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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge

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MYRON A. CANNON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000180

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APPENDIX

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1 STATE OF SOUTH CAROLINA )  
 ) COURT OF GENERAL SESSIONS  
 2 COUNTY OF FLORENCE ) No. 2016 GS 21 0415

3

4 STATE OF SOUTH CAROLINA )

5 )

6 versus ) TRANSCRIPT OF RECORD

7 )

8 MYRON A. CANNON )

9 Defendant )

10 Florence, South Carolina

11 September 6-7, 2016

12

13 B E F O R E :

14 HONORABLE WILLIAM H. SEALS, Presiding Judge, and

15 a Jury

16

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

17

For the State:

JOHN C. JEPERTINGER, Esq.  
 Deputy Solicitor

18

19 For the Defendant:

GRANT B. SMALDON, Esq.

20

Reporter Present:

KERSHIA T. REED

21

22

23

HARRIET P. BENNETT  
 Reporter, S.C. Court Administration  
 46 Regency Oaks Drive  
 Summerville, S.C. 29485

24

25

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1           (The within matter came before the Court for hearing  
2 on September 6, 2016)

3           THE COURT: All right, Solicitor.

4           SOLICITOR: Your Honor, the State has one matter, if  
5 we can approach.

6           (Conference at the bench between counsel and the Court  
7 off the record)

8           THE COURT: All right, Solicitor. If you would call  
9 your next case.

10          SOLICITOR: Yes, sir. The State would call The State  
11 against Myron A. Cannon, 2016 415, Judge.

12          THE COURT: All right, thank you.

13          Members of the jury, we are getting ready to pick  
14 another jury, and in that regard I need you to remember  
15 that you are under oath.

16          I'm going to ask you a series of questions and if any  
17 of these questions apply to you I need for you to stand to  
18 respond.

19          If you would like to respond up here instead of out  
20 there, that is perfectly fine with me, but I need you to  
21 respond to any question that is applicable.

22          In this case, the State of South Carolina alleges  
23 that a Myron Cannon did in Florence County on or about  
24 September 12th of 2015 knowingly sell, deliver, purchase  
25 or bring into this State, or give aid in doing so, a

1 quantity of cocaine base amount of more than twenty grams  
2 but less than one hundred grams.

3 Therefore, Mr. Cannon is charged with trafficking in  
4 cocaine base.

5 Mr. Cannon is also charged in that regard with posses-  
6 sion with intent to distribute cocaine, failure to stop for  
7 a blue light and resisting arrest.

8 In this regard, has any member of the jury panel heard  
9 anything about this case? Do you know anything about this  
10 case? Have you read anything about this case? If you do  
11 know anything at all about this case, I need for you to  
12 please stand.

13 (No response)

14 All right. No one stood.

15 The Defendant, if you would please stand, Mr. Myron  
16 A. Cannon, and turn and face the jury panel, please.

17 All right, you may be seated.

18 Is any member of the jury panel related by blood or  
19 marriage or has a close personal or social relationship  
20 with Mr. Myron Cannon? If so, please stand.

21 (No response)

22 No one stood.

23 And, Solicitor, Mr. Jepertinger, if you would stand  
24 and introduce yourself and any members of your staff.

25 SOLICITOR: Good morning, everyone. My name is John

1 Jepertinger, and I'm Deputy Solicitor here in Florence  
2 County.

3 Seated with me at the table is Assistant Solicitor  
4 Clemmons, and I have several members of law enforcement  
5 here.

6 THE COURT: If you don't mind naming the Solicitors  
7 who are in your office.

8 SOLICITOR: Okay, sir. Anne Clemmons, myself, David  
9 Richardson, Steven Hill, Susan Magill, Lauren Hall, and  
10 John Holmes, Ricky Haber, Patty Parker, Brian White. We  
11 have in Florence Todd Tucker and April (inaudible). Also  
12 Kevin Holst who does DUI trials.

13 THE COURT: Thank you. Is any member of the jury  
14 panel related by blood or marriage or has a close personal  
15 or social relationship with Mr. Jepertinger or any members  
16 in his office? If so, please stand.

17 (Juror standing)

18 THE COURT: All right, let's start on my left. If  
19 you would give me your name and your number?

20 JUROR: Number 62, (name inaudible)

21 THE COURT: And who do you know?

22 JUROR: Kevin Holst.

23 THE COURT: Taking that into account, if you were se-  
24 lected to serve on the jury in this case could you be fair  
25 and impartial not only to the State but to the Defense as

1 well?

2 JUROR: It's hard to say?

3 THE COURT: I'm sorry. I didn't hear you.

4 JUROR: It's hard to say.

5 THE COURT: It's hard to say? All right. You don't  
6 think you could view the evidence and listen to the whole  
7 case and make a decision based on what you think is right  
8 and based on the law as I give it to you, setting aside  
9 that relationship? You think you can do that?

10 JUROR: Yes.

11 THE COURT: All right, thank you.

12 (Another juror standing)

13 THE COURT: The lady in the front. Your name and  
14 your number.

15 JUROR: Deborah Roseman Tyler, 153. I know Mr.  
16 Jepertinger.

17 THE COURT: Can you tell me some stories a little bit  
18 later?

19 JUROR: I'm sure I can.

20 THE COURT: Taking that into account if you were se-  
21 lected to serve on the jury in this case, could you be fair  
22 and impartial not only to the State but to the Defense as  
23 well?

24 JUROR: Absolutely.

25 THE COURT: Thank you. Appreciate your standing.

1 (Another juror standing)

2 THE COURT: Your name and your number?

3 JUROR: (Name inaudible) Juror 144. My husband  
4 works for the Solicitor's Office.

5 THE COURT: Your husband works for the Solicitor's  
6 Office?

7 JUROR: Yes, sir.

8 THE COURT: I'm going to excuse you for purposes of  
9 this trial only.

10 Thank you for standing.

11 All right, Mr. Smaldon, I'll ask you to stand and  
12 introduce yourself and any members of your firm.

13 MR. SMALDON: My name is Grant Smaldon, and I'm an at-  
14 torney. I represent Mr. Cannon. I am in solo practice so  
15 I have no members of my firm.

16 THE COURT: Thank you. Is any member of the jury  
17 panel related by blood or marriage or has a close personal  
18 or social relationship with Mr. Smaldon, or has been re-  
19 presented by him at any point in time? If so, please stand  
20 at this time.

21 (No response)

22 ' No one stood.

23 The witnesses on behalf of the State of South Carolina  
24 will be Corporal Jason Bazen with the Florence County Sher-  
25 iff's Office, Lieutenant Mitch Hansen, Florence County

1 Sheriff's Office, Deputy T. J. Christmas, Florence County  
2 Sheriff's Office, Sergeant Tony Drummond formerly with the  
3 Florence County Sheriff's Office, Deputy Brooks Urqhart  
4 with the Florence County Sheriff's Office, and Sergeant  
5 William J. Nida with the Florence Police Department.

6 In this regard, is any member of the jury panel re-  
7 lated by blood or marriage or has a close personal or so-  
8 cial relationship with any of these deputies or any of  
9 these witnesses on behalf of the State of South Carolina?  
10 If so, please stand.

11 (No response)

12 No one standing.

13 Is any member of the jury panel related by blood or  
14 marriage to any law enforcement officer? If so, please  
15 stand.

16 (Juror standing)

17 THE COURT: All right, your name and number?

18 JUROR: I'm Ann Stone. I'm Number 143.

19 THE COURT: Okay.

20 JUROR: My brother is a state trooper and I have ano-  
21 ther brother with the Montgomery County, (inaudible).

22 THE COURT: Taking that into account, if you were se-  
23 lected to serve on the jury in this case, could you be  
24 fair and impartial not only to the State but to the Defense  
25 as well?

1 JUROR: I would try to.

2 THE COURT: Is that a yes or no?

3 JUROR: Yes, sir.

4 THE COURT: All right, would you be fair and impartial  
5 to both sides?

6 Is that a yes or no?

7 JUROR: Yes.

8 THE COURT: Thank you very much. Appreciate your stand-  
9 ing.

10 (Another juror standing)

11 THE COURT: All right, gentleman. Your name and num-  
12 ber?

13 JUROR: Number 133, Lance Clifton.

14 My brother in law is with a sheriff's department in  
15 another county.

16 THE COURT: All right. Taking that into account,  
17 if you were selected to serve on the jury in this case, can  
18 you be fair and impartial not only to the State but the  
19 Defense as well?

20 JUROR: I cannot say that, sir.

21 THE COURT: Why would that be?

22 JUROR: I have several reasons.

23 THE COURT: Then I'll excuse you for purposes of this  
24 trial only.

25 (Another juror standing)

1 THE COURT: All right, your name and your number,  
2 please, sir.

3 JUROR: Number 47, Brandon Floyd.

4 THE COURT: How does that question apply to you?

5 JUROR: My wife's father is a lieutenant.

6 THE COURT: A lieutenant where?

7 JUROR: In Lake City.

8 THE COURT: All right, taking that into account, if  
9 you were selected to serve on the jury in this case, could  
10 you be fair and impartial not only to the State but to the  
11 Defense as well?

12 JUROR: Yes.

13 THE COURT: Would you be fair and impartial to both  
14 sides?

15 JUROR: Yes.

16 THE COURT: All right, sir. Thank you very much. I  
17 appreciate your standing.

18 Is any member of the jury panel aware of any bias or  
19 prejudice for or against the State of South Carolina? If  
20 so, please stand.

21 (No response)

22 No one stood.

23 Is there any member of the jury panel who is a mem-  
24 ber of or contributor to any group which has as its primary  
25 concern the promotion of law enforcement or victim's rights?

1           These groups would include but certainly not be lim-  
2   ited to MADD, SADD, or CAVE, Citizens Against Violent  
3   Crime. If so, please stand.

4           (No response)

5           No one stood.

6           Is there any member of the jury panel who knows of  
7   any reason whatsoever why they could not give the parties  
8   in this case a fair and impartial trial? If so, please  
9   stand.

10          (No response)

11          No one standing.

12          Has any member of the jury panel or any member of your  
13   family ever been prosecuted by this Solicitor or any mem-  
14   ber of the Solicitor's Office, regardless of whether the  
15   case was dismissed or not? If so, please stand.

16          (No response)

17          No one stood.

18          Anything further from the State?

19          SOLICITOR: No, sir, Your Honor.

20          THE COURT: Anything further from the Defense?

21          MR. SMALDON: No, sir.

22          THE COURT: Except for those I have excused, I find  
23   the jury panel qualified for this case.

24          Ms. Clerk, if you'll give us twelve and one.

25          (Whereupon, a jury was selected or struck as follows:

1 Christopher Goodman, Juror 166, excused by the State;  
2 Nolan Davis, Juror 36, seated;  
3 David Brown, Juror 10, seated;  
4 Cornelia A. Miles, Juror 104, excused by Defense;  
5 Leroy D. Harrison, Juror 67, excused by the State;  
6 Casey Watford, Juror 157, excused by Defense;  
7 Brandon Floyd, Juror 47, excused by Defense;  
8 Deborah Tyler, Juror 153, excused by Defense;  
9 Sylvester Davis, Juror 37, seated;  
10 Toshia Gandy, Juror 57, seated;  
11 Abubakr Malik, Juror 92, seated;  
12 Bradley Taylor, Juror 148, seated;  
13 Linda Brent, Juror 9, seated;  
14 Martha J. Navy, Juror 116, seated;  
15 Christopher Johnson, Juror 79, excused by the State;  
16 Jonathan Nichols, Juror 117, seated;  
17 Jannese Shavers, Juror 131, seated;  
18 Shobhana Chokski, Juror 22, excused by the State;  
19 Linda Epps, Juror 42, seated;  
20 Darla Hansford, Juror 63, excused by the Court;  
21 Julia Boykin, Juror 8, excused by the Defense;  
22 Quinton German, Juror 53, excused by the State;  
23 Sylvia McFadden, Juror 102, seated.)  
24 (Alternate Juror selected as follows:  
25 Jeremy Hanna, Juror 61, excused by the Defense;

1 Stephanie Tedder, Juror 151, seated as alternate.)

2 THE COURT: Any objections to the jury or the process  
3 by which they were drawn by the State?

4 SOLICITOR: No, sir.

5 THE COURT: By the Defendant?

6 MR. SMALDON: No, sir. No objections.

7 THE COURT: The remainder of the jury panel is excused  
8 for the day. If you would call back in after six this  
9 evening, there will be instructions for you, but you may  
10 go at this time.

11 (Jurors not selected for the within trial were excused  
12 by the Court)

13 THE COURT: All right, members of the jury, I am  
14 going to excuse you for lunch. I need you to be back at  
15 two o'clock, but I do want to tell you one thing.

16 During the lunch hour do not discuss the case with  
17 anybody. Do not research the case or go on the internet in  
18 any form or fashion. Don't look up anybody's name. Just  
19 put it out of your minds.

20 Don't talk about it and be back at two o'clock. We'll  
21 start it at that time.

22 You are excused at this time. Have a good lunch.

23 (Chosen jurors excused for the lunch period)

24 THE COURT: Everybody else remain seated.

25 Do you all want to do pre-trial now?

1           SOLICITOR: Briefly, Judge, I think Mr. Smaldon had a  
2   issue regarding sequestration, and the State would agree.  
3   We'd just keep Officer Drummond here as case officer and  
4   everybody else would just go back to the conference room  
5   until they are called.

6           THE COURT: Is the Defense okay with that?

7           MR. SMALDON: The Defense is okay with that, Your  
8   Honor.

9           THE COURT: Any other pre-trial matters?

10          MR. SMALDON: There's a motion to suppress evidence  
11   certainly that was seized as a result of the traffic stop.

12          THE COURT: On what grounds?

13          MR. SMALDON: Essentially, Your Honor, to determine  
14   the manner in which it was seized.

15          SOLICITOR: We would call witnesses as to that.

16          MR. SMALDON: From the reports it is a little unclear  
17   about where it was found, how it was found, if the door  
18   was opened; if the door wasn't open at what point every-  
19   thing was seized.

20          I am honestly not prepared to make the motion without  
21   witnesses being sworn.

22          THE COURT: Okay.

23          SOLICITOR: As far as schedule, I don't think this  
24   will take too long.

25          THE COURT: All right, let's go ahead and call your

## B. URQHART IN CAMERA

1 first witness.

2 SOLICITOR: Brooks Urqhart.

3 BROOKS URQHART, being duly  
4 sworn, testified as follows, out of the jury's presence:

5 CLERK: Please be seated and state your full name for  
6 the record.

7 WITNESS: Brooks Alexander Urqhart.

8 DIRECT EXAMINATION

9 BY SOLICITOR:

10 Q. On September 12th, 2015, were you called out to a lo-  
11 cation here at the intersection of Camp Road and Fort Farm  
12 Road here in Florence County?

13 A. I did respond as an assisting officer. Yes, I did.

14 Q. When you got to the scene, what did you see?

15 A. When I arrived on scene, I was the first one to my  
16 knowledge to the vehicle which was abandoned with the  
17 driver's door open.

18 Q. How about the passenger seats? Were any other doors  
19 open?

20 A. No, sir.

21 Q. Just the driver's side door was open?

22 A. That's correct.

23 Q. Okay, and did you see anything that peaked your in-  
24 terest right off the bat?

25 A. From outside the car in plain view there was a bag of

## B. URQHART IN CAMERA

1 drugs on the driver's seat, I believe, and another under  
2 -- on the floor, and I believe it was near one of the  
3 pedals, a brake pedal or . .

4 Q. You didn't have to open any door or anything of that  
5 nature?

6 A. No.

7 Q. All right, and did Deputy Bazen come on the scene  
8 later?

9 A. Yes.

10 Q. And did you point that out to him?

11 A. That's correct.

12 Q. Okay, and did you see Bazen do anything with the sub-  
13 stances?

14 A. I don't recall. I'm not sure what exactly he did at  
15 that point.

16 Once he arrived, it turned it all over -- I turned it  
17 over to him. I didn't put my hands on anything. I didn't  
18 go into the car. All I did was strictly observation and  
19 hold that scene until other people arrived.

20 Q. Okay, and are you aware of what Officer Drummond was  
21 doing at that point?

22 A. I believe at that point he was still out in the field  
23 trying to apprehend the Defendant.

24 Q. Okay, and did he apprehend the Defendant?

25 A. Yes.

## B. URQHART IN CAMERA

1 Q. Okay. Thank you so much. That's all the questions  
2 I have for you.

3 THE COURT: All right. Anything on Cross from the  
4 Defense?

5 MR. SMALDON: Nothing at this time, Your Honor.

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

7 (Witness excused from stand)

8 SOLICITOR: Call Jason Bazen to the stand.

9 JASON BAZEN, being duly sworn,  
10 testified as follows, out of the presence of the jury:

11 CLERK: Please be seated and state your full name.

12 WITNESS: Jason Scott Bazen.

13 DIRECT EXAMINATION

14 BY SOLICITOR:

15 Q. Corporal Bazen?

16 A. Yes, sir.

17 Q. Corporal Bazen, did you have occasion to be out at  
18 the intersection of Camp Road and Fort Farm Road on Sep-  
19 tember 12th of 2015?

20 A. I did.

21 Q. Okay, and when you arrived at the scene, what did you  
22 observe?

23 A. I observed Corporal Urqhart standing beside a white  
24 Dodge Charger abandoned in a bean field.

25 The driver's side door was open.

J. BAZEN IN CAMERA

1 Q. And did you observe what was -- what was your obser-  
2 vation I should ask, when you walked up to the vehicle?

3 A. When I walked up to the vehicle from -- standing on  
4 the driver's side with the driver's side door open, you  
5 could see a clear plastic bag with a white powder substance  
6 or either a white substance.

7 Q. Where was that substance located?

8 A. It was sitting right on the edge of the driver's seat,  
9 and another clear plastic bag with a white substance on  
10 the floorboard near the brake pedal.

11 Q. Okay, and did you retrieve those items?

12 A. I did.

13 Q. And did you eventually turn them into evidence?

14 A. They were.

15 Q. All right, thank you. That's all the questions that  
16 I have.

17 THE COURT: All right. From the Defense?

18 MR. SMALDON: Nothing at this time, Your Honor.

19 THE COURT: You may step down.

20 (Witness excused from stand)

21 SOLICITOR: We would call Mr. Tony Drummond to the  
22 stand.

23 TONY DRUMMOND, being duly  
24 sworn, testified as follows out of the presence of the  
25 jury:

## T. DRUMMOND IN CAMERA

1           CLERK: Please be seated and state your full name for  
2 the record.

3           WITNESS: My name is Wayne Anthony Drummond.

4 DIRECT EXAMINATION

5 BY SOLICITOR:

6 Q. Okay, Mr. Drummond, back on September 12 of 2015, did  
7 you find yourself near the intersection of Camp Road and  
8 Fort Farm Road?'

9 A. Yes, sir, I did.

10 Q. And were you in pursuit of a vehicle?

11 A. Yes, sir.

12 Q. What color was that vehicle?

13 A. White Dodge Charger.

14 Q. Okay, and did you see anybody leave that vehicle?

15 A. No, sir. Just the driver.

16 Q. That's what I'm asking you. Did you see the driver  
17 get out of the vehicle?

18 A. Absolutely.

19 Q. That's what I was asking.

20 A. Yes, sir.

21 Q. And did you have an opportunity to look into that ve-  
22 hicle to see if anyone else was in that vehicle?

23 A. Yes, sir. Once the driver bailed and started running,  
24 I ran to the vehicle, and before I passed it I made sure  
25 nobody else was in the vehicle to keep from getting ambushed,

## T. DRUMMOND IN CAMERA

1 and then I proceeded after the driver on foot.

2 Q. Okay, and did you eventually catch up to the driver?

3 A. Yes, sir, I did.

4 Q. Okay, and is that driver sitting here in the Courtroom  
5 today?

6 A. Yes, sir, he is.

7 Q. And who would that be?

8 A. The gentleman seated there in the white shirt.

9 Q. Next to Mr. Smaldon?

10 A. Correct.

11 SOLICITOR: Let the record reflect that he has identi-  
12 fied the Defendant in this case.

13 THE COURT: Yes, sir.

14 BY SOLICITOR:

15 Q. Thank you. That's all the questions I have for you.

16 A. Yes, sir.

17 THE COURT: Defense?

18 CROSS EXAMINATION

19 BY MR. SMALDON:

20 Q. Is it Corporal Drummond or Mr. Drummond?

21 A. It's Mr. Drummond now.

22 Q. Mr. Drummond, you were employed with the Florence  
23 County Sheriff's Office?

24 A. That's correct.

25 Q. But you are not employed there any more?

## T. DRUMMOND IN CAMERA

1 A. No, sir.

2 Q. Okay, you made the initial stop in this case?

3 A. Yes, sir.

4 Q. And the vehicle stopped was a white Dodge Charger?

5 A. Correct.

6 Q. And you stopped that vehicle for speeding?

7 A. Correct.

8 Q. All right.

9 A. My initial reason was for speeding, yes.

10 Q. So you blue-lighted him for speeding?

11 A. Correct.

12 Q. And then he fled -- your allegation is that he fled  
13 the scene?

14 A. He sped up instead of slowing down.

15 Q. And he failed to stop for a blue light?

16 A. Yes, sir.

17 Q. Failed to stop for a blue light, and this chase lasted  
18 about how long?

19 A. I can't recall exactly the amount of minutes but we  
20 went quite a few miles.

21 Q. Okay, and during that time you ran the tag?

22 A. I believe I ran the tag once. I believe I was on Canor  
23 Road.

24 Q. Okay.

25 A. I was close enough to observe the tag.

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1 Q. And during that time you determined that it was not  
2 -- the vehicle did not actually belong to Mr. Cannon?

3 A. It was a rental vehicle.

4 Q. It was a rental vehicle, and did you determine who it  
5 was rented out to?

6 A. . .

7 Q. Did you determine who was the ultimate rentor?

8 A. No, sir.

9 Q. Okay, and you arrived at the vehicle once Mr. Cannon  
10 allegedly left?

11 A. I was directly behind him, yes, sir.

12 Q. Directly behind him, so you were the first on scene?

13 A. Yes.

14 Q. And you were the cause of the stop?

15 A. Correct.

16 Q. And you stopped the vehicle by ramming your patrol  
17 car into that vehicle?

18 A. After he almost collided with two other vehicles, one  
19 almost head-on where they almost went off the road and into  
20 a ditch, yes, sir.

21 Q. All right, and so you touched his vehicle in the back?  
22 You touched his vehicle?

23 A. Yes.

24 Q. And did he stop as a result of the accident or did he  
25 stop as a result of some kind of physical force against the

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1 vehicle?

2 A. He stopped after he went across a ditch into a bean  
3 field.

4 Q. Okay, so he crashed the car?

5 A. Yes, sir.

6 Q. And there was significant damage to the car?

7 A. In the -- I guess in the under part of the body. I  
8 guess.

9 Q. All right.

10 A. And the back.

11 Q. Okay, and did you witness the alleged drugs in the  
12 vehicle?

13 A. After it was pointed out to me when I came back to the  
14 vehicle. I was approached by Corporal Urghart that there  
15 was narcotics in the vehicle.

16 Q. All right, and so he left the car after the accident?

17 A. Correct.

18 Q. He ran and shut the door?

19 A. No, sir.

20 Q. All right, and you were the arresting officer in this  
21 case?

22 A. Correct.

23 Q. All right.

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

25 THE COURT: All right.

1           SOLICITOR: That's all I have in terms of Mr. Smaldon's  
2 motion.

3           THE COURT: Thank you, Mr. Drummond. You may step  
4 down.

5           (Witness excused from stand)

6           WITNESS: Thank you, Your Honor.

7           THE COURT: Anything before we take up your motion?

8           MR. SMALDON: No, sir, Your Honor.

9           THE COURT: All right, I'm going to deny the motion.  
10          Any other pre-trial matters that we need to take  
11 up at this time?

12          SOLICITOR: Your Honor, I have informed Mr. Cannon I  
13 am putting up Officer Nida as an expert in terms of value  
14 of the cocaine and crack in this community.

15          That motion is based on State versus Jamison, which I  
16 have a copy of for the Court.

17          THE COURT: All right. Any problems with that from  
18 the Defense?

19          MR. SMALDON: I have not seen the particular case. I  
20 was not informed of this so-called expert witness until an  
21 hour or two ago.

22          So, Your Honor, I would ask for about a minute and a  
23 half to read the case. I would normally object to rele-  
24 vance, which relevance would be addressed in this case.

25          (Brief pause)

1       MR. SMALDON: Your Honor, I would object to relevance  
2 of this particular witness. It is not an element of the  
3 crime. There is no element as to dollar value in anything  
4 he is charged with.

5       SOLICITOR: I would tend to think, Judge, that as the  
6 case will rest with the jurors who are not knowing what  
7 thirty-six grams or whatever it is charged here -- how much  
8 that they would have, you know, and he is charged with the  
9 trafficking, Judge.

10       I know that trafficking is based on the weight based  
11 on the law. However, they need to know, I think in my mind,  
12 what we're dealing with here.

13       Thirty-six Hundred Dollars, a scale in the car and so  
14 on and so forth. It is more than perhaps the use of drugs  
15 by a person who has it in their possession.

16       MR. SMALDON: Again, I haven't heard anything about  
17 the elements so I don't know, but I still continue my ob-  
18 jection under relevance in this case.

19       Once they hear my defense we might re-visit it, but  
20 at this point the dollar value is more prejudicial, and  
21 there is no probative value at all. More prejudicial than  
22 probative.

23       THE COURT: All right. Let me think about it over our  
24 lunch and we'll go from there.

25       At this point we will break for lunch.

1           Any further pre-trial matters at this time from the  
2 State?

3           SOLICITOR: I think that does it for me.

4           THE COURT: All right. Anything from the Defense?

5           MR. SMALDON: That's it for me as well, Judge.

6           THE COURT: All right, I'll see you back at two then.

7           (Whereupon the matter stood in recess for the lunch  
8 period, after which it resumed)

9           THE COURT: Ladies and gentlemen, good afternoon, and  
10 be seated.

11          I have had a chance to review the case that the Soli-  
12 citor passed up, the Jamison case, and my instincts tell  
13 me that it is going to be applicable to the case because  
14 we have a rental car, and I suspect some of your questions  
15 will pertain to maybe somebody else left the drugs in the  
16 car, other than the Defendant.

17          If your guy testifies he may say that as well, and in  
18 that case it is something we will take up as to whether or  
19 not the case is dead on point.

20          That may not be your defense in any form or fashion  
21 anyway. It is probably all in the documents anyway.

22          All right, go ahead and bring in our jury.

23          (Whereupon, the selected jurors were brought into the  
24 Courtroom)

25          THE COURT: All right, Ms. Brent, that's you?

1 JUROR: Yes.

2 THE COURT: I'm going to have you switch chairs with  
3 this man right here. I'm going to ~~make~~ you the Forelady  
4 of the jury.

5 I'm going to ask the Clerk of Court to swear in the  
6 jury if she would.

7 (Whereupon, the jury was sworn for the trial of the  
8 within case by the Clerk of Court)

9 THE COURT: Ladies and gentlemen of the jury, we are  
10 getting ready to start the trial, but before we do I just  
11 want to go over a few things with you before we begin.

12 First thing I want to tell you is that the State of  
13 South Carolina has the burden of proof. They have to prove  
14 the Defendant guilty beyond a reasonable doubt.

15 Secondly, you may want to know what is your role and  
16 then what is my role as a Judge.

17 You are the judge of the facts. I am the judge of the  
18 law. In that regard, that means that the twelve of you  
19 determine what the facts of this case are, and you do that  
20 simply by looking at the evidence.

21 Evidence is made up of two things. It's made up of  
22 the witnesses who come over here and sworn in. They take  
23 that witness stand and they testify.

24 And it's made up of any exhibits admitted into the  
25 record as evidence.

1           That is how you determine what the facts of the case  
2   are, and in turn I am the judge of the law. I'm here to  
3   give the parties a fair trial, and I'm here to read you the  
4   law in great detail at the end of this case.

5           Now, I want you to understand that you have to accept  
6   the law as I give it to you. Then only when I tell you to  
7   begin your deliberations will you take your findings of  
8   fact, the law as I give it to you, put the two together,  
9   and make a decision therefrom.

10          Furthermore, at no point in this trial if we take a  
11   break and you have to go back into the jury room or if you  
12   go home tonight and we are not through with the case -- at  
13   no point in time are you to discuss this case at all.

14          I don't want you to begin your deliberations prema-  
15   turely. It is very, very important that you hear every-  
16   thing the State has to say and if the Defendant elects to  
17   say anything everything the Defendant has to say, and you  
18   have to hear from me in regard to the law.

19          I will know when that point in time is for you to be-  
20   gin your deliberations, and at that time I will tell you  
21   to begin your deliberations.

22          In the meantime you can talk about the weather, sports,  
23   or whatever you want to talk about yourselves but not this  
24   case until I tell you to do, and that will be at the very,  
25   very end of this case.

1           Furthermore, at any point in time that somebody is un-  
2   comfortable or you don't feel good, or you need a break or  
3   need to use the restroom or need a coke or whatever, if  
4   you'll kind of waive your finger to me I will try to take  
5   a natural breaking point to make sure you are taken care  
6   of.

7           In the meantime, I want you just to sit back. I want  
8   you to relax, and I'm going to call on the State for your  
9   opening statement.

10          SOLICITOR: Thank you, Your Honor. Counsel. Good  
11   afternoon, ladies and gentlemen of the jury.

12          Once again, my name is John Jepertinger, and I just  
13   want to thank you because you have come here willing to  
14   serve as a juror. I want you to know from the get-go that  
15   I appreciate your being here, and I'm sure Mr. Smaldon joins  
16   me in that.

17          (Portion inaudible on cassette)

18          The same thing happened to me when I was in junior  
19   high school. Not that I'm a scholar but they introduced  
20   me to the works of William Shakespeare, and I remember sit-  
21   ting there in junior high school thinking, you have got to  
22   be kidding me.

23          I didn't look at the teacher and say, you have got to  
24   be kidding me, but, you know, as the years passed I began  
25   reading more and more, and I got his complete works, and I

1 grew with it. Anyway, I know you're saying, well, what  
2 does that have to do with this case?

3 I think in some ways it is pertinent to what we're  
4 going to do here today. We will analyze what appears to be  
5 a tragedy that happened, and there is a contravening issue  
6 in what we first see.

7 There is a saying there that says conscience makes co-  
8 wards of us all. Everybody knows what a conscience is.  
9 It is that little warning that you have inside of you say-  
10 ing that what you're doing is wrong. You go to do an act  
11 and that little warning says uh uh.

12 You look down at your speedometer and you know what  
13 the speed limit is and you say, oh, boy. I'm over the  
14 speed limit.

15 And the time that you have a serious problem is when  
16 you look at the second part of it and there is a fear we all  
17 have in our lives, something that scares us and turns us  
18 into cowards.

19 One thing I know about fear from my lifetime is that  
20 everybody is fearful of something. Fear causes certain re-  
21 actions.

22 For certain people and I know in my own life that some  
23 things can make you just freeze up. I can be walking down  
24 the street with my wife and I hear a sound like (Solicitor  
25 making roaring noise), and I just stop and freeze. I don't

1 know if something is coming after me or what.

2 Sometimes fear can demonstrate itself like that and  
3 causes people to run from a scene. It happens.

4 (Portion inaudible)

5 On September 12th of 2015 conscience did that to Myron  
6 Cannon. Sometime after midnight Myron was speeding on the  
7 Pamplico Highway in Florence County when Sergeant Drummond,  
8 who was with the Sheriff's Department at the time, was in  
9 a vehicle and saw him, turned around on him, hit the blue  
10 lights, and tried to stop him.

11 What was Myron Cannon's reaction? Did he pull over?  
12 Did he freeze? He ran. How did he run? He speeded up and  
13 accelerated. There is a little road (inaudible) on Pamplico  
14 Highway. He turned down there and he didn't stop at the  
15 stop sign there on Millwood. He went around that and drove  
16 on.

17 He didn't stop at the intersection of Purvis Street,  
18 turned right and he headed back at a high rate of speed,  
19 sometimes driving across the center of Purvis. He turned  
20 left on Pamplico Highway, headed downtown. He goes flying  
21 down Pamplico Highway with oncoming traffic trying to get  
22 out of the way.

23 Then his vehicle fishtailed. You will hear all about  
24 that chase, blue lights going. He drives all the way on  
25 down the road to where the Baptist Church is there on the

1 left, and he turns right on Kayhill Road and flies down  
2 that road. As he is driving down the road, other people  
3 have to evade him and the vehicle Cannon is driving. So  
4 the officer does the only thing he can do in that situation.  
5 He hits the back of Mr. Cannon's vehicle as they are ap-  
6 proaching the intersection of Pamplico Road and Fort Farm  
7 Road.

8 What happened then? Mr. Cannon drives his rental ve-  
9 hicle, a white Dodge truck, that he didn't stop for the blue  
10 light -- he drives onto a field, gets out of his vehicle  
11 and runs.

12 Officer Drummond runs past Mr. Cannon's vehicle to  
13 make sure there is nobody else in that vehicle and starts a  
14 foot pursuit. He yells at Mr. Cannon all the way, stop,  
15 stop, you're under arrest. He didn't stop.

16 He finally gets ahold of him and they struggle. They  
17 struggle until the officer can subdue him. He stops Mr.  
18 Cannon and he has not only not stopped for the blue light  
19 but he resisted arrest.

20 But it doesn't end there. Other officers appear on  
21 the scene and they find the vehicles near a bean field out  
22 in the country.

23 One of the officers walks up to the white Dodge Charger  
24 and the door is open, and there right under the seat where  
25 Myron Cannon had been sitting was a quantity of cocaine and

1 crack cocaine.

2       There in plain view, right on the floorboard near the  
3 brake pedal under the seat where Myron Cannon had been --  
4 a quantity of cocaine and crack cocaine.

5       He saw that and alerted other officers who retrieved  
6 it and tested it, and this drug analysis was made. The  
7 quantities you will hear, thirty-eight point nineteen grams  
8 of crack cocaine and six point nine two grams of powder co-  
9 caine.

10       The Judge will instruct you at the end of this trial  
11 with the law that pertains to this case. Myron Cannon is  
12 charged with trafficking in crack thirty-eight to one hun-  
13 dred grams and possession of powder cocaine with intent to  
14 distribute.

15       His Honor will explain to you the elements that per-  
16 tain to those charges.

17       There is another inference that you will be able to  
18 draw because in that vehicle not only did they find the nar-  
19 cotics, but they found digital scales as well, three tele-  
20 phones and a thumb drive.

21       You will be able to consider what the finding of those  
22 things means in this case.

23       Now, ladies and gentlemen, in each and every criminal  
24 case the State has to prove someone is guilty beyond a rea-  
25 sonable doubt.

