

RECEIVED

SEP - 9 2013

S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Marlboro County

J. Michael Baxley, Circuit Court Judge

KEENA L. RIVERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000476

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

ALAN WILSON
Attorney General

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

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT (dated June 11, 12, 2008).....	1
APPLICATION FOR POST-CONVICTION RELIEF	321
RETURN	329
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated September 10, 2012).....	334
APPLICANT'S TRIAL BRIEF	388
ORDER DENYING POST-CONVICTION RELIEF	392
INDICTMENTS AND SENTENCE SHEETS	397
COURT OF APPEALS OPINION	409

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF MARLBORO) INDICTMENT #08-GS-34-82
3 84, 85, 86 & 87
4

5 THE STATE OF SOUTH CAROLINA,)
6 PLAINTIFF,)
7 -VS-)
8 KEENA LAMONT RIVERS,)
9 DEFENDANT.)
_____)

TRANSCRIPT OF RECORD

10 June 11 & 12, 2008
11 Bennettsville, S. C.

12 B E F O R E:

13 HONORABLE EDWARD B. COTTINGHAM, JUDGE AND JURY
14

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

16 ELIZABETH R. MUNNERLYN, ESQUIRE
17 Assistant Solicitor, Fourteenth Judicial Circuit
Attorney for the State

18 DANIEL L. BLAKE, ESQUIRE
19 Assistant Public Defender for Marlboro County
Attorney for the Defendant
20

21 LINDA W. MCCALL
22 OFFICIAL REPORTER
23
24
25

INDEXWEDNESDAY, JUNE 11, 2008

REMARKS OF THE COURT	2
<u>VOIR DIRE</u>	3
JURY SELECTION	12
MOTION TO SEQUESTER AND RULING OF THE COURT	20
JURY SWORN	21
REMARKS OF THE COURT	21
OPENING STATEMENT BY	
MRS. MUNNERLYN	24
MR. BLAKE	28
<u>STATE'S WITNESSES</u>	
<u>(SW) LAWANDA WILLIAMS</u>	
DIRECT EXAMINATION BY MRS. MUNNERLYN	29
CROSS EXAMINATION BY MR. BLAKE	38
<u>(SW) LT. GREGORY WILLIAMS</u>	
DIRECT EXAMINATION BY MRS. MUNNERLYN	45
CROSS EXAMINATION BY MR. BLAKE	51
<u>(SW) DETECTIVE LARRY DALE BOWMAN</u>	
DIRECT EXAMINATION BY MRS. MUNNERLYN	56
CROSS EXAMINATION BY MR. BLAKE	65
<u>(SW) CHIEF LARRY McNEIL</u>	
DIRECT EXAMINATION BY MRS. MUNNERLYN	70
CROSS EXAMINATION BY MR. BLAKE	76

1	<u>(SW) SLED AGENT MARJORIE A. WILSON</u>	
2	DIRECT EXAMINATION BY MRS. MUNNERLYN	81
3	CROSS EXAMINATION BY MR. BLAKE	91
4	<u>(SW) OFFICER ARETHA POE</u>	
5	DIRECT EXAMINATION BY MRS. MUNNERLYN	94
6	CROSS EXAMINATION BY MR. BLAKE	100
7	REDIRECT EXAMINATION BY MRS. MUNNERLYN	105
8	RE-CROSS EXAMINATION BY MR. BLAKE	106
9	<u>(SW) OFFICER WILLIAM KALE HALL</u>	
10	DIRECT EXAMINATION BY MRS. MUNNERLYN	107
11	CROSS EXAMINATION BY MR. BLAKE	110
12	<u>(SW) INVESTIGATOR IRA DEASE, III</u>	
13	DIRECT EXAMINATION BY MRS. MUNNERLYN	112
14	CROSS EXAMINATION BY MR. BLAKE	121
15	REDIRECT EXAMINATION BY MRS. MUNNERLYN	122
16	RE-CROSS EXAMINATION BY MR. BLAKE	123
17	<u>(SW) SGT. LARRY W. TURNER</u>	
18	DIRECT EXAMINATION BY MRS. MUNNERLYN	125
19	CROSS EXAMINATION BY MR. BLAKE	144
20	REDIRECT EXAMINATION BY MRS. MUNNERLYN	164
21	RE-CROSS EXAMINATION BY MR. BLAKE	166
22	THE STATE RESTS/MOTIONS AND RULING OF THE COURT	167
23	CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT	168
24	PRIOR RECORD OF DEFENDANT	169
25	EXAMINATION OF OFFICER AUSTIN PEELE (IN CAMERA)	175

DEFENDANT'S WITNESSES

(DW) OFFICER AUSTIN PEELE

DIRECT EXAMINATION BY MR. BLAKE 180

(DW) OFFICER SHAWN CHRISTOPHER LUCAS

DIRECT EXAMINATION BY MR. BLAKE 184

CROSS EXAMINATION BY MRS. MUNNERLYN 186

REDIRECT EXAMINATION BY MR. BLAKE 187

(DW) DEREK RIVERS

DIRECT EXAMINATION BY MR. BLAKE 188

THURSDAY, JUNE 12, 2008

MATTER OF EXCLUDING WITNESS, OFFICER PEELE 190

(DW) DEREK RIVERS

CONTINUED DIRECT EXAMINATION BY MR. BLAKE 194

CROSS EXAMINATION BY MRS. MUNNERLYN 219

(DW) DELORES HODGE FRYE

DIRECT EXAMINATION BY MR. BLAKE 226

(DW) KEENA LAMONT RIVERS

DIRECT EXAMINATION BY MR. BLAKE 231

CROSS EXAMINATION BY MRS. MUNNERLYN 248

THE DEFENDANT RESTS 257

STATE'S REPLY

STATE'S WITNESSES

(SW) OFFICER ARETHA POE

DIRECT EXAMINATION BY MRS. MUNNERLYN 260

1	(SW) <u>KEVIN THOMAS</u>	
2	DIRECT EXAMINATION BY MRS. MUNNERLYN	262
3	CROSS EXAMINATION BY MR. BLAKE	265
4	THE STATE RESTS	265
5	MOTIONS AND RULING OF THE COURT	266
6	CHARGE OF THE COURT	268
7	SUMMATIONS	
8	BY MR. BLAKE	280
9	BY MRS. MUNNERLYN	286
10	EXHIBITS AND VERDICT FORM AGREED UPON/ALTERNATE REMOVED	297
11	JURY BEGINS DELIBERATIONS AT 2:58 P.M.	299
12	JURY QUESTIONS	299
13	JURY ADVISES VERDICT AT 5:25 P.M.	302
14	VERDICT	303
15	SENTENCE OF THE COURT	307
16	<u>TUESDAY, JULY 22, 2008</u>	
17	<u>POST-TRIAL</u>	
18	MOTION TO RECONSIDER SENTENCE	314
19	RULING OF THE COURT	318
20	JURY SELECTION FORM	320
21	CERTIFICATE OF THE COURT REPORTER	321

EXHIBITSSTATE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
1	BPD REPORT - MARIJUANA		117
2	SLED REPORT - CRACK		90
3	MARIJUANA		139
4	CRACK COCAINE		139
5	PHOTO		220
6	MEDICAL FORM - KEENA LAMONT RIVERS		264

DEFENDANT

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
1	PHOTO		232
2	NOT OFFERED		---
3	DATA MASTER REPORT/NOW COURT'S EX. #1		---
4	BLUE TICKET	147	
5	BLUE TICKET	147	

COURT

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
1	DATA MASTER REPORT		230
2	JURY NOTE		302
3	JURY NOTE		302

REMARKS OF THE COURT

2

1 WEDNESDAY, JUNE 11, 2008

2 TRIAL

3 (The Court convenes the trial of this case with all parties
4 present in the courtroom.)

5 REMARKS OF THE COURT

6 THE COURT: Good morning ladies and gentlemen. Please be
7 seated.

8 Ladies and gentlemen of the jury, I asked that all of you be
9 here very promptly at 9:30, and you were, and I want you to know I
10 appreciate it. You're entitled to know why we starting at ten
11 after ten.

12 Certain witnesses were not here. They have various reasons,
13 good reasons for not being here at 9:30.

14 You know, I know that your time is valuable, and I don't want
15 a jury to think we back there telling jokes, smoking cigarettes and
16 keeping you waiting out here, and so when I keep a jury waiting
17 forty minutes as I had to this morning, I do want you to know that
18 we always have your interests in mind at all times.

19 We are going to select a jury now in just a moment, and once
20 I select a jury of twelve jurors and one alternate, the rest of the
21 jurors will be excused to call in after 6:00 tonight.

22 Now, all defendants and witnesses in the other cases to be
23 resolved will remain in the courtroom at all times.

24 Alright, Solicitor, call your case.

25 MRS. MUNNERLYN: Your Honor, The State vs. Keena Lamont

VOIR DIRE

3

1 Rivers, Indictment #08-GS-34-82, indictment for failure to stop for
2 a blue light; 08-85, possession with intent to distribute
3 marijuana; 08-84, possession with intent to distribute marijuana
4 within one half mile of a school; 08-87, possession with intent to
5 distribute crack cocaine; and 08-86, possession with intent to
6 distribute crack within one half mile of a school.

7 The State is ready for trial.

8 THE COURT: Alright, sir.

9 Mr. Dan Blake, do you represent the defendant?

10 MR. BLAKE: Yes, Your Honor.

11 THE COURT: Is the defendant ready for trial upon the
12 indictments enumerated by Mrs. Munnerlyn?

13 MR. BLAKE: Yes, Your Honor.

VOIR DIRE

14
15 THE COURT: Alright, sir.

16 Ladies and gentlemen of the jury panel I am going now to ask
17 of you certain questions regarding any interest or knowledge or
18 relationships that you might have in this case with regards to
19 anyone involved.

20 My sole purpose in asking these questions of you is to insure
21 that the State of South Carolina and the defendant gets a jury with
22 no friends to reward, no enemies to punish, a juror who is not
23 related to any of the parties, a juror who has not had any
24 connection with anything involved in the case. I want a jury who
25 can say, "If I am one of the twelve selected, I will base my

VOIR DIRE

4

1 verdict on my oath upon the law and evidence in this courtroom and
2 from no other place."

3 That insures that the State of South Carolina and the
4 defendant receive a fair trial.

5 Now, my first statement is this.

6 Keena Lamont Rivers who sits to my left stands indicted for
7 the following charges:

8 Failure to stop for a blue light;

9 Possession with intent to distribute marijuana;

10 Possession with intent to distribute marijuana within a half
11 mile of a school;

12 Possession with intent to distribute crack cocaine; and

13 Possession with intent to distribute crack cocaine within a
14 half mile of a school.

15 To these indictments this defendant specifically pleads not
16 guilty thereby placing the burden of proof upon the State of South
17 Carolina of proving him guilty if they can to your satisfaction
18 unanimously beyond a reasonable doubt.

19 This defendant and all defendants come into this court under
20 the presumption of innocence and that presumption remains with him
21 from the outset throughout the trial until you, the jury, have upon
22 evidence beyond a reasonable doubt found him guilty - - found him
23 guilty.

24 This defendant and no defendant in South Carolina has to prove
25 himself innocent. The State has that burden.

VOIR DIRE

5

1 Now, to these charges as I've indicated this defendant pleads
2 not guilty.

3 Now, have the defendant stand, Mr. Blake.

4 (The defendant stands and faces the jury panel.)

5 THE COURT: Is there anyone among you related by blood or
6 connected by marriage in any way with this defendant? If so,
7 please stand.

8 Do any of you - - okay. Come forward, please.

9 Did you stand?

10 Okay. Come forward.

11 Come on up, please, ma'am, and good morning to you.

12 MS. SHAW: Good morning.

13 THE COURT: May I have your name, please?

14 MS. SHAW: Mary Shaw.

15 THE COURT: Ms. Shaw, what is your response?

16 MS. SHAW: Um, I've been knowing him ever since he was
17 about five years old.

18 THE COURT: You a friend of his?

19 MS. SHAW: Yes, sir.

20 THE COURT: Ah, you think that that might impact upon your
21 ability in this case?

22 MS. SHAW: Yes, sir.

23 THE COURT: It would? I will excuse you.

24 Thank you, Ms. Shaw.

25 Alright. Anybody else?

VOIR DIRE

6

1 Are any of you connected in anyway with him such as a church
2 member, a friend, neighbor, co-employee. Any of you have any
3 connections in that manner?

4 Are any of you close personal friends or relatives of his
5 immediate family? Please stand.

6 How many of you - - please stand until I get through if you
7 would. Thank you, sir.

8 How many of you know this defendant in any capacity
9 whatsoever? If you've known him in school or work or anywhere,
10 please stand.

11 Well, that's alright. I've already excused you.

12 Is this another one? Come forward. Come forward.

13 Good morning.

14 MS. ALLEN: Good morning.

15 THE COURT: May I have your name?

16 MS. ALLEN: Nellie Allen.

17 THE COURT: And what is your response?

18 MS. ALLEN: I use to be a substitute teacher, and I taught
19 his class.

20 THE COURT: Ma'am?

21 MS. ALLEN: I use to be a substitute teacher.

22 THE COURT: Uh-huh.

23 MS. ALLEN: And he was in one of my classes.

24 THE COURT: How long ago was that?

25 MS. ALLEN: He was in highschool.

VOIR DIRE

7

1 THE COURT: Okay. You haven't been a close friend of
2 his. You just know him?

3 MS. ALLEN: Yes, sir.

4 THE COURT: Would that impact on your ability to be a fair
5 juror?

6 MS. ALLEN: No, sir.

7 THE COURT: I think not. You are fine if selected.

8 Thank you so much.

9 Now, ladies and gentlemen - - you may now be seated, Mr.
10 Defendant.

11 (The defendant resumes his seat at the defense table.)

12 THE COURT: Have any - - I have delineated for you the
13 charges against this defendant to which he has pled not guilty.
14 Have any of you had any discussions about this case or any part of
15 it with anybody? If so, please stand.

16 Have any of you expressed or formed any type of opinion with
17 regard to this case, please stand?

18 Is any of you aware of any - - or conscious of any bias or
19 prejudice such that you cannot give both the State of South
20 Carolina and this defendant a fair trial?

21 If anybody says, "I've got certain - - -"

22 You know, we all develop biases in lifetime, and, ah, we can
23 understand that.

24 If anybody has any type of bias or prejudice that would
25 prevent you from giving both sides a fair trial, I ask you to

VOIR DIRE

8

1 stand, and I'm going to excuse you.

2 Alright.

3 The, ah, this case is initially brought by the City of
4 Bennetttsville. Are any of you employed by the City of
5 Bennetttsville in any capacity, please stand?

6 Yes, sir. What is your name?

7 MR. BLACK: Charles Black. I'm a Volunteer Fireman with
8 the City.

9 THE COURT: Volunteer Fireman. That would not exclude
10 you.

11 Of course, I know who you are, Mr. Black, but I need it for
12 the record.

13 MR. BLACK: I know you do.

14 THE COURT: Good to see you.

15 A Volunteer Fireman is not - - would not be something that I
16 would do.

17 Anybody else care to respond to that question?

18 Mr. Dan Blake represents the defendant. Are any of you
19 currently clients of Mr. Dan Blake or have you been in the last
20 immediate past? If so, please stand.

21 Mrs. Munnerlyn, Deputy Solicitor Munnerlyn represents the
22 Solicitor's Office. Mrs. Munnerlyn is also in the private practice
23 of law. Are any of you clients of Mrs. Munnerlyn or have you been
24 in the immediate past? Please stand.

25 Alright.

VOIR DIRE

9

1 May I have your witness list?

2 MR. BLAKE: You have it, Judge.

3 THE COURT: Okay.

4 Other than the witness list, first, Solicitor, is there any
5 additional inquiry?

6 MRS. MUNNERLYN: No, Your Honor.

7 THE COURT: Mr. Blake, any additional inquiry from you,
8 sir?

9 MR. BLAKE: No, Your Honor.

10 THE COURT: Alright, sir.

11 Ladies and gentlemen, I am going to list certain names that
12 may or may not be called as witnesses by one side or the other. As
13 I call these names, if any of you have any close connection with
14 these folks or if you're related to them by blood or marriage,
15 please stand so I can talk to you about it.

16 Lawanda Williams, Greg Williams, Larry Bowman of the City
17 Police Department, Aretha - - is that Dease?

18 MRS. MUNNERLYN: Poe.

19 THE COURT: Aretha Poe, Chief McNeil, Bill Parrish, Kale
20 Hall, Ira Dease, Marjorie Wilson. They are potential witnesses.
21 Anybody have any connection, close connection with those folks?

22 Others who may - - yes, sir, come forward, please.

23 Your name, sir?

24 MR. SMITH: Frank Smith.

25 THE COURT: And, Mr. Smith, what is your response?

VOIR DIRE

10

1 Ms. Aretha Poe, we are very close friends.

2 THE COURT: Sir?

3 Aretha Poe, she and I are very close friends.

4 THE COURT: Okay.

5 Ms. Poe may or may not be a witness in this case. If you are
6 a juror, you will be the judge of her credibility and
7 believability. Knowing of your friendship with her, can you tell
8 me that you will accept her testimony like all of the other
9 witnesses and view it that way?

10 MR. SMITH: Yes, I will.

11 THE COURT: I think - - all I want is to be a fair juror.
12 Yes, sir?

13 MR. BLAKE: I object for cause, Judge. He seems to
14 indicate they are very close friends. She's a key witness in the
15 case.

16 THE COURT: No, sir, I'm not going to excuse him.

17 MR. BLAKE: We have plenty of jurors.

18 THE COURT: He, ah, just because he's a witness with a - -
19 a friend of the witness. Now, if he was a friend of the defendant
20 or somebody in the prosecution, I would do that but he tells me he
21 can be fair and impartial with that, and I accept his word.

22 You are okay.

23 Thank you.

24 MR. SMITH: Thank you.

25 THE COURT: I note - - note your motion.

VOIR DIRE

11

1 Larry Turner of the Bennettsville Police Department. Okay.

2 Let's see. Let me ask you about these.

3 What is that first one? Janesha Johnson, Derek Rivers, Shawn
4 Lucas, Bennettsville Police Department, Greg Williams of
5 Bennettsville Police Department.

6 Yes, sir.

7 MR. LUCAS: Shawn Lucas is my son.

8 THE COURT: Your son.

9 This is a defense - - let me ask you this. This is your son,
10 and he'll be a juror - - -

11 MR. LUCAS: I couldn't half hear you from back there.

12 THE COURT: Okay.

13 MR. LUCAS: I just thought you were calling anybody who is
14 related to come up here.

15 THE COURT: Well, I am. Who - - which one is your son,
16 now?

17 Would that impact on your ability to be a fair juror?

18 My interest as a juror and this is one of your witnesses, ah,
19 he's your witness. I'll leave him on if you care - - if you wish
20 me to.

21 MR. BLAKE: No. Wish to be removed for cause, Judge.
22 Wish to remove him.

23 THE COURT: I will excuse you since it is your son but you
24 stick around. I'd like to have you on any other juror.

25 COURT REPORTER: Your Honor, may he state his name?

JURY SELECTION

12

1 THE COURT: May I have your name?

2 MR. LUCAS: Michael Lucas.

3 THE COURT: Now, that individual who is his son, let the
4 record reflect that I have dismissed but the son is - - was a - -
5 is a witness for the defense.

6 Austin Peele, Greg Williams.

7 Any further witnesses, Mrs. Munnerlyn?

8 MRS. MUNNERLYN: No, Your Honor.

9 THE COURT: How about it, Mr. Blake?

10 MR. BLAKE: No, Your Honor.

11 JURY SELECTION

12 THE COURT: Alright.

13 Give us a jury. We're going to have one alternate. The
14 strikes will be one and two, and proceed.

15 DEPUTY CLERK OF COURT: When I call your name, if you'd just
16 watch your step on the side and bring your stuff up here. Come
17 right here in front of me and just turn around and face that way,
18 please.

19 THE COURT: Strikes are five and five.

20 DEPUTY CLERK OF COURT: Number 143, Ronald Wiggins. Ronald
21 Williams.

22 THE COURT: Who is that?

23 DEPUTY CLERK OF COURT: #128, Mary Tatum.

24 THE COURT: Was Ron Williams excused? Oh, transferred.

25 Okay.

JURY SELECTION

13

1 MR. BLAKE: The 143 has been excused.

2 THE COURT: He was transferred.

3 DEPUTY CLERK OF COURT: What says the State?

4 MRS. MUNNERLYN: Present the juror.

5 DEPUTY CLERK OF COURT: What says the defendant?

6 MR. BLAKE: Please excuse the juror.

7 THE COURT: You may be excused.

8 DEPUTY CLERK OF COURT: #154, Samuel Bass.

9 What says the State?

10 MRS. MUNNERLYN: Please present the juror.

11 DEPUTY CLERK OF COURT: What says the defendant?

12 MR. BLAKE: Please seat the juror.

13 DEPUTY CLERK OF COURT: Have a seat in the jury box.

14 #51, Pauline Hailey.

15 THE COURT: What's his name?

16 DEPUTY CLERK OF COURT: Pauline Hailey.

17 THE COURT: Sheriff, Deputy, go find out where this witness
18 is for me, please. Somebody call, and if she doesn't come on in
19 issue a Bench Warrant.

20 My position is if all these good folks can be here, all the
21 jurors have to be here as required by statute.

22 So, somebody make a call first. She may be sick. May be in
23 the hospital. May have forgotten but find out what the reason is.

24 Who can tend to that for me, Lisa?

25 DEPUTY CLERK OF COURT: We'll get it for you, Judge.

JURY SELECTION

14

1 #108, Robin Rummage.
2 What says the State?
3 MRS. MUNNERLYN: Please present the juror.
4 DEPUTY CLERK OF COURT: What says the defendant?
5 MR. BLAKE: Please seat the juror.
6 DEPUTY CLERK OF COURT: Have a seat in the jury box.
7 #53, Dianna Hayes.
8 What says the State?
9 MRS. MUNNERLYN: Please present the juror.
10 DEPUTY CLERK OF COURT: What says the defendant?
11 MR. BLAKE: Please excuse the juror.
12 DEPUTY CLERK OF COURT: #21, Norma Clark.
13 What says the State?
14 MRS. MUNNERLYN: Please present the juror.
15 DEPUTY CLERK OF COURT: What says the defendant?
16 MR. BLAKE: Please accept the juror.
17 DEPUTY CLERK OF COURT: Please have a seat in the jury box.
18 #78, Larry Martin.
19 What says the State?
20 MRS. MUNNERLYN: Please present the juror.
21 DEPUTY CLERK OF COURT: What says the defendant?
22 MR. BLAKE: Please seat the juror.
23 DEPUTY CLERK OF COURT: Have a seat in the jury box.
24 #34, Chris English.
25 What says the State?

JURY SELECTION

15

1 MRS. MUNNERLYN: Please excuse this juror from service on
2 this trial.

3 DEPUTY CLERK OF COURT: Thank you.

4 #70, Eugene Ledbetter.

5 What says the State?

6 MRS. MUNNERLYN: Please present the juror.

7 DEPUTY CLERK OF COURT: What says the defendant?

8 MR. BLAKE: Please seat the juror.

9 DEPUTY CLERK OF COURT: Have a seat.

10 #164, Derendia Odom.

11 What says the State?

12 MRS. MUNNERLYN: Please present the juror.

13 DEPUTY CLERK OF COURT: What says the defendant?

14 MR. BLAKE: Please seat the juror.

15 DEPUTY CLERK OF COURT: Have a seat.

16 #46, Madie Glenn.

17 What says the State?

18 MRS. MUNNERLYN: Please excuse this juror from service on
19 this trial.

20 DEPUTY CLERK OF COURT: You can return to your seat.

21 #37, Lawrence Ford.

22 What says the State?

23 MRS. MUNNERLYN: Please present the juror.

24 DEPUTY CLERK OF COURT: What says the defendant?

25 MR. BLAKE: Please seat the juror.

JURY SELECTION

16

1 DEPUTY CLERK OF COURT: Have a seat in the jury box.

2 #44, Clara Garner.

3 What says the State?

4 MRS. MUNNERLYN: Please present the juror.

5 DEPUTY CLERK OF COURT: What says the defendant?

6 MR. BLAKE: Please seat the juror.

7 DEPUTY CLERK OF COURT: Have a seat in the jury box, please.

8 #159, Patsy Jenkins.

9 What says the State?

10 MRS. MUNNERLYN: Please present the juror.

11 DEPUTY CLERK OF COURT: What says the defendant?

12 MR. BLAKE: Please seat the juror.

13 DEPUTY CLERK OF COURT: Have a seat in the jury box.

14 #79, Charles McAlister.

15 What says the State?

16 MRS. MUNNERLYN: Please present the juror.

17 DEPUTY CLERK OF COURT: What says the defendant?

18 MR. BLAKE: Please excuse the juror.

19 DEPUTY CLERK OF COURT: Please have a seat.

20 #163, Terry Melton.

21 What says the State?

22 MRS. MUNNERLYN: Please present the juror.

23 DEPUTY CLERK OF COURT: What says the defendant?

24 MR. BLAKE: Please seat the juror.

25 DEPUTY CLERK OF COURT: Have a seat.

JURY SELECTION

17

1 #14, Jerry Brown.

2 What says the State?

3 MRS. MUNNERLYN: Please excuse this juror from service on
4 this trial.

5 DEPUTY CLERK OF COURT: You can have a seat. Thank you.

6 #144, David Williams, Jr.

7 What says the State?

8 MRS. MUNNERLYN: Please present the juror.

9 DEPUTY CLERK OF COURT: What says the defendant?

10 MR. BLAKE: Please seat the juror.

11 DEPUTY CLERK OF COURT: Have a seat in the jury box.

12 #63, Shirley Jackson.

13 What says the State?

14 MRS. MUNNERLYN: Please present the juror.

15 DEPUTY CLERK OF COURT: What says the defendant?

16 MR. BLAKE: Please excuse the juror.

17 DEPUTY CLERK OF COURT: You may return to your seat.

18 #139, Joe Wensil.

19 What says the State?

20 MRS. MUNNERLYN: Please present the juror, please.

21 DEPUTY CLERK OF COURT: What says the defendant?

22 MR. BLAKE: Please seat the juror.

23 DEPUTY CLERK OF COURT: Have a seat in the jury box.

24 THE COURT: That will be the jury. Now, we'll select the
25 alternates. Strikes are one and two.

JURY SELECTION

18

1 Proceed, please, with the alternates.

2 DEPUTY CLERK OF COURT: #59, John Huggins.

3 What says the State?

4 MRS. MUNNERLYN: Please present the juror.

5 DEPUTY CLERK OF COURT: What says the defendant?

6 MR. BLAKE: Please excuse the juror.

7 DEPUTY CLERK OF COURT: #98, Annie Powell.

8 What says the State?

9 MRS. MUNNERLYN: Please present the juror.

10 DEPUTY CLERK OF COURT: What says the defendant?

11 MR. BLAKE: Please excuse the juror.

12 DEPUTY CLERK OF COURT: You may return to your seat.

13 #146, Virginia Williams.

14 What says the State?

15 MRS. MUNNERLYN: Please present the juror.

16 DEPUTY CLERK OF COURT: Any call for challenge from the
17 defendant?

18 MR. BLAKE: No.

19 DEPUTY CLERK OF COURT: Have a seat in the jury box.

20 THE COURT: Have a seat in the jury box.

21 Madame, you are the alternate. You would at all times please
22 occupy that chair and during the recess here I will appoint some
23 foreman who will sit in the first chair.

24 Is there any motions from the State constituting the jury?
25 What say Mrs. Munnerlyn?

JURY SELECTION

19

1 MRS. MUNNERLYN: None from the State, Your Honor.

2 THE COURT: How about from the defense?

3 MR. BLAKE: No, Your Honor.

4 THE COURT: Alright.

5 Let you go to the jury room, please.

6 (The jury retires to the jury room at 10:47 a.m.)

7 THE COURT: Alright, now, based on no further motions, the
8 jury is constituted. Everybody agree with that?

9 MRS. MUNNERLYN: Yes, sir.

10 MR. BLAKE: Yes, Your Honor.

11 THE COURT: Alright.

12 Mrs. Munnerlyn, I'm prepared to release the remainder of the
13 jury to call in after 6:00 tonight. Is that okay?

14 MRS. MUNNERLYN: That's fine, Judge.

15 THE COURT: Alright. Now, I'm getting ready to release
16 the jury. All defendants and others are to remain in court. Ms.
17 Rosalyn, the Deputy Solicitor, is going to take everybody's name to
18 see that those who are suppose to be here are here. So do not
19 leave.

20 Thank you for your attendance this morning. You are excused
21 to call in after 6:00 tonight. I anticipate starting another case
22 tomorrow if we finish this case today. If we do not, I'll have
23 different instructions but please call in after 6:00 tonight.

24 (The remaining jury panel is released to call in after 6:00
25 p.m. tonight and departs the courtroom.)

MOTION TO SEQUESTER AND RULING OF THE COURT

20

1 THE COURT: I want to find out where that juror is.

2 We will be in recess for a few minutes.

3 (The Court recesses the trial of this case for a short break
4 and thereafter reconvenes the trial of this case.

5 THE COURT: Mrs. Elizabeth, are you ready with your first
6 witness? Are you ready?

7 I am designating Sam Bass as Foreman. Bring them out and - -

8 -

MOTION TO SEQUESTER AND RULING OF THE COURT

10 MR. BLAKE: Judge, before you bring them in - -

11 THE COURT: Wait a minute.

12 MR. BLAKE: - - we do have a motion to sequester witnesses.

13 THE COURT: Both sides.

14 MR. BLAKE: That's correct, Judge.

15 THE COURT: Okay. That's fine. You're entitled to that.

16 Sequester the witnesses.

17 Now, the investigating officers will remain in the courtroom.

18 MR. BLAKE: Just one investigating officer, correct, Judge.

19 THE COURT: Well, I don't know. One or two?

20 MRS. MUNNERLYN: Well, Your Honor, I had both of these
21 involved in this particular case.

22 THE COURT: Pardon me?

23 MRS. MUNNERLYN: I have both - - both were involved.

24 THE COURT: Who is the primary investigator?

25 MRS. MUNNERLYN: Both, Your Honor.

JURY SWORN/REMARKS OF THE COURT

21

1 THE COURT: Pardon me?

2 MRS. MUNNERLYN: Both of them.

3 THE COURT: Both of them or one of them?

4 MR. BLAKE: Sgt. Turner wrote the warrants and the incident
5 report.

6 THE COURT: Okay. Let the others go and sequester the
7 witnesses.

8 Sequester the witnesses, now. Make arrangements back there
9 for the defendant's witnesses and the State's witnesses to be
10 sequestered separately.

11 Have your first witness ready. Who is that, please?

12 MRS. MUNNERLYN: Lawanda Williams.

13 THE COURT: Okay. Just have her waiting. Bring the jury
14 in.

15 Mrs. Munnerlyn, as I told you, we're going ahead with this
16 trial but we hope to finish it so we can have that meeting
17 tomorrow.

18 (The jury returns to the courtroom at 11:33 a.m.)

19 THE COURT: Alright. Let's have some order back there.

20 JURY SWORN

21 (The Deputy Clerk of Court swears the jury.)

22 REMARKS OF THE COURT

23 THE COURT: Mr. Bass and ladies and gentlemen of the jury,
24 good morning. Mr. Bass, I have designated you, sir, as Foreman of
25 this jury. Your job will be to preside in the jury room during

REMARKS OF THE COURT

22

1 deliberations and to be the jury spokesman in the courtroom.
2 Please occupy that chair at all times, and you and your jury be
3 assured that I will keep you fully advised of your duties not only
4 as jurors but you, Mr. Bass, as your duties as Foreman, and please
5 occupy that chair at all times.

6 Now, preliminarily, let me say to you. Some of you may have
7 never sat on a criminal case and it's different from sitting on a
8 civil case.

9 In this case the State has charged this defendant with - -
10 with these various charges which have been read to you, and they
11 come to court as all defendants do upon documents known as an
12 indictment but these indictments are simply allegations that the
13 State must prove beyond a reasonable doubt, and to these
14 indictments this defendant specifically pleads not guilty thereby
15 placing the burden of proof upon of the State to prove all of these
16 allegations or some of them to your satisfaction unanimously beyond
17 a reasonable doubt.

18 Now, we'll proceed in the following manner.

19 Mrs. Munnerlyn, the Deputy Solicitor, representing the State
20 of South Carolina, will make a short opening statement to you as to
21 her position and what she intend to prove. What lawyers tell you
22 is not evidence. The evidence comes from the witness stand but
23 this is a guideline to help you follow her presentation of the
24 case.

25 Mr. Blake represents the defendant as he is the Public

REMARKS OF THE COURT

23

1 Defender. He is the attorney for the defendant, and he will make
2 a statement to you with regards to the defendant's position.

3 Following that, there will be various witnesses called and
4 other matters that are introduced in the trial of this case.
5 After all of the witnesses have testified, each side will make a
6 closing statement to you and then I will give you the law with
7 regards to issues that you will decide, and then you will begin
8 your deliberations in the jury room, ah, with Mr. Bass as Foreman
9 of that procedure.

10 Now, there are several things you need to know and keep in
11 mind.

12 First, the defendant is always presumed innocent. The State
13 has got to prove him guilty beyond a reasonable doubt.

14 The second one, with regards to this case and all cases in
15 criminal court, various witnesses will come in and testify. You
16 will judge their credibility and their believability. You may
17 accept all of what a witness says or none. You may believe, if you
18 choose, one witness against that of many or the other way around.
19 Obviously, you do not determine the truth or falsity of a matter by
20 counting up the number of witnesses who testify for one side or the
21 other.

22 Ladies and gentlemen, throughout this entire process in
23 judging credibility you have but one single objective, just one, to
24 speak and find the truth.

25 Now, in judging credibility, you know, in our life's

OPENING STATEMENT BY MRS. MUNNERLYN

24

1 experiences we size them up. You didn't leave your common sense on
2 the streets of Bennettsville, South Carolina when you came into
3 this courtroom, and we all know when folks tell us things, we ask
4 ourselves, "Hey, do they know what they talking about?"

5 Obviously, we would ask ourselves, "Does this person have a
6 cause or reason to want me to believe one way or the other?"

7 We would always consider whether any particular witness for
8 any side has some bias or prejudice which would make his testimony
9 or her testimony suspect.

10 And so it is, you bring your common sense to bear. You know
11 tools you've used over your lifetime whether it is with our
12 children or employers or employees or whatever. We learn to make
13 decisions whether somebody is telling the truth or not, and these
14 are some common sense experiences we bring into the courtroom in
15 helping you arrive at your decision of not guilty or guilt.

16 I'll keep you fully advised of the law of the case remembering
17 that from this moment on that there is nobody in this wide world
18 that can tell you twelve the facts. You determine the facts from
19 the testimony under oath here and such other matters as may be
20 introduced in this trial in this case.

21 You may have your opening statement.

22 MRS. MUNNERLYN: Thank you, Your Honor.

23 OPENING STATEMENT BY MRS. MUNNERLYN

24 MRS. MUNNERLYN: May it please the Court? Mr. Blake,
25 ladies and gentlemen of the jury, good morning.

OPENING STATEMENT BY MRS. MUNNERLYN

25

1 As you have been told, my name is Elizabeth Munnerlyn, and I
2 am here before you today as Assistant Solicitor for the State of
3 South Carolina here in Marlboro County, and I'm here to present to
4 you the case against this particular defendant, Keena Lamont
5 Rivers, and you have heard the charges of failure to stop for a
6 blue light, possession with intent to distribute marijuana as well
7 as crack and that he did possess those drugs within one half mile
8 of a school or playground.

9 And it is, of course, as the judge told, our - - the State's
10 burden of proof to prove to you that this defendant did, in fact,
11 commit those crimes beyond a reasonable doubt, not beyond any doubt
12 but a reasonable doubt.

13 And I believe once you hear all of the evidence that you will
14 be convinced beyond any reasonable doubt.

15 But let me just tell you what this case is about so you can
16 follow along the testimony as I present it to you.

17 This incident happened back on December 6th of 2007, and it
18 actually began at the Exxon Station down, um, on Cheraw Street
19 across from the hospital which I'm sure most of you are familiar
20 with, and at that time this testimony will come out that the
21 defendant was actually driving a grey in color truck this
22 particular night. It was about 10:00 at night, maybe a little
23 after ten on that particular date, and Ms. Lawanda Williams had
24 pulled up to the store and had sent one of her children in to get
25 something, and as she's sitting in her car, she notices the

OPENING STATEMENT BY MRS. MUNNERLYN

26

1 defendant and some of his friends in the vehicle next to her, and
2 he has an open container. He's drinking a beer, and he's the
3 driver of the vehicle.

4 And when she realizes that he is driving and he is drinking,
5 she calls and reports that, actually, to her husband who is a
6 police officer, and, ah, she gives him the information. She stays
7 in the parking lot and reports that to him, and they proceed - -
8 the defendant proceeds to drive the truck out of the parking lot at
9 the Exxon there on Cheraw Street, and it comes toward them.

10 At that point Officer Williams who is her husband and several
11 other officers were already patrolling together in one vehicle in
12 that particular area. They immediately spotted the truck on
13 Cheraw Street, ah, just as it was coming up to Bennett Point
14 Apartments, and, of course, that's not far up from where the Exxon
15 is located.

16 They blue lighted the car, and he was actually was driving
17 left of center. There's four lanes of traffic there. He was in
18 the middle lane driving left of center when they first spotted him.

19 So, they, of course, turned on the blue light. He initially
20 looked as if he was going to stop in the middle of the room in the
21 medium, the contract medium there but then, though, he pulled over
22 on the right-hand side there before you get to Center Street on
23 Cheraw Street.

24 The officers were, of course, behind him. They exited the
25 vehicle and approached the car, ah, and immediately smelled the

OPENING STATEMENT BY MRS. MUNNERLYN

27

1 alcohol. One of the officers testified he saw the open twelve pack
2 or container of beer, ah, and, ah, the - - Sgt. Turner will testify
3 that he talked with the driver who is the defendant. Asked him to
4 step out of the car, and he refused to do so, and so he was
5 attempting to open the door so he could open it from the outside
6 when the defendant actually took off - - with the officer's arm
7 inside the vehicle, spun him around.

8 They, of course, went back into - - got into their vehicle and
9 began to chase the defendant as he was driving his truck. He went
10 down - - went down Cheraw Street, took a right there on Center
11 Street which is a very short distance. Right on center. Then took
12 a right on the first road to the right which I believe is Fara
13 Street, and that is a dead-end street.

14 He went to the end of the dead-end street, and he and the
15 front seat passenger jumped out of the vehicle. The officers then
16 gave chase. The passenger went one way. The driver went another
17 way. They followed, of course, the driver who is the defendant in
18 this particular case. He was apprehended a short distance away in
19 a ditch area right there at the end of the dead-end street.

20 He was apprehended, of course, and handcuffed. Another
21 officer, Aretha Poe, came to the scene to transport him to the
22 Marlboro County Detention Center. He was searched actually at the
23 scene at that time by her, and he had on him two bags of marijuana
24 and two bags of crack, one of them which contained seven separate
25 what we call quarter bags of crack packaged for sale, and those

OPENING STATEMENT BY MR. BLAKE

28

1 were removed from his pants pocket when they arrested him.

2 And, of course, that was there on Fara Street which is very
3 close there to Kids Land Park as well as Bennettsville Middle
4 School.

5 And I think once you hear all of this testimony that you will
6 be firmly convinced that he is, in fact, guilty of all of these
7 offenses, and we will be as brief as we can. We'll present to you
8 as many witnesses as were there that night and to tell you what
9 happened, and I appreciate your attention and your time today.

10 Thank you.

11 THE COURT: Mr. Blake.

12 OPENING STATEMENT BY MR. BLAKE

13 MR. BLAKE: I'm too clumsy. I'll probably stumble over
14 something.

15 My name is Dan Blake. I'm the Public Defender. Contrary to
16 popular belief, the Public Defender is not the attorney for people
17 who are always guilty. Those are the people who cannot afford an
18 attorney.

19 So they do pay a \$40 application fee but I represent those who
20 cannot afford a private attorney.

21 The Solicitor set out the facts as she is going to attempt to
22 prove them. We are here, obviously, asking for a trial. Mr.
23 Rivers certainly had the opportunity to plead guilty, has chosen
24 not to because he says that he is innocent, and as the judge has
25 told you and as you hear all the time, someone, of course, is

1 innocent until proven guilty.

2 There's thirteen of you sitting here now but there will really
3 be twelve to go back into that jury room, twelve sets of eyes,
4 twelve sets of ears, twelve minds.

5 I ask that you listen carefully to the evidence, and that you,
6 of course, deliberate carefully, and for your attention, thank you.

7 THE COURT: Thank you, Mr. Blake.

8 Mrs. Munnerlyn, call your first witness, please.

9 MRS. MUNNERLYN: Thank you, Your Honor. I would call
10 Lawanda Williams.

11 (The witness takes the witness stand.)

12 LAWANDA WILLIAMS, being duly sworn,
13 testifies as follows:

14 DEPUTY CLERK OF COURT: Please be seated and state your name
15 for the record.

16 MRS. WILLIAMS: My name is Lawanda Williams.

17 DIRECT EXAMINATION BY MRS. MUNNERLYN:

18 Q. Spell your first name, please.

19 A. L-a-w-a-n-d-a.

20 Q. And, Mrs. Williams, you live here in Marlboro County?

21 A. Yes, ma'am.

22 Q. And you have lived here for some period of time?

23 A. Yes, ma'am.

24 Q. And you are currently married?

25 A. Yes, ma'am.

MRS. WILLIAMS - DIRECT EXAMINATION BY MRS. MUNNERLYN

30

1 Q. And who is your husband?

2 A. Gregory Williams.

3 Q. And is he employed with the Bennettsville Police Department?

4 A. Yes, ma'am.

5 Q. I'm going to ask you if you would to try and talk into that
6 microphone so everybody can hear you.

7 Okay. I'm going to ask you. Back on December 6th of 2007, ah,
8 where were you that night?

9 A. I was, um, at Exxon across from the hospital.

10 Q. Okay.

11 A. Parked right in front of the door.

12 Q. Okay.

13 And this was about 10:00 or a little after?

14 A. It was pretty dark. I don't really recall the actual time of
15 night it was but it was dark. It was late.

16 Q. Okay, and you were - - who was with you?

17 A. My two kids.

18 Q. Your children, and where were you actually parked at the
19 Exxon?

20 A. Um, Exxon has the door that enters and the door that comes
21 out. I was actually to the left of it but right in front of the
22 door.

23 Q. One of the parking spaces right out front?

24 A. Right out front.

25 Q. Okay, and that is a well-lit area?

1 A. Yes, ma'am.

2 Q. Okay.

3 Um, and while you were - - did you go in the store yourself?

4 A. No, ma'am.

5 Q. And did someone in your vehicle go in?

6 A. Yes, ma'am.

7 Q. Okay. One of your children?

8 A. Yes, ma'am.

9 Q. So, it was you and just your two children?

10 A. Yes, ma'am.

11 MR. BLAKE: Judge, I'm just going to ask if she would just
12 make these questions more open-ended. Object to the leading nature
13 of them.

14 THE COURT: Well, this is a preliminary basis.

15 Go ahead. Just follow the Rule. Go ahead.

16 MRS. MUNNERLYN: Yes, sir.

17 Q. Ah, and - - -

18 THE COURT: I will - - on these preliminary questions I
19 will permit both of you in the interest of time to move on.

20 Go ahead.

21 MRS. MUNNERLYN: Thank you, Your Honor.

22 Q. Were you - - who was driving the vehicle?

23 A. I was driving the vehicle.

24 Q. You were in the driver's seat?

25 A. Yes, ma'am.

MRS. WILLIAMS - DIRECT EXAMINATION BY MRS. MUNNERLYN

32

1 Q. Okay, and did you see anything as you were sitting there that
2 drew your attention?

3 A. I did. I, actually, as my daughter got out to go in, um, I
4 noticed a truck right next to me with a couple of guys that were in
5 there, um, and they were, I guess, just sitting there at the time
6 when I noticed them in the truck, actually. They were just sitting
7 there.

8 Q. Alright.

9 As you sat there and waited on your daughter, did anything
10 happen?

11 A. Yes, ma'am.

12 I saw the driver actually kind of get out of the car. He
13 didn't get all the way out of the car. He had, like, one leg in,
14 one leg out, and the door of the truck was open, and he had a
15 container in his hand that he was drinking from but it was covered
16 with the back. So I didn't get to see it at the time until he
17 actually pulled it up out of the bag, and that's when I got a
18 chance to view it.

19 Q. And when did he do that?

20 A. He did it maybe a couple of seconds after he got out of the
21 truck, and it looked like he was showing someone in the store but
22 I wasn't sure.

23 Q. Okay.

24 And what - - can you sort of show the jury what you're talking
25 about as far as what he did with the particular container?

1 A. He had it here in his left hand, and he took it up to drink,
2 pulled it back down, shook it a little bit. Then he went and
3 lifted it up out of the bag, and that's when I got a view of up.

4 Q. And you said that that was as if to who someone inside the
5 store?

6 A. And he was looking into the store, and he was talking at the
7 time but my windows were rolled up. So I'm not sure exactly what
8 he said.

9 Q. Okay.

10 And this vehicle, ah, was right immediately beside of yours or
11 where was it?

12 A. It was to the right of me.

13 Q. Okay.

14 Was it - - was there a parking space in between or was it in
15 the next parking space?

16 A. There is, like, the little no parking zone in between us.

17 Q. Okay.

18 So, how many feet would you say was in between your car and
19 this truck?

20 A. Maybe five or ten.

21 Q. Okay.

22 Just five or ten feet beside your vehicle?

23 A. Yeah, because I think where I was parked I was a little over
24 into that, um, no parking area right in front of the store just so
25 that I could make sure my daughter was okay as she got out to

MRS. WILLIAMS - DIRECT EXAMINATION BY MRS. MUNNERLYN

34

1 enter.

2 Q. Okay. Okay.

3 Ah, and did anything else happen while you were sitting there?

4 A. I proceeded to - - -

5 Q. You can sit back down. I'm sorry.

6 A. I proceeded to stay there because it concerned me that he was
7 up under the wheel and driving. I got - - immediately got on the
8 phone. Called my husband, um, and told him what I had witnessed
9 and told him everything about the truck, and after that I proceeded
10 to wait until he actually got up under the wheel and pulled off,
11 and at the same time I was still on the phone talking to my
12 husband, and when he pulled off, I pulled out behind him and went
13 the opposite way.

14 Q. And - - and where did the truck, which entrance to the Exxon
15 did he pull out of?

16 A. Exxon is here. He went out from here. He was here. He came
17 around and went out straight that way and proceeded to turn.

18 Q. On what street?

19 A. Ah, the Cheraw Highway.

20 Q. Okay.

21 And can you tell us. So, he came out of the exit onto Cheraw
22 Highway or Cheraw Street.

23 A. Yes, ma'am.

24 Q. And did he turn away from town or towards town?

25 A. Towards town.

1 Q. Towards town, okay.

2 And you say you went out the same exit?

3 A. No, ma'am.

4 Q. A different exit?

5 A. Yes, ma'am.

6 Q. Okay.

7 And did you see him again after that?

8 A. No, ma'am.

9 Q. Ah, and, um, you said there were some other people inside, and
10 you didn't know if he was talking to him or not?

11 A. Right.

12 Q. Did anyone get back into the truck with him?

13 A. Yes, ma'am.

14 Q. Okay.

15 And did they - - do you know if that person did anything
16 inside the store?

17 A. Ah, one guy came out with some beer.

18 Q. Okay.

19 A. But I tried to keep my eye on the driver just to make sure it
20 was the same guy that got up under the wheel.

21 Q. Okay.

22 And was it?

23 A. Yes, ma'am.

24 Q. And did - - did you personally know that particular person?

25 A. No, ma'am.

MRS. WILLIAMS - DIRECT EXAMINATION BY MRS. MUNNERLYN

36

1 Q. The driver?

2 A. No, ma'am.

3 Q. And - - and do you recognize him today?

4 A. No, ma'am. I - - I can't recall him otherwise from knowing
5 that he is sitting to the left of me but that night I was able to
6 tell them, and I saw him actually get up under the wheel. So I
7 know it was the driver of the vehicle.

8 Q. Okay.

9 And you - - and you called your husband and described the
10 vehicle to him?

11 A. Yes, ma'am.

12 Q. And how did you describe that vehicle?

13 A. Detail-wise, I remember it being a grey truck. Um, it's been
14 a while. So I don't recall everything I said at that time of the
15 conversation.

16 Q. Ah, but there were more than two passengers in the car?

17 A. Yes, ma'am.

18 Q. Was it a single-cab truck or a double-cab or a king-cab or do
19 you remember?

20 A. It had a backseat.

21 Q. Okay.

22 A. And that's all - - I'm not sure if it opened up but it had a
23 backseat that I do recall them getting into.

24 Q. And was there much other traffic in and out of the Exxon at
25 that time?

MRS. WILLIAMS - DIRECT EXAMINATION BY MRS. MUNNERLYN

37

1 A. No, ma'am. There pretty much, um, station. I think at that
2 time where I was here, there was, like, maybe two more cars that
3 came in after me but that was the only traffic at that point in
4 time.

5 Q. Okay.

6 So, they came into the parking lot.

7 A. They came into the parking lot.

8 Q. As you were leaving.

9 A. As I was sitting there.

10 Q. Oh, as you were sitting there?

11 A. Uh-huh.

12 Q. And they parked.

13 A. Yes, ma'am.

14 Q. So, that truck, was there any other vehicles that left at the
15 same time as that truck?

16 A. My vehicle.

17 Q. Right.

18 Any other vehicles that left heading towards town on Cheraw
19 Street?

20 A. No, ma'am.

21 Q. Okay.

22 And did you have any further involvement with that vehicle
23 that night?

24 A. No, ma'am.

25 Q. Okay.

MRS. WILLIAMS - CROSS EXAMINATION BY MR. BLAKE

38

1 I don't have any further questions. If you'll answer any
2 questions Mr. Blake might have for you.

3 THE COURT: Mr. Blake.

4 CROSS EXAMINATION BY MR. BLAKE:

5 Q. You said you're married to Greg Williams?

6 A. Yes, sir.

7 Q. Is he a Lieutenant with the Bennettsville Police Department?

8 A. Yes, sir.

9 Q. Do you know how long he's been working there?

10 A. Eight or more years.

11 Q. You've been married to him that whole time?

12 A. No, sir.

13 Q. How long you been married to him?

14 A. We got married in 2004.

15 Q. And where do you live?

16 A. I stay here in Bennettsville.

17 Q. Where in Bennettsville?

18 A. Behind Bi-Lo.

19 Q. Street address.

20 A. Drive.

21 Q. Drive?

22 A. Yes, sir.

23 Q. Okay.

24 You said there were three individual in the truck?

25 A. There was a couple of individuals in the truck.

1 Q. So, you're saying there was at least two?

2 A. There was more than two in the truck.

3 Q. But you don't know how many were in there?

4 A. No, sir.

5 Q. How do you know there was more than two?

6 A. Because as the guy - - there were two guys that came out of
7 the store that got into the truck with the defendant.

8 Q. Isn't that three?

9 A. There was also another guy that I saw, and I'm not sure he got
10 into the truck because I was focused more on the driver of the
11 truck.

12 Q. So, there was at least three?

13 A. Yes, sir.

14 Q. So, two guys went into the store?

15 A. I didn't see them get - - go into the store. They went in the
16 store.

17 Q. You just saw them come out of the store.

18 A. They went in before I pulled up.

19 Q. So, you saw two guys come out of the store and go into the
20 truck?

21 A. Yes, sir.

22 Q. And where did they go into the truck?

23 A. They entered from the passenger side.

24 Q. Okay.

25 One sat in the passenger seat, and one sat in the back?

MRS. WILLIAMS - CROSS EXAMINATION BY MR. BLAKE

40

1 A. I don't recall. I recall keeping my eye on the driver.

2 Q. So, you were - - are those parking spaces you park with the
3 front of your car there facing the convenience store?

4 A. Yes, sir.

5 Q. So, you say he was five to ten feet to your right?

6 A. Yes, sir.

7 Q. Okay.

8 So, you were looking through your passenger side, right?

9 A. Yes, sir.

10 Q. Okay.

11 And I assume your daughter was in the passenger side?

12 A. No, sir. They were both in the backseat of my car.

13 Q. Did you have your windows up or down?

14 A. Up.

15 Q. And how much time do you think you had when you were observing
16 him?

17 A. Around five minutes or so.

18 Q. And you say that the first thing you noticed was him having
19 something he was holding in his hand with a paper bag?

20 A. I didn't - - it was in a bag where I couldn't see through.

21 Q. It was in a paper bag. You don't know - - -

22 A. Something was in a bag.

23 Q. You saw him holding a bag?

24 A. And I didn't know what it was.

25 Q. You saw him holding a bag?

1 A. Yes, sir.

2 Q. Okay.

3 That caught your attention?

4 A. Yes, sir.

5 Q. And you stood up and said he was holding it was in a bag.

6 A. Did I stand up? I didn't get out of my car.

7 Q. When you testified, you said that he was getting kind of out
8 of the car.

9 A. He opened the door of the car. He had one leg still in the
10 truck, and he had one leg out of the truck - -

11 Q. Okay.

12 A. - - with the bag in his hand.

13 Q. So, he had his left side facing you, correct?

14 A. Well, he was like this. One leg was here but he was straight
15 like this.

16 Q. Okay.

17 And the beer or the bag was in what hand?

18 A. The left hand.

19 Q. Okay.

20 Was he directly in front of the store?

21 A. Yes, sir.

22 Q. So, you're saying that he - - he didn't actually get out of
23 the truck.

24 A. Partially.

25 Q. But you saw him kind of leg dangling out with a bag like that,

MRS. WILLIAMS - CROSS EXAMINATION BY MR. BLAKE

42

1 and he took a swig. Okay?

2 A. Uh-huh.

3 Q. A swig or a big slurp? He took a swig or how much did he
4 drink?

5 A. I guess my idea of a slurp and a swig, a swig is a sip to me.
6 I'm not sure as far - - -

7 Q. He took some time with it.

8 A. He took some time with it.

9 Q. His Adam's apple was moving up and down. He didn't just take
10 a little sip?

11 A. No, sir.

12 Q. He drank it?

13 A. Well, as if to - - he didn't keep it up. He turned it up.
14 Got, I guess, a mouth full and pulled it down.

15 Q. Did he take another drink of it?

16 A. No, sir. He shook it.

17 Q. He shook the beer?

18 A. He shook the container.

19 Q. He shoot the container?

20 A. Because at this time I didn't know it was beer.

21 Q. And then - - this was right in front of the store that he did
22 this?

23 A. Yes, sir.

24 Q. And then he - - he pulls the container up out of the bag?

25 A. Partially, yes, sir.

MRS. WILLIAMS - CROSS EXAMINATION BY MR. BLAKE

43

1 Q. To show it to somebody in the store?

2 A. I'm not sure if that's what he was doing or not but he was
3 looking at the direction of the store - - looking into the store.

4 Q. So, he'd already taken his drink and then he pulled it up with
5 his right hand, I guess?

6 A. Just kind of crossed over, had it with both hands and lifted
7 it.

8 Q. Yeah. Okay.

9 And how long did he have that lifted up towards the store?

10 A. Long enough for me to get a view of the top of the can to get
11 maybe half way he pulled up, and I was able to get a look at it to
12 know it wasn't a soda or anything else and know it was a beer can.

13 Q. Long enough that you knew it wasn't a beer - -

14 A. I knew it was a beer.

15 Q. - - was a beer and was not a soda.

16 A. It was not anything else but a beer.

17 Q. Okay.

18 Did you figure out what kind of beer it was?

19 A. No, sir, because I got a glimpse of the can, and I couldn't
20 get the full view of the name on the can.

21 Q. Okay.

22 And so you became afraid that you had somebody there who was
23 drinking and driving?

24 A. Yes, sir.

25 Q. Did you recognize any of the two - - those two coming out of

MRS. WILLIAMS - CROSS EXAMINATION BY MR. BLAKE

44

1 the store who got into the truck?

