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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

JAMES JERMAINE ABERCROMBIE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212149

APPENDIX

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COURT OF GENERAL SESSIONS
2006-GS-23-08683

ORIGINAL

STATE OF SOUTH CAROLINA,)
 PLAINTIFF,))
 vs.))
JAMES JERMAINE ABERCROMBIE,))
 DEFENDANT.)

TRANSCRIPT OF RECORD

July 9th & 10th, 2007
Greenville, South Carolina

B E F O R E:

THE HONORABLE LARRY R. PATTERSON, JUDGE.

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

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Attorney for the State

WILLIAM GODFREY, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

I N D E X

(SW) - Denotes State's Witness

(DW) - Denotes Defense Witness

(IC) - Denotes In Camera

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(State's Exhibits)		
S-1	Photograph.....	3.....	72
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(Defense Exhibits)

There were no Defense Exhibits.

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All Exhibits were retained by the Clerk of Court for Greenville County.

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Monday, July 9, 2007

(WHEREUPON, State's Exhibit No. 1 and 2
were marked for identification.

THE COURT: All right, y'all ready?

MS. MONTS: Yes Your Honor.

MR. GODFREY: Yes, Your Honor.

THE COURT: Okay, we can bring the jury panel up.

MR. GODFREY: May it please the Court, I will have a
suppression motion on this case.

(WHEREUPON, the jury venire entered the
courtroom at approximately 10:45 a.m.)

THE COURT: Ladies and gentlemen, we're going to select a
jury now in a criminal case between the State of South
Carolina and James Jermaine Abercrombie.

Mr. Abercrombie, would you stand up, turn around and face
the jury panel, please.

Do any of you ladies and gentlemen know Mr. Abercrombie?

All right, thank you.

Yes, ma'am, would you stand up, please. What's your
name?

PROSPECTIVE JUROR: Zandra Ladson.

THE COURT: And how do you know Mr. Abercrombie?

PROSPECTIVE JUROR: That's my father's nephew.

THE COURT: Okay. I'm going have to excuse you from this
case. Just have a seat, stay with us for a few minutes.

1 Thank you, Mr. Abercrombie.

2 Ladies and gentlemen, the allegations are and
3 Mr. Abercrombie pleads not guilty to these charges.
4 Possession of crack cocaine with intent to distribute in
5 Greenville County on or about the January 17th, 2006. Do any
6 of you, ladies and gentlemen, know anything about this case?
7 Or have you heard anything about it? The allegations are,
8 which Mr. Abercrombie pleads not guilty to, are possession of
9 crack cocaine with intent to distribute on January 17th of
10 2006. Have any of you, ladies and gentlemen, had any
11 personal experiences with drugs, such as cocaine or crack
12 cocaine? And because of that you could not give
13 Mr. Abercrombie a fair trial. It's very important that we
14 have a jury who will be fair and impartial. And you will
15 take an oath that you will be fair and impartial if you're
16 selected on the jury. If you could not be fair and impartial
17 in a case where there's alleged drugs, please stand.

18 There was no response.

19 Okay. Ladies and gentlemen, the attorneys in this case
20 will be Mr. Godfrey and Ms. Monts.

21 Would y'all stand up, please. Do any of you know these
22 two lawyers who will participate in the case?

23 There was no response.

24 All right, thank you.

25 Do any of you, ladies and gentlemen, have any personal

1 friends or relatives who work in the office of the Circuit
2 Solicitor who prosecutes the criminal cases? If you have any
3 personal friends or relatives who work in the Solicitor's
4 Office, please, stand.

5 There was no response.

6 Do any of you, ladies and gentlemen, of the jury panel
7 have any personal friends or relatives who work in law
8 enforcement? If so would you stand up.

9 Yes, ma'am, your name?

10 PROSPECTIVE JUROR: Stephanie Brazell.

11 THE COURT: Okay, and who do you know in law enforcement?

12 PROSPECTIVE JUROR: We have several friends who work for
13 Greenville County Police Department. Brad Grice who works
14 for Greenville County Sheriff's Department. As well as
15 several other friends who work for the city and the county.

16 THE COURT: Do you just know them socially?

17 MS. BRAZELL: Yes, sir.

18 THE COURT: Or church or whatever.

19 PROSPECTIVE JUROR: We all grew up together, we're very
20 close friends.

21 THE COURT: Could you be fair and impartial in a criminal
22 case?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Okay. You gave us your name?

25 MS. BARZELL: Yes, sir.

1 THE COURT: All right, thank you.

2 Yes, ma'am, your name.

3 PROSPECTIVE JUROR: Renee Hall.

4 THE COURT: All right.

5 PROSPECTIVE JUROR: My Uncle is the sheriff of Pickens
6 County. And I have a good friend in law enforcement.

7 THE COURT: Your Uncle is the Sheriff of Pickens County.
8 David Stone? Okay. Well, could you be fair and impartial in
9 a criminal case?

10 PROSPECTIVE JUROR: Uh-huh.

11 THE COURT: You'd take an oath to do that, you'd be fair
12 to the defendant -- now he's your Uncle, right?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Thank you, ma'am.

15 Yes, ma'am.

16 PROSPECTIVE JUROR: My name is Emily Ranieri, I have a
17 best friend who's father is a SLED agent.

18 THE COURT: One your best friend's father is a SLED agent?

19 PROSPECTIVE JUROR: Yes, sir. He also worked for the FBI
20 here in Greenville.

21 THE COURT: Okay, could you be fair and impartial in a
22 criminal trial, ma'am?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Thank you.

25 Yes, ma'am, your name?

1 PROSPECTIVE JUROR: My name is Barbara Powell, my nephew
2 is Travis Rozelli. He just joined the police force as deputy
3 sheriff for the county.

4 THE COURT: He's what now?

5 PROSPECTIVE JUROR: Deputy Sheriff for the county.

6 THE COURT: Okay. And how is he related to you?

7 PROSPECTIVE JUROR: He's my nephew.

8 THE COURT: Your nephew. Would that effect your ability
9 to be fair and impartial in a criminal case?

10 PROSPECTIVE JUROR: No, it wouldn't.

11 THE COURT: You could be fair to both sides and decide it
12 on the evidence and testimony?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: Thank you, ma'am.

15 Yes, ma'am.

16 PROSPECTIVE JUROR: I go the church with and friends with
17 Joe Patterson and his wife. He works for the Sheriff's
18 Department.

19 THE COURT: Okay. You use to be a dispatcher for 911 or
20 something?

21 PROSPECTIVE JUROR: That's correct, sir.

22 THE COURT: Could you be fair and impartial in a criminal
23 trial.

24 PROSPECTIVE JUROR: Yes, sir, I can.

25 THE COURT: And you would follow your oath and do that?

1 PROSPECTIVE JUROR: I would.

2 THE COURT: Thank you, ma'am.

3 Ladies and gentlemen, witnesses in this case may be Tim
4 Fuller with the Greenville County Sheriff's Office, David
5 Weiner from the Greenville County Sheriff's Office, Sean
6 Collins, Department of Public Safety. Kara Bennick with the
7 Department of Public Safety. Renee Pruitt with the
8 Department of Public Safety. And Iva Bracken with the
9 Department of Public Safety. Do any of you, ladies and
10 gentlemen, know those potential witnesses in this case? If
11 you know any of the possible witnesses, would you, please,
12 stand.

13 There was no response.

14 THE COURT: Kay. Ladies and gentlemen, it's very
15 important that we have a jury that will be fair and
16 impartial. And I can't ask you -- we don't ask a lot of
17 questions in South Carolina like they do in other states.
18 But if you had any experiences with the court, or if you
19 could not be a fair and impartial juror in this case, would
20 you, please, stand. If you couldn't be fair and impartial
21 and follow your oath for any reason in this case, please,
22 stand.

23 There was no response.

24 THE COURT: Okay, I think the jury's qualified.

25 All right, each side gets five preemptory challenges.

1 Once you use the five challenges, then your only challenge
2 would be for cause. If you want to exercise your challenges
3 you can do that.

4 Ladies and gentlemen, we use to -- we had bigger
5 courthouses and everything, we had to come down front. So
6 everything is so small and compact, I'm just going to ask you
7 to stand up in place if your name is called and you will
8 either be seated or excused. And if you're excused just have
9 a seat and I'll dismiss you with everyone else. If you're
10 seated, bring your personal items up and have a seat in the
11 jury box. Okay. We'll select 12 jurors and one alternate.

12 Yes, ma'am, we're ready.

13 THE CLERK: Juror number 80, Patricia Moody.

14 (Patricia Moody, a white female, came forward.)

15 What says the State?

16 MS. MONTS: Present the juror.

17 THE CLERK: What says the defendant?

18 MR. GODFREY: Please excuse the juror.

19 THE CLERK: Ms. Moody, you have been excused in this
20 case, you may be seated.

21 Jury 127, Doyle Yates.

22 (Doyle Yates, a white male, came forward.)

23 What says the State?

24 MS. MONTS: Please present the juror.

25 THE CLERK: What says the defendant?

1 MR. GODFREY: Please seat the juror.

2 THE CLERK: Mr. Yates, please, bring your things, come
3 have a seat in the jury box.

4 Juror 98, C. James Rex.

5 (James Rex, a white male, came forward.)

6 What says the State?

7 MS. MONTS: Please present the juror.

8 THE CLERK: What says the defendant?

9 Mr. Godfrey: Please seat the juror.

10 THE CLERK: Mr. Rex, please have a seat in the jury box.

11 Juror 51. Patricia Hammond.

12 (Patricia Hammon, a white female, came forward.)

13 What says the State?

14 MS. MONTS: Please present the juror.

15 THE CLERK: What says the defendant?

16 MR. GODFREY: Please seat the juror.

17 THE CLERK: Ms. Hammond, please, bring your things, have
18 a seat in the jury box.

19 Juror number 10, Thomas Boyd.

20 (Thomas Boyd, a white male, came forward.)

21 What says the State?

22 MS. MONTS: Please present the juror.

23 THE CLERK: What says the defendant?

24 MR. GODFREY: Please seat the juror.

25 THE CLERK: Mr. Boyd, please have a seat in the jury box.

1 Juror 47, Martha Stone.
2 (Martha Stone, a white female, came forward.)
3 What says the State?
4 MS. MONTS: Please present the juror.
5 THE CLERK: What says the defendant?
6 MR. GODFREY: Please seat the juror.
7 THE CLERK: Ms. Stone, please bring your things, have a
8 seat in the jury box.
9 THE CLERK: Juror 22, Tanya Carter.
10 (Tanya Carter, a white female, came forward.)
11 What says the State?
12 MS. MONTS: Please present the juror.
13 THE CLERK: What says the defendant?
14 MR. GODFREY: Please seat the juror.
15 THE CLERK: Ms. Carter, please bring your things, have a
16 seat in the jury box.
17 Juror 34, Paula Edwards.
18 (Paula Edwards, a white female, came forward.)
19 What says the State?
20 MS. MONTS: Please present the juror.
21 THE CLERK: What says the defendant?
22 MR. GODFREY: Please excuse the juror.
23 THE CLERK: Ms. Edwards, you've been excused, you may be
24 seated.
25 Juror 108, Marion Stokes.

1 (Marion Stokes, a white male, came forward.)

2 What says the State?

3 MS. MONTIS: Please present the juror.

4 THE CLERK: What says the defendant?

5 MR. GODFREY: Please seat the juror.

6 THE CLERK: Mr. Stokes, please come have a seat in the
7 jury box.

8 Juror 115, Charles Waldrop.

9 (Charles Waldrop, a white male, came forward.)

10 What says the State?

11 MS. MONTIS: Please excuse the juror from the trial.

12 THE CLERK: You may be seated, sir, you've been excused
13 in this case.

14 Juror 58, Sherrill Howayeck.

15 (Sherrill Howayeck, a white female, came forward.)

16 What says the State?

17 MS. MONTIS: Please present the juror.

18 THE CLERK: What says the defendant?

19 MR. GODFREY: Please seat the juror.

20 THE CLERK: Ma'am, please come have a seat in the jury
21 box.

22 Juror 59, Sharon Hoyle.

23 (Sharon Hoyle, a black female, came forward.)

24 What says the State?

25 MS. MONTIS: Please present the juror.

1 THE CLERK: What says the defendant?

2 MR. GODFREY: Please seat the juror.

3 THE CLERK: Ms. Hoyle, please bring your things, have a
4 seat in the jury box.

5 Juror 95, Emily Ranieri.

6 (Emily Ranieri, a white female, came forward.)

7 What says the State?

8 MS. MONTS: Please present the juror.

9 THE CLERK: What says the defendant?

10 MR. GODFREY: Please excuse the juror.

11 THE CLERK: Ma'am, you may be seated, you've been excused
12 in this case.

13 Juror 56, Barbara Hocking.

14 (Barbara Hocking, a white female, came forward.)

15 What says the State?

16 MS. MONTS: Please present the juror.

17 THE CLERK: What says the defendant?

18 MR. GODFREY: Please seat the juror.

19 THE CLERK: Ms. Hocking, please bring your things, have a
20 seat in the jury box.

21 Juror 17, Michelle Bushey.

22 (Michelle Bushey, a white female, came forward.)

23 What says the State?

24 MS. MONTS: Please present the juror.

25 THE CLERK: What says the defendant?

1 MR. GODFREY: Please seat the juror.

2 THE CLERK: Ms. Bushey, please come have a seat in the
3 jury box.

4 Juror 42, Sutton Graham.

5 I'm sorry, Juror 50, Renee Hall.

6 (Renee Hall, a white female, came forward.)

7 What says the State?

8 MS. MONTS: Please excuse the juror from this case.

9 THE CLERK: You may be excused in this case, ma'am.

10 Juror 42, Sutton Graham.

11 (Sutton Graham, a male, came forward.)

12 What says the State?

13 MS. MONTS: Please present the juror.

14 THE CLERK: What says the defendant?

15 MR. GODFREY: Excuse the juror.

16 THE CLERK: Mr. Graham, you may be seated, you've been
17 excused in this case.

18 Juror 122, Michelle Weston.

19 (Michelle Weston, a white female, came forward.)

20 What says the State?

21 MS. MONTS: Please present the juror.

22 THE CLERK: What says the defendant?

23 MR. GODFREY: Please seat the juror.

24 THE CLERK: Ma'am, please come have a seat in the jury
25 box.

1 THE COURT: One alternate. Two and one. Two for the
2 defense, one for the State.

3 THE CLERK: Juror 69, Sarah Lanz.

4 (Sarah Lanz, a white female, came forward.)

5 What says the State?

6 MS. MONTIS: Please present the juror.

7 THE CLERK: What says the defendant?

8 MR. GODFREY: Please excuse the juror.

9 THE CLERK: Ma'am, you may be seated, you've been excused
10 from this case.

11 Juror 45, Amy Greer.

12 What says the State?

13 MS. MONTIS: Please present the juror.

14 THE CLERK: What says the defendant?

15 MR. GODFREY: Please seat the juror.

16 THE CLERK: Please bring your things, have a seat in the
17 jury box.

18 THE COURT: Any question about selection of the jury, Ms.
19 Monts?

20 MS. MONTIS: Not from the State, Your Honor.

21 MR. GODFREY: None from the defense, Your Honor.

22 THE COURT: Okay. Ladies and gentlemen, the rest of you
23 are excused for the day. Call back in after 6:00 tonight and
24 we'll leave a message as to when you need to report back.
25 Thank you, so much.

1 (WHEREUPON, the jury venire was excused at
2 approximately 11:07 a.m.)

3 THE COURT: Ladies and gentlemen, you are the jury in the
4 case now between the State and James Jermaine Abercrombie.
5 From this time forward you cannot discuss the case with
6 anyone. Do not discuss it with each other on breaks. Do not
7 begin discussing the case at all until the case is over.
8 After you've heard everything and you start deliberating.
9 And I'll go over a few other matters with you but we'll need
10 to take a short recess and I'm going to let you go back to
11 the jury room. You need to get familiar with the jury room.
12 That's where you will be taking breaks and where you will
13 deliberate. We have two jury rooms and you can use the rest
14 rooms in both jury rooms if you want to do that.

15 I need to go over some issues of law before we begin. I
16 know nothing about the case. You know as much about this
17 case as I do at this present time. But I'm going to go over
18 a few things and resolve any legal disputes. We will not do
19 anything outside of your presence that has any bearing on the
20 facts or the credibility or believability of the witnesses.
21 That is solely what you will decide. And you will hear
22 everything that's relevant to that.

23 Okay, go back to the jury room now and we'll take about
24 15 to 20 minutes. Then when we come back out we'll start the
25 trial. And we'll work an hour or so. We'll take regular

1 breaks. But we do not want any of you to be uncomfortable.
2 If you need to take a recess for any reason, raise our hand
3 and we'll take a break. It won't be any problem. Y'all step
4 back to the jury room for just a few minutes and then I'll
5 bring you back out and we'll begin the trial.

6 (WHEREUPON, the jury left the courtroom at
7 approximately 11:10 a.m.)

8 THE COURT: Okay, you need to run back to your office?

9 MS. MONTIS: Yes, Your Honor.

10 THE COURT: We'll take about 2, 3, 4, 5 minutes and then
11 we'll come back in. He has a suppression motion he says.

12 MR. GODFREY: That's correct, Your Honor.

13 MS. MONTIS: Thank you, Your Honor.

14 THE COURT: Five minutes, maybe. We'll come back in for
15 the suppression hearing.

16 (WHEREUPON, a short break was taken.)

17 THE COURT: All right, Mr. Godfrey.

18 MR. GODFREY: May it please the Court. The defense would
19 respectfully move to suppress a warrantless entry into the
20 house. And we further move to suppress a warrantless search
21 of the house which led to the evidence as both of these being
22 in violation of the Fourth Amendment of the Federal
23 Constitution.

24 THE COURT: Ms. Montis.

25 MS. MONTIS: Your Honor, the State's position is that the

1 defense has the burden to articulate specific factual and
2 legal grounds to support this claim that evidence was
3 obtained by conduct violative of the Constitutional rights.
4 And this will is under State v. Bandon, it's a South Carolina
5 Supreme Court 2006 as well as State v. Patton, in 1996, Your
6 Honor.

7 MR. GODFREY: May it please the Court. When an officer
8 goes to a home, based on the Fourth Amendment a person is
9 supposed to be safe in their place where they live. The
10 officers went there, they had a right to knock on the door.
11 The question becomes did they have a right to go inside that
12 house. And we don't believe that they did. According to the
13 incident report, one of the officers was at the back of the
14 house and one officer at the front door, one officer at the
15 back door. The officer at the back door claims to have
16 looked through the glass and believes that he saw my client
17 put something beside a cabinet. When the officers got inside
18 the house, the four people who were in the house were all in
19 the living room. The incident report indicated that the
20 officer did a protective sweep. Immediately went back to the
21 kitchen to see what was placed between the cabinet because he
22 thought it might be a gun. And found crack cocaine.

23 The defendant's position is on a protective sweep
24 normally that comes into play. When someone has been
25 arrested. It can come into play, I would suppose with

1 officer safety, but under United States vs. Seifus, which is
2 a Fourth Circuit case, in that particular case they had a
3 tip, just like they did in this case. There was some illegal
4 activity going on at a particular apartment. In the Seifus
5 case the officer did verify that the man named by the tipster
6 lived at the apartment. When the door was opened he could
7 smell the odor of marijuana emanating from the room and the
8 tipster had indicated to the officer in the Seifus case, that
9 there was an under age girl in there that he was giving
10 marijuana to. At that point in time the officer forced his
11 way in and when he secured everyone he went back and got a
12 search warrant before they did anything further.

13 In this particular case, Judge, the officers had a tip.
14 And cannot tell from the discovery of the tipster has any
15 reliability. Cannot tell from the discovery if there was any
16 attempt to verify what the tipster said. Looks more like a
17 knock and talk. Where they walk up and knock on the door and
18 then try to get in. There was no or should have been no
19 concern for officers safety when all four people that were in
20 house were in the living room and the officers had control of
21 it. If they wanted to do anything further, regarding a
22 search, they should have gone back to get a search warrant.
23 And they did not do that.

24 Under Maryland vs. Bowie, U.S. Supreme Court case, they
25 held that the Fourth Amendment permits a properly limited

1 protective sweep in conjunction with an in home arrest when
2 the searching officer possess a reasonable belief based on
3 specific and articulable facts that the area to be swept
4 harbors an individual posing a danger to those on the arrest
5 scene. A case where there is protective sweep, the only
6 cases that I can found are federal. I can't find any state
7 cases on protective sweep. But protective sweep, in every
8 federal case that I have seen is concerned about an
9 individual posing a harm or danger to the officer. In this
10 particular case the officer, according to the incident
11 report, didn't know what was placed between the cabinet,
12 thought it might be a gun. He knew what was between the
13 cabinet wasn't a person. I don't believe this fits under
14 protective sweep. And I believe that to go any farther with
15 a search, they should have had a search warrant.

16 It also says in Maryland vs. Bowie, we should emphasize
17 that such a protective sweep, aimed at protecting the
18 arresting officers, if justified by the circumstances, is
19 nevertheless not a full search of the premisses. But may it
20 stand only to a cursory inspection of those spaces. Where a
21 person may be found. The sweep last no longer than is
22 necessary to dispel the reasonable suspicion of danger. And
23 in any event, no longer than it takes to complete the arrest
24 and to depart the premisses.

25 Now, I would suppose that the State will say that there's

1 extrinsic circumstances because you have drugs. Back to the
2 United States vs. Seifus, the Fourth Circuit said that their
3 inquiry was guided by United States vs. Turner. Which sets
4 out several factors for analyzing the question of extrinsic
5 circumstances. Including the degree of urgency involved and
6 the amount of time necessary to obtain a warrant. The
7 officers reasonable belief that the contraband is about to be
8 removed or destroyed. Three, the possibility of danger to
9 police guarding the site. And four, information the
10 possessors of the contraband are aware that the police are on
11 their trail. And five, the ready destructability of the
12 contraband. The Seifus case is where the officer had the tip
13 that Mr. Seifus was selling marijuana or giving marijuana to
14 under a age girl. Before Mr. Seifus -- before the officers
15 searched Seifus' apartment, he went back and got a search
16 warrant.

17 In this case that was not done. We believe that the
18 facts of this case violate the Fourth Amendment and we
19 believe we have laid sufficient foundation to go forward with
20 the suppression hearing.

21 MS. MONTS: May it please the Court, Your Honor. Some of
22 the things that Mr. Godfrey has said are correct. But
23 starting at the basic premise that this was not the
24 defendant's residence. Both officers have worked this area
25 for years.

1 THE COURT: I can't decide until I hear the testimony.
2 I'll grant his motion. But let's hear it. Y'all telling me
3 what rights and what the facts are and what they're not. I
4 can't go on that, I've got to hear it.

5 All right, Ms. Monts.

6 MS. MONTS: Your Honor, the State calls David Weiner to
7 the stand.

8 THE CLERK: Officer Weiner, please place your left hand
9 on the Bible, raise your right hand.

10 David Weiner, after being duly sworn, testified
11 as follows:

12 THE CLERK: Please be seat. Please state your name for
13 the record.

14 THE WITNESS: David Weiner.

15 DIRECT EXAMINATION

16 BY MS. MONTS:

17 Q Officer Weiner, please tell the Court where you're
18 employed and how long you've worked there?

19 A Greenville County Sheriff's Office for just about seven
20 years.

21 Q And were -- in January '06, what were your duties?

22 A I worked on uniform parole at the time. Those duties
23 include preventing crime proactively, reactively responding
24 to calls for service, things of that nature. Traffic
25 violations.

1 Q What was your area at that time?

2 A What we call beat area 9 which includes where this
3 incident occurred in a neighborhood called Riverside.

4 Q And how long had you been assigned that area?

5 A At the time about six years.

6 Q Are you familiar with [REDACTED]?

7 A I am.

8 Q How often would you go in that area on [REDACTED]?

9 A Probably every day I worked.

10 Q And did you know people who lived in the area?

11 A Absolutely.

12 Q Did you respond to calls in the area?

13 A Absolutely.

14 Q Did you know which houses were lived in and which houses
15 were abandoned?

16 A Absolutely.

17 Q Did you have any personal knowledge on the residence at
18 [REDACTED]?

19 A I did.

20 Q Had you ever responded to that house?

21 A I did.

22 Q What dates, if you call, did you respond?

23 A It was in August of '05.

24 Q Was that the first time that you responded to that
25 residence?

1 A That specific residence, yes.

2 Q And at that time was that house lived in?

3 A No.

4 Q What do you know about that house?

5 A That it is a vacant house and it had not been lived in
6 for some time.

7 Q Would drive pass the house, how often did you say?

8 A Probably every day that I worked.

9 Q And did you every walk pass the house?

10 A Not specifically that I can recall.

11 Q How about on August -- what was the date in August?

12 A It was -- I pulled the incident report. It was August
13 15th.

14 Q And at that time why did you respond to that location?

15 A A stolen car had been recovered in the backyard.

16 Q A stolen car?

17 A A stolen car had been recovered in the back yard and that
18 stolen car had a methamphetamine -- mobile methamphetamine
19 lab in it.

20 Q Is part of your duties locating stolen materials or
21 stolen items?

22 A Absolutely.

23 Q What did you observe about the house at that time?

24 A It was vacant. Absent of all furniture, there was
25 nothing.

1 Q No personal items?

2 A Nothing that I recall. There was even a garage building
3 in this back that was empty. It was just one car parked
4 around back.

5 Q And that car was?

6 A It was stolen.

7 Q And did you work that beat area including Colonial Avenue
8 after that date?

9 A Yes.

10 Q And in June 17th of 2006, were you still working that
11 area?

12 A Yes.

13 Q And on your trips in the area, did you ever notice anyone
14 moving into that house?

15 A No. To the best of my recollection it had a for sale
16 sign in the front yard for years.

17 Q On January 17th of 2006, did you go to that residence?

18 A I did.

19 Q What was your reason for going on that date?

20 A Deputy Fuller has asked me to assist him. He said he
21 received an anonymous tip that there was some activity going
22 on there. Some people present.

23 Q And based on your law enforcement experience and your
24 duties, what was your duty at that time at that location?

25 A To determine if somebody had actually, in fact,

1 burglarized the home. See if somebody was inside of it.

2 Q Were you -- were you privy to any information that
3 Officer Fuller had obtained about that location?

4 A Just what he briefly told me that there had been some
5 type of activity going on. Or some type of suspicious
6 activity. I don't think he got specific.

7 Q When you arrived, what did you notice about the house?

8 A Car in the driveway. A light on in the front room. I
9 don't know if it was like a lantern or the electricity was on
10 in the house. I don't recall that. And then there was a car
11 around back again.

12 Q And any other officers arrive?

13 A I had a trainee with myself, with me, riding with me and
14 then Deputy Fuller was there. We both came up about the same
15 time.

16 Q And what were your duties and what did you do?

17 A It was decided that Deputy Fuller go to the back to make
18 sure that nobody was heading out the back door or any kind of
19 officer safety issues with the back yard. We make sure
20 there's nobody in the vehicles. And then I knocked on the
21 front door.

22 Q And what was your purpose?

23 A To determine what they were doing there. To see if maybe
24 it was lived in, if it wasn't still vacant.

25 Q And what happened when you knocked on the door?

1 A A known prostitute, Karen Walker came to the door.

2 Q Did you know if Karen lived there?

3 A She absolutely did not.

4 Q And you knew Karen Walker?

5 A Absolutely. I've arrested her several times.

6 Q And was there anyone else inside the house?

7 A She has an older gentleman that will sometimes accompany
8 her. He'll bond her out of jail, he'll give her a place to
9 stay, a meal, that kind of thing. He was there. And that
10 was his car that was in the driveway.

11 Q Do you know his name?

12 A I call him Hubert Hall but I think his legal name is John
13 Hubert Hall.

14 Q And you knew him?

15 A Yes, ma'am.

16 Q And did he live at that residence?

17 A No, ma'am, he lives in Easley.

18 Q Did you see anyone else or -- excuse me, what happened
19 when Ms. Walker opened the door?

20 A I knocked on the door, she knows me, I know her.

21 I said, you know, Karen, what's going on here? Who else
22 is here, that kind of thing. And she just steps to the side.
23 So I walked inside to talk to her. And it was her, Hubert
24 Hall and the defendant was kind of standing right in the
25 threshold between the kitchen and the main room.

1 THE COURT: Excuse me, one minute.

2 Mr. Bailiff, ask the jury to -- tell them that we're
3 going over some legal matters. And don't tell them anything
4 else but ask them to be back at 1:30.

5

6 BY MS. MONTS:

7 Q Okay, please continue. Where was the defendant?

8 A When I -- straight ahead of me is like a -- it's a door
9 way but there's no door, you know, it's framed out. And he
10 was standing right there at that threshold between the
11 kitchen area and the main room.

12 Q Had you ever seen him before?

13 A No.

14 Q Was there any furniture inside?

15 A There was one couch to my left and then to my right
16 another opened threshold area, looks like a bedroom area.
17 And it was either a mattress or a sleeping bag spread out.
18 That was it. That's was all the furniture I observed in the
19 in entire place.

20 Q Was there any personal items?

21 A Just like that sleeping bag, mattress. It might have had
22 like a little bag of clothes next to it or something. I want
23 to say there was a candle next to it.

24 Q Did you have any reason to believe that any of these
25 people lived in this residence?

1 A Absolutely not.

2 Q Did anyone ever tell you they lived in this residence?

3 A Absolutely not.

4 Q Did Officer Fuller come into the house?

5 A He did.

6 Q If you know, which door did he use?

7 A He came right in that front door, the same one I did.

8 Once I told him that I didn't see anybody else in the
9 residence and I had called out, everybody was in that main
10 room where I was. He came around to the front.

11 Q So did the defendant come into the living room then?

12 A Yes, ma'am.

13 Q What transpired once Officer Fuller got inside?

14 A He walked in and said that he'd seen the defendant in the
15 kitchen crawling underneath a cabinet and he wanted to make
16 sure he wasn't storing some type of weapon under there. So
17 he walked into the kitchen. And I kind of stood right in
18 that threshold area where the defendant was when I first came
19 in. And that's when Deputy Fuller came back to me with
20 illegal narcotic s.

21 Q At this point was anybody handcuffed?

22 A No.

23 Q Was anybody under arrest?

24 A Not at the time.

25 Q What are you duties at this time?

1 A Well basically to determine if a crime had been
2 committed, I think. And other than the illegal narcotics
3 that we located, we didn't find any other paraphernalia, any
4 other weapons or anything like that.

5 Q But based on your investigation, were these people
6 lawfully in this house?

7 A No. It wasn't their residence. But I couldn't find any
8 other crime that they were committing. The other two
9 individuals. The other crime that they were committing just
10 by being there.

11 Q Did you charge them?

12 A No.

13 MS. MONTS: Thank you, no further questions at this time.

14 MR. GODFREY: May it please the Court.

15 CROSS-EXAMINATION

16 BY MR. GODFREY:

17 Q Okay, deputy, you -- Deputy Fuller contacted you about
18 help at this residence because there was suspicious activity,
19 is that correct?

20 A Yes, sir.

21 Q Now you have indicated that you have been familiar with
22 that area basically since August of 2005, right?

23 A I've been familiar with that area since basically since
24 August of 2000. Since I started patrol that's where I've
25 always worked.

1 Q Who owns the house?

2 A No idea. If I recall, the for sale sign in the front was
3 a Tinsley sign. It's a red and white sign, they're a lot in
4 that area.

5 Q Now, when you went up on the porch you knocked on the
6 door?

7 A Yes, sir.

8 Q Was the door locked?

9 A I have no idea.

10 Q But a Karen Walker came?

11 A Right. She opened the door from the inside, yes, sir.

12 Q And when she opened the door, what did you see?

13 A I said, Karen, you know, what's going on here? Anybody
14 else here I need to know about? That kind of thing. And she
15 stepped to the side to allow me in.

