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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

S.C. Supreme Court

REGINALD BARNO,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213291

APPENDIX

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF SUMTER)

State of SC,)
) PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD)
)
Reginald Barno,)
) DEFENDANT)

June 8-10, 2009
Sumter, South Carolina

B E F O R E:

THE HONORABLE R FERRELL COTHRAN, JR., JUDGE; and
a jury.

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

MARTIN SPRATLIN, ASSISTANT SOLICITOR
Attorney for the Plaintiff

ARTHUR WILDER, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

Kathleen Richardson, RPR, CRR
Official Court Reporter

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STATE EXHIBITS

| <u>NO</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EV</u> |
|-----------|----------------------|-----------|-----------|
| 1 | Bag w/ crack cocaine | 70 | 132 |
| 2 | Bag w/ marijuana | 75 | 136 |

COURT EXHIBITS

| <u>NO</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EV</u> |
|-----------|-----------------------------|-----------|-----------|
| 1 | Requested jury charges | 191 | |
| | Question of jury at 4:39 pm | | |

1 *THE COURT:* All right. Gentlemen, do y'all want
2 to approach, let's see about this next case...

3 (Whereupon a bench conference was held.)

4 *MR. SPRATLIN:* Your Honor, the State would next
5 call the State of South Carolina versus Reginald
6 Lashon Barno. He is charged in indictment
7 2009-GS-43-0009 with count number one being
8 possession of cocaine base, count number two being
9 possession of marijuana. Your Honor, the State is
10 ready for trial.

11 *THE COURT:* Okay. Ladies and gentlemen, if
12 you'll give me your attention. We are about to begin
13 the trial of State versus Reginald Barno. Is there
14 any member of the jury panel connected by blood or
15 marriage, close personal friends or social relations
16 with the defendant in this case, Mr. Barno; if so,
17 please stand. Okay.

18 The potential witnesses in this case are Wayne
19 Dubose, Lowman Mays, Cindy Pierson, and Mitchell
20 Hansen. Any member of the jury panel connected by
21 blood or marriage, close personal friends or social
22 relations with any of the potential witnesses in this
23 case; if so, please stand. Yes, ma'am.

24 *JUROR:* Did you say his name was Reginald Barno?

25 *THE COURT:* Yes.

1 *JUROR:* I believe I taught him in elementary
2 school.

3 *THE COURT:* Okay. And what's your name and
4 number, please ma'am?

5 *JUROR:* 147, Jean Ward.

6 *THE COURT:* Ward?

7 *JUROR:* Yes.

8 *THE COURT:* Yes, ma'am. The fact that you may
9 have taught him in elementary school, would that
10 affect your ability to give both the State and this
11 defendant a fair and impartial trial?

12 *JUROR:* No, sir.

13 *THE COURT:* Thank you, ma'am. Yes, sir.

14 *JUROR:* Relationship with Mr. Dubose here.

15 *THE COURT:* Okay. And you know him or are you
16 kin to him?

17 *JUROR:* I know him.

18 *THE COURT:* Okay. And the fact that you're an
19 acquaintance of his, would that affect your ability
20 to give both the State and the defendant a fair and
21 impartial trial?

22 *JUROR:* No, sir.

23 *THE COURT:* What was your number, please, sir?

24 *JUROR:* 142 I think.

25 *THE COURT:* Okay.

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JUROR: Again, Your Honor, I'm prior law enforcement, so I know all of them, but it would not affect my judgment on the case. Do I need to stand up every time?

THE COURT: Yeah, you're going to have to because every case has a different record. Thank you, though.

JUROR: You're welcome.

THE COURT: All right. Anyone else? Okay. The attorneys in this case -- representing the State are Martin Spratlin, and Arthur Wilder represents the defendant.

Is there any member of the jury panel connected by blood or marriage, close personal friends or social relations with any -- with either two of these attorneys or been represented by them? If so, please stand.

Is there any member of the jury panel formed or expressed an opinion about any of the matters or issues involved in this case; if so, please stand.

Any member of the jury panel aware of any bias or prejudice either toward the State of South Carolina or this defendant; if so, please stand.

Any member of the jury panel served on the Grand Jury that heard this case; if so, please stand.

1 Any member of the jury panel due to religious or
 2 moral reasons unable judge your fellow man; if so,
 3 please stand.

4 Any member of the jury panel know any reason
 5 whatsoever they can't give both the State of South
 6 Carolina and this defendant a fair and impartial
 7 trial? If so, please stand. Any further questions
 8 from the State?

9 MR. SPRATLIN: No, Your Honor.

10 THE COURT: From the defense?

11 MR. WILDER: No, Your Honor..

12 THE COURT: All right. Mr. Clerk, if you will
 13 give us a jury.

14 THE CLERK: Yes, sir.

15 THE COURT: Ladies and gentlemen, it used to be
 16 your names were put in a cylinder and they were spun
 17 round and round and a blind person would pull them
 18 out.

19 Now you're out in hyperspace somewhere, and the
 20 jury randomly selects your name and it's a blind -- I
 21 mean, a computer random selection, and it's a blind
 22 computer, but it will put your names in order so
 23 nobody knows what order it's going to be in.

24 But some of you will figure out by the end of
 25 the week that you get picked almost every time, so

1 maybe you ought to go buy a lottery ticket when you
2 get out of here Friday.

3 (Whereupon there was a pause.)

4 *THE COURT:* Five and five, gentlemen.

5 *BAILIFF:* May it please the Court, Your Honor.

6 *THE COURT:* Yes, sir.

7 *BAILIFF:* Ladies and gentlemen, just a reminder.
8 If you have any personal belongings, bring them with
9 you when you come, please. Juror number 44, Jeffrey
10 Farber (white male). What says the State?

11 *MR. SPRATLIN:* Please present this juror.

12 *BAILIFF:* What says the defendant?

13 *MR. WILDER:* Excuse the juror for this trial.

14 *BAILIFF:* Have a seat back with the panel. You
15 have been excused from this trial, please sir. Juror
16 number 63, Timothy Hodge (white male). What says the
17 State?

18 *MR. SPRATLIN:* Please present this juror.

19 *BAILIFF:* What says the defendant?

20 *MR. WILDER:* Please swear Mr. Hodge.

21 *BAILIFF:* Have a seat in the jury box, please
22 sir. Juror number 74, Charles Jacobs (black male).
23 What says the State?

24 *MR. SPRATLIN:* Please present this juror.

25 *BAILIFF:* What says the defendant?

1 MR. WILDER: Swear Mr. Jacobs.

2 BAILIFF: Have a seat in the jury box, please
3 sir. Juror number 146, Ellen Warburton (white
4 female). What says the State?

5 MR. SPRATLIN: Please present this juror.

6 BAILIFF: What says the defendant?

7 MR. WILDER: Swear Mrs. Warburton.

8 BAILIFF: Have a seat in the jury box, please
9 ma'am. Juror number 107, George Nelson (white male).
10 What says the State?

11 MR. SPRATLIN: Please present this juror.

12 BAILIFF: What says the defendant?

13 MR. WILDER: Please swear Mr. Nelson.

14 BAILIFF: Have a seat in the jury box, please
15 sir. Juror number 42, Hammie English (black female).
16 What says the State?

17 MR. SPRATLIN: Please present the juror.

18 BAILIFF: What says the defendant?

19 MR. WILDER: Please swear Mrs. English.

20 BAILIFF: Have a seat in the jury box, please
21 ma'am. Juror number 100, Dorothy Mitchell (black
22 female). What says the State?

23 MR. SPRATLIN: Please excuse this juror.

24 BAILIFF: Have a seat back with the panel. You
25 have been excused from this trial, please ma'am.

1 Juror number 135, Andrea Strachan (black female).

2 What says the State?

3 MR. SPRATLIN: Please present this juror.

4 BAILIFF: What says the defendant?

5 MR. WILDER: Please swear Mrs. Strachan.

6 BAILIFF: Have a seat in the jury box, please
7 ma'am. Juror number 105, Robert Nagy (white male).

8 What says the State?

9 MR. SPRATLIN: Please present this juror.

10 BAILIFF: What says the defendant?

11 MR. WILDER: Please swear Mr. Nagy.

12 BAILIFF: Have a seat in the jury box, please,
13 sir. Juror number 138, Edgar Tabon (black male).

14 What says the State?

15 MR. SPRATLIN: Please present this juror.

16 BAILIFF: What says the defendant?

17 MR. WILDER: Please swear Mr. Tabon.

18 BAILIFF: Have a seat in the jury box, please
19 sir. Juror number 18, Nancy Brewer (white female).

20 What says the State?

21 MR. SPRATLIN: Please present this juror.

22 BAILIFF: What says the defendant?

23 MR. WILDER: Please swear Mrs. Brewer.

24 BAILIFF: Have a seat in the jury box, please
25 ma'am. Juror number 141, Robert Thompson (white

1 male). What says the State?

2 MR. SPRATLIN: Please present this juror.

3 BAILIFF: What says the defendant?

4 MR. WILDER: Please excuse Mr. Thompson.

5 BAILIFF: Have a seat back with the panel. You
6 have been excused from this trial, please sir. Juror
7 number 16, Sharelle Bradley (black female). What
8 says the State?

9 MR. SPRATLIN: Please present this juror.

10 BAILIFF: What says the defendant?

11 MR. WILDER: Please swear Mrs. Bradley.

12 BAILIFF: Have a seat in the jury box, please
13 ma'am. Juror number 85, Richard Kirby (white male).
14 What says the State?

15 MR. SPRATLIN: Please present this juror.

16 BAILIFF: What says the defendant?

17 MR. WILDER: Please excuse Mr. Kirby.

18 BAILIFF: Have a seat back with the panel. You
19 have been excused from this trial, please sir. Juror
20 number 23, Angela Brunson (black female). What says
21 the State?

22 MR. SPRATLIN: Please present this juror.

23 BAILIFF: What says the defendant?

24 MR. WILDER: Swear Mrs. Brunson.

25 BAILIFF: Have a seat in the jury box, please

1 ma'am. Juror number 112, Edward Pate (white male).

2 What says the State?

3 MR. SPRATLIN: Please present this juror.

4 BAILIFF: What says the defendant?

5 MR. WILDER: Swear Mr. Pate.

6 BAILIFF: Have a seat in the jury box, please
7 sir. Alternate juror, juror number 69, Donna Hoskins
8 (black female). What says the State?

9 MR. SPRATLIN: Please present this juror.

10 BAILIFF: What says the defendant?

11 MR. WILDER: Please swear Mrs. Hoskins.

12 BAILIFF: Have a seat in the jury box, please
13 ma'am.

14 THE COURT: Are there any matters of law
15 pertaining to the selection of the jury on behalf of
16 the State?

17 MR. SPRATLIN: No, Your Honor.

18 THE COURT: On behalf of the defense?

19 MR. WILDER: No, Your Honor.

20 THE COURT: Okay. Ladies and gentlemen, I have
21 got to take up a couple of short matters of law
22 outside of your presence, so I'm going to ask you to
23 go to the jury room and I will get you back out just
24 as quick as I can.

25 And remind you, you don't know anything about

1 this case yet. Don't try to speculate, don't discuss
2 this case. I will get you back out just as quick as
3 I can.

4 (Jury left the courtroom at 2:27 pm.)

5 *THE COURT:* All right, gentlemen. Y'all want to
6 approach?

7 (Whereupon a bench conference was held.)

8 (Defendant entered the courtroom at 2:31 pm.)

9 *MR. WILDER:* Your Honor, we do have some
10 pretrial motions. We're ready to proceed.

11 *MR. SPRATLIN:* State's ready.

12 *THE COURT:* Okay. All right. I need to deal
13 with this panel. Y'all approach a minute. Let me
14 find out what to do with this panel.

15 (Whereupon a bench conference was held.)

16 *MR. WILDER:* We are ready.

17 *THE COURT:* Solicitor?

18 *MR. SPRATLIN:* State's ready to proceed, Your
19 Honor.

20 *THE COURT:* All right.

21 (Remaining jury excused for day.)

22 *THE COURT:* All right. Y'all ready?

23 *MR. WILDER:* May it please the Court. At this
24 time I would renew our rule five and Brady motions
25 which were originally served on the State

1 November 10th, 2008.

2 The State I believe has responded in this case
3 by sending me a packet of materials. But Your Honor,
4 I'm in an abundance of caution trying to identify in
5 particular any written or recorded statements that
6 the State alleges that my client may have made.

7 The notes I believe in the discovery refer to an
8 oral statement that -- first I'd like for them to
9 comply with the rule and make sure I have the full
10 contents of that statement, whatever it might be.

11 And secondly, Your Honor, I'd like to move to
12 suppress it before it's mentioned in front of the
13 jury. So under Jackson versus Deno I would like a
14 hearing outside the presence of the jury.

15 So with all of that taken in context, first
16 Brady, rule five, is there anything else they haven't
17 given me, and I would call upon them to respond.

18 *THE COURT:* Okay. Mr. Spratlin?

19 *MR. SPRATLIN:* Your Honor, the State has
20 furnished the defense with all of the oral or written
21 statements that the defendant made that we intend to
22 introduce at trial.

23 In fact, all written statements entirely
24 not just those that we intend on using at trial, but
25 any ones that he made.

1 We would be prepared to go forward with the
2 Jackson v Deno hearing in regard to the -- I believe
3 the two statements that have been made to the
4 officers at the scene of the incident.

5 *THE COURT:* All right. The -- are these
6 statements we are referring to oral or written
7 statements?

8 *MR. SPRATLIN:* They are oral, Your Honor. I
9 believe one was in reference to the defendant not
10 having a driver's license and the other was a
11 response from the officer's inquiry where he stated
12 that the crack cocaine found was his.

13 *THE COURT:* Okay. All right. If you'll call
14 your witness.

15 *MR. SPRATLIN:* Your Honor, the State would first
16 call investigator Wayne Dubose to the stand.

17 WAYNE DUBOSE, after being duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SPRATLIN:

21 Q Mr. Dubose, where are you employed?

22 A Employed with Sumter County Sheriff's Office.

23 Q What is your job there?

24 A I am a narcotics investigator.

25 Q Okay. What does that entail?

1 A I -- entails -- we do vice operations. Also we do
2 investigations of drug activity and make arrests such as
3 buys and whatnot here in Sumter County.

4 Q Okay. Were you on duty on September 30th, 2008?

5 A Yes, sir.

6 Q What were you doing on that date?

7 A Myself and Investigator Mays were -- we were just out
8 riding through areas. We had a couple locations we were
9 checking on that day. And we actually went and was
10 conducting surveillance on a residence on Pack Road where
11 we had received information in reference to drug activity
12 and also had made arrests of individuals from that
13 particular residence. We were just conducting
14 surveillance on it that day.

15 Q And when you say surveillance, what do you mean?

16 A Basically we sit in a location and we just observe
17 what goes on at the residence, vehicles either coming to
18 the residence or leaving, or people going to the residence
19 and leaving.

20 Q Okay. On that day did you have a chance to come into
21 contact with the defendant, Reginald Barno?

22 A Yes, sir, I did.

23 Q How did you come in contact with him?

24 A While conducting surveillance, we observed a black
25 vehicle pull up to the residence. A individual we had

1 prior -- or we had arrested prior, I believe maybe a month
2 or so prior to this, is a known drug user, seen that
3 individual come out to the vehicle, approach Mr. Barno.

4 We did not know Mr. Barno was driving a vehicle at
5 this time. Approached the person that was in the vehicle,
6 and it appeared that they handed each other something.

7 At that time we were sitting across the street with
8 binoculars. We got the tag off the vehicle. I believe
9 Investigator Mays ran the vehicle through dispatch. The
10 vehicle came or the tag on the vehicle came back to a
11 Volvo, and this particular vehicle was a Nissan.

12 Q Okay. What did you do then? What happened--

13 A When the vehicle left, we pulled right out behind the
14 vehicle. By the time we got on the radio, conducted a --
15 called in a traffic stop and whatnot, Mr. Barno -- the
16 vehicle was pulling into his mother's residence on Old
17 Manning Road.

18 At that time we got out of the vehicle, approached --
19 Investigator Mays approached the vehicle and I approached
20 the vehicle. At that time saw Mr. Barno, and I know Mr.
21 Barno. I have dealt with him a number of times in the
22 past.

23 That time we also known him to have a suspended
24 driver's license. We removed him from the vehicle,
25 advised him the tag that was on the vehicle was not

1 supposed to be on the vehicle.

2 At that time we detained him because Mr. Barno does
3 have a history of running. And when we -- Investigator
4 Mays removed him from the vehicle, we saw sitting in the
5 driver's seat where he was sitting a small white rock
6 which -- believed to be crack cocaine.

7 Q Okay. And at some point when you first stopped Mr.
8 Barno, did you inquire about a driver's license?

9 A We got him out. Like I said, I have known him to
10 have a suspended driver's license. We asked him did he
11 have his driver's license. He said he didn't have one.

12 Q Okay.

13 A That time went ahead and Mirandised him. He was
14 handcuffed and detained and we put him in the vehicle.
15 And when we -- Investigator Mays had found the crack
16 cocaine, went ahead and placed him under arrest at that
17 time.

18 Q Okay. So you Mirandised him after he gave you the
19 statement regarding the driver's license?

20 A When we got him out of the vehicle, I went ahead and
21 Mirandised Mr. Barno with a card that I usually keep in my
22 wallet or in my vest, and we took him into custody.

23 Q Do you remember exactly what you told Mr. Barno in
24 regard to his Miranda rights?

25 A I read it off the card that I keep in my wallet. Try

1 to -- card with me. I believe my card is actually going
2 to be in my bulletproof vest which is in the vehicle.

3 Q Okay. Do you remember substantively what rights you
4 advised Mr. Barno of when you read him his rights?

5 A I advised him that he had the right to remain silent,
6 anything that he said could and would be used against him
7 in a court of law, he had the right to talk to a lawyer
8 and have a lawyer present with him while he was being
9 questioned, if he cannot afford a lawyer, one will be
10 appointed to represent you -- represent him before any
11 questioning if he so desired.

12 And I advised him if -- he mind answering any
13 questions that we asked of him. He advised that he
14 understand his rights and -- but it was read off of my
15 Miranda card.

16 Q And he affirmatively told you that he understood his
17 rights?

18 A Sir?

19 Q He stated that he--

20 A I don't -- I don't recall if he made a remark that he
21 understood them or he didn't understand them, but he was
22 advised of his rights.

23 Q Okay. And what happened after he was read his
24 Miranda rights?

25 A We had asked him about the crack cocaine that was

1 sitting in the driver's seat. Investigator Mays actually
2 took possession of that. And he said that the crack
3 cocaine was his.

4 We did a field test on it which -- and it tested
5 positive for cocaine base. It's just a -- with a swipe we
6 had, and then it was actually placed in evidence and sent
7 to be tested.

8 Q At the time Mr. Barno made the statement that the
9 crack cocaine was his, had you promised him anything?

10 A No, sir.

11 Q Had you in any way threatened or used any kind of
12 force against Mr. Barno?

13 A No, sir.

14 Q So did Mr. Barno had the slightest hope of benefit or
15 the remotest fear of injury at the time you made that
16 statement?

17 A No, sir. And he seemed to -- I mean, after I got him
18 to the vehicle, we basically talked to -- as we do all
19 individuals. In narcotics, that's what we do. We arrest
20 someone, we try to flip them and go to the next person.

21 And I did sit down there and I talked to Mr. Barno,
22 and Mr. Barno said he wasn't a snitch and he wasn't going
23 to do that, and pretty much we stopped from there.

24 Q In regards to the statement he made about not having
25 a driver's license which you touched on earlier, was he

1 under arrest at that point in time?

2 A We had -- we had taken him out of the vehicle at that
3 time and detaining him, it would have been at that time --
4 for the improper tag we were not going to arrest him. But
5 like I said, knowing that -- the history I have had with
6 Mr. Barno, Mr. Barno will run from law enforcement if he
7 gets the opportunity.

8 So therefore we went ahead and detained him at that
9 time. And while he was being handcuffed by Investigator
10 Mays, I was reading him his Miranda rights, and that's
11 also when we saw the crack cocaine in the seat.

12 Q I believe that's all the questions I have at this
13 time, Investigator Dubose.

14 CROSS-EXAMINATION

15 BY MR. WILDER:

16 Q Mr. Dubose, who searched the car?

17 A I believe Investigator Mays did. I was in the
18 vehicle with -- in my vehicle with Mr. Barno.

19 Q Okay. Now, so Mr. Barno was actually in your car
20 when the alleged crack was found in the other car?

21 A No, sir. We were standing as close to me to the step
22 here. He was still standing beside the vehicle. When he
23 stepped out, when he stood up out of the seat, the crack
24 was sitting right where he was just sitting at. And he
25 was handcuffed. And we looked down and saw it and... Mr.

1 Barno seen it also.

2 Q What was it contained in?

3 A What was it contained in?

4 Q The crack.

5 A It was just one rock sitting in the seat.

6 Q It wasn't in--

7 A It wasn't in a -- no, sir, it wasn't in a baggy or
8 container or anything like that as I recall. It was just
9 sitting in the seat.

10 Q Okay. Did you take a picture of the inside of this
11 car?

12 A No, sir, I don't believe we did.

13 Q Did anybody to your knowledge take a picture of what
14 the inside of the car looked like?

15 A No, sir, I don't believe so.

16 Q Who else was in the car?

17 A No one.

18 Q Who else had been in the car while y'all were
19 conducting surveillance?

20 A No one.

21 Q Now, you said this was in front of his mother's
22 residence?

23 A Where the stop was completed at, yes, sir, it was in
24 the res -- his mother's residence on Old Manning Road.

25 Q So his mother and perhaps other members of his family

1 would have been out in the yard or saw this?

2 A There was no one in the yard when we pulled up.

3 After we pulled up, blue light and stuff, when I got out
4 with Mr. Barno, I believe his mother, a female, and I
5 believe two males either came out of the house or drove
6 up, I don't recall exactly, but I believe there were about
7 four or five individuals in the yard.

8 Q Okay. So you say that when -- after he was
9 Mirandised and questioned about the rock in the front
10 seat, he said, that's mine?

11 A Yes, sir.

12 Q He admitted it to you.

13 A He said it was his.

14 Q Did he say anything else?

15 A No, sir.

16 Q That's it.

17 A No, sir. After that, we -- I put him in my vehicle,
18 started doing his tickets. Investigator Mays was
19 searching the vehicle, doing a tow sheet. And then I did
20 start to talk to Mr. Barno about activity and other
21 individuals that he was associated with. But as far as--

22 Q But he wouldn't give you any information?

23 A He -- he hauled around this and that and -- but he
24 would never give any information. I told him then, I
25 said, you want to help yourself out, now is the time, but

1 he wasn't interested.

2 Q Okay. Now, did he ask for a lawyer --

3 A No, sir.

4 Q -- at any point? All right. So other than saying
5 that was his crack, he didn't tell you anything else?

6 A No, sir, other than he didn't have his license, but I
7 don't know if he just didn't have it or whether he meant
8 they were suspended. He just said he didn't have his
9 license when I asked for it. And then he admitted to the
10 crack being his and never made any other statements.

11 Q All right. Do you have any notes of what was said?

12 A No, sir.

13 Q Okay. And Investigator Mays, did he have a chance to
14 talk to him separate from you?

15 A No, sir. We were all together standing beside the
16 vehicle. And once we got into the vehicle or into my
17 vehicle, he was placed in the front seat beside me. And
18 Investigator Mays was in and out of the vehicle either
19 getting paperwork, whatnot, searching the vehicle. I
20 believe he was talking to Mr. Barno's mother.

21 Actually Mr. Barno's mother came up to the vehicle
22 and talked to us. But it was just me and Mr. Barno in the
23 vehicle, and then Mr. Mays was to and from the vehicle,
24 but...

25 Q All right. There's a conversation -- the exact part

1 of the conversation when he says -- when he said, that's
2 my crack, who was standing around at that point? Did
3 Investigator Mays hear it?

4 A Me, Investigator Mays -- Investigator Mays was
5 actually handcuffing him at the time.

6 Q Uh-huh.

7 A I read him his Miranda rights, and we saw the crack
8 cocaine or what we believed to be crack cocaine on the
9 seat, and asked him about it, and he looked at it and
10 asked whose it was and he said, that's mine.

11 Q So y'all weren't in your car at that point in time.
12 You were standing next to the car that he was---

13 A Right. We had already approached his car when he had
14 stopped in the yard.

15 Q All right. No other questions at this time.

16 MR. SPRATLIN: Nothing further of this witness,
17 Your Honor.

18 THE COURT: All right. You can step down.

19 (Witness left the stand.)

20 MR. SPRATLIN: Your Honor, the State would next
21 call Investigator Mays to the stand.

22 THE COURT: All right, sir.

23 TRIPP MAYS, after being duly
24 sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. SPRATLIN:

2 Q Mr. Mays, where are you employed?

3 A Sumter County Sheriff's Office.

4 Q What do you do there?

5 A Narcotics investigator.

6 Q What does that entail?

7 A Well, we do the undercover narcotics investigations
8 with making controlled buys, doing surveillance, different
9 things like that.

10 Q Okay. Were you on duty and working on
11 September 30th, 2008?

12 A Yes, sir.

13 Q What were you doing on that date?

14 A I was with Investigator Dubose doing surveillance on
15 several locations and one being -- included the residence
16 of Mr. Wayne Barkley on Pack Road.

17 Q Why were you surveying that area?

18 A We were watching Mr. Barkley's house in reference to
19 complaints and arrests and stuff that we had had in --
20 previous to this date.

21 Q Okay. At some point during that day did you have a
22 chance to come into contact with the defendant?

23 A Yes, sir.

24 Q Reginald Barno?

25 A Yes, sir.

1 Q How did you come in contact with him?

2 A While we were sitting there watching Mr. Barkley's
3 residence, we saw the black Nissan pull into the
4 residence. I was using binoculars and was able to obtain
5 the tag number off of that vehicle.

6 Q And what did you do?

7 A Run it through dispatch which came back to a Volvo,
8 and that being a Nissan --

9 Q Okay.

10 A -- that the plate was displayed on.

11 Q And what did you do after you discovered that the tag
12 did not match the vehicle?

13 A Investigator Dubose was driving. When the vehicle
14 left, we started following the car to attempt a traffic
15 stop. And by the time we were able to call them in on the
16 radio, we were already on Old Manning Road and actually
17 turning into the -- his mother's residence.

18 Q And whose mother's residence?

19 A Mr. Barno's mother.

20 Q Okay. When you stopped the vehicle, what happened
21 then?

22 A Stopped the vehicle. Mr. Barno was identified by
23 myself and Investigator Dubose because we have had
24 previous contact with him. Got him out of the vehicle.
25 Asked for his driver's license.

1 Q What did he say when you asked for his driver's
2 license?

3 A Said that he did not have them.

4 Q Okay. At the time that he made that statement, was
5 he under arrest?

6 A No, sir.

7 Q Was he in handcuffs?

8 A He was -- he wasn't being detained at that time until
9 he said he didn't have them on him.

10 Q What was the purpose of asking him for the driver's
11 license?

12 A Because he was driving the motor vehicle.

13 Q Okay. What happened then after you determined that
14 he didn't have a driver's license?

15 A Then he was placed in -- well, he was already out of
16 the vehicle. We saw that in the vehicle the suspected
17 crack cocaine sitting inside the seat, so at that point he
18 was being detained.

19 Q Okay. Who actually placed Mr. Barno under arrest?

20 A I believe it was Investigator Dubose told him he was
21 under arrest.

22 Q Were you present when he was placing him under
23 arrest?

24 A Yes, sir.

25 Q All right. Did you hear Investigator Dubose give the

1 defendant what's commonly called Miranda warnings?

2 A Yes, sir, I did.

3 Q All right. What right, if you will, did you hear
4 Investigator Dubose inform the defendant of?

5 A That he had the right to remain silent, anything he
6 said could be used against him in court, he had the right
7 to have an attorney present before questioning, if he
8 cannot afford one, one will be appointed for him.

9 Q At any time did you hear the defendant ask for an
10 attorney?

11 A No, sir.

12 Q Okay. What happened after he was given his Miranda
13 rights?

14 A Investigator Dubose asked whose suspected crack
15 cocaine was inside the seat, and he stated it was his.

16 Q All right. Where did you find crack cocaine?

17 A It was sitting inside -- in the seat portion, the
18 bottom of the seat of the driver's seat.

19 Q Okay. Who was occupying that seat just prior to your
20 finding the cocaine?

21 A Mr. Reginald Barno.

22 Q Okay. Was he -- where you found it, did it appear as
23 if he was sitting on top of it?

24 A Yes, sir.

25 Q At any point during this traffic stop and the

1 detention of the defendant did you hear -- and did you
2 yourself, did you hear Investigator Wayne Dubose make any
3 threats to Reginald Barno?

4 A No, sir.

5 Q Okay. Did you hear yourself or the Investigator
6 Wayne Dubose make any promises to Reginald Barno?

7 A No, sir.

8 Q At any time did you or did you witness Investigator
9 Dubose make any threatening movements towards Reginald
10 Barno?

11 A No, sir.

12 Q And in any way did you have witness yourself or
13 Investigator Dubose make any threats to Reginald Barno --

14 A No, sir.

15 Q -- either prior to or during his--

16 A No, sir.

17 Q Thank you, Investigator Mays. That's all the
18 questions I have.

19 CROSS-EXAMINATION

20 BY MR. WILDER:

21 Q Did you have an opportunity to speak to Mr. Barno
22 outside of the presence of Mr. Dubose or was it like he
23 said where the two of y'all pretty much were together
24 during your opportunity to hear what Mr. Barno said?

25 A What Investigator Dubose said would be correct. I

1 did not have any opportunity to speak with Mr. Barno
2 outside of Investigator Dubose's presence.

3 Q And you agree with his testimony that pretty much the
4 only thing he said other than didn't have a driver's
5 license was, that's my crack cocaine?

6 A Yes, sir.

7 Q Okay. Was there anything else the defendant said?

8 A No, sir. Not to my knowledge, no, sir.

9 Q Did you make notes?

10 A No, sir.

11 Q Did you write down what the exact words were --

12 A No, sir.

13 Q -- used by either Mr. Dubose or Mr. Barno?

14 A No, sir.

15 Q You just have an impression of what was the general
16 conversation.

17 A Yes, sir.

18 Q You would agree that all of this took place in the
19 defendant's mother's front yard?

20 A Yes, sir.

21 Q You remember the other female that was there?

22 A I wouldn't be able to point her out, no, sir.

23 Q No other questions.

24 MR. SPRATLIN: No further questions, Your Honor.

25 THE COURT: You can step down.

1 (Witness left the stand.)

2 MR. SPRATLIN: Your Honor, I believe in regard
3 to the Jackson Deno hearing, the State does rest.

4 THE COURT: Okay. Mr. Wilder?

5 MR. WILDER: Your Honor, may it please the
6 Court. You know, for the record we would move to
7 suppress it. I don't have any case law that would
8 single this one out as being -- subject the
9 suppression, but the defendant was in custody when he
10 gave the statement, apparently was being in the
11 process of being put in handcuffs.

12 The specific language that Mr. Dubose read to
13 him is not in evidence because his card was in his
14 vest, so we would move to suppress on grounds that
15 the specific alleged rights that were actually read
16 to Mr. Barno still have not been testified to under
17 oath.

18 A general rendition of those rights according
19 to the best recollection of Mr. Dubose was put in the
20 record, but Your Honor, we would argue that what he
21 actually read to the defendant that night is not yet
22 in the record, and that therefore the -- we don't
23 have a record of what was actually read to him so
24 that we could know that he specifically was advised
25 all of his Miranda rights as the State alleges.

1 Your Honor, in addition to that motion, the
2 general suppression motion, and we would also ask
3 that if the Court does permit it in, that the jury be
4 instructed at the time that it comes in over our
5 objection, that they need to make their own finding
6 as to whether or not any statement allegedly given by
7 the defendant was free and voluntary.

8 In addition to that, Your Honor, we move to
9 suppress the statement or the testimony of the
10 officers about my client being known to them and
11 having a history of running.

12 Your Honor, all of that seems to me to be
13 irrelevant to whether or not he actually had
14 possession of the crack cocaine that was in the front
15 seat of the car. And he didn't run.

16 And so the implication, Your Honor, would be
17 that that evidence we believe is -- prejudicial value
18 of it far outweighs any probative value because it's
19 not related to whether or not he possessed the crack
20 cocaine at the time.

21 So we would move to suppress specifically any
22 testimony by law enforcement that he was known to
23 them and had a history of running.

24 THE COURT: All right, sir. You want to respond
25 to that?

1 MR. SPRATLIN: I would, Your Honor. As far as
2 the rights given to the defendant, Your Honor, we do
3 have the substance of what was told to the defendant
4 from Officer Dubose's testimony as well as officer --
5 Investigator Tripp Mays' testimony, that he was
6 advised of his right to remain silent, he was advised
7 of his right to an attorney.

8 While the exact language, Your Honor, was not
9 read into evidence, we do have testimonial evidence
10 of these substantive rights that were given and
11 explained to this defendant and that he did then give
12 a statement having been fully advised of those
13 rights.

14 Your Honor, in addition to that, under Jackson
15 Deno, the defendant was not posing any sort of fear
16 according to the evidence that we have heard, he was
17 not promised anything. He had not the slightest hope
18 of benefit nor the remotest fear of injury.

19 Thus, Your Honor, his statement was in fact
20 voluntary, that the crack cocaine was his, and we
21 would ask that the Court admit that statement. We
22 understand that we will have to prove to the jury as
23 well as Your Honor that the statement was voluntary
24 and potential and that the defendant made it knowing
25 all of his rights, and we intend on doing that before

1 the jury as well, Your Honor.

2 So we do not necessarily oppose the statement or
3 the charge that the jury has to also find that a
4 statement was knowing and voluntary.

5 However, Your Honor, invites the evidence of
6 the -- I believe it's the clear and convincing
7 evidence that we have to prove to Your Honor that the
8 statement was knowing and voluntary while we do have
9 to prove to the jury beyond a reasonable doubt.

10 Your Honor, I believe it is clear and
11 convincing. We have done that. We have shown the
12 defendant was given his Miranda rights. We have
13 shown that the defendant, after being advised of his
14 Miranda rights, never requested an attorney, was not
15 promised anything nor threatened in any way. And
16 thus any statement he made, Your Honor, was done
17 voluntary to Investigator Dubose.

18 As to, Your Honor, Mr. Wilder's statements
19 wanting the evidence suppressed as to the officers
20 knowing the defendant and the officer knowing that
21 his license was suspended and that he has been known
22 to run.

23 Your Honor, we agree that the jury should not
24 hear that the defendant has a history of running from
25 law enforcement. We agree with that and we do not

1 oppose that. That will not be introduced into
2 evidence today.

3 Your Honor, as far as the officers knowing the
4 defendant, that does go to an issue in this case.
5 That goes to the issue of why the officers knew his
6 license was suspended.

7 Your Honor, the evidence we intend to introduce
8 to the Court is simply that Investigator Wayne Dubose
9 did know the defendant and did know for a fact that
10 his license was suspended and which prompted the
11 question of, do you have a license to which the
12 defendant responded, no.

13 And while Mr. Wilder did not touch on this
14 statement during his argument, Your Honor, we feel
15 that we have proven that that statement was prior to
16 custody, it's a non-custodial statement, and thus not
17 fall under the requirements of Jackson v Deno that
18 the defendant be read the Miranda rights right to
19 making it.

20 In fact, Your Honor, the evidence has shown that
21 that was still an investigative -- in the
22 investigative process of figuring out what was going
23 on when that question was asked of the defendant and
24 when that statement was made by the defendant.

25 So we would ask that that be allowed into

1 evidence as a non-custodial statement by the
2 defendant.

3 Your Honor, we feel we have met our burden of
4 proof in showing that the statement was knowing and
5 voluntary. He knew his rights and he voluntarily
6 made that statement.

7 And we admit that we cannot introduce showing
8 the defendant has a history of running from law
9 enforcement or even touch on that issue. However,
10 Your Honor, we would ask that we be permitted to
11 introduce any evidence that the officer knew the
12 defendant and knew his license to be suspended.
13 Thank you.

14 THE COURT: All right. What do you say about
15 that, Mr. Wilder?

16 MR. WILDER: Your Honor, we feel that, you know,
17 if -- if it's an issue about the right to stop the
18 car, they ran the tags. Improper tags were on the
19 car. They have got that.

20 I don't believe it's necessary and needful for
21 them to comment on my client's license being
22 suspended. I believe that's prejudicial.

23 So we would move to suppress that as the
24 prejudicial value outweighs the probative value.
25 It's got nothing to do with whether or not my client

1 possessed the cocaine in the seat so -- and it -- and
2 doesn't even relate to an issue.

3 I'm not moving yet to suppress the stop. I
4 mean, you know, they have got that. They ran the
5 improper tag and they had a right to stop the
6 vehicle.

7 So I don't believe it relates to any issue that
8 the State is charged with proving in the case. So
9 I'm going to ask you to suppress the statement that
10 he knew that they knew that his driver's license was
11 suspended and his response.

12 *THE COURT:* Okay. You want to respond to that?

13 *MR. SPRATLIN:* Just real briefly, Your Honor. I
14 believe the evidence that's going to be introduced at
15 trial is that the suspension of the license was
16 actually the basis for the subsequent arrest of this
17 defendant.

18 I believe -- I mean, while they did have
19 probable cause based off the tag to do a stop, Your
20 Honor, any issues involving suppression, which I
21 believe that Mr. Wilder said he's not going to
22 address, the jury should still have issues with that
23 and I think we are entitled to introduce the reason
24 that the defendant was placed under arrest.

25 It was not simply for having an improper tag on

1 a vehicle. It was for driving without a license
2 which I--

3 THE COURT: But I think in -- in response to the
4 questions, he told the officers he didn't have a
5 license.

6 MR. SPRATLIN: Yes, Your Honor.

7 THE COURT: So their prior knowledge he didn't
8 have a license really is not an issue in this. Now,
9 it could become an issue if Mr. Wilder opens that
10 door.

