived his right to assert this claim and cannot be granted relief upon assertion of flaws now.

However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record

before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”).

V. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding Applicant’s allegations. Applicant alleges that plea counsel was constitutionally ineffective because of alleged instances where Counsel failed to object and why the Court lacked subject matter jurisdiction because presentment did not occur in front of the grand jury. However, he does not explain exactly what Counsel did that constituted ineffective assistance of counsel. Applicant fails to set forth with specificity any facts and circumstances upon the claim is based. The Uniform Post-Conviction Procedure Act requires that applicants must “specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In a PCR application, it is incumbent upon applicants to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended application well in advance of any evidentiary hearing concerning this matter. If Applicant fails to file a timely and

responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VI. Other Allegations Denied

Each and every other allegation in Applicant's PCR application not explicitly admitted, qualified, or explain in this Return is hereby denied by Respondent.

VII. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant's court-appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRCRCP and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.").

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) ("In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases."); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) ("When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the

degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRCP (explaining how to amend a pleading). Pursuant to Section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

[conclusion and signature line on following page]

VIII. Conclusion

WHEREFORE, Respondent respectfully requests that the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant's allegations.

Respectfully submitted,

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Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO
Assistant Attorney General

By: /s Chelsey F. Marto
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July 28, 2020

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

James L. Arthur, #301001

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-26-0648

Certificate of Service

FILED
2020 JUL 29 PM 12:03
CLERK OF COURT
HORRY COUNTY, SC

1. Undersigned is counsel of record for the Respondent in the above-captioned action.
2. Pursuant to the South Carolina Supreme Court's Order "RE: Operation of the Trial Courts During the Coronavirus Emergency" (Appellate Case No. 2020-000447), dated April 3, 2020), "a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS)."
3. Undersigned has served a copy of the **Return and Motion for a More Definite Statement** in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

James K. Falk, Esquire
jfalklaw@gmail.com

DATED this 28nd day of July, 2020.

/s Chelsey F. Marto
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	2020-CP-26-00648
James L. Arthur,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	
	)	JUNE 2, 2022
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

B E F O R E:

Honorable H. Steven DeBerry, IV
Horry County Courthouse
Conway, South Carolina

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

James K. Falk, Esquire
Attorney for Plaintiff

Chelsey F. Marto, Esquire
Attorney for State

Sallie Beth Todd
Circuit Court Reporter

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<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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JAMES L. ARTHUR

By Mr. Falk	4			
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KENNETH B. MASSEY

By Ms. Marto	13			
By Mr. Massey		17		

JAMES L. ARTHUR (REBUTTAL)

By Mr. Falk	20			
By Ms. Marto		21		

Certificate of Court Reporter..... 25

E X H I B I T S

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1 **THE COURT:** All right. Ms. Marto.

2 **MS. MARTO:** Yes, Your Honor. May it please the Court?

3 We are here today in the case of James Arthur versus the
4 State of South Carolina docket number 2020-CP-26-0648. He is
5 presently confined in the South Carolina Department of
6 Corrections. During the June 2016 the Horry County Grand Jury
7 indicted applicant for trafficking cocaine more than 10 grams,
8 less than 28 grams; possession of schedule IV drug; unlawful
9 possession of a pistol; and unlawful carrying of a pistol. He
10 was represented by Mr. Kenneth Massey, and assistant
11 solicitors Mary Ellen Walter and C. Leigh Andrew prosecuted
12 the case. November 6th through the 7th, 2017 it proceeded to
13 trial before the Honorable Steven H. John and a jury and was
14 found guilty as charged. Judge John sentenced him to a total
15 of 25 years imprisonment.

16 A timely notice of appeal was filed on December 19th,
17 2017. It was perfected by Ms. Kathrine Hudgins through a
18 filing of brief pursuant to Anders vs. California. The South
19 Carolina Court of Appeals dismissed the appeal and granted the
20 motion to be relieved as counsel by unpublished opinion. The
21 remittitur was issued December 3rd, 2019. This application was
22 filed January 27th, 2020, and the return was made July 28th,
23 2020. With that, I'll turn it over to Mr. Falk.

24 **THE COURT:** All right. Mr. Falk.

25 **MR. FALK:** Your Honor, my client's claim here today is

1 that his claim for ineffective assistance of counsel is that
2 trial counsel failed to communicate a seven-year plea offer
3 which would have made a significant difference on his current
4 outcome; had he known about this seven-year plea offer he
5 would have accepted it and not run the risk of going to trial.
6 That's the issue that we're going forward on, and I'll call
7 Mr. Arthur to the stand.

8 **THE COURT:** All right. Mr. Arthur.

9 **THE CLERK:** Raise your right hand, place your left hand
10 on the Bible.

11 **JAMES L. ARTHUR, HAVING BEEN**
12 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

13 **THE COURT:** Have a seat and state your first and last
14 name for the Court.

15 **MR. ARTHUR:** My name is James Arthur.

