

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Marion County

Thomas A Russo, Circuit Court Judge

RECEIVED

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S C Supreme Court

GLENN PERNELL,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF MARION) INDICTMENT NO 06-GS-33-0297
COUNTS #2, #3, #4 & #5

THE STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
-VS-)
GLENN Q PERNELL,)
DEFENDANT)

TRANSCRIPT OF RECORD
VOLUME I
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February 27-March 1, 2007
Marion, South Carolina

B E F O R E

HONORABLE EDWARD B COTTINGHAM, JUDGE AND A JURY

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EXHIBITS

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EXHIBITSSTATE

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DEFENDANT

NONE

COURT

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TUESDAY, FEBRUARY 27, 2007

(The Court convenes the trial of this case with all parties present in the courtroom)

THE COURT Thank you, ladies and gentlemen
Please be seated

Alright, Solicitor, call your case, please

MR LAWSON May it please the Court?

The State would call Indictment #06-GS-33-297, The State of South Carolina vs Glenn Pernell

THE COURT Alright, sir

And for the record, who represents the defendant?

MR LONG I do, Your Honor, J M Long, III

THE COURT Mr Long, is the defendant ready for trial?

MR LONG Ready for trial, Your Honor

THE COURT Alright, sir

Ladies and gentlemen of the jury panel, I have in my hand an indictment as against - - are you proceeding as to one defendant or the others?

MR LAWSON Proceeding against Glenn Pernell, Your Honor

THE COURT Alright, sir

This indictment is against Glenn - - Glenn Pernell, and he stands indicted upon this instrument on five separate counts to which counts he is specifically pleading not guilty, thereby placing the burden of proof upon the State of South Carolina of proving him guilty if they can by evidence to your satisfaction

VOIR DIRE

8

1 beyond a reasonable doubt

2 Count 1 of this indictment charges Glenn Pernell of
3 distribution of cocaine base

4 Count 2 charges this defendant with trafficking in cocaine

5 Count 3 charges this defendant with possession of cocaine with
6 intent to distribute within the proximity of a school or park, and

7 Count 4 charges the defendant with trafficking in cocaine

8 And then there is one additional count - - of possession of
9 cocaine base with intent to distribute it

10 Now, these are allegations only in this indictment This is
11 simply the formal way by which any defendant is brought to trial

12 The allegations as against this defendant is absolutely no
13 evidence Evidence comes from this witness stand under oath

14 This defendant as to each indictment, there being five in
15 number, is pleading and has pled not guilty

16 This defendant and every defendant comes into this courtroom
17 under presumption of innocence He doesn't have to prove a thing
18 The State's got to prove his guilt

19 That presumption of innocence remains with all defendants and
20 this defendant at all times throughout the arraignment, throughout
21 the trial and until a jury of twelve unanimously have found him
22 guilty beyond a reasonable doubt

VOIR DIRE

23 THE COURT Now, I, now, am going into a procedure known as
24 voir dire to inquire of you if anybody knows anything about any of
25

VOIR DIRE

9

1 these cases, heard about them or discussed them

2 I need to know if any of you are related by blood or connected
3 by marriage with the participants in the case I need to know if
4 any of you know anything about the case, and I need to know if any
5 of you have any reason whatsoever to feel that you could not be a
6 fair juror for the State of South Carolina and this defendant

7 The State of South Carolina and the defendant solely desire
8 from your numbers twelve folks with no friends to reward, no
9 enemies to punish, twelve people who can say, "I have no biases or
10 prejudices in this case If I am selected as one of the twelve
11 jurors, I promise you under my oath that my verdict of either
12 guilty or not guilty relating to any of these five indictments will
13 be based on the law and the evidence heard in this courtroom and
14 from no other source

15 Now, at the outset, I would ask of you Are any of you
16 connected by blood or related by marriage to this defendant, Glenn
17 Pernell?

18 Mr Pernell, please stand and face the jury for me

19 (Defendant stands and faces jury panel)

20 THE COURT Any of you related by blood or connected by
21 marriage?

22 You may be seated

23 (Defendant resumes his seat)

24 THE COURT Do any of you have any close personal
25 connections with Mr Pernell such as neighbors, church workers, co-

VOIR DIRE

10

1 workers or whatnot?

2 Come forward

3 And as this gentleman comes forward, I would ask you how many
4 of you know this defendant in any capacity whatsoever If you
5 know him, I want you to stand

6 You gentlemen may come forward and come in front of me,
7 please

8 Good morning Come around here, please We want to be on
9 the record

10 Okay

11 Everybody come forward

12 Good morning to you

13 JUROR CANTEY Good morning

14 THE COURT May I have your name for the record?

15 JUROR CANTEY Joe Cantey

16 THE COURT Alright, sir

17 And what is your response?

18 JUROR CANTEY Well, he's my neighbor I've been knowing
19 him for a while

20 THE COURT He's your neighbor now?

21 JUROR CANTEY Yes, sir

22 THE COURT That's a personal - - close personal
23 relationship I think I would excuse you

24 JUROR CANTEY Okay

25 THE COURT Alright Thank you

VOIR DIRE

11

1 And your name, sir?

2 JUROR PHILLIPS Travis Phillips

3 THE COURT And what is your response?

4 JUROR PHILLIPS I know him I'm a cousin to his cousin
5 I know him all my life

6 THE COURT Are y'all friends?

7 JUROR PHILLIPS Yes, sir

8 THE COURT Would that put you in a spot to be on this
9 jury?

10 JUROR PHILLIPS Yes, sir

11 THE COURT Sir?

12 JUROR PHILLIPS I wouldn't want to be on the jury

13 THE COURT I didn't think so I will excuse you I
14 wouldn't want to put you on that position

15 Your name?

16 JUROR GARDNER Richard Garner

17 I know him - - I live in the same community he lives in

18 THE COURT Would, ah, you're not close friends?

19 JUROR GARDNER No, sir

20 THE COURT Let me ask you this

21 Even though you know him, if selected as a juror, could you
22 give him and the State a fair trial?

23 JUROR GARDNER I think so

24 THE COURT You could put aside any knowledge that you may
25 have had of him and base your verdict on the law and evidence in

VOIR DIRE

12

1 this case?

2 JUROR GARDNER Judge, I don't know him personally I
3 just know him and his family

4 THE COURT I got you

5 And you feel like that you're qualified to serve - if
6 selected?

7 JUROR GARDNER Yes, sir

8 THE COURT I do, too

9 You're qualified Thank you

10 Yes, sir, your name?

11 JUROR PEE William Pee

12 THE COURT Sir?

13 JUROR PEE Roderick Pee

14 MR LAWSON We need the number of the last one

15 THE COURT What is - - pardon me What is - - -

16 JUROR GARDNER Richard Gardner, #43

17 THE COURT Okay

18 And what would you have to tell me, sir Sir?

19 JUROR PEE I've been knowing him a long time

20 THE COURT You're friends?

21 JUROR PEE Yes, sir I know him

22 THE COURT Okay

23 I will excuse you from this case

24 JUROR HODGE I don't know him but I know his mother

25 THE COURT Would that impact on your ability to be a fair

VOIR DIRE

13

1 juror?

2 If it will, now, tell me All I'm - - if you think knowing
3 his mother - - are you friends of his mother?

4 JUROR HODGE Right We in church

5 THE COURT Church?

6 JUROR HODGE Yes, sir I go to church with her

7 THE COURT Tell me Would that impact on your ability to
8 be fair in this case?

9 JUROR HODGE No, sir

10 THE COURT Ma'am?

11 JUROR HODGE No, sir

12 THE COURT Now, if you are selected, whatever it is,
13 you're not going to be looking at his mom here, are you?

14 JUROR HODGE Um

15 THE COURT Well, if you are, now, I'm not - - -

16 JUROR HODGE That would be hard for me

17 THE COURT Okay I'm going to excuse you

18 JUROR HODGE I mean, that's not fair, but I appreciate you
19 telling me that

20 CLERK OF COURT #38, Your Honor

21 THE COURT Okay Thank you

22 Anyone else?

23 Now, it is alleged, and I tell you alleged, they are
24 allegations only until proven beyond a reasonable doubt, it is
25 alleged that these incidences occurred on or about August 2nd of

VOIR DIRE

14

1 2006

2 It's not likely but would any of you have heard anything about
3 anything involving these cases? Any of you had it discussed in
4 your presence?

5 Any of you know anything about this?

6 Alright

7 Do any of you have any reason to say to me that you feel for
8 any reason that you could not be a fair juror either to the State
9 of South Carolina or the defendant? If somebody feels that way,
10 I want you to come forward, and I'll excuse you

11 Okay I'm going to have this juror come around here This
12 is outside of the public

13 Mr Long, you may join us here Mr Long, come around - -
14 come around here, please

15 Good morning May I have your name?

16 JUROR WIEGAND Jane I Wiegand

17 (The juror explains off the record that the juror's son has
18 been involved in drugs The Court thereafter excuses this juror)

19 THE COURT This juror is excused for this case only

20 Now, ladies and gentlemen, I need to know Are any of you -
21 - do any of you or have any of you had any recent involvement with
22 the Solicitor's Office such as a victim or witness or anything of
23 that kind? I would ask that you please stand

24 The defendant is represented by Mr Long of the Horry County
25 Bar Are any of you clients of Mr Long or have you been in the

VOIR DIRE

15

1 immediate past? If so, please stand

2 Gentlemen for the State and the defendant, other than the
3 witness list are there any other further inquiries asked for the
4 State of South Carolina?

5 MR LAWSON Nothing from the State?

6 THE COURT Mr Long?

7 MR LONG None from the defense, Your Honor

8 THE COURT Alright, sir

9 Now, ladies and gentlemen - - do you have a witness list here,
10 Mr Long?

11 MR LONG I do not, Your Honor

12 THE COURT Alright

13 I'm going to name certain names who may or may not be called
14 as they are potential witnesses, and I just need to know if any of
15 you have any close personal relationships with any of these folks
16 or are you related to them in any way This is more for my
17 information

18 The possible witnesses are, first, Jennifer Warren Fleming,
19 Agent Neil D Rouse or Ross, Janet McCrae, Agent Cribb, Agent Simon
20 Brown All of these are with Marion County Sheriff's Office

21 Willie C Smith, III, Deputy Shad Barfield, Captain Michael
22 Bethea, Lt Betty Rowell, Derrick Levon Platt, Jeffrey Levon
23 Graves

24 Anybody have any close personal connections with those folks?

25 MR LAWSON May - -

VOIR DIRE

16

1 THE COURT Sir?

2 MR LAWSON May it please the Court?

3 Your Honor, I believe that Your Honor skipped #5, Agent Joseph

4 Brian Wallace in the names - - and Chief Russell Bass

5 THE COURT Yes, I see

6 Agent Joseph Brian Wallace and Chief Russell Bass

7 Yes, ma'am Would you come forward, please?

8 Good morning

9 JUROR AMMONS Good morning

10 THE COURT Yes, ma'am

11 JUROR AMMONS Shad Barfield, he's my cousin

12 THE COURT First, second, third cousin?

13 JUROR AMMONS First

14 THE COURT Can you - - can you listen to this testimony

15 like anybody else and forget he's your cousin?

16 JUROR AMMONS Yes

17 THE COURT I think you can

18 She's a cousin of one of the witnesses

19 Which one?

20 JUROR AMMONS I'm a cousin

21 THE COURT Which one?

22 JUROR AMMONS Shad Barfield

23 THE COURT Who?

24 JUROR AMMONS, Shad Barfield

25 THE COURT She's qualified

JURY SELECTION

17

1 Alright Thank you

2 COURT REPORTER I need her name and number

3 CLERK OF COURT #1

4 THE COURT Alright, sir

5 Anything further before we begin the selection of the jury
6 process?

7 MR LAWSON Nothing from the State

8 MR LONG Nothing from the defense, Your Honor

9 THE COURT Are you ready?

10 MR LONG Yes, sir

11 Five and five, Your Honor?

12 THE COURT Yes Five and five

13 JURY SELECTION

14 THE COURT Alright, sir

15 Pull your jurors

16 CLERK OF COURT As I call your names, if you'll come
17 forward, please, and stand at the end of this table and face back
18 outwards Bring your belongings or your pocketbooks or keys or
19 whatever you may have with you

20 #27, Jessica M Ceasar

21 What say the State?

22 MR LAWSON Present Ms Ceasar

23 CLERK OF COURT What say the defense?

24 MR LONG Please swear the juror

25 CLERK OF COURT Be seated - - have a seat in the chairs

JURY SELECTION

18

1 over in the jury box, please, ma'am

2 #143, John Williamson

3 What say the State?

4 MR LAWSON Please present Mr Williamson

5 CLERK OF COURT What say the defendant?

6 MR LONG Please excuse the juror from the trial of this
7 case

8 CLERK OF COURT You're excused from this case, Mr
9 Williamson Thank you, sir

10 #96, Roderick T Pee

11 MR LAWSON He was excused

12 CLERK OF COURT Oh, I'm sorry

13 He was excused by the Court I'm sorry

14 #103, Roosevelt Platt

15 What say the State?

16 MR LAWSON The State would excuse Mr Platt from this
17 case

18 CLERK OF COURT Mr Platt, you're excused from this trial
19 Thank you, sir

20 #112, Ginger H Rogerson

21 What say the State?

22 MR LAWSON Please present Ms Rogerson

23 CLERK OF COURT What say the defense?

24 MR LONG The defense would excuse this juror from the
25 trial of this case

JURY SELECTION

19

1 CLERK OF COURT Thank you, Ms Rogerson
2 #136, Gregory L White
3 What say the State?
4 MR LAWSON Please present Mr White
5 CLERK OF COURT What say the defense?
6 MR LONG Please swear the juror
7 CLERK OF COURT Mr White, if you'll have a seat in the
8 jury, please
9 #43, Richard C Gardner
10 What say the State?
11 MR LAWSON Please present Mr Gardner
12 CLERK OF COURT For the defense?
13 MR LONG Please swear the juror
14 CLERK OF COURT Mr Gardner, if you'll have a seat in the
15 jury box, please, sir
16 #48, Patricia J Godbolt
17 What say the State?
18 MR LAWSON Please present Ms Godbolt
19 CLERK OF COURT What say the defense?
20 MR LONG Please swear the juror
21 CLERK OF COURT #125, Deldon N Strickland
22 What say the State?
23 MR LAWSON Please present Mr Strickland
24 CLERK OF COURT What say the defense?
25 MR LONG Please excuse the juror from the trial of this

JURY SELECTION

20

1 case

2 CLERK OF COURT Thank you, Mr Strickland

3 #86, Tara J McWilliams

4 THE COURT What number was that, please?

5 CLERK OF COURT #86

6 THE COURT #86?

7 CLERK OF COURT Yes, sir

8 What say the State?

9 MR LAWSON Please present Ms McWilliams

10 CLERK OF COURT What say the defense?

11 MR LONG Please swear the juror

12 CLERK OF COURT #41, Sarah E Ford

13 What say the State?

14 MR LAWSON Please present Ms Ford

15 CLERK OF COURT What say the defense?

16 MR LONG Please swear the juror

17 CLERK OF COURT Ms Ford, if you'll have a seat in one of

18 the jury chairs, please

19 #100 was excused by the Court

20 #54, Denice W Gregg

21 What say the State?

22 MR LAWSON Please present Ms Gregg

23 CLERK OF COURT What say the defense?

24 MR LONG Please swear the juror

25 CLERK OF COURT Ms Gregg, if you'll have a seat in the

JURY SELECTION

21

1 jury chairs

2 #44, John W Gause

3 What say the State?

4 MR LAWSON Please present Mr Gause

5 CLERK OF COURT What say the defense?

6 MR LONG Please swear the juror

7 CLERK OF COURT Mr Gause, if you'll have a seat in one of
8 the jury chairs

9 #22, Terry M Brown

10 What say the State?

11 MR LAWSON Please present the Ms Brown

12 CLERK OF COURT What say the defense?

13 MR LONG Please swear the juror

14 CLERK OF COURT Ms Brown, if you'll have a seat in the
15 jury chairs, please

16 #94, Boyd Owens

17 What say the State?

18 MR LAWSON Please present Mr Owens

19 CLERK OF COURT What say the defense?

20 MR LONG Please excuse the juror from the trial of this
21 case

22 CLERK OF COURT Thank you, Mr Owens You're excused from
23 this trial

24 #59, Rayfield A Horton

25 What say the State?

JURY SELECTION

22

1 MR LAWSON Juror #59?
2 CLERK OF COURT Yes, sir
3 MR LAWSON Please present Mr Horton
4 CLERK OF COURT What say the defense?
5 MR LONG Please swear the juror
6 CLERK OF COURT Mr Horton, if you'll have a seat in one
7 of the chairs in the jury box, please
8 #80, Kaye C Lemons
9 What say the State?
10 MR LAWSON Please present Ms Lemons
11 CLERK OF COURT What say the defense?
12 MR LONG Please swear the juror
13 CLERK OF COURT Ms Lemons, if you'll have a seat
14 #4, Enoch C Baker
15 What say the State?
16 MR LAWSON The State would excuse Mr Baker from this
17 case
18 CLERK OF COURT Thank you, sir
19 #131, Stephen C Tucker
20 What say the State?
21 MR LAWSON Please present Mr Tucker
22 CLERK OF COURT What say the defense?
23 MR LONG Please swear the juror
24 THE COURT Alright That will constitute - - -
25 CLERK OF COURT Two alternates?

JURY SELECTION

23

1 THE COURT Yeah, I want two alternates

2 Now, gentlemen, the strikes will be one and two as to each
3 alternate separately

4 CLERK OF COURT #98, Ella M Phillips

5 What say the State?

6 MR LAWSON Please present Ms Phillips

7 CLERK OF COURT What say the defense?

8 MR LONG Please seat the juror

9 CLERK OF COURT Ms Phillips, if you'll have a seat in the
10 chair for the front alternate

11 #107, Bobby E Richardson

12 What say the State?

13 MR LAWSON Please present Mr Richardson

14 CLERK OF COURT What say the defense?

15 MR LONG Please swear the juror

16 CLERK OF COURT Mr Richardson, if you'll have a seat in
17 the chair, please, sir

18 Thank you

19 Thank you, sir

20 THE COURT Alright

21 Now, Mr Bailiff, escort this jury to the jury room just a
22 moment for me Please take them to the jury room, and I'll be
23 calling them back very shortly

24 (The jury retires to the jury room at 12 14 p m)

25 THE COURT I'll ask the - - this panel to step out in the

JURY SELECTION

24

1 hall just a moment, and I'll bring you back in just a second Just
2 step out in the hall

3 (Jury panel leaves the courtroom)

4 THE COURT Close the door for me, please

5 CLERK OF COURT Close the door

6 THE COURT For the State

7 Any motions regarding the composition of the jury?

8 MR LAWSON No, Your Honor

9 THE COURT For the defense?

10 MR LONG No, Your Honor

11 THE COURT The jury will stand as selected

12 Bring the jury back for me

13 MR LONG Your Honor, prior - - -

14 THE COURT Wait a minute Hold on a minute

15 Yes, sir Excuse me

16 MR LONG As a matter of scheduling, Your Honor, I think
17 you talked about a plea earlier that involved an interpreter - -

18 THE COURT Yes, sir

19 MR LONG And you may have some motions, Jackson v Denno
20 motions I think there may be a statement or something involved

21 THE COURT Well, what I'll - - I'll have the jury come
22 back at 2 30

23 MR LONG Okay Yes, sir Thank you

24 THE COURT And we'll - - we'll come back at two for
25 hearing these matters Yes, sir

REMARKS OF THE COURT

25

1 Maybe we can get some of that done before lunch

2 (The jury returns to the courtroom at 12 21 p m)

REMARKS OF THE COURT

4 THE COURT Now, during the course of this trial, the two
5 alternates will sit there at all times

6 Where does your Foreman sit here in this courtroom?

7 Okay

8 I will select a Foreman this afternoon when we return

9 Now, I'm going to ask that all of you come back to this jury
10 room promptly at 2 30 this afternoon at which time we will begin
11 the trial of this case

12 Now, these statements and admonitions that I make to you at
13 this time are continuing admonitions for anytime you take a break
14 or tonight

15 Do not discuss this case with anyone Under no circumstances
16 let anyone discuss it with you Make no independent inquiry

17 You must not even discuss it among yourselves until I have
18 given you the case for your deliberation at the end of all the
19 testimony

20 Sometimes when we take a break for lunch or at nighttime, two
21 or three jurors or prone to get together and discuss some issue
22 That's improper for the following reasons Ultimately, whatever
23 your decision is as to not guilty or guilty must be the unanimous
24 verdict of all twelve of you, and if several of you are talking
25 about some issue in the case, you are depriving your fellow jurors

REMARKS OF THE COURT

26

1 of your thought process, and they're entitled to that

2 And such it is under our system we say that even in the jury
3 room as the case progresses, you will not discuss any issue until
4 you have heard all of the witnesses and until I have instructed you
5 with regards to the law

6 I'm going to excuse all of you, now, to be back in the jury
7 room promptly at 2 30

8 You may leave at this time

9 Everybody else remain seated

10 Thank you so much

11 And I'll select a Foreperson this afternoon

12 (The jury departs the courtroom at 12 19 p m to return at
13 2 30 p m)

14 THE COURT Now, ladies and gentlemen, for those of you who
15 were not selected for the trial of this case, these instructions
16 will apply to you

17 When you went in the courtroom, your Clerk of Court gave you
18 a phone number It is important that you call in after 6 00
19 tonight for further instructions

20 As I indicated before, sometimes we start a case in the
21 afternoon and we have to set it aside because witnesses become
22 unavailable or other things occur, and if that should happen, I'll
23 tell you on your instructions to be back at 9 30 in the morning

24 If at the end of the day we are still in consideration of that
25 case, my instructions will be either to call in after tomorrow

REMARKS OF THE COURT

27

1 night or come back at 2 30 tomorrow afternoon I can't tell yet

2 But what I tell you is so important that you call in tonight
3 after 6 00

4 Now, as you leave, if anybody has any questions about that or
5 any questions about the telephone numbers, please talk to Ms
6 Sherrie here before you go because you are now qualified to serve,
7 and I would have to send the Sheriff for you if you're not here
8 when I call for you I would not wish to do that but I will if
9 necessary

10 You are now excused to call in after 6 00 tonight

11 Everybody else remain seated, please

12 You may leave at this time

13 (The remaining jury panel is released to return at 6 00 p m
14 tonight)

15 THE COURT Alright What's before me, please?

16 Incidentally, would you be in a position to hear the Jackson
17 v Denno prior to lunch today?

18 MR LONG Yes, sir, Your Honor

19 I don't know if the State has all their witnesses available
20 I do still need to look at some tapes and listen to some - - -

21 THE COURT Okay

22 What we'll do at the appropriate time here we'll break for
23 lunch and do that at 2 00

24 MR LONG Okay

25 THE COURT Alright The bond of the defendant has

REMARKS OF THE COURT

28

1 fallen He will be available for you

2 MR LONG Alright

3 Thank you, Your Honor

4 THE COURT Alright, sir

5 (The Court recesses this case to address other matters before
6 the Court and then briefly resumes this case)

7 THE COURT Alright, sir

8 MR LONG Your Honor, as to Glenn Pernell's bond, I would
9 like to be able to speak with him over lunch, our lunch break
10 I've got to view some tapes and consult with him

11 Until the jury is sworn, can we then say jeopardy is not
12 attached and his bond is not subject to be revoked?

13 THE COURT Where do you want to go to review the - -
14 review the - - -

15 MR LONG Well, I'm going to go downstairs to review the
16 tapes, and then I'm going to eat lunch, and I assume he's going to
17 need lunch, also

18 THE COURT Well, I want him to - - I want him to remain in
19 the courtroom

20 MR LONG Very well, Your Honor

21 THE COURT In the courthouse

22 And I'll have a deputy get him a sandwich or something but I
23 do not want him to leave the courthouse

24 MR LONG Understood

25 Thank you, Your Honor

MOTION FOR CONTINUANCE AND RULING OF THE COURT

29

1 THE COURT But, now, if you need to talk to him
2 confidentially, I'll let the security stand outside the room

3 MR LONG Thank you, Your Honor

4 THE COURT But his - - his bond has fallen

5 MR LONG Thank you, Your Honor

6 THE COURT Alright, sir

7 (The Court again recesses the trial of this case to address
8 other matters before the Court and thereafter resumes the trial of
9 this case after lunch)

MOTION FOR A CONTINUANCE AND RULING OF THE COURT

11 THE COURT Alright

12 I understand there are several motions in the case we're
13 getting ready to try

14 Mr Long, I'll be glad to hear from you

15 MR WELLS Before we start, I need to call out these names
16 to take in this back room

17 THE COURT Alright, sir We'll do that

18 (Assistant Solicitor Wells addresses other defendants while
19 Court waits and thereafter resumes the trial of this case)

20 THE COURT Alright, Mr Long Let me hear from you

21 MR LONG Thank you, Your Honor

22 First, Your Honor, the defense would make a motion for
23 continuance We talked in chambers and went through some of the
24 reasons for the continuance but just to summarize for the record,
25 Your Honor

MOTION FOR CONTINUANCE AND RULING OF THE COURT

30

1 There are five charges or five counts in the indictments that
2 the State is calling for trial today The Solicitor's Office
3 provided discovery pursuant our - - our discovery request back in
4 November of 2006, all of the discovery materials that relate to
5 four of the five charges, that is, the two counts of trafficking
6 and the two counts of proximity The discovery materials for the
7 distribution charge was not provided until this morning

8 THE COURT Is that on Count 1?

9 MR LONG Count 1, I believe, is the distribution, Your
10 Honor

11 THE COURT Okay

12 MR LONG The difficulty that created and the reason for
13 our motion for a continuance, we moved to continue all charges
14 because we found out this morning there was an audio tape from the
15 distribution, a video tape of the distribution, photographs taken
16 of the drugs in the vehicle on Counts 2 through 5 of the
17 indictment We just found out the existence of those this
18 morning Just over lunch I was able to view the video tape and
19 listen to the audio tape, view the photographs

20 Again, on the record, Your Honor, Mr Lawson has not willfully
21 or purposely withheld any of this discovery material from us He
22 is open, candid and accommodating but I think through an oversight
23 through the office, the discovery materials that were provided to
24 us, the incident report provided to us only relate to the
25 trafficking charges and proximity charges

MOTION FOR CONTINUANCE AND RULING OF THE COURT

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1 THE COURT The four charges

2 MR LONG Counts 2 through 5

3 THE COURT Well, we've had a pretrial discussion, and Mr
4 Lawson has looked at his file, and it's obviously what happened
5 Their secretary who responded to your request didn't realize there
6 were two separate incidences

7 MR LONG Yes, sir

8 And there were two separate incident reports

9 THE COURT And I - - I told Mr Lawson My view is we'll
10 proceed on the second incident which is the four charges, and
11 pursuant to your request, continue the distribution charge

12 What do you want to say, Mr Lawson?

13 Candidly, you've admitted to me your record does not reflect
14 that you responded to the distribution charge

15 MR LAWSON Your Honor, it is a generic response which it
16 just says, "We've responded to discovery "

17 I can't, ah, deny that we, uh, sent it I can't admit that we
18 sent it All I can tell you is that we sent something under a
19 generic letter to indicate discovery was sent

20 THE COURT Well, you read that generic letter to me, and
21 it looks like to me it relates to the second incident of that
22 alleged date which embraces the four counts Two of trafficking
23 and two of proximity

24 It does not relate to the incident four hours earlier from
25 which the distribution charge arose Isn't that true?

MOTION FOR CONTINUANCE AND RULING OF THE COURT

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1 MR LAWSON Well, sir, it relates to the indictment is what
2 the - - the letter that we sent relates to a copy of the
3 indictment

4 THE COURT Yes, sir, but you will agree with me that you
5 didn't send him a copy of the video or the audio nor tell him you
6 had it

7 MR LAWSON I didn't send a copy, no, sir

8 THE COURT Well, did you tell him you had it?

9 MR LAWSON It - - it's in the incident report If he did
10 not get the incident report, then he wouldn't have that
11 information

12 THE COURT Well, he related to me he only got the incident
13 report involving the later incident that day

14 Is that true?

15 MR LONG That's correct, Your Honor There are two
16 separate incident reports, and the incident report I received was
17 merely hit or miss mention of the distribution, nothing about
18 audio/video tapes, and then the result of the trafficking charges,
19 the incident report

20 THE COURT Well, I - - I'm inclined to continue the
21 distribution charge but that shouldn't affect the rest of the case
22 which is trafficking which occurred four hours later

23 MR LONG No, Your Honor

24 For the record, we feel that the State may or may not be
25 permitted or may or may not be permissible for them to go into the

MOTION FOR CONTINUANCE AND RULING OF THE COURT

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1 facts and evidence of the distribution charge as relates to the
2 trafficking charges

3 I think it's sufficient for the State to say, "We had a
4 warrant for his arrest - We effectuated the arrest warrant As a
5 result of effectuated that arrest warrant, we found in the
6 defendant's actual or constructive possession that these items
7 constituting trafficking and drugs - - - "

8 THE COURT Which was four hours earlier, you talking
9 about?

10 MR LONG Pardon?

11 THE COURT The four hours earlier?

12 MR LONG Yes, sir, the distribution

13 THE COURT Okay

14 MR LONG And, of course, the video and audio tape, I
15 assume the State will want to use that evidence to try to show
16 ownership for the trafficking charges We would object to that
17 for the record, Your Honor I think that those would be too
18 prejudicial as far as the trafficking charges The trafficking
19 charges should stand alone, should be tried alone

20 THE COURT Well, as I understand it from pretrial, this
21 other incident occurred just some four hours earlier which is so
22 close to the trafficking charge - - -

23 MR LONG Five hours, Your Honor

24 THE COURT Five hours - - to make it admissible

25 You've had a full opportunity today to review those audios and

MOTION FOR CONTINUANCE AND RULING OF THE COURT

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1 videos, and so I just don't see any prejudice in proceeding with
2 the trafficking

3 I'll rule on the admissibility of this as we go along but, ah,
4 preliminarily, Mr Lawson, tell me why the occurrence of five hours
5 earlier is admissible as to the later charges that were made

6 MR LAWSON Your Honor, it's the basis for the later
7 charges The warrant that was obtained was based on what occurred
8 earlier, ah, and that warrant was served on the defendant and at
9 the time that it was served was when additional drugs were found

10 THE COURT Okay

11 What do you say occurred occurred?

12 MR LAWSON There was a, ah, a sale of what was alleged to
13 have been, ah, cocaine base by the defendant to a confidential
14 informant

15 THE COURT Okay

16 Why - - I assume you're going to have a confidential informant
17 testify as to that?

18 MR LAWSON Ah, yes, sir One is available

19 THE COURT Why - - why, I'm just curious

20 Since we not going to try that case, why do you need the
21 audio/video if I let in the fact - - it's clear to me that if what
22 occurred five days - - five hours earlier was the basis for the
23 arrest warrant which later led to the charge, that's admissible but
24 why do you need the video?

25 MR LAWSON Well, Your Honor, the video shows certain

JACKSON V DENNO HEARING (IN CAMERA)

35

1 things such as the automobile in which the defendant was arrested,
2 um, and - - -

3 THE COURT Is that the same automobile he had five hours
4 later?

5 MR LAWSON Yes, sir

6 THE COURT And so you're saying that you're going to prove
7 that he had it in his custody five hours earlier in the same
8 automobile?

9 MR LAWSON Yes, sir

10 THE COURT I'm going to let it in, and I am going to
11 continue the innocence or guilt phase of trial for a later date

12 I would conclude if that's the testimony that, ah, that is
13 necessarily close enough in time to be relevant to the jury as to
14 what occurred five hours later

15 MR LONG Yes, sir, Your Honor

16 THE COURT So, I would respectfully grant your - - deny
17 your motion to continue the - - the four charges I will grant
18 your motion to continue the distribution charge upon the failure to
19 comply with your Miranda, no, your Brady rule request finding no
20 intent to do that on behalf of the State It was just a clerical
21 error not recognizing there were two separate indictments

22 Alright What other - - what's your next motion?

23 JACKSON V DENNO HEARING (IN CAMERA)

24 MR LONG Your Honor, secondly, we move under Jackson v
25 Denno I understand from the incident report on the trafficking

AGENT WALLACE - DIRECT EXAMINATION BY MR LAWSON (IN CAMERA) 36

1 charges, there was - - just one minute, Your Honor

2 If I could read verbally a couple of things

3 "Agent Wallace called Agent Rouse to come to his vehicle, and
4 when Agent Rouse got there, Agent Wallace said that the drugs was
5 his and that the other two had nothing to do with the drugs "

6 And I'm assuming from that incident report that Agent Wallace
7 was telling Agent Rouse that Glenn Pernell said that the drugs was
8 his and the other two had nothing to do with the drugs

9 THE COURT Well, you anticipate a vocal confession by the
10 defendant made to that agent?

11 MR LONG Yes, Your Honor

12 We would move to suppress that unless he had been properly
13 Mirandized

14 THE COURT Well, we'll take testimony on that issue, and
15 we'll find out

16 MR LONG Thank you, Your Honor

17 THE COURT Is that agent here?

18 MR LAWSON Yes, Your Honor

19 THE COURT Let's move forward

20 MR LAWSON Your Honor, we would call Joseph Brian Wallace

21 (The witness takes the witness stand)

22 (IN CAMERA) AGENT JOSEPH BRIAN WALLACE being
23 duly sworn, testifies as follows

24 DIRECT EXAMINATION BY MR LAWSON

25 Q Would you please state your name for the record?

AGENT WALLACE - DIRECT EXAMINATION BY MR LAWSON (IN CAMERA) 37

1 A Joseph Brian Wallace

2 Q And where are you employed?

3 A Marion County Sheriff's Office

4 Q And how long have you been so employed?

5 A A little over eight years

6 Q And, um, are you assigned to any special unit at this time?

7 A Yes I'm assigned to the Marion County Combined Drug Unit

8 Q Okay

9 And what does the Combined Drug Unit do?

10 A Conduct undercover investigations, work with confidential
11 informants and, ah, different drug activity in the county

12 Q And were you in that position on August 2nd of 2006?

13 A I was

14 Q Ah, and how long had you been in the Combined Drug Unit in
15 August of 2006?

16 A A year and seven or eight months

17 Q Alright, sir, and on August 6th of 2000 - - August 2nd of 2006,
18 did you have an opportunity to, ah, become involved, ah, in the
19 arrest of Glenn Pernell?

20 A Yes, sir, I did

21 Q Explain to the Court how that occurred?

22 A We had - - earlier that day we had done a controlled drug buy
23 with a confidential informant That drug transaction led to an
24 arrest warrant A location was arranged where we knew the
25 defendant, Mr Pernell, would be

AGENT WALLACE - DIRECT EXAMINATION BY MR LAWSON (IN CAMERA) 38

1 Officers stayed around the motel and across the road from the
2 Imperial Motel inside the City Limits of Mullins

3 When Mr Pernell drove up to the motel and exited his vehicle,
4 officers, ah, moved in and made an arrest on Mr Pernell, and there
5 was two other occupants in the car

6 Q Alright

7 So, then, at the time - - where - - where was Mr Pernell when
8 he was arrested?

9 A He was inside a little office at the Imperial Motel where you
10 go in to register for a room

11 Q Alright, and were you present there at the time of the arrest?

12 A Shortly after I was across the street It took me a, ah, a
13 few seconds to get across the street to the vehicle

14 Well, actually, I was concentrating on the car Other
15 officers went inside the office to make the arrest

16 Q Alright

17 And did you at some point go to the office?

18 A Yes He was - - he was brought outside the office, and I
19 took him and placed him in my, ah, vehicle

20 Q And what did you do at that point?

21 A At that point he was in the vehicle I talked with him
22 Advised him he was under arrest Advised him of his Miranda
23 rights which I read off of a card that I keep in my wallet

24 After I advised him of his Miranda rights, one of the last
25 sentences says, "Do you understand your rights?"

AGENT WALLACE - DIRECT EXAMINATION BY MR LAWSON (IN CAMERA) 39

1 He stated he did

2 I asked if he wanted to talk He said yes We started
3 talking

4 At that point I told him that, um, as I stated, he was under
5 arrest for distribution of cocaine base, um, at that point the
6 other officer told me there were some drugs in the car I asked
7 him was the drugs his At first, he claimed the drugs

8 He said, "Yeah, they mine The other two guys didn't have
9 nothing to do with it "

10 And, then, shortly thereafter that, he stated, "No, they're
11 not mine I wasn't driving the car The person driving the car
12 must have run off "

13 Q Alright, and what exactly did you advise him?

14 A I advised him of his Miranda warnings You want me to read
15 the card?

16 Q Just exactly - - exactly what you said to him on that day

17 A What I said to him

18 I said, "Before we ask you any questions, you must understand
19 your rights

20 You have the right to remain silent Anything you say can be
21 used against you in a court of law

22 You have a right to talk to a lawyer for advice before we ask
23 any questions and to have him with you during questioning

24 If you cannot afford a lawyer, one will be appointed to
25 represent you before any questions if you wish

AGENT WALLACE - DIRECT EXAMINATION BY MR LAWSON (IN CAMERA) 40

1 You can decide to answer questions now without a lawyer
2 present, and you still have the right to stop answering at any
3 time

4 You also have a right to stop answering at any time until you
5 talk to a lawyer

6 Do you understand these rights?"

7 Q Alright

8 And his response to that question was?

9 A He stated he understood his rights

10 Q Alright

11 And then, um, what happened at that point - - after he had
12 said he understood his rights?

13 A He stated that the stuff in the car belonged to him, the drugs
14 in the car belonged to him and the other two guys in the car didn't
15 have anything to do with it and shouldn't be charged

16 Q Alright

17 A At that point, that's when I asked Lt Rouse to walk over to
18 the vehicle

19 Q Alright

20 What transpired at that point?

21 A Lt Rouse walked over to the vehicle I informed him what Mr
22 Pernell said He stated, "Well, all of them are going to be
23 charged now When we get to the office, and, ah, we'll get a
24 statement from him if he's claiming the drugs "

25 Lt Rouse walked away, and then Mr Pernell shortly

AGENT WALLACE - DIRECT EXAMINATION BY MR LAWSON (IN CAMERA) 41

1 thereafter, I don't know exactly how long, then, he said he didn't
2 have anything to do with it He wasn't driving the car The
3 person driving the car must have run across that field

4 Q Alright

5 And, ah, what position were you in when the car arrived at the
6 motel?

7 A I was, ah, the car was parked near the front office, and I was
8 - - from the back of the car, I was to the right of the car

9 Q Alright

10 Could you see the driver's side of the car?

11 A Um, after the arrest was made?

12 Q From - - before - - from where you were sitting, the vantage
13 point?

14 A I could - - it was dark windows on the car I couldn't
15 actually see I could see the driver's side but I was on the
16 opposite side of it

17 Q Alright

18 And did you see someone get out of the car, the driver's side?

19 A No I did not see him get out the car

20 Q Alright

21 Did, ah, did he make any other statement to you other than
22 what you've indicated today?

23 A No

24 Q Answer any questions Mr Long may have

AGENT WALLACE - CROSS EXAMINATION BY MR LONG (IN CAMERA)

42

1 CROSS EXAMINATION BY MR LONG

2 Q Agent Wallace, ah, you were there at the scene before Glenn
3 Pernell's vehicle arrived at the scene Is that correct?

4 A I was across the street behind a church

5 Q Okay

6 So you were there before his vehicle got there Is that
7 correct?

8 A Yes, sir

9 Q And you didn't observe him get out of the vehicle and go into
10 the office?

11 A From my position across the street behind the church I - - I
12 could not see that

13 Q Okay

14 And then when the other officers arrived, about how long was
15 it from the time Glenn Pernell's vehicle got there until the other
16 officers arrived and arrested him in the office?

17 A I can't tell you the exact time

18 Q Approximately

19 A Say the question one more time

20 Q How long was it from the time that Glenn Pernell's vehicle
21 arrived at the motel until the other officers arrived and effected
22 the arrest of Glenn Pernell in the office?

23 A Ten seconds

24 Q Ten seconds?

25 A Ten, fifteen seconds

AGENT WALLACE - CROSS EXAMINATION BY MR LONG (IN CAMERA)

43

1 Q Alright

2 Now, after they brought him out of the office to you, you were
3 at the vehicle Is that correct?

4 A He - - he may have already been out the office when I went
5 over there

6 Q Okay

7 So, he had been brought out of the office, and then you came
8 from your vehicle over to his vehicle Is that correct?

9 A I got out my vehicle, and I was standing around his vehicle

10 Q Alright

11 And then at some point in time, you took him from that
12 location to your vehicle Is that correct?

13 A Yes, sir

14 Q Alright

15 And you say you advised him orally of his Miranda rights at
16 that time Correct?

17 A Yes, sir, a verbal warning

18 Q Okay

19 Did you give him a written warning and have him sign a written
20 notification of his Miranda rights?

21 A No, sir

22 Q Alright

23 Are you positive that you advised him of his Miranda rights
24 orally before he made this statement?

25 A Yes, sir

AGENT WALLACE - CROSS EXAMINATION BY MR LONG (IN CAMERA)

44

1 Q Alright

2 You advised him that he was under arrest for distribution of
3 crack cocaine Is that correct?

4 A Yes, sir

5 Q When was that - - wasn't that warrant not served on him until
6 the next day?

7 A I - - I'm not sure when it was exactly served

8 Q If I show you this warrant, and I believe it's signed by you,
9 could you tell me on the return when it was served on Mr Pernell?

10 A It was served on August 3rd

11 Q That would be the next day?

12 A Yes, sir

13 Q So, you did not serve the warrant on him and put him under
14 arrest at that time on August 2nd?

15 A We had a warrant We had an arrest warrant

16 Q Okay

17 A And we arrested on this arrest warrant

18 Q Okay

19 A But the warrant may have not been served until the following
20 day

21 Q Alright

22 A With the other warrants

23 Q And then that distribution that allegedly took place on 12 00
24 noon on that date, are you certain that you had this warrant signed
25 by the judge by 5 55 p m that day?

AGENT WALLACE - CROSS EXAMINATION BY MR LONG (IN CAMERA)

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1 A Yes, sir Yes, sir

2 The warrant was issued by Judge Bristow on August the 2nd?

3 Q At what time?

4 A I don't know what time It was earlier - - we had the arrest
5 warrant in hand

6 Q You had it in hand?

7 A Yes

8 Q But it wasn't served on him until the next day?

9 A Yes, sir

10 Q Alright

11 Now, you're saying that Glenn said, and I want to get this in
12 quotes as much as I possibly can You claim that he said the drugs
13 were his The other two didn't have anything to do with it

14 Is that correct? Is that in close quotation marks as to what
15 you heard him say?

16 A I can't say that's exactly word for word what he said but
17 that's what he - - I'm paraphrasing what he said

18 Q Alright

19 And isn't it possible you could be paraphrasing, "Why are you
20 locking them up? They don't know nothing "

21 A He said the drugs was his

22 Q You're saying specifically, quote, unquote, the drugs - - he
23 said the drugs was his?

24 A Unquoted, he said the drugs was his

25 Q Alright

RULING OF THE COURT

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1 Thank you, sir No further questions
2 THE COURT You may come down
3 Any other witness on this issue
4 MR LAWSON That would be all on this issue
5 THE COURT You have any witness on this issue?
6 MR LONG One moment, Your Honor
7 THE COURT You may come down
8 AGENT WALLACE Thank you
9 (The witness takes the witness stand)
10 MR LONG No witnesses, Your Honor

RULING OF THE COURT

12 THE COURT No witness? Okay
13 Alright
14 Let the record now reflect that I have held an evidentiary
15 hearing in this matter, and I am convinced beyond a reasonable
16 doubt and so find that the alleged statement obtained was obtained
17 from the defendant was freely and voluntarily given and that the
18 same was given without duress, without coercion, without undue
19 influence and without any threats, inducements or hopes of reward
20 I further find that the defendant in compliance with Miranda
21 v Arizona was advised of his constitutional rights, that is, the
22 right to have an attorney present with him during the interview and
23 the interrogation, that the Court would appoint an attorney for him
24 if he was without the funds to employ one without cost to him, that
25 he has the right to remain silent, that he has the right to

MOTION AND RULING OF THE COURT

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1 terminate the interrogation at any time and not to answer any
2 questions and that anything the defendant said could be used as
3 evidence against him

4 I further find that this defendant knowingly understood these
5 rights and intelligently waived such rights under the Fifth and
6 Sixth Amendments to remain silent and to have counsel present with
7 him at the interview and interrogation

8 I further find that the decision to make the statement was a
9 product of the defendant's own unfettered will He had the
10 capacity to comprehend the meaning and affect of waiving his
11 constitutional rights I would conclude that this was a
12 spontaneous utterance of the defendant after having been duly
13 warned and given his Miranda rights

14 That alleged statement will be introduced into evidence for
15 the jury's consideration subject to proper instruction by the
16 Court

17 MR LONG Yes, sir, Your Honor

18 Thank you

19 THE COURT Alright

20 Anything else before we bring the jury in?

MOTION AND RULING OF THE COURT

22 MR LONG Your Honor, lastly, just in an abundance of
23 precaution, we are proceeding to opening statements and calling of
24 the State's first witnesses I would like to make a motion in
25 limini so to speak that we not be discussing much, if any, evidence

MOTION AND RULING OF THE COURT

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1 on the distribution charge unless or until that is submitted
2 through the witness stand, I have an opportunity to object or you
3 have an opportunity to rule on its admissibility at that particular
4 time

5 THE COURT No, sir

6 I think that that's an integral part of their case to show the
7 basis for the arrest I have made a ruling on it, and, ah, I'm
8 going to stand by that ruling

9 MR LONG Thank you, Your Honor

10 THE COURT If he cares to now knowing that I'm going to
11 let it in, I will let it in under instructions that that is only
12 being used at this time for the purpose of showing the basis of
13 his, ah, arrest later on that day I will make that qualifying
14 instruction for you

15 MR LONG Thank you, Your Honor

16 THE COURT But I will permit him to show what occurred but
17 the jury will be instructed You might prepare what instruction
18 you would have me do

19 My basis is to say to the jury, "Ladies and gentlemen, I am
20 permitting this testimony for the basis of showing further arrest "

21 If you have some other language that you would have me submit,
22 let me consider it

23 MR LONG Alright Thank you, Your Honor

24 With that, the State has no further motions

25 THE COURT Alright

MOTION AND RULING OF THE COURT

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1 MR LONG I mean the defense has no further motions

2 THE COURT Alright

3 Who is my Foreman?

4 Who is the bailiff bringing my jury in?

5 Wait a minute Let me give you the Foreperson

6 I am designating Ms Denice Gregg as Forelady of the jury

7 Please tell her that and have her sit in the Foreman's chair for
8 me

9 Bring the jury up Thank you

10 Now, prior to lunch as to the documents that were in there and
11 so forth?

12 MR LAWSON You want me to check?

13 THE COURT Check Yes, sir

14 That's why I sent them downstairs I hope it's clear

15 MR LAWSON Yes, sir

16 (The jury returns to the courtroom at 3 00 p m)

17 THE COURT Ms Gregg, I have designated you as Foreperson

18 JUROR GREGG Alright

19 THE COURT Let the record reflect that the jury and the
20 alternates are here

21 Ms Gregg, you will please occupy that chair at all times
22 during these proceedings The rest of you may sit as you choose
23 You will preside over the group during their deliberations in the
24 jury room and be the jury's spokesman in the courtroom and at the
25 appropriate time, I will provide for you a form verdict for your

JURY SWORN/REMARKS OF THE COURT

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1 consideration

2 I'll keep you fully advised of your duties

3 Okay?

4 FORELADY GREGG Yes Thank you

5 THE COURT Alright

6 Swear the jury

7 JURY SWORN

8 (The Clerk of Court swears the jury)

9 REMARKS OF THE COURT

10 THE COURT First, let me apologize for starting at 3 00
11 and had told you to be here promptly at 2 30, and you were

12 We were busy with some pleas not involving this case, and we
13 needed to do those pleas We had one where we had to wait for an
14 interpreter to come over, and so that delayed us in bringing you
15 good folks up

16 We are now ready to try this case Knowing that for many of
17 you this is probably the first time you've ever sat in a criminal
18 case and may be the first time you've ever sat as a juror but we'll
19 proceed in the following manner

20 As I indicated earlier and prior to your selection, the State
21 of South Carolina represented by Mr Jack Lawson of the Solicitor's
22 Office has the burden of proof in this case He will initially
23 make to you an opening statement as to what he proposes to show
24 you

25 Now, what Mr Lawson or any lawyer tells you is not evidence

REMARKS OF THE COURT

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1 Evidence comes from this witness stand but he will give you kind of
2 a guideline to help you follow what his introduction of testimony
3 and witnesses

4 Mr Long represents the defendant He will make a statement
5 to you with regards to his position

6 After these opening statements by both sides, that will give
7 you kind of glimpse as to what the issues are

8 There will be various witnesses called in the trial of this
9 case At the conclusion of that I will instruct you with regards
10 to what the law is with any issues that we have, and they will have
11 an opportunity to make final arguments to you

12 But let me say several things first

13 This defendant comes into court presumed innocent He
14 doesn't's have to prove a thing The State has got to prove him
15 guilty beyond a reasonable doubt

16 Now, you twelve are the sole and only judges in this case
17 There is nobody including this judge in this wide world that can
18 tell you twelve what the facts are

19 Jurors have said, "Well, Judge, how are we to decide what the
20 facts are?"

21 Well, there will be various witnesses called under oath to
22 testify as to what they say they know about the case, and during
23 the trial of the case there may be other documents introduced -
24 photographs, drawings or whatnot

25 As these witnesses testify, you are the sole judges of their

REMARKS OF THE COURT

52

1 credibility and their believability

2 In finding the facts, you may believe all of what a witness
3 says or none You may believe a small portion and disregard the
4 larger or the other way around

5 You know, you didn't leave your common sense on the streets of
6 Marion, South Carolina when you came into this courtroom, and we
7 all know in everyday lives when folks tell us things, we size them
8 up be it our children or work or play, and there are certain tools
9 we use

10 When somebody tell us something, we say, "Hey, do they know
11 what they talking about?"

12 Sometimes we ask ourselves, "Does this person have a reason or
13 cause to be biased or prejudiced "

14 In other words, "Are they telling me the truth? If not, why
15 not?"

16 You can think of other tools that you use in daily pursuits in
17 judging credibility and believability

18 Let me say this to you In judging credibility and
19 believability, you have but one single objective, just one - to
20 seek the truth, to seek the truth

21 You may have your opening statement

22 MR WELLS Your Honor, before we get started, may I just
23 excuse some people?

24 THE COURT You may do so

25 (Assistant Solicitor Wells addresses other defendants off the

OPENING STATEMENT BY MR LAWSON

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record, and the Court thereafter resumes the trial of this case)

THE COURT Alright, Mr Lawson, opening statement on
behalf of the State

OPENING STATEMENT BY MR LAWSON

MR LAWSON May it please the Court, Mr Long

Ladies and gentlemen of the jury, I am Jack Lawson I am a
Deputy Solicitor here in the Twelfth Circuit of Florence and Marion
Counties, and it is my pleasure in this case to represent the State
of South Carolina, and it is my burden to convince you beyond a
reasonable doubt that the defendant Glenn Pernell did certain
things in relation to drugs on August 2nd of 2006

And it is the State's burden to prove The defense has
nothing to prove to you, no burden whatsoever The law requires
that the State must be proven in the case

And in this case, we will be going forward on charges called
trafficking in cocaine, trafficking in cocaine base or crack
cocaine, um, and possession within proximity - - possession with
the intent within proximity of a school or playground, and that
means that you possess certain illegal substances within the radius
of a mile of some school or playground

Now, trafficking is a possessory offense and what it relates
to is the possession of a certain amount of a substance, and it
relates to the weight of that substance to create trafficking

Trafficking is not like distribution where there is a sale or
transfer Trafficking is statistical weight of a substance

OBJECTION AND RULING OF THE COURT

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1 In this particular case there is and in trafficking, you have
2 different categories, and it starts that in - - -

OBJECTION AND RULING OF THE COURT

4 MR LONG Your Honor, I hate to object at this time It
5 may need to be outside the presence of the jury

6 THE COURT Alright Let you go to the jury room just a
7 moment Be calling you right back

8 (The jury retires to the jury room at 3 09 p m)

9 THE COURT Yes, sir, Mr Long

10 MR LONG Your Honor, and I apologize to Mr Lawson I
11 do object - - -

12 THE COURT Wait a minute

13 Yes, sir

14 MR LONG I apologize to Mr Lawson

15 THE COURT That's alright

16 MR LONG I never like to interrupt an opening statement

17 Your Honor, in that the amounts in controversy in this action

18 Cocaine - a 128 64 grams,

19 Crack cocaine - 64 02 grams, and

20 Crack Cocaine - 15 64 grams

21 We are talking about trafficking 28 to 100 grams and
22 trafficking 100 to 200 grams We think it's very prejudicial for
23 the jurors to know that trafficking begins at 10 grams and goes 10
24 to 28 and 28 to 100 - - -

25 THE COURT Well, we can alleviate that Just say to the

OBJECTION AND RULING OF THE COURT

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1 jury that you're proceeding on the statute that provides whatever
2 you're proceeding under You understand?