11 But short of opening that door, I think that
12 prejudicial value outweighs any probative because the
13 stop is not in question at this point. The tags were
14 wrong, and they asked him about his driver's license,
15 he says, I don't have one, and at that point they
16 have the authority to detain him and or arrest him.

17 I think it's clear that the interrogation was
18 custodial, that he was handcuffed and a reasonable
19 person would not think he could leave, and the
20 officers agreed to that, but that his Miranda rights
21 were given to him, that -- I think that the State has
22 covered those even though he didn't introduce the
23 car, he introduced testimony from witnesses and the
24 fact -- what he told him his rights were and that any
25 statement was made after he knowingly and

1 intelligently waived his rights.

2 So I think as far as the issue of the crack
3 cocaine is concerned that is admissible in front of
4 the Jackson v Deno -- whether it's Miranda rights.

5 Now, the fact that they have prior knowledge his
6 license is suspended I don't think is admissible at
7 this point simply because I think at this point
8 prejudicial value outweighs the probative.

9 However, you know, if it becomes an issue at
10 trial and Mr. Wilder opens that door, then the police
11 may be able to go there. But they question him, he
12 says his license -- he didn't have a driver's
13 license. At that point, they placed him under
14 arrest.

15 After they place him under arrest, read him his
16 rights, they observed what appeared to be crack
17 cocaine in the seat, he admitted that was his, and I
18 think that comes in.

19 *MR. SPRATLIN:* Yes, Your Honor. Would the
20 officers be allowed to -- just for guidance -- would
21 the officers be allowed to state that they knew the
22 defendant prior to this incident or...

23 *THE COURT:* What is your position on that?

24 *MR. WILDER:* It's prejudicial. And what
25 relevance does it have? These are drug officers. If

1 they say they knew my client--

2 *THE COURT:* Yeah. How is that relevant? They
3 see him and stop him. Unless he asks him on
4 cross-examination -- Mr. Wilder asks him whether they
5 knew him, he asks, they can go there.

6 But I don't know how it's going to -- you know,
7 they have -- testifying they observed him with a
8 known drug house and seeing an individual pull up the
9 car and leave, they run the tags, it comes back to a
10 different kind of car, they execute a stop, he
11 doesn't have a driver's license.

12 I think you have got all your bases covered as
13 far as that is concerned.

14 *MR. SPRATLIN:* Yes, sir, Your Honor. Thank you.

15 *THE COURT:* Okay. Anything else before I bring
16 the jury in?

17 *MR. WILDER:* Your Honor, I do want the record to
18 reflect that my client did arrive before we started
19 our pretrial motions and he is present and he and I
20 did talk on the phone. He was on his way up here.
21 But he didn't get here exactly at the time I told him
22 to be back after lunch.

23 So that's why we went ahead and drew the jury.
24 But I did want to explain on the record that I struck
25 a few jurors that seemed to me couldn't be on the

1 panel and that -- protecting his rights while he was
2 not here.

3 *THE COURT:* All right. Now, my understanding is
4 you're going to proceed on count one and count two of
5 this indictment.

6 *MR. SPRATLIN:* That's correct, Your Honor.

7 *THE COURT:* All right. Anything else before I
8 bring the jury in?

9 *MR. WILDER:* No, sir.

10 *THE COURT:* All right, sir. If you will bring
11 us the jury.

12 (Jury entered the courtroom.)

13 (Whereupon the jury was sworn.)

14 *THE COURT:* Thank you, ladies and gentlemen. I
15 apologize in keeping you back there so long, but I
16 never know how long things are going to take, and I
17 had some matters I need to deal with outside of your
18 presence.

19 And you are probably going to figure out this
20 week, you're going to swear that Judge doesn't have a
21 watch and he has no clue what the time is, but I
22 apologize.

23 We are about to begin the testimony in this
24 case. And Mr. Barno is charged under two counts of
25 this indictment, possession of cocaine base and

1 possession of marijuana.

2 And to these charges and to this indictment he's
3 entered a plea of not guilty. Therefore it puts the
4 burden upon the State to prove each and every element
5 of this indictment beyond a reasonable doubt.

6 And I will explain to you at the end of the
7 trial the law involved in this case as well as what a
8 reasonable doubt is. But your job at this point is
9 to listen to the evidence in this case.

10 And the evidence -- this indictment is not
11 evidence. It's simply a formal document to get this
12 case to court.

13 The evidence that you will hear in this case
14 will come to you in three forms. One from the sworn
15 testimony from this witness stand. The other from
16 any exhibits that may be introduced by the parties.
17 And the third way is any stipulations made by the
18 attorneys.

19 Those are the three forms of evidence you will
20 receive. This indictment is not evidence. What the
21 attorneys say is not evidence. Their opening
22 statements and their closing statements are not
23 evidence. Even their questions is not evidence.

24 The evidence that you will make your
25 determination upon comes from sworn testimony from

1 this witness stand. Your job in this case is to find
2 what the true facts are. So listen to this evidence.
3 Apply the law that I give to you and determine what
4 the true facts are in this case.

5 So I ask that you pay close attention because if
6 you make a mistake it's going to be very hard to
7 correct that. If I make a mistake, at some other
8 time and some other place it will be reviewed and
9 possibly corrected.

10 My job is to tell you what the law is and to
11 rule upon the admissibility of the evidence. So you
12 have got to take the law exactly as I give it to you
13 whether you agree with it or not.

14 But you're to apply the law as I give it to you
15 to the evidence that you hear from this case and
16 determine what the true facts are. That is why there
17 is 12 of you, to -- because all of us are smarter
18 than any one of us.

19 And it's an important enough decision that all
20 12 of you must agree and it must be a unanimous
21 verdict.

22 So during this trial if you -- I will try to
23 take a break every hour, hour and 15 minutes, hour
24 and a half. It depends on how the testimony is
25 going.

1 But if you need a break before that, if you're
2 uncomfortable and you need a break, let me know and
3 we will stop because you need to be paying attention.
4 And if you're uncomfortable, you're not paying
5 attention. So I will simply take a break and start
6 back with the testimony.

7 When we go out during this trial -- and we won't
8 finish this case today. But any time during the
9 trial if I have to rule on a matter of law or we take
10 a break, I'm going to tell you when you go to the
11 jury room you can't discuss this case.

12 And you're going to want to say, well, why can't
13 we? We have heard from this witness and we heard
14 from that witness, why can't we go back there and
15 talk about what we heard?

16 And the reason you can't is because after you
17 hear from one witness, you go back in the jury room
18 and you start discussing it, then at the end of the
19 trial after you have heard all of the case -- and if
20 you had an opinion early on, you're going to want to
21 defend that opinion you had, and that wouldn't be
22 proper.

23 I don't want you to start forming your opinions
24 till you have heard the entire case as well as the
25 law. So that's why I'm going to tell you throughout

1 this trial don't discuss it yet.

2 At the end of the case when you have heard all
3 of the case and the law that I charge you, then and
4 only then will it be proper for you to discuss the
5 facts of this case and determine what the true facts
6 are and to reach a verdict that speaks the truth.

7 Now, give you kind of an idea about how this is
8 going to flow. The lawyers usually begin with an
9 opening statement. The State goes first because they
10 have the burden of proof.

11 And the opening statement, as I told you, is not
12 evidence. It's simply the lawyer telling you what
13 they think the evidence is going to show or give you
14 a roadmap of what they think this case is about.

15 The defense also will usually get up and give
16 you an opening statement, even though they are not
17 required to do so, because under our system of
18 justice the defendant is not required to prove his or
19 her innocence.

20 The State has the burden of proving him guilty.
21 But in most cases the defense lawyer does make an
22 opening statement to you. Then we will begin with
23 the testimony.

24 And after you hear all of the testimony in the
25 trial, you will hear the closing arguments of the

1 attorneys and then the attorneys will argue to you as
2 to what they think the evidence showed in this case
3 or did not show you.

4 Then I will charge you on the law and then you
5 will go back to the jury room and make your
6 determination what the true facts are in this case.

7 So if you will pay close attention to the
8 attorneys, we'll get started. Mr. Solicitor?

9 MR. SPRATLIN: Thank you, Your Honor.

10 OPENING STATEMENT

11 MR. SPRATLIN: Good afternoon, ladies and
12 gentlemen of the jury. As you heard, I'm Martin
13 Spratlin. I work for your elected Solicitor Kelly
14 Jackson here in the third circuit.

15 Now, we are here today basically because the
16 defendant is charged with two counts. One count
17 being possession of crack cocaine. And one count
18 being possession of marijuana.

19 Now ladies and gentlemen, I like to think of
20 opening statements as the preview to a movie. It
21 gives you basically an idea about what the movie is
22 going to be about and gives you some of the high
23 points.

24 Doesn't necessarily tell you the whole story.
25 That comes from that witness stand during the trial.

1 But it gives you an idea about what you're going to
2 hear today.

3 And that's basically my goal here. My goal with
4 the opening statement is to get across to you what
5 you're going to hear today.

6 I know all of you have something you'd rather be
7 doing than sitting here listening to me talking. I
8 understand that and I appreciate that and I promise
9 you I will try to do it in as little time as
10 possible.

11 Jury service is one of the important things I
12 want to do, and I appreciate your attention to me,
13 your attention to the evidence I present, your
14 attention to Mr. Wilder today.

15 This case all goes back to September 30th, 2008.
16 On September 30th, 2008 you're going to hear that two
17 officers or two deputies with the Sumter County Drug
18 Unit from the Sheriff's Office, Sumter County
19 Sheriff's Office Drug Unit, Investigator Wayne Dubose
20 and Investigator Tripp Mays also known as his real
21 name is Lowman C Mays but he goes by Tripp Mays --
22 you'll hear us referring to him as Tripp.

23 They were on duty that day and they were staking
24 out an area where they have had some issues with
25 drugs. And you're going to hear that on that day

1 this defendant pulled up into that area in a black
2 Nissan automobile.

3 You're going to hear that while he was driving a
4 black Nissan automobile, the tag on the vehicle came
5 back to a Volvo vehicle, a different vehicle.

6 You're going to hear that that gives the officer
7 reason to pull a person over, which they did. You're
8 going to hear though, ladies and gentlemen, also that
9 while the defendant was in that area they were
10 surveying and someone else, another individual,
11 walked up to the vehicle, got something or getting
12 something and then walked away, and that then this
13 defendant, he then drove away from that area.

14 Ladies and gentlemen, you're going to hear from
15 Investigator Dubose and Investigator Mays that they
16 got behind that vehicle and they called it in, they
17 were going to do a traffic stop, and they did do a
18 traffic stop, and they actually wound up pulling the
19 defendant over in front of his mother's house.

20 Now ladies and gentlemen, you're going to hear
21 that when the investigators began talking to the
22 defendant about the vehicle, why the tag was not
23 matching up, they also asked him did he have a
24 driver's license in which he responded he didn't.

25 So ladies and gentlemen, they took the defendant

1 out of the vehicle and put him under arrest for
2 driving without a license.

3 And you're going to hear from Investigator Mays
4 that when the defendant was out of that vehicle, he
5 looked in the vehicle and saw in the driver's seat
6 where the defendant was sitting a quantity of crack
7 cocaine.

8 I don't know if any of you have ever seen crack
9 cocaine, but it's a rock-like substance. It kind of
10 looks -- it's not powdery like you would
11 think cocaine -- use bricks of cocaine. That's not
12 what we are talking about here. We are talking about
13 crack cocaine which is basically a rock version of
14 that.

15 You're going to get to see it in evidence later
16 on. You're going to get to hold it. You're going to
17 get to feel it in an evidence bag at a later time.
18 But for now just -- it's basically -- it's a solid
19 substance kind of like rock.

20 When Investigator Mays found that rock, he
21 pulled it out. And you're going to hear that
22 Investigator Dubose asked the defendant about that
23 rock.

24 And you're going to hear that the defendant
25 said, that's my crack cocaine. He accepted

1 responsibility for it at the scene, ladies and
2 gentlemen. You're going to hear all of that today.

3 Ladies and gentlemen, given the fact that the
4 defendant was in possession of crack cocaine and
5 admitted to it, the officers took him into custody
6 and took him to jail.

7 And ladies and gentlemen, you're going to hear
8 from Investigator Dubose that he was with the
9 defendant all the time that he was at the jail, and
10 that while the defendant was being what's called
11 booked into the jail -- that's basically a fancy way
12 of saying he was admitted into the jail -- they
13 always do a search of you before you go into the
14 jail.

15 And as the evidence is going to show, during
16 that search they found a little quantity of marijuana
17 on the defendant, not a lot, point -- I think it was
18 .49 or .39 grams. .48 grams of marijuana was found.

19 Ladies and gentlemen, you're going to hear that
20 that was found in the defendant's pocket, that in
21 Investigator Dubose's presence it was pulled out of
22 his pocket, it was given to Investigator Dubose,
23 Investigator Dubose took that drug, took that
24 marijuana to the -- what's called a forensic chemist.

25 That's the gentleman who basically tests

1 substances to prove whether or not they are drugs or
2 aren't drugs.

3 Now ladies and gentlemen, going back to the
4 crack cocaine we talked about earlier, you're going
5 to hear that Investigator Tripp Mays kept possession
6 of that crack cocaine at all times until he turned it
7 over to the evidence technician, Cindy Pierson.

8 So you're also going to hear her testimony.
9 Mrs. Pierson is going to testify today and tell you
10 that she took that crack cocaine, kept it in her
11 possession or kept it under her control until it was
12 transferred to the forensic chemist.

13 The forensic chemist is the same both for
14 marijuana and crack cocaine, Mitchell Hansen. You're
15 going to hear from him today. He's going to tell you
16 that he ran tests on it which are well above my --
17 but he's going to talk to you about the scientific
18 procedures and the ways that they basically test the
19 drugs to find out and to prove that they are in fact
20 drugs.

21 Because we have to prove to you not only that
22 the defendant possessed that substance but that the
23 substance he possessed was in fact crack cocaine and
24 was in fact marijuana.

25 And the way we do that is the testimony from Mr.

1 Mitchell Hansen who is also with the Sumter County
2 Sheriff's Office. I forgot to mention Mrs. Pierson
3 is also with the Sumter County Sheriff's Office.

4 So all of those basically went in a nice little
5 chain. The crack cocaine went to Tripp Mays, Cindy
6 Pierson, Mr. Hansen, and we are going to prove all of
7 that today.

8 And you're also going to hear testimony that the
9 marijuana went from the defendant to Wayne Dubose,
10 from Wayne Dubose straight to Mitchell Hansen.

11 Ladies and gentlemen, at the end of all the
12 evidence, I will come back up here and give you a
13 closing argument, basically sum up everything you
14 have heard.

15 I hope I have given you a good preview, given
16 you an idea of what to expect. And all I can ask is
17 that you pay attention because when you pay
18 attention, I'm sure you're going to find that the
19 State meets their burden of proof and proves this
20 defendant guilty beyond a reasonable doubt. Thank
21 you.

22 THE COURT: Mr. Wilder?

23 MR. WILDER: May it please the Court.

24 THE COURT: Yes, sir.

25 OPENING STATEMENT

1 MR. WILDER: Ladies and gentlemen, my name is
2 Arthur Wilder. Been practicing law here in Sumter
3 County for over 30 years now. And actually I was
4 thinking about last week some, was over 50 years ago
5 that I drew my first jury in this courtroom.

6 And the way that happened was my father was an
7 attorney here. And the Judge mentioned to you that
8 we draw names by computer now-a-days. Back in that
9 day, in that day, not only did we have a blind person
10 sometimes draw the jury, the law said that the lawyer
11 asked for it, he could either be a blind person or a
12 child.

13 And my daddy was proud of me so he brought me up
14 here and he had arranged with one of the lawyers to
15 ask that the jury be drawn by a blind person or a
16 child.

17 They didn't have a blind person available that
18 day, but my dad spoke up and said, here is my son, he
19 can draw the jury. I remember sitting up there next
20 to the Judge. The Judge had a black robe on. I
21 thought he was probably the biggest fellow in the
22 whole world, and that it was an awesome thing.

23 We didn't even have the little turn thing that
24 you put the bottles in and has the names in there.
25 Back then put the name on a little slip and had them

1 in a little drawer next to where the Judge is
2 sitting.

3 Open the drawer and reached in there, draw the
4 names out one at time, I hand them to the Judge and
5 he would call them out. And that was my first
6 experience in a courtroom.

7 Last week I saw Mr. Finney, Ernest Finney's son,
8 Chip Finney, Ernest Finney the third here with his
9 son, brought his son up here to the courthouse and
10 showing him around and let him see how our judicial
11 system works.

12 You know, when I brought my children here so
13 they could see when they were growing up what our
14 system of justice is all about.

15 And it's a very important thing that we have
16 jury trials and that we have courtrooms that we
17 resolve our disputes in because all of us, you, there
18 are rights that we have are very sacred.

19 And what we want our children to see when we
20 bring them here is we want to see that everybody is
21 being treated with respect, that they're being
22 listened to, that the folks are trying their best to
23 do justice and look for the truth, that they are
24 taking their time on each case no matter how large or
25 small it might be, that we are looking at it very

1 closely and that we want to know that if the burden
2 is on the State to prove the case beyond a reasonable
3 doubt, that they're required to meet that burden, and
4 that we don't rush to judgment.

5 We don't try to short-circuit anything, that we
6 take our time because that's the kind of justice
7 system we want. We don't get in a hurry about trying
8 to decide what the future or the rights of a
9 particular person will be.

10 Now in this case I'm defending Mr. Reginald
11 Barno who is sitting over there. Mr. Barno had a
12 medical emergency. You see his arm is in a sling
13 over there. He had that happen this morning.

14 We went ahead and picked you folks to serve on
15 his jury and he got here right as that was concluded
16 and he is here for his trial.

17 We're going to question each witness as they
18 come up. And you heard Mr. Spratlin say, well, he
19 admitted that what was found, the little tiny piece
20 of something that was in the front seat, he admitted
21 that was his crack.

22 You heard Mr. Spratlin say that. If he did
23 that, what are we doing here today? You know, what
24 is this case all about if that's what happened?

25 You're going to also hear that this happened in

1 his mother's front yard. And his mother and his
2 sister and other members of their family were there
3 and they heard what happened, too. And that's not
4 what happened.

5 See, every pancake, no matter how thin it is,
6 has got two sides to it. And I want you to be ready
7 and listen, and you will -- when you hear this
8 testimony here today, you're going to hear Mr. Dubose
9 testify, you're going to hear Mr. Mays testify and
10 you're also going to hear, we didn't take any notes.

11 We didn't write down exactly what he said. We
12 are just going on our impression about what generally
13 we remember. And it's been a good little while now.
14 How do we know they're exactly telling the truth?
15 You know.

16 This is important because my client -- it's the
17 most important day in my client's life. And if it
18 happens just like Mr. Spratlin said, what are we
19 doing here? Why did we ask for a jury trial?

20 Most people come up here and they plead guilty.
21 Ninety-nine something -- I don't know how many
22 percentage points it is, probably varies a little
23 bit. But if everybody asked for a jury trial,
24 certainly we couldn't give everybody one.

25 But the vast majority of folks don't put

1 themselves in this situation. This situation, when
2 they ask for a jury trial, that transfer -- the
3 burden is on the State. They have to prove each and
4 every element.

5 And what is this -- what is this case? What is
6 the charge? Possession. Possession happens when you
7 intend to control something. Well, I have a pen and
8 I put there on the bench and I say, well, you know,
9 if it's my pen, I possess it, I intend to control it.

10 Actual possession is if I'm holding it.
11 Sometimes the law talks about constructive
12 possession. That's if I intend to control it even
13 though I'm not holding it.

14 But if I don't know that the pen is there and I
15 walk into the room, it don't matter if I am sitting
16 on the pen. If I don't know what it is and I didn't
17 intend to break the law when I sat on it -- anything
18 can be put under your chair right now or in your
19 chair, if you don't know it's there, you can't intend
20 to control it.

21 So what I'm saying to you is that possession is
22 a state of mind. There has to be criminal intent, an
23 intention to break the law. You have to know that
24 it's there.

25 And the State has the burden of proving that my

1 client knew not only that it was a little tiny piece
2 of something in the seat but what it was.

3 Now, you have heard the Solicitor say, well, it
4 was crack cocaine. Well, a little tiny piece of
5 plaster of paris doesn't come with a sign on it that
6 says, I'm crack cocaine. It doesn't have a wig on
7 it.

8 If you pick up a little packet of artificial
9 sweetener like I do most Tuesday mornings at
10 Shoney's -- go down there, pick up a little packet of
11 sweetener, that's approximately 1 gram of a white
12 powder that's in that little packet.

13 And it's got a label on it and it tells me what
14 it is. If I open that little packet and I dump it
15 out in a pile right here and somehow I get it
16 compacted into a little compressed little rock thing
17 or maybe I boil it down on the stove like I hear some
18 of these folks do and I make it into something that
19 looks like plaster of paris -- first of all, let me
20 point out to you you're talking about one third of
21 what might be in that little tiny piece of packet,
22 one third, .32 grams. That's a third of a gram.

23 Normally the little packet has about a gram in
24 it. Get you to where you understand what the State
25 is trying to say.

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. SPRATLIN:

4 Q Mr. Dubose, where are you employed?

5 A I'm employed Sumter County Sheriff's Office.

6 Q What do you do there?

7 A I'm a narcotics investigator.

8 Q And what all does that entail?

9 A Sir?

10 Q What all does that entail, that job?

11 A Narcotics investigator, we go out and purchase
12 illegal narcotics, drugs, or whatever, from individuals
13 who sell. We also we do vice operations. But we mainly
14 concentrate on the drug problem here in Sumter County.

15 Q What do you mean by vice operations?

16 A Prostitution, things of that sort.

17 Q All right. Now, were you working on September 30th,
18 2008?

19 A Yes, sir.

20 Q What were you doing that day?

21 A Myself and Investigator Mays, we were just riding in
22 the area that day checking on some locations that we had
23 received information either by phone or from citizens in
24 the county in reference to a -- either drug problems or
25 other investigations we were doing.

1 Q Okay. And you say you were checking on those areas.
2 What were you doing to check on them?

3 A Basically riding through areas. Someone may give us
4 an address, maybe suspicious activity or whatnot, and we
5 will go out and we will check and we will actually do
6 surveillance.

7 We may sit on these houses, watch who goes to the
8 houses, who leaves the houses. A lot of times we'll stop
9 people as they walk away from there if it looks like they
10 may be doing something suspicious or vehicles leaving.

11 Q Okay. What sort of equipment do you use to sit on a
12 house?

13 A Use a -- we just in our unmarked vehicles and we have
14 binoculars, cameras. Sometimes we have video equipment
15 with us. It just depends on what exactly we're doing that
16 particular time.

17 Q On September 30th, 2008, were you in a vehicle which
18 had video equipment?

19 A No, sir. The vehicle I have, it is not equipped with
20 a video camera.

21 Q Okay. Why is that?

22 A Our marked patrol cars have video cameras, but the
23 vehicles that we have that are unmarked vehicles and --
24 they just have not put that equipment in them.

25 Q Okay. At some point on September 30th, 2008 did you

1 have a chance to come into contact with the defendant
2 Reginald Barno?

3 A Yes, sir.

4 Q How did you come into contact with him?

5 A Myself and Investigator Mays, we were at a location
6 on Pack Road. We had received information that this
7 particular residence--

8 MR. WILDER: Your Honor, I'm going to object to
9 what was hearsay.

10 THE COURT: Okay. Sustained.

11 THE WITNESS: Okay. I can rephrase it.

12 BY MR. SPRATLIN:

13 Q If you would, please.

14 A This particular residence, we have arrested
15 individuals from this residence. I have personally
16 arrested individuals from this residence. And...

17 Q What did you arrest these individuals for?

18 A Individuals in this residence were arrested for
19 distribution of crack cocaine.

20 Q Okay.

21 A The individuals at this residence we have known to
22 have prior drug problems. We went to this location,
23 myself and Investigator Mays, we sat across from the
24 residence behind the church and just sit there and
25 observed. First vehicle we saw come to the residence was

1 a -- was driven by Mr. Barno.

2 Q Okay.

3 A It was a--

4 Q Sorry. What kind of vehicle was that?

5 A It was a black Nissan --

6 Q Okay.

7 A -- Sentra I believe it was. While we were sitting
8 there watching what was taking place, an individual came
9 out of the residence and was the actual individual that
10 had arrested prior to this, Mr. Barkley. He approached
11 the vehicle.

12 It appeared that Mr. Barkley walked over to the
13 vehicle, they exchanged something. Investigator Mays had
14 a set of binoculars. He actually got the tag off the
15 vehicle.

16 We called dispatch and ran the tag through dispatch.
17 Like I said, this vehicle was a Nissan Sentra. The tag
18 that was on the vehicle came back to a Volvo, so therefore
19 we just waited until the vehicle left.

20 Q Why is it troublesome that the tag did not match up
21 to the vehicle?

22 A Sir?

23 Q Why is it a problem if the tag do not match up to the
24 vehicle?

25 A A lot of times people may put different tags on

1 vehicles maybe for insurance purposes or whatever. It's
2 not uncommon to find people who put the wrong tags on the
3 wrong vehicles.

4 Q Is that against the law?

5 A Yes, sir, it is.

6 Q Okay. What did you do then?

7 A At that time we waited. The vehicle left the
8 residence. At that particular time we could not see
9 exactly who was the vehicle. The vehicle pulled out of
10 the residence, went down Pack Road toward Old Manning
11 Road.

12 We pulled out behind the vehicle, followed the
13 vehicle just to make sure we had the tag right and didn't
14 misread it. We got close enough to the vehicle, got
15 the -- confirmed the tag, again ran it, made sure that it
16 was to a Volvo. Once dispatch verified that, we initiated
17 a traffic stop on the vehicle.

18 Q Okay. How far away from where the vehicle had
19 stopped was it until you did the traffic stop give or
20 take?

21 A Maybe a mile and a half. Well, maybe 2 miles. Mile
22 and a half, 2 miles.

23 Q Okay. Was there anyone else in the vehicle besides
24 the defendant that you could observe?

25 A There was no one else in the vehicle other than Mr.

1 Barno.

2 Q Was there any chance of someone exiting the vehicle
3 without you seeing it?

4 A No, sir.

5 Q Okay. Real quickly, just to go back and cover our
6 base on this. Where did you state the initial house was
7 again?

8 A The initial residence -- if you're familiar with Pack
9 Road on -- it is on the very sharp curve across from
10 Pocalla Holiness Church.

11 Q Okay. Is that in Sumter County?

12 A Yes, sir, it is.

13 Q Okay. All right. What happened once you made the
14 traffic stop?

15 A We got behind the vehicle at Old Manning and Rogers
16 Avenue. The vehicle stopped in the roadway, was going to
17 make a left-hand turn into a driveway. The vehicle pulled
18 into the driveway.

19 Activated my blue lights and stuff that was in my
20 truck. The vehicle stopped. And the vehicle stopped. I
21 pulled up beside, slightly to the side of the vehicle.
22 Investigator Mays exited the vehicle, made contact with
23 the driver, and then I walked around and assisted him in
24 making contact.

25 Q Okay. Were you able to identify the driver of that

1 vehicle?

2 A Yes. When I walked around, I saw Mr. Barno in the
3 driver's seat. He was the only one in the vehicle at that
4 time.

5 Q Okay. And just for the record, do you see the
6 individual that you saw in that vehicle here in court
7 today?

8 A Yes, sir, be Mr. Barno there in the white T-shirt.

9 Q Okay.

10 MR. SPRATLIN: Please let the record reflect
11 that the witness has identified the defendant as well
12 as an article of clothing that the defendant is
13 wearing.

14 THE COURT: Okay.

15 BY MR. SPRATLIN:

16 Q Now Mr. Dubose, did you have a chance to inquire
17 about the status of Mr. Barno's license?

18 A At that time Mr -- or Investigator Mays made contact
19 with him. Investigator Mays was asking for his driver's
20 license. And I believe they were stepped out of the
21 vehicle. Mr. Barno advised he didn't have a driver's
22 license.

23 At that time he was placed into a -- or detained,
24 started handcuffing. At that time I went ahead and
25 started to Mirandize him, advise him of his rights.

1 Q Okay. And in particular what rights did you advise
2 the defendant of?

3 A Advised him of his constitutional right, that he had
4 the right to remain silent, anything he said could be used
5 against him in court, he had an opportunity to talk to a
6 lawyer before and during questioning, and if he cannot
7 afford to hire a lawyer, one would be appointed to
8 represent him.

9 And that was the rights I advised him. I actually
10 read them off of a Miranda card that we're given.

11 Q Okay. At any time did the defendant seem to indicate
12 to you that he did not understand his rights?

13 A No, sir. He never indicated that.

14 Q Okay. After you read the defendant his rights, what
15 happened then?

16 A I advised him of his rights. Like I said,
17 Investigator Mays was placing handcuffs on him at that
18 time. We observed in the front seat a white rock
19 substance which due to my experience doing this, it
20 appeared to be crack cocaine.

21 At that time asked Mr. Barno about the substance. We
22 referred to it as crack cocaine right there on the spot,
23 and then he advised that it was his crack cocaine.

24 In our vehicles we have test kits that -- we cannot
25 analyze them and say definite it's crack or cocaine or

1 marijuana or whatever. We do have test kits. A lot of
2 them are like a little small tile, and you open out sealed
3 package, wipe the substance.

4 And with these test kits, if a substance turns a blue
5 color, then it gives you a -- it's just a field test
6 saying it is possibly going to be crack cocaine.

7 Q What's the purpose of doing this field test?

8 A That just tells the officer that, say, if we had
9 powder cocaine, it wouldn't -- we could say, well, if
10 powdered sugar, well, it's not going to test. But if it
11 did turn blue, then it's a pretty good chance it's going
12 to be crack cocaine or cocaine or whatever.

13 Q So it allows you to discern what are real drugs and
14 what are imitations.

15 A That's correct.

16 Q Okay. Now, you stated earlier that you referred to
17 the substance found in the car as crack cocaine?

18 A Yes, sir. That's what it looked like when I saw it.
19 It appeared to be crack cocaine.

20 (Whereupon, State's Exhibit No. 1 was marked for
21 identification only.)

22 MR. SPRATLIN: Permission to approach the
23 witness.

24 THE COURT: Yes, sir.

25 BY MR. SPRATLIN:

1 Q Officer Dubose, please for the record I have just
2 handed to the witness what's been marked as State's
3 Exhibit Number one for identification purposes only. Do
4 you recognize the item I just handed you?

5 A Yes, sir. This appears to be a packet with what we
6 refer to as a best kit. This is what we seal controlled
7 substances in, what we put it in evidence and have our
8 chemist analyze it.

9 Q Does the item included in that best kit appear to be
10 what you saw on September 30th?

11 A Yes, sir.

12 Q Okay. Thank you. And was that substance the
13 substance that you asked the defendant about?

14 A That would be, yes, sir.

15 Q Okay. And again, what was the defendant's response
16 to that question?

17 A Again--

18 MR. WILDER: Your Honor, we move to suppress it
19 and or object to it and ask the Court to rule
20 accordingly, accordingly charge the jury.

21 THE COURT: Okay. Then I understand your
22 objection. I will overrule it and allow the question
23 to be asked.

24 BY MR. SPRATLIN:

25 Q I'm sorry, Investigator Dubose. What was the

1 defendant's response to your question is -- whose crack
2 cocaine is this? Or what was your question again?

3 A I asked him whose crack cocaine was this in the seat,
4 and Mr. Barno advised it was his.

5 Q Okay. Do you remember exactly what he said?

6 A I believe that's exactly what he said. My report...
7 Mr. Barno was removed from the car, suspect crack cocaine
8 was in plain view in front driver's seat. It says, Mr.
9 Barno advised crack cocaine was his, so that's all he said
10 was just it was his.

11 Q Okay. At the time that the defendant said that the
12 crack cocaine was his, had you promised the defendant
13 anything?

14 A No, sir. I Mirandised him, read him his rights, and
15 that was the extent of our conversation up to that point.

16 Q Okay. Was the defendant in any way threatened?

17 A No, sir. He was fairly calm at that point.

18 Q He did not appear to be agitated?

19 A Not at that time he did not.

20 Q How would you describe his demeanor at that point?

21 A I mean, he was fairly calm. We advised him we
22 stopped him because the tag didn't match the vehicle. He
23 was asked about a license, said he didn't have a license,
24 and he give us no problem up to that point.

25 Q Okay. After the defendant admitted that the crack

1 cocaine was his, what did you do?

2 A He was placed into the front seat of my vehicle and I
3 got in the driver's side. Investigator Mays started
4 getting paperwork that we have to fill out and tow vehicle
5 inventory sheets and whatnot.

6 He got that paperwork and started doing a --
7 basically searching the rest the vehicle, doing an
8 inventory on the vehicle. So he was outside messing with
9 the -- that vehicle and myself and Mr. Barno were sitting
10 in the front seat of the truck.

11 Q Okay. Where did you take Mr. Barno after y'all left
12 the scene of this incident?

13 A After the inventory was complete, wrecker came and
14 picked up the vehicle and towed the vehicle, and we
15 transported -- myself and Mr. Investigator Mays
16 transported Mr. Barno to the Sumter Lee Regional Detention
17 Center on Winkles Road.

18 Q Okay. What is the procedure when you get to the
19 Sumter Lee Regional Detention Center?

20 A We arrive at the detention center, you pull into a
21 sally port in the back. You take the prisoner out, then
22 you go into the inside of the facility. Once you get in
23 there, you don't have contact with the subject.

24 One of the correction officers, they come up, take
25 all the property from them. They actually do a very

1 thorough search. They remove all the items from their
2 person. A lot of times they will make them change into
3 other clothing, but that's what we did at the back of the
4 jail that day.

5 Q Were you present when the defendant was searched?

6 A Yes.

7 Q Okay. Were you there at all times?

8 A Yes, sir.

9 Q All right. What if anything happened with the
10 defendant when he was being searched?

11 A We entered in, myself and Investigator Mays were
12 standing at the back booking counter. Mr. Barno was
13 there. He was in handcuffs. And one of the correctional
14 officers came around, whoever was going to be taking care
15 of him, and they started to search him, take his property
16 from him, and place it on the counter.

17 At that time they removed a small baggy of --
18 appeared to be a suspect marijuana from his -- I believe
19 his right front pocket. Once they removed that, I saw the
20 officer remove it, and that being another charge, I went
21 ahead and took that from him and I placed it in envelopes.

22 Q Okay. How close were you to where the defendant was
23 being searched?

24 A We were standing side by side. We were within arms
25 reach of each other.

1 Q Was there any way that anyone else could have put the
2 marijuana into the defendant's pocket?

3 A No, sir. I was on one side of Mr. Barno. A
4 correctional officer was behind him. Mr. Mays was on the
5 other side.

6 Q Okay.

7 (Whereupon, State's Exhibit No. 2 was marked for
8 identification only.)

9 MR. SPRATLIN: Permission to approach the
10 witness, Your Honor.

11 THE COURT: Yes, sir.

12 BY MR. SPRATLIN:

13 Q Investigator Dubose, do you recognize the item I just
14 handed you?

15 A Yes, sir. This would be a -- an evidence bag. This
16 would be the evidence bag that I placed the suspect
17 marijuana in. There is a cellophane wrapper which is a
18 cigarette wrapper. That's what I refer to as the plastic
19 bag.

20 The marijuana was inside that cellophane wrapper.
21 And I believe this here, the plastic bag, was added by the
22 chemist after it was analyzed.

23 MR. SPRATLIN: Okay. I'm sorry. Please let the
24 record reflect I did hand the witness what's been
25 marked for identification purposes as State's Exhibit

1 Number two.

2 *THE COURT:* Okay.

3 BY MR. SPRATLIN:

4 Q Now when you received that suspected marijuana from
5 the defendant, what did you do with it then?

6 A We actually take it back up, do our reports and
7 stuff, and then it's later transferred over to the
8 evidence locker. We actually drop in the evidence locker
9 and then the evidence custodian or the chemist, whoever,
10 will actually go get the drugs out of that evidence and
11 then they analyze it.

12 Q Okay. How do you secure the evidence?

13 A Commonly when I get it -- usually we have our vest
14 and stuff on. I usually take evidence and either put it
15 in my pocket or something to hold on to it. This
16 particular day, once I got it out, I -- we carried these
17 baggies here in our vehicles, so I put that into the
18 plastic baggy, wrote the information on it, sealed it, and
19 placed it in my pocket until we got to the office.

20 Q How familiar are you with those plastic bags?

21 A Very familiar. We use them every day.

22 Q What if any protections does that bag have against
23 tampering?

24 A It is a sealed plastic bag. You can -- you can look
25 at the bag and tell that it's sealed. At the top it will

1 be open. This here red line is -- has a strip on it. You
2 actually pull that strip off.

3 Once you place the evidence inside and when you bend
4 it over, it seals. And there's no way to get it open. If
5 you try to peel that back open, it will rip the bag open.

6 So when it's placed into the evidence locker, you can
7 tell it's sealed and then the next person who opens it,
8 there's -- on the front here it tells you what was the
9 condition of the bag when say the evidence custodian
10 receives it and whether it was sealed or whether it was
11 not sealed, and it has all of that information on the
12 bottom and usually they are cut at the bottom and the
13 items were taken out.

14 Q Can you tell in that bag where you sealed it, does it
15 appear to have been tampered with in any way?

16 A No, sir. The top seal where I sealed it has not been
17 broken.

18 Q Okay. Now, when you place that evidence in that bag,
19 did you put the evidence in the evidence locker or did you
20 take it directly to the chemist?

21 A We actually go back to the office and do the
22 paperwork and stuff, and I believe it was placed into the
23 evidence locker at the law enforcement center --

24 Q Okay.

25 A -- which is a box that's in the wall. And when we

1 place it in there, there's no way anyone can mess with it
2 because it's in an alarm, sealed room.

3 Q Okay.

4 MR. SPRATLIN: That's all the questions I have
5 at this time. Thank you, Investigator Dubose.

6 THE COURT: Need a break? I'm glad you said
7 that because I do, too. We'll take a 15 minute
8 break. All of y'all can go. You all go, all of
9 y'all. Don't discuss the case now. I have to remind
10 you.