16 **DIRECT EXAMINATION OF MR. ARTHUR BY MR. FALK:**

17 Q: Mr. Arthur, who represented you on your criminal charges?

18 A: Mr. Massey, Kenneth Massey.

19 Q: And you're going to have to speak up a little bit.

20 A: Mr. Massey.

21 Q: Okay. And was he appointed or did you retain him?

22 A: Retain him.

23 Q: Okay. And now were you out of custody at the time or
24 were you in custody?

25 A: I was in custody.

1 Q: Okay.

2 A: When I retained him.

3 Q: So you never made bond?

4 A: Yes, sir, I made bond.

5 Q: Okay. So at some point -- that was a poorly asked
6 question. So you had gotten out on bond prior to the trial?

7 A: Yes, sir.

8 Q: Okay. And tell me a little bit about what was the
9 strategy that y'all had determined?

10 A: When he first came to me, he was like he as going to take
11 my case and he said he can guarantee me drug court because
12 that would be good for me. And drug court is good for me
13 because he don't want me to come back in front of him in the
14 future with the same problems. So we talked about drug court
15 for a little while and then a few weeks later he came to me
16 about Mr. Caraker was a retired police officer and I can work
17 for the police and make all of this go away.

18 Q: So there was some kind of possible opportunity that you
19 could cooperate?

20 A: Yes, sir.

21 Q: All right. So if you are talking about drug court it
22 sounds like that y'all are -- in your mind you thought that
23 you were going to pled ultimately in this case?

24 A: Well actually I thought I was getting drug court, but he
25 said that he can guarantee me drug court because that's what I

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1 needed for the charges that I had.

2 Q: Okay. But what I'm saying is were you ever contemplating
3 going to trial on the charges?

4 A: Nah, I ain't never want to go to trial from the start. I
5 ain't never talked to him about trial.

6 Q: Okay. Well then how did you wind up going to trial?

7 A: He called me in his office one day and said something
8 about he's going to put me on the document for trial. I'm
9 like, you know, I ain't know we was going to trial. I don't
10 know how we got to get a trial.

11 Q: So I don't want you to necessarily remember that exact
12 day, but from the day you got that telephone call until the
13 day the trial started, how much time had elapsed?

14 A: Not too much.

15 Q: Two months?

16 A: About two months, yeah.

17 Q: So when you and I were talking earlier you showed me a
18 piece of paper about a plea agreement.

19 A: Yes, sir.

20 **MR. FALK:** May I approach the witness?

21 **THE COURT:** Yes, sir.

22 **MR. FALK:** Let me mark this just as an exhibit first.

23 **MS. MARTO:** Without objection.

24 **THE COURT:** Okay.

25 **BY MR. FALK:**

1 Q: Let me show you that. Is that the document that we were
2 talking about?

3 A: Yes, sir.

4 Q: And what is -- so what's your understanding of what that
5 document says? Who is it from? Who did you think it was
6 from?

7 A: I never seen it. It was inside my motion, I got this out
8 of my motion discovery.

9 Q: Okay.

10 A: It was my first time seeing it when I had told you about
11 it.

12 Q: Okay. And what do you think that the document says? Is
13 that the plea offer that we're talking about?

14 A: Yes, sir.

15 Q: And so what was -- and that offer indicates that you had
16 an offer for seven years?

17 A: Yes, sir. If I plead guilty to possession with intent of
18 cocaine base second offense and unlawful carry, the state
19 offers a negotiated seven year.

20 Q: And it's your testimony that your lawyer never told you
21 about that offer; is that correct?

22 A: Yes, sir.

23 Q: Why would you -- you have wanted to go away for seven
24 years? Would you have agreed to that?

25 A: Yeah, I wouldn't have went to trial. I don't know how we

1 wind up going to trial.

2 Q: So what you're saying is that you would have taken the
3 seven year offer, had you known about it?

4 A: Yes, sir.

5 Q: And it's your testimony that no one ever told you about
6 it?

7 A: Yes, sir.

8 Q: And so then the trial comes moving along and you get
9 convicted, and then when did you get your motion for
10 discovery?

11 A: A couple of months after I got to Broad River.

12 Q: Okay. So you were at SCDC and that's when you found out
13 that there was this plea offer?

14 A: Yes, sir.

15 Q: Okay.

16 **MR. FALK:** Your Honor, I would ask, I don't know if you
17 can accept this, but I would ask to enter that letter from the
18 solicitor's office as an exhibit, petitioner's exhibit number
19 1.

20 **MS. MARTO:** No objection.

21 **THE COURT:** All right. Yes, sir. We'll enter that into
22 evidence as number 1.

23 **(PLAINTIFF'S EXHIBIT NUMBER 1**
24 **IS ADMITTED INTO EVIDENCE.)**

25 **MR. FALK:** Thank you.

1 **BY MR. FALK:**

2 Q: So how much time did y'all spend preparing for the trial
3 when the trial actually came around?

4 A: Really none really.

5 Q: And you were out of custody at this time, right?

6 A: Yes, sir.

7 Q: Okay. Had you gone ---

8 A: He really never talked to me about nothing but the drug
9 court and working for Mr. Caraker. He said he was a retired
10 police officer or something.

11 Q: Well what happened to drug court?

12 A: He never -- after he mentioned to me about working for
13 the police, he never talked about drug court no more. He just
14 kept pressuring me about working for Mr. Caraker.

15 Q: And so you would have agreed to go to drug court; is that
16 correct?

17 A: Yes, sir.

18 Q: And it's your testimony that you never wanted to go to
19 trial on these charges?

20 A: No, sir.

21 Q: And it's your testimony that had you known about that
22 seven-year offer, you would have taken it?

23 A: Yes, sir.

24 Q: I have no further questions.

25 **THE COURT:** All right. Ms. Marto.

1 **MS. MARTO:** Yes, Your Honor.