2 A. One guy is a guy I don't know him by name but I know I went to
3 school with.

4 Q. But, ah, it's somebody you have talked to since school or do
5 you know him very well?

6 A. No, sir.

7 Q. Don't know him?

8 A. No, sir.

9 Q. Don't talk to him?

10 A. No, sir.

11 Q. Don't remember his name?

12 A. No, sir.

13 Q. Okay.

14 And this was highschool?

15 A. Yes, sir.

16 Q. So, that was how many years ago?

17 A. Over ten years.

18 Q. And you really haven't talked to him since then?

19 A. No, sir.

20 MR. BLAKE: One moment, please, Your Honor.

21 No further questions, Judge.

22 Do you have any further questions, Mrs. Munnerlyn?

23 MRS. MUNNERLYN: No, sir, Your Honor.

24 (The witness takes the witness stand.)

25 THE COURT: Call your next witness, please.

LT. WILLIAMS - DIRECT EXAMINATION BY MRS. MUNNERLYN

45

1 Can this witness now be excused from her subpoena?

2 MRS. MUNNERLYN: Yes, please, Your Honor.

3 THE COURT: You are now excused. Thank you.

4 MRS. MUNNERLYN: Greg Williams.

5 (The witness takes the witness stand.)

6 LT. GREGORY WILLIAMS, being duly sworn,
7 testifies as follows:

8 DEPUTY CLERK OF COURT: Please be seated and state your name.

9 LT. WILLIAMS: My name is Gregory Williams.

10 DIRECT EXAMINATION BY MRS. MUNNERLYN:

11 Q. Mr. Williams, where are you employed?

12 A. Say again, ma'am?

13 Q. Where are you employed?

14 A. Bennettsville Police Department.

15 Q. Okay.

16 How long have you been employed by the Bennettsville Police
17 Department?

18 A. It will be nine years in September.

19 Q. And in what capacity - - what is your title with the Police
20 Department now?

21 A. I'm the Operations Lieutenant.

22 Q. Operations?

23 And were you working back on the night of December 6, 2007?

24 A. I was, ma'am.

25 Q. And did you that evening receive a call from your wife?

LT. WILLIAMS - DIRECT EXAMINATION BY MRS. MUNNERLYN

46

1 A. I did.

2 Q. Okay.

3 And - - and what is your wife's name?

4 A. Lawanda Williams.

5 Q. Okay.

6 And as a result of the call your wife, what did you do?

7 A. We were - - we were already in the area, um, just doing a sort
8 of team stuff, warrant services and stuff like that.

9 She stated that there were some young men at the Exxon on
10 Cheraw Street, and they were inside of the vehicle drinking. So,
11 she gave me a call.

12 We were headed up Cheraw Street. She gave us a description of
13 the vehicle. It was a pickup truck. As we were coming up Cheraw
14 Street, the vehicle passed us which was what we thought was the
15 vehicle.

16 We turned around on the vehicle, and we got out on the
17 vehicle.

18 Q. Let me ask you first of all, when the vehicle passed you,
19 where exactly on Cheraw Street was it.

20 A. We were right at Center Street, a little further up, though,
21 probably a little closer to Winston Avenue.

22 Q. Winston Avenue?

23 A. Ah, when we passed it.

24 Q. Okay.

25 Ah, and you were in a vehicle with whom?

LT. WILLIAMS - DIRECT EXAMINATION BY MRS. MUNNERLYN

47

1 A. Detective Turner, Detective Bowman and Reserve Parrish.

2 Q. Okay, and, ah, who was driving the vehicle you were in?

3 A. Detective Turner.

4 Q. Okay.

5 Did he turn the vehicle around at that time?

6 A. When we saw the vehicle, yes, ma'am.

7 Q. Okay.

8 And did the vehicle - - and he instigated a traffic stop?

9 A. He did.

10 Q. Okay.

11 And what did the vehicle do when he attempted to stop it?

12 A. It pulled over on, um, a few hundred feet from Center Street
13 which is off of Cheraw Street. It pulled over there.

14 Q. On the right-hand side of the road?

15 A. Yes, ma'am.

16 Q. Okay.

17 Ah, and, ah, where were you seated in Sgt. Turner's vehicle?

18 A. I was, ah, the rear of - - on the passenger side. I was in
19 the rear seat.

20 Q. Okay.

21 Ah, and when the vehicle and you were stopped - - the vehicle
22 you were in was stopped behind it, who got out and approached the
23 vehicle?

24 A. Detective Turner got out and went on the driver's side.

25 Detective Bowman went out. He got on the passenger side, and I

LT. WILLIAMS - DIRECT EXAMINATION BY MRS. MUNNERLYN

48

1 also got out, like I say, near the vehicle, our vehicle.

2 I know that it was taking him a little while to get the
3 information. So I started walking up. About that time the vehicle
4 started pulling off.

5 Q. Okay.

6 Ah, how long was it from the time you stopped or the vehicle
7 stopped and you stopped until the vehicle took off again?

8 A. It wasn't very long. I can't recall how long it was but I
9 can't recall but it was a short time.

10 Q. Okay.

11 What did y'all proceed to do at that time?

12 A. We got back in our vehicle, and we pursued the vehicle.

13 It took a right on Center Street and then another right I
14 think onto Fara Street which ended up as a dead end, and they got
15 out and they ran from there.

16 Q. Okay.

17 The vehicle went to the dead end, you say?

18 A. Yes, ma'am.

19 Q. Okay.

20 And who got out?

21 A. Detective Turner, Detective Bowman and myself. We started
22 chasing the two young men who ran from the vehicle. Um, they ran
23 through a yard. When we got up to a fence, there was some dogs
24 back there. So, I stopped because they kept going, Detective
25 Turner and Detective Bowman.

LT. WILLIAMS - DIRECT EXAMINATION BY MRS. MUNNERLYN

49

1 I went back to the vehicle because there was another young man
2 in the vehicle, too. So, I went back.

3 Q. So the third passenger in the vehicle remained in the truck?

4 A. Yes, ma'am.

5 Q. Okay.

6 But the two, the passenger and the driver, you say, jumped and
7 ran - -

8 A. Yes, ma'am.

9 Q. - - when they stopped?

10 A. Yes, ma'am.

11 Q. Okay.

12 Ah, were you present when either one of them were apprehended?

13 A. No, ma'am.

14 Q. Okay.

15 Was either one of those some period of time after that brought
16 back to the vehicle where y'all had stopped?

17 A. Um, no, not that I can remember.

18 Q. Okay. Okay.

19 Ah, and, ah, did you have any further involvement as far as
20 arrest of any of those individuals or transportation of any of
21 those individuals?

22 A. No, ma'am.

23 Q. And you didn't take custody of any evidence?

24 A. No, ma'am. No, ma'am.

25 Q. Okay.

LT. WILLIAMS - DIRECT EXAMINATION BY MRS. MUNNERLYN

50

1 And what - - this was a - - were there any other vehicles when
2 you first spotted this vehicle, and you say y'all met it and turned
3 around? Were there any other vehicles on the highway?

4 A. No, ma'am. That was the only vehicle at the time that was
5 coming into town while we were going towards - - towards Oakwood.

6 Q. Okay.

7 A. That was the only vehicle on the road.

8 Q. And did it fit the description she had given you?

9 A. Yes, ma'am.

10 It was a light colored newer model. She said it was Chevy or
11 a GMC.

12 Q. And about how many minutes after you were on the phone with
13 your wife that you met it - - when you met the truck?

14 A. No. I - - I had got off the phone with her, and we proceeded
15 to go towards the Exxon where she was.

16 Q. Okay.

17 A. And, ah, she called me back and said that the vehicle had
18 left.

19 Q. Okay.

20 A. And then we passed them as we were coming up.

21 Q. Okay.

22 MRS. MUNNERLYN: Court's indulgence just one moment.

23 Q. Please answer any questions that Mr. Blake might have.

24 A. Yes, ma'am.

LT. WILLIAMS - CROSS EXAMINATION BY MR. BLAKE

51

1 CROSS EXAMINATION BY MR. BLAKE:

2 Q. You said it was a grey in color truck?

3 A. No, I said it was a light colored vehicle.

4 Q. Did you know who was driving it?

5 A. No, sir.

6 Q. A light colored vehicle but you identified it as a truck?

7 A. Yes, sir, a light colored vehicle, truck.

8 Q. Then you added it was a GMC or Ford?

9 A. No, Chevy.

10 Q. So, the incident report said that you received information
11 about a grey in color truck with a male driving.

12 MRS. MUNNERLYN: Your Honor, I would object. That
13 incident report was not prepared by this officer.

14 THE COURT: Sustained.

15 Q. I think you stated that, ah, you participated to part of the
16 chase?

17 A. Yes, sir.

18 Q. And then you came back to the vehicle?

19 A. Yes, sir.

20 Q. Okay.

21 And at that point did you interact with the person in the
22 vehicle?

23 A. No - - the third party, yes, sir, I did.

24 Q. And who was that third party?

25 A. I believe his name was Derek Rivers.

LT. WILLIAMS - CROSS EXAMINATION BY MR. BLAKE

52

1 Q. Did you have a conversation with him?

2 A. Yes, sir, I did.

3 Q. Okay.

4 And what did you find in the vehicle?

5 A. Well, I found some beer and also, ah, a gun.

6 Q. Where did you find the gun?

7 A. It was on the passenger side of the vehicle.

8 Q. And where was it on the passenger side?

9 A. In the seat.

10 Q. In the seat. Is that in the front?

11 A. Yes, sir.

12 Q. You sure you found it on the seat?

13 A. Yes, sir.

14 Q. Alright.

15 So you said you saw some beer there?

16 A. Yes, sir.

17 Q. How much beer was it?

18 A. I can't recall, sir.

19 Q. Did you seize the beer?

20 A. I didn't seize it. We had other officers there that seized
21 the beer.

22 Q. So, you know that beer was seized?

23 A. Uh-huh.

24 Q. Did you see an open container?

25 A. Yeah, there was an open container, a beer. There was a can.

LT. WILLIAMS - CROSS EXAMINATION BY MR. BLAKE

53

1 Q. And where was that located?

2 A. There was one in the back of the vehicle which was where the
3 passenger was in the back, and there were two in the front.

4 Q. So, it sounds like everybody had an open container?

5 A. Yes, sir.

6 Q. What kind of beer was it?

7 A. I'm not sure.

8 Q. Could you describe the two beers in front?

9 A. Say again?

10 Q. Could you describe those two beers that were in front?

11 A. A can.

12 Q. Just two cans?

13 Just two cans of beer in the front?

14 A. And one in the back.

15 Q. Okay.

16 And it's like a king-cab type thing or was it a - - -

17 A. It was four doors.

18 Q. Four doors.

19 A. Uh-huh.

20 Q. Alright. That's helpful.

21 So you found one can in the back section and two cans in the
22 front section?

23 A. Yes, sir.

24 Q. You don't recall what kind of beer it was?

25 A. I do not.

LT. WILLIAMS - CROSS EXAMINATION BY MR. BLAKE

54

1 Q. Okay.

2 Just a can of beer sitting there.

3 Was it in, like, a cup holder?

4 A. No. The one - - the one that was in the rear was in the
5 pocket of the - - of the driver's seat.

6 Q. Pocket of the driver's - -

7 A. Uh-huh.

8 Q. - - the driver's side?

9 A. The back side of the driver's seat there was a pocket.

10 Q. Oh, okay.

11 A. If I'm not mistaken, and it was in there. The one in the
12 front was stuck on the passenger side it was stuck between the seat
13 - - stuck between the seat and console if I'm not mistaken. The
14 other one was on the floorboard.

15 Q. On the floorboard?

16 A. Un-huh.

17 Q. Good.

18 Did these beer cans have beer in them?

19 A. One of them had spilled. I think that's the one that was on
20 the floorboard. It had spilt over.

21 Q. So, it was lying on its side or something?

22 A. Yeah.

23 Q. Just a metal can lying on its side there?

24 A. Say again?

25 Q. A metal can lying on its side there. It wasn't bottles?

LT. WILLIAMS - CROSS EXAMINATION BY MR. BLAKE

55

1 A. No. It was cans.

2 Q. So, you -- did you take the gun into custody?

3 A. We had, ah, another officer come and get the weapon.

4 Q. Okay.

5 You guys -- you said you were out on a warrant roundup that
6 night?

7 A. Yes. Yes, sir.

8 Q. And you were not there when they brought the defendant back?

9 A. No.

10 Q. You were not there when they apprehended him?

11 A. No.

12 Q. And you didn't transport him anywhere?

13 A. No, sir.

14 Q. Didn't book him in?

15 A. No, sir.

16 Q. Go to the jail?

17 A. No, sir.

18 Q. So, it really fair to say you didn't have any interaction with
19 Mr. Lamont Rivers that night?

20 A. Yes, sir.

21 Q. That's correct?

22 A. Yes, sir.

23 MR. BLAKE: One moment, please, Your Honor.

24 No further questions, Judge.

25 THE COURT: Anything further of this witness?

DETECTIVE BOWMAN - DIRECT EXAMINATION BY MRS. MUNNERLYN

56

1 MRS. MUNNERLYN: No, Your Honor.

2 THE COURT: You may come down, and thank you.

3 LT. WILLIAMS: Yes, sir.

4 (The witness leaves the witness stand.)

5 MRS. MUNNERLYN: Can he be released from his subpoena as
6 well, Your Honor?

7 THE COURT: Yes, ma'am. You are discharged.

8 LT. WILLIAMS: Thank you.

9 THE COURT: Call your next witness.

10 MRS. MUNNERLYN: Larry Bowman.

11 (The witness takes the witness stand.)

12 DETECTIVE LARRY DALE BOWMAN, JR., being
13 duly sworn, testifies as follows:

14 DEPUTY CLERK OF COURT: Please have a seat and state your
15 name.

16 DETECTIVE BOWMAN: My name is Larry Dale Bowman, Jr.

17 DIRECT EXAMINATION BY MRS. MUNNERLYN:

18 Q. Where are you employed?

19 A. Ah, Bennettsville Police Department.

20 Q. And how long have you been employed there?

21 A. Eight years.

22 Q. And in what capacity are you working for the police
23 department?

24 A. I'm a criminal investigator.

25 Q. And were you working in that capacity back on December 6,

1 2007?

2 A. Yes, I was.

3 Q. And you were working that night?

4 A. Yes.

5 Q. Who were you with?

6 A. I was working with Sgt. Turner.

7 Q. Okay.

8 In his vehicle with him?

9 A. Yes, ma'am.

10 Q. Alright.

11 Were any officers in the vehicle with you?

12 A. Ah, Reserve Officer Bill Parrish and Lt. Greg Williams.

13 Q. And what were y'all doing that particular night?

14 A. Ah, basically, just out and about patrolling areas where we
15 had recent criminal activity and stuff like that.

16 Q. Okay.

17 Ah, and, ah, did you receive a call from, ah, Greg Williams'
18 wife in regards to a vehicle at the Exxon Station?

19 A. I did not receive a call.

20 Q. Okay.

21 Were you present when the call was received?

22 A. Yes.

23 Q. Okay.

24 And as a result of that call, what did y'all do?

25- A. Ah, we started heading towards the Exxon located on Cheraw

DETECTIVE BOWMAN - DIRECT EXAMINATION BY MRS. MUNNERLYN

58

1 Street and Oakwood, um, to go see if we could sit on the vehicle,
2 spot the vehicle that was described to us.

3 Q. And when did you spot the vehicle?

4 A. As we were headed toward the Exxon on Cheraw Street.

5 Q. Okay.

6 Were you actually on Cheraw Street at that time?

7 A. Yes, ma'am.

8 Q. Okay.

9 And what did she say - - what - - what kind of vehicle was it
10 if you recall?

11 A. It was a silver in color, I believe, a Dodge pickup truck.

12 Q. Okay.

13 You said it was a Dodge or could it have been another make or
14 model?

15 A. It could have been another make. I wasn't real sure. I still
16 don't know it was silver in color. I know it was a pickup truck.

17 Q. Okay. Alright.

18 And once you saw this truck, ah, what did y'all proceed to do?

19 A. Ah, we turned around and started following the vehicle.

20 Q. So, you met?

21 A. We met. We were headed out of town towards the Exxon Station.
22 The vehicle was coming into town towards us on Cheraw Street.

23 Q. Were there any other - - were there any other vehicles on the
24 road?

25 A. No, ma'am.

1 Q. Okay.

2 And so when you met this vehicle, y'all turned around?

3 A. Sgt. Turner proceeded to turn around after we passed the
4 vehicle, ah, turn around shortly thereafter, and we followed the
5 vehicle.

6 Q. Tell us what the vehicle did.

7 A. Ah, the vehicle drove left of center. It was crossing the
8 line. It wasn't staying within the line or the lines on the road,
9 um, at which time - - -

10 Q. I'm sorry. In which lane of traffic was it traveling?

11 A. I can't recall at this time which exact lane it was because I
12 know the vehicle switched lanes a couple of times once we - - once
13 we were initiating the traffic stop.

14 Q. Okay. Alright.

15 So, you turned around and you initiated a traffic stop?

16 A. Uh-huh.

17 Q. And you did that by doing what?

18 A. Well, I was the passenger.

19 Q. Right. Well, what Sgt. Turner did.

20 A. Sgt. Turner initiated a traffic stop by activating his blue
21 lights. We called the tag number into Central Dispatch, and we
22 waited for the vehicle to stop.

23 Q. And did it stop?

24 A. Eventually. The driver of the vehicle was acting like he
25 didn't know where he wanted to stop at. Initially, he acted like

DETECTIVE BOWMAN - DIRECT EXAMINATION BY MRS. MUNNERLYN

60

1 he was going to stop in what we call the fast lane of traffic in
2 the middle or inside lane. Then he proceeded to pull onto the side
3 of the road onto - - onto the sidewalk halfway in the road and the
4 sidewalk area.

5 Q. And where was it when he did pull over to the side of the road
6 that - - is that the right-hand side of the road?

7 A. The right-hand side of the road, yes, ma'am.

8 Q. Okay.

9 Where exactly was that?

10 A. It was right before Center Street which is right off of Cheraw
11 Street right before the Middle School.

12 Q. And once the car pulled over, it stopped?

13 A. Yes, ma'am.

14 Q. Okay.

15 And what did y'all, the four of you proceed to do once the
16 vehicle was stopped?

17 A. Um, I proceeded to get out the vehicle, and I approached the
18 passenger side of the vehicle.

19 Q. And when you approached, what did you do?

20 A. I looked first thing. It was a four door pickup truck. First
21 think I did was look in the backseat where I saw an open case of
22 beer where it appeared to be some missing cans out of the case of
23 beer that was sitting back there, ah, next to the rear passenger.

24 I proceeded to move up to the front passenger's side window
25 and knocked on the window and asked the individual to roll the

1 window down.

2 Q. And did he?

3 A. He started to.

4 Q. Okay.

5 And what happened next?

6 A. The vehicle took off.

7 Q. And where was Sgt. Turner at that time?

8 A. Sgt. Turner was at the driver's side window talking with the
9 driver.

10 Q. Okay.

11 And once the vehicle took off, what did you proceed to do?

12 A. Run back to Sgt. Turner's vehicle.

13 Q. And once - - once you got back to that vehicle, what did you
14 do?

15 A. I jumped in the passenger seat and shut the door?

16 Q. What did Sgt. Turner do?

17 A. He got in and took off behind the vehicle, and we - - we
18 called in that we were a 10 zero which is in a chase of a vehicle.

19 Q. Okay.

20 And where did the vehicle proceed to go?

21 A. It made a right onto Center Street and then made a right onto
22 Farley - - Fairly Street, if I'm not correct. If I'm wrong with
23 the pronunciation of that - - that street name but it made a right
24 onto a dead-end road and it went to the dead end and stopped.

25 Q. That - - that - - was that the first, second, third? Which

DETECTIVE BOWMAN - DIRECT EXAMINATION BY MRS. MUNNERLYN

62

1 street once you got on Center Street if you recall?

2 A. I believe it was the first street on the right once you turn
3 on Center Street.

4 Q. Okay.

5 And that was a dead-end street?

6 A. Yes, ma'am

7 Q. Okay.

8 And once the vehicle reached the dead end what happened?

9 A. Stopped, um, and I observed the passenger - - the driver's
10 door and the passenger's - - the front passenger door and the
11 driver's door opened up, and the two subjects jumped out and ran.

12 Q. And what did you do at that point?

13 A. I proceeded to jump out Sgt. Turner's vehicle and proceeded to
14 chase them on foot.

15 Q. Okay.

16 And where did they run?

17 A. They ran into an individual's yard. Actually, they hopped the
18 fence. I went - - I opened the gate and went through the fence
19 behind them. They hopped the backyard fence. I hopped the fence
20 behind them.

21 At that point, ah, the front passenger took off to the right,
22 and I stayed in behind the driver which went to the left and jumped
23 the fence down into a ditch.

24 Q. Okay.

25 And - - and was anyone else chasing the driver along with you?

1 A. If there was anybody behind me, I don't know.

2 Q. Okay.

3 A. I was - - I had my focus on him.

4 Q. So, you were the front runner for the officers who were
5 chasing him?

6 A. Yes, ma'am.

7 Q. Okay.

8 Ah, and when you approached the ditch, what happened?

9 A. Well, I - - I was behind the suspect who jumped the fence and
10 went into the ditch, and I jumped it behind him and, ah, proceeded
11 to chase him along the ditch and back out to Cheraw Street - - or
12 down - - in the ditch back out to Cheraw Street.

13 Q. Towards Cheraw Street?

14 A. Yes, ma'am.

15 Q. Okay.

16 And what happened when you got there?

17 A. Um, I caught up with the suspect as he was trying to climb out
18 the ditch. At that point that's when I attempted to apprehend him
19 and place cuffs on him. Um, at that point that's when Sgt. Turner
20 came up and assisted me with placing the cuffs on the suspect.

21 Q. Okay.

22 Ah, and do you see that particular individual that you chased
23 into the ditch and actually apprehended that night here in the
24 courtroom today?

25 A. Yes, ma'am, I do.

DETECTIVE BOWMAN - DIRECT EXAMINATION BY MRS. MUNNERLYN

64

1 Q. And where is he?

2 A. He's sitting next to Dan Blake.

3 Q. Okay.

4 MRS. MUNNERLYN: Your Honor, if the record would just
5 reflect that he has pointed out the defendant in this particular
6 case.

7 THE COURT: The record will reflect.

8 MRS. MUNNERLYN: Thank you, Your Honor.

9 Q. And, ah, once he was placed under arrest, what did you do with
10 him or what happened to him?

11 A. I brought him out to the road. In fact, I was give out. So,
12 I was done at that point.

13 Q. Okay.

14 So other officers took over the custody at that point?

15 A. Yes, ma'am.

16 Q. Okay.

17 Now, was the passenger of the vehicle that ran was he ever
18 apprehended?

19 A. No, ma'am. We could not locate him. So he was not.

20 Q. And the third - - the second passenger who was sitting in the
21 backseat?

22 A. Yes, ma'am. The one actually sitting behind the driver, the
23 rear passenger behind the driver, he stayed with the vehicle.

24 Q. Okay.

25 He never left?

DETECTIVE BOWMAN - CROSS EXAMINATION BY MR. BLAKE

65

1 A. No, ma'am.

2 Q. So, y'all actually talked with him?

3 A. Yes, ma'am.

4 Q. Okay.

5 MRS. MUNNERLYN: Court's indulgence just one moment.

6 Q. That's all I have. If you would answer any questions Mr.
7 Blake has for you.

8 THE COURT: Mr. Blake, any questions?

9 MR. BLAKE: Yes, Your Honor.

10 CROSS EXAMINATION BY MR. BLAKE:

11 Q. You said when those blue lights were first activated that he
12 looked he really didn't know where to stop or pull over?

13 A. The driver of the vehicle we were attempting to stop didn't
14 look like he knew where exactly where to stop at.

15 Q. But he finally pulled over to the right?

16 A. Yes, sir.

17 Q. And Sgt. Turner came up to the driver's side, correct?

18 A. Yes, sir.

19 Q. And you came up to the passenger side?

20 A. That's correct.

21 Q. Who was it that seized the beer?

22 A. That seized the beer?

23 Q. Yeah.

24 A. I'm not sure who got the beer out the vehicle. I was pursuing
25 the driver.

DETECTIVE BOWMAN - CROSS EXAMINATION BY MR. BLAKE

66

1 Q. Did you see what kind of beer it was?

2 A. All I know was a white and blue box.

3 Q. But you did notice there was some missing cans out of the box?

4 A. Yes, sir.

5 Q. Sounds like you had a pretty good foot chase?

6 A. It was a foot chase.

7 Q. So, the passenger - - what did he do? Veered off to the - -
8 went to the right?

9 A. Yes, sir.

10 Q. And you followed the driver who was on the left?

11 A. Correct.

12 Q. And talked about hopping the fence and then going through a
13 yard, hopping another fence. Then you were in a ditch?

14 A. Yes, sir.

15 Q. And at some point that ditch changed directions - -

16 A. No.

17 Q. - - or it was just going towards Cheraw Street?

18 A. That ditch ran straight towards Cheraw Street.

19 Q. Okay.

20 And how deep is that ditch?

21 A. I'd say every bit - - well, it sloped but probably every bit
22 of about ten feet. It was probably about over top of your head - -
23 and it's wooded. So, it's hard to say.

24 Q. So, the depth of it varied?

25 A. Ah, to honest with you, I'm not sure because there's so much -

1 - -

2 Q. You were running in that ditch - - -

3 A. I was running - - I was running and ducking because I was
4 constantly getting slapped in the head with branches. So.

5 Q. So, that's a heavily wooded area?

6 A. Yes, sir.

7 Q. I think you said as soon as you got to Mr. Rivers that you
8 were pretty well done in or something from the chase?

9 A. I was - - I was about give out.

10 Q. Is that when Sgt. Turner - - who put the cuffs on him?

11 A. I think it was a combination of both myself and Sgt. Turner.

12 Q. Was he resisting you at that point?

13 A. No. I kept telling him to pull his hands out. He was laying
14 on top of his hands.

15 Q. He was laying on his hands. So he was on his stomach?

16 A. Yeah. He had - - he was trying to crawl out the ditch when I
17 got to him.

18 Q. Okay.

19 A. And I remember telling him to give me your hands, um, to stop
20 resisting.

21 Q. So the two of you put your cuffs on him?

22 A. Well, the two of us just put a pair of cuffs on him.

23 Q. And what did you do at that point?

24 A. I proceeded to try to get the suspect up and get him out the
25 sidewalk.

DETECTIVE BOWMAN - CROSS EXAMINATION BY MR. BLAKE

68

1 Q. So, you were pretty close to Cheraw Street in the ditch then?

2 A. Yes, sir.

3 We were right - - we were at the end of the ditch where it
4 comes into to Cheraw Street.

5 Q. Oh, okay.

6 So, the ditch just sort of dead ends at Cheraw Street?

7 A. It dead - - well, it goes into a culvert pipe.

8 Q. Alright.

9 So you, ah, you got him in handcuffs, and then you walked him
10 up to the sidewalk there on Cheraw Street?

11 A. Well, I didn't walk him. I just tried to help him up. It's
12 hard to walk where we were at.

13 Q. Do you have any idea how long that chase took?

14 A. The foot chase?

15 Q. Yeah.

16 A. A matter of minutes.

17 It seemed like forever but - - -

18 Q. Sgt. Turner was right behind you?

19 A. He was somewhere behind me. I know he was there when I - - at
20 some point in time he showed up.

21 Q. Well, how long did it take him to catch up?

22 A. Not long because I remember he was pretty much right there
23 behind me, I - - I guess. I don't know. I was focused on the
24 suspect.

25 Q. Were you already trying to put the handcuffs on him when

DETECTIVE BOWMAN - CROSS EXAMINATION BY MR. BLAKE

69

1 Turner got there?

2 A. Yes, sir.

3 Q. You said all you were doing was just you got him there? You
4 were trying to scramble up the ditch?

5 A. Yes, sir.

6 Q. And then he was - - you said he was lying on his hands?

7 A. Yes, sir.

8 I know he was lying - - I know his hands weren't behind his
9 back where they needed to be cuffed.

10 Q. So, basically, you chased him. Then you guys got the cuffs on
11 him. Then you got him up to Cheraw Street.

12 A. Correct.

13 MR. BLAKE: One moment, please.

14 No further questions.

15 THE COURT: You may come down. Thank you.

16 (The witness leaves the witness stand.)

17 THE COURT: You may call your next witness.

18 MRS. MUNNERLYN: May we approach, Your Honor?

19 THE COURT: Ma'am?

20 MRS. MUNNERLYN: May we approach?

21 THE COURT: Yes.

22 (Bench conference held off the record in the presence of the
23 jury but outside the hearing of the jury.)

24 MRS. MUNNERLYN: Larry McNeil.

25 (The witness takes the witness stand.)

CHIEF McNEIL - DIRECT EXAMINATION BY MRS. MUNNERLYN:

70

1 CHIEF LARRY McNEIL, being duly sworn,
2 testifies as follows:

3 DEPUTY CLERK OF COURT: Have a seat and state your name for
4 the Court.

5 CHIEF McNEIL: Larry McNeil.

6 DIRECT EXAMINATION BY MRS. MUNNERLYN:

7 Q. Where are you employed?

8 A. The City of Bennettsville Police Department.

9 Q. In what capacity?

10 A. As Police Chief.

11 Q. Okay.

12 And how long have you been so employed?

13 A. Approximately seven years and about six months.

14 Q. Okay.

15 And so you were the chief back in December of 2007?

16 A. Yes, I was.

17 Q. Okay.

18 And do you recall back the night of December 6th of 2007,
19 receiving a call in regards to a - - an officer needing assistance
20 or a foot chase?

21 A. Yes, I do.

22 Q. Okay.

23 And did you respond to that particular call?

24 A. Yes.

CHIEF McNEIL - DIRECT EXAMINATION BY MRS. MUNNERLYN:

71

1 Q. Okay.

2 Tell us what happened when you arrived?

3 A. Um, as I arrived at Cheraw Street right by Bennett's Point at
4 the entrance where the parking lot starts at there there's a wooden
5 fence up and a canal ditch, and as I was coming up to that area, I
6 saw two people coming up out of the ditch. They were having
7 something of a physical altercation. They were tussling a little
8 bit, and I could see it was Officer Bowman and a suspect at the
9 time, this particular gentleman, and, um, they were tumbling and
10 tussling a little bit in the ditch, and they came out of the ditch,
11 and then I saw Officer Turner come out the ditch, and he fell back
12 in the ditch pretty much.

13 Q. Officer Turner?

14 A. Officer Turner fell back in the ditch. It's a real deep
15 ditch.

16 Um, when they came out of the ditch, ah, Officer Bowman cuffed
17 the suspect, and the suspect came to me and was trying to explain
18 something to me, and I told him I didn't want to talk to him, that
19 he needed to deal with them because they had stopped him, and he
20 was trying to explain, and I said, "Look, I don't want to hear it.
21 You need to deal with them. Whatever you did, if you hadn't done,
22 you wouldn't be here."

23 And then shortly after that, Officer Poe showed up. Uh, she
24 went down the street and came back because the car was facing - -
25 her car was facing me.

CHIEF McNEIL - DIRECT EXAMINATION BY MRS. MUNNERLYN:

72

1 Um, and, um, she was coming up to escort or to transport the
2 suspect to the Detention Center, and she searched him, and in the
3 process of searching him, she found some bags in his pocket, and
4 from what I could tell the bags concealed some green leafy like
5 substance and a white rock-like substance were in the pocket.

6 Q. Okay.

7 A. And somewhere right during that time, Officer Lucas came up,
8 and by that time I think the suspect was in Officer Poe's vehicle,
9 and he kept screaming saying he wanted to talk to Officer Lucas,
10 and Officer Lucas looked at me, and I told him he could go to the
11 car and talk to him.

12 And that was it basically.

13 Q. Okay.

14 So, you were there from the point in time that the defendant
15 actually came out of that ditch?

16 A. Yes.

17 Q. Off of Cheraw Street - -

18 A. Yes.

19 Q. - - area right there?

20 A. Yes.

21 Q. And you were present until he was placed in the back of
22 Officer Poe's car?

23 A. Yes.

24 Q. Okay.

25 And did you have any conversations with him other than what

CHIEF McNEIL - DIRECT EXAMINATION BY MRS. MUNNERLYN:

73

1 you have already stated here?

2 A. No. Um, like I said. He wanted to talk, and I told him I
3 didn't have anything I needed to say to him. He needed to deal
4 with him, and the officers did explain to me why they chases that
5 had to do with a traffic stop, and then he had driven away from
6 them, and then they followed him, and a foot pursuit ensued in the
7 end.

8 Q. Okay.

9 A. That was it.

10 Q. Okay.

11 And you were actually physically present during the, 'ah,
12 search by Officer Poe of the defendant's person?

13 A. Yes.

14 Q. Okay.

15 Which produced the - -

16 A. Bags of - -

17 Q. - - the alleged drugs that you have already described?

18 A. Yes.

19 Q. Okay.

20 Now, you didn't take custody of any of those drugs at that
21 time, did you?

22 A. No, ma'am, I did not.

23 Q. Okay.

24 They - - do you know who took custody of those drugs from
25 Officer Poe once she - - -

CHIEF McNEIL - DIRECT EXAMINATION BY MRS. MUNNERLYN:

74

1 A. I think it was Officer Turner if I'm not mistaken.

2 Q. Okay.

3 And you said he was placed in the back of Officer Poe's car,
4 and then - - -

5 A. Officer Lucas was there, and he was screaming saying he wanted
6 to talk to Lucas because Lucas - - evidently he felt like he knew
7 Lucas, and Lucas asked, and I said, "Yeah, go talk to him."

8 Q. Okay.

9 And so he did go and speak with him?

10 A. Yes. I couldn't tell you what the conversation was. I
11 couldn't. I didn't hear that.

12 Q. Okay.

13 Did you have any further, ah, contact with the defendant that
14 particular night?

15 A. No, ma'am, I did not.

16 Q. And the individual you saw coming out of that ditch with
17 Officer Bowman, he is present in the courtroom today?

18 A. Yes, he is.

19 Q. Okay.

20 And can you point him out for me?

21 A. Ah, he's sitting next to Mr. Blake.

22 Q. Okay.

23 MRS. MUNNERLYN: Your Honor, if the record will reflect he
24 has pointed out the defendant in this particular case.

25 THE COURT: The record will so reflect.

CHIEF McNEIL - DIRECT EXAMINATION BY MRS. MUNNERLYN:

75

1 MRS. MUNNERLYN: Thank you, Your Honor.

2 Q. Was he then transported to the Marlboro County Detention
3 Center?

4 A. Yes, he left the area that I was in. I assume that's where
5 they took him.

6 Q. And Officer Poe was the officer who transported him?

7 A. Yes, ma'am.

8 Q. Okay.

9 MRS. MUNNERLYN: Court's indulgence just one moment.

10 Q. Now, if I can, I just want you to describe again so we have a
11 good idea.

12 You said this was actually on Cheraw Street?

13 A. Yes.

14 Q. Which was at the Bennett's Point Apartments?

15 A. Yes, where - - where the parking lot actually either stops or
16 starts depending on how you looking at it, there's a wooden fence
17 that comes along the side of that parking area. There's a real
18 deep canal ditch. We use to call it canal ditches because they
19 were so deep, and it's like a wooded area coming up at that point
20 behind that fence, and they were coming up out of there as I was
21 driving up, and they were still tussling a little bit, and they
22 were, I guess, in the process of trying to get him up out of the
23 ditch.

24 Q. Okay.

25 So, this was the - - the wooden fence, I guess, was the end of

CHIEF McNEIL - CROSS EXAMINATION BY MR. BLAKE

76

1 the Bennett's Point property?

2 A. Yes, I would think, yes.

3 Q. Okay.

4 And the ditch is actually on this side, the town side of
5 Bennett's Point?

6 A. Yes, it is.

7 Q. Okay.

8 I don't have any further questions. If you would answer any
9 questions that Mr. Blake has.

10 CROSS EXAMINATION BY MR. BLAKE:

11 Q. So, Aretha Poe basically came to transport Mr. Rivers?

12 A. Yes, I mean that's what she ended up doing. I believe all of
13 the officers that were out were in the process of trying to help
14 locate. Um, when you hear someone is running from somebody,
15 everybody just comes to help.

16 Q. Then you - - you said you arrived as they were bringing him up
17 out of the ditch?

18 A. Well, bringing up they're still in the process of controlling
19 - - getting total control because they were still scuffling a
20 little bit when I got there.

21 Q. Okay.

22 And then they put the cuffs up and they got him up there at
23 the street?

24 A. Yes.

25 Q. But you say you did observe the search?

1 A. Yes, I did.

2 Q. And what pocket did the drugs come out of?

3 A. I'm not certain about what pocket. I just remember seeing her
4 reach in the pocket. Reaching him and she is the one that searched
5 him. I'm certain of that. Exactly what pocket, I'm not sure.

6 Q. They all come out of one pocket?

7 A. Yes, sir.

8 Q. So that was in December. I guess it was a little slippery
9 since we had Officer Turner falling back in the ditch?

10 A. I'll equate that to being slippery but that was in December.

11 Q. Okay.

12 So, Bowman, basically, brought him up out of the ditch?

13 A. Yes. Well, in all honesty, I don't know who brought who up
14 because I remember Bowman getting flipped out. So it was more like
15 he was thrown out. They kind of threw - - came out together.

16 Ah, in a tussle, you know, somebody throws somebody.

17 Q. Okay.

18 So, Mr. Rivers and Mr. Bowman came out of the ditch, and
19 somehow Bowman got flipped a little bit?

20 A. Yes, he did.

21 Q. But Turner slipped back down?

22 A. Yes, he did.

23 Q. Okay.

24 And then Bowman put the cuffs on him at the top of the street?

25 A. Yes, if I remember correctly.

CHIEF McNEIL - CROSS EXAMINATION BY MR. BLAKE

78

1 MR. BLAKE: One moment, please.

2 No further questions, Judge.

3 THE COURT: Alright.

4 Chief - - any further questions?

5 MRS. MUNNERLYN: No, Your Honor.

6 THE COURT: You are released but you, of course, may remain
7 in the courtroom since you've testified.

8 CHIEF McNEIL: Thank you, sir.

9 Would it be possible if I could be excused for tomorrow?
10 Would it be possible that I would be called back tomorrow? I have
11 to be out of town.

12 THE COURT: No. You are excused from your subpoena.

13 CHIEF McNEIL: Thank you, sir.

14 THE COURT: You won't need him tomorrow?

15 MRS. MUNNERLYN: No, sir.

16 THE COURT: Alright.

17 You are excused.

18 CHIEF McNEIL: Thank you.

19 (The witness takes the witness stand.)

20 THE COURT: Alright.

21 You have any other short witness we could take prior to lunch?

22 MRS. MUNNERLYN: No, sir.

23 THE COURT: Let me ask you this.

24 (Bench conference held off the record and in the presence of
25 the jury but outside the hearing of the jury.)

1 THE COURT: Mr. Foreman, ladies and gentlemen, ordinarily
2 we'd give you an hour and a half for lunch but I respectfully
3 request that you take just an hour and be back at 2:00. One
4 witness is coming from out of town and needs to testify and get
5 back to another assignment. So I would respectfully request that
6 when we break, please be back in the jury room at 2:00 so that we
7 can start immediately.

8 Now, please do not discuss this case with anyone. Let no one
9 discuss it with you. Make no independent inquiry, and, ladies and
10 gentlemen, under our rules until you've heard all the evidence from
11 both sides and instructions in the law, it would be improper for
12 even you, the jury, to start discussing some aspect of this case.

13 So, Mr. Bass, as Foreman, please do not let any discussion
14 take place on any issue involving this case during that jury room
15 until I've given you the case for your deliberation.

16 You can talk about the weather or anything else you want to
17 but don't talk about this case. Okay?

18 And do not talk to each other during lunch about it. The
19 reason for that is this. Whatever your decision ultimately is,
20 it's got to be unanimous, and if several of you are talking about
21 the case at lunch outside the presence of your fellow jurors, you
22 are depriving your fellow jurors of your thought process, and they
23 are entitled to that.

24 So, have a nice lunch and be back at 2:00.

25 Thank you.

CHIEF McNEIL - CROSS EXAMINATION BY MR. BLAKE

80

1 (The jury is released for lunch at 12:54 p.m. to return at
2 2:00 p.m. and departs the courtroom.)

3 THE COURT: Mrs. Munnerlyn, go ahead now and pre-mark the
4 exhibits.

5 MRS. MUNNERLYN: Yes, sir.

6 THE COURT: We are in recess but I want the exhibits
7 marked.

8 MRS. MUNNERLYN: Yes, sir.

9 (The Court recesses the trial of this case for lunch and
10 thereafter reconvenes the trial of this case.)

11 THE COURT: Be seated, please.

12 Bring the jury in.

13 (The jury returns to the courtroom at 2:06 p.m.)

14 THE COURT: Call your next witness?

15 Who is your next witness, Mrs. Munnerlyn?

16 MRS. MUNNERLYN: Marjorie Wilson.

17 THE COURT: Have her come around.

18 (The witness takes the witness stand.)

19 THE COURT: Good afternoon, Ms. Wilson.

20 SLED AGENT WILSON: Good afternoon, Judge.

21 THE COURT: Proceed.

22 MRS. MUNNERLYN: Thank you, Your Honor.

SLED AGENT WILSON - DIRECT EXAMINATION BY MRS. MUNNERLYN

81

1 SLED AGENT MARJORIE A. WILSON, being duly
2 sworn, testifies as follows:

3 DIRECT EXAMINATION BY MRS. MUNNERLYN:

4 Q. State your full name for the record.

5 A. Marjorie A. Wilson.

6 Q. And where are you employed?

7 A. I'm employed by the South Carolina Law Enforcement Division
8 commonly referred to as SLED.

9 Q. Okay, in what capacity?

10 A. I'm employed as a Forensic Scientist specializing in the
11 analysis of controlled substances.

12 Q. Okay.

13 And tell us what your education and experience is in that
14 field.

15 A. Yes. I have a Bachelor of Science Degree in Russell Sage
16 College and a dual major in Biology and Criminal Science, and I've
17 undergone training in forensic drug analysis with the New York
18 State Police, the law - - the South Carolina Law Enforcement
19 Division and the Drug Enforcement Administration.

20 In addition to that, I have been employed as a forensic
21 scientist specializing in the analysis of controlled substances
22 with New York State Police for eight years.

23 Currently and for the past seven years and eleven months, I
24 have been employed in a similar capacity with the South Carolina
25 Law Enforcement Division.

SLED AGENT WILSON - DIRECT EXAMINATION BY MRS. MUNNERLYN

82

1 THE COURT: Her qualifications admitted?

2 MR. BLAKE: Yes, Your Honor.

3 THE COURT: Ladies and gentlemen, this woman - - this
4 witness I have qualified as an expert in her field, and I tell you
5 that experts who by education and training are qualified as experts
6 in a particular field. You, of course, may give that expert such
7 opinion as you in your judgment thing it's entitled to but she is
8 an expert in Forensic Analysis of Chemicals.

9 Proceed.

10 MRS. MUNNERLYN: Thank you, Your Honor.

11 THE COURT: I've had her many times in my court, and she's
12 testified on many occasions in the courts of this state.

13 MRS. MUNNERLYN: Thank you, Your Honor.

14 Q. And you say you have been employed with SLED seven years and
15 eleven months?

16 A. Eleven months?

17 Q. Okay.

18 Did you receive any evidence in regards to this case of Keena
19 Lamont Rivers with an incident date of 12/6/07?

20 A. I believe so.

21 Q. Okay.

22 Ah, and did you have an opportunity to analyze those
23 substances that were submitted?

24 A. Yes, ma'am, I did.

25 Q. I'm going to show you - - let me show you what's been marked

SLED AGENT WILSON - DIRECT EXAMINATION BY MRS. MUNNERLYN 83

1 as State's Exhibit #4 and see if you recognize what is in that
2 exhibit.

3 A. Yes, ma'am, I do.

4 Q. Okay.

5 And from where do you recognize that?

6 A. This is a heat sealed pouch that bears a Laboratory Case
7 Number L0802071, and this whole package and the contents therein
8 bears my initials and various dates and notations with regard to
9 the evidence.

10 Q. Okay.

11 And who delivered that particular package of evidence to SLED?

12 A. Um, may I refer to my report?

13 Um, this particular packet of evidence was brought to SLED by
14 Sgt. Larry Turner of the Bennettsville Police Department.

15 Q. Okay.

16 Ah, and if you can, tell us. How does that what's in State's
17 Exhibit #4, how does it come to you?

18 A. The evidence that Sgt. Turner brought to SLED was actually
19 contained in not this outer packet but this inner bag. If you can
20 see through here, there is a bag that's entitled SLED Drug Analysis
21 Security Envelope. That particular envelope is a tamper evidence
22 pouch, and the officer at the time they seize suspected drugs place
23 them within a bag such as this which is already sealed on three
24 sides. They place it in that pouch, and then they seal it where
25 that green area is. Once that's sealed by the officer, any attempt

SLED AGENT WILSON - DIRECT EXAMINATION BY MRS. MUNNERLYN

84

1 to open that pouch would, obviously, be apparent to anyone looking
2 at it.

3 And that pouch is then submitted to our laboratory. This
4 pouch has a number associated with it which is then entered into
5 our data base at SLED and this particular packet of evidence is
6 then also given a laboratory case number, this L0802071 number as
7 a cross reference, and this is the number we go by in the
8 laboratory.

9 Q. Okay.

10 When you received the BEST packet in this particular case with
11 the evidence in it, did you analyze it to determine whether or not
12 it had been opened or attempted to have been opened?

13 A. The first thing I do is actually look at the packet itself it
14 see whether or not it's been tampered with. If by chance it looks
15 like it has been tampered with or it is - - a seal is broken, I
16 won't analyze it. I won't touch it. Basically, the officer would
17 get a phone call.

18 In this particular instance everything was okay. Everything
19 was sealed, and if you look closely, actually, on that packet I
20 have my initials, the laboratory case number and a notation that
21 says, "Seal intact", and the date.

22 Q. Okay.

23 So, ah, when it came to you it was still in the same condition
24 or sealed as it was when the officer sealed that evidence inside?

25 A. That's correct.

1 Q. Okay. Alright.

2 And once you received that BEST packet, what did you proceed
3 to do with it?

4 A. I opened up that pouch and, basically, inventoried what was
5 inside that packet and then proceeded with my analysis.

6 Q. Okay.

7 And the request in this particular case was an analysis as to
8 what particular drug?

9 A. Um, I don't recall off hand without looking at additional
10 paperwork.

11 Q. Okay.

12 A. Along with that pouch, the officer feels out a request form
13 for us, and, basically, they have the type of crime which was PWID
14 crack cocaine.

15 Q. Okay.

16 A. Pretty much everything that is submitted to our department is
17 analyzed for any of the controlled substances that are listed in
18 our South Carolina Code of Laws.

19 Q. So, you were analyzing it in this particular case in regards
20 to whether or not it was crack cocaine?

21 A. No. Basically, there was a screen, um, that was conducted,
22 and my findings ultimately did decide or did show that crack
23 cocaine was present in the exhibit.

24 Q. Okay.

25 Tell us if you can, I'm going to show you State's Exhibit #2

SLED AGENT WILSON - DIRECT EXAMINATION BY MRS. MUNNERLYN

86

1 first off and see if you recognize what that exhibit is.

2 A. State's Exhibit #2 is my Laboratory Report with regard to the
3 analysis performed on this exhibit for, um, along with a chain of
4 custody form with regard to the officer's seizure and ultimate
5 bringing of that evidence to SLED.

6 Q. Okay.

7 And so when you - - you opened the BEST pack what exactly as
8 far as the evidence contained therein was, ah, there and what
9 analysis did you make of it?

10 A. In this pouch there was a clear plastic bag containing a rock-
11 like substance, and there also was another bag which contained
12 seven smaller corner bags, and each of those seven corner bags had
13 a quantity of rock-like substance in them.

14 Q. Can you explain before you go on any further what a corner bag
15 is?

16 A. A corner bag is - - if I was to take say any bag but I'll
17 demonstrate on this, um, for all intents and purposes this could be
18 also a bag. A corner bag is if somebody was to actually take this
19 corner and cut it off about there and then use that corner and put
20 a rock-like substance or a quantity of powder or - - or tablet or
21 something in it and then attempt to seal it.

22 Q. Okay.

23 And in this case how was that - - what was the attempt to
24 seal?

25 A. It was a knot.

1 Q. A knot.

2 A. A knot in each one of those little corner bags.

3 Q. Okay.

4 And that - - there were seven of those?

5 A. Right, within the confines of a larger, say, baggie type
6 container.

7 Q. Okay.

8 A. And then the other exhibit was just a baggie that had been
9 knotted and contained that loosely.

10 Q. Okay.

11 And so once those were submitted to you and you opened the
12 BEST pack what did you do in regards to your analysis of those?
13 What test did you perform on those?

14 A. Well, the first thing we - - I did was to weigh the actual
15 contents of each of the individual bags or corner bag and determine
16 the weight for each one of those. Then I took a small
17 representative sample from each one of those and conducted
18 preliminary and confirmatory testing on each of those.

19 The preliminary testing involves the use of, um, chemical
20 reagents, and these chemical reagents when you put some of this
21 unknown with these color reaction reagents, you can see a color
22 reaction, and the color reaction gives the chemist or the analyst
23 an idea of what kind of drug they may be looking at that is
24 contained in that powder or in this case a rock-like substance.

25 Ah, the chemical tests I performed, there were three of those,

SLED AGENT WILSON - DIRECT EXAMINATION BY MRS. MUNNERLYN

88

1 and the colors that I observed told me that I possibly had cocaine
2 in the crack form.

3 Um, I then went on to do a confirmatory test on each of these,
4 um, again, utilizing instrumental methods. The instrumental method
5 that was used in this particular case was infrared spectroscopy
6 whereby infrared light is exposed to some of the sample, and the
7 sample will absorb different frequencies of infrared light, and the
8 absorption pattern that we receive is then compared to a known
9 standard, um, of cocaine and a determination is made that. Whether
10 or not cocaine is indeed present.

11 That confirmatory test confirms or acts like a fingerprint in
12 the field of drug analysis with regard to whether or not, ah, a
13 drug is present, and in this particular case it matched cocaine
14 base or cocaine in crack form.

15 Q. Okay. Alright.

16 And so the results of that - - your analysis then are set
17 forth in the report which is State's Exhibit #2?

18 A. That's correct.

19 Q. Okay.

20 And if you can, just, again, specifically tell us what your
21 findings were in regards to those bags?

22 A. Item #1.1 is a clear plastic bag contained rock-like
23 substance. The results for that was cocaine base in the crack
24 form, and that was found to be 0.72 grams which converts to 11.112
25 grains, and it's a Schedule II Drug according to law.

SLED AGENT WILSON - DIRECT EXAMINATION BY MRS. MUNNERLYN

89

1 Item #1.2 is a clear plastic bag containing seven clear
2 plastic corner bags each containing a quantity of rock-like
3 substance. Cocaine base in the crack form was found with a
4 combined weight of 1.76 grams which converts to 27.16 grains, and,
5 again, it's a Schedule II Drug.

6 I might note that the combined weight here in this is the
7 weight of the rock-like substance without the packaging.

8 So each one of those bags was separately weighed, and that
9 combined weight is in addition of all those, um, the contents of
10 each one of those bags.

11 Q. Okay.

12 And all of those bags that you referenced on that particular
13 report are contained in State's Exhibit #4?

14 A. That's correct.

15 At the conclusion of my analysis you will see in here little
16 zip-lock bags. When I take the substance out of the original
17 containers some of these corner bags are too small to actually put
18 it back in there and seal it up. So what I do is I reseal each of
19 those exhibits within a zip-lock bag, and, again, they would have
20 my initials, the laboratory case number and the actual sub-item
21 number.

22 Q. Okay.

23 This - - this piece of evidence was then returned from SLED to
24 the Bennettsville Police Department. Isn't that correct?

25 A. That's correct.

SLED AGENT WILSON - DIRECT EXAMINATION BY MRS. MUNNERLYN

90

1 At the conclusion of my analysis everything was placed in this
2 pouch which is manufactured sealed on three sides. I placed
3 everything in the open end and then heat sealed it. That heat seal
4 bears my initials and the date that it was sealed, and this pouch
5 was then returned to our Log-in Department at SLED, and the Log-in
6 Department ultimately returned it to Bennettsville Police
7 Department.

8 Q. And is it in the same condition as when you completed your
9 analysis and returned it to the Bennettsville Police Department?

10 A. Yes. It has not been opened, and my seal is still intact.

11 MRS. MUNNERLYN: Your Honor, then, I would move to admit at
12 this time Ms. Wilson's report which is State's Exhibit #2.

13 MR. BLAKE: Without objection as to the report.

14 THE COURT: Without objection.

15 (The Court Reporter accepts State's Exhibit #2 in evidence.)

16 THE COURT: Does that exhibit include the drugs, I mean the
17 alleged drugs?

18 MRS. MUNNERLYN: This is a separate exhibit, Your Honor.
19 Ah, I have not completed the chain on that.

20 THE COURT: Alright. Go ahead.

21 MRS. MUNNERLYN: So, we -- we've just got that marked for
22 I. D.

23 (The Court Reporter accepts State's Exhibit #4 for
24 identification only at this time.)

25 Q. That's all the questions I would have. If you will please

SLED AGENT WILSON - CROSS EXAMINATION BY MR. BLAKE

91

1 answer any questions that Mr. Blake might have.

2 A. Sure.

3 CROSS EXAMINATION BY MR. BLAKE:

4 Q. I hope you had air conditioning in your car?

5 A. I did.

6 Q. You came from Columbia, right?

7 A. I did.

8 Q. And you work there at the SLED Forensic Lab in Columbia?

9 A. That's correct.

10 Q. Is that on Broad River?

11 A. It is.

12 Q. Okay.

13 And you are a Chemical Analyst, correct?

14 A. That's correct.

15 Q. Of course, you did that in New York before you came down here,
16 and you've been doing it here for a number of years.

17 A. That's correct.

18 Q. So, no doubt in your mind that the substance that you analyzed
19 was crack cocaine?

20 A. No, sir.

21 Q. Okay.

22 But you are in a laboratory in Columbia?

23 A. That's correct.

24 Q. The drugs are brought to you by law enforcement?

25 A. They're not brought to me directly. They are brought to SLED

SLED AGENT WILSON - CROSS EXAMINATION BY MR. BLAKE

92

1 as an entity, and then - - -

2 Q. Let's talk about that because, of course, they are brought to
3 SLED as an entity as you said, and then they're in some sort of
4 storage place, and then you get them or they are brought to you.
5 Is that correct?

6 A. That's correct.

7 Q. So there is an intermediary stage there where in some sort of
8 lockup in SLED or some place where it is being kept before you
9 analyze it?

10 A. That's correct.

11 Q. Okay.

12 But you were not at the scene of the crime?

13 A. No, sir.

14 Q. Except for the Transmittal Sheet that they give you, you have
15 not idea who might be involved. You just have a name on a sheet.

16 A. That's correct.

17 Q. So, you're really here today saying that the drugs were crack
18 cocaine?

19 A. That's correct.

20 Q. And giving us the weight of the drugs?

21 A. That's correct.

22 Q. But you cannot testify at all as to who those drugs came from
23 or who they belong to?

24 A. All I can tell you is the identify placed with that particular
25 piece of evidence with regard to a subject's name and an incident

1 date.

2 Q. Transmittal Sheet had some names on it?

3 A. That's correct.

4 Q. Okay.

5 But you don't know anything about the circumstances of how
6 those drugs were obtained from the defendant or defendants?