11 (Jury left the courtroom at 4:11 pm.)

12 THE COURT: All right. We will take a 15 minute
13 break.

14 MR. WILDER: I ask the witness be instructed not
15 to discuss the testimony while he's off the stand.

16 THE COURT: All right. You understand you can't
17 discuss your testimony. All right.

18 (Whereupon a brief recess was had.)

19 THE COURT: State ready?

20 MR. SPRATLIN: Yes, Your Honor.

21 THE COURT: Bring us a jury.

22 (Jury entered the courtroom at 4:35 pm.)

23 THE COURT: Counsel?

24 MR. WILDER: May it please the Court.

25 THE COURT: Yes, sir.

CROSS-EXAMINATION

1

2 BY MR. WILDER:

2

3 Q Mr. Dubose, how many years you been in law
4 enforcement?

3

4

5 A Thirteen.

5

6 Q Okay. And during that period of time have you had
7 occasion to charge anybody with possession of imitation
8 controlled substance?

6

7

8

9 A Yes, sir.

9

10 Q And so that would be like if something looked like
11 crack cocaine but wasn't; right?

10

11

12 A Yes, sir, or if they presented it as crack cocaine.

12

13 Q Okay. Or some other substance that either presented
14 it or they were representing it as a controlled substance,
15 there was--

13

14

15

16 A Yes, sir.

16

17 Q Okay. Now, you made reference to that particular day
18 you had some kind of test kit?

17

18

19 A Yes, sir.

19

20 Q Did you actually use it?

20

21 A Yes, sir. There -- we actually have a couple
22 different test kits. We have little packets where you
23 bust an ampule or ampule in it, and then the chemicals give
24 you a test reading, or you have -- we actually have little
25 swipes which you open up and wipe on the substance and it

21

22

23

24

25

1 will give you -- it's just a field test. It's nothing
2 that confirms it.

3 Q All right. Well, I'm not asking you what you usually
4 have or what else you might have. What did you actually
5 use?

6 A We have a -- it's a little white -- I think it's a
7 nick white is what it's called or narc white.

8 Q Okay. And on that day you actually used one?

9 A Yes, sir.

10 Q On this little tiny piece of whatever it is that was
11 in the front seat of the car.

12 A Yes, sir.

13 Q Okay. Now, at what point did you do that?

14 A Once we got the substance in the vehicle or the --
15 put Mr. Barno in the vehicle, I had -- I have some in my
16 drawer pocket, but I believe it was while I was -- I
17 believe I was in the front seat of the vehicle when we did
18 it.

19 Q Okay. So this was after you already put Mr. Barno in
20 handcuffs and advised him of his Miranda rights.

21 A That's correct.

22 Q And also after he had already given you some
23 statement that you said, that's my crack cocaine.

24 A That's correct.

25 Q Now, you said you didn't have a camera in your car?

1 A We don't have a video camera in our car, no, sir.

2 Q All right. So there was no recording running of
3 whatever your conversation was as you were advising Mr.
4 Barno of his Miranda rights.

5 A No, sir.

6 Q And therefore no recording made of whatever he might
7 have said thereafter to you.

8 A No, sir.

9 Q All right. And at that point you weren't writing
10 down something contemporaneously; were you?

11 A No, sir.

12 Q In fact, if you had have been, your policy in your
13 department is to throw those notes away; isn't it?

14 A No, sir.

15 Q Well, you didn't write something down and throw it
16 away in this case; did you?

17 A No, sir.

18 Q You just didn't write anything down?

19 A No, sir. It was pretty well self-explanatory. We
20 stopped the subject and what we found, and we didn't have
21 a -- it's not like a search warrant. We didn't have tons
22 of evidence. We just had the crack cocaine and that was
23 it. And the marijuana that we found, that was found at
24 the jail.

25 Q So you didn't think it was important enough to write

1 anything down in this particular case.

2 A No, sir. I -- I knew what happened, so I didn't need
3 to write it down.

4 Q So no notes?

5 A No, sir.

6 Q Now, you didn't see Mr. Mays writing anything down
7 either; did you?

8 A No, sir, other than the inventory. We did the
9 inventory sheet, the tickets.

10 Q All right. Now, were you looking around the
11 courtroom earlier this afternoon and saw some people
12 sitting in a group over there behind the defendant?

13 A Yes, sir.

14 Q You have seen those people before; haven't you?

15 A I recognize them.

16 Q Okay. Now, which ones are the ones that were sitting
17 there were actually present when you were talking to the
18 defendant?

19 A I don't remember. I know Mr. Barno's mother was
20 there.

21 Q Right.

22 A And there was a female. I'm not sure who she was.
23 And I believe two males were there. I believe someone
24 said it was his brother. But all I know -- I know it was
25 Mr. Barno's mother because I actually spoke to her.

1 Q Okay. Now -- and these will be the folks coming in
2 the courtroom now; right?

3 A Possibly could be.

4 Q Well, you're a trained observer, right, law
5 enforcement?

6 A Yes, sir, but I can't say that's definitely them. I
7 know -- I know his mother was there.

8 Q You identified my client specifically.

9 A Yes, sir.

10 Q All right. Tell me if these are the two same black
11 males that were there when you were talking to my client.

12 A I couldn't tell you. I have never dealt with those
13 individuals. I don't know who they are.

14 Q Okay. Now, you know you talked to Mr. Barno's
15 mother.

16 A Yes, sir.

17 Q And there was another female there; right?

18 A There was a female.

19 Q Now, I want you to tell me exactly the words that my
20 client is supposed to have said when he said those are --
21 that's my crack cocaine.

22 A I asked him whose crack cocaine was in the vehicle,
23 and he said -- what I have in my report here is -- I said
24 Mr. Barno was arrested at that time. Barno advised crack
25 cocaine was his. So when I asked whose crack cocaine it

1 was, he said it was his.

2 Q All right. Exactly the words, not he said it was
3 his, exactly--

4 A I can't remember the exact words, but he said, the
5 crack cocaine is mine. He didn't say it was anyone
6 else's.

7 Q The crack cocaine is mine. Are those the exact words
8 my client said?

9 A I can't say the exact words he said, but he did claim
10 possession of the crack cocaine that was in the seat.

11 Q Well, could it have been he said the drugs are mine?

12 A I asked him whose crack was in the seat. He said it
13 was his. I don't recall his exact words.

14 Q Do you refer to it as crack cocaine or cocaine base?

15 A Crack cocaine.

16 Q Well, you are familiar with the term cocaine base;
17 aren't you?

18 A That's the -- I would say the legal word for it is
19 say -- it's what cocaine is referred to, but it is
20 commonly referred to as crack cocaine.

21 Q Now, tell the jury exactly what Mr. Barkley has been
22 charged with in his illustrious criminal career.

23 A Mr. Barkley has been charged with conspiracy to
24 distribute crack cocaine for his part with other
25 individuals.

1 Q And... that all?

2 A Well, that's what I charged him with.

3 Q Well, you said he was well known to you; right?

4 A Well, he is -- he's a drug user. He has -- I don't
5 know what his criminal history is, but I do know I have
6 arrested him. I have had complaints on him from that
7 residence, not just him but other individuals also.

8 Q Well, he had been charged with distribution of
9 marijuana before; hadn't he?

10 A I looked at his criminal history, I could tell you,
11 but I do know he has had charges of drugs.

12 Q And he has been charged with possession of marijuana.

13 A Very possible.

14 Q Now, when you saw something take place over there
15 through the binoculars -- were you looking through the
16 binoculars or was Mr. Mays?

17 A Investigator Mays was.

18 Q Okay. And you just said you saw something and looked
19 like an exchange; right?

20 A Right. Investigator Mays had binoculars. I was
21 sitting in my vehicle. We were probably maybe 200 yards.
22 I mean, it was clear the vehicle pulled up. There's no
23 obstruction between where we were sitting and the house.

24 The vehicle pulled up in the yard. Mr. Barkley walks
25 over to the driver's side of the vehicle. He didn't get

1 in the vehicle. They talked. And it appeared that they
2 exchanged.

3 That there is typically what happens during a drug
4 transaction. We were doing surveillance. It appeared
5 that that is what happened.

6 Q Well, did Mr. Barkley lean in the car?

7 A He was leaning up. I believe when he leaned up he
8 was leaning against the car. I don't remember him
9 getting -- leaning inside the vehicle.

10 Q Mr. Barno didn't get out of the car; did he?

11 A No, sir.

12 Q Okay. Now, did you take a picture of the car?

13 A No, sir.

14 Q So we don't know what else might have been in the
15 car; do we?

16 A We have an inventory sheet, but it's usually
17 documented, but I don't -- there is no photos. And our
18 inventory sheet, it doesn't go through and state
19 everything in the vehicle.

20 If there's usually -- like say large like speakers or
21 stereos or something out of the ordinary, usually we
22 notate it on there. But there is nothing on there of any
23 other items out of the ordinary.

24 Q So it could have been a lot of stuff in there that
25 you didn't put on the inventory sheet that --

1 A That's correct.

2 Q -- didn't make it on the list; right?

3 A Maybe not.

4 Q CDs?

5 A Very possible.

6 Q Odor destroyer things that hang down from the --

7 A Yeah, I--

8 Q -- mirror?

9 A I don't recall. Usually we don't put that kind of
10 stuff on there.

11 Q Right. It's only something significant that you put
12 down there. You didn't have anything significant on that
13 one?

14 A No, sir. There's nothing on this inventory sheet.

15 Q But you're not saying there wasn't anything in the
16 car.

17 A I don't recall what all was in the car.

18 Q All right. Well, let's see if you can remember what
19 my client was wearing. Well, don't look at your notes.
20 I'm asking you what you remember.

21 A I'm telling you I don't remember what he was wearing
22 unless -- I don't even think it's in my notes, but I don't
23 recall what he was wearing.

24 Q Well, you say at the jail something came out of a
25 pocket; right?

1 A It came out of his right pocket.

2 Q What kind of clothing was it that the pocket was
3 associated with?

4 A Pants.

5 Q Describe the pants to the jury.

6 A I can't describe the pants for you.

7 Q And where are the pants?

8 A I have no idea.

9 Q You didn't take them into evidence?

10 A No, sir. We took the drugs into evidence. We didn't
11 take the pants.

12 Q All right. Let's talk about the marijuana for a
13 minute. What was it in?

14 A Like a cellophane, a plastic wrapper, cellophane
15 wrapper off of a cigarette case.

16 Q Is that wrapper in the best evidence envelope --

17 A Yes, sir.

18 Q -- you identified?

19 A Yes, sir.

20 Q But the alleged cocaine base or crack cocaine wasn't
21 in any container or in any kind of wrapper; was it?

22 A No, sir, it was just sitting loose in the seat.

23 Q Loose in the seat.

24 A And the best kit is actually in two pieces. It looks
25 like it's probably broke.

1 Q Well, at some point you said that the seal was
2 unbroken, but at some point Mr. Hansen would have had to
3 check it; wouldn't he?

4 A Seal on what?

5 Q The best kit.

6 A Yes, sir.

7 Q So if Mr. Hansen went in there, somebody could easily
8 unseal it and reseal it?

9 A No, sir, that's impossible.

10 Q I thought you testified the envelope hadn't been
11 opened?

12 A It hadn't. When I sealed it, there's only a -- when
13 you seal that best kit and you put into the package, you
14 can see the package, you can tell it hadn't been tampered
15 with, it hadn't been cut open.

16 And then the next person, which would be Mr. Hansen,
17 would be the person that opens it up, analyze it, and then
18 if it's been tampered with, I don't believe he would go
19 forward with the case.

20 Q Okay. Now, let's talk about that a little. When you
21 test something in the field with the little narc white --
22 I believe you called it.

23 A Uh-huh.

24 Q When you do that, that's only -- means that it's a
25 presumptive test, it's likely to be the drug, but you

1 can't say for sure that it is. Would that be because
2 other things could be causing the narc white to give a
3 false positive?

4 A It could be, yes, sir.

5 Q Okay. And when you do that, there's no way to test
6 for the purity of the substance either; is it?

7 A I -- no, sir, not without the test kit, no, sir, not
8 that I'm aware of. I don't even know if you can do that
9 with a regular system. Mr. Hansen will have to answer
10 that for you.

11 Q Okay. So when we say that there is less than a third
12 of a gram of a substance involved, that's not the pure
13 substance y'all are even talking about there; is it?

14 A All I know is the substance that we retrieve tested
15 positive for crack cocaine or cocaine base. That's about
16 all I can tell you.

17 Q All right. Now, so even when you do get a positive
18 reading, it still could be something else?

19 A Yes, sir.

20 Q Okay. Thank you. No other questions.

21 MR. SPRATLIN: Your Honor, brief redirect?

22 THE COURT: Okay.

23 REDIRECT EXAMINATION

24 BY MR. SPRATLIN:

25 Q Investigator Dubose, you stated that the crack rock

1 substance found in the defendant's car was not in any kind
2 of container; correct?

3 A No, sir. It was sitting -- what you have in that bag
4 is what was sitting in the front seat.

5 Q Okay. Just the rock, though; right?

6 A That's correct.

7 Q Okay. Is that unusual with crack cocaine?

8 A Every situation is different. Sometimes you may have
9 it in containers. A lot of individuals have it in
10 containers, but it's not uncommon to find it sitting loose
11 in a vehicle.

12 Q How much -- I see that this part is broken; correct?

13 A Uh-huh.

14 Q How does crack cocaine go from one person to another?

15 A How does it go from one?

16 Q How would one give crack cocaine to another person?

17 A I mean, person gets a -- say medicine bottle,
18 someone -- it's common for drug dealers to carry crack
19 cocaine in medicine bottles or other containers, but say a
20 medicine bottle -- they would open it up and whatever the
21 person asks for, they will take that substance out,
22 present it to whoever wants it, and they go on about their
23 business.

24 Q Okay. Now, you stated on Mr. Wilder's
25 cross-examination that you did not recall the exact words

1 the defendant uttered.

2 A I don't recall the exact words of what he said. We
3 asked him whose crack -- he was the only one in the
4 vehicle. We asked him whose crack cocaine it was, and he
5 said it was his, he took possession of it.

6 He didn't say, it's not mine, it's somebody else's,
7 or this ain't my car, it was that person's. He said it
8 was his.

9 Q And in your opinion is there any way he could think
10 that you were referring to something other than--

11 MR. WILDER: Objection. That calls for
12 speculation as to what was going on in the mind of
13 some other person.

14 THE COURT: I'll -- you -- you can rephrase the
15 question, but I -- I agree with Mr. Wilder. You
16 can't ask him that point.

17 BY MR. SPRATLIN:

18 Q Were you in any way ambiguous in what you were
19 referring to when you asked him whose is this?

20 A That substance was sitting in the front seat. Mr.
21 Barno was standing. Like I say, he could look over and
22 see what it was. Investigator Mays -- we were all
23 standing there by the door -- seen the substance, asked
24 him what it was, or if -- whose crack cocaine is this.

25 I refer to it as crack cocaine because that's what it

1 looked like. And he said it was his. We then retrieved
2 it and then it was placed into that evidence bag' and then
3 it later made it into evidence.

4 Q Okay. When you asked him that, did you point at
5 this?

6 A Yes. That would have been sitting in the front seat.

7 Q So when the question was asked, you were actually
8 directing his attention to that.

9 A Yes, sir. It was clear -- I mean, it was clear it
10 was sitting right there in the seat. You couldn't mistake
11 what we were talking about.

12 Q Okay. And you testified that there were other people
13 around when the defendant was being arrested; correct?

14 A When we first pulled into the residence, stopped the
15 vehicle, I don't recall anyone else being in the yard.
16 Once we made contact with Mr. Barno, got him out, he was
17 being handcuffed, at that time I think some people may
18 have come out of the front door.

19 We went ahead and as we arrested him, put him in the
20 truck. Investigator Mays was outside the vehicle doing
21 the inventory. He was also speaking to some other
22 individuals in the yard.

23 And I actually got out and spoke to Mr. Barno's
24 mother. And she actually came up to the driver's side of
25 the vehicle and leaned in, and we had a conversation. And

1 that was pretty much the extent of it.

2 Q And this was all after you had already asked the
3 defendant whose is this?

4 A That's correct.

5 Q Okay. Was there any chance that this could have come
6 from any of those individuals?

7 A No, sir. We followed that vehicle off the roadway.
8 No one made contact with that vehicle. He didn't get out
9 of the vehicle. No one else got out of the vehicle. He
10 was the only one in it, and no one else in the yard was
11 there.

12 Q Okay. Now, you also stated that you did not take the
13 defendant's pants into evidence.

14 A Sir?

15 Q Mr. Wilder asked you about the defendant's pants.

16 A I.-- I don't recall. I -- from what he had on, I
17 don't even think it's in my -- it's not even in the
18 report, but he was -- had shirt and pants on is all I can
19 tell you.

20 Q Is it typical -- do you ever take into custody
21 someone's clothes when you retrieved drugs from them?

22 A You may have a rare -- if we are doing a buy from
23 someone, if we go buy drugs from someone and maybe they
24 have certain type of earrings or a certain type of watch
25 or a certain type of clothing on that you can see in that

1 buy and compare it, then we may take it then.

2 But usually when we arrest people for drugs, we
3 don't -- we don't take their clothing.

4 Q And in fact, do you know what happens to that
5 clothing?

6 A If we take it?

7 Q If it's not taken.

8 A If it's not taken, I mean, it's their clothing. I
9 mean, they have it when they go in the jail and they have
10 it when they leave out. It's theirs.

11 Q Okay. All right. Think that's all the questions I
12 have Mr. Dubose.

13 MR. WILDER: Just one question.

14 RE-CROSS-EXAMINATION

15 BY MR. WILDER:

16 Q You see Mr. Barno's mother is in the courtroom now?

17 A She would be the second female in the white shirt
18 there. That would be the lady I spoke to.

19 Q Thank you.

20 THE COURT: You can step down.

21 (Witness left the stand.)

22 THE COURT: It's two till. You got a witness
23 you can get up and down in two minutes?

24 MR. SPRATLIN: I would think not, Your Honor.

25 THE COURT: We are going to quit then. Ladies

1 and gentlemen, this is all you're going to hear from
2 this case today. I ask you to come back in the -- to
3 be in the jury room at 9:30 in the morning. We will
4 continue with the testimony.

5 I know when you get home, everyone is going to
6 want to know what you have been doing all day. But
7 you can't tell them yet. When this case is over
8 with, you can tell them everything. But it's
9 important that you decide this case based on what you
10 hear in this courtroom.

11 Both sides have picked you to be fair and
12 impartial, so I need you not to get any outside
13 influence. I don't know if it's going to be anything
14 in the newspaper, but if it is, you can't read it or
15 anything -- or anything.

16 And I know when you get home your family is
17 going to question you. But if you will just refrain
18 from talking to them tonight. You can't discuss it
19 among yourselves in the morning until I give you this
20 case.

21 But you have a nice evening. I will see you
22 back at 9:30. If for any reason any of you have an
23 emergency and are going to be late or have a problem,
24 please call the Clerk's Office and let us know
25 because we will all be sitting here waiting on you.

1 Thank you.

2 (Jury left the courtroom at 4:59 pm.)

3 *THE COURT:* All right. We will be in recess
4 until 9:30 in the morning.

5 (Court in recess for the evening.)

6 ***** June 9, 2009 *****

7 *THE COURT:* Ready for the jury now, gentlemen?

8 *MR. SPRATLIN:* State's ready, Your Honor.

9 *THE COURT:* Okay. If you will bring us the
10 jury.

11 (Jury entered the courtroom at 9:47 am.)

12 *THE COURT:* Mr. Solicitor, you may call your
13 next witness.

14 *MR. SPRATLIN:* Your Honor, the State next calls
15 Investigator Lohman T Mays to the stand.

16 *TRIPP MAYS,* after being duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SPRATLIN:

20 Q Mr. Mays, where are you employed?

21 A Employed with the Sumter County Sheriff's Office.

22 Q What is your job there?

23 A I'm a narcotics investigator.

24 Q Okay. How long have you been employed by the Sumter
25 County Sheriff's Office?

1 A I have been employed with Sumter County Sheriff's
2 Office for seven years, little over.

3 Q How long have you been involved in law enforcement?

4 A A little over 10 years.

5 Q Now, you said that you were a narcotics investigator?

6 A Yes, sir.

7 Q What does that entail?

8 A We do undercover narcotics investigations, controlled
9 buys, surveillance on different places, and we do several
10 other different things, gambling, prostitution, stuff like
11 that.

12 Q Okay. Were you on duty or working on September 30th,
13 2008?

14 A Yes, sir, I was.

15 Q What were you doing at that time?

16 A I was with Senior Investigator Dubose. We were at
17 a -- we were watching a house on -- I can't exactly
18 remember the address, but it was on Pack Road.

19 Q Okay. This address on Pack Road, was this in Sumter
20 County?

21 A It was, yes, sir.

22 Q Okay. Why were you all watching that house?

23 A We had previously arrested the person of that -- that
24 lived at that house, Mr. Wayne Barkley, for distribution
25 charges, and we were just checking a few different areas.

1 Q Okay. Where were y'all when y'all were watching this
2 house?

3 A We were across the street from it at Pocalla Holiness
4 Church.

5 Q Okay. All right. And did you have any special
6 equipment to watch this house?

7 A About the only equipment that I was using that day
8 was -- be a pair of binoculars.

9 Q Okay. On that date did you have a chance to come
10 into contact with the defendant --

11 A Yes, sir.

12 Q -- Mr. Barno? How did you become in contact with
13 him?

14 A We were sitting across the street from the house on
15 Pack Road and observed a black Nissan Sentra pull up into
16 the yard of Mr. Wayne Barkley. I looked through the
17 binoculars and was able to read the tag on the vehicle
18 which I then run through our dispatch and they replied
19 that it was -- it came back to another vehicle, think it
20 was a Volvo.

21 Q Is it pretty standard for you to run tags on vehicles
22 that come to that area when you are staking out a house?

23 A Yes, sir, it is. That way we -- if it's on the
24 correct vehicle, we know about who we're maybe dealing
25 with.

1 Q Okay. At the time Mr. Barkley arrived at the
2 residence, were you looking through the binoculars?

3 A Mr. Barno?

4 Q I mean Mr. Barno. I'm sorry. Mr. Barno, the time he
5 arrived at the residence, were you looking through the
6 binoculars?

7 A Yes, sir, I was.

8 Q All right. What did you see?

9 A I saw Mr. Barkley walk up to the driver's side of the
10 vehicle. It appeared they exchanged something through the
11 door of the vehicle. The driver of the vehicle never got
12 out, so at that point we didn't know exactly who it was.

13 Q Okay. Could you tell -- when you said they were
14 exchanging, could you tell who was giving what to whom?

15 A Not really, no, sir.

16 Q Okay. It just appeared to you that there was an
17 exchange?

18 A Yes, sir.

19 Q Okay. What did Mr. Barkley do after that exchange?

20 A He turned around, went walking back towards the
21 residence.

22 Q Okay. And what did the driver of the black Nissan,
23 what did he do?

24 A Come out of the driveway and turned towards the sharp
25 curve on Pack Road and went back towards Old Manning Road.

1 Q Okay. And what did you and Investigator Dubose do?

2 A We got behind the vehicle and got to the vehicle and
3 run the tag again to confirm that that was the correct tag
4 and that it did come back to a Volvo.

5 Q Okay. And what did you find out?

6 A Found out that it was correct, that that was the tag
7 on the vehicle that came back to a Volvo.

8 Q All right. And after you discovered that it was the
9 wrong tag, what did you do next?

10 A By that time whenever the tag was confirmed through
11 dispatch that it was the correct tag that they had given
12 me the information back on, that it was on the Volvo, we
13 were just about to Rogers Avenue.

14 At that point in time Investigator Dubose turned on
15 his blue lights and the vehicle turned into Mr. Barno's
16 mother's residence.

17 Q Okay. Do you remember what street that Mr. Barno's
18 residence -- that the defendant's mother's house is on?

19 A It's on the Old Manning Road.

20 Q Okay. And is that in Sumter County as well?

21 A Yes, it is.

22 Q So all of the events that you described up to now
23 occurred in Sumter County?

24 A That is correct.

25 Q Okay. After the vehicle came to a stop, what

1 happened then?

2 A We approached the vehicle. Mr. Barno was identified
3 by us. We asked for his driver's license. Stated that he
4 did not have one. So at that point in time got him out
5 the vehicle and detained him.

6 Q Okay. And why did you get him out of the vehicle
7 again just for clarity?

8 A Because he stated that he did not have his driver's
9 license on him.

10 Q Okay. And what -- who was talking to Mr. Barno at
11 that point in time?

12 A I asked him for his driver's license. He stated he
13 didn't have one.

14 Q Okay. And after he got out of the vehicle, what
15 happened then?

16 A When he got out of the vehicle and as I was putting
17 the handcuffs on him -- on him detaining him, Investigator
18 Dubose advised him of the Miranda, and that's when we saw
19 the rock-like substance in the seat of the vehicle.

20 Q Okay. Then you said Investigator Dubose advised him
21 of Miranda rights. What specifically do you mean he
22 advised him of?

23 A He advised him that he had the right to remain
24 silent, anything that he said could be used in court
25 against him, that he had a right to talk with an attorney

1 before and during questioning, if he cannot afford an
2 attorney, one will be appointed for him.

3 Q Okay. And then he stated that -- while that was
4 going on, who noticed the rock-like substance in the car?

5 A Myself and Investigator Dubose noticed it.

6 Q Okay. What if any statements did the defendant make
7 in regards to that rock substance?

8 A When Investigator Dubose asked whose crack cocaine--

9 MR. WILDER: Your Honor, I'd like my objection
10 to run throughout the testimony.

11 THE COURT: Your objection is noted.

12 BY MR. SPRATLIN:

13 Q Please continue, Investigator.

14 A Investigator Dubose asked whose crack cocaine it was,
15 and Mr. Barno admitted -- said it was his.

16 Q Okay. And you actually heard it referred to as crack
17 cocaine.

18 A Yes, sir.

19 Q Okay. And Mr. Barno said, it's mine?

20 A That's correct.

21 Q Or something to that effect.

22 A He claimed possession of it.

23 Q Okay. What did you do then, Investigator Mays?

24 A At that point in time Investigator Dubose placed Mr.
25 Barno in the front passenger seat of his vehicle and I

1 took the substance into custody.

2 MR. SPRATLIN: Your Honor, permission to
3 approach the witness.

4 THE COURT: Yes, sir.

5 MR. SPRATLIN: Please let the record reflect I'm
6 showing the witness what has previously been marked
7 State's Exhibit Number one for identification
8 purposes.

9 BY MR. SPRATLIN:

10 Q Investigator Mays, do you recognize the item I just
11 handed you?

12 A Yes, sir.

13 Q What is that item?

14 A That is the substance that was seized from inside the
15 driver's seat of the vehicle.

16 Q Okay. How can you tell that that's the same
17 substance that was seized?

18 A The way that I can tell that it's the same substance
19 that was seized is because the drug analysis security
20 envelope that is inside this sealed bag is -- it has my
21 signature, the date on it, and the best kit number that I
22 placed it in.

23 Q Is the substance in that bag in the same condition as
24 it was when you found it?

25 A Not that -- not to my knowledge, no, sir.

1 Q How is it different?

2 A It appears that there's some pieces broken off of it
3 as floating around inside the bag.

4 Q Okay. When you found that substance, what kind of --
5 was it all together?

6 A Yes, sir.

7 Q Okay. Now, when you -- who took possession of the
8 substance that was found in the car?

9 A I did.

10 Q Okay. And where exactly in the car did you find it?

11 A It was in the driver's seat of the vehicle.

12 Q Okay. Was it where the defendant was sitting?

13 A That is correct.

14 Q Okay. When you took possession of it, what did you
15 do to it?

16 A I placed it into this evidence bag that's in the back
17 side of it because we can't just drop the substance itself
18 inside the security envelope. We have to have it in
19 something else for the -- whoever analyzes it.

20 Q Okay. And what did you do after you placed it in
21 that bag?

22 A After I placed it in the bag, I filled out the B
23 form, which is the initial chain of custody, and dropped
24 it in the Sumter County Sheriff's Office drug drop box at
25 the law enforcement center for it to be analyzed.

1 Q Okay. With that bag, is there a -- what are these
2 safety precautions or tamper-resistant precautions that
3 that bag offers?

4 A If -- once it is sealed up top, as you can see this
5 one is green -- once it is sealed, if it is tried -- if
6 someone tries to open it from that seal, it does something
7 to show that it's been tampered with.

8 Q Okay. Were you actually the one who sealed that bag?

9 A Yes, I was.

10 Q Okay. And at any time from the time you took
11 possession of the substance until you sealed that bag, was
12 that substance out of your possession?

13 A No, sir.

14 Q Okay. Now, what did you do with the bag once you
15 sealed it?

16 A Once I sealed the bag, I filled out the -- what we
17 call the B form, which is the initial chain of custody,
18 and the C form which is the substance -- subsequent chain
19 of custody is filled out for anybody else that the
20 substance is passed on to.

21 Q Okay. And what did you do with the bag after doing
22 that?

23 A Placed it in the brown envelope that goes along with
24 the packet and dropped it in the Sheriff's Office drug
25 drop box at law enforcement center to be analyzed.

1 Q Okay. And when you say the drug, I'm sorry, what did
2 you drop it in again?

3 A It's the sheriff's -- it's Sumter County Sheriff's
4 Office drug drop box --

5 Q Okay.

6 A -- at the law enforcement center.

7 Q Okay. Once an item is placed in that box, can it be
8 retrieved?

9 A Yes, sir. The only persons that can retrieve it is
10 whoever handles the evidence for the Sumter County
11 Sheriff's Office.

12 Q Is there any way that you could have retrieved it?

13 A No, sir.

14 Q Is there any way to your knowledge that anyone
15 besides the evidence technician could have retrieved it?

16 A No, sir.

17 Q Are there precautions set up to prevent people from
18 being able to tamper with evidence in that box?

19 A Yes, sir. Once it's dropped, it goes into a room
20 that is -- that only evidence custodians have keys to and
21 it also has an alarm system on that door. It's one door,
22 one way in, one way out.

23 Q As far as where you sealed that bag, does it appear
24 to be in the same condition, in the same shape that it was
25 in when you sealed it?

1 A Yes, sir.

2 Q Okay. Now, the bag -- has the bag been opened
3 subsequently, subsequent to your sealing it?

4 A Yes, sir.

5 Q Okay. But as far as where you sealed it, it still
6 appears to be sealed.

7 A Appears to be still intact, that's correct.

8 Q Okay. All right. Once Mr. Barno was taken into
9 custody, what did you and Investigator Dubose do next?

10 A I did the vehicle inventory sheet and inventoried the
11 vehicle.

12 Q Okay. And when you inventoried the vehicle, what
13 happened then? After you inventoried the vehicle, what
14 happened?

15 A After I inventoried the vehicle, Investigator Dubose
16 had Mr. Barno inside the vehicle, inside of his pick-up
17 truck, and the -- we had to call for a wrecker as well to
18 come pick up the vehicle.

19 Q Okay. Let me go back one second. When you
20 inventoried the vehicle, did you find any other contraband
21 or controlled substances?

22 A No, sir.

23 Q So that -- the rock substance that you found on the
24 driver's seat was the only...

25 A That was -- that was the only contraband inside the

1 vehicle.

2 Q And were you present when a field test was done on
3 that substance?

4 A Yes, sir.

5 Q And what were the indications of that field test?

6 A That field test showed positive for cocaine base.

7 Q After the car was towed, what did you and Mr -- and
8 Investigator Dubose do with the defendant, Reginald Barno?

9 A Transported him to Sumter County or Sumter Lee
10 Regional Detention Center.

11 Q Okay. And when he was at the Sumter Lee Regional
12 Detention Center, did anything else happen?

13 A Yes, sir. During the booking search at the Sumter
14 Lee Regional Detention Center there was a small quantity
15 of marijuana found.

16 Q Were you in the room when that marijuana was found?

17 A Yes, sir.

18 Q What did you observe?

19 A It came out of his right pant pocket and it was --
20 Investigator Dubose had it.

21 Q Okay. Investigator Mays, what would you say is
22 the -- in your expertise as a law enforcement officer,
23 what would you say is the street value of that crack
24 cocaine?

25 A In my experience it averages approximately \$100 per

1 gram that we purchase it off the street. And this here
2 would probably be worth approximately \$40 if we were
3 buying it.

4 Q Okay. Thank you, investigator. That's all the
5 questions I have at this time.

6 CROSS-EXAMINATION

7 BY MR. WILDER:

8 Q So, what is the VIN number on the Nissan truck?

9 A The Nissan truck?

10 Q Or -- wasn't it a truck?

11 A No, sir.

12 Q Black Nissan Sentra.

13 A Sentra is a little vehicle.

14 Q Little vehicle.

15 A Little small car?

16 Q Small car.

17 A Yes, sir.

18 Q What is the VIN number?

19 A I don't have those notes right here in front of me,
20 sir.

21 Q Well, who is that VIN number actually registered to?

22 A Sir, I don't have that in front of me. I think
23 Investigator Dubose may have that in the case file.

24 Q Did you look? Did you look?

25 A Yes, sir, but I don't remember it right off-hand.

1 Q It's not my client; is it?

2 A No, sir.

3 Q Who -- and you didn't want a jury to know who the
4 truck or the car belonged to?

5 A Sir, I think Investigator Dubose has those notes.

6 Q Well, he didn't tell us that yesterday; did he?

7 A No, sir.

8 Q All right. Now, how about the license plate itself,
9 who did that belong to?

10 A I don't have those notes in front of me, sir.

11 Q Well, you didn't check that yourself?

12 A Yes, sir. I think all that's in those -- the case
13 file.

14 Q Well, you said you called it into the dispatcher and
15 it didn't go with this particular automobile; right?

16 A That is correct.

17 Q All right. Tell the jury who they said it went to.

18 A Sir, I don't have that --

19 Q Whose car?

20 A -- I don't have that in front of me.

21 Q You can't remember; can you?

22 A No, sir.

23 Q All right. You need written notes to do that.

24 A No, sir. They print it out from dispatch or we do
25 whenever we get back to the office.

1 Q But you of your own personal memory can't remember
2 what it was, the information that was given to you; can
3 you?

4 A I can remember that it came back to a Volvo.

5 Q But you have to look at something in writing in order
6 to refresh your recollection; don't you?

7 A That would be correct.

8 Q Now, where are your notes from what my client
9 allegedly told you?

10 A Don't have any written notes on that, sir.

11 Q Oh. So you might not remember exactly what he said;
12 right?

13 A No, sir. I don't remember exactly what he said.

14 Q Okay. Now, don't know whose car it is. Don't
15 remember exactly what he said. How long had the little
16 rock been in the seat?

17 A Don't know, sir.

18 Q Could have been there two days; right?

19 A Could have, yes, sir.

20 Q And the purpose of writing all this information on a
21 sealed envelope is so that you can say later for sure when
22 and where that little rock was placed in that envelope;
23 right?

24 A Yes, sir.

25 Q And if I gave you another piece of crack cocaine

1 right now and you looked at it, you wouldn't be able to
2 tell me what the history is on where that little piece had
3 been without some envelope and written note and
4 documentation; right?

5 A That would be correct.

6 Q So we don't know how long it was in the seat of the
7 car, we don't know what the chain of custody was before
8 you saw it.

9 A That would be correct.

10 Q Right? And so we don't know when or where or by whom
11 it was placed there; right?

12 A That would be correct.

13 Q Okay. Well, what you're wanting to say is
14 immediately my client claimed responsibility for it;
15 right?

16 A Yes, sir, he did.

17 Q What you are wanting to say. Now, you agree that
18 this was in his mother's front yard.

19 A That's correct.

20 Q You see his mother in the courtroom?

21 A Yes, sir.

22 Q Okay. Do you see anybody else seated in the
23 courtroom who was there that day?

24 A No, sir, not to my -- not that I recall, no, sir.

25 Q All right. Point out some individuals to you. This

1 lady seated right here in the blue jacket, do you
2 recognize this lady?

3 A Yes, sir. I think I did talk with her, speak with
4 her there.

5 Q So she was there and you know her; right?

6 A I'm pretty sure she was.

7 Q You remember it?

8 A I think I remember speaking to her.

9 Q All right. And this lady right here, that's his
10 mother; right?

11 A That's correct.

12 Q You remember her for sure.

13 A Yes, sir.

14 Q How about this gentleman on the end right here in the
15 red shirt, do you remember seeing him there?

16 A I do believe he was there as well.

17 Q Okay. Now, do you see anybody else in the courtroom
18 who was there?

19 A Sir, there wound up being several people inside that
20 yard while we were there.

21 Q So I take it that as the stop was initially made,
22 blue light was going, some people began to come out, and
23 at different points more and more people were there.

24 A That's correct.

25 Q Right? Okay. And so there would have been some

1 people there when he got out of the car, some people there
2 when you spotted the rock, some people there when he was
3 being Mirandised, some more people there -- being there
4 when he got the car, and just kept adding and adding, more
5 people showing up; right?

6 A Yes, sir.

7 Q All right. So there would have been witnesses there
8 in the yard who saw different parts of what happened;
9 right?

10 A Very well could have been.

11 Q All right. Now, back over to Mr. Barkley.
12 Mr. Barkley works on cars for a living; doesn't he?

13 A From my dealings with him, yes, sir.

14 Q Okay. And so he has an opportunity to do things like
15 fix lug nuts on black Nissan Sentras; doesn't he?

16 A He probably does that.

17 Q Okay. And so you have no way of knowing if my client
18 wasn't talking to him about fixing lug nuts on his black
19 Nissan Sentra?

20 A That would be correct.

21 Q Okay. Now, isn't it true that the family was
22 permitted to get a load of clothes out of this Nissan
23 Sentra?

24 A Yes, sir, that would be correct.

25 Q All right. But Mr. Dubose didn't remember any of

1 that; did he?