2 **CROSS EXAMINATION OF MR. ARTHUR BY MS. MARTO:**

3 Q: So roughly how many times did you meet with your
4 attorney, sir? Do you know?

5 A: I mean probably about -- he came to see me when I was in
6 county, and probably about four or five times after that.

7 Q: Did you all discuss all of the evidence and discovery
8 against you?

9 A: Nah, we ain't really discuss nothing, but that's all we
10 really talked about. We talked about drug court at the
11 beginning, then after that we talked about working for the
12 police.

13 Q: Okay.

14 A: And making the charges go away.

15 Q: But you didn't know what the facts of your case were, did
16 you?

17 A: No, ma'am.

18 Q: And did you go to trial?

19 A: No, ma'am.

20 Q: Why didn't you go to your trial?

21 A: Because actually I was kind of scared. I didn't really
22 want to go to trial, that's what I'm saying. I didn't ask to,
23 you know, take it to trial. I don't understand how we end up
24 going to trial.

25 Q: Did you know you had trial that day?

1 A: Ma'am?

2 Q: Did you know you had trial that day?

3 A: Yes, ma'am.

4 Q: Okay. And then did you think that it would be continued

5 if you just didn't show up?

6 A: Yes, ma'am.

7 Q: And he didn't discuss the plea offer with you either?

8 A: No, ma'am.

9 Q: Did he talk to you about any defenses you had?

10 A: No, ma'am. That's what I'm saying, the only thing we

11 talked about was drug court and working for -- to make it all

12 go away.

13 Q: Did he explain to you what a plea is?

14 A: We never talked about a plea.

15 Q: Did he talk to you about what a trial is?

16 A: Yeah, well I'm saying he had give me a call and call me

17 to his office one day and said I'm going to be on the docket

18 for trial, I forgot exactly what day it was, you know.

19 Q: Okay.

20 A: But I don't understand how we end up going to trial, you

21 know. I don't know what he had, you know.

22 Q: Did you know about any of the evidence that the state had

23 against you?

24 A: Yes, ma'am.

25 Q: What did you know?

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1 A: Just I knew what was found, you know, but we ain't never
2 discuss nothing.

3 Q: You knew what the drugs were found or what was found?

4 A: The drugs.

5 Q: And were they found on your person?

6 A: Ma'am?

7 Q: Were they found on your person?

8 A: They was found in the car.

9 Q: That you were driving?

10 A: Yes, ma'am.

11 MS. MARTO: One moment, Your Honor. No further
12 questions, Your Honor.

13 THE COURT: All right. Mr. Falk, any redirect?

14 REDIRECT EXAMINATION OF MR. ARTHUR BY MR. FALK:

15 Q: So did you ever receive a telephone call from your lawyer
16 saying that you're going to trial that day?

17 A: No, sir, not that day.

18 Q: Did you receive one the week before that y'all were going
19 to trial?

20 A: Nah. He called me to his office and told me what day I
21 was on the document for trial, but I forgot what that day it
22 was he called me to his office.

23 Q: And how long before the trial was that?

24 A: About a month maybe.

25 Q: When did you find out that you had a trial?

1 A: After. Somebody called me and told me that I was on the
2 news.

3 Q: Okay.

4 A: No further questions.

5 **THE COURT:** All right. Mr. Arthur, you can step down.
6 Thank you, sir.

7 Mr. Falk, do you have another witness?

8 **MR. FALK:** Will the state call defense counsel?

9 **MS. MARTO:** The state would call Mr. Kenneth Massey to
10 the stand.

11 **THE COURT:** All right.

12 **THE CLERK:** Raise your right hand, place your left hand
13 on the Bible.

14 **KENNETH B. MASSEY, HAVING BEEN**
15 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

16 **DIRECT EXAMINATION OF MR. MASSEY BY MS. MARTO:**

17 Q: Good afternoon, sir.

18 A: Good afternoon.

19 Q: So were you retained to represent Mr. Arthur in this
20 case?

21 A: I was.

22 Q: Okay. Roughly how many times did y'all meet?

23 A: I know I saw him at the jail probably five, six, seven
24 different times. Then we had a roster in October, then we had
25 a roster in May, we had a roster in August. At the August

1 roster he was late showing up. The roster that was on August
2 10th, that was to basically we were going to go to trial if he
3 didn't sign the paperwork. I started out with Mr. Caraker,
4 and Mr. Caraker was interested in where this arrest took place
5 because it was in the corridor of 701 near Tabor City and
6 Loris. So I told my client about that, that he would be
7 interested to talking to you and talking to the officer to see
8 if you can do any work for him to see if you can find any
9 information because they were worried about that corridor.

10 So I go to him and talk to him about that and he just
11 wasn't very receptive about it. So David Caraker passed it
12 off, I think, about six or seven months into the case to Mary
13 Ellen Walter. At that point we were on the roster for August
14 10th of 2017 and we were on the roster for trial November 6,
15 2017, and on the August 2017 roster he was at 10:15. My
16 clients are supposed to be in line at 7:30, not 8:30, 7:30.
17 He shows up at 10:15 for the August roster. And I also have
18 an email from Mary Ellen Walter where she basically says she's
19 giving me a heads up about the roster, that it was going to be
20 put on the trial roster. So I communicated that to him.

