

RECEIVED

FEB 24 2025

S.C. SUPREME COURT

Exhibit A

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 Q And what is your current rank?

2 A Lance Corporal.

3 Q And just briefly could you go over the training you
4 have had throughout your career.

5 A When I started in 2000, I was assigned to Oconee
6 County as a road trooper. I worked there until 2004 before
7 coming to the H-Team which is Troop 8 nowadays out of
8 Columbia and I've been doing that essentially full time
9 interdiction work. I've had a little over 300 hours of
10 training.

11 Q Do you also have training relating to narcotics?

12 A I do.

13 Q And what was that training?

14 A Basically the identification of narcotics. Also I
15 specialized in hidden compartments for transport of illegal
16 substance.

17 Q On March 20, 2014, were you involved in a traffic
18 stop of Ronald Michaux?

19 A Yes.

20 Q And can you tell us about why you initiated that
21 had traffic stop?

22 A Yes. On March 20th, 2014, I was in Lexington
23 County with some other troopers working a detail on I-20.
24 As I was monitoring traffic around the 42 mile marker I
25 observed a white mid-sized sedan, later I discovered it was

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 a Volkswagen Passat -- I noticed the vehicle slow down
2 abruptly. I also observed a tractor trailer truck that had
3 to swerve to the adjacent lane to avoid the vehicle. I
4 thought the was extremely odd on the interstate where there
5 were no hazards, it was a clear day, sun was out.

6 I entered the roadway in an effort to follow the
7 white vehicle. As I pulled onto the interstate, I noticed
8 that the vehicle was not maintaining his lane of travel and
9 what I mean by that is, he wasn't driving in the center
10 most portion. He was to the left, he was to the right, he
11 was back and forth. He never went outside of his lane;
12 however, he's weaving within his lane.

13 I wasn't sure if the driver was looking back at me.
14 I wasn't sure if the driver was sleepy or possibly under
15 the influence. It was at that time with the erratic
16 behavior coming from the white vehicle, the driver of the
17 white vehicle, I decided to make the traffic stop.

18 Q And did you initiate your emergency lights?

19 A I did.

20 Q And did a stop result from that?

21 A Yes.

22 Q And upon pulling that vehicle over, did you
23 approach the vehicle?

24 A I did.

25 Q And did you notice anything while you approached

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 A No.

2 Q Intimidating him?

3 A No, sir.

4 Q Did you have your hand on your weapon, or your
5 taser?

6 A No.

7 Q How were you speaking to him?

8 A Essentially like I am now.

9 Q At any point in time, did he request to speak to an
10 attorney or stop talking to you?

11 A No.

12 Q Now, was he free to leave?

13 A No.

14 Q And why is that?

15 A Based on the fact that I'd already discovered he
16 didn't have a valid driver's license, the indicators of
17 criminal activity I observed within the vehicle, and also
18 the smell of marijuana.

19 Q In your general experience, on the road, after
20 interviewing people, do you ever just issue citations?

21 A I'm sorry, could you repeat that?

22 Q Have you ever issued citations as a result of a
23 traffic stop?

24 A Yes.

25 Q And they are released?

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 A Yes.

2 Q At this point in the interview, did you have any
3 reason to arrest him?

4 A No.

5 Q After speaking to him, and him giving testimony
6 that you deemed to not be forthright, how did you then
7 proceed?

8 A Basically, during that time and while I was waiting
9 for Lance Corporal Rogers to arrive as backup, once I
10 finished speaking with Mr. Michaux, I continued the
11 enforcement action with a warning before returning back to
12 where he was standing with Lance Corporal Rogers.

13 Q At this point when you made contact with
14 Mr. Michaux again has he calmed down?

15 A No.

16 Q How would you describe his demeanor?

17 A It -- his demeanor at that time, he was clearly
18 extremely nervous. His breathing rate, his pulse that I
19 could observe in the pit of his neck, none of that ever
20 subsided throughout the stop.

21 Q And are those things that you've been trained
22 through your 16 years of law enforcement to observe?

23 A Yes.

24 Q And are those thing that are nationally relied upon
25 by law enforcement?

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 A Yes.

2 Q And after seeing these indicators from him, what
3 else did you end up doing on scene? How did you proceed at
4 that point?

5 A After I explained the warning to Mr. Michaux, I
6 then explained to him that I would be searching the
7 vehicle. I explained the reasoning, that I'd observed
8 about the vehicle because I smelled marijuana.

9 Q That was the only reason to search this vehicle,
10 correct?

11 A Yes.

12 Q Was that -- did anything else go into your
13 consideration of the situation?

14 A The indicators that I initially observed along with
15 the smell indicators, the third party rental, the --
16 Mr. Michaux being general about his trip which is unusual,
17 the air fresheners -- the air fresheners in a rental and
18 then, of course, the smell of marijuana and his extreme
19 nervousness.

20 Q And did you ultimately search the vehicle?

21 A I did.

22 Q And do you recall as you were walking to the
23 vehicle to search it Mr. Michaux saying anything to you?

24 A He did. As I turned my back to begin my search,
25 leaving him Lance Corporal Rogers, he stated again there's

Michael D. Harrison - Direct Examination In-Camera by Mr. Bell

1 no marijuana in the vehicle.

2 Q Upon ultimately searching the vehicle did you
3 locate anything?

4 A I did.

5 Q And where did you locate it?

6 A Typically I always start my searches in the front
7 passenger compartment. I typically start my search on the
8 right front passenger department. I didn't this day
9 because that door was locked, so I went around to the
10 driver's side where I started my search. As I checked the
11 console where I had seen the tobacco shavings, I located
12 more tobacco shavings in a cup. I also located some cigar
13 packages, they typically come two to a pack, looking for
14 marijuana.

15 Q Why did that stand out to you?

16 A That stands out through my training and experience.
17 There's a lot of folks that prefer to hollow out those,
18 take the cob out, replace it with other substances. I
19 didn't -- I'm sorry.

