

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Cherokee County

J. Derham Cole, Circuit Court Judge

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OCT 16 2013

S.C. Supreme Court

THOMAS ARNOLD GREGORY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000418

A P P E N D I X

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHEROKEE)

The State,)
) TRANSCRIPT OF RECORD
-vs-) 2007-GS-11-418-420
)
Thomas Arnold Gregory,)
) September 17, 2007
) Gaffney, South Carolina
Defendant.)

B E F O R E:

HONORABLE JAMES E. LOCKEMY, JUDGE; and a jury

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

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Attorney for the State

DON A. THOMPSON, ESQ.
Attorney for the Defendant

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Circuit Court Reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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NOTE: State's exhibit Nos. 1 thru 3 were premarked at the beginning of the trial.

MOTIONS AND MATTERS

1 THE COURT: I'm gonna step off the bench now and I'll
2 come back at about a quarter after so we'll be ready for the
3 jury when they come back in, let me look at a couple of
4 things, all right? Now, before we do that though, Ms.
5 Leskanic, I understand you plant to call the matter of the
6 State vs. Thomas Arnold Gregory.

7 MS. LESKANIC: Yes, Your Honor.

8 THE COURT: And, Mr. Thompson, you represent Mr. Gregory?

9 MR. THOMPSON: I do, Your Honor.

10 THE COURT: Now, Ms. Leskanic, I want to make sure a few
11 things before we go forth on this. Mr. Gregory is not in this
12 courtroom?

13 MS. LESKANIC: That is correct, Your Honor.

14 THE COURT: Madam clerk, have you had someone check to
15 see who's in the courtroom?

16 THE CLERK: Mr. Gregory? No, sir.

17 THE COURT: How 'bout having someone call out there for
18 his name Thomas Arnold Gregory. Is Thomas Arnold Gregory in
19 the courtroom?

20 (No response.)

21 THE COURT: You have the original bond payment, madam?

22 THE CLERK: Yes, sir.

23 (Whereupon, a discussion was held off the record.)

24 THE COURT: I have somewhat concern of trying someone in
25 their absence but I'll go through some of the requirements

1 right now before I make my final decision. Before I've done
2 that, madam clerk, where's he going to call the name out?

3 THE CLERK: Downstairs and outside the front.

4 THE COURT: Okay. And what is his name? Officer?

5 THE CLERK: Troy Cooper.

6 THE COURT: Troy Cooper?

7 THE CLERK: Um-hum.

8 THE COURT: Madam clerk, if you would, please stand up,
9 ma'am. Please raise your right hand.

10 BRANDY MCBEE, having been first
11 duly sworn, testified as follows:

12 THE COURT: Okay. You may be seated, ma'am. Officer
13 Cooper, come around too please, sir. Madam clerk, put Officer
14 Cooper under oath.

15 OFFICER TROY COOPER, having been
16 first duly sworn, testified as follows:

17 THE COURT: All right. Now, Officer Cooper, did you call
18 the name Thomas Arnold Gregory outside the courtroom?

19 OFFICER COOPER: I did, sir.

20 THE COURT: Did anybody respond?

21 OFFICER COOPER: No, sir.

22 THE COURT: How many times you call him?

23 OFFICER COOPER: Three times, sir.

24 THE COURT: Three times. Loudly?

25 OFFICER COOPER: Yes, sir.

MOTIONS AND MATTERS

1 THE COURT: Give me an example.

2 OFFICER COOPER: Three doors. Thomas R. Gregory, are you
3 out here?

4 THE COURT: Thomas.

5 OFFICER COOPER: R. Gregory's I believe's ---

6 THE COURT: No, sir, Thomas Arnold Gregory.

7 OFFICER COOPER: Arnold, I said "r".

8 THE COURT: Go back and call it again.

9 OFFICER COOPER: Thomas Arnold Gregory?

10 THE COURT: You hadn't called that name out?

11 OFFICER COOPER: No, sir. I called "r."

12 THE COURT: Go ahead and do an "r."

13 OFFICER COOPER: Yes, sir.

14 THE COURT: Let me hand these indictments to the state
15 and if you plan to call witnesses on that, madam solicitor,
16 why don't you go and do that and then go from there.

17 MS. LESKANIC: May it please the Court. Your Honor, this
18 is the State vs. Thomas Arnold Gregory. The state is going
19 forward on three indictments. The first is 2007-GS-11-418
20 which is a true billed indictment for possession with intent
21 to distribute crack cocaine near a school or a playground. The
22 next indictment is 2007-GS-11-419 true billed indictment for
23 resisting arrest (a). And finally, Your Honor, 2007-GS-11-420
24 a true bill indictment for trafficking crack cocaine.

25 THE COURT: All right.

7
MOTIONS AND MATTERS

1 MS. LESKANIC: If I could hand these up to Your Honor.

2 (Counsel handed the documents to the Court.)

3 THE COURT: Now, and Mr. Gregory's represented by Mr. Don
4 Thompson?

5 MR. THOMPSON: Yes, sir, that's correct.

6 THE COURT: Are you the public defender for Cherokee
7 County?

8 MR. THOMPSON: I am, Your Honor.

9 THE COURT: Now, have you met with Mr. Gregory,
10 Mr. Thompson?

11 MR. THOMPSON: I have, Your Honor. I've met with him and
12 talked with him over the telephone on several occasions.

13 THE COURT: And he's aware the charges he's facing, sir?

14 MR. THOMPSON: Yes, sir.

15 THE COURT: And you all -- were you all anticipating
16 court at this term of court for these charges?

17 MR. THOMPSON: Yes, sir.

18 THE COURT: So in other words, he was aware through you
19 that the case was gonna be called this term of court?

20 MR. THOMPSON: Yes, sir. Wednesday was a week ago. He
21 was informed that he would be up for trial this week.

22 THE COURT: All right. Now, was Mr. Gregory on a surety
23 bond? What kind of bond was he on, madam solicitor?

24 MS. LESKANIC: He was on a seventy-five thousand dollar
25 (\$75,000) surety bond which also included a provision of home

MOTIONS AND MATTERS

1 detention, Your Honor.

2 THE COURT: How was the home detention gonna be
3 enforced?

4 MS. LESKANIC: We have the home detention program. He
5 was on electronic monitoring and I received paperwork that I
6 can hand up to the Court.

7 THE COURT: Who was monitoring him?

8 MS. LESKANIC: It's...

9 THE COURT: A private company or the probation department
10 or whom?

11 MS. LESKANIC: It's a private company, Your Honor.
12 Carolina Community Services, Your Honor. It is a private
13 company.

14 THE COURT: All right. Do we have them here?

15 MS. LESKANIC: I do not, Your Honor. I can call them. I
16 have the paperwork that they turned in where he violated and
17 he removed his bracelet ---

18 THE COURT: Um-hum.

19 MS. LESKANIC: --- and also a copy of the letter that he
20 left with the bracelet that he returned on their door step.

21 THE COURT: Well, of course we don't -- how do we know
22 that he either left it or he either left the letter or he
23 either wrote the letter?

24 MS. LESKANIC: The the only thing I can say is he's given
25 another statement the handwriting's similar, Your Honor, but

MOTIONS AND MATTERS

1 and notations ---

2 THE COURT: How -- I mean, ---

3 MS. LESKANIC: --- that he makes.

4 THE COURT: --- you don't have anybody here from the
5 monitoring company to say that's where they found it and ---

6 MS. LESKANIC: I do not.

7 THE COURT: --- this is the bracelet he had on?

8 MS. LESKANIC: I do not, Your Honor, but I can ---

9 THE COURT: Are they ---

10 MS. LESKANIC: --- get them here.

11 THE COURT: --- far away?

12 MS. LESKANIC: No, sir.

13 THE COURT: I'd like to have them here if they can
14 identify the bracelet at least as the one that he was wearing
15 and we know it's no longer on him. So I would like to have
16 them here. But in any event, Mr. Thompson, you can say that
17 that you informed your client to be here today?

18 MR. THOMPSON: I did. I personally informed him that he
19 was up for trial this week.

20 THE COURT: All right. Has he contacted you in the last
21 week or so?

22 MR. THOMPSON: No, sir. I've tried to contact him last
23 week and was told, a phone number I had, a young lady answered
24 and she told me she hadn't seen him in several days.

25 THE COURT: But you said you yourself saw him.

MOTIONS AND MATTERS

1 MR. THOMPSON: I saw him Wednesday was a week ago.

2 THE COURT: Wednesday was a week ago.

3 MR. THOMPSON: I talked ---

4 THE COURT: So about twelve (12) days ago?

5 MR. THOMPSON: Let's see, today's 17th, 10th, it would
6 have been about the 5th I guess.

7 THE COURT: Well, this Wednesday will be two weeks,
8 right?

9 MR. THOMPSON: Right, this Wednesday will be two weeks.

10 THE COURT: About twelve (12) days.

11 MR. THOMPSON: Yes, sir.

12 THE COURT: And said he was up this -- has this been a
13 one week term of court?

14 MR. THOMPSON: Yes, sir.

15 MS. LESKANIC: Yes, Your Honor.

16 THE COURT: And so he was up this week term of court.

17 All right. All right. But I do want the monitoring company
18 here.

19 MS. LESKANIC: Yes, Your Honor.

20 THE COURT: All right. Bring -- come around, officer, if
21 you would, Officer Cooper. Now, sir, you realize you're still
22 under oath?

23 OFFICER COOPER: Yes, sir.

24 THE COURT: Did you go out and call the name of the
25 defendant?

MOTIONS AND MATTERS

1 OFFICER COOPER: Yes, sir.

2 THE COURT: What name was that?

3 OFFICER COOPER: Thomas Arnold Gregory.

4 THE COURT: And how many times you call it?

5 OFFICER COOPER: Three times, sir.

6 THE COURT: Anybody respond?

7 OFFICER COOPER: No, sir.

8 THE COURT: You call it very loud?

9 OFFICER COOPER: Yes, sir.

10 THE COURT: Give me one example of how loud you got.

11 OFFICER COOPER: Thomas Ryan -- Ryan -- Ronald Gregory,

12 are you out here? I went to three doors.

13 THE COURT: You did say Thomas Arnold Gregory?

14 OFFICER COOPER: Arnold, yes, sir.

15 THE COURT: All right. All right. And no response you

16 say?

17 OFFICER COOPER: No, sir.

18 THE COURT: All right. Thank you, sir.

19 OFFICER COOPER: Yes, sir.

20 THE COURT: All right. Madam clerk, if you would please,

21 you're under oath, ma'am, please stand up now. Ma'am, do you

22 have -- are you the custodian of legal documents filed in

23 Cherokee County?

24 THE CLERK: Yes, sir.

25 THE COURT: Do you have any legal documents on file or an

MOTIONS AND MATTERS

1 active open criminal case on one Tom -- Thomas Arnold Gregory
2 with the indictments being all '07 and one being 0418, one
3 being 0420 and I guess the other one being 0419?

4 THE CLERK: I have 418, 419 and 420, yes, sir.

5 THE COURT: Okay. And in those documents do you have
6 anything like a bond form?

7 THE CLERK: Yes, sir.

8 THE COURT: And is that -- you're the custodian of that
9 document?

10 THE CLERK: Yes, sir.

11 THE COURT: And it is a -- and that document you have in
12 your hand is that the bond form?

13 THE CLERK: Yes, sir.

14 THE COURT: And it has been in your custody since it was
15 filed. Does it have -- in criminal matters, you don't put a
16 file date on 'em, do you?

17 THE CLERK: Yes, sir, I have a file date.

18 THE COURT: Okay. What date is it?

19 THE CLERK: April 25th 2007 at 3:13 in the afternoon.

20 THE COURT: All right. All right. If you would, please
21 have have the court reporter mark it as Court Exhibit A.

22 (Bond form marked Court's Exhibit A.)

23 THE COURT: An do you see down on that bond form, Court
24 Exhibit A, right where the defendant...someone signed it?

25 THE CLERK: Yes, sir.

MOTIONS AND MATTERS

1 THE COURT: And does it say anything there regarding
2 requiring him to appear appear in court? If it does you need
3 to read it loud so the Court Reporter can hear with the train
4 coming by.

5 THE CLERK: Where it says, "The defendant shall appear at
6 the term of?" Okay. "The term of court of general sessions
7 beginning on demand at 9 a.m. Cherokee County Courthouse and
8 remain there throughout the term of court. If no disposition
9 is made during the term, the defendant shall appear and remain
10 throughout each succeeding term of court until final
11 disposition is made of his case unless otherwise ordered by
12 the Court."

13 THE COURT: All right. And are there other conditions on
14 the back of that form, second page of the form?

15 THE CLERK: Yes, sir.

16 THE COURT: What are those?

17 THE CLERK: "The defendant will comply with the following
18 other conditions of release: Report to surety as directed."

19 THE COURT: Um-hum. Any acknowledgments the defendant
20 made?

21 THE CLERK: He acknowledged, "I understand that if I
22 violate any condition of this order a warrant for my arrest
23 will be issued. I also understand and have been informed that
24 I have the right and obligation to be present at trial and
25 should I fail to attend the Court the trial will proceed in my

MOTIONS AND MATTERS

1 absence. It it has been explained to me that if I fail to
2 appear before the Court as required, a warrant for my arrest
3 will be issued," and he signed his name acknowledging that.

4 THE COURT: Okay. All right. All right. Then has
5 anyone -- Mr. -- Ms. Ms. Leskantic?

6 MS. LESKANIC: Leskantic [sic].

7 THE COURT: Leskanic. Do you have any questions of the
8 clerk?

9 MS. LESKANIC: I do not, Your Honor.

10 THE COURT: Mr. Thompson, any questions of the clerk?

11 MR. THOMPSON: No, sir.

12 THE COURT: All right. Make sure that's filed. You
13 make a copy of it and file that true copy and that as a court
14 exhibit.

15 THE CLERK: Okay.

16 THE COURT: And if you want to make a true copy, if they
17 don't have an objection, we'll put the true copy in as an
18 exhibit.

19 MS. LESKANIC: No objection.

20 MR. THOMPSON: No objection.

21 THE COURT: What I need to do is look at something right
22 quick. I'll be honest with you, Ms. Leskantic [sic], I I was
23 trying to decide if I wanna select this jury now. I'd like to
24 have someone to make sure that is his signature on that
25 document. And I understand you've asked that the the person

MOTIONS AND MATTERS

1 who witnessed it who is a magistrate to be here at two
2 o'clock?

3 THE CLERK: Yes.

4 THE COURT: And also we have the Carolina Bonding Company
5 and whatever.

6 MS. LESKANIC: Yes, Your Honor, she's on her way.
7 Michelle Peake is on her way.

8 THE COURT: She may be here in a few minutes then.

9 MS. LESKANIC: Yes, Your Honor.

10 UNIDENTIFIED SPEAKER: Yes, I told her to come right
11 away.

12 THE COURT: So that's and she's in Gaffney?

13 UNIDENTIFIED SPEAKER: Yes, sir.

14 THE COURT: You all have an actual EM company in Gaffney?

15 MR. THOMPSON: Yes, sir.

16 MS. LESKANIC: We do.

17 THE COURT: That's unusual. That's pretty good. All
18 right, if you would, when the jurors come in, madam court
19 reporter, I may if you got a tape handy come back with the
20 tape of that. All right. Let me step off the bench here and
21 I'll be back in in the chambers. I may call you all back
22 there.

23 (The following takes place in chambers.)

24 THE COURT: All right. Let's bring this lady in and go
25 ahead and get started.

MICHELLE PEAKE - EXAMINATION BY THE COURT

1 Hello, ma'am how are you doing?

2 MS. PEAKE: I'm doing good.

3 THE COURT: If you would -- where's the clerk? There's
4 the clerk. Set your papers down if you would please and face
5 the clerk and raise your right hand.

6 MICHELLE PEAKE, having been first
7 duly sworn, testified as follows:

8 THE COURT: Ma'am, have a seat there if you would.
9 What's your name?

10 MS. PEAKE: Michelle Peake.

11 THE COURT: P-E-A-K-E?

12 MS. PEAKE: Um-hum.

13 THE COURT: All right. Now, what business you in, Ms.
14 Peake?

15 MS. PEAKE: Electronic monitoring.

16 THE COURT: Electronic monitoring. Have you in anyway
17 come in contact with a Thomas Arnold Gregory?

18 MS. PEAKE: Yes, sir.

19 THE COURT: And how's that?

20 MS. PEAKE: He was hooked up on our program on, um, April
21 17th of '07.

22 THE COURT: April 17th of '07.

23 MS. PEAKE: Um-hum.

24 THE COURT: All right. And when's the last -- did you
25 actually do it, to talk with him or get involved with him at

MICHELLE PEAKE - EXAMINATION BY THE COURT

1 all?

2 MS. PEAKE: No, he he sought me out.

3 THE COURT: I know but did you meet with him? Have you
4 met with him?

5 MS. PEAKE: To qualify for this program?

6 THE COURT: In any way.

7 MS. PEAKE: Yeah, I had to. I had to meet with him ---

8 THE COURT: All right.

9 MS. PEAKE: --- in the Cherokee Detention Center to
10 qualify him.

11 THE COURT: All right. And do you remember the last time
12 it was you talked with him?

13 MS. PEAKE: Thursday the 6th, 9/6/07.

14 THE COURT: Okay. And why were you talking with him on
15 Thursday the 6th?

16 MS. PEAKE: That is his report day. He called me about
17 quarter till four stating he would not be able to come
18 Thursday to report, that he would be there first thing in the
19 morning on that Friday morning. This was not the first time.

20 THE COURT: Not too fast.

21 MS. PEAKE: So I said that will be fine.

22 THE COURT: In other words, he had missed other
23 appointments.

24 MS. PEAKE: Not -- due to a ride or not having his money
25 for his, uh, ankle bracelet, he would wait until the following

MICHELLE PEAKE - EXAMINATION BY THE COURT

1 day.

2 THE COURT: So you require them to meet with you once a
3 week ---

4 MS. PEAKE: Um-hum.

5 THE COURT: --- in person?

6 MS. PEAKE: Um-hum.

7 THE COURT: All right. And so he said he wouldn't be
8 there on Thursday the 6th but he'd be there on Friday the 7th.

9 MS. PEAKE: Yes, sir.

10 THE COURT: Did he show up on Friday the 7th?

11 MS. PEAKE: No, sir, I didn't see him. He dropped his
12 equipment off.

13 THE COURT: How do you know that?

14 MS. PEAKE: Because I I received it Friday morning when I
15 got to work about ten o'clock a.m. that morning.

16 THE COURT: Okay. How do you know he dropped the
17 equipment off? Where did he put it?

18 MS. PEAKE: I don't know. He dropped it off. I received
19 his equipment. I don't know how the equipment got there.

20 THE COURT: Okay. The equipment, are you sure that was
21 the equipment he had?

22 MS. PEAKE: Yes, sir.

23 THE COURT: In other words, you have a way of knowing by
24 numbers or registration numbers what -- what's -- who's
25 assigned ---

MICHELLE PEAKE - EXAMINATION BY THE COURT

1 MS. PEAKE: Who is assigned to what unit.

2 THE COURT: And you have his number?

3 MS. PEAKE: Yes, sir.

4 THE COURT: What was it?

5 MS. PEAKE: It was 34859 and that was his box that he
6 carried around. His ankle bracelet, his transmitter number
7 was 575081472.

8 THE COURT: And when you got this equipment, this
9 equipment was in fact have -- that equipment had those numbers
10 on it?

11 MS. PEAKE: He didn't turn in his ankle bracelet. He
12 turned in the most important part but he didn't turn in the
13 ankle bracelet. He didn't cut it 'cause I always warn anyone
14 if you cut your bracelet that's escape. I guess I wasn't
15 clear enough that if you turn your equipment in that's also
16 escape also.

17 THE COURT: What did he actually leave or what what was
18 actually left there?

19 MS. PEAKE: Okay. Um, the base that sits at home with
20 our GPS monitoring, he had to be GPS monitored which means he
21 carries around a little battery type deal and as long as it's
22 near this leg (indicating), it has to be near this leg at all
23 times then the satellite in the sky can watch everywhere he
24 goes.

25 THE COURT: And so without that you can't find him?

MICHELLE PEAKE - EXAMINATION BY THE COURT

1 MS. PEAKE: No.

2 THE COURT: So he brought that?

3 MS. PEAKE: (The witness nodded in the affirmative.)

4 Yes, sir.

5 THE COURT: And did someone in your, did someone in your
6 office receive it or was it just left at your door?

7 MS. PEAKE: It was left on the front porch of the
8 office.

9 THE COURT: So and your and your employee told you
10 that?

11 MS. PEAKE: No, I re -- I personally came to work Friday
12 morning and saw a birthday bag and inside was Thomas Arnold's
13 equipment along with this letter.

14 THE COURT: What's a birthday bag?

15 MS. PEAKE: Birthday hand tote bag.

16 THE COURT: Oh, it -- for an actual birthday?

17 MS. PEAKE: Yeah.

18 THE COURT: Like you'd give a gift.

19 MS. PEAKE: I still have it, yeah, sir.

20 THE COURT: And so inside was that ---

21 MS. PEAKE: His equipment. Everything accept his
22 bracelet including this letter (indicating).

23 THE COURT: Okay. The letter?

24 MS. PEAKE: Yes, sir, the letter was folded up like so
25 (indicating).

1 THE COURT: Have you ever received a letter from him
2 before?

3 MS. PEAKE: No, sir.

4 THE COURT: Okay. What's the letter say?

5 MS. PEAKE: As best I can make out, "I'm very sorry about
6 what I have did. Thing just ain't for me in jail. I for to
7 die in there. Just like I said you will always know my core
8 from the heart. Well it time for me to go. May all God bless
9 be upon you and your family. Thank you. P. S. my family
10 don't have nothing to what am doing so please keep them out."

11 THE COURT: Had you talked with him before?

12 MS. PEAKE: The day before I got this.

13 THE COURT: Did he speak in broken english kinda like
14 that or...

15 MS. PEAKE: Yeah, Thomas wasn't very educated. I'm sure
16 in his mind he meant it better but it come out like this.

17 THE COURT: But he'd never written something to you
18 before..

19 MS. PEAKE: Not other than his signature.

20 THE COURT: Okay. All right. And since then you've not
21 heard from him, talked with him or didn't receive anything
22 from him?

23 MS. PEAKE: No, sir.

24 THE COURT: All right. And any questions, Ms. Leskantic
25 [sic]?

MICHELLE PEAKE - EXAMINATION BY THE COURT

1 MS. LESKANIC: No, Your Honor.

2 THE COURT: Mr. Thompson?

3 MR. THOMPSON: No, sir.

4 THE COURT: All right if you would, could you -- would
5 you mind if we made a copy of that and let you all agree it's
6 an accurate copy and then mark that as Court's Exhibit B, I
7 guess, or 2 or whatever, okay? And also I wouldn't mind
8 having a copy of the monitoring stuff there. If you could
9 just make copies of it, we'll get it later.

10 MS. PEAKE: Of the violation?

11 THE COURT: Something that shows his his number that was
12 on the equipment that was turned in.

13 MS. PEAKE: There's two pieces of paper with equipment
14 numbers on it.

15 THE COURT: Mr. Thompson, would you agree -- now those
16 originals or copies?

17 MS. PEAKE: Originals.

18 THE COURT: All right. Make copies and make sure
19 Mr. Thompson reads those, a copy of the originals.

20 THE COURT: All right. Ma'am, thank you very much.

21 MS. PEAKE: No problem.

22 (Carolina Community Service Intake Form marked Court's
23 Exhibit B.)

24 THE COURT: All right. Now, madam solicitor, you say you
25 have a a sheet that is a notice of the trial list.

MATTERS AND MOTIONS

1 MS. LESKANIC: Yes, Your Honor.

2 THE COURT: And you sent it directly to the defendant?

3 MS. LESKANIC: No, Your Honor. This is the published
4 docket that is published for Cherokee County for the term of
5 court beginning September 17th 2007 and Thomas Gregory is
6 listed as Number 9 on that trial docket. We also have a copy
7 of the letter that was sent to his bondsman Kenneth Tate at
8 , Gaffney, South Carolina 29340.

9 THE COURT: Well, that is also the defendant's address.
10 No, I'm sorry. No it isn't. Kenneth Tate, I'm sorry. In
11 fact, I'm looking to see where the defendant -- oh, here's the
12 address it's

13 MS. LESKANIC: Yes, Your Honor, and due to his
14 representation I'm not permitted of course to have ---

15 THE COURT: Yeah.

16 MS. LESKANIC: --- actual contact with him so these are
17 the documents.

18 THE COURT: And, Mr. Thompson, you got a -- you knew the
19 trial list too?

20 MR. THOMPSON: Oh, yes, sir. I I received the trial
21 list. Now, I received the trial list after I had talked with
22 Mr. Gregory but I had already been told by the solicitor that
23 there was an offer made on Wednesday of two weeks ago, and I
24 was told that if he didn't accept that offer by the end of the
25 term of court two weeks ago which was gonna end on Thursday

MATTERS AND MOTIONS

1 his offer was off the table and he was up for trial this week,
2 first trial this week.

3 THE COURT: And you informed of him of that?

4 MR. THOMPSON: I did that on ---

5 THE COURT: Did he tell you he was refusing the offer?

6 MR. THOMPSON: No, sir, he actually told me he was going
7 to accept the offer and I expected him to be in court the next
8 morning but he did not show.

9 THE COURT: Next morning meaning?

10 MR. THOMPSON: Thursday morning.

11 THE COURT: Last week?

12 MR. THOMPSON: Yes, sir, the 6th.

13 THE COURT: So you all had ---

14 MR. THOMPSON: No, no, no, no, Thursday. It was a week
15 ago the 6th.

16 THE COURT: So you all had court that week?

17 MR. THOMPSON: Yes, sir.

18 THE COURT: And then you had no court, then you had
19 court?

20 MR. THOMPSON: That's correct.

21 THE COURT: All right. And so you told him if he didn't
22 accept the offer he was gonna be first up for trial this week?

23 MR. THOMPSON: Yes, sir.

24 THE COURT: Which is the week of the -- I guess this is
25 the 19th is it? 19, 20 ---

MATTERS AND MOTIONS

1 MS. LESKANIC: 17th.

2 MR. THOMPSON: 17.

3 THE COURT: Seventeenth, week of 17th.

4 MR. THOMPSON: Yes, sir.

5 THE COURT: All right. Okay. I find after reviewing, if
6 you would you can mark that also if you would as Court
7 Exhibit C, but I find after reviewing court Exhibit A, the
8 bond form, form that is signed by Mr. Gregory that he was
9 informed that he was supposed to be in court until his case
10 was disposed of after he was released on bond back in April of
11 '07. I further find he signed understanding the conditions of
12 the bond were that if he -- that he had the right to be in
13 court and that and he had an obligation to be in court and
14 that if he failed to attend the court, the trial would proceed
15 in his absence. And I find that he was aware that court was
16 going to proceed this week with his case. I find further that
17 that he has removed the electronic monitoring system in which
18 he was on as a part of his bond and is therefore no longer
19 able to be located because of that that electronic monitoring
20 system and that also gives me a strong suspicion that he is
21 voluntarily -- no I find that he's voluntarily not showing up
22 here for court although he was aware that he was supposed to
23 be here and that he therefore he's not here voluntarily, that
24 he was notified to be here, he he knew he was supposed to be
25 here, he knew the nature of the charges against him and that

MATTERS AND MOTIONS

1 the case will proceed in his absence. One second. All right.

2 Now, Mr. Thompson, you will maintain your representation
3 of him?

4 MR. THOMPSON: Yes, sir, and ---

5 THE COURT: And I'll make sure the jury's informed that
6 they're not to hold anything against him or make any decisions
7 because of that, that the state has a burden of proof beyond a
8 reasonable doubt and that the fact he's not here should not in
9 anyway affect their decision in that regard, they she'll --
10 still need to make a decision whether state's proven guilt
11 beyond a reasonable doubt and should not hold this against him
12 whatsoever. All right. So you're gonna continue to represent
13 him?

14 MR. THOMPSON: Yes, sir. I have not given him any notice
15 that I was gonna move to not represent him so I I think
16 I'm ---

17 THE COURT: Okay.

18 MR. THOMPSON: --- bound to it.

19 (Court docket marked Court's Exhibit C.)

20 (The following takes place in open court.)

21 THE COURT: All right. Madam solicitor, if you would,
22 call the case please, ma'am.

23 MS. LESKANIC: May it please the Court. Your Honor, this
24 is the State vs. Thomas Arnold Gregory. The state is
25 proceeding on indictments 2007-GS-11-0418 a true bill

JURY QUALIFICATION

1 indictment for possession with intent to distribute crack
2 cocaine near a school or playground; indictment
3 2007-GS-11-0419 true bill indictment for resisting arrest and
4 07-GS-11-0420 a true bill indictment for trafficking in crack
5 cocaine. May I approach?

6 THE COURT: Okay. Yes, ma'am.

7 (Counsel handed the documents to the Court.)

8 THE COURT: Mr. Thompson, you represent Mr. Gregory?

9 MR. THOMPSON: I do, Your Honor.

10 THE COURT: All right. Ladies and gentlemen of the jury,
11 I'm about to draw a jury in this case. Before I do so I want
12 to read the names of some people who may or may not testify
13 because they may testify. I wanna find out what your
14 connection or knowledge of these people are if any. I'm gonna
15 read a few names out first: Brian Quinn of the South Carolina
16 Highway Patrol, Stephen Poole of the South Carolina Highway
17 Patrol, Christy Poole of the Metro Narcotics Unit, Carmen J.
18 Tucker of SLED, South Carolina Law Enforcement Division. Does
19 anyone on the jury panel have any knowledge or kinship or
20 business or personal or socia -- or social relationship with
21 those individuals that I mentioned? Stand up please, ma'am.
22 What is your name, ma'am?

23 UNIDENTIFIED JUROR: Kelley Kennedy. My ---

24 THE COURT: You're Kelley Kennedy and what's your number
25 Ms. Kennedy?

JURY QUALIFICATION

1 JUROR NUMBER 47: 47.

2 THE COURT: All right, Ms. Kennedy, which one of the
3 people I mentioned do you know?

4 JUROR NUMBER 47: The first three I don't know personally
5 but I do know of them because my husband's a sergeant with the
6 Gaffney Police Department.

7 THE COURT: All right. Knowing that, ma'am, will that
8 affect your ability to be fair and impartial?

9 JUROR NUMBER 47: I don't think so. I just know their
10 names.

11 THE COURT: So, ma'am, would that affect your ability to
12 be fair and impartial?

13 JUROR NUMBER 47: No.

14 THE COURT: All right. Would you look upon them like you
15 would any other witness?

16 JUROR NUMBER 47: Yes.

17 THE COURT: You'd be fair both to the state and to the
18 defense?

19 JUROR NUMBER 47: Yes, sir.

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

21 Also, David Oglesby who is with the Cherokee County
22 Sheriff's Department may testify in the case. You may know
23 his name but if you know Mr. Oglesby, you're kin to
24 Mr. Oglesby or you have any business, personal, social
25 relationship with him or you have some other association with

JURY QUALIFICATION

1 him, if you would please stand up.

2 (No response.)

3 THE COURT: Does anybody feel they'll look upon him
4 differently than they would look upon any other witness, if so
5 please stand up.

6 (No response.)

7 THE COURT: Also, Johnny Price with the Central Evidence
8 Facility. Is that in Cherokee County?

9 MS. LESKANIC: No, Your Honor, that's in Columbia.

10 THE COURT: Columbia. Anybody know Johnny Price with
11 SLED?

12 (No response.)

13 THE COURT: Okay. And I guess we'll wait and see who
14 your representative is from the detention center when we do
15 the other matter. Also the defendant Thomas Arnold Gregory,
16 anybody know Mr. Thomas Arnold Gregory?

17 (No response.)

18 THE COURT: All right. If you have, we already know one
19 lady but other than her, anyone else related to anyone and
20 when I say related let's say brother, sister, a spouse,
21 parents, uncle or ant or first cousin with somebody in law
22 enforcement, if you're that close to 'em, stand up for me
23 please. Anyone else? Anyone else? All right. What is your
24 name, ma'am?

25 JUROR NUMBER 11: Emily Blackwell, No. 11.

JURY QUALIFICATION

1 THE COURT: All right and, Ms.. Blackwell, who do you have
2 as a relative?

3 JUROR NUMBER 11: I have a son. He's a reserve officer
4 for the Cherokee County Sheriff's Department.

5 THE COURT: Thank you, ma'am. You may be seated. Anyone
6 else? Now, that just doesn't mean Cherokee County...anywhere.
7 South Carolina or some other state or whatever.

8 (No response.)

9 THE COURT: Okay. Does anyone have any involvement with
10 working with programs with law enforcement or with
11 prosecute -- prosecution teams, the volunteer work or whatever
12 else if so please stand up. What is your name, ma'am?

13 JUROR NUMBER 71: Juror No. 71. I'm Patsy Peeler. I
14 worked with Private Probation & Parole approximately three
15 years ago in Greer South Carolina under the company Maximus.

16 THE COURT: As a what, ma'am?

17 JUROR NUMBER 71: Maximus Private Probation and Parole.

18 THE COURT: And what did that project do?

19 JUROR NUMBER 71: We basically did programs. We did
20 domestic counseling for domestic violence, we did drug
21 counseling, we did drug testing, we were ---

22 THE COURT: Were you -- this volunteer or employed?

23 JUROR NUMBER 71: Employed.

24 THE COURT: All right. Now, ma'am, would that in any way
25 affect your ability to be fair and impartial?

1 JUROR NUMBER 71: No, sir.

2 THE COURT: You'd be fair both to the state and to the
3 defendant?

4 JUROR NUMBER 71: Yes, sir.

5 THE COURT: All right. Thank you, ma'am. You may be
6 seated.

7 THE COURT: Anyone else?

8 (No response.)

9 THE COURT: The allegations in this case involve
10 allegations of illegal drug activity, allegations. Does
11 anyone feel that simply because the allegations involve
12 allegations about drug activity simply because that fact in
13 and of itself would cause you to be not to be able to be fair
14 or impartial? If you feel that just because the allegations
15 involve illegal drug activity allegations that you could not
16 be fair and impartial, please stand up.

17 (No response.)

18 THE COURT: Now, ladies and gentlemen, these three sheets
19 of paper I have in my hand are called indictments charging the
20 defendant with trafficking cocaine, resisting arrest and
21 possession of cocaine near a playground or school, these are
22 just that, indictments. They're not evidence that Mr. Gregory
23 has committed any crime whatsoever. The burden is upon the
24 state to prove guilt beyond a reasonable doubt. Mr. Gregory
25 does not have to prove himself innocent. Once again the

JURY QUALIFICATION

1 burden's on the state and in fact Mr. Gregory is presumed
2 innocent unless guilt is proven beyond a reasonable doubt. As
3 jurors the responsibility of a juror or jury will be to make a
4 determination of whether the state has proven facts and what
5 facts they've proven and then once they determine what facts
6 they've proven they'll then take the law as I give it to them
7 in which they must use and accept and determine if the facts
8 they feel the state's proven beyond a reasonable doubt will be
9 such to find the defendant guilty of the crime. Does anyone
10 feel they could not follow that process?

11 (No response.)

12 THE COURT: Okay. Other than attorney representation any
13 other voir dire requests from the state?

14 MS. LESKANIC: No, Your Honor.

15 THE COURT: From the defense?

16 MR. THOMPSON: No, sir.

17 THE COURT: All right. If you would, Ms. Leskanic,
18 introduce yourself to the jury.

19 MS. LESKANIC: Thank you. May it please the Court.

20 THE COURT: Um-hum.

21 MS. LESKANIC: My name's Kim Leskanic and I'm assistant
22 solicitor here for Cherokee County.

23 THE COURT: All right. Anybody related by blood or
24 marriage to Ms. Leskanic or have any business, personal or
25 social relationship with her or anybody within the solicitor's

JURY QUALIFICATION

1 office of the Seventh Judicial Circuit, if so please stand up.

2 (No response.)

3 THE COURT: Okay. Mr. Thompson.

4 MR. THOMPSON: My name's Don Thompson. I'm a chief
5 public defender here in Cherokee County.

6 THE COURT: Anybody of the jury panel related by blood or
7 marriage to Mr. Thompson or have any business, personal or
8 social relationship with him or with anybody that practices
9 law with him at all, if so please stand up.

10 (No response.)

11 THE COURT: Okay. Now, ladies and gentlemen of the jury,
12 we're about to draw the jury. The defendant is not here at
13 this time; however, that in no way lessens the responsibility
14 of the state to prove guilt beyond a reasonable doubt. The
15 burden is still upon the state to prove guilt beyond a
16 reasonable doubt. The fact the defendant is not here should
17 in no way, in no way prejudice him or in no way should you
18 hold that against the defendant. Does anybody feel that that
19 would affect their ability to be fair and impartial, if so
20 please stand up.

21 (No response.)

22 THE COURT: Okay. Any objections from the state, defense
23 to my voir dire questions to the jury?

24 MS. LESKANIC: No, Your Honor. Thank you.

25 MR. THOMPSON: No, sir.

JURY QUALIFICATION

1 THE COURT: All right. If you would, ladies and
2 gentlemen, we're gonna select a jury. The way we're gonna do
3 that is your name's in this cylinder here (indicating).
4 They've turned it around and around and around and they're
5 gonna select names. When they select names, if you would come
6 on down front, right in front of Ms. McBee here, turn around
7 and face the doors at the back and then at that point in time
8 each side will have an opportunity to either select you or
9 excuse you in this particular trial. Please stand there and,
10 Ms. McBee, what I'll do is I'll ask you, if you would, once
11 they've been excused by either side you ask them to go have a
12 seat in the jury box or back out in the audience, that way you
13 can stand in here until the clerk tells you either to go sit
14 in the jury box and then the bailiff will take care of you or
15 to go back in the audience to your seat. So the best thing is
16 to stand right there until then that way you won't be worried
17 about, Am I supposed to move, I'm not supposed to move, what
18 am I supposed to do?. So just come stand here till Ms. McBee
19 tells you what to do otherwise, all right?

20 Now, any objection from the state or from the defense the
21 names being drawn in capsules or not?

22 THE CLERK: They're in capsules.

23 THE COURT: Names in the capsules drawn by the clerk's
24 office, any objection from either side?

25 MS. LESKANIC: Not from the state, Your Honor.

JURY QUALIFICATION

1 MR. THOMPSON: No, sir.

2 THE COURT: All right. Do we have five and five or five
3 and ten here?

4 MR. THOMPSON: Five and five I believe, Your Honor.

5 MS. LESKANIC: Five and five.

6 THE COURT: I think it is. Discharge five and five.

7 Five and five are the strikes. First name, if you would,
8 please step down here. Bring everything you brought with you
9 when your name is called.

10 THE CLERK: Juror 24, Debra Elmore. What says the state?

11 MS. LESKANIC: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. THOMPSON: Excuse Ms. Elmore from trial in this case
14 please.

