

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Pickens County
Edward W. Miller, Circuit Court Judge

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S.C. Supreme Court

JACKIE BOYD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000081

APPENDIX

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STATE OF SOUTH CAROLINA	) COURT OF GENERAL SESSIONS
COUNTY OF PICKENS	) Case No(s) : 08-GS-39-1338,
State of South Carolina,	) 08-GS-39-1339
Plaintiff,	)
-VS-	) TRANSCRIPT OF RECORD
Jackie Boyd,	)
Defendant.	)

November 17-18, 2008
Pickens, South Carolina

B E F O R E:

HONORABLE LARRY R. PATTERSON, Judge.

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

PETER THEM, Esquire
Assistant Solicitor

ROBERT NEWTON, Esquire
Attorney for the Defendant

Recorded by:
Mary Sprague
Official Court Reporter

Transcribed by:
Teresa B. Johnson
Official Court Reporter

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P R O C E E D I N G S

1
2 (WHEREUPON, State's Exhibits 1 through 5 were
3 marked for identification purposes.)

4 THE COURT: Okay. Ladies and Gentlemen,
5 we're going to select a jury now in the case
6 between the State of South Carolina and Jackie
7 Lee Boyd.

8 Mr. Boyd, would you stand up and face the
9 jury panel please.

10 Do any of you Ladies and Gentlemen know Mr.
11 Boyd? (No response).

12 Okay. Thank you, sir. You may be seated.

13 The attorneys in this case will be Mr. Them
14 and Mr. Newton. Would y'all stand up please.

15 Do any of you Ladies and Gentlemen know any
16 of these lawyers who is standing before you?

17 Yes, ma'am. Would you stand up please. Your
18 name please.

19 JUROR: Diane Robinson.

20 THE COURT: Mrs. Robinson, who do you
21 know? You know Mr. Them?

22 JUROR: I know of him.

23 THE COURT: Okay. You know of him. You
24 don't -- okay. How have you heard about Mr. Them?
25 Can you tell me?

1 JUROR: I was a witness up here one time.

2 THE COURT: He was the Solicitor?

3 JUROR: Yes.

4 THE COURT: The fact that you had been a
5 possible witness and he was the Solicitor, would
6 that affect your ability to be fair and
7 impartial?

8 JUROR: No.

9 THE COURT: You could be fair to the State
10 and you could be fair to the Defendant, Mr. Boyd?

11 JUROR: Yes.

12 THE COURT: And you would follow your oath
13 and decide it only on the evidence and testimony?

14 JUROR: Yes.

15 THE COURT: Thank you, ma'am. You may be
16 seated.

17 Anyone else?

18 I'm sorry. Yes, ma'am, Mrs. McMahan.

19 JUROR: Yes, sir.

20 THE COURT: I couldn't hear you. If you
21 could, speak up just a little louder.

22 JUROR: Mr. Them's children swim on the
23 Pickens County swim team.

24 THE COURT: Okay. The fact that they swim
25 on the swim team, would that affect your ability

Jury Qualification

7

1 to be fair and impartial?

2 JUROR: No, sir.

3 THE COURT: Thank you, ma'am. Okay.

4 Okay. Ladies and Gentlemen, the allegations
5 in this case -- and Mr. Boyd pleads not guilty to
6 these charges and that's the reason we are here.
7 The allegations are Trafficking in Cocaine on
8 September the 3rd of 2007. Have any of you Ladies
9 and Gentlemen heard anything about this case or
10 do you know anything about this case involving
11 Mr. Boyd? (No response).

12 Mr. Them, I need to see you.

13 (WHEREUPON, a bench conference is held off the
14 record.)

15 THE COURT: Ladies and Gentlemen, the date
16 alleged is December the 3rd of 2007. In addition
17 to that, they allege failure to stop for a blue
18 light. Mr. Boyd pleads not guilty to that charge.
19 Have any of you heard anything at all about these
20 cases involving Mr. Boyd? (No response).

21 Have you, Ladies and Gentlemen, or any
22 members of your family had any experiences, any
23 experiences either favorable or unfavorable or
24 whatever, if you had any experiences in any way
25 with cocaine, if this case involved cocaine, that

1 would affect your ability to be fair and
2 impartial, I would need you to tell me about
3 that. Any reason why you couldn't --

4 Okay. Sir, would you come down front?

5 (WHEREUPON, the following bench conference is
6 held with Juror number 12, Steven Braisted.)

7 THE COURT: Yes, sir.

8 JUROR: My name is --

9 THE COURT: Come around so she can hear
10 what you say.

11 JUROR: With my job, that's all I deal
12 with is people that deal with that stuff all the
13 time. I don't know if that makes a difference or
14 not.

15 THE COURT: Well, the question is could
16 you be fair and impartial during the trial.

17 JUROR: Probably not.

18 THE COURT: You work at Miracle Hill with
19 people who are involved with that?

20 JUROR: Yes.

21 THE COURT: Okay. Juror number 12. I'm
22 going to excuse him from this case. If you'll
23 just have a seat back out there.

24 (WHEREUPON, the bench conference concludes.)

25 (WHEREUPON, the following bench conference is

Jury Qualification

9

1 held with Juror 91, Stephen Riddle.)

2 THE COURT: Hi.

3 JUROR: My brother-in-law was strung out
4 on cocaine.

5 COURT REPORTER: Okay. I can't hear you.
6 You're going to have to speak up.

7 JUROR: My brother-in-law was addicted to
8 cocaine.

9 THE COURT: Would that affect your ability
10 to be fair and impartial?

11 JUROR: It doesn't set well with me. So it
12 could. I'm trying to be honest.

13 THE COURT: Okay. All right. I'll excuse
14 you from this case. Just have a seat.

15 JUROR: Thank you.

16 (WHEREUPON, the bench conference concludes.)

17 (WHEREUPON, the following bench conference is
18 held with Juror 54, Elizabeth Hilst.)

19 THE COURT: Yes, ma'am.

20 JUROR: My brother works at the sheriff's
21 department in San Diego. And he does drug busts.

22 THE COURT: San Diego?

23 JUROR: San Diego, California.

24 THE COURT: Would that affect your ability
25 to be a fair and impartial juror?

1 JUROR: Yes, sir.

2 THE COURT: It would?

3 JUROR: It would.

4 THE COURT: Okay. I'll let you be excused
5 from this case.

6 (WHEREUPON, the bench conference concludes.)

7 THE COURT: All right. Ladies and
8 Gentlemen, we're going to select the jury for the
9 second case we're going to try after this one. It
10 may be tomorrow morning. As your name is called,
11 if you would just stand. You will either be
12 seated or excused.

13 Five peremptory challenges for the State and
14 five for the defense. All right. Madam Clerk.

15 The computer printed out a different list
16 this time. You may be on it again. You may not.
17 We'll see. All right.

18 THE CLERK: 43, Arthur H. Gardner.

19 What says the State?

20 MR. THEM: Present the juror.

21 THE CLERK: Defense?

22 MR. NEWTON: Seat Mr. Gardner for the trial
23 of this case.

24 THE CLERK: Please come around and be
25 seated.

Jury Selection

11

1 113, Connie C. Walker.

2 What says the State?

3 MR. THEM: Present the juror.

4 THE CLERK: Defense?

5 MR. NEWTON: Seat Mrs. Walker.

6 THE CLERK: Please come around and be
7 seated.

8 122, Steven L. Setzer.

9 What says the State?

10 MR. THEM: Present the juror.

11 THE CLERK: Defense?

12 MR. NEWTON: Seat Mr. Setzer.

13 THE CLERK: Please come around and be
14 seated.

15 90, Sharon B. Richards.

16 What says the State?

17 MR. THEM: Present the juror.

18 THE CLERK: Defense?

19 MR. NEWTON: Seat Mrs. Richards.

20 THE CLERK: Please come around and be
21 seated.

22 21, Vernon G. Clark.

23 What says the State?

24 MR. THEM: Present the juror.

25 THE CLERK: Defense?

1 MR. NEWTON: Excuse Mr. Clark.
2 THE CLERK: Just have a seat, sir.
3 33, Wanda S. Durham.
4 What says the State?
5 MR. THEM: Present the juror.
6 THE CLERK: Defense?
7 MR. NEWTON: Seat Mrs. Durham.
8 THE CLERK: Please come around and be
9 seated.
10 2, Ronald K. Alexander.
11 What says the State?
12 MR. THEM: Present the juror.
13 THE CLERK: Defense?
14 MR. NEWTON: Excuse Mr. Alexander..
15 THE CLERK: 66, Randy L. Leopard.
16 What says the State?
17 MR. THEM: Present the juror.
18 THE CLERK: Defense?
19 MR. NEWTON: Seat Mr. Leopard.
20 THE CLERK: Please come around and be
21 seated.
22 93, Diane A. Robinson.
23 What says the State?
24 MR. THEM: Present the juror.
25 THE CLERK: Defense?

1 MR. NEWTON: Excuse Mrs. Robinson.
2 THE CLERK: Please be seated.
3 51, Christy L. Greene.
4 What says the State?
5 MR. THEM: You said 61?
6 THE CLERK: 51.
7 MR. THEM: Present the juror please.
8 THE CLERK: Defense?
9 MR. NEWTON: Seat Mrs. Greene.
10 THE CLERK: Please come around and be
11 seated.
12 23, Maurice M. Collins.
13 What says the State?
14 MR. THEM: Present the juror.
15 THE CLERK: Defense?
16 MR. NEWTON: Seat Mr. Collins.
17 THE CLERK: Please come around and be
18 seated.
19 5, Judith B. Atkins.
20 What says the State?
21 MR. THEM: Present the juror.
22 THE CLERK: Defense?
23 MR. NEWTON: Seat Mrs. Atkins.
24 THE CLERK: Please come around and be
25 seated.

1 121, Syble M. Ramey.
2 What says the State?
3 MR. THEM: Present the juror.
4 THE CLERK: Defense?
5 MR. NEWTON: Seat Mr. Ramey.
6 THE CLERK: Please come around and be
7 seated.
8 40, Anna V. Freeman.
9 What says the State?
10 MR. THEM: Present the juror.
11 THE CLERK: Defense?
12 MR. NEWTON: Excuse Mrs. Freeman.
13 THE CLERK: Please be seated.
14 108, Susan R. Thomas.
15 What says the State?
16 MR. THEM: Present the juror.
17 THE CLERK: Defense?
18 MR. NEWTON: Excuse Mrs. Thomas.
19 THE CLERK: Please be seated.
20 32, Joey N. Durham.
21 What says the State?
22 MR. THEM: Present the juror.
23 THE CLERK: Defense?
24 MR. NEWTON: Seat Mr. Durham.
25 THE CLERK: Please come around and be

1 seated.

2 42, Allison E. Gantt.

3 What says the State?

4 MR. THEM: Present the juror.

5 THE CLERK: Defense?

6 MR. NEWTON: Seat Mrs. Gantt.

7 THE COURT: Let's get one alternate. Two
8 and one.

9 THE CLERK: 109, Shelia M. Tinsley.

10 What says the State?

11 MR. THEM: Present the juror.

12 THE CLERK: Defense?

13 MR. NEWTON: Seat Mrs. Tinsley.

14 THE CLERK: Please come around and be
15 seated.

16 THE COURT: Any objection about the
17 selection of the jury, Mr. Them?

18 MR. THEM: No objection on behalf of the
19 State, Your Honor.

20 MR. NEWTON: None from the defense, Judge.

21 THE COURT: All right. Ladies and
22 Gentlemen, we have the jury for the second case.
23 Now, all of you, there's a telephone number that
24 you can call back in. Call back in after six
25 o'clock tonight and we will leave a message as to

1 when you have to return. Okay. Call in after six
2 o'clock tonight. The number is on your jury card.
3 Y'all are excused for the day. Thank you so much.
4 (WHEREUPON, the jury panel exits at approximately
5 10:12 a.m.)

6 **THE COURT:** Ladies and Gentlemen, y'all
7 are the second case. We're going to try that
8 first case first. I'll ask y'all to be here at
9 9:30 in the morning. We're going to try it
10 upstairs. It's a little bit smaller courtroom.
11 It's a lot like this courtroom. It doesn't
12 matter. Judge Miller is going to be doing some
13 other matters down here. He'll have a lot more
14 people in here than we will have in our trial.

15 You are going to show them how to come back
16 tomorrow morning? They will come to the courtroom
17 upstairs.

18 Okay. He will take you out this way and show
19 you how to get back in and report back at 9:30 in
20 the morning. Now, Ladies and Gentlemen, you are
21 the jury for the case of the State against Mr.
22 Boyd. From this time forward, you can not discuss
23 the case with anyone. Do not permit anyone to
24 discuss the case with you. You must decide this
25 case only on the evidence and testimony and the

1 law that you hear in the courtroom. You don't
2 have to look up any law on the internet. That
3 wouldn't be appropriate. We'll go over everything
4 you will need to hear to decide this case.

5 Go home. Have a good day. Be back -- we're
6 going to be in Courtroom 3 at 9:30 tomorrow
7 morning. The bailiff will show you how to get out
8 and get back in tomorrow morning.

9 THE CLERK: Courtroom 4.

10 THE COURT: I'm sorry. They say that's
11 Courtroom 4.

12 THE CLERK: Courtroom 4 on the third
13 floor.

14 THE COURT: All right. It's on the third
15 floor. All right. If you will just follow him,
16 he'll show you where that is. Thank you so much.

17 (WHEREUPON, the jury exit at approximately
18 10:15 a.m.)

19 THE COURT: All right. Before we break,
20 the State amended indictment number 2008-GS-39-
21 1339 without objection by the defense. It should
22 have read the third of December of 2007 instead
23 of the third of September 2007. Without
24 objection, we amended the indictment to read that
25 so there was no question about notice to the

1 Defendant about what date it was.

2 MR. THEM: Your Honor, the State has no
3 objection to the jury selection process. I
4 wondered if you would inquire of the Defendant.

5 THE COURT: I did. I asked him on the
6 record.

7 MR. THEM: Thank you. Okay. 9:30 tomorrow
8 morning, Gentlemen. Okay.

9 (WHEREUPON, the Court recessed at approximately
10 10:18 a.m.)

11 (WHEREUPON, the Court resumes on
12 November 17, 2008 at approximately 9:30 a.m.)

13 THE COURT: All right. We're going to begin
14 the case of the State versus Jackie Lee Boyd.
15 Trafficking in cocaine and Failure to Stop for
16 Police Vehicle.

17 Mr. Them.

18 MR. THEM: We need to have a Jackson v.
19 Deno hearing, Your Honor.

20 THE COURT: All right. Is that right, Mr.
21 Newton?

22 MR. NEWTON: That is correct, Judge.

23 JEREMY DAVID BENJAMIN

24 having first been sworn, testifies as follows:

25 THE CLERK: Please state your name for the

1 record.

2 THE WITNESS: Jeremy David Benjamin.

3 DIRECT EXAMINATION

4 BY MR. THEM:

5 Q Where are you employed, sir?

6 A The City of Easley.

7 Q In what capacity?

8 A As a police officer with the Easley Police
9 Department.

10 Q Okay. Were you so employed on December the
11 3rd, 2007?

12 A Yes, sir.

13 Q Were you on duty that night?

14 A Yes, sir.

15 Q Did you have an occasion to come into contact
16 with the Defendant?

17 A Yes, sir.

18 Q Tell me how that happened very briefly.

19 A Very briefly. Uh, I was in a parking lot. I
20 saw a vehicle that he was driving coming southbound on
21 Highway 123. It had one headlight. I pulled the
22 lights.

23 Q At some point in time, did that pursuit
24 involve an automobile crash with the Defendant's car?

25 A Yes, sir.

1 Q Okay. What did you do when the Defendant
2 crashed his car?

3 A When the Defendant crashed his car, I exited
4 my vehicle. Went up to the driver's side of the
5 vehicle. Uh, myself and another officer pulled him out
6 of the vehicle. We handcuffed him.

7 Q Okay. So he was under arrest at that point in
8 time?

9 A Yes, sir.

10 Q Did you advise him of his constitutional
11 rights at that point in time?

12 A Yes, sir.

13 Q What did you use to do that?

14 A The Miranda card.

15 Q Do you have it with you?

16 A Yes, sir.

17 Q Would you get it out please. Is that the same
18 card or a copy of the card you used that night?

19 A Same card.

20 Q Same card?

21 A Yes, sir.

22 Q Would you tell me what you told him when you
23 advised him of his rights verbatim?

24 A Verbatim. He was advised that You have the
25 right to remain silent. Anything you say can and will

1 be used against you in a court of law. You have the
2 right to talk to an attorney and have him or her
3 present with you during any questions. If you can not
4 afford to hire an attorney, one will be appointed to
5 represent you before any questioning if you want. You
6 can decide at any time to exercise these rights and
7 not answer any questions or make any statements. Do
8 you understand these rights I have -- do you
9 understand these rights I have explained to you?

10 Q Did the Defendant signify to you whether or
11 not he understood those rights?

12 A Yes, sir.

13 Q Did he agree to talk to you?

14 A Yes, sir.

15 Q All right. Tell me what your conversation was
16 with him. Tell me about that conversation.

17 A After Miranda?

18 Q Yes, sir.

19 A Uh, we talked. I asked him -- the first
20 thing, I asked him if he needed an ambulance. He was
21 moaning and groaning pretty bad. He acted like, I
22 believed he was injured. I asked him if there was
23 anything illegal in the car. I asked him if there were
24 any drugs.

25 Q What was his response?

1 A He said they had been smoking crack cocaine.
2 Q Okay. When he said "they", who was he talking
3 about?
4 A Himself and a passenger.
5 Q Okay. And based on that, did he tell you when
6 they had been smoking crack?
7 A Approximately, he said about 45 minutes
8 before --
9 Q Okay.
10 A -- before the chase.
11 Q All right. And based on that, did you conduct
12 a search of the car?
13 A Yes, search incident to arrest.
14 Q Okay. Did you seize various evidence from the
15 car?
16 A Yes, sir.
17 Q Okay. Did you find any evidence outside of
18 the car?
19 A Yes, sir.
20 Q Did you ever confront the Defendant as to
21 whether or not the evidence that you found inside the
22 car was his or something that he had control over?
23 A Yes, sir.
24 Q What did he tell you?
25 A I asked him about the items inside the car.

1 Q I'm sorry. About the what?

2 A About the evidence inside the car --

3 Q Yes, sir.

4 A -- that we seized. I asked him about it.

5 Q And tell me what that evidence was briefly.

6 A Briefly, there was a glass tube. There was
7 some pad, a kind of a spoon, some syringes inside the
8 car.

9 Q Okay. Uh, what did he tell you about whether
10 or not that was his stuff?

11 A He didn't really say, yes, sir, that that was
12 his. He didn't really give a direct answer.

13 Q Okay. And did you find any -- the evidence
14 that you found outside the car, what was that?

15 A There was a medicine bottle with what I
16 believed to be crack cocaine inside of it.

17 Q Okay. And did you ask him about that?

18 A Yes, sir.

19 Q What was his response?

20 A He did not claim it.

21 Q Okay.

22 A Said it was not his.

23 Q Okey-doke. Now, the person that made those
24 statements to you, is he in the courtroom here today?

25 A Yes, sir.

1 Q Would you point him out please?

2 A (Pointing).

3 MR. THEM: Let the record reflect that
4 the witness is pointing at the Defendant. I have
5 no further questions.

6 THE COURT: Mr. Newton.

7 MR. NEWTON: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. NEWTON:

10 Q Officer, if I understand you correctly, your
11 testimony is that the only statement that my client
12 gave to you was that he had been smoking crack cocaine
13 prior to the incident. Is that correct?

14 A That's not the only statement he made. No,
15 sir. He made other statements to me. But that was a
16 direct answer to his question.

17 Q Okay. He did not come up and say that the
18 drugs were his?

19 A No, sir.

20 Q He denied that they were his.

21 A Yes, sir.

22 Q Correct?

23 A Yes, sir.

24 Q The only admission that he gave that you are
25 testifying to is that he was smoking crack cocaine

1 before the incident?

2 A Yes, sir.

3 Q Okay. Now, sir, you say you gave him Miranda
4 warnings?

5 A Yes, sir.

6 Q Why did you not write that in your incident
7 report that you gave Miranda warnings?

8 A To be honest, I just didn't do it.

9 Q Is it a normal procedure to write in the
10 incident report that you gave Miranda warnings?

11 A Sometimes I do, sometimes I don't.

12 Q What kind of condition was -- this was a high
13 speed chase, correct?

14 A Yes, sir.

15 Q And the vehicle in question collided into a
16 brick wall, correct?

17 A Yes, sir.

18 Q There was severe damage done to the vehicle,
19 right?

20 A Yes, sir.

21 Q And my client was taken to the hospital,
22 right?

23 A Yes, sir.

24 Q And at the hospital, was he not in a dazed
25 and confused state of mind?

1 A I was not at the hospital.

2 Q What state of mind did he appear to be in at
3 the scene?

4 A Initially, he was in a dazed state when we
5 first drug him out of the car.

6 Q Right. So you were interrogating him while he
7 was in a dazed and confused state?

8 A When?

9 Q At the incident. When you asked him the
10 question about whether he had been smoking crack
11 cocaine or not.

12 A No, he responded to that. He responded to
13 that with a yes. He actually stated that to me.

14 Q But your own words, sir. You said he was in a
15 dazed and confused state at that time, correct?

16 A When we first removed him from the car, he
17 was in a dazed state.

18 Q How fast had the car been traveling before it
19 hit that wall?

20 A On Highway 123 where it speeds up to 115
21 miles per hour approximately. We traveled anywhere up
22 to 115. Somewhere up there.

23 Q This card you say that you showed him, how
24 big is that card?

25 A It's about the size of my wallet.

1 Q Did you show it to him or did you read it to
2 him?

3 A I read it to him.

4 Q Okay. And where was he standing? Was he in
5 the car, outside the car?

6 A He was handcuffed and laying on the ground.

7 Q He was handcuffed and laying on the ground?

8 A Yes, sir.

9 Q Was he moaning and groaning during this time?

10 A Yes, sir.

11 MR. NEWTON: No further questions at this
12 time, Judge. I do have a motion.

13 REDIRECT EXAMINATION

14 BY MR. THEM:

15 Q How much time elapsed from when you pulled
16 him out of the car and he was dazed before you started
17 asking him questions?

18 A When we pulled him out of the car, I would
19 say roughly a couple of minutes, several minutes.
20 Maybe four minutes, maybe.

21 Q When you were advising him of his rights, did
22 he appear dazed to you at that point in time?

23 A He appeared slightly dazed but nothing like
24 what he was when we first got him out of the car.

25 Q Okay. Did he appear to understand what you

1 were telling him?

2 A Yes, sir.

3 Q The responses that he gave you in response to
4 questions, were they addressing the question that you
5 had asked?

6 A From what I believed, sir, yes.

7 Q Okay. Now what else did he tell you other
8 than they had been smoking crack? Look at your report
9 if you feel the need.

10 A Okay. (Pause).

11 Uh, I asked him if he had any illegal
12 narcotics, paraphernalia or weapons inside the
13 vehicle. He said no. Uh, that's all I can see.

14 Q Okay. Thank you very much. I have no further
15 questions.

16 THE COURT: Thank you, sir.

17 MR. THEM: That's our case, Your Honor.

18 MR. NEWTON: I call Jackie Boyd.

19 JACKIE BOYD

20 having first been sworn, testifies as follows:

21 THE CLERK: State your name for the
22 record.

23 THE WITNESS: Jackie Lee Boyd.

24 THE CLERK: Please be seated.

25 DIRECT EXAMINATION

1 BY MR. NEWTON:

2 Q Mr. Boyd, how are you this morning?

3 A How are you, sir?

4 Q All right. You just heard the officer's
5 testimony.

6 A Yes.

7 Q In the incident in this case, you had just
8 been involved in a traffic collision, correct?

9 A Yes, sir.

10 Q High speed impact, hit a wall. Correct?

11 A Yes, sir.

12 Q What was your condition after that impact?

13 A Dazed. The officer approached me and another
14 officer and told me to get out the car with hands up.
15 I got out of the car with hands up. They drug me to
16 the back of the car. I don't remember him reading me
17 my rights.

18 Q Okay. That was my next question. That was the
19 next question I was going to ask you. Did he ever give
20 you what's called the Miranda warnings? You know, you
21 have the right to remain silent, anything you say --

22 A He did not.

23 Q He did not?

24 A I'm sure he did not.

25 Q You do not remember him saying anything like

1 that?

2 A He did not. He was too busy searching me and
3 checking me out.

4 Q Is it possible that he said that --

5 MR. THEM: Objection. Is it possible.

6 THE COURT: Okay. Rephrase the question.

7 BY MR. NEWTON:

8 Q You just don't remember him saying anything?

9 A No, sir.

10 Q Okay.

11 A I would have remembered.

12 Q Okay.

13 A I would have remembered him reading a card.

14 He did not. He was getting he out of the car. He asked
15 me was I alright and everything. He did ask me that.
16 He asked me did I have any drugs or anything in the
17 car. I said no. He asked me my name. I gave him my
18 correct name, Jackie Boyd. He called it in. It was
19 correct. He came back. He left the passenger in the
20 car unattended for about five or ten minutes. My door
21 was open.

22 Q Yes, sir. Did you go to the hospital after
23 this? Did they take you to the hospital?

24 A Yes, sir.

25 Q Okay. No further questions.

1 CROSS-EXAMINATION

2 BY MR. THEM:

3 Q You said you remember him reading you a card?

4 A No, I said I don't remember that. I would
5 have remembered --6 Q Oh, I'm sorry. Okay. Now, I believe you said
7 it was some four or five minutes after he pulled you
8 from the car that he talked to you?

9 A Yes, sir.

10 Q Some four or five minutes?

11 A Yes, sir.

12 Q And you remember him asking you about drugs
13 and paraphernalia in the car?14 A Yes, sir. He asked me did I -- kind of. He
15 asked me did I have any drugs or any weapons in the
16 car.

17 Q Okay.

18 A I do remember that part.

19 Q Did you answer that?

20 A I told him no.

21 Q Okay. Did he talk to you about paraphernalia?
22 Pipes, stems, rods, steel wool. Did he talk to you
23 about that? Was any of that in the car?24 A Yeah, he asked was it in the car. He was
25 mainly talking about weapons and drugs.

1 Q Okay. Did he ask you about that stuff?

2 A He asked for weapons and drugs.

3 Q Okay. I'm not asking that question. Let me
4 try again. Did he ask you about the paraphernalia that
5 you said was in the car?

6 A He didn't ask me that.

7 Q Did he ask you about the pill bottle that he
8 had found?

9 A No, sir. It wasn't a pill bottle when he
10 first came and got me out the car. Two officers
11 approached me and told me to get out with my hands up.
12 I got out with my hands up. They were admonishing my
13 every move.

14 Q Okay.

15 A So when I got out, he said the pill bottle
16 was right there on the ground.

17 Q Uh-huh.

18 A That couldn't have been me. They would have
19 noticed that right then and there. They took me in the
20 back of the car for five minutes and left the
21 passenger unattended and came back with her. That's
22 when -- you can see on the picture. They left the
23 driver's door open. She tossed it on the other side.
24 She --

25 Q She tossed it?

1 A Yes, sir.

2 Q What did she toss?

3 A The, uh, bottle.

4 Q The pill bottle?

5 A Yes, sir.

6 Q You see her toss it?

7 MR. NEWTON: Your Honor, this is not
8 relevant to the Jackson v. Deno.

9 THE WITNESS: The thing about it, sir, I
10 didn't see her toss it but the door was left
11 open. The officers seen clearly that the pill
12 bottle wasn't there when he first came and got me
13 out of the car. I was at the back of the car
14 apprehended. There was no way that I could have
15 put that bottle right there. She was left
16 unattended. If you look at the picture, she was
17 left --

18 MR. NEWTON: I object.

19 THE WITNESS: She was left in the car --

20 MR. NEWTON: I don't think my client
21 understands that this is just a Jackson v. Deno
22 hearing, Judge.

23 THE WITNESS: Oh, I'm sorry.

24 MR. NEWTON: This is just a Jackson v. Deno
25 hearing. The current line of questioning is not

1 relevant to --

2 THE COURT: All right. I will sustain it.

3 MR. NEWTON: Thank you.

4 BY MR. THEM:

5 Q Did you just say that you saw her throw the
6 pill bottle over the car?

7 A No, I didn't.

8 MR. NEWTON: Objection.

9 THE WITNESS: I did not see her. I did not
10 see her, sir. It wasn't there.

11 THE COURT: All right. Go on.

12 THE WITNESS: Listen to what I'm saying,
13 sir. I said the officer came and got me out of
14 the car. They watched my every move and told me
15 to put my hands up. When I stepped out of the
16 car, there was nothing there. When they came back
17 later on and searched the car, the bottle was out
18 there on the ground. I'm saying she had to be the
19 one. She was the only one at the car.

20 MR. NEWTON: Mr. Boyd.

21 THE WITNESS: Sir?

22 MR. NEWTON: Please. The judge has directed
23 that you do not have to answer that question.

24 THE WITNESS: I'm just telling the truth,
25 sir. I'm just letting you know that the bottle --

1 MR. NEWTON: We'll get into that later in
2 the trial.

3 THE WITNESS: Okay.

4 MR. NEWTON: This is not the trial.

5 BY MR. THEM:

6 Q Now, you were treated and released at the
7 hospital, weren't you?

8 A Yes, sir.

9 Q You didn't spend any night at the hospital?

10 A Didn't have a scratch on me.

11 Q Okay. Were you convicted or did you plead
12 guilty to Possession of a Schedule 1 Drug on or about
13 -- strike that please. Let me rephrase. Were you
14 convicted of Possession of Less than 1 gram of Crack
15 Cocaine on or about August 17th, 1995?

16 MR. NEWTON: Objection. How is this
17 relevant to the issue of --

18 MR. THEM: It goes to his credibility,
19 Your Honor. Prior record.

20 THE COURT: I'll allow it.

21 BY MR. THEM:

22 Q Were you?

23 A Uh-huh.

24 Q Did you receive a sentence of five years
25 probation?

1 A Yes, sir. Two years and five years probation.

2 Q You served all five years of the probation?

3 A Yes, sir.

4 Q Successfully completed it?

5 A Yes, sir.

6 Q All right.

7 A I will admit it. I do have a drug problem.

8 Q Were you also charged and convicted on
9 December the 10th, 1990 -- just one second. Strike
10 that. Nothing further.

11 MR. NEWTON: No questions. No further
12 questions.

13 THE COURT: You can step down.

14 MR. NEWTON: I have no further witnesses.

15 MR. THEM: Your Honor, obviously a person
16 that was in a car crash and was probably bruised
17 up pretty badly, fortunately the seatbelt saved
18 his life, would have been in a daze for a brief
19 period of time. But he said in his own words it
20 was some four to five minutes before the police
21 started talking to him. He was able to respond
22 intelligently to the questions put to him by the
23 police officer. The police officer indicated that
24 he appeared to understand his rights. He waived
25 his rights and started answering questions. I

1 believe it is a question for the jury to
2 determine as opposed to the court on the
3 admissibility issue. I believe it should be
4 allowed to go forward.

5 THE COURT: What is the confession of
6 statement that applies to what he is charged with
7 here today?

8 MR. THEM: That they were smoking crack
9 cocaine in the car.

10 THE COURT: He wasn't charged with having
11 possession of cocaine. He's charged with
12 trafficking cocaine.

13 MR. THEM: I understand that, Your Honor.
14 If I could, that's going to be my next motion.

15 THE COURT: I heard the police say that he
16 denied that there were any drugs in the car.

17 MR. THEM: That's correct. Your Honor, I
18 will call your attention to the statute. I have
19 highlighted them if I could hand them up. I'm
20 going to cite for you the trafficking statute
21 that says 10 grams or more of cocaine or any
22 mixtures containing cocaine as provided in
23 Section 44-53-210(b)(4).

24 That statute, the 44-53-210(b)(4) says the
25 control substance are coca leaves and any salt

1 combine, derivative or preparation of coca leaves
2 thereof which is chemically equivalent or
3 identical with any of these substances. So I
4 maintain that the possession of the crack cocaine
5 and we have lab tests to show that should be
6 added to the more than 10 grams of cocaine that
7 he has to give it some 13 to 14 grams of cocaine
8 and its derivatives. He's admitting that he's had
9 possession of one of the derivatives of cocaine
10 in the form of crack cocaine. I can hand up the
11 statute if the Court would like to look at it.

12 THE COURT: Are you saying he agreed that
13 he had possession of 10 grams or more of cocaine?

14 MR. THEM: No, sir. I'm saying that he
15 agreed that he had possession of some crack
16 cocaine that night that he had been smoking and
17 that crack cocaine is a derivative of cocaine and
18 comes in under the statute.

19 THE COURT: I didn't hear the officer
20 testify that he admitted to having possession. I
21 heard him say that he had been smoking.

22 MR. THEM: Yes, sir. Well, smoking
23 implies that you got to have possession. You've
24 got to have it in your hand to control it to
25 smoke it, Your Honor.

1 THE COURT: Well, he's not charged with
2 possession of it. He's charged with trafficking.
3 I really don't see any problem with the testimony
4 that I heard. I just don't think it is really a
5 confession. He stated that he was using, he had
6 been using crack cocaine. That's all that I
7 understood him to say.

8 MR. THEM: Yes, sir. But the statute
9 says --

10 THE COURT: I'm --

11 MR. THEM: I'm not understanding the
12 Court's question. Are you in effect saying you
13 are going to allow it in or you are not going to
14 allow it in?

15 THE COURT: I'm saying I'm not going to
16 disallow it.

17 MR. THEM: Okay. With that, I'll sit
18 down.

19 THE COURT: At this point. Mr. Newton, I
20 don't think he was dazed to the extent that he
21 didn't know what had happened. He was going into
22 some detail that he really knew what was
23 happening at the scene. He had his hands up. I'm
24 going to submit it to the jury.

25 MR. THEM: Next problem, Your Honor,

1 about the statute. According to the lab, he had
2 4.37 grams of crack and 10.9 grams of coke. I
3 maintain pursuant to the statutes that I just
4 read -- if I can hand them up. I've highlighted
5 them -- that I'm entitled to aggregate those in
6 my arguments to the jury which would give me some
7 almost 15 and a half grams of cocaine.

8 THE COURT: Give me those weights again.

9 MR. THEM: 10.9 grams of coke and 4.37
10 grams of crack.

11 MR. NEWTON: Your Honor, I think the
12 legislature itself tells us to treat these drugs
13 as separate drugs. They have separate penalties.
14 Crack is treated differently as cocaine.
15 Therefore, it's highly improper now to try to
16 combine them as the same substance. He's not on
17 trial for possession of crack cocaine. He's on
18 trial simply for trafficking of powder cocaine.

19 THE COURT: Okay. My ruling is the state
20 legislature has chosen to treat them both as
21 separate crimes. Crack cocaine is one crime.
22 Cocaine is another. You would have to go on the
23 10.9 grams of cocaine.

24 MR. THEM: Next matter, Your Honor. It
25 may come out in testimony and I want to ask the

1 Court to prohibit it from coming out in testimony
2 that when one of the police officers interviewed
3 the passenger in the car who is going to be a
4 State's witness, she supposedly said that she was
5 a prostitute. I maintain that that is totally
6 irrelevant, has nothing to do with the charges
7 and the defense should be prohibited from any way
8 attempting to elicit any testimony that she said
9 to anyone that she was a prostitute. It's
10 strictly character assassination of a State's
11 witness.

12 THE COURT: I can't rule on that in the
13 dark. I have got to wait til we get to that point
14 in the trial. I don't know if it is to be
15 connected with drug use or drugs being in the
16 car. I just have to wait until I've heard the
17 testimony. I can't make a preliminary ruling on
18 that right now.

19 Of course, you can't put the character of the
20 victim and the character of the accused. There's
21 pretty strict parameters on that. If it were
22 connected with drug use, it may be admissible. I
23 can't rule at this particular point. You and I
24 see a lot of cases that come to court involving
25 prostitution and like that. Some of it is drug

1 connected. We will just have to cross that bridge
2 when we get there.

3 MR. THEM: Would you consider instructing
4 counsel prior to asking that question --

5 THE COURT: I will tell him to look at the
6 rules in regards to characters of victims and
7 characters of Defendants.

8 MR. THEM: She's not a victim, Your
9 Honor. She's a witness.

10 THE COURT: I'm not -- victim, character
11 of a witness. The character of the witness, the
12 character of any witness. You shouldn't attack
13 the character unless it has some relevance.

14 MR. THEM: What I'm concerned about, Your
15 Honor, is if counsel reads it and gives it a
16 reading and ask the question and I object, the
17 cat is already out of the barn. The cat's already
18 out of the whatever. The horse is out of the
19 barn. I'm mixing my metaphors. Excuse me. I'm
20 concerned with somewhat irreparable damage.

21 THE COURT: Well, Rule 608 controls you --
22 I'll tell Mr. Newton that -- under Rules of
23 Evidence as far as character goes. Whenever you
24 think it is going to come up, we can take it
25 outside the presence of the jury. That's the only

1 thing I can tell you.

2 **MR. THEM:** Thank you. Finally, Your
3 Honor, when this witness testifies, her criminal
4 record will probably be an issue. If I could hand
5 up her RAP sheet. On the second page of the RAP
6 sheet, it shows she was sent to the Women's -- is
7 this thing feeding back?

8 **COURT REPORTER:** You are fine. You are okay.

9 **THE COURT:** It's okay.

10 **MR. THEM:** Your Honor, on the bottom of
11 the first page, it shows she was admitted to the
12 Women's R&E Center. On the next page, it shows
13 for a charge of Assault and Battery of High and
14 Aggravated Nature. It says court disposition,
15 convicted. Family Court not to exceed her 21st
16 birthday. I realize that Assault and Battery of
17 High and Aggravated Nature is a crime that's
18 punishable of more than one year. I realize that
19 a juvenile record can be used to impeach someone.
20 I take the position that while that conviction
21 satisfies the first prong for impeachment of a
22 witness, that it's prejudicial value outweighs
23 its probative value.

24 The crime of a juvenile committing Assault
25 and Battery of High and Aggravated Nature has

1 nothing to do with honesty or belief. It shows a
2 volatile youth that evidently attacked someone or
3 improperly touched someone. I maintain the
4 prejudicial value outweighs the probative value.
5 I would ask the Court to rule that she can not be
6 impeached on that.