2 A Probably not, sir.

3 Q What else was in the car that you don't remember
4 Mr. Dubose talking about?

5 A There were several different -- there were CDs in
6 there, there was a DVD player that also came back that --
7 well, it was turned over to the family.

8 Q Okay.

9 A Prior to it being towed.

10 Q None of it on the inventory; right?

11 A No, sir, because it wasn't -- it wasn't being towed
12 inside the vehicle because it was turned over to them and
13 the vehicle was towed.

14 Q Okay. Who owned the clothes that were in the car?

15 A Sir, I don't know. There were looked -- appeared to
16 be males clothing, so I don't know whose they were.

17 Q All right. And who owned the DVDs that were in the
18 car?

19 A Sir, I had no earthly idea. It wasn't marked on the
20 DVDs or CDs or whatever they were.

21 Q All right. I wonder if you'd do a favor for me,
22 Mr. Mays. Would you look in the back of the seat you're
23 sitting in right now?

24 A In the back of it?

25 Q Yeah. Just turn around and look behind you, down in.

1 the bottom of that seat. See anything?

2 A No, sir.

3 Q Do you know what was there an hour before? .

4 A No, sir, I sure don't.

5 Q If there was a rock there, would you be able to tell
6 me when it was placed there?

7 A No, sir.

8 Q Thank you.

9

REDIRECT EXAMINATION

10 BY MR. SPRATLIN:

11 Q Real briefly, Investigator Mays. Now, when
12 Mr. Wilder asked you about the individual in the courtroom
13 who were at the scene that day, where did those
14 individuals come from?

15 A The only one that I can recall that where they came
16 from was Mr. Barno's mother, and she came up right at
17 towards the end of it. I don't know where she came from,
18 but she was not at the residence at the time. She did
19 come up in a vehicle.

20 Q But when did she come up?

21 A She came up in time to -- it was prior to the tow
22 truck getting there because she was the one that asked
23 about the belongings inside the vehicle, and they were --
24 they were actually -- she was told that she could get them
25 out of the vehicle.

1 Q And she -- she actually mentioned that it was the
2 defendant's belongings. She asked about his belongings;
3 right?

4 A She just asked if she could get the items out of the
5 vehicle.

6 Q Okay. Was this before or after the defendant said,
7 that's my crack cocaine or something to that effect?

8 A That was after.

9 Q Okay. When the defendant stated or stated that it
10 was his when -- in response to the crack cocaine question,
11 were any of the individuals in the courtroom immediately
12 close by?

13 A Not that I'm aware of. My focus at that point was on
14 Mr. Barno because he was the one that I was dealing with
15 at that time.

16 Q And now Mr. Wilder also talked about Investigator
17 Dubose not being aware that I assume Mrs. Barno, his
18 mother, was able to remove the clothing from the vehicle.
19 Where was Investigator Dubose, if you know, when she
20 allowed to remove these clothings?

21 A He was sitting inside the front driver's seat of his
22 vehicle.

23 Q What was he doing?

24 A He was in there talking with Mr. Barno.

25 Q Okay. Were you the only one outside the vehicle at

1 that time?

2 A Actually there was another officer that showed up
3 that was out there.

4 Q Okay. Why was that officer called out?

5 A He wasn't called out. He heard our dispatch trying
6 to make radio contact with us, and we were -- he said that
7 he just stopped by because neither one of us answered.

8 Q Okay. And again, just to clarify everything, when
9 asked whose crack cocaine is it, what did the defendant
10 say?

11 A Mr. Barno claimed possession of that, stated that it
12 was his.

13 Q And now Mr. Wilder -- and you admitted to Mr. Wilder
14 that you cannot remember exactly what was said.

15 A That's correct.

16 Q In your mind is there any chance that you're
17 confusing what the defendant said?

18 A No, sir.

19 Q How certain are you that to the best of your ability
20 Mr. Barno said, it's my crack cocaine?

21 A When Investigator Dubose asked -- after advised of
22 Miranda, Investigator Dubose asked, well, whose crack
23 cocaine is that in the seat. Mr. Barno claimed possession
24 of it.

25 Q Okay. Now, when he made that statement, were you in

1 a position where you could easily write it down?

2 A No, sir. I was--

3 Q Why?

4 A Because I actually had my hands on him because he was
5 in custody.

6 Q Okay. Now, you have been talking a lot about Mr.
7 Barno and the defendant in this case. Do you recognize
8 the individual that you refer to as Mr. Barno in the
9 courtroom today?

10 A Yes, sir.

11 Q Could you please point him out and identify an
12 article of clothing that he is wearing?

13 A Yes, sir. He's sitting right beside Mr. Wilder in a
14 white T-shirt.

15 MR. SPRATLIN: Please let the record reflect the
16 witness has positively identified the defendant in
17 this case.

18 THE COURT: All right.

19 MR. SPRATLIN: Thank you, Mr. Mays. That's all
20 the questions I have.

21 MR. WILDER: No other questions.

22 THE COURT: You can step down.

23 THE WITNESS: Thank you, sir.

24 (Witness left the stand.)

25 THE COURT: Call your next witness.

1 MR. SPRATLIN: State would call Cindy Pierson to
2 the stand.

3 CINDY PIERSON, after being duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SPRATLIN:

7 Q Mrs. Pierson, where are you employed?

8 A Sumter County Sheriff's Office.

9 Q What do you do there?

10 A I'm the evidence technician along with crime scene
11 processing.

12 Q Okay. What area did you use as the evidence
13 technician?

14 A I store all the evidence that's brought into the
15 department. I'm responsible for sending it to the chemist
16 to have it analyzed. After it's analyzed, it comes back
17 to me which I store it until court.

18 Q Okay. Let me ask you a couple of questions about
19 evidence at the Sumter County Sheriff's Office. When an
20 officer seizes a substance, what does he typically do with
21 it?

22 A Once an officer seizes a substance, if -- we try to
23 get them to turn it straight over to the drug chemist. If
24 the chemist is not available at that point, they will drop
25 it in the drug drop box which is located at the law

1 enforcement center. It has a alarm system on the door.

2 There is myself and Investigator Bean that has the
3 key to that area. No one else can enter it without a
4 code. The next -- when I go in the following day, I then
5 retrieve the drugs and I take them back out to the
6 forensic technology building in which there they are
7 entered into the computer and then they are handed over to
8 the drug chemist for analyzation.

9 Q What kind of packaging are these substances typically
10 in?

11 A If it's a best kit, which we call a best kit, is
12 crack cocaine; that type drugs is placed in there.
13 Marijuana is usually placed in a evidence tamper bag.

14 MR. SPRATLIN: Permission to approach the
15 witness, Your Honor?

16 THE COURT: Yes, sir.

17 MR. SPRATLIN: Let the record reflect I'm
18 showing the witness what has been marked State's
19 Exhibit one for identification purposes.

20 BY MR. SPRATLIN:

21 Q Mrs. Pierson, would you please identify the best kit
22 in that packaging?

23 A Yes, sir. This is the best kit that I received on
24 the first, October 1st. What they have is a control
25 number on each pouch and they are placed inside a manila

1 envelope, and that envelope also has a control number
2 which is matched up with this so we know that we have all
3 our information together in the same pouch.

4 The drugs are placed in this tamper-proof bag. Once
5 they are placed in this bag, there's a green strip that
6 goes across the seal. If any way that seal was broken, I
7 will not accept the drugs. I will call the officer in.
8 So I make sure that seal is intact.

9 I never open this bag. I check the paperwork, make
10 sure the proper paperwork is there that needs to be there.
11 I then do my C form in which shows where I received the
12 evidence from and who I turn it over to which would have
13 been the drug chemist.

14 Q Okay. In this case do you remember who you received
15 the drugs from?

16 A These drugs were dropped into the LEC drug drop box.

17 Q Okay. And where did you take them or what did you do
18 next?

19 A Once they were dropped into the drop box, they were
20 dropped on the -- on 9-30-08. And then I received them on
21 10-1 which would have been -- I'm not sure if there was 31
22 days in that month or 30.

23 If it -- if they were dropped on a Friday, I would
24 have picked them up on a following Monday. If they
25 dropped on a Monday, I picked them up on Tuesday. However

1 it falls.

2 I picked them up on the first of October. I then
3 took them out to the forensic technology building. I
4 signed them in and handed them over to -- or excuse me --
5 I dropped them into the chemist drug drop box at the time
6 and then he picks them up from there.

7 Q Okay. Now, just to go over one more time. You
8 mentioned this already. But do you ever handle the
9 substances themselves?

10 A No, I do not.

11 Q Okay.

12 A When I get them, they're sealed. And when they are
13 returned back to me, they are sealed.

14 Q Do you ever open the package for any reason?

15 A No, sir, I do not.

16 Q Thank you. That's all the questions I have for right
17 now.

18 CROSS-EXAMINATION

19 BY MR. WILDER:

20 Q Mrs. Pierson, were the contents of either bag ever
21 delivered to an individual who would check the bag,
22 interior bag for fingerprints?

23 A No, sir, they were not.

24 Q So at least insofar as the marijuana is concerned, no
25 attempt was made to fingerprint the plastic bag that those

1 were found in; was it?

2 A No, sir. The marijuana was not turned directly over
3 to me. That was turned over to the drug chemist.

4 Q But it wound up in your evidence room.

5 A That's correct. After it was analyzed, it was
6 brought back to me.

7 Q All right. So the only place these things have gone
8 as far as you know about is the chemist, not to any
9 fingerprint analysis.

10 A That's correct.

11 Q Okay. And Mr. Hansen is the chemist over here?

12 A Yes, sir, he is.

13 Q All right. So he would have been the one that did
14 both tests?

15 A Yes, sir.

16 Q Okay. Now, insofar as things in the evidence room
17 and all that kind of stuff, I would guess that you would
18 have had an opportunity because of your line of work and
19 the fact that you're the custodian to see lots of little
20 pieces of crack cocaine over the years.

21 A Yes, sir.

22 Q Okay. So there's really no way to tell one piece of
23 crack cocaine from another piece of crack cocaine if it's
24 not in an envelope and labeled; is there?

25 A That's correct.

1 Q Okay. So if it's just loose and if it's on the floor
2 or something, unless there was some chain of custody
3 associated with it, you wouldn't know how long it had been
4 there, where it had been. I mean, that's really the
5 purpose for keeping all the envelopes; isn't it?

6 A That's correct.

7 Q So you can go back and see who had it then and
8 identify which piece of crack cocaine was associated with
9 which individual.

10 A Yes, sir.

11 Q All right. Now, do you see anything in the chair
12 you're sitting in?

13 A Nothing but me.

14 Q Did you look at it before you sat down?

15 A I glanced at it. I didn't examine it, no, sir.

16 Q Okay. If there were a rock-like substance in the
17 back of that chair, would you be able to tell the jury how
18 long it had been there?

19 A No, sir, I -- that's not what I do, but I couldn't
20 tell how long it had been there.

21 Q And if there were, could you tell them who put it
22 there?

23 A No, sir.

24 Q Okay. No other questions.

25 MR. SPRATLIN: Nothing further, Your Honor.

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

2 (Witness left the stand.)

3 MR. SPRATLIN: Your Honor, the State would next
4 call Mitchell Hansen to the stand.

5 THE COURT: All right.

6 MITCHELL HANSEN, after being duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SPRATLIN:

10 Q Mr. Hansen, where are you employed?

11 A Sumter County Sheriff's Department.

12 Q What are your duties there?

13 A I am the drug analysis (sic) for Sumter County
14 Sheriff's Department. I analyze controlled substances.

15 Q Okay. What kind of training have you had with this
16 job?

17 A I have Associates in Science from Florence Darlington
18 Tech, Associates in Arts from Florence Darlington Tech, a
19 Bachelors in Chemistry from Francis Marion University,
20 forensic drug analysis training from state law enforcement
21 or SLED, and basic law enforcement training from South
22 Carolina Criminal Justice Academy.

23 Q Okay. Now, when you get a substance, what kind of
24 tests do you run on it to decide whether or not it's a
25 drug or illegal substance?

1 A We use a presumptive test and a confirmatory test.
2 The presumptive test tells us what form or if it is a drug
3 at all or gives us an idea of what the drug is.

4 Q Uh-huh.

5 A If it's crack cocaine or cocaine or heroin or such so
6 we know which way to go with the compound itself.

7 MR. SPRATLIN: Permission to approach the
8 witness, Your Honor?

9 THE COURT: Permission granted.

10 MR. SPRATLIN: Let the record reflect I'm
11 showing the witness what has been marked for State's
12 Exhibit Number one for identification purposes.

13 BY MR. SPRATLIN:

14 Q Mr. Hansen, do you recognize the item I just handed
15 you?

16 A Yes.

17 Q What is that item?

18 A This is the best kit that I received on 10-1-2008.

19 Q Okay. When you received that best kit, what did you
20 do with it?

21 A First I checked to see if it was concealed by this
22 green strip here. If it had been tampered with, it has
23 markings on it that will stretch. It's a tamper evident
24 bag, has markings all the way around the bag. If anybody
25 tries to cut open or tear, these markings will stretch and

1 indicate that it had been tampered with.

2 Q Okay. And when you received that bag, did it appear
3 that it had been tampered with?

4 A No. It was sealed and intact.

5 Q Okay. Can you -- are you certain of that fact to the
6 best of your ability?

7 A Yes. To the best of my ability I examined the bag.
8 Before opening up, if it had been tampered with, I would
9 then return it back and would -- no analysis would be
10 performed.

11 Q What did you do with the bag next after making sure
12 it had not been tampered with?

13 A After it had not been tampered with, I proceed with
14 the testing by opening the bottom of the bag so the top
15 can show that it was sealed.

16 Q Okay. Why again do you open the bottom of the bag?

17 A So I do not disturb the seal on the top where it was
18 initially sealed.

19 Q Okay. And once you open the bag, what do you do
20 then?

21 A First I weigh the substance, then do a chemical test,
22 and then a confirmatory test.

23 Q Okay. When you weighed that substance, how much did
24 it weigh?

25 A .32 grams.

1 Q Okay. And how do you weigh it?

2 A I use a balance, electronic balance.

3 Q Okay. And what did you do with the substance after
4 you weighed it?

5 A After it was weighed, then the chemical test was done
6 to tell me that it was -- a presumptive test to tell me
7 that it could be cocaine. Also it tells me what form the
8 cocaine is in, whether it's in base form or salt form.

9 Q Okay. And what did the results of that test tell you
10 in regards to that substance?

11 A It told me that the compound was in base form, that
12 it possibly could be cocaine.

13 Q Okay. Now, you're talking about preemptive test. In
14 the best layman terms you can, what exactly is that
15 preemptive (sic) test?

16 A It's a chemical test. We used a spot -- a -- it's
17 what they call a spot test. We use a dish where we put a
18 little piece of the gum substance into the dish and we
19 drop chemicals on it to tell us -- and the color that
20 chemical -- the color that it turns tells us what form,
21 what the substance could be, as -- it's just a presumptive
22 test. It's a color test.

23 Q Okay. And now, once that presumptive test told you
24 that it was -- that it was possible that it was cocaine in
25 base form, what did you do then?

1 A From then we put the -- we took the substance and run
2 it on GC mass speck and -- to confirm exactly what the
3 substance was.

4 Q Okay. How does the mass speck, is that the mass
5 spectrometer?

6 A It's a gas chromatograph mass spectrometer.

7 Q Okay. How does that work?

8 A First it takes the compound. It's injected into the
9 instrument. From there it separates out all compounds.
10 And from there it goes to the mass speck part which then
11 identifies each compound.

12 Q All right. And when you did that on that substance,
13 what result did you find?

14 A It was positive for cocaine. It was positive for
15 benzocaine.

16 Q What does that mean?

17 A That means that the cocaine or crack cocaine was
18 found, was present, it was also -- benzocaine was also
19 there present.

20 Q So the results of the tests confirmed the presumptive
21 test that that was a cocaine base?

22 A Yes.

23 Q Now, can you say that with a scientific -- with a
24 degree of scientific certainty that that was cocaine base?

25 A Yes, sir.

1 Q Okay. And that's the results of your chemical test
2 and the other test that you performed on that substance;
3 correct?

4 A Yes.

5 Q Okay.

6 MR. SPRATLIN: Let me also ask you -- Your
7 Honor, at this time I would tender into evidence
8 State's Exhibit Number one for identification
9 purposes as State's Exhibit Number one.

10 We have established the full chain of custody on
11 it and also established that it is in fact crack
12 cocaine. We ask that it be admitted into evidence at
13 this time.

14 THE COURT: What says the defense?

15 MR. WILDER: Your Honor, we object on the chain
16 of custody.

17 THE COURT: Y'all approach a minute.

18 (Whereupon a bench conference was held.)

19 THE COURT: I will overrule your objection on
20 the chain of custody.

21 (Whereupon, State's Exhibit 1 was admitted into
22 evidence.)

23 MR. SPRATLIN: Your Honor, permission to publish
24 the exhibit to the jury.

25 THE COURT: Permission granted.

1 BY MR. SPRATLIN:

2 Q Real briefly, Mr. Hansen, about this substance that
3 you have. Now, your tests, are they designed to show the
4 purity of the substance?

5 A No, they are not.

6 Q Why is that?

7 A The -- currently we only test for the presence of
8 substance because the law states any amount thereof, so we
9 don't currently test the purity because it would take
10 longer.

11 Q You don't test for the purity because it's
12 unnecessary basically?

13 A Basically.

14 Q All you have to determine is that there is cocaine
15 present?

16 A Correct.

17 MR. SPRATLIN: Permission to approach the
18 witness, Your Honor?

19 THE COURT: Granted.

20 MR. SPRATLIN: Please let the record reflect I'm
21 showing the witness what has been marked State's
22 Exhibit Number two for identification purposes.

23 BY MR. SPRATLIN:

24 Q Mr. Hansen, do you recognize the item I just handed
25 you?

1 A Yes.

2 Q What is that item?

3 A This is an item that I was -- was sent in for drug
4 analysis.

5 Q How did that item come into your possession?

6 A I actually picked it up out the drop box at the --
7 what they call it the chemist drug box that's out at the
8 forensic technology building.

9 Q Okay. You mentioned with the best kit how there was
10 tamper-proof qualities to it. Are there any similar
11 tamper-proof qualities in that bag?

12 A This bag I -- also has the blue lines around it that
13 if you -- if you pull or tug on these bags, they will
14 stretch. And if they stretch, you can see that they were
15 also tampered with.

16 Q And when you received that bag, did it appear that it
17 had been tampered with?

18 A No, it did not appear to be tampered with.

19 Q Had it appeared to been tampered with, what would you
20 have done with it?

21 A I would have sent it back and no analysis would have
22 been performed.

23 Q After determining that it had not been tampered with,
24 what did you do next?

25 A Next the bag was cut from the bottom and the evidence

1 was -- the evidence was taken or the suspected drug was
2 taken out to be analyzed.

3 Q Okay. When you removed that item from the bag, what
4 did you do then?

5 A Once it was removed from the bag, it was weighed and
6 then tested. This was -- happened to be a chemical test
7 and a microscopic test.

8 Q Okay. What kind of chemical test did you do on that?

9 A This was a Duquenois/Levine test -- chemical test.

10 Q What does that mean?

11 A It's a two part chemical test. It detects the
12 presence of THC.

13 Q Okay. And THC, what substance is that typically
14 found in?

15 A Marijuana.

16 Q Okay. What do the results of that test tell you in
17 regards to that substance?

18 A That there was positives, it was positive for THC.

19 Q And did you perform any additional test on that
20 substance?

21 A Microscopic test was also performed.

22 Q Okay. What do the results of that test show?

23 A It was -- the microscopic test we look for features
24 in the plants that only marijuana have, and it was
25 positive for the -- for those features on the plant.

1 Q So to a scientific degree of certainty can you state
2 that that is in fact marijuana?

3 A Yes.

4 MR. SPRATLIN: Your Honor, at this time I would
5 like to enter into evidence what has previously been
6 marked State's Exhibit Number two for identification
7 purposes as in evidence as State's Exhibit Number
8 two.

9 THE COURT: What says the defense?

10 MR. WILDER: Same objection, chain of custody.

11 THE COURT: Is it based on the same thing that
12 you told me at the bench?

13 MR. WILDER: Yes, Your Honor.

14 THE COURT: Okay. Overruled.

15 MR. SPRATLIN: Thank you, Your Honor.

16 (Whereupon, State's Exhibit 2 was admitted into
17 evidence.)

18 MR. SPRATLIN: Your Honor, permission to publish
19 the exhibit to the jury.

20 THE COURT: Permission granted.

21 (Exhibit passed to jury.)

22 BY MR. SPRATLIN:

23 Q Now Mr. Hansen, both of these substances appear to be
24 in vacuum-sealed bags; is that correct?

25 A They are in a heat sealed pouch.

1 Q Okay. How -- is that what happened after you tested
2 them?

3 A Yes.

4 Q Okay. But other than that, are these pretty much in
5 the same condition as when you tested them?

6 A Other than -- after I sealed them?

7 Q Yes.

8 A They are in the same condition after -- since I
9 sealed them.

10 Q Okay. Let me ask you about the crack cocaine again
11 real quick. We call crack cocaine a rock. Is it as hard
12 as a rock?

13 A No, it's not. It's actually a brittle substance that
14 will break apart.

15 Q How brittle is it?

16 A It's brittle enough if you're not careful, you can
17 chase it around when you're trying to cut it.

18 Q Okay. So while we call it a rock, it's not really
19 like stone.

20 A No, it's not.

21 Q It's a lot more brittle.

22 A Correct.

23 Q Okay. Thank you, Mr. Hansen. That's all the
24 questions that I have at this time.

25 MR. WILDER: May it please the Court.

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. WILDER:

4 Q Mr. Hansen, you consider yourself an expert?

5 A As far as drug analysis.

6 Q Okay. So the average person would not be considered
7 to be an expert in your field; would they?

8 A No, they would not.

9 Q In fact, you had to have special training in order to
10 go off and be certified to do what you do to come in here
11 and testify in court; right?

12 A Correct.

13 Q All right. In fact, you have quite a bit of training
14 to get where you are in life; right?

15 A Correct.

16 Q Would you tell the jury a little bit about what
17 training you had to go through.

18 A I had to go through -- first you had to get your
19 chemistry degree, your Bachelors at least, before you can
20 go further in any kind of drug analysis training. From
21 there I had six to eight months training at SLED for drug
22 analysis.

23 There we were trained in every type of drug, whether
24 it was pharmaceutical, the different types of drugs,
25 opiates, from opiates to methamphetamines to cocaine to

1 how to tell the difference, how to analyze them, and what
2 process it uses while analyzing it.

3 Q Okay. And part of this training is so that you don't
4 mistake something like baking soda with crack cocaine.

5 A Correct.

6 Q And what you just told the jury I believe when we --
7 or Mr. Spratlin was asking you questions, said you didn't
8 test for purity when you made this specific test in this
9 case; did you?

10 A No, I did not.

11 Q So we don't know what percentage of whatever is in
12 that bag might be baking soda and what percentage might be
13 crack cocaine.

14 A Correct.

15 Q It could be like a million to one.

16 A It would have to be more than a million to one. My
17 instrument tests down to 50 parts per million, so...

18 Q Fifty parts per million. Okay. What percentage of
19 .33 grams would 50 parts per million be?

20 A I could not tell you. I'd -- I am not sure.

21 Q A little tiny percentage?

22 A It would be -- it would be a small amount.

23 Q Way small. So out of this .33 grams, maybe .003
24 would be crack?

25 A I could not tell you that. We didn't test for that.

1 Q Didn't test for it. Okay. But, the important thing
2 is that the guy on the street would have no way to do that
3 because he wouldn't have access to all the instruments in
4 your lab.

5 A Correct.

6 Q So insofar as if I looked at something that looked
7 like what's in that bag and I were trying to figure out
8 was it baking soda or did it have some crack cocaine in it
9 somewhere, I'd probably have to come to a guy like you to
10 know for sure; wouldn't I?

11 A Yes.

12 Q Okay. So really there's no way for the guy on the
13 street to know for sure; is it?

14 A I would assume not.

15 Q And if somebody like a Mr. Barkley had some, he
16 wouldn't know whether or not it was -- actually had crack
17 in it without doing the test; would he?

18 A To my knowledge, no.

19 Q Now, the purpose of having all that heat sealed stuff
20 and in the bag and labeled and all of that is so you'll
21 know who, where, and when whatever is in that bag was put
22 there; right?

23 A Correct.

24 Q And you'd be able to form a chain of custody and make
25 sure that if it started out in this person's possession on

1 one end, that it's coming out in the courtroom here today
2 virtually unchanged except for the test that you did.

3 A Correct.

4 Q Okay. Now, is it possible that you cracked it when
5 you were doing the test?

6 A It's possible that if -- it could have been broken
7 when I did the test. It could have been broken at any
8 point in time as far as it being handled.

9 Q Okay. If somebody had it and they mashed down on it,
10 probably would crack it; right?

11 A Yes.

12 Q So as far as you know, it was in one piece at the
13 time that it originally went into that envelope.

14 A The -- from I -- I don't know if it was in one piece
15 or not. I wasn't there when they placed it in the
16 envelope.

17 Q Now, to state the obvious, the little piece of stuff
18 is so small, it could fit in anybody's pocket; couldn't
19 it?

20 A Correct.

21 Q And that goes for the marijuana, too. It's just a
22 tiny little bit of something, right, in a small -- very
23 small, small envelope.

24 A Correct.

25 Q Right? And the actual envelope the marijuana is in

1 is not the original container, and you can tell that from
2 the way it's sealed in that package; can't you?

3 A Yes. That is where I repackaged it after testing.

4 Q Okay. So the original envelope is also in the bag.

5 A Correct.

6 Q And you didn't weigh that; did you?

7 A No, I did not.

8 Q Did not weigh the envelope. Now let's talk about the
9 marijuana for a minute. Again, the average guy on the
10 street might get sucked into thinking oregano was
11 marijuana; right?

12 A Correct.

13 Q Have you ever analyzed stuff the police gave you and
14 said, well, this isn't marijuana, this is oregano?

15 A I have analyzed it and have gotten negative for
16 marijuana.

17 Q Okay. Well, what substance would it look most like?

18 A It can -- we get -- it depends. It depends on what
19 they actually used. I have seen probably what I would
20 have thought was grass. I, you know, just normal grass or
21 hay, or sometimes I have seen something like oregano,
22 but--

23 Q Spices off the spice -- spice rack in the grocery
24 store?

25 A It just depends on what somebody might have.

1 Q Okay. All right. So between baking soda on the
2 crack and oregano on the other stuff, it just takes
3 somebody with your expertise and testing to know for sure;
4 right?

5 A Correct.

6 Q Now, to your knowledge was any fingerprint powder
7 ever put on the plastic bag involved in the marijuana?

8 A Not to my knowledge.

9 Q Okay. So you can kind of tell where the chain of
10 custody went just by looking at the envelope, and it never
11 went to somebody who would have examined it for
12 fingerprints.

13 A Not to my knowledge.

14 Q You don't do that.

15 A I do not do that.

16 Q Now, in so far as what actually -- where the little
17 packet of marijuana came from, you aren't there to say
18 which CO found it; are you?

19 A No, I'm not.

20 Q In fact, that is not even noted on the package which
21 correctional officer might have come up with that.

22 A As far as my knowledge, no, it was not.

23 Q All right. So found in pants pocket at the jail, not
24 noted on the envelope who actually found it in a pocket;
25 right?

1 A I'm not sure who found it. I was not there or
2 present at the time it was found.

3 Q Now, did you look in the back of the chair you sat in
4 before you sat in it?

5 A I glanced at it as I sat down.

6 Q What did you see?

7 A I saw a chair.

8 Q See anything else?

9 A I didn't see anything else.

10 Q Thank you.

11 REDIRECT EXAMINATION

12 BY MR. SPRATLIN:

13 Q Real briefly, Mr. Hansen. Mr. Wilder asked you about
14 oregano and baking soda. Can you say to a degree of
15 scientific certainty what substance is in this bag?

16 A That was -- that substance would be crack cocaine.

17 Q And you say to a scientific certainty what substance
18 is in this bag?

19 A That was positive for marijuana.

20 Q Thank you. That's all the questions I have.

21 RE-CROSS-EXAMINATION

22 BY MR. WILDER:

23 Q And if you don't mind, what other substance is mixed
24 in with this crack cocaine?

25 A The other substance that was -- was detected was

1 benzocaine.

2 Q And how much baking soda?

3 A I'm not sure. We did not do -- we did not quantify
4 the drugs.

5 Q And what percentage of this might be some other
6 substance other than marijuana?

7 A We did not quantify that either.

8 Q Thank you.

9 *THE COURT:* You can step down.

10 (Witness left the stand.)

11 *MR. SPRATLIN:* Your Honor, at this time the
12 State would rest.

13 *THE COURT:* Okay. Ladies and gentlemen, we're
14 going to -- I have got to deal with some matters of
15 law, and it's a good time to take a morning break, so
16 I'm going to send you to the jury room. I will get
17 you back out as quick as I can. Remind you, don't
18 discuss this case yet.

19 (Jury left the courtroom at 10:52 am.)

20 *MR. WILDER:* If it please the Court. We'd move
21 for directed verdict of not guilty on the grounds
22 that the State has not proven possession either of
23 the crack or of the marijuana.

24 *THE COURT:* Okay. And I respectfully deny that.
25 I at least think there's the existence of evidence in

1 this record and the jury will give it whatever weight
2 it deems appropriate. Anything else?

3 MR. WILDER: No, Your Honor. I would like a
4 moment to talk with the witnesses, get their names so
5 I can give them to Mr. Spratlin.

6 THE COURT: All right. We will take 15 minutes.
7 (Whereupon a brief recess was had.)

8 MR. SPRATLIN: Your Honor, if we may -- I
9 already talked to Mr. Wilder about this. May Mrs.
10 Pierson and Mr. Hansen be excused?

11 MR. WILDER: No objection. We are ready, Your
12 Honor.

13 THE COURT: All right. Mr. Wilder, can you give
14 me an idea simply about how long you're going to take
15 and how many witnesses so I will know what to tell
16 this jury?

17 MR. WILDER: Your Honor, I have got Martisha
18 Barno, Roslyn Barno, Terrance Barno and possibly
19 Marcus Barno. I don't believe he's here at this
20 time. But those would be our potential witnesses.

21 I have given these names to Mr. Spratlin. He
22 has had an opportunity to run their records. And
23 we'll see how this goes. I have no idea, of course,
24 how long it will take. All of them were out there
25 that day. I guess it will take just as long as

1 Mr. Mays and Mr. Dubose.

2 THE COURT: Is the defendant going to testify?

3 MR. WILDER: Probably not.

4 THE COURT: Have you covered his rights with him
5 about testifying or you want me to do that?

6 MR. WILDER: I do want you to do it at an
7 appropriate time. If you think now is good...

8 THE COURT: Well, and I --

9 MR. WILDER: I have covered--

10 THE COURT: -- since we got the jury out. Mr.
11 Barno, if you would stand up, please sir, and raise
12 your right hand.

13 REGINALD BARNO, after being duly
14 sworn, testified as follows:

15 THE COURT: Thank you. You understand we have
16 reached this point in the trial where you have a
17 right to put up evidence. You don't have to -- you
18 can put your hand down.

19 And my understanding from talking to your
20 attorney that you are going to put up witnesses. You
21 also have a right to testify yourself.

22 Now, you also -- you have a constitutional right
23 not to testify if you want to. And that -- if you
24 decide not to testify, I will instruct the jury that
25 they cannot consider that or hold that against you in

1 any way.

2 But you have a right to talk to your attorney
3 about this decision, but ultimately it is your
4 decision and not his whether you testify or not
5 testify. Do you understand that?

6 *THE DEFENDANT:* Yes, sir.

7 *THE COURT:* If you choose to testify, you will
8 be subject to cross-examination just like any other
9 witness. And if you have a criminal record, if it
10 qualifies, it may be brought out in front of this
11 jury. I don't know.

12 But you need to understand that if you do take
13 the stand, that the State has a right to
14 cross-examine you and impeach you just like they
15 would any other witness. Do you understand?

16 *THE DEFENDANT:* Yes, sir.

17 *THE COURT:* You got any questions you want to
18 ask me concerning your right to testify?

19 *THE DEFENDANT:* No, sir.

20 *THE COURT:* You had an opportunity to discuss
21 that with your lawyer whether you want to testify or
22 not?

23 *THE DEFENDANT:* Yes, sir.

24 *THE COURT:* All right. Thank you, sir. Okay.
25 So we're ready for the jury?

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MR. WILDER: Yes, Your Honor.

THE COURT: State ready?

MR. SPRATLIN: State's ready, Your Honor.

THE COURT: All right. If you will bring us the jury.

(Jury entered the courtroom at 11:20 am.)

THE COURT: Thank you, sir. All right.

Mr. Wilder?

MR. WILDER: If it please the Court. Your Honor, we call to the stand Martisha Barno.

MARTISHA BARNO, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WILDER:

Q Martisha, are you related to Reginald?

A Yes, sir.

Q Okay. And tell the jury what your relationship is.

A I'm his sister.

Q Okay. On September the 30th of '08, last year, where were you that day when you saw Reginald?

A I was in a burgundy Nissan Altima coming out the driveway, trying to come out the driveway.

Q Okay. I'm going to push this up to you a little closer. Now, you were in what?

A A burgundy Nissan Altima trying to come out the

1 driveway.

2 Q Trying to come out the driveway?

3 A Yes, sir.

4 Q What happened when you tried to come out the
5 driveway?

6 A As I was coming out, on my right-hand side Reginald
7 was turning in the yard and I saw the blue pick-up truck
8 behind him with the police lights on, so I backed up to
9 let them in.

10 Q All right. Were you there from the get-go when the
11 police arrived and started to talking to your brother?

12 A Yes, sir.

13 Q And did you get out of your car and come over there
14 and stand around where you could hear everything and see
15 everything?

16 A Yes, sir.

17 Q How close were you to Mr. Dubose here?

18 A I wasn't close to him. I was close to the short one.

19 Q Mr. Mays.

20 A Yes, sir.

21 Q And you were standing -- where in proximity to the
22 car that Reginald was in were you standing?

23 A I was close to the car. I was close that I could
24 have touched the short one.

25 Q Okay. Now, did you see Reginald get out of the car?

1 A Yes, sir.

2 Q And what happened then?

3 A When he got out the car, Officer Dubose approached
4 the car, asked him did he have a license. He told him no.
5 Then that's when he put the handcuffs on him and walked
6 Reginald to the -- he was patting his pockets at the time,
7 and he put him in the passenger's seat of the blue pick-up
8 truck they had in the yard.

9 Q Straight into the pick-up truck?

10 A Yes, sir.

11 Q Did you hear him, either one of these guys advise
12 Reginald of his rights?

13 A No, sir.

14 Q Okay. Never did, did they?

15 A No, sir.

16 Q Not in your presence?

17 A No, sir.

18 Q The whole time.

19 A No, I was standing there the whole time.

20 Q Okay. Now, did Reginald say anything about any piece
21 of crack that was found in the car?

22 A No, sir, because when they put him in the truck, the
23 windows was wind up.

24 Q Okay. Now, did Mr. Mays proceed -- what did you
25 observe Mr. Mays do then?

1 A Dubose, he was in the car with -- was writing
2 something on a notepad he had, and Reginald was talking to
3 him at that time in the truck. The short one, he was
4 searching the car, and he was bending over as he was
5 searching the car.

6 He went in his pocket and he -- like with a seat
7 thing, he was like, look what we got here. And I didn't
8 see crack. All I saw was a clear bag, little bag.

9 Q When Mr. Mays said, look what we got here, did he
10 then go over and ask Mr. Barno anything about look what we
11 got here?

12 A No, sir, because Reginald was asking me -- they
13 called me Poo Poo, and he was like, Poo Poo, what they
14 got, what they got? And I said he said he find some
15 crack.

16 Q He said he found some crack?

17 A Yes, sir.

18 Q And what is he said, who said he?

19 A The short one.

20 Q The short one. Mr. Mays?

21 A Yes, sir.

22 Q Now, was your mother there?

23 A Not at that time. I was on the phone calling her to
24 tell her what happened, tell her she need to get home.

25 Q Okay. All right. Now, this car that Reginald was

1 in, who does it actually belong to?

2 A My brother, Marcus Barno.

3 Q Marcus. Okay. Now, does it have problems with the
4 lugs?

5 A Yes. A week before that the tire popped off when
6 it -- was driving it.

7 Q Okay. Now, also what -- what is the state of the --
8 was the state of the interior of the car? Was it cleaned
9 out?

10 A No.

11 MR. SPRATLIN: Your Honor, I'm going to object
12 to this line of questioning. There has been no
13 foundation laid about the knowledge this witness has
14 about the car.

15 THE COURT: She can testify what her
16 observations were.

17 MR. SPRATLIN: Yes, Your Honor.

18 BY MR. WILDER:

19 Q What were your observations about the inside of that
20 car?

21 A That it was nasty.

22 Q Nasty? How much stuff was piled up in there?

23 A It was sitting for like two years before that, so it
24 was pretty nasty.

25 Q Did you observe any laundry coming out of the car?

1 A Yes, sir.

2 Q Tell the jury about that.

3 A It was a white basket of clothes and CDs in the front
4 seat, and it was a -- a DVD player with the TV hooked on
5 to it. And I asked the officer right here, because it was
6 mine, so I was like, well, can I get that or whatnot? And
7 he let me get it out the car.

8 Q Okay. Did there come a time when Terrance was there
9 also?

10 A Yes, sir.

11 Q When did he arrive?

12 A When we was getting the stuff, he told me to hold on
13 before he could give me the stuff out of the car. So when
14 Terrance pulled up right after that, he jumped out the
15 car, was wondering what was going on, what's going on.

16 And the officer was telling him, wait a minute, wait
17 a minute, but he kept going on about what was going on and
18 he kept walking up to the truck where Reginald was in the
19 truck at, and they keep telling him, back up, and he
20 wasn't listening, so he wanted him to -- he said move --
21 he didn't -- I don't want to say the word, but he told him
22 to move before he lock his black A up.