7 A. Other than what's on the officer's statement that he provides
8 to SLED.

9 Q. So, again, you were not at the scene?

10 A. No, sir.

11 Q. You work in Columbia?

12 A. That's correct.

13 Q. As a Chemical Analyst.

14 Do you know by your papers? Was any of this sent to Latent
15 Prints before or after the drugs were analyzed?

16 A. To my knowledge nothing was submitted to Latent Prints. If
17 some Latent Prints was requested on this particular piece of
18 evidence, ah, what happens is the evidence would come to me first,
19 and I would take out the actual rock-like substance from those bags
20 and then those bags would be offered to Latent Print Department by
21 me.

22 Ah, they don't go to Latent Prints first and then come to me.

23 Q. Did you go through that procedure and offer those bags to
24 Latent Prints?

25 A. No, sir.

OFFICER POE - DIRECT EXAMINATION BY MRS. MUNNERLYN

94

1 Q. And when we're talking about Latent Prints, that's
2 fingerprints?

3 A. Fingerprints.

4 Q. So to your knowledge these bags were not fingerprinted?

5 A. No, there was no request for SLED to perform such a thing.

6 MR. BLAKE: One moment, please, Your Honor.

7 No further questions.

8 MRS. MUNNERLYN: No further questions, Your Honor.

9 I would ask that this witness be excused.

10 THE COURT: Yes. This witness may be excused.

11 You need to get back to Columbia, and we appreciate your
12 attendance.

13 Thank you.

14 SLED AGENT WILSON: Thank you.

15 (The witness leaves the witness stand.)

16 THE COURT: Call your next witness.

17 MRS. MUNNERLYN: Aretha Poe.

18 (The witness takes the witness stand.)

19 OFFICER ARETHA POE, being duly sworn,
20 testifies as follows:

21 DEPUTY CLERK OF COURT: Please have a seat and state your
22 name.

23 OFFICER POE: My first name is Aretha. My last name is Poe.

24 DIRECT EXAMINATION BY MRS. MUNNERLYN:

25 Q. Ms. Poe, where are you employed?

1 A. With the Bennettsville Police Department.

2 Q. And how long have you been employed with the Bennettsville
3 Police Department?

4 A. Every since September of, correct, August of '07.

5 Q. And in what capacity do you work with the Bennettsville Police
6 Department? What do you do for them?

7 A. I'm a Patrol Officer.

8 Q. Okay.

9 And were you working as a Patrol Officer back on the night of
10 December 6th of 2007?

11 A. Yes, I was.

12 Q. Okay.

13 And did you receive a - - did you receive a call for
14 assistance for officers who were attempting to stop a vehicle?

15 A. Yes, I did.

16 Q. Okay.

17 And when that call went out, what did you do in regards to
18 that.

19 A. Well, the call came out pertaining to officers needing
20 assistance, ah, pertaining to a transport.

21 Upon my arrival, um, Sgt. Turner, he had Mr. Rivers in cuffs,
22 ah, and Sgt. Turner asked me if I would search him, and upon
23 searching him, um, I reached my right hand into his pocket, front
24 pocket, um, and I pulled out two bags, two plastic bags of a green
25 leafy-like substance, and I also pulled out one plastic bag of - -

OFFICER POE - DIRECT EXAMINATION BY MRS. MUNNERLYN

96

1 of a rocky-like substance.

2 Q. White - - white - - a white substance?

3 A. Yes, ma'am.

4 Q. Okay.

5 Ah, and this was, he was all - - when you arrived, first of
6 all, where were they when you arrived?

7 A. When I arrived, ah, Mr. Rivers was on the ground in cuffs.
8 Um, it was on Cheraw Street, um, and Sgt. Turner was close by, um,
9 and, again, I was there solely as a Transport Officer rendering
10 assistance.

11 Q. Okay.

12 Who was there when you arrived?

13 A. Ah, Chief, ah, Larry McNeil, and, also, Sgt. Turner, um,
14 Officer Bowman and, also, Game Officer Shawn.

15 Q. Okay.

16 Shawn Lucas?

17 A. Um, yes, ma'am.

18 Q. Okay.

19 And so they were actually on Cheraw Street when you arrived?

20 A. Yes.

21 Q. And Chief McNeil's car, his vehicle was there as well?

22 A. Yes, it was.

23 Q. Okay.

24 So, you actually stopped your vehicle there - - there where
25 Chief McNeil's was?

1 A. Yes.

2 The Chief's vehicle was turned facing Cheraw, and my vehicle
3 was turned facing East Main Street.

4 Q. Okay.

5 So, they were basically facing each other?

6 A. Yes.

7 Q. Alright.

8 And, ah, you said the defendant in this particular, Mr.
9 Rivers, was already on the ground and already in cuffs when you
10 arrived?

11 A. Yes, he was.

12 Q. Okay.

13 And you - - your primary responsibility was as a
14 Transportation Officer?

15 A. Yes, ma'am.

16 Q. That meaning you were to transport him to the jail?

17 A. Yes.

18 Q. Okay.

19 Ah, pursuant to your transport of him, ah, you conducted a
20 search, you say?

21 A. Uh-huh. Yes, I did.

22 Q. Okay.

23 And the materials that you've just testified to you removed,
24 from where did you removed them from Mr. Rivers?

25 A. From his front pocket. So I have to be honest. I cannot say

OFFICER POE - DIRECT EXAMINATION BY MRS. MUNNERLYN

98

1 which pocket but I can confirm that I reached my right hand into
2 his front - - front pocket, ah, and I pulled those items out.

3 Q. So they were all in the same pocket?

4 A. Yes, they were.

5 Q. And they were all in the pants that the defendant was wearing?

6 A. Uh-huh.

7 Q. Okay.

8 A. Yeah.

9 Q. They were on his body when you removed it?

10 A. Absolutely.

11 Q. Okay.

12 And when you removed these bags containing these drugs, what
13 did you proceed to do with those bags?

14 A. I gave them to Sgt. Turner. I showed the two to him first.
15 Then I - - then I physically handed it, you know, to - - to him.

16 Q. Okay.

17 And that's all of the bags?

18 A. Ma'am?

19 Q. That's all of the bags together you handed to him?

20 A. Yes, I did.

21 Q. Okay.

22 How long were they actually in your custody, physical custody?

23 A. Not long at all.

24 Q. Okay.

25 You didn't go anywhere with them, did you?

1 A. No, I didn't.

2 Q. Okay.

3 Was he present there when you actually searched the defendant,
4 Sgt. Turner I mean?

5 A. Uh-huh.

6 Q. He was?

7 A. Yes, ma'am.

8 Q. Okay.

9 Ah, and so he was present when you actually removed these bags
10 from his pocket?

11 A. Yes, ma'am.

12 Q. Okay.

13 And who else was present when you removed the bags from the
14 defendant's pocket?

15 A. Again, the Chief Larry McNeil was present, ah, and it was Sgt.
16 Turner. Ah, again, the other officers were there but in the
17 immediate area it was, ah, Chief and it was Sgt. Turner.

18 Q. Okay. Alright.

19 Once you handed those items of evidence to Sgt. Turner, did
20 you take custody of any other items of evidence?

21 A. If I did I cannot recollect it.

22 Q. Okay.

23 And then what - - what was your involvement after that point?

24 A. My involvement was to then transport Mr. Rivers to the county
25 jail?

OFFICER POE - CROSS EXAMINATION BY MR. BLAKE

100

1 Q. Okay.

2 And you did that?

3 A. Uh-huh, yes, I did.

4 Q. And once you delivered him to the jail, that was the end of
5 your duties in regards to this case. Is that correct?

6 A. Yes.

7 Q. Okay.

8 And you weren't - - you were not present when the car was
9 stopped or anything else done?

10 A. No, I wasn't there for that.

11 Q. Okay.

12 When you arrived the defendant was already in custody?

13 A. Yes, true.

14 Q. Okay.

15 A. That's true.

16 MRS. MUNNERLYN: Court's indulgence just one moment.

17 Q. Please answer any questions that Mr. Blake has.

18 CROSS EXAMINATION BY MR. BLAKE:

19 Q. Ms. Poe, this happened back in December of '07?

20 A. Yes.

21 Q. So - - so about six months ago?

22 A. It happened December 6, 2007, yes.

23 Q. Alright.

24 So, it's - - events are still fresh in your mind?

25 A. Yes.

OFFICER POE - CROSS EXAMINATION BY MR. BLAKE

101

1 Q. Did you have a chance to talk to the Solicitor today before
2 you came out and testified? Did you talk to Mrs. Munnerlyn?

3 A. Yes, I did.

4 Q. Who else was present when you talked to Mrs. Munnerlyn?

5 A. Who else was present?

6 Q. Yes.

7 A. In terms of officers or in terms of anyone?

8 Q. Officers who were there with you when Mrs. Munnerlyn was
9 talking to you?

10 A. Um, well, she spoke with me individually, ah, and I have to be
11 honest. I was in the room at the time that, you know, she pretty
12 much spoke with all of us, ah, pertaining to today's case.

13 Q. So you had a chance to do that this morning?

14 A. Sir?

15 Q. You did that this morning?

16 A. Yes.

17 Q. You said that Mr. Rivers was on the ground in his handcuffs
18 when you arrived?

19 A. Yes, sir.

20 Q. And in what position was he?

21 He was on his stomach, I think you said, or on his back.

22 A. He was on his bootious maximus, ah, seated on the ground, ah,
23 seated on the ground, and the handcuffs was on his person.

24 Q. Handcuffs were behind him?

25 A. Yes, sir.

OFFICER POE - CROSS EXAMINATION BY MR. BLAKE

102

1 Q. So, he was basically in a seated position?

2 A. Uh-huh, yes, yes.

3 Q. And you said that Sgt. Turner was close by?

4 A. Yes, sir.

5 Q. I believe you said that you are primarily a Transport Officer?

6 A. Yes.

7 Q. In this situation?

8 A. Yes.

9 Q. Okay.

10 And I believe you said that you got these drugs out of one
11 pocket. Is that correct?

12 A. Yes, sir.

13 Q. And you said that you got two bags of green type stuff out of
14 his pocket. Is that right?

15 A. I said I had found two plastic bags of a green leafy-like
16 substance, and I also stated that I found one plastic bag of a
17 white rock, rocky-like substance.

18 Q. So, essentially, three bags.

19 A. True.

20 Q. Two with what you suspected to be marijuana, one, perhaps,
21 something like cocaine or crack cocaine?

22 A. Well, I didn't know what it was until I, you know - - well,
23 I'm not the one that entered - - entered that into evidence. So I
24 really cannot say what they were.

25 Q. But two were green and one was white?

OFFICER POE - CROSS EXAMINATION BY MR. BLAKE

103

1 A. True.

2 Q. One was white. Correct?

3 A. Correct.

4 Q. You say you got that out of his front pocket?

5 A. True.

6 Q. Did he have jeans on?

7 A. He had jeans on. That is correct. Yes.

8 Q. You said that you were standing in front of him. As he was
9 facing you that you took your right hand and reached into his
10 pocket.

11 A. True.

12 Q. Do you think that you took your right hand and reached over to
13 his right pocket or that you took your right hand and just went
14 into his left pocket?

15 A. All I know is I took my right hand, and I reached in his pants
16 pockets, um, and in a pocket - - -

17 Q. Okay.

18 So you had two hands reaching - - -

19 THE COURT: Let her finish. She didn't finish her answer.

20 OFFICER POE: Thank you, Judge.

21 A. As I stated, I took my right hand, and I reached in his front
22 pocket. In all honesty, I can not tell you which pocket I can
23 truly say that I reached in a pocket and pulled out these things.

24 Q. And you pulled out these things with your right hand?

25 A. Yes, I did.

OFFICER POE - CROSS EXAMINATION BY MR. BLAKE

104

1 Q. But I thought you started to say that you put two hands in two
2 pockets.

3 A. Never said that.

4 Q. My confusion.

5 So you only went in his left pocket?

6 A. Again, I stated that I took my right hand, and I reached in
7 Mr. Rivers' pocket - - in his front pocket and pulled out the
8 substances that I've already testified to.

9 Q. So, you went in both pockets or just one pocket?

10 A. Again, I took my right hand and I reached into his pocket and
11 pulled out that.

12 Q. I'm sorry. You said pockets. You've said pocket. That's
13 why I belabor the point. You say one pocket. We'll move on.

14 A. Thank you.

15 Q. Isn't it true that you never got out of that vehicle, that you
16 were in your car the whole time? Isn't that true?

17 A. Negative. That is incorrect.

18 Q. Does that negative mean no?

19 A. Yes. The negative means no.

20 Q. You were the Transport Officer but you did not remain in your
21 vehicle. That - - that's just an error, correct?

22 A. I was rendering assistance.

23 Q. You didn't put the cuffs on him, did you?

24 A. No.

25 Q. When you saw him, he had the cuffs. They were already on him?

OFFICER POE - REDIRECT EXAMINATION BY MRS. MUNNERLYN

105

1 A. True.

2 Q. So, you weren't really arresting him?

3 A. True.

4 Q. That means no, you were not arresting him?

5 A. Right.

6 Q. You were transporting him?

7 A. True.

8 Q. Because you said that you were solely there for - - as a
9 Transportation Officer to take him to jail but somehow you say now
10 that you searched him?

11 A. Uh-huh.

12 Q. That Sgt. Turner had you search him?

13 A. Yes.

14 MR. BLAKE: One moment, please, Your Honor.

15 No further questions.

16 THE COURT: Any further?

17 MRS. MUNNERLYN: Just a couple, Your Honor.

18 REDIRECT EXAMINATION BY MRS. MUNNERLYN:

19 Q. Officer Poe, ah, you came to the scene to transport this
20 particular defendant to the jail, correct?

21 A. Yes.

22 Q. And you were requested by Sgt. Turner to search the defendant?

23 A. Yes, ma'am.

24 Q. Okay.

25 Pursuant to your transport of him to the jail?

OFFICER POE - RE-CROSS EXAMINATION BY MR. BLAKE

106

1 A. Yes, ma'am.

2 Q. Okay.

3 And so you searched his whole person, correct?

4 A. Yes, correct.

5 Q. And, um, you found these drugs in how many pockets?

6 A. One pocket. They were all housed together.

7 Q. Okay. Okay. Alright.

8 But you searched his entire person. Isn't that right?

9 A. True.

10 Q. Okay.

11 Did you find anything in his other pockets?

12 A. No, I didn't.

13 Q. Okay. Alright.

14 MRS. MUNNERLYN: No further questions.

15 MR. BLAKE: I do have, Judge. It's important to my client.

16 RE-CROSS EXAMINATION BY MR. BLAKE:

17 Q. I don't mean to waste anybody's time.

18 A. Yes.

19 Q. I thought you just told us you just searched one pocket. Now
20 you told us you searched the full body and both pockets. Which is
21 it?

22 A. Again, I took my right hand and I placed it in - - in his
23 pocket, and I pulled out those substances - - substances that I
24 already testified to.

25 Q. Thank you.

OFFICER HALL - DIRECT EXAMINATION BY MRS. MUNNERLYN

107

1 A. Thank you.

2 THE COURT: Alright. You may come down Officer Poe.

3 OFFICER POE: Thank you, Judge.

4 THE COURT: You may remain in the courtroom if you choose
5 to.

6 OFFICER POE: Thank you, Judge.

7 (The witness leaves the witness stand.)

8 THE COURT: Call your next witness.

9 MRS. MUNNERLYN: Your Honor, I call Kale Hall.

10 (The witness takes the witness stand.)

11 OFFICER WILLIAM KALE HALL, being duly
12 sworn, testifies as follows:

13 DEPUTY CLERK OF COURT: Please have a seat and state your
14 name for the record.

15 MR. HALL: William Kale Hall.

16 DIRECT EXAMINATION BY MRS. MUNNERLYN:

17 Q. Where are you employed, Officer Hall?

18 A. At Bennettsville Police Department.

19 Q. And in what capacity?

20 A. Patrolman and Evidence.

21 Q. Patrol Officer and Evidence Custodian?

22 A. Yes, ma'am.

23 Q. Okay.

24 And, ah, how long have you been employed with the
25 Bennettsville Police Department?

OFFICER HALL - DIRECT EXAMINATION BY MRS. MUNNERLYN

108

1 A. Three years.

2 Q. Okay.

3 And were you've been the, ah, Evidence Custodian for some time
4 now, and you evidence to court today. Is that correct?

5 A. Correct.

6 Q. Okay.

7 I'm going to show you State's Exhibit #3 and see if you
8 recognize that particular item.

9 A. Yes, ma'am.

10 Q. Okay.

11 Did you bring that to court with you today?

12 A. I did.

13 Q. Okay, and that has been in the evidence locker?

14 A. It has.

15 Q. Okay.

16 Ah, and has anyone checked out that evidence as it - - since
17 it has been in the evidence locker?

18 A. Yes, ma'am.

19 Q. And who is that?

20 A. Ira Dease.

21 Q. Okay.

22 And he then returned that to you as the Evidence Custodian?

23 A. Yes, ma'am.

24 Q. Okay.

25 Ah, and when was that when he checked that item out?

1 A. 6/9 of '08.

2 Q. And that would have been on Monday of this week?

3 A. Yes, ma'am.

4 Q. Other than that, that evidence has remained in the evidence
5 locker while this case has been pending?

6 A. Yes, ma'am.

7 Q. And who initially - - what officer initially brought that to
8 the evidence locker, what arresting officer?

9 A. I have to look at the sheet.

10 Q. Go ahead. You can.

11 A. Officer, ah, Sgt. Larry Turner.

12 Q. And, of course, you checked those items out and brought them
13 here today?

14 A. Yes, ma'am.

15 Q. And you said Ira had checked them out on Monday, June 9th?

16 A. Yes, ma'am.

17 Q. And did he return them on the same day?

18 A. He did.

19 Q. And you brought them today in the same capacity as was
20 returned to you?

21 A. Yes, ma'am.

22 Q. And did anyone else have access to the evidence locker?

23 A. No, ma'am, they did not.

24 MRS. MUNNERLYN: That's all I would have of this witness.

25 Q. If you would answer any questions of that Dan Blake may have.

OFFICER HALL - CROSS EXAMINATION BY MR. BLAKE

110

1 THE COURT: Mr. Blake.

2 MR. BLAKE: Thank you, Judge.

3 CROSS EXAMINATION BY MR. BLAKE:

4 Q. So, you're the Evidence Custodian of the Bennettsville Police
5 Department?

6 A. Yes, sir.

7 Q. And I take it you guys now have a locked evidence room?

8 A. Yes, sir.

9 Q. That would have been a couple of years ago or so?

10 A. I don't know when it was done.

11 Q. Any idea why Ira Dease checked stuff out on Monday?

12 A. Yes, sir. He checked it out for it to be tested.

13 Q. For it to be tested?

14 A. Yes, sir.

15 Q. Ah, the marijuana.

16 A. Okay.

17 Q. So, he did the marijuana testing?

18 A. I'm sorry.

19 Q. You were not at the scene, Mr. Hall.

20 A. Yes, sir. I was there while he tested it.

21 Q. I'm sorry, December 6, '07?

22 A. No, sir.

23 Q. You weren't out at Cheraw Street.

24 A. I was there. I got there after the defendant was already in
25 custody.

OFFICER HALL - CROSS EXAMINATION BY MR. BLAKE

111

1 Q. Okay, and, ah, at what stage of the proceedings - - where was
2 the defendant when you arrived?

3 A. He was already gone when I got there.

4 Q. Okay.

5 So, he'd actually left?

6 A. Yeah. He had already left.

7 Q. Okay.

8 Did you go and look at the truck that he'd been driving?

9 A. Ah, I don't - - no, I don't think we ever made it to the
10 truck. We went to Cheraw Street.

11 Q. Did you have any idea who might have seized the beer in the
12 truck?

13 A. No, sir, I do not.

14 Q. But you're really here today to say that it was put into the
15 evidence locker given to you by Larry Turner? I guess that's all
16 the drugs or just the marijuana?

17 A. No, sir. That was everything?

18 Q. Okay.

19 And that today or Monday of this week Ira Dease checked out
20 the marijuana?

21 A. Correct.

22 Q. Tested it and brought it back to you that same day?

23 A. Yes, sir.

24 Q. And, really, what you're here to establish is that it was in
25 - - in your custody between December 06, '07, and today?

INVESTIGATOR DEASE - DIRECT EXAMINATION BY MRS. MUNNERLYN 112

1 A. Yes, sir.

2 Q. Thank you.

3 THE COURT: Anything further, Mrs. Munnerlyn?

4 MRS. MUNNERLYN: No, Your Honor.

5 THE COURT: You may come down, Officer.

6 OFFICER HALL: Alright.

7 THE COURT: Thank you.

8 (The witness leaves the witness stand.)

9 MRS. MUNNERLYN: Ira Dease.

10 Your Honor, can this officer be released from his subpoena?

11 THE COURT: Yes, he may be. Yes, sir.

12 OFFICER HALL: Thank you, sir.

13 (The witness takes the witness stand.)

14 INVESTIGATOR IRA DEASE, III, being duly
15 sworn, testifies as follows:

16 DEPUTY CLERK OF COURT: Have a seat and state your name.

17 INVESTIGATOR DEASE: Ira Dease, III.

18 DIRECT EXAMINATION BY MRS. MUNNERLYN:

19 Q. Where are you employed?

20 A. Bennettsville Police Department.

21 Q. And in what capacity?

22 A. Narcotics Investigator.

23 Q. And how long have you employed with the Bennettsville Police
24 Department?

25 A. A little over eleven years.

1 Q. Eleven years?

2 A. Yes.

3 Q. Okay.

4 And, ah, have you had any training and certification in the
5 area of analysis of marijuana?

6 A. Yes, I did.

7 Q. Okay.

8 And where was that?

9 A. At SLED.

10 Q. Okay.

11 And when did you get that training?

12 A. It was about two years ago almost.

13 Q. Okay.

14 And so you have a certification from SLED to analyze mg?

15 A. I do.

16 Q. Okay.

17 MRS. MUNNERLYN: Your Honor, I would move to qualify this
18 particular witness as an expert just in the analysis of marijuana
19 based on the training he has gotten and the certification he has
20 from SLED?

21 MR. BLAKE: Without objection.

22 THE COURT: Without objection. He's qualified in the
23 analysis of marijuana.

24 MRS. MUNNERLYN: Thank you, Your Honor.

25 Q. And in this particular case, the case of Keena Lamont Rivers,

INVESTIGATOR DEASE - DIRECT EXAMINATION BY MRS. MUNNERLYN 114

1 did you have the opportunity to analyze any evidence in regards to
2 whether it was marijuana?

3 A. I did.

4 Q. Okay.

5 I'm going to show you what's been marked now as State's
6 Exhibit #3 and see if you recognize that item.

7 A. Yes, I do.

8 Q. Okay.

9 And from where to you recognize this item?

10 A. Say that again?

11 Q. What is this item?

12 A. Marijuana.

13 Q. Okay.

14 Where did you get that?

15 A. Out of the evidence locker.

16 Q. Okay.

17 From Kale Hall?

18 A. Right.

19 Q. Okay.

20 On what date?

21 A. On the 9th.

22 Q. Of this month?

23 A. Yes.

24 Q. That was Monday?

25 A. Monday.

INVESTIGATOR DEASE - DIRECT EXAMINATION BY MRS. MUNNERLYN 115

1 Q. And when you received that from Officer Hall, what did you
2 proceed to do with it as a part of your analysis?

3 A. Um, first I had taken it out of the bag, and then I put it on
4 the scale to get the exact weight of the marijuana, and then I put
5 it under the microscope based on the training we received in order
6 to detect whether it's marijuana or not.

7 Q. Okay.

8 So, the microscopic test?

9 A. Right.

10 Q. Okay.

11 And did you perform any other test?

12 A. The chemical test.

13 Q. Okay.

14 And, ah, as a result of the microscopic and chemical test, did
15 you - - well, first of all, is this one or two items of evidence?

16 A. Two.

17 Q. Two separate items.

18 A. Yes.

19 Q. Two separate bags?

20 A. Right.

21 Q. Okay.

22 I'm going to show you what's been marked as State's Exhibit #1
23 which is two sheets. Do you recognize that?

24 A. Yes, I do.

25 Q. Okay.

INVESTIGATOR DEASE - DIRECT EXAMINATION BY MRS. MUNNERLYN

116

1 And what is that?

2 A. It's a Marijuana Analysis Work Sheet.

3 Q. Okay.

4 For two separate bags?

5 A. That's correct.

6 Q. Okay.

7 And this is - - this is your analysis?

8 A. That's correct.

9 Q. And it shows the results of your analysis of these two items
10 of evidence that are in State's Exhibit #3?

11 A. That's correct.

12 Q. Okay.

13 Um, if you would, then, tell us what the analysis - - what the
14 results of your analysis is on each of those?

15 A. The microscopic test was positive. The chemical test was
16 positive. The test result was positive, and I performed the
17 microscopic test and chemical test on Item 1 and as a result of
18 Item 1 tested positive as being marijuana.

19 Q. And what was the weight of that first item, that Item 1?

20 A. .8 ounce.

21 Q. .8 ounces.

22 A. That's correct.

23 Q. Okay.

24 And that was the first bag?

25 A. That's correct.

1 Q. Okay.

2 And - - and the second sheet, the second bag?

3 A. Yes.

4 Q. Okay.

5 And what are the results of that?

6 A. The weight of it is .1 - - .1 ounce. The microscopic test
7 was positive. The chemical test was positive and the test result
8 was positive. Results performed microscopic test on and chemical
9 test on Item #2, and as a result, Item #2 tested positive as being
10 marijuana.

11 Q. Okay.

12 So, both of these items, both of the substances, the green,
13 leafy substances in both bags tested positive for marijuana?

14 A. That's correct.

15 Q. Okay.

16 And that is what's reflected in your test in State's Exhibit
17 #1?

18 A. That's correct.

19 Q. Okay.

20 MRS. MUNNERLYN: Your Honor, I would move to admit State's
21 Exhibit #1 at this time.

22 MR. BLAKE: Without objection.

23 (The Court Reporter accepts State's Exhibit #1 in evidence.)

24 Q. Once you completed your testing in those two bags in State's
25 Exhibit #3, what did you do with those bags?

INVESTIGATOR DEASE - DIRECT EXAMINATION BY MRS. MUNNERLYN

118

1 A. I placed in a new evidence bag.

2 Q. This bag here?

3 A. Right. That's correct.

4 Q. Okay.

5 And then once you placed them in that bag, what did you do?

6 A. I put it back in the evidence room - - locker.

7 Q. Okay.

8 And that - - that - who is the Evidence Custodian that you
9 transferred those to for the evidence locker?

10 A. Officer Kale Hall.

11 Q. Okay.

12 And that was all done on the same day?

13 A. Yes, ma'am.

14 Q. All done on the 9th?

15 A. On Monday - - the 9th.

16 Q. Okay.

17 Now, you have just testified that you placed those two bags
18 that you analyzed in - - in the BEST bag in which it is packaged at
19 this time?

20 A. Correct.

21 Q. And that's how you sent it back to the evidence locker to - -

22 A. That's correct.

23 Q. Officer Hall.

24 Now, when you removed it, it was already in a BEST bag,
25 correct?

1 A. That's correct.

2 MR. BLAKE: Objection. Leading.

3 Q. When you removed it, what was - - what was the condition and
4 what was it in?

5 A. It was in sealed bag.

6 Q. Okay.

7 A. And, ah, and I cut the bottom of it to remove the items out of
8 that bag.

9 Q. Okay.

10 It was sealed. Had it been tampered with?

11 A. No.

12 Q. Okay.

13 Ah, and, ah, do you know who had placed into that sealed bag
14 that was presented to you?

15 A. It was already in the sealed bag when I got it.

16 Q. Right, and do you know who placed in that sealed bag? That
17 information is actually on that bag, correct?

18 A. Ah - - on which bag we speaking of?

19 Q. The bag inside - - the original bag when you obtained that the
20 two marijuana bags were in, the original BEST bag?

21 A. Uh-huh.

22 Q. Are those BEST bags sealed?

23 A. Yeah, it was sealed.

24 Q. Okay.

25 And so if it had been tampered with from the person initially

INVESTIGATOR DEASE - DIRECT EXAMINATION BY MRS. MUNNERLYN 120

1 placed it in that bag, then it would have been apparent to you at
2 that time?

3 A. That's correct. It would have been.

4 Q. And was it?

5 A. It wasn't.

6 Q. Okay.

7 So, it was still sealed?

8 A. That's correct.

9 Q. By the person who originally placed it - - -

10 MR. BLAKE: Judge, I would just ask that she - - -

11 THE COURT: No, I will permit this limited - - these
12 questions.

13 Go ahead.

14 Q. But the original bag that they were in before you started any
15 testing came to you in what condition?

16 A. It was sealed.

17 Q. Okay.

18 And those - - that is a BEST bag?

19 A. It's an evidence bag.

20 Q. An evidence bag.

21 A. Yes.

22 Q. And the officer who sealed - - how does that work? Is there
23 a process on the outside of it?

24 A. Yes. You indicate the case number, and you give a
25 description of the items.

INVESTIGATOR DEASE - CROSS EXAMINATION BY MR. BLAKE

121

1 Q. Okay.

2 A. And the officer who put it - - the contents in the bag.

3 Q. Okay. Okay. Alright.

4 And that is all encompassed within your bag, correct?

5 A. Right.

6 Q. So, the original bag is inside of your bag?

7 A. Right, inside this bag. Right.

8 Q. Okay.

9 MRS. MUNNERLYN: I have no further questions.

10 THE COURT: Mr. Blake.

11 CROSS EXAMINATION BY MR. BLAKE:

12 Q. Could you open the bag for us?

13 A. It's sealed.

14 Q. Well, you got a knife?

15 A. No, I don't carry a knife.

16 THE COURT: Mrs. Munnerlyn, you object to that?

17 MRS. MUNNERLYN: Yes, Your Honor.

18 If he opens it, the marijuana will be out - - -

19 THE COURT: No, sir, I'm not going to permit you to open
20 it.

21 MR. BLAKE: Judge, the marijuana is in separate bags.

22 THE COURT: No, sir.

23 MRS. MUNNERLYN: It's in baggies.

24 THE COURT: No, sir.

25 He's described it as marijuana. I'm not going to permit you

INVESTIGATOR DEASE - REDIRECT EXAMINATION BY MRS. MUNNERLYN 122

1 to open it.

2 Q. Alright.

3 So, one bag was .8 ounce, correct?

4 A. That's correct.

5 Q. And the other bag is .1 ounce, correct?

6 A. That's correct.

7 Q. You're a narcotics officer, aren't you?

8 A. Yes, sir.

9 Q. Okay.

10 How much is .1 ounce in size? Is it a thimbleful? Is it a
11 basketful? How much is .1 ounce.

12 A. Um, I - - I only go weight on the scale.

13 Q. Well, you looked at it. You saw it.

14 A. I did it on the scale.

15 Q. What was its size? I mean, was it as big as my fist?

16 A. I did it on the scale.

17 Q. You're not going to give us any indication of it's size. You
18 just weighed it. You didn't look at it?

19 A. I weighed it.

20 MR. BLAKE: No further questions.

21 REDIRECT EXAMINATION BY MRS. MUNNERLYN:

22 Q. Can the jury see the two different bags in here?

23 A. Yes, two.

24 Q. And this accurately represents how it was when you analyzed
25 it?

INVESTIGATOR DEASE - RE-CROSS EXAMINATION BY MR. BLAKE

123

1 A. That's correct.

2 Q. So, that is the size of it?

3 A. That's correct.

4 Q. And there's two separate bags in there?

5 A. That's correct.

6 Q. Okay.

7 And that's in State's Exhibit #3.

8 A. That's correct.

9 Q. Okay.

10 MRS. MUNNERLYN: No further questions.

11 THE COURT: Alright, sir. You may come down.

12 MR. BLAKE: I'm not done.

13 THE COURT: Sir?

14 MR. BLAKE: I'm not done.

15 RE-CROSS EXAMINATION BY MR. BLAKE:

16 Q. I can't get it out of here. So, we can't look at the two bags
17 and try to see them. You got the one bag has got more in it,
18 obviously. That's .8 ounce?

19 A. That's correct.

20 Q. And then the other smaller bag is .1 ounce?

21 A. That's correct.

22 Q. So the total weight of the two would be what?

23 A. .9 ounce.

24 Q. Less than an ounce?

25 A. .9 ounce.

INVESTIGATOR DEASE - RE-CROSS EXAMINATION BY MR. BLAKE

124

1 Q. Which is less than an ounce?

2 A. That's correct.

3 MR. BLAKE: No further questions.

4 THE COURT: Alright, sir. You may come down.

5 (The witness leaves the witness stand.)

6 MRS. MUNNERLYN: May we approach, Your Honor?

7 THE COURT: Yes, ma'am.

8 (Bench conference held off the record and in the presence of
9 the jury but outside the hearing of the jury.)

10 THE COURT: We've got one more witness for the State. I'm
11 going to let you go the jury room for just a few minutes to relax.
12 If anybody needs to take a smoke, take them downstairs and let them
13 do it.

14 And I'll be calling you back very shortly, now, no longer than
15 fifteen minutes.

16 (The jury retires to the jury room at 3:06 p.m.)

17 THE COURT: Dan, let me see you a minute.

18 Alright. Let's take a very short break.

19 (The Court recesses the trial of this case for a short break
20 and thereafter reconvenes the trial of this case.)

21 THE COURT: Alright. Be seated, please.

22 (The jury returns to the courtroom at 3:17 p.m.)

23 THE COURT: Alright, tell the lawyers the jury is in the
24 courtroom waiting on them.

25 Go get the defendant and Mr. Blake. Bring them out. The jury

SGT. TURNER - DIRECT EXAMINATION BY MRS. MUNNERLYN

125

1 is waiting..

2 Alright. Call your next witness, please. The defendant is in
3 court accompanied by his attorney.

4 MRS. MUNNERLYN: Thank you, Your Honor.

5 I would call Larry Turner to the stand.

6 (The witness takes the witness stand.)

7 SGT. LARRY W. TURNER, being duly sworn,
8 testifies as follows:

9 DEPUTY CLERK OF COURT: Be seated and state your name.

10 SGT. TURNER: Larry W. Turner.

11 DIRECT EXAMINATION BY MRS. MUNNERLYN:

12 Q. Sgt. Turner, where are you employed?

13 A. The Bennettsville Police Department.

14 Q. And how long have you been employed there?

15 A. This October will be 13 years.

16 Q. Alright, and in what capacity are you employed with the
17 Bennettsville Police Department?

18 A. I'm a Sergeant in the Investigative Division.

19 Q. And were you so employed back in December of 2007?

20 A. Yes, I was.

21 Q. Okay.

22 And were you working on the night of December 6th of '07?

23 A. Yes, I was.

24 Q. Okay.

25 And tell us what when you received a call from Lt. Williams'

SGT. TURNER - DIRECT EXAMINATION BY MRS. MUNNERLYN

126

1 wife.

2 A. Lt. Williams advised that he had received a call from his wife
3 stating that she had seen some gentlemen at the Exxon located in
4 Cheraw Street which is in the City Limits of Bennettsville, um,
5 with what was believed to be alcohol. She advised that the vehicle
6 was leaving from the Exxon traveling Cheraw Street back towards
7 East Main Street.

8 We just happened to be on Cheraw Street at the time of the
9 call. Um, so we went to that location to try to verify her story.

10 Q. Okay.

11 You had a description of the vehicle?

12 A. Yes, I did.

13 It was a either grey or silver type truck.

14 Q. And as - - you said y'all were already on Cheraw Street or the
15 Cheraw Street area at the time you received the call?

16 A. That's correct.

17 Q. Okay.

18 So, you immediately began traveling that way.

19 A. Yes, we did.

20 Q. And what is the first vehicle you saw when you traveled that
21 way?

22 A. A light in color pickup truck?

23 Q. Okay.

24 And where exactly were you when you first saw the truck?

25 A. We were traveling Cheraw Street towards the hospital Exxon

1 Station at #9, correction, Cheraw Street. As we approached Winston
2 Avenue and Bennett Point Apartments, we actually passed a truck
3 fitting that description at which time I did a U-turn and got
4 behind the vehicle.

5 Q. You actually passed it at the Bennett Point Apartments?

6 A. That's correct.

7 Q. And you did a U-turn immediately?

8 A. That's correct.

9 Q. And what did you do at that point?

10 A. Ah, got behind the vehicle, and as we got behind the vehicle
11 because the vehicle was not traveling at a high rate of speed, the
12 vehicle was actually traveling left of the yellow line in the fast
13 lane as I would refer to it traveling Cheraw Street back towards
14 Main Street.

15 Q. Okay.

16 And did you signal for the car to stop at that point?

17 A. I did. At that time I initiated my blue light.

18 Q. Okay.

19 And what did the car do in reaction?

20 A. It attempted that it was going to stop in the fast lane, and
21 then all of a sudden it made a right and went over to the - - the
22 slower lane and pulled over the side of the road and stopped.

23 Q. Okay.

24 That would be on the right-hand side of the road?

25 A. Yes, that would be.

SGT. TURNER - DIRECT EXAMINATION BY MRS. MUNNERLYN

128

1 Q. Okay.

2 And where, exactly, there on Cheraw Street did the car stop?

3 A. It would have been right as - - some people refer to it as
4 Bennett Point Apartments but it's actually called Marlboro Place
5 Apartments which is directly beside Bennett Point Apartments was
6 where the vehicle finally stopped at.

7 Q. Okay. Alright.

8 And it pulled over to the right-hand - - right-hand shoulder?

9 A. It was still - - I would say all four tires were still on the
10 highway but it was closer to the shoulder of the road than it would
11 be to the fast lane.

12 Q. Okay.

13 And once the vehicle came to a stop, what did you proceed to
14 do?

15 A. I exited my vehicle and walked up to the driver's side of the
16 vehicle at which time when I got to the vehicle, the defendant
17 already had his window rolled down.

18 I advised him the reason I had stopped him was because he was
19 driving on the - - the yellow line left of center. I also told him
20 that we had a complaint that someone had called about seeing him
21 drinking or someone in the vehicle drinking alcohol at the Exxon on
22 15th or Cheraw Street at which time I asked him if there were any
23 open containers inside the vehicle, and he stated no.

24 At that time I could smell alcohol coming from inside of the
25 vehicle. I asked him once again was there any alcohol inside the

1 vehicle, and he stated no again.

2 I asked him to put his vehicle in park and actually cut it
3 off. For some reason he stated there was no alcohol in the
4 vehicle. Then he stated, "I'm not."

5 I reached inside of the vehicle to open the door at which time
6 he took off with me inside the vehicle.

7 Q. Okay.

8 And why did you reach inside the vehicle to open the door?

9 A. Because he refused to cut his vehicle and would not exit the
10 vehicle after I had requested him to.

11 Q. Okay.

12 And when - - this was a truck?

13 A. Yes, ma'am, it was.

14 Q. What model?

15 A. It was actually a 2007 Chevrolet pickup truck.

16 Q. Okay.

17 A. It was actually silver in color.

18 Q. Two door, four door?

19 A. Four door - -

20 Q. Okay.

21 A. Like a crew cab sized vehicle.

22 Q. And who was actually driving the vehicle?

23 A. The defendant sitting beside Mr. Dan Blake.

24 Q. Okay.

25 MRS. MUNNERLYN: Your Honor, if the record will reflect he

SGT. TURNER - DIRECT EXAMINATION BY MRS. MUNNERLYN

130

1 has pointed out Keena Lamont Rivers as the driver of this
2 particular vehicle.

3 Q. So, you reached your arm in to open the door?

4 A. To open the door, yes, ma'am.

5 Q. That being which arm?

6 A. Ah, my left arm.

7 Q. Left arm?

8 A. Yes, ma'am.

9 Q. Okay.

10 And there were other passengers in the car - - in the truck
11 as well?

12 A. Yes. There was a passenger - - there was a person seated on
13 the passenger side, and, also, someone seated in the backseat.

14 Q. Okay.

15 And when you put your arm in the truck, what happened?

16 A. At that time the defendant accelerated his truck and left me
17 standing in the roadway.

18 Q. Okay.

19 Ah, and what did you proceed to do?

20 A. I went back and got in my vehicle. We pursued the vehicle.
21 It made a right turn on Center Street which is maybe a hundred
22 yards to a hundred and fifty yards from Center to where the vehicle
23 was actually stopped at. Once he made the right on Center Street,
24 he made another right onto Fara Street which is a dead-end street
25 in a residential neighborhood.

SGT. TURNER - DIRECT EXAMINATION BY MRS. MUNNERLYN

131

1 When he got to the dead-end portion of the road, he exited the
2 vehicle and started fleeing on foot along with what appeared to be
3 a passenger out of the right front side. I - - at the time I
4 wasn't sure if it was the front passenger or the back passenger of
5 the vehicle.

6 Ah, Investigator Bowman actually got in behind the defendant.
7 I was directly behind them. I guess they were in a lot better
8 shape than me, and they were able to get over the fences a lot
9 quicker than I was.

10 We pursued him into a canal ditch. It was a very deep ditch
11 that was very wooded, um, and the chase actually went back to
12 Cheraw Street where he was actually apprehended.

13 Q. Okay.

14 And you stayed with the chase until it came back to Cheraw
15 Street?

16 A. Yes. I was in the chase all the way to Cheraw Street. I
17 wasn't directly behind them, ah, in the canal ditch but I could
18 actually hear them running through the brush.

19 Q. Okay.

20 Ah, and, ah, who ultimately apprehended the defendant?

21 A. Investigator Bowman.

22 Q. And tell us what happened when you got close to the end of
23 that ditch at Cheraw Street.

24 A. Well, as the Chief said earlier, I actually fell trying to get
25 out of the ditch to get to Investigator Bowman. Once I was able to

SGT. TURNER - DIRECT EXAMINATION BY MRS. MUNNERLYN

132

1 get out, Investigator Bowman was actually trying to pull the
2 defendant up to his feet because I guess he was tired and he
3 couldn't get up. Investigator Bowman actually fell trying to get
4 him up at which time we were finally able to get him and seated him
5 on his butt on the side of the road.

6 Investigator was, as I was, was tired. I actually think he,
7 ah, got sick beside the road.

8 I then called - - -

9 Q. Who got sick beside the road?

10 A. Investigator Bowman.

11 Q. Okay. Okay.

12 A. Um, at which time the Chief had already pulled up as we were
13 getting him to seat him on his butt. I called for a Transport Unit
14 to come transport him to the jail, and then I tried to advise the
15 other units to set up a perimeter to see if we could apprehend the
16 other subject in the vehicle.

17 Q. Okay.

18 You still at that point had not apprehended the - - the
19 passenger who had run?

20 A. No, ma'am. To this day we still have not.

21 Q. Okay.

22 Ah, and when you came out of that ditch, he was handcuffed
23 after the struggle that you've already spoken of?

24 A. Yes, ma'am. Investigator Bowman was actually able to handcuff
25 him.

SGT. TURNER - DIRECT EXAMINATION BY MRS. MUNNERLYN

133

1 Q. Okay.

2 And he was seated on the ground?

3 A. Yeah. I was actually, myself and Investigator Bowman was able
4 to seat him on the ground.

5 Q. Okay.

6 Ah, and you then called for a Transportation Officer?

7 A. Yes, that's correct.

8 Q. Okay.

9 And did you remain there with him until she arrived?

10 A. That's correct.

11 Q. Ah, and what - - what - - and, again, what was the reason why
12 you called the Transportation Officer?

13 A. One, myself alone and Investigator Bowman, both of us was very
14 tired from the chase.

15 Two, I was trying to get the other officers to set up a
16 perimeter to see if we could actually apprehend the other suspect,
17 and Aretha Poe was the Transport Officer that actually showed up.

18 Q. Okay.

19 And she showed up how soon?

20 A. It was just a minute at the most, two minutes. The exact time
21 I'm not sure but it was not very long.

22 Q. Okay.

23 And he was - - where was the defendant when she arrived?

24 A. He was actually seated on the ground as she pulled up.

25 Q. Okay.

SGT. TURNER - DIRECT EXAMINATION BY MRS. MUNNERLYN

134

1 And when she arrived what, if anything, did you ask her to do
2 as a part of that transportation procedure?

3 A. We got him up off of the ground. I advised her that he had
4 not been searched yet. Would she search him before she put him
5 inside of her patrol car? She was standing facing him, um, and if
6 I remember correctly, she reached with her right hand into his
7 right front pants pocket.

8 When she removed her hand she had several bags. One bag
9 appeared be marijuana, and another bag appeared to be crack
10 cocaine. At that time she actually she just handed it to me
11 because I am a narcotics investigator. The patrol officers don't
12 deal with a whole lot of drug cases unless, you know, it's a
13 traffic stop or something.

14 She actually gave them to me, and I secured them inside - -
15 I had a tactical vest on. I removed - - I keep plastic zip-lock
16 bags on me. I removed the bag, put it inside the bag and put it
17 back inside my tactical vest.

18 Q. Okay.

19 And how long did she actually have custody of those?

20 A. From pulling it out of his pocket and handing it to me.

21 Q. Okay.

22 And you were how close to her and him when that - - when she
23 actually pulled them out of his pocket?

24 A. I would have been on her left side, and the Chief would
25 actually have been standing on her right side.

1 Q. Okay.

2 So, you were in close proximity to her, then?

3 A. Yes, that's correct.

4 Q. Okay.

5 And she immediately handed those items over to you?

6 A. Yes, ma'am.

7 Q. And you had custody of them from that point until when?

8 A. Until I put them inside - - the crack I actually secured into
9 a BEST package, um, to transport to SLED, and the marijuana because
10 we test it in-house, I put it inside of an evidence bag.

11 Q. Okay.

12 I'm going to show you what's been marked now as State's
13 Exhibit #3 and State's Exhibit #4 and see if you recognize those
14 two items.

15 A. Ah, these two items are the two individual bags of marijuana
16 that was taken from him. The bag that's on the inside of this bag
17 I can tell my handwriting where I logged his marijuana into
18 evidence.

19 Q. Okay.

20 Well, let me ask you about that a little further. You logged
21 these in separately?

22 A. Yes.

23 Q. Packaged separately?

24 A. This - - this was packaged separately because the crack
25 actually goes to SLED, and we test marijuana in-house.

SGT. TURNER - DIRECT EXAMINATION BY MRS. MUNNERLYN

136

1 Q. Okay.

2 And how exactly do you package the marijuana?

3 A. It goes inside of the evidence bag that's provided by the
4 Bennettsville Police Department.

5 Q. Okay.

6 A. That is a glued seal, tamper seal.

7 Q. Okay.

8 And you - - you placed it in that bag?

9 A. That's correct.

10 Q. Okay.

11 And I'm asking you. Inside this outer evidence bag is another
12 evidence bag.

13 A. Yes.

14 Q. What is that bag that is on the interior of the bag?

15 A. The bag that's on the interior of the bag is the bag that I
16 actually logged into the evidence locker where I placed the
17 marijuana inside of the evidence bag.

18 Q. Okay.

19 And that was, um, in the same or similar condition - - at that
20 time the marijuana in the two bags was in the same or similar
21 condition at that time as when you received it from Aretha Poe?

22 A. Yes, that's correct.

23 Q. Okay.

24 And you said those were two different bags of marijuana?

25 A. Correct.

SGT. TURNER - DIRECT EXAMINATION BY MRS. MUNNERLYN

137

1 Q. And you said that the writing on that particular bag is your
2 writing, and you recognize that bag as being the bag?

3 A. Yes, ma'am.

4 Q. And you did seal it when you logged it into evidence with
5 Officer Hall?

6 A. Yes, ma'am.

7 Q. And State's Exhibit #4 if you call tell me what you did with
8 that?

9 A. These are inside of the BEST bag is two plastic, ah, I would
10 call them sandwich bags. When she removed the bags from the
11 defendant, she handed the bags to me. As I said, I placed inside
12 of a baggie inside of my tactical vest.

13 When I got back to the Bennettsville Police Department to log
14 it into the BEST envelope to put it into evidence, when I took it
15 out there was a bag inside of a bag that had crack cocaine in both
16 of the bags.

17 So, it appeared to be one bag was actually two. One bag was
18 inside of the other bag.

19 Q. Okay.

20 A. So, that's why there's two bags inside of this evidence bag.

21 Q. So, there's two bags, and one contained a quantity, and the
22 second contained a separate quantity?

23 A. Yes, ma'am.

24 Q. Now, there's been some discussion by SLED Agent Wilson in
25 regards to seven quarter bags?

SGT. TURNER - DIRECT EXAMINATION BY MRS. MUNNERLYN

138

1 A. Yes, ma'am. One bag had seven individually wrapped pieces of
2 a bag, and the other bag just had a quantity inside of it that was
3 not wrapped.

4 Q. Okay.

5 But they were all in one bag?

6 A. Yes.

7 Q. And then within that bag was another bag that contained seven
8 quarter bags?

9 A. Yes. That's correct.

10 Q. Okay.

11 Ah, and tell us again. You put all of that - - all of those
12 pieces of white rock-like substance into what?

13 A. Into a manilla envelope that is - - is called a BEST bag, and
14 then it was logged into the evidence locker.

15 Q. Okay.

16 You placed it into a BEST bag?

17 A. Yes.

18 Q. And that is tamper resistant?

19 A. Yes, ma'am. That's the actual bag that's inside of the bag
20 that SLED sent back.

21 Q. This one inside here is the one you actually sealed?

22 A. Yes, ma'am.

23 Q. Okay.

24 And on the front of this, is that your signature on that BEST
25 packet inside of that piece of evidence?

SGT. TURNER - DIRECT EXAMINATION BY MRS. MUNNERLYN

139

1 A. Yes, ma'am. I -- my handwriting is very easy to notice.

2 Q. Okay.

3 So, once it was sealed, um, it was taken to SLED and then it
4 was analyzed later?

5 A. Yes, ma'am.

6 Q. But no one had it from the time you received it until the time
7 you placed it in that bag?

8 A. No, ma'am.

9 MRS. MUNNERLYN: Your Honor, I would move now to admit into
10 evidence State's Exhibit #3 and State's Exhibit #4.

11 MR. BLAKE: Without objection.

12 (The Court Reporter accepts State's Exhibits #3 and #4 into
13 evidence.)

14 Q. Now, um, these items were all in plastic bags, all these
15 alleged drugs were in plastic bags?

16 A. Yes, ma'am.

17 Q. And you submitted the crack to SLED for analysis to determine
18 whether or not it was crack?

19 A. That's correct.

20 Q. Ah, was there any submission in regards to fingerprinting?

21 A. No, ma'am. I -- I didn't think there was a reason to have
22 them submitted for fingerprints because it was taken directly out
23 of the defendant's pocket.

24 Q. Okay.

25 And how many people were present when it was removed from the

SGT. TURNER - DIRECT EXAMINATION BY MRS. MUNNERLYN

140

1 defendant's pocket?

2 A. Myself, Chief Larry McNeil, and, also, Aretha Poe.

3 Q. Okay.

4 Now, once you had this particular defendant in - - in custody,
5 ah, he was transport - - he was being transported to the jail by
6 Aretha Poe, did you make any further requests as to what - - what
7 tests might be performed in regards to him?

8 A. Yes, I did because there was actually some open containers of
9 alcohol inside of the vehicle, I had him transported to the jail
10 and then asked if the officer could actually run a Data Master Test
11 on him at the jail to see if he was DUI or not.

12 Q. Okay.

13 And what - - did an officer, in fact, attempt to run the Data
14 Master on this particular defendant?

15 A. Yes, he did, and if I remember, it was Austin Peele, Officer
16 Austin Peele.

17 Q. Okay.

18 And were there any successful from that Data Master?

19 A. He said they - - they were not able to get a - - a, um, a
20 result from it. It did not show that he was under the influence -
21 - or actually over the legal limit of alcohol to be driving.

22 Q. Okay.

23 So, there was no further charge in regards to that?

24 A. No, ma'am.

25 Q. Okay.

SGT. TURNER - DIRECT EXAMINATION BY MRS. MUNNERLYN

141

1 What about the open container?

2 A. He was charged - - -

3 Q. Did you go back to the truck?

4 A. Yes, ma'am.

5 Q. Okay.

6 And when you went back to the truck, what did you find in the
7 truck?

8 A. Um, there was three cans of beer, and if I remember correctly,
9 they were Natural Lite. There was a, um, I can't remember if it
10 was a eighteen pack or not in the back, actual back of the vehicle.
11 One of the beers had spilt inside of the vehicle.

12 Um, the items were taken by me and placed with the
13 Bennettsville Police Department. Over a period of time they were
14 done away with. Um, the case to my knowledge is done in Municipal
15 Court.

16 Q. Okay. Alright.

17 So, was there a ticket issued in regards to open container?

18 A. Yes, there was.

19 Q. Okay.

20 And that was as to this particular defendant.

21 A. Yes, ma'am.

22 Q. Now, this area that we've been talking about on Cheraw Street
23 and Center Street and Fara Street, what county is that located in?

24 A. Marlboro County.

25 Q. And that is, of course, in the City of Bennettsville, correct?

SGT. TURNER - DIRECT EXAMINATION BY MRS. MUNNERLYN

142

1 A. That's correct.

2 Q. And we, of course, have charged him with possession with
3 intend to distribute crack and possession with intent to distribute
4 marijuana. Can you explain why you made those two charges?

5 A. The reason he was charged with possession with intent to
6 distribute crack is because there was the individually packaged
7 white rock-like substance which has been tested to be crack, and
8 the bags of marijuana were two individually packaged bags of
9 marijuana, ah, which in my law enforcement career working as a
10 narcotics investigator, um, shows that's normally the way when it's
11 possession with intent to distribute.

12 Q. Okay.

13 They were packaged a special way that it - - it showed an
14 intent to distribute?

15 A. That's correct.

16 Q. Okay.

17 And they have also been charged with having, ah, he has been
18 charged in regards to having possession of these drugs, ah, within
19 one-half mile of a school or playground. Was there, in fact, a
20 school or playground within one-half mile of this particular, ah,
21 scene?

22 A. That was correct, both. The school located on Cheraw Street,
23 and there's also the playground Kid's Land Park on Center Street.

24 Q. Kid's Land Park is located on Center Street, and then there's
25 also what I think is now known as Bennettsville Middle School?

SGT. TURNER - DIRECT EXAMINATION BY MRS. MUNNERLYN

143

1 A. That is correct.

2 Q. On Cheraw Street.

3 And those are both located within one-half mile?

4 A. Correct.

5 Q. Once this particular defendant was transported to the jail,
6 did you have any further involvement with him?

7 A. No, ma'am.

8 Q. Other than the items of drugs which were seized from the
9 defendant's person and the beer which was seized from the truck,
10 was there any other evidence taken at that time?

11 A. There was some scales that was inside of the vehicle.

12 Q. Okay.

13 A. And a handgun.

14 Q. And a handgun?

15 A. Yes.

16 Q. Was the passenger ever located?

17 A. No, ma'am.

18 Q. Now, there was a third person in the vehicle as well. Is that
19 right?

20 A. That's correct.

21 Q. Okay.

22 And he remained in the truck while the chase was going on?

23 A. That's correct.

24 Q. Okay.

25 And did you or members of your staff have any conversations

SGT. TURNER - CROSS EXAMINATION BY MR. BLAKE

144

1 with him about this incident?

2 A. Ah, I talked to him briefly. Lt. Williams and Reserve Officer
3 Parrish stayed there with him at the truck. I couldn't speak if
4 they had any conversations with him or not. I'm not sure.

