

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Horry County

Steven H John, Circuit Court Judge

---

RECEIVED

MAY - 3 2012

SC Supreme Court

TARREN LEE RICHBURG,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

---

APPENDIX

---

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STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF HORRY ) 2006-GS-26-4824  
THE STATE, )  
PLAINTIFF, ) JUNE 4, 2007  
VERSUS ) TRANSCRIPT OF RECORD  
TARREN LEE RICHBURG, )  
DEFENDANT )

---

**B E F O R E**

**THE HONORABLE J MICHAEL BAXLEY**

**A P P E A R A N C E S**

Scott A Graustein, Esquire  
Attorney for The State

G Scott Bellamy, Esquire  
Attorney for the Defendant

Pamela Ozment-Cartee  
Circuit Court Reporter

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## WITNESSES

| Name             | Voir Dire | Direct | Cross | Redirect |
|------------------|-----------|--------|-------|----------|
| Lucas Green      |           | 057    | 068   | 081      |
| Osvaldo Santiago |           | 083    | 091   | 104      |
| Frederick Rash   |           | 105    | 108   |          |
| Dave Jolliff     |           | 114    | 120   |          |
| Lori Rabon       |           | 129    | 133   |          |
| Lisa Floyd       | 136       | 137    | 142   |          |

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## VOIR DIRE

Case No 2006-GS-26-4824 Date June 5, 2007  
 Plaintiff The State Attorney Scott Graustein, Esquire  
 Defendant Tarren L Richburg Attorney Scott Bellamy, Esquire  
 Presiding Judge J. Michael Baxley Court Reporter Pamela O Cartee

| Juror # | Juror Name            | Race | Sex | Court | State | Defd |
|---------|-----------------------|------|-----|-------|-------|------|
| 156     | Michael J Keohane     | W    | M   |       | ---   | ---  |
| 192     | Robin M Myers         | W    | F   |       | ---   | -x-  |
| 243     | Herman L Small        | B    | M   |       | -x-   |      |
| 205     | Susan G Picard        | W    | F   |       | ---   | ---  |
| 144     | Brock W Johnson       | W    | M   |       | ---   | ---  |
| 070     | Melissa Eaddy         | B    | F   |       | ---   | ---  |
| 186     | John L Minnigh        | W    | M   |       | ---   | -x-  |
| 137     | Stephen M Huther      | W    | M   |       | ---   | ---  |
| 013     | Leanne R Barnes       | W    | F   |       | ---   | ---  |
| 264     | Donna E Thompson      | W    | F   |       | ---   | -x-  |
| 160     | Harriett P Laing      | W    | F   |       | ---   | ---  |
| 010     | Lorraine Askey        | W    | F   |       | ---   | ---  |
| 247     | Susan A Smith         | W    | F   |       | ---   | ---  |
| 261     | Stanley Swiderski, Jr | W    | M   |       | -x-   |      |
| 274     | Jo Ann Vaught         | W    | F   |       | ---   | -x-  |
| 008     | Melissa A Armstrong   | W    | F   |       | -x-   |      |
| 155     | Ralph L Kennnedy      | W    | M   |       | ---   | ---  |
| 103     | Furman J Graham, Jr   | W    | M   |       | --    | -x-  |
| 237     | Marshall V Sharrer Jr | W    | M   |       | ---   | ---  |
| 023     | John M Bessinger      | W    | M   |       | ---   | ---  |
| 207     | Nancy L Polan         | W    | F   |       | ---   | ---  |
|         | ALTERNATE             |      |     |       |       |      |
| 005     | Raymond A Andrews     | W    | M   |       | ---   | -x-  |
| 023     | Frank L Turner        | W    | M   |       | ---   | ---  |

## THE STATE V TARREN LEE RICHBURG

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1 (Whereupon, the Court comes to order at  
2 12 02 p m on June 4, 2007 )

3 The Court When the jury comes in Mr Solicitor I  
4 will let you call your case, just as you normally would, and  
5 we will go from there All right?

6 Mr Graustein Thank you, Your Honor

7 The Court Is everyone comfortable in the courtroom?  
8 Very good Ladies and gentlemen welcome My name is Judge  
9 Baxley As you can see we have changed courtrooms, and you  
10 have changed judges I am sure the first thing you think of  
11 is that I am not nearly as attractive as Judge Thomas, and I  
12 will admit to that

13 It is my privilege to be working with you this week  
14 We have more than one term of Court that is running This  
15 is a General Sessions, or a Criminal Court, and again I am  
16 Judge Baxley

17 You are here because the Solicitor is getting ready to  
18 call a case for trial, and we are going to choose a jury  
19 for our first case for trial here in the Criminal Court

20 Now let me say to you that I know, first of all you  
21 felt a little bit herded, H-E-R-D-E-D around this morning  
22 and waiting for us Thank you for that courtesy to us I  
23 know that you were sitting in another room waiting to be  
24 called in here We have handled some matters that are quite  
25 weighty in peoples lives, and have some substantial impacts

## THE STATE V TARREN LEE RICHBURG

6

1 in peoples lives, and sometimes we ask our jurors to wait on  
2 us, while we get some things resolved, and get prepared for  
3 trial I appreciate your courtesy and understanding of our  
4 process

5 I do want to tell you one thing, and it is simply  
6 this I know that each of you has a busy life before you  
7 ever hit court this morning, and received a jury summons,  
8 which is an interruption in that busy life, whether it be  
9 your family, your job, or any other personal concerns that  
10 you may have, you had a full plate before you got here, and  
11 I just want to say this to you I think most scholars will  
12 tell you from throughout the world that the United States  
13 has the best justice system in the world

14 Now you may pick up the newspaper sometime, and you  
15 may see a story about where the writer of that story may  
16 perceive that there was a misstart or a bad result, but day  
17 in and day out, in the in the hundreds of courts that are  
18 operating through this land, we have the best justice system  
19 in the world It is a system upon which our country and the  
20 peace and serenity that we have here is founded There  
21 really is not much more important business that we can be  
22 about

23 I want to thank you for sitting aside your busy  
24 schedules, and responding to the jury summons, and coming  
25 forward and performing your civic duty, because this week

## THE STATE V TARREN LEE RICHBURG

7

1 you are a pivotal part of that justice system You will  
2 make the decisions in these cases that actually resolve the  
3 cases one way or another

4 We try to make this as least intrusive for you as we  
5 can As you know, and I know that Judge Thomas, and also  
6 our clerk discussed with you, we use a call in system What  
7 we are going to do now, so that if you are not on a case,  
8 you are not just sitting here like you are sitting now We  
9 are going to choose now from your number, and there should  
10 be thirty of you sitting there, a jury panel of probably  
11 twelve or thirteen individuals We will give instructions  
12 to the others, whom are not chosen, and then those who will  
13 serve as jurors will remain with us

14 We are going to start this by letting the Solicitor,  
15 that is the prosecutor, call the case Because, on the  
16 criminal side of the Court it is our elected Solicitor  
17 Gregory Hembree, here in Horry County, who makes the  
18 decision of what case is called when So, Mr Solicitor,  
19 please call your case

20 Mr Graustein Thank you, Your Honor may it please  
21 the Court This is the matter of the State versus Tarren  
22 Lee Richburg, Indictment 2006-GS-26-4824 This Indictment  
23 has been True Billed by the Horry County Grand Jury It is  
24 an Indictment for trafficking in powder cocaine, more than  
25 ten grams but less than twenty-eight grams

## THE STATE V TARREN LEE RICHBURG

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1           **The Court**   All right, very good   And Mr Bellamy,  
2 do you represent Mr Richburg with regards to these charges?

3           **Mr Bellamy**   Yes, sir, Your Honor, I do

4           **The Court**   And tell me sir, how does Mr Richburg,  
5 plea?

6           **Mr Bellamy**   Mr Richburg pleads not guiltily, Your  
7 Honor

8           **The Court**   All right, very good   Ladies and  
9 gentlemen, you have heard the charge, you have heard a plea  
10 entered of not guilty, that means the issues are joined for  
11 trial, and we are here to choose a jury

12           Now let me just simply say this to you   I know just  
13 from human psychology, that when you sit in a group, as you  
14 are sitting now, that it is a lot easier on yourself,  
15 sometimes you hear a question, and you think, you know, I  
16 just don't think that applies to me, I decide that it  
17 doesn't apply to me, I am going to hold my piece, and not  
18 call attention to myself   I am going to ask you to do just  
19 the opposite   If you hear a question that I am getting  
20 ready to ask you, that you think in your mind you have some  
21 response to, please stand and give it to us   There are no  
22 wrong answers in jury qualifications   The purpose of this  
23 process in which we are getting ready to engage is to make  
24 sure that whatever jury we choose is, and the term I am  
25 going to use is disinterested   When I say that, I don't

## THE STATE V TARREN LEE RICHBURG

9

1 mean that you don't care, what I mean is that you don't have  
2 some connection to this case, a relationship to a party, or  
3 something else that might not make you the best juror for  
4 this particular case

5 We are going to start with the parties introducing  
6 themselves The prosecution has the burden of proof in this  
7 Court at all times The defendant never has a burden of  
8 proof The prosecution has it So, we always start with  
9 the prosecution, and Mr Graustein, I am going to let you  
10 turn, and introduce yourself to the jury panel, and if you  
11 have a case officer, or a chief prosecuting officer, whether  
12 they are here or not, please also give the jury that  
13 information

14 Mr Graustein Yes, Your Honor My name is Scott  
15 Graustein I am with the Horry County Solicitor's Office,  
16 and will be prosecuting this case I believe the  
17 Investigator on this case is Detective Jolliff of the Horry  
18 County Police Department

19 The Court You turned away from me, sir Detective  
20 who, please?

21 Mr Graustein Jolliff

22 The Court Thank you very much, and you may be  
23 seated

24 Mr Bellamy, on your side of the case let's do the  
25 same please Introduce yourself, tell us with whom you

## THE STATE V TARREN LEE RICHBURG

10

1 practice, and introduce your client please

2 Mr Bellamy My name is Scott Bellamy I practice  
3 here, primarily here in Conway, with the law firm of Hearn  
4 Brittain & Martin That would be George Hearn, Tony  
5 Brittain, Morgan Martin, Peter Hearn, and myself I am  
6 representing Tarren Richburg, who is from the Loris area of  
7 Horry County

8 The Court All right, very good Now first going to  
9 the prosecution side, and you were introduced to Mr  
10 Graustein I ask you now if there is any member of this  
11 jury panel, related by blood or marriage to him, or have  
12 some close, business, professional, or social connection to  
13 him, or either, you have some relationship to anyone else  
14 who may be working in the Solicitor's Office for the  
15 Fifteenth Judicial Circuit, which is Horry and Georgetown  
16 County So here is my question again Related by blood or  
17 marriage to Mr Graustein, or have some close, professional,  
18 social, business connection, to him, or you are related by  
19 blood or marriage to anyone who works in the Solicitor's  
20 Office for this circuit If that applies to you ladies and  
21 gentlemen please stand Let's let the record reflect that  
22 no one has stood

23 Let me ask now whether there is anyone who has a  
24 business relationship to the Solicitor's Office, perhaps as  
25 a vendor, or some other connection to the Solicitor's



## THE STATE V TARREN LEE RICHBURG

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1 Office If that applies to you, please stand Let's let  
2 the record reflect that no one has stood

3 And, finally ladies and gentlemen I ask you if any  
4 member of this jury panel, who has ever been in the past, be  
5 what you would think of as a client of the Solicitor's  
6 Office That is, you have been represented by the  
7 solicitor, or one of the Deputy Solicitors, or in a  
8 prosecution where you may have been the victim of a crime,  
9 and they were prosecuting someone who was accused of that  
10 crime Is there anyone who has had a professional  
11 relationship of that nature with the Solicitor's Office,  
12 either now or in the past, if that applies to you, please  
13 stand? Let's let the record reflect that no one has stood

14 Let's switch over to the defendant's side You were  
15 introduced to Mr Bellamy I want to ask ladies and  
16 gentlemen if there is any member of the jury panel related  
17 by blood or marriage to him, have some close, business,  
18 professional, or social connection to him, or either now or  
19 in the past been represented by any of his law partners,  
20 which, is the firm of Hearn, Brittain, and Martin If that  
21 applies to you, please stand All right, ma'am, please tell  
22 me your name

23 Juror My daughter was represented by Peter Hearn,  
24 for child support

25 The Court Tell me your name ma'am?

## THE STATE V TARREN LEE RICHBURG

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1 Juror Robin Myers

2 The Court Ms Myers, and how long ago has this  
3 been?

4 Juror Myers It would be probably 98

5 The Court All right Would the fact that you have  
6 that prior relationship with one of Mr Bellamy's law  
7 partners, prevent you somehow from giving a fair and  
8 impartial trial in this case, in your opinion?

9 Juror Myers No, sir

10 The Court All right, then based upon that, I find  
11 that you are qualified, ma'am Thank you. You may be  
12 seated. Thank you, Ms Myers

13 All right, is there anyone else who would respond  
14 about counsel for the defendant?

15 All right, let's talk about the parties, ladies and  
16 gentlemen Let me go first to the prosecution The  
17 prosecution advised us that the chief prosecutor, the police  
18 officer that is the case agent, the case officer, is Officer  
19 Jolliff here in Horry County I asked you now if there is  
20 any member of this jury panel, related by blood or marriage  
21 to that individual, have some close business, professional,  
22 social connection, or think you may even know that officer  
23 If that applies to you, please stand? Let's let the record  
24 reflect that no one has stood

25 Then in the courtroom you were introduced to Mr

## THE STATE V TARREN LEE RICHBURG

13

1 Tarren Lee Richburg, seated here at counsel's table I ask  
2 you now ladies and gentlemen, if there is any member of this  
3 jury panel related by blood or marriage to Mr Richburg,  
4 have any connection to him whatsoever, or think you may even  
5 know Mr Richburg, if that applies to you, please stand  
6 Let's let the record reflect then that no one has stood

7 Now, Mr Graustein, give us the names of potential  
8 witnesses that you may call in the prosecution of your case,  
9 and please give that information to the jury panel

10 Mr Graustein Yes, Your Honor My potential  
11 witnesses to be called are, Sergeant Lucas Green, of Horry  
12 County Police Department Detective Dave Jolliff of the  
13 Horry County Police Department Corporal Oswald Santiago of  
14 the Horry County Police Department Officer Frederick Rash  
15 also of the Horry County Police Department Lisa Floyd of  
16 the SLED Lab, and Officer Lisa Rabon of the Horry County  
17 Police Department

18 The Court Very good Now ladies and gentlemen you  
19 have heard the names of potential witnesses Now, when we  
20 are talking about the case officer of the defendant, I asked  
21 you if you even knew them My question for the witnesses is  
22 a little less stringent It is, do you have some close  
23 business, professional, or social connection to any of these  
24 individuals, or are you related by blood or marriage to any  
25 of these individuals? If that applies to you, please stand

## THE STATE V TARREN LEE RICHBURG

14

1 Let the record reflect that no one has stood

2 Now, to the defendant's side of the case, and before I  
3 ask a question of Mr Bellamy, let me say this to you In  
4 this courtroom the defendant has no burden of proof It is  
5 a foundational principle of our justice system, that the  
6 defendant has no burden of proof In other words the  
7 defendant does not have to come in here and prove himself or  
8 herself innocent The State has to prove guilt, and must  
9 prove guilt beyond a reasonable doubt Thus, the defendant  
10 having no burden of proof, does not have to call any  
11 witnesses, doesn't have to put up a case, doesn't have to  
12 respond in any way But, I want to ask you Mr Bellamy, are  
13 there additional individuals for whom I should query this  
14 jury panel at this time?

15 Mr Bellamy No sir, Your Honor

16 The Court All right, very good Now ladies and  
17 gentlemen I have in my hands an Indictment Let me just  
18 tell you so we will all be clear The Indictment is simply  
19 a piece of paper It is the document by which the Solicitor  
20 commences a prosecution against an individual What is  
21 contained within the Indictment are allegations, and I will  
22 tell you now the allegations are not to be accepted  
23 automatically as the truth They are not evidence The  
24 reason I tell you they are not to be accepted as the truth  
25 is because what the truth of the matter is, is going to be

## THE STATE V TARREN LEE RICHBURG

15

1 determined by the jury, from the evidence in the case, from  
2 what the witnesses say from the witness stand, not because  
3 it says something on a piece of paper So, please  
4 understand that the Indictment is simply a set of  
5 allegations I am going to give you these allegations so  
6 that you will be aware of what the allegations are, because  
7 I will then have questions for you The allegations in the  
8 Indictment are that Tarren Lee Richburg did in Horry County  
9 on or about August 31, 2006, so, there is your operative  
10 date, 8/31/06 Knowingly, sell, delivered, purchase, or  
11 bring into this State or did, aid, abet, attempt or conspire  
12 to sell, deliver, purchase, or bring into this State, or was  
13 in actual or constructive possession, or attempted to become  
14 in actual or constructive possession of a quantity of  
15 cocaine in an amount more than ten grams but less than  
16 twenty-eight grams in violation of South Carolina Law  
17 These are the allegations Now I tell you this to ask you  
18 this Is there any member of this jury panel who knows  
19 anything about this case, these allegations from any source  
20 whatsoever, if that applies to you, please stand? Let's let  
21 the record reflect then that no one has stood

22 I want to ask you now ladies and gentlemen if there is  
23 any member of this jury panel who has ever been employed  
24 full time in law enforcement, if you have ever been employed  
25 full time in law enforcement, please stand Let's let the

## THE STATE V TARREN LEE RICHBURG

16

1 record reflect that no one has stood

2 I want to ask you now ladies and gentlemen if there is  
3 any member of this jury panel, who is a member of an  
4 organization, which has as its purpose --- And, let me just  
5 right off the bat say that there is nothing wrong with being  
6 a member of such an organization I am getting ready to ask  
7 you about, I just simply wish to know if you are, that has  
8 as its purpose the advocacy for victims rights That would  
9 be, victims of crime such as MADD for Mothers Against Drunk  
10 Driving CAVA, which is Citizens Against Violent Crime  
11 CASA, Citizens Against Spousal Abuse, organizations of that  
12 nature And, again I say, there is absolutely nothing wrong  
13 with that I am just simply asking if you are a member of  
14 any such organization, if that applies to you, please stand  
15 All right sir, and please tell me your name

16 Juror Steve Huther

17 The Court Mr Luther?

18 Juror Huther Huther

19 The Court Mr Huther, all right, very good Mr  
20 Huther Tell me which organization you are a member of?

21 Juror Huther CASA

22 The Court CASA, okay Are you currently a member?

23 Juror Huther Yes, I volunteer periodically

24 The Court Would the fact that you have worked with  
25 CASA, and you are a member of that organization, prevent you

## THE STATE V TARREN LEE RICHBURG

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1 from giving a fair trial in this case for some reason, sir?