15 THE CLERK: You have been excused.

16 Juror 44, Jacinda Johnson. What says the state?

17 MS. LESKANIC: Please present the juror.

18 THE CLERK: What says the defense?

19 MR. THOMPSON: Seat the juror please.

20 THE CLERK: Please take a seat in the jury box.

21 Juror 63, Charles Mills. What says the state?

22 MS. LESKANIC: Please present the juror.

23 THE CLERK: What says the defense?

24 MR. THOMPSON: Seat juror please.

25 THE CLERK: Please take a seat in the jury box.

JURY QUALIFICATION

1 Juror 113, Lloyd Parris. What says the state?

2 MS. LESKANIC: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. THOMPSON: Seat the juror, please.

5 THE CLERK: Please take a seat in the jury box.

6 Juror 95, Susan Westbrooks. What says the state?

7 MS. LESKANIC: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. THOMPSON: Seat juror, please.

10 THE CLERK: Please take a seat in the jury box.

11 Juror 79, Kenneth Sarratt. What says the state?

12 MS. LESKANIC: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. THOMPSON: Seat the juror, please.

15 THE CLERK: Please take a seat in the jury box.

16 Juror 47, Kelley Kennedy. What says the state?

17 MS. LESKANIC: Please present the juror.

18 THE CLERK: What says the defense?

19 MR. THOMPSON: Excuse Ms. Kennedy from the trial of this
20 case, please.

21 THE CLERK: You have been excused.

22 Juror 112, Jonathan Oglesby. What says the state?

23 MS. LESKANIC: Please present the juror.

24 THE CLERK: What says the defense?

25 MR. THOMPSON: Seat juror, please.

JURY QUALIFICATION

1 THE CLERK: Please have a seat in the jury box.
2 Juror 93, Jameka Watkins. What says the state?
3 MS. LESKANIC: Please excuse the juror from service in
4 this case.
5 THE CLERK: You have been excused.
6 Juror 57, Timothy McCraw.
7 THE COURT: What number?
8 THE CLERK: 57.
9 THE COURT: McCraw?
10 THE CLERK: Yes, sir.
11 THE COURT: What says the state?
12 MS. LESKANIC: Please present the juror.
13 THE CLERK: What says the defense?
14 MR. THOMPSON: Seat juror, please.
15 THE CLERK: Please take a seat in the jury box.
16 Juror 25, Karen Fowler. What says the state?
17 MS. LESKANIC: Please present the juror.
18 THE CLERK: What says the defense?
19 MR. THOMPSON: Seat juror, please.
20 THE CLERK: Please take a seat in the jury box.
21 Juror 108, Richard Norris. What says the state?
22 MS. LESKANIC: Please present the juror.
23 THE CLERK: What says the defense?
24 MR. THOMPSON: Seat juror, please.
25 THE CLERK: Please take a seat in the jury box.

JURY QUALIFICATION

1 Juror 66, Florence Morgan. What says the state?

2 MS. LESKANIC: Please present the juror.

3 THE COURT: What says the defense?

4 MR. THOMPSON: Seat juror, please.

5 THE CLERK: Please take a seat in the jury box.

6 Juror 69, Melanie Nance. What says the state?

7 MS. LESKANIC: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. THOMPSON: Seat juror, please.

10 THE CLERK: Please take a seat in the jury box.

11 Juror 81, Brenda Scruggs. What says the state?

12 MS. LESKANIC: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. THOMPSON: Seat juror, please.

15 THE CLERK: Please take a seat in the jury box.

16 THE COURT: And let's get one alternate, please. One
17 strike for the state, two for the defense.

18 THE CLERK: Juror 28, Maurice Galmon.

19 THE COURT: Last name?

20 THE CLERK: Galmon. What says the state?

21 MS. LESKANIC: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. THOMPSON: Seat juror, please.

24 THE CLERK: Please take a seat in the jury box.

25 MR. THOMPSON: May I have a moment with the solicitor,

JURY QUALIFICATION

1 Your Honor?

2 THE COURT: Um-hum.

3 (Whereupon, a discussion was held off the record.)

4 THE COURT: If you would, ladies and gentlemen of the
5 jury, I'm about to let you go to lunch, do you all have any
6 motions regarding the jury selection before I decide that?

7 MS. LESKANIC: None from the state.

8 MR. THOMPSON: No, sir,

9 THE COURT: All right. Ladies and gentlemen of the jury,
10 I'm gonna let you all go to lunch. If you would, return
11 at -- they'll take you back to the jury room here to show you
12 the jury room and show you how to come back to the jury room.
13 I assume, Mr. Bailiff, they don't need to come back to the
14 court room, right.

15 THE BAILIFF: They come this way.

16 THE COURT: There's a way for you -- you should come back
17 to the jury room right through the hallways and steps and all
18 that. He'll show you to do that but if you would, be back at
19 let's say 2:30, 2:30. So we'll see you then. Do not discuss
20 this case among yourselves or with anyone else between now and
21 then. When you do get back at 2:30, among yourselves,
22 everybody but Mr. Galmon who's the alternate he would not be
23 qualified but everyone else is, all right, choose who you want
24 to be your foreperson, who to be your foreperson. Just let me
25 know who is gonna be your foreperson. That's the

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1 administrative spokesperson of the jury. It's someone who has
2 no more power, no more authority really than any other juror,
3 it just means that that person will be the one to begin the
4 deliberations, will do whatever communications to the Court
5 that you need to do as well as the one who will sign the
6 verdict form, all right? So select that person from among the
7 twelve (12) of you. See you at 2:30. Have a good lunch. You
8 may leave at this time.

9 (The remaining jurors who were not selected for trial
10 were released.)

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: Okay. You all have -- do we have a
14 *Jackson v. Denno*, search and seizure matters and whatever from
15 anyone? All right, Mr. Thompson.

16 MR. THOMPSON: I have one *Jackson v. Denno* motion and one
17 motion just dealing with the relevance of evidence. Maybe not
18 relevance but whether or not its prejudicial value outweighs
19 its probative value.

20 THE COURT: All right. Ms. Leskanic, do you plan on
21 putting in any statement made by the defendant in this case?

22 MS. LESKANIC: Yes, Your Honor.

23 THE COURT: Tell me the circumstances of that.

24 MS. LESKANIC: After he was arrested it was two days
25 later he requested that Christy Poole who is with the Metro

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1 Narcotics Unit come visit, excuse me, come visit him at the
2 jail. While she was there with detective and Captain Oglesby,
3 the defendant gave a written statement as to the circumstances
4 of this arrest.

5 THE COURT: Was this -- I assume because of the witnesses
6 this is a vehicle type situation, a vehicle stop of some
7 type.

8 MS. LESKANIC: It is, Your Honor.

9 THE COURT: Was he the only one in the vehicle?

10 MS. LESKANIC: No, Your Honor, there was a passenger in
11 the car also.

12 THE COURT: So you're trying to clear it to make sure
13 there's no doubt who had the possession of the drugs?

14 MS. LESKANIC: No, Your Honor. The the testimony will
15 show that this defendant had the drugs in his pants and while
16 he was being chased by Officer Poole, he threw the drugs down.
17 But he did request to speak with the Metro Narcotics Unit,
18 gave a statement admitting that while he was being chased by
19 Officer Poole that he did throw his drugs down on the
20 street..

21 THE COURT: Is Officer Poole prepared to testify she
22 observed him throw 'em down anyway?

23 MS. LESKANIC: Yes, Your Honor, he is prepared to testify
24 today.

25 THE COURT: He. I'm sorry. We got two Pooles here. Are

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1 they related by the way?

2 MS. LESKANIC: They are.

3 THE COURT: And so you have Officer Poole who was gonna
4 testify that he actually saw the drugs being dr -- thrown but
5 also you want to introduce a statement of the defendant that
6 he actually threw the drugs out.

7 MS. LESKANIC: That's correct, Your Honor.

8 THE COURT: Okay. And, Mr. Thompson, do you plan to have
9 witnesses in opposition to to that ---

10 MR. THOMPSON: No, sir.

11 THE COURT: --- that he made it freely? And are you
12 gonna say that he -- that -- is your testimony such that Mr.
13 Gregory is given his Miranda rights and he did it freely and
14 voluntarily?

15 MS. LESKANIC: Yes, Your Honor, he completed a
16 pre-interrogation waiver form prior to speaking with officers.

17 THE COURT: And the officers did not initiate the
18 conversation ---

19 MS. LESKANIC: That's correct.

20 THE COURT: --- or the contact? Was he represented at
21 that time, Mr. Thompson?

22 MR. THOMPSON: I don't believe he was at that time,
23 Judge. We began representing him on the 7th of March and that
24 statement was given on ---

25 MS. LESKANIC: February ---

1 THE COURT: 7th of March?

2 MR. THOMPSON: Yes, sir. The statement was given on the
3 28th of February.

4 THE COURT: Okay. All right. Okay. And what other
5 motions do you have, sir?

6 MR. THOMPSON: The only other motion I have, Judge, and
7 I'll give you a little bit of background so you'll understand
8 where I'm coming from, this was a traffic stop as you surmised
9 and they had Mr. Gregory out of the car and the officer says
10 that he, Mr. Gregory, threw down a bag of marijuana, that
11 threw the marijuana down, took off running, officer took off
12 after him. On that chase the officer says that Mr. Gregory
13 threw a bag of crack cocaine. My motion is to suppress the
14 marijuana. I realize it may have some relevance to the
15 rate ---

16 THE COURT: Of which he's not charged with here.

17 MR. THOMPSON: Well, he's not charge here. He was
18 charged. That's been handled in magistrate's court.

19 THE COURT: Okay.

20 MR. THOMPSON: I realize it may have some relevance as
21 part of the *res gestae* but I also would argue that the
22 prejudicial value of that especially since it was drugs would
23 far outweigh any probative value that the state would derive
24 from putting it in. I mean, they're gonna testify they saw
25 him throw down the crack. So the throwing down the marijuana

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1 would have nothing to do with throwing down the crack in two
2 different locations.

3 THE COURT: All right. Ms. Leskantic [sic], what is your
4 position on that?

5 MS. LESKANIC: Our position, Your Honor, is it is part of
6 the *res gestae*. What happened Trooper Poole was speaking
7 with the defendant, the defendant dropped the bag of
8 marijuana, Trooper Poole saw it, told him, "You dropped
9 something," reaches to put his hands on him to place him under
10 arrest, at that point his test ---

11 THE COURT: Well, why is Trooper Poole gonna put him
12 under arrest for dropping something?

13 MS. LESKANIC: Because he can tell that it's marijuana.

14 THE COURT: All right. So until that time he had no
15 reason to arrest him.

16 MS. LESKANIC: Well, I believe they were checking to see
17 if he was driving under suspension. He had been pulled over
18 for a seat belt violation. But he is outside talking to the
19 trooper, they're waiting to hear from communications, he drops
20 the marijuana, Trooper Poole reaches to place his hand on him,
21 at that point the defendant pushes off of him, takes off
22 running down Limestone Street and Wall Street, Trooper Poole
23 proceeds to chase him.

24 THE COURT: Well, it, Mr. Thompson, it depends on the
25 testimony but it makes it more than *res gestae*. It also makes

1 it the reason for the initial arrest if what she says comes
2 out to be the testimony that at that point in time they had no
3 reason to arrest him since he hadn't got a report back about
4 any driving problems. And until then that they couldn't place
5 him under arrest they have no right to try and stop him and
6 then had no right for him if he wanted to run, he was running.
7 There's no resisting arrest charge so how would how would they
8 in any way succeed in resisting arrest charge unless they were
9 trying to arrest him for the marijuana? It goes more more
10 than just a *res gestae* of a cocaine charge it almost goes into
11 the basis for the resisting arrest charge. So anyway let me
12 listen to the testimony and and I will let you know.

13 MR. THOMPSON: All right, sir.

14 THE COURT: Okay. Any other matters of concern?

15 MR. THOMPSON: No, sir.

16 THE COURT: All right 'cause the cocaine the testimony is
17 gonna be it was dropped in the open.

18 MS. LESKANIC: Yes, Your Honor, while he was running.

19 THE COURT: So there was no search to find it was dropped
20 in the ocean -- open ---

21 MS. LESKANIC: Correct.

22 THE COURT: --- as was the marijuana. All right.

23 Let's -- is the trooper here?

24 MS. LESKANIC: Yes, Your Honor.

25 THE COURT: Well, let's go ahead and see if we can get

TROOPER STEPHEN POOLE - DIRECT EXAMINATION BY MS. LESKANIC

1 that testimony. Let's see if we can get it in.

2 TROOPER STEPHEN POOLE, having been
3 first duly sworn, testified as follows:

4 THE COURT: Trooper, make sure everyone can hear you, if
5 you would. Please give us your full name and spell your last
6 for us.

7 TROOPER POOLE: My name is Stephen Poole. Last name is
8 P-O-O-L-E.

9 THE COURT: All right. Madam solicitor.

10 DIRECT EXAMINATION BY MS. LESKANIC:

11 Q. Trooper Poole, if you would, please tell us where you're
12 employed.

13 A. I'm employed with the South Carolina Highway Patrol.

14 Q. And how long have you been so employed?

15 A. A little over seven years now.

16 Q. What are your general duties working with the highway
17 patrol?

18 A. Accident investigation and also enforcing the traffic
19 laws here in Cherokee and Union Counties.

20 Q. Were you working on February 26th 2007?

21 A. Yes, ma'am.

22 Q. Were you called out to assist another trooper on a
23 call?

24 A. Yes, ma'am.

25 Q. And who was that trooper?

1 A. It was Trooper Quinn. I had trained -- I was Trooper
2 Quinn's field training officer. He called me up there to see
3 if I could help identify the subject. He thought he
4 recognized him and he called me up there to right at Wall
5 Street and Limestone Street across from the Sticks Lounge.

6 Q. Okay. And that's here in Cherokee County?

7 A. Yes, ma'am, in downtown Gaffney.

8 Q. Okay. What did you do when you arrived at the scene?

9 A. When I got, when I got on the scene, Trooper Quinn
10 informed me who what he had been told the name was and when I
11 first made eye contact with the subject he was standing at the
12 front of Trooper Quinn's car at the side of it and he told me
13 that he wasn't who I thought he was, that that was his
14 brother. And at that point I hadn't even made any contact
15 with him. I asked him, "Well, why why would you think I
16 thought you were somebody?"

17 He said, "I'm not who you think I am." And Trooper Quinn
18 we kept talking to him and I did recognize him from a previous
19 encounter and I told Trooper Quinn, "This is who you think it
20 is. It's Thomas Arnold Gregory." Mr. Gregory stood there and
21 talked to me for probably six, seven minutes. We we have to
22 call all of our stuff into Blythewood, that's where our
23 communication's located out of and they do it for the whole
24 state so sometimes dependin' on how slow the systems are, it
25 can be five, six minutes before you get anything back. And we

1. was having to run him by name and date of birth because as
2. best I can recall he didn't even have a -- an identification
3. card on him.

4. When we was sittin' there talking to him, Trooper Quinn
5. went up, back up to the front of the car that he had stopped
6. and the passenger, he started talking to the passenger. I
7. can't tell you what he said. I was back with Mr. Gregory.
8. Mr. Gregory was standing there talking to Kit. He started
9. saying, "I can't go to jail. Man, I can't go to jail."

10. And I told him, I said, "Nobody said anything about
11. taking you to jail, man, just calm down. We're waiting on
12. your driving record to come back and we'll go from there."
13. And I said, "As long as you're being honest and telling us who
14. you are then what do you have to worry about going to jail
15. for?" And it was sunshine and I had sunglasses on and I
16. looked down through the bottom of my sunglasses and sitting
17. there watching him one, because we're out in the open and I
18. just got that feeling that something's bad about to happen.
19. And I thought he was fixin' to take off running on me so I
20. moved back to the back of the car to prevent him from going
21. across the train tracks, didn't think that he would go towards
22. traffic. At that time he was standing there and he reached
23. into his right pocket and I was approximately 2 to 3 foot from
24. him, he reached in his right pocket and he just very
25. nonchalant just pulled out it was a small bag, had green plant

TROOPER STEPHEN POOLE - DIRECT EXAMINATION BY MS. LESKANIC

1 like material in it, and when he pulled it out of his pocket
2 he just, once it cleared his pocket it just dropped. When I
3 seen it hit the ground it sort of stunned me that somebody
4 would do that right there in front of me and I told him I
5 said, "Hey, man, you dropped something," and when he looked
6 down, I took my left hand and when I touched him, that's when
7 he turned and shoved me off and the foot chase started. We
8 made it about twenty-five (25) ---

9 THE COURT: Why'd you touch him in the first place?

10 TROOPER POOLE: I was fixin' to place him under arrest
11 for simple possession of marijuana.

12 THE COURT: How did you know that's marijuana?

13 TROOPER POOLE: Being in seven years I -- my professional
14 opinion it was marijuana.

15 THE COURT: So you seen it many times before ---

16 TROOPER POOLE: Yes, sir, I'm ---

17 THE COURT: --- in you're profession.

18 TROOPER POOLE: I'm also one of the marijuana
19 analysists [sic] for Cherokee County for this area.

20 THE COURT: All right.

21 TROOPER POOLE: And we as about the first twenty-five
22 (25), thirty (30) foot into this foot chase, he goes back into
23 this pocket and he pulls out there's money starts coming out
24 but there's a plastic look like a little clear cellophane
25 baggy and when it hit the ground, I could tell there was some

TROOPER STEPHEN POOLE - DIRECT EXAMINATION BY MS. LESKANIC

1 type of white substance in it. It appeared to me to be some
2 form of cocaine. We was running. I called Trooper Quinn on
3 the radio and advised him to secure the drugs that he had just
4 throwed down. I told him that there was some cocaine right up
5 in front of where Trooper Quinn was at. Trooper Quinn
6 would actually -- was dealing with the passenger and didn't
7 even realize that we had left 'cause it happened pretty quick.

8 BY MS. LESKANIC:

9 Q. Okay. Let me go back to where he dropped the marijuana.
10 At that point in time had you received word from communication
11 whether he was driving under suspension or were you placing
12 him under arrest for anything else at that time?

13 A. At that time I had not, uh, they had not informed me of
14 anything. Trooper Quinn had been the one to call it in and as
15 far -- I was sittin' there conversating back and forth with
16 him with him starting about, "I can't go to jail," I was
17 basically just trying to keep him calm because he didn't
18 really have no reason to be upset not that I knew about.

19 Q. So at the point he dropped what appeared to be marijuana
20 to you based on your experience, you had no other reason
21 personally to place him under arrest?

22 A. No, ma'am. Okay. Thank you. That's all the questions
23 that I have, if you'd answer any questions Mr. Thompson may
24 have.

25 MR. THOMPSON: Thank you. Please the Court, Your Honor.

1 CROSS-EXAMINATION BY MR. THOMPSON:

2 Q. Now, at the point you say he pulled the marijuana out and
3 just let it drop when it cleared his pocket ---

4 A. Yes, sir.

5 Q. --- you say you reached and put your hand on him?

6 A. Yes.

7 Q. Did you actually touch him?

8 A. When I got right to him that's when he turned and he
9 turned like (demonstrating) -- if I can...

10 THE COURT: Sure.

11 (The witness stood up.)

12 TROOPER POOLE: When I reached out, he spun this way
13 (demonstrating) and pushed me off and when he throwed this
14 hand off, he actually hit this (indicating) arm with one hand
15 and hit my chest with the other.

16 THE COURT: All right. The witness is reflecting that
17 the defendant turned left, pushed the witness with his right
18 arm and touching the witness's left arm, is that right, sir?

19 TROOPER POOLE: Yes, sir.

20 THE COURT: All right.

21 BY MR. THOMPSON:

22 Q. You say that when you saw him take it out of his pocket
23 and drop it you said, "What's that?"

24 A. I said, "You dropped something."

25 Q. "You dropped something." Okay. Did you say anything

1 else to him?

2 A. Not at that point.

3 Q. Not at that point.

4 THE COURT: He did say, "Hey, man, you dropped
5 something."

6 MR. THOMPSON: Okay.

7 TROOPER POOLE: Yes, sir, I said, "Hey, man, you dropped
8 something."

9 BY MR. THOMPSON:

10 Q. Did you say anything else?

11 A. No, sir, not at that point.

12 Q. Then the chase ensued.

13 A. Yes, sir.

14 Q. Okay. While you were chasing him were you saying
15 anything?

16 A. I told him to stop running when we first took off.

17 Q. When you first took off.

18 A. Yes, sir.

19 Q. So from the fact from the, "Hey, man, you dropped
20 something," to the "stop" when you first took off, was
21 anything else said?

22 A. Not that I can recall, no, sir.

23 Q. Okay. And how far did the chase go?

24 A. Approximately six blocks.

25 Q. And I believe he went to jump over a fence and fell down

TROOPER STEPHEN POOLE - REDIRECT EXAMINATION BY MS. LESKANIC

1 and you jumped over and landed on him or something, that's the
2 way it ended?

3 A. Yes, sir.

4 Q. Something similar to that?

5 A. Yes, sir.

6 Q. Okay. At that point in time did you tell him he was
7 under arrest?

8 A. Yes, sir.

9 Q. Had you ever told him he was under arrest any point
10 before that?

11 A. No, sir.

12 Q. Okay, Thank you.

13 THE COURT: Any other questions?

14 REDIRECT EXAMINATION BY MS. LESKANIC:

15 Q. Trooper Poole, were you attempting to place him under
16 arrest when he pushed off of you and ran?

17 A. Yes, ma'am, that was my intentions.

18 Q. Okay. And were you dressed in uniform that day?

19 A. Yes, ma'am.

20 Q. Thank you. Nothing further.

21 THE COURT: Let me ask you why why did you all pull the
22 vehicle over. I was doing something else when you first
23 started. Why'd you pull the vehicle over in the first place?

24 TROOPER POOLE: Your Honor, Trooper Quinn had actually
25 stopped it and I believe ---

TROOPER STEPHEN POOLE - EXAMINATION BY THE COURT

1 THE COURT: He radioed you?

2 TROOPER POOLE: Yes, sir.

3 THE COURT: What was your understanding of why you came
4 there? Why were you brought there?

5 TROOPER POOLE: To see if I could place a positive ID on
6 this driver. He had no identification and he kept
7 rambling ---

8 THE COURT: Why would he think that you were the guy that
9 could place a positive ID on him?

10 TROOPER POOLE: 'cause I had foot chased him before.

11 THE COURT: Okay. Do you have any reason to know why
12 Trooper Quinn thought you knew this person?

13 TROOPER POOLE: Yes, sir. Approximately four months
14 prior to this I was a field training officer for Trooper Quinn
15 when he come out of the academy and we had stopped this
16 gentleman before on the other side of town and which ended up
17 in about a five block foot chase.

18 THE COURT: So in other words, Trooper Quinn didn't tell
19 you this was a certain name, he just told you it was someone
20 that he felt you knew and could you help identify him?

21 TROOPER POOLE: When he called me up there, Your Honor,
22 first thing Trooper Quinn said when I pulled up he said, "Is
23 this the guy that you chased the other day," or "the other
24 month."

25 THE COURT: So he didn't necessarily know his name you

1 just -- you understood he was recognizing his face from the
2 other encounter, right?

3 TROOPER POOLE: Yes, sir, that was my understanding.

4 THE COURT: All right. And did you tell Trooper Quinn
5 who you thought it was?

6 TROOPER POOLE: Yes, sir.

7 THE COURT: Who'd you tell him you thought it was?

8 TROOPER POOLE: Thomas Arnold Gregory.

9 THE COURT: Did you say it in in a way that you felt that
10 the defendant heard you say that?

11 TROOPER POOLE: Yes, sir, because he said that I didn't
12 chase him, I chased his brother Tully, I believe, the name he
13 gave me.

14 THE COURT: Well, had you brought up the chasing at all
15 with -- in front of him?

16 TROOPER POOLE: No, sir.

17 THE COURT: He just brought it out himself that day?

18 TROOPER POOLE: Yes, sir. When Trooper Quinn stopped the
19 car, Mr. Gregory exited the vehicle as soon as the car stopped
20 and Trooper Quinn was able to get up to him and told him he
21 said, "Man, don't take off running," and and that's when they
22 called for ---

23 THE COURT: And that's your understanding. You weren't
24 there?

25 TROOPER POOLE: That, yes, sir, that was my

TROOPER STEPHEN POOLE - EXAMINATION BY THE COURT

1 understanding.

2 THE COURT: All right. Okay. And do you have an
3 understanding as to why Trooper Quinn stopped the car in the
4 first place?

5 TROOPER POOLE: Uh, the best I can recall is for a seat
6 belt violation on the driver and passenger.

7 THE COURT: Okay. Any other questions?

8 MS. LESKANIC: Not from the state, Your Honor.

9 MR. THOMPSON: No, sir.

10 THE COURT: You may step down, sir.

11 TROOPER POOLE: Thank you.

12 (Whereupon, the witness was excused.)

13 THE COURT: Now, this officer's not going to testify
14 regarding the *Jackson v. Denno*.

15 MS. LESKANIC: That's correct, Your Honor.

16 THE COURT: Okay. Who --- what else do you have in
17 regard to that?

18 MS. LESKANIC: Uh...

19 THE COURT: You have any other witnesses regarding the
20 situation of his objection to the admissibility of any
21 marijuana in the indictment ---

22 MS. LESKANIC: No, Your Honor.

23 THE COURT: --- or resisting arrest charge? All right.
24 Do you have any witness you wanna put up at this time?

25 MR. THOMPSON: No, sir.

1 THE COURT: All right. As far as the marijuana, once
2 again I feel the testimony is such that that that would form
3 the basis of why the person was being chased and the state
4 does have a right to to introduce evidence as to why the
5 defendant was charged with resisting arrest, if not there'd be
6 no reason why the state would be chasing him. So if your
7 motion is you to -- you wish to add anything on as far as
8 argument, Mr. Thompson?

9 MR. THOMPSON: No, sir, the only thing I would argue,
10 Your Honor, is the officer himself said that he never told him
11 he was under arrest and when he started reaching for him
12 that's when he pushed him.

13 THE COURT: The officer said he told him to stop.

14 MR. THOMPSON: Told him but that was after the chase had
15 started.

16 THE COURT: Right.

17 MR. THOMPSON: Yes, sir.

18 THE COURT: And he kept on running.

19 MR. THOMPSON: Yes, sir.

20 THE COURT: Well, even if I would agree with you the
21 rest -- the attempted arrest hadn't taken place when the
22 trooper tried to grab him and he pushed him away if he told
23 him to stop and he kept going, that obviously is resisting the
24 efforts to stop and to put him under arrest. Is your concern
25 he didn't say, "You're under arrest?"

MOTIONS AND MATTERS

1 MR. THOMPSON: No, sir, I -- and maybe I misunderstood
2 the officer. I'm not sure the officer said he told him to
3 stop before he threw the ---

4 THE COURT: No, you're right there but ---

5 MR. THOMPSON: --- drugs down.

6 THE COURT: --- once the gentleman started running the
7 officer said, "I told him to stop."

8 MR. THOMPSON: That's right. "Once he started running I
9 told him to stop," but at what point was that in relation to
10 the crack cocaine being thrown? My my whole argue ---

11 THE COURT: Well, I mean, that might be interest -- it
12 might be interesting but what difference does it make on the
13 char -- charge of resisting arrest? And if you're only
14 concerned about the crack cocaine charge as a prejudice ---

15 MR. THOMPSON: Yes.

16 THE COURT: --- in regard to that, if they're gonna if
17 they're gonna follow through with the with the resisting
18 arrest charge, they can't follow through with that unless they
19 have some reason to place him under arrest and the only reason
20 they got to place him under arrest is is the marijuana
21 situation. But this officer here did not see the seat belt
22 violation so he had no right to place him under arrest for
23 seat belt violation. He didn't see the crime.

24 MR. THOMPSON: I don't think you, by statute, you can
25 arrest somebody for seat belt.

1 THE COURT: I don't care. That's been done before.

2 MR. THOMPSON: Yeah.

3 THE COURT: Even if it wasn't and even if he could, he
4 had no right since he didn't see a misdemeanor and we just go
5 out advise a misdemeanor. But but the only reason the officer
6 had to arrest him would be the fact he dropped marijuana. So
7 how can the states -- how would the state sustain a directed
8 verdict with a bag of marijuana in, how would they be able to
9 resist a a directed verdict?

10 MR. THOMPSON: Well, and maybe -- my my issue is whether
11 or not the marijuana is going to prejudice the jury with the
12 crack. So, I mean, perhaps they can say something to the
13 effect of we had reason to arrest him and I won't raise any
14 objections and just not say that it is marijuana. That that's
15 my whole issue is whether the prejudicial value of that
16 marijuana is greater than the probative value the state would
17 get for putting it in.

18 THE COURT: Okay. State's response?

19 MS. LESKANIC: Your Honor, I just feel like to tell the
20 complete story to the jury, that's what prompted the arrest is
21 Trooper Poole testified that he dropped marijuana and the jury
22 is entitled to know all of those facts.

23 THE COURT: I can understand the defense's concern but I
24 I feel that the charge of resisting arrest almost requires it
25 and one thing will be what if the jury sat down and said, Why

MOTIONS AND MATTERS

1 are they trying to arrest him, you know. After considering
2 the testimony I feel that the probative value is not
3 substantially aggravated by the danger of unfair prejudice nor
4 confusion of the issues in misleading the jury, and after
5 doing a 403 analysis I determine that the officer can testify.
6 I find the officer can testify regarding the marijuana as to
7 the reason for the the charge of resisting arrest. I do know
8 that also that will be before the jury as they consider the
9 question of his guilt or innocence on the cocaine charge but I
10 I feel that that does not substantially outweigh any unfair
11 prejudice.

12 All right. Now, let's hear any *Jackson v. Denno* mo --
13 how long will the *Jackson v. Denno* take? Well, is it gonna
14 take -- you all, let's go and take a lunch break now. Okay.
15 We'll see you all then around 2:30, 2:40 something like that,
16 all right?

17 (Whereupon, a recess was taken.)

18 THE COURT: All right. Now, before we go back in the
19 jury coming in I had decided that with the bond matter on
20 Mr. Mr. Gregory that I wanted just to make sure there's no
21 doubt he's the one who signed the bond and the witness on the
22 bond that notified him he needed to be in court and if he
23 didn't he'd be tried in his absence, the witness on the bond
24 is a magistrate and is the magistrate here? Judge here?

25 JUDGE RAMSEY: Yes.

1 THE COURT: Judge, how are you doing? I'm sorry to hold
2 you up. We can probably get that done now. Come by up here
3 if you would. Have you shown her the documents?

4 THE CLERK: Yes, sir.

5 THE COURT: Okay. You can come on up. I just need for
6 you to verify you witnessed this and that when you witnessed
7 it that was the person who signed it.

8 JUDGE RAMSEY: Okay. Yes, sir.

9 THE CLERK: Should I put the judge under oath?

10 THE COURT: Yes.

11 HONORABLE TRESSA YVONNE MORTON

12 RAMSEY, having been first duly sworn, testified as follows:

13 THE COURT: Okay. Have a seat if you would, Judge, and
14 give us your full name.

15 JUDGE RAMSEY: Okay. My name is Tressa Yvonne Morton
16 Ramsey.

17 THE COURT: All right. Judge Ramsey, you -- your job in
18 this county is what, ma'am?

19 JUDGE RAMSEY: Magistrate.

20 THE COURT: Okay. And in doing so do you handle the bond
21 paperwork on people who are charged with what will potentially
22 be general sessions charges but bond's been set on them, and
23 and you may have set the bond or some other judge may have set
24 the bond but do you handle doing the paperwork when they post
25 the bond to be released?

1 JUDGE RAMSEY: I do.

2 THE COURT: And in doing so do you have them sign certain
3 places?

4 JUDGE RAMSEY: Yes, sir.

5 THE COURT: And when they sign you observe 'em sign and
6 you sign also?

7 JUDGE RAMSEY: That's correct.

8 THE COURT: And would you sign something if the person
9 who who signed where it said the defendant signed if that
10 person wasn't the defendant, would you sign it?

11 JUDGE RAMSEY: No, sir.

12 THE COURT: All right. Now, have you looked at Court
13 Exhibit Number A?

14 JUDGE RAMSEY: Yes, sir.

15 THE COURT: All right. Now, do you see on that document
16 where it says there on the the front of it here where someone
17 has initialed, were you the judge who handled this this
18 paperwork?

19 JUDGE RAMSEY: Yes, sir.

20 THE COURT: And do you watch the defendants as they
21 initial and sign these matters?

22 JUDGE RAMSEY: I do.

23 THE COURT: And so since you do that you could say under
24 oath that that say for example an initial would be the initial
25 of defendant as stated there where it says "initials of the

1 defendant" on the bottom right hand side of the paper?

2 JUDGE RAMSEY: That's true.

3 THE COURT: You would observe that?

4 JUDGE RAMSEY: Yes, sir.

5 THE COURT: And also where it says "sign by the
6 defendant" you would observe the defendant sign?

7 JUDGE RAMSEY: Yes, sir. This is my signature here
8 (indicating).

9 THE COURT: I'm sorry your signature.

10 JUDGE RAMSEY: That is mine.

11 THE COURT: The other side is the defendant.

12 JUDGE RAMSEY: Yes, sir.

13 THE COURT: I'm sorry.

14 JUDGE RAMSEY: Um-hum.

15 THE COURT: Right there where you signed with the
16 conditions of the bond the top where it says that if he if if
17 he doesn't show up he could be tried in his absence and he --
18 you observed Mr. Gregory sign that, is that right?

19 JUDGE RAMSEY: Yes, sir.

20 THE COURT: Now, you would not have been there though
21 when he did the -- that's your signature there, right?

22 JUDGE RAMSEY: That's correct. This is me.

23 THE COURT: That's for the bondsman. Is this the ---

24 JUDGE RAMSEY: This ---

25 THE COURT: --- only place the defendant signs the

1 document?

2 JUDGE RAMSEY: They initial on the front and then they
3 sign on the back yes, sir.

4 THE COURT: All right. Well, where it has the initials
5 of the defendant and a place for the defendant to sign, can
6 you tell me under oath, ma'am, that you were there and you
7 observed Mr. Gregory sign those documents?

8 JUDGE RAMSEY: That is correct. Yes, sir.

9 THE COURT: All right. You don't read those documents to
10 'em do you?

11 JUDGE RAMSEY: I, before I have them initial I go over
12 the stipulations. I have my little spiel is what I call it,
13 my little canned remarks that I give them ---

14 THE COURT: Don't we all.

15 JUDGE RAMSEY: --- to let them know what what they're
16 initialing. Do you want me to go over that with you?

17 THE COURT: Well, do you say anything about that if he
18 doesn't show up he can be tried in his absence?

19 JUDGE RAMSEY: Yes, on the back I go over every bit of
20 that. I ---

21 THE COURT: What -- do you read it or just tell him?

22 JUDGE RAMSEY: I tell them, "In signing this, you're
23 saying you will show up for court. If you fail to appear,
24 they will try you in your absence find you guilty and issue a
25 bench warrant for your arrest and you could face up to an

JUDGE TRESSA YVONNE MORTON RAMSEY - EXAMINATION BY THE COURT

1 additional five years and or a five thousand dollar (\$5,000)
2 fine just for not showing up." That's what I tell everybody
3 before they sign.

4 THE COURT: And do you sort of get from them whether they
5 understand what you're saying?

6 JUDGE RAMSEY: I do and I ask them if they have any
7 questions, you know.

8 THE COURT: All right. And if the person indicates they
9 don't understand or they or or they have questions that you
10 cannot answer, would you hold up proceedings until you felt
11 they did understand or you did answer the questions?

12 JUDGE RAMSEY: Yes.

13 THE COURT: All right. By signing that document then
14 would -- does that indicate to you that in your procedure that
15 the person understood what you said, that you said it to 'em
16 and he understood it and then they signed verifying they
17 understood it and that you may be tried in your absence?

18 JUDGE RAMSEY: Yes.

19 THE COURT: All right. Any questions you may have, madam
20 solicitor?

21 MS. LESKANIC: No, Your Honor. Thank you.

22 THE COURT: Mr. Thompson?

23 MR. THOMPSON: No, sir.

24 THE COURT: All right. Judge, thank you very much. And
25 so Court Exhibit A has your signature on it as well as that of

1 the defendant and you saw him sign it?

2 JUDGE RAMSEY: Yes, sir.

3 THE COURT: And you read the information he could be
4 tried in his absence?

5 JUDGE RAMSEY: Yes, sir.

6 THE COURT: Okay. Thank you very much.

7 JUDGE RAMSEY: Okay. Thank you.

8 THE COURT: You may go pick up your child and I really
9 appreciate you being here.

10 JUDGE RAMSEY: Thank you. I appreciate it.

11 (Whereupon, the witness was excused.)

12 THE COURT: Okay. I just wanted that because she was not
13 available earlier today and although I made a finding this
14 further supports the finding I made that the defendant was
15 aware of the trial and was aware that he could be tried in his
16 absence, that he had the right to be here and he better and
17 should be here and that the defendant has freely and
18 voluntarily made the decision not to show up and we will
19 proceed with the trial in his absence on these charges.

20 There's nowhere on the indictment, is there, that
21 indicates a warrant which ended up with this indictment then
22 if I could trans -- compare the warrant making sure the
23 warrant is the --

24 MR. THOMPSON: There usu --

25 THE COURT: --- indictments?

1 MR. THOMPSON: There usually is, Judge, on the ---

2 THE COURT: Where where would that be?

3 MR. THOMPSON: It would be on the.---

4 THE COURT: Oh, I see.

5 MR. THOMPSON: --- left-hand side.

6 THE COURT: I've got it right here. In looking at the
7 indictment, the back of the indictment it does have H994305
8 which is one of the charges on the bonding paper as well as
9 H994306 which is on the bonding paper and H994307 which is on
10 the bonding paper. So matters that the judge the judge
11 discussed that is on Court Exhibit A is also the warrants and
12 then the indictments we have here. Okay. I just reaffirmed
13 my findings regarding Mr. Gregory.

14 Okay. Now, let's do that quick, if we could, Jackson v.
15 Denno hearing.

16 MS. LESKANIC: The state calls Detective Christy Poole.

17 DETECTIVE CHRISTY POOLE,
18 having been first duly sworn, testified as follows:

19 THE COURT: If you would, ma'am, please give us your full
20 name.

21 DETECTIVE POOLE: Christy Poole.

22 THE COURT: Is that P-O-O-L-E?

23 DETECTIVE POOLE: Yes, sir.

24 THE COURT: That's a coincidence just like the highway
25 patrol officer.

DETECTIVE CHRISTY POOLE - DIRECT EXAMINATION BY MS. LESKANIC

1 DETECTIVE POOLE: Yes, sir.

2 THE COURT: Is he your father?

3 DETECTIVE POOLE: No, sir.

4 THE COURT: How is he related to you?

5 DETECTIVE POOLE: Yes, he's my husband.

6 THE COURT: Oh, and you work -- what agency do you work
7 for?

8 DETECTIVE POOLE: I work for the, um, Cherokee County
9 Metro Narcotics Unit.

10 THE COURT: Is that an arm of the...

11 DETECTIVE POOLE: Sheriff's office. I'm actually
12 employed by the Gaffney City Police Department. I'm assigned
13 to the Sheriff's Office Metro.

14 THE COURT: Does the sheriff's office do better police
15 work than the highway patrol?

16 DETECTIVE POOLE: In my opinion, sir? Yes, sir.

17 THE COURT: Any objection to giving opinion testimony?

18 (Laughter.)

19 MR. THOMPSON: No, sir. In fact, I'd like a copy of that
20 for future trials.

21 (Laughter.)

22 THE COURT: All right. Anyway this is out of the
23 presence of the jury. But anyway, you may proceed, madam
24 solicitor.