3 MR LONG But if he starts at the lower levels - - -

4 THE COURT I understand You want to show big time

5 Just confine your remarks to the quantities that you are
6 interested in

7 MR LAWSON I understand

8 Thank you, Your Honor

9 THE COURT Alright

10 Bring the jury in

11 (The jury returns to the courtroom at 3 10 p m)

12 THE COURT Madame Foreman, let me say preliminary again
13 From time to time in the trial of any case such as this one,
14 lawyers for each side may say, "I object "

15 Do not hold that against him They are simply calling to my
16 attention some possible error of law, and be assured and we like to
17 discuss errors of law outside of your presence Be assured that
18 these attorneys nor this judge are trying to hide anything from you
19 that you are entitled to hear Nobody would do that but do not
20 hold it against either attorney if during the trial of the case
21 they say, "Your Honor, I object "

22 And we'll hear what it is and rule accordingly

23 Alright

24 You may continue your opening statement

CONTINUING OPENING STATEMENT BY MR LAWSON

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1 CONTINUING OPENING STATEMENT BY MR LAWSON

2 MR LAWSON May it please the Court, Mr Long

3 Ladies and gentlemen, in this case we deal with trafficking in
4 cocaine in excess of 100 grams and less than 200 grams, and in
5 cocaine base, crack cocaine, in excess of 28 grams but less than
6 100 grams

7 The charges of possession with intent within proximity relate
8 to possession of a certain amount of a substance, be it cocaine,
9 crack cocaine, within a certain radius of a school, as I said, park
10 or playground, and as I said earlier

11 Now, the State will prove in this case that approximately 5 00
12 - 5 30 on August 2, 2006, at the Imperial Motel in Mullins, South
13 Carolina, that the defendant did traffic in cocaine and cocaine
14 base and that he did possess with intent to distribute the same two
15 substances within a mile radius of a school

16 Ah, during the case you will hear testimony of witnesses who
17 were there You will hear testimony of a Chemist from SLED who has
18 to test substances to come into court and testify what something
19 may be so as to allow the proof of that substance or what that
20 substance is

21 I ask you and I always do to be - - be fair, and I know you
22 will be, to be alert and to listen to the evidence

23 You and you alone are the judges of the facts The judge is
24 the judge of the law He will tell you that in his instructions

25 You, therefore, need to listen and to pay close attention to

OPENING STATEMENT BY MR LONG

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1 the facts of the case, and I ask and I believe that you will do
2 that in this case because this is an important case It is
3 important to the State It's important to the defendant, and it is
4 important to the State of South Carolina

5 And I want to thank you for giving of your time and coming up
6 here and serving on jury duty It's not something that you enjoy
7 doing, I'm sure

8 I know there's probably a hundred different places you would
9 rather be than here but I thank you for giving up your time and
10 being here and doing what you're doing in this case

11 Just pay close attention to the evidence as it unfolds in
12 front of you and render a verdict that speaks the truth as I know
13 you will

14 Thank you

15 THE COURT Mr Long

16 MR LONG Thank you, Your Honor

17 OPENING STATEMENT BY MR LONG

18 MR LONG Well, ladies and gentlemen, I am Buddy Long
19 I'm an attorney from Conway I drove 39 miles to be here My wife
20 is a kindergarten teacher in Myrtle Beach, and I've got no good
21 reason not to be here either

22 We know about the same about each other, and you were selected
23 as jurors I'm here representing Glenn Pernell I'm his defense
24 attorney, and you can count yourself unfortunate, I think, because
25 you've got the toughest job in the courtroom

OPENING STATEMENT BY MR LONG

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1 My job is easy It pales by comparison I believe Mr
2 Lawson's job respectfully pales by comparison to your job Even,
3 respectfully, I say His Honor's job pales in comparison to what you
4 have to do

5 You have to make a decision as the finders of the facts
6 You've got to sort and sift and figure out what you can believe

7 My wife asks me, "Honey, what you want for supper? Where do
8 you want to go for supper?", sometimes

9 And I'm all over myself, and I can't make a decision
10 Finally, I say, "Honey, where ever you want to go "

11 Something as insignificant as what to eat for supper can be a
12 hard decision to make Okay?

13 And you're called with an awesome responsibility I
14 sympathize with you about that but I appreciate it

15 All those other people were rejects Okay? You were the
16 ones the State and Mr Pernell said are fair to try the case

17 Now, His Honor will give you the law I won't bore you with
18 the law but I will try to tell you just a couple of things that you
19 should consider, and opening statements are like a road map If
20 you're getting ready to go from here to California, you'd want to
21 kind of have some idea of what roads you're going to be on to get
22 there, and that's all opening statements are

23 His Honor will tell you you're the judge of the credibility
24 and believability of the witnesses as he has explained to you You
25 have to try to determine who is telling the truth or not or who can

OPENING STATEMENT BY MR LONG

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1 remember facts and details correct or not or who as everybody tends
2 to kind of bend and exaggerate and things of that nature facts and
3 circumstance, and you have to sift through all that and find out
4 what actually happened

5 Now, the presumption of innocence is something that everyone
6 can say the terms but you never really understand what it means
7 If it were not Glenn sitting here with me, if were your uncle or
8 your father or my grandfather or my sister or my brother or
9 something of that nature, and they said, "Buddy, your relative or
10 friend or whatever is charged with that "

11 It could be my preacher, my pastor, anything of that nature,
12 and my first reaction is going to be, "No, that can't be true No
13 way That person would never do that "

14- You don't have the advantage of knowing Glenn Pernell but the
15 law says he's entitled to that same, "That can't be That can't
16 be "

17 Because he doesn't know you You don't know him, and,
18 technically, you may not get to know him through this trial This
19 is a highly stressful environment but that's what the presumption
20 of innocence means That's how you are to look at the evidence

21 You hear everybody talk about beyond a reasonable doubt
22 Well, those are nice words but they're not words created by defense
23 attorneys to try to get clients off

24 An example I like to use

25 Someone calls up my wife and says, "Mrs Long, I saw your

OPENING STATEMENT BY MR LONG

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1 husband at a club last night dancing with whoever "

2 And let's say she went out to supper with some of her friends
3 from the kindergarten, left me at home by myself

4 How can I prove a negative? How can I prove to her that I
5 didn't go out unless some kind of alibi witness or something of
6 that nature, how can I prove I didn't do something? It's almost
7 impossible

8 That's why the State has the burden of proof beyond a
9 reasonable doubt because it's difficult to prove you didn't do
10 something You can't prove a negative

11 And that's why when we're talking about beyond a reasonable
12 doubt, His Honor will tell you Evidence that leaves you firmly
13 convinced, okay? I can make up my mind I'm so firmly convinced
14 about this that I can tear off this presumption of innocence and
15 say, "He's guilty "

16 Only unless or until the State's provided that kind of
17 evidence

18 Now, trafficking in drugs is a fancy term for possession of a
19 certain quantity It doesn't involve bringing it in on ships and
20 ports out of Miami and cigarette boats and helicopters and cargo
21 planes and things of that nature It just involves possession of
22 a certain amount

23 The State must prove each and every element of the offense,
24 the most important of which is possession

25 My pen, I have it in my possession There's no question

OPENING STATEMENT BY MR LONG

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1 That is mine

2 My pen, you can say Your verdict will say that is my pen
3 because you saw it in my possession, and you saw me put it there,
4 and you know it's not the Solicitor's pen

5 The catch-phrase along with possession and there's actual and
6 possession

7 Actual possession

8 If this is in my briefcase, I have constructive possession of
9 it That is my briefcase I'm the only one who has dominion and
10 control over my briefcase Nobody else in the entire world is
11 entitled, permitted into my briefcase Therefore, whatever is in
12 my briefcase is mine

13 The State must prove that he had exclusive dominion and
14 control over the drugs that we're here about here today, and we
15 feel the State cannot, cannot prove that to be the case

16 Again, as His Honor tells you, use your good common sense
17 because that's the only way you can sort through everything

18 Listen attentively to the witnesses Try to determine through
19 their body language or the way they answer questions, how up front
20 they are or how withholding they are and arrive at your verdict

21 Thank you

22 THE COURT You may call your first witness, Solicitor

23 MR LAWSON May it please the Court

24 The State would call Agent Neil Rouse

25 (The witness takes the witness stand)

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 LT DAVID NEIL ROUSE, being duly sworn,
2 testifies as follows

3 DIRECT EXAMINATION BY MR LAWSON

4 Q Please state your name for the record

5 A David Neil Rouse

6 Q And you go by Neil?

7 A Correct

8 Q And where are you employed?

9 A I am employed with the City of Mullins I am the Supervisor
10 or the Marion County Combined Drug Unit

11 Q And how long have you been so employed?

12 A I've been with the City of Mullins fifteen years I was five
13 years with the Sheriff's Office in Dillon County

14 Q And after five years with Dillon, then you came to work with
15 Mullins?

16 A That is correct

17 I've been in Narcotics ever since I've been here, fifteen
18 years

19 Q So, you've been - - did you go to work with the City of
20 Mullins?

21 A That's correct

22 Q And you immediately went to work with the Combined Drug Unit
23 at that time?

24 A That's correct

25 Q And you are the lieutenant?

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 A Yes, sir

2 Q In charge of the Combined Drug Unit at this time?

3 A That's correct

4 Q And how long have you held that position?

5 A I've been in that position now since 2002

6 Q And so, ah, in August of 2006, ah, you were in that position
7 Is that correct?

8 A That's correct

9 Q In that position do you have certain duties and
10 responsibilities?

11 A My duties is to oversee the case agents as they perform their
12 duties, also to make cases myself, ah, to get the surveillance
13 equipment, to purchase that, ah, view any purchase that the
14 Combined Drug Unit does I do that

15 I set the schedules for each officer when they're working and
16 oversee each case as we try to make cases in the county I don't
17 be on all the cases but most of the time I'm there when most of the
18 cases are made

19 Q Ah, and so you, ah, basically, supervise the other members of
20 the unit Is that correct?

21 A That's correct

22 Q And how many members are there?

23 A We have, ah, there's four officers and myself, and Agent
24 Wallace, and Agent Brown, and Agent Crib and Secretary Janet
25 McCrae

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 Q And, um, on August 2nd of 2006, ah, do you recall that
2 particular day?

3 A Yes, sir, I do

4 Q And, um, what did you do in - - in - - in relation to your
5 duties on that day?

6 A On that day we had a confidential informant which is a what we
7 call a C I to come to our office A C I stated that she could
8 purchase cocaine - - crack cocaine from one Glenn Pernell

9 At that particular time, we then - - -

10 MR LONG Your Honor, again, I'm going to object
11 specifically to this testimony it being irrelevant to the charges
12 we're trying here today We may propose by stipulation to talk
13 about a valid warrant, a valid arrest warrant for his arrest but we
14 object to this testimony

15 THE COURT No, sir I'm going to let it in

16 MR LONG Thank you

17 THE COURT And I would charge the jury that the basis of
18 this testimony is the basis for the subsequent arrest warrant

19 MR LONG Thank you, Your Honor

20 THE COURT And to be used for that only

21 Alright Go ahead

22 A On that particular day, like I said, a confidential informant
23 came to our office We then proceeded with setting up a
24 controlled buy from Mr Pernell The C I was searched by the
25 secretary in our office and was found to have no drugs or money on

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 the C I at that time

2 The vehicle was searched by Agent Brown and Agent Cribb at
3 which time I placed a body transmitter on the C I along with a
4 video camera, and monitored the C I as we went out to the [REDACTED]
5 Community of Dillon, ah, Marion County

6 We went to a location out in the [REDACTED] Community where we then
7 activated the video and audio on the C I and monitored her
8 transactions from the time she left us until the time she come
9 back

10 The purpose for that is the safety of the confidential
11 informant or the undercover officer that we send in We try to do
12 this on every case Some cases we feel like that putting the
13 audio device or the video device on the person is - - might be at
14 risk of someone touching them or feeling of them, their body parts
15 and maybe finding the video or the audio camera, the audio system
16 So we put it on other places, not on the confidential informant

17 At this particular time she then left us We give her marked
18 buy money We then sent her to [REDACTED] which is located in
19 the [REDACTED] Community to Glenn Pernell's residence

20 Q Alright

21 Now, um, was this the first time that you had seen this
22 informant or had you seen him earlier?

23 A She had - - she had done some earlier work for us back in
24 2005

25 Q Ah, and did you - - did you see her the day before this

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 occurred?

2 A Correct I did

3 Q And - - and where was that? Was that - - -

4 A That was at my office

5 Q Alright

6 And, um, so, ah, as a result of - - of what happened, ah, what
7 did you do after, ah, the informant returned to you and the other
8 members of the unit?

9 A After - - after listening to the audio knowing that a drug
10 transaction had taken place and the C I coming back and bringing
11 us the drugs instead the marked buy money, she met back with us and
12 then turned the evidence over to Agent Wallace We found - - I
13 turned off the audio and video equipment

14 We then left and went back to our office We then discussed
15 the stuff that went on in the residence

16 Agent Wallace then placed the evidence in a BEST Bag which was
17 sealed to send to SLED for testing

18 Q Alright

19 Did you have anything to do, ah, with, ah, holding, retrieving
20 or storing that evidence?

21 A No, sir

22 Q Okay

23 Ah, now, after, ah, you returned, ah, to your office, ah, what
24 - - what did you do as a result of the activities of that - -
25 earlier that day? -

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 A The C I stated to us that Glenn Pernell - - -

2 MR LONG Objection Hearsay

3 THE COURT What is his response?

4 MR LONG He was stating that the C I told them
5 something, something, something

6 THE COURT No, sir Don't want that

7 Just say based on what he may have said, you may say what you
8 did but do not go into verbatim what he said He would have to
9 testify to that

10 A Based on the information that I received, ah, we then set up
11 another transaction that afternoon with, ah, Mr Pernell

12 Q Alright

13 Now, um, um, did you personally obtain a warrant as a result
14 of the information?

15 A Ah, based on the sale prior to that afternoon, I had Agent
16 Wallace then to type up a affidavit for an arrest warrant of Glenn
17 Pernell for distribution of crack cocaine or cocaine base and carry
18 it to the Magistrate's Office and get a warrant for - - for his
19 arrest

20 Q Alright

21 And was that warrant obtained?

22 A Yes, sir, it was

23 Q Alright, and, as a result of having that warrant in hand, what
24 did you then do

25 A Based on the information that Mr Pernell would be coming to

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 Mullins, ah, I then set up a sting operation consisting of officers
2 from the Mullins Police Department and Marion County Sheriff's
3 Office at the Imperial Motel located in the City Limits of Mullins

4 I staged four officers around behind the Imperial Office,
5 officers across the road and myself in the parking lot at Dollar
6 General so I could overview the whole situation as it unfolded

7 Once I got everybody in place, I then had the C I to place
8 a phone call to Mr Pernell and tell him that she was at the motel
9 She did

10 I was sitting in the parking lot at Dollar General overseeing
11 the parking lot of the Imperial Motel at which time I could observe
12 whoever would come to the parking lot, and I could tell the other
13 officers when to move in

14 After placing the phone call, several minutes passed A white
15 Crown Vic pulled into the parking lot Ah, Mr Pernell exited the
16 driver - - the driver's side of the vehicle He was the driver of
17 the vehicle The windows were tinted in the vehicle You could
18 not see the other passengers in the vehicle

19 Based on the information that we had through our investigation
20 that there could possibly be a pistol in the vehicle, it was my - -
21 -

22 MR LONG Your Honor, I'm going to have to object at this
23 point Relevance

24 THE COURT No, sir I conclude I will let the jury
25 consider whether or not it's relevant

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 Proceed

2 A It was my observation to get Mr Pernell out of the vehicle
3 for the safety of the officers That's my main objective as a
4 supervisor is to make sure my officers are safe in whatever we do

5 We felt like getting him out of the vehicle would be an
6 opportunity to get him away if there was a pistol If there
7 wasn't or if we found that there was one, he would be away from the
8 pistol

9 Ah, once - - once he exited the vehicle and got inside the
10 office of the motel to register where you register, I then gave the
11 order for them to move in

12 The four officers from around the back of the motel come in
13 They took Mr Pernell down

14 Myself, Officer Wallace and Officer Brown and Officer Clibb
15 then secured the people in the car

16 We didn't know - - we did not know at the time that there was
17 two more people in the car

18 Once the two people in the car saw the officers moving in to
19 the motel office, they started to exit the vehicle By that time,
20 we had got to the scene where they were at and secured them

21 Once they got out of the vehicle, their door was open I
22 could see inside of the vehicle In the ashtray there was a blunt
23 of marijuana in the ashtray Based on that it gave me further
24 cause to look further

25 I went around to the driver's side and opened the door, and in

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 the seat of the car was a black pouch I believe it's right there,
2 Mr Lawson, if you'll hand it to me right in that bag right there

3 In the seat of the car was a black pouch open just like this
4 It had the crack cocaine and cocaine in it along with a pair of
5 scales and an ink pen laying right on the front seat of the
6 vehicle

7 After seeing all of that, Mr Pernell was already placed under
8 arrest from the officers inside I then based that arresting the
9 other two occupants along with Mr Pernell for, ah, the drugs in
10 the vehicle

11 Prior to the - - also, Mr Pernell with the warrant we had in
12 our hand before on the distribution charge

13 Mr Pernell was then taken to Mr Wallace's vehicle Ah, a
14 few minutes had passed, us going through the vehicle and stuff
15 before Mr Wallace called me over I went over to his car He
16 told me then what Mr Pernell had told him

17 THE COURT Again

18 MR LONG Objection

19 THE COURT Not - - he just said he told him He's not
20 going into what he said

21 Don't go into what he said

22 LT ROUSE Yes, sir Yes, sir

23 THE COURT You may say what he said He told you
24 something whatever it is but he's not going into what he said

25 Go ahead

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 A After Mr Wallace - - Agent Wallace told me what was said, I
2 then made the statement that all three of them would be charged
3 until we could sort this out at my office

4 After everybody was secured and the drugs was secured, we then
5 had the vehicle towed We waited there at that scene until the
6 tow truck got there, and then we left there and went back to my
7 office where we sorted - - tried to sort everything out

8 Ah, once back in the office, no one would claim the drugs in
9 the vehicle So all three were charged with it

10 Q Now, is this the actual black pouch that was in the vehicle?

11 A That's correct

12 Q And - - -

13 A The reason - - the reason the drugs are not in this, the drugs
14 were so large amount and our BEST Bags that we could not put all
15 this with the satchel in it to take to SLED So we taken the drugs
16 out of it Put them in the BEST Bag and secured this until - - for
17 evidence in the case

18 Q And what - - what is inside of the, ah, black pouch?

19 A You have a set of scales and you have a ballpoint ink pen

20 Q Alright

21 And was that in the pouch at the time that you retrieved it?

22 A That's correct

23 Q Did you retrieve that pouch?

24 A Yes, sir

25 Q And did you also retrieve the drugs from that pouch?

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 A That's correct

2 MR LAWSON Your Honor, the State would move to introduce
3 this pouch and its contents as State's Exhibit #1

4 THE COURT You may do so

5 MR LONG Without objection, Your Honor

6 MR LAWSON Your Honor, I am going to close this so that
7 the contents won't fall out

8 (The Court Reporter accepts State's Exhibit #1 into evidence)

9 Q And, ah, when - - when you retrieved the drugs, now, what did
10 you do with them?

11 A Before - - before moving the drugs from the vehicle, we took
12 photographs of everything that was in the vehicle Um, before we
13 secured the drugs, everything was photographed

14 Q Now, you said it was a Crown Vic Is that? What kind of
15 vehicle is that?

16 A That's a Ford vehicle

17 Q A Ford, and it's a Crown Victoria?

18 A Yes, sir

19 Q You said there were photographs taken Is that correct?

20 A That's correct

21 Q Did you take the photographs?

22 A No, sir Captain Mike Bethea of the Mullins Police
23 Department took the photographs

24 Q Alright

25 I'm going to ask you if you can, ah, just tell me if these

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 three represent - - are accurate representations of what you saw
2 when you looked in the car?

3 A Yes, sir, they are

4 Q And are these two photographs accurate representations of the
5 car?

6 A Yes, sir, they are

7 Q And you were actually physically on site and present at the
8 time these photographs were taken?

9 A That's correct

10 MR LAWSON Your Honor, the State would offer these five
11 photographs as State's Exhibits #2, #3, #4, #5 and #6?

12 THE COURT Have you had an opportunity to see these
13 photographs?

14 MR LONG I have, Your Honor

15 We would object to them and tender our objection that they be
16 marked for identification purposes until a witness testifies that
17 he took the photographs on that occasion

18 THE COURT I would permit you to mark them for
19 identification only at this time

20 Proceed

21 (Court Reporter accepts State's Exhibits #2, #3, #4, #5 and #6
22 for identification only)

23 Q Um, now - - oh, I'm sorry

24 As a result of observing the vehicle, did you, ah, attempt to
25 find who the vehicle belonged to?

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 A Yes We run the license tag on the vehicle, and it come back
2 to Hattie Pernell, Mr Glenn Pernell's momma

3 Q Alright

4 Now - - let me show you an exhibit and ask if you can identify
5 that

6 A Yes, sir This is a warrant for possession with intent to
7 distribute crack cocaine base

8 Q Is that the warrant that was obtained on Mr Pernell?

9 A That's correct

10 Q And who actually signed that warrant?

11 A Actually, who signed it was Simon Brown, an agent in my
12 office

13 Q Okay, and it was not Brian Wallace?

14 A No, sir

15 Q Um, and, now, - - -

16 A Agent - - Agent Wallace signed the distribution charge
17 warrant

18 Q I will ask you if you can identify this

19 A Yes, sir, I can

20 Q And what is that?

21 A This is what we call a BEST Bag that we send to SLED We get
22 that blue bag inside this with blue writing It says, "Agency -
23 Marion County Combined Drug Unit " The date it was sealed -
24 8/2/06 Signature of the person sealing it - Printed, and
25 Signature of person sealing it - signed My name - I printed my

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 name and signed my name to this BEST Bag and took the evidence that
2 I put in this BEST Bag and sent it to SLED

3 Q And where did that evidence come from?

4 A It come out of the front seat of, ah, Mr Pernell's vehicle he
5 was driving that day

6 Q And is that what was in the black bag, this case?

7 A That - - that's correct

8 Q Alright

9 MR LAWSON Your Honor, we would ask that this be marked
10 for identification as State's Exhibit's #7 for identification

11 THE COURT It is so ordered

12 (The Court Reporter accepts State's Exhibit #7 for
13 identification only)

14 Q Alright

15 Um, when - - when you, ah, sealed the bag in State's Exhibit
16 #7 for identification, what did you then do with it?

17 A Once I sealed it, we then have a vault at the Drug Unit
18 Office It takes two officers to get in it and two officers to get
19 out of it

20 We then - - I opened my part of it Agent Cribb or Agent
21 Simon came and opened their side, and I placed the evidence in
22 there until they were ready to send it to SLED

23 Q Now, um, you were in a position, ah, where, ah, you could, ah,
24 observe cars coming into the Imperial Motel Is that correct?

25 A That's correct

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 Q And you saw someone get out of the driver's side?

2 A I saw Mr Pernell get out of the driver's side

3 Q And where did he go, the person that got out, where did he go?

4 A He went - - he went into the Imperial Motel Office

5 Q And, ah, and that office is located how far from where that
6 car was parked?

7 A Approximately, ah, approximately ten feet or so from the
8 office to where he parked at

9 Q And how long did it take, ah, the officers, ah, to respond,
10 ah, once the individual got out of the car?

11 A Just a matter of seconds

12 As soon as he opened the door and got inside, I hollered over
13 the radio, "Move in Move in "

14 And they all swarmed in

15 Q Ah, and, ah, at that time, ah, officers went into the office
16 of the motel?

17 A That's correct

18 Q And where - - and you went to the vehicle?

19 A That's correct

20 Q And two people got out of the car?

21 A That's correct

22 Q And at what point did they get out?

23 A At the point - - they were getting out of the vehicle at the
24 point they seen the two officers go into the motel room, then they
25 started exiting the vehicle

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 Q Alright

2 And, um, how long did it take, ah, for them to be apprehended
3 or were they apprehended?

4 A They were It was just a matter of a minute or so after - -
5 after the radio transaction went down

6 Q Alright

7 Were they able? Did they run? Did they jump and try go get
8 away that way or did y'all, ah, secure them immediately?

9 A No, sir They stood still and we secured them right
10 immediately They did not - - they didn't try to run

11 Q Alright

12 And, ah, at that point, ah, you went to the automobile?

13 A That's correct

14 Q Alright

15 Now, were - - was the warrant actually served on Mr Pernell?

16 A No, sir, not at that point It was my decision, ah, to just
17 hold off serving the warrant until the next day until we got all
18 the warrants together with trafficking in crack cocaine and
19 trafficking in cocaine and serve them all at one time

20 Q Alright

21 So, ah, but at the time that the, ah, arrest was made, you
22 have the warrant at the scene?

23 A That's correct

24 Q Now, once you put State's Exhibit #7 for identification into
25 the vault, did you have anything else to do with this package from

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 that point on?

2 A The day we carried them to SLED in Columbia, ah, I then
3 retrieved them out of the vault and done a chain of evidence to the
4 officer who carried them to SLED

5 Q And would that be that document?

6 A That's correct

7 What we - - we have documents We send them this and send us
8 a copy of it that we fill out

9 "I certify that I, Neil Rouse, employed with the Marion County
10 Combined Drug Unit on October 2, 2006, I seized from Glenn Pernell,
11 Derrick Platt and Jeffrey Graves pursuant to lawful arrest at or
12 near Mullins a white rock-like subject believed to be cocaine

13 Item #1 - Rock-like substance believed be cocaine base,

14 Item #2"

15 That's where I placed them into this bag

16 And on 9/17/06 I made a delivery to Agent Simon Brown with the
17 Marion County Combined Drug Unit for him to carry to SLED which was
18 notarized by the secretary of the Mullins Police Department

19 Q Alright, and, so, ah, you did not carry this to SLED?

20 A No, sir

21 Q And, ah, SLED is in Columbia?

22 A That's correct

23 Q And that's the laboratory?

24 A That's correct

25 Q And that's where y'all have to send all of your, ah, drugs for

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 testing purposes?

2 A That's correct

3 MR LAWSON Bear with me one moment, Your Honor

4 May it please the Court?

5 Q Would you look at these and explain what they represent?

6 A These are pictures of the offices of the Imperial Motel in
7 Mullins

8 Q And did you take those photographs?

9 A No, sir Agent Cribb did with the Marion County Drug Unit

10 Q And are they accurate representations of the area as it
11 appeared on the date - - on August 2, 2006?

12 A Yes, sir, they are

13 Q And, ah - - -

14 THE COURT Let's see those, Solicitor

15 I assume that you provided Mr Long with copies

16 You've seen these photographs?

17 MR LONG Very briefly, Your Honor

18 Your Honor, same objection I have no objection to they
19 being marked as an I D or for identification until the person who
20 took the photos

21 THE COURT Well, that's not necessary I'll leave it for
22 the jury's consideration

23 He says that he observed them, and they depict what it
24 actually looked like I think that's sufficient for the jury's
25 consideration

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

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1 I'll let them make that decision

2 MR LONG Thank you, Your Honor

3 THE COURT You may proceed

4 MR LAWSON We'd move the two photographs State's Exhibit
5 #8 and #9

6 COURT REPORTER And, Your Honor, those are in evidence?

7 THE COURT Yes, ma'am

8 COURT REPORTER Thank you, Your Honor

9 (The Court Reporter accepts State's Exhibits #8 and #9 into
10 evidence)

11 Q Now, on State's Exhibit #9, if you would describe to the jury
12 what that is a picture of

13 A That's the front entrance to the Imperial Motel in Mullins

14 Q And is that the entrance in which the driver of that vehicle
15 got out and went in to?

16 A That's correct

17 Q Ah, and did you see the person brought out by law enforcement?

18 A I did

19 Q And did you then approach that person at some point?

20 A Yes, sir, I did

21 Q And who was it?

22 A Glenn Pernell

23 Q And on State's Exhibit #8, what is that a depiction of?

24 A It's a picture of the parking lot of the Imperial Motel and a
25 side shot of the office and the parking lot of Dollar General which

LT ROUSE - CROSS EXAMINATION BY MR LONG

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1 is located just beside the Imperial Motel

2 Q And where were you parked in relation?

3 A I was parked right up here on the hill facing the Imperial
4 Motel so I could see what was going on

5 Q And - - where the Dollar General sign is?

6 A That's correct

7 Q Alright

8 MR LAWSON I have no other questions

9 Q Answer any questions Mr Long has

10 MR LONG Cross examination, Your Honor?

11 THE COURT You may proceed

12 CROSS EXAMINATION BY MR LONG

13 Q Lt Rouse, you say that the confidential informant had done
14 some earlier cases in 2005 for Marion County Is that right?

15 A That's correct

16 Q Alright

17 And she had done nothing during the first seven or eight
18 months of 2006 until this case?

19 A That's correct

20 Q And what was the reason for that?

21 A Uh, her husband was, ah, arrested for distribution of crack
22 cocaine

23 Q And she was trying to help him help himself work off his
24 charges Is that correct?

25 A I would assume so She didn't say anything about There was

LT ROUSE - CROSS EXAMINATION BY MR LONG

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1 no deal cut for that No She may have

2 Q But that's the whole purpose for a confidential informant is
3 they've been arrested themselves or in this situation, their
4 husband has been arrested and they're trying to work off charges or
5 help themselves with charges Isn't that correct

6 A Most of the time that's what it is Yes, sir

7 Q Alright

8 THE COURT I have previously charged the jury and will do
9 so again that that preliminary information as to the earlier
10 incident was only permitted as a basis for their further arrest
11 warrants

12 You understand that?

13 MR LONG Yes, sir Thank you

14 Q And I believe you testified about concern there was a pistol
15 in the car or a pistol on Mr Pernell's possession Was there a
16 weapon found in the vehicle?

17 A No, sir They was bullets found in the vehicle

18 Q But there was no weapon found in the vehicle?

19 A No, sir

20 Q Alright

21 Was there a weapon found on Mr Pernell?

22 A No, sir

23 Q Did he have the opportunity to try to hide or conceal any
24 weapon?

25 A No, sir

LT ROUSE - CROSS EXAMINATION BY MR LONG

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1 Q Was there any weapon found on either of the two co-defendants?

2 A No, sir

3 Q Do you know whether or not they had an opportunity to hide or
4 conceal a weapon?

5 A No, sir

6 Q Now, on your State's Exhibit - - I mean your SLED Drug
7 Analysis Request, who are the two subjects listed on that document
8 that you prepared in sending the drugs to SLED?

9 A Glenn Pernell, Dominic Platt and I can't remember the third
10 guy What's his name?

11 I think - - I don't - - I don't think he put this form in
12 evidence, chain of custody

13 Q Is this a copy of the SLED Drug Analysis Request that you were
14 reading a moment ago?

15 A No, sir This is not what I was reading a moment ago

16 Q Well - - -

17 A I was reading actually what was put on the - -

18 Q On the exhibit itself

19 A - - on the chain of custody

20 Q Alright

21 And were the subjects listed as Glenn Pernell, Dominic Platt
22 and Jeffrey Graves?

23 A That's correct

24 Q Now, you were parked at the Dollar General and the photograph
25 shows the relationship of the Dollar General to the hotel office

LT ROUSE - CROSS EXAMINATION BY MR LONG

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1 A That's correct

2 Q How many officers arrived there at the scene and set up there
3 at the scene?

4 A I only have four officers who were around behind the motel
5 office that I showed you in the photograph They were around
6 behind the building so they couldn't be seen

7 Q Alright

8 They were behind the building in their vehicles or on foot?

9 A In their vehicles

10 Q Right

11 And someone arriving at the motel office, you wouldn't want to
12 see police vehicle surrounding the motel?

13 A No, sir, you wouldn't

14 Q Alright

15 And so these vehicles were parked far enough away so that if
16 somebody drove by on the highway, they wouldn't see their cars Is
17 that correct?

18 A That's correct

19 Q Alright

20 But you testified from the time that you made the call it took
21 about ten seconds for them to arrive at the motel office?

22 A Yes, sir They were parked right behind it Come right
23 around the building is all they had to do

24 Q Did they drive their vehicles around or did they leave their
25 vehicles and run around on foot?

LT ROUSE - CROSS EXAMINATION BY MR LONG

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1 A They were on foot

2 Q Alright

3 So, they came around Got out of their vehicles upon the
4 call They ran around the front of the office or did they run
5 around the back of the motel?

6 A Around the front of the office

7 Q Around the front of the office Alright

8 And around the front of the office Were there windows in the
9 office? Would somebody in the office see officer come running
10 around in front of the office?

11 A Not until they got right in front of the office he wouldn't

12 Q Okay

13 And then when they arrived, Glenn Pernell was in the office?

14 A That's correct

15 Q Did he put up any fight?

16 A I'm not sure I wasn't in the office with them when they took
17 him down So, I don't know if he put up a fight or not?

18 Q Was he charged with resisting arrest or anything of that
19 nature?

20 A No, sir

21 Q And the officers then when they arrived, you weren't there and
22 don't know exactly what happened They were out of your view at
23 that time Is that correct?

24 A I don't follow you

25 Q Could you see in the office from where you were parked?

LT ROUSE - CROSS EXAMINATION BY MR LONG

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1 A In the office?

2 Q Yes, sir

3 A Yes, I could

4 Q You could?

5 A Yes, sir

6 Q Okay

7 And did they immediately place him in detention and place him
8 under arrest and cuff him there in the office?

9 A I don't know if they actually put the cuffs on him in the
10 office because I wasn't in the office when they was - - they was
11 four officers in there I wasn't in the office at the time

12 Q So one of those other officers can testify about that?

13 A That's correct

14 Q So, that's when you came around into the office?

15 A No, sir I - - once they come in, I went to the vehicle
16 first - - to secure the two objects - - subjects in the vehicle

17 Once they were secured, I looked in the vehicle Found the
18 drugs Then I went and saw - - over to where they had Mr Pernell
19 at in the office

20 Q At the time you made the call to move in, were you leaving
21 your vehicle as well moving in with them?

22 A I was driving up, yes, sir

23 Q Alright

24 So, they ran around and you drove from the Dollar General and
25 drove your car to the parking lot beside Mr Pernell's vehicle?

LT ROUSE - CROSS EXAMINATION BY MR LONG

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1 A Yes, sir

2 Q Alright

3 And when you pulled up in the parking lot, were the two other
4 subjects already out of the car and walking?

5 A No, sir They were exiting the vehicle at that point

6 Q They were exiting the vehicle at that point?

7 A That's correct

8 Q And I think you said that about a minute later they were
9 apprehended?

10 A Correct

11 Q Alright

12 So, they started walking out as you were getting out of your
13 car and you were looking to see what was going on, and the officers
14 saw them walking away, and that's when you called to them, "Whoa,
15 whoa, stop "

16 A That's correct

17 Q Alright

18 So from the time the officers arrived in the office, it would
19 have taken until you drove around before they decided to exit the
20 car? They were exiting as you drove up?

21 A That is correct

22 Q Now, this pouch that was on the front of the car and the
23 contents of the pouch - - let me get it open Inside is a pen and
24 a set of scales Is that correct?

25 A That's correct

LT ROUSE - CROSS EXAMINATION BY MR LONG

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1 Q Did you fingerprint these scales?

2 A No, sir

3 Q Do you know if any other officer that did fingerprint them?

4 A No, sir

5 Q Do you know whether or not fingerprints were ever taken or
6 attempt to be taken from the leather?

7 A No, sir, there wasn't

8 Q Do you know of your own knowledge whether or not paper and
9 leather and other porous type material will hold fingerprints?

10 A That's correct

11 Q Now, who would have had a camera that day? Who took the
12 photographs?

13 A Captain Mike Bethea with the Mullins Police Department

14 Q Mike who?

15 A Bethea

16 Q Bethea

17 And the photographs he took, you weren't walking behind him as
18 he made all the photographs You just told him or he was trained
19 to know what to take photographs of Is that correct?

20 A That's correct

21 Q Did he take photographs of the marijuana blunt in the ashtray?

22 A I don't think so

23 Q Lt Rouse, you've been in law enforcement for quite some time
24 Is that correct?

25 A That's correct

LT ROUSE - CROSS EXAMINATION BY MR LONG

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1 Q And you've seen everything from speeding tickets to murder
2 charges Is that correct?

3 A That's correct

4 Q And you've also seen many people charged and arrested, and
5 you've seen their cases to court and testified in court Ah,
6 you've had a lot of experience in that regard

7 A That's correct

8 Q A blunt in an ashtray is not an unusual event, is it?

9 A From my respect, yeah, it's not unusual but it's - - it's a
10 concern to go further

11 Q It's not a common occurrence in a traffic stop or traffic
12 arrest stop for drugs but it's not an unusual event

13 A Not - - not in my field but that's what I do I work
14 narcotics

15 Now for a road officer on the street, yes, sir, that would be
16 unusual for them but in my field of work, it's not unusual to see
17 a blunt in a car - - in a vehicle

18 Q Sure

19 Not common but not unusual?

20 A That's correct

21 Q How unusual or common is it to see a leather pouch stuffed
22 full of drugs laying open on the front seat of a car?

23 A That's pretty unusual Most of the time they have it hid
24 pretty good

25 Q Yes, sir

LT ROUSE - CROSS EXAMINATION BY MR LONG

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1 And it's just in the nature of drug and drug activities, you
2 don't want to leave it hanging around in plain sight You want to
3 have it concealed, covered Most of the time you find it either in
4 a glove box or a trunk or underneath seats, don't you?

5 A That's correct

6 Q Now, the confidential information I believe you testified
7 earlier that after she reported back that y'all were going to set
8 up another transaction Is that correct?

9 A That's correct

10 Q Alright

11 Well, wasn't the transaction that Glenn was calling her
12 wanting to set up a date with her?

13 A That's correct

14 Q And isn't that what had happened, basically, from the start?
15 That Glenn had talked to her or Glenn called her He wanted to
16 meet up with her He wanted to take her to a motel He wanted to
17 have a quote, unquote "date" with her?

18 A Without saying exactly what she said, basically, yes, sir

19 Q Alright

20 And so this, ah, transaction we're talking about setting up at
21 the motel was simply his pressuring her to go to the motel and have
22 a date with him?

23 A That's correct

24 Q Alright

25 And she - - so it was at that time when he was calling her for

LT ROUSE - CROSS EXAMINATION BY MR LONG

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1 a date, did she then make a call to you or was she in your presence
2 when this information came up about the Imperial Motel?

3 A She was in our presence

4 Q Alright

5 Did you have any guidance - - provide her any guidance of what
6 to say, how to act or what to tell him over the telephone?

7 A Yes, sir, I did

8 Q Alright

9 And how would she do that physically I mean would she talk
10 to him and put her hand over the phone and try to explain what was
11 going on and you tell her, and then she'd talk to him?

12 A What she did on that particular day is once we had everybody
13 in place and all my officers in place, I then called her on her
14 cell phone and had her to place a call to Glenn and tell him that
15 she was at the place

16 Which she did Once she made the call in, she called me back
17 and said he was on his way

18 Q She was in your presence when you called her on your cell
19 phone?

20 A She was in the vehicle at the parking lot of the Imperial
21 Motel, and I was in my vehicle in the Dollar General observing what
22 was going on

23 Q But she and Glenn had already, obviously, agreed to meet there
24 at the motel?

25 A Yes, sir

LT ROUSE - CROSS EXAMINATION BY MR LONG

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Q But then that was - - she was in place and all of the officers were in place before she was to call him and say, "Come on "

A That's correct

MR LONG Court's indulgence just one moment

No further questions

Thank you, sir

THE COURT Alright Is there anything - - any further questions, Mr Lawson?

MR LAWSON No, sir, Your Honor

THE COURT You may come down, Officer Thank you

(The witness leaves the witness stand)

MR LONG Might I request a recess, Your Honor We've been at it - - -

THE COURT Sir?

MR LONG Might I request a recess We've been at it a little over two hours

THE COURT Yeah You started early

I'll let you go to your jury room and relax just a few minutes, and I'll be calling you back very shortly

(The jury retires to the jury room at 4 12 p m)

THE COURT We going to take just a short break now

(The Court recesses this case for a short break and thereafter reconvenes the trial of this case)

THE COURT Thank you Be seated

Bring the jury in, please

CAPTAIN BETHEA - DIRECT EXAMINATION BY MR LAWSON

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1 (The jury returns to the courtroom at 4 34 p m)

2 THE COURT Alright

3 You may call your next witness

4 MR LAWSON May it please the Court, Your Honor

5 The State would call Captain Michael Bethea

6 THE COURT Alright, sir

7 (The witness takes the witness stand)

8 CAPTAIN MICHAEL J BETHEA, being duly

9 sworn, testifies as follows

10 DIRECT EXAMINATION BY MR LAWSON

11 Q Please state your name for the record

12 A Michael J Bethea

13 Q And, um, where are you employed?

14 A With the Mullins Police Department

15 Q And what is your position there?

16 A I am second in command, and I'm over investigations

17 Q And you are a captain?

18 A A captain, yes

19 Q And how long have you been employed with the, ah, Mullins
20 Police Department?

21 A Approximately twenty-four years

22 Q And how long have you been in your present position?

23 A Approximately nine years

24 Q Were you on duty on August 2nd of 2006?

25 A Yes, sir

CAPTAIN BETHEA - DIRECT EXAMINATION BY MR LAWSON

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1 Q And did you have any part or play any part in the arrest of
2 the defendant Glenn Pernell?

3 A Yes, sir

4 Q And what was that?

5 A My part was I took photographs of the drugs and the - - and
6 the vehicle

7 Q Alright

8 And, um, were you there the entire time?

9 A Well, I - - if my mind serves me right, I pulled up myself
10 with Chief Bass We pulled up after - - after the other officers
11 had - - had, ah, arrived on the scene

12 Q Alright, sir

13 So you had nothing to do with the arrest or anything that had
14 happened earlier in the day?

15 A No, sir, not what happened earlier in the day

16 Q Alright

17 I'm going to ask you if you could look at State's Exhibits #2,
18 #3, #4, #5 & #6 for identification and ask you if you can identify
19 those

20 A Yes, sir

21 Q And what are those?

22 A The - - State's Exhibit #2 is the black leather bag that I
23 took - - took pictures of with the drugs - - with the drugs in it

24 And State Exhibit #3 is also - - well, State's Exhibit #2 is
25 a close-up shot of the drugs #3 is a little bit further back,

CAPTAIN BETHEA - DIRECT EXAMINATION BY MR LAWSON

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1 and #4 is the bag containing the drugs #5 is the - - the - - his
2 car from the driver's side, and #6 is a shot of the front of the
3 car

4 Q Alright, sir

5 And did you take those photographs?

6 A Yes, sir

7 Q And when did you take those photographs?

8 A On August the - - August 2nd, the date of the arrest - - the
9 date the arrest occurred

10 Q Alright, sir

11 And, um, at the time that you took those photographs, were
12 there other officers on the scene as well?

13 A Yes, sir

14 Q And do you remember any of the officers that were on the
15 scene?

16 A Ah, yes, sir

17 Q And who was that?

18 A Um, myself, Chief Bass, Agent Rouse, Detective Wallace, Sgt
19 Barfield, Lt Betty Rowell, Agent Cribb and Agent Brown

20 Q Alright

21 And, ah, - -

22 MR LAWSON Your Honor, the State would move to introduce
23 State's Exhibits #2, #3, #4, #5 and #6 previously marked for
24 identification

25 MR LONG Your Honor, without objection

CAPTAIN BETHEA - CROSS EXAMINATION BY MR LONG

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1 THE COURT Alright, sir

2 (The Court Reporter accepts State's Exhibits #2, #3, #4, #5
3 and #6 into evidence)

4 Q Answer any questions Mr Long has

5 CROSS EXAMINATION BY MR LONG

6 Q Captain Bethea, did you receive a call to come to this
7 location after the arrests had been made or were you made aware of
8 it beforehand and asked to come there at your earliest convenience?

9 A Ah, I was asked by Agent Rouse to assist them in the, ah, in
10 the operation that they had going on

11 Q So, in other words, "Be available We'll call you because
12 we're planning an arrest, and we may need you to come down and take
13 some photographs "

14 Is that correct?

15 A That's correct

16 Q Alright

17 Now, are you particular trained in taking photographs for
18 evidence?

19 A Well, I'm not, say, certified trained to take photographs?

20 Q Right

21 But you received any specific training through your twenty-
22 four years of law enforcement career about the taking of or which
23 pictures to take or how to take them or what they're to view and
24 things of that nature? In other words, the pictures itself, do
25 you receive any such training in regards to that?

CAPTAIN BETHEA - CROSS EXAMINATION BY MR LONG

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1 A I've had very - - very little training in it

2 Q Alright

3 But twenty-four years experience gives you the training you
4 need Is that correct?

5 A Yes, sir

6 Q Okay

7 And when you arrive on a scene to take pictures of any
8 photographs of any evidence, don't you try to gather as many
9 pictures as you possibly can and weed through them at a later date
10 for which are relevant and which aren't?

11 A Yes, sir

12 Q Alright

13 For example, if you were called to the scene of multiple
14 shots, a homicide, you would want to photograph each and every
15 shell case, each and every weapon, each and every blood splatter,
16 each and every wound, things of that nature, each and every bullet
17 hole in the car, things of that nature, that would be part of your
18 training Is that correct?

19 A That's correct

20 Q And you would take more photographs than you ever need and
21 sort through them later to determine which ones show evidence

22 A That's correct,

23 Q Did you take a photograph of a marijuana blunt in an ashtray
24 in this vehicle?

25 A No, sir

CAPTAIN BETHEA - CROSS EXAMINATION BY MR LONG

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1 Q Alright

2 Did you ever see a marijuana blunt in the ashtray of this
3 vehicle?

4 A I can't say for sure it wasn't there and I can't say it was
5 there

6 I don't - - I don't remember

7 Q If you had seen - - if you had seen it, there's no doubt in
8 your mind you would have taken a photograph of it Is that
9 correct?

10 A That's correct

11 Q And if any other officer had brought it to your attention,
12 there's no doubt in your mind you would have taken a photograph of
13 it Is that correct?

14 A That's correct

15 Q Now, these five photographs, would they be the most relevant
16 photographs that you took that day? I'm sure you took many more
17 but these are the most relevant Is that correct?

18 A That's correct

19 Q Alright

20 Any other ones you have would have simply been over-exposed or
21 not of any evidentiary value Is that correct?

22 A That's also correct

23 Q Okay

24 So whatever evidence was there would be shown or you would
25 have taken photos or these photos to indicate that to show to a

CAPTAIN BETHEA - REDIRECT EXAMINATION BY MR LAWSON

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1 jury to show to the Court?

2 A Yes, sir

3 Q Thank you, sir

4 No further questions

5 THE COURT You may come down

6 Any further questions?

7 MR LAWSON May it please the Court Just - -

8 THE COURT Go ahead

9 MR LAWSON - - just one

10 REDIRECT EXAMINATION BY MR LAWSON

11 Q Captain Bethea, you did, in fact, take more photographs than
12 just these?

13 A Yes, sir

14 Q Is that correct?

15 Ah, and, ah, most of them were of the bag with the drugs in
16 it?

17 A Yes, sir

18 Q Alright

19 MR LAWSON That's all I have

20 THE COURT Alright

21 You may come down

22 (The witness takes the witness stand)

23 MR LAWSON May it please the Court

24 The State would call Agent Simon Brown

25 THE COURT Alright

AGENT BROWN - DIRECT EXAMINATION BY MR LAWSON

100

(The witness takes the witness stand)

AGENT SIMON L BROWN, being duly sworn,

testifies as follows

DIRECT EXAMINATION BY MR LAWSON

Q Please state your name for the record

A Simon L Brown

Q And, ah, Simon, where are you employed?

A I'm employed through the Marion County Sheriff's Office

Q And are you assigned to a specific unit?

A Yes I'm assigned to the Marion County Combined Drug Unit

Q And how long have you been assigned to that unit?

A A little over two years

Q And, ah, were you, um, in that - - you were in that capacity, then, in August of 2006?

A Yes, sir

Q Ah, and as part of your responsibilities, do you from time to time carry things, evidence back and forth to Columbia?

A Yes, sir

Q And are you familiar with the case involving the defendant Glenn Pernell?

A Yes, sir

Q Alright

And you were involved in that case from, ah, the start Is that correct?