5 Q. Okay.

6 But he never left the truck?

7 A. No, ma'am.

8 Q. Okay.

9 Okay.

10 That's all the questions that I have. If you would answer any
11 questions that Mr. Blake has.

12 CROSS EXAMINATION BY MR. BLAKE:

13 Q. So, two people left the truck?

14 A. That's correct. The driver and the passenger.

15 Q. So, two people took off running?

16 A. Correct.

17 Q. But you never located the second person?

18 A. No, sir.

19 Q. The person who remained in the vehicle, who was that?

20 A. Derek Rivers.

21 Q. And what relation is he to Lamont Rivers?

22 A. I could not tell you.

23 Q. Did you charge Derek Rivers with anything?

24 A. No, sir.

25 Q. But you said he had three open containers?

SGT. TURNER - CROSS EXAMINATION BY MR. BLAKE

145

1 A. I said there was three open containers in the vehicle.

2 Q. And where were those three open containers located?

3 A. Two, if I remember correctly, were in the front, and one was
4 in the back.

5 Q. And is that where Derek Rivers was located?

6 A. Yes, sir.

7 Q. Did you complete the incident report for this case?

8 A. Yes, I did.

9 Q. Do you have a copy of with you at the stand?

10 A. No, I do not.

11 Q. But you have a copy here in the courtroom, don't you?

12 A. Yes, sir.

13 MR. BLAKE: Judge, could we have him get that copy so I can
14 ask him some questions from it?

15 THE COURT: Where is it?

16 MRS. MUNNERLYN: I - - can hand it up to him.

17 Q. Ah, down at the bottom there that's dated June 9th, correct?

18 I'm sorry, my mistake. December 6, 2007?

19 A. That's correct.

20 Q. But there's no place there to put time, is there?

21 A. Ah, it's up top.

22 Q. As to when you actually filled this out?

23 A. Yes, sir. It was between - - no. You asking me is there a
24 time - - what time I filled it out?

25 Q. Yeah.

SGT. TURNER - CROSS EXAMINATION BY MR. BLAKE

146

1 A. No, sir. There's not a time on there for that.

2 Q. Well, I understand about the call-in times, dispatch times,
3 that sort of time. Just so - - you mentioned that. What was the
4 dispatch time on this call?

5 A. 22:03 which would have been 10:03.

6 Q. 10:03 in the evening?

7 A. Yes, sir.

8 Q. Okay.

9 And you've a got depart time there of what?

10 A. 22:52 which is a 10:52.

11 Q. Almost 11:00?

12 A. Yes, sir.

13 Q. So, I take it, then, that you went straight back to the office
14 and typed this report in?

15 A. No, sir. I actually stayed on the scene trying to set a
16 perimeter up so we could locate the other subject that had fled
17 from the vehicle.

18 Q. So, when did you actually type this report up?

19 A. That would have been the next day.

20 Q. 12/7?

21 A. Yes, sir. I started the report that night and finished the
22 next day.

23 Q. That night probably after midnight some time?

24 A. It - - it - - probably so.

25 Q. Do you remember everything that you charged Mr. Rivers with

SGT. TURNER - CROSS EXAMINATION BY MR. BLAKE

147

1 that night?

2 A. Not until I looked back at the report I did not.

3 Q. And I think it's down near the bottom of the first page in
4 your report where you say he was arrested for assault and battery
5 with the intent to kill, PWID crack, proximity, PWID marijuana,
6 proximity, failure to stop for a blue light, driving left of center
7 and possession of drug paraphernalia. Is that correct?

8 A. That's correct.

9 Q. Didn't you also charge him with failure to stop on command?

10 A. Not that I recall. Now, I could have.

11 (The Court Reporter marks Defendant's Exhibits #4 and #5 for
12 identification.)

13 Q. Passing up Defendant's Exhibit #4 and #5. Those are the blue
14 tickets you wrote that night. Does that refresh your recollection?

15 A. Yes, sir.

16 Q. So, you did give him a ticket for failure to stop on command?

17 A. Yes, sir. Drug paraphernalia, left of center and open
18 container.

19 Q. Out of all of these charges, was there any charge for
20 resisting arrest?

21 A. No, sir.

22 Q. Your testimony earlier said that the gun was found on the
23 passenger seat but you did charge him with that. You got a judge
24 to sign a warrant for violation of gun law?

25 A. Yes, sir.

SGT. TURNER - CROSS EXAMINATION BY MR. BLAKE

148

1 Q. You also got the judge to swear a warrant for assault and
2 battery with the intent to kill?

3 A. Yes, sir.

4 Q. But you're not going forward on those two charges today?

5 A. No, sir. The date was actually typed on the warrant as the
6 7th, and it took place on the 6th.

7 Q. But that's not true about the gun law, is it?

8 A. The gun warrant?

9 Q. Right.

10 A. It's on 12/6/07.

11 Q. So, that was correct. The date was correct on the gun
12 warrant?

13 A. Yes, sir.

14 Q. You're saying there was confusion with the assault warrant?

15 A. Yes, sir. The date.

16 Q. Otherwise you would have gone forward with assault and battery
17 with the intent to kill?

18 A. I'm assuming the Solicitor's Office would have, yes, sir.

19 Q. Okay.

20 I count that as ten different charges. Is that about right?

21 A. Um - - that's about right.

22 Q. Four of which are in lower court?

23 A. Yes, sir.

24 Q. You - - you said you thought they might be already handled but
25 you don't know that, do you?

SGT. TURNER - CROSS EXAMINATION BY MR. BLAKE

149

1 A. No, sir, I don't.

2 Q. If I was to tell you they were still open, you wouldn't really
3 know that, would you?

4 A. I would not.

5 The only way I would know is when they notify me that we
6 needed to come for the court date because most of the time these
7 cases, if there is a general sessions case, they hold them until
8 you come to General Sessions Court to find out what the
9 determination is on the high court cases.

10 Q. Right.

11 Is that why you're saying the evidence was destroyed on the
12 beer and stuff is because you thought the case was disposed of in
13 the lower court?

14 A. Yes, sir.

15 Q. Let's move on to talking about the, ah, drug charges.

16 You talked about how there was an inference of possession with
17 intent to distribute from the packaging?

18 A. Yes, sir.

19 Q. Is there some other way that you can have an inference as to
20 distribution?

21 A. The weight.

22 Q. And for marijuana what would that weight be?

23 A. 28 grams.

24 Q. And how many ounces is that?

25 A. I - - I would have to look at a chart to convert the math over

SGT. TURNER - CROSS EXAMINATION BY MR. BLAKE

150

1 unless you can tell me.

2 Q. One ounce, and the marijuana weighted how much?

3 A. I think Investigator Dease said .9 ounces?

4 Q. That's correct.

5 If you just have a simple possession charge like that, do you
6 have a proximity to go along with it?

7 A. No, sir.

8 Q. So, you don't get those two proximity charges unless you can
9 establish the possession with intent to distribute?

10 A. Yes, sir.

11 Q. But that's a coming up with intent by either the packaging or
12 the weight?

13 A. That's correct.

14 Q. You try to look into the defendant's mind and figure out what
15 he was doing?

16 A. Yes, and the reason why is because, normally, you don't find
17 scales, and somebody that uses marijuana, you - - normally they
18 would accompany it with having either rolling paper or blunts which
19 were not located inside of the vehicle.

20 Q. So you did find some scales in the backseat?

21 A. There were some scales. I don't remember where they were
22 found. There were some scales inside the vehicle.

23 Q. Now, you say you had three open containers there?

24 A. Yes, sir.

25 Q. You never found the passenger?

SGT. TURNER - CROSS EXAMINATION BY MR. BLAKE

151

1 A. No, sir.

2 Q. But the guy in the backseat, he never ran?

3 A. No, sir.

4 Q. But there was an open container back there, too?

5 A. Correct.

6 Q. But he was not charged?

7 A. Correct.

8 And the reason why was he said that somebody passed him the
9 beer when we were actually stopping the car, um, that they did not
10 belong to him. So I charged the driver because I - - he was
11 responsible for what was inside of that vehicle just as I would be
12 if I were stopped for something.

13 Q. And you accepted his explanation?

14 A. Yes, sir.

15 I had no reason not to believe him. He did not flee from me.

16 Q. Well, we don't have here today those beer cans, either the
17 opened ones or the closed ones?

18 A. No, sir. I didn't know we'd be trying a Municipal Court case
19 in General Sessions.

20 Q. Well, you don't think that the beer cans are relevant to the
21 General Sessions case?

22 A. No, sir. Because my actual stop was based on him driving left
23 of center.

24 Q. The actual stop was him based - - based on him being left of
25 center.

SGT. TURNER - CROSS EXAMINATION BY MR. BLAKE

152

1 A. Yes, sir.

2 Q. However, you say that you got a phone call from Lt. Williams'
3 wife saying that you had someone driving out on the city streets
4 who had been drinking. Correct?

5 A. Correct.

6 Q. You sat here through all of this testimony, right?

7 A. Yes, sir.

8 Q. You really are the only officer who has done so?

9 A. Yes, sir.

10 Q. Because we like to keep the witnesses outside so they don't
11 hear what's being testified to.

12 A. Yes, sir.

13 Q. Now, you said that you had Mr. Rivers tested for alcohol in
14 his blood, correct?

15 A. Correct.

16 Q. Um, was - - was Officer Peele working for the police
17 department at that time?

18 A. Yes, he was.

19 Q. And I assume you had the test done because you had some
20 thought that he might have been drinking and driving.

21 A. Yes, sir.

22 Q. Correct?

23 A. Because after we stopped him for left of center, we got in a
24 chase. Once we were able to apprehend him, we went back and
25 searched the vehicle. The containers were found inside of the

SGT. TURNER - CROSS EXAMINATION BY MR. BLAKE

153

1 vehicle.

2 Q. Well, is that - - didn't you receive a phone call that you had
3 somebody that might be drinking and driving?

4 A. Yes, sir. We received a phone call that we, ah, somebody may
5 have an open container.

6 Q. I just handed you up that Data Master result.

7 A. Yes, sir.

8 Q. Was there any level of alcohol in Mr. Rivers' system at all?

9 MRS. MUNNERLYN: Your Honor, I object to this question. He
10 - - he was not present when the Data Master was performed.

11 THE COURT: He is not charged with driving under the
12 influence.

13 MRS. MUNNERLYN: No, he is not.

14 THE COURT: I sustain that - - on both grounds.

15 Q. But you suspected he might have been drinking and driving?

16 A. I suspected based on the phone call from Lt. Williams' wife to
17 him. Yeah, there could be some possible grounds.

18 Q. But you did not write a ticket for DUI?

19 A. No, sir.

20 Q. So, a minor point but you say that Derek Rivers in the
21 backseat said that somebody handed it back to him?

22 A. Yes, sir.

23 Q. And you were here. Do you remember where that beer was found
24 or where did you see that beer?

25 A. If I remember correct, two of them were in the front, and one

SGT. TURNER - CROSS EXAMINATION BY MR. BLAKE

154

1 was found in the back.

2 Q. Do you know where in the back?

3 A. No, sir.

4 I think the officer may have testified in the - - behind one
5 of the seats but I didn't locate it.

6 Q. But you did go back to the vehicle you said?

7 A. Yes, sir.

8 Q. You just don't remember where you saw those things?

9 A. I don't know where they were recovered from. I wasn't there
10 at the time.

11 Q. But you did go back and search the vehicle?

12 A. I went back to the vehicle. They had actually already
13 searched the vehicle by the time I had got back.

14 Q. Who took the gun into custody?

15 A. I did.

16 Q. So, you took the gun into custody but you didn't take the beer
17 into custody?

18 A. Yes, sir. I took the beer into custody but it had already
19 been just like the gun had already been located by the time I got
20 back.

21 Q. Oh. So, you're saying somebody gave it to you so you - - to
22 hold it but you didn't take it out of the vehicle?

23 A. No, sir.

24 Q. Well, which was it? You initiated the stop for left of
25 yellow line or for this someone driving the car with an open

1 container?

2 A. I initiated the traffic stop for the left of center.

3 Q. You're driving in one direction on Cheraw Street. He's
4 driving the other. You - - the three of you make a U-turn. Come
5 back around after him but you stopped only for left of center.

6 A. As I stated earlier, we went to try to verify her story of the
7 vehicle that she saw, the persons in question that was inside of
8 the vehicle. We saw a vehicle that fit that description. I made
9 a U-turn on the vehicle. Got behind the vehicle. Did not blue
10 light the vehicle at that time.

11 Once I got behind the vehicle, the vehicle was actually
12 driving on the yellow line left of center. Then I initiated a
13 traffic stop for the vehicle being left of center.

14 Q. I guess that would have given you pretty good thought for DUI,
15 wouldn't it?

16 MRS. MUNNERLYN: Objection, Your Honor. We've said he's
17 not - - -

18 THE COURT: DUI is not an issue in this case. He's not
19 charged with that. Move on to something else.

20 Q. So, he was driving erratically, I take it?

21 A. He was driving left of center. I don't know what your
22 description of erratically would be.

23 Q. You stopped him basis - - on the basis of driving left of
24 center?

25 A. Correct.

SGT. TURNER - CROSS EXAMINATION BY MR. BLAKE

156

1 Q. And you said he went over the double yellow line?

2 A. He was actually driving on the yellow line.

3 Q. Are there two yellow lines there? Is there a medium?

4 A. Yes, sir. There's just the lines. There's not a medium at
5 that - - at that particular spot in the roadway.

6 Q. So, you stopped him for driving on the yellow line?

7 A. Yes, sir.

8 Q. How long was he driving on that yellow line?

9 A. When I got back up behind him which was in a matter of
10 seconds, he was already driving on the yellow line. When I saw him
11 driving on the yellow line at that time I initiated my blue light.

12 Q. And after figuring out where to pull over, he pulled over.

13 A. That's correct.

14 Q. He stopped.

15 A. Yes, sir.

16 Q. You got out of your vehicle?

17 A. Yes, sir.

18 Q. You approached him on the driver's side?

19 A. Yes, sir.

20 Q. You asked to see his license and registration?

21 A. No, sir. When I first approached him I advised him that I
22 had stopped him because he was driving left of center. Then I told
23 him that we had received a complaint that there was possible open
24 containers in his vehicle that he had been seen at the Exxon
25 possibly drinking alcohol.

SGT. TURNER - CROSS EXAMINATION BY MR. BLAKE

157

1 I asked him was there any alcohol in the vehicle at the time.
2 He said no. I - - we went through that line of questioning several
3 times. I asked him to step from the vehicle. He kept saying there
4 was no alcohol in the vehicle.

5 Once he would not exit the vehicle and I could smell the
6 alcohol in the vehicle, I reached in to unlock the door because the
7 door was locked when I attempted to open it from the outside, and
8 that's when he fled in the vehicle.

9 Q. So, you didn't ever ask for his license and registration?

10 A. Never got to that point.

11 Q. Isn't that the first thing that you do?

12 A. No, sir.

13 Or not me. I try to advise them why I actually stopped them
14 first.

15 Q. So you said you stopped him left of center, actually on the
16 center line there and that he - - you heard that he was driving
17 with an open container?

18 A. That somebody in the vehicle had an open container. I didn't
19 know at the time if it was him or not.

20 Q. We were told there was an open container in the console
21 between the passenger and the driver's seat. Did you see that?

22 A. No, sir. I just saw the three cans of beer.

23 Q. Saw what?

24 A. The three cans of beer that was inside of the vehicle after it
25 had been searched.

SGT. TURNER - CROSS EXAMINATION BY MR. BLAKE

158

1 Q. Afterwards?

2 A. Yes.

3 Q. Not at the first stop?

4 A. No, sir. I could only smell it at the first stop.

5 Q. You smelled alcoholic beverages at the first stop?

6 A. Yes, sir.

7 Q. And you were on the driver's side?

8 A. Yes, sir. It was actually beer was poured or spilled inside
9 of the car.

10 Q. Oh, you saw beer spilled inside of the car - -

11 A. No, no, no.

12 Q. - - at the first stop?

13 A. No. I could smell alcohol coming from inside of the vehicle
14 from the first stop.

15 Q. Do you know where that was coming from?

16 A. I didn't know whether it was coming off of them or from inside
17 of the vehicle. That's why I asked were there any open containers
18 in the vehicle.

19 Q. Do you know where that smell was coming from?

20 A. It was coming from one of the beers, evidently, that had
21 spilled inside of the vehicle or it could have actually been coming
22 from the can. It may not have been spilled at that time. I mean,
23 it could have spilled during the chase.

24 Q. So, you reached in to unlock the door?

25 A. Yes, sir.

SGT. TURNER - CROSS EXAMINATION BY MR. BLAKE

159

1 Q. And that's when he pulled off?

2 A. Yes, sir.

3 Q. You did charge him with assault and battery with the intent to
4 kill. Were you injured in that? Did you go to the hospital?

5 A. The vehicle struck me, actually, in the left arm spinning me
6 around almost knocking me down, and that was why he was charged
7 with the ABWIK charge.

8 Q. But you got to your car pretty quickly?

9 A. Yes, sir, after I regained my balance. Yes, sir.

10 Q. And then the chase, you said it was a hundred and fifty - -
11 you said feet or yards?

12 A. It was anywhere from maybe a hundred to a hundred and fifty
13 yards before we actually got to Center Street. It was a short
14 distance.

15 Q. Turn right and how far is that on Center Street before you get
16 to the next right?

17 A. Maybe another hundred or hundred and fifty yards, and that
18 road, maybe, two hundred or two hundred and fifty yards to the dead
19 end.

20 Q. So, how long would that whole chase take?

21 A. I'd say a minute, less than a minute because he didn't have
22 anywhere to go once he got on Fara Street.

23 Q. And then the driver and the passenger jumped out?

24 A. That's correct.

25 Q. And started running?

SGT. TURNER - CROSS EXAMINATION BY MR. BLAKE

160

1 A. Yes, sir.

2 Q. Bowman ahead of you. You right behind him?

3 A. Yes, sir.

4 Q. And then, finally, that ditch comes to an end at Cheraw Street
5 where the pipe is, the culvert?

6 A. Yes, sir.

7 Q. And you came up shortly?

8 A. Yes, sir.

9 Q. A little aggravated at this point?

10 A. No, more or less give out.

11 Q. Just given out?

12 A. Yes, sir.

13 Q. I've heard lots of different - - several different stories
14 about what happened there. Where was he handcuffed?

15 A. In the - - behind him, protocol for us.

16 Q. Well, was he handcuffed up on Cheraw Street or down in the
17 ditch?

18 A. He was actually handcuffed outside of the ditch.

19 As you go up the ditch, the ditch stops. You got to grab some
20 things. For example, I'll use this as the embankment.

21 Once you come down the ditch, you start going up the
22 embankment. There's actually a grassy spot right here. He was
23 actually handcuffed on that grassy spot. So, I would say actually
24 he was outside the ditch but he was not up on level - - level
25 ground. He was still on an incline.

1 That's why Investigator Bowman attempted to try to get him up
2 to get him up on level ground so he would not fall back into the
3 ditch like I did.

4 Q. So, he was handcuffed at that landing there?

5 A. Yes, sir.

6 Q. And then how was he gotten up the rest of the ditch?

7 A. By, actually, me getting him up, he was able to get up to his
8 - - actually, when he was with me, he couldn't make it all the way
9 to his feet. I was able to get up, and we set him on his butt.

10 Q. How far was it that last part of the ditch? How many feet is
11 that?

12 A. Five feet.

13 Q. So, he's handcuffed with his hands behind his back?

14 A. Yes, sir.

15 Q. And how did you lift him up?

16 A. I actually rolled up and got him up. Like I said, I don't
17 actually remember if he - - I don't think he came all the way to
18 his feet because I think he was give out just like we were. He was
19 up to his knees, and we were able to get him up to the level
20 ground.

21 Q. So after all this, one stop. He actually takes off on you.
22 You've got to chase him down. You - - you weren't frustrated at
23 all?

24 A. Give out, not frustrated.

25 Q. You didn't take out your frustration on him at all?

SGT. TURNER - CROSS EXAMINATION BY MR. BLAKE

162

1 A. No, sir.

2 Q. You didn't strike him at all?

3 A. No, sir.

4 Q. You didn't see Detective Bowman strike him at all?

5 A. No, sir.

6 Q. You didn't see any blows happen to Mr. Rivers up there on the
7 street?

8 A. No, sir. The only thing I saw was Investigator Bowman
9 attempting to get him up and actually falling.

10 Q. And it's your testimony that Aretha Poe searched him in front
11 of you and Chief McNeil?

12 A. Yes, sir.

13 Q. Officer Bowman did not search him at all?

14 A. No, sir, not that I can recall.

15 Q. And you clarified for us - - having listened to the testimony,
16 you clarified and said that she reached in with her right hand and
17 went over to his right pocket. Is that correct?

18 A. I'm assuming that because she is right-handed. If that would
19 have been me I would - - that's the way I would have done it, and
20 that would have been her closest pocket to her.

21 Q. Well, the closest pocket would be the left, wouldn't it?

22 A. If she's reaching with her right hand, she's facing you for
23 example, well, actually, that would be your left pocket, yeah. Her
24 right hand, your left pocket.

25 Q. But you didn't actually see it?

SGT. TURNER - CROSS EXAMINATION BY MR. BLAKE

163

1 A. No, sir. I'm just assuming that.

2 Q. So you were pretty close behind Bowman?

3 A. I was close enough to know that Investigator Bowman had
4 actually apprehended him. I mean, I was not right behind them
5 because it was dark, and you running through a canal ditch that's
6 heavily wooded. The only way I was able to stay with him, I could
7 actually hear him going through the canal because I would have to
8 stop because I didn't have any light with me. I didn't have a
9 flashlight or anything to be able to tell which way they were
10 actually going.

11 Q. Now, we're told that there were two people actually running?

12 A. Yes, sir, that's correct.

13 Q. And that ditch, he jumps in the ditch and took off towards
14 Cheraw Street?

15 A. Yes, sir.

16 Q. They both took off towards Cheraw Street?

17 A. No, sir. When they went over the first chain link fence and
18 through the residence off of Fara Street, the driver kept straight
19 and started angling to the left. The passenger actually went right
20 and went behind the house but we were - - the driver was the one
21 that had committed the infraction. So that's why we went after the
22 driver and not the passenger.

23 Q. Alright.

24 So, the two of you are going after one person, and you let the
25 other one slip away?

SGT. TURNER - REDIRECT EXAMINATION BY MRS. MUNNERLYN

164

1 A. Correct.

2 Q. The unknown passenger wasn't there at the dead end of the
3 ditch?

4 A. No, sir.

5 Q. But for sure, you never found that second person?

6 A. No, sir, we never found him.

7 Q. But there were two people running?

8 A. Yes, sir.

9 Q. And you said it was quite dark in there?

10 A. Yes, sir.

11 MR. BLAKE: One moment, please.

12 No further questions.

13 REDIRECT EXAMINATION BY MRS. MUNNERLYN:

14 Q. I just want to clear a couple of things up, Sgt. Turner.

15 Now, you actually approached the vehicle the first time when
16 he stopped?

17 A. Yes, ma'am.

18 Q. You approached the driver's side - - -

19 MR. BLAKE: Excuse me.

20 Q. You approached the driver's side, and how close were you to
21 the actual driver?

22 A. Right up on him on the driver's side to the point where I
23 actually reached inside of the vehicle.

24 Q. Based on that encounter only, can you determine who was the
25 driver?

SGT. TURNER - REDIRECT EXAMINATION BY MRS. MUNNERLYN

165

1 A. The defendant sitting beside Mr. Blake.

2 Q. Okay, and that was the same person that you chased when he
3 jumped out of the vehicle?

4 A. That's correct.

5 Q. Okay.

6 And that was the same person that was apprehended out on
7 Cheraw Street after you got up out of the ditch?

8 A. That's correct.

9 Q. No question from the start until the finish that person never
10 changed?

11 A. No, ma'am.

12 Q. So you didn't start chasing a different person and end up
13 catching a passenger?

14 A. No, ma'am.

15 The defendant went towards the ditch. The passenger went
16 right and behind the residence. No question whatsoever.

17 Q. But you had an opportunity when you stopped the truck the
18 first time to visual within a very short distance who the driver
19 was?

20 A. Yes, ma'am, because I had a conversation with him.

21 Q. Okay.

22 Now, um, you indicated that there was a gun found in the
23 vehicle? Where was the gun found?

24 A. On the passenger seat.

25 Q. Okay.

SGT. TURNER - RE-CROSS EXAMINATION BY MR. BLAKE

166

1 And you did find some scales?

2 A. Yes, ma'am.

3 Q. But you've indicated there were no rolling papers or anything
4 of that nature found in the truck?

5 A. No, ma'am.

6 Q. And he was charged as - - under a city ordinance for what's
7 called failure to stop on command?

8 A. Yes, ma'am.

9 Q. And that was on the ticket?

10 A. Yes, ma'am.

11 Q. That's a separate offense from failure to stop for a blue
12 light?

13 A. Yes, ma'am.

14 Q. And that is, basically, for failing to stop when asked to do
15 so - -

16 A. Yes, ma'am.

17 Q. - - by an officer? In other words, by verbal command?

18 A. Yes, ma'am.

19 Q. Okay.

20 MRS. MUNNERLYN: No further questions.

21 MR. BLAKE: One question, Judge.

22 THE COURT: Yes, sir.

23 RE-CROSS EXAMINATION BY MR. BLAKE:

24 Q. You just said very clearly that you were right up on him at
25 that first stop?

THE STATE RESTS/MOTIONS AND RULING OF THE COURT

167

1 A. Yes, sir.

2 Q. But you can't tell us whether you smelled alcohol from his
3 breath or whether it was coming from the car?

4 A. No, sir. It was so strong I couldn't tell you if it was
5 coming from him or in the car

6 Q. So strong.

7 Thank you.

8 THE COURT: Alright, sir. You may come down, Officer.

9 (The witness leaves the witness stand.)

10 THE COURT: Is there any further witness for the State?

11 THE STATE RESTS

12 MRS. MUNNERLYN: No, Your Honor. That's all the State
13 would have. The State would rest.

14 THE COURT: The State rests.

15 I'm going to let you go to your jury room for just a minute,
16 and we'll bring you back and start the defendant's case.

17 (The jury retires to the jury room at 4:11 p.m.)

18 MOTION AND RULING OF THE COURT

19 THE COURT: Alright. We going to proceed now an probably
20 try and work until around 6:00.

21 Any motions for the defense at this time?

22 MR. BLAKE: Judge, I would make a motion for a directed
23 verdict on the insufficiency of the evidence.

24 THE COURT: Well, obviously, if believed the evidence is
25 actually overwhelming by the identification and the fact that

CHARGE TO THE DEFENDANT - RIGHT TO TESTIFY OR NOT

168

1 there's evidence that they actually found it in the pocket.
2 There's further evidence that it was tested for marijuana and
3 cocaine. That motion is respectfully denied.

4 Anything further?

5 MR. BLAKE: Not from the defendant, Your Honor.

6 THE COURT: Have the defendant stand, please.

7 (The defendant stands before the Court.)

8 CHARGE OF THE COUR TO DEFENDANT - RIGHT TO TESTIFY OR NOT

9 THE COURT: Mr. Defendant, we are at that stage in the case
10 where you may call any witnesses that you have on your behalf. You
11 understand that?

12 MR. RIVERS: Yes, sir.

13 THE COURT: In addition to that, you have the absolute
14 right to testify here on this stand under oath. You understand t?

15 MR. RIVERS: Yes, sir.

16 THE COURT: If you elect not to testify I will specifically
17 charge the jury that that is your absolute constitutional right as
18 it is mine. I would charge the jury that the fact that you did not
19 testify if that be the case cannot even enter into their
20 deliberations in the jury room.

21 Now, obviously, as to whether you wish to testify or not
22 testify is something that you would discuss with your attorney but
23 the ultimate decision rests with you. Do you understand that?

24 MR. RIVERS: Yes, sir.

25 THE COURT: You cannot be heard to say that I wanted to

PRIOR RECORD OF DEFENDANT

169

1 testify and my lawyer wouldn't let me or I didn't want to testify
2 and my lawyer insisted that I do. That's your decision. You can
3 consider what your lawyer says but it's your decision and nobody
4 else's. Do you understand that?

5 MR. RIVERS: Yes, sir.

6 THE COURT: Mr. Blake, is it his intention to testify or
7 not testify?

8 MR. BLAKE: I believe he wishes to testify, Judge.

9 THE COURT: I will certainly honor that request.

10 Alright. Are we ready to proceed?

11 MR. BLAKE: Yes, Your Honor.

12 THE COURT: Y'all come - - lawyers, come forward, please.
13 You may be seated.

14 (The defendant resumes his seat at the defense table.)

15 THE COURT: Mrs. Munnerlyn, come forward.

16 (Bench conference held off the record and outside the presence
17 of the jury.)

18 PRIOR RECORD OF DEFENDANT

19 THE COURT: Let - - we're on the record now.

20 I'm advised by the defendant that he proposes to testify as is
21 his constitutional right. I'm further advised by the Solicitor's
22 Office that he has an alleged trial record involving among other
23 things burglary and grand larceny, both of which are crimes of
24 dishonesty. Under the appropriate statute crimes of dishonesty
25 are admitted without the necessity of weighing prejudice against

PRIOR RECORD OF DEFENDANT

170

1 the necessity for it, and I will permit only that portion of his
2 record with regards to crimes of dishonest. You understand?

3 MRS. MUNNERLYN: Yes, sir. I understand. He's got that
4 burglary.

5 THE COURT: It will be given under proper instructions it
6 will not be used in any way of any evidence of any guilt in this
7 case.

8 Now, I want it further advised that you - - there's going to
9 be as I understand it alleged testimony that there was physical
10 cruelty upon this defendant, you understand. Is that right, Mr.
11 Blake?

12 MR. BLAKE: Yes. A prior incident, Judge.

13 THE COURT: Okay.

14 I will permit that testimony only as to his - - to his alleged
15 reasons for failure to stop or for running. It will not be any
16 defense to any other charges. You understand that?

17 MR. BLAKE: Yes, Your Honor.

18 THE COURT: Alright, sir.

19 And do you agree that it is for the jury to determine but,
20 preliminarily, outside the presence of the jury, do you agree that
21 he does have two crimes of dishonesty; to-wit: burglary and grand
22 larceny?

23 MR. BLAKE: Yes, Your Honor.

24 THE COURT: Alright, sir.

25 Anything else before we proceed?

PRIOR RECORD OF DEFENDANT

171

1 Now, please, Mrs. Munnerlyn, limit that inquiry to prior
2 records only as to crimes of dishonesty?

3 MRS. MUNNERLYN: Yes, sir.

4 THE COURT: I'm advised that there are some other charges
5 on his record.

6 MRS. MUNNERLYN: I'm only going to ask him about those two.
7 I understand the Rule.

8 THE COURT: Alright.

9 Are we ready to go?

10 MR. BLAKE: Judge, I need one minute. I have my - - -

11 THE COURT: Let me ask you this now. When he testifies as
12 to some alleged prior physical abuse, is that going to bring in his
13 prior record at that time?

14 MR. BLAKE: I think it would be limited, Judge. Mr.
15 Locklear happens to be here, I guess, for the Sheriff's Office. He
16 was actually involved in it.

17 THE COURT: Well - - -

18 MR. BLAKE: I'm not calling him as a witness.

19 THE COURT: Okay.

20 If you do it, now, be careful because if you go to far with
21 it, then they're entitled to show why he was arrested and what was
22 the basis for the activity.

23 As an example, on some part of some arrest, if you allege that
24 somebody hit him, he may have started that difficulty. I don't
25 know - - I don't know a thing about this but just be careful about

PRIOR RECORD OF DEFENDANT

172

1 it.

2 MRS. MUNNERLYN: I don't either, Judge. I would like to
3 know who this person is so that I can try to find out where they
4 are and where I can get them if this is a prior record.

5 THE COURT: It is that time, now, and they are entitled to
6 know what his record is, too. They're entitled to check it out.

7 Which witness is going to testify to that?

8 MR. BLAKE: Well, the witnesses will testify to his
9 injuries. One saw the blow being struck and saw the injury
10 afterwards and then the other person saw the injury.

11 THE COURT: What is that witness?

12 MR. BLAKE: They're back in the back.

13 THE COURT: But what are their names?

14 MR. BLAKE: Janesha Johnson and Derek Rivers.

15 MRS. MUNNERLYN: Your Honor, I would just like to know the
16 name of the officer who is alleged to have struck him.

17 MR. BLAKE: I stated earlier.

18 THE COURT: Pardon me?

19 MRS. MUNNERLYN: Jeffrey Locklear?

20 MR. BLAKE: Yes.

21 THE COURT: Is he here?

22 MRS. MUNNERLYN: He's here.

23 THE COURT: Okay.

24 Do they - - these two witnesses have prior records?

25 MR. BLAKE: Judge, I can - - I got their date of birth and

PRIOR RECORD OF DEFENDANT

173

1 social security numbers from them. If you give me a minute, I can
2 give that to the Solicitor and she can run their record. I can't -
3 - I can't run a record.

4 THE COURT: Can you do that, Solicitor?

5 MRS. MUNNERLYN: Yes, sir, I can get Rosalyn to get me
6 their information.

7 THE COURT: Can you run it while we keep on going?

8 MRS. MUNNERLYN: I can get - - I can get Tyra to run it
9 just as soon as I get the information.

10 THE COURT: You want to wait and bring the jury out until
11 you run it?

12 MR. BLAKE: Judge, if you'll give me a minute I'll give it
13 to her, and she can get it.

14 THE COURT: I want the witness here who he allegedly says
15 struck this defendant so that that defendant can be prepared to
16 testify in rebuttal.

17 (The Court takes a short recess and thereafter reconvenes the
18 trial of this case.)

19 THE COURT: I understand at a pretrial conference here at
20 the Bench the defense proposes to go into some prior arrest. I
21 have told him that if he does that the State is entitled to show
22 upon what reason he was arrested including whether or not there was
23 a Bench Warrant or a warrant for him or whatever, and I leave it to
24 the defense to decide whether they want to go into a prior arrest
25 or not if they alleging some type of illegal arrest and undue

PRIOR RECORD OF DEFENDANT

174

1 harassment.

2 If they do that as a basis for him failing to stop this time,
3 he opens the door as to why they - - they arrested him on these
4 prior cases which goes into a prior record, some of which would not
5 otherwise be admissible but that's your decision to make.

6 MR. BLAKE: Thank you, Judge. May I speak with my client?

7 THE COURT: Yes, sir.

8 (Mr. Blake has discussion with defendant off the record>)

9 THE COURT: Alright, Mr. Blake, are we ready?

10 MR. BLAKE: Yes, Your Honor. Can we approach?

11 THE COURT: Yes, sir.

12 (Bench Conference held off the record and outside the presence
13 of the jury.)

14 THE COURT: Alright, are we ready, gentleman and lady?

15 Bring the jury in.

16 (The jury returns to the courtroom at 4:28 p.m.)

17 THE COURT: Ladies and gentlemen of the jury, in your
18 absence we've had a scheduling session here, and what our plans are
19 is to complete all of the testimony in this case this evening and
20 come back at 9:30 in the morning at which time we'll charge you
21 with the law and have final summations such that you can get this
22 case for your deliberations in the middle of the morning, and this
23 case will be the last one for your consideration. I've got a jury
24 coming back in some other cases.

25 I tell you this so that you can plan your schedule and if this

EXAMINATION OF OFFICER PEELE (IN CAMERA)

175

1 case is resolved tomorrow and I certainly anticipate it will be,
2 you will not have to return Friday. I understand that all of you
3 are busy.

4 Alright. Call your witness, Mr. Blake.

5 MR. BLAKE: Your Honor, we'd call Austin Peele.

6 (The witness enters the courtroom and is sworn by the Deputy
7 Clerk of Court.)

8 MRS. MUNNERLYN: Your Honor, may we approach?

9 THE COURT: Ma'am?

10 MRS. MUNNERLYN: May we approach?

11 (Bench conference held off the record and in the presence of
12 the jury but outside the hearing of the jury.)

13 THE COURT: I'll let you go to the jury room just a moment.
14 I have an issue that I need to discuss outside your presence.

15 (The jury retires to the jury room at 4:36 p.m.)

16 EXAMINATION OF OFFICER AUSTIN PEELE (IN CAMERA)

17 THE COURT: Officer, have you been sworn? Is he sworn?

18 DEPUTY CLERK OF COURT: Yes, he has.

19 THE COURT: You have called Officer Peele, Trooper of the
20 South Carolina Highway Department, for what purpose?

21 MR. BLAKE: Judge, he was - - -

22 THE COURT: The jury - - -

23 MRS. MUNNERLYN: The door is open, Judge.

24 (Bailiff closes the courtroom door.)

25 THE COURT: Yes, sir.

EXAMINATION OF OFFICER PEELE (IN CAMERA)

176

1 MR. BLAKE: He was the Data Master Operator on December 6,
2 2007.

3 THE COURT: Well, he's not charged with driving under the
4 influence. What - - for what purpose does - - this will help the
5 jury on any issue in this case?

6 MR. BLAKE: Judge, he was not charged with that DUI.
7 Obviously, he did take the test. He registered a 0.0. That in my
8 mind would say no alcohol.

9 Of course, we have the allegations at the very beginning of
10 the case of within a short time of this arrest he, at least, that
11 he had been drinking alcohol. At the very least, the testimony of
12 - - that fact that she said she saw him drinking alcohol.

13 THE COURT: The testimony is that somebody in the car was
14 drinking alcohol as I understand.

15 What you say about this, Mrs. Munnerlyn?

16 MRS. MUNNERLYN: She said she saw him take one - - one
17 drink from the can which she said appeared to be beer to her.

18 THE COURT: Says this defendant did it?

19 MR. BLAKE: Yes, she did, Judge.

20 MRS. MUNNERLYN: Yes, sir.

21 MR. BLAKE: And she also said that that was the reason for
22 calling her husband, Lt. Williams, and why the original call went
23 out.

24 MRS. MUNNERLYN: She didn't say he was drunk or anything.
25 She just said that he had an open container, and she saw him take

EXAMINATION OF OFFICER PEELE (IN CAMERA)

177

1 one - - she saw him take one drink from the beer.

2 MR. BLAKE: And she was concerned about drinking and
3 driving is why she called her husband.

4 THE COURT: I will let them show that he had no alcohol to
5 her credibility. I mean, I don't know whether one - - you can ask
6 him whether one sip of beer would show up on a Data Master or not.
7 I don't know. Do you?

8 MRS. MUNNERLYN: I don't know either. I don't know if that
9 officer can testify to that or not.

10 THE COURT: Well, I'm not going make a big issue for
11 appellate purposes on - - we're not going into it now. You can
12 just ask the question.

13 MR. BLAKE: It's very simple, Judge, but he's not
14 qualified as an expert as an alcohol and how it affects - - -

15 THE COURT: Well, if you qualify him, I'm going to ask him.
16 Now, you can't have it both ways.

17 MR. BLAKE: He's qualified to run the Data Master. He's
18 not qualified - - -

19 THE COURT: I'm going to permit her to ask him a question
20 if he knows, "Will one swallow of beer - - -?"

21 Does any quantity of beer show up on an alcohol drug test?

22 OFFICER PEELE: I really don't know.

23 THE COURT: Sir?

24 OFFICER PEELE: I really do not know. It all depends on
25 the person's body weight and their actual tolerance.

EXAMINATION OF OFFICER PEELE (IN CAMERA)

178

1 I really do not have an answer. I mean, I can't - - I can't
2 say yes or no. I really don't know.

3 THE COURT: So, you - - you propose to testify that here
4 your Data Master didn't show anything?

5 OFFICER PEELE: Correct. It didn't - - it didn't get any
6 kind of reading on him.

7 MRS. MUNNERLYN: See, that's my problem with it, Judge. I
8 don't think it was functioning properly or something, and it didn't
9 get a reading, and that's why they didn't proceed with anything.

10 MR. BLAKE: Wait a minute.

11 You administered the test, and you certainly - - you were
12 operating the machine, correct?

13 OFFICER PEELE: Correct.

14 MR. BLAKE: At the bottom it says, you know, everything was
15 verified and the simulator passed.

16 I mean, there's no information here about the Data Master not
17 working correctly. It says that the subject's sample was 0.00.
18 That's the Data Master. That's what it gave as a result.

19 There's nothing, no testimony here - - -

20 THE COURT: I'm going to let you ask the question. He can
21 answer, "I just don't know where that would show up or not."

22 I mean, in fairness to the State. I think a minute quantity
23 would not show up personally but I don't know that.

24 But, it - - unfortunately, it - - it goes to the credibility
25 as to whether he was drinking or not even though his drinking is

EXAMINATION OF OFFICER PEELE (IN CAMERA)

179

1 not an issue in the case.

2 MRS. MUNNERLYN: I mean, I don't even know if the machine
3 was even functioning properly. I haven't quizzed this witness
4 completed about all this.

5 So my information was that they - - the Data Master did not
6 function properly, and they didn't get a proper sample. That was
7 the whole reason.

8 THE COURT: Well, was it functioning properly or not?

9 OFFICER PEELE: Yes, sir. It did function properly. All
10 the internal tests came back as passed.

11 MRS. MUNNERLYN: Okay.

12 So it was valid Data Master Report?

13 OFFICER PEELE: Correct.

14 MRS. MUNNERLYN: Okay.

15 THE COURT: I'm going - - I'm going very - - there ain't no
16 need in going in - - very quietly. I'm going to let you ask him,
17 though, is he qualified to say how much it takes for it to register
18 at all. I'm going to let you ask that and he can say, "I don't
19 know."

20 But we're not going into to - - I'm going to let it in only as
21 to the credibility now.

22 MR. BLAKE: I'll be very brief, Judge.

23 THE COURT: Alright.

24 Bring the jury in.

25 (The jury returns to the courtroom at 4:41 p.m.)

OFFICER PEELE - DIRECT EXAMINATION BY MR. BLAKE

180

1 THE COURT: Alright. This witness has been sworn. Is that
2 right?

3 DEPUTY CLERK OF COURT: Yes, sir.

4 THE COURT: Alright.

5 You may call your witness, please.

6 OFFICER AUSTIN PEELE, being duly sworn,
7 testifies as follows:

8 DIRECT EXAMINATION BY MR. BLAKE:

9 Q. Trooper Peele?

10 A. Yes.

11 Q. You're currently employed where?

12 A. The South Carolina Highway Patrol.

13 Q. And back on December 6, 2007, where were you working?

14 A. I was employed with the City of Bennettsville Police
15 Department.

16 Q. I'm handing you Defendant's Exhibit #3. Do you recognize this
17 document?

18 A. Yes, sir, I do.

19 Q. Could you describe it for us?

20 A. It's a Data Master Sample Slip with all the readings from the
21 Data Master the night he was put on the Breathalyzer machine.

22 Q. Did you run that test?

23 A. Yes, I did.

24 Q. So, you put him on the Breathalyzer. Is that what you call
25 it?

OFFICER PEELE - DIRECT EXAMINATION BY MR. BLAKE

181

1 A. Data Master.

2 Q. Data Master?

3 And was it a valid test?

4 A. Yes, sir, it was.

5 Q. Any doubt about that?

6 A. No, sir.

7 Q. And who did you test that night?

8 A. Um, Mr. Keena L. Rivers.

9 Q. I believe there's a mistake on there. If you read the next
10 line, does it say arresting officer?

11 A. Yes, it does.

12 Q. And what do you have there?

13 A. I have his actual name in there.

14 Q. But he didn't arrest himself?

15 A. No.

16 Ah, at the time this was my first Data Master I had done since
17 I had graduated from the school. So, it was probably a period of
18 four or five months which I knew I was not going to be able to run
19 it properly. So, I did have some help and have some questions but
20 I didn't go back there and change anything once it had already
21 started.

22 Q. So, someone helped you run this test?

23 A. Correct.

24 Q. But the machine itself does internal tests, correct?

25 A. Correct.

OFFICER PEELE - DIRECT EXAMINATION BY MR. BLAKE

182

1 Q. Correct? And those internal tests were run?

2 A. Correct. It does it automatically. We don't physically do
3 the test on the machine. So.

4 Q. Okay.

5 So, did you have anybody assisting you with the test?

6 A. I was - - I was asking certain people some questions that are
7 certified, and they were helping me out along the way.

8 Q. Okay.

9 THE COURT: Wait a minute.

10 You saying you were not qualified to run this machine?

11 OFFICER PEELE: No, sir. I was qualified or certified.

12 THE COURT: Yes.

13 OFFICER PEELE: But the - - the time I went through the
14 class was probably a four or five month time frame and the last
15 time I had actually done anything on the Data Master, and so - and
16 when I went to do the Data Master there was a couple of things on
17 there that I was actually not sure about it, and so I was getting
18 clarification before I actually did the test.

19 THE COURT: You had to inquire of other people as to how to
20 run it?

21 OFFICER PEELE: Correct. Some people that are certified
22 to run the Data Master.

23 THE COURT: Sir?

24 OFFICER PEELE: Yes, sir. Some people that were certified
25 in Data Master.

OFFICER PEELE - DIRECT EXAMINATION BY MR. BLAKE

183

1 THE COURT: Have this witness come down. I decline to
2 accept any testimony about that. Come on down.

3 You have any objection to that, Solicitor?

4 MRS. MUNNERLYN: No, I do not. He's evidently not
5 qualified.

6 THE COURT: No, I can't do that. We'll be here all day
7 about who else was there, who else saw it. He says he had to get
8 some help. I'm not going to - - have him come down.

9 MR. BLAKE: Okay.

10 I'd move to enter this into evidence.

11 THE COURT: No, sir. Not going to do it. He's not
12 qualified to do it. He's says he didn't know. He says he had to
13 have some extra help, and those folks are not here. I decline to
14 accept that testimony and I tell the jury that he is not charged
15 with driving under the influence. There is no charge against him
16 on that issue.

17 Officer, I thank you for your testimony.

18 OFFICER PEELE: Yes, sir.

19 THE COURT: And I appreciate the candor of your questions
20 and answers.

21 OFFICER PEELE: You're welcome.

22 THE COURT: Thank you.

23 (The witness leaves the witness stand.)

24 MR. BLAKE: Shawn Lucas.

25 (The witness takes the witness stand.)

OFFICER LUCAS - DIRECT EXAMINATION BY MR. BLAKE

184

1 SHAWN CHRISTOPHER LUCAS, being duly sworn,
2 testifies as follows:

3 DEPUTY CLERK OF COURT: Have a seat and state your name for
4 the record.

5 MR. LUCAS: Shawn Christopher Lucas.

6 DIRECT EXAMINATION BY MR. BLAKE:

7 Q. Where do you work?

8 A. Bennettsville Police Department.

9 Q. Were you involved in this case on December 6, 2007?

10 A. Um, toward the end when he was in custody.

11 Q. He was in the car?

12 A. He was in custody when I got there.

13 Q. Did you speak to the defendant?

14 A. Yes.

15 Q. Okay.

16 Where was he when you spoke to him?

17 A. He was in the patrol - - the patrol vehicle.

18 Q. Okay.

19 Whose patrol car was it?

20 A. Ah, I want to say it was Ms. Poe's.

21 Q. Was she in that car with you?

22 A. No.

23 Q. And where you and where was he?

24 A. Mr. Rivers was in the back and I was in the front on the
25 passenger side.

1 Q. So you were turned around talking to him?

2 A. Ah, basically, kneeling in the seat.

3 Q. Was the door open?

4 A. Yes.

5 Q. His door was closed?

6 A. Yes.

7 Q. He was in handcuffs?

8 A. Yes.

9 Q. And he had asked to speak with you?

10 A. Yes.

11 Q. Can you tell us the content of that conversation?

12 A. Um, before they actually had him in custody, it was a call
13 stating that two subjects was running from the actual traffic stop.
14 When I got to - - when I walked to the patrol vehicle, I asked him
15 who the other subject was that ran. I asked him that twice. He
16 never replied back.

17 Q. That was the entire content of your conversation with Mr.
18 Rivers?

19 A. Yes, sir.

20 Q. You asked him who the other person in the vehicle was?

21 A. Yes, sir.

22 Q. And he did not respond?

23 A. No, sir.

24 Q. Had you given him Miranda Warnings or anything like that?

25 A. No, sir.

OFFICER LUCAS - CROSS EXAMINATION BY MRS. MUNNERLYN

186

1 Q. So, the entire content of the conversation was you asked twice
2 did he know who the passenger was in the car - - that ran?

3 A. Yes, sir.

4 Q. Nothing else was discussed?

5 A. No, sir.

6 Q. You didn't tell him anything else?

7 A. No, sir.

8 Q. Okay.

9 Um, did you Lamont Rivers before this night?

10 A. Yes.

11 Q. Did you know him as a kid? Child?

12 A. Yes. Yes.

13 Q. So, I think you would have testified to earlier. I don't know
14 if you said it, Officer Lucas, but did he ask for you?

15 A. Yes.

16 Q. Okay.

17 MR. BLAKE: No further questions.

18 THE COURT: Do you have any questions, Mrs. Munnerlyn?

19 MRS. MUNNERLYN: Ah, just one, Your Honor.

20 CROSS EXAMINATION BY MRS. MUNNERLYN:

21 Q. But you've known this defendant for some period of time?

22 A. Yes, ma'am.

23 Q. Okay.

24 And he, obviously, trusts you if he asked to speak with you?

25 A. Yes.

OFFICER LUCAS - REDIRECT EXAMINATION BY MR. BLAKE

187

1 Q. Okay.

2 Ah, at the time you spoke with him, you asked him these two
3 questions, and he didn't respond to anything?

4 A. No, ma'am.

5 Q. Did he ever make any claims about having been assaulted or
6 anything of that nature?

7 A. No, ma'am. No, ma'am.

8 Q. Did he appear to be in any duress or have any injuries that
9 you could see?

10 A. From being - - from running. That's all I could see.

11 Q. Out of breath, that sort of thing?

12 A. Yes. Yes.

13 MRS. MUNNERLYN: I don't have any further questions.

14 REDIRECT EXAMINATION BY MR. BLAKE:

15 Q. You didn't see any marks on his face?

16 A. All I could see was some dirt on his face from running.

17 Q. You saw some dirt?

18 A. Yes.

19 Q. Okay.

20 THE COURT: Alright. You may come down. Thank you.

21 OFFICER LUCAS: Thank you.

22 (The witness leaves the witness stand.)

23 MR. BLAKE: Derek Rivers.

24 (The witness takes the witness stand.)

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

188

DEREK RIVERS, being duly sworn, testifies
as follows:

DEPUTY CLERK OF COURT: Have a seat and state your name.

MR. RIVERS: My name Derek Leverne Rivers.

Derek - - Derek Rivers.

DIRECT EXAMINATION BY MR. BLAKE:

Q. What's your relationship to Lamont Rivers?

A. My brother.

Q. Okay.

Is he your older brother or younger brother?

A. Younger brother.

Q. Younger?

A. Yes, sir.

Q. You ever been to prison?

A. No, sir.

Q. Were you convicted of a gun charge in the year 2000?

A. Yes, sir.

Q. Were you convicted of a burglary and grand larceny in 2004?

A. Yes, sir.

Q. But you've never been to prison?

A. No, sir.

THE COURT: Alright. I have permitted the testimony - -
this prior record of this witness solely upon the grounds as to his
credibility or believability. A juror if they choose to may
consider a witness' believability based on his prior record as to

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

189

1 his credibility and that's for you to determine in your judgment,
2 not mine.

3 Alright. Go ahead.

4 (The Court Reporter requests a break. Due to equipment
5 problems, the Court Reporter advises the Court that she may not be
6 on the record from this point on.

7 The Court thereafter off the record dismisses the jury for the
8 day to return at 9:30 a.m. on Thursday and places the defendant in
9 the custody of the Court.

10 The Court then adjourns the trial of this case to allow the
11 Court Reporter to resolve the equipment problems.)

MATTER OF EXCLUDING WITNESS, OFFICER PEELE

190

THURSDAY, JUNE 12, 2008

(The Court reconvenes the trial of this case with all parties present in the courtroom.)

THE COURT: Okay.

Mrs. McCall has a statement with reference to recording that y'all need to know about. Go ahead, Mrs. McCall.

(The Court Reporter advises the parties that all matters are on the record and a part of the record up and until the Court Reporter asked the Court to recess the case.)

MATTER OF EXCLUDING WITNESS, OFFICER PEELE

THE COURT: Yesterday I excluded the testimony of Trooper Peele, and I want the record to reflect the basis for that.

First, by his own testimony though he had just recently qualified, he was not experienced in operating the thing. He said so and during this particular test had to call in the assistance for instructions from several other people.

In addition to that, this defendant is not charged with driving under the influence, and it raises no issue in my view with reference to his testimony.

Beyond that had I permitted that testimony, then all of those witnesses who allegedly helped him would have to have been called in. We'd have had issues as to the reliability of the machine itself. We'd have had additional issues as to his reliability which he said he had - - really didn't know about it though he was qualified and had to have some additional help.

1 I excluded on that basis and for the further reason under Rule
2 403. Although relevant evidence may be excluded if its probative
3 value is substantially outweighed by the danger of unfair
4 prejudicial conditions or to mislead the jury or to unduly waste
5 the time.

6 To permit - - to permit that trooper to go into a Breathalyzer
7 when he's not even charged with DUI would do nothing further than
8 confuse the jury.

9 In addition to that, it would waste the Court's time because
10 the State would have to call numerous witnesses whoever assisted
11 him.

12 So, I just want the record to reflect clearly that is the
13 basis, several bases, one on 403, one - - another is it's not
14 relevant to any issue in this case.

15 MR. BLAKE: Judge, if I could for the record.

16 THE COURT: Okay.

17 MR. BLAKE: Linda, do you have that exhibit?

18 (Court Reporter provides the Defendant's Exhibit #3.)

19 MR. BLAKE: For the record I have Defendant's Exhibit #3
20 which we were attempting to enter into evidence, and this was the
21 Data Master Sample that was done on December 6, 2007, indicating
22 that the subject's sample was 0.00 percent of breath alcohol.

23 THE COURT: I'll permit you to ask him did he do that and
24 what was it. I'll permit that but I'm not going to permit this
25 trooper to testify as to that.

MATTER OF EXCLUDING WITNESS, OFFICER PEELE

192

1 MR. BLAKE: You'll allow me to ask who, Judge?

2 We don't have the trooper anymore.

3 THE COURT: No, I'm not going to do that either. I just
4 think to get into that issue, whether or not he was intoxicated
5 would just clearly confuse the jury and create an issue would
6 unduly lengthen the trial of this case, and I'm not going to get
7 into that. He's not tried for that.

8 MR. BLAKE: Judge, again, I'm not arguing with you.

9 THE COURT: I understand. I just want you on the record.

10 MR. BLAKE: I'm just doing the record and indicating that
11 one of the reasons for the stop was that the defendant had been
12 drinking and this was going to the credibility of that witness.

13 THE COURT: Well, you know, he was - - that issue has been

14 - - -

15 MR. BLAKE: I'm not arguing with you. I just want to be on
16 the record.

17 THE COURT: I understand but there was never a motion made
18 to question the legitimacy of the stop itself. That motion was
19 never made, and that issue could have been explored fully at that
20 time but the record - - -

21 MR. BLAKE: Judge, that was tactical decision on my part
22 not to do it as a pretrial motion.

23 THE COURT: Okay, but it would have been given to you.

24 Now, also, that statement that somebody was drinking in a car
25 brought the - - Mr. Turner and his car to the scene to see what was

MATTER OF EXCLUDING WITNESS, OFFICER PEELE

193

1 going on but the specific basis for the stop was his turning left
2 of center and not because there was suspicion of alcohol, illegal -
3 - not illegal - - -

4 MR. BLAKE: So, Judge, there were two bases, and, of
5 course, I'm proceeding to try to attack both bases just for the
6 record. I'm not arguing with you.

7 THE COURT: I understand.

8 MR. BLAKE: That was my way of dealing with one basis, that
9 being left of center.

10 THE COURT: What is your basis for attacking the basis of
11 the stop when testimony is that he was left of center?

12 MR. BLAKE: Judge, I'll - - we'll deal with that with the
13 next witness.

14 THE COURT: Okay. That will be fine.

15 Then we'll let the jury come in.

16 Alright. Bring the jury in.

17 I know that you weren't arguing with me, Mr. Blake. I just
18 want you to be fully protected for the record.

19 MR. BLAKE: I appreciate it, Judge.

20 (The jury returns to the courtroom at 10:12 a.m.)