16 Q So how many people total were there in house?

17 A Three.

18 Q And that was Karen Walker?

19 A Yes, sir.

20 Q And then Karen Walker's older fella that takes care of
21 her?

22 A Yes, sir.

23 Q And James Abercrombie?

24 A Correct, that's the three I recall being in there.

25 Q And this is a small house?

1 A One bed room.

2 Q Now, did Karen Walker tell you that there were only three
3 people there?

4 A I don't think she ever said there were only three people
5 there. Those were -- as soon as that door opened I could see
6 the defendant in the threshold, Karen Walker, just a foot or
7 two off to her right, my left, would have been Hubert Hall.

8 Q So you were not suspecting to find anybody else in that
9 residence?

10 A No idea.

11 Q And when you went in with detective -- excuse me, with
12 Deputy Fuller, everybody went the living room area?

13 A Correct. I had everybody move to the living room area so
14 we could see where they were, see what they were doing. Make
15 sure nobody was digging in pockets or going for any stashes
16 or anything like that.

17 Q Did you pat people down?

18 A Not at that time. They were just sat down on the couch.
19 I checked the couch to make sure there was nothing on that
20 couch, lifted the cushions, then I sat them down.

21 Q Okay. So you checked the couch and while you were
22 checking the couch and people sat down, what was Deputy
23 Fuller doing?

24 A He was still around back. And once I told him that we
25 had it secured, that everybody in the residence was seated in

1 the living room, he came around front.

2 Q Did you determine that day if any of those people
3 actually lived there?

4 A Sure.

5 Q How did you do that?

6 A Asked them, Anybody stay here?

7 Q Whose clothes was it in by the sleeping bag?

8 A Nobody would own up to that. Never could figure that
9 out. It's kind of a vacant house. Once it's determined it's
10 vacant, especially in that side of town, in that
11 neighborhood, it's going to be frequented. Somebody that's
12 looking for a roof over their head to keep out of the rain.
13 Or out of the cold in this case, in January. They're going
14 to stay there.

15 Q Did you tell Deputy Fuller to check the house?

16 A I did not.

17 Q Did you search any other areas of the house?

18 A Just to stick my head in the room to make sure nobody was
19 hiding. That type of thing.

20 Q All right. Which room did you stick your head in.

21 A That bedroom area, then there's a bathroom off of it and
22 then the kitchen.

23 Q And when did you do that?

24 A As soon as I kind of got everybody into the living room.
25 It didn't really require me walking around because there was

1 no obstacles. There was no obstructions, no furniture, no
2 shower curtains, no doors, nothing.

3 Q Now when you first -- when Karen Walker first opened the
4 door, you saw Karen Walker, you saw James Abercrombie and was
5 the older gentleman?

6 A He was in that same living room off to my left, her
7 right. He was kind of -- I mean when you walk in the door
8 the living room is almost straight from the door over. To my
9 left. To the right is that bedroom. Straight ahead is the
10 kitchen.

11 Q So other than sticking your head around, making sure
12 there was nobody else there, the only searching was done was
13 going through the kitchen area?

14 A Once we located those narcotics we did a little bit
15 better search to make sure there was nothing else left
16 behind.

17 Q And what is a little bit better search?

18 A Looking underneath that bedding, bathroom cabinet, that
19 kind of thing.

20 MR. GODFREY: Nothing further.

21 MS. MONTS: Nothing further of this witness, Your Honor.

22 THE COURT: Okay. Thank you, sir.

23 MS. MONTS: The state calls officer fuller.

24 Tim Fuller, after being duly sworn, testified
25 as follows:

1 THE CLERK: Please state your full name for the record.

2 THE WITNESS: Timothy Fuller.

3 DIRECT EXAMINATION

4 BY MS. MONTS:

5 Q Officer Fuller, please tell the Court where you're
6 employed and how long you've worked there?

7 A Employed with the Greenville County Sheriff's Office for
8 approximately four years.

9 Q And in January of 2006 how long had you worked with the
10 sheriff's office?

11 A Approximately two and a half years at that time.

12 Q And what were your duties at that time?

13 A Was -- worked in uniform patrol.

14 Q What are your duties in uniform patrol?

15 A As Deputy Weiner stated, we respond to calls, proactive
16 in trying to prevent crime in our beat areas.

17 Q What was your beat area?

18 A Beat area 9.

19 Q What area does that encompass?

20 A In encompass the incident location which is in the
21 Riverside community as well as several other communities
22 close by.

23 Q And how long have you been assigned to beat area 9?

24 A Approximately two years.

25 Q Are you familiar with Colonial Avenue?

1 A I am.

2 Q How often would you go by that area?

3 A Probably every day that I worked.

4 Q And were you familiar with the residence at [REDACTED]

5 [REDACTED]?

6 A Not before this date.

7 Q And on this date, did you go to 212 Colonial Avenue?

8 A I did.

9 Q And what made you go to that location on that date?

10 A We had a call previously in the area, something totally
11 unrelated. And after finishing that up a citizen kind of
12 flagged me down, can you check on this? And told me about
13 some suspicious activity at the house. Described the house.
14 I asked Deputy Weiner about it, knowing that he had been
15 working the area longer than I have. Said he was familiar.
16 And we went down there together.

17 Q Were you in separate vehicles?

18 A That's correct.

19 Q And where did you park?

20 A We parked along the side the road, maybe a house away
21 from the location.

22 Q And at this time of day was it daylight or dark?

23 A It was getting dark.

24 Q And where did Officer Weiner go and where did you go?

25 A Deputy Weiner went to the front, along with his trainee.

1 I went around to the back. Make sure there was nobody in the
2 backyard, in the vehicle that was in the back, stood by for
3 officer safety reasons where I could see inside the house
4 actually.

5 Q And what did you observe about the house as far as --
6 what did you observe about the house?

7 A It's a small house, car in the driveway and a car around
8 back. No personal effects like belongings out back like
9 grills or lawn mowers or anything like that. What I could
10 see inside the residence there wasn't furniture or anything
11 like that.

12 Q Did you look inside the residence?

13 A I did.

14 Q And what did you observe when you looked inside the
15 residence?

16 A I was standing at the back door looking through a glass
17 piece in the door. Deputy Weiner had gone around front,
18 again to knock on the front door. I saw the subject, black
19 male subject who later turned out to be the defendant, come
20 into the kitchen area. Had his hand in his coat pocket, saw
21 him pull his hand back out of his pocket, kneeled down and
22 set something down in the corner of the kitchen.

23 Q You said it was out of his coat pocket?

24 A That is correct.

25 Q And what did you do once you observed this?

1 A I just stood by there. Deputy Weiner advised me that he
2 was inside. To come around. I came around.

3 Q Could you be seen from outside?

4 A It's doubtful. It was small glass piece in the door.
5 And I was standing at a slight angle, I doubt that anybody
6 could see me.

7 Q Once Officer Weiner told you he was inside, what did you
8 do?

9 A I went around and went inside with him. Told him what I
10 had observed. Again, for officer safety reasons, went
11 immediately to that spot and looked and observed what
12 appeared to be crack cocaine.

13 Q Did you show this to Deputy Weiner?

14 A I did.

15 Q And when you walked in the house, who was inside and what
16 could you see?

17 A Deputy Weiner, his trainee, Ms. Walker, the other older
18 male subject and the defendant were in the living room.

19 Q And this older male subject, was he white or black?

20 A White male.

21 Q How about Ms. Walker, is she white or black?

22 A She's a white female.

23 Q Where was everyone when you came inside?

24 A In the living room.

25 Q And describe what was inside the house?

1 A I recall a couch being in there. And I don't recall
2 looking in any of the bed rooms, even to look. I know that
3 there wasn't any other furniture or any personal effects.

4 Q How about curtains or things on the wall?

5 A Not that recall any kind of pictures or anything like
6 that.

7 Q How about in the kitchen, what was in the kitchen?

8 A I don't recall any food or anything like that. There was
9 some appliances missing, there wasn't any appliances in
10 there.

11 Q And what did you once you went into the kitchen and found
12 what you believed to be crack cocaine?

13 A At that point, obviously I let Deputy Weiner know, and we
14 then detained the defendant in handcuffs at that time.

15 Q And did you or was Ms. Walker or the other gentleman
16 charged with anything?

17 A They were not.

18 Q Do you know if they lived there?

19 A They do not live there.

20 Q Do you know if the defendant lived there?

21 A He said he did not live there.

22 Q And did you, in fact, transport him to the law
23 enforcement center?

24 A I did.

25 Q And what -- did you find out where he lived at that time?

1 A I have the address of [REDACTED].

2 Q Is that this location?

3 A It is not.

4 Q And did the defendant give you his correct name?

5 A He did not originally. He gave me a false name and birth
6 date. After some time of trying to figure out who he was I
7 finally found out who he was and verified it through a
8 picture before we put him in the detention center.

9 Q Did you have any reason to believe that any of these
10 people lived at this residence?

11 A No.

12 Thank you, no further questions.

13 CROSS-EXAMINATION

14 BY MR. GODFREY:

15 Q Deputy Fuller, you received an anonymous tip from a
16 citizen?

17 A That's correct.

18 Q What was the nature of the anonymous tip?

19 A He was concerned about the activity at this house. Cars
20 coming and going, staying for a short period of time. He
21 thought it was drug activity.

22 Q Did you know the citizen who gave you the tip?

23 A No.

24 Q Did you know if -- had you ever seen the citizen before?

25 A I'm not sure.

1 Q But he hadn't worked for the department or given you any
2 previous information?

3 A No, he had not.

4 Q Did you go and set up and observe the house to see if
5 there was suspicious activity?

6 A No, sir.

7 Q So the first thing you did was call Deputy Weiner?

8 A That's correct.

9 Q And you all went directly to the house?

10 A We pulled up, like I said maybe a house way on the side
11 of the road. Get out. See that there's some cars there.
12 Discuss what we want to do from that point.

13 Q But there was no verification made of anything that the
14 tipster had to tell you, you just went over?

15 A Well at that point after speaking with Deputy Weiner, he
16 let me know that he was more familiar with the residence
17 obviously than I was and that it should be vacant. And that
18 he was familiar with some activity at the residence.

19 Q Did you contact the owner of the house that day?

20 A Did not.

21 Q Or any day there after?

22 A Did not.

23 Q Were the lights on in the house?

24 A As Deputy Weiner said there was some sort of light in the
25 living room area. I'm not sure if it was coming from

1 electricity or a lantern.

2 Q Now, you went around to the back of the house at Deputy
3 Weiner's, direction, right?

4 A That's what we decided to do, sure.

5 Q And you say there was a small glass in the door?

6 A That is correct.

7 Q Was there a light on in the kitchen?

8 A Not that recall. It was lit enough to where I could see.

9 I don't know if there was a light on inside the kitchen.

10 Q Okay. And, of course, you don't know if it was electric
11 light or some other type of light?

12 A I do not.

13 Q What time of day was this that you were actually out
14 there?

15 A 6 p.m.

16 Q In January?

17 A That is correct.

18 Q It's getting dark?

19 A That is correct.

20 Q And you're looking through a little pane of glass?

21 A That is correct.

22 Q How many people did you see?

23 A I only saw the defendant.

24 Q You saw one person?

25 A That is correct.

1 Q And when Deputy Weiner asked you to come around and come
2 in, you went around to the front door and went into the
3 house?

4 A That is correct.

5 Q When you got into the house, how many people did you see?

6 A Five people total. Deputy Weiner, his trainee and the
7 other three previously mentioned.

8 Q Well, where were Karen Walker, the older gentleman and my
9 client when you walked in the front door?

10 A They were in the living room, possibly all sitting on the
11 couch. I know at least two of them were, I can't recall
12 exactly.

13 Q And you had already learned from Deputy Weiner that the
14 house was secured?

15 A Yes.

16 Q And when you went in you went back to the kitchen and
17 checked around the cabinet?

18 A That is correct.

19 MR. GODFREY: I have nothing further for this witness.

20 MS. MONTS: Nothing further of this witness, Your Honor.

21 THE COURT: Okay. Thank you, sir.

22 MS. MONTS: Your Honor, that would be the State's showing
23 on this issue.

24 MR. GODFREY: May it please the Court. For the purposes
25 of this hearing I would call James Abercrombie

1 THE CLERK: Mr. Abercrombie, sir, if you'd please pause
2 at the end of the bench, place your left hand on the Bible
3 and raise your right hand.

4 James Abercrombie, after being duly sworn,
5 testified as follows:

6 THE CLERK: Thanks you, please be seated. Please state
7 your name for the record.

8 THE WITNESS: My name is James Jermaine Abercrombie.

9 DIRECT EXAMINATION

10 BY MR. GODFREY:

11 Q James, back on January 17, 2006, where did you live?

12 A I live in [REDACTED] at -- trying to think of the
13 address. I was living at [REDACTED], it's called --
14 right up there by Ingles, that area is called -- I'm trying
15 to recall the area. I can't remember.

16 Q Some where around Travelers Rest?

17 A I wasn't living over there on [REDACTED].

18 Q Okay. Why were you at Colonial Avenue?

19 A John Hall. John Hubert Hall, I call him Pop. I was
20 working -- I work on his cars, that's how he know me. He
21 called me over, he told me that him and Karen, Karen Walker,
22 at the time they was married, that's what he told me. That
23 they wanted something to eat. I brought them something to
24 eat. They witness, they seen they were eating at the time
25 they did come in.

1 Q Okay. Now, wait a minute.

2 A Okay.

3 Q You went to [REDACTED] [REDACTED] to work on a car?

4 A Yes, sir.

5 Q And you also carried some fast food?

6 A Yes, sir, from Wendy's.

7 Q How many people were at the house when you got there?

8 A When I got there it was John Hall, Karen Walker and it
9 was another lady, female, that was sitting there with them.

10 Q Whose car did you intend to work on?

11 A It was the lady that was there earlier. Her name was
12 Tonya, I think. John called me and told me that it broke
13 down in the front of the driveway.

14 Q Who did you believe lived at that house?

15 A I thought Karen did. Karen Walker and them did. That's
16 why I thought. I wun't (sic) really just asking no
17 questions. I just came to fix the car.

18 Q How long were you at [REDACTED] [REDACTED]?

19 A By the time the officers arrived I was there no longer
20 than about like 10 minutes. If even more than that.

21 Q Well what happened to the woman who had the car you
22 wanted to work on?

23 A I put -- the freeze plug had popped out of the bottom of
24 the radiator. I put a rubber piece that I got out of the
25 back yard and stuck it in and told her, you know, drive

1 straight back to point A, don't drive no where else. And she
2 left.

3 Q Had she left before the officers came?

4 A Yes, sir.

5 Q When the officers knocked on the door, where were you?

6 A I was sitting -- when they knocked on the door I was in
7 the bathroom washing my hands.

8 Q Was the water on?

9 A Yes, sir.

10 Q So the utilities were working?

11 A Yes, sir.

12 Q Why were you washing your hands?

13 A Because I had grease on my hands from the radiator.

14 Q And where is the bathroom in relations to the living
15 room?

16 A When you go in there's a bedroom off to your right then
17 there's a bathroom, then there's another bedroom. It's right
18 between the two bedrooms.

19 Q What's the relationship of the kitchen to the bathroom?

20 A It's like the living room, then the kitchen, then there's
21 a bedroom, then there's a bathroom. Or you can go the other
22 way around and come into the bedroom and then there's a
23 bathroom.

24 Q So when the officer knocked on the door, where were you
25 and what were you doing?

- 1 A I came -- when I heard the knock on the door, I was
2 coming out the bathroom, through the kitchen. John, when he
3 came in there he said, Somebody knocking at the door. So as
4 we was coming in I sit on the couch. That's when they opened
5 -- he opened the with a key. It's a deadbolt on the front
6 door. You can't just open the door, it's a deadbolt. You
7 got to open from -- a key from the outside to the inside.
- 8 Q All right. Back up just a second. You came out of the
9 bathroom washing your hands?
- 10 A Yes, sir.
- 11 Q You say you saw John, what's his last name?
- 12 A Hall.
- 13 Q John Hall. And where was it that you saw John Hall?
- 14 A John Hall was coming -- it's like -- it's a fridgerator
15 before you get to the bedroom, that's where we met at right
16 there. At the fridgerator. The fridgerator sat in the
17 corner of the kitchen.
- 18 Q And where did you go after you met John Hall at the
19 corner where the refrigerator is?
- 20 A Went to the front living room.
- 21 Q What did you do there?
- 22 A I sit down.
- 23 Q All right.
- 24 A On the couch behind the door.
- 25 Q I'm sorry, maybe I misunderstood. Did you say you went

1 to the front bedroom?

2 A Front living room.

3 Q Okay, I'm sorry. And you sat down?

4 A Yes, sir.

5 Q Where was John Hall, do you know?

6 A Going to open the door.

7 Q Where was Karen Walker?

8 A She was sitting on the couch in front of me.

9 Q Now, let me jump back for a second, when you washed your
10 hands, how did you dry your hands?

11 A I dried my hands on my clothes because when I was coming
12 out he said somebody was knocking at the door.

13 Q Was there any towels in there?

14 A Yes, sir. The bathroom was -- had towels hanging from
15 the wall. That was their personal towels. I don't touch
16 nobody personal towels and put grease on it.

17 Q Now, when the officer knocked on the door, John Hall
18 opened the door?

19 A Yes, sir.

20 Q And how did he open the door?

21 A He took a key, opened the door and the officers told him
22 to step out.

23 Q Then what happened?

24 A When he stepped out it was -- I didn't see neither one of
25 them two. It was an older officer with a beard. White

1 beard. He told John to step out. John stepped out, the door
2 opened up. It opened up from -- it opened from -- from --
3 when you open it it opens like that and it comes in. It
4 don't go out, it comes in. And when it came in that's when I
5 think this officer, not the other one but right here, Fuller
6 -- no, that's Fuller, the other officer.

7 Q Weiner?

8 A Yes, sir. They were coming in. Him and that dude, the
9 other officer with the white beard, they come in. First
10 thing they told me to stay right there.

11 Q Then what happened?

12 A Then he said, Where KK at, there's some drugs at. So
13 then that's when Fuller come around. I don't where he come
14 from, he come in, come to the door. He come in the door,
15 that's when I seen all four officers right there. All four
16 officers standing right there. Two of them was in front of
17 me. So I couldn't move no where. And he asked for ID's,
18 identification.

19 Q Did you have any identification?

20 A No, sir. I didn't give none. I told him -- I was giving
21 him a false name. First I told him I shouldn't have to give
22 none because I felt like I ain't did no wrong. I'm just
23 here, I brought food. And one of the officers -- I remember
24 one of the officers asked John, how can you eat at a time
25 like this?

1 Q Well, was everybody in the living room at that point in
2 time?

3 A Yes, sir.

4 Q What did Deputy Fuller do? The one who's in uniform?

5 A Deputy Fuller, from what I recall, I don't recall him
6 entering the house completely. I know he was out the front
7 door, back in the front door, out the front door, back in the
8 front door. And I was looking -- he was looking at me. And
9 he goes back out and come back in. From because I guess when
10 I wouldn't give him my name he was outside trying to pull up
11 a photo or something. Then he come in at one point he said,
12 We got him. So then the other officer, somebody, finally
13 went in the kitchen, started searching around. There was
14 another officer in the other room. Because I still had the
15 older dude with the white beard in front of me and the other
16 dude, it was a younger dude. And then it was -- they came
17 back and said, Bingo. Then he showed me what he found. And
18 when he showed me what he found I said, That ain't mine.

19 Q Which officer showed you what he found?

20 A It was another officer with him. Not the older dude, he
21 was standing in front of me.

22 Q You're saying it wasn't Deputy Fuller?

23 A No, it wun't Deputy Fuller.

24 Q Well what did you do when you were shown the item by the
25 Deputy?

1 A I told him that wun't mine.

2 Q Then what happened?

3 A He told me that, I seen you kneel down over there.

4 I said, No, you don't.

5 And then he said, Then you're under arrest.

6 And they was telling me that they were going to 10 finger
7 roll me to pull my ID., that's 30 days. And if I don't give
8 him my right name, my real name, he going to hit me -- after
9 I get my fingerprints rolled down here, he going to hit me,
10 come back and serve a failure -- false report to officer.
11 And said that's =going to be another 30 days.

12 So I told him. I ain't give him my real name until we
13 got down here in front of the detention center. When I got
14 in front of the detention center.

15 MR. GODFREY: Nothing further of this witness.

16 CROSS-EXAMINATION

17 BY MS. MONTS:

18 Q Mr. Abercrombie, how long had you known John Hall?

19 A I known John Hall about approximately four year.

20 Q Four years. And how often would you see him?

21 A About -- it was like once -- once or twice a week.

22 Q Where would you see him?

23 A Sometimes at his house.

24 Q Where is his house?

25 A Down in Easley.

1 Q Okay. Where else?

2 A And sometime he come to the shop that I was working at.

3 Q And where is that shop?

4 A Over there off -- it of Markley Street right beside
5 Elgin. But it was.

6 Q Had you ever seen Karen Walker before?

7 A When she be in the car with him.

8 Q And where would you see them together?

9 A They come to the shop or they come -- when he had a
10 little black car, she had wrecked it. He called me one time,
11 I seen him down at the house.

12 Q And how did you talk to him on January 17th of 2006?

13 A On the cell phone, he called me.

14 Q And what did he tell you?

15 A He told me that if I don't mind that there's a lady car
16 that broke down in his driveway. Would you, please, come
17 down and help me fix it. To get it out the way. I told her
18 that you wouldn't charge so much. So that's what caused me
19 to come out -- come down there.

20 Q And where was that car?

21 A Right there at the front of the driveway. Like right
22 when you first pull in the driveway, it's right there in the
23 front of the driveway.

24 Q By the road or up further up the driveway?

25 A It's like, when you come in the driveway, it's right

1 there. It's right off the road. It was out the of the way
2 road but it was right off the rode in the driveway.

3 Q Where were you parked?

4 A I parked -- when I first pulled up -- mine was right in
5 front, in the ditch in the front of house.

6 Q You parked in front of the house in a ditch?

7 A Yes, ma'am.

8 Q And how much did she pay you for coming up there?

9 A I ain't charge nothing but \$25.

10 Q What car did you drive there?

11 A An Expedition.

12 Q Is that a Ford?

13 A Yes, ma'am, Ford Expedition.

14 Q What color is that?

15 A Blue.

16 Q Is it in your name?

17 A No, ma'am.

18 Q Whose name it is in?

19 A Angela Faulkner.

20 Q And when you arrived, how did you get inside the house?

21 A They let me in the back door.

22 Q And how long had you been there?

23 A I wun't there no longer than 10 minutes.

24 Q And what did you do as soon as you got there?

25 A As soon as I got there I pulled -- first I fixed her car,

1 I went to the backyard.

2 Q How long did it take you to fix her car?

3 A It wun't even take me about -- it ain't took me about
4 like three minutes tops.

5 Q To do what?

6 A I -- once she told me what her problems was -- she told
7 me the only thing wrong with her car, the water keep running
8 out of it. So I said, pop the hood. She popped the hood. I
9 popped the radiator cap, there wun't no water in it. There's
10 a hose right there by the front driveway. Running water in
11 it, water coming out the bottom. I went back there in the
12 back and found this little piece of plastic and I stuck it,
13 this little rubber piece, and I stuck it up in the bottom of
14 the radiator where the freeze plug at.

15 Q All right. And what did you do after you fixed her car?

16 A Okay, she backed up out the driveway, that's when I
17 pulled my truck around to the back.

18 Q And how did Ms. Walker and Mr. Hall get to this place?

19 A His truck was out there too. He had a -- it's like a --
20 I want to say it's blue but it's funny purplish color. Ford,
21 F -- I think F-150.

22 Q Where was he?

23 A Well he was in the house.

24 Q Where was the car?

25 A His truck was -- it's like a garage, it was half in the

1 garage.

2 Q When did you go inside the house?

3 A When I pulled my truck around the back.

4 Q And what did you do when you went inside the house?

5 A I went in the house, I went in through the back door,
6 went through the kitchen and he showed me where the bathroom
7 was to wash my hands.

8 Q And what did you do after that?

9 A I come up -- it was knock. When I came out washing my
10 hands there was a knock at the door.

11 Q Was the first time you walk in the house after you fixed
12 her car?

13 A Yeah. Yes, ma'am.

14 Q And the knock at the door was the police officer?

15 A Yes, ma'am.

16 Q When did you get the food in the house?

17 A I brought the food in the house when I came through the
18 house. He was right there with me in the back door to let me
19 in.

20 Q I thought you said they were eating already when the
21 police got there?

22 A No, I said -- yeah when the police got in they was
23 eating.

24 Q But you said the knock door at the door came right when
25 you walked through.

1 A Listen, he got the food when I come in, that's when he
2 got the food at the back door with me. I come around, he
3 show me where the bathroom, I wash my hand. When a knock at
4 the door that's when I come through, they was already sitting
5 in the front room eating.

6 Q And did you say that there was a police officer with a
7 white beard?

8 A Yes, ma'am.

9 Q Had you ever seen him before?

10 A No, ma'am.

11 Q How long was his beard?

12 A I say about a couple inches off his face. It was thick.
13 I wasn't like short cut beard, it was kind of thick. He
14 drove that -- it's like a Cherokee sheriff patrol truck.

15 Q When you went outside did you see the police officers
16 car?

17 A Yes, ma'am.

18 Q Where was that?

19 A His truck was parked -- it was like -- the patrol car
20 that I got in, his truck was parked right across from it.

21 Q Had you ever been to that residence prior to this date?

22 A No, ma'am.

23 Q How did you know how to get there?

24 A I was familiar with the area, just from over there.

25 Q And had you ever seen John Hall at that residence?

1 A No, I never seen him over there. He also meet me at my
2 shop or I come to his house.

3 MS. MONTES: Thank you, no further questions.

4 MR. GODFREY: That's all we have.

5 THE COURT: Thank you.

6 MS. MONTES: Your Honor, may I recall the officer or do
7 you want to go forward from here?

8 THE COURT: All right, you want to put the officer back
9 up, I'll let you put the officer back up.

10 MS. MONTES: Your Honor, the State calls Deputy Weiner. .

11 THE COURT: We don't need to go over anything that's
12 already been testified to now.

13 REDIRECT EXAMINATION

14 BY MS. MONTES:

15 Q Deputy Weiner, how many of your officers went to the
16 scene?

17 A It was myself, Deputy Fuller and I had a trainee. That's
18 initially what was there. There may have been one other
19 officer that responded.

20 Q Where there any officers with a beard?

21 A No, the sheriff's office has strict policies about that.

22 Q Which are?

23 A You have to have a clean shaven face except for mustache
24 that can't exceed the corners of the mouth. Unless you're in
25 vice and narcotics. In which case they would be in plain

1 clothes. And we didn't call any vice and narcotics out
2 there.

3 Q And where were the two vehicles parked that you saw
4 there?

5 A One was pretty close up to garage and the Expedition was
6 all the way around.

7 Q Which one was the care that belonged to -- or that the
8 defendant had driven there?

9 A The Expedition was parked around the back of the house.

10 Q Was that in front of Mr. Hall's car?

11 A Yeah, I mean, you couldn't fit an Expedition behind there
12 with a pickup truck parked there as well.

13 Q So the defendant's car was in front of Mr. Hall's car?

14 A By order of arrival, through the driveway, yes.

15 MS. MONTS: Thank you, nothing further.

16 MR. GODFREY: No questions.

17 THE COURT: Thank you, sir.

18 Y'all want to say anything else about this?

19 MR. GODFREY: Judge, I don't think I have anything else
20 that I can add. The argument came in the beginning. The
21 two cases were, if you don't have them, is U.S. v. Seifus at
22 254 F3rd 488 and Maryland v. Bowie, which is 494 U.S. 325.

23 MS. MONTS: And, Your Honor, the State would argue that
24 the defendant had no expectation of right to privacy at this
25 residence. He testified that he had known Mr. Hall for

1 several years but knew him to live in Easley. He had never
2 been to this house before. And he also said he had never
3 seen Mr. Hall at this house before. So there's no reason for
4 the defendant to have expected any privacy at this residence.
5 In addition, law enforcement testified that the house had --
6 was not in a livable condition, that there were no appliances
7 in there, that the only furniture was one couch and one
8 possibly mattress or sleeping bag on the floor. It was not
9 being lived in. Both officers, especially Officer Weiner,
10 testified that he knew Karen Walker and Mr. Hall and knew
11 that neither of them lived there. Neither of them said that
12 they lived there. The defendant never said he lived there.
13 All of them they -- the vehicles were not registered at that
14 location.

15 And according to State v. Missouri, it does not meet the
16 burden of expectation of right to privacy. As well as this
17 case -- which is a 2004 Supreme Court case. As well as the
18 State v. Crane which is a 1988 Supreme Court, South Carolina
19 Supreme Court case stating that the expectation of right of
20 privacy must be proven by the defendant. The defendant has
21 the burden to show this. And that the defendant must
22 demonstrate a legitimate expectation of privacy in connection
23 with a search premisses. That he must have demonstrate
24 ownership, dominion or control over this. And, Your Honor,
25 in our case there is no demonstration of a legitimate

1 expectation or privacy. He'd never been in this house
2 before. He'd been there less than, per his testimony, less
3 than 10 minutes. He'd never seen either of the other two
4 occupants at this residence before and had, in a reasonable
5 man's standard, there would be no reason for him to actually
6 believe or for a reasonable man to believe that these people
7 lived there. But basically he was there less than 10
8 minutes, Your Honor. He has no expectation of privacy based
9 upon these South Carolina Supreme Court cases.

10 MR. GODFREY: May it please the Court, I'd just like to
11 say a couple of things. Number one, my client testified that
12 when the door was opened that John Hall used a key and stuck
13 it into the dead bolt lock which locks with a key on both
14 sides of the door. That indicates some expectation of
15 privacy and ownership. The officers never told us and never
16 even checked in to see who actually owned the house. And
17 according to my client there was water running in the house.
18 Obviously the utilities were on. The officers were unclear
19 about whether or not the lighting that was there was
20 artificial or electric. But I believe that based upon the
21 testimony of my client, that there was an expectation of
22 privacy.

23 THE COURT: We'll take 10 minutes and we'll come back. I
24 want to look at couple of these cases. 12:30.

25 (WHEREUPON, a short break was taken.)

1 The cases indicate that to exclude evidence that it must
2 be established by the person seeking suppression that he had
3 an expectation of privacy in the area which was searched.
4 State vs. Crane says that and that's about all it says.
5 State vs. Missouri goes a little bit further than that. That
6 was a Greenville case Judge Hall rules on and it was in
7 regard to an apartment. Clearly an occupied apartment. In
8 Missouri they affirmed the doctrine that they claimed
9 protection under the Fourth Amendment. The defendant must
10 show that they have a legitimate expectation of privacy in
11 the place that was searched. Well, the undisputed testimony
12 from the officers and I don't know if there's any way the
13 defendant could have known what testimony was going to be but
14 still the defendant has not brought forth any evidence to
15 contradict the testimony of the officers.

16 Officer patrolled this area his entire career with the
17 sheriff's department in Greenville. And he testified clearly
18 that he knew that this was vacant property. A vacant
19 residence. He testified that he had taken from that
20 residence a stolen vehicle in some time the year before, '05,
21 maybe. And there was no evidence, he never knew anybody
22 occupied that residence. So this was vacant property. The
23 only thing the officers have testified, and again the burden
24 is on the defendant to suppress the evidence, but the officer
25 testified that the only thing in there was a mattress and a

1 sleeping bag. It being a vacant property and the fact that
2 the officers had found property of the subject of a crime in
3 the backyard on these premises before and that was their area
4 to patrol, it was not unreasonable police conduct for them to
5 go on the premises.