A From the start, yes

AGENT BROWN - DIRECT EXAMINATION BY MR LAWSON

101

1 Q Um, did you have an occasion to, um, handle what's been marked
2 for identification as State's Exhibit #7?

3 A Yes, sir

4 Q And, ah, what, ah, what did you do in relation to that
5 exhibit?

6 A On that date that was scheduled for it to go out, I was
7 assigned to take it up to SLED and have it analyzed

8 Q Alright

9 And, um, what - - what - - do you remember what date that was?

10 A Let me - - that was on September 7, 2006

11 Q And what did you do with, ah, was it, ah, in this package in
12 this form when you took it?

13 A No It was in the inside form which the primary officer was
14 Neil Rouse

15 Q Alright

16 And you received it and took it to Columbia?

17 A Yes, sir

18 Q Did you have anything else to do with that package?

19 A I was also the one that picked that same item up after SLED
20 analyzed it

21 Q And what - - and when you picked it up, what condition was it
22 in at that time?

23 A It was, ah, they had to open the pack that Neil Rouse sealed,
24 and once they analyzed it and got the results, they put it in the
25 SLED pack and sealed

AGENT BROWN - DIRECT EXAMINATION BY MR LAWSON

102

1 Q And is it in the condition now that it was in then?

2 A Yes, sir

3 Q And do you remember when that was?

4 A Ah, that was, ah, December 13, 2006

5 Q And on December 13, 2006, what - - what would you have done at
6 that time?

7 A At that time after I got the package back to SLED, came back
8 to the Marion County Combined Drug Unit Agent - - Sgt Wallace
9 is the officer that signs everything back in, and she properly
10 conducts a sign-in on the drug sheets, and I immediately kept it
11 into my possession and entered it back into the drug vault

12 Q And, um, then - - then the next time it comes out is when it
13 comes here to court?

14 A Yes, sir

15 Q And is that package in the condition that it was in when you
16 picked it up at SLED?

17 A Yes, sir

18 Q Alright

19 Now, on August 2nd of 2006, did, ah, did you have any other
20 duties in relation to this case?

21 A On the 2nd

22 Q On - - -

23 A Yes

24 Q And - - and what did that involve?

25 A Assisting the officers, all the other officers in reference to

AGENT BROWN - DIRECT EXAMINATION BY MR LAWSON

103

1 this incident

2 Q Alright

3 So, then, did, ah, at some time in the afternoon, did you have
4 an occasion to go to a Magistrate's Office?

5 A Yes, sir

6 Q And for what purpose?

7 A That's to take an affidavit up to obtain a warrant, an arrest
8 warrant

9 Q And what kind of affidavit did you take on that day?

10 A That would be distribution of crack cocaine?

11 Q And who would the defendant have been?

12 A Glenn Pernell

13 Q And what - - what time did you obtain that - - did you get a
14 warrant? Is that what you did?

15 A Yes, sir

16 Q At what time did you obtain that warrant?

17 A It was approximately after - - a little bit after 2 00 that
18 afternoon

19 Q Alright

20 And what did you do with that warrant once you obtained it?

21 A I brought it back to the office and put it in the box that we
22 all kept our evidence bags and stuff when we do go out and do an
23 operation

24 Q Alright

25 There's a box that you have that has - - that has what? BEST

AGENT BROWN - CROSS EXAMINATION BY MR LONG

104

1 Bags - - -

2 A BEST Bags, evidence bags, ah, tags, evidence tags, etc ,
3 anything that we need

4 Q Alright

5 And you put that warrant in that box?

6 A Yes, sir

7 Q Alright

8 And where did that box then go?

9 A It went to Neil Rouse's vehicle

10 Q And that is normal operating procedures - -

11 A Yes, sir

12 Q - - within the drug unit?

13 A Yes, sir

14 Q And so it would have been, ah, the warrant would have then
15 been in Neil Rouse's vehicle?

16 A Yes, sir

17 Q Alright

18 Answer any questions Mr Long may have

19 A Yes, sir

20 CROSS EXAMINATION BY MR LONG

21 Q Detective Brown, you were there set up at the scene to assist
22 the officers Is that correct?

23 A Yes, sir

24 Q So you were there before Mr Pernell got there?

25 A Yes, sir

AGENT BROWN - CROSS EXAMINATION BY MR LONG

105

1 Q Alright

2 And after - - or when he was arrested in the office building,
3 were you one of the officers in the office?

4 A No, sir

5 Q Where were you stationed? Where was your position when he
6 was arrested?

7 A I was a passenger with Agent Rouse, I mean, not Agent Rouse,
8 but Brian Wallace, and when we came across the street, some of the
9 officers that was already up ahead, we immediately came up to the
10 vehicle, and that's when more subjects started exiting the vehicle
11 So we stopped there

12 Q Were you one - - I believe you said Rouse that it was he and
13 four officers Were you one of the four that he was referring to?

14 A Yes, sir

15 Q Alright

16 And you were in a vehicle with Wallace?

17 A Yes, sir, Brian Wallace

18 Q Alright

19 And the other officers ran or drove to make the arrest?

20 A I'm not sure The Supervisor had set the whole thing up So
21 I was told to go to a certain area, and that's what I done

22 Q Alright

23 Were you driving or was Officer Wallace driving?

24 A Officer Wallace

25 Q Alright

AGENT BROWN - CROSS EXAMINATION BY MR LONG

106

1 You were in his patrol car?

2 A Yes

3 Q Where was that patrol car parked?

4 A Across the street behind a building

5 Q Across which street?

6 A Across the street from the Imperial Motel

7 Q Alright

8 And which building?

9 A I'm not sure I think it was a church It was a building

10 Q And how far in distance would that have been from the office
11 of the Imperial Motel?

12 A Ah, within eyesight after we moved from around the vehicle -
13 - the building

14 Q Length of a football field, length of two football fields - -

15 A Less than - -

16 Q - - how much distance would that have been?

17 A - - less than a football field

18 Q Alright

19 Fifty yards?

20 A Approximately, ah, approximately fifty

21 Q Alright

22 So, excuse me It's been a while since I've been on a
23 football field

24 Would you estimate the distance your vehicle was parked behind
25 the church from the office of the Imperial Motel to be the distance

AGENT BROWN - CROSS EXAMINATION BY MR LONG

107

1 between you and I right now?

2 A No It was a little further than that

3 Q A little further, alright

4 So, would you say another ten yards, maybe?

5 A Ah, at this time I can't tell you Just a little bit more
6 out

7 Q Okay Well, I can't back up any further Is this an
8 approximate distance?

9 A Ah, approximately fifty

10 Q Was Officer Wallace driving a patrol vehicle?

11 A It was an undercover vehicle

12 Q Alright

13 So, it was a what type of vehicle?

14 A An Explorer

15 Q Okay

16 Ford Explorer?

17 A Yes, sir

18 Q Alright

19 And not readily apparent as a police vehicle?

20 A No, sir

21 Q Alright

22 Now, when you then - - when Officer Wallace drove across the
23 street, you saw the officers, and y'all were in a position to watch
24 the officers go into the office, weren't you?

25 A Sir, it happened so fast You know, everybody is doing their

AGENT BROWN - CROSS EXAMINATION BY MR LONG

108

1 job, and we were more so focusing on the person that we were coming
2 in to get Everything happened so fast

3 But by the time we got there, officers already made it to the
4 door, and, ah, when we were attempting to go up to the door, that's
5 when two other subjects opened their doors So we had to stop
6 there

7 Q In response to my question, were you in a position to observe,
8 see with your eyes through the windshield of Officer Wallace's
9 undercover vehicle the officers run into the office?

10 A Yes

11 Q Alright

12 And when you saw them doing that, that's when Officer Wallace
13 drove across the street?

14 A We were in the process We were already driving then coming
15 across the highway

16 Q Alright

17 And did he park behind Glenn Pernell's vehicle?

18 A I can't say that We parked right close to it I'm not
19 saying - -

20 Q Right close to it

21 A - - not behind

22 Q And that's wh you say you saw the other two occupants of the
23 vehicle walking away from the vehicle?

24 A They were getting out of the vehicle

25 Q Getting out of the vehicle

AGENT BROWN - CROSS EXAMINATION BY MR LONG

109

1 What was your responsibilities at that point? Were your
2 responsibilities to get those two occupants and detain them for
3 questioning or did you go into the office and assist with the
4 arrest of Glenn Pernell?

5 A My duty was to be security on the outside and make sure those
6 subjects don't run Basically, it

7 Q Alright

8 So, you detained two passengers, other occupants of the
9 vehicle Is that correct?

10 A I was assisting the other officers that was on the outside
11 detaining those subjects

12 Q Alright

13 So you were one of the few involved with detaining those
14 subjects?

15 A Yes, sir

16 Q What about the vehicle itself? Is any part of your
17 responsibilities to search the vehicle or to preserve the vehicle
18 or anything of that nature?

19 A Yes, sir

20 Q Alright

21 Were you there when Captain Bethea was taking photographs?

22 A Ah, apparently I was He was out there at the time I was

23 Q Alright

24 And did you see him take photographs before any of the items
25 were moved by, um, Lt Rouse to be put in the BEST Bags or anything

AGENT BROWN - CROSS EXAMINATION BY MR LONG

110

1 like that?

2 A Sir, that wasn't my duty I was just there That was his
3 duty to take the pictures, and I couldn't tell you when he took
4 them if it was moved or not

5 Q Alright

6 Now, I believe I asked you A part of your responsibilities
7 were to preserve the crime scene and preserve the car Is that
8 correct? You answered yes?

9 A Yes, sir

10 Q Alright

11 And when Detective Brown came, excuse me, Captain Bethea came
12 and took photographs, nothing had been touched or moved He
13 wanted to take the photographs as things sat or existed in the car
14 Is that correct?

15 A That's proper procedure, sir

16 Q Alright

17 And that's what was happening by procedure

18 And after he took the photographs and only after he took the
19 photographs that was when Lt Rouse would have placed any drugs
20 found in the BEST Bag Is that correct?

21 A It's proper procedure, sir Yes

22 Q And did he do that in your presence?

23 A Not in my presence

24 Q Were there any BEST Bags taken by you of any marijuana taken
25 from that vehicle?

AGENT BROWN - CROSS EXAMINATION BY MR LONG

111

1 A No

2 Q To SLED for testing or anywhere else?

3 A No, sir

4 Q Is there any in-house testing of marijuana at the Marion
5 County Combined Drug Unit?

6 A Repeat that question again?

7 Q Do you have any person in-house to do testing of marijuana at
8 the Marion County Combined Drug Unit?

9 A Yes, sir

10 Q Alright

11 Do you know if any marijuana was submitted to that person for
12 testing?

13 A On that occasion, sir, we, um, if everybody's involved with
14 it, we're not allowed to, ah, test marijuana - - involved in that
15 case

16 Q So any marijuana that would have been taken would have had to
17 have been sent to SLED for testing?

18 A Any other agency that can test it that's certified, sir

19 Q Alright

20 Any other other than Marion Is that correct?

21 A Yes, sir

22 Anyone that's not involved in that case

23 Q Alright

24 And who do you routinely or customarily farm those marijuana
25 testing responsibilities out to? Florence, Georgetown, Horry,

AGENT BROWN - CROSS EXAMINATION BY MR LONG

112

1 Dillion?

2 A That's the supervisor's decision on that I'm just an agent

3 Q Alright

4 Thank you, sir

5 No further questions

6 THE COURT Alright, sir

7 You may come down

8 (The witness takes the witness stand)

9 MR LAWSON Your Honor, it's right at five

10 THE COURT Alright, sir

11 I think the jury has been here very patiently since 9 30 this
12 morning and so has the staff

13 We're going to break at this time to give you an opportunity
14 to go home with your families or go by your offices as the case may
15 be

16 Please remember my admonitions Don't discuss this case with
17 anyone Let no one discuss it with you Make no independent
18 inquiries

19 And I would ask, please, that in the morning you be back in
20 this jury room promptly at 9 30 so we'll be ready to go

21 We're going to make every effort to conclude this case
22 tomorrow if we can So, please be here at 9 30 on time, all
23 fourteen of you

24 Thank you so much

25 You are now excused

AGENT BROWN - CROSS EXAMINATION BY MR LONG

113

1 (The jury is released for the day and departs for the day to
2 return at 9 30 on Wednesday morning)

3 THE COURT Alright, gentlemen, anything further before
4 recessing for the evening?

5 MR LONG No, Your Honor

6 MR LAWSON No, Your Honor

7 THE COURT Alright

8 I'll look forward to seeing you back at promptly at 9 30 in
9 the morning ready to go

10 Thank you

11 MR LAWSON One thing, Your Honor, there is an exhibit
12 marked for identification that needs to be put somewhere safe, all
13 that drugs

14 COURT REPORTER We've discussed that, the Clerk and I

15 MR LAWSON Okay

16 COURT REPORTER We'll have them secured

17 MR LAWSON Okay Good

18 THE COURT Where's the Clerk

19 COURT REPORTER Connie is here for the Clerk's Office

20 Thank you, Your Honor We have that taken care

21 THE COURT Work it out with the Clerk

22 MR LAWSON Thank you, Your Honor

23 (The Court adjourns this case for the day to resume at 9 30

24 a m)

MRS FLEMING - DIRECT EXAMINATION BY MR LAWSON

114

WEDNESDAY, FEBRUARY 28, 2007

(The Court convenes the trial of this case with all parties present in the courtroom)

THE COURT Alright

Mr Lawson, are you ready to proceed?

MR LAWSON Yes, Your Honor

THE COURT Mr Long, are you ready?

MR LONG Yes, sir, Your Honor

THE COURT And good morning to both of you

MR LONG Good morning, Your Honor

THE COURT Bring the jury in, please

(The jury returns to the courtroom at 9 45 a m)

THE COURT Let the record reflect that the jury and two alternates are present in court

Madame Foreman and ladies and gentlemen, good morning to all of you

Alright, sir

Solicitor, you may call your next witness

MR LAWSON May it please the Court

The State would call Jennifer Warren Fleming

(The witness takes the witness stand)

JENNIFER WARREN FLEMING, being duly sworn,
testifies as follows

DIRECT EXAMINATION BY MR LAWSON

I'm going to stand here So you speak loud enough for me to

MRS FLEMING - DIRECT EXAMINATION BY MR LAWSON

115

1 hear you Okay?

2 A Yes, sir

3 Q Okay

4 What is your name, please?

5 A Jennifer Fleming

6 Q And your maiden name is Warren?

7 A Yes, sir, it is

8 Q Alright

9 And, um, Jennifer, where do you live

10 A [REDACTED] Marion

11 Q And how long have you lived in Marion?

12 A Um, about six years, now

13 Q Alright

14 How long have you lived in Marion County?

15 A All my life

16 Q And where did you live before you lived in Marion?

17 A Mullins

18 Q In Mullins?

19 A Yes, sir

20 Q So, you have lived between Marion and Mullins all your life?

21 A Yes, sir

22 Q Alright

23 And, ah, alright

24 Are you present employed?

25 A Yes, sir

MRS FLEMING - DIRECT EXAMINATION BY MR LAWSON

116

1 Q Alright

2 And where do you work?

3 A At Landmark on the beach

4 Q And what do you do there?

5 A I'm a housekeeper

6 Q Alright

7 How long have you been doing that kind of work?

8 A Really, I'm a CN Neighbor At the time I'm just doing
9 housekeeping because it's a job

10 Q Alright

11 You - - you were what?

12 A I'm a CN Neighbor

13 I'm just doing housekeeping because that's the only thing
14 that's available right now

15 Q Alright

16 And, um, when did - - how long have you worked with Landmark?

17 A Ah, I started there last Tuesday

18 Q Alright

19 And did you work on the beach prior to that?

20 A Yes, sir

21 Q Alright

22 And where did you work?

23 A I was working at the Palace Resort

24 Q And doing the same thing?

25 A Yes, sir

MRS FLEMING - DIRECT EXAMINATION BY MR LAWSON

117

1 Q And were - - in 2006 were you working at that location?

2 A Yes, sir, I was

3 Q And, um, is that seasonable work?

4 A Yes, sir

5 Q And when does the season run?

6 A From March to October

7 Q Alright

8 So in August you would have been working down there?

9 A Yes, sir, I would

10 Q Alright

11 And in early August of 2006, ah, did you receive a disturbing
12 phone call on the way home from work?

13 A Yes, sir

14 Q And what was that?

15 A That my husband had just got arrested

16 Q And, um, do you remember what day that was?

17 A July 21, 2006

18 Q And 2006?

19 A Yes, sir

20 Q Alright

21 And, um, did you, ah, at some time subsequent to that meet
22 with Neil Rouse and the other members of the Combined Drug Unit?

23 A Yes, sir, I did

24 Q And would that have been about August 1st?

25 A August 2nd

MRS FLEMING - DIRECT EXAMINATION BY MR LAWSON

118

1 Q August 2nd?

2 A Yes, sir

3 Q Alright

4 And on August 2nd, did you have occasion to go to the defendant
5 Glenn Pernell's house?

6 A Yes, sir

7 Q And how did you - - how did you know Mr Pernell?

8 A He had been with my cousin in the early nineties

9 Q Alright

10 So you've known him since the nineties?

11 A Yes, sir

12 Q And he dated your cousin?

13 A Yes, sir

14 Q Had you ever dated the defendant?

15 A No, sir, I haven't

16 Q Alright

17 And at that time your husband was in jail?

18 A Yes, sir

19 Q Alright

20 And, um, did you agree to work with the Combined Drug Unit?

21 A Yes, sir

22 Q And were you trying to help your husband in that regard?

23 A Yes, sir, I was

24 Q And on that day, August 2nd, 2006, you said you had occasion
25 to go to Mr Pernell's house?

MRS FLEMING - DIRECT EXAMINATION BY MR LAWSON

119

1 A Yes, sir

2 Q And, um, while you were there what - - what did you do?

3 A Um, he had a black bag, like a clip bag with drugs in it

4 Q Alright

5 And, um, did - - did you see any car?

6 A Yes, sir A white - -

7 Q What - - -

8 A - - a white Crown Vic

9 Q A white Crown Vic?

10 A Yes, sir

11 Q I show you what's been marked as State's Exhibit #6 and ask
12 you if that looks like the car?

13 A Yes, sir, it is

14 Q It looks like the car?

15 A Yes, sir

16 Q And you saw this at his house?

17 A Yes, sir, in the front yard

18 Q And, ah, you say that he showed you a bag?

19 A Yes, sir

20 Q I'll ask you if you can identify for me State's Exhibit #1
21 Does that look like the black bag?

22 A Yes, sir

23 Q And did you see anything else?

24 A A scale

25 Q I ask you to look inside the bag and tell me if that looks

MRS FLEMING - DIRECT EXAMINATION BY MR LAWSON

120

1 familiar?

2 A Yes, sir

3 Q What does it look like?

4 A The scale that he used to weigh the drugs out on

5 THE COURT Talk a little louder for us

6 A The scale that he weighed the drugs out on

7 Q And that's when you were there - -

8 A Yes, sir

9 Q - - on the 2nd?

10 A Yes, sir

11 Q Alright

12 When you left there on August 2nd, did you receive any further
13 phone calls from Mr Pernell?

14 A Yes, sir About five phone calls

15 Q And what was that about?

16 A To meet him at Imperial

17 Q To meet - - to meet him where?

18 A At Imperial Motel

19 Q And did you know where that was?

20 A Yes, sir, I did

21 Q And when did he first mention the Imperial Motel?

22 A Um, when I went to the house to get the drugs, he said that I
23 was acting suspicious, and he said that if I wasn't playing games
24 that I'll come back So, I told him that I would

25 Q And that was to come to the Imperial Motel?

MRS FLEMING - DIRECT EXAMINATION BY MR LAWSON

121

- 1 A Yes, sir
- 2 Q Alright
- 3 And, ah, at the time that you left there, um, you received,
- 4 ah, within the next several hours would it be?
- 5 A Yes, sir
- 6 Q A number of phone calls?
- 7 A Yes, sir
- 8 Q And they all related to going to the Imperial Motel?
- 9 A Yes, sir
- 10 Q Did you agree to go there?
- 11 A Yes, sir
- 12 Q And why was that?
- 13 A So that he wouldn't think nothing was up
- 14 Q Alright
- 15 And did you tell anybody that you were going to go there?
- 16 A No, sir
- 17 Q Alright
- 18 What about law enforcement?
- 19 A Yes, sir
- 20 Q And who would that have been?
- 21 A The, ah, Combined Drug Unit
- 22 Q Alright
- 23 And when did you tell them about the phone calls?
- 24 A When I got back with them
- 25 Q That's after you left the house - -

MRS FLEMING - DIRECT EXAMINATION BY MR LAWSON

122

- 1 A Yes, sir
- 2 Q - - and got back?
- 3 A Yes, sir
- 4 Q Alright
- 5 And did - - did you actually agree to go there at - - at
- 6 their direction?
- 7 A Yes, sir
- 8 Q And, um, did you make a phone call to Mr Pernell?
- 9 A Yes, sir
- 10 Q And what did you tell him?
- 11 A I called - - he told me to call him when I got to the motel
- 12 and let him know that I was there
- 13 When I got there, I called him to let him know I was there and
- 14 to come on
- 15 Q Alright
- 16 And, um, was anybody else there - -
- 17 A Um - - -
- 18 Q - - with you?
- 19 A No, sir I was by myself
- 20 Q Alright
- 21 Was anybody else there in other vehicles?
- 22 A With him?
- 23 Q No With - - with - - with you?
- 24 A No, sir
- 25 Q Connected with you?

MRS FLEMING - DIRECT EXAMINATION BY MR LAWSON

123

1 A No, sir I'm by myself

2 Q Alright

3 What about law enforcement?

4 A Yes, sir

5 Q Alright

6 Were they there?

7 A Yes, sir They was sot up

8 Q Alright

9 And were they there when you got there or did they come up
10 after you got there?

11 A They was coming when I was - - they was following me there

12 Q Alright

13 So, they were with you all the time

14 A Yes, sir, they was

15 Q Alright

16 Now - - when he took you to the car and showed you a bag, I
17 show you State's Exhibit #4, is that what it looked like?

18 A Yes, sir

19 Q And this was earlier in the day?

20 A Yes, sir When I went and made a purchase

21 MR LONG Again, I'm going to have to object - -
22 continuing objection we discussed The foundation - - -

23 THE COURT Let - - the record will reflect that I am
24 permitting - - first, let me say that this defendant is not charged
25 in these proceedings with any cause of action relating to the first

MRS FLEMING - DIRECT EXAMINATION BY MR LAWSON

124

1 incident I am permitting this testimony only as to how it may or
2 may not bear on the further events occurring at the Crown (sic)
3 Motel some hours later

4 MR LONG Yes, sir

5 THE COURT But I specifically charge the jury that he is
6 not being tried for any alleged sale at that time

7 This testimony is only as it relates to the subsequent events,
8 if any, at the Crown (sic) Motel

9 MR LONG Thank you, Your Honor

10 THE COURT Alright, sir

11 Q Alright

12 Jennifer, did you see Mr Pernell arrive at the motel?

13 A Yes, sir

14 Q And what was - - what kind of car was he in?

15 A A white Crown Vic with tinted windows

16 Q Alright

17 And, um, did you see someone get out of that car?

18 A He got out to get the motel room

19 Q Alright

20 You saw him do that?

21 A Yes, sir, I did

22 Q Alright

23 And where did he go when he got out of his car?

24 A He went to the front office to the window

25 Q Alright

MRS FLEMING - CROSS EXAMINATION BY MR LONG

125

1 Um, and, ah, what happened then?

2 A Um, the police came and got him?

3 Q And what did you do?

4 A I left the scene

5 Q Alright

6 Do you have any criminal record?

7 A No, sir, I don't

8 Q Alright

9 Answer any questions that Mr Long may have

10 A Yes, sir

11 Q Thank you, ma'am

12 THE COURT Mr Long, you may examine

13 MR LONG Thank you, Your Honor

14 CROSS EXAMINATION BY MR LONG

15 Q Mrs Fleming, how long have you been married to your husband?

16 A Four years

17 Q Four years?

18 A Yes, sir

19 Q Alright

20 And is this the first time that he's got in trouble and you've
21 tried to help him out of trouble?

22 A Yes, sir

23 Q Alright

24 Were you ever an informant for the CBU in 2005?

25 A Yes, sir

MRS FLEMING - CROSS EXAMINATION BY MR LONG

126

1 Q Alright

2 And so this is the second time?

3 A Yes, sir, it is

4 I forgot about that Yes, sir

5 Q Are you and your husband still together?

6 A Yes, sir, we are

7 Q Alright

8 Y'all love each other a lot?

9 A Yes, sir I do love him

10 Q And you'd do anything you could to try to help him Wouldn't
11 you?

12 A Yes, sir, I would

13 Q Now, when you agreed to work as an informant, they don't
14 specifically tell what good it's going to do your husband, do they?

15 A No, sir

16 Q But it's understood by you and it's understood by your
17 husband that if you do what they want you to do that it will help
18 him Correct?

19 A Yes, sir, but it didn't He still got time in jail

20 Q Alright

21 So, there's no question that when you do what they want you to
22 do - - I'm talking about the Combined Drug Unit - - there's no
23 question in your mind that you know it's going to help your
24 husband Otherwise you wouldn't be doing it, would you?

25 A I don't understand that question

MRS FLEMING - CROSS EXAMINATION BY MR LONG

127

1 Q Even though they don't tell you how much it's going to help
2 him, there's no question in your mind when you do what they want
3 you to do that you know it's going to help your husband
4 Otherwise, you wouldn't be doing it Right?

5 A Yes, sir

6 Q Do you and your husband have children?

7 A Yes, sir, I do

8 Q Did they ever threaten to take your children?

9 A No, sir

10 Q Now, how long - - you say you've known Glenn Pernell for quite
11 some time Ten years?

12 A Yes, sir

13 Q Alright

14 And on this day, August 2nd, and I'm talking about when you
15 went over to house, how long were you there?

16 A About twenty minutes

17 Q Twenty minutes?

18 A Yes, sir

19 Q Alright

20 And then you left, and he gave - - made a bunch of phone calls
21 to you - -

22 A Yes, sir

23 Q - - about wanting to meet up with him Right?

24 A Yes, sir

25 Q What was there to prevent the two of you from meeting up at

MRS FLEMING - CROSS EXAMINATION BY MR LONG

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1 his house?

2 A I don't - - I don't understand that Say that again?

3 Q Alright

4 Was there anybody staying in his house or any reason that the
5 two of you couldn't meet up at his house?

6 A Yeah

7 Q Alright

8 What was that reason?

9 A His sister was there

10 Q Alright

11 Does his sister live with him?

12 A Yes

13 Q Alright

14 And she was there?

15 A Yes

16 Q Alright

17 Now, he called you several times Did CBU put any kind of
18 recording device on your phone?

19 A Me?

20 Q On your phone?

21 A I don't understand Could you say that again?

22 Q Did CBU ever want to put a tape recorder or any kind of
23 recording device on your phone

24 A On my phone? When I call - - when I had called Glenn the
25 first time to go out there, he had his phone cut off So, I wasn't

MRS FLEMING - CROSS EXAMINATION BY MR LONG

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1 able to get through So, I went out there

2 Q I know I don't think you understand the question

3 A No, sir, I don't

4 Q Alright

5 Did the Combined Drug Unit ever tell you or ask you if they
6 could record any of your telephone conversations that you had with
7 Glenn Pernell that day?

8 A No, sir

9 Q Okay

10 Did you phone have a headphone jack or an earpiece jack on it?

11 A No, sir

12 Q What kind of phone is it?

13 A It was an Singular Eclipse

14 Q Now, when you went to the motel, you told Glenn - - or after
15 speaking with him, you called him and told him that you would meet
16 up with him at the motel

17 A He told me to call him when I got there So, when I got
18 there I made a phone call and told him that I was there

19 Q Alright

20 And what did - - what was in his mind What did he want you
21 at the motel for?

22 A To mess with me

23 Q To mess with you To have sex with you?

24 A Yes

25 Q Alright

MRS FLEMING - CROSS EXAMINATION BY MR LONG

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1 And when you told him that you were at the motel, you were
2 telling him that you were at the motel there ready to have sex with
3 him Right?

4 A I was in my car

5 Q Alright

6 But that's the reason you were calling him to tell you - - to
7 tell him you were at the motel, wasn't it? To tell him,, "Okay,
8 I'm at the motel I'm ready to meet up with you and have sex "

9 That's what you were telling him Right?

10 A So that he wouldn't think nothing suspicious when I went to
11 his house

12 That's why I did that

13 Q Well, this was four or five hours after you were at his house
14 Right?

15 A Yeah, but he kept calling me

16 Q Okay

17 And then you called him to tell him, "Okay, I'm at the motel "

18 And what you were telling him, basically, was, "I'm at the
19 motel Come on and we can meet up, and we can have sex "

20 That's what you wanted him to believe Right?

21 A Yeah

22 Q And that wasn't true, was it?

23 A No

24 Q Did members of the CBU tell you to call him and kind of lead
25 him and make him believe that you were going to have sex with him?

MRS FLEMING - CROSS EXAMINATION BY MR LONG

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1 A No

2 Q They didn't say that?

3 A No

4 Q That was your own idea to say that?

5 A He had told me to call him when I got to the motel So that's
6 what I did Glenn told me to do that

7 Q Glenn told you to call him when you got to the motel

8 A When I got to the motel

9 I told him I had to get my kids and stuff and had to get
10 myself a baby-sitter So I just lead him like that

11 He said when I got ready to call him When I got to the
12 parking lot, that's what I did

13 Q Okay

14 Alright

15 What about your phone records from these cell phone calls?

16 Do you get a monthly statement on your telephone?

17 A It's a - - it's a prepay

18 Q Prepay? So, you don't get a monthly statement on it?

19 A No, sir

20 Q Okay

21 What about your phone records from the prepaid company? Did
22 you ever request them or did you ever - - request asking to get
23 your phone records?

24 A No, sir

25 Q Do you know if they ever got them on their own?

MRS FLEMING - CROSS EXAMINATION BY MR LONG

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1 A I don't know

2 Q Now, you pulled up at the motel, and did you have to call law
3 enforcement officers to tell them you were at the motel or were
4 they kind of following with you?

5 A They was along with me the whole time

6 Q Okay

7 So you didn't have to call them and tell them that you were
8 there?

9 A No

10 Q Did you park near the office or away from the office?

11 A In front of the office

12 Q In front of the office?

13 A Yes, sir

14 Q How far from the office? Look at me

15 A I don't want to look at Glenn

16 Q Alright

17 Well, I'll stand here Can you look across the judge's bench
18 at me

19 Was your car this far from the motel office?

20 A No, sir

21 It was right there in the doorway

22 Q Closer than we are now?

23 A Yes, sir

24 Q Alright

25 And Glenn pulled up right beside your car?

MRS FLEMING - CROSS EXAMINATION BY MR LONG

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1 A Yes, sir

2 Q Alright

3 And when did he pulled up, did he step out the car to talk to
4 you?

5 A No, sir

6 Q Alright

7 Did he waive at you or wink at you or make any type of gesture
8 to you?

9 A He went to get the room

10 Q Alright

11 He pulled up He saw you Did he know your car?

12 A Yes, sir, he did

13 Q Alright

14 He pulled up in his car?

15 A Yes, sir

16 Q Alright

17 Did you see in his car that there were other people in the
18 car?

19 A Yes, sir

20 Q Alright

21 And who was else in his car?

22 A He had two other fellows in there

23 Q Alright

24 So, you don't know who they are?

25 A No, sir

MRS FLEMING - CROSS EXAMINATION BY MR LONG

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1 Q Alright

2 Were they going to come in the motel room, too?

3 A He suppose to drop them off

4 Q Alright

5 And he went in to go get a motel room?

6 A Yes, sir

7 Q And when he went in to get the motel room, you stayed there?

8 A Yes, sir

9 Q Alright

10 And how long was it from the time that he got out of his car
11 and went in the motel room before officers came in and arrested
12 him?

13 A Not a second

14 Q A second?

15 A Time he got out to get the motel room, the police officers
16 were already there

17 Q Alright

18 In the motel, the police officers went straight to the office?

19 A Yes, sir

20 Q Alright

21 And they went straight to the office and placed him under
22 arrest

23 A Yes, sir

24 Q And that's when you decided you were going to leave?

25 A Yes, sir

MRS FLEMING - CROSS EXAMINATION BY MR LONG

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1 Q Alright

2 When you were leaving, did you see anybody get out of Glenn's
3 car?

4 A I just left

5 Q Alright

6 But during the time that you were backing out and leaving and
7 driving off, did you ever see anybody getting out of Glenn's car?

8 A No, sir

9 Q In other words, the two fellows that were in the car?

10 A No, sir

11 Q Alright

12 A I just left

13 Q So, when you left, they were still in Glenn's car Is that
14 right?

15 A Yes, sir

16 Q Okay

17 As you were leaving, did you see any other patrol vehicles
18 pulling up?

19 A They were already in place before he even got there sot up

20 Q Alright

21 But when you were leaving, did you see any other vehicles
22 driving into the parking lot in police vehicles they had come into
23 the parking lot?

24 A Yes, sir

25 Q Alright

MRS FLEMING - REDIRECT EXAMINATION BY MR LAWSON

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1 And what kind of vehicles were they? Were they patrol
2 vehicles? What were they?

3 A Polices and Sheriffs

4 Q Alright Were they, like, marked police cars, you know, like
5 Impalas or Crown Vics or something you could tell they were police
6 cars?

7 A Crown Vics

8 Q Alright

9 And then when you left the scene, basically, that was the
10 extent of your involvement that day

11 Right?

12 A Yes, sir

13 MR LONG Court's indulgence just one moment

14 No further questions

15 THE COURT Alright

16 Any further question?

17 MR LAWSON Yes, sir, just a few questions

18 REDIRECT EXAMINATION BY MR LAWSON

19 Q Jennifer, um, you said you didn't - - on cross examination,
20 you didn't want Glenn to be suspicious?

21 A Yes, sir

22 Q Were you afraid of him?

23 A Yes, sir, I was

24 Q Alright

25 Do you recognize Glenn Pernell?

MRS FLEMING - REDIRECT EXAMINATION BY MR LAWSON

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1 A Yes, sir He's right there

2 Q Is that him sitting next to Mr Long?

3 A Yes, sir

4 MR LAWSON That's all the questions, Your Honor

5 THE COURT You may come down

6 MRS FLEMING Thank you

7 MR LAWSON We ask that she may be released, Your Honor

8 THE COURT You have any objection to releasing her?

9 MR LONG No objection, Your Honor

10 THE COURT You are now released from your subpoena

11 MRS FLEMING Thank you

12 THE COURT Thank you

13 (The witness leaves the witness stand)

14 MR LAWSON Your Honor, may we approach?

15 THE COURT Yes, sir

16 (Bench conference off record and in the presence of the jury
17 but outside the hearing of the jury)

18 THE COURT Just find out if that witness is downstairs
19 If not, we'll call another one We'll wait here on you

20 Thank you

21 MR LAWSON Thank you, Your Honor

22 May it please the Court

23 The State would call Special Agent Willie C Smith, III

24 (The witness takes the witness stand)

25 MR LAWSON May it please the Court

SPECIAL AGENT SMITH - DIRECT EXAMINATION BY MR LAWSON

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SPECIAL AGENT WILLIE C SMITH, III, being

duly sworn, testifies as follows

DIRECT EXAMINATION BY MR LAWSON

Q Please state your name for the record

A My name is Willie C Smith, III

Q And, um, is it Agent?

A Yes I work as a special agent at the South Carolina Law Enforcement Division in the Drug Analysis Department

Q And, um, how long have you been employed at that commonly referred to as SLED?

A For six years and eight months

Q And during that period, what have you been assigned - - what unit have you been assigned?

A My primary duty is assigned to the Drug Analysis Department to analyze samples from across the State of South Carolina

Q And has that been your duties the entire time you've been at SLED?

A Yes, it has

Q Um, Special Agent Smith, ah, where did you receive your undergraduate - - where did you do your undergraduate work?

A I have degrees in Biology and Chemistry from the University of South Carolina

And have you had training past that?

A Yes, I have I had additional training, a year at TRED for purposes of drug analysis I've taken a digital graduate course

SPECIAL AGENT SMITH - DIRECT EXAMINATION BY MR LAWSON 139

1 work for drug analysis I attended the Justice Academy to become
2 a sworn law enforcement officer and also attended drug enforcement
3 administration training for drug analysis

4 Q Alright

5 Have you testified previously in court as an expert in drug
6 analysis?

7 A Yes

8 Q And on how many occasions?

9 A Thirty-nine times

10 Q And is that in state courts?

11 A Yes State, federal and city courts

12 Q That's here in South Carolina?

13 A That is correct

14 Q And the United States District Court in Federal Court as well?

15 A That is correct

16 MR LAWSON Your Honor, we offer this agent Special Agent
17 Smith as an expert in the area of drug analysis

18 THE COURT Is his qualification admitted as an expert?

19 MR LONG That's correct, Your Honor

20 THE COURT Agent Smith has been qualified many times
21 including my court as an expert, and I so qualify him on this
22 occasion

23 Q Agent Smith, did you have occasion to become involved in
24 what's been marked for identification as State's Exhibit #7?

25 A Yes, I have I did receive this evidence into SLED

SPECIAL AGENT SMITH - DIRECT EXAMINATION BY MR LAWSON

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1 Q And what did you do when you received this evidence?

2 A I received the evidence, and the first thing I do is to make
3 sure the bag was sealed, and so that the evidence has not been
4 tampered with

5 Once I make sure that the evidence is sealed, I write the
6 words "Sealed and Intact", and I date it, and then I proceed to do
7 my analysis

8 When I start my analysis, I examine the evidence what's in the
9 packet with the request for drug analysis It contained three
10 different bags

11 Bag one contained a plastic bag that contained a powder
12 substance

13 Bag two contained a plastic bag that contained a rock
14 substance

15 Bag three contained a plastic bag that contained a rock
16 substance

17 And I did an analysis on each and every bag

18 Q Alright

19 And, um, the outside bag is what - - was that on the substance
20 at the time that you received it?

21 A This outside bag is - - once I finished doing my analysis for
22 the case, I sealed it in a heat-sealed bag right here so when I get
23 to court that I can see that it's still in the same condition with
24 my initials at the bottom, and the condition of this big is still
25 in the same condition as when my initials and the dates that I

SPECIAL AGENT SMITH - DIRECT EXAMINATION BY MR LAWSON 141

1 tested it back on October 25, 2006

2 Q And it - - and in observing that bag, is it in the same
3 condition that it was in when you sealed it?

4 A Yes, it is

5 Q Ah, and the BEST Bag which is the evidence bag - - explain to
6 the jury what the BEST Bag is

7 A The BEST Bag is the way we give to the different agencies
8 across South Carolina in order for them to submit samples to test -
9 - for us to test at the SLED laboratories to determine exactly
10 what's in them, and it's sealed at the top, and it's a heat
11 sensitive seal If the seal is broken in any way whatsoever, I
12 return it directly back to the agency

13 Q Alright

14 And in this particular case did you - - you examined the bag
15 that the substance was presented in Is that correct?

16 A That is correct

17 Q And would not have been proceeded had there been any problem?

18 A That is correct I would have sent it back to the agency

19 Q Alright

20 And - - and that bag is then inserted inside of the bag that
21 you sealed Is that correct?

22 A That is correct

23 Q Alright

24 But you do have to take the substance out to test it, don't
25 you?

SPECIAL AGENT SMITH - DIRECT EXAMINATION BY MR LAWSON

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1 A That is correct

2 I did take it out of the BEST Bag in order to test every item
3 that was inside - - to make it test

4 Q Alright

5 From examining the bag, was, ah, was it your opinion that you
6 were the first one to open the bag since it had been sealed?

7 A Yes

8 If the bag had been opened by anybody else, I would not do any
9 testing on that item

10 Q Alright

11 And, um, what did you proceed to in relation to the testing on
12 these items?

13 A Each of these three bags, I did an instrumental test and a
14 chemical test to determine exactly what was in each of the bags

15 Q Alright

16 And did you also do a weight of each bag?

17 A Yes, I did

18 Q Do you actually weigh the bag or do you just weigh the
19 substance?

20 A I only weigh the substance that's in the bag

21 Q Alright

22 So, if, ah, substance is in a plastic bag that's inside the
23 BEST Bag, you would take it out of both bags?

24 A That is correct

25 I just only weigh the powder substance or the rock substance

SPECIAL AGENT SMITH - DIRECT EXAMINATION BY MR LAWSON 143

1 Q And all you're concerned with is the weight of the substance?

2 A That's correct

3 Q And so your weights are only substance weights There's no
4 weight in there for a bag or anything else?

5 A It's just includes only the substances that were inside of the
6 bags

7 Q Alright, sir

8 And, um, in your testing what - - what did you find in
9 relation to this substance

10 Bag one which came - - contained a powder substance, a plastic
11 bag contained a powder substance, it was found to be cocaine found
12 - 128 64 grams, and it's a Schedule 2 drug

13 Bag two which was a plastic bag containing a rock substance,
14 it was cocaine base crack found, and it was 64 02 grams, and it's
15 a Schedule 2 drug

16 In Bag three was a plastic bag containing a rock substance,
17 and it was found to be cocaine base crack found - 15 64 grams, and
18 it's a Schedule 2 drug

19 Q Alright

20 And if you add the two crack substances together, what would
21 be the total crack weight?

22 A The total crack weight would be 79 66 grams

23 Q Alright

24 And that - - when you say, "Bag 1, Bag 2 and Bag 3," are those
25 arbitrary numbers that you, ah, assessed?

SPECIAL AGENT SMITH - DIRECT EXAMINATION BY MR LAWSON

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1 A That is correct

2 When I open it up, I have to identify the item and assign a
3 laboratory number for them, and I choose Bag 1, 2 and 3 because I
4 had three different items in it It's labeled 1, Item 1, Item 2
5 3, etc

6 Q Alright

7 So, the bags were marked 1, 2 and 3 when you received them?

8 A No, it was not

9 Q And did you mark the bags in some way?

10 A Yes Every time I handle a piece of evidence, I put my
11 initials and the lab number and the item number on it, and I, also,
12 once I finish examining the evidence, I repack it into separate
13 zip-lock bags So the actual weight that I report out on my
14 report is the weight that is inside the separate repacked bags of
15 only the substance that I report out

16 Q Alright

17 And, once again, the cocaine weight was, ah, what?

18 A 128 64 grams

19 Q And the crack weight?

20 A The crack weight was 79 66 grams

21 Q Alright

22 And when you complete your analysis, then what do you do?

23 A Once I've done my chemical test and instrumental test, I take
24 the bags Like I said, I repack them back into a separate package
25 which contains the actual weight that I'm reporting out, and I seal

SPECIAL AGENT SMITH - DIRECT EXAMINATION BY MR LAWSON 145

1 it in this heat-sealed pack, and I date it and initial it so that
2 the evidence is still sealed and intact from the date that I did my
3 analysis to when I get to court so that I can see that my evidence
4 is in the same condition from when I did my analysis back on
5 October 25, 2006

6 Q And, um, that is then normally picked up by the local agency?

7 A That is correct

8 Q And then brought into court for you to testify?

9 A That is correct

10 MR LAWSON Your Honor, the State would move for Item #7 to
11 now be admitted into evidence

12 THE COURT It is admitted

13 (The Court Reporter accepts State's Exhibit #7 into evidence)

14 THE COURT Madame Foreman, ladies and gentlemen, from time
15 to time there will be matters introduced into evidence in the trial
16 of this case They may publish them anytime they care to but
17 these items will be with you in the jury room during your
18 deliberations

19 Q Let me ask you something if you could State's - - what's
20 been marked State's Exhibit #1 is - - is alleged to have been the
21 bag in which the cocaine was found, and there's certain items in
22 there

23 Um, would you, um, feel comfortable touching those without
24 latex gloves?

25 A Well, inside the bag is a scale, a digital scale, um, with

SPECIAL AGENT SMITH - DIRECT EXAMINATION BY MR LAWSON

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1 residue substance on it

2 Q And you have not tested that?

3 A No, I did not test this item

4 MR LAWSON Your Honor, just - - I didn't want the jury
5 without - - to have access to plastic gloves should they desire to
6 touch the items inside

7 THE COURT I understand

8 I don't think he would need to touch the items

9 Q Would that be the wise thing to do?

10 A That is correct

11 It would be improper to handle that evidence without gloves

12 Q And when you handle evidence, you wear gloves?

13 A Yes, in every single case

14 Q And, um, on the BEST Bag is there a name - - are there names
15 indicated, ah, on - - on the BEST Bag? Can you see it through?

16 A The BEST Bag, I cannot see it I can see the person that
17 sealed the envelope for this BEST Bag that indicated but usually
18 the additional information that we receive which the subjects are
19 in a case, um, comes on a SLED Drug Analysis Request Form
20 indicating how we suppose to link the person with the evidence

21 Q Um, can - - whose name can you see on that bag as being the
22 one that sealed it?

23 A Neil Rouse

24 Q Okay

25 Thank you

SPECIAL AGENT SMITH - CROSS EXAMINATION BY MR LONG

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1 Answer any questions that Mr Long may have

2 A Okay

3 CROSS EXAMINATION BY MR LONG

4 Q Agent Smith, um, just so the jury understands I don't walk
5 into SLED and say, "Mr Smith, will you test this ten grams of
6 cocaine residue?"

7 That's not the way you receive any items to test Is that
8 correct?

9 A That is correct

10 Q There is a set procedure or set chain of custody the documents
11 coming to you have to follow in order for you to properly have them
12 before you for testing Correct?

13 A That is correct

14 Q Alright, sir

15 And, specifically, if I'm a police officer and I receive
16 something, then, I place it in an evidence bag, BEST Bag, and I
17 then turn it over to the Evidence Custodian who keeps all the
18 evidence locked in a safe place at that police department That
19 police officer themselves or some of their deputy mates would
20 transport it to SLED for SLED to take into its evidence locker, and
21 then you would receive from that evidence locker whoever the
22 evidence custodian is for SLED an item for you to test

23 Is that right or, basically, the procedure? _

24 A That is correct

25 Q Alright, sir

SPECIAL AGENT SMITH - CROSS EXAMINATION BY MR LONG

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1 And is there paperwork that follows each and every step of
2 that procedure?

3 A Yes, there is

4 Q Alright

5 And when an item is handed to you by your Custodian at SLED
6 who says, "This is an item we want tested," do you have the
7 paperwork with you concerning each step along the way

8 A SLED is paperless now, and we go by electronic chain In our
9 computer system, it links all our paperwork together for each and
10 every step

11 Q Including the chain of custody steps for the law enforcement
12 agency that submits it to you Is that correct?

13 A In some cases that is correct

14 Q For example, this is one document that the local agency would
15 fill out and would be presented to SLED with the evidence to be
16 tested Is that correct?

17 I'll show you that document and ask if you can identify it

18 A That is - - this is a SLED Drug Analysis Request Form that we
19 receive with each and every drug analysis request in most cases

20 Q And that would be signed by Lt Rouse, I believe, with the
21 Marion County Combined Drug Unit?

22 That is correct

23 Q Alright

24 And subjects that are listed on there by Lt Rouse, the
25 suspects or subjects are listed as who?

SPECIAL AGENT SMITH - CROSS EXAMINATION BY MR LONG

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1 A In the subject section, we just list the names

2 Q Yes

3 A Right That is correct

4 Q What names are contained there?

5 A The names are Glenn Pernell, Derrick Platt and Jeffrey Graves

6 Q Alright

7 And how many items are listed on that document for you to
8 test?

9 A On this document it's listed Item 1 which is a white powder
10 substance, and Item 2 was a white rock substance

11 Q Two items?

12 A Two items

13 Q Alright

14 Now, also, when the document - - when the drugs are presented
15 to you for testing, do you also receive copies of those documents
16 when the drugs come to you?

17 A Yes

18 This is SLED Chain of Custody Forms that we supply with the
19 BEST Evidence Testing Kits and this is also sometimes supplied with
20 the case

21 Q Alright

22 Do you recall whether or not those were presented to you in
23 this case?

24 A Yes, it was

25 Q Alright

SPECIAL AGENT SMITH - CROSS EXAMINATION BY MR LONG

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1 And those were prepared by other law enforcement officers who
2 had the drugs in their custody at some time before it got to you
3 Is that correct?

4 A That is correct

5 Q Alright

6 And if you would, sir, look at those documents and tell me how
7 many items are listed on those documents?

8 A In this item, there are two items listed on each of these
9 documents

10 Q Alright

11 And what are those items describe as?

12 A Item 1 is a white powder substance believed to be cocaine

13 Item 2 is a white rock substance believed to be cocaine base

14 Q Alright

15 And your report shows three items you tested Is that
16 correct?

17 A That is correct because that is what was inside the BEST
18 Evidence Bag

19 Q Okay

20 Now, Agent Smith, when an item comes to you for testing at
21 SLED, is there any requirement by SLED that they test the potency
22 of that item?

23 A We do not do that We just tell exactly what it is

24 Q Alright

25 Was there ever - - are there any forms used by SLED which

SPECIAL AGENT SMITH - CROSS EXAMINATION BY MR LONG

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1 require to have a form or a blank listed for you to put the
2 percentage on?

3 A We do not do that

4 Q Do not do it anymore?

5 A We never done that

6 Q Alright

7 But is there a form that SLED uses to report out - - report a
8 controlled substance or whatever that does have a percentage space
9 that y'all never check?

10 A For my six years and eight months at SLED we - - I've never
11 seen a form like that

12 Q Okay Alright

13 So, you're not testing it to see if it's a hundred percent
14 cocaine or one percent cocaine or anything of that nature, just if
15 there is - - -

16 MR LAWSON Objection, Your Honor

17 THE COURT I sustain that

18 MR LAWSON Under the law, it doesn't make any difference

19 THE COURT Yes, sir He'll understand that

20 Q Now, for the jury's understanding also, when we're talking
21 about 128 grams, um, we're talking an ounce weighs 28 grams Is
22 that correct?

23 A Not off the top of my head, I can't It should be Yeah,
24 sounds correct

25 Q Okay

SPECIAL AGENT SMITH - REDIRECT EXAMINATION BY MR LAWSON

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1 An ounce is 28 grams

2 So, you'd be talking about less than five ounces weight of
3 that substance Is that correct?

4 A The thing is, when you're talking about ounces and grams - -
5 if you're trying to convert it that way

6 Q Alright

7 But if an ounce is 28 grams, 28 000 grams, then we're talking
8 about a little less than five ounces Is that correct

9 Q Alright

10 And the crack cocaine was 80 - - 79 66 total grams?

11 A That's correct

12 MR LONG Court's indulgence just one moment

13 Q Thank you, sir

14 No further questions

15 MR LAWSON May it please the Court, just a couple of
16 questions

17 REDIRECT EXAMINATION BY MR LAWSON

18 Q Ah, Mr Smith, on the forms that are sent to you when it says,
19 "Items 1 - Powder substance, Item 2 - Rock-like substance", does
20 that necessarily mean that there's only two bags for you to test?