7 THE COURT: Mr. Newton.

8 MR. NEWTON: Your Honor, frankly, I don't
9 see how this is anymore prejudicial than any
10 other case or crime. It's all under the statute
11 or the Rules of Evidence that we will try to get
12 in. It's no more prejudicial than any other. It's
13 pretty much standard.

14 THE COURT: I would overrule the
15 objection.

16 MR. NEWTON: Thank you, Your Honor.

17 MR. THEM: Moving to the next page, Your
18 Honor, would show a conviction on court charge
19 number 1 for Resisting Arrest convicted one year.
20 I maintain that she was evidently sentenced under
21 Section A of the statute which carries a maximum
22 of one year whereas Section B talks about
23 violence of the officer which is a much more
24 serious crime. I would maintain that he should
25 not be allowed to impeach her on the Resisting

1 Arrest unless he has some documentation to show
2 that it was a Section B as opposed to a Section
3 A.

4 MR. NEWTON: To address that, Judge, the
5 prosecutor's own RAP sheet shows that it was one
6 year suspended during probation. What he just
7 handed to the judge verifies that.

8 MR. THEM: The evidence rule talks about
9 more than a year, Your Honor, rather than one
10 year.

11 THE COURT: All right. I would sustain the
12 objection to that. It's not more than one year.
13 It says in excess of one year.

14 MR. NEWTON: Okay.

15 THE COURT: Can not impeach her on that
16 one.

17 MR. THEM: The next thing listed on
18 there, Court charge number 2, possession of one
19 gram of meth, obviously, that is an impeachable
20 offense. I told Mr. Newton I would not oppose
21 that. The third charge, Possession of Other
22 Controlled Substances, Schedule 1, first offense,
23 that's a six-month offense, Your Honor.

24 THE COURT: Okay. Can't use that one.

25 MR. THEM: With that in mind, I have

1 nothing further.

2 MR. NEWTON: No motions.

3 THE COURT: Okay. Five minutes and we will
4 start the trial.

5 MR. THEM: Oh, excuse me, Your Honor. Mr.
6 Newton and I have an agreement. I just want to
7 bounce it off the court. This is an aerial map or
8 photograph from County Mapping Service and shows
9 the path of the pursuit of the vehicle. It starts
10 here in Easley near Wal-Mart. It continues on the
11 Clemson Highway out to Cartee Road.

12 Unfortunately, this aerial photograph is old.
13 It's the only one the county had. It does not
14 show improvements to the Cartee Road Exit. I
15 believe Mr. Newton and I have agreed that if I
16 limit the reason for introducing this to show the
17 path and the distance of the pursuit and if I
18 bring out that this interchange up here is not
19 properly reflected on the photograph that he
20 would not object. Is that correct?

21 MR. NEWTON: That's correct, Judge.

22 THE COURT: Y'all do that.

23 MR. THEM: Good enough.

24 (WHEREUPON, a short recess is taken.)

25 (WHEREUPON, the jury enters at approximately

1 10:27 a.m.)

2 **THE COURT:** Ladies and Gentlemen, we've
3 been here. We've been working. We're ready to
4 start this trial now. If you would stand and
5 raise your right hand please, the clerk will
6 swear you to try the case. Please respond by
7 saying "I will" when you take the oath. All
8 right. Raise your right hand.

9 Madam Clerk.

10 **THE CLERK:** You shall well and truly try
11 the issue joined in the case of the State versus
12 Jackie Lee Boyd and a true verdict render
13 according to the law and the evidence so help you
14 God?

15 (WHEREUPON, each juror responds affirmatively.)

16 **THE COURT:** All right. Ladies and
17 Gentlemen of the jury, we are about to begin the
18 trial between the State and Jackie Lee Boyd.
19 Ladies and Gentlemen, this case comes to court on
20 these two pieces of paper which I hold in my
21 hand. They are called indictments. This is what
22 brings the case to court and what you will
23 eventually report your verdict on the back of
24 these pieces of paper. Now, the fact that someone
25 has been charged and arrested is not evidence of

1 their guilt.

2 These indictments or pieces of paper are not
3 evidence in the case. They are just simply the
4 paperwork that brings the case to court and
5 eventually you will report your verdict and we
6 will file it with the court and keep it as a
7 court record.

8 To these indictments, Mr. Boyd has pled not
9 guilty. One is charged with Trafficking in
10 Cocaine on December the 3rd of 2007. The other
11 one is Failure to Stop for a Police Vehicle on
12 December the 3rd of 2007. He has pled not guilty
13 to both of these charges.

14 His plea of not guilty places the burden of
15 proof upon the State of South Carolina to prove
16 him guilty beyond a reasonable doubt. A person
17 charged with a crime in South Carolina,
18 regardless of what the crime is, is always
19 presumed to be innocent of those charges until
20 the State proves him guilty beyond a reasonable
21 doubt.

22 Now, Ladies and Gentlemen, you are the sole
23 judges of the facts of this case. You determine
24 the facts of this case based on the evidence and
25 testimony you hear in the courtroom. And you pass

Opening Statements by the Court

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1 upon the credibility and the believability of
2 each and every witness regardless of who that
3 witness is.

4 Now, please keep an open mind throughout the
5 trial. You have to evaluate the case as we go
6 along and as you hear the evidence and testimony.
7 But do not make up your mind as to what the
8 verdict should be until you have heard all the
9 evidence and testimony and I go over the law with
10 you and you start deliberating and then you say
11 this should be the verdict or should not be the
12 verdict. Also, remember, do not discuss the case
13 with anyone until the case is over and I tell you
14 to begin your deliberations in the jury room.

15 Now, we begin the trial with opening
16 statements. If the attorneys care to make an
17 opening statement, they may. After the opening
18 statements, you will hear the evidence and
19 testimony from which you will decide the facts.
20 After the evidence and testimony is in, the
21 lawyers can make their summations. After that, I
22 will go over the law with you that applies to
23 this case. Then you will go back and deliberate
24 until you reach unanimous verdict.

25 We have an alternate juror. You are a juror

1 just like the other twelve individuals are. You
2 are just the same. If they were to get sick or a
3 family member gets sick or have an emergency of
4 some time, you would have to fill their spot. So
5 up until they begin deliberation, you are a juror
6 just like every one else.

7 We will begin this trial with opening
8 statements if there are no objections to anything
9 I said. We will start with the State. Mr. Them.

10 MR. THEM: No objections on behalf of the
11 state.

12 MR. NEWTON: No objections.

13 THE COURT: All right. Mr. Them.

14 MR. THEM: Good morning. I'm Pete Them.
15 I'm with the Solicitor's Office. I will be
16 presenting the evidence in this case on behalf of
17 the State of South Carolina. The Defendant is
18 charged with two separate, but the evidence will
19 probably show interrelated crimes. The first
20 crime is what we call Failure to Stop for a Blue
21 Light. When a police officer gets behind you and
22 activates his blue light and siren, the law in
23 this state requires that you stop.

24 On the dates we are talking about in December
25 approximately a year ago, this officer got behind

1 this Defendant with blue lights and sirens and
2 tired to pull him over. He would not stop. They
3 had a chase of some four miles reaching speeds at
4 over 100 miles and hour. The chase ended in a
5 collision against a rock wall at the entrance to
6 the County Industrial Park off Cartee Road and
7 Highway 123 on the Clemson Highway.

8 After the officers got up to the car, spoke
9 to the Defendant and his passenger and
10 ascertained that their physical health was such
11 that they at least appeared to be okay, they took
12 the Defendant into custody and began a search of
13 the car for weapons and things of that nature.
14 They also advised the Defendant of his
15 constitutional rights. And based on statements
16 that he made, they searched the car.

17 When they searched the car, they found all
18 sorts of drug paraphernalia in the car. The
19 Defendant made some statements that you will hear
20 about shortly. And right where the car door on
21 the driver's side opens out, they looked on the
22 ground and they saw a brown pill bottle like you
23 get at any pharmacy for any prescription
24 medication that you've taken.

25 It had been raining off and on that night.

1 The ground was wet. This officer, Officer
2 Benjamin, picked up the bottle and immediately
3 noticed it was dry. He looked at the contents of
4 the bottle and thought that it may be illegal
5 drugs. He kept it in close and safe confinement
6 until he turned it over to the evidence locker
7 which you will hear about at the Easley Police
8 Department where it was taken by the evidence
9 custodian over to Greenville and tested by
10 skilled chemists working for the Greenville
11 Department of Public Safety. You will hear their
12 testimony as to the results of the findings they
13 made of what was in the bottle.

14 The key issue in this case -- obviously both
15 crimes are an issue. But the key issue that you
16 will be confronted with was did the Defendant
17 have knowing and willful possession of that
18 bottle that was found on the ground. Pay
19 particular attention to exactly where it was
20 found, where the Defendant was, whether or not
21 the window was up or down on both sides of the
22 car.

23 At the conclusion of this case, you are going
24 to be asked to decide did the Defendant possess
25 more than ten grams of cocaine which would

1 entitle you if you wanted to, you don't have to
2 but if you wanted to to return a verdict of
3 trafficking in cocaine. You will also have to
4 decide whether or not the Defendant ran from the
5 police officer when he had his blue light and his
6 siren activated.

7 At the conclusion of this case, if you are
8 not satisfied that this Defendant is guilty of
9 these charges, you have a duty to vote not
10 guilty. But on the other hand, if you are firmly
11 convinced based on the evidence that we present
12 to you that he is guilty of these charges, return
13 that verdict and let him be dealt with according
14 to the law. Thank you very much.

15 THE COURT: Mr. Newton.

16 MR. NEWTON: May it please the Court, Your
17 Honor.

18 THE COURT: Yes, sir.

19 MR. NEWTON: Ladies and Gentlemen, I thank
20 you for being here. My name is Robert Newton. I
21 have the pleasure of representing Jackie Boyd
22 this morning. I agree with some of what Mr. Them
23 has just told you. I disagree with other parts.

24 First of all, let me say, get it out of the
25 way right now that my client is guilty of Failure

1 to Stop for Blue Light. That's not why we are
2 here today. He has never denied guilt on that
3 charge. The issue before you today is who had
4 possession of drugs. It's our position that the
5 drugs that were found belongs to a passenger that
6 was in the vehicle. I believe the evidence as it
7 comes out will show that.

8 Now, what Mr. Them just said and what I'm
9 telling you is not evidence. It's a fair
10 summation of what we believe happened based upon
11 the information that we have. The only evidence
12 in the case is what comes from that chair right
13 there, sworn testimony under oath. That's what
14 you should pay attention to. You'll hear from a
15 number of witnesses.

16 The burden is on the State, of course, to
17 prove my client guilty beyond a reasonable doubt.
18 Mr. Boyd does not have to prove anything. It's up
19 to the state to prove that he possessed those
20 drugs, they were his beyond a reasonable doubt.
21 Thank you.

22 THE COURT: Okay. Mr. Them, call your
23 first witness.

24 MR. THEM: Officer Jeremy Benjamin.

25 JEREMY BENJAMIN

1 having first been sworn, testifies as follows:

2 **THE CLERK:** State your full name for the
3 record.

4 **THE WITNESS:** Jeremy David Benjamin.

5 **DIRECT EXAMINATION**

6 **BY MR. THEM:**

7 **Q** Officer Benjamin, where are you employed,
8 sir?

9 **A** The City of Easley Police Department.

10 **Q** How long have you worked there?

11 **A** Approximately five years.

12 **Q** Okay. Have you attended and successfully
13 completed the course of study at the Criminal Justice
14 Academy?

15 **A** Yes, sir.

16 **Q** Are you a certified police officer in the
17 state of South Carolina?

18 **A** Yes, sir.

19 **Q** Let me call your attention to the night of
20 December the 3rd, 2007. Were you employed at the
21 Easley Police Department then?

22 **A** Yes, sir. I was.

23 **Q** Were you on duty that night?

24 **A** Yes, sir.

25 **Q** Did anything unusual happen that night in the

1 late night hours?

2 A Yes, sir.

3 Q What?

4 A Myself and another officer were sitting in a
5 parking lot talking. We saw a vehicle traveling
6 southbound with one headlight. We were within the city
7 limits of Easley near the Wal-Mart exit ramp. And the
8 vehicle passed us. We pulled -- I pulled in behind the
9 vehicle. I was going to pull it over and just write
10 him a warning like I always write warnings for
11 headlights being out. And activated my blue lights.
12 Still within the city limits of Easley near the bridge
13 that crosses over Pendleton Street which is, which
14 leads down to Liberty. I activated my blue lights
15 there.

16 The vehicle continued traveling approximately
17 the speed limit up til the city limit sign. I had my
18 siren activated also. At that time, the vehicle began
19 to speed up. We reached speeds of approximately 100,
20 anywhere between 100 and 120 miles an hour. We had
21 about 115 miles per hour. We traveled approximately,
22 from the time I activated my blue lights to where the
23 collision occurred, was right about 3.7 miles.

24 We were traveling down 123. We were in the
25 lane close to the center median. Several times the

1 vehicle swerved over and went into the grass a little
2 bit. Almost lost control. I straddled several times.
3 When we got down to the exit ramp at Cartee Road, uh,
4 I thought he was going to go straight --

5 Q Stop right there, sir.

6 A Okay.

7 Q Can you describe the weather conditions for
8 us that night?

9 A Yes, sir. It was raining off and on
10 throughout the night. It had rained previously in the
11 evening. It was not raining at that time.

12 Q Okay.

13 A It was just overcast right then.

14 Q Now, the officer that you were talking to,
15 what was his name again?

16 A Connor Shivers.

17 Q Okay. Were y'all in the same car or separate
18 cars or what?

19 A We were in separate vehicles.

20 Q When you pulled out to check on this burned
21 out headlight, did Officer Shivers follow you?

22 A Yes, sir. He did.

23 Q Okay. Did he participate in this chase that
24 you described?

25 A Yes, sir. He was behind me.

1 Q Okay. And the chase that you are talking
2 about, did that take place here in Pickens County?

3 A Yes, sir. It did.

4 Q Okay. And if you would, step down here
5 please, sir. I'm going to show you a document that's
6 marked State's Exhibit number 1 and ask you have you
7 ever seen this before.

8 A Yes, I have.

9 Q Okay. What is it?

10 A It's a map.

11 Q Of what?

12 A A map of Highway 123 in the city limits of
13 Easley. It's Calhoun Memorial Highway.

14 Q Okay. And indicated on this map is the place
15 where you and the other officer were when you first
16 saw the car. Is that indicated on this map?

17 A Yes, sir.

18 Q Okay. And the place where the car crashed, is
19 that indicated on this map?

20 A Uh, yes.

21 Q Now, this map came from County Mapping
22 Service and appears to have some age on it. Is the
23 portion of the map where the accident actually
24 occurred correct as it was on the night you were
25 there?

1 A No, sir. It's not.

2 Q Why is it incorrect?

3 A The exit ramp has not been built where the
4 vehicle accident occurred.

5 MR. THEM: Your Honor, subject to that, I
6 would move to admit this document into evidence.

7 MR. NEWTON: No objection.

8 THE COURT: Without objection.

9 (WHEREUPON, State's Exhibit 1 is admitted into the
10 record.)

11 BY MR. THEM:

12 Q Now, would you orient us as to what, where
13 and...

14 A This right here is Calhoun Memorial Highway,
15 Highway 123. This is Pendleton Street. Easley High
16 School is up here. And Wal-Mart is right here if you
17 know where Wal-Mart is. And myself and, uh, Officer
18 Shivers was sitting right here. It was called Victory
19 Lane Auto Sales at that time. Now, it's called Family
20 Auto, I believe. We were sitting in the parking lot
21 right here just talking.

22 The vehicle was traveling southbound on 123
23 coming up this direction up a hill. We were sitting
24 right here. I saw the vehicle. We were traveling
25 southbound on 123 toward Clemson. We got to the bridge

1 here. Right about when I got to the bridge, when I got
2 pass the bridge between there ---

3 Q This thing you are calling the bridge.

4 A Yeah. It's the bridge where Highway 123 goes
5 over Highway 135 where Wal-Mart is.

6 Q Okay. Good. Thank you.

7 A When I got pass this bridge, between the
8 bridge, I activated my blue lights. We traveled a
9 short distance. Usually, I don't activate my siren
10 immediately. Most people will stop for blue lights. We
11 traveled a short distance. Right about this exit, I
12 activated my siren. He was still traveling the speed
13 limit at that time, maybe a little bit over but not
14 nothing considerable. When we got to the city limit
15 sign, which I can't point that out on this map very
16 well. It may be 300 yards pass, three or four hundred
17 yards pass Ross Avenue exit.

18 Q Ross Avenue exit leads where?

19 A Ross Avenue connects with Liberty Highway.

20 Q Okay.

21 A Which goes into Liberty. Highway 93.

22 Q Okay.

23 A It began to speed up around the city limits
24 sign. It's relatively fast. I stayed behind the
25 vehicle. We traveled down Highway 123. We maintained

1 speeds right about 100 miles an hour. I do know that I
2 looked down at the speedometer one time. I was
3 traveling about 115.

4 Q At what point in time did you activate your
5 siren?

6 A I activated my siren shortly after I passed
7 Ross Avenue.

8 Q Okay.

9 A I was still in city limits of Easley.

10 Q All right.

11 A We traveled down Highway 123. Continued
12 traveling. We struck the center. There's a grass
13 median here which you can't see on this map. Uh, the
14 driver side of the vehicle struck the grass median
15 several times. Almost lost control right at two times.
16 Never did lose full control of the vehicle. We kept
17 going down 123. When we got down to the Cartee Road
18 exit. I'm going to come over this way.

19 Q Hold on just a second.

20 A Okay. Do you want me to draw with this --

21 Q Hold on just a second.

22 A -- just down here.

23 Q I'm going to get you to draw some stuff at
24 the Cartee Road exit when we get there.

25 A Okay. We're traveling down 123. Right when we

1 get to 123 where Cartee Road exit to the Pickens
2 County Commercial Park, it appeared that he was going
3 to drive straight. Then he took a real quick right
4 turn onto the exit ramp. We were traveling at that
5 time about 100 miles an hour. Of course, he slowed
6 down as we were going up the exit ramp.

7 Q Let me cut you off if I could. Could you show
8 us the path of the exit ramp?

9 A Sure. You want me to draw on this map,
10 correct?

11 Q Please.

12 A It pretty much follows this line right here.
13 It comes off here and it goes straight up to Cartee
14 Road just like that.

15 Q Okay. Can you circle that so we know where we
16 are? This whole area.

17 A This whole area.

18 Q Thank you. Okay. Now, when the car got off at
19 that exit ramp, what's at the top of that exit ramp?
20 Can you go over and across or what?

21 A No, you can't go over and across it. It's a T
22 intersection.

23 Q Okay.

24 A You come up. You can either go right or left.

25 Q What happened when the car reached the T

1 intersection?

2 A He was still traveling at a very high rate of
3 speed. He just continued to go straight. He went
4 through the T-intersection. Went on to a grassy area
5 and struck a rock wall.

6 Q How far on that grassy area did he travel
7 from the edge of the road before it struck the rock
8 wall?

9 A About 50.

10 Q And how close were you to what was going on?

11 A I was in very close proximity. My vehicle
12 actually stopped at the edge of the grassy area and
13 Cartee Road.

14 Q Okay.

15 A That's where my vehicle stopped.

16 Q All right. Now, can you show us with an X on
17 this map where approximately the car struck that wall?

18 A I'm just going to put it right there.

19 (Drawing).

20 Q Okay. And can you underline Cartee Road, the
21 name of it right there?

22 A Yeah. (Drawing).

23 Q Now, would you step back up into the witness
24 chair please, sir?

25 A Thank you.

1 Q Did you see the car strike the wall?

2 A Yes, sir. I did.

3 Q What happened when the car struck the wall?

4 A The wall was, if I can show you like this,
5 the wall was sitting like this. The vehicle came up.
6 Struck the wall at a little bit of an angle. The back
7 end of the vehicle came up off the ground a little bit
8 and laid back down.

9 Q Okay.

10 A And myself, I pulled up to the, I pulled up
11 right there to the grassy area and Cartee Road. And
12 Officer Shivers pulled up beside me. And I exited my
13 car and went up to the driver's side of the vehicle
14 with my pistol drawn for my safety and the safety of
15 everybody else. The driver was there. He seemed
16 disoriented. Both air bags had deployed inside the
17 car. We were yelling at him telling him to get out of
18 the vehicle. He had his arms up. The window was rolled
19 down.

20 Q The window was rolled down on which side of
21 the car?

22 A On the driver's side of the car.

23 Q Do you remember whether or not the window was
24 rolled down on the other side of the car?

25 A No, sir. I don't.

1 Q Okay.

2 A The door was opened. I don't remember exactly
3 who opened up the door. I don't remember if Mr. Boyd
4 opened the door or if I opened up the door. The door
5 was opened up. Officer Shivers grabbed him. I kept the
6 gun pointed. Pulled him out of the vehicle. We got him
7 down on the ground. He was handcuffed and placed under
8 arrest.

9 Q Did you search him?

10 A Uh, yeah. After we had him, after we
11 handcuffed him, then we searched him. Patted him down
12 for guns and weapons.

13 Q Okay. I wanted to show you two photographs
14 marked State's Exhibit number 2 and number 3 for
15 identification purposes only at this time. Try not to
16 handle the print part of it because they bleed a
17 little bit I am told.

18 A Okay.

19 Q Can you tell me what State's Exhibit number 2
20 represents?

21 A This is what the vehicle looked like after
22 the collision.

23 Q Okay. Does the rock wall appear in that
24 picture?

25 A Yes, sir. It does.

1 Q Okay. And from what side of the car is that
2 picture taken?

3 A This is from the driver's side of the
4 vehicle.

5 Q And the next one?

6 A The next one is the same vehicle, same rock
7 wall. This is taken from the driver's side also.

8 Q Okay. Do those two photographs fairly and
9 accurately reflect how that vehicle appeared that
10 night immediately after the crash?

11 A Yes, sir.

12 MR. THEM: Your Honor, at this point in
13 time, I would move to admit these two photographs
14 into evidence.

15 MR. NEWTON: Without objection.

16 THE COURT: Without objection, they are in
17 evidence.

18 (WHEREUPON, State's Exhibits 1 and 2 are admitted
19 into the record.)

20 BY MR. THEM:

21 Q Now, after you got the Defendant out of the
22 car, what did you do? Excuse me. After you got the
23 driver out of the car, what did you do?

24 A We had him on the ground. We placed him in
25 handcuffs. The first thing we did was, I was trying to

1 see if he was okay. I was making sure he was okay and
2 wasn't injured. I didn't see any severe injuries, no
3 blood. He seemed slightly disoriented. He was advised
4 of his Miranda rights.

5 Q All right. Stop right there a second. The
6 person that you pulled out of that car, handcuffed,
7 searched and advised of his Miranda rights, is he in
8 the courtroom here today?

9 A Yes, sir.

10 Q Would you point him out to me please.

11 A He's sitting over there in the blue shirt.

12 MR. THEM: Let the record reflect that
13 the witness is pointing at the Defendant.

14 BY MR. THEM:

15 Q You said you advised him of his Miranda
16 rights. Tell me what that means.

17 A Yes, sir. It's an advisement that we read to
18 Defendants. It's an advisement of their rights that
19 they have the right to not answer any questions.

20 Q Okay. How do you go about doing that? Is
21 there a process you use?

22 A Yes, sir. There's a card that I carry with
23 me.

24 Q Do you have that card with you today?

25 A I'm sure I do. I put it back in my wallet.

1 I've got it with me. It's on the bench. Sorry. Thank
2 you, sir.

3 Q You want to hold on to your wallet?

4 A Yes, sir.

5 Q Okay. You have the card with you?

6 A Yes, sir.

7 Q Is that the same card you had that night?

8 A Yes, sir.

9 Q You always carry that card with you?

10 A Yes, sir. I've had it several years.

11 Q Okay. Tell me what procedure you used that
12 night to advise this young man of his rights.

13 A It was read verbatim.

14 Q Would you read it to me now verbatim? Word-
15 for-word.

16 A Yes, sir. You have the right to remain
17 silent. Anything you say can and will be used against
18 you in a court of law. You have the right to talk to
19 an attorney and have him or her present with you while
20 you are being questioned. If you can not afford to
21 hire an attorney, one will be appointed to represent
22 you before any questioning if you want. You can decide
23 at any time to exercise these rights and not answer
24 any questions or make any statements. Do you
25 understand these rights I have explained to you?

1 Q And what was his response as to whether or
2 not he understood those rights?

3 A Based off of what I could tell, he understood
4 them.

5 Q Tell me -- can you tell me what he did or
6 said that lead you to that conclusion?

7 A Pretty much a nod.

8 Q A nod of the head. And did you begin to ask
9 him any questions at that time?

10 A I asked him -- yeah, I was asking him was he
11 okay, if he needed EMS.

12 Q What were his responses to that?

13 A He stated that he did which we called for.

14 Q Okay. Okay.

15 A And I asked him if he had any guns, any
16 weapons or drugs inside his vehicle.

17 Q What was his response to that?

18 A He said no. That was really about the extent
19 of it.

20 Q Okay. Did he make any statements just
21 blurting them out to you?

22 MR. NEWTON: Objection. This involves the
23 issue we discussed before the trial, Judge,
24 regarding a particular statement.

25 MR. THEM: May we approach, Your Honor?

1 THE COURT: Yes, sir.

2 (WHEREUPON, a bench conference is held off the

3 record.)

4 BY MR. THEM:

5 Q Did the Defendant blurt out any statements to

6 you about anything else that happened that evening?

7 A Yes, sir.

8 Q What?

9 A He stated that they were smoking crack

10 cocaine about 30 to 45 minutes prior to the pursuit.

11 Q Okay. And had y'all searched the car by this

12 time?

13 A Uh, no.

14 Q Okay. Based on those statements from the

15 Defendant, did you conduct a search of the car?

16 A Yes.

17 Q I want to show you two bags, sir. The first

18 one is State's Exhibit number 5 for identification.

19 Have you ever seen that bag before?

20 A Yes, sir. I have.

21 Q Where?

22 A Uh, I actually placed these items into this

23 bag.

24 Q How do you know that?

25 A Cause it's got my signature on the tape and I

1 remember signing for these.

2 Q Okay. And what are those items and where were
3 they found?

4 A There is an orange pill bottle in here. There
5 is some, uh, it's called brillo pad that you used to
6 clean your dishes with. There's two metal spoons with
7 white handles. There's a pipe with like a foggy white
8 residue inside of it. There are 1, 2, 3, 4 syringes.

9 Q Okay. Have you ever seen that kind of
10 material before in other cases?

11 A Yes, sir.

12 Q What is that material generally used for?

13 A Crack or meth.

14 Q Okay. All right. Moving to the next bag which
15 would be number 6, have you ever seen that bag?

16 A Yes, sir.

17 Q Where have you seen that bag?

18 A That was placed in evidence by me.

19 Q Why are they in two separate bags?

20 A This one right here was actually -- this bag
21 right here is actually the bra of the passenger in the
22 vehicle. It actually has some, there's some glass in
23 there that's broken.

24 Q Okay.

25 A And this right here, I can't really remember

1 why we put them in two separate bags.

2 Q Okay. Are those items in substantially the
3 same condition that they were when you seized them
4 that night?

5 A Yes, sir. They might be broken a little bit.

6 MR. THEM: Okay. Move to admit, Your
7 Honor.

8 MR. NEWTON: Your Honor, I object that this
9 point. There's been no testimony about where
10 those items were found to connect it to this
11 case.

12 THE COURT: I sustain the objection.

13 BY MR. THEM:

14 Q Where were the items found? Do it bag by bag
15 if you can. And tell me which bag you are talking
16 about.

17 A On the driver's side floorboard, there were
18 four syringes which are inside this bag right here.

19 Q Bag number what?

20 A This would be State's Exhibit number 5.

21 Q Okay.

22 A There's silver spoons with white handles, an
23 empty medicine bottle that's orange and a glass tube
24 which is here. It's broken in half now. Those are the
25 items that we got with the --

1 Q On what side of the car?

2 A This would be on the driver's side
3 floorboard.

4 Q And when you arrived at the car, who was in
5 the driver's seat?

6 A Mr. Boyd.

7 Q Okay. Next bag, where did you find that
8 stuff?

9 A This bag was beside the passenger inside her
10 purse.

11 Q Okay.

12 A There's a glass tube in here, this right
13 here. The medicine dropper, the metal rods right here
14 and the bra were located on the female who was the
15 passenger in the vehicle.

16 Q Okay. Other than the bra, the items that are
17 in that bag, what are they classically used for?

18 A For consumption of drugs.

19 MR. THEM: Okay. With that, Your Honor, I
20 would again move to admit.

21 MR. NEWTON: No objection.

22 THE COURT: Without objection.

23 (WHEREUPON, State's Exhibit 5 is admitted into the
24 record.)

25 BY MR. THEM:

1 Q After you found those items, did you find
2 anything else while you were searching?

3 A Inside the vehicle or outside the vehicle.

4 Q Inside the vehicle first.

5 A No, that, those were the items that we
6 actually took out of the vehicle.

7 Q Did you find anything outside of the vehicle?

8 A Yes, sir.

9 Q What did you find?

10 A I found a medicine bottle which was similar
11 to this one. It was laying outside the driver's side
12 door.

13 Q Let me show you State's Exhibit number 4 for
14 identification and ask you had you ever seen that
15 before.

16 A Yes, sir. I have.

17 Q Where?

18 A This was on the scene outside the driver's
19 side door.

20 Q Okay. How do you know that's the same thing
21 that you found?

22 A I sealed the bag. I sealed it with evidence
23 tape which was initialed and signed by me.

24 Q Okay. Now, tell me where you found -- tell me
25 where you found State's Exhibit number 4. Describe in

1 some detail exactly where it was.

2 A Okay. If you open up the door to the vehicle,
3 where the hinge of the door is and where the wheel
4 well of the front tire is --

5 Q Going towards the front or the back?

6 A The front of the vehicle.

7 Q Okay.

8 A It was laying -- the door was still opened
9 whenever I found it. It was laying outside the door. I
10 wish I could -- can I show it on the pictures?

11 Q Sure. I'm going to get you to do that after
12 you describe where it was.

13 A Okay. It was laying outside the door, right
14 near the hinge maybe about a foot and a half away from
15 vehicle.

16 Q Okay. Now, talking about State's Exhibit
17 number 2, would you carefully mark where you found
18 State's Exhibit number 4.

19 A I'll just put an X on it.

20 Q Okay.

21 A Right here.

22 Q Can you draw a dotted line from there to the
23 closest part of the car?

24 A (Drawing).

25 Q What would be that distance?

1 A I'm approximating. A foot and a half.

2 Q Okay. And can you approximate where the
3 bottle was found as compared to the beginning of the
4 front wheel well to the driver's side?

5 A As in in front of it or behind it. Is that
6 what you're asking?

7 Q Yes.

8 A Maybe an inch or two.

9 Q An inch or two which way?

10 A Forward.

11 Q Into the wheel well?

12 A Yes.

13 Q All right. Now, I'm also going to hand you
14 State's Exhibit number 3. Would you mark that for me
15 paying particular attention to exactly where it was in
16 relation to doors and wheel wells and et cetera?

17 A (Drawing).

18 Q Okay. Now, when you got there, was the
19 driver's side window up or down?

20 A When I talked up to the car after the
21 collision, the driver's side window was down.

22 Q Okay. And did you ask the Defendant about any
23 ownership of any of the items in those bags?

24 A Yes, sir. Exhibit 4 which was right outside
25 the door, not inside the vehicle, he did not claim

1 ownership of this.

2 Q Okay.

3 A When I spoke to him about these items, uh, --

4 Q You got to tell me which bag numbers.

5 A I'm sorry. This is Exhibit 5. He didn't
6 really make any claim to these. And to Exhibit 6, he
7 didn't claim this either.

8 Q Did you accompany -- how long after you got
9 there did EMS arrive?

10 A I would say about -- after we -- after I
11 actually called in to EMS, I would say it took them
12 maybe five to seven minutes. That's just a guess.

13 Q As you were talking to the Defendant about
14 questions you had of him, how did he appear to you.

15 A He appeared to be okay. It appeared that he
16 possibly may have been injured. He was really sore.
17 He appeared to be okay.

18 Q Was he able to answer your questions
19 intelligently?

20 A Yes. Immediately after we put him out of the
21 car, no, but yes.

22 Q Okay. At what point in time did he begin to
23 answer your questions intelligently if you say he
24 could not when you immediately got him out of the car?
25 How long did it take?

1 A After we handcuffed him, just a couple of
2 minutes.

3 Q Okay. During the time you were interviewing
4 him about statements you told us about, when did that
5 take place in relation to when you got him out of the
6 car?

7 A Probably -- we didn't find these items until
8 after we searched the car. Everybody was with EMS.

9 Q Okay. Roughly how much time had passed?

10 A 10 or 15 minutes.

11 Q Okay. When you spoke to him 10 or 15 minutes
12 later about that stuff, how did he appear to you at
13 that point in time?

14 A He appeared to be okay.

15 Q Huh?

16 A He appeared to be okay.

17 Q Okay. Now, what did you do with the evidence
18 in State's Exhibit number 4, the pill bottle?

19 A The pill bottle? I picked it up. I took it
20 with me. After I cleared the scene, I went to the
21 police department. I filled out a Greenville County
22 Drug Analysis Form. I filled out an Easley Police
23 Department Property Form. I filled out all the
24 paperwork. I sealed this inside a bag, put tape around
25 it, signed on the tape. Put it into the evidence

1 locker.

2 Q Tell me what you mean by evidence locker.

3 A It's a locker where you actually put your
4 evidence -- it's like a locker. It's about that big.
5 You open up the locker. You put your evidence and your
6 evidence forms in there. You close the door. You twist
7 the handle. You push a button. That locks it. The only
8 person that can open that, that can actually retrieve
9 those items are the evidence custodian.

10 Q If you needed to get back into that locker
11 after you had closed the door, would you have had the
12 ability to do so?

13 A No, you can't get back in.

14 Q Okay. That's all the questions I have of this
15 witness, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. NEWTON:

18 Q Officer, I just want to touch on the chase
19 part of the --

20 A Okay. Okay.

21 Q -- very briefly. You said the chase went up
22 to 115 miles per hour?

23 A Yes, sir.

24 Q What kind of car was it that you were
25 pursuing?

- 1 A It was a Honda.
- 2 Q What year?
- 3 A Uh, I can't remember the exact year of the
- 4 vehicle to be honest with you.
- 5 Q Isn't that written on the ticket that you
- 6 issued?
- 7 A Yeah.
- 8 Q You have a copy of that with you?
- 9 A I will see if I can locate it. (Pause).
- 10 It was a 1998 Honda, four door, Accord.
- 11 Q So you are talking about a 10-year old car?
- 12 A Yes, sir.
- 13 Q A Honda.
- 14 A Uh-huh.
- 15 Q Is such a car capable of going 115 miles per
- 16 hour?
- 17 A A Honda? Yes.
- 18 Q How are you sure about that speed, sir?
- 19 A I'm sure about it because I looked down at my
- 20 speedometer while I was driving.
- 21 Q How close behind the vehicle were you?
- 22 A I was pacing the vehicle.
- 23 Q You mean going at the same speed?
- 24 A I was -- approximately, yes.
- 25 Q You were either gaining or following behind?

1 A No, sir. Well, I was gaining in order to
2 catch up with him for a little bit from whenever I
3 pulled out of the parking lot.

4 Q How fast did you have to get up to to gain on
5 the vehicle?

6 A Well, I was at a dead stop. He was traveling
7 the speed limit, about 45. It took me a little bit.
8 Maybe 60, 65, somewhere in there.

9 Q When you say you were pacing behind the
10 vehicle at approximately 115 miles per hour, how long
11 of a period of time was that?

12 A About -- I would say about two and a half
13 miles.

14 Q And how far behind the vehicle were you that
15 you were pacing at that speed?

16 A I was pretty safe distance back. In case he
17 hit the brakes or something, I didn't want to run into
18 him. You want feet or yards?

19 Q Yeah. Give your best estimate. How far behind
20 were you?

21 A 20 yards maybe. I don't --

22 Q 20 yards behind him?

23 A About, yeah.

24 Q At 115 miles per hour?

25 A Yes, sir.

1 Q There was a second police car involved in the
2 chase too, correct?

3 A Yes, sir.

4 Q Who was that?

5 A Connor Shivers.

6 Q Was he behind you?

7 A Yes, sir.

8 Q Pacing as well?

9 A He was behind me.

10 Q Okay. Who was the owner of this vehicle?

11 A Uh, the tag that I got through DMV, this is
12 the VIN number. It shows a Ryan Francis Murray out of
13 Bluffton, South Carolina.

14 Q It was somebody other than my client,
15 correct?

16 A Yes, sir.

17 Q He was not the owner of the vehicle?

18 A There was no paperwork at that time. I didn't
19 know. But according to DMV, no.

20 Q Are you aware that the owner was the
21 passenger's boyfriend?

22 A No.

23 Q Did you know that?

24 A No, sir. I didn't know that.

25 Q When you ran a license check on my client,

1 you found out his license was suspended, correct?

2 A Yes, sir.

3 Q He was driving under suspension?

4 A Yes, sir.

5 Q You charged him with that?

6 A Yes, sir.

7 Q He's been to court and pled to that?

8 A I believe so.

9 Q He received 60 days in jail for that?

10 A I don't remember the date.

11 Q Okay. But yeah, he was under suspension. You

12 found that out. He was charged with that and that's

13 been taken care of.

14 A Yes, sir. That's been taken care of.

15 Q Okay. Now, were you still following behind

16 the car at this 115 miles per hour as it tried to exit

17 off the ramp?

18 A Yes, sir.

19 Q At 20 yards behind?

20 A I started slowing down. I knew I was coming

21 up to a stop sign.

22 Q Okay.

23 A I didn't know where he was going to go or if

24 he was going to wreck or what was going to happen.

25 Q Okay. So when you saw him impact into that

1 wall --

2 A Yes, sir.

3 Q -- how far behind were you at the moment of
4 impact?

5 A At the moment of impact? At the moment of
6 impact, I was still on the exit ramp. I was hitting my
7 brakes pretty hard. I didn't want to slide in the
8 grass. You are talking about the point of impact,
9 where did I stop?