2 Juror Huther No, sir

3 The Court All right, sir, then I that you are  
4 qualified by your response Thank you

5 All right Ladies and gentlemen, is there any member  
6 of this jury panel, and you heard the allegations are that  
7 these charges involve powder cocaine, in an amount between  
8 ten and twenty-eight grams Now we all bring different life  
9 histories to this courtroom, as you would certainly be  
10 aware I ask you now, if there is any member of this jury  
11 panel, because this case involves allegations about illegal  
12 drugs, believe that you would be an inappropriate juror to  
13 serve on this jury for whatever reason personal to you, if  
14 you have that belief, or if you have that concern, please  
15 stand All right, let's let the record reflect that no one  
16 has stood

17 Then I ask you ladies and gentlemen if there is any  
18 member of this jury panel for any reason personal to you,  
19 believe that you would not be an appropriate juror in this  
20 case, if that applies to you, please stand Let's let the  
21 record reflect that no one has stood further

22 I ask now from the State, are there any further  
23 questions or requested questions for jury qualifications?  
24 What say you, Mr Graustein?

25 Mr Graustein No further questions, Your Honor

## THE STATE V TARREN LEE RICHBURG

18

1           The Court     And what says defense, Mr Bellamy?

2           Mr Bellamy    No sir, Your Honor

3           The Court     All right    How many strikes are claimed  
4 by the defense?

5           Mr Bellamy    Five, Your Honor

6           The Court     And claimed by the State?

7           Mr Graustein   Five, Your Honor

8           The Court     All right, the strikes will be five and  
9 five    That is the number that the Statute gives you

10           Ladies and gentlemen, let me talk with you a little  
11 bit about what we are going to do   First of all, I am going  
12 to allow our jurors to just remain in their seats, as  
13 opposed to getting out and coming up and standing in front  
14 of us   So, counsel if you want to turn your back to me, and  
15 move your chairs around, and face the jury panel you are  
16 certainly welcome to

17           All right, from your ranks of thirty ladies and  
18 gentlemen, we are going to, at random, pull jurors names one  
19 at a time   When your name is called, I am going to ask you  
20 to just stand right there where you are   Both sides of the  
21 case are going to have an opportunity to say whether they  
22 seat you, or they excuse you

23           Let me say right off the bat, that it may suit you  
24 fine if you are excused   But, I want you to understand that  
25 you should not take that personally, because first of all it



## THE STATE V TARREN LEE RICHBURG

19

1 may have to do with some strategy, or tactic in the case  
2 that you and I don't know about at this juncture It could  
3 have something to do with a response made on a jury  
4 questionnaire, or perhaps here in the courtroom here today  
5 But it is not, and I will tell you again, it will not be  
6 because of your race, or your sex, because it is against the  
7 law to strike a juror for either of those reasons, and both  
8 sides have an opportunity to challenge the strikes posed by  
9 the other side

10 Now if you are not chosen, please just take your seat,  
11 be seated where you are I can't let you go immediately  
12 We may have to revisit some issue in the jury strike If  
13 you are chosen, then please get whatever personal belongings  
14 you have, not because you are going to be sequestered  
15 somewhere, you are just changing your seat in the courtroom,  
16 and you will come over here and have a seat in the jury box

17 All right, Madam Clerk, are you ready?

18 Clerk Yes, Your Honor

19 The Court All right, then ladies and gentlemen  
20 please respond to our Clerk

21 Clerk 156 Michael Koebane, what say the State?

22 Mr Graustein Please seat this juror

23 Clerk Defense?

24 Mr Bellamy Swear the juror

25 Clerk Have a seat in the jury box, please 192

## THE STATE V TARREN LEE RICHBURG

20

1 Robin Myers, what say the State?

2 Mr Graustein Please seat this juror

3 Clerk Defense?

4 Mr Bellamy Please excuse the juror from the trial  
5 of this case

6 Clerk You are excused in this particular case 243

7 Herman Small, what say the State?

8 Mr Graustein Please excuse this juror

9 Clerk You are excused in this particular case 205

10 Susan Picard, what say the State?

11 Mr Graustein Please seat the juror

12 Clerk Defense?

13 Mr Bellamy Swear the juror

14 Clerk Have a seat in the jury box, please. 144

15 Brock Johnson, what say the State?

16 Mr Graustein Please excuse the juror

17 Clerk You are excused in this particular case 17

18 Melissa Eaddy, what say the State?

19 Mr Graustein Please seat the juror

20 Clerk Defense?

21 Mr Bellamy Swear the juror

22 Clerk Have a seat in the jury box please 186 John

23 Minnigh, what say the State?

24 Mr Graustein Please seat the juror

25 Clerk Defense?

## THE STATE V TARREN LEE RICHBURG

21

1           Mr Bellamy     Please excuse the juror from the trial  
2 of this particular case

3           Clerk     You are excused from this particular case  
4 137 Stephen Huther, what says the State?

5           Mr Graustein   Please seat this juror

6           Clerk     Defense?

7           Mr Bellamy   Swear the juror

8           Clerk     Have a seat in the jury box please   13

9 Leanne Barnes, what say the State?

10          Mr Graustein   Please seat the juror

11          Clerk     Defense?

12          Mr Bellamy   Swear the juror

13          Clerk     Have a seat in the jury box please   264

14 Donna Thompson, what say the State?

15          Mr Graustein   Please seat the juror

16          Clerk     Defense?

17          Mr Bellamy   We would excuse this juror   Thank you

18          Clerk     You are excused from this particular case

19 160 Harriett Laing, what say the State?

20          Mr Graustein   Please seat this juror

21          Clerk     Defense?

22          Mr Bellamy   Swear the juror

23          Clerk     Have a seat in the jury box please   Number

24 10 Lorraine Askey, what say the State?

25          Mr Graustein   Please seat the juror

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1 Clerk Defense?

2 Mr Bellamy Swear the juror

3 Clerk Have a seat in the jury box please 247

4 Susan Smith, what says the State?

5 Mr Graustein Please seat the juror

6 Clerk Defense?

7 Mr Bellamy Swear the juror

8 Clerk Have a seat in the jury box please 261

9 Stanley Swiderski, what says the State?

10 Mr Graustein Please excuse this juror

11 Clerk You are excused from this particular case

12 274 Jo Ann Vaught, what says the State?

13 Mr Graustein Please seat the juror

14 Clerk Defense?

15 Mr Bellamy Please excuse this juror

16 Clerk You are excused from this particular case

17 The Court Defense has one strike remaining

18 Clerk Number 8, Melissa Armstrong, what say the

19 State?

20 Mr Graustein Please excuse the juror

21 Clerk You are excused in this particular case

22 The Court The State has one strike remaining

23 Clerk 155 Ralph Kennedy, what say the State?

24 Mr Graustein Please seat the juror

25 Clerk Defense

## THE STATE V TARREN LEE RICHBURG

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1           **Mr Bellamy**     Please seat the juror

2           **Clerk**     Have a seat in the jury box please     103

3           Furman Graham, Junior, what say the State?

4           **Mr Graustein**     Please seat the juror

5           **Clerk**     Defense?

6           **Mr Bellamy**     Please excuse the juror

7           **Clerk**     You are excused from this particular case

8           **The Court**     The Defense has only challenges for cause

9           remaining

10          **Clerk**     237 Marshall Sharrer, Junior, what say the

11          State?

12          **Mr Graustein**     Please seat the juror

13          **Clerk**     Defense?

14          **Mr Bellamy**     Swear the juror

15          **Clerk**     Have a seat in the jury box please     23 John

16          Bessinger, what say the State?

17          **Mr Graustein**     Please seat the juror

18          **Clerk**     Defense?

19          **Mr Bellamy**     Swear the juror

20          **Clerk**     Have a seat in the jury box please     207

21          Nancy Polan, what say the State?

22          **Mr Graustein**     Please seat the juror

23          **Clerk**     Defense?

24          **Mr Bellamy**     Swear the juror

25          **Clerk**     Have a seat in the jury box please

## THE STATE V TARREN LEE RICHBURG

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1           **The Court**     All right, Madam Clerk, that is twelve  
2           jurors     Let's chose one alternate, and the strikes will be  
3           two for the defense and one for the State as to the  
4           alternate  
5           **Clerk**     Number 5, Raymond Andrews, what says the  
6           State?  
7           **Mr Graustein**     Please swear the juror  
8           **Clerk**     Defense?  
9           **Mr Bellamy**     Please excuse this particular juror  
10          **Clerk**     You are excused in this particular case     270  
11          Frank Turner, what says the State?  
12          **Mr Graustein**     Please seat the juror  
13          **Clerk**     Defense?  
14          **Mr Bellamy**     Swear the juror  
15          **Clerk**     Have a seat in the jury box please  
16          **The Court**     All right     Ladies and gentlemen welcome  
17          to the jury box     I know you started out this morning with a  
18          large number of people, and there was safety in numbers, and  
19          then you came in here with a smaller group, and now we have  
20          had our first draw and there you sit  
21          Let me ask you this     Now many of you have had the  
22          opportunity before to serve on a jury, if you have, raise  
23          your hand please     All right, I see some hands that are  
24          raised     Let me just say to those of you who have not  
25          Don't be uncomfortable, about where you find yourself

## THE STATE V TARREN LEE RICHBURG

25

1 There are two tools that you need to serve, and serve well,  
2 and you have them both The first is your ability to  
3 listen, and the second is your collective common sense,  
4 armed with those two things you will find yourself in good-  
5 stead So, don't be uncomfortable about where you find  
6 yourself

7 Now, from the State first, is there any objection to  
8 the jury draw procedure employed by the Court, or the  
9 strikes employed by the other side?

10 Mr Graustein No objections, Your Honor

11 The Court And from the defense?

12 Mr Bellamy No objection

13 The Court All right, counsel please come up and  
14 let's talk about scheduling, so I can speak with both groups  
15 of jurors and give them more information

16 (Whereupon, a bench conference was held in  
17 the presence of the jury but out of their hearing )

18 The Court All right, now To our larger pool,  
19 well, our unchosen members, and I know you are disappointed  
20 Let me just say this to you You are free for the  
21 afternoon, and what I would ask you to do, and you are free  
22 to leave now, please call the jury number after six o'clock  
23 tonight, and there will be instructions to the greater jury  
24 panel Please respond to those instructions, and you are  
25 free to leave at this time, if you don't have the telephone

## THE STATE V TARREN LEE RICHBURG

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1 number, they will give you to that when you walk out in the  
2 lobby there Have a good day ladies and gentlemen you are  
3 free to go Perhaps I will see you sometime later in the  
4 week, and I look forward to that

5 (Whereupon, the jury panel is released at  
6 12 34 p m )

7 The Court All right To our remaining jurors, who  
8 now will serve as our jury in this case, let me just ask you  
9 to do this over lunch We are going to give you a little  
10 bit of extra time at lunch here today That is so the  
11 lawyers can prepare some things, and be ready to go, and  
12 start with the trial, and there won't be delays, and you  
13 won't be waiting while we delay We will let you have lunch  
14 while that is going on I will ask you to be back in your  
15 jury room at 2 15 This is Mr Eddie Williams, who is your  
16 Bailiff He is going to take you now and show you where the  
17 jury room is, and how to get back, and be back here at 2 15

18 Now, let me just tell you a couple of things about the  
19 case Counsel tell me, and what we were talking up here  
20 about is the length of the trial Of course, you turn on  
21 the television and see out in California where there was a  
22 case that goes for months at a time That is not going to  
23 happen here That doesn't mean that this case is any less  
24 important than any case that may take several days to try  
25 But, it appears to me, and counsel tells me that this case



## THE STATE V TARREN LEE RICHBURG

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1 may likely if not end this afternoon, probably more likely  
2 end tomorrow at some point I just tell you that for your  
3 information

4 When you have lunch, and lunch is on your own with  
5 whomever you wish to have lunch, please don't discuss the  
6 facts of this case We don't even know enough about the  
7 facts of this case to have a discussion about it Just have  
8 a nice lunch, talk about the weather, or whatever you wish  
9 Also, please do not undertake some sort of investigation on  
10 your own, whether it be somehow by looking into some  
11 reference material, or going on the internet, or whatever it  
12 may be Just come back with an open mind The lawyers will  
13 present the testimony and evidence for you You don't need  
14 to worry about that

15 The final thing is, when you talk with your loved ones  
16 at lunch they may want to know what your schedule is going  
17 to be today, and I tell you we generally end these  
18 proceedings at five o'clock That is the end of our  
19 business day We may go a little bit over that, but you can  
20 expect to be at home, and with your family where you should  
21 be this afternoon

22 Any questions now from our jury about our schedule?  
23 Yes, sir

24 Juror If this thing is over with tomorrow, is that  
25 it for the week?

## THE STATE V TARREN LEE RICHBURG

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1           The Court     Well, no     I will have to give you a  
2     quick no on that     We have at least two judges that are  
3     working the civil side, and a criminal side     So, when we  
4     finish, what will happen is I will return you to the jury  
5     pool, and you may be chosen yet again in another case     So,  
6     there is no need for us to stampede here just to get you  
7     right-back into the jury panel, but that will not be it for  
8     the week, but thank you for your question     Anyone else, a  
9     scheduling question?     Have a nice lunch ladies and  
10    gentlemen     We will see you at 2 15, back in your jury room

11                         (Whereupon, the jury exits the courtroom for  
12    lunch at 12 37 a m )

13           The Court     All right, now the jury has departed the  
14    courtroom     What I would ask counsel to do, is to be back at  
15    two o'clock, if this case is able to resolve by then, please  
16    let me know so that I can take the plea between 2 00 and  
17    2 15, if that is what happens     I am not demanding that  
18    I'm just simply laying this out for you     That way we will  
19    be on time with the jury, and can release them at 2 15     Are  
20    there any questions from counsel before we break from lunch?

21           Mr Bellamy     No, Your Honor

22           Mr Graustein    No, sir

23           The Court     All right, Court will be in recess then  
24    until two o'clock for court personnel

25           Mr Richburg, please understand this, if you are not

## THE STATE V TARREN LEE RICHBURG

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1 back for whatever reason at the end of the lunch hour, that  
2 is at the beginning of the Court session this afternoon, we  
3 are going to go forward in your absence, which will not be  
4 good for you, sir Do you understand that sir?

5 Mr Richburg Yes, sir

6 The Court I will see you back here at 2 15? I am  
7 going to release you to Mr Bellamy's custody, and we will  
8 see you then That is at two o'clock, not 2 15

9 Mr Richburg Yes, sir

10 (Whereupon, a lunch recess was taken from  
11 12 38 until 2 07 p m )

12 The Court All right, Mr Richburg, before I talk  
13 with you, we are going to place you under oath here, and  
14 please follow our clerk's instructions

15 TARREN LEE RICHBURG,

16 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

17 The Court All right, Mr Richburg, again my name is  
18 Judge Baxley, and I will be your trial judge in this matter  
19 We have not met previously I of course saw you seated in  
20 the courtroom earlier as we were choosing the jury The  
21 jury is not in the courtroom The record should reflect  
22 that What discussion you and I are getting ready to have,  
23 will not be told to the jury I want you to be aware that  
24 this is what we call --- It is outside the presence of the  
25 jury conversation

## THE STATE V TARREN LEE RICHBURG

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1 I am advised, and I will ask you Mr Bellamy to make  
2 sure that I have correct information, that there have been  
3 plea negotiations in this case, is that correct?

4 Mr Bellamy Yes, sir, Your Honor

5 The Court All right, sir Will you give me the  
6 extent of what they are, please?

7 Mr Bellamy Your Honor, just to back up some from  
8 where we are exactly today Previously there was an offer  
9 made to Mr Richburg He is charged with, as the Court is  
10 aware, with trafficking third drug offense, meaning the low  
11 level trafficking ten to twenty-eight grams Prior to this  
12 being placed on the trial roster, Mr Graustein in the  
13 Solicitor's Office, had offered Mr Richburg a plea to a  
14 first offense trafficking, ten to twenty-eight grams, which  
15 carries a three to ten-year range, non 85%, and was prepared  
16 to recommend a four-year active sentence Mr Richburg  
17 declined that offer on a couple of occasions That offer  
18 was since withdrawn, put on the trial roster, with  
19 trafficking third offense, being twenty-five to thirty years  
20 with the twenty-five years of course being no parole, 85%  
21 crime

22 The Court I should also add that that twenty-five  
23 years, I believe, is non suspendable, and is a mandatory  
24 minimum, is that correct?