1           It should be that way. You will hear these terms used  
2 all over the United States, that a person is innocent until  
3 proven guilty. That is a good policy to have, but when  
4 the State brings forth evidence that leaves you firmly con-  
5 vinced that person is guilty then you also have the obliga-  
6 tion to find the person guilty if you should so find.

7           In this case, ladies and gentlemen, there was no other  
8 individual in that vehicle. In this case, ladies and gen-  
9 tlemen, the drugs were in his possession.

10          In this case, ladies and gentlemen, he ran from the  
11 police.

12          In this case, ladies and gentlemen, I ask that you  
13 find the Defendant, Myron Cannon, guilty as charged in the  
14 case.

15          I appreciate your attention and your service in this  
16 case.

17          Thank you.

18  
19  
20  
21  
22  
23  
24  
25

1 THE COURT: Mr. Smaldon.

2 MR. SMALDON: On September 12, 2015, Myron was driving  
3 a car and Myron was speeding in that car and Myron was  
4 driving drunk in that car.

5 And Myron was driving drunk in that car that wasn't  
6 his. Myron was driving down the road in Florence and blue  
7 lights appeared in his rear view window. Eventually, and  
8 we're not sure when, he sees the blue lights, and what did  
9 he do?

10 What does drunken Myron do, what does drunken Myron,  
11 driving somebody else's car do, what does drunken Myron do  
12 driving somebody else's car with blue lights following him  
13 do? Does he hit the brakes or hit the gas? What does he do?

14 I'm not saying this to embarrass him. He doesn't  
15 want to get a DUI and so he tries to outrun a cop. Has  
16 a lot of friends in college, a lot of friends out in the  
17 country, friends that go to South Carolina State, so he  
18 does that, but trying to outrun a cop is always a bad idea.  
19 They always have a faster car than you do.

20 Myron eventually loses that car chase. He crashes the  
21 vehicle, somebody else's car, and then Myron tries to run.  
22 He tries to run from the officer that was trying to stop  
23 him.

24 So he ran from the car and abandons the car, but what  
25 do they find in that car? What do they find in the car?

1    Somebody else's drugs. They find somebody else's drugs in  
2    somebody else's car. Just like they find somebody else's  
3    seats, somebody else's steering wheel, they find somebody  
4    else's drugs in somebody else's car.

5            Throughout the course of this trial, you'll hear evi-  
6    dence, evidence that will come from this chair. You will  
7    hear from this chair all about a high speed chase. You'll  
8    hear all about him running from the car.

9            But what you won't hear, I submit, is anything link-  
10   ing somebody else's drugs in somebody else's car to Myron,  
11   because Myron isn't the real owner of the drugs. Myron had  
12   no idea that the drugs were there.

13           He was driving drunk in somebody else's car but he  
14   didn't know the drugs were there.

15           Now, the State has the burden, the tough burden, to  
16   prove to you that Myron possessed those drugs. Not that  
17   he was just around them, but that he had dominion and con-  
18   trol over those drugs. They have to prove that to you be-  
19   yond a reasonable doubt. Have to have proof which will  
20   convince you beyond a reasonable doubt that he had dominion  
21   and control of those drugs.

22           After the evidence has been presented, I'm going to  
23   ask you to find Myron not guilty because there is nothing  
24   linking him to the drugs other than him being in somebody  
25   else's car.

1           That is why I will ask you to find him not guilty and  
2   I think that is a pretty good reason.

3           Please listen to everything the State presents to you  
4   and listen to the Judge, and you will find him not guilty.

5           Thank you.

6           THE COURT: Solicitor, you may call your first witness.

7           SOLICITOR: Thank you. We would call Tony Drummond to  
8   the stand.

9                                   TONY DRUMMOND, being duly  
10   sworn, testified as follows:

11          CLERK: Please be seated and state your full name for  
12   the record.

13          WITNESS: My name is Wayne Anthony Drummond.

14   DIRECT EXAMINATION

15   BY SOLICITOR:

16   Q.   Where do you work now, Mr. Drummond?

17   A.   I work at McCloud Engineering.

18   Q.   All right, and back in September a year ago, where  
19   were you working?

20   A.   I worked for the Florence County Sheriff's Office for  
21   about nineteen years as a sergeant.

22   Q.   And what were your responsibilities as a sergeant at  
23   that time, sir.

24   A.   I was in charge of six other guys and gals, and I had  
25   to make sure all of their work was done and make sure what

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1 was being done was properly done; answer calls.

2 Q. Okay. Did you have occasions where you were out at  
3 night yourself on patrol, driving in Florence County?

4 A. Yes, sir.

5 Q. All right. Now, on September 12th of 2015, can you  
6 tell the ladies and gentlemen of the jury where you were  
7 at?

8 A. I was -- as a supervisor I would go anywhere in Flor-  
9 ence County that I wanted to go. About twenty-three min-  
10 utes after midnight I was on Pamplico Highway traveling  
11 toward Pamplico, if you're familiar with Florence County,  
12 coming out of Florence.

13 Q. Okay, let's do this. I have some area photos, and I  
14 have shown this to the defense attorney already.

15 Is this a fair and accurate portrayal of -- on State's  
16 Exhibit 3, of the Pamplico Highway area?

17 A. Yes, sir.

18 Q. All right, and would it help you tell your story to  
19 the jury?

20 A. A little bit, if they are not familiar with Florence  
21 out that way.

22 Q. Okay.

23 SOLICITOR: Your Honor, at this time I would move  
24 State's Exhibit 3 in evidence.

25 THE COURT: Any objection?

T. DUMMOND ON DIRECT

1 MR. SMALDON: No objection.

2 THE COURT: All right. State's Exhibit 3 into evi-  
3 dence without objection.

4 (Aerial photograph admitted without objection as State's  
5 Exhibit 3)

6 BY SOLICITOR:

7 Q. Okay, Mr. Drummond, I'm going to have you come down,  
8 if that's okay with the Judge, and I'd ask you to stand  
9 right here.

10 All right. Can everyone see? All right.

11 Can you tell us in looking at it where you were and  
12 where the Defendant's vehicle may have been?

13 A. I was traveling out of Florence, going toward Pamplico.  
14 As I came into this -- where this road goes into -- from  
15 two lane to four lane coming into Florence, he was coming  
16 in what I call the four lane.

17 As he entered into the four lane right here at Dudley  
18 Drive that's when I estimated his speed and activated my  
19 radar to confirm my estimation at ninety miles an hour.

20 That's when I turned around and activated my blue  
21 lights in an attempt to stop him.

22 Q. Okay, and where -- can you tell us which way he went?

23 A. Traveling in this direction.

24 Q. Okay.

25 A. And I had been traveling in this direction.

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1 Q. Okay, and when you turned around where did he go?

2 A. As I turned around, he traveled back through House  
3 Range Crossing Road and Pamplico Highway area there at a  
4 high rate of speed.

5 Q. Did he stop for the red light? Was the light red?

6 A. I can't recall.

7 Q. Okay, that's fine. Go ahead.

8 A. He continued down and around the curve, all the way  
9 up to here, and that's where the Stone Market is.

10 Q. Or used to be?

11 A. Used to be. Right.

12 Q. Okay.

13 A. He took a right there and went down a block to the  
14 stop sign, blew the stop sign, made a right, and on down  
15 and blew a stop sign again, and came back out Pamplico  
16 Highway.

17 Q. What did he do when he got back on Pamplico Highway?

18 A. He made a left going back toward Pamplico, and he pro-  
19 ceeded at a high rate of speed, and then that's where he  
20 came around, right in this curve here, and that's when he  
21 went down through the median.

22 Then he finally gained control and pursuit continued  
23 down the Pamplico Highway.

24 Q. Now, I know this was after midnight, but was there  
25 traffic out there on the highway?

T. DRUMMOND ON DIRECT

1 A. I know we passed several cars.

2 Q. Okay, and did any of them have to get out of the way  
3 other than . . .

4 A. One of them.

5 Q. Go ahead.

6 A. Once we got down to this -- it's not on here, but it  
7 goes down and then it goes into a sharp curve to the left,  
8 and he took the inside curve because he was traveling at  
9 such a high rate of speed, and a car was coming and they  
10 ran off the right side of the road down into the grass try-  
11 ing to keep from getting hit, you know.

12 Q. Okay. How about you? What were you trying to do when  
13 you saw all of this erratic driving?

14 A. Trying to get into the oncoming lane with the blue  
15 lights going so he could see me and slow down, to try to  
16 keep them from having a head-on collision. That was be-  
17 cause he was driving so reckless.

18 Q. Then what happened?

19 A. Once no cars were coming I tried to pull up beside  
20 him, and that was several times and he would slam on brakes,  
21 slam on brakes, trying to get me to go on, and from what I  
22 seen in my career he was trying to get me in the rear and  
23 force my air bags to come out.

24 Q. So what happened then?

25 A. He went down and made a right turn onto Kayhill Road

T. DRUMMOND ON DIRECT

1 and . .

2 Q. Now, Kayhill Road -- is that where the Baptist Church  
3 is on the left?

4 A. On the left, yes, sir.

5 Q. Okay. Go ahead.

6 A. I went to the right also and there is a dirt road out  
7 there to the left. He took Kayhill Road to that road.

8 Q. To the right?

9 A. TO the right.

10 Q. Okay, go ahead.

11 A. Okay, he continued down that road, again at high rates  
12 of speed. Once he got to the end he had already -- he al-  
13 ready almost hit a vehicle here, and almost caused another  
14 head-on collision.

15 Then I felt like it was time to terminate the chase,  
16 and so I went ahead and struck him when he came up to the  
17 stop sign -- I struck him in the rear and he proceeded  
18 across the road into the ditch.

19 Q. He went into a ditch?

20 A. Yes, sir, a little small ditch which he went across  
21 that and into the bean field. That's where he jumped out  
22 and ran.

23 Q. Okay. Now, let me ask you this. All of this to the  
24 bean field, Kayhill Road and all of this highway, what  
25 County is that in?

T. DRUMMOND ON DIRECT

1 A. It's in Florence County, sir.

2 Q. Florence County?

3 A. Yes.

4 Q. All right, and when he went off the road and in the  
5 ditch and finally stopped, his car came to rest in the ditch.

6 Is that correct?

7 A. No, sir, it came to rest in a bean field.

8 Q. Okay, and once it came to rest in the bean field,  
9 what happened?

10 A. The driver's door came open and that's when he had  
11 jumped out and I was in the process of stopping my vehicle.  
12 I got out and gave chase.

13 Once I got up to his vehicle, I took a quick peek in-  
14 side the vehicle to make sure nobody was in there and so  
15 I didn't get ambushed or shot in the back I ran by, and  
16 nobody else was in the vehicle, and so I pursued after Mr.  
17 Cannon.

18 Q. Did you ever lose sight of him?

19 A. No, sir.

20 Q. All right. When you took your peek into that vehicle,  
21 were you looking for anything, any object, any drugs, any  
22 cell phones or anything of that nature?

23 What was your purpose for peaking in the vehicle?

24 A. To make sure no other person was sitting in the ve-  
25 hicle that could ambush me from behind as I went past the

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1 vehicle.

2 Q. Okay, so you continued on with the chase?

3 A. Absolutely.

4 Q. Then what happened?

5 A. I continued to give chase. He jumped into a ditch and  
6 crossed to the other side and that's when I was within my  
7 range to tase him, and I tased him.

8 Q. Prior to tasing him, did you yell, stop, you're under  
9 arrest or anything?

10 A. All the way across the bean field.

11 Q. You were yelling?

12 A. Absolutely. Yes, sir.

13 Q. All right, and what finally happened?

14 A. When I tased him, he went down and stayed in the ditch.  
15 Once you shoot them with the taser it cycles for five sec-  
16 onds. Once it stops, it releases, and every time it would  
17 release he would try to push up and try to get the prongs  
18 out of him, to be able to run again.

19 Every time he would try to get up, I told him to stay  
20 down, stay down, stay down, stay down, and every time he  
21 would try to get up I would hit him again, until I had no  
22 more to use there.

23 Q. Did you eventually ask him about whether he needed any  
24 medical treatment, after having that . .

25 A. We called EMS out there to see if he needed medical

T. DRUMMOND ON DIRECT

1 treatment, if he was hurt in any way, and he said, no, he  
2 was fine, and he refused any kind of medical treatment.

3 Q. All right. You finally subdued him. Correct?

4 A. Correct.

5 Q. All right. Did anybody else help you in that pro-  
6 cess of cuffing him and all that sort of business?

7 A. There was quite a few people there. Once we had got  
8 back to the field with him I was wore out and tired from  
9 running and I don't know who all came or anything. I know,  
10 you know, I had some of my guys -- Austin Miggs -- he was  
11 the one who transported him. He was there, and I think we  
12 had the PACE Team, which is Mr. Bazen.

13 Q. He was there?

14 A. He was there, and I think they were out doing the de-  
15 tails, and there were probably a couple more people. They  
16 came up after I had finally, you know, had him in the ditch.

17 Q. Okay, and at that point were you aware of any drugs  
18 or any of this other business that was in his car?

19 A. No, sir.

20 Q. Okay, did someone point that out to you a little bit  
21 later?

22 A. Um, Corporal Bazen did once we got him chained and  
23 got him in the vehicle, took him back up to the road to  
24 where the vehicles were, where his vehicle was in the field  
25 and mine was on the edge of the road.

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1           That's when Corporal Urghart came to me and said that,  
2   you know, there was drugs in the car.

3   Q.    So that was pointed out to you then?

4   A.    Yes, sir.

5   Q.    All right. Now, did you determine whether or not Mr.  
6   Cannon owned this vehicle or someone else owned the vehicle?

7   A.    It was -- it came back when we ran the tag to a rental  
8   vehicle.

9   Q.    What?

10  A.    A rental vehicle.

11  Q.    Do you know which one it was?

12  A.    I believe it was Enterprise, yes, sir.

13  Q.    Okay.

14  A.    An Enterprise rental car.

15  Q.    All right. Now, another question that I have -- your  
16  vehicle when you turned on the blue lights, was your ve-  
17  hicle equipped with any sort of video camera system?

18  A.    No, sir. My camera in that vehicle -- it was an old  
19  L three camera system, and they said it would cost too  
20  much money to have it repaired and ordered to buy a new  
21  one because the soft-ware was so outdated. They would buy  
22  new cameras and would replac~~e~~ it later.

23  Q.    And your duties normally didn't consist of patrol,  
24  correct?

25  A.    It didn't consist of stopping cars or anything of that

T. DRUMMOND ON DIRECT

1 matter. Our main duty on patrol was to handle our calls  
2 and check property.

3 Q. All right. Now, the reason you stopped him was what?

4 A. Speeding. It was just an excessive rate.

5 Q. All right. Thank you. Please answer any questions  
6 the defense attorney has for you.

7 A. Yes, sir.

8 THE COURT: You may cross examine.

9 CROSS EXAMINATION

10 BY MR. SMALDON:

11 Q. Good afternoon.

12 A. Good afternoon, sir.

13 Q. First of all, Mr. Cannon was also charged with DUI in  
14 this case. Correct?

15 A. Yes, sir, I believe so.

16 Q. And he was also charged with open container?

17 A. . .

18 Q. Or an ABC violation?

19 A. If he was, he was charged by the Highway Patrol. I  
20 didn't make those charges, I don't believe.

21 Q. Okay, so the Highway Patrol was there also?

22 A. Yes, sir. They were there.

23 Q. All right. So some other deputies were there?

24 A. Yes, sir.

25 Q. All right, so they also responded?

T. DRUMMOND ON CROSS

1 A. Yes, sir.

2 Q. And you were the one in charge and you were chasing  
3 the vehicle. Correct?

4 A. Correct.

5 Q. You made the initial blue light. . .

6 A. Correct.

7 Q. And you didn't see anything exit the vehicle? You  
8 didn't see any drugs exit the vehicle or anything like  
9 that?

10 A. No, sir.

11 Q. All right, and you determined the car was an Enterprise  
12 rental car?

13 A. Correct.

14 Q. You never determined who rented the car out, did you?

15 A. No, sir.

16 Q. To your knowledge, you still don't know who rented  
17 the car out?

18 A. No, sir. He was the driver so he was responsible for  
19 the vehicle and anything in the vehicle.

20 Q. That's your position, right?

21 A. Pardon?

22 Q. That's your position?

23 A. No, sir. That's -- as far as I'm concerned that was  
24 the law.

25 Q. Okay.

## T. DRUMMOND ON CROSS

1 A. He's the law and he was responsible for the vehicle  
2 and anyone, any person, in the vehicle.

3 Q. Okay, so you make the law now?

4 A. No, sir.

5 Q. Okay, so you don't make the law?

6 A. No, sir. All I did was enforce it.

7 Q. But that's your position?

8 A. Okay.

9 Q. You were doing your job?

10 A. Correct.

11 Q. So as far as you're concerned, as soon as you saw any  
12 drugs in that vehicle it was his. Right?

13 A. Correct.

14 Q. You didn't really do anything else to determine whose  
15 it could have been. Right?

16 A. Correct.

17 Q. Because in your mind, because he ran from you, because  
18 you saw drugs in the car, this rental car, he was already  
19 guilty. Right?

20 A. . .

21 Q. Is that what you said?

22 A. No. I didn't say that.

23 Q. But that's what you thought at the scene? You said,  
24 they're in his car so they must be his. Right?

25 A. Because they were in the driver's seat and he was

T. DRUMMOND ON CROSS

1 driving.

2 Q. Correct. After the fact. Correct?

3 A. Correct.

4 Q. Okay, so you didn't test or -- you didn't do any test  
5 or fingerprints on the drugs?

6 A. No, sir.

7 Q. Okay. You didn't do any test for any kind of oil  
8 or skin cells? That wasn't performed?

9 A. Not to my knowledge.

10 Q. All right, because they were in the car with him, in  
11 your mind it was his?

12 A. Repeat your question.

13 Q. Because they were in the car. Right?

14 A. Well, I mean, he was the only one in the vehicle.

15 Q. Right. Not his vehicle though. Right?

16 A. Right.

17 Q. So you performed -- when you were with the Florence  
18 County Sheriff's Office, you did traffic stops?

19 A. Uh hm.

20 Q. Okay. Did you arrest people for narcotics?

21 A. I have, yes.

22 Q. Thank you, sir. You have?

23 A. Uh hm.

24 Q. And have there been cases where other peoples' nar-  
25 cotics were left in your patrol car?

1 A. If they were stuck in the seat. That's the reason we  
2 check our back seats before -- you know, when we get them  
3 down to F and L we pull our seat out and make sure no nar-  
4 cotics have been stuck back there. We do it before our  
5 duty and any time after we transport somebody and before  
6 we transport somebody.

7 Q. Okay, and that happens occasionally. Right?

8 A. Them stuffing it in the seat?

9 Q. Correct.

10 A. Absolutely.

11 Q. All right, do you arrest yourself?

12 A. Not when they stuck it back there and I check when we  
13 get down to F and L and pull it out and then I charge them.

14 Q. After they are gone from the vehicle. Right?

15 A. No, sir. When they get out of the car.

16 Q. Right.

17 A. We stand them outside of the car.

18 Q. Right.

19 A. And we check our back seat.

20 Q. Right.

21 A. And it's not like it's bolted down. It just flips  
22 up.

23 Q. They're not in the vehicle at that point?

24 A. Standing outside the car.

25 Q. So they are not in the vehicle?

T. DRUMMOND ON CROSS

1 A. They're standing outside the car. They were in the  
2 vehicle.

3 Q. So they are not in the vehicle when you search it?

4 A. No. I can't lift the back seat with them sitting on  
5 it.

6 Q. Exactly. When other peoples' drugs are found in your  
7 car, you don't arrest yourself, do you?

8 A. I don't understand the question that you're trying to  
9 ask me.

10 Q. I'm suggesting you didn't arrest yourself for other  
11 peoples' drugs being found in your car. Right?

12 A. When they were transported and put in my back seat,  
13 the vehicle was checked.

14 Q. Okay.

15 A. When I get them down to Effingham which is our facility,  
16 we step them out of the car and remove the back seat to  
17 see if they had put any drugs in there. If they weren't  
18 there when I checked it the first time and they were there  
19 when I checked it the second time, and he's the only one  
20 that's been in the back seat, that's who we charge.

21 Q. Right.

22 A. Absolutely.

23 Q. This is a police car. Correct?

24 A. Correct.

25 Q. And you don't expect normal people to do that to their

T. DRUMMOND ON CROSS

1 car every day, do you?

2 A. No, sir.

3 Q. That's why you -- well, you normally wouldn't do that  
4 if you had a rental car. Right?

5 A. If I got a rental car?

6 Q. Correct.

7 A. Sometimes I have. Sometimes I haven't. It just  
8 depends.

9 Q. Because you don't know what happens with a rental car?

10 A. Not with other drivers. Right.

11 Q. Right, and you don't know who has been in that car  
12 before you?

13 A. No, sir.

14 Q. So do you worry other peoples' drugs might be in the  
15 rental car?

16 A. I have taken a lot of drugs out of rental cars.

17 Q. Okay. It makes sense, because drugs can sometimes be  
18 in a rental car?

19 A. Uh hm.

20 Q. All right.

21 MR. SMALDON: Beg the Court's indulgence.

22 THE COURT: yes, sir.

23 (Brief pause)

24 MR. SMALDON: No further questions.

25 THE COURT: All right. Redirect.

T. DRUMMOND ON REDIRECT

1 REDIRECT EXAMINATION

2 BY SOLICITOR:

3 Q. Enterprise didn't complain about leaving thirty-eight  
4 grams of crack in the car, did they?

5 A. No.

6 Q. You never got any information as far as the rental  
7 car, did you?

8 A. No, sir. Usually whenever they -- whenever you turn  
9 a car back in they clean it. So most of the time it's  
10 cleaned when they get it.

11 MR. SMALDON: I object to that. No personal knowledge.

12 Q. Sir, have you ever rented a car from Enterprise?

13 A. Yes.

14 Q. In any car you've ever rented from Enterprise, did you  
15 ever find thirty-eight grams of crack cocaine in it?

16 A. No.

17 Q. Thank you.

18 THE COURT: Any recross?

19 MR. SMALDON: No Recross.

20 THE COURT: All right, you may step down. Thank you.

21 (Witness excused from stand) (Excused without objection)

22 THE COURT: Call your next witness.

23 SOLICITOR: Deputy Urqhart.

24 THE COURT: Have a seat.

25 BROOKS URQHART, being

## B. URQHART ON DIRECT

1     duly sworn, testified as follows:

2             CLERK: Please state your name for the record.

3             WITNESS: Brooks Alexander Urqhart.

4     DIRECT EXAMINATION

5     BY SOLICITOR:

6     Q.     Corporal Urqhart, where do you work?

7     A.     Florence County Sheriff's Office.

8     Q.     How long have you worked there?

9     A.     Probably close to two years now. I've done two stints  
10    with the Sheriff's Office. I've got about nine years of  
11    law enforcement experience.

12    Q.     Okay. Were you working for the Sheriff's Department  
13    back on September 12th, 2015?

14    A.     I was.

15    Q.     Okay, after midnight did you have an occasion to be  
16    summoned out to some place?

17    A.     Yes, I responded to the incident in progress as an  
18    assisting officer.

19    Q.     All right, and where was the incident in progress, if  
20    you recall?

21    A.     I believe it was near the intersection of Kayhill Road  
22    and Port Farm Road.

23    Q.     Okay, and when you got out to the scene, what happened?  
24    What did you do there?

25    A.     As best I can recall I was the first person to the

## B. URQHART ON DIRECT

1 abandoned vehicle. The door was left open.

2 Q. Which door was left open?

3 A. The driver's door.

4 Q. How about the -- were any of the other passenger doors  
5 open?

6 A. No, sir.

7 Q. Are you sure about that?

8 A. Yes.

9 Q. All right. Okay, when you got out there, what kind  
10 of vehicle was it?

11 A. I believe it was a Dodge Charger.

12 Q. Do you recall the color?

13 A. White.

14 Q. All right, and what did you observe?

15 A. Like I said, the driver's door was open. I walked up  
16 to the car -- just walked over to the car just to make sure  
17 there were no other people in the car, and from outside the  
18 vehicle in plain view you could see two bags of drugs, one  
19 being on the driver's seat and one being in the floorboard  
20 of the driver's seat.

21 Q. Okay. What did you do with those drugs once you ob-  
22 served them?

23 A. I did nothing with them, other than staying at that  
24 vehicle and waiting for other officers to arrive.

25 Q. All right, and did you assist in the arrest of Mr.

B, URQHART ON DIRECT

1 Cannon?

2 A. No, I stayed with the vehicle until they could be  
3 turned over.

4 Q. Was that your only involvement in this case?

5 A. After they were turned over, I think a group of us re-  
6 walked the field to make sure if we could find anything  
7 else that may have been disposed of in the field -- to make  
8 sure there was no gun or something like that that could  
9 harm the public.

10 Q. Did you find anything else?

11 A. Not that I recall.

12 Q. Did you see anything in the vehicle other than those  
13 bags? The bags of drugs?

14 A. I seem to recall a set of digital scales maybe but  
15 after I saw the two bags of drugs that was my main focus,  
16 to stay on the scene until other people arrived.

17 Q. Who arrived to retrieve those drugs?

18 A. Corporal Bazen did the recovery on the drugs.

19 Q. All right, and whatever objects were in the vehicle?

20 A. Correct.

21 Q. All right, thank you. Those are all the questions I  
22 have. Please answer any questions Mr. Smaldon may have  
23 for you.

24 A. Yes, sir.

25 THE COURT: Cross examine.

## B. URQHART ON CROSS

1 CROSS EXAMINATION

2 BY MR. SMALDON:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. I only have a few questions for you. To be clear,  
6 you just saw drugs in that car. Right?

7 A. Correct.

8 Q. So you never saw Mr. Cannon in possession of those  
9 drugs?

10 A. No, that's correct.

11 Q. Mr. Cannon was gone?

12 A. He had already fled the scene by that point.

13 Q. And when he fled the scene and you re-traced the  
14 scene, you didn't find anything  
15 that he had left?

16 A. That's correct.

17 Q. So all you know is that there were allegedly or were  
18 some drugs in a car. Right?

19 A. Correct.

20 Q. And then later you learned who was driving?

21 A. That's correct.

22 Q. And that was after the car accident?

23 A. Correct. Some sort of collision.

24 Q. Maybe accident is the right word. After the collis-  
25 ion, being an intentional collision. Correct?

1 A. . .

2 Q. The car was pretty banged up?

3 A. From what I recall.

4 Q. Okay, and there is no video taken of -- you arrived  
5 in a patrol car?

6 A. I did.

7 Q. Was it equipped with video?

8 A. It is.

9 Q. And there was no video from your car?

10 A. No. I was responding only as an assisting. I wasn't  
11 actually involved in the chase.

12 Q. All right. You just secured the car?

13 A. That's correct.

14 Q. All right, and you did not -- I just want to be as  
15 clear as I can so I'm asking the right person the right  
16 questions.

17 You did not turn the drugs into evidence, did you?

18 A. No.

19 Q. So you are just a witness?

20 A. Correct.

21 Q. Okay. We're done then.

22 Thank you.

23 THE COURT: Redirect?

24 SOLICITOR: No, sir.

25 THE COURT: All right, you may step down.

1 WITNESS: Thank you.

2 (Witness excused without objection)

3 THE COURT: Call your next witness.

4 SOLICITOR: We'd call Corporal Jason Bazen.

5 JASON BAZEN, being duly  
6 sworn, testified as follows:

7 CLERK: Please be seated and state your name for the  
8 record.

9 WITNESS: Jason Scott Bazen.

10 DIRECT EXAMINATION

11 BY SOLICITOR:

12 Q. Okay, Corporal Bazen, for whom do you work?

13 A. Florence County Sheriff's Office.

14 Q. How long have you worked for the Florence County  
15 Sheriff's Office?

16 A. Nine years and four months.

17 Q. And what are your responsibilities with the Sheriff's  
18 Office?

19 A. I work on the PACE Team and Special Operations.

20 Q. What does Special Operations mean?

21 A. It's an interstate team, inter-county community team,  
22 and I'm also one of the dog handlers.

23 Q. Okay. Have you been involved with any drug inter-  
24 dictions at all?

25 A. Yes, sir.

1 Q. That you all do?

2 A. Yes, sir.

3 Q. Were you doing the same type of work back in September  
4 of 2015?

5 A. Yes, sir.

6 Q. All right, and did you have occasion to be called out  
7 to the general vicinity of Kayhill and Port Farm Road?

8 A. I did. I responded in reference to a pursuit that  
9 Sergeant Drummond was in as an assisting officer.

10 Q. All right, and can you tell us what happened when you  
11 got to the scene?

12 A. Upon arriving at the intersection, I saw Corporal  
13 Urqhart was standing beside a white Charger in a bean field,  
14 and Sergeant Drummond was asking over the radio for some  
15 assistance because he had come upon the suspect who was  
16 driving the vehicle just on the other side of the bean  
17 field.

18 Q. All right, and what did you do then?

19 A. Went over to where Sergeant Drummond was and assisted  
20 him with apprehending the Defendant, and then we brought  
21 him back across the bean field to the vehicles where  
22 Corporal Urqhart was waiting by the vehicles, and he then  
23 pointed out the drugs in the vehicle in plain view.

24 Q. Okay. What did you do then in regards to those nar-  
25 cotics in plain view?

J. BAZEN ON DIRECT

1 A. I secured them and placed them in evidence bags.

2 Q. All right, let me stop you there.

3 I'm going to show you State's Exhibit 1 for identifi-  
4 cation, and I am showing them to the Defendant as well.

5 A. . .

6 (Brief pause)

7 BY SOLICITOR:

8 Q. All right, can you tell us everything -- excuse me one  
9 second.

10 (Brief pause)

11 Q. All right, if you would look at State's Exhibit 1 and  
12 tell me if you can identify the two pieces of paper and a  
13 plastic bag?

14 A. Yes.

15 Q. You can identify those objects?

16 A. I can.

17 Q. Okay, can you tell us . .

18 A. That's the rocks and that is from today, the chain of  
19 custody from today.

20 Q. All right. I'm going to keep this out because this  
21 would be referred to as an extended chain of custody in Case  
22 Number 2015-09-0300, description bestpack, with a number  
23 there, and going to evidence and evidence to Court. I'll  
24 just remove that.

25 A. . .

1 SOLICITOR: Your Honor, I would move to admit that.

2 MR. SMALDON: He hasn't said what it is.

3 BY SOLICITOR:

4 Q. All right.

5 A. This is a property sheet evidence log form that I  
6 filled out that night and logged this into evidence.

7 Q. Okay, and can you tell us what you see in there and  
8 how you know this is the stuff you logged in on that parti-  
9 cular night?

10 A. It is my handwriting on the seal.

11 Q. All right, and . .

12 A. I sealed the best pack. This clear plastic bag con-  
13 taining what one powder substance that at the time I believed  
14 to be cocaine, which was a very fine powder.

15 And a large quantity of off-white rock-like substances  
16 just like it was under the driver's seat.

17 Q. And when you find these objects are they loose or in  
18 the plastic bags or whatever it is in?

19 A. There was a clear plastic bag laying on the driver's  
20 seat that contained the crack cocaine.

21 Q. The rock?

22 A. The rock-like substance.

23 Q. Okay.

24 A. Yes, sir. The powder -- white powder substance which  
25 was fine powder was in a clear plastic bag on the floorboard

J. BAZEN ON DIRECT

1 of the vehicle and another one on the floorboard.

2 Q. All right. Now, when you grabbed that stuff and I'd  
3 guess it was in plastic bags, what do you do with the plas-  
4 tic that you grab the things in? Do you . .

5 A. That's logged in evidence also.

6 Q. Okay, and I'll get you to talk about the best pack.  
7 What is that?

8 A. It is how we monitor the evidence, and we can verify  
9 it is sealed. When I seal it, it can only be opened by a  
10 chemist. Basically what it is, it's a clear bag that we  
11 put the drugs in. Then it is sealed and has a tamper seal  
12 on it.

13 Then it is placed in an envelope which is then placed  
14 into a large mailbox, the old style post office metal mail-  
15 box.

16 Q. All right.

17 A. It is locked and the only person who has a key to it  
18 is the evidence technician.

19 Q. All right, and the evidence technician in this case  
20 would be Officer Christmas?

21 A. Yes.

22 Q. All right, and were there other items seized by you on  
23 that evening?

24 A. There was.

25 Q. I want you to look at State's Exhibit 2, and if you

J. BAZEN ON DIRECT

1 would tell us if there are several items that you seized  
2 from the car?

3 A. Yes, and for the record I am sticking in that piece of  
4 paper from State's Exhibit 1.

5 Q. Can you identify these objects, sir?

6 A. I can. It's a black and silver scale, a AT and T flip  
7 phone, a Verizon LG cell phone, two thumbdrives, and a  
8 Samsung cell phone.

9 Q. Okay, and where did you find these items?

10 A. Inside the vehicle. Exactly where they were inside  
11 the vehicle I cannot recollect. I think this phone was  
12 laying on the driver's seat also but I'm not absolutely  
13 certain of that.

14 Q. That's fine. That's fine. But they were found inside  
15 the vehicle?

16 A. Yes, sir.

17 Q. All right. Now, I want to ask you, did you order any  
18 testing, whether DNA, fingerprint analysis, on the one, two,  
19 three, four, five, six non-fungible items?

20 A. I did not.

21 Q. All right. Now, based on your experience with work-  
22 ing drug interdiction, Pro Active Community Enforcement  
23 Team, what are digital scales used for in the drug business?

24 A. To weigh drugs.

25 Q. All right. Did you find -- just for the jury's

J. BAZEN ON DIRECT

1   edification, how do people ingest or take crack cocaine?  
2   What is the method for getting crack in your body to get  
3   you high?

4   A.   Smoke it.

5   Q.   Did you find any crack pipe?

6   A.   No, I did not.

7   Q.   Was there any crack pipe found back of the vehicle?

8   A.   No.

9   Q.   Any crack pipe found in the cab of the vehicle?

10  A.   No, sir.

11  Q.   Did you find any gloves in the car?

12  A.   No, sir.

13  Q.   All right. You said you were involved in the arrest  
14  of this Defendant. Did you see anything that looked like  
15  a crack pipe inside of his pockets?

16  A.   No, sir.

17  Q.   All right.

18       SOLICITOR: At this time, Your Honor, being that these  
19  are non-fungible items, I would move State's Exhibit 2 in  
20  evidence.

21       THE COURT: Any objections?

22       MR. SMALDON: If I could clarify one thing.

23       (Colloquy between counsel and the Court)

24       MR. SMALDON: No objection.

25       THE COURT: State's Exhibit 2 is in evidence without

J. BAZEN ON DIRECT

1 objection.