10 Q No, the moment my client, the car he was
11 driving hit that wall --

12 A Okay.

13 Q -- how far behind were you at that precise
14 moment if you recall?

15 A 60 feet. I'm not real sure. I can't give you
16 an exact.

17 Q 50 or 60 feet?

18 A About somewhere in there. I was still on
19 Cartee Road.

20 Q Okay. And where did you stop?

21 A I stopped in the roadway.

22 Q Right behind him?

23 A In the roadway. Not in the grass. I was still
24 in the roadway. He was up against the wall in the
25 grass.

1 Q Is there a video of this chase?

2 A No, sir.

3 Q There was no video in your car?

4 A No, sir. I've never had video in my car.

5 Q How about in the other cars?

6 A No, sir. Not that I know of, no.

7 Q At this time, were you aware a passenger was
8 in the car?

9 A No, sir. I did not realize there was a
10 passenger in the car.

11 Q Is it safe to say your intention was
12 concentrated on the driver?

13 A Yes, sir.

14 Q How long was it that you exited your vehicle
15 after you stopped, after the impact?

16 A I pulled my seatbelt off, got out of the
17 vehicle, shut my door.

18 Q Okay. And you drew your weapon?

19 A Yes, sir.

20 Q Why did you do that?

21 A Why?

22 Q Yes.

23 A The car -- anytime you have a vehicle
24 pursuit, I don't know why the vehicle is running. So
25 it is just for my safety. I don't want to die.

1 Q That's understandable, Officer.

2 A Yeah.

3 Q I'm certainly not questioning that. So you
4 were concerned for your own safety. It was a high
5 speed chase. You didn't know who was in the vehicle or
6 how dangerous they were.

7 A Right.

8 Q So your attention was fixed on that.

9 A Uh, yes.

10 Q On who it was?

11 A Yes, sir.

12 Q Okay. Did you see anything get thrown out of
13 the window?

14 A No. It was dark. I really couldn't see very,
15 very well.

16 Q Your headlights were shining right on there.

17 A There was a good distance.

18 Q But you did not see anything being thrown out
19 of the vehicle?

20 A No, sir. I did not.

21 Q Okay. You said you stopped 60 feet behind it.

22 A About, yes, sir.

23 Q Okay. So when you got out of your vehicle,
24 you immediately went to his car, the wrecked car?

25 A Yes, yes.

1 Q Did the other officer do the same along with
2 you?

3 A Yes.

4 Q Did you walk up there together?

5 A Yes, we walked up there together.

6 Q What exactly did you see the driver doing as
7 you were approaching?

8 A Our sirens were blaring. I was screaming, I
9 was yelling at him to keep his hands where I could see
10 them. He had his hands directly up in the air like
11 this.

12 Q Okay. So he heard you say that and his hands
13 were up in the air?

14 A Yeah. He heard me and he understood me.

15 Q You didn't see him tossing anything out of
16 the window? You saw his hands up in the air.

17 A Yes.

18 Q Okay. Now, uh, I wasn't up here when you were
19 marking where exactly you found the pill bottle on the
20 photograph.

21 A Yeah.

22 Q Where is it? Okay. On what's been marked as
23 State's Exhibit number 2, is that an X mark with a
24 circle around it, is that what you were saying the
25 pill bottle was?

1 A Yes. It was right along the edge of the grass
2 right here.

3 Q Now, the door in the picture is closed.

4 A Uh-huh.

5 Q Didn't you testify that the door was open at
6 the time of this?

7 A At the time of?

8 Q When -- you said, did you not testify that
9 the driver's side door was open and you don't remember
10 if you opened it or if Mr. Boyd opened it?

11 A This picture was taken after he was taken
12 into custody and highway patrol had already marked the
13 scene and everything. That's a long time after the
14 chase was ended.

15 Q How long after?

16 A I don't know when the team got there. I
17 couldn't tell you. I have no clue.

18 Q Several hours?

19 A I don't know. I don't know when they got
20 there. I think it was the same day.

21 Q How long was that car sitting there?

22 A I don't know. I wasn't there. The tow truck -
23 - whenever I left the scene, the car was still there.
24 Highway patrol was still there.

25 Q How long were you at the scene in all?

1 A After -- I was there for maybe an hour.

2 Q Okay. So are you absolutely positive that's
3 the exact location the bottle was at?

4 A That's an approximate. I don't have a
5 pinpoint place. I know it was right there where the
6 door jam is.

7 Q In that general vicinity?

8 A Yes, sir.

9 Q Could it have been a little closer to the
10 car?

11 A No, sir.

12 Q Could it have been a little further up?

13 A It was about that close. I mean, it could
14 have been maybe a couple of inches. But it was not in
15 feet.

16 Q You say it was about a foot and a half.

17 A A foot and a half.

18 Q To the best of your recollection?

19 A Yes, that's correct.

20 Q Are you precise about that? Could it have
21 been six inches further or closer than you remember?

22 A It could have been. Within a couple of
23 inches, that's my best estimate.

24 Q All right. Now, who first saw the pill
25 bottle? Was it you or the other officer, the one

1 laying outside the car?

2 A The one laying outside the car, I did.

3 Q You did?

4 A Yes, sir.

5 Q And when did you first notice it?

6 A After we had him in custody. He was already
7 inside the ambulance. You need a time? Is that what
8 you are asking for?

9 Q Yes, please. How long had you been on the
10 scene before you found that pill bottle?

11 A Maybe, I'm going to say about 20 minutes
12 maybe. Somewhere in there.

13 Q Okay. And how many people had been on the
14 scene during that time? Two officers at least, EMS --

15 A It was me, another officer, EMS had been on
16 the scene. But they didn't actually come over to the
17 vehicle. They stayed off to the side from what I can
18 remember. Uh, my Lieutenant was there. He arrived on
19 the scene.

20 Q So at least three officers?

21 A Yes.

22 Q Was there more officers there as well?

23 A Between the time when I found it? I think one
24 trooper had arrived. There was one trooper that had
25 come up also.

1 Q Okay. So at least four officers?

2 A Yes.

3 Q And you did not find the pill bottle that you
4 say was laying right outside the driver's side door --

5 A No.

6 Q -- until some time later.

7 A The door was open. It was behind the door on
8 the other side of the door. I had not been to that
9 side of the door yet.

10 Q What was the passenger doing during all this
11 time?

12 A I know that she was inside the passenger's
13 side of the vehicle.

14 Q Uh-huh.

15 A And we talked with Mr. -- we went over there
16 to Mr. Boyd. He was placed in handcuffs. I was over
17 there talking with him. Officer Shivers actually made
18 first contact with her.

19 Q Uh-huh.

20 A I didn't even realize there was a passenger
21 in the car until actually I went up right beside the
22 car and I saw her in there.

23 Q Who was this passenger?

24 A I don't remember -- I don't really know her
25 real name. I know that the name that she gave me was

1 Alice Auburn. I know that we found out later that
2 wasn't her name.

3 Q Right. She gave you a false name, correct?

4 A Yes, sir. That's correct.

5 Q You charged her with False Information to
6 Police for that, right?

7 A Yes, sir.

8 Q Did you ask her to get out of the vehicle
9 when you found out that she was in there?

10 A No. We kept her in there.

11 Q Is that standard? Don't you normally ask all
12 passengers to get out of the vehicle in a case like
13 this?

14 A I kept her inside the vehicle because she
15 seemed like she was injured a lot worse than what Mr.
16 Boyd may have been.

17 Q What injuries did you think she had from the
18 way she looked?

19 A Possibly a concussion.

20 Q Was she taken to the hospital?

21 A Yes, she was.

22 Q Do you know if she was diagnosed with a
23 concussion after this?

24 MR. THEM: Objection, hearsay.

25 THE COURT: Okay. I will sustain.

1 BY MR. NEWTON:

2 Q So did you allow her to just sit in the car
3 smoking cigarettes?

4 A We let her smoke a cigarette, yes.

5 Q Okay. Why do you have her bra in evidence?

6 A Her bra?

7 Q Yes, sir.

8 A Her bra was taken because, uh, inside of it,
9 there was a glass pipe that was inside of her bra.

10 Q Okay. And these other items were found inside
11 of her purse, weren't they?

12 A These items were.

13 Q Everything in that bag?

14 A Uh, the scale, to be honest, I don't know
15 where that came from. I don't remember. The rest of
16 the items, the glass pipe, the medicine bottle and the
17 rocks.

18 Q Okay. Officer, you recognize the lady in this
19 photograph?

20 A Yes, I do.

21 Q Is that the passenger of the car?

22 A Yes, sir.

23 Q Was this picture taken there on the scene?

24 A Yes, sir. It was.

25 Q That's an accurate representation of the

1 moment in time there on the scene?

2 A Yeah.

3 Q She was sitting in the car, smoking a
4 cigarette, unattended?

5 A No, she was attended because there was
6 somebody there with her.

7 Q Okay.

8 A Officer Shivers was there with her.

9 Q Well, and obviously the person who took the
10 photograph.

11 A Yeah.

12 Q You can see the driver's side door on the
13 photograph?

14 A Yeah. It's open.

15 MR. NEWTON: Your Honor, I would like to
16 have this marked as Defendant's number 1.

17 MR. THEM: No objection.

18 THE COURT: Okay. Without objection, it's
19 in evidence.

20 (WHEREUPON, Defendant's Exhibit 1 is marked and
21 admitted into the record.)

22 BY MR. NEWTON:

23 Q Isn't it true the passenger admitted there on
24 the scene --

25 MR. THEM: Objection, hearsay.

1 THE COURT: I will sustain the objection..

2 BY MR. NEWTON:

3 Q So, Officer, none of these items were found
4 on Mr. Boyd's person, correct?

5 A No, they were not.

6 Q However, at least half of them were found on
7 the Defendant's person, correct? Or in her purse?

8 A Yes.

9 Q Okay. The others were found in a car which
10 did not belong to my client, correct?

11 A That's correct.

12 Q Did you charge the passenger with Trafficking
13 in Cocaine?

14 MR. THEM: Objection, irrelevant.

15 THE COURT: I would overrule the objection
16 this time.

17 BY MR. NEWTON:

18 Q Did you charge her as well?

19 A Yes.

20 Q You charged both of them?

21 A Yes, they were both charged.

22 Q Because at the time, you had no idea whose
23 drugs they were..

24 A That's correct because neither one of them
25 admitted to it.

1 Q Has she been to court yet on her charges?

2 A No.

3 Q Now, you said -- when I asked you earlier if
4 the passenger was left attended, you said she was not.
5 But she was unattended for at least part of this time,
6 correct? Before the other officers arrived on the
7 scene?

8 A Before Officer Shivers and I actually went to
9 make contact with her, yes.

10 Q Okay. Because initially, your attention
11 understandably was concentrated on the driver?

12 A That's correct.

13 Q And y'all bought him out, handcuffed him and
14 threw him to the ground asking him questions and then
15 put him back in your patrol car, correct?

16 A Not exactly.

17 Q Well, correct me what was incorrect about
18 that.

19 A He was on the ground outside of our vehicle.

20 Q Uh-huh.

21 A He went to EMS. He did not get in the back of
22 our patrol cars.

23 Q Okay. All right. But, did you actually take
24 him away from the vehicle at all?

25 A I didn't, no.

1 Q Who did?

2 A I don't know.

3 Q He was removed away from the car, correct?

4 A Yes.

5 Q And during that time, the passenger was left
6 unattended in the vehicle, correct?

7 A No, there was another officer over there with
8 her.

9 Q Who was that officer?

10 A Connor was over there talking with her. He
11 was the first one speaking with her.

12 Q Officer, isn't it true that there was at
13 least a few seconds in time where you were not paying
14 attention to what the passenger was doing?

15 A Yes.

16 Q Okay. Thank you. You, uh, some of these items
17 that you said were found in the vehicle, you testified
18 they were used for crack or meth?

19 A Yes, sir.

20 Q My client is not charged with possession of
21 crack or meth, is he?

22 A No.

23 Q Okay. Did you allow the passenger to change
24 clothes there on the spot, on the scene and that's how
25 you got her bra?

1 A No.

2 Q When was the bra taken?

3 A At the hospital.

4 Q Sir, I was just clearing that up. Finally,
5 officer, just a few more questions. You said initially
6 my client seemed dazed, confused from the impact with
7 the wall?

8 A Yeah.

9 Q Which is understandable.

10 A Yeah.

11 Q You said he later recovered from that?

12 A Yeah.

13 Q When you first pulled him out, he was dazed
14 and confused?

15 A When we first got him out of the car, yes.

16 Q Okay. You did not see a pill bottle or
17 anything outside the passenger, outside the driver's
18 side door?

19 A I wasn't looking around them.

20 Q Okay. No further questions.

21 REDIRECT EXAMINATION

22 BY MR. THEM:

23 Q When you approached the vehicle and opened
24 the door, did the door interfere with your vision as
25 to where the pill bottle was found?

1 A Yes.

2 Q Okay. Now, looking at State's Exhibit number
3 2 that's the driver's side door that was open in the
4 photograph. If the passenger were to have thrown the
5 pill bottle out of the driver's side door, could they
6 have thrown it over the door and under the door or
7 how?

8 A The only way I figure they could throw it
9 would be out the window. I guess they could throw it
10 right outside the door.

11 Q How much force would be required to cover
12 that distance? A fair amount of force?

13 A Fair amount of force.

14 Q Okay. Would you expect if someone threw
15 something outside, would you expect to find the pill
16 bottle as close to the car as you did if someone threw
17 it across the car, out the door or the window?

18 A Where it was located, no.

19 Q Had they done that, would the bottle had hit
20 the ground and rolled?

21 A Probably.

22 Q Okay. Did you see anything when you picked up
23 the bottle that indicated to you whether or not the
24 bottle had rolled around on the ground?

25 A I don't believe it rolled around on the

1 ground. It was dry on the top of it.

2 Q Okay.

3 A And the ground was wet still.

4 Q Okay. How wet was the ground?

5 A It was damp. It had rained maybe a couple of
6 hours beforehand.

7 Q When you say the bottle was dry on the top,
8 can you show us, assuming this right here is the
9 ground and the car is right here, can you show us how
10 the bottle was laying when you first saw it?

11 A It was laying just like this. It was laying
12 down like this. The top of it, I'm talking about was
13 facing up. It was not sitting like that.

14 Q Was it laying right side up with the screw
15 top pointing straight out?

16 A No.

17 Q So when you say the top, you are talking
18 about the highest point the way it was laying on the
19 ground?

20 A Yes, sir.

21 Q It was laying on its side?

22 A Yes, that's correct.

23 Q Okay. And the young lady was in the car. Did
24 you hear any noises or anything that sounded like
25 something rolling over the top of the car?

1 A No.

2 Q Okay. Thank you, sir. I have no further
3 questions.

4 MR. NEWTON: Nothing further.

5 MR. THEM: That's all I have of this
6 witness, Your Honor.

7 THE COURT: Okay. Next witness.

8 **CONNOR SHIVERS**

9 having first been sworn, testifies as follows:

10 THE CLERK: State your full name for the
11 record.

12 THE WITNESS: Mark Connor Shivers.

13 **DIRECT EXAMINATION**

14 BY MR. THEM:

15 Q Officer Shivers, where are you employed, sir?

16 A With the City of Easley.

17 Q Okay. On the night of, I believe it's
18 December 3rd, December 3rd last year, were you so
19 employed?

20 A Yes, sir.

21 Q And what shift were you working?

22 A Third shift. From 7 p.m. to 7 a.m.

23 Q Were you already a licensed police officer
24 there?

25 A Yes, I was.

1 Q How long had you been a police officer that
2 night?

3 A At that time, approximately two years.

4 Q Okay. And where was that time spent? In
5 Easley?

6 A Yes, sir.

7 Q Okay. Did you participate in a vehicle chase
8 that night?

9 A Yes, sir. I did.

10 Q About what time of night are we talking?

11 A Around 4:30, I believe.

12 Q 4:30 in the morning?

13 A Yeah.

14 Q Where were you when all this started?

15 A I was sitting next to Officer Benjamin at
16 Victory Lane Auto Sales in the parking lot.

17 Q Did a car go by that attracted y'all's
18 attention to cause y'all to get behind it?

19 A Yes, sir. It did.

20 Q Tell us what happened after you got behind
21 the car.

22 A Officer Benjamin pulled out. Initially I
23 pulled out behind him. We both activated our blue
24 lights to try to stop the vehicle. The vehicle
25 continued without stopping for some time. We activated

1 our sirens also. The vehicle still continued slightly
2 speeding up and just not stopping. Around the speed
3 limit or around the city limit sign, it begin to
4 accelerate to a higher speed.

5 Q Okay. And did you continue with the pursuit?

6 A Yes, sir. I did.

7 Q How fast were you driving in that pursuit?

8 A Usually, the primary officer handles actually
9 pursuing the suspect vehicle and a secondary officer
10 which would have been me at the time handles all the
11 radio traffic as far as traffic conditions and stuff.
12 I remember at some point calling in our speeds at over
13 100 miles an hour to our supervisor. They like updates
14 on the chase.

15 Q How close were you following Officer
16 Benjamin?

17 A Maybe 20 yards.

18 Q Okay. And did you go up the ramp to the place
19 when the car crashed into the wall?

20 A Yes, sir. I did.

21 Q Where did you park in relation to where
22 Officer Benjamin parked?

23 A Somewhat behind him. It's only a one-way
24 ramp.

25 Q And where were your lights pointing?

1 A Forward. I mean, towards the wall where the
2 collision happened.

3 Q Okay. If you were to center where your two
4 beams were, where would it be in relation to the car?
5 Left, right, right on the car, what?

6 A Probably on the car.

7 Q Okay. And did you go up to the car with
8 Officer Benjamin to find out who was in the car and
9 what was going on?

10 A Of course, Officer Benjamin exited his
11 vehicle first. I was still handling radio traffic. We
12 just called in that a collision happened to have
13 somebody on standby in case of emergency.

14 Q Okay.

15 A But I did exit my car. We both approached the
16 car at the same time on the driver's side.

17 Q On the driver's side. Did you participate in
18 getting the Defendant out of the car?

19 A Yes, sir. I did.

20 Q What did you do after that?

21 A Initially, Officer Benjamin kept the suspect,
22 the Defendant at gunpoint. He was pulled from the car
23 and handcuffed on the ground. Immediately after that,
24 I went to, I noticed that there was a passenger in the
25 vehicle as he said.

1 Q When was your first indication you had that
2 there was a passenger in the vehicle?

3 A In order to get the Defendant out of the
4 vehicle, I had to reach inside and get him by the arm.
5 At that point, I noticed that there was a passenger in
6 the vehicle. Like I said, after he was secured, after
7 the Defendant was secured, I immediately went to the
8 passenger.

9 Q Okay. When you got to the passenger's door,
10 was the window up or was it down?

11 A I don't recall. I know that I opened the door
12 and talked to her. I would assume that it would have
13 been up or else I would have just spoken to her
14 through the window.

15 Q There was a young lady in the car, correct?

16 A Yes, sir.

17 Q Did she appear to be injured?

18 A Yes, sir. She did.

19 Q What injuries did she appear to have?

20 A No blood or anything physical. She was just
21 extremely dazed. Not really -- she wasn't unconscious
22 but she was just dazed and kind of out of it. She had
23 been hit by the air bag.

24 Q And how long did you stay with her in the
25 car?

1 A Until EMS got there, until we conducted a
2 search and everything of the vehicle. We were trying
3 to get her information and that kind of stuff.

4 Q Was there ever a point in time when you went
5 around -- excuse me. Let me back up. Was there ever a
6 point in time after the Defendant was handcuffed and
7 you went up to check on the passenger and opened the
8 door that she left your vision prior to EMS care?

9 A No, sir.

10 Q How close were you to her at that point in
11 time?

12 A I was right in the doorway, right standing
13 right beside her.

14 Q Arms length?

15 A Yes, sir.

16 Q During that time, did her condition seem to
17 improve as far as being dazed?

18 A Yes, sir.

19 Q Okay. At any point in time did you see her
20 throw anything?

21 A No, sir. I didn't.

22 Q At any point in time while you were there,
23 could she have thrown something that you would not
24 have seen?

25 A No, sir. I was speaking with her.

1 Q Just one second please. I have nothing
2 further -- let me back up just one second. The person
3 that was taken from the vehicle and handcuffed, the
4 male, do you see that person in court today?

5 A Yes, sir.

6 Q Would you point him out please.

7 A In the blue shirt.

8 MR. THEM: Let the record reflect that
9 the witness is pointing to the Defendant. I have
10 no further questions of this witness, Your Honor.

11 MR. NEWTON: May it please the Court, Your
12 Honor.

13 CROSS-EXAMINATION

14 BY MR. NEWTON:

15 Q Officer, I noticed when the prosecutor was
16 asking you questions, you appeared to be reading from
17 notes?

18 A Yes, sir.

19 Q What are those notes?

20 A It's just a supplement to Officer Benjamin's
21 report. Just a brief supplement of what I saw and what
22 I believe occurred that night.

23 Q I see. So you right your own report as well?

24 A Yes, sir.

25 Q Could I see it?

1 A Yes, sir.

2 (WHEREUPON, there is a pause.)

3 BY MR. NEWTON:

4 Q Officer, when you first came up to the scene,
5 your attention was focused on the driver of the
6 vehicle, correct?

7 A After the collision or after we exited?

8 Q After the collision after you got out of your
9 car.

10 A Initially, since I was on the radio traffic,
11 I was letting dispatch and everybody know a collision
12 occurred. Then we both approached together. So yes.

13 Q When you got out of your vehicle, did you
14 also have your weapon drawn?

15 A Yes, sir.

16 Q Did you even know there was a passenger at
17 the time?

18 A Not initially.

19 Q So your attention was focused on the driver?

20 A Yes, sir.

21 Q And you assisted the other officer in taking
22 Mr. Boyd out of the car, putting him on the ground,
23 handcuffing him, reading his Miranda warnings?

24 A I didn't assist in the Miranda.

25 Q But you were there for that. Did you hear him

1 say that? Did you hear him give the Miranda warnings?

2 A Yes, sir.

3 Q How long did it take?

4 A To give him Miranda warnings?

5 Q Yes.

6 A However long it takes to read the Miranda
7 card after he was handcuffed.

8 Q Okay. And where was he at? You say he was on
9 the ground by the vehicle. Was he there right beside
10 the driver's door the entire time?

11 A I believe he came out of the driver's door.
12 He went to the ground as he had been instructed say no
13 more than 10 feet from the car before he was put on
14 the ground.

15 Q 10 feet to the front of the car, to the back
16 of the car?

17 A Just a little bit.

18 Q So towards the rear of the car?

19 A Yes, sir.

20 Q About 10 feet?

21 A Yes, sir.

22 Q Had you even noticed there was a passenger in
23 the car at that time?

24 A When I reached in to secure him, that's when
25 I realized there was a passenger in the car.

1 Q Okay. No further questions.

2 REDIRECT EXAMINATION

3 BY MR. THEM:

4 Q When y'all first took the Defendant out of
5 the car and put him on the ground, where did you put
6 him on the ground in relation to the car? Let me show
7 you State's Exhibit number 2. Was the place that you
8 put him on the ground in this photograph or not?

9 A It was probably a little bit out of that
10 photograph.

11 Q Which way? Towards the back or the front?

12 A Towards the -- away from the vehicle. Away
13 from the driver's side and back a little.

14 Q Okay. How far would have been away from the
15 entrance to the driver's door when you put the
16 Defendant on the ground?

17 A I would say less than 10 feet.

18 Q Okay. And where were you standing when the
19 Defendant was mirandized, read his rights?

20 A After he was handcuffed, Officer Benjamin was
21 doing that as I was leaving to go to the other side of
22 the car.

23 Q Okay. So how long would the passenger who had
24 been in the car before -- let me back up. How long
25 would the passenger been in the car after the

1 collision with the wall before you got around their to
2 talk to her?

3 A Uh, less than two minutes.

4 Q Okay.

5 A It would take long to get him out of the car
6 and get him secured.

7 Q All right. What's the angle or the relative
8 positions of the Defendant's car after it struck the
9 wall and Officer Benjamin's car when he pulled up?

10 MR. NEWTON: Judge, it's not relevant to
11 anything I brought up on cross-examination.

12 THE COURT: Sustain the objection.

13 MR. THEM: Okay. Nothing further.

14 **RECROSS-EXAMINATION**

15 BY MR. NEWTON:

16 Q Officer, would you have this jury believe
17 that you stood by the passenger the entire time with
18 your eyes fixed upon her the entire time? Are you
19 really asking them to believe that?

20 MR. THEM: Objection, argumentative.

21 THE COURT: I sustain the objection as to
22 the form of the question.

23 BY MR. NEWTON:

24 Q Is that your testimony, sir?

25 A Yes, sir.

1 Q That you stood there with your eyes fixed
2 upon her the entire time you were standing by her/

3 A I was speaking to her. I normally look at you
4 when I speak.

5 Q How long did you speak to her?

6 A Initially, like you said before, she was
7 giving us a false name. Nothing was coming back. It
8 took quite a while. We were trying to sort through all
9 that, trying to figure out exactly who she was. During
10 that time, you ask a question, you have to call that
11 name, that date of birth into dispatch. They look at
12 it through DMV files. It takes a while. It takes maybe
13 a minute or two to get it back.

14 Q Did you speak with anybody else on the scene
15 or any of the other officers? Anybody with EMS?
16 Anybody at all else on the scene?

17 A Later I did. That was after the search, after
18 everything was already found.

19 Q All right. Thank you.

20 MR. THEM: Nothing further.

21 THE COURT: Thank you, sir. We'll take
22 about a 10 or 15 minute recess right now. At one
23 o'clock, we're going to feed y'all some lunch.
24 We'll take a lunch break. Let's just take a 10 or
25 15 minute recess.

1 (WHEREUPON, the jury exit at approximately
2 11:51 a.m.)

3 (WHEREUPON, a short recess is taken.)

4 (WHEREUPON, the jury enters at approximately
5 12:11 p.m.)

6 THE COURT: Okay.

7 BRIAN COWAN

8 having first been sworn, testifies as follows:

9 THE CLERK: State your full name for the
10 record.

11 THE WITNESS: Robert Brian Cowan.

12 DIRECT EXAMINATION

13 BY MR. THEM:

14 Q Where are you employed, sir?

15 A The Easley Police Department.

16 Q In what capacity?

17 A I am the Forensic Service Officer with the
18 Easley Police Department.

19 Q What does the Forensic Service Officer do,
20 sir? I know but they don't.

21 A I, uh, respond to crime scenes. I handle
22 evidence storage. I handle some drug analysis on
23 marijuana. I have several other duties also within the
24 Easley Police Department.

25 Q You said you are the evidence custodian?

1 A Yes, sir.

2 Q When an officer seizes evidence, say, like a
3 pill bottle like this and seals it in a bag and signs
4 it and puts it in the evidence locker -- you with me
5 so far?

6 A Yes, sir.

7 Q When he closes that door, is there any way he
8 can reopen that door?

9 A No, he can not.

10 Q Who is the only person the Easley Police
11 Department who has access to items that have been put
12 in an evidence locker situation like that?

13 A While I am on duty or not on vacation, it is
14 myself.

15 Q What happens when you are not on duty or on
16 vacation?

17 A The keys to the evidence locker then get
18 placed into a -- I seal it into a bag, put my
19 signature on it and turn it over to my captain in case
20 they are needed. Then they would have to open the bag
21 and get the keys so that they can open the evidence
22 locker.

23 Q All right. Let me show you a document marked
24 State's Exhibit number 4 for identification and ask
25 you have you ever seen that before?

1 A Yes, I have.

2 Q Where?

3 A I retrieved it from my evidence locker on
4 December the 3rd of 2007.

5 Q Okay. And what did you do with it after you
6 retrieved it?

7 A Once I retrieve evidence from the evidence
8 locker, I make sure it's documented, make sure there
9 is a case number on it, make sure there is a seal on
10 it, seal that's in tact. Once I determine that all
11 that is correct,, I think sign as far as date and time
12 in which I received it. I place it into a storage area
13 until which time it is either needed for court or it
14 needs to be transferred to another agency for
15 processing.

16 Q Okay. How do you check to make sure it's been
17 properly bagged and sealed and all that?

18 A On narcotics, we have evidence tape. You can
19 see that the red tape right here. The officers are
20 instructed to seal the bag with that evidence tape,
21 put their name or initials on it along with the, uh,
22 date that they have sealed it.

23 Q Was that the case here?

24 A Yes, sir. It was.

25 Q At some point in time, did you ever take

1 that, that plastic bottle some place else?

2 A Yes, I did.

3 Q Where did you take it?

4 A Uh, I took it over to the Greenville Property
5 and Evidence section which is the log in section for
6 any evidence that we have that needs to be, needs to
7 be processed. In other words, drugs, any type of drug
8 outside of marijuana.

9 Q Okay. And this place you took it was what?

10 A The Greenville, uh, it's the Greenville
11 Property and Evidence.

12 Q Okay. And when you took it there, was the bag
13 still in tact?

14 A Yes, it was.

15 Q What happens to evidence generally,
16 particularly drugs or something like that after you
17 deliver it to the property and evidence people?

18 A The property and evidence people sign the
19 property form that we have. They sign the form. They
20 note if it sealed or not sealed. They note that it's
21 sealed. Then at that time, it's safe and in their
22 custody until the lab technician comes down and he
23 signs for it.

24 Q Okay. At some later point in time, did you go
25 back to that place that you are talking about, this

1 property and evidence section at the Greenville Crime
2 Lab and retrieve that box?

3 A Yes, I did.

4 Q When did you do that?

5 A On December the 18th at 9:48 in the morning.

6 Q And then when you retrieved it, how was the
7 evidence packaged. It was packaged in this, I don't
8 know the exact technical name. It's a hard plastic
9 bag. It has the initials of the lab technician on it
10 as far as when he sealed it. That's the way I received
11 it back.

12 Q When you got it back from Greenville, was it
13 sealed?

14 A Yes, it was.

15 Q Whose name appeared on the seal?

16 A The initials on it are JMA.

17 Q Are you familiar with those initials?

18 A Yes, I am.

19 Q Who is that?

20 A That's James Armstrong. He works for the
21 Greenville County Crime Lab.

22 Q Okay. Now, when you got it back, what did you
23 do with it?

24 A I placed it into the storage area of the
25 Easley Police Department which I have the keys for.

1 Q Okay. And has it remained there until this
2 morning?

3 A Yes, it has.

4 Q Has that ever left your custody and control
5 with the exception of the trip to Greenville since you
6 got it?

7 A No, it has not.

8 Q Okay. At some point in time, did you
9 fingerprint, see if you could raise any prints?

10 A Yes, I did.

11 Q Were you successful?

12 A No, I was not.

13 Q Why not?

14 A It's kind of hard to explain. It depends on
15 how you grab something as to whether or not you leave
16 fingerprints behind. You can grab small items. You
17 leave trace, what we call trace fingerprints, ridge
18 detail. If you grab certain items a certain way, you
19 won't leave any fingerprints behind.

20 Q Show us with this cup if you would.

21 A This cup, if this was a plastic cup, if you
22 grabbed it in this nature right here, you would leave
23 fingerprints. Of course, you can see the five areas
24 you would leave fingerprints. If you grabbed it in
25 this nature, the fingerprints that you leave behind

1 are so minute that you, a lot of times, will not be
2 able to see them at all. If you can't see them, of
3 course, you can't compare them. That's when you
4 determine, that's what you look for as to whether or
5 not fingerprints were left behind.

6 Q Does the roughness or smoothness of the
7 surface from which you are trying to get a print have
8 any bearing?

9 A The texture does have some things to do with
10 it. Wood, glossy coats on wood are good. Unfinished
11 wood is not good. You have to use other types of
12 methods to try to obtain his -- I have book in which I
13 went to a week-long class that I had to go through and
14 understand. At times, I go back to these whenever I
15 want to refresh my memory on what exactly I need to do
16 on certain surfaces.

17 Q Did you find any usable prints whatsoever of
18 anybody on that bottle?

19 A No, I didn't.

20 Q Okay. Thank you very much. I have no further
21 questions.

22 MR. NEWTON: No questions of this witness.

23 THE COURT: Thank you, sir. Call your next
24 witness.

25 MR. THEM: Call Jessica Kennedy.

1 JESSICA KENNEDY
2 having first been sworn, testifies as follows:
3 THE CLERK: State your full name for the
4 record.
5 THE WITNESS: Jessica Kennedy.
6 THE CLERK: Thank you. Be seated.
7 DIRECT EXAMINATION
8 BY MR. THEM:
9 Q Ms. Kennedy, where is your home? Where do you
10 live?
11 A Greenville.
12 Q Okay. You know the Defendant in this case,
13 Mr. Boyd?
14 A Yes, sir.
15 Q How do you know Mr. Boyd?
16 A I was his girlfriend.
17 Q Did you live with him?
18 THE COURT: Push that microphone down. The
19 jury -- I'm having trouble hearing you. Speak
20 into the mic so that the jury can hear you.
21 BY MR. THEM:
22 Q Maybe if you pull your chair up a little
23 bit. Just ignore the mic and talk. Okay.
24 A Okay.
25 Q How long did you live with him?

1 A About three months.

2 Q Okay. Let me call your attention to December
3 of last year. Were you living with him then?

4 A Yes, sir.

5 Q How long had you been living with him in
6 December?

7 A About three months.

8 Q Where were y'all living?

9 A In an apartment.

10 Q Where?

11 A In Greenville.

12 Q In Greenville. Okay. Now, were you working
13 then?

14 A No, sir.

15 Q Prior to December of last year, when was the
16 last time you had held down a job?

17 A I ain't never had one.

18 Q Okay. Was Mr. Boyd working at that time?

19 A No, sir.

20 Q Did he ever have a job when he lived with
21 you?

22 A No, sir.

23 Q Do you remember December the 3rd of last
24 year?

25 A Yes, sir.

1 Q That's the day you got arrested, right?

2 A Yes, sir.

3 Q Now, do you remember what you were doing --

4 let me back up. The problems over here started at

5 about four o'clock in the morning according to what we

6 heard so far. Do you remember what you were doing the

7 night before?

8 A No, sir.

9 Q Okay. Can you tell me were you in Easley at

10 about four o'clock in the morning on December of last

11 year?

12 A I'm not sure. I don't remember. We was in

13 Easley but I don't know what time.

14 Q Do you remember being involved in a car chase

15 that night?

16 A Yes, sir.

17 Q Who was driving the car?

18 A Jackie.

19 Q Who?

20 A Jackie Boyd.

21 Q Were y'all involved in a crash?

22 A Yes, sir.

23 Q Let's go back to that date. You got that date

24 in your mind. What were y'all doing before the police

25 started chasing y'all?

1 A We were getting high.

2 Q Okay. Getting high on what?

3 A Crack.

4 Q Where did the crack come from?

5 A We had it.

6 Q Who had it?

7 A Me and Jake.

8 Q Okay. Where did he get it?

9 A I'm not for sure. I think from Washington

10 Heights.

11 Q Why do you think that?

12 A Because we went over there.

13 Q Where is Washington Heights?

14 A It's in Greenville.

15 Q Why did y'all go to Washington Heights?

16 A To get some dope.

17 Q Okay. Did you go in the place with Mr. Boyd

18 or did he go in alone?

19 A No, I didn't go in.

20 Q When he came out, -- let me back up. Prior to

21 going over there, did y'all have any drugs in the car?

22 A I'm not for sure.

23 Q Okay. After he came out of that house in

24 Washington Heights, did y'all have drugs in the car

25 then?

1 A Yeah.

2 Q Okay. And why did y'all leave Greenville to
3 come over to Easley?

4 A To make somebody.

5 Q Did y'all meet that person after you got over
6 here?

7 A Yes, sir.

8 Q Okay. And when you finished meeting that
9 person, where did you go?

10 A We were going back to Greenville.

11 Q Okay. You were going back to Greenville when
12 you were stopped by the police?

13 A Yes, sir.

14 Q You know whether or not the car was being
15 driven in the direction of Greenville or away from
16 Greenville?

17 A No, sir.

18 Q Were you pretty high?

19 A Yeah.

20 Q Was Mr. Boyd?

21 A Yeah.

22 Q Okay. Now, what was the first indication you
23 had that there was a police car behind y'all that
24 started the chase? Do you remember?

25 A Yeah.

1 Q What was it?

2 A We started panicking.

3 Q Who started panicking?

4 A Me and Jackie.

5 Q Okay. And why were y'all panicking?

6 A Because the police was behind us.

7 Q Why would that concern you?

8 A Because we had stuff on us.

9 Q Okay. And what happened then. What happened

10 after that?

11 A I just know we were in a high speed chase.

12 Q Do you know how fast y'all were going?

13 A We were going a hundred and something. I

14 ain't for sure.

15 Q How do you know that?

16 A Cause I looked up one time at the speed

17 thing.

18 Q Okay. What was Mr. Boyd doing during this

19 chase?

20 A Uh, I think he was getting high at one point

21 in time but I ain't for sure.

22 Q When you say you think he was getting high,

23 can you tell me exactly what he was doing as best you

24 can remember?

25 A No, sir.

1 Q Huh?

2 A What?

3 Q You said you think he was getting high during
4 the chase.

5 A Yeah.

6 Q What was he doing?

7 A I don't know, sir.

8 Q I'm sorry.

9 A I don't know.

10 Q You don't know.

11 Q Do you remember what you told me when we
12 talked last Thursday?

13 MR. NEWTON: Objection, leading.

14 THE COURT: I sustain the objection.

15 MR. THEM: I'm trying to refresh the
16 witness' --

17 THE COURT: I sustain the objection.

18 BY MR. THEM:

19 Q You say he was trying to get high while you
20 were riding. What did you see that lead you to believe
21 that he was trying to get high? What was he doing?

22 MR. NEWTON: It already been asked and
23 answered. She doesn't remember that. She can not
24 answer that question. That was her testimony.

25 MR. THEM: I think she just tried to

1 answer it and got cut off, Your Honor. I don't
2 know what she said. I couldn't hear.