21 We talked, once he was out of J Reuben Long, we talked
22 probably once a month to two times a month. And I try to get
23 my clients in there between 7 and 9 o'clock because that way
24 they can work, but also to see if they can get probation or
25 get drug court or mental health court. He was never promised

1 drug court. I said if he was an addict, but this was not an
2 addict issue, this was a dealer issue. And I said what we
3 need to do is see what we can do about working with Mr.
4 Caraker if you can work with Mr. Caraker. That didn't go
5 anywhere.

6 So I got a heads up letter, or an email actually, from --
7 this is on 9/5/2017 from Mary Ellen Walter saying just a heads
8 up, this is going to be on the trial roster for the second
9 week of October. Any time I get a correspondence, whether
10 it's an email, a telephone call, mail, I open my own mail,
11 within 24 hours my client has it or they have a phone call in
12 to meet me about it. So when we emailed him this and we
13 called him about it on 9/8, now this was 9/5 when I received
14 this. Client wants to know if you can negotiate five years.
15 The reason he is saying that is because we had the offer for
16 seven years. And the offer came down actually from David
17 Caraker back on June 3rd, 2016. So we had this offer for quite
18 a while, about a year and a half.

19 So when Mary Ellen Walter takes it over, she's wanting to
20 know if we're going to pled because she set it up for May, she
21 set it up for August, and I think there was a September
22 roster, and an October roster, not roster, roll call. And he
23 wasn't going to take it. He didn't want to do any time. But
24 his communication to me was on 9/8, will I go back to her and
25 talk about five years, which I did. She was not very

1 receptive. So he knew about the trial roster, we talked. We
2 tried talking about the evidence, about the traffic stop and
3 everything, he just didn't want to do time.

4 And the day of trial, I had called him, my staff had
5 called him, I'm out there on the third floor trying to call by
6 the window because that's where you have reception, and I'm
7 trying to call his number and he's not answering. Only later
8 in the day, after the trial, do I get his mother. Now, about
9 a week after, his girlfriend comes in and wants to know what
10 we can do and I said well, we filed the notice of appeal and
11 we've got to wait on that, but if there's any issues you can
12 file a PCR, and I guess that's what he's done.

13 Q: So the seven year offer was communicated to him, right?

14 A: Absolutely. In fact that was communicated to him within
15 24 hours of June 3rd, 2016.

16 Q: And that was the most favorable offer you got?

17 A: Yes. And from Mr. Caraker at that time, that was a
18 pretty good offer on these allegations.

19 Q: And was -- applicant evidently wasn't willing to accept
20 that offer?

21 A: He didn't want time. He wanted probation and that's not
22 what David Caraker was offering. Now, I was going to probably
23 ask -- well I know I was going to ask for probation, but he
24 still didn't want time and it was a chance, taking a risk,
25 asking for probation.

1 Q: And did you inform him about the discovery evidence and
2 facts related to his case?

3 A: I not only informed him, he gets a copy of it. They all
4 get a copy within 24 hours.

5 Q: Okay.

6 A: If they're at the jail -- my mail comes at 11:30 every
7 day. If it doesn't come, I have the other mail man that's at
8 3:30. So if it comes at 3:30, it's the next day I take it to
9 the jail, but he was out.

10 Q: Okay.

11 A: I think he was living with his mother or something.

12 Q: And he failed to appear at his trial, correct?

13 A: He did after repeated calls. The first message was if
14 you get here soon enough, we probably can get this negotiated
15 plea back on the record and just plea it out. I got no
16 response, and I called every number, and every number that I
17 have on this file. I've got the girlfriend, I've got that
18 number. I've got the client's number. I've got Ivy, who is
19 the sister, all of these numbers I called.

20 **MS. MARTO:** One moment, Your Honor. No further
21 questions.

22 **THE COURT:** Mr. Falk.

23 **CROSS EXAMINATION OF MR. MASSEY BY MR. FALK:**

24 Q: When you say a roster?

25 A: I meant roll call.

1 Q: Okay. So there was a roll call meeting?

2 A: It's roll call. And Mary Ellen was trying to get it roll
3 called May, and I think there was one in June, there was one
4 in August, and I think there was one in September. She was
5 trying to get him to sign up on this offer she inherited from
6 David Caraker.

7 Q: Okay.

8 A: And he wasn't receptive to that, and he didn't do
9 anything to help with trying to work with the officer when
10 Caraker had the file.

11 Q: All right. So that's where I got some things confused.
12 Who is David Caraker?

13 A: He is the former solicitor that had this.

14 Q: How do I spell that?

15 A: I can spell it for you.

16 Q: Is it with a C or a K?

17 A: It's C-A-R-A-K-E-R, Jr., assistant solicitor.

18 Q: Well then what was this police officer?

19 A: I don't recall his name.

20 Q: What was his relationship to the solicitor's office? Was
21 he retired? I mean that's what Mr. Arthur said there was a
22 retired police officer.

23 A: No, no. Mr. Caraker, I think he was talking about Mr.
24 Caraker. But, no, I'm talking about another police officer,
25 the police officer Mr. Caraker wanted him to contact.

1 Q: I see.

2 A: Which he was not -- he didn't return calls, he didn't
3 stay in touch with him. And every time I would see Mr.
4 Caraker or Mary Ellen I would ask if my client was staying in
5 touch with this officer and they would tell me no. He was not
6 receptive, not returning calls, not helping, not very
7 productive.

8 Q: What is your recollection, where were you when you talked
9 to him about the seven-year offer?

10 A: You're talking about June, it was in my office, I mean he
11 was out.

12 Q: And what did you tell him about the offer?

13 A: I said that's a pretty good offer. I said if you want me
14 to ask for time, which I was going to ask for probation
15 anyway, but it's negotiated so that's sort of tricky. He just
16 didn't want to do the time, but he knew about it for about a
17 year and a half.