20 Q What else did you locate?

21 A The -- in the rear passenger floor I observed --
22 and this again was from the front seat -- I could see a
23 black plastic bag with a knot tied in it.

24 Q And did you investigate that bag?

25 A I did.

Michael D. Harrison - Cross-Examination In-Camera by Mr. Mauldin

- 1 A Yes.
- 2 Q So you didn't want to chase after him?
- 3 A That's correct.
- 4 Q You didn't want him going anywhere?
- 5 A That's correct.
- 6 Q And at no time during your conversation with him at
7 the side of your patrol car, the conversation that you
8 mentioned here in court today did you read Mr. Michaux his
9 Miranda Rights?
- 10 A No.
- 11 Q Now, you said you smelled an overwhelming odor of
12 marijuana?
- 13 A Overwhelming.
- 14 Q Did you find any marijuana in the car?
- 15 A No, I did not.
- 16 Q And you had a Trooper Rogers with you; is that
17 correct?
- 18 A Yes.
- 19 Q Did he have -- you had a K-9 is that correct?
- 20 A That's correct.
- 21 Q Did you run your K-9 around the car?
- 22 A No.
- 23 Q What was the warning? You said you issued a
24 warning?
- 25 A It's a public contact form warning which is not a

Michael D. Harrison - Cross-Examination In-Camera by Mr. Mauldin

1 citation.

2 Q Okay. And what was it for? Was it for a minor
3 thing?

4 A Yes.

5 Q What was it?

6 A If I recall correctly it was for improper lane
7 usage.

8 Q Do you have a copy of this warrant?

9 A I don't know. It's been two years ago. I would
10 say probably not.

11 Q Now -- and you said you called in Mr. Michaux's
12 identity -- and they said his license was revoked in North
13 Carolina; is that correct?

14 A That was after the search of the vehicle.

15 Q Was during enforcement action. Before the search?

16 A Before.

17 Q Now, in your conferring with him, you're kind of
18 paraphrasing what he says; is that correct?

19 A Yes.

20 Q It's not -- did he say that -- is it possible he
21 said my home girl instead of my girlfriend?

22 A It's possible.

23 Q So you don't remember exactly what word he used for
24 the female that had rented the vehicle?

25 A No.

1 MR. MAULDIN: Yes, sir.

2 THE COURT: All right. Any objections?

3 MR. MAULDIN: No, Your Honor.

4 MR. BELL: No objections.

5 THE COURT: All right. Thank you.

6 Thank you. Madam Clerk, if you would give us a
7 panel please.

8 THE CLERK: As I call your juror number and name,
9 please come forward and stand right here where Tommy is
10 standing and remain there until I give you further
11 instructions on whether to sit in the jury box or to return
12 to your seat.

13 **JURY SELECTION**

14 THE CLERK: Number 192, Rodney Spangler (white
15 male).

16 What say ye for the State?

17 MR. BELL: Please present the juror.

18 THE CLERK: What say ye for the defense.

19 MR. MAULDIN: Please seat the juror.

20 THE CLERK: Have a seat in the jury box, sir.

21 Number 156, Travis Ouzts (white male).

22 What say ye for the State?

23 MR. BELL: Please present the juror.

24 THE CLERK: What say ye for the defense?

25 MR. MAULDIN: Please excuse the juror.

1 THE CLERK: Return to your seat please, sir.

2 58, Douglas Drenten (white male).

3 What say ye for the State?

4 MR. BELL: Please present the juror.

5 THE CLERK: What say ye for the defense?

6 MR. MAULDIN: Please seat the juror.

7 THE CLERK: Have a seat in the jury box, sir.

8 61, Kimberly Dunlap (black female).

9 What say ye for the State?

10 MR. BELL: Please excuse the juror.

11 THE CLERK: Return to your seat please, ma'am.

12 32, Sylvia Brown (black female).

13 What say ye for the State.

14 MR. BELL: Madam Clerk, would you please repeat the
15 number.

16 THE CLERK: 32.

17 MR. BELL: Please present the juror.

18 THE CLERK: What say ye for the defense?

19 MR. MAULDIN: Please seat the juror.

20 THE CLERK: Have a seat in the jury box, ma'am.

21 92, Zachary Gutknecht (white male).

22 What say ye for the State?

23 MR. BELL: Please excuse the juror.

24 THE CLERK: Return to your seat please, sir.

25 Number 142, Jesse Merritt (white male).

1 What say ye for the State?
2 MR. BELL: Please present the juror.
3 THE CLERK: What say ye for the defense?
4 MR. MAULDIN: Please seat the juror.
5 THE CLERK: Have a seat in the jury box, sir.
6 Number 114, John Kahler (white male).
7 What say ye for the State?
8 MR. BELL: Please present the juror.
9 THE CLERK: What say ye for the defense?
10 MR. MAULDIN: Please seat the juror.
11 THE CLERK: Have a seat in the jury box, sir.
12 154, Anne Elizabeth Odom (white female).
13 What say ye for the State?
14 MR. BELL: Please present the juror.
15 THE CLERK: What say ye for the defense?
16 MR. MAULDIN: Please excuse the juror.
17 THE CLERK: Return to your seat please, ma'am.
18 196, Randall Stewart (white male).
19 What say ye for the State?
20 MR. BELL: Please present the juror.
21 THE CLERK: What say ye for the defense?
22 MR. MAULDIN: Please seat the juror.
23 THE CLERK: Have a seat in the jury box, sir.
24 183, Nicholas Simons (white male).
25 What say ye for the State?