21 A No

22 And several times when I receive cases, they just list them as
23 a powder substance I can have ten powder bags, and sometimes they
24 usually just list them by the category of items that are submitted

25 Q So, that would be mean that would item would be a powder

SPECIAL AGENT SMITH - REDIRECT EXAMINATION BY MR LAWSON 153

1 substance and the other item would be rock-like substance
2 regardless of how many bags it may be in?

3 A That is correct

4 Q And that's normally how it's done?

5 A In some cases it's done that way

6 Q Thank you

7 MR LAWSON No further questions

8 MR LONG Nothing further, Your Honor

9 THE COURT You may come down

10 May this witness now be excused? He needs to get back to
11 Columbia

12 MR LONG Without objection

13 THE COURT Thank you, Agent Smith We appreciate your
14 participation

15 (The witness leaves the witness stand)

16 THE COURT Call your next witness

17 MR LAWSON Could we have just a brief break, Your Honor

18 THE COURT Yes, sir

19 We'll - - the jury's been here very patiently

20 We'll let you go out for just a few minutes, and I'll be
21 calling you back

22 Thank you

23 (The jury retires to the jury room at 10 35 a m)

24 MR LAWSON Thank you, Your Honor

25 THE COURT Yes, sir

MOTION AND RULING OF THE COURT

154

1 MR LAWSON I just - - I need to run to the restroom

2 And my witness is here I didn't think he was So, that's
3 why I had asked but he is here So

4 THE COURT I could have told you he was here

5 MR LAWSON I was busy I didn't see him come

6 THE COURT He was here early this morning He said,
7 "Good morning," about 9 00

8 Okay That's fine

9 Alright Hurry back

10 MR LONG Are we going to wait or we just going to take
11 a short recess ourselves while we stop?

12 THE COURT Yes Go ahead

13 I can tell you when he's told to be here at 9 30, the Sheriff
14 would have him here at 9 30

15 Alright, Linda, let's take a short break, and then we'll start
16 again

17 (The Court recesses the trial of this case and thereafter
18 resumes the trial of this case)

MOTION AND RULING OF THE COURT

19 THE COURT Thank you

20 Be seated, please

21 Alright, Solicitor Ready to proceed?

22 MR LAWSON Yes, sir, Your Honor

23 One thing The next witness, um, actually effected the
24 arrest on Mr Pernell During that arrest, we - - ah, Mr Pernell
25

MOTION AND RULING OF THE COURT

155

1 threw something

2 THE COURT He what?

3 MR LAWSON He threw something

4 THE COURT Okay

5 MR LAWSON And the officer who arrested him retrieved
6 that, and it was - - the package was, we believe, to be marijuana
7 It's not been tested, and he was charged with simple possession but
8 in another court, you know

9 Also, a small bag of marijuana was found on the defendant by
10 the arresting officer

11 THE COURT Alright

12 MR LAWSON We would ask that the officer be allowed to
13 testify as to the full transaction and what he believed - - -

14 THE COURT I will permit that

15 MR LAWSON Thank you

16 THE COURT I will charge the jury that he's not being
17 tried for possession of marijuana - - but anything incident to the
18 arrest in my view - - -

19 MR LONG Your Honor

20 THE COURT Yes, sir

21 MR LONG Your Honor, we would respectfully object

22 We're talking about possession of cocaine and cocaine base in
23 this case He's not charged with or on trial for anything to do
24 with marijuana

25 The only references that we were making specifically during

MOTION AND RULING OF THE COURT

156

1 cross was that the testimony of, ah, Lt Rouse that he saw a
2 marijuana blunt in the ashtray but that was not taken into evidence
3 for testing He wasn't charged with that

4 We think it's highly prejudicial to bring up the fact that he
5 was charged with simple possession of marijuana, did forfeit bond
6 in City Court or County - - Traffic Court

7 THE COURT I'm not going to let him bring that up I'm
8 just going to let him identify that he found marijuana

9 You don't intend to get into the subsequent events

10 MR LAWSON No, sir, or that he was even charged

11 THE COURT I'm just going to let him testify as to what he
12 found incident to a search

13 MR LONG Alright, sir

14 I believe - - okay A small quantity was found on Glenn
15 Pernell Is that what the testimony is going to be and that he
16 saw him throw another quantity?

17 THE COURT I'm not sure what the testimony is but I think
18 that's what it is

19 MR LONG Yes, sir

20 THE COURT That - - that would be evidence for the jury 's
21 consideration if believed that he was possibly dealing in drugs
22 including marijuana I don't know

23 MR LONG And that's prejudicial, Your Honor

24 THE COURT Well, it may be but it's admissible

25 If those drugs coming in, it's prejudicial but it's

MOTION AND RULING OF THE COURT

157

1 admissible

2 MR LONG Well, yes, sir, well, he's on trial for
3 cocaine I understand

4 THE COURT I'm not going to let them testify as to what
5 occurred I'll tell the jury that he's not being tried for
6 marijuana

7 MR LONG Very well, Your Honor

8 THE COURT But it was incident to the search on this
9 occasion, and he's entitled to show what he found

10 If he found a gun in there, he's not being tried for guns
11 either but he'll be entitled to testify he found one

12 MR LONG Yes, sir

13 THE COURT Alright Thank you

14 MR LONG Yes, sir

15 THE COURT You understand I don't want any testimony as
16 to what subsequently occurred in Magistrate's Court with reference
17 to marijuana

18 MR LAWSON I understand, Your Honor, and I'm - - -

19 THE COURT I'm only letting you go into to show that
20 that's an item of search and what he did with it if he did
21 anything

22 MR LAWSON Yes, sir, and I'm not even going to ask him
23 whether or not there was a charge

24 THE COURT No, no

25 Bring the jury in

DEPUTY BARFIELD - DIRECT EXAMINATION BY MR LAWSON

158

(The jury returns to the courtroom at 10 59 a m)

THE COURT Alright, sir, call your next witness, please

MR LAWSON Yes, sir

May it please the Court, the State would call Deputy Shad Barfield

(The witness takes the witness stand)

DEPUTY SHAD BARFIELD, being duly sworn,
testifies as follows

DIRECT EXAMINATION BY MR LAWSON

Q Please state your name for the record

A Shad Barfield

Q And where do you work?

A I work for the Marion County Sheriff's Office in the K-9 Unit

Q And how long have you been so employed?

A For about six years

Q And is that with the Sheriff's Department?

A Yes, sir

Q And how long -- you said you're with the K-9 Unit?

A Yes, sir

Q What does that involve?

A I, ah, I do criminal control I do call-outs for traffic and narcotics, and I mainly work traffic with the dog

Q Alright, sir

And, ah, you were employed with the Sheriff's Department as of August of 2006?

DEPUTY BARFIELD - DIRECT EXAMINATION BY MR LAWSON

159

1 A Yes, sir

2 Q And were you, ah, involved, ah, in an incident, ah, at the
3 Imperial Motel?

4 A Yes, sir

5 Q And how did you become involved with that?

6 A Lt Rouse of the Drug Unit called for assistance We had a
7 briefing and - - -

8 Q Alright

9 And, I mean, did he specifically call you or - - -

10 A That's correct

11 Q - - call your supervisor? How did that work?

12 A He specifically called me

13 Q Alright

14 And what was - - what were you - - did you have a specific
15 assignment on that day?

16 A I'm sorry I can't hear you

17 Q Did you have a specific assignment on that day?

18 A Yes, sir

19 Q And what were you do to?

20 A I was to pull around behind the motel, and whenever the
21 defendant pulled up, the Lieutenant was to give the word, and I was
22 to pull up and try to make the arrest

23 Q Alright

24 And do you recall where you were suppose to try and make that
25 arrest?

DEPUTY BARFIELD - DIRECT EXAMINATION BY MR LAWSON

160

1 A Yes, sir

2 Q And where was that?

3 A In the admissions office of the Imperial Motel

4 Q Alright

5 And are you familiar with that area?

6 A Yes, sir

7 Q And, ah, did you, in fact, work patrol in that area?

8 A Yes, sir I use to be employed by the Mullins Police
9 Department, and I worked there for about two years

10 Q Alright

11 You were with the Mullins Police Department - -

12 A Yes, sir

13 Q - - for two years?

14 A Yes, sir

15 Q And that is in the City of Mullins within the City Limits?

16 A Correct Yes, sir

17 Q And is the Imperial Motel close to a school?

18 A Yes, sir It's within - - it's within - - side of a school

19 Q What school?

20 A North Mullins Primary

21 Q And how far is to that school?

22 A It's about two city blocks

23 Q And would that be within a half-mile of the school?

24 A Yes, sir, definitely

25 Q Can you see the school from the motel?

DEPUTY BARFIELD - DIRECT EXAMINATION BY MR LAWSON

161

1 A Yes, sir If you stand in front of the admissions office and
2 look down main street, you see the front lawn of North Mullins
3 Primary

4 Q Alright In two blocks?

5 A Maybe two and a half

6 Q But these are city blocks, country blocks?

7 A City blocks, yes, sir

8 Q Alright

9 Is there a difference?

10 A Yes, sir I would assume so

11 Q Alright

12 Um, now, um, did you receive word from Lt Rouse to proceed
13 with your assignment?

14 A Yes, sir

15 Q And what did you do, ah, when you received, ah, that word?

16 A You mean when he give us the go ahead?

17 Q Yes

18 A I was parked behind the motel I pulled my car around the
19 side Got of my vehicle Run around the defendant's vehicle I
20 seen - - I put - - I seen him in the motel, and that's when I went
21 inside and made the arrest

22 Q Alright

23 And were you the first officer in the motel - - in the motel
24 lobby there or whatever?

25 A The office, yes, sir

DEPUTY BARFIELD - DIRECT EXAMINATION BY MR LAWSON

162

1 Q The office?

2 A Yes, sir

3 Q Was there anyone else in that office at the time that you
4 entered?

5 A Not the time that I first entered, no, sir

6 Q Alright

7 A The defendant was ringing the bell for service

8 Q Alright

9 So, the defendant was in there?

10 A Yes, sir

11 Q Was any - - anyone else in there?

12 A No, sir, not at that time

13 Q Alright

14 You did - - did you see the defendant go into the, ah, um,
15 office?

16 A No, sir

17 Q Alright

18 But when you got into the office, there was one other person
19 in there?

20 A The defendant, yes, sir

21 Q And do you recognize that person here in court?

22 A Yes, sir, the defendant sitting there

23 Q And that was the individual there?

24 A Yes, sir

25 Q What happened when you went in?

DEPUTY BARFIELD - DIRECT EXAMINATION BY MR LAWSON

163

1 A When I rounded the corner, the defendant was standing in the,
2 ah, admissions office It's just a little small room, maybe - -
3 eight - - eight foot deep by twelve foot

4 And when I come around, he appeared to be ringing the bell for
5 service He seen me I seen him When I went into the door,
6 there's another door to the right of the room or to the left of the
7 room that, ah, leads into I'm assuming where they - - the, ah,
8 people who own the motel live at It looks like a living quarters
9 in there from the window

10 Well, when he seen me, he went straight to that door and tried
11 to get in, and it was locked

12 And I told him to let me see his hands, let me see his hands
13 I'm sorry As - - as he was turning to go into that door when I
14 came in, I seen him throw something down

15 I told him to let me see his hands, let me see his hands He
16 was shaking the door He had his other hand in his pocket He
17 turned around and tried to run past me I grabbed him Um, there
18 was a little small table I shoved him up against that table
19 backwards He was facing Officer Rowell At that time he came
20 in We, ah, put the handcuffs on him Um, I reached in his pocket
21 to see what it was he was, ah, digging for It was suppose to be,
22 you know, I thought it may have been a gun because I know the issue
23 of a gun came up in the briefing that he could possibly have a
24 weapon, and I found a small bag of green, leafy substance, leafy
25 marijuana

DEPUTY BARFIELD - DIRECT EXAMINATION BY MR LAWSON

164

1 Also, on the floor the bag he threw was a - - was the same
2 thing It was just a larger bag, a green, leafy substance believed
3 to be marijuana

4 THE COURT I charge you that I am admitting this testimony
5 regarding alleged marijuana only as to the fruits of this alleged
6 search I specifically charge you that this defendant is not being
7 tried for possession of marijuana

8 Q And in - - can you see in there? Does that look like what
9 you found?

10 A Yes, sir Yes, sir, it does

11 Q Alright

12 MR LAWSON Your Honor, the State is not moving to enter
13 the introduce this

14 THE COURT No, I've admitted only for limited purpose to
15 show that with regards to his testimony what he says he found
16 That's the only purpose of admitting it

17 MR LAWSON Right

18 Q Now, did you have any other, ah, any other duties in relation
19 to this, ah, situation?

20 A No, sir Um, I just effected the arrest After the arrest
21 was over, then the agents with the drug unit, you know, handled the
22 evidence and that - - -

23 Q Alright

24 Did you have the defendant in your custody or you had him, ah,
25 handcuffed? Is that correct?

DEPUTY BARFIELD - CROSS EXAMINATION BY MR LONG

165

1 A Yes, sir

2 Q And who did you turn him over to?

3 A Lt Rouse

4 Q Alright

5 And, ah, and at that point, what did you do?

6 A I just kind of backed off and watched them photograph the
7 vehicle and search the vehicle and things

8 Q Alright, sir

9 So, you had no active involvement after initiating the arrest?

10 A That's correct

11 Q Alright

12 Answer any questions Mr Long may have

13 CROSS EXAMINATION BY MR LONG

14 Q Deputy Barfield, on that date at the Imperial Motel, you were
15 in your patrol vehicle stationed behind the motel?

16 A Yes, sir, that's correct

17 Q Alright

18 And how many units are in this motel, how many rooms?

19 A Ah, it's a single level motel I'm not sure I'd guess maybe
20 thirty I don't know

21 Q Okay

22 So, and how long was the building? Is it as long as this
23 courtroom to the back or maybe longer?

24 A Maybe twice that distance

25 Q Twice that distance Okay

DEPUTY BARFIELD - CROSS EXAMINATION BY MR LONG

166

1 So, it's thirty rooms or so all in a row behind

2 A No, sir They're actually in an L-shape

3 Q L-shape

4 A Yes, sir

5 Q So, how many rooms deep does it go back before it turns to
6 make the L-shape?

7 A I - - -

8 Q Approximately

9 A Approximately, maybe, ten, maybe, and then - - no there's not
10 There wouldn't be thirty motels there It probably be maybe - -
11 I'm not sure I don't know

12 I mean, it goes - - it goes down maybe a hundred yards long
13 and then turns and makes an L about the distance of this courtroom

14 Q Alright

15 And were you parked behind the L?

16 A Yes, sir, at the corner

17 Q Alright

18 And so when you got the call, did you drive your vehicle
19 around the bottom part of the L to the parking lot to where Mr
20 Pernell's car was?

21 A When the Lieutenant gave the word to move in, it took me
22 probably seven seconds to go from the corner of the L that was an
23 actual room The admission office sits by itself in the parking
24 lot I pulled from the back corner to the back of the admissions
25 office or the side of the admissions office That's when I got out

DEPUTY BARFIELD - CROSS EXAMINATION BY MR LONG

167

1 of my vehicle and went into - - and went into the room

2 Q Alright

3 How close was your vehicle to Glenn's car when you got out of
4 your vehicle and went into the office?

5 A Ah, less than ten feet

6 Q Alright

7 And easily within eyesight?

8 A Of who?

9 Q Of someone in Glenn Pernel's vehicle

10 A Yes, sir

11 Q Alright

12 They would have seen your patrol car pull up, you get out of
13 the patrol car and run in the office?

14 A Yes, sir

15 Q Alright

16 No question they could have seen that?

17 A Yes, sir

18 Q Alright

19 And so, then, you say Glenn was in the office, and he was
20 still ringing a bell whenever you came?

21 A I'm assuming that's what - it looked like he was ringing the
22 bell He was standing at the window, you know, the - - where you
23 talk to the person in the inside - - the clerk window

24 Q Do you know how long he had been there when you saw him there?

25 A The Lieutenant give the word when he seen him go into the

DEPUTY BARFIELD - CROSS EXAMINATION BY MR LONG

168

1 office to move in So, I mean, it couldn't have been just a few
2 seconds

3 Q Alright

4 And, again, you were in your vehicle, and you drove your
5 vehicle around the bottom or the foot of the L, and then you pulled
6 up then to - - ten feet of Glenn's vehicle

7 A From where my vehicle was at I could see the admissions
8 office

9 Q Okay

10 Alright

11 A Yes, sir

12 Q Were you parked? Okay The motel is an L-shape?

13 A Yes, sir

14 Q Were you parked behind the L-shape and could see through,
15 like, a walkway or something or were you parked in the front of the
16 motel rooms inside the L

17 A The admissions office sits here The motel runs down and in
18 an L-shape All this is parking lot

19 Q Okay

20 A My vehicle was sitting here I could see the back of the
21 admissions office

22 When he said move in, I shot out and shot straight up to the
23 side of the admissions office

24 Q Okay Alright

25 Now, you were the first officer to go in the motel office?

DEPUTY BARFIELD - CROSS EXAMINATION BY MR LONG

169

1 A Correct Yes, sir

2 Q Alright

3 And as you placed Glenn under arrest, I believe you said Lt
4 Rouse came in?

5 A Ah, no Lt Rowell, Mullins PD

6 Q Rowell?

7 A Yes, sir

8 Q Okay Alright

9 And how many other officers came in then after Betty Rowell,
10 Office Betty Rowell?

11 A Um, I'm not exactly sure

12 Given the situation, you know you get tunnel vision I was
13 focused on the defendant Um, I had my hands on him I know Lt
14 Rowell was there, and there was maybe one other officer come in
15 I'm not exactly sure as to who it was I can't remember Most of
16 my attention was focused on the defendant, um, and I - - I'm not
17 exactly sure who else came in there

18 Q Okay

19 Do you recall whether Lt Rouse came in the office - - the
20 motel office?

21 A I believe he came Yes, sir, after the arrest was already
22 effected, after he was already handcuffed, I believe he may have
23 come to the door

24 I know - - I believe he did, yes, sir

25 Q Alright

CERTIFICATE OF COURT REPORTER

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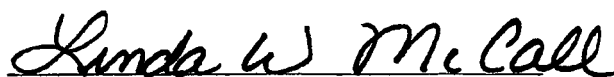
1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3
4 I, the undersigned Linda W McCall, Official Court
5 Reporter for South Carolina Court Administration, do hereby
6 certify that the foregoing is a true, accurate and complete
7 Transcript of Record of all the proceedings had and evidence
8 introduced in the hearing of the captioned case, relative to
9 appeal, in the Court of General Sessions of Marion County, South
10 Carolina

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

13 August 2, 2007

14 

15 Linda W McCall

16 Official Reporter

17
18
19
20
21
22
23 CERTIFICATE AS TO

24 VOLUME I, PAGES 1-169

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF MARION) INDICTMENT NO 06-GS-33-0297
3 COUNTS #2, #3, #4 & #5

4 THE STATE OF SOUTH CAROLINA,)
5)
6 PLAINTIFF,)
7)
8 -VS-)
9)
10 GLENN Q PERNELL,)
11)
12)
13 DEFENDANT)
14)

TRANSCRIPT OF RECORD
VOLUME II
PAGES 170-338

February 27-March 1, 2007
Marion, South Carolina

11 B E F O R E

12 HONORABLE EDWARD B COTTINGHAM, JUDGE AND A JURY

14 A P P E A R A N C E S

15 JACK W LAWSON, JR , ESQUIRE
16 Assistant Solicitor, Twelfth Judicial Circuit
17 Attorney for the State

18 J M LONG, III, ESQUIRE
19 Attorney for the Defendant

20 LINDA W MCCALL
21 OFFICIAL REPORTER
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DEFENDANT

NONE

COURT

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DEPUTY BARFIELD - CROSS EXAMINATION BY MR LONG

170

1 And how long were you in the office arresting Glenn Pernell?

2 A It was just a matter of seconds The whole thing lasted only
3 just a matter of seconds

4 Q Alright

5 So, you got him detained and you put cuffs on him, and then
6 that only took a few seconds to have him into your custody Is
7 that right?

8 A Correct Yes, sir

9 Q Alright

10 And then after you got him into your custody, what did you do
11 with him?

12 A After - - after I arrested him Placed the handcuffs on him,
13 he was turned over to Lt Rowell, Rouse

14 Q Okay, to Rouse?

15 A Yes, sir, Lt Rouse

16 Q Alright

17 Was that in the office as well?

18 A I walked him out - - again, you know, this is - - the office
19 is small The arrest actually took place by the doorway which is,
20 you know, a foot or so

21 I may have walked him outside a foot or Lt Rouse may have
22 been right there I'm not exactly sure but he was at the motel
23 office

24 Q Okay

25 A I'm not sure if he went in the office or if I stepped him

DEPUTY BARFIELD - CROSS EXAMINATION BY MR LONG

171

1 outside the doorway but it was in the doorway where the arrest had
2 taken place

3 Q Alright

4 A The outside doorway

5 Q And you turned him over to Lt Rouse, and what did Lt Rouse
6 then do with him?

7 A Um, I'm not sure There were a lot of things going on I'm
8 not sure if he put him in his vehicle at the time I not sure I
9 don't know

10 Q Alright

11 Was he - - you don't know whether he put him in his vehicle,
12 Lt Rouse's vehicle or put him in somebody else's vehicle?

13 A Um, I'm not sure I don't remember

14 Q But no question you turned him over to Lt Rouse?

15 A Yeah

16 Q "Here he is Your man's under arrest "

17 A Yes, sir

18 Q Alright

19 Now, how much longer did you continue to remain at the scene
20 after you did that, turn him over to Lt Rouse?

21 A Fifteen minutes maybe

22 Q Alright

23 During that time how many other officers arrived or how many
24 other vehicles, officer vehicles arrived there at the scene?

25 A Um, I'm not exactly sure There were people staged all over

DEPUTY BARFIELD - CROSS EXAMINATION BY MR LONG

172

1 on all different exits, you know, because of the risk of him
2 fleeing

3 I'm not sure how many vehicles I couldn't give you a certain
4 number I'm going to guess, maybe, six to seven vehicles including
5 City and County

6 Q Alright

7 A But I'm not sure

8 Q At what point in time, and I'm talking about from the time you
9 said when you turned over Glenn Pernell to Lt Rouse, at what point
10 in time did you first find out that there were occupants, other
11 occupants of the car?

12 A When I came out - - when I came out of the office, after the
13 arrest was made, I walked out of the office I seen two more other
14 subjects standing outside, and I was informed that they were in the
15 vehicle

16 Q Okay

17 A And the reason why I remember was because there was a safety
18 concern

19 Q Alright

20 They were still in Glenn Pernell's vehicle?

21 A No, sir No, sir They were out of his vehicle

22 Q Alright

23 Outside of the vehicle

24 A Yes, sir

25 Q Alright

DEPUTY BARFIELD - CROSS EXAMINATION BY MR LONG

173

1 How close to the vehicle were they? Had they walked off a
2 ways or were they just still right there at the vehicle?

3 A They were right - - kind of at the back of the vehicle

4 Q Alright

5 And did officers have them in custody or detained - - detained
6 at the back of the vehicle?

7 A I don't remember if they were actually in handcuffs or if they
8 were just being detained for investigative purposes I'm not
9 exactly sure but I know the officers were with them

10 Q Alright

11 And when you parked your car, got out of your car and went in
12 to the office, you couldn't see or tell or had no indication of
13 them - - anybody in the car?

14 A No, sir I got tunnel vision, my eyes on the defendant, and
15 that was the only person I was focused at

16 Q And you simply had to rely on other officers whatever it - -

17 A Yes, sir, exactly

18 Q - - to take care of that That was their responsibility?
19 Right?

20 A Yes, sir

21 Q Alright

22 The marijuana that you claim you got out of the office, who
23 did you turn that over to?

24 A Lt Rouse

25 Q Lt Rouse as well

DEPUTY BARFIELD - CROSS EXAMINATION BY MR LONG

174

1 A Yes, sir

2 Q Alright

3 Were you involved in any way in searching the car,
4 inventorying of the car or anything of that nature?

5 A No, sir

6 Q Alright

7 Was the majority of your responsibilities, the remainder of
8 fifteen minutes that you were there was simply to be more security
9 or security concerns or simply to observe?

10 A I just observed

11 Q Okay

12 MR LONG Court's indulgence just one moment

13 Q Thank you, sir No further questions

14 MR LAWSON No further questions, Your Honor

15 THE COURT You may come down Thank you

16 DEPUTY BARFIELD Thank you, sir

17 (The witness leaves the witness stand)

18 MR LAWSON May it please the Court, the State would recall
19 Agent Neil Rouse

20 (The witness takes the witness stand)

21 THE COURT Agent Rouse, I remind you You have previously
22 been sworn to tell the truth, the whole truth and nothing but the
23 truth

24 AGENT ROUSE Yes, sir

25 THE COURT Have a seat

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

175

1 Lt DAVID NEIL ROUSE, having been
2 previously sworn, duly testified as follows

3 DIRECT EXAMINATION BY MR LAWSON

4 Q Now, Agent Rouse, there's been discussion about a blunt
5 Would you explain to the jury what a blunt is?

6 A A blunt is a rolled, ah, type of cigar type cigarette or a
7 cigar Sometimes they'll take a regular cigar and take the tobacco
8 out of it and put marijuana inside that and smoke it and roll it
9 back up

10 Q And I believe in your earlier testimony you said there was a
11 blunt in the car

12 A That's correct

13 Q I ask if you if you can identify this

14 A Yes, sir, I can

15 Q And what is it?

16 A It's the blunt that was in the ashtray of the, ah, white Crown
17 Victoria - - -

18 MR LONG Your Honor, I have an objection at this point
19 This is something we may have to take up outside the presence of
20 the jury

21 THE COURT I'll let you go to the jury room just a moment,
22 please I'll be calling you right back

23 (The jury retires to the jury room at 11 20 a m)

24 THE COURT What's your purpose - - let me ask you this
25 Close the door, please

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

176

1 What's your purpose in going into this?

2 Close the door

3 What's the purpose of this?

4 MR LAWSON Your Honor, the defense has raised the issue
5 that the blunt was gone, was not there, was, ah, apparently - - -

6 THE COURT How - - how did he raise that issue?

7 MR LAWSON During cross examination on Captain Bethea in
8 the picture

9 THE COURT I just want it for the record That's my
10 understanding

11 What's your objection?

12 MR LONG Your Honor, my objection is - - he was charged
13 with simple possession of marijuana, and they brought that in here
14 We objected to that but I understand the Court's ruling though I
15 disagree with it

16 Your Honor, we've had no previous notice or knowledge of the
17 question asked of the witnesses yesterday about this blunt, whether
18 it was taken into custody, pictures taken of it, anything of that
19 nature This is the first notice or knowledge that we had about -
20 - -

21 THE COURT I only - - I continue to say and I previously
22 charged the jury We're going to stop that testimony I told
23 them it's just as to what they found in the search

24 Now, they said they found it You've raised a question about
25 it, and he - - he's challenging that testimony that you elicit on

LT ROUSE - DIRECT EXAMINATION BY MR LAWSON

177

1 direct - - on cross examination

2 MR LONG Yes, sir, Your Honor

3 THE COURT Let's get on with something, now I'm not
4 going into marijuana I've already told the jury is the only
5 reason that I'm letting it in at all is to show the proof of
6 search You understand?

7 MR LAWSON Yes, sir

8 THE COURT Okay

9 MR LAWSON Your Honor, I would move to introduce it

10 THE COURT No, sir, not going to do that

11 I don't see any necessity for that He's not being tried for
12 - - you getting ready to go to far with the marijuana issue, and
13 you got a lot more serious issues involved here

14 MR LAWSON Yes, sir

15 THE COURT Do not do that

16 But I would permit any - - any further cross - - direct
17 examination to contradict what he brought out in cross examination
18 as to what was found and that only You understand?

19 MR LAWSON Yes, sir

20 THE COURT Alright

21 Bring the jury back

22 Do not put it into evidence because it's no concern of theirs

23 (The jury returns to the courtroom at 11 22 a m)

24 THE COURT Madame Foreman, there is some alleged testimony
25 about a blunt or marijuana Now, I specifically charge you that

LT ROUSE - CROSS EXAMINATION BY MR LONG

178

1 this defendant on this day is not being charged with marijuana, not
2 being charged with anything involved with marijuana, and that's not
3 for your consideration

4 I am permitting this testimony only to show the fruits of the
5 result of this search that was made and for that purpose only

6 Now, limit it to that

7 MR LAWSON Yes, sir

8 CONTINUED DIRECT EXAMINATION BY MR LAWSON

9 Q Um, and, ah, Agent Rouse, ah, you found, ah, a blunt in the
10 ashtray?

11 A That's correct

12 Q Did you take it into your custody?

13 A I did

14 Q And have you had it, ah, in your custody ever since?

15 A I have

16 Q Answer any questions Mr Long may have

17 THE COURT Anything further, Mr Long?

18 MR LONG Very briefly, Your Honor

19 CROSS EXAMINATION BY MR LONG

20 Q Lt Rouse, um, you prepared a case report from this incident,
21 this arrest and these charges Is that correct?

22 A That's correct

23 Q Alright

24 And do you have a copy of the case report with you?

25 A Not with me No, sir

LT ROUSE - CROSS EXAMINATION BY MR LONG

179

1 Q May I hand you one?

2 Make sure I've got one that has four pages

3 A I've got all four pages, yes, sir

4 Q Lt, is that your case report?

5 A Yes, sir

6 Q Alright

7 And I'd refer you to page 3 about midway through that long
8 paragraph

9 In that incident report, did you say, "Agent Rouse then looked
10 inside Glenn Pernell's vehicle while standing at the end of it and
11 saw a marijuana blunt on the ashtray "

12 A That's correct

13 Q Alright

14 And that was you typed that into that incident report

15 A That's correct

16 Q Alright, sir

17 On the last page - - the second page where it shows the items
18 taken or the inventory taken, whatever, it shows marijuana, 13 5
19 grams Is that correct?

20 A That's correct

21 Q Alright

22 And how did you weigh 13 5 grams of marijuana?

23 A We have a digital scale in our office that we - - we use just
24 for our preliminary weight We don't get the actual weight until
25 it's tested, just something preliminary to - - for us to go by to

LT ROUSE - CROSS EXAMINATION BY MR LONG

180

1 put on the report which they are pretty close to the amounts that
2 we got back from SLED They're not that far off, only one gram or
3 two one way or the other

4 So, that - - that's how I determine that

5 Q Alright

6 Does your report anywhere indicate a marijuana blunt that was
7 taken into evidence?

8 A My report reflects all the marijuana that's been showed you
9 this morning All of it was weighed together, what was found on
10 the defendant and - - in the motel office and the blunt were all
11 weighed together

12 Q So, you're saying this was weighed along with the other
13 marijuana?

14 A That's correct

15 Q Alright

16 And wouldn't this have been put with the other marijuana for
17 it to be weighed?

18 A Yes, sir

19 Q Alright

20 And why wasn't this kept, then, with the other marijuana?

21 A It was found in two different separate places That's the
22 reason it's kept in a separate bag

23 THE COURT Alright

24 I want to tell the jury one more time

25 I'm permitting this cross examination but the jury now fully

LT ROUSE - CROSS EXAMINATION BY MR LONG

181

1 understands that we are not concerned in any trial of the case
2 involving marijuana period I again emphasize that I have
3 permitted the testimony only to show what they found in the search
4 period

5 MR LONG Yes, sir Thank you

6 THE COURT Alright

7 That may or may not have some relevance in some other issue of
8 the case but that's for the jury to decide They're finders of
9 the facts

10 They understand that we are not concerned with any charge
11 relating to marijuana

12 MR LONG Court's indulgence one moment

13 THE COURT Alright, sir

14 Q Alright

15 So, the fact that it was found in two separate locations is
16 the reason you bagged it in two separate bags?

17 A That's correct

18 Q Alright

19 But the reason it was found in two separate locations is the
20 way you lumped it all together and weighed it all together Is
21 that right?

22 A That's correct

23 Q Alright

24 MR LONG No further questions

25 THE COURT Alright

MR GRAVES - DIRECT EXAMINATION BY MR LAWSON

182

1 Any further questions on this issue

2 MR LAWSON Nothing further, Your Honor

3 THE COURT You may come down

4 (The witness leaves the witness stand)

5 THE COURT Alright, next witness

6 MR LAWSON He's coming upstairs right now, Your Honor

7 THE COURT Alright, sir

8 MR LAWSON May it please the Court?

9 The State would call Jeffrey Levon Graves

10 (The witness takes the witness stand)

11 JEFFREY LEVON GRAVES, being duly sworn,

12 testifies as follows

13 Q Would you please state your name for the record?

14 A Jeffrey Graves

15 Q Alright

16 And you go by Jeffrey?

17 A Yes, sir

18 Q Jeffrey, if you would, please, speak up so the jury can hear
19 what you have to say Alright?

20 A Yes, sir

21 Q Alright Now

22 Um, you, I believe, ah, pled guilty, ah, to, ah, manufacturing
23 or distribution of, ah, or possession with intent, ah, cocaine base
24 back in, ah, 1999, did you not?

25 A Yes, sir

MR GRAVES - DIRECT EXAMINATION BY MR LAWSON

183

1 Q And, um, you actually have two charges and received an active
2 YOA sentence?

3 A Yes, sir

4 Q Ah, then, in 2002, you also had a possession of crack?

5 A Yes, sir

6 Q Ah, you received an active sentence for that of five years

7 A Yes, sir

8 Q Now, you haven't had any other convictions?

9 A No, sir

10 Q And, now, were you, ah, with, ah, the defendant, Mr Glenn
11 Pernell, in August of 2006?

12 A Yes, sir

13 Q You recall being at the Imperial Motel?

14 A Yes, sir

15 Q Alright

16 How did it come about that you were at the Imperial Motel with
17 Mr Pernell?

18 A Well, earlier that evening I had - - I was leaving Wal-Mart
19 from a job hunt interview, and I seen Mr Platt Being that I
20 hadn't seen him in a while, I wanted to get with him and talk to
21 him So we went back to his residence, and he had to go get a
22 telephone or something So we had needed a ride, and we was just
23 calling people for a ride, and Mr Pernell came by

24 Q Alright

25 Did you actually call the defendant, Mr Pernell, or, ah, did

MR GRAVES - DIRECT EXAMINATION BY MR LAWSON

184

1 Mr Platt call him?

2 A Well, both of us was making calls around the same time trying
3 to find a ride

4 Q Alright

5 And do you recall which one of you actually - - -

6 A I probably called or he probably called I probably called

7 Q Alright

8 And so he was going to give you a ride where?

9 A For Mr Platt to go get his telephone to get him straightened
10 up

11 Q Alright

12 And where were you going to have to do that?

13 A I think he was going to Sun Com or something like that?

14 A Alright

15 And, um, so was this in the morning time? Was this in the
16 night? Was it - - -

17 A Afternoon, like, afternoon, mid-afternoon

18 Q Alright

19 So, it was in the afternoon?

20 A Yes, sir

21 Q The sun was still out?

22 A Yes, sir

23 Q Alright

24 Um, and you were at Mr Platt's house?

25 A Yes, sir

MR GRAVES - DIRECT EXAMINATION BY MR LAWSON

185

1 Q And, um, what happened then?

2 A Well, ah, when we was on the way, I guess, ah, he had to make
3 a stop I think he had got a phone call or something He had to
4 make a stop

5 He was like, "Well, ah, let me make a stop real fast, and I'll
6 take y'all - - drop y'all off "

7 And when he made a stop, that's when, you know, everything
8 happened

9 Q Alright

10 So, you say you think he got a phone call?

11 A Well, the phone rung His phone rung

12 Q Alright

13 A He told us he had to make a stop

14 Q Alright

15 And so where did he stop?

16 A He stopped at Imperial Motel

17 Q Alright

18 And - - and what happened when you got to the Imperial Motel?

19 A We was just rushed by agents

20 Q Alright

21 Um, who was driving the vehicle?

22 A At the time of the arrest? No one was in the vehicle at the
23 time of the arrest

24 Q Well, I understand but who drove to the motel?

25 A Mr Pernell

MR GRAVES - DIRECT EXAMINATION BY MR LAWSON

186

1 Q Alright

2 And who, ah, who got out and went in to the motel?

3 A Mr Pernell

4 Q Alright

5 And where were you? Were you still in the car?

6 A Yes, sir In the back seat

7 Q And where were - - -

8 A Back behind the passenger, back seat passenger seat

9 Q Back seat passenger side?

10 A Yes, sir

11 Q Alright

12 And when you saw - - did you see Mr Pernell go into the
13 office?

14 A Yes, sir

15 Q And what did you see after he went into the office?

16 A I just seen the agents come rush him and arrest him

17 Q Alright

18 And what did you do at that time?

19 A I got out the car

20 Q Alright

21 What, ah, what happened at that time?

22 A Ah, they just told us we was being detained, and while we was
23 standing there, I seen Officer Rouse come out the car with some
24 drugs, a bag containing drugs

25 He was, like, "Well, all of y'all are being charged with

MR GRAVES - DIRECT EXAMINATION BY MR LAWSON

187

1 this "

2 Q Alright

3 And did you, ah, say anything about that?

4 A I was just, like, "I don't know nothing about that Them
5 ain't mine "

6 Q Alright

7 And were they yours?

8 A No, sir

9 Q Alright

10 Did - - does this State's Exhibit #1, does this look like the
11 bag that they came out with?

12 A I mean, when he just pulled it up, I just glanced at it and
13 put my head down, like, 'No "

14 So, I - - I just - - it's probably - - it's probably it

15 Q But you didn't - - you just said, "No, it's not mine "

16 A Yes, sir

17 Q Alright

18 And how long had you been in the car at the time that this,
19 ah, the agents - - that you got to the Imperial Motel?

20 A Well, it was, like, after they rushed - - like, as soon as we
21 seen the police pull up, we just jumped out the car

22 Q Alright

23 But what - - how long had you been in the car?

24 A Probably a minute and a half or so

25 Q Alright, then - - -

MR GRAVES - DIRECT EXAMINATION BY MR LAWSON

188

1 A Two minutes

2 Q Well, how long did it take to get from Mr Platt's house to
3 the motel?

4 A Probably about five, ten minutes

5 Q Alright

6 And had you been riding in the car earlier?

7 A No, sir

8 Q Alright

9 Had you driven the car at all?

10 A No, sir

11 Q Alright

12 Did - - was there anytime during the day earlier that you had
13 been in the car?

14 A No, sir

15 Q Is Mr Pernell in the courtroom?

16 A Yes, sir

17 Q Where is he?

18 A The defendant

19 Q The defendant sitting back with Mr Long?

20 A Yes, sir

21 Q Now, have - - have you talked with anyone about your testimony
22 here today?

23 A Yourself

24 Q You talked to me?

25 A Yes, sir

MR GRAVES - CROSS EXAMINATION BY MR LONG

189

1 Q And what - - what did we talk about?

2 A The facts

3 Q The facts?

4 A Yes, sir

5 Q And what were you instructed to do?

6 A To tell the truth

7 Q Are you?

8 A Yes, sir

9 Q Alright

10 Were they your drugs?

11 A No, sir

12 MR LAWSON Excuse me one minute, Your Honor

13 Q Alright

14 Answer any questions Mr Long may have

15 CROSS EXAMINATION BY MR LONG

16 Q Mr Graves, you were the backseat passenger behind the
17 passenger seat Correct?

18 A Yes, sir

19 Q Alright

20 What type of front seat is in the car? Is it, like, a bench
21 seat or is it more like bucket seats?

22 A I think it's bucket seats

23 Q Alright

24 So, there's a space between the two front seats Is that
25 right?

MR GRAVES - CROSS EXAMINATION BY MR LONG

190

1 A Yes, sir

2 Q Alright

3 It's not a big long bench with a long back that goes all the
4 way across?

5 A No, sir

6 Q Alright

7 And at the scene they charged you and arrested you Put you
8 in jail on charges of trafficking cocaine, trafficking cocaine
9 base, possession within close proximity, two counts Is that
10 right? You got four charges?

11 A Yes, sir

12 Q Alright

13 And they arrested you and told you they were placing you under
14 arrest for this?

15 A Well, after they produced the drugs, they said that we were
16 being charged with it Yes, sir

17 Q Alright

18 And at what point in time did you have conversations with any
19 law enforcement or the Solicitor's Office about your testimony and
20 being able to come forward and testify about it?

21 A You say when?

22 Q Yeah

23 How long after August 2, 2006, was it, approximately, until
24 you had conversations with law enforcement or with the Solicitor's
25 Office?

MR GRAVES - CROSS EXAMINATION BY MR LONG

191

1 A Well, I had to come to court and get appointed an attorney,
2 and I went through my attorney to do that I don't know the exact
3 date or time or anything

4 Q A day, a week, a month, two months, three months? How long
5 was it?

6 A It was, ah, like, like, I think court started back in November
7 or something like that

8 Q So is that when you're telling me you first had conversations
9 with the Solicitor's Office about your testimony?

10 A About a testimony?

11 Q Yes, sir

12 A You mean like for the telling my side about the truth?

13 Q Yes, sir

14 That would have been sometime in November?

15 A Yes, sir

16 Q Late November or what was it?

17 A Earlier part - - -

18 Q Was it the 15th?

19 A The earlier part of court, like, right after I was appointed
20 an attorney

21 Q Alright

22 Now, did you give a written statement to the Solicitor's
23 Office?

24 A No, not at first, no, sir

25 Q Alright

MR GRAVES - CROSS EXAMINATION BY MR LONG

192

1 But have you since given a written statement to the
2 Solicitor's Office?

3 A Yes, sir

4 Q When did you do that?

5 A Yesterday, Monday - - I think Monday

6 Q Alright

7 And is the written statement, basically, the same thing you
8 testified to here today?

9 A Yes, sir

10 Q Alright

11 That you didn't know anything about the drugs?

12 A Yes, sir

13 Q The drugs didn't belong to you?

14 A No, sir

15 Q And that you were going - - you told them you would come
16 testify to that That you didn't know anything about the drugs
17 and the drugs didn't belong to you

18 A Yes, sir

19 Q Now, what have they told you? What have they promised you
20 about your charges if you come forward and testify?

21 A Nothing

22 Q Nothing?

23 A Nothing

24 Q What do you feel should happen to your charges about you
25 coming forward to testify

MR GRAVES - CROSS EXAMINATION BY MR LONG

193

1 A I mean, it's not about me testifying It's about me just
2 being innocent, telling the truth

3 Q Alright

4 So, is it fair to say that you feel that your charges should
5 be dismissed if you come forward and tell the truth?

6 A Yes, sir

7 Q Alright

8 Now, again, you're telling me they haven't promised you that?

9 A No, sir

10 Q Alright

11 Is that what you expect?

12 A Yes, sir

13 Q Alright

14 Now, Glenn pulled up at the motel and said, "I have to make a
15 stop," or, "I need to make a stop "

16 A Well, on the way to the phone place, as I say, he had got a
17 phone call, and I guess he had - - he say he had to make a stop - -
18 I guess he say he had to make a stop

19 Q Did he say, "A girl called me"?

20 A He say he had to get a room for a girl or something like that,
21 and he was, like, "And I'll do that Then I'll go take y'all
22 Drop y'all off "

23 Q Alright

24 So, was this a five minute stop? Was this a thirty minute
25 stop?

MR GRAVES - CROSS EXAMINATION BY MR LONG

194

1 A Soon as we got there, like, a minute after he got in the
2 office, the agents pulled up

3 Q How long - - did you and he discuss how long he was going to
4 be at the motel? Did he say, "I got to make a stop I'm going to
5 be there five minutes "

6 "I got to make a stop I'm going to be there thirty minutes "

7 I mean, how long was this stop suppose to have lasted?

8 A He was just suppose to go in there and pay for the room and
9 leave and take us where we needed to go

10 Q Alright

11 And then he was going to come back to the room or whatever?

12 A All I know I guess so

13 Q Alright

14 So, he pulled up Pulled up near the office Right?

15 A Yes, sir

16 Q And he got out the car and he walked in the office

17 A Yes, sir

18 Q Well, were you where you could see him in the office?

19 A Well, when he went in the door, I can't see no more of him

20 Q Okay, so he went in the door

21 A Probably at the counter or something

22 Q Alright

23 And how long he in there before the first officer arrived and
24 went in there behind him?

25 A I guess like a minute and a half, two minutes

MR GRAVES - CROSS EXAMINATION BY MR LONG

195

1 Q Alright

2 And the first officer pulled up and ran straight in the
3 office Right?

4 A Yes, sir

5 Q Alright

6 How many more officers, how many more cars did you watch pull
7 up?

8 A A lot

9 Q Alright

10 And did they all go to the office, too?

11 A Yeah, well, the majority of them did, and the other ones just
12 pulled up to the side

13 Q Alright

14 Well, I'm going to ask about that in a minute, but, basically,
15 when everybody pulled up, y'all were still sitting in the car
16 watching all these police officers pull up Right?

17 A Yes, sir

18 Q That was a bad time, wasn't it?

19 A Yes, sir

20 Q Alright

21 And so, then, when you and the other passenger - - what's his
22 name? Platt?

23 A Yes, sir

24 Q Was he in the front seat, the front passenger seat?

25 A Yes, sir

MR GRAVES - CROSS EXAMINATION BY MR LONG

196

1 Q He was directly in front of you?

2 A Yes, sir

3 Q He could see everything that was going on, too, right?

4 A Yes, sir

5 Q Okay

6 So, y'all saw all of these police officers pulling up, going
7 in the office, did you see them take Glenn out of the office?

8 A Yes, sir

9 Q Alright

10 And when they took him out of the office, where were you?
11 Were you still in the car?

12 A No, sir We was standing outside the car

13 Q Standing outside the car

14 Alright, now

15 When you were standing outside of the car, were y'all walking
16 off?

17 A Well, we was trying to but they stopped us

18 Q Alright

19 And how far did you get walking off before the officers
20 stopped?

21 A Probably, like, two, three feet, something like that

22 Q How far?

23 A Probably about from here to the desk or something like that
24 Not far Not very far

25 Q Ten or fifteen feet would you estimate?

MR GRAVES - CROSS EXAMINATION BY MR LONG

197

1 A Probably

2 Q Alright

3 And when you say they stopped you, did they detain you?

4 A Well, they was, like, "You're not being arrested "

5 Until they searched the car

6 They were, like, "We're not arresting y'all "

7 You know

8 Then they searched the car, and then they say that's when we
9 were being charged

10 Q Alright

11 I show you what's been marked as State's Exhibit #3 and ask
12 you if you ever saw anything like that anywhere in that car?

13 A No, sir

14 Q And that appears to be a black bag full of drugs?

15 A Yes, sir

16 Q Now, then, the officer said, "Hold on You're not going
17 anywhere We're not going to arrest you "

18 This, that and the other

19 "Just hang with us right here "

20 Or whatever

21 And you saw them bringing Glenn out of the office at that time

22 - -

23 A Yes, sir

24 Q - - under arrest

25 A Yes, sir

MR GRAVES - CROSS EXAMINATION BY MR LONG

198

1 Q Alright

2 And then you said they started searching the car then?

3 A Yes, sir

4 Q Alright

5 And after they searched the car, you said you saw Lt Rouse or
6 something have what appeared to be bag - -

7 A Yes, sir

8 Q - - coming out of the car of whatever

9 A Yes, sir

10 Q And that's when you found out all of y'all were being charged
11 and arrested

12 A Yes, sir

13 Q And how long were you and Platt in the car at the motel before
14 y'all got out and started walking away?

15 A I mean, like, like I say

16 He pulled up and he went in the office When he walked in
17 the office, like, a minute or two went by Then agents started
18 pulling up, and when we seen them pulling up, we hopped out the
19 car

20 Q Okay

21 So about a minute or two until y'all got out of the car?

22 A Yes, sir

23 MR LONG Court's indulgence just one moment

24 Q Thank you, sir No further questions

25 MR LAWSON May it please the Court, just a few

MR GRAVES - REDIRECT EXAMINATION BY MR LAWSON

199

1 REDIRECT EXAMINATION BY MR LAWSON

2 Q Um, Jeffrey, let me ask you this

3 When - - when you pulled up there is it fair to say it was
4 pretty quick? Everything happened pretty quick?

5 A Yes, sir

6 Q So, one or two minutes, fifteen, twenty seconds It's hard to
7 say - - -

8 MR LONG Objection to leading, Your Honor

9 THE COURT I will permit this limited inquiry so that we
10 can move on to something else

11 MR LONG Yes, sir

12 Q So, at the time you wasn't worried about time at that point?

13 A No, sir

14 Q But when you pulled up there, things happened quick?

15 A Yes, sir

16 Q Alright

17 MR LAWSON Bear with me one moment

18 Nothing further, Your Honor

19 THE COURT Alright, sir

20 You may come down

21 MR GRAVES Thank you

22 (The witness leaves the witness stand)

23 MR LAWSON I ask that he be dismissed

24 THE COURT Any objection to this witness being released
25 from his subpoena?

MR PLAT - DIRECT EXAMINATION BY MR LAWSON

200

1 MR LONG No, sir, Your Honor

2 THE COURT You are now excused

3 Call your next witness

4 MR LAWSON Your Honor, may we approach the bench?

5 THE COURT Yes, sir

6 (Bench conference off the record and in the presence of the
7 jury but outside the hearing of the jury)

8 THE COURT Ah, we'll wait five minutes to see if that
9 individual is here If not, we're going to proceed

10 I'll let you go to the jury room just a moment I'll be
11 calling you back in five or ten minutes

12 (The jury retires to the jury room at 11 49 a m)

13 MR LAWSON We're in good shape, Your Honor

14 THE COURT Alright, sir

15 (The Court recesses the trial of this case briefly and
16 thereafter reconvenes the trial of this case)

17 THE COURT Alright Call your next witness

18 MR LAWSON May it please the Court, the State would call
19 Derrick Levon Platt

20 (The witness takes the witness stand)

21 DERRICK LEVON PLATT, being duly sworn,
22 testifies as follows

23 Q Please state your name for the record

24 A Derrick Levon Platt

25 Q Alright

MR PLAT - DIRECT EXAMINATION BY MR LAWSON

201

1 And you don't need to bend over and talk into that but keep
2 your voice up so the jury can hear you

3 A I'm Derrick Levon Platt

4 Q And the Court Reporter

5 And, if you would, answer the questions, make sure you
6 verbally answer Don't shake your head because she needs to hear
7 you answer

8 A Alright

9 Q Okay?

10 A Alright

11 Q You go by Derrick?

12 A Yes, sir

13 Q Alright

14 Derrick, you have a conviction of possession of crack,
15 possession of marijuana with intent back in 1995 Is that correct?