25 Mr Bellamy Yes sir, Your Honor It cannot be

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1       suspended    The Court's hands would be tied in that regard  
2       Here today, and as of last Friday, and today, the  
3       Solicitor's Office has come back with an offer of second  
4       offense trafficking, again ten to twenty-eight grams, of  
5       which carries five to thirty years with a recommendation, if  
6       he were to plead of twelve   Of course, that is eight-five  
7       percent crime, but it is somewhat less than the twenty-five-  
8       year mandatory, on his actual Indictment   I have explained  
9       both the first plea, and this plea to Mr Richburg   And, I  
10      would like the Court, to go over that with him, to make sure  
11      he fully understands that the plea is there, available to  
12      him, should he wish to avail himself of it

13               **The Court**   All right, Mr Richburg, we are about  
14      five minutes away from beginning your trial   I was just  
15      told right before I walked in the courtroom from the back  
16      door, by the Bailiff that all of the jurors are here, which  
17      means we are ready to begin

18               Now you just heard Mr Bellamy explain to me the plea  
19      negotiations, and the history of this case   Is there  
20      anything, that you disagree with that you heard him say?

21               **Mr Richburg**   About twelve years, I don't want to do  
22      no twelve years -

23               **The Court**   Sir, you are going to have to speak up  
24      If you are talking to me, you are going to have to speak up,  
25      pull that microphone to you please   Now you can stand up,

## THE STATE V TARREN LEE RICHBURG

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1 and please speak up

2 Mr Richburg Yes, sir I am kind of shaking right  
3 now I really don't know what to say, I mean

4 The Court All right Mr Richburg, let me make  
5 sure you understand that in our court system, the judge is  
6 not part of the prosecution, and the judge is not part of  
7 the defense I am on neither side in this case. I am here  
8 to make sure that whatever happens in the trial is fair, and  
9 that whatever result is just, and then the Court imposes a  
10 sentence But, you heard Mr Bellamy say something that is  
11 of extreme importance here, and that is this If you are  
12 charged with a third offense trafficking, the judge has no  
13 discretion if you are found guilty, but to sentence you to a  
14 minimum, that is a minimum of twenty-five-years That  
15 twenty-five-years, is not suspendable, so I cannot put you  
16 on probation It is what we call an 85%, which means you  
17 are going to serve at least 85% of it, but really you should  
18 count on serving day for day That is every day for twenty-  
19 five-years Now what is happening, sir, and again, I am not  
20 part of the prosecution, I am just watching as an observer

21 Mr Richburg Yes, sir

22 The Court You are having offers that are made to  
23 you which are favorable, less favorable, and then we go to  
24 the jury, if there is a conviction, well, all the offers, of  
25 course there are no offers at that point, and the statute

## THE STATE V TARREN LEE RICHBURG

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1 takes over as to what must happen

2 So, I will just tell you that you are in a situation  
3 now where you are going to have to make a decision as to  
4 whether you wish to accept the plea offer, of whether you  
5 wish to go to trial

6 The Court Now, Mr Bellamy, do wish to tell us on  
7 the record what your advice has been to Mr Richburg, or do  
8 you, not wish to do that

9 Mr Bellamy I will put that on that record I have  
10 advised him concerning the pleas offers that I thought,  
11 because of the risk, and the significant punishment of being  
12 convicted of the charge, which he stands indicted, that the  
13 original in this plea offer, I felt would be in his best  
14 interest to take in light of his age, and the risk involved  
15 As a part of that, we have fully discussed the facts of his  
16 case, the evidence that they have against him, and my advice  
17 concerning that, and what I thought the State would be able  
18 to prove I have advised him while the State's recommending  
19 a twelve-year sentence on this plea, that I felt that he  
20 would receive a sentence less than that, all be it no less  
21 than five years if he were to plea, but somewhere between  
22 the five and the twelve My advice to him in that regard,  
23 is that would be in his best interest

24 The Court All right Mr Richburg, what your  
25 lawyer is telling us is that he recommends that you take

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1 this plea Do you understand that, sir?

2 Mr Richburg Yes, sir

3 The Court All right Now I want you to obviously  
4 understand that ultimately it is your decision It's not  
5 your lawyers, it's not the Courts, it's not the prosecution,  
6 it's not anyone else in this courtroom but you But, sir,  
7 you are in a position now where you have to decide, and so I  
8 ask you, do you intend to take the plea offer, and admit  
9 that you are guilty to the charge, and enter a guilty plea,  
10 or do you wish to go forward to trial?

11 Mr Richburg Sir, in this guilty plea would it be  
12 about five years like you said?

13 The Court Sir, I cannot tell you that in advance  
14 I will tell you I will listen to the facts, I will decide,  
15 and in our system the judge is the one who imposes the  
16 sentence, what is appropriate under the circumstances, based  
17 on many years of doing this, and having worked with many  
18 cases of this nature But, I cannot tell you, and will not  
19 tell you in advance, what the sentence would be But you  
20 are being told by the solicitor that they are recommending  
21 -- that they will make a recommendation of twelve, which, of  
22 course, is less than half of the twenty-five-maximum, excuse  
23 me, twenty-five-year minimum that will be required should  
24 you be convicted

25 Now by the same token, Mr Richburg, if you have a



## THE STATE V TARREN LEE RICHBURG

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1 defense on the facts of this case, or in the law and you  
2 wish to take your chance with the jury, that is absolutely  
3 your prerogative, and if you are acquitted well there would  
4 be no sentence, because you are acquitted of the charges  
5 But that, sir, is for you to decide

6 Who is seated behind you, sir? There is a young lady  
7 there behind you

8 Mr Richburg It that's my --- It is my wife We  
9 have been together for about nine-years, three kids

10 The Court Have you discussed this with her?

11 Mr Richburg No, I really haven't had time to sit  
12 down and discuss it with her I'm just getting all this  
13 today

14 The Court All right, sir I am going to give you  
15 one minute, just right there where you are, if you wish to  
16 discuss it with her You're not required to, but do you  
17 wish to discuss it with her, and your attorney, or just her?

18 Mr Richburg With her and my attorney

19 The Court All right Well I am going to let you  
20 all, turn right where you are, turn you back to me, and you  
21 all have this discussion I'll give you one minute for it

22 (Pause)

23 The Court Gentlemen?

24 (Pause)

25 The Court All right, Mr Bellamy, I am going to

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1 have to call time, the jury awaits

2 All right, Mr Richburg, please tell me your decision,  
3 sir?

4 (Pause)

5 The Court All right, sir Counsel, do you wish to  
6 respond, or is there anything further?

7 Mr Bellamy Your Honor, other than I have advised  
8 him again that I felt like it was in his best interest to go  
9 forward Of course, it is left up to him as whether he  
10 wants to do it, Judge

11 The Court Very good Mr Richburg, have you made  
12 your decision, sir

13 Mr Richburg Yes, sir I think I am going on  
14 forward with the trial, sir

15 The Court Very good Please bring in the jury  
16 You may be seated

17 (Whereupon the jury enters the courtroom at  
18 2 19 p m )

19 The Court All right, ladies and gentlemen, good  
20 afternoon Welcome back to the courtroom I trust you had  
21 a nice lunch, and ready to go forward We are going to  
22 begin this trial with you taking the oath as jurors in this  
23 specific case Please follow our Clerk's instructions

24 (Whereupon the jury is given the oath at  
25 2 19 p m )

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1 Clerk Please be seated

2 The Court And, let me ask ladies and gentlemen, is  
3 there any member of the jury panel that did not take the  
4 oath just administered, if you did not take the oath for any  
5 reason, please raise your hand Let's let the record  
6 reflect no one raised their hand, so everyone is  
7 appropriately sworn

8 All right, we are going to start, just so everyone  
9 will be comfortable where they are I know you are not in  
10 the courtroom every day, and you will see some people coming  
11 and going as we have a trial I want to introduce them to  
12 you, and introduce our staff to you Not so that you will  
13 necessarily remember their names, but so you will see what  
14 the various functions are, of the individuals who work here  
15 in the courtroom Now I will be your trial Judge I am  
16 Judge Baxley I am actually from Hartsville, South  
17 Carolina And in our system, Circuit Judges move around the  
18 State, and it is my privilege to work a good bit in Horry  
19 County, and I look forward to working with you in the trial  
20 of this case You will see going and coming from the  
21 courtroom a young lady who will be seated by me from time to  
22 time Her name is Mary Ashley Martin She is an attorney  
23 She is my law clerk, and assists the Court as we move around  
24 from place to place, with the various administrative issues  
25 that are our responsibilities, as well as research and other

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1 things during the course of a trial This is a Court of  
2 record, meaning what is said in here is taken down You  
3 will note that we have a court reporter who is with us and  
4 her name is Pamela Cartee, and she is responsible for the  
5 transcript of these proceedings We also have and you have  
6 been working with our Bailiff Eddie Williams, who is there  
7 on the side, beside you, and of course, he is here for your  
8 assistance If you have a question about how to get into  
9 this place, or how to get out, where the phones are, where  
10 the restrooms are, where to park, or any other of a myriad  
11 number of questions you may have, Eddie works here every  
12 day, and he will be glad to answer those for you Seated  
13 right below me is Donna Williams who is our clerk She is  
14 one of the Deputy Clerks for Criminal Court. She works for  
15 Melanie Huggins who is our elective Clerk of Court here in  
16 Horry County She will be working with us throughout the  
17 trial, and swearing in the witnesses, and handling other  
18 administrative matters that are connected to the trial And  
19 then on the sides here are our securities officers, Raymond  
20 Nobles and Mike Green, who will be working with us in and  
21 out of the courtroom during the trial of the case Now,  
22 again, that is not for you to know everybody's name, but  
23 that is just to see the various functions of the people who  
24 are employed within the Court

25 Now I will let the lawyers when they have their

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1 opening statement, have an opportunity to introduce  
2 themselves, and their parties if they wish to do so

3 All right, just one moment, ladies and gentlemen

4 Mr Graustein Your Honor, may we approach?

5 The Court You may

6 (Whereupon, a bench conference was held in  
7 the presence of the jury, but out of the hearing of the  
8 jury )

9 The Court All right Ladies and gentlemen, now we  
10 are not going to be treating you like a ping-pong-ball here,  
11 but I am advised by counsel, there is a matter that I need  
12 to take up outside of your presence, so let's do this Just  
13 like we will not be back there in jury room with you, when  
14 you are making the factual determinations that decide this  
15 case Sometimes, when we handle a matter of law, I am going  
16 to have to ask you to step from the room, and this is not a  
17 good start, right off the bat you just got in your seat, and  
18 here I ask you to leave I don't think this will take very  
19 long but would you kindly return to the jury room, and we  
20 will send for you shortly Thank you

21 (Whereupon the jury exits the courtroom at  
22 2 25 p m )

23 The Court All right The jury has left the room  
24 Mr Bellamy, do you have something you wish to say, sir?

25 Mr Bellamy Yes, sir, Your Honor As, Your Honor

## THE STATE V TARREN LEE RICHBURG

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1 was addressing briefly the jury on some preliminary matters,  
2 Mr Richburg whispered in my ear that he would like possibly  
3 to get another lawyer, or something to that effect He  
4 didn't want me to represent him I told him, that was a  
5 matter he should take up with the Court, and let Your Honor  
6 deal with it I certainly for the record Judge, I am  
7 prepared to go forward today and try the case Albeit my  
8 advice is for him to take a plea, I am certainly prepared to  
9 try and defend it, and I am ready

10 The Court Very good Mr Richburg, you have an  
11 expert trial lawyer representing you, sir What seems to be  
12 the problem? And the first thing I want to tell you is I am  
13 not going to let you control these proceedings The jury  
14 has come in this courtroom, and I have sent them out as a  
15 courtesy simply because Mr Bellamy approached, and said  
16 there is something he needs to discuss But I want you to  
17 understand something, sir You are not going to just take  
18 over these proceedings, the jury comes, you want them to go  
19 out, you want to fire your lawyer, you can't decide what you  
20 want to do, sir We are not all here just revolving around  
21 you Do you understand that?

22 Mr Richburg Yes, sir

23 The Court Now what seems to be your problem, sir?

24 Mr Richburg Well I don't think I am getting  
25 represented the right way, sir

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1           **The Court**     And why do you think that?

2           **Mr Richburg**    I mean, I ain't really had time to sit  
3 down, talk to my lawyer about the case, or nothing like  
4 that    I mean I am just here all of a sudden going to trial

5           **The Court**     Let's see, these charges were brought  
6 against you on August 31, 2006    Is that right?

7           **Mr Richburg**    Yes, sir

8           **The Court**     And you are telling me all of a sudden  
9 here in June of 2007, you are going to trial, what did you  
10 think was going to happen with these charges pending since  
11 August of 2006?

12          **Mr Richburg**    Nothing    I was trying --- Sir, I was  
13 asking my lawyer, I wasn't really getting no no comment, or  
14 feedback from him, I mean

15          **The Court**     Yes, sir    Well, Mr Richburg, are you  
16 under the mistaken impression that your lawyer called this  
17 case for trial? He didn't    The solicitor controls the  
18 Docket    The solicitor made the call of this case    Your  
19 lawyer had nothing to do with it

20          **Mr Richburg**    Yes, sir, I understand that    I just  
21 don't feel like I am getting representing right by him  
22 though

23          **The Court**     Yes, sir    And by what reason?

24          **Mr Richburg**    Sir, it's like you said, it's been  
25 that the --- it's been since when now, August --

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1           Mr Bellamy     -- 06

2           Mr Richburg   06 of last year until now, and I  
3 really ain't get a chance to sit down and talk to him   I  
4 mean it's like I go in, and we don't talk about nothing   He  
5 just says, take a plea, take a plea, take plea, you know, we  
6 really don't talk about my case or nothing

7           The Court     All right, sir   Do you want to respond  
8 to that, Mr Bellamy?

9           Mr Bellamy     Yes, sir, Your Honor   I have  
10 represented Tarren since October of last year   He and I  
11 have met probably ten to fifteen different times at  
12 different roll calls   I have fully discussed with him,  
13 given him copies of discovery, went over the evidence and  
14 the witnesses that would be against him   Judge, this is not  
15 an overly complicated case   There are about three police  
16 officers, who are fact witnesses in the case   No lay folks  
17 They have done rather detailed reports in here as to what  
18 they did and did not do   I have gone over that with him  
19 I've explained to him the drug weight and that sort of  
20 thing   I have fully discussed that with him   His case was  
21 set to plea in January of this year   The solicitor extended  
22 that offer for four years under a first, I believe from  
23 January to April   In April I had the solicitor go in and  
24 speak directly to Mr Richburg, and informed him that the  
25 plea offer would be withdrawn, and that he would be tried in



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1 May I also informed Mr Richburg that he would be tried in  
2 May He understood that in April It's obviously June now  
3 I have talked to him previously about this case going to be  
4 tried The facts and the evidence, I thought that the State  
5 would present, I believe that I have discussed it with him  
6 fully on numerous occasions And as I said, I'm prepared to  
7 try the case

8 The Court Very good Thank you Mr Richburg, I  
9 am going to deny your request to fire your lawyer That  
10 would be the very worst thing you could do at this point,  
11 and proceed without an attorney, because this case is going  
12 forward in about thirty seconds But I am going to tell you  
13 what I hear, sir It is not that you don't know what is  
14 happening, and not that you don't understand, and not that  
15 your lawyer has not been assisting you, and keeping you  
16 fully informed What the problem is, sir, is that you just  
17 haven't been listening, and pushing back, and falling back,  
18 and turning this offer down, and turning that offer down,  
19 just pushing back, and now you are at your day of  
20 reckonings, sir, and the time is here, and I find no fault  
21 in what your lawyer has done The problem lies with the way  
22 you have responded to it, sir You can be seated We are  
23 going to bring the jury back in, and we are going to start  
24 this trial Please bring in the jury

25 (Whereupon the jury enters the courtroom at

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1 2 30 p m )

2 The Court All right, welcome back, ladies and  
3 gentlemen Thank you for your patience and understanding in  
4 exiting the courtroom, and now returning We resolved the  
5 matter, and we are ready to go forward

6 What I would like to do is begin this trial by giving  
7 you what I call an introduction to the trial of a criminal  
8 case These are just a few thoughts that I want to share  
9 with you before the trial begins This is not intended to  
10 take the place of a much more detail charge on the law that  
11 I will give you at the end of the case In fact, really,  
12 the last person from whom you will hear before you retire to  
13 deliberate, when we reach that stage of the case, will be  
14 the Court giving you a detail charge on the law

15 This is a criminal case as we have stated several  
16 times earlier today, and it is commenced by the State, the  
17 prosecution against the Defendant Now I will tell you that  
18 one of the traditions in our courtroom, and throughout the  
19 State of South Carolina, is that the party that has the  
20 burden of proof sits closes to the jury And, if you will  
21 look, you will see the State, the prosecution, the solicitor  
22 is seated at the table closes to you That is because the  
23 solicitor, the State, has the burden of proof at all times  
24 in this proceeding, as I have already discussed with you  
25 Now the case is based upon an Indictment, which I held out

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1 for you earlier in the day But again I say to you, the  
2 Indictment is simply a document, by which the solicitor  
3 commences a prosecution against an individual The document  
4 is not evidence The allegations in that document are not  
5 to be automatically accepted as the truth And that is  
6 because, again, as I said earlier this morning the truth  
7 will be determined by you, based on the evidence in this  
8 case This is why you sit where you do, and the witnesses  
9 sit right there beside you when they come up to testify, so  
10 that you will be able to hear the witnesses, and observe the  
11 witnesses, and determine their demeanor, the credibility,  
12 and their believability

13 Now I will tell you that as I said, the burden of  
14 proof is always on the State, never on the Defendant The  
15 Defendant is presumed innocent of these charges, but you  
16 heard it hear in open Court the Defendant pleads not guilty,  
17 meaning the Defendant denies each and every allegation  
18 contained in the Indictment But again, it's not the  
19 Defendant's burden of proof to prove that these allegations  
20 are incorrect It is the State's burden to prove beyond a  
21 reasonable doubt, and that is the standard, and I will tell  
22 you, that is a high standard, that the Defendant is guilty  
23 before a finding of guilty may occur And the purpose of  
24 this trial is to determine whether or not the State can meet  
25 that high burden

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1           Now, let's talk about your role as jurors    You are  
2   the judges of the facts    I am not the Judge of the facts, I  
3   am the Judge of the law, and no one else is the judge of the  
4   facts in the courtroom