1 MR. BELL: Please present the juror.
2 THE CLERK: What say ye for the defense?
3 MR. MAULDIN: Please seat the juror.
4 THE CLERK: Have a seat in the jury box, sir.
5 89, Linda Green (black female).
6 Back up just a little more for me. There you go.
7 What say ye for the State?
8 MR. BELL: Please present the juror.
9 THE CLERK: What say ye for the defense?
10 MR. MAULDIN: Please excuse the juror.
11 THE CLERK: Return to your seat please, ma'am.
12 143, Bruce Mike (white male).
13 What say ye for the State?
14 MR. BELL: Please present the juror.
15 THE CLERK: What say ye for the defense?
16 MR. MAULDIN: This is 143?
17 THE CLERK: Yes, sir.
18 MR. MAULDIN: Please seat the juror.
19 THE CLERK: Have a seat in the jury box, sir.
20 188, Kayla Smith (white female).
21 What say ye for the State?
22 MR. BELL: Please excuse the juror.
23 THE CLERK: Return to your seat please, ma'am.
24 214, Taylor Webb (white female).
25 What say ye for the State?

1 MR. BELL: Please present the juror.
2 THE CLERK: What say ye for the defense?
3 MR. MAULDIN: Please seat the juror.
4 THE CLERK: Have a seat in the jury box, ma'am.
5 198, Amanda Storey (white female).
6 What say ye for the State?
7 MR. BELL: Please present the juror.
8 THE CLERK: What say ye for the defense?
9 MR. MAULDIN: Please seat the juror.
10 THE CLERK: Have a seat in the jury box, ma'am.
11 166, Tyler Raymond (white male).
12 What say ye for the State?
13 MR. BELL: Please excuse this juror.
14 THE CLERK: Return to your seat, sir.
15 149, Leigh Murphy (white female).
16 What say ye for the State?
17 MR. BELL: Please present the juror.
18 THE CLERK: What say ye for the defense?
19 MR. MAULDIN: Please seat the juror.
20 THE CLERK: Have a seat in the jury box, ma'am.
21 147, Carola Morand (white female).
22 What say ye for the State?
23 MR. BELL: Please present the juror.
24 THE CLERK: What say ye for the defense?
25 MR. MAULDIN: Please excuse the juror.

1 THE CLERK: Return to your seat please, ma'am.

2 169, Rebecca Riley (white female).

3 What say ye for the State?

4 MR. BELL: Please present the juror.

5 THE CLERK: What say ye for the defense?

6 MR. MAULDIN: Please seat the juror.

7 THE CLERK: Have a seat in the jury box, ma'am.

8 Alternates, Your Honor?

9 THE COURT: Will one be sufficient, Solicitor and
10 Mr. Mauldin?

11 MR. MAULDIN: Yes, Your Honor.

12 MR. BELL: Yes, sir.

13 THE COURT: All right. One alternate. You know
14 the strikes.

15 THE CLERK: 96 Sharon Hawes (white female).

16 What say ye for the State?

17 MR. BELL: Please present the juror.

18 THE CLERK: What say ye for the defense?

19 MR. MAULDIN: Please excuse the juror.

20 THE CLERK: Return to your seat please, ma'am.

21 195, Brenda Stalzer (white female).

22 What say ye for the State?

23 MR. BELL: Please present the juror.

24 THE CLERK: What say ye for the defense?

25 MR. MAULDIN: Please seat the juror.

1 THE CLERK: Have a seat in the jury box, ma'am.

2 That's the alternate, Your Honor.

3 THE COURT: Any motions regarding the jury
4 selection process from the State?

5 MR. BELL: None from the State, Judge.

6 THE COURT: The defense?

7 MR. MAULDIN: No, Your Honor.

8 THE COURT: All right. Ladies and gentlemen of the
9 jury panel, momentarily I'm going to have you step to your
10 new temporary home, your jury room. During this recess and
11 throughout the trial of the case, I will advise you, you
12 may not discuss this case with anyone, that includes your
13 fellow jurors or anyone else. You would not be authorized
14 to discuss the case until you've heard all of the evidence,
15 all the testimony presented from the witnesses testifying
16 under oath from this witness stand, closing arguments by
17 the attorneys, and the instruction on the law by the Court
18 and then instructed by the Court to begin your
19 deliberations with your fellow jurors in your jury room.

20 I'm going to give you one assignment, however, as a
21 jury during this brief recess. If you would please select
22 one among your number from the primary twelve jurors to
23 serve as the foreperson of the jury panel. It cannot be
24 Juror Number 195, Ms. Stalzer; did I pronounce that
25 correctly?

1 Although I'm sure she would make a fine jury
2 foreperson, right now she is in the status of an alternate
3 juror, so she could -- she could not be selected for that
4 position. But anyone of your number, you can use whatever
5 criteria you deem appropriate, whether it's prior jury
6 service or no prior jury service or what -- what have you,
7 whatever your good judgement and your common sense, things
8 think would be appropriate for selecting a foreperson of
9 the jury panel.

10 Once you've made that selection if you'll knock on
11 the jury room door, advise the bailiff, we will have you
12 right back here in the courtroom. We're going to take --
13 well, why don't I just say 10:30. It's about an eighteen
14 minute recess. I'll be back out here by 10:30, that should
15 give you some time to make that selection and -- and take a
16 break.

17 All right. Any questions?

18 All right. Thank you. Thank you very much. You
19 may now go with your bailiff, Mr. Humphries, to your jury
20 room.

21 The jury left the courtroom at 10:13 a.m.)

22 THE COURT: Solicitor, will you step up here on a
23 scheduling matter. You're certainly welcome also, Mr.
24 Mauldin.

25 (There was a bench conference out of the hearing of

ledge. To further substantiate this allegation, it is unclear from this record whether oral testimony concerning the reliability of the informant was given to the magistrate. See Exhibit C Tr. p. 6 line 22 - p. 30 line 17; Tr. p. 112 line 6 - p. 152 line 15. Had trial counsel objected and moved to suppress on these grounds, all evidence seized by the Lexington County Highway Patrol and all statements and testimony intended to be used by the State at trial would have been suppressed and excluded.