16 A Yes, sir

17 Q Alright

18 And you received an active YOA sentence for that?

19 A Yes, sir

20 Q And then you, also, in 1998, had a conviction for distribution
21 of cocaine?

22 A Yes, sir

23 Q And it was a second drug offense because of your first offense
24 that you pled to earlier, and you received a ten year sentence for
25 that

MR PLAT - DIRECT EXAMINATION BY MR LAWSON

202

1 Don't have any other record?

2 A No, sir

3 Q Alright

4 Um, in August of 2006, um, were you doing something in
5 relation to one of these convictions?

6 A No, sir

7 Q Alright

8 When had you been released from custody?

9 A I was released August 1st of 2006

10 Q You were released on August 1st?

11 A Yes, sir

12 Q And you were sentenced in 1998 Is that correct?

13 A Yes, sir

14 Q You had to eighty-five percent?

15 A Yes, sir

16 Q It was a no parole offense?

17 A Yes, sir

18 Q So, you did eight and a half years, basically?

19 A Yes, sir

20 Q Alright

21 And as a result of the eighty-five percent, when you got out
22 there's a certain situation that is accompanied getting out on an
23 eighty-five percent sentence, isn't there?

24 A Yes, sir

25 Q And what is that?

MR PLAT - DIRECT EXAMINATION BY MR LAWSON

203

1 A Well, to my knowledge I had to obtain - - I had to obtain
2 phone services for a leg monitor that I would be hooked up to, and,
3 um, I wasn't suppose to be affiliated with any known criminals

4 Q Alright, and, um, so you - - you had to get telephone service

5 A Yes, sir

6 Q And that was in relation to a monitoring system?

7 A Yes, sir

8 Q Alright

9 So, um, what were you, ah, working on on August 2nd of 2006?

10 A Obtaining the phone service that I was suppose to have

11 Q Alright

12 And, ah, did you actually go and try to get phone service?

13 A Yes, sir I went and got the phone services, and I had a
14 deadline to have the phone service hooked up but the phone services
15 wasn't going to be hooked up to meet the deadline So I was on the
16 way trying to get a refund of the money that I had given the phone
17 company to obtain another phone service on the way up

18 Q Alright

19 And, ah, you're, ah, when, ah, did you, ah, happen to run into
20 the defendant, Glenn Pernell, that day?

21 A Ah, yes, sir

22 Q And how did that come about?

23 A He stopped by to see me

24 Q He stopped by to see you?

25 A Yes, sir

MR PLAT - DIRECT EXAMINATION BY MR LAWSON

204

1 Q Alright

2 And what happened as a result of that

3 A I asked him for a ride to obtain the phone service

4 Q Alright

5 And was anybody with you?

6 A Yes, sir

7 Q And who was that?

8 A Jeffrey Graves

9 Q Alright

10 And so where were y'all, you and Mr Graves, when you first
11 saw Mr Pernell?

12 A At my house

13 Q Alright

14 And where were - - where were you going?

15 A I was on my way back to Marion to the rental place I forgot
16 the name of the store that I bought the phone from but I was on my
17 way back to Marion to that place

18 Q Alright

19 Where was your house?

20 A Out in Mill Creek in Mullins

21 Q And so, um, so was this in the morning, in the nighttime, the
22 afternoon? When was it?

23 A Around the afternoon time

24 Q It was in the afternoon?

25 A Yes, sir

MR PLAT - DIRECT EXAMINATION BY MR LAWSON

205

1 Q Still daylight?

2 A Yes, sir

3 Q And did you go to the store to get the refund?

4 A Nah We didn't make it

5 Q Alright

6 Well, what happened?

7 A Well, I guess Mr Pernell had got a phone call, and he had to
8 make a stop somewhere else before we could get a chance to make it

9 Q And where was that you stopped?

10 A The Imperial Hotel

11 Q And, um, what happened, ah, when you got to the Imperial
12 Motel?

13 A Ah, he stepped out the car to go get a room, I guess, and the
14 police just swarmed the area where we was at, and that was - - that
15 was that

16 Q Alright

17 And where were you sitting in the car?

18 A The passenger side

19 Q Alright

20 In the front or the back?

21 A The front seat

22 Q The front seat?

23 A Yes, sir

24 Q Ah, what - - what did you do when you, ah, where did you first
25 see the officers?

MR PLAT - DIRECT EXAMINATION BY MR LAWSON

206

1 A Well, I seen them rushing from behind the building At that
2 point I went ahead and got out the car to walk off because I
3 didn't know what was going on

4 Q Alright

5 And, ah, what happened at that point?

6 A Well, the officers stopped me, me and Mr Graves, and told us
7 they wasn't placing us under arrest They was just detaining us

8 And they searched us Nothing was found, and that's when they
9 went and talked to Mr Pernell, and they conducted a search of the
10 car

11 That's whenever whatever was found was found I mean, I never
12 got a chance to see what was found I was just told that this was
13 found

14 Q Alright

15 And, ah, you were then charged?

16 A Yes, sir I was then charged due to the fact that nobody was
17 owning up to it

18 Q Alright

19 And did you ever tell anybody that that was your drugs in the
20 car?

21 A No, sir They didn't belong to me I didn't - - -

22 Q Okay

23 Was it your drugs?

24 A No, sir

25 Q Alright

MR PLAT - DIRECT EXAMINATION BY MR LAWSON

207

1 What kind of car were you in?

2 A I think it was a Crown Vic, Crown Victoria

3 Q What color was it?

4 A White

5 Q Whose car?

6 A To my knowledge it was Mr Pernell's It was his car To my
7 knowledge

8 Q Did you ever at any time drive that automobile?

9 A No, sir

10 Q Was there anything in that car that belonged to you?

11 A No, sir

12 Q Did you have the right to dispose of anything that was in that
13 car?

14 A No, sir

15 Q Ah, did you have any drugs in that car?

16 A No, sir

17 Q Have you ever told anybody that the drugs in that car were
18 yours?

19 A No, sir

20 Q Um, how quickly did this happen when you got to the motel?

21 A I say about ten seconds after he got out the car, that's when
22 the police just swarmed - - swarmed the area They rushed straight
23 to the office

24 Q Alright

25 Now, let me ask you

MR PLATT - CROSS EXAMINATION BY MR LONG

208

1 During this trial have you been in here listening to
2 testimony?

3 A No, sir

4 Q You've been outside the whole time?

5 A Yes, sir

6 Q So, you haven't heard anybody else testify?

7 A No, sir

8 Q Now, have you talked with anyone about your testimony?

9 A Other than you, no, sir

10 Q And we, ah, discussed what you were going to testify to and
11 what did I tell you?

12 A To just be truthful about the whole accident

13 Q Were - - were you ever shown anything that came out of the
14 car?

15 A No, sir

16 Q Alright

17 Answer any questions Mr Long may have

18 CROSS EXAMINATION BY MR LONG

19 Q Mr Platt, as far as bad days go, that has to be one of the
20 worst you've had in quite a while Is that right?

21 A Yes, sir

22 Q Alright

23 Here you are You just got out of jail the day before on a
24 ten year sentence Having problems getting your phone set up
25 You got a ride, hopefully, getting a ride back to your house and

MR PLATT - CROSS EXAMINATION BY MR LONG

209

1 had to make a stop, and then all of this happens

2 Is that right?

3 A Yes, sir

4 Q Alright

5 Now, the Solicitor asked you, "Did they ever show you any
6 drugs?"

7 You said, "No "

8 Were you standing with Mr Graves the entire time?

9 A Yes, sir

10 Q Alright

11 Y'all were pretty much together the whole time they were
12 holding you outside the car Is that right?

13 A Yes, sir

14 Q And they never showed you any drugs or anything?

15 A Not to my knowledge I didn't see any drugs

16 Q Alright, sir

17 Now, you testified that Glenn got a telephone call, and he
18 said he had to make a stop at the motel

19 A Yes, sir

20 Q Wasn't this the conversation? Did he say, "Hey, I got to get
21 a room This girl wants to meet me here, and I may get lucky here
22 at the motel "

23 A Yes, sir That's what I was assuming it was for

24 Q Alright

25 Well, wasn't there some conversation about it?

MR PLATT - CROSS EXAMINATION BY MR LONG

210

1 He said, "Hey, you know This girl wants me to meet her at
2 the motel, and, hey, guys, I'm going to get the room, and then I'm
3 going to go dump you all guys somewhere, and I'm going to be here "

4 A Yes, sir

5 Q Something like that?

6 A Yes, sir

7 Q And so you pull up to the motel and just like he told you, he
8 went out to go get a room Is that right?

9 A Yes, sir

10 Q And so you're sitting in the front seat of the car?

11 A Yes, sir

12 Q Alright

13 Did he turn the car off?

14 A I don't - - I don't think so

15 Q Alright

16 Do you remember whether he took the keys with him or not?

17 A I think the keys were still there

18 Q You think the keys were still there

19 And he got out to go get the room

20 A Yes, sir

21 Q And you say within ten seconds or so, the police officers
22 pulled up and ran into the office behind - - where Glenn was Is
23 that right?

24 A Yes, sir

25 Some were on feet

MR PLATT - CROSS EXAMINATION BY MR LONG

211

1 Q Alright

2 And then some of the other - - other officers, and they went
3 in the office as well?

4 A Yes, sir

5 Q And how long were you and Jeffrey Graves sitting in the car
6 until y'all started seeing all of this going on and saying, "The
7 heck with this We're going to walk off "

8 How long were y'all in the car?

9 A Ah, soon as I seen the police, it didn't - - it didn't take no
10 more than about three seconds for me to make up my mind to get out
11 I didn't know what was going on

12 Q And how far - - did you get out the car and run?

13 A No, sir

14 Q Alright

15 Get out the car but you were walking fast, weren't you?

16 A Just got out the car and started walking.

17 Q Alright

18 How far did you get before the police said, "Whoa, whoa,
19 stop," whatever and came over arrest y'all guys?

20 A We - - we didn't really even make it too far from the car
21 The car was still in plain sight

22 Q How far approximately?

23 A I say about five feet

24 Q Five feet from the car

25 Alright, and they came over and grabbed you

MR PLATT - CROSS EXAMINATION BY MR LONG

212

1 A They didn't grab us They just told us to stop

2 Q Told you to stop

3 And y'all stopped?

4 A Yes, sir

5 Q And they searched you, and, of course, you say they didn't
6 find nothing on you

7 A Yes, sir

8 Q Did you ever see any drugs in that vehicle at any time prior
9 to them stopping you and searching you?

10 A What was in my eyesight in plain view was a blunt That's the
11 only thing I had knowledge of

12 Q Yes, sir

13 Had y'all smoked that blunt?

14 A No, I - - I didn't indulge in it I had my paperwork So I
15 can't do nothing like that

16 Q And you never saw nothing else in the car?

17 A No, sir

18 Q Alright

19 Now, who did you meet up with first that day? Did you meet
20 with Graves first that day?

21 A Yes, sir We met up at that Wal-Mart after I purchased - - I
22 purchased the phone the first time Then I had met up with Mr
23 Jeffrey Graves

24 Q Alright

25 And then from Wal-Mart until you went back to your house?

MR PLATT - CROSS EXAMINATION BY MR LONG

214

1 A Um, yes

2 Q Okay

3 So, about fifteen minutes the three of y'all were together in
4 the car?

5 A Yes, sir

6 Q Now, Mr Platt, you're charged with trafficking in crack
7 cocaine, trafficking in cocaine and two proximity charges as well
8 Is that right?

9 A Yes, sir

10 Q Alright

11 And you were arrested for this August 2, 2006?

12 A Yes, sir

13 Q Alright

14 How long were you in jail before you got bonded?

15 A On this charge here how long was I in jail? About two and a
16 half days

17 Q Alright

18 And how much was your bond?

19 MR LAWSON Objection, Your Honor

20 Relevance

21 THE COURT I'll permit it

22 MR LONG Thank you

23 Q How much was your bond?

24 A It was \$25,000 surety bond

25 Q Was that on each charge or was that consolidated on all

MR PLATT - CROSS EXAMINATION BY MR LONG

215

1 charges?

2 A All the charges

3 Q All the charges Okay

4 And you paid a bondsman to get out?

5 A Yes, sir

6 Q How long was it until you had any conversation with law
7 enforcement or the Solicitor's Office about your testimony? How
8 long from August 2nd - - how long from when you got out of jail, I'm
9 assuming August 4th or 5th, how long was it until you had any
10 conversations about testifying?

11 A Well, I just recently made my mind up about testifying I - -
12 I was actually hoping it didn't get to this point So, I say
13 around a couple of weeks back

14 Q Alright

15 So, you're saying maybe January or February or so of this
16 year?

17 A Yes, sir

18 Q Alright

19 And did they promise you anything in exchange for your
20 testimony?

21 A No, sir All they promised me was a chance to plead my case

22 Q A chance to plead your case?

23 Did - - what are you expecting the Solicitor's Office to do
24 in exchange for your testimony?

25 A Well, actually, just - - I'm expecting them to take my word

MR PLATT - CROSS EXAMINATION BY MR LONG

216

1 and see that I'm innocent of all charges

2 Q Alright

3 So, you're expecting them to dismiss your charges Is that
4 correct?

5 A Well, I mean, if that's possible

6 Q Have you had conversations with your attorney as well about
7 your testimony, and he's spoken to the Solicitor's Office?

8 A Um - - -

9 Q I'm not asking the substance of what they talked about but
10 just having conversations?

11 A Yes

12 Q Do you know whether or not your attorney has received any type
13 of guarantee or promise from the Solicitor's Office?

14 A Not to my knowledge

15 Q Okay

16 Your house that you lived in that you were at that day, um,
17 was that a rental or house you own or family member's house? Whose
18 house was that?

19 A Family member

20 Q Family member?

21 A My sister

22 Q Your sister?

23 Okay

24 And power and things of that nature, were they all hooked up
25 in her name?

MR PLATT - REDIRECT EXAMINATION BY MR LAWSON

217

1 A Yes, sir

2 Q What were you doing about a job, um, since you got out? Had
3 you been on job interviews or anything like that?

4 A Talk about during the time when this here occurred?

5 Q Yes In August?

6 A Well, this happened, like I said This happened on the 2nd,
7 and I got out the 1st I mean, during that time I didn't have any
8 chance to do anything

9 Q You hadn't had got a chance to get into a job, looking for a
10 job or interviews, anything?

11 A No, sir, but now I'm employed at Arbor Freight Tools in
12 Dillon

13 MR LONG Court's indulgence just one moment

14 Q Thank you, sir No further questions

15 MR LAWSON May it please the Court, just a couple of
16 questions

17 REDIRECT EXAMINATION BY MR LAWSON

18 Q My understanding, you are now working?

19 A Yes, sir

20 Q Is that correct?

21 And you work where?

22 A Arbor Freight Tools in Dillon

23 Q And how long have you been working there?

24 A About three months

25 Q And what do you do?

AGENT WALLACE - DIRECT EXAMINATION BY MR LAWSON

218

1 A Well, I'm in the stocking department

2 Q And that's when you've been doing the whole time you've been
3 there?

4 A Yes, sir

5 MR LAWSON That's all, Your Honor

6 THE COURT You may come down

7 (The witness leaves the witness stand)

8 THE COURT Shall this witness be now released?

9 MR LONG No objection, Your Honor

10 THE COURT You are released from your subpoena

11 MR PLATT Thank you, sir

12 MR LAWSON May it please the Court?

13 The State would - - would call Agent Joseph Brian Wallace

14 (The witness takes the witness stand)

15 AGENT JOSEPH BRIAN WALLACE, being duly
16 sworn, testifies as follows

17 DIRECT EXAMINATION BY MR LAWSON

18 Q Please state your name for the record

19 A Joseph Brian Wallace

20 Q And you go by Brian Is that correct?

21 A That is correct

22 Q And some other nicknames as well?

23 A A few

24 Q And are you presently employed?

25 A Yes, I am I'm employed with the Marion County Sheriff's

AGENT WALLACE - DIRECT EXAMINATION BY MR LAWSON

219

Office, and I'm assigned to the Marion County Combined Drug Unit

Q And how long have you been assigned to the, ah, Combined Drug Unit?

A I've been assigned to the drug unit since 2005, January of 2005

Q And, ah, since being assigned to that, have you done that on a full-time basis?

A I have

Q And prior to that what - - what were you involved in with the Sheriff - - what were you assigned to?

A I was assigned to the Criminal Investigation Division - - for four years

Q Alright

Now, were, ah, I would assume you were employed, ah, at the Sheriff's Department in the Combined Drug Unit in August of 2006?

A Yes, I was

Q Ah, were you, ah, involved in the case involving this defendant, Glenn Pernell?

A Yes, I was

Q And when did you become involved?

A Ah, that - - that morning of August 2nd

Q Alright

In what capacity?

A I was assisting Agent Neil Rouse and Agent Aurelius Cris and Agent Simon Brown

AGENT WALLACE - DIRECT EXAMINATION BY MR LAWSON

220

1 Q Alright

2 And, ah, did you, ah, continue, ah, your involvement in that
3 case all day?

4 A Yes, sir

5 Q And, um, what - - what did it involve?

6 A Ah, during the morning hours, we conducted a controlled drug
7 buy

8 Q And then after that - - -

9 MR LONG Again, Your Honor, I'm going to object
10 Without the necessary admonition, I'm going to object to this
11 line of testimony

12 THE COURT What specifically are your objections?

13 MR LONG He's talking about the earlier activities of
14 the day, what his involvement was in the controlled drug buy

15 THE COURT I, again, have told the jury that this
16 defendant stands - - does not stand trial for those earlier
17 activities I am permitting this testimony only as it may relate
18 to subsequent events

19 MR LONG Yes, sir Thank you, Your Honor

20 THE COURT All of which is for the jury to consider as
21 finders of the facts

22 You may proceed

23 Q Alright

24 And, ah, after the activity in the morning, what - - what did
25 you do in the afternoon, ah, later in the day?

AGENT WALLACE - DIRECT EXAMINATION BY MR LAWSON

221

1 A We - - we obtained an arrest warrant, and we had information
2 We knew that the defendant would be at the Imperial Motel at
3 approximately a certain time, and at that point, we were going to
4 attempt to arrest the defendant Glenn Pernell on that arrest
5 warrant

6 Q Um, and what - - what was involved in - to effect the - -
7 effectuate that arrest?

8 A We had officers from the Sheriff's Office and Mullins Police
9 Department staged at different areas around the motel and across
10 the road from the motel

11 I was across the road from the motel in my white Ford
12 Explorer, an unmarked police vehicle with blue lights I was with
13 Agent Simon Brown and Agent Aurelius Cribb

14 Q And what, ah, what did, ah, what did you do in relation, ah,
15 to the afternoon's activity?

16 A Ah, it was the instructions of Lt Neil Rouse when Mr - -
17 when the defendant come up, we believed he would be driving a white
18 Crown Vic

19 Ah, when he pulled up, he would give us the word, and we would
20 go and effect the arrest The duties for me and the other two
21 officers in the vehicle with me was to control the vehicle itself,
22 and the other officers had other duties such as, ah, effecting the
23 arrest on the defendant

24 Q Alright

25 So, ah, your, ah, primary responsibility initially was the

AGENT WALLACE - DIRECT EXAMINATION BY MR LAWSON

222

1 automobile?

2 A Yes, it was

3 Q Alright

4 What did you do in that - - in respect to that?

5 A When we got there, I pulled up I was to - - I pulled my
6 vehicle to the right of the defendant's vehicle that he was driving
7 at the time, and when I - - when I pulled up, other officers had
8 got there quicker than I had because of the fact that I was across
9 the road and had to cross the road to get to where they were

10 Um, at that time, there were some passengers in the car, and
11 we just secured the passengers, and the defendant was already
12 arrested at the time

13 Q Alright

14 When you arrived there, were the passengers in the vehicle?
15 Were they exiting the vehicle?

16 A I recall that they had exited the vehicle

17 Q And, um, what did you do after that?

18 A After that, they were detained At that point the defendant
19 was arrested Ah, I took the defendant and placed him in my
20 vehicle in the passenger side seat

21 Q Alright

22 And how was it, ah, that you, ah, became involved with the
23 defendant? How did you gain, ah, custody of the defendant?

24 A If I recall, I think it was Lt Rouse, ah, he was standing
25 over with Lt Rouse, and I just took him and placed him in my

AGENT WALLACE - DIRECT EXAMINATION BY MR LAWSON

223

1 vehicle, and the other two defendants, ah, the other two passengers
2 in the vehicle, they were standing outside, and I just - - since we
3 had an arrest warrant, I placed him in my vehicle to explain the
4 charges and also to see, ah, to talk with him

5 Q Alright

6 And did you, in fact, explain the charges?

7 A Yes I informed him he was under arrest, ah, for
8 distribution of cocaine base

9 Q Alright

10 And what else did you do?

11 A At that point since he was under arrest, I informed him I
12 needed to advise him of his Miranda rights which I read from a card
13 that's in my wallet

14 Q Okay

15 Is that - - do you have that card with you?

16 A Yes, sir

17 Q And what did you tell the defendant on that occasion?

18 A I advised him I said, "Before we ask you any questions you
19 must understand your rights

20 You have the right to remain silent Anything you say can and
21 will be used against you in a court of law

22 You have a right to talk to a lawyer for advice before we ask
23 any questions and to have him with you during questioning

24 If you cannot afford to hire a lawyer, one will be appointed
25 to represent you before any questions

AGENT WALLACE - DIRECT EXAMINATION BY MR LAWSON

224

1 If you wish, you can decide to answer without a lawyer
2 present You will have the right to stop answering at any time
3 You also have the right to stop answering at any time so you can
4 talk to a lawyer "

5 And the last sentence is, "Do you understand these rights?"

6 And he acknowledged he did understand his rights

7 Q Alright

8 So, after you completed advising him, then the question, "Do
9 you understand these rights?"

10 A Yes, sir, there is

11 Q And you asked him, the defendant, Mr Pernell, that?

12 A Yes

13 Q And what did he tell you?

14 A He said he understood his rights

15 Q Alright

16 Did he say anything else at that time?

17 A At that point, I asked him did he want to talk, and we started
18 a conversation

19 During that time I was informed I seen the officers They
20 had found some items in the car, ah, some drugs inside of the car
21 inside of a black bag

22 Ah, I asked him did he, ah, you know, did the drugs belong to
23 him?

24 He stated that the drugs belonged to him The other two guys
25 didn't have anything to do with it

AGENT WALLACE - DIRECT EXAMINATION BY MR LAWSON

225

1 I called Lt Rouse over to the vehicle I informed him of
2 what we had spoken about, and he said at that time all of them was
3 going to be charged due to the fact, ah, until we could get to the
4 office to take statements to, ah, see who needed to be charged and
5 who didn't need to be charged

6 Q Alright

7 And, ah, so, ah, initially, ah, the defendant told you that
8 they were his drugs?

9 A That the drugs belonged to him

10 Q And that the other two didn't have anything to do with it

11 A Didn't have anything to do with it or didn't need to be
12 charged

13 Q Alright

14 And did he, ah, shortly thereafter make another, ah,
15 statement?

16 A Yes, he did

17 Ah, then he stated that the drugs didn't belong to him Ah,
18 he didn't have anything to do with it, and, ah, that he wasn't
19 driving the car, and whoever was driving the car must have run
20 across the field

21 Q Alright

22 So, um, he then, ah, after changing the story to the drugs
23 didn't belong to him also, ah, denied even driving the automobile

24 A That is correct

25 Q Um, and did - - what did you do at that point?

AGENT WALLACE - DIRECT EXAMINATION BY MR LAWSON

226

1 A Just sat in the vehicle until they finished, and then he was
2 taken out of my vehicle and taken to the drug unit where he was
3 fingerprinted and processed, and I waited on the wrecker truck to
4 come get the car

5 Q Alright

6 And did you have anything else to do with - - with anything
7 after that?

8 A Other than just, maybe, I served a warrant on the defendant
9 the next day for distribution of cocaine base, and I may have
10 fingerprinted some of the defendants or photographed or done some
11 booking reports I don't recall

12 Q Alright

13 What about the charges of trafficking? Did you serve those
14 warrants?

15 A Yeah On the trafficking charges, I signed affidavits and
16 presented them to the Magistrate, ah, and warrants were issued
17 also Yes, sir

18 Q When were those warrants issued? Do you recall?

19 A August - -

20 Q August - - -

21 A - - August 3rd, and all the warrants were served at the same
22 time

23 Q Alright

24 And where were they served?

25 A It was either at the Sheriff's - - at the County Jail or at

CHARGE OF THE COURT

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1 the City of Mullins I don't recall the exact location where we
2 served them at It would have been one or the other

3 Q Now, um, are - - are you familiar with the area where - -
4 where the Imperial Motel is?

5 A Yes, sir

6 Q Um, how often do you go by that motel?

7 A Probably every day?

8 Q And is it on a main thoroughfare in the Mullins area?

9 A Yes, sir It's on 41 North out of Mullins

10 Q Alright

11 And is there a, ah, school in close proximity?

12 A Yes, sir North - - North Mullins Primary is located south
13 of the motel

14 Q Okay

15 And is it within a half-mile of the motel?

16 A Yes, sir It's well - - actually, standing where the signs of
17 the Imperial Motel is, you can look and see the grass It's just
18 past the cemetery You can see the school

19 Q Alright

20 Answer any questions - - -

21 CHARGE OF THE COURT

22 THE COURT One moment Let me say this to this jury

23 There has been admitted into the record in this case alleged
24 oral statements alleged to have been made by this defendant

25 Before you may consider this oral statement as evidence for

CHARGE OF THE COURT

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1 any purpose, you must determine four questions

2 First, did the defendant make that statement?

3 Secondly, was the defendant warned previously to making the
4 statement of his constitutional rights?

5 Third, in making the statement, did the defendant knowingly
6 and intelligently waive his constitutional rights?

7 And, lastly, was the alleged statement given voluntarily?

8 The fact that this Court has admitted this statement into
9 evidence should not be considered by you as any evidence whatsoever
10 that the defendant made such a statement or that he was required -
11 or that the constitutional safeguards were required, in fact,
12 waived by the defendant or that the statement was voluntarily made
13 because these issues are for you, the jury, to determine

14 The State must prove beyond a reasonable doubt each of these
15 four requirements that I have stated to you before you may consider
16 the statement as any evidence for any purpose whatsoever

17 Now, as to the first requirement Did the defendant make the
18 statement?

19 If you conclude that the defendant did not make the statement,
20 you must completely and totally disregard the alleged statement

21 If you find, however, that the defendant did make the
22 statement, you must next consider the next requirement

23 Was the defendant warned of his constitutional rights?

24 I charge you that when an individual is taken into custody or
25 otherwise deprived of his freedom of action in any significant way

CHARGE OF THE COURT

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1 by police or law enforcement officer, he first must be warned of
2 his constitutional rights prior to and before any custodial
3 interrogation or custodial questioning

4 These rights are

5 1 That he had the right to remain silent,

6 2 That any statement that he does make can and will be used
7 against him in a court of law,

8 3 That he has the right to select the lawyer of his choice but
9 if he does not have the money or resources to employ a lawyer,
10 this Court will appoint and provide a lawyer to him without
11 any cost to him, and

12 Lastly, that he has the right to consult a lawyer before
13 answering any questions or making any statements if he so desires,

14 Lastly, that he has the right to have the lawyer present with
15 him at all times during any interrogation

16 If you find that the defendant did make these alleged
17 statements and if you conclude that his constitutional warnings
18 were, in fact, given to the defendant and that the defendant was
19 afforded an opportunity to exercise these constitutional rights,
20 you must next consider the third requirement

21 Did the defendant knowingly and intelligently waive his
22 constitutional rights?

23 If you find that the defendant after being given his
24 constitutional rights knowingly and intelligently waived such
25 rights and agreed to answer any questions or to make any statement,

CHARGE OF THE COURT

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1 you must next consider the fourth requirement

2 Was the statement given voluntarily?

3 A statement is not voluntary and may not be used against a
4 defendant unless it is the product of an essential free and
5 unconstrained choice by the maker

6 If the statement is voluntary and if the defendant has willed
7 to make a statement, you may - - it may be used against him if you
8 choose

9 The true test to be applied is whether a statement is freely,
10 voluntarily and understandingly made without compulsion or
11 inducement

12 In determining whether or not the alleged statement of the
13 defendant was voluntary, you may consider all of the facts and
14 circumstances surrounding the taking or making of the statement
15 You may consider all of the evidence in the case in reaching a
16 conclusion as to the voluntariness

17 With regards to the alleged statement of the defendant, the
18 State must prove by evidence each and every requirement about which
19 I have instructed you beyond a reasonable doubt before you may
20 consider the alleged statement as evidence in this case

21 Absence any one of the requirements about which I have
22 instructed you, the alleged statement must be disregarded
23 completely, and in that event, you would accord no evidentiary
24 weight whatsoever to it or to any part of it

25 On the other hand, ladies and gentlemen, if you find beyond a

AGENT WALLACE - CROSS EXAMINATION BY MR LONG

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1 reasonable doubt that this defendant made the statement, that this
2 defendant was given the required constitutional warnings before
3 interrogation and that this defendant knowingly and intelligently
4 waived his constitutional rights and thereafter gave a voluntary
5 statement, this alleged statement, if any, may be considered by you
6 together with all the other evidence in the case, and you may give
7 it such weight and such value and of such effect to which you
8 conclude it is entitled

9 You may proceed with your cross examination

10 MR LONG Thank you, Your Honor

11 CROSS EXAMINATION BY MR LONG

12 Q It's Deputy Wallace?

13 A Agent Wallace

14 Q Agent Wallace

15 Agent Wallace, when you arrived on the scene, Glenn was
16 already in custody Is that correct?

17 A Yes, he was

18 Q And I believe - - which officer had him in custody?

19 A I think he was then with Lt Rouse

20 Q Alright He was with Rouse already?

21 A If I recall correctly

22 Q Alright

23 A There were several officers standing outside

24 Q Did other officers search Glenn or was it your responsibility
25 to search Glenn at that location?

AGENT WALLACE - CROSS EXAMINATION BY MR LONG

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1 A I did not search Glenn

2 Q Alright

3 The other officers who may or may not have searched him, did
4 they turn over to you anything they found during the search?

5 A No I didn't take control of any evidence - -

6 Q Alright

7 A - - at the scene

8 Q Now, you said initially your responsibility was to control the
9 vehicle Is that correct?

10 A That's correct

11 Q Alright

12 But, then, when you arrived over there, then, they said,
13 "Here's Glenn Go talk to him "

14 A Ah, once the vehicle was secured and anybody in the vehicle
15 was secured, ah, I took him over to my vehicle

16 Q Alright

17 And when you took him over to the vehicle, you were placing
18 him under arrest for an existing warrant for distribution Is that
19 correct?

20 A I - - I informed him that he was under arrest

21 Q For that

22 A For that warrant, yes, sir

23 Q Alright

24 Now, how long have you been a sworn law enforcement officer?

25 A Eight years

AGENT WALLACE - CROSS EXAMINATION BY MR LONG

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1 Q Alright

2 And do you have to do continued training periodically
3 throughout your job?

4 A Yes, sir

5 Q Alright

6 And you have to, of course, graduate the Police Academy before
7 being sworn as a law enforcement officer Is that correct?

8 A That is correct

9 Q And other than making an arrest, which is an awesome
10 responsibility, I don't mean to demean that in any way Isn't the
11 second most important part of your job is to collect and preserve
12 evidence?

13 A That's a - - that is an important part of the job

14 Q Alright

15 A There are several important factors in the job but that is one
16 of them

17 Q That is one of them Alright

18 Now, what they teach you is to try to document as much as
19 possible Is that correct?

20 A Yes, sir

21 Q And you try to corroborate as much as possible which has
22 secondary or back-up means of proving something Is that correct?

23 A That is correct

24 Q And don't they issue to you Doesn't the Marion County
25 Sheriff's Office issue to you Advisement of Miranda Rights

AGENT WALLACE - CROSS EXAMINATION BY MR LONG

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1 Statements that are printed on an eleven by and eight and a half
2 sheet of paper that has all that information on it that you read to
3 the jury?

4 A We do have that

5 Q Alright

6 And the reason they do that on a sheet of paper is because
7 they have the rights It has a place for a defendant, whoever it
8 may be, to check off that he's read and understands and a place for
9 him to sign saying, "I've got these rights I understand them,"
10 and either an officer or other witness will witness his signature
11 Is that correct?

12 A That is how the form looks Yes, it is

13 Q Alright

14 And the reason that's done is that is the best way to preserve
15 and document the fact that someone was advised of their rights

16 A We do do that Yes

17 Q Alright

18 Was that done in this case?

19 A Not at this particular - - not at the scene

20 That - - that type of form which you are referring to, um, is
21 normally done at the office during a formal statement which you
22 would take a handwritten or recorded statement which is usually
23 preferred to be done at the office on a more controlled
24 environment

25 Q Alright

AGENT WALLACE - CROSS EXAMINATION BY MR LONG

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1 Your patrol vehicle - - did you take Glenn to your patrol
2 vehicle that day?

3 A Yes

4 Q To talk to him?

5 A Yes, I did

6 Q Alright

7 Is your patrol vehicle equipped with a camera or audio?

8 A No, sir

9 Q Alright

10 Are you furnished with a tape recorder by the Marion County
11 Sheriff's Office?

12 A We do have them at the office Yes

13 Q Alright

14 But you don't carry them in your car?

15 A No, sir

16 Q Alright

17 So, there was no audio recording of this statement Is that
18 correct?

19 A That is correct There was no audio recording

20 Q But you had a tape recorder and if you had had it with you,
21 you could have used it for the statement Is that correct?

22 A If I had had one, I could have

23 Q And, matter of fact, isn't that one, also, another way of
24 documenting the warnings - - the Miranda warnings is when you're
25 talking to somebody orally, don't you normally have an audio

AGENT WALLACE - CROSS EXAMINATION BY MR LONG

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1 recording to say, "This is Agent Wallace The time is The date
2 is I am speaking with " The person's name "I am hereby
3 advising you," and go through the warning on the tape?

4 A Yes, sir

5 And that - - as I stated earlier, that's a formal statement
6 which we would prefer to do at the, ah, at the office where we, ah,
7 talk with the defendant or whoever at the office, and those forms
8 are available

9 Q The tape recorders are very portable, aren't they? Small
10 micro-cassette recorders You can set the recorder in my hand

11 A Yes, sir

12 Q And you didn't have one or didn't make a tape recording Is
13 that correct?

14 A I did not I did not make a tape recording

15 Q Now, you and he - - was he in the back of your vehicle and you
16 were in the front?

17 A No He was beside me

18 Q He was in the passenger seat of your patrol vehicle?

19 A Yes, he was

20 Q And was your vehicle pointed towards the front of the office
21 or pointed so that both of you could look out the front of your car
22 and see his car?

23 How was your car oriented?

24 A Ah, my vehicle was pointed towards the motel You could look
25 at the office, and if you looked out my driver's side window, you

AGENT WALLACE - CROSS EXAMINATION BY MR LONG

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1 could see his vehicle

2 Q Alright

3 So, if you're sitting in the driver's seat and he's sitting in
4 the passenger seat, he's looking at you talking to you, he would
5 see beyond you the office of the motel Is that correct?

6 A He could see the office and his vehicle

7 Q And his vehicle Alright

8 And so he could view everything that was going on while he was
9 in your vehicle?

10 A Yes, sir

11 Q Alright

12 And you didn't ask him, I believe you testified, who the drugs
13 belonged to or anything of that nature Is that correct?

14 A I asked him if the drugs belonged to him

15 Q Okay

16 And he said, "Yeah "

17 He said You said he said, "Yes, they belong to me Why are
18 them other fellows being arrested?"

19 A If I recall, it was something, "Yes, the drugs belong to me
20 the other two had nothing to do with it "

21 Q Is it possible, Officer, that he was talking to you or you
22 were advising him of rights or y'all were having a discussion of
23 whatever, and he sees past you, and he sees Graves and Platt being
24 handcuffed and locked up? Could he see that?

25 A Yes, sir It is possible he could have seen that

AGENT WALLACE - CROSS EXAMINATION BY MR LONG

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1 Q And isn't that possible that that stimulated him to say, "What
2 are those two fellows being locked up for?"

3 A I - - I can't say what he was thinking I don't know

4 Q Alright

5 So, isn't it likely that could have happened?

6 A Possible

7 Q And is it possible you could have misinterpreted that
8 statement as being, "What are they being locked up for? It's
9 mine "

10 A Excuse me, now?

11 Q Is it possible you could have misinterpreted his question and
12 statement being that he admitted they were his but rather he was
13 just asking, "Why are they being locked up?"

14 A His admitting that the drugs was his?

15 Q That's correct

16 A He said the drugs was his

17 Q Alright

18 And you're sure of that?

19 A Yes, sir

20 And the reason because I called Agent Rouse over to the
21 vehicle to inform him of that

22 Q Did he state it again in Agent - - in Lt Rouse's presence?

23 A Not to my knowledge, no

24 Q Okay

25 So, the only Lt Rouse knew is what you told him he said Is

AGENT WALLACE - CROSS EXAMINATION BY MR LONG

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1 that right?

2 A That is correct

3 Q Okay

4 And when Detective, I mean, Lt Rouse got there, what did
5 Glenn tell Lt Rouse?

6 A I don't know if he told him anything

7 Q How long did you remain at the scene with Glenn?

8 A I don't - - I don't recall how long it was I couldn't tell
9 you a time

10 Q How much longer after you said that you had this conversation
11 with him and advised him of his rights, how long after that do you
12 think it was before you took him on to jail?

13 A I didn't carry him to jail Another officer did but I - - I
14 don't know how long we were at the scene

15 I was at the scene some period of time because I remember It
16 was taking a long time for the wrecker truck to come get the car,
17 ah, specifically, because we were in Mullins, and the wrecker
18 service had to come from Marion which is in a different zone from
19 that towing - - for towing the vehicle

20 Q And you're sure you didn't transport him back to the police
21 department?

22 A I don't recall transporting him because I was waiting on the
23 wrecker truck

24 Q Did you have a formal interview with him back at the police
25 department with a signed Miranda warning and a tape recorded

AGENT WALLACE-REDIRECT EXAMINATION BY MR LAWSON/STIPULATION 240
1 conversation or statement?

2 A No, sir

3 Q Thank you, sir

4 No further questions

5 MR LAWSON Just one thing, Your Honor

6 REDIRECT EXAMINATION BY MR LAWSON

7 Q And, ah, why did you not do that when you got back at the, ah
8 - - -

9 A Well, when we were back at the office, he was adamant that the
10 - - he was saying he wasn't even driving the car or the drugs
11 wasn't his It was just insignificant

12 Q Thank you

13 MR LAWSON That's all, Your Honor

14 THE COURT Alright, sir

15 You may come down

16 (The witness leaves the witness stand)

17 THE COURT Alright I'll let you go to your jury room
18 for just a minute I'll be calling you back

19 (The jury retires to the jury room at 12 55 p m)

20 STIPULATION

21 THE COURT Close the door, please

22 Counsel for the defendant, the Solicitor has asked does he
23 need to put another witness with regard to the fact that this
24 occurred in Marion County There's an abundance of testimony it's
25 Marion and Mullins

STIPULATION

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1 What's your position on that? He can call another witness

2 MR LONG I don't think so, Your Honor I think we can
3 stipulate that the Imperial Motel exists within the geographical
4 limits within the limits of the County of Marion

5 THE COURT Okay That will save that

6 Now, having said that, would you have any other witnesses?

7 MR LAWSON No, Your Honor

8 THE COURT Okay

9 The State will rest

10 Let's hear two things here

11 Do you have any motions at this time?

12 MR LONG At the Court - -

13 THE COURT At the end of the State's case

14 MR LONG - - at the Court's convenience, Your Honor, I
15 will have some motions for the record to make I don't know if
16 you want me to make those now or when we come back

17 THE COURT We can do that

18 Let me ask you this

19 Let's get on the record

20 Do you have any testimony to be presented on behalf of the
21 defendant?

22 MR LONG No, Your Honor

23 We're not planning on presenting any evidence - - -

24 THE COURT The defendant has elected not to testify?

25 MR LONG That's correct, Your Honor

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 242

1 THE COURT Have him stand, please

2 (The defendant stands before the Court)

3 CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT

4 THE COURT Alright, the defendant, the State of South
5 Carolina has now - - I don't think you rested on the record, have
6 you?

7 Solicitor, when you call - - you have not rested on the
8 record When we call them back out, you may rest on the record,
9 and at that time you can tell us you have no evidence to present

10 MR LONG Yes, Your Honor

11 THE COURT Alright

12 Now, Mr Defendant, we are at that stage where when we re+urn
13 from lunch you would have the absolute right to put up any
14 witnesses on your behalf that you care to

15 You understand that? Sir?

16 MR PERNELL Yes, sir

17 THE COURT You got to talk louder, now, so she can hear
18 you

19 MR PERNELL Yes, sir

20 THE COURT Yes and no by the head doesn't get it done

21 Now, in addition to that, do you understand that you have the
22 absolute right to get on this stand and testify?

23 MR PERNELL Yes, sir

24 THE COURT Equally, you are presumed innocent You don't
25 have to prove a thing I've told this jury that, and I'll tell

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 243

1 them again

2 If you elect to remain silent, that is your absolute
3 constitutional right

4 Do you understand that?

5 MR PERNELL Yes, sir

6 THE COURT Is it your decision to testify or not to
7 testify?

8 MR PERNELL Not to testify

9 THE COURT Not to testify

10 Now, obviously, with regard to such an important question, you
11 would consult with your attorney but the ultimate decision rests
12 with you

13 You understand?

14 MR PERNELL Yes, sir

15 THE COURT I have had in the past people tell me later,
16 ah, "Well, I didn't testify because my attorney told me not to "

17 But I'm telling you The decision is yours

18 Do you understand that?

19 MR PERNELL Yes, sir

20 THE COURT You are saying to me that it is your decision
21 not to testify knowing fully that you have that right

22 You understand?

23 MR PERNELL Yes, sir

24 THE COURT Now, in the event you elect not to testify I
25 will charge the jury that the fact that you did not testify must

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 244

1 not be used against you in any way It cannot raise any adverse
2 inference against you The fact that you did not testify must not
3 even be mentioned in the jury room during the deliberations

4 You understand that?

5 MR PERNELL Yes, sir

6 THE COURT Now, you are saying to me upon this record that
7 you know you have a right to testify?

8 MR PERNELL Yes, sir

9 THE COURT You know you don't have - - you don't have to
10 testify?

11 MR PERNELL Yes, sir

12 THE COURT You are saying to me that it is ultimately your
13 decision not to testify?

14 MR PERNELL Yes, sir

15 THE COURT Any other inquiry would you have me make on
16 this question, Mr Long?

17 MR LONG No, Your Honor That covers it

18 THE COURT Alright

19 Let's do this

20 When I bring the jury out, I would ask then that the State if
21 he has rested, say so, and then I'll move to you, and you can say
22 at that time what your position is

23 MR LONG Yes, sir

24 THE COURT I then will excuse the jury for lunch, and
25 we'll hear any motions, and then we'll proceed for final arguments

THE STATE RESTS/THE DEFENDANT RESTS

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1 after lunch

2 Is that satisfactory?

3 MR LONG Yes, sir

4 THE COURT Bring the jury in

5 (The jury returns to the courtroom at 1 00 p m)

6 THE COURT Alright, Solicitor

7 THE STATE RESTS

8 MR LAWSON The State rests, Your Honor

9 THE COURT Alright The State has concluded its
10 presentation of evidence

11 Alright, sir

12 What say the defendant?

13 THE DEFENDANT RESTS

14 MR LONG Your Honor, the defendant would likewise rest

15 THE COURT Okay

16 That's fine

17 Mr Foreman, ladies and gentlemen, the State has now concluded
18 it's evidence by testimony, and the defendant as is his
19 constitutional right has elected not to call any witnesses, and he
20 has elected not to testify

21 Now, in that connection I charge you that this defendant and
22 all defendants are presumed innocent They don't have to prove a
23 thing The State has the burden of proving him guilty beyond a
24 reasonable doubt

25 Now, I charge you that the fact that this defendant did not

THE STATE RESTS/THE DEFENDANT RESTS

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1 testify does not and cannot raise any inference against him
2 whatsoever The fact that he did not testify must not even enter
3 into your deliberations in the jury room

4 Each of us has a constitutional right not to testify and put
5 the State to the burden of proof So, this - - the fact that he
6 offers no evidence and does not testify raises no inference against
7 him The State must prove these charges or some of them to your
8 satisfaction beyond a reasonable doubt

9 So, the testimony is concluded When you return, I'll ask
10 that you return, ah, just return - - if you can, be back at 2 00
11 It's 1 00 now

12 If you can be back, this is - - this is the last case for your
13 consideration this week, and so when you return at 2 00, we'll have
14 final charges I'll give you the law, and we'll give you this case
15 for your deliberation sometime in the middle of the afternoon
16 Hopefully, we can conclude it

17 You are now released for lunch Do not discuss the case among
18 yourselves Let no one discuss it with you Make no independent
19 inquiry, and please be back if at all possible promptly at 2 00 so
20 we can get started

21 You are now excused Thank you

22 Everybody else remain seated

23 (The jury departs the courtroom at 1 03 p m for lunch to
24 return at 2 00 p m)

25 THE COURT Alright, Mr Long, I'll hear any motions that

MOTIONS AND RULING OF THE COURT

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1 you might have at this time

MOTIONS AND RULING OF THE COURT

3 MR LONG Thank you, Your Honor

4 For the record, I make a motion for a directed verdict I
5 won't bother or bore Your Honor with a recitation of the facts,
6 testimony and evidence that you've heard but, none the less, Your
7 Honor, the - - -

8 THE COURT Wait a minute

9 Somebody still back there

10 BAILIFF Yes, sir

11 THE COURT I thought he came out and said they were all
12 gone

13 MR LONG That's quite alright

14 THE COURT Mr Bailiff, in the future, never bring the
15 jury out until all of them are ready Never, ever

16 It happens all the time and as many times as I tell them but
17 I understand

18 (Jury in jury room leaves the courtroom)

19 THE COURT Anybody else back there?

20 BAILIFF No, sir, that's all

21 THE COURT Alright, Mr Long

22 Let me hear from you

23 MR LONG Thank you, Your Honor

24 The Statute and case law requires actual or constructive
25 possession Actual possession I won't bother you with a recitation

MOTIONS AND RULING OF THE COURT

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1 of Constructive possession I won't define for you but the State
2 has failed to prove exclusive dominion and control on behalf of
3 this defendant to the exclusion of all others

4 There was a period of time when the other two co-defendants
5 were in the vehicle He was not in the vehicle Police arrived
6 Depending on the varying testimony it could be anywhere from ten,
7 fifteen seconds, three seconds, five seconds, just a couple of
8 minutes that they were in the car before they left the car

9 Your Honor, this - - photographs in evidence that are in which
10 show that it was obviously in plain view in the front seat of the
11 vehicle, that, Your Honor, it was accessible by either occupant of
12 the vehicle

13 It was not a bench seat The backseat occupant could reach in
14 that front seat as could the front seat passenger, and we feel the
15 State has proved exclusive dominion and control

16 THE COURT Well, you keep using the word "exclusive"
17 There's nothing in the law that says it's got to be exclusive to
18 start with Two or three people can - - can possess drugs, you
19 know

20 Let me say this to you and cut this short, and I respect your
21 position

22 First, there is evidence that there were these drugs, if
23 believed, in a black bag earlier four hours earlier

24 Secondly, there's evidence that he was sole possession of that
25 white Crown Victoria at that time

MOTIONS AND RULING OF THE COURT

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1 Thirdly, there was evidence that he was driving the car, and
2 it was sitting right by him

3 And, lastly, there's evidence necessary for me to send it to
4 the jury standing alone on the fact that allegedly he said, "They
5 were my drugs "

6 If the jury believe that, that's all they need

7 So, they are - - standing alone, there is sufficient evidence
8 for the jury to convict him if they believe it

9 Equally important, there is giving this totality of the
10 circumstances, there is sufficient evidence for the jury to find
11 beyond a reasonable doubt of his guilt if believed

12 Okay?

13 MR LONG Thank you, Your Honor

14 THE COURT Your motions are respectfully denied

15 MR LONG Lastly, we would move for a new trial or for a
16 mistrial I understand your rulings I am not overly arguing your
17 rulings but we feel that the facts and circumstances and the
18 testimony concerning the distribution charge is highly prejudicial
19 in these cases that we are here today trying the jury

20 I've tried to object as many times as any of that testimony
21 coming forward I understand that you will give the jury the
22 admonition and you have given them that admonition I thank you
23 for it but I do believe that that testimony should be excluded,
24 should have been excluded It's highly prejudicial and ask for a
25 mistrial or a new trial

MOTIONS AND RULING OF THE COURT

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1 THE COURT Well, that testimony was solely admissible for
2 whatever benefit or issues it might have with reference to what
3 occurred four or five hours later

4 And those issues would be that four hours earlier this
5 defendant was driving a white Crown Victoria which showed up at the
6 Crown (sic) Motel later

7 And there is evidence that even at that time that he had
8 solely in his possession the same black bag that was later found in
9 the car by his side even though there were two others there

10 The significance of that testimony is, if the jury believes
11 it, is that there was nobody with him four hours earlier when he
12 had it and that he was driving the Crown Victoria then and later

13 And there is other testimony that could give rise to certain
14 inferences as to what occurred later by the testimony of the
15 witness who says, "He asked me to meet him there later, and I did "

16 So, I respectfully deny that motion I consider the fact that
17 the incidents were so similar in fact, close in time, related to
18 the subsequent issues at the Crown (sic) Motel that they were
19 admissible for the jury's consideration

20 MR LONG Thank you, Your Honor

21 THE COURT Again, your motion is noted and respectfully
22 denied

23 MR LONG Thank you, Your Honor

24 There's no further motions at this time

25 THE COURT Alright

MOTIONS AND RULING OF THE COURT

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1 We are in recess until 2 00

2 Now, gentlemen, if you have any special charges I don't see
3 any here

4 I'm going to charge failure to testify I'm going to charge
5 the law with regards to trafficking I'll charge the law with
6 intent to possess within a half-mile of a school I will charge
7 for your benefit mere presence

8 And I'm going to charge circumstantial evidence in Victor v
9 Nebraska

10 Anything else you would like to have me charge?

11 MR LONG No, Your Honor

12 I don't think there's any need for conspiracy or anything of
13 that nature

14 THE COURT Now, it's my custom unless somebody disagrees
15 I'm going to charge the jury even prior to arguments

16 As I've told you before and most of you have been in my
17 courtroom, jurors tell me, "Judge, I wish I'd have had the
18 opportunity to hear the law before final arguments "

19 You agree with that, Mr Long?

20 MR LONG Yes, sir, I do

21 THE COURT Okay

22 Now, given the fact that the defendant did not issue any that,
23 you have the last argument

24 You agree with that, do you not?

25 MR LAWSON Yes, Your Honor

CHARGE OF THE COURT

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1 THE COURT Alright

2 See you back at 2 00

3 MR LAWSON Thank you, Your Honor

4 MR LONG Thank you, Your Honor

5 (The Court recesses for lunch and thereafter resumes the trial
6 of this case with all parties present in the courtroom)

7 THE COURT Thank you Be seated

8 Alright, sir

9 Are we ready to proceed with the conclusion of this trial?

10 MR LAWSON Yes, Your Honor

11 MR LONG Yes, Your Honor

12 THE COURT Okay Anything further before we start?

13 MR LONG No, Your Honor Nothing further

14 THE COURT Alright

15 By consent of the parties, I'm going ahead and charge the jury
16 even before your arguments

17 (The jury returns to the courtroom at 2 08 p m)

18 CHARGE OF THE COURT

19 THE COURT Good afternoon, Madame Foreman, ladies and
20 gentlemen You have now heard all of the testimony in the trial
21 of this case, and we are now at the stage for final arguments and
22 instructions in the law which pertain to the various issues that
23 they have been, ah, arise in the trial of this case

24 Ordinarily, we charge the jury after final arguments but
25 jurors in the past few years have said to me, "Judge, I wish you'd

CHARGE OF THE COURT

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1 have told us what the law was even before I heard final arguments
2 I believe I could have followed their positions better "

3 And that makes sense to me

4 And so it is, I'm going to charge you the law with regards to
5 this case Then we'll have final arguments, and I'll be back with
6 you with some concluding remarks

7 Now, as you are all aware, the State of South Carolina charges
8 this defendant upon four separate indictments

9 The first indictment which is Count 2, he is charged with
10 trafficking in cocaine with a quantity of more than 100 grams but
11 less than 200 grams

12 And in Count 3, he is charged with possession of that amount
13 of cocaine within the proximity of a school or playground which is
14 a separate offense

15 And then in Count 4, he's charged with trafficking in cocaine
16 base which is crack cocaine

17 And in that indictment, he's charged with actual or
18 construction - - actual or constructive possession of more than 28
19 grams but less than a 100 grams

20 Now, this indictment which will be with you in the jury room
21 also contains an allegation of a distribution of a cocaine which is
22 said to have occurred earlier in the day I charge you now as I
23 did then that he is not being tried as to Count 1 for distribution
24 The evidence, if any, as to that was simply as to whether or not
25 any issues in that incident bore relevance for your consideration

CHARGE OF THE COURT

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1 in the later alleged incident that is said to have occurred at the
2 motel

3 So, in your deliberations, you will be writing four verdicts,
4 and, Madame Foreman, I'll prepare a verdict form for you They
5 will relate to Count 2, Count 3, Count 4, and your verdict as to
6 each one will either be not guilty or guilty

7 Now, in considering these various counts, you will consider
8 the evidence as to each count separately

9 As an example, you may find him not guilty of all four counts
10 You may find him guilty of all four counts You may find him
11 guilty of some and not guilty of the others

12 I make no suggestion to you as to what your verdict will be
13 but I say to you Please consider the evidence as to each count
14 separately and thereafter write your verdict accordingly in
15 accordance with your unanimous findings of either not guilty or
16 guilty

17 Now, this indictment has been read to you or explained to you,
18 and you'll have it with you in the jury room

19 Now, to this indictment which contains four separate counts,
20 this defendant has pled not guilty which places upon the State the
21 burden of proving the defendant guilty if they can beyond a
22 reasonable doubt

23 A person charged with committing a criminal offense in South
24 Carolina is never, ever required to prove himself innocent I
25 charge you, therefore, ladies and gentlemen, that it is a vital,

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1 important rule of law of evidence that a defendant in a criminal
2 case, no matter how serious or great may be the offense with which
3 he is charged, must always be presumed innocent until his guilt has
4 been proven beyond a reasonable doubt

5 This presumption of innocence remains with this defendant at
6 all times from the moment of his arraignment, throughout the trial
7 and until the testimony has been presented to your satisfaction
8 beyond a reasonable doubt

9 Now, as I continue to emphasize to you, the State has the
10 burden of proving the defendant guilty beyond a reasonable doubt
11 Some of you may have served as jurors in civil cases where you were
12 told that it is only necessary to prove that a fact is more likely
13 true than not

14 In criminal cases, the government's proof must be more
15 powerful than that It must be beyond a reasonable doubt

16 Ladies and gentlemen, proof beyond a reasonable doubt is proof
17 that leaves you firmly convinced of the defendant's guilt

18 There are very few things in this world that we know with
19 absolute certainty, and in criminal cases the law does not require
20 proof that overcomes every possible doubt

21 If based on your consideration of the evidence you are firmly
22 convinced the defendant is guilty of the crime charged, you must
23 find him guilty

24 If, on the other hand, you think there is a real possibility
25 that he is not guilty, you must give him the benefit of that doubt

CHARGE OF THE COURT

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1 and thereafter find him not guilty

2 Now, ladies and gentlemen, as I have emphasized to you and do
3 so again, under the Constitution and laws of this state, you are
4 the sole and only finders of the facts in this case There is
5 nobody else including this judge in this wide world that can tell
6 you good folks what the facts are

7 And so I charge you If any word, ruling, mannerism of mine
8 might tend to have indicated to any of you how I feel about any
9 factual situation, please disregard that I am not entitled to a
10 factual opinion, and I have none

11 You twelve, you alone are the sole finders of the facts in
12 this case

13 I tell you, too, that you are the sole judges of the
14 believability or the credibility of the witnesses who have
15 testified in the trial of this case I touched on this issue
16 briefly at the beginning of this case, and I told you then that in
17 everyday life in passing upon anybody's credibility who tells us
18 things, we use certain tools You may think if some that you use
19 in your everyday pursuits I would use, maybe, some differently

20 But some of the things that we use in judging credibility and
21 believability is the appearance and manner of a witness who
22 testifies sometimes referred to as the demeanor of a witness

23 Was a witness forthright or hesitate? Was a witness'
24 testimony or consistent or did it contain discrepancies? What was
25 the ability of a witness to know about the facts about which he may

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1 have testified?