3 THE COURT: I sustain the objection as a
4 leading question.

5 BY MR. THEM:

6 Q Okay. Were any drugs used in the car during
7 the chase?

8 A I think so.

9 Q By whom?

10 A Me and Jackie.

11 Q What were y'all doing?

12 A We were getting high smoking.

13 Q Smoking?

14 A Yeah.

15 Q Okay. When you smoke drugs, can you tell us
16 how that, can you tell us what you have to do to smoke
17 drugs?

18 A Yeah, you have to use one or two hands.

19 Q Okay. Well, if you have to use one or two
20 hands, how was Mr. Boyd driving the car if he was
21 trying to get high?

22 A I don't know.

23 Q Okay. Now, were you injured when the car
24 crashed into the brick wall?

25 A Yeah. My chest was crushed.

1 Q Did you have to get medical attention?
2 A No, sir.
3 Q You were taken to the hospital and checked
4 out?
5 A Yes, sir.
6 Q Were you released or kept overnight?
7 A I was released.
8 Q Okay. Now, do you remember talking -- stand
9 up. Do you remember talking to this police officer at
10 the scene that night?
11 A Sort of but not really.
12 Q Okay. Do you recognize him at least?
13 A Yes.
14 Q Okay. How long after the crash was it before
15 he came up to talk to you?
16 A He was at least, I would say about two or
17 three minutes.
18 Q What were you doing?
19 A I was sitting in the car.
20 Q Were you conscious?
21 A Yeah. My chest was hurting.
22 Q Okay. All right. Did you move anything in the
23 car or throw anything outside the car?
24 A No, sir.
25 Q Was your window that was immediately next to

1 you, was it up or was it down?

2 A I can't remember, sir.

3 Q Okay. Just one second please. (Pause).

4 You were charged in this case too, weren't
5 you?

6 A Yes, sir.

7 Q You were charged with Trafficking in Cocaine?

8 A Yes, sir.

9 Q You are represented by Mr. Dejong, the Public
10 Defender?

11 A Yes, sir.

12 Q Does he know you are here today?

13 A Yes, sir.

14 Q Are you testifying with his permission?

15 A No, sir.

16 Q Okay. Do you hope to get some reward for
17 testifying here today?

18 A No, sir.

19 Q What do you hope to accomplish by testifying
20 here today? Why are you testifying today?

21 A I don't know, sir.

22 Q You think it might give you a lighter
23 sentence?

24 A Yes, sir.

25 Q You hope so?

1 A Yes, sir.

2 Q All right. Now, when you come to court to
3 dispose of these charges, it won't be the first time
4 you've been to court for criminal charges, will it?

5 A No, sir.

6 Q You remember a time back in apparently
7 January of 2006 when you were convicted of Assault and
8 Battery of a High and Aggravated Nature in Family
9 Court?

10 A Yes, sir.

11 Q Huh?

12 A Yes, sir.

13 Q Okay. Did you have to go to jail over that?

14 A Yes, sir.

15 Q Did you serve that time?

16 A Yes, sir.

17 Q You remember another occasion on or about
18 September the 5th of 2006 when you were convicted or
19 pled guilty, the record don't reflect of possession of
20 either methamphetamine or cocaine base?

21 A Yes, sir.

22 Q And is that a picture of you?

23 A Yes, sir.

24 Q Where did you get the cigarette you were
25 smoking?

1 A Out my pocketbook.

2 Q Okay. Did you ever -- switching subjects
3 again. Did you ever see where Mr. Boyd got the cocaine
4 that you were smoking? Off his person or his car or
5 wherever.

6 THE COURT: Sir?

7 MR. NEWTON: It's a leading question.

8 THE COURT: I sustain the objection.

9 THE WITNESS: No, sir.

10 BY MR. THEM:

11 Q Okay. Thank you very much, ma'am. I have no
12 further questions. Let me back up. The person that you
13 are talking about when you talking about Jackie, is
14 that person in the courtroom here today?

15 A No, sir.

16 Q Huh? The man that was with you when you were
17 involved in the car wreck, is he in the courtroom
18 today?

19 A Yes, sir.

20 Q Would you point him out to me please?

21 A (Pointing).

22 Q Let the record reflect that the witness was
23 pointing to Mr. Boyd. Was he driving the car or you?

24 A He was.

25 Q Okay. Thank you.

1 **THE COURT:** Hold on. Wait just a minute.
2 Have a seat. Answer Mr. Newton's questions.
3 **CROSS-EXAMINATION**
4 **BY MR. NEWTON:**
5 **Q** When Mr. Them asked you if Jackie was here in
6 the court today, you said no.
7 **A** I didn't understand his question, sir.
8 **Q** Okay. Whose car was it that was involved in
9 this case?
10 **A** This dude named Maurice.
11 **Q** A dude named Maurice?
12 **A** Yeah.
13 **Q** Who is he?
14 **A** He was a friend of mine.
15 **Q** A friend of yours. Somebody that was your
16 boyfriend. He was at one point in time but I stopped
17 dating him.
18 **Q** How did you get his car?
19 **A** I just asked.
20 **Q** And he gave you permission to take his car?
21 **A** Yes, sir.
22 **Q** For how long?
23 **A** He just said have it back in a couple of
24 hours.
25 **Q** How long did you actually keep his car?

1 A I can't remember, sir.

2 Q Was it several days?

3 MR. THEM: Objection, relevancy.

4 THE COURT: I overrule the objection.

5 THE WITNESS: No, sir.

6 BY MR. NEWTON:

7 Q Do you have any idea how long you had the
8 car?

9 A No, sir.

10 Q No idea at all?

11 A No, sir.

12 Q Could it have been a day?

13 A Yeah, we had it a day. But I'm not for sure
14 how long we had it.

15 Q Okay. Now, had you ever seen these items
16 before? I'm showing you a bag marked State's Exhibit
17 number 6. You ever seen these items?

18 A Yes, sir.

19 Q Where did you see them at?

20 A They was in the car. The scales was in my
21 pocketbook.

22 Q Your pocketbook? Some of those other items
23 were in your pocketbook too, right?

24 A Yes, sir.

25 Q And what is that blue in the bag there?

1 A I don't know.

2 Q Isn't that your bra?

3 A Yeah.

4 Q That they took at the scene?

5 A Yeah.

6 Q Were some of those items found inside your
7 bra?

8 A Yeah.

9 Q Okay. And the same goes for these items in
10 the bag marked State's Exhibit number 5?

11 A Yes, sir.

12 Q How about the bottle here marked State's
13 Exhibit number 4. You ever seen that before?

14 A Yes, sir.

15 Q You know what's inside of it?

16 A Yes, sir.

17 Q You had that on you as well?

18 A No, sir.

19 Q Where was it?

20 A I ain't for sure.

21 MR. THEM: Your Honor, can we ask Mr.
22 Newton to step to one side? I can't see or hear.

23 MR. NEWTON: I apologize.

24 MR. THEM: Thank you.

25 BY MR. NEWTON:

1 Q So it's your testimony that you never seen
2 that bottle before today that I just showed it to you?

3 A Yeah. I seen the bottle.

4 Q Where did you see it at?

5 A It was in the car at one point in time.

6 Q Where at in the car?

7 A I can't remember, sir.

8 Q You know what's inside of it or not?

9 A No, sir.

10 Q You don't know what's inside of it. You
11 testified earlier that Jackie was your boyfriend?

12 A Yes, sir:

13 Q Huh?

14 A Yes, sir.

15 Q For how long?

16 A For about three months.

17 Q Did you stay with him constantly during that
18 period of time?

19 A Yes, sir.

20 Q Were you also seeing other people during that
21 time?

22 A Yes, sir.

23 Q You testified that you went to Greenville,
24 the two of you, to pick up drugs and you said you were
25 getting high.

1 A Yes, sir.

2 Q Whose idea was that?

3 A I don't know, sir.

4 Q You don't know?

5 A No.

6 Q You went along willingly to look for drugs,
7 to get high, right?

8 A Yes, sir.

9 Q You been charged with the same crime,
10 Trafficking in Cocaine. You testified earlier that you
11 thought you would get a lighter sentence for
12 testifying for the prosecution today, right?

13 A Yes, sir.

14 Q That's what you are hoping for. So you hope
15 you come in here and tell these people something and
16 you get a break because of it.

17 A Yes, sir.

18 Q Yes? You told falsehoods to the police right
19 off the bat when they first questioned you, didn't
20 you?

21 A Yes, sir.

22 Q You gave them a false name, didn't you?

23 A Yes, sir.

24 Q You were being dishonest with them from the
25 very beginning.

1 A Yes, sir.

2 Q Were you sitting inside the car the entire
3 time after the accident happened?

4 A Yes, sir.

5 Q Even when the police were going through the
6 car and finding this stuff, you were sitting inside
7 the car?

8 A No, sir.

9 Q You had gotten out of the car, hadn't you?

10 A Yeah, I was in the ambulance.

11 Q When did they first find these items that
12 were found in your pocketbook and in your bra?

13 A The officer took my pocketbook when we was
14 first, when he noticed I was in the car and at the
15 hospital when I took my bra off.

16 Q Okay. Was there at time after the accident
17 when you were alone in the car by yourself?

18 A Yes, sir.

19 Q And when nobody was talking to you?

20 A No, sir.

21 Q Nobody was looking at you?

22 A Yes, sir.

23 Q Thank you.

24 MR. NEWTON: One second, Judge. Nothing
25 else.

1 REDIRECT EXAMINATION

2 BY MR. THEM:

3 Q The scales that were found, who did they
4 belong to?

5 A Me, sir.

6 Q Why did you have them?

7 A I got them from a friend there.

8 Q What did you use them for?

9 A I wasn't using them for nothing.

10 Q Okay. Now you said you saw this pill bottle
11 in the car, is that correct?

12 A Yes, sir.

13 Q When you saw it in the car, did it belong to
14 you?

15 A No, sir.

16 Q Who had it?

17 A It was just in the car.

18 Q Where?

19 A It was in the floor.

20 Q On whose floor, the driver's side, the
21 passenger side, the middle, where?

22 A I can't remember.

23 Q Okay. Does that bottle of drugs right there
24 belong to you, ma'am?

25 A No, sir.

1 Q Why did you give the police a false name?

2 A I had warrants on me.

3 Q Where?

4 A In Greenville County.

5 Q The name you gave them was your sister's
6 name?

7 A Yes, sir.

8 Q Okay. Thank you very much.

9 RE CROSS-EXAMINATION

10 BY MR. NEWTON:

11 Q What were the warrants they had on you?

12 MR. THEM: Objection, relevance.

13 THE COURT: I overrule the objection. Go
14 ahead.

15 BY MR. NEWTON:

16 Q What were the warrants?

17 A Violation of Probation and Child Neglect.

18 Q And what?

19 A Child Neglect.

20 Q Child Neglect. If that's not your bottle, why
21 are you planning to plead guilty to it?

22 A It's not my bottle, sir.

23 Q You do have a deal with the prosecution where
24 you plan to plead guilty to possession of drugs, do
25 you not?

1 A Yes, sir.

2 Q Thank you.

3 REDIRECT EXAMINATION

4 BY MR. THEM:

5 Q Who in the prosecution's office did you tell
6 you were going to plead guilty to drugs? Did you ever
7 tell me that?

8 A No, sir. I don't understand his question he
9 saying.

10 Q Do you have a deal in place or you are hoping
11 for something?

12 A No, sir.

13 Q No to both of them?

14 A I'm hoping for a deal.

15 Q Okay. Thank you.

16 THE COURT: Thank you. You can come down.

17 MR. THEM: Your Honor, may I approach?

18 THE COURT: Yeah. We're going to take a
19 short --

20 MR. THEM: Okay. That's all I ever wanted
21 to talk about.

22 THE COURT: Okay. We'll take a lunch
23 break. If y'all will go back to the jury room for
24 a minute or two then the bailiffs will take you
25 across the street to Michael's. They'll feed you

1 over there whatever they have. Thank you so much.
2 I'll see you back. We'll finish up after lunch.
3 Do not discuss the case.

4 (WHEREUPON, the jury exit at approximately
5 12:43 p.m.)

6 THE COURT: You got another witness?

7 MR. THEM: Before lunch?

8 THE COURT: No, after lunch.

9 MR. THEM: Yes, sir. I've got James, the
10 drug guy from Greenville and that's it.

11 THE COURT: Okay. Two o'clock.

12 MR. THEM: Two o'clock is fine.

13 THE COURT: We'll start back at two
14 o'clock.

15 You have discussed with your client whether
16 he will testify?

17 MR. NEWTON: I have, Judge, initially. We
18 were waiting to see how the State's case
19 developed. Then we were going to talk about it
20 again.

21 THE COURT: Okay. You go ahead. I just
22 want to put on the record y'all discussed it.
23 Once he rest, we'll go into it.

24 MR. NEWTON: Okay.

25 THE COURT: Thank you.

1 (WHEREUPON, a lunch recess is taken.)

2 MR. THEM: Your Honor, I have one matter
3 of law.

4 THE COURT: Okay.

5 MR. THEM: You had previously allowed
6 testimony about the Defendant and his girlfriend
7 smoking crack. The next witness is James W.
8 Armstrong from Greenville County. He did the
9 chemical testing on the items contained in the
10 bottle that were found. He found one of them to
11 be crack cocaine and one of them to be cocaine.
12 Cocaine was found to be 10.9 grams. The crack was
13 found to be 4.3.

14 I maintain that he should be able to at least
15 briefly testify that he found a crack cocaine
16 base and cocaine. It's corroborative of
17 previously admitted evidence that they were
18 smoking crack in the car.

19 THE COURT: My understanding was when you
20 presented it to begin with that all that stuff
21 was found in the same bottle. He can testify that
22 some of it was crack and some of it was cocaine.
23 But you are going to get a charge with cocaine.

24 MR. THEM: Yes, sir. Now, that you are
25 aware that it was all found in the same bottle --

1 THE COURT: The legislator labels it as
2 two different crimes.

3 MR. THEM: I understand. So he can
4 testify briefly as to the crack and the cocaine.

5 THE COURT: Whatever he found in the
6 bottle.

7 (WHEREUPON, the jury enters at approximately
8 2:08 p.m.)

9 THE COURT: If y'all got the same wind I
10 did, it probably woke you up. It's a little bit
11 chilly out there.

12 Okay. Mr. Them, we are ready to continue.

13 MR. THEM: We call James W. Armstrong.

14 JAMES W. ARMSTRONG

15 having first been sworn, testifies as follows:

16 THE CLERK: State your full name for the
17 record.

18 THE WITNESS: James William Armstrong.

19 THE CLERK: Thank you.

20 DIRECT EXAMINATION

21 BY MR. THEM:

22 Q Mr. Armstrong, where are you employed?

23 A Greenville County Department of Public Safety
24 Forensics Division and Crime Laboratory.

25 Q What do you do there?

1 A My primary function is a forensic chemist and
2 a firearm examiner.

3 Q Okay. Would you tell me something about your
4 educational background from your college degree
5 forward.

6 A Yes, sir. I have a Bachelor of Science degree
7 in Chemistry from Erskine College. I attended and
8 completed the South Carolina Criminal Justice Academy
9 to work as a certified law enforcement officer. I had
10 training approximately one year under the direction of
11 our lab supervisor. I attended the forensic chemist
12 seminars sponsored by the Drug Enforcement
13 Administration in Washington, D.C.

14 I attended numerous instrumental students
15 concerning the instruments that I use in my analysis.
16 I testified no fewer than 111 times in federal, state
17 and local courts as an expert in drug identification.

18 MR. THEM: Your Honor, I would move to
19 qualify Mr. Armstrong as an expert in the field
20 of chemical testing of items thought to be drugs.

21 MR. NEWTON: No objection.

22 THE COURT: Okay.

23 BY MR. THEM:

24 Q Let me call your attention, if I might, sir,
25 to State's Exhibit number 4 and ask you if you ever

1 seen this before.

2 A Yes, sir. I have.

3 Q When did you first see that?

4 A I received it on December the 5th, 2007.

5 Q When you received it, could you tell me the
6 conditioning of the packaging.

7 A It was in a sealed condition. The inside bag
8 which has the white and red evidence tape on the
9 inside with has a black pen writing on it also has my
10 initials and dates on the bottom of that where I had
11 to cut it open and signify that it was sealed at the
12 time of analysis.

13 Q Okay. Did you see any evidence of tampering
14 whatsoever?

15 A No, sir. I did not.

16 Q Okay. You cut it open. What did you do when
17 you cut it open?

18 A When I cut the item open, the inventory would
19 have been the sealed container. Once I've taken
20 inventory, I would then conduct my analysis depending
21 on what the item may be.

22 Q Okay. What items were in the bag when you got
23 them?

24 A I had a bottle which contained two separate
25 bags. One bag contained a rock substance. One bag

1 contained a powder substance.

2 Q What sort of testing did you do on those
3 items to determine what they were?

4 A When I first opened the item, I then opened
5 the bag. Weighed the contents. Recorded it in my
6 notes. Then do a chemical spot test to give me an idea
7 of what I may or may not have. After a chemical spot
8 test, I then go to an instrument to run for
9 confirmation. I ran the instrument for instrumental
10 analysis and made my conclusion.

11 Q Okay. And what were those conclusions?

12 A The bag which is labeled as Item 1A which
13 contains rock substance, I found it to be cocaine base
14 with a weight of 4.37 grams. The other bag which is
15 labeled as Item 1B, the bag containing powder
16 substance, I found it to contain cocaine with a weight
17 of 10.90 grams.

18 Q Is there another name that people use for
19 cocaine base as in Item 1A?

20 A Yes, sir. It's crack cocaine.

21 Q And the weight of Item 1B was how much?

22 A 10.90 grams.

23 Q Okay. When you finished the testing, what did
24 you do with the evidence there?

25 A Once my analysis was complete, I placed in a

1 bag, put my initials and date which I was going to
2 seal it. I sealed it between my initials and the date.
3 It was double heat sealed to preserve the report.

4 MR. THEM: Okay. Your Honor, at this
5 point in time, we move these items into evidence.
6 This is State's Exhibit number 4.

7 MR. NEWTON: No objection.

8 THE COURT: Without objection.

9 BY MR. THEM:

10 Q Would you answer any questions Mr. Newton
11 might have, sir?

12 A Yes, sir.

13 MR. NEWTON: No questions for this witness.

14 THE COURT: Thank you, sir.

15 MR. THEM: May the witness be excused,
16 Your Honor?

17 MR. NEWTON: No objection.

18 THE COURT: Okay. Without objection.

19 MR. THEM: The State rests, Your Honor.

20 THE COURT: That's all the State's
21 evidence. We have to take another short break.
22 I'll let you come back in in just a minute. If
23 y'all will, step outside.

24 (WHEREUPON, the jury exits at approximately.

25 2:14 p.m.)

1 **MR. NEWTON:** Your Honor, I move for a
2 directed verdict on the trafficking cocaine
3 charge on the grounds that in the light most
4 favorable to the State, no reasonable jury could
5 find my client guilty beyond a reasonable doubt
6 on the evidence as has been presented.

7 The woman, the passenger who testified, I
8 believe any reasonable juror and I think it
9 should be apparent to the Court that she was just
10 making it up as she went along. Her testimony was
11 not credible at all. She was contradicting
12 herself freely and making impossible claims,
13 unlikely claims such as my client driving down
14 the road at 115 miles per hour while smoking a
15 crack pipe which she then later retracted and
16 admitted that it was not possible after all.

17 The other witnesses, Judge, the two officers
18 who were on the scene, neither one of them saw or
19 found this drug in my possession. The only thing
20 that -- in my client's possession. The only thing
21 that was found in anybody's possession was the
22 paraphernalia found on the passenger herself. It
23 comes down to the pill bottle that was found
24 outside the car which contained the cocaine.

25 By the testimony of the officers themselves,
26 Judge, when they pulled up behind the car, they

1 had their eyes on him. They drew a weapon as soon
2 as they got out. Yelled for him to get his hands
3 in the air. They saw him while he's still sitting
4 in the car with his hands in the air, not
5 throwing anything out of the car. They made him
6 get out of the car and handcuffed him and put him
7 on the ground. They did not see the bottle at
8 that time which they say was laying right there
9 by the door.

10 The testimony also is that all witnesses
11 agree that the passenger was, had moments in time
12 when nobody was paying any attention to her where
13 she clearly had the, both the motive and the
14 ability to throw that bottle out of the car.
15 submit, uh, respectfully move for a directed
16 verdict.

17 THE COURT: All right. At this particular
18 point, I can't weigh the evidence. I just have
19 to consider the existence of any direct evidence
20 or substantial circumstantial evidence. And the
21 testimony was she knew the bottle was in the car.
22 She had seen it but she didn't know how it got
23 there. I will have to deny the motion at this
24 time.

25 Have you discussed with your client about
26 testifying?

1 MR. NEWTON: I have, Judge, and he will not
2 be testifying.

3 THE COURT: He will not be testifying.

4 MR. NEWTON: That's correct.

5 THE COURT: Mr. Boyd, it's said that in
6 the criminal case, the most important decision
7 that you have to make is whether to take this
8 witness stand, testify under oath in the presence
9 of this jury or to exercise your constitutional
10 right and remain silent.

11 I'm not indicating what you should do. But
12 you and Mr. Newton, your attorney have discussed
13 this I'm sure. And you should listen to his
14 advice. But the decision has to be yours. He
15 can't make the decision. You have to decide what
16 you want to do.

17 You have a constitutional right to either
18 testify or to remain silent. If you exercise your
19 constitutional right to remain silent, I would
20 instruct the jury that they can not consider that
21 fact in any way against you. And they could not
22 even discuss that in the jury room. That is your
23 constitutional right under the constitution of
24 the United States and under the constitution of
25 South Carolina. You have the right to testify or

1 remain silent. The burden of proof is always on
2 the State of South Carolina to prove you guilty
3 beyond a reasonable doubt. Do you understand
4 that?

5 MR. BOYD: Yes, sir.

6 THE COURT: And if they have any prior
7 convictions of any nature that they could use
8 against you, I would instruct the jury they
9 couldn't come in as to your guilt or innocence in
10 this case. Only as to have to bear on your
11 believability or credibility. Do you understand
12 that?

13 MR. BOYD: Yes, sir.

14 THE COURT: Have you considered all that
15 and determined whether or not you should exercise
16 your constitutional right to remain silent or to
17 testify?

18 MR. BOYD: Yes, sir.

19 THE COURT: What is your decision?

20 MR. BOYD: Not to testify.

21 THE COURT: You are not going to testify?

22 MR. BOYD: No, sir.

23 THE COURT: All right.

24 MR. THEM: I have another matter of law,
25 Your Honor. If you could look at the trafficking

1 cocaine indictment, we use the standard boiler
2 plate language. There has been no proof as to the
3 first possibility of proving crack cocaine, that
4 he did knowingly sell, manufacture, deliver or
5 bring into the State of South Carolina, or two,
6 that he did knowingly provide financial
7 assistance or otherwise aid or abet or attempt or
8 conspire to sell, manufacture, deliver or bring
9 into the state. I'm going to ask that you not
10 send that to the jury.

11 I think the only evidence that you have
12 before, the only evidence that is before the
13 Court is that -- and I'm quoting from the
14 indictment -- that Jackie Lee Boyd did in Pickens
15 County on or about the third day of December,
16 2007 -- dropping down to the end of the third
17 line -- was knowingly in actual or constructive
18 possession of more than ten grams of cocaine. I
19 think if we get a conviction, that could create
20 an appellate issue if it went to the jury on
21 things that no evidence was presented as far as
22 bringing into the State of South Carolina.

23 THE COURT: Well, Solicitors argue that
24 different ways. Sometimes they want the whole
25 thing sent to where they -- y'all draft the
26 indictment. I'm going to send the indictment

1 back. But I'm not going to confuse them in the
2 charge. I only charge them on what the evidence
3 is, that's whether or not he was in actual or
4 constructive possession of the ten grams or more
5 of cocaine.

6 MR. THEM: Good enough, sir.

7 THE COURT: I'm going to send the
8 indictment back. Are you going to offer anything,
9 Mr. Newton?

10 MR. NEWTON: No, Your Honor.

11 THE COURT: All right. Are you ready for
12 closing arguments, Mr. Them, or should we take
13 five minutes?

14 MR. THEM: I'm ready now but Mr. Newton
15 has to open, Your Honor. He put in one exhibit.

16 THE COURT: Okay.

17 MR. NEWTON: I did and I am ready.

18 THE COURT: All right. I'll give -- you
19 ready? Since y'all did it so quick, I've got to
20 pick out a foreperson. I'm going to give y'all
21 five minutes anyway while I pick out who's going
22 to be the foreperson. We'll take five minutes.
23 I'm just going to charge trafficking cocaine
24 guilty or not guilty and Failure to Stop for Blue
25 Light.

1 (WHEREUPON, there is a short recess.)

2 THE COURT: Okay. Y'all keep your seat.
3 Thank you. Mr. Gardner, Mr. Gardner. You can just
4 have him sit in the foreperson's seat. Thank you.

5 (WHEREUPON, the jury enters at approximately
6 2:45 p.m.)

7 THE COURT: Ladies and Gentlemen, we are
8 ready for the closing statements.

9 Mr. Newton.

10 MR. NEWTON: Thank you, Your Honor. May it
11 please the Court.

12 THE COURT: Yes, sir.

13 MR. NEWTON: Ladies and Gentlemen, thank
14 you for your attention in this case to all the
15 evidence that has been presented. You have heard
16 all the testimony in this case. All that remains
17 now is our closing statements or summation of the
18 case. The judge will charge you on the applicable
19 law. What I have to say to you right now is not
20 evidence. It's my summation of what I believe the
21 evidence shows. What the prosecutor gets to say
22 to you when I'm done is the same thing, his
23 summation of what he wants you to believe the
24 evidence shows.

25 I will say right off at the beginning as I

1 told you at the beginning of the trial is that my
2 client is guilty of Failure to Stop for Blue
3 Light. He did it. We admit that. He's never
4 denied that. We're not claiming he's a perfect
5 person. He's not a perfect person. This trial is
6 not about whether he is a perfect person or not.
7 This trial is about one thing and one thing only.
8 That's whether he's guilty of what he's been
9 charged with.

10 I told you he's guilty of Failure to Stop for
11 Blue Light. I will sort out whether he's guilty
12 of trafficking regular cocaine, powder cocaine.
13 That's the only issue, the only question in this
14 case for you to decide. To decide that, you have
15 to be convinced that the State has proven him
16 guilty beyond any reasonable doubt.

17 In this country, a Defendant charged with a
18 crime does not ever have to prove their
19 innocence. As you notice, he did not testify. The
20 judge will charge you that's in a person's right
21 to do that. They can do it for many reasons. You
22 are not to hold that against him. They do not
23 have to prove a thing. It's up to the State and
24 the State alone to prove his guilt beyond a
25 reasonable doubt.

26 What is a reasonable doubt? A reasonable

1 doubt is a doubt that would make a reasonable
2 person to hesitate to make a decision. If you are
3 firmly convinced of his guilt, without
4 hesitation, you should find him guilty. If,
5 however, you hesitate and you believe there's
6 question in this case, there's some doubt about
7 whether he's really guilty or not, you should
8 find him not guilty.

9 Clearly, Mr. Boyd did some stupid things that
10 night. Driving down the road, high speed chase,
11 failure to stop for a blue light. Really dumb. We
12 admit that. Again, the question is not what kind
13 of person he is, whether he is a perfect person
14 or not but simply whether he was guilty of
15 trafficking cocaine on the night in question.
16 That's the only question.

17 What evidence does the State have to try to
18 prove that he was trafficking in powder cocaine?
19 I submit no credible evidence whatsoever. The
20 passenger they presented, I think it was obvious
21 that she was making it up as she was going along.
22 She was contradicting herself left and right. She
23 would say one thing and then change her story two
24 seconds later.

25 For example, when the prosecutor even asked
26 his own witness what they were doing as they were

1 driving down the road at this high speed chase,
2 she said initially they were both smoking crack
3 cocaine. My client was smoking crack cocaine as
4 he was going down the road at a high speed chase.
5 Then it came out, of course, that you need two
6 hands to do that. One to hold the pipe and one to
7 hold the lighter. Then she admitted well, I guess
8 he really wasn't do that.

9 She's simply not credible. She was changing
10 her story left and right. Totally inconsistent.
11 The reason why she was doing that was the same
12 reason to told a lie to the police officers in
13 the first thing out of her mouth. The first thing
14 out of her mouth was a lie and the last thing out
15 of her mouth today was a lie to protect herself.
16 She had warrants out on her for Probation
17 Violation, Child Neglect. She was on probation.
18 She had drugs on her person. They found the stuff
19 in her purse and in her bra. They didn't find
20 anything on my client's person.

21 She admitted that she was testifying today in
22 the hopes that if her testimony was favorable to
23 the State that they would treat her more
24 leniently. Is there any greater incentive to come
25 in here and tell a lie, to come and lie to you
26 people, to try to save herself, to try to point

1 the finger at my client when the evidence points
2 to her as the real guilty one.

3 Her testimony is unbelievable. She would
4 change her story. She would say first they went
5 to Greenville. Then they went back to Easley to
6 meet a friend of hers. Then they were on the way
7 back to Greenville when they were stopped. Of
8 course, the evidence was that they were heading
9 in the opposite direction, heading west on 123,
10 away from Greenville instead of towards
11 Greenville.

12 So it comes down to the two officers. I'm not
13 going to accuse them of lying like I accused the
14 passenger of lying. I will say that what they
15 told you does not add up to evidence beyond a
16 reasonable doubt that my client was guilty of
17 trafficking cocaine, trafficking in cocaine,
18 possession of cocaine in an amount greater than
19 ten grams, ten or more grams. They found nothing
20 on him. All they have to point at him is this
21 bottle they say they found outside the car, a
22 foot and a half away from the car right beside
23 the driver's door.

24 I'm sure the prosecutor is going to get up
25 here and argue that my client threw it out. But
26 the evidence from the police officers themselves

1 said that's not what happened. Remember, high
2 speed chase. Officer is understandably upset.
3 High speed chase going down the road. Doesn't
4 know who's in the car, doesn't know if its some
5 mass murderer or not. Has no idea whose in the
6 car.

7 The officer gets out with his pistol drawn.
8 He doesn't know whose in there. He doesn't know
9 how much danger he might be in. He doesn't know
10 who might step out of the car. In doing so, his
11 attention is fixed totally on the driver. He
12 doesn't even know there's a passenger in the car.
13 His attention is fixed totally on the driver who
14 he has no idea whether it's a mass murderer.

15 By his own testimony, as soon as he got out
16 of the car, he stopped right behind the car. He's
17 60 feet away from the impact, 60 feet behind
18 facing toward with his headlights on him yelling
19 for Mr. Boyd to put his hands in the air. He says
20 Mr. Boyd is sitting in the car with hands in the
21 air. He can see them. His hands are in the air.
22 Both hands. Nothing in them. Nothing being thrown
23 out. Nothing. Hands in the air. Empty hands.

24 The officer goes up to the car. He said he
25 didn't realize whether the door was open or not,
26 whether he opened it or my client did. In any

1 case, my client's hands in the air. Officer goes
2 and pulls him out of the car. His watching my
3 client the whole time, watching Mr. Boyd the
4 whole time. He handcuffs him and brings him
5 around with the assistance of the other officer.
6 At no time did they see my client throw anything
7 out of the car, have anything in his hands. They
8 testified my client was dazed after the impact
9 initially.

10 He was dazed and confused from the force of
11 the impact. It's a miracle they weren't both
12 killed. The air bags saved lives from that sort
13 of impact. But nevertheless, that sort of impact
14 -- my client was understandably dazed and
15 confused. They were both in similar conditions,
16 no real physical injuries. Neither one of them
17 stayed in the hospital long at all. They were
18 both dazed and confused initially.

19 The State would have you believe that my
20 client dazed and confused after this massive
21 impact with the wall with his hands in the air
22 somehow stash a pill bottle outside the car. It
23 doesn't make any sense. That is not true beyond a
24 reasonable doubt. There's tons of doubt as to who
25 had possession, control and dominion of it.

26 The only logical inference is that the

1 passenger had it. That it was hers. She admitted.
2 She was smoking herself. She first tried to lie,
3 lyingly say Mr. Boyd was smoking it down the
4 road. It was pointed out that that wasn't
5 actually possible. Then she says okay, I guess he
6 wasn't. But she said she was. She had it. It was
7 hers. That's how it got there on the ground
8 outside the car.

9 The police officer didn't even see it when
10 they first went up to her. It's a foot and a half
11 outside the driver's door, a foot and a half
12 away. They don't even see it. Two other officers
13 arrive on the scene. They don't see it either.
14 They didn't see it because it wasn't there until
15 after they brought my client back behind the car.
16 They handcuffed him. They were asking him
17 questions, reading his Miranda rights, getting
18 information, who he was. He was honest about who
19 he was and like that. The State's witness lied
20 about that. He was honest about that.

21 She was left in the car unattended. All
22 witnesses agree. They disagreed on the amount of
23 time that she was unattended. But they all agree
24 that for some space of time, there was a time
25 that nobody was watching her and what she was
26 doing. She was on probation. She was panicking.

1 She knew she had warrants for her arrest. She
2 told my client don't stop, keep going, they got
3 warrants on me.

4 She had the drugs on her. It was the easiest
5 thing in the world for her to do, to toss them
6 out. She doesn't toss them out on her side. She
7 wants to put the blame on him. That's why they
8 are over there on his side. Either through the
9 open door itself or the window that witnesses say
10 was open. You see a picture of the inside of the
11 car with her in it. It's not a big car. She's in
12 trouble. She knows she's in a world of trouble.
13 She says, oh my God, got to blame him.

14 I'm sure Mr. Them is going to say things and
15 I'll wish I had a chance to respond. He gets the
16 last word. I would imagine he's probably going to
17 make a big deal out of the statement that my
18 client told the officer about having smoked crack
19 30 to 35 minutes before. I submit that could have
20 been misheard in the excitement of the situation.
21 The officer has his gun out, adrenaline pumping.
22 He could have misheard what my client said. What
23 he actually said was the passenger was smoking
24 crack.

25 Even if you are to believe the officer heard
26 that correctly, it's not evidence of guilt of

1 what he's charged with. They could have charged
2 him with DUI if they wanted to. DUI is not just
3 driving under the influence of alcohol but any
4 drug if they thought he was driving under the
5 influence of a drug. The charge is DUI. That's
6 not what we are here for today. The only question
7 you are to decide is whether the State has proved
8 his guilt beyond a reasonable doubt on the charge
9 of Trafficking in Powder Cocaine. Thank you.

10 MR. THEM: There's only one witness
11 that's testified that the State of South Carolina
12 selected. That was Mr. Armstrong. All the other
13 witnesses were in effect selected by the
14 Defendant when he chose to fail to stop for that
15 blue light, he made this gentleman a witness and
16 made Officer Shivers who was here earlier, he
17 made him a witness. He had his girlfriend in the
18 car, his partner. Notice she kept saying we this,
19 we this, we this. Not "him", not "I". She said
20 "we". He chose her as a witness.

21 Counsel admits that they failed to stop for
22 blue light. Now, why did they fail to stop for a
23 blue light? Because the Defendant and his
24 girlfriend, and she's just as guilty as he is.
25 I'm not trying to paint her as Mother Theresa or
26 Cinderella or somebody. She's just as

1 contaminated in this case as he is...

2 They ran because they hoped that they would
3 be able to get away and protect these valuable
4 drugs. They drove 100 miles an hour. Recklessly
5 drove off the bank. They rammed into a wall.
6 That's why they ran from the blue light. I told
7 you in the beginning that we would connect the
8 two of those. There's no other reason to run from
9 a blue light if you got a burned out headlight.
10 That's almost like getting a splinter in your
11 finger and amputating your arm. It just doesn't
12 make sense.

13 Now, the defense would have you believe that
14 this young lady in a car is somehow able to flick
15 this across the car, around and under the door so
16 that it falls 18 inches away from the car. She
17 can't throw a button hook or a fish hook like
18 that, folks. This is not boomerang. This is a
19 bottle of drugs. Or could she have possibly
20 thrown it through the window. If she did that,
21 when she arched it across the car to throw it
22 through the window, would it land 18 inches
23 below, 18 inches from the edge of the car? No.

24 Ms. Kennedy is a perfect example of what's
25 wrong with drugs. Poor young lady has a fried
26 brain from all the drugs she's used over time.

1 Isn't it amazing that she says that they were
2 smoking crack and this officer says the Defendant
3 said they were smoking crack, that she saw the
4 pill bottle on the floor or the car.

5 Now, what happens when you get in a wreck? If
6 you never been in a wreck, certainly you have
7 slammed on brakes in the car. Everything comes
8 forward. Papers, bottles, whatever, whatever is
9 on the seat. When you hit like that in such a
10 violent collision, I'm not going to tell you that
11 the collision did this. But it is certainly
12 possible that the drugs came out of the car or
13 it's just as possible that the Defendant threw
14 them out of the car.

15 But these two were a team. They were partners
16 in this business, the girl that testified, Ms.
17 Kennedy and the Defendant. She had the scales. He
18 had the drugs. He was the stronger of the two to
19 protect them. She had the drugs. She was the drug
20 dealer's girlfriend. Neither one of them worked.

21 MR. NEWTON: Your Honor, I have to object,
22 Judge. There was no basis that, no testimony that
23 my client was any sort of drug dealer or anything
24 like that. There's no basis in the record to
25 support that argument at all.

26 THE COURT: I will sustain the objection.

1 MR. NEWTON: Thank you.

2 MR. THEM: She was the alleged drug
3 trafficker's girlfriend. Did you notice when she
4 testified, she was still under his spell? She
5 kept looking at him. He kept evil eyeing her. I
6 hope you saw that. It's a rather complicated
7 situation.

8 MR. NEWTON: Judge, I have to object to
9 that too. There's no --

10 THE COURT: I will sustain the objection.
11 You can only argue what's in evidence in the case
12 and reasonable inferences from the evidence in
13 the case.

14 MR. THEM: The defense's theory that she
15 threw the drugs just doesn't fly. There's no way
16 she could have known the drugs to have them land
17 where they did. When you start deliberating,
18 remember, we are talking about a team here. Two
19 of them possessing over ten grams of cocaine.