21 THE COURT: The jury is present.

22 Good morning, Mr. Foreman and ladies and gentlemen of the
23 jury.

24 Alright.

25 Mr. Blake, you may call your next witness, please.

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

194

1 MR. BLAKE: Your Honor, we Derek Rivers who was on the
2 stand yesterday afternoon when we recessed.

3 THE COURT: Alright, sir. Have him come around.

4 DEPUTY CLERK OF COURT: You want me to swear him again.

5 THE COURT: Yes, reswear him, please.

6 DEREK LEVERNE RIVERS, being duly sworn,
7 testifies as follows:

8 DEPUTY CLERK OF COURT: Please be seated.

9 MR. RIVERS: My name is Derek Rivers.

10 DIRECT EXAMINATION BY MR. BLAKE:

11 Q. Good morning.

12 A. Good morning.

13 Q. Where do you work?

14 A. Mohawk Industries.

15 Q. And what shift do you normally work?

16 A. Night shift, third.

17 Q. And how long have you been working there?

18 A. Nine months.

19 Q. And where did you work before that?

20 A. I worked at Smithfield.

21 Q. Okay, and prior to that where did you work?

22 A. Sir?

23 Q. Before that where did you work?

24 A. Marley - - Marley Electric.

25 Q. How long did you work at Marley?

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

195

1 A. Three years.

2 Q. Okay.

3 You remember back to December 6, 2007?

4 A. Yes, sir.

5 Q. You were in the car that night when the car was stopped by the
6 Bennettsville Police Department?

7 A. Yes, sir.

8 Q. You need to just move forward a little bit.

9 At that time were you working - - what shift were you working
10 at Mohawk, Oak River?

11 A. I was - - I was on first shift then.

12 Q. Okay.

13 And the shifts then, what time did you get off?

14 A. At eight p.m.

15 Q. Okay.

16 And how did you get from Oak River to home?

17 A. This lady that I ride with.

18 Q. Did you get a ride to and from work with her?

19 A. Yes, sir.

20 Q. And did you go directly home?

21 A. No, sir.

22 Q. Tell us what you did?

23 A. We went to Piggly Wiggly and cashed our check.

24 Q. Cashed your paycheck?

25 A. Yes, sir.

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

196

1 Q. So, what day do you get your paychecks here at Oak River?

2 A. Thursday.

3 Q. Alright.

4 You both cashed your paycheck?

5 A. Yes, sir.

6 Q. Did you buy anything at the store?

7 A. Yes, sir.

8 Q. Okay. You don't need to just tell me yes, sir. If I ask you
9 a question, just answer the question. What did you buy at the
10 store?

11 A. A twenty-four case of Natural Lite.

12 Q. And where did you go from Piggly Wiggly?

13 A. I went home.

14 Q. And where is home?

15 A. Drive.

16 Q. ?

17 A. Drive.

18 Q. Drive.

19 Does Lt. Greg Williams live near you?

20 A. Yes, sir.

21 Q. How far away does he live from you?

22 A. Ah, not a mile. Walking distance.

23 Like down the street, a block. A block away.

24 Q. Okay.

25 Do you know Mr. Williams?

1 A. Yes, sir.

2 Q. What did you - - about what time do you think you got home?

3 A. I say around 8:45.

4 Q. What did you do once you got home?

5 A. I left right back outside and walked around the corner with a
6 friend of mine.

7 Q. Walked around the corner to your friend's?

8 A. Yes, sir.

9 Q. Did you take anything with you?

10 A. Yes, sir.

11 Q. What did you take with you?

12 A. I grab a couple of beers for me, you know, out of the box.

13 Q. You did not take the box?

14 A. No, sir.

15 Q. Alright.

16 And how many doors down from you was that?

17 A. Maybe three, four.

18 Q. And how long were you at your friends?

19 A. About thirty minutes.

20 Q. So, you and your friend shared a couple of beers?

21 A. Yes.

22 Q. Okay.

23 Where did you go from there?

24 A. I came back home.

25 Q. To your house there at Drive?

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

198

1 A. Yes.

2 Q. Okay.

3 And what happened next?

4 A. I called Lamont. He came by my house. Picked me up. I got
5 in the truck with him with some clothes, shoes and that same case
6 of beer.

7 Q. Okay.

8 And Lamont came to pick you up?

9 A. Yes, sir.

10 Q. Did he pick you up?

11 A. Yes, sir.

12 Q. And was he alone in the truck?

13 A. No.

14 Q. Who was with him?

15 A. Ah, this friend of ours, Reggie Rivers.

16 Q. Okay.

17 Reggie.

18 So, he picked you up. Do you - - I don't know if you were
19 watching tv or looking at a clock. Do you have any idea what time
20 Lamont came and picked you up?

21 A. I say maybe 9:30.

22 Q. Do you know?

23 A. Not exactly.

24 Q. So, it was sometime.

25 How long were you at your house before Lamont got there, more

1 or less?

2 A. Ah - - -

3 Q. Don't know?

4 A. No.

5 Q. Kind of guessing?

6 A. Yeah.

7 Q. So, where did you get in that truck, what seat?

8 A. Oh the back - - in the backseat behind the driver.

9 Q. Okay.

10 Is that truck a two-door or a four-door?

11 A. Four-door.

12 Q. So, you had a door of your own?

13 A. Uh-huh.

14 Q. Okay.

15 Where was your brother sitting?

16 A. In the driver's seat.

17 Q. Where was Reggie Rivers sitting?

18 A. On the front passenger.

19 Q. Where did you go from there?

20 A. Exxon.

21 Q. Where is that Exxon?

22 A. Right beside the Huddle House.

23 Q. Is that near the hospital?

24 A. Yes, right across from the hospital.

25 Q. Is that out there where Bi-Lo is?

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

200

1 A. Uh-huh.

2 Q. Alright.

3 Where did the truck pull up to the Exxon Station?

4 A. By the front of the door, in the park in front of the door.

5 Q. More to the - - to the left side or the right side as you're
6 facing the store?

7 A. Yeah, kind of in the center.

8 Q. In the center?

9 Why were you going to the Exxon?

10 A. To get a cigar.

11 Q. And what was the purpose of getting a cigar?

12 A. I just was asked to bring a cigar at the store.

13 Q. You were asked to bring a cigar?

14 A. Uh-huh.

15 Q. Who asked you?

16 A. My brother, Lamont.

17 Q. Do you know what the cigar was for?

18 A. For marijuana.

19 Q. Okay.

20 And what were you going to do with it?

21 A. Put marijuana in it.

22 Q. Oh, okay.

23 Is that called a blunt?

24 A. Yes.

25 Q. Who went in the store?

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

201

1 A. I did.

2 Q. Did anybody else go in the store with you?

3 A. No.

4 Q. And you said that you got the twenty-four pack of beer. It
5 was in the car - - in the truck?

6 A. Yes.

7 Q. How many cans were out of that twenty-four pack?

8 A. I say three or four.

9 Q. Okay.

10 So, what did you buy in the store?

11 A. Just the cigar.

12 Q. One cigar?

13 A. Yes.

14 Q. Do you remember what kind it was?

15 A. White Owl New York.

16 Q. White Owl New York?

17 A. Uh-huh.

18 Q. Did you get anything else in the store?

19 A. No, sir.

20 Q. You didn't buy any beer?

21 A. No.

22 Q. Sure of that?

23 A. I already had beer. I didn't buy none.

24 Q. When you got that beer at Piggly Wiggly, um, carried out in a
25 bag?

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

202

1 A. No, sir. The box too big to go in a bag. They put a orange
2 PAID sticker.

3 Q. Put a what?

4 A. A orange PAID sticker.

5 Q. PAID sticker on it?

6 A. Uh-huh.

7 Q. So you had that - - that same twenty-four can - -

8 A. Uh-huh.

9 Q. - - case or bag with you - - not bag. I guess, box?

10 A. Uh-huh.

11 Q. In that truck.

12 A. Uh-huh.

13 Q. And where was it?

14 A. Sitting right there beside me in the back.

15 Q. So, you were in the backseat?

16 A. Un-huh.

17 Q. Behind the driver?

18 A. Yes.

19 Q. Okay.

20 So, you had drinken (sic) those beers at your friend's house?

21 A. Yes.

22 Q. You said?

23 A. Yes.

24 Q. Okay.

25 How far is it from Drive - - well, first of, what

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

203

1 neighborhood is that located in? Give us a general area.

2 A. We call it Knollwood Acres.

3 Q. You call it what?

4 A. Knollwood Acres.

5 Q. Okay.

6 And that is - - what's the nearest big street?

7 A. Cottingham Boulevard.

8 Q. Okay.

9 How far is from Terrace Drive to the Exxon Station?

10 A. It's walking distance, too. About a quarter of a mile. I
11 ain't going to give it no mile either.

12 Q. How long does it take you to drive there?

13 A. Oh, I mean - - not even five minutes.

14 Q. You say it's how far, a quarter of a mile?

15 A. Yeah.

16 Q. Half a mile at most?

17 A. Yeah, at the most.

18 Q. Alright.

19 When Lamont and Reggie showed up, did they already have beers
20 opened?

21 A. No. I was - - there wasn't no other beer in the car - - that
22 I saw. Just what I had brought.

23 Q. Did you have an open beer?

24 A. No.

25 Q. So, you got to the Exxon Station and went in to get the cigar?

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

204

1 A. Yes.

2 Q. Do you have any idea how long you were inside the store?

3 A. Nah - - no. Nah.

4 Q. Was there a long line there in the store?

5 A. No.

6 Q. Was there anybody waiting?

7 A. I - - I sure don't think so. I know I wasn't in the store
8 five minutes, though.

9 Q. Well, did you look around or did you go and get what you want?

10 A. Go and get what I wanted?

11 Q. Did you go to the cash register?

12 A. Well, I went straight to the cash register because they behind
13 the register.

14 Q. Okay.

15 So, couldn't take you five minutes then?

16 A. I mean, not exactly but I can't - - -

17 Q. A short period of time?

18 A. Yes.

19 Q. When you got back in the car, had your friends opened up those
20 beer and were they drinking them?

21 A. No.

22 Q. Again, when the truck picked you up at your house did you see
23 either the driver or the passenger in that car with an open beer?

24 A. No.

25 Q. Of course, you just said you didn't see either of them with an

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

205

1 open beer. Did you come out of that store with a beer in a bag, a
2 little baggie?

3 A. No.

4 Q. Did you see anybody with a open beer in a bag?

5 A. No.

6 Q. You said you know Greg Williams?

7 A. Yes.

8 Q. And he - - he lives within a block?

9 A. Yes.

10 Q. Know what kind of cars he drives?

11 A. Yes.

12 Q. Do you speak to him when you see him?

13 A. Every time I see him, I speak to him.

14 Q. Why is that?

15 A. He did a favor for me before, and I feel like, you know, he
16 did a favor for me. I have to return a favor for him. I make it
17 my business to speak to him every time I se him appreciating him,
18 what he did for me.

19 Q. And back then, December, '07, did you see either of their cars
20 there at the Exxon Station?

21 A. No.

22 Q. What would you have done if you had of saw them?

23 A. I would have spoke to him.

24 Q. Alright. So, you're there at the Exxon, and Lamont is
25 driving. Reggie's in the passenger seat. You're behind Lamont?

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

206

1 A. Yes.

2 Q. And it's a four-door?

3 A. Yes.

4 Q. Where does the truck go from there?

5 A. We leave Exxon, leave out to the right going down #9.

6 Q. What street is that there?

7 A. Ah, all I know is Highway #9.

8 Q. Would that be Cheraw Street?

9 A. Yes, yeah, Cheraw Street.

10 Q. You're going on towards town or towards Evans Correction?

11 A. Towards town.

12 Q. Okay.

13 What lane were you driving in?

14 A. On the inner lane.

15 Q. Inner lane? That means the left lane?

16 A. Yes, sir.

17 Q. Okay.

18 You knew your brother had some marijuana, right?

19 A. No.

20 Q. You did not?

21 A. No.

22 Q. Okay, but you got the cigar - -

23 A. I didn't know if he had it or - -

24 Q. - - for the blunt?

25 A. - - I didn't know that he already had it or he had to buy it.

1 I didn't know what nobody had.

2 Q. But your plans were to smoke some?

3 A. Yes.

4 Q. With your brother?

5 A. Yes.

6 Q. And you had the beer in the back there?

7 A. Yes.

8 Q. Alright.

9 Going down on what you call the inside lane, I guess, the left
10 lane. Were you guys speeding?

11 A. No.

12 Q. Do you have any idea how fast you were going?

13 A. Not exactly but I know it wasn't speeding.

14 Q. Alright. What did you see next?

15 A. I saw going down that street we spotted the blue Explorer
16 coming up.

17 Q. Whose car was that?

18 A. Officer Turner.

19 Q. Y'all know what car he drives?

20 A. Sir?

21 Q. Y'all know what car he drives?

22 A. Yes.

23 Q. Okay.

24 What happened next?

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

208

1 A. He was coming. He got close toward us.

2 Q. He was going the same direction or the opposite direction?

3 A. He was going the opposite. He was coming up, and we were
4 going down.

5 Q. He was going out towards Evans?

6 A. Yes.

7 Q. Okay.

8 A. And we seen him bust a U-turn with the lights on and came
9 straight and pulled us over.

10 Q. Okay. Um - - when did you see those lights go on?

11 A. Before he made that turn. Before he turned around completely.

12 Q. Have you been out there and looked at that area, walked around
13 that area?

14 A. Yes.

15 Q. Have you done that since that night?

16 A. Yes, yes.

17 Q. Can you describe it for the jury? It's, obviously, two lanes
18 in each direction?

19 A. Yes.

20 Q. And what sort of thing is in the center there?

21 A. Like a little cement, little - - a little cement thing in the
22 road in the highway.

23 Q. Would that be the entire way?

24 A. No, not the entire way. Just a little bit, just a little bit,
25 um, not much.

1 Q. Okay.

2 On the right-hand side of the road, is it all cross-walk
3 through there?

4 A. No.

5 Q. Okay, and what area were you when he pulled over?

6 A. Around the, ah, I could say the old folks home, that nursing
7 home where like apartments where the older people go rent the
8 apartments from right up in that area.

9 Q. Okay.

10 Did it take long for your brother to pull over?

11 A. No, he pulled right over.

12 Q. And who came to the driver's side?

13 A. Officer Turner.

14 Q. You were sitting right behind your brother?

15 A. Yes.

16 Q. Could you hear the conversation?

17 A. Yes.

18 Q. What happened first?

19 A. He asked him for his license and registration. Lamont reached
20 in his wallet in his pocket and got a little thing, his license,
21 and, um, Lamont was reaching over to get the other - - whatever in
22 the glove box. He stopped and he asked him what he pulled us for.

23 And Officer Turner shined the light looking all around the
24 truck and spotted that case of beer. Then he said, "I smell
25 alcohol."

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

210

1 Lamont had already gave him his license.

2 Q. What happened next?

3 A. Officer Turner tried to reach inside the truck and snatch the
4 door - - or snatch the door open, kind of, I'm thinking, it kind of
5 - - he was, like, "Man, you know, what's going - - what's going
6 on?"

7 And then he pulled off. Lamont pulled off.

8 And I was thinking to myself, I say, well, he pulled off but
9 the officer still got his license. He going to know who he is
10 regardless.

11 So, he drove around the corner, around - - made the first
12 right turn.

13 Q. Before you go there, um, so Lamont had pulled over. Sgt.
14 Turner came up to the driver's side.

15 A. Yes.

16 Q. You said he asked for the license and registration?

17 A. Yes.

18 Q. And what did your brother?

19 A. He hand him his license. He was going to go in the glove box
20 to get - - to get over where the registration is in there, and
21 Lamont asked him what was he pulling him for.

22 Q. Okay.

23 Did Sgt. Turner ask your brother to step out of the vehicle -

24 -

25 A. Oh, yeah, yeah.

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

211

1 Q. - - several times?

2 A. Yeah. He asked him to step out of the vehicle.

3 Q. Several times.

4 A. That's when Lamont asked him.

5 Q. How many times did he ask him?

6 A. I'd say twice.

7 Q. Okay.

8 And at what point did he - - did Sgt. Turner reach inside the
9 vehicle?

10 A. When Lamont reached over to the glove box, he tried to catch
11 him off-guard not looking at him.

12 Q. Did your brother ever - - -

13 A. They came to the truck with guns out. They came to the truck
14 with guns out.

15 Q. On both sides?

16 A. On both sides.

17 Q. And guns were drawn?

18 A. I mean, they weren't point at - - they were having them
19 holding them down, you know, ready for anything that was going to
20 happen.

21 Q. How many times did your brother ask why they were stopping
22 him?

23 A. I think he asked him twice, too.

24 Q. Did Sgt. Turner ever say they were stopping him because he was
25 left of center?

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

212

1 A. No, sir.

2 Q. Did Sgt. Turner ever say - - -

3 MRS. MUNNERLYN: Objection. Leading, Your Honor.

4 THE COURT: Whatever else did he say, let him answer
5 without leading.

6 Q. You said there were no open containers?

7 A. No, sir.

8 Q. You didn't have one?

9 A. No, sir.

10 Q. Did Lamont have one?

11 A. No.

12 Q. Did Reggie?

13 A. No.

14 Q. Do you know if Lamont had been drinking?

15 A. No, I don't know.

16 Q. You don't know if he had?

17 A. Nah. I don't know. He ain't really a - - Lamont ain't
18 really a drinker like, you know, drinking beer like that. Rarely -
19 - you'd rarely catch Lamont drinking a beer.

20 Q. Huh?

21 A. I say he ain't really no drinker like that. You rarely catch
22 him drinking a beer, you know, special occasions or something like
23 that.

24 Q. Did you smell alcohol?

25 A. No.

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

213

1 Q. But you say you had had one or two beers?

2 A. Yes.

3 Q. Within an hour or so?

4 A. Yes.

5 Q. Alright. So, Lamont took off at that point?

6 A. Yes.

7 Q. What happened next?

8 A. Um, he took off. I heard Mr. Turner holler, and we went
9 around the corner, made the first right turn. It was a dead-end
10 street. He pulled all the way down. Got close to the sign that
11 said, "Dead road ends."

12 I see him and Mr., ah, him and Reggie jump out and run?

13 Q. Did you help him?'

14 A. No. I stayed in the car - - in the truck - - in the truck.

15 Q. Okay.

16 What happened next?

17 A. Um, they both jumped out. They ran toward the same way to hop
18 the fence. They was going in the same direction. I sot in the
19 back and stayed in the back.

20 They came. The police came up and got me out. Handcuffed me
21 and put me in the backseat of Officer Turner truck, and later on,
22 Officer Turner came to me with the license and ask me who - - what
23 is - - what is he - - what is he to me?

24 I said, "My brother."

25 And, ah, "Oh, yeah. We caught him with - - by a bag of dope

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

214

1 in his pocket."

2 And, ah, asked me who - - -

3 Q. He said a bag of dope?

4 A. Sir?

5 Q. He said a bag of dope?

6 A. Yeah, that's just what he said.

7 Q. Go ahead. I'm sorry.

8 A. So, I stayed in the truck. Then, all of a sudden, he came
9 asked me "Who was a passenger?"

10 A. I didn't tell Officer Turner. I told Mr. Greg, and - - -

11 Q. You told Greg Williams?

12 A. Yes.

13 Q. Who the passenger was?

14 A. Yes.

15 Q. And I was - - they came back to the truck and asked me for
16 Lamont's cell phone, and they started going through the phone, and
17 they spotted - - saw a picture of Reggie on there.

18 He said, "No, I ain't going to give you the phone. Keep it."

19 So he had another officer download the picture out of the
20 phone.

21 So, they wouldn't give me - - -

22 Q. Whose picture was that?

23 A. A picture of Reggie standing up on the front of the phone.

24 Q. Okay.

25 A. Ah, after that, um, they came asked me. He was, like, "Well,

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

215

1 you going to jail," if I didn't tell him who - - who the person
2 was.

3 So, then they came. Like I say, I told Mr. Williams. they
4 came and, ah, then they let me go. I walked home.

5 Q. You walked home?

6 A. Yes.

7 Q. Is that the extent of your conversation with Sgt. Turner?

8 A. Yes.

9 Q. Did he ask you or talk to you about you having an open
10 container?

11 A. I think ask me had I been drinking. That was it.

12 Q. Whether you had been drinking?

13 What did you say?

14 A. I told him earlier but not - - -

15 Q. Were there any open containers in the car?

16 A. No, sir.

17 Q. Were you aware of any spilled beer in the truck?

18 A. No, sir.

19 Q. Did you through out some open containers while you were
20 sitting there?

21 A. No, sir.

22 Q. How long did it take Greg Williams to come to your truck?

23 A. My truck?

24 Q. Well, the truck you were in?

25 A. The officer truck.

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

216

1 After they couldn't find them - - couldn't find Reggie. They
2 couldn't find him. Officer Turner came first. I - - I wouldn't
3 tell him. I knew Greg. I felt comfortable.

4 Q. Oh, okay. So, Lt. Williams didn't come right back to the
5 truck Lamont had been driving?

6 A. No, no, no, he did.

7 Q. Go ahead and tell us about that?

8 A. Yeah, he came to the truck. They started searching. They
9 got me out and put me in Officer Turner car when they started their
10 search.

11 Q. Did they take the beer?

12 A. Yes. I asked for it back when they let me go.

13 He said, "No, I'm keeping it for evidence."

14 Q. Keeping it for evidence?

15 A. Yeah.

16 Q. When the car came to the stop there at the dead end, Lamont
17 and Reggie jumped out.

18 A. Yes.

19 Q. Were you able to see where they went?

20 A. Yes, sir.

21 Q. And where did they go?

22 A. Lamont jumped out and around the truck and ran that way.
23 Reggie jumped out. They both - - I seen them both go hop that
24 fence and go in the same direction.

25 Q. So, using your body language, you're pointing to the right?

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

217

1 A. Uh-huh. That's the way they was going - -

2 Q. Okay.

3 A. - - to the right.

4 Q. And have you been out to that area since that time?

5 A. Yes.

6 Q. So, you said there was a fence there?

7 A. Yes.

8 Q. Is there a residence right there?

9 A. Yes.

10 Q. Now, I'm just trying to understand.

11 You said they both went to the right?

12 A. Yes, sir.

13 Q. And you saw them jump one fence or two fences?

14 A. Yes. I saw them jump one fence.

15 Q. Okay.

16 At that point did you ever see Lamont or Reggie again that
17 night right then?

18 A. No.

19 Q. You didn't see either of them circle back?

20 A. No.

21 Q. So, I think you were saying earlier your brother doesn't drink
22 too much?

23 A. Nah, he don't.

24 Q. Do you like beer?

25 A. I do, I do.

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

218

1 Q. You use it to relax?

2 A. Yes.

3 Q. Your brother smokes weed to relax?

4 A. Yeah, yeah.

5 Q. So who was it you saw searching Lamont's - - the truck Lamont
6 was driving?

7 A. I never saw the officer before. I don't really know his name.
8 I knew Officer Turner and Mr. Williams. There was another one. I
9 don't know him.

10 Q. Did, um, who was it that you asked about taking your beer
11 home?

12 A. Officer Turner.

13 Q. And he told you no. He needed it for evidence?

14 A. Yes.

15 MR. BLAKE: One moment, please, Your Honor.

16 No further questions.

17 Judge, I have one further question of this witness.

18 THE COURT: Sir.

19 MR. BLAKE: I have one further question

20 THE COURT: Go ahead.

21 Q. When you were in the truck, you say Sgt. Turner did a U-turn?

22 A. Yes.

23 Q. Had the lights on?

24 A. Yes.

25 Q. Was your brother driving left of center?

MR. RIVERS - CROSS EXAMINATION BY MRS. MUNNERLYN

219

1 A. No, sir. I didn't - - I didn't see him driving left of
2 center.

3 Q. Was he weaving along the road?

4 A. I didn't see that or feel the need - - I mean, you see the
5 police, I always straighten up if I see them turn and make a U-turn
6 if I was - - but I ain't see no reason to weave or nothing.

7 Q. Trying to be careful?

8 A. Yeah.

9 Q. Thank you.

10 CROSS EXAMINATION BY MRS. MUNNERLYN:

11 Q. You said you were straighten up when you saw the police?

12 A. I say if I would have been driving and I see the police, I'm
13 going to get myself together. Sit up right and make sure I'm
14 driving right if I see the police come back with the lights on.

15 Q. If you had been driving?

16 A. Yes.

17 Q. But you weren't driving?

18 A. No.

19 Q. You were in the backseat?

20 A. Yes.

21 Q. I'm going to show you what's been marked as State's Exhibit #5
22 and see if you recognize that.

23 A. Yes.

24 Q. From where do you recognize that?

25 A. That - - that's the picture that was in the phone.

MR. RIVERS - CROSS EXAMINATION BY MRS. MUNNERLYN

220

1 Q. That was the picture that was on - -

2 A. Lamont's phone.

3 Q. - - your brother's cell phone?

4 A. Yes.

5 Q. That the officers had that night?

6 A. Yes.

7 Q. Okay.

8 MRS. MUNNERLYN: Your Honor, I would move to admit this
9 into evidence at this time?

10 THE COURT: You may do so.

11 MR. BLAKE: Without objection.

12 (The Court Reporter accepts State's Exhibit #5 into evidence.)

13 Q. And who is the individual shown in that picture?

14 A. Who is that person?

15 Q. Who is that person?

16 A. Reggie Rivers.

17 Q. Reggie Rivers. He was the front seat passenger?

18 A. Yes.

19 Q. Okay.

20 And, ah, what does he have in his waistband there?

21 A. A 357 gun.

22 Q. Okay.

23 And, ah, and that gun was found in the truck that night,
24 wasn't it?

25 A. Yes.

MR. RIVERS - CROSS EXAMINATION BY MRS. MUNNERLYN

221

1 Q. In the seat where Reggie Rivers was sitting?

2 A. I'm thinking I seen them pick it up off the floor on the front
3 passenger.

4 Q. Who picked it up?

5 A. I'm not sure. I'm thinking it was Officer Williams, though,
6 I'm thinking, Mr. Greg.

7 Q. Now, you said, ah, now, you've been - - you've been convicted
8 of having a gun yourself?

9 A. Yes.

10 Q. And you've also been convicted of burglary, and you've also
11 been convicted of grand larceny, right?

12 A. Yes.

13 Q. And you said that this defendant is your younger brother?

14 A. Yes.

15 Q. Y'all - - how much age difference?

16 A. Four years.

17 Q. Four years.

18 Y'all pretty close?

19 A. Yes.

20 Q. And - - and you're not related to Reggie?

21 A. No, sir. No, ma'am.

22 Q. Same - - same last name but you're not related?

23 A. No, ma'am.

24 Q. How long did you know Reggie?

25 A. Ah, since, I think '92, '93.

MR. RIVERS - CROSS EXAMINATION BY MRS. MUNNERLYN

222

1 Q. It's been a long time?

2 A. Yes.

3 Q. Y'all are close?

4 A. Uh-huh.

5 Q. Now, you said you went, ah, in the Exxon Station, and you got
6 a cigar because y'all were going to make a blunt.

7 A. Yes.

8 Q. And how much marijuana does it normally take to make a blunt
9 out of a cigar like that?

10 A. Ah, a nickel bag, five dollar bag.

11 Q. Five dollar bag?

12 A. Yeah.

13 Q. How much normally is in a five dollar bag?

14 A. I don't know is the weight, what's the weight. I don't know.

15 Q. It's relatively small amount, isn't it?

16 A. Yeah. It's a small amount.

17 Q. That would make quite a few blunts there, wouldn't it?

18 A. Yes, yes.

19 Q. Now, you said you know Greg Williams?

20 A. Yes.

21 Q. In fact, you're friendly with him, and he's helped you out in
22 the past?

23 A. Yes.

24 Q. You know him from the vehicles he's driven?

25 A. Yes.

MR. RIVERS - CROSS EXAMINATION BY MRS. MUNNERLYN

223

- 1 Q. So, you don't have any problems with him?
- 2 A. No.
- 3 Q. And you didn't have any reason to run that night?
- 4 A. No.
- 5 Q. Just sat right there in the truck?
- 6 A. Yes.
- 7 Q. In fact, you told the officer who the - - the other two were
- 8 that were in the car, didn't you?
- 9 A. Yeah. Yeah.
- 10 Q. Didn't you talk to Greg Williams and tell him who - - who had
- 11 jumped out and run?
- 12 A. Yes.
- 13 Q. Now - - -
- 14 A. Just Reggie because he said he had Lamont already. He asked
- 15 me who was - - just - - was who was that.
- 16 I said, "It's my brother."
- 17 Q. Okay.
- 18 So the time you talked to him they already had your brother in
- 19 custody?
- 20 A. Yes.
- 21 Q. And you have revealed to him who the other passenger - - the
- 22 passenger was.
- 23 A. No. Officer Williams.
- 24 Officer Turner came to ask me but I wouldn't tell him. I told
- 25 Officer Williams.

MR. RIVERS - CROSS EXAMINATION BY MRS. MUNNERLYN

224

1 Q. And you said you're so familiar with Greg, you would know the
2 kinds of vehicles he drives?

3 A. Yes.

4 Q. And you know - - you're familiar with his wife?

5 A. I don't - - I see her a lot but I don't really know her like
6 that.

7 Q. You're not really on a talking basis with her.

8 A. Nah.

9 Q. And what kind of vehicle does she drive?

10 A. A Chrysler 300.

11 Q. She was driving it that night?

12 A. I don't know.

13 Q. You don't know. You didn't see her that night?

14 A. No.

15 Q. And you said that you saw when y'all were driving on Cheraw
16 Street and you first saw Officer Turner's vehicle which you're
17 familiar with - -

18 A. Uh-huh.

19 Q. - - he turned his blue lights on?

20 A. And turned around.

21 Q. And turned around.

22 And you could see the blue lights the entire time?

23 A. Uh-huh.

24 You could about see them when he passed us.

25 Q. Where were the blue lights?

1 A. They - - -

2 Q. Where were they flashing on the vehicle?

3 A. Ma'am?

4 Q. Where were they flashing? Where are the lights on the
5 vehicle?

6 A. The two headlights that's on and the windshield, the front
7 windshield.

8 Q. Two headlights and the front windshield?

9 A. There was lights on the top in front of the windshield.

10 Q. Okay.

11 But you were busy straightening up?

12 A. I wasn't driving.

13 Q. You weren't worried about straightening up because you weren't
14 driving.

15 And you say your brother - - your brother, um, didn't get out
16 when he was asked at least twice, I think you said, by Officer
17 Turner to step out of the vehicle?

18 A. Yes.

19 Q. He never made any move to get out of the vehicle, did he?

20 A. No.

21 Q. In fact, at that time he went to move to get something out of
22 the glove box?

23 A. Yes.

24 Q. And that's when Officer Turner - -

25 A. Tried to snatch it.

MS. FRYE - DIRECT EXAMINATION BY MR. BLAKE

226

1 Q. - - put his arm in and attempted to open - -

2 A. Yes.

3 Q. - - open the door.

4 A. Yes. Yes.

5 I wouldn't have got out either if I didn't know why he stopped
6 me.

7 He couldn't tell me why he stopped me - -

8 Q. You wouldn't have gotten out - -

9 A. - - I ain't going to get out.

10 Q. - - you wouldn't have gotten out if requested to do so by the
11 officer?

12 A. If he couldn't tell me why he stopped me.

13 MRS. MUNNERLYN: No further questions, Your Honor.

14 THE COURT: Alright. You may come down.

15 (The witness leaves the witness stand.)

16 MR. BLAKE: Can this witness be excused?

17 THE COURT: He may.

18 MR. BLAKE: Delores Hodge.

19 (The witness takes the witness stand.)

20 DELORES HODGE FRYE, being duly sworn,
21 testifies as follows:

22 DEPUTY CLERK OF COURT: Have a seat and state your name.

23 MS. FRYE: My name is Delores Hodge Frye.

24 DIRECT EXAMINATION BY MR. BLAKE:

25 Q. Ms. Frye, where do you work?

MS. FRYE - DIRECT EXAMINATION BY MR. BLAKE

227

1 A. The Bennettsville Municipal Court.

2 Q. Are you the Clerk of that court?

3 A. I am.

4 Q. Does that mean you handle all of the tickets down there?

5 A. Yes, sir.

6 Q. Did you bring anything with you to court today?

7 A. I did.

8 Q. I'm referring to Tickets 61057ED, 61220ED, 21ED and 23ED. You
9 have those with you today?

10 A. I do.

11 Q. Okay.

12 Are those cases still open?

13 A. Yes, sir, they are. They are scheduled for a jury trial the
14 week of October 20th of this year.

15 Q. Okay.

16 And is he represented by an attorney?

17 A. He is.

18 Q. And who might that be?

19 A. Public Defender Dan Blake.

20 Q. Okay.

21 And you have a letter there where I requested a jury trial and
22 a continuance?

23 A. I do. This letter was dated April 1, 2008?

24 Q. And these tickets, what is the date of arrest on them?

25 A. The date of arrest is December 6, 2007.

MS. FRYE - DIRECT EXAMINATION BY MR. BLAKE

228

1 Q. And what are the four tickets?

2 Ticket #61057ED, charge of open container;

3 Ticket #61220ED, charge of left of center;

4 Ticket #61221ED, charge of failure to stop on command;

5 Ticket #61223ED, charge of drug paraphernalia.

6 Q. Have any of those cases been disposed of?

7 A. Not to my knowledge, sir.

8 Q. Well, you've - - you've looked at your computer and you don't
9 know?

10 A. No, sir. They are not closed according to our - - -

11 Q. You have them scheduled for a jury trial in October?

12 A. That is correct.

13 Q. So, those cases are open?

14 A. Yes, sir.

15 MR. BLAKE: No further questions.

16 THE COURT: Any questions from the State?

17 MRS. MUNNERLYN: I don't have anything to ask this witness,
18 Your Honor.

19 THE COURT: Ma'am?

20 MRS. MUNNERLYN: I don't have any questions.

21 THE COURT: You may come down, ma'am.

22 MRS. FRYE: Thank you.

23 (The witness leaves the witness stand.)

24 MR. BLAKE: Judge, may we approach?

25 THE COURT: Yes, sir.

MS. FRYE - DIRECT EXAMINATION BY MR. BLAKE

229

1 MR. BLAKE: May this witness be excused?

2 THE COURT: She may.

3 MR. BLAKE: Thank you, Judge.

4 (Bench conference held off the record and in the presence of
5 the jury but outside the hearing of the jury.)

6 THE COURT: I'll let you - - well, it's 11:00. Let's take
7 a fifteen minute break. If somebody needs to smoke, take them down
8 and let them smoke. We'll be back in about fifteen minutes.

9 (The jury retires to the jury room at 10:58 a.m.)

10 THE COURT: We are in recess.

11 (The Court recesses the trial of this case for a break and
12 thereafter reconvenes the trial of this case.)

13 THE COURT: Thank you. Be seated.

14 Are we ready to proceed, ladies and gentlemen?

15 MR. BLAKE: Yes, yes, Your Honor.

16 THE COURT: Bring the jury in.

17 MR. BLAKE: Judge, just a matter for the record.

18 THE COURT: Hold on a minute.

19 MR. BLAKE: We might need to do this as a Court's Exhibit,
20 the one that was kept out?

21 THE COURT: What is that?

22 MR. BLAKE: That's the Data Master results?

23 THE COURT: Yes, sir. I'm going to let that come in. I
24 meant to do that.

25 Thank you for calling that to my attention.

MS. FRYE - DIRECT EXAMINATION BY MR. BLAKE

230

1 (Defendant's Exhibit #3, Data Master Report not admitted into
2 evidence by the Court, is accepted by the Court Reporter as Court's
3 Exhibit #1.)

4 (The jury returns to the courtroom at 11:19 a.m.)

5 THE COURT: Call your next witness, please.

6 MR. BLAKE: Judge, our next witness would have been Reggie
7 Rivers, the passenger in the car. We did have a subpoena for him.
8 That subpoena was sent to be served, and they were not able to
9 locate him.

10 THE COURT: Alright.

11 MR. BLAKE: We'd call Lamont Rivers.

12 THE COURT: Just for the record, when was he - - when was
13 the subpoena first issued?

14 MR. BLAKE: It was this morning, Your Honor.

15 THE COURT: Well, we knew this last week this case was
16 going to be tried. Why - - any reason why it wasn't issue earlier
17 so we could have the opportunity to find him?

18 MR. BLAKE: Judge, there were facts that came out in the
19 State's case that, ah, contrary to what I knew before, I had to
20 change my position.

21 THE COURT: Alright, sir. That's fine.

22 (The witness takes the witness stand.)

23 KEENA LAMONT RIVERS, being duly sworn,
24 testifies as follows:

25 DEPUTY CLERK OF COURT: Have a seat and state your name.

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

231

1 MR. RIVERS: My name is Keena Lamont Rivers.

2 DIRECT EXAMINATION BY MR. BLAKE:

3 Q. Would you state your full name for the record?

4 A. Keena Lamont Rivers.

5 Q. Can I just call you Lamont?

6 A. Sure.

7 Q. Where do you work?

8 A. I work at Mohawk Industry.

9 Q. What shift do you work there?

10 A. I work third shift which would be a night shift.

11 Q. When we started this trial on Wednesday, on Wednesday - -

12 A. Yeah.

13 Q. - - you worked Tuesday night?

14 A. Yes, sir.

15 Q. Do you remember being booked in - - at the jail December 6,
16 '07?

17 A. Yes, sir, I do.

18 Q. Did they take your photograph?

19 A. Yes, sir, they did.

20 Q. I'm showing you - - -

21 MRS. MUNNERLYN: Your Honor, I have no objection to the
22 booking photo - - sheet.

23 THE COURT: Pardon me?

24 MRS. MUNNERLYN: I have no objection to the Booking Sheet
25 which has his photo on it.

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

232

1 MR. BLAKE: I move to enter into evidence Defendant's
2 Exhibit #1.

3 (The Court Reporter accepts Defendant's Exhibit #1 into
4 evidence.)

5 MR. BLAKE: I'm handing that up to the defendant.

6 Q. They say you were driving a late model truck.

7 A. Yes, sir, I was.

8 Q. Did you own that truck?

9 A. No, sir, I didn't.

10 Q. How were you in possession of it?

11 A. It was my aunt's boyfriend's truck.

12 Q. Your aunt's boyfriend?

13 A. Yes.

14 Q. And how long had you been driving that truck?

15 A. I had been driving it for about an hour and half, maybe two,
16 since - - right before nightfall.

17 Q. And how long had your, ah, he had let you drive it?

18 A. Ah, he had let me be driving it all week. He was in town. He
19 had just got it.

20 Q. And you had that truck all week?

21 A. Yes, sir, I did.

22 Q. I take you remember, ah, this night, December 6, 2007?

23 A. Yes, sir, I do.

24 Q. Do you remember about what time you picked up your brother?

25 A. Yes, sir. It was around 9:45, ah, 9:30, 9:45.

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

233

1 Q. And - - who was it - - who is your brother that you picked up?

2 A. It was Derek Rivers.

3 Q. He just came on and testified earlier?

4 A. Yes, sir, he did.

5 Q. And where did you pick him up?

6 A. I had picked him up at Drive.

7 Q. And where is that?

8 A. That his house.

9 Q. So, had you talked to him before that?

10 A. Yes, sir, I did. He had called me prior to that and asked me
11 to come pick him up.

12 Q. And where were y'all going?

13 A. He was going to take the truck, and I was going to go back
14 home, me and Reggie, and he was going to go see a female.

15 Q. What did he - - who was in the truck with you when you got to
16 Derek's house?

17 A. Reggie Rivers.

18 Q. What relationship is that to you?

19 A. Um, he's no kin to me. He's just a very close friend.

20 Q. Did, ah, Derek and Reggie - - did, ah, you and Reggie drove to
21 Derek's house? Did you go into Derek's house?

22 A. No, sir, I didn't. He came right on out.

23 Q. And what did he have when he came out?

24 A. He had a bag with some clothes in it and a twenty-four case of
25 Natural Lite.

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

234

1 Q. Was that a full case?

2 A. Ah, no, sir, it wasn't.

3 Q. And where did he sit?

4 A. He sot in the - - behind me in the backseat.

5 Q. Okay.

6 And where did the beer go?

7 A. I want to say in the middle of the truck on the floorboard - -
8 beside him.

9 Q. Okay.

10 And he was in the back?

11 A. Yes, sir.

12 Q. How far is it from Derek's house there on Terrace Drive to the
13 Exxon Station?

14 A. A quarter of a mile, no - - no further than a half mile.

15 Q. Did you go directly from Derek's house to the Exxon Station?

16 A. Yes, sir, we did.

17 Q. Any estimate on how long that will take you?

18 A. Two or three minutes.

19 Q. Were you with your brother earlier when he went to Piggly
20 Wiggly?

21 A. No, sir, I wasn't.

22 Q. So, you drove to the Exxon Station?

23 A. Yes, sir, I did.

24 Q. And where did you pull in there?

25 A. Ah, I was directly in front of the store.

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

235

1 Q. For what purpose did you go there?

2 A. I sent my brother in to get a cigar for some marijuana that I
3 had.

4 Q. And the purpose of the cigar?

5 A. Ah, for my personal use. I smoke marijuana, and I was going
6 to take the cigar and put marijuana in it and smoke it.

7 Q. Do you use marijuana?

8 A. Yes, I do. I have a real bad problem in using marijuana. I
9 use marijuana heavy.

10 Q. You use it regularly?

11 A. Numerous times a day.

12 Q. They say they found some scales in the truck. Do you know
13 anything about that?

14 A. No, sir. Unaware of any scales that was in the truck.

15 Q. When you and Reggie, ah, pulled up at Derek's house did you
16 have a beer open?

17 A. No, sir, I did not.

18 Q. Did you have a beer in a paper bag?

19 A. No, sir, I did not.

20 Q. Did you get out of the truck at the Exxon Station?

21 A. No, sir, I did not.

22 Q. Did you open the door at the Exxon Station?

23 A. No, sir, I did not.

24 Q. Did Reggie have a beer?

25 A. No, sir, he did not.

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

236

1 Q. Did Derek open some beer once he got in the car?

2 A. No, sir, he did not.

3 Q. You said it was about two to three minutes to the Exxon
4 Station?

5 A. Yes, sir.

6 Q. How long do you think you were at the Exxon Station?

7 A. Two to three minutes.

8 Q. Were there a bunch of cars there at the Exxon Station?

9 A. No, sir, there wasn't. Hardly anyone was there.

10 Q. Okay.

11 Did you see any cars near you?

12 A. Yes, sir. That's where, um, from where I was parked at to the
13 left of me is where the people - - the people that worked in the
14 store park.

15 Q. Did you see anybody in those cars?

16 A. No, sir, I did not.

17 Q. So, you left the Exxon Station. Where did you go?

18 A. I proceeded to come in toward town.

19 Q. On what street?

20 A. Cheraw Street.

21 Q. You had the marijuana in your pocket?

22 A. Yes, sir.

23 Q. Which pocket was it?

24 A. It was my right front pocket.

25 Q. One bag or two?

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

237

1 A. I had one bag of marijuana.

2 Q. Showing you State's Exhibit #3, which bag was it?

3 A. It was the bag that was here. It's on my left and would be on
4 your - - I think it would be on your left, too, from where I'm
5 sitting, right here.

6 Right - - to be honest with you, Mr. Blake, it looks like it's
7 all broken up and I'm assuming that's the bag right here, and this
8 is a bag. I don't - - I don't really know what that's - - excuse
9 me. It looks it's all just - - like that's not even a bag.

10 Q. Well, how much marijuana is in the bag?

11 A. Ah, I had just some for my personal use. Enough to last me
12 for that day or to the next day.

13 Q. So you're not sure which?

14 A. Yes, sir. I'm sure which bag is mine because it was the
15 smallest bag. The bag is over to the side but as you can tell.
16 That reefer, the marijuana is switching back and forth. It's not
17 in a separate bag but, yes, that smallest bag over to the left is
18 mine.

19 Q. You have anything else in that right front pocket?

20 A. No, sir, I did not.

21 Q. Did you have any crack cocaine?

22 A. No, sir, I did not.

23 Q. So you say you turned right onto Cheraw Street?

24 A. Yes, sir. Proceeding to come into town.

25 Q. What lane were you driving in?

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

238

1 A. I was driving in the fast lane.

2 Q. Okay.

3 Were you driving fast?

4 A. No, sir, I was not.

5 Q. Tell us in your own words what happened then.

6 A. As I proceeded to come in town toward - - upon coming down
7 Cheraw Street and toward town, I met Mr. Turner's truck. When I
8 seen Mr. Turner's truck, I seen Mr. Turner making a U-turn. He
9 threw his lights on. I acknowledged that he was pulling me over
10 because I didn't see anything. I pulled over to the right lane.
11 Slowly veered off to the shoulder of the road.

12 Q. Okay.

13 Ah, and they rode in there - - does it have a crosswalk - - I
14 mean a sidewalk the whole way. Is there a curve the whole way?

15 A. Ah, yes, there is a sidewalk, a sidewalk.

16 Q. Sidewalk?

17 Um, so you pulled off the side of the road?

18 A. Yes, sir, I did.

19 Q. When did you see the blue lights go on?

20 A. Well, what happened, Mr. Blake, was immediately when Mr.
21 Turner spotted our truck he bust a U-turn and throwed his blue
22 lights on. I pulled over immediately. There was no one else on
23 #9. I know he was pulling me over.

24 Q. Are you saying you saw the lights and pulled over?

25 A. Yes, sir. He immediately - - when Mr. Turner seen the truck,

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE.

239

1 he immediately threw the blue lights on me. He threw his blue
2 lights on automatically - - he was really before he turned around
3 on me.

4 Q. Did you cross over the center line?

5 A. No, sir. When Mr. Turner turned his truck around, I pulled
6 off to the right hand and proceeded to pull on over.

7 Q. What happened next?

8 A. Mr. Turner and Officer Bowman came up on my left side on the
9 driver's side, and Lt. William - - Greg Williams came up on the
10 right side. Mr. Larry Turner asked me for my license. I handed
11 him my license. He wanted my registration, too.

12 As I reached over to get my registration, I asked Mr. Turner
13 what was he pulling me over for. Mr. Turner did not answer the
14 question. He avoided the question by saying, "Well, I smell
15 alcohol."

16 And I asked him again what did he pull me over for. He said
17 again that he smelled alcohol. Can I step out of the car? I said.
18 For what?"

19 He didn't - - he didn't give me a chance to, you know, open
20 the door or anything. He just went in and started trying to unlock
21 the door because I was bent over reaching for my registration out
22 of the glove box.

23 Q. What happened next?

24 A. After Mr. Turner forced his - - tried to force his way in the
25 truck on me, I pulled off. I was frightened. I didn't - - I

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

240

1 didn't - - I didn't really know what was going on. Mr. Turner
2 didn't give me a reason for him pulling me over, and he was - - he
3 - - I was in shock and pulled off. I went around the corner.

4 Q. You admit pulling off?

5 A. Yes, sir, I do. I do. I was very scared.

6 Q. Why were you scared?

7 A. Because I - - Mr. Turner has harassed me before. I didn't
8 want him to beat me.

9 MRS. MUNNERLYN: Objection, Your Honor.

10 May we approach? There's no evidence of this. This is the
11 first time this has come out.

12 MR. BLAKE: Judge, that's - - that's it right there.
13 That's all. I just asked him why he was scared. He told me.
14 That's it.

15 THE COURT: Do you propose to go into that any further?

16 MR. BLAKE: No, Judge.

17 THE COURT: Okay.

18 I will not permit to go forward.

19 MRS. MUNNERLYN: If there is any corroboration, I would
20 like to have - - be aware of what witnesses are.

21 THE COURT: Yes, sir. I'll - - I'll permit that. You may
22 ask him if it occurred, where it occurred, so forth. I'll permit
23 you to inquire. The jury is entitled - - he said it. So the
24 jury's entitled to for them as finders of the facts to know whether
25 or not it was true and whether or not that's a basis for his

1 further actions.

2 I'll leave it to the jury to make that determination - - or
3 whether or not it's relevant to any issue in this case.

4 Go ahead.

5 MR. BLAKE: Thank you, Judge.

6 Q. So, you pulled off and where did you go?

7 A. I went around the corner. I proceeded to pull up and turned
8 on the right into Center Street I think it was.

9 Q. Okay.

10 And then where did you go?

11 A. I made another right and went to the dead-end street.

12 Q. And about how far was this entire distance of your driving?

13 A. Less than a quarter mile.

14 Q. You said you pulled up to the dead end of Fara Street?

15 A. Yes, sir, I did.

16 Q. Alright. At that point who was in the driver's seat?

17 A. I was.

18 Q. Who was in the passenger seat?

19 A. Reggie Rivers.

20 Q. And who was in the backseat?

21 A. Derek Rivers.

22 Q. Okay.

23 You pulled up to the dead end. Then what happened?

24 A. I jumped out and started to run. Reggie jumped out. He
25 started to run.

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

242

1 Q. So, Reggie was in the passenger seat?

2 A. Yes, sir.

3 Q. Which direction did you go?

4 A. I followed Reggie, behind Reggie. Which way did we go? We
5 went behind a house. Jumped a fence. Went past the house and we
6 jumped into a ditch.

7 Q. You were behind Reggie?

8 A. Yes, sir.

9 Q. You both - - you both went into a ditch?

10 A. Yes, sir. After we jumped two fences, me and him jumped down
11 in the ditch.

12 Q. Which direction would that have been from where the car was?

13 A. It would have been East.

14 Q. Is that right or left?

15 A. Right.

16 Q. And that ditch was going towards where?

17 A. Back towards Cheraw Street.

18 Q. Reggie was ahead of you?

19 A. Yes, sir. I was behind him.

20 Q. How far?

21 A. From me to you.

22 Q. It was sometime around 10:00 at night December 6, '07?

23 A. Yes, sir, it was.

24 Q. I assume it was dark?

25 A. Yes, sir, it was pretty dark.

1 Q. Was there street lights?

2 A. Yes, sir. There were street lights from where we had jumped
3 out. There were street lights on a couple of apartments there in
4 Bennett Point. I don't know the name of them.

5 Q. And it was in the middle of winter?

6 A. Yes, sir, it was.

7 Q. Alright. So, just tell us about running in the ditch.

8 Q. Okay.

9 As me and Reggie jumped out of the truck, it was a fence time
10 we got out of the truck. We jumped the fence. Ran to the back
11 yard. We jumped another fence. We jumped down in the ditch, and
12 as we got in the ditch Reggie was throwing stuff out of his pocket.
13 I was trying to catch up and get away from Mr. Turner.

14 We got to the end of the ditch. I got stuck in the mud.
15 Reggie made it over the fence, and Mr., um, Office Bowman was the
16 first one to catch me. He jumped on me, and Mr. - - Officer Turner
17 was right behind him.

18 Q. Who put the cuffs on you?

19 A. It was Officer Turner that put the cuffs on me.

20 Q. Where did he put the cuffs on you?

21 A. Behind my back.

22 Q. Where were you?

23 A. I was laying face down in the ditch.

24 I had come up the incline but I was still in the ditch.

25 Q. What happened next?

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

244

1 A. Officer Bowman held me down while Mr. Turner put the cuffs on
2 me. There was - - there was some licks exchanged and they wasn't
3 coming from me. Um, after they got finished beating me, they drug
4 me out back into the highway.

5 Q. They - - so, you were handcuffed?

6 A. Yes, sir.

7 Q. And they pulled you up the ditch?

8 A. Yes, sir.

9 Q. Is there much distance there between the culvert up top and
10 the street?

11 A. Yes, it is quite a distance. I would say five, maybe ten
12 feet.

13 Q. Is there a sidewalk there?

14 A. Yes, sir. To the sidewalk.

15 Q. What happened next?

16 A. After Officer Bowman and Mr. Turner got through with me in the
17 ditch, they threw me out in front of the street, and I asked Mr.
18 McNeil could he help me because they had finished beating me.
19 Knocked my earring out and cuts was on my face. He told me there
20 was nothing that he could do for me.

21 Officer Bowman slammed me down on the street. That's when Ms.
22 Poe pulled up, I guess to transport me. Mr. Bowman stood me back
23 up. Asked me did I have anything on me. I told him I had some
24 marijuana in my front right pocket. He pulled out the marijuana
25 and sot it on the hood of Ms. Poe car. After that he put me in the

1 backseat.

2 I seen Mr. - - -

3 Q. In the backseat where?

4 A. Ms. Poe, ah, Ms. Poe police car.

5 Q. Okay.

6 A. Afterwards, as I - - like, I was beside the street seated in
7 Mr. Poe - - Ms. Poe's car, I seen Mr. Lucas coming through, and I
8 know Mr. Lucas from a childhood friend, and I asked him was there
9 anything that he could do for me because I was really hurt and
10 dehydrated. He said it wasn't anything he could do for me but he
11 asked me who - - who was, ah, who was the passenger in the vehicle.
12 I did not answer. He asked me again, and I did not answer, and he
13 told me that I would take all the charges then, and he slammed the
14 door in my face and walked off.

15 Q. So, you asked for Officer Lucas?

16 A. Yes, I did. I asked for him to see if he would help me. Yes,
17 sir, I did.

18 Q. And you proceeded to talk to him once he got to the car?

19 A. Yes, sir, I did.

20 Q. And you were asking him for help?

21 A. Yes, sir, I was asking him for help.

22 Q. Did you ever ask to go to the hospital?

23 A. Yes, sir. I did ask to go the hospital. I asked him to take
24 pictures of the cuts and bruises that was on my face and on my arms
25 but they would not.

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

246

1 Q. Had you been drinking anything that night?

2 A. No, sir, I hadn't. I didn't drink anything. I blew a 0.0
3 percent on their alcohol test.

4 Q. Was that when you got back to the jail?

5 A. Yes, sir, it was.

6 Q. Did you have any crack cocaine on you?

7 A. No, sir, I did not have crack cocaine.

8 Q. Did Aretha Poe search you?

9 A. No, sir. Aretha Poe did not search me.

10 Q. Did you ever see her get out of the car?

11 A. No, sir. She never got out of the car.

12 Q. Who was standing around when Officer Bowman went in your
13 pocket?

14 A. Ms. Aretha Poe was sitting in the front seat of her car. He
15 took - - after he took the marijuana out of my front pocket after
16 I told him what was in it, he took it and sot it on the hood of Ms.
17 Poe car. She was sitting right there in the driver's seat of the
18 car.

19 Q. Did Ms. Poe offer you assistance at some point?

20 A. Yes, she did. I was seated in her car. She took me back
21 around to the truck where I had jumped out at and was going to ask
22 Mr. Turner to loosen up the cuffs because I was bleeding from where
23 the cuffs were around my hand.

24 She told him but he would not - - he would not loosen them,
25 and she seen how bad I was out of breath and bleeding from my face

MR. RIVERS - DIRECT EXAMINATION BY MR. BLAKE

247

1 that she gave me a bottle of her water to wash the blood off.

2 Q. Showing you Defendant's #1. Do you recognize that photograph?

3 A. Yes, sir. I do. This is a picture that was taken at the
4 Detention Center after I left the scene of the crime.

5 Q. That very night?

6 A. Yes, sir.

7 Q. And you're wearing what kind of clothing there?

8 A. I'm wearing a white tee-shirt here.

9 Q. And where did you get the white tee-shirt?

10 A. I got the white tee-shirt from the Detention Center.

11 Q. Where were the clothes that you had been wearing that night?

12 A. They was already taken off of me.

13 Q. Do you remember by whom?

14 A. Yes, sir. The people at the County Detention.

15 Q. Okay.

16 There's a spot on the shirt there.

17 A. Yes, sir. That's where I had took the shirt and wiped the
18 blood from on my lip from where my lip had been busted earlier by
19 Mr. Turner and Officer Bowman.