(b) Trial Counsel failed to object that State unlawfully impaneled its grand jury outside the jurisdiction of the Court of General Sessions.

Facts - S.C. Code Ann. § 14-9-210 is jurisdictional in nature and requires that all criminal indictments must be issued through a grand jury impaneled before the Court of General Sessions. My bill of indictment prints that it was returned, "At a Court of General Sessions, convened on August 2014, the Grand Jurors of Lexington County present upon their oath:" (See Exhibit B) The indictment is signed by the Assistant Solicitor, and sealed with a True Billed stamp. Furthermore, the title page of State's Indictment prints that it was published at a Court of General Sessions Term during July 2015. However, the terms of the Court of General Sessions for Lexington County are fixed by S.C. Code Ann. § 14-5-160, which DOES NOT offer provisions for a Court to be open on August 2014. Moreover, my indictment was TRUE BILLED stamped on July 13, 2015. The terms of Lexington County General Sessions Court

284 be held at Lexington on: 1) the 3rd Monday in January for 2 weeks; 2) 4th Monday in May for two weeks; and 3) the Tuesday following the first Monday in September for 2 weeks.

C) Trial counsel failed to request a Batson hearing after the State exercised all peremptory challenges to strike all but one black juror in contravention of Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 W.Ed.2d 69 (1986).

Facts - During the outset of trial, there were only three (3) black jurors who were selected for jury duty. Out of those three who were called, only one was selected. See Exhibit C Tr.p. 70 lines 12-20. All three potential jurors were black females. See Exhibit C Tr.p. 70 lines 8-20; Tr.p. 72 lines 5-10. The State struck the first black female juror. Tr.p. 70 lines 8-11. And trial counsel struck the other black female juror. Tr.p. 72 lines 5-10. To further substantiate this allegations, I did not advise my trial counsel to strike these black jurors, he never informed me that he was gonna strike those black jurors, nor did I agree to strike the potential black jurors. Moreover, I was denied a fair and impartial jury because not only did I have an all-white jury, but all of the jurors were senior citizens, over the age of 50 years old.

DAVID MAULDIN - DIRECT BY MR. SMITH

1 BY MR. SMITH:

2 Q: Mr. Mauldin, what's your full name?

3 A: David Mauldin, M-a-u-l-d-i-n. David Michael Mauldin.

4 Q: Okay. When were you admitted to practice in South
5 Carolina?

6 A: 1997.

7 Q: Can you give me a summary of your professional experience
8 since you were admitted?

9 A: I worked for George Sink for about a year and a half in
10 Charleston, decided that that wasn't for me. I applied at a
11 public defender and solicitor's office, ended up getting hired
12 in Aiken in April of '99, I believe. I was there until the
13 end -- at the public defender's office, I was there until
14 about 2008. I moved over here to Lexington, was a public
15 defender until early 2012, when I just took a break for about
16 ten months, and then I went back to the public defender's
17 office, where I've been ever since.

18 Q: Okay. How did you come to be involved in Mr. Michaux's
19 criminal case?

20 A: I believe our office was appointed sometime in late April
21 or early May. He was interviewed. He was arrested in March.

22 Q: Of what year?

23 A: '14, 2014.

24 Q: Okay. On how many occasions did you meet with Mr.
25 Michaux?

DAVID MAULDIN - DIRECT BY MR. SMITH

1 Q: Well, I could go through it all. Let's see. Our initial
2 meeting was on June 6th of '14. Let's see. He was excused
3 from roll call. There were some phone contact in between. We
4 had a bond reduction hearing sometime after June, but before
5 the end of July, where he was -- bond was lowered and he was
6 out of jail.

7 Q: And this was all still in 2014?

8 A: 2014. Let's see, he was from out of state. So there
9 were some issues with him showing up, and the solicitor -- he
10 was excused from a roll call in July. That's when I had the
11 prelim that day and the offer was made. I called him by phone
12 on August 12th of '14 and relayed the plea offer.

13 He had a court appearance or a roll call on 8/22 of '14,
14 and he said he wasn't going to take the offer. They had
15 another appearance on September 12th where we were given
16 notice of a potential trial on October 20th of '14, but they
17 hadn't had the drug results back by then. So it was a little
18 ambitious of the solicitor to -- to do so.

19 On October 1st of '14, I called him and left a voicemail
20 regarding the fact that the -- the plea offer was going to be
21 extended because originally they said it was null and void
22 when he didn't want to take it, that it was going to be
23 extended. I never talked to him. I left a voicemail, and
24 then I got some messaging where I ended up calling a fellow
25 named Andre Hogan, who informed me that Mr. Michaux had been

DAVID MAULDIN - DIRECT BY MR. SMITH

1 anywhere.

2 Q: Okay. Did you see any benefit in arguing that there was
3 no probable cause for the arrest on the basis of this warrant
4 after the judge made probable cause findings at trial?

5 A: Well, obviously, you know, the warrant was obtained after
6 he was arrested and put in jail. Probably they typed it up or
7 whatnot.

8 Q: Okay.

9 A: I don't think there was any evidence obtained from him
10 after he was put in jail that was used against him at trial
11 and so, therefore, I wouldn't have made objections about
12 probable cause of the warrant because that -- that's -- you
13 know.

14 Q: Right. Okay. Tell me your understanding of the case of
15 *Batson v. Kentucky*, 476 U.S. 79.

16 A: Well, the proposition is that any party to trial is not
17 supposed to strike jurors based on a suspect class, like race
18 or sex, those sorts of things.