18 Q: And from when you noticed that his case was on the
19 roster, on the trial docket, how many times did you call him?

20 A: Several, several, in fact he came in. He knew about the
21 trial roster because I even gave him a copy of it because I
22 think we were number three or number four and I wanted to tell
23 him that's basically number one.

24 Q: No further questions.

25 **THE COURT:** All right.

Arthur vs State

20

2020-CP-26-00648

1 **MS. MARTO:** Nothing further, Your Honor.

2 **THE COURT:** All right. Thank you, Mr. Massey.

3 **MR. MASSEY:** Yes, sir.

4 **THE COURT:** Ms. Marto.

5 **MS. MARTO:** No further witnesses, Your Honor.

6 **THE COURT:** All right.

7 **MR. FALK:** Can I call my client as a rebuttal witness.

8 **THE COURT:** Sure.

9 **THE COURT:** Mr. Arthur, I remind you that you're still
10 under oath.

11 **DIRECT EXAMINATION OF MR. ARTHUR BY MR. FALK AS A REBUTTAL**

12 **WITNESS:**

13 Q: All right. So you heard Mr. Massey's testimony?

14 A: Yes, sir.

15 Q: Did you ever have a conversation with him about trying to
16 get a five-year offer?

17 A: Yeah, I asked him that, but I ain't asked him that after
18 he said something about a seven-year plea.

19 Q: Did you ever get -- did you ever have a conversation with
20 him about a seven-year plea?

21 A: No, sir.

22 Q: Okay. Did you ever have a conversation with him where he
23 said that you couldn't get drug court, or you wouldn't
24 qualified for drug court because that's more for addicts as
25 opposed to dealers?

1 A: No, no, sir. He told me he could get me -- he said he
2 can guarantee me drug court because I need that, so I won't
3 have to come back in here in front of him in the future with
4 the same problem. And once I complete the program it will
5 expunge the charge off my record.

6 Q: Did you ---

7 A: He never said nothing about no addict.

8 Q: What do you think he meant by "problem"?

9 A: Like if I ever catch that type of charge again.

10 Q: And did you ever have a conversation with him where
11 you're asking him to try and get probation?

12 A: No, sir. I knew I couldn't get probation.

13 Q: And did you ever go into his office when he told you that
14 you were on the trial roster?

15 A: Yeah. That's what I told you earlier, when he first told
16 me about it he called me to his office.

17 Q: Okay. And again, you never had a conversation with him
18 about a seven-year offer?

19 A: No, sir.

20 Q: No further questions.

21 **THE COURT:** All right.

22 **MS. MARTO:** Briefly, Your Honor.

23 **CROSS EXAMINATION OF MR. ARTHUR BY MS. MARTO:**

24 Q: If it wasn't within the context of a seven-year offer,
25 where did you come up with the number five?

1 A: I figured if I get found guilty, you know, I can do at
2 least five years if he couldn't get me the drug court.

3 Q: Were you willing to do anything more than five?

4 A: Yes, ma'am, but not 25.

5 Q: Okay. And was five your ideal situation; is that where
6 you came up with that number?

7 A: Yes, ma'am.

8 **MS. MARTO:** No further questions, Your Honor.

9 **THE COURT:** All right.

10 **MR. ARTHUR:** Being that he was my attorney, I was just
11 asking could he get that if I couldn't get the drug court.
12 That's what I was asking for.

13 **MS. MARTO:** No further questions, Your Honor.

14 **THE COURT:** All right.

15 **MR. FALK:** No further questions.

16 **THE COURT:** All right. Thank you, Mr. Arthur.

17 Anything further, Ms. Marto? Anymore witnesses?

18 **MS. MARTO:** No witnesses.

19 **THE COURT:** Okay. Mr. Falk, be happy to hear from you.

20 **MR. FALK:** Your Honor, my client vehemently denied that
21 he ever was given a seven-year offer. He said that offer was
22 never communicated to him. You heard him talking about sort
23 of the trial strategy was to maybe do drug court, but there
24 was never -- he never had an intention to try and take these
25 cases to trial. He never wanted to go to trial on these

1 cases. He certainly -- he testified that had he gotten the
2 seven-year offer, he would have taken the seven-year offer.
3 He was pretty clear that he was never given that seven-year
4 offer. He was clearly prejudiced by the trial counsel's
5 failure to deliver the offer and then he wound up getting a
6 28-year sentence.

7 **THE COURT:** Thank you, sir.

8 Ms. Marto.

9 **MS. MARTO:** Yes, Your Honor. It's the state's position
10 that counsel credibly testified that he did convey the seven-
11 year offer. And that was further substantiated by the fact
12 that Mr. Arthur evidently requested a five-year offer days
13 later. And it was Mr. Arthur who did not accept that offer,
14 and as counsel credibly testified, because he didn't want to
15 serve any time, he wanted drug court which was not an option.
16 So it would be the state's position that the Court should deny
17 the relief on that basis. Thank you.