20 Now, to find the Defendant guilty if you
21 chose to do that, you must be satisfied that he
22 is guilty beyond a reasonable doubt. A reasonable
23 doubt is exactly what Mr. Newton said. It's
24 something that would cause an honest person
25 seeking the truth to hesitate. Finding someone

1 guilty beyond a reasonable doubt means that you
2 are firmly convinced of their guilt, not some
3 little green men from the moon came down and did
4 something. Not some wild and fanciful doubt but
5 and honest, sincere reasonable doubt.

6 I submit to you that we have proven to you
7 beyond a reasonable doubt that this
8 boyfriend/girlfriend team possessed together and
9 more than one person can possess something. They
10 possessed this drug together. It was in that car
11 and he should be found guilty. Thank you very
12 much.

13 THE COURT: Ladies and Gentlemen of the
14 jury, you've heard the evidence and testimony in
15 the case. I'll go over the law with you. And you
16 will deliberate until you reach a unanimous
17 verdict. This case comes to us on two indictments
18 which contain the charges against the Defendant.
19 One is Trafficking in Cocaine on or about the
20 third day of December 2007. They allege that
21 Jackie Lee Boyd did in Pickens County on or about
22 the third day was trafficking in cocaine. Then
23 they allege on the same day, he failed to stop
24 for a blue light.

25 Now, these indictments, as I told you at the
26 very beginning are not evidence in the case. The

1 fact that someone has been charged and arrested
2 is not any evidence of their guilt. And you
3 should not consider that as evidence in the case.
4 These are just simply the vehicles that brings
5 this case to court. And eventually, you are going
6 to report your verdict on the back of these two
7 pieces of paper.

8 Now, to these charges, the Defendant, Mr.
9 Boyd, has pled not guilty. His plea of not guilty
10 places the burden of proof upon the State of
11 South Carolina to prove him guilty of any crime
12 charged beyond a reasonable doubt. Now, a person
13 charged with committing a criminal offense in
14 South Carolina is never required to prove
15 themselves innocent.

16 Ladies and Gentlemen of the jury, that's a
17 cardinal and important rule of the law of
18 evidence in a criminal case. No matter what the
19 seriousness of the charges are, a person is
20 always presumed to be innocent for the crime in
21 which they are charged until you, the jury, hears
22 evidence that satisfies you of guilt beyond a
23 reasonable doubt.

24 Now, the presumption of innocence is not a
25 mere legal theory or a legal phrase but that's a
26 substantial right to which all of us are entitled

1 to. That is, the presumption of innocence until
2 the jury hears evidence that satisfies you of
3 guilt beyond a reasonable doubt.

4 Now, Ladies and Gentlemen, all of us have
5 different functions and responsibilities in this
6 courtroom. Mine are different from yours. I am
7 prohibited under the Constitution from discussing
8 the facts of this case with you. I would not do
9 that. I appreciate you Ladies and Gentlemen,
10 citizens of Pickens County being here, using your
11 good judgement and common sense to determine the
12 facts in this case, if you can, apply the facts
13 to the law and write a verdict in this case that
14 speaks the truth.

15 If I have done anything during this trial to
16 cause you to believe that I have a feeling about
17 this case either for the State or for the
18 defense, you disregard that. If I did anything, I
19 didn't mean to. I wouldn't do anything to
20 infringe upon your responsibility to determine
21 the facts, apply the facts to the law that I go
22 over with you and right a verdict in this case
23 that speaks the truth.

24 Now, as jurors in this case and in
25 determining the facts in this case, you have the
26 right to pass upon the credibility and the

1 believability of each and every witness in this
2 case. You observe the witnesses. You observe the
3 demeanor of witnesses, their factual expressions.
4 You can ask yourself was the witness forthright;
5 how did the witness come to know the facts about
6 which they testified, was there other testimony
7 and evidence in the case that make the testimony
8 of that witness stronger or weaker? You can take
9 into consideration any bias, prejudice or
10 inference that you feel a witness may have in the
11 case.

12 I say these things to you just to emphasize
13 to you, the jury, the weight that you see fit to
14 give to the evidence and the testimony. The
15 credibility and believability of each and every
16 witness is for your sole determination. Just as
17 you are the judges of the facts, you have to
18 accept the law as I explain it to you, apply the
19 facts that you find to the law and write a
20 verdict in this case.

21 Now, Ladies and Gentlemen, there are two
22 types of evidence which are generally presented
23 during a trial. There is direct evidence and
24 circumstantial evidence. Direct evidence is
25 testimony of a person who claims to have
26 firsthand knowledge of a fact such as an

Jury Charge

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1 eyewitness. Something gained through their five
2 senses. Circumstantial evidence is proof of a
3 chain of facts and circumstances that indicates
4 the existence of a fact.

5 The law makes absolutely no distinction
6 between the weight or value to be given to either
7 direct evidence or circumstantial. Nor is a
8 greater degree of certainty required of
9 circumstantial evidence than direct evidence. You
10 should weigh all the evidence and testimony in
11 the case. After weighing all the evidence and
12 testimony, if you are not convinced of the guilt
13 of the Defendant beyond a reasonable doubt, you
14 must find the Defendant not guilty.

15 Ladies and Gentlemen, the State has the
16 burden of proving each and every element of the
17 crime charged beyond a reasonable doubt. A
18 reasonable doubt may exist because of the
19 evidence and testimony you heard or the lack of
20 evidence and testimony in the case. If you have a
21 reasonable doubt as to the guilt of the
22 Defendant, he's entitled to that doubt and would
23 be entitled to an acquittal. What is a reasonable
24 doubt? A reasonable doubt is the kind of doubt
25 that would cause a reasonable person to hesitate
26 to act.

1 Now, the government or the State has the
2 burden of proving the Defendant guilty beyond a
3 reasonable doubt. If you served as jurors in a
4 civil case, you would have been told that the
5 burden of proof was by the greater or
6 preponderance of the evidence. In a criminal
7 case, the State's proof is more powerful than
8 that. It is beyond a reasonable doubt.

9 Proof beyond a reasonable doubt is proof that
10 leaves you firmly convinced that the Defendant is
11 guilty. There are very few things in this world
12 that we can know with absolute certainty. The law
13 does not require proof that overcomes every
14 possible doubt. If, based on your consideration
15 of the evidence, you are firmly convinced that
16 the Defendant is guilty of the crime charged,
17 then you must find him guilty. If, on the other
18 hand, you think there is a real possibility that
19 he is not guilty, you must give him the benefit
20 of the doubt and find him not guilty.

21 Ladies and Gentlemen, the fact that a
22 Defendant has not testified in his own behalf can
23 not and must not be considered against him under
24 any circumstances or in any manner whatsoever.
25 The fact that a Defendant does not take the
26 witness stand in his own behalf does not create

1 any presumption against him. I would charge you
2 that you must not let that fact weigh in the
3 slightest degree against the Defendant. Nor
4 should this fact enter into your discussions or
5 deliberations in the jury room.

6 Under the Constitution of the United States
7 and under the Constitution of South Carolina, it
8 is the prerogative of the Defendant to testify or
9 to remain silent. The burden of proof is always
10 on the State of South Carolina to establish his
11 guilt beyond a reasonable doubt.

12 Ladies and Gentlemen, the Defendant is
13 charged with Trafficking in Cocaine. The State
14 must prove to you that on or about December the
15 3rd of 2007 that Jackie Lee Boyd did in Pickens
16 County traffic in cocaine. The State must prove
17 beyond a reasonable doubt that the Defendant was
18 knowingly in actual or constructive possession of
19 cocaine. The charge is cocaine. If I said crack
20 cocaine, disregard that.

21 The charge is that he knowingly, with
22 knowledge, knew that he was in actual or
23 constructive possession of cocaine. The State
24 must prove to you beyond a reasonable doubt that
25 the substance in question was cocaine. The State
26 must prove to you beyond a reasonable doubt that

1 the cocaine was ten grams or more of cocaine. The
2 State must prove to you beyond a reasonable doubt
3 that the Defendant was in actual or constructive
4 possession of ten grams or more of cocaine on
5 December the 3rd of 2007.

6 Actual possession means that the cocaine was
7 in the actual physical custody of the Defendant.
8 Constructive possession means that the Defendant
9 had dominion and control or the right to exercise
10 dominion and control over either the cocaine
11 itself or the property on which the cocaine was
12 found. Mere presence at the scene where drugs
13 were found is not enough to prove possession.

14 The State must prove that the Defendant had
15 actual knowledge of the cocaine and that he was
16 in either actual possession or constructive
17 possession of the cocaine. Again, constructive
18 possession is the State must prove the Defendant
19 had dominion and control over the substance
20 itself, the alleged cocaine, or had the right to
21 exercise dominion and control over the cocaine.
22 If the State has proven each of those elements
23 beyond a reasonable doubt, then your verdict
24 would be guilty of Trafficking in Cocaine. If the
25 State fails to prove any element of the crime
26 charged, your verdict would be not guilty of

1 . Trafficking in Cocaine.

2 Now, the other allegations are that the
3 Defendant did in Pickens County on or about the
4 3rd day of December 2007 willfully, knowingly and
5 unlawfully failed to stop for a police vehicle
6 when the vehicle signaled the Defendant to stop
7 and that he knew or should have known that he was
8 being signaled to stop by either a siren or a
9 blue light. It can be either one. It does not
10 have to be both. The charge is failure to stop
11 for a blue light. Now, Ladies and Gentlemen, the
12 only verdict on this charge would be guilty or
13 not guilty. Again, the State would have to prove
14 each and every element beyond a reasonable doubt.

15 Now, your only verdict on the Trafficking in
16 Cocaine can be either guilty or not guilty.
17 Whatever verdict you reach on either indictment
18 must be unanimous. Any verdict in a criminal case
19 must be unanimous. Each person has an equal
20 voice, an equal vote and equal input into the
21 case. Each juror does. Someone has to preside.
22 That will be your responsibility, sir.

23 I will send all the evidence that's been
24 introduced back into the jury room. You can have
25 it back there for your consideration. Then, uh,
26 I'll let you go back to the jury room for just a

1 minute. I'll go over my charge on the law and see
2 if the attorneys want me to say anything else to
3 you about the case, about the law of the case. If
4 not, you can begin your deliberations. Y'all can
5 just step back to the jury room.

6 (WHEREUPON, the jury exits at approximately
7 3:19 p.m.)

8 THE COURT: Any exceptions?

9 MR. NEWTON: No, Your Honor.

10 MR. THEM: Not on behalf of the State,
11 Your Honor.

12 THE COURT: All right. We'll be in recess
13 until they reach a verdict.

14 (WHEREUPON, deliberations began at approximately
15 3:25 p.m.)

16 THE COURT: They got a verdict. Bring them
17 in.

18 (WHEREUPON, the jury enters at approximately
19 5:29 p.m.)

20 THE COURT: Mr. Foreman, you reached a
21 verdict?

22 JUROR FOREPERSON: Yes, sir.

23 THE COURT: Would you give it to the
24 bailiff please.

25 (WHEREUPON, the foreperson passes the verdict.)

Verdict

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1 THE COURT: Publish the verdict.

2 THE CLERK: In the case of the State
3 versus Jackie Lee Boyd, 2008-GS-39-1339, guilty.
4 In the case of 2008-GS-39-1338, the State versus
5 Jackie Lee Boyd, verdict, guilty. If this is your
6 verdict, so say you all by raising your right
7 hand.

8 (WHEREUPON, each juror raises right hand.)

9 THE CLERK: Thank you.

10 THE COURT: Any questions about the form
11 of the verdict?

12 MR. THEM: Not on behalf of the State,
13 Your Honor.

14 MR. NEWTON: No, Your Honor.

15 THE COURT: Ladies and Gentlemen, thank
16 y'all so much for your service. I appreciate it.
17 I'm going to have to ask you to come back one
18 more time at 9:30 in the morning. We're going to
19 draw two more juries. Maybe you'll be drawn,
20 maybe you won't. Have a good evening. I'll see
21 you tomorrow morning. 9:30.

22 (WHEREUPON, the jury exits at approximately
23 5:32 p.m.)

24 THE COURT: Mr. Newton, you and Mr. Boyd
25 come up. Anything you want to say?

1 MR. NEWTON: Your Honor, you heard the
2 facts of the case. I urge you to be as lenient as
3 possible. I understand it is severe.

4 THE COURT: I understand this is a third
5 offense.

6 MR. THEM: Yes, sir. And it's a whole lot
7 more than that if you'll allow me to read his
8 record.

9 THE COURT: Okay.

10 MR. THEM: Starting back in 1984,
11 Receiving Stolen Goods, Conspiracy. Moving to
12 1986, Accessory Before the Act of a Felony. Looks
13 like a Strong Armed Robbery. Also convictions for
14 Burglary and Grand Larceny. A Simple Possession
15 of Marijuana charge in 1981. Twelve counts of
16 Possession of Drug Paraphernalia starting in the
17 80's going up to the most recent time. I will not
18 list each and every one of them. Carrying a
19 Pistol Unlawfully in '94.

20 Possession of a Schedule 1 Control Substance
21 first offense in 1995. Receiving Stolen Goods in
22 1995. Also in 1995, Possession of Crack Cocaine,
23 first offense. Also Felony in Possession of a
24 Pistol, 1996. Manufacture, distribution of ice,
25 crack, crank. Evidently it's either crack or

1 methamphetamine charge in '96. Criminal Domestic
2 Violence in '97.

3 Selling Counterfeit Drugs, Criminal Domestic
4 Violence in '97. In '97, Possession of one gram
5 of Ice or Crack. First degree Burglary in 2003.
6 Possession of Marijuana in 2007. That's it, Your
7 Honor.

8 THE COURT: This is an 85 percent?

9 MR. THEM: Yes, sir. It's over 20. My
10 understanding is anything over 20 years is 85
11 percent. It's a minimum mandatory 25 to a maximum
12 30 and three years on the blue light.

13 MR. BOYD: Mr. Patterson, can I say
14 something, sir?

15 THE COURT: Yes, sir.

16 MR. BOYD: Mr. Patterson, I wasn't in the
17 wrong, sir. That drugs wasn't mine. I admit that
18 I was getting high, sir. When he bring up those
19 charges, that's over 20 years ago. I was young
20 and stupid then, sir. That right there shows it
21 wasn't mine.

22 THE COURT: Well, under the law, Mr. Boyd,
23 unfortunately, the Court doesn't have much
24 choice. So under the Trafficking charge, the
25 minimum sentence is 25 years.

1 MR. BOYD: And but Mr. Patterson, the
2 Trafficking is a third offense but I just had
3 possession of the other two. That ain't no three
4 trafficking.

5 THE COURT: It counts. All the other ones
6 count.

7 MR. BOYD: Please don't give me 25 years.
8 I'm 45 years old, sir. Please, Mr. Patterson.

9 THE COURT: And under the indictment, I
10 have to give you three years. I'll let it run
11 concurrent.

12 MR. NEWTON: Thank you.

13 MR. BOYD: 25?

14 THE COURT: Yeah.

15 MR. BOYD: 85 percent, sir?

16 MR. NEWTON: He gave you the minimum.

17 MR. BOYD: Okay. But it's not 85 percent,
18 is it?

19 THE COURT: It is 85 percent.

20 MR. BOYD: That's 20 years I have to do.

21 MR. NEWTON: He gave you the minimum
22 sentence.

23 THE COURT: Thank you.

24 MR. BOYD: Please don't give me -- Mr.
25 Patterson, you can't change it over.

Sentencing of the Court

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1 THE COURT: There is nothing I can do.

2
3 (END OF PROCEEDING)
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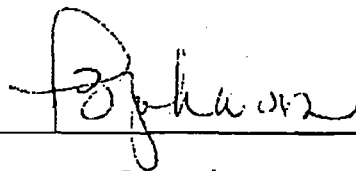
CERTIFICATE

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1 I, the undersigned, Teresa B. Johnson, Official
2 Court Reporter for the Thirteenth Judicial Circuit of
3 the State of South Carolina, do hereby certify that I
4 was not the recorder of record for the trial of the
5 captioned case but am the transcriber of record. I
6 hereby certify that the foregoing is a true, accurate
7 and complete Transcript of Record of all the
8 proceedings had and evidence introduced in the trial
9 of the captioned case, relative to appeal, in the
10 Court of General Sessions for Pickens, South Carolina,
11 on the 17th days of December, 2008.

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

14
15 June 28, 2009

16
17 
18

19 Teresa B. Johnson

20 Official Court Reporter
21
22
23
24
25
26

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

Larry R. Patterson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACKIE L. BOYD,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Did the trial court judge err by not granting Boyd's motion for a directed verdict at the close of the State's case?

STATEMENT OF THE CASE

Jackie Lee Boyd was indicted by the Pickens County grand jury for trafficking cocaine and failure to stop for a blue light. He was tried before the Honorable Larry R. Patterson and a jury on November 17th -18th, 2008. He was represented by Robert Newton, Esquire. He was convicted and sentenced to 25 years for the cocaine, and 3 years for failing to stop for a blue light. The sentences were ordered to run concurrently.

This appeal timely follows.

ARGUMENT

The trial court judge erred by not granting Boyd's motion for a directed verdict at the close of the State's case.

Boyd was entitled to a directed verdict at the close of the State's case because the evidence presented raised only a "mere suspicion" that he was guilty of trafficking cocaine. Specifically, the State did not offer any evidence to show that Boyd had knowledge of the bottle containing the drugs that were attributed to him. Since the State did not offer any evidence on this element of the crime, it was improper for the judge send the case to the jury. For the following reasons, Boyd asks this Court to reverse his conviction.

Relevant Facts

On the night of these events, Boyd and a passenger, Jessica Kennedy, were driving away from the city of Greenville on the interstate. One of the car's headlights was burned out. The police, observing this traffic infraction, then attempted to pull the car over. Instead, the car accelerated. After about 3-4 minutes, the car exited from the interstate, and ran into a stone wall. ROA 4, ll. 4-23. During his opening statement, Boyd conceded that he was guilty of failing to stop for a blue light. ROA 1, l. 24- p. 2, l.7. The car belonged to Kennedy's ex-boyfriend, Maurice. ROA 28, ll. 8-19.

The police approached the car, and Boyd was removed and handcuffed. ROA 12, l. 10- p. 13, l. 8. According to the police, he also confessed to having smoked crack cocaine earlier in the evening. ROA 18, ll.5-10. EMS arrived on the scene, and both Boyd and Kennedy were taken to the hospital. The car was searched, and various items of drug paraphernalia were found. ROA 19, l. 2- p. 21, l. 18. Next to the car, about a foot and a half away from the door, a medicine bottle was found. ROA 23, ll. 13-15. Inside were drugs;

specifically, cocaine. Both Boyd and Kennedy were charged with the cocaine. Another item of drug paraphernalia was found in Kennedy's bra at the hospital. ROA 41, ll. 5-9.

Boyd's defense at trial was that the drugs belonged to Kennedy, and that she threw them out of the car while he was being detained by the officers. ROA 102, l. 13- 111, l. 9.

At the close of the State's case, Boyd made a motion for a directed verdict:

The woman, the passenger who testified, I believe any reasonable juror and I think it should be apparent to the Court that she was just making it up as she went along. Her testimony was not credible at all. She was contradicting herself freely and making impossible claims, unlikely claims such as my client driving down the road at 115 miles per hour while smoking a crack pipe which she then later retracted and admitted that it was not possible at all.

The other witnesses, Judge, the two officers who were on the scene, neither one of them saw or found this drug in my possession. The only thing that—in my client's possession. The only thing that was found in anybody's possession was the paraphernalia found on the passenger herself. It comes down to the pill bottle that was found outside the car which contained the cocaine.

By the testimony of the officers themselves, Judge, when they pulled up behind the car, they had their eyes on him. They drew a weapon as soon as they got out. They saw him while he's still sitting in the car with his hands in the air, not throwing anything out of the car. They made him get out of the car and handcuffed him and put him on the ground. They did not see the bottle at that time which they say was laying (sic) right there by the door.

The testimony also is that all witnesses agree that the passenger was, had moments in time when nobody was paying any attention to her where she clearly had the, both the motive and the ability to throw that bottle out of the car. Submit, uh, respectfully move for a directed verdict.

ROA 96, l. 7- p. 97, l. 16.

The judge denied the motion. ROA 96, ll. 17-24.

The evidence produced at trial was not sufficient to show that Boyd was guilty of trafficking cocaine, and he should have his conviction reversed.

A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. McKnight, 352 S.C. 635, 642, 576 S.E.2d 168, 171, *cert. denied*, 540 U.S. 819, 124 S. Ct. 101, 157 L.Ed.2d 36 (2003); State v. Rothschild, 351 S.C. 238, 243, 569 S.E.2d 346, 348 (2002). The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. State v. Mitchell, 341 S.C. 404, 409, 535 S.E.2d 126, 127. "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001). See also State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004). In this case, the evidence presented by the State did not rise above the level of mere suspicion.

Specifically, the State did not introduce any testimony at all to prove that Boyd had any knowledge of the bottle that was found on the ground. About the bottle, Kennedy testified:

Q: How about the bottle here marked State's Exhibit number 4. You ever seen that before?

A: Yes, sir.

Q: You know what's inside it?

A: Yes, sir.

Q: You had that on you as well?

A: No, sir.

Q: Where was it?

A: I ain't for sure . . .

Q: So it's your testimony that you never seen that bottle before today that I just showed it to you?

A: Yeah. I seen the bottle.

Q: Where did you see it at?

A: It was in the car at one point in time.

Q: Where at in the car?

A: I can't remember sir.

ROA 82, ll 12- p. 83, l. 7.

Then, on re-direct examination by the State:

Q: Okay. Now you said you saw this pill bottle in the car, is that correct?

A: Yes, sir.

Q: When you saw it in the car, did it belong to you?

A: No, sir.

Q: Who had it?

A: It was just in the car.

Q: Who had it?

A: It was just in the car.

Q: On whose floor, the driver's side, the passenger side, the middle, where?

A: I can't remember.

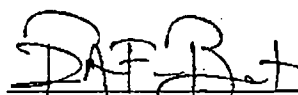
ROA 86, ll. 10-22.

The State did not present any evidence to show that Boyd had knowledge of the bottle. They failed to provide any evidence of this element during its case. In re Winship, 397 U.S. 358 (1970). The trial court judge should have granted Boyd's motion for a directed verdict. Respectfully, Boyd asks this Court to reverse his conviction.

CONCLUSION

For the preceding reason, Boyd respectfully asks this Court to reverse his conviction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'DAF-Best', written over a horizontal line.

Elizabeth A. Franklin-Best
Appellate Defender

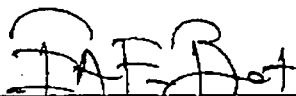
ATTORNEY FOR APPELLANT.

This 22nd day of March, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 22, 2010



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

Larry R. Patterson, Circuit Court Judge

THE STATE,

RESPONDENT,

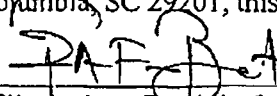
V.

JACKIE L. BOYD,

APPELLANT

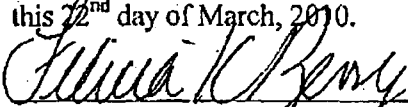
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 22nd day of March, 2010.


Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 22nd day of March, 2010.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: August 15, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appcal From Pickens County
Honorable Larry R. Patterson, Circuit Court Judge

THE STATE,

Respondent,

vs.

JACKIE L. BOYD,

Appellant.

FINAL BRIEF OF RESPONDENT

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<u>State v. Ballenger</u> , 322 S.C. 196, 470 S.E.2d 851 (1996).	9
<u>State v. Brown</u> , 319 S.C. 400, 461 S.E.2d 828 (Ct. App. 1995).	8, 9
<u>State v. Cherry</u> , 361 S.C. 588, 606 S.E.2d 475 (2004).	8
<u>State v. Gore</u> , 318 S.C. 157, 456 S.E.2d 419 (Ct. App. 1995).	9, 10
<u>State v. Hernandez</u> , 382 S.C. 620, 677 S.E.2d 603 (2009).	8
<u>State v. Hudson</u> , 277 S.C. 200, 284 S.E.2d 773 (1981).	8
<u>State v. Long</u> , 325 S.C. 59, 480 S.E.2d 62 (1997).	7
<u>State v. Marshall</u> , 250 S.C. 448, 158 S.E.2d 650 (1968).	7
<u>State v. Martin</u> , 347 S.C. 522, 556 S.E.2d 706 (Ct. App. 2001).	10
<u>State v. Mollison</u> , 319 S.C. 41, 459 S.E.2d 88 (Ct. App. 1995).	8
<u>State v. Odems</u> , 385 S.C. 399, 684 S.E.2d 573 (Ct. App. 2009).	9
<u>State v. Robinson</u> , 310 S.C. 535, 426 S.E.2d 317 (1992).	7
<u>State v. Stanley</u> , 365 S.C. 24, 615 S.E.2d 445 (Ct. App. 2005).	8, 10
<u>State v. Weston</u> , 367 S.C. 279, 625 S.E.2d 641 (2006).	7
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827 (2001).	7

STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's motion for a directed verdict because substantial circumstantial evidence was presented establishing Appellant's constructive possession and knowledge of the drugs.

STATEMENT OF THE CASE

Appellant Jackie L. Boyd was arrested on December 3, 2007, after crashing a vehicle during a high-speed chase. Appellant was indicted by the Pickens County grand jury for failure to stop for blue lights and trafficking in cocaine third offense. On November 17, 2008, a jury trial was commenced in the Pickens County court of general sessions, with the Honorable Larry R. Patterson, circuit court judge, presiding. At the close of the State's case, Appellant moved for a directed verdict on the trafficking offense and the motion was denied. On November 18, 2008, the jury convicted Appellant as charged. Appellant was sentenced to twenty-five (25) years for the trafficking offense and three (3) years for the blue light offense. Appellant subsequently filed a timely notice of appeal.

STATEMENT OF FACTS

In the early morning hours of December 3, 2007, at approximately 4:30 a.m., Officers Jeremy Benjamin and Connor Shivers of the City of Easley Police Department were on duty when they observed a passing vehicle with only one operational headlight. (R. pp. 3-4; pp. 49-50). With Officer Shivers following behind in another police car, Officer Benjamin pursued the vehicle and activated his blue lights and siren with the intention of stopping the vehicle and issuing the driver a warning citation. (R. p. 4; p. 5). However, instead of stopping, the vehicle rapidly accelerated, and a chase ensued. (R. p. 4).

The officers pursued the vehicle as it reached speeds between 100 and 120 miles per hour. (R. p. 4). During the chase, the vehicle swerved into the grass several times and the driver occasionally appeared to lose control. (R. p. 5). The chase went on for approximately 3.7 miles. (R. p. 4). Suddenly, as the vehicle approached an intersection at a high rate of speed, the driver lost control, drove into a grassy area, and struck a rock wall. (R. p. 11). The force of the impact lifted the back end of the car off of the ground. (R. p. 12).

The officers stopped their patrol cars in the roadway and approached the crashed vehicle with guns drawn. (R. p. 12; p. 32). As the officers approached, it was dark and they could not see very well. (R. p. 34). The driver of the vehicle, Appellant Jackie L. Boyd, was in the driver's seat with his hands raised and appeared disoriented. (R. p. 12). The officers yelled for Appellant to exit the vehicle, and Officer Shivers pulled him from the car. (R. pp. 12-13). Immediately after Appellant was pulled from the vehicle, Officer Shivers realized there was also a passenger in the car. (R. p. 52). The officers put

Appellant on the ground, hand-cuffed him, and placed him under arrest. (R. p. 13). As soon as Appellant was secured and within minutes of the crash, Officer Shivers went to check on the passenger. (R. p. 53).

Officer Benjamin remained with Appellant. He performed a pat-down search, and once Appellant was secured, Officer Benjamin checked to make sure he was okay. (R. p. 13; pp. 14-15). Appellant appeared disoriented at first, but he had no visible serious injuries. (R. p. 15). Officer Benjamin read Appellant his Miranda rights verbatim from a card, and Appellant nodded he understood those rights. (R. p. 17). Appellant then admitted to smoking crack cocaine thirty to forty-five minutes before the chase. (R. p. 18).

Based on Appellant's statements, Officer Benjamin conducted a search of the vehicle. (R. p. 18). The officer recovered four syringes, silver spoons with white handles, an empty orange medicine bottle, and a glass tube in the driver's side floorboard. (R. pp. 20-21). The officer also located a glass tube, metal rod, and medicine dropper in the passenger's purse. (R. p. 21). These items are typically associated with drug consumption. (R. p. 21). On the ground roughly a foot and a half from the car, Officer Benjamin discovered a medicine bottle similar to the one recovered from the interior of the car. (R. p. 22; p. 23). Inside of this medicine bottle, there were two separate bags containing approximately 4.37 grams of crack cocaine and 10.90 grams of cocaine. (R. pp. 93-94). When questioned about the recovered items, Appellant did not claim ownership of anything. (R. pp. 24-25).

Meanwhile, Officer Shivers attended to the passenger. (R. p. 53). The passenger initially gave a false name, but she was later identified as Jessica Kennedy, Appellant's

girlfriend at the time. (R. pp. 40-41; p. 68). Officer Shivers stayed with Kennedy until EMS arrived and began providing treatment, and he never saw her throw anything from the vehicle. (R. p. 54). Subsequently, a glass pipe was recovered from Kennedy's bra. (R. p. 41). Kennedy was also arrested. (R. p. 77).

At trial, Kennedy testified to the events leading up to the chase and crash. Kennedy borrowed a friend's car, and she and Appellant went to get drugs earlier in the evening. (R. p. 71; p. 77). Appellant left her in the vehicle and went into a house to get the drugs. (R. p. 71). Appellant and Kennedy then got high using crack cocaine. (R. p. 71). Both were "pretty high," and when they saw the officers' police cars, they panicked. (R. pp. 72-73). Appellant then attempted to elude the police and crashed. (R. p. 70). Kennedy testified drugs might have been used during the police chase. (R. p. 73; p. 75). She denied moving anything in the car or throwing anything out of the car. (R. p. 76). Kennedy recognized the recovered medicine bottle containing the drugs from inside of the car earlier, but she denied ownership. (R. pp. 82-83). She stated the bottle was "just in the car." (R. p. 86).

The officers' testimony corroborated some of Kennedy's testimony. While Kennedy was left unattended only temporarily after the crash, she was never seen throwing anything from the car. (R. p. 44; p. 54). Furthermore, Officer Benjamin testified it would have been difficult for the passenger to have thrown the bottle from the vehicle based on its condition and location right outside of the driver's side door. (R. pp. 47-48). Additionally, the officer indicated he did not initially detect the medicine bottle when he approached the car because the car door interfered with his ability to see the place where the bottle was eventually recovered. (R. p. 46).

At the close of the State's case, Appellant moved for a directed verdict on the trafficking charge. (R. p. 96). Appellant based this motion on the credibility of Kennedy, the lack of evidence recovered from Appellant's possession, and the period in time in which Kennedy was left unattended. (R. pp. 96-97). The trial judge denied the motion. (R. p. 97). Subsequently, the jury convicted Appellant on all charges.

ARGUMENT

The trial judge properly denied Appellant's motion for a directed verdict because substantial circumstantial evidence was presented establishing Appellant's constructive possession and knowledge of the drugs.

Appellant contends the trial judge erred in denying the motion for a directed verdict on the trafficking offense. Appellant argues the evidence only raised a mere suspicion of guilt and did not establish his knowledge of the medicine bottle containing the drugs. There was substantial circumstantial evidence presented from which the jury could find Appellant's constructive possession and knowledge of the drugs. The trial judge properly considered the existence of evidence in denying the directed verdict motion. Appellant's conviction should be affirmed.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When presented with a motion for a directed verdict, the trial judge is concerned with the existence or non-existence of evidence, not its weight. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). The trial judge should deny the directed verdict and submit the case to the jury if there is any substantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992). A directed verdict is properly denied when the determination of guilt is dependent on the credibility of the witnesses. State v. Marshall, 250 S.C. 448, 450, 158 S.E.2d 650, 651 (1968). On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial circumstantial evidence reasonably tending to

prove the guilt of the accused; the appellate court must affirm the trial judge's ruling.

State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004).

Possession of a controlled substance can be inferred from the circumstances of a particular case and can be imputed to a person with both the power and intent to control the disposition and use of the drugs. State v. Brown, 319 S.C. 400, 404, 461 S.E.2d 828, 830 (Ct. App. 1995). Recently, in State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009), the South Carolina Supreme Court instructed:

In drug cases, the element of knowledge is seldom established through direct evidence, but may be proven circumstantially. State v. Attardo, 263 S.C. 546, 550, 211 S.E.2d 868, 869 (1975). Knowledge can be proven by evidence of acts, declarations, or conduct of the accused from which the inference may be drawn that the accused knew of the existence of the prohibited substances. Id.

Possession may be either actual or constructive. State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995). "Actual possession occurs when the drugs are found to be in the actual physical custody of the person. Constructive possession occurs when the person charged with possession has dominion and control over either the drugs or the premises upon which the drugs were found." Id.

Constructive possession can be established by circumstantial or direct evidence or a combination of the two, but possession requires more than mere presence. State v. Stanley, 365 S.C. 24, 43, 615 S.E.2d 455, 464-465 (Ct. App. 2005). "When contraband materials are found on premises under the control of the accused, this fact in and of itself gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury." State v. Hudson, 277 S.C. 200, 203, 284 S.E.2d 773, 775 (1981).

Constructive possession can be shared by more than one person. Id.

Additionally, knowledge and possession of contraband can be inferred from other circumstances of a particular case. Brown, 319 S.C. at 404, 461 S.E.2d at 830. When examining these other circumstances, the finder of fact is permitted to consider flight as some evidence of guilt. See State v. Ballenger, 322 S.C. 196, 200, 470 S.E.2d 851, 854 (1996) (holding defendant's flight was at least some evidence of guilt). In State v. Odems, 385 S.C. 399, 404, 684 S.E.2d 573, 575 (Ct. App. 2009), the Court of Appeals examined evidence of flight:

"Flight from prosecution is admissible as evidence of guilt." State v. Al-Amin, 353 S.C. 405, 413, 578 S.E.2d 32, 36 (Ct. App. 2003); see also State v. Ballenger, 322 S.C. 196, 200, 470 S.E.2d 851, 854 (1996) (stating flight "is at least some evidence of guilt"); State v. Freely, 105 S.C. 243, 250, 89 S.E. 643, 645 (1916) ("The flight of one charged with crime has always been held to be some evidence tending to prove guilt."). Flight can constitute evidence of a defendant's guilty knowledge and intent. See State v. Beckham, 334 S.C. 302, 315, 513 S.E.2d 606, 612 (1999). "Flight, when unexplained, is admissible as indicating consciousness of guilt, for it is not to be supposed that one who is innocent and conscious of that fact would flee." State v. Crawford, 362 S.C. 627, 635, 608 S.E.2d 886, 890 (Ct. App. 2005). "The critical factor to the admissibility of evidence of flight is whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities." Id. at 636, 608 S.E.2d at 891.

The Court in Odems found that the inferences to be drawn from Odems' flight from police along with his constructive possession of stolen goods in a car he was riding in equated to sufficient circumstantial evidence to overcome a motion for a directed verdict.

In State v. Gore, 318 S.C. 157, 456 S.E.2d 419 (Ct. App. 1995), the Court of Appeals considered whether the facts of the case sufficiently established constructive possession of drugs. Gore was arrested after officers pulled him from underneath an automobile. Id. at 160, 456 S.E.2d at 421. Marijuana was recovered from the ground underneath the car, and drug paraphernalia was located in another vehicle Gore had

parked at a nearby restaurant. Id. Viewing the facts in a light most favorable to the State, the Court found the marijuana found on the ground near where Gore had been along with the recovered drug paraphernalia constituted sufficient evidence from which a jury could find Gore's knowledge and possession of the drugs. Id. at 163, 456 S.E.2d at 423.

In State v. Stanley, officers attempted to stop a vehicle in which Stanley was a passenger and a high speed chase ensued. Id., 365 S.C. at 29, 615 S.E.2d at 457. The vehicle crashed, and the driver ran from the scene. Id. at 29, 615 S.E.2d at 457-458. Stanley exited the car and attempted to walk away, but officers ordered him to the ground and arrested him. Id. After Stanley was rolled over, drugs were discovered on the ground where Stanley had been laying. Id. at 30, 615 S.E.2d at 458. Additionally, drug paraphernalia was located in the vehicle. Id. The Court of Appeals affirmed the denial of Stanley's motion for a directed verdict, finding substantial circumstantial evidence pointing to his guilt. Id. at 43, 615 S.E.2d at 465.

In the case sub judice, substantial circumstantial evidence was introduced at trial from which a jury could infer Appellant's guilt. Initially, Appellant fled from officers attempting to stop his vehicle. Appellant's flight from authorities can be considered as some evidence of guilt, and Appellant's flight allows for an inference he was aware of the presence of drugs inside of the vehicle. Additionally, Appellant acknowledged to officers he had been using drugs prior to the police chase and crash. See State v. Martin, 347 S.C. 522, 534, 556 S.E.2d 706, 712-713 (Ct. App. 2001) (finding evidence of prior drug use could be used to show the defendant's knowledge of the presence of the drugs and intent to possess them). Appellant's statements regarding drug use shortly before fleeing from authorities support an inference he was aware of the drugs recovered from the scene.

Regarding Kennedy's testimony, Kennedy indicated Appellant had purchased drugs with her earlier in the evening. She further linked the medicine bottle of drugs to the interior of the vehicle prior to the crash without specifically assigning ownership of the bottle to herself or Appellant. Contrary to Appellant's assertions, any issues with the credibility of Kennedy's testimony would go to the weight and not the existence of evidence of Appellant's guilt.

Appellant was in constructive possession of the drug paraphernalia found in the driver's side floorboard of the vehicle, further supporting an inference of knowledge, possession, and guilt. Additionally, the medicine bottle of drugs was located within a foot and a half of Appellant's position in the vehicle. The drugs had previously been located in the vehicle and were discovered in close proximity to Appellant's position. Appellant had dominion and control over the premises where the drugs and drug paraphernalia were located, allowing for a finding of constructive possession. Like in Gore and Stanley, the drugs recovered from the ground in close proximity to Appellant's location could be attributed to Appellant through constructive possession. Furthermore, even if Kennedy were also to be found in constructive possession of the drugs, constructive possession can be shared.