2 Did a particular witness have a cause or reason to be biased
3 or prejudiced with regard to the testimony he or she gave
4 Otherwise, did a witness have some reason to want you to believe
5 one thing which may or may not be true

6 You may consider, if you choose Was a witness' testimony
7 corroborated by other testimony or made - - or was it made weaker?

8 Ladies and gentlemen, as jurors you have a right to believe a
9 small portion of a witness' testimony and to disregard the larger
10 or vice versa

11 As I have indicated to you, you may believe all of a witness'
12 testimony or none You may, if you choose, believe the testimony
13 of a single witness against that of many or the other way around

14 Obviously, you do not determine the truth of the matter or
15 falsity by counting up the number of witnesses who may have
16 testified for one side or the other

17 Ladies and gentlemen, I again emphasize to you Throughout
18 this entire process you have but one single objective, just one
19 That is to seek the truth, to seek and find the truth, and
20 thereafter write your verdict accordingly

21 Now, as - - by the same Constitution that makes unto you the
22 finders of the facts, that august document makes unto me the
23 instructor of the law, and under your oath as jurors, now, you are
24 absolutely required to take the law as I charge it to you even
25 though you or I for that matter might disagree with what the law is

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1 or ought to be, please accept the law as I charge it to you
2 remembering that you take the facts as you find them to be and
3 apply those facts to the law as I charge it to you and thereafter
4 reach a verdict that speaks the truth

5 Verdict comes from the Latin word "verdicto" meaning again to
6 speak the truth

7 Now, Madame Foreman, and ladies and gentlemen, in the trial of
8 the case there are two types of evidence which are generally
9 presented during a trial, direct evidence and circumstantial
10 evidence

11 Direct evidence is the testimony of a person who asserts or
12 claims to have actual knowledge of a fact such as an eyewitness

13 Circumstantial evidence is proof of a chain of facts and
14 circumstances indicating the existence of a fact

15 The law makes absolutely no distinction between the weight or
16 value to be given to either direct or circumstantial evidence nor
17 is a greater degree of certainty required of circumstantial
18 evidence than of direct evidence

19 You must weigh all of the evidence in the case After
20 weighing all of the evidence, if you are not convinced of guilt
21 beyond a reasonable doubt, then you must find him not guilty

22 Now, during the trial of this case, one witness from SLED was
23 qualified by me as an expert Witnesses who by training,
24 education or experience are considered as experts in a particular
25 field, and those expert witnesses may give such opinions in that

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1 field based upon the facts or evidence of a matter

2 A witness' conclusions and opinion constitutes evidence to be
3 considered by you in connection with all the other evidence in the
4 case You, the jury, may give it such weight as you in your
5 experience and discretion deem appropriate

6 Now, I continue to emphasize to you that the defendant in this
7 case has not testified, and I emphasize to you that this is his
8 constitutional right and is not a circumstance that you can take
9 into consideration or even allow it to enter into your discussions
10 in the jury room

11 Under the Constitution of South Carolina and under the United
12 States Constitution, it is his constitutional right not to testify

13 The burden of proof is upon the State of South Carolina to
14 establish his guilt by competent testimony beyond a reasonable
15 doubt

16 Now, Madame Foreman, I charge you again The fact that this
17 defendant did not take the witness stand and testify in his own
18 behalf does not create any inference against him, and you, the
19 jury, must not permit that fact to weigh in the slightest degree
20 against this defendant nor must that fact even enter into your
21 discussions in the jury room

22 Now, while the Court generally determines the admissibility of
23 evidence, I instruct that in regard to any alleged statements, oral
24 statements made by this defendant that you, the members of the
25 jury, make the ultimate determination of whether or not the

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1 defendant made the statement and if he did make the statement,
2 whether the statement was by the defendant voluntarily and of his
3 own free will and accord, and, finally, just what weight, if any,
4 should be given to any alleged oral statement

5 I charge you that you must determine, must determine if the
6 statement was a product of essentially free and unconstrained
7 choice by its maker

8 If you determine it was, and the burden is upon the State to
9 prove this fact as all other facts beyond a reasonable doubt, then
10 you may give this statement such further consideration as you deem
11 proper

12 If you determine the alleged statement was not the free and
13 voluntary willed expression of the defendant, then you should not
14 consider the statement at all

15 In determining whether a defendant's will was overcome in
16 obtaining a statement, you should consider both the characteristics
17 of the accused - - the details of the interrogation which is
18 referred to in the law as the totality of the circumstances

19 Some of the factors that you must consider are

20 The age of the accused,

21 His education or lack thereof,

22 His mental ability or capacity,

23 His IQ and intelligence

24 You are entitled to consider all of these things, and you are
25 entitled to consider, certainly, and should, the advice or lack

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1 thereof to the accused of his constitutional rights, including but
2 not limited to the procedural safeguards known as his Miranda
3 warnings

4 These warnings are as follows They concern his right to
5 remain silent He should be told of this and the following

6 That a statement could be used against him in a court of law,
7 The right to have a lawyer present,

8 If indigent, that he could - - if he could not afford one, one
9 would be appointed for him

10 Other factors to be considered are the place and length of
11 detention and the nature of the questions

12 You, the jury, ladies and gentlemen, must carefully scrutinize
13 all of the surrounding circumstances before you give any weight to
14 an alleged statement

15 You must be satisfied beyond a reasonable doubt that the
16 statement was made by the accused uninfluenced by promise or
17 reward, threat or injury or diminution of any of his constitutional
18 rights

19 Now, as I have told you before, this defendant - - let me hold
20 the indictments - - is charged upon four separate counts designated
21 in this indictment as 2, 3, 4 and 5 He's charged with trafficking
22 in powder cocaine, and he's charged with trafficking in cocaine
23 base commonly known as crack cocaine

24 The State must prove under Count 2 with reference to powder
25 cocaine was in knowingly either in actual or constructive

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1 possession of more than 100 grams but less than 200 grams

2 And with reference to trafficking in cocaine base which is
3 crack cocaine, an entirely separate offense, as to that charge, the
4 State must prove that this defendant was knowingly in actual or
5 constructive possession of more than 28 grams but less than a 100
6 grams, and they must prove these issues beyond a reasonable doubt

7 Now, trafficking in cocaine is basically a possessionary
8 defense - - I mean an action, charge, and it relates to the amount
9 in possession

10 And as I've said to you, one who possesses a cocaine - - a
11 powder cocaine of more than 100 grams but less than 200 grams is
12 guilty of trafficking in powder cocaine

13 And one who possesses knowingly or constructively a quantity
14 of drugs of more than 28 grams but less than a hundred is guilty of
15 trafficking in crack cocaine

16 They are two separate offenses

17 The statutes relating to these matters are as follows

18 Any person who knowingly sells, manufactures, delivers or
19 brings into the state or who provides financial assistance or
20 otherwise aids, abets, conspires to sell, manufacture, deliver or
21 bring into the state or who is in knowingly in actual or
22 constructive possession is guilty of trafficking in crack cocaine
23 and guilty of trafficking in powder cocaine if in his possession
24 there were with reference to powder cocaine more than 100 grams but
25 less than two and with reference to crack cocaine more than 28

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1 grams but less than a hundred

2 Those are the amounts that an individual must be in either
3 actual or constructive possession in order to be convicted of these
4 charges

5 Now, this indictment alleges these amounts, and the State's
6 got to prove that beyond a reasonable doubt

7 Now, as I've indicated, there are certain elements of these
8 offense, we're talking about both of them - powder cocaine and
9 crack cocaine - there are certain elements of these offenses which
10 the State must prove beyond a reasonable doubt before the defendant
11 can be convicted and found guilty

12 Each of these elements must be found by you, the jury, and
13 should you find beyond a reasonable doubt that all of these
14 elements existed - - did not exist, you must find him not guilty

15 These are what the State must prove beyond a reasonable doubt

16 First, that this defendant did possess a quantity of a
17 controlled substance at the time and place in the manner alleged

18 I tell you that crack cocaine is a controlled substance, and
19 I charge you that powder cocaine is a controlled substance

20 I mentioned possession Possession requires that a person be
21 in the actual or constructive possession of a controlled substance
22 with actual knowledge of its presence

23 Actual possession of a controlled substance exists when the
24 controlled substance is found in the actual physical custody of the
25 person charged with possessing it

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1 Constructive possession of a controlled substance exists when
2 a person although not in actual physical possession of the
3 controlled substance exercises dominion and control over the
4 controlled substance or has the right to exercise such dominion and
5 control

6 A person has possession of a controlled substance within the
7 meaning of the law when he has the power and intent to control its
8 disposition or use

9 It must be shown that this defendant had the controlled
10 substances, crack cocaine as to one charge and powder cocaine as to
11 the other, and that the defendant knew he had the controlled
12 substance in his possession Knowledge of the presence of the
13 controlled substance by the defendant is essential

14 Now, as I said, too, the State must prove that the substance
15 was cocaine and crack cocaine, and the State must prove that the
16 controlled substances was in the quantity that I have told you

17 The quantity that the State must prove with reference to the
18 Count 2 which is the powder cocaine is that there were 100 grams
19 but less than 200

20 The quantity that the State must prove with reference to
21 trafficking in cocaine base which is crack cocaine is that the
22 quantity was more - - was more than 28 grams but less than 100

23 And the State, again, as all other issues, must prove these
24 issues beyond a reasonable doubt

25 Now, there is a separate statute which provides that one who

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1 possesses a quantity of cocaine or crack cocaine within a half a
2 mile of a school or playground with the intent to distribute is
3 guilty of a separate crime

4 This indictment under Count 3 alleges that this defendant was
5 in possession of powder cocaine with intent to distribute within a
6 half-mile of a school

7 And with reference to cocaine base, crack cocaine, it is
8 alleged that he was in possession to that separate drug within half
9 mile, ah, with intent to distribute within half-mile of a school
10 which, again, is a separate incident

11 Two of these counts or indictments relate to base cocaine and
12 crack cocaine The other two relate to possession with intent to
13 distribute one or both within the half-mile of the school

14 Now, as I've charged you, this defendant is charged with
15 possession with intent to distribute a quantity of crack cocaine in
16 one indictment and quantity of powder cocaine in another, a
17 controlled substance in violation of the laws of this State, and,
18 of course, he's charged in a separate indictment with intent to
19 distribute within a half-mile of a school, these drugs allegedly to
20 have been in his possession

21 Now, there are certain elements of this offense which the
22 State must prove beyond a reasonable doubt before the defendant can
23 be found guilty of either of these offenses

24 Should you find in your deliberations that you have reasonable
25 doubt as to any of these elements, you must return a verdict as to

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1 these of not guilty

2 First, you must find beyond a reasonable doubt that the
3 defendant did have in his possession, actual or constructive, the
4 controlled substance at the time and place asserted in this
5 indictment

6 Possession requires that a person be in actual or constructive
7 possession of the controlled substance with actual knowledge of its
8 presence As I indicated before and I tell you again, actual
9 possession of a controlled substance exists when the controlled
10 substance is found in the actual physical custody of the person
11 charged with its possession

12 Constructive possession of a controlled substance exists when
13 a person, although not in actual physical possession of the
14 controlled substance, exercises dominion and control over that
15 substance

16 A person has possession of a controlled substance within the
17 meaning of the law when he has both the power and the intent to
18 control its disposition

19 It must be shown that the defendant had possession of the
20 controlled substance and the defendant knew he had the controlled
21 substance in his possession, actual or constructive

22 Knowledge of the presence of the controlled substance by the
23 defendant is essential

24 The State must not only prove the possession of the controlled
25 substance by the defendant but the State must also prove -

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1 establish by the necessary requisite measure of proof that the
2 defendant possessed the control substance with the intent to
3 distribute

4 The intent to distribute the controlled substance is an
5 essential element of the offense Intent is defined as a purpose
6 or aim or design in law It is the state of a person's mind which
7 directs his actions towards a specific object

8 Distribute means to deliver the controlled substance, that is,
9 the actual or constructive attempt to transfer with the intent to
10 distribute with or without payment

11 Now, the State must prove beyond a reasonable doubt that the
12 substance is, in fact, as to one indictment crack cocaine or base
13 cocaine and as to the other indictment powder cocaine The State
14 must prove that, ah, these substances if they were found in his
15 possession were crack cocaine as to one indictment and base
16 cocaine, ah, powder cocaine as to the other

17 Furthermore, in order to find the defendant guilty of
18 possession with intent to distribute these two substances within a
19 half-mile of school or playground, you must find, ladies and
20 gentlemen, that the State must prove beyond a reasonable doubt each
21 of these elements including the fact that they must prove if he
22 possessed it at all with intent to distribute it was within a half-
23 mile of a school or playground which is a separate offense

24 Now, if the State fails to prove that he had the intent to
25 distribute, you cannot find him guilty of possession with intent to

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1 distribute cocaine or powder cocaine Possession alone as to that
2 charge is not sufficient You must find beyond a reasonable doubt
3 that he not only possessed it but he had an intent to distribute
4 it

5 I will now charge you in part the provisions of Section 44-53-
6 370(d) of The Code of Laws of South Carolina

7 In any criminal prosecution for the violation of these
8 sections relating to possession with intent to distribute a
9 controlled substance, the amount of the controlled substance in the
10 defendant's possession at the time of the alleged violation shall
11 give rise to the following inference

12 If the defendant had in possession more than 10 grains or more
13 than 10 grains of crack cocaine or commonly called cocaine base,
14 there is an inference that this defendant had possession of these
15 drugs with intent to distribute

16 If he had 10 grains or more of either base cocaine or powder
17 cocaine, there is an inference that he had it with the intent to
18 distribute

19 This inference created by law which I have just read to you is
20 an inference only This inference is simply an evidentiary fact
21 to be taken into consideration by you, the jury, along with the
22 other evidence in the case, and you may give it such weight as you,
23 the jury, determines it should receive

24 Now, I charge you that mere presence of a person in an area
25 where an object is found is not enough in and of itself to give

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1 rise to the necessary inference of possession The State must
2 prove dominion or control over the substance beyond a reasonable
3 doubt

4 As I've indicated, the mere presence in an area is in and of
5 itself not sufficient but you may examine in your judgment the
6 totality of all of the circumstances in reaching your
7 determinations

8 Now, ladies and gentlemen of the jury, you have been selected
9 as fair and impartial jurors sworn to impartially try and to
10 determine the facts of this case, and when you comply with your
11 oath to do so, then no one will have a right to criticize your
12 verdict, and you will have fully discharged your duty as jurors

13 You must not be influenced by opinions or expressions, if any,
14 that you may have heard on the outside but you are to decide this
15 case, ladies and gentlemen, according to the testimony that you
16 have heard from the lips of the sworn witnesses along with such
17 other evidence as is introduced, and those matters will be with you
18 in the jury room

19 I have prepared a verdict form for you which relates to Counts
20 2, 3, 4 and 5 As to each count your verdict will either be not
21 guilty or guilty Your verdict as to each count must be unanimous
22 It must be all twelve of you It cannot be a verdict of the
23 majority Obviously, it would not be a verdict of the minority

24 You will consider each count separately, and you will consider
25 the evidence as to each count separately and write your verdict

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1 separately

2 Madame Foreman, as I indicated at the beginning of these
3 charges, you may find him not guilty as to all charges You may
4 find him guilty of all charges You may find him not guilty of
5 some and guilty of the others depending on your view of the facts
6 as it relates to the various law of this case

7 Now, in just a few moments, we will have final arguments
8 The Solicitor representing the State of South Carolina, Mr Lawson,
9 will first make his final closing summation to you

10 Following that, Mr Long who represents the defendant will
11 make a summation to you I'll then give you some short concluding
12 remarks, and then the case will be given to you for your
13 deliberation

14 At such time as you have reached a unanimous verdict, you
15 would knock on the door and let me know

16 Now, ladies and gentlemen, there will be pencil and paper
17 provided for you in the jury room, and, Madame Foreman, if you are
18 your members of your distinguished jury have any questions about
19 what the law is, please write that question down and let me know,
20 and I'll answer it for you

21 Now, remember I cannot answer factual case for you That's
22 for you to decide, and you must base your verdict not on
23 speculation but the record

24 I tell you that for the following reason Some years ago I
25 was trying a case in Darlington, South Carolina where the young

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1 lady was being charged with arson, it being alleged that she burned
2 down her mobile home

3 The jurors sent me a question "Tell us whether she smoked
4 or not "

5 Well, that question was never asked Consequently, it was
6 never answered in the record I knew she smoked because she was
7 outside smoking as we talked but I could not tell the jury that
8 because that was not a matter for their consideration It was not
9 in the record

10 I tell you that to emphasize Do not ask me what the facts
11 are Just ask me how the law is if you have any questions about
12 it

13 Now, I'm going to let you go to the jury room and relax for
14 about ten minutes This was a right lengthy charge here, and, ah,
15 and I did make one mistake here, and I'm glad they caught it

16 With reference to cocaine, the State must prove beyond a
17 reasonable doubt ten grains or more With reference to base
18 cocaine or crack cocaine, they must prove one gram or more

19 Now, I'll let you go to the jury room, and I'll be calling you
20 back very shortly

21 (The jury retires to the jury room at 2 46 p m)

22 THE COURT Alright

23 For the State, any exceptions or additions to that charge?

24 MR LAWSON No, Your Honor

25 THE COURT How about it?

SUMMATION BY MR MR LAWSON

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1 MR LONG Nothing, Your Honor

2 THE COURT Alright

3 Let's take a short break so you can prepare your final
4 summation, and we'll be back in about ten minutes

5 (The Court recesses this case and thereafter reconvenes the
6 trial of this case with all parties present in the courtroom)

7 THE COURT Solicitor, you ready?

8 MR LAWSON Yes

9 THE COURT How about it, Mr Long?

10 MR LONG Yes, sir, Your Honor

11 THE COURT Alright

12 Solicitor, you'll have the first argument

13 Make sure everybody is here

14 (The jury returns to the courtroom at 2 58 p m)

15 THE COURT Alright, sir

16 Solicitor Lawson

17 SUMMATION BY MR LAWSON

18 MR LAWSON May it please the Court, Mr Long

19 Madame Forelady, and ladies and gentlemen, I start off by
20 thanking you for doing what I asked you to do initially and that is
21 pay attention and listen closely to the evidence, and the evidence
22 is now in, and it becomes your job to judge that evidence and
23 determine whether or not the State has proven to you guilt of this
24 defendant Glenn Pernell beyond a reasonable doubt on each and every
25 charge presented to you

SUMMATION BY MR MR LAWSON

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1 We are not here trying Count 1 of the indictment, the
2 distribution count We are trying, ah, the trafficking count as
3 the judge has told you in his charge

4 The whole idea of trafficking is that as the judge indicated
5 it is a possessory offense

6 Ah, if you have over a 100 grams of powder cocaine and less
7 than 200 grams, then it is trafficking in powder cocaine

8 In this indictment if you have more than 28 grams and less
9 than a 100 grams of crack cocaine base, it is trafficking in
10 cocaine base or crack cocaine

11 Um, in this particular case we have presented testimony of the
12 witnesses that were involved in this case from the beginning and
13 from its inception

14 As we presented the case, it's up to you, the jury, to judge
15 the witnesses and to judge their credibility as the judge
16 indicated

17 Whether or not they're telling the truth? Whether or not
18 they're hedging on the truth? Whether you can believe all of what
19 somebody says or part of what somebody says

20 You can many against one, one against many as you decide in
21 your deliberations

22 In this case, the State has tried to present to you the
23 evidence as this took place on the afternoon of August 2nd of 2006,
24 at the Mullins, South Carolina That's here in Marion County

25 What happened is that someone had in their possession a great

SUMMATION BY MR MR LAWSON

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1 deal of drugs

2 Now, there - - as the judge indicated, an expert witness
3 testified that State's Exhibit #7 contains both powder and cocaine
4 base, contains 124 - - 128 64 grams of powder cocaine and 79 66
5 grams of crack cocaine or cocaine base

6 Now, you can believe what Willie Smith said about these drugs
7 or not You can believe that he tested them, that he properly
8 tested them and that they are, in fact, what he says they are or
9 you can disbelieve that but not without a reason

10 I submit to you that what's in this bag as testified to is, in
11 fact, cocaine and cocaine base, that it was found in this bag in a
12 white Crown Victoria sitting in the parking lot of the motel and
13 that this bag was open and the substance was sitting here right on
14 top of what else is in the bag

15 Now, as indicated, if you want to take this out, you'll be
16 provided with latex gloves as indicated by Mr Smith it wouldn't be
17 a good idea for you to touch this and take it out and look at it

18 But that's a set of digital scales, and you heard testimony
19 from a witness, Mrs Fleming, Jennifer Fleming, that earlier on the
20 2nd she went to the defendant's house and observed a white Crown
21 Victoria, that she was taken to that vehicle by the defendant and
22 shown a bag like this with drugs in it, cocaine, what appeared to
23 her to be crack cocaine and crack cocaine, that a set of scales
24 were used at that time which resembled the set of scales in this
25 bag, all within the custody and control and possession of the

SUMMATION BY MR MR LAWSON

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1 defendant Glenn Pernell this earlier in the day, possibly four
2 hours before we end up at the Imperial Motel

3 Between that time between the time that she observes this and
4 we have the incident at the motel She is called a number of
5 times by the defendant and asked to meet her at a motel She
6 agrees, and if you remember her testimony, she said she was scared
7 of him She did not want him to be suspicious of her Therefore,
8 she agreed to what was requested

9 Now, when she testified today, remember that she was doing
10 that to help her husband Her husband as she testified is - - was
11 sentenced So her testimony today doesn't help or hurt him one way
12 or the other His case is done

13 So what she has said today, you judge based on what she said
14 today and whether or not she was believable It's up to you It's
15 your decision

16 Now, what happens when we get to the Imperial Motel? Well,
17 what happens before that?

18 Just before that Mr Platt is trying to take back a telephone
19 because he's got to make arrangements to get a telephone because of
20 an incarceration situation He'd just gotten out of jail He had
21 to have a phone to hook up

22 The system that he had bought, the phone he bought couldn't be
23 hooked up in time So he was taking it back to get another phone
24 trying to find a ride, and he and Jeffrey Graves are at his house,
25 and the defendant comes by to give them a ride

SUMMATION BY MR MR LAWSON

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1 I guess we are to believe that they got in the car and put all
2 these drugs in there and set Mr Pernell up, that he didn't have
3 anything to do with it and these two guys had a grand plan to set
4 him up There's absolutely no testimony that prior to this taking
5 place, they had any incentive to do that

6 When you get a ride from some one, do you plunder through
7 their car, look for everything you can look for, feel up under the
8 seat?

9 Suppose you get a ride from somebody and they happen to have
10 a gun under their seat? Is that your fault?

11 No, and it wasn't their fault that these drugs were in this
12 car These drugs had been in this car earlier in the day from the
13 testimony of Mrs Fleming She had seen the drugs in the car, the
14 car that was registered to this defendant's mother, the car that
15 this defendant drove, nobody else

16 Unless the statement that he gave, the second statement that
17 he gave to Brian was, in fact, true and that is, "No, I wasn't even
18 driving the car The driver must have got out and ran somewhere
19 else "

20 Now, not only did he go from saying, "The drugs are mine
21 Those guys didn't have anything to do with it," which was his first
22 response which I find is normally the most truthful response 1 the
23 initial, off the cuff, quick response and reaction to any
24 situation

25 After thinking for a minute, four or five, "Oh, no They're

SUMMATION BY MR MR LAWSON

277

1 not my drugs I wasn't even driving the car The driver must
2 have got out and ran across the field "

3 Now, I submit to you, ladies and gentlemen, that we have
4 enough police officers there and you have heard enough testimony
5 that there ain't no question about certain things in this case, and
6 one is that the defendant, Mr Pernell, was driving that car to the
7 Imperial Motel

8 Number two, that he got out of that car and went into the
9 office of the Imperial Motel because that's where he was arrested,
10 and he was the only person in there other than the officer that was
11 arresting him Wasn't anybody else in there, and the person that
12 went in there got out the driver's side

13 And the other two individuals got out of the passenger side

14 Possession - the ability to control or the ability to, ah,
15 have the control over the disposition of a substance or of
16 something else

17 As Mr Long said Actual possession - my pen, constructive
18 possession - it's still my pen You may pick it up but do you
19 have a right to dispose of it?

20 I have the right to dispose of it even when it's laying over
21 there because it's mine but not anybody else

22 These drugs were in his vehicle Had been before he even saw
23 Mr Platt or Jeffrey Had been there since earlier in the day

24 The only person from the evidence to drive that car was the
25 defendant The only person in control of that car was the

SUMMATION BY MR MR LAWSON

278

1 defendant The only person from the evidence that had a right to
2 control that car and its contents was the defendant

3 Did the State prove that there was cocaine in excess of 100
4 and less than 200 grams? Yes The State did prove that

5 Did the State prove that there was crack cocaine in excess of
6 28 but less than a 100 grams? Yes The State proved that

7 Did the State prove that this defendant is guilty? By the
8 evidence both direct and circumstantial, a chain of facts that
9 leads to the conclusion, that this defendant did - - a chain that
10 runs from this witness stand from the testimony and the evidence
11 over to that defendant's chair where if I pull that chain, the
12 defendant's chair is going to rattle

13 Did the State put together a chain of evidence that leads to
14 him or did we put together a chain of evidence that when pulled
15 would cause the chairs in the back of the courtroom to rattle or
16 the chairs where the prosecution was sitting to rattle or where the
17 judge is settle to rattle? Which chair rattles when the evidence
18 chain is pulled, when the evidence is tested?

19 When the evidence is looked at by you is there a real
20 possibility?

21 So, beyond a reasonable doubt is not as the judge has said
22 beyond all doubt or any doubt You know, it's like do you doubt
23 that the sun is going to come up in the east tomorrow morning?

24 You think tomorrow morning just maybe the sun will change its
25 mind and come up in the west? If somebody tells you that, are you

SUMMATION BY MR MR LAWSON

279

1 going to get up in the morning and say, "Hot dog' I'm going to
2 watch out of the west and I'm going to see the sun rise from the
3 west for the first time in the history of the world "

4 That is not a reasonable doubt

5 A reasonable doubt exists because there is evidence or a lack
6 thereof that causes you to have an honest belief that the defendant
7 - - that the State has failed to prove this case beyond a
8 reasonable doubt

9 A real possibility, is there in this case a real possibility
10 that somebody else possessed these drugs other than the defendant
11 Glenn Pernel?

12 Is there a real possibility that the evidence the State has
13 presented fails to prove the guilt of this defendant?

14 Everything that the State has put up in relation to the
15 evidence is one more link in that chain that leads to the
16 defendant's chair, and I submit to you When you deliberate and
17 you look at the facts honestly and in - - in your wisdom, you will
18 realize and you will come up with the same conclusion that I have
19 that the State has proven its case beyond a reasonable doubt

20 There is no real possibility of the guilt of anyone else, that
21 the defendant is guilty of trafficking in cocaine, 100 to 200
22 grams, and crack cocaine or cocaine base, 28 to 100 grams

23 I ask you to look at the evidence Weigh it Judge it, and
24 render a verdict that speaks the truth

25 Thank you

SUMMATION BY MR LONG

280

1 THE COURT Thank you, Mr Lawson

2 Mr Long

3 SUMMATION BY MR LONG

4 MR LONG Thank you, Your Honor

5 May it please the Court, Mr Lawson

6 Ladies and gentlemen, I also thank you for paying attention,
7 for listening to the evidence Understand that I sympathize with
8 you, again, because you've got the hardest job in the courtroom
9 You have to sift through, sort through, weigh, decide and be
10 unanimous on your verdict, and that's difficult That's tough to
11 do I realize that

12 I don't like to hear myself talk To me this is the least
13 productive part of any trial because the closing arguments made to
14 you by the Solicitor, by myself, are made concerning what our view
15 of the evidence is

16 When we're in the courtroom doing other things and thinking
17 about questions and looking through our files, finding papers,
18 this, that and the other, we're not listening attuned to that
19 witness a hundred percent So if I say anything that you don't
20 recall or anything different from what you recall from that witness
21 stand, please disregard what I tell you because I'm mistaken

22 The twelve of you, fourteen of you now, are at least fourteen
23 times more capable than I am of recalling that So use your
24 recollection of what came from that stand

25 But Glenn is here today He has an attorney representing him

SUMMATION BY MR LONG

281

1 He has come here today by his presence and said, "I am not guilty
2 Those were not my drugs I am not guilty of these charges I want
3 a jury of my peers to determine innocence or guilt "

4 Now, you've heard testimony from the State, and understand
5 what I told you earlier about trying to prove a negative How can
6 Glenn prove the other boys had the drugs on them and dumped them in
7 the car and left them in the car? How can he prove that? He
8 wasn't in the car He was in the motel office

9 How can Glenn try to prove anything, the evidence and stuff
10 because the State controls the evidence? The State takes the
11 photographs The State does the fingerprints The State has
12 drugs tested, things of that nature The State has the control
13 over that

14 And so what we do by a trial is we try to test that evidence
15 Again, I wish I didn't have to but I would be failing to do my job
16 if I didn't go through some of the testimony and give you, tell you
17 how it kind of bear upon other testimony you heard

18 What the State wants you to believe on a case that's not
19 before you, not being tried was that he sold some drugs and because
20 he had those drugs and we found some drugs later that day that
21 those must have been his

22 Don't bite that empty hook Okay? Make them put some meat on
23 it Make them do something to prove to you so that you can go to
24 sleep tonight and say, "I did the right thing Yep The State
25 wanted me to convict him I convicted him because "

SUMMATION BY MR LONG

282

1 Now, His Honor charged you You can find the truth from the
2 evidence or the lack of evidence Okay?

3 You can believe one witness against many, many against one,
4 nothing a witness says, everything but you determine based on a
5 witness' demeanor and how it weighs with other evidence whether
6 it's true or not

7 Now, you heard witnesses testify that, "Yep, we got these
8 drugs into custody We didn't fingerprint them "

9 You see these bags You don't think there's fingerprints all
10 over these bags inside this BEST Bag? You don't think they can't
11 put fingerprint dust on that and determine whose hand last touched
12 those drugs? They didn't do that

13 We couldn't - - didn't have the opportunity to do that
14 This - - the State controls the evidence The State determines
15 what evidence is to be collected and what evidence is to be
16 presented to you

17 The State could have brought you much better evidence of
18 Glenn's so-called confession They got tape recorders They got
19 written Miranda statements They got cameras They got video
20 cameras They got the means to do that but what they have is an
21 officer saying, "Well, he told me the drugs was his "

22 Okay? And that's why I called it a so-called confession

23 The State could have upon his arrest because he had some money
24 in his possession, and, lo and behold, look at it Marked buy
25 money Okay? They didn't do it They didn't bring you anything

SUMMATION BY MR LONG

283

1 like that to show any kind of concrete proof They couldn't
2 because none exists

3 What they have today is he and two co-defendants in a car He
4 goes in the office and one - - and the true scenario if you put
5 yourself at this scene and try to imagine what's going on

6 Three guys are riding in a car

7 "Hey, man I got to stop I got a girl Want to spend some
8 time with her I'm going to check in I'm going to get a motel
9 room I'm going to drop you guys off Have a great day I'm
10 going to "

11 And he goes in the motel room to do that

12 Two guys sitting in the car "Yeah, lucky rascal," this that
13 and the other Maybe had the keys in Maybe had the music playing
14 this, that and the other, and all of a sudden, here comes the
15 police officers screeching up, running around the building, running
16 in the office, going in the office where Glenn is

17 Well, let's assume, okay? And, again, the State hasn't
18 proven, the State doesn't want to prove but let's assume one of
19 those boys had drugs on him

20 Police all around the car They don't know they're in the car
21 yet They've got windows that are tinted Nobody's coming to the
22 car and saying, "Sir, step out of the car "

23 They're kind of sitting in the car and, "Man, what's going on
24 here?"

25 They stepped out of the car If they've got anything on them,

SUMMATION BY MR LONG

284

1 what you think's going to happen?

2 What's the first thought self-preservation would come in
3 anybody's mind

4 "Man, I ain't holding that I ain't sitting in the car, and
5 I ain't walking out with it "

6 What did Lt Rouse tell you?

7 That's unusual That don't happen very often If somebody's
8 got drugs in the car, it's not sitting in the driver's seat in a
9 bag, the bag open and the drugs hanging out like cotton I mean,
10 that just doesn't happen

11 When would it happen? How could it happen?

12 "I ain't going to get caught with this "

13 Let them blame it on Glenn It's his car His driver's seat

14 Now, there are smart crooks and dumb crooks You've heard
15 that, and there are smart people and dumb people, and there's
16 people with good common sense and bad book sense but do you think
17 this man would get out of a car with two people in the car and
18 leave those kind of drugs sitting in his front seat in plain view
19 of both of them and go into the motel and check in and get a motel
20 room? Do you think if he had possession of any of those drugs, it
21 wouldn't be under his seat or in his glove box or in his trunk or
22 some place for safe keeping? Okay?

23 Because the State tells you That's a lot of drugs

24 Now, Lt Rouse also told you, and I don't hold anything
25 against police officers They got a job to do I understand that

SUMMATION BY MR LONG

285

1 I hope police officers don't hold my job against me although I kind
2 of wonder about Detective Brown I think it was He wouldn't look
3 me in the eye, and I tried to kind of get his attention

4 "You know, Lieutenant, I'm the one asking the questions, and
5 I'm the one talking to you over here," and he wouldn't look me in
6 the eye

7 Alright

8 They've got a job to do and they're human just like any of us
9 Okay? And they want to be believed They want to be in the right,
10 and what they do is they put a little bit of spin on things to kind
11 of make it sound bad

12 Now, what did Lt Rouse tell you?

13 "Well, we had evidence that Mr Pernell was armed and had a
14 pistol or something of that nature, and we were overly concerned "

15 What does that have to do with a drug case? Nothing It
16 makes him look bad

17 Did they find a pistol? Did they find a weapon? No

18 "Well, you know, he was, um, going to meet this confidential
19 informant at the motel to set up another transaction "

20 "Wait a minute Lieutenant, what are you talking about
21 another transaction They were going to meet there to have sex,
22 right?"

23 "Well, yes "

24 It doesn't sound as bad as another transaction

25 What you don't know and what officers routinely use is the

SUMMATION BY MR LONG

286

1 doctrine of plain view

2 If I pull up beside an officer standing on a street corner
3 directing traffic, my windows in my car are down, and I've got a
4 Coors Lite can sitting in the cup holder of my console in my seat
5 He doesn't need a warrant He doesn't need a blue light He sees
6 something in plain view

7 He can say, "Mr Long, pull over right there You're under
8 arrest for open container "

9 In plain view

10 What did Lieutenant tell you was in his plain view first?

11 "A marijuana blunt was sitting in the ashtray "

12 Not that And then he told you about that

13 "Well, that was in plain view Then we saw that there was
14 this open thing full of drugs "

15 Whatever

16 And the only reason we take such issue with the marijuana is
17 because Glenn knows it didn't exist, and that's why we questioned
18 about it, and that's why they were - because with plain view, you
19 don't have an arrest warrant You just get in and search

20 "Hey, we got something in plain view Then, we can just get
21 in and search "

22 It didn't exist It didn't exist and it didn't come into
23 existence, and we didn't see it until today

24 "Yeah, this is the one I found It's not listed on the
25 report You know, we threw it in with the other stuff We had to

SUMMATION BY MR LONG

287

1 weigh it all together "

2 Well, again, because it makes him look bad It makes Glenn
3 look bad

4 Another thing Captain Bethea, he's got a job to do He's -
5 - and all officers have a job to do To collect and preserve
6 evidence to be presented to you, to a jury, to a Court

7 Is there a photograph taken of marijuana in the ashtray, a
8 blunt there? No Certainly not

9 If someone had pointed it out to him, would he have taken a
10 picture?

11 "Absolutely That's my job "

12 Detective Brown, and I really don't have much issue with his
13 case except as it relates to SLED The SLED agent told you

14 "You know, these are the forms they submit There was two
15 items submitted for testing, and I tested three items "

16 "Oh, well We just lump things together, whatever, and send
17 it up, you know "

18 This, that and another

19 Well, what's going on? Three sounds worse "

20 Three separate tests for drugs "

21 And that's the way his testing went

22 There was only two items listed and being taken in that
23 vehicle

24 Jennifer Fleming, and please don't get me wrong I love my
25 wife I've been married to her for twenty-six years, and I'd lay

SUMMATION BY MR LONG

288

1 down and die for her to save her Same with my children Same
2 with any of my family members Same with some of my friends

3 And I don't fault her for wanting to help her husband I
4 can't fault her one bit Okay?

5 Most of you - - all of you would do the same thing for your
6 loved ones

7 But there's certain parts of her testimony that just quite
8 don't ring true

9 She's trying to help him He got arrested July, 2006 Yes,
10 this was the first time she was working with them Going to try to
11 help them help him

12 "Oh, wait a minute Wait a minute Yeah, there was some
13 time in 2005 he got arrested with "

14 She didn't remember that until I asked her

15 "Oh, well, yeah, yeah, there was Now that you bring it up,
16 I remember it "

17 And she would do what any faithful, loving wife would do, and
18 that is anything to try to save her husband from going to jail

19 She didn't want to admit that she lied to Glenn She was
20 trying to lure him to the motel to have sex She had no intention
21 of having sex with him but she kind of lied to him and led him on,
22 you know, to believe things of that sort was going to happen

23 Because they told her to tell him that Told her to get him
24 to the motel

25 "Get him there You know, we can arrest him there "

SUMMATION BY MR LONG

289

1 It just so happens that's two blocks from an elementary
2 school

3 I had to go look at my cell phone I'm sure each of you own
4 a cell phone, and I don't think any cell phone I've ever owned
5 didn't have a phone jack on it If you want to record a cell phone
6 conversation, you plug the jack in and you plug it into a micro-
7 cassette recorder or whatever the case may be, and you get it to
8 record

9 But, no, they couldn't bring you that evidence of supposedly
10 all these five telephone calls, what took place during those
11 telephone calls

12 Now, Graves and Platt, going back to the scenario, did either
13 one of them have drugs in their possession? They were alone
14 They were alone for a very brief time in the car after the police
15 officers arrived or they were alone in the car for maybe a little
16 bit longer depending on whose recollection of how long it took for
17 the officers to realize that there may have been somebody in the
18 car or to get to the car to search in the car

19 But, none the less, by the time that happened they were
20 walking away from the car

21 I think one of the most incredible things about this entire
22 trial is we're talking about a car with a three seater backseat
23 I'm seeing that this car has three seats in the back and a console
24 between the two front seats, an open space between the two front
25 seats A front passenger and a back passenger behind the front

SUMMATION BY MR LONG

290

1 passenger so that he has a view of the driver's seat between the
2 seats

3 "I ain't never seen those drugs There wasn't no never no
4 drugs in there There certainly wasn't no drugs that belonged to
5 me "

6 And according to the officer, Glenn got out of the car and
7 went into that motel to go check in to get a room and just so
8 happened to leave that in plain view on his driver's seat, and them
9 boys didn't know it? Come on Come on

10 Another scenario that I think is very possible you can find
11 from the evidence is Glenn is in the motel office and police
12 officers come storming in the arrest him, and he doesn't resist
13 He doesn't fight Okay?

14 Officer Wallace says, "Well, he wanted to go through that
15 locked door but, you know, he didn't, couldn't "

16 And he was arrested, and he was brought outside that motel
17 office, and he, I guess, possibly sees the two guys that were
18 inside his car outside the car or just walking away from the car or
19 just being brought back by the officers to the car

20 He gets escorted over to another officer's car The officer
21 claims he read him Miranda warnings, read him his Miranda rights
22 The officer didn't testify and tell you that he waived those rights
23 and wanted to give a statement

24 The officer said, "I read him his rights, and I asked him a
25 question where he just told me something

SUMMATION BY MR LONG

291

1 He said, 'Those were my drugs Why are they being charged?'"

2 But what I wanted you to do is try to see for yourself and try
3 to visualize yourself there what's going on

4 Just for example, if His Honor's bench is the motel office and
5 the Deputy's patrol vehicle, the driver and passenger is pointed in
6 this direction, Glenn's got a clear view The officer's got a
7 clear view of what's going on if the officer is not looking at
8 Glenn and turns his head and sees what's going on

9 So, Glenn's talking to the officer and can see beyond the
10 officer what's going on

11 And he sees them cuffing and putting those boys under arrest,
12 and Glenn's been told what's he's been put under arrest for

13 And he says, "What are them boys getting put under arrest
14 for?"

15 He then, the officer says, "Well, he just completely changed
16 that story around then and said, 'I wasn't driving the car, and the
17 driver got out and was ran away '"

18 Isn't it just as likely that Glenn said, "You're charging me
19 with what, trafficking in drugs? How do you know the drugs don't
20 belong to them two boys that were walking away from the car?"

21 Alright, now I can't test that officer's memory I can't
22 give him a test and recite to him twenty things and ask him how
23 many he can recall and things of that nature I know he's an
24 officer I know he's got a job to do

25 Any of you ever watch Andy Griffith The thing that's funny

SUMMATION BY MR LONG

292

1 about the show, we all love Barney Fife

2 And Barney Fife has a good heart, and he wants to do right but
3 he gets so wrapped up in doing right, he does wrong, and it's
4 comical

5 And I've used this an example before

6 Episode 23 - Let's say Barney Fife discovers the body of Sue
7 stuffed in a tool shed on some farm property, and he comes running
8 to town all upset, nervous, this that and the other

9 Somebody's murdered Sue Somebody's murdered Sue

10 He meets somebody on the street, and he says, "Well, now,
11 Barney, the sky is blue today, isn't it?"

12 And he stops him whatever and puts him under arrest because he
13 heard, "Hey, Barney, I killed Sue today "

14 Now, he didn't intentionally do it Okay? That's what he
15 thought he heard

16 And that's an extreme example Okay?

17 But that is the type of mistakes that people can make with
18 perception, hearing They hear what they want to hear rather than
19 what was actually said, and that's a possible

20 I can't prove I can't bring any evidence I can't bring in
21 an audio tape because the officer claims he didn't have a video
22 tape or audio tape in the car We don't control evidence

23 He had one at the office and the Detention Center or at the
24 jail house or police where he supposedly changed his statement

25 Now, what the State wants you to do is to convict him saying

SUMMATION BY MR LONG

293

1 that the evidence proves beyond a reasonable doubt that he was in
2 actual or constructive possession of these drugs

3 And, again, the example I gave you - actual and constructive
4 possession

5 I have a flashlight in my car right now, and nobody would
6 question that it's my flashlight because I've got the keys to my
7 car, and my car is locked, and nobody else has the right to
8 exercise dominion and control over the contents of my car, my
9 flashlight

10 And if the State really wants to prove it, they can pull that
11 flashlight They can dust it for fingerprints, and my fingerprints
12 will be all over it

13 And there ain't no doubt I'm guilty of possessing that
14 flashlight There's no doubt

15 But they want you to believe beyond a reasonable doubt Glenn's
16 getting out of the car Something laying in plain view on the
17 front seat of the car with other occupants of the car that just see
18 police pull up, that they get out of the car and, "I'm getting out
19 of here " Okay

20 "Whoa Whoa Hold on Where you boys going? Come back
21 here "

22 "I don't know nothing about those drugs I never seen no
23 drugs Those drugs, oh, no, those drugs don't belong to me '

24 Okay

25 I wish they had just taken a fingerprint Okay? That'd

FINAL CHARGE OF THE COURT

294

1 prove everything We wouldn't have to sit here and mull and decide
2 and debate and argue, things of that nature We wouldn't have to
3 do that

4 Now, is Glenn a fantastic, wonderful human being? Yes, no,
5 it doesn't matter That's not what we're here to decide

6 Is Glenn guilty beyond a reasonable doubt of trafficking in
7 crack cocaine and trafficking in cocaine? We assert to you that
8 the State can point him out, single him out, tell him - - tell you
9 that he is the one

10 Do you think those other two boys are going to be called to
11 trial? Sit in that chair?

12 If you were to believe the State and find Glenn Pernell
13 guilty, I wouldn't bet much money on that Okay? Because they're
14 hoping They're looking for their case to be dismissed

15 Don't let them pull one over on Glenn Don't let the State
16 ask you to make Glenn take that for them

17 Thank you

18 THE COURT Thank you, Mr Long

19 Thank you, Mr Lawson

FINAL CHARGE OF THE COURT

20
21 THE COURT Ladies and gentlemen, you've now heard all of
22 the testimony in the trial of this case You've heard final
23 arguments I have given you the instructions with regards to the
24 law I ask, please, that you keep in mind each and every
25 instruction that I have given to you

FINAL CHARGE OF THE COURT

295

1 You are the finders of the facts You are the judges of the
2 credibility of the witnesses You take the facts as you find them
3 to be and apply those facts to the law as I gave it to you and
4 reach a verdict, a verdict that simply speaks the truth

5 Now, Madame Foreman, I have prepared - - I'm going to send
6 this indictment in with you

7 You would understand as to Count #1 you are not to be
8 concerned with any verdict regarding Count #1

9 You are to be concerned with Counts 2, 3, 4 and 5, and I have
10 them listed on this piece of paper, and you will see as to each one
11 either guilty or not guilty

12 Whatever your verdict is, it's got to be the unanimous
13 verdict

14 And when you conclude reaching a verdict as to all four
15 counts, you will please sign your name on the last page and date it
16 and knock on the door, and we'll be glad to take your verdict

17 As I indicated earlier, if there's, ah, any questions of law
18 that you might have, please let me know I'll be glad to answer
19 them for you

20 Do not begin your deliberations until I send this matters of
21 evidence in to you along with this indictment When this
22 indictment and the verdict form comes in, you may begin your
23 deliberation

24 You may now retire

ALTERNATES SEPARATED FROM THE JURY

296

1 ALTERNATES SEPARATED FROM THE JURY

2 THE COURT Alternates will please remain outside the
3 courtroom - - outside the jury room

4 (The jury retires to the jury room at 3 45 p m)

5 THE COURT Gentlemen, first for the State, you have
6 previously indicated there's no exceptions - - no exceptions or
7 additions to the charge Is that correct?