18 **THE COURT:** All right. I find that what is
19 uncontroverted in this situation is that the defendant and Mr.
20 Massey both -- the PCR applicant and Mr. Massey both testified
21 and agreed to the fact that Mr. Arthur was aware of the trial.
22 And it follows to reasonably believe and find that if you're
23 aware of the trial, then you should be aware of any
24 outstanding plea offers because, you know, it's just a
25 reasonable thing to believe that if you know you're case is up

1 for trial then certainly you've had discussions about any
2 outstanding plea offers. And that's corroborated and more
3 believable by the fact that you asked for five years. I mean
4 it's just reasonable to believe and understand that that would
5 be in response to a seven-year plea offer, which certainly by
6 the evidence that's been introduced in this case, was extended
7 to you in June of 2016. And certainly at some point in time
8 if you're asking for a five-year deal then that seems
9 reasonable to believe that that's in response to a seven-year
10 offer.

11 And as such, you know, not showing up for your trial, you
12 know, I don't make any specific findings regarding that. But
13 I'm going to deny your PCR application based on failing to
14 prove that there's any ineffective assistance of counsel based
15 on not having been communicated a plea offer. All right.
16 Thank you.

17 (END OF TRIAL)
18
19

Arthur vs State

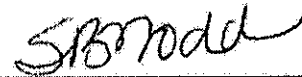
25

2020-CP-26-00648

C E R T I F I C A T E

I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the Transcript of Record of the hearing held in the interest of James L. Arthur versus State of South Carolina in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on June 2, 2022.

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



Sallie Beth Todd, CVR
Official Reporter

December 13, 2022.



P.O. BOX 1276
CONWAY, SC 2952B
843-915-5460
F. AXB43-915-6461

P.O. BOX 1688
GEORGETOWN, SC 29442
843-545-3189
FAX: 843-545-3268

JIMMY A. RICHARDSON, II

Solicitor

DATE: June 3, 2016
TO: Kenneth Massey, Esquire
FROM: David P. Caraker, Jr., Assistant Solicitor **MEW**
RE: State vs. James Lamont Arthur Case # 16H02446

Pending Charge(s)	Drugs / Trafficking in meth. or cocaine base - 10 g or more, but less than 28 g – 3 rd offense (correcetd by Solicitor)	Warrant	2016A2610500186
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Unlawful carrying of pistol	2016A2610500191
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Upon reviewing the above referenced case(s) the State makes the following offer regarding the disposition of the charge(s):

If the Defendant will plead guilty to: PWTD cocaine base, 2nd offense; unlawful carry.

The State offers the following: Negotiated 7 years, cc.

The Defendant must accept the offer by September 2, 2016 or it is considered rejected and the State will not make the offer again. Should the defendant accept the offer, he or she must enter the plea before or during the September term of court. Please review the offer with your client, sign and date as indicated below, and return to me no later than September 2, 2016. Please call me at 915-8628 if I may be of service.

DEFENDANT'S RESPONSE

TRIAL GUILTY PLEA

Attorney's Signature _____ Date: _____

Defendant's Signature _____ Date: _____



COPY

The mission of the Fifteenth Circuit Solicitor's Office is to uphold the public's trust in the pursuit of justice and enforcement of the law.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

James L. Arthur, #301001,
Applicant,

Case No.: 2020-CP-26-0648

v.

ORDER OF DISMISSAL

State of South Carolina,
Respondent.

This matter comes before this Court by way of Applicant's post-conviction relief application filed January 27, 2020. Respondent made its return on July 28, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on June 2, 2022, at the Horry County Courthouse. James K. Falk, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto, Esquire, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Kenneth Massey also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of Court. During its June 2016 term, the Horry County Grand Jury indicted Applicant for trafficking cocaine base more than ten grams, less than twenty-eight grams (2016-GS-26-02574), possession of schedule I -- V drug (2016-GS-26-02575), unlawful possession of a pistol (2016-GS-26-02576), unlawful carrying of a pistol (2016-GS-26-02577). Applicant was represented by Kenneth B. Massey, Esquire. Assistant

FILED
Horry County
2022 OCT 10 13:25
RENEE N. EAVIS
CLERK OF COURT
HORRY COUNTY, SC

Solicitors Mary-Ellen Walter and C. Leigh Andrew of the Fifteenth Circuit Solicitor's Office prosecuted the case. On November 6-7, 2017, Applicant proceeded to trial before the Honorable Steven H. John, circuit court judge, and a jury. Applicant failed to appear and was tried *in absentia*. Applicant was found guilty as charged. Judge John sentenced Applicant to a total of twenty-five years' imprisonment.

Applicant filed a timely notice of appeal on December 19, 2017, that was perfected by Kathrine H. Hudgins, Esquire, through filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967) and a motion to be relieved as counsel. The South Carolina Court of Appeals dismissed Applicant's appeal and granted the motion to be relieved by unpublished opinion. *State v. Arthur*, 2019-UP-364 (S.C. Ct. App. Nov. 13, 2019). The remittitur was issued on December 3, 2019.

Summary of Relevant Facts

On May 12, 2016, an officer was on patrol, running license plates. (Tr. 43). The officer passed Applicant's car, ran the license plate, and the plate came back as suspended. (Tr. 43). The officer stopped Applicant's car, approached Applicant, and smelled marijuana coming from the car. (Tr. 43-44). Applicant was ultimately forced to step out of the car, was given his *Miranda* warnings, and thereafter told the Officer the marijuana was in the passenger seat when asked. (Tr. 44). The Officer went to the passenger seat and found a black bag containing a scale, a mason jar, plastic baggies containing 13.4 grams of crack cocaine, ammunition, and a pistol. (Tr. 44). Applicant was previously convicted of third-degree burglary, rendering his possession of the pistol unlawful. (Tr. 45).