19 Q: Okay. Do you remember any particulars about jury
20 selection from Mr. Michaux's trial?

21 A: Not off of the -- not -- but after we discussed it, I had
22 some memory. I think one black female juror had been struck
23 by the State, but I think I had seen that they had sat at
24 least one or two other African-American or black people on the
25 jury. So that's probably why I didn't object to it because

DAVID MAULDIN - DIRECT BY MR. SMITH

- 1 they didn't strike every black person.
- 2 Q: Okay. Do you have any knowledge about the circumstances
3 surrounding the -- the black juror that the solicitors struck?
- 4 A: No, I didn't know.
- 5 Q: Okay.
- 6 A: I learned something later on, but that might be hearsay
7 or whatever, but --
- 8 Q: Okay. Did you see any reason at the time to raise a
9 *Batson* issue?
- 10 A: No. Like I said, unfortunately, in Lexington our jury
11 pool is super minority black. Like, it didn't even reflect
12 the population in the county, and you'd be lucky to get five
13 on a whole pool.
- 14 Q: Right. Okay.
- 15 A: By black people. It's getting a little better.
- 16 Q: If you had seen something that raised your suspicion that
17 the solicitor was taking race into account in jury selection,
18 would you raise a *Batson* issue?
- 19 A: Yes.
- 20 Q: Okay. And I --
- 21 A: And usually, it takes not just one juror. Like, if it's
22 a pattern, that's usually when I object, when I see a pattern
23 of it.
- 24 Q: Okay. So what was your trial strategy here?
- 25 A: Well, number one, try to get the drugs suppressed. And

BRADLEY POGUE - DIRECT BY MR. SMITH

1 Q: Okay. Tell me what your understanding is of *Batson v.*
2 *Kentucky*.

3 A: I mean, essentially, I mean, that's the seminal case that
4 establishes that, you know, peremptory strikes can only be
5 used for, you know, non-racial reasons or non-sexual reasons.
6 In this case it was non -- non-race. So essentially you can
7 use a strike as long as you have a race neutral or sex neutral
8 -- neutral reason for using that particular strike. Then it's
9 not unconstitutional.

10 Q: Okay. Does the Eleventh Circuit Solicitor's Office or do
11 you have any sort of general practice or policy on how to
12 handle juror selection aligned with *Batson*?

13 A: We never strike a juror -- at least from my policy and
14 the policy that I'm aware of with all of the employees of our
15 office, we don't ever strike a juror for any race-based
16 reason. It's always a reason that has to do with something
17 founded other than race.

18 Q: Okay. Were you present when Mr. Bell exercised the jury
19 strikes in jury selection?

20 A: I was. Yes, sir.

21 Q: Okay.

22 MR. SMITH: I believe Mr. Mauldin took my transcript, so
23 I'll get me another copy. He's returned it now. Your Honor,
24 may I approach the witness?

25 THE COURT: Yes, sir.

BRADLEY POGUE - DIRECT BY MR. SMITH

1 BY MR. SMITH:

2 Q: Okay. Will you confirm for me that this is the trial
3 transcript from Mr. Michaux's trial? And if we're looking at
4 page 69, do you see on there where Mr. Bell strikes Juror
5 Number 61, Kimberly Dunlap?

6 A: I see 156 and 192 that were called on page 69. I don't
7 see Juror 62. I'm sorry. Next page, page 70, I see Kimberly
8 Dunlap, Juror 61. Yes, sir.

9 Q: Okay.

10 A: Yes, I see where Mr. Bell has struck Juror 61, Kimberly
11 Dunlap.

12 Q: And that's page 70?

13 A: Page 70 on this transcript. Yes, sir.

14 Q: Okay. And then also on page 70, is -- correct me if I'm
15 wrong, but Juror Number 32, who's identified as a black
16 female, was also seated?

17 A: Correct.

18 Q: Okay. And then if you look at page 72, would you agree
19 with me that Mr. Mauldin struck Juror 89, who was a black
20 female?

21 A: Yes, sir.

22 Q: Okay. Is there any indication in your file for the
23 reason that Mr. Bell struck Juror Number 61, Ms. Dunlap?

24 A: When I went back and looked and found the jury list and
25 the notes that our office puts on the jury list for that

BRADLEY POGUE - DIRECT BY MR. SMITH

1 particular term, I recognized that there was some notation
2 beside Juror 61, Kimberly Dunlap, and I can't recall exactly
3 what that notation was, but I believe that she had recently
4 either had a trial or a plea where she was either guilty or
5 not guilty to a -- I believe it must have been a magistrate or
6 municipal level offense that was fairly recent, and that would
7 have been the basis for the strike is that she may have some
8 -- may have some prejudice, either -- you know, against a
9 prosecutor's office for having just been put in jeopardy on a
10 criminal offense herself.

11 MR. SMITH: Okay. May I have this marked as State's
12 Exhibit 1 for identification only?

13 BY MR. SMITH:

14 Q: Okay. Mr. Pogue, I've handed you State's Exhibit 1.
15 Would you look at that and tell me the name of the defendant
16 identified on that document?

17 A: The name of the defendant is Kimberly Rena Dunlap.

18 Q: Okay. And correct me if I'm wrong, but that's the
19 document showing the outcome of a criminal case you had in
20 Lexington County; right?

21 A: Correct.

22 Q: Okay. What information does it show about that case, the
23 disposition?

24 A: It shows that she has a criminal domestic violence, first
25 offense, that was either dismissed or nolle prossed by the

BRADLEY POGUE - DIRECT BY MR. SMITH

1 prosecuting agency.

2 Q: Okay. Does it show what the date of that disposition
3 was?

4 A: It looks like December 5th, 2008.

5 Q: Okay.

6 MR. SMITH: Okay. Your Honor, at this time, I would
7 offer this into evidence as State's Exhibit 1.

8 MR. WILKES: Your Honor, I would object to the document.
9 The solicitor hasn't testified that this is a document that he
10 had or was aware of. He's testified to another document that
11 we don't have. So I'm not sure that this is relevant on the
12 issue of knowledge. It's relevant perhaps on the truth that
13 she did have something pending, but it's not necessarily
14 relevant to actual knowledge and -- unless this is a document
15 that they had in their possession.