25 MS. LESKANIC: Thank you, Your Honor.

1 DIRECT EXAMINATION BY MS. LESKANIC:

2 Q. Detective Poole, will you please state again where you
3 are employed.

4 A. I work for the Cherokee County Metro Narcotics Unit.

5 Q. Okay. And how long have you been with the Metro
6 Narcotics Unit?

7 A. Um, a little over two years this time.

8 Q. Okay. And what do your duties include being with the
9 Metro Narcotics Unit?

10 A. Narcotics investigation from undercover drug buys to
11 sending confidential informants in to make buys, executing
12 search warrants, securing evidence, taking statements,
13 arresting people.

14 Q. Okay. What type of training do you receive to be able to
15 do that type of work?

16 A. I've had several s -- narcotics investigator schools, um,
17 just specialized narcotics training we do separate from our
18 basic training at the academy.

19 Q. Okay. Were you involved in the questioning of Thomas
20 Arnold Gregory on February 28th 2007?

21 A. Yes, ma'am.

22 Q. Okay. Where did that take place?

23 A. At the Cherokee County Detention Center.

24 Q. Okay. Who was with you during that questioning?

25 A. Captain David Oglesby.

1 Q. Okay. Was anyone else in the room or just the three of
2 you?

3 A. Just the three of us.

4 Q. Okay. Based on your experience in law enforcement --
5 well, let me ask you: How long have you been in law
6 enforcement? I know you've been with narcotics for two years.

7 A. Um, a little over twelve (12) years.

8 Q. Okay. Based on your experience did Thomas Gregory appear
9 to be under the influence of any alcohol or drugs when you
10 spoke with him?

11 A. No, ma'am.

12 Q. Did he appear to have any physical or mental disability
13 that would impair his ability to understand what you were
14 there to talk to him about?

15 A. No, ma'am.

16 Q. Okay. When you met with him, was he advised of his
17 Miranda rights prior to questioning?

18 A. He was.

19 Q. Okay. And why did you go talk to Mr. Gregory?

20 A. He had sent word that he wanted to speak with me.

21 Q. Okay. And then you went to the jail to meet with him?

22 A. Yes, sir.

23 Q. All right. Well, let me --

24 MS. LESKANIC: May I approach the witness, Your Honor?

25 THE COURT: Yes.

DETECTIVE CHRISTY POOLE - DIRECT EXAMINATION BY MS. LESKANIC

1 BY MS. LESKANIC:

2 Q. Let me show you what's been marked State's Exhibit 1. If
3 you would, take a look at that and tell me what it is.

4 (The witness examined the document.)

5 A. It's a pre-interrogation waiver form.

6 Q. Okay. And how do you recognize that?

7 A. It's -- actually it's the one that we did with
8 Mr. Gregory but, I mean, it's our form we fill out before we
9 question or talk to anyone.

10 Q. Okay. Would you please demonstrate for the Court how you
11 advised Mr. Gregory of his rights prior to talking with him.

12 A. Affirmative. Basically, what we do is we're on one side
13 of the table, he's on the other side. First all we fill out
14 the information, his personal information. After that I put a
15 check mark in each one of these boxes (indicating) and a
16 circle beside it and then I read to him. From statement of
17 rights I read every line to him and I ask him if he
18 understands it. Once he says he understands it I advise him,
19 "If you understand, what I need you to do is place your
20 initials in each circle beside each check mark and then sign
21 at the bottom stating that you do understand your rights."

22 Q. Okay. Did he in fact place his initials by each number
23 of his rights?

24 A. He did.

25 Q. And did he sign the waiver of rights ---

- 1 A. He did.
- 2 Q. --- that you read the statements of rights to him?
- 3 A. Well, right. We did this part first and he signed, he
- 4 initialed and signed and then we do this part separate.
- 5 Q. Okay. And what is the next part?
- 6 A. It's a waiver of rights and I read it to him and ask him
- 7 if he's willing to talk to us about, there's a blank here that
- 8 says "in reference to" and it says "trafficking cocai -- crack
- 9 cocaine," I ask him if he's willing to talk to us about that,
- 10 he says he is then we -- I advise him that if he's willing to
- 11 talk to us, he needs to sign right there and then I witness
- 12 his signature and then the time is put on what time the
- 13 interview began.
- 14 Q. Okay. And he signed all of this after you reviewed it
- 15 with him?
- 16 A. He did.
- 17 Q. Did he appear to understand all of your questions?
- 18 A. Yes, ma'am.
- 19 Q. And he voluntarily, in your opinion, gave up his rights
- 20 and wished to talk to you about this incident?
- 21 A. He did.
- 22 Q. Okay. Did you promise him anything to speak with you?
- 23 A. No, ma'am.
- 24 Q. Did you coerce him or threaten him in any way if he
- 25 failed to talk to you?

1 A. No, ma'am.

2 Q. In fact, you went there on his request not on your own?

3 A. Yes, ma'am.

4 MS. LESKANIC: Okay. Your Honor, at this time I'd like
5 to offer State's Exhibit 1 for admission as evidence in this
6 hearing.

7 THE COURT: Any objection?

8 MR. THOMPSON: No objection.

9 THE COURT: It's in evidence or as a court exhibit this
10 time. Well, let's just put it -- I'll put it down for the
11 Court to consider but you've got it marked also as a state's
12 exhibit. Do you plan to try and use it later assuming you get
13 the statement?

14 MS. LESKANIC: Yes, Your Honor.

15 THE COURT: All right. Just -- well, however you've got
16 it marked, madam court reporter. How is it marked?

17 COURT REPORTER: 1, State's Exhibit 1.

18 THE COURT: It's in evidence.

19 (State's Exhibit No. 1 was admitted into evidence.)

20 MS. LESKANIC: Thank you, Your Honor.

21 BY MS. LESKANIC:

22 Q. So to the best of your knowledge any statement that he
23 later gave you was freely and voluntarily given?

24 A. Yes, ma'am.

25 Q. All right. I'd like to show you what's been marked

1 State's Exhibit 2, if you'll take a look at that and tell me
2 what that is.

3 (The witness examined the document.)

4 A. That's the statement that Mr. Gregory gave.

5 Q. Okay. Did he write that statement or did you write it for
6 him?

7 A. He wrote it.

8 Q. Was he given an opportunity to review the statement after
9 he wrote it?

10 A. Yes, ma'am, he was.

11 Q. Did he make any changes on the statement?

12 A. He didn't make any changes. He had, um, during writing
13 the statement he had marked out twice and he actually, um, I
14 put a circle above it and had him initial where he had
15 scratched out while he was writing his statement.

16 Q. Okay. And would you please -- well, Your Honor, at
17 this -- let me ask you: Did he sign that statement?

18 A. He did.

19 Q. Okay. And who witnessed his signature?

20 A. Myself and Captain David Oglesby.

21 MS. LESKANIC: Okay. Your Honor, at this time we offer
22 State's Exhibit 2 for admission as evidence in this hearing.

23 THE COURT: Any objection?

24 MR. THOMPSON: No objection for the purpose of this
25 hearing.

1 THE COURT: In evidence.

2 (State's Exhibit No. 2 was admitted into evidence.)

3 BY MS. LESKANIC:

4 Q. If you would, would you please read that statement to the
5 Court.

6 A. It says, um, "I was with my friend and we was just
7 driving around. The place look a little fun but I had stopped
8 to pick up some dope from somebody and he has the things that
9 you want. He had -- we had left his house. As I live -- left
10 his house I got three ounces of dope from him. As the day
11 goes on, I went downtown and got stopped by the police. I
12 took off run from them and at the end I a got caught. As I
13 ran I downed my dope down down from Officer Poole."

14 Q. Okay. What time did this interview begin?

15 A. Um, the interview actually beca -- began at 1:13 p.m.

16 Q. And what time did it end?

17 A. Um, 1:21 p.m.

18 Q. That's all the questions that I have. If you would,
19 please answer any questions Mr. Thompson has for you.

20 A. Okay.

21 THE COURT: Okay, Mr. Thompson.

22 CROSS-EXAMINATION BY MR. THOMPSON:

23 Q. Just follow up with that last question she asked. So the
24 interview lasted -- from the time you walked in to start with
25 him until he finished signing this statement you left eight

1 minutes.

2 A. The interview, the actual interview when after we had
3 given him his rights, his waiver of rights and everything we
4 started the waiver of rights form at, um, 1:08, the actual
5 interview as far as talking to him about anything other than
6 his rights began -- began at 1:13.

7 Q. So this statement was eight minutes or thereabout. This
8 statement was just eight minutes or thereabouts?

9 A. It was in that eight minutes, yes, sir.

10 Q. Okay. You say that he sent word he wanted to talk to
11 you.

12 A. He did.

13 Q. And I'm gonna try to ask this question carefully so I
14 don't get you in trouble, okay?

15 A. Yes, sir.

16 Q. He talked to you about something more than just this
17 incident, did he not ---

18 A. He did.

19 Q. --- there at the time. Okay. And what else that you had
20 you talked about at this point in time you can't disclose that
21 because of federal secrecy agreements or whatever, is that
22 correct?

23 A. Yes, sir.

24 Q. Okay. Uh...

25 THE COURT: Now, Mr. Thompson, are you alleging that

1 something she can't divulge is of assistance to you, sir?

2 MR. THOMPSON: Well, I I can get around her divulging it
3 if I can just ask questions without going into details of of
4 that.

5 THE COURT: Well, that's fine but you let me know if you
6 feel there's something you know that is exculpatary --
7 exculpatory to Mr. Gregory or in any way hinders his
8 defense.

9 MR. THOMPSON: I I don't think there's anything what they
10 talked about, it's whether or not there were any promises made
11 and that's what I want to get to.

12 THE COURT: Go ahead.

13 MR. THOMPSON: All right, sir.

14 BY MR. THOMPSON:

15 Q. Now, I don't want to go into details of what you talked
16 about as far as the details of of the other matter, okay?

17 A. Yes, sir.

18 Q. But were there any promises made to Mr. Gregory regarding
19 this case or any other cases during this time you were with
20 him that day?

21 A. No, sir.

22 Q. Okay. Did he ask for any type of promise or assistance
23 during this time?

24 A. I don't understand the question.

25 Q. Okay. Was he trying to get you to help him in someway?

1 A. Yes, sir.

2 Q. Okay, and I don't know if you can answer this based on
3 that or not, what kind of help was he wanting from you?

4 A. He just basically asked for help with his charge but, I
5 mean, he was advised that we couldn't do anything for him, we
6 hadn't to talked to the officer, the solicitor or anyone.

7 Q. Okay. Was he advised of that before he gave this written
8 statement?

9 A. N -- he was advised before this statement was given that
10 we couldn't we couldn't help him in any way, wWe had hadn't
11 talked to the solicitor's office, we hadn't talked to the
12 officer that arrested him or anything.

13 Q. Okay. Were you involved in the -- this incident on --
14 the the statement was taken on the 28th, his arrest was on the
15 26th of February, were you involved in this case on the 26th
16 at all?

17 A. No, sir.

18 Q. So your first dealings was when he asked to talk to you
19 on the 28th?

20 A. Yes, sir.

21 Q. Okay. Did anyone else make any promises to him in your
22 presence?

23 A. No, sir.

24 Q. Okay. Thank you. I have no further questions.

25 THE COURT: Anything else, Ms. Leskanic?

1 MS. LESKANIC: No, Your Honor, not of this witness.

2 THE COURT: Officer, let me just make sure you again
3 talked to him on what day?

4 DETECTIVE POOLE: February the 28th, Your Honor.

5 THE COURT: And he had been under arrest two days?

6 DETECTIVE POOLE: Yes, sir.

7 THE COURT: And tell me again, ma'am, why you began
8 speaking with him.

9 DETECTIVE POOLE: He had sent word from the detention
10 center that he wanted me to come and see him and talk to him.

11 THE COURT: Now, you had not been involved in his arrest,
12 had you?

13 DETECTIVE POOLE: No, sir.

14 THE COURT: Well, why did he he call for you?

15 DETECTIVE POOLE: I work narcotics in this county and
16 he's familiar with me. I mean, I -- I've dealt with him in
17 the past. He knows me.

18 THE COURT: You know, just for the purpose of this
19 hearing, he's had other convictions?

20 DETECTIVE POOLE: Yes, sir.

21 THE COURT: And you've dealt with him in those other
22 convictions.

23 DETECTIVE POOLE: I've dealt I've dealt with him on the
24 streets. I've never arrested him per say for a drug
25 conviction of mine. I've dealt with him on the streets.

DETECTIVE CHRISTY POOLE - EXAMINATION BY THE COURT

1 THE COURT: While you're doing investigations of other
2 drug matters and those things.

3 DETECTIVE POOLE: Yes, sir.

4 THE COURT: All right. So you decided to go down. At
5 that time you knew he was in jail.

6 DETECTIVE POOLE: Yes, sir.

7 THE COURT: And you knew what he was there for.

8 DETECTIVE POOLE: Yes, sir.

9 THE COURT: And so when you went there are you saying
10 that before you talked with him at all you made sure he
11 understood his rights.

12 DETECTIVE POOLE: Yes, sir.

13 THE COURT: And he signed the document in that regard?

14 DETECTIVE POOLE: Yes, sir.

15 THE COURT: That's document -- is that 1?

16 DETECTIVE POOLE: Yes, sir.

17 THE COURT: And he initialed or or signed the document
18 anyway. Did he initial also in circles after each letter?

19 DETECTIVE POOLE: He he initialed all and beside every
20 one of his rights and signed that he understood 'em right
21 there.

22 THE COURT: And do you feel he did understand his
23 rights?

24 DETECTIVE POOLE: Yes, sir.

25 THE COURT: Did you in any way coerce him to get him to

1 sign this?

2 DETECTIVE POOLE: No, sir.

3 THE COURT: Did you in fact once you got down there try
4 to persuade him to talk and he decided maybe he wasn't sure he
5 really wanted to talk with you and you sort sort of changed
6 his mind or what?

7 DETECTIVE POOLE: No, sir.

8 THE COURT: He was fully determined he wanted to talk
9 from the minute you got down there?

10 DETECTIVE POOLE: Yes, sir.

11 THE COURT: How do you know that given -- I mean, you
12 remember seeing him that day, I know you have many cases, do
13 you remember seeing him that day?

14 DETECTIVE POOLE: I remember talking to him that day,
15 yes, I mean, he requested that I come over there so, I mean,
16 when we went over there, you know, he was wanting to talk and
17 we -- and I explained to him when I first walked in, "It's
18 fine if you wanna talk but first I have to I have to give you
19 your rights. I have to make sure you understand your rights.
20 I have to see if you want to waive 'em for me," and and that's
21 what we do, I mean, when anybody requests that we come and
22 talk to 'em.

23 THE COURT: Did he tell you why he wanted to talk to you?
24 I mean, what purpose it was for him wanting to talk to you?

25 DETECTIVE POOLE: What purpose as far -- he had some

DETECTIVE CHRISTY POOLE - EXAMINATION BY THE COURT

1 information that he thought be valuable to us.

2 THE COURT: Okay. All right. And do you -- are you
3 telling me you think maybe he thought by giving you certain
4 information may help him in these charges?

5 DETECTIVE POOLE: He asked about it after his statement
6 and we advised him the same thing that we advised him before
7 his statement that we had to talk to the solicitor's office
8 and the officer involved in the case in reference to any help
9 that he might be able to get for whatever he done when he got
10 outta jail.

11 THE COURT: All right. And so were you aware that he had
12 a lawyer or didn't have a lawyer? One or the other?

13 DETECTIVE POLE: As far as I knew he didn't have a lawyer
14 at the time.

15 THE COURT: Okay. Well, did he ever ask for water or any
16 other type of situations that you didn't provide to him?

17 DETECTIVE POOLE: No, he didn't ask for anything.

18 THE COURT: Did you talk with him in a meeting room,
19 interview room?

20 DETECTIVE POOLE: In an interview room.

21 THE COURT: In the course of the interview did he ever
22 say, "Wait a minute, I've changed my mind, I want to stop" or
23 say, "I I want to talk to a lawyer before I go on?"

24 DETECTIVE POOLE: No, sir, he did not.

25 THE COURT: He never at all or any time during the

DETECTIVE CHRISTY POOLE - EXAMINATION BY THE COURT

1 interview discussed that?

2 DETECTIVE POOLE: No, sir.

3 THE COURT: Okay. Did the statement -- was it written by
4 him or by you and he read it?

5 DETECTIVE POOLE: It was written by him.

6 THE COURT: Okay. And did you let him read it over
7 before he signed it and make any changes or corrections?

8 DETECTIVE POOLE: I did but I also read it back to him
9 myself ---

10 THE COURT: Um-hum.

11 DETECTIVE POOLE: --- and let -- and I put the circles at
12 the beginning and everywhere he made a mistake and at the end
13 and I explain to him, "That circle's 'cause that's where you
14 began. You scratched out right there so I need your initials.
15 I need your initials right there 'cause you scratched out and
16 this is where your statement ends. I need you to put your
17 initials right there." I write "end of statement" and I "x"
18 it out and tell him that's so nobody can add anything or take
19 anything away from his statement.

20 THE COURT: So the areas on that statement, State's
21 Exhibit Number 2 I think it is ---

22 DETECTIVE POOLE: Yes, sir.

23 THE COURT: --- that have marked out words that he marked
24 those words out as he was proceeding?

25 DETECTIVE POOLE: He did.

DETECTIVE CHRISTY POOLE - EXAMINATION BY THE COURT

1 THE COURT: He didn't go back after it was over?

2 DETECTIVE POOLE: No, he did not.

3 THE COURT: And so you noticed he had done that so you
4 had him initial where the statement began then each place he
5 had marked out and then where the statement ended?

6 DETECTIVE POOLE: Yes, sir.

7 THE COURT: Okay. At any point in time, did he seem
8 reluctant, hesitant or in any way seem to decide he didn't
9 want to do this but yet you sort of persuaded him to continue
10 on?

11 DETECTIVE POOLE: No, sir.

12 THE COURT: All right. Thank you very much. And that
13 document is the Miranda rights. You said you read those to
14 him or he read 'em?

15 DETECTIVE POOLE: I read 'em to him, yes, sir.

16 THE COURT: You let him relook ---

17 DETECTIVE POOLE: I had the paper like this right here
18 (demonstrating) and I read to him starting right here
19 (indicating) just laid down like that right there, "Before any
20 questions I ask you you must understand your rights," and I
21 read to him so forth and so on.

22 THE COURT: That whole whole first section right ---

23 DETECTIVE POOLE: Stopped right here (indicating) the
24 whole first section. Once we did that and he understood his
25 rights I did the same thing with this one (indicating), his

1 waiver of rights I did the same thing. I read it to him and I
2 pointed to it as we go along as I read, told him to read with
3 me not -- he didn't have to read out loud but, you know, as I
4 was reading I pointed to what I was reading.

5 THE COURT: So every word on that page you read to him?

6 DETECTIVE POOLE: Yes, sir, every word on this paper.

7 THE COURT: And that's his signature on that document?

8 DETECTIVE POOLE: That is.

9 THE COURT: You witnessed it?

10 DETECTIVE POOLE: Right here (indicating), right here
11 (indicating), and right there (indicating), yes, sir.

12 THE COURT: And did anyone else witness it with you?

13 DETECTIVE POOLE: David Oglesby notarized it.

14 THE COURT: Okay. So Mr. Oglesby came in with you and
15 uh ---

16 DETECTIVE POOLE: He was in there with me.

17 THE COURT: --- while Mr. Gregory ---

18 DETECTIVE POOLE: Um-hum.

19 THE COURT: Okay. Thank you. Any other questions?

20 MS. LESKANIC: None of this witness, Your Honor.

21 THE COURT: Any other questions?

22 MR. THOMPSON: No, sir.

23 THE COURT: Thank you. You may step down.

24 (Whereupon, the witness was excused.)

25 MS. LESKANIC: The state calls Captain David Oglesby.

CAPTAIN DAVID WAYNE OGLESBY-DIRECT EXAMINATION BY MS. LESKANIC

1 CAPTAIN DAVID WAYNE OGLESBY,
2 having been first duly sworn, testified as follows:

3 THE COURT: All right. If you would, officer, please
4 just give us your full name, sir.

5 CAPTAIN OGLESBY: David Wayne Oglesby.

6 THE COURT: Is that O-G-L-E-S-B-Y?

7 CAPTAIN OGLESBY: Yes, sir.

8 THE COURT: All right. Your witness.

9 MS. LESKANIC: Thank you, Your Honor.

10 DIRECT EXAMINATION BY MS. LESKANIC:

11 Q. Where are you employed?

12 A. Cherokee County Sheriff's Office.

13 Q. How long have you been an officer?

14 A. Uh, '91, approximately almost sixteen (16) years.

15 Q. Okay. Do you work with the Cherokee County Metro
16 Narcotics Unit?

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

18 Q. Okay. And were you working with the metro narcotics unit
19 in February of this year?

20 A. Yes, ma'am.

21 Q. Did you have an occasion to go to the Cherokee County
22 Detention Facility and meet with Thomas Arnold Gregory?

23 A. Yes, I accompanied Ms. Poole.

24 Q. Okay. Can you tell me and the Court what happened when
25 you arrived in the interview room to speak with Mr. Gregory.

1 A. Mr. Gregory come in and he had sent word that he wanted
2 to speak with Officer Poole. And Mr. Gregory, when they
3 brought him into the room, set down and explained to him his
4 rights. He wanted to discuss some issues with us.

5 Q. Okay. Were you present when detective Poole read
6 Mr. Gregory his rights on the pre-interrogation waiver form?

7 A. Yes, ma'am.

8 Q. And did you see Mr. Gregory initial each one of his
9 rights?

10 A. Yes, ma'am.

11 Q. And did you see Mr. Gregory sign that he wished, that he
12 had been read his rights and understood his rights?

13 A. Yes, ma'am?

14 Q. Okay. Did you witness that or is that Officer Poole
15 (indicating)?

16 A. No, ma'am, that's officer Poole's writing.

17 Q. Okay. On the waiver of rights, did he state that he
18 wished to give up those rights and speak with you and Officer
19 Poole?

20 A. Yes, ma'am.

21 Q. And how did he indicate that?

22 A. Um, by signing here (indicating) where it says
23 "signature."

24 Q. Okay. And were you present -- were his -- was this form
25 fully read to him ---

1 A. Yes.

2 Q. --- in your presence?

3 A. Yes, ma'am.

4 Q. Okay. And what part of this form did you complete,
5 Captain Oglesby?

6 A. At the bottom of the waiver of rights form it states, "I
7 have read this statement consisting of one page and I swear or
8 affirm that the facts contained therein are true and correct."

9 Q. Okay. Did you or Officer Poole promise Mr. Gregory
10 anything in order to talk with you?

11 A. No, ma'am.

12 Q. Did either one of you threaten him or try to coerce him
13 in any way to give you a statement?

14 A. No, ma'am.

15 Q. Did he indicate to you or in your presence that he fully
16 understood his rights, that he did not have to talk with you
17 if he wished to give up those rights?

18 A. Yes, ma'am.

19 Q. Okay. And based on your time and experience in law
20 enforcement did he appear to be under the influence of any
21 alcohol or drugs or have any mental problem that would impair
22 his ability to understand he was giving up his rights when he
23 gave you the statement?

24 A. In my opinion, yes, he knew exactly what he was doing.

25 Q. Okay. Thank you. That's all the question I have.

1 THE COURT: Any questions, Mr. Thompson?

2 MR. THOMPSON: Thank you, Your Honor.

3 CROSS-EXAMINATION BY MR. THOMPSON:

4 Q. Captain Oglesby, Mr. Gregory contacted ya'll?

5 A. Yes, sir.

6 Q. And you went to talk with him?

7 A. Yes, sir.

8 Q. And he wanted to talk, again I'm trying too keep you and
9 Officer Poole from from violating your your federal order, he
10 wanted to talk with ya'll about not only this incident but
11 other matters.

12 A. He wanted to discuss some things.

13 Q. Okay. And he was hoping that those things that he could
14 discuss with you would help him out on these charges, is that
15 correct?

16 A. Yes, sir. We explained to him that we could not promise
17 him anything because we had not talked with the officer. The
18 way it -- some people will contact us and want help if it's a
19 narcotics violation per se whether it be the highway patrol, a
20 city officer that has charged 'em, another deputy that has
21 charged him as far as, uh, what we call working off charges,
22 but we advised him that we could not promise him anything or
23 we hadn't talked with the solicitor or the officer.

24 Q. Did you tell him that you would talk to solicitor on his
25 behalf?

1 A. We told him that we would talk with the officer first but
2 if the officer did not agree with it then we couldn't we
3 couldn't -- we don't make deals I guess is the point I'm
4 trying to make.

5 Q. Okay. Did you talk to the officer?

6 A. Mr. Quinn stated he did not, he was not gonna agree to
7 anything.

8 Q. Okay. So you did talk to the officer at least to see?

9 A. We had -- I think Ms. Poole had spoken with him because
10 my only thing was accompanying her as a witness.

11 Q. Okay. But I guess or the situation is is you told him
12 you would talk with the officer and in exchange for that he
13 gave you a statement, ---

14 A. No, sir.

15 Q. --- is that correct?

16 A. No, sir.

17 Q. No?

18 A. No, sir. We -- he wanted us to talk to him to see if he
19 could work his charge off.

20 Q. Okay.

21 A. Mr. Gregory, as Your Honor put it a while ago, we dealt
22 before.

23 Q. You've -- I know he -- he's got a record, right?

24 A. Yes, sir.

25 Q. And is there any possibility that's you or agent Poole

1 could have said something to him that would have led him to
2 believe that you all were gonna try to do something for him on
3 these charges if he would give a statement?

4 A. No. As I said he had -- we've talked before and he knows
5 how things work and no, sir, neither one of us he knows that
6 we do not promise anything.

7 Q. Okay. So there was there was nothing that you said to
8 him that could have been mistaken as a promise to do something
9 for him?

10 A. No, sir.

11 Q. Even the, "We'll talk to the officer and see what he
12 says?"

13 A. No, sir.

14 Q. Okay. Now, at -- the the promise to talk to the officer
15 that occurred before or after he gave his written statement?

16 A. It it was not a promise. It was ---

17 Q. Okay. The statement that you'd talked with the officer,
18 when did it occur?

19 A. Um, best I can remember it was it was after the statement
20 had been given 'cause we told him -- agent Poole had told him
21 we want to discuss the issue at hand first before we got
22 into ---

23 Q. The other.

24 A. He got into something else.

25 Q. Okay. And basically, I guess, when you asked Officer,

1 whoever, Trooper Quinn now he told you he wasn't willing to do
2 anything and that just slammed the door on everything?

3 A. Ms. Poole had spoke with Officer Quinn about that.

4 Q. Okay. Did you ever go back to talk with Mr. Gregory
5 after the 28th?

6 A. No, sir, I didn't have an interest in it.

7 Q. Okay. Thank you.

8 THE COURT: Anything else?

9 MS. LESKANIC: No, Your Honor.

10 THE COURT: All right. Thank you very much, sir. You
11 may be seated.

12 (Whereupon, the witness was excused.)

13 MS. LESKANIC: That's the state's showing, Your Honor.

14 THE COURT: Any witnesses for the defense?

15 MR. THOMPSON: No, sir.

16 THE COURT: Any comments from the state?

17 MS. LESKANIC: Just, Your Honor, based on the totality of
18 the circumstances I believe it's clear that the defendant was
19 given his Miranda rights, he was not represented by counsel at
20 the time, he fully understood his rights, they were read to
21 him by Detective Poole, he signed that those rights had been
22 written -- read to him, he also signed that he agreed to waive
23 those rights, he gave a written statement, it was in his own
24 hand, it was not written by the officer, he signed those
25 statements so I believe it shows the statement was freely and

1 voluntarily given after his -- he had knowingly waived his
2 rights.

3 THE COURT: Okay. Defense?

4 MR. THOMPSON: I have nothing in response.

5 THE COURT: All right. I find that Mr. Gregory although
6 was in custody and but since he was in custody he was entitled
7 to Miranda rights as well as the fact that he was entitled to
8 make sure any statements he made were made freely and
9 voluntarily. I find the discussions with Officer Poole were
10 initiated by Mr. Gregory, that they were not any way
11 encouraged or initiated by Officer Poole or any other police
12 agency. I find that Mr. Gregory was given his Miranda rights,
13 that he understood his Miranda rights and freely and
14 voluntarily waived those rights and had a desire on his own to
15 speak to Officer Poole. I further find that during the course
16 of the conversation he was never forced, coerced or made any
17 promises of any kind to get him to make any comments and that
18 all comments were made freely and voluntarily with no
19 expectation of any type of promise or reward for this
20 statement and and I will admit those matters in front of the
21 jury for them to determine beyond a reasonable doubt whether
22 or not he was -- he gave a free and voluntary statement and
23 whether or not it was given after Miranda rights but at this
24 level I find they are admissible.

25 Okay. Are you all ready now to proceed with the trial?

MOTIONS AND MATTERS

1 MS. LESKANIC: State's ready, Your Honor.

2 MR. THOMPSON: Defense is.

3 THE COURT: All right. Mr. Mills is the foreperson so
4 bring out the jury. Mr. Mills is foreperson.

5 (The following takes place in the presence of the jury.)

6 THE COURT: Okay, ladies and gentlemen of the jury, we're
7 now ready to proceed with the trial of the case. What we need
8 to do right now is to place you under oath and then after
9 putting you under oath I'm gonna give you a bit of
10 instructions.

11 Now, Mr. Mills, I understand you're the foreperson of the
12 jury?

13 THE FOREPERSON: Yes, sir.

14 THE COURT: Congratulations on your election. I'm sure
15 it's a hard fall election and you did great but I look forward
16 to seeing your name in the future matters of the election.
17 Now, what we're doing gonna do is swear you but, Mr. Mills,
18 remember, I told you that you don't have any more power or
19 authority than any other juror. It just means, sir, that you
20 will be the one to begin deliberations and if there's any
21 communication that the jury wants to make to the Court, you
22 just write it down and send it out to me. In addition, sir,
23 you will always sit there so I'll know where the foreperson
24 is. And the alternate, Mr. Galmon, you are to sit over there
25 where you're sitting right on the end there, okay? All

1 right. Madam Clerk, please swear the jury.

2 (Whereupon, the entire jury panel was sworn.)

3 THE COURT: Ladies and gentlemen of the jury, before you
4 were selected I told you that that Mr. Gregory is charged with
5 three crimes: resisting arrest, trafficking crack cocaine as
6 well as possession with intent to distribute crack cocaine in
7 the vicinity of a playground. And I told you that the fact
8 he's charged with these crimes is not evidence that he's
9 committed any crime whatsoever. So the fact a person is
10 charged with crimes is not evidence they've committed the
11 crimes. This is a formality to bring it before you, a jury,
12 for you to decide whether the state proves beyond a reasonable
13 doubt that he committed these crimes because the burden is on
14 upon the state of South Carolina to prove guilt beyond
15 reasonable a doubt. The defendant has no obligation to prove
16 himself innocent at all. The burden is upon the state to
17 prove guilt beyond a reasonable doubt.

18 I also mentioned to you that the defendant is not
19 present. Ladies and gentlemen, please, the fact the defendant
20 is not present should not in any way come into play as far as
21 your decision in this case. Your decision is based on whether
22 or not you feel the state has proven guilt beyond a reasonable
23 doubt. The fact the defendant's not here should not in any
24 way prejudice you or prejudice him at all, should not even be
25 discussed in the jury room because the issue before you today

MOTIONS AND MATTERS

1 is whether the state can prove guilt beyond a reasonable
2 doubt. So please, ladies and gentlemen, the fact the
3 defendant is not here should not and must not in any way be
4 involved in your decision in this case.

5 Now, ladies and gentlemen, how do you make your decision
6 in this case of whether the state has proven guilt beyond a
7 reasonable doubt? What you do is you make a determination
8 from the observation of the evidence in consideration of the
9 evidence in the case. The evidence will be in the form of
10 people taking the witness stand under oath responding to
11 questions. It also will be in the form of exhibits: items
12 objects, documents, whatever photographs, and those matters
13 become evidence for you to consider. Then, ladies and
14 gentlemen, after all the evidence is put before you, then each
15 side will have an opportunity to come back in a closing
16 statement, discuss the evidence that they feel has been put
17 before you and what it does or does not prove or discuss with
18 you the evidence in the case and discuss whether reasonable
19 doubt has been shown or the lack of reasonable doubt. Both
20 sides will discuss that with you. Then I will charge you on
21 the law at the end of the case.

22 Do not be concerned right now with what the law is
23 regarding these charges because I will tell you that later on.
24 I'll tell you the law. You don't need to be worrying about
25 what it is. I'll tell you that and you must accept the law as

OPENING STATEMENTS

1 I give it to you. Your job is to determine the facts,
2 determine what facts are proven beyond a reasonable doubt and
3 you cannot do that unless you observe, listen and pay
4 attention. So please, this is a very important case to the
5 state and a very important case to the defendant, so please
6 listen, observe, and pay attention in that regard.

7 ~~We'll start the case by the state making an opening~~
8 statement, a brief overview of the case. Then the defense
9 will make an opening statement, another brief overview of the
10 case from each perspective. And then after that we have the
11 witnesses presented and then the closing statements as I
12 mentioned and then my charge on the law. If everyone's ready
13 to proceed, we'll get started. Madam solicitor, any
14 objections from you with opening comments of the Court?

15 MS. LESKANIC: No, Your Honor.

16 THE COURT: From the defense?

17 MR. THOMPSON: No, sir.

18 THE COURT: If you would, madam solicitor, you may
19 proceed.

20 MS. LESKANIC: May it please the Court?

21 THE COURT: Yes, ma'am.

22 MS. LESKANIC: Good afternoon, ladies and gentlemen. My
23 name is Kim Leskanic. I introduced myself to you a little
24 while ago. And you're here today to determine whether
25 somebody's guilty or not guilty of three offenses that he's

OPENING STATEMENTS

1 been charged with. The defendant is Thomas Arnold Gregory.
2 He's been charged with trafficking in crack cocaine, with
3 possession with intent to distribute crack cocaine within a
4 half mile of a school or playground and with resisting arrest.

5 The facts that we're gonna show you today are that
6 Trooper Quinn made the traffic stop up here at Five Points, if
7 you know where that is where Limestone Street crosses over to
8 Wood Street, made a traffic stop, saw a violation. The
9 defendant Thomas Gregory was driving that vehicle. He got out
10 of the vehicle to talk with the troopers. Trooper Stephen
11 Poole was called by Trooper Quinn to assist on the call.
12 While Trooper Quinn was working with a passenger in the car,
13 Trooper Poole was standing with the defendant outside of his
14 car next to the patrol car. The defendant put his hand in his
15 pocket (demonstrating) and when he pulled his hand out he
16 dropped marijuana on the ground or a green leafy substance
17 that Trooper Poole recognized as marijuana in his years of
18 service. At that point, Trooper Poole told the defendant,
19 "You dropped something," and he reaches for him to place him
20 under arrest for simple possession of marijuana. When he
21 reaches for the defendant, Thomas Gregory then pushes away
22 from Trooper Poole and takes off running down Wood Street.
23 Trooper Poole goes after him. While he is running the
24 defendant then reaches in his pants again during the chase,
25 when he does he pulls out crack cocaine and he throws that

OPENING STATEMENTS

1 down. Trooper Poole radios back to Trooper Quinn, lets him
2 know that these drugs had been dropped and where they were
3 dropped. Trooper Poole continues with the chase, lasts about
4 six blocks and was finally able to take the defendant down and
5 take him into custody. Those are the facts. This happened
6 within a half mile of Limestone Courts playground. That's
7 your possession with intent to distribute within a half mile.

8 We sent the drugs to the state law enforcement division, comes
9 back to be 64.01 grams of crack cocaine. That matches the --
10 that meets the statutory amount of trafficking cocaine between
11 28 and a 100 grams.

12 Now, two days after he was arrested he sent word to the
13 narcotics officers that he wished to talk to them. They came
14 to talk to him and he gave a confession. He admitted he ran
15 from Trooper Poole and that while he was running from Trooper
16 Poole he threw his drugs down. Those are the facts of the
17 case. Those are the facts that we're gonna show you from this
18 stand through the testimony of our troopers, our narcotics
19 agents, also from the sled agent who tested the drugs that
20 were sent in. The defendant is guilty of the crimes he's been
21 charged with and at the end of the case we will ask that you
22 find him guilty. Thank you.

23 THE COURT: Thank you, solicitor. All right.

24 Mr. Thompson.

25 MR. THOMPSON: Good afternoon, ladies and gentlemen.

OPENING STATEMENTS

1 After listening to Ms. Leskanic, I'm ready to find him
2 guilty...one problem...Ms. Leskanic wasn't there. She didn't
3 see what happened. She don't have any knowledge other than
4 what somebody told her of what happened. I wasn't there. I
5 don't know what happened. You all weren't there. You don't
6 know what happened. But the state has the burden of proving
7 to you or showing to you beyond a reasonable doubt through
8 whatever evidence and witnesses they put on this stand they
9 have a burden of showing to you beyond a reasonable doubt that
10 Mr. Gregory is guilty of what they have him charged with.

11 Now, the judge will explain reasonable doubt to you and
12 I'll talk to you a little bit about it myself in the closing
13 argument, but what I want you to do right now is I want you to
14 sit there, I want you to listen. I want you to listen
15 carefully. I want you to listen carefully to details, okay,
16 'cause this case might just turn on one or two very small
17 details and if you don't hear 'em, if you just take a summary
18 of the case, the overview that the solicitor just gave you,
19 there's no need in having the trial we'll just find him guilty
20 now. Listen at the details. There might be one or two small
21 ones in this case it might turn on. With that I'm gonna sit
22 down and let the state build its case. Thank you.

23 THE COURT: Thank you. First witness for the state.

24 MS. LESKANIC: Thank you, Your Honor. The state calls
25 Trooper Steve Poole.

TROOPER STEPHEN POOLE - DIRECT EXAMINATION BY MS. LESKANIC

1 TROOPER STEPHEN POOLE, having been
2 first duly sworn, testified as follows:

3 THE COURT: If you would, please state your name for the
4 jury please, sir.

5 TROOPER POOLE: Stephen Poole.

6 THE COURT: Your witness.

7 MS. LESKANIC: Thank you, Your Honor.

8 DIRECT EXAMINATION BY MS. LESKANIC:

9 Q. Would you please tell the jury where you're employed.

10 A. I'm employed with the South Carolina Highway Patrol
11 assigned to Cherokee and Union Counties.

12 Q. Okay. And how long have you been so employed?

13 A. A little over seven years now.

14 Q. Could you please tell the jury what your general duties
15 include as a trooper with the highway patrol.

16 A. Enforcing traffic laws, accident investigation, DUI
17 detection, so forth.

18 Q. Okay. And what type of training have you received to be
19 a trooper?

20 A. Uh, we -- I went through a 20 week long basic, highway
21 patrol basic class back in 2000 and we do in service twice a
22 year ---

23 Q. Okay.

24 A. --- since then.

25 Q. Okay. And then you're experienced for seven years?

TROOPER STEPHEN POOLE - DIRECT EXAMINATION BY MS. LESKANIC

1 A. Yes, ma'am.

2 Q. Okay. Were you working on February 26th of this year
3 2007?

4 A. Yes, ma'am.

5 Q. Okay. Were you in uniform that day?

6 A. Yes, ma'am.

7 Q. Were you called by Trooper Quinn to assist him with a
8 call?

9 A. Yes, ma'am.

10 Q. Okay could you -- do you know why you were called out
11 there or can you tell the jury what happened?

12 A. When Trooper Quinn called me and asked me could I meet
13 with him at Five Points, he told me he was across from ---

14 MR. THOMPSON: Objection. Hearsay.

15 THE COURT: Sustained.

16 BY MS. LESKANIC:

17 Q. Okay. Were you called out to to Five Points to assist
18 Trooper Quinn?

19 A. Yes, ma'am.

20 Q. Is that located here in Cherokee County?

21 A. Yes, ma'am.

22 Q. All right. What did you find when you arrived?

23 A. Um, when I arrived, Trooper Quinn was standing beside his
24 car with a black male. He stepped back to my car and asked me
25 did I recognize him.