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully

because of ineffective assistance of counsel in that:

1. Defense counsel was ineffective because:
 - a. "no objections to the black bag."
 - b. "no objections to the marijuana."
 - c. "no chain of custody to the black bag – no objections."
 - d. "no chain of custody to marijuana – no objections."
 - e. "no chain of custody on off white back substance – no objection."
 - f. "evidence submitted in evidence with no chain of custody and no objection."
 - g. "no objections to items in the back bag or green bag and no chain of custody."
 - i. "Also no foundation to the chain of custody."
 - h. "There was no chain of custody due to officer findings and collecting the blue-white pills."
 - i. "there was no chain of custody on the collecting of the evidence and there was no body camera to verify a complete chain of custody"
 - j. "Counsel did not object to State's Exhibit #3"
 - k. "No chain of custody was established at the crime scene during the collecting of the evidence."
 - l. "Counsel made no objections to the tainted evidence and State's exhibits 4 and 5."
 - m. "Counsel made no objections to police officer omissions that the body-cam just disappeared."
 - n. "Counsel made no objections to Police Officer Cox not knowing the name of the Highway patrol officer that assisted him."
 - o. "Judicial error when the Judge allowed in exhibit 6. . . Conviction over defense attorney objections."
 - p. "there was no chain of custody established when officer James Hafner turned over 2 white pills/14 blue pills that he released to Officer Cox whom did not establish a chain of custody."
 - q. "Counsel did not object to the omission of police officer Hafner said that he did not recall the highway patrolman's officer name, and asked did he have a body cam that night, Hafner said yes, but it was purged off the system."
 - r. "Defense Counsel made no objections to the omissions of the Clerk Donna Bell."
 - s. "Even after the clerk stated that no evidence of the body cams was turned in defense counsel still failed to object."
 - t. "Defense counsel made no objections to the drug analysis conducted by Courtney Johnson."
 - u. "Defense Counsel made no objections to State's exhibit number 7 when it was admitted into evidence even though the fact is [the officer] stated she did not test all of the drugs defense counsel failed to object to its being admitted into evidence."
 - v. "The Court lacked subject matter jurisdiction to charge defendant with a third offense without presentment by the Grand Jury."

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective Assistance of Counsel:
 - a. For promising Applicant drug court or a dismissal of the charges if he

- cooperated with the State.
- b. Failure to convey a seven-year plea offer.
- c. Failure to review discovery.
- d. Failure to communicate effectively with Applicant.
- e. Failure to ensure Applicant was present for his trial.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Applicant Testimony

Applicant stated that Counsel represented him on his criminal charges. He stated he retained Counsel and he made bond. He stated Counsel went to him and stated he would handle the case and could guarantee him drug court because it would be good for him, and he did not want Applicant to come back to him with another refraction in the future. He stated that a few weeks later Counsel came to him after speaking to the prosecutor, who stated that he could get the charge dismissed if he cooperated with the police. He stated that he received a seven-year written plea offer that he received in his motion for discovery. He stated Counsel never showed him the offer. He stated if Counsel showed him the offer, he would have taken it and would not have gone to trial. He stated he received this after going to Broad River Correctional Institution after he was sentenced. He stated that he and Counsel did not prepare for trial and that Counsel did not talk to him about anything.

On cross-examination, Applicant stated that he met with Counsel four or five times after they initially met when he was in jail. He stated they did not talk about the evidence against him. He stated they only talked about drug court and potentially dropping the charges. He stated he did not appear at his trial because he was scared. He stated he knew he was scheduled for trial on the trial date. He stated he thought the case would be continued if he did not show up. He stated

Counsel did not discuss the plea offer with him. He stated that he did not discuss potential defenses, the plea, or the trial beyond the date it was set for. He stated that he knew about the evidence the State had against him. Specifically, he stated that he knew what drugs the police found in the car that he was driving.

On re-direct, Applicant stated that he did not receive a call the day of trial from Counsel. He stated he received a call from Counsel about a month before trial, stating that the trial was on the docket. He stated he found out about the trial when someone saw him on the news.

Counsel Testimony

Counsel testified that he was retained to represent Applicant and that he met with Applicant five or six times at the jail and then again at court when Applicant was on the October and August rosters. He stated that Applicant was proceeding to trial if he did not sign the paperwork. He stated that Applicant was interested in whether he would be eligible for drug court. Counsel testified that Applicant was a drug dealer, not drug user, and was not a candidate for drug court as a result. He stated that he procured a seven-year plea offer, but Applicant requested it be dropped to five years. He stated Applicant knew about the deal but did not want to do the time. He stated that on the day of trial, he and his staff called Applicant to no avail. He stated that a week later Applicant's girlfriend came to him and asked what they could do. Counsel testified that he told them to file a notice of appeal and a post-conviction relief application. Counsel stated he provided Applicant with a copy of the discovery. He stated that Applicant failed to appear for court multiple times, including at trial. He stated that Applicant only wanted a probation-only sentence and was unwilling to serve active time. He stated he told Applicant that if he appeared at a court hearing, he thought he would be able to get the negotiated plea back on the table.

On cross-examination, Counsel testified that he did not recall who the police officer involved in the case was. He stated that he informed Applicant of the seven-year plea offer during his June office meeting with Applicant. He stated he told Applicant that he received a good offer but did not want to do the time. He stated that Applicant knew about the offer for a year and a half. He stated he tried to contact Applicant several times when he failed to appear at his court hearing.