5           In a nutshell how this process works is you are going  
6   to listen hopefully to the testimony, which will be  
7   presented right there beside you   From that you will make a  
8   determination of the facts of the case   You will apply  
9   those facts to the law of the case, that I give you at the  
10   close of the case, and reach a verdict in that fashion, just  
11   in a nutshell, that is how we are going to go forward

12           Now, I will tell you that one of the things that you  
13   are going to have to do, and I tell you this in advance, as  
14   judges of the facts, is to determine the credibility and  
15   believability of the witnesses who come before you   Now  
16   just like you, I have not heard the evidence in this case  
17   But I tell you that many times in trials we will have  
18   witnesses that will say things that seem to be inconsistent,  
19   and sometimes witnesses will say things that are absolutely  
20   mutually exclusive   You will have to make a determination,  
21   should that occur in this trial, which of those witnesses is  
22   the most believable and credible so that you can determine  
23   the facts   Now I am not telling you that someone is going  
24   to come in here and be dishonest with you   I think we know  
25   from human experience that you will see someone observe an

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1 event, you may even observe it yourself, and then you will  
2 hear varied descriptions of the event, that are so varied  
3 that you wonder, is this the same event that everyone is  
4 talking about, because people's perceptions are different  
5 Some of the things that you may want to look to in  
6 determining credibility and believability are, and let me  
7 just first say, you should use what criteria you believe in  
8 your own common sense that you use every day, and your own  
9 collective judgment, determine credibility and  
10 believability But some of things that you may want to look  
11 to are, what is the demeanor of a witness when they  
12 testified, is it hesitant, is the witness straight forward?  
13 How did the witness come to know what it is they are talking  
14 about? What is their ability to know what they are  
15 testifying about? Is the witnesses testimony consistent  
16 even with itself, and is it weakened or strengthened by  
17 other evidence in the case? And finally, in light of the  
18 global evidence in the case, how reasonable is what the  
19 witness saying, and then finally, might there be a reason a  
20 witness would want to help or hurt one side of a case or the  
21 other Might that witness have a bias or prejudice?  
22 Again, I tell you these things in advance so you can  
23 consider these matters as you listen to the testimony in the  
24 case

25 Now I normally go about an hour and a half before I

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1 take a break, but we can never stop to the exact minute I  
2 don't want you watching the clock and worry about that It  
3 depends on where we are in the testimony But if you need  
4 to take a break before we reach a break point, please, if  
5 you will raise your hand, I will understand exactly what  
6 that means, and we will take a break I do that for two  
7 reasons We will take a break immediately Two reasons for  
8 that Number one, you are giving of your time, almost  
9 giving it, and I, want you to be comfortable about what you  
10 are doing Secondly, I don't want you worried about  
11 something else I want you to be able to listen to and  
12 focus on the evidence in the case So, please don't  
13 hesitate to stop us if you need to stop Now, when we take  
14 a break, please, do not go back in the back and discuss the  
15 case, the facts of the case, or anything else of that  
16 nature You should not discuss this case until the end when  
17 it is given to you for deliberation, and only then The  
18 reason for that is this, if we took one witness for example,  
19 took a break and the jury went back and made some  
20 preliminary decision, that then drove the rest of the case,  
21 that would be unfair to all parties, because you haven't  
22 heard all of the evidence before you being to draw  
23 conclusions So, please, do not discuss the case among  
24 yourselves until the end of the case

25 Now, there are one or two other things that I want to

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1 tell you We operate on a system of rules, the Rules of  
2 Criminal Procedure From time to time if one side or the  
3 other believes that the other is about to, or is breaking  
4 the rules, well they call that to my attention by an  
5 objection That all happens right here in the courtroom in  
6 your presence Just like you, I don't know when the  
7 objections are coming, or what they are going to be And I  
8 want you to understand, that I rule on the objections based  
9 on my training as a Judge, my experiences as an attorney for  
10 many years before I became a Judge, and my understanding of  
11 the law and procedures of the South Carolina Courts But I  
12 never rule on an objection to somehow send you a message  
13 about how I might feel about the facts I don't have a  
14 position on the facts, if I did, I would be invading your  
15 providence You are the judges of the facts So, please,  
16 take no inference from any ruling you may see me make during  
17 the course of this trial

18 Now, I am concluding these remarks now The way we  
19 are going to go forward is this Both sides are going to  
20 come before you in an opening statement An opening  
21 statement is not some big persuasive event It's an  
22 opportunity for the lawyers on both sides, to tell you what  
23 they believe the facts will show, or what the evidence will  
24 show in their opinion Then the prosecution will call its  
25 witnesses one after the other Every time they call a

## OPENING STATEMENTS BY MR GRAUSTEIN

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1 witness, that witness will have direct examination from  
2 State's counsel, and then cross examination from defense  
3 counsel Then the State, will rest after calling all their  
4 witnesses The Defendant will be given an opportunity to  
5 put up a case, if the Defendant wishes to, again not  
6 required to, because the Defendant has no burden of proof  
7 The lawyers come before you in closing arguments, which is a  
8 persuasive event, where they tell you what they believe the  
9 evidence has shown, or what the inferences from the evidence  
10 show Then I give you the charge on the law, and you retire  
11 to deliberate That is how we are going to proceed The  
12 Court recognizes the prosecution for opening statements

OPENING STATEMENTS BY MR GRAUSTEIN

13  
14 Mr Graustein Thank you, Your Honor

15 The Court Yes, sir

16 Mr Graustein Ladies and gentlemen of the jury, my  
17 name is Scott Graustein I am the assistant solicitor who  
18 will be prosecuting this case and representing the State in  
19 this matter

20 First of all, I would like to thank you for being  
21 here, and doing your very important job in making our  
22 judicial system work Everything you do here will be very  
23 important, and I would like to thank you for being here

24 As Judge Baxley said, you are the finder of the facts  
25 in this case You are to determine what happened on August



## OPENING STATEMENTS BY MR BELLAMY

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1 31, 2006 The facts that I am going to prove to you are  
2 that the Defendant Tarren Richburg, was in possession of  
3 more than ten grams and less than twenty-eight grams of  
4 cocaine I don't think you will find this to be a very  
5 complex case The facts that I will prove to you are, that  
6 two police officers responded to a, be on the look out for a  
7 car-jacking Mr Richburg's car matched that They  
8 followed him, and he quickly turned off the road They  
9 pulled in behind him Then there was a scuffle between the  
10 Defendant and the police officer, and during the scuffle,  
11 Mr Richburg grabbed a package of cocaine and through it,  
12 and it was recovered by the police So the question that  
13 you are going to have to answer is, was Mr Richburg in  
14 possession of this package of cocaine It is really that  
15 simple

16 As the Judge said, he is the Judge of the law in this  
17 case If you hear me say anything that you think  
18 contradicts the Judge as to what the law is, please, go with  
19 what the Judge says, that is his job I think the Judge  
20 alluded to it This is going to be a very brief case I  
21 believe we should get this done very quickly, and I don't  
22 believe a lot of the facts are in dispute

23 The Court Mr Bellamy?

OPENING STATEMENTS BY MR BELLAMY

24  
25 Mr Bellamy May it please the Court

## OPENING STATEMENTS BY MR BELLAMY

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1           The Court       Yes, sir

2           Mr Bellamy       Ladies and gentlemen of the jury, my  
3       name is Scott Bellamy, I previously introduced myself    I  
4       practice law here in Conway primarily, although I live in  
5       Myrtle Beach    I have the pleasure today to represent Tarren  
6       Richburg, twenty-eight-years-old, sitting beside me    As His  
7       Honor told you, the moving party, as by tradition, gets to  
8       sit closer to the jury    I am not sure why we do that, I  
9       guess we can get closer to you or whatever, but in any event  
10      Mr Graustein gets to sit at this table, because he bears  
11      the burden of proof, and we use the term burden, because it  
12      is    Burden, is not a light term, but it signifies a  
13      significant event that the State has to bear a burden to  
14      bring you evidence    A Defendant never has to present  
15      anything    Many times it's hard to prove a negative, the  
16      State bears that burden    And I ask you to hold them to it,  
17      because ultimately, as jurors of the facts, that is what you  
18      are doing    You are judging the State of South Carolina, and  
19      all of its power to bring in evidence    You are judging  
20      whether they've met that burden, and I ask you to hold them  
21      to that    Consider the evidence that is brought to you,  
22      evidence that is not brought to you, evidence that is  
23      consistent or inconsistent    I don't think it's going to be  
24      quite as simple as the solicitor says it is    I really  
25      don't

## OPENING STATEMENTS BY MR. BELLAMY

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1           There is another propositional of law that His Honor  
2       has discussed with you, and that is presumption of  
3       innocence   I have never sat in a jury panel like the twelve  
4       or thirteen like you are, but I have sat in a big room in  
5       the old courthouse just like you all did, and did a lot of  
6       waiting and sitting, as we do as an attorney, and I got a  
7       chance to listen to people   And, as I listened to them I  
8       came to understand that a lot of people come into this  
9       courtroom as jurors with an idea that the people are  
10      probably guilty   The police say they're guilty, the  
11      solicitor says they're guilty, they are probably guilty,  
12      they probably did it, but our law says we must presume  
13      someone innocent   But how do you do that? You all do not  
14      know anything about this case   You don't know me, the  
15      solicitor, the police, nobody   So, if we use this rail as  
16      innocent and guilty, shouldn't we be somewhere here in the  
17      middle? We don't really know   Shouldn't we be neutral and  
18      listen to both sides? We'll, that is what we normally do in  
19      life, or we try too hopefully, is to be unbiased and to be  
20      mutual   But in a criminal courtroom where a citizen of this  
21      state, and countries very freedom is at stake, and the  
22      awesome power of our government is against an individual  
23      citizen   This isn't civil court, we don't start in the  
24      middle, we start over here as jurors. That is what  
25      presumption of innocence means   In this State, when we put

## OPENING STATEMENTS BY MR BELLAMY

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1 the evidence here before you piece by piece, every piece  
2 consistently with the other until they drag you to, guilty  
3 beyond any reasonable doubt That is the State's burden  
4 But you must start over here, ladies and gentlemen of the  
5 jury And by way of example, I am sure that each of you has  
6 someone in your life that is important to you, you trust, it  
7 might be your husband, your wife, your preacher, a teacher,  
8 whoever, your best friend This is how you presume someone  
9 innocent If you got a call and somebody said, well that  
10 person in your life, whoever it may be, they have committed  
11 some crime, this crime, some other crime, and the first  
12 thing you think of, I don't believe it I don't believe it,  
13 and won't unless they prove it to me That is how you  
14 presume someone innocent That is how you presume Tarren  
15 Richburg innocent You look at him as that person in your  
16 life, and you start from there in this case Sometimes we  
17 assume things, it must have been him, it must have been him  
18 I am not going to argue, with you about whether something  
19 was found, whether it was crack cocaine, cocaine, or even  
20 how much it was But I say to you it wasn't in the  
21 possession of my client I think there have been some  
22 assumptions made, but I ask you to listen to the evidence  
23 Listen to the evidence, holding the State of South Carolina  
24 to their burden Start over here with the presumption of  
25 innocence Look at the evidence presented, or maybe there

## OPENING STATEMENTS BY MR BELLAMY

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1 is some evidence that will clear everything else up for  
2 certain if it was present, or the evidence not presented, I  
3 suggest to you should be considered as well

4 I, like the solicitor, and His Honor, thank you for  
5 your time and service I know it is a burden, but truly for  
6 Tarren Richburg, this is an important day as any person who  
7 stands in a criminal courtroom accused, and their freedom at  
8 stake is very important, so I thank you on his behalf

9 Your Honor, may we approach just one moment, I  
10 apologize

11 (Whereupon, a bench conference was held in  
12 the presence of the jury, but out of the hearing of the  
13 jury )

14 The Court All right, do you have a Motion,  
15 counselor?

16 Mr Bellamy Yes, sir Your Honor, I apologize I  
17 should have previously made this I believe under our rules  
18 there were several witnesses in this case who were present,  
19 seeing the same thing, at the same time, and under our rules  
20 I would ask that they be sequestered so that one witness is  
21 not aided by the memory of another witness, who would have  
22 seen the same thing at the same time, and ask that they be  
23 sequestered, obviously, with the exception of the lead  
24 investigator

25 The Court All right What is your position, Mr

## OPENING STATEMENTS BY MR BELLAMY

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1 Graustein?

2 Mr Graustein Your Honor, the State, would object  
3 to having the witnesses sequestered, that the written  
4 reports of what these officer's saw from the time they did  
5 it, if he wants to question them in any inconsistencies in  
6 that, and if their testimony changes significantly from what  
7 their reports say, I believe that should accomplish what the  
8 defense, is seeking to do, Your Honor

9 The Court All right, sir I am going to grant the  
10 Motion, Mr Graustein, but it will be the same for both  
11 sides Those who remain in the courtroom will be your first  
12 witnesses you are going to call, your case officer who will  
13 be with you throughout the trial, and the Defendant may  
14 remain in the courtroom throughout the trial Now, Mr  
15 Bellamy, if someone in the defense case is going to testify  
16 perhaps those individuals need to leave the courtroom also

17 Mr Bellamy Yes, sir, Your Honor

18 The Court All right, very good I will let you  
19 speak to your witnesses You may ask them to step from the  
20 room, and we'll call for them shortly

21 (Pause)

22 The Court Please call your first witness

23 Mr Graustein Thank you, Your Honor, the State  
24 would call Sergeant Lucas Green

25 The Court Please come forward and take the oath of

SERGEANT LUCAS GREEN - DIRECT EXAMINATION BY MR GRAUSTEIN 57

1 a witness

2 SERGEANT LUCAS GREEN,

3 BEING DULY SWORN TESTIFIED AS FOLLOWS

4 Sergeant Green I do affirm

5 Clerk Please state your full name and spell your  
6 last name for the Court?

7 Mr Green Sergeant Lucas Green G-R-E-E-N

8 The Court Counsel

9 DIRECT EXAMINATION BY MR GRAUSTEIN

10 Q Sergeant Green, where do you currently work?

11 A I am presently employed by the Horry County Police  
12 Department, sir

13 Q How long have you been employed there?

14 A I have been employed with Horry County for  
15 approximately ten years

16 Q Were you employed prior to coming to Horry County  
17 Police Department?

18 A Yes, sir I was a military police officer for  
19 approximately three years, and in 1993 I became  
20 employed as a civilian law enforcement officer with  
21 the City of Marion, which you probably know is in  
22 South Carolina In 1997 I accepted employment with  
23 the Horry County Police Department, and I have been  
24 here every since

25 Q Thank you And what are your present duties?

## SERGEANT LUCAS GREEN - DIRECT EXAMINATION BY MR GRAUSTEIN 58

1 A My present duties, is in the capacity of uniform  
2 patrol supervisor The County Police Department has  
3 divided the county up in precincts My present duties  
4 include me supervising the Conway area precinct

5 Q And do your current duties ever include you  
6 participating in drug investigations?

7 A If I am so summoned, or obviously if something happens  
8 in my presence that would require me to act in my  
9 capacity of a law enforcement officer, yes, sir, I  
10 would be in the position to do that

11 Q And were you involved in an incident on August 31,  
12 2006 that involved the Defendant?

13 A Yes, sir, I was

14 Q Could you tell me how that incident came about?

15 A Yes, sir In law enforcement when situations occur we  
16 have something which is known as a BOLO, which  
17 basically stands for be on the lookout for During  
18 the date that the solicitor mentioned, the City of  
19 Conway Police Department issued one of those BOLOS in  
20 referenced to a white Oldsmobile being operated by two  
21 males, operating in the Highway 701 area of Conway  
22 The reason they issued this BOLO is because that  
23 vehicle was recently involved in a car-jacking  
24 incident They broadcast this information obviously  
25 for us to try to locate this vehicle for further



SERGEANT LUCAS GREEN - DIRECT EXAMINATION BY MR GRAUSTEIN 59

1 investigation, but also more importantly from a  
2 officer safety standpoint

3 Q And this BOLO having been issued, is that what lead to  
4 the incident with you and the Defendant?

5 A Yes, sir I happen to be on the Highway 701, North  
6 area when the BOLO came out I am not sure if you are  
7 familiar, but there is a road off of 701 called Adrian  
8 Parkway, it's a little road that goes to the right,  
9 but just north of that, is a little indenture where it  
10 is on the shoulder where you can park your car As  
11 soon as that BOLO came out, I positioned my police  
12 vehicle in that area, because I was like, hey, I'm  
13 right in the area And while I was parked there,  
14 approximately six to seven minutes after that BOLO was  
15 issued, one of my other officers, Corporal Santiago,  
16 said hey, Sarg, a vehicle matching that description  
17 just past me He was on 701 headed north So I  
18 positioned myself there and waited And while I was  
19 waiting, sure enough a white Oldsmobile, being  
20 operated by two black males past by me

21 Q Okay And what did you do after they past by you?

22 A After I saw the car I turned around and proceeded to  
23 follow the vehicle We were headed north I turned  
24 around because it was a white vehicle, it roughly  
25 matched the description, but more importantly I want

SERGEANT LUCAS GREEN - DIRECT EXAMINATION BY MR GRAUSTEIN 60

1 to try to look at the tag on it, because Conway had  
2 also BOLOED a tag out, and my intention was to verify  
3 the tag through our dispatch, and see if in fact those  
4 vehicle registrations were in fact the same

5 Q And were you able to verify that tag?

6 A No, sir In the process when I got behind the  
7 vehicle, as I said we were headed north, and the  
8 vehicle increased its speed slightly, but then all of  
9 a sudden it made a severe left, turns into the parking  
10 lot of the Bruce Gerald Convenience Store, which if  
11 you are familiar with the geography of Horry County  
12 and Conway, Bruce Gerald's Convenience Store is  
13 located at the intersection of Highway 701 and 410,  
14 where the road folks it is there on the left The  
15 vehicle made a severe turn into the parking lot and I  
16 proceeded to pull in behind it

17 Q Let's just back up for a second Do you recall what  
18 the weather was like on August 31, 2006?

19 A Yes, sir, I do At that time, a tropical storm was  
20 moving through Horry County at that time, so it was  
21 raining I wouldn't say hard, but it was raining  
22 pretty good, some slight wind gusts

23 Q Okay So you testified that the Defendant, that the  
24 car you were attempting to ascertain, if it was the  
25 subject of the BOLO, as you were attempting to

SERGEANT LUCAS GREEN - DIRECT EXAMINATION BY MR GRAUSTEIN 61

1 identify it, it pulled into a convenience store?