1 Q. Okay. And did you recognize him?

2 A. Yes, ma'am.

3 Q. And who was he?

4 A. Thomas Arnold Gregory.

5 Q. Okay. What happened after that?

6 A. After that Trooper Quinn and myself started talking to
7 him. He was standing at the front quarter panel at the front
8 tire, of the driver's side front tire of Trooper Quinn's car.
9 He was we talking -- we was actually waiting on his driving
10 record to come back. Um, Trooper Quinn went up to talk to the
11 passenger and I began talking to Mr. Arnold and he started
12 saying that he didn't want to go to jail, he couldn't go to
13 jail, "Man, I can't go to jail," and I told him he needs to
14 calm down 'cause no one said anything about going to jail.
15 He'd been stopped for wearing -- not wearing a seat belt.
16 Um...

17 Q. And what happened after that?

18 A. He -- I told him that he just needed to calm down and as
19 me and him was standing there approximately 2 to 3 foot from
20 each other, he took his right hand and placed it in his right
21 pocket. He then took and slid when he pulled out of his
22 pocket there was a small bag of green leafy plant like
23 material that I recognized looked to me to be marijuana.

24 THE COURT: And, sir --- do you need to change a tape?

25 You all right?

1 COURT REPORTER: (Nodded in the affirmative.)

2 THE COURT: Go ahead.

3 TROOPER POOLE: And at that time when it come out of his
4 pocket he just let it drop straight down beside his leg. I
5 said, "Hey, man, you dropped something," and as I said, "Hey,
6 man, you dropped something," I reached out with my left hand
7 to grab a hold of him to place him under arrest for simple
8 possession of marijuana. He then tried to push off of me
9 striking my arm and then my chest and ensued into a foot
10 chase.

11 Q. Okay. And let me go back a little bit appeared to be
12 marijuana. Do you have any training in the identification of
13 marijuana?

14 A. Yes, ma'am. I -- I've dealt with some narcotics in the
15 seven years. Also, I'm certified to analyze and test
16 marijuana so...

17 Q. Okay. So at the point that he -- you -- you're trying to
18 place him under arrest, you reach for him, he pushes off of
19 you and runs ---

20 A. Yes, ma'am.

21 Q. Do you give chase?

22 A. Yes, ma'am.

23 Q. Okay. What happens while you're running after him?

24 A. Right when we started running we actually hadn't even
25 passed the car that he was actually driving before the stop

1 was made. I told him to stop running. We made it about
2 twenty-five (25), 30 (thirty) yards maybe and he dropped --
3 pulled -- well went back into his right pocket and pulled out
4 along with some money, started pulling out of his pocket also
5 a clear cellophane type baggy. It was like a clear baggy that
6 had what looked like to me to be some form of cocaine.

7 Q. Okay. What did you do when you saw him pull that out of
8 his pants pocket?

9 A. I radioed back to Trooper Quinn that he had just thrown
10 what appeared to be cocaine down and for Trooper Quinn to
11 secure the marijuana and also the -- what appeared to me to be
12 cocaine.

13 Q. Okay. Is there any doubt in your mind where that --
14 those drugs came from?

15 A. No, ma'am, I seen it come out of his pocket.

16 Q. Okay. So do you stop and secure the drugs?

17 A. No, ma'am.

18 Q. Okay. You continue after Mr. Gregory?

19 A. Yes, ma'am.

20 Q. Okay. What happens next?

21 A. We went approximately six blocks until the last fence we
22 crossed he sorta tumbled over it and when I went over it he
23 was on the ground and as he started to push back up to get up
24 and run again, I tackled him and was able to put the cuffs on
25 him.

1 Q. Okay. And then at that point where did you go with
2 him?

3 A. I actually laid there because I was out of breath until
4 the city and the county got there.

5 Q. Okay. Did that take a long time?

6 A. No, they was there within maybe a minute from the time
7 that I got him in custody.

8 Q. Okay. When you radioed back to Trooper Quinn about him
9 throwing what appeared to be cocaine out of his pocket, did
10 you tell him where he could locate that cocaine?

11 A. I told him it was right up in front of the Bi-Lo Store.

12 Q. Okay.

13 A. It was laying in the middle of the road.

14 Q. All right. And how soon after he threw the drugs down
15 did did you notify Trooper Quinn?

16 A. As -- when the drugs hit the ground, I actually jumped
17 over the top of 'em and as I hit the ground that's when I
18 started calling Trooper Quinn.

19 Q. Okay. So you can use your radio up here (indicating) to
20 talk while you're in the middle of a chase?

21 A. Yes, ma'am.

22 Q. Did you have an opportunity to see the drugs that were
23 recovered by Trooper Quinn?

24 A. I did. One of the deputies gave me a ride back to the
25 car, to my patrol car. When I got back up there, Trooper

1 Quinn had secured the marijuana and also the cocaine.

2 Q. Okay. And did this appear to be the same bag uh ---

3 A. It was.

4 Q. --- both bags of marijuana and the cocaine?

5 A. Yes, ma'am.

6 Q. You can identify that as what he threw down?

7 A. Yes, ma'am.

8 Q. Okay. Did this happen within a half mile of any
9 playground or school?

10 A. Limestone. Limestone Courts is just across the railroad
11 tracks from where we was located.

12 Q. Okay. So that's -- this happened within a half mile of
13 the Limestone Courts playground?

14 A. Yes, ma'am.

15 Q. Okay. And all that happened in Cherokee County?

16 A. Yes, ma'am.

17 Q. Thank you. If you would, please answer any questions Mr.
18 Thompson has.

19 CROSS-EXAMINATION BY MR. THOMPSON:

20 Q. Trooper, when you say he dropped a bag out of his pocket
21 you went to reach for it?

22 A. Yes.

23 Q. Did you say anything to him at that point in time?

24 A. I told him, "Hey, man, you dropped something."

25 Q. Okay. You say he pushed off and took off running?

1 A. Yes, sir.

2 Q. All right.. How far when he when he started running, how
3 long was it till you started running?

4 A. I started running immediately.

5 Q. I guess my question is did he get a little bit of a head
6 start on you?

7 A. Yes, sir, he actually pushed me backwards.

8 Q. Okay. How far behind him were you when you all were
9 running?

10 A. At the beginning I'd say five, six steps behind him.

11 Q. Okay. Is that five or six long strides (demonstrating)
12 as you're running or is it just ---

13 A. He was from here (indicating) to that bench right behind
14 this lady's head (indicating).

15 Q. All right. And you're running hard.

16 A. Yes, sir.

17 Q. I mean, it wasn't trotting, it was a break neck run, is
18 that right?

19 A. It was all out run.

20 Q. Okay. For the whole time?

21 A. Yes, sir.

22 Q. And you say -- how far away into the chase was it you say
23 you saw him throw a second bag?

24 A. He was -- where our cars were parked if you have

25 Limestone Street where Wall Street turns off straight across

1 from Sticks right here ---

2 Q. Where?

3 A. --- at Five Points.

4 Q. Five points. Okay.

5 A. When he actually pulled his car over, he pulled onto Wall
6 Street. Our cars were still on Limestone Street. We were
7 standing on Limestone Street and we ran approximately from the
8 time we started running to the time he pulled out the bag of
9 not the marijuana but the other, cocaine, it was actually on
10 Wall Street and probably twenty-five (25), thirty (30) yards
11 in front of his car.

12 Q. Okay. Now, you chased him down Wall Street and at any
13 point in time and you all you all were running the whole time
14 when he threw it out, right?

15 A. Yes.

16 Q. But you can see in a break neck run that that was a white
17 cocaine substance?

18 A. Yes, sir, because it came -- some of it came out of the
19 bag.

20 Q. You saw enough of that?

21 A. Sir, it was a pretty big chunk of.

22 Q. Okay. But you was in a break neck run and you saw all
23 that while you was chasing him?

24 A. Yes, sir.

25 Q. And had time to radio back to another officer that -- of

1 what you saw.

2 A. We're trained to run and talk at the same time.

3 Q. All right. Did he ever turn off Wall Street left or
4 right?

5 A. We actually crossed several streets. We come off Wall
6 Street cross Robinson, cross Limestone, behind Kimbrell's,
7 cross Robinson, went behind the little theater across the
8 fence that that was around the property of the old big mill,
9 went across that field, crossed the fence again, went across
10 Cherry Street, another fence and then he was tackled right
11 before he got down to Beech Street.

12 Q. Okay. From the time that you all took off running to
13 start with when you said, "Hey, man, you dropped something,"
14 until the time you tackled him, did you ever say anything else
15 to him?

16 A. I told him to stop running right when he first took off
17 running before he even dropped the bag of cocaine.

18 Q. Okay. How many times you tell him to stop running?

19 A. I told him once.

20 Q. Once. From then on it was just a a chase?

21 A. Pretty much yes, sir.

22 Q. Okay. Now, you say the city officers come and picked you
23 all up at the final location where ---

24 A. Um...

25 Q. --- you arrested him?

TROOPER STEPHEN POOLE - CROSS-EXAMINATION BY MR. THOMPSON

1 A. I believe the county actually transported him. I believe
2 the deputy was actually the first one to us that actually did
3 the transporting of him. I road back with a deputy from the
4 scene to my car.

5 Q. Okay. Did you ever go back on Wall Street to the
6 location where you say you saw him throw something down to see
7 if what was picked up was in fact what you saw thrown down?

8 A. Yes, sir, and when I got back I asked Trooper Quinn if he
9 got the drugs that I called him about and he said was it more
10 than the marijuana in that bag that was laying right up there
11 in front of his car. I said no. If you got -- I walked
12 beside his car, the bag of marijuana was gone, I said, "Well,
13 you've got that. It's sitting right here in your car." And I
14 walked up to where I seen him pull out the other, where the
15 money and the drugs came out on Wall Street it was gone. I
16 walked back it was also setting in the front seat of Brian's
17 car.

18 Q. Okay. What about the money? Where was it at?

19 A. It was still laying there.

20 Q. Still laying on Wall Street?

21 A. Yes, sir.

22 Q. Did you all ever pick it up?

23 A. Yes, sir. It was returned to Mr. Gregory.

24 Q. Okay. Now, the drugs, the alleged drugs, who's car were
25 they in when you were brought back?

TROOPER STEPHEN POOLE - CROSS-EXAMINATION BY MR. THOMPSON

1 A. Trooper Quinn.

2 Q. They were locked in his car?

3 A. Yes, sir.

4 Q. Okay. And did you ever have possession of 'em?

5 A. No, sir.

6 Q. Did you ever go to the jail to talk with Mr. Gregory? I
7 assume he was booked into the jail, was he not?

8 A. Yes. I went down to the jail to make sure that a a hold
9 was placed on him so I could get a warrant for resisting.

10 Q. Okay. Were you present during the book -- booking
11 process?

12 A. Yes, sir.

13 Q. You were?

14 A. I was present during the part where Trooper Quinn was
15 there.

16 Q. All right.

17 A. As far as his initial bringing into the jail no, sir. He
18 got transported from the scene by another officer.

19 Q. Okay. Did you -- were you present when they took his
20 photograph at the jail?

21 A. No, sir, I don't recall them taking a photograph.

22 Q. Were you present when they fingerprinted him at the
23 jail?

24 A. No, sir.

25 Q. Okay. Is photographing somebody brought into the jail a

TROOPER STEPHEN POOLE - CROSS-EXAMINATION BY MR. THOMPSON

1 standard procedure?

2 A. I don't work for the Cherokee County Detention Center. I
3 can't answer their questions.

4 Q. Well, when you book peo -- have you ever booked anybody
5 in the jail yourself?

6 A. We don't book people, sir.

7 Q. You don't? When you arrest somebody, you don't make a
8 booking?

9 A. We do a booking sheet but as far as fingerprints and
10 that's the detention officers' jobs.

11 Q. That's their job to do that?

12 A. Yes.

13 Q. Okay. Do you know whether or not there were any
14 fingerprints off of the plastic bag ever taken to see if those
15 matched Mr. Gregory?

16 A. I seen it come out of his pocket. I didn't feel the...

17 Q. But you're not aware of it ever being fingerprinted?

18 A. Not that I'm aware of no, sir.

19 Q. Okay. But it was out of your sight for a period of time
20 while you was chasing him, is that correct?

21 A. When it come out, yes, sir, I did step over and keep
22 going.

23 Q. Thank you. I have no further questions.

24 THE COURT: Redirect?

25 MS. LESKANIC: Briefly, Your Honor.

TROOPER STEPHEN POOLE - REDIRECT EXAMINATION BY MS. LESKANIC

1 REDIRECT EXAMINATION BY MS. LESKANIC:

2 Q. You were able to look at what Trooper Quinn collected?

3 A. Yes, ma'am.

4 Q. Okay. And did that appear to be the same type of
5 packaging and contents that you saw come out of his pocket
6 when you were chasing him?

7 A. Yes, ma'am, it did.

8 Q. Thank you. Nothing further.

9 THE COURT: Anything else?

10 MR. THOMPSON: No.

11 THE COURT: You may step down, sir. Thank you very much.
12 (Whereupon, the witness was excused.)

13 MS. LESKANIC: The state calls Trooper Brian Quinn.

14 TROOPER BRIAN QUINN, having been
15 first duly sworn, testified as follows:

16 THE COURT: Trooper if you would, make sure I can hear
17 you, please give us your full name.

18 TROOPER QUINN: My name is Brian Scott Quinn.

19 THE COURT: Is that Brian with an "ia" or a "y"?

20 TROOPER QUINN: That's "ia".

21 THE COURT: Okay. Your witness.

22 MS. LESKANIC: Thank you, Your Honor.

23 DIRECT EXAMINATION BY MS. LESKANIC:

24 Q. Trooper Quinn, would you please introduce yourself to the
25 jury and tell them where you work.

TROOPER BRIAN QUINN - DIRECT EXAMINATION BY MS. LESKANIC

1 A. I'm Trooper Brian Quinn. I work for the South Carolina
2 Highway Patrol.

3 Q. And how long have you been so employed?

4 A. I've been employed with the highway patrol for
5 approximately a year and a half -- well, almost two years
6 right now.

7 Q. Okay. Were you in law enforcement prior to working with
8 the highway department?

9 A. Yes, ma'am, I was.

10 Q. And where were you employed?

11 A. I was employed with the City of Gaffney.

12 Q. And how long were you so employed?

13 A. Full full-time for two years, reserves for three years.

14 Q. Okay. Were you working with the highway patrol on
15 February 26th of this year?

16 A. Yes, ma'am.

17 Q. Did you make a traffic stop on Thomas Arnold Gregory?

18 A. Yes, ma'am.

19 Q. Where did you make that stop?

20 A. The initial stop was -- the stop was initiated at Five
21 Points on Cherokee Avenue but actually come to a stop at Wall
22 Street and and I believe that's Limestone right there besi --
23 across from Sticks.

24 Q. Okay. What time approximately was the stop made?

25 A. Approximately 4, 4:15.

TROOPER BRIAN QUINN - DIRECT EXAMINATION BY MS. LESKANIC

1 Q. Okay. What was the purpose of the stop?

2 A. I I I observed the driver and the passenger not wearing a
3 seat belt.

4 Q. Okay. So you pulled them over for a seat belt violation?

5 A. Yes, ma'am

6 Q. All right. And what happened after you made the stop?

7 A. Initially when the stop was made the driver of the
8 vehicle exited the vehicle pretty quickly. I exited mine
9 also, advised him, you know, don't run. And he said he wasn't
10 gonna run and we began a conversation at that point in time.
11 I knowed the defendant prior to and uh...

12 Q. Okay. So he said he wasn't gonna run, you told him not
13 to.

14 A. Yes, ma'am.

15 Q. Okay. What happened after that?

16 A. After that we discussed a a previous matter on the side
17 of the road and he said it was not him so I then initially
18 called Trooper ---

19 MR. THOMPSON: Objection, Your Honor I think we're
20 getting field here.

21 THE COURT: No, you just gotta -- go from there.

22 TROOPER QUINN: I called Trooper Poole then for
23 assistance to help identify the subject.

24 BY MS. LESKANIC:

25 Q. Okay. And at some point was Trooper Poole talking with

1 Thomas Gregory while you were dealing with someone else?

2 A. Yes, ma'am.

3 Q. All right. At some point did Trooper Poole leave the
4 scene?

5 A. Yes, ma'am.

6 Q. Why was that?

7 A. To chase Thomas Gregory.

8 Q. Okay. Did you see Thomas Gregory run from the scene?

9 A. Not a -- not initially when the run started. As they
10 passed me dealing with the passenger yes, I saw him chase him.
11 I saw Trooper Poole chase him.

12 Q. Okay did Trooper Poole communicate with you at all over
13 the radio during his chase?

14 A. Yes, ma'am, he did.

15 Q. And did he -- what did he communicate to you?

16 A. He advised me that the -- that Mr. Gregory had throwed
17 down a bag of marijuana where they were standing and had
18 throwed down some more narcotics.

19 Q. Okay. Did he tell you where he had thrown those
20 narcotics?

21 A. Yes, ma'am. Initially during the foot chase I couldn't
22 understand him at that point, I mean, when you're running
23 you're kinda outta breath and he advised me where the the
24 marijuana was. I could understand that but where the cocaine
25 was I didn't understand so I had to reask him ---

1 Q. Okay.

2 A. --- over the radio.

3 Q. Were you able to find the marijuana where he told you it
4 was located?

5 A. Yes, ma'am.

6 Q. And was he able to give you a description or location of
7 where the other drugs were located?

8 A. Yes, ma'am.

9 Q. Were you able to go to that location?

10 A. Yes, ma'am.

11 Q. And what did you find?

12 A. I found a glassine baggy containing a a hard white
13 substance that appeared to be cocaine.

14 Q. Okay. Did you have any difficulty locating this after
15 Trooper Poole told you where it would be found?

16 A. No, ma'am, it was right in the middle of the road.

17 Q. Okay. Did you collect the the baggy containing the white
18 substance?

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

20 Q. All right. What did you do with that?

21 A. At that point I secured in my vehicle.

22 Q. Okay.

23 MS. LESKANIC: May I approach, Your Honor?

24 THE COURT: Yes.

25 (Counsel approached the witness.)

TROOPER BRIAN QUINN - DIRECT EXAMINATION BY MS. LESKANIC

1 BY MS. LESKANIC:

2 Q. I'd like to show you what's been marked State's
3 Exhibit 3. Just tell me if you recognize this.

4 (The witness examined the item.)

5 A. Yes, ma'am.

6 Q. Okay. What is that?

7 A. That is what I retrieved off the roadway that appeared at
8 that time to be crack cocaine.

9 Q. Okay. And how is it that you recognize this as what you
10 picked off off the street on February 26th?

11 A. Well, honestly because I had never seen that big of
12 chunks to start with and the way it was broke it it looks
13 identical to what I had saw before.

14 Q. Okay. And do you put any identifying marks on the way
15 that you package things so that you can recognize it at a
16 later time?

17 A. Yes, ma'am.

18 Q. And what is that?

19 A. We place a case number, our signature, our agency and I
20 believe the suspect and address of our office on the
21 package.

22 Q. Okay. And did you in fact do that in this case?

23 A. Yes, ma'am.

24 Q. Okay. And how do you seal those to protect them?

25 A. Uh, they have a tampering seal made on the bags that we

1 actually put 'em in.

2 Q. Okay. And did you put -- you put that substance in a
3 tamper evident bag?

4 A. Yes, ma'am.

5 Q. And sealed that bag?

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

7 Q. All right. At any time were these drugs out of your
8 possession or control?

9 A. No, ma'am.

10 Q. What did you do with them from the time that you
11 collected them from the scene where Trooper Poole told you
12 they'd be located to when you transported them to the state
13 law enforcement division task ---

14 A. I secured 'em in the trunk of any vehicle.

15 Q. Okay. Were they already secured in a tamper evident
16 bag ---

17 A. Yes, ma'am.

18 Q. --- at that time?

19 A. In this type bag (indicating).

20 Q. Okay. Now, when did you take them to SLED?

21 A. The following day.

22 Q. All right. So on the 27th ---

23 A. Yes, ma'am.

24 Q. --- you transported them to SLED for testing?

25 A. Yes, ma'am.

1 Q. Okay. When you took them out of your car to turn them
2 into SLED, had they been tampered with in any way?

3 A. No, ma'am.

4 Q. Would it have been apparent to you if they had been
5 tampered with?

6 A. Yes, ma'am, to tamper with it you would have had to cut
7 the seal. It was still sealed ---

8 Q. Okay. So ---

9 A. --- from when I sealed it.

10 Q. --- everything was in the same condition as it was when
11 you sealed it?

12 A. Yes, ma'am.

13 Q. Okay. And when did you seal this in the tamper evident
14 bag?

15 A. Uh, after we booked Mr. Gregory in we went back to the
16 office to where these bags are kept and we then have to do a
17 report and all that has to be sealed in the bag with it also.
18 The the chain chain of custodies has to be sealed in the bag
19 and I sealed it later that afternoon.

20 Q. Okay.

21 A. In my office.

22 Q. Okay. And no other drugs could get in with this bag or
23 anything else. It's all ---

24 A. No, ma'am.

25 Q. --- secured at one time?

TROOPER BRIAN QUINN - CROSS-EXAMINATION BY MR. THOMPSON

1 A. Yes, ma'am.

2 Q. All right. All right. The person, did you actually take
3 Thomas Gregory to book him into jail?

4 A. No, ma'am, he was transported by another I think a
5 deputy ---

6 Q. Okay.

7 A. --- from from the initial when we we placed him under --
8 when Trooper Poole placed him under arrest.

9 Q. All right.

10 A. I didn't transport him, no, ma'am.

11 Q. Okay. Did you in fact find out that he was Thomas Arnold
12 Gregory?

13 A. Yes, ma'am.

14 Q. Okay. All right. Thank you. That's all the questions I
15 have. If you would, answer any questions Mr. Thompson has.

16 MR. THOMPSON: Thank you, Your Honor.

17 CROSS-EXAMINATION BY MR. THOMPSON:

18 Q. Trooper Quinn, I take it from your testimony that you did
19 not see Mr. Gregory drop the bag of marijuana.

20 A. No, sir, I did not.

21 Q. Because I believe you said you didn't see him running
22 until he came by you.

23 A. Yes, sir, that is correct.

24 Q. Okay. And I also take it from your testimony I'm -- or
25 I'm surmising from your testimony that you didn't see him drop

- 1 a bag of -- that bag of cocaine or crack or whatever it is.
- 2 A. No, sir, I did not see him throw it down.
- 3 Q. You didn't see it. You were told about it.
- 4 A. Yes, sir.
- 5 Q. And you went?
- 6 A. Yes, sir.
- 7 Q. And you picked that up off of the road?
- 8 A. Yes, sir.
- 9 Q. Where was it at in the road?
- 10 A. Uh, pretty much center of the road.
- 11 Q. Okay. Was there anything else with it?
- 12 A. Just those -- the bag that it's -- it -- the bag that it
- 13 was in. It's it's in a different bag now.
- 14 Q. Okay.
- 15 A. SLED, that's SLED's bag.
- 16 Q. You said the bag that it was in.
- 17 A. Yes, sir. The bag, the glassine baggy that it was in,
- 18 this is SLED's bag that it's in now, it was sealed in this bag
- 19 before being tested at SLED, this type bag (indicating).
- 20 Q. Okay. You have what's known as a best bag, right?
- 21 A. Yes, sir.
- 22 Q. I'm saying the the cocaine was in a glassine baggy and
- 23 that's what was with it when I found it.
- 24 Q. Okay. The glassine baggy's not with it now?
- 25 A. Uh, this is actually -- this has a case number from SLED

1 on the bag so it was sent down in the glassine baggy.

2 Q. Okay. Okay. Do you know whether or not there were any
3 fingerprints taken off that glassine baggy to see if they
4 matched Mr. Gregory?

5 A. Not not before I took it to SLED, no, sir, there was
6 not.

7 Q. Okay. It stayed in the trunk of your car for one
8 night?

9 A. Yes, sir.

10 Q. Were there any other alleged drugs in the trunk of your
11 car at that time?

12 A. No, sir.

13 Q. Is that the only delivery you made to SLED on the 29th?

14 A. Yes, sir.

15 Q. Okay. Have you had those drugs -- you dropped 'em off
16 with the I guess it's SLED drop box, is that right?

17 A. Yes, sir, I need to back up. I may have actually
18 delivered some urine in reference to a different case. I
19 don't remember if I delivered urine or not but there was no
20 other drugs delivered.

21 Q. Okay. I lost my train of thought. I'm sorry. You put
22 it in a SLED drop box, is that correct?

23 A. No, sir, I delivered it to the personnel at SLED.

24 Q. You actually handed it to somebody.

25 A. Yes, sir.

TROOPER BRIAN QUINN - REDIRECT EXAMINATION BY MS. LESKANIC

1 Q. Okay. Have you had that back in your possession at any
2 time since you handed it off on the 29th until today?

3 A. These narcotics?

4 Q. Yes.

5 A. No, sir, it's the first time I've touched 'em since.

6 Q. Okay. Thank you. I have no further questions.

7 THE COURT: All right. Redirect?

8 MS. LESKANIC: Briefly, Your Honor.

9 REDIRECT EXAMINATION BY MS. LESKANIC:

10 Q. Trooper Quinn, you said that when you went to the roadway
11 you picked up the crack cocaine or what appeared to be the
12 drugs, was there anything else in the roadway?

13 A. No, ma'am. Uh...

14 Q. Money in the roadway?

15 A. Not not at that point. We found the money on past it a
16 little ways further.

17 Q. Okay.

18 A. It wasn't laying with the actual narcotic, it was kinda
19 scattered along with the suspect's shoes and several other
20 items that he came out of but all that was returned back to
21 Mr. Gregory.

22 Q. Okay. But all that was found in the general area ---

23 A. Yes, ma'am.

24 Q. --- the money, the drugs.

25 A. Yes, ma'am, just not right up under that -- not right in

CARMEN JANEANE TUCKER - DIRECT EXAMINATION BY MS. LESKANIC

1 that spot, just within a few feet.

2 Q. All right. Thank you. Nothing further.

3 THE COURT: Anything else? Nothing. You may step down,
4 sir.

5 (Whereupon, the witness was excused.)

6 MS. LESKANIC: The state calls Carmen Tucker.

7 CARMEN JANEANE TUCKER, having been
8 first duly sworn, testified as follows:

9 THE COURT: Would you give us your full name.

10 MS. TUCKER: Carmen Janeane Tucker.

11 THE COURT: Your witness.

12 MS. LESKANIC: Thank you.

13 DIRECT EXAMINATION BY MS. LESKANIC:

14 Q. Would you please introduce yourself to the ladies and
15 gentlemen of the jury.

16 A. Carmen Janeane Tucker. I work for the South Carolina Law
17 Enforcement Division in the drug analysis lab.

18 Q. And how long have you worked in the drug analysis lab?

19 A. A year and three months now.

20 Q. Okay. And what type of training do you receive to work
21 in the drug lab?

22 A. I am certified as a marijuana analyst and as a analyst of
23 potential controlled substances. Prior to that I have a
24 chemistry degree, a a bachelor's and a master's degree in
25 chemistry and then I have two and a half years of organic and

1 medicinal chemistry research.

2 Q. Okay. Does your training does that include testing crack
3 cocaine? Cocaine?

4 A. Yes.

5 Q. What are your duties at SLED?

6 A. My duties involve testing evidentiary evidence for the
7 presence of controlled substances.

8 Q. Okay. And briefly how do you do that?

9 A. Um, basically when we get the evidence in, we test it
10 chemically and by a means of an instrumental analysis to
11 confirm.

12 Q. Okay. Have you ever testified in court before?

13 A. No, ma'am, this is the first time.

14 Q. Okay.

15 MS. LESKANIC: At this time, Your Honor, I would like to
16 offer Carmen Tucker as an expert in the field of chemistry and
17 analysis of narcotics based on her training with narcotics
18 drugs.

19 THE COURT: Did you say you had a degree, ma'am?

20 MS. TUCKER: Yes, sir, I have a bachelor's in chemistry
21 and a master's.

22 THE COURT: Okay. Any questions?

23 MR. THOMPSON: I was gonna follow up on that. Your --
24 where's your master's from?

25 THE COURT: Um, Wake Forest University.

1 MR. THOMPSON: Thank you.

2 THE COURT: Any questions regarding her qualifications or
3 any objection to her qualifications?

4 MR. THOMPSON: No, sir.

5 THE COURT: All right. Ladies and gentlemen of the jury,
6 what this is about is that normally a witness is not permitted
7 to come into court and give his or her opinion. A witness is
8 only qualified to state what they perceive by their senses,
9 what they saw or heard, smelled, things of that nature.
10 However, if a witness has training, experience, education in a
11 field that is not normally those associated by lay persons,
12 the Court can qualify that individual to give opinion
13 testimony.

14 Now, the fact the person gives opinion testimony only
15 means that it is evidence for you to consider along with all
16 the other evidence in the case in making your own decision.
17 You may reject the opinion, you may accept the opinion. You
18 may reject it in part, accept it in a part, that's totally up
19 to you. The Court qualifying a person to give opinion
20 testimony does not require you to accept the testimony it just
21 means it is testimony and evidence just like any other
22 evidence in the case for you to give whatever weight you wish
23 to.

24 I qualify this person in the area of chemical analysis
25 and you may proceed, ma'am.

1 MS. LESKANIC: Thank you, Your Honor. Let me -- may I
2 approach the witness, Your Honor?

3 THE COURT: Yes.

4 MS. LESKANIC: Thank you.

5 (Counsel approached the witness.)

6 BY MS. LESKANIC:

7 Q. I'm gonna show you, it's sitting before you, this is ---

8 A. Um-hum.

9 Q. --- State's Exhibit 3. Would you take a look at that and
10 tell me if you recognize it.

11 (The witness examined the item.)

12 A. Yes, I do.

13 Q. And what is that?

14 A. This is -- inside of here this is the SLED evi -- tamper
15 evident bag that the potential evidence was sealed in and it
16 did come to me sealed.

17 Q. Okay. And how are you able to identify that as something
18 that you worked on at SLED?

19 A. This has my initials on it and our SLED, this
20 (indicating) is the lab number for this case and the item
21 number.

22 Q. Okay. How do you receive that package?

23 A. This package I basically I go downstairs to our log in
24 department and give them a list of cases and they give me the
25 cases. I take them upstairs. As I work them, I check to see

1 that it is sealed and that it has not been tampered with.

2 Then then I mark that okay, I put the date and my initials.

3 And then as I open it I also label the individual bags or bag

4 that the potential evidence came in with my initials and the

5 lab number and the item number and then I begin testing the

6 evidence.

7 Q. Okay. In this case when you received the bag, it was in
8 a best bag or tamper evident bag?

9 A. Yes, it was.

10 Q. And did that bag indicate who you received that from or
11 who sealed that bag?

12 A. On the front of the bag it has basically the person, the
13 name of the person who sealed the bag.

14 Q. Okay. And who was that in this case?

15 A. Um, I can't really read it. It's Brian and I can't
16 really read the last name.

17 Q. Okay. Brian Quinn possibly?

18 A. It's a signature.

19 Q. Okay.

20 A. Yeah.

21 Q. Now, when you received that bag from downstairs, was it
22 sealed?

23 A. Yes, it was.

24 Q. Okay. Had it been tampered with in any way?

25 A. No, ma'am.

1 Q. Would you have tested the substance if the bag had been
2 tampered with?

3 A. Absolutely not.

4 Q. Okay. Now, when you bring it upstairs, what do you do?
5 What's what's your process?

6 A. When I bring the bag upstairs, basically like I said
7 before I I check the bag to make sure that it is sealed and it
8 has not been tampered with. I then make a cut after I've
9 initialed and put the date on the front of the bag, I made a
10 cut along the bottom of the bag which is in the backside here
11 (indicating) away from the top of the bag 'cause that is where
12 the seal is so that the seal stays in tact and then I remove
13 the evidence and begin testing.

14 Q. Okay. Did you test the substances that were submitted to
15 you by Trooper Brian Quinn?

16 A. Yes, I did.

17 Q. Okay. When did you do the tests?

18 A. March 27th.

19 Q. What test do you perform?

20 A. First we weigh the substance.

21 Q. Okay.

22 A. And then I take a sample of the substance and I test it
23 with chemicals and then a sample of the substance is also
24 tested in this particular case by a gas cromatography mass
25 spectometry.

1 Q. Okay. So how do you determine -- what do you use to
2 weigh, you say you weigh it first, what do you use to weigh
3 the substance?

4 A. A Mettler digital balance.

5 Q. Okay.

6 A. Okay.

7 Q. And is that put through any sort of test to make sure
8 that it's giving you an accurate ---

9 A. Yes, ma'am.

10 Q. --- reading?

11 A. Yes, ma'am, monthly.

12 Q. How often is that tested, do you know?

13 A. Every every month it's -- we have a log that we keep.
14 Each analyst keeps a log at their desk for their particular
15 balance and it is lo -- it is che -- tested every month.

16 Q. Okay. And this particular device did you make sure that
17 it would been tested ---

18 A. Yes, ma'am.

19 Q. --- prior to weighing it?

20 A. Yes, ma'am.

21 Q. All right. And what was the weight of the substance?

22 A. 64.01 grams.

23 Q. Okay. Were you able to do a test to determine what
24 substance was contained in the best bag, what what what that
25 is? Were you able ---

1 A. Yes, ma'am. Yeah, like I said before we -- I tested it
2 chemically and then I also tested it on the instrument.

3 Q. Okay. And what is that substance in your opinion?

4 A. This is cocaine-based crack.

5 Q. All right. Now, after you finish weighing it and testing
6 it to determine it's crack cocaine, what do you do with the
7 substance after that?

8 A. After the testing is complete the -- in this particular
9 case the bags, the bag that this evidence came in was not a
10 sealable back so that it wouldn't leak all over so I -- we
11 resealed them in sealable bags in this particular case the
12 Ziploc bag which I have also labeled with my initials and it
13 says bag add to indicate that I added this bag.

14 Q. Okay. So what bag did it come in when it was delivered
15 to you?

16 A. It actually ---

17 Q. You still have those?

18 A. Yes, they're in here. There's two different bags.
19 There -- it was basically -- the substance was in a bag which
20 was in another plastic bag so it was double bagged basically.

21 MS. LESKANIC: Your Honor, may I ask her to step down to
22 show that to the jury?

23 THE COURT: Well, ma'am, you may step down but you need
24 to make sure you speak loud so this lady right here
25 (indicating) can hear you, okay? So try your best not to have

CARMEN JANEANE TUCKER - DIRECT EXAMINATION BY MS. LESKANIC

1 your back to the lady 'cause I don't see a microphone near the
2 wall there.

3 MS. TUCKER: Okay, I'll do that.

4 THE COURT: All right. You may step down.

5 (The witness left the stand.)

6 MS. TUCKER: The evidence came in -- when there's two
7 plastic ---

8 THE COURT: Any objection, by the way she's not moved to
9 have this in evidence yet, any objection to the witness using
10 it at this time?

11 MR. THOMPSON: I don't have any objection to her
12 testifying to it but I may have an objection but I do not
13 object with it going in front of the jury.

14 THE COURT: So at this point in time you have no
15 objection?

16 MR. THOMPSON: I have no objection to her testifying what
17 went on. I do have an objection to her presenting it to the
18 jury ---

19 MS. LESKANIC: Your Honor, at this time I'd -- I'm sorry.

20 MR. THOMPSON: Oh, I'm sorry. Well, let me ask you, if I
21 could ask her one question just out of turn.

22 THE COURT: Any objection?

23 MS. LESKANIC: No objection.

24 THE COURT: Well, then yes, sir.

25 MR. THOMPSON: Have you had possession of that since...

1 MS. TUCKER: When I tested it I had possession of it.

2 MR. THOMPSON: Whose had possession since you tested it?

3 MS. TUCKER: I returned it back in. I resealed it in
4 this (indicating) bag. I turned it back into log in and then
5 as far as I know, it was returned to the agency.

6 MR. THOMPSON: Are you gonna be able to establish a
7 chain?

8 MS. LESKANIC: I can.

9 MR. THOMPSON: Okay. If she can establish a chain, I'll
10 I'll not object to it.

11 THE COURT: Well, I'm not gonna admit it yet but you can
12 go ahead and discuss it in front of the jury.

13 MS. LESKANIC: Thank you, Your Honor.

14 MS. TUCKER: There are two plastic bags in here. The the
15 crack, cocaine based crack was inside a plastic bag which was
16 inside another plastic bag.

17 BY MS. LESKANIC:

18 Q. Okay. And then you did what with that?

19 A. I I removed it. I labeled each bag with the lab number,
20 my initials and then once I was done with testing I put it in
21 a sealable bag, Ziploc bag, and then put the the lab number
22 and my initials on that.

23 Q. Okay. All right. If you would like to have a seat
24 again. Thank you.

25 (The witness returned to the stand.)

1 And then after you seal it, what do you do with the
2 drugs?

3 A. I return it to log in downstairs.

4 Q. Okay. And is this the way, the way that it's sealed
5 today, is that the way that you sealed it when you returned it
6 to log in?

7 A. Yes, ma'am. This is a heat seal.

8 Q. Okay. And how do you know that you're the last one to
9 seal that?

10 A. Because inside the bag before I heat seal it I put the
11 date and my initials and then I heat seal over it.

12 Q. Okay. So in you're professional opinion based on the
13 test you performed this was 64.01 grams of crack cocaine?

14 A. Yes, ma'am.

15 MS. LESKANIC: Okay. Your Honor, at this time I'd move
16 to offer State's Exhibit 3 for admission as evidence.

17 (Whereupon, a discussion was held off the record.)

18 THE COURT: You want to approach up here for a second.

19 (Whereupon, a bench conference was held off the record.)

20 BY MS. LESKANIC:

21 Q. Ms. Tucker, ---

22 THE COURT: I'll not admit it at this time.

23 MS. LESKANIC: Thank you, Your Honor.

24 BY MS. LESKANIC:

25 Q. Ms. Tucker, is this bag in the same condition as it was

CARMEN JANEANE TUCKER - CROSS-EXAMINATION BY MR. THOMPSON

1 when you last saw it?

2 A. Yes, it is.

3 Q. Okay. If it had been tampered with in any way, would
4 that be evident?

5 A. This heat sealed bag, yes, it would.

6 Q. Okay. So it is in the same condition as it was when you
7 last had it after you did the testing and sealed the drugs?