23 Q Did you look in the chair behind you? Look right at
24 the back of the seat where the metal comes out there.

25 Find anything?

1 A Yes, sir.

2 Q So now --

3 A Yes, sir.

4 Q -- what did you find?

5 A A white piece of rock.

6 Q Do you know how long it's been there?

7 A No, sir.

8 Q Ever seen it before?

9 A No, sir.

10 MR. SPRATLIN: Your Honor, I'm going to object
11 to this.

12 THE COURT: All right. On what grounds?

13 MR. SPRATLIN: Relevance, Your Honor.

14 THE COURT: What?

15 MR. SPRATLIN: Relevance. I don't see how any
16 of this is relevant to the issues involved in this
17 case.

18 THE COURT: Well, I overrule it on the ground of
19 relevance.

20 BY MR. WILDER:

21 Q Answer any questions that Mr. Spratlin might have.

22 A Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. SPRATLIN:

25 Q Ms. Barno?

1 A Yes, sir.

2 Q The defendant Reginald Barno is your brother; isn't
3 he?

4 A Yes, sir.

5 Q Okay. Where do you live?

6 A Off Mooneyham off the Boulevard Road.

7 Q Okay. You said earlier that the Nissan that your
8 brother was driving was -- belonged to your brother.

9 A Yes, sir.

10 Q Marcus --

11 A Yes, sir.

12 Q -- Barno. Okay. Can you explain why the vehicle is
13 registered to a Melody Elaine Brunson?

14 A At that time Marcus was having trouble with the
15 insurance because it says on -- be high in his name, so he
16 put it in her name for low insurance rate.

17 Q Do you know who the tag that was on the vehicle, who
18 that belonged to?

19 A The officer, he said it was -- belonged to a Volvo.

20 Q Okay. But do you know where that tag came from?

21 A No, sir.

22 Q Okay. Now, you stated that you got out the car and
23 approached the officers; correct?

24 A Yes, sir.

25 Q Okay. Now, you also said that you were close enough

1 that you could touch Investigator Dubose.

2 A Not Dubose, the short one.

3 Q Okay. At what point during the interaction were you
4 close enough to Investigator Mays that you could actually
5 make contact with him?

6 A After they put Reginald in the truck.

7 Q So after Mr. Barno had already been placed in the
8 truck you got close enough to Investigator Mays where you
9 could have touched him?

10 A Yeah, because I was standing -- he was standing in
11 between the door and I was standing right there.

12 Q You weren't close enough to Investigator Mays or
13 Investigator Dubose before your brother was put into that
14 truck to touch them; were you?

15 A No, sir.

16 Q Okay. In fact, you weren't close enough to them
17 before that to be able to hear any of what was going on.

18 A I was standing at the back of the tail of the car.

19 Q The back of the tail of which car?

20 A Of the black Nissan.

21 Q How far away were you from Investigator Dubose and
22 Investigator Mays?

23 A Not far. It's a short Nissan Sentra.

24 Q Okay.

25 A The driver door was open. He was standing in front

1 of the driver door and he was standing between the driver.

2 Q Okay. But you just said you were not close enough to
3 touch them until after your brother was placed into the
4 other patrol car, the truck.

5 A Yes, sir.

6 Q Now, you stated that you actually saw Investigator
7 Mays reach into his pocket and take something out.

8 A Yes, sir.

9 Q Okay. Did you tell anyone that beforehand?

10 A Yeah. I was telling Reginald when he was sitting in
11 the truck and I told my mother when she pulled up.

12 Q How were you telling Reginald when he was in the
13 truck?

14 A When he was in the truck, he was talking to me. I
15 didn't get too close to the window of the truck. I was
16 standing back. And he was like, what? And I told him.
17 And I was like, we -- say I just saw him went in his
18 pocket.

19 Q Who else was nearby when you told him that?

20 A It was just -- at that time it was just me, Reginald,
21 and the two officers out there.

22 Q So both law enforcement officers were there when you
23 told him that.

24 A Yes, sir.

25 Q So both law enforcement officers should remember you

1 telling him that.

2 A Yes, sir.

3 Q You never called the police and told them what you're
4 now saying Investigator Mays did; did you?

5 A No, sir.

6 Q Okay. You never told anyone else about that since
7 that date; have you?

8 A No, sir.

9 Q This is the first time you're coming in court today
10 telling us you saw Investigator Mays reach into his
11 pocket, pull out a plastic bag and say, look what we found
12 here.

13 A Yes, sir.

14 Q So your statement is you were observing Investigator
15 Mays at all times during this incident.

16 A Yes, sir.

17 Q Okay. Despite the fact that your brother was in the
18 car talking with Investigator Dubose during a large
19 portion of this incident, your eyes were focused on
20 Investigator Mays.

21 A Yes, sir.

22 Q You love your brother; don't you?

23 A Yes, sir.

24 Q You'd do anything for him; wouldn't you?

25 A I wouldn't lie for him.

1 Q You would do anything for him; wouldn't you?

2 A I wouldn't lie for him.

3 Q Okay. No other questions.

4 REDIRECT EXAMINATION

5 BY MR. WILDER:

6 Q Martisha, were you close enough where you could hear
7 everything that was said between Mr. Dubose and your
8 brother?

9 A At the time when they was arresting him, I heard him
10 talking, but he didn't read no rights. All he was asking
11 him did he have a license.

12 Q Okay. That's all you heard, do you have a driver's
13 license.

14 A Yes, sir.

15 Q But you heard your brother say --

16 A No.

17 Q -- I don't have a license.

18 A Yes, sir.

19 Q And so he told the officer that.

20 A Yes, sir.

21 Q So were you close enough where you could have heard
22 if your brother had said anything else?

23 A No.

24 Q You weren't--

25 A He didn't say anything else after--

1 Q Oh, your brother didn't say anything.

2 A No, sir.

3 Q Were you close enough -- you said you couldn't touch
4 him, but you were right next to the back of the car;
5 right?

6 A Yes, sir.

7 Q Were you close enough where you could hear everything
8 that was said?

9 A Yes, sir.

10 Q All right. And your brother never said anything
11 about owning any crack; did he?

12 A No, sir.

13 Q And all he said was he didn't have a driver's
14 license.

15 A Yes, sir.

16 Q Okay. They put him under arrest. They took him and
17 they put him in the car.

18 A Yes, sir.

19 Q Did they read him his rights?

20 A No, sir.

21 Q Okay.

22 RE-CROSS-EXAMINATION

23 BY MR. SPRATLIN:

24 Q Real briefly again, Ms. Barno. You went over this.
25 You said that you saw Mr -- Investigator Dubose, this

1 gentleman right here, place your brother in handcuffs;
2 correct?

3 A Yes, sir.

4 Q Can you explain why the evidence today has shown that
5 in fact Investigator Tripp Mays who put your brother in
6 handcuffs?

7 A Dubose put Reginald in handcuffs.

8 Q Okay. What color did you say the truck was again?

9 A A blue pick-up truck.

10 Q Okay. You're sure about that?

11 A It could have been blue or black, but it was blue I
12 think.

13 Q All right. And you remember this incident just like
14 it was yesterday?

15 A Yes, sir.

16 Q Okay. What were you -- where were you going when you
17 were heading out of the house?

18 A That day it was my kids' father's birthday, so I was
19 going to get a cake.

20 Q Okay. And you never told anyone since that day that
21 you saw Investigator Mays reach into his pocket and
22 basically according to you plant evidence on your brother?

23 A No, sir.

24 Q Didn't think that was something law enforcement
25 needed to know about?

1 A Oh, basically it would have been my word against his.

2 Q You don't trust law enforcement very much; do you?

3 A No, sir.

4 Q You in fact do not like law enforcement very much; do
5 you?

6 A I wouldn't say that.

7 Q You have had run-ins with law enforcement before;
8 haven't you?

9 A Yes, sir.

10 Q Okay. No further questions at this time.

11 MR. WILDER: No other questions.

12 THE COURT: You can step down.

13 (Witness left the stand.)

14 MR. WILDER: Call Roslyn Barno to the stand.

15 ROSLYN BARNO, after being duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. WILDER:

19 Q Mrs. Barno, you're Reginald's mother?

20 A Yes, sir.

21 Q And September the 30th, '08 did you have occasion to
22 arrive at the house there where the police had Reginald
23 already in custody?

24 A Yes, sir.

25 Q Okay. Now, this car that was there that Reginald

1 apparently was in before you got there, is it owned by
2 Marcus?

3 A Yes.

4 Q And that's another one of your sons; right?

5 A Yes, sir.

6 Q Marcus has had problems with the police; hasn't he?

7 A Yes, he have.

8 Q Okay. Now, was Marcus there that day?

9 A No, sir, he wasn't.

10 Q Okay. Now, how long had that car been around the
11 house or in Marcus -- did Marcus have it to your
12 knowledge?

13 A It was about two years because Marcus was locked down
14 for a bench warrant.

15 Q Okay. And was it clean or was it dirty?

16 A It was dirty.

17 Q Tell the jury -- describe it for them if you can.

18 A It had like trash on the floors in the car. The
19 seats was very nasty. It had clothes in the back seat.
20 It had CDs, and it was a DVD player in the front seat.

21 Q Okay. Did this stuff -- could you tell exactly who
22 it belonged to?

23 A I know the DVD player had belong to my daughter, and
24 the clothes I think it was Reginald.

25 Q Okay. Was there anything else that you could

1 identify in the car that belonged to anybody?

2 A No, sir.

3 Q Okay. Now, when you got there, what was going on?

4 A I got out my truck and I walk up to my daughter, and
5 she was standing -- I asked what was going on. And that
6 when she say -- then I walk up to this officer here and
7 he -- asked him what was going on, and he tell me.

8 And then I walk over here to Mr. Dubose truck where
9 Reginald -- I walk over to the side with Reginald, but
10 they had the windows up. Then I walk around to the side
11 where Mr. Dubose been.

12 Q Did Terrance have an opportunity to show up?

13 A Yes. Terrance was there when I got there. And
14 Terrance and this officer here was having a
15 misunderstanding. Him and Terrance were having a
16 misunderstanding.

17 I think he was telling Terrance to go in the house,
18 and then I would tell Terrance to go -- he said he was
19 going to lock Terrance up. So I told Terrance to go on in
20 the house.

21 Q Okay. All right. Which one was into it with
22 Terrance?

23 A This one right here with the lime green shirt on.

24 Q The lime green?

25 A Right here, yeah, him.

1 Q The one I'm pointing to?

2 A Yes, sir.

3 Q That was the one -- okay.

4 A Yes, him and Terrance.

5 Q All right. Now answer any questions that Mr.

6 Spratlin may have for you.

7 A Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. SPRATLIN:

10 Q Good morning or afternoon, Mrs. Barno. How are you
11 doing today?

12 A I'm doing.

13 Q I know you're probably not in the best of health and
14 I appreciate you being here.

15 A Yes, sir.

16 Q I know it must be troublesome for you with your son
17 being on trial and all. Now, when you arrived, your son
18 was already in the pick-up truck; correct?

19 A Yes, sir.

20 Q Okay. So you did not actually see him being
21 arrested.

22 A No, sir.

23 Q Okay. And now the clothes you're talking about being
24 in the vehicle that you think belonged to Reginald; right?

25 A I guess.

1 Q Okay. Is that because Reginald used that car a lot?

2 A Yes.

3 Q Okay. Those clothes, they were kind of folded up
4 neatly in the car; weren't they?

5 A No. They was in a basket.

6 Q Okay. All right. Now, you said that your other son,
7 Terrance Barno, he arrived at some point.

8 A He was there when I got there. Terrance was already
9 there.

10 Q He was there when you got there. And he had actually
11 got in some kind of confrontation with Investigator Mays.

12 A Yes, sir.

13 Q Okay. Now again, you were not there when your son,
14 Reginald Barno, was being arrested.

15 A No, sir.

16 Q Okay. Now, did your daughter when you arrived tell
17 you that she saw Investigator Mays plant drug evidence on
18 Reginald?

19 A Mr. Mays had -- I was talking to -- I went and talked
20 to Mr. Mays and he was at the passenger's side of the
21 door. He had -- it was some marijuana seeds on the floor.
22 He had showed me that.

23 Then I walk over to my daughter and I asked my
24 daughter, I said, what going on? And she said Mr -- I
25 can't remember your name -- said that he had pull

1 something out his pocket.

2 Q Did you tell anyone about that after your daughter
3 told you that?

4 A I told my husband. I called my husband on the phone
5 and I told him.

6 Q You didn't alert law enforcement or anyone like that?

7 A No, I didn't.

8 Q You felt that your son was being framed for a crime
9 he didn't commit, but you didn't let anybody know that in
10 law enforcement?

11 A I wasn't there. I can't recall what happened because
12 I wasn't there at the time. I just went off what they
13 told me.

14 Q Okay. But you never actually saw any of that.

15 A The only thing I saw when Mr. Mays showed me the
16 marijuana seed on the floor, that's it.

17 Q Okay.

18 MR. SPRATLIN: Beg the Court's indulgence for
19 one second, Your Honor.

20 (Whereupon there was a pause while Mr. Spratlin
21 conferred with officers.)

22 BY MR. SPRATLIN:

23 Q Now, if you were told that these two law enforcement
24 officers had planted evidence on your son, why didn't you
25 call anyone? Why didn't you try to report that?

1 A I don't know. I...

2 Q Okay. No further questions at this time.

3 MR. WILDER: No other questions for Mrs. Barno.

4 THE COURT: All right. Step down. Watch your
5 step, please.

6 (Witness left the stand.)

7 MR. WILDER: Call Terrance Barno to the stand.

8 TERRANCE BARNO, after being duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. WILDER:

12 Q Terrance, what is your relationship to Reginald?

13 A He's my brother.

14 Q All right. I'm going to push this microphone -- you
15 don't need to lean forward. I'm just going to push it
16 toward you a little bit so we all can hear. All right?

17 Now, do you live there at that location where the police
18 were that day?

19 A Yes, sir.

20 Q All right. And did you have occasion to get there
21 after Martisha but before your mother?

22 A Yes, sir.

23 Q Okay. And what was going on when you arrived?

24 A When I pull up in the yard, I had to get my kids out
25 the car. I just picked them up. And Martisha was talking

1 to I think a officer standing beside the car, asked what
2 was going on. And she said Red was getting lock up. I
3 asked her what? And she said -- I think she didn't told
4 me.

5 Q Okay. Now, are you familiar with the car, the Nissan
6 Sentra?

7 A Yes, sir.

8 Q Had you driven it before?

9 A Yes, sir.

10 Q Who did it belong to?

11 A Marcus Barno, my brother.

12 Q Okay. And Marcus has had problems with the police;
13 right?

14 A Yes, sir.

15 Q Now, that was your mother that just testified?

16 A Yes, sir.

17 Q And she's supposed to have an operation to her spine?

18 A Yes, sir.

19 Q When was that supposed to take place?

20 A To my knowledge was today.

21 Q Today. All right. Now, the car, did it need work on
22 the tires?

23 A Yes, sir. The lug nuts was breaking off and the
24 tires was shaking.

25 Q Now, is Barkley somebody that y'all know that works

1 on automobiles?

2 A Yes, sir.

3 Q Okay. Okay. Describe the inside of the car on that
4 day. How was -- how did that look? Describe that to the
5 jury.

6 A When I pull up at the house, I look inside the car.
7 It was a basket of clothes in the back seat and trash used
8 to always be on the floor, so it's like pretty nasty.

9 Q Okay. How long had the car been around your house?

10 A About two years because my brother was locked up and
11 he had want nobody else to mess with his car.

12 Q Did you clean it out?

13 A No, sir.

14 Q Did you know whether it was ever cleaned out?

15 A No, sir.

16 Q Answer any questions that Mr. Spratlin may have for
17 you.

18 A Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. SPRATLIN:

21 Q Mr. Barno, how are you doing today?

22 A I'm fine. How are you? .

23 Q Just to clarify. I mean, you -- you're the
24 defendant's brother?

25 A Yes, sir.

1 Q Okay. All right. And you actually live in the same
2 house as him.

3 A He wasn't staying there.

4 Q Okay. Where was he staying at the time?

5 A I believe with his girlfriend if I'm not mistaken.

6 Q So he was not living at the house?

7 A No, sir.

8 Q Okay. But he was using the car?

9 A Yes, sir.

10 Q And as your mom testified to, he used the car all the
11 time.

12 A Yes, sir.

13 Q So the car wasn't actually staying at your house.

14 A No, sir, it's back and forth.

15 Q Okay. So he was living with his girlfriend?

16 A I believe so.

17 Q Okay. Now, sir, when your brother was being
18 arrested, you became somewhat combative; didn't you?

19 A What you mean?

20 Q You got loud with the law enforcement officers when
21 they were placing your brother under arrest; didn't you?

22 A He was already in truck when I pull up.

23 Q When you pulled up, did you get into an argument with
24 one of the law enforcement officers?

25 A Yes, sir.

1 Q Okay. Did you scream and yell at that law
2 enforcement officer?

3 A No, sir.

4 Q Were you loud towards that officer?

5 A We exchanged words.

6 Q Okay. You testified that Mr. Barkley -- you know
7 that he fixes cars.

8 A Yes, sir.

9 Q You also know that he sells drugs?

10 A No, sir.

11 Q Okay. Can you say for certain that your brother
12 didn't know he sold drugs?

13 A I don't know.

14 Q Okay. Now, the inside of the car, you said it looked
15 kind of nasty; right?

16 A Yes, sir.

17 Q It looked like a lot of trash is on the floor and
18 stuff?

19 A Basically because he used to store trash in it.

20 MR. SPRATLIN: Beg the Court's indulgence.

21 (Pause while Mr. Spratlin conferring with
22 officers.)

23 BY MR. SPRATLIN:

24 Q Now sir, you're in court today when you heard your
25 sister testify that she actually witnessed, and I believe

1 she said she saw Tripp Mays pull something out of his
2 pocket.

3 A Yes, sir.

4 Q Did she tell you that on that date?

5 A Not to my knowledge. Only thing she told me -- she
6 told me after they left. She told my mother.

7 Q Okay. Did you, when you found out about that, go to
8 the South Carolina Law Enforcement Division or any other
9 greater law enforcement authority?

10 A No, sir.

11 Q No more questions at this time.

12 A Yes.

13 MR. WILDER: No other questions.

14 THE COURT: You can step down.

15 THE WITNESS: Yes, sir.

16 (Witness left the stand.)

17 MR. WILDER: That's the defendant's case, Your
18 Honor. We rest.

19 THE COURT: All right. Any reply testimony?

20 MR. WILDER: Your Honor, we would renew our
21 motions for the record.

22 THE COURT: I understand. And--

23 MR. SPRATLIN: Your Honor, the State does intend
24 on calling Investigator Tripp Mays to the stand in
25 reply.

1 THE COURT: Okay.

2 TRIPP MAYS, after being duly
3 reminded of oath, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SPRATLIN:

6 Q Investigator Mays, real briefly, want to address a
7 couple of issues with you. When you were -- when the
8 defendant was taken into custody, who was placing him in
9 handcuffs?

10 A I did.

11 Q Okay. Where was Investigator Dubose when you were
12 placing him in handcuffs?

13 A Investigator Dubose was -- when I was placing Mr.
14 Barno in handcuffs, we were standing in the doorway of the
15 vehicle. Investigator Dubose was standing off just to my
16 left and -- where if anything went bad, he would be able
17 to get to me as well.

18 Q Okay. And were y'all right near the black Nissan
19 automobile?

20 A Yes, sir, on the driver's side door.

21 Q All right. Do you remember Ms. Martisha Barno or the
22 woman who took the stand and identified herself as
23 Martisha Barno being there at that point in time?

24 A Not to my knowledge because, like I say, I was
25 dealing with Mr. Barno at the time.

1 Q Okay. So your attention was focused on him?

2 A That's correct.

3 Q But to your recollection you do not remember her
4 being at the end of the car as she testified to?

5 A No, sir.

6 Q Okay.

7 A I wasn't facing that direction. I was facing the --
8 the front of the vehicle.

9 Q Okay. Now again, when Mr. Barno was taken out of the
10 car, what did you do?

11 A When he was taken out of the car, I placed him in
12 handcuffs detaining him at that point.

13 Q Okay. And at some point did you have a chance to
14 look down in the seat of the car?

15 A Yes, sir.

16 Q What did you see?

17 A The rock-like substance believed to be crack cocaine
18 that has been testified to earlier.

19 Q All right. If you would, could you please stand up
20 and show the jury on your seat where in relation to the
21 car seat the crack cocaine was actually to.

22 A (Complied). It was sitting in the bottom of the seat
23 where you would actually sit in the seat, not the back
24 rest.

25 Q Probably be better if we brought this down here so

1 the whole jury can see it.

2 A It's actually in the bottom portion of the seat where
3 you sit at. It wasn't in the back or anything toward the
4 back of the seat, back rest.

5 Q Now Investigator Mays, you heard Ms. Martisha Barno
6 state that you never actually pulled anything out of the
7 seat. Are you certain that -- that you saw that crack
8 rock sitting in the seat that day?

9 A I'm positive.

10 Q At any time did you pull any kind of contraband out
11 of your pocket?

12 A No, sir.

13 Q What if anything did you pull out of your pocket that
14 day?

15 A Nothing other than my handcuffs out my back right
16 pocket.

17 Q Again, how many years of law enforcement do you have?

18 A Ten years.

19 Q Thank you. That's all the questions I have at this
20 time.

21 CROSS-EXAMINATION

22 BY MR. WILDER:

23 Q Mr. Mays, again, you didn't take a picture of the
24 inside of the car to show the jury; did you?

25 A No, sir.

1 Q Was this a bench seat or a console seat?

2 A You mean like bucket seats, sir?

3 Q Yeah. Bucket seat, console seat, bench seat.

4 A It was bucket seats.

5 Q Bucket seat. And so I assume like most bucket seats,
6 it had a space down in the back that things could drop
7 down into?

8 A I'm not sure exactly what you're talking about as far
9 as the back of the seat, sir.

10 Q Well, the chair you are sitting in has an open back
11 down at the bottom.

12 A That's correct.

13 Q This seat didn't have an open back; did it?

14 A Not as open as this, no, sir.

15 Q Not as open as this. But it could have had a crevice
16 in there; couldn't it?

17 A Correct.

18 Q All right. Well, you didn't take a picture of it for
19 the jury to know what it looked like; did you?

20 A No, sir.

21 Q And in fact, you can't even tell the jury today what
22 color the interior of that car was; can you?

23 A No, sir.

24 Q When Mr. Spratlin trying to get you to describe
25 what -- where it was in relationship to the chair is

1 meaningless. It just doesn't mean anything; does it?

2 A To me it does, yes, sir.

3 Q All right. So at some point you decided that the
4 information about who the car was registered to was
5 important and you gave that to Mr. Spratlin; right?

6 A Investigator Dubose has that information.

7 Q All right. No other questions.

8 REDIRECT EXAMINATION

9 BY MR. SPRATLIN:

10 Q Two quick questions, Investigator Dubose (sic). The
11 crack rock you found in the car, it wasn't in any crevice;
12 was it?

13 A No, sir.

14 Q It was in fact sitting out in the seat.

15 A That's correct.

16 Q Thank you. No further questions.

17 RECROSS-EXAMINATION

18 BY MR. SPRATLIN:

19 Q And it was not enclosed in any kind of wrapper; was
20 it?

21 A No, sir, it was not.

22 Q Just laying there open on the seat.

23 A That's correct.

24 THE COURT: You can step down.

25 THE WITNESS: Thank you, sir.

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(Witness left the stand.)

MR. SPRATLIN: The State has no further evidence in reply, Your Honor.

THE COURT: Okay. Ladies and gentlemen, you have heard all of the evidence you're going to hear in this case. I have got some matters of law I need to deal with. It's 12:00.

So I'm going to let you go to lunch at this time and ask you to come back to the jury room at 1:30 and then at that time you will hear the closing arguments of the attorneys and I will charge you on the law in this case and give you this case to decide.

I remind you, don't discuss this case among yourselves and don't allow anyone to discuss it with you. Have a nice lunch. I will see you at 1:30.

(Jury left the courtroom.)

THE COURT: Get them back just a second.

(Jury entered the courtroom.)

THE COURT: Let me do one more thing. I'm sorry. I forgot something I need to tell y'all. I'm sorry. I forgot something I need y'all to do.

When you do get back from lunch, I need y'all to select a foreperson. I found out juries do a whole lot better when you select your own foreperson than -- because I don't know any of you.

1 So when you get back, if you will just elect the
2 foreman. So -- and it has to be one of the 12. The
3 alternate doesn't qualify.

4 But the foreperson has no greater vote than
5 anyone else. They simply preside over the
6 deliberation and sign the verdict form.

7 So if you will do that when you get back so when
8 I get you back out, you will be able to tell me who
9 the foreperson is. Okay? Thank you.

10 Now you can go to lunch. And when you come
11 back, sitting in the jury room waiting on me, if you
12 will select the foreperson.

13 (Jury left the courtroom at 12:03 pm.)

14 *THE COURT:* Yes, sir.

15 *MR. WILDER:* Close of all the evidence now, we
16 would again renew our motions for directed verdict of
17 not guilty on both charges.

18 *THE COURT:* And I think there's sufficient
19 evidence -- the existence of evidence in this record
20 and the jury will give it whatever weight. I
21 respectfully deny your motion. Anything else?

22 *MR. WILDER:* Not as to motions, but I guess we
23 would respectfully request some charges.

24 *THE COURT:* Okay.

25 *MR. WILDER:* Mere presence being one, actual

1 knowledge regarding the possession, ask for a charge
2 on that. If you would like the request in writing,
3 Your Honor, I could go down and prepare them over
4 lunch and have them after lunch.

5 *THE COURT:* All right. Well...

6 *MR. WILDER:* I think they are pretty standard as
7 to possession cases, Your Honor, so...

8 *THE COURT:* Yeah. And it appears to be pretty
9 standard. I will also put in defendant's failure to
10 testify in my standard -- and circumstantial
11 evidence, criminal intent.

12 What's the State's position on mere presence as
13 well as actual and constructive possession and define
14 possession of cocaine base and possession of
15 marijuana?

16 *MR. SPRATLIN:* Your Honor, as far as mere
17 presence goes, the State would argue that the charge
18 on the statute that the defendant knowingly,
19 intentionally possesses would essentially cover the
20 same basis as mere presence.

21 And so we would -- I mean, we don't necessarily
22 feel like this is necessary in this case since the
23 State has to prove that the defendant knowingly and
24 voluntarily possessed that drug.

25 And with the charge on actual and constructive

1 possession, we feel that the mere presence would be
2 extremely...

3 *THE COURT:* I will look at it.. It doesn't
4 appear to me like mere presence is necessarily
5 appropriate. It's not two co-defendants in this
6 case.

7 And it seems that actual and constructive
8 possession would cover all those bases, but I will
9 review it over lunch and let y'all know, but...

10 *MR. WILDER:* Your Honor, I will prepare a
11 written charge on mere presence and hand it to you
12 for the record and...

13 *THE COURT:* Okay.

14 *MR. WILDER:* I do wish to preserve my exception
15 in the event Your Honor should choose not to charge
16 it, so I want to do everything I need to do to make
17 an appellate court happy.

18 *THE COURT:* Well, the mere presence standard --
19 mere presence at the scene is not sufficient to prove
20 someone guilty of a crime. A defendant's presence
21 where a crime is being committed or mere association
22 with a person who commits a crime does not make a
23 defendant an accomplice or an aider and abettor of
24 the person committing the crime.

25 That's what's the standard -- and then the

1 burden of proof is upon the State. The State has to
2 prove the defendant was... the State proves the
3 defendant was only present at the crime scene and
4 that he had not -- they have not proved beyond a
5 reasonable doubt any other participation in the
6 crime, you must find him not guilty.

7 MR. WILDER: That's what we would request, Your
8 Honor. And we feel it's appropriate in this case
9 because insinuation -- we certainly going to make the
10 argument Marcus Barno could have left it in the car,
11 his brother.

12 And you know, if the jury -- and one other
13 charge I'm going to request Your Honor to make is
14 that they be advised that under Miranda if they find
15 that the defendant either did not make the statement
16 the police say he made or if he was not advised of
17 his Miranda rights when -- at the time he made it,
18 that they're -- that they're entitled to and should
19 disregard the testimony, and we request that that
20 charge be given to the jury and that -- that as part
21 of the--

22 THE COURT: Well, I will -- I will charge them
23 that -- the voluntariness of the statement to the
24 jury. You're right. They have to make that
25 independent.

1 MR. WILDER: Suppose they decide that he was not
2 given his Miranda rights. Then there is no alleged
3 confession. If there's no alleged confession, then
4 he's merely present where they found drugs.

5 So we believe that it all ties together and they
6 should be charged that and would be error to not
7 charge it.

8 THE COURT: Right. Then the question is whether
9 the drugs were in his actual or constructive
10 possession. But that's up to the jury. But I will
11 charge actual and constructive and the voluntariness
12 of his confession. And I will let you know the mere
13 presence...

14 MR. WILDER: All right.

15 THE COURT: If y'all will be back a few minutes
16 early, we'll discuss that.

17 MR. SPRATLIN: Yes, sir. Your Honor, what time
18 did you say?

19 THE COURT: I told the jury to be back at 1:30.
20 If you could be back, you know, a few minutes, 10
21 minutes before that, we may can resolve that if you
22 could.

23 MR. SPRATLIN: Yes, Your Honor.

24 THE COURT: We'll be in recess 1:30.

25 (Court in recess for lunch.)

1 THE COURT: All right. Gentlemen, as far as --
2 y'all got any further requests to charge?

3 MR. WILDER: Your Honor, I would like to hand up
4 five written requests --

5 THE COURT: Okay.

6 MR. WILDER: -- to charge. And I made an extra
7 copy for the Court Reporter so she can mark the
8 copy --

9 THE COURT: Okay.

10 MR. WILDER: -- the one that we're requesting,
11 let me give that copy to Mr. Spratlin also. He can
12 follow along with what I'm asking for.

13 A general charge on mere presence. And I have
14 got a specific charge on knowledge of the nature of
15 the item controlled, a charge on possession, a charge
16 on possession and mere control of the premises or
17 vehicle, and then I have got a request to charge
18 of -- the one that's out of Ralph King Anderson's
19 material, Your Honor, is the detailed charge on the
20 nature of confession and when -- when it's
21 appropriate for a jury to consider that and what
22 elements they should find before they begin to
23 consider the statement.

24 Any way, I'd mark these as -- ask they be marked
25 as an exhibit. And we request that those -- those be

1 charged.

2 *THE COURT:* All right. On the charge that I was
3 going to give on possession on both of these drugs
4 has a paragraph in it -- and I'll be glad to let you
5 look at these charges if you want to -- which covers
6 a lot of -- of your requested charges as far as
7 possession and knowledge of the controlled substance.

8 And it says mere presence at the scene where the
9 drugs were found is not enough to prove possession.
10 Actual knowledge of the presence of the -- either
11 going to be marijuana or cocaine base -- is strong
12 evidence of the defendant's intent to control its
13 disposition or use the defendant's knowledge and
14 possession may be inferred from the circumstances
15 when a circumstance is found -- sorry -- when a
16 substance is found on the property under which the
17 defendant has control.

18 However, this inference is simply an evidentiary
19 fact to be taken into consideration by you along with
20 all the other evidence.

21 *MR. WILDER:* Your Honor, whenever you -- if it's
22 the Court's intention to use the word inferred or
23 inference at any place in your charge, I'm going to
24 respectfully object and ask that you not do that
25 feeling that any time the Court gives the jury an

1 instruction as to inference, that that we would argue
2 is respectfully -- I know it's often done generally
3 done in some cases, but we would respectfully urge
4 the Court to find that that is burden shifting, that
5 that is creating a comment on the facts by the bench
6 which is not permitted under the rules, and that
7 ultimately it's a denial of due process and that it's
8 violative of the constitutional right to a
9 fundamentally fair trial.

10 In that, Your Honor, if they're told that they
11 may infer something by anything, then why is that not
12 a comment on the facts? I mean, the general nature
13 of the violation of the contraband statute, they have
14 got that.

15 Why is it we're telling them that they can find
16 something if they find something else or that -- that
17 we feel -- any time the word inference is used but
18 may be inferred, that phrase, we feel that that's
19 burden shifting and improper comment on the facts and
20 denial of due process.

21 And we would urge the Court not to do that and
22 let you know that it would be our intention to
23 respectfully except should the Court choose to do
24 that.

25 *THE COURT:* And it's under *State v Adams*, 291

1 South Carolina 130, it is exactly where that language
2 comes from. It is in every charge book in every
3 Judge in the State of South Carolina dealing with
4 possession of crack cocaine as well as possession of
5 marijuana.

6 But it -- and I -- it does not comment on the
7 facts in my opinion. It simply it is the law in this
8 State. And it simply says that a knowledge -- and
9 possession may be inferred when the substance is
10 found on the property under the defendant's control.
11 However, this inference is simply an evidentiary fact
12 to be taken by you.

13 I think that is the law. And I'm going to
14 charge it formally, but I note your objection.

15 *MR. WILDER:* Thank you.

16 *THE COURT:* And it appears this mere presence
17 charge in here covers your concern with mere presence
18 and doesn't get into some knowledge of criminal plan.
19 The second paragraph does, which I don't think has
20 anything to do with the facts in this case.

21 But the knowledge that -- possession and
22 knowledge is in my charge any way. And number three
23 of yours is also included in my charge. The -- what
24 about number four?

25 *MR. SPRATLIN:* Your Honor, the State would argue

1 that given the requirement that the defendant have
2 knowledge would knowingly and intentionally possess
3 the controlled substance, the State would feel that
4 that would cover that instruction as well.

5 *THE COURT:* Okay. All right. I will -- let me
6 look at these cases that you cited, State v Hudson
7 and State v Ellis on number four, see if they go
8 beyond what the standard charge is.

9 And as far as the statement of the defendant, I
10 have a pretty exhaustive charge on that, but I'm not
11 going to go as long as Judge Anderson's charge, but I
12 think that it covers at least all of the points that
13 the jury and I can understand on the defendant's
14 statement.

15 *MR. WILDER:* Your Honor, I have such respect for
16 Judge Anderson, I would not deviate from something he
17 said.

18 *THE COURT:* I understand that. And I appreciate
19 that. But I think I will cover all of his points and
20 not -- quite as many words, and the jury will not
21 need a dictionary to determine what he was saying.

22 *MR. WILDER:* I hope you're able to dilucidate as
23 well as he can, Your Honor.

24 *THE COURT:* I'm not sure I can do that, but I
25 will do my best. Anything else before we bring the

1 jury in?

2 MR. SPRATLIN: Nothing from the State.

3 THE COURT: Okay. Then bring us the jury,
4 please sir.

5 MR. WILDER: Did I renew my motions at the end
6 of all the evidence?

7 THE COURT: Yes, you did.

8 MR. WILDER: I intended to do that.

9 THE COURT: This case you cited me doesn't
10 include the same inference language that you objected
11 to, so I understand your objection.

12 (Whereupon, Court's Exhibit No. 1 was marked for
13 identification only.)

14 (Jury entered the courtroom at 1:38 pm.)

15 THE COURT: Thank you, sir. Thank you, ladies
16 and gentlemen. I hope you had a nice lunch. If you
17 will now pay attention to the attorneys, they are
18 going to give you their closing arguments, then I
19 will charge you on the law. Who is going first?

20 MR. WILDER: May it please the Court.

21 THE COURT: Yes, sir.

22 CLOSING STATEMENT

23 MR. WILDER: All right. It's time for me to
24 comment on the facts, which I'm glad to do, and then
25 Mr. Spratlin will have an opportunity to get up here.

1 He will be able to comment on the facts persuasively
2 arguing to you, trying to get you to convict my
3 client.

4 Then the Judge is going to charge you as to the
5 law on the case. And it might surprise you how much
6 law would apply to what seemingly might be a simple
7 situation, but there is a lot of law on it.

8 And the Judge will give you the law and you will
9 take that law as he charges it to you and do your
10 best to find the truth in the situation and come back
11 and render a verdict that speaks the truth.

12 It will be two charges basically you'll be
13 deciding, possession of cocaine base or crack
14 cocaine, guilty or not guilty -- guilty or guilty,
15 either way you look at it, and then possession of
16 marijuana, simple possession of marijuana, guilty or
17 not guilty.

18 That's what you'll be concerned with. And so
19 each of those are separate charges. You have to make
20 your decision about those independently.

21 But the thing is this. The State in both of the
22 charges and all of the situation, they have the
23 burden of proof. They have to prove the elements of
24 the crime beyond a reasonable doubt.

25 And if you say, well, they didn't prove it

1 beyond a reasonable doubt. Now, what is a reasonable
2 doubt? That is a -- the kind of a doubt that you
3 might give a reason for or that will cause a
4 reasonable person to hesitate to act.

5 Okay. Well, what might be a reasonable doubt in
6 this case? Well, apparently the police say, well, he
7 just told us it was his crack cocaine, we had
8 observed all these things leading up to it, and he
9 told us it was his crack cocaine.

10 But you're going to find out -- the Judge is
11 going to charge you that there are safeguards in the
12 law before you may consider what somebody allegedly
13 may have said.

14 The first safeguard you have to consider is was
15 this man read his Miranda rights. Did the police
16 actually tell him he had a right to remain silent.

17 Well, sounds like from the testimony of the two
18 officers, they did. And then after they were doing
19 that conveniently he says, that's my crack cocaine in
20 the front seat. Open and shut kind of case.

21 Friends, then you heard the rest of the story
22 from Martisha. Now, Martisha was there the whole
23 time. Did they remember that Martisha was there the
24 whole time? No.

25 What they said to begin with there was a black

1 female there. We don't even know who she was. We
2 remember her being there kind of. We don't know when
3 she got there. We know that there was a black
4 female.

5 You heard her testimony. They did not recall
6 that. That tells you that their memory is not all
7 that accurate that they would have you believe.

8 Then, ladies and gentlemen, you find out that
9 they didn't take any notes about what was happening
10 as it was happening. Then you find out there is no
11 camera in the car that they were driving, so we don't
12 have a video of this stop.