6 Once on the premisses, the officer in his testimony was
7 that he viewed, in plain view, what the activities of this
8 defendant, what he did in the house in placing what some
9 items or attempting to hide something on this property.

10 Which appears to the Court I'll have to find will be vacant
11 property because there's been no rental agreements or anybody
12 had the right or permission to be there. And so the police
13 conduct to check out what was going on was not unreasonable
14 police conduct. And the standard is that -- they're two
15 standards set forth in the Missouri about what a reasonable
16 expectation of privacy is. And there is a New Jersey case
17 which I didn't write the name down, that indicates that the
18 person on vacant property does not have an expectation of
19 privacy in activity -- or you cannot -- I don't remember the
20 name of the case but we'll provide that to the record later.
21 But we have the case that we just looked at before we were
22 walking in here. The officer testified he saw this put under
23 there, the officer had made the arrest of this lady several
24 times before who was in there. And there was no evidence
25 that they did not enter without permission. They did not

1 search.-- they probably would not have any right to search
2 the defendant but they did not search the defendant. The
3 testimony was that this was evidence actually visualized by
4 the officer from the backyard before they entered into the
5 residence. Which they had reason to believe it was, had been
6 and was a vacant residence and nobody should have been there.
7 Therefore, there was no search of this individual. They went
8 and seized the alleged evidence in this case based on what he
9 actually observed. And I'm going to rule that there was no
10 violation of the Fourth Amendment for expectation of privacy
11 in a persons house or home or apartment or residence. So I
12 would not suppress the evidence at this time.

13 We'll start the trial at 1:30. Thank you.

14 (WHEREUPON, a lunch break was taken.)

15 THE COURT: The State of New Jersey vs. Linford Linton,
16 the defendant who hides drugs in someone else's vacant
17 property has no constitutional reasonable expectation of
18 privacy.

19 Okay, here you go, if you'll make this part of the
20 record. Just a Court's Exhibit.

21 (WHEREUPON, Court's Exhibit NO. 1 was entered
22 into evidence.)

23 THE COURT: Ready to go?

24 State ready?

25 MR. GODFREY: Yes, Your Honor.

1 MS. MONTS: Yes, Your Honor.

2 THE COURT: All right.

3 (WHEREUPON, the jury entered the courtroom at
4 approximately 1:38 p.m.)

5 THE COURT: Okay, ladies and gentlemen, if you would
6 stand and raise right hand, please, the clerk will give you
7 the oath to try the case.

8 THE CLERK: Would you respond by saying, I will, when you
9 take the oath.

10 (WHEREUPON, the jury was sworn.)

11 THE COURT: Ladies and gentlemen, in this case comes to
12 us in the form of this indictment which I hold in my hand.
13 Now this indictment is just a piece of paper. It's not any
14 evidence in the case. The fact that someone has been charged
15 and arrested is not any evidence of their guilt. To these
16 charges Mr. Abercrombie has pled not guilty. His plea of not
17 guilty places the burden of proof upon the State of South
18 Carolina to prove him guilty of the crime charged beyond a
19 reasonable doubt. A person charged with a crime in South
20 Carolina is never required to prove themselves innocent
21 regardless of what the crime is. So, ladies and gentlemen,
22 you will be the judges of the facts. And the credibility and
23 the believability of the testimony of any witness in this
24 case. You are the sole judges of the facts. You bring into
25 the courtroom your good judgment, your common sense and your

1 everyday experiences in life. And you can determine the
2 facts and pass upon the credibility and the believability of
3 the evidence as well as anyone.

4 Now, again, remember do not discuss this case at all. Do
5 not discuss it with each other on breaks or at any time until
6 the case is over and you've heard everything. Keep an open
7 mind throughout the trial. I know you have to evaluate it as
8 we go along. But wait until you've heard all of the evidence
9 and testimony and I go over the law with you before you start
10 saying this should be the verdict in the case. Now, we will
11 begin the trial with opening statements if the attorneys care
12 to make an opening statement, they may. After the opening
13 statements, you will then hear the evidence and testimony in
14 this case from which you will determine the facts. After all
15 the evidence and testimony is in, the lawyers may stand up
16 and make their closing statements or summations to you. Then
17 you'll go back and deliberate until you reach a unanimous
18 verdict.

19 We'll begin this trial with opening statements. First by
20 the State since they have the burden of proof.

21 MS. MONTS: May it please the Court, Your Honor.

22 Ladies and gentlemen of the jury, again my name is Joyce
23 Monts. I'm an attorney with the Solicitor's Office here in
24 Greenville County. It's my job to you to prove beyond a
25 reasonable doubt that the defendant is guilty of the charge

1 that is pending against him. That charge is possession with
2 intent to distribute crack cocaine. Now how we're going to
3 do that is by putting witnesses up on the witness stand.
4 They're going to tell you what they observed and what
5 happened and what they heard on January 17th of 2006 at 212
6 Colonial Avenue here in Greenville County. We're going to
7 have two officers that responded to this vacant house, the
8 people they observed in the house including the defendant, as
9 well as what they observed and heard and what they did.
10 You're also going to hear from the chemist who analyzed the
11 substance that the officers obtained at residence who will
12 explain to you how he analyzed the substance and came to his
13 conclusion on that.

14 And everyone in this courtroom has a job. His Honor is
15 the finder of the law in this case, you are the finders of
16 the facts in this case. So for the 12 of you, once His
17 Honor, tells you to go back and deliberate to decide what
18 really happened on January 17th of 2006. And who did you
19 believe from the witness stand and how much of what was said
20 on the witness stand did you believe? And the charge again
21 is possession with intent to distribute crack cocaine. And
22 the legislature decides how much weight is allowed to charge
23 possess versus possession with intent to distribute. You're
24 going to hear that when His Honor charges you at the end of
25 this trial as well. And the State believes that we will meet

1 our burden beyond a reasonable doubt to prove to you, 12 of
2 you who will back there deliberating, that the defendant did
3 commit this crime. That he is guilty of possession with
4 intent to distribute. And that once you go in the back and
5 render your truthful verdict that it will be guilty on this
6 charge. Thank you.

7 THE COURT: Mr. Godfrey.

8 MR. GODFREY: May it please the Court.

9 Ladies and gentlemen, the State has brought my client
10 into this courtroom and has charged him with possession with
11 intent to distribute crack cocaine. My client doesn't have
12 anything to prove. My client under our law is presumed
13 innocent. The State, Ms. Monts and the witnesses that she
14 puts up, they have the complete burden. They have to explain
15 and show you beyond a reasonable doubt that my client is
16 guilty. They can't do that. What you need to do is listen
17 to the witnesses from the witness stand and determine what
18 could and could not be seen by the officers. Try to figure
19 out what really happened. And when you use your common sense
20 with the evidence that you're going to hear and you apply
21 your common sense to it, my client, James Abercrombie, is
22 certain that you will find him not guilty. Thank you.

23 THE COURT: All right, Ms. Monts, you want to call your
24 first witness.

25 MS. MONTs: Your Honor, the State calls Officer Fuller to

1 the stand.

2 THE CLERK: Mr. Fuller, if you'll pause at the end of the
3 bench here, place your left hand on the Bible, raise your
4 right hand.

5 Timothy Fuller, after being duly sworn,
6 testified as follows:

7 THE CLERK: Thank you, please be seated. State your name
8 for the record.

9 THE WITNESS: Timothy Fuller.

10 DIRECT EXAMINATION

11 BY MS. MONTS:

12 Q Please tell the jury where you're employed and how long
13 you've worked there.

14 A I work for the Greenville County Sheriff's Office for
15 approximately four years now.

16 Q And were you working for the sheriff's office on January
17 17th of 2006?

18 A Yes, I was.

19 Q At that time what were your duties?

20 A I was in uniform patrol at that time.

21 Q And as a uniform patrol officer who do you do on your
22 normal routine?

23 A You respond to calls for service as well as proactively
24 trying to prevent crime in the areas that you're assigned.

25 Q And what area were you assigned at that time?

1 A It's called beat area 9 which did include the incident
2 location here. Which is a small community called Riverside.

3 Q And are you familiar with the street Colonial Avenue?

4 A Yes, I am.

5 Q Was that include in this area?

6 A Yes.

7 Q Is that in Greenville County?

8 A Yes, it is.

9 Q And how many times during your normal beat would you go
10 near this street?

11 A You would go by this street daily.

12 Q And approximately how long had you been assigned to this
13 area prior to January 17th of 2006?

14 A Two years.

15 Q And when you worked were you alone or were you with
16 another officer, usually?

17 A I worked along.

18 Q And on January 17th 2006, approximately 6:00 in the
19 evening, do you know where you were?

20 A Yes.

21 Q Where was that?

22 A I was at 212 Colonial Avenue.

23 Q And what led you to that location?

24 A I was flagged down by a citizen in the area. Told me he
25 was concerned with some suspicious activity at the location.

1 Described some cars coming in and out. Staying for a short
2 period of time. I then spoke with Deputy Weiner about it and
3 he was familiar with that house, that it was vacant. . And
4 that's what brought us to the location.

5 Q Did Deputy Weiner work the same area?

6 A Yes.

7 Q Did you arrive at the same time at this location?

8 A We did.

9 Q Were you both in marked vehicles?

10 A Yes.

11 Q Where did you park?

12 A Parked approximately one house down from this location on
13 the side of the street.

14 Q And I'm going to hand you what's been marked for
15 identification, State's Exhibits 1 and 2, can you, please
16 identify these documents?

17 A This is the front and the rear of the house that we went
18 to at 212 Colonial.

19 Q And is this a depiction of the house as it looked on
20 January 17th 2006?

21 A Aside from the patio furniture and flag and lawn mowers
22 and such out back, yes. There wasn't personal effects such
23 as that on the 17th.

24 Q So the items that you just mentioned were not there?

25 A That's correct? .

1 MS. MONTS: Your Honor, I move these items 1 and 2 into
2 evidence at this time.

3 THE COURT: Okay. Without objection.

4 MR. GODFREY: Without objection.

5 (WHEREUPON, State's Exhibit NO.s 1 and 2 were
6 admitted into evidence.)

7 BY MS. MONTS:

8 Q Please describe what did you observe on January 17th of
9 2006 approximately 6:00 when you arrived at this residence?

10 A We've arrived, we decided that I was standing at the back
11 of the residence while Deputy Weiner and his trainee went to
12 the front.

13 Q And had you before been to this residence before this
14 day?

15 A I don't recall ever being to that residence.

16 Q I'm sorry?

17 A I don't recall every being to that exact residence.

18 Q But you'd been up and down this street many times?

19 A Yes.

20 Q Please continue, where did you go?

21 A I went to the rear of the residence. Make sure there was
22 nobody in the yard. There were a couple of cars back there.
23 There was no one in the vehicles. Deputy Weiner was going to
24 make contact with the front door. I stood by at the rear of
25 the residence, positioned at the back door where I could

1 actually see through a glass panel in the back door of the
2 house.

3 Q If you'll look at -- which document is it, please, of the
4 back of the house?

5 A Yes.

6 Q Which -- can you, please, point to where you were
7 standing? If you'll show the jury, please.

8 A I would have been standing right there. Looking in this
9 window right here through the door.

10 Q With your height, how could you see through the window.
11 How?

12 A Guess I'm tall enough.

13 Q Did you have any trouble seeing through the window?

14 A I don't recall having any trouble looking through the
15 window.

16 Q Did you have to stand on your tippy toes or?

17 A I don't recall having to stand on my tippy toes, no.

18 Q Describe the view. What could you see through that
19 window?

20 A I could see into the kitchen. I believe there maybe
21 another door here that goes into the kitchen which was
22 opened. I could see into the kitchen and I saw a black male
23 subject, the defendant, walk into the kitchen, his hand in
24 his coat pocket. I saw him pull his hand out of the coat
25 pocket, kneel down and like he was concealing something in a

1 row of cabinets. Where there was a hole in the cabinets.

2 Q At this point could you see whether there was any
3 appliances in the kitchen?

4 A It didn't appear. There was obviously some appliances
5 missing because the space in the row of cabinets where he
6 knelt down was a space where an appliance would be, normally.

7 Q And describe the light.

8 A There was a light on. It was dark at this time. There
9 was a light on in the living room. I don't know if it was
10 electric or lantern type light but it provided enough light
11 where I could see in the kitchen.

12 Q Was there any lights behind you, being outside?

13 A No.

14 Q Do you know if anyone inside could see you out there?

15 A I doubt that anyone could see me. The way I was
16 positioned.

17 Q Could you hear anything going on inside the house at this
18 time?

19 A I don't recall hearing anything in particular.

20 Q And did you see the subject after they bent down and put
21 something down, could you see where they went?

22 A He walked back toward the front of the house from the
23 kitchen area.

24 Q Describe the person that you saw?

25 A It was a large, black, male subject.

1 Q And how long did you stay at the back door?

2 A It was just a matter of minutes. As Deputy Weiner
3 knocked on the front door and advised me to come on around.

4 Q And where did you go?

5 A I went around and entered in the front door.

6 Q What did you see once you entered the front door?

7 A I saw the defendant and a white female and a white male
8 in the living room.

9 Q If you recall, do you know where they were located in the
10 living room?

11 A I know that two of them probably were sitting on the
12 couch. Maybe -- I don't recall exactly. I know at least two
13 were sitting on the couch.

14 Q And describe what was inside the house?

15 A There was a couch in the living room. Aside from that
16 the only rooms that I looked was the living room and the
17 kitchen. It was void of any personal effects. The only
18 thing I remember was a couch in there. I don't remember
19 recalling any food items or except missing appliances in the
20 kitchen.

21 Q How about a television or radio?

22 A No television or anything like that.

23 Q And what was taking place when you walked in?

24 A Deputy Weiner was speaking with the subjects in there,
25 finding out what they were doing there, what was going on.

1 Trying to follow up on this complaint we had from a citizen.

2 Q Did you have any knowledge of anyone living at that
3 residence?

4 A No.

5 Q To your knowledge, describe what type of place this was?

6 A Very small house. Kind of run down. Vacant to our
7 knowledge.

8 Q And what did you do once you walked and heard Officer
9 Weiner speaking with the people that were in there?

10 A I let him know what I had seen. I walked to the kitchen
11 area. Kneel down to where I'd seen him kneel down and pull
12 something out of his pocket. Which is where I observed the
13 crack cocaine.

14 Q Officer Fuller, I'm going to hand you a plastic envelope,
15 can you, please, describe this item for the jury?

16 A This is a white-rock substance, which is the substance
17 that was seized that day.

18 Q Seized by whom?

19 A By me.

20 Q And how do you know that? Do you have any markings on
21 there?

22 A It's got my initials, unit number, the date and case
23 number sealed inside of the envelope I placed the narcotics
24 into.

25 Q And when you picked up this substance, describe what it

1 was in. Was it loose or was it in something?

2 A It was in a plastic bag. I noted -- no, it was just
3 sitting on the floor. It was just on the floor in there.

4 Q And was it exactly where you saw the defendant go?

5 A That's correct.

6 Q Describe for us -- describe how you had to reach for
7 this?

8 A I had the kneel down as I observed him kneel down, I
9 knelt down in a similar fashion and looked. And where the
10 empty space in the cabinets were, right behind the cabinet is
11 where it was sitting.

12 Q You mean empty spaces---

13 A Where an appliance would likely go.

14 Q And did you keep custody of that substance?

15 A That is correct.

16 Q Please continue, what did you do after you took custody
17 of this substance?

18 A I informed Deputy Weiner that I found this. We detained
19 the defendant. And he had -- at that point we were still
20 working on trying to identify him as well.

21 Q Did you know the defendant's name at that time?

22 A We had probably several different names that he had given
23 us at that point.

24 Q But could you confirm at that time what his correct name
25 was?

1 A No.

2 Q Did you investigate to try to determine a correct name at
3 that time?

4 A Yes..

5 Q Was the defendant arrested at that time?

6 A Yes.

7 Q Who transported him?

8 A I did.

9 Q What do you do when you transport someone, what's your
10 procedure?

11 A Make sure his handcuffs are double locked, put him in the
12 car, after checking under the seat for any items that could
13 be removed, put him in the seatbelt and drive him down.

14 Q Did you subsequently determine the defendant's correct
15 name?

16 A I did.

17 Q What did you subsequently determine his name to be?

18 A James Jermaine Abercrombie.

19 Q And is that person that you arrested on that day after
20 seeing him in the kitchen at 212 Colonial Avenue in the
21 courtroom today?

22 A Yes, he is.

23 Q Where is he seated?

24 A He the seated right there.

25 Q Where there any cars at the scene?

1 A Yes.

2 Q Can you tell us how many cars and where they were
3 located?

4 A There were two vehicles. One in the drive toward the
5 back of the drive and one pulled back around behind the
6 house.

7 Q And if you're facing the house, which side was the
8 driveway on?

9 A Be on the right side.

10 Q Did the defendant have a vehicle at this scene?

11 A Yes, he did.

12 Q Where was the vehicle located?

13 A Around the back of the house.

14 Q And was the car registered to him?

15 A No, it was not.

16 Q Did you subsequently determine that he had driven it
17 there?

18 A Yes, ma'am.

19 Q Who did the other car belong to?

20 A Belong to the white male subject who was inside the
21 house.

22 Q And did you know either the white female or white male
23 that were inside the house?

24 A I was familiar with both of them. I knew the female to
25 be Karen Walker. Who was a known prostitute in the area. I

1 knew the other subject to be somebody she frequently rides
2 with, things of that nature. I wasn't on a name basis with
3 him but I did know the other female.

4 Q And based on your investigation did either of them live
5 at this residence?

6 A No.

7 Q And did the defendant live at the residence?

8 A No.

9 Q Did you subsequently determine the defendant's correct
10 address?

11 A I've got [REDACTED] [REDACTED] is what I ended
12 up getting.

13 Q Was that at the LEC?

14 A That's correct.

15 Q Okay. Please describe what did you do with the white
16 substance that you obtained at that scene?

17 A I kept it in my possession until he was -- the warrant
18 was done and he arraigned and placed into the detention
19 center. Then I went immediately to property and evidence
20 where I locked it into P&E.

21 Q Okay, describe what is P&E?

22 A It stands for property and evidence, that's where they
23 store evidence such as narcotics. They're locked up. Safe.
24 To keep people from tampering with them or whatever.

25 Q And who has access to the property and evidence room?

1 A People who work for them. People who work in that room.

2 Q And what building is that in?

3 A It's at the law enforcement center.

4 Q Do you have to get past the security at the front to get
5 in there?

6 A Yes.

7 Q Is property and evidence room a locked facility?

8 A Yes, it is.

9 Q Describe when you went to property and evidence, what do
10 you do with the substance?

11 A Well, most likely I've already bagged it one of these
12 bags because I keep it with the. At that point it will be
13 weighed. I'll write my name, case number, unit number and
14 that date on the inside of the bag and seal it. At that
15 point I'll fill out property and evidence sheet as well as
16 request for lab analysis. Put it in a -- this was after
17 hours so you put it in a envelope and it's a drop box that
18 you drop it through.

19 Q And describe the drop box. Is this something you can
20 stick your hand in?

21 A No. It's similar to a mailbox with a back on it. Which
22 would keep you -- you set in there and then you drop it.

23 Q And when you say seal, describe what mean by how you seal
24 the bag?

25 A It's a heat sealed machine, I guess you'd call it. Press

1 it done on the ends and it heat seals it. Melts the plastic
2 together.

3 Q And did you -- have you seen this substance until today
4 after you dropped it into property and evidence?

5 A No.

6 Q Did you bring it to court with you today?

7 A I did.

8 Q Where did you bring it from?

9 A From the property and evidence room.

10 Q What did you have to do get it from the property and
11 evidence room?

12 A I had to sign it out.

13 Q Were you allowed into the property and evidence room?

14 A No.

15 MS. MONTIS: Your Honor, I move in for identification
16 purposes only.

17 (WHEREUPON, State's Exhibit No. 3 was marked
18 for identification.

19 BY MS. MONTIS:

20 Q Do you -- what did you at the scene after you found the
21 crack in the kitchen and spoke with Deputy Weiner, did you
22 look around at all?

23 A No.

24 Q Did you stay in the living room area or where did you go?

25 A Actually I began working on trying to figure out his real

1 identity. Because at that point we had determined that he
2 was likely giving us a false name. So I was actually --
3 which I was actually working on a computer in my car some and
4 coming back in.

5 Q Okay. At the scene, do you -- were you present when the
6 defendant was booked at the jail on January 17th of 2006?

7 A Yes.

8 Q Did he have any cash on him?

9 A Yes, he did.

10 Q How much did he have?

11 A \$235 is what he was booked in with.

12 Q Okay. Officer, I'd like --

13 Your Honor, may the witness step down?

14 If you -- please draw the lay out of the house and the
15 driveway and the street in front of it to the best of your
16 ability.

17 A This could be amusing. This is the street. Write
18 everything, the rooms?

19 Q Yes, please.

20 A Driveway. Driveway. Garage. Door -- I'm sorry, I have
21 it written upside down. Living room, this is the kitchen
22 counter. Rest of the kitchen. Kitchen door. Back door.
23 There's also a bedroom, a bathroom. Not familiar enough to
24 draw exactly how it was laid out. It was on this side of the
25 house. This is where I was standing. This the where his car

1 was parked.

2 Q Can you put an x where you were standing, please.

3 A (The witness complies.)

4 Q And where was the other par parked?

5 A In that vicinity.

6 Q Whose car did you subsequently determine that belonged
7 to?

8 A This belonged to the white male subject who was inside.

9 Q Okay thank you, very much. When you first came around to
10 the back of the house and were looking through the window
11 could you see anyone else?

12 A No.

13 Q How big, if you can describe feet wise or point in here,
14 how large was the kitchen?

15 A 'Maybe' 10 by 12 kitchen. Not a big kitchen but not a very
16 small kitchen.

17 Q Did you see anybody else in the kitchen?

18 A No.

19 Q Did you see anyone else in there when you went around the
20 house?

21 A No.

22 Q And also when you were at the property and evidence room,
23 did you field test the substance?

24 A I field tested it on the scene.

25 Q Were the other people in house, the white female and

1 older white male, were either of them arrested at that time?

2 A They were not.

3 Q Were they allowed to stay in that house?

4 A No, they were not.

5 Q Why not?

6 A They didn't live there. And they didn't know who owned
7 the house.

8 Q Do you know if -- if anyone had electricity or water on
9 at this house?

10 A I'm not aware.

11 Q Did anyone assist you in transporting the defendant to
12 the law enforcement center?

13 A No.

14 Q And was the last time you saw him is when he was being
15 booked at that time?

16 A That is correct

17 MS. MONTS: Thank you, no further questions.

18 MR. GODFREY: May it please the Court.

19 CROSS-EXAMINATION

20 BY MR. GODFREY:

21 Q Deputy Fuller, you say you were on routine patrol and a
22 citizen flagged you down?

23 A That's correct.

24 Q And based on the fact that you had a tip about suspicious
25 activity, that's why you went over to the house?

1 A Yes, sir.

2 Q Now, you go by that house just about every day that
3 you're on patrol, don't you?

4 A That area, that street, yes, sir.

5 Q And had you noticed anything suspicious when you were on
6 patrol?

7 A There's suspicious things all over that street. But that
8 particular house I had never been to before.

9 Q Well did you see anything that brought your particular
10 attention to that house -- had you been by that house that
11 day?

12 A No. Had not.

13 Q So after you got the information that there might be
14 something suspicious, that's when you called Deputy Weiner?

15 A That's correct.

16 Q Or Weiner. Then you all met up over there?

17 A We were close in the area anyway, I had just been on a
18 call in the area, which is actually I think I was getting
19 back into my car on an unrelated incident when I was flagged
20 down.

21 Q About how long was it after you had the information about
22 possible suspicious activity that you actually got to this
23 particular house?

24 A Probably not more than 15 minutes.

25 Q If I could, let me ask you about what has been marked as

1 State's Exhibits 1 and 2. Pictures -- you say this is
2 pictures of the front and back of the house?

3 A Correct.

4 Q And when you were asked a question about does it look the
5 same, you were talking about but for the furniture on the
6 porch, lawn mower and some other stuff, right?

7 A Yeah, I don't recall there being items such as that
8 there.

9 Q So this is an accurate depiction of way the house itself
10 looked on the day that you went there?

11 A To the best that I can I recall, yes, sir.

12 Q Now, when you got there it was about 6:00 I think you
13 said, is that right?

14 A That's what I said, yes, sir.

15 Q Of course, these pictures obviously weren't taken on the
16 day you went to the house, were they?

17 A No.

18 Q And since there is pretty good lighting, I'm assuming it
19 didn't happen at 6:00; is that right?

20 A Those picture?

21 Q Yeah.

22 A I didn't take the pictures, I don't know what time it
23 happened.

24 Q Well was it dark when you got there?

25 A Yes, sir.

1 Q Are these picture in the light?

2 A Yes, sir.

3 Q Okay. But there's no question this is the way the house
4 looked?

5 A The best that I recall, yes, sir.

6 Q All right. Now, let me ask you, as a matter of routine
7 or practice, when you go to a potential crime scene and you
8 find contraband like drugs, if that contraband is in a
9 plastic baggy, do you also confiscate that and put it into
10 property and evidence?

11 A Yes.

12 Q Is there a plastic baggy associated with these drugs?

13 A Yes, there is.

14 Q There is?

15 A Yes, sir.

16 Q Where is it?

17 A It's right there.

18 Q Okay. You're saying that's what the drugs were in?

19 A At least part of them. That's inside there so I would
20 assume so.

21 Q Well, didn't you testify on direct that the drugs were
22 not in any plastic baggy when you picked them up?

23 A That's what I just said because I didn't note that in my
24 report that they were in a plastic bag. Which is usually
25 what I do so.

1 Q So you just been -- it's been a while and you forgot in
2 other words?

3 A Evidently.

4 Q Okay. Now, when you finally went into the house -- well
5 let me ask you this way. How long were you and deputy, the
6 other deputy there before you went inside the house?

7 A Matter of -- matter of minutes, I'm sure.

8 Q Well what is a matter of minutes? Is that three minutes,
9 is that 5 minutes, is it 15 minutes?

10 A Less than 10. Long enough to walk up to check the
11 vehicles in the back of the yard for anybody hanging out.
12 Then for him to go around front. Me stand at the back while
13 he does that and knock on the door. Converse monetarily with
14 him and tell me to come around.

15 Q So you all parked about one house down, right?

16 A Approximately.

17 Q And you got out and you walked to this house?

18 A Yes, sir.

19 Q And then you went into the yard and checked the yard.
20 And then you remained at the back of the house then the other
21 deputy went to the front door. Then he immediately knocked
22 on the door?

23 A Yes, sir.

24 Q And then you went around and went inside the house?

25 A Yes, sir.

1 Q How many people did you see -- how many people other than
2 officers did you see inside the house?

3 A Three.

4 Q And one of those was a female?

5 A That's correct.

6 Q And I believe you said her name was Karen Walker?

7 A That's correct.

8 Q And you had previous knowledge of her?

9 A That is correct.

10 Q And there was a white male there by the name of John
11 Walker?

12 A I believe his last name was Hall.

13 Q John Hall. And did you know him?

14 A I was familiar with him, I didn't know him as well as I
15 knew her.

16 Q When you got to the front door was the house well lit on
17 the inside?

18 A There was a light, I'm not sure if it was.

19 Q Could you tell us where the light was?

20 A Now I could not.

21 Q Was it in the living room?

22 A I would say most likely but I can't tell you. I just
23 know that it was light enough to see.

24 Q Light enough to see. So it was dimly lit?

25 A I wouldn't say that.

1 Q Well it wasn't like this was it?

2 A I don't know. I don't recall exactly what the light was
3 like. I know that I could see inside.

4 Q Okay. Well, I believe your testimony was you didn't know
5 if the electrical power or water was on, is that right?

6 A I don't know if it was electric light or if it was a
7 lantern or some candles or what.

8 Q But when you looked into the living room it was not
9 bright like this room, is it?

10 A I doubt it but I can't tell you that for sure.

11 Q Can't tell me for sure?

12 A That's correct. I don't recall exactly what the
13 intensity of the lighting was.

14 Q And when you walked in, where were Karen Walker, John
15 Hall and James Abercrombie?

16 A Some of them were sitting on the couch. At least, maybe
17 one was standing up. I can't tell you for sure.

18 Q Then you went around to the kitchen?

19 A I went straight through the living room and the kitchen
20 area speaking with Deputy Weiner momentarily.

21 Q When you say you went straight through, you drew an
22 entrance here, is that where you went through?

23 A That's correct.

24 Q Okay. So is this an opened area from the kitchen to the
25 living room or was there a wall there?

1 A It's like a -- it's a cabinet that opens into the living
2 room.

3 Q It's a cabinet that opens into the living room?

4 A A countertop that divides the kitchen there.

5 Q Okay. So if you were standing in the living room here
6 you could look over into the kitchen?

7 A Part of the kitchen.

8 Q Part of the kitchen?

9 A Yes. The corner is mostly tall cabinets.

10 Q So you went around into the kitchen. Do you remember if
11 the kitchen was dimly lit?

12 A The light was coming from the living room.

13 Q The light was coming from the living room?

14 A That's correct.

15 Q So there was no light in the kitchen? I mean no actual,
16 physical light in the kitchen?

17 A I don't know.

18 Q You don't recall?

19 A I don't recall.

20 Q But you believe that the lighting that you had in the
21 kitchen that you could see was emanating or coming from the
22 living room?

23 A It's possibly.

24 Q And when you went into the kitchen what did you do?

25 A I knelt down where I observed him kneel down and looked

1 behind the bottom of the cabinet, located that substance.

2 Q And then pursuant to your training, you put it in a
3 plastic bag with your name and number on it?

4 A Yeah, property and evidence room, yes.

5 Q Okay. Now, did you see any fast food items in that
6 house?

7 A I don't recall.

8 Q Do you recall anyone eating anything while you were
9 there?

10 A No, sir.

11 Q Let's go take you back outside to this door. And what
12 has been State's Exhibit 2. That's where you were standing
13 when the officer -- when the deputy went to the front door?

14 A Yes.

15 Q And you were standing here. And you're looking through
16 that glass?

17 A Yes, sir.

18 Q Now, was that glass clear?

19 A I would assume so.

20 Q Was it in any way opaque?

21 A Not that I'm aware of. I indicate that I looked through
22 the back door glass so that's what I did and that's what I
23 could see so. It was a clear enough for me to see through.

24 Q Well when you and the other deputy finished checking the
25 cars and the yard, he walked around to the front door, right?

1 A Yes, sir.

2 Q And is that when you went up to the back door?

3 A I'd say so.

4 Q So about how long were you at the back door?

5 A Once again a matter of just a couple of minutes.

6 Q Not long?

7 A Not long.

8 Q And during that time were you looking around and checking
9 other things as well as looking through that glass?

10 A No, sir, that why we checked the yard first so I know
11 that there wasn't anything else going on and I could look.

12 Q Well, through that glass at the back door, since there is
13 no actual wall there at the kitchen, could you also see into
14 the living room?

15 A I don't recall seeing into the living room. But the
16 angle I was at I was kind of looking at the corner of the
17 kitchen.

18 Q But you were looking around trying to see as much as you
19 could, couldn't you?

20 A Uh-huh.

21 Q But you didn't see anybody else?

22 A (The witness shook his head.)

23 Q Now it's about 6:00, I guess 6:00 is the time you
24 responded, isn't it? Is that when you actually got to the
25 scene?

1 A Yes, sir.

2 Q So it would have been a little after 6:00 when you all
3 actually got inside the house, is that correct?

4 A Yes.

5 Q Now, in January, or January 17th, it gets dark sort of
6 early, doesn't it?

7 A Uh-huh.

8 Q And it was getting dark outside?

9 A Yes, sir.

10 Q I believe your testimony was that you didn't believe that
11 anybody could see you because that it was getting dark
12 outside?