2 A Yes, sir

3 Q Okay And what did you do when it pulled into the  
4 convenience store?

5 A I proceeded to follow it, and I pulled in directly  
6 behind it, trying to get a good vantage point

7 Q Okay And what were the occupants of the vehicle  
8 doing?

9 A. At that point when the vehicle came to a stop the  
10 driver's side door, and the front passenger's door  
11 opened simultaneously And, as it opened both of  
12 those parties exited at the same time The front seat  
13 passenger exited, and began walking toward the  
14 entrance or into the door of Bruce Gerald The driver  
15 exited, and began just to walk, in a twelve o'clock  
16 position, or straight ahead of that vehicle as if  
17 walking away from it

18 Q And at this point had you excluded that vehicle as  
19 being the subject of being on the lookout for?

20 A No, I had not I hadn't had time to call the tag in  
21 I hadn't had any information at that point from my  
22 dispatcher, or any other law enforcement agency that  
23 excluded that vehicle as the one we were looking for

24 Q And the Defendant, was he leaving the driver side or  
25 the passenger side?

## SERGEANT LUCAS GREEN - DIRECT EXAMINATION BY MR GRAUSTEIN 62

1 A The Defendant was exiting the driver side He was the  
2 driver of the vehicle

3 Q And he was walking away from you when you pulled up?

4 A Yes, sir He was walking away from the car

5 Q And what did you do then?

6 A At that point, I verbally challenged both of them  
7 Hey, stop, you need to come to with me, the passenger  
8 And, keep in mind my attention was divided, I am  
9 trying to watch both people at one time But, the  
10 passenger ignored me, and kept walking, and once again  
11 I challenged, verbally challenged the driver, hey,  
12 stop, police, you need to speak with me At that  
13 point, the Defendant stopped and still had his back  
14 turned to me

15 Q Then what happened?

16 A I asked the driver once again, police, you need to  
17 come talk with me He turned around and looked at me  
18 and began to walk toward me Seeing as how this was a  
19 BOLO issued for a car-jacking, which is a violent  
20 incident, for my safety I wanted to pat this  
21 individual down I didn't know if he had a gun or  
22 anything I want to make sure that number one, is  
23 that the public was safe, and that I was safe, so I  
24 brought the driver back, and placed him against the  
25 car, and patted him down to see if he had a weapon

## SERGEANT LUCAS GREEN - DIRECT EXAMINATION BY MR GRAUSTEIN 63

- 1 Q And did you find a weapon?
- 2 A No, sir, I did not I did not find a weapon
- 3 Q Did you take, or recover anything, or cease anything
- 4 as a result of that?
- 5 A As a result of the pat, no, I did not receive
- 6 anything
- 7 Q Okay And you patted down the Defendant, and then
- 8 what happened?
- 9 A I begin to converse with him, explain to him why I
- 10 stopped him, and I asked to see his driver's licence
- 11 Q And what happened after you asked to see his driver's
- 12 license?
- 13 A At that point, he said he did not have a driver's
- 14 license, that his license was suspended
- 15 Q And then what did you do?
- 16 A At that point I moved to place him into custody, which
- 17 consisted of me asking him to place his hands behind
- 18 his back and then placing handcuffs in him
- 19 Q And did the Defendant comply with you?
- 20 A No When he had his hands against the car, I had
- 21 placed my left hand on his back to just kind of secure
- 22 him, and with my right hand, I threw my handcuffs to
- 23 apply them, when my left hand made contact with his
- 24 back, he tried to fight me, he tried to run from me
- 25 I had to physically subdue him, and by that I wrapped

## SERGEANT LUCAS GREEN - DIRECT EXAMINATION BY MR GRAUSTEIN 64

1 my arms around his waist, and I did a Greco Roman  
2 clinched and held him We scuffled for probably  
3 fifteen seconds, and he fell to the ground. At that  
4 point, Corporal Santiago had arrived on the scene,  
5 because he heard me make the traffic stop, and  
6 Corporal Santiago arrived on the scene, and assisted  
7 me in subduing the Defendant

8 Q Okay I am going to show you an item marked for  
9 identification as State's Exhibit 1. Have you ever  
10 seen this item before?

11 A Yes, sir I have

12 Q And when did you first see that item?

13 A At the conclusion of subduing the Defendant, Corporal  
14 Santiago came to me and said, Sarg, while you were  
15 fighting this individual, I witnessed him throwing  
16 something, it was a plastic bag, but I witnessed him  
17 through it Then I went to the area where he threw  
18 it, and I picked this up He showed it to me At  
19 that time, it appeared to me that it was similar in  
20 nomenclature, and other characteristics as cocaine

21 Q So who collected that item?

22 A Corporal Santiago was the initial officer who  
23 collected it

24 Q Okay And did you ever take custody at that item or  
25 secure that item?

## SERGEANT LUCAS GREEN - DIRECT EXAMINATION BY MR GRAUSTEIN 65

1       A       Yes, I did   Once the corporal brought it to me, and  
2               it was identified as an illicit and/or illegal  
3               substance, I took it to my vehicle, and I secured it  
4               by putting it in the trunk portion of my vehicle, and  
5               locking the vehicle

6       Q       Okay   Did you ever place that item in a package of  
7               any sort or some sort of container?

8       A       No, sir, I left it as is, in tact

9       Q       Okay   Did you ever transport to another individual?

10      A       Yes   I did

11      Q       And who did you transfer it to?

12      A       At that point with the amount of drugs here, it is a  
13               common practice, or a good practice in my opinion, to  
14               contact an investigator with our Narcotic's Division  
15               At that point, I made contact with our Division, and  
16               Detective Jolliff responded to the scene, and I  
17               released it to him at that time

18      Q       Okay   And when did you transfer it to him?

19      A       That same day, at that scene when Detective Jolliff  
20               arrived on the scene, I explained to him the situation  
21               that occurred, and at that time, I presented it to  
22               him

23      Q       And, where did you give it to him?

24      A       In the incident location right there

25      Q       Okay   From your observations, is that item in the

## SERGEANT LUCAS GREEN - DIRECT EXAMINATION BY MR' GRAUSTEIN 66

1 same condition it was when you first collected it?

2 A When I was first given it, it was contained --- May I  
3 show this to the jury, so they can understand?

4 Mr Bellamy Judge, I believe this item has been  
5 identified I object We have not tied it all up at this  
6 point I don't think it's in evidence It has just simply  
7 been marked for I D

8 The Court All right, sir Have you moved it into  
9 evidence? You are not moving it at this time

10 Mr Graustein No, sir

11 The Court All right Ladies and gentlemen, because  
12 it is not yet into evidence rather than display it to the  
13 jury, sir, if you would just describe what you wish, without  
14 letting the jury view it as yet

15 A When I received it, it was in a plastic wrap, if you  
16 would, something similar to Saran Wrap That was the  
17 condition that I received it, and when it was  
18 transferred to Detective Jolliff that was the  
19 condition it was in when I transferred it to him

20 Q Okay And while it was in your custody and control  
21 did you alter or change the item in any substantial  
22 way or form?

23 A No, sir I did not manipulate this in any way

24 Q Okay Did you tamper with it at all?

25 A No, sir



## SERGEANT LUCAS GREEN - DIRECT EXAMINATION BY MR GRAUSTEIN 67

1 Q And did you maintain the integrity of that item while  
2 it was in your custody and control?

3 A I absolutely did, sir

4 Q Okay Let's just go back for a moment to when you got  
5 to the convenience store The Defendant's car pulled  
6 into --- What type of area was that he pulled into?

7 A It's just a common area, a parking lot, this black  
8 paved top, just a standard average convenience store

9 Q Okay So it was the parking area of the convenience  
10 store?

11 A Yes, sir

12 Q And were there any other people in the parking area  
13 that you were aware of?

14 A I didn't observe anybody, but then again I was focused  
15 on those two folks, but as memory serves, no, I don't  
16 recall anybody out there

17 Q All right And let me ask you, when you had custody  
18 of that item marked as Exhibit 1, did you ever request  
19 that that be examined for fingerprints?

20 A I did not make that request The reason why is  
21 because at that point I had made the determination,  
22 that I was going to transfer this case to Detective  
23 Jolliff, and by that I mean Detective Jolliff is going  
24 to assume the investigation And at that point, I did  
25 not want to insert and/or interject myself into what

**SERGEANT LUCAS GREEN - CROSS EXAMINATION BY MR BELLAMY 68**

1 the Detective was going to do So I made --- I left  
2 that call up to Detective Jolliff, as he would be the  
3 lead investigator

4 Q And prior to your approaching the Defendant in this  
5 case, did you observe any packages of illegal  
6 substances laying in the parking lot?

7 A No, sir

8 Q Did you observe the Defendant with that item marked as  
9 Exhibit 1?

10 A I did not observe the Defendant with this in his  
11 possession I did not

12 Mr Graustein Okay That's all the questions, I  
13 have, Your Honor

14 The Court Cross-examination?

15 Mr Bellamy Yes, sir, Your Honor

16 The Court Yes, sir

17 Mr Bellamy May it please the Court

18 **CROSS-EXAMINATION BY MR BELLAMY**

19 Q Sergeant Green?

20 A Yes, sir

21 Q Did you do a report, generate your own report in this  
22 case?

23 A No, sir, if you will permit me to look through this  
24 package I do not think that I did generate a report  
25 No, sir, I did not generate a report according to

## SERGEANT LUCAS GREEN - CROSS EXAMINATION BY MR BELLAMY 69

1 this

2 Q Now, you have been in law enforcement Sergeant Green,  
3 here for ten-years, and prior to that several years in  
4 the military, right?

5 A Three years, yes, sir

6 Q Isn't it the procedure that if you make an arrest for  
7 anything that an incident report, be prepared by you  
8 to memorialize what happened so ten months later when  
9 you come in this courtroom you've got written  
10 documentation of what you did?

11 A That is correct A report was generated about the  
12 activities that took place, however, an officer  
13 assisting with this particular incident, documented  
14 via the incident what we did, to supplement with what  
15 Detective Jolliff was preparing

16 Q But you did nothing as it relates, and you're the  
17 first officer to encounter my client, correct?

18 A Yes, sir

19 Q And you've written absolutely nothing down about the  
20 incident of that day?

21 A To answer your previous question, I did not generate a  
22 report, no, sir

23 Q Okay Do you know if Officer Santiago did any written  
24 report?

25 A Officer Fred Rash who was at the scene documented the

## SERGEANT LUCAS GREEN - CROSS EXAMINATION BY MR BELLAMY 70

1 facts as to what uniform patrol we contributed

2 Q Well now Sergeant Green, isn't it appropriate that the  
3 officer who sees, whatever they see, whatever they are  
4 personally doing, that they do their own report  
5 individually?

6 A You are saying appropriate? By that I am assuming you  
7 are implying it is a matter of policy In most cases  
8 I would agree with you, however, Detective Jolliff,  
9 arrived on the scene approximately, or minutes after  
10 this incident occurred And since his arrival was so  
11 timely and so professional, I was able to sit with  
12 Detective Jolliff and dictate the pertinent  
13 information as it pertains to this case And I think  
14 if you peruse this file here, I think --

15 Q I have I have

16 A -- It documents it pretty thoroughly

17 Q Well tell me in there where Officers Santiago's name  
18 is mentioned, and you take as long as you want to

19 A Okay

20 (Pause)

21 A Can I read from this report, sir?

22 Q Which one is it, so we're on the same page?

23 A You told me to take as long as I needed to and I found  
24 it

25 Q Where is it?

## SERGEANT LUCAS GREEN - CROSS EXAMINATION BY MR BELLAMY 71

- 1 A If you'll refer to possession to crack cocaine case  
2 Number 06-074519
- 3 Q Okay, if you would just show it to me
- 4 A Okay May I read, sir?
- 5 Q Yes, sir
- 6 A Okay And I'm reading from the report, ladies and  
7 gentlemen On 8/31/06, I responded to a call from  
8 Sergeant Green, that he had the suspect vehicle from a  
9 car-jacking that just occurred, stopped at Bruce  
10 Gerald's Store Sergeant Green and Corporal Santiago  
11 had the first suspect unknown to me, and another  
12 suspect in the store Do I need to read more, but you  
13 told me to refer to Corporal Santiago?
- 14 Q And that's the only mention of him, correct?
- 15 A That's what I see, yes, sir I'm sure if I look  
16 further I might find some more
- 17 Q Well, keep looking
- 18 (Pause)
- 19 A That's all I see at this point
- 20 Q One sentence about him arriving on the scene, correct?
- 21 A Well, an entire report generated, yes, sir
- 22 Q But Officer Santiago, that is all that is mentioned  
23 about him, isn't it?
- 24 A Yes, sir, he indicates that Officer Santiago arrived  
25 on the scene to assist me, yes, sir

## SERGEANT LUCAS GREEN - CROSS EXAMINATION BY MR. BELLAMY

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1 Q Okay But is there any report by Officer Santiago  
2 that he prepared about what he did or saw?

3 A I'm sorry, that he compared?

4 Q That he prepared

5 A Oh, I'm sorry, not that I see in this packet No,  
6 sir, I don't see it

7 Q Okay And no question about it Sergeant Green, you  
8 never saw my client with any drugs at all, did you?

9 A No, sir While I was fighting your client, I had no  
10 chance to, I didn't see him through anything

11 Q Well, he stopped when you said stop didn't he?

12 A Yeah, he did

13 Q And the other fella ran, didn't he?

14 A He walked into the store, yes, sir

15 Q Well, would you agree with me the report indicates  
16 that he ran into the store?

17 A Well, if you want me to look back through it, I will  
18 But, my testimony is that he exited from the vehicle  
19 and walked into the store

20 Q And I will ask the officer about that that prepared  
21 the report concerning that So my client stopped My  
22 client answered your questions My client let you pat  
23 him down Is that all correct?

24 A Yes, sir After I challenged him, yes, sir, after I  
25 challenged him the third time, yes, sir, he complied

## SERGEANT LUCAS GREEN - CROSS EXAMINATION BY MR BELLAMY 73

1 and came right over there, and I explained what I  
2 needed to do

3 Q And he did?

4 A Yes, sir, absolutely

5 Q And the other fellow left?

6 A Yes, sir

7 Q Now, you also charged him with some drugs too, didn't  
8 you?

9 A Yes, sir If memory serves me correct, he was  
10 charged

11 Q And you weren't involved in whatever happened in that  
12 store with Mr Willie Douglas, were you?

13 A No, sir I was not present when that was recovered,  
14 that was recovered by Officer Rash Since we had two  
15 Defendants, I stayed with the initial one, I made  
16 contact with, and then Officer Rash handled the  
17 second

18 Q He was charged with possession of crack cocaine wasn't  
19 he, the co-defendant, the other guy in the parking lot  
20 that day, who ran?

21 A According to this yes, sir, Detective Jolliff did in  
22 fact charge the second defendant with drug offense,  
23 that being possession of crack, third offense, yes,  
24 sir

25 Q Now, to make sure we are clear on in the initial

## SERGEANT LUCAS GREEN - CROSS EXAMINATION BY MR BELLAMY 74

- 1           thing    The BOLO and all, that had nothing to do with  
2           my client, did it? He wasn't involved in a car-  
3           jacking?
- 4       A       After further investigation, we couldn't, no, we could  
5           not
- 6       Q       He had nothing to do whatsoever?
- 7       A       No, sir
- 8       Q       And, in fact, you didn't ever put on your blue light,  
9           or he actually stopped prior at a store and exited the  
10          vehicle to go into the store prior to you even getting  
11          close enough to verify or stop him, right?
- 12      A       That is correct    I didn't have time to activate my  
13          blue light when he pulled into the parking lot    I  
14          didn't have time to activate anything
- 15      Q       But, I mean, were you in a marked car?
- 16      A       Yes, sir
- 17      Q       And you were behind him?
- 18      A       Uh-huh
- 19      Q       With no blue light no?
- 20      A       When I pulled behind him, yes, sirs, when he observed  
21          me pull behind him, he pulled in the parking lot, and  
22          I didn't have time to activate the blue lights,  
23          because he moved so fast
- 24      Q       Well, but he pulled in the parking lot, stopped,  
25          exited the vehicle knowing that you were behind him?



## SERGEANT LUCAS GREEN - CROSS EXAMINATION BY MR BELLAMY 75

- 1 A Yes, sir
- 2 Q Okay In fact, if you would have run the tag on that  
3 car you would have had no reason to stop him, would  
4 you?
- 5 A No, if he didn't try to get, or if he didn't walk away  
6 from his car, I would have had time to run it
- 7 Q I understand it You were responding to what you  
8 thought could have been a dangerous situation --
- 9 A -- Absolutely
- 10 Q -- Before you could have verified it?
- 11 A Yes, sir
- 12 Q Gerald's Store is a pretty busy place?
- 13 A Normally it is It is a fairly busy place It's  
14 normally a busy place
- 15 Q And a lot of folks in and out of there?
- 16 A From the times I have observed, it seems to be a  
17 fairly popular place
- 18 Q And, Sergeant Green, you say you had a marked car?
- 19 A Yes, sir
- 20 Q Okay If there were other people in the parking lot  
21 they would have seen that you were in a marked car  
22 pulling up, correct?
- 23 A I didn't understand
- 24 Q Well, I mean it would have been evident to anybody  
25 that you have a police car?