2 (Scales, two thumbdrives, flip phone, Verizon phone,  
3 Samsung cell phone all admitted in evidence without objec-  
4 tion as State's Exhibit 2)

5 BY SOLICITOR:

6 Q. Other than that, did you do anything else in this case,  
7 sir, other than seizing items and writing a report?

8 A. Other than the supplemental report and obtaining the  
9 arrest warrants for the possession with intent to distri-  
10 bute cocaine and trafficking crack cocaine.

11 Q. That was it?

12 A. That was it.

13 Q. All right. Please answer any questions Defense would  
14 have for you.

15 CROSS EXAMINATION

16 BY MR. SMALDON:

17 Q. To be clear, you got those items from the vehicle?

18 A. I did.

19 Q. You're the one who took them out of the vehicle?

20 A. Yes, sir.

21 Q. All right, and when you were arresting or in the pro-  
22 cess of arresting Mr. Cannon, did you help to apprehend  
23 him?

24 A. I was there when he was apprehended, yes.

25 Q. Okay, and during that procss you testified earlier that

## J. BAZEN ON CROSS

1 no crack pipe was found on him?

2 A. Not that I saw.

3 Q. Right, and no crack was found on him?

4 A. No, sir.

5 Q. No cocaine was found on him?

6 A. No, sir.

7 Q. No scales were found on him?

8 A. No, sir. It's quite common when someone runs that  
9 they separate themselves from the drugs as they leave the  
10 vehicle.

11 Q. That's your opinion. Right?

12 A. . .

13 Q. You saw him run?

14 A. I did not.

15 Q. So you didn't see him run but you're telling me how he  
16 ran?

17 A. I just said it was quite common when people run they  
18 leave their -- they separate themselves from the drugs.

19 Q. It's also common to pitch it out of the vehicle.

20 Right? So you don't get caught?

21 A. Could be.

22 Q. Okay, so nothing was found on Mr. Cannon and you never  
23 saw Mr. Cannon in possession of any drugs. Right?

24 A. No, sir.

25 Q. All right, so you have to make your case. You're a

1 detective or you're with the law enforcement? You have to  
2 make your case?

3 A. . .

4 Q. Right? Your job is to help to prove Mr. Cannon guilty  
5 beyond a reasonable doubt?

6 That's what you do when you work for the State and  
7 that is okay.

8 A. I work in law enforcement.

9 Q. You work for the government?

10 A. Local government, that's correct.

11 Q. When you got the cocaine there were no tests done for  
12 fingerprints?

13 A. No, sir.

14 Q. When you got the cocaine there was no test for touch  
15 DNA?

16 A. No, sir.

17 Q. When you got the crack, there was no test for finger-  
18 prints?

19 A. No, sir.

20 Q. When you got the cocaine -- I'm sorry. When you got  
21 the crack there was no test done for touch DNA?

22 A. No, sir.

23 Q. You could have asked for those tests?

24 A. I could have.

25 Q. Okay, and you didn't?

J. BAZEN ON CROSS

1 A. No, sir.

2 Q. All right, because you know . .

3 A. Well, actually, sir, cocaine and crack cocaine you can  
4 hardly get fingerprints off of them.

5 Q. I'm sorry, the bags.

6 A. Okay, no, sir.

7 Q. Right. You never ordered tests on the bag, either bag?

8 A. No, it is not common practice.

9 Q. All right, and you didn't do it?

10 A. No, sir.

11 Q. Okay, all right, and you were in a patrol car that  
12 night?

13 A. I was.

14 Q. All right, and your patrol car is equipped with video?

15 A. Mine is. Yes, sir.

16 Q. Okay, and no video was taken that night?

17 A. I was not part of the pursuit.

18 Q. Right, but you got there?

19 A. Yes, sir.

20 Q. And no video was taken?

21 A. No, sir.

22 Q. Okay.

23 MR. SMALDON: Beg the Court's indulgence.

24 (Brief pause)

25 MS. SMALDON: That's all I have for this witness.

## J. BAZEN ON REDIRECT

1 THE COURT: Redirect?

2 SOLICITOR: Yes, sir.

3 REDIRECT EXAMINATION

4 BY SOLICITOR:

5 Q. Did I ask you in any way, shape or form to help to  
6 get a conviction against this guy?

7 A. No, sir.

8 Q. All right. Thank you so much.

9 THE COURT: All right, you can step down.

10 (Witness excused from stand)

11 THE COURT: You may call your next witness.

12 SOLICITOR: We would call Jeff Christmas.

13 T. J. CHRISTMAS, being duly

14 sworn, testified as follows:

15 CLERK: Please be seated and state your name for the  
16 record.

17 WITNESS: Terry Christmas.

18 DIRECT EXAMINATION

19 BY SOLICITOR:

20 Q. Deputy Christmas, what are your responsibilities with  
21 the Sheriff's Department?

22 A. Evidence tech.

23 Q. How long have you been doing that?

24 A. About a year and a half.

25 Q. Okay, and were you so employed back on September 12th

## T. CHRISTMAS ON DIRECT

1 of 2015?

2 A. Yes, sir.

3 Q. Can you tell the ladies and gentlemen what an evidence  
4 tech does?

5 A. An evidence tech is in charge of being the custodian  
6 of all evidence that is logged in from cases. When the  
7 road deputies log in evidence I take it out of the locker  
8 and put it into our system and it is put under lock and  
9 key. All our evidence is in lock and key and in a secure  
10 area.

11 Then another duty once it's logged into our system is  
12 to search out where it needs to go. If it needs to go to  
13 SLED or needs to go to our drug lab -- I'm the one who does  
14 all of that.

15 Q. All right. I'm going to show you what's marked as  
16 State's Exhibit 1 for identification. Can you identify  
17 these objects?

18 A. The best kit from Case Number 2015 09 300.

19 Q. Okay, and who do you receive this from? The deputy,  
20 I guess.

21 The deputy who puts it in the locker and that would  
22 have been Deputy Bazen?

23 A. Corporal Bazen.

24 Q. Is that the gentlemen who just walked out of the  
25 Courtroom?

## T. CHRISTMAS ON DIRECT

1 A. Yes, sir.

2 Q. All right, and what did you do with the drugs in this  
3 case?

4 A. This particular best kit would have been logged in,  
5 the best pack. I log it in first and then I send it to  
6 the lab for testing.

7 Q. And in this case who did the testing?

8 A. Lieutenant Hansen with the Florence County Sheriff's  
9 Office.

10 Q. All right. Did anybody other than you yourself and  
11 Detective Hansen, once it was logged into your secure  
12 locker, have access to those drugs?

13 A. No, sir.

14 Q. Did you open that package in any way, shape or form  
15 prior to Detective Hansen testing the  
16 substance?

17 A. No, sir. It remained sealed.

18 Q. All right. Thank you so much. Please answer any  
19 questions the Defense may have for you.

20 A. Yes, sir.

21 MR. SMALDON: No questions.

22 THE COURT: You may step down. Any objection to ex-  
23 cusing him?

24 (Negative responses from counsel)

25 (Witness excused)

1 SOLICITOR: We would call Detective Hansenm to the  
2 stand.

3 MITCH HANSEN, being duly  
4 sworn, testified as follows:

5 CLERK: Please be seated and state your name for the  
6 record.

7 WITNESS: Mitchell Hansen.

8 DIRECT EXAMINATION

9 BY SOLICITOR:

10 Q. Okay. Detective Hansen, what are your responsibili-  
11 ties over at the Sheriff's Department?

12 A. I'm the forensic drug chemist for the Sheriff's Office.  
13 My responsibilities are -- we take in the drugs, we test  
14 them, weigh them, package them back up, and turn them back  
15 into evidence.

16 Q. All right, and what special training do you have in  
17 the field of forensics drug analysis?

18 A. I have an Associates in science, Associates in arts, a  
19 Bachelors in chemistry. I have been trained at SLED for  
20 forensic drug analysis and basic law enforcement.

21 Q. How many analyses, plural, do you figure you have  
22 done in your tenure with the Florence County Sheriff's Of-  
23 fice?

24 A. With the Sheriff's Office in analyses I have done prob-  
25 ably six or seven thousand in total in my last ten years.

1 In private close to seventeen or eighteen thousand.

2 Q. Is that in the totality of your career?

3 A. Yes.

4 Q. Did you work someplace else prior to working with the  
5 Florence County Sheriff's Office?

6 A. Yes, for the Sumter County Sheriff's Office.

7 Q. Were you also a forensic drug analyst there?

8 A. Yes.

9 Q. And have you ever testified in Court before?

10 A. Yes.

11 Q. And were you qualified as an expert in the field of  
12 forensic drug analysis?

13 A. Yes, I was.

14 Q. All right. Approximately how many times have you  
15 testified before a Court?

16 A. Approximately about forty-three times.

17 SOLICITOR: At this time, Your Honor, I would move to  
18 have Lieutenant Hansen qualified as an expert in the field  
19 of forensic drug analysis.

20 THE COURT: Any objection?

21 MR. SMALDON: No objection.

22 THE COURT: All right, the motion is granted.

23 BY SOLICITOR:

24 Q. Okay. Now, prior to us looking at what is State's

25 Exhibit Number 1, I'm going to ask you just simply -- can

M. HANSEN ON DIRECT

1 you tell the ladies and gentlemen of the jury as easily and  
2 softly as you can the difference between cocaine and crack  
3 cocaine?

4 A. The difference between cocaine and crack cocaine --  
5 cocaine is in an especially soft form. Crack cocaine is in  
6 a base form. The difference in the two is that the base  
7 form has higher properties as far as being able to be lit  
8 on fire and smoked. The difference between the soft form  
9 and the base form is more with the properties of the chemi-  
10 cal compound itself.

11 That's pretty much it.

12 Q. Well, let me ask you this. Do you make crack from co-  
13 caine?

14 A. Yes.

15 Q. All right, so if you found powder cocaine, there is a  
16 possibility that it could become crack cocaine. Correct?

17 A. Yes, it could be converted into base form.

18 Q. And how would it be converted into base form?

19 A. By using -- the most common thing is to use baking  
20 soda mixed with water and with heat, and that will force a  
21 conversion from soft form to a base form.

22 Q. All right. In terms of your analysis, how do you de-  
23 termine that it is a narcotic drug as opposed to foot pow-  
24 der or something of that nature?

25 A. We do two different tests, a chemical test and an in-

1 instrumental test. The instrumental test involves our mass  
2 spec. A chemical test is a spot test which determines the  
3 substance, and then we go forward to the instrument test.

4 Q. Now, I want to show you State's Exhibit 1. Tell the  
5 ladies and gentlemen of the jury -- just a minute -- what  
6 this stuff is and the test you did, and then we'll talk  
7 about the results here in a minute.

8 A. This is what has been repackaged after testing. The  
9 outside bag here is the best kit bag. It's a tamper-evident  
10 bag, and you cannot tamper with it without it being noticed.  
11 You can't stretch it or open it. If you try to open this  
12 bag, you will see that someone has tried to tamper with it.

13 The other items inside here are the items that were  
14 in this and actually were tested.

15 Q. All right, and you subjected them to the chemical  
16 test that you . .

17 A. Yes, they were chemically tested and instrument-  
18 ally tested.

19 Q. Now, as to the powdery stuff that we see in the best  
20 package, what was your analysis in regards to that?

21 A. The powdery substance was positive for cocaine or co-  
22 caine solvent.

23 Q. Okay, and did you weigh the stuff before you tested  
24 it?

25 A. Yes, I did.

1 Q. Okay, and what was the weight of the substance that  
2 you tested, the powder?

3 A. The powder substance weighed six point nine two grams.

4 Q. Okay, six point -- let me just write this down. You  
5 said six point nine two grams. All right.

6 And that was for the powder. Correct?

7 A. Correct.

8 Q. How about the other substance that you subjected to a  
9 chemical analysis?

10 A. The other substance was a rock substance, and it  
11 also tested positive for cocaine base.

12 Q. Now, a cocaine base, what is another common name for that?

13 A. Crack.

14 Q. Crack, and what did that crack weigh?

15 A. Thirty-eight point one nine grams.

16 Q. All right, and did you prepare reports in this regard,  
17 sir?

18 A. Yes, I did.

19 Q. I'll get this marked as well.

20 (Brief pause)

21 Showing you State's Exhibit 4 which I've shown to the  
22 defense attorney, is that the report that you prepared in  
23 this matter?

24 A. Yes, it is.

25 Q. Let's look at all the pages, sir. It's a four page

1 document, is it not?

2 A. Yes, it is.

3 Q. All right.

4 SOLICITOR: At this time I would move to have State's  
5 Exhibit 1 and State's Exhibit 4 introduced into evidence.

6 THE COURT: Any objection?

7 SOLICITOR: As to, I believe, 1, subject to my earlier  
8 motion in the case.

9 THE COURT: So that State's 1 and 4 are admitted in  
10 evidence, Number 1 over objection.

11 (Cocaine and crack cocaine admitted over an objection  
12 as State's Exhibit 1 in evidence. State's Exhibit 4, SLED  
13 reports, admitted without objection.)

14 BY SOLICITOR:

15 Q. Please answer any questions the Defense may have for  
16 you.

17 A. Yes, sir.

18 THE COURT: Cross examination.

19 CROSS EXAMINATION

20 BY MR. SMALDON:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. So it has been established that there were thirty-eight  
24 grams of crack. Correct?

25 A. Thirty-eight point one nine grams.

1 Q. Right, and almost seven grams of cocaine powder?

2 A. Six point nine two grams.

3 Q. Right, and those are the only tests you did?

4 A. I did the chemical test and the mass spec, gas chromat-  
5 igraph mass spectrometer.

6 Q. Right, and the only tests you did were just to con-  
7 firm that what they think it is is what it is. Right?

8 A. Right.

9 Q. You didn't do any test that would link that back to  
10 Myron. Right?

11 A. I'm not sure what you're asking.

12 Q. The tests you did were to determine what the substances  
13 were?

14 A. Correct.

15 Q. Not where they came from. Right? Not who they came  
16 from?

17 A. Right.

18 Q. I just wanted to be clear. That's not your job, is  
19 it?

20 A. No, it's not.

21 Q. You didn't do any other tests?

22 A. No.

23 Q. Okay, that's all I have. Thank you, sir.

24 THE COURT: Redirect?

25 SOLICITOR: No, sir. We'd ask that Mr. Hansen be

1   excused.

2       THE COURT: Any objection.

3       THE COURT: You are excused, sir. Thank you.

4       (Witness excused without objection)

5       SOLICITOR: We would call Sergeant Joe Nida.

6       THE COURT: Counsel approach, please.

7       (Conference at the bench between counsel and the  
8 Court off the record)

9       THE COURT: Members of the jury, let's take about a  
10 ten or fifteen minute break, and then we'll come back and  
11 finish up with the State's last witness.

12      Do not discuss the case.

13      (Jury excused from Courtroom)

14      THE COURT: We'll take a break.

15      (Whereupon, the Court took a brief recess, after  
16 which the case was continued)

17      THE COURT: Everybody have a seat. Go ahead and bring  
18 out the jury.

19      (Jury returned to the Courtroom)

20      THE COURT: Call your next witness.

21      SOLICITOR: Your Honor, the State would call Sergeant  
22 Joe Nida.

23                                      WILLIAM JOE NIDA, being  
24 duly sworn, testified as follows:

25      CLERK: Please be seated and state your name for the

J. NIDA ON DIRECT

1 record.

2 WITNESS: William Joseph Nida.

3 DIRECT EXAMINATION

4 BY SOLICITOR:

5 Q. Okay, sir. For whom do you work?

6 A. Florence Police Department.

7 Q. First of all, let me ask you, do you have any connec-  
8 tion with this case whatsoever?

9 A. No, sir, I do not.

10 Q. You weren't involved in the arrest or anything like  
11 it?

12 A. No, sir.

13 Q. All right. Let me ask you, what do you do for the City  
14 Police Department?

15 A. For the past twelve years I've been in the Special In-  
16 vestigations Unit or what is more commonly referred to as  
17 the Narcotics Unit.

18 Q. Okay. What are your responsibilities in that Narcotics  
19 Unit?

20 A. We handle all the drug cases, conduct controlled pur-  
21 chases. Anything that pertains to drugs including prescrip-  
22 tion fraud stuff, and prostitution stuff, gangs and any-  
23 thing that is -- organized crime or what's called vice.

24 Q. Let me ask you this. In terms of narcotics prosecu-  
25 tions, how many -- I know you'd be just guessing but how

1 many have you made?

2 A. We average drug cases -- it ends up being close to I'd  
3 say forty a month. So in a year four . .

4 Q. Four hundred eighty?

5 A. Four hundred eighty a year, give or take.

6 Q. Times twelve years. Correct?

7 A. My part, yes, sir, in our unit.

8 Q. Now, you said you have been involved in controlled  
9 purchases in terms of drugs. Can you tell the ladies and  
10 gentlemen of the jury what that is all about?

11 A. Utiliizing what we call a confidential informant or a  
12 C I, we would with the individual consenting have him make  
13 a buy from Mr. or Mrs. Smith.

14 We would give him monitoring equipment, give him money,  
15 and they would go to these individuals and purchase what-  
16 ever amount someone normally would buy from them.

17 Q. Okay, and as a result of making controlled purchases  
18 and working during your twelve years in narcotics, have you  
19 become familiar with the value of street narcotics here in  
20 Florence County?

21 A. Yes, sir.

22 Q. All right.

23 SOLICITOR: At this time, Your Honor, I would like to  
24 have Sergeant Joe Nida qualified as an expert in the field  
25 of retail value of cocaine and crack cocaine in the general

1 area.

2 THE COURT: Any objections?

3 MR. SMALDON: I do object to relevance, and also on  
4 Rule 403.

5 THE COURT: All right, I'm going to overrule it and  
6 find the information needed is beyond that of an ordinary  
7 jury.

8 He does have the requisite knowledge and skill. His  
9 testimony is reliable.

10 I grant your motion.

11 BY SOLICITOR:

12 Q. All right. Now, I'm going to ask you what does one  
13 gram of crack cocaine equal here in terms of value, the  
14 street value?

15 A. One gram of crack is going to be a Hundred Dollars  
16 per gram.

17 Q. So it's One Hundred Dollars per gram?

18 A. Yes, sir.

19 Q. So if I am a confidential informant and I tell a dealer  
20 that I want one gram of crack cocaine, I would have to hand  
21 over One Hundred Bucks?

22 A. One Hundred Dollars, yes.

23 Q. All right. How about for the powder? Is there any  
24 distinction in terms of powder?

25 A. It's still the same. Typically when you purchase a

J. NIDA ON DIRECT

1 Twenty Dollar rock, it's zero point two grams that would  
2 be Twenty Dollars, whether it is in crack or powder form.

3 Q. So that would be -- one gram would equal -- for pow-  
4 der one gram would also equal One Hundred Dollars?

5 A. That is correct.

6 Q. Okay.

7 A. One gram is a Hundred Dollars for both the powder and  
8 the crack.

9 Q. So I guess if you add up the figures of thirty-eight  
10 point nineteen and six point nine two -- it would be forty-  
11 five point eleven?

12 A. Forty-five point eleven.

13 Q. So forty-five point eleven -- we'd have to multiply  
14 that by One Hundred. Correct?

15 A. One Hundred, yes, sir.

16 Q. And the figure we'd wind up with would be . .

17 A. Four Thousand Five Hundred . .

18 Q. Four Thousand Five Hundred and Eleven Dollars?

19 A. Correct. That would be street value for the total of  
20 crack and cocaine.

21 Q. So in this case, and I show you State's Exhibit 1,  
22 and State's Exhibit 4 -- I'll let you look at State's Ex-  
23 hibit 4 -- Forty-five point eleven grams. The total would  
24 be Four Thousand Five Hundred Eleven Dollars on the streets  
25 of Florence?

J. NIDA ON DIRECT

1 A. Yes, sir. That would be at a Hundred Dollars per gram.

2 Q. All right. Thank you so much. Please answer any ques-  
3 tions that the Defense Attorney may have.

4 THE COURT: Mr. Smaldon.

5 CROSS EXAMINATION

6 BY MR. SMALDON:

7 Q. Good afternoon.

8 A. Yes, sir.

9 Q. Is it Sergeant Nida?

10 A. Yes, sir.

11 Q. Nida?

12 A. Yes, sir.

13 Q. Are you married, Sergeant Nida?

14 A. Yes, sir.

15 Q. Have you got any children?

16 A. One.

17 Q. One child?

18 A. One.

19 Q. So this is a weird question but just go with me. I  
20 am guessing you all use toilet paper. Right?

21 A. Yes, sir.

22 Q. In your house you use toilet paper, right?

23 A. Yes, sir.

24 Q. And you've got three people in the house?

25 A. Yes.

1 Q. If you go to the convenience store and buy toilet  
2 paper, do you buy it per roll of toilet paper?

3 A. Well, my wife usually does all the shopping. I be-  
4 lieve they come in multi-packs.

5 Q. Multi-packs. Why does she get multi-packs?

6 A. Uh, I don't know if they sell it individually. I don't  
7 know.

8 Q. It's probably cheaper that way, isn't it?

9 A. It's cheaper, yes.

10 Q. Right. So you're saying those drugs, whoever they be-  
11 longed to, that person probably didn't spend a Hundred Dol-  
12 lars per gram for those drugs?

13 A. Oh, absolutely not. Most of the time when they are  
14 purchased there may be a large quantity, a large quantity  
15 of crack or cocaine. They are purchasing it at a lower  
16 amount than street value to break it down and sell to make  
17 that profit, and their yield is a lot higher obviously  
18 than what they purchase it for.

19 Q. Right. Same reason you buy toilet paper in bulk?

20 A. I guess so.

21 Q. You would make more by selling it in small quantities.  
22 Right?

23 A. I guess if you had a business license to do so, yes,  
24 sir.

25 Q. Right, right, and if you were a drug dealer you would

1 buy in bulk and sell it in small quantities?

2 A. Absolutely, to make a bigger profit.

3 Q. So whoever bought those drugs, whoever had those drugs,  
4 or not, they didn't spend Forty-five Hundred Eleven?

5 A. Probably.

6 Q. And in your opinion . . .

7 A. No, sir, they would not spend that amount.

8 Q. That wouldn't be a profitable venture?

9 A. No, it would not be.

10 Q. That's all I have for you.

11 SOLICITOR: One more question.

12 REDIRECT EXAMINATION

13 BY SOLICITOR:

14 Q. That's what they could sell it for. Correct?

15 A. That is the street value, regardless of what they  
16 purchased it for. The street value is a Hundred Dollars a  
17 gram when broken down and would have a value on the street  
18 of Four Thousand Five Hundred Dollars for the gross product  
19 there of cocaine and crack.

20 Q. Okay. Thank you so much. I appreciate it.

21 THE COURT: Any Recross?

22 MR. SMALDON: No Recross

23 THE COURT: You have a good day.

24 (Witness excused from stand)

25 THE COURT: Call your next witness.

1 SOLICITOR: That would be the State's case, Your  
2 Honor.

3 THE COURT: All right, members of the jury, if you  
4 would, step into the jury room.

5 We have to take up some motions and we'll be back  
6 with you in just a moment.

7 (Jury excused from Courtroom)

8 THE COURT: All right, any motions from the Defense?

9 MR. SMALDON: Yes, Your Honor. At this time I would  
10 make a motion for a directed verdict as to all charges.  
11 Alternately, and more specifically, on the trafficking  
12 charge and possession with intent to distribute charge.

13 Your Honor, I make those motions because there is no  
14 evidence from the State that was presented -- they have  
15 presented no evidence that Mr. Cannon had dominion and con-  
16 trol --- dominion or control over those drugs.

17 The only evidence that has been presented by them was  
18 that he was merely present at the scene with some drugs.

19 THE COURT: He was in the car and he got out of the  
20 car and ran, and the drugs were in the car. No one else  
21 was in the car.

22 MR. SMALDON: Your Honor, . .

23 THE COURT: I understand your motion but I'm going to  
24 deny it.

25 Anything else?

1 MR. SMALDON: No, sir.

2 THE COURT: Do you want to go over Mr. Cannon's rights  
3 now, or does he want . .

4 MR. SMALDON: We can go forward with that. I think  
5 we know where we are with that.

6 THE COURT: All right, Mr. Cannon. Is that right?

7 DEFENDANT: Yes, sir.

8 THE COURT: If you would, stand up one moment.

9 Swear him in, if you would.

10 (Whereupon, the Defendant was sworn by the Clerk for  
11 purposes of his colloquy with the Court)

12 THE COURT: Mr. Cannon, I want to go over your right  
13 to remain silent, but I want to tell you before I go over  
14 those rights that you can come over here and take the stand  
15 and you can testify in this case.

16 However, I want you to know that if you do testify  
17 you may be cross examined on any and all relevant issues in  
18 connection with your case.

19 Furthermore, if you have a criminal record that in-  
20 volves crimes of dishonesty or false statements, or crimes  
21 that carry a punishment of more than one year, or if the  
22 Court determines the probative value of admitting your re-  
23 cord outweighs its prejudicial effect, then your criminal  
24 record may be introduced to attack your credibility.

25 Do you understand the risk with testifying?

1           DEFENDANT: Yes, sir.

2           THE COURT: However, I want you to understand that  
3 you have a right to remain silent. You don't have to tes-  
4 tify. Nobody can make you testify.

5           And if you choose to exercise that right, I want you  
6 to understand that I will tell that jury they cannot use  
7 that against you in any way. I would tell the jury that  
8 the fact that you did not testify is absolutely no prejudice  
9 against you.

10          I would even tell them they cannot talk about that fact  
11 in the jury room.

12          Do you understand your right to remain silent?

13          DEFENDANT: Yes, sir, I do.

14          THE COURT: Have you talked with your lawyer about  
15 whether you wish to testify or not?

16          DEFENDANT: Yes, sir.

17          THE COURT: And what is your decision?

18          DEFENDANT: I wish not.

19          THE COURT: All right, thank you very much. You may  
20 be seated.

21          For the record, I make a finding that he made that  
22 decision freely and intelligently, and with the advice of  
23 competent counsel.

24          We'll bring back the jury in the morning and go from  
25 there.

1           Go ahead and bring them in and I'll dismiss them.  
2           They don't even have to sit down. Just stand them there  
3           in the front of the Courtroom.

4           (Jury returned to the Courtroom)

5           THE COURT: Thank you, members of the jury. We're  
6           going to let you go for the day. We're going to come back  
7           at nine thirty in the morning, at which time we will finish  
8           the case in the morning.

9           However, I did want to tell you when you leave the  
10          Courtroom to not discuss the case with anybody, even among  
11          your family. Do not get on the computer and research any-  
12          body in this case or anything you have seen or heard.

13          Everything you need will be given to you right here  
14          in this Courtroom.

15          So you just go home and relax, rest, and come back to  
16          finish it up tomorrow.

17          Thank you. You're excused.

18          (Jury excused from Courtroom)

19          THE COURT: I'll see you all in the morning. Thank you.

20          SOLICITOR: Thank you, Judge.

21          MR. SMALDON: Thank you.

22          (Whereupon, the Court stood in recess until September  
23          7, 2016)

24          THE COURT: Good morning.

25          Before you address the jury this morning, a juror has

1     come up to speak to the Clerk of Court.

2             The Solicitor and Defense Attorney have had a chance  
3     to look at my charge and the verdict from.

4             Are there any objections to the charge or the verdict  
5     form?

6             From the State?

7             SOLICITOR: None from the State, Your Honor,

8             THE COURT: From the Defendant?

9             MR. SMALDON: None from the Defense.

10            THE COURT: I just noticed the Defendant is not pre-  
11     sent. We'll wait for him to get here, but I wanted to get  
12     that out of the way.

13            For the record, I will let you make your motions be-  
14     fore you rest, if that's okay. We'll wait for your client  
15     to arrive.

16            (Brief pause)

17            CLERK: Your Honor, it was Juror 131, Jannese Shavers.

18            THE COURT: Okay.

19            CLERK: When I spoke with Ms. Shavers, she said she  
20     got a phone call this morning, and the phone call was from  
21     someone she had worked with who said she was the Defendant's  
22     girlfriend -- she had worked with the girlfriend's aunt,  
23     I believe, if I've got this correctly.

24            The Defendant's girlfriend had called and said the  
25     Defendant was her boyfriend, and Ms. Shavers stopped her

1 right there and said that she couldn't talk to her about it  
2 but the girlfriend said that she just needed to talk to  
3 her.

4 I believe just a few words were exchanged but nothing  
5 else was said after she stopped her.

6 She wanted to bring it to my attention, and I told  
7 her she did the right thing. I had her sent back into the  
8 jury room and told her to please not say anything to the  
9 other jurors but she was concerned.

10 Ms. Shavers was concerned, and I told her it was okay  
11 and that is why we have alternates. So what do you want to  
12 do?

13 SOLICITOR: To hear from her and then the Court de-  
14 cide obviously.

15 She is an honest woman and she did what you told her to  
16 do in my opinion.

17 THE COURT: That could rise to the level of jury tamp-  
18 ering. What would the Defense like me to do?

19 MR. SMALDON: I just -- as far as an investigation or  
20 anything like that I don't really have any part in that,  
21 but as far as asking her questions I would agree.

22 We could bring her out and hear from her.

23 THE COURT: Okay, the motion is to bring her out  
24 is granted.

25 Please bring her out.

1           (Whereupon, Juror Number 131, Jannese Shavers, was  
2 brought into the Courtroom)

3           THE COURT: For the record, if you would give me your  
4 name.

5           JUROR: My name is Jannese Shavers.

6           THE COURT: All right, Ms. Shavers. If you would,  
7 tell me what happened.

8           JUROR: I receive a telephone call and it was unre-  
9 stricted when I answered it, and then she told me that she  
10 was the girlfriend of the Defendant, and I told her you  
11 tell me not to discuss this.

12          THE COURT: Did she say anything else?

13          JUROR: Um, no, sir.

14          THE COURT: And did you say anything else?

15          JUROR: Well, I told her I cannot discuss this and  
16 please don't jeopardize me.

17          THE COURT: And have you said anything to the other  
18 jurors?

19          JUROR: No, sir.

20          THE COURT: Thank you. Anything you would like me  
21 to ask her, from the State?

22          SOLICITOR: I would just question how she recognized  
23 the voice of the Defendant's girlfriend.

24          JUROR: Well, what she did, she called me and she said,  
25 Miss Jan, and I said, who is this, and then when she said

1 who she was -- her aunt used to be my supervisor when I  
2 worked for County D.S.S., and that is how I knew her.

3 THE COURT: Do you still work there?

4 JUROR: No, sir, I'm retired.

5 THE COURT: All right, and is there anything you'd  
6 like to ask?

7 MR. SMALDON: Your Honor, I would ask the Court to in-  
8 quire how this would affect her and if she could continue  
9 to be fair and impartial to my client.

10 THE COURT: All right, Ms. Shavers, taking that into  
11 account, would you have a problem continuing to serve on  
12 this jury?

13 JUROR: No.

14 THE COURT: Do you feel any pressure at all from . .

15 JUROR: No, I don't feel any pressure. I try to be  
16 a fair person.

17 THE COURT: All right, and sitting on this jury could  
18 you continue to listen to the rest of the case?

19 JUROR: Yes, sir.

20 THE COURT: And be fair and impartial to the Defendant  
21 and the State as well?

22 JUROR: Yes, sir.

23 THE COURT: Okay, and make a decision based on the law  
24 as I give it to you and the evidence you have seen in this  
25 Courtroom?

1 JUROR: Yes, sir.

2 THE COURT: And totally disregard that call?

3 JUROR: Yes, sir.

4 THE COURT: All right. Anything else from the State?

5 SOLICITOR: No, sir.

6 THE COURT: Anything else from the Defense?

7 MR. SMALDON: If I may speak to my client for just a  
8 minute?

9 THE COURT: Go ahead.

10 (Brief pause)

11 THE COURT: Thank you, Ms. Shavers.

12 JUROR: Okay.

13 MR. SMALDON: Nothing further from the Defense.

14 I don't have any more questions for her.

15 THE COURT: Thank you. You may go back in there and  
16 we will be with you all in just a moment.

17 (Juror returning to jury room)

18 THE COURT: Do you have any problem with that juror  
19 continuing? I don't have a problem with her.

20 SOLICITOR: I can't decide, Your Honor, though my in-  
21 clination is that if she's that honest, coming forward, and  
22 she said she's not going to discuss it, I would kind of  
23 trust her. I don't believe I do have a problem exactly  
24 with her.

25 THE COURT: Mr. Smaldon?

1 MR. SMALDON: I would leave it up to the Court, Judge.

2 THE COURT: All right, I'm going to let her sit on the  
3 jury. I think she did the right thing. She seems very in-  
4 telligent as far as the Court is concerned.

5 I think she will do the right thing.

6 Anything before we bring in the jury?

7 MR. SMALDON: Let the record reflect the jury is not  
8 present although we would rest, and I will rest immediately  
9 following these motions.

10 I would like the record to reflect that I made it con-  
11 temporaneously after I rest technically.

12 At this time I renew all of my motions, all of my ob-  
13 jections including my motion for directed verdict under the  
14 aforestated grounds. I don't believe I need to re-argue  
15 them but it would be with the same arguments.

16 THE COURT: I would deny those motions.

17 Are you all ready to go with your closing statements?

18 SOLICITOR: The State is ready, Your Honor.

19 THE COURT: All right, bring out the jury.

20 (Jury returned to the Courtroom)

21 THE COURT: The State is recognized for your closing  
22 statement.

23 MR. SMALDON: I would rest on the record, Judge.

24 THE COURT: Yes, sir. The Defense has rested, and now  
25 the State may make its closing statement.

1 SOLICITOR: May it please the Court, Your Honor?

2 Madam Forelady and ladies and gentlemen of the jury.

3 I know this has been a shorter trial but I appreciate  
4 your attention in this matter.

5 Now, the Judge is going to instruct you and tell you  
6 the law in a little bit, and at this point an old saying  
7 comes to mind. It goes like this: If common sense makes  
8 good sense you need no other sense because if you try to  
9 find it you wind up with nonsense.

10 What makes good old-fashioned common sense in this  
11 case? We'll get to that, but let's go over the nonsense  
12 first.

13 The nonsense would be that Enterprise Rental gave him  
14 a car with cocaine and crack and digital scales and tele-  
15 phones and phone drives.

16 That doesn't make any sense whatsoever, you know. The  
17 whole situation -- would you like the optional insurance;  
18 would you like the Wi-fi in the car; would you like the  
19 optional crack and cocaine?

20 That just doesn't make any sense at all. The other  
21 deal would be this. Well, they just didn't clean up the  
22 car so the previous renter left what has street value of  
23 Forty-five Hundred Dollars in that car.

24 Folks, we're not talking about a ten or twenty that  
25 falls out of a pocket. Forty-five Hundred Dollars -- I

1 don't know where you guys are from but Forty-five Hundred  
2 Dollars is a lot of money to me, and I just don't believe  
3 that anyone else would leave Forty-five Hundred Dollars  
4 in the car.