13 A Well I was standing on the other side of the wall, so.

14 Q And when you were looking in you were looking into to a
15 very dimly lit room, weren't you?

16 A As I testified earlier, I don't know the intensity of the
17 light. I could see.

18 Q You could see somebody, right?

19 A That's correct.

20 Q And you could see somebody reach into their pockets you
21 say?

22 A Uh-huh.

23 Q And you see somebody bent down?

24 A That's correct.

25 Q But you don't see anybody else?

1 A That is correct.

2 Q When was -- did the drugs always remain in your
3 possession?

4 A That is correct.

5 Q So once you found them and showed them to the other
6 deputy, you maintained control of those drugs?

7 A Routinely I stick them in my pocket here. Until I am
8 able to go get a plastic bag and do something a little better
9 with them. Often times wrap them in a glove.

10 Q Did you look around the inside of the house at all?

11 A No, sir.

12 Q And you don't have any idea what kind of lighting was in
13 the living room?

14 A No, sir, I'm not able to recall.

15 Q You don't believe it was electric however?

16 A It may have been, I don't know.

17 Q Dark at 6:00 but you can't tell us or give us a
18 description of what the lighting actually, looked like on the
19 inside of the house?

20 A Light enough to see.

21 MR. GODFREY: Nothing further.

22 MS. MONTIS: Nothing further of this witness, Your Honor.

23 THE COURT: Okay. Thank you, sir, you may come down.

24 MS. MONTIS: Your Honor, the State calls officer Weiner to
25 the stand.

1 THE CLERK: Sir, if you'd, please, place your left hand
2 on the Bible, raise your right hand.

3 David Weiner, after being duly sworn, testified
4 as follows:

5 THE CLERK: Thank you, please be seated. State your full
6 name for the record.

7 THE WITNESS: David Weiner.

8 DIRECT EXAMINATION

9 BY MS. MONT'S:

10 Q Officer Weiner, please tell the jury where you're
11 employed and how long you've worked there?

12 A Greenville County Sheriff's Office and I've been there
13 coming up on seven years.

14 Q And in January 17th of 2006, were you employed with the
15 Sheriff's Office?

16 A Yes, ma'am, I was.

17 Q And can you describe your training with the sheriff's
18 office?

19 A (There was no response.)

20 Q Did you go through any training in order to work at the
21 sheriff's office?

22 A I did. I did a program call police core; it's a 16 week
23 intensive program. About 1600 hours of training involved
24 with that. Prior to joining the sheriff's office, once
25 you're hired by the sheriff's office then you go through a

1 pretty intensive 16 week field training course where you ride
2 with a training officer.

3 Q And in January of 2006 approximately how long had you
4 been with the sheriff's office?

5 A Almost six years, May would have been six years.

6 Q What were your duties, where were you assigned at that
7 time?

8 A Uniform patrol. I was assigned to beat area 9. It's the
9 county version, It's the West side of town, [REDACTED],
10 [REDACTED], [REDACTED]. I don't know if
11 anybody's familiar with any of that. But it included a small
12 neighborhood called [REDACTED].

13 Q And where are you currently assigned?

14 A The white collar crimes division.

15 Q And in January of 2006 you were in uniform patrol, do you
16 drive along or do you have someone with you?

17 A At that time I had a trainee with me.

18 Q And what was the purpose of that?

19 A I was now the trainer doing a 16-week training program.
20 I would have a trainee for four to six weeks.

21 Q And were you -- describe [REDACTED], did that include
22 [REDACTED]?

23 A I did.

24 Q How often would you go on [REDACTED]?

25 A [REDACTED] is a low-income neighborhood and it's pretty

1 high in crime. Not always the residence there but the foot
2 traffic and the car traffic that comes in there. We have a
3 lot of burglaries, a lot of drug arrest, a lot of
4 prostitution, things of that nature.

5 Q And how often would you go on [REDACTED]?

6 A [REDACTED] would have been about a daily shift when
7 I'm working. Which is -- averages out to every other day.

8 Q And how many years had you been assigned to that beat
9 area?

10 A In January 2006 it was almost six years. Specifically to
11 that beat area.

12 Q Had you -- describe what you know about the house, [REDACTED]
13 [REDACTED]?

14 A Sure. [REDACTED] was a vacant residence. It
15 had been for some time. I'd been there in August -- August
16 15th of 2005 recovering a stolen car around back. And inside
17 that stolen car was a mobile meth lab. And at that time we
18 spend some time trying to determine who owned the house and
19 didn't have any luck at that time. And that was August of
20 '05. And there was a for sale sign in the front yard, no
21 furniture, no personal items in the yard, the garage was
22 empty.

23 Q If you would, please look at State's Exhibit 1 and 2, the
24 photos.

25 A Sure.

1 Q On January 17th 2006, is this how the residence looked?

2 A For the most part. No trash can. There's like a rebel
3 flag here and some kind of flag covering the window.

4 Everything was -- it was opened. You could see in. There
5 was no window coverings, no window blinds, no shades,
6 nothing. Then again, in the back, I don't recall if the
7 windows were painted but no lawn mower, no -- I guess that's
8 some kind of bathroom cabinet. It was empty, there was two
9 cars parked there, that was it.

10 Q When you went on January 17th 2006, describe what you saw
11 at the residence?

12 A Sure. We walked up on foot, Deputy Fuller told me that
13 he received the tip.

14 I said, Hey, I'm familiar with this house. I've been
15 here before recovering a mobile meth lab and a stolen car.
16 The house is vacant.

17 There is a for sale sign in the yard. And we walked up
18 and you could see a light on in the front room. Which when
19 you're looking at the front of the house, it's this large
20 window here to your left. That would be the front room that
21 the light was on.

22 Q And how long prior to your arriving at the scene did you
23 meet with Officer Fuller?

24 A Well Fuller was on a call a couple of streets over. I
25 couldn't tell you where I came from. We're talk 10 minutes

1 we probably met at a church parking lot around the corner and
2 then we'll drive down to a house or two in front of use. We
3 don't like to get out right in front of the house because it
4 could set up some kind of ambush or something where we could
5 get hurt.

6 Q And please continue, what did you and Officer Fuller
7 decide to do when you got out of your vehicles and walked up
8 to the residence?

9 A Sure. We actually parked on this side. We walked up in
10 the street. It was dark out. No street lights that would
11 illuminate us to the point where we felt endangered. And on
12 the side you can see a little bit of a driveway. And there
13 was a truck, a new Ford pick-up truck, nice Ford pick-up
14 truck parked in the back. And we ran the tag and make sure
15 there was nobody in there. And that it wasn't stolen or
16 anything like that. And then around the actual back of the
17 house, it's kind of hard to tell in this picture, it was
18 parked in the backyard maybe just a couple of feet from the
19 back of the house was the big Ford Expedition. And again,
20 same thing, run the tag, make sure it's not occupied or
21 stolen anything like that. Then the garage is all the way
22 back at the end of the driveway. It's got no door on it. We
23 just stuck our head in to make there's nobody in there,
24 nobody sitting on a couch or anything like that, crazy.
25 Q Describe where you went and where Officer Fuller went?

1 A We discussed we were going to do a knock and talk. I
2 knew it was vacant but I could hear people inside. I didn't
3 want to do something crazy, kick in the door that would --
4 what if somebody had moved in the night before. So I went to
5 the front door with my trainee and Deputy Fuller stayed at
6 the back door where we quickly discussed our game plan and I
7 knocked on the front door.

8 Q Describe what happened after you knocked on the door?

9 A It was a little peek out the window. I said, Police,
10 open the door. The door opens and it's Karen Walker. I call
11 her KK, that's her street name.

12 Q What a street name?

13 A Just her nickname, that's what she's going by.

14 Q How did you know her?

15 A She's a prostitute, I've arrested her half a dozen times
16 probably for alcohol, drugs and prostitution violations.

17 Q And describe the -- how did the front door open? Did you
18 hear a noise, what did you hear?

19 A Nothing, the doorknob opens. Turn the doorknob and the
20 door opened, that was it. In fact---

21 Q Did she have keys in her hands?

22 A No. In fact, by looking at this picture there's no dead
23 bolt, it's just a doorknob.

24 Q What did you observe once the door opened?

25 A The door opened to the left but I could see, you know,

1 Karen Walker was standing right there. And I said, Karen
2 what's going on? She knows me very well. I know her very
3 well. And, you know, you don't belong here, Karen, who else
4 is here? And Karen kind of steps to the side. Which to me
5 is an open invitation, you might want to check out what's
6 going on in here. And the defendant was -- straight ahead is
7 a doorway almost. It's framed out for a door but there's no
8 door. And he was standing right there in that threshold
9 between that living room which is probably literally four
10 feet wide and eight foot long. I mean, it's tiny. He was
11 standing in that threshold between the living room and the
12 kitchen.

13 Q If you didn't mind, please step down to this diagram that
14 Officer Fuller -- and I think the pen is still up there.

15 A (The witness complies.)

16 Q Can you please put -- put a circle where the defendant
17 was standing when you walked in.

18 A He was right here. Right in the middle. Right in that
19 threshold. I call it a threshold, right in between.

20 Q And if you could just put a K where Karen was?

21 A Sure. Karen was standing right about here. She stepped
22 out to the side of the door a little bit. And then there was
23 an elderly man. I call him Hubert. I think his full name is
24 John Hubert Hall. J for him?

25 Q Sure.

1 A All right. John was back here to the side. There was
2 like a small couch up against this wall. And that was
3 everybody there. There was no door but again a frame for a
4 door threshold for right here.

5 Q And do you know, while you're up there, can you make any
6 other additions on that?

7 A Yeah, there was a bathroom right here. A little bathroom
8 right here. And I don't remember a second bedroom being
9 here. I recall the house being chopped like this.

10 Q Where you put the marks, that would be outside?

11 A Yeah, this is -- I think this is how the house -- almost
12 like, I call it a mud room or like a laundry room or
13 something, that's kind of like what he drew here. Like a,
14 almost like a separate room that has a -- like it was an
15 addition later on.

16 Q And when you walked in, where did you have everyone go?

17 A Officer safety number one, I don't want the defendant
18 running into the kitchen, the bathroom, to a bedroom, Karen
19 doing the same thing, diving out a window or something, crazy
20 like that. Everybody this is who I am. I wear a uniform,
21 they all know that.

22 Q You were wearing a uniform at that time?

23 A Absolutely.

24 Q And how long was it until you talked with Officer Fuller?

25 A I poked -- I say I poked my head in, I took a step or two

1 into the bedroom to make sure there was nobody there. The
2 bathroom. My trainee remained in here. I'll put a T here
3 for him, I know it gets confusing but he remained in the room
4 with the three of them. And I just kind of checked the
5 bedroom, bathroom, kitchen. There was nobody else here.
6 Told Deputy Fuller to come on around front the house was
7 secured.

8 Q And where was Deputy Fuller why you came in the front
9 door and saw the defendant standing in the kitchen doorway?

10 A Standing right here. I couldn't see him but that's where
11 he was.

12 Q Okay. Have a seat, thank you.

13 A (The witness complies.)

14 Q Describe which was inside the house?

15 A There was that sofa. The lighting source, whatever it
16 was. Again, it was small room 4 feet by 8 feet. And it was
17 a pretty bright light I thought. You know, like a 100 watt
18 bulb, you know, without a lamp shade on it or like a Coleman
19 lantern like a propane lantern. It was something putting off
20 a pretty decent amount of light. Enough to light that room
21 really well. But that was the only light on in the house.

22 Q Was there any, to your recollection, photos, television?

23 A Nothing. There was a sofa. And in that bedroom I drew,
24 I can't remember if it was a mattress laying straight on the
25 floor or just a sleeping bag that was opened up to be like a

1 bedding area. And that was in the bedroom. And maybe a
2 little bag with a few items of clothes. I mean, it was --
3 basically what it is is it appears to me anyways to be a drug
4 house. This is where when it's cold out, when it's raining,
5 they know it's vacant, the drug users can go in there, sneak
6 in a window, sneak in a back door that they know is unsecured
7 and they can do whatever they want in there without us
8 knowing.

9 Q Describe what was in the kitchen?

10 A Nothing. Just like he drew it. It was an L-shape set of
11 cabinets. And just like he said, right where a stove would
12 be or a refrigerator or something like that, it was just a
13 big empty void.

14 Q And describe what did you do once you had looked around
15 the house?

16 A Sure. Everybody sitting on the couch, all right, who
17 lives here. Nobody knows. Nobody could answer that for me.
18 What are y'all doing here? I think Mr. Hall was eating. I
19 don't recall what. I want to say like a styrofoam box, like
20 a white styrofoam box. Karen was kind of jittery. It was
21 kind of hard to get stuff out of her sometimes. She's
22 usually on some kind of pills or something so she's kind of
23 jumping around a little bit.

24 Q And did you ever -- what happened when Officer Fuller
25 came in the door?

1 A He walked in the door, told me that he had seen the
2 defendant in the kitchen kneel down. Looked like to him that
3 he had concealed something. He walked right pass me, I was
4 in the threshold down at the doorway there. And Deputy
5 Fuller walked right past me, after he walked in the front
6 door walked straight to the kitchen, knelt down at one spot
7 and came out with what he later showed me here. It's right
8 up here.

9 Q If you would, please, look at State's Exhibit 3 for
10 identification, tell me what that is, please.

11 A By eyesight I'll tell you that it appears to be what we
12 call white-rock like substance. And if you field test it,
13 sometimes it will leave a mark on there. It later turned out
14 to be -- field tested positive for crack cocaine. It's a,
15 get a closer look at it, it's a pretty substantial amount in
16 there. There's one large piece and a broken off smaller
17 piece. It is, I believe by his weight, I can look it up.
18 1.9 grams. A normal crack rock that I'll pull off a crack
19 head is one-tenth of a gram. So this could be cut up into 19
20 crack rocks.

21 Q Was there anyone else in the house?

22 A Just the three of them. Karen, John and the defendant.

23 Q Did you find any paraphernalia in the house?

24 A No. Once the defendant was placed under arrest he was a
25 little -- wasn't argumentive to the point of resisting or

1 anything like that. He was just very questioning. Why you
2 doing this? It's not mine. Obviously he was giving us a
3 hard time with his name. We spent quite a bit of time trying
4 to figure out who he really was. Not carrying any kind of
5 identification, none of the cars came back to him so we had a
6 hard time identifying him.

7 Q Did you allow -- did you arrest Karen or Mr. Hall?

8 A No. I couldn't really find any crime they were committed
9 other than sitting in this vacant house. I'd love for it to
10 be a burglary but in order for it to be a burglary you have
11 to intend to commit another crime which I didn't see them
12 doing.

13 Q Who transported the defendant to the law enforcement
14 center?

15 A Deputy Fuller did.

16 Q Describe the appearance of Mr. Hall versus the defendant?

17 A Best I can remember, it's been about a year and a half
18 since I've seen off the road. About a year since I've seen
19 him. He's a taller white male. He's probably 6 foot, a
20 little bit heavy set. He's elderly. I don't know, that's a
21 bad word. He's in his early to mid 60's, he's got a little
22 bit of a beer gut on him. He usually dresses pretty well.
23 He has some kind of financial backing. Whether he's retired
24 or still works, draws a pension, I don't know. But he
25 dresses pretty appropriately.

1 Q And do you see the person that you are saying was
2 standing in the doorway of the kitchen on that day that was
3 eventually arrested by Officer Fuller, do you see him in the
4 courtroom?

5 A Yes, ma'am, he's the defendant seated over there in the
6 white collared shirt.

7 MS. MONTS: Thank you, no further questions.

8 THE COURT: Yes, ma'am.

9 CROSS-EXAMINATION

10 BY MR. GODFREY:

11 Q Deputy Weiner, your point in this was to help Deputy
12 Fuller with the complaint he had received?

13 A Yes, sir.

14 Q You say you all met up some where before you got to the
15 residence and talked about what you were going to do?

16 A Sure. It's like you ever see a police car in a parking
17 lot and there's two of them, driver to driver, that kind of
18 thing where we're parked there. He says, Hey, I got a tip
19 about suspicious activity. I'm like, well, you know, as a
20 matter of fact I know a little bit about that house.

21 Q Okay. So you all decided what you were going to do at
22 your meeting when you were talking car to car?

23 A It's kind of run of the mill with it. We're going to go
24 knock on the door and see what it develops into. In a save
25 manner.

1 Q Well I'm sure being in a safe manner is one of the plans
2 you had when you all talked in the parking lot?

3 A Yeah, I'm just saying it's not like we write out a list
4 of all right, you to the back, I go to the front. You know,
5 you stand here for x amount of minutes and notify me of this.
6 It's just -- he and I have probably done literally 100's of
7 these knocks and talks before.

8 Q Okay. So it's almost like -- you've worked with Deputy
9 Fuller a lot then?

10 A Since she started his career with the sheriff's office.

11 Q And you say you've done a lot of these knock and talks?

12 A Yes, sir.

13 Q So basically you all do them about the same way every
14 time?

15 A More or less. I mean, obviously it's a dynamic
16 situation, things are always changing, the number of people,
17 the house, what kind of premises, that type thing.

18 Q Okay. So when you all pulled up you pulled up basically
19 one house away, right?

20 A Yes, sir. Cars out of sight.

21 Q Then you get out of your vehicles?

22 A Yes, sir.

23 Q And you go check the yard?

24 A Yes, sir.

25 Q And then once you check yard, then Deputy Fuller stays at

1 the back and you and your trainee go to the front?

2 A Correct.

3 Q You knock on the door?

4 A Correct.

5 Q From the time that you had checked the yard and you and
6 your trainee went to the front, how much time you think
7 elapsed before you told Deputy Fuller to come on around to
8 the front?

9 A From when I left him at the back?

10 Q Yeah.

11 A Is that what you're asking?

12 Q Yea.

13 A Five minutes. It was pretty quick, maybe less.

14 Q Why would it take five -- you all had finished checking
15 the yard, right?

16 A Uh-huh.

17 Q House is not very big?

18 A No.

19 Q So why would it take five minutes for you to get to the
20 front door to knock to tell him the come around?

21 A Well sometimes the delay occurs with them opening the
22 door. There was a short delay of that. Of Karen looking out
23 the window to see who was there. Then my brief conversation
24 with her and having everybody sit on the couch, then I walk
25 around the house and make sure there's nobody else there.

1 Takes about five minutes I'd say. From when I left him at
2 the back door.

3 Q You said something interesting, you said that John Hall
4 was eating?

5 A Yeah. I want to say he was. Sitting on that couch, it
6 was almost like we didn't phase him one bit. He just
7 nonchalantly was eating some kind of meal. I really don't
8 remember what it was, I just remember he was eating
9 something.

10 Q But it was some type of fast food meal?

11 A I don't know if it was fast food. I just remember a
12 styrofoam container, that's really all I can tell you.

13 Q There was no -- based on your testimony there was no way
14 the fix food there was there?

15 A Absolutely not.

16 Q So it had to come in from some where else?

17 A Correct.

18 Q Now Karen Walker, you say you'd known her before?

19 A Yeah, I'd say in January of '06 I had had encounters with
20 her probably since 2000 since I started at the sheriff's
21 office.

22 Q Had you had any encounters with John Hall?

23 A Yes. Actually I never saw John Hall without Karen
24 Walker. I could see Karen Walker by herself. But if John
25 Hall was ever around Karen was with him.

1 Q On January 17th 2006 when you were over at that house,
2 had you ever seen James Abercrombie before?

3 A I had never seen him. Not a day in my life before that.

4 Q Now you say Karen Walker was a prostitute?

5 A Yes. I've never made a prostitution charge on her. I've
6 been present when they've done reversals or we'll have our
7 undercover vice guys pose as what we call Johns. And they'll
8 drive around and pick up prostitutes. I've helped them out
9 on back-up with that. But I personally arrested her for
10 narcotics and for alcohol violation.

11 Q For narcotics?

12 A Yes.

13 Q Crack cocaine?

14 A No, it was -- I don't recall what kind but it was pills.

15 Q She's a pill popper?

16 A Yes, sir.

17 Q How about John Hall?

18 A I've never known John Hall to do any alcohol or
19 narcotics.

20 Q Have you ever arrested him?

21 A I have not.

22 Q But normally -- your testimony is that you've never seen
23 Karen Walker when John Hall is not present?

24 A No, I've never seen John Hall without Karen.

25 Q Okay.

1 A Now I've seen Karen by herself but I've never seen John
2 Hall without Karen.

3 Q Okay, I'm sorry, I got it backwards. I understand what
4 you're saying now. Okay. Now, when you checked the yard, is
5 there adequate outside lighting? Street lights and stuff or
6 is it fairly dark out there?

7 A It's pretty dark. I'd say it's light enough for us to
8 see make and model and tag on the car. But if you're going
9 to want to look in the car you'll need a flashlight. Which
10 we all carry.

11 Q On this particular evening did you all look in the car?

12 A Just through the window. No opening doors or anything
13 like that. But shine just to make sure there's no
14 individuals laying down in the seat trying to hide from us or
15 anything like that.

16 Q And you wanted to have a flashlight but didn't have one?

17 A No, we always carry one.

18 Q Okay. So did you use a flashlight to illuminate the
19 inside?

20 A Inside of the vehicle, yes, sir.

21 Q And you ran the tags?

22 A Yes, sir.

23 Q And you checked the garage?

24 A Yes, sir.

25 Q And you and the trainee went around to the front?

1 A Correct.

2 Q And Deputy Fuller was at the back?

3 A Correct.

4 Q And I believe your testimony was in that the large window
5 to the left you could see a light?

6 A Yes. This window right here. Very well lit. It was
7 just -- I mean, there's no blinds, no paint over it, there's
8 nothing there. It was just a big open window.

9 Q When you went into the house did you attempt to turn on
10 the electrical power?

11 A Didn't touch it.

12 Q Didn't flip a switch?

13 A Never needed it. That light from that room lit up this
14 bedroom, the kitchen -- I think the only room I ended up
15 using a flashlight in on that map was the bathroom. That's
16 the only room I really couldn't see in. Every other room I
17 could see from the light that was in here.

18 Q But you can't tell us what kind of light that was?

19 A No. Again, it was something, I don't remember if it was
20 sitting on the floor next to the couch. It was either just a
21 plain old, old lamp without a lamp shade with a 100 watt bulb
22 in it or some kind of Coleman propane lantern or something.
23 It was more than a candle. Absolutely. I mean, it was
24 putting off a pretty good bit of light for me.

25 Q It was more than a candle but it was sitting on the?

1 A I think so, yes, sir.

2 Q As best you can remember?

3 A Yes, because I don't remember any of the furniture except
4 for that couch which was kind of against this window here.

5 Q Well let me ask you, and you might have to step down to
6 do this.

7 A Sure.

8 Q You're trainee's here?

9 A Correct.

10 Q Karen is here.

11 A Now while I'm checking the house, the trainee is standing
12 here, everybody is seated on the couch.

13 Q Okay.

14 A Just so we can keep our eyes on them, keep your hands on
15 your legs where I can see them.

16 Q All right. What is here?

17 A This is like, almost like -- I want to say this is a
18 threshold door and then it's got a small gap area here where
19 you can pass stuff through from the kitchen to the living
20 room. Like it was a little bar. And then from like here
21 over is this wall. I don't know if it was the back of the
22 cabinets or what it was.

23 Q But if you were in the living room corner here, then you
24 could not look into the kitchen, is that correct?

25 A Right, not this way. You could see this way into the

1 kitchen. You could get from here over. Where my hands
2 covered you could not see.

3 Q Okay. So part of this was solid floor to ceiling, you
4 can't see?

5 A Correct.

6 Q Part of this is like a bar where you can pass things
7 through.

8 A Yeah, that's like a countertop and maybe a two and a half
9 foot, three foot opening.

10 Q And then on top of that opening is more cabinet space?

11 A Correct.

12 Q And how big is the -- how long is the opening where you
13 can pass things through?

14 A Two feet.

15 Q Two feet?

16 A Yeah.

17 Q So it's about two feet long and --

18 A Keeping in mind in context this whole room from end to
19 end is 8 feet, pushing 10 feet. This is a tiny house.

20 Q It's a tiny house?

21 A It is.

22 Q So you got about a two foot space where you can pass
23 things through?

24 A Correct.

25 Q And how much space is there from the countertop where the

1 other cabinet?

2 A That's what I'm talking about, maybe two and a half to
3 three feet.

4 Q Two and a half to three feet.

5 A You can duck your head down and look under.

6 Q Well the actual countertop itself where you could pass
7 things through, how long was that?

8 A That what was about maybe two feet wide. So from that,
9 let's call this area here, draw a little line for you. Okay,
10 this is where you could pass things through, that's about two
11 feet. This part here be pushing six feet. Then you have
12 your doorway and the threshold area here.

13 Q So the lighting in the kitchen was actually emanating
14 through this passage?

15 A Absolutely.

16 Q And there's no other way the lighting could get in there?

17 A This bar area -- or again, this threshold area here, it's
18 like this doorway right here but there's no door.

19 Q The frame it there, there is no door?

20 A I don't think there ever was a door.

21 Q Just frame.

22 A There to make the room divided.

23 Q Okay. Thank you, sir.

24 A Yes, sir.

25 Q Do you know if there were any utilities in that house at

1 all?

2 A I couldn't answer that. I didn't flip light switches, I
3 didn't turn the bathroom sink or kitchen sink on or try any
4 of that. I just -- what was there was there. I didn't
5 adjust anything.

6 Q So you talked to the folks in the living room, told them
7 to sit down?

8 A Yes, sir.

9 Q Deputy Fuller comes in, goes to kitchen, comes back with
10 what's been marked there for---

11 A I watched him kneel down at that counter. I never saw
12 the defendant but I saw Deputy Fuller. He just walked up to
13 me, I saw that guy hide something under the cabinets. He
14 walks pass me, kneels down, kind of takes a knee, almost on
15 all fours and reaches around the back of the cabinet, you
16 know, shines his light, reaches around the back of the
17 cabinet and there's the -- there's your crack.

18 Q So he shines his light when he's in the kitchen?

19 A To see behind the cabinet, yeah. Now when you get down
20 below that bar area, that floor behind the cabinet, there was
21 no light source behind the cabinet.

22 Q So when Deputy Fuller went into the kitchen, where were
23 you standing?

24 A At the threshold where the defendant was initially when
25 the door was opened.

1 Q Okay, so you're actually standing at the threshold where
2 James was standing when you first got there?

3 A Correct. I can see the suspects and I could see Deputy
4 Fuller.

5 Q And where did Deputy Fuller go when he was in the
6 kitchen?

7 A Straight to that corner. The 90 degree. Except there
8 was no cabinets there, it was just like a big hole. For lack
9 of better terms. I mean, there was nothing there. Something
10 had been there. You can tell by the dirt accumulation and
11 stuff on the floor. Something was there at one time but
12 there was nothing there now. Whoever it was had cleaned it
13 out. Whether legally or not. So there was an opening to the
14 cabinets from behind.

15 Q From behind. But it wasn't something you could see
16 through from the living from the corner?

17 A From the living room you could not see that corner of the
18 kitchen.

19 Q Okay.

20 MR. GODFREY: Beg the Court's indulgence. Nothing
21 further, Your Honor.

22 MS. MONTS: Nothing further of this witness, Your Honor.

23 THE COURT: Okay. Thank you, sir.

24 Okay, we'll take about a 10, 15 minute break and then
25 we'll start back up, okay. Do not discuss the case at this

1 time. Y'all step out just for a few minutes.

2 (WHEREUPON, the jury left the courtroom at
3 approximately 2: 50.)

4 (WHEREUPON, a short break was taken.)

5 (WHEREUPON, the jury entered the courtroom at
6 approximately 3:08 p.m.)

7 THE COURT: Okay, Ms. Monts, next witness.

8 MS. MONT'S: Your Honor, the State calls Sean Collins.

9 THE CLERK: Place your left hand on the Bible, raise
10 right hand.

11 Sean Collins, after being duly sworn, testified
12 as follows:

13 THE CLERK: Thank you, please, be seated. State your
14 full name for the record.

15 THE WITNESS: Sean Frank Collins.

16 DIRECT EXAMINATION

17 BY MS. MONT'S:

18 Q Mr. Collins, please tell the jury where you're employed?

19 A I'm employed by the Greenville County Crime Laboratory.
20 I have been there just under 16 years now.

21 Q And what is the extent of your education?

22 A I have a bachelor of science degree in chemistry from
23 Clemson University. I attended the drug enforcement
24 administrations forensic chemist seminar and I've completed
25 over 700 hours in specialized training in the area of drug

1 identification.

2 Q And what are your duties at the crime lab?

3 A I'm currently the laboratory manager and my primary
4 duties are the analysis of suspecting controlled substance.

5 Q Have you been qualified in the Courts of this State as an
6 expert in the field of drug analysis?

7 A Yes, ma'am. I've testified 144 times as an expert in
8 drug identification.

9 MS. MONTES: Your Honor, the State would offer Mr. Collins
10 as an expert in field of chemical drug analysis.

11 MR. GODFREY: Without objection.

12 THE COURT: Okay, without objection.

13 BY MS. MONTES:

14 Q Mr. Collins, specifically in this case, I'm going to hand
15 you what's been marked for identification as State's Exhibit
16 3. Can you please tell the jury what you know about this
17 item?

18 A This is an item I examined in the laboratory.

19 Q How do you know this?

20 A My initials are on the enter package where I opened it.
21 The items itself is sealed in the package with my initials on
22 it and my initial the date on the outer package I sealed when
23 the analysis was completed.

24 Q And can you describe how you first would come into
25 contact with the substance?

1 A To retrieve something for analysis in the laboratory, an
2 officer must request it in written form. And I would then go
3 to the property and evidence room which is in the basement of
4 the law enforcement center and retrieve the evidence and
5 return to the laboratory which is just down the hall.

6 Q And describe what you have to do at the property and
7 evidence room to retrieve the controlled substance?

8 A There's a check out process. One of the clerks will
9 bring the items to be tested to the counter, I will sign the
10 custody document, leave a copy with them and return to the
11 laboratory with the items to be analyzed.

12 Q And did you, in fact, do that with this substance?

13 A Yes, ma'am, I did.

14 Q And did you analyze the substance?

15 A Yes, I did.

16 Q Did you produce a report?

17 A Yes, ma'am.

18 MS. MONT'S: Your Honor, I'd as this like to be marked for
19 identification.

20 (WHEREUPON, State's Exhibit No. 4 was marked
21 for identification.)

22 BY MS. MONT'S:

23 Q I'm going to hand a sheet marked for identification
24 State's Exhibit 4, can you identify this please?

25 A Yes, ma'am. This is a copy of the report with the item

1 in this bag.

2 Q Did you make this report?

3 A Yes, ma'am, I did.

4 Q Did you sign this report?

5 A Yes, ma'am.

6 MS. MONTS: Your Honor, I move the report into evidence
7 at this time.

8 MR. GODFREY: Without objection.

9 THE COURT: Okay, without objection.

10 (WHEREUPON, State's Exhibit No. 4 was admitted
11 into evidence.)

12 BY MS. MONTS:

13 Q Can you, please, tell the jury how you connect the
14 substance marked for identification, State's Exhibit 3, with
15 the report that you produced?

16 A The bag this item was originally sealed in has a unique
17 case number. The '06 is the year followed by 010127. That's
18 the same report number or same case number on the lab report.

19 Q And what do you do with the substance once you finish
20 your analysis of it?

21 A Once I complete an examination I seal it in a new package
22 and return it to the property and evidence room for storage.