13 You see on TV all the time the videos of police
14 stops and see what happens in front of the car when
15 they're out there. You have seen those on TV. You
16 know that they have got cameras in a lot of the cars.
17 We don't have that in this case. That's a failure of
18 the proof.

19 And then you find out, well, we never did write
20 down exactly what he said. And you know what? When
21 we sit on this stand, we can't tell you what his
22 exact words were, as though, you know, that really
23 didn't make a big difference, we weren't concerned
24 about that that day.

25 And then you heard Martisha say, well, not only

1 did they not advise him of his rights, he told them
2 he didn't have a driver's license. She's close
3 enough to hear that part of the conversation.

4 She was standing right there at the back of the
5 car where she could hear. And this man never said,
6 that's my crack cocaine. He just didn't say that.

7 These two officers are trying to help their case
8 by saying that today during this trial. That's why
9 we are having a trial.

10 Now, maybe you come from the kind of lifestyle
11 you trust the police. I notice Mr. Spratlin said,
12 you just don't trust the police, do you? No. Why?
13 Because in your experience, have you ever seen police
14 officers not remember everything exactly correct?

15 What about if they made a mistake? Officers sat
16 on this stand. I said, look behind the chair. You
17 see anything there? They looked. Didn't see
18 anything. All along there's a little tiny rock
19 there.

20 Friends, the whole case is about, is this not
21 Marcus Barno's rock? I don't know. But the police
22 have not proved that Reginald Barno knew anything
23 about drugs in the front seat of that car.

24 They have not shown that. They did not show it
25 beyond a reasonable doubt. If I asked you right now

1 to get up and look under your chair because there
2 might be a rock there, and if there was and the
3 police came and charged you with possession of crack
4 cocaine, you would say, I didn't know anything about
5 it.

6 You might not say anything at all. Why?
7 Because you have a right to remain silent. But if
8 they charge you with that, you would know in your
9 mind and in your heart that that is not enough to
10 find a person guilty beyond a reasonable doubt of
11 knowingly, intentionally, willfully possessing crack
12 cocaine.

13 Everything else they've got in their case is
14 innuendo and smoke and mirrors. Smoke and mirrors
15 is -- oh yeah, we know he's done drugs. They would
16 have never told you that he was an auto mechanic and
17 fixed lugs and stuff on cars if I hadn't asked the
18 question.

19 But who has got the burden of proof? The State.
20 And their obligation is to present the truth, the
21 whole truth, and nothing but the truth. The whole
22 truth.

23 Oh, yeah, Barkeley is known to us as a drug
24 dealer. Oh, by the way he's also known to us as an
25 auto mechanic. And they are sitting so far away from

1 this guy that they have to check, double-check and
2 make sure they got the right number on the license
3 plate looking through binoculars, saw some kind of
4 conversation or exchange -- and they know better than
5 to call it a drug transaction because they didn't see
6 enough of it to know what it was.

7 But friends, they want you to believe it was
8 because that's the innuendo and the spin they put on
9 it. But what they didn't tell you was the man was an
10 auto mechanic.

11 So if they didn't tell you the whole truth to
12 begin with, how can you trust the part of it that
13 they were showing you? You can't. And that is a
14 reasonable doubt. That's a doubt for which you can
15 give a reason that would cause a reasonable person to
16 hesitate to act.

17 Mr. Spratlin was trying to get Martisha to say,
18 well, don't you love your brother and you'd lie for
19 him? But you remember this. She said, well, no, I
20 wouldn't lie for him. You'd do anything for him,
21 wouldn't you? Well, I love him.

22 When she asked weren't you -- when he asked,
23 weren't you close enough to touch him? No, I wasn't.
24 I was standing by the rear of the car. But she
25 heard. She was close enough to hear.

1 If she would say anything, if she was going to
2 lie for her brother, she would have gone and said, I
3 was standing right up there really close where I
4 could see and hear everything.

5 Well, if she was close enough to hear but she
6 couldn't touch, that -- therefore you know that she
7 was telling the truth when she testified. If she's
8 worthy of being believed and you believe what she
9 says, then you know this.

10 You know that Reginald was not advised of his
11 rights. You know that he did not say anything about
12 owning any crack cocaine. And ask yourself this.
13 Why would any reasonable person say that it's my
14 crack cocaine? That defies logic.

15 I submit to you that although Martisha is his
16 sister, that's who was there. I can't invent
17 somebody, you know, down the street, bring them in
18 here to get them to say something. Somebody down the
19 street wasn't there. But she was. And that's the
20 way this happened.

21 That is a reason that would cause I think a
22 reasonable person to hesitate to act. Well, the
23 State says he confessed. We think there's a
24 reasonable doubt about it because Martisha said that
25 they did not read him his rights and he didn't say

1 that that's my crack.

2 What's the point when I asked him -- Mr. Hansen
3 all these questions about purity of drugs, what did
4 it look like, doesn't this look like any other rock,
5 doesn't this look like any common thing that might be
6 lying around, baking soda.

7 The reason I asked about all of that kind of
8 stuff is what I'm thinking you might be thinking,
9 too, in your common sense is this. If the stuff
10 looks like baking soda or oregano and it ain't yours
11 and you didn't own it, how do you know what it is?

12 It doesn't have a label on it that says, I'm
13 crack cocaine. It's just a little piece of white
14 stuff that's on the floor along -- the seat with all
15 the other trash in the car that every member of this
16 family says was not kept clean, was nasty, had all
17 kinds of stuff in it including laundry that
18 Mr. Dubose doesn't even remember was in there.

19 And where are the pictures of the inside of the
20 car? Now, it's one thing if a car is swept out every
21 day and just had it taken over here to the carwash
22 and they all got it nice and clean and there's no
23 trash and no nothing in there.

24 It's quite another thing if that car had been
25 sitting around for two years and people were throwing

1 stuff in it and trash in it all the time. Quite
2 another thing.

3 Well, they want to produce an inventory and say,
4 well, there was nothing else I observed in the car
5 worthy of interest. Friends, if there's trash all
6 over the inside of the car and there's a little piece
7 of white stuff down in the corner that nobody
8 notices, even if Reginald is sitting on top of it,
9 that don't mean he knows it's there.

10 See, they want you to infer, which is like
11 leaping to a conclusion. It's like the
12 circumstantial evidence, okay, that's not direct
13 evidence.

14 I didn't actually observe him in possession of
15 it, you know, but I want you to infer that he knew
16 about it because it was right where he was or close
17 to where he was sitting.

18 But once again, in order the law -- I submit in
19 order to prove possession, not only do they have to
20 prove that -- that there was an intention to control
21 it, they have to prove that the defendant knew what
22 the substance was.

23 And I don't believe they have got that proof in
24 this case. No notes of the officer about the exact
25 words that were said, no video, no recording.

1 Did you notice Mr. Mays couldn't even tell you
2 what color the car seat was? Did you notice that? I
3 said, well, didn't you -- you said you ran the tag.
4 It came back to a Volvo. Whose name was the car in?
5 I -- you know, you have to see Mr. Dubose about
6 looking into the notes on that.

7 Listen, they have told you that they didn't
8 remember what Terrance Barno -- whether he was
9 actually there. You remember that testimony? I
10 can't say if anybody else was in the courtroom was
11 there.

12 I went over and started pointing to people, was
13 he there, was he there, was he there? Yeah, well
14 maybe he was there. I don't know.

15 They had such an argument with Terrance Barno
16 that Mr. Mays told him something like I'm going to
17 arrest your blankedy blank blank if you don't do so
18 and so.

19 Martisha was even embarrassed to tell you what
20 the police said. The words that the police used
21 Terrance Barno, Martisha was embarrassed to say it.

22 Now, what does that tell you? That tells you
23 that if all that happened -- which I believe it
24 did -- I believe you can -- you can conclude that
25 from what you heard from the evidence -- that they

1 don't remember.

2 And if they don't remember all that, then that
3 is a reason for you to hesitate to act. There is no
4 testimony in the record about who was using the car
5 earlier that day or who else might have been in
6 there.

7 All I am saying is the police have the burden.
8 They have the burden of proof. And I submit that
9 under the facts that we have here, they have not
10 proved this case beyond a reasonable doubt.

11 They have not proven my client knew about crack
12 cocaine. They have not proven he had any intent to
13 control the crack cocaine. They have not proved that
14 he was in possession of it, either actual possession
15 or constructive possession.

16 Now, about driving the car down the road. That
17 doesn't mean that you are in constructive or actual
18 possession of anything that's in there that you don't
19 know that's in there.

20 You can't knowingly break the law if you don't
21 know what is in your car when you drive it. And I
22 submit the police didn't even know what was in that
23 car when they searched it.

24 But they came in here and they told you that
25 they did not remember or could not tell you what was

1 actually in the car since they didn't write it down
2 on their -- then lo and behold you find out not only
3 was there a bunch of stuff in there, DVD and
4 everything else, but the laundry had been given back
5 to the family and all kind of other stuff was in
6 there.

7 That's not strong enough, ladies and gentlemen,
8 for y'all to conclude beyond a reasonable doubt my
9 client knowingly and intentionally possessed
10 anything, but in specific no -- did not knowingly and
11 intentionally possess a substance which we find out
12 not only is contraband, but you have to be an expert
13 to even know what you got.

14 Now, there's going to be some little packets in
15 the jury room that are sweetener for your coffee.
16 You're going to know that it's sweetener because of a
17 packet and there's a label on it and it tells you
18 what it is and it's even got the percentages of stuff
19 that's in there.

20 That is not what we are talking about. We are
21 talking about something that was out in the open, not
22 in any kind of container. It was just lying around.

23 Now, if you don't -- if you think you know what
24 that is, I submit after you listen to Mr. Hansen's
25 testimony, we all have another thing coming. Speak

1 up.

2 You can't know what it is unless you've got the
3 kind of equipment to analyze the substance, you have
4 the training and the expertise and the background to
5 figure out what the substance is.

6 So has the State proven that it was even
7 possible for a guy like my client, Reginald Barno, to
8 know beyond a reasonable doubt whether that was lying
9 in the seat -- not only didn't they prove he didn't
10 know it was sitting there, but if there was any proof
11 that he knew it was sitting there, have they proved
12 beyond a reasonable doubt that he had knowledge of
13 the fact that it was apparently a small, small
14 percentage of crack cocaine.

15 Now I'm going to move on to the jail situation
16 and the search. All I want to say about that is
17 that, okay, they said what was marijuana came out of
18 the right front pants pocket.

19 Apparently that was a correctional officer who
20 made the find. They are saying it happened in their
21 presence. Well, I would be the first one to tell you
22 that the evidence on that is a lot stronger than the
23 other case and ask that you find my client not
24 guilty. Thank you.

25 MR. SPRATLIN: May it please the Court.

1 THE COURT: Yes, sir.

2 CLOSING STATEMENT

3 MR. SPRATLIN: Ladies and gentlemen of the jury,
4 I want to again take this opportunity to thank you
5 for your service. Know it's -- it's been a long
6 trial. You paid attention all throughout -- every
7 witness that testified, all those witnesses, and
8 that -- came from today. So now the case is in your
9 hands.

10 At the beginning of this case during opening
11 argument, opening statement, Mr. Wilder made a
12 comment about -- wanted y'all to see why are we here.
13 I don't think -- you heard all the evidence that you
14 know why you're here.

15 You are here to make that defendant take
16 responsibility for what he did on December 30th,
17 2008. You're here because the State has presented
18 enough evidence to convince you that this defendant
19 on September 30th, 2008 possessed not only crack
20 cocaine but also marijuana.

21 So now, ladies and gentlemen, I want to go ahead
22 and talk about -- I think it's Martisha Barno was her
23 name, the woman who testified earlier today. Want to
24 go ahead and talk about what she testified to.

25 I want to talk about that because if you believe

1 that Investigator Tripp Mays planted evidence on the
2 defendant Barno, on Reginald Barno, then that's it.
3 If you believe that, that's it. Go back in the jury
4 room, not guilty, two minutes, come back out. If
5 that's what you believe when you are actively seeking
6 the truth in this case, that's it.

7 You shouldn't believe that, though. Never told
8 anybody. If you saw someone plant drugs on your
9 brother, would you tell somebody? The mother never
10 told anybody. His brother never told anybody.

11 Ladies and gentlemen, it's her brother. I'm
12 sympathetic to that. And it's your job and the Judge
13 is going to tell you to determine the credibility of
14 witnesses. You 12 people -- I'm sorry, ma'am.

15 Y'all have been at this case. But 12 of you are
16 going to decide the credibility of each and every
17 person that took the stand. You can believe all of
18 what they said. You can believe part of what they
19 said. You can believe none of what they said.

20 I leave that up to you to decide. I leave that
21 up to you to decide who to believe in this case
22 because I'm confident that when you heard the
23 testimony from Investigator Wayne Dubose,
24 Investigator Tripp Mays, that you knew that they were
25 telling the truth.

1 Did it appear to you that they were trying to
2 hide something? Did it appear to you they were
3 trying to make smoke and mirrors? I don't think so.

4 I submit to you that they were being honest.
5 They were responding to my questions as honestly as
6 they could. They were responding to Mr. Wilder's
7 questions as honestly as they could.

8 And that is something for you to decide. You
9 judge on credibility. But I submit to you that both
10 law enforcement officers -- in fact, there were four
11 law enforcement officers identified, Mrs. Pierson and
12 Mr. Hansen, who is the forensic chemist, forensic
13 technician respectively, are also members of Sumter
14 County Sheriff's Office.

15 All four law enforcement officers who testified
16 were being as honest and truthful with you as they
17 could. And you could tell that by their demeanor on
18 the stand, the way they respond to my questions, the
19 way they respond to Mr. Wilder, they weren't trying
20 to hide anything. They were trying to tell you what
21 happened that day and give you as clear a picture as
22 they could.

23 Now, as Mr. Wilder said -- going to actually
24 have to end up repeating some of what Mr. Wilder
25 said, and I apologize for that, but I want to make

1 sure -- these are points that are important and I
2 want to make sure they are brought up.

3 The State has the burden of proof. This
4 defendant is presumed innocent. When he walks into
5 the courtroom, he was presumed innocent. When we
6 called the trial, read off what he was charged with,
7 he was presumed innocent.

8 You have now heard all the evidence. You have
9 to decide whether the State, as myself and all the
10 witnesses who testified for the State, have convinced
11 you beyond a reasonable doubt that the defendant is
12 guilty.

13 If we have done that, we have overcome that
14 presumption of innocence, and that presumption of
15 innocence no longer exists.

16 But if you believe he's guilty beyond a
17 reasonable doubt, then he's guilty, ladies and
18 gentlemen.

19 Now, we pulled out something that we hear a lot
20 of in our society. We see it on TV just like Law and
21 Order, CSI, those kinds of stuff. You hear about
22 reasonable doubt all the time. Have 12 people on --
23 may all hear different things.

24 The Judge is going to tell you basically what
25 Mr. Wilder said. But also, ladies and gentlemen, I

1 just think of reasonable doubt as the doubt that
2 would give a reasonable juror actively seeking the
3 truth a reason to hesitate to act.

4 That means if you are looking at this case,
5 looking at all the evidence you have heard and you
6 are seeking the truth about what happened on
7 September 30th, 2008, then you have a reason to
8 hesitate -- and you can give a reason for that doubt,
9 a doubt about they -- give a reason for that doubt,
10 that's reasonable doubt.

11 But ladies and gentlemen, there is no reasonable
12 doubt here. And the last thing I want to talk to you
13 about on reasonable doubt is the Judge is also going
14 to tell you is beyond -- our burden of proof is
15 beyond a reasonable doubt. It's not beyond all
16 doubt.

17 We don't have to prove the case beyond all
18 doubt, only beyond a reasonable doubt. There is
19 always that -- can't assign a reason to in the back
20 of your head, says, well, maybe he didn't. But you
21 can't find a reason to it, it's not reasonable doubt.
22 And that's all we have to prove today, ladies and
23 gentlemen.

24 It's a heavy burden. I'm not going to lie to
25 you. We have to stack those bricks and keep stacking

1 to prove reasonable doubt. Stuff that you can't even
2 see -- pretty much.

3 But it's always a chance. There is always that
4 all doubt level that we don't have to quite rise to.
5 It just has to be beyond a reasonable doubt.

6 And the Judge is going to tell you in criminal
7 cases intent is an element of every case. We have to
8 prove the defendant intentionally possessed crack
9 cocaine and marijuana, and we have to prove that the
10 crack cocaine and marijuana, that he intentionally
11 possessed it and that he knew it was crack cocaine
12 and marijuana when he possessed it.

13 Now, we can't take a scan of the defendant's
14 brain and point out this part of the brain right here
15 is intent. We can't do that. So rather what you're
16 charged with doing is looking at the circumstances
17 about the case, looking at the case, and basically
18 extracting from the defendant's actions and the
19 circumstances surrounding the incident whether or not
20 the defendant had that required intent.

21 And I submit to you in this case you can find
22 that he had that requirement. I'm going to talk to
23 you a little later on about the statement and go into
24 what you have to find to give the statement the
25 weight that it deserves.

1 But when Investigator Wayne Dubose said, whose
2 crack cocaine is that, the defendant responded it was
3 his. Mr. Wilder is right. They didn't break it
4 down. They didn't have a notepad right then taking
5 notes.

6 Why not? They were arresting him. They were
7 putting him under arrest. They were in the process
8 of arresting him at that time. They weren't sitting
9 in an interview room back at the police station with
10 all the time in the world to pull out this -- pull
11 out recorders, pull out videotapes. No, they were
12 making the arrest at the scene.

13 They were trying to do it and protect themselves
14 and everyone else that was there. But they didn't
15 write down exactly what he said. But both of them
16 testified about the substance of the statement.

17 Both of them testified that he was read his
18 Miranda rights before he made that statement. Both
19 of them said that. Independently both of them took
20 that stand and said he was read his Miranda rights.

21 Both of them said he was not promised anything
22 before he made that statement. Both of them said he
23 was not threatened in any way before he made that
24 statement. No one said, admit to this crack or we're
25 going to beat you, or something to that effect. No

1 one threatened him in any way.

2 He voluntarily and willfully said, that's my
3 crack. And now he's here today saying, no, it's not.
4 We have all said something that we wish we could take
5 back. We have all said -- but most of us know once
6 we say something, we can't take it back.

7 And that is the situation here, ladies and
8 gentlemen. Don't allow him to take it back. He said
9 it. He accepted responsibility for those drugs. He
10 did that.

11 And ladies and gentlemen, you should find that
12 the statement was voluntary because he was read his
13 Miranda rights, he didn't have the slightest hope or
14 benefit or the remotest fear of injury when he made
15 that statement. That was -- under the law makes that
16 a voluntary statement.

17 Now again, I will talk briefly about how they
18 weren't able to write down exactly what he said, how
19 they weren't able to tape it, how they weren't able
20 to audiotape it.

21 And Mr. Wilder talks a lot about that.
22 Mr. Wilder talks a lot about what we didn't have.
23 But I want you to remember something. What we didn't
24 have doesn't take away from what we did have.

25 If what we did have is enough to prove to you

1 beyond a reasonable doubt that this defendant
2 possessed crack cocaine and marijuana on
3 September 30th, 2008, then that's enough.

4 If you can be satisfied with evidence that you
5 have heard I presented, that's enough. And let me
6 talk to you about the evidence that you have heard.
7 You have heard that the officers staking out a known
8 drug dealer's house -- that's Mr. Barkley's house --
9 who walked up to the defendant's car when he pulled
10 up into his driveway, and either -- and you heard
11 from the officers there was a man -- they are not
12 sure whether the defendant gave Mr. Barkley
13 something, Mr. Barkley gave the defendant something,
14 we are not sure.

15 But you heard that he went to the house of a
16 known drug dealer. Now, Mr. Wilder makes a big deal
17 about, well, he took cars, too.

18 Ladies and gentlemen, had the defendant popped
19 the hood and Mr. Barkley started working underneath
20 the hood or jacked up the car, started working on the
21 tires, that would have some weight, but that's not
22 what happened.

23 No one was fixing a car that day. No one was
24 out there working on a car. I submit to you that
25 there was another reason the defendant was at that

1 house unrelated to automotive repair.

2 Ladies and gentlemen, after Mr. Barno left the
3 room, the officers -- improper tag. There was
4 nothing -- about them following the Volvo. The tag
5 came back to a Volvo and the defendant was driving a
6 Nissan.

7 They stopped him, they discovered that he did
8 not have a driver's license. They were putting him
9 under arrest driving without a license. It was only
10 at that point in time, Your Honor, ladies and
11 gentlemen, when he was pulled out of the car and
12 being put under arrest for driving without a license
13 that Investigator Mays saw the drugs, pointed out to
14 Dubose, who then asked whose crack cocaine is that
15 and the defendant said.

16 Now, I want you to remember when Investigator
17 Mays talked to you about where he found it.
18 Mr. Wilder talked about how this could have been
19 sitting in the car for weeks, days. However long we
20 don't know.

21 But ladies and gentlemen, this wasn't stuck in
22 the crevice of the car. This was sitting on the seat
23 right under where the defendant was seated. This
24 wasn't -- hadn't fallen beside the car. They didn't
25 have to pluck everything out and get everything they

1 had in the car.

2 No, they didn't. It was sitting right where the
3 defendant was sitting moments before. And there is
4 something else that I kind of found interesting. I
5 want y'all to think about.

6 Investigator Mays said that when he saw this
7 rock the first time, it was all together. Now it's
8 gotten broken up in evidence. We are not sure
9 whether that happened before or after Mitchell Hansen
10 tested it. We don't know.

11 But that's one of the things about rock.
12 Looks -- this is a pretty big crack rock. It's
13 fragile. You can crush it up with your fingers as
14 Mr. Wilder demonstrated. You can crush it, it will
15 break.

16 The defendant had been sitting on this for days
17 or weeks, would it still be whole when Investigator
18 Mays found it? You can't sit on this and expect it
19 not to break. You can't. It wouldn't be whole,
20 ladies and gentlemen, it just -- it wouldn't. It
21 would be in a bunch of little pieces.

22 You heard the scientist, the chemist from the
23 Sheriff's Office testify that this stuff is pretty
24 brittle. We call it a rock, but it's nowhere near as
25 hard as a rock. We call it a rock because its

1 texture. It's not because it's a solid.

2 I submit to you, ladies and gentlemen, that had
3 this rock been -- had this piece of crack cocaine
4 been in that car for days or weeks underneath the
5 defendant's behind as he was sitting in that car,
6 Investigator Mays never would have found it whole.

7 Now ladies and gentlemen, talking about the
8 marijuana real quickly. You heard Investigator
9 Dubose and Investigator Mays tell you that after they
10 placed the defendant under arrest he was transported
11 to Sumter Lee Regional Detention Center which is
12 standard.

13 They then took him to the booking area which is
14 a fancy way of saying the admissions area. That one
15 of the things he did before he got booked into the
16 jail was -- excuse me -- was he was thoroughly
17 searched.

18 And you heard both of them state that in their
19 presence a corrections officer pulled this marijuana
20 out of his pocket and that Investigator Dubose took
21 possession of this marijuana.

22 He took possession of this marijuana, sealed it
23 up in this evidence bag. It was given to the chemist
24 for testing and in fact it was what -- this is what
25 Investigator Dubose assumed it was, marijuana.

1 It came out of his pants, ladies and gentlemen.
2 Don't get much more straight-forward than that.

3 Ladies and gentlemen, the last thing I really
4 want to talk to you about today is the roles of
5 attorneys. Now, if this case -- down to who is the
6 better attorney, myself or Mr. Wilder, Mr. Wilder is
7 going to win hands down.

8 As he told you in his opening, experience --
9 he's got 30 years experience. But one thing that he
10 doesn't -- one thing that doesn't seem in case,
11 whether you have an attorney for 30 years or one with
12 three are the facts of this case.

13 Now, Mr. Wilder stated earlier that the State
14 was putting up smoke and mirrors to try to falsely
15 convince you that this man is guilty.

16 I submit to you that the reverse is true, ladies
17 and gentlemen. That all the things that Mr. Wilder
18 is talking about are done in an attempt to draw your
19 attention away from what's really important,
20 determining what happened on September 30th, 2008.

21 Because I submit to you that when you do that,
22 when you focus your attention as a reasonable juror
23 on determining the truth about what happened on
24 September 30th, 2008, you can come to no other
25 conclusion than that that defendant intentionally

1 possessed crack cocaine and marijuana.

2 And that's why, ladies and gentlemen, when you
3 receive that verdict form, I ask you to find him
4 guilty of both offenses and hold him accountable for
5 what he did. Thank you.

6 JURY CHARGE

7 *THE COURT:* Okay, ladies and gentlemen. Now
8 that you have heard all of the evidence in this case
9 as well as the arguments of the attorneys, I'm going
10 to explain to you the law that applies in this case.

11 Under our Constitution and code of laws, only
12 the jury can make a determination of what the facts
13 are in a case. I am not permitted to indicate to you
14 how I might feel about the facts.

15 So if I have said anything or done anything in
16 this trial that you think that I have an opinion
17 about the facts, you're to disregard that because you
18 and only you can determine what the true facts are in
19 this case.

20 And just as the law makes you the sole judges of
21 the evidence and the facts of this case, it makes me
22 the sole judge of the law in this case.

23 So if you have an opinion as to what you think
24 the law is, what you think the law ought to be, and
25 that differs from what I now tell you the law is --

1 and under your oath you're to disregard your opinion
2 and accept and apply the law exactly as I give it to
3 you.

4 The fact that this defendant was arrested,
5 charged and indicted in this case is not evidence in
6 this case and cannot be considered by you as evidence
7 in this case of innocence or guilt. Nor does it
8 create any presumption or inference of guilt.

9 The indictment is simply a formal written
10 instrument which contains the charge or charges that
11 brings this case to court. It serves as the formal
12 document by which this case is processed through the
13 court system.

14 To this indictment the defendant has pled not
15 guilty. And that plea casts the burden of proof upon
16 the State of South Carolina to prove him guilty
17 beyond a reasonable doubt.

18 A person charged with a crime in a criminal
19 court in South Carolina is never required to prove
20 himself or herself innocent. And I instruct you and
21 emphasize to you the fact that the defendant did not
22 testify is not a factor to be considered by you in
23 any way in your deliberation and in your
24 consideration of the question of guilt or innocence
25 of the defendant.

1 It must not be considered by you in any manner
2 whatsoever. A defendant has a constitutional right
3 to remain silent, and the assertion of this right
4 must not be considered by you in your deliberation.

5 I repeat. Under your oath you're to draw no
6 conclusions whatsoever from the fact that the
7 defendant did not testify.

8 This fact, the fact the defendant did not
9 testify should not even be discussed or brought up in
10 the jury room.

11 It is an important rule of law in this country
12 that a defendant in a criminal trial will always be
13 presumed innocent of the crime for which he's
14 indicted unless and until his guilt has been proven
15 by evidence that satisfies you of that guilt beyond a
16 reasonable doubt.

17 Now, the presumption of innocence is not a mere
18 legal theory. It is not just a legal phrase. It is
19 a substantial constitutional right to which every
20 defendant is entitled.

21 This presumption of innocence accompanies the
22 defendant from the time he is charged and throughout
23 the trial until you reach a verdict of guilt based
24 upon the evidence that satisfies you of that guilt
25 beyond a reasonable doubt.

1 Now, a reasonable doubt is a doubt which makes
2 an honest, sincere, conscientious juror in search of
3 the truth to hesitate to act.

4 Proof beyond a reasonable doubt must therefore
5 be proof of such a convincing character that a
6 reasonable person would not hesitate to rely and act
7 upon it in the most important of his or her own
8 affairs.

9 Proof beyond a reasonable doubt can also be
10 described as proof that leaves you firmly convinced
11 of the defendant's guilt.

12 There are very few things in this world that we
13 know with absolute certainty. And in a criminal
14 case, the law does not require proof that overcomes
15 every possible doubt.

16 If based upon your consideration of the evidence
17 you are firmly convinced that the defendant is guilty
18 of the crime charged, you must find him guilty.

19 If on the other hand there is a real possibility
20 that he is not guilty, you must give him the benefit
21 of that doubt and find him not guilty.

22 In determining the facts -- what the facts are
23 in this case, you must necessarily pass upon the
24 credibility which simply means the believability of
25 the witnesses and give the weight and value to their

1 testimony that you deem appropriate.

2 You alone must decide the force and effect of
3 the truth of that testimony. In making these
4 decisions, there are many things that you may
5 consider and take in consideration such as the
6 appearance and the manner of the witness on the
7 stand, sometimes referred to as the demeanor of the
8 witness.

9 Was the witness forthright or hesitant. Was the
10 witness's testimony consistent or did it contain
11 discrepancies. What was the ability of the witness
12 to know the facts about which he or she testified.

13 Did the witness have cause or reason to be
14 biased and prejudiced in favor of their testimony.
15 Was the witness -- was the testimony of a witness
16 corroborated and made stronger by other testimony or
17 evidence or was it made weaker or impeached by such
18 other testimony and evidence.

19 As jurors you have a right to believe a small
20 portion of the witness's testimony and disregard the
21 larger or vice versa. You may believe all of a
22 witness's testimony or none of it. You may believe
23 the testimony of a single witness against that of
24 many or the other way around.

25 Now, there are two types of evidence which

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generally are presented during a trial, direct and circumstantial evidence.

Direct evidence is testimony of a person who asserts or claims to have actual knowledge of a fact such as an eye witness.

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

The law makes absolutely no distinction between the weight given to -- or the value to direct evidence over circumstantial evidence.

I will give you a example. We have been in this courtroom, and I haven't been paying attention to the windows at all. But when I came in from lunch, the sidewalk was dry.

We go out at 5:00, if it's soaking wet, then I can assume that sometime this afternoon while we're in this courtroom, it must have rained. I didn't see it rain. If I'd have seen it rain, that's direct evidence.

But the circumstances indicate that while we were in here trying this case it rained because when I went to go out this afternoon, it's water everywhere, it's mud puddles, then that is circumstantial evidence.

1 And as I told you, the law makes no distinction
2 between the weight you give to direct evidence or
3 circumstantial evidence.

4 Now, criminal intent is a necessary element of
5 each crime that must be proven by the State beyond a
6 reasonable doubt. Criminal intent is always a matter
7 that must be determined by the jury from the
8 circumstances surrounding the situation.

9 There is no way to prove intent to a
10 mathematical certainty. There is no way to prove --
11 there is no way medical science can dissect a
12 person's brain to determine what he or she had in
13 mind, so the law states criminal intent may be
14 inferred from the circumstances shown to have existed
15 both before and after the fact.

16 This is how you, the jury, make the
17 determination of whether or not the element --
18 elements, requiring intent was present.

19 Criminal intent is a state of mind that operates
20 jointly with an act or omission in the commission of
21 a crime. Criminal intent is a mental state of
22 conscious wrongdoing.

23 So it is up to you, the jury, to determine what
24 the defendant intended to do based on the
25 circumstances shown to have existed. I tell you that

1 the State must prove criminal intent beyond a
2 reasonable doubt just as the State must prove every
3 element beyond a reasonable doubt.

4 Now, a statement was alleged to have been made
5 by the defendant and has been admitted into evidence
6 in this case. While the Court has determined that
7 the statement is admissible, I instruct you that you
8 make the ultimate decision of whether or not the
9 defendant made the statement.

10 If the defendant did make the statement, you
11 must determine whether the statement was made by the
12 defendant voluntarily and of his own free will.

13 This means that the statement was not caused by
14 pressure, force, fear, threats, coercion or
15 intimidation or by hope or promise of leniency or a
16 reward of any kind.

17 In determining whether the statement was
18 voluntary -- voluntarily given, you should consider
19 both the characteristics of the defendant and the
20 details of the questioning.

21 Some of the factors you must consider are the
22 age of the defendant, the defendant's education or
23 lack of education, the defendant's mental ability or
24 capacity, the defendant's IQ or intelligence, the
25 defendant's background and environment, the place and

1 length of the detention, the nature of the
2 questioning, the advice or lack thereof to the
3 defendant of his or her constitutional rights,
4 including but not limited to the right to remain
5 silent, that any statement could be used against him
6 in a court of law, the right to have a lawyer present
7 and that if he could not afford a lawyer, that a
8 lawyer would be appointed to represent him without
9 any costs, and he could stop making a statement at
10 any time.

11 You must carefully consider all of the
12 circumstances surrounding before you give any weight
13 to the alleged statement.

14 The State has the burden of proving beyond a
15 reasonable doubt that the alleged statement was
16 voluntary. If you determine it was, you may give the
17 statement any further consideration that you deem
18 proper.

19 You must decide what weight, if any, you should
20 give to the alleged statement. If you determine that
21 the alleged statement was not free and voluntarily
22 given by the defendant, you should not consider this
23 statement at all.

24 Now, the defendant is charged with possession of
25 crack cocaine or cocaine base. When I talk about

1 crack cocaine or cocaine base, I'm talking about the
2 same substance.

3 The defendant (sic) must prove beyond a
4 reasonable doubt that the defendant was knowingly and
5 intelligently possessed crack cocaine.

6 Knowingly means with knowledge, consciously and
7 not accidentally. Intelligently means willful,
8 intending the result which actually occurred, not
9 accidentally or involuntarily.

10 Intent may be shown by acts and conducts of the
11 defendant and other circumstances from which you may
12 naturally and reasonably infer intent.

13 To prove possession, the State must prove beyond
14 a reasonable doubt that the defendant had both the
15 power and the intent to control the disposition or
16 use of the crack cocaine.

17 Possession may be either actual or constructive.
18 Actual possession means that the crack cocaine was in
19 the actual physical custody of the defendant.

20 Constructive possession means that the defendant
21 had dominion and control or the right to exercise
22 dominion and control or control over the crack
23 cocaine itself or the property on which the crack
24 cocaine was found.

25 Mere presence at the scene where the drugs were

1 found is not enough to prove possession. Actual
2 knowledge of the presence of the crack cocaine is
3 strong evidence of the defendant's intent to control
4 its disposition or use.

5 The defendant's knowledge and possession may be
6 inferred when a circumstance -- I mean, sorry -- when
7 a substance is found on the property under the
8 defendant's control.

9 However, this inference is simply an evidentiary
10 fact to be taken into consideration by you along with
11 the other evidence in this case and to give the
12 weight you decide it should have.

13 Two or more people may have joint possession of
14 a drug.

15 Now, the defendant's also charged with
16 possession of marijuana. And the State must prove
17 beyond a reasonable doubt that the defendant
18 knowingly and intentionally possessed marijuana.

19 And as I explained to you earlier, knowingly
20 means with knowledge, and consciousness -- means with
21 knowledge consciously and not by accident.

22 Intent means willful, intending the results
23 which actually occurred, not accidentally or
24 involuntarily. Intent may be shown by acts or
25 conducts of the defendant or other circumstances

1 which you may naturally and reasonably infer intent.

2 And as I explained to you before, to prove
3 possession, the State must prove beyond a reasonable
4 doubt that the defendant had both the power and the
5 intent to control the disposition or use of the
6 marijuana.

7 Possession may be the actual or constructive --
8 and I explained to you what actual possession was
9 just a second ago and what constructive possession
10 was.

11 And it applies in both drugs. The definition of
12 actual and constructive possession doesn't change
13 just simply because the alleged drug change.

14 And the mere presence at the scene where the
15 drugs were found is not enough to prove possession.
16 Actual knowledge of the presence of the marijuana is
17 strong evidence that the defendant's intent to
18 control the disposition or use.

19 Now, ladies and gentlemen, you are not partisans
20 or advocates for the State of South Carolina or this
21 defendant. You're not here to serve as jurors to
22 reward your friends or to punish your enemies.
23 Clearly that system of justice would not be
24 tolerated.

25 You have been selected by both the State and

1 this defendant to be fair and impartial jurors. It
2 is your duty then by your joint deliberations to
3 determine the truth in this case giving to this
4 defendant the benefit of every reasonable doubt on
5 each and every issue.

6 Then to the facts which you determine to be true
7 you're to take and apply the law which I have now
8 given to you and reach a verdict that speaks the
9 truth.

10 When you have accomplished these
11 responsibilities, you will have satisfied your oath
12 as jurors and discharged your duty to this court.

13 Now, I have had my Law Clerk draw up a possible
14 verdict form for you to consider. The form simply
15 consists of a caption of this case at the top, which
16 is the State of South Carolina versus Reginald Barno,
17 and then the indictment number, which is simply the
18 tracking number of this case.

19 The possible verdicts in this case are, on count
20 one, which is possession of cocaine base, we the jury
21 find the defendant guilty of possession of cocaine
22 base. And if that's your verdict, you would sign it
23 as foreperson.

24 Number two of the second possible verdict is we
25 the jury find the defendant not guilty of possession

1 of cocaine base. And if that's your unanimous
2 verdict, which means both -- all of the verdicts in
3 this case must be unanimous, all 12 of you must agree
4 on this verdict. If that's the verdict of all 12 of
5 you, then you would sign it in that spot.

6 The second count is possession of marijuana. We
7 the jury find the defendant guilty of possession of
8 marijuana or we the jury find the defendant not
9 guilty of possession of marijuana.

10 The verdict as I said must be unanimous. And
11 only when all 12 of you agree are you authorized to
12 sign whatever appropriate space for the verdict form
13 that is in fact your verdict.

14 The order that I put this on the form you should
15 make no inference from whatsoever. We just had to
16 put it in some order.

17 So when you are deliberating this case, all 12
18 of you must be present in the courtroom. So if one
19 of you need to be excused and leave the room, then
20 you must stop your deliberations and wait for that
21 person to return and then when they return you can
22 finish your deliberation.

23 When you have reached a verdict, sign this
24 verdict form, you will knock on the door and inform
25 the bailiff that you reached a verdict, and we'll

1 bring you back out and receive this verdict.

2 Now, I am going to send you to the jury room for
3 just a minute. I have got to confer with these
4 attorneys, see if I have left anything out. If I
5 have left anything out of my charge, I will bring you
6 back out and charge you further.

7 If I have covered everything, then I will send
8 this verdict form in along with the evidence in this
9 case. And when you get this verdict form and the
10 evidence, that will be your indication to begin your
11 deliberation.