Applicant Rebuttal

Applicant testified that he never discussed the plea with Counsel. He stated that Counsel told him he could guarantee him drug court. He stated he did not know he could receive probation and that he never discussed this option with Counsel. He stated he never discussed the seven-year plea offer with Counsel. Applicant stated he requested Counsel obtain a five-year offer because he thought that was obtainable. He denied that the five-year request was related to the seven-year offer.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Horry County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRPC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed

in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Seven-Year Plea Offer

Applicant’s claim of ineffective assistance of counsel for failure to convey a fifteen-year plea offer is without merit. Applicant alleges ineffective assistance of counsel because Counsel failed to present a favorable plea to Applicant before the offer expired. “[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.” *Missouri v. Frye*, 566 U.S. 134, 145 (2012). Further, ineffective assistance is given “[w]hen defense counsel allow the [plea] offer to expire without advising the defendant or allowing him to consider [the plea].” *Id.* at 145.

When determining prejudice for failure to convey a plea, a case-by-case determination is made “assessing whether but for counsel’s deficient performance a defendant would have accepted the State’s proposed plea bargain and that he would have benefited from the offer.” *Bell v. State*, 410 S.C.436, 443, 765 S.E.2d 4, 7 (2014). Prejudice is found if applicant “would have taken the plea offer had [he] been afforded effective assistance of counsel”, if “the plea would have been entered without prosecution canceling it or the trial court refusing to accept it”, and “the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.” *Collins v. State*, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018) (quoting *Frye*, 566 U.S. 147) (quotations omitted). Presumed prejudice is reserved to limited situations. *Bell*, 410 S.C. at 443, 765 S.E.2d at 7.

Counsel credibly testified that the seven-year plea offer was communicated to Applicant, who asked for a five-year sentence instead. Counsel exhibited this written counteroffer by Applicant while on the witness stand. He also credibly testified that Applicant was aware of the offer for a year and a half but rejected it because he did not want to serve any time. Counsel was not deficient because he informed Applicant of the offer. No prejudice is shown because the only reason why the offer was not accepted was because of Applicant’s own rejection of said offer. Accordingly, relief is denied on this ground.

Drug Court/Dropped Charges

Applicant alleged that Counsel promised him he could get the charges dropped or get him drug court. Counsel credibly testified that Applicant was not a candidate for drug court because he was a drug dealer, not an addict or user. Counsel also credibly testified that the best offer he was made was a seven-year offer, but that Applicant was unwilling to take any offer that required he serve active time. Thus, this Court finds Applicant’s assertions that these were

plausible offers for him or that Counsel portrayed them as plausible options incredible. Thus, relief is denied on this ground.

Failure to Communicate

Applicant alleges that Counsel was ineffective for failure to maintain regular contact with him. “[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating “how additional preparation or communication would have resulted in a different outcome.” *Id. See Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Counsel credibly testified that he met multiple times with Applicant, where they discussed the plea offer and the discovery. Applicant has failed to show how Counsel was deficient on this ground or what prejudice occurred. In fact, this Court finds that Applicant was primarily responsible for failing to communicate effectively with Counsel, as evidenced by his refusal to show up at court or answer Counsel’s phone calls the day of trial. Thus, relief is denied on this ground.

Failure to Review Discovery

Applicant claims Counsel was ineffective for failure to inform him of what evidence or discovery existed in this case. However, Counsel credibly testified that he provided Applicant

with a copy of all discovery materials. Applicant substantiated this in part by stating that he was aware of what drugs were found in his car. This Court finds Applicant's allegation that he did not know the evidence against him incredible. Thus, relief is denied on this ground.

Failure to Ensure Applicant was Present at Trial

Applicant claims Counsel was ineffective for failure to ensure Applicant was present at his trial. Although the Sixth Amendment of the Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived. *State v. Bell*, 293 S.C. 391, 401, 360 S.E.2d 706, 711 (1987); *Ellis v. State*, 267 S.C. 257, 260, 227 S.E.2d 304, 305 (1976). Rule 16 of the South Carolina Rules of Criminal Procedure provides:

[A] person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his right to be present and a warning was given that the trial would proceed in his absence upon a failure to attend the court.

Rule 16, SCRCrimP.

A waiver of such an important right is permitted only in limited circumstances. *City of Aiken v. Koontz*, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (2006). Therefore, before a defendant may be tried *in absentia*, the trial court must determine a defendant voluntarily waived his right to be present at trial, making findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned that the trial would proceed in his absence. *Id.*

Applicant, by his own admission, understood his trial was taking place on the trial date and chose not to appear, stating that he was afraid of going to trial. Additionally, at the trial, testimony was elicited that Applicant was issued a subpoena to appear on the trial date. (Tr. 30). A bondsman testified that Applicant dropped from calling once a week to not calling in the couple of months prior to trial and has not notified her of any address changes. (Tr. 32-34). Counsel stated at trial that he attempted to contact Applicant at the courthouse, to no avail. (Tr. 34). Counsel credibly testified to the same at the PCR hearing. Thus, this Court finds Applicant was properly notified of the trial and

elected not to appear, waiving this right. Thus, relief is denied on this ground.

Conclusion

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 10th day of October, 2022.


H. STEVEN DEBERRY, IV
Presiding Judge
Fifteenth Judicial Circuit

Florence

, South Carolina.