8 A. Yes, it is.

9 Q. Okay. Thank you. I have no further questions of this
10 witness.

11 THE COURT: Okay. Cross-examination?

12 MR. THOMPSON: Thank you, Your Honor.

13 CROSS-EXAMINATION BY MR. THOMPSON:

14 Q. Ms. Tucker, where were you on February the 26th of this
15 year?

16 A. I'm not sure, sir.

17 Q. Were you here in Cherokee County by any chance?

18 A. I don't believe so.

19 Q. Okay. So you didn't witness this incident. You don't
20 have a clue what went on.

21 A. No, sir.

22 Q. All you did was tested the substance that was brought to
23 you, is that ---

24 A. Yes, sir.

25 Q. --- correct?

1 A. Yes, sir.

2 Q. Okay. And I'm sorry I didn't mean to throw you with that
3 question.

4 A. That's okay.

5 Q. And you obtained the substance from?

6 A. Our log in department which is on the first floor of our
7 building.

8 Q. Okay. And you opened the the best bag, the tamper proof
9 bag?

10 A. Yes, sir.

11 Q. You tested the substance?

12 A. Yes, sir.

13 Q. And you put it back in a bag?

14 A. Yes, sir.

15 Q. And sealed it yourself?

16 A. Yes, sir.

17 Q. Is there -- are you certain that that's the condition the
18 bag was in when it left you?

19 A. Yes, sir, I am.

20 Q. Okay. Now, you tested this substance. What date did you
21 test it on?

22 A. March 27th.

23 Q. Okay. And you issued a report on April 13th, would that
24 be about right?

25 A. That's correct.

1 Q. Okay. Can I ask why there was a over a two week period
2 between the time you tested and you issued your report?

3 A. We have a lotta cases and basically we will process them,
4 seal them and then as we get to our reports we work the
5 reports. We don't basically -- like I wouldn't do this case
6 and then the same like next hour do the paperwork on that.

7 Q. Well, how do you keep 'em separate? How do you know
8 which case you're doing which report on?

9 A. Because they have lab numbers assigned to them and I mark
10 everything's is assigned.

11 Q. Okay. I guess my question is two weeks later did you sit
12 down and say, "Well, I remember testing that and it tested
13 crack cocaine," ---

14 A. Oh, n ---

15 Q. --- or do you have some kinda notes or something?

16 A. I do have notes, yes, I do.

17 Q. Okay. All right. And you used a chemical test?

18 A. Yes, sir.

19 Q. What -- what's the chemical test?

20 A. Cobalt thiocyanate and 10-Chloro is -- is -- are two
21 different solutions basically. Do you want me to explain how
22 it works?

23 Q. It's solutions that you either drop on the ---

24 A. Right.

25 Q. --- on the substance or you drop the substance down on

1 the solution.

2 A. Right.

3 Q. And it does something, right?

4 A. Right.

5 Q. Okay. Did it do what it was supposed to do to the crack
6 cocaine?

7 A. Yes, it did.

8 Q. Okay. Gas chromatography, what is that?

9 A. Gas chroma -- the instrument that we use is gas
10 chromatography, mass spectrometry and it is designed to in the
11 gas chromatography part of the instrument to separate
12 components of a compound or a mixture and then they move
13 through at different times and exit the column which is within
14 the gas chroma -- gas chromatograph. When they exit the mass
15 spectrometry part, fragments, those molecule or those
16 individual molecules of the component exiting and then those
17 fragments are like a fingerprint for the molecule.

18 Q. So we're talking DNA for ---

19 A. Sort of, yeah.

20 Q. All right. Is is the chromatography where -- do you burn
21 a part of the substance to do that?

22 A. No, sir.

23 Q. You don't?

24 A. No. It is it is -- to inject it into the gas
25 chromatograph, it is put in solution and is vaporized and then

1 passes through the column in a vapor form.

2 Q. And you've also got checked on your report "physical
3 test." What does that mean?

4 A. That just means when we're dealing with a substance that
5 is possibly cocaine crack in in the base form, you -- if -- it
6 will go up into hexane and hexane is what it was dissolved in
7 to put it on the on the gas cromatograph.

8 Q. So that's really nothing ---

9 A. That just ---

10 Q. --- that's ---

11 A. No.

12 Q. --- nothing spectacular there.

13 A. All that means is, um, that as as the base form, the base
14 form will go into hexane, the salt form will not.

15 Q. Okay. And when you finished testing it, you sealed it
16 back in the bag, did you return it back to your evidence or
17 your whoever it is that logs it in the same day?

18 A. No, sir, I did not. We have a vault inside of our lab
19 and we lock all the evidence. We have our individual filing
20 cabinets in that vault and it was in, locked in the vault,
21 until such time as I returned it to log in downstairs. And we
22 return 'em in batches like just a large group at the time.

23 Q. Okay. Do you know when it was that you returned it to
24 log in downstairs?

25 A. I would have to refer to my chain of custody ---

CARMEN JANEANE TUCKER - CROSS-EXAMINATION BY MR. THOMPSON

1 Q. Okay.

2 A. --- for the exact date.

3 Q. And then you've had not further contact with it until
4 today?

5 A. No, sir.

6 Q. Okay. Thank you.

7 THE COURT: Any follow up?

8 MS. LESKANIC: No, Your Honor.

9 THE COURT: You may step down, ma'am.

10 You request this witness be excused?

11 MS. LESKANIC: Yes, Your Honor.

12 MR. THOMPSON: No objection.

13 THE COURT: You may be excused to return to your duties.

14 Thank you, ma'am.

15 (Whereupon, the witness was excused.)

16 MS. LESKANIC: Thank you. The state calls Johnny Price.

17 THE COURT: Johnny Price.

18 CORPORAL JOHNNY PRICE, having been
19 first duly sworn, testified as follows:

20 THE COURT: Good afternoon, Officer Price, how are you?

21 CORPORAL PRICE: I'm fine, Judge. How are you today?

22 THE COURT: Johnny Price is your name. I assume price is
23 like the sale price. P-R-I-C-E?

24 MR. PRICE: That's correct, Your Honor. Price is Right.

25 Got it.

CORPORAL JOHNNY PRICE - DIRECT EXAMINATION BY MS. LESKANIC

1 MR. PRICE: That's it.

2 THE COURT: Thank you. Your witness.

3 DIRECT EXAMINATION BY MS. LESKANIC:

4 Q. Corporal Price, will you please introduce yourself to the
5 jury and tell them where you are employed.

6 A. As the judge told you, my name is Johnny Price. I'm
7 employed with the South Carolina Highway Patrol. I've been in
8 law enforcement for almost twenty-three (23) years. I'm
9 currently stationed in Columbia. I am a state asset
10 forfeiture officer for the highway patrol. And my other duty
11 involves I'm essent -- I'm an evidence technician with
12 responsibilities of Troop 2, Troop 3 and Troop 4. This
13 includes once a month I go around to the various troops, pick
14 up any and all evidence that needs to be returned to Columbia
15 for destruction or any new evidence that may be confiscated.
16 Also, once a month I go to SLED and pick up any evidence
17 that's been analyzed and to be returned to our facility to be
18 held until court or the case is disposed of.

19 Q. Okay. So in essence do you work cases just for the
20 highway patrol, keep evidence ---

21 A. No, the Department of Public Safety.

22 Q. Okay. In this case did you have an occasion to go to the
23 state law enforcement division to pick up narcotics?

24 A. That's correct.

25 Q. Okay. When did you do that?

CORPORAL JOHNNY PRICE - DIRECT EXAMINATION BY MS. LESKANIC

1 A. It was on July the 26th of this year.

2 Q. Okay. I'd like to show you what's been marked State's
3 Exhibit 3. Tell me if you recognize that.

4 (The witness examined the exhibit.)

5 A. It is a -- excuse me. It is evidence that that I picked
6 up for the -- my area which is either Troop 2, Troop 3 or
7 Troop 4 for the highway patrol or any other DPS areas of
8 responsibility within that that coverage. Um, I can identify
9 this. On the packaging it's -- well, if you go to this
10 package there's an there's an L07 number which is it's a lab
11 number for SLED and underneath that there's a -- an agency
12 case number and this case is 0711HP40022. That "L" number
13 means absolutely nothing to me but that agency case number by
14 the fourth, the second set of numbers which is the 11 which is
15 County Code 11 which means it's Cherokee County, thus being in
16 my area of coverage. So at this point I I saw that it
17 belonged to Brian Quinn and that the date that the offense
18 occurred was 2/27/07.

19 This particular case what I did is I just created where I
20 picked it up from SLED, showed a best kit and I took it back
21 to my office, I entered it into the system, our computerized
22 system which electronic tracking in case a solicitor's office
23 calls asking me about a case I can look it up on the computer
24 rather than digging through all the the evidence in the back.
25 And this case number once it's entered into the system by

1 the -- all the information that I have, it's it's gone into
2 the system and then once I've gotten it all and saved it what
3 I do is I I create three evidence labels. Number 1 I place it
4 on the evidence itself which is indicated to me by the case
5 number, Number 2, I put one on the chain of custody, I put
6 both of them inside of the envelope. I've got another one on
7 the outside of the envelope and then once I've entered all my
8 evidence I take it back and whenever that troop like Troop 4,
9 which they're assigned to, it will go into their evidence area
10 which is a file cabinet and it's alphabetized by the subject's
11 last name.

12 Q. Okay. And that file cabinet is kept in Columbia where
13 you work.

14 A. Absolutely. Um, it's -- our our office -- excuse me. To
15 get into our office you have seven levels of security before
16 you get to it and then you also have from the time you enter
17 the facility you are photogra -- you're on camera the entire
18 time.

19 Q. Okay. Now, the the drugs in this particular case or
20 State's Exhibit 3, when you picked them up from SLED, were
21 they in the condition that they appear in court today?

22 A. Absolutely because if there's any damage to a package
23 whatsoever we do not accept it. The da -- the the evidence
24 that we pick up from SLED as far as drug related items is
25 always sealed. If it's not drug related just say if it's

CORPORAL JOHNNY PRICE - DIRECT EXAMINATION BY MS. LESKANIC

1 latent prints or something like that, it could be in a
2 different type packaging but they have it sealed with evidence
3 tape; therefore, I have no access to the actual evidence
4 itself. I I can't reach in and touch it. If I did I would
5 break the seal that the young lady had placed on this when she
6 sealed it and dated it.

7 Q. Okay. And did you tamper with this in any way after you
8 picked it up from SLED?

9 A. Absolutely not. I have no use for it.

10 Q. All right. What did you do with it after you picked it
11 up from SLED?

12 A. I went back to my office, did the process, entered into
13 police central, itemized it into the system and put it in into
14 Troop 4's file cabinet.

15 Q. Okay. And it has been there since the time that you
16 picked it up from SLED and logged it in?

17 A. It has been there unnoticed since Thursday when you
18 called me.

19 Q. Okay.

20 A. And I confirmed it was there.

21 Q. Okay. And then what did you do this morning?

22 A. This morning at about six o'clock I was there picking it
23 up and then I drove it to -- I I picked -- I went to the back,
24 I picked it up out of the file cabinet, went to the computer,
25 signed it out, showed it coming from the safe to me, signed it

CORPORAL JOHNNY PRICE - CROSS-EXAMINATION BY MR. THOMPSON

1 out electronically then I brought it here. And ever since
2 this morning around six o'clock it's been in my possession
3 until earlier when I handed it to you at that table.

4 Q. Okay. And is it in the same condition as it was today as
5 it was when you received it from SLED?

6 A. Absolutely.

7 Q. Okay. Hasn't been tampered with in any way?

8 A. No indication and and not by me.

9 Q. Okay.

10 MS. LESKANIC: Your Honor, at this time I would offer
11 State's Exhibit 3 for admission as evidence.

12 THE COURT: Any questions or any objections?

13 MR. THOMPSON: No objection.

14 THE COURT: All right. Is it marked already?

15 MS. LESKANIC: It is, Your Honor.

16 THE COURT: As 3?

17 MS. LESKANIC: Yes, Your Honor.

18 THE COURT: All right in evidence.

19 (State's Exhibit No. 3 was admitted into evidence.)

20 MS. LESKANIC: Thank you. I have no further questions.
21 If you would, please answer any questions Mr. Thompson may
22 have.

23 THE COURT: All right. Mr. Thompson.

24 MR. THOMPSON: Thank you.

25 CROSS-EXAMINATION BY MR. THOMPSON:

CORPORAL JOHNNY PRICE - CROSS-EXAMINATION BY MR. THOMPSON

- 1 Q. Trooper Price, you work outta Columbia?
- 2 A. Yes, sir.
- 3 Q. So on February 26 you wasn't here in Cherokee County to
- 4 see what went on?
- 5 A. Not that I recall.
- 6 Q. Okay. Your involvement in this case never began until
- 7 whenever it was, July, you picked that up is that correct?
- 8 A. Absolutely.
- 9 Q. All right. And that Troop 4 file cabinet you're talking
- 10 about ---
- 11 A. Right.
- 12 Q. --- is that a secure file cabinet? I know you talk about
- 13 there's seven levels of security to get to it, but what if I
- 14 can get into the room with it, is it a secure file cabinet?
- 15 A. Is it secure?
- 16 Q. Yes.
- 17 A. No, it's it's secured under the under the atmosphere of
- 18 security. Uh, can you walk in there? Well, what I'm saying
- 19 is when -- can you walk in there and open the drawer, yes you
- 20 can, sir.
- 21 Q. Okay. So it's it's not a a a locked file cabinet that
- 22 it's in?
- 23 A. It sure is not.
- 24 Q. Okay. Thank you. I have no further questions.
- 25 THE COURT: Redirect.

CORPORAL JOHNNY PRICE - REDIRECT EXAMINATION BY MS. LESKANIC

1 REDIRECT EXAMINATION BY MS. LESKANIC:

2 Q. If someone were to walk in and open that file cabinet and
3 tamper with that package, would we know that today?

4 A. Absolutely...visible means.

5 Q. Okay. Thank you. Nothing further.

6 THE COURT: Anything else?

7 MR. THOMPSON: No, sir.

8 THE COURT: You may step down, sir.

9 MS. LESKANIC: I ask that he be released, Your Honor.

10 MR. THOMPSON: No objection.

11 THE COURT: You'd rather go back to Columbia than stay
12 here in Gaffney?

13 TROOPER PRICE: Not really.

14 THE COURT: Well, he can be released.

15 (Whereupon, the witness was excused.)

16 THE COURT: Any other witnesses from the state?

17 MS. LESKANIC: Yes, Your Honor, I call Detective Christy
18 Poole.

19 DETECTIVE CHRISTY LYNN POOLE,
20 having been first duly sworn, testified as follows:

21 THE COURT: If you would, please state your full name for
22 the jury.

23 DETECTIVE POOLE: Christy Lynn Poole.

24 THE COURT: All right. Your witness.

25 DIRECT EXAMINATION BY MS. LESKANIC:

1 Q. Detective Poole, if you would please introduce yourself
2 to the jury and tell them where you are employed.

3 A. I'm Christy Poole and I work for the Cherokee County
4 Metro Narcotics Unit.

5 Q. How long have you worked for the metro narcotics unit?

6 A. I've been assigned to metro at this time for about a
7 little over two years this time.

8 Q. Okay. Have you worked for metro before?

9 A. I have.

10 Q. And how long had you worked for metro before?

11 A. Probly two, three years.

12 Q. Okay. How long have you been in law enforcement?

13 A. A little over twelve (12).

14 Q. Would you please tell the jury your general duties in
15 metro.

16 A. We do narcotics in -- investigations which consist of
17 undercover narcotics buys, sending other individuals to do
18 narcotics buys. We do traffic stops, arrests, booking,
19 investigations.

20 Q. Did you have an occasion to speak with Thomas Arnold
21 Gregory about what happened in this case?

22 A. I did.

23 Q. And why did you speak with him?

24 A. He requested that I come to the jail and talk to him.

25 Q. Okay. So he was in jail at the time?

1 A. He was.

2 Q. When did you go and talk with him?

3 A. I believe it was February the 28th

4 Q. Okay. So two days after his arrest.

5 A. Yes, ma'am.

6 Q. How did he send word to you?

7 A. He sent word through, um, Trooper Quinn and through the
8 detention officers.

9 Q. Okay. And just stated that he wanted to talk with you?

10 A. Yes, ma'am?

11 Q. So did you go speak with him?

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

13 Q. Okay. Did you go by yourself?

14 A. No, Captain David Oglesby of the metro narcotics unit
15 went with me.

16 Q. Okay. What did you do when you first got to the
17 detention center?

18 A. We went into the interview room and we had a detention
19 officer bring Mr. Gregory in there.

20 Q. Okay. So it was just you, Captain Oglesby and Thomas
21 Gregory?

22 A. Yes, ma'am.

23 Q. All right. What was the first thing you did when
24 Mr. Gregory came into the room?

25 A. I did a pre-interrogation waiver form.

DETECTIVE CHRISTY POOLE - DIRECT EXAMINATION BY MS. LESKANIC

1 A. Okay.

2 Q. I'd like to show you -- if I may approach, Your Honor?

3 THE COURT: Yes.

4 (Counsel approached the witness.)

5 BY MS. LESKANIC:

6 Q. I'd like to show you what's been marked State's
7 Exhibit 1. Take a look at that and tell me what that is.

8 (The witness examined the document.)

9 A. That is the pre-interrogation waiver form that I
10 completed on Thomas Arnold Gregory.

11 Q. All right. And what is a pre-interrogation waiver form?

12 A. It's a form which explains a subject's Miranda rights in
13 one section and underneath that section is a a waiver of their
14 Miranda rights.

15 Q. Okay. Would you please demonstrate for the jury how you
16 reviewed those rights with Mr. Gregory?

17 A. Can I move this (indicating)?

18 Q. Yes, you may.

19 A. Basically what we do is, um, at first I filled out the
20 top part which would be his information. After that I put a
21 check mark in each one of the little blocks beside his rights
22 and then I put a circle beside each one of 'em. At that point
23 in time I read from statement of rights and it starts with
24 "before" I read from that to the end of his rights, um, all
25 the way down to asking his -- if he fully understood 'em.

DETECTIVE CHRISTY POOLE - DIRECT EXAMINATION BY MS. LESKANIC

1 Q. Okay. Would you please read that for the jury just as
2 you did for Mr. Gregory.

3 A. Okay, "Before any questions are asked of you you must
4 understand your rights. You have the right to remain silent.
5 Anything you say can and will be used against you in a court
6 of law. You have the right to talk to a lawyer and to have a
7 lawyer present while you're being questioned. If you cannot
8 afford a lawyer, a lawyer will be appointed free of cost to
9 represent you before for questioning begins."

10 THE COURT: Not too fast, ma'am. The court reporter has
11 to take down what you say.

12 TROOPER POOLE: I'm sorry.

13 THE COURT: Continue on.

14 TROOPER POOLE: "And you have the right to stop answering
15 question any time. The above rights have been read to me by
16 S. A. Poole/Captain Oglesby. I have read the above rights and
17 I understand them fully."

18 BY MS. LESKANIC:

19 Q. Okay. And did Mr. Gregory sign that in your presence?

20 A. He did.

21 Q. Did you witness his signature?

22 A. I did.

23 Q. Okay. And what is next on that pre-interrogation waiver
24 form?

25 A. There is a waiver of rights form part.

1 Q. And what does that state?

2 A. It says, "Fully understanding my rights as they have been
3 explained to me I wish to waive or give up my rights and talk
4 to Officer Poole/Oglesby in reference to trafficking crack
5 cocaine. I have waived my rights freely and voluntarily
6 without being threatened or coerced and without being any --
7 without being promised any leniency or reward."

8 Q. Okay. And did he sign, is there a place for him to sign
9 under that?

10 A. There is.

11 Q. And did he sign that in both places?

12 A. He did.

13 Q. Did anyone witness that?

14 A. I did.

15 Q. What else is contained on that form?

16 A. Um, the date -- I mean, well, actually the time that the
17 interview started after his rights were given to him and he
18 waived his rights, the time the interview began and the time
19 the interview ended.

20 Q. Okay. What time did the interview begin?

21 A. Um, 1:13 p.m.

22 Q. And what time did the interview end?

23 A. 1:21 p.m.

24 Q. Okay. And then are there any other signatures on the
25 form?

DETECTIVE CHRISTY POOLE - DIRECT EXAMINATION BY MS. LESKANIC

1 A. There is. Captain Oglesby read the bottom part and, um,
2 the defendant signed it and I witnessed it and Captain Oglesby
3 notarized it.

4 Q. Okay. And all of this was done in your presence?

5 A. Yes, ma'am.

6 Q. Did Mr. Gregory seem to understand his rights when you
7 read them to him?

8 A. He did.

9 Q. Did he freely and voluntarily waive those rights and want
10 to speak with you about this case?

11 A. He good.

12 MS. LESKANIC: Your Honor, at this time I'd offer
13 State's Exhibit 1 for admission as evidence.

14 THE COURT: Any objection?

15 MS. LESKANIC: No objection.

16 THE COURT: All right State's Exhibit -- what number is
17 it?

18 MS. LESKANIC: 1.

19 THE COURT: One in evidence.

20 MS. LESKANIC: Thank you, Your Honor.

21 (State's Exhibit No. 1 was admitted into evidence.)

22 BY MS. LESKANIC:

23 Q. Now, Detective Poole, when you went to talk with him, did
24 you or Captain Oglesby promise Mr. Gregory anything if he
25 would talk to you?

1 A. No, we did not.

2 Q. Okay. Did you threaten him in any way ---

3 A. No.

4 Q. --- if he refused to talk to you?

5 A. No, ma'am, we did not.

6 Q. Did you try to coerce him in any way to give you a
7 statement?

8 A. No, ma'am.

9 Q. Did he give you a statement?

10 A. He did.

11 Q. And was it an oral statement or a written statement?

12 A. It was a written statement.

13 Q. I'd like to show you what's been marked State's
14 Exhibit 2. Take a look at that and tell me if you recognize
15 that.

16 (The witness examined the document.)

17 A. Yes, ma'am it's the statement that Mr. Gregory gave us.

18 Q. Okay. Now is that statement something that he wrote or
19 did you write that statement for him?

20 A. He wrote the statement.

21 Q. All right. And did he write that statement in your
22 presence?

23 A. He did.

24 Q. Okay. Did he sign the statement?

25 A. He did.

1 Q. And was that done in your presence?

2 A. Yes, ma'am.

3 Q. Okay. Was he given an opportunity to read that statement
4 or did you read that statement to him?

5 A. I got -- he read the statement and I read the statement
6 to him after he wrote it.

7 Q. Okay. And he signed that statement?

8 A. And he signed it.

9 Q. Okay.

10 MS. LESKANIC: Your Honor, at this time I'd offer State's
11 Exhibit 2 for admission as evidence.

12 THE COURT: Any questions or objections?

13 MR. THOMPSON: No, sir.

14 THE COURT: State 2 in evidence.

15 (State's Exhibit No. 2 was admitted into evidence.)

16 BY MS. LESKANIC:

17 Q. Would you please read that statement that Mr. Gregory
18 gave to you and Captain Oglesby.

19 A. Yes, ma'am, "I was with a friend and we was driving
20 around. The place looked a little fun but I had stopped and
21 pick up some dope from a from somebody and he has the things
22 that you want, had left his house, as I left his house I got
23 three ounces of dope from him. As the day goes on I went
24 downtown and got stopped by the police. I took off run from
25 them and at the end I got caught. As I ran I downed my dope

DETECTIVE CHRISTY POOLE - CROSS-EXAMINATION BY MR. THOMPSON

1 down from Officer Poole."

2 Q. Was there any question when he gave you this statement as
3 to when incident he was talking about?

4 A. No, ma'am.

5 Q. Okay. So did you all discuss what the facts of the case
6 were while he gave you the statement so you knew which case he
7 was about?

8 A. Yes, ma'am.

9 Q. Okay. I think that's all the questions I have. If you
10 would, please answer any questions Mr. Thompson has.

11 THE COURT: Cross-examination.

12 MR. THOMPSON: Thank you, Your Honor.

13 CROSS-EXAMINATION BY MR. THOMPSON:

14 Q. It says voluntary statement at the top?

15 A. Yes, sir.

16 Q. You all have an involuntary statement form?

17 A. No, sir.

18 Q. Okay. According to your pre-interrogation waiver form
19 you began talking with Mr. Gregory at 13:08, that would be
20 eight minutes after 1 in the afternoon, is that correct?

21 A. Yes, sir.

22 Q. And apparently that's -- you gave you gave a -- the
23 statement of rights, Miranda rights and all at that point in
24 time, is that correct?

25 A. Yes, sir.

DETECTIVE CHRISTY POOLE - CROSS-EXAMINATION BY MR. THOMPSON

1 Q. Did you ask him what you wanted to talk with him -- what
2 he wanted to talk with you about before you gave him the
3 Miranda rights or did you do that first?

4 A. I did the Miranda rights first.

5 Q. Okay. Then on down there it says time interview began
6 13:13 p.m. That's five minutes later.

7 A. Yes, sir.

8 Q. So it took five minutes to do the Miranda rights I'm
9 assuming.

10 A. Approximately, yes, sir.

11 Q. And then then the interview, I guess, is when you say he
12 gave a statement, is that correct?

13 A. Yes, sir.

14 Q. And then the time that the statement was completed was
15 13:21 p.m., is that correct?

16 A. Yes, sir.

17 Q. That's eight minutes later.

18 A. Yes, sir.

19 Q. And in that eight minutes he he wrote this (indicating),
20 you both reviewed it, he made some changes to it and everybody
21 signed it, is that correct?

22 A. Yes, sir.

23 Q. Okay.

24 A. Well, he didn't make any changes to it but...

25 Q. Well, when he wrote it, he scratched out a couple things

1 and ---

2 A. He did.

3 Q. --- you had him initial it, right?

4 A. Yes, sir.

5 Q. Okay. And it says that he picked up some dope, is that
6 right?

7 A. Yes, sir.

8 Q. Doesn't say whether it was marijuana or crack, right?

9 A. It doesn't say.

10 Q. Just says dope.

11 A. Yes, sir.

12 Q. And the second place in there where it says he dropped
13 some dope or threw down some dope or actually it says, "I
14 downed my dope down," is that correct?

15 A. Yes, sir.

16 Q. And the the language isn't exactly the best in the world.

17 A. Mr. Gregory wrote it, yeah.

18 Q. Okay. "I downed my dope down." Again, it doesn't say
19 whether that's marijuana or crack, is that correct?

20 A. That's correct.

21 Q. Okay. On February 26th were you down at Five Points when
22 this incident occurred?

23 A. I was not.

24 Q. Okay. Any concessions, promises, hopes given to
25 Mr. Gregory by you or Mr. Oglesby at the time of this

DETECTIVE CHRISTY POOLE - REDIRECT EXAMINATION BY MS. LESKANIC

1 statement to get him to give this statement?

2 A. None whatsoever.

3 Q. Thank you.

4 THE COURT: Anything else?

5 MS. LESKANIC: Briefly, Your Honor.

6 REDIRECT EXAMINATION BY MS. LESKANIC:

7 Q. Detective Poole, Mr. Thompson's in his statement just
8 says that he downed his dope, ---

9 A. Yes, ma'am.

10 Q. --- doesn't say what it was, but on the pre-interrogation
11 waiver form under the waiver of rights had you told him what
12 you were there to talk with him about?

13 A. Yes, ma'am.

14 Q. And what was that?

15 A. It was in reference to trafficking crack cocaine.

16 Q. Okay. And that's what he gave the statement in reference
17 to?

18 A. That's what he gave the statement in reference to.

19 Q. Thank you. No further questions.

20 THE COURT: Anything else?

21 MR. THOMPSON: No, sir.

22 THE COURT: You may step down.

23 TROOPER POOLE: Thank you.

24 (Whereupon, the witness was excused.)

25 THE COURT: Any other witnesses?

MOTIONS AND MATTERS

1 MS. LESKANIC: No, Your Honor, the state rests.

2 THE COURT: Ladies and gentlemen of the jury, at this
3 time, if you would, I'm gonna have you step out to the jury
4 room. The case is not yours yet so don't discuss it. I'll
5 bring you back in a few minutes, step to the jury room.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: Okay. Any motions by the state, hear you
9 now, motions by the defense?

10 MR. THOMPSON: Your Honor, we would at this time make us
11 a general motion for directed verdict based on our prior
12 pretrial motions and matters.

13 THE COURT: All right. I'd like someone to refresh me as
14 to any testimony regarding a park.

15 MS. LESKANIC: Trooper Poole testified that it happened
16 in proximity of Limestone Courts playground.

17 THE COURT: Did he say the distance?

18 MS. LESKANIC: I believe I asked if it was within a half
19 mile.

20 MR. THOMPSON: He he did testify, Your Honor, that it was
21 across the road and it was within a half mile of ---

22 THE COURT: He did testify?

23 MR. THOMPSON: Yes.

24 THE COURT: Trooper Poole did?

25 MS. LESKANIC: Yes, Your Honor.

MOTIONS AND MATTERS

1 DETECTIVE STEPHEN POOLE: Yes, sir.

2 THE COURT: Okay. And he did say it was Limestone Courts
3 playground? Everyone agrees he said that?

4 MR. THOMPSON: Yes, sir.

5 THE COURT: And the chemist said the amount of the
6 cocaine was how many grams?

7 MS. LESKANIC: 6 ---

8 THE COURT: Do we have it on the document?

9 MS. LESKANIC: I think 64.01.

10 THE COURT: Okay. Okay. I will respectfully deny your
11 motion at this time.

12 All right. Now, Mr. Thompson, you plan to have any
13 witnesses, sir?

14 MR. THOMPSON: I don't believe so, Judge. I ---

15 THE COURT: All right.

16 MR. THOMPSON: Mr. Gregory's not here. He'd be the only
17 witness we would have if we had one.

18 THE COURT: Okay. Well, I'll let you rest in front of
19 the jury. Of course you put no evidence in you get last
20 argument.

21 MR. THOMPSON: Yes, sir.

22 THE COURT: All right. State, if you would, do you have
23 any matters, other than a few minutes to get yourself
24 together, anything else you need to talk about before we take
25 a few minutes and let you get yourself ready for your closing

MOTIONS AND MATTERS

1 argument? You go first.

2 MS. LESKANIC: That's right. I'll I'll be ready, Your
3 Honor. No no other motions.

4 THE COURT: All right. I will assume your argument is
5 not gonna be more than about fifteen (15), twenty (20)
6 minutes.

7 MS. LESKANIC: Probably five.

8 THE COURT: Okay. And of course the state's up to you on
9 that.

10 MR. THOMPSON: I haven't figured out what I'm gonna argue
11 yet, Judge.

12 THE COURT: Okay. Okay. We'll take a break for a
13 minute.

14 (Whereupon, a recess was taken.)

15 THE COURT: Charge the jury on the standard charge as
16 well as the three criminal charges also the fact the defendant
17 did not testify not to be used against him if you request me
18 to.

19 MR. THOMPSON: Yes, sir.

20 THE COURT: Also, the fact of trial in the absentia
21 remind you again that's not in any way to be discussed in the
22 jury room and the burden is upon the state to prove guilt
23 beyond reasonable doubt. So the fact the defendant is not
24 here should not in nay way affect the jury's verdict or be
25 held adverse to the defendant whatsoever. Any other requests?

MOTIONS AND MATTERS

1 MR. THOMPSON: I've just got one question. Which one of
2 the reasonable doubt charges do you use?

3 THE COURT: The Lockemy one.

4 MR. THOMPSON: Well, I'm not sure which one that is.

5 THE COURT: It is a hybrid between *Victor v. Nebraska* and
6 the *Manning* case.

7 MR. THOMPSON: Okay.

8 THE COURT: I'll read it to you, doesn't take but a
9 second, well, a little more than a second. "The government
10 has," -- tell you what, you come look at it.

11 MR. THOMPSON: Well, I -- if it's a cross between the two
12 I ---

13 THE COURT: You come look at it.

14 MR. THOMPSON: I just ---

15 THE COURT: I'd rather you look at.

16 MR. THOMPSON: I ---

17 THE COURT: Come around also, madam solicitor. You can
18 come around.

19 MR. THOMPSON: I don't want to stand up there and argue
20 one thing and you charge 'em with the other one. That's what
21 I'm trying to ---

22 THE COURT: But I I drafted this one myself about seven
23 or eight years ago.

24 (Whereupon, a bench conference was held off the record.)

25 MR. THOMPSON: I don't have a problem with that.

MOTIONS AND MATTERS

1 THE COURT: All right. You all know of any other charges
2 other than the criminal charges themselves, your request that
3 I charge him the charge regarding defendant not testifying as
4 well as I charge that the jury is not in any way to hold it
5 against the defendant, the fact he is not here should not even
6 be discussed in the jury room and the burden is upon the state
7 to prove guilt beyond a reasonable doubt and not upon the
8 defendant to prove himself innocent similar to the fact he
9 didn't testify?

10 MR. THOMPSON: I don't have anything else I'd request.

11 THE COURT: All right. And nothing else from the state?

12 MS. LESKANIC: No, Your Honor.

13 THE COURT: I didn't see any evidence of circ -- I didn't
14 see any circumstantial evidence type charge here. And I've
15 already charged on the expert witness I'll be glad to charge
16 it again when I told 'em that they can accept it or reject it
17 one way or the other. I'd be glad to do it again if you want
18 me to.

19 MR. THOMPSON: I don't think that's necessary. You you
20 told 'em and I'm ---

21 THE COURT: Well, before I qualified the witness I told
22 'em what I was doing but I'd be glad to do it again if you
23 wish for me to.

24 MR. THOMPSON: Yeah, maybe just to protect the record
25 maybe we better.

MOTIONS AND MATTERS

1 THE COURT: All right. Anything else?

2 MR. THOMPSON: No, sir

3 MS. LESKANIC: No, Your Honor. Thank you.

4 THE COURT: All right. I'm gonna let you rest in front
5 of the jury and then we'll get started.

6 MR. THOMPSON: All right, sir.

7 THE COURT: Bring the jury in.

8 (The following takes place in the presence of the jury.)

9 THE COURT: Okay. Ladies and gentlemen, we'll now
10 recognize Mr. Thompson for the defense.

11 MR. THOMPSON: Defense would ---

12 THE COURT: Go ahead.

13 MR. THOMPSON: The defense would, the defense would rest,
14 Your Honor.

15 THE COURT: Defense rests. That will be all the evidence
16 in the case, ladies and gentlemen. And if you all would
17 approach one second before we start.

18 (Whereupon, a bench conference was held off the record.)

19 THE COURT: All right. Let the record reflect that the
20 same motions made at the end of the state's case the defense
21 is now making at this time the same ruling will be made. And
22 you wanna preserve to him any rights to make any additional
23 motion in regard to that after the charge of the jury, is that
24 right, Mr. Thompson?

25 MR. THOMPSON: Yes, sir,

CLOSING ARGUMENTS

1 THE COURT: All right. Ladies and gentlemen of the jury,
2 we'll now proceed with the closing arguments in the case.
3 Closing arguments is as follows: first the state will give its
4 closing argument to you and then the defense. After that I'll
5 charge you on the law. Please listen attentively as they go
6 through this because very shortly this case will be in your
7 hands for your decision. And your decision by the way must be
8 unanimous. So all of these -- all of you should listen and
9 pay attention, all right?

10 Recognize you, madam solicitor.

11 MS. LESKANIC: Thank you. May it please the Court?

12 THE COURT: Yes, ma'am.

13 MS. LESKANIC: Good afternoon again, ladies and
14 gentlemen. As I told you just a couple hours ago, the
15 defendant in this case is Thomas Gregory. He was charged with
16 trafficking crack cocaine, possession with intent to
17 distribute crack cocaine within a half mile of a school or
18 playground, Trooper Poole testified it was within a half mile
19 of Limestone Courts playground and also charged with resisting
20 arrest. I don't want to keep you here any longer than we have
21 to. It was a short case and I know you can remember all the
22 testimony.

23 I want to anticipate some things Mr. Thompson may say
24 because I don't get to stand up and again and respond to
25 anything that he may say to you. So I have to kind of try to

CLOSING ARGUMENTS

1 anticipate what he's gonna say and cover that because I may
2 want to say something but the law doesn't allow me to stand up
3 before you again.

4 He mentioned fingerprints, that the bag wasn't tested for
5 fingerprints. You don't need fingerprint when you know who
6 committed the crime. You use fingerprints when you don't know
7 who did something and you're trying to find the suspect. Here
8 a trooper with years of experience is chasing Mr. Gregory, saw
9 him pull the dope out of his pocket and drop it on the ground,
10 he saw that, he testified to it, he immediately notified
11 Trooper Quinn who collected both the marijuana and the crack
12 cocaine exactly where he said it would be. We presented you
13 with a chain of custody showing you how the drug was secured
14 the entire time and had Carmen Tucker with SLED testify that
15 it was 64.01 grams of crack cocaine.

16 The judge is gonna instruct you on the law and what we
17 have to prove for trafficking crack cocaine is that he
18 possessed more than the statutory amount of crack cocaine.
19 We've proven it's crack cocaine through the SLED analysis of
20 the drugs. We've proven the weight of the drugs, 64.01 grams.
21 The judge is gonna let you know we have to show you that it
22 was between twenty-eight (28) grams and a hundred (100) grams
23 for trafficking and we have done that. That's the trafficking
24 offense. Possession with intent to distribute within a half
25 mile there's testimony that this was within a half mile of

CLOSING ARGUMENTS

1 Limestone Courts playground. Possession with intent to
2 distribute you can infer from the amount of the drugs that
3 were collected that he intended to distribute those drugs.
4 Then with the resisting arrest Trooper Poole testified that he
5 was standing there with Mr. Gregory, he dropped the marijuana,
6 Trooper Poole saw that it was marijuana, went and placed his
7 hand on him to place him under arrest and at that point
8 Mr. Gregory pushed off of him and started the chase. Trooper
9 Poole told him to stop, he didn't stop that's resisting
10 arrest. If they are making an arrest or attempting to make an
11 arrest and somebody tries to prevent that lawful arrest, then
12 that is resisting arrest.

13 We've met the elements of each of the offenses charged.
14 We also have the statement that you can take back to the jury
15 room with you that Mr. Gregory wrote himself. This wasn't
16 written by Detective Poole. She didn't write it and make him
17 sign it. He asked to see her. He requested that she come see
18 him. She didn't go there on her own. And he wrote this
19 statement in his own handwriting, even as he was writing it
20 marked some things out and initialed it and signed his name to
21 it.

22 Mr. Thompson mentioned that it just says "dope," it
23 doesn't say "crack," but when they met with him, he knew they
24 were talking about the crack cocaine. He wasn't there on the
25 marijuana, he was there on the crack cocaine. That's what the

CLOSING ARGUMENTS

1 statement is in reference to as seen by the officers. The
2 entire statement took thirteen (13) minutes that was the time
3 that they started reading him his rights until he finished
4 signing the statement. He wasn't there for a prolonged period
5 of time. He wasn't threatened or coerced or promised anything
6 to give a statement. It's a voluntary statement. He's guilty
7 of trafficking, possession with intent to distribute and
8 resisting arrest. We ask that you find him guilty of all
9 three charges. Thank you.