16 MR. SMITH: Your Honor, Mr. Pogue's testimony was that he
17 remembered from looking in his file that they had some note
18 indicating they had a reason that they struck her dealing with
19 a past criminal case. I think this goes to show what that
20 would have been.

21 THE COURT: I'll allow it. Respectfully overruled.

22 (WHEREUPON, State's Exhibit Number 1, criminal
23 disposition document, was admitted into evidence.)

24 MR. SMITH: I could also -- I mean, if I need to, I could
25 ask Mr. Pogue to get his file and pull the note where he had

BRADLEY POGUE - DIRECT BY MR. SMITH

1 written it down.

2 THE COURT: That's up to you.

3 MR. SMITH: Mr. Pogue, do you mind doing that?

4 THE WITNESS: I can. I can go print off our email
5 exchanges.

6 MR. WILKES: Your Honor, I'll stipulate that if counsel
7 testifies that it is there and it was known at the time, I'm
8 not going to require he go get his file.

9 THE COURT: Yes, sir.

10 MR. SMITH: Yeah.

11 THE COURT: All right.

12 THE WITNESS: That is correct. There was a --

13 THE COURT: Go ahead.

14 THE WITNESS: That's correct. There was a note on the
15 jury list that we had next to hers, and when I went back and
16 found it, there was actually an email exchange that I had with
17 -- with the PCR attorney. And we -- I believe I attached that
18 particular document with that notation on it, but there was a
19 notation of a criminal -- again, I couldn't remember which one
20 it was, but I remember that there was some sort of criminal
21 charge that she had had on her record, which would have been
22 the basis for our strike.

23 MR. SMITH: Okay.

24 THE COURT: All right.

25 BY MR. SMITH:

BRADLEY POGUE - DIRECT BY MR. SMITH

1 Q: Okay. So explain to me the concern you would have during
2 jury selection of having someone seated on the jury who had
3 been acquitted at trial before?

4 A: We always take into account any prejudice, whether it be
5 founded or unfounded, in the prospective juror's mind as to
6 whether they could consider the evidence with an open mind and
7 render a jury -- excuse me -- render a verdict based upon just
8 strictly that -- that evidence. And as a policy, you know,
9 that I have personally and I know that in my conversations
10 with Mr. Bell, when he was a prosecutor, I believe he had that
11 same -- same position is that, you know, if you have a
12 potential juror who has had interactions with the criminal
13 justice system in the past, we have no basis to know how they
14 may feel about those interactions with the justice system. So
15 our -- you know, from a precautionary standpoint, we usually
16 strike those -- those -- those jurors.

17 Q: Okay. That's out of precaution that they may harbor some
18 resentment?

19 A: That's correct.

20 Q: Okay. Do you have any reason to believe that striking
21 Ms. Dunlap was a departure from that indication?

22 A: Not at all.

23 Q Okay. And without looking at your notes, you're not sure
24 if this is the exact criminal defense -- criminal case
25 discussed?

BRADLEY POGUE - DIRECT BY MR. SMITH

1 A: That's correct. Without looking at my notes, I couldn't
2 tell you, but I do recall that she had some experience, again,
3 some charge -- criminal charge on her record that --

4 Q: Okay.

5 A: -- we had found in our search and had notated on the jury
6 list next to her name.

7 Q: If you had done a criminal search for Ms. Dunlap, would
8 you have expected to find something on there like what's
9 described in State's Exhibit 1?

10 A: Yes. Unless she had -- between then and -- and now had
11 somehow had it expunged or removed from her record. I believe
12 even then sometimes it still shows up on NCIC rap sheets. So,
13 yes, I would expect for it to show up.

14 Q: Okay.

15 MR. SMITH: Thank you.

16 MR. WILKES: Nothing further.

17 THE COURT: You may step down, sir. Thank you.

18 THE WITNESS: Thank you, Judge.

19 MR. SMITH: Your Honor, that's the State's case. The
20 State rests.

21 THE COURT: Okay. As I stated yesterday at the end of
22 the hearing, I take lots of notes. I'm listening intently. I
23 know where each one of you are coming from or trying to go to.
24 However, if you want to make a few comments, I'd be glad to
25 hear it, sir.

1 MR. WILKES: Your Honor, I believe that the biggest
2 argument I had was the legal on the expert. I believe I
3 articulated --

4 THE COURT: Yes, sir.

5 MR. WILKES: -- that well enough. I don't need to -- I
6 don't feel I need to do that again unless Your Honor wants.

7 THE COURT: You did highlight that, sir. You said that.
8 Anything from the State, sir?

9 MR. SMITH: Yes, Your Honor.

10 On the first issue, I believe there's enough evidence on
11 the record to show that the State made multiple plea offers to
12 Mr. Michaux, and that Mr. Mauldin communicated those to Mr.
13 Michaux and that Mr. Michaux made a decision to reject them
14 because, one, is he told Judge McMahon he was innocent. And
15 number two, I think the record and the testimony shows that he
16 was concerned with the prison exposure, and so we think that
17 there's no issue of him not being given plea offers.

18 In terms of success at trial, I think there's enough
19 evidence on the record for Your Honor to see that Mr. Mauldin
20 informed Mr. Michaux about the risks of trial as best he
21 could, considering Mr. Michaux was a difficult client who, you
22 know, made it difficult to communicate with him about the case
23 and frequently refused to speak with Mr. Mauldin.

24 As far as the *Batson* motion goes, Mr. Mauldin testified
25 he had no reason to think that he should raise a *Batson* --

Exhibit B

cannot be considered on PCR application absent claims of ineffective assistance of appellate counsel); *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494 499 (2005) (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”).