## SERGEANT LUCAS GREEN - CROSS EXAMINATION BY MR BELLAMY 76

- 1 A I can't assume what people see or think
- 2 Q Well, let me ask this Did you have blue lights on
- 3 the top?
- 4 A No, sir
- 5 Q Okay Is it marked with insignias or anything?
- 6 A It has striping on the side, but it's a supervisor's
- 7 car I guess they don't think we rate high enough to
- 8 have a blue light on top, but we have a dash mounted
- 9 light inside the vehicle
- 10 Q Does it have the county logo on it?
- 11 A On the side, it's striped on the side, yes, sir
- 12 Q And the county logo?
- 13 A It's stripped on the side, it says Horry County
- 14 Police
- 15 Q Oh, okay That's what I am asking Is it marked, is
- 16 it a marked car?
- 17 A Yes, sir, it is
- 18 Q Okay So, and when you pulled up your primary focus
- 19 wasn't on who was in that parking lot, but was that
- 20 the car that could have been in a car-jacking?
- 21 A Absolutely
- 22 Q You were not paying attention necessarily to who was
- 23 doing what around you, and that's understandable?
- 24 A Not too much, no
- 25 Q Okay Now, if you could just so I could make sure the

## SERGEANT LUCAS GREEN - CROSS EXAMINATION BY MR BELLAMY 77

1 jury, help the jury understand with Your Honor's  
2 permission, have him step down and draw a basic  
3 diagram of that area, and where the cars were located,  
4 and the people were located?

5 The Court All right, let's do that And how about  
6 have the Sergeant go to the opposite side so he is speaking  
7 back to our court reporter Please speak up so we can all  
8 hear you in the courtroom

9 Sergeant Green Yes, sir

10 The Court All right, thank you

11 Mr Bellamy Would it help if he spoke into this  
12 Judge, and sat on this side, or do you want him on that  
13 side?

14 The Court Well as long as we are able to hear him  
15 that's fine I just don't want the record not be complete,  
16 and at the same time I want to make sure the jury can see  
17 what it is you are doing

18 Mr Bellamy I think he wants you on this side

19 The Court I think it will be a little better

20 Mr Bellamy And speak up loud so --

21 A So that I understand, what would you like for me to  
22 draw?

23 Q If you would just basically draw, and I know this is  
24 not to scale, Bruce Gerald's Store, and where  
25 Richburg's car was, and your car, and then I will ask

## SERGEANT LUCAS GREEN - CROSS EXAMINATION BY MR BELLAMY 78

- 1           you to draw from there the individuals, and where they  
2           were located   You might want to draw the road first
- 3       A       Can everybody hear me, okay?
- 4       Q       Can you all see that, or do we need to come maybe a  
5           little bit closer with the diagram?
- 6       A       This here would be the store, and this is the shelter,  
7           or the covering of the gas pumps, the awning there  
8           This here is a telephone booth, a telephone, a pay  
9           phone   This here would be the Defendant's car
- 10      Q       Put T. R   there
- 11      A       And this would be my police vehicle   Over here is,  
12           if you are familiar with Bruce Gerald, he has a little  
13           storage back here   He's got commercial vehicles like  
14           tractor trailers and cars on this side over here
- 15      Q       All right   Sergeant Green, the passenger exited this  
16           side of the vehicle?
- 17      A       Yes, sir
- 18      Q       And went in the front door being up here somewhere?
- 19      A       Yes, sir
- 20      Q       Okay   All right   My client exited this side?
- 21      A       Yes, sir, the driver's side
- 22      Q       Now, when you asked him to stop, and he did approach  
23           you, where did you all have the conversation, and this  
24           pat down that you have referred to?
- 25      A       He got a couple of feet, I am not going to guesstimate

## SERGEANT LUCAS GREEN - CROSS EXAMINATION BY MR BELLAMY 79

- 1           this, it was in front of his car, I asked him to stop  
2           And the third time when I verbally challenged him he  
3           stopped, and then we approached, I say we, kind of met  
4           in the middle I walked toward him He walked back  
5           toward me, but is it in this area here, the rear  
6           portion of his vehicle
- 7       Q       Could you put an "X" there for me, Sergeant Green?  
8           Now is that where the struggling pursued?
- 9       A       Approximately, in that area
- 10      Q       Okay Now, Officer Rash, where was he?
- 11      A       When Rash arrived, if memory serves, Corporal Santiago  
12           was the first to arrive
- 13      Q       Okay Draw him
- 14      A       He -- I'm just going to put "O" for Oswald He  
15           arrived and took up the position on the right side of  
16           my vehicle And then when Officer Rash arrived, if I  
17           am not mistaken, Officer Rash arrived somewhere in  
18           here
- 19      Q       And he arrived after Officer Santiago?
- 20      A       Yes, Rash arrived after Santiago
- 21      Q       So, one, two, and then the third?
- 22      A       Yes, sir
- 23      Q       And then, of course, Detective Jolliff is four?
- 24      A       Yes, sir
- 25      Q       Okay Now, did you all engage in the struggle when

## SERGEANT LUCAS GREEN - CROSS EXAMINATION BY MR BELLAMY 80

1 Officer Santiago arrived here?

2 A Yes, sir, I was Yes, sir, I was

3 Q Okay And were you on the ground with him?

4 A I honestly don't remember All I know is we were  
5 fighting, and Corporal Os arrived, and I remember him  
6 helping me put handcuffs on him

7 Q So you don't know whether you had him on the ground,  
8 or he helped you get him on the ground?

9 A I want to think that I was, he was on the ground and I  
10 was on top of him in a Greco Clinch when Officer  
11 Santiago came up and assisted me

12 Q And just got the handcuffs on him So you had him  
13 secured, but you needed help getting the cuffs on him?

14 A Getting the cuffs on him

15 The Court Counsel, speak up some, your back is to  
16 our court reporter Thank you

17 Mr Bellamy I'm sorry

18 Q Okay Where did Officer Rash go? When he arrived,  
19 did you finish securing Mr Richburg?

20 A When Officer Rash arrived on the scene, Corporal Os  
21 and I had Mr Richburg, the Defendant, secured I  
22 instructed Officer Rash to go into the store because  
23 the other individual had actually went into the store  
24 I didn't know what his intentions were, so I asked  
25 Officer Rash to go in there, and to see if in fact he

SERGEANT LUCAS GREEN - REDIRECT EXAMINATION BY MR GRAUSTEIN 81

1 was in there, and if he was to detain him until we  
2 could have a chance to talk with him

3 Q Okay Thank you

4 A May I return to the stand?

5 Q Yes, sir, if you would return

6 Mr Bellamy Court's indulgence for just one second

7 The Court Certainly

8 Mr Bellamy I don't have any further questions of

9 Sergeant Green Thank you

10 The Court Is there redirect?

11 Mr Graustein Just very briefly, Your Honor

12 The Court Let me say to the jury, in the  
13 presentation of a witness, we have a direct examination,  
14 then we have cross, and on redirect, if new issues are  
15 brought up in cross, or some new part of an issue counsel is  
16 allowed to address that We don't go back and rehash the  
17 same thing It is only if there is a new matter Go ahead,  
18 counsel

19 REDIRECT EXAMINATION BY MR. GRAUSTEIN.

20 Q Sergeant Green, you testified that you conducted a pat  
21 down search of the Defendant?

22 Mr Bellamy Judge, I don't think this is a new  
23 matter, that we are going into

24 The Court Well, let's hear what the question is  
25 Go ahead

SERGEANT LUCAS GREEN - REDIRECT EXAMINATION BY MR GRAUSTEIN 82

1 A I'm sorry Could you repeat it, please?

2 Q You testified that the Defendant did not resist you  
3 until you started initially, correct?

4 A When I conducted the pat down, no, there was no  
5 resistance, no, sir

6 Q When did he start resisting you?

7 A When I advised him that we were --- That I was  
8 arresting him for not having a driver's license at  
9 that point, when I removed my handcuffs

10 The Court All right, just a moment I am going to  
11 sustain Counsel did not go into that My  
12 recollection is that certainly is not in some new  
13 fashion, counsel Is there anything new that you wish  
14 to go in redirect?

15 Mr Graustein No, Your Honor

16 The Court All right So you may step down You  
17 are free to remain or you are free to leave if you wish

18 Sergeant Green Thank you, Your Honor This is  
19 evidence, who do I need to give this to?

20 The Court. You can give that to our court reporter

21 Sergeant Green Thank you, sir

22 The Court Thank you Please call your next  
23 witness

24 Mr Graustein Yes, Your Honor Corporal Santiago

25 The Court Please come forward and take the oath of



OSVALDO SANTIAGO - DIRECT EXAMINATION BY MR GRAUSTEIN

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1 a witness

2 OSVALDO SANTIAGO,

3 BEING DULY SWORN TESTIFIED AS FOLLOWS

4 Clerk Please state your full name for the Court,  
5 and she needs you to spell your first and last name

6 Mr Santiago My name is Osvaldo Santiago I spell  
7 O-S-V-A-L-D-O, last name S-A-N-T-I-A-G-O

8 DIRECT EXAMINATION BY Mr GRAUSTEIN

9 Q Thank you Corporal Santiago, what is your current  
10 occupation?

11 A I am a law enforcement officer, a corporal with the  
12 Horry County Police Department

13 Q How long have you been employed by Horry County Police  
14 Department?

15 A Since 1999

16 Q. Before 1999, did you have any prior law enforcement  
17 experience?

18 A Yes, sir I spent two and half years with Conway  
19 City Prior to that I spent twenty-years in the  
20 military, and about four years of that was in law  
21 enforcement

22 Q And what do your present duties include?

23 A I am a patrol officer, also a patrol supervisor, I  
24 answer calls, and I sign off reports, take care of my  
25 guys, anything they need, if they have questions, I

1 try to answer them for them

2 Q Okay And in your job as a patrol officer, patrol  
3 supervisor, do you have the opportunity to become  
4 involved in drug investigations?

5 A Sometimes, yes, sir

6 Q Corporal Santiago, were you involved in an incident  
7 with the Defendant on August 31, 2006?

8 A Yes, sir, I was

9 Q Okay Tell me how that incident came about for you?

10 A I was leaving what we call the camp I was having  
11 some maintenance done on my vehicle A BOLO came out  
12 as I was leaving the camp I was coming down toward  
13 Conway The vehicle that was described in the BOLO  
14 has passed me I said something over the radio, like  
15 it just passed me I turned around headed up toward,  
16 I can't remember the name of the store, I think it's  
17 Bruce Gerald, or something like that Right there at  
18 701 North just before 410 When I got there --

19 Q So, you got this be on the look for notice?

20 A Yes, sir

21 Q And you saw the car drive past you --

22 A -- Yes, sir

23 Q -- Or the car matching the description I want to be  
24 correct What did you do after you saw the car that  
25 matched the description?

## OSVALDO SANTIAGO - DIRECT EXAMINATION BY MR GRAUSTEIN 85

1 A I got on the radio and I made a comment about just  
2 passed me, or something of that nature At that  
3 point, when traffic allowed me, I turned around and  
4 headed in the direction of the vehicle

5 Q Okay And did you have an opportunity to ever catch  
6 the vehicle, or to get to where the vehicle was  
7 located?

8 A No When I got to where the vehicle was, it had  
9 already been stopped by Sergeant Green, and he was  
10 behind the vehicle, when I got, when I pulled up

11 Q All right So you pulled up and this was, where did  
12 you say this was?

13 A I believe it's called Bruce Gerald

14 Q Okay So you pulled up, and what was going on when  
15 you pulled up?

16 A When I pulled up, the Sergeant was involved in an  
17 altercation with the suspect or the Defendant I got  
18 there I was getting ready to assist the Sergeant  
19 The Defendant has something in his hand, and he threw  
20 it At that time, I said to the Sergeant, got him on  
21 the ground, and basically that was it I went over  
22 and started looking for the item that he had thrown

23 Q Okay So the scuffle had already started before you  
24 got there?

25 A Yes, sir

OSVALDO SANTIAGO - DIRECT EXAMINATION BY MR GRAUSTEIN 86

1           The Court     Counsel, just a moment     Corporal, would  
2     you pull up a little closer to that microphone     Just come  
3     to it a little bit closer     Thank you

4           Corporal Santiago     Yes, sir

5           The Court     Thank you

6     Q     (By Mr Graustein)     And did you know what caused the  
7     scuffle, were you able to observe what caused the  
8     scuffle?

9     A     No, sir, I wasn't

10    Q     Okay     And I would like to show you what has been  
11    marked for identification as States Exhibit 1     Have  
12    you ever seen this item before?

13    A     In this particular package, no, but it looks like the  
14    little cellophane package here looks like what I  
15    picked up when I whet looking

16    Q     Okay     You went looking for an object that the  
17    Defendant had thrown?

18    A     Yes, sir

19    Q     And did you see where that object had landed?

20    A     The only thing I can tell you is that it landed in an  
21    area about ten to eleven o'clock from where the  
22    vehicles were     I guess it was about seven to eight  
23    feet

24    Q     So seven to eight feet from where the Defendant --

25    A     -- From where the scuffle had taken place, yes, sir

## OSVALDO SANTIAGO - DIRECT EXAMINATION BY MR GRAUSTEIN

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1 Q Okay Was it thrown into a group of people or  
2 anything like that?

3 A No Actually it was in an open area Bruce Gerald on  
4 the right-hand side of it as you're looking at, it has  
5 an open area That particular area that day, because  
6 it was raining, it was wet, not muddy, but there was  
7 no grass or anything like that, just dirt

8 Q Okay And did you ever observe any individuals other  
9 than yourself over in that area?

10 A No There was no one else there

11 Q What was the weather like that day?

12 A It was raining

13 Q And you're looking at State's Exhibit 1, did you  
14 collect that?

15 A Yes, sir, that looks like the item that I picked up  
16 that day

17 Q Okay Did you place it in any sort of package or  
18 container?

19 A No, sir I did not I handed it to the Sergeant

20 Q Did you transfer the item, did you transfer that item?

21 A Hand to hand, yes, sir

22 Q Hand to hand, and who did you transfer it to?

23 A Sergeant Green

24 Q Sergeant Green And when did you do that?

25 A Maybe ten, fifteen, twenty seconds after I found it

## OSVALDO SANTIAGO - DIRECT EXAMINATION BY MR GRAUSTEIN

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- 1 Q Okay How long did it take you to find it after you  
2 went looking for it?
- 3 A Not very long at all
- 4 Q And from your observations of Exhibit 1, is it in the  
5 same condition as when you recovered it?
- 6 A No, sir it is not When I recovered it, it was not in  
7 this package, it was in this cellophane package here
- 8 Q Okay And while Exhibit 1 was in your custody and  
9 control, did you alter or change the item in any  
10 substantial way?
- 11 A No, sir
- 12 Q Did you tamper with it at all?
- 13 A No
- 14 Q And did you maintain the integrity of that item?
- 15 A Yes, sir From the point I picked it up until the  
16 point I handed it to the Sergeant.
- 17 Q Okay Did you ever request the fingerprints be --  
18 fingerprints be examined on that package?
- 19 A No, sir, I did not
- 20 Q And why didn't you do that?
- 21 A Well it was raining when I picked it up It was in a  
22 puddle of water
- 23 Q Okay Did you see any item that would have resembled  
24 Exhibit 1, lying in the area around the Defendant's  
25 car when you arrived?

OSVALDO SANTIAGO - DIRECT EXAMINATION BY MR GRAUSTEIN

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1 A No, sir

2 Q Did you see anybody that could have placed an item  
3 like that?

4 A No There were only three people there It was  
5 myself, the sergeant, and Defendant

6 Q Did you assist in placing the Defendant in into  
7 custody?

8 A I assisted the sergeant when he had him on the ground  
9 to put handcuffs on him, and then the sergeant  
10 indicated that there was another officer in another  
11 part of the store, and he asked me to go over and  
12 assist him

13 Q And is it normal procedure that when somebody is being  
14 placed under arrest that you conduct a search of them?

15 A Yes, sir, it is

16 Q And that is more than just a pat down?

17 A Yes, sir, that is more than just a pat down,  
18 especially before placing them in the vehicle

19 Q Well is it reasonable that the Defendant had an  
20 illegal substance on him while he was being placed  
21 under arrest that he would be found --

22 Mr Bellamy -- Judge, I would object to what is  
23 reasonable, what a Defendant may be thinking or not  
24 thinking He's asking him to speculate

25 The Court Overruled That was not asking about

OSVALDO SANTIAGO - DIRECT EXAMINATION BY MR GRAUSTEIN

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1 what someone was thinking He was asking about whether  
2 something may be reasonable You may rephrase, sir  
3 Restate your question

4 Q (By Mr Graustein) In your experience as a law  
5 enforcement officer, if somebody had illegal drugs on  
6 them at the time they were being placed under arrest,  
7 would those drugs be found?

8 A Yes, sir

9 Mr Graustein Thank you

10 The Court Counsel, how long do you anticipate your  
11 cross of the witness?

12 Mr Bellamy About, fifteen-minutes

13 The Court All right, let's take our break at this  
14 time We'll take our afternoon break, ladies and gentlemen  
15 Corporal Santiago, I am going to ask you not to speak to the  
16 State's attorney or defense attorney, because you are a  
17 witness under examination, but you are free to step down  
18 during our break We will be on break for approximately  
19 fifteen minutes, then we will reconvene at that time

20 Ladies and gentlemen, please do not discuss the case  
21 but enjoy your break Let's all remain where we are while  
22 our jury departs the courtroom

23 (Whereupon, the jury departs the courtroom  
24 for an afternoon break is taken at 3 38 p m )

25 The Court All right, the Court will be in recess



**OSVALDO SANTIAGO - CROSS EXAMINATION BY MR BELLAMY** 91

1 Counsel, step up and let's talk about scheduling just one  
2 second before you step from the courtroom

3 (Whereupon, the Court took a recess from  
4 3 38 p m until 3 55 p m )

5 The Court All right I believe our jurors have  
6 just returned from those who took an outside break, so  
7 please bring in the jury Corporal Santiago, if you want to  
8 come back to the witness stand, please do

9 (Whereupon the jury enters the courtroom at  
10 3 55 p m )

11 The Court All right Welcome back ladies and  
12 gentlemen, I trust you had a nice break You will recall we  
13 had just ended direct examination of Corporal Santiago, and  
14 now cross examination Mr Bellamy?