10 THE COURT: Okay. Thank you. Argument for the defense.

11 MR. THOMPSON: Thank you, Your Honor. It sure sounds
12 tough. I'm I'm standing here, I got a wall of police
13 officers, highway patrolmen and they're testifying to this. I
14 know you're all expecting me to say, "Oh, they're liars." I'm
15 not saying that. I'm not saying that. Here's what I'm
16 saying: Let's look at this thing through the eyes of today's
17 the 17th of September. This occurred February 26th. We're
18 looking at it almost seven months down the road. Even the
19 witnesses are now looking at it almost seven months down the
20 road. There were a few things in there that that kind of --
21 you got your basic story but there are a few things that
22 bothered me. Let me tell you what those few things were.
23 We've got Trooper Poole who's standing there with him says he
24 pulls out the marijuana, drops it, I said something to him
25 about he dropped something, he pushed him and ran. And

CLOSING ARGUMENTS

1 Trooper Poole says, "I immediately recognized that as
2 marijuana." They're running at a break neck run, wide open.
3 He takes this (indicating) not this whole big bag in here
4 (indicating) but out of his pocket it and throws it while
5 they're running. And the Trooper, Poole, says, "I had to jump
6 over it. It busted open, some of it came out and I could
7 recognize immediately that was crack cocaine or a cocaine
8 based product," at a break neck run, at a break neck run, "Saw
9 him throw something. I knew it was cocaine." Maybe he
10 suspected it but he testified he knew it. He also threw money
11 out of his pocket. The story's a little bit different between
12 the two troopers on the money. Trooper Poole says the money
13 was right there with the drugs. Trooper Quinn says the money
14 was down the street from the drugs. It wasn't right with 'em.
15 So we're looking at this from seven months down the road.
16 Now, Trooper Quinn didn't see any marijuana drop, didn't see
17 this (indicating) dropped. He was told it was dropped when he
18 went to recover it. All right. Why would fingerprints be
19 important? Well, if there's fingerprints on these bags, we
20 don't have any question that Trooper Quinn picked up something
21 that Mr. Gregory had thrown. And you know they they
22 fingerprinted him in the jail when they booked him in, you
23 know, that's -- that could be a lack of reasonable doubt.
24 Mr. Gregory, over at that table (indicating) and I noticed two
25 of ya looked. And you've been sitting here all day and you

CLOSING ARGUMENTS

1 know Mr. Gregory's not at that table but when I said that, all
2 of a sudden two of ya looked. That's reasonable doubt. That
3 moment that you hesitated right there that is reasonable
4 doubt. Is it reasonable doubt on these drugs that Trooper
5 Poole at a break neck run jumped over 'em, saw they were
6 drugs, kept running then Trooper Quinn goes and picks 'em up,
7 puts 'em in the car. Troo -- Trooper Quinn takes them to
8 Columbia, they stay in Columbia. I'm not saying that there's
9 anything at all wrong with the testing. If you believe that
10 this is crack cocaine, then you believe it. I think it's a
11 little strange though that we pick it up and put it in an
12 unlocked, in July when the Trooper Price picked it up, he puts
13 it in an unlocked filing cabinet. Now, we go through all
14 these purposes of best bags and the signing and the sealing
15 and all this, that and the other to secure the stuff and we
16 just throw it into a -- an unsecured, well not unsecured it's
17 in a building, but an unlocked file cabinet once we get it
18 back.

19 Another issue that I find odd Mr. Gregory calls Agent
20 Poole, Captain Oglesby to come to the jail two days after he's
21 arrested to spend, and you look at this, it started at 8
22 minutes after 1, ended at 21 minutes after 1, spend 13 minutes
23 with him to give them a confession as to what happened two
24 days earlier. Now, this says dope and they talk about
25 marijuana and they've talked about crack. This talks about,

CLOSING ARGUMENTS

1 if you look at it and you read it, it basically talks -- I
2 don't think it talks about more than one drug, but you read it
3 for yourself and you see. Why would Mr. Gregory call them to
4 come to the jail, spend 13 minutes with 'em? See that's
5 the -- and they're not even involved in the case. Those are
6 matters that you need to take into account. Reasonable doubt
7 is something that would simply cause you to hesitate to act.
8 The judge is gonna explain all the law dealing with the
9 charges with you -- to you, you listen to him. You listen to
10 him on all the law.

11 But anything that would cause a reasonable person to
12 hesitate to act -- let's say I was gonna buy a house and I got
13 cash in my hands for some reason and I'm ready just to sign a
14 contract and hand the cash over. A neighbor comes over to me
15 and says, "Whatcha doing?"

16 "What do ya think? I'm gonna by this house. I'm gonna
17 live next door to ya tomorrow."

18 And he says, "Are you aware that drugs have been here
19 every day for the past month?" Now, if he says that, am I
20 gonna go ahead and hand that cash over to the person that owns
21 that house and buy it or am I gonna say, "Wait a minute.
22 Maybe I better have this looked at." It's reasonable doubt.
23 And I submit to you, ladies and gentlemen, that in this case
24 when it comes to to these drugs (indicating) there is
25 reasonable doubt. Thank you. I'd ask you to return a verdict

JURY CHARGE

1 of not guilty. Thank you.

2 THE COURT: Thank you, Mr. Thompson.

3 Now, ladies and gentlemen of the jury, it now becomes my
4 duty to charge you on the law. Please listen attentively as I
5 go through this. I'll do my best to make most of this such
6 that I won't be reading it but some of it I'll have to read.
7 I'll do my utmost to keep looking at you, keep eye contact and
8 to be as clear as possible but please listen attentively as I
9 go through this.

10 I told you earlier that the State of South Carolina
11 charges the defendant one Thomas Arnold Gregory with three
12 charges: charges him resisting arrest, charges him with
13 trafficking in crack cocaine and charges him with possession
14 with intent to distribute crack or cocaine within one half
15 mile of a school or park. These charges are brought to you by
16 what is called an indictment. Each one has an indictment. As
17 I told you earlier, the fact that the defendant has been
18 indicted is in no way evidence that he's committed the crimes
19 alleged. You must make your decision based on the evidence
20 presented and not on the fact that he's been indicted. That
21 is not evidence.

22 Now, these indictments the defendant has pled not guilty.
23 That puts a burden upon the state, for the state to prove
24 guilt beyond a reasonable doubt. A person is not required to
25 prove himself innocent no matter what the charge is. The

JURY CHARGE

1 presumption of innocence an individual has stays with that
2 individual from the time they're charged with the crime
3 through all proceedings and is never removed unless guilt is
4 proven beyond a reasonable doubt. And the government has that
5 burden of proving guilt beyond a reasonable doubt.

6 Some of you may have been involved at some point in time
7 in your life in a civil case, a civil case where people argued
8 about contracts or an accident or some other civil dispute.
9 And if you were involved in a civil case, whether as was a
10 witness, a party or whatever you may have heard the judge tell
11 the jury in that case that the person bringing the lawsuit has
12 the burden of proving that their lawsuit, their claim is more
13 likely true than not. Well, that is the burden in a civil
14 case, proving something is more likely true than not. In a
15 civil case though, ladies and gent -- excuse me, in a criminal
16 case, ladies and gentlemen, the burden is much much more
17 heavier than that. In a criminal case the burden is proof
18 beyond a reasonable doubt.

19 Proof beyond a reasonable doubt is proof that leaves you
20 firmly convinced of the defendant's guilt. Our courts have
21 decided that a reasonable doubt is a doubt that would cause a
22 reasonable person to hesitate to act. Having said that let me
23 also say this: There are few things in this world, ladies and
24 gentlemen, that we know with absolute certainty and in
25 criminal cases the law does not require proof that overcomes

JURY CHARGE

1 every possible doubt, requires proof beyond a reasonable
2 doubt.

3 Reasonable doubt may arise into evidence in the case or
4 the lack of or absence of evidence in the case. You decide
5 whether reasonable doubt exists as to the guilt of the
6 defendant. That's up to you, the jury. If based upon your
7 determination of the evidence in the case, you're convinced
8 beyond a reasonable doubt the defendant's guilty, you should
9 find him guilty. If, on the other hand, you're not convinced
10 beyond a reasonable doubt, you should find the defendant not
11 guilty.

12 Now, Mr. Foreman, ladies and gentlemen of the jury, under
13 the constitution of this state you are the finders of fact
14 not -- I'm not permitted to get involved in the decisions on
15 the facts at all. The law leaves that solely solely within
16 your province. If for some reason because of a ruling I may
17 have made or anything else I may have done you have a thought
18 or a feeling I have an opinion about the facts, you're wrong.
19 I'll leave that totally up to you.

20 Now, ladies and gentlemen, in making your decision on the
21 facts, the law does not require nor does it desire that you
22 leave your common sense at home. We want the benefit of your
23 individual and your collective common sense as you come into a
24 courtroom. In addition, ladies and gentlemen, to make a
25 decision on the facts you must pass upon, rule upon, decide

JURY CHARGE

1 upon the credibility, the believability of the evidence put
2 before you and in doing so you can consider the demeanor, the
3 manner in testifying of a witness, whether a witness is
4 forthright or hesitant; whether a witness had a reason to be
5 biased or prejudiced in regard to the testimony that was
6 given, whether a witness's testimony was contradicted on the
7 one hand or supported and corroborated on the other. Was the
8 testimony consistent? What was the witness's opportunity for
9 knowledge and observation about which he or she testified?
10 You certainly do not determine this matter of credibility by
11 counting number of witness on either side. That makes no
12 difference. You can believe one witness against many, many
13 against one. You can believe a a small portion of what a
14 witness testified to and disregard the large or vice versa.
15 Your sole goal is to reach the truth and decide the truth no
16 matter what witness that information or evidence comes from.

17 Now, ladies and gentlemen, by the same constitution that
18 says you are the triers of fact and the deciders of the facts,
19 it states that I am I am the instructor of the law. You must
20 accept the law as I give it to you and apply it to this case.
21 Do not be concerned with what you thought the law was before
22 you came in here and do not be concerned with what you feel
23 the law should be. You must apply the law as I give it to you
24 in this case.

25 Now, ladies and gentlemen, I told you that the fact the

JURY CHARGE

1 defendant is not here today should not in any way affect your
2 deliberations in this case. You should base your decision on
3 the evidence and whether what you determine has been proven if
4 anything beyond a reasonable doubt. In fact, the fact the
5 defendant is not here today, ladies and gentlemen, should not
6 be construed as any admission of guilt, should not be
7 construed as admission of guilt. A defendant is not here.
8 I've made the decision the trial will proceed but it is not an
9 admission of guilt. Ladies and gentlemen, you should not even
10 discuss that in the jury room. You should discuss whether or
11 not the state has proven guilt beyond a reasonable doubt for
12 the fact the defendant's not here should not in any way be
13 held against him by members of the jury.

14 Moreover, ladies and gentlemen, the fact he's not here
15 also means he did not testify. And the fact that a defendant
16 does not testify in a case is not a factor to be considered by
17 you in any manner whatsoever in your deliberation of the
18 consider and the consideration of the guilt or innocence of
19 the accused. It must not be considered in any matter
20 whatsoever the fact that he did not testify. A defendant has
21 a constitutional right not to testify and the assertion of
22 that right should not be considered by you in your
23 deliberations. I repeat, under your oath you are to draw no
24 conclusion whatsoever from the fact the defendant in this case
25 did not testify. The fact that the defendant did not testify

JURY CHARGE

1 should not even be discussed in the jury room. The burden of
2 proof is upon the state to prove guilt beyond reasonable
3 doubt. The burden is not upon the defendant to prove himself
4 innocent.

5 Also, ladies and gentlemen, you heard me mention expert
6 witnesses earlier. Once again let me mention to you that
7 normally witnesses are not permitted to testify and give their
8 opinion. The Court normally requires a witness to confine
9 their testimony to what they perceive by their senses; what
10 they heard, what they smelled, things of that nature.
11 However, a witness who by education and experience has become
12 an expert in some art, science or profession or calling may be
13 permitted by the Court to state an opinion as to rele --
14 relevant and material matters in which the witness claims to
15 be an expert and may also state the reasons for that opinion.
16 You should consider any expert opinion and receive it in
17 evidence like you do any other evidence in the case. Give it
18 the weight you think it deserves. If you decide the opinion
19 of an expert is not based on sufficient education and
20 experience or if you conclude that the reasons given in
21 support of the opinion are not sound or that the opinion
22 out -- is outweighed by any other evidence, you can disregard
23 that opinion or you may accept the opinion. An expert
24 witness's testimony is to be given no greater weight than that
25 of other witnesses simply because the witness is an expert.

JURY CHARGE

1 You're not required once again of the opinion or you may
2 accept the opinion.

3 Also, ladies and gentlemen, now let me talk to you
4 briefly regarding the actual charges in this case. The
5 defendant is first charged with resisting arrest. That is a
6 charge in our code of laws right here these (indicating) fifty
7 (50) books that the legislature meets from January and June of
8 every year to make all the laws about this state. He's
9 charged on or about February 26th 2007 resisting efforts of an
10 officer to place him under lawful arrest. The state must
11 prove beyond a reasonable doubt that the defendant knowingly
12 and willfully opposed or resisted a law enforcement officer
13 who was attempting to place him under lawful arrest. Resist
14 means to oppose, stride against or obstruct or obstruct which
15 means to impede, hinder or interfere with even peaceful,
16 non-violent or indirect, indirect obstruction may be resisting
17 arrest. If the means used are sufficient to prevent, even
18 though temporarily, the officer from making an arrest, the
19 defendant is guilty of resisting arrest.

20 The defendant is also charged with trafficking in crack
21 cocaine. The state must prove beyond a reasonable doubt that
22 the defendant either knowingly sold, manufactured, cultivated,
23 delivered, purchased, brought into the state, provided
24 financial assistance or otherwise aided, abetted, attempted or
25 conspired to sell, manufacture, cultivate, deliver or purchase

JURY CHARGE

1 or bring into the state crack cocaine or the state must prove
2 that the defendant was knowingly in actual or constructive
3 possession of crack cocaine. So the state must prove one of
4 those two either that the defendant was trying to deliver it,
5 sell it, purchase it, provide assistance or the state must
6 prove that defendant was knowingly in actual or constructive
7 possession of crack cocaine or attempted to become in actual
8 of or constructive possession of crack cocaine. Those are the
9 threshold matters that the state must prove.

10 Then after that the trafficking in crack co -- cocaine
11 the state must also prove beyond a reasonable doubt that the
12 amount of the crack cocaine was more than twenty-eight (28)
13 grams but less than one hundred (100) grams. So if the state
14 only proves that the defendant was in knowing, actual possu --
15 possession of crack cocaine, that's just simple possession.
16 The state must also prove to convict him of this charge that
17 he was -- that the amount of crack cocaine was more than
18 twenty-eight (28) grams of crack cocaine, less than one
19 hundred (100) grams.

20 Next is the state alleges the defendant was in possession
21 with the intent to distribute crack cocaine near a school or
22 playground. Here they specifically allege Limestone Courts
23 playground violation of the law. There the state must prove
24 beyond a reasonable doubt that the defendant was in possession
25 of crack cocaine with intent to distribute crack cocaine

JURY CHARGE

1 within one half mile of the Limestone Courts playground it's
2 called. Limestone Courts playground. The state must prove
3 that, prove that beyond a reasonable doubt that he was within
4 one half mile of that playground and he had possession of
5 crack cocaine with intent to distribute.

6 Ladies and gentlemen, you are the jurors in this case
7 selected by both sides. Both sides had the opportunity to
8 strike you, ask you ask you to sit back down in the audience.
9 Both selected you. I've qualified you as jurors to fairly and
10 impartially try this case. When you go back to that jury
11 room, you should discuss the evidence presented to you and
12 make a decision which you you feel, ladies and gentlemen,
13 speaks the truth. I told you earlier that your verdict must
14 be unanimous. That means all twelve (12) of you must agree on
15 your verdict. So all of you should be involved in the
16 discussion of the case.

17 Once you have reached a verdict in the case, I have these
18 indictments which once again are not evidence in the case, on
19 the back of them, Mr. Foreperson, there's the word "verdict."
20 Under there on each one of 'em you have one or two verdicts
21 guilty or not guilty. Guilty or not guilty. Not guilty or
22 guilty. No preference when I say the words I gotta say one
23 before the other. So you would put that in each one of the
24 individual sheets either guilty or not guilty, not guilty or
25 guilty in each one of those. It doesn't necessarily have to

JURY CHARGE

1 be the same verdict for each each indictment. Could be
2 different verdict, could all be the same verdict but you use
3 this (indicating) indictment form. In addition, the exhibits
4 will be back there in the jury room. Once you reach that
5 decision write your verdict down, sign your name and date it.
6 Today is September the 17th 2007.

7 If during the course of your deliberations you have
8 questions regarding testimony you don't remember that was
9 testified to and you want the court reporter to find it or
10 somehow we might be able to find that or if you have a need
11 for me to reread something else to you regarding the law, I'll
12 be glad to do that. There is no ev -- no more evidence to put
13 before you. This is the evidence that will go before you. If
14 you want to read or something that's been placed in evidence
15 let us know or me reread something in the charge, if not then
16 once you've begun, once you have decided the case knock on the
17 door, we'll bring you out and receive your verdict.

18 Now, if you would, once you first go back there do not
19 begin your deliberations yet. I need to check to make sure I
20 haven't forgotten to tell you something about the law. If I
21 haven't, we'll send the exhibits back to the jury room with
22 you and then at that point in time you can begin your
23 deliberations.

24 There's one thing I just did remember that I forgot to
25 tell you. I myself made a decision in the case that the

JURY CHARGE

1 statement of the defendant, alleged statement of the
2 defendant, was admissible but that does not mean you must
3 accept the statement or that you have to even consider it. I
4 made it admissible so you can make your decision. You can
5 make a decision on whether it was actually made or not made.
6 That's totally up to you. If you find that it wasn't made,
7 then you shouldn't consider it whatsoever. If you find the
8 defendant did make the statement, then you must next consider
9 whether or not the statement was made freely and voluntarily
10 by the defendant and in doing so you should consider such
11 things as the age, intelligence, the conditions in which the
12 cond -- the statement was made, whether it was coerced,
13 whether it was forced, whether the defendant was deprived of
14 any type of substance that he needed during the course
15 of taking the testimony, whether or not the police did
16 anything to force him to make the statement. You also should
17 consider whether or not he was given what we've come to be
18 called the Miranda rights, meaning, he had the right to remain
19 silent and he had a -- had the right to an attorney, and if he
20 wanted an attorney one would be appointed for him free of
21 charge, that at any time he could stop the proceedings and and
22 not make any further statements at all and that he had to
23 understand his rights. And once again the attorney be
24 appointed to him free of charge. If you would, madam, or
25 someone hand me the exhibits over there, two exhibits there,

JURY CHARGE

1 make sure I get 'em all down the Miranda rights, see what
2 we've got. That once again he had the right to remain silent,
3 anything he said could and would be used against him in a
4 court of law, that he had the right to talk with an attorney,
5 have a lawyer present while he's being questioned and that if
6 he could not afford a lawyer, one would be appointed free of
7 charge and that he had the right to stop answering questions
8 at any time and that he understood those rights and that he
9 waived those rights. You consider all those to determine
10 whether or not you wish to consider the statement of the
11 defendant or not. If you feel that it wasn't freely and
12 voluntarily given, you should push it aside and not consider
13 it at all. If you feel that it was freely and voluntarily
14 given and it was given after he was given and understood his
15 Miranda rights, then you may consider the statement.

16 Now, ladies and gentlemen once again, if you would, step
17 to the jury room and do not begin your deliberations yet. Let
18 me first make sure we got the exhibits together and there's
19 nothing else I need to tell you. If there isn't anything
20 else, we'll let you begin your deliberations. Please step to
21 the jury, you too, Mr. Galmon, right now. I'll bring you out
22 in a minute.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: I trust that the state and the defense not

JURY CHARGE

1 speaking about the jury as having to make a decision beyond a
2 reasonable doubt; in fact, I also need to make sure I bring
3 'em out to tell 'em that regarding the state. You argued that
4 in your closing argument anyway.

5 MR. THOMPSON: Yes, sir.

6 THE COURT: But neither one of you mentioned that in your
7 request for charge but I assume, especially you, Mr. Thompson,
8 you wanted me to charge it.

9 MR. THOMPSON: I didn't have any objection to it.

10 THE COURT: I'm gonna bring 'em out. Do you have any
11 objection to me making sure they understand the burden is upon
12 the state to prove beyond a reasonable doubt that he made the
13 statement and that it was made freely, voluntarily and with
14 the Miranda rights?

15 MR. THOMPSON: Yes.

16 THE COURT: Any other objection from the state?

17 MS. LESKANIC: No, Your Honor.

18 THE COURT: From the defense?

19 MR. THOMPSON: No, sir.

20 THE COURT: Let's get the exhibits together so after I do
21 bring 'em out then we can let 'em go back and start
22 deliberations. Here are the two things I have with the
23 indictments. Mr. Thompson, you come look too make sure there
24 are no subliminal messages on anything or whatever.

25 (Laughter.)

JURY CHARGE

1 THE COURT: All right. Bring the jury back out if you
2 would, Mr. Bailiff.

3 (The following takes place in the presence of the jury.)

4 THE COURT: Now, since as I told you I failed to put in
5 the charge to discuss with you and instruct you regarding your
6 decision regarding the statement that the defendant allegedly
7 made, just want to make sure I give you completely that the
8 state has a burden of proving beyond a reasonable doubt the
9 statement was made. The state has a burden of proving beyond
10 a reasonable doubt that the statement was made freely and
11 voluntarily without any coercion, promises of reward or any
12 other forcefulness in regard to as well as the fact that the
13 statement was made after the rendering and understanding of
14 the Miranda rights. That's the burden of the state to prove
15 beyond a reasonable doubt just like everything else.

16 Now, we have all the evidence here for you. And the
17 indictment's in there also, Mr. Foreman, for you all to use.
18 If you would, Mr. Galmon, you stay here with us, you all now
19 may at this time retire to the jury room. Once you've reached
20 a unanimous verdict on the charges, please let's us know. You
21 may begin your deliberations.

22 (At 4:32 p.m., the jury retired to the jury room to begin
23 deliberations.)

24 (Whereupon, the alternate juror was released.)

25 (The following takes place outside the presence of the

1 jury.)

2 THE COURT: All right. No exceptions from the state?

3 MS. LESKANIC: Nothing, Your Honor.

4 THE COURT: None from the defense?

5 MR. THOMPSON: No, sir.

6 THE COURT: We'll wait for their decision. I've got to
7 do a couple of guilty pleas but please, Mr. Thompson and madam
8 solicitor, please be close by in case we need you in case
9 assigned some questions. Madam court reporter, take a break
10 there.

11 (Whereupon, a recess was taken.)

12 THE COURT: Trooper, listen, you both did a good job on
13 the case. I don't know what the verdict is but, you know,
14 it's trials like today make me really not only appreciate but
15 sometimes stand in awe of our judicial and court system
16 although as a judge I'm sitting sort of away from it but
17 watching two attorneys really work together but also protect
18 the interest of their respective clients so whatever the
19 verdict is you all add respect and you all add great measure
20 to our legal system in the United States of America. All
21 right. Let's proceed. If we could, bring the jury in. And,
22 Mr. Thompson, on behalf of the defendant, if you would, when
23 the verdict's read please stand as do the officers who
24 testified too.

25 (The jury returned with a verdict at 6:15 p.m.)

VERDICT

1 THE COURT: Okay, Mr. Foreman, ladies and gentlemen of
2 the jury, I understand you reached a verdict is that right?

3 THE FOREPERSON: Yes, sir, we have.

4 THE COURT: Hand the verdict, if you would, to the
5 bailiff to review it before the clerk reads it. That's all I
6 need are the verdict forms. There we go. Okay, Mr. Thompson.
7 The clerk will read it.

8 THE CLERK: Indictment 200G -- 2007-GS-11-418 the State
9 vs. Thomas Arnold Gregory indictment for possession with
10 intent to distribute crack cocaine near a school and or
11 playground the verdict is guilty, signed by foreperson,
12 Charles Mills; 2007-GS-11-420 the State vs. Thomas Arnold
13 Gregory indictment for trafficking in crack cocaine, the
14 verdict is guilty signed by foreperson Charles S. Mills;
15 2007-GS-11-419 the State vs. Thomas Arnold Gregory indictment
16 for resisting arrest the verdict is guilty, signed by
17 foreperson Charles S. Mills.

18 Ladies and gentlemen of the jury, if this is the verdict
19 of you all please indicate by raising your right hand.

20 (All jurors raised their hand.)

21 THE CLERK: Thank you.

22 THE COURT: Any further polling requested by the state?

23 MS. LESKANIC: No, Your Honor.

24 THE COURT: By the defense?

25 MR. THOMPSON: No, sir.

MOTIONS AND MATTERS

1 THE COURT: All right. You may be seated. Ladies and
2 gentlemen of the jury, thank you very much for your service on
3 this case. As I told the attorneys before you came in,
4 regardless what the verdict was, it almost makes one proud of
5 our -- even more proud of our system in America, two attorneys
6 fighting hard for their respective sides and as we said one
7 person not being here but Mr. Thompson's still fighting as
8 best he could in the interest of of the defendant,
9 Mr. Gregory. I made the decision that he was given the proper
10 notice to be here and he wasn't here and chose not to be here.
11 In fact, he also even had a -- an ankle bracelet on home
12 detention -- not home detention, home monitoring but the
13 company that was supposed to be monitoring says he showed up
14 the other day and the equipment was on their door step and he
15 had gone or they didn't know where he was or he was not at
16 home so and he was given the opportunity to know he should be
17 here but he wasn't here, but even with that Mr. Thompson's
18 still fighting as hard as he he did and the state in making
19 sure they presented the evidence completely and totally just
20 as if they -- if the defendant had been here in just that way
21 where you you wanna protect our system.

22 Now, you all are gonna have to have to come back tomorrow
23 morning at 10 a.m. so you're doing double duty. The other
24 jurors got to leave at like 1:00 and you're now here at 6:30
25 almost and gotta come back in tomorrow morning 'cause we'll be

MOTIONS AND MATTERS

1 picking another jury tomorrow. I wanna thank you very much.

2 (Whereupon, the jury panel was released.)

3 THE COURT: Any motions by the state?

4 MS. LESKANIC: None, Your Honor.

5 THE COURT: Any motions by defense?

6 MR. THOMPSON: Your Honor, we would at this time move for
7 a new trial based on our earlier motion and the earlier
8 rulings of the Court.

9 THE COURT: And also let the recollect -- record reflect
10 that up here after the -- you had mentioned you rested, you
11 noted the same and similar motions for directed verdict at the
12 end of your case which I ruled upon as I said on the record
13 the same way denying your motions with respect for a directed
14 verdict and you're saying now you're making the same motion.

15 MR. THOMPSON: It's the same motion, motion for a new
16 trial, yes.

17 THE COURT: All right. With motion for directed verdict
18 and a new trial I've considered those and I will respectfully
19 deny the motion. How 'bout let's just do the sentencing
20 tomorrow. If you all want to though unless you have the
21 sentence sheets done now.

22 MS. LESKANIC: I believe they're ---

23 THE CLERK: They're ready, Judge.

24 MR. THOMPSON: Your Honor, I, if you recall, I'm excused
25 from court tomorrow and Wednesday.

MOTIONS AND MATTERS

1 THE COURT: Let's do it now. I need to know the prior
2 record of the defendant make sure he qualifies and what kind
3 of sentencing he qualifies for.

4 MR. THOMPSON: I have it, Your Honor. I'll mark it
5 unless you got it.

6 MS. LESKANIC: Okay. And I also um...

7 MR. THOMPSON: 326.

8 MS. LESKANIC: 326. Okay. I need to write down the CDR
9 code for resisting arrest.

10 MR. THOMPSON: Judge, I don't know how, I don't know how
11 you want to handle this but I have a copy of his rap sheet
12 which I had gone over with him and marked what he was
13 gonna ---

14 THE COURT: I'll have the state tell me what they ---

15 MR. THOMPSON: Okay.

16 THE COURT: --- have as his prior record and if you
17 disagree with it, I'll probably accept your disagreement.

18 MR. THOMPSON: All right, sir.

19 THE COURT: We'll do it that way.

20 MS. LESKANIC: And also, Your Honor, I'd like to have
21 marked as exhibits we have two photographs of the defendant.
22 Mr. Thompson has seen these and admits that these are his
23 client and we just want to make sure when he is picked up that
24 we have identification to show who was on trial today so that
25 there's no question. I think that that has come up before if

MOTIONS AND MATTERS

1 somebody's has a similar or same name.

2 THE COURT: Well let's just do this: Mr. Thompson, how
3 'bout having those marked, if you would, Maggie, just court
4 exhibit. Make sure you know that we're not introducing them
5 for the hearing.

6 (Whereupon, a discussion was held off the record.)

7 (Photographs marked Court's Exhibit D and E.)

8 MR. THOMPSON: These (indicating) are Court's Exhibits D
9 and E. These are photographs of my client. In fact, Your
10 Honor, Court Exhibit D is a blow up of the booking photograph
11 of my client at the time of his arrest on this charge when he
12 was booked into the jail. I have a copy of the booking
13 photograph in my file when he was arrested on these charges
14 and it is this which is Court's Exhibit D so it is the same
15 person.

16 THE COURT: So "D" and "E" are the defendant.

17 MR. THOMPSON: They are the defendant yes, sir.

18 THE COURT: All right. Go and place them in the record.
19 Prior record of Mr. Gregory?

20 MS. LESKANIC: Yes, Your Honor, in 1994 possession of
21 mar --

22 THE COURT: You might want to give a copy of that to
23 Mr. Cooper in case he sees him around here.

24 (Laughter.)

25 MS. LESKANIC: 1994 possession of marijuana, possession

MOTIONS AND MATTERS

1 of stolen vehicle, 1996 possession with intent to distribute
2 crack cocaine, carrying a pistol, 2001 possession with intent
3 to distribute crack cocaine near a school, uh...

4 THE COURT: When was this? 2001?

5 MS. LESKANIC: Yes, Your Honor.

6 THE COURT: He was convicted only of PWID within
7 proximity?

8 MS. LESKANIC: Yes, Your Honor.

9 THE COURT: What sentence did he get?

10 MS. LESKANIC: Ten (10) years and ten thousand dollars
11 (\$10,000) suspended to five (5) years and three (3) years
12 probation, credit for time served.

13 THE COURT: Okay.

14 MS. LESKANIC: There's also another possession with
15 intent to distribute near the proximity of a school also in
16 2001, Your Honor; 2005 driving under suspension, simple
17 possession of marijuana, resisting arrest, operating a vehicle
18 with a TV screen toward the driver, giving false information,
19 in 2006 forgery.

20 THE COURT: Somebody stopped him for having a TV screen?
21 Is that a statute or is that ---

22 MR. THOMPSON: Yes, sir.

23 OFFICER: Yes.

24 THE COURT: What size is the TV screen?

25 OFFICER: It can't be in view of the driver.

MOTIONS AND MATTERS

1 THE COURT: What about the GPS system?

2 OFFICER: They actually watch like movies going down the
3 road.

4 OFFICER POOLE: While they're driving.

5 MR. THOMPSON: I guess a GPS system would be a TV screen
6 too, wouldn't it?

7 THE COURT: I mean, you're watching one of them things
8 going you got 11 miles this way, 12 miles that way. All
9 right.

10 MS. LESKANIC: That's the record, Your Honor. And I do
11 have true copies of ---

12 THE COURT: One of you all stop him for that movie? I
13 wonder if you lose the movie, get it confiscated.

14 All right. So he obviously does have prior drug records
15 then.

16 MS. LESKANIC: He does, Your Honor, and I have three true
17 copies of prior drug offenses I was gonna make part of the
18 record as well so there was no question about that we have
19 certified copies of three prior drug convictions.

20 THE COURT: So you contend he is in -- he's been found
21 guilty of trafficking in crack cocaine third?

22 MS. LESKANIC: Yes, Your Honor.

23 THE COURT: It is twenty-five (25) to thirty (30) years,
24 a minimum of twenty-five (25)?

25 MS. LESKANIC: Yes, Your Honor.

MOTIONS AND MATTERS

1 THE COURT: Okay. Is anything suspendible or whatever?
2 Let's look at the statute on that.

3 MS. LESKANIC: No, Your Honor.

4 THE COURT: It says here twenty-five (25) to thirty (30)
5 years violent and serious, no suspended sentence, no
6 probation, no parole. He also loses his driver's license.
7 All right. And PWID, you all sufficient with it being a first
8 offense or there is there is no second.

9 MR. THOMPSON: There is none ---

10 MS. LESKANIC: There is no second ---

11 MR. THOMPSON: --- on that. It's ten (10) to
12 fifteen (15).

13 THE COURT: All right. Anything else from the state?

14 MS. LESKANIC: No, Your Honor, just I'm submitting those
15 as a court exhibit, the prior convictions as well as the
16 photographs.

17 THE COURT: Does the defense agree with the prior
18 convictions record?

19 MR. THOMPSON: No, sir, that's the exact record that I
20 had gone over with Mr. Gregory.

21 THE COURT: Well then we need to put in the -- you have
22 the correct CDR code ---

23 MS. LESKANIC: I believe so.

24 THE COURT: --- 349 for trafficking crack cocaine? Isn't
25 it set different depending on the number of the offenses?

MOTIONS AND MATTERS

1 THE COURT: It is, Your Honor. Trafficking crack third
2 offense is 0452.

3 THE COURT: Well, you got 0349.

4 MS. LESKANIC: Oh, I'm sorry, that's for
5 twenty-eight (28) to a hundred (100) grams, that's correct,
6 0349 is for twenty-eight (28) to a hundred (100) grams. I was
7 looking at the ten (10) to twenty-eight (28) grams.

8 THE COURT: But that is the CDR code for third offense?

9 MS. LESKANIC: It is, Your Honor, 0349.

10 THE COURT: Okay. And most of the letters and problems I
11 get are from prisoners sending things with the wrong CDR code.
12 All right. Mr. Thompson, on I'll be glad to hear from you,
13 sir.

14 MR. THOMPSON: Judge, Mr. Gregory was 28-years-old at the
15 time of this incident. He's 29 now. He is single. He has
16 one child who back just shortly after he was arrested on this
17 I, this occurred as you know on February the 26th, I began
18 representing him on March the 7th and I talked with him on
19 March 13th, at that point in time he had one child who was one
20 week old. He is a high school graduate. At that time he had
21 gotten out and was working at, when he got out he or I'm
22 sorry, prior to being arrested he was working at ADS which is
23 Foot Star. Quite frankly, I think that's about all I can tell
24 you about Mr. Gregory other than up until a week before last
25 he was a very cooperative client. Whenever I asked him to

1 come talk with me, he'd come and talk with me. Whenever he
2 needed to show up for roll call in court, he showed up. The
3 only thing I can tell you is from from reading that letter it
4 appears he just got scared and ran.

5 THE COURT: Well, he has been involved before ---

6 MR. THOMPSON: Yes, sir.

7 THE COURT: --- obviously. Did he serve any time in jail
8 at all on these matters?

9 MR. THOMPSON: Yes, sir, he did. He was -- I don't know
10 that I have a bond sheet that shows the exact date he was
11 released but I know that on March the 15th I had a a bond
12 hearing in general sessions for him and he was still in jail
13 at that time.

14 THE COURT: And arrested on February the...

15 MR. THOMPSON: 26th.

16 THE COURT: 26th?

17 MR. THOMPSON: Yes, sir, and I had the ---

18 THE COURT: March?

19 MR. THOMPSON: --- bond hear -- March 15th so that would
20 have been in approximately ---

21 THE COURT: Do we know when he bonded out?

22 MR. THOMPSON: --- seventeen (17) days.

23 THE COURT: We have the bond -- the bond documents are
24 put in the ---

25 MR. THOMPSON: It's put into evidence there. It should

MOTIONS AND MATTERS

1 be all one. It is dated April 17th, Your Honor.

2 THE COURT: So therefore, really almost sixty (60) days.

3 MR. THOMPSON: Let's see thirty-one (31) and
4 seventeen (17) be forty-eight (48), two (2); fifty (50) days
5 would be my count exactly.

6 THE COURT: I was about to give him sixty (60) but you
7 want me to give him how many?

8 MR. THOMPSON: We'll give him sixty (60).

9 THE COURT: All right. Any objection?

10 MS. LESKANIC: Whatever Your Honor decides.

11 THE COURT: Anything else from the defense?

12 MR. THOMPSON: No, sir, other than to ask Your Honor to
13 be as lenient as you can and ask you to consider concurrent
14 sentencing.

15 THE COURT: As you know, the procedure is to place the
16 sentence in a sealed envelope.

17 MR. THOMPSON: Yes, sir.

18 THE COURT: And it's not opened until the defendant is
19 apprehended. And at that point in time any motions you may
20 make regarding sentence being reconsidered or whatever else
21 you may before the presiding judge at that time. All right,
22 madam clerk, all I need, I've done the sentencing and I just
23 need to have an envelope and I put my initials over it.

24 Okay. Now, any objection from the state or from the
25 defense for the clerk to seal the original documents like the

MOTIONS AND MATTERS

1 original information the state had -- who was it had those
2 envelopes? Is it you had the things you put in evidence? The
3 documents?

4 MS. LESKANIC: Yes, Your Honor.

5 THE COURT: All right. And the documents she had the
6 originals as well as the bonding paper the clerk had to make
7 certified true copies to put in this file record and to put
8 the original documents back in there. Any objection?

9 MR. THOMPSON: No, sir, no objection ---

10 MS. LESKANIC: No objection.

11 MR. THOMPSON: --- from the defense.

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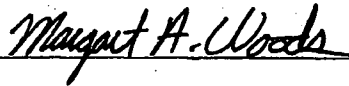
25

1
2
3 CERTIFICATE OF REPORTER
4

5 I, Margaret A. Woods, Court Reporter and Notary Public in
6 and for the State of South Carolina at Large, hereby certify
7 that I reported the preceding case on September 17, 2008 at
8 the time and place heretofore set forth; and that the
9 foregoing pages numbered from 6 through 203, inclusive,
10 constitute a true and accurate transcription of my
11 stenographic notes of the said proceeding.

12 I further certify that I am neither attorney nor counsel
13 for, nor related to or employed by any of the parties
14 connected to the action, nor am I financially interested in
15 the action.

16 WITNESS MY HAND AND SEAL at Greenville, South Carolina,
17 this 27th day of January, 2008.

18
19 

20 Margaret A. Woods, Notary Public
21 in and for the State of South Carolina at Large.

22 My commission expires: 06/09/2009.
23
24
25

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS
2007-GS-11-418
2007-GS-11-419
2007-GS-11-420

COUNTY OF CHEROKEE

STATE OF SOUTH CAROLINA,

-vs-

THOMAS ARNOLD GREGORY,

Defendant.

November 5, 2007

B E F O R E:

HONORABLE J. ERNEST KINARD, JR.

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

KIMBERLY LEWIS LESKANIC, Esquire
Attorney for the State

DON A. THOMPSON, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Thomas Gregory? Hold it just a
3 second. You have individuals that are planning on
4 pleading guilty?

5 MS. LESKANIC: Yes, Your Honor, we have a
6 sentencing, then a guilty plea.

7 THE COURT: All right, come around.

8 MS. LESKANIC: This is Thomas Arnold Gregory,
9 Your Honor, and he had, we had a trial in his
10 absence on September 17th of this year. He was
11 recently picked up on his bench warrant and we're
12 here for his sentencing.

13 THE COURT: Okay. Madam Clerk, do you have a
14 letter opener down there?

15 Okay, Mr. Gregory, apparently you were
16 charged with resisting arrest back in February of
17 this year. You had what is called a trial in your
18 absence and the jury found you guilty of those
19 charges.

20 There was another charge of trafficking in
21 crack cocaine, you were tried in your absence and
22 the jury found you guilty of that.