8 MR LAWSON That's correct

9 THE COURT Mr Long?

10 MR LONG That's correct, Your Honor

11 THE COURT Alright

12 Please come forward Let's agree on what's going into the
13 jury room

14 Mr Bailiff, take these matters that are in evidence into the
15 jury room along with this indictment and, now, as to the
16 alternates, ah, you've been here very patiently throughout the
17 time I wish our rules permitted you to go into the deliber - -
18 and deliberate but they do not I cannot let you go at this time
19 because from time to time, I've done that, and I've gotten in
20 trouble

21 One time in Charleston just as soon as I let the alternates
22 go, one of my jurors had an epileptic attack In Florence
23 recently, I let a juror go, and one of the jurors thirty minutes
24 was summoned to the emergency room Her child was in a bad wreck

25 So, Mr Sheriff, take these jurors to a place outside the

EXHIBITS AGREED/JURY BEGINS DELIBERATIONS

297

1 courtroom Make them comfortable, please

2 And I wish I could let them go but my experience is don't do
3 that

4 You know, if somebody has to leave or something, I'll have to
5 call one of you

6 Alright

EXHIBITS AGREED UPON

7
8 Let the record now reflect The alternates are withdrawn from
9 the jury The attorneys have agreed with regard to the charge the
10 evidence, and we are now permitting the jury to begin
11 deliberations

JURY BEGINS DELIBERATIONS AT 3 48 P M

12
13 THE COURT Alright

14 We're going to be in short recess

15 Mr Lawson, tell, ah, Mr Clements that we're ready to take
16 any pleas that he may have

17 (The Court recesses the trial of this case awaiting the advice
18 of the jury and addresses other matters before the Court)

19 The Court thereafter resumes the trial of this case at 5 22
20 p m upon receiving a note from the jury with all parties present
21 in the courtroom)

JURY NOTES AND RESPONSE OF THE COURT

22
23 THE COURT I have a note from the jury Is counsel here?

24 The jury advises me at this time that they have, ah, not come
25 to a decision They do not say that they are locked I'll let you

JURY NOTES AND RESPONSE OF THE COURT

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1 folks see this at the appropriate time

2 I do not receive this message as one where we have a hung
3 jury They just saying, "at this time "

4 So, ah, I'm going to tell - - bring the jury out, please, and
5 bring the alternates in, please

6 Somebody gone to get the alternates?

7 CLERK OF COURT Yes, sir They've gone to get them

8 (The jury returns to the courtroom at 5 23 p m)

9 THE COURT Madame Foreman, ladies and gentlemen, I
10 certainly appreciate your note that you are continuing your
11 deliberations and as of yet have not reached a unanimous decision
12 and, frankly, that's not unusual Even the parties here can't
13 agree We've been at this case for two days and you've only been
14 deliberating an hour, and we going to deliberate on into tonight,
15 into tomorrow, and I'll be glad to get you motel reservations if
16 necessary or bring you back in the morning

17 These are serious cases, serious for the State of South
18 Carolina and serious for this defendant, and I know that in your
19 deliberations, you will take it seriously

20 But, you know, ah, I could never think that I could find
21 twelve other people more able to resolve the issues in this case
22 than you twelve

23 I will do one of several things I'll keep you here tonight
24 as long as you want to or if you wish to adjourn and come back
25 fresh in the morning at 9 30 and deliberate all day tomorrow and

JURY NOTES AND RESPONSE OF THE COURT

299

1 maybe Saturday, we'll do that, but we going to resolve this case,
2 and I know that you are doing your best to do so

3 You have told me at this time that you are still deliberating
4 and have been unable to reach a decision as of yet

5 Is that what you're saying to me?

6 MADAME FORELADY Yes

7 THE COURT Ma'am?

8 MADAME FORELADY Yes

9 THE COURT Alright

10 Please continue your deliberations and, ah, I say to you I
11 couldn't expect you to reach a unanimous decision in one hour given
12 the - - all of the testimony that's been here a day and a half and
13 all the exhibits and all You can't possibly resolve the issues in
14 an hour's time, and I understand that, and so does everybody else
15 but we going to reach a decision here if it takes the rest of this
16 week

17 So, go back and continue your deliberations Thank you so
18 much

19 And if you need to quit for the night and come back in the
20 morning, just let me know

21 Gentlemen, come forward

22 (The jury retires to the jury room and continues deliberations
23 at 5 26 p m)

24 CLERK OF COURT Alternates need to be taken back down
25 stairs Right?

JURY NOTES AND RESPONSE OF THE COURT

300

1 THE COURT Right

2 Take the alternates out, please

3 Where is your husband?

4 ALTERNATE JUROR Um, at - - to the school house

5 THE COURT How long will it take you to go and come back?

6 ALTERNATE JUROR About ten, fifteen minutes

7 THE COURT You go get him I'll wait on you

8 ALTERNATE JUROR Alright, Judge

9 Gentlemen, let - - Mrs McCall, let the record reflect that I

10 have received a communication from the jury saying at this time

11 they've been unable to reach a verdict They do not say it's a

12 hung jury I do not conclude that this was the first opportunity

13 for a hung jury This is just further instructions from me, and if

14 I hear that there is a hung jury, at that time I will consider that

15 as the first opportunity and give them the Allen charge at that

16 time

17 Everybody agree with that?

18 MR LONG Yes, sir, Your Honor

19 THE COURT Alright

20 This communication - - the rest of the communication, please

21 keep confidential

22 Please hand this to Mrs McCall

23 (Juror Note made Court's Exhibit #1 and accepted by the Court

24 Reporter)

25 (The Court recesses this case and awaits further advice of the

JURY NOTES AND RESPONSE OF THE COURT

301

1 jury and thereafter reconvenes this case at 6 01 p m upon receipt
2 of another note from the jury)

3 THE COURT Bring the jury in for me

4 Alright Come to order

5 Where is counsel? Counsel

6 Bring the jury out Bring the alternates up

7 (The jury returns to the courtroom at 6 02 p m)

8 THE COURT Madame Foreman, I have received the further
9 communication and appreciate it

10 It says, "Your Honor, we, the jury have not reached a
11 unanimous decision on all counts and wish to resume in the
12 morning "

13 This request I will honor

14 You state you have not reached a unanimous decision on all
15 counts Have you reached a unanimous decision on any count?

16 Ma'am?

17 MADAME FORELADY No, Your Honor

18 THE COURT Okay

19 Now, as I indicated before, I would want you to continue
20 deliberations

21 You know, ah, when, ah, the jury fails to reach a verdict, it
22 doesn't mean that anybody wins It means that everybody loses

23 If this the State of South Carolina is entitled to a verdict,
24 they're entitled to one now, not next week or next month

25 Equally, the defendant is entitled to one, same thing, not

JURY NOTES AND RESPONSE OF THE COURT

302

1 next week, next month '

2 Your Honor, if this case were unable to reach a verdict, and
3 you have not told me that at this time You are continuing to
4 deliberate but it would be an unfortunate thing

5 What would happen is that I'd have to bring in twelve folks
6 just like you The same lawyers would be here The same questions
7 would be asked The same witnesses would be presented, and twelve
8 people would have to do what this distinguished jury is unable to
9 do

10 And I would conclude that I can't find twelve people more
11 honest, more capable, more willing to find the truth, and so I'm
12 going to tell you Go ahead and deliberate until we reach a
13 unanimous verdict if at all possible

14 Now, having said that, I would not want anybody to give up his
15 heartfelt - - his or her heartfelt opinion That's not our system
16 but our system never projected that our jury verdict would be one
17 or two people saying, "This is what I'm going to do and I'm not
18 going to do anything else until everybody agrees with me "

19 And so we say to jurors who are still deliberating If a lot
20 of you think one way, then the minority ought to listen very
21 carefully and determine whether or not their position is
22 reasonable

23 On the same note, then the majority of you if there be a
24 majority should listen to the minority's view's with the same idea
25 when considering their verdict, and if at all possible, reach a

JURY NOTES AND RESPONSE OF THE COURT

303

1 unanimous verdict

2 As I said, this case has taken a day and a half There's a
3 lot of evidence for your consideration There's no way in the
4 world that a good jury can syphon through all the testimony and
5 evidence that has been presented in an hour or two, and I would
6 understand that

7 Nobody has told me yet that we have a hung jury, and for that
8 reason, I'm going to recess now Ask you to come back at 9 30 in
9 the morning Be in the jury room Do not begin your deliberations
10 until I call you out for further instructions

11 We are here with several other matters all day tomorrow Be
12 back Friday So you are not inconveniencing us because as you
13 deliberate, we got a lot of other things to do not connected with
14 this case

15 But this is an important case It's important to the people
16 of Marion County Equally important, it's important to this
17 defendant

18 And so I'm going to ask you twelve good folks to resolve these
19 issues in accordance with your oath and in accordance with your
20 view of the facts as it applies to the law of this case

21 So, remember my admonitions, now Do not discuss this case
22 with anyone Let no one discuss it with you Make no independent
23 inquiry Come back here at 9 30 in the morning with an open, fresh
24 mind

25 I've found from twenty-three years on the bench that that

JURY NOTES AND RESPONSE OF THE COURT

304

1 quite happens, that people are unable to reach a unanimity at night
2 but they go home and sleep on it and come back with a fresh
3 outlook, and, generally, in our system, we get a verdict
4 Otherwise, our system fails It's an unfortunate thing The
5 system just doesn't work

6 So, I want twelve good folks to come back here tomorrow with
7 an open mind and nobody to give up their heartfelt opinions and
8 let's reach a unanimous verdict

9 As I said, we'll be here all day tomorrow We'll be back here
10 Friday We'll be here as long as it takes

11 Have a good evening I'll see you here at 9 30 in the
12 morning

13 Thank you

14 The alternates will return, too

15 Alternates will report to the room downstairs

16 (The jury released at 6 03 p m to return at 9 30 a m
17 Thursday to continue their deliberations)

18 THE COURT This is made a part of the record

19 (Court Reporter accepts Jury Note as Court's Exhibit #2)

20 THE COURT Alright

21 Anything further for the evening, gentlemen?

22 MR LAWSON No, Your Honor

23 MR LONG Nothing for the defense

24 THE COURT Alright, sir

25 Solicitor, you ask me something?

JURY NOTES AND RESPONSE OF THE COURT

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1 MR LAWSON May it please the Court?

2 THE COURT Yes, sir

3 MR LAWSON I would ask that the Court admonish that - -
4 that no one try to contact or have any contact with any jurors,
5 that that is - - -

6 THE COURT Oh, I would think if that occurs and I find out
7 about it, somebody's going to jail immediately

8 MR LAWSON Yes, sir

9 THE COURT Immediately

10 That's on either side of the issue, you understand

11 I would not anticipate that

12 The, of course, the bond of the defendant has fallen He
13 remains in the custody of the Sheriff

14 See everybody back at 9 30 in the morning

15 MR LONG Thank you, Your Honor

16 (The Court adjourns this case and court for the day to
17 reconvene at 9 30 a m on Thursday)

REMARKS OF THE COURT - ALLEN CHARGE

306

THURSDAY, MARCH 1, 20006

(The Court reconvenes the trial of this case with all parties present in the courtroom)

THE COURT Yes, ma'am

CLERK OF COURT Bring the jury in

THE COURT And to the alternates, good morning

ALTERNATE JURORS Good morning

THE COURT I wish you could be back there with them but our rules just simply doesn't provide for it but quite often something happens, and I'll need one of you

So, I'll - - every time I talk to the jury, I'll bring you out and keep you fully informed because you well may have to serve

(The jury returns to the courtroom at 9 40 a m)

REMARKS OF THE COURT - ALLEN CHARGE

THE COURT Good morning, Madame Foreman, ladies and gentlemen Delighted to see everybody back here again today to resume your deliberations

I continue to express to all of you my deepest thanks for your services in this case

You know, none of you asked to come here this week Certainly, none of you asked to be on this jury but having done that under your oath, now, you are required to perform services as required by law paying strict adherence to my law as I have given it to you understanding that you are the finders of the facts and you will apply those facts to the law and thereafter reach a

REMARKS OF THE COURT - ALLEN CHARGE

307

1 verdict

2 Last night prior to breaking for the evening, I made some
3 preliminary remarks concerning what happens when we have a mistrial
4 which is, indeed, an unfortunate thing for the system,
5 jurisprudence for the State of South Carolina and the folks of
6 Marion County and for the defendant

7 And, so, let me give you, now, a detailed discussion with
8 results to these issues

9 And I say to you in all sincerity that we want this case
10 resolved, and we're going to be here all day today and all day
11 today but we want it resolved, and it should be resolved in
12 fairness to the State and in fairness to the defendant

13 Now, the only mode provided by our law for deciding questions
14 of fact is by the verdict of a jury just exactly like you twelve
15 In most all cases absolute certainty cannot be obtained or effected
16 but when a matter is in dispute, it isn't always easy for even two
17 people to agree initially

18 So, when twelve people must agree, it becomes correspondingly
19 more difficult

20 I tell you that it is very unusual for a jury to go out and to
21 immediately or quickly return with a verdict That is what would
22 happen if a jury was in agreement to begin with

23 Now, I tell you, too, at the same time, we usually get a
24 verdict And, so, while it is normal as in this case for jurors
25 to disagree at first, we, nevertheless, get a verdict after all the

REMARKS OF THE COURT - ALLEN CHARGE

308

1 jury has laid aside all extraneous or outside matters and have
2 determined to try this case on its merits and on the basis of the
3 law and evidence in this case, not from some outside situation but
4 on the law and the evidence in this case

5 The State's entitled to that The people of Marion County is
6 entitled to that and this defendant is entitled to that

7 It has been said that jury service is perhaps the highest
8 service a citizen can perform for his or her country or state
9 during peacetime, and I certainly agree with that but I tell you,
10 however, a juror does not render good service who arbitrarily says,
11 "I know what I want to do in this, and if and when everybody agrees
12 with me, then we will write a verdict, and we will not write a
13 verdict until that time "

14 It was never intended that the verdict of the jury should be
15 the verdict of any one person That's not our procedure

16 At the same time I tell you that every juror has a right to
17 his or her own opinion and he or she should not give up that right
18 merely for the purpose of being in agreement However, the verdict
19 of the jury is the collective reasoning of all jurors, of all
20 twelve of you, and that is why we have a jury

21 It is the duty of each juror to tell the other how he or she
22 feels and why he or she feels that way since the verdict of the
23 jury is the result of collective reasoning It can be said that a
24 verdict is the result of give and take

25 With this in mind, Madame Foreman, and ladies and gentlemen,

REMARKS OF THE COURT - ALLEN CHARGE

309

1 I tell you that each of you - - I tell you - - I tell you that if
2 much larger number of your panel are in favor of one position, I'm
3 not interested in what it is, a dissenting jury or juror should
4 consider whether his or her position is reasonable which makes no
5 impression upon the minds of the majority

6 In other words, if the majority of you are one position, the
7 minority ought to seriously ask themselves why they can reasonably
8 doubt the correctness of the judgment of the majority

9 Although the verdict to which a jury agrees must, of course,
10 be his or her own verdict, the result of his or her own convictions
11 and not merely an acquiescence in the conclusion of his or her
12 fellow jurors, yet in order to bring twelve minds to a unanimous
13 result, you must examine the questions submitted to you with candor
14 and with proper regard, too, and respect for the opinions of each
15 other

16 You should also consider that you were selected in the same
17 manner and from the same source that any future jury will be, and
18 there is certainly no reason for me to suppose that this case will
19 ever be submitted to twelve people more intelligent, more impartial
20 and competent than you are or that more clear evidence will be
21 produced on one side or the other

22 In other words, ladies and gentlemen, a mistrial in a case is
23 an unfortunate thing If you do not agree on a verdict, it does
24 not mean that anybody wins It simply means that at some future
25 time, and it will be next week, that I will try this case with

REMARKS OF THE COURT - ALLEN CHARGE

310

1 another jury sitting where you are now selected in the same way
2 The same participants will come, and the same lawyers will ask
3 basically the same questions and probably get basically the same
4 answers, and we will go through this whole process again but,
5 fortunately, this is a two week term of court, and this case is
6 going to be resolved today or tomorrow or it will be tried again
7 Monday morning here in Marion County, and I tell you that to
8 emphasize that nobody wins in a mistrial

9 Now, in conclusion, I say to you that if the State of South
10 Carolina and the people of Marion County are entitled to a verdict,
11 they are entitled to it today, not tomorrow and not next week

12 If this defendant is entitled to a verdict of not guilty at
13 your hands, he's entitled to it today, not next week, next month

14 So, I continue to emphasize to you as strong as I can The
15 only thing that will happen in that event is that next Monday
16 morning I will go through the same voir dire I will ask
17 everybody do they have any interest in the case I will ask
18 everybody did anybody even know any of the participants, and all of
19 you have answered to me no

20 All of you have said that you have no interest in the case, no
21 bias in the case You've said to me that you have no friends to
22 reward or enemies to punish, and I know for you to be good,
23 independent, fair-minded people

24 Now - - now, of course, as I indicated yesterday, this case
25 took approximately two days and I received a message that at that

REMARKS OF THE COURT - ALLEN CHARGE

311

1 time you were still deliberating, ah, only in two hours, and,
2 obviously, two hours to go through a file like this with the
3 evidence that was presented as finders of the fact, that's not
4 nearly sufficient time for you to reach unanimity either for not
5 guilty or guilty

6 And, of course having said that, I'm certainly of the opinion
7 that there has not been sufficient deliberation So with a good
8 conscience I tell you that we're going to be a considerable more
9 time to see if these issues, ah, can be resolved

10 As I said to you, we're here with many other matters today and
11 tomorrow I'll be here at all times, Madame Foreman If there's
12 any questions of law that concern you or any member of your jury,
13 please write that question down because I want this jury to be
14 clear as to what the law is

15 Now, I want you to take the facts as you find them to be but
16 if there's any question about the law, now I want to clear it up
17 I want everybody to understand that

18 Now, I, therefore, humbly as presiding officer of this Court
19 here in Marion County, I beseech you to return to your
20 deliberations with the hope that we can arrive at a verdict
21 sometime today or tomorrow

22 And as I say to you and I emphasize again as strong as I can,
23 I would not ask anybody to give up their heartfelt opinions about
24 any issue of the case That would be improper

25 But I also tell you as strong as I can that if this case is

JURY CONTINUES DELIBERATIONS

312

1 not resolved this week, we're going to be going through the same
2 procedure next week, and I want everybody to understand that
3 That means that nobody wins but everybody loses

4 So, please, Madame Foreman, go back and resume your
5 deliberations If there's any questions anybody has, please let me
6 know so that I can clarify it for you

7 You may now begin your deliberations

8 Thank you

9 If you need any help or anything, now, in the event we need
10 lunch, I'll be glad to order lunch for you, and we'll have lunch at
11 the County's expense Okay? Supper, too

12 (The jury retires to the jury room at 9 52 a m continue
13 deliberations)

14 THE COURT Alright

15 Have the alternates, please, resume their place

16 (Alternates leave the courtroom)

17 THE COURT Any exceptions or additions to that charge?

18 What say the state?

19 MR LAWSON None from the State

20 THE COURT What say the defendant?

21 MR LONG None, Your Honor

22 THE COURT Your Honor

23 (The Court recesses the trial of this case awaiting advice
24 from the jury and thereafter reconvenes the trial of this case at
25 10 54 a m upon receiving another note from the jury)

JURY NOTE AND RESPONSE OF THE COURT

313

1 THE COURT Thank you Be seated

2 Bring the - - bring the alternates back for me

3 (The jury returns to the courtroom at 10 57 a m along with
4 the alternates)

JURY NOTE AND RESPONSE OF THE COURT

5
6 THE COURT Madame Foreman, I've received your
7 communication and by such communication, it appears obvious to me
8 that you are making some progress with regards to certain counts
9 here

10 You know, Count 2 was the trafficking in powder cocaine which
11 is the actual simple possession of a sufficient quantity to render
12 the possession

13 And County 4 is trafficking in crack cocaine which, again, is
14 simple possession, either actual or constructive, of a quantity
15 sufficient for it to rise to trafficking

16 Now, you have asked that I talk to you about 3 and 5

17 Count 3 says not only did the defendant possess that quantity
18 which is claimed in Count 2 but also says that at that time and
19 place, he possessed it with intent to distribute

20 And so County 3 says not only did he have it but he had with
21 intent to distribute it which is an entirely separate account,
22 separate statute.

23 Our statute says if you possess it, are trafficking in it,
24 you're guilty but there's a separate statute that says there's
25 another penalty if you possessed it with intent to distribute

JURY NOTE AND RESPONSE OF THE COURT

314

1 within a half-mile of school or playground

2 So Count 3 simply says, "We allege that he had it and he did
3 it with intent to possess it within half mile of a school "

4 Count 5 says, "Not only did he have the crack cocaine in the
5 quantity alleged but he did it with the intent to distribute it
6 within a half-mile of a school or playground "

7 And so if, and I say this advisedly, if in Count 2 which is
8 trafficking and if in Count 4 which is trafficking you have found
9 that he possessed, and so, then, you go to the other two counts, if
10 at all, and I'm not suggesting what your verdict should be, but if
11 you find he had it, then you need to go to the second - - third
12 question, "Did he have these drugs at that time and place, one,
13 within a half-mile of a school, and, two, did he intend to
14 distribute it?"

15 Now, as I told you earlier, you can find somebody not guilty
16 or guilty on one charge and guilty on the other or not guilty

17 As an example and an example only, you might find that he
18 possessed, either actual or constructive, the drugs sufficient to
19 rise to trafficking but you could easily find, too, if you chose to
20 that you did not find intent to distribute

21 And, again, as all other issues, that's for you to determine

22 And so it is that in order to find the one guilty of intent to
23 distribute, three things have to happen

24 You have to find that he had it, either actual or
25 constructive, beyond a reasonable doubt

JURY NOTE AND RESPONSE OF THE COURT

315

1 Then, secondly, you have to find that he had it within a half-
2 mile of a school or playground,

3 And, then, third, you've got to find that at the time he had
4 it, he intended to distribute it

5 And the State's got to prove this beyond a reasonable doubt

6 Now, let me talk to you about the intent to distribute

7 I have told you about the elements

8 First you've got to prove that he had, and, of course, and I'm
9 not saying what your verdict is or ought to be but if you find that
10 he had it in trafficking, then you go to the second, whether it was
11 within half-mile of a school, and if you find that it was, then you
12 go to the third thing Did he intend to distribute?

13 Now, I've told you that possession requires that a person be
14 in actual or constructive possession, either one or the other of
15 the controlled substance

16 Now, I've told you that you must find that the defendant had
17 possession of the controlled substance

18 Now, secondly, in the intent to distribute, the State must not
19 only prove possession of the controlled substance by the defendant
20 but the State must also prove beyond a reasonable doubt that he
21 possessed it with intent to distribute, and that's for you to
22 determine

23 One can possess it and be guilty of that and not necessarily
24 be guilty of intent to distribute depending upon your findings

25 The intent to distribute a controlled substance is an

JURY NOTE AND RESPONSE OF THE COURT

316

1 essential element of the offense Intent is defined as a purpose
2 or aim or design in law It is the state of a person's mind which
3 directs his actions toward this specific object

4 Distribute means, of course, that he intended to distribute it
5 with or without pay and that either actual or constructive If you
6 distribute it, you violated the law with or without pay The
7 violation is the actual distributing or handing over or giving to

8 Now, the State must prove beyond a reasonable doubt, of
9 course, that the substance, in fact, either in Count 3 or 5 was
10 powder cocaine or crack cocaine Must prove as I continue to say
11 to you that it was within a half-mile of a school or playground

12 Now, if the State fails to prove the defendant had the intent
13 to distribute, you may, if you choose, find him not guilty as to
14 that charge That would in no way affect your other charge if, in
15 fact, you found him guilty of trafficking

16 As I continue to say, one can be guilty of possession,
17 possession only and the State hasn't proved the intent to
18 distribute

19 Now, in connection with intent to distribute, I'm going to
20 charge you as follows

21 I will now charge you in part provisions of the appropriate
22 sections of the Code of Laws of South Carolina

23 In any criminal prosecution for the violation of this section
24 relating to possession with intent to distribute a controlled
25 substance, the amount of the controlled substance in the

JURY NOTE AND RESPONSE OF THE COURT

317

1 defendant's possession at the time of the alleged violation shall
2 give rise to the following inferences

3 If a defendant had in his possession more than ten grains of
4 powder cocaine, there is an inference that the defendant had that
5 substance with possession with intent to distribute There is
6 that inference with that quantity

7 And if one has more than one gram of crack cocaine, that same
8 inference arises that he had the intent to distribute

9 However, I charge you this This inference created by law
10 which I just read to you is an inference only This inference is
11 simply an evidentiary fact to be taken into consideration by the
12 jury along with all the other evidence in the case and to be given
13 such weight as you determine it should received

14 In conclusion, let me say this to you

15 One can be guilty of possession only of a quantity of crack
16 cocaine or powder cocaine, and the State still has not proved him
17 guilty of intent to distribute Let that be clear

18 I'm not suggesting to you what your verdict is or ought to be
19 but as I told you earlier You can if you choose find the
20 defendant guilty of some and not guilty of the other, not guilty of
21 all or guilty of all but there's nothing inconsistent in finding
22 one guilty of possession but not guilty of intent to distribute

23 And having said that, I make no suggestion as to what your
24 verdict should be as to any of these things. I just wanted to
25 explain to you the difference between possession and the charge of

JURY NOTE AND RESPONSE OF THE COURT

318

1 intent to distribute which is a separate charge emphasizing again
2 that one who is found guilty of possession must also be found of
3 possessing it within a half-mile of a school or playground and,
4 thirdly, it must be shown to your satisfaction that he not only
5 possessed it there but he possessed it with intent to distribute,
6 and the State's got to prove these three things beyond a reasonable
7 doubt

8 And so it is by recapitulation, in Count 2, the State says
9 that he was possessing a certain quantity of powder cocaine
10 sufficient to raise it to trafficking under the amounts that the
11 indictment indicates

12 Under Count 4 they say that at the same time and place, he had
13 a quantity of crack cocaine in his possession

14 Now, in addition to those possession charges raising
15 trafficking, the additional charges to which you refer are not only
16 that he did it but he had it with possession to intent which is
17 whole nother issue for your decision and yours only

18 Does that answer question, Madame Foreman? Does that clarify
19 anybody?

20 MADAME FORELADY Yes

21 THE COURT Ma'am?

22 MADAME FORELADY Yes, sir

23 THE COURT Can you answer me yes or no?

24 MADAME FORELADY Yes

25 THE COURT Okay

JURY NOTE AND RESPONSE OF THE COURT

319

1 Now, let me say this to you I'm delighted to explain it to
2 you, and if anybody has any further questions about this issue, do
3 exactly as what your good Foreman did Tell them what it is
4 Come out here and let me talk to you about it so that we can
5 explain it and move on with this case Okay?

6 Thank you so much

7 (The jury retires to the jury room at 11 09 a m to continue
8 deliberations, and the alternate jurors are again separated from
9 the jury)

10 THE COURT For the State or defendant, any objection to
11 that charge?

12 What says the defendant?

13 MR LONG None, Your Honor

14 I was just wondering if I could see the note

15 THE COURT What did we do with it?

16 Yes Make it a part of the record

17 (The Court Reporter accepts the Jury Note as Court's Exhibit
18 #3)

19 THE COURT They wanted clarification as to 3 and 5 which
20 are the intent

21 MR LONG Yes, sir

22 THE COURT I apologize for not showing it to you

23 MR LONG No, no, no No problem whatsoever

24 THE COURT Alright Mr Well, let's move on

25 (The Court recesses the trial of this case to address other

JURY ADVISES VERDICT REACHED AT 11 25 A M

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1 matters before the Court while awaiting the advice of the jury and
2 thereafter resumes the trial of this case at 11 41 a m at which
3 time the jury advises that a verdict has been reached)

4 JURY ADVISES VERDICT REACHED AT 11 25 A M

5 THE COURT Thank you Be seated

6 Ladies and gentlemen of the audience, I understand that the
7 jury has reached a verdict in the case they are now considering
8 I have no idea what the verdict is and don't know what it is but
9 whatever it is, either not guilty or guilty, it's going to impact
10 and be of great concern to some folks in this audience

11 Now, I tell all of you within the sound of my voice Upon the
12 publishing of that verdict whatever it is I will not accept any
13 statement or any outcry by anybody If that be done, you will be
14 found in contempt of court and go to jail today

15 Now, in that connection, Sheriff, I would not anticipate it
16 but I'm not going to have it So, I want you to put appropriate
17 personnel around the courtroom If anybody makes any inappropriate
18 remark Arrest them immediately Bring them before

19 Sheriff, you got that?

20 SHERIFF Yes, sir

21 THE COURT Put your people around

22 SHERIFF Okay

23 THE COURT Now, is anybody - - in fairness to you, if
24 anybody feels that emotionally you can't handle the verdict whether
25 it's not guilty or guilty, I'll ask and give you an opportunity to

VERDICT

321

1 leave at this time I don't want to put anybody in jail but I
2 certainly will

3 Alright Bring the jury in

4 (The jury returns to the courtroom at 11 44 a m)

5 VERDICT

6 THE COURT Madame Foreman, have you and the jury reached
7 a unanimous verdict in regards to the issues in this case?

8 MADAME FORELADY Yes, Your Honor

9 THE COURT Please hand them to the Bailiff and have him
10 hand them to me

11 Ladies and gentlemen, if this be the unanimous verdict of all
12 twelve, please signify by raising your right hand

13 Let the record now reflect that the jury has signified that
14 the verdict is unanimous

15 Publish the verdict, please

16 CLERK OF COURT Thank you, sir

17 Court of General Sessions, State of South Carolina, County of
18 Marion, The State of South Carolina vs Glenn O Pernell

19 As to Count 2, the defendant is charged with trafficking in
20 cocaine in violation of Section 44-53-0370 of The Code of Laws of
21 South Carolina

22 We, the jury, find the defendant guilty

23 As to Count 3, the defendant is charged with possession of
24 cocaine with intent to distribute within the proximity of a school
25 or park in violation of Section 44-53-0445(b)

VERDICT

322

1 We, the jury, find the defendant not guilty

2 As to Count 4, the defendant is charged with trafficking in
3 cocaine base, crack cocaine, in violation of Section 44-53-0373 of
4 The Code of Laws of South Carolina

5 We, the jury, find the defendant guilty

6 As to Count 5, the defendant is charged with possession of
7 cocaine base, crack, with intent to distribute within the proximity
8 of a school or park in violation of Section 44-53-0445, The Code of
9 Laws of South Carolina

10 We, the jury, find the defendant not guilty

11 Signed Denice Gregg, Foreman, Signature of Foreperson,

12 Date - 3/1/07

13 Is this your verdict, say you one, say you all?

14 MEMBERS OF THE JURY Yes

15 CLERK OF COURT Thank you

16 THE COURT Madame Foreman, ladies and gentlemen, let me
17 thank you for your services in this case, and I tell you as
18 presiding judge, this verdict was certainly warranted by the law
19 and evidence in this case

20 The evidence as presented here was just simply overwhelming
21 with regards to the possession issue and trafficking

22 I can understand why a jury might well conclude that he had it
23 but they couldn't satisfy themselves that he had it with intent to
24 possess, so - - and I understand that

25 But I could understand, too, that twelve people sworn to find

VERDICT

323

1 the truth, it'd be very difficult to have found him not guilty as
2 to the trafficking charge

3 Now, you know, most of us unless elected or appointed never
4 have an opportunity to participate in government but that's not
5 true in the jury system In the jury system you actually have a
6 chance to participate in your government and in your law
7 enforcement, and by a verdict like this, you are saying as
8 custodians of the peace and good order, and the jury is the
9 custodian of the peace and good order in your county, defendants
10 quickly learn what they can or cannot do based on the verdicts of
11 the jury

12 And I can tell you without equivocation had this verdict been
13 not guilty on this overwhelming evidence, the drug dealers of this
14 county would have inundated Marion County by the weekend with more
15 drugs believing, "Well, let's go ahead and do it They're not
16 going to convict us anyway "

17 Everybody within the sound of my voice, now, knows the word
18 that if you violate the drug laws of this county and this state
19 that your dedicated law enforcement officials including this great
20 Sheriff is going to do something about it

21 This case was one - - I've been on the bench twenty-three
22 years, and this case was one of the best presented that I've seen
23 in a long time, not only by the Solicitor's Office here but by the
24 gathering of the evidence from the Sheriff's Office

25 Sheriff, I want to congratulate you and your fine staff in

VERDICT

324

1 this case

2 Now, in that connection, I would tell you that this defendant
3 received a splendid defense Mr Long of the Horry County Bar is
4 a distinguished member of that Bar, a splendid defense attorney
5 Matter of fact, I was in college with his father

6 He came here as a court appointed attorney without one dime
7 being paid by this law - - by the defendant, and that speaks well
8 of our system that if you can't afford an attorney that our Court
9 will appoint somebody as a distinguished lawyer like Buddy Long who
10 came here every day from Horry County and gave up his business to
11 give this defendant the splendid defense that he did

12 But in this case you concluded, and I can now agree with you,
13 that the evidence was just simply overwhelming

14 Now, you might read in the paper tomorrow that this defendant
15 has a significant prior drug record, and he does, and I'm going to
16 let him present it to you, and you may wonder "Why in the world
17 didn't they tell us that?"

18 Well, under our rules, that's highly prejudicial If he be
19 convicted at all, we wanted him convicted on the evidence in this
20 and not what he did some time ago

21 But you need to know that he has a prior record at least on
22 two separate occasions, known, as I understand it, for his record

23 Tell me about his record, Solicitor

24 MR LAWSON If it please the Court?

25 Your Honor, he has a conviction for simple possession of

VERDICT

325

1 marijuana in 1996, ah, driving under suspension and possession of
2 alcohol by a minor in 1998, driving under the influence in 1999,
3 trafficking in cocaine, ten grams - - more than ten but less
4 twenty-eight grams - -

5 THE COURT When was that?

6 MR LAWSON - - in 1999

7 THE COURT Already been convicted one time in 1999

8 MR LAWSON And the rest are these charges, and there are
9 driving offenses included DUI and some offenses in North Carolina
10 which I can't - - it's under cases in North Carolina

11 THE COURT It was a second offense of drugs of some kind

12 MR LAWSON It was a third

13 THE COURT This is the third - - the third drug offense
14 And this - - where's the Sheriff?

15 SHERIFF Right here

16 THE COURT Sheriff, as I understand it, what kind of
17 reputation? Isn't he one of the big drug dealers in the county?

18 SHERIFF Yes, sir He's been a problem for quite some time

19 THE COURT Okay

20 Tell me I want the jury to know of his inappropriate conduct
21 at the jail night before last

22 SHERIFF I presented your Law Clerk with an incident report
23 just a few minutes ago

24 THE COURT Come around please Tell me I just want the
25 jury to know who we're dealing with here

VERDICT

326

1 SHERIFF I presented your Law Clerk with an incident report
2 from the jail It happened - - the incident happened day before
3 yesterday when my officers carried him back to the jail

4 He urinated in front of a couple of female guards at the jail,
5 and, you know, it's just inappropriate behavior, I feel like

6 THE COURT In a trash can or something

7 SHERIFF In a trash can, yes, sir, and view of two female
8 officers

9 THE COURT Okay

10 Sheriff, I again, ah, express to you the appreciation of
11 Marion County for your dedicated effort in eradicating the drugs
12 As I understand here in Marion County as in Marlboro, they've got
13 a terrific drug traffic

14 SHERIFF Yes, sir, we do

15 THE COURT Well, you know that the word's going out, now
16 They've got a quicker line than this computer here

17 I can tell them and everybody within the sound of my voice,
18 within thirty minutes the word's going out

19 "Be careful The Sheriff's after us, and the jury is going
20 to convict us "

21 SHERIFF Yes, sir That's what - - the message we need to
22 send

23 THE COURT Yes, sir I understand

24 I want to thank all of you, and I just bring - - I didn't want
25 you to have this information ahead of time because it may have

VERDICT

327

1 prejudiced you against the defendant, and I would not have wished
2 that If convicted at all, I want him convicted with what he's
3 charged with

4 We have many other things to do today, and we'll be here
5 tomorrow, too, but we will not now require the services of the jury
6 for the rest of the proceedings

7 We've got some bond revocations, many guilty pleas We're
8 going to get a lot of guilty pleas this afternoon on the basis - -
9 on the basis of this verdict I can tell you that Ordinarily,
10 they wait around to see what a jury is going to do

11 And if somebody, you know, if somebody wants to plead not
12 guilty, I above all would respect their right to not guilty I
13 would above respect their presumption of innocence but, ah,
14 defendants have got to know If the evidence is simply
15 overwhelming, twelve good citizens who are charged with - - with
16 the responsibility of law and order in the court are going to look
17 at it very seriously

18 Some defendants think it's just alright, but as I said The
19 jury system is the custodian of what's permissible in our society,
20 and the first time the jury system thinks it's just alright to
21 violate the law, it's just going to be violated more

22 I've got to tell you, ladies and gentlemen, that, ah, the
23 drugs are the scourge of our society, now About ninety-five
24 percent of what we now do is either because of drugs or is drug
25 related, either stealing and robbing and killing to get drugs or

VERDICT

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1 sell it, and it's engulfed our society, and it's not going to
2 improve by all of us or our children until we eradicate it

3 You know, a lot of people don't realize it but these children
4 are getting hold of these drugs now earlier It's literally
5 scrambling their brains

6 When a drug dealer is out there selling, he does not care who
7 it gets All he wants is his money but it's getting our children
8 and grandchildren

9 And so it's a - - it's a bane on our land here that we got to
10 do something about

11 Anyway, having said that, I am most appreciative of your
12 efforts in the case You've worked very diligently in this case,
13 and, you know, a good sign of a jury is how they pay attention to
14 the testimony, and I knew I had a good jury early on because all of
15 you without equivocation were most attentive to every witness and
16 everything that was said, and that just tells me I got good
17 twelve folks here who are going to do their duty in accordance with
18 their oath

19 You are now excused for the day and for the week, and you go
20 with my gratitude

21 Thank you

22 You may leave, and the alternates, too

23 (The jurors are released for the day and for the week and
24 depart the courtroom)

25 THE COURT Alright

POST-TRIAL MOTIONS AND RULING OF THE COURT

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1 Mr Long, I again congratulate you on the efforts that you
2 made in this terrible case here The evidence against him, as I
3 indicated is just simply overwhelming but I wish to again express
4 to you for the people of Marion County and our judicial system your
5 willingness to come down here as a court appointed attorney - -

6 MR LONG Thank you, Your Honor I appreciate the
7 comments

8 THE COURT - - and take away from your practice in Horry
9 County

10 MR LONG I was, in fact, retained by an advance

11 THE COURT Well, even retained counsel

12 MR LONG Well, I appreciate your comments

13 THE COURT But, ah, you are recognized, and I conclude an
14 excellent attorney

POST-TRIAL MOTIONS AND RULING OF THE COURT

15 THE COURT I will never know more about this case than I
16 know right now So, I'll be glad to hear any post-trial motions

17 MR LONG Yes, Your Honor

18 Again, for the same ground, motion for a directed verdict and
19 new trial following the presentation of the testimony and evidence
20 Yes, Your Honor, agrees that the evidence concerning the
21 distribution was prejudicial Your Honor has ruled that it was
22 relevant and properly before this jury
23

24 The jury, obviously, had some issues in grappling with the
25 possession issue, and, of course, they reached a verdict saying

POST-TRIAL MOTIONS AND RULING OF THE COURT

330

1 trafficking but we think that verdict of possession resulting in
2 the trafficking charges was highly influenced by evidence we feel
3 should not have been in front of the jury, the distribution - - the
4 distribution allegations, and for that reason we would respectfully
5 ask for a new trial in spite of the jury's verdict

6 THE COURT Anything further?

7 MR LONG No, Your Honor

8 THE COURT Alright, sir

9 You want to respond to that for the State, Mr Lawson, or Mr
10 Solicitor?

11 MR LAWSON Your Honor, we believe that the evidence was
12 presented, ah, in conformity with the rules, that, ah, there is
13 absolutely no reason to grant a new trial really The evidence and
14 the facts speak for themselves This is all one continuous
15 transaction, and I believe it had to be presented the way it was
16 presented, Your Honor

17 THE COURT Well, my response would be that I specifically
18 granted a continuance on that issue at your request, and I told the
19 jury on several occasions that the introduction of that testimony
20 was not as to his guilt or innocence but only as to how it might
21 bear on the issues that occurred at the motel some four or five
22 hours later

23 The jury, in my view, given the close proximity in time was
24 entitled to know that he by himself in a white Crown Victoria
25 possessed some drugs and possessed them in a black bag which was

SENTENCE OF THE COURT

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1 found in the car seat next to him later

2 They were also entitled to know that earlier that day he had
3 drugs in a white Crown Victoria

4 These were issues in my view that related to the subsequent
5 events In addition to all of that, the jury in my view were
6 entitled to know the basis for the arrest warrant which was
7 exercised in the incident at the Crown (sic) Motel some four or
8 five hours later

9 And so it is I'm satisfied and comfortable with the fact that
10 those issues were properly for the jury's consideration, and I,
11 therefore, respectfully, Mr Long, deny your motions

12 MR LONG Thank you, Your Honor

13 THE COURT Yes, sir

14 Alright Bring the defendant around, please

15 SENTENCE OF THE COURT

16 (The defendant stands before the Court)

17 THE COURT Mr Solicitor, is there anything further you
18 care to tell me about this case?

19 MR LAWSON Your Honor, there are, also, I would advise
20 that, ah, that this individual has pending trafficking charges in
21 Marlboro County as well, that - - -

22 THE COURT And the distribution charge here is still
23 pending

24 MR LAWSON Yes, sir

25 THE COURT You represent him in Marlboro County?

SENTENCE OF THE COURT

332

1 MR LONG Yes, sir, Your Honor

2 THE COURT And when are those cases to be tried?

3 MR LONG They have not said or mentioned anything about
4 trial dates yet

5 THE COURT Well, I will be the presiding judge down there
6 beginning in May and probably on into September So, I'll probably
7 be seeing you again

8 MR LONG Yes, sir

9 THE COURT Mr Long, again, I want to emphasize to you the
10 splendid job you did under the set of facts in this case I know
11 you to be a distinguished attorney

12 Is there anything you care to tell me?

13 MR LONG Very briefly, Your Honor

14 Glenn is twenty-eight Born and raised in Marion, single, no
15 kids

16 He was disabled from a gunshot injury approximately a year,
17 year and a half ago Been disabled from working He works
18 roofing construction Has done that off and on Still attempts
19 to try to do it when he can

20 Accompanied here today in the courtroom by his mother and by
21 other family members - - uncle - - that have been here throughout
22 the trial for him

23 Your Honor, the statute takes the discretion out of Your
24 Honor, out of the trial court in determining an appropriate
25 sentence, and, certainly, the amount of drugs in this case, I would

SENTENCE OF THE COURT

333

1 not come before Your Honor asking for a minimum sentence or a
2 probationary sentence, nothing of that nature It's not even
3 possible but even if it were possible

4 What the statute provides is a sentencing range of twenty-five
5 to thirty years, minimum mandatory, no parole with eighty-five
6 percent service I don't think it is going to change one thing
7 for you to impose a thirty year sentence versus a twenty-five year
8 sentence

9 Your Honor, also, the fact that he was arrested pursuant to
10 one incident at one place and had two separate types of drugs but,
11 none-the-less, two offenses, one arrest, we think that any sentence
12 Your Honor gives him appropriately would be concurrent sentences

13 He is punished, so to speak, by the jury by being found not
14 guilty They have issued their verdict

15 THE COURT You mean found guilty

16 MR LONG Yes, sir

17 And the sentence itself, the minimum sentence itself is
18 sufficient punishment that it's going to be twenty-three years
19 before he's eligible for release should you give him the minimum
20 sentence at age twenty-eight

21 THE COURT What - - what are the facts giving rise to the
22 trafficking in Marlboro County?

23 MR LONG He and another occupant of a vehicle, traffic
24 stop arrest What was the weight?

25 Twenty-five on crack cocaine and seven grams and cocaine

SENTENCE OF THE COURT

334

1 So, it's one trafficking, ten to twenty-eight and one
2 possession

3 THE COURT Of course, that doesn't bear on my decision
4 here

5 MR LONG Yes, sir

6 THE COURT But, of course, if I'm the judge there, I will
7 deal with it appropriately knowing what I did here for him

8 MR LONG Yes, sir

9 THE COURT No, this young man, he's been fooling with
10 drugs since 1999, trafficking in cocaine by his conviction, and do
11 you agree that he has two prior drug records?

12 MR LONG I believe, Your Honor, that the first one was
13 simple possession, and the other was a conviction I believe he
14 served five years

15 THE COURT But there is still two prior sections for the -
16 -

17 MR LONG Yes, sir

18 THE COURT - - mandatory minimum sentencing involved

19 MR LONG Yes, sir I agree

20 THE COURT How old are you?

21 MR PERNELL Twenty-eight, Your Honor

22 THE COURT Twenty-eight

23 Well, you know, I don't enjoy putting anybody in jail but you
24 folks got to understand that, ah, everybody's so concerned about
25 drugs that they going to do something about it, and I've got to

SENTENCE OF THE COURT

335

1 deal you in a very serious way

2 You want to tell me why you decided to do what you did at the
3 jail the other day? Why did you decide to urinate in a trash can

4 - -

5 MR PERNELL Yeah, I had - -

6 THE COURT - - in front of two females officers? Why?

7 MR PERNELL - - I asked, um, I asked the officer if I could
8 use the restroom I was sitting in the hall, and she was, like,
9 "I need to go do something else first "

10 And I couldn't hold it If I'd a did it on myself - - -

11 THE COURT Well, you know, you been sitting here all week,
12 and every time your lawyer said you needed to smoke, I accommodated
13 you

14 MR PERNELL I needed to use the restroom in here, too

15 THE COURT Well, we'd have taken care of you That's
16 unacceptable conduct

17 MR LONG Your Honor, if I can comment because I do
18 recall some testimony I spoke with the Sheriff earlier about it
19 He informed me, and, of course, I spoke

20 He did not do it within the eyesight of the officers He did
21 turn his back to the officers It wasn't like he just unzipped and
22 exposed himself and went in the trash can He was - - turned his
23 back to the officers, he tells me He was not attempting to try to
24 embarrass or show them any disrespect or anything He simply had
25 to go to the restroom

SENTENCE OF THE COURT

336

1 THE COURT Does he know that he's going to serve twenty-
2 three years on what I do?

3 MR LONG Yes, sir Yes, sir

4 THE COURT You are how old now?

5 MR PERNELL Twenty-eight

6 THE COURT Twenty-eight and twenty-three, you'll be out at
7 sixty-one

8 MR LONG Fifty-one, Your Honor

9	THE COURT	Sir?

10 MR LONG Fifty-one, Your Honor

11	THE COURT	Fifty-one?

12 SOLICITOR CLEMENTS My age, Your Honor

13	MR LONG	See there	He'll be an old man

14 THE COURT He's a big-time operator

15 The sentence of the Court as to Count 2, he be confined to the
16 State Penitentiary for a twenty-five years which is the minimum
17 mandatory

18 As to Count 4, trafficking in crack cocaine, the sentence of
19 the Court, he be confined for another twenty-five years
20 consecutive

21 That will be the judgment of the Court Give him credit for
22 any time he served

23	Thank you

24 (The Court adjourns the trial of this case)

25 - - - END OF TRANSCRIPT - - -

CASE NO 06 GS33-297 DATE 2-27-07
PLAINTIFF State ATTORNEY Jack Lawson AS
DEFENDANT Glenn D Pernell ATTORNEY JM (Buddy) Long III

PRESIDING JUDGE Edward B. Cottingham COURT REPORTER LINDA W. MCCALL

[illegible]

CERTIFICATE OF COURT REPORTER

338

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF HORRY)
3

4 I, the undersigned Linda W McCall, Official Court
5 Reporter for South Carolina Court Administration, do hereby
6 certify that the foregoing is a true, accurate and complete
7 Transcript of Record of all the proceedings had and evidence
8 introduced in the hearing of the captioned case, relative to
9 appeal, in the Court of General Sessions of Marion County, South
10 Carolina

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

13 August 2, 2007

14
15 Linda W. McCall

16 Linda W McCall

17 Official Reporter
18
19
20
21
22

23 } CERTIFICATE AS TO

24 VOLUME II, PAGES 170-338

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF MARION)

GLEN PLRNELL)

Full name and prison number (if any) of Applicant)

v)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2009-CP-33 527
~~527~~

APPLICATION FOR

POST-CONVICTION RELIEF

BOOK 140
FILED

2009 DEC 14 P 1237

INSTRUCTIONS B 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 Broad River Correctional Institute
- 2 Name and location of Court which imposed sentence Marion County Court of General Sessions
- 3 Name(s) of co-defendant(s) (if any) , none known
- 4 The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed
 - (a) 2006-GS-33-297- Count 2 Trafficking Cocaine
 - (b) 2006-GS-33-297- Count 4 Trafficking Crack
 - (b) _____
 - (c) _____

CERTIFIED COPY OF THE
ORIGINAL FILED IN THIS OFFICE

BOOK _____ PAGE _____

Sherry R. Blodgett

CLERK OF COURT MARION COUNTY
SOUTH CAROLINA

Revised 3/2003

- 5 The date upon which sentence was imposed and the terms of the sentence
- (a) March 1, 2007 to a term of Twenty-Five (25) years in the State Department of Corrections-all sentences to run consecutive, credit for any time served on the charges
- (b) _____
- (c) _____
- 6 Check whether a finding of guilty was made
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
- 7 Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
- 8 If you answered Ayes 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 Conviction Affirmed
- ii _____
- iii _____
- (c) the date of each such result
- i July 20 2009
- 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) _____

- (b) _____
- (c) _____
- 10 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully
- (a) Ineffective Assistance of Counsel - * Applicant reserves the right to amend this application as needed
- (b) _____
- (c) _____
- 11 State concisely and in the same order the facts which support each of the grounds set out in (10)
- (a) Attorney failed to preserve certain issues for appeal
- (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? no
- (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 Aves= to any part of (12) list with respect to each petition motion or application
- (a) the specific nature thereof
- I _____
- II _____
- _____
- IV _____
- (b) the name and location of the Court in which each was filed
- I _____
- II _____

III _____

IV _____

(c) the disposition thereof

I _____

II _____

III _____

IV _____

(d) the date of each such disposition

I _____

II _____

III _____

IV _____

(e) if known citations of any written opinions or orders entered pursuant to each such disposition

I _____

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

15 If you answered "yes" to (14) identify

(a) which grounds have been presented

I _____

II _____

III _____

(b) the proceedings in which each ground was raised

I _____

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? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18 If you answered Ayes= to one or more parts of (17), list

(a) the name and address of each attorney who represented you

i J M Long, III, 319 Beaty Street, Conway, S C 29526

ii _____

iii _____

(b) the proceedings at which each such attorney represented you

i Trial, sentencing, and appeal

ii _____

iii _____

19 State clearly the relief you seek in filing this application

New Trial/ Conviction vacated

20 Are you now under sentence from any other court that you have not challenged?

no

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Tynika Adams Claxton", with a stylized flourish at the end.