Viewing the evidence in a light most favorable to the State, there was clearly substantial evidence from which Appellant's guilt could be inferred. This evidence included: (1) Appellant's flight from authorities; (2) Appellant's statements regarding prior drug use just before the crash; (3) the drug paraphernalia recovered from the vehicle and from the floor underneath Appellant's seat; (4) the medicine bottle containing drugs found just outside of the car next to Appellant's seat; (5) the similar empty medicine

bottle found underneath Appellant's seat; (6) Kennedy's testimony linking Appellant to the purchase and use of drugs earlier in the evening; and (7) Kennedy's testimony linking the medicine bottle of drugs to the inside of the car before the crash. The trial judge correctly found the existence of evidence without considering its weight and denied the motion for a directed verdict. Absent a claim of ownership by Appellant, the only way to resolve any question regarding Appellant's knowledge and possession of the drugs was by submitting the case to jury. The trial judge properly submitted the case to the jury in order for it to make this determination. Appellant's convictions should be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

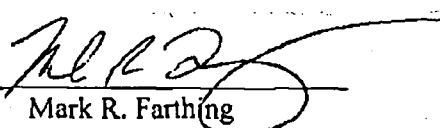
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ATTORNEYS FOR RESPONDENT

March 18, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Pickens County
Honorable Larry R. Patterson, Circuit Court Judge

THE STATE,

Respondent,

vs.

JACKIE L. BOYD,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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March 18, 2010

STATE OF SOUTH CAROLINA

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Appeal From Pickens County
Honorable Larry R. Patterson, Circuit Court Judge

THE STATE,

Respondent,

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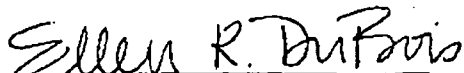
Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Elizabeth A. Franklin-Best, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.
This 18th day of March, 2010.


ELLEN R. DUBOIS
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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Jackie Lee Boyd,

Appellant.

Appeal From Pickens County
Larry R. Patterson, Circuit Court Judge

Unpublished Opinion No. 2011-UP-070
Submitted February 1, 2011 – Filed February 23, 2011

AFFIRMED

Appellate Defender Elizabeth A. Franklin-Best, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General Mark R. Farthing, all of

Columbia; and Solicitor Walt Wilkins, of Greenville,
for Respondent.

PER CURIAM: Jackie Lee Boyd appeals his conviction for trafficking in cocaine, arguing the circuit court erroneously denied his motion for a directed verdict. He contends the State only raised a "mere suspicion" that he knowingly possessed the drugs. We affirm.¹

An appellate court reviews the denial of a directed verdict by viewing the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [an appellate court] must find the case was properly submitted to the jury." Id. at 292-93, 625 S.E.2d at 648. The circuit court may not consider the weight of the evidence. Id. at 292, 625 S.E.2d at 648. However, when the evidence "merely raises a suspicion" of guilt, a directed verdict is proper. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001). A mere suspicion is a belief that is inspired by "facts or circumstances which do not amount to proof." Id.

Trafficking in cocaine occurs when a person is "knowingly in actual or constructive possession" of "ten grams or more of cocaine or any mixtures containing cocaine." S.C. Code Ann. § 44-53-370(e), (e)(2) (2002). Constructive possession can be established by circumstantial evidence. State v. Brown, 267 S.C. 311, 315, 227 S.E.2d 674, 676 (1976). "[T]he State must show a defendant had dominion or control, or the right to exercise dominion or control." State v. Muhammed, 338 S.C. 22, 26, 524 S.E.2d 637, 639 (Ct. App. 1999) (quoting State v. Hudson, 277 S.C. 200, 202, 284 S.E.2d 773, 774-75 (1981)).

Here, substantial circumstantial evidence existed showing Boyd knowingly possessed the requisite amount of cocaine. Specifically, the arresting officer testified he discovered a medicine bottle containing drugs in the grass next to the driver's side door. Labs tests determined the contents of

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

the medicine bottle to be 10.90 grams of cocaine and 4.37 grams of crack cocaine. The only other passenger in the vehicle testified the medicine bottle was in the vehicle prior to the stop. She also said she did not throw it from the vehicle. This evidence, in addition to Boyd's flight, his admission of recent drug use, and the drug paraphernalia found on the driver's side of the vehicle, permits the jury to reasonably infer guilt. Accordingly, the decision of the circuit court is

AFFIRMED.

WILLIAMS, GEATHERS, and LOCKEMY, JJ., concur.

FORM 5

STATE OF SOUTH CAROLINA

County of PickensJackie Lee Boyd
Full name and prison number (if any) of Applicant298278

v.

State of South Carolina Attorney
General office

IN THE COURT OF THE COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2011 CP 39-1320CLERK DEPT. OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2011 SEP 9

P 1:17
MB
Sep 9, 2011INSTRUCTIONS - 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.

- Place of detention McCormick Correctional Institution
386 Redemption Way, McCormick S.C. 29849
- Name and location of Court which imposed sentence Pickens Court
General sessions
- Name(s) of co-defendant(s) (if any) Yes
Jessica Jan Kennedy AKA Alice Denise Audlin
- The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2008-GS-39-1338
(b) 2008-GS-39-1339

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) (3) YEARS CONCURRENT (25) YRS
- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty
- (b) after a plea of not guilty YES
- (c) after a plea of nolo contendere

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. Affirmed

ii. _____

iii. _____

- (c) the date of each such result:

i. Feb 1, 2011 submitted

ii. Feb 23, 2011 filed

iii. _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results:

i. unknown STATE V. JACKIE BOYD, (at Appeals)

ii. " " "

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL
AND ABANDONMENT OF DIRECT APPEAL REMEDIES,
(EX. REHEARING, PETITION FOR WRIT OF HABEAS CORPUS)
OF MERITORIOUS WINNABLE ISSUE PR. TO
JACKSON V. VIRGINIA, (US SUPREME CT)

2011 SEP 9 P 1:18

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: INEFFECTIVE ASSISTANCE OF APPELLATE AND
 (a) 5th Amendment TRIAL COUNSEL AND DUE PROCESS
 (b) 6th Amendment PROCESS VIOLATIONS (etc)
 (c) 14th Amendment, SC CONST. ART 3 § 14,
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) see Attachment Support Memorandum
 (b) Support Post-Conviction Relief
 (c) Application
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? _____
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. NA
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. NA
 ii. _____
 iii. _____
 iv. _____

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

SEP - 9 - 18

(c) the disposition thereof:

- i. _____
- ii. NA _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. NA _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NA _____
- ii. _____
- iii. _____
- iv. _____

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?

NA _____

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. NA _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. NA _____
- ii. _____
- iii. _____

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 SEP -9 PM 1:08

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) NA

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

(b) your trial, if any? _____

(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? NA

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CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

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. Robert Newton (TRIAL)
Elizabeth A. Franklin - Best (APPEAL)

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial Counsel ✓
Appellate Counsel ✓

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

Vacate conviction and sentence

20. Are you now under sentence from any other court that you have not challenged?

NA

STATE OF SOUTH CAROLINA)

County of MCCORMICK)

VERIFICATION

2011 SEP - 9 P 1:18

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

I, Jackie Lee Boyd #298278, 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.

Jackie Boyd

SWORN to and subscribed before me this 31
day of August, 2011.

Penny G. Moten (L.S.)
Notary Public

My Commission Expires: Feb 28, 2018

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, JACKIE LEE BOYD #298278, 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.

Jackie Boyd
Applicant

SWORN or affirmed to and subscribed before me this

31 day of August, 2011.

Penny G. Morton
Notary Public

My Commission Expires: Feb 28, 2018

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 SEP -9 P 1:18

STATE OF SOUTH CAROLINA

CLERK OF COURT
PICKENS COUNTY OF COMMON PLEAS
SOUTH CAROLINA

COUNTY OF DICKENS

2011 SEP - 9 P 1:21

2011 CP 39 1320

JACKIE LEE BOYD #298278

Applicant

c/a

v.

Memorandum of Law support

STATE OF SOUTH CAROLINA

Post Conviction Relief
Application

Respondent

Applicant JACKIE LEE BOYD CLAIM THAT HE IS BEING HELD IN CUSTODY UNLAWFULLY IN VIOLATION OF HIS DUE PROCESS RIGHTS AND EQUAL PROTECTION RIGHTS OF THE SOUTH CAROLINA CONSTITUTION ARTICLE(1) & (3) AND SOUTH CAROLINA CONSTITUTION ARTICLE(1)(14) AND U.S.C.A. 5th, 6th, AND 14th To EFFECTIVE ASSISTANCE OF COUNSEL AND A FAIR TRIAL.

Applicant FURTHER CLAIM THAT DISRUPTANT TO THE FIRST PRONG TEST IN (STICKLAND V WASHINGTON) 466 U.S. 668 (1984) THAT TRIAL COUNSEL ROBERT NEWTON PERFORMANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS.

ON CROSS EXAMINING STATE WITNESS JESSICA KENNEDY ABOUT STATE EXHIBIT #4 THE PILL BOTTLE CONTAINING 10 OR MORE GRAMS OF COCAINE. WHEN THE STATE DURING DIRECT EXAMINATION OF ITS OWN WITNESS JESSICA KENNEDY NEVER QUESTIONED HER ABOUT STATE EXHIBIT #4

TR. TR. pg. 120 THROUGH pg. 122 L-2

THE STATE NEVER QUESTIONED STATE WITNESS JESSICA KENNEDY ABOUT STATE EXHIBIT #4 THERE WAS NO NEED FOR TRIAL COUNSEL ROBERT NEWTON TO ON CROSS EXAMINATION, QUESTION HER ABOUT THIS PILL BOTTLE.

STATE EXHIBITS #4

QUESTIONING STATE WITNESS JESSICA KENNEDY ABOUT STATE EXHIBIT #4 ABOUT EVIDENCE NOT MENTIONED DURING DIRECT EXAMINATION. APPLICANT SUBMITS THAT UNDER THE FIRST PRONG TEST OF (STRICKLAND V WASHINGTON) SUPRA PERFORMANCE Fell BELOW OBJECTIVE STANDARD OF REASONABLENESS.

TR. TR. pg. 134 1-12-25 - pg. 135 1-7

2.) INEFFECTIVE ASSISTANCE OF COUNSEL

APPLICANT CLAIM UNDER THE SECOND PRONG TEST OF (STRICKLAND V WASHINGTON) 466 U.S. 668 (1984) THAT HE WAS PREJUDICED BY TRIAL COUNSEL DEFICIENT PERFORMANCE IN QUESTIONING STATE WITNESS JESSICA KENNEDY ON CROSS-EXAMINATION ABOUT EVIDENCE SHE WASN'T QUESTIONED ABOUT DURING DIRECT EXAMINATION, WHEN IN QUESTIONING JESSICA KENNEDY ABOUT THIS PILL BOTTLE IN STATE EXHIBIT #4 WHICH CONTAINED TWO PLASTIC BAGS IN WHICH ONE CONTAINED 10.90 GRAMS OF COCAINE AND THE OTHER BAG CONTAINED 4.37 GRAMS OF COCAINE BASE (CRACK) TRIAL COUNSEL ELICITED INCrimINATING EVIDENCE INTO EVIDENCE IN WHICH PLACED THIS PILL BOTTLE CONTAINING 10 GRAMS OR MORE OF COCAINE THAT WAS FOUND BY OFFICER JEREMY BENJAMIN ON THE GROUND OUTSIDE THE DRIVERS SIDE DOOR.

TR. TR. pg. 74 1-13-25 - 75 - 1-1-15

TR. TR. pg. 134 1-12-25 - 135 1-1-7

TR. TR. pg. 144 1-24- pg. 147 1-6

INCRIMINATING EVIDENCE ELICITED AGAINST APPLICANT INTO EVIDENCE BY TRIAL COUNSEL ROBERT NEWTON

Q: WHERE DID YOU SEE IT AT?

A: I WAS IN THE CAR AT ONE POINT IN TIME, BUT CAN'T REMEMBER WHERE SHE SEEN IT AT.

TR. TR. pg. 135 1-4-5

AS A RESULT OF TRIAL COUNSEL ELICITING THIS INCRIMINATING EVIDENCE INTO EVIDENCE, BASED ON THIS EVIDENCE IS WHAT LEAD TO THE TRIAL JUDGE

NOT GRANTING APPLICANT MOTION FOR A DIRECTED VERDICT OF ACQUITTAL. THE EVIDENCE WAS INSUFFICIENT TO PROVE BEYOND A REASONABLE DOUBT THAT THE APPLICANT WAS KNOWINGLY IN ACTUAL OR CONSTRUCTIVE POSSESSION OF (10) OR MORE GRAMS OF COCAINE WHERE THE TRIAL COURT JUDGE BASED HIS GROUNDS UPON INSUFFICIENT FACTS, WHICH THE COURT CONSIDERED THE EXISTENCE OF ANY DIRECT EVIDENCE, SUBSTANTIAL OR CIRCUMSTANTIAL EVIDENCE ON TESTIMONY OF THE STATE WITNESS JESSICA KENNEDY WHO TESTIFIED SHE KNEW THE BOTTLE WAS IN THE CAR SHE HAD SEEN IT BUT DIDN'T KNOW HOW IT GOT THERE

Id AT TR. TR. pg. 149 1-17-24

EXHIBIT #13

THIS EVIDENCE ONLY SHOWS THE STATE WITNESS JESSICA KENNEDY HAD KNOWLEDGE OF THIS BOTTLE, BUT BECAUSE INFERENCE CAN BE DRAWN THAT SHE HAD IT IN HER PURSE, BUT WOULDN'T SAY WHERE SHE SAW IT AT IS INSUFFICIENT EVIDENCE TO PROVE THE ELEMENT THAT I HAD ACTUAL OR CONSTRUCTIVE POSSESSION OF THIS PMU BOTTLE, UNDER SOUTH CAROLINA RULES OF CRIMINAL PROCEDURE RULE (9) THE COURT ON ITS OWN MOTION SHOULD HAVE DIRECTED A VERDICT OF ACQUITTAL IN FAVOR OF APPLICANT AS WELL AS CONSIDERING APPLICANT OWN MOTION FOR A DIRECTED VERDICT. WHAT THE TRIAL JUDGE DENIED APPLICANT DIRECTED VERDICT MOTION UPON IS INSUFFICIENT EVIDENCE IN WHICH THE STATE FAILED TO PROVE THE ELEMENT OF KNOWINGLY BEING IN ACTUAL OR CONSTRUCTIVE POSSESSION BEYOND A REASONABLE DOUBT, AS REQUIRE IN RE MAINSHIP 397 U.S. 358 (1970) AS AN INDIGENT DEFENDANT I AM DEPENDANT ON THE GOVERNMENT, NOT TO VIOLATE MY CONSTITUTIONAL RIGHTS TO A FAIR TRIAL, AND FOR THE GOVERNMENT COUNSEL TO PROTECT MY DUE PROCESS RIGHTS UNDER SOUTH CAROLINA CONSTITUTION ARTICLE 1) SUBSECTION (3) AND THE UNITED STATES CONSTITUTIONAL RIGHT TO A

TRIAL FAIR, FROM BEING VIOLATED BY THE GOVERNMENT, BUT WHEN THE
 SAME GOVERNMENT IS PROSECUTING APPLICANT, THE SAME GOVERNMENT
 THAT DUE TO MY INDIGENCY APPOINTS ME COUNSEL, A CONFLICT OF
 INTEREST EXISTS UNDER THE THIRD PARTY INTEREST OF THE GOVERNMENT IN
 WHICH THE GOVERNMENT COUNSEL SEEMS TO BE MORE OF A FRIEND TO THE
 COURT, THEN TO PROTECT MY CONSTITUTIONAL RIGHTS UNDER THE DUE
 PROCESS CLAUSE OF THE 14TH AMENDMENT UNITED STATES CONSTITUTION
 IS A FAIR TRIAL. AS PERTAINING TO MY TRIAL COUNSEL NOT PRESENTING
 THE PROPER FACTS AND UNDER RE WAINSHIP 397 U.S. 358 (1970) REQUESTING
 A DIRECTED VERDICT OF ACQUITTAL. YET WHEN THE TRIAL COURT RECORD
 ITSELF PLAINLY SHOWS THAT DUE TO THE INSUFFICIENT EVIDENCE THE STATE
 FAILED TO PROVE THE ELEMENT OF KNOWINGLY UNDER SOUTH CAROLINA
 RULE OF CRIMINAL PROCEDURE RULE 19(A) THE TRIAL COURT ON ITS OWN
 MOTION SHOULD HAVE ENTERED A DIRECTED VERDICT OF ACQUITTAL AND
 BECAUSE IT DIDN'T THE COURT ABUSED ITS DISCRETION. THE GOVERNMENT
 DUE TO MY INDIGENCY THEY APPOINTED ME APPELLATE DEFENSE COUNSEL
 TO PERFECT MY APPEAL AGAIN THE ISSUE WAS PROPERLY RAISED THAT
 EXISTED IN THE RECORD BECAUSE UNDER A CONFLICT OF INTEREST THE
 SOUTH CAROLINA APPELLATE DEFENSE COUNSEL ACTED AS A FRIEND OF
 THE COURT AND STATE AND MISREPRESENTED APPLICANT AND TO
 PREVENT THE CONSTITUTIONAL ERROR FROM BEING REVIEWED BY
 THE STATE SUPREME COURT, THE SOUTH CAROLINA OFFICE OF
 APPELLATE DEFENSE COUNSEL WOULD NOT FILE A PETITION FOR REHEARING
 TO PREVENT A FINAL DECISION AND APPLICANT FROM RECEIVING RELIEF
 IN MY FAVOR. SUCH AN ANNULLMENT OF ACQUITTAL THIS CONCLUDES THE
 FIRST ISSUE AGAINST APPLICANT APPELLATE DEFENSE COUNSEL

Applicant claim that the combination of these two unprofessional acts during his trial prejudiced him of a directed verdict of acquittal because basically his trial counsel lessen the states burden of having to prove the essential element of trafficking in 10 or more grams of cocaine in which the state had the burden of proving beyond a reasonable doubt, that Jackie Lee Boyd Applicant did on December 3, 2007 was knowingly in actual or constructive possession of 10 or more grams of cocaine when trial counsel:

1) in opening and closing argument told the jury his client was guilty of failure to stop for blue light
element of knowingly infer from flight

2) and eliciting evidence from state witness Jessica Kennedy placing pill bottle containing 10.90 grams of cocaine in car
pill bottle in car establish evidence of dominion and control or the right to exercise dominion and control over pill bottle containing 10.90 grams of cocaine or over the property vehicle where Jessica Kennedy seen it at one point in time establishes evidence to infer constructive possession
therefore under the first prong test of (Stucki and V Washington)
Hill v. US (1984)

Applicant Jackie Lee Boyd claim that his trial counsel Robert Norton performance fell below an objective standard of reasonableness in telling the jury in his opening and closing argument that Applicant was guilty of failure to stop for a blue light when Applicant plead not guilty to the charge and the trial judge told the jury that Applicant plead not guilty to this charge.

TR. TR. pg. 7 1-3-18 TR. TR. pg. 53 1-24-05- pg. 54 1-1-25

TR. TR. pg. 155 1-1-4

AND IN CROSS EXAMINATION OF STATE WITNESS JESSICA KENNEDY QUESTIONING HER ABOUT STATE EXHIBIT #4 PM BOHE CONTAINING COCAINE ASKING HER WHERE SHE HAD SEEN IT BEFORE AND ELICITING INCRIMINATING EVIDENCE INTO EVIDENCE AGAINST APPLICANT WHEN SHE TESTIFIED SHE SAW IT IN THE CAR AT SOME POINT IN TIME.

TR. TR. pg. 124- L-12-25 ~ pg. 125 L-1-5

APPLICANT CLAIM UNDER THE 2ND PRONG TEST OF (STRICKLAND V WASHINGTON) 466 U.S. 668 (1984) THAT BASED ON THE PREPONDERANCE OF THE EVIDENCE AS MENTIONED IN THIS ISSUE (3) 10(B) 11(B) IF PCR APPLICATION AND BASED UPON RECORDED DOCUMENTS OF PROOF ATTACHED SHOWS THAT HE WAS PREJUDICED OF A DIRECT VERDICT OF ACQUITTAL AND HAD IT NOT BEEN FOR TRIAL COUNSEL DEFICIENT PERFORMANCE THE OUTCOME OF THE PROCEEDINGS (TRIAL) OR (APPEAL) WOULD HAVE BEEN DIFFERENT.

3) 10(C) 11(C)

APPLICANT CLAIM THAT HE IS BEING HELD IN CUSTODY UNLAWFULLY IN VIOLATION OF S.C. CONST. ARTICLE (1) (3) AND (1) (14) U.S.C.A. 5TH, 6TH, 14TH RIGHT UNDER THE DUE PROCESS CLAUSE AND EQUAL PROTECTION CLAUSE OF EFFECTIVE ASSISTANCE OF COUNSEL AND A FAIR TRIAL.

SUBSANT TO (STRICKLAND V WASHINGTON) 466 U.S. 668 (1984).

APPLICANT CLAIM TRIAL COUNSEL ROBERT NEWTON'S PERFORMANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS, IN ADVISING APPLICANT NOT TO TESTIFY IN HIS OWN BEHALF AND EXPLAIN TO THE JURY WHY HE DID NOT STOP FOR THE BLUE LIGHT.

APPLICANT CLAIMS TRIAL COUNSEL'S DEFICIENT PERFORMANCE UNDER THE SECOND PRONG TEST OF (STRICKLAND V WASHINGTON) 466 U.S. 668 (1984) PREJUDICED HIM OF A FAIR TRIAL BECAUSE TRIAL COUNSEL COULD NOT (did)

ADVISE APPLICANT NOT TO TESTIFY, HE WOULD HAVE TESTIFIED ON HIS OWN BEHALF AND INTRODUCED EVIDENCE AS TO WHY HE DID NOT STOP FOR THE BLUE LIGHT WHICH WAS BECAUSE:

TR. TR. PG. 132 1-1-18

THE CAR WAS STOLEN TR. TR. PAGE 132 1-1-18

APPLICANT LICENSE WAS SUSPENDED

APPLICANT DIDN'T WANT TO GO TO JAIL

*
[ALTERNATIVE REASON FOR FLIGHT]

HAD APPLICANT TESTIFIED AND COUNSEL AS STATED IN ISSUE NUMBER

10(B) 11(B) COUNSEL TOLD THE JURY APPLICANT WAS GUILTY FOR FAILURE TO STOP FOR A BLUE LIGHT IN HIS OPENING AND CLOSING ARGUMENT, THE EVIDENCE OF WHAT WOULD NOT BE ADMISSIBLE AGAINST HIM AS EVIDENCE OF GUILT.

(AS THE ATTORNEY GENERAL STATED IN ITS ARGUMENT IN THE STATE FINAL BRIEF OF RESPONDENT) IN WHICH THE ELEMENT OF KNOWINGLY OR KNOWLEDGE WAS INFERRED, APPLICANT CLAIMS HAD IT NOT BEEN FOR COUNSEL'S DEFICIENT PERFORMANCE THERE EXISTS A REASONABLE PROBABILITY THAT THE OUTCOME OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT, HAD APPLICANT TESTIFIED AND INTRODUCED EVIDENCE TO REBUT THE STATES CASE.

APPLICANT CONTENDS THAT HE DID NOT KNOWINGLY AND VOLUNTARILY WAIVED HIS CONSTITUTIONAL RIGHT TO TESTIFY THAT IN VIOLATION OF SOUTH CAROLINA CONSTITUTION ART (5) & (21) THE TRIAL COURT IN GIVING ITS OPINION COERCED APPLICANT TO WAIVE HIS CONSTITUTIONAL RIGHT TO TESTIFY IN HIS OWN BEHALF AND INTRODUCE RELEVANT EVIDENCE AGAINST THE STATES CASE, THE TRIAL COURT INSTRUCTED ME TO LISTEN TO COUNSEL'S ADVICE.

TR. TR. PG. 150 1-11-14

HAD THE COURT NOT ADVISED ME TO LISTEN TO TRIAL COUNSEL ADVISE I WOULD NOT HAVE WAIVED MY CONSTITUTIONAL RIGHT TO TESTIFY AND INTRODUCE EVIDENCE ON MY BEHALF.

10② 11②

Applicant claim that he is being held in custody unlawfully in violation of his due process rights and equal protection rights of the South Carolina Constitution Article (1) and (3) Article (1) & (14)

U.S.C.A. 5th, 6th, 14th To Effective Assistance of Counsel and a Fair Trial Applicant further states that pursuant to the first prong test in (Strickland v Washington) 466 U.S. 668 (1984)

that his trial counsel Robert Newton performance fell below an objective standard of reasonableness in failing to request curative instructions to the jury and in moving for a motion for a mistrial. When the prosecution in closing argument intentionally refer to or argue on the basis of facts outside the record in which the prosecutor may only argue all reasonable inferences from evidence in the record.

TR. TR. pg. 115-25- TR. TR. pg. 166 2-1-13

Applicant claim pursuant to the second prong of (Strickland v Washington) 466 U.S. 668 (1984) that it is a violation of the Model Rules of Professional Conduct 3-5.8, 3.5.9 Model Code of Professional Conduct/Responsibility DR-7-106 (c) (1) (1980) and Rule 3.3(A)(1) for the prosecutor in his or her closing argument not to confine his or her closing argument to evidence on the record and to permissible inferences therefrom. The prosecutor called Applicant a drug dealer then a drug trafficker in which trial counsel objected to twice on grounds there was no basis, no testimony that Applicant was any type of drug dealer or anything like that, there is no basis in the record to support that argument. The trial court sustain the objection, but counsel failed to request curative

INSTRUCTIONS.

TR. TR. pg. 165- 1-15-25

THE PROSECUTOR AGAIN IN HIS CLOSING ARGUMENT REFERRED TO APPLICANT AS A DRUG DEALER/TRAFFICKER, AND TRIAL COUNSEL OBJECTED ON THE SAME GROUNDS, THE TRIAL COURT SUSTAIN THE OBJECTION AND AGAIN COUNSEL DID NOT REQUEST CURATIVE INSTRUCTIONS TO BE GIVEN TO THE JURY

TR. TR. pg. 166 1-2-13

APPLICANT WAS PREJUDICED WHEN TRIAL COUNSEL FAILED TO REQUEST THAT THE TRIAL JUDGE TO GIVE CURATIVE INSTRUCTIONS TO THE JURY AND BECAUSE THE JURY HEARD EVIDENCE OUTSIDE THE RECORD THE JURY MOST LIKELY FOUND APPLICANT GUILTY ON THIS EVIDENCE AND THEREFORE TRIAL COUNSEL SHOULD HAVE MOTIONED THE TRIAL COURT FOR A MISTRIAL, BUT SINCE HE DIDN'T APPLICANT CLAIM THAT DUE TO TRIAL COUNSEL DEFICIENT PERFORMANCE TO REQUEST CURATIVE JURY INSTRUCTIONS TO BE GIVEN TO THE JURY OR AND MOVE FOR A MISTRIAL HAD IT NOT BEEN FOR COUNSEL'S DEFICIENT PERFORMANCE IN CLOSING SO THAT THERE EXISTS A REASONABLE PROBABILITY EXISTS THAT BUT FOR COUNSEL'S UNPROFESSIONAL ERROR, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT.

10(E) 11(E)

APPLICANT CLAIM HE IS BEING HELD IN CUSTODY UNLAWFULLY IN VIOLATION OF HIS DUE PROCESS RIGHTS AND EQUAL PROTECTION RIGHTS UNDER THE DUE PROCESS CLAUSE OF THE SOUTH CAROLINA CONSTITUTION ARTICLE 1(3) AND U.S.C.A. 54, (2), 14TH AMENDMENT TO A FAIR TRIAL, IN VIOLATION OF BRADY V. MARYLAND 373 U.S. 83

ON 12/3/2007 APPLICANT WAS CHARGED ON WARRANT N-173996 WITH
 TRAFFICKING IN COCAINE. TO IN APPLICANT EXHIBITS #13 AND WARRANT
 61489 FAILURE TO STOP FOR A BLUE LIGHT 1ST OFFENSE AND ARREST WARRANT
 61494 DUT 2ND OFFENSE, IN WHICH ON FEBRUARY 19, 2008 TRIAL COUNSEL
 FOR APPLICANT REQUESTED THE SOLICITOR TO PROVIDE ALL EVIDENCE
 FAVORABLE TO THE APPLICANT SUBJECT TO DISCLOSURE PURSUANT TO
 BRADY V. MARYLAND 373 US 83 (1963) THIS REQUEST IS A CONTINUING
 REQUEST FOR ALL SUCH DISCOVERABLE INFORMATION AS IT BECOMES
 KNOWN TO THE SOLICITOR OR ANY PROSECUTING AGENCY.

STATE V KENNEDY 563 S.E.2d 214

FURTHERMORE PURSUANT TO RULE 6 SOUTH CAROLINA RULES OF CRIMINAL
 PROCEDURE APPLICANT OBJECTS TO THE INTRODUCTION OF A CHEMIST OR
 ANALYSTS REPORT WITHOUT SUCH PERSON BEING PERSONALLY PRESENT
 AT TRIAL. APPLICANT ALSO REQUESTS THE APPEARANCE OF PERSONS IN COURT
 WITHIN THE CHAIN OF CUSTODY OF ALL PHYSICAL EVIDENCE.

THE SOLICITOR OFFICE HAD IN ITS POSSESSION THE EASLEY POLICE DEPARTMENT
 PROPERTY REPORT OF THE CHAIN OF CUSTODY OF ALL THE PERSONS THAT
 HANDLED THE PHYSICAL EVIDENCE IT INTENDED TO INTRODUCE IN THE
 AT TRIAL AGAINST APPLICANT WHICH SHOWS THAT ON 12-3-2007 AN OFFICER
 JEREMY BENJAMIN RECOVERED (1) MEDICINE BOTTLE WITH OFF WHITE ROCK
 SUBSTANCE FROM GROUND AND FROM STATE WITNESS JESSICA KENNEDY
 NURSE AND BBA

AT 4:38 A.M. AND IT WAS
 RECEIVED BY OFFICER ROBERT BRAIN COWEN IN PERSON ON 12-3-07 AT
 9:00 A.M. ON 12/5/07 AT 9:45 A.M. A TABITHA FRICKS RECEIVED THE
 EVIDENCE FOR P.E. STORAGE AND SEALED IT WHO IS EMPLOYED WITH
 THE GREENVILLE COUNTY DEPARTMENT OF PUBLIC SAFETY. ON 12/5/07 AT
 1310 A JAMES ARMSTRONG RECEIVED IT FOR LAB. THEN A ISRAEL FLOUNDER
 RECEIVED IT ON 12/7/07 THEN ROBERT B. COWAN RECEIVED IT TO RETURN TO

EASLEY POLICE DEPARTMENT ON 12/18/07 AT 0948.

ALSO PROOF THAT THE SOLICITOR OFFICE HAD THIS EASLEY POLICE DEPARTMENT PROPERTY REPORT IS

Id IN APPLICANTS EXHIBITS #9

THE STATE PROSPECTIVE WITNESS LIST WHICH CONTAINS ALL THE PERSONS NAME LISTED IN THE EASLEY POLICE DEPARTMENT PROPERTY REQUEST THAT HANDLED THE EVIDENCE. MEDICINE BOTTLE WHICH CONTAINED AN OFF WHITE ROCK SUBSTANCE DEALING WITH THE CHAIN OF CUSTODY OF THIS EVIDENCE BEING JEREMY BENJAMIN BRIAN COWEN, JAMES ARMSTRONG, TABITHA FRICKS, ISYEL FLOUNDERS.

SEE Id AT APPLICANTS EXHIBITS #9

BUT WHEN THE SOLICITORS OFFICE PURSUANT TO SCRCP RULE(5) AND RULE 5(E) AND BRADY V MARYLAND SUPRA DISCLOSED ITS DISCOVERY MATERIAL ON APRIL 8, 2008 IT DID NOT DISCLOSE THIS EASLEY POLICE DEPARTMENT PROPERTY REPORT SEE Id IN APPLICANTS EXHIBITS #6 NOR IN NOVEMBER 5, 2008 PURSUANT TO SCRCP RULE(5) DID NOT DISCLOSE THIS PROPERTY REPORT.

SEE Id IN APPLICANT EXHIBITS #7

THIS DOCUMENT/ INFORMATION ISN'T IN APPLICANT EXHIBIT #4

EASLEY POLICE DEPARTMENT PROPERTY REPORT IS MATERIAL EXCULPATORY AND IMPEACHING EVIDENCE AS WELL AS HAVE EXCULPATORY VALUE CONCERNING THE ADMISSIBILITY OF EVIDENCE.

WHERE AS DURING THE TRIAL THE SOLICITOR INTRODUCED THIS MEDICINE BOTTLE WHICH ACCORDING TO TESTIMONY OF STATE WITNESS JESSICA KENNEDY/ JAMES ARMSTRONG TESTIFIED THAT THE PILL BOTTLE CONTAINED 10.90 GRAMS OF COCAINE AND 4.37 GRAMS OF COCAINE BASE.

EXHIBIT #1 TR. TR. PG 143 1-22- PG. 147- 1-6

EXHIBIT #8

THE SOLICITOR IN ESTABLISHING THE CHAIN OF CUSTODY IN REFERENCE TO THIS PILL BOTTLE STATE EXHIBITS #4 IN TRIAL TRANSCRIPT ON DIRECT EXAMINATION INTRODUCED THE TESTIMONY OF OFFICER JEREMY BENJAMIN WHO TESTIFIED UNDER OATH THAT HE LOCATED THIS PILL BOTTLE ON THE OUTSIDE OF THE DRIVER SIDE DOOR ON THE GROUND, HE PICKED IT UP TOOK IT WITH HIM AFTER HE CLEARED THE SCENE, WENT TO EASLEY POLICE DEPARTMENT AND FILLED OUT GREENVILLE COUNTY DRUG ANALYSIS FORM, FILLED OUT EASLEY POLICE DEPARTMENT FORM, FILLED OUT ALL THE PAPERWORK SEALED THE EVIDENCE IN A BAG PUT TAPE AROUND IT AND SIGNED ON THE TAPE AND PUT EVIDENCE IN EVIDENCE LOCKER THEN EXPLAINED WHAT THE EVIDENCE LOCKER IS AND HOW IT WORKS.

EXHIBITS #1 TR. TR. PG. 74 L-10-12

TR. TR. PG. 78 L-12- PG. 79 L-13

THEN THE SOLICITOR INTRODUCED THE TESTIMONY OF ROBERT B. COWAN WHO TESTIFIED ON DIRECT EXAMINATION THAT HE RETRIEVED THE PILL BOTTLE ON DECEMBER 3, 2007 FROM HIS EVIDENCE LOCKER AND EXPLAINED WHAT HE DID WITH THE PILL BOTTLE

EXHIBITS #1 TR. TR. PG. 114- L-23- PG. 119 L-19

ACCORDING TO THE EASLEY POLICE DEPARTMENT PROPERTY REPORT THE SOLICITOR KNOWINGLY INTRODUCED PERJURY TESTIMONY AS WELL AS VIOLATED THE BRADY RULE BECAUSE THE E. P. D. PROPERTY REPORT SHOWS THE PILL BOTTLE WAS NEVER PLACED IN AN EVIDENCE LOCKER AT THE EASLEY POLICE DEPARTMENT BUT IT DOES SHOW THAT OFFICER ROBERT B. COWAN RECEIVED THE PILL BOTTLE IN PERSON FROM JEREMY BENJAMIN WHO RECEIVED IT FROM JEREMY BENJAMIN ON 12/3/07 AT 0900 AND KEPT IT FOR TWO DAYS BEFORE HE PLACED IT IN PROPERTY IN EVIDENCE TO TAKE TO GREENVILLE FOR TESTING. ACCORDING TO EASLEY PROPERTY REPORT IT DOESN'T SHOW WHERE THIS PILL BOTTLE WAS BETWEEN 12-3-07 0900 AND 12/5/07 0944 NOR IS IT

ANY TESTIMONY IN EVIDENCE THAT THIS PILL BOTTLE WAS RECOVERED FROM JACKIE BOYD AT IN LIBERTY S.C. NOR DID ANY OF THE PERSONS WHO RECEIVED OR HANDLED THE PILL BOTTLE SUCH AS TASHA ERICKS OR ISREAL FLOUNDER TESTIFIED NOR A SWORN AFFIDAVIT PRESENTED INTRODUCING EVIDENCE THAT THE EVIDENCE RECEIVED BY THEM IS THE SAME EVIDENCE THE SOLICITOR INTRODUCED THE EVIDENCE AT TRIAL, AND THAT IT IS IN THE SAME CONDITION THAT THEY RECEIVED IT, HAD THEY TESTIFIED THEY MIGHT HAVE INTRODUCED EVIDENCE SHOWING THAT THE EVIDENCE IN STATE EXHIBITS #4 WAS TAMPERED WITH, THIS, ESP PROPERLY REPORT. APPLICANT EXHIBIT #4 IN IMPEACHMENT EVIDENCE, WHICH THE SOLICITOR'S OFFICE VIOLATION OF SCACR 407 RULES OF PROFESSIONAL CONDUCT CONCEALED/WITHHELD KNOWINGLY, THIS IMPEACHMENT EVIDENCE ALONG WITH THE ABSENCE OF ANY FORENSIC PHOTOGRAPHS TAKEN AT THE CRIME SCENE SHOWING THE NON EXISTING OF A PILL BOTTLE BEING LOCATED WHERE OFFICER JEREMY BENJAMIN TESTIFIED TO WHERE HE SUPPOSEDLY LOCATED THIS PILL BOTTLE AT AND WHAT HE DID WITH IT, HAD THE SOLICITOR PRODUCED THIS EVIDENCE OF IMPEACHMENT, THERE IS A STRONG PROBABILITY THE JURY WOULD HAVE BELIEVE HIM OR OFFICER BRIAN COWEN AND THE OUTCOME OF THE TRIAL WOULD HAVE BEEN DIFFERENT.

BASED ON THIS IMPEACHMENT EVIDENCE APPLICANT EXHIBITS #4 WHERE WAS THE PILL BOTTLE RECEIVED FROM? JACKIE BOYD AT LIBERTY BASLEY S.C. ON THE GROUND OUTSIDE THE DRIVERS SIDE DOOR?