5 You can say, well, this is crack and cocaine, but what  
6 it really is in State's Exhibit 1 is money. This represents  
7 money.

8 The bottom line is that why people traffick drugs is  
9 for filthy lucre, for profit, and I just don't believe that  
10 someone would leave it in this vehicle.

11 I don't believe that they would say, oh, my gosh, I  
12 wonder what these digital scales is doing in there. That  
13 makes no sense. It's nonsense.

14 So what are you left with? You are left with Myron  
15 Cannon being in possession of thirty-eight point nineteen  
16 grams of crack cocaine and six point nine two grams of pow-  
17 der cocaine.

18 Mr. Smaldon would have you believe that the accident  
19 caused these drugs to just reappear or just appear.

20 Well, he could argue the cocaine was under the front  
21 seat and the accident caused the drugs to run to the brake  
22 pedal, but how about the stuff that was just sitting there  
23 because remember what happened.

24 Remember what happened when Drummond hit his car. He  
25 got out of the car and where did they find the crack? In the seat.

1           Maybe it was on the seat but it is just absolutely  
2   disingenuous to say that the drugs were just there.

3           Mr. Smaldon during cross examination said, well, you  
4   know, the Highway Patrol arrested him for DUI and that's why  
5   he was running.

6           Well, he's driving a hundred miles an hour flying down  
7   Pamplico Highway and his car fish-tails. He maintains con-  
8   trol over the vehicle. He is in perfect control of his  
9   vehicle at that time. He wants to get away. Because of a  
10   DUI? Sure, his insurance rates go up if he's caught for  
11   DUI, but that is within your judgment today on September  
12   7th in dealing with this case.

13          That is the only plausible, plausible explanation in  
14   this case. That is the only situation that makes any  
15   sense.

16          Now, it is the law that we have to bring evidence to  
17   you to prove his guilt beyond a reasonable doubt. What we  
18   don't have to show you is proof beyond every sort of doubt.

19          I hear this all the time from all over this country,  
20   that there has to be proof beyond a shadow of a doubt, but  
21   that is not required. You know, people can have a doubt  
22   about anything.

23          I went to church with this woman who was convinced that  
24   we never landed on the moon. She went to her grave saying  
25   we never landed on the moon. A human being never walked

1 on the moon.

2 All right, and people are convinced in all these con-  
3 spiracy theories that go on of something and your imagina-  
4 tion -- you hear that Lee Harvey Oswald and (inaudible) were  
5 on the grassy knoll trying to shoot President Kennedy. You  
6 know that people have crazy ideas, but it is not beyond a  
7 shadow of a doubt. It is beyond a reasonable doubt, and  
8 that is if you are firmly convinced that this Defendant did  
9 this, you must find him guilty.

10 If there is a real possibility that he didn't do it,  
11 of course, your verdict would be not guilty, but, folks,  
12 the only plausible, plausible situation we find here is  
13 that he was in possession and control of these drugs.

14 He wasn't just merely present where drugs were, he was  
15 in possession and control of that vehicle and he was alone.

16 The drugs were on the seat and on the floorboard in  
17 plain view. He knew they were there and he ran from the  
18 cops because he knew they were there. That is the only  
19 plausible thing.

20 Now, obviously he is charged with the drugs, and I am  
21 going to ask you to find him guilty on the trafficking of  
22 both crack and possession with intent to distribute pow-  
23 der cocaine.

24 Now, in terms of the crack, if he had more than ten  
25 grams of crack, that is trafficking, because trafficking is

1 is based on weight. If he is in possession and control of  
2 over ten grams of crack, and thirty-eight grams is more than  
3 ten, he's guilty of trafficking.

4 There is a permissive inference that you can gather  
5 that if he has more than one gram of powder cocaine he has  
6 an intent to distribute that cocaine. There is a permis-  
7 sive inference.

8 And obviously there was seven times the inferential  
9 amount. But it's not only that, but what else can you draw  
10 an inference that he had an idea of selling this stuff?  
11 The digital scales.

12 You remember when I asked Bazen what the scale was  
13 used for that he said it was used to weigh drugs to sell.  
14 That is the inference right there.

15 When I was a kid there was a time my mother forced me  
16 to eat carrots. We used to go to old-time grocery stores.  
17 This was before A and P and all of those, and I know I  
18 don't look that old but I am.

19 We went to the grocery store and back then was before  
20 they pre-packaged meat, and you would look through the big  
21 closed container at the meat, and they would say, Mrs.  
22 Jepertinger, how much would you like of chopped meat; I'd  
23 like two pounds of hamburger, and then they would fill up  
24 this cardboard box and before they put the final packaging  
25 on it and we paid for it, what did they do? They placed it

1 on a scale.

2 We didn't bring the scale with us. The buyer didn't  
3 bring the scale. The seller has the scale. That's an in-  
4 ference that you can use, and like Mr. Smaldon said, you  
5 have to consider the evidence, look at the evidence, what  
6 you've heard.

7 And these objects -- this evidence is what you consider  
8 and not some mere speculation or some fanciful deal like the  
9 Enterprise situation, but this is what you consider.

10 And when you look at that, there is an inference that  
11 he had an intent to distribute that cocaine.

12 We learned from Lieutenant Hansen that it can be con-  
13 verted to crack.

14 Some of you might be thinking, well, he might have  
15 been, maybe just because Mr. Smaldon questioned that one wit-  
16 ness about buying toilet paper in bulk or people buy cig-  
17 arettes in bulk, so how do you know he wasn't just doing  
18 that?

19 Are you telling me it was for his own use, this much  
20 drugs? He could smoke it up? It just doesn't go there.  
21 However, His Honor is going to inform you that there is a  
22 lesser included offense of possession with intent to dis-  
23 tribute which is possession of cocaine, and, like I said, it  
24 is a permissive inference that you can make.

25 Whatever you decide is your business, not mine. You

1 are charged with that duty.

2 Then I need to address as well that he failed to stop  
3 for a blue light, and I think that is just uncontravertible.  
4 In Mr. Smaldon's opening statement I don't think he had  
5 much to say about that. He ran from the cop; no question  
6 about that.

7 No question that the blue lights were on and no ques-  
8 tion that he didn't stop; that he kept on going at a high  
9 rate of speed; you heard that, and he's charged with that.

10 He is also charged with resisting arrest. Now, a lot  
11 of you folks might say, well, I don't like to say he re-  
12 sisted arrest; I don't like that he was tased. Well, I  
13 can't put myself in Sergeant Drummond's shoes.

14 But it was after midnight and the guy had been speed-  
15 ing and running from the cops. The cop is chasing him and  
16 he's not stopping. He's all over the road.

17 He chases him eventually into a bean field where he gets  
18 out of his vehicle and runs, tries to get away. Then he  
19 chases him and tells him to stop but he didn't stop.

20 He didn't pull his service revolver. He used a taser,  
21 and maybe you don't like that and I don't blame you if you  
22 don't, but the question is whether he was resisting arrest.  
23 Don't think about the tasing so much that you lose sight of  
24 the fact that he told him to stop, stop, and he did not  
25 stop.

1           He did not stop, and we know Sergeant Drummond no  
2 longer works for the Sheriff's Office, but the question is  
3 whether Myron Cannon resisted arrest, and he did that.

4           When a cop is chasing someone and says, stop, stop,  
5 what else is a cop supposed to do when the person doesn't  
6 stop? What else is he supposed to do?

7           Folks, this verdict is your verdict. This decision  
8 is yours to make, but I'm telling you folks that this guy  
9 is guilty, unfortunately.

10          You know, I wish Myron Cannon was here to be pre-  
11 sented an award for being a great guy. I wish we could do  
12 that, and I would be the first one to extend my hand to  
13 him, but the fact is that Myron Cannon decided to cut corn-  
14 ers in life, and whether it was that night or whether it  
15 was just that night or whether it was pure greed, whether  
16 it -- whatever it was, he did wrong.

17          I'm sorry for him, but he did wrong, and you've taken  
18 an oath to do right, to speak the truth, and I ask you to  
19 find Mr. Cannon guilty of trafficking in crack, possession  
20 with intent to distribute powder cocaine, as His Honor will  
21 explain to you, and resisting arrest.

22          Thank you..

23          THE COURT: All right, the Defense is recognized.

24          MR. SMALDON: May it please the Court?

25          THE COURT: Yes, sir.

1 MR. SMALDON: Counsel, and ladies and gentlemen of the  
2 jury.

3 There is a poster I've seen, an advertising poster,  
4 and it shows a freshly paved highway. You can tell because  
5 the asphalt is so dark and black, and it has kind of fresh  
6 paint on it, and it focuses in on the highway, and there  
7 is a freshly painted yellow line on the left side of the  
8 road. In the middle of that yellow line there is a dead  
9 possum, and that yellow line goes right over the possum  
10 and keeps on going.

11 At the bottom of that poster it says, not my job, as-  
12 suming the painter didn't want to move the possum and he  
13 said it is not my job.

14 I know what we've heard from the State this week, on  
15 yesterday -- not my job. That's kind of what we heard  
16 from Deputy Drummond, not my job.

17 Former Deputy Drummond. He doesn't work there any  
18 more.

19 That's what we heard from Deputy Urqhart, not my job.

20 Drugs were found in a car that didn't belong to Myron  
21 Cannon. It was rented from Enterprise Rental. Who rented  
22 it out? Not my job, not my job, is what they've said.

23 Well, drugs were found. Were simple fingerprint tests  
24 done on the bag of cocaine, on the bag of crack? What did  
25 they say? Well, that's not my job.

1           The digital scales were found -- same thing. Cell  
2 phones were found. If you leave a cell phone in a bar, in  
3 this Courthouse, in church, what do they do when it's found?  
4 They try to figure out who it belongs to. Right? A man  
5 would want his cell phone back.

6           Did they talk about whose cell phones they were? Good  
7 God, man, they didn't even try to figure out who the cell  
8 phones belonged to, because it's not their job.

9           What did Deputy Drummond say, or former Deputy Drummond?  
10 As far as I'm concerned if the drugs were in a vehicle you  
11 are driving they are your drugs, but then later on he said,  
12 well, drugs are left in rental cars, or he said drugs are  
13 left in patrol cars.

14          Wonder why he doesn't work there any more? Literally  
15 it isn't his job any more. Literally it is not his job any  
16 more.

17          My man ran from the cops because he was drunk and driv-  
18 ing a car. I wonder if his drunk driving trial, if he had  
19 one--as counsel earlier said, he had control of the drugs.  
20 He didn't even know how drunk he was when he was driving a  
21 car. There wasn't any breath test on him.

22          What do you think those cops did when they found the  
23 drugs? They smiled. We've got him. He's run from us and  
24 we've got him. They're elated, I'm sure. So do you think  
25 that they gave him due process?

1           Do you think that they said when they found the drugs,  
2   well, we might have him; let's figure out --let's really try  
3   to get him. Let's figure out -- they did nothing in the  
4   case to show that they are his. The only test done was to  
5   determine what kind of drugs these were.

6           So we'll just let a jury decide. They don't want to  
7   do their work. I hate to be so dramatic, but they don't  
8   want to do their work.

9           They don't want to test the scales, they don't want to  
10   test the drugs, they don't want to test the cell phones. They  
11   don't even want to test who the car was rented out to --  
12   don't want to figure out who Myron was drinking with earl-  
13   ier that night.

14          He was drunk. Was he drinking by himself? I don't drink  
15   by myself. Who else was in the car earlier that night? Did  
16   they try to figure out whose company he was keeping that  
17   night or who was in the car earlier in the day? They didn't  
18   bother. Did not bother.

19          This is awful, it's sad, and I guess it saved them a  
20   little bit of time, and they wanted to try this trafficking  
21   case in<sup>2</sup>day, I guess. If Mr. Drummond had had drugs found  
22   in his patrol car before and they are accusing him of having  
23   the drugs and trafficking in drugs, he would want those  
24   tests to be done.

25          He would want them to figure out who they belonged to.

1 I think everyone on that side would, but they didn't think  
2 he deserved that.

3 Remember that it wasn't their job. They came to the  
4 possum in the highway and they painted over the possum.  
5 They needed to prove to you beyond a reasonable doubt, all  
6 reasonable doubt. Not one of them, not seventeen of them,  
7 but all reasonable doubt. That is their job.

8 So what did they prove? I guess they have maybe proven  
9 that Myron was in the car. They could probably prove that  
10 he was -- maybe prove that he ran from the police. I won-  
11 der though where is the video. We've got at least three  
12 deputies and I think a highway patrol person was there that  
13 didn't testify. Maybe two, maybe three deputies -- they  
14 said there were a lot there. I don't think they knew how  
15 many were there.

16 All of those cars there without any video? That is  
17 their job. No video. Nothing. No body cams. They have  
18 treated this like it was a speeding ticket.

19 So what are they trying to do? They've trying to  
20 leave out, trying not to do their jobs because they don't  
21 want any questions. They want you to answer their questions  
22 for them, but that is not your purpose. That's not.

23 There is no video, nothing. Well, we have these photos,  
24 right? No, there is no photo, no pictures. I've got an  
25 I-phone and I-pad and a laptop seven feet away from me

1 right now, and all have cameras.

2 They could have shown you where the drugs were found  
3 and take pictures of where they were supposedly found. Not.  
4 You've got none of that. No pictures, no video.

5 They didn't do anything. Nothing. That's their job.  
6 Their job is to prove to you beyond a reasonable doubt that  
7 Myron Cannon is guilty.

8 The Judge is going to tell you that the law says that  
9 mere presence around drugs isn't enough. He will read you  
10 the law that mere presence where drugs are around is not  
11 enough.

12 The State must prove to you beyond a reasonable doubt  
13 that Myron had dominion and control over the drugs -- do-  
14 minion and control over the drugs.

15 The drugs weren't found on him. He didn't toss the  
16 drugs out of the car. They say he ran from the cops. Why  
17 didn't he get rid of them? He didn't know they were there.  
18 They weren't his. They weren't his.

19 I don't know where they were. Nobody knows where they  
20 were originally.

21 I want to clear up any confusion because I'm not say-  
22 ing that Myron is a user of drugs. He is not. He didn't  
23 know the drugs were there. Nothing they have done proves  
24 that he did. Nothing.

25 So their job, their duty, is to prove that to you

1   beyond a reasonable doubt. What is a reasonable doubt?

2   The Judge will define that for you.

3       I'm not going to give a percentage or anything like it,

4   but I will give an example of it. All right, an example.

5   Let's say that you have a box, a big box, and you put a  
6   mouse in the box and then you put a cat in the box and you  
7   close the lid to the box.

8       You leave it overnight and you come back that next  
9   morning and you open up the lid and look in the box and the  
10   cat's in there. He's asleep. He's purring and happy. No  
11   mouse. The mouse is gone.

12       Well, I would say that that would prove to you or I  
13   could prove to you beyond a reasonable doubt that that cat  
14   ate that mouse. Right? That's common sense. The cat ate  
15   that mouse.

16       All right. Take that same box and put a mouse in the  
17   box and you put a cat in the box, and do the same thing,  
18   close the lid. Come back in the morning and look in the  
19   box -- same thing.

20       The cat's in the box and the mouse is not in the box  
21   as you look around but then you look in the corner and you  
22   see a mouse-size hole. A mouse-size hole in the box, and  
23   that mouse-size hole is called reasonable doubt.

24       Do we have a mouse-size hole in this case? We have a  
25   hole so big and deep that we could drive through it.

1           We have nothing that ties the drugs to Myron. Nothing.  
2       He said, she said, all this stuff. We have a car that wasn't  
3       his. Don't know who it belonged to or how long it was  
4       rented out. We don't know who rented it. We don't know  
5       who was in there earlier that day.

6           We found drugs strewn about in a car after a car acci-  
7       dent. Who knows where they came from? Nothing that ties  
8       Myron to the drugs.

9           That's why when you consider the evidence you must find  
10      him not guilty because the State said it's not my job. Law  
11      enforcement said it's not my job.

12          Ladies and gentlemen, when they said it's not my job,  
13      it's your job, find Myron not guilty because he is not  
14      guilty.

15          Ladies and gentlemen, pay attention to the Judge's in-  
16      structions on the law and then you put two and two together  
17      and you will know the truth. You know they failed to meet  
18      their high burden.

19          Thank you.

20          THE COURT: Members of the jury, it is now my duty to  
21      instruct you on the law applicable to this case, and in that  
22      regard it is your duty as jurors to accept and apply the  
23      law as I now state it to you.

24          Furthermore, it is your exclusive duty to decide all  
25      of the issues of fact in this case and to determine the

1 effect, the value, weight and truth of the evidence pre-  
2 sented.

3 Both the State and the Defendant have the right to  
4 expect that you will carefully consider and evaluate the  
5 evidence, and apply the law of this case to it so that in  
6 the end both the State and the Defendant will have received  
7 a fair and impartial trial.

8 I want you to understand that when I use the word De-  
9 fendant I am referring to Myron Cannon. In this case, the  
10 State of South Carolina charges the Defendant with the of-  
11 fenses known as trafficking in cocaine base, possession with  
12 intent to distribute cocaine, failure to stop for a blue  
13 light, and resisting arrest.

14 To these charges, the Defendant has entered a plea of  
15 not guilty. These pleas of not guilty place the burden of  
16 proof on the State to prove the guilt of the Defendant to  
17 you beyond a reasonable doubt.

18 It is vital to understand that the Defendant is pre-  
19 sumed under the law to be innocent of the charges. It is  
20 a fundamental rule of our law that a Defendant, regardless  
21 of the seriousness of the charges against him, is always  
22 presumed innocent of the crimes for which he is charged,  
23 unless and until his guilt has been proven by evidence  
24 that satisfies you beyond a reasonable doubt.

25 The presumption of innocence is not a mere legal theory

1 or legal phrase. The presumption of innocence is very im-  
2 portant. You need to understand that this presumption of  
3 innocence accompanies the Defendant from the time of his  
4 arrest and appearance in this Court and it continues with  
5 the Defendant even after you retire to the jury room to de-  
6 liberate.

7 In other words, a Defendant receives the benefit of a  
8 presumption of innocence until the very end of this trial  
9 when you the jury will deliberate upon the evidence and de-  
10 cide whether the State has proved his guilt on each and  
11 every charge beyond a reasonable doubt.

12 During this trial you and I have had separate duties  
13 to perform. As the Trial Judge, it is my responsibility  
14 to preside over this trial. Therefore, I have a duty to  
15 rule upon the admissibility of the evidence offered during  
16 the trial.

17 In that regard, you are to consider only the evidence  
18 before you. Thus, you are to consider only the testimony  
19 which has been presented from this witness stand, together  
20 with any exhibits that may have been admitted into the re-  
21 cord of the case.

22 Furthermore, I have the additional duty to charge you  
23 on the law applicable to this case, and in that regard it  
24 is your duty to accept and apply the law as I now state it  
25 to you.

1           If you have any pre-conceived ideas as to what the law  
2 is or what the law ought to be and it does not agree with  
3 what I tell you the law is then you are obligated under your  
4 oath to abandon these pre-conceptions and accept the law as  
5 I now state it to you.

6           In this trial, you are the sole and exclusive judge  
7 of the facts, and I am the judge of the law. Do not infer  
8 that I have any opinion about the facts in this case from  
9 anything I have said or done during the course of this trial.  
10 In this regard, the law simply does not permit me to have  
11 an opinion about the facts, and as jurors it is your duty  
12 alone to determine the effect, value, weight and truth of  
13 the evidence offered during the course of this trial.

14           Furthermore, it is your job as jurors to determine  
15 the credibility and believability of the witnesses who have  
16 testified in this case.

17           You must evaluate the evidence and determine which evi-  
18 dence convinces you of its truth. In determining the be-  
19 lievability of the witnesses who have testified in this  
20 trial you may believe one witness over many, or many over  
21 one.

22           You may believe a part of the testimony of a witness  
23 and reject the remaining part. You may believe the testi-  
24 mony of a witness in its entirety or reject it in full.

25           You may consider whether the witness has an interest in

1 the result of the trial, whether the witness is prejudiced  
2 toward either party, the opportunity for the witness to  
3 have seen the matters and things about which the witness  
4 may testify, and the way the witness acts on the witness  
5 stand.

6 Evidence may be direct or circumstantial. Direct evi-  
7 dence is testimony by a witness about what the witness per-  
8 sonally saw or heard or did.

9 Circumstantial evidence is indirect evidence. That is,  
10 it is proof of one or more facts from which one can find  
11 another fact.

12 You are to consider both direct and circumstantial  
13 evidence equally.

14 Proof beyond a reasonable doubt is proof that leaves  
15 you firmly convinced of the Defendant's guilt. There are  
16 few things in this world that we know with absolute cer-  
17 tainty, so even in criminal cases the law does not require  
18 proof that overcomes every possible doubt.

19 However, if based upon your consideration of the evi-  
20 dence you are firmly convinced that the Defendant is guilty  
21 of the crimes charged, you must find him guilty.

22 If, on the other hand, you think there is a real possibil-  
23 ity that he is not guilty, you must give him the benefit  
24 of the doubt and find him not guilty.

25 Please understand that a reasonable doubt may arise

1 from the evidence which has been presented in the case or  
2 from the lack of evidence that has been presented in the  
3 case.

4 It is your responsibility to determine whether or not  
5 reasonable doubt exists as to the guilt of this Defendant  
6 on each and every charge.

7 I charge you that a Defendant is entitled to every rea-  
8 sonable doubt arising in the whole case. If, upon any is-  
9 sues of fact essential to conviction and a verdict of guilt  
10 you have a reasonable doubt as to how that issue should be  
11 resolved, it would be your duty to resolve that reasonable  
12 doubt in favor of the Defendant.

13 It is important to understand that a Defendant is not  
14 required to prove his innocence. Instead, the State is re-  
15 quired by law to prove every essential element of the charges  
16 against the Defendant by evidence which satisfies you of  
17 his guilt beyond a reasonable doubt.

18 Only then can you convict the Defendant and find him  
19 guilty.

20 I further instruct you that the fact that the Defen-  
21 dant in this trial did not testify on his behalf is not a  
22 factor to be considered by you in any way in your delibera-  
23 tions and in your consideration on the question of guilt or  
24 innocence.

25 In this regard, the Defendant has a constitutional

1 right to remain silent, and the exercise of this right must  
2 not be considered by you in your deliberations.

3 The fact that the Defendant did not testify should not  
4 even be discussed in the jury room.

5 The burden of proof, as I've stated to you, is on the  
6 State. The Defendant has no obligation to prove his inno-  
7 cence. The burden of proof remains with the State to prove  
8 the Defendant's guilt beyond a reasonable doubt, and the  
9 fact that a Defendant did not testify is not a factor to  
10 be considered by you in deciding the guilt or the innocence  
11 of the Defendant.

12 The Defendant is charged with trafficking cocaine base.  
13 The State must prove beyond a reasonable doubt that the  
14 Defendant knowingly sold, manufactured, cultivated, deliv-  
15 ered, purchased, brought into this State, provided financial  
16 assistance or otherwise aided, abetted, attempted or con-  
17 spired to sell, manufacture, cultivate, deliver, purchase  
18 or was knowingly in actual or constructive possession of  
19 cocaine base.

20 The State must also prove beyond a reasonable doubt  
21 that the amount of cocaine or any mixture containing cocaine  
22 was twenty-eight grams or more but less than one hundred  
23 grams.

24 Also, the State must prove beyond a reasonable doubt  
25 that the Defendant possessed cocaine with the intent to

1 distribute it. To prove possession, the State must prove  
2 beyond a reasonable doubt that the Defendant had both the  
3 power and the intent to control the disposition or use of  
4 the cocaine.

5 Possession may be either actual or constructive. Act=  
6 ual possession means that the Defendant had dominion and  
7 control or the right to exercise dominion or control over  
8 either the cocaine itself or the property on which the co-  
9 caine was found.

10 Mere presence at the scene where the drugs were found  
11 is not enough to prove possession. The Defendant's know-  
12 ledge and possession may be inferred when a substance is  
13 found on the property under the Defendant's control.

14 However, this inference is simply an evidentiary fact  
15 to be taken into consideration by you along with the other  
16 evidence in the case and be given the weight you decide it  
17 should have.

18 Two or more persons may have joint possession of a  
19 drug. The State must also prove beyond a reasonable doubt  
20 that the Defendant intended to distribute the cocaine.

21 Distribute means to deliver other than by administer-  
22 ing or dispensing a drug.

23 Intent may be shown by acts and conduct of the Defen-  
24 dant and other circumstances from which you may naturally  
25 and reasonably infer intent.

1 In determining whether the Defendant had the intent  
2 to distribute the cocaine, you may consider the circumstan-  
3 ces surrounding the Defendant's alleged possession. You  
4 may consider the amount of the substance alleged to have  
5 been possessed, the manner in which it was allegedly pos-  
6 sessed, the place where it was allegedly possessed, and other  
7 factors which you consider to be important.

8 You must find that a Defendant did not intend to have  
9 the cocaine solely for his own use. Possession of more  
10 than one gram of cocaine creates an inference that the De-  
11 fendant possessed the cocaine with intent to distribute it.

12 This inference does not relieve the State from proving  
13 beyond a reasonable doubt that the Defendant had the in-  
14 tent to distribute.

15 It is simply an evidentiary fact to be taken into con-  
16 sideration by you along with the other evidence in the case  
17 and be given the weight you decide it should have.

18 If you find the Defendant did not possess with intent  
19 to distribute cocaine, you may find the Defendant guilty of  
20 possession of cocaine.

21 To prove possession the State must prove beyond a rea-  
22 sonable doubt the Defendant had both the power and the in-  
23 tent to control the disposition or use of the cocaine.

24 Possession may be actual or constructive. Actual  
25 possession means that the cocaine was in the actual physical

1 ~~custody~~ of the Defendant. Constructive possession means that the  
2 Defendant had dominion and control or the right to exercise  
3 dominion and control over either the cocaine itself or the  
4 property on which the cocaine was found.

5        Mere presence at the scene where the drugs were found  
6 is not enough to prove possession. The Defendant's know-  
7 ledge and possession may be inferred when a substance is  
8 found on property under the Defendant's control.

9        However, this inference is simply an evidentiary fact  
10 to be ~~taken~~ into consideration by you along with the other  
11 ~~evidence~~ in the case and to be given the weight you decide  
12 it should have.

13        Two or more persons may have joint possession of a drug.

14        Also, the Defendant is charged with failure to stop  
15 for a blue light. In order to prove this crime, the State  
16 must prove beyond a reasonable doubt that the Defendant was  
17 driving a motor vehicle; that the Defendant was driving the  
18 motor vehicle on a road, street or highway in this State;  
19 that the Defendant was signaled to stop by law enforcement  
20 vehicle by means of a siren or flashing lights, and that  
21 the Defendant did not stop.

22        In determining whether or not there are mitigating cir-  
23 cumstances which would justify a Defendant's failure to  
24 stop for a blue light, you may consider actual road condi-  
25 tions.

1           Also, other conditions such as lighting and weather,  
2 driver and/or passenger safety, and any other circumstances  
3 you believe to be reasonably -- that would reasonably miti-  
4 gate the offense.

5           An official signal requiring a motorist to stop may be  
6 a siren or flashing lights but both are not required.

7           An attempt to increase the speed of a vehicle or in  
8 some other manner avoid the pursuing law enforcement vehicle  
9 when signaled by a siren or flashing light may be considered  
10 evidence of failure to stop for a blue light.

11           However, it is merely an evidentiary fact to be taken  
12 into consideration by you along with all other evidence in  
13 the case and to be given the weight that you think that it  
14 should receive.

15           The State must prove beyond a reasonable doubt the De-  
16 fendant resisting a lawful arrest being made by a person a  
17 Defendant knew or reasonably should have known was a law  
18 enforcement officer.

19           Knowingly means with knowledge, consciously done.

20           Wilfully means done intentionally and not done by ac-  
21 cident.

22           Resisting means to oppose, strive against or obstruct.

23           Obstruct means to impede, hinder or interfere with.

24           Even peaceful, non-violent and indirect obstruction of  
25 an arrest is considered resisting arrest.

1           If the means used are sufficient to prevent the of-  
2   ficer from making an arrest, the Defendant is guilty of ..  
3   resisting arrest.

4           Ladies and gentlemen, I am now drawing to the end of  
5   my charge, and I want you to clearly understand that you  
6   are not partisans or advocates for the State or for this  
7   Defendant.

8           You do not serve as jurors to reward your friends or  
9   to punish your enemies. In this regard, you have been se-  
10   lected by both the State and this Defendant to be fair and  
11   impartial jurors. It is your duty by your joint delibera-  
12   tions to determine the truth in this case, giving to this  
13   Defendant the benefit of every reasonable doubt on each  
14   and every issue.

15          Then to the facts as you determine them to be true you  
16   should take and apply the law which has been given to you  
17   by this Court and thus arrive at a verdict which speaks the  
18   truth in this case.

19          In fact, the word verdict which has a Latin derivative  
20   means a true saying. Thus, when you have accomplished these  
21   responsibilities you will have satisfied your oath as jurors  
22   and you will have discharged your duty to this Court.

23          Now, Ms. Bailiff, would you hand the Forelady this  
24   verdict form?

25          Ms. Forelady, I have had handed to you the verdict

1 form. When you arrive at a verdict in this case you will  
2 write your verdict on the form for the charges.

3 If the State has failed to prove the guilt of this De-  
4 fendant beyond a reasonable doubt, your verdict would be  
5 two words, not guilty.

6 However, should the State have proved their case against  
7 against the Defendant beyond a reasonable doubt, then your  
8 verdict would be one word, guilty.

9 Ms. Forelady, once a decision has been made if you  
10 would just check whichever choice is yours on the verdict  
11 form on each and every charge.

12 Also, please understand that the verdict that you ren-  
13 der in this case must be the verdict of each and every  
14 juror. It must be your unanimous verdict. All twelve of  
15 your jurors must agree on the verdict which you authorize  
16 the Forelady to write for the jury.

17 Ms. Forelady, members of the jury, I want you to fur-  
18 ther understand that the order in which the choices of ver-  
19 dict appear on the verdict form are not suggestive of any  
20 verdict on the part of this Court. The verdict in the case  
21 is to be determined by you and not the Court.

22 Furthermore, ladies and gentlemen, please understand  
23 that even though I have given the verdict form to the Fore-  
24 lady it is not her verdict alone. It is the verdict of all  
25 twelve of you, and I emphasize again that it must be

1 unanimous.

2 Now, you will retire to the jury room. However, I'd  
3 ask that you do not begin your deliberations until you are  
4 told to do so. The law requires that I now consult with  
5 the attorneys before you begin your deliberations. After  
6 I have done so, the bailiff will bring in the items of evi-  
7 dence and instruct you to begin your deliberations at that  
8 time.

9 Also, should you have any questions during your delib-  
10 erations you must put them in writing and send them to me  
11 by way of the Bailiff.

12 The Court Bailiff will be placed immediately outside  
13 of the jury room door to provide security and assistance  
14 for you during your deliberations.

15 Once you have reached your verdict, please knock on  
16 the jury room door and advise the Bailiff to advise the  
17 Court that you have reached a verdict, and we will return  
18 you to the Courtroom as promptly as possible thereafter.

19 Thank you. You may retire to the jury room but do  
20 not begin your deliberations until you are told to do so.

21 (Jury excused from Courtroom)

22 THE COURT: All right. Any objections to the charge  
23 from the State?

24 SOLICITOR: No.

25 THE COURT: How about from the Defendant?

1 MR. SMALDON: Not from the Defense.

2 THE COURT: All right. Why don't you all come take a  
3 look at the State's 1, 2, 3 and 4.

4 (Brief pause)

5 THE COURT: All right, bring out the alternate, and  
6 take these Exhibits in.

7 (Jury instructed to begin deliberations at 10:51 A.M.)

8 (Alternate juror excused by the Court)

9 (Court stood at ease for a brief period)

10 THE COURT: We have questions from the jury. All  
11 right, everybody have a seat.

12 We have two questions from the jury. The first ques-  
13 tion is intent -- is intent to distribute based on quan-  
14 tity or the way it is packaged, and I'm going to answer  
15 that there may be a permissive inference of intent to dis-  
16 tribute if the cocaine weighs over one gram.

17 They also have another question that says, or any  
18 other factors, and I'm going to answer, also the jury may  
19 draw a permissive inference of intent to distribute also  
20 based on packaging and other factors.

21 Any objection from the State?

22 SOLICITOR: No, sir.

23 THE COURT: Any objections from the Defense?

24 MR. SMALDON: No, sir.

25 THE COURT: All right, go ahead and I'll have the

1 Court Reporter mark that and send it on in.

2 (Court stood at ease until the jury was brought back  
3 to the Courtroom at 11:41 A.M.)

4 THE COURT: Ms. Forelady, has the jury reached a ver-  
5 dict?

6 FORELADY: We have, sir.

7 THE COURT: If you would be so kind as to hand it to  
8 the Bailiff and she will hand it to me.

9 (Brief pause)

10 THE COURT: I find the verdict form is in order. If  
11 you would publish the verdict?

12 CLERK: State of South Carolina versus Myron A. Cannon,  
13 Indictment 2016 GS 21 00425.

14 As to the charge of trafficking in cocaine base, we,  
15 the jury, unanimously find the Defendant, Myron A. Cannon,  
16 guilty.

17 As to the charge of possession with intent to distri-  
18 bute cocaine, we, the jury, unanimously find the Defendant,  
19 Myron A. Cannon, guilty.

20 As to the charge of possession of cocaine, we, the  
21 jury, unanimously find the Defendant, Myron A. Cannon . .

22 THE COURT: It was struck through and she initialed  
23 it as well.

24 CLERK: Guilty.

25 THE COURT: Not guilty.

1 CLERK: Not guilty.

2 As to the charge of failiure to stop for a blue light,  
3 we, the jury, unanimously find the Defendant, Myron A.  
4 Cannon, guilty.

5 As to the charge of resisting arrest, we, the jury,  
6 unanimously find the Defendant, Myron A. Cannon, guilty.

7 Signed by the Forelady and dated September 7, 2016.

8 Members of the jury, if this is your verdict, please  
9 raise your right hands.

10 Thank you.

11 THE COURT: Any request for polling by the Defense?

12 MR. SMALDON: We would request that you poll the  
13 jurors.

14 THE COURT: All right, please poll the jury.

15 (Whereupon, individual jurors' names were called and  
16 questioned as follows:

17 Members of the jury, as I call your name, please raise  
18 your hand. I'm going to ask you two questions and please  
19 respond to both questions.

20 Was this your verdict then, and is it still your  
21 verdict now?

22 All members of the jury answered in the affirmative.)

23 (Whereupon, the jurors were sent to the jury room).

24 THE COURT: If you would, please step into the jury  
25 room for just a moment and let me speak to the lawyers and

1 we'll get back with you.