Applicant’s claim here, that he was not told he would be taken into custody, is not a cognizable claim under the Act. See S.C. Code Ann. § 17-27-20 (grounds for actions pursuant to the Act). For this reason alone, this claim fails. Going further, Applicant has not shown Counsel’s conduct in failing to notify him (if this was the case, which has not been established) was not within the wide range of reasonable professional actions or that prejudice of any type, and especially prejudice “sufficient to undermine confidence in the outcome” resulted from any such failure to notify him in advance that his bond condition may change. Accordingly, this allegation is denied and dismissed with prejudice.

Claim 5: Counsel was ineffective for not arguing the arrest warrant lacked probable cause.

Applicant next alleges trial counsel was ineffective for failing to argue that the affidavit underlying the arrest warrant was insufficient to support a finding of probable cause.⁵ Counsel testified at the hearing that he had seen the arrest warrant affidavit and that he did not see any benefit in arguing the affidavit lacked probable cause. (PCR, pp. 54-55). In this case, the warrant was obtained after the Applicant was in jail, the Applicant having been arrested on the side of the

⁵ In the March 20, 2014 affidavit, the following basis was set out for Trafficking in Cocaine 100 g. or more, but less than 100 g.:

On 3/20/2014 at 1240 hours while in Lexington County, I made a lawful traffic stop on a 2014 Volkswagen Jetta for improper lane use. I identified the driver as Arnold D. Michaux by his North Carolina ID card. I smelled of marijuana coming from the vehicle. I had Mr. Michaux exit the vehicle. A search of the vehicle was conducted and a black bag was found in the rear floorboard that contained 5 oz of a white powder substance. Mr. Michaux was placed under arrest...

road after, among other things, the officer smelled marijuana in the car, determined Applicant was driving without a valid license, and found a small black bag that field tested for cocaine in the car. (PCR, p. 35, 1.2-13; R. 88-90; R. 100-101). Counsel's point was the evidence used against Applicant at trial had already been obtained by the time of Applicant's arrest and it was sufficient for conviction (implying the evidence was sufficient for arrest). (PCR, p. 35). Counsel made the additional point, "arrest warrants are kind of subsumed by the indictments as far as the charging document." (PCR, p. 34).

In the present case, Counsel chose to challenge the officer's probable cause regarding the stop and search, instead of the probable cause articulated in the arrest warrant after the search had already been conducted. In this case, Counsel's conduct was within the acceptable range of professional assistance. *Butler*, 286 S.C at 445, 334 S.E.2d at 816. Further, Applicant has not shown prejudice resulting from Counsel's failure to argue the affidavit. In light of the indictment returned by the grand jury in this case, and the jury verdict, it is not surprising Applicant has been unable to show prejudice, particularly prejudice "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 690. For these reasons, this ground is denied and dismissed with prejudice.

Claim 6: Counsel was ineffective for not arguing that the grand jury was impaneled outside of a General Sessions term.

Applicant next raised that Counsel was ineffective for not arguing that the grand jury was impaneled outside of a General Sessions term. Applicant chose to abandon this claim at the evidentiary hearing. (PCR, pp. 21-22) (PCR counsel testified "[w]e've reviewed the evidence on the issue involving the grand jury, being indicted outside the term of the grand jury. The attorney general has presented the documentation showing that it was, in fact, in a legitimate term for the grand jury and, therefore, that is a non-issue.") Because this claim has been abandoned and, further,



Exhibit

C

Sample Affidavit

Comes now Susan Blake, being first duly sworn and upon oath, does state:

I am a Euphoria County Police Detective. The date of this Affidavit In Support of an Application for an Arrest Warrant is October 29, 2007. I have been employed as an Euphoria Police Officer for the past 7 years. During this period, I participated in more than 150 arrests for burglary, larceny, and armed robbery.

Sometime between 8:00 p.m. and 10:00 p.m. on October 29, 2007, a burglary occurred at the home of Vicki Royce at 406 Meadow Lane. The burglary was discovered at 10:15 p.m. when Vicki Royce returned home. The property stolen during the ~~robbery~~ ^{burglary} included a large Indian Head coin collection stored in a maroon and gold case, jewelry, and sterling silver place settings. I was given a detailed description of the stolen property when I interviewed Vicki Royce at her residence after the burglary was discovered.

While I was there, Alan Polk, a neighbor who lives at 408 Meadow Lane, saw a squad car and came over. He stated that he was out walking his dog about 9:20 p.m. that evening and that he saw a man leave Vicki Royce's house, get into a maroon or rust-colored "K-car type" station wagon, and drive off. He described the man as white, bald, approximately 5'9", of medium build, and in his early fifties.

On the morning of October 28, 2007, Officer Dave Fox of the Euphoria County Police Department received a telephone call from a woman who stated that she wished to remain anonymous. This individual informed Officer Fox that a man named Sam M. Wanna, who lives in a rented house at 721 Preston Street, invited her into his home the previous evening shortly before midnight, and offered to sell her some

Indian Head coins, jewelry, and silverware.

I ran a criminal records check and learned that Sam M. Wanna (alias Sticky-Fingered Sam) has 3 convictions for burglary (1989, 1995, 1999) and one for check forgery (1992). The criminal records show that Sam M. Wanna is 48 years old, 5'10", and weighs 170 pounds.


I went to 721 Preston Street and saw a maroon Chrysler station wagon parked in front, bearing an in-state license plate, number 256-JRV. I ran a vehicle registration check and verified that this vehicle is registered to Sam M. Wanna.