23 Then you got an indictment that charged you
24 with possession with intent to distribute crack
25 cocaine near a school or a playground. September

1 17th of '07 the jury found you guilty of that.

2 And let's see. Judge Lockemy presided over
3 the trial and sentenced you, he sealed the
4 sentence, and he gave you one year on resisting
5 arrest, he gave you ten years on the possession of
6 crack cocaine in proximity of a school or
7 playground, et cetera. And then he gave you 25
8 years and fined you \$50,000 for trafficking in
9 crack cocaine. He fined you \$25,000, the State
10 doubles it, adds to it, it comes to a lot of money.

11 But in any event, you were not able to state
12 anything on your behalf at sentencing so now you
13 can. I can let the sentences ride or I can alter
14 them in some degree but the State is going to tell
15 tell me what I need to know. It is not like you
16 are pleading guilty, the jury has already found you
17 guilty, so it's just a question of sentencing.

18 I will warn you, of course, that Mr. Thompson
19 has explained to you, I'm sure, that trafficking is
20 one of those strikes that you talk about. You have
21 heard that two strikes you're out and three strikes
22 you're out. Well, that's a strike. Trafficking
23 cocaine would not be a violent crime but the
24 Legislature has designated it as being a serious
25 offense, a violent crime of violence. You pick up

1 another violent crime and you get convicted of on
2 or plead guilty the State could do what they call
3 LOP, life without parole. It's a violent crime.

4 But anyway, no need for me to go into that
5 fully, we are talking about how much time you are
6 going to get.

7 Mr. Thompson, he has a right to appeal that
8 sentence. It is probably too late to appeal your
9 conviction, but I'm not getting into it.

10 Now, what about Mr. Gregory?

11 MS. LESKANIC: Your Honor, this was a third
12 offense. I'm sorry I don't have my file in front
13 of me right now. It was a third offense
14 trafficking case that would carry 25 to 30 years.
15 The facts of this case, he was a driver in a car,
16 the Highway Patrol pulled him over, he got out of
17 the car, while he was talking to the trooper who
18 pulled him he dropped some marijuana on the ground.
19 The trooper saw this, the defendant took off
20 running. While he was running he threw the crack
21 on the ground. Trooper Poole continued to chase
22 him. He was able to apprehend him. During the
23 chase Trooper Poole advised Trooper Quinn that the
24 defendant had thrown down a white powder substance
25 that did come back to be crack cocaine, and all

1 this happened within half mile of a playground.

2 THE COURT: All right. Now a third offense,
3 Judge Lockemy probably gave him a mandatory
4 minimum.

5 MR. THOMPSON: Yes, Your Honor, the maximum
6 is up to 30 years.

7 THE COURT: The maximum is up to 30? He
8 helped you with that. That's like 25 to 30, they
9 don't give the judge much discretion. There is not
10 much we can talk about.

11 I didn't cover it exactly, Mr. Gregory, but
12 Judge Lockemy made all the sentences concurrent so
13 while I was talking about one year, ten years, and
14 25, they were all concurrent. Being generous, he
15 gave you credit for 60 days, which isn't going to
16 help you a lot if you are looking at 25. So, what
17 about him?

18 MR. THOMPSON: Judge, I would normally make a
19 motion to vacate on a trial in absence. However, I
20 was the attorney back in September, I know what
21 went on, and it would be a frivolous motion on my
22 part. I know the record is covered. So, what I
23 was prepared to do today was to try to honestly
24 expect a 30 year sentence, I was going to try to
25 talk you down to 25, which is minimum.

1 THE COURT: 25 sounds all right. How old is
2 he?

3 MR. THOMPSON: He is 28 years old -- I'm
4 sorry, he may be 29. You know, he just turned 29.
5 He's single, he has one child who is somewhere not
6 quite a year old. She was born premature, she's
7 blind and he tells me that one of the reasons he
8 didn't show up for the trial, she was having
9 surgery at that time and he wanted to be with her
10 over in Spartanburg.

11 He is a high school graduate, he worked at
12 ADS, which is the Food Star. I will be honest with
13 you, Judge, Mr. Gregory was as loyal a client and
14 faithful a client as I had ever had while I was
15 representing him. It came down to trial, he just
16 didn't, he got scared and didn't show up. As I
17 say, I was prepared to try to beg for 25, which is
18 the minimum. Since that is what the judge
19 sentenced him to, I would ask you to consider
20 leaving it at that, everything concurrent.

21 THE COURT: All right. Now, Mr. Gregory, I
22 don't have to go into a lot with you because I
23 wasn't the trial judge. You understand?

24 THE DEFENDANT: Yes.

25 THE COURT: What happens is I could actually

1 give you like 30 years on the trafficking and ten
2 years on the possession, and consecutive, and one
3 year on the resisting arrest consecutive, you could
4 end up with 41 years. But, you know, you're a
5 young guy, 25 years is -- I think I will let the
6 sentences stand.

7 I'm going to warn you about one more thing.
8 I told you about the two strikes and so forth. I
9 didn't know, when I was telling you that, you
10 already had two prior drug convictions. Even if
11 you commit an offense involving drugs that is not
12 trafficking it will be a third and above and you
13 will probably get the maximum sentence, and like,
14 what, possession of crack cocaine, third or fourth?

15 MR. THOMPSON: Yes, sir, I think third and
16 above is 25 to 30.

17 THE COURT: It just takes a lot of, that is
18 what you're going to get, so it's going to be a
19 while before you get out.

20 MR. THOMPSON: Judge, he's also on probation
21 from a prior charge. We would ask you to go ahead
22 and deal with that today.

23 THE COURT: We can deal with it but I need
24 for the probation agent, whoever that might be --

25 PROBATION OFFICER: That is me, Your Honor, I

1 have a violation report.

2 THE COURT: Okay. And he shouldn't be doing
3 it again because he received some time.

4 MR. THOMPSON: Yes, sir. I would ask you to
5 consider running that concurrent with the other
6 sentence.

7 THE COURT: Yes, that's enough time.

8 PROBATION OFFICER: Yes.

9 THE COURT: We will revoke this, run it
10 concurrent. When you get out, of course, you're
11 probably going to be on that supervised release,
12 isn't he?

13 MS. LESKANIC: I believe so, Your Honor. Two
14 years, I believe.

15 THE COURT: I need to tell him that. I don't
16 really --

17 MR. THOMPSON: Mr. Gregory has asked if he
18 can speak to the Court.

19 THE COURT: He can. Certainly, Mr. Gregory.
20 One other thing I didn't say, Mr. Thompson told
21 you. When they let you out you will be on
22 supervised release because it's a violent crime and
23 so forth and you get out on parole and you don't
24 comply with parole they take you back in and they
25 keep doing that on and on.

1 MR. THOMPSON: This is a nonparollable, Your
2 Honor, he will have to do 25, 85 percent of it.

3 THE COURT: They don't let him out after an
4 85, they put you on supervised community
5 supervision, they can put you back in one year at a
6 time the rest of your life.

7 Anyway else, Mr. Gregory? What can I help
8 you with?

9 THE DEFENDANT: Your Honor, what I want to
10 say, I don't understand I'm guilty or not, but my
11 baby was born blind, you know, and I had to go at
12 that point in time. Your Honor, 25 years, I got a
13 girl out there, Your Honor, and my heart can't bear
14 it, my heart can't bear it, Your Honor.

15 THE COURT: Here is the problem, where it is,
16 not from your perspective, but the Legislature has
17 taken away any ability I have to give you less than
18 25 and they have said that anybody that plays
19 around with drugs and ends up trafficking and it's
20 a third offense they get a minimum of 25, and
21 that's a minimum sentence. Judge Lockemy could
22 have given you -- that's the minimum he could give
23 you. I can't set it aside.

24 So, it is really tough. You're less than
25 thirty years of age, you are going to have to serve

1 at least 20 years in there. Plus, Mr. Gregory, it
2 is not only tough on you, but it cost us \$20,000 a
3 year to keep you in there. We would rather have
4 you out earning some money to support your child,
5 but I can't help with you with it. There is
6 nothing I can do.

7 THE DEFENDANT: Also, Your Honor, when I was
8 going through this, you know, I'm saying they had
9 promised me all kind of stuff, you know what I'm
10 saying, I'm not dealing with narcotics or dealing
11 with things like that, they promised me that and
12 when it come time for me to come to court they
13 backed off all that. I mean, the statements I gave
14 them toward things, they backed off all that, you
15 know what I'm saying? Your Honor, I can't bare it.

16 THE COURT: I can't help you with the
17 sentence. If they promised you something and you
18 had pled guilty and they didn't agree to it I could
19 have altered that but once you have a trial and are
20 found guilty all I can do is, the minimum sentence
21 I can give you is 25, like Judge Lockemy, you know,
22 and concurrent on the others. The Legislature has
23 set a \$50,000 minimum fine which is going to be way
24 over \$50,000.

25 MR. THOMPSON: I have explained all that to

1 Mr. Gregory.

2 THE COURT: I know. It's hard for him to
3 understand, there is no need for me to try because
4 25 years, serving 85 percent seems unjust to him
5 but --

6 MR. THOMPSON: Yes, sir. Thank you, Your
7 Honor.

8 THE COURT: Okay.

9 MS. LESKANIC: Thank you, Your Honor.

10 THE DEFENDANT: Your Honor, could I say
11 something before I go?

12 THE COURT: I can't help you with it.

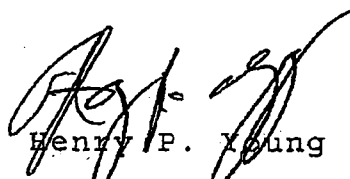
13 (Hearing Concluded).
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Cherokee County, South Carolina, on the 5th day of November, 2007.

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

December 8, 2007


Henry P. Young
Court Reporter

010CP-110780

In the Court of Common Pleas

STATE OF SOUTH CAROLINA)

County of Cherokee)Thomas Arnold Gregory, #279488)

Full name and prison number, if any, of applicant)

v.)

State of South Carolina)

Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

DEMAND FOR HONORARY

2010 OCT 11 A 8:23

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 Perry Correctional Institution, 430 Oaklawn Rd., Pelzer, S.C.
29669

2. Name and location of Court which imposed sentence Cherokee County Court of General
Sessions

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 2007 GS 11 418 possession with intent to distribute crack cocaine near school

(b) 2007 GS 11 420 trafficking crack cocaine

(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

(a) November 5, 2007

(b) _____

(c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty *** _____

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. S.C. Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Appeal Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. November 19, 2009

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion No. 2009 UP- 551

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) Lack of Authority

(c) Denial of Due Process and Equal Protection of the Law

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Failure to object to an incomplete chain of custody

(b) See Attachment

(c) See Attachment

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.

iii.

iv.

(b) the name and location of the Court in which each was filed:

i. N/A

ii.

iii.

iv.

(c) the disposition thereof:

i. N/A

ii.

iii.

iv.

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? None

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) These issues were preserved for appeal.
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? ***
- (c) your sentencing? ***
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? _____

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. Don A. Thompson, Public Defender Office

ii. _____

iii. M. Celia Robinson, S.C. Appellate Defense

(b) the proceedings at which each such attorney represented you:

i. Trial and sentencing

ii. _____

iii. Appeal

18. State clearly the relief you seek in filing this application.

New Trial

19. Are you now under sentence from any other court that you have not challenged?

N/A

010CP-110780

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Cherokee)

VERIFICATION

I, Thomas Arnold Gregory, 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.

Thomas Gregory

Sworn to and subscribed before me

This 10th day of October, 2010.

Ray L. Spina L.S.
 Notary Public for South Carolina

My Commission Expires May 12th, 2014

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
 OF COSTS AND AFFIDAVIT
 IN SUPPORT THEREOF**

I, Thomas Arnold Gregory, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Thomas Gregory
 Applicant

Sworn to and subscribed before me

This 10th day of October, 2010.

Ray L. Spina L.S.
 Notary Public for South Carolina

My Commission Expires May 12th, 2014

CLERK OF DISTRICT COURT

2010 OCT 11 A 8:23

CLERK OF DISTRICT COURT

Applicant asserts that his trial counsel was ineffective. Where ineffective of assistance of counsel is alleged as a ground for relief in a PCR action, 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, 104 S. Ct. 2052 (1984); Sanchez v. State, 351 S.C. 270, 569 S.E.2d 363 (2000).

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." The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (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, 386 S.E.2d at 625. 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." "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Moreover, there are times when prejudice is presumed. Where counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, there has been a denial of the Sixth Amendment rights that makes the adversary process itself presumptively unreliable, and prejudice may be presumed. Cronic v. U.S., 446 U.S. 648, 104 S. Ct. 2039 (1984), also Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006).

Thus, after a careful consideration of the issue(s) presented, this Court will conclude that Applicant received ineffective assistance of counsel and this conduct prejudiced the outcome of this trial.

DISCUSSION

Ineffective Assistance of Counsel

Counsel was ineffective for failing to object to an incomplete chain of custody.

Thus rendering the evidence inadmissible against Applicant.

Rule 6 SCRCrim.P.(b) Certified or Sworn Statement.

"For the purpose of establishing a chain of physical custody or control of evidence entered under Part A of this Rule, a certified or sworn statement signed by each successive person having custody of the evidence that he or she delivery it to the person stated is evidence that the person had custody and made delivery as stated without the necessity of the person who signed the statement:

BRANDY W. HEE

2010 OCT 11 11:24

In keeping with the requirements of the procedures, a complete chain of evidence, tracing possession from the evidence's initial control to its final analysis, must be established as far as practicable. If a substance has passed through several hands it must not be left to conjecture concerning who had the evidence and what was done with it between the taking and the analysis. State v. Chisolm, 584 S.E.2d 401 (2003).

Therefore, as an alternative to presenting the testimony of the intervening custodians, the State could have utilized the procedures in Rule 6(b), SCRCrim.P., to establish the chain of custody. While the chain of custody "need not negate all possibility of tampering," the State is required to show that the chain is complete. Thus, in establishing the procedures that could have been taken to show and prove a complete chain of custody, we are forced to analyze the issue at hand.

Pursuant to SLED Rules, R73 70 number 23 Two Person Rule:

"A system to prohibit a single individual from having access to or exercising custody over controlled substance evidence by requiring the presence at all times of at least two authorized persons, each capable of detecting incorrect or unauthorized procedures with respect to the task being performed"

According to the testimonies presented all officers including the chemist stated that they handled this evidence by themselves. This conduct is inconsistent with the procedure that is set by this rule.

Furthermore, rules of procedures, like statutes, should be given their plain meaning, and when the text of a rule is clear and unambiguous, the judicial inquiry is complete.

Additionally, counsel in criminal cases must conduct the appropriate investigations both factual and legal in order to ascertain the available and unavailable defenses. And the failure to abide by these requirements constitutes denial of effective representation of counsel unless the State can establish lack of prejudice thereby. Coles v. Peyton, 389 F.2d 224 (4th Cir. 1968).

Lack of Authority

S.C. Code Ann. §17 25 10, mandates as follows:

...No person shall be punished for an offense unless duly and legally convicted thereof in a Court having competent jurisdiction of the cause and of the person...

In acknowledging the content of this statute, we are forced to review the issue at hand. The acts of this Court and the Government are not binding upon Applicant, pursuant to the Original Thirteenth Amendment that was amend in 1863 to reflect what is now known as the Slavery and the Involuntary Servitude Amendment.

This Congressional Act called the Titles of Nobility Act (TONA, 1810-11), mandates as follows:

"If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall without the consent of Congress, accept and retain any present pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them."

Thus, the titles of "Esquire" and "Honorable" are titles of British Nobility, which is prohibited by this amendment. Since this original amendment has never been repealed, all acts of the Government since 1819 are technically null and void. Because most so-called lawmakers, are attorneys and are prohibited from participation in any office of government by the true Original Amendment of the Social Compact Contract known as the U.S. Constitution.

Furthermore, this Court that supposedly tried these criminal charges was operating under Admiralty jurisdiction not Common Law. Thus, I can not be tried, found guilty nor sentenced for a criminal offense in a civil court. Therefore, if this Court conclude that it had lawful authority under the United States Constitution, then it to provide this jurisdiction. See Eric v. Tompkins, 304 U.S. 64, 58 S. Ct. 817 (1938).

Denial of Due Process and Equal Protection of the Law

Applicant contends that the prosecutor improperly introduced testimony of prior bad acts concerning the possession of marijuana to secure this conviction, which in the setting denied Applicant due process and equal protection of law to a fair trial.

It has been well-established that aprior bad act must first be established by clear and convincing evidence to be admissible. Evidence of prior bad acts is inadmissible to prove the specific crime charged unless the evidence tends to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish proof of the other; or (5) identity of the person charged with the present crime. State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923); also Rule 404(b), SCRE.

In the prosecution of one crime, proof of another direct substantive crime is never admissible unless there is some legal connection between the two upon which it can be said that one tends to establish the other or some essential fact in issue. State v. Parker, 315 S.C. 230, 433 S.E.2d 837 (1993). Thus, deciding to apply the Lyle exception for admission of prior crimes, the Court must always determine if the probative value of the evidence out weighs its prejudicial effect.

The connection between the prior bad acts and the crime must be more than just a general similarity; there must be a close degree of similarity or a connection between the prior bad acts and the crime. State v. Raffaldt, 318 S.C. 110, 456 S.E.2d 390 (1995).

Here, the testimony concerning the dropping of the marijuana, was not necessary to establish the Applicant's identity in this matter. Trooper Stephen Poole testified that he knew Applicant.

Moreover, the Applicant made a Statement, which is direct evidence that he had the crack cocaine and that he threw it down when he was running from Officer Poole. Tr. p. 77 lines 6-13. Therefore using an excuse that this matter related to a crime charged is unnecessary.

There is no connection between the crimes charged and the possession of marijuana as the Court would like make people think or that for the State to prove and are insufficient to come within the framework of the common scheme or plan exception. Indeed, the purpose of the State's use of the evidence appears to establish the resisting arrest charge, in which the State was not trying to prove a common or plan, but this evidence was only trying to convince the jury that they should convict the Applicant of resisting arrest for running. This is the precise type of inference prohibited by Lyle. State v. Campbell, 317 S.C. 449, 454 S.E.2d 899 (1994).

Furthermore, the Lyle rule is "grounded on the policy that character evidence is not admissible for the purposes of proving that the accused possesses a criminal character or has a propensity to commit the crime with which he is charged." Thus, the procedures utilized to convict a person must have been fundamentally fair, that is, in accordance with the commands of the Fourteenth Amendment and Art. I, §3 of S.C. Constitution, "No State shall deprive any person of life, liberty, or property, without due process of law"... are "implicit in the concept of ordered liberty."

ATTENTION

Wherefore, stating the fact, Applicant respectfully ask that the Respondent in making its Return address all points stipulated in every issue presented. If the Respondent does not respond accordingly, then every un rebutted point stands as truth in the private and public record.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
	)	
Thomas Arnold Gregory, #279488,	)	2010-CP-11-0780
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on November 3, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Cherokee County Clerk of Court's orders of commitment. The Cherokee County Grand Jury indicted the Applicant at the April 2007 term of General Sessions for possession with intent to distribute crack cocaine near school and/or playground (2007-GS-11-0418) and trafficking in crack cocaine (2007-GS-11-0420). Don A. Thompson, Esquire, represented the Applicant. On November 5, 2007, the Applicant was tried in absentia and convicted of these charges by a jury. The Honorable James E. Lockemy sentenced the Applicant to confinement to ten (10) years for possession with intent to distribute crack cocaine near school and/or playground and twenty-five (25) years for trafficking in crack cocaine, set to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. State v. Gregory, Op. No. 2009-UP-0551 (filed November 19, 2009). The Remittitur was returned December 7, 2009.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that;
 - a. "Counsel failed to object to an incomplete chain of custody thus rendering the evidence inadmissible against Applicant."
2. Subject Matter Jurisdiction, in that;
 - a. "The acts of this Court and the Government are not binding upon Applicant, pursuant to the original thirteenth amendment;"
 - b. "The Titles of Nobility Act prohibits such titles as 'Esquire' and 'Honorable' thus making all acts of the Government since 1819 null and void."
3. Violation of Due Process, in that;
 - a. "The Prosecutor improperly introduced testimony of prior bad acts concerning the possession of marijuana to secure this conviction."

For the purpose of this Return, the Respondent incorporates the transcript, the Clerk of Court records, and the South Carolina Department of Corrections' records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent asserts that 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 Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. 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, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that 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. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant has claimed that the trial court lacked subject matter jurisdiction due to the

court's lack of authority. An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Respondent submits that this allegation should be summarily dismissed.

V.

The Applicant further alleges that he was denied due process of law because of prosecutorial misconduct. The Applicant appears to be raising Direct Appeal issues regarding the introduction of evidence of prior bad acts. The allegations presented by Applicant raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant raised this issue at trial and on appeal. Therefore, the Court should summarily dismiss this application for post-conviction relief.

VI.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

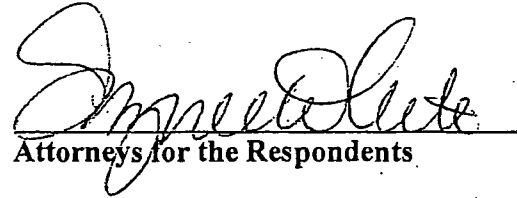
ALAN WILSON
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Assistant Attorney General

By:


Attorneys for the Respondents

Office of the Attorney General
P.O. Box 11549
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August 17, 2011.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS
3
4 Thomas Arnold Gregory,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2010-CP-11-0780
7 The State,)
8 Respondent.) April 6, 2012
9 Spartanburg, South Carolina
10
11
12
13
14

11 B E F O R E:

12 HONORABLE J. DERHAM COLE, JUDGE
13
14

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

16 N. DOUGLAS BRANNON, ESQUIRE
17 Attorney for the Applicant

18 SUZANNE H. WHITE, ESQUIRE
19 Attorney for the Respondent
20
21
22

23 Margaret A. Woods
24 Circuit Court Reporter
25

ORIGINAL

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THOMAS ARNOLD GREGORY - DIRECT EXAMINATION BY MR. BRANNON

1 THE COURT: Gregory?

2 MS. WHITE: Yes, Your Honor.

3 THE COURT: Okay.

4 MS. WHITE: It's Case Number 2010-CP-11-0780, he's
5 represented today by Doug Brannon. He's indicted April 2007
6 for PWID near a school or playground, resisting arrest and
7 trafficking in crack cocaine. Ultimately a trial in his
8 absence was held, he was convicted, received sentence of
9 25 years aggregate total and on November 5th 2007 represented
10 by Don Thompson at trial and then a se -- excuse me, trial
11 September 17th 2007 sentence was unsealed November 5th.
12 Anders brief was filed, it was affirmed and then he filed this
13 application raising various allegations of ineffective
14 assistance of counsel and I will turn it over at this time to
15 Mr. Brannon.

16 MR. BRANNON: Prepared to go forward, Your Honor.

17 THE COURT: Okay.

18 MR. BRANNON: I call Thomas Gregory to the witness
19 stand.

20 THE COURT: Okay.

21 (Whereupon, the applicant came forward.)

22 THOMAS ARNOLD GREGORY, having been
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. BRANNON:

25 Q. Sir, please state your full name for the Court.

THOMAS ARNOLD GREGORY - DIRECT EXAMINATION BY MR. BRANNON

1 A. Thomas Arnold Gregory, sir.

2 Q. Okay. Mr. Gregory, did you hear the Attorney General
3 when she announced the charges for which you went to trial,
4 did you hear the -- those charges?

5 A. Yes, sir.

6 Q. Okay. And when you went to trial in September of 2007,
7 were you in fact represented by Mr. Thompson?

8 A. Yes, sir.

9 Q. Okay. Did you have the opportunity to meet with him in
10 the months before the trial?

11 A. No, sir.

12 Q. Are you -- is -- i -- are you alleging that you did not
13 meet with your attorney prior to going to trial?

14 A. No, sir.

15 Q. Okay. Now in your application for post-conviction relief
16 you don't, you don't talk about not meeting with your
17 attorney ---

18 A. No, sir, I don't.

19 Q. --- okay, so my question is: Are you saying that you did
20 not have time to meet with your attorney to prepare for the
21 trial?

22 A. No, sir.

23 Q. You're not saying that. Okay, thank you. In your
24 application you allege that there appears to be a problem with
25 the chain of custody for the drugs, is that correct?

THOMAS ARNOLD GREGORY - DIRECT EXAMINATION BY MR. BRANNON

1 A. Yes, sir.

2 Q. You also allege that there was some admission of
3 evidence, specifically, uh, marijuana, your possession of
4 marijuana that was made known to the jury in the trial and you
5 believe that that was a violation of the rules of evidence and
6 of your constitutional rights, is that correct?

7 A. Yes, sir.

8 Q. Alright. Now let's go back to the chain of custody
9 issue. You -- your case began with a traffic stop, is that
10 correct?

11 A. Yes, sir.

12 Q. And who stopped you? And when I say who stopped you, was
13 it a trooper? was it a deputy? was it a city police officer?
14 who was that?

15 A. It was a trooper, sir.

16 Q. Alright. When the trooper stopped you, is it true that
17 the drugs that they allege belong to you were found in a
18 roadway?

19 A. Yes, sir.

20 Q. The drugs that -- and who reco -- who recovered those
21 drugs?

22 A. Uh, State Trooper Carl Quinn.

23 Q. Okay. And when Trooper Quinn, Trooper Quinn is also the
24 same trooper that stopped you, that blue lighted you,
25 correct?

THOMAS ARNOLD GREGORY - DIRECT EXAMINATION BY MR. BRANNON

1 A. Yes, sir.

2 Q. In the transcript and in your trial, is it true that
3 Trooper Gwenn -- Trooper Quinn alleged that the drugs were
4 seized or picked up off of the road and then placed into the
5 trunk of his patrol car?

6 A. Yes, sir.

7 Q. And then at some point he took the drugs himself from,
8 uh, to Columbia to SLED for che -- for testing, is that
9 correct?

10 A. Yes, sir.

11 Q. Okay. And is it your allegation that the chain of
12 custody is actually broken at that point when he turned the
13 drugs over to SLED?

14 A. Yes, sir.

15 Q. Alright. As far as the marijuana charge, you were also
16 charged not only with these general sessions charges that
17 you're here on a PCR application for but you were also charged
18 with simple possession of marijuana at the same time, is that
19 correct?

20 A. Yes, sir.

21 Q. Your allegation is that those -- that marijuana charge
22 was not admissible, is that correct?

23 A. Yes, sir.

24 Q. Alright. Now you allege in your application for post-
25 conviction relief that Mr. Thompson was was ineffective

THOMAS ARNOLD GREGORY - DIRECT EXAMINATION BY MR. BRANNON

1 because he did not adequately adequately point out the breaks
2 in the chain of custody, correct, ---

3 A. Yes, sir.

4 Q. --- and that he was ineffective because the mention of
5 the marijuana was made in court and you believe it prejudiced
6 you, is that correct?

7 A. Yes, sir.

8 Q. Alright. And is it your belief that if your attorney had
9 more vigorously or accurately pointed out the flaws in the
10 chain of custody that the drugs might have been or should have
11 been suppressed?

12 A. Yes, sir.

13 Q. And had he more vigorously argued against the admission
14 of the statements concerning marijuana that you would not have
15 been prejudiced by that?

16 A. Yes, sir.

17 Q. Alright. And, sir, is it also your belief that had he
18 done both of those things, fight the chain of custody flaws
19 and fight the admission or the announcement of the marijuana
20 in your trial, that the outcome of the trial may have been
21 different?

22 A. Yes, sir.

23 Q. Alright. Now, sir, this is your hearing for post-
24 conviction relief, have we accurately addressed all of your
25 complaints against defense counsel?

THOMAS ARNOLD GREGORY - CROSS-EXAMINATION BY MS. WHITE

1 A. Yes, sir.

2 Q. Is there anything else that you want to make a -- that
3 you want to let this court know about in this hearing?

4 A. No, sir.

5 MR. BRANNON: Alright, I have no further questions, Your
6 Honor.

7 MS. WHITE: Just briefly.

8 CROSS-EXAMINATION BY MS. WHITE:

9 Q. Um, Mr. Gregory, one of the things you talked about was
10 the the mention of the marijuana. Initially your attorney
11 made a motion to suppress that evidence before trial, have you
12 read through, I I know you weren't there but at the
13 transcript, have you had a chance to read through that?

14 A. Yes, ma'am.

15 Q. Okay, and so you do see that, you acknowledge that the
16 fact that your attorney made a motion to suppress the evidence
17 of the marijuana based on the fact that it was gonna
18 prejudice you.

19 A. Uh-uh.

20 Q. Did you, did you notice that he had done that prior to
21 the beginning of trial?

22 A. No, ma'am, I I really didn't even notice it, ma'am, ---

23 Q. Okay, ---

24 A. --- truth.

25 Q. --- um, well and he did, he made a motion to suppress the

THOMAS ARNOLD GREGORY - REDIRECT EXAMINATION BY MR. BRANNON

1 marijuana on the statement that it was gonna be more
2 prejudicial to your case than having any kind of probative
3 value, you know, to help your case and the judge actually
4 overruled that so he did attempt to keep that out from your
5 case at the time so he argued that, it's just he was overruled
6 at the time.

7 A. Yes, ma'am.

8 Q. Okay. And your argument is in regards to the chain
9 of custody was that that the trooper you said sent the drugs
10 to SLED ---

11 A. Yes, ma'am.

12 Q. --- and that there was a break in chain at that point?

13 A. Yes, ma'am.

14 Q. Okay.

15 MS. WHITE: Um, I think, Your Honor, that's all the
16 questions I have this time.

17 MR. BRANNON: I only have one follow-up question.

18 REDIRECT EXAMINATION BY MR. BRANNON:

19 Q. Mr. Gregory, I I just want to make -- I sent you a copy
20 of the transcript, right?

21 A. Yes, ma'am -- yes, sir.

22 Q. Okay, thank you.

23 MR. BRANNON: Nothing further, Your Honor.

24 THE COURT: Okay, you can step down.

25 THE APPLICANT: Thank you, sir.

DON THOMPSON - DIRECT EXAMINATION BY MR. BRANNON

1 (Whereupon, the applicant left the stand.)

2 MR. BRANNON: Your Honor, I call Mr. Don Thom -- Don
3 Thompson to the witness stand.

4 (Whereupon, the witness came forward.)

5 DON THOMPSON, having been first
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BRANNON:

8 Q. Mr. Thompson, did you in fact represent Mr. Gregory in
9 the trial of these three charges?

10 A. I did.

11 Q. Okay. I wanna talk to you about the chain of custody
12 issue that my client has raised. How would you describe the
13 chain a custody in this case?

14 A. As I recall it and I I looked through the transcript last
15 night notes it appears that the officer that recovered the
16 drugs took the drugs to SLED himself. He turned 'em over to
17 SLED where they do the receiving of it, they were logged into
18 their safe or whatever holding facility they have. The
19 chemist then took the drugs out and tested 'em, um, which is
20 standard procedure. I saw a little bit of a problem with the
21 chain of custody after the drugs were picked up from SLED and
22 brought back to Cherokee County and I was able actually to
23 keep the drugs from bein' introduced until they took care of
24 that problem with the chain a custody but they finally think
25 they put testimony in take care of it.

DON THOMPSON - DIRECT EXAMINATION BY MR. BRANNON

1 Q. Okay, can I ask you to explain the problem that you saw,
2 I think I know where you're goin' but can ---

3 A. Well a highway patrol officer who was basically the
4 evidence custodian for several highway patrol districts or
5 troops or whatever they call 'em, uh, had picked it up and
6 just taken it back to his office and thrown in the filing
7 cabinet and, uh, and that that's where it had sat for several
8 months after he picked it back up from SLED and I I saw a
9 problem with that and I raised that and the judge when they
10 tried to put the drugs in with the chemist, the judge would
11 not let 'em put it in until that officer testified and and
12 actually established a chain on that.

13 Q. Okay. Alright, now I wanna go, I wanna go back though
14 the trooper that that blue lighted my client and then
15 initially seized the drugs ---

16 A. Um-hum.

17 Q. --- testified that that he took the drugs to Columbia,
18 correct, ---

19 A. Correct.

20 Q. --- and and that between seizing the drugs and taking
21 them to Columbia they they m -- they stayed in his trunk,
22 correct?

23 A. Uh, I don't recall so, ---

24 Q. Okay.

25 A. --- I don't think.

DON THOMPSON - DIRECT EXAMINATION BY MR. BRANNON

1 Q. Alright, but then he he drives the the the drugs to.
2 Columbia and hands them to somebody, correct?

3 A. Yes.

4 Q. Do we know who that somebody was?

5 A. It's -- let's see, off the top of my head I don't know but
6 I might have some documents ---

7 Q. Well I ---

8 A. --- maybe show that.

9 Q. --- I can make the question more simple. Was there a
10 paper trail that identified each person who took, who who
11 handled the drugs at SLED?

12 A. Um, accordin' to this it the paper trail Quinn says he
13 took it to SLED and dropped in the to the container. I think
14 his testimony in the thing was he actually handed it to
15 somebody.

16 Q. Right, but my review of the paper trail indicates that it
17 went from Quinn to the, to the testing agent, there there ---

18 A. Right.

19 Q. --- there wasn't anybody in between and Quinn clearly
20 says he didn't give it to the, to the testing agent.

21 A. To the chemist.

22 Q. To the chemist, right.

23 A. No, uh-uh.

24 Q. Okay, so did you point that that potential omission out
25 to the Court or to the jury?

DON THOMPSON - DIRECT EXAMINATION BY MR. BRANNON

1 A. I don't know if I did or not.

2 Q. Okay, thank you. Alright, would you admit that that
3 could be a potential breach in the chain of custody?

4 A. Uh, it could be, yes.

5 Q. Okay, thank you. Alright, and you pointed out the other
6 believed or thought to be breach in in the storage in the
7 unlocked file cabinet ---

8 A. Correct.

9 Q. --- and that was argued in court, correct?

10 A. Correct.

11 Q. Alright, now there -- was the other issue raised by my
12 client that deals with some marijuana?

13 A. Right.

14 Q. Now is it true that in this case my client gave a
15 statement?

16 A. He did.

17 Q. And the sta -- in the statement he said, "It was my
18 dope," correct?

19 A. Correct.

20 Q. You've been doin' this a long time, does dope mean any
21 type of drug specifically?

22 A. No.

23 Q. So could it be that he didn't admit to being in
24 possession of cocaine but what he admitted to being in
25 possession of was marijuana?

DON THOMPSON - DIRECT EXAMINATION BY MR. BRANNON

1 A. I guess that could be, yes.

2 Q. Okay, and he had already pled guilty to simple possession
3 of marijuana, correct?

4 A. That's correct.

5 Q. So we now have a statement where ad -- an absent
6 defendant admits to possessing dope but not specifically
7 cocaine, correct?

8 A. Correct.

9 Q. Did you ever point that out?

10 A. I don't know that I did or not, record would have to
11 reflect that.

12 Q. Okay. Alright, ---

13 A. I don't recall.

14 Q. --- you you did try to suppress or prevent the mention of
15 marijuana in the courtroom though, correct?

16 A. I fought like hell to keep the marijuana out but it ---

17 Q. Okay.

18 A. --- came in anyway.

19 Q. Thank you.

20 MR. BRANNON: Your Honor, may I have one moment?

21 THE COURT: (No verbal response.)

22 (Attorney/client discussion held off the record.)

23 MR. BRANNON: Alright, Your Honor, have nothing further,
24 thank you.

25 MS. WHITE: Just briefly.

DON THOMPSON - CROSS-EXAMINATION BY MS. WHITE

1 CROSS-EXAMINATION BY MS. WHITE:

2 Q. Um, Mr. Thompson, in regards to chains of custody and
3 your understanding does every person that that touches a bag
4 generally have to be there to testify to prove chain at ---

5 A. No.

6 Q. --- a trial? And is that generally able to show -- how
7 are they able to show that chain of custody through different
8 ways? I mean, ---

9 A. Well they can show it through paper -- a paper chain,
10 paper trail or sometimes through testimony.

11 Q. And in fact isn't it true that the case law said that's
12 as much as practible or practicable you can have people
13 testify, it doesn't have to be every person that touches the
14 chain?

15 A. That's correct.

16 Q. Okay, and in this point as Mr. Brannon point out the
17 trooper testified he put it in a locked box and then I believe
18 the chemist testified that's perhaps where they obtained it
19 from to do the testing, is that correct?

20 A. That's correct.

21 Q. Okay. Um, ---

22 A. And I don't -- let me back up on that. I'm not sure the
23 officer testified he put it in a lock box, his testimony may
24 have been he gave it to somebody. I don't recall ---

25 Q. Okay.

DON THOMPSON - REDIRECT EXAMINATION BY MR. BRANNON

1 A. --- that it was put in a lock box. The the chemist's
2 testimony was that it was retrieved from the lock box ---

3 Q. Okay.

4 A. --- that they take it out in batches, ---

5 Q. Okay.

6 A. --- whatever.

7 Q. So it's either he gave it to someone at SLED who put it
8 in their locked box or he put it in the lock box is your
9 understanding.

10 A. Right.

11 Q. Okay.

12 MS. WHITE: Alright, um, I think that's all the questions
13 I have this time, Your Honor.

14 MR. BRANNON: One follow-up question.

15 REDIRECT EXAMINATION BY MR. BRANNON:

16 Q. Mr. Thompson, isn't it, I think you and I both said the
17 same things, trooper said that he took it to SLED and gave it
18 to someone, correct?

19 A. If I recall from my reading of the transcripts last night
20 time I think that's what he testified to, yes.

21 Q. And there is a paper, a a paper chain but indi -- it
22 indicates something different, doesn't it?

23 A. It indicates it was taken to SLED and and locked up, ---

24 Q. Correct, ---

25 A. --- yeah.

DON THOMPSON - REDIRECT EXAMINATION BY MR. BRANNON

1 Q. --- so there's there's there's a hole, would you agree
2 with me there?

3 A. I guess there could could be an argument that there was,
4 yes.

5 Q. Thank you, nothing further.

6 MS. WHITE: State has nothing ---

7 MR. BRANNON: That's applicant's case.

8 MS. WHITE: --- further, Your Honor.

9 MR. BRANNON: I I'm s ---

10 MS. WHITE: I ---

11 THE COURT: You may step down.

12 (Whereupon, the witness left the stand.)

13 MR. BRANNON: That's applicant's case, Your Honor.

14 THE COURT: I'll review the record and issue an Order.

15 MR. BRANNON: Thank you, Your Honor.

16 MS. WHITE: Thank Your Honor.

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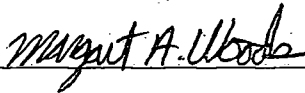
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1 CERTIFICATE OF REPORTER

2
3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on April 6, 2012 at the time and place
6 heretofore set forth; and that the foregoing pages numbered
7 from 3 through 17, inclusive, constitute a true and accurate
8 transcription of my stenographic notes of the said proceeding.

9 I further certify that I am neither attorney nor counsel
10 for, nor related to or employed by any of the parties
11 connected to the action, nor am I financially interested in
12 the action.