Tynika Adams Claxton
Attorney for Applicant
P O Box 50
Blythewood, SC 29016
803-400-1195 (P)
803-675-0259 (F)

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF MARION	)	2009-CP-33-527
	)	
	)	
	)	
Glenn Pernell	)	)
	)	
vs	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina	)	)
DEFENDANT	)	February 9, 2011
		Florence, South Carolina

B E F O R E

THE HONORABLE THOMAS A RUSSO, JUDGE

A P P E A R A N C E S

DAVID SPENCER, ASSISTANT ATTORNEY GENERAL
Attorney for the STATE

TYNIKA CLAXTON, ESQ
Attorney for the Applicant

KESHIA REED
Official Court Reporter

I N D E XWITNESSDIRECTCROSSREDIRECTRECROSS

Glenn Pernell

Mrs Claxton

5

23

Mr Spencer

11

J M Long

Mr Spencer

25

35

Mrs Claxton

31

Certificate of Reporter 43

1 MR SPENCER Your Honor, whenever you're ready

2 THE COURT I'm ready

3 MR SPENCER Thank you, Your Honor The next
4 case I call will be Glenn Pernell vs State, that's
5 2009-CP-33-527 Mr Pernell was indicted in November of
6 2006 for distribution of cocaine base, trafficking in
7 cocaine, possession of cocaine with intent to distribute
8 within proximity of a school or park, trafficking in
9 cocaine base and possession of cocaine base within
10 proximity of a school or a park And he was represented
11 by Mr Buddy Long He was tried on all charges except
12 that first distribution charge And he was convicted on
13 both trafficking counts and acquitted on the proximity
14 counts He was sentenced by Judge Cottingham to
15 consecutive 25 year sentences on the trafficking charges
16 for an aggregate 50 year sentence Your Honor, he's
17 represented here today by Mrs Claxton And I would just
18 ask Mrs Claxton to set out the allegations for the
19 record Oh, and I forgot to mention, Your Honor, there
20 was an appeal, obviously that was affirmed by the Court of
21 Appeals

22 THE COURT All right Mrs Claxton

23 MRS CLAXTON May it please the Court, Your
24 Honor

25 THE COURT Yes, ma'am

1 MRS CLAXTON Basically, we're here on
2 ineffective assistance of counsel on the part of Buddy
3 Long We are ready to proceed

4 THE COURT All right

5 MR SPENCER Your Honor, of course, I think I
6 said this yesterday, but ineffective assistance is more a
7 cause of action And if I could just get a little bit, I
8 think it help for a road map to get a little bit more
9 specific

10 THE COURT We'll hear about when she puts her
11 client up

12 MR SPENCER Thank you, Your Honor

13 THE COURT Let's just go ahead and proceed

14 MRS CLAXTON Your Honor, we call Glenn Pernell
15 to the stand

16 THE COURT Mr Pernell, if you please come
17 around to be sworn, sir

18 THE CLERK If you'll place your left hand on
19 the Bible and raise your right hand to the best of your
20 ability You swear the testimony you give in this case
21 will be the truth, the whole truth and nothing but the
22 truth so help you God?

23 THE WITNESS Yes

24 THE CLERK Be seated and state your name for
25 the record

1 THE WITNESS Glenn Pernell

2 WHEREUPON,

3 Glenn Pernell,

4 after first having been duly sworn, testified as follows

5 DIRECT EXAMINATION

6 BY MRS CLAXTON

7 Q Mr Pernell, where are you housed?

8 A At Lee Correction

9 Q And what were you convicted of?

10 A Trafficking in cocaine, trafficking crack cocaine

11 Q Okay And how much time did you get on both of those
12 charges?

13 A Twenty-five years a piece

14 Q Okay For a total of 50 years?

15 A Yes, ma'am

16 Q Okay Who represented you at your trial?

17 A Buddy Long

18 Q Okay And did you hire him initially like before the
19 trial started?

20 A Yes

21 Q Okay And did you have a preliminary hearing on your
22 charges?

23 A No, ma'am

24 Q Okay Why didn't you have a preliminary hearing?

25 A I was advised to waive my right to a preliminary

1 hearing

2 Q I'm sorry I didn't hear you

3 A I was advised to waive the preliminary hearing

4 Q Okay And were you challenging probable cause for
5 your arrest?

6 A No, I ain't challenge, but I feel like it was -- it
7 was ineffective for not challenging it

8 Q Okay So you feel like you wanted a preliminary
9 hearing?

10 A Yes

11 Q Okay Do you feel like you would have prevailed at
12 the preliminary hearing?

13 A Yes

14 Q Let's talk about prior to your trial, did you receive
15 any offers from the Solicitor's office?

16 A Yes, 14 years

17 Q Okay And did your attorney advise you to not take
18 that offer and go to trial?

19 A He said he felt like we had a good chance at winning
20 the trial, so he advised me to go ahead with the trial and
21 we didn't do the 14

22 Q Okay And if knowing what you knew now, would you
23 have taken that 14 year offer and not gone to trial?

24 A Yes

25 Q And the 14 year offer was on all of your charges?

1 A Yes

2 THE COURT Well, Mrs Claxton, let me ask,
3 clearly every person that walks the face of the earth with
4 hindsight who got a 50 year sentence would have taken the
5 14 year sentence if they had the chance to do it over
6 again So I'm not understanding that question You're
7 basically asking him, You were offered a deal, you didn't
8 take it, now that it went bad for you, would you have
9 taken it Obviously, the answer to that is ---

10 MRS CLAXTON I'll rephrase, Your Honor

11 BY MRS CLAXTON

12 Q Would you have taken the deal if your attorney had
13 advised you to take that deal?

14 A Yes

15 Q Do you feel like he should have strongly advised you
16 to take it?

17 A Yes

18 Q All right Let's talk about the trial itself Were
19 there any motions filed on your behalf prior to the trial?

20 A No, ma'am

21 Q Are there any motions you feel should have been
22 heard?

23 A I feel like I should have had a motion to suppress
24 all the evidence that was found in the vehicle And feel
25 like should have had a motion to suppress all the evidence

1 that was concerning the distribution charge

2 Q Okay Do you feel like you would have prevailed on
3 those motions?

4 A Yes

5 Q Okay In fact, your attorney filed a motion to
6 continue your case, is that right?

7 A Yes

8 Q Okay Why did he file that motion?

9 A Because he was just getting evidence of the
10 distribution charge that morning I guess, he didn't have
11 time to probably go over what was everything with the
12 distribution charge But they went on with the trial and
13 use evidence of the distribution charge to convict me of
14 the trafficking

15 Q Okay Do you feel like your attorney should have
16 strongly objected to going forward on that case
17 considering that they were going to use the distribution
18 evidence against you?

19 A I feel like we shouldn't have went to trial because
20 the evidence of the distribution charge was to be
21 presented during the trafficking

22 Q Okay The judge allowed the evidence of a
23 distribution charge to be presented before the jury Did
24 he ask your attorney to provide limiting instructions to
25 the jury about those charges?

1 A Yes, he ask did he have any instructions that he
2 would like for him to consider

3 Q And what did your attorney say?

4 A He didn't give any instructions He didn't have any
5 instructions for him to consider, but I feel like he
6 should had ask the judge to consider the -- advising the
7 jury that I was still innocent, presume innocent of the
8 distribution charges

9 Q And do you feel if the jury had had that instruction
10 they would have ruled in your favor on the trafficking?

11 A Yes

12 THE COURT I'm sorry I didn't understand
13 There was no charge to the jury of the presumption
14 innocence?

15 MRS CLAXTON There was a limiting instruction
16 The judge asked his attorney if he had limiting
17 instruction that he wanted to give the jury because he was
18 allowing the evidence of the distribution to be heard by
19 the jury and his attorney said -- well, did not offer any
20 limiting instructions

21 THE COURT All right

22 BY MRS CLAXTON

23 Q Did you take the stand at trial?

24 A No, ma'am

25 Q Did you want too?

1 A Yes, ma'am

2 Q And why didn't you take the stand?

3 A I was advised not to take the stand

4 Q And why did you want to take the stand?

5 A First about the conversation between me and Agent
6 Wallace and also about -- to prove that I was innocent
7 about the drugs that was found

8 Q Okay Where were the drugs found?

9 A In the vehicle

10 Q Okay Where were you?

11 A Inside the motel lobby

12 Q Okay Were there other people in the vehicle?

13 A Yes

14 Q And you wanted to take the stand to show ---

15 A That other people in the vehicle had to leave them
16 there because I ain't had noting to do with any of the
17 drugs

18 Q All right And you appealed your case, is that
19 right?

20 A Yes

21 Q And you weren't successful on the appeal, is that
22 correct?

23 A Correct

24 Q Okay Are there any things that you feel like your
25 attorney did wrong at the appeal stage?

(-- 1 A Yes, he had argued the provative (sic) value of the
2 distribution charge being let in And on the appeal, he
3 argued about the -- it being let in as a common scheme or
4 plan when the judge said he was letting it in for -- show
5 basis of arrest I feel like he should have -- on appeal
6 he should have argued that the provative (sic) value
7 outweigh prejudice effect

8 Q You're saying probative value, is that correct?

9 A Yeah

10 Q Is there anything else you felt like your attorney
11 did wrong as far as handing your case? Anything else you
12 want the Court to know?

13 A That's about it

14 Q Are you asking the Court to vacant your sentence and
15 grant you a new trial?

16 A Yes

17 MRS CLAXTON No further questions, Your Honor

18 THE COURT Thank you, ma'am

19 Mr Spencer

20 MR SPENCER Thank you, Your Honor

21 CROSS-EXAMINATION

22 BY MR SPENCER

23 Q Okay Now, I wanted to turn -- the first -- one of
24 the things I think you're arguing is you felt like the
25 evidence of the distribution charge shouldn't have come in

1 for a trial on the trafficking charge, is that correct?

2 A Yes, sir

3 Q Okay And in fact Mr Long did object to that
4 happening, right?

5 A Yes

6 Q And he -- and, obviously, the judge let it in over
7 Mr Long's objection?

8 A Uh-huh

9 Q And then Mr Long went ahead and appealed that issue,
10 right?

11 A Yes

12 Q And the Court of Appeals found that it was
13 admissible, right?

14 A Yes, he had argued -- he didn't argue that right on
15 the appeal

16 Q He argued it was not admissible as common scheme or
17 plan, right?

18 A Yeah

19 Q Now, did the Court of Appeals didn't think it was
20 common scheme or plan, but they came back and said it was
21 admissible anyway, right?

22 A Yeah

23 Q And it was under something called res gestae theory,
24 right?

25 A I don't understand

1 Q But you agree with me the Court of Appeals did affirm
2 on that? Did find the evidence admissible you agree with
3 me on that?

4 A Yes

5 Q And you agree with me too -- I mean, the reason he
6 was trying to move for a continuance he felt that the
7 evidence of a distribution charge was given to him late?

8 A Yes

9 Q And he objected and the judge made the trial go
10 forward anyway But the judge did continue the
11 distribution charge, right?

12 A He continued it, but he still let -- let the jury
13 hear a lot of evidence concerning the distribution charge,
14 which I was still presume innocent of?

15 Q So the judge wasn't going to let the State try you on
16 a distribution charge, but they did allow it into evidence
17 at the trial on the trafficking charges?

18 A Yes

19 Q Now, you're arguing today that you felt your judge
20 should have tried to suppress the evidence in the vehicle?

21 A Yes

22 Q Do you recall the testimony the police officer saying
23 that when the arrest was made -- well, let me back up a
24 little bit There was two other individuals with you in
25 the Crown Vic, right?

1 A Yes

2 Q Okay And you got out of the car and went into hotel
3 lobby, right?

4 A Yes

5 Q Okay And after you were arrested the two guys in
6 the car, they were in the backseat, right?

7 A No, there was -- one in the passenger and one in the
8 back When I was in the office, they had got out and
9 walked away And while they was arresting me, someone
10 stop them, but they was away from the car and arrested
11 them and stop them and handcuff them or whatever

12 Q You recall one of the police officers testifying that
13 the car door was open and he looked in and he saw a
14 marijuana blunt in the front seat?

15 A Yes, sir

16 Q Okay Then based on that, he searched the car?

17 A Yes, sir

18 Q And there was a black sack in the front seat of the
19 car, you recall that testimony?

20 A Yeah

21 Q Okay And he testified that that was open and that
22 he could see, I think, it was cocaine and crack cocaine
23 inside the bag, right?

24 A He said that the marijuana plant in the ashtray what
25 gave him probable cause to look further But during trial

1 and any of the evidence no marijuana was ever tested,
2 never entered in the trial

3 Q I'm sorry can you repeat that again

4 A He said that what gave him probable cause to search
5 the vehicle, but in none of the evidence was no marijuana
6 ever tested or was no marijuana plant ever entered into
7 trial to show that what he gave him was probable cause

8 Q And you weren't actually tried for any of the
9 marijuana found that day, right?

10 A No

11 Q Okay I wanted to ask you you said there was an
12 offer at one time for 14 years?

13 A Yeah

14 Q And you're wishing, of course, now understandably
15 wishing you would have taken that 14 year offer, right?

16 A Yes

17 Q Did your attorney advise you to take that?

18 A No, he told me what they was offering and like we
19 have a good chance, but we should go head with the trial

20 Q Okay My ears are just so so, so if you could speak
21 up You kind of mumbled that last answer if you don't
22 mind repeating that for me, sir

23 A I said he told me that what the State had offered
24 And he told me that he felt good about the trial, so we go
25 ahead with the trial

1 Q All right So he thought he had a good defense to
2 the trial?

3 A I assume so

4 Q How about you, did you feel you had a good defense to
5 the charges?

6 A Yes, sir Yes, sir

7 Q Were you guilty of the charges?

8 A No, sir

9 Q Okay So you decided you had a good chance at trial
10 and feel that you're not guilty and so you decided to go
11 to trial?

12 A Yes, sir

13 Q Was that your decision?

14 A It was with the help of my lawyer, I made that
15 decision

16 Q You made that decision?

17 A (No response)

18 Q And you realize if you pled guilty, you'd have to
19 tell the judge that you were guilty of those offenses?

20 A Excuse me

21 Q Do you realize if you pled guilty to the trafficking
22 charges, you would have had to tell the judge that you
23 were guilty of those two charges?

24 A Yes

25 Q And what you're telling me now today is if you told

1 the judge that that wouldn't be the truth?

2 A That's why I didn't tell the judge that

3 Q Okay So that's really why you didn't go -- that's
4 really why you didn't take the plea offer and went to
5 trial, right?

6 A I didn't take the plea because I was advised not to
7 take the plea

8 Q But it was your decision?

9 A With the help of my attorney

10 Q Now, and you were caught on the distribution charge
11 or when the evidence of that distribution charge came in,
12 do you recall Judge Cottingham giving him a limiting
13 instruction on that?

14 A As he said, it was being used for a basis of the
15 arrest

16 Q Right And that -- he said that you weren't being
17 tried on that charge today, is that correct?

18 A He didn't inform the jury that I was presumed
19 innocent Being that the jury heard that, they had --
20 they had no way to think They thought I was already
21 found guilty or pled guilty being that it was let in
22 They heard all that damaging evidence

23 Q Do you recall if the judge instructed the jury on
24 presumption of innocence at the conclusion of the evidence
25 after closings?

1 A Presumption of innocence concerning the trafficking?

2 Q Concerning all the charges

3 A No, sir

4 Q You don't recall that? Okay We can look at the
5 transcript for that Regards to your allegation on the
6 preliminary hearing, you're saying you wish you had the --
7 had that preliminary hearing cause you felt they might not
8 have found probable cause?

9 A To search the vehicle

10 Q To search the vehicle So that's just kind of -- you
11 wouldn't have wanted them to try and say that there was no
12 probable cause for the search?

13 A Yes

14 Q Okay And do you realize you were indicted by the
15 grand jury on all of those trafficking charges?

16 A Yes

17 Q All right I want to talk about your decision to not
18 testify And your attorney advised you not to testify?

19 A Yes

20 Q Do you recall why?

21 A No, I don't recall why

22 Q What would you have testified -- you've already told
23 us you were in the Crown Vic You drove up to the motel
24 You went into the motel lobby and that's when the arrest
25 was made, right?

1 A Yes, I was in the -- they come arrest me out the
2 motel lobby

3 Q Okay Well, let's back up a little bit Do you
4 recall Jeanette Flemming testified for the State, right?

5 A Yes

6 Q And she is -- she was working for the State and she
7 made -- she said that she made a purchase from you at your
8 house, purchase I can't remember if it's coke or crack?

9 A Concerning the distribution

10 Q And that's the distribution charge, right?

11 A Yes, sir

12 Q And she testified -- she testified that she saw that
13 black bag ---

14 A And she say she saw a black bag, but I wasn't on
15 trial for the distribution I never been found guilty of
16 the distribution

17 Q And I understand that, but that was presented in the
18 trial, right?

19 A Yes, it was presented?

20 Q And she testified that she -- she then arranged for a
21 transaction -- to set up a transaction to make another
22 drug purchase at the motel?

23 A For sex at the motel

24 Q Transaction of trading sex for drugs?

25 A No

1 Q She testified to that, right?

2 A No, sir

3 Q Okay Well, tell me what you think happened?

4 A Meeting up there to have sex?

5 Q And you weren't going to -- did you sell drugs to her
6 at your house?

7 A No, sir

8 Q Okay And so what you're saying is you were just
9 going to meet at the hotel to have sex?

10 A Yeah

11 Q And how many -- and you drove over in the Crown
12 Victoria, right?

13 A Yes

14 Q And who was in that car with you?

15 A Derrick Platt and Jeffrey Grays?

16 Q And it's just you and those two people?

17 A Yes

18 Q Okay And you gave a statement to the police though
19 when you were arrested And you told them that -- knew
20 that those two people had anything to do with that -- that
21 the drugs were yours, right?

22 A No, sir, that's not how the statement went When
23 they put me in Mr Wallace truck and he told me what they
24 had arrest me for, I said, Well, why they arrested them?
25 They had nothing to do with it, talking about the

1 distribution

2 Q Right

3 A They ain't know about no drugs being found or
4 anything

5 Q You're saying you didn't know that there were any
6 drugs?

7 A No

8 Q I see And so you told them they didn't have
9 anything to do with it?

10 A Do with the -- after he told me what I was being
11 arrested for, I seen them handcuffing the two people with
12 me I ask him why you arrested them, they had nothing to
13 do with it

14 Q So when -- did you recall the officer's testimony
15 basically after you had told them they had nothing to do
16 with it, he testified that you changed your story and said
17 that you had nothing to do -- those weren't your drugs and
18 there must have been somebody else that

19 A Yes, I did tell them it wasn't mine

20 Q And you told them that there was another person in
21 the car who must have had them and ran in the field?

22 A No, I never said that

23 Q You never said that?

24 A Uh-uh

25 Q So what you're saying is the officer is lying about

1 that?

2 A He lying about that And he lying about the
3 testimony with me saying that I say the drugs was mine,
4 yes, sir

5 Q Tell me about your prior conviction? What prior
6 convictions do you have prior to these charges?

7 A Trafficking in '99

8 Q Okay Any other convictions?

9 A (No response)

10 Q So you had a prior trafficking charge in '99 So
11 what you're saying is -- well, what drugs were you talking
12 about when you said it wasn't your drugs?

13 A I ain't said nothing about whether it was my drugs
14 I said they didn't have anything to do with why you
15 locking them up

16 Q And those two other individuals in the car they
17 testified against you and they said they had nothing to do
18 with those drugs, right?

19 A Yeah, they said they never seen any drugs and they
20 ain't had nothing to do with it And Officer Rossi he got
21 the drugs out of the front seat beside -- saying out the
22 middle, so it was -- that's where he said he got them from
23 somebody might had to see something I don't know nothing
24 about them

25 MR SPENCER Beg the Court's indulgence

1 THE COURT Yes, sir

2 (WHEREUPON, a pause in the proceedings)

3 BY MR SPENCER

4 Q Just one more thing, Mr Pernell Jeanette Flemming
5 was married, right?

6 A That what she said

7 Q Okay So you would have had to testify to the jury
8 that you were arranging to have sex with a married woman?

9 A That happens every day Your Honor -- I mean, sir

10 MR SPENCER Thank you I have no further
11 questions

12 MRS CLAXTON I have a couple of redirect
13 questions

14 REDIRECT EXAMINATION

15 BY MRS CLAXTON

16 Q Let's clarify your statement that you made to the
17 officers When the officer arrested you, what did he tell
18 you he was arresting you for?

19 A For distribution of cocaine -- of crack cocaine base

20 Q And when did that happen? When did they tell you it
21 happened?

22 A Said earlier that day

23 Q Okay And when you said why are you arresting them,
24 they had nothing to do with it is that what you were
25 talking about?

1 A Yes, concerning the distribution

2 Q Okay Not the drugs that they allegedly found in the
3 car?

4 A No, not the drugs they said they got out of the car

5 Q And the attorney general asked you about some -- a
6 blunt that was found in the ashtray is that why you felt
7 like your attorney should have had a suppression hearing
8 prior to your trial?

9 A Yes

10 Q Okay And with regards to the judge advising the
11 jury that you were presumed innocent until they found you
12 guilty, what were you on trial for?

13 A I was on trial for trafficking

14 Q And is that what the judge was presuming you innocent
15 of?

16 A Yes

17 MRS CLAXTON No further questions

18 MR SPENCER Your Honor, if I could beg the
19 Court's indulgence real quick I wanted to see something
20 before I ask him a question

21 (WHEREUPON, a pause in the proceedings)

22 MR SPENCER Your Honor, I have no further
23 questions I would just ask for everyone's convenience
24 there's testimony regarding the statement as about 223 and
25 224 of the transcript, but I have no further questions

1 THE COURT All right Thank you

2 Mr Pernell, you may step down, sir

3 (WHEREUPON, the witness leaves the witness
4 stand)

5 THE COURT Any other witnesses, Mrs Claxton?

6 MRS CLAXTON None, Your Honor

7 THE COURT All right Mr Spencer

8 MR SPENCER I would cal Mr Pernell to the
9 stand Excuse me, Mr Long to the stand

10 THE CLERK If you would place your left hand on
11 the Bible and raise your right hand Do you swear the
12 testimony you give in this case will be the truth, the
13 whole truth, and nothing but the truth so help you God?

14 THE WITNESS I do

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

17 THE WITNESS My name is Jay L Long, III
18 WHEREUPON,

19 Jay L Long, III

20 after first having been duly sworn, testified as follows

21 DIRECT EXAMINATION

22 BY MR SPENCER

23 Q Mr Long, you're obviously here today because you
24 represented Mr Pernell at trial?

25 A Yes, sir

1 Q Okay I wanted to first ask you about the 14 year
2 offer that was mention before Did you discuss that 14
3 year offer with Mr Pernell?

4 A I did

5 Q And what was your advice as to whether or not he
6 should take the plea?

7 A I advised him -- I thought he should take it because
8 we were presented that morning with a videotape and an
9 audiotape of a distribution that occurred, I think, it was
10 five hours before his arrest and charge with the
11 trafficking charges And I told him that I could try to
12 fight to keep the distribution case out or try to keep the
13 evidence out or try to get a continuance on all But if
14 that video came in or if we tried the distribution case,
15 then it was going to be very difficult

16 Q Okay Whose decision was it whether or not to take
17 that 14 year offer?

18 A It was his And there was more involved as the day
19 progressed I probably should have, so to speak twisted
20 his arm harder to take it, but he had decided not to And
21 that was when we were first presented with the tapes I
22 then discussed with the Solicitor and we had a pretrial
23 with Judge Cottingham about those tapes and about the
24 problem that this case had been pending for probably a
25 year And I was just informed and just became aware that

1 the tapes even existed that morning of trial So then the
2 judge ruled kind of in chambers said he would hear it all,
3 but he was incline to continue the distribution case,
4 which meant we would be trying the trafficking cases only
5 And there was some defense concerning the other two
6 defendants that had access to the drugs when Glenn was
7 arrested Glenn didn't have immediate access to them I
8 think then is when he's correct I said, Well, you know,
9 we've got a better chance with the trafficking charges if
10 the distribution charge is continued and is not going to
11 be tried today But I think I still wanted him to take
12 the 14

13 Q Okay And fair to say that in hindsight you wish you
14 tried harder get him to take that?

15 A Oh, yes, I wish I sat on him and held him down until
16 he took it in hindsight

17 Q But you did advise him to take it?

18 A Yes, I did

19 Q And, of course, naturally that's our seg way is what
20 I wanted to talk about which was the distribution and you
21 mention it take place about five hours before he was
22 arrested on the trafficking charges and you objected to
23 that coming in at trial?

24 A Continuously over and over again I thought Judge
25 Cottingham was going to get mad at me but every time

1 Q And you took that and you appealed that issue to the
2 Court of Appeals?

3 A Correct

4 Q And the Court of Appeals came back and said that that
5 was admissible as res gestae evidence?

6 A Correct

7 Q Mr Pernell brought up the issue of -- well, he
8 brought up the issue of a preliminary hearing And as I
9 understand, there wasn't a preliminary hearing Do you
10 think there would have been any advantage in having a
11 preliminary hearing?

12 A Generally, no There are some cases that I feel are
13 fact specific in a preliminary hearing that is worthwhile
14 In this case, they wouldn't even have to bring any of the
15 arresting officers, just basically an officer to come in
16 read the incident reports They wouldn't have to present
17 any evidence They wouldn't have to show the blunt
18 Basically, just the statement that there was a blunt
19 observed in the ashtray would have given them sufficient
20 probable cause to search

21 Q All right And then regarding the motion to
22 suppress evidence, suppress the drugs, I believe, is what
23 he was getting at Did you have -- was there a motion to
24 suppress the drugs do you recall?

25 A The transcript -- you mean, did I file one or did I

1 make one at trial?

2 Q Did you make one at trial?

3 A I'm pretty sure I did The transcript would be the
4 best record of that, but again, I don't think there was a
5 real issue as to probable cause for the drugs themselves
6 I think the defense was more along the lines of whose
7 drugs they were, than whether or not the drugs were
8 admissible and properly found through the search?

9 Q Right So there wasn't a significant search issue
10 that you could assert?

11 A Looking back on it, maybe I should have gone through
12 the motions for it At the time, I didn't feel that there
13 was a valid grounds to file a motion to suppress

14 Q And he excuse me -- what the testimony that was
15 presented at trial was the officer saw the marijuana blunt
16 in the passenger seat, is that your recollection?

17 A In the ashtray

18 Q In the astray?

19 A Yes

20 Q And based on that, he searched the car?

21 A Yeah, I think he said that the -- it was a leather
22 shave bag or something like that and he said it was open
23 and the drugs were visible in -- through that bag from,
24 you know, just looking in the window of the car door

25 Q I wanted to ask you concerning the decision of

1 whether or not Mr Pernell should have taken the stand
2 Did you discuss whether or not he should have testified at
3 trial?

4 A I'm sure we did

5 Q And do you recall why -- what was your advice on
6 whether or not he should take the stand?

7 A I don't specifically recall if he says I advised him
8 not to, then I would stick with that Normally, that's
9 what I do in cases like this There were ---

10 Q If I could just kind of follow up on that Why would
11 that normally be the advice you give?

12 A Specifically anyone with prior record for drugs
13 that's charged with drugs, sometimes that can turn around
14 and be admitted The fact that the distribution charge
15 had been brought up and the witness testified And then
16 we were on trial for the trafficking only, I felt that
17 would open up if Glenn testified to cross-examination on
18 the distribution charge things of that nature that were --
19 they were testified to in great detail during the trial by
20 the confidential informant who made the purchase Glenn's
21 a smart fellow And I think he could do well from the
22 witness stand But I think he just -- there were just too
23 many issues that he could take hits on if he were there to
24 testify

25 Q And I probably shouldn't have cut you off I just

1 wanted to let you finish cause you were about to say
2 something concerning the decision to testify when I kind
3 of interrupted you for that Do you recall what you were
4 going to say?

5 A No, all this was relating to his decision

6 Q We can get back on that if we need to Going back --
7 since, you didn't present any evidence at trial that gave
8 you the last closing argument as well, right?

9 A Correct

10 Q And that presents a strategic advantage as well, does
11 it not?

12 A Some, yes

13 MR SPENCER Beg the Court's indulgence
14 (WHEREUPON, a pause in the proceedings)

15 MR SPENCER Your Honor, I have no further
16 questions

17 THE COURT Mrs Claxton

18 CROSS-EXAMINATION

19 BY MRS CLAXTON

20 Q Mr Long, looking back on it is there anything that
21 you felt like you should have done for Glenn at his trial
22 that you didn't do?

23 A Yes, I should have been much more forceful with him
24 when he didn't want to take the plea I should have been
25 much more forceful to try to talk him into convince,

1 coerce whatever it took for that I should have objected
2 more to the marijuana evidence that was brought out during
3 the trial He was on trial for cocaine and crack cocaine
4 possession and the judge allowed testimony of evidence
5 that he allegedly threw from his person while he was in
6 the motel lobby being arrested There was also some
7 testimony from an officer -- I think I objected to it, but
8 the curative instruction wasn't given that he was
9 presumedly armed and dangerous and the jury heard that
10 Of course, we did take care of that in cross and tell --
11 you know, the officer admitted he was not armed Did not
12 have any guns or anything of that nature in his
13 possession I wish I should have objected more often
14 concerning the distribution evidence I still feel that
15 was highly prejudicial and shouldn't have been admitted
16 When we were presented with that discovery that morning
17 and then we were going to trial supposedly that morning on
18 all trials, I wish I'd argued more for a continuance on
19 all charges including the trafficking charges Because,
20 obviously, I wish I'd foreseen didn't know that the judge
21 would have admitted the confidential informant to testify
22 about the purchase that took place five hours earlier I
23 thought the judge was simply going to continue anything
24 about the distribution case But now knowing that the
25 judge continued the case but allowed the confidential

1 informant to testify in full, in great detail concerning
2 the distribution, I think that would have affected our
3 decision to try to continue all of it There may be some
4 other specifics, but, yes, there's things I wish I done

5 Q Okay What about the motion to suppress would you
6 have -- looking back on it do you feel like you should
7 have argued that?

8 A To suppress the drugs that were found in the vehicle?

9 Q Yes

10 A Probably not I think it -- I still think it would
11 have been a waste of time I just don't think there were
12 grounds to have it excluded as evidence

13 Q What about when the judge asked you if there were any
14 limiting instructions that you wanted him to provide to
15 the jury with regards to the distribution charge? Do you
16 feel like you should have offered some guidance there?

17 A Unlike Glenn's suggestion and I wish he would have
18 come up with it at trial To say, Your Honor, I wish I'd
19 come up with it as well To say, Your Honor, you know, we
20 appreciate the fact that you're going to tell the jury
21 he's not being tried on the distribution charge, that the
22 distribution evidence -- the reason the distribution
23 evidence is coming in was solely for his purpose of being
24 arrested at the motel And if that were the case, I don't
25 think there would have been any specifics concerning the

1 distribution I offered the judge, Judge, we will
2 stipulate that there was a valid arrest warrant for his
3 arrest in place at the time he was at the motel And we
4 will stipulate that without having to go into any of the
5 distribution evidence The judge didn't agree with me and
6 allowed it in I wish I would have stressed, well, Judge,
7 if you're going to charge him that please at the same time
8 tell the jury that he's innocent or presumed innocent
9 until proven guilty of this distribution charge And it
10 hasn't been called to trial The State hadn't called it
11 for trial I wish I had done that now

12 Q Okay What about at the appeal level, do you think
13 you did everything you could have as far as appealing the
14 case?

15 A The opinion says I failed to preserve the issue
16 concerning the marijuana found and I objected to it during
17 the trial I made a motion for a new trial or for a
18 mistrial at the close of all testimony and evidence and I
19 didn't bring it up then So then they said I did not
20 preserve that issue even though I objected to it
21 throughout the trial They said I didn't preserve it for
22 appeal Yes, I should have included that as well as my
23 other arguments for a new trial or a mistrial They said
24 in my brief that I said the marijuana found -- allegedly
25 found by him or the fact that he was allegedly armed and

1 dangerous was manifestly prejudicial In other words, its
2 -- you don't have to back it up by anything He's accused
3 of two crimes of possessing a firearm and possessing
4 marijuana And that in and of itself is so prejudicial,
5 it's manifestly prejudicial You don't have to cite
6 authority or argue it And I wish I'd had presented more
7 argument on that

8 MR SPENCER I'm sorry I missed who was saying
9 it was manifestly prejudicial

10 A I was -- we were on appeal

11 MR SPENCER I'm sorry for jumping in, but
12 that's what you were arguing?

13 A Yes, that's what we argued in the brief

14 MR SPENCER Thank you

15 MRS CLAXTON Beg the Court's indulgence

16 THE COURT Yes, ma'am

17 (WHEREUPON, a pause in the proceedings)

18 MRS CLAXTON I have further questions, Your
19 Honor

20 MR SPENCER Just briefly, Your Honor

21 REDIRECT EXAMINATION

22 BY MR SPENCER

23 Q When you brought up about, you know, testimony about
24 that came in concerning the possible pistol, is it your
25 recollection that the officer actually did testify that he

1 was armed and dangerous, but said that they had
2 information that there was a pistol in the car Does that
3 comport with your recollection?

4 A As I recall, the officer testified that they had
5 information that he was possibly armed or that he
6 possessed a firearm or something I don't know exactly
7 I don't think it was exactly armed and dangerous, but it
8 was words to that affect

9 Q And actually you did object to that testimony along
10 the lines of a weapon, right?

11 A Yes, I believe I did

12 Q And you objected to the testimony concerning the
13 marijuana, right?

14 A Yes, sir

15 Q Okay And in both cases, the Court overruled you?

16 A That's correct

17 Q Okay On appeal, they found -- the Court of Appeals
18 that the issue regarding the marijuana and I think also
19 the weapon were abandoned on appeal because there was no
20 authority cited is that comport with your recollection?

21 A No, I think they said it wasn't preserved on appeal
22 because I did not include that and my grounds for a
23 mistrial or a new trial at the close of all testimony and
24 evidence

25 Q Okay So -- but in terms of mistrial, you'd actually

1 already been overruled on whether or not that evidence
2 came in, right?

3 A Correct Correct

4 MR SPENCER Thank you Your Honor, I have no
5 further questions

6 THE COURT Thank you very much, Mr Long You
7 may step down, sir

8 (WHEREUPON, the witness leaves the witness
9 stand)

10 THE COURT Anything further, Mr Spencer?

11 MR SPENCER Nothing further, Your Honor I
12 would like the opportunity to argue

13 THE COURT All right, sir

14 MR SPENCER And, Your Honor, I think with the
15 first ground that was the preliminary hearing and I'm not
16 really going to argue much on that other than to say
17 there's an indictment and there's no real good reason to
18 hold a preliminary hearing

19 Regarding the 14 year offer, I don't think
20 there's been any deficiency shown obviously -- certainly
21 in hindsight Mr Long wishes he could have done something
22 more I think his testimony in general demonstrates that
23 he was really trying to fight for his client back at trial
24 and still wishes that the result that it led didn't occur
25 But I think he told them he should take it and -- but, you

1 know, ultimately, it was Mr Pernell's choice and there's
2 no deficiency shown in that regard

3 The motion to suppress evidence obviously
4 Mr Pernell, I think, gave valid trial strategy There
5 wasn't much grounds to try and suppress evidence

6 The distribution charge, of course Your Honor's
7 heard enough now to understand I think that issue, which
8 is clearly admissible on res gestae And certainly, it
9 was pretty damaging evidence the distribution charge
10 because it was so probative And Mr Long did everything
11 he could to keep that out and that's just text book res
12 gestae evidence He made his motion for a continuance and
13 it was denied And we haven't heard any testimony that he
14 was prejudice in his ability to prepare for trial in that
15 regard

16 Regarding the limiting instructions the
17 distribution charge, Judge Cottingham -- and I'm going to
18 paraphrase, but I think I'm going to paraphrase it fairly
19 closely is that, you know, he said he's not on trial for
20 the distribution charges This is relevant towards the
21 arrest that was made later at the motel

22 Judge Cottingham -- I haven't looked in the
23 transcript, but I can pretty much guarantee that he
24 charged the burden of proof and presumption of innocence
25 and all that that every judge charges in a trial And I

1 certainly can check for that if Your Honor would want me
2 to But regarding taking the stand, we heard trial
3 strategy that on that, Your Honor And quite clearly,
4 Your Honor, there's good reasons to not have Mr Pernell
5 take the stand There's risk, of course, of opening the
6 door to prior events, but certainly from a strategic
7 standpoint it gives the -- Mr Long the advantage of last
8 closing argument and gives him the ability attack all the
9 State's witnesses and gives the State no witnesses for
10 them to attack in terms of closing arguments and in terms
11 of cross-examination It's tremendous strategic advantage
12 and there's no deficiency shown there Beg the Court's
13 indulgence

14 There was somethings that kind of came up at the
15 end or on cross-examination and Mr Long -- which wasn't
16 presented as a grounds, Your Honor But regarding the
17 marijuana in rather than trying to refresh Mr Long's
18 memory, that you have pending in front of you But
19 basically what happened is the marijuana was seized from
20 the search of Mr Pernell Mr Long objected to it He
21 was overruled There's no requirement in terms of air
22 preservation to move for a mistrial at that point So he
23 certainly could raise the marijuana objection on appeal
24 It was -- it was dismissed on the grounds that have been
25 abandoned appeal because there was no citation cited The

1 State didn't argue that it was abandoned actually the
2 Court of Appeals found that

3 Your Honor, even if Mr Pernell had thrown in a
4 cite or two which would have taken care of that problem,
5 it was admissible because it occurred during the arrest
6 even though it's not admissible It's not prejudicial
7 this is a trial on crack and cocaine And there's no
8 great prejudicial value of a much softer drug of marijuana
9 being presented in that trial It does tie probatively
10 ties Mr Pernell to the car because there's a blunt
11 found -- of marijuana found in the car But even if it
12 was err to admit, it certainly was -- is harmless error
13 and this is really an overwhelming evidence case with
14 Mr Pernell At one point saying the drugs were his and
15 he was identified with that black sack at his house on the
16 prior distribution charge and identified with that black
17 sack at the hotel and anywhere on the marijuana charge
18 that will just be harmless error at best

19 Regarding the pistol and again this is something
20 that I'd tried a little bit to refresh Mr Long's memory,
21 but actually the testimony that I looked at police officer
22 said that they had some information that there was a
23 pistol in the car and mind you there were three people in
24 that car So it wasn't necessarily saying that
25 Mr Pernell is the one with the pistol They also was

1 admissible just show why the police officers wanted
2 Mr Pernell out of the car They were trying to approach
3 Mr Pernell away from the car and away from any possible
4 pistol in the car So it would have been admissible and
5 also would have been harmless error particularly in light
6 of the fact that they weren't saying Mr Pernell was the
7 one with the gun

8 Your Honor, I think that was in terms of
9 addressing the grounds raised I think that hit them all
10 But I would argue that Mr Long did a great job at trial
11 And I understand his testimony today He can come up with
12 things he wish he did And I think everyone that's ever
13 faced a situation like that where there client went to
14 trial and came up with a very hash result would say that
15 But, Your Honor, there's been no evidence -- they've not
16 met their burden of showing deficiency And in light
17 though of overwhelming evidence in this case, there's no
18 evidence of prejudice either And I would ask you to deny
19 this application, Your Honor

20 THE COURT Thank you, sir

21 Mr Claxton

22 MRS CLAXTON May it please the Court, we feel
23 that Mr Pernell's sentence should be vacated and he
24 should get a new trial based on the fact that he wasn't
25 allowed a preliminary hearing Mr Long said on the stand

1 that he had wished that he had requested a continuance
2 on all the charges not just the distribution charge That
3 he wishes that he had provided limiting instructions as
4 the judge requested that he do Also that he had objected
5 more to the marijuana evidence and basically been a little
6 more forceful with Mr Pernell to plea We just ask that
7 the sentence be vacated and he be granted a new trial

8 THE COURT All right Thank you very much,
9 ma'am

10 I'm going to take this matter under advisement
11 I want to look at some of the transcript record, so I'll
12 have an answer for you in a few days

13 MRS CLAXTON Thank you

14 MR SPENCER And, Your Honor, if it would -- if
15 you feel it would be beneficial, I'd be happy to submit a
16 proposed order and certainly wouldn't object if Mrs
17 Claxton wish to submit a proposed order

18 THE COURT That will be fine I should have a
19 decision for you in a few days

20 END OF REQUESTED REQUEST

21

22

23

24

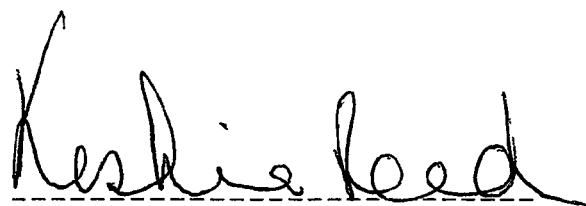
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARION)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out, that I was authorized to and did
transcribe the said proceedings, and that the foregoing
and annexed paged, numbered 1 through 43, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing In the Court of Common Pleas for Florence
County, South Carolina, on the 9th day of February, 2011

I do further certify that I am neither of kin,
counsel nor interest to any party hereto In witness
whereof, I have hereunto affixed my signature this 30th
day of October 2011

A handwritten signature in cursive script that reads "Keshia Reed". The signature is written in dark ink and is positioned above a horizontal dashed line.

Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF MARION

Glenn Pernell SCDC No 263271

Applicant

v

State of South Carolina,

Respondent

) IN THE COURT OF COMMON PLEAS
) TWILFT JUDICIAL CIRCUIT
) 2009-CP-33-527

ORDER OF DISMISSAL

This matter is before this Court by way of an application for post-conviction relief (PCR) filed December 14, 2009. The State made its return on March 26, 2010. A hearing on the matter was convened at the Florence County Courthouse on February 9, 2011. Applicant was present and represented by Tynika Claxton, Esquire. The Respondent was represented by David Spencer of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf. Also testifying was his trial counsel, J M Long, III. This Court had before it the transcript of Applicant's trial along with the PCR application, the State's return, the Clerk of Court's Records regarding the subject convictions and the appellate records from Applicant's appeal.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marion County Clerk of Court. Applicant was indicted at the November 2006 term of the Marion County Grand Jury for distribution of cocaine base, trafficking in cocaine, possession of cocaine with intent to distribute within proximity of a school or park, trafficking in cocaine base, and possession of cocaine base with intent to

distribute within proximity of a school or park (2006-GS-33-297) J M Long, III Esquire, represented the Applicant. The Applicant proceeded to trial on February 27 - March 1, 2007 on counts 2-5 of the indictment (count 1, distribution of cocaine with leave to restore), in front of the Honorable Edward B. Cottingham, and a jury. Applicant was convicted of trafficking in cocaine and trafficking in cocaine base, but was acquitted of the two proximity charges. He was sentenced by Judge Cottingham to consecutive terms of twenty-five years imprisonment on each charge.

A timely Notice of Appeal was filed and an appeal was perfected on the Applicant's behalf by Mr. Long. The South Carolina Court of Appeals affirmed the conviction State v. Pernell, 2009-UP-394 (filed July 20, 2009). The remittitur was issued on August 7, 2009.

ALLEGATIONS

In his application, the Applicant alleges that he is being held in custody unlawfully because he received ineffective assistance of trial counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony presented at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel and Involuntary Plea

Applicant makes various allegations of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996), Rule 71(d), SCRCP.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 112, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy such conduct should not be deemed ineffective assistance of counsel. Joseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995), Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

This Court will now address each allegation of ineffective assistance of trial counsel below.

Fourteen year offer

Applicant alleges counsel was ineffective for not advising Applicant to take a fourteen year offer from the State instead of going to trial. Counsel testified that he advised Applicant to take the offer, but Applicant wanted to go to trial. Counsel testified he wished he was forceful on the matter, but admits that the decision was Applicant's. Applicant presented no evidence that counsel's performance in advising Applicant on the decision of whether or not to plead guilty was deficient. This Court finds counsel did not render deficient performance in this regard. Ultimately, the decision was Applicant's and finds that Counsel's testimony that he advised Applicant to take the offer is credible and that Applicant's testimony on the matter is not

credible. Although Counsel and Applicant both wish in hindsight that Applicant took the offer, Applicant made an informed decision to proceed to trial. This allegation is denied.

No preliminary hearing

Applicant alleges he should have had a preliminary hearing. Counsel testified he did not believe a preliminary hearing would have been beneficial in this case. This allegation is denied. Counsel's performance was not deficient, nor was Applicant prejudiced, as it is obvious from the record that there was probable cause to proceed to trial, and the indictment was true-billed, allowing the prosecution of the case.

Motion to suppress evidence in vehicle

Applicant alleges counsel should have moved to suppress the drugs found in the vehicle. Counsel testified that he did not think such a motion was likely to succeed. This Court agrees with Counsel's assessment and finds Counsel's performance was not deficient, nor was Applicant prejudiced in this regard. The testimony at trial reveals Applicant left his vehicle, with his two co-defendant's inside, to enter the motel lobby where he was arrested, pursuant to an arrest warrant for the distribution charge. When the two co-defendant's exited the vehicle, they left the car door open. A black bag in the front seat was open and the narcotics were in plain view of the officers. Tr pp 69-70. Therefore, the search was permissible under the plain view exception to the warrant requirement. This allegation is denied.

Distribution charge

Evidence at trial was that Applicant sold crack cocaine to a confidential informant, Jeanette Fleming, at Applicant's residence. While there, Fleming noticed a white Crown Victoria in the driveway and saw Applicant take the drugs and a scale from a black bag. They then agreed for Applicant to exchange more drugs in exchange for sex, and to meet at the

Imperial Motel Tr pp 119-123 Applicant arrived at the motel in a white Crown Victoria, exited the vehicle, and entered the motel lobby At that point, Applicant was arrested in the lobby and his two co-defendants were arrested as they exited the Crown Victoria The narcotics were found in a black bag Tr pp 69-70, p 76

Applicant alleges that the evidence of distribution should not have been allowed, and that counsel should have argued that the evidence of the distribution could not be admitted under the common scheme or plan exception, and that the prejudicial value outweighed the probative value of the evidence

This Court notes that Counsel did object to the evidence of the distribution charge being admitted Counsel requested a continuance at trial because the prosecutor had not provided him with an audio tape and video tape of the distribution The Court granted the continuance on the distribution count, but not on the trafficking and proximity charges from the narcotics seized at the motel Tr pp 29-32

Counsel then moved to suppress evidence of the distribution and his motion was denied Tr pp 32-35 He challenged the ruling on appeal and the Court of Appeals found that the evidence was admissible as *res gestae* of the trafficking offenses

This Court finds that counsel's performance was not deficient nor was Applicant prejudiced in this regard Counsel vigorously sought suppression, but the evidence was obviously admissible as *res gestae* and highly probative where the informant was able to identify the Crown Victoria and the seized black bag from the prior transaction, and where immediately upon the first transaction, Applicant and the informant arranged the proposed transaction at Imperial Motel This allegation is denied

Testimony about marijuana and officers' belief that Applicant was armed

Applicant complains about counsel's performance regarding testimony that marijuana was found on him pursuant to a search incident to arrest and testimony that law enforcement believed there might be a weapon in the vehicle, which is why they waited for Applicant to go into the motel lobby before making the arrest. Counsel objected, but was overruled. Counsel appealed the issues, but the Court of Appeals found that the arguments were abandoned on appeal because no authority was cited in the Appellant's brief. However, the Court of Appeals opined that even if preserved, in light of overwhelming evidence of guilt and that no weapon was found on Applicant, the testimony did not prejudice Applicant.

This Court finds that even though counsel should have cited authority for his argument in the brief, Applicant was not prejudiced as the Court of Appeals made clear that any error would be found harmless. Accordingly, Applicant has not met his burden of prejudice and therefore, this Court finds counsel was not ineffective. Strickland

Instruction on distribution charge

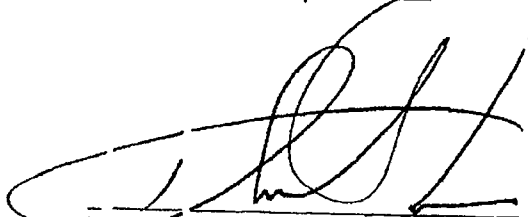
When testimony regarding the prior distribution was elicited, the trial court gave a limiting instruction. Applicant alleges that counsel should have requested a limiting instruction that Applicant was presumed innocent of the distribution charge, although Applicant was not being tried on that charge. This Court finds that Applicant has not met his burden of proving counsel ineffective. The trial court gave a limiting instruction that made clear Applicant was not being tried for the distribution charge. Tr pp 123-124. Further, the trial court instructed the jury that Applicant was presumed innocent of the charges upon which he was being tried. This allegation is denied.

notice of entry of this order. See Rules 203 and 213 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also 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 review of the denial of post-conviction relief. Rule 711(g) SCRPC provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED

- 1 The application for Post-Conviction Relief is denied with prejudice
- 2 The Applicant must be remanded to the custody of the Respondent

AND IT IS SO ORDERED this 9th da of March, 2011



Thomas A. Russo
Presiding Judge
1st Judicial Circuit

Florence, South Carolina