APPLICANT EXHIBIT #1 TR. TR. p9:74 1-10-12

APPLICANT HAS SHOW A BRADY VIOLATION WHICH IS A VIOLATION OF APPLICANT U.S.C.A. 14th DUE PROCESS OF LAW.

SEE APPLICANT EXHIBIT #11

WHICH IS THE DISCLOSURE OF THE SOLICITOR'S OFFICE DISCOVERY MATERIAL

PURSUANT TO SCRCR RULE (5) APPLICANT EXHIBIT #6 AS EASLEY POLICE
DEPARTMENT INCIDENT REPORT CASE 07-5397 (11) PAGES OF THIS MATERIAL
EVIDENCE IN WHICH STATES WITNESS OFFICER JEREMY BENJAMIN TESTIFIED
IN REFERENCE TO CARRYING THE TRIAL BEFORE A JURY. APPLICANT EXHIBITS #1
TR. TR. PG. 56 1-7 THROUGH PG. 161 1-5

WAS ALTERED BY THE SOLICITOR IN VIOLATION OF SCACR 407 RULES OF
PROFESSIONAL CONDUCT RULE 3.4 AND 8.4 (a) IN WHICH THE ORIGINAL
EASLEY POLICE DEPARTMENT INCIDENT REPORT CASE 07-5397 CONSISTED
OF 15 PAGES. 4 PAGES WERE REMOVED AND THE PAGES NUMBER ALTERED
APPLICANTS EXHIBITS #12 EASLEY POLICE DEPARTMENT INCIDENT REPORT
CASE 07-5397

THE FOLLOWING 4 PAGES OF APPLICANTS EXHIBIT #12 EDD INCIDENT
REPORT OF CASE 07-5397 WAS TAKEN OUT OF THE REPORT AND
CONCEALED IN VIOLATION OF BRADY V MARYLAND 373 U.S. 83 (1963) SCRCR
RULE (5) AND VIOLATING APPLICANTS 14TH U.S.C.A. RIGHTS TO A FAIR TRIAL
PAGES 9 OF 15

PAGES 12 OF 15

PAGES 13 OF 15

PAGES 14 OF 15

THESE PAGES WERE EXCLUDED FROM THE SOLICITOR'S DISCLOSURE OF
DISCOVERY MATERIAL IN REFERENCE TO EASLEY POLICE DEPARTMENT
INCIDENT REPORT CASE 07-5397 IN APRIL 2007.

IT APPEARS THAT BASED UPON PAGE 9 OF 15 IN APPLICANT EXHIBITS #12
THAT THIS INCIDENT REPORT / SUPPLEMENTAL REPORT IS COMBINED WITH
INFORMATION FROM BOTH OFFICER JEREMY BENJAMIN AND OFFICER CONNER
SHIVERS FOR PAGE 9 OF 15 IS WRITTEN BY OFFICER CONNER SHIVERS BUT
SIGNED BY OFFICER BENJAMIN JEREMY AT THE BOTTOM AS IF ITS HIS REPORT
APPARENTLY OFFICER JEREMY BENJAMIN WAS NOT THE REPORTING OFFICER WHO

WROTE THIS PAGE OF THE REPORT SO IT WAS EXCLUDED BECAUSE OFFICER CONNER SHIVERS WROTE IT APPARENTLY OFFICE BENJAMIN REPORT ENDS AT PAGE 8 OF 15

SEE TD IN APPLICANTS EXHIBITS #12 PAGES 1-15

AT PAGE 9-15 IS OFFICER CONNER SHIVERS REPORT

ACCORDING TO PAGES 12 OF 15 OF APPLICANT EXHIBITS #12 ON 1-7-2008

EVIDENCE IN THIS CASE WAS TAKEN TO SIED WHERE IT WAS GIVEN Lab

NUMBER- CR-00074 THIS IS IMPEACHMENT EVIDENCE MATERIAL TO

APPLICANTS CASE BECAUSE TESTIMONY OF BOTH OFFICER BENJAMIN AND

SHIVERS TESTIFIED UNDER OATH THE EVIDENCE WAS TAKEN TO GREENVILLE

COUNTY FOR TESTING. IN WHICH JAMES ARMSTRONG ONLY TESTED THE CONTENT

INSIDE THE PILL BOTTLE. THERE IS NO MENTION ON WHERE THE DRUG

PARAPHERNALIA FOUND ON CO-DEFENDANT JESSICA KENNEDY PURSE OR

INSIDE THE VEHICLE UNDER THE DRIVER SEAT ON THE FLOOR BOARD TO WHERE

IT WAS KEPT FROM THE INITIAL SPOT IT WAS LOCATED AND SEIZED

THERE WAS NO TESTIMONY OR EVIDENCE OR PAPERWORK TO SHOW WHAT

WAS DONE WITH THIS EVIDENCE. STATE EXHIBITS #5

APPLICANT EXHIBITS #1 Tr. Tr. pg. 72 1-14 THROUGH pg 73 1-24

IN WHICH WAS INTRODUCED INTO EVIDENCE AGAINST APPLICANT AT TRIAL

BEFORE THE JURY. YET PAGE 12 OF 15 TD IN APPLICANT EXHIBITS #12

CONTAINS MATERIAL EVIDENCE, EXCULPATORY EVIDENCE THAT

THESE REPORTS WERE NOT JUST BASED ON EVIDENCE FROM THE

INVESTIGATION OF THE CASE. ON 12-3-07 BUT INFORMATION WAS

INCLUDED IN THESE REPORT AS FAR AS UP TO 8-11-2008 EXCULPATORY

INFORMATION THAT JESSICA KENNEDY APPLICANT CO-DEFENDANT

HAD PLEADED GUILTY TO POSSESSION OF DRUG PARAPHERNALIA WAS NOT

DISCLOSED PURSUANT TO BRADY TD IN APPLICANTS EXHIBIT #12

PAGES 14 OF 15

HAD APPLICANT RECEIVED THIS INFORMATION THAT JESSICA KENNEDY HAD PLEAD GUILTY TO THE DRUG PARAPHERNALIA FOUND IN THE CAR AND HER PURSE, APPLICANT WOULD HAVE PRESENTED THIS EVIDENCE TO THE JURY IN WHICH ALONG WITH HER TESTIFYING TO SHE KNEW WHATS IN THE PILL BOTTLE AND SEEN IT IN THE CAR AT ONE POINT IN TIME.

Id IN APPLICANT Exhibit #1.

Tr. Tr. pg. 134 1-12-16 And page 135 1-4-16

THE JURY COULD INFER THAT THE PILL BOTTLE BELONGED TO JESSICA KENNEDY AS SHE THREW IT OUT OF HER PURSE WHEN THE OFFICERS WERE OCCUPIED IN ARRESTING APPLICANT LEAVING THE DOOR OPEN ON THE DRIVER SIDE OF REMOVING THE APPLICANT FROM THE VEHICLE. THAT SHE HAD TIME TO THROW THE PILL BOTTLE FROM THE CAR. JESSICA KENNEDY TESTIMONY ONLY PROVES THE ELEMENT OF SHE HAD KNOWLEDGE OF THE PILL BOTTLE IN THE CAR AT ONE POINT IN TIME. CONFIRMS SHE KNEW WHAT WAS IN IT. SHE PROVED HERSELF GUILTY OF TRAFFICKING IN COCAINE, BUT WAS NOT TRIED FOR TRAFFICKING IN COCAINE. FOR THE COURT TO SAY BASED UPON THE EVIDENCE BEFORE IT INTRODUCED BY STATE WITNESS JESSICA KENNEDY THAT THE JURY CAN INFER GUILT OF APPLICANT JACKIE BOYD IS A VIOLATION OF THE 14TH U.S.C.A. UNDER MAINSHIP 397 US 358 AND WHERE UNDETAINED EXCULPATORY EVIDENCE IS ALTERED OR CONCEALED BY THE SOLICITOR IN VIOLATION OF SCRPC 407 RULE 3.4(A) 8.4 (A) THIS IS A VIOLATION OF BRADY V. MARYLAND 373 US 83 (1963) VIOLATING THE 14TH U.S.C.A. TO A FAIR TRIAL IN WHICH APPLICANT PURSUANT TO THE EVIDENCE PRESENTED ASK THIS COURT TO VACATE HIS CONVICTION AND GRANT HIM A NEW TRIAL PURSUANT TO BRADY V. MARYLAND.

PLUS WHEN OFFICER CONNER SHRIVERS WAS TESTIFYING FOR THE STATE
ON DIRECT EXAMINATION, APPLICANT TRIAL COUNSEL SAW THAT THIS OFFICER
WAS READING FROM THE SAME REPORT THAT THE STATE WITNESS OFFICER
JEREMY BENJAMIN WAS READING FROM.

SEE TR IN APPLICANT EXHIBIT #1

TR. TR. PG. 107 L-15 THROUGH PG. 108 L-1

OFFICER CONNER WAS TESTIFYING FROM PAGE 9 OF 15 OF APPLICANT EXHIBIT #12
INSTEAD OF THE REPORT IN APPLICANT EXHIBIT #11 WHICH PAGE 9 OF 15
OF APPLICANT'S EXHIBIT #12 WAS WITHHELD IN VIOLATION OF BRADY V. MARYLAND
373 U.S. 83 (1963) WHICH IS MATERIAL. PAGE 9 OF 15 IN APPLICANT EXHIBIT #12
IS THE SUPPLEMENTAL REPORT OF CONNER SHRIVERS THAT WAS NEVER
DISCLOSED TO APPLICANT. COMPARE APPLICANT EXHIBIT #11 WITH APPLICANT
EXHIBIT #12 AND SEE APPLICANT EXHIBIT #5 AND 6 WHICH CLEARLY
SHOWS A BRADY VIOLATION ENTITLING APPLICANT TO A NEW TRIAL.

{ CONCLUSION }

BASED ON THE ABOVE INFORMATION PREPONDERANCE OF EVIDENCE
IN SUPPORT OF APPLICANT CLAIM THAT HE IS BEING HELD IN CUSTODY
UNLAWFULLY, APPLICANT ASK THIS COURT TO REVERSE HIS CONVICTION
AND ENTER THE APPROPRIATE JUDGMENT OF ACQUITTAL OR NEW TRIAL.

THIS INFORMATION IN THIS CLAIM IS TRUE AND CORRECT.

S. Jackson Bay

RESPECTFULLY SUBMITTED

SWORN TO OR BEFORE ME

THIS 31 DAY OF August 2011

Tenny G. Maiton

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES Feb 28 2018

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 SEP 19 PM 1:21

APPLICANTS EXHIBITS IN SUPPORT OF THE PCR APPLICATION

THAT ARE ATTACHED TO HIS PCR APPLICATION

APPLICANTS EXHIBITS #1 - TOTAL TRANSCRIPT

APPLICANTS EXHIBITS #2 - OR-GS-39-1339 TRAFFICKING IN COCAINE

APPLICANTS EXHIBITS #3 - S.C. COURT OF APPEALS 2011-CP-070

APPLICANT EXHIBITS #4 - EASLEY POLICE DEPARTMENT PROPERTY REPORT

APPLICANTS EXHIBITS #5 - RULE 5 DISCOVERY BRADY V MARYLAND

APPLICANTS EXHIBITS #6 - APRIL 8, 2008 DISCLOSURE

APPLICANTS EXHIBITS #7 - STATES NOVEMBER 8, 2008 DISCLOSURE

APPLICANTS EXHIBITS #8 - DRUG ANALYSIS

APPLICANTS EXHIBITS #9 - PROSPECTIVE WITNESS LIST

APPLICANTS EXHIBITS #10 - FINAL BRIEF OF RESPONDENT

APPLICANTS EXHIBITS #11 COPY OF PROSECUTION DISCLOSURE

APPLICANT EXHIBITS #12 A COPY OF EASLEY POLICE DEPT. REPORT

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS

JACKIE LEE BOYD 288278

Applicant

%A

V

MEMORANDUM IN SUPPORT OF
STATE OF SOUTH CAROLINA POST-CONVICTION RELIEF APPLICATION
Respondent

THIS MATTER DOES COMES BEFORE THE COURT OF COMMON PLEAS
BY WAY MEMORANDUM IN SUPPORT OF POST CONVICTION RELIEF
APPLICATION:

Applicant WAS INDICTED BY PICKENS COUNTY GRAND JURY FOR FAILURE
TO STOP FOR BLUE LIGHTS AND TRAFFICKING IN COCAINE THIRD OFFENSE.
Applicant HAS CO-DEFENDANT WHICH HAS NOT BEEN INDICTED BY
THE PICKENS COUNTY GRAND JURY. THE Applicant WAS SENTENCED TO
TWENTY-FIVE YEARS FOR THE TRAFFICKING OFFENSE AND THREE YEARS
FOR THE BLUE LIGHT OFFENSE; THE Applicant IS PRESENTLY CONFINED
WITHIN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.

{ ARGUMENT }

TOTAL COUNSEL WAS INEFFECTIVE FOR FAILING TO INFORM CLIENT
THAT CO-DEFENDANT STATE WITNESS RECEIVED IMMUNITY.

DURING THE Applicant TRIAL STATE WITNESS DURING DIRECT
EXAMINATION BY TOTAL COUNSEL MR. NEWTON IN REGARDS OF THE

CRIME THAT WAS COMMITTED BY BOTH DEFENDANT AND STATE WITNESS

AT TRIAL TRANSCRIPT PG. 129 1-7 Q: YOU WERE CHARGED WITH

TRAFFICKING IN COCAINE? PG. 129 1-8 A: YES

AS THE TRIAL TRANSCRIPT RECORD SHOWS MOST FAVOR IN A LIGHTER

SENTENCE TO THE STATE WITNESS ON PG. 129 LINE 22 Q: DO YOU

THINK IT MIGHT GIVE YOU A LIGHTER SENTENCE.

IN SUCH DEFENSE AS THE STATE HAS COMMITTED FRAUD UPON THE

COURT AND PERJURY TO OBTAIN A SENTENCE FOR IMMUNITY.

SEE PG. 129 1-23 TR. TR.

THE SOLICITOR FOR PICKENS COUNTY WAS AWARE OF THE DEAL

THAT WAS GOING TO BE TAKEN FOR IMMUNITY FOR THE CO-DEFENDANT

STATE WITNESS AT THE HANDS OF THE COURT BEWARE OF GET

SUCH AS IMMUNITY. TR. TR. PG. 126 1-9-12

AS THE LAW OF SOUTH CAROLINA STATES: "THE HAND OF ONE IS THE

HAND OF ALL" AND THE STATE MUST COMPLY WITH/TO THESE LAWS.

IN THIS CASE THE SOLICITOR KNEW IF THEY PRESENT AN INDICTMENT

TO THE GRAND JURY WITH THEIR MOST FAVORABLE WITNESS NAME IN IT

THEY COULD NOT BUILD A CASE WITHOUT EVIDENCE TO CONVICT THE

DEFENDANT OF THE CHARGE OF TRAFFICKING IN COCAINE

SEE TR. TR. PG. 126 1-11 Q: THOUGHT YOU WOULD GET A LIGHTER

SENTENCE FOR TR. TR. PG. 136 1-12 Q: FOR TESTIFYING FOR THE

PROSECUTION TODAY RIGHT? SEE ALSO TR. TR. PG. 136 1-13 A: YES SIR

AS THE RECORD SHOWS THERE WAS A DEAL MADE IN FAVOR OF

IMMUNITY TO THE STATE WITNESS AND ALL EVIDENCE FROM THE

TRIAL TRANSCRIPT ON PG. 140 LINE 14 A: I AM HOPEING FOR A DEAL

APPLICANT DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO

THOROUGHLY INVESTIGATE AS WELL AS NOTIFY CLIENT THAT MATERIAL

EVIDENCE EXISTED THAT WOULD HAVE ASSISTED CLIENT AT TRIAL

IF COUNSEL HAD ADVISED CLIENT THAT CO-DEFENDANT WILL BE RECEIVING IMMUNITY AS PART OF HER PLEA AGREEMENT IN WHICH SOLICITOR WAS AWARE THAT IMMUNITY WOULD BE OFFERED FOR TESTIMONY AND THE SOLICITOR WITHHELD THIS BRADY MATERIAL FROM COUNSEL AND CLIENT CONCERNING IMMUNITY; OUR LAWS OF SOUTH CAROLINA WOULD HAVE EXCLUDED THE TESTIMONY SAME FOR TRIAL AND GUILTY PLEAS; AND SOLICITOR "MUST" AND "SHALL" NOT AWARE STATE WITNESS TESTIMONY IMMUNITY FOR THIS TESTIMONY TO DROP CHARGES SUCH AS CO-DEFENDANT HAD PENDING WAIT TO PLEAD GUILTY TO FOR IMMUNITY.

STATE V BESOME 232 S.E.2d 324 (1977) AT U.S.V. LORD 711 F.2d 887
(STICKLAND V WASHINGTON 466 U.S. 668 (1984))

{ ARGUMENT }

APPLICANT 5TH AMENDMENT AND 14TH AMENDMENT HAS BEEN VIOLATED; TESTIMONY GIVEN BY STATE WITNESS AS EVIDENCE MOST FAVORABLE TO PROSECUTION; FALSE EVIDENCE;

IN THE APPLICANT CASE THE SOLICITOR WAS AWARE THAT CO-DEFENDANT TESTIMONY WAS FALSE EVIDENCE THAT THE SOLICITOR USED TO GET A CONVICTION, AND THE STATE WITNESS WAS THREATENED BY THE SOLICITOR MR. NEWTON AND THERE WAS A DEAL MADE BY PROSECUTION JUST TO GET EVIDENCE "SUM" UP A CASE TO CONVICT MR. JACKIE BOYD OF SUCH CRIME.

ACCORDING TO MILLER V DYE 87 S.C. 785 THE 14TH AMENDMENT CANNOT TOLERATE A STATE CRIMINAL CONVICTION OBTAINED BY KNOWING USE OF FALSE EVIDENCE. { MORE THAN (30) YEARS AGO THIS COURT HELD THAT THE FOURTEENTH AMENDMENT CANNOT TOLERATE A STATE CRIMINAL CONVICTION OBTAINED BY THE KNOWING USE

OF FALSE EVIDENCE. MOONLEY V HOLOHAN 55 S. CT. 340 THERE HAS BEEN NO DEVIATION FROM THAT ESTABLISHED PRINCIPLE. NAQUE V PEOPLE OF THE STATE OF ILLINOIS 79 S. CT. 1173, PIR V STATE OF KANSAS 63 S. CT. 177 ALCORTA V STATE OF TEXAS 78 S. CT. 103 THERE CAN BE NO RETREAT FROM THAT PRINCIPLE HERE.

IN THE CASE AT BAR DUE PROCESS BARS PROSECUTION FROM USE STATE WITNESS JESSICA KENNEDY MAKING KNOWING USE OF FALSE TESTIMONY AND EVIDENCE. U.S.C.A. CONST. AMEND. 5th AND 14th

ALSO A CONVICTION WHICH IS OBTAINED THROUGH THE USE OF FALSE EVIDENCE OF TESTIMONY KNOWN TO BE SUCH BY THE PROSECUTION IS A DENIAL OF DUE PROCESS AND IN VIOLATION OF THE 14th AMENDMENT GRAHAM V WILSON 828 F.2d 656

KNOWING USE OF MATERIAL FALSE EVIDENCE BY THE STATE IN CRIMINAL PROSECUTION DOES VIOLATE DUE PROCESS WHERE STATES ALLOW IT TO GO UNCORRECTED AFTER LEARNING OF ITS FALSHY.

WILLIAM V GRISWOLD 743 F.2d 1533 BANKS V PRATKE 125 S. CT. 1250

5004

{ CONCLUSION }

IT IS SO ORDERED THAT APPLICANT SHOULD BE GRANTED A NEW TRIAL AND HIS CONVICTION AND SENTENCE BE VACATED.

Dated _____ 2011

S _____

JACKIE BOYD

PRESENTATION OF THE ISSUES

D) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

THE APPLICANT WAS DENIED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL AS OF RIGHT ON THE FIRST APPEAL IN VIOLATION OF SOUTH CAROLINA CONSTITUTION ARTICLE (1) SUBSECTION (3) AND SOUTH CAROLINA CONSTITUTION ARTICLE (1) SUBSECTION (14) AND UNITED STATES CONSTITUTIONAL AMENDMENT 5th 6th AND 14th IN FAILING TO FILE A PETITION FOR A REHEARING OR REINSTATEMENT PURSUANT TO SOUTH CAROLINA APPELLATE COURT RULE 221 ASKING THE SOUTH CAROLINA COURT OF APPEALS TO REVIEW ANY ADVERSAL FACT OR PRINCIPLE OF LAW THAT HAS BEEN EITHER OVERLOOKED OR DISREGARDED.

UNDER EVANS V LUCY

I AM ENTITLED TO EFFECTIVE ASSISTANCE OF COUNSEL ON MY FIRST APPEAL AS OF RIGHT. THE SOUTH CAROLINA OFFICE OF INDIGENT DEFENSE DIVISION APPELLATE COUNSEL ELIZABETH FRANKLIN BEST PERFORMANCE FELL BELOW AN OBJECTIONABLE STANDARD OF REASONABLENESS UNDER THE FIRST PRONG OF STRICKLAND V. WASHINGTON 466 US 668 (1984) INEFFECTIVE ASSISTANCE OF COUNSEL IN FAILING TO FILE A PETITION FOR A REHEARING WITH THE SOUTH CAROLINA COURT OF APPEALS UPON THE REQUEST OF THE APPLICANT PURSUANT TO SOUTH CAROLINA APPELLATE COURT RULE 221 VIOLATION APPLICANT CONSTITUTIONAL RIGHT ARTICLE (1) SUBSECTION (3) AND VIOLATING APPLICANT CONSTITUTIONAL RIGHT UNDER THE 5th AND 14th CONSTITUTIONAL AMENDMENT RIGHT AND IN VIOLATION OF APPLICANT DUE PROCESS RIGHT AND EQUAL PROTECTION RIGHT OF THE SOUTH CAROLINA CONSTITUTION ARTICLE (1) SUBSECTION (14th) AND THE UNITED STATES CONSTITUTIONAL AMENDMENT UNDER THE 6th AND 14th AMENDMENT EFFECTIVE ASSISTANCE OF COUNSEL

APPLICANT WAS PREJUDICED BY APPELLATE COUNSEL ELIZABETH FRANKLIN BEST
 EFFICIENT PERFORMANCE IN FAILING TO FILE A PETITION FOR A REHEARING
 PURSUANT TO SOUTH CAROLINA APPELLATE COURT RULE 221 BECAUSE IT
 DENIED APPLICANT OF A FINAL DECISION, AND IT FURTHER PREJUDICED
 APPLICANT OF BEING ABLE TO EXHAUST STATE COURT REMEDY UNDER
 SOUTH CAROLINA APPELLATE COURT RULE 226 PETITION FOR WRIT OF
 CERTIORARI AS STATED IN AN ORDER ISSUED BY THE STATE OF SOUTH
 CAROLINA SUPREME COURT ORDER IN STATE V MCGRIFF, CP. NO. 2010-UP-528
 (S.C. CT APP. FILED DECEMBER 16th, 2010)

WHEN NO PETITION FOR REHEARING WAS RECEIVED BY THE S.C. COURT OF
 APPEALS, THE S.C. COURT OF APPEALS SENT THE REMITTUR. PETITIONER HAS
 NOW FILED A PETITION FOR WRIT OF CERTIORARI DATED MARCH 1, 2011
 SEEKING REVIEW OF THE DECISION OF THE SOUTH CAROLINA COURT OF APPEALS
 IN THIS MATTER. UNDER RULE 242 (A) FORMERLY RULE 226 S.C. APPELLATE
 COURT RULE THIS COURT WILL ONLY REVIEW A FINAL DECISION OF THE COURT
 OF APPEALS AND A DECISION IS NOT FINAL FOR THE PURPOSE OF REVIEW
 UNTIL A PETITION FOR REHEARING OR REINSTATEMENT HAS BEEN ACTED
 ON BY THE COURT OF APPEALS. RULE 242 (C) S.C. APPELLATE COURT RULE.
 SO NO PETITION FOR REHEARING HAS BEEN RULED ON BY THE COURT OF
 APPEALS. IN THIS MATTER, THERE IS NO FINAL DECISION FOR THIS COURT
 TO REVIEW. FURTHER WHEN NO PETITION FOR REHEARING WAS RECEIVED
 BY THE COURT OF APPEALS, THE COURT OF APPEALS PROPERLY SENT THE
 REMITTUR RULE 221 S.C. APPELLATE COURT RULE. THE SENDING OF THE
 REMITTUR ENDED APPELLATE JURISDICTION OVER THIS CASE.
 WISE V SOUTH CAROLINA DEPT OF CORRECTIONS 372 S.C. 173, 642 S.E. 2d
 561 (2007)

- 2) THE APPLICANT MOTION FOR A DIRECTED VERDICT SHOULD HAVE BEEN GRANTED
 THE TRIAL COURT JUDGE LARRY R. PATTERSON ABUSED HIS DISCRETION IN

DENYING TRIAL COUNSEL MOTION FOR A DIRECTED VERDICT OF ACQUITTAL.

TR. TR. pg. 148 1-1-25- pg. 149 1-1-24

TR. pg. 149 1-17-24 THE TRIAL COURT JUDGE STATED:

ALL RIGHT AT THIS PARTICULAR POINT, I CAN'T WEIGH THE EVIDENCE, I JUST HAVE TO CONSIDER THE EXISTENCE OF ANY DIRECT OR SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE AND THE TESTIMONY WAS SHE KNEW THE BOTTLE WAS IN THE CAR SHE HAD SEEN IT BUT SHE DIDN'T KNOW HOW IT GOT THERE. I WILL HAVE TO DENY THE MOTION AT THIS TIME.

APPLICANT SUBMITS THAT HAD IT NOT BEEN FOR TRIAL COUNSEL DEFICIENT PERFORMANCE IN ELICITING THIS INCRIMINATING DIRECT EVIDENCE OR SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE INTO EVIDENCE DURING CROSS EXAMINATION OF STATE WITNESS JESSICA KENNEDY, IN WHICH THE TRIAL JUDGE CONSIDERED HIS REASONS IN DENYING COUNSEL'S MOTION FOR A DIRECTED VERDICT, APPLICANT SUBMITS THAT THERE IS A REASONABLE PROBABILITY EXISTS, THAT BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS THAT THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT.

ABSENT THE EVIDENCE UNPROFESSIONALLY ELICITED INTO EVIDENCE BY TRIAL COUNSEL, THERE IS NO EVIDENCE IN THE RECORD IN WHICH CONSTRUCTIVE POSSESSION COULD HAVE BEEN PROVEN BEYOND A REASONABLE DOUBT, AND THEREFORE APPLICANT UNDER THE DUE PROCESS CLAUSE OF THE 14TH U.S.C.A WOULD BE ENTITLED TO A DIRECTED VERDICT OF ACQUITTAL.

IN RE MAINSHIP 397 U.S. 358 (1970)

THE INCRIMINATING EVIDENCE ELICITED AGAINST TRIAL COUNSEL OWN CLIENT ESTABLISH APPLICANT DOMINATED CONTROL OVER THE PILL BOTTLE CONTAINING 10 OR MORE GRAMS OF COCAINE OR HAD THE RIGHT TO EXERCISE DOMINATION AND CONTROL OVER THE PILL BOTTLE.

ABSENT THIS INCULCATING EVIDENCE, IN WHICH THE JURY CAN INFER
 CONSTRUCTIVE POSSESSION AN ESSENTIAL ELEMENT THAT MUST BE PROVEN
 BEYOND A REASONABLE DOUBT. THE OUTCOME OF THE TRIAL WOULD HAVE
 BEEN DIFFERENT. UNDER IN RE WAINSHIP 397 U.S. 358 APPLICANT WOULD
 BE ENTITLED TO A VERDICT OF ACQUITTAL. THIS FURTHER SHOWS APPLICANT
 WAS PREJUDICED WHEN TRIAL COUNSEL ELICITED THAT EVIDENCE, IN THAT THE
 TRIAL COURT RULED AGAINST APPLICANT MOTION FOR A DIRECTED VERDICT.
 TR. TR. pg. 149 L-17-24

TRIAL COUNSEL ROBERT NEWTON IN HIS OPENING AND CLOSING ARGUMENT TOLD THE
 JURY THAT HIS CLIENT WAS GUILTY FOR FAILURE TO STOP FOR A BLUE LIGHT.
 TR. TR. pg. 53 L-24-25 - TR. TR. pg. 54 L-1-25 - TR. TR. pg. 55 L-1-4

COMBINE THAT WITH TRIAL COUNSEL ELICITING EVIDENCE FROM JESSICA
 KENNEDY ON CROSS EXAMINATION, THAT SHE SAW THE POLI BOMIE IN THE CAR
 AT ONE POINT IN TIME.
 TR. TR. pg. 124 L-12-25 - TR. TR. pg. 125 L-1-5

TR. TR. pg. 123 L-12-25 - TR. TR. 175 L-1

NOW SEE HOW THE STATE USES THIS EVIDENCE THAT WAS INTRODUCED INTO
 EVIDENCE BY APPLICANTS OWN TRIAL COUNSEL.

THE FINAL BRIEF OF RESPONDENT pg. 7 THROUGH 12

S.C. COURT OF APPEALS UNPUBLISHED OPINION 2011-UP-070

SUBMITTED FEBRUARY 1, 2011

SEE HOW THE PROSECUTION DURING CLOSING ARGUMENT AT TRIAL USES THIS
 EVIDENCE INTRODUCED BY APPLICANT TRIAL COUNSEL AGAINST APPLICANT

TR. TR. pg. 163 L-21 - pg. 164 L-1-4

State of South Carolina
County of Pickens

In The Court of Common
Pleas

Jackie Lee Boyd #298278 case 2011 CL 39 1320

Applicant

V.S

State of South Carolina
Respondent

Proof of Service

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 SEP - 9 P 1:21

To Respondent:

I certify that Jackie Lee Boyd, hereby
has served a true and original copy of
Post-Conviction Relief Application; and
Summons upon Mr. Harold P. Welborn, Jr
Pickens, county clerk of court At P.O Box
215 Pickens, S.C. 29671 By Place A copy
in the united States mail.

SWORN before me this day
31 of August, 2011

Notary Penny G. Morton

Expires Feb 28, 2018

Jackie Lee Boyd
Jackie Lee Boyd
386 Redemption Way
McCormick, S.C. 29899

JACKIE Lee Boyd #298278
 386 Redemption way
 MCCORMICK, S.C. 29899

2011 CP 39 1320

Case _____

Date Aug 31 2011

Dear, Honorable Harold P. Welborn, JR.

Enclosed Please find for filing
 within your Clerk of Court; Appl-
 ication for Post-conviction Relief,
 and Summons & Proof of Service
 Request. A clocked-date stamped
 copy.

Respectfully Submitted

Jackie Boyd

C/C: J. L. B.

C/C: H. H. P. W. JR.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-39-1320
COUNTY OF PICKENS	)	
	)	
Jackie Lee Boyd,	)	
S.C.D.C. No. 298278,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed September 9, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant for failure to stop for a blue light (2008-GS-39-1338) and trafficking cocaine (2008-GS-39-1339). Robert Newton, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On November 18, 2008, the Honorable Larry R. Patterson sentenced the Applicant to concurrent terms of three (3) years for failure to stop for a blue light and twenty-five (25) years for trafficking cocaine, third offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Boyd, Op. No. 2011-UP-070 (S.C. Ct. App. filed Feb. 23, 2011).

Attached herewith and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to object to introduction of evidence.
 - b. Admitted guilt regarding failure to stop.
 - c. Failed to request curative instructions.
 - d. Failed to object to improper chain of custody.
 - e. Due Process Violations.
 - f. Improperly advised Petitioner against testifying.
 - g. Failed to question witnesses effectively.
2. Ineffective assistance of appellate counsel.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel

“rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent 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) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

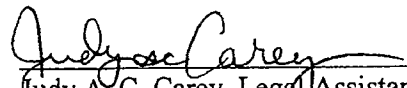
January 20, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	
	)	
	)	2011-CP-39-1320
JACKIE LEE BOYD, 298278	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jackie Lee Boyd, 298278
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899

DATED this 20th day of January, 2012.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	) COURT OF COMMON PLEAS
	)
COUNTY OF PICKENS	) Case No(s) : 2011CP3901320
	)
Jackie Boyd,	)
	)
Applicant,	)
	)
-VS-	) TRANSCRIPT OF RECORD
	)
State of South Carolina,	)
	)
Respondent.	)

December 17, 2012
Pickens, South Carolina

B E F O R E:

HONORABLE EDWARD W. MILLER, Judge.

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

KAREN RATIGAN, Esquire
Attorney for the State

CHASE HARBIN, Esquire
Attorney for the Applicant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

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EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u> <u>EV</u>

APPLICANT EXHIBITS

(No exhibits offered.)

RESPONDENT EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 17th day of December, 2012 at approximately 11:08 a.m.)

THE COURT: Who would this be? Jackie Boyd?

MS. RATIGAN: Yes, Your Honor. This is -- may it please the Court. This is the case of Jackie Boyd versus the State. The docket number is 2011-CP-39-1320. Mr. Boyd was indicted for Failure to Stop for a Blue Light and Trafficking Cocaine. He was represented on these charges by Mr. Newton.

The case was brought to trial back in November of 2008 before Judge Patterson. Mr. Boyd was found guilty of the charges. On November 18th of 2008, Judge Patterson sentenced him to concurrent sentences of three years for Failure to Stop and 25 for Trafficking Cocaine third offense. The case was appealed. The South Carolina Court of Appeals affirmed his convictions and sentences in February of 2011. His application was timely filed and we are ready to proceed.

THE COURT: Okay. Mr. Harbin?

MR. HARBIN: Judge, we'd like to call my client, Mr. Boyd, to the stand.

THE COURT: Come on around, Jackie.

MR. BOYD: Yes, sir.

1 **THE CLERK:** Place your left hand on the
2 Bible and raise your right hand.

3 **JACKIE BOYD**

4 having first been sworn, testifies as follows:

5 **THE CLERK:** State your name for the record.

6 **THE WITNESS:** Jackie Lee Boyd.

7 **THE CLERK:** Please be seated.

8 **DIRECT EXAMINATION**

9 **BY MS. RATIGAN:**

10 **Q** All right, Mr. Boyd.

11 **A** Yes, sir.

12 **Q** Mr. Boyd, uh, Mr. Newton represented you in the
13 Trafficking and Failure to Stop case we're here for
14 today?

15 **A** Yes, sir.

16 **Q** Okay. And as a result of that trial, you were
17 convicted and received a 25-year sentence and a three-
18 year sentence for the Trafficking and the Failure to Stop
19 respectfully?

20 **A** Yes, sir.

21 **Q** Okay. And you filed this petition today
22 because you believe that Mr. Newton was ineffective in
23 his assistance as your counsel?

24 **A** Yes, sir.

25 **Q** Okay. Just to get started, excuse me, I

1 believe chronologically anyway when this trial started,
2 the prosecutor immediately made mention of you as a drug
3 dealer?

4 A Yes, sir.

5 Q Okay. And you feel that Mr. Newton was not
6 effective in dealing with this inappropriate statement by
7 the prosecutor?

8 A Yes, sir.

9 Q What do you feel that he should have done that
10 he did not do in that trial?

11 A The curative instruction to the jury in that
12 the prosecutor spoke outside my character. I never took
13 the stand. He did object.

14 Q Okay. So you feel that although he objected,
15 he didn't go far enough?

16 A Yes, sir.

17 Q Okay. And you feel that had he asked for a
18 curative instruction, that that could have affected the
19 outcome of the case?

20 A Yes, sir. There's no where that I was in there
21 for drugs or nothing like that.

22 Q Right. And now, you had a co-defendant in this
23 case originally, right?

24 A Yes, sir.

25 Q What was her name?

1 A I don't really know her name. She was so
2 untruthful we really don't know her name today.

3 Q Okay.

4 A I know I think it is Jessica.

5 Q But y'all were charged together in this?

6 A Yes, sir.

7 Q And it was part of her testimony that was part
8 of the evidence in your trial, is that right?

9 A Yes, sir.

10 Q Okay. And you had a particular issue with Mr.
11 Newton's, uh, representation of you as it relates to her
12 testimony, did you not?

13 A Say that again.

14 Q Let me rephrase that.

15 A All right.

16 Q You had an issue with Mr. Newton's cross-
17 examination of your co-defendant?

18 A Yes, sir.

19 Q Could you tell the Court what you believe he
20 ineffectively did as your counsel as it relates to the
21 cross-examination of your co-defendant?

22 A The judge can infer that -- the judge can infer
23 that, uh, -- I mean, the jury can infer that by the
24 outcome, by him not saying -- by him not asking -- when
25 the judge did not grant direct verdict, he said I can't

1 weigh evidence at this time. She said she seen me but
2 she didn't know where she seen me at. Mr. Newton should
3 have asked for a responsive answer.

4 Q But what specific question did you believe that
5 Mr. Newton did not demand the Court tell the witness to
6 answer directly?

7 A The Court did not ask the State witness about
8 the bottle.

9 Q About the bottle? About the pill bottle?

10 A About the pill bottle.

11 Q And just quickly for the Court's information,
12 the pill bottle was found outside of your -- of the
13 driver's side door on the ground?

14 A Yes, sir.

15 Q Okay.

16 A Anyway, by him bringing her into cross-
17 examination -- I'm kind of nervous, man.

18 Q That's okay. Take a breath.

19 A Cross-examination, he inferred that the bottle,
20 that the jury can infer that I had something to do with
21 it by him bringing the bottle. The State never asked her
22 about a bottle. They had rested their case. By them
23 asking her, the judge sent that on to the jury.

24 Q You feel that the fact that Mr. Newton examined
25 your co-defendant about the pill bottle and because there

1 was no mention of the pill bottle during her direct
2 examination from the State that then he opened the door
3 and allowed the judge to find some evidence and then he
4 couldn't therefore direct a verdict?

5 **A** Yes, sir. Cause no evidence pointed at me. I
6 had been out of the picture for 25 or 30 minutes. She
7 was the only one left in the car unattended.

8 **Q** You feel that that was ineffective and that had
9 he not done that, then the trial would have been -- the
10 result would have been different?