As a result of this information, it is my belief that ~~the~~ Sam M. Wanna burglarized Vicki Royce's house on October 29, 2007

III

Exhibit

D

 Support now[Sign this petition](#)

Why this petition matters




Started by **HEARTS FOR INMATES Founded by Erica Fielder**

Currently, the United States has the highest prison population than any other country. South Carolina currently has twenty four prisons through out the state. According to SCDC Profile as of June 30, 2014 there were over 20,000 inmates and over 10,000 of those inmates are sentenced under the Truth In sentencing Law. Twenty years later there has not been any retroactive relief given to those who were sentenced and under the Truth In Sentence Law or any given to those who were sentenced under the determinate or indeterminate laws. There are inmates who has served more than twenty years and are still being denied parole for the same reason each time a parole hearing is given. South Carolina Parole Board requires an inmate to have a minimum of four votes be considered for release. In most instances inmates are being denied for "nature of offense" for crimes that were committed greater than twenty years ago. South Carolina Department of Corrections requires that all inmates work within the institutions. Those inmates who work within these institutions are not receiving pay and are not given any work credits that will help the inmate earn time reduction. The Institutions are receiving free labor from the inmates without giving them any incentives for the work they are doing. In conclusion, the solutions that we pose are to reduce the mandatory minimum from 85% to 65 % retroactive including those with violent offenses, offering parole eligibility for all offenders and those who are sentenced under the "old laws" consider previous votes towards current eligibility year and reestablishing both good behavior and work credits for all. Creating such solutions will allow the inmates the opportunity to work towards their freedom, independence and coming back into society as productive citizens. All institutions where inmates are required to work should offer trades or job training that will help the inmates earn pay while incarcerated or skills that will help them become employable after being released. There are men and women who daily strive towards making better choices than the one that lead to prison. Lets help them by establishing options that will help them come back into society as productive citizens.



Share this petition in person or use the QR code for your own material.

[Download QR Code](#)

 Support now[Sign this petition](#)

WITNESSES

S.C. Highway Patrol Headquarters

M D Harrison

Law Enforcement Case #:

DOCKET NO. 2014GS3202606

The State of South Carolina

County of Lexington

ATRUE COPY
Lex. Co. C.O.P., G.S. & F.C.

274

GB

ARREST WARRANT NUMBER

2014A3210200450

COURT OF GENERAL SESSIONS

JULY TERM 2015

THE STATE

vs.

Ronald Douglas Michaux Jr

ACTION OF GRAND JURY

TRUE BILL

Stamela Baker
Foreperson of Grand Jury
Date: *7/13/15*

CDR #: 0280

Indictment for

VERDICT

GUILTY

Trafficking Cocaine (100g or more but less than 200g)

§ 44-53-0370(e)(2)(c)

DOUGLAS DRENTEN

DONALD V. MYERS, SOLICITOR

Donald Myers
Foreperson of Petit Jury
Date: *5/19/16*

CERTIFICATE OF REPORTER

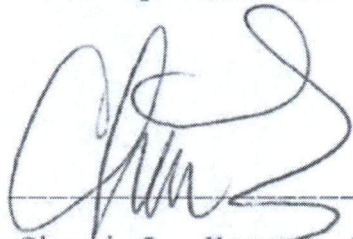
STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, Cheri L. Young, Registered Professional Reporter and Official Court Reporter for the State of South Carolina, Second Circuit-At Large, do hereby certify that the foregoing proceedings were written stenographically by me using computer-aided translation; further, that the foregoing is a true, accurate and complete record, to the best of my skill and ability, of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Lexington County, on the 25th day of August, 2016.

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

I have hereunder set my hand this 1st day of November, 2016.



Cheri L. Young, RPR
Official Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

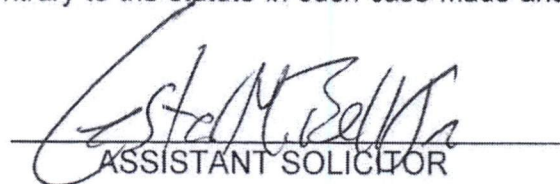
INDICTMENT FOR
Trafficking Cocaine (100g or more but less than
200g)

§ 44-53-0370(e)(2)(c)

At a Court of General Sessions, convened on August 2014, the Grand Jurors of Lexington County present upon their oath:

That **Ronald Douglas Michaux Jr** did in Lexington County, South Carolina on or about March 20, 2014 knowingly, intentionally, willfully, and unlawfully sell, cultivate, manufacture, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise, aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of cocaine, a controlled substance under the provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in a quantity of one hundred (100) grams or more but less than two hundred (200) grams, in violation of § 44-53-370 (e)(2)(c), Code of Laws of South Carolina, 1976, as amended.

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


ASSISTANT SOLICITOR

A TRUE COPY
JUL 20 2014

276
STATE OF SOUTH CAROLINA

25 yrs + \$50,000
IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.
Ronald Douglas Michaux Jr
AKA:
Race: Black Sex: M Age: 33
DOB: SS#:
Address: Edgecomb Ave
City, State, Zip: Fayetteville, NC 28301
DL#: SID#:
*CDL Yes No CMV Yes No Hazmat Yes No

INDICTMENT/CASE#: 2014GS3202606
A/W#: 2014A3210200450
Date of Offense: 3/20/2014
S.C. Code § : 44-53-0370(e)(2)(c)
CDR Code #: 0280

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: Drugs / Trafficking in cocaine, 100 g or more, but less than 200 g

CONVICTED OF or PLEADS

in violation of § 44-53-0370(e)(2)(c) of the S.C. Code of Laws, bearing CDR Code # 0280
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Gester M Bell Sr. 100621
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 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.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED
 Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____
Substance Abuse Counseling

*Fine: _____ \$ _____ Random Drug/Alcohol testing
§ 14-1-206 (Assessments 107.5 %) \$ _____ Fine may be pd. in equal, consecutive weekly/monthly
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ Other: _____
§ 56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso 47.9 (Public Def/Prob) \$500 \$ _____
§ 14-1-212 (Law Enforce. Funding) \$25 \$ _____
§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____
§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
Proviso 90.5 (SCCJA Surcharge) \$5 \$ _____

3% to County (if paid in installments) \$ _____
TOTAL \$ _____
 Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk _____
Court Reporter: _____
Presiding Judge _____
Judge Code: 145
Sentence Date: 19 APR 16