2 (Jurors to jury room)

3 THE COURT: I just want to make sure you are okay  
4 with the verdict form, both the State and the Defense, on  
5 number three, as to the charge of possession of cocaine.

6 The forelady checked guilty and then she marked through  
7 it and initialed it, which makes sense to me.

8 Do you want to take a look at it and let me know your  
9 thoughts?

10 (Brief pause)

11 It looks to me like to me she checked it and then  
12 marked through it. They didn't need to answer it, so she  
13 struck through it and initialed it.

14 SOLICITOR: It appears fine to the State, Your Honor.

15 THE COURT: How about the Defense?

16 MR. SMALDON: I don't see anything wrong with it for  
17 the Defense.

18 THE COURT: Then I will let the jury go and hear your  
19 motions.

20 (Jury was brought in and excused by the Court)

21 THE COURT: All right, any motions from the Defense?

22 MR. SMALDON: Your Honor, I move at this time for a  
23 new trial for the Defendant.

24 THE COURT: All right. I would deny that motion.

25 Thank you.

1 THE COURT: Ready for sentencing?

2 MR. SMALDON: Yes, sir.

3 SOLICITOR: Mr. Cannon has a prior record, Your Honor.  
4 This is what I guess is important, Your Honor, in terms of  
5 enhancement.

6 It looks like October 25th, 2004, he had a prior pos-  
7 session of cocaine.

8 He also had a prior possession of crack cocaine that  
9 he pled to on June 28, 2003.

10 Also, at the same time, Your Honor, he pled to failure  
11 to stop for a blue light on that same day which would have  
12 been a first offense then.

13 The crimes of trafficking in cocaine base which he has  
14 been convicted of has a mandatory minimum of twenty-five to  
15 thirty years.

16 The possession with intent to distribute cocaine car-  
17 ries from ten to thirty years; the blue light carries five  
18 years; resisting arrest carries one year, Your Honor.

19 Normally I don't do this but there is no reason for  
20 the State to call for the mandatory minimum of twenty-five  
21 years in this matter.

22 THE COURT: So you see no reason to go to twenty-five?

23 SOLICITOR: I know he has a record for it, Judge, but  
24 twenty-five years is a long time.

25 He didn't murder anybody, harm anybody or anything of

1     that nature. I would ask -- the State would be satisfied  
2     with twenty-five years.

3             THE COURT: All right, let me hear from the Defense.

4             MR. SMALDON: Your Honor, as you know, I want to pre-  
5     serve the record on this. I have an objection to the sen-  
6     tencing under the Eighth Amendment, cruel and unusual, and  
7     I believe that the sentence is unduly cruel based on his  
8     prior offenses being years ago.

9             I have seen the federal guidelines. I have seen those  
10    of neighboring states. I have seen more than I've wanted  
11    to.

12            I would at this time ask for a -- the relief I would  
13    ask for I guess is a declaratory judgment, that the statute  
14    is unconstitutional.

15            THE COURT: All right. I would deny your motion.

16            In reference to the resisting arrest, the sentence of  
17    the Court is one year.

18            In reference to the failure to stop for a blue light,  
19    the sentence of the Court is five years.

20            In reference to the PWID cocaine third, the sentence  
21    of the Court is twenty-five years.

22            In reference to the trafficking, the sentence of the  
23    Court is twenty-five years.

24            I will run all of them concurrent.

25            Thank you.

1           SOLICITOR: Thank you, your Honor. As far as allocution  
2 being an issue -- I know you have sentenced him, but no  
3 family members or anything else . .

4           MR. SMALDON: Certainly the family has been in and out  
5 and his family is here. I have not been informed that they  
6 wish to speak.

7           THE COURT: Thank you.

8       -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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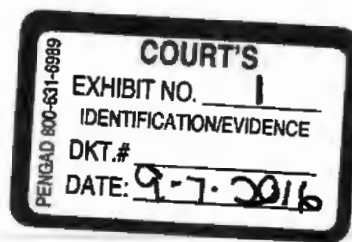
## 1 CERTIFICATE

2 I, HARRIET P. BENNETT, Court Reporter for South Carolina  
3 Court Administration, hereby certify that the foregoing  
4 Transcript was prepared from the records of Keeshia Reed to  
5 the best of my ability, having been heard in the Court of  
6 General Sessions for Florence County, South Carolina, on  
7 September 6 and 7, 2016.

8 FURTHER, I certify that I am neither of kin nor counsel  
9 to any party to this action, nor do I have any interest in  
10 the same.

11 May 4, 2017

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Question #2.

- Is intent to distribute based on quantity or the way it is packaged?

Or any other factors?

Linda Bratt 9/7/2016

There may be a permissive inference of intent to distribute if the cocaine weighs over 1 gram.

Also, the jury may draw a permissive inference of intent to distribute also based on packaging and other factors.

Judge Seals

WITNESSES

Jason Bazen Florence County Sheriff

DOCKET NO. 2016-GS-21-00415

The State of South Carolina

County of

FLORENCE

CERTIFIED: A TRUE COPY  
FILED  
2016 MAR 10 PM 12:00  
CONNIE REEL-SHEARIN  
CLERK & GS  
FLORENCE COUNTY, SC

COURT OF GENERAL SESSIONS

MARCH TERM 2016

THE STATE

vs.

MYRON AMADEUS CANNON

John C Jepertinger

ARREST WARRANT NUMBER

2015A2110200830 2015A2110200831

2015A2110200833 2015A2110200834

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 3-10-16

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

Indictment for

TRAFFICKING IN COCAINE BASE,  
POSSESSION WITH INTENT TO  
DISTRIBUTE COCAINE,  
FAILURE TO STOP FOR A BLUE LIGHT  
AND  
RESISTING ARREST

STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )

INDICTMENT FOR  
TRAFFICKING IN COCAINE BASE,  
POSSESSION WITH INTENT TO  
DISTRIBUTE COCAINE,  
FAILURE TO STOP FOR A BLUE LIGHT  
AND  
RESISTING ARREST

At a Court of General Sessions, convened on MARCH 10, 2016 the Grand Jurors of FLORENCE County present upon their oath:

**COUNT ONE- TRAFFICKING IN COCAINE BASE**

That MYRON AMADEUS CANNON did in Florence County on or about September 12, 2015, knowingly, sell, deliver, purchase, or bring into this state; or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this state, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Cocaine Base in an amount of more than twenty grams but less than one hundred grams, same being a controlled substance all within the meaning of Section 44-53-110, et.seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized and in violation of Section 44-53-375(C)(2)(C), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

**COUNT TWO- POSSESSION WITH INTENT TO DISTRIBUTE COCAINE**

That MYRON AMADEUS CANNON did in Florence County on or about September 12, 2015, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Cocaine, a controlled substance under the provisions of Section 44-53-110, et.seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-370(B)(1), S. C. Code of Laws, 1976, as amended.

**COUNT THREE - FAILURE TO STOP FOR A BLUE LIGHT**

That MYRON AMADEUS CANNON did in Florence County on or about September 12, 2015, while operating a motor vehicle on a road, street, or highway of the State of South Carolina, fail to stop his/her motor vehicle when signaled to do so by a law enforcement vehicle, by means of a siren and/or flashing light, in violation of Section 56-05-0750(B)(2), S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR TRAFFICKING IN COCAINE BASE, POSSESSION WITH INTENT TO DISTRIBUTE COCAINE, FAILURE TO STOP FOR A BLUE LIGHT AND RESISTING ARREST, WITH THE AFORESAID NAMES(S) OF MYRON AMADEUS CANNON SHOWN THEREON:

**COUNT FOUR- RESISTING ARREST**

That MYRON AMADEUS CANNON did in Florence County on or about September 12, 2015, knowingly and willfully oppose or resist an arrest being made by one whom the defendant knew or reasonably should have known was a Law Enforcement Officer to wit: Deputy Wayne Drummond with the Florence County Sheriff's Office, in violation of Section 16-09-0320(A), S. C. Code of Laws, 1976, as amended.

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



**E.L. Clements, III**  
TWELFTH CIRCUIT SOLICITOR

FILED A TRUE COPY  
JUL 10 2015  
FLORENCE COUNTY S.C.

## STATE OF SOUTH CAROLINA

COUNTY OF  
STATE

Florence

VS.

Myron Amadeus Cannon

AKA:

Race: Black Sex: M Age: 31

DOB: [REDACTED] SS#: [REDACTED]

Address: 2945 Park Pl

City, State, Zip: Florence, SC 29505-6648

DL#: [REDACTED] SID#: [REDACTED]

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Resisting / Resisting Arrest; Oppose or resist law enforcement officer serving process or making arrest

in violation of § 16-09-0320(A) of the S.C. Code of Laws, bearing CDR Code # 0326

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ § 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Jepertinger, John

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of \_\_\_\_\_ 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: today

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

|                                        |         |
|----------------------------------------|---------|
| *Fine:                                 | \$      |
| § 14-1-206 (Assessments 107.5 %)       | \$      |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   |
| § 56-5-2995 (DUI Assessment)           | \$12    |
| § 56-1-286 (DUI Breath Test)           | \$25    |
| Proviso 61.6 (Public Def/Probation)    | \$500   |
| § 14-1-212 (Law Enforce. Funding)      | \$25    |
| § 14-1-213 (Drug Court Surcharge)      | \$150   |
| § 50-21-114 (BUI Breath Test Fee)      | \$50    |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea |
| 3% to County (if paid in installments) | \$ 300  |

TOTAL \$ 10300

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016-GS-21-00415

A/W#: 2015A2110200834

Date of Offense: 9/12/2015

S.C. Code § : 16-09-0320(A)

CDR Code #: 0326

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

(0-1/1,000)

in violation of § 16-09-0320(A) of the S.C. Code of Laws, bearing CDR Code # 0326

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ § 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Jepertinger, John

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of \_\_\_\_\_ 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: today

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

## 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, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: \_\_\_\_\_

Sentence Date: 9/17/16

## STATE OF SOUTH CAROLINA

## IN THE COURT OF GENERAL SESSIONS

143

COUNTY OF Florence

STATE VS.

Myron Amadeus Cannon

AKA:

Race: Black Sex: M Age: 31

DOB: SS#:

Address: 2945 Park Pl

City, State, Zip: Florence, SC 29505-6648

DL#: SID#:

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Trafficking in meth. or cocaine base - 28 g or more, but less than 100 g - 3rd or sub. (Fel., 25Y to 30Y)

INDICTMENT/CASE#: 2016-GS-21-00415

A/W#: 2015A2110200830

Date of Offense: 9/12/2015

S.C. Code § : 44-53-0375(C)(2)(c)

CDR Code #: 0349

## SENTENCE SHEET

in violation of § 44-53-0375(C)(2)(c) of the S.C. Code of Laws, bearing CDR Code # 0349

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ § 17-25-45
The charge is: ☐ As Indicted. ☒ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence. ☐ Recommendation by the State.

ATTEST:

John C. Jeperinger, John C.

9826 SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment

of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: \$ \_\_\_\_\_

§ 14-1-206 (Assessments 107.5 %) \$ \_\_\_\_\_

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_

Proviso 61.6 (Public Def/Probation) \$500 \$ \_\_\_\_\_

§ 14-1-212 (Law Enforce. Funding) \$25 \$ \_\_\_\_\_

§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

3% to County (if paid in installments) \$ 7.50

TOTAL \$ 257.50

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

## 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.  
 Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: \_\_\_\_\_

Sentence Date: 9/7/16

## STATE OF SOUTH CAROLINA

COUNTY OF 144 Florence  
STATE VS.

Myron Amadeus Cannon

AKA:

Race: Black Sex: M Age: 31DOB: [REDACTED] SS#: [REDACTED]Address: 2945 Park PlCity, State, Zip: Florence, SC 29505-6648DL#: [REDACTED] SID#: [REDACTED]\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Manuf., poss. of other sub. in Sch. I, II, III or flunitrazepam, w.i.t.d. - 3rd or sub. offense

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016-GS-21-00415A/W#: 2015A2110200831Date of Offense: 9/12/2015S.C. Code §: 44-53-0370(b)(1)CDR Code #: 0185

## SENTENCE SHEET

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0185☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ § 17-25-45The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence. ☐ Recommendation by the State.

ATTEST:

[Signature]  
Jepertinger, John CSC Bar# 9826

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment

of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ 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)

§ 56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (07/2016)

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, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.Presiding Judge [Signature]

Judge Code: \_\_\_\_\_

Sentence Date: 9/17/15

## STATE OF SOUTH CAROLINA

## IN THE COURT OF GENERAL SESSIONS

145

COUNTY OF Florence  
 STATE VS.  
Myron Amadeus Cannon

AKA:

Race: Black Sex: M Age: 31DOB: [REDACTED] SS# [REDACTED]Address: 2945 Park PlCity, State, Zip: Florence, SC 29505-6648DL#: [REDACTED] SID#: [REDACTED]\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Traffic / Failure to stop for a blue light, no injury or death - 2nd or sub. offense☒ CONVICTED OF or ☐ PLEADS(0-5)in violation of § 56-05-0750(B)(2) of the S.C. Code of Laws, bearing CDR Code # 2396
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ § 17-25-45  
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Jepening, John C9826  
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 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 paymentof \$       ; 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: today☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$        plus 20% fee:        \$       Payment Terms:       ☐ Set by SCDPPPS       Recipient:       

\*Fine:

|                                        |         |    |
|----------------------------------------|---------|----|
| § 14-1-206 (Assessments 107.5 %)       | \$      |    |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$ |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$ |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$ |
| Proviso 61.6 (Public Def/Probation)    | \$500   | \$ |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$ |
| § 50-21-114 (BUI Breath Test Fee)      | \$50    | \$ |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$ |
| 3% to County (if paid in installments) | \$      |    |

TOTAL

\$

Clerk of Court/ Deputy Clerk [Signature]Court Reporter: [Signature]

SCCA/217 (07/2016)

INDICTMENT/CASE#: 2016-GS-21-00415A/W#: 2015A2110200833Date of Offense: 9/12/2015S.C. Code § : 56-05-0750(B)(2)CDR Code #: 2396

## SENTENCE SHEET

PTUP              days/hours Public Service EmploymentObtain 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 FundOther:       
☐ Appointed PD or appointed other counsel,  
 Proviso 61.6 requires \$500 be paid to Clerk  
 during probation and shall be collected before  
 any other fees.
Presiding Judge [Signature]Judge Code:       Sentence Date: 9/17/16

STATE OF SOUTH CAROLINA

County of

FLORENCE

IN THE COURT OF COMMON PLEAS

MYRON A. CANNON #296787

Full name and prison number (if any) of Applicant

2020 CP 21-02926

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION REVIEW

DORIS POULOS O'HARA  
JCCCP & GS  
FLORENCE COUNTY, SC

2020 DEC 17 PM 2:42

FILED

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 clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution 990 Wacker Highway, Bishopville, South Carolina 29010
2. Name and location of Court which imposed sentence Florence County Court of General Sessions Florence South Carolina
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2016-GS-21-00418 Count one - Trafficking in Cocaine Base
  - (b) Count two - Possession with intent to Distribute Cocaine
  - Count three - Failure to stop for Blue Light
  - Count four - Resisting Arrest

(c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

(a) September 7<sup>th</sup> 2016 25 years~~(b)~~ \_\_\_\_\_~~(c)~~ \_\_\_\_\_

6. 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 \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes I did

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals~~ii.~~ \_\_\_\_\_~~iii.~~ \_\_\_\_\_

(b) the result in each such Court to which you appealed:

i. Affirmed~~ii.~~ \_\_\_\_\_~~iii.~~ \_\_\_\_\_

(c) the date of each such result:

i. \_\_\_\_\_

~~ii.~~ \_\_\_\_\_~~iii.~~ \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. \_\_\_\_\_

~~ii.~~ \_\_\_\_\_~~iii.~~ \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) \_\_\_\_\_

(c) \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Attachment

(b) \_\_\_\_\_

(c) \_\_\_\_\_

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? \_\_\_\_\_

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), 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.~~ \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No they have not

15. If you answered "yes" to (14) 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.~~ \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) \_\_\_\_\_  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A  
 (b) your trial, if any? Yes I was  
 (c) your sentencing? Yes I was  
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes I was  
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Grant Smaldone 105 Wappoo Creek  
OR #1a, Charleston, SC 29412  
 ii. Elizabeth Franklin-Best 2725 Devine St  
Columbia, SC 29205

(b) the proceedings at which each such attorney represented you:

i. Trial and Sentence  
 ii. South Carolina Court of Appeals

19. State clearly the relief you seek in filing this application:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20. Are you now under sentence from any other court that you have not challenged?

NO, I am NOT  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF SOUTH CAROLINA )  
County of FLORENCE )

VERIFICATION

I, MYRON A. CANNON #296787, 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.

Myron Cannon

SWORN to and subscribed before me this 28th  
day of Oct 2020.

Jesse M. [Signature] (L.S.)  
Notary Public

My Commission Expires: 09/04/2029

APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, MYLTON CANNON 296787, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

MyLton Cannon  
Applicant

SWORN or affirmed to and subscribed before me this

25<sup>th</sup> day of Oct: 2020

Jeanne Myke  
Notary Public

My Commission Expires: 09/04/2029

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF FLORENCE       | ) | CASE NO.                     |
|                          | ) |                              |
| MYRON A. CANNON,         | ) |                              |
| PETITIONER,              | ) |                              |
|                          | ) |                              |
|                          | ) | MEMORANDUM OF LAW            |
| V.                       | ) |                              |
|                          | ) |                              |
| STATE OF SOUTH CAROLINA, | ) |                              |
| RESPONDENT.              | ) |                              |
| -----                    | ) |                              |

COMES NOW, THE ABOVE NAMED PETITIONER WITH THE  
MEMORANDUM OF LAW IN SUPPORT OF POST CONVICTION RELIEF  
APPLICATION HEREIN.

PETITIONER WPOULD RESPECTFULLY SHOW THIS  
HONORABLE COURT THE FOLLOWING,

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL,

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL,

VIOLATION OF DUE PROCESS OF LAW, AND

THE CIRCUIT COURT WAS WITHOUT SUBJECT MATTER JURISDICTION  
TO SENTENCE PETITIONER AS A THIRD OFFENSE TRAFFICKER.

THE RULES OF CRIMINAL PROCEDURE REQUIRES THAT AN INDICTMENT BE A PLAIN AND CONCISE AND DEFINITE WRITTEN STATEMENT OF THE ESSENTIAL FACTS CONSTITUTING THE OFFENSE CHARGED. AN INDICTMENT MUST CONTAIN THE FACTS AND ELEMENTS OF THE ALLEGED OFFENSE NECESSARY TO INFORM THE ACCUSED OF THE CHARGE SO THAT HE MAY PREPARE A DEFENSE AND INVOKE THE DOUBLE JEOPARDY CLAUSE IF A SECOND PROSECUTION BE BROUGHT BASED ON THE SAME CONDUCT. AN INDICTMENT IS NOT SUFFICIENT IF IT FAILS TO STATE AN ELEMENT OF THE OFFENSE.

#### SUPPORTING FACTS

1) COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT TO AN INSTRUCTION TO THE JURY REGARDING POSSESSION OF COCAINE WITH THE INTENT TO DISTRIBUTE.

PETITIONER ASSERTS THAT COUNSEL FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS WHEN HE FAILED TO OBJECT TO AN ERRONEOUS INSTRUCTION. T. p. 12, L. 9-14.

' POSSESSION OF MORE THAN ONE GRAM OF COCAINE CREATES AN INFERENCE THAT THE DEFENDANT POSSESSED THE COCAINE WITH THE INTENT TO DISTRIBUTE IT. THIS INFERENCE DOES NOT RELIEVE THE STATE FROM PROVING BEYOND A REASONABLE DOUBT THAT THE DEFENDANT HAD THE INTENT TO DISTRIBUTE.

AS A RESULT OF THIS INSTRUCTION, THE JURY SENT OUT A QUESTION TO THE COURT DURING THEIR DELIBERATIONS, THEREBY

SUGGESTING TO THE COURT THAT THEY WERE CONFUSED REGARDING THE GIVEN INSTRUCTION ON POSSESSION WITH INTENT TO DISTRIBUTE. COUNSEL FOR THE DEFENDANT SHOULD HAVE OBJECTED TO THE ERRONEOUS CHARGE. T.p. 130, L.12-20

WE HAVE TWO QUESTIONS FOR THE JURY. THE FIRST QUESTION IS INTENT TO DISTRIBUTE BASED ON QUANTITY OR THE WAY IT IS PACKAGED AND I AM GOING TO ANSWER THAT THEIR MAY BE A PERMISSIVE INFERENCE IF THE COCAINE WEIGHTS MORE THAN ONE GRAM.

HERE THE COURT FAILED TO CHARGE OR TO RECHARGE THAT THE STATE MUST MEET THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT MATERIAL ELEMENT OF THE OFFENSE. DEFENSE COUNSELS FAILURE TO OBJECT TO THE INSTRUCTION AS A WHOLE AND FAILED TO REQUEST THE COURT TO REINSTRUCT THAT THE STATE HAS THE BURDEN OF PROVING ALL ELEMENTS OF THE OFFENSE BEYOND A REASONABLE DOUBT. THE PROOF IS ALWAYS ON THE STATE.

COUNSELS FAILURE TO OBJECT AND MAKE THE NECESSARY ARGUMENT WAS INEFFECTIVE AND AS A RESULT PETITIONER SUFFERED PREJUDICE. STRICKLAND V. WASHINGTON, SUPRA.

AS A RESULT OF THIS INSTRUCTION, THE JURY SENT OUT A QUESTION TO THE COURT DURING THEIR DELIBERATION, THEREBY SUGGESTING **TO** THE COURT THAT THEY WERE CONFUSED REGARDING THE GIVEN INSTRUCTION ON POSSESSION WITH INTENT TO DISTRIBUTE. COUNSEL FOR THE DEFENDANT SHOULD HAVE OBJECTED TO TO THE ERRONEOUS CHARGE. TRIAL P. ONE HUNDRED THIRTY, LINE 12 TWELVE TO LINE TWENTY.

WE HAVE TWO QUESTIONS FROM THE JURY. THE FIRST QUESTION IS INTENT TO DISTRIBUTE BASED ON QUANTITY OR THE WAY IT IS PACKAGED, AND I AM GOING TO ANSWER THAT THERE MAY BE A PERMISSIVE INFERENCE OF INTENT TO DISTRIBUTE, AND I AM GOING TO ANSWER **THAT** IF THE COCAINE WEIGHTS MORE THAN ONE GRAM THERE IS THAT INFERENCE.

HERE THE COURT FAILED TO CHARGE THAT THE STATE MUST PROVE INTENT TO DISTRIBUTE THE COCAINE BEYOND A REASONABLE DOUBT, THEREBY RELIEVING THE COURT OF THE BURDEN OF **PROFF** BEYOND A REASONABLE DOUBT REGARDING THAT MATERIAL **ELFMENT** OF THE OFFENSE.

DEFENSE COUNSELS FAILURE TO OBJECT TO THE INSTRUCTION AS A WHOLE AND TO REQUEST THE COURT TO REINSTRUCT THAT THE STATE HAS THE BURDEN OF PROVING ALL ELEMENTS BEYOND A REASONABLE DOUBT AND THAT THE BURDEN OF **PROFF** IS ALWAYS ON THE STATE.

2) COUNSEL WAS INEFFECTIVE IN FAILING TO REQUEST THE COURT TO DISMISS, MS. SHAVERS, AND TO SIT THE ALTERNATE JUROR AFTER, MS. SHAVERS HAD BECOME COPROMISSED BY A PHONE CALL. T.P. 96, L.17-~~T~~. p. 101, L.4.

PETITIONER SUBMITS THAT ONCE A JUROR HAS BEEN COMPROMISSED FOR ANY REASON WHAT SO EVER THAT JUROR SHOULD BE DISMISSED FOR CAUSE AND REPLACED WITH AN ALTERNATE JUROR. IN THE INSTANT CASE, JUROR NUMBER 131 WAS IN FACT COMPROMISSED BY A HIGHLY QUESTIONABLE PHONE CALL. A HEARING WAS HELD OUTSIDE THE PRESENCE OF THE JURY TO DETERMINE WHAT SHOULD BE DONE. AT THE CONCLUSION OF SAID HEARING, THE COURT ASKED DEFENSE COUNSEL IF HE WOULD MOTION TO RELIEVE, MS. SHAVERS AND COUNSEL SIMPLY STATED THAT **HE** WOULD LEAVE IT UP TO THE COURT.

PETITIONER ASSERTS **THAT** COUNSEL WAS INEFFECTIVE IN NOT OBJECTING AND IN NOT MOTIONING THE COURT TO HAVE MS. SHAVER DISMISSED AND HAVE **AN** ALTERNATE REPLACE HER. THIS IS VERY PREJUDICIAL IN THAT NO ONE CAN SPECULATE WHAT IS TYULY IN THE MIND OF THIS JUROR. COUNSELS DECISION TO DO NOTHING BUT LEAVE IT UP, TO THE COURT FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS. COUNSEL SHOULD HAVE **OBJE**CTED AND PUT FORTH THE PROPER ARGUMENT. STRICKLAND V. WASHINGTON, SUPRA.

3) COUNSEL WAS INEFFECTIVE WHEN MAKING A MOTION FOR DIRECTED VERDICT BASED ON CONTROL AND DOMINION OF THE COCAINE. T.P.92-L.8-T.P.93,L.1.

THE COURT, ALL, RIGHT, ANY MOTIONS FROM THE DEFENSE?

MR. SMALDON, YES, YOUR HONOR. AT THI I WOULD MAKE A MOTION FOR A DIRECTED VERDICT AS TO ALL CHARGES. ALTERNATELY, AND MORE SPECIFICALLY, ON THE TRAFFICKING CHARGE AND THE POSSESSION WITH INTENT TO DISTRIBUTE CHARGE. YOUR HONOR I MAKE THOSE MOTIONS BECAUSE THERE WAS NO EVIDENCE FROM THE STATE THAT WAS PRESENTED -- THEY HAVE PRESENTED NO EVIDENCE THAT, MR. CANNON HAD CONTROL AND DOMINION OVER THE DRUGS.

THE COURT, HE WAS IN THE CAR AND HE GOT OUT OF THE CAR AND RAN AND THE DRUGS WERE IN THE CAR. NO ONE ELSE WAS IN THE CAR. I UNTERSTAND YOUR MOTION BUT I AM GOING TO DENY IT. ANYTHING ELSE?

MR. SMALDON, NO, SIR.

COUNSEL WAS INEFFECTIVE FOR NOT BASING HIS MOTION FOR A DIRECTED VERDICT ON KNOWLEDGE INSTEAD OF CONTROL AND DOMINION THERE IS MORE THAN A REASONABLE PROBABILITY THAT PETITIONER COULD HAVE PREVAILED IF THE MOTION WAS STRUCTURED ON KNOWLEDGE AND NOT CONTROL AND DOMINION. THERE IS AMPLE TESTIMONY THAT TEH VEHICLE WAS A RENTAL AND THAT IT WAS RENTED UNDER A NAME OTHER THAN PETITIONERS NAME. AN ARGUMENT CURTAILED TO THAT FACT WOULD HAVE BEEN APPROPRIATE UNDER THE CIRCUMSTANCES IN THIS CASE. COUNSELS ACTIONS PREJUDICED THE OUTCOME OF THE PROCEEDINGS.

4) APPELLATE COUNSEL WAS INEFFECTIVE IN FAILING TO RAISE ON APPEAL THE FACT THAT THE COURT ACTED WITHOUT JURISDICTION OVER TRAFFICKING OFFENSE.

IT IS THE PETITIONER POSITION THE INDICTMENT IS FATAL ON ITS FACE BECAUSE IT FAILS TO PROVIDE PETITIONER WITH LEGAL DETAIL TO ADEQUATELY DEFEND THE CHARGES. AT NO POINT DURING THE PROCEEDINGS FROM THE INDICTMENT FORWARD THERE WAS NEVER ANY MENTION OF THE CHARGE OF TRAFFICKING THIRD OFFENSE. U.S. V. BARNES, 158 F3d 665-69(2dCIR. 1998).

PETITIONER SUBMITS THE INDICTMENT SERVES AS THE FOUNDATION OF THE CONVICTION AND PROVIDES THE FOLLOWING-

AT A COURT OF GENERAL SESSIONS, CONVENED ON MARCH 10, 2016 THE GRAND JURORS OF FLORENCE COUNTY PRESENT UPON THEIR OATH

THAT MYRON AMADEUS CANNON DID IN FLORENCE COUNTY ON OR ABOUT SEPTEMBER 12, 2015, KNOWINGLY, SELL, DELIVER, PURCHASE OR BRING INTO THE STATE, OR DID AID, ABET, ATTEMPT OR CONSPIRE TO SELL DELIVER, PURCHASE OR BRING INTO THE STATE, OR WAS IN ACTUAL OR CONSTRUCTIVE POSSESSION OF A QUANTITY OF COCAINE BASE IN AN AMOUNT OF MORE THAN TWENTY EIGHT GRAMS, SAME AS BEING A CONTROLLED SUBSTANCE ALL WITHIN THE MEANING OF SECTION 44-53-375(C)(2)(C), S.C. CODE OF LAWS, 1976, AS AMENDED FOR THE CRIME OF TRAFFICKING.

COUNSELS DECISION TO NOT CHALLENGE THE INDICTMENT PRIOR TO THE JURY BEING SWORN OR AT ANYTIME DURING THE TRIAL WAS WHOLLY INEFFECTIVE AND AS A RESULT PETITIONER WAS DEPRIVED OF DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT TO THE

UNITED STATES CONSTITUTION, THE SOUTH CAROLINA  
CONSTITUTION AND WELL ESTABLISHED LAW.

PETITIONER FURTHER SUBMITS THAT IF HE WERE PROPERLY  
NOTIFIED THAT HE WOULD BE TREATED AS A TWICE CONVICTED  
TRAFFICKER HE COULD HAVE ESTABLISHED A PROPER DEFENSE OR  
COULD HAVE DECIDED TO ENTER A PLEA.

HOWEVER, PETITIONER WAS NOT GIVEN THE OPPORTUNITY AND,  
THEREFORE, WAS NOT AFFORDED PROPER DUE PROCESS OF LAW. U.S.  
V. HITT 249 F.3D 1010 (D.C. CIR. 2001). PETITIONER ASSERTS TO  
THIS HONORABLE COURT THAT A CHALLENGE OF THE INDICTMENT OR  
THE LACK THEREOF BEING RAISED ON APPEAL V. WHAT WAS BROUGHT  
TO THE COURT BY APPELLATE COUNSEL COULD HAVE SUBSTANTAILLY  
CHANGED THE OUTCOME OF THE PROCEEDINGS HAD IT BEEN RAISED  
PROPERLY.

WHENEVER A DEFENDANTS PUNISHMENT IS INCREASED WITH  
THE USE OF PREDICATE OFFENSES THAT PROGRESS WITH EACH  
SEPERATE OFFENSE IT BECOMES APPROPRIATE TO INCLUDE THE  
ENUMERATED OFFENSE IN THE BODY OF THE INDICTMENT. ESPECIALLY  
WHEN THE SUBSEQUENT OFFENSE INCRESSES THE AMOUNT OF TIME THAT  
MUST BE SERVED. (SEE ATTACHED)

ANY JUDGEMENT DERIVED FROM A COURT THAT ACTS WITHOUT  
SUBJECT MATTER JURISDICTION IS A JUDGEMENT THAT IS VOID IN LAW.  
STATE V. CARTER, SUPRA. IN DETERMINING WHETHER AN INDICTMENT  
PROPOERLY INFORMS THE DEFENDANT OF THE OFFENSE CHARGED, COURTS  
GIVE THE INDICTMENT A COMMON SINSE CONSTRUCTION. ALTHOUGH AN  
INDICTMENT THAT TRACTS THE STATUTORY LANGUAGE MAT BE ACCEPTABLE

ONLY IF ALL THE ELEMENTS OF THE CHARGED CRIME ARE INCLUDED IN THE LANGUAGE AND FULLY PUTS THE DEFENDANT ON NOTICE OF WHAT TO DEFEND AGAINST. U.S. V. FOLLEY, SUPRA.

INDICTMENT TRACKING LANGUAGE OF STATUTE INSUFFICIENT. BECAUSE IT FAILED TO ALLEGE IMPLICIT ELEMENT OF THE OFFENSE.

5) COUNSEL WAS INEFFECTIVE IN NOT CHALLENGING THE INDICTMENT BEFORE THE JURY WAS SWORN AND THE CIRCUIT COURT FOR FLORENCE COUNTY WAS WITHOUT SUBJECT MATTER JURISDICTION TO ACT OVER OFFENSE.

#### CONCLUSION

FOR THE FOREGOING REASONS, PETITIONER IS ENTITLED, AS A MATTER OF LAW, TO HAVE CONVICTION AND SENTENCE VACATED AND SO PRAYS FOR THE SAME.

DATED

12/9/20

S

Myron Cannon

MYRON A. CANNON

|                           |   |                                     |
|---------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA   | ) | IN THE COURT OF COMMON PLEAS        |
| COUNTY OF FLORENCE        | ) | FOR THE TWELFTH JUDICIAL CIRCUIT    |
| Myron A. Cannon, #296787, | ) |                                     |
| Applicant,                | ) | Case No.: 2020-CP-21-2926           |
|                           | ) |                                     |
| v.                        | ) | <b>RETURN AND PARTIAL MOTION TO</b> |
|                           | ) | <b>DISMISS</b>                      |
| State of South Carolina,  | ) |                                     |
| Respondent.               | ) | <b>(Counsel Appointed)</b>          |

2021 APR 5 PM 3:48  
 DOUGLAS COUNTY  
 CLERK OF COURT  
 FLORENCE COUNTY, SC

FILED

In response to Myron A. Cannon's (Applicant) action for post-conviction relief (PCR) commenced December 17, 2020, the State makes this return.

### **I. Procedural History**

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the March 2016 term of the Florence County Grand Jury for trafficking cocaine base, possession of cocaine with intent to distribute, failure to stop for a blue light, and resisting arrest (2016-GS-21-0415). Applicant was represented by Grant B. Smaldone, Esquire. Deputy Solicitor John C. Jepertinger prosecuted the case.

Applicant's case proceeded to a jury trial September 6–7, 2016, before the Honorable William H. Seals. The jury convicted Applicant as indicted on all counts. Judge Seals sentenced Applicant to twenty-five years' incarceration. Applicant appealed.

Elizabeth Franklin-Best perfected Applicant's appeal and presented the following issues:

1. The circuit court judge erred when he denied Cannon's motion for a directed verdict because the State failed to adduce substantial circumstantial evidence to prove that Cannon was guilty of trafficking in cocaine base and possession with intent to distribute cocaine.
2. The circuit court judge erred by allowing Officer Nida to testify to the street value of the drugs that were found in the car Cannon was driving because that testimony was irrelevant and was unduly prejudicial to Cannon pursuant to Rule 403.