23 Q And have you seen this item since you returned it to the
24 property and evidence room?

25 A No, ma'am.

1 MS. MONTES: Your Honor, we move State's Exhibit 3 for
2 identification into evidence at this time.

3 MR. GODFREY: Without objection.

4 THE COURT: Okay, without objection.

5 (WHEREUPON, State's Exhibit 3 was admitted into
6 evidence.)

7 BY MS. MONTES:

8 Q Okay. Can you, please, tell the jury the results of your
9 analysis on State's Exhibit 3?

10 A I found the white-rock like substance inside to be crack
11 cocaine with a weight of 1.83 grams.

12 MS. MONTES: Thank you, no further questions of this
13 witness.

14 MR. GODFREY: No question, Your Honor.

15 MS. MONTES: Your Honor, we ask this witness be excused.

16 MR. GODFREY: Without objection

17 THE COURT: Without objection.

18 MS. MONTES: Your Honor, that would be the State's
19 showing.

20 THE COURT: I thought there was more witnesses than that
21 but that's the State's case. I'm going to have to ask y'all
22 to step out for just another minute or two. Then I'll bring
23 you back in.

24 (WHEREUPON, the jury left the courtroom at
25 approximately 3:15 p.m.)

1 MR. GODFREY: May it please the Court. For the record
2 the defendant would make a motion for a directed verdict
3 taking the evidence in the light most favorable to the State.
4 The defendant does not believe there's been sufficient
5 evidence presented.

6 THE COURT: Okay. I'm going have to overrule that
7 motion. Okay.

8 MR. GODFREY: May it please the Court at this time we
9 would move---

10 THE COURT: I deny the motion, I'm sorry.

11 MR. GODFREY: May it please the Court, at this time we
12 would move for a motion to settle the record. In particular
13 my client has three prior drug convictions all from the same
14 date on October 31, 1996. Judge, we would move that although
15 that normally would be admissible for impeachment purposes if
16 my client were to take the stand. We would move under Rule
17 403 that although relevant, that the evidence should be
18 excluded because its probative value is substantial
19 outweighed be the danger unfair prejudice.

20 Also, Judge, I know this is not precedent, it's an
21 unpublished opinion on a drug case which got reversed because
22 they allowed in the prior convictions for drugs. I just
23 believe that -- I've talked with my client about the fact his
24 right to testify or not to testify. And I do not believe he
25 is going to have the information needed to make up his mind

1 until the Court will settle the record on whether or not the
2 prior convictions for drugs can be used to impeach his
3 testimony.

4 MS. MONTIS: Your Honor, the State's position is that the
5 prior, and this maybe a separate issue, but the prior
6 offenses, two occurred in Pickens County and one occurred in
7 Greenville County. There were three distributions of crack
8 cocaine and there was a -- it's not a drug conviction that
9 I'm familiar but a monetary instrument derived from drug
10 activity. They all -- there were three separate drug
11 incidents. There was also an habitual traffic offender where
12 he received a five year sentence from that same incident plea
13 date. But the State would argue that at least four offenses
14 should be allowed for impeachment purposes. And the fact
15 that these were distributions, are different than possession
16 with intent to distribute which is what he is charged with.
17 However, if, Your Honor, see's that is too similar of a
18 charge we would ask that His Honor allow us, pursuant --
19 pursuant to -- and I can tell you the case in a second. But
20 the suggestion by the Court that the State be allowed to say
21 that it was a charge that carried more than a year. Rather
22 than specifically what the alleged conviction charge was for.
23 So we do believe that the three distributions and the one
24 habitual traffic offender should be allowed in for
25 impeachment purposes.

1 THE COURT: I haven't had that issue come up in some time
2 but it seems like so similar that there's been 'specific drug
3 case, Ms. Monts, it said it should not be permitted that --

4 MS. MONTS: And, Your Honor, I have the case, let me --

5 THE COURT: I remember reading the case but I can't
6 remember which one it was.

7 THE COURT: I placed a copy of the New Jersey case that
8 said that -- well they site several cases that said that,
9 this is a totally different thing but, squatters have no
10 expectation of privacy. But then they went on to say that
11 drugs hidden on vacant property -- someone elses vacant
12 property that there was no expectation of privacy in that.
13 That was a case almost right on point from New Jersey and I
14 stated into the report and I made the case a part of the
15 record but that's a Court's record in case y'all want a copy
16 of it.

17 MS. MONTS: Thank you, Your Honor. Yes, the case is a
18 Court of Appeals case, South Carolina, State v. Elmore
19 decided February 21 of 2006, it's in a footnote says, Once a
20 permissible approach advocated by the Fourth Circuit is to
21 allow the prosecutor to ask a witness about the existence of
22 a prior similar conviction without disclosing to the jury the
23 nature of the prior offense. And they quote several Federal
24 cases. United States v. Boyce and Green v. State.

25 Your Honor, I can hand that up.

1 THE COURT: Well -- this is the Elmore case, opinion
2 written by Judge Kittredge. But I need to make a ruling on
3 the record as to the probative value and the prejudicial
4 value. And at the end they kind of back out of it. Maybe I
5 shouldn't say that because I haven't read the whole case. I
6 think they said the objection was not preserved for review
7 because the defendant didn't testify in the Elmore case. Is
8 that right? But anyway they took the opportunity to remind
9 the Court of the inherent prejudice that flows from the use
10 of similar prior convictions for impeachment purposes under
11 Rule 609-(A)1. And the guidelines were to consider all
12 relevant factors. Including but not limited to the
13 impeachment of value of the prior crime. The point and time
14 of the convictions and the witnesses subsequent to history.
15 And they highlighted the similarities between the past crime
16 and the charged claim. And the importance of his testimony.

17 And they ask us to make a record of that. And I have
18 just quickly glanced at this case today. And I would say
19 that in considering these factors, the impeachment value is
20 important but the point and time of the convictions, the
21 convictions were almost 10 years ago. Based on what
22 Mr. Godfrey's told me. They were almost identical, the past
23 crime and the charged crime. I don't know if it was
24 distribution of cocaine or crack cocaine. I don't know what
25 it is.

1 MS. MONTS: Your Honor, I believe it was -- it was crack
2 cocaine. I believe there was one -- I can check but I got
3 the certified copies here. Either one or two distributions
4 of crack and one possession with intent to distribute crack,
5 Your Honor. But -- and the statute says it's within 10 years
6 of the -- either the date of conviction or the date of
7 release. And the defendant got a seven year sentence and we
8 got that he was released March 27th of 2000.

9 THE COURT: Okay. That was about seven years ago when he
10 was release, right?

11 MS. MONTS: Yes, Your Honor.

12 THE COURT: Well, the -- in this particular case, of
13 course, his -- it's important -- the importance of the
14 defendant's testimony, I assume that he's got a
15 Constitutional right to testify or not to testify. I would
16 impress that on the jury and we all know that. But a
17 person's testimony I guess is always important. I have to
18 find that it's important. I think that the crimes are so
19 similar in nature, that the prejudicial value would probably
20 outweigh the probative value. And -- the footnotes state,
21 also, and I make this ruling so the defendant can make a
22 decision about what he wants to do Constitutionally, either
23 testify or not to testify. But the footnote, as pointed out
24 by Ms. Monts from the Fourth Circuit, That one permissible
25 approach advocated by the Fourth Circuit, is to allow the

1 prosecutor to ask the witness about the existence of a prior
2 similar conviction under Rule 609(A)1, without disclosing to
3 the jury the nature of the prior offense. Of course, you
4 couldn't say, Do you have a similar conviction? At some
5 point in time. You can just ask him if he had a conviction
6 at some point in time. Or two or three convictions in 1996
7 without disclosing the nature of the offenses. And I would
8 permit that in this case.

9 MS. MONTES: Thank you, Your Honor. And the habitual
10 traffic offender, would that be allowed?

11 THE COURT: When was this?

12 MS. MONTES: That I was, I believe, on the same day, 19 --
13 yeah, October 31 of 1996.

14 THE COURT: What was the sentence?

15 MS. MONTES: Five years. Your Honor, I can hand up---

16 THE COURT: I'll accept your word for it. Okay.

17 Habitual traffic offender.

18 Any objection to that, Mr. Godfrey?

19 MR. GODFREY: It just bothers me about the bifurcated way
20 we're doing this. In that she specifically names one crime
21 by naming habitual traffic offender. Then says, Well you
22 have three other convictions for crimes which carried more
23 than one year. It's almost like you're telegraphing. We're
24 not telling you---

25 THE COURT: That's right.

1 MR. GODFREY: --that's it's drugs. But it is drugs.

2 THE COURT: But you're inferring that it's drugs. That's
3 a point well raised. If you name the one offense Ms. Monts,
4 then it maybe an indication that the others could be an
5 inference there for the juror that the others could have been
6 more serious or something of that nature. I just think the
7 similarities of the two crimes and based on our current case
8 law --

9 MS. MONTS: Your Honor, I'll be happy to say four prior
10 convictions without naming any of them.

11 THE COURT: Okay, I'll permit that.

12 In this opinion, Judge Kittredge goes on to say that the
13 Boyce approach from the Fourth Circuit in State vs. Boyce,
14 approach was referenced by our Supreme Court in Green vs. the
15 State, a 2000 case. And -- but it still required a
16 meaningful balance. I think I stated all the factors. I'm
17 going to --

18 You're going to ask him about four crimes that carry a
19 sentence of more than year without disclosing those crimes?

20 MS. MONTS: Yes, Your Honor.

21 THE COURT: Okay, I'll permit that. Now that gives you
22 an opportunity to make a decision.

23 EXAMINATION

24 BY THE COURT:

25 Q All right, Mr. Abercrombie?

1 A Yes, sir.

2 Q Some people say that the most important decision that a
3 criminal defendant has to make in a criminal trial is whether
4 or not to take this witness stand and
5 testify in the presence of the jury, under oath, as to the --
6 to give your testimony about the facts and circumstances
7 surrounding this case. Now, you have a Constitutional right
8 either to testify or to remain silent. And I'm not
9 indicating one way or another what you should do. Either
10 testify or not to testify. That is a decision that you have
11 to make personally after talking this over with your
12 attorney. And getting his advice. You should listen to him
13 but you have to make a decision as to testify or not testify.
14 Do you understand that?

15 A Yes, sir.

16 Q Okay. Now if you chose to exercise your Constitutional
17 right and not testify, I would instruct the jury that they
18 couldn't hold that against you in any way or even consider it
19 or discuss it in the jury room. The burden of proof is
20 always on the State to prove you guilty beyond a reasonable
21 doubt. That's your Constitutional right. If you do take the
22 witness stand and you have prior convictions, which she's
23 going to ask you about but not name the nature of the those
24 crimes, I would tell the jury that evidence of any prior
25 convictions comes in for a limited purpose. And maybe

1 considered by them for that purpose only. And that is to
2 your credibility or believability of the testimony presented.
3 And for no other purpose. They cannot consider prior
4 convictions as to your guilt or innocence in this case. Only
5 as to how it would bear upon your credibility of your
6 testimony. Do you understand what I have just gone over with
7 you in regard to you testifying or not testifying and your
8 Constitutional right?

9 A Yes, sir.

10 Q I'm going to let you discuss it a little more here for
11 about 5 or 10 minutes with Mr. Godfrey. And when you've made
12 that decision, you can let the bailiffs know and they'll let
13 me know, okay.

14 All right, thank you. I'll give y'all a chance to talk
15 about it.

16 We'll take about a 10, 15 minute recess.

17 (WHEREUPON, a short break was taken.)

18 THE COURT: Mr. Godfrey, have you had a chance to talk to
19 your client?

20 MR. GODFREY: Yes, I have. And my client says he wishes
21 to testify.

22 THE COURT: Okay. All right. Mr. Abercrombie, is that
23 your decision, you wish to testify?

24 MR. ABERCROMBIE: Yes, sir.

25 THE COURT: All right.

1 Ready?

2 MS. MONTS: Yes, Your Honor.

3 THE COURT: I don't know how long he'll take but y'all
4 want to finish today?

5 Mr. Godfrey?

6 MS. MONTS: It's possible, Your Honor.

7 MR. GODFREY: That's fine because I got to be back here
8 tomorrow for plea court and PCR court.

9 THE COURT: Okay.

10 (WHEREUPON, the jury entered the courtroom at
11 approximately 3:50 p.m.)

12 THE COURT: Mr. Godfrey.

13 MR. GODFREY: The defense would call James Abercrombie.

14 THE CLERK: Mr. Abercrombie, please pause at the end of
15 the bench, place your left hand on the Bible, raise your
16 reasonable.

17 James Abercrombie, after being duly sworn,
18 testified as follows:

19 THE CLERK: Thank you, please be seated. State your name
20 for the record.

21 THE WITNESS: James Jermaine Abercrombie.

22 DIRECT EXAMINATION

23 BY MR. GODFREY:

24 Q James, how old are you?

25 A 32.

1 Q Who do you live with?

2 A Angela Faulkner.

3 Q Who is that?

4 A She's common law wife.

5 Q How long have you y'all been together?

6 A Seven years.

7 Q You all have children together?

8 A Yes, sir.

9 Q How many?

10 A Four in all.

11 Q How far did you go in school?

12 A 11th grade.

13 Q Do you have a GED?

14 A No, sir.

15 Q Can you read and write?

16 A Yes, sir.

17 Q What is your usual employment?

18 A Mechanic.

19 Q What type of mechanic?

20 A Basically I workshop, D&D performance on hot road cars
21 and stuff like that. And oil changes and stuff like that
22 too.

23 Q Now, do you know a woman by the name of Karen Walker?

24 A Yes, sir.

25 Q Do you know a man by the name of John Hall?

1 A Yes, sir.

2 Q How do you know John Hall?

3 A At the time when I met John Hall him and Karen Walker was
4 married. That was once his wife.

5 Q And so back on the incident date that we're here about,
6 this January 17th of 2006, Karen Walker and John Hall
7 married, to your knowledge?

8 A Yes, sir, I think they were going through a divorce. But
9 they was married.

10 Q How well do you know John Hall?

11 A I know John Hall from he bring his cars up to the shop
12 that I worked at.

13 Q How did you end up -- well let me ask you, where do you
14 and Angela live?

15 A 10 Melody Traveler's Rest.

16 Q And do you know how long you've lived there?

17 A We live there approximately about three years.

18 Q Did you grow up in Greenville County?

19 A Yes, sir.

20 Q You went to Greenville County school?

21 A Yes, sir.

22 Q Have you ever lived outside of Greenville County?

23 A No, sir.

24 Q On January 17th of 2006, how is it that you came to be on
25 Colonial Avenue?

1 A John Hall gave me a call. I was at home.

2 Q Was it your day off?

3 A Yes, sir.

4 Q And based on John Hall's call, what did you do?

5 A He called me and told me that he had a car broke down in
6 the driveway and ask me do I want to make some money? Fix
7 her car for her quick.

8 And I said, Yes.

9 Q So what did you do after you ended the phone call with
10 John Hall?

11 A John Hall again proceeded to tell me that he was hungry,
12 that him and Karen was hungry. Would I stop by the store and
13 get him something to eat on the way down.

14 I said, Yes.

15 Q Well, did you immediately go to this Colonial address?

16 A No, sir, I went to Wendy's. Out at Cherry Dale point.

17 Q What did you do at Wendy's?

18 A I went and got a double, it's like a combo for him and
19 her together with cup holders. Sodas in a cup holder.

20 Q Then where did you go?

21 A Then I persuaded (sic) to [REDACTED].

22 Q Is that John Hall's address?

23 A No, no, sir. It wasn't. Not to my knowledge, I didn't
24 know.

25 Q Did you actually know where John Hall lived?

1 A No, sir. Yeah, I know where his residence, his real
2 house.

3 Q Where his what is?

4 A His real house. Where he -- down in Easley.

5 Q Well, did you ask him why he wanted you to come this

6

7 A No. Because he said it was -- I ain't ask him I just
8 proceeded because he said about a car he was wanting to get
9 fixed.

10 Q So you went over there to?

11 A My intention is to fix a car.

12 Q And make some money?

13 A Bring him some food, yes, sir.

14 Q Had you ever been to that house before?

15 A No, sir.

16 Q How did you know where that house was?

17 A He told me where it was when we was on the phone. He
18 told me it was behind Cowboys or Tony's or something. I'm
19 trying to recall the name Tony's or Cowboys. Right there on
20 Told me to turn behind it. Take a right
21 and I'll see a car in front of a white house.

22 Q And what kind of car were you looking for?

23 A Like a little white -- it was like a little white -- he
24 told me it was like a little white car. That's all the
25 description he give me.

1 MS. MONTS: Objection, Your Honor. I've let the hearsay
2 go but I'm going to object to hearsay.

3 THE COURT: Okay. I'll let it come in, not for the truth
4 matter asserted, he can testify as to why he was there.

5 BY MR. GODFREY:

6 Q When you got to Colonial Avenue at that house, what did
7 you do?

8 A First when I pulled in front of the house, the car was in
9 the driveway on the -- right there on the side, close to the
10 front. If you be on the porch you can see the car facing --
11 like facing out toward the road. But it was in the driveway.
12 I got out my truck, I parked in front of the truck, there was
13 ditch, I parked off the road as far as I can, got out the
14 car, proceeded over to the car. I popped the -- she told me,
15 she was standing out there, the lady told me the hood -- I
16 popped the hood she said her car was losing water.

17 Q What did you do?

18 A That's when she popped the hood. Then I immediately
19 popped the radiator cap. I stick my finger down in the
20 radiator cap, there wun't (sic) no water, period. No fluids
21 in the car, period. So then I went to a hose located right
22 there in front of me, located in front of the yard. And put
23 water in the thing. It was coming out the bottom.

24 Q So you're getting water from?

25 A A hose.

1 Q At the house on /Colonial Avenue?

2 A Yes, sir.

3 Q What happened when you put water in the radiator?

4 A It came out the bottom.

5 Q What did that tell you?

6 A The freeze plug got to be missing or it's got a hole in
7 it. The radiator or the freeze plug gone.

8 Q Well did you check?

9 A Yes, sir. I got on my back, I looked, it was right --
10 the freeze plug is right there close to the fan, just a
11 little plastic piece that plugs up really. And it was coming
12 out the hole. A stream was coming out from the little water
13 I put in.

14 Q What did you do?

15 A Then I got up, I proceeded to the back yard. There was a
16 plastic container with some rubber on it. I took the rubber
17 off of it and the plastic and made it like a cork. I took
18 it, came back around to the house, the front of the car and
19 stuck it up in the radiator. Then I filled water up in the
20 car.

21 Q Did you get paid for your work?

22 A Yes, sir.

23 Q What did you get paid?

24 A She gave me \$25.

25 Q After she paid you what did she do?

1 A I told her well if she got to go to point A to B, don't
2 go joy riding because that cork it ain't going to hold much.
3 Once it heat up it's going to melt.

4 She said, Okay. And all she said was, Thank you and took
5 off.

6 Q Well up to this point in time had you gone inside the
7 house there?

8 A No, sir.

9 Q Colonial Avenue?

10 A No, sir.

11 Q Up to this point in time had you seen John Hall or Karen
12 Walker?

13 A Yes, sir.

14 Q Who did you see?

15 A I seen John.

16 Q And where was he?

17 A He was standing like on the back side of the house where
18 his truck was.

19 Q So his truck was parked where now?

20 A It's like a garage on the side of the house. He drew a
21 picture of it. It's like this is the garage, his truck, back
22 of his truck, like truck with a bed on it. Truck was backed
23 up in there. Back of the bed was under this part right here.

24 Q Okay. Now, when the lady left that you had fixed the
25 radiator for, at least patched the radiator for her--

1 A Patched.

2 Q What did you do with your car?

3 A I pulled by car or truck right there, how he got the
4 picture, back behind the house. Past John's.

5 Q Now, from the time you got there until the time you got
6 your car parked behind the house, how much time do you think
7 elapsed?

8 A Right there was probably like, I say from the time I
9 fixed the car and all of that was like a good seven or eight
10 minutes.

11 Q When you pulled your vehicle behind the house, did you
12 see anybody?

13 A John was back in the house. When I pulled my truck
14 behind the house there wasn't nobody back there, period.

15 Q Well what did you do when you got out of your truck?

16 A When I got out of my truck, I came out the truck, I
17 grabbed the food and the tray. When I came to the back door
18 John was at the back door. Opened the back door for me, I
19 came in.

20 Q Now when you say back door, looking at State's Exhibit
21 No. 2, is that the door you went in?

22 A The door I had was like a wooden, a metal bar door. Like
23 you put on them houses, like the bars. It was one of them
24 doors then that door.

25 Q Then that door?

1 A Yes, sir.

2 Q So how many doors were there before you get into the
3 kitchen?

4 A Three doors.

5 Q Could you get up and point on this display and show where
6 the doors were?

7 A As I came through the back door, that's the back door.
8 Well there's a wooden, that bar door right here. It's like a
9 gate door made out of steel. That door, then got the back
10 door, then there's a den area with two couches. A couch that
11 way and a couch that way. And there was a door right here
12 before you go in the kitchen.

13 Q Okay, please have a seat.

14 A (The witness complies.)

15 Q So you parked your truck and did you knock on the door or
16 did John let you in?

17 A John already came to the door. By time I got to it he
18 was already opening the door.

19 Q Once you went in what did you -- where did you go?

20 A When came through the door I gave him the food crates,
21 the crate and food and I went to the bathroom. I asked him
22 where was the bathroom?

23 He said, On your left.

24 Q Why did you go there?

25 A I had to wash my hands from the oil, little grease I got

1 on my hands from fixing the radiator.

2 Q Where was John when you went to the bathroom?

3 A John was right there by me in the bedroom. There is a
4 bedroom you got to go through when you go through that way to
5 the bathroom from the back way.

6 Q When you finished washing your hands, which room did you
7 go to?

8 A I went to -- John walked up to the front room and I came
9 around through the kitchen.

10 Q When you say you came around through the kitchen, where
11 did you go?

12 A Come up, come through the bedroom, I come through the
13 kitchen. Well John was standing -- now me and him standing
14 face to face.

15 He said, There's a knock at the door.

16 Q Okay. You and John were standing face to face in what
17 room?

18 A Right when -- we came through the kitchen we were
19 standing face to face in the kitchen, when I come out the
20 bathroom. That's where we was standing at. Then we
21 proceeded to the front room.

22 Q And when was the knock at the door?

23 A The knock at the door when he was standing there -- when
24 we was standing there he said there was a knock at the door.
25 The knock done came I guess when I was in the bathroom.

1 Because I was coming out.

2 Q Did you hear the knock when you were in the bathroom?

3 A No, sir.

4 Q How did you know there was a knock at the door?

5 A Because John was -- when I came through the kitchen
6 that's what he was saying.

7 Q Where did you go after that?

8 A We went to the front room.

9 Q Who opened the door?

10 A John. He the only one had a key to open the door.

11 Q Where was Karen Walker?

12 A It was a couch -- it's a couch right across -- let me
13 show you. It was a couch -- it's another couch right here,
14 too. Couch right here. It's like a couch with two Lazy Boys
15 on the end. Same way this couch was with the Lazy Boys. It
16 was like a coffee table right here in the middle, kerosene
17 heater right here.

18 Q Okay. So did you see John Hall open the door?

19 A Yes, sir.

20 Q What happened then?

21 A When John Hall opened the door, the officer told him to
22 step out on the porch.

23 Q What did he do?

24 A When he stepped out on the porch, the door swung opened.
25 And that's when you can see where I was, my face. And they

1 rushed in.

2 Q And where were you?

3 A I was sitting behind the door. When the door shut, the
4 door right there behind me.

5 Q You say you were seated?

6 A Seated on one of the Lazy Boys on the couch.

7 Q Close to the entrance to where the kitchen is?

8 A No, close to the entrance where the door is. The front
9 door.

10 Q Front door?

11 A Yes, sir.

12 Q Then what happened?

13 A Then there was a officer with white hair, white beard.
14 He told me -- he started asking for identification.

15 I told him I shouldn't feel like I should give him
16 identification because I didn't do nothing. What's going on?

17 And then we was -- basically he was asking -- he got
18 Karen Walker he said, Well he got Pops, John, ID, he got John
19 ID. He said, I know Karen.

20 Then basically that's when another officer came in and
21 said, Where Karen at, there drugs at.

22 Q Why didn't -- was John -- was John Hall doing anything
23 that you thought unusual at that time?

24 A No, sir.

25 Q Did he do anything unusual when he came back in the

1 house?

2 A No, sir.

3 Q Well do you remember him continuing to eat his food?

4 A Yes, sir.

5 Q When the officers were there?

6 A Yes, sir. Because one of the officers asked him how can
7 he eat at a time like this.

8 Q Then what happened?

9 A Then they proceed to take -- they proceed -- another
10 officer come in and as the door was open he peep and look at
11 me. Then he go back out. Then he come back in, peep in,
12 look at me and go back out. Then peep in, look at me, go
13 back out. The next thing, you know, another officer came up,
14 went in the kitchen. And when he went in the kitchen he was
15 in there searching. Basically he was searching all over the
16 kitchen. Then he went to the cupboard and he come up and
17 said -- I heard him say, Bingo.

18 Q Now how many officers do you say where there?

19 A I seen it was four of them.

20 Q Was it Deputy Weiner?

21 A Yes, sir.

22 Q Defendant Fuller?

23 A Yes, sir.

24 Q And you say there were two more?

25 A There was two more. Because the one that had me on the

1 couch, he had white hair. Because he the one that told us to
2 sit down.

3 Q When the drugs were found in the kitchen.

4 A Yes, sir.

5 Q Did an officer approach you about the drugs?

6 A Yes, sir.

7 Q What did the officer tell you?

8 A You going to jail.

9 Q What was your response?

10 A What for.

11 And he said, Show him.

12 And he showed me like that.

13 And I said, That ain't mine.

14 Q At this point in time, you had gone to the house and
15 worked on a radiator?

16 A Yes, sir.

17 Q Then you went inside. From the time you got there until
18 the time that the drugs were shown to you, how much time you
19 think had passed?

20 A I'd say about a good 30 minutes. 30 -- like 30 minutes.
21 In all that time it was about 30 minutes. I know I wasn't in
22 the house at least a good 10 minutes before they came
23 knocking at the door.

24 Q Now, did you have any money in your pocket?

25 A Yes, sir.

1 Q How much did you have in your pocket?

2 A I had 300 in my pocket when that lady paid me \$25.

3 Q And do you normal carry that kind of money?

4 A No. What it was I got paid and I was going to pay a bill
5 that Tuesday. It was the water bill that we need to get off
6 before but I didn't go pay it that day because John called me
7 to bring him some food.

8 Q Well when you get paid do you get a check from the place
9 were you work or---

10 A No, sir---

11 Q Do they pay you cash?

12 A They pay us cash.

13 Q So you're working under the table?

14 A Yes, sir.

15 Q The drugs that are directly in front of you right there?

16 A Yes, sir.

17 Q Are those your drugs?

18 A No, sir. No, sir.

19 Q Do you know whose drugs they are?

20 A No, sir.

21 Q Did you have anything to do with those drugs?

22 A No, sir.

23 MR. GODFREY: Nothing further.

24 ///

25 ///

CROSS-EXAMINATION

1

2 BY MS. MONTIS:

3 Q The officers that came to the house that day, had you
4 ever seen them before?

5 A No, ma'am.

6 Q Had you ever seen a sheriff's office deputy with a beard?

7 A I seen -- the one I seen it was white. Had white hair.

8 Q He was a sheriff's office deputy?

9 A Yes, ma'am.

10 Q And how long did it take you to fix the car that you said
11 you went there to fix?

12 A It didn't take me about good three to four minutes.

13 Q Three or four minutes?

14 A Yes, ma'am.

15 Q To lift up the hood, see that there was no water in
16 there, go get the hose, turn the water on, put the water in,
17 go in the backyard, find a piece of plastic, fit the piece on
18 to the car, go back over there, put the plastic on and talk
19 to the woman about going straight home. It took you three to
20 four minutes?21 A Talking to the woman -- it was all -- you said fix the
22 car. When I fixed the car it was about three to four minutes
23 tops.

24 Q And then she left?

25 A Yes, ma'am.

1 Q So you did all that in three to four minutes?

2 A Yes, ma'am.

3 Q And then when you went in the house you said you were in
4 there about 10 minutes before the police came?

5 A Uh-huh.

6 Q So what were you doing for the 10 minutes.

7 A When I came in the house, I walked into the bathroom.
8 That's when I was washing my hands. That's about basically
9 as far as I got before the police came.

10 Q It took you 10 minutes to wash your hands?

11 A In all that, in all the time together.

12 Q What do you mean?

13 A From the time that lady left and I pulled my truck around
14 back and come in the house.

15 Q And why did you pull the car around the back?

16 A Because I was bringing Pop and them some food. And I
17 ain't want my car to be sitting on the curb.

18 Q Your bringing who some food?

19 A John Hall, sorry. And Karen Walker.

20 Q And why didn't you want your car in the front?

21 A Because it can get hit the way I had it parked on the
22 side of the road.

23 Q So you were planning on staying a while?

24 A No, I wasn't. I even told the officer, Can I leave? I
25 ain't got nothing to do with this.

1 Q But you took the time---

2 A To wash my hands.

3 Q --to go get your car and go move it in the back. What
4 kind of interior do you have in your car?

5 A Leather.

6 Q Leather interior?

7 A Yes, ma'am.

8 Q You got your car, moved it around and parked it behind
9 the house?

10 A Yes, ma'am.

11 Q And then went inside?

12 A Yes, ma'am.

13 Q Had you ever been in this house before?

14 A No, ma'am.

15 Q Had you ever seen Mr. Hall there before or seen him or
16 know him to be at that house?

17 A No, ma'am.

18 Q So you had no reason to know that he would be at that
19 house on this day?

20 A I would have no reason.

21 Q Okay. Describe the lighting in the house?

22 A It was like, you call it chandelier in the front room.
23 It's like -- if I'm saying it right it's like a chandelier,
24 it came from the ceiling.

25 Q In the front room?

- 1 A Yes, ma'am.
- 2 Q What other light?
- 3 A He had the bedroom lights on too. On the -- when you
- 4 come in the door it's like the bedroom on your right.
- 5 Q There's one bedroom?
- 6 A No, ma'am, there's two bedrooms.
- 7 Q And there were lights on in two bedrooms?
- 8 A Yes, ma'am.
- 9 Q What was in the two bedrooms?
- 10 A The front bedroom was a box spring and mattress. Then
- 11 you got a bathroom, then you got the other bedroom. It had a
- 12 bed with a bunch of clothes in the floor. And black bags.
- 13 Q How big was the bed?
- 14 A It was like I would -- I want to say full, full size.
- 15 Q Full size bed in one room and box spring and mattress in
- 16 the other?
- 17 A Yes, ma'am.
- 18 Q Describe the kitchen, what was in the kitchen?
- 19 A It was the table in the kitchen. A big brown table.
- 20 Q How about appliances?
- 21 A I didn't see none.
- 22 Q Did you see the holes where there should be appliances?
- 23 A I saw it. Yes, ma'am, it was like I guess a dish washer
- 24 area.
- 25 Q How about where a stove or a refrigerator?

1 A There was no refrigerator. It was like, when you come
2 through that door the refrigerator radiator sit right here in
3 the corner, catted corner.

4 Q Did you see any dishes or things that would show someone
5 had been living there?

6 A Yeah, it was a home. It had, watch you call it, a dish
7 crate. What you put your dishes in. Right by the sink.

8 Q And isn't it true that you've got four prior convictions
9 which carry a sentence of more than year?

10 A Yes, ma'am.

11 Q And isn't it true that -- excuse me, what days did you
12 work?

13 THE COURT: Ladies and gentlemen, the record of any prior
14 convictions comes in for a limited purpose only. And that is
15 has it may bear upon his credibility or believability. And
16 you must not consider any prior record as to his guilt or
17 innocence of these charges. Okay.