12 And when you have reached a verdict, you will
13 simply knock on the door and if I need to bring you
14 back out, I will. Once you get the verdict form, you
15 can start.

16 Madam alternate, everybody looks like they are
17 healthy and going to make it, so I need you to stay
18 with me in the courtroom. But if y'all will go to
19 the jury room, I will either send the evidence in or
20 I will bring you back out.

21 (Jury left the courtroom at 2:35 pm.)

22 *THE COURT:* All right. Are there any exceptions
23 or deletions on behalf of the State?

24 *MR. SPRATLIN:* None, Your Honor.

25 *THE COURT:* On behalf of the defense?

1 MR. WILDER: Your Honor, first for the record we
2 would respectfully except in that the Court did not
3 follow our specific requests to charge.

4 Secondly, Your Honor, we would respectfully
5 except I believe -- and I -- my hearing isn't as good
6 as it used to be. But I believe that the Court, when
7 you were charging right after the cocaine and when
8 you refer to cocaine and cocaine base is the same
9 thing, right after that there was a sentence that
10 should have started I think the State must prove.

11 But I believe Your Honor misspoke and said the
12 defendant must prove, if my hearing didn't deceive
13 me. So I respectfully except in that I believe Your
14 Honor misspoke.

15 I know you didn't -- if that's what I heard if I
16 heard correctly -- I don't think you intended to say
17 that, but I -- I believe -- I will rely on the Court
18 Reporter on her transcript to determine whether I am
19 hearing wrong or right.

20 But if you did say, the defendant must prove, I
21 think that was an error and should be corrected.

22 The third exception, Your Honor, would be
23 inference. You did use the word. I think it was in
24 the context of something to be inferred from control
25 of the premises on which the drugs were found.

1 So I respectfully except to that as being burden
2 shifting for those reasons. I told you before the
3 break.

4 Your Honor, mere presence -- I know you did
5 mention mere presence, but I respectfully except that
6 it wasn't in the form I requested charged.

7 And then lastly, Your Honor, I respectfully
8 except in that the testimony in this case was as to
9 the elements of Miranda were articulated from memory
10 by the officer.

11 It was never actually read off a card and it was
12 never put into evidence as in a form. Sometimes they
13 have a form everybody signs it, and so the elements
14 are all spelled out in writing.

15 I would respectfully except as to the part of
16 the charge, it first of all didn't follow Mr -- or
17 Judge Anderson's loquacious and -- articulation of
18 that area of the area of juris prudence.

19 However, Your Honor, since the five elements I
20 don't believe of marijuana -- I mean -- Miranda,
21 excuse me -- five elements of Miranda weren't covered
22 in your charge if I'm not mistaken, the jury has
23 never been told exactly what Miranda consists of,
24 exact language it has to be given.

25 And I respectfully except Your Honor's charge,

1 and that whatever was given I don't believe actually
2 put them on notice of specifically what defendant
3 would have had to have been told and then instructed
4 them that if the defendant was not specifically told
5 that and they found that he understood it and then
6 freely and voluntarily waived those specific rights
7 and they should have been told they shouldn't
8 consider the statement.

9 So with great respect for Your Honor, I do
10 except to the charge on that basis as well. Thank
11 you.

12 *THE COURT:* All right. I'm going to start with
13 Miranda, the last one first because I don't know
14 whether I misspoke and said the -- I may get the
15 Court Reporter to check for me. If I need to go back
16 and clear that up, I will.

17 My charge -- my understanding it covers all the
18 points of Miranda because I charged them the
19 defendant -- that they must advise or lack thereof of
20 the defendant of his constitutional rights including
21 but not limited to the right to remain silent, and
22 any statement could be used against him in a court of
23 law, the right to have an attorney present, that if
24 he could not afford a lawyer, a lawyer would be
25 appointed to represent him without any costs, and

1 that he could stop making his statement at any time.

2 And that I said they must carefully consider all
3 the surrounding circumstances before giving any
4 weight to the statement, and that the statement is
5 only proof -- the State has the burden of proving
6 that a statement was allegedly voluntarily given
7 beyond a reasonable doubt.

8 And I said, if you determine it was, you may
9 give the statement or -- any further consideration
10 that you deem proper. You must decide what weight,
11 if any, statement should be given.

12 If you determine that the alleged statement is
13 not the free and voluntary statement of the
14 defendant, you should not consider it at all.

15 That is the charge straight out of our book.
16 It's been approved by the Supreme Court. And I think
17 it covers all of the points of Miranda and the
18 voluntariness of the statement.

19 And I think I covered mere presence adequately
20 in my charges that in with possession -- and as far
21 as the inference is concerned, I think that's the law
22 in this state.

23 It's the State v Adams -- also the cases that
24 you handed up, State v Hudson, and those said the
25 exact same thing.

1 So the only question I have is whether I
2 misspoke and said the defendant instead of the State.
3 Can you find that, Kathy?

4 (Court conferring with Court Reporter regarding
5 reviewing the jury charge on realtime screen.)

6 *THE COURT:* You were right. I need to bring
7 them back in and correct it. I propose to bring them
8 back in and say that I misspoke.

9 Instead of reading the whole charge, I said the
10 defendant must prove beyond a reasonable doubt and
11 that I was in error and the defendant doesn't have to
12 prove anything, the State has the burden to prove
13 that beyond a reasonable doubt.

14 Will that correct it or you want me to read the
15 whole charge?

16 *MR. WILDER:* I think as to that part it will
17 suffice, Your Honor. You know, respectfully I would
18 say -- I understand your rulings. Not trying to
19 belabor.

20 *THE COURT:* I understand.

21 *MR. WILDER:* Want the record to make note.
22 Thank you.

23 *THE COURT:* And I appreciate you paying
24 attention and catching that. I apologize. Look like
25 I could read.

1 (Jury entered the courtroom at 2:43 pm.)

2 THE COURT: Ladies and gentlemen, I apologize
3 for bringing you back out, but I did make a mistake
4 on the charge to y'all.

5 When I was describing to y'all the offense of
6 possession of crack cocaine and I referred to crack
7 cocaine or cocaine base meant the same thing, I said
8 the defendant must prove.

9 And I don't know if any of you caught that, but
10 the State must prove. The defendant does not have to
11 prove anything. The State must prove beyond a
12 reasonable doubt that the defendant knowingly
13 possessed cocaine base or crack cocaine.

14 And so I don't know whether any of you caught
15 that, but I misstated that. Tell you the defendant
16 doesn't have to prove anything. The State has the
17 burden of proof.

18 I think that corrects every issue. I will
19 now -- you can return to your jury room. I will send
20 the evidence in, the verdict form in, and you can
21 begin your deliberations. Just knock on the door
22 when y'all have reached a verdict.

23 (Jury left the courtroom at 2:45 pm.)

24 THE COURT: Y'all want to look at this verdict
25 form before we send it back?

1 MR. SPRATLIN: I would, Your Honor.

2 MR. WILDER: No objection to the form, Your
3 Honor.

4 MR. SPRATLIN: No objection from the State
5 either, Your Honor.

6 THE COURT: Any -- it's only two pieces of
7 evidence? Drugs is all?

8 MR. SPRATLIN: I believe so.

9 THE COURT: Okay. You can tell them they can
10 begin their deliberation.

11 MR. WILDER: And Your Honor, we have no
12 additional exceptions or any exceptions to that last
13 correction.

14 THE COURT: Okay. Thank you.

15 (Alternate juror excused.)

16 THE COURT: All right. We will stand at ease in
17 this case until we get a verdict.

18 MR. SPRATLIN: Thank you, Your Honor.

19 (Jury began deliberations at 2:46 pm.)

20 (Whereupon a recess was had.)

21 THE COURT: Gentlemen, I have got a question
22 from the jury. Did the defendant have to know that
23 the drugs were in the car to be guilty. What do you
24 mean by possession? Okay.

25 MR. WILDER: I think that's an excellent

1 question, Your Honor, and the answer is yes.

2 *THE COURT:* Well, I don't know that I -- my
3 proposal I guess is just re-charge them on the
4 definition of possession.

5 *MR. SPRATLIN:* That's what the State would ask,
6 Your Honor.

7 *THE COURT:* I don't know that I can do anything
8 else. Okay. So if you will get them back out, we
9 will deal with it.

10 (Jury entered the courtroom at 4:39 pm.)

11 *THE COURT:* Thank you. Mr. Foreman, I received
12 a note from you and the note says, did the defendant
13 have to know that the drugs were in the car to be
14 guilty. What do you mean by possession?

15 I can re-charge you on the law of possession. I
16 assume that's what you're asking for. So I will
17 re-charge you as I did the first time.

18 The -- in the charge on possession of cocaine
19 base or crack cocaine and the charge on possession of
20 marijuana is basically the same evidence, it's just a
21 different drug.

22 So I will read to you on crack cocaine and
23 cocaine base. The defendant is charged with
24 possession of cocaine base or crack cocaine.

25 The State must prove beyond a reasonable doubt

1 that the defendant knowingly or intelligently
2 possessed crack cocaine.

3 Knowingly means with the knowledge -- with
4 knowledge, consciously, not accidentally.
5 Intentional means willfully, intending the result
6 which actually occurred, not accidentally or
7 involuntarily.

8 Intent may be shown by acts and conduct of the
9 defendant or other circumstances for which you may
10 naturally and reasonably infer intent.

11 To prove possession, the State must prove beyond
12 a reasonable doubt that the defendant had both the
13 power and the intent to control the disposition or
14 use of the crack cocaine.

15 Possession may be either actual or constructive.
16 Actual possession means that the crack cocaine was in
17 the actual physical custody of the defendant.
18 Constructive possession means that the defendant had
19 the dominion and control or the right to exercise
20 dominion or control over either the crack cocaine
21 itself or the property on which the crack cocaine was
22 found.

23 Mere presence at the scene where the drugs were
24 found is not enough to prove possession. Actual
25 knowledge of the presence of the crack cocaine is

1 strong evidence of the defendant's intent to control
2 its disposition or use.

3 The defendant's knowledge and possession may be
4 inferred when a substance is found on the property
5 under the defendant's control.

6 However, this inference is simply an evidentiary
7 fact to be taken into consideration by you along with
8 the other evidence in this case and to be given
9 whatever weight you decide it should have. And as I
10 told you, two or more persons may have joint
11 possession of a drug.

12 Now, he's also charged with possession of
13 marijuana, and it is the exact same definition. You
14 just substitute marijuana in place where crack
15 cocaine would be.

16 Do you want me to read y'all that again as far
17 as marijuana is concerned? Well, does that answer
18 your question?

19 *FOREMAN:* (Nodded.)

20 *THE COURT:* All right. If you will return to
21 your jury room and let us know either you have
22 another question or a verdict.

23 (Jury left the courtroom at 4:43 pm.)

24 *THE COURT:* Any exceptions or deletions on
25 behalf of the State?

1 MR. SPRATLIN: No.

2 THE COURT: Defense?

3 MR. WILDER: Yes, Your Honor. We respectfully
4 except again to the language regarding the inference.

5 THE COURT: I understand.

6 MR. WILDER: And Your Honor, as to mere presence
7 again and the other elements of possession that we
8 specifically requested in writing and would
9 respectfully except in that the Court did not use the
10 language that we requested.

11 THE COURT: All right. And your exception is so
12 noted, but I charged them exactly the same thing that
13 I charged them before and I don't think I can add to
14 it or take away from a charge in midstream.

15 But I -- I understand your concern, but I think
16 I covered the law on mere presence and I think that
17 the inference is in fact the law in this state and
18 that -- based on the case law.

19 But this time I -- I didn't misstate anything,
20 let it rest. And Madam Court Reporter, if you will
21 mark this, and we will wait to hear something else
22 from the jury.

23 (Whereupon a recess in this case was had.)

24 THE COURT: My understanding we have a verdict,
25 gentlemen. All right. If you will get the jury.

1 (Jury entered the courtroom at 4:59 pm.)

2 VERDICT

3 THE COURT: Mr. Foreman, have you reached a
4 verdict?

5 FOREMAN: Yes, sir, we have.

6 THE COURT: Is it a unanimous verdict?

7 FOREMAN: Yes, sir.

8 THE COURT: All right. If you will pass it up,
9 please sir.

10 (Bailiff approached the foreman, then approached
11 the Court.)

12 THE COURT: All right, sir. You may publish the
13 verdict.

14 BAILIFF: For the State of South Carolina,
15 County of Sumter, in the Court of General Sessions,
16 docket number 2009-43-GS-009, State of South Carolina
17 versus Reginald Barno, defendant.

18 As to count one, we the jury find the defendant
19 guilty of possession of cocaine base.

20 As to count two, possession of marijuana, we the
21 jury find the defendant guilty of possession of
22 marijuana.

23 Mr. Foreperson, Edgar Tabon, if you will, please
24 sign this verdict form for me, please sir.

25 (Pause.)

1 *BAILIFF:* Ladies and gentlemen, if this is your
2 verdict, please say so by raising your right hand.
3 Thank you.

4 *THE COURT:* Okay. Anything from the State
5 before I release the jury?

6 *MR. SPRATLIN:* Nothing from the State, Your
7 Honor.

8 *THE COURT:* From the defense?

9 *MR. WILDER:* Move that the jury be polled, Your
10 Honor.

11 *THE COURT:* Wait a minute, now. All right. You
12 got him to sign this form?

13 *BAILIFF:* Verdict form?

14 *THE COURT:* Yeah.

15 *BAILIFF:* Yes, sir.

16 *THE COURT:* He already signed it in one place.
17 You had him sign it in the wrong place.

18 *BAILIFF:* Oh, I'm sorry, Judge. I thought that
19 was for the...

20 *THE COURT:* All right. This needs to -- strike
21 through that.

22 *BAILIFF:* Yes, sir.

23 *THE COURT:* All right. If you will poll the
24 jury, please.

25 *BAILIFF:* Yes, sir.

1 THE COURT: You did it right the first time.
2 All right. Now, if you will poll the jury.

3 BAILIFF: Ladies and gentlemen, when your name
4 is called, please stand and answer my question,
5 please. Juror number 63, Timothy Hodge. Is this
6 your verdict and still your verdict?

7 JUROR: Yes, sir.

8 BAILIFF: Thank you. You may be seated.
9 Charles Jacobs, is this your verdict and still your
10 verdict?

11 JUROR: Yes, sir.

12 BAILIFF: Thank you, sir. Juror number 146,
13 Ellen Warburton, is this your verdict and still your
14 verdict?

15 JUROR: Yes, sir.

16 BAILIFF: Thank you ma'am. Juror number 107,
17 George Nelson, is this your verdict and still your
18 verdict?

19 JUROR: Yes, sir.

20 BAILIFF: Thank you. Number 42, Hammie English,
21 is this your verdict and still your verdict?

22 JUROR: Yes.

23 BAILIFF: Thank you. Juror number 135, Andrea
24 Strachan, is this your verdict and still your
25 verdict?

1 *JUROR:* Yes.

2 *BAILIFF:* Thank you. Juror number 105, Robert
3 Nagy, is this your verdict and still your verdict?

4 *JUROR:* Yes, sir.

5 *BAILIFF:* Thank you. Juror number 138, Edgar
6 Tabon, is this your verdict and still your verdict?

7 *JUROR:* Yes, sir.

8 *BAILIFF:* Thank you. Juror number 18, Nancy
9 Brewer, is this your verdict and still your verdict?

10 *JUROR:* Yes, sir.

11 *BAILIFF:* Thank you. Juror number 16, Sharelle
12 Bradley, is this your verdict and still your verdict?

13 *JUROR:* Yes, sir.

14 *BAILIFF:* Thank you. Juror number 123, Angela
15 Brunson, is this your verdict and still your verdict?

16 *JUROR:* Yes, sir.

17 *BAILIFF:* Thank you. Juror number 112, Edward
18 Pate, is this your verdict and still your verdict?

19 *JUROR:* Yes, sir.

20 *BAILIFF:* Thank you. Your Honor, the jury has
21 been polled and the verdict stands.

22 *THE COURT:* Okay. Ladies and gentlemen, I want
23 to thank you for serving in this case. And I have
24 been telling you the last two days you couldn't talk
25 about it with anybody. Now you can talk about it

1 with anybody you want to.

2 You can go home and tell your family what you
3 have been doing if you want to. And if you don't
4 want to talk about it, simply tell them you don't
5 want to talk about it. You don't have to. You are
6 free to talk about this case if you want to.

7 My understanding is that you have got to call
8 back after 6:00 tonight to see what -- we need you
9 tomorrow or not.

10 THE CLERK: Report back here at 9:30 in the
11 morning.

12 THE COURT: All right.

13 THE CLERK: Sorry.

14 THE COURT: All right. So I guess I get to see
15 y'all back at 9:30 in the morning. You have a good
16 evening. Thank you.

17 (Jury left the courtroom at 5:05 p.m.)

18 MR. SPRATLIN: Your Honor, this is his
19 paperwork. The State is also going to have several
20 copies of certified copies of convictions. I believe
21 Mr. Wilder...

22 THE COURT: Okay.

23 SENTENCING

24 MR. SPRATLIN: Your Honor, if I may, I'm handing
25 up plea paperwork that shows the defendant was

1 convicted of possession of cocaine base back on
2 11-7-2006. Forgery, no dollar amount also on
3 11-7-2006. Failure to stop for blue light on
4 November 10th, 2004.

5 Grand larceny value over \$5000 back on
6 November 7th, 2006. Burglary in the second degree
7 violent, sentenced back on January 7th, 2003..

8 Possession of marijuana, that would make this
9 his third or subsequent drug offense, Your Honor.
10 This conviction is from January 12th, 2005. A
11 driving under suspension from that same date. And
12 financial transaction card fraud value over \$500,
13 that being on November 10th, 2004.

14 Your Honor, in addition to those charges I
15 believe he also has two magistrate level simple
16 assault and battery convictions, a possession of a
17 stolen vehicle charge from 2001. And that is the
18 defendant's record, Your Honor. If I may...

19 *THE COURT:* Tell me about his prior drug
20 offenses.

21 *MR. SPRATLIN:* This would be his third, Your
22 Honor. I handed you up at least two prior
23 convictions. In 2001, Your Honor, he was charged
24 with -- and convicted of simple assault and battery,
25 also in 2001 burglary. It's not--

1 *THE COURT:* I don't care about anything but drug
2 offenses at this point. I understand the rest, but
3 give me his drug offenses again.

4 *MR. SPRATLIN:* Your Honor, the first drug
5 offense comes from April 13th, 2003, he was convicted
6 of possession of less than an ounce of marijuana.

7 The second drug offense, Your Honor, comes from
8 2004, November of 2004 to be particular, where he was
9 convicted of possession of less than 1 gram of
10 cocaine base which I did hand up a certified copy of
11 that conviction.

12 That does make this his third drug offense, Your
13 Honor.

14 *THE COURT:* Okay.

15 *MR. SPRATLIN:* And those are his two prior drug
16 convictions.

17 *THE COURT:* All right. Mr. Wilder, do you
18 refute that this would be his third offense?

19 *MR. WILDER:* Your Honor, we would wish to object
20 to enhancement in that under State versus Gentry the
21 subsequent convictions were not alleged on the face
22 of the indictment.

23 *THE COURT:* Okay. My understanding ruling --
24 this is not jurisdictional. It simply goes to
25 sentencing and not jurisdiction of the Court unlike

1 the second offense that was on the face of the
2 indictment.

3 Marijuana was on the face of the indictment
4 because that's jurisdictional issue, but the cocaine
5 wasn't. So I think -- it's my understanding it's
6 properly enhanced and that Gentry doesn't -- only
7 goes to jurisdictional issues.

8 But having said that, you don't take issue -- I
9 mean, challenge these records as far as it's in fact
10 his prior record and he does in fact have two prior
11 drug convictions?

12 *MR. WILDER:* Your Honor, my client -- we could
13 ask him if that's his record, but I have no
14 independent information one way or the other.

15 *THE COURT:* All right. Is that -- the record
16 that the Solicitor just gave me, Mr. Barno, is that
17 in fact your record?

18 *THE DEFENDANT:* Not that I know of, no, sir.
19 Some of them charges I don't even know of.

20 *THE COURT:* Okay. Well, I have certified copies
21 that have been handed up that are signed. The
22 possession of cocaine base is a certified -- you were
23 represented by Mr. Finney at that time.

24 And the possession of marijuana was signed by
25 Judge Thomas W Cooper on January the 12th, 2005.

1 So I have certified records reflecting the same
2 social security number, the same date of birth. And
3 anything you would like to tell me, either side,
4 before I pass sentence?

5 *MR. WILDER:* Your Honor, as to other sentencing,
6 his mother is having an operation to her spine.
7 Supposed to have it today. She loves him very much
8 and would like to have him home. And he does have
9 family support. You met some of the family members
10 that he has here in Sumter.

11 What I want to say about the nature of that
12 possession, Your Honor, is that -- very small amount,
13 no particular quantity. I have never seen a smaller
14 amount of marijuana prosecuted.

15 I guess that's about equivalent to what you
16 would roll up in a half a joint or something, but
17 it's a very small amount of marijuana. And Your
18 Honor, my client says he didn't -- didn't have
19 possession of the cocaine.

20 *THE COURT:* All right, sir. All right.
21 Sentence of the Court on count one, possession of
22 cocaine base, the Sentence of the Court is the
23 defendant is committed the State Department of
24 Corrections for a term of eight years.

25 On count two he's sentenced to one year to run

1 concurrent with count one.

2 MR. SPRATLIN: Thank you, Your Honor.

3 THE COURT: All right. We'll be in recess until
4 9:30 in the morning.

5 (Whereupon court was in recess for day.)

6 ***** June 10, 2009 *****

7 MR. WILDER: Continuation of the record of the
8 case we tried yesterday, State versus Reginald Barno,
9 2009-GS-43-009.

10 Your Honor, at this time we would make a motion
11 for a judgment NOV and a motion for a new trial and
12 also a motion for reconsideration of the Court's
13 previous rulings.

14 Your Honor, we have filed a written motion which
15 has been served on Mr. Spratlin, copy was given to
16 the Court, detailing seven different grounds for our
17 motion.

18 Your Honor, the -- several of them were just
19 renew the basic motions raised during the trial. But
20 Your Honor, we'd also point out that specifically as
21 to the Miranda rights charge that -- that we
22 requested a charge contemporaneously with the Court
23 overruling my objection to the admission that the
24 defendant allegedly made to the officers.

25 We requested at that time an instruction to the

1 jury, and that was not given at that time, but the
2 Court gave that instruction at the end of all of the
3 evidence, and we still feel that the specific
4 instruction that was given by the Court did not
5 detail all of the elements of Miranda that the jury
6 would have to find beyond a reasonable doubt before
7 they -- before they were permitted to consider the
8 statement of the defendant.

9 So we feel that that was a material error in the
10 trial and denied him a substantially fair trial, and
11 we would ask the Court to give us a new trial on that
12 ground in particular.

13 And Your Honor, again, dealt with the inference
14 several times during the jury trial request. And I
15 believe that became particularly important when the
16 jury sent out a message asking the question, do we
17 actually have to find that he had knowledge of the
18 drugs that were in the car before we can find him
19 guilty.

20 And when the charge was given again that
21 inferences could be drawn of control or possession of
22 the car, Your Honor, we feel that that was
23 prejudicial to my client, so -- rights to receive a
24 fair trial.

25 Your Honor, at the very last there as the jury

1 was in the courtroom and we were receiving the
2 verdict, there was some confusion apparently that the
3 bailiff requested the verdict form be signed in some
4 other fashion than that the foreman had originally
5 signed it, and at that point in time Your Honor made
6 the comment that -- to the effect that the foreman
7 had signed it in the right way the first time.

8 And Your Honor, we feel that that thereby
9 prejudiced our right to obtain a fair polling of the
10 jury when that juror -- jurors were individually
11 asked, is this your verdict and still is your
12 verdict, that the comment that they had done it the
13 right way the first time may have been interpreted by
14 them to be the Court affirming that they had reached
15 the right verdict of guilty and therefore we don't
16 believe that we obtained an impartial polling of the
17 jury at that time. And so therefore we would move
18 for a new trial on that -- that ground as well.

19 And Your Honor, we would rely on the points
20 raised in our written motion to establish each ground
21 and we would argue that each one individually would
22 be grounds for the Court giving us a new trial, but
23 collectively that they certainly would in any -- in
24 any collection of any two or more of them, but would
25 cumulatively give rise to a reason for a total

1 granting of a new trial for us.

2 And so for those reasons we would move that the
3 Court give us a new trial.

4 And lastly, Your Honor, if you don't grant us
5 that, we'd ask that you reconsider the sentence.
6 There was a small amount of drugs.

7 I realize my client's got a lengthy history of
8 infractions, but his mother is very sick and it
9 wasn't but a small amount, less than a third gram of
10 crack. Thank you. Thank you for hearing us, Your
11 Honor.

12 *THE COURT:* The State would like to respond?

13 *MR. SPRATLIN:* Your Honor, I would. I do not
14 have a copy of Mr. Wilder's written motion. It
15 hasn't quite made its way up the chain to me.

16 *MR. WILDER:* We served it on his office.

17 *MR. SPRATLIN:* Your Honor, as to the first basis
18 of the motion for a new trial, that the Court has --
19 failure to sustain and or grant various objections
20 and motions made by the defendant during trial.

21 The State would basically contend that Your
22 Honor did make the right decisions during trial, that
23 there were no reversible errors made that would grant
24 the defendant a new trial in this case.

25 As the exception charge to the jury, I assume

1 that Mr. Wilder is referring to the Miranda warnings
2 in particular in that instance.

3 But Your Honor did in fact charge the jury on
4 what they had to determine before they could accept
5 the defendant's statement, and that is that the
6 statement was coherently and that is that the
7 statement was made freely and voluntarily without any
8 threat or coercion or promise of benefit given to the
9 defendant prior to that statement.

10 And Your Honor did instruct the jury on that.
11 You instructed them on that prior to their
12 deliberations. We feel that the charge you gave was
13 adequate, it did cover all bases for both Miranda and
14 the fact that the statement had been knowing and
15 voluntary.

16 As far as the other charges, Your Honor, I
17 believe that Your Honor is referring to in this
18 written packet, the mere presence and the mere
19 presence of an automobile, in an automobile.

20 You did charge the jury, Your Honor, that
21 possession had to be knowing and voluntary. We feel
22 that that covers any and all mere presence necessity
23 in that case.

24 If the jury believes that the defendant was
25 merely present, that would not -- that would not

1 qualify as possession. That was the law under the
2 charges that you gave.

3 As far as the inferences, Your Honor, mentioning
4 those inferences and the inference to be drawn from
5 his control over the premises where the drugs were
6 found, that is the law as it now stands.

7 So we feel that that is -- was an appropriate
8 charge given by you to the jury. And it is the law
9 that is now in the State of South Carolina.

10 And that there was no burden shifted in that you
11 also, Your Honor, said that it was impermissive and
12 that means they could accept it or reject it if they
13 so choose.

14 It did not place any burden on the defendant to
15 over -- or rebut that presumption or that inference.
16 Sorry.

17 As far as count six, Your Honor, that the
18 bailiff -- following your comment on the fact that
19 the foreman had done it right. I don't think any
20 reasonable person would construe that comment any
21 more than the form in which the verdict form was
22 completed by the jury, not as to as it -- as it
23 relates to the substance of the jury's verdict.

24 And Your Honor, that -- anything done on that
25 was done post-verdict. The jury had already made up

1 their verdict. And if there was any change in
2 verdict, Your Honor, that would have happened during
3 the polling of the jury.

4 The jury was in fact polled. Each and every
5 member of that jury stood up and said, that's my --
6 that's still my verdict, that's my verdict and that's
7 still my verdict.

8 So we feel there is no reversible or no reason
9 to grant a new trial based on that error or that
10 charge that the defendant's motion for a new trial.

11 As to count seven, Your Honor, as far as the
12 chain of custody goes, the defendant did timely
13 object to the chain of custody. However, he was
14 unable to point out any either hole in the chain of
15 custody.

16 And Your Honor, the State did in fact at trial
17 prove chain of custody proving from Investigator
18 Tripp Mays to the evidence custodian, the evidence
19 technician, to the chemist.

20 And on the marijuana, Your Honor -- as far as
21 crack cocaine, Your Honor.

22 As far as the marijuana goes, from the
23 defendant's possession to Wayne Dubose to the
24 chemist. We have shown the chain of custody, Your
25 Honor.

1 None of the seven grounds alleged in this motion
2 for a new trial are -- call for a new trial. None of
3 the motions have merit.

4 And so we would ask that you respectfully deny
5 the defendants's motion for a new trial.

6 And as far as the reconsideration of the
7 sentence imposed, Your Honor did hear about the
8 defendant's rather lengthy criminal history. You
9 were given certified copies of most all the
10 defendant's convictions.

11 Given the defendant's criminal history, given
12 the evidence that was presented at trial, we feel
13 that it was an appropriate sentence that the Court
14 made, and we would respectfully ask the Court not
15 change its sentence in regard to the eight years to
16 serve.

17 THE COURT: All right. Thank you, sir. As far
18 as Miranda warnings are concerned, I think I covered
19 what the law requires when I charged the jury, and I
20 gave them the charge four times I think on
21 possession.

22 I think that the inference charge that I gave on
23 possession based on state law in this state is
24 correct and does not shift the burden of proof in any
25 way to the defendant.

1 As far as the verdict form is concerned, the
2 comment of -- the Court had received the verdict, the
3 verdict had been published, the jury confirmed that
4 that was their verdict, the bailiff then requested
5 that the foreman sign the verdict form in another
6 place.

7 The -- I think my comment was that he did it
8 right the first time, that he signed it in the
9 appropriate place the first time and no way meant
10 that their verdict was right or wrong but simply that
11 he signed the form as he intended to do.

12 I don't think that that changed the polling of
13 the jury in any way. I don't think the jury took
14 that that I inferred that their verdict was correct,
15 only that the form was signed correct.

16 The bailiff had not looked at the form
17 completely when he asked him to sign another line.

18 And I think the chain of custody was established
19 by the State and I respectfully deny your motions and
20 I think that my sentence was appropriate based on his
21 prior record and I respectfully deny that, too.

22 MR. WILDER: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 MR. SPRATLIN: Thank you, Your Honor.

25 THE COURT: All right. We will be in recess

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till what time?

(Court was in recess for lunch.)

(End of requested transcript of record.)

SC Attorney General
RECEIVED

DEC 22 2010

STATE OF SOUTH CAROLINA)
County of Sumter)

RECORDED
In the Court of Common Pleas Referred to W. WMS.
2010 DEC 17 PM 12:35 Answered _____

Reginald Barne # 290000
Full name and prison number, if any, of applicant)

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C. 2010-CP-43- 2723

v.)
State of South Carolina)
Name of Respondent)

APPLICATION FOR
POST-CONVICTION RELIEF
DEC 22 2010

INSTRUCTIONS - 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 it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

- Place of detention EVANS CORRECTIONS Hwy 610 Hwy 9 West, Bennettsville.
- Name and location of Court which imposed sentence Sumter County Court
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - 2009-GS-43-0009
 - _____
 - _____
- The date upon which sentence was imposed and the terms of the sentence:
 - June 9, 2009
 - 3 YEARS NON-VIOLENT
 - 1 YEAR NON-VIOLENT

- 5. Check whether a finding of guilty was made
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty ✓ _____
 - (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. THE SC COURT OF APPEAL
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. Affirmed
- ii. _____
- iii. _____

(c) the date of each such result:

- i. NOVEMBER 10, 2010
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. unpublished opinion NO. 2010-UP-500
- ii. _____
- iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) _____
- (b) N/A
- (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ineffective assistance of counsel/ Fourth amend Search
- (b) THE DEFENDANT WAS PREJUDICED BY COUNSEL'S
- (c) FAILURE TO ADVISE THE COURT'S CHARGE TO THE JURY OF AN INFERENCE TO BE DRAWN FROM, ALLEGEDLY HAVING CONTROL OVER THE PREMISES WHERE THE DRUGS WERE FOUND; TRIAL COURT LACK SUBJECT MATTER JURISDICTION

continuation of grounds of issues raised in # (9)

10. State concisely and in the same order the facts which support each of the grounds set out in (9)
- (a) AND counsels performance was deficient
By allowing the court thereby to impeach missibly
 - (b) commenting on the facts and/or lessening
OR shifting the burden of proof which
 - (c) must be carried by the state.
Fourth amendment, illegal search lack probable cause

11. Prior to this application have you filed with respect to this conviction
- (a) any petition in a State Court under South Carolina Law?
COURT OF APPEALS
 - (b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?
COURT OF APPEALS
 - (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) N/A
 - (d) any other petitions, motions or applications in this or any other Court?
N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. DIRECT APPEAL TO THE SC COURT OF APPEALS
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. SOUTH CAROLINA COURT OF APPEALS
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. AFFIRMED
 - ii. _____
 - iii. _____
 - iv. _____

(d) the date of each such disposition:

- i. November 10, 2010
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. unpublished opinions No 2010-UP-500
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? yes

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. THE TRIAL JUDGE ERRED IN GIVING A JURY
- ii. CHANGE ON INFERENCE THAT WAS BURDEN
- iii. SHIFTING

(b) the proceedings in which each ground was raised:

- i. THE SC COURT OF APPEALS
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) BECAUSE INEFFECTIVE ASSISTANT OF COUNSEL
- (b) CANNOT BE RAISED ON A FIRST TIME DIRECT
- (c) APPEAL

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (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 application with respect to this conviction, which you filed? yes

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. ARTHUR H. Wilder Jr, Sumter ^{Co.} public Defender
- ii. Robert M. PACHAK Appellate Defender
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. TRIAL
- ii. Sentencing
- iii. Direct Appeal

18. State clearly the relief you seek in filing this application.

CONVICTION OVERTURN ^{VACATED AND DISMISSED} ~~REVERSED~~
OF JUDGE ERRONEOUS JURY CHANGE ON INFERENCE
THAT WAS BURDEN SHIFTING AND COUNSEL'S PREJUDICE PERFORM

19. Are you now under sentence from any other court that you have not challenged?

N/A

STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF _____)

I, Reginald Barne #290000, 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.

Reginald Barne #290000

Sworn to and subscribed before me
This 16 day of December, 2010

Carla Dugan McDowell

Notary Public for South Carolina

My Commission Expires August 18, 2018

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Reginald Barne, 290000, 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 or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Reginald Barne #290000
Applicant

Sworn to and subscribed before me
This 16 day of December, 2010

Carla Dugan McDowell
L.S.

Notary Public for South Carolina

My Commission Expires: August 18, 2018

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

2010-CP-43-2723

Reginald Barno, #290000.

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

(Appointment of Counsel Requested)

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 17, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted at the December 31, 2008, term of the Sumter County Grand Jury for Possession of Cocaine base, Possession of Marijuana, and Habitual Traffic Offender (2009-GS-43-0009). A jury trial was held before the Honorable R. Ferrell Cothran, Jr. The Applicant proceeded to jury trial where the State proceeded only on the first two counts of the indictment. On June 10, 2009, the jury found Applicant guilty of both counts as indicted, whereupon Judge Cothran sentenced Applicant to eight (8)-years imprisonment for Possession of Cocaine Base (Third Offense) and one (1) year imprisonment for Possession of Marijuana (Second Offense), to run concurrently. The Applicant filed an appeal with

the South Carolina Court of Appeals, and on November 29, 2010. Applicant's convictions were Affirmed and an Order of Remittitur was issued.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the trial court transcripts, and appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.
 - a. "The Defendant was prejudiced by Counsel's failure to advise the Court's charge to the jury of an inference to be drawn from allegedly having control over the premises where the drugs were found.";
 - b. "Counsel's performance was deficient by allowing the Court thereby to impermissibly comment[ing] on the facts and/or lessen[ing] or shift[ing] the burden of proof which must be carried by the state.";
2. Lack of Subject Matter Jurisdiction
 - a. Trial Court lacked Subject Matter Jurisdiction; and
 - b. "Fourth Amendment illegal search lack probable cause."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing, S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his 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, 466 U.S. 668. 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 plea 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).

The Respondent submits that the 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, the 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.

Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); See also U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45, -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant’s

conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

V.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ROBERT D. CORNEY
Staff Attorney

By: RAA
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

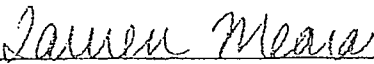
JUNE 22, 20 11

| | | |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | |
| |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF SUMTER |) | |
| |) | |
| |) | 2010-CP-43-2723 |
| |) | |
| REGINALD BARNO, 290000, |) | |
| |) | |
| Applicant, |) | |
| |) | |
| vs |) | AFFIDAVIT OF SERVICE BY MAIL |
| |) | |
| STATE OF SOUTH CAROLINA, |) | |
| |) | |
| Respondent. |) | |

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Brian Benenhaley, Esquire
Subscriber BASE Holdings
3830 Forrest Drive, Suite 207
Columbia, SC 29204

DATED this 22nd day of June, 2011.



 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF LEE)

COURT OF COMMON PLEAS

REGINALD BARNO)
 PETITIONER,)

v.)

TRANSCRIPT OF RECORD
 10-CP-43-2723

STATE OF SOUTH CAROLINA,)
 RESPONDENT.)

September 19, 2012
 Bishopville, South Carolina

B E F O R E :

THE HONORABLE WILLIAM J. YOUNG, JUDGE

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

CHARLES T. BROOKS, ESQ.
 Attorney for the Petitioner

MEGAN E. HARRIGAN, ESQ.
 Attorney for Respondent

FRANCES BAKIS-RAY, RPR
 Circuit Court Reporter
 Typed for Margaret Sullivan

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(There were no exhibits submitted.)

1 MS. HARRIGAN: Your Honor, this is the
2 Reginald Barno versus the State of South Carolina,
3 Docket No. 2010-CP-43-2723.