13 May 10, 2013.

14
15 

16 Margaret A. Woods, Court Reporter
17 in and for the State of South Carolina at Large.
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STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Thomas Arnold Gregory, #279488,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2010-CP-11-0780

ORDER OF DISMISSAL

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 JAN 22 PM 1 37
BRANDY M. MCBBE

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 3, 2010. The Respondent made its Return on or about August 23, 2011. An evidentiary hearing into the matter was convened on April 6, 2012, at the Spartanburg County Courthouse. The Applicant was present and represented by N. Douglas Brannon, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. At the beginning of the hearing, Applicant's Counsel stated that the hearing would be proceeding solely on the allegation of ineffective assistance of counsel and that all other allegations were waived.

At the hearing, the Applicant testified on his own behalf. Don A. Thompson, Esquire, also testified. This Court also had before it a copy of the records of the Cherokee County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the trial transcript, and Applicant's appellate records.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Cherokee County Clerk of Court's orders of commitment. The Cherokee County Grand Jury indicted the Applicant at the April 2007 term of General Sessions for possession with

intent to distribute crack cocaine near school and/or playground (2007-GS-11-0418) and trafficking in crack cocaine (2007-GS-11-0420). Don A. Thompson, Esquire, represented the Applicant. On November 5, 2007, the Applicant was tried in absentia and convicted of these charges by a jury. The Honorable James E. Lockemy sentenced the Applicant to confinement to ten (10) years for possession with intent to distribute crack cocaine near school and/or playground and twenty-five (25) years for trafficking in crack cocaine, set to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. State v. Gregory, Op. No. 2009-UP-0551 (filed November 19, 2009). The Remittitur was returned December 7, 2009.

ALLEGATIONS

In the current application, the Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that;
 - a. "Counsel failed to object to an incomplete chain of custody thus rendering the evidence inadmissible against Applicant."
2. Subject Matter Jurisdiction, in that;
 - a. "The acts of this Court and the Government are not binding upon Applicant, pursuant to the original thirteenth amendment;"
 - b. "The Titles of Nobility Act prohibits such titles as 'Esquire' and 'Honorable' thus making all acts of the Government since 1819 null and void."
3. Violation of Due Process, in that;
 - a. "The Prosecutor improperly introduced testimony of prior bad acts concerning the possession of marijuana to secure this conviction."

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) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "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).

The Applicant claims that Counsel failed to properly object to the insufficient chain of custody and the improper introduction of evidence of marijuana at trial. Applicant testified that he was arrested following a traffic stop by Officer Quinn and the drugs Applicant was charged with were found in the roadway. Applicant testified that the drugs were sent to SLED for analysis and Applicant believes the chain was broken at that time. Also, Applicant testified that the marijuana found on Applicant was mentioned during the trial and he believes that prejudiced him. However, Applicant acknowledged that he did not realize that Counsel had made a pre-trial motion to suppress any mention of the marijuana and was denied.

Counsel testified that the issue of the chain of custody involved an officer who took the drugs to SLED, where they were tested by a chemist, but then the chain had issues when the drugs were taken back from SLED to be returned to Cherokee County. Counsel testified that he was initially able to keep the drugs from being introduced based on failure to prove chain of custody, but when Corporal Price testified after the chemist, the drugs were allowed into evidence.

This Court finds that the Applicant has failed to meet his burden of proof as to this allegation. This Court finds that Counsel argued against the introduction of the evidence of marijuana and attacked the introduction of the drug evidence because of the State's failure to prove the chain of custody. This Court finds no deficiency in the representation that Counsel provided to the Applicant, and as a result, no prejudice. This Court finds that Counsel is an experienced attorney who was prepared for and effectively represented Applicant at his trial, even in the Applicant's absence. This Court finds that the Applicant has failed to meet his burden of proof as to this claim; therefore, this claim is denied and dismissed.

Summary

This Court finds counsel adequately conferred with the Applicant, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that 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 Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

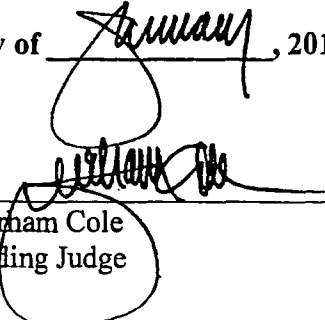
This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your

attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 14 day of January, 2013


J. Denham Cole
Presiding Judge

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 JAN 22 PM 1 37
BRANDY W. MCBEE

WITNESSES

E. B. Jackson

DOCKET NO. 07-GS-11-

0420

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

The State of South Carolina
County of Cherokee
Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

APR 26 2007

TERM

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

H994306

THE STATE

vs.

Thomas Arnold Gregory

ACTION OF GRAND JURY

TRUE BILL

For person of Grand Jury
Date:

Angela M. Copeland
4-26-07

VERDICT

Guilty

Indictment for

TRAFFICKING IN CRACK COCAINE

SC Code: 44-53-375

Charles A. Miller

Foreperson of Petit Jury

Date: 9/17/07

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

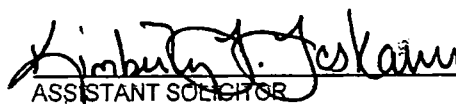
INDICTMENT

At a Court of General Sessions, convened on APR 26 2007 the
Grand Jurors of Cherokee County present upon their oath:

TRAFFICKING IN CRACK COCAINE

That Thomas Arnold Gregory did in Cherokee County on or about February 26 2007, sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was in actual or constructive possession or did attempt to become in actual or constructive possession of twenty-eight (28) grams, or more, but less than one hundred (100) grams of Crack Cocaine, a schedule II controlled substance under the provisions of §44-53-110 in violation of §44-53-375, *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

WITNESSES

SCHP

[Signature]

DOCKET NO. 07-GS-11- *DA18*

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

APR 26 2007

TERM

ARREST WARRANT NUMBER

H994305

ACTION OF GRAND JURY

True Bill

Thomas Arnold Gregory

Angela W. Copeland
Foreperson of Grand Jury
Date: *4-26-07*

VERDICT

Guilty

Charles A. Mills

Foreperson of Petit Jury

Date:

9/17/07

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE CRACK COCAINE NEAR
SCHOOL/LAND OR PLAYGROUND

SC Code: 44-53-445 (B)(1)

CDR: 0108

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

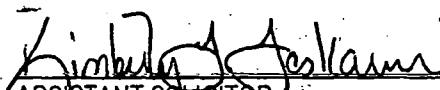
INDICTMENT

At a Court of General Sessions, convened on APR 26 2007 the
Grand Jurors of Cherokee County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE
NEAR SCHOOL/AND OR PLAYGROUND

That Thomas Arnold Gregory did in Cherokee County on or about February 26, 2007, possess with the intent to distribute a quantity of Crack Cocaine, a controlled substance under the provisions of Section 44-53-110, et. Seq., Code of Laws of South Carolina, 1976, as amended, such possession being within a one-half mile radius of a public playground and/or school, to wit: Limestone Courts Playground, in violation of §44-53-445 (B)(1) of the *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, such possession not having been authorized by law.

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


ASSISTANT SOLICITOR

258

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Cherokee

VS

Thomas Arnold Gregory

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

07

-GS-

11

420

A/W#:

H-994306

Date of Offense:

S.C. Code §:

44-53-370

CDR Code #:

0131419

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Trafficking in Crack Cocaine - (25-30yr)

in violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0131419

☐ NON-VIOLENT

☒ VIOLENT

☒ SERIOUS

☐ MOST SERIOUS

☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Clerk

Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 23 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$50,000; 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: IND # 418 & 419

☒ 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.

60 DAYS

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$100

\$50,000.00

\$14-1-211(A)(1) (Conv. Surcharge)

\$100

\$100.00

\$14-1-211(A)(2) (DUI Surcharge)

\$12

\$

\$56-5-2995 (DUI Assessment)

\$500

\$

§ 35.13 (Public Def/Prob)

\$25

\$25.00

\$73.3, 1B TP (Law Enforce. Funding)

\$100

\$100.00

\$33.7, 1B TP (Drug Court Surcharge)

\$50

\$

\$50-21-114(BUI Breath Test Fee)

\$40/ea

\$3119.25

\$56-5-2942(J) (Vehicle Assessment)

\$

\$6.75

3% to County (if paid in installments)

TOTAL

\$23,042.25

☐ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

[Signature]
01 03 11
September 17, 2007

Court Reporter:

Clerk of Court, Deputy Clerk

STATE OF SOUTH CAROLINA

COUNTY OF
STATECherokee

AKA:

Race: Sex: Age:

DOB: SS#:

Address:

City, State, Zip

DL# SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

07

-GS-

H-99430541B

A/W#:

Date of Offense:

2/26/07

S.C. Code §:

44-53-445(B)(2)

CDR Code #:

0 1 1 0 1 8☐ CASE RESTORED
SENTENCE☐ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: 1/2 mile (10.15 + 10K)In violation of 44-53-445 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 0 1 8☒ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Thomas Arnold Gregory
DefendantJohn H. Thompson
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 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: IND # 415 & 420☐ 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.☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$ 35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

	\$
\$	\$
\$100	\$100.00
\$100	\$
\$12	\$
\$500	\$
\$25	\$25.00
\$100	\$100.00
\$50	\$
\$40/ea	\$
\$	\$6.75
\$	\$231.75

Brandon M. Beebe
Clerk of Court/ Deputy ClerkCourt Reporter: Maggie Woods

SPECIAL CONDITIONS:

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

September 17, 2007

H- 994305

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of Cherokee

ARREST WARRANT

THE STATE
against

Thomas Arnold Gregory

Address: Gaffney, SC 29340

Phone: ☒ Home ☐ Office ☐ Cell SSN: ☐ 101 Weight: 145

Sex: M Race: B Height: 5'10" DOB: ☐ 101

DL State: SC Agency ORI#: SC0110000

Prosecuting Agency: Cherokee Co. Sheriff's Office

Offense: TRAFFICKING CRACK COCAINE MORE THAN 28g but less than 100g WITHIN 1/2 M Offense Code: 44-53-445

Code/Ordinance Sec. 44-53-445

This warrant is CERTIFIED FOR SERVICE in the ☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant Thomas H. Gregory on 2-27-07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: ROBERT B. HONELL, Magistrate

312 E. Frederick Street Gaffney, SC 29340

487-2502

260

STATE OF SOUTH CAROLINA

AFFIDAVIT

Form Approved by S.C. Attorney General April 21, 2003 SCCA 618

☒ County/ ☐ Municipality of Cherokee

Trp. B. S. Quinn

who

Personally appeared before me the affiant Thomas Arnold Gregory being duly sworn deposes and says that defendant February 26, 2007 violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Cherokee)

In the following particulars: TRAFFICKING CRACK COCAINE MORE THAN 28g but less than 100g WITHIN 1/2 MILE DESCRIPTION OF OFFENSE: PROXIMITY OF PLAYGROUND

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on the date of February 26, 2007, the defendant Thomas Arnold Gregory did traffic a quantity of Crack Cocaine, a Schedule II controlled substance, being more than 28 grams less than 100 grams. This incident did occur at the intersection of North Limestone Street and Hall Street within 1/2 mile proximity of Limestone Courts Playground located at 940 North Limestone Street in Gaffney within the County of Cherokee, South Carolina. This being in violation of the South Carolina Code of Laws, 1976, as amended.

Warrant based on investigation of the South Carolina Highway Patrol.

Signature of Affiant

1868 Old Georgia Highway

STATE OF SOUTH CAROLINA

Affiant's Address Gaffney, SC 29340

☒ County/ ☐ Municipality of Cherokee

Affiant's Telephone 864-489-3115

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on February 26, 2007 defendant Thomas Arnold Gregory did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Cherokee) as set forth below:

DESCRIPTION OF OFFENSE: TRAFFICKING CRACK COCAINE MORE THAN 28g but less than 100g WITHIN 1/2 MILE PROXIMITY OF PLAYGROUND

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn ☒ and subscribed before me on 2/27/2007

Signature of Issuing Officer (L.S.)

Judge's Address 312 E. Frederick Street Gaffney, SC 29340

Signature of Issuing Officer (L.S.) Judge's Telephone 487-2502 Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

H-994305

BAIL set by:

Judge _____
on _____
Type and Amount: _____
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defense Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

ARREST WARRANT

H-994306

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Cherokee
THE STATE
against

Thomas Arnold Gregory

Address: Gaffney, SC 29340

Phone: _____

Sex: _____ Race: _____ Height: _____ Weight: _____

DL State: _____

DOB: _____

Prosecuting Agency: _____

Prosecuting Officer: _____

Offense: _____

Offense Code: _____

Code/Ordinance Sec: _____

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of _____The accused
is to be arrested and brought before me to be
dealt with according to law.Date: _____
Signature of Judge _____ (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant Thomas A. Gregory
on 2/25/07
1 Public 33842
Signature of Constable/Law Enforcement Officer _____RETURN WARRANT TO:
Robert B. Howell, Magistrate

312 E. Frederick Street

Gaffney, SC 29340

487-2502

262

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Cherokee

AFFIDAVIT

Personally appeared before me the affiant

Trp. B. S. Quinn

who

being duly sworn deposes and says that defendant Thomas Arnold Gregory

February 25, 2007

did within this county and state on

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of _____)violate the criminal laws of the
Cherokeein the following particulars:
DESCRIPTION OF OFFENSE:

TRAFFICKING CRACK COCAINE MORE THAN 28g but less than 100g

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on the date of February 25, 2007, the defendant Thomas Arnold Gregory did traffic a quantity of
Crack Cocaine, a Schedule II controlled substance, being more than 28 grams less than 100 grams. This
incident did occur at the intersection of North Limestone Street and Wall Street in Gaffney, within the
County of Cherokee, South Carolina. This being in violation of the South Carolina Code of Laws, 1976, as
amended.

Warrant based on investigation of the South Carolina Highway Patrol.

Case number: 07-11-HP4-0022

Signature of Affiant

B. S. Quinn

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Cherokee
Affiant's Address 1868 Old Georgia Highway
Gaffney, SC 29340

Affiant's Telephone 864-483-3116

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on February 25, 2007 defendant Thomas Arnold Gregory
did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of _____)

DESCRIPTION OF OFFENSE: TRAFFICKING CRACK COCAINE MORE THAN 28g but less than 100g

as set forth below:

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of his execution, or as soon thereafter as is practicable.Sworn to and subscribed before me
on 2/25/07Judge's Address 312 E. Frederick Street
Gaffney, SC 29340

Judge's Telephone 487-2502

Signature of Issuing Court _____
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

H-994306

Form Approved by
S.C. Attorney General
April 2, 2003
S.C. 616

BAIL set by

Judge _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THOMAS ARNOLD GREGORY,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

M. CELIA ROBINSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. Did the trial judge erred in refusing to exclude from evidence any reference to appellant's possession of marijuana where the marijuana testimony tended to suggest propensity and a verdict on an improper basis and the probative value was substantially outweighed by its prejudicial effect?

STATEMENT OF THE CASE

Thomas Arnold Gregory, appellant, was indicted by the Cherokee County Grand Jury for possession with intent to distribute crack cocaine near a school, resisting arrest, and trafficking in crack cocaine. On September 17, 2007, the trial of the charges against appellant commenced before the Honorable James E. Lockemy and jury in the absence of the accused. Upon the jury returning verdicts of guilty on all charges, Judge Lockemy imposed sentence which was sealed pending appellant's apprehension. On November 5, 2007, appellant was brought before the Honorable J. Ernest Kinard. Counsel for appellant and appellant explained that he was absent from his trial because his baby girl, born premature and blind, was undergoing surgery in Spartanburg as his trial was proceeding in Greenville.

Judge Kinard announced the sentence imposed by Judge Lockemy: one year incarceration for resisting arrest, ten years incarceration for possession of crack cocaine in proximity of a school, and twenty-five years incarceration and a \$50,000 fine for trafficking in crack cocaine. Judge Lockemy had ruled that the sentences be served concurrently and that appellant be given credit for time served. Judge Kinard allowed the sentences to stand as imposed. This appeal follows.

ARGUMENT

- I. The trial judge erred in refusing to exclude from evidence any reference to appellant's possession of marijuana where the marijuana evidence tended to suggest propensity and a verdict on an improper basis and the probative value was substantially outweighed by its prejudicial effect.

Appellant was charged with trafficking crack cocaine. However, the charge of simple possession of marijuana had been dealt with in magistrate's court. (R. p. 45, lines 17-18). Therefore, counsel for appellant moved to exclude from evidence any testimony related to appellant's possession of marijuana. Counsel for appellant moved to suppress any reference to appellant's dropping marijuana at the scene. (R. p. 45, lines 7-14). Counsel argued that the prejudicial value of admitting testimony indicating that appellant had thrown the baggie of marijuana on the ground far outweighed any probative value to the prosecution. Counsel argued that the State would present testimony that officers saw appellant throw down the crack cocaine which was the subject of the charge against appellant. Counsel argued that, therefore, admission of evidence that appellant threw down marijuana served no legitimate, probative, purpose sufficient to outweigh the unfairly prejudicial effect of the testimony. (R. p. 45, line 20-p. 46, line 2). The trial judge indicated that, in his opinion, the marijuana and the testimony indicating that appellant threw the marijuana to the pavement was admissible under the theory of res gestae and also relevant as the basis for the resisting arrest charge. However, he withheld ruling until the testimony was presented. (R. p. 47, lines 7-12).

Outside the presence of the jury, Trooper Stephen Poole with the South Carolina Highway Department testified that he was working on February 26, 2007, when he was called out to assist Trooper Quinn. Poole testified that he was Quinn's field training officer and that Quinn asked him to respond to Wall Street and Limestone Streets in downtown

Gaffney for the purpose of identifying a subject he had stopped for a seatbelt violation. Poole indicated that Quinn "thought he recognized him" and he believed that Poole could possibly identify the subject. Poole testified that when he arrived at the scene, he was told the name given by appellant, the subject standing to the side of Trooper Quinn's car. Poole testified that the subject indicated to him, "I'm not who you think I am." Poole testified that the subject explained that he might be mistaken for his brother. However, Poole testified that as he kept talking, he recognized the subject from a previous encounter. Poole testified that he informed Quinn that the subject was appellant, Thomas Arnold Gregory. (R. p. 49, lines 17-20).

Poole testified that appellant, was saying, "I can't go to jail. Man, I can't go to jail." (R. p. 50, lines 4-8). Poole testified that he got that feeling that the subject was going to take off running so that he moved back to the back of the car to block his path. (R. p. 50, lines 9-22). Poole testified, "At that time he was standing there and he reached into his right pocket and I was approximately 2 to 3 foot from him, he reached in his right pocket and he just very nonchalant just pulled out it was a small bag, had green plant like material in it, and when he pulled it out of his pocket he just, once it cleared his pocket it just dropped. When I seen it hit the ground it sort of stunned me that somebody would do that right there in front of me and I told him, I said, 'Hey, man, you dropped something,' and when he looked down, I took my left hand and when I touched him, that's when he turned and shoved me off and the foot chase started." (R. p. 50, line 22-p. 51, line 7). Trooper Poole testified that he touched appellant because he was attempting to place appellant under arrest for simple possession of marijuana. (R. p. 51, lines 9-11).

Trooper Poole testified that after he had chased appellant twenty-five to thirty feet, the subject "goes back into this pocket and he pulls out there's money starts coming out but there's a plastic look like a little clear cellophane baggy and when it hit the ground, I could tell there was some type of white substance in it. It appeared to be some form of cocaine." (R. p. 51, line 21-p. 52, line 2). Trooper Poole testified that as he continued to run after the subject, he called Trooper Quinn by radio in order to advise him to secure the drugs the subject had thrown down. Poole testified, "I told him that there was some cocaine right up in front of where Trooper Quinn was at." (R. p. 52, lines 2-5). Trooper Poole testified that upon appellant's falling down, he was able to tackle him, at which time Trooper Poole for the first time informed appellant that he was under arrest. (R. p. 55, lines 1-11). Trooper Poole testified that, up to that point, he had not indicated that appellant was under arrest. (R. p. 55, lines 6-11).

The trial judge indicated that he believed that the testimony regarding appellant's possession of marijuana was relevant as the basis for the arrest he had resisted. (R. p. 59, lines 1-8). Counsel objected to admission of testimony regarding appellant's possession of marijuana on the grounds of relevance, arguing that this evidence was more prejudicial than probative. Counsel further argued that the marijuana testimony prejudiced appellant in the eyes of the jury on the crack charge. (R. p. 61, lines 10-12). Counsel suggested that the jury could simply be informed that the officer had cause to arrest appellant and attempted to arrest him but that appellant ran away. Counsel suggested that he would make no objection to the basis for the arrest if the prosecution would "just not say it was marijuana." (R. p. 61, lines 12-14). Counsel argued that the jury need never be informed that appellant was in possession of marijuana and that evidence of his marijuana possession was particularly

prejudicial to appellant because he was facing drug charges related to crack cocaine. Counsel argued that the unfairly prejudicial effect of the marijuana testimony substantially outweighed any supposed probative value. (R. p. 61, lines 14-17).

The trial judge ruled that the marijuana possession was relevant and admissible to explain to the jury why the officer was arresting appellant at the time he resisted arrest. The trial judge further found, "After considering the testimony I feel the probative value is not substantially aggravated by the danger of unfair prejudice nor confusion of the issues in misleading the jury, and after doing a 403 analysis I determine that the officer can testify. I find the officer can testify regarding the marijuana as to the reason for the charge of resisting arrest. I do know that also that will be before the jury as they consider the question of his guilt of innocence on the cocaine charge but I feel that that does not substantially outweigh any unfair prejudice." (R. p. 62, lines 1-11). This ruling was error.

A conviction must be based upon evidence of the offense for which accused is on trial rather than upon prior criminal or immoral acts. Evidence that a defendant has committed other unrelated crimes or bad acts is inadmissible to prove the defendant's propensity to commit the crime with which he is charged. State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). This is so because under our system of justice, a conviction must be based upon evidence of the offense for which the accused is on trial rather than upon prior criminal or immoral acts. State v. Gore, 283 S.C. 118, 322 S.E.2d 12 (1984). It is only in exceptional cases that another crime or bad act is relevant to an issue other than the accused's character. Because of the potential for prejudice from the admission of testimony of other crimes, however, the use of such evidence is limited. Rule 404(b), SCRE. In deciding to apply the Lyle exception for the admission of prior crimes

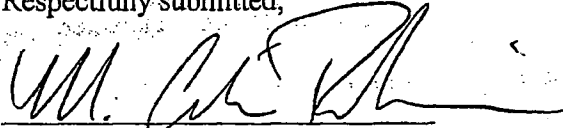
evidence, the court must always determine if the probative value of the prior act evidence outweighs its prejudicial effect. State v. Parker, 315 S.C. 230, 433 S.E.2d 831 (1993). Rule 403, SCRE. If the unfair prejudice outweighs the probative value or is dangerously close to tipping the scales, the court must exclude the evidence despite its relevance to some material issue other than character. State v. Alexander, 303 S.C. 377, 381, 401 S.E.2d 146, 149 (1991).

If the court does not clearly perceive the logical relevancy between the extraneous criminal transaction and the crime charged, the accused should be given the benefit of the doubt and the evidence should be rejected." Lyle, 125 S.C. at 417, 118 S.E. at 807; State v. Carter, 323 S.C. 465, 469, 476 S.E.2d 916, 919 (Ct.App.,1996). Evidence of other bad acts which are identical or substantially similar to the crime charged is particularly likely to cause a high degree of unfair prejudice to the accused. See State v. Al Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003)(the likelihood of a high degree of prejudice to the accused from the admission of offenses similar to the charged offense is inescapable.); State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000)(Evidence of similar offenses inevitably suggests to the jury the defendant's propensity to commit the crime with which he is charged). Here, because both substances are illicit drugs, appellant's possession of marijuana and of crack cocaine constituted similar crimes. Under these circumstances, even assuming that the evidence of marijuana possession was somewhat relevant to the resisting arrest charge, the probative value was slight in comparison to the highly prejudicial effect that resulted from the admission of testimony regarding appellant's possession of marijuana. The trial judge erred in overruling appellant's objections to the admission of testimony regarding his possession of marijuana.

CONCLUSION

For the forgoing reasons appellant's convictions should be reversed and a new trial ordered.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Celia Robinson', written over a horizontal line.

M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of September, 2008.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THOMAS ARNOLD GREGORY,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Thomas Arnold Gregory states:

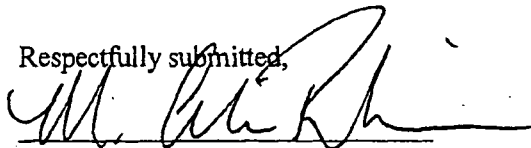
1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. She has reviewed the record of appellant's trial before Judge J. Ernest Kinard, Jr., which was held on September 17, 2007 & November 5, 2007, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Thomas Arnold Gregory.

Respectfully submitted,



M. Celia Robinson
Appellate Defender

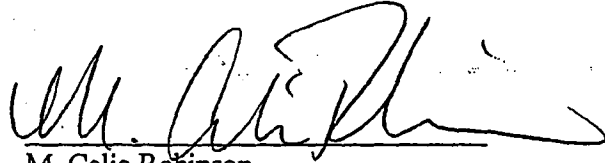
ATTORNEY FOR APPELLANT

This 2nd day of August, 2008.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 2, 2008



M. Celia Robinson
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

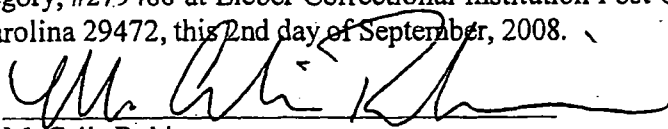
V.

THOMAS ARNOLD GREGORY,

APPELLANT

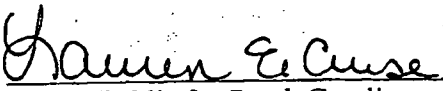
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201; and a copy of the Final Anders Brief of Appellant and Record on Appeal have been served on Thomas Arnold Gregory, #279488 at Lieber Correctional Institution Post Office Box 205 Ridgeville, South Carolina 29472, this 2nd day of September, 2008.


M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of September, 2008.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014

ANDERS RESPONSE BRIEF

RECEIVED

OCT 02 2008

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Indict. No. 07-GS-11-418, 420Appeal from Cherokee County
J. Ernest Kinard, Jr. Cir.Ct. Judge

THOMAS A. GREGORY #279488.....APPELLANT,

-VS-

THE STATE OF SOUTH CAROLINA.....RESPONDENT,

APPELLANT'S PRO-SE ANDERS BRIEF

Respectfully Submitted,

/s/ Thomas Gregory
Thomas Gregory #279488

ISSUE ON APPEAL

ISSUE (A) DID THE TRIAL COURT ERR IN ALLOWING APPELLANT TO BE
TRIED ABSENTIA?

ISSUE (A) DID THE TRIAL COURT ERR IN ALLOWING APPELLANT TO BE TRIED ABSENTIA?

FACTS

At the onset of Appellant's trial the following colloquy was recorded:

THE COURT: All right. Has he contacted you in the last week or so?

MR. THOMPSON: No, sir. I've tried to contact him last week and was told, a phone number I had, a young lady answered and she told me she hadn't seen him in several days.

THE COURT: But you said you saw him yourself....[Tr.p.11, L.20-25]...

MR. THOMPSON: I saw him Wednesday was a week ago.

THE COURT: Wednesday was a week ago. [Tr.p.12, L.1-2].

THE COURT: All right. Now, madam solicitor, you say you have a sheet that is a notice of the trial list. [Tr.p.14, L.24-25]..

MS. LESKANIC: Yes, Your Honor.

THE COURT: And you sent it directly to the defendant?

MS. LESKANIC: No, Your Honor. This is the published docket that is published for Cherokee County for the term of court beginning September 17, 2007 and Thomas Gregory is listed as Number 9 on that trial docket. We also have a copy of the letter that was sent to his bondsman Kenneth Tate at Street, Gaffney, South Carolina 29340.

THE COURT: Well, that is also the defendant's address. No I'm sorry. No it isn't. Kenneth Tate,

I'm sorry. In fact, I'm looking to see where the defendant -- oh, here's the address it's

MS. LESKANIC: Yes, Your Honor, and due to his representation I'm not permitted of course to have --

THE COURT: Yeah.

MS. LESKANIC: --- actual contact with him so these are the documents.

THE COURT: And, Mr. Thompson, you got a -- you knew the trial list too?

MR. THOMPSON: Oh, yes, sir. I I received the trial list. Now, I received the trial list after I had talked with Mr. Gregory but I had already been told by the solicitor that there was an offer made on Wednesday of two weeks ago, and I was told that if he didn't accept that offer by the end of the term of court two weeks ago which was gonna end on tuesday...[Tr.p.25, L.1-25]..

As is seen the Solicitor has [not] notified Appellant of any such trial date. Further is should be noted that Appellant's Counsel himself candidly admits that he did not even have an official copy of the notice of trial [until after] he had spoken with Appellant approximately a week prior.

Although Counsel does affirm that the Solicitor had previously discussed a bargain, this does not in any way constitute a [notice of trial date]. It cannot be said with consistent common sense that Appellant had adequate legal notice of the commencement of a trial date. Therefore the Trial Court committed err that has unduly prejudiced Appellant and has violated his constitutional rights that are protected under the South Carolina Constitution as well as the Constitution of the United States.

DISCUSSION

The Confrontation Clause of the Sixth Amendment of the United States Constitution provides that: "in all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him..." The United States Supreme Court has further held that the Fourteenth Amendment makes the guarantee of this clause obligatory upon the states. Pointer v. Texas 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965), and that one of the most basic rights guaranteed by the Confrontation Clause is the accused's right to be present in the courtroom at every stage of his trial. Lewis v. United States 146 U.S. 370, 13 S.Ct. 136, 36 L.Ed. 1011 (1892). However, an accused, present at the start of trial, can waive the right to be present for further proceedings once the trial begins. Taylor v. United States 414 U.S. 17, 94 S.Ct. 194, 38 L.Ed.2d 174 (1973). These rights, though are personal to the accused. It is the accused, not counsel, who must be informed of the nature and the cause of the accusation, and who must be confronted with witnesses against him. Faretta v. California 422 U.S. 806, 95 S.Ct. 2525, 2533, (1975).

The right to be present at one's trial is not something new. It is well settled that...at common law the personal presence of the defendant is essential to a valid trial and conviction on a charge of felony...If he is absent a conviction will be set aside, further, that right was once considered unwaivable. See W. Mikell Clark's Criminal Procedure, 175 and 178. This cannon was premised on the notion that a fair trial could take place only if

the jurors met the defendant face-to-face and only if those testifying against the defendant did so in his presence. F. Wharton, Criminal Pleading and Practice, 388 (9th Ed 1889). It was thought contrary to the dictates of humanity to let a prisoner waive that advantage which a view of his sad plight might give him by inclining the hearts of the jurors to listen to his defense with indulgence. (quoting Prince v. Comm' Wealth 18 Pa. 103 (1851)). However, this right is now considered waivable. See Snyder v. Mass. 271 U.S. 97, 106, 54 S.Ct. 330, 332, 78 L.Ed 674 (1934).

A defendant's right to be present at every stage of trial cannot however, be cursorily and without inquiry be deemed by the trial court to have been waived simply because the defendant is not present when he should have been, the trial must try to find out "where" the defendant is and "why" he is absent and should consider the likelihood the trial could soon proceed with the defendant. United States v. Rogers 853 F.2d 249, cert. denied 109 S.Ct. 375, 102 L.Ed.2d 364 (4th Cir. 1988).

Typically, these factors will favor proceeding without the defendant in multi-defendant trials [only]. United States v. Tortora 464 F.2d 1202 (2nd Cir. 1972), cert. denied, Santoro v. United States 409 U.S. 1063, 93 S.Ct. 554, 34 L.Ed.2d 516.

A presumption exists against the waiver of a constitutional right. Such a waiver must be voluntary, knowing and an intelligent act done with sufficient awareness of relevant circumstances and likely consequences. Brady v. United States 397

U.S. 742, 748, 90 S.Ct. 1463, 1468-69. Even voluntary absence, standing alone, does not necessarily constitute a knowing and intelligent waiver.

In the instant case it cannot be said that Appellant's actions were obstructionist, or willfull, but yet were the result of external circumstances which was his daughter illness. Then consideration must....be given to the fact that Appellant had [no notice] that the trial was to be called. The record is replete as is seen (supra) from the colloquy that was recorded between the Court, Solicitor and Appellant's Counsel. There is no evidence that Appellant had notice that ultimately a trial would commence if he were not present. A voluntary and intelligent waiver of the right to be present at trial requires a showing that an officer of the court has explained to the defendant that a failure to appear at trial could result in being tried in his absence. While in the instant case it could be argued that the magistrate had advised Appellant of such, it is dispositive to believe that Appellant was actually put on notice of the trial date.

Further, the State made no showing that the case against Appellant would be prejudiced if a continuance was granted which cannot be shown by only showing that witnesses may be lost or not available for a second trial.

The trial Court has failed to consider these complex issues, including the likelihood that a trial could soon take place with Appellant present. See United States v. Peterson 524 F.2d 167, 185 (4th Cir. 1975). A crucial factor to be considered "which in

this case was not considered at all by the trial Court", is the likelihood that the Appellant would appear and the trial could take place at a later date. In this instance the Court was aware that The Solicitor had [not] mailed notice to Appellant, and further the record established that Counsel never was put on notice until [after] he had spoken to Appellant a [week prior]. This should have provided the basis to believe that the trial could be rescheduled within a reasonable time. Based on the record in this case there was no indication, not even a hint, that Appellant would be unavailable in the future. It is not likely Appellant fled the jurisdiction or the country for parts unknown, never to be heard from again.

The Federal Courts have extend the general rule allowing a trial to proceed in the absence of a defendant found to have absconded mid-trial to trials in absentia of defendants who failed to appear at the commencement of trial. E.g. United States v. Tortora 464 F.2d 1202 (supra)., also see Santoro v. United States 409 U.S. 1063, 93 S.Ct. 554 (1972). Tortora has been cited as the leading federal case upholding trial in absentia of a defendant who took flight before the trial commenced. 3 LaFave & Isreal, Criminal Procedure §23.2(b) (1984). However, the Tortora court held that an accused's voluntary absence at the start of trial is not alone enough or sufficient to warrant proceeding with the trial. Id. at 1210. Rather, under the Tortora approach, the decision to proceed in the absence of the defendant who fails to appear at the start of trial is a matter for discretion of the

trial court, and should be exercised only in "extraordinary circumstance" where the public interest clearly outweighs that if the voluntary absence of the defendant. Id. This balancing turns on the complexity of the issues, including the likelihood that the trial could soon take place with the defendant present.

The Fourth Circuit has adopted Tortora's balancing test in multi-defendant cases involving a set of extraordinary circumstances and factors. United States v. Peterson 524 F.2d 167, 185-86 (4th Cir.), cert. denied 423 U.S. 1088, 96 S.Ct. 881. Later in United States v. Muzevsky 760 F.2d 83 (4th Cir. 1985), the Fourth Circuit extended the rule in Peterson and Tortora to a single-defendant trial. In doing so, the Muzevsky Court reaffirmed the Peterson/Tortora balancing approach stating: "When the Court does not know the reasons for the defendant's absence and has no basis to believe that the trial can be rescheduled within reasonable time, consideration of the government's difficulty in reassembling its proof may dictate an immediate trial. This determination should be undertaken in accord with Peterson Id.

In 1912, The United States Supreme Court recognized a limited exception to this general rule for situations where a defendant voluntarily during the course of a trial. Diaz v. United States 223 U.S. 442, 32 S.Ct. 250, 56 L.Ed. 500 (1912). However, this exception only applies in cases where the trial had "begun" in [the defendant's presence]. Id. at 455. The Court in Crosby v. United States 506 U.S. 255, 113 S.Ct. 748, 122 L.Ed.2d 25 (1993)

held that this language, history and logic supports a straightforward interpretation that "prohibits trial in absentia" of a defendant who is not present at the beginning of trial. The Court also noted in Crosby that the waiver is dependant upon the notice of the rights available and the prejudice to the government. Id. 506 U.S. at 261-262, 113 S.Ct. at 752-753. The Court held that even Federal Rules of Criminal Procedure 43 did not permit a trial in absentia of a defendant who absconds prior to trial.

The trial Court in the instant case never considered these principals in making the decisions on whether or not to proceed in Appellant's absence. The decision of the trial Court was and is clearly contrary to well established federal law as determined by the United States Supreme Court because the trial court failed to apply the correct controlling authority from the United States Supreme Court, Paker v. Hill 277 F.3d 1092, 1101, and because the court was unreasonable in refusing or even considering to extend the governing legal principle of Crosby (supra) to Appellant's case, a context in which the principle of Crosby should have controlled.

CONCLUSION

WHEREFORE, in the instant case it cannot be said that there is evidence substantial enough in the record to conclude that Appellant did in fact have notice that the trial was to commence on the said day herein. Therefore, the Trial Court erred in allowing Appellant to be tried absentia.

Appellant should be granted a new trial.

Respectfully Submitted,

/s/ Thomas Gregory

Thomas Gregory #279488

CERTIFICATE OF SERVICE

RECEIVED

OCT 02 2008

SC Court of Appeals

I, Thomas Gregory, do hereby swear under the penalty of perjury that I have mailed the Original, enclosed pro-se Anders brief to the Clerk of Court for the South Carolina Court of Appeals, Kenneth Richstad. This was done by way of the U.S. Mail.

This was done by placing the aforesaid document in a properly addressed, sufficient postage affixed envelope and placed in the U.S. Mailroom here at Lieber Corr. Inst. P.O. Box 205, Ridgeville, SC. 29472

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 14 DAY OF July, 2008*Yvette Blane*

NOTARY PUBLIC

MY COMM. EXPIRES 8/20/2016

Respectfully Submitted,

/s/ Thomas Gregory

Thomas Gregory #279488

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Thomas Arnold Gregory,

Appellant.

Appeal From Cherokee County
J. Ernest Kinard, Jr., Circuit Court Judge
James E. Lockemy, Circuit Court Judge

Unpublished Opinion No. 2009-UP-551
Submitted November 2, 2009 – Filed November 19, 2009

APPEAL DISMISSED

Appellate Defender M. Celia Robinson, of Columbia,
for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh, and

Assistant Deputy Attorney General Salley W. Elliott,
all of Columbia; and Solicitor Harold W. Gowdy, III,
of Spartanburg, for Respondent.

PER CURIAM: Thomas Arnold Gregory was convicted in absentia and sentenced to a total of twenty-five years' imprisonment for possession with intent to distribute crack cocaine near a playground, resisting arrest, and trafficking in crack cocaine. Gregory appeals, arguing the trial court erred in refusing to exclude unduly prejudicial propensity evidence concerning his possession of marijuana at the time of his arrest. Gregory also filed a pro se brief. After thoroughly reviewing the record and briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss¹ Gregory's appeal and grant counsel's motion to be relieved.

APPEAL DISMISSED.

SHORT, THOMAS, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



DEC 6 2009

The South Carolina Court of Appeals

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December 7, 2009

REMITTITUR

The Honorable Brandy W. McBee
125 E Floyd Baker Blvd
PO Drawer 2289
Gaffney, SC 29342-2289

Re: The State v. Gregory, Thomas Arnold
2007-GS-11-00418 2007-GS-11-00419 2007-GS-11-00420

Dear Ms. McBee:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

V. Claire Allen

V. Claire Allen
Deputy Clerk of Court

JFB/lf

cc: Appellate Defender M. Celia Robinson
Thomas Arnold Gregory #279488
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Harold W. Gowdy, III, Esquire