18 A Okay, work is Monday through Friday. Hours from 9 in the
19 morning to 3:30.

20 Q And this was a Tuesday, why did you have this day off?

21 A Because there wun't no work, boss man wun't around,
22 nobody can get in the shop.

23 Q On this particular day?

24 A Yes, ma'am.

25 Q How did Mr. Hall know to find you at home?

1 A He called me on my cell phone like he usually reach me.

2 Q Why did he usually reach you?

3 A When his cars tear up or something---

4 Q I'm sorry?

5 A When he have a car problem or car issue or something he
6 want me to fix.

7 Q How often did he have a car he needed fixed?

8 A Well when him and Karen got together it was pretty often.

9 Q So she was what a good 30 years younger than him?

10 A She was younger but I don't know how old -- the time line
11 between them.

12 Q Okay. You said an officer came in and searched, was it
13 either of these officers that came in and searched?

14 A It was -- I think it was one that was with him. Not this
15 one, not Fuller, the other one.

16 Q And you said that they rushed in. You said Mr. Hall
17 opened the door and they rushed in, who rushed in?

18 A When Mr. Hall opened the door, he unlocked the door with
19 the key, that dude with the white hair, he was in a police
20 uniform, told him to step out on the porch.

21 Q The dude with a white beard in a uniform?

22 A Yes, ma'am. His whole face was white. And he told him
23 to step out on the porch.

24 Q Where was Officer Weiner?

25 A Officer Weiner came in -- when they rushed in Officer

1 Weiner.

2 Q Who's they?

3 A Officer Weiner, his -- the other one that was with him
4 and the dude the white hair. The other officer.

5 Q They rushed in and where did they go?

6 A First thing they did to me is sit me -- told me to stay
7 put where I'm at.

8 Q Told you to do what?

9 A Stay put where I was at.

10 Q Which was where?

11 A Right behind the door.

12 Q Were you standing or seated?

13 A I was seated.

14 Q Where was Karen?

15 A Karen was, a couch in front of me. She was a couch in
16 front of me. Her and another woman.

17 Q Her and what?

18 A Another woman.

19 Q There was another woman in there?

20 A Yes, ma'am, I don't know her name.

21 Q Did you need a flashlight in the house at all?

22 A As far as -- as in what, to light up the room.

23 Q To see, yes, sir.

24 A No, you could see. The room you in if the light on you
25 can see it. As far as trying to look around like go through

1 a room without you going to have to have one or cut the
2 lights on.

3 Q So you said that you were there for three to four
4 minutes, that you came, took the time to move your car from
5 the front around to the back, came inside the house and went
6 straight to the bathroom, is that correct?

7 A Yes, ma'am.

8 Q And at that time there's apparently a knock at the door?

9 A Yes, ma'am.

10 Q And all this was approximately 10 minutes?

11 A Yes, ma'am.

12 Q When did you have time to look into all the rooms to see
13 what was there?

14 A I didn't have time to look in all the rooms. What you
15 do, I show you right here. When I came in, I came in through
16 the back door. When you come through the back door you can
17 see these. And you come through this door the bathroom is
18 immediate through this way, to your right. That's the
19 bedroom right there, that's another bedroom. Then it's the
20 bathroom.

21 Q And did you give the law enforcement officers your name?

22 A No, ma'am.

23 Q And even when you were arrested, did you give them your
24 name?

25 A I gave it then.

1 Q At the scene or at the law enforcement center?

2 A At the law enforcement center.

3 Q So until you were transported you never told them your
4 name?

5 A No, ma'am.

6 Q And were you, besides walking through the kitchen to go
7 to the bathroom, were you ever in the kitchen?

8 A No, I just physically standing, no.

9 Q Did you ever see the deputy at the back door looking
10 through the window?

11 A No, ma'am.

12 Q Did you ever see Officer Weiner knocking at the front
13 door?

14 A No, ma'am.

15 Q And you knew Mr. Hall didn't live at this residence, is
16 that correct?

17 A Yes, ma'am.

18 Q How about the light in the kitchen, was that on?

19 A No, ma'am.

20 Q So how could you see when you went through?

21 A You can see -- when you come out the bedroom, you can see
22 the kitchen table from the light in the front room. You can
23 see about like the big oh circle table, like the corner of
24 the table.

25 Q How long did you expect to stay at the residence?

1 A I was really trying to get my hands washed and get clean
2 and get back home.

3 Q Why didn't you just park on the side of the house or in
4 the front yard? Why did you pull all the way around to the
5 back?

6 A Because when I got in my car I ain't pull in the front of
7 the yard because I just pulled on around to back. That's
8 where the door -- I just pulled back there really, just
9 pulled back there. I wun't planning to stay.

10 Q And who was the officer that searched the kitchen?

11 A I think it was one of the other ones. It wasn't Fuller.

12 Q Fuller was not the officer that searched the kitchen?

13 A No, ma'am.

14 Q Did you ever see him walk into the kitchen?

15 A I see him in and out the door.

16 Q You're talking about the front door?

17 A Yes, ma'am.

18 Q But you never saw him go into the kitchen?

19 A No, ma'am. There was another officer that went in that
20 way.

21 MS. MONT'S: Nothing further.

22 MR. GODFREY: No redirect.

23 THE COURT: Okay.

24 MR. GODFREY: Your Honor, the defense rests.

25 THE COURT: Ms. Monts, anything else?

1 MS. MONT'S: No reply, Your Honor.

2 THE COURT: All right, I'm going to let y'all step out
3 just for a minute.

4 (WHEREUPON, the jury left the courtroom at
5 approximately 4:20 p.m.)

6 THE COURT: I don't think we can finish today, we'll have
7 to come back tomorrow. Because it's almost 4:30 and one of
8 the lady's already had to call and make arrangements for her
9 children at 4:00. But still, I mean, I don't want them to
10 rush because I know this is an important case to the
11 defendant. But I assume it would be if he is convicted, I
12 don't know what they're going to do, it would be third or
13 more?

14 MS. MONT'S: That's correct, Your Honor.

15 THE COURT: All right.

16 Mr. Taylor, I'm just thinking about coming back and what
17 time tomorrow. These don't look like the strongest cases I
18 have ever seen.

19 I was thinking doing that one first at 9:30. We'll do
20 this one at 9:00. We have the arguments and the charge.
21 Then they can deliberate and then I'll do that one and one of
22 these trials if you have to.

23 MR. TAYLOR: What time are you going to bring the jury
24 back in the morning?

25 THE COURT: We talked about 9:30 but I think that we

1 ought to change that to 10:00. 10:00. Not going to take us
2 more than hour to argue and charge this one.

3 MR. TAYLOR: 10:00. And then you got the Attorney
4 General's here.

5 THE COURT: Then I got the Attorney General, say 10:15.
6 10:15, we ought to be ready to go. If we have one. Okay.

7 All right. I'll bring them back in.

8 You want to make a motion?

9 MR. GODFREY: I'll renew the motion for a directed
10 verdict, same basis.

11 THE COURT: Okay. It's -- at this particular point I
12 would deny the motion and find that it's a factual question
13 for the jury to determine. Okay.

14 Have them step back in.

15 (WHEREUPON, the jury entered the courtroom at
16 approximately 4:25 p.m.)

17 THE COURT: Ladies and gentlemen, this is an important
18 case for the State and it's an important case to the
19 defendant. It's 4:30 and it's probably going to take us an
20 hour. We've got the closing arguments and the charge. So
21 I'm going to let y'all come back at 9:00 in the morning and
22 we'll finish. We have closing arguments and the charge.
23 Then you'll go back and deliberate after that. Tonight, do
24 not discuss the case with anyone. We trust you to go and
25 come and not talk to anybody about the case. If you did, you

1 would be talking to someone who had not seen the witnesses or
2 heard the testimony. So I'm going to ask you don't discuss
3 it. Just tell whoever you see that you're serving on the
4 jury, you cannot talk to them about it until it's over. Then
5 you can talk to anybody you want to or you don't have to talk
6 to anybody. That would be up to y'all. Y'all just say you
7 don't want to discuss or can't discuss it.

8 After the case is over, you're free to discuss it with
9 anyone or you do not have to. But tonight don't discuss it
10 with your spouse or your friends or whoever you see. And
11 come back at 9:00 and we'll finish in the morning. Okay.
12 Thank you, so much.

13 (WHEREUPON, the jury left the courtroom at
14 approximately 4:28 p.m.)

15 THE COURT: Is the door closed?

16 THE BAILIFF: It's closed.

17 THE COURT: All right, I'm going to charge possession
18 with intent to distribute, possession as a lesser-included
19 and not guilty. Those three. Okay. And I'll see y'all at
20 9:00 in the morning.

21 MR. GODFREY: Thank you, Your Honor.

22 MS. MONTIS: Thank you, Your Honor.

23 (WHEREUPON, the proceeding were concluded for
24 the day to be reconvened Tuesday, July 10, 2007
25 at approximately 9:00 a.m.)

1

2

Tuesday, July 10, 2007

3

(WHEREUPON, the jury entered the courtroom at
approximately 9:05 a.m.).

4

5

THE COURT: Okay, we're ready for the closing
statements.

6

7

Mr. Godfrey.

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MR. GODFREY: May it please the Court?

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Solicitor.

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Good morning, ladies and gentlemen. This has got to be
-- it's never easy to be on a jury. Because, you know,
you're trying to weigh and figure out who's telling the truth
and who's not telling the truth. And you try to understand
the evidence on a story that you've never heard before. And
unlike T.V., we can't put things in 30 second sound boxes.
But this is one of the most unusual cases that I've seen.
It's remarkable for what the conflict that's in the case.
People either don't remember or when they do remember they
don't remember exactly. And it generates problems as far as
trying to understand what is actually going on.

What we do know, when James testified yesterday, he told
you that he's a life long resident of Greenville County. He
told you that he is not married but he considers himself to
have a common law wife because they've been together for more
than seven years and they have four children together. We

1 know that he went to school here in Greenville County. And
2 we know that he works as an auto mechanic and he gets paid
3 under the table. Now, we also know that he knows a fellow by
4 the name of John Hall. And he also knows a woman by the name
5 of Karen Walker. James said that John Hall called him on his
6 cell phone and wanted him to come over to this particular
7 address, where this house is and fix a car. Because there's
8 a woman that couldn't leave. And that John Hall wanted him
9 to bring some food. James wasn't working that day and like
10 most people, I guess who work under the table, if he can pick
11 up any extra money he'll do it. So he leaves and he goes by
12 Wendy's and get some food for John Hall and Karen Walker and
13 he goes over there.

14 And then you've got the confusion starting. He says that
15 he parks his car on the side of the road at the ditch.
16 Because he can't really get into the driveway because the car
17 that had broken down is top of the driveway. And he says he
18 talked to the woman and finds out the problem is with the
19 radiator. He opens the cap, sticks his finger in it, there's
20 no water. And he takes a hose from the yard and turns on the
21 water, puts it in the radiator, it runs out. He crawls
22 underneath the car and sees the freeze plug has a problem.
23 And like a lot of shad tree mechanics, he finds something to
24 jerry rig it so it will hold for a little bit. And he puts
25 water in it. And as he told you, he told the woman, Just go

1 from point A to point B, don't drive around. And she leaves.
2 Then he pulls his car around to the back because he said he
3 didn't want it in the road. And he takes the food out of the
4 car and goes to the back door. And John Hall lets him in.
5 Said he had seen John Hall in the yard while he was doing
6 that. Working on the car.

7 But then the real confusion starts. According to the
8 officers, this is a vacant house. Nobody's lived in it for a
9 very long time. But there had been a stolen car found at
10 that house in 2005. That they couldn't find out who owned
11 the house. Really? Everybody that owns anything in South
12 Carolina, especially in this county that is on the dirt is
13 going to pay taxes. It's not real hard to find out who the
14 owner of a house is. You go to the tax records, you can do
15 that on-line. And I'll guarantee you that somebody's paying
16 taxes on a house, on dirt, in Greenville County. They're not
17 going to be paying the money unless they have some interest
18 in that house. And that doesn't make any sense to me. I
19 mean, how can you not know who the owner of the house is?

20 But it gets worst. The officer tells us that there is a
21 light coming from the left front window of the house. Well,
22 this is supposed to be a vacant house, there's not supposed
23 to be anybody that's been living in it. But according to
24 James, he just used water to fill up the radiator. And
25 there's a light in the house. Then the confusion gets worst.

1 Was it a electrical light or was it something else? Now,
2 James told us it was like a chandelier. That the lights were
3 on and they were on in the bedroom as well. He says there
4 were lights. The officer says that well it might have been
5 like a 100 watt bulb with a lamp with no shade on it sitting
6 on the floor. Or it might have been like a Coleman lantern.
7 Why didn't somebody flip a switch? I think the officer said
8 yesterday he didn't flip the switch, he didn't try to turn on
9 the lights. I mean, it's total confusion about what's going
10 on.

11 There was no really good explanation about how much light
12 that there was in that house. I mean, is it like this or was
13 it dimmer? What were the lighting conditions like? We know
14 that it was 6:00 or shortly thereafter when most of this
15 stuff happened on January the 17th. That time of the day in
16 January it's going to be getting dark. But we don't have a
17 really good idea about what the lighting was like. Or even
18 what the lighting was. It would depend upon -- was not even
19 a conflict in stories as much as it's a memory problem with
20 everybody. Was it a Coleman lantern, was it a propane
21 lantern? Was is a light? Was it electric light or was it a
22 chandelier? Now, I don't think anybody ever said the lights
23 were on in the kitchen. And that's an unusual thing in
24 itself. If you're going to go into a kitchen to look for
25 something as one of the officers did, wouldn't the natural

1 thing to be to flip the switch?

2 And then you have this drawing. This is the living room
3 which is very narrow and long. I think everybody agreed to
4 that. There's a door here which leads into the kitchen and
5 there's no door hung on the door facing, it's just an opened
6 door. Then you have apparently from floor to ceiling some
7 type of cabinetry. And then you have a space where you can
8 slide things through from the kitchen to the living room.
9 And apparently, the lighting from -- that was in the kitchen
10 was the lighting that was emanating through that pass
11 through. And again, we don't have a description as to how
12 much light that is. It's a difficult situation. We know
13 that on the outside of the house there was not very much
14 lighting. Or not very much street lighting. The officer
15 said, you know, they used their flashlights to look into the
16 car to see if there's anybody hiding in the cars or if
17 there's any problem with the cars. It was dark. It was
18 dark.

19 So what happened? Deputy Weiner went around to the front
20 door with his trainee. Deputy Fuller was at the back door.
21 This is a picture of the back door. Obviously not at 6:00 at
22 night on January the 17th. But it's a picture of the back
23 door. And you can see this glass that Deputy Fuller said he
24 was looking through. We don't know what kind of lighting was
25 there. Then we come back to this. Deputy Fuller was

1 standing here. This is the back door that was in the
2 picture. And then apparently, if I got this right, and if I
3 didn't y'all use your memory, this was like a mud room. And
4 then one of -- I don't remember who drew it in but there's
5 apparently is another door here which led into the kitchen.
6 It's dark. The officers looking through there, apparently
7 through another doorway, into the kitchen. In a lighting
8 condition that has never been explained.

9 Now, James told you that when he finished working on the
10 car, he pulled his car around, he got the food, he went into
11 the kitchen with John Hall. And then he went to -- James
12 went to wash his hands. So James -- and nobody actually drew
13 it but apparently there's some kind of bedroom door here and
14 bathroom. He says goes there to wash his hands in the
15 bathroom. Now John Hall is in the kitchen. At one point in
16 time. When he left the kitchen, nobody noticed. James said
17 he went to wash his hands which is a fairly reasonable thing
18 to do if you had your hands on the radiator. Or been trying
19 the stuck up something in a radiator.

20 He says there was a knock at the door, James says he went
21 to the front room. Frankly, that appears to be basically
22 accurate because I think everybody said that the folks that
23 were in the house, that being Karen Walker, John Hall and
24 James Abercrombie, were all in the front room when the
25 officer actually had the door opened. One of the officers

1 said that James was standing here by the entry way into the
2 kitchen. James says he was seated. Don't know. It's
3 extremely confusing. Now we know from the officers that
4 Karen Walker is a known prostitute and narcotics user or as
5 the officer said, A pill popper. We know that John Hall was
6 often seen with her. And James said that at one point in
7 time they were husband and wife but does not know if they
8 still are. Then you have this strange comment that was made
9 by one of the officers and also made by James. John Hall,
10 while the officers were there, was sitting there eating. He
11 got the food from some where. Looks like James did bring it
12 to him. But the officer's comment was, He was eating, we
13 were there. That's sort of a strange thing.

14 Was John Hall trying to be too calm and too normal with
15 what was going on? We don't know. We know that James --
16 James believes that there was another officer there. And,
17 you know, there was Deputy Weiner and the trainee. We know
18 that for sure. James said they were there. There was
19 Deputy Fuller, we know he was there. Then James wants to
20 talk about another officer with long hair and a beard. You
21 know, the other officers don't remember an officer like that
22 being there. And the only one that would have long hair and
23 a beard would be somebody undercover. It certainly wouldn't
24 be a line officer. But the thing about that is, it's
25 irrelevant. If the officer was there he didn't do anything.

1 And James told you about him. But doesn't help his case.
2 Because that officer apparently didn't do anything if he was
3 there.

4 Now, when Deputy Fuller came around, and I tried to get a
5 time frame about how long it took from the time Deputy Fuller
6 was at the back door looking in, how long it took Deputy
7 Weiner to get to front door, knock on the door, get the door
8 open then have Fuller come around. And I still don't know.
9 You all heard the testimony maybe you can figure it out. I
10 just don't think that it would take that long to walk to the
11 back of the house, to the front of the house and knock on the
12 door. But anyway Deputy Fuller goes in. And according to
13 his testimony, tells Deputy Weiner, I saw something some
14 placed between the cabinets in the kitchen. He goes into the
15 kitchen, doesn't turn on the light, doesn't attempt to turn
16 on the lights. And apparently pulls out a flashlight and
17 finds crack cocaine. Brings it back in. Deputy Fuller says
18 that whoever he saw in the kitchen, reached into there coat
19 pocket. What coat? We've got a situation here where
20 somebody's wearing a coat, it's January. And there's been no
21 testimony from the State or the officers about any
22 description of the coat or who was wearing the coat or what
23 kind of coat it was. Which is odd.

24 Now Deputy Fuller finds the drugs. Finds this crack
25 cocaine. Now, when the Solicitor was talking with Deputy

1 Fuller yesterday, she ask him what the condition of the crack
2 was when it found. Was it in something or was it lying
3 loose? And his answer was, It was just on the floor, I
4 picked it up. When I talked with Deputy Fuller and ask him
5 about the fact that if there was some type of plastic bag you
6 would have put it into evidence too, right?

7 He said, yes.

8 I asked him to look at this. There's a plastic baggy in
9 there. Deputy Fuller made a honest mistake take in his
10 testimony yesterday, he just didn't remember that there was a
11 plastic bag associated with this crack cocaine.

12 And we know from Deputy Weiner that Deputy Fuller and
13 Deputy Weiner have done what they call knock and talk, going
14 up to houses to talk. A lot of times, I don't remember the
15 number of times that Deputy Weiner talked about but it was a
16 lot of times. And this is an old case. And it may be that
17 memories aren't as fresh as they should be. May be that
18 they're confusing things in this house that happened with
19 others. Don't know.

20 The other thing which is highly unusual about this case
21 is that you have two people in the house. Karen Walker and
22 John Hall. That Deputy Weiner knows well. Knows Karen
23 Walker to be a pill popper. Prostitute. Says he's never
24 known John Hall to do anything unlawful. You know, Deputy
25 Weiner testified nd said, This is a vacant house, this is a

1 drug house. People get in the houses like this and when it's
2 cold so they can do what they want to do and stay as warm as
3 they can. They crawl through a window or something. But
4 Deputy Weiner knocked on the door, of course, the only place
5 we have this is from James. He says that John Hall used a
6 key to open the door from the inside. Of course, Deputy
7 Weiner says that Karen Walker opened the door. We've got
8 confusing and conflicting testimony all the way through. And
9 I don't believe it's because anybody's trying to mislead
10 anyone. I think it's because of lack of memory.

11 But the odd thing about this, if this is supposed to be a
12 vacant house and a drug house, why didn't they search the
13 rest of the house? If it's a drug house. Would you expect
14 drugs to be in the house? Maybe in several different places.
15 They never searched thoroughly the house. The other thing
16 which was really odd, you've got three people in the house
17 and I never heard a single officer, either one of them, say
18 that they patted down either Karen Walker or John Hall. And
19 Karen Walker's a known narcotics person. It just seems real
20 odd. This whole case is real odd.

21 Deputy Fuller made an honest mistake about the plastic
22 bag. He forgot. It was a mistake. What if Deputy Fuller
23 made a mistake about what he saw through that glass, through
24 the other inside door? Lighting conditions were bad. How do
25 we know? How do you know? And, of course, the State has to

1 prove beyond a reasonable doubt, that James Abercrombie is
2 guilty. The officers yesterday, at least Deputy Weiner, said
3 he knew Karen Walker and he knew John Hall. I asked if he
4 knew my client and he said he'd never seen him before. What
5 if Deputy Fuller made a mistake? It would be an honest
6 mistake. People make honest mistakes. Nobody's trying to do
7 anything that's wrong or bad or hang anybody out to dry.
8 People make honest mistakes. This was an honest mistake.
9 It's a plastic bag. We don't know what's going on. We don't
10 know what the lighting conditions were like. We don't know
11 what the light actually was. The entire house wasn't
12 searched. People were let go without any further
13 investigation.

14 They have to prove to you that James Abercrombie is
15 guilty beyond a reasonable doubt. Reasonable doubt is the
16 kind of a doubt that causes a reasonable person to hesitate
17 to act. There's too many things that are strange about this
18 case. The memories of everybody are just thought. A view
19 through a glass on an outside door, through a doorway
20 apparently in a mud room, into a kitchen where something is
21 supposed to have happened in the corner. Really? People can
22 make honest mistakes. This is a mistake. It may well be
23 that my client was picked out by an honest mistake by the
24 officer based on the time of day, the lighting conditions and
25 everything else that was going on.

1 James Abercrombie believes that after you consider
2 everything that you have heard and frankly a lot of stuff
3 that you have not heard because there's no testimony about,
4 that when you consider that the State has to prove him guilty
5 beyond a reasonable doubt, that the only verdict that you can
6 return is not guilty. Thank you.

7 THE COURT: Ms. Monts.

8 MS. MONTS: May it please the Court, Your Honor.

9 Ladies and gentlemen of the jury, this is the last time
10 that you will hear from me so it's now time that I talk a
11 little bit about this charge that the defendant has pending
12 against him. That charge is possession with intent to
13 distribute crack cocaine. What in the world does that mean?
14 Possession with intent to distribute crack cocaine. I'm
15 going to abbreviate a lot on here so I can save a little
16 space. But I'm going to say possession with intent to
17 distribute crack cocaine. PWID.

18 Ladies and gentlemen, there are several elements on this
19 charge that the State must prove and I'll go through the
20 basic ones first. We must prove that it occurred in
21 Greenville County. We must prove that it occurred on the
22 date in question, January 17th, 2006. We must prove that the
23 identity of the person is the defendant, James Abercrombie.
24 We've done that. Then we must meet the elements of
25 possession with intent to distribute crack cocaine. What's

1 the first word? Possession. Possession, as His Honor will
2 tell you in his jury instructions, and if anything I say
3 differs from what he says, please remember it the he says it.
4 But possession means that you have the knowledge and the
5 right to exercise control over something. Knowledge and the
6 right to control.

7 Now, something in your pocket you're in position of, you
8 know that because you have the knowledge that it's there and
9 the right to control it. How about something at home, your
10 television or your car? You are still in possession of those
11 things because you have the knowledge that it exist and the
12 right to control it. So if the defendant has the knowledge
13 and the right to control the crack cocaine, he is possession
14 of it. And you will have the crack cocaine in the back with
15 you to deliberate, when you deliberate.

16 Now, with intent to distribute. That's a little bit more
17 complicated. There are several ways you can prove intent to
18 distribute. One of the ways, and His Honor is going to
19 instruct you, is the weight of the drugs. I'm going to say
20 with intent to distribute is the weight. There was an
21 inference that the legislature saw fit to pass as a law, an
22 inference of one gram. One gram is an inferential weight for
23 with intent to distribute. And you will have the lab report
24 with you in the back. It says 1.83 grams. The chemist told
25 you that it was crack cocaine. It was crack cocaine and the

1 weight was 1.83 grams. Which is greater than the one gram.
2 Over the inferential weight. What else do we know? 1.83 is
3 approximately, gets close to twice, almost twice the weight
4 of one gram.

5 What else can you consider? You can consider the fact
6 that it was in a large chunk. This isn't yet broken down
7 into the crack rocks that are generally sold. The deputy
8 told you yesterday that when this is broken down into the
9 crack rocks, it would be approximately 19 crack rocks. Not
10 what a person would use for personal use. 19 crack rocks.
11 What else do we know in this case? When the defendant was
12 arrested he had cash on him. When he was booked he had \$235
13 of cash on him. Inferential from selling drugs.

14 Now, I'm going to talk to you a little bit about things
15 that we've learned during this case. Things that we've
16 heard, testimony from the witness stand. Now there were a
17 lot of conflicts. But ladies and gentlemen, consider those
18 conflicts. Did they matter in deciding what happened on this
19 date? And what we're looking at is did the defendant commit
20 the crime, possession with intent to distribute crack
21 cocaine? What do we know? What was told you? We know from
22 testimony that the police were called on January 17th of '06
23 regarding activity at this house. What do we know? On this
24 date at approximately 6:00 p.m., that's the sign for
25 defendant, I'll just use a D. At approximately 6:00 p.m. the

1 defendant is at the residence at [REDACTED]. None
2 of these facts are in dispute.

3 What else do we know? That the defendant does not live
4 there. What was do we know? That the other two people there
5 don't live there. What do we know? Officers told you this
6 is a vacant house used for people to come and use drugs and
7 come to buy drugs. What do we know? The defendant was in
8 the kitchen. Both from the officers testimony and from the
9 defendant's testimony. He at some point was actually in the
10 kitchen from both sides. What else do we know? The officer
11 looked through the back window, he could see the defendant
12 come into the kitchen, bend down as he's pulling something
13 out of his coat pocket and put something down. The officer
14 doesn't know at this point what it is. Put something down in
15 a place where apparently an appliance should have been.

16 Now there are three people in this house. There's an
17 older, approximately 60ish white male. Approximately 30ish
18 age white female and the defendant. There is no confusing
19 these three people. The defendant didn't need to turn on a
20 light when he went through the kitchen. The officer didn't
21 need to turn on a light when he went through the kitchen
22 because it was lit well enough. The only time the officer
23 used his flashlight was when he was bending down and looking
24 underneath the cabinet where he found the crack cocaine.
25 What else do we know? Which I find very interesting. The

1 defendant originally apparently was parked on the street but
2 then he gets out and drives not here, not here, not here, not
3 here, he somehow gets around Mr. Hall's car and parks behind
4 the house. That leaves me to believe that the defendant was
5 actually there prior to Mr. Hall being there. Why, if he's
6 coming just to drop off food, would he pull the car all the
7 way around? He said he wanted to keep it from getting hit
8 out there, well there was plenty of space to park. He
9 apparently planned to stay for some time or was already there
10 prior to Mr. Hall and Ms. Walker arriving.

11 What else do we know? And one of the most important
12 things to consider is the credibility the witness. The
13 person who's testifying on the witness stand. And what can
14 you use to consider credibility? You can consider the fact
15 of defendant's prior convictions. It was testimony that he
16 had four prior convictions. And you can use that to
17 determine credibility. What else can you consider? Some
18 things that I was thinking of myself was the story that he
19 told you. And as I said in the beginning, the story about
20 him coming to fix the car is really irrelevant. Because the
21 point is that he was at the house. It doesn't matter why he
22 was there or why you want to believe that he was there. If
23 you want to believe that he actually came from Travelers Rest
24 all the way to Greenville to fix this woman's car, and by the
25 way, I say far fetch, you can call it whatever kind of story

1 you want.

2 But this woman breaks down at this vacant house. She
3 happens to break down at this house where John Hall happens
4 to be hanging out. John Hall happens to know the defendant.
5 This John Hall actually lives in Easley. He knows the
6 defendant through apparently bringing his car to the shop
7 that the defendant works at sometimes. The defendant just
8 happened to not be at work on this Tuesday or whatever day of
9 the week it was because the shop was closed for some reason.
10 The defendant apparently didn't bring any tools with him when
11 he comes to fix the car. He happens to find a hose lying in
12 the yard of this vacant house to fill the car up with water.
13 He happens to find a rubber plug some where in the yard to
14 plug the vehicle. He happens to do all this fixing of the
15 car within seven to eight minutes. And I'm not a mechanic so
16 if any of you know more about cars, please use your common
17 sense and background. But it sounds like a whole lot of
18 things just fell into place for all this to have happened on
19 this date. And not only during that seven to eight minutes,
20 the defendant and this woman, whoever she was who happened to
21 break down at this vacant house, also discussed how much he
22 was going to be paid and the little discussion about make
23 sure you go straight home or from point A to point B. So a
24 lot of things that just happened to fall into place to make
25 all this happened. Which all goes again to credibility.

1 The reason why he's there doesn't matter but the fact
2 that this is a far fetched story, along with his prior
3 convictions, along with the fact that he gave a false name to
4 the police, all add up to show that his credibility is not
5 very strong. There were other differences in the story that
6 I'm not going to go into. You can consider them if you want
7 to. About how much furniture was the car -- excuse me, in
8 the house. That there was an extra woman, I believe the
9 defendant said, that there was some other woman in there.
10 Things that the police said didn't happen. And the police
11 officer did a report at the time so he would have had a
12 recollection based on his report.

13 What else did law enforcement tell you? When Mr. Officer
14 Fuller was standing at the back window looking through, he
15 saw the defendant bend down and put something down on the
16 ground. When he comes around to the front of the house, it
17 wasn't until Deputy Weiner tells him the house is secured.
18 Meaning that he had the three people in the living room, that
19 the training officer is watching those three while Deputy
20 Weiner walks through the house to make sure there's no one
21 else there. This whole time, Fuller is still standing at the
22 back door, looking through that window. And when Deputy
23 Weiner is at the front door, he sees the defendant standing
24 in the kitchen doorway. So Fuller is here, sees the
25 defendant in the kitchen, the defendant walks to the door, .

1 Weiner is around the front door and sees him there. So ther
2 was nobody else in the kitchen, nobody else standing down in
3 the area other than the defendant. Fuller then comes around
4 and goes inside with Weiner.

5 What does he do?. What is the fist thing he does? He
6 walks right past Weiner toward the kitchen and says, There's
7 something in here. He's not walking around, he's not
8 searching. He goes straight to the spot that he saw the
9 defendant bend down, pull something out of his pocket and put
10 down. Weiner testified when Mr. Godfrey was questioning him
11 that Fuller didn't tell him about it, that he saw Fuller go
12 directly there and pick this object up. And the object was
13 the crack cocaine.

14 Ladies and gentlemen, there's no way in this huge house
15 -- excuse me, it's not a huge house, in this empty house,
16 that Officer Fuller could have gone into the kitchen, looked
17 into a place under where an appliance should be and have gone
18 directly there and found this crack cocaine. And let's talk
19 about crack cocaine. Crack cocaine has value. Use our
20 common sense, our backgrounds, our education, this has value.
21 People pay for this. No one is going to leave money or
22 something of value laying around in a house that people have
23 access to.