11 **A** Yes.

12 **Q** Okay.

13 **THE COURT:** You have a page in the -- you
14 know where we're talking about?

15 **MS. RATIGAN:** 134 and 135.

16 **THE COURT:** Okay.

17 **MR. HARBIN:** Judge, if you're okay, I'll move
18 on.

19 **THE COURT:** I'm okay if you're okay.

20 **MR. HARBIN:** Yes, sir. Yes, sir.

21 **BY MR. HARBIN:**

22 **Q** Mr. Boyd, you also, uh, write in your return
23 that you've got an issue with the chain of custody and
24 specifically lack of discovery that was provided to you
25 and to Mr. Newton. Could you elaborate for the court as

1 to what you think was not provided to you and how that
2 affected your ability to --

3 **A** First of all, the pill bottle had been missing
4 for two days out of the evidence room on 12/05 until
5 12/05 -- 7. It had been missing out of evidence. Nobody
6 name on it, where it come from. Officer Benjamin said
7 that he don't know why he put this -- I left everything
8 over there. Officer Benjamin said he don't know why he
9 put this in this bag. He don't know why he put this in
10 the bag. He just took all the evidence and put it in one
11 bag as evidence. He didn't sign his name on it. He had
12 another officer swear that they did the change of custody
13 but they wasn't there in court.

14 **Q** And specifically, you were worried about the
15 fact that there had been no submission of a chain of
16 custody in paperwork form ---

17 **A** Exactly.

18 **Q** --- in response to your discovery requests
19 prior to trial, ---

20 **A** Yes, sir.

21 **Q** --- is that correct?

22 **A** Yes, sir.

23 **Q** And, of course, you feel as if that hampered
24 your ability to defend yourself in the trial?

25 **A** Yes, sir.

1 Q Are you arguing at this point also that Mr.
2 Newton was ineffective in seeking out this chain of
3 custody information?

4 A Yes, sir. He should have objected -- well, he
5 did object but then he didn't, you know, they still just
6 denied it.

7 Q Okay. All right. Mr. Boyd, you also bring up
8 an issue with the disclosure or non-disclosure of what
9 you are referring to as an immunity deal that the State
10 had given your co-defendant.

11 A I wasn't aware of it until we got to court and
12 she had been coerced. They had took her to the room and
13 tried to get her to testify against me saying it was
14 mine. She know that wasn't true. So she never did say
15 anything. He got mad. Told her to step down and all
16 this right here.

17 Q Well, Mr. Boyd, as it relates to this
18 particular hearing that we're having today, your argument
19 is that the fact that the immunity deal was not disclosed
20 affected the outcome of the trial.

21 A Yes, sir.

22 Q Okay. Are you also arguing or are you not that
23 Mr. Newton should have -- did or should have known about
24 the immunity deal?

25 A He should have known about it. He got in touch

1 with me so I would have been prepared.

2 Q Is it your feeling that had Mr. Newton made a
3 legal argument regarding this disclosure of immunity deal
4 that that would have effected the outcome of the trial?

5 A Yes, sir.

6 Q Okay. All right. And I know we're kind of
7 skipping around here. You had a great deal of research
8 that you provided to me. Just hitting the bullet points.
9 Your last concern, I believe, dealt specifically with
10 your appeals attorney. And your appeal as counsel
11 described was essentially denied. Your conviction was
12 affirmed. Do you believe that your appeal attorney was
13 deficient in her representation?

14 A (Inaudible.)

15 Q Yes, ma'am. Yes, sir. Excuse me.

16 A No, sir. Cause she said -- I got the paper
17 right here that she wrote. She said she was understaffed
18 and underpaid. And she thought the issues that she
19 raised was a good issue. I'm sorry that didn't -- the
20 outcome didn't work out for you. She said it's best that
21 you go and try to exhaust it on PCR. They had resolved
22 that. What I was doing -- they said they were going to
23 send a remittitur. How could a remittitur ever be sent
24 if you didn't investigate, give me a full investigation.
25 You know what I mean?

1 Q So you believe Ms. Best was deficient in her
2 performance?

3 A Yes, sir.

4 Q Because she did not --

5 A I had called her multiple times and told her
6 please, you know, I got just enough time to send a
7 (inaudible). They based my decision, the reason why they
8 didn't give me relief is that the she say she didn't fill
9 it out.

10 Q You might want to elicit that a little bit.
11 The flight, you're talking about the failure to stop
12 charges?

13 A Yes, sir. Yeah, the flight. That's what they
14 said. Failure to stop. She said she didn't throw it
15 out. That was their decision. They based it on not --

16 Q You don't feel she argued correctly as it
17 relates to a flight element.

18 A At all. At all. She looked at it. She seen
19 it. I wasn't even in the car for 25 -- the officer said
20 25 minutes. They ain't seen nothing in 25 minutes. They
21 asked me my name and everything. She gave false name and
22 information. She started throwing stuff around. They
23 found stuff on her, not me.

24 Q Mr. Boyd, speaking of the failure to stop, you
25 also had an issue with Mr. Newton's admission in open

1 court that you were guilty of failure to stop.

2 A Yeah, at the end of the flight. That's why
3 they could infer that I was -- they can send that to the
4 jury. The flight. They made it seem like failure to
5 stop for a blue light, I assumed if I failure to stop for
6 a blue light, I failure on everything else.

7 Q So you believe that because Mr. Newton
8 volunteered to the jury that you were guilty of failure
9 to stop for blue light that the jury immediately inferred
10 that the reason you were fleeing is because you were
11 guilty of the trafficking charge?

12 A Yes, sir.

13 Q You believe he should not have done that?

14 A Yeah, he shouldn't have done that. I mean, he
15 didn't mean well, I mean, he didn't mean it. I'm just --

16 Q You also believe that had he not done that,
17 there's a substantial likelihood that the trial would
18 have come out differently?

19 A It would come out different. The final brief,
20 that's what they based my relief on, not giving relief.
21 The flight -- she said she didn't throw it.

22 Q You had page after page and a lot of it was --
23 I won't say redundant --

24 A Yes, sir.

25 Q But certainly. Is there anything that I have

1 not directly addressed to you this morning that you feel
2 is something the court needs to hear about Mr. Newton or
3 Ms. Best's deficient performance as your attorneys?

4 **A** Well, the judge asked -- when my lawyer, Mr.
5 Newton, asked for directed verdict, the judge said he
6 couldn't weigh evidence at the time. She said she seen
7 it but she don't know where she seen it at. He should
8 have asked for it. That was a non-responsive answer. He
9 should have asked for a responsive answer. That's as far
10 as then. They were never sent to the jury. They weren't
11 a complete answer. There's no evidence that he sent it
12 to the jury.

13 **Q** And you are referring to your co-defendant's
14 statement that she doesn't -- that she didn't know where
15 the drugs had come from?

16 **A** Yeah, she said -- no. She said she don't --
17 seen them. But she didn't know where she seen them at.
18 She seen them in her pocketbook. If you look on that
19 certain page right there, I got the number over there.
20 She came out of her pocketbook and out of her bra with
21 scales, with cocaine in it.

22 **Q** But you believe Mr. Newton should have objected
23 at that point or at least asked the judge to instruct her
24 --

25 **A** A non-responsive answer. She said she seen it.

1 The judge said you seen it? She said I don't know where
2 I seen it at though.

3 Q Okay.

4 A He should have struck that as a non-responsive
5 answer.

6 Q Okay.

7 A That wasn't a complete sentence.

8 Q Sure. Is there anything else you would like to
9 address to the Court that we didn't cover?

10 A I had a thousand things.

11 Q That's alright.

12 THE COURT: Take your time. Take your time.

13 THE WITNESS: Well --

14 THE COURT: You need to look at any notes?

15 THE WITNESS: Yes. I had plenty of notes,
16 ma'am. My argument was --

17 THE COURT: Is that your handwriting?

18 THE WITNESS: No, sir. That's somebody else
19 handwriting.

20 THE COURT: I was going to say, that's pretty
21 neat.

22 THE WITNESS: I mean, I don't know too much
23 about the law. I had somebody help me out down
24 there. When they seen my case, they was like you
25 got so much time for this right here.

1 But the thing about it, when they took me out
2 of the car and put me all the way in the back of the
3 car, one officer, two officers had a gun on me. Not
4 throwing nothing out, sir. Not throwing nothing
5 out. Stripped me down and asked me my name for 20
6 or 30 minutes. Called me in using my brother or
7 somebody else name. Left her in the car unattended,
8 smoking cigarettes, doing whatever she wanted to do.
9 If they searched her like they searched me, they
10 would have seen where that pill bottle would have
11 came from. But since they didn't, and left me on
12 the ground like that and just let her do what she
13 want to do. When they come back -- there was no
14 pill bottles on the ground.

15 But when they came back, when she kept giving
16 them false information, they even went to dispatch
17 to try to get her name, ma'am, your name ain't
18 coming out right. You done gave about 10 different
19 names. That's when she started throwing things.
20 When they come back, she had left the driver door
21 open. Soon as he got back to the driver door, he
22 noticed a -- he said he noticed a pill bottle. The
23 picture over there. The pill bottle was on the
24 ground.

25 The prosecutor said it's mighty strange. It

1 was raining out there. He said the bottle would had
2 been wet. He said Mr. Boyd been out for 25 minutes.
3 The bottle would have been soaking wet. But the
4 bottle was dry. Who was the only one in the car? I
5 had been gone for 25 minutes..

6 Then when they went in her pocketbook, the same
7 bottle they said he found on the ground, it was two
8 more in her pocketbook with Xanaxes, marijuana
9 scales. It's right there with scales with cocaine.
10 Cracks in her bra. I don't know how in the world I
11 even get in the picture. I understand if I was
12 right there and they found all this stuff at one
13 time, but they ain't find none of this. She had all
14 this stuff on her.

15 But when they start asking her name, she start
16 doing this. Even the officer let her change her
17 clothes. I don't know why. He acted like he liked
18 her a little bit. I'm serious. It's right there in
19 the transcript. We asked him why you let her change
20 her clothes at the scene of the --

21 **THE COURT:** Where was this?

22 **THE WITNESS:** She took her bra off. It's
23 right there.

24 Is I lying, Mr. Newton? You remember that? He
25 told her to take her bra of?

1 I'm serious. It's right here.

2 **THE COURT:** Well, I saw where it was in
3 evidence, a blue bra. I saw that.

4 **THE WITNESS:** Yeah. He told her to take it
5 off. She took it off. He was laughing. Smiling.

6 **THE COURT:** Who was that?

7 **THE WITNESS:** Officer Benjamin. They just
8 screwed me, man. And when he look at me, he look at
9 me. When he talked to her, he just smiled. Looked
10 at me like this. Just smiled. Everything was all
11 right then.

12 **THE COURT:** Well, she was your girlfriend,
13 right?

14 **THE WITNESS:** She wasn't my -- she was a
15 prostitute. They told me not to even write it down.
16 I was just out having a little fun off from work.
17 And she had stole my daddy truck. Not my daddy, my
18 uncle truck. I went looking for it. I won't tell
19 you no lie. I party a little bit and get high or
20 whatever. I'm 49 years old. I try to keep up with
21 the little young girls. So, you know, she tricked
22 me.

23 She stole a truck from somebody for some drugs.
24 So I went looking for the girl, for the car, for the
25 truck to find it, and got caught. Officer Benjamin

1 seen me going through the highway on Easley and got
2 behind me. She said, oh, this car is probably
3 stolen. She had done stole that car was in from her
4 boyfriend. It's in there. From some guy, whatever
5 his name is. My heart really got to beating. I
6 said what.

7 I was already going about 60 or 70. The police
8 jumped behind me. He said I was going 80. He said
9 I was going 115. That car won't even go 115 miles
10 per hour. If I would have hit the wall at 115, I
11 wouldn't even be here today, sir. We had a little
12 raggedy door on the side of the car. We hit the
13 wall.

14 He told me to get out with my hands up. Not
15 one officer, two officers. I got out. That was it.
16 They took me in the back of the car and everything
17 was over with. I don't even know how I came into
18 the picture about the drug part. She had all them
19 on her, except for failure to stop for blue light.

20 **BY MR. HARBIN:**

21 Q Well, Mr. Boyd, just to kind of wrap all this
22 up, the last bit of information you had given us over the
23 past few minutes, basically, your assertion is that Mr.
24 Newton did not argue exactly what you just finished
25 arguing on your behalf ---

1 A Exactly.

2 Q --- in an effective manner and the lack of that
3 effective counsel affected --

4 A Yes, sir. The bottle, you know -- actually,
5 when he cross-examined her, he asked her did you see the
6 pill bottle, where did you see it at. That inferred to
7 the jury that I probably was guilty. She didn't say
8 where she seen it at. That was the non-responsive
9 answer. That was an incomplete answer. Mr. Patterson
10 sent it on to the jury. I was convicted and just
11 assumed --

12 Q You felt you were entitled to a directed
13 verdict is what you felt you were entitled to?

14 A Yes, sir. I thought I was, sir.

15 Q Before you get down off the witness stand, is
16 there anything else that we haven't covered? I know we
17 covered a good bit now.

18 A Pretty much -- basically, that's much --
19 without, uh, -- oh, yeah. Oh, yeah. The supplementary
20 report.

21 Q Okay.

22 A It was only 9 pages of 11. No, it was 9
23 through 15. When I went to court, they kept all the
24 important pages out of it. And that wasn't there.

25 Q Who is "they"?

1 **A** Uh, Officer Benjamin, whoever handled it. When
2 I tried, they called down there and told them that I was
3 harassing them, that I threatened them. The warden
4 wanted to send me away. I said, man, I just asked for
5 the papers. They told me not to be writing down there no
6 more.

7 **Q** All right. You believe discovery was withheld?

8 **A** Yes, sir.

9 **Q** Okay.

10 **A** And the outcome would have came out different
11 if they supplemented -- the other half of the
12 supplementary report would have been there. It would
13 show who had the pill bottle and the paraphernalia and
14 all that stuff.

15 **Q** Right.

16 **A** You know what I'm saying. I wanted to see her
17 supplementary stuff. All the paraphernalia and stuff
18 belonged to her, but they got me. How you going to --
19 let me make sure of that.

20 **Q** Okay. All right.

21 **MR. HARBIN:** Judge, I don't believe we have
22 anything further. Thank you, Mr. Boyd.

23 **THE WITNESS:** Okay, sir.

24 **MS. RATIGAN:** I have no questions for Mr.
25 Boyd, Your Honor.

1 **THE COURT:** Okay. All right, Jackie.

2 **THE WITNESS:** Yes, sir.

3 **THE COURT:** You can step down.

4 **THE WITNESS:** All right.

5 **THE COURT:** All right. Be careful.

6 All right. If you weren't so skinny, your
7 pants wouldn't fall off.

8 **THE WITNESS:** I had to lose weight, Doctor --
9 I mean, Mr. Miller. They said I was diabetic.

10 **THE COURT:** Oh.

11 **THE WITNESS:** You know when you start eating
12 a lot -- you probably don't remember.

13 **MR. HARBIN:** Nothing further, Judge. I'm
14 sorry.

15 **THE COURT:** All right. Anything from the
16 State?

17 **MS. RATIGAN:** Yes, Your Honor. We call Mr.
18 Newton.

19 **THE COURT:** Come on around.

20 **THE CLERK:** Place your left hand on the Bible
21 and raise your right hand please.

22 **ROBERT NEWTON**

23 having first been sworn, testifies as follows:

24 **THE CLERK:** State your full name for the
25 record.

1 **THE WITNESS:** Robert Lee Newton, Jr.

2 **THE CLERK:** Please be seated.

3 **DIRECT EXAMINATION**

4 **BY MS. RATIGAN:**

5 **Q** Mr. Newton, you recall representing Mr. Boyd on
6 these charges?

7 **A** I do.

8 **Q** And were you appointed or were you retained?

9 **A** Appointed case.

10 **Q** And did you file the usual Brady and Rule 5
11 discovery motions?

12 **A** I did.

13 **Q** And to the best of your knowledge, did you
14 receive full discovery from the State?

15 **A** I received a package from them. Apparently, I
16 think it's true when he said that we never received a,
17 uh, full property report. I believe that is true.
18 There's none in my file. I don't recall one.

19 **Q** Okay. Property report in terms of like chain
20 documentation?

21 **A** Chain of custody.

22 **Q** Did you have any concerns about chain of
23 custody in the case?

24 **A** Well, from the very first time I met Mr. Boyd
25 at the jail, the focus of his defense was that the drugs

1 were not his. He maintained that it was the passenger's.
2 So he didn't really question whether the drugs were
3 really actual drugs, legal drugs. Our whole focus in the
4 case were surely they were drugs but they weren't his
5 drugs.

6 Q And did you review the State's discovery with
7 Mr. Boyd in discussing the case?

8 A Yes.

9 Q And so you -- I believe you already kind of
10 hinted at this. Mr. Boyd told you his version of what
11 had happened that day?

12 A Yes.

13 Q Mr. Boyd, at the end of his testimony a few
14 minutes ago, stated that he didn't believe you ever
15 received the full supplemental report. Is that something
16 you can speak to?

17 A I'm not sure what he was talking about.

18 Q Do you ever recall having problems with the
19 incident supplementals getting those full reports from
20 the State in this case?

21 A To my knowledge, we're not missing anything. I
22 believe we stipulated for trial strategy purposes.

23 Q And was the co-defendant in this case, was she
24 also charged? Do you remember?

25 A She was.

1 Q And Mr. Boyd testified that she had some kind
2 of immunity deal that he was unaware of. Do you know of
3 her having any such deal with the State?

4 A I wouldn't call it an immunity. I think it was
5 brought up at trial that she was -- I questioned her and
6 cross-examined her about her hopes of getting a lesser
7 sentence for her cooperation with the State against Mr.
8 Boyd. I tried to raise in the minds of the jury that
9 that was grounds that got her credibility. But as far as
10 a set deal, I was not aware of what the terms of that
11 deal was. She had not been to court for sentencing.

12 Q And Mr. Boyd seems concerned that you brought
13 up with her the pill bottle for the first time in cross-
14 examination. Do you recall why you would have asked her
15 about the pill bottle?

16 A I'm not sure which particular bottle he's
17 referring to. Do you know the page number?

18 Q I believe he was referring to page 134 and 135.

19 A I did ask her about a bottle marked State's
20 Exhibit 4. The State had marked it as an exhibit. I
21 presumed it had been admitted already.

22 Q Did it harm your case in any way for you to
23 have asked her about the pill bottle on cross?

24 A Not to my knowledge, no.

25 Q And so would it be fair to say your trial

1 strategy was basically to shift the blame on the co-
2 defendant, that your guy just didn't know anything about
3 it?

4 A Yes, that was the entire approach.

5 Q And you discussed that with Mr. Boyd that that
6 would be the approach you take at trial?

7 A Yes.

8 MS. RATIGAN: That's all I have, Your Honor.

9 THE COURT: Okay. Cross.

10 MR. HARBIN: Please the Court.

11 CROSS-EXAMINATION

12 BY MR. HARBIN:

13 Q Mr. Newton, the directed verdict issues --
14 excuse me. Let me start a different place. Apparently,
15 the prosecutor in this case referred to my client as a
16 drug dealer in his opening and maybe again in his -- as I
17 recall in his closing, to which you objected both times.
18 Is that your recollection?

19 A I don't recall that specifically. If it's in
20 the transcript.

21 Q I'll have to ask you this anyway. Do you
22 recall asking, not just objecting, but asking for a
23 curative instruction from the judge to instruct the jury
24 as to what to do with that inappropriate comment?

25 A I don't recall.

1 MR. BOYD: Page 165.

2 MR. HARBIN: Page 165. I'm sorry, Judge.

3 Just making sure I'm covering what Mr. Boyd wants me
4 to cover.

5 BY MR. HARBIN:

6 Q Mr. Newton, you see where you objected and
7 actually the court had sustained your objection?

8 A Yes, sir.

9 Q And do you feel that it was unnecessary to ask
10 for further curative instructions from the court at that
11 point?

12 A I did not ask for one. It looks like I was
13 objecting to Peter Them's closing argument to that. I
14 think basically what I was trying to do was -- he was
15 saying some objectionable things.

16 Q I understand. Let me ask you about the chain
17 of custody issue. You testified earlier that you recall
18 that you stipulated to the chain of custody in this
19 matter, is that correct?

20 A I believe.

21 Q And you also testified that you did that
22 because that wasn't necessarily the crux of your defense?

23 A Correct.

24 Q All right. Now, I don't know if this is
25 strategic or what. But if you recall that you know you

1 did not have a chain of custody, is it your practice to
2 stipulate to something that you did that was not provided
3 to you in the first place? In other words, what was the
4 basis for your stipulation? That they did not provide
5 the chain of custody prior to trial?

6 A I'm not sure I understand the question.

7 Q Well, it seems that we have determined in this
8 hearing that during the discovery process, they did not
9 provide you with a piece of paper with the chain of
10 custody.

11 A I do not believe they -- I can not say that
12 with 100 percent certainty. I can say there's none in my
13 file. I don't recall ever getting one in this case.

14 Q And Mr. Boyd has an issue with that. But you
15 stipulated to the chain of custody in the trial?

16 A Yeah.

17 Q So my question is where was the basis for your
18 informed decision to stipulate to the chain of custody if
19 you did not have any information as to the chain of
20 custody?

21 A What we stipulated to was what they were
22 reported to be. I don't know. I phrased it as
23 stipulated to the chain of custody just that we weren't
24 going to challenge that the drugs were something other
25 than what they always claimed they were. We stipulated

1 that they were what the police claimed they were.

2 Q Okay.

3 A Again, from my conversations with my client
4 from the very beginning, he never questioned that it was
5 actual drugs as the police claimed. His whole story was
6 that they were not his, they were the co-defendant's.
7 So, you know, I probably should have insisted on getting
8 the chain of custody, but I didn't.

9 Q Okay. Moving on, Mr. Boyd had, uh, referred to
10 an immunity deal which you might have described as just
11 some kind of beneficial arrangement for testimony from
12 his co-defendant.

13 A Right.

14 Q I did see in the transcript where you did ask
15 her some questions to kind of point that out to the jury.
16 You specifically were not aware of what her deal was?

17 A The standard practice at that time is he would
18 not make a definite offer because then the witness would
19 have to say, yeah, he promised me this certain break on
20 the stand. So they intentionally did not do that. They
21 just said you testify first and we'll take that into
22 consideration when your case comes up. But that's the
23 way they work it.

24 Q And you didn't have any information that she
25 had received anything specific that was not brought out

1 in the direct testimony or the cross-examination?

2 A And I do not know what her ultimate outcome
3 was.

4 MR. HARBIN: Okay. Judge, if I could have
5 one second.

6 THE COURT: Yeah.

7 (WHEREUPON, there is a pause.)

8 MR. HARBIN: Thank you. Thank you, Mr.
9 Newton. No further questions.

10 THE COURT: Okay. You got --

11 MS. RATIGAN: Nothing, Your Honor.

12 THE COURT: What was the photograph you put
13 into evidence? You remember?

14 MR. BOYD: Right here. They got one
15 photograph where she sitting in the car smoking a
16 cigarette. He had that one.

17 Remember I asked for the photograph, Mr.
18 Newton?

19 THE COURT: Is it a photograph of her smoking
20 a cigarette?

21 MR. BOYD: In the car.

22 You remember you had that picture and she was
23 sitting in the car?

24 Here's the pictures right here. She was left
25 alone in the car by herself.

1 **THE COURT:** All right. That's all. You got
2 anything else?

3 **MR. HARBIN:** Nothing else for Mr. Newton,
4 Judge.

5 **THE COURT:** Okay. Thank you. Anything else?

6 **MR. HARBIN:** Nothing else but arguments,
7 Judge.

8 **THE COURT:** Any evidence from the State?

9 **MS. RATIGAN:** Well, I called Mr. Newton.

10 **THE COURT:** Oh, you did.

11 **MS. RATIGAN:** Yeah.

12 **THE COURT:** Okay.

13 **MS. RATIGAN:** And I'm going to rest. I would
14 ask if he would like to be excused, he could be
15 excused. If you have any questions for me,
16 otherwise, I'll turn it over to --

17 **THE COURT:** All right. Mr. Harbin.

18 **MR. HARBIN:** Thank you, Judge. May it please
19 the Court. I think that probably Mr. Boyd's
20 strongest point here is that this case obviously is
21 all about drugs that are found in a bottle. There
22 was no chain of custody. His counsel admitted that
23 although he had not been provided with any
24 information as it relates to chain of custody, he
25 still stipulated that issue away. That would rise

1 to the level of ineffective assistance of counsel.
2 A reasonable attorney would not have stipulated to
3 something for which he had no, uh, basis to
4 stipulate. I don't know. You can discount the
5 importance of chain of custody in a drug case when
6 that is a case whether or not the drugs are what
7 they are. I believe we covered the curative
8 instructions.

9 Judge, just to let it go with sustained -- I
10 often kind of got frustrated myself where that only
11 rings the bell. It doesn't do anything to help your
12 client. It's just going to highlight -- for Mr.
13 Boyd to have asked for a curative instruction when
14 Mr. Them calls him a drug dealer and all the court
15 essentially does at that point is to sustain his
16 objection that he could have asked for a curative
17 instruction that would have helped the jury
18 understand exactly what not to consider in their
19 deliberations.

20 **THE COURT:** Well, when Mr. Them, God rest his
21 soul, again changed the characterization to alleged
22 drug dealer and Mr. Newton objected again, the judge
23 said he was only allowed to argue the evidence and
24 reasonable inferences therefrom. It was kind of a
25 curative instruction.

1 **MR. HARBIN:** Yes, sir. And Judge, I believe
2 that would be all that we have essentially the chain
3 of custody, I believe is Mr. Boyd's strongest
4 concern in this matter.

5 **THE COURT:** All right. Anything from the
6 State?

7 **MS. RATIGAN:** Your Honor, I would just, Mr.
8 Boyd's key issue about the chain, we'd argue that he
9 hasn't even proven there is a deficient chain of
10 custody. So he can't prove any --

11 **MR. BOYD:** It's right here, ma'am.

12 **THE COURT:** Wait, wait, wait. I'll let you.

13 **MS. RATIGAN:** Just that he hasn't presented
14 any evidence or witnesses today to testify there was
15 a deficient chain. Furthermore, if you read the
16 transcript, again, Mr. Newton's characterization is
17 correct. The fact that there were drugs wasn't the
18 issue. The issue was Mr. Boyd's contention that it
19 wasn't his pill bottle, somehow while the female was
20 unattended that she tossed the pill bottle out the
21 car and that's how it ended up outside the car. He
22 tries to characterize it as all being in her
23 custody. She did have some items in her purse. But
24 also on the driver's side floorboard, there were
25 syringes and some spoons. Both of them had items

1 within their grabbing distance.

2 **THE COURT:** It's a reasonable inference.

3 **MS. RATIGAN:** Yeah. So we would just argue
4 he hasn't met his burden today.

5 **THE COURT:** Yes, sir, Jackie.

6 **MR. BOYD:** Sir, them drugs come out of her --
7 there wasn't nothing the officers -- if you look at
8 the transcript, if you read the whole transcript, he
9 said it was nothing in the car until he started
10 asking her name. She started rearranging everything.
11 I don't do no shooting up or nothing like that. All
12 that stuff come out her pocketbook.

13 **THE COURT:** That could well be, Jackie, but
14 I'm going to have to agree with the State at this
15 time. I don't think you met your burden. And, uh,
16 so I'm going to deny your petition.

17 **MR. BOYD:** So where do I go from here, Mr.
18 Miller?

19 **THE COURT:** Well, Mr. Harbin will tell you.

20 **MR. BOYD:** Mr. Miller, I mean --

21 **THE COURT:** Oh, Jackie, I'd love to let you
22 out of jail, but I can't do it.

23 **MR. BOYD:** At least give me a little lesser.
24 I'm 49 years. I mean, I could see -- the prosecutor
25 even said that we'll have a problem if we convict

1 Mr. Boyd cause we have nothing on Mr. Boyd and
2 bringing nothing in this state. Like I said,
3 whatchamacallit never brought that pill bottle.
4 They didn't want me to bring up she was a prostitute
5 or none of that. She was a prostitute, sir. That's
6 all that was. We was having a little fun. When the
7 car stopped and everything, she started rearranging
8 everything, sir. But I didn't have nothing on me,
9 nothing period.

10 **THE COURT:** Okay. Well, those are factual
11 matters that were determined at the trial. I've got
12 to determine whether or not what Mr. Newton did was
13 -- fell below an objective standard of
14 reasonableness. If it did, show by greater weight
15 of the evidence that it did. And the second part
16 is, you've got to show it would have changed the
17 outcome of the trial.

18 **MR. BOYD:** So how could I have kept that from
19 going to the jury?

20 **THE COURT:** I don't think you could have kept
21 it from going to the jury, Jackie. It's a tough nut
22 to swallow but I'm going to deny your petition.
23 Okay. I wish you the best of luck, Jackie.

24 **MR. BOYD:** Yes, sir.

25 **THE COURT:** Okay.

1 **MR. BOYD:** So this is it? I can't ask for
2 another hearing or nothing?

3 **THE COURT:** Well, you can -- your lawyer will
4 tell you. You can appeal this decision.

5
6 **(WHEREUPON, the proceedings conclude at**
7 **approximately 11:44 a.m.)**

8

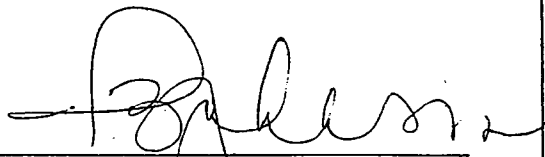
CERTIFICATE

38

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Pickens, South Carolina, on this 24th day of May, 2013.

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



Teresa B. Johnson

Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

Jackie Lee Boyd,
S.C.D.C. No. 298278,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
C.A. No. 2011-CP-39-1320

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2013 JAN 24 D 2:51

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 9, 2011. The Respondent made its return on January 20, 2012. An evidentiary hearing into the matter was convened on December 17, 2012 at the Pickens County Courthouse. The Applicant was present at the hearing and represented by H. Chase Harbin, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Robert L. Newton, Jr., Esquire. The Court had before it the trial transcript, the records of the Pickens County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Pickens County Grand Jury indicted the Applicant for failure to stop for a blue light (2008-GS-39-1338) and trafficking

cocaine (2008-GS-39-1339). Robert L. Newton, Jr., Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On November 18, 2008, the Honorable Larry R. Patterson sentenced the Applicant to concurrent terms of three (3) years for failure to stop for a blue light and twenty-five (25) years for trafficking cocaine, third offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Boyd, Op. No. 2011-UP-070 (S.C. Ct. App. filed Feb. 23, 2011).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to object to introduction of evidence.
 - b. Admitted guilt regarding failure to stop.
 - c. Failed to request curative instructions.
 - d. Failed to object to improper chain of custody.
 - e. Due Process Violations.
 - f. Improperly advised Petitioner against testifying.
 - g. Failed to question witnesses effectively.
2. Ineffective assistance of appellate counsel.

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. 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 conclusions of law as required by

S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Trial Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated the pill bottle in his case was missing from the evidence room for two days. The Applicant stated they were not provided documents for chain of custody before trial and that the State withheld several pages from the supplemental report. The Applicant stated trial counsel should not have admitted he was guilty of failure to stop for a blue light. The Applicant stated trial counsel did not properly cross-examine his co-defendant about the ownership of the drugs or her immunity agreement. The Applicant stated trial counsel should have asked for a curative instruction when the State referred to him as a drug dealer during closing argument.

Trial counsel testified he filed discovery motions, received those materials from the State, and reviewed them with the Applicant. Trial counsel testified they also discussed the Applicant's version of events and the trial strategy to argue the drugs belonged to his passenger/co-defendant. Trial counsel testified he was not missing pages from the incident or supplemental reports he received from the State. Trial counsel testified he never received the full property report/chain of custody documentation but that, as he was not challenging the items were not actually drugs, he was not concerned. Trial counsel testified the co-defendant did not have an immunity deal because the prosecutor never made a specific offer to them. Trial counsel testified he cross-examined the co-defendant about what she hoped to receive from her testimony. Trial counsel testified he properly questioned the co-defendant about ownership of the pill bottle. Trial counsel testified he did not ask for a curative instruction after he objected during the State's closing argument because he was merely trying to disrupt the argument.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the incomplete discovery received from the State. Trial counsel testified he received full copies of the incident and supplemental reports in this case. This Court finds his testimony is credible. While trial counsel admitted they did not receive the full property report/chain of custody documentation, he stated this unimportant to the defense case because they were not challenging that the drugs in evidence were not what the State purported them to be. This Court finds trial counsel articulated a valid strategic decision not to challenge the chain

of custody documentation. Regardless, as the Applicant did not present this documentation at the PCR hearing, this Court cannot speculate about whether it was deficient and trial counsel should have challenged the chain of custody at trial. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet his burden of proving trial counsel erred in conceding his guilt for the charge of failure to stop for a blue light. Trial counsel made this admission during opening argument. (Trial transcript, pp.53-54). Trial counsel then stated the defense's contention that the drugs belonged to the co-defendant. (Trial transcript, p.54). Trial counsel testified at the PCR hearing that this was their trial strategy. This Court finds trial counsel's statement amounted to a tactical retreat on the failure to stop charge and – based on the facts of the case – was a valid part of the overall trial strategy. See Bell v. Evatt, 72 F.3d 421, 429 (4th Cir. 1995) (“[T]actical retreats may be reasonable and necessary within the context of the entire trial, particularly when there is overwhelming evidence of the defendant's guilt.”).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly cross-examine his co-defendant. While the Applicant stated trial counsel should have questioned the Applicant about an immunity agreement, trial counsel testified there was no such agreement. This Court finds trial counsel's testimony is credible. The Applicant failed to present any witnesses to confirm the existence of an immunity agreement. See, e.g., Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court “has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to

establish prejudice from the witness' failure to testify at trial.") (emphasis in original). Regardless, trial counsel cross-examined the co-defendant about whether she believed she would receive a lighter sentence (in exchange for her testimony) in an attempt to attack her credibility. (Trial transcript, p.136). Further, trial counsel was not deficient in his cross-examination of the co-defendant. The Applicant points to trial counsel's reference to the pill bottle as improper because he brought up this piece of evidence (and not the solicitor). (Trial transcript, pp.134-35). This Court finds trial counsel did not render deficient performance in this regard because the defense strategy at trial was to argue all of the drugs and drug paraphernalia in the car belonged to the co-defendant.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have requested a curative instruction. During the State's closing argument, the prosecutor said the co-defendant "was the drug dealer's girlfriend." (Trial transcript, p.165). The trial judge sustained trial counsel's objection. (Trial transcript, p.165). The prosecutor then stated the co-defendant was "the alleged drug trafficker's girlfriend" and trial counsel objected. (Trial transcript, p.166). The trial judge sustained and stated "[y]ou can only argue what's in evidence in the case and reasonable inferences from the evidence in the case." (Trial transcript, p.166). This Court finds the trial judge's admonishment to the prosecutor was tantamount to a curative instruction to the jury and trial counsel was not deficient in failing to formally request a curative instruction. Further, the Applicant cannot prove any resulting prejudice as the State presented overwhelming evidence against him. See Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the

Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830 (1985). In analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009); Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999) (noting courts apply the Strickland test to determine if appellate counsel was deficient for failing to raise an issue and whether the defendant was prejudiced from the failure to raise the issue). Appellate counsel, however, is not required to raise every non-frivolous claim, but instead may select among them in order to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000).

The Applicant stated his appellate attorney told him that she had raised the best issues on appeal. The Applicant stated he wanted counsel to have argued an issue about flight and failure to stop for a blue light.

This Court finds the Applicant has failed to prove the first prong of the Strickland test – that appellate counsel failed to render reasonably effective assistance under prevailing

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professional norms. It is well-settled that appellate counsel must not brief every meritorious issue on appeal. Smith, 528 U.S. at 288, 120 S. Ct. at 765. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by appellate counsel's performance. The Applicant has failed to articulate why the issue in question – concerning flight and the failure to stop charge – would have resulted in a reversal of his convictions if it had been raised by counsel on appeal.

Accordingly, this Court concludes the Applicant has not met his burden of proving appellate counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules

for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 17th day of January, 2013.

Edward W. Miller

Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

WITNESSES

Jeremy Benjamin

Easley Police Department

12/3/2007

ARREST WARRANT NUMBER

K172996

ACTION OF GRAND JURY

TRUE BILL

AUG 19 2008

Date

John B. Boyd
 Foreperson of Grand Jury

VERDICT

Guilty

John H. Allen
 Foreperson of Petit Jury
 Date: 11/18/08

DOCKET NO. 2008-GS-39-1339^{PT}

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2008

THE STATE

VS.

JACKIE LEE BOYD

Indictment for

0387

TRAFFICKING COCAINE

VIOLATION § 44-53-0370(E)(2)

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
TRAFFICKING COCAINE

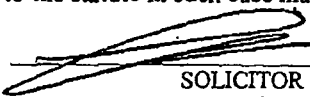
At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That JACKIE LEE BOYD did in Pickens County, on or about the 3rd day of ^{December}~~September~~, 2007, knowingly sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 10 grams of Cocaine. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended. YR.

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


SOLICITOR

WITNESSES

Jeremy Benjamin

Easley Police Department

12/3/2007

ARREST WARRANT NUMBER

61489EG

ACTION OF GRAND JURY

TRUE BILL

AUG 19 2008

8388

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date:

Andrew H. Anderson 11/18/08

DOCKET NO. 2008-GS-39-1338

PT

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2008

THE STATE

VS.

JACKIE LEE BOYD

0065

Indictment for

FAILURE TO STOP FOR BLUE LIGHT

VIOLATION § 56-05-0750(B)(1)

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
FAILURE TO STOP FOR BLUE LIGHT

At a Court of General Sessions, convened on _____ the Grand Jurors of Pickens
County present upon their oath:

That JACKIE LEE BOYD did in Pickens County, on or about the 3rd day of December, 2007, willfully, knowingly, and unlawfully commit the offense of failure to stop for police vehicle in that the said defendant while driving on a road, street or highway of the State did fail to stop when signaled to do so by a police vehicle using blue lights and/or siren. This is in violation of §56-5-750 of the South Carolina 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.

SOLICITOR