20 Q. Did you have an open container in that truck?

21 A. No, sir, there was no open containers in that truck, none.

22 Q. Did you have one?

23 A. No, sir, I did not have one.

24 Q. Did you have a gun that night?

25 A. No, sir, I did not.

MR. RIVERS - CROSS EXAMINATION BY MRS. MUNNERLYN

248

1 Q. Did you know that anybody had a gun?

2 A. No, sir, I did not.

3 MR. BLAKE: No further questions.

4 THE COURT: Thank you.

5 Mrs. Munnerlyn.

6 MR. BLAKE: Judge, may we approach?

7 THE COURT: Yes, sir.

8 (Bench conference held off the record and in the presence of
9 the jury but outside the hearing of the jury.)

10 CROSS EXAMINATION BY MRS. MUNNERLYN:

11 Q. You said you didn't know anything about a gun?

12 A. Being in the truck that night, no, ma'am, I did not.

13 Q. But you knew that Reggie Rivers had a gun because that picture
14 was on your cell phone, wasn't it?

15 A. Yes, ma'am. I did know he owned a gun.

16 Q. In fact, that gun was in that truck last night - - that night,
17 wasn't it?

18 A. On the seat, yes, ma'am, it was.

19 Q. It was.

20 A. Yes, ma'am, on the seat he was on.

21 Q. When did you find out it was in that truck?

22 A. After Mr. Lucas told me that I was being charged with a whole
23 lot of other charges.

24 Q. And you say you had been beaten by Turner and Bowman?

25 A. Yes, the night in the ditch in the woods before they brought

1 me out.

2 Q. But you said that you were - - you were immediately taken from
3 the scene and taken to the jail and photographed right here. Isn't
4 that right? That's what you just testified to.

5 A. No, ma'am. I told that Ms. Poe took me back to the truck
6 where I had jumped out from.

7 Q. Right.

8 And then you were taken from there to the jail, and you were
9 photographed at the jail.

10 A. That was moments later.

11 Q. Moments later?

12 A. Yes, ma'am.

13 Q. So, this is the picture of you here?

14 A. Let me say.

15 Q. You've already testified that that was the picture that was
16 taken of you at the jail. Is that right?

17 A. Yes, sir. That is the picture that was taken at the jail.

18 Q. And how - - you said that one of your earrings was knocked
19 out?

20 A. Yes, ma'am. I was being hit with a flashlight.

21 Q. Which earring was that?

22 A. My right earring.

23 Q. And you wear two earrings?

24 A. Yes, ma'am, I do.

25 Q. Ah, and you say you were hit with a flashlight?

MR. RIVERS - CROSS EXAMINATION BY MRS. MUNNERLYN

250

1 A. Some foreign object.

2 Q. Now you're saying it was a foreign object?

3 A. Yes, ma'am.

4 Q. Was it a flashlight or a foreign object?

5 A. Well, I was handcuffed behind my back, and my face was in the
6 dirt. I couldn't see. I was just imagined that it was flashlight.

7 Q. So, now you say you were beaten after you were handcuffed?

8 A. Yes, ma'am. That was the statement I made earlier.

9 Q. And you hit on the ear?

10 A. Yes, ma'am, I was hit in the head.

11 Q. But you were never taken to the hospital?

12 A. No, ma'am. I was denied the privilege to go to the hospital.

13 Q. And there's no scratches or blood on you in this picture, is
14 there?

15 A. Yes, ma'am. If you look closely my lip is swollen, and you
16 see the blood on my shirt from where I was keeping the blood from
17 dripping.

18 Q. And where do you say there's blood?

19 A. The blood was coming from the swollen lip that I had.

20 Q. And you say there's blood on your tee-shirt here?

21 A. No, ma'am. I said that's the spot where I took my tee-shirt
22 and got the blood from off my lip.

23 Q. But you weren't taken to the hospital?

24 A. No, ma'am. I was denied the privilege of going to the
25 hospital.

MR. RIVERS - CROSS EXAMINATION BY MRS. MUNNERLYN

251

1 Q. Now, you ran through a wooded ditch, right?

2 A. No, ma'am, the ditch was not wooded at all.

3 Q. How deep is it?

4 A. Over my head.

5 Q. A ditch over your head?

6 A. Yes, ma'am.

7 Q. You jumped down in it and ran through it at 10:00 at night in
8 the dark?

9 A. Yes, ma'am.

10 Q. With two officers chasing you?

11 A. Yes, ma'am.

12 Q. And you ran from the block behind all the way out to close to
13 Cheraw Street?

14 A. Yes, I did.

15 Q. And you ran - - you ran to such an extent that you were out of
16 breath, and you said that you needed something to drink?

17 A. No, ma'am. I was beaten out of breath. Mr. Bowman had his -
18 - his knee on the back of my neck. I barely could breath.

19 Q. And you said you admitted to having the marijuana?

20 A. Yes, ma'am, I did.

21 Q. You have a problem with marijuana?

22 A. Yes, ma'am, I do.

23 Q. You smoke it several times a day?

24 A. Yes, ma'am, I do.

25 Q. Did you - - you haven't sought any help for that problem?

MR. RIVERS - CROSS EXAMINATION BY MRS. MUNNERLYN

252

1 A. No, ma'am, I haven't.

2 Q. You continue to smoke it, and you're smoking it here today?

3 A. Yes, ma'am, I do.

4 Q. Carry it with you?

5 A. Yes, ma'am, I do.

6 Q. And you had Reggie - - Reggie Rivers with you who was running
7 along with you?

8 A. Yes, ma'am.

9 Q. And he, in fact, got away?

10 A. Yes, ma'am, he did.

11 Q. And you haven't been able to get him to come up here and
12 testify for you?

13 A. No, ma'am. That's a touchy situation. Reggie threw the
14 crack down, and he knows if he come up here and said he threw the
15 crack down that you would charge him with the crack cocaine.

16 Q. So, you just - - you just - - you saying now that Reggie had
17 crack on him?

18 A. No, ma'am. I'm saying I seen Reggie throw the crack in the
19 ditch that night.

20 Q. And where - - when was this?

21 A. The night of this 6/07.

22 Q. And you could see the crack?

23 A. Yes, ma'am. I seen Reggie. He was no farther than from me to
24 you. He reached down in his pocket and got the crack and threw it
25 down in the ditch.

MR. RIVERS - CROSS EXAMINATION BY MRS. MUNNERLYN

253

1 Q. And you're in the ditch over your head?

2 A. Yes, ma'am.

3 Q. And it's 10:00 at night at December 6th?

4 A. Yes, ma'am.

5 Q. Now, you also have a record, don't you?

6 A. Yes, ma'am, I do.

7 Q. You've been convicted also of burglary and grand larceny?

8 A. Yes, ma'am, I did.

9 Q. And you knew - - you - - -

10 THE COURT: Mr. Foreman, ladies and gentlemen, it has come
11 into the record alleged prior convictions of burglary and grand
12 larceny. Under our law that testimony is permitted for a limited
13 purpose. That is you may use it as to his credibility and
14 believability of his testimony today, our law stating that crimes
15 of dishonesty are for the jury to consider on the issue of
16 credibility and believability.

17 That prior record, however, other than for that purpose cannot
18 be used as to his guilt or innocence in this case. You may, if you
19 choose, if you find the fact that he had such a prior record, you
20 may, if you choose, use it as to his credibility and believability
21 because those charges of robbery and burglary involve questions of
22 honesty. You would use it for that purpose, if at all, only for
23 credibility and believability.

24 You may proceed.

25 Q. And you were familiar with these officers. In fact, you know

MR. RIVERS - CROSS EXAMINATION BY MRS. MUNNERLYN

254

1 exactly what Officer Turner drives. Even though it's an unmarked
2 vehicle you know what he drives?

3 A. Yes, ma'am. So does everybody else.

4 Q. Who is everybody else?

5 A. Anybody.

6 Q. Anybody like everybody on the jury would know this?

7 A. Generally, generally, etc. The general public, etc.

8 Q. But you're - - you said you immediately saw that vehicle, and
9 you knew that's who it was when you saw it coming down Cheraw
10 Street.

11 A. No, ma'am. That's not what I said. I said immediately when
12 I seen the truck it immediately turned around and threw its blue
13 lights on me.

14 Q. But you knew who it was?

15 A. Yes, ma'am. When he turned the blue lights on me, yes, I did.
16 When I seen the blue - - the blue Explorer, he turned the blue
17 lights on me. I knew that was Turner truck. Yes, ma'am, I did.

18 Q. And - - and you claim you had problems with him before?

19 A. Yes, ma'am.

20 Q. And where was that?

21 A. Ah, just briefly passing him and seeing him at different
22 places.

23 Q. Have you been arrested by him before?

24 A. Ah, yes, ma'am, I have but the charges were dismissed.

25 Q. And when was that?

1 A. Um, back in 2003, I want to say. Yep, yes, ma'am.

2 Q. And it was because of that that you decided you had to take
3 off?

4 A. Yes, ma'am. Mr. Turner treats me very - - um, um, um, - - I
5 say he treats me very rude. I'll put it like that. Yes, ma'am.

6 Q. You know Greg Williams?

7 A. Um, not to the extent that I know Mr. Turner. No I do not.

8 Q. You know Shawn Lucas?

9 A. Yes, I do. Very familiar with Mr. Lucas.

10 Q. Then you trust him?

11 A. Yes, I do.

12 Q. When he approached the car, you asked to speak with him?

13 A. Yes, ma'am, I did.

14 Q. You just don't like Turner?

15 A. No, and that's not the problem. Mr. Turner doesn't like me.

16 Q. But you refused to get out of the car when he asked you to get
17 out of the car?

18 A. No, I didn't refuse. I wanted him to tell me what he was
19 pulling me over for. I know that's my right to know.

20 Q. Did you get out of the car?

21 A. No, ma'am, I did not. He did not give me the reason for he
22 pulled me over.

23 Q. And he asked you more than once to get out of the car.

24 A. And I asked him to tell me what he pulled me over for, and he
25 could not answer that question.

MR. RIVERS - CROSS EXAMINATION BY MRS. MUNNERLYN

256

1 Q. Did he say he smelled alcohol in the car?

2 A. No, ma'am. He did not tell me that.

3 Q. You testified earlier that when he came up to the car he began
4 asking you for - - you say that he asked you for your license and
5 registration.

6 A. The registration.

7 Q. Then he said, "Well, I smell alcohol in the car."

8 A. No, ma'am. That was after the fact when I asked him what he
9 was pulling me over for.

10 Q. And then he said he smelled alcohol in the car.

11 A. That was his reason for telling me to get out.

12 Q. And you still refused to get out?

13 A. Yes, ma'am.

14 Q. And then you - - you put your foot on the gas, and you didn't
15 pull off. You peeled off, didn't you?

16 A. Well, the way Mr. Turner was approaching me coming at me, yes,
17 ma'am, I did. I was trying to get out as fast as I could.

18 Q. Even though you had been stopped with a blue light and you had
19 been asked and you had been given a reason why you were stopped and
20 asked - - -

21 A. No, ma'am, I was not given a reason why I was stopped.

22 Q. You just testified that he smelled alcohol in the car.

23 A. That's not a reason for being stopped. That's a reason - -
24 that was a reason he gave for getting out of the car. He wanted me
25 on the outside of the truck.

THE DEFENDANT RESTS

257

1 Q. And you didn't want to be on the outside of the truck because
2 you know you had - - you knew you had dope on you?

3 A. No, ma'am. I didn't want to get out of the truck because Mr.
4 Turner came in a fashion to where he was going to do something to
5 me.

6 MRS. MUNNERLYN: No further questions, Your Honor.

7 THE COURT: Any further questions?

8 MR. BLAKE: No, Your Honor.

9 THE COURT: You may come down. Thank you.

10 (The witness leaves the witness stand.)

11 THE COURT: Any further witnesses?

12 MR. BLAKE: No, Your Honor.

13 THE DEFENDANT RESTS

14 THE COURT: Any reply?

15 MRS. MUNNERLYN: Your Honor, I need just a moment, please.

16 THE COURT: Yes. You want to have the jury excused?

17 MRS. MUNNERLYN: Yes, if I could.

18 THE COURT: I'll let you go just a moment. We're going to
19 take a short reply, and we're going to charge, and we're going to
20 break here about lunch. I've made arrangements to send you out to,
21 ah, Landmark for lunch at the county's expense. So, I'll take
22 care of lunch.

23 We'll finish the case and go to lunch, and then we'll start
24 deliberations.

25 (The jury retires to the jury room at 12:00 noon.)

THE DEFENDANT RESTS

258

1 THE COURT: Alright. We are in recess.

2 (The Court recesses this case for a short break and thereafter
3 reconvenes the trial of this case.)

4 THE COURT: Keep the jury out, please.

5 Wait a minute. I need to put a matter on the record. Hold
6 the folks.

7 Alright.

8 I want the record to reflect that - - that with regards to the
9 defendant's testimony I permitted the introduction of a prior
10 record involving armed robbery and burglary because they were
11 crimes of dishonesty. The statute permits the introduction of a
12 prior record under two prong positions

13 Under Section 1: If the probative value outweighs the
14 prejudicial affect I would have permitted it under that because the
15 defendant's testimony is crucial to the main issue in his - - in
16 this case, and the jury based on the fact that they've got to
17 observe his credibility and believability is entitled to know that,
18 and I think, then, the probative value outweighs the prejudicial
19 affect.

20 However, clearly, under Part 2 without the weighing factor,
21 crimes of dishonesty are admissible against the testifying
22 defendant. Our Supreme Court has said that burglary and armed
23 robbery are crimes of dishonesty, and I also permitted not only on
24 Section 1 but under Section 2.

25 Alright.

THE DEFENDANT RESTS

259

1 Bring the jury in.

2 MR. BLAKE: Judge, before you do that, can we approach one
3 second?

4 THE COURT: Do you need to approach. Why can't we get on
5 the record.

6 MR. BLAKE: We can do it on the record, Judge.

7 THE COURT: Alright.

8 MR. BLAKE: As far as jury instructions, I'd like you to
9 read Statute 56-5-1810. That's driving on the right side of the
10 roadway, left of center. That's the statute left of center.

11 That is a critical part of this case, Judge.

12 THE COURT: I got that section. I'll do that for you.

13 MR. BLAKE: Thank you, Judge.

14 THE COURT: Alright. Bring the jury in.

15 Other than that, I have told you what I will charge. You have
16 no additional instructions?

17 MR. BLAKE: No, Judge.

18 (The jury returns to the courtroom at 12:21 p.m.)

19 STATE'S REPLY

20 THE COURT: Mr. Foreman, ladies and gentlemen, you will
21 recall at the recess a few moments before, the defense had rested
22 its case, and under our rules of procedure, the State has the
23 opportunity of offering reply testimony.

24 As I understand it, you wish to do that at this time.

25 MRS. MUNNERLYN: Yes, sir.

OFFICER POE - DIRECT EXAMINATION BY MRS. MUNNERLYN

260

1 THE COURT: You may proceed.

2 MRS. MUNNERLYN: Aretha Poe.

3 (The witness takes the witness stand.)

4 OFFICER ARETHA POE, being duly sworn,
5 testifies as follows:

6 DEPUTY CLERK OF COURT: Please have a seat.

7 OFFICER POE: My first name is Aretha. My last name is Poe.

8 DIRECT EXAMINATION BY MRS. MUNNERLYN:

9 Q. Officer Poe, you had testified earlier in this case that you
10 were the Transportation Officer and involved in this particular
11 incident.

12 A. Yes, ma'am.

13 Q. Correct?

14 A. Yes, correct.

15 Q. Okay, and I just want to ask you a few questions.

16 When you arrived on the scene and you - - the defendant was
17 already in custody and you were prepared to transport him, ah, did
18 you - - what, if any, injuries did you see that he had?

19 A. I saw he was dirty, ah, in terms of his hair and had some dirt
20 on him and as far as sweat but - - but other than that, nothing.

21 Q. Did you see any blood?

22 A. No, no, ma'am.

23 Q. On his face.

24 A. No, I did not.

1 Q. On his clothing?

2 A. No, I did not.

3 Q. Okay.

4 Ah, and did you provide him with any water?

5 A. Yes, I did.

6 Q. Tell me what you did in regards to that?

7 A. He stated, "Ma'am, I am so thirsty."

8 And I always carry Aquafina, and I opened it, and I came to
9 the back like this, and I gave him at least about two swallows.

10 Q. He just took two swallows out of the bottle?

11 A. Yes, ma'am.

12 Q. Okay.

13 Ah, alright, and then you transported him to the jail?

14 A. Yes.

15 Q. Ah, do you recall, ah, anything about his handcuffs, any
16 complaint about his handcuffs?

17 A. I do not remember. Ah, I don't recall him complaining, um,
18 other than, you know, saying, "Ma'am, I am so thirsty."

19 Q. And then you, ah, transported him from the scene to the jail?

20 A. Yes, ma'am.

21 MRS. MUNNERLYN: I don't have any further questions of s
22 witness.

23 THE COURT: Mr. Blake?

24 MR. BLAKE: No questions.

25 THE COURT: You may come down. Thank you so much.

MR. THOMAS - DIRECT EXAMINATION BY MRS. MUNNERLYN

262

(The witness leaves the witness stand.)

THE COURT: Call your - - -

MRS. MUNNERLYN: Kevin Thomas.

(The witness takes the witness stand.)

KEVIN THOMAS, being duly sworn, testifies
as follows:

DEPUTY CLERK OF COURT: Take a seat.

DIRECT EXAMINATION BY MRS. MUNNERLYN:

Q. You are Kevin Thomas?

A. Yes, ma'am.

Q. And where are you employed?

A. Marlboro County Detention Center.

Q. Okay, and in what capacity or what do you do out there at the
Detention Center?

A. I'm a Jail Supervisor. I maintain the jail, book,
fingerprint, process.

Q. And you worked last night, didn't you?

A. Last night?

Q. Did you work last night?

A. No, not last night.

Q. Okay.

Ah, and we just called you and asked you to come up to the
courtroom, and you came immediately. Is that right?

A. That's right.

Q. You came as you were dressed?

MR. THOMAS - DIRECT EXAMINATION BY MRS. MUNNERLYN

263

1 A. Right.

2 Q. Okay.

3 I want to ask you. Were you the Booking Officer working on
4 the night of December 6, 2007, when Keena, ah, Lamont - - Keena
5 Lamont Rivers was brought in?

6 A. Yes, I was.

7 Q. Okay.

8 And you were the officer who actually booked him in. Is that
9 correct?

10 A. That's correct.

11 Q. Okay.

12 And he was photographed at that time as well?

13 A. Right.

14 Q. Okay.

15 I'm going to show you what's been marked as State's Exhibit #6
16 and see if you recognize that form.

17 A. Yes, I do.

18 Q. Okay, and what is this form?

19 A. That's a medical form that we ask them due to policy
20 processing procedures during the time they're being booked in by a
21 medical form.

22 Q. Okay.

23 In regards to any injuries or any treatment that's necessary?

24 A. Exactly.

25 Q. Okay. Alright.

MR. THOMAS - DIRECT EXAMINATION BY MRS. MUNNERLYN

264

1 And this is the form for Keena Lamont Rivers on that night,
2 correct?

3 A. That's correct.

4 Q. Okay.

5 MRS. MUNNERLYN: Your Honor, I would move to admit this
6 into evidence at this time.

7 THE COURT: I will admit it.

8 MR. BLAKE: Without objection.

9 (The Court Reporter accepts State's Exhibit #6 into evidence.)

10 Q. And that form, actually, indicates that there is no current
11 medical treatment necessary. Isn't that right?

12 A. That's right.

13 Q. And, um, you recall that particular night when Mr. Rivers was
14 booked in?

15 A. Yes, I was.

16 Q. And did you notice any injuries on the defendant, Mr. Rivers,
17 that night?

18 A. No, I did not.

19 Q. Okay.

20 And did you notice any blood on him or any of his clothing?

21 A. No, I did not.

22 MRS. MUNNERLYN: I don't have any further questions of him,
23 Your Honor.

MR. THOMAS - CROSS EXAMINATION BY MR. BLAKE/THE STATE RESTS 265

1 CROSS EXAMINATION BY MR. BLAKE:

2 Q. Looks like you've been out cutting grass.

3 A. Yes, sir.

4 Q. Um, I notice here on State's Exhibit #6 that there's no
5 signature by either the officer of the inmate.

6 A. That's correct.

7 MR. BLAKE: No further questions.

8 THE COURT: Alright, sir.

9 You may come down.

10 MRS. MUNNERLYN: That's all.

11 MR. THOMAS: That's it?

12 (The witness leaves the witness stand.)

13 THE COURT: Any further reply?

14 MRS. MUNNERLYN: That will be all we have, Your Honor.

15 THE STATE RESTS

16 THE COURT: Alright, sir.

17 I'm going to let you go the jury room just a minute.

18 Now, what we going to do is when we come back out I'm going to
19 give you the instructions in the law. Ordinarily, we charge after
20 the summation of counsel.

21 Jurors in the past few years have said to me, "Judge, I wish
22 you'd have told us what the law was to start with. I believe I
23 could have followed the arguments of counsel better."

24 And that makes sense to me, and I've done that for a number of
25 years.

MOTIONS AND RULING OF THE COURT

266

1 But after, even after arguments of counsel, I'll be back with
2 some concluding remarks as to what the law is.

3 Now, remember this, of course. You are the finders of facts,
4 and you take the facts and you apply the facts to the law of this
5 case.

6 Let you go the jury room just a moment, and I'm going to bring
7 you right back. We going to finish this case. As soon as we
8 conclude it, I'm going to send you out to the Landmark for a good
9 lunch at the county's expense.

10 (The jury retires to the jury room at 12:29 p.m.)

MOTIONS AND RULING OF THE COURT

11 THE COURT: Come on around.

12 (Bench conference held off the record and outside the presence
13 of the jury.)

14 THE COURT: Mr. Blake, you've asked me to read the statute
15 that provides that an automobile shall not be driven under this
16 roadway at that place left of center. I don't know of any issue
17 that relates to because the basis for the stop was never challenged
18 by anybody on - - as an unlawful stop in - - in a motion, and
19 nobody has ever pretrial contested the - - and said it was an
20 unlawful stop.

21 MR. BLAKE: Judge, it doesn't have to be contested
22 pretrial. That simply is a matter of law. It's certainly part of
23 this case and much of what I have presented but I understand if you
24 don't to submit that. I just - - I just want to be able to argue
25

MOTIONS AND RULING OF THE COURT

267

1 about the open container as well as left of road.

2 THE COURT: Well, you can argue about it but I don't see
3 the necessity of - - I'm going to let you argue that whatever you
4 want to about he didn't drive left of center if you choose to.

5 MR. BLAKE: Thank you, Judge.

6 THE COURT: But I'll let you argue that but why do I need
7 to tell the jury that.

8 Obviously - - -

9 MR. BLAKE: Judge, I've already agreed with that.

10 THE COURT: Sir?

11 MR. BLAKE: You've made the ruling. I'm not going to
12 object to it.

13 THE COURT: Well, I understand but you - - you want to tell
14 me why I need to tell the jury that it is illegal to drive left of
15 center.

16 MR. BLAKE: I was hoping to clarify that, Judge, but I'll
17 just deal with it in closing arguments.

18 THE COURT: Would you like for me to charge that? It's
19 illegal to drive left of center on a four-lane road.

20 MR. BLAKE: Judge, I had showed you a part of the statute,
21 those two different sentences. I think the first part of that is
22 important also as to how the statute begins and then phrase down
23 there.

24 MRS. MUNNERLYN: Judge, I would object to that.

25 THE COURT: No, sir, I'm not going to do that but you are

CHARGE OF THE COURT

268

1 protected for the record.

2 Alright.

3 Anybody object to me going ahead and charging the jury prior
4 to argument?

5 MRS. MUNNERLYN: No, Your Honor.

6 THE COURT: How about you?

7 MR. BLAKE: No, Your Honor.

8 THE COURT: Alright. Bring the jury in.

9 Wait a minute. Take them back out just a second.

10 Mr. Blake, you need to make some motions at this time.

11 MR. BLAKE: Judge, I do renew my motion for a directed
12 verdict on the grounds of sufficient evidence.

13 THE COURT: That motion is respectfully denied.

14 There is ample evidence if believed by the jury to convict him
15 of all the charges contained in the indictment.

16 It is a question for the jury. Bring the jury in.

17 (The jury returns to the courtroom at 12:35 p.m.)

CHARGE OF THE COURT

18
19 THE COURT: Alright. Mr. Foreman, ladies and gentlemen, I
20 think that we can conclude the charge and final arguments by 1:30
21 such that I can have you go to lunch, and we'll let you begin your
22 deliberations after lunch.

23 Now, Mr. Foreman and members of the jury, the State of South
24 Carolina has charged this defendant with various offenses with
25 which you are familiar, and to these charges this defendant

CHARGE OF THE COURT

269

1 specifically pleads not guilty.

2 Now, there are five separate indictments. The indictments, of
3 course, is not evidence. It's the allegations that the State must
4 prove. The evidence comes from this witness stand and such matters
5 as I have introduced into the trial of this case, and as to that,
6 these documents that are in evidence, Mr. Bass, will be with you in
7 the jury room during your deliberations.

8 You consider the evidence separately as to each indictment.
9 Your verdict may be not guilty as to all, guilty as to all, guilty
10 of some and not guilty of the other or not guilty. What I'm
11 saying is your verdict can be the same as all indictments. It
12 doesn't have to be. It depends on your view of the evidence. You
13 must consider the evidence as to each indictment, and once you
14 reach a unanimous verdict of all twelve of you, you would write
15 your verdict under the word "verdict". I will have for you a
16 verdict form relative to each indictment.

17 Now, to these indictments this defendant has pled not guilty
18 which places the burden of proof upon the State of South Carolina
19 of proving him guilty if they can to your satisfaction by evidence
20 beyond a reasonable doubt.

21 I charge you, therefore, that it is an important rule of law
22 of evidence that a defendant in a criminal case no matter how great
23 or serious may be the offense with which he's charged must always
24 be presumed innocent until his guilt has been established beyond a
25 reasonable doubt. From the moment of his arraignment throughout

CHARGE OF THE COURT

270

1 the trial he has the presumption of innocence until removed by you,
2 the jury.

3 Now, and so, again, I continue to emphasize. The burden of
4 proof is upon the State of South Carolina of proving him guilty of
5 these charges beyond a reasonable doubt.

6 Now, let me talk to you about reasonable doubt. The State
7 has the burden of proving the defendant guilty beyond a reasonable
8 doubt as I've indicated. Some of you may have served in civil
9 cases where you were told that it is only necessary to prove that
10 a fact is more likely true than not.

11 In criminal cases the government's proof must be more powerful
12 than that. It must be beyond a reasonable doubt.

13 Now, ladies and gentlemen, proof beyond a reasonable doubt is
14 proof that leaves you convinced of the defendant's guilt. There
15 are very few things in this wide world that we know with absolutely
16 certainty, and in criminal cases the law does not require proof
17 that overcomes every possible doubt.

18 If based on your consideration of the evidence you are firmly
19 convinced that the defendant is guilty of the crime charged, you
20 must find him guilty. If, on the other hand, you think there is a
21 real possibility that he is not guilty, then you must give him the
22 benefit of that doubt and, thereafter, find him not guilty.

23 Now, as I told you earlier at the beginning of this trial, you
24 folks are the judges, sole judges of the credibility meaning the
25 believability of every witness who has testified in this case for

CHARGE OF THE COURT

271

1 the State and for the defense, and, ah, in - -

2 And, you know, as I indicated, too, that there are certain
3 tools that we all use in everyday life in judging credibility and
4 believability. Some of the things we sometimes use, you may or may
5 not, is the appearance and manner of a particular witness who
6 testified sometimes referred to as a demeanor.

7 Was a witness forthright or hesitant? Was a witness'
8 testimony consistent or did it contain discrepancies? You may
9 consider if you choose what was the ability of one witness to know
10 the facts which he or she may have testified to.

11 Obviously, you would always consider whether any witness had
12 a cause or reason to be biased or prejudiced with regard to the
13 testimony that he or she gave.

14 Obviously, you are entitled to consider whether or not a
15 particular witness is telling the truth, and, if not, why not.

16 But, again, that is for you to decide.

17 You may consider if you choose was the testimony of one
18 witness consistent with the testimony of others or did it contain
19 discrepancies?

20 You have, as I indicated, the right to believe one witness
21 against that of many, to believe a small portion of a witness'
22 testimony and to disregard the larger.

23 Most certainly, you do not determine the truth of a matter by
24 counting up the number of witnesses who may have testified on one
25 side or the other.

CHARGE OF THE COURT

272

1 And I continue to emphasize, Mr. Foreman, and to the jury,
2 throughout this entire process you have but one single objective in
3 judging credibility and believability and that is to seek and find
4 the truth, to seek and find the truth.

5 All of these things you are entitled to consider bearing in
6 mind that you must give the defendant the benefit of every
7 reasonable doubt.

8 Now, by the Constitution that makes unto you folks the finders
9 of the facts, your oath requires that you accept the law as I give
10 it to you. Even though you or I for that matter might disagree
11 with what the law is or ought to be, please for the purposes of
12 this trial and under your oath accept the law as being the correct
13 law applying at all times the facts as you find them to be to the
14 law as I hereafter charge it to you.

15 Now, there are two types of evidence which are generally
16 presented during a trial, direct evidence and circumstantial
17 evidence.

18 Evidence - - direct evidence is the testimony of a person who
19 asserts or claims to have actual knowledge of a fact such as an
20 eyewitness.

21 Circumstantial evidence is proof of a chain of facts and
22 circumstances indicating the existence of a fact.

23 The law makes absolutely no distinction or weight to be given
24 to the value of either circumstantial or direct evidence nor is a
25 greater degree of proof required of circumstantial evidence than of

CHARGE OF THE COURT

273

1 direct evidence.

2 Now, the defendant is charged with failure to stop for a blue
3 light. In order to prove this crime the State must prove beyond a
4 reasonable doubt that the defendant was driving a motor vehicle,
5 that the defendant was driving the motor vehicle on a road, street
6 or highway of this state and that the defendant was signaled to
7 stop by a law enforcement vehicle by means of a siren or flashing
8 light and that the defendant did not stop or if stopped proceeded
9 again without authority.

10 In determining whether or not there are mitigating
11 circumstances which would justify the defendant's failure to stop
12 for the blue light, you may consider actual road conditions, other
13 structures such as lighting and weather and any other issues which
14 you think are mitigating circumstances with regards to failure to
15 stop.

16 One of the issues in this case may be, and it's for you to
17 consider, duress or the defense of necessity. In order to prove
18 necessity, the defendant must show that there is a present and
19 imminent emergency arising not on the fault of the defendant or the
20 emergency is of such a nature as to induce a well-grounded
21 apprehension of death or serious bodily harm if the act of failure
22 to stop is not done or - - or and there is no reasonable
23 alternative other than committing the crime to avoid the threat of
24 harm.

25 I in the course of this trial permitted a witness to testify

CHARGE OF THE COURT

274

1 who I qualified as an expert witness in the field of Forensic
2 Science. Witnesses who by training, education or experience are
3 considered experts in a particular field, and they may give their
4 opinions based on the facts of a matter, and their conclusions
5 constitutes evidence to be considered by you in connection with all
6 the other evidence and testimony presented.

7 You, the jury, may give such testimony and such evidence such
8 consideration as you think it is entitled to.

9 Now, the defendant is charged with possession with intent to
10 distribute. The defendant in this case is charged with the
11 violation of section - - of the appropriate section of the Code
12 involving crack cocaine. This section makes it unlawful to
13 manufacture, distribute, dispense or possess with intent to
14 manufacture or to distribute a controlled substance.

15 The indictment charges that this defendant possessed a
16 quantify of crack cocaine with intent to distribute on the date
17 indicated in the indictment, and in a separate indictment before
18 you, the defendant is charged with possession with intent to
19 distribute within a half mile of a school or playground. That is
20 a separate statute for your consideration.

21 Now, there are certain elements of the offense which the State
22 must prove beyond a reasonable doubt before the defendant can be
23 found guilty of this offense. Should you find in your
24 deliberations that you have a reasonable doubt as to any of these
25 elements, then you must reach a verdict of not guilty.

CHARGE OF THE COURT

275

1 First, you must find beyond a reasonable doubt that this
2 defendant did possess the controlled substance at the time and
3 place alleged in these indictments which will be with you in the
4 jury room.

5 Possession requires that a person be in actual or constructive
6 possession of the controlled substance with actual knowledge of its
7 presence.

8 Actual possession of a controlled substance exists when the
9 controlled substance is found in the actual physical custody of the
10 person charged with possession.

11 Constructive possession of a controlled substance exists when
12 a person, although not in actual physical possession of the
13 controlled substance, exercises dominion and control of that
14 controlled substance.

15 A person has possession of a controlled substance within the
16 meaning of the law when he has both the power and - - both the
17 power and the intent to - - to control the property in discussion.

18 Pardon me. My glasses are fogging up on me this morning.

19 It must be shown that the - - -

20 (The Court stops to clean glasses.)

21 It must be shown that the defendant had possession of the
22 controlled substance and the defendant knew he had the controlled
23 substance in his possession. Knowledge of the controlled substance
24 by the defendant is essential.

25 Second, the State must not only prove possession of the

CHARGE OF THE COURT

276

1 controlled substance by the defendant but the State must establish
2 by the requisite measure of proof that the defendant possessed the
3 substance with the intent to distribute.

4 The intent to distribute the controlled is an essential
5 element of this offense. Intent is defined as a purpose or aim or
6 design and in law it is the state of a person's mind which directs
7 his actions toward the specific object.

8 Distribute means to deliver the controlled substance then in
9 the actual or constructive possession to transfer it.

10 This defendant, of course, is charged with possession with
11 intent to distribute.

12 Third, the State must prove beyond a reasonable doubt that the
13 substance, in fact, is crack cocaine which I charge you is a
14 controlled substance.

15 Furthermore, in order to find the defendant guilty with the
16 intent to distribute within a half mile of a school or playground,
17 you must find that the State proved beyond a reasonable doubt each
18 of these three elements plus the additional element that you must
19 find that his actions in possession if at all with intent to
20 distribute occurred within a half mile of a school or playground.

21 If the State fails to prove that the defendant had the intent
22 to distribute but that the defendant possessed the crack cocaine,
23 then under those circumstances, you may find the defendant guilty
24 of possession, and, obviously, you may find him not guilty of
25 intent to distribute or possession depending on your findings of

CHARGE OF THE COURT

277

1 the facts.

2 I will now charge you in part the provisions of the
3 appropriate Section 44-53-370(d)(3) of the Code of Laws of the
4 State of South Carolina.

5 In any prosecution for the violation of this section relating
6 to possession with intent to distribute a controlled substance, the
7 amount of the controlled substance in the defendant's possession at
8 the time of the alleged violation shall give rise to the following
9 inferences.

10 If the defendant had in his possession more than - - more than
11 one gram of cocaine, there then is an inference that he possessed
12 it with intent to distribute.

13 Now, with possession with intent to distribute marijuana, the
14 State must prove that the substance was marijuana, and the State
15 must prove that, too, beyond a reasonable doubt. I charge you that
16 marijuana is a controlled substance.

17 If the defendant had in his possession one or more ounces of
18 marijuana there is an inference that the defendant had possession
19 with intent to distribute the same.

20 Now, this inference with reference to crack or marijuana is as
21 follows:

22 The inference created by law which I have just read to you is
23 an inference only. This inference is simply an evidentiary fact to
24 be taken into consideration by you, the jury, along with any other
25 evidence in the case relating to intent to distribute, and you may

CHARGE OF THE COURT

278

1 give it such weight as you in your judgment think it is entitled
2 to.

3 Now, Mr. Foreman, I'm going to prepare for you a form of
4 verdict.

5 First, let's talk about failure to stop for a blue light.
6 In that case, and I'll have some guidelines for you. In that case
7 your verdict will simply be either not guilty or guilty and it must
8 be the unanimous verdict of all twelve of you.

9 I'll have it on a sheet of paper and whatever your verdict is,
10 I'll ask that you turn on the back of that indictment and write not
11 guilty or guilty.

12 Now, with reference to possession of cocaine with intent to
13 distribute, you may find him not guilty of that charge or guilty.
14 If, and I say that advisedly, if you find him in possession but not
15 guilty of intent to distribute, then you would consider whether or
16 not he possessed it at all.

17 If he possessed it at all, then you would say so. If you find
18 that he did not possess it with intent to distribute nor did he
19 possess it at all, as to that charge, it would be not guilty.

20 I will prepare a verdict with the same thing with regards to
21 marijuana, either guilty or not guilty of possession with intent,
22 either guilty or not guilty of possession only.

23 You may consider possession with intent to distribute and if
24 you find that there's not sufficient evidence, and that's for you,
25 then you would ascertain whether or not there was evidence of

CHARGE OF THE COURT

279

1 possession only.

2 Now, if you find him, and I use that advisedly, if you find
3 him guilty of possession with intent to distribute either the
4 marijuana or the crack, you will consider whether or not that
5 possession with intent to distribute was in the proximity of a
6 school or playground.

7 IF you find him guilty of possession only, you could not
8 charge him with the playground aspect. That playground aspect only
9 deals with distribution or intent to distribute.

10 But, now, having given you these various forms of verdict, I
11 make no suggestion to you as to what your verdict will be. That's
12 solely for you to determine.

13 Mr. Foreman, I have prepared possible verdicts for you for
14 clarification. They will be sent back with you. Whatever your
15 verdict is as to each charge, you would turn under verdict, and let
16 it be the unanimous verdict. It must be, and you would write your
17 name accordingly and ask - - tell the jury you've reached a
18 verdict, a unanimous verdict, and bring the jury out.

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

24 You must not be influenced by opinions or expressions of
25 opinions, if any, which you may have heard on the outside but you

SUMMATION BY MR. BLAKE

280

1 are to decide this case according to the testimony and evidence
2 that you have heard from the trial of this case from the lips of
3 the sworn witnesses and from such other matters as I have
4 introduced into the trial of this case.

5 I will deal with any additional charges or exceptions after
6 arguments. Is that okay?

7 MR. BLAKE: Yes, Judge.

8 MRS. MUNNERLYN: Yes, Your Honor.

9 THE COURT: Alright.

10 Will the State have one or two - - will you have an opening
11 and a closing or are you waiving your opening?

12 MRS. MUNNERLYN: Waiving the opening, Your Honor.

13 THE COURT: You may proceed, Mr. Blake.

14 MR. BLAKE: Thank you, Your Honor.

15 SUMMATION BY MR. BLAKE

16 MR. BLAKE: Wouldn't it be great if this was tv and we had
17 a video camera showing the entire incident beginning to end? That
18 would make it pretty easy for you.

19 Your job is not an easy one. It's difficult. Especially in
20 a case like this where you hear so many different versions of the
21 truth.

22 I'd like to start off by reading a section from Isaiah. It's
23 very relevant to my work. I think it's entirely relevant to the
24 job that you have to do.

25 Isaiah wrote, of course, in the Eighth Century BC, Before

SUMMATION BY MR. BLAKE

281

1 Christ. He was a prophet. This is him from God, itself.

2 It says, "Learn to do good. Seek justice. Rebuke the
3 oppressor. Defend the fatherless. Plead to the widow."

4 It's always a question about what justice really is. Of
5 course, in your situation it comes down to who do you believe.

6 The judge just read you those instructions, and one of the
7 things that he gave you as a suggestion in terms of deciding who to
8 believe was the inconsistency of the witnesses, and it's difficult
9 to hear a case like this. It's not like someone gets up and tells
10 you a story. You've got attorneys asking questions, and we
11 probably don't ask all of the questions that you might like to have
12 answered, and the story gets told by the witness stand and by the
13 exhibits by whatever is said by those witnesses.

14 It is kind of in bits and pieces. That's why there's twelve
15 of you who will deliberate in the jury room. Like I said in the
16 opening, twelve different sets of eyes and ears and twelve
17 different minds because none of you can pay attention to all of
18 this all of the time. It's not humanly possible besides the fact
19 that some of it's just downright boring.

20 But you've done the best that you can. I know that you've
21 been paying attention. That's what we ask of you. In a while
22 you'll have the case for yourself to decide what did happen because
23 that's actually your job, because there is no big video in the sky
24 at least that we get to look at. You have to figure out what
25 happened that night by what you heard in these last few days.

SUMMATION BY MR. BLAKE

282

1 My client freely admits that he had marijuana in his right
2 front pocket. The witnesses testified about the twenty-four pack
3 of Natural Lite in the backseat. However, it's not against the law
4 to travel with something like that unopened.

5 The police contend, of course, that there were three open
6 containers and that was one of the reasons for them stopping the
7 vehicle because they had gotten this call from Lawanda Williams who
8 is Lt. Greg Williams' wife.

9 I guess she kind of makes the police's job easy by calling in
10 things like that but let's think a moment about that testimony, and
11 was it corroborated by other people's testimony.

12 You will probably recall better than I do because there's
13 twelve of you and we're busy asking questions and taking notes and
14 sometimes we don't catch everything but I don't think there's any
15 doubt about the fact that she said my client was half in and half
16 out of the truck, that he had something in a bag, that the he took
17 the swig of it actually with his left hand, more than a swig. She
18 said a swallow or two.

19 She didn't, she tells you, didn't know what was in it, in that
20 bag because she couldn't see what was in the bag but then, somehow,
21 he looking towards the store lifts the bag up, and that's when she
22 noticed that it was a beer.

23 I guess he was trying to communicate something in the store,
24 maybe, "Buy more beer." I don't know.

25 She says that two people came out of the store and got into

SUMMATION BY MR. BLAKE

283

1 the car and that they had beer with them but she didn't, you know,
2 know what it was or how much it was.

3 The - - and you'll have to bear with me because I can't keep
4 up with all this. She goes on but, ah, I could be wrong, and,
5 again, if I say something wrong, please don't blame my client. You
6 were hearing this. You've got twelve people hearing. I may
7 mistake something. If I do, it's my mistake. It's certainly not
8 intentional but as I was listening to these witnesses I believe
9 that Greg Williams came next, her husband next.

10 Let me point something out. It may be obvious to you. It may
11 not be.

12 Out of your presence before the trial started I made a motion
13 for the witnesses to be not in the courtroom. We call it a motion
14 for sequestration of witnesses because you notice. Every time we
15 had to call for a witness they came through that door. They were
16 sitting outside your presence so that they would not hear what
17 other witnesses had said so that each of those persons' testimony
18 would be fresh and not as an accumulation of what everybody else
19 had said.

20 Of course, Sgt. Turner was sitting here because he was the
21 lead investigating officer, and my client was sitting there because
22 we're trying him for these crimes.

23 So, I did that for a purpose. I did that so that you could
24 see if these witnesses' testimony was consistent.

25 Now, I think you all assume that because my client's on trial,

SUMMATION BY MR. BLAKE

284

1 he's lying. Has a good reason to lie but everybody who testifies
2 up there has a bias. They have an ax to grind.

3 Now, the police have a very difficult job. They also are
4 given that uniform and have a great deal of power.

5 So, I ask you to just consider the biases of all the
6 witnesses, and as the judge said, also, how those witnesses
7 appeared on the stand, how they responded to questions. That's all
8 for you to determine who you're going to believe because you really
9 have two different versions of what happened, and it's up to you to
10 decide who you're going to believe.

11 Getting back to Greg Williams, I spent a great deal of time
12 talking about these open containers because he says that there were
13 three open containers. He says that there were three cans of beer,
14 and he denied that any of them had a brown paper bag around them.

15 Now, if you have questions about that, you can always ask the
16 Court Reporter to replay any testimony.

17 The reason that the police say that they were coming after my
18 client was because of the phone call. She said that the beer was
19 in the paper bag. Her husband never mentioned a paper bag. I kept
20 asking him. I wasn't trying to waste your time. It may seem like
21 just a trivial, insignificant point but on those little points is
22 the truth built, and if those points are inconsistent, they're not
23 just glossing on the cake, they're the whole deal. They're the
24 meal.

25 The Solicitor will tell you that I'm just trying to blow

SUMMATION BY MR. BLAKE

285

1 smoke, smoke and mirrors and that those things are unimportant. My
2 client has never denied that he was originally stopped, and he
3 pulled over. He never denied that he then sped off. He told you
4 why.

5 He never denied having marijuana in his pocket. Let's just
6 move to that for a minute, and I have no doubt about this because
7 I paid extreme attention to it. I asked the question numerous
8 times of Ms. Poe.

9 "What did you take out of that pocket?"

10 "Two bags of green, one bag of white."

11 State's Exhibit #2 shows there are two bags of white.

12 State's Exhibit #4 shows the two main bags and smaller bags of
13 green.

14 You'll have all of that when you go back into the evidence
15 room.

16 I didn't just ask it once. I gave her many times to just tell
17 us what happened.

18 That's not insignificant.

19 Maybe it's possible that she actually did not search my
20 client. I'd like you just to consider that possibility.

21 Again, so many of you hearing what was stated, sometimes those
22 inconsistencies may not be right obvious in the beginning because
23 you just don't know the whole story but I was very happy to see Mr.
24 Bass there taking notes, paying attention. I think those notes
25 are very helpful because those are taken right when the testimony

SUMMATION BY MRS. MUNNERLYN

286

1 is going on.

2 It's your job to get back in that room and talk about what you
3 remember in terms of the testimony, to look at the exhibits and
4 make your decision.

5 It is not my job to prove my client innocent. In fact, he's
6 not completely innocent. He admits to the marijuana.

7 As the judge told you, you are to find him beyond a reasonable
8 doubt on all of the elements of those crimes. That reasonable
9 doubt really means causing a reasonable person to hesitate to
10 convict.

11 I thank you for your time and your attention.

12 THE COURT: Thank you, Mr. Blake.

13 You may have closing, Mrs. Munnerlyn.

14 MRS. MUNNERLYN: Thank you, Your Honor.

SUMMATION BY MRS. MUNNERLYN

16 MRS. MUNNERLYN: May it please the Court, Mr. Blake, ladies
17 and gentlemen of the jury, good afternoon, now.

18 Now, we are at the end of this case and it will very shortly
19 be in your hand, and we have presented to you all of the witnesses
20 that we have, and as Mr. Blake said, I wish I could give you a
21 video tape of it so that you could see it for your own eyes but
22 that's just not possible.

23 So we have presented to you every witness that we know of who
24 was present there and who can tell you what they remember, and that
25 does not necessarily mean that they all remember it exactly the

SUMMATION BY MRS. MUNNERLYN

287

1 same. As you remember in grade school when you would always - -
2 you played the little game where you sat in a circle and you
3 started with one person saying one thing, and you passed it around,
4 and by the time you got to the last person, it's always different.

5 There's always going to be little differences in how people
6 see things, okay? But you have to consider why somebody is saying
7 something, okay? And this case really comes down to credibility.

8 Who do you believe?

9 And what - - what really happened here and how does all of
10 this evidence fit together? And what makes the most sense? Okay?
11 What are you firmly convinced of as far as what happened on the
12 night of December 6th of 2007.

13 And beyond a reasonable doubt, we're not talking about
14 possibilities here like Mr. Blake was just talking about certain
15 possibilities. We're not talking about possibilities. We're
16 talking about beyond a reasonable doubt. Okay? We're talking
17 about reasonable doubt here.

18 We have to prove to you that this defendant committed these
19 crimes beyond a reasonable doubt. Okay? So the evidence has to
20 leave you firmly convinced that this is, in fact, what happened.

21 And I think once you sit back there and think about what each
22 of these witnesses has said and why they might be saying what
23 they're saying that you will be able to determine what really is
24 the truth here.

25 I think that probably once you look at all of this, how

SUMMATION BY MRS. MUNNERLYN

288

1 everything is packaged, how much is there, the photograph, ah, the
2 booking photo and you think about what supports what was said on
3 that witness stand, then the only verdict you can come back with is
4 guilty.

5 You have, well, it's five indictments but three different
6 charges. Okay? You've got your failure to stop for a blue light
7 which, as the judge has already told you what the law is, and I
8 just want to go back through it so I can show you how we argue we
9 think we've met the burden of proof.

10 The failure to stop for a blue light, of course, is when a
11 defendant who is driving on the public roads of this state fails to
12 stop when he's signaled to do so by an officer of the law. Okay?
13 And his signal can be by siren or by lights and there's - -
14 there's an admission here, basically, by the defendant that, yes,
15 he failed to stop. He agrees.

16 "Yeah, I pulled off."

17 He wants you to believe that he was afraid. It's okay. It's
18 okay. He was afraid of what might happen. So he just took off,
19 and that makes it okay. But this is - - that is not I would argue
20 what the judge charged you necessity in this particular case.

21 Necessity, when the judge is talking about necessity or
22 duress, often times what you think of in those cases or if you
23 have, perhaps, a woman driving late at night and she's signaled to
24 stop by an officer but it's on a deserted road or there's no
25 lighting. There's no good place to pull over and she's proceeds

SUMMATION BY MRS. MUNNERLYN

289

1 for some distance before she stops. That might be a defense of
2 necessity. Okay? That is not what we're talking about here
3 today.

4 He admits he stopped but he didn't like - - he didn't want to
5 get out. He didn't want to step out of the vehicle even when he
6 was told. He admitted he was told why.

7 I kept asking, and, finally, he admitted. "Yeah, he did tell
8 me why."

9 But he wasn't going to get out.

10 He said, "I felt uncomfortable at that point. So I just took
11 off."

12 Even though he had already stopped with the officer right
13 there by the car, he takes off, and not only did he take off in his
14 car, and he goes around the block and down a dead-end street, when
15 he stops, he jumps out on foot, and he runs.

16 And there's a foot chase, and you hear, and he jumps over a
17 couple of fences. He runs through a ditch. Makes every effort to
18 get away.

19 And then he's ultimately arrested, and, of course, he's taken
20 to the police - - to the jail, and he's booked, and there is the
21 photo taken right as he's taken to the jail. Okay?

22 He says he was scared but he had dope on him. I mean, I would
23 submit to you that's why he was scared. Not because of anything
24 that happened to him. Because he had all of this dope in his
25 pocket. That's the only reason he was scared.

SUMMATION BY MRS. MUNNERLYN

290

1 He thought he could get away but he didn't.

2 So you have your failure to stop for a blue light, and I think
3 we've already - - we've just gone through those things, and the
4 defendant's even admitted that he did this.

5 Next, you move on to possession with intent to distribute your
6 drugs. We have crack and marijuana in this particular case. Okay?

7 Officer has testified. Aretha Poe came and she testified that
8 she pulled the bags out of one pocket with one hand. All the bags
9 were in one, and, yes, she did say it was two bags of marijuana and
10 one bag of white rock-like substance. She handed those immediately
11 over to Sgt. Turner.

12 As Sgt. Turner, "Yeah, all of this crack was in one bag but it
13 wasn't - - it was actually one bag containing another bag with a
14 quantity of crack in it and then a second bag inside that bag with
15 seven little corner bags already in it."

16 Okay? So that, yeah, they're all in one bag but they're all
17 together.

18 Aretha Poe testified to it. She's just the Transportation
19 Officer.

20 Who else was there? Chief McNeil was present when she pulled
21 it out of his pocket in addition to Sgt. Turner. All those were
22 there.

23 So, you've got possession and he had - - in this case the
24 judge charged you about actual and constructive possession. This
25 is a case of actual possession. It was in his pants on his person.

SUMMATION BY MRS. MUNNERLYN

291

1 Then you have intent to distribute. The judge has charged you
2 some about an inference which is given to you in the law about a
3 certain weight which infers under the law that possession of that
4 amount infers intent to distribute but it can also be inferred or
5 you can find it some other circumstances such as packaging.
6 Packaging for sale or just for instance these small seven corner
7 bags, and that's called packaging for sale. Okay?

8 You're either talking about a large quantity or packaging, and
9 we argue to you. This amount and the circumstances under which it
10 was. He had it in his possession. It was all packaged ready to be
11 sold. You can from those facts find an intent to distribute.

12 Then, of course, we have to prove to you that it is, in fact,
13 drugs, that it's, in fact, crack, that it's, in fact, marijuana.

14 And you have, of course, both of the analysis, and you heard
15 from the two witnesses who were qualified as expert witnesses
16 during the trial and testified to you the tests that they performed
17 on these substances and that the results were, in fact, positive
18 for both crack and the marijuana.

19 So, those are your elements on your possession with intent to
20 distribute drugs, the two separate drugs.

21 Then you move on the consider whether that possession with
22 intent to distribute was within a half mile of a school. Okay?

23 And the testimony has been that all of this occurred within
24 half a mile of Kid's Land Park and the Bennettsville Middle School.

25 But let's talk a minute now about what the actual testimony

SUMMATION BY MRS. MUNNERLYN

292

1 was. How did this whole case even get started? It was with
2 Lawanda Williams.

3 She came forward, and she was the first witness to testify.
4 She doesn't have any - - Mr. Blake was talking about axes to grind.
5 She doesn't have any ax to grind. She's just, in fact, she sat
6 there and told you. "

7 I didn't even know who that guy was who was driving the car.
8 I didn't know his name. I didn't know him from Adam. I had no
9 reason to call that in."

10 You know? I mean, she's just a citizen with her two children
11 in the car. She pulls up to the store. Her daughter's inside, and
12 she sees this, and she feels that she needs to report it, and so
13 she did. She had no reason to report it specifically against this
14 defendant because she didn't even know who he was.

15 She's the one who starts it all, and then the wheels are in
16 motion at that point. She sees him. Yes, she's minding her own
17 business sitting in her car. She's sees this defendant.

18 He puts - - he gets out. You know how you often will do.
19 You sitting and you just get one hand out if you need to tell
20 somebody or communicate with somebody. Open the door and just put
21 one foot out.

22 She didn't know what it was he was drinking until he pulls the
23 can up to show who ever is in the store, and then it was confirmed.

24 But, again, there was no reason for her to call but she did
25 because she was concerned.

SUMMATION BY MRS. MUNNERLYN

293

1 Then, of course, you heard from the officers. You heard from
2 Greg Williams who this defendant's own brother says that he trusts
3 and he's helped him in the past and he doesn't have any problem
4 with.

5 And he testified to you what happened when they made that stop
6 and that those officers had just approached him, and he said that
7 he didn't approach the vehicle. It was only the other officers who
8 approached on either side, and it wasn't anytime that the truck
9 took off after they approached it.

10 And, of course, he didn't chase them. When they jumped out
11 and ran, he didn't chase them when he saw the dog. He admits to
12 you that.

13 "I'm not going over that fence with that dog."

14 And that's fine. He went back to talk with the defendant who
15 - - I mean the defendant's brother who was still in the car. He
16 chose not to run. He had no reason to.

17 The defendant, on the other hand, had every reason to run.

18 (The Solicitor holds up State's Exhibits #3 and #4, the two
19 bags of drugs.)

20 MRS. MUNNERLYN: As did the passenger.

21 You heard the defendant, then, sit on the stand and testify to
22 you that he was beaten by Officer Bowman and Officer Turner, and he
23 gave you this whole story which is not corroborated by anything.
24 He does not have any apparent injuries.

25 The Booking Officer has come and testified to you. There were

SUMMATION BY MRS. MUNNERLYN

294

1 no apparent injuries to him. He had no complaints when he was
2 brought to the jail immediately after this happened. There was no
3 blood on anything, completely opposite to what the defendant
4 testified to on the stand.

5 As did Aretha Poe. She came back and testified to you once
6 again.

7 "Yes, I gave him water. He asked for water. He said he was
8 thirsty. Tired, obviously, tired from having run that foot-chase.

9 He asked for water, and I gave him some."

10 She didn't wash his face, wash the blood off of his face or
11 anything as the defendant would have you believe. She gave him a
12 couple of sips of water out of that bottle into the backseat.

13 She testified there was no blood on his face, no blood on his
14 clothing. There was dirt and sweat but no blood.

15 She's just your Transportation Officer. She comes up and gets
16 in the middle of this. She's not involved in the chase. She
17 doesn't know this defendant from anybody else but what does she
18 pull out of his pocket?

19 (The Solicitor holds State's Exhibits #3 and #4, the two bags
20 of drugs, up to jury.)