Following briefing, the South Carolina Court of Appeals dismissed the appeal in an unpublished decision. *State v. Cannon*, 2019-UP-397 (filed December 18, 2019). The case was remitted back to the circuit court January 8, 2020.

## **II. Statement of the Facts**

Prior to trial, Applicant moved to suppress evidence seized from the car he was driving at the time of his arrest. After hearing testimony from the police officers involved in Applicant's arrest and seizure of the evidence, the circuit court denied Applicant's motion. (Trial Transcript [TT], pp. 17-27; Record on Appeal [R.], pp. 000019-000029). Applicant then moved to exclude testimony from the State's proposed expert regarding the street value of cocaine and crack, arguing the testimony was irrelevant because dollar value was not an element of the offenses charged, and it was more prejudicial than probative. The State argued the testimony was relevant to the issue of whether the drugs found in the car was just for personal use. The court denied the motion to exclude, finding the proposed testimony was relevant because the car Applicant was driving was a rental car, and the issue of whether someone other than Applicant left the drugs in the car could arise. (TT, pp. 27-29; R., pp. 000029-000031).

During his opening statement, Applicant contended he ran from law enforcement on the night in question because he was driving while intoxicated, and the drugs found in the car were "somebody else's drugs in somebody else's car." He further contended there was no evidence linking him to "somebody else's drugs in somebody else's car . . . because [Applicant] isn't the real owner of the drugs" and he "had no idea that the drugs were there." (TT, pp. 38-39; R., pp. 000040-000041).

Tony Drummond testified he was a sergeant with the Florence County Sheriff's Office on September 12, 2015, and while on patrol that night he attempted to stop a car traveling at a very

high rate of speed. Rather than stopping after Drummond activated his blue lights, the driver, subsequently identified as Applicant, continued driving at a high rate of speed with Drummond in pursuit. During the pursuit, Drummond observed Applicant run stop signs and driving erratically. Finally, after Applicant almost caused wrecks with other cars, Drummond struck the rear of Applicant's car, which caused it to run off the road, through a ditch and into a bean field. (TT, pp. 40-45; R., pp. 000042-000047).

After the car came to a stop in the bean field, Drummond saw Applicant open the driver's door, jump out and run away. Drummond determined no one else was inside the car, and then pursued Applicant on foot. Applicant refused to stop when Drummond repeatedly ordered him to do so, and Drummond ultimately used a taser to subdue Applicant and get him into custody. When Drummond took Applicant back to his car, another officer told Drummond drugs had been found inside the car, which was determined to be an Enterprise rental car. (TT, pp. 46-49; R., pp. 000048-000051).

Corporal Brooks Urqhart of the Florence County Sheriff's Office testified he was the first officer on the scene after Drummond started chasing Applicant on foot. When he walked up to the car in the bean field, he observed the driver's side door was open, and there were two bags of what appeared to be narcotics in plain view inside, one on the driver's seat and one on the driver's side floorboard. Urqhart did not touch anything in the car, but secured the scene until other officers could arrive to seize the drugs. (TT, pp. 58-60; R., pp. 000060-000062).

Corporal Jason Bazen of the Florence County Sheriff's Office testified he worked narcotics interdictions with an inter-county community team of officers. He was working the night of September 12, 2016, and responded to a call for assistance involving Drummond's pursuit of Applicant. He assisted Drummond in securing Applicant, and walked with them back to the car in

the bean field, where he also saw the bags of drugs in plain view inside the car. He secured the drugs and placed them in evidence bags. He also seized a set of digital scales, several cell phones, and two thumb drives from inside the car. He testified digital scales are used to weigh drugs in the drug business. (TT, pp. 63-70; R., pp. 000065-000072).

Detective Mitch Hansen of the Florence County Sheriff's Office testified he is the forensic drug chemist for the Office, which includes testing, weighing and re-packaging seized narcotics. He analyzed the drugs seized from Applicant's rental car, and determined one bag contained 6.92 grams of cocaine powder. The other bag contained 38.19 grams of crack (cocaine base). (TT, pp. 77-81; R., pp. 000079-000083).

Sergeant William Nida of the Florence Police Department testified he had worked with the Department Narcotics Unit for twelve years, which handles anything pertaining to drugs, including controlled purchases of illegal narcotics. He stated his unit averages 480 drug cases annually, and as a result of his involvement in controlled purchases and general experience working drug cases, he was familiar with the street value of narcotics in Florence County. Over Applicant's relevancy and 403 objection, the circuit court qualified Nida as an expert in the field of retail value of cocaine and crack cocaine in the Florence area, finding the information was beyond the knowledge of an ordinary jury, Sergeant Nida had the requisite knowledge and skill, and his testimony was reliable. (TT, pp. 84-87; R., pp. 000086-000089).

Sergeant Nida testified one gram of crack or cocaine powder sold for \$100. The amount of cocaine powder and crack found in Applicant's rental vehicle was 45.11 grams, with a street value of \$4,511. (TT, pp. 87-91; R., pp. 000089-000093). Applicant moved for a directed verdict at the close of the State's case, arguing the State presented no evidence Applicant had dominion and control over the drugs found in the car he was driving. The circuit court denied the motion, finding

there was evidence Applicant was in the car, he got out of the car and ran, the drugs were inside the car, and no one else was inside the car. (TT, p. 92; R., p. 000094).

During closing argument, the Solicitor stated it was "nonsense," not common sense, to believe Enterprise Rental Car failed to clean the rental car from a prior renter, and then either put the narcotics inside the car, or rented the car to Applicant with \$4500 of narcotics inside. The Solicitor then stated it was nonsense because the narcotics represented money, which is why people traffick drugs, and no one would just leave \$4500 worth of narcotics, along with digital scales used to weigh the drugs, in a car. He further argued the location of the drugs, on the driver's seat and the driver's side floorboard, showed Applicant was not merely present, but he was in possession and control of the car, he knew the drugs were inside the car, and he ran from the police because he knew the drugs were there. (TT, pp. 102-109; R., pp. 000104-000111).

Applicant argued in closing the State had "maybe proven that [Applicant] was in the car," and "could probably prove that he was - - maybe prove that he ran from the police." He further argued the State failed to prove he "had dominion and control over the drugs," he "didn't know the drugs were [in the car]," and there was no evidence "that ties the drugs to him." (TT, pp. 110-116; R., pp. 000112-000118).

### **III. Current Application**

Applicant timely commenced this PCR action on December 17, 2020. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of trial counsel:
  - a. Counsel was ineffective in failing to object to an instruction to the jury regarding possession of cocaine with the intent to distribute.
  - b. Counsel was ineffective in failing to request the court to dismiss, Ms. Shavers, and to sit the alternative juror after, Ms. Shavers had become compromised [sic.] by a phone call.

- c. Counsel was ineffective when making a motion for a directed verdict based on control and dominion of the cocaine.
- d. Violation of Due Process of Law:
  - i. Counsel's decision to not challenge the indictment prior to the jury being sworn or at any time during the trial was wholly ineffective and as a result [Applicant] was deprived of due process of law under the Fourteenth Amendment to the United States Constitution, the South Carolina Constitution and well established law.
  - ii. [Applicant] further submits that if he were properly notified that he would be treated as a twice convicted trafficker he could have established a proper defense or could have decided to enter a plea
- e. Counsel was ineffective in not challenging the indictment before the jury was sworn and the circuit court for Florence County was without subject matter jurisdiction to act over offense.
- 2. Ineffective assistance of appellate counsel:
  - a. Appellate counsel was ineffective in failing to raise on appeal the fact that the court acted without jurisdiction over trafficking offense.
- 3. The circuit court was without subject matter jurisdiction to sentence [Applicant] as a third offense trafficker

As relief, Applicant requests the court vacate his conviction and sentence.

Attached herewith and incorporated herein are the Florence County Clerk of Court records regarding the subject conviction, Applicant's SCDC records, the trial transcript, the appellate records (including the record on appeal), and the records of this PCR action. The State reserves the right to amend this return upon receipt of any relevant materials

#### **IV. Response to Allegation of Ineffective Assistance of Counsel**

The State submits that Applicant's allegations of ineffective assistance of trial counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

“The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove “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.

*Strickland* requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 691. Therefore, judicial scrutiny of counsel’s performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort to “eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Strickland*, 466 U.S. at 689.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the

case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. *Id.*

Here, Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

#### **V. Response to Ineffective Assistance of Appellate Counsel**

Applicant alleges ineffective assistance of appellate counsel. A defendant is entitled to effective assistance of appellate counsel. *Southerland v. State*, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." *Thrift v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing *Jones v. Barnes*, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). "For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy..." *Jones*, 463 U.S. at 754, 103 S.Ct. 3308.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. See *Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance. *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

The State submits that Applicant cannot satisfy either requirement of the *Strickland* test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the State requests an evidentiary hearing to fully resolve this issue. See *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

#### **VI. Response to Claim the Circuit Court Lacked Subject Matter Jurisdiction**

The State submits that the Applicant's allegation that the circuit court lacked subject matter jurisdiction is meritless, and therefore this allegation should be summarily dismissed. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. *State v. Wilkes*, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (citing *Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001)). In this case, the Applicant was indicted by the Florence County grand jury. That indictment was true-billed and signed by the foreman of the grand jury. The said indictment contains all the necessary

elements of the offense, and further cites the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. *See, e.g., Tate v. State*, 345 S.C. 577, 549 S.E.2d 601 (2001); *Pringle v. State*, 287 S.C. 409, 339 S.E.2d 127 (1986). Here, Applicant cannot show any irregularity, because the indictment in question is sufficient on their face. Therefore, the Court should summarily dismiss this allegation.

## **VII. Any Future Amendments and Invocation of Discovery**

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to

request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

**VIII. Any and All other Allegations**

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

**IX. Conclusion**

WHEREFORE, the State requests an evidentiary hearing be held on the claim of ineffective assistance of trial counsel and ineffective assistance of appellate counsel. Additionally, the State requests Applicant's allegation that the circuit court lacked subject matter jurisdiction be summarily dismissed.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

MICHAEL D. DAVIDSON  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211

4/2, 2021

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

Myron A. Cannon, #296787

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS  
FOR THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2020-CP-21-2926

Certificate of Service by Mail

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return And Partial Motion To Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ola A. Johnson, Esquire  
Ola A. Johnson, Attorney at Law  
PO Box 549  
Lexington, SC 29071

DATED this 2<sup>nd</sup> day of April, 2021.

  
Katie Wade, Legal Assistant  
For Respondent

2021 APR -5 PM 3:48  
DO NOT FILE  
SCCP & GS  
FLORENCE COUNTY, SC

FILED

FILED

STATE OF SOUTH CAROLINA )

2022 OCT 11 AM 11:45

COUNTY OF FLORENCE )

BORIS POLJAKOVICH

COUNTY CLERK

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

MYRON CANNON , )

CASE NO.: 2020-CP-21-02926

Applicant, )

v. )

AMENDMENT TO APPLICATION

FOR POST CONVICTION RELIEF

STATE OF SOUTH CAROLINA, )

Respondent. )

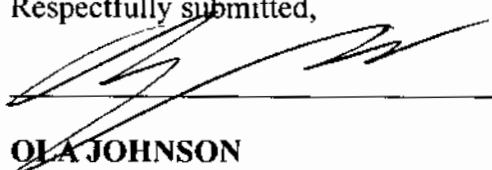
Applicant, by and through his undersigned attorney, hereby amends his application for Post-Conviction Relief filed December 17, 2020. This amended application adopts and includes all grounds in the original application. This application is related to a guilty verdict following trial on September 7, 2016 before the Hon. William H. Seals in Florence County General Sessions court. Applicant further alleges as additional grounds regarding his claim of ineffective assistance of counsel as follows:

1. Applicant's counsel, Grant B. Smaldon, failed to discuss a defense strategy with applicant or to properly review evidence with Applicant.
2. Applicant's counsel Grant B. Smaldon, failed to properly investigate the states case.

3. Applicant's counsel, Grant B. Smaldon, failed to meet with Applicant a sufficient number of times to review the evidence in the case.
4. Applicant's counsel, Grant B. Smaldon, failed to object to a juror (Juror 131 Janesse Shavers) remaining on the jury following the discovery that this juror had been contacted by a person described as the "defendants girlfriend" (p. 96-101).
5. Applicant's counsel, Grant B. Smaldon, failed to object to the testimony of the states witness, Sgt. William Joe Nida, regarding the street value of the drugs in question as improper character evidence at trial and therefore failed to preserve this issue for appeal. (Unpublished Opinion No. 2019-UP-397, State v Myron A. Cannon, Appellate Case No. 2016-001954).
6. Applicant seeks to have his conviction and sentence vacated.

Furthermore, the Applicant requests that he be permitted to Amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



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**OLA JOHNSON**

Attorney for Applicant

P.O. Box 549

Lexington, SC 29071

803-360-8692 Phone

olajohnsonlaw@gmail.com

This 7 day of October, 2022.

FILED

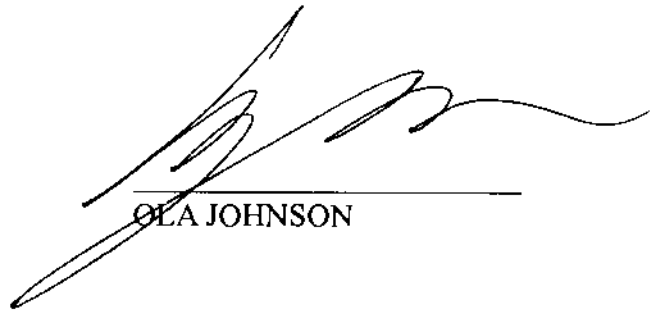
STATE OF SOUTH CAROLINA <sup>2022 OCT 11 11:45</sup>  
COUNTY OF FLORENCE <sup>DORIS J. JOHNSON</sup> IN THE COURT OF COMMON PLEAS  
<sup>CLERK OF COURT</sup> TWELFTH JUDICIAL CIRCUIT  
<sup>FLORENCE COUNTY SC</sup>  
MYRON CANNON, )  
) CASE NO.: 2020-CP-21-02926  
) Applicant, )  
) )  
) v. )  
) )  
) STATE OF SOUTH CAROLINA, )  
) )  
) Respondent. )  
\_\_\_\_\_ )

## CERTIFICATE OF SERVICE

I, Ola Johnson, hereby certify on that on October 7, 2022, I served a copy of the  
AMENDMENT TO APPLICATION FOR POST CONVICTION RELIEF on Danielle Dixon,  
Assistant Attorney General by Email and U.S. Mail to the following address:

Danielle Dixon, Asst. Attorney General  
SC Attorney General's Office  
P.O. BOX 11549  
Columbia, SC 29211

10-7-22  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
OLA JOHNSON

|                          |   |                              |
|--------------------------|---|------------------------------|
| State of South Carolina  | ) | In the Court of Common Pleas |
|                          | ) | Twelfth Judicial Circuit     |
| County of Florence       | ) | Case No. 2020-CP-21-02926    |
|                          | ) |                              |
| Myron Cannon,            | ) |                              |
|                          | ) |                              |
| Applicant,               | ) |                              |
|                          | ) |                              |
| -vs-                     | ) | Transcript of Record         |
|                          | ) |                              |
| State of South Carolina, | ) |                              |
|                          | ) |                              |
| Respondent.              | ) |                              |
|                          | ) |                              |

---

December 15, 2022  
 Florence, South Carolina

B E F O R E:

The Honorable George M. McFaddin, Jr., Judge

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

Ola A. Johnson, Esquire  
 Attorney for the Applicant

Russ Barlow, Esquire  
 Attorney for the Respondent

Krystal J. Smith  
 Official Circuit Court Reporter III

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| 22 |                              |                    | or change in thought                   |            |
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| 24 | [ph]                         |                    | phonetically written                   |            |
| 25 | [sic]                        |                    | written as said                        |            |

1 DECEMBER 15, 2022

2 (WHEREUPON, the proceedings began at 3:15 p.m.)

3 THE COURT: All right, sir.

4 MR. BARLOW: Your Honor, may it please the Court. Russ  
5 Barlow on behalf of the State of South Carolina. This is the  
6 PCR matter of Myron Cannon, Case Number 2020-CP-21-2926.

7 In March of 2016, the Florence County Grand Jury indicted  
8 applicant for trafficking in cocaine base, third offense, PWID  
9 cocaine, failure to stop for blue light, and resisting arrest,  
10 Indictment Number 2016-GS-21-415. This arose from a September  
11 12th, 2015, incident where applicant failed to stop for the  
12 blue light after officer saw him speeding, and the chase ended  
13 when his car crashed and he got out and ran.

14 Police apprehended him and noticed a bag of white powder  
15 in driver's seat and another bag on the floorboard, and there  
16 were no other persons in the car with him. It was also a  
17 rental car, and the name of the renter was not introduced at  
18 trial.

19 He proceeded to a jury trial before the Honorable William  
20 H. Seals on September 6th through the 7th, 2016. Grant B.  
21 Smaldone, Esquire, represented applicant, and John C.  
22 Jepertinger prosecuted the case. And he was convicted as  
23 indicted, and Judge Seals sentenced him to concurrent  
24 sentences of 25 years for the PWID cocaine and trafficking,  
25 five years for failure to stop for blue light, and one year

1 for resisting arrest.

2 Applicant timely filed a notice of appeal, and that  
3 appeal was perfected by Elizabeth Franklin-Best, Esquire. It  
4 was affirmed on the merits, and the remittitur was returned to  
5 the Circuit Court on January 8th, 2020. This application, the  
6 PCR application, was timely filed December 17th, 2020, and our  
7 office filed a return and partial motion to dismiss regarding  
8 the claim to the summary -- the subject matter jurisdiction.

9 And applicant's original application listed multiple  
10 ineffective assistance of counsel claims, the first to be  
11 failed to object to instruction regarding PWID cocaine.  
12 Number two, failed to ask Court to dismiss Juror Shavers.  
13 Number three, failed to move for directed verdict based on  
14 lack of knowledge of cocaine. And number four, failed to  
15 challenge indictment and/or the summary -- or subject matter  
16 jurisdiction of the Court. There was also an ineffective  
17 assistance of appellate counsel claim, failed to argue Court  
18 acted without jurisdiction over trafficking offense.

19 And, Your Honor, I'll ask at this time that counsel for  
20 applicant place on the record which -- which allegations he  
21 intends to move forward on. And if he intends to move forward  
22 on the indictment and subject matter jurisdiction, Your Honor,  
23 I would be -- I would ask that you allow us to be heard on our  
24 motion to dismiss that claim as a matter of law.

25 THE COURT: Yes, sir.

1 MR. JOHNSON: Your Honor, I'll just put on the record  
2 after discussing with my client, we're going to go forward  
3 with these four different allegations from his original, as  
4 well as the ones in my amended application. We're not  
5 addressing -- we're not going forward with the one on  
6 appellate counsel.

7 So the first four that are listed was ineffective  
8 assistance of counsel for failure to object to the instruction  
9 regarding the inference of possession of more than a gram of  
10 cocaine, and then the ineffective -- well, related to that,  
11 failure to recharge.

12 There was also a related allegation. The Court failed to  
13 charge or recharge the State must meet the burden of proving  
14 proof beyond a reasonable doubt. That was something I think  
15 related to that. So I don't know if the Court would consider  
16 that one allegation or two, but it's sort of related to that  
17 charge.

18 THE COURT: Okay.

19 MR. JOHNSON: So then we move on. And as the attorney  
20 general listed, charge -- we'd move forward with failure to  
21 ask or object that the juror be dismissed. There was some  
22 dimension there and so on in the transcript. We'll go over  
23 that. But there was a juror that we're arguing is ineffective  
24 for failing to ask that that juror be dismissed based on some  
25 contact that came up between that person and another party.

1           And the claim of ineffective assistance of counsel for  
2 failure to argue directed verdict motion based on knowledge  
3 instead of control and dominion, as well as going forward on  
4 failure -- ineffective assistance of counsel for failure to  
5 challenge the indictment.

6           In my amended application, I put in here we're going to  
7 go forward on failure of Mr. Smaldone, as ineffective  
8 assistance of counsel, failure to discuss defense strategy  
9 with applicant or review evidence properly, failure to --  
10 second after that, another allegation of failure to properly  
11 investigate the case -- the State's case. After that, failed  
12 to meet with applicant a sufficient number of times to review  
13 evidence in this case.

14           And then after that, this is a repeat of that one  
15 regarding failure -- ineffective assistance of counsel for  
16 failure to object to Juror 131, Janesse Shavers. So that is  
17 just being -- that's been repeated in mine.

18           THE COURT: Okay.

19           MR. JOHNSON: And then the final ineffective assistance  
20 of counsel is Smaldone failed to object to testimony of the  
21 State's witness, Sgt. William Joe Nida, regarding street  
22 buying drugs in question. It's improper character evidence,  
23 and this was listed in the unpublished opinion regarding the  
24 appeal because it actually said that that issue was -- trial  
25 counsel failed to preserve that issue for appeal. And so

1 that's something we're arguing as ineffective assistance of  
2 counsel for not preserving that issue.

3 And that's what we have, Judge.

4 THE COURT: Yes, sir.

5 MR. BARLOW: And, Your Honor, just as a matter of law,  
6 the -- his claim regarding the indictment and subject matter  
7 jurisdiction, Your Honor, that's handled through *State v.*  
8 *Gentry*. That's 363 S.C. 93. An indictment and the subject  
9 matter jurisdiction are distinct -- two distinct issues, Your  
10 Honor.

11 Obviously, the circuit courts have jurisdiction or have  
12 subject matter jurisdiction to hear criminal matters. The  
13 indictment is just a notice document, Your Honor, and also any  
14 indictment issues must be raised prior to the jury being  
15 sworn, and applicant has not shown that -- that he is part of  
16 a class of cases that could not be tried in the civil court,  
17 Your Honor, I mean -- excuse me -- the criminal court, Your  
18 Honor, or the circuit court rather. And just as a matter of  
19 law under *State v. Gentry*, Your Honor, we would move to  
20 dismiss that -- that claim.

21 THE COURT: Mr. Johnson?

22 MR. JOHNSON: Just that I would mention the allegation of  
23 ineffective assistance of counsel as it relates to objecting  
24 to indictment also would apply to the argument that my client  
25 put in his original application indicating he was not put on

1 proper notice because of the wording of the indictment not  
2 mentioning a trafficking, third offense.

3 So I would argue that that is something that we are going  
4 forward on. If the Court rules regarding the jurisdiction  
5 issue, I would just put that forward as that -- that is also a  
6 challenge to indictment, but on different -- I guess different  
7 grounds. We're talking about not being put on proper notice,  
8 and that should have been an objection.

9 THE COURT: Mr. Barlow?

10 MR. BARLOW: Your Honor. Also under *State v. Gentry*,  
11 that it -- any issues with the indictment, those are direct  
12 appeal issues. Those are not PCR issues.

13 THE COURT: Okay. All right. I will grant the State's  
14 request or motion to dismiss that.

15 MR. BARLOW: Thank you, Your Honor.

16 THE COURT: All right. Mr. Johnson?

17 MR. JOHNSON: Judge, we'd call Mr. Cannon to testify at  
18 this time.

19 THE COURT: Yes, sir.

20 THE CLERK: You can place your stuff down. Put your left  
21 hand on the Bible. Raise your right hand as much as you can.  
22 You can lay your stuff down. Do you swear to tell the truth,  
23 the whole truth, and nothing but the truth, so help you God?

24 THE APPLICANT: Yes, ma'am.

25 THE CLERK: Thank you.

## MYRON CANNON - DIRECT BY MR. JOHNSON

1 THE COURT: All right, sir.

2 MR. JOHNSON: Thank you, Judge.

3 MYRON CANNON, being first duly  
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. JOHNSON:

7 Q: Mr. Cannon, is your -- for trial, was your attorney Mr.  
8 Smaldone? Grant Smaldone? That was your attorney?

9 A: Yes, sir.

10 Q: Okay. And do you see him here in the courtroom?

11 A: Yes, sir.

12 Q: He's present here in court? Okay. And he represented  
13 you at trial?

14 A: Yes, sir.

15 Q: Okay. And when he represented you -- let me ask you a  
16 question. Do you recall whether or not there was a jury -- a  
17 charge made to the jury about possession of more than one gram  
18 of cocaine and whether or not that would give an inference  
19 that something that related to that and whether or not there  
20 was an objection made?

21 A: Say that again, sir?

22 Q: Do you remember during trial whether or not there was a  
23 jury charge given about an inference to the jury for  
24 possession with intent based on possessing over a gram of  
25 cocaine?

## MYRON CANNON - DIRECT BY MR. JOHNSON

1 A: Yes.

2 Q: Okay. And did your attorney make an objection to that?

3 A: No.

4 Q: Okay. And do you remember having a conversation with him

5 about that?

6 A: Yes.

7 Q: Well, how did that go?

8 A: Like, I can't recall, like, word for word, but I know we

9 spoke [sic] upon that, though.

10 Q: Okay. Did you want him to object to that?

11 A: Yes, sir.

12 Q: Okay. And do you feel like that somehow prejudice --

13 prejudiced you at trial?

14 A: Yes, sir.

15 Q: Okay. But he never made an objection?

16 A: No, sir.

17 Q: Okay. And then was there a moment where you felt like

18 the jury should have been charged again, recharged based on

19 the questions they had or a response from the jury?

20 A: Yes, sir.

21 Q: Okay. Were they charged at the -- your attorney, Mr.

22 Smaldone, asked that they get charged again?

23 A: No, sir.

24 Q: All right. Now, was there an incident with a juror

25 making contact with a Ms. Shavers?

MYRON CANNON - DIRECT BY MR. JOHNSON

1 A: Basically, it was a situation where the lady, Ms.  
2 Shavers, a juror -- right? -- 131 or 130, like, she know my  
3 son's mama. She know my son's mom. Like, they know each  
4 other. Like, went out to eat with each other, that type of  
5 stuff.

6 Q: Okay. And so there was an issue where this Juror 131 had  
7 made contact with this person?

8 A: Yes, sir.

9 Q: And was there an objection made by your attorney to have  
10 that person removed from the jury?

11 A: No, sir.

12 Q: And you felt like that would have been appropriate?

13 A: Yes, sir.

14 Q: Okay. And so Janesse Shavers is Juror 131, and that's  
15 the person -- who do they know?

16 A: She know -- he know my -- she know my son's mother,  
17 Latisha Paige German.

18 Q: And was it your information that that was the person who  
19 made contact with her?

20 A: I don't know about the contact situation. I don't know  
21 nothing about that, but I know they spoke with each other.  
22 Basically, they know each other.

23 Q: That happened at trial? The judge --

24 A: That happened in the middle of my trial.

25 Q: Okay. And so no objection was made about that?

## MYRON CANNON - DIRECT BY MR. JOHNSON

1 A: No, sir.

2 Q: Okay. And on the motion for directed verdict and when

3 your attorney argued that, tell me about what you felt he

4 should have argued regarding knowledge and the definition of

5 what he should have gone forward with a directed verdict

6 motion versus control and dominion?

7 A: Yes, I feel like, basically, like -- like, with that

8 situation there or whatever -- hold on.

9 Q: Would it refresh your memory to look at the transcript?

10 Would you like to look?

11 A: Yeah. That's what I meant, yeah.

12 Q: Okay.

13 MR. JOHNSON: Judge, is it okay for me to approach?

14 THE COURT: Yes, sir.

15 MR. JOHNSON: Okay.

16 THE COURT: Please.

17 MR. JOHNSON: I think this is on page 92. Sorry, Your

18 Honor. One second, please.

19 THE APPLICANT: Where was it at?

20 MR. JOHNSON: One second.

21 BY MR. JOHNSON:

22 Q: Now, I'm just going to show you page 92 from the

23 transcript, starting with line 9.

24 A: Uh-huh.

25 Q: Do you have that?

## MYRON CANNON - DIRECT BY MR. JOHNSON

1 A: Yes.

2 Q: Okay. Now, after reviewing that, how do you feel like --  
3 how was that handled and how do you feel like that should have  
4 been handled by your attorney?

5 A: I feel like it should have been handled differently. I  
6 know that.

7 Q: Was there a statement made, an argument made that there  
8 was no evidence that you had dominion and control over the  
9 drugs?

10 A: Yes, sir.

11 Q: And do you feel like he should have listed an argument  
12 based on the fact that you did not have -- there was no  
13 evidence of you having knowledge of the drugs?

14 A: Yeah, exactly.

15 Q: And that was not done?

16 A: No, it wasn't.

17 Q: Okay. Now, regarding the indictment, did you have any  
18 notice before that that you would be put on trial and  
19 sentenced for a trafficking, third offense?

20 A: Basically, like, it was a whole rushed situation, like --  
21 MR. BARLOW: Your Honor, objection. We -- we've already  
22 moved --

23 THE COURT: Yes, sir.

24 MR. BARLOW: -- to dismiss those claims.

25 MR. JOHNSON: Oh, I'm sorry.

## MYRON CANNON - DIRECT BY MR. JOHNSON

1 THE COURT: I did.

2 MR. JOHNSON: You were including also the argument about  
3 notice?

4 THE COURT: Yes, sir.

5 MR. JOHNSON: Okay. I'm sorry, Judge.

6 THE COURT: That's okay.

7 MR. JOHNSON: We'll withdraw that.

8 THE COURT: That's all right.

9 BY MR. JOHNSON:

10 Q: All right. Mr. Cannon, during your conversation with Mr.  
11 Smaldone prior to trial, did he ever discuss a defense  
12 strategy with you or review evidence?

13 A: No, sir.

14 Q: He never talked about the evidence with you?

15 A: I'd say he talked, but it wasn't -- like, we didn't  
16 strategize the whole situation. Like, it was a whole rush.  
17 The whole trial was rushed.

18 Q: Okay. How many times did he meet with you to review  
19 evidence?

20 A: One time.

21 Q: Okay. Do you feel like he properly investigated the  
22 case?

23 A: No, sir.

24 Q: Did he have a private investigator meet with you?

25 A: No, sir.

## MYRON CANNON - DIRECT BY MR. JOHNSON

1 Q: Okay. And you're saying he only met with you one time?

2 A: One time he came to see me.

3 Q: Okay. And as we stated before, there was an issue with  
4 Juror 131 that came up in court, Janesse Shavers, and she was  
5 on the jury and made contact with someone described as, quote,  
6 defendant's girlfriend or someone else --

7 A: Yes.

8 Q: -- that might have had some relationship, and there was  
9 no effort by him to have that person removed from the jury?

10 A: Yes, exactly. Like she know -- like, the lady, Janesse  
11 Shavers, she worked with my son's aunt and they worked at DSS  
12 together or whatever, and they had an altercation there.  
13 Like, they had a feud, and they're not friends no more  
14 basically, you know, behind the feud or whatever. Right?  
15 And, like, it came out in court. So it was, like, he didn't  
16 strike her as a juror. You know what I'm saying? She stayed  
17 on there.

18 Q: Okay. And when the trial was going forth and there was  
19 testimony by Sgt. Joe Nida, William Joe Nida, talking about  
20 street value of drugs, do you recall that your attorney at  
21 that point failed to preserve an issue regarding testimony  
22 where he talked about street value of drugs and that issue was  
23 not properly objected to or preserved?

24 MR. BARLOW: Your Honor, objection to leading.

25 THE COURT: Sustained. Just a little bit of adjustment

## MYRON CANNON - DIRECT BY MR. JOHNSON

1 there, sir.

2 MR. JOHNSON: I'm sorry.

3 BY MR. JOHNSON:

4 Q: Do you remember testimony about Sgt. Nida and the street  
5 value of drugs?

6 A: Yeah, I remember. Yeah, I remember the -- are you  
7 talking about the narcotic agent or something like that?  
8 Right?

9 Q: Yeah.

10 A: Yeah, I remember him.

11 Q: Do you remember Mr. Smaldone objected to that testimony?

12 A: I ain't -- you said, did he -- did he object to it?

13 Q: Yeah.

14 A: I'm not quite -- I can't quite recall. Like, I don't --

15 Q: Okay.

16 A: Yeah, I can't even remember. Like, it was years ago  
17 though.

18 Q: Okay.

19 MR. JOHNSON: But -- well, that's all we have, Your  
20 Honor.

21 THE COURT: Mr. Barlow?

22 CROSS-EXAMINATION

23 BY MR. BARLOW:

24 Q: Good afternoon, Mr. Cannon. How are you doing?

25 A: All right.

## MYRON CANNON - CROSS BY MR. BARLOW

1 Q: All right. You're here today claiming that your trial  
2 counsel was ineffective; correct?

3 A: Yes, sir.

4 Q: Okay. And what's your -- what sentence did you receive  
5 at trial? '

6 A: Twenty-five years.

7 Q: Twenty-five years? Okay. Do you know how PCR works? Do  
8 you understand what relief we can grant you here today or this  
9 Court can grant you?

10 A: Kind of sort of.

11 Q: Okay. Okay. You -- the only relief that this Court can  
12 give you if they find that you meet the burden is a new trial.  
13 Okay? You go back to day one.

14 A: Yes, sir.

15 Q: All indictments that were originally set on you come back  
16 on you.

17 A: Yeah, I understand.

18 Q: Okay. And there are no guarantees that any plea  
19 negotiations will occur or anything like that. You will go to  
20 trial on all of the charges that you were originally indicted  
21 on.

22 A: I understand.

23 Q: Do you understand the maximum sentences for those --  
24 those charges?

25 A: Yes, sir.

## MYRON CANNON - CROSS BY MR. BARLOW

1 Q: Okay. So tell me what trafficking in cocaine base, third  
2 offense, is?

3 A: Twenty-five to 30 years.

4 Q: Okay. So it's 30 max?

5 A: Yeah.

6 Q: How about PWID cocaine first? Actually, were you charged  
7 with PWID cocaine first or third offense?

8 A: They charged me with third offense on both of them.

9 Q: Okay. And what's the maximum on that one, the third?

10 A: I think it was 30 years or something like that.

11 Q: Correct. All right. And how about the failure to stop  
12 for a blue light?

13 A: I think it's five years.

14 Q: Okay. And resisting arrest?

15 A: Like, one or two years or something like that.

16 Q: So potentially you were exposing yourself -- if granted  
17 PCR, you're exposing yourself to 66 years?

18 A: Yes.

19 Q: Versus what you got at trial?

20 A: I understand.

21 Q: Knowing that, do you wish to proceed forward?

22 A: I understand.

23 Q: Okay. All right. Your first claim is that he failed to  
24 object to the instruction regarding -- excuse me -- regarding  
25 the PWID cocaine. Exactly what objection should he have made?