4 THE COURT: All right.

5 MS. HARRIGAN: The applicant was indicted
6 at the December 31st, 2008 term of the Sumter County
7 Grand Jury, possession of cocaine base, possession
8 of marijuana, and habitual traffic offender.
9 Applicant was represented by Arthur Wilder on these
10 charges who is present in the courtroom today.
11 Applicant proceeded to a jury trial before the
12 Honorable R. Ferrell Cothran, Jr. on the first two
13 counts of the indictment.

14 On June 10th, 2009, the jury found
15 applicant guilty of both counts as indicted, and
16 Judge Cothran sentenced applicant to eight years
17 imprisonment for possession of a cocaine base third
18 offense and one year imprisonment for possession of
19 marijuana second offense with both sentences to run
20 concurrently. Applicant perfected an appeal and the
21 South Carolina Court of Appeals affirmed his
22 conviction. The remittitur was done on November
23 29th of 2010. Applicant filed a timely application
24 for post-conviction relief on December 17th, 2010
25 making allegations of ineffective assistance of

1 trial counsel and lack of subject matter
2 jurisdiction. The State made its return on June
3 22nd, 2011 and applicant is represented today by
4 Charles T. Brooks, III, and it's the State's
5 understanding Mr. Brooks has a motion before the
6 Court at this time.

7 THE COURT: Mr. Brooks.

8 MR. BROOKS: May it please the Court,
9 Judge, I talked with my client. He indicated that
10 he wanted to the Court to have me relieved and
11 proceed pro se on this matter, and I told him that
12 we would have to see if you would let him.

13 THE COURT: All right. Mr. Barno.

14 PETITIONER BARNO: Yes, sir. Yeah, see, I
15 was really, you know what I'm saying, I'm trying --
16 I wanted to get a continuance 'cause this is my
17 first time I've ever talked with him or ever seen
18 Mr. Brooks about my case. I never have got any
19 input to see what kind of histories he had, present
20 for me to this case. I got some issues that I want
21 to present also to the case. We never even talked
22 or discussed my case or bring before me comments or
23 anything for me in my, on behalf of me now.

24 THE COURT: What's the State's position?
25 Is this his first continuance?

1 MS. HARRIGAN: Your Honor, this is the
2 first time the case has been on the roster, and I
3 will note for the record that an order substituting
4 Mr. Brooks as counsel was filed with the Clerk's
5 office on October 19th of 2011. This is the first
6 time the case has been on the roster according to
7 the file. And in regards to the motion to relieve
8 counsel, the State would object to that. He'd
9 already had Mr. Brooks up to and as counsel and we'd
10 object to any other counsel being ---

11 THE COURT: Well, who was his other
12 counsel? Mr. Benningham?

13 MR. BROOKS: This was -- I'll tell you the
14 guy.

15 MS. HARRIGAN: Bryan ---

16 MR. BROOKS: Yeah, Bryan. You know Bryan,
17 Judge, he doesn't have any of these things so when
18 he gets them, you know what he does and so ---

19 THE COURT: I'm gonna deny his motion for
20 new counsel since this is his first time. Does the
21 State have any objection to his continuance?

22 MS. HARRIGAN: The State is prepared to go
23 forward but it is the first time that case has been
24 called, and we'll leave it in Your Honor's
25 discretion.

1 THE COURT: Are you ready to proceed, Mr.
2 Brooks?

3 MR. BROOKS: I -- Judge, it doesn't matter
4 to me either way 'cause you know I do a bunch of
5 them, Judge so, but Mr. Barno, he does desire a
6 continuance.

7 THE COURT: I mean, Mr. Barno, what else
8 would you present other than what you -- I mean, you
9 can't change your PCR.

10 You ready to proceed on the PCR
11 allegation, Mr. Brooks?

12 MR. BROOKS: I am personally, Judge, but I
13 just defer to my client. I mean, this is his case,
14 his life. He does max out on his ---

15 THE COURT: I mean, if you put it off one
16 more year he maxes out next year.

17 MR. BROOKS: On this case.

18 THE COURT: On this case. I can't, you
19 know, if he's done something else I'm not
20 responsible for that, but he maxes out in a year.

21 MR. BROOKS: And I explained that to him,
22 Judge.

23 THE COURT: You realize that?

24 PETITIONER BARNO: Yes, sir.

25 THE COURT: Now on this case you max out

1 in a year.

2 PETITIONER BARNO: Yes, sir.

3 MR. BROOKS: And I explained that to him.

4 THE COURT: So you want to go try and do
5 it again?

6 PETITIONER BARNO: Yes, sir, 'cause I feel
7 like I shouldn't even be here on -- if you look at
8 my case and really just do the background check ---

9 THE COURT: Mr. ---

10 PETITIONER BARNO: ---I feel like, that's
11 what I'm trying to bring forth to show that I was
12 being ineffective assistance of counsel because the
13 D-- I had a DUS third offense, right, but everything
14 was together. That's how I so-called got these
15 charges right here that I'm going up before you now
16 and that got dismissed, that got thrown out. It got
17 thrown out twice 'cause the investigators or whoever
18 they had brought ---

19 THE COURT: Well, that's subject for
20 appeal. That's not subject for a post-conviction
21 relief.

22 MR. BROOKS: What he's saying, Judge, just
23 to kind of clarify, he's saying Mr. Wilder didn't
24 raise this issue at trial as that the subsequent
25 things that should have been suppressed as a part of

1 trial. That's the allegation against Mr. Wilder for
2 the ineffective assistance relief. Just to clarify
3 further, Judge, I did ask him if he maxes out and
4 he's on the street, he says he still wants to have
5 his PCR so...

6 THE COURT: Mr. Wilder as the witness for
7 the State, do you have any objection? You're up
8 here ready to go. You spent the morning up here and
9 he comes up wanting a continuance today. I mean, I
10 imagine you got a life to live too; don't you?

11 MR. WILDER: I do. I'll do whatever the
12 Court tells me to obviously, but I do ---

13 THE COURT: Mr. Brooks says ---

14 MR. WILDER: ---appreciate not having to
15 come back up two or three more times.

16 THE COURT: Mr. Brooks says he's ready to
17 go. We're going to go ahead and have the hearing
18 today so motion to relieve your counsel is denied.
19 Motion for continuance is denied.

20 Mr. Brooks, you may call your first
21 witness.

22 MS. HARRIGAN: Thank you, Your Honor.

23 MR. BROOKS: In light ---

24 THE COURT: And if you don't like what I
25 do you can appeal me.

PW - R. BARNO - DIRECT

1 MR. BROOKS: In light of Your Honor's
2 ruling I will call Mr. Barno to the stand.

3 THE CLERK: Raise your right hand, state
4 your name please.

5 PETITIONER BARNO: Reginald Shawn (ph)
6 Barno.

7 WHEREUPON,

8 **REGINALD BARNO,**
9 having been duly sworn by the Clerk of Court,
10 testified as follows:

11 THE CLERK: State your full name and spell
12 your last name for the record.

13 THE WITNESS: Reginald Shawn Barno,
14 B-A-R-N-O.

15 **D I R E C T E X A M I N A T I O N**

16 BY MR. BROOKS:

17 Q Mr. Barno, you had Mr. Wilder representing you
18 in this case?

19 A Yes, sir.

20 Q Okay. You went to trial, you were convicted, and
21 you received eight years; is that correct?

22 A Yes, sir.

23 Q Your major issue that you have discussed and were
24 trying to tell the judge was about the fact that you
25 got arrested for DJS; is that right?

PW - R. BARNO - DIRECT

1 A Yes, sir.

2 Q And that charge was thrown out in magistrate's
3 court?

4 A Yes, sir, at the preliminary hearing.

5 Q Okay. Now and what you've been arguing is that
6 Mr. Wilder whom did not argue effectively to
7 suppress the things that came as a result of that
8 arrest; is that correct?

9 A Yes, sir.

10 Q What came as a result of that arrest?

11 A What came as a result of that arrest? All right,
12 they said the probable cause on my court transcript
13 on page 39 the prosecutor Mr. Swearing (ph) stated
14 that the probable cause was for me driving without a
15 license. All right, the driving without a license
16 charge, the DUS third, all that came about when they
17 so-called read the tags on the car and the tags came
18 back invalid. Once they pulled me over and got me
19 out the car and detained me, they so-called ran the
20 tags back and the tags came back valid so they ought
21 not arrest me, put me in detainer because I'm
22 driving without a license. But that charge got
23 dismissed; it got thrown out. So all -- everything
24 what there from me getting pulled over and they
25 so-called found whatever they found in the car, all

PW - R. BARNO - DIRECT

1 A Yes, sir.

2 Q And that charge was thrown out in magistrate's
3 court?

4 A Yes, sir, at the preliminary hearing.

5 Q Okay. Now and what you've been arguing is that
6 Mr. Wilder whom did not argue effectively to
7 suppress the things that came as a result of that
8 arrest; is that correct?

9 A Yes, sir.

10 Q What came as a result of that arrest?

11 A What came as a result of that arrest? All right,
12 they said the probable cause on my court transcript
13 on page 39 the prosecutor Mr. Swearing stated that
14 the probable cause was for me driving without a
15 license. All right, the driving without a license
16 charge, the DUS third, all that came about when they
17 so-called read the tags on the car and the tags came
18 back invalid. Once they pulled me over and got me
19 out the car and detained me, they so-called ran the
20 tags back and the tags came back valid so they ought
21 not arrest me, put me in detainer because I'm
22 driving without a license. But that charge got
23 dismissed; it got thrown out. So all -- everything
24 what there from me getting pulled over and they
25 so-called found whatever they found in the car, all

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1 that should have had got dismissed with the driving
2 charge because that was their probable cause.

3 Q Okay. And the issue you got is that Mr. Wilder
4 did not ask for that to be suppressed ---

5 A Yes, sir.

6 Q ---by arguing the police didn't have probably
7 cause to arrest you?

8 A Yes, sir. Yes, sir.

9 Q Is that it?

10 A Yes, sir.

11 Q Okay. And if that had gotten suppressed then you
12 would not have had these things against you as far
13 as drugs were concerned at trial?

14 A Yes, sir.

15 Q Okay. And obviously you would have -- the State
16 wouldn't have been able to make a case against you?

17 A Yes, sir.

18 Q Okay. Now that's your issue on this case; isn't
19 that correct?

20 A Yes, sir.

21 Q Do you have any other issues besides that?

22 A Yes, sir, I have another one where -- all right,
23 Juror No. 23, Angela Brunson (ph), all right, I told
24 Mr. Wilder I seen who the juror was on the side. I
25 tapped him and I told him I know that juror. And

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1 he, how you know that juror, and I told him that's

2 ---

3 MS. HARRIGAN: Objection, Your Honor, that
4 was not a ground that was raised in the application.

5 THE COURT: Sustained.

6 MR. BROOKS: Judge, I would in light of
7 Your Honor's ruling ---

8 BY THE COURT: I'll give you a little bit of
9 latitude.

10 MR. BROOKS: Latitude on that.

11 BY MR. BROOKS:

12 Q Go ahead and explain.

13 A I told my attorney that I know that juror, and he
14 asked me how and I told him that's my cousin's
15 cousin. And he was like, that's good on my behalf.
16 And I say he never ready to stop a juror and got
17 that juror removed or anything, he never did that.
18 And that was another reason. And I saw -- put that
19 on my application also, it's in my application.

20 Q Okay. Well, the judge let you get into that,
21 that's fine.

22 A Yes, sir.

23 Q And you saying that's somebody that Mr. Wilder
24 shouldn't have put on your jury?

25 A Yes, sir.

PW - R. BARNO - DIRECT

1 Q Okay. Now you were talk-- you also talked about
2 the circumstances behind you want; how you came to
3 trial, remember we chatted about that. You want to
4 tell the Court about that?

5 A Yes, all right. That morning I came to court I
6 came to court that morning for roll call, and I sit
7 in there, sit right there behind the thing right
8 there. And Arthur Wilder state, he told -- I came
9 to ask him that I have a doctor's appointment 'cause
10 I had fell on my motorcycle. So, well he was like,
11 well, you can go, you ain't going up this term, I
12 ain't gonna see you today. So I left, I went to my
13 doctor appointment. I come back 1:20 his secretary
14 called my house. Well, she called my cell phone and
15 she's like Arthur needs you back up here, so I was
16 like, for what. She said, they about to proceed
17 with your case today. So I was like, you know who
18 you talking to. She was like, yeah, Reginald Barno.
19 (inaudible) Arthur need you back up today about to
20 proceed your case. So I'm like, all right, I'm
21 coming. So I go on. So Arthur Wilder called me
22 about ten minutes later. I was already on my way up
23 here. Arthur Wilder called me ten minutes later and
24 asked me, he told me the same thing. So I was like,
25 I thought I wasn't going to go up today. So he was

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1 like, well they done got a case out the way so they
2 gonna proceed with your case today. So when I came
3 up here I came through the door. Me and my momma
4 went and got up here. By the time I came through
5 the door he came to me, met me downstairs, and he
6 was like, they got a arm with a deal, plea
7 agreement, a deal. I was like what is the deal? He
8 was like five years. So I was like, naw, I'm not
9 gonna to plead to it, I ain't had nothing. So he
10 took me back in the back. That's when I walked
11 through that back door one of the officers had
12 issued a warrant, resisting arrest, but the warrant
13 came back oldest but I never got charged for that
14 charge. I never even went up for the charge officer
15 gave me, which was resisting arrest.

16 Q Okay.

17 A I never went up for the charge. They never
18 brought the charge back up and that's when they
19 issued, put a little vest on me, and Arthur Wilder
20 like, come on, we're going back out. So we're going
21 back out so he was like, well I'm gonna select your
22 jury. We supposed to come back here to talk about
23 my case. He ain't said nothing about my case or
24 nothing. So when they issued the warrant, put the
25 vest on me, me coming back out here to start my

PW - R. BARNO - DIRECT

1 case.

2 Q Okay. And you wanted to tell the Court about
3 that circumstance ---

4 A Yes, sir.

5 Q ---that went down. Now I'm gonna ask you this
6 questions Reginald, and I'm not trying to sway you
7 either way.

8 A Yes, sir.

9 Q But now, on this case you have almost completed
10 the time on this case, you're aware of that?

11 A Yes, sir.

12 Q And you're aware that the only thing that Judge
13 Young can do for you today is to grant you a new
14 trial on all of these charges that you went to trial
15 on with Mr. Wilder as your lawyer?

16 A Yes, sir.

17 Q You understand that if that is granted that you
18 ---

19 A Uh-huh.

20 Q ---could face those charges over again ---

21 A Yes, sir.

22 Q ---and could potentially be exposed to more time?

23 A Yes, sir.

24 Q Okay. And you are totally aware of that ---

25 A Yes, sir.

PW - R. BARNO - DIRECT

1 Q ---and you decided you still wanted to go
2 forward?

3 A Yes, sir.

4 Q Okay. And as a matter of fact, you could be
5 potentially home before coming back to trial on
6 this?

7 A I still want to go forward, yes, sir.

8 Q Okay, just wanted to put that on the record.

9 A Can I say something else too? I would like to
10 add ---

11 THE COURT: (Inaudible.)

12 MR. BROOKS: What else do you ---

13 THE WITNESS: (Inaudible.)

14 BY MR. BROOKS:

15 Q What else do you want to say?

16 A This is a motion I would like to make, also have
17 amended to my own trial case, to my PCR hearing.

18 Q What is the -- what is it?

19 A It's for my -- it's a motion I put up for my
20 ineffective assistance of counsel, you know what I'm
21 saying. It's ineffective assistance of counsel and
22 findings of fact and collusion of law -- conclusion
23 of law against my case and showing motions of how my
24 lawyer was ineffective also, you know what I'm
25 saying.

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1 Q What other ways -- what other issues we haven't
2 covered about Mr. Wilder being ineffective? We
3 talked about the juror issue. We talked about him
4 not moving to suppress because of the DUS. Is there
5 any other issue that you're saying he did ---

6 THE COURT: You're moving -- you're in her
7 line of sight. She'd like to see the defendant
8 testify.

9 THE WITNESS: No, sir, that's all I would
10 like to bring. I also want this amended also. It's
11 the same -- everything I'm stating it's also here
12 and I'd like to have that amended.

13 MR. BROOKS: Okay.

14 THE COURT: Objection from ---

15 MS. HARRIGAN: The State would object to
16 amending the application.

17 THE COURT: Sustained, not timely made.

18 MR. BROOKS: Okay. And let me ask him
19 this.

20 BY MR. BROOKS:

21 Q Are the things -- Reginald, are the things in
22 there, are they the same things that you just
23 testified to here today?

24 A Yes, sir.

25 Q Okay. So what -- you've already told the Court

PW - R. BARNO - DIRECT

1 what you've already written; isn't that correct?

2 A Yes, sir.

3 Q And that's already on the record?

4 A Yeah.

5 Q Okay. I wanted to let you know what you
6 testified to is on the record 'cause this lady
7 sitting right here is taking it all down as the
8 court reporter so it's already on the record. I
9 just want to make sure you understand that.

10 A Yeah.

11 Q Okay. Are there any issues that you want to
12 raise about Mr. Wilder's ineffectiveness?

13 A No, sir, that's the main thing, no, sir.

14 Q Okay. Answer any questions the Attorney General
15 has.

16 THE COURT: Ms. Harrigan.

17 **CROSS - EXAMINATION**

18 BY MS. HARRIGAN:

19 Q Mr. Barno, how many times did you meet with your
20 attorney before your trial?

21 A Twice.

22 Q Do you recall how long those meetings were for?

23 A The first time he came to me like telling me what
24 they had against me, it'd be a good idea for me to
25 plead. We sit back there in the walk. Arthur out

FW - R. BARNO - CROSS

1 there in the hall way. We sit like about 20 minutes
2 and I kept telling him I wasn't gonna plead, I'm
3 taking it to trial so I let him out. And the next
4 time was when I came and told him about the DUS
5 third was dismissed, and I came from the preliminary
6 hearing the second time they had it. I take,
7 appealed the judge's decision. He brought me back
8 in front of her and I came in his office and I told
9 him then. And that wasn't even brought up. He was
10 like, he was gonna bring that up and he never
11 brought that up.

12 Q So you ---

13 A The next time I went to trial.

14 Q The first time you met with your attorney you did
15 go over the State's discovery with him?

16 A Yes, sir, yes, ma'am.

17 Q Do you recall discussing any possible defenses
18 you had with the case with your attorney?

19 A No, I told him about whenever he said that the
20 so-called agents or the police officer, they
21 reviewed the so-called me and this guy was saying
22 something and then he was like, I told him, okay,
23 can you go and investigate and get a statement from
24 him about bringing that up whatever. He was like,
25 well, it wouldn't be good for me to bring him up

PW - R. BARNO - CROSS

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

2 MR. BROOKS: That's the Applicant's side.

3 THE COURT: The State?

4 MS. HARRIGAN: The State calls Arthur
5 Wilder to the stand.

6 THE COURT: Mr. Wilder, come forward
7 please to be sworn.

8 THE CLERK: Place your left hand on the
9 Bible, raise your right hand. State your name
10 please.

11 THE WITNESS: Arthur Harrelson Wilder, Jr.
12 WHEREUPON,

13 **ARTHUR HARRELSON WILDER, JR.**

14 having been duly sworn by the Clerk of Court,
15 testified as follows:

16 THE CLERK: Thank you, Mr. Wilder. Have
17 a seat please, sir. State your full name and spell
18 your last name for the record.

19 THE WITNESS: Arthur Harrelson Wilder, Jr.
20 Last name is spelled W-I-L-D-E-R.

21 **D I R E C T E X A M I N A T I O N**

22 BY MR. WILDER:

23 Q Good morning, Mr. Wilder. How long have you been
24 practicing law?

25 A Since 1976.

PW - R. BARNO - CROSS

1 here 'cause he was a convicted felon and they
2 wouldn't believe what he say or what not so that was
3 ---

4 Q But you did discuss any possible witnesses with
5 your attorney?

6 A Yes, ma'am.

7 Q Do you have any of those witnesses here today to
8 testify at your PCR?

9 A No, 'cause I supposed to be going up yesterday
10 and they brought me up today. But tomorrow, I
11 supposed to come up tomorrow on Thursday and they
12 brought me a paper, I got the letter last week, but
13 Thursday they said I'm going up today.

14 Q Mr. Bar-- you do have prior drug convictions,
15 correct?

16 A Yes, ma'am, and I pled to those 'cause I was
17 guilty of them.

18 Q And it was your decision to proceed to trial in
19 this case?

20 A Yes, sir.

21 MS. HARRIGAN: No further questions, Your
22 Honor.

23 THE COURT: Mr. Brooks, any redirect?

24 MR. BROOKS: No other questions, Your
25 Honor.

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1 Q And how much of that time has been criminal law,
2 if you could the Court an estimate.

3 A I would say about 95 to 97 percent of it.

4 Q So you practice primarily criminal law?

5 A That would be correct.

6 Q Were you appointed in this case?

7 A I was appointed to represent Mr. Barno. I had
8 been appointed to represent him on several
9 occasions. Over the years two or three different
10 occasions he got into more than one jam or another
11 and filed the application for public defender. I
12 was assigned to represent him. I saw him at the
13 jail, talked to him here in the courtroom, talked to
14 him down at the Public Defender's Office. We had
15 several occasions to speak to each other over the
16 years, and there's still pending charges against him
17 now which the Public Defender's Office represents
18 him, but I retired a year ago so I no longer
19 represent him on those charges.

20 Q Do you recall having times you met with him in
21 regards to this matter, the application of bond?

22 A I would have to check but I do have records of
23 the contacts that I had with Mr. Barno so let me
24 check. Okay, the defendant and I talked in the
25 courtroom on April the 6th of 2009. He was told to

RW - A. WILDER - DIRECT

1 check the list each day, check with the Solicitor
2 Martin Swearing on that day to see about whether or
3 not the case would be tried. And then we were
4 discussing the case at other times in the office. I
5 spoke with him in the lockup in 2010. Of course we
6 talked during the case as it was tried. I have
7 other notes here.

8 Q At least two times prior to his trial?

9 A Oh, yeah.

10 Q Did you discuss the elements of the charges he
11 was facing and what the State's was required to
12 prove?

13 A Well, the major charge was possession of crack
14 cocaine. It was a little tiny piece of crack in the
15 automobile seat. And during the trial we tried to
16 demonstrate that he probably didn't even know it was
17 in the car.

18 Q That was your defense strategy going forward for
19 trial?

20 A It was.

21 Q And you --- did you formulate this strategy after
22 discussions with your client?

23 A Sure, and I don't know if he knew it was in the
24 car. That seemed to me to be very reasonable.

25 Q Mr. Wilder, one of Mr. Barno's allegations is

RW - A. WILDER - DIRECT

1 that you were ineffective for failing to object to
2 the stop of the car, that there was no probable
3 cause to stop him. Did you see any issue with
4 regards to the stop?

5 A I would defer to the transcript and whatever was
6 testified. You know, I would have to say that if
7 the testimony evoked a logical stream of Mr. Barno
8 coming to the attention of law enforcement that I
9 may not have raised an objection to the search and
10 seizure; but you know, opinions differ, maybe I
11 should have.

12 Q In your years as a primarily criminal defense
13 attorney, if you feel there's an issue in regards to
14 the stop, probable cause, do you raise that issue
15 generally?

16 A Well, I would have. The danger in it in this
17 case would be that they would go into his driving
18 record, and he had a very colorful history of
19 driving under suspension and the fact the HTO was
20 excluded from the case kind of gave us an advantage
21 of not having to go into everything that police knew
22 about whether or not Mr. Barno ought to be driving
23 an automobile or not. So there were some advantages
24 in not raising the issue.

25 Q And you did -- did you have a Jackson v. Denno

RW - A. WILDER - DIRECT

1 hearing in this trial?

2 A You know, I again refer to the transcript which I
3 do not have with me. I did make a motion to ---
4 thank you.

5 Q And if I can perhaps guide you to speed things
6 along, I see that the Court's ruling of the Jackson
7 v. Denno hearing on page 41. If you can flip to
8 page 41.

9 A All right, so yes.

10 Q And based on your review of that did the court
11 make a ruling that the officers could not testify
12 about their prior interaction with your client?

13 A Right. Well, that just emphasizes the point that
14 police well knew Mr. Barno, and I didn't want them
15 going in front of the jury as to all the reasons
16 that they knew Mr. Barno. But they also had him
17 under surveillance in this particular instance, and
18 I preferred that they not testify about that either.

19 Q Did you have any Brady or Rule 5 motions in this
20 case?

21 A Yes.

22 Q Did you review that discovery material with the
23 applicant?

24 A I'm sorry, what?

25 Q Did you review that material with your client?

RW - A. WILDER - DIRECT

1 A Oh, yes, I did.

2 Q Did he ever indicate there was something he did
3 not understand as you reviewed this material?

4 A I can't say whether Mr. Barno understood
5 everything I discussed with him or not.

6 Q In your professional opinion was that a concern
7 to you that he was not understanding conversations?

8 A Mr. Barno well knows what he's doing.

9 Q Did the applicant give you any potential
10 witnesses for you to investigate in this case?

11 A We actually called a witness. I'm not sure how
12 many we called, but we wanted to establish whether
13 or not there would have been an opportunity for
14 somebody else to have dropped the crack cocaine into
15 the seat of the car, and I think we kind of did
16 that. In fact, the jury came back after
17 deliberating a short while and asked the question
18 whether or not the State had to prove that he knew
19 the crack was in the car and I thought that the
20 judge ought to have to charge that, yes, they do
21 have to prove that.

22 Q And did you make ---

23 A But Judge Cothran didn't agree with me so he
24 re-charged them on inference.

25 Q Did you make any motion before the Court in

RW - A. WILDER - CROSS

1 CROSS - EXAMINATION

2 BY MR. BROOKS:

3 Q Since the attorney general asked about it, you
4 said it didn't come up on appeal?

5 A If you read the appellate opinion, Justice Few in
6 his opinion states that appellant counsel admitted
7 in argument that it was proper to charge inference
8 in certain circumstances and then proceeded to deny
9 Mr. Barno a new trial. However, I think he kind of
10 gave the case away by making that admission on
11 argument before the Court of Appeals. Belcher is
12 just -- I mean the logic is simple. If it's error
13 to charge an inference in one case it ought to be
14 error to charge an inference in all of them in my
15 opinion but anyway.

16 Q That wasn't raised on appeal?

17 A I don't ---

18 Q You objected to it?

19 A I objected to it, and I made the motion to, you
20 know, have the Court not charge inference and I
21 appropriately excepted to it and raised it again in
22 my motion for new trial. And the appellate court
23 has published -- well, it's an unpublished opinion
24 actually, and they said that it wasn't useful as
25 precedent. And I think the reason they decided not

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1 regards to that argument?

2 A Yes, I did. In fact, I referred to them on
3 written motion for judgment NOV, motion for new
4 trial, motion for reconsideration. I raised all
5 these points during the case, and I specifically
6 requested four charges be given by the Court and
7 Judge Cothran chose to give his own charges and went
8 ahead and charged them on inference over my
9 objection.

10 By the way, the case of State v. Belcher
11 where they decided that possession of a deadly
12 weapon during a violent crime or use of a deadly
13 weapon during a violent crime should not give rise
14 to the inference insofar as it being charged to the
15 jury because it's a judge's commentary on the facts.
16 So ever since I've always objected whenever a judge
17 charged inference to a jury no matter what case it
18 comes up in. And in this case I raised an issue,
19 but I don't think it was properly preserved on
20 appeal.

21 MS. HARRIGAN: Court's indulgence.

22 THE COURT: Yes, ma'am.

23 MS. HARRIGAN: No further questions at
24 this time, Your Honor.

25 THE COURT: Mr. Brooks.

RW - A. WILDER - CROSS

1 to publish it was because appellate counsel didn't
2 properly preserve the objection on appeal.

3 Q Okay. Now ---

4 THE COURT: Let me make sure now, you had
5 nothing to do with the appellate, the appeal?

6 THE WITNESS: I did not. However, I filed
7 a notice of intent ---

8 THE COURT: That's all you did.

9 THE WITNESS: And I sent the case over to
10 appellate defense.

11 BY MR. BROOKS:

12 Q Now you didn't -- as far as the stop of Mr.
13 Barno, are you saying you raised the issue or you
14 don't recall? Are you relying on the transcript?

15 A I rely on the transcript. I have not read the
16 whole thing. If I did not object to the suppression
17 of the evidence on the grounds that there was no
18 probable cause for the stop, I must have had a
19 reason for not doing it. And the only reason I can
20 think of right now would have been that if they went
21 into the probable cause for the stop they would have
22 testified: (a) that he was under surveillance and
23 they had seen a drug transaction go down right
24 before they stopped the car and; (b) that they knew
25 Mr. Barno had problems with his driving record and

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1 was likely driving under suspension. Now whether or
2 not they convicted him on that later is another
3 issue. That -- whether or not he was convicted of
4 it would have nothing to do with whether or not
5 there was probable cause on the street for them to
6 have concluded that he was driving under suspension.
7 The issue is whether or not they got grounds to stop
8 him.

9 Q Okay. And did you explain that to him?

10 A I don't know if Mr. Barno and I talked about all
11 that was going on in my mind at the time, probably
12 not.

13 Q Now but you didn't ask for the stop to be
14 suppressed?

15 A Well, let me read you what was in the report,
16 Mr. Brooks. "On the above date officers observed a
17 black Nissan pull up to a location. Officers were
18 conducting surveillance on for drug activity.
19 Vehicle had SC license tag 413SK in display which
20 was registered to a Volvo. Officers observed a
21 male, a Wayne Barkley, a known, a known drug user,
22 walk up to the vehicle. Driver handed Barkley
23 something, then he walked away, and the vehicle left
24 the residence. Officers initiated a traffic stop
25 and found Barno to be the driver." All right, when

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23 something, then he walked away, and the vehicle left
24 the residence. Officers initiated a traffic stop
25 and found Barno to be the driver." All right, when

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1 seat. Barno was arrested at that time.. Barno
2 advised the crack cocaine was his. Barno was also
3 found to be suspended by dispatch." I mean, you
4 know. So I did move to suppress the statement, but
5 that put the burden on the State to then prove that
6 he was properly mirandized but the notes say he was.
7 So again, I was probably climbing up a tree. I
8 wasn't gonna let them get to the top.

9 Q Did you perhaps explain that to Mr. Barno?

10 A Again, I don't know how much of that we talked
11 about. I think Mr. Barno pretty well understood I
12 was trying to keep as much as I could away from the
13 jury and to do the best job I could for him, which I
14 did do the best job I could for Mr. Barno.

15 MR. BROOKS: No other questions.

16 THE COURT: All right, thank you.

17 MS. HARRIGAN: No redirect, Your Honor,
18 and the State has no additional witnesses.

19 THE COURT: All right, I'll take the
20 matter under advisement.

21

22

23 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

24

25

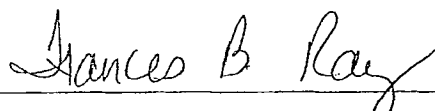
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding was transcribed for Margaret Sullivan through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings to the best of my ability.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 12th day of April, 2013.



FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

2012 OCT 23 PM 1:31

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Reginald Barno, #290000,

Applicant,

v.

State of South Carolina,

Respondent.

JAMES W. BELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Case No. 2010-CP-43-2723

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Dorinda A. Dinkens
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 17, 2010. The Respondent made its Return on June 22, 2011. An evidentiary hearing into the matter was convened on September 19, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court¹. Applicant was indicted during the December 31, 2008 term of the Sumter County Grand Jury for Possession of Cocaine Base, Possession of Marijuana, and Habitual Traffic Offender (2009-GS-43-0009). He was represented on all charges by Arthur Wilder, Esquire.

Applicant proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr. on the charges of Possession of Cocaine Base (Third or Subsequent offense) and Possession of

¹ Applicant is currently serving a five year sentence on an unrelated Common law Robbery sentence from Sumter County which is not challenged in this application for post-conviction relief.

Marijuana (Second offense). On June 9, 2009, the jury found Applicant guilty of both counts as indicted. Judge Cothran sentenced Applicant to eight years imprisonment for Possession of Cocaine Base (Third or Subsequent Offense) and one year imprisonment for Possession of Marijuana (Second Offense), with both sentences to be served concurrently. On the following day, Judge Cothran heard Applicant's motions for judgment notwithstanding the verdict and for a new trial; Judge Cothran denied both motions.

A timely notice of appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Barno, 2010-UP-500 (Ct. App. filed Nov. 10, 2010). The Remittitur was sent on November 29, 2010.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.
 - a. "The Defendant was prejudiced by Counsel's failure to advise the Court's charge to the jury of an inference to be drawn from allegedly having control over the premises where the drugs were found.";
 - b. "Counsel's performance was deficient by allowing the Court thereby to impermissibly comment[ing] on the facts and/or lessen[ing] or shift[ing] the burden of proof which must be carried by the state.";
2. Lack of Subject Matter Jurisdiction
 - a. Trial Court lacked Subject Matter Jurisdiction; and
 - b. "Fourth Amendment illegal search lack probable cause."

Applicant only presented evidence in regards to his claims of ineffective assistance of counsel at the evidentiary hearing.

At the evidentiary hearing, the Applicant testified on his own behalf. The State presented testimony from trial counsel, Arthur Wilder, Esquire ("Counsel"). This Court also had before it a copy of the Applicant's trial transcript, Applicant's appellate records, the records of the Sumter

County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This 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 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this

prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. The Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant. Below are the findings in regards to the allegations of ineffective assistance of counsel and subject matter jurisdiction raised by the Applicant in his application for post-conviction relief:

Ineffective Assistance of Counsel Allegations

Both of Applicant's allegations of ineffective assistance of counsel pertain to the trial court's jury instruction regarding inference and were presented jointly at the evidentiary hearing.

During the evidentiary hearing, Applicant testified that Counsel did not object to the jury instructions, particular those that dealt with inference. However, Counsel's testimony and the record strongly refute this allegation. Counsel testified that during the trial, he objected to the court's jury charge concerning inferences, both before and after the jury was charged. Specifically, the record reflects that during an *in camera* discussion regarding jury charges, Counsel objected to "the word inferred or inference at any place in your charge" as it would amount to "burden shifting" and "creating a comment on the facts by the bench which is not permitted under the rules . . . and ultimately it's a denial of due process and . . . violative [sic] of the constitutional right to a fundamentally fair trial." Trial Tr. p 187 ln. 22 – p. 188 ln. 9. The

record reflects that the trial court disagreed but noted Counsel's objection. Trial Tr. p. 189 ln. 13-14.

Additionally, following the trial court's instructions to the jury, Counsel again objected to the use of inference in the court's jury charge and that it amounted to burden shifting. Trial Tr. p. 233 ln. 22 – p. 234 ln. 3. The trial court again denied Counsel's objections. Trial Tr. p. 236 ln. 19-25. Following the guilty verdict, Counsel made motions for judgment notwithstanding the verdict and for a new trial, citing the same objections to the inference language in the court's jury instructions. Trial Tr. p. 253 – p. 261. Again, both motions were respectfully denied by the trial court.

This Court finds that counsel was not ineffective in regards to these allegations of ineffective assistance of counsel. Counsel properly objected to the inference portions of the jury instructions at all appropriate times, including before the instructions were given, after the instructions were given, and in post-trial motions following the guilty verdict. Counsel acted both reasonably and professionally. Therefore, this allegation is denied and dismissed with prejudice.

Allegations regarding a lack of Subject Matter Jurisdiction

No testimony or evidence was presented at the evidentiary hearing regarding this allegation. This Court finds that as the Applicant failed to present any probative evidence regarding such allegation, the Applicant has waived this allegation and failed to meet his burden of proof regarding it. Accordingly, this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his

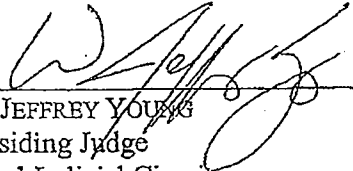
application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 16 day of Oct, 2012.


 W. JEFFREY YOUNG
 Presiding Judge
 Third Judicial Circuit

Sumter, South Carolina.

WITNESSES

SCSO

Dubose

ARREST WARRANT NUMBER

M190946; M190947; Ticket #72848EH

D/A: 10/01/08

ACTION OF GRAND JURY

[Signature]
Mar Bice

Foreperson of Grand Jury

Date: *31 December 2008*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-43-*0009*

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

JANUARY TERM 2009

THE STATE

vs.

REGINALD LASHAWN BARNO

Indictment for

POSSESSION OF COCAINE BASE,
POSSESSION OF MARIJUANA,
HABITUAL TRAFFIC OFFENDER

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

POSSESSION OF COCAINE BASE,
POSSESSION OF MARIJUANA, HABITUAL
TRAFFIC OFFENDER

At a Court of General Sessions, convened on December 31, 2008, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE – POSSESSION OF COCAINE BASE

CERTIFIED COPY
OF ORIGINAL
DEPUTY CLERK
SUMTER COUNTY
SOUTH CAROLINA

That REGINALD LASHAWN BARNO did in Sumter County on or about September 30, 2008, knowingly and intentionally possess a quantity of cocaine base, a controlled substance under the provisions of Act No. 445, Acts of 1971, General Assembly of South Carolina, as amended (Section 44-53-375 et. seq., 1976 Code of Laws of South Carolina, as amended), such possession not having been authorized by law.

COUNT TWO – POSSESSION OF MARIJUANA

That REGINALD LASHAWN BARNO did in Sumter County on or about September 30, 2008, knowingly and intentionally possess a quantity of marijuana, a controlled substance under the provisions of Act No. 445, Acts of 1971, General Assembly of South Carolina, as amended (Section 44-53-370(d)(4) et. seq., 1976 Code of Laws of South Carolina, as amended), such possession not having been authorized by law; this being more than a first offense.

COUNT THREE – HABITUAL TRAFFIC OFFENDER

That REGINALD LASHAWN BARNO did in Sumter County on or about September 30, 2008, operate a motor vehicle on a public highway of this State after having been declared an Habitual Traffic Offender by Order of the South Carolina Highway Department and while the decision of the Department prohibiting the operation was in effect, in violation of Section 56-1-1100 of the Code of Laws of South Carolina (1976), as amended.

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

P. Kell Jackson

SOLICITOR