15 Mr Bellamy May it please the Court?

16 The Court Yes, sir

17 CROSS EXAMINATION BY MR BELLAMY

18 Q Officer Santiago?

19 A Yes, sir

20 Q When you arrived at Bruce --- And, I am a little  
21 confused You passed this vehicle?

22 A Yes, sir, I did

23 Q Okay And did you make a U-turn?

24 A Yes, sir, I did

25 Q But I assume that Sergeant Green was ahead of you in

1           some fashion?

2       A       I don't know where exactly Sergeant Green was

3       Q       In any event when you arrived he was already there?

4       A       Yes, sir

5       Q       Out of his vehicle?

6       A       Uh-huh

7       Q       And engaged in at that point a struggle?

8       A       Yes, sir

9       Q       Okay   Was he on the ground with Mr Richburg?

10      A       No    When I got there, he was standing up

11      Q       They were standing up, both of them?

12      A       Yes, sir

13      Q       And at that point Officer, is it Rash who was the  
14           third officer to get --

15      A       Uh-huh

16      Q       Was he there then?

17      A       I don't remember seeing him, no

18      Q       Were there any other officers there?

19      A       No, sir

20      Q       Okay   This was about what time of day?

21      A       Sometime in the afternoon, I think it was about 1400,  
22           thereabouts, I'm sorry, two o'clock

23      Q       Two o'clock in the afternoon?

24      A       Yes, sir

25      Q       Okay   And you then, I believe, assisted Sergeant

## OSVALDO SANTIAGO - CROSS EXAMINATION BY MR BELLAMY

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- 1 Green in handcuffing?
- 2 A No, sir, I did not assist him Sergeant Green got him
- 3 on the ground He had his hands behind his back At
- 4 that time --
- 5 Q -- You are talking about Mr Richburg had his hands
- 6 behind his back?
- 7 A Yes, sir
- 8 Q Okay Or Sergeant Green --
- 9 A -- Sergeant Green had hands back At that time --
- 10 Q You are talking about Mr Richburg had his hands
- 11 behind him --
- 12 A -- Yes, sir
- 13 Q Or Sergeant Green had his --
- 14 A Sergeant Green had hands back
- 15 Q Behind him like this and standing?
- 16 A No, he was on the ground
- 17 Q Okay Mr Richburg?
- 18 A Yes, sir.
- 19 Q Okay Face down?
- 20 A Yes, sir
- 21 Q Okay And with both hands behind his back?
- 22 A I believe so
- 23 Q And, did you have him in some sort of arm hold or
- 24 something?
- 25 A From what, if I remember correctly he had his hands

## OSVALDO SANTIAGO - CROSS EXAMINATION BY MR BELLAMY

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- 1           behind his back   I don't know if he had any handcuffs  
2           on him or not   It's possible that he had one handcuff  
3           on him, but I couldn't be absolutely sure  
4       Q       Did you help him get the other one on?  
5       A       No, sir  
6       Q       Okay   Did he have his knee in the middle of his back  
7           to secure him?  
8       A       If I said yes, I would be lying   I just couldn't tell  
9           you that   I don't know  
10      Q       Okay   Did he get the other handcuff on?  
11      A       Again, when that occurred I got down there with him,  
12           and he made mention of Officer Rash   He said  
13           something about Officer Rash --  
14      Q       -- Hold on just a minute   Let's don't talk what other  
15           people said   Tell us what you did  
16      A       I responded to what he said which was what was --  
17      Q       Now Officer Rash, wasn't there at the time was he?  
18      A       I did not see Officer Rash  
19      Q       Okay   Did you ever go into the store?  
20      A       I went into the store  
21      Q       And that was to assist Officer Rash?  
22      A       That is correct  
23      Q       Okay   And you encountered another individual in  
24           there?  
25      A       Officer Rash already had the individual in custody

## OSVALDO SANTIAGO - CROSS EXAMINATION BY MR BELLAMY

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- 1 Q Okay And he was also charged with a drug offense,  
2 correct?
- 3 A I could not tell you I don't know what he was  
4 charged with
- 5 Q Okay Did you have any interaction with that  
6 particular individual?
- 7 A Only long enough to hold him while Officer Rash went  
8 into the men's room, and checked out the men's room
- 9 Q Okay And then he was placed in the car, taken off?
- 10 A As far as I know
- 11 Q And likewise, Mr Richburg was placed in the car and  
12 taken off?
- 13 A Mr Richbourg was still in one of the vehicles when I  
14 came back outside looking for the item, this item  
15 here
- 16 Q Okay So you went into the store before you came  
17 back out looking for this?
- 18 A That is correct
- 19 Q Okay So you went into the store and leave out  
20 there in the parking lot for at least long enough to  
21 have to hold a Defendant while another officer  
22 searches the bathroom, right?
- 23 A That is correct
- 24 Q How long did that take, five minutes, ten minutes?
- 25 A No, sir, it didn't take more than two or three

## OSVALDO SANTIAGO - CROSS EXAMINATION BY MR BELLAMY 96

1 minutes

2 Q Two or three minutes And you don't know what was  
3 going on out there in the parking lot?

4 A That is correct

5 Q And you, Officer Santiago, you said it looks like,  
6 you say you collected this as evidence?

7 A I collected this, when it was in this bag here, not  
8 in this back

9 Q But you say it looks like, that was your testimony?

10 A That is correct

11 Q Okay Did you put --- And is it the practice of law  
12 enforcement to put an identifying mark or something  
13 with your initials on the evidence, so that you can  
14 be sure ten months later that that's the same item?

15 A When that evidence is turned into evidence, yes

16 Q Okay So you should do it as well if you come in  
17 contact with it, should you not?

18 A It depends on if I am going to hold on to it, I  
19 handed it to the Sergeant

20 Q Well, but you are telling us that you collected this  
21 yet you put nothing on there You really can't say  
22 that's it, or not can you?

23 A No, sir I can say that this is the bag This was  
24 --

25 Q You said it looks like it --- Can you look at that

## OSVALDO SANTIAGO - CROSS EXAMINATION BY MR BELLAMY 97

1 and tell me with absolute certainty that is what you  
2 collected from some mark, or identification you put  
3 on it?

4 A No, sir, I would not be able to say that with  
5 certainty

6 Q Okay Now you would be in what is called a chain of  
7 custody of that piece of evidence, would you not?

8 A That is correct

9 Q And your name, therefore, should be reflected in the  
10 chain of custody log, should it not?

11 A That is correct

12 Q Okay That is standard procedure/policy of the  
13 Horry County Police Department?

14 A Yes, sir

15 Q Did you ever write a report done by you as to your  
16 involvement in this case?

17 A. No, I did not

18 Q Isn't it standard operating procedure Officer  
19 Santiago, to generate an incident report about, as  
20 Officer did, about what he did, and observe?

21 A No, sir The standard is that the officer who first  
22 responded is the one that writes the report In  
23 this particular situation the report was given to  
24 Officer Rash to write

25 Q He wasn't the first officer who got there was he?

## OSVALDO SANTIAGO - CROSS EXAMINATION BY MR BELLAMY 98

- 1 A As far as I know the first officer there was  
2 Sergeant Green
- 3 Q So it would be his responsibility to write a report?
- 4 A I'm not going to say what the Sergeant's  
5 responsibility is, he's a Sergeant
- 6 Q I understand But, in any event, you didn't write  
7 anything?
- 8 A No, sir, I did not
- 9 Q Did you take any notes, anything that would help you  
10 ten months after this incident to remember so that  
11 you could tell these folks here on the jury what  
12 happened?
- 13 A I took no notes, no, sir
- 14 Q You took no notes, and you did no written report?
- 15 A A report that I, a report, no, I did not write a  
16 report
- 17 Q Okay Now, do you know if there is any report, that  
18 reflects you going into the store, or searching for  
19 anything, or collecting anything in this case?
- 20 A Other than the report that was written by Officer  
21 Rash
- 22 Q Well I'll let you look at it and see if it indicates  
23 where you collected anything, or held any suspect,  
24 or went into the store
- 25 A No, sir It doesn't say anything about it



## OSVALDO SANTIAGO - CROSS EXAMINATION BY MR BELLAMY 99

1 Q Nothing about you collecting any evidence?

2 A Nothing

3 Q And that is an important part of this case isn't it,  
4 Officer Santiago?

5 A I would imagine so, yes, sir

6 Q Would you say it would be critical in this case?  
7 This, is probably the single most important thing,  
8 that happened in this case, and it is no where,  
9 reflected in any report

10 A Sir, it's not up to me to decide what is and is not  
11 critical

12 Q I understand But, you didn't think it important  
13 enough for you to do a report?

14 A I thought it important enough to hand it to the  
15 Sergeant

16 Mr Bellamy With the Court's permission, I will  
17 ask Officer Santiago to step down, and assist me in doing  
18 a drawing

19 The Court All right

20 Mr Bellamy Do you mind stepping down, Officer  
21 Santiago?

22 The Court You may And if you want to move that  
23 closer to the jury, counsel, please do

24 Mr Bellamy Would you please help me in moving  
25 that close to the jury, just about right there Thank

## OSVALDO SANTIAGO - CROSS EXAMINATION BY MR BELLAMY 100

1 you And if you, stand on this side and speak up and  
2 maybe look at the Court reporter so that she can hear

3 Q (By Mr Bellamy) If you would Officer Santiago,  
4 can you hear me, Madam Reporter, I'll speak up as  
5 loud as I can

6 If you could come around and for us  
7 obviously not in scale, but draw us a diagram of  
8 Bruce Gerald's Store and, not the inside, the  
9 outside of it, maybe the gas pumps, and where the  
10 vehicles were located, and then we will proceed from  
11 there about where everybody was located

12 A I will do the best I can

13 Q Go ahead and draw And you may want to draw the  
14 road first to reflect and give you a reference  
15 point

16 A The store is here, the road comes up this way, and  
17 410 comes up this way

18 Q You have to speak up now

19 A 410 runs this way, Bruce Gerald is here, gas here,  
20 the vehicles When you came across, if I remember  
21 correctly about right --- and I was about four  
22 o'clock here The suspect was here

23 Q When you arrived, which car, do you believe, and you  
24 didn't see Mr Richburg driving the car did you?

25 A No, sir, I did not

## OSVALDO SANTIAGO - CROSS EXAMINATION BY MR BELLAMY 101

- 1 Q Okay Which car do you believe to be his in this  
2 diagram?
- 3 A This right here
- 4 Q Put an "X" there And put Sergeant S G for  
5 Sergeant Green, and I understand you go by Os?
- 6 A Yes, sir
- 7 Q Put Os, where you were All right And, step, a  
8 little to the side, so they can see, this being Mr  
9 Richburg's vehicle?
- 10 A Yes, sir
- 11 Q This being Sergeant Green?
- 12 A Correct
- 13 Q This being your vehicle, is that correct?
- 14 A Yes, sir
- 15 Q Okay When you arrived where, if you can put an "X"  
16 where did you see Officer Green and Mr Richburg  
17 which were together at the time, actually entangled,  
18 where were they?
- 19 A About right here
- 20 Q Okay Which way did you get out of your vehicle,  
21 when you got out?
- 22 A From the driver's side, I came across this way
- 23 Q Did you assist him at all in detaining him, or did  
24 you just, I think you said you watched him subdue  
25 him?

## OSVALDO SANTIAGO - CROSS EXAMINATION BY MR BELLAMY 102

1 A When I got there, they were in the altercation He  
2 said something to me and I said, and I can't  
3 remember exactly what it was, or what I said, but  
4 help him up He put the individual on the ground  
5 then he made that statement about Officer Rash I  
6 went in there came back I told him that I had seen  
7 the Defendant through something, and I was going to  
8 go see if I could locate it

9 Q Okay And, where, in fact, do you say you located  
10 this item?

11 A This area here, there are trees here, and this whole  
12 area is dirt back here I would say it was about  
13 approximately somewhere here in a puddle of water

14 Q Is that dirt or concrete?

15 A It's dirt

16 Q A dirt area?

17 A Yes, sir

18 Q Absolutely

19 A Yes, sir

20 Q Now, then you went into the store and back out?

21 A I went --

22 Q You went into the store first I'm sorry Okay I  
23 don't have any further questions about this, if you  
24 would have a seat Court's indulgence?

25 The Court Yes, sir

## OSVALDO SANTIAGO - CROSS EXAMINATION BY MR BELLAMY 103

- 1 Q Just one question Officer Santiago When you pulled  
2 up there you were in a marked or unmarked car?
- 3 A A marked vehicle
- 4 Q A marked car Does it have blue lights on it?
- 5 A Yes, sir, it does
- 6 Q Did you turn your blue lights on as a result of what  
7 you saw?
- 8 A No, I didn't
- 9 Q You don't remember?
- 10 A To be quite frank, I don't remember I don't  
11 believe I did, no
- 12 Q Does your car have a camera in it?
- 13 A Yes, sir, it does
- 14 Q Did you videotape as you positioned your car, which  
15 would have seen a field of you, where Sergeant Green  
16 was, did you video tape that incident as it was  
17 occurring which is an officer being someone who was  
18 resisting?
- 19 A No Like I said, when I got there I don't think I  
20 had my blue lights on, and the camera is activated  
21 when the blue lights are on
- 22 Q But you can manually activate them to can't you?
- 23 A Yes, sir, you can but I didn't
- 24 Q You didn't do it?
- 25 A Uh-huh

**OSVALDO SANTIAGO - REDIRECT EXAMINATION BY MR GRAUSTEIN 104**

1 Q So, we don't have video, even though there was a  
2 camera there?

3 A Not from my camera, no, sir

4 Q You know, most police cars have videos, right?

5 A Yes, sir

6 Q Do you know, and if you don't, you don't, if either  
7 Sergeant Green or yourself, videoed taped this  
8 incident?

9 A I can't tell you that I did not video tape it I  
10 cannot speak for the sergeant I don't know

11 Q Did he have a camera in his car?

12 A I don't know

13 Mr Bellamy Okay I don't have anything further  
14 for Officer Santiago Thank you, so much

15 The Court Is there redirect?

16 Mr Graustein Yes, Your Honor

17 **REDIRECT EXAMINATION BY MR GRAUSTEIN**

18 Q Corporal Santiago, have you had the opportunity to  
19 review reports generated in this case?

20 A Just a little while ago, yes, sir

21 Q And is anything in those reports that substantially  
22 differs from your recollection of the events?

23 A No, sir

24 Mr Bellamy Judge, I would object I am not sure  
25 that is a proper question I don't think he can use it to

FREDERICK A RASH - DIRECT EXAMINATION BY MR GRAUSTEIN 105  
1 begin with Judge

2 Mr Graustein It has to do with the reports that  
3 he was questioned about

4 The Court Overruled There were questions about  
5 reports Go ahead

6 Q (By Mr Graustein) Does anything in those reports  
7 differs substantially from your recollection of  
8 events?

9 A No, sir, not from my recollection

10 Mr Graustein Thank you

11 The Court All right, sir You may step down, you  
12 are free to leave if wish, you are not required to leave,  
13 but if you wish to leave you may

14 Mr Santiago Thank you, sir

15 Mr Graustein Yes, Your Honor, the State calls  
16 Officer Frederick Rash

17 The Court Would you get Officer Rash, please?  
18 Officer Rash, please come forward and take the oath of a  
19 witness

20 OFFICER FREDERICK A RASH,

21 BEING DULY SWORN TESTIFIED AS FOLLOWS

22 Mr Rash My full name is Frederick A Rash,  
23 R-A-S-H, my last name

24 DIRECT EXAMINATION BY Mr GRAUSTEIN

25 Q Officer Rash, what is your current occupation?

## FREDERICK A RASH - DIRECT EXAMINATION BY MR GRAUSTEIN 106

1 A I am currently employed with Horry County Police  
2 Department as a police officer

3 Q And how long have you been with Horry County Police  
4 Department?

5 A Approximately, one year three months

6 Q And prior to working for Horry County Police, did  
7 you have any prior law enforcement experience?

8 A No, sir

9 Q And what are your present duties with the police  
10 department?

11 A I am assigned a sector to patrol and answer calls  
12 for service as needed, and any traffic violations  
13 that are committed in my presence

14 Q Did you become involved in an incident in the Loris  
15 area on August 31, 2006, approximately two in the  
16 afternoon?