## MYRON CANNON - CROSS BY MR. BARLOW

- 1 A: Are you talking about the PWID?
- 2 Q: Correct.
- 3 A: Basically, like, they charged me with PWID for possession
- 4 with intent to distribute. They had a big deliberation on the
- 5 situation when I -- like, when they're deliberating on it that
- 6 it was possession. They charged me with PWID. That's what I
- 7 went to trial for.
- 8 Q: Right. But the -- the instruction -- your claim is that
- 9 he failed to object to the instruction regarding PWID cocaine.
- 10 What objection should he have made?
- 11 A: Like, I can't quite say, but I know that that definitely
- 12 wasn't what it's supposed to be, you know.
- 13 Q: So your claim is that -- are you claiming the jury charge
- 14 was not correct?
- 15 A: Yes.
- 16 Q: Okay. Your second is failed to ask the Court to dismiss
- 17 Juror Shavers. Do you recall talking to Mr. Smaldone about --
- 18 after -- or about the Court and questioning Juror Shavers?
- 19 A: We didn't have time to talk. Like, it happened in the
- 20 middle of the courtroom. Like, we didn't have time. We
- 21 talked, but it wasn't like -- you know, it was a whole
- 22 situation in the middle of the trial.
- 23 Q: And what was the issue with Juror Shavers?
- 24 A: That she know my family.
- 25 Q: Does she know you?

## MYRON CANNON - CROSS BY MR. BARLOW

1 A: Yes, she know my baby mama. She know my son's mother.

2 Q: Okay. And was the Juror Shavers also with the Juror 131?

3 A: Yes, that was her.

4 Q: Okay. So she's 131? Okay.

5 A: Yeah.

6 Q: And do you recall the Court actually holding a --  
7 bringing that juror in and questioning her?

8 A: Yes.

9 Q: Okay. And do you recall your -- your lawyer was able to  
10 question her as well?

11 A: He let her stay on.

12 Q: Okay. The Court permitted her to stay on, sir. Do you  
13 recall that?

14 A: Yeah, I'm saying that he did. He said that it was, you  
15 know, all right for the Court to let her stay on.

16 MR. BARLOW: I beg the Court's indulgence, Your Honor.

17 THE COURT: Yes, sir.

18 BY MR. BARLOW:

19 Q: Do you recall him speaking to you before the juror --  
20 before the Court ruled on the juror?

21 A: Basically, like -- like, it was a whole rush situation,  
22 but, like, me and him talked. He said -- basically, he let  
23 her stay on. That's what I remember. I do remember that  
24 part.

25 Q: Did you tell Mr. Smaldone that you wanted her removed?

## MYRON CANNON - CROSS BY MR. BARLOW

1 A: Yes, sir.

2 Q: All right. Moving on. Let's -- failure to move for a  
3 directed verdict based on the lack of knowledge of cocaine.  
4 Tell me about that allegation.

5 A: Say that again?

6 Q: Your -- one of your claims is that he failed -- that Mr.  
7 Smaldone failed to move for a directed verdict based on the  
8 lack of knowledge of cocaine?

9 A: Yeah.

10 Q: Do you recall Mr. Smaldone moving for a directed verdict?

11 A: Yeah, I remember that.

12 Q: Okay. And that's page 92 of the transcript?

13 A: Yeah.

14 Q: And in fact, he argued that -- that there was no evidence  
15 that you exercised dominion and control?

16 A: Yeah, exactly.

17 Q: So what exactly is your argument regarding the knowledge  
18 of the drugs?

19 A: Basically, like, I feel like he should have asked for a  
20 -- not -- not direct verdict. He should have asked for the  
21 knowledge of the drug.

22 Q: All right. Let me ask you this, Mr. Cannon. You ran  
23 from the police; correct?

24 A: That's what they said.

25 Q: Okay. And you -- your vehicle crashed; correct?

## MYRON CANNON - CROSS BY MR. BARLOW

1 A: Yes.

2 Q: Who was in the vehicle with you?

3 A: It was a rental car.

4 Q: Right. No. Who else was in there?

5 A: No one.

6 Q: Okay. Where did they find the cocaine?

7 A: They said they found it on the floorboard, but I know

8 that wasn't.

9 Q: On the floorboard --

10 A: Yeah.

11 Q: -- of the car that you were driving?

12 A: That's what they said.

13 Q: Okay. And you had no knowledge that that cocaine was

14 there?

15 A: No, sir.

16 Q: Okay. Moving on. The next claim is he failed to --

17 counsel failed to discuss defense strategy or properly review

18 evidence. What defense is it do you think you had?

19 A: You say what defense strategy I think I had?

20 Q: Uh-huh.

21 Q: Basically, like, I feel like the whole situation been

22 rushed. Like, I didn't -- like, I got indicted -- what? --

23 2015? I went to court the same year.

24 Q: Mr. Cannon, I understand that you feel that it was

25 rushed, but I'm asking you what -- what defenses did you think

MYRON CANNON - CROSS BY MR. BARLOW

1 you had that he should have brought up?

2 A: Basically, I felt like he could have did more than what  
3 he did for me though. That's what I feel. I'm not a lawyer.  
4 I'm not a lawyer. So I --

5 Q: I understand that too, but did you -- are you aware of  
6 any defense that he -- he should have brought up?

7 A: I can't quite say, but I know that I feel like he didn't  
8 represent me, like, adequately.

9 Q: Okay. The next one was failure to investigate. Did you  
10 ask Mr. Smaldone to investigate anything or anyone?

11 A: Yes, I asked him. You know, I really wanted him to get a  
12 P.I., a private investigator on the situation. Like, the  
13 whole -- my whole court case been rushed. Like, I couldn't do  
14 nothing. Like, within four months -- I hired him on -- what?  
15 -- July and I went to court in September. So that's, like, a  
16 violation of my due process.

17 Q: And what exactly did you want the private investigator to  
18 investigate?

19 A: Basically, like, the whole situation.

20 Q: Regarding?

21 A: The rental car, everything.

22 Q: And the next one is failed to meet a sufficient number of  
23 times. How many times did Mr. Smaldone meet with you?

24 A: Like I said, once.

25 Q: Okay. In that one meeting, did you all review evidence

## MYRON CANNON - CROSS BY MR. BARLOW

1 or any discovery?

2 A: Not really.

3 Q: Did you or didn't you?

4 A: Yeah, we talked, but it wasn't like he -- he really came  
5 down to see me or talk to me or whatever. I was basically,  
6 like, one time I seen him.

7 Q: Do you recall what evidence you reviewed?

8 A: I can't recall.

9 Q: How about do you recall or can you tell us today what  
10 evidence are you asserting you did not review?

11 A: Basically, like, they didn't have any touch DNA or no --  
12 you know what I'm saying? They didn't have a lot of stuff.  
13 They didn't -- like, he didn't -- basically, like . . .

14 Q: You were the only person in the vehicle; correct?

15 A: Yes, sir.

16 Q: Okay. How would any further discussion of your evidence  
17 have changed the outcome of your trial?

18 A: I feel like if we had time to go over my case, it would  
19 have been -- it would probably -- the outcome would have came  
20 out different.

21 Q: And your last allegation is failure to object to the  
22 expert testimony of Sgt. -- Sgt. Nida as improper character  
23 evidence. And are you aware or do you recall that Mr.  
24 Smaldone did actually make a -- an objection to relevance and  
25 to 403? And that's on pages 27 through 29 of the transcript.

MYRON CANNON - CROSS BY MR. BARLOW

1 That was a pretrial objection to that?

2 A: Yes.

3 Q: Okay. So he did object?

4 A: He did -- are you talking about the guy that tried to  
5 testify on me about controlled buys?

6 Q: Sgt. Nida.

7 A: Yes.

8 Q: Okay. And -- and it was renewed at page 87 of the  
9 transcript. Do you recall that?

10 A: Yes.

11 Q: Okay.

12 MR. BARLOW: I beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 MR. BARLOW: Nothing further, Your Honor.

15 THE COURT: Mr. Johnson?

16 MR. JOHNSON: Just briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. JOHNSON:

19 Q: Mr. Cannon, so at the end when the jury came back and  
20 asked that question about permissive inference, that's the  
21 original jury charge that you wanted your attorney to object  
22 to about their inferences in --

23 MR. BARLOW: Your Honor, objection. Leading.

24 MR. JOHNSON: Oh.

25 THE COURT: Yes, sir.

## MYRON CANNON - REDIRECT BY MR. JOHNSON

1 MR. JOHNSON: I'm sorry.

2 BY MR. JOHNSON:

3 Q: But is that -- is that the charge you wanted objected to

4 by your counsel?

5 A: Yes.

6 Q: Okay.

7 MR. JOHNSON: No other questions, Your Honor.

8 THE COURT: Mr. Barlow?

9 MR. BARLOW: Nothing from the State, Your Honor.

10 THE COURT: Thank you, sir. You may come down.

11 Anybody else, Mr. Johnson?

12 MR. JOHNSON: No, sir.

13 THE COURT: Okay.

14 MR. BARLOW: Your Honor, may I have a moment?

15 THE COURT: Yes, sir.

16 (WHEREUPON, there was a pause in the proceedings, after

17 which the proceedings resumed as follows.)

18 MR. BARLOW: All right, Your Honor.

19 THE COURT: Yes, sir.

20 MR. BARLOW: The State would call Grant Smaldone.

21 THE CLERK: Go up to the stand. Place your left hand on

22 the Bible and raise your right hand. Do you swear to tell the

23 truth, the whole truth, and nothing but the truth, so help you

24 God?

25 THE WITNESS: I do.

## GRANT SMALDONE - DIRECT BY MR. BARLOW

1 GRANT SMALDONE, being first duly  
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BARLOW:

5 Q: Thank you for being here. State your name for the  
6 record, please?

7 A: My name is Grant Smaldone, S-m-a-l-d-o-n-e.

8 Q: And, Mr. Smaldone, how many years have you been  
9 practicing law?

10 A: As of now, I believe a little -- I believe maybe a little  
11 over ten.

12 Q: And what percentage of that practice has been devoted to  
13 criminal law?

14 A: A hundred percent.

15 Q: Regarding your representation with Mr. Cannon, were you  
16 appointed or retained?

17 A: I was retained.

18 Q: And do you recall when you were retained?

19 A: I think it was -- I just looked a minute ago. That's why  
20 I remember it was late July of 2016.

21 Q: And his trial was September 6th through the 7th, 2016?

22 A: That's correct.

23 Q: So a little over a month?

24 A: Correct.

25 Q: Is that correct? Okay.

## GRANT SMALDONE - DIRECT BY MR. BARLOW

1 A: Yes.

2 Q: How many times did you meet with Mr. Cannon?

3 A: I honestly do not know that. He says once. That is  
4 possible. It might be more. I know it was at least once, but  
5 I do not recall independently.

6 Q: Okay. Do you recall the evidence the State had against  
7 Mr. Cannon?

8 A: Yes. Yes, I do.

9 Q: Okay. Would you -- would you mind giving us a little  
10 recitation of what the State's evidence was?

11 A: Do you mean the pieces of evidence or kind of the theory  
12 of the case?

13 Q: Kind of like what --

14 A: What proves it?

15 Q: -- happened, transpired?

16 A: The State alleged that Mr. Cannon was driving. I believe  
17 it was late at night. And I might -- again, it's been six --  
18 it has been six years. So if I get any details wrong, I  
19 apologize.

20 But I believe it was late at night driving a rental car  
21 alone. Blue lighted. I can't -- I cannot remember why, but  
22 he ran. Well, he fled from police. Crashed the car. I think  
23 it was into a cornfield or something like that. I might be  
24 wrong. Crashed the car, fled, ran out of the car, was tasered  
25 by a deputy, and then arrested for failure to stop for a blue

## GRANT SMALDONE - DIRECT BY MR. BARLOW

1 light.

2 The door was left open, and I think it was another  
3 officer saw what he assumed to be cocaine in the front seat.  
4 They found that. I think that was the trafficking weight  
5 cocaine. And if I recall correctly, there was a scale found  
6 maybe in the trunk and I think two cell phones. And then I  
7 think Mr. Cannon -- I think he was arrested for DUI, too, but  
8 that all transpired before because that was -- if he was  
9 arrested for DUI, that would be magistrate court, and I didn't  
10 handle that part of it.

11 So based on the cocaine in the front seat and the weight  
12 of it and and then since he ran, there was no Fourth Amendment  
13 stop issue. The door was open, so there wasn't really a  
14 Fourth Amendment suppression issue with the plain view. So  
15 based on all of that, that's -- that's the State's version of  
16 the case and, unfortunately, the jury's version of the case  
17 too.

18 Q: Okay. Let me ask you this. Do you recall where the  
19 drugs were found in the car? You said the front seat?

20 A: I -- I want to say in his front. I think it's -- I might  
21 be wrong, but I think it was where he was sitting.

22 Q: Okay.

23 A: But I might be wrong about that.

24 Q: All right. Did you review the evidence that the State  
25 had with Mr. Cannon?

## GRANT SMALDONE - DIRECT BY MR. BARLOW

1 A: Yes.

2 Q: Okay. And do you feel like you had sufficient time to  
3 review that evidence with him?

4 A: Yes.

5 Q: Okay. And did you explain the elements of the charges he  
6 was charged with and what the State had to prove?

7 A: I believe so. I might not have laid it out in a kind of  
8 a school-style lesson, but it's always covered in my  
9 discussions with clients.

10 Q: Do you recall if Mr. Cannon had any defenses?

11 A: I referred to this case -- I've talked with other lawyers  
12 about it, you know, beforehand and afterwards. I call it the  
13 flying drugs defense. This was a case where my version was  
14 that this was not his car. He ran because he was drunk, and  
15 because of the accident there must have been drugs dislodged  
16 from wherever they were hiding in the back seat to the front  
17 seat.

18 So that was -- I think the flying drugs defense was  
19 probably the only one. I still -- it's been six years. I  
20 can't think of a better -- you know, obviously, it didn't win;  
21 so it wasn't the best, but I cannot think of a better  
22 explainer of events than that.

23 Q: And do you recall if that was the -- that was the defense  
24 you went with and that you discussed that with him?

25 A: I did. I didn't call -- candidly, I did not call it the

## GRANT SMALDONE - DIRECT BY MR. BARLOW

1 flying drugs defense at the time. But we -- you know, we  
2 talked about basically our -- I said our version of the fact  
3 is that we don't know where those drugs came from. Whatever  
4 happened during the wreck or afterwards, that's -- that's --  
5 he didn't know about it. So, yes.

6 Q: Did you engage in any plea negotiations?

7 A: I did not. This case was -- well, I'll back up. I  
8 briefly attempted to. This case was -- had -- I don't recall.  
9 I think it was Scott Suggs actually. He -- he represented Mr.  
10 Cannon before me.

11 Mr. Cannon's solicitor -- I didn't know his solicitor is  
12 kind of infamous for not making any secondary offers. Mr.  
13 Jepertinger is just kind of a one-offer guy and if I wanted  
14 another offer, it would be worse than the initial offer, and  
15 that apparently that he is very well -- I don't even think he  
16 -- he might practice. I'm not sure. If he still practices,  
17 he is very well known for that. And if he doesn't practice,  
18 he was very well known for that.

19 Q: Well, let me ask you this. Do you -- do you feel that  
20 you had adequate time to prepare for the trial with what would  
21 have been a little over a month and a half?

22 A: Honestly, yes. Yes. If I had it from the start, it  
23 would have been better, not for trial, but because I would  
24 have had a sit down, like, hey, take -- take the ten years,  
25 buddy. It might not be fun but take it. Unfortunately, that

GRANT SMALDONE - DIRECT BY MR. BARLOW

1 was not an option once I was retained. So it was just trial  
2 or nothing.

3 Q: Gotcha. Let's jump into these allegations. I want to  
4 start with the first one. It's -- his first one is that you  
5 failed to object to the -- the cocaine jury charge, the PWID  
6 cocaine jury charge where -- where the judge said that  
7 possession of more than one gram of cocaine creates an  
8 inference?

9 A: Yes.

10 Q: And that was to the inference language that he is -- he  
11 is referring to that you should have objected to. Do you feel  
12 you should have objected to that?

13 A: All right. So honestly, I -- I don't think it -- I don't  
14 think it was necessary to have objected to that. Now, I  
15 absolutely would object to that because that is a garbage  
16 statute, just saying that on the record. That is ridiculous  
17 that there is an inference that the defendant has to prove  
18 away.

19 However, I still think even today that's the law. So I  
20 don't think -- I don't think there's any duty for me to object  
21 to something to create new law. And if there is, I'm more  
22 than happy to fall on that sword, especially on that  
23 ridiculous statute.

24 Q: Thank you. And to the next one, failure to ask the Court  
25 to dismiss Juror Shavers. Do you recall the Court bringing in

## GRANT SMALDONE - DIRECT BY MR. BARLOW

1 that juror to discuss what had occurred?

2 A: Yes.

3 Q: Okay. And did you see any reason to object to her being  
4 seated or perhaps removed?

5 A: Well, she was already seated, and I think it was very  
6 close to the end of the trial. Because it was close to the  
7 end of the trial, I had kind of a sense that things, you know,  
8 might not be going our way. So honestly, I thought maybe a  
9 little chaos grenade to the arcades might be helpful.

10 And I think that she was -- from my understanding was  
11 that she was friends with Mr. Cannon's girlfriend or child's  
12 mother or whatever she is. So I thought it -- I just -- I  
13 just thought I -- it would be better than what I thought would  
14 happen without her, basically. So I did not really see any  
15 reason to strike her, and I think she said she'd be fair and  
16 impartial. Obviously, they all say that, but she did say  
17 that, so I let her stay on.

18 Q: Would that be a strategic move on your part?

19 A: Yeah, that was definitely strategy because, like I said,  
20 I think we needed a wild card at that point.

21 Q: All right. Next one was failure to move for a directed  
22 verdict, which you did, but his argument is that you argued  
23 that it was for lack of control or dominion and not knowledge  
24 of the cocaine. Can you tell me any reason why you would  
25 object to that?

## GRANT SMALDONE - DIRECT BY MR. BARLOW

1 A: I mean, I think -- I think knowledge and control covers  
2 it. And if not, that's fine too.

3 Q: Well, I believe -- let me -- let me ask you this. Let me  
4 rephrase that. It's failed to move for a directed verdict  
5 based on knowledge of the cocaine.

6 A: Okay.

7 Q: You originally moved for a directed verdict based on lack  
8 of control and dominion of the cocaine. Is there any reason  
9 why you would choose that one over knowledge of the cocaine?

10 A: I think -- honestly, no, I don't -- I don't know that I  
11 made a conscious choice. I think I just said what I know the  
12 elements and statutes say. I think that -- you know, yeah, I  
13 think I just was kind of spitting out statute or, you know,  
14 elements, I guess.

15 Q: Okay. Moving on to their amended allegations. I know  
16 we've covered this a little. Just let me -- let me cover did  
17 you fail to discuss the defense strategy with Mr. Cannon?

18 A: No. I told -- I mean, like I've said before, I told him  
19 that the whole case revolves around I think -- I think I kind  
20 of summed it up before the trial and maybe during the trial as  
21 not my -- not my car, not my drugs.

22 Q: And you -- and you have given testimony that you did  
23 review the -- the evidence with Mr. Cannon; correct?

24 A: Yes.

25 Q: Okay. And let's see. Next one is you failed to properly

## GRANT SMALDONE - DIRECT BY MR. BARLOW

1 investigate the State's case.

2 A: I -- I read the discovery. I don't know what else. I  
3 mean, it was cocaine found in the front seat of a car. I  
4 don't think that, like, visiting the car would really -- you  
5 know, or buying a replica of the car or anything like that  
6 would really cover new ground. So I think it was a -- you  
7 know -- and I hate -- I don't -- I don't want to say this  
8 because it's a big deal for Mr. Cannon. It was a -- it was a  
9 large sentence and life changing, but -- but it was a simple  
10 case as far as the -- a brief couple of minutes of -- of  
11 events.

12 It was not a federal RICO case. There were no witnesses.  
13 There were no -- you know, there was no -- I don't think there  
14 was surveillance. There was no -- there were no experts that  
15 I could have. It was just -- you know, it was just the facts  
16 and how do you interpret them. So I don't know that -- I read  
17 the discovery many times. I don't know what else I could have  
18 done.

19 Q: The next one is you failed to meet with him a sufficient  
20 number of times. Do you believe that you met with him  
21 sufficiently in order to represent him effectively?

22 A: I believe so. Obviously, it didn't go our way, so who  
23 knows what would happen otherwise? But I don't think that --  
24 I think that -- I don't think that the thing lacking on my  
25 part was -- was sitting down and talking with him enough. I

## GRANT SMALDONE - DIRECT BY MR. BARLOW

1 don't -- again, it's been a long time and I only represented  
2 him for, like, a month before trial, and that was spent  
3 preparing for trial and getting ready, but I -- I think I  
4 talked with him, and I don't -- I don't remember -- he did not  
5 have any additional questions or concerns. So . . .

6 Q: And we've -- we've addressed the juror. So I'm going to  
7 just move to the next one, and it's a failure to object to  
8 Sgt. William Joe Nida's testimony about the street value and  
9 failed to preserve this issue for appeal. Do you recall  
10 objecting?

11 A: I do. I did object.

12 Q: Okay. And that was in your -- but the Court of Appeals  
13 -- do you -- are you familiar with their opinion that they  
14 issued on this case?

15 A: Yes.

16 Q: And it was regarding this preservation issue; correct?

17 A: Yes.

18 Q: And they did find that it wasn't preserved?

19 A: Yes.

20 Q: Based off of the argument that they made in the appellate  
21 brief?

22 A: Oh, I'm not sure about that. Oh, actually, you're right.  
23 I do -- I am sure about that. I know what you're talking  
24 about now.

25 I guess Ms. Franklin-Best -- who, by the way, is one of

GRANT SMALDONE - DIRECT BY MR. BARLOW

1 the best appellate attorneys in the country probably, so I'll  
2 defer to her. However, I think her argument that it was --  
3 that it was a character evidence issue, I had no control over  
4 that. Maybe I should have objected to character evidence.

5 I found it more of a relevance issue, like why some  
6 officer who has nothing to do with the case is talking about  
7 how much drugs cost in Florence County. I don't see what that  
8 has to do with -- I didn't at the time see what it has to do  
9 with, you know, this -- this version of events and these facts  
10 because he wasn't selling them and there was not a bunch of  
11 cash found. So I don't get it.

12 Q: In your time as a -- as a criminal defense attorney, do  
13 you believe that it was a novel argument?

14 A: Back then, I think so, yeah. I think it still might be.  
15 But yeah, I think it was pretty new or new to me at least. I  
16 hadn't heard of it much.

17 MR. BARLOW: I beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 MR. BARLOW: Thank you. Nothing further, Your Honor.

20 THE COURT: Mr. Johnson?

21 CROSS-EXAMINATION

22 BY MR. JOHNSON:

23 Q: Mr. Smaldone, the objection or potential objection to the  
24 charge regarding an inference when there's a charge -- there's  
25 cocaine over a gram, wouldn't it be to your client's advantage

## GRANT SMALDONE - CROSS BY MR. JOHNSON

1 if that was not charged to the jury?

2 A: Well -- okay. That's a hard question to answer because I  
3 don't want to say no. Of course, it would. It would benefit  
4 him. Yes, that would be a beneficial thing. However, I don't  
5 know that it would have made a difference because that wasn't  
6 the controlling charge. There was also the trafficking issue.

7 However, certainly for that charge, yes, it probably  
8 would have benefited, although I don't -- I don't see a judge,  
9 especially that particular judge, granting my objection. But  
10 if he did, yeah, I would -- it would have -- probably would  
11 have helped, especially because the jury had questions later.  
12 So . . .

13 Q: Okay. Have you ever attempted to object to that before  
14 or ever?

15 A: I don't -- honestly, I don't think it's come up in a  
16 while. I haven't tried a drug case in a -- in a while, so I  
17 don't think I've had -- I think I've come close, and they've  
18 always pled at the last minute. So I don't think I've had the  
19 chance to -- to argue that. I look forward to it, though.

20 Q: Okay. But you didn't do it in this case?

21 A: I did not do it in this case. In the future, I would  
22 argue that it would be an impermissible comment, judicial  
23 comment on the facts that the -- that inference and also  
24 burden shifting. But . . .

25 Q: Okay. And regarding the Juror 131, you did not ask that

## GRANT SMALDONE - CROSS BY MR. JOHNSON

1 that juror be replaced with an alternate juror, and why -- why  
2 was -- what was your decision there about? Why? Why did you  
3 choose not to do that?

4 A: All right. So the issue was she was -- according to --  
5 according to the State, according to what we believe, we're  
6 not a hundred percent sure, but we think that the defendant or  
7 applicant's girlfriend or significant other in some way  
8 contacted that juror. I think that juror said in court that  
9 nothing was really discussed because she kind of hung up, but  
10 there was an implication made and then that's when she hung  
11 up.

12 The reason I didn't strike her, I was on the fence about  
13 it. I -- you know, it's a tricky call because it was close to  
14 the end of the trial. I didn't think that things were going  
15 my and Mr. Cannon's way. So I thought that maybe this might  
16 be the kind of Hail Mary or whatever metaphor you want to use  
17 that we needed to -- to push things back our way. So it was  
18 kind of a strategic move. Yeah.

19 Q: Did you have any information about any relationship  
20 between this juror or the person who called them, relationship  
21 to anyone in your client's family?

22 A: Yeah. Well, I don't know of -- of at least an  
23 acquaintanceship of -- with his -- I think her name is Latisha  
24 German, but I might be wrong. His -- and I don't know if  
25 they're together or were together. I know that they were

## GRANT SMALDONE - CROSS BY MR. JOHNSON

1 involved romantically at some point, and she was there at the  
2 trial. So I'm sure she cared about him and hopefully still  
3 does.

4 Q: So this is somebody who made contact with the juror?

5 A: Yes.

6 Q: Okay. And you didn't -- did you have any conversations  
7 with your client about that?

8 A: I don't recall. I don't.

9 Q: Okay.

10 A: But he -- Mr. -- I will say Mr. Cannon was right. It was  
11 very -- it was kind of sudden. It was, I think, right before  
12 trial. So if I did, it was brief, but yeah.

13 Q: Okay. Regarding your directed verdict motion, was the --  
14 what was the reason for not stating that there was a failure  
15 to prove the knowledge of the drugs?

16 A: Honestly, I'm not sure. I think I probably just -- just  
17 said what I -- what I believe the elements to be.

18 Q: Okay. The -- do you remember how much evidence was  
19 recorded audio, digital audio, video which you reviewed?

20 A: I honestly do not remember that. I don't remember the  
21 multimedia, the level of multimedia evidence. I don't think  
22 there was much. There might -- honestly, there might not have  
23 been any, but if there was, it was not voluminous.

24 Q: Do you remember how long -- you said you may have had one  
25 meeting with him; correct?

## GRANT SMALDONE - CROSS BY MR. JOHNSON

- 1 A: At least one, yes.
- 2 Q: Do you remember how long that meeting was?
- 3 A: I do not know, no.
- 4 Q: Okay. Could that meeting have been, like, less than an  
5 hour? Is that possible?
- 6 A: It's possible, yeah.
- 7 Q: Did you hire an investigator to look into this case?
- 8 A: No.
- 9 Q: Do you remember Mr. Cannon asking you to do that?
- 10 A: I do not recall that.
- 11 Q: Okay. And the argument regarding preserving this issue,  
12 basically this appellate opinion, Court of Appeals opinion,  
13 was accurate when it said you did not object based on improper  
14 character evidence trying to object to Sgt. Nida's testimony.  
15 You didn't do that at trial, and you had that option; correct?
- 16 A: Right.
- 17 Q: Okay. By failing to do that, that prevented the  
18 appellate counsel from addressing that on appeal?
- 19 A: Right. She could argue relevance, but I don't know why  
20 she went with something I didn't object to.
- 21 Q: Okay. But it would have been to your client's advantage  
22 to have that additional ground preserved for appeal?
- 23 A: Yes, it would be to his advantage to have every ground  
24 for appeal.
- 25 Q: Okay. And did you have any attorneys working with you on

## GRANT SMALDONE - CROSS BY MR. JOHNSON

1 this case at trial? Were you alone?

2 A: I was alone.

3 Q: Did anybody assist you as far as paralegals or anyone  
4 doing any research or any investigation?

5 A: I don't believe so.

6 Q: Did you talk to the arresting officers before trial?

7 A: I honestly don't know. I don't. If -- if I did, it was  
8 not at length.

9 Q: Okay.

10 MR. JOHNSON: No more questions, Your Honor.

11 THE COURT: Mr. Barlow?

12 MR. BARLOW: One moment, Your Honor. Nothing from the  
13 State, Your Honor.

14 THE COURT: Thank you, sir.

15 MR. BARLOW: And that concludes our witnesses, Your  
16 Honor.

17 THE COURT: Okay. May he be excused?

18 MR. JOHNSON: Yes, sir.

19 THE COURT: Have a good day, sir.

20 THE WITNESS: You too, Judge.

21 THE COURT: Mr. Cannon, a lot has been said today in this  
22 trial. I want to take time to go back and read my notes, look  
23 at the file, and your lawyers have worked with me many times,  
24 both -- all three of them have. And I will send my ruling out  
25 soon when I get through with this stack.

1 Thank you all.

2 MR. BARLOW: Thank you, Your Honor.

3 MR. JOHNSON: Thank you, Judge.

4 (WHEREUPON, the proceedings ended at 4:11 p.m.)

5

6 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina                 )  
                                                                )      Certificate  
County of Florence                         )

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter III for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 44, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 15th day of December, 2022.

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

s/Krystal J. Smith

Court Reporter

Florence, South Carolina

July 6, 2023

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

FILED

) IN THE COURT OF COMMON PLEAS  
) TWELFTH JUDICIAL CIRCUIT

2025 JAN 10 PM 2:31

Myron A. Cannon, #296787,

DORIS FULFUS O'HARA  
CCCP & GS

) CASE No. 2020-CP-21-2926

Applicant, FLORENCE COUNTY, SC

v.

**ORDER OF DISMISSAL  
WITH PREJUDICE**

State of South Carolina,

Respondent.

|                        |                              |
|------------------------|------------------------------|
| Presiding Judge:       | Hon. George M. McFaddin, Jr. |
| Applicant's Attorney:  | Ola A. Johnson, Esq.         |
| Respondent's Attorney: | D. Russell Barlow, II, Esq.  |
| Trial Counsel:         | Grant B. Smaldone, Esq.      |
| Date of Hearing:       | December 15, 2022            |
| Court Reporter:        | Krystal J. Smith             |

This matter comes before the Court by way of Myron A. Cannon's (Applicant) application for post-conviction relief (PCR) filed on December 17, 2020. Respondent, the State of South Carolina, submitted its Return and Partial Motion to Dismiss on April 5, 2021, requesting an evidentiary hearing to resolve the claims outlined in the application and amended application. On October 11, 2022, Applicant amended his application through PCR Counsel Ola A. Johnson.

On December 15, 2022, an evidentiary hearing was held at the Florence County Courthouse before the Honorable George M. McFaddin, Jr. Applicant was present and represented by Ola A. Johnson, Esquire. Senior Assistant Deputy Attorney General D. Russell Barlow, II, represented Respondent. Applicant proceeded forward on the claims set forth in his original and amended applications. In support of these claims, Applicant testified on his behalf, and Respondent presented testimony from Grant B. Smaldone, Esquire (Trial Counsel).



Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

### **PROCEDURAL HISTORY**

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Florence County Clerk of Court. During its March 2016 term, the Florence County Grand Jury indicted Applicant for Trafficking Cocaine Base, Possession of Cocaine with Intent to Distribute, Failure to Stop for a Blue Light, and Resisting Arrest (2016-GS-21-0415). Trial Counsel represented Applicant. Deputy Solicitor John C. Jepertinger prosecuted the case.

Applicant's case proceeded to a jury trial September 6–7, 2016, before the Honorable William H. Seals. The jury convicted Applicant as indicted on all counts. Judge Seals sentenced Applicant to concurrent sentences of twenty-five (25) years for Trafficking Cocaine Base, twenty-five (25) years for Possession of Cocaine with Intent to Distribute, five (5) years for Failure to Stop for a Blue Light, and one (1) year for Resisting Arrest.

Applicant filed a timely notice of appeal. Elizabeth Franklin-Best, Esquire, perfected Applicant's appeal and presented the following issues:

1. The circuit court judge erred when he denied Cannon's motion for a directed verdict because the State failed to adduce substantial circumstantial evidence to prove that Cannon was guilty of trafficking in cocaine base and possession with intent to distribute cocaine.
2. The circuit court judge erred by allowing Officer Nida to testify to the street value of the drugs that were found in the car Cannon was driving because that testimony was irrelevant and was unduly prejudicial to Cannon pursuant to Rule 403.

Following briefing, the South Carolina Court of Appeals dismissed the appeal in an unpublished decision. State v. Cannon, Op. No. 2019-UP-397 (S.C. Ct. App. filed December 18, 2019). The Remittitur was returned to the circuit court on January 8, 2020.

#### **FACTS GIVING RISE TO THE CONVICTION**

Prior to trial, Applicant moved to suppress evidence seized from the car he was driving at the time of his arrest. After hearing testimony from the police officers involved in Applicant's arrest and seizure of the evidence, the trial court denied Applicant's motion. (Trial Tr. pp. 17–27). Applicant then moved to exclude testimony from the State's proposed expert regarding the street value of cocaine and crack, arguing the testimony was irrelevant because the dollar value was not an element of the offenses charged, and it was more prejudicial than probative. The State argued the testimony was relevant to the issue of whether the drugs found in the car were just for personal use. The trial court denied the motion to exclude the expert's testimony, finding the proposed testimony was relevant because the car Applicant was driving was a rental car, and the issue of whether someone other than Applicant left the drugs in the car could arise. (Trial Tr. pp. 27–29).

Tony Drummond (Drummond), a sergeant with the Florence County Sheriff's Office, testified that on September 12, 2015, he attempted to stop a car traveling at a very high rate of speed. Rather than stopping after Drummond activated his blue lights, the driver, subsequently identified as Applicant, continued driving at a high rate of speed with Drummond in pursuit. During the pursuit, Drummond observed Applicant run stop signs and drive erratically. Finally, after Applicant almost caused wrecks with other cars, Drummond struck the rear of Applicant's car, which caused it to run off the road, through a ditch, and into a bean field. (Trial Tr. pp. 40–45).



After the car came to a stop in the bean field, Drummond saw Applicant open the driver's door, jump out, and run away. Drummond determined no one else was inside the car, then pursued Applicant on foot. Applicant refused to stop when Drummond repeatedly ordered him to do so, and Drummond ultimately used a taser to subdue Applicant and get him into custody. When Drummond took Applicant back to his car, another officer told Drummond drugs had been found inside the car, which was determined to be an Enterprise rental car. (Trial Tr. pp. 46–49).