24 What else do we know? When Deputy Weiner came to the
25 front door, Karen Fuller -- Karen Walker didn't open the door

1 immediately, she was looking out the window. There was a
2 little bit of time. That gave the defendant time to go into
3 the kitchen, discard the evidence and get back to the
4 doorway. What else do we know? Per testimony of the
5 officers, there was only one couch in that room and one
6 mattress in the one bedroom. So there was no place beside
7 the couch in that man room or on his person for the defendant
8 to stash the crack. So, of course, he wants to get it into
9 another room. Hoping that the officers aren't even going to
10 go into that other room.

11 And again, there was some discrepancies in the story,
12 you're going to have to decide what you believe is important.
13 There was a discrepancy on who opened the door, whether the
14 John Hall opened the door and the defendant said, and y'all
15 use your background and experience, the defendant said that
16 John Hall opened this door with a deadbolt key. But the
17 officer said Karen opened the door without a key. She had no
18 key in her hand, that she just walked up and turned the knob.

19 Now, what did the defendant intend to do with this? Was
20 he at this house to sell that cocaine or was he at this house
21 to fix the girl's car? Or both? Doesn't matter what your
22 decision is on that or even if you make that decision on why
23 he was there. Because that doesn't matter. The whole
24 question is was he in possession with intent to distribute
25 the crack cocaine? And you go back to the elements. Was he

1 in possession of it, did he know it and have the right to
2 control it? Yes, he did. He was the only one who touched,
3 the only one the officer saw hide it. With intent to
4 distribute. One way you can prove it is by the weight.
5 Being over a gram. The amount of rocks that can be made out
6 of that. The fact that he's got cash on him. Anything of
7 the these things you can use to consider that the defendant
8 was in possession with intent to distribute this crack
9 cocaine.

10 And, ladies and gentlemen, at the beginning of this
11 trial, you were told that you would have the evidence to take
12 back with you. You will have the lab reports. You will have
13 the crack cocaine and you will have the two photos of the
14 house, the front and the back. You will, after His Honor
15 gives you the instructions, go back to deliberate. And as I
16 mentioned at the beginning of this, when the 12 of you come
17 to your unanimous verdict, the honest truthful verdict in
18 this case is that this defendant is guilty of possession with
19 intent to distribute crack cocaine. Thank you.

20 THE COURT: Mr. Foreman, ladies and gentlemen, you've
21 heard the evidence and testimony, I'll now go over the law
22 with you and you'll go back and deliberate until you reach a
23 unanimous verdict in the case. As I told you at the
24 beginning of the trial, the case comes to us on this
25 indictment which alleges that James Jermaine Abercrombie did

1 in Greenville County on the 17th of January 2006, possession
2 with intent to distribute crack cocaine. Now, to these
3 charges the defendant has pled not guilty. This is just a
4 piece of paper that brings the case to court. And eventually
5 you will write your verdict on the back of this indictment
6 and we'll just keep it for the records.

7 The fact that someone has been charged and arrested is
8 not any evidence of thier guilt and you should not consider
9 this as evidence in the case. The defendant's plea of not
10 guilty places the burden of proof upon the State of South
11 Carolina to prove him guilty of the crime charged beyond a
12 reasonable doubt. A defendant, regardless of what the
13 charges are, is never required to prove himself innocent.
14 Now that's a cardinal and important rule of the law of
15 evidence in a criminal case. No matter what the seriousness
16 of the charges are, a defendant is always presumed innocent
17 until you, the jury, hears evidence that convinces you of his
18 guilt beyond a reasonable doubt. Now, that's not a legal
19 phrase, that's a substantial right to which all of us are
20 entitled to. And that is the presumption of innocence.
21 Until a jury hears the evidence that satisfies them of guilt
22 beyond a reasonable doubt.

23 Now, ladies and gentlemen, all of us have different
24 functions and responsibilities in the courtroom. You, ladies
25 and gentlemen, are the sole judges of the facts of this case

1 and the credibility and the believability of the testimony
2 and the evidence that you've heard in this case. You are the
3 sole judges of the facts. I am prohibited from discussing
4 the facts with you. And I would not do that. I appreciate
5 you being here to determine the facts and write a verdict
6 more than any person in the courtroom. If I've done anything
7 during this trial, any comments I've made or anything I've
8 done to led you to believe that I have a feeling about the
9 facts of this case, you disregard that. If I did anything I
10 didn't mean to. You are the sole judges of the facts. And
11 you pass upon the credibility of each and every witness that
12 testified before you. You can believe everything that a
13 witness tells you or can disbelieve everything that a witness
14 told you. You can believe part of what a witness told you,
15 you can disbelieve part of what a witness told you. You can
16 believe one witness as several or several witnesses as
17 against one. I know you wouldn't do that lightly.

18 These witnesses, you've observed the demeanor of the
19 witnesses. Their facial expressions. You can ask yourself,
20 Were they forthright? How did they come to know the facts
21 about what they testified? Was there other evidence and
22 testimony that made the testimony of that witness stronger or
23 weaker? You can take into consideration any bias or
24 prejudice or interest you feel a witness may have in the
25 case. I just mention these things to you to emphasize the

1 weight you see fit to give to the evidence and testimony, the
2 credibility and the believability of all the witnesses is for
3 your sole determination as jurors. Just as you're the
4 finders of the facts, you have to accept the law as I go over
5 it with you and you have apply the facts that you find to the
6 law and write a verdict in this case that speaks the truth.

7 Now, ladies and gentlemen, there's usually two types of
8 evidence which is generally presented during a trial. There
9 is direct evidence and circumstantial evidence. Direct
10 evidence is the testimony of a person who asserts or claims
11 to have actual knowledge of a fact. Such as an eye witness.
12 Something gained through their five senses. Circumstantial
13 evidence is proof of a chain of facts and circumstances
14 indicating the existence of a fact. The law makes absolutely
15 no distinction between the weight or value to be given to
16 direct evidence or circumstantial evidence. Nor is a greater
17 degree of certainty required of circumstantial evidence than
18 of direct evidence. You, ladies and gentlemen, should weigh
19 all the evidence in the case. After weighing all the
20 evidence in the case, if you are not convinced of the guilt
21 of the defendant beyond a reasonable doubt, you must find the
22 defendant not guilty.

23 The State has the burden of proving each and every
24 element of the crime charged beyond a reasonable doubt. Any
25 reasonable doubt you have must be resolved in favor of the

1 defendant. A reasonable doubt may exist because of the
2 evidence and testimony you've heard or the lack of evidence
3 and testimony in the case. If you have a reasonable doubt as
4 to the guilt of the defendant, he's entitled to that doubt
5 and would be entitled to an acquittal.

6 I'm going to give you three possible verdicts in the
7 case. Guilty of the crime charged, possession of crack
8 cocaine with intent to distribute or guilty of possession of
9 crack cocaine. Sometimes we call that simple possession. Or
10 not guilty. Those are the three potential verdicts. Now if
11 you have a reasonable doubt as to whether the defendant is
12 guilty of the greater offense or the lesser offense, you must
13 give him the benefit of the doubt and find him guilty of the
14 lesser-included offense.

15 Now, what is a reasonable doubt? A reasonable doubt is
16 the kind of doubt that would cause a reasonable person to
17 hesitate to act. Some of you may have served on juries in
18 civil cases. And you would have been told that the burden of
19 proof in most of those cases is by the greater weight of the
20 preponderance of the evidence. Or that a fact is more likely
21 true than not true. In a criminal case the State's prove is
22 more powerful than that. It's beyond a reasonable doubt.
23 Prove beyond a reasonable doubt is prove that leaves you
24 firmly convinced of the defendant's guilt. Now there are
25 very few things in this world that we can know with absolute

1 certainty. And the law does not require proof that over
2 comes every possible doubt. If, based on your consideration
3 of the evidence and testimony, you are firmly convinced that
4 the defendant is guilty, you must find him guilty. On the
5 other hand, if you think there is a real possibility that he
6 is not guilty, you must give him the benefit of the doubt and
7 find him not guilty.

8 Now, as I instructed you at the beginning, the fact that
9 a defendant has a prior record comes in for a limited
10 purpose. And a limited purpose only and cannot be considered
11 by you as any evidence of his guilt or innocence in this
12 particular case. It's admitted only for the purpose of
13 evaluating the credibility or believability of the testimony
14 presented by the defendant and for no other purpose. You
15 cannot and must not consider a prior record as any evidence
16 of his guilt of the charge for which he is being tried today.
17 You may give this evidence such weight and such value, if
18 any, as you think it is entitled, on the sole issue of
19 credibility of the testimony only.

20 Now, the State has to prove to you beyond a reasonable
21 doubt that James Jermaine Abercrombie, did in Greenville
22 County, on or about the 17th day of January, 2006, possess
23 with intent to distribute a quantity of crack cocaine. I
24 will define for you, of course, they must prove that
25 Mr. Abercrombie possessed the crack cocaine. What do we mean

1 by possession of crack cocaine? Of course, the substance has
2 to be proven to you beyond a reasonable doubt that it was
3 crack cocaine. Possession can be either actual possession or
4 constructive possession. Actual possession means that the
5 crack cocaine was in the actual, physical custody of the
6 defendant. Constructive possession means that the defendant
7 has dominion and control or the right to exercise dominion
8 and control over either the crack cocaine or the property on
9 which the drug crack cocaine was found. Mere presence at the
10 scene where drugs are found is not enough to prove
11 possession. The State must prove to you actual possession or
12 constructive possession. That Mr. Abercrombie was in
13 possession of the crack cocaine.

14 The State must prove to you beyond a reasonable doubt
15 that the defendant intended to distribute the crack cocaine.
16 Distribute means to deliver from one person to another the
17 crack cocaine. Whether it be done for profit or for free.
18 It is the delivery of crack cocaine from one person to
19 another. Now, the State must prove that he intended to
20 distribute it. Intent maybe shown by acts and conduct of the
21 defendant and other circumstances from which can you may
22 naturally and reasonably infer intent. In determining
23 whether the defendant had the intent to distribute the crack
24 cocaine, you may consider the circumstances surrounding the
25 defendant's alleged possession. You may consider the amount

1 of the substance allegedly took in possession. The manner in
2 which it was allegedly possessed. The place where it was
3 allegedly possessed. And other factors which you consider to
4 be important.

5 You must find that the defendant did not intend to have
6 the crack cocaine solely for his own use. Under our law, the
7 possession of one or more grams of crack cocaine, raises or
8 creates an inference that the defendant possessed the crack
9 cocaine with intent to distribute it. That is an inference.
10 The inference does not relieve the State from proving beyond
11 a reasonable doubt that the defendant had the intent to
12 distribute crack cocaine. It is simply an evidentiary fact
13 to be taken into consideration by you along with all the
14 other evidence in the case and to be given the weight that
15 you decide it should receive.

16 Now, ladies and gentlemen, you should consider three
17 verdicts. They're three possible verdicts. And the way I
18 give them to you does not infer any -- at all what you should
19 find. You can find not guilty, you can find guilty of simple
20 possession. Or you may find the defendant guilty of
21 possession with intent to distribute crack cocaine. If the
22 State has proven each and every element of the offense in the
23 indictment, your verdict would be guilty. If they've proven
24 that beyond a reasonable doubt, your verdict would be guilty
25 of possession with intent to distribute crack cocaine. If

1 the State has failed to prove intent to distribute crack
2 cocaine, you may consider possession, simple possession of
3 crack cocaine. If the State has failed to prove possession
4 of crack cocaine, then your verdict would have to be not
5 guilty of the crime charged. Now, as I told you earlier, if
6 you have a reasonable doubt as to the guilt of the greater or
7 lesser offense, you must find him guilty of the lesser
8 offense.

9 Now, whatever verdict you reach must be unanimous. All
10 12 of you have to agree. Every person has a equal voice and
11 equal input into the verdict but someone has to preside and
12 that would be your responsibility, Dr. Rex.

13 Okay, I'll let y'all step out just briefly and if the
14 attorneys have no other requests about the law for me to
15 speak to you about, then you begin your deliberations. If
16 y'all would just step back to the jury room.

17 (WHEREUPON, the jury left the courtroom at
18 approximately 10:00 a.m.)

19 THE COURT: Any exceptions or other charges?

20 MS. MONT'S: None from the State, Your Honor.

21 MR. GODFREY: None, Your Honor.

22 THE COURT: Okay, we'll be in recess until they reach a
23 verdict.

24 Would have him have the alternate to step outside.

25 (WHEREUPON, deliberations began at

1 approximately 10:00 a.m.)

2 (WHEREUPON, court was in recess awaiting a
3 verdict.)

4 (WHEREUPON, the jury entered the courtroom at
5 approximately 11:45 a.m.)

6 THE COURT: Mr. Foreman, you've reached a verdict?

7 MR. FOREMAN: Yes, sir.

8 THE COURT: Okay, would you give it to the bailiff,
9 please.

10 THE CLERK: Your Honor, this is case 2006-GS-23-8683, the
11 State vs. James Jermaine Abercrombie, indicted for possession
12 of crack cocaine with intent to distribute. The verdict of
13 the jury is guilty of possession with the intent to
14 distribute. Signed by Mr. Rex, our foreperson.

15 Ladies and gentlemen of the jury, if you agree this is
16 the verdict you reached in your deliberation room, please
17 raise your right hand.

18 (WHEREUPON, all members of the jury raised
19 their right hand.)

20 THE CLERK: Thank you.

21 THE COURT: Thank you.

22 Any question about the form of the verdict?

23 MR. GODFREY: No, Your Honor.

24 MS. MONTS: No, Your Honor.

25 THE COURT: Ladies and gentlemen, thank y'all so much for

1 your service in this case. We've got a panel for tomorrow
2 morning, call back after 1:00 tomorrow. And we'll leave a
3 message for you as to what you should do. Okay. After 1:00
4 tomorrow. Thank you, so much. Thank you, y'all may be
5 excused for the day.

6 (WHEREUPON, the jury left the courtroom at
7 approximately 11:50 p.m.)

8 MR. GODFREY: May it please the Court, the defense would
9 move to set the verdict aside and move for a new trial based
10 on the fact that the evidence does not support the verdict on
11 our objections and motions thus far.

12 THE COURT: It was clearly boiled down to a believability
13 of witnesses which would be a jury question. I'd have to
14 deny the motion.

15 Y'all want to come forward, Solicitor.

16 Ms. Montis, this maybe outdated what I have but I'm not
17 sure. The sentences have changed once or twice in the last
18 year or two.

19 MS. MONTIS: Your Honor, I have 15 to 30 years and or up
20 to \$50,000 fine. Mandatory sentence cannot be suspended, it
21 is 85 percent.

22 THE COURT: Okay.

23 MR. GODFREY: I agree with all of that and have
24 previously discussed that with my client.

25 THE COURT: All right, sir.

1 Anything else you want to present, Ms. Monts?

2 MS. MONTS: Your Honor, I would like to put the prior
3 convictions on the record.

4 THE COURT: Yes, ma'am.

5 MS. MONTS: 1994, driving under suspension, second.
6 1995, driving under suspension, third. 1995, two separate
7 counts of habitual traffic offender and DUS third by separate
8 agencies. 1996, a transportation of crack cocaine in
9 Greenville County. Also in 1996 a possession with intent to
10 distribute crack cocaine in Greenville County. Also in 1996,
11 pled to distribution of crack, two counts in Pickens County.
12 All three of those drug offenses did have prior incident --
13 excuse me, separate incident dates. In 1996 also pled to
14 another DUS third and habitual traffic offender.

15 THE COURT: All right, Mr. Godfrey.

16 MR. GODFREY: May it please the Court. As James
17 testified, Judge, he has a wife that he's been with for over
18 seven years. Angela couldn't be here, she has to take care
19 of the children. And she has to work. And she's working
20 third shift right now and she just couldn't take off to be
21 here. Otherwise she would have been here. She's been in
22 constant contact with my office. Judge, James is 31 years
23 old. He was working at D&D performance as a mechanic. He
24 had been there for two years. Obviously he was working under
25 the table but he was working for full time than not. He has

1 an 11th grade education, he does not have a GED.

2 Your Honor, James is not your typical person that has
3 this type of record. James has a good personality. He's
4 been a nice fellow and cooperative throughout this whole
5 situation. We have, it's not a part of this, we have tried
6 to work out things before. And could not work out things
7 because James and he understands the verdict, but James said
8 that he never did this one. And he does have other charges
9 pending, obviously. But James is just a nice guy. If he
10 wasn't involved with drugs or the fact that you knew he was
11 involved with drugs, you'd think he was a great guy. Angela
12 wonderful. It's a situation to where you don't understand
13 how somebody with his, basically kind personality gets
14 involved in this kind of stuff. And there's no question that
15 he has a good stable marriage relationship with Angela
16 Faulkner. It can't be explained. The only thing that James
17 can do is say that he is sorry. And we would respectfully
18 request the mercy of the Court.

19 THE COURT: How long has he been in jail?

20 MR. GODFREY: Judge, he has been in jail now for over a
21 year.

22 MS. MONTS: Your Honor, he's been in since his arrest on
23 January 17th of '06 but he had outstanding bench warrants at
24 that time which is one of the things that the officer served
25 on him. So he's been in jail on probably eight pending

1 charges. So I don't know if he gets credit for that or not.

2 THE COURT: Mr. Abercrombie, do you have anything to say
3 before I sentence you?

4 MR. ABERCROMBIE: Yes, sir. I'd, like he was saying, I
5 made a big mistake. What I did was got involved with the
6 wrong people. That's why these charges came up. But, Your
7 Honor, I promise you I wasn't guilty of this charge. But I
8 understand what they come up with, Your Honor. And I'm sorry
9 for it. I beg for mercy of the Court. I really beg for it.
10 Because right now the only thing I can do is think about my
11 boys, they're going to grow up by themselves without me for a
12 while, a long period of time. And it's killing me. I don't
13 want that. The mistakes I've made that they follow that.
14 Somebody be there for them to keep them not to make mistakes
15 that I made. Make them a better person than me. I just -- I
16 beg for your mercy right now, Your Honor.

17 THE COURT: This third offense is 85 percent?.

18 MS. MONTIS: That's correct, Your Honor.

19 THE COURT: You and Mr. Godfrey fully discussed what you
20 were facing?

21 MR. ABERCROMBIE: Yes, sir.

22 THE COURT: Before we started?

23 MR. ABERCROMBIE: Yes, sir.

24 THE COURT: You knew you were facing 15 to 30.

25 MR. ABERCROMBIE: Well I know I was facing 15 but not 30.

1 THE COURT: I'm sorry?

2 MR. ABERCROMBIE: I know I was facing 15 but not 30. 15
3 to 30, I didn't know it was like that.

4 THE COURT: Well that's the sentence that's set by the
5 legislature. The sentence -- this is a 85 percent sentence
6 and the minimum I believe is mandatory. So I would have to
7 sentence you, Mr. Abercrombie, to the State Department of
8 Corrections for a term of 18 years. Thank you, very much.

9 MS. MONT'S: Thank you, Your Honor.

10 (WHEREUPON, the proceedings were concluded.)

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1 CERTIFICATE OF REPORTER

2

3

4 STATE OF SOUTH CAROLINA)

5 COUNTY OF GREENVILLE)

6

7 I, April Herron, Official Court Reporter for the 13th

8 Judicial Circuit of the State of South Carolina, do hereby

9 certify that the foregoing is a true, accurate and complete

10 Transcript of Record of the proceedings had and evidence

11 introduced in the trial of the captioned case, relative to

12 appeal, in the Court of General Session for Greenville

13 County, South Carolina, on the 9th and 10ht day of July,

14 2007.

15 I do further certify that I am neither of kin, counsel

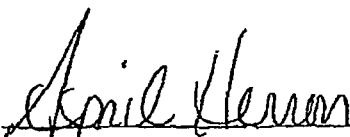
16 nor interest to any party hereto.

17

18

19 March 4, 2008

20

21 

22 April Herron, Court Reporter

23

24

25

WITNESSES

T Fuller / Perron / s

Greenville County Sheriffs Office

1/17/2006

ARREST WARRANT NUMBER

1426587

ACTION OF GRAND JURY

TRUE BILL

Buddy L. Reynolds

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty of possession

with the intent to

distribute

[Signature]
Foreperson of Petit Jury

7/10/07

Date:

DOCKET NO. 2006-GS-23-000003

JLK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

OCTOBER TERM 2006

7-10-07

GUILTY THE STATE

vs.

JAMES JERMAINE ABERCROMBIE

PLEAD GUILTY

Indictment for

3014

POSSESSION OF CRACK COCAINE WITH
INTENT TO DISTRIBUTE

VIOLATION § 44-53-0375

44

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF CRACK COCAINE WITH INTENT TO
DISTRIBUTE

At a Court of General Sessions, convened on OCTOBER 17, 2006 the Grand Jurors of Greenville
County present upon their oath:

That JAMES JERMAINE ABERCROMBIE did in Greenville County, on or about the 17th day of January, 2006,
possess with intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Crack
Cocaine, a controlled substance, such possession not having been authorized by law. This is in violation of §44-
53-375 of the South Carolina Code of Laws (1976) as amended.

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

Jayce Monts
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.James Abercrombie

AKA: _____

Race: _____ Sex: M Age: _____

DOB: _____ SS#: _____

Address: Greenville, SC 29601

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2006GS2308683A/W#: I426587Date of Offense: 01-17-2006S.C. Code § : 44-53-0375CDR Code #: 3039

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE 3RD OFFENSEin violation of § 44-53-0375 of the S.C. Code of Laws, bearing CDR Code # 3039☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

Joeje Monts
Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135

SPECIAL CONDITIONS:

☐ RESTITUTION. ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73 3, 1B TP (Law Enforce. Funding) \$25 \$ 25§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.Paul B. Wickenham

Clerk of Court/ Deputy Clerk

Court Reporter: A. HarnPRESIDING JUDGE J.R. McElroyJudge Code: 2101 1315Sentence Date: July 10, 2007

SCCA/217 (9/2006)

2010-CP-23- 5177

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of GREENVILLE)James J. Abernethy #236714)

Full name and prison number, if any, of applicant)

v.)

APPLICATION FOR

POST-CONVICTION RELIEF

STATE OF SOUTH CAROLINA)

Name of Respondent)

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.

1. Place of detention McCORMICK Corr Inst 386 Redemption Way McCormick S.C. 29899

2. Name and location of Court which imposed sentence GREENVILLE COUNTY COURT HOUSE 305 EAST NORTH STREET GREENVILLE S.C. 29601

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 2006-GS-23-8683

3rd offense

(b) _____

(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

(a) July 10th 2007 (18) years sentence

(85%)

(b) _____

(c) _____

5 Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty Trial

(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. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. AFFIRMED - UNPUBLISHED OPINION NO. 2010-UP-280

ii. _____

iii. _____

(c) the date of each such result:

i. Submitted May 3, 2010 - Filed May 20, 2010

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) NA

(b) NA

(c) NA

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully.

(a) Ineffective Assistance of Counsel

(b) Brady Violation

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) See attachement

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

N/A

(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.

N/A

ii.

N/A

iii.

N/A

iv.

N/A

(b) the name and location of the Court in which each was filed:

i.

N/A

ii.

N/A

iii.

N/A

iv.

N/A

(c) the disposition thereof:

i.

N/A

ii.

N/A

iii.

N/A

iv.

N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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? N/A

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

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) Sixth Amendment violation of the right to Counsel; issue of Ineffective Assistance
- (b) of Counsel is the exclusive province of Post-Conviction Relief (PCR) action 14th and
- (c) 5th Amendment due process violation

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? No
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? No

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. E.P. "Bill" Godfrey Law Firm 10 East Ave. Greenville S.C. 29601
- ii. Elizabeth A. Franklin-Best, of Columbia, P.O. Box 11587 Columbia SC 292
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial
- ii. Appeal Courts
- iii. _____

18. State clearly the relief you seek in filing this application.

Vacate sentence

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

VERIFICATION

I, James Abercrombie, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James Abercrombie
James Abercrombie

Sworn to and subscribed before me

This 18 day of June, 2010.

J C Franklin L.S.

Notary Public for South Carolina

My Commission Expires 12-16-2019

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
 OF COSTS AND AFFIDAVIT
 IN SUPPORT THEREOF**

I, James Abercrombie, 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.

James Abercrombie
James Abercrombie
 Applicant

Sworn to and subscribed before me

This 18 day of June, 2010.

J C Franklin L.S.

Notary Public for South Carolina

My Commission Expires: 12-16-2019

9. Ineffective Assistance of Counsel

10. Ineffective Assistance of Counsel

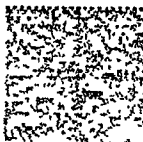
- i) Failure to investigate.
- ii) Failure to object to insufficient or defect Indictment.
- iii) Failure to object to surprising testimony. Due to it was a Brady and Rule (5) violation.

James Abercrombie # 236714

McCormick Corr Inst F4 B220

386 Redemption way

McCormick SC, 29899



LEGAL MAIL:

CLERK of COURT

305 East North St.

GREENVILLE SC, 29601

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2010-CP-23-5177
COUNTY OF GREENVILLE	)	
	)	
James Jermaine Abercrombie,	)	
S.C.D.C. No. 236714,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed June 24, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the October 2006 term of General Sessions for possession with intent to distribute (PWID) crack cocaine (2006-GS-23-8683). E.P. "Bill" Godfrey, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On July 10, 2007, the Honorable Larry R. Patterson sentenced the Applicant to eighteen (18) years imprisonment for PWID crack cocaine, third offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Abercrombie, Op. No. 2010-UP-280 (S.C. Ct. App. filed May 20, 2010).

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failure to investigate.
 - b. Failure to object to insufficient or defective indictment.
 - c. Failure to object to surprising testimony.
2. Brady violation.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held

and counsel appointed to represent the Applicant.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

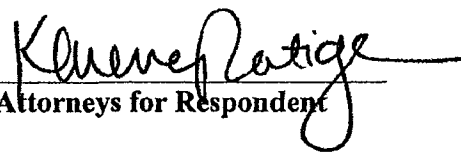
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

December 16, 2010

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2010CP2305177
	)	
James Jermaine Abercrombie,	)	
	)	
Applicant,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

April 4, 2012
Greenville, South Carolina

B E F O R E:

HONORABLE EDWARD W. MILLER, Judge.

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

KAREN RATIGAN, Esquire
Attorney for the State

ELIZABETH WIYGUL, Esquire
Attorney for the Applicant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S C 29602

Records are
taken and
produced via



I N D E XDIRECT CROSS REDIRECT RECROSS**Applicant's Witnesses:**

James Abercrombie

by Ms. Wiygul 5

by Ms. Ratigan 10

Respondent's Witnesses:

Bill Godfrey

by Ms. Ratigan 12

by Ms. Wiygul 18

Ruling of the Court 22

Certificate of Reporter 24

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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APPLICANT EXHIBITS

A-1	Incident Report	19	19
A-2	Towing Report	19	19

RESPONDENT EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 4th day of April, 2012 at approximately 10:27 a.m.)

MS. RATIGAN: Mr. Godfrey said he'd be back in a minute. We can start without him.

THE COURT: Yeah, let's start without him.

MS. RATIGAN: Oh, there he is. May it please the Court, Your Honor. This is the case of James Abercrombie versus the State. The docket number is 2010-CP-23-5177. Mr. Abercrombie was indicted for Possession with Intent to Distribute Crack Cocaine. He was represented on this charge by Mr. Godfrey.

The case was brought to trial in July of 2007 at which point the applicant was found guilty. On July 10th, 2007, Judge Patterson sentenced him to 18 years for a PWID Crack Cocaine third offense. The case was appealed and perfected by the Office of Appellate Defense. Court of Appeals confirmed the conviction and sentence in May of 2010. The State is ready to proceed.

THE COURT: Okay.

MS. WIYGUL: Your Honor, the applicant calls James Abercrombie.

THE COURT: Okay.

1 **THE CLERK:** Mr. Abercrombie, please place
2 your left hand on the Bible and raise your right
3 hand.

4 **JAMES ABERCROMBIE**
5 having first been sworn, testifies as follows:

6 **THE CLERK:** Thank you. Please state your
7 full name for the record.

8 **THE WITNESS:** James Jermaine Abercrombie.

9 **THE CLERK:** Thank you. You may be seated.

10 **DIRECT EXAMINATION**

11 **BY MS. WIYGUL:**

12 **Q** Mr. Abercrombie, who represented you on the
13 charge for which you are incarcerated?

14 **A** Bill Godfrey.

15 **Q** And was he appointed or retained?

16 **A** Retained.

17 **Q** Did he meet with you prior to your conviction
18 going through discovery with you?

19 **A** I mean, the day, uh, I met him on my motion for
20 discovery, he just gave me the whole complete discovery
21 with all my charges included in this.

22 **Q** Okay. Was it discovery on just this charge
23 that you were convicted of?

24 **A** No, ma'am. It was seven or eight other
25 charges.

1 Q Okay.

2 A He gave them to me all in one and told me when
3 I go through it, number the pages 1 through how many it
4 is. Then he told me to read every one of them and then
5 go through it and write out some, which, uh, the story
6 that they are telling, me tell the story that what really
7 happened on my end, what I see happened. Then he told me
8 to, uh, send it to him and he'll get back with me on it.

9 Q Okay.

10 A He say some of the video, that mean a tape and
11 they got a video of a movie.

12 Q Okay. And this was regarding charges, not the
13 one that we're here about today, right?

14 A Yes, ma'am.

15 Q Okay. Did you understand all of that discovery
16 that you were reading?

17 A No.

18 Q How far did you go in school, sir?

19 A I went to the 11th grade.

20 Q Okay.

21 A Then I got my GED though since I been
22 incarcerated.

23 Q Okay. After you got the discovery, how many
24 more times did Mr. Godfrey meet with you?

25 A On this charge right here?

1 Q On this charge right here.

2 A He didn't meet two times. The day he gave me
3 the discovery and the Friday before I went to trial.

4 Q Okay. And you went to trial on this charge,
5 correct?

6 A Yes, ma'am.

7 Q Okay. On the Friday before you went to trial,
8 do you recall that meeting and that discussion?

9 A Yes, ma'am.

10 Q And what were you told during that meeting?

11 A He told me to, uh, just tell them basically
12 what happened and he said that the officers couldn't get,
13 uh, couldn't come into a house without a warrant so don't
14 even worry about the rest of it.

15 Q So he told you not to worry about the trial?

16 A Yes, ma'am.

17 Q Did he tell you specifically what would happen?

18 A As in like?

19 Q You said that the officers wouldn't be able to
20 do something.

21 A Yeah, he was saying about him coming to a house
22 without a warrant.

23 Q So did he say the drugs would be suppressed?

24 A I mean, in so many words, that's what I thought
25 I took it as.

1 Q Okay. Did the State make any plea offers in
2 your case?

3 A For all the charges, they did. In this one
4 here in particular, they didn't.

5 Q Okay. Uh, --

6 A Well, correction. They did make one. On the
7 day before I went to trial, they offered a 15-year plea.

8 Q Okay. All right. Uh, and you rejected that
9 plea, is that correct?

10 A I didn't feel that I should plea to something
11 that wasn't mine.

12 Q Was there any witnesses that you wanted called
13 during trial?

14 A If I had known I was going to trial and I
15 needed witnesses, I could have got John, I could have got
16 everybody that was in the house at the time.

17 Q And when you say John, you are specifically
18 talking about John Hall?

19 A Yes, ma'am.

20 Q Okay. To the best of your knowledge, did Mr.
21 Godfrey meet with Mr. Hall or subpoena him to appear in
22 trial?

23 A No, ma'am.

24 Q Uh, what would have been the significance of
25 Mr. Hall's testimony?

1 A He could have explained the reason why I was
2 there at the house.

3 Q Okay. At the trial, was there an issue about
4 whether the house was vacant or whether the officers
5 believed the house was vacant?