21 MRS. MUNNERLYN: You've been sitting here the entire time.
22 You've been listening to all of the testimony. This is your
23 decision to make but it's an important one just like every other
24 case. This is an important case, and I ask you to consider it
25 carefully, and I know once you do that and you discuss all of the

SUMMATION BY MRS. MUNNERLYN

295

1 testimony and you determine how best all of this testimony and
2 evidence fits together that you will be able to come back with a
3 verdict of guilty, and I thank you for your attention.

4 THE COURT: Alright.

5 Ladies and gentlemen, I'm going to let you go to the jury room
6 for just a moment, and then I'm going to call you back out and go
7 to lunch but please go to the jury room for just a moment, and I'll
8 be calling you back in just a second.

9 (The jury retires to the jury room at 1:32 p.m.)

10 THE COURT: Alright.

11 For the State was there any exceptions or additions to the
12 charge?

13 MRS. MUNNERLYN: No, Your Honor.

14 THE COURT: How about it for the defense?

15 MR. BLAKE: Judge, for the record, it's already happened.
16 So, it's kind of putting the cat back in the box.

17 You had asked me if I had any special instructions, and I said
18 no. Obviously, that would have concerned his offenses but you did
19 the defense of necessity and duress. That's not something I
20 requested. I'm noting that for the record.

21 THE COURT: What is that? I charged what?

22 MR. BLAKE: You charged necessity and duress. That's not
23 anything that I had requested. That's nothing that I knew was
24 actually going to happen but it's already happened. We can't - -
25 we can't correct it.

SUMMATION BY MRS. MUNNERLYN

296

1 THE COURT: Well, that - - that's a part of the charge. I
2 mean, you - - under failure to stop for a blue light, that is a
3 part of the charge when that issue is raised. You don't have to
4 request. I got to give it based on his testimony as his reason for
5 failure to stop.

6 Alright.

7 I'm directing the jury - - Bill's back there talking to them.
8 He's going to give them instructions to the Landmark. Tell them -
9 - and we've got - - Bill's made arrangements for the bailiffs and
10 so forth, too.

11 The bailiffs would understand, now, that they going under
12 strick orders not to discuss any issue with the jury. The jury
13 knows not to discuss any issue in the case until they return to the
14 jury room and when everybody's present but as soon as they get
15 back, now, let me know.

16 Alright. Anything further before lunch?

17 MR. BLAKE: Judge, I think the matter is of mutual concern
18 that the jury understand that they are not to talk about this case.

19 THE COURT: I told them every time - - they know that. Let
20 the record reflect I've said that three separate times.

21 MR. BLAKE: Judge, I just - - they don't have the case yet.
22 I just hope they understand that.

23 THE COURT: I understand.

24 I told them even last night that they would never discuss the
25 case until I had given it to them for their deliberation.

EXHIBITS AND VERDICT FORM AGREED UPON/ALTERNATE REMOVED

297

1 MR. BLAKE: Would you just have the Clerk make sure that
2 they hear that again before they eat?

3 THE COURT: Have you let them go, yet.

4 CLERK OF COURT: No, sir.

5 THE COURT: Just tell them, please, do not discuss the case
6 in anyway.

7 Alright. Let's break for lunch. We'll be back in session as
8 soon as the jury returns, and then we'll take some pleas, and I
9 still want to have that meeting with law enforcement that we talked
10 about.

11 I had it planned for 2:30. I don't think we're going to quite
12 get there at that time but for whoever's around, tell them we want
13 to have that meeting this afternoon as soon as we can finish here.
14 I'm going to do it while the jury is deliberating.

15 Alright. Thank you.

16 (The Court recesses the trial of this case for the lunch break
17 and thereafter reconvenes the trial of this case.)

18 THE COURT: Alright.

19 Where is Dan? Where's Elizabeth? I want Elizabeth here to.

20 I want them to agree on the exhibits. I told them don't let -
21 - once you take it back - - -

22 Where's Scott, too, with that form of verdict I prepared?

23 (All parties reconvene in the courtroom.)

EXHIBITS AND VERDICT FORM AGREED UPON/ALTERNATE SEPARATED

24
25 MR. BLAKE: The jury's not coming back out?

EXHIBITS AND VERDICT FORM AGREED UPON/ALTERNATE REMOVED

298

1 THE COURT: No, no.

2 MR. BLAKE: Okay.

3 THE COURT: You, ah, y'all have looked at the proposed
4 verdict form?

5 MR. BLAKE: Yes.

6 MRS. MUNNERLYN: Yes, sir.

7 THE COURT: And my instructions are fairly clear.

8 Where is that verdict form?

9 LAW CLERK: Should be right - - it was on top of the
10 indictments. It was with the indictments. It's right here.

11 THE COURT: Okay.

12 Alright. This is the verdict form of which y'all have got a
13 copy.

14 LAW CLERK: No, sir. That's the only one.

15 THE COURT: I thought you gave them a copy.

16 LAW CLERK: No, sir. That was the only one I had.

17 THE COURT: Have they seen it?

18 LAW CLERK: Yes, sir.

19 THE COURT: Okay.

20 I'm sending the verdict form y'all have seen.

21 (The Court Reporter reviews the exhibits with both attorneys
22 and all parties agree to the exhibits and verdict form and the
23 alternate is separated from the jury.)

24 THE COURT: Alright. We'll get on the record, please.

25 The counsel for the State and the defendant have agreed upon

JURY BEGINS DELIBERATIONS AT 2:58 P.M./JURY QUESTIONS

299

1 the exhibits. I am now sending the exhibits and the verdict forms
2 which have been seen by both counsel to the jury, and, Mr. Clerk,
3 you may now tell them to begin their deliberations.

4 CLERK OF COURT: Alright. Thank you.

5 THE COURT: Alright. Now, Elizabeth and Dan, as soon as we
6 take these two pleas, one for the State and one for Chesterfield,
7 we going to meet back there. I want y'all back there with me.
8 The Solicitor's back there, and the Sheriff's back there and law
9 enforcement.

10 (The Court recesses the trial of this case to address other
11 matters before the Court and to await the advice of the jury.)

12 JURY BEGINS DELIBERATIONS AT 2:58 P.M.

13 (The jury advises there is a question. The Court reconvenes
14 the trial of this case at 4:10 p.m.)

15 JURY QUESTION AND RESPONSE OF THE COURT

16 THE COURT: Be seated, please.

17 Bring the defendant in for me.

18 (The defendant returns to the courtroom with his attorney.)

19 THE COURT: Alright.

20 Bring the jury in.

21 Bring the - - bring the alternate out, too, please.

22 (The jury returns to the courtroom at 4:10 p.m.)

23 THE COURT: Ladies and gentlemen, while I'm waiting,
24 you might wonder why we keep the alternate. Ah, everybody appears
25 to be healthy, and I think we're going to get through this case

JURY QUESTIONS

300

1 without needing an alternate but on one occasion in Charleston
2 years ago, just as soon as I let the alternates go, one of the
3 jurors, unfortunately, had an epileptic attack, and on another
4 occasion in Florence once I let the alternate go, and one of the
5 jurors was notified that her daughter was in critical condition in
6 the emergency room.

7 Those things happen sometimes and in a criminal case we cannot
8 proceed without all twelve, thus, the - - and I have to keep my
9 alternate.

10 Also, I wish it wasn't the rule but under our rules the - -
11 only twelve can be in the jury room. So, I've got the alternate
12 standing by. I don't want any of you to get sick, though.

13 Now, you initially asked for a transcript. In South Carolina
14 we don't do that. They do that on tv. They may do it in
15 California. They transcribe the testimony as it is taken. Here in
16 most - - in South Carolina in most cases we record the testimony
17 and later if it's needed for subsequent appeal, that testimony is
18 then transcribed but until such time as it's needed to be
19 transcribed we don't do that.

20 Now, you've asked for the testimony of the Chief, and we're
21 going to play that, and you've asked for the testimony which is
22 very proper if that's what you wish of the Detective Poe. We going
23 to play that.

24 Now, sometimes in the playing of testimony there is only thing
25 that one juror is interested in. If you hear that portion of the

JURY QUESTIONS

301

1 testimony that you wanted and don't need to hear the rest, raise
2 your hand and we will stop and go to the next one. What I'm
3 saying. We're here to play them in full if that's what you want or
4 we are here to play such portion of it as you desire.

5 You understand, Mr. Foreman?

6 FOREMAN: Yes, sir.

7 THE COURT: Okay.

8 Alright. The reason I say that, I've had testimony that's
9 lasted two hours, and, obviously, unless the jury needed all of
10 that, they didn't want it. I'm told here, though, that the
11 testimony of the Chief is only six minutes and the testimony of
12 Officer Poe is only sixteen minutes. So, it's not a great deal of
13 time to play it all.

14 Now, Mrs. McCall, let the record reflect that the Solicitor,
15 Mr. Blake and the defendant are in court. Please play for them,
16 first, the testimony of - - of Chief McNeil.

17 (The Court Reporter goes off the record in order to play back
18 the requested testimony of the two witnesses. After the requested
19 testimony is played in the presence of the jury, the Court goes
20 back on the record.)

21 THE COURT: You understand that I will stop it at this time
22 per your request. If at any time you or any member of your jury
23 desire it played in full, I will do so.

24 You understand, Mr. Bass?

25 FOREMAN: Yes, sir.

JURY ADVISES VERDICT AT 5:25 P.M.

302

1 THE COURT: Please retire, now, and resume your
2 deliberations. If you have any questions, don't hesitate to ask.

3 The alternate will remain in the courtroom.

4 (The jury retires to the jury room at 4:29 p.m. to continue
5 deliberations.)

6 THE COURT: Ma'am, take the alternate to her place outside
7 the presence of the jury.

8 (The alternate retires from the courtroom.)

9 THE COURT: Alright.

10 Mrs. Munnerlyn, anything further at this time?

11 THE COURT: Mr. Blake?

12 MR. BLAKE: No, Your Honor.

13 THE COURT: Alright.

14 The jury's note will be a Court's Exhibit.

15 (The Court Reporter accepts the Jury Note as Court's Exhibit
16 #2.)

17 THE COURT: We are in recess.

18 (The Court recesses the trial of this case. The jury presents
19 another question which the Court responds to off the record with
20 consent of both counsel. The Jury Note is made a Court's Exhibit,
21 and the Court Reporter accepts it as Court's Exhibit #3.)

22 JURY ADVISES VERDICT REACHED AT 5:25 P.M.

23 (The Court reconvenes the trial of this case.)

24 THE COURT: Bring the defendant out. Where is the
25 defendant, please.

VERDICT

303

1 MR. BLAKE: We're bringing him in, Judge.

2 THE COURT: Alright. Be seated.

3 Alright. Have the jury come in.

4 (The jury returns to the courtroom at 5:29 p.m.)

5 VERDICT

6 THE COURT: Mr. Foreman, if this be the unanimous verdict
7 of all twelve, please signify by raising your right hand. The jury
8 has so signified. It is a unanimous verdict.

9 Mr. Clerk, may I look at the verdict?

10 (The Clerk of Court accepts the verdict from the Foreman and
11 passes it to the Court.)

12 THE COURT: Publish the verdict.

13 DEPUTY CLERK OF COURT: The State of South Carolina vs. Keena
14 Lamont Rivers, Indictment Nos. 08-GS-34-84, 85, 86, 87, 82, we the
15 jury unanimously find the guilty of possession of marijuana only,
16 guilty of possession with intent to distribute crack cocaine, not
17 guilty of possession with intent to distribute crack cocaine within
18 half mile of a school and guilty of failure to stop for a blue
19 light.

20 Signed, Foreman of the Jury, Samuel Bass, June 12, 2008.

21 THE COURT: Mr. Foreman, she has read your verdict. I want
22 to make sure. You have found him guilty of possession of
23 marijuana. Is that correct?

24 FOREMAN: Yes.

25 THE COURT: And you have found him guilty of possession

VERDICT

304

1 with intent to distribute of cocaine. Is that correct?

2 FOREMAN: Yes, sir.

3 THE COURT: And you have found him guilty of failure to
4 stop for a blue light. Is that correct?

5 FOREMAN: Yes, sir.

6 THE COURT: Fine.

7 Anything further from the State at this time?

8 MRS. MUNNERLYN: No, Your Honor.

9 THE COURT: From the defendant? I'll talk with you in
10 just a minute.

11 Ah, the jury has been a very fine jury deliberating all
12 afternoon making sure that the State and the defendant had a very
13 fair trial. They asked of me a very interesting question which
14 shows their concern, and I appreciate the question, and that
15 question was, "Can we recommend drug court?"

16 I told them that under our law we - - we could not. That was
17 a decision for the judge.

18 Now, let me tell you about drug court. Drug court is for
19 those who are just absolute unfortunate users, generally, with no
20 prior record. Drug court is not an option ever for somebody that's
21 dealing with drugs with intent to distribute or selling. It's not
22 an option for somebody with a significant prior record as this
23 defendant did when he had been previously convicted of burglary and
24 larceny.

25 Now, so that the jury will understand why he was not even

VERDICT

305

1 offered - - and, incidentally, our - - our Solicitor leans over
2 backwards to put qualified candidates in the drug court.

3 Our penitentiary system is full, unfortunately, of unfortunate
4 users, and we have established a system now where we can intervene
5 if we can and give them a chance. We sentence them and suspend it
6 and let them go to drug court, and if they make it, we throw out
7 the sentence. If you don't make it, you're sentenced. It's not an
8 option, though, with somebody with a prior record.

9 Now, tell me what his prior record is with reference to drugs.
10 I want the jury to know.

11 MRS. MUNNERLYN: Your Honor, with reference to drugs, he
12 does, of course, have the burglary and the grand larceny conviction
13 as we have indicated. Then he has a prior for possession for
14 marijuana.

15 MR. BLAKE: Judge - -

16 THE COURT: Sir?

17 MR. BLAKE: - - in lower court, Judge, and thirty days for
18 the charge.

19 THE COURT: Now, by reputation what can you tell me, too,
20 as to his drug involvement in Marlboro County? I want to do this
21 so the jury will understand that he would never have been a
22 candidate as a user. What was it?

23 OFFICER LOCKLEAR: Yes, sir.

24 If it please the Court, Your Honor, in 2005, just shortly
25 after we had taken office we received numerous complaints about the

VERDICT

306

1 drug activity in the defendant's area and around his home.

2 We set up an undercover operation that included Richmond
-3 County authorities which we deployed around his home. We attempted
4 to purchase \$3500 worth of powder cocaine from several individuals
5 which included the defendant. On the day that we set this
6 operation into motion, ah, we purchased approximately \$1800 worth
7 of powder cocaine from these individuals.

8 We knew in advance there was gun use in that area, ah, from
9 these individuals when the drugs were being sold. We took these
10 individuals into custody and was able to get our hands on a large
11 quantity of the cocaine that we found there on the property.

12 Ah, unfortunately, his brother was charged then with
13 trafficking. This individual here was also charged along with the
14 other individuals in this - - in this particular case. This
15 operation had been going on for quite some time with the drug
16 business going on there.

17 THE COURT: Sheriff, you have any comment to make?

18 SHERIFF KNIGHT: Yes, sir.

19 Your Honor, I was present during this operation. Ah, myself
20 and Chief Lemon were in the same vehicle, and several subjects ran
21 when we drove up in this drug infested area. Ah, where they ran
22 to was shocking to us. They ran to a vehicle where several long
23 guns, shotguns and riffles were over there. On the street right
24 there where they were at, we opened the mailbox and there were
25 handguns in the mailbox.

SENTENCE OF THE COURT

307

1 Ah, on the day that we left this scene of this operation, the
2 neighbors came out on the porches and clapped. They come out and
3 clapped their hands that we came in there and broke this up.

4 THE COURT: Well, I only admit this so that the jury will
5 now.

6 One, he had a prior record; and

7 Two, he had a significant reputation for dealing in drugs, he
8 and plus he was convicted of robbery and larceny. There was no
9 way in the world that anybody was going to put that individual in
10 drug court as a simple, hopeless user.

11 I want to thank you for your service, and I'm going to ask
12 that you go the jury room a minute. I want to talk to you for just
13 a second. You may go to your jury room.

14 The alternate may now join them if you care to.

15 (The jury retires to the jury room at 5:37 p.m.)

16 THE COURT: Alright. Everybody remain in the courtroom.
17 I want to thank the jury for their service and be right back for
18 sentencing purposes.

19 (The Court recesses the trial of this case to address the jury
20 off the record in the jury room and thereafter releases the jury
21 for the day and for the week.

22 The Court thereafter reconvenes the trial of this case.)

SENTENCE OF THE COURT

24 THE COURT: Thank you. Be seated.

25 Have the defendant come around, please.

SENTENCE OF THE COURT

308

1 Alright.

2 I need to know, now, for the purposes of sentencing. Is - -
3 there's some inference that he's had a prior marijuana record. So,
4 clearly, this is a second possession of marijuana but as I
5 understand the statute, any prior drug charge makes this charge a
6 second offense. Isn't that true?

7 MRS. MUNNERLYN: Yes, Your Honor.

8 MR. BLAKE: Judge, you have to be very careful there. Did
9 he have an attorney in lower court? There - - you've got a number
10 of rules before you can count it as a second offense.

11 THE COURT: I understand.

12 That's Bellesary you're talking about, The State v Bellesary.
13 That was a simple possession charge?

14 MR. BLAKE: In lower court simple possession of marijuana.
15 We don't know if he just forfeited bond or whether or not he
16 had an attorney. You've got two separate issues.

17 THE COURT: Alright.

18 I'm going to consider that as a second marijuana charge and in
19 connection with that I'm going to sentence him to one year which is
20 the maximum.

21 With regards to possession with intent to distribute - - -

22 MR. BLAKE: Judge, could I have - - could you hear from me
23 before you render sentencing?

24 THE COURT: Sure, go ahead.

25 MR. BLAKE: He is twenty-three years old. He does

SENTENCE OF THE COURT

309

1 currently work at Mohawk. He's worked there for six months.

2 He has a daughter four years. Tanesha, the woman he's been
3 with seven years, and the charges that were discussed by the
4 Sheriff's Office, there was somebody there who got I believe eight
5 or ten years. I'm not sure exactly what it was. This gentleman's
6 charges were dismissed on that.

7 THE COURT: Was charged with what?

8 MR. BLAKE: Dismissed.

9 THE COURT: Now, obviously, under the failure to stop for
10 a blue light -- let me say this to you, Mr. Defendant.

11 MR. RIVERS: Yes, sir.

12 THE COURT: I don't see how a jury of your family could
13 have found you not guilty --

14 MR. RIVERS: Me neither, sir.

15 THE COURT: -- under the circumstances in this case when
16 dedicated law enforcement officers testified they took it out your
17 pocket --

18 MR. RIVERS: No, sir.

19 THE COURT: -- and you admitted to some of it.

20 MR. RIVERS: Yes, sir. They did take the marijuana out of
21 my pocket. Mr. Cottingham, I would not lie about it.

22 THE COURT: I know. You've said that but the jury
23 concluded otherwise.

24 MR. RIVERS: Yes, sir.

25 THE COURT: And there's no question about the fact that --

SENTENCE OF THE COURT

310

1 MR. RIVERS: That I failed to stop for a blue light.
2 There's no question about that.

3 THE COURT: - - ain't no question about that, is it?

4 MR. RIVERS: No, sir.

5 THE COURT: So, with that regard, I'm going to sentence you
6 to three years on that consecutive.

7 And with PWID cocaine, that's - - I'm going to deal with that
8 under the first offense but as to that charge, I'm going to
9 sentence you - I could sentence you to fifteen years on that.

10 MR. RIVERS: Yes, sir.

11 THE COURT: I'm going to sentence you to twelve years on
12 that, and that is consecutive to the sentences previously imposed
13 for marijuana and for failure to stop for a blue light.

14 The totality of my sentence is fourteen years, but I'm dealing
15 with it as a first offense.

16 MR. RIVERS: Yes, sir.

17 THE COURT: Now, I'm giving you this sentence for several
18 reasons.

19 You've got a prior record, significant prior record, and
20 justice is served in my view in letting the world know that you
21 have received a substantial sentence of fourteen years - - wait a
22 minute - - it's sixteen years.

23 It's twelve years under the crack cocaine, first offense. I'm
24 sentencing you to three years under failure to stop for a blue

MOTION TO RECONSIDER SENTENCE

317

1 MRS. MUNNERLYN: Yes, sir. It was a failure to stop for a
2 blue light. He was stopped, and Officer Turner actually was at the
3 door of the car with his arm inside the vehicle when he took off.

4 He went around the block to the next street over. Stopped and
5 jumped out and ran. They chased him on foot through a ditch and
6 then, ah, when the officer came to transport him to jail, she
7 searched him and found his drugs in his pocket.

8 THE COURT: And then he was saying he indicated in his
9 testimony that the officers beat him and were lying, didn't he?

10 MRS. MUNNERLYN: Yes, sir.

11 THE COURT: I remember that.

12 MR. RIVERS: Yes, sir.

13 Like I said, I just wanted to talk to you.

14 THE COURT: No, you - - you stood there and said under oath
15 - - they one of the most dedicated officers in Marlboro County, and
16 you wanted that jury to believe that not only did they beat you but
17 they set you up and lied.

18 MR. RIVERS: Well, the - - -

19 THE COURT: I mean, you the one that said it. I didn't.

20 MR. RIVERS: And I - - yes, sir.

21 THE COURT: I - - I just didn't understand how you could
22 ever think that a jury could ever find you not guilty when they
23 found the stuff on you. It was in your pocket, wasn't it? Wasn't
24 it?

25 MR. RIVERS: You want me to answer that question, Judge?

RULING OF THE COURT

318

1 MR. BLAKE: Judge, I'll answer for him.

2 They did say, you know, that it was found in his pocket. I
3 think the issue really was that there was another person in the car
4 who had ran but that's over and done with. The jury certainly
5 found him guilty, and - - -

6 THE COURT: Well, regardless of how ran and who didn't,
7 they actually found the stuff in his pocket.

8 MR. BLAKE: Yes, Judge.

9 RULING OF THE COURT

10 THE COURT: And he wanted the jury to believe that they
11 lied and put it there.

12 I, ah, I understand your motion. Respectfully denied.

13 I gave you every consideration and more that I think you were
14 entitled to. I could have easily justified giving you the max but
15 based on the fact that you had your children, I took that into
16 consideration, and so I cut three off.

17 I was going to give you the max but I got to thinking about
18 your children - -

19 MR. RIVERS: Nah, I just have one child.

20 THE COURT: - - and decided not to do that.

21 But the record will reflect that the controlling indictment is
22 the main indictment, and that was said upon the record, and if the
23 sentencing sheet needs to say that, then that's fine.

24 Alright. Thank you so much.

25 MRS. MUNNERLYN: Thank you, Your Honor.

RULING OF THE COURT

319

1 MR. BLAKE: Thank you, Your Honor.

2 (The Court adjourns this matter to address other matters
3 before the Court.)

4 - - - END OF TRANSCRIPT - - -

GENERAL SESSIONS JURY SELECTION

CASE NO: 086534DATE: June 11, 2008PLAINTIFF: STATEATTORNEY: Elizabeth Mummery ASDEFENDANT: Keena Lamont
RiversATTORNEY: Dan Blake PDPRESIDING JUDGE: Edward B. CottonhamCOURT REPORTER: LINDA W. MCCALL

STRIKES

JUROR #	NAME	RACE	SEX	COURT	STATE	DEF.	ACCEPT
143	Ronnie Wiggins pres Excused						
128	Mary Tatum	C	F			X	✓
154	Samuel Bass - Foreman	AA	M				✓
51	Pauline Haley - not present						
108	Robin Rummage	C	M				✓
53	Dianna Hayes	C	F			X	✓
21	Norma Clark	C	F				✓
78	Larry Martin	C	M				✓
34	Chris English	C	M		X		✓
70	Eugene LeBlond	AA	M				✓
164	Dorinda Odom	C	F				✓
46	Madie Glenn	AA	F		X		✓
37	Lawrence Ford	AA	M				✓
44	Clara Garner	AA	F				✓
159	Patsy Jenkins	AA	F				✓
79	Charles McAlister	C	M			X	✓
163	Terry Melton	C	M				✓
14	Terry Brown	AA	M		X		✓
144	David Williams JR	C	M				✓
63	Shirley Jackson	C	F			X	✓
139	Joe Wensil	C	F				✓
Alternate							
59	John Higgins	C	M			X	
98	Annne Powell	C	F			X	
146	Virginia Williams	AA	F				✓

CERTIFICATE OF COURT REPORTER

321

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3
4 I, the undersigned Linda W. McCall, Official Court
5 Reporter for South Carolina Court Administration, do hereby
6 certify that the foregoing is a true, accurate and complete
7 Transcript of Record of all the proceedings had and evidence
8 introduced in the trial of the captioned case, relative to
9 appeal, in the Court of General Sessions of Marlboro County,
10 South Carolina.

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

13 September 30, 2008

14 Linda W. McCall

15 Linda W. McCall

16 Official Reporter
17
18
19

FORM 5

STATE OF SOUTH CAROLINA)

County of Marlboro)

IN THE COURT OF COMMON PLEAS

10-34-188

KEENA L. Rivers #328886)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

Filed 7-9-10

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Stevenson Correctional Institution
2. Name and location of Court which imposed sentence Marlboro County Courthouse
Bennettville, SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) GS-34-00087 PWID crack cocaine twelve years

- (b) GS-34-00085 ✓ Simple possession of marijuana. one year
- (c) GS-34-00082 ✓ Failure to stop for a blue light three years
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June 12, 2008 GS-34-00087
- (b) June 12, 2008 GS-34-00085 ✓
- (c) June 12, 2008 GS-34-00082 ✓
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty yes
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 11, 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. unpublished opinion No. 2010-Up-0164
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A

- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
- (b) Constitutional violations
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10): (SEE Attachment on the next page)
- (a) Counsel failed to render adequate legal assistance by not conducting a investigation.
- (b) _____
- (c) Counsel was ineffective for not presenting adequate trial strategy.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) N/A
- (b) N/A
- (c) N/A
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? no
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Daniel Blake Marlboro County Public Defender p.o. box
37 Bennettsville, S.C. 29512
- ii. Robert M. Pachak Appellate Defender p.o. box 11629
Columbia, S.C. 29210
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Daniel Blake
Trial, Sentence, and reconsideration of the sentence.
- ii. Robert M. Pachak
Appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

Vacate conviction

New trial

Resentencing

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Marlboro)

VERIFICATION

I, Kune L. Rivers, 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.

SWORN to and subscribed before me this 30th
day of June, 2010.

Floria Balin Cook (L.S.)
Notary Public

My Commission Expires: 10-01-2018

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Luna L. Kinner, 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.

Luna L. Kinner
Applicant

SWORN or affirmed to and subscribed before me this
30th day of June, 2010.

Helvia Belin Cook
Notary Public

My Commission Expires: 10-01-2015

10-34-188

3.) Counsel was ineffective for never pursuing a line of defense or amassing ~~some~~ certain information and presenting it to the court.

★

4.) Counsel representation fail below the standard when he fail to secure a preliminary hearing as well as a suppression hearing.

5.) Counsel was ineffective for never informing the defendant with the best options available.

6.) My constitutional rights were violated when timely made objections were never ruled upon.

7.) My constitutional rights were violated when unreliable information was used to enhance my sentence.

page 7
119?

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	
	)	
	)	2010-CP-34- 188
	)	
Keena L. Rivers, 328886	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for post conviction relief (PCR) filed July 9, 2010, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. Applicant was indicted at the January 2008 term of the Marlboro County Grand Jury for possession with intent to distribute crack cocaine (2008-GS-34-87), failure to stop for a blue light (2008-GS-34-82) and possession with intent to distribute marijuana second offense (2008-GS 34-85). Daniel Blake, Esquire, represented Applicant.

On June 12, 2008, the Applicant was tried before The Honorable Edward B. Cottingham and a jury, and was convicted as indicted. Judge Cottingham sentenced Applicant to twelve years imprisonment on the PWID crack; to one year imprisonment on the possession of marijuana second offense; and to three years imprisonment on the failure to stop for a blue light, with all sentences to

run concurrently. On information and belief, Applicant filed a Notice of Appeal but her appeal was dismissed on February 16, 2010.

Attached herewith and incorporated herein are the records of the Marlboro County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and the guilty plea transcript will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel"
2. "Constitutional violations".

Applicant seeks "Vacate conviction new trial and Resentencing" as a result of this proceeding.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

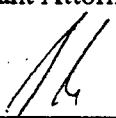
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

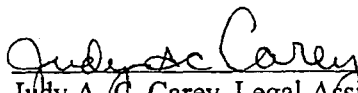
5-8-, 2012.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	
	)	
	)	2010-CP-34-0188
	)	
KEENA L. RIVERS, 328886	)	
	)	
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** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Keena L. Rivers, 328886
Palmer Pre-Release Center
2012 Pisgah Road
Florence SC 29501

DATED this 8th day of May, 2012.


 Judy A. C. Carey, Legal Assistant
 For Respondent

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF MARLBORO	)	
	)	2010-CP-34-0188
KEENA RIVERS	)	
	)	
PLAINTIFF	)	PCR HEARING
VERSUS	)	
	)	
THE STATE OF SOUTH CAROLINA	)	SEPTEMBER 10, 2012
	)	
DEFENDANT	)	
	)	
	)	

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

APPEARANCES

David E. Belding, Esquire
ATTORNEY FOR THE APPELLANT

T. Andrew Johnson, Sr., Esquire
ATTORNEY FOR THE STATE

Pamela Ozment-Cartee
Circuit Court Reporter

INDEX PAGE

PCR Hearing Page 30

Procedural History by the Attorney General Page 04

WITNESSES

WITNESS	DIRECT	CROSS	REDIRECT	RE-CROSS
Keena Lamont Rivers	05	23		
Daniel L. Blake	28	43	46	49

Ruling of the Court Page 51

Certificate of Reporter Page 54

KEENA RIVERS VERSUS THE STATE

3

1 (Whereupon, this hearing began at 3:23 p.m.
2 on Monday, September 10, 2012.)

3 **THE COURT:** All right. Mr. Belding, welcome.

4 **MR. BELDING:** Thank you, Your Honor. I appreciate
5 it. I am sorry to make you wait.

6 **THE COURT:** That's alright. Have you had enough time
7 with your client?

8 **MR. BELDING:** I haven't seen him today, but I saw
9 him last week. But, I think he is fine. I will just say,
10 hi, and if he has any questions. Otherwise, we will call
11 our first witness.

12 **THE COURT:** Well, let's go ahead and bring Mr. Rivers
13 in then, and we will be ready to go forward.

14 (PAUSE.)

15 **MR. BELDING:** Whenever the Court is ready is fine,
16 Your Honor.

17 **THE COURT:** All right, very good. Mr. Rivers, good
18 afternoon. Welcome back to the courtroom.

19 The way we are going to go forward here is we are going
20 to let the Attorney General tell us the history of your
21 case, that is the procedural history, how we end up finding
22 ourselves here today. And then give you an objection to
23 either object or agree to that history. And then because
24 you are the Applicant, you have the burden of proof, we will
25 let you and your lawyer begin to call your witnesses after

KEENA RIVERS VERSUS THE STATE

4

1 that.

2 So, Mr. Johnson, please call your case, sir.

3 **MR. JOHNSON:** Your Honor, this is Keena Rivers
4 versus South Carolina. It is 2010-CP-34-188. And, Mr.
5 Rivers was indictment for possession to distribute crack
6 cocaine, failure to stop for a blue light, possession
7 with intent to distribute marijuana second offense. He
8 was represented by Mr. Dan Blake. He was tried before Judge
9 Cottingham and was convicted as indictment. Judge
10 Cottingham sentenced Mr. Rivers to twelve years on the PWID
11 crack charge, to one year imprisonment on the possession of
12 marijuana second, and three imprisonment on the failure to
13 stop for a blue light, with all sentences to run
14 concurrently.

15 He filed a notice of intent to appeal, and the
16 appeal was dismissed February 16, 2010. He has filed a
17 PCR July 9, 2010. He is represented today by David
18 Belding.

19 **THE COURT:** All right. Mr. Belding, any objection to
20 the history given to us?

21 **MR. BELDING:** We have no objection, Your Honor.

22 **THE COURT:** All right. Then please call your
23 first witness.

24 **MR. BELDING:** Thank you, very much, Your Honor. At
25 this time I would like to call Keena Lamont Rivers.

KEENA L. RIVERS - DIRECT EXAMINATION

5

1 **THE COURT:** All right. Mr. Rivers, please come
2 forward and take the oath of a witness, sir.

3 **WHEREUPON, KEENA L. RIVERS**

4 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

5 **MR. RIVERS:** Yes, I do.

6 **MR. BELDING:** If it please the Court?

7 **THE COURT:** Yes, sir, go ahead.

8 **DIRECT EXAMINATION BY MR. BELDING**

9 Q. Please state your full name for the record.

10 A. Keena Lamont Rivers.

11 Q. Mr. Rivers, are you incarcerated at this time?.

12 A. Yes, I am.

13 Q. Where are you incarcerated?

14 A. Palmer Pre-release Center.

15 Q. And what sentences are you serving?

16 A. Twelve to three and one.

17 Q. Okay. The explanation of the sentences that were
18 previously given by Mr. Johnson, those are correct?

19 A. Yes, sir.

20 Q. You are doing twelve years for PWID crack?

21 A. Three years for failure to stop for a blue light, and
22 one for possession of marijuana.

23 Q. Okay. And those are running concurrently with the PWID
24 crack sentence; correct?

25 A. Correct.

KEENA L. RIVERS - DIRECT EXAMINATION

6

1 Q. Now, taking you back to the trial, who represented you?

2 A. Dan Blake.

3 Q. Did you have any other attorneys before or after Mr.
4 Blake on this matter?

5 A. No, I didn't. I had an appeal, but no other attorney
6 beside I had on the appeal.

7 Q. Okay. And was the appeal handled by the Office of
8 Appellate Defense in Columbia?

9 A. Yes, sir.

10 Q. Now, were you in jail for a period of time before you
11 stood trial?

12 A. No, I was not.

13 Q. Okay. You were out on bond?

14 A. Yes, sir.

15 Q. And during that time, how much time was there between
16 the date of the alleged crime and the trial?

17 A. I'm going to say six months.

18 Q. Okay. When did you first become aware that Mr. Dan
19 Blake was representing you?

20 A. Um, a month or two after maybe?

21 Q. Did you have a chance to talk to Mr. Blake about your
22 case?

23 A. No, we didn't discuss it. You know, he told me he
24 would be representing me and that was about it.

25 Q. How many times do you think you talked with him before

KEENA L. RIVERS - DIRECT EXAMINATION

7

1 you stood trial in front of Judge Cottingham.

2 A. I know I only spoke with him once.

3 Q. And was that in person?

4 A. Yes, sir..

5 Q. Where did that meeting take place?

6 A. In Mr. Blake's office.

7 Q. Where is Mr. Blake's office?

8 A. In the Marlboro County Courthouse.

9 Q. Now, how long did that meeting take place? How long
10 did that meeting last?

11 A. No longer than thirty minutes.

12 Q. And what all did you all talk about in that meeting?

13 A. How would I plea? Did I have any witnesses? That sort
14 of thing. That was it. Just a few random questions.

15 Q. Okay. Did you give Mr. Blake witnesses to call on your
16 behalf?

17 A. Yes, I did. Yes, I did.

18 Q. Did you discuss the defense strategy for your case?

19 A. I told Mr. Blake that I did not want to plead guilty to
20 any of those charges. Other than that, there was no
21 strategy discussed between me and him.

22 Q. Okay. Now, as I understood, of course, you were there
23 at the trial. Do I understand that the first witness
24 for the State was Ms. LaWanda Williams; correct?

25 A. Correct.

KEENA L. RIVERS - DIRECT EXAMINATION

8

1 Q. And, in summary, what did Ms. Williams testify to?

2 A. She said she seen me drinking alcohol in the parking
3 lot at the Exxon Mobile Station.

4 Q. Did she say alcohol?

5 A. Yes, she did. She said --

6 MR. JOHNSON: Your Honor, we would object, Your
7 Honor.

8 THE COURT: On what basis?

9 MR. JOHNSON: Relevance. I have gone through the
10 claims in the application, and there is no --- I understand
11 they are going to make a claim that is not contained within
12 the application. One that the State was not on notice of.
13 So, we would object to that.

14 THE COURT: I am going to let your lawyer explain
15 that to you. Mr. Belding, what do you say, sir?

16 MR. BELDING: The application as filed, Your Honor,
17 has two counts. This is filed by a pro se applicant. One
18 is that counsel, meaning Mr. Blake, failed to render
19 adequate legal assistance by not conducting an
20 investigation. And two, that counsel was ineffective for
21 not presenting adequate trial strategic or strategy. And
22 actually, the main point I want to make here today concerns
23 trial strategy.

24 THE COURT: Okay. Mr. Johnson, I am going to
25 overrule your objection. And, if at the end of this matter

KEENA L. RIVERS - DIRECT EXAMINATION

9

1 you feel like you have been unfairly surprised, we will let
2 you enquire about whether we might leave the record open for
3 further affidavit or testimony. But, at this point,
4 objection overruled. Go ahead.

5 **MR. BELDING:** Thank you, Your Honor.

6 Q. Do you go by Keena or Lamont?

7 A. I go by Lamont.

8 Q. Lamont, let me ask you. And, of course the transcript
9 is available for all of us to read. But, Ms.
10 Williams, the first state's witness.

11 A. Yes, sir.

12 Q. Testified that she saw you drinking something at a gas
13 station; correct?

14 A. Yes, sir. But, she goes on into -- in the transcript
15 to say she was --- it was clearly a beer can is what
16 she says in the transcript.

17 Q. Okay. And as a result of that, what did she do?

18 A. She called her husband.

19 Q. Okay. Who was her husband?

20 A. Lieutenant Williams, I am assuming, if I am not
21 mistaken?

22 Q. Gregory Williams?

23 A. Yes, sir.

24 Q. And it is your understanding from the trial, what was
25 his position?

KEENA L. RIVERS - DIRECT EXAMINATION

10

1 A. Um, he was her husband, but his position at that
2 moment?

3 Q. I mean, how was he employed?

4 A. Oh, he was employed by the Police Department -- City.

5 Q. For Bennettsville?

6 A. Uh'hum, correct.

7 Q. Okay. So, you were on a road called Cheraw Street in
8 Bennettsville; is that correct?

9 A. Correct.

10 Q. And tell the Court what happened that night with
11 respect to Lieutenant Williams?

12 A. Okay. After she said she had seen me drinking alcohol,
13 she said she phoned her husband. I left the parking
14 lot, and she told him I was proceeding down Cheraw
15 Street. Immediately when I was, I am assuming spotted
16 by the officer, he made a U-turn within seconds is what
17 is in the transcripts. He was behind me with his blue
18 lights on, because at that precise moment I was on the
19 yellow line.

20 Q. Okay. And do you recall the testimony of Lieutenant
21 Williams?

22 A. Yes, sir.

23 Q. Okay. Now, in the testimony of Lieutenant Williams,
24 basically he testified that he received a call from his
25 wife?

KEENA L. RIVERS - DIRECT EXAMINATION

11

1 A. Uh' huh.

2 Q. Within a matter of seconds, or minute --

3 A. -- Correct.

4 Q. He sees the vehicle that she describes. Is that the
5 vehicle you were driving?

6 A. Correct.

7 Q. Okay. And you don't deny that you were at this gas
8 station, that is in this report, correct?

9 A. Correct.

10 Q. So, she accurately described your vehicle?

11 A. Correct.

12 Q. And based on the phone call from his wife, Lieutenant
13 Williams initiated a traffic stop; correct?

14 A. Correct. Correct.

15 Q. Do you recall in the testimony that he described
16 initially any traffic related reasons for stopping you?

17 A. Yes, he said I was left of center. Well, he didn't say
18 that, but this is what Sergeant Turner testified to.

19 Q. Correct. In other words, the gentlemen, Lieutenant
20 Williams got the phone call from his wife, did not
21 testify that you were guilty of any bad driving; is
22 that correct?

23 A. Correct.

24 Q. Nevertheless, he initiated a traffic stop?

25 A. Correct.

KEENA L. RIVERS - DIRECT EXAMINATION

12

1 Q. Did you know Lieutenant Williams from before?

2 A. Um, I don't know him personally. I know where he live
3 at, but that is about it.

4 Q. Okay. Did you know --- Was anybody riding in the car
5 with Lieutenant Williams?

6 A. Um, Sergeant Turner and Officer Bowing was in the
7 vehicle with him.

8 Q. Do you know either one of those individuals from
9 before?

10 A. Yes, sir. Some previously, you know, run-ins with
11 Sergeant Turner, but Officer Bowing, no.

12 Q. Now, when you stopped, or when the blue lights came on,
13 did you pull over and stop?

14 A. Yes, sir.

15 Q. Who approached the vehicle?

16 A. All three officers jumped out of their vehicle.

17 Q. You were obviously in the driver's seat?

18 A. Yes, sir.

19 Q. Did you roll down the driver's side window?

20 A. Correct.

21 Q. Who approached on that side to speak to you on the
22 driver's side window?

23 A. Sergeant Turner.

24 Q. Okay. And, this is the one you knew from before?

25 A. Right.

KEENA L. RIVERS - DIRECT EXAMINATION

13

1 Q. All right. Did Sergeant Turner startle you or cause
2 you any apprehension?

3 A. Yes, he did. He had his hand on his service weapon.

4 Q. Aside from him having a deadly weapon attached to him,
5 was there anything else that bothered you about
6 Sergeant Turner?

7 A. Well, to be honest with you, the manner in which he
8 came to the vehicle. You know, once I got the window
9 rolled down and he spoke to me about what he wanted.
10 But other than that, no, sir.

11 Q. Okay. Shortly after that did you take off with the
12 car?

13 A. No, it was after some voicing that I took off.

14 Q. Okay. Would you please explain to the Court why you
15 ended up taking off in your car?

16 A. Well, when he came to the window, Sergeant Turner never
17 asked me for my driver's license. He never asked me to
18 get out -- you know, talk to me about committing a
19 crime. His first question was any alcohol in the
20 vehicle. After I explained to him, on numerous
21 occasions, then he asked me for my driver's licenses.
22 Once he asked me for my driver's license, I handed it
23 to him. He wanted the registration for the vehicle.
24 When I leaned over to hand him the registration, he
25 stuck his hand in and surprised me because he snatched

KEENA L. RIVERS - DIRECT EXAMINATION

14

1 the door open, and that startled me, so I drove off.

2 Q. Okay. And were you advised at any time at the
3 beginning of that traffic stop why you had been
4 stopped?

5 A. No, sir.

6 Q. Do you recall during the trial, during Lieutenant
7 Williams' testimony if he ever said why they initiated
8 a stop other than he was responding to a phone call
9 from his wife?

10 A. Um, I don't recall. Lieutenant Williams later giving
11 an indication of why I was pulled over. But, Sergeant
12 Turner later said that I was pulled over for left of
13 center.

14 Q. Okay. Ultimately, they gave pursuit and caught you,
15 correct?

16 A. Correct.

17 Q. Who were the other people with you that night?

18 A. My brother Derrick Rivers and another gentlemen by the
19 name of Reggie Rivers.

20 Q. Is Reggie Rivers related to you?

21 A. No, sir, he isn't.

22 Q. Okay. Now, were either of these people the ones that
23 went into the store and came out with the beer,
24 according to the testimony of Ms. Williams?

25 A. No, sir.

KEENA L. RIVERS - DIRECT EXAMINATION

15

1 Q. No one bought the beer that was in your truck?

2 A. No, sir.

3 Q. Was there any beer in your truck?

4 A. Yes, sir.

5 Q. At the time you were stopped?

6 A. Yes, sir.

7 Q. Where did that beer come from?

8 A. When I picked up my brother he had already had a case
9 of Natural Light with him.

10 Q. Okay. Were any of those containers open?

11 A. No, sir.

12 Q. Were you in fact drinking beer from a can in a paper
13 bag, or a concealed bag at the time?

14 A. No, sir.

15 Q. Okay. What were you drinking?

16 A. I was drinking other.

17 Q. Okay. So, essentially, LaWanda Williams observation
18 and testimony based upon her phone call were incorrect?

19 A. Oh, yes, sir.

20 Q. Okay. Now, you were ultimately chased down and caught
21 by the police; correct?

22 A. Correct.

23 Q. Okay. At that time you testified that they searched
24 you and found the drugs that you were charged with on
25 your person; is that correct?

KEENA L. RIVERS - DIRECT EXAMINATION

16

1 A. Correct.

2 Q. Were those on your person, those drugs?

3 A. Yes, sir.

4 Q. Both the crack cocaine and the marijuana; correct?

5 A. No, sir. No, sir. The crack cocaine wasn't on me, but
6 the marijuana was in fact in my pocket.

7 Q. Okay. Where did they find this crack cocaine, that the
8 lab lady testified that was crack cocaine?

9 A. In the ditch where I was --- In a ditch that me and the
10 other fellow had went through.

11 Q. Which other fellow?

12 A. Reggie Rivers.

13 Q. Now, this Reggie Rivers, how do you know him?

14 A. Um, I just know him from where we live in the same ---
15 he live in the same area.

16 Q. Okay. How did you get together with him that night?

17 A. Actually he had called me earlier that day and wanted a
18 ride.

19 Q. Okay. Did you know or is it your testimony under oath
20 today that that crack cocaine contained belonged to
21 Reggie Rivers?

22 A. Oh, yes, sir. Yes, sir.

23 Q. How do you know that it was his?

24 A. Well see, I know Reggie Rivers, and I seen the drugs in
25 his pocket earlier that day.

1 Q. Okay. Was that packet of crack cocaine ever in your
2 possession?

3 A. No, sir. Never.

4 Q. Did they ever test the package for your fingerprints?

5 A. No, sir. Never.

6 Q. Was that an issue in your trial in anyway, whether or
7 not your fingerprints were on it to show that you had
8 possession of it?

9 A. Yes, sir, it was a thing at the trial.

10 Q. Explain to the Court what the bag was that came into
11 your trial?

12 A. Ah, I can't recall exactly what the bag was, but I know
13 that when it come in the trial the marijuana was in the
14 bag and the crack cocaine was supposedly inside the
15 marijuana. So, it was supposedly bagged all together
16 in one bag where you couldn't see the crack cocaine at
17 all.

18 Q. Okay. Was -- Who tested --- Let's start that over.
19 The SLED Agent, Ms. Wilson testified to that?

20 A. No, sir. That was Sergeant Turner who testified to the
21 crack being in the bag with the marijuana.

22 Q. All right. But, it is your testimony that that was not
23 your crack cocaine?

24 A. No, sir.

25 Q. Did you admit at trial to the marijuana?

KEENA L. RIVERS - DIRECT EXAMINATION

18

1 A. Yes, sir.

2 Q. Okay. Why would you have not admitted to the crack
3 cocaine too?

4 A. If it had been mine I would have.

5 Q. Okay. As a man?

6 A. Yes, sir.

7 Q. Did you admit to the failure to stop for a blue light?

8 A. Yes, sir.

9 Q. Did you in fact fail to stop for a blue light?

10 A. Yes, sir. Once I was pulled over I did seek to pull
11 away again.

12 Q. Now, did you make a request for a preliminary hearing
13 in this case?

14 A. Yes, sir.

15 Q. All right. Did you have a preliminary hearing?

16 A. No, sir.

17 Q. Why not?

18 A. Dan Blake failed to render me one.

19 Q. Did you ever get a date to appear in the courtroom to
20 have a preliminary hearing?

21 A. No, sir, I was never, never given one.

22 Q. Did your attorney ever discuss with you whether or not
23 there would be a good trial strategy to move to
24 question the legitimacy of the traffic stop?

25 A. Dan Blake never spoke with me anything about a strategy

KEENA L. RIVERS - DIRECT EXAMINATION

19

1 or what way would be our pursue of the case.

2 Q. Did you think he had developed a trial strategy at all?

3 A. Well, to be honest with you, Mr. Belding, after I left
4 his office on that one occasion, he asked me who my
5 witnesses be --- I didn't speak to Mr. Blake again
6 until the day of the trial.

7 Q. Tell me briefly how you came to be at the courthouse
8 and being tried that same day? When did you find out
9 that you were suppose to be there?

10 A. Well, I had worked twelve hours that night and I
11 received a phone call from Dan Blake which was on my
12 message when I walked out of work that morning for me
13 to give him a call. When I gave him a call, he asked
14 me to immediately come to the courthouse. When I came
15 to the courthouse, Dan Blake at that time told me well,
16 we are going to start the trial this morning. I need
17 you go to home and put on some clothes, and come back
18 for the trial.

19 Q. What time of day was this?

20 A. This was around 8:30.

21 Q. In the morning?

22 A. Yes, sir.

23 Q. You said you had worked a twelve hour shift. Where did
24 you work?

25 A. I work at Mohawk Industries, I had worked from eight

KEENA L. RIVERS - DIRECT EXAMINATION

20

1 that night to eight that morning.

2 Q. At a carpet --

3 A. -- Yes, sir.

4 Q. Carpet, Mohawk?

5 A. Yes, sir.

6 Q. All right. And had you had any previous communication
7 with Mr. Blake that you were going to be starting your
8 trial that day?

9 A. No, sir. I had no previous communication of when the
10 trial would start. I would say no previous
11 conversation about trial strategy or anything. It was
12 just out of the blue.

13 Q. Okay.

14 A. He just called me.

15 Q. Did any of the witnesses that you wanted to have
16 present at your trial, were they there?

17 A. No, sir. I had no time to get no witnesses to be
18 there. It was just out of the blue.

19 Q. All right. I am going to be asking Mr. Blake some
20 other questions that -- Lamont, this is your day in
21 court.

22 A. Yes, sir.

23 Q. On your post conviction relief case. It is actually
24 pretty straight forward. But, is there anything that
25 you would like to tell Judge Baxley as far as anything

KEENA L. RIVERS - DIRECT EXAMINATION

21

1 else you would like to tell him about your allegations
2 or your claim for relief?

3 A. Yes, sir, of course. Well, first and foremost is the
4 fact that Mr. Blake never rendered me any, any, any,
5 any, any kind of assistance, I mean as far as motion to
6 suppress, which would have been the most common thing
7 to do when the charge was steaming from a traffic
8 violation. I think that would, think you know, that
9 would be elementary to you know, suppress the drugs,
10 because without the stop, there is no drugs. There was
11 never any of that that was brought up, discussed with
12 me, or you know, the legitimacy of the stop, we never -
13 -- we never challenged the legitimacy of the stop,
14 because I think we have read the record and allowed the
15 jurors to see what was said on the record, I think the
16 legitimacy of the stop would have been thrown out the
17 window. And you know in the case of the trial, you
18 know, I'm steady trying to get him to look at what is
19 being said, and you know --- you know, getting him to
20 challenge the witnesses on what they were saying. And
21 the legitimacy to know what they were saying. I know -
22 -- like I say once again, I think from the beginning
23 until you had Sheriff Fred Knight, and Officer Jeffrey
24 Locklear, who testified who wasn't under oath when they
25 gave testimony, said some things at my trial -- I just

KEENA L. RIVERS - DIRECT EXAMINATION

22

1 don't think he rendered me any adequate assistance as
2 far as challenging what they said. During the
3 sentencing phase of my trial. I don't think my
4 witnesses were given the opportunity to be there on
5 such short notice. You know, forty-five minutes to be
6 in the courtroom. I just don't think that there was
7 any way legally or possible that we could have
8 reasonably you know, had a fair trial in the courtroom
9 that day. I just you know, not trying to put it all
10 together, but just after I took the time to read over
11 the record, I just can't see where Dan Blake had any
12 strategy at all on going to trial. Because he said, it
13 was his decision to make decision throughout that case.
14 And none of the decisions that I had was put in on or
15 questioned about. The sole decision was made by Dan
16 Blake on his own. And, I just don't think I ever had
17 the opportunity to have input on what was going on
18 during the trial. And to be honest with you, I just
19 think that Mr. Blake did not have a strategy. Was not
20 prepared. And just as well as I was, was called that
21 morning to try the case, and he just tried the case at
22 face value. I don't think that he looked at the
23 affidavit. I don't think that he even had a Brady
24 motion, or I just don't see no adequacy assistance that
25 he rendered to me during the course of that trial. And

1 that's about it.

2 Q. You feel like he inadequately represented you in the
3 trial?

4 A. No shape, form, or fashion did he adequately assist me.

5 Q. Do you think that the ineffective assistance of counsel
6 prejudiced your case at trial?

7 A. Yes, I think if he would have prepared not only
8 himself, but for me too in my witnesses to go into that
9 courtroom, I think we would have been under a different
10 place and a different time right here today.

11 MR. BELDING: Thank you, Lamont. I appreciate it.
12 No further questions, Your Honor.

13 THE COURT: All right. Cross examination.

14 CROSS EXAMINATION BY MR. JOHNSON

15 Q. Mr. Rivers, now you are not here saying that you are
16 not guilty of failure to stop for a blue light are you?

17 A. No, sir.

18 Q. And in fact you are guilty of failure to stop for a
19 blue light aren't you?

20 A. Yes, sir.

21 Q. And the same question with regard to the marijuana
22 charge. You are not saying that you are not guilty of
23 that?

24 A. No, sir.

25 Q. In fact, you are saying that you are guilty of the

KEENA L. RIVERS - CROSS EXAMINATION

24

1 marijuana charge that you were convicted of?

2 A. Correct.

3 Q. So, the only charge that you are contesting is the
4 crack charge; is that right?

5 A. Um, well, to be honest with you, I thought we were
6 contesting the representation by Mr. Blake. But, did I
7 --- did I say I was not guilty for the crack; yes, sir.
8 In fact not guilty, yes, sir.

9 Q. All right. So, today your contention is guilty of
10 failure to stop for a blue light, and marijuana, but
11 not for a crack charge, along with your allegation of
12 ineffective assistance of counsel?

13 A. That my contention, not the drug charge, but that I was
14 not legally represented.

15 Q. All right. Now, do you recall who did the search of
16 your pocket?

17 A. Of course.

18 Q. Who was it?

19 A. Aretha Pough.

20 Q. And, if you read the trial transcript, referencing just
21 for the Court's benefit page 102, 13 through 20, she
22 pulls out not just a bag of marijuana, but a bag of
23 what appears to be crack cocaine from your pocket, is
24 that right?

25 A. Well, if you --- if you pay closely attention to that

1 transcript, she says, she never noticed what it was
2 that she pulled out. That is in the transcript.

3 Q. Yes, sir. But she didn't just pull out just one bag of
4 marijuana; correct?

5 A. She said, she don't know what she pull out. She only
6 seen the marijuana. But, in fact, I know that she only
7 pulled out marijuana.

8 Q. All right. And, the associate that you were there
9 with, you saw him personally pull the crack out of his
10 pocket and throw it in the ditch, didn't you?

11 A. Correct.

12 Q. All right.

13 **THE COURT:** And, counsel can you give me a transcript
14 page and line to which you were just asking about the
15 pocket?

16 **MR. JOHNSON:** Yes, Your Honor. Page 102, and the
17 line reference is 13 through 17.

18 **THE COURT:** Thank you.

19 **MR. JOHNSON:** Page 102, lines 13 through 17.

20 Q. Now, is it your testimony that Mr. Blake did not go
21 over any discovery with you?

22 A. Yes, it is.

23 Q. Okay. Now, after the trial was over, did you not
24 apologize to the detective in this case?

25 A. Not to my recollection.

KEENA L. RIVERS - CROSS EXAMINATION

26

1 Q. You didn't? All right.

2 A. No, sir.

3 Q. Now you mentioned a litte earlier upon direct
4 examination that you thought that Mr. Blake should have
5 filed a motion to suppress?

6 A. Yes, sir.

7 Q. Among the things that you thought he should have
8 done, what would have been the basis of this motion?
9 What would have been suppressed? And what do you
10 think the outcome would have been?

11 A. I think it should have been a motion to suppress all
12 the drugs, and on the basis of the illegitimate stop.

13 Q. Now, in the process of the stop, isn't it true when
14 you pulled away one of the officers, I think Officer
15 Turner still had his hand in the car?