Corporal Brooks Urqhart (Urqhart) of the Florence County Sheriff's Office testified he was the first officer on the scene after Drummond started chasing Applicant on foot. When Urqhart walked up to the car in the bean field, he observed the driver's side door was open, and there were two bags of what appeared to be narcotics in plain view inside, one on the driver's seat and one on the driver's side floorboard. Urqhart did not touch anything in the car but secured the scene until other officers could arrive to seize the drugs. (Trial Tr. pp. 58–60).

Corporal Jason Bazen (Bazen) of the Florence County Sheriff's Office testified he worked narcotics interdictions with an inter-county community team of officers. Bazen was working the night of September 12, 2016, and responded to a call for assistance involving Drummond's pursuit of Applicant. Bazen assisted Drummond in securing Applicant and walked with them back to the vehicle, where he also saw the bags of drugs in plain view inside the car. Bazen secured the narcotics and placed them in evidence bags. Bazen also seized a set of digital scales, several cell phones, and two thumb drives from inside the car. Bazen testified digital scales are used to weigh drugs in the drug business. (Trial Tr. pp. 63–70).

Detective Mitch Hansen (Hansen) of the Florence County Sheriff's Office testified he is the forensic drug chemist for the Office, which includes testing, weighing, and re-packaging seized narcotics. Hansen analyzed the drugs seized from Applicant's rental car and determined one bag



contained 6.92 grams of cocaine powder. The other bag contained 38.19 grams of crack (cocaine base). (Trial Tr. pp. 77–81).

Sergeant William Nida (Nida) of the Florence Police Department testified he had worked with the Department Narcotics Unit for twelve years, which handles anything concerning drugs, including controlled purchases of illegal narcotics. Nida stated his unit averages 480 drug cases annually, and as a result of his involvement in controlled purchases and general experience working with drug cases, he was familiar with the street value of narcotics in Florence County. Over Applicant's relevancy and 403 objections, the trial court qualified Nida as an expert in the field of the retail value of cocaine and crack cocaine in the Florence area, finding the information was beyond the knowledge of an ordinary jury, Nida had the requisite knowledge and skill, and his testimony was reliable. (Trial Tr. pp. 84–87).

Nida testified that one gram of crack or cocaine powder was sold for \$100. The amount of cocaine powder and crack found in Applicant's rental vehicle was 45.11 grams, with a street value of \$4,511. (Trial Tr. pp. 87–91). Applicant moved for a directed verdict at the close of the State's case, arguing the State presented no evidence that Applicant had dominion and control over the drugs found in the car he was driving. The trial court denied the motion, finding there was evidence Applicant was in the car, he got out of the car and ran, the drugs were inside the car, and no one else was inside the car. (Trial Tr. p. 92).

#### **CURRENT ACTION BEFORE THIS COURT**

In his *pro se* PCR application, Applicant alleges he is being detained unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel:
  - a. Counsel was ineffective in failing to object to an instruction to the jury regarding possession of cocaine with the intent to distribute.

- b. Counsel was ineffective in failing to request the court to dismiss, Ms. Shavers, and to sit the alternative juror after, Ms. Shavers had become compromised [sic.] by a phone call.
  - c. Counsel was ineffective when making a motion for a directed verdict based on control and dominion of the cocaine.
2. Violation of Due Process of Law:
- a. ~~Counsel's decision to not challenge the indictment prior to the jury being sworn or at any time during the trial was wholly ineffective and as a result [Applicant] was deprived of due process of law under the Fourteenth Amendment to the United States Constitution, the South Carolina Constitution and well established law.~~
  - b. ~~[Applicant] further submits that if he were properly notified [because of the wording of the indictment] that he would be treated as a twice convicted trafficker he could have established a proper defense or could have decided to enter a plea.~~
  - c. ~~Counsel was ineffective in not challenging the indictment before the jury was sworn and the circuit court for Florence County was without subject matter jurisdiction to act over offense.<sup>1</sup>~~
3. ~~Ineffective Assistance of Appellate Counsel:~~
- a. ~~Appellate counsel was ineffective in failing to raise on appeal the fact that the court acted without jurisdiction over trafficking offense.~~
4. ~~The circuit court was without subject matter jurisdiction to sentence [Applicant] as a third offense trafficker.~~

In Applicant's amended application, he asserted the following allegations:

- 1. Ineffective Assistance of Trial Counsel
  - d. Trial Counsel failed to review discovery with Applicant.
  - e. Trial Counsel failed to investigate the case.
  - f. Trial Counsel failed to object to juror 131 following the discovery that someone described as "defendant's girlfriend" contacted this juror.
  - g. Trial Counsel failed to object to the testimony of Sgt. William Joe Nida regarding the street value of the drugs in question as improper character evidence and failed to preserve the issue for appeal.

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<sup>1</sup> Allegations 2(a), 2(b), 2(c), and 4 were summarily dismissed on Respondent's motion to dismiss. Accordingly, these allegations will not be addressed *infra*. (PCR Tr. pp. 8–9).

As relief, Applicant requests the Court vacate his conviction and sentence.

Before this Court were the Florence County Clerk of Court records regarding the Applicant's convictions and sentences, Applicant's SCDC records, the trial transcript, the entire appellate record, and the records of this PCR action.

### STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act<sup>2</sup> (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive

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<sup>2</sup> S.C. Code Ann. §§ 17-27-10 to -160.

*effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving

that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective

standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S. at 112.

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize



their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

#### *INITIAL FINDINGS*

This Court finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant he rendered adequate assistance and exercised reasonable professional judgment in her representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time

they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

*ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL*

**Allegation 1a: Failure to object to jury instruction regarding inference when in possession of over a gram of cocaine.**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the erroneous jury charge on inference when the amount of cocaine is over one gram. This Court finds this allegation is without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that

failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[c] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

"In reviewing jury charges for error, [the reviewing court] must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (quoting State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003)). "[A] charge is sufficient if, when considered as a whole, it covers the law applicable to the case. State v. Burton, 302 S.C. 494, 498, 397 S.E.2d 90, 92 (1990) (citing State v. Rabon, 275 S.C. 459, 272 S.E.2d 634 (1980)). If the charge "is substantially correct and covers the law [it] does not require reversal." State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (citing State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996)). "Moreover, '[t]o warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.'" State v. Marin, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016)

(quoting State v. Brandt, 393 S.C. 526, 550, 713 S.E.2d 591, 603 (2011)). An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion. State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583–84 (2010) (citing State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)).

### ***Trial***

At trial, the trial court gave the following jury charge:

Possession of more than one gram of cocaine creates an inference that the Defendant possessed the cocaine with intent to distribute it. This inference does not relieve the State from proving beyond a reasonable doubt that the Defendant had the intent to distribute. It is simply an evidentiary fact to be taken into consideration along with other evidence in the case and given the weight accordingly. If you find the Defendant did not possess with intent to distribute cocaine, you may find the Defendant guilty of possession of cocaine.

(Trial Tr. p. 124).

### ***PCR Evidentiary Hearing***

On direct examination, Applicant testified that he remembered there was a jury charge given about an inference to the jury for possession with intent based on possessing over a gram of cocaine. (PCR Tr. p. 10). Applicant testified although he recalled speaking with Trial Counsel about it, Trial Counsel never objected. (PCR Tr. p. 11).

On cross-examination, Applicant testified he believes that the jury instruction prejudiced him at trial. (PCR Tr. p. 11).

On redirect examination, Applicant testified he wanted Trial Counsel to object to the jury instruction, and Trial Counsel did not. (PCR Tr. p. 27).

On direct examination, Trial Counsel testified that he did not think it was necessary to object; however, he now would have objected because it is a "garbage statute." (PCR Tr. p. 33). Trial Counsel further testified it was ridiculous that there was an inference that the defendant had

to prove. Id. Trial Counsel testified that the law still exists today. Id. Trial Counsel testified he did not have a duty to object and create new law. Id.

On cross-examination of Trial Counsel, the following colloquy occurred:

- Q: Mr. Smaldone, the objection or potential objection to the charge regarding an inference when there's a charge -- there's cocaine over a gram, wouldn't it be to your client's advantage if that was not charged to the jury?
- A: Well -- okay. That's a hard question to answer because I don't want to say no. Of course, it would. It would benefit him. Yes, that would be a beneficial thing. However, I don't know that it would have made a difference because that wasn't the controlling charge. There was also the trafficking issue. However, certainly for that charge, yes, it probably would have benefited, although I don't -- I don't see a judge, especially that particular judge, granting my objection. But if he did, yeah, I would -- it would have -- probably would have helped, especially because the jury had questions later. So . . .
- Q: Okay. Have you ever attempted to object to that before or ever?
- A: I don't -- honestly, I don't think it's come up in a while. I haven't tried a drug case in a -- in a while, so I don't think I've had -- I think I've come close, and they've always pled at the last minute. So I don't think I've had the chance to -- to argue that. I look forward to it, though.
- Q: Okay. But you didn't do it in this case?
- A: I did not do it in this case. In the future, I would argue that it would be an impermissible comment, judicial comment on the facts that the -- that inference and also burden shifting. But . . .

(PCR Tr. pp. 38–39).

### ***Findings***

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any

resulting prejudice from that alleged deficiency. See Butler, supra. After a review of the record and the charge given to the jury, this Court finds Trial Counsel cannot be found deficient where when considered as a whole, the jury charge was a correct statement of the law. See State v. Jackson, 297 S.C. 523, 377 S.E.2d 570 (1989) (recognizing that jury instructions must be considered as a whole and if as a whole, they are free from error, any isolated portions that might be misleading do not constitute reversible error). Furthermore, this Court finds any objection by Trial Counsel would not have been meritorious. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

- Allegation 1b:** Failure to request the trial court to dismiss Juror 131, and to sit alternative juror after compromised phone call between defendant's girlfriend and Juror 131.
- Allegation 1f:** Failure to object to juror 131 following the discovery that someone described as "defendant's girlfriend" contacted this juror.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to juror 131 not being excused when details regarding a phone call from Applicant's "girlfriend" were

addressed by the trial court. Applicant also alleges that Trial Counsel should have objected to Juror 131 following discovery that someone described as "defendant's girlfriend."

### *Trial*

At trial, the following colloquy occurred concerning Juror 131 as follows:

Clerk: Your Honor, it was Juror 131, Jannese Shavers.  
 Court: Okay.  
 Clerk: When I spoke with Ms. Shavers, she said she got a phone call this morning, and the phone call was from someone she had worked with who said she was the Defendant's girlfriend -- she had worked with the girlfriend's aunt, I believe, if I've got this correctly. The Defendant's girlfriend had called and said the Defendant was her boyfriend, and Ms. Shavers stopped her right there and said that she couldn't talk to her about it but the girlfriend said that she just needed to talk to her. I believe just a few words were exchanged but nothing else was said after she stopped her. She wanted to bring it to my attention, and I told her she did the right thing. I had her sent back into the jury room and told her to please not say anything to the other jurors, but she was concerned. Ms. Shavers was concerned, and I told her it was okay and that is why we have alternates. So what do you want to do?  
 Solicitor: To hear from her and then the Court decide obviously. She is an honest woman, and she did what you told her to do in my opinion.  
 Court: That could rise to the level of jury tamper. What would the Defense like me to do?  
 Trial Counsel: I just -- as far as an investigation or anything like that I don't really have any part in that, but as far as asking questions I would agree. We could bring her out and hear from her.  
 Court: Okay, the motion is to bring her out is granted. Please bring her out.

(Whereupon, Juror Number 131, Jannese Shavers, was brought into the Courtroom).

Court: For the record, if you would give me your name.

Juror: My name is Jannese Shavers.

Court: All right, Ms. Shavers. If you would tell me what happened.

Juror: I receive a telephone call and it was unrestricted when I answered it, and then she told me that she was the girlfriend of the Defendant, and I told her you tell me not to discuss this.

Court: Did she say anything else?

Juror: Um, no, sir.

Court: And did you say anything else?

Juror: Well, I told her I cannot discuss this and please don't jeopardize me.

Court: And have you said anything to the other jurors?

Juror: No, sir.

Court: Thank you. Anything you would like me to ask her, from the State?

Solicitor: I would just question how she recognized the voice of the Defendant's girlfriend.

Juror: Well, what she did, she called me, and she said, Miss Jan, and I said, who is this, and then when she said who she was --her aunt used to be my supervisor when I worked for County D.S.S., and that is how I knew her.

Court: Do you still work there?

Juror: No, sir. I'm retired.

Court: All right, and is there anything you'd like to ask?

Trial Counsel: Your honor, I would ask the Court to inquire how this would affect her. and if she could continue to be fair and impartial to my client.

Court: All right, Ms. Shavers, taking that into account, would you have a problem continuing to serve on this jury?

Juror: No.

Court: Do you feel any pressure at all from...

Juror: No, I don't feel any pressure. I try to be a fair person.

Court: All right, and sitting on this jury could you continue to listen to the rest of the case?

Juror: Yes, sir.

Court: And be fair and impartial to the Defendant and the State as well?

Juror: Yes, sir.

Court: Okay, and make a decision based on the law as I give it to you and the evidence you have seen in this Courtroom?

Juror: Yes, sir.

Court: And totally disregard that call?

Juror: Yes, sir.  
 Court: All right. Anything else from the State?  
 Solicitor: No, sir.  
 Court: Anything else from the Defense?  
 Trial Counsel: If I may speak to my client for just a minute?  
 Court: Go ahead.  
 (brief pause)  
 Court: Thank you, Ms. Shavers.  
 Juror: Okay.  
 Trial Counsel: Nothing further from the Defense. I don't have any more questions for her.  
 Court: Thank you. You may go back in there and we will be with you all in just a moment.  
 The Court: Do you have any problem with that juror continuing? I don't have a problem with her.  
 Solicitor: I can't decide, Your Honor, though my inclination is that if she's, that honest, coming forward, and she said she's not going to discuss it, I would kind of trust her. I don't believe I do have a problem exactly with her.  
 The Court: Mr. Smaldon?  
 Trial Counsel: I would leave it up to the Court, Judge.  
 The Court: All right, I'm going to let her sit on the jury. I think she did the right thing. She seems very intelligent as far as the Court is concerned. I think she will do the right thing.

(Trial Tr. pp. 96–101).

### ***PCR Evidentiary Hearing***

On direct examination, Applicant testified that Juror 131 knew Applicant's "baby mama" and spoke in the middle of the trial. (PCR Tr. p. 12). Applicant testified that Trial Counsel did not object to Juror 131 remaining on the jury. Id. Applicant testified the removal of said juror would have been appropriate. Id. Applicant testified that he does not know about the contact encounter; however, he does know they know each other. Id. Applicant further testified that the encounter happened in the middle of his trial. Id.

On cross-examination, Applicant testified that Juror 131 did not know him, but she knew his "baby mama," his son's mother. (PCR Tr. p. 21). Applicant further testified he remembered

the trial court questioning Juror 131. Id. Applicant testified Trial Counsel had the opportunity to question juror 131 but let the trial court keep the juror on the panel. Id. Applicant testified he asked Trial Counsel to remove Juror 131. Id.

On direct examination, Trial Counsel testified that it was close to the end of trial, and Juror 131 was already seated on the jury panel. (PCR Tr. p. 34). Trial Counsel testified he sensed that things were not going their way. Id. Trial Counsel testified that he figured "a little chaos grenade" might be helpful. Id. Trial Counsel testified his understanding was that Juror 131 was friends with Applicant's girlfriend or child's mother or whatever it was. Id. Trial Counsel testified he found no reason to strike her and believed Juror 131 would be fair and impartial. Id. Trial Counsel further testified not removing the juror or objecting was a strategic move. Id. Trial Counsel testified their defense needed a wild card. Id.

On cross-examination, Trial Counsel testified that from his understanding Applicant's girlfriend called Juror 131, but nothing was discussed because the juror hung up. (PCR Tr. p. 40). Trial Counsel specifically testified that an implication was made, and then that's when the juror hung up. Id. Trial Counsel testified that he did not strike Juror 131 and was on the fence about it. Id. Trial Counsel testified it was a strategic move, and he believed it could help his client's case. Id. Trial Counsel further testified that Applicant and his then-girlfriend were involved romantically at some point, and she was also present at his trial. (PCR Tr. p. 41).

### ***Findings***

This Court, after a thorough evaluation, finds that the Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, supra. This Court further finds the combination of the record and Trial Counsel's **credible** testimony that

Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. Trial Counsel **credibly** testified that it was a strategic decision not to strike the juror because he believed it could benefit Applicant's case. Trial Counsel **credibly** testified he believed that Juror 131 could be fair and impartial. Additionally, the trial court questioned Juror 131 about the call and ultimately concluded that the juror would remain on the jury. Based on the record, this Court finds that any objection to the juror remaining on the jury would have been non-meritorious as the trial court found it did not have a problem with the juror remaining on the jury. *See Miller v. Keeney*, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both *Strickland* prongs); *U.S. ex rel. Link v. Lane*, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Nevertheless, Applicant avers that this somehow prejudiced his case. This Court is not persuaded by Applicant's conjecture. *See Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the *Strickland* test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of *Strickland*—that he was prejudiced by Trial Counsel's performance.



Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation 1c: Failure to argue Applicant's motion for directed verdict based on knowledge instead of control and dominion.**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to argue dominion and control in the directed verdict motion. This Court finds this allegation is without merit.

When considering a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. State v. Larmand, 415 S.C. 23, 30, 780 S.E.2d 892, 895 (2015) (citing Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). The role of the trial court is only to determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016). If there is any direct or circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004). "In deciding motions for a directed verdict. . . the evidence and all reasonable inferences which may be drawn from it must be viewed in the light most favorable to the non-moving party." Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 611, 518 S.E.2d 591, 597 (1999).

If more than one reasonable inference can be drawn from the evidence, the case must be submitted to the jury." Id. "[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict . . . must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App.



1986) (citing State v. Fogle, 256 S.C. 149, 181 S.E.2d 483 (1971)). The trial court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. Ladner, 373 S.C. 103, 120, 644 S.E.2d 684, 693 (2007).

### ***Trial***

At trial, Trial Counsel moved for a directed verdict and argued the following:

Yes, Your Honor. At this time, I would make a motion for a directed verdict as to all charges. Alternately, and more specifically, on the trafficking charge and possession with intent to distribute charge. Your Honor, I make those motions because there is no evidence from the State that was presented – they have presented no evidence that Mr. Cannon had dominion or control over those drugs. The only evidence that has been presented by them was that he was merely present at the scene with some drugs.

(Trial Tr. p. 92). The trial court noted, "[Applicant] was in the car and he got out of the car and ran, and the drugs were in the car. No one else was in the car." (Trial Tr. p. 92). The trial court denied Trial Counsel's motion. Id.

### ***PCR Evidentiary Hearing***

On direct examination, Applicant testified that Trial Counsel should have handled it differently. (PCR Tr. p. 14). Applicant testified that he feels that Trial Counsel should have argued that there was no evidence Applicant had knowledge of the drugs. Id. Applicant testified there was no evidence that Applicant exercised dominion and control.

On cross-examination, Applicant testified his rental car crashed. (PCR Tr. p. 23). Applicant testified no one else was in the vehicle with him and that the drugs were found on the floorboard of the rental vehicle. Id. Applicant further testified he did not know that the cocaine was in the vehicle. Id. Applicant testified he felt Trial Counsel could have done more and indicated that Trial Counsel did not represent him adequately. Id.

On direct examination, Trial Counsel testified that he thought knowledge and control covered it. (PCR Tr. p. 35). Trial Counsel testified that he does not know why he would choose control and dominion of the cocaine over knowledge. *Id.* Trial Counsel testified that he does not think he made a conscious choice and merely thinks he stated the elements and statutes. *Id.*

### ***Findings***

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. The record in this case provides Trial Counsel made a directed verdict motion with a reasonable argument. This Court finds that even if Trial Counsel had argued that Applicant did not know about the drugs that the trial court would not have granted a directed verdict on that argument either. The evidence in this case was that the drugs were found in the driver's side of the car where Applicant, and Applicant alone, was seated before he wrecked the vehicle and ran. This was sufficient evidence that would lead a reasonable juror to believe Applicant was guilty beyond a reasonable doubt. Thus, even if this Court were to find Trial Counsel deficient, which it does not, Applicant is unable to prove any prejudice from the alleged deficiency.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or



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omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation 1c: Failure to adequately investigate Applicant's case.**

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to adequately investigate the case. This Court finds this allegation is without merit.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other

defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

### ***PCR Evidentiary Testimony***

On direct examination, Applicant testified Trial Counsel did not properly investigate his case. (PCR Tr. p. 15). Applicant testified Trial Counsel did not hire a private investigator. Id.

On cross-examination, Applicant testified that he asked Trial Counsel to investigate and hire a private investigator on the situation. (PCR Tr. p. 24). Applicant testified that his case was rushed. Id. Applicant testified within four months of hiring Trial Counsel, his case was called for trial in September, thereby violating his due process. Id. Applicant testified that he wanted the private investigator to investigate the rental car and the whole situation. Id.

On direct examination, Trial Counsel testified he reviewed discovery. (PCR Tr. p. 36). Trial Counsel testified that the cocaine was found in the front seat of the rental car and does not believe that visiting the car or buying a replica of the car would really cover any new ground. Id. Trial Counsel further testified there were no witnesses nor any surveillance. Id. Trial Counsel testified there were no experts he could have hired; it was just about the facts and how to interpret them. Id.



Trial Counsel testified that Applicant was previously represented by Scott Suggs, Esquire, and had received a plea offer for ten (10) years and rejected it. Id. Trial Counsel testified that Solicitor Jupertinger's first offer was always the best offer, and it only went up from there, so his inclination was that a second plea offer would be far worse than the initial offer. Id. Trial Counsel also testified that a plea offer was not an option when he was retained, and the only option was to proceed with trial. Id. Trial Counsel testified this was not a complex "federal RICO case." Id. Trial Counsel testified there was nothing else he could have done on Applicant's case. Id. Trial Counsel testified he was adequately prepared for trial. (PCR Tr. p. 32).

On cross-examination, Trial Counsel testified that he did not recall Applicant asking him to hire an investigator. (PCR Tr. p. 42).

### ***Findings***

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, supra. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, supra. This Court finds Trial Counsel's testimony on this matter **credible** and **persuasive**. This Court further finds Applicant's testimony **not credible** and **not persuasive**. In support of this claim, Applicant only provided his own self-serving testimony; he did not present the results of any independent investigation and did not present any documentary evidence to establish that any additional investigation would have yielded beneficial information that would have resulted in a different outcome at trial. Trial Counsel **credibly** testified that there was no reason to hire an investigator. Under the

circumstances and facts within the record before this Court, this Court cannot find Trial Counsel deficient in his performance as it was reasonable.

Furthermore, as discussed above, this Court finds Applicant failed to present any evidence to establish what benefit an additional investigation would have yielded. Nevertheless, even if Trial Counsel was ineffective for failing to investigate, where Applicant cannot establish the evidence or testimony that would have been favorable to them at the time of trial, relief will be denied. Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999); See Skeen, 325 S.C. 210 (Supreme Court found applicant failed to meet burden of proof that counsel was ineffective for failing to request a continuance where he offered no evidence as to what benefits additional preparation would have yielded).

Consequently, any assertion by Applicant is merely speculative and does not meet the burden of proof he must establish for relief. See Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)) (finding failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.



Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation 1d: Failure to review discovery with Applicant.**

Applicant alleges Trial Counsel was constitutionally ineffective for failing review discovery with Applicant. This Court finds this allegation is without merit.

An applicant who alleges his or her defense attorney was ineffective in failing to spend more time preparing or providing a copy of the discovery materials must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. Id. (citing David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

***Trial***

On direct examination of Jason Bazen (Corporal Bazen), a responding officer in Applicant's case, he was asked whether he ordered any DNA or fingerprint analysis on the drugs, to which he answered he did not. (Trial Tr. p. 68).

On cross-examination, the following colloquy occurred with Corporal Bazen and Trial Counsel:



- Q. Right? Your job is to help to prove Mr. Cannon guilty beyond a reasonable doubt? That's what you do when you work for the State and that is okay.
- A. I work in law enforcement.
- Q. You work for the government?
- A. Local government, that's correct.
- Q. When you got the cocaine there were no tests done for fingerprints?
- A. No, sir.
- Q. When you got the cocaine there was no test for touch DNA?
- A. No, sir.
- Q. When you got the crack, there was no test for fingerprints?
- A. No, sir.
- Q. When you got the cocaine -- I'm sorry. When you got the crack there was no test done for touch DNA?
- A. No, sir.
- Q. You could have asked for those tests?
- A. I could have.
- Q. Okay, and you didn't?
- A. No, sir.
- Q. All right, because you know . . .
- A. Well, actually, sir, cocaine and crack cocaine you can hardly get fingerprints off of them.
- Q. I'm sorry, the bags.
- A. Okay, no, sir.
- Q. Right. You never ordered tests on the bag, either bag?
- A. No, it is not common practice.
- Q. All right, and you didn't do it?
- A. No, sir.

(Trial Tr. pp. 72–73).

### ***PCR Evidentiary Hearing***

On direct examination, Applicant testified that Trial Counsel did not discuss a defense strategy or review evidence with him. (PCR Tr. p. 15). When asked if Trial Counsel ever talked to him about any of the evidence, Applicant testified that it was rushed and they did not strategize.

Id.

On cross-examination, Applicant testified Trial Counsel did "not really" review discovery with him. (PCR Tr. pp. 24–25). Applicant testified that he and Trial Counsel spoke the one time

he came to see him. (PCR Tr. p. 25). When asked what evidence he was asserting they did not review, Applicant testified that the State had no DNA evidence matching his DNA. Id. Applicant also testified he was the only person in the vehicle. Id. Applicant testified that if he and Trial Counsel had spent more time going over his case, the outcome would have been different. Id.

On direct examination, Trial Counsel testified that he reviewed discovery with Applicant. (PCR Tr. pp. 30–31). Trial Counsel testified that he had sufficient time to review the evidence with Applicant. (PCR Tr. p. 30).

### *Findings*

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Trial Counsel's testimony that he reviewed discovery with Applicant and had enough time to review it credible. Nevertheless, Applicant avers that the State did not have DNA evidence against him, which is what Trial Counsel did not review with him. This Court is not persuaded by Applicant's argument. Corporal Bazen testified to the fact that there was no DNA evidence collected in Applicant's case. This matter was before the jury, and Trial Counsel adequately and reasonably crossed Corporal Bazen on this matter. Applicant presented nothing further that had Trial Counsel reviewed discovery further with him, the result of his trial would have been different. This Court finds Applicant has failed in his burden of proving Trial Counsel's performance was deficient or any prejudice from the alleged deficiency.



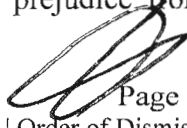
Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

**Allegation 1g: Failure to object to the testimony of Sgt. William Joe Nida regarding the street value of the drugs in question as improper character evidence and failure to preserve the issue for appeal.**

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to object to the testimony of Sgt. William Joe Nilda (Sgt. Nida) regarding the street value of the drugs in question as improper character evidence and failure to preserve the issue for appeal. This Court finds this allegation is without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally



supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

### ***Trial***

During pretrial motions, the following occurred:

Solicitor: Your Honor, I have informed Mr. Cannon I am putting up Officer Nida as an expert in terms of

value of the cocaine and crack in this community. That motion is based on State versus Jamison, which I have a copy of for the Court.

The Court: All right. Any problems with that from the Defense?

[Trial Counsel]: I have not seen the particular case. I was not informed of this so-called expert witness until an hour or two ago. So, Your Honor, I would ask for about a minute and a half to read the case. I would normally object to relevance, which relevance would be addressed in this case.

(Brief pause)

[Trial Counsel]: Your Honor, I would object to relevance of this particular witness. It is not an element of the crime. There is no element as to dollar value in anything he is charged with.

Solicitor: I would tend to think, Judge, that as the case will rest with the jurors who are not knowing what thirty-six grams or whatever it is charged here -- how much that they would have, you know, and he is charged with the trafficking, Judge. I know that trafficking is based on the weight based on the law. However, they need to know, I think in my mind, what we're dealing with here. Thirty-six Hundred Dollars, a scale in the car and so on and so forth. It is more than perhaps the use of drugs by a person who has it in their possession.

[Trial Counsel]: Again, I haven't heard anything about the elements so I don't know, but I still continue my objection under relevance in this case. Once they hear my defense we might re-visit it, but at this point the dollar value is more prejudicial, and there is no probative value at all. More prejudicial than probative.

The Court: All right. Let me think about it over our lunch and we'll go from there. At this point we will break for lunch.

....

The Court: Ladies and gentlemen, good afternoon, and be seated. I have had a chance to review the case that the Solicitor passed up, the Jamison case, and my instincts tell me that it is going to be

applicable to the case because we have a rental car, and I suspect some of your questions will pertain to maybe somebody else left the drugs in the car, other than the Defendant. If your guy testifies he may say that as well,, and in that case it is something we will take up as to whether or not the case is dead on point. That may not be your defense in any form or fashion anyway. it is probably all in the documents anyway.

(Trial Tr. pp. 27–29).

During direct examination of Sgt. Joseph Nida, the following occurred:

Solicitor: At this time, Your Honor, I would like to have Sergeant Joe Nida qualified as an expert in the field of retail value of cocaine and crack cocaine in the general area.

The Court: Any objections?

[Trial Counsel]: I do object to relevance, and also on Rule 403.

The Court: All right, I'm going to overrule it and find the information needed is beyond that of an ordinary jury. He does have the requisite knowledge and skill. His testimony is reliable.

(Trial Tr. pp. 86–87).

### ***PCR Evidentiary Hearing***

On direct examination, Applicant testified he remembered Sgt. Nida. (PCR Tr. p. 17). Applicant testified that Trial Counsel objected to his testimony. Id.

On cross-examination, Applicant testified that Trial Counsel objected to testimony from Sgt. Nida about controlled buys and then again renewed his objection. (PCR Tr. p. 26).

On direct examination, Trial Counsel testified that he objected to testimony about the street value of the drugs. (PCR Tr. p. 37). Trial Counsel testified that he probably should have objected to character evidence but found it to be more of a relevance issue because it concerned the testimony of an officer who had nothing to do with the case and wanted to talk about drug costs in Florence County. (PCR Tr. p. 38).



On cross-examination, Trial Counsel testified that he did not object to Sgt. Nida's testimony based on improper character evidence. (PCR Tr. p. 42). Trial Counsel testified that failing to do so prevented appellate counsel from addressing the issue on appeal. *Id.* Trial Counsel testified at trial that he did have the option to object based on character evidence and objected based on relevance. Trial Counsel testified Appellate Defense could have argued relevance and does not understand why Appellate Defense argued something he did not object to. *Id.* Trial Counsel testified it would have been to Applicant's advantage to have every ground for appeal. *Id.*

### ***Findings***

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. Here, Applicant avers Trial Counsel should have objected to Sgt. Nida's testimony as improper character evidence. This Court, just like the trial court, turns to *State v. Jamison*, 372 S.C. 649, 643 S.E.2d 700 (Ct. App. 2007), and finds the *Jamison* case virtually on point with the present case.

In *Jamison*, the State presented expert testimony regarding the street value of cocaine and crack cocaine. The defendant objected, arguing the proposed testimony was irrelevant and prejudicial. The trial court limited the expert's testimony to the wholesale and retail values of cocaine and crack cocaine for the general area, finding jurors typically do not know the illegal drug industry. The expert testified the drugs found in the defendant's truck had a street value of between \$2,750.00 and \$9,319.00. *Id.*, 643 S.E.2d at 701-702. The defendant claimed the drugs belonged to someone else, possibly one of his employees who also had access to the truck. In

affirming the admission of the testimony, the Supreme Court found the drugs' value "allowed the jury to better determine whether a person would reasonably leave expensive narcotics unguarded and disguised as trash in a truck allegedly used by numerous people" and if the jury did not believe "an unknown individual left thousands of dollars worth of drugs where other people had access to the drugs and might even throw them away," "it reinforced the State's case that Jamison was knowingly in actual or constructive possession of the drugs at the time of his arrest, a key element of the trafficking charges." Id. at 702.

As in Jamison, Applicant repeatedly claimed the drugs found in the car belonged "to somebody else," and he did not know the drugs were there. (Trial Tr. pp. 38–39, 83, 92, 110–116). According to Sgt. Nida's testimony, the drugs had a street value of \$4511. (Trial Tr. pp. 87–89). Given the high monetary value and Applicant's claim someone else left the drugs in the car, the drugs' value was directly relevant to the jury's consideration of whether somebody else would leave thousands of dollars worth of drugs in a rental car where any number of people could access them, and whether Applicant was knowingly in actual or constructive possession of the drugs at the time of his arrest, a key element of the trafficking charges.

This Court finds any objection by Trial Counsel on the basis of improper character evidence would have been overruled and non-meritorious; thus, Trial Counsel cannot be deficient for not making a non-meritorious objection. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Moreover, Applicant has failed in his burden of proving any resulting prejudice from the alleged deficiency.



Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

***ALLEGATIONS RAISED AT THE EVIDENTIARY HEARING***

**Allegation: Trial Counsel failed to meet with Applicant a sufficient number of times.**

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to meet with him a sufficient number of times. This Court finds this allegation is without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to insure an adequate defense



and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Trial Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) (finding "Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

### **PCR Evidentiary Hearing**

On direct examination, Applicant testified that he met with Trial Counsel only once. (PCR Tr. p. 24).

On direct examination, Trial Counsel testified that he met with Applicant at least once, and it could have been more, but he could not recall. (PCR Tr. p. 29).

On cross-examination, Trial Counsel testified that he could not recall how long the meeting lasted, but it could have lasted less than an hour. (PCR Tr. p. 42).

### **Findings**

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. As found *supra*, this Court finds the record reflects Trial Counsel was well-prepared in his defense of Applicant and was familiar with the facts of the case and the law surrounding the charges. Importantly, this Court finds Applicant has failed to present "any evidence of how additional preparation or



communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Harris, 377 S.C. at 75, 659 S.E.2d at 145 (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective). This Court finds Trial Counsel was not deficient in their representation of Applicant, and Applicant has failed to demonstrate how he was prejudiced by Trial Counsel's alleged deficient performance in this matter.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

[CONCLUSION PAGE FOLLOWS]

A handwritten signature in black ink, appearing to be 'Myron A. Cannon', written in a cursive style.

**CONCLUSION**

Based on all the foregoing, this Court finds and concludes that 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 notifies the 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, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking a review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. 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 South Carolina Department of Corrections.

AND IT IS SO ORDERED this 6 day of June, 2025.

GEORGE M. MCFADDIN  
Presiding Judge  
Twelfth Judicial Circuit

2025 JAN 10 PM 2:31  
DORIS POULUS O'HARA  
CCCP & GS  
FLORENCE COUNTY, SC

FILED

[Signature], South Carolina