6 A Yes.

7 Q And did you understand that that was going to
8 be an issue at trial?

9 A No, ma'am. It wasn't part of no discovery
10 material or nothing.

11 Q Okay. After your conviction, did you take any
12 steps to find out whether the house was vacant or not?

13 A Yes, ma'am. I wrote the Greenville water place
14 and the park place to try to get the information on the
15 house. They told me during the time that I'm asking for
16 -- it was water and power -- but the only way I can get
17 that information is to get my lawyer to subpoena because
18 my name wasn't on the bill.

19 Q Okay. Did, uh, Mr. Godfrey object to the house
20 being described as vacant?

21 A No, ma'am. He put up an argument, but he never
22 objected to it.

23 Q Okay. Uh, what result would you like to see
24 from this case?

25 A I would like to go back to -- go get a new

1 trial if possible.

2 Q And you understand that you would be looking
3 and going through the whole process over again and you
4 and receive more time than you did initially?

5 A Yes, ma'am.

6 Q When you went to trial, how much did you think
7 you could get?

8 A 15 years.

9 Q Did you understand you could get up to 30
10 years?

11 A No, ma'am.

12 Q Had anyone ever discussed that with you?

13 A No, not until I got in front of the judge.

14 Q Okay. And that was at your sentencing after
15 you had been convicted?

16 A Yes, ma'am.

17 Q I have no further questions. Thank you, sir.

18 **CROSS-EXAMINATION**

19 **BY MS. RATIGAN:**

20 Q So your main allegation is that Mr. Godfrey
21 didn't look into whether or not the house was actually
22 vacant?

23 A He didn't investigate the scene at all.

24 Q Okay. So he didn't investigate whether the
25 house was vacant. He didn't have your witnesses at the

1 trial.

2 A Yes, ma'am.

3 Q And that he did not prepare you that the case
4 was going to trial and you could get 30 years?

5 A Yes, ma'am.

6 Q Those are issues?

7 A I got an indictment issue too. On the face of
8 my indictment was defective. It's got the sentencing --
9 I mean, it's got the possession with intent and it got
10 the code 44-53-375, but it don't have no sentencing
11 provision telling me what offense and how much time was
12 supposed to be applied to each offense, nothing like
13 that.

14 MS. RATIGAN: That's all I have, Your Honor.

15 THE COURT: Anything else?

16 MS. WIYGUL: I have no further questions.

17 Thank you, Mr. Abercrombie. You can come sit
18 with me.

19 The applicant rests, Your Honor.

20 THE COURT: All right.

21 MS. RATIGAN: The State would call Mr.
22 Godfrey.

23 THE CLERK: Place your left hand on the
24 Bible. Raise your right.

25 E.P. "BILL" GODFREY

1 having first been sworn, testifies as follows:

2 **THE CLERK:** Thank you. Please state your
3 full name for the record.

4 **THE WITNESS:** Everett Godfrey. Everyone
5 calls me Bill.

6 **DIRECT EXAMINATION**

7 **BY MS. RATIGAN:**

8 **Q** Mr. Godfrey, do you recall representing Mr.
9 Abercrombie at this trial?

10 **A** Yes.

11 **Q** And I think Mr. Abercrombie testified he had
12 multiple charges. Did you represent him on all those
13 charges?

14 **A** Yes.

15 **Q** And did you file discovery motions in this
16 case?

17 **A** Yes.

18 **Q** Did you review those materials with your
19 client?

20 **A** Yes.

21 **Q** Did you provide him a copy of those materials?

22 **A** I believe he had a complete copy of the
23 discovery. Right now, I don't remember handing it to
24 him, but I believe he did.

25 **Q** And this PWID charge, did you know at the

1 outset this was a third offense?

2 A Yes.

3 Q Did you explain that to Mr. Abercrombie that
4 this would be a third offense?

5 A Yes, we talked about all of his charges. He
6 had incidents from -- incident dates of April 3, 2001,
7 August 23, 2001, January 15, 2002, January 25, 2002,
8 April 16, 2002 and January 17, 2006. And I actually went
9 through -- we went down first, second and third, I
10 talked to him about all of that and what he was actually
11 facing and what could be a mandatory sentence and what
12 would not be -- or the mandatory minimums.

13 Q So you would have explained the minimum and
14 maximum he could receive on his PWID third?

15 A Yes.

16 Q Did he ever give you the witness name of
17 someone named Mr. Hall?

18 A If that -- there were there people in the house
19 when the officers got there. There was a gentleman.
20 There was a lady and there was him. And right now, I
21 don't remember the gentleman's name that was in the
22 house, probably Mr. Hall.

23 Q And were you able to contact the gentleman who
24 was in the house when the police arrived?

25 A I did not try to contact him or the lady. The

1 lady was -- based on what my understanding was -- a
2 prostitute. And James said he went over there because he
3 needed to go up there to try to fix a car for Mr. Hall. I
4 believe it was a radiator problem. I saw with that,
5 facially, that he didn't have any tools with him.

6 Q When you met with Mr. Abercrombie about his
7 charges, were they meetings when you only talked about
8 the PWID charge or were they meetings when you talked
9 about kind of everything?

10 A We talked about the charges that the Solicitor
11 was interested in pushing. April 3, 2001 was a
12 confession case. January 25, 2002 was a confession case.
13 The rest of them were just -- there was no confession on
14 the rest of them. James got did wrong. He thought he
15 was going to be working with the narcs.

16 I checked into that. In fact, did get a
17 contract that he signed with the narcs. The trouble is
18 the narc said, yeah, he helped us a little, but he kept
19 selling drugs. They said after he sold drugs one time
20 and got rearrested, they let him work for them again.

21 What James told me was the last time he worked
22 with the narcs, it was his understanding that his charges
23 would go away. If you looked at the dates of these
24 incidents, it appears that, uh, it's funny looking.
25 You've got 1, 2, 3, 4 -- you've got five charges, the

1 last one being April 16, 2002. Then you don't have
2 another incident date until January 17, 2006. James, at
3 the time, was living with his wife and his child, I
4 believe, up in Travelers Rest. He wasn't trying to hide.
5 He was going to work every single day. I checked into
6 that every way I could check into it. And I could not --
7 all I could get was a contract. They said he violated
8 the contract. Then they caught him again in 2006.

9 Q At what point did you --

10 THE COURT: So how did he get did wrong if he
11 violated the contract?

12 THE WITNESS: Well, they kept letting him go
13 back to work. He violated it one time. They let
14 him work again. I believe he violated it a second
15 time. He did more work. Then, what put smoke to
16 the -- fire to the smoke I was seeing, he wasn't
17 hiding. Last incident where he was arrested was
18 April 16, 2002. He was here in Greenville County,
19 going to work every day, on the public roads,
20 completely out there --

21 THE COURT: Yeah. I understand that. How did
22 he get -- he did he get done wronged? How did he
23 get wronged if he was out breaking the contract? He
24 did it to himself.

25 THE WITNESS: Yeah, but the officer said the

1 last time that he worked for them, if what James
2 told me is accurate, that they would have his
3 charges go away. Then you've got that space of a
4 few years there where nothing happened whatsoever.
5 It sort of makes it look like something did happen.
6 I couldn't prove it.

7 **THE COURT:** Okay.

8 **BY MS. RATIGAN:**

9 **Q** At what point were you noticed that this case
10 was going to be on the trial docket?

11 **A** When was I noticed that it was going to be --
12 it was at least probably a couple, three weeks.

13 **Q** Would you have told Mr. Abercrombie two or
14 three weeks ahead of time that the case was going to
15 trial?

16 **A** Sure.

17 **Q** Did you look into the issue of whether or not
18 the house was actually a vacant house?

19 **A** That did not come up until the trial. Based
20 upon the discovery, the officers had a, uh, -- somebody
21 said, hey, y'all need to take a look at that house.
22 People were coming and going too quickly. One officer
23 goes to the front door. One officer goes to the back
24 door and looks through the back door into the kitchen.
25 The officer at the front door put in the incident report

1 that he was invited in. He was invited in, and that's
2 when the other officer came around and went to the
3 kitchen where he saw, uh, Mr. Abercrombie take something
4 out of his pocket and hide it by a shelf, which turned
5 out to be drugs.

6 I had no indication that the house was vacant
7 from James. He said that the people that were there had
8 the lights and the water on and had a key to the door.
9 So it was news to me when the officer said they thought
10 it was vacant. In fact, I think the officers told me
11 during the trial that they didn't know who actually owned
12 the house. I think we talked some about who's paying the
13 taxes on it.

14 Q Do you recall if you brought out at trial the
15 discrepancy in the incident report about being invited in
16 versus the house being invaded in being testified at
17 trial?

18 A I'm not -- my hearing is not the best in the
19 world. Would you do that --

20 Q That was the most inartfully asked question of
21 all time so I'll try it again.

22 **THE COURT:** She wants to know about the
23 Alabama search warrant.

24 **BY MS. RATIGAN:**

25 Q Did you bring out the inconsistency at

1 trial ---

2 A Yes.

3 Q --- about the incident report versus the
4 testimony about vacancy?

5 A Yes.

6 MS. RATIGAN: Okay. That's all I have, Your
7 Honor.

8 THE COURT: Cross.

9 CROSS-EXAMINATION

10 BY MS. WIYGUL:

11 Q Mr. Godfrey, you were retained in this case, is
12 that right?

13 A That's correct.

14 Q And as we heard, there was a suppression
15 hearing held, is that correct?

16 A Yes.

17 Q Uh, during that suppression hearing, did
18 Detective Fuller testify that the incident location was
19 212 Colonial Avenue?

20 A I don't remember that from the transcript. But
21 if it's in the transcript, that's what he testified to.

22 Q Could you identify these documents here?

23 A This is a tow and inventory report, second tow
24 and inventory report. And we have --

25 Q That's all the same thing.

1 **A** Yeah. That's an incident report.

2 **Q** And is this an incident report and towing
3 report relating to Mr. Abercrombie's conviction?

4 **A** Yes.

5 **MS. WIYGUL:** Your Honor, at this time, we
6 would move these into evidence as Applicant's 1 and
7 2.

8 **MS. RATIGAN:** I have no objection, Your
9 Honor.

10 **THE COURT:** Okay.

11 **(WHEREUPON,** Applicant's 1 and 2 are marked for
12 identification and admitted into the record.)

13 **BY MS. WIYGUL:**

14 **Q** Mr. Godfrey, could you please tell me the
15 incident location that's listed on that incident report
16 and on the towing report?

17 **A** The incident report says 12 Colonial Avenue,
18 Greenville. The towing report says 12 Colonial Avenue.

19 **Q** Okay. And you stated that you would not
20 disagree that the transcript, the actual incident
21 location was 212 Colonial Avenue, correct?

22 **A** Whatever the officer testified to. It's in the
23 transcript. I don't dispute that.

24 **Q** Okay. And you didn't, uh, challenge the
25 officer about the discrepancy in addresses, did you?

1 **A** Nope. I didn't recognize that at the time of
2 the trial.

3 **Q** Okay. Did you serve any subpoenas in this
4 case?

5 **A** No.

6 **Q** Okay. Had you had notice ahead of time that
7 the State was going to be claiming the house was vacant,
8 would you have addressed that issue?

9 **A** If I had known ahead of time they were going to
10 say it was vacant, I would have probably looked into it
11 to see who owned it.

12 **Q** Okay.

13 **A** If it was truly vacant, then it really does
14 look like a drug house.

15 **Q** Okay.

16 **A** It makes a big difference.

17 **Q** Okay.

18 **A** No way I can get around the invitation of the
19 officers into the house. But it's prejudicial if you've
20 got a vacant house with people in it and you find drugs.

21 **Q** Okay. Uh, Mr. Godfrey, did you argue to the
22 jury that the drugs were not broken up for sale?

23 **A** I don't remember. Whatever the transcript
24 says, it says.

25 **Q** And you heard Mr. Abercrombie testify just a

1 moment ago. Did you make any objection as to the fact
2 that the sentencing possibilities were listed on the
3 indictments?

4 **A** None.

5 **MS. WIYGUL:** I have no further questions.
6 Thank you, Your Honor.

7 **THE COURT:** You got anything?

8 **MS. RATIGAN:** I've got no redirect and the
9 State would rest, Your Honor.

10 **THE COURT:** Okay. It's really just kind of
11 prejudicial when you go into a house and find drugs
12 though, isn't it?

13 **THE WITNESS:** Yeah. It doesn't help.

14 **THE COURT:** Okay. All right. Next witness.

15 **MS. RATIGAN:** The State rests, Your Honor.

16 **THE COURT:** Reply?

17 **MS. WIYGUL:** No reply, Your Honor.

18 **THE COURT:** Okay. What do you want to tell
19 me?

20 **MS. WIYGUL:** Your Honor, we would ask that
21 the Court grant the post-conviction relief action
22 for Mr. Godfrey's failure to recognize the failure
23 in the discrepancy in the incident report versus the
24 actual incident location as well as Rule 5 Brady
25 violation for failure to notify Mr. Godfrey of the

1 claim the house was vacant.

2 **THE COURT:** How is that a Brady violation?

3 **MS. WIYGUL:** Your Honor, it's a big issue at
4 the suppression hearing as to whether the house was
5 vacant or not vacant.

6 **THE COURT:** So how is that a Brady violation?

7 **MS. WIYGUL:** Because Mr. Godfrey was never
8 notified through incident report, through
9 supplemental reports or anything else that the State
10 was claiming the house was vacant.

11 **THE COURT:** Okay. But the testimony is that
12 if it was vacant, that would be prejudicial. So how
13 would that be beneficial to -- how does that fall
14 under Brady? That's my point.

15 **MS. WIYGUL:** Mr. Godfrey would have been able
16 to prove that it was not vacant had he known that
17 the State was claiming it was vacant.

18 **THE COURT:** Well, that's a quite stretch.
19 I'm going to deny your petition, Mr. Abercrombie.
20 You got the burden of proving it. The indictment is
21 a notice document that tells you what the charges
22 are. It doesn't have to list the level of -- the
23 sentence on it, it doesn't have to list if it's a
24 first, second or third offense. That's all based on
25 your criminal history. Okay. So that's not -- that

1 doesn't make it defective. You know, I think, uh,
2 you know Mr. Godfrey did a good job for you so I'm
3 going to deny your petition. Where they got you?

4 MR. ABERCROMBIE: Lieber.

5 THE COURT: Lieber? You not related to Leon,
6 are you?

7 MR. ABERCROMBIE: Yeah, that's my uncle.

8 THE COURT: How's he doing?

9 MR. ABERCROMBIE: I haven't heard for him in
10 a while. I been locked up.

11 THE COURT: Yeah, he's getting on up there,
12 isn't he?

13 MR. ABERCROMBIE: Yes, sir.

14 THE COURT: How old is he?

15 MR. ABERCROMBIE: In his 50s. Should be in
16 his 50s.

17 THE COURT: Well, that's not that old. If
18 you talk to him, you tell him I said hello. Ned
19 Miller. I represented him a bunch.

20 MR. ABERCROMBIE: All right.

21 THE COURT: Okay.

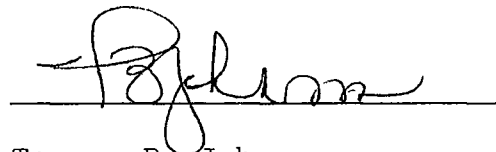
22 (WHEREUPON, the proceedings conclude at
23 approximately 10:51 a.m.)
24
25

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 31st day of August, 2012.

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

A handwritten signature in cursive script, appearing to read 'T. B. Johnson', is written over a horizontal line.

Teresa B. Johnson

Circuit Court Reporter

STATE OF SOUTH CAROLINA)

IN THE Common Pleas COURT 239

COUNTY OF GREENVILLE)

CASE NO(s) 10-CP-23-5177

EXHIBITS RECEIPT

PLAINTIFF	<u>Varus Abercrombie</u>	PLAINTIFF'S ATTORNEY	
DEFENDANT	<u>State</u>	DEFENDANT'S ATTORNEY	
JUDGE	<u>Miller</u>	DATE OF HEARING	<u>04/04/12</u>

The following exhibits were received by me from Teresa B. Johnson, Court Reporter for the Thirtieth Judicial Circuit, on the 3 day of April, 20 12.

They are, as follows:

Plaintiff / Petitioner / State Exhibits	Defendant / Respondent Exhibits	Court Exhibits
1 <u>Incident Report</u> ID / EV	1 ID / EV	1
2 <u>Tow Record</u> ID / EV	2 ID / EV	2
3 ID / EV	3 ID / EV	3
4 ID / EV	4 ID / EV	4
5 ID / EV	5 ID / EV	5
6 ID / EV	6 ID / EV	6
7 ID / EV	7 ID / EV	7
8 ID / EV	8 ID / EV	8
9 ID / EV	9 ID / EV	9
10 ID / EV	10 ID / EV	10
11 ID / EV	11 ID / EV	
12 ID / EV	12 ID / EV	
13 ID / EV	13 ID / EV	
14 ID / EV	14 ID / EV	
15 ID / EV	15 ID / EV	
16 ID / EV	16 ID / EV	
17 ID / EV	17 ID / EV	
18 ID / EV	18 ID / EV	
19 ID / EV	19 ID / EV	
20 ID / EV	20 ID / EV	
21 ID / EV	21 ID / EV	
22 ID / EV	22 ID / EV	
23 ID / EV	23 ID / EV	
24 ID / EV	24 ID / EV	
25 ID / EV	25 ID / EV	

Jan White
Clerk of Court

4/4/12
Date Received

OF

GREENVILLE COUNTY SHERIFF'S OFFICE
INCIDENT REPORT

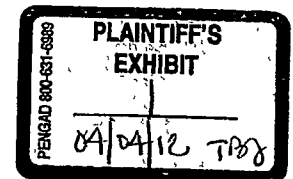
CASE NUMBER

ADULT/
JUVENILEAGENCY ID
SC0230000OFFENSE
35AMLED
SUB-CODE
987

UOF

0161010101101127

EVENT	INCIDENT TYPE		OFFENSE COMPLETED		FORCED ENTRY		PREMISE TYPE		UNITS ENTERED		TYPE VICTIM	
	Crack Possession w/intent to Distribute		YES ☒ NO ☐		YES ☐ NO ☒		Residence/Home				☐ INDIVIDUAL	
	WARRANTS SERVED		YES ☐ NO ☐		YES ☐ NO ☐		Residence/Home				☐ BUSINESS	
			YES ☐ NO ☐		YES ☐ NO ☐						☐ FINANCIAL INST	
VICTIM	INCIDENT LOCATION (SUBDIVISION WILL VILLAGE APARTMENT AND NUMBER STREET NAME AND NUMBER)						CLOSEST INTERSECTION		ZIP CODE			
	12 COLONIAL AVE GREENVILLE, SC						COLONIAL / MARION		29609			
	INCIDENT DATE		TIME		TO		DATE		TIME		WEAPON TYPE	
	1/17/06		1800								None	
SUBJECT	COMPLAINANT'S NAME (LAST, FIRST MIDDLE)						RESIDENT		RACE		SEX	
	FULLER, TIMOTHY, AARON *817						J		W		M	
	ADDRESS						CITY		STATE		ZIP CODE	
							GREENVILLE		SC		29601	
NARRATIVE	VICTIM'S NAME (LAST, FIRST MIDDLE)						RELATIONSHIP TO SUBJECT		RESIDENT		RACE	
	ADDRESS						CITY		STATE		ZIP CODE	
VEHICLE	VICTIM'S NAME (LAST, FIRST MIDDLE)						RELATIONSHIP TO SUBJECT		RESIDENT		RACE	
	ADDRESS						CITY		STATE		ZIP CODE	
PROPERTY	VICTIM'S NAME (LAST, FIRST MIDDLE)						RELATIONSHIP TO SUBJECT		RESIDENT		RACE	
	ADDRESS						CITY		STATE		ZIP CODE	
ADMIN	VICTIM'S NAME (LAST, FIRST MIDDLE)						RELATIONSHIP TO SUBJECT		RESIDENT		RACE	
	ADDRESS						CITY		STATE		ZIP CODE	
VISIBLE INJURY (VICT 1) ☐ YES ☒ NO EXPLAIN: VICTIM (NO 1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK DRUGS: ☐ YES ☒ NO ☐ UNK TYPE: TWO-MAN VEH ☐ ONE-MAN VEH ☐ DETECTIVE/PLASMT ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ J. THIS JURISDICTION IS - STATE - OUT OF STATE U. UNKNOWN ☒ SUSPECT NAME (LAST, FIRST, MIDDLE) SEE SUPPLEMENT RACE SEX AGE DATE OF BIRTH HEIGHT WEIGHT HAIR EYES ☐ RUNAWAY ADDRESS SSN ☐ WANTED FACIAL HAIR SCARS TATTOOS GLASSES CLOTHING PHYSICAL PECULIARITIES ETC CITY STATE ZIP CODE PATROL DISTRICT ☐ ARREST SUBJECT (NO 1) USING ALCOHOL ☐ YES ☒ NO ☐ UNK ARRESTED NEAR OFFENSE SCENE Yes ☐ No ☐ DATE/TIME OF OFFENSE DATE OF ARREST ☐ MISSING DRUGS: ☐ YES ☒ NO ☐ UNK TYPE Total Arrested: ARRESTEE ARMED ☐ YES ☐ NO WEAPON TYPE: ☐ ARRESTED ON CURRENT OFFENSE ☐ CLEARED BY ARREST ON PRIOR OFFENSE JUVENILE DISPOSITION: ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY ☐ ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY CHARGES WARRANT # TICKET # Crack Possession w/intent to Distribute 1-426587 BENCH WARRANT - GENERAL SESSIONS 2002GO6400 BENCH WARRANT - GENERAL SESSIONS 2002GO5458 Arrest Location 12 COLONIAL AVE GREENVILLE, SC DURING ROUTINE PATROL IN THE AREA, I WAS FLAGGED DOWN BY A RESIDENT (WHO WISHED TO REMAIN ANONYMOUS), WHO ADVISED THAT HE WAS SUSPICIOUS OF DRUG ACTIVITY AT THE INCIDENT LOCATION. SEE SUPPLEMENT. JURISDICTION OF THEFT: NONE JURISDICTION OF RECOVERY: NONE ☐ STOLEN TAG NUMBER 378 RRC STATE SC YEAR 06 VIN 1FMPU18L8XLC03469 VALUE \$10000 ☐ RECOVERED YEAR 99 MAKE Ford MODEL EXPEDITION STYLE 4 DR COLOR Blue ☐ SUSPECT TAG ONLY ☐ VICTIM ADDITIONAL VEHICLE DESCRIPTION Status Property Type Quantity Property Make Color Description Serial # Value SEIZED 010-Drug/Narcotic 19 G CRACK COCAINE White WHITE ROCK SUBSTANCE NONE \$150 SUBJECT IDENTIFIED SUBJECT LOCATED ☐ ACTIVE ☐ ADMIN CLOSED ☐ ARRESTED UNDER 18 ☐ EX-CLEARED UNDER 18 ☒ YES ☐ NO ☒ YES ☐ NO ☐ UNFOUNDED ☒ ARRESTED 18 AND OVER ☐ EX-CLEARED 18 AND OVER REASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ VICTIM DECLINED COOPERATION 4 ☐ PROBATION DENIED 5 ☐ JUVENILE NO ARREST REPORTING OFFICER (A) DATE UNIT # Star # T FULLER *817 1/17/06 E55 APPROVING OFFICER DATE UNIT # Star # FOLLOW UP INVESTIGATION ☐ YES ☐ NO (OFFICER)												



JAN 18 04:15

JH
1/23/06
E



GREENVILLE COUNTY SHERIFF'S OFFICE
Steve Loftis, Sheriff
Vehicle Tow and Inventory Record



INCIDENT TYPE ARREST				CASE NUMBER 06-10127		DATE 1-17-06	
LOCATION VEHICLE TOWED FROM [REDACTED]							
VEHICLE MAKE FORD	MODEL EXPLORER	YEAR 99	COLOR BLUE	BODY TYPE 4DR	VIN (1981 & NEWER VEHICLES HAVE 17 CHARACTERS) 1FMPU18L8XLC03469		
LIEN PLATE NUMBER 378 RRC	STATE SC	TAG YR 2006	SPECIAL CHARACTERISTICS OF VEHICLE (ACCESSORIES, DAMAGE, UNUSUAL LIGHTING, ANTENNAS, ETC)				
REGISTERED OWNER ANGELA FAULKNER			OWNER'S ADDRESS 116 OSMOND DR		CITY TAYLORS	STATE SC	ZIP 29687
OPERATOR NONE			OPERATOR'S ADDRESS		CITY	STATE	ZIP
HOLDER ATSON FINANCE CO. 328 W. STONE AVE. GREENVILLE					REASON FOR TOW: (Check all that apply) ☒ Operator Arrested ☐ Recovered Stolen ☐ Abandoned Vehicle ☐ Seized ☐ Road Hazard ☐ Other (Specify):		
VEHICLE ARRESTED ☒ YES ☐ NO		CHARGES		TICKET NUMBER(S)			
TOWING SERVICE CITY WRECKER		STORAGE LOCATION RUTHERFORD ST.		OWNER NOTIFIED YES ☐ NO ☐		DATE NOTIFIED	TIME NOTIFIED
TOW OFFICER FULLER		HOLD FOR: **Must Be Marked** ☒ REGISTERED OWNER ☐ I.D. - Then Release to Registered Owner After Processing ☐ CASE OFFICER (name) ☐ INVESTIGATOR (name)					
TORY OFFICER C.R. HILL #961							

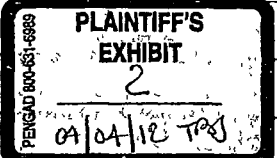
VEHICLE INVENTORY (ALL VALUABLES SHOULD BE SECURED)

ELECTRONIC EQUIPMENT (RADIOS, TAPE/CD/DVD PLAYERS, SPEAKERS, TV, ETC) CUSTOM RADIO, 6 DISC CHANGER IN CONSOLE	
SPECIAL WHEELS, WHEEL COVERS, SPARE TIRE	
ARMS, TOOLS, CLOTHING, etc	
ADDITIONAL MECHANICAL ACCESSORIES (GAUGES, PARTS)	
OTHER ITEMS	
ITEMS SEIZED: SUPPLEMENTAL REPORT ATTACHED? YES ☐ NO ☐	

TRUCK OPERATOR (PRINT NAME) Justin Pearce	TOW TRUCK OPERATOR'S SIGNATURE Justin Pearce
---	--

VEHICLES SUBJECT TO FORFEITURE

AGE	VALUE	OTHER
TURNED TO OWNER - DATE		CONSENT FORFEITURE - DATE
NOT FORFEITURE - DATE		OPERATIONAL USE - DATE
FORFEITED - DATE		TO BE AUCTIONED - DATE



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) C.A. No. 2010-CP-23-5177
 COUNTY OF GREENVILLE)

James Jermaine Abercrombie,
 S.C.D.C. No. 236714,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 24, 2010. The Respondent made its return on December 16, 2010. An evidentiary hearing into the matter was convened on April 4, 2012 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Elizabeth P. Wiygul, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, E.P. "Bill" Godfrey, Esquire. The Court had before it the trial transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, the appellate records, and the Applicant's exhibit from the PCR hearing.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the October 2006 term of the Greenville County Grand Jury for possession with

intent to distribute (PWID) crack cocaine (2006-GS-23-8683). He was represented by E.P. "Bill" Godfrey, Esquire.

After the State called the case to trial, the Applicant was found guilty. On July 10, 2007, the Honorable Larry R. Patterson sentenced the Applicant to eighteen (18) years imprisonment for PWID crack cocaine, third offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Abercrombie, Op. No. 2010-UP-280 (S.C. Ct. App. filed May 20, 2010).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failure to investigate.
 - b. Failure to object to insufficient or defective indictment.
 - c. Failure to object to surprising testimony.
2. Brady violation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated trial counsel represented him on eight (8) charges. The Applicant stated he believed he was facing a maximum sentence of fifteen (15) years on this charge and did not know the maximum sentence was actually thirty (30) years. The Applicant stated he was not aware his case was going to trial. The Applicant stated trial counsel did not have any of his witnesses available at the trial. The Applicant stated trial counsel failed to object to the house in question being described at trial as vacant.

Trial counsel confirmed he represented the Applicant on multiple charges in addition to the one at issue in this trial. Trial counsel testified he filed discovery motions in this case, gave a copy of the discovery materials to the Applicant, and reviewed those materials with him. Trial

counsel testified this charge was a third offense and he explained to the Applicant the minimum and maximum sentences. Trial counsel testified the case was put on the trial docket two or three weeks before trial and he would have informed the Applicant of this. Trial counsel stated there was a man and a woman at the house with the Applicant when he was arrested but that he did not contact either person. Trial counsel stated he did not notice the discrepancy between the address being listed as [REDACTED] in the incident report and the towing report and the officer testifying at trial that the address was [REDACTED]. Trial counsel stated he did not investigate whether the house was vacant because (1) the Applicant told him people were in the house and the utilities were on and (2) the incident report noted the police were invited into the house. Trial counsel stated the statements that the house was vacant were first made during the trial.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly advise him of the sentence he could receive on this charge or that the case was set for trial. Trial counsel testified he explained the sentence range to the Applicant for this charge – PWID crack cocaine, third offense. Trial counsel also testified he would have had two or three weeks notice of the trial date in this case and that he would have relayed this information to the Applicant. This Court notes trial counsel is an experienced criminal defense attorney and finds his testimony on these matters is more credible.

This Court finds the Applicant failed to meet his burden of proving trial counsel was

ineffective in failing to subpoena witnesses who were at the house when he was arrested. As these alleged witnesses did not testify at the evidentiary hearing, any discussion regarding what they would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have investigated the issue of whether the house – the location of his arrest – was vacant. Trial counsel testified he did not investigate this issue because the incident report noted the officers were invited into the home. Trial counsel also testified the Applicant had told him there were people in the house (one of whom had a key) and that the utilities were working. This Court finds that, based upon the information known to trial counsel before trial, there was no reason for him to have investigated whether the house was vacant. This Court notes trial counsel's testimony that the first time he heard the house was vacant was during the officers' testimony. This Court has examined the record, however, and finds trial counsel conducted thorough cross-examination of both officers about the circumstances surrounding the Applicant's arrest. Regardless, this Court finds the Applicant failed to present any evidence that the house in question was actually vacant at the time of his arrest. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the

Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

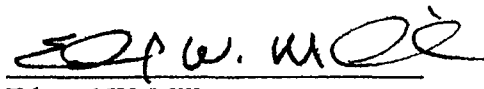
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 17 day of April, 2012.



Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

A Certified Copy
Paul B. Wickens
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 4/17/12

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP2305177

2012 APR 17 P 3:45

James J Abercrombie South Carolina State Of

FILED-CLERK OF COURT
GREENVILLE CO SC
JUL 10 5 10 PM '12

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

☐ **ACTION DISMISSED (CHECK REASON):**

☐ Rule 12(b), SCRPC;

☐ Rule 41(a),

SCRPC (Vol. Nonsuit);

☐ Rule 43(k), SCRPC (Settled);

☐ Other: _____

☐ **ACTION STRICKEN (CHECK REASON):**

☐ Rule 40(j) SCRPC;

☐ Bankruptcy;

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;

☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed;

☐ Reversed;

☐ Remanded;

☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order;

☐ Statement of Judgment by the Court.

Dated at Greenville, South Carolina, this _____

Court Reporter, _____

PRESIDING JUDGE - _____

This judgment was entered on the 17th day of April, 2012, and a copy mailed first class this 17th day of April, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

James J Abercrombie McCormick Corr Instit 386
Redemption Way McCormick, SC 29899

Elizabeth P Wiygul 101 Whitsett Street Greenville,
SC 29601

Karen Christine Ratigan Attorney Generals Office
Po Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B Wickensimer Greenville County Clerk Of Court
- Clerk of Court