16 A. No, sir.

17 Q. He didn't have his hand inside?

18 A. You actually need that, no, sir. But it was his
19 testimony that it was.

20 Q. Well, I heard you earlier say that one of the
21 officers reached inside and you felt threatened?

22 A. Right.

23 Q. Who was that? Was it not Turner?

24 A. It was Officer Turner.

25 Q. All right. So, he had his hand inside?

KEENA L. RIVERS - CROSS EXAMINATION

27

1 A. Once again, that was his testimony, but those were
2 the charges that he dropped.

3 Q. Yes, sir. I hope I am not getting myself confused
4 here. When you pulled away.

5 A. Uh'huh.

6 Q. While driving your car.

7 A. Right.

8 Q. Did Officer Turner still have his hand inside?

9 A. No, sir. He had his arm removed.

10 Q. Okay. But you pulled away because he put his hand
11 inside?

12 A. When Sergeant Turner put his arm in the car, I seen his
13 arm, and I sat back up, and I startled him. He jerked
14 his arm back out of the car and I pulled off.

15 MR. JOHNSON: That is all the questions I have.

16 Thank you.

17 THE COURT: Is there redirect?

18 MR. BELDING: No redirect. Thank you, Your Honor.

19 THE COURT: All right. Sir, watch your step coming
20 out. And you may return to your table. Thank you.

21 And please call your next witness.

22 MR. BELDING: If it please the Court, Your Honor,
23 I would like to call Mr. Daniel L. Blake.

24 THE COURT: Please come forward and take the oath of
25 a witness.

DANIEL L. BLAKE - DIRECT EXAMINATION

28

1 WHEREUPON, DANIEL L. BLAKE

2 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

3 MR. BLAKE: I do.

4 MR. BELDING: May it please the Court, Your Honor?

5 THE COURT: Yes, sir.

6 DIRECT EXAMINATION BY MR. BELDING

7 Q. Please state your full name for the record.

8 A. Daniel L. Blake.

9 Q. Mr. Blake, are you a licensed lawyer in South Carolina?

10 A. Yes, sir.

11 Q. How long have you been licensed?

12 A. Since 1995.

13 Q. And, were you at one time a public defender for
14 Marlboro County?

15 A. Yes, I was.

16 Q. Are you in private practice today?

17 A. Yes, I am.

18 Q. Are you primarily practicing in the area of criminal
19 defense?

20 A. Yes, sir.

21 Q. Did you as a part of your public defender did you
22 represent a Mr. Keena Lamont Rivers?

23 A. Yes, I did.

24 Q. Have you had a chance to refresh your memory? Do you
25 have the file in this matter?

DANIEL L. BLAKE - DIRECT EXAMINATION

29

1 A. I do not have the file. I did request from the Public
2 Defender's Office a copy of that file. And I also
3 phoned the office requesting that. I never received
4 the file. I really never received a response from
5 them. I did contact the Sergeant in charge of the case
6 for the City of Bennettsville. He gave me what he
7 called Rule 5, which had an incident report, and a
8 warrant, tickets, and an obscure photo of I guess the
9 drugs, I am not sure. The booking photo, and that was
10 it. So, I don't have any notes from the case. I can
11 talk about procedures that I had in the Public
12 Defender's Office, but not specifics as to this case.

13 Q. I understand. And as I recall from speaking with you
14 before, this has been a problem that you have been
15 having about getting your old files from the Public
16 Defender's Office; is that right?

17 A. Not just myself, but other public defenders have
18 testified in PCR hearings they could not obtain a copy
19 of their file. And I did attempt to do so, and wasn't
20 able to get anywhere.

21 Q. This has been a little over four year ago. How well do
22 you remember this case? Do you have a fair present
23 sense recollection of defending Mr. Rivers?

24 A. I do. I certainly remember the situation, because I
25 went out to the scene. I believe I went out to the

DANIEL L. BLAKE - DIRECT EXAMINATION

30

1 scene with the defendant. I went to the gas station,
2 the store where supposedly this all started. I went to
3 the area where he was initially stopped, where he ran
4 to. Went down in the ditch area. I remember that
5 much. I can tell you as general procedure for every
6 client when you receive them, we did file a Rule 5
7 request, of course. And, we did receive a trial list.
8 And for every client, when they were on the trial list,
9 we sent out a letter to them. Now, as for going over
10 the Rule 5 with the client, I don't have any
11 recollection of that. I will say that --- I mean, I
12 never just sit up and did a trial. Okay? I mean, I
13 always put time into preparation for it. I put thought
14 into it. I involve the client in that discussion.
15 But, I don't remember specifically this particular
16 situation. I do remember going out to the scene, and
17 looking at it, and getting down in a drainage area and
18 that sort of thing.

19 Q. Okay. I mean, ball park, I won't hold you to this.
20 Did you spend an hour with him walking the property?

21 A. I have no idea. That would not have been the only
22 thing that I did. I certainly had discussions about
23 it. But, again, I cannot give you details on that. I
24 do not have any notes to refer to. And, of course, it
25 was four years ago.

DANIEL L. BLAKE - DIRECT EXAMINATION

31

1 Q. I understand. Does it sound --- you obviously have
2 heard the testimony under oath of Mr. Rivers. Does it
3 sound in accordance with your recollection that you
4 might have called him the morning of trial and said,
5 come on down?

6 A. That makes no sense to me, because he had jumped on the
7 trial list. Now, whether or not he was getting the
8 letters that I was sending to him, I don't know. But,
9 again, we had court once a month there in Marlboro.
10 And when the trial list came out we would contact
11 people by letter and also by phone. So, I don't
12 remember. I don't have any idea. That sounds
13 completely irregular to what is being said, which is
14 all of a sudden he was called at the last minute. It
15 may have been that he was not in court when he should
16 have been. That certainly happens a lot. We are
17 always protecting people from bench warrants and things
18 like that. The Court will give us some time to contact
19 them.

20 Q. And I understand you don't have any notes and the
21 passage of time. But, also, isn't it true that you did
22 not set the trial in the Court of general sessions in
23 Marlboro County as the public defender, correct?

24 A. No. Obviously the Solicitor does. But the Solicitor
25 will publish a trial list significantly before court,

DANIEL L. BLAKE - DIRECT EXAMINATION

32

1 and that is when we would communicate with the client,
2 my client.

3 Q. So, in just trying to get the sworn testimony to
4 coincide if possible, is it possible that you sent the
5 letters to Mr. Rivers and for whatever reason he either
6 did not get or ignore that caused you to have to call
7 him on that morning and say, we need you down here?

8 A. It is possible.

9 Q. Did you have a --- Did you feel prepared to go to
10 trial?

11 A. Yes.

12 Q. To defend Mr. Rivers on these charges?

13 A. Again, I did not just walk into trial. I had a lot of
14 trials in that court. And, truly, honestly, one must
15 have been -- obviously, I did not win this case. I
16 think there actually wasn't a very clear strategy in
17 this case looking back at the transcript. It has been
18 brought out, I guess I will address this motion to
19 suppress, which seems to be essential.

20 Q. Yes, sir. That is exactly what I wanted to get in.
21 And, I put it in my brief, and it is before the Court.
22 One of the things that obviously jumps out at me in the
23 transcript was this little colloquy with Judge
24 Cottingham, there was never anyone to challenge -- no
25 one ever challenged the legitimacy of the traffic stop.

DANIEL L. BLAKE - DIRECT EXAMINATION

33

1 Do you have a copy of the transcript?

2 A. Yes.

3 Q. If you don't mind, turn to page 196.

4 (PAUSE.)

5 Q. And to see if I have this right, this was during a
6 point in the trial, as I understand it, the highway
7 patrolman who performed a Breathalyzer and a data
8 master test, testified that it was 0.0 reading for
9 alcohol.

10 A. No, there was a reading.

11 Q. What was the reading?

12 A. It read 0.00. So, there was a test, a legitimate test
13 done which showed that there was no alcohol in Mr.
14 River's system.

15 Q. Okay. And did the Solicitor at one point argued that
16 the equipment apparently wasn't working and the highway
17 patrolman said, no, it was working fine, you know? So,
18 you ended up doing okay on that part; correct?

19 A. Well, I think actually disallowing his testimony.

20 Q. Ultimately, wasn't that because he testified that he
21 was asking someone else how to do something and Judge
22 Cottingham said, well, I can't have you as an expert if
23 you are having to ask people how to do the test.

24 A. Right.

25 Q. Now, at the end of that, on page 192 beginning at line

DANIEL L. BLAKE - DIRECT EXAMINATION

34

1 17, you were making what you wanted to be on the record
2 about this drinking, credibility of witnesses, and the
3 Court states, I understand, but there was never a
4 motion made to question the legitimacy of the stop
5 itself. That motion was never made. And, that issue
6 could have been explored fully at that time, but the
7 record --- and then an objection cutting him off.
8 Saying, judge that was a tactical decision on my part
9 not to do it as a pretrial motion. And the Court says,
10 okay. But it would have been given to you. I read
11 this, and I am not sure what would have been given to
12 you? Do you have any recollection from having been
13 there at the time?

14 A. He would have given me a hearing on the motion to
15 suppress.

16 Q. Okay. And why wouldn't you have made a motion to
17 suppress, understanding if you won at all, they would
18 have had was a failure to stop case?

19 A. Right. And, I would have laid out my entire case to
20 them before hand in that motion to suppress. All of
21 the officers would have been present and testified.
22 And I would have given a rehearsal to them as to what
23 to testify to in the trial. I did sequester the
24 witnesses. There was a number of conflicts between the
25 witnesses. Turner is talking about stopping because of

DANIEL L. BLAKE - DIRECT EXAMINATION

35

1 left of center. Williams is talking about because of
2 the alcohol.

3 Q. Right.

4 A. I wanted to give the jury an opportunity to hear things
5 fresh and not have it rehearsed by the officers. And,
6 honestly, I have tried a lot of cases in front of Judge
7 Cottingham, and I have never won a motion to suppress.
8 So, with my decision to --- Yes. The only defense you
9 often have, or the best benefit you have often is
10 surprise.

11 Q. Okay.

12 A. So, I was not wanting to give the officers an
13 opportunity to prepare their remarks, because even
14 though you quote, unquote sequester the witnesses, that
15 is a small courtroom. They are all back in the
16 Solicitor's Office talking. And, I was not trying to
17 give them a heads-up on what was coming. And a lot of
18 what I was trying to do, which was usually very
19 effective there in Marlboro, was showing that the
20 officers had different explanations.

21 Q. So, for example. And, I think I am following you.
22 When Lieutenant Williams was testifying, and I am on
23 page 46 of the transcript, beginning at line 12. He,
24 being the first one who testifies for law enforcement,
25 essentially says he got a call from his wife and saw

DANIEL L. BLAKE - DIRECT EXAMINATION

36

1 the car, and initiated a traffic stop. He didn't say
2 anything. He didn't give any reason at all for why he
3 initiated a traffic stop; is that correct?

4 A. Yes.

5 Q. We are heading up Cheraw Street. She gave us a
6 description of the vehicle. It was a pickup truck. We
7 turned around and we got out on the vehicle. That is
8 lines 12 through 17. So, that was one version of it.
9 Later on there was a pretextual reason given.

10 MR. JOHNSON: We object to the characterization.

11 MR. BELDING: Let me withdraw.

12 THE COURT: Sustained.

13 Q. There was a reason given for why the car was stopped by
14 one of the other officers, and that was this driving
15 left of center explanation. Do you recall that?

16 A. Yes.

17 Q. Okay. So, your trial strategy was to try to get these
18 two conflicting testimonies against each other in order
19 to show the jury what?

20 A. That the officers were lying. And really in Marlboro
21 County many times just the jury getting a sense of law
22 enforcement not being honest was enough to get a not
23 guilty verdict. So, yes, I guess I could have done a
24 motion to suppress. As I said, in my experience Judge
25 Cottingham was, that that would have been futile. And

DANIEL L. BLAKE - DIRECT EXAMINATION

37

1 that is why I didn't do that part of it. There was
2 obviously conflicting testimony in terms of --- I mean,
3 Lieutenant Williams was getting the information from
4 his wife.

5 Q. Correct.

6 A. And his wife talks about you know, seeing Keena Rivers
7 drinking alcohol at the convenient store. That was one
8 reason why I --- that was going to come in. I knew
9 that was coming in. And, I also had the Breathalyzer
10 report which showed 0.00. Those two things you know,
11 really don't add up too well. I had talked to now
12 Lieutenant Turner, back then Detective Turner before
13 the case. He gave me his reason for the stop was left
14 of center. Keena Rivers said, I was never left of
15 center.

16 Q. And, in fact, as I recall in the transcript, Lieutenant
17 Williams never actually said that as a reason for
18 stopping him. He wasn't the one that said that; is
19 that correct?

20 A. Right. And I don't recall --- Was he the first one --

21 Q. -- He was the first one. And I don't remember anything
22 in there about why he -- He said he got a phone call.
23 This is on page 46. He passed us and we thought it was
24 the vehicle. We turned around the vehicle and got out
25 of the vehicle. I'm just looking, because I don't

DANIEL L. BLAKE - DIRECT EXAMINATION

38

1 recall anything.

2 Q. Okay. Page 46 starting on line 9, starting with the
3 information that he received from his wife.

4 A. Right. His testimony follows his wife's testimony
5 about what he saw. Then she calls him, and he does the
6 stop. So, I guess there is an inference in there about
7 the alcohol.

8 Q. Correct. And there is nothing in his testimony about
9 any bad driving?

10 A. Correct.

11 Q. And, a fair inference from that is that he pulls the
12 car over because his wife called and said it is a drunk
13 driver. Somebody is drinking, driving down the road in
14 a vehicle that she describes. Okay.

15 There is one other thing that I would like
16 for you to look at, if you don't mind turning to
17 page 266 in the transcript.

18 A. Okay.

19 Q. Again, this is another interaction with Judge
20 Cottingham. 266 beginning on line 15. You are talking
21 about the statute apparently read to the jury that an
22 automobile should not be driven left of center. And,
23 beginning on line 17 Judge Cottingham states, I don't
24 know if any issue that relates to --- that relates to -
25 -- because the basis for the stop was never challenged

DANIEL L. BLAKE - DIRECT EXAMINATION

39

1 by anybody on -- as an unlawful stop in a motion. And
2 nobody has every pretrial -- contested the --- and said
3 it was an unlawful stop. Now, it sounds like the
4 second time Judge Cottingham is pointing out that had
5 that been raised, that would have been a serious issue
6 in the case.

7 A. That is your reading into it.

8 Q. I understand.

9 A. It is like saying he is disallowing that charge left of
10 center. And I had called a witness, the clerk of the
11 Bennettsville City Court for her to name into the
12 record the tickets on that same incident that he had
13 been charged with. One of them being an open
14 container, the other one being left of center. I mean,
15 I am trying to find that in the transcript.

16 Q. I've seen it. It is in the transcript.

17 A. I don't know where that is. But, you know, I was
18 breaking in on Judge Cottingham. I don't know if I was
19 or not. But, you just did the best you could with him.

20 Q. I understand.

21 A. And, he basically was saying he wasn't going to allow
22 that. Which, I didn't understand, since I had
23 presented evidence that he was actually charged with
24 left of center, why that would not be part of the case.
25 He's the Judge.

DANIEL L. BLAKE - DIRECT EXAMINATION

40

1 Q. So, and just let me make sure I understand what you
2 testified to earlier. Is it my understanding that in
3 drug cases and motions to suppress being made before
4 Judge Cottingham, you have never won one?

5 A. That's correct..

6 Q. Okay. So, the reason you didn't make a motion to
7 suppress, which if successful would have helped
8 tremendously. The reason you didn't is because of as
9 trial strategy to go forth and try to discredit the law
10 enforcement witnesses and not give them a heads up
11 about where you were going with that?

12 A. Right. This was --- I did talk about this case with
13 the defendant. I would proceed on and involve the
14 defendant in the case. And, again the reason I did not
15 do that was, I did not feel it would be successful, and
16 I did not want to give law enforcement a heads-up. As
17 for the mention of the tickets and the testimony, that
18 is on page 228, lines 1 through 5. Those are the four
19 tickets that Mr. Rivers was charged with that night.
20 Open container, left of center, failure to stop on
21 command, and drug paraphernalia.

22 Q. Right.

23 A. And those were of course all the same incident, just
24 charges in a different court.

25 Q. Okay. We heard Mr. Rivers testify earlier that he

1 wanted a preliminary hearing and you waived it. Did
2 you waive it for essentially the same reasons that you
3 didn't want to ask questions that might give a heads-up
4 to the arresting officers?

5 A. No. I don't believe that. I believe I waived it, I
6 don't have any notes. I was certainly busy as a public
7 defender. But, I did all of the preliminary hearings
8 that I could. We would often have four or five
9 scheduled on a day. He says I waived it. I really
10 don't have any recollection as to ever waiving a
11 preliminary hearing. Sometimes --- I mean, I don't
12 know when I was appointed to the case. I don't know
13 when it was indicted. Of course, once it is indicted
14 you don't have a right to a preliminary hearing. No, I
15 use the preliminary hearing as an opportunity to learn
16 about the case, because otherwise I have what my client
17 is telling me, or I have some paper incident report
18 that the Marlboro County, and discovery was usually
19 quite thin. So, I would use the preliminary hearing to
20 begin to nail down what law enforcement was saying. I
21 don't believe I waived it.

22 Q. Okay. I mean, it is a discovery tool?

23 A. Absolutely.

24 Q. All right.

25 A. I mean, it is as good as you get in terms of having a

DANIEL L. BLAKE - DIRECT EXAMINATION

42

1 deposition.

2 Q. Correct.

3 A. Which you can't have in general sessions. So, yeah, I
4 did it every chance I could.

5 Q. Okay. You don't necessarily expect to win, you expect
6 to learn something from a preliminary hearing?

7 A. Right. Because, as you well know, even if you win that
8 preliminary hearing you can have a direct presentment,
9 and that is often what would happen in that court.

10 Q. I understand.

11 A. But, no I did every one of them that I could. And I
12 would notify the client of when it was scheduled.
13 Again, they didn't have to testify in our court, it was
14 whether or not they wanted to give a statement, which I
15 always warned them not to. But, I would have clients
16 at those preliminary hearings. I would have family
17 members. I did tons of preliminary hearings when I was
18 a public defender. I do not recall this one.

19 Q. The other question I have is, I understand your
20 testimony that it was trial strategy to not move to
21 suppress on the basis of the question of the traffic
22 stop. And you said it was your opinion that that would
23 not have been successful. Ultimately, the other
24 strategy was unsuccessful too wasn't it?

25 A. I was.

DANIEL L. BLAKE - CROSS EXAMINATION

43

1 MR. BELDING: Okay. Thank you. No further
2 questions.

3 THE COURT: All right. And, cross examination.

4 CROSS EXAMINATION BY MR. JOHNSON

5 Q. Mr. Blake, regarding the motion to suppress that
6 counsel avers that you should have filed. Let's say
7 that the failure to stop for a blue light was the only
8 charge that Mr. Rivers was facing. In that scenario
9 there still would have still been a search incident to
10 arrest; right?

11 A. Correct.

12 Q. And, where presumably these things that are in his
13 pocket would have been found under any such
14 circumstance. Is that right?

15 A. Yes.

16 Q. Okay. So, I want you to, if you will, go into your
17 trial strategy. You have someone who is going to
18 testify, going to presumably admit that he failed to
19 stop for a blue light. Again, presumably spoken to you
20 about admitting to having the marijuana in his pocket.
21 What is the trial strategy for a client like that? And
22 what was it in this case?

23 A. Well, again, I certainly can't remember everything from
24 four years ago. But, looking at the trial transcript,
25 even the failure to stop for a blue light, we were

DANIEL L. BLAKE - CROSS EXAMINATION

44

1 basically at least challenging that in the jury's eyes
2 that Keena Rivers said he had a very valid reason for
3 driving off, and he had prior difficulties I believe it
4 was with Turner. And we got into that a little bit
5 before the Judge cut that questioning off. I forget
6 where that was. But, I think Turner had been rough
7 with him before. We were obviously dealing with the
8 aspect of the stop in terms of the different things
9 that the Court was saying. Keena was adamant from the
10 beginning that he did not have any crack in his pocket,
11 that he only had marijuana. That came out through
12 three different witnesses, that they saw Officer Pough
13 searching him, saw him pulling it from his pocket. I
14 would note that the jury was out two and a half hours.
15 That is a long time for Marlboro County jury. And
16 certainly means that they had some reason to question
17 what went on. And you are asking me what the strategy
18 was. It is hard to kind of think back exactly. But, a
19 lot of it was showing the testimony of the officers
20 wasn't true. I did of course bring in Ms. Frye, who is
21 the clerk at Bennettsville City Court, to show about
22 the center line ticket. I brought in Officer Peel to
23 show that in fact he had no alcohol in his system. So,
24 therefore, what was being --- they said that they
25 stopped him because of the alcohol. But, that was sort

1 of actually done as the trial was developing. I had
2 talked to Sergeant Turner before the trial, and he
3 talked really about the left of center issue.

4 Q. All right. So, in your investigation, you go out to
5 the scene; right?

6 A. Yes.

7 Q. You actually get in the ditch; is that correct?

8 A. Yes.

9 Q. The ditch where Mr. Rivers was eventually found, where
10 he says his co-defendant threw the crack cocaine. You
11 called in the witness to prove there was no alcohol in
12 his system. Is that your testimony?

13 A. Yes.

14 Q. You filed a motion for Rule 5 and other discovery
15 request; Brady versus Maryland?

16 A. Yes.

17 Q. You received a response?

18 A. Yes.

19 Q. And did you go over that with Mr. Rivers?

20 A. I don't recall exactly. I can't say. I would say that
21 is the normal procedure. What I did --

22 Q. And is it your testimony that the jury deliberated two
23 and a half hours?

24 A. Well, that is in the record. Yes, I think they took it
25 up around three o'clock or a little before, and came

DANIEL L. BLAKE - REDIRECT EXAMINATION

46

1 back around 5:30.

2 Q. And at Mr. Rivers' request, you even filed a motion for
3 reconsideration of the sentence?

4 A. That's correct.

5 Q. And what was the outcome of that?

6 A. It was turned down.

7 MR. JOHNSON: That is all the questions I have, Your
8 Honor.

9 THE COURT: Any redirect?

10 MR. BELDING: Just one brief thing, Your Honor.

11 REDIRECT EXAMINATION BY MR. BELDING

12 Q. Mr. Blake, when you were talking about the trial
13 strategy, and I understand that it is your testimony
14 you don't recall if you actually went over the discover
15 material with Mr. Rivers; is that correct?

16 A. I said that I do not recall in this incident, but that
17 was certainly what I normally do.

18 Q. Correct.

19 A. And, again, I am giving you credit for not having your
20 notes and refresh your memory. You have testified
21 about who you had planned to call, up including the
22 administrative lady at the Bennettsville Municipal
23 Court. Were you planning on calling Reggie Rivers, a
24 passenger in the car?

25 A. I really have no recollection of that conversation, and

1 witnesses. I am just going to tell you, if he wanted
2 me to call certain witness, this is just general
3 procedure again, I would have gone out in the street to
4 find those witnesses.

5 Q. And I don't mean to sabotage your -- Do me a favor turn
6 to page 230. And if you don't mind when you get there
7 start with line five and just refresh your memory on
8 this.

9 A. Okay. I see that. Basically, we had him subpoenaed
10 and you know, they said they were not able to locate
11 him.

12 Q. I understand. Look at the jury came back after some
13 sort of break. Like twenty something minutes. The
14 judge asked you to call your next witness and you
15 explained to him you had some --- It would have been
16 Reggie Rivers, the passenger, and you had sent out a
17 subpoena. And Judge Cottingham asked him, beginning on
18 line 12, this is the record. When was he --- When was
19 the subpoena first issued? And, your response was.

20 A. This morning.

21 Q. It was this morning, Your Honor. The rest of the
22 little exchange between you and Judge Cottingham made
23 it sound like you knew last week that the case was
24 coming up, and why didn't you start a little earlier,
25 and you responded that there were facts that came out,

KEENA RIVERS VERSUS THE STATE

48

1 so you had to change your strategy so to speak?

2 A. Right.

3 Q. Needed a different witness in the middle of the trial;
4 correct?

5 A. Right.

6 Q. Okay. Does this --- Does this corroborate in your mind
7 what Mr. Rivers testified to earlier that basically he
8 was called to come down and start the trial that day?

9 A. No.

10 Q. Okay. So, it wasn't that you had to subpoena a
11 material witness that morning, it was that you tried to
12 do it in response to some testimony that you heard;
13 correct?

14 A. Yes. If Mr. Rivers had suggested that Reggie Rivers
15 was an important witness in this case, I would have
16 subpoenaed him earlier. Certainly, in that court the
17 clerk needs to sign those subpoenas and it is often
18 difficult to get that done. But, I don't know what
19 facts that came out to change some of that. I really
20 don't. That is obviously within the record here.

21 Q. And you don't have any present recollection of what you
22 had asked Mr. Reggie Rivers to testify to?

23 A. Actually, not at all, no.

24 **MR. BELDING:** Thank you, Mr. Blake. No further
25 questions.

DANIEL L. BLAKE - RE-CROSS EXAMINATION

49

1 THE COURT: All right. Thank you. Then you may --

2 MR. JOHNSON: I have one followup, Your Honor.

3 THE COURT: Is there a new issue brought up?

4 MR. JOHNSON: If I may.

5 THE COURT: Go ahead.

6 RE-CROSS EXAMINATION BY MR. JOHNSON

7 Q. So, you didn't call Reggie Rivers; correct?

8 A. Right.

9 Q. And this leaves Keena Lamont Rivers completely free to
10 allege that it was Reggie Rivers who threw the crack
11 cocaine in the ditch uncontroverted; is that right?

12 A. Yes.

13 Q. And that is exactly what happened now, wasn't it?

14 A. If that is what Mr. Rivers' said?

15 Q. Yes, sir.

16 A. Mr. Keena Rivers?

17 Q. Yes, sir. Reggie wasn't there to say it wasn't so.

18 So, that is what became of the facts of the case?

19 A. I would note that in three different instances in the
20 transcript, three different officers talk about Office
21 Pough searching Mr. Keena Rivers, and that they saw her
22 take out the crack from his pocket. That was Chief
23 McNeil. I was looking at the trial transcript as we
24 were listening to testimony. I can give those pages
25 and lines. But three different officers observed the

KEENA RIVERS VERSUS THE STATE

50

1 search and saw the drugs being pulled from his pocket.

2 MR. JOHNSON: Nothing further, Your Honor.

3 THE COURT: All right. Then sir, you may step down.
4 Please watch your step. Is there any objection to the
5 release of the witness?

6 MR. BELDING: Yes, Your Honor.

7 THE COURT: No objection?

8 MR. BELDING: No objection.

9 THE COURT: Then you are free to leave, Mr. Blake,
10 if you wish.

11 And, are there further witnesses now for the applicant?

12 MR. BELDING: No, Your Honor. Thank you. That would
13 be the applicant's case.

14 THE COURT: All right. And will there be testimony,
15 further witnesses from the state?

16 MR. JOHNSON: No, Your Honor.

17 THE COURT: All right. Just a moment please.

18 (PAUSE.)

19 THE COURT: All right. Mr. Belding, there was a
20 question about whether Mr. Reggie Rivers would be taking
21 responsibility for the drugs. Now, is he going to testify
22 today to that effect, sir?

23 MR. BELDING: No, Your Honor.

24 THE COURT: All right. Then just a moment.

25 (PAUSE.)

RULING OF THE COURT

1
2 **THE COURT:** All right. Let's let the record reflect
3 that I have had the opportunity to review not only the
4 transcript, the applicant's trial brief, the return, the
5 application for Post Conviction Relief as well as listening
6 to the testimony here in this case.

7 Mr. Rivers, there are two things that you have to prove
8 in order to be successful at PCR.

9 One is that your lawyer, as we discussed first thing
10 this morning, your lawyer's performance was deficient. That
11 is it fell below the standard we require of lawyers
12 practicing criminal law in South Carolina. And, number two.
13 That you were prejudiced by that. And in a case of a trial,
14 basically the best way to define prejudice is that but for
15 your lawyer's errors or deficient performance the outcome of
16 the trial would have been different.

17 And, I find that you have failed to meet either prong
18 of the proof. You have raised questions about whether or
19 not the stop should have been suppressed. However, I have
20 no evidence today that if there was a suppression motion
21 that the stop would have been found to be illegal, and thus
22 all the evidence flowing from it would have been suppressed.
23 That is conjecture to say that it would have, sir.

24 In fact, what happened was we had a known informant.
25 This was not a confidential or antonymous tip. And thus,

KEENA RIVERS VERSUS THE STATE

52

1 the Court may well have had a suppression hearing and
2 determined not to suppress the stop or to determine the stop
3 illegal, even though you were found to have a zero blood
4 alcohol level.

5 Mr. Blake has given us a trial strategy for which he
6 did not wish to tip the officers as to one another's
7 testimony, or allow them to practice their testimony in a
8 suppression hearing.

9 And, I simply find that there is not sufficient
10 evidence on that basis to find that he was deficient, or
11 that you were prejudiced by it.

12 I also don't find that there is any evidence that there
13 has been a performance here that was so deficient in any
14 particular factor that would render it ineffective.

15 And I don't find that you have been prejudiced.

16 What happened was, you had some fairly strong evidence
17 against you. You went to trial, sir. And you were
18 convicted.

19 The Court finds no reason to set it aside now.

20 Now, you can appeal this decision, Mr. Rivers, and here
21 is how it works. I am going to ask Mr. Johnson to prepare a
22 written order, a formal order, which is going to lay out
23 these reasons I have just given, and present that to me
24 within thirty days. I am going to take that order, review
25 it, and sign it. Return it to him, and he will then serve

KEENA RIVERS VERSUS THE STATE

53

1 it on Mr. Belding. And your right to appeal begins to run
2 on that day. And you have thirty days from that day in
3 order to appeal this decision. Not from today, but from
4 that future day. Do you understand that, sir?

5 **MR. RIVERS:** Oh, yes, sir.

6 **THE COURT:** All right. Then very good. Then that
7 is the decision of the Court.

8 I am going to return you now to Marlboro County for
9 return to Department of Corrections. Good luck to you, Mr.
10 Rivers.

11 **MR. JOHNSON:** Thank you, Your Honor.

12 **MR. BELDING:** Thank you, Your Honor.

13 (Whereupon, this hearing was concluded at
14 4:48 p.m. on Monday, September 10, 2012.)

15 -- END OF TRANSCRIPT --

CERTIFICATE OF REPORTER

54

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the above captioned case, relative to appeal, in The Court of Common Pleas in Marlboro County, South Carolina, on the 20th day of September 2012.

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

April 3, 2013



Pamela Ozment-Cartee
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF MARLBORO	)	
Keena L. Rivers, #328886,	)	C/A No.: 2010-CP-34-0188
	)	
Applicant,	)	
	)	
vs.	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

APPLICANT'S TRIAL BRIEF

The Applicant hereby submits this *Trial Brief* for the Court's consideration in this matter.

I. Statement of Facts of the Case.

A. This case was filed on July 9, 2010, by the Applicant, acting *pro se*. The State made its *Return* on May 9, 2012. Undersigned counsel was appointed to represent the Applicant by the Honorable William B. Funderburk, Clerk of Court, on April 12, 2012.

B. Applicant's PCR application states that he is seeking relief from the sentences imposed by Judge Edward B. Cottingham on June 12, 2008, for the following:

i) Indictment No.: 2008-GS-34-87 (Possession with Intent to Distribute of Crack Cocaine) – twelve (12) years imprisonment;

ii) Indictment No.: 2008-GS-34-82 (Failure to Stop for a Blue Light) – three (3) years, to run concurrently; and,

iii) Indictment No.: 2008-GS-34-85 (Possession with Intent to Distribute Marijuana, Second Offense) – one (1) year, to run concurrently.

C. The Applicant was represented by Dan L. Blake, Esquire of the Public Defender's Office.

D. Applicant's convictions were appealed but dismissed on February 16, 2010.

This action in post-conviction relief followed, and the application was timely filed after the appellate ruling.

II. Legal Issue

Trial counsel was ineffective in representing Applicant, a violation of Applicant's Sixth Amendment right to counsel.

III. Legal Authority

For Applicant to be granted relief 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 assistance. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Brown v. State*, 340 S.C. 590, 533 S.E.2d 308 (2000).

A. In this case, counsel failed to render effective assistance in the following particulars:

1) State's witness, Lawanda Williams, testified that she saw the Applicant, as the driver of a truck parked next to her, drinking something from "...a container in his hand that he was drinking from but it was covered with the back" (*Transcript* pg. 32 ln. 14-16). The witness never identified the beverage in her direct testimony, although she did testify that *after* she saw the described action by Applicant, another "guy came out [of the store] with some beer" (*Transcript* pg. 35 ln. 17). Even though this witness could not and did not testify that the Applicant was drinking an alcoholic beverage, on cross-examination, Applicant's counsel asked this witness "and the beer or the bag was in what hand [of the Applicant]?" (*Transcript* pg. 41 ln. 17). This clearly linked to the jury for the first and only time that the Applicant may have been drinking alcohol prior to driving. This goes to the ultimate issue of innocence – rather than contesting the first State's witness's observation or highlighting for the jury that the witness could not identify what the Applicant may have been drinking, trial counsel asked a question which clearly implied that the witness, in fact, *had* a beer in his possession.

2) This first witness then testified that she called her husband, Lt. Gregory Williams of the Bennettsville Police Department, and reported the incident with a

description of Applicant's vehicle (*Transcript* pg. 34 ln. 7-13). Within a matter of seconds, Lt. Williams, who was on the same street, spotted the described vehicle and initiated a traffic stop (*Transcript* pg. 46 ln. 12-17). In his testimony, this witness does not initially describe any traffic-related reason for the stop; clearly, he was responding to the report from his wife. Nevertheless, Applicant's counsel failed to move to suppress the evidence based on the questionable traffic stop. In fact, the trial judge stated on the record that "...there was never a motion made to question the legitimacy of the stop itself. That motion was never made, and that issue could have been explored fully at that time..." (*Transcript* pg. 192 ln. 17-20). The judge reiterated that concern in the motions colloquy, stating "...I don't know of any issue that [statute] relates to because the basis for the stop was never challenged by anybody on – as an unlawful stop in – in a motion, and nobody has ever pretrial contested the – and said it was an unlawful stop." (*Transcript* pg. 266 ln. 17-21). Applicant's counsel informed the Court that it was a "tactical decision", but he never discussed this with the Applicant to allow him to decide what to do.

3) The Applicant made a timely request for a preliminary hearing which was waived by counsel without Applicant's knowledge or consent.

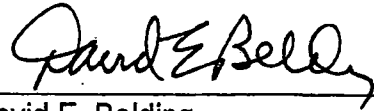
B. The second step in the analysis is whether Applicant was prejudiced by the deficient representation. *Strickland v. Washington*, 466 U.S. at 687. The Applicant's convictions clearly show the prejudice he suffered. Had trial counsel moved to suppress the evidence based on the illegitimacy of the traffic stop, there would have been no drug evidence to use against the Applicant.

Therefore, Applicant's attorney did not demonstrate "reasonableness under professional norms" that satisfies the requirements of the Sixth Amendment. *Cherry v. State*, 300 S.C. 115, 386 S.E. 2d 624 (1989).

PRAYER FOR RELIEF

Based on the foregoing, Applicant prays that the Court vacate his sentence as violative of the Sixth Amendment and remand this case to the Marlboro County Court of

General Sessions:



David E. Belding
Post Office Box 11964
Columbia, SC 29211-1964
Phone: 803-665-3161
Fax: 866-220-6352
Email: dar820@sc.rr.com
ATTORNEY FOR APPLICANT

September 10, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

2010-CP-34- 188

Keena Lamont Rivers, 328886

Applicant,

v.

State of South Carolina,

Respondent.

ORDER DENYING
POST-CONVICTION RELIEF

FILED
2012 DEC 6 AM 11 49
WILLIAM B. FURBER, JR.
CLERK OF COURT
MARLBORO COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 9, 2010. Respondent made a timely Return. The Court convened an evidentiary hearing into the matter on September 10, 2012, at the Darlington County Courthouse. Applicant was present at the hearing and represented by David E. Belding, Esquire. Tyson Andrew Johnson, Sr., Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the hearing, Applicant testified on his own behalf. Also testifying was trial counsel Daniel L. Blake, Esquire. This Court had before it the PCR Application, the State's Return, the records of the County Clerk of Court, the transcript, and Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. Applicant was indicted at the January 2008 term of the Marlboro County Grand Jury for possession with intent to distribute crack cocaine (2008-GS-34-87), failure to stop for a blue light (2008-GS-34-82), and possession with intent to distribute marijuana second offense (2008-GS 34-85). Daniel L. Blake, Esquire, represented

Applicant on all charges.

On June 12, 2008, Applicant was tried before The Honorable Edward B. Cottingham and a jury, and was convicted as indicted. Judge Cottingham sentenced Applicant to twelve years imprisonment on the PWID crack; to one year imprisonment on the possession of marijuana, second offense; and, to three years imprisonment on the failure to stop for a blue light, with all sentences to run concurrently. Applicant filed a Notice of Appeal but his appeal was dismissed on February 16, 2010.

ALLEGATIONS

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel"
2. "Constitutional violations"

Applicant seeks to "Vacate conviction [and order] new trial and Resentencing as a result of this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

*JB
2* The Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. The Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80.

Statement of the Law of 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) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the

adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). 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, 489 S.E.2d 733, 735 (1997) (citing Strickland).

Ineffective assistance claims

Applicant claims counsel was ineffective for waiving his preliminary hearing. Counsel could not recall waiving Applicant's preliminary hearing, but also could not recall attending a preliminary hearing on Applicant's behalf. Counsel indicated he utilized preliminary hearings to gather basic information about the case. Applicant has failed to show what prejudice resulted from the lack of a preliminary hearing, nor did he indicate he asked counsel to schedule one.

Applicant testified his counsel was ineffective because he only met with him one time before trial for thirty minutes. This allegation is not borne out by the evidence. Counsel testified he went to the arrest scene with Applicant, and physically got into the ditch where Applicant admitted that he

hid from police and where his co-defendant Reggie Rivers allegedly threw down crack cocaine. Counsel indicated his preparation was more than adequate to try Applicant's case. Counsel served discovery requests on the State, and received a response. Counsel indicated that he had adequate preparation despite Applicant's claims that trial was suddenly upon them and they were not prepared. Counsel reiterated he did not set the trial docket, that the Solicitor did, and that he notified Applicant as soon as he learned the case was on the trial list.

In his testimony, Applicant raised several complaints against counsel. He opined that counsel did not challenge the legitimacy of the traffic stop that led to his arrest, nor attempt to suppress the drugs in question, nor did counsel adequately confront the adverse witnesses at trial. Counsel responded that he did not move to suppress the drugs due to the fact that there was no genuine argument for suppression, that he did not want to give the police an opportunity to rehearse their testimony, and the likelihood of Judge Cottingham suppressing the drugs was remote. Moreover, from the PCR Court's review of the record, there was overwhelming evidence of guilt. On cross examination at PCR, Applicant admitted guilt to two of his charges – the failure to stop for blue light and the marijuana charge, but contested the cocaine charge. As to the cocaine charge, the trial transcript reveals that Officer Aretha Poe testified she removed the crack from Applicant's front jeans pocket at the arrest scene (TR p. 102, l. 15).

In examining Applicant's claims, the Court finds that counsel's performance was not deficient and Applicant failed to show evidence that would overcome the presumption of effective assistance of counsel, and has failed to show prejudice. In reaching this conclusion, the Court finds counsel's testimony persuasive and gives it great weight. This Court does not find Applicant's testimony credible or persuasive. For these reasons, the Court finds that counsel was not ineffective with regard to any of Applicant's claims. The Court finds that counsel was not deficient in this respect, nor was Applicant prejudiced by any alleged deficiency. Further, the Court finds counsel's trial preparation and actions were reasonable under prevailing professional norms, and therefore

396
21
Applicant's claims are denied.

Other Allegations

No other allegations were raised or testified to at the PCR hearing. Therefore, any additional allegations raised in the Application are deemed waived because no evidence was presented.

CONCLUSION

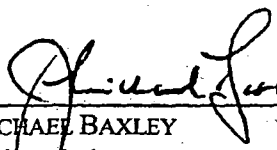
Based on the foregoing, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant any of the claims in his application. Therefore, this application for post conviction relief is denied and dismissed, with prejudice.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. That Applicant must remain in the custody of Respondent for the completion of his sentence.

IT IS SO ORDERED this 29th day of November, 2012.

Hartsville, South Carolina


J. MICHAEL BAXLEY
Presiding Judge
Fourth Judicial Circuit

2012 DEC 6 AM 11 49
WILLIAM B. FUNDENBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

FILED

WITNESSES

Sgt. Larry Turner
BPD

Larry Turner

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

WITNESS:

C.C.C. PLS. AND G.S.

ARREST WARRANT #:

I078411

Arrested on December 06, 2007

ACTION OF GRAND JURY

True Bill

1-14-08

Foreman:

Deborah D. Brown
Grand Jury

VERDICT

True Bill *ASB*

Foreman:

Petit Jury

Date:

DOCKET #: 08GS34-0085

THE STATE OF SOUTH CAROLINA

County of Marlboro

COURT OF GENERAL SESSIONS

Term: January, 2008

THE STATE

vs.

Keena Lamont Rivers

I N D I C T M E N T F O R

0186

POSSESSION WITH INTENT TO DISTRIBUTE

MARIJUANA (44-53-370)

MARLBORO COUNTY, S.C.
CLERK OF COURT
WILLIAM B. FUNDERBURK

2008 JAN 16 PM 3 59

FILED

STATE OF SOUTH CAROLINA)
County of Marlboro)

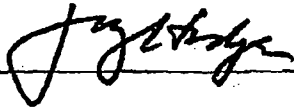
INDICTMENT #08GS34-0085

At a Court of General Sessions, convened on January 14, 2008
the Grand Jurors of Marlboro County present upon their oath:

COUNT: POSSESSION WITH INTENT TO DISTRIBUTE
MARIJUANA (44-53-370)

That Keena Lamont Rivers in the County of Marlboro on or about December 06,
2007, possess with intent to distribute a quantity of Marijuana, a controlled
substance, Sec. 44-53-370, et. seq., Code of Laws of South Carolina (1976), such
possession with intent to distribute not having been authorized by law. This
incident occurred on Cheraw Street in Bennettsville, SC.

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

SOLICITOR: 

WITNESSES

Sgt. Larry Turner
BPD

Larry Turner

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

WITNESS:

C.C.C. PLS. AND G.S.

ARREST WARRANT #:
61222ED

Arrested on December 06, 2007

ACTION OF GRAND JURY

True Bill

1-14-08

Foreman: *Deborah A. Brown*
Grand Jury

VERDICT

True Bill *100B*

Foreman:

Petit Jury

Date:

DOCKET #: 08GS34-0082

THE STATE OF SOUTH CAROLINA

County of Marlboro

COURT OF GENERAL SESSIONS

Term: January, 2008

THE STATE

vs.

Keena Lamont Rivers

I N D I C T M E N T F O R

0065

FAILURE TO STOP FOR A BLUE LIGHT/SIREN

(56-5-750)

WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.
2008 JAN 16 PM 3 59

FILED

STATE OF SOUTH CAROLINA)

County of Marlboro)

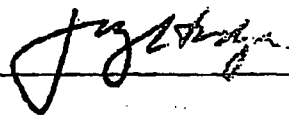
INDICTMENT #08GS34-0082

At a Court of General Sessions, convened on January 14, 2008
the Grand Jurors of Marlboro County present upon their oath:

COUNT: FAILURE TO STOP FOR A BLUE LIGHT/SIREN
(56-5-750)

That Keena Lamont Rivers in the County of Marlboro on or about December 06, 2007, violate Section 56-5-750 of the Code of Laws of South Carolina (1976), as amended, in that while operating a motor vehicle upon the public streets or highways in the State of South Carolina, the said defendant did fail to stop when signaled to do so by a law enforcement officer by means of a siren or flashing light.

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

SOLICITOR: 

WITNESSES

Sgt. Larry Turner
BPD

Larry Turner

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

WITNESS:

C.C.C. PLS. AND G.S.

ARREST WARRANT #:

I078413

Arrested on December 06, 2007

ACTION OF GRAND JURY

True Bill

1-14-08

Foreman: *Deborah D. Burns*
Grand Jury

VERDICT

True Bill

Foreman:

Petit Jury

Date:

DOCKET #: 08GS34-0087

THE STATE OF SOUTH CAROLINA

County of Marlboro

COURT OF GENERAL SESSIONS

Term: January, 2008

THE STATE

vs.

Keena Lamont Rivers

I N D I C T M E N T F O R

3014

POSSESS WITH INTENT TO DISTRIBUTE

CRACK COCAINE 44-53-375(B)(1)

WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

2008 JAN 16 PM 3 59

FILED

ARREST WARRANT

I-078413

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
BENNETTSVILLE

THE STATE
against

KEENA LAMONT RIVERS

Address: BENNETTSVILLE SC 29512
Date of Birth: 01-11-1966 SSN: 135
Race: B Height: 5-6 Weight: 135
Sign: SC DL#: -
Agency ORI#: SC0350100
Issuing Agency: CITY OF BENNETTSVILLE
Rescuing Officer: SGT. LARRY TURNER
Offense: PWITD CRACK COCAINE

Offense Code: 0100
Offense Sec. 44-53-0375 (A)
is warrant is CERTIFIED FOR SERVICE in the
County/ ☐ Municipality of

The accused
to be arrested and brought before me to be
all with according to law.

Signature of Judge (L.S.)

RETURN

copy of this arrest warrant was delivered to
defendant KEENA LAMONT RIVERS

Signature of Constable/Law Enforcement Officer

TURN WARRANT TO:

MUNICIPAL COURT

103 E. MARKET STREET

BENNETTSVILLE, SC 29512

FILED

2007 DEC 14 PM 1:03

ROBERT STANTON (L.S.)

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
BENNETTSVILLE

AFFIDAVIT

Personally appeared before me the affiant DET LARRY TURNER who
being duly sworn deposes and says that defendant KEENA LAMONT RIVERS
did within this county and state on 12/06/2007 to 12/06/2007 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of BENNETTSVILLE)
in the following particulars:
DESCRIPTION OF OFFENSE: 44-53-0375 (A) / PWITD CRACK COCAINE

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THAT ON 12/06/2007 ONE KEENA LAMONT RIVERS DID COMMIT THE OFFENSE OF POSSESSION WITH THE INTENT TO
DISTRIBUTE CRACK COCAINE BY HAVING TWO CLEAR PLASTIC BAGS WITH A WHITE ROCK LIKE SUBSTANCE BELIEVED TO
BE CRACK COCAINE, ABOUT HIS PERSON, SAID OFFENSE OCCURRED ON CHERAW STREET, BENNETTSVILLE, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
BENNETTSVILLE

Affiant's Address 243 EAST MAIN STREET
BENNETTSVILLE SC 29512
Affiant's Telephone 843-479-3620

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 12/06/2007 defendant KEENA LAMONT RIVERS

did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of BENNETTSVILLE) as set forth below:

DESCRIPTION OF OFFENSE: PWITD CRACK COCAINE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

and subscribed before me

on 12/07/2007

Judge's Address 103 MARKET STREET

BENNETTSVILLE SC 29512

Judge's Telephone 843-479-1582

Judge Code: JUDGE2

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

STATE OF SOUTH CAROLINA)

)

INDICTMENT #08GS34-0087

County of Marlboro)

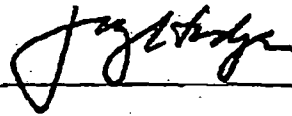
At a Court of General Sessions, convened on January 14, 2008
the Grand Jurors of Marlboro County present upon their oath:

COUNT: POSSESS WITH INTENT TO DISTRIBUTE
 CRACK COCAINE 44-53-375(B)(1)

That Keena Lamont Rivers in the County of Marlboro on or about December 06, 2007, did possess with intent to distribute a quantity of Crack Cocaine, a controlled substance under provisions of Sec. 44-53-375, et. seq., Code of Laws of South Carolina(1976), as amended, such possession with intent to distribute not having been authorized by law. This incident occurred on Cheraw Street in Bennettsville, SC.

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

SOLICITOR: _____



STATE OF SOUTH CAROLINA

COUNTY OF Marlboro
 STATE VS.
Keena Laurent Rivers
 AKA:
 Race: B Sex: M Age:
 DOB: S#:
 Address:
 City, State, Zip
 DL# SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 08 -GS- 34 - 87
 AWW#: I-078413
 Date of Offense: 12-6-07
 S.C. Code §: 44-53-375(B)(1)
 CDR Code #: 310114
☐ CASE RESTORED
☐ SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: PWID Crack

in violation of 44-53-375(B)(1) of the S.C. Code of Laws, bearing CDR Code # 310114
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probati
 which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the Stat
 Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
 Total: \$ plus 20% fee: \$
 Payment Terms:
☐ set by SCDPPPS

PTUP days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling
 Random Drug/Alcohol Testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning
 \$ paid to Public Defender Fund
 Other:

Recipient:
 *Fine: \$
 \$14-1-206 (Assessments 107.5%) \$
 \$14-1-211(A)(1) (Conv. Surcharge) 100 \$ 100.00
 \$14-1-211(A)(2) (DUI Surcharge) 100 \$
 \$56-5-2995 (DUI Assessment) 12 \$
 \$ 35.13 (Public Def/Prob) 500 \$
 \$73.3, 1B TP (Law Enforce. Funding) 25 \$ 23.06
 \$33.7, 1B TP (Drug Court Surcharge) 100 \$ 100.00
 \$50-21-114(BUI Breath Test Fee) 50 \$
 \$56-5-2942(J) (Vehicle Assessment) 40/ea \$
 3% to County (if paid in installments) \$ 16.75
 TOTAL \$ 231.75

☐ Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

William B. Zundel
 Clerk of Court/ Deputy Clerk
 Court Reporter: Linda McColl

PRESIDING JUDGE [Signature]
 Judge Code: 0101411
 Sentence Date: 6-12-08

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Marlboro
 STATE VS.
Keena Laurent Rivers
 AKA:
 Race: R Sex: M Age:
 DOB: 1-1-81 SS#: 1-1-81
 Address:
 City, State, Zip Pennettsville, SC
 DL# 1-1-81 SID# 1-1-81

INDICTMENT/CASE#: 08-GS-34-85
 A/W#: 1078411
 Date of Offense: 12-10-07
 S.C. Code §: 44-53-370
 CDR Code #: 0111816
☐ CASE RESTORED
 SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: Possession of Marijuana 2nd offense
 in violation of §44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0111816
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

John R. Huff
 Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed 1 years
 and/or to pay a fine of \$ 100.00; provided that upon the service of 1 days/months/years and/or payment
 of \$ 100.00; plus costs and assessments as applicable; the balance is suspended with probation for 1
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation
 which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
 Total: \$ 100.00 plus 20% fee: \$ 20.00
 Payment Terms:
☐ set by SCDPPPS

PTUP 1 days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning 12-10-07
 Substance Abuse Counseling
 Random Drug/Alcohol Testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ 100.00 beginning 12-10-07
 \$ 100.00 paid to Public Defender Fund
 Other: 100.00

Recipient:
 *Fine: \$ 100.00
 §14-1-206 (Assessments 107.5%) \$ 100.00
 §14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 §14-1-211(A)(2) (DUI Surcharge) \$100 \$ 100.00
 §56-5-2995 (DUI Assessment) \$12 \$ 12.00
 § 35.13 (Public Def/Prob) \$500 \$ 500.00
 §73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
 §33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100.00
 §50-21-114(BUI Breath Test Fee) \$50 \$ 50.00
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 40.00
 3% to County (if paid in installments) \$ 16.75
 TOTAL \$ 231.75

☐ Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation.

William B. Surdenburg
 Clerk of Court/ Deputy Clerk
 Court Reporter: Linda McCall

PRESIDING JUDGE [Signature]
 Judge Code: 0111816
 Sentence Date: 6-12-08

GS Docket Sheet**Indictment Number 2008GS3400085****Defendant Section****Defendant Name / Address****RIVERS, KEENA L****BENNETTSVILLE, SC 29512****Defendant SSN****Defendant Gender M****Defendant Race B****Birth Date****Marital Status UnKnown****Drivers License State / Number SC :****Warrant Section****Warrant Number 1078411****Counts 1****Warrant Issued True****Arrest Date 12/6/2007****Offense Code 183****Offense Description****Drugs / MDP, Narcotic drugs in Sch. I(b) & (c),
LSD, and Sched. II (Cocaine)- 1st offense****Judge Name COTTINGHAM, EDWARD B****Court Reporter MCCALL, LINDA****Date Received By Clerk 12/14/2007****Summary Judge 999****Defense Attorney****Plaintiff Attorney MUNNERLYN, ELIZABETH R****Disposition Section****Disposition Date 6/12/2008****Disposition Type 2 : TRIAL/GUILTY****Convicted of 1 counts.****Drugs / Poss. of 28g (1 oz) or less of marijuana or 10g or less of hash - 2nd or sub. offense****Sentence 1-YR-CONSECUTIVE**

STATE OF SOUTH CAROLINA

COUNTY OF
STATEMaclaw

VS.

AKA:

Race:

B

Sex:

M

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED
SENTENCE☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Fallen to Stop for a Blue Lightin violation of §56-5-750 of the S.C. Code of Laws, bearing CDR Code # 0101615☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Elizabeth R. Muf
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$_____; provided that upon the service of _____ days/months/years and/or payment of \$_____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$_____ plus 20% fee: \$_____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114 (DUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

	\$
	\$
\$100	\$100.00
\$100	\$
\$12	\$
\$500	\$
\$25	\$25.00
\$100	\$
\$50	\$
\$40/ea	\$
	\$3.75
	\$128.75

William B. Sunderbush

Clerk of Court/ Deputy Clerk

Court Reporter:

Linda McCall

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$_____ beginning

\$_____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

GS Docket Sheet**Indictment Number 2008GS3400082****Defendant Section****Defendant Name / Address****RIVERS, KEENA L****BENNETTSVILLE, SC 29512****Defendant SSN****Defendant Gender M****Defendant Race B****Birth Date****Marital Status UnKnown****Drivers License State / Number SC :****Warrant Section****Warrant Number 61222ED****Counts 1****Warrant Issued True****Arrest Date 12/6/2007****Offense Code 65****Offense Description****Traffic / Failure to stop for a blue light, no injury or death - 1st offense****Judge Name COTTINGHAM, EDWARD B****Court Reporter MCCALL, LINDA****Date Received By Clerk 12/14/2007****Summary Judge 999****Defense Attorney****Plaintiff Attorney Sellers, Rosalind****Disposition Section****Disposition Date 6/12/2008****Disposition Type 2 : TRIAL/GUILTY****Convicted of 1 counts.****Traffic / Failure to stop for a blue light, no injury or death - 1st offense****Sentence 3 YRS CONSECUTIVE**

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.

Keena Lamont Rivers, Appellant.

Appeal From Marlboro County
Edward B. Cottingham, Circuit Court Judge

Unpublished Opinion No. 2010-UP-064
Submitted January 4, 2010 – Filed January 28, 2010

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh, and
Assistant Deputy Attorney General Salley W. Elliott,
all of Columbia; Solicitor Jay E. Hodge, Jr., of
Cheraw, for Respondent.

PER CURIAM: Keena Rivers appeals his consecutive sentences of twelve years, three years, and one year for possession with intent to distribute crack cocaine, failure to stop for a blue light, and possession of marijuana, respectively. Rivers argues the trial court erred by not allowing him to present a defense. After a thorough review of the record, and counsel's brief, pursuant to Anders v. California, 386 U.S. 738 (1967) and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.^[1]

APPEAL DISMISSED.

SHORT, THOMAS, and KONDUROS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.