17 A Yes, sir, I was involved with that

18 Q How did you become involved in that?

19 A Through the dispatch, Horry County Dispatch, asking  
20 us to be on the look out, which is a BOLO, for a  
21 white Chevrolet/Oldsmobile approximately probably  
22 mid 80's involved in a car-jacking in the area I  
23 heard Sergeant Green call on the radio that he had a  
24 suspect vehicle fitting that description on 701 and  
25 I proceeded on Highway 22 from 319 to back Sergeant



FREDERICK A RASH - DIRECT EXAMINATION BY MR GRAUSTEIN 107

1 Green up At that point and time I heard he had the  
2 vehicle stopped and --

3 Q Okay

4 A -- And I attempted to help him

5 Q All right And what did you see when you first got  
6 to the scene?

7 A When I first got to the scene I pulled up, directly  
8 in front of me was Sergeant Green to what would be  
9 the left side of the Defendant, and Corporal  
10 Santiago on the right side with him on the ground  
11 trying to get the handcuffs on at that point

12 Q All right Now let's just talk about your direct  
13 involvement with this Defendant

14 A Okay

15 Q Did you have any direct involvement with this  
16 Defendant?

17 A I was asked by, I can't remember if it was Sergeant  
18 Green or Officer Santiago, Corporal Santiago to go  
19 over and do a search incident to arrest after the  
20 Defendant was in the vehicle already, to make sure  
21 he had no further weapons

22 Q What vehicle was he in?

23 A He was in Corporal Santiago's car

24 Q You said it was a search subsequent to an arrest?

25 A Search incident to arrest

## FREDERICK A RASH - CROSS EXAMINATION BY MR BELLAMY 108

1 Q Search incident to arrest He was under arrest to  
2 your knowledge at that --

3 A To my knowledge he was being placed under arrest, at  
4 that point

5 Mr Bellamy Your Honor, may we approach

6 The Court Counsel, go ahead if you have an  
7 objection, please state it

8 Mr Bellamy Judge, I'm not sure where he is going  
9 with this, and I'm not sure if I can, and I think he's  
10 going somewhere, I'm sure that he shouldn't go, and I  
11 don't know how to object to it until after it's said and,  
12 of course, the cat is out of the bag

13 The Court All right You may step up, if you  
14 will, just a moment, just a moment, ladies and gentlemen  
15 (Whereupon, a bench conference was held in  
16 the presence of the jury, but out of the hearing of the  
17 jury )

18 The Court All right, Mr Graustein, go ahead,  
19 please

20 Mr Graustein Nothing further

21 The Court Nothing further All right, is there  
22 cross examination?

23 Mr Bellamy Just briefly, Your Honor

24 CROSS EXAMINATION BY MR BELLAMY.

25 Q Officer Rash, you went into the store?

## FREDERICK A RASH - CROSS EXAMINATION BY MR BELLAMY 109

- 1 A Yes, sir
- 2 Q Okay And while in the store you secured another
- 3 individual?
- 4 A Another suspect, yes, sir
- 5 Q By the name of Willie Douglas?
- 6 A Yes, sir
- 7 Q Okay And did Officer, Corporal Santiago, come into
- 8 the store to assist you?
- 9 A Yes, sir
- 10 Q Okay And what did he do?
- 11 A At the point when Corporal Santiago came in, I
- 12 cleared the rest of the store to make sure there
- 13 were no other suspects in the store, and he went
- 14 ahead and put him in, investigation detention
- 15 Q All right And you searched the restroom as well, I
- 16 believe?
- 17 A Yes, sir
- 18 Q Okay How long did that take to secure the store
- 19 and search the restroom?
- 20 A Thirty seconds
- 21 Q Thirty-seconds total?
- 22 A It's a very short store, ran past him, there were no
- 23 other customers in the store fitting that
- 24 description, and I cleared the bathroom to make sure
- 25 there was nobody else in there

## FREDERICK A RASH - CROSS EXAMINATION BY MR BELLAMY 110

1 Q All right And then I believe Mr Douglas was also  
2 charged with some particular drug?

3 A I believe he was --- The charges on him, was for  
4 possession of crack cocaine

5 Mr Bellamy Okay Court's indulgence for just  
6 one second

7 The Court All right, sir

8 Q (By Mr Bellamy) One more question When you first  
9 arrived, Officer, Sergeant Green and Corporal  
10 Santiago were there when you arrived?

11 A Yes, sir

12 Q Did you have a video camera in your car?

13 A Yes, sir.

14 Q Did you turn it on, to video tape the incident or  
15 whatever was going on with Mr Richburg?

16 A At that point, I cannot recall if it was on at that  
17 point It should have come on automatically as soon  
18 as my lights and sirens came on

19 Q You had your blue lights on?

20 A On the way there, yes, sir When -

21 Q -- You would have left them on when you got out, the  
22 car flashing as the car was parked?

23 A Not as it was parked, they would have been turned  
24 off As I --

25 Q As you did what?

## FREDERICK A RASH - CROSS EXAMINATION BY MR BELLAMY 111

- 1 A As I pulled up, I would have turned them off --
- 2 Q -- You would have turned them off?
- 3 A -- Because, they already had other units on the
- 4 scene
- 5 Q Now tell me again, when you pulled up, the two other
- 6 officers were there, Mr Richburg was there,
- 7 correct?
- 8 A Yes, sir
- 9 Q What was Corporal Santiago and Sergeant Green doing
- 10 at the moment you pulled up?
- 11 A The moment I pulled up Sergeant Green was on his
- 12 left side trying to pull his arm to the back
- 13 Corporal Santiago was on his right side, it looked
- 14 like their arms were coming together just as I got
- 15 out the car
- 16 Q Were they standing, crouched, seated?
- 17 A Crouched They were crouched at that time Kneeled
- 18 down would be the --
- 19 Q When you say they, you are referring to the
- 20 officers?
- 21 A The officers were crouched down
- 22 Q What about Mr Richburg?
- 23 A He was laying down on the ground at that point?
- 24 Q On his back?
- 25 A On his stomach

## FREDERICK A RASH - CROSS EXAMINATION BY MR BELLAMY 112

- 1 Q With one officer on each side?
- 2 A Yes, sir
- 3 Q All right And were they able to secure him?
- 4 A Yes, sir
- 5 Q All right And then you went into the store?
- 6 A Yes, sir
- 7 Q Did you see anything collected that day?
- 8 A Excuse me, I --
- 9 Q Were you present when any items of evidence were
- 10 collected in relation to Mr Richburg?
- 11 A As far as the narcotics, no
- 12 Q You did a report did you not?
- 13 A Yes, sir
- 14 Q Officer Rash?
- 15 A I, sure did
- 16 Q And you didn't collect any evidence --
- 17 A From Mr Richburg, no, sir
- 18 Q But your report reflects what you did?
- 19 A What I did with Mr Willie Douglas
- 20 Q Okay Is it standard procedure Officer Rash, for
- 21 each officer to do their own incident report as to
- 22 what they've done, turn that into the investigator
- 23 and let them compile it?
- 24 A Under a supplemental policy, yes, sir
- 25 Q And you did that?

## FREDERICK A RASH - CROSS EXAMINATION BY MR BELLAMY 113

1 A I did an original incident report for my suspect

2 Q Your involvement?

3 A My involvement with my suspect --- I can't advise as

4 to what Sergeant Green and Corporal Santiago did

5 with supplementals, or if any had been filed I

6 have not been about to get through It was turned

7 over to detectives when they arrived on the scene

8 Q And your report contains nothing about Mr Richburg

9 or any evidence collected related to him?

10 A. . No, not from Mr Richburg

11 Mr Bellamy I don't have anything further

12 The Court Is there redirect?

13 Mr Graustein No, Your Honor

14 The Court All right, sir, you are free to step

15 down, if you wish to leave, you may do so

16 Please call your next witness

17 Mr Graustein Yes, Your Honor, the State calls

18 Detective Dave Jolliff

19 The Court Please come forward and take the oath

20 of a witness

21 KYLE DAVID JOLLIFF,

22 BEING DULY SWORN TESTIFIED AS FOLLOWS

23 Clerk State your full name for the record,

24 spelling your last name

25 Mr Jolliff My name is Kyle David Jolliff

KYLE DAVID JOLLIFF - DIRECT EXAMINATION BY MR GRAUSTEIN 114

J-O-L-L-I-F-F

DIRECT EXAMINATION BY MR GRAUSTEIN.

Q Detective Jolliff, where do you currently work?

A I am currently employed with the Horry County Police Department

Q And how long have you been employed with the police department?

A Nine-years

Q Prior to that, do you have any other law enforcement experience?

A No, sir, I do not

Q What are your present duties with the Horry County Police Department?

A Present duties now are, I am a Narcotics Detective I worked for the past three and a half-years in an undercover and over cover capacity, with mid-level trafficking of cocaine, crack cocaine, heroin, meth amphetamines, numerous different types of different vice cases as well, prostitution, and that nature

Q Do your duties include you participating in drug investigations?

A That is correct Most of my investigations are mid-level trafficking cases

Q And you have been present during the testimony of this case today?



KYLE DAVID JOLLIFF - DIRECT EXAMINATION BY MR GRAUSTEIN 115

1 A That is correct

2 Q Were you involved in the investigation of that case?

3 A Yes, sir, I was I was called to the scene  
4 approximately 2 30, quarter till three o'clock on  
5 the 31 August 2006

6 Q And did you create a report for your involvement in  
7 that case?

8 A I did, sir I generated my report of investigation  
9 once, at the conclusion of the case, after  
10 everything was gathered and processed

11 Q Okay What did you compile together to include in  
12 your report?

13 A Different statements from the officers I try to  
14 gather statements from the Defendant if they are  
15 willing to talk And, of course, the evidence is  
16 key The transportation and gathering of the  
17 evidence, as well as the process and for analysis,  
18 and anything else that is subsequential in the  
19 investigation as in any monies or anything else  
20 involved that may be part of the investigation

21 Q Did you speak to Sergeant Green prior to you  
22 completing your report?

23 A I did I spoke with Sergeant Green Prior to  
24 arrival on the scene of the scene I was called by  
25 him from the office as well Upon arrival I had a

KYLE DAVID JOLLIFF - DIRECT EXAMINATION BY MR GRAUSTEIN 116

1 chance to discuss the case with him, and get the  
2 facts of the case, and generate the report from  
3 that

4 Q Did you have an opportunity to talk with Corporal  
5 Santiago before you did your report?

6 A I did not talk with Corporate Santiago And, I  
7 apologize, it's been over a year or close too almost  
8 a year I don't remember if he was occupied at the  
9 time with some situation on the scene, to where I  
10 never was able to get to sit down with him and speak  
11 with him All my dealings were with Officer Rash  
12 and Sergeant Green

13 Q I am showing you what has been marked as State's  
14 Exhibit 1, do you recognize that item?

15 A Yes, sir, I do

16 Q Was that collected by you?

17 A Sir, it was collected --- Once I arrived on the  
18 scene I collected it from Sergeant Green Prior to  
19 my arrival, I did not personally collect it from the  
20 ground, however, I did take possession from Sergeant  
21 Green

22 Q All right

23 A -- Of this particular item, and it is marked with my  
24 writing

25 Q And did you place it in a package?

KYLE DAVID JOLLIFF - DIRECT EXAMINATION BY MR GRAUSTEIN 117

- 1 A I did, sir
- 2 Q What sort of package did you place it in?
- 3 A When we send our drugs for analysis, we send this to
- 4 a chemist that we have on site, there at the Horry
- 5 County Police Department, and we package these in
- 6 what's called a Best Evidence Kit These Best
- 7 Evidence Kits are labeled with a number which in
- 8 this case was Hotel-005474 which is also can be
- 9 reflected in my report of investigation And I do
- 10 sign it and date it and it's sealed in an envelope
- 11 which is tamper proof
- 12 Q And did you place a marking on this container to
- 13 assist you in identifying it?
- 14 A This container itself was the plastic bag inside
- 15 there, and you can see the numbers from which it was
- 16 processed, but it was just the cellophane, I would
- 17 like to call it a plastic sandwich bag, not like a
- 18 ziplock, but just a regular sandwich bag
- 19 Q And did you at sometime transfer that item to
- 20 another person?
- 21 A This item was packaged --- Once I signed custody
- 22 from Sergeant Green, this item was packaged the way
- 23 it is packaged in the Best Evidence Kit At that
- 24 time, I submitted it into our evidence locker, which
- 25 the chain goes from the officer, or in my case, the

## KYLE DAVID JOLLIFF - DIRECT EXAMINATION BY MR GRAUSTEIN 118

1 detective, to our evidence custodian, which is  
2 turned over to our chemist

3 Q Okay And when did you transfer that to the  
4 evidence custodial?

5 A This was transferred the same day, August 31, 2006  
6 And if you will give me one second and please  
7 indulge me --- August 31, 2006 at 6 19 it was  
8 submitted into the evidence locker with a  
9 description of what I did place into it

10 Q And that transferred occurred at the evidence  
11 locker?

12 A The evidence locker, of the Horry County Police  
13 Department, that is correct

14 Q And upon observing Exhibit 1, is that item in the  
15 same condition as when you took custody of it?

16 A The cellophane bag or the plastic sandwich bag is  
17 there I cannot testify to the actual ziplock  
18 container that it's in That looks like our chemist  
19 packages, after she's done the analysis and re-sends  
20 it back for court purposes But, that is something  
21 that I did not place in there, that is something  
22 that our chemist does

23 Q Okay And while this item was in your custody and  
24 control did you alter or change it in any way?

25 A No, I did not

KYLE DAVID JOLLIFF - DIRECT EXAMINATION BY MR GRAUSTEIN 119

1 Q Did you tamper<sup>h</sup> with it at all?

2 A No, sir, I did not

3 Q Did you maintain the integrity of that item the  
4 whole time it was in your custody?

5 A Yes, sir, it stayed with my custody until it was  
6 provided and put into evidence

7 Q Looking at Exhibit 1, is that the same item that you  
8 received from Sergeant Green?

9 A Yes, sir, it is

10 Q Now, did you ever request to have this item, Exhibit  
11 1, examined for fingerprints?

12 A No, sir It is my standard practice that I do that,  
13 however, due to inclement weather and the fact that  
14 cocaine is a water soluble item, the fact that it  
15 was in water, I wanted to maintain the integrity of  
16 the actual package, it was wet The fact that it  
17 was picked up in a pumped manner by the officers on  
18 the scene where it was contaminated somewhat, in  
19 order to get a true latent print, it was futile at  
20 that point so I did not deem it necessary due to the  
21 fact that it was wet, and it had already been  
22 handled without proper latex gloves

23 Mr Graustein That's all I have, Your Honor

24 The Court Cross examination?

25 Mr Bellamy May it please the Court

KYLE DAVID JOLLIFF - CROSS EXAMINATION BY MR BELLAMY 120

1 The Court Yes, sir

2 CROSS EXAMINATION BY MR BELLAMY

3 Q Detective Jolliff, you put your initials on the bag,  
4 this item that has been marked as State's 1 for  
5 I D , is that correct?

6 A I initialed the outside of the bag I do not tamper  
7 with the inside of the bag

8 Q But you put something on there so that you would be  
9 able to --

10 A Yes, sir

11 Q -- Identify that this was in fact what you  
12 collected?

13 A That is correct, sir That is my signature, sir

14 Q Okay And that is standard operational procedure  
15 for any officer when they come in contact with  
16 something, is to make sure it is the same item if  
17 they should have to come to Court, correct?

18 A That is for the officer that prepares the Best  
19 Evidence Kit, it is standard operational procedure  
20 to document it in this bag, and this form with their  
21 signature, yes, sir And I was the one that  
22 personally prepared that on this occasion, yes, sir

23 Q Okay Now, you spoke to Officer Green -- excuse me,  
24 Sergeant Green in reference to this case, right?

25 A That is correct

KYLE DAVID JOLLIFF - CROSS EXAMINATION BY MR BELLAMY 121

1 Q And you did a report based on that?

2 A I did what is called a Report of Investigation on my  
3 part I also did a Supplemental Report if you will  
4 refer to your notes, sir, after Officer Rash, I did  
5 a follow-up Supplemental Report, naming the  
6 Defendant Richburg as Defendant Number Two, I  
7 believe is how I marked it, if you have my  
8 supplemental report That is my cover sheet, sir  
9 That is a synopsis of the case This is not a  
10 Report of Investigation If you will indulge me for  
11 one second, this is the actual Supplemental Report,  
12 sir, that I prepared But that is correct, sir, the  
13 typed written one

14 Q Okay

15 A That is something that I prepared myself

16 Q All right

17 A After being on the scene

18 Q And you this one as well, didn't you?

19 A Yes, sir, I did

20 Q Would you agree with me that the Report of  
21 Investigation is more detailed than your  
22 Supplemental?

23 A Yes, sir, it is It gets a little more into  
24 operational parts, protocol and things of that  
25 nature, yes, sir

## KYLE DAVID JOLLIFF - CROSS EXAMINATION BY MR BELLAMY 122

1 Q All right Now, and in this Report of  
2 Investigation, and you are the lead investigator,  
3 correct?

4 A I am, sir

5 Q You no where in your report mention Corporal  
6 Santiago, do you?

7 A No, sir, I did not Like I -- again, as I mentioned  
8 earlier, I did not interview, Corporal Santiago

9 Q It is a shame that you didn't interview him, but it  
10 would not be important Detective Jolliff, if the man  
11 who collected the very evidence we are hearing about  
12 today, and you don't even mention him as being on  
13 the scene, or collection evidence That is  
14 critical, isn't it, who collects evidence?

15 A Yes, sir And again, I did mark in the  
16 Investigative Report that I took custody of that  
17 from Sergeant Green To my knowledge, I did not  
18 have any prior knowledge of Officer Santiago  
19 collecting that Again, due to lack of interviewing  
20 him, and again, I apologize, I do not remember what  
21 incident kept me from talking to him, but it was not  
22 even discussed in his matter I took physical  
23 custody from Officer Green, Sergeant Green which is  
24 documented

25 Q Well now Sergeant Green was there?



KYLE DAVID JOLLIFF - CROSS EXAMINATION BY MR BELLAMY 123

1 A Yes

2 Q He and Corporal Santiago supposedly found this You  
3 put in here that it fell from his pocket, did you  
4 not?

5 A I did catch that just a few minutes ago During  
6 this period time, and this is how I was assigned  
7 this case, and if you will indulge me for one  
8 second, if you will look on the synopsis sheet,  
9 which is my cover sheet, the one you held up This  
10 is what it looks like, sir

11 Q I got it, sir

12 A When you are on call, you get several cases like  
13 this in a day from road officers In doing a lot of  
14 cut and pasting, this is an incident where I made a  
15 typo If you will read my synopsis in there it will  
16 tell you that, if you will excuse me, I put in there  
17 that Defendant Richburg did throw down a bag of  
18 white powder, so I did make the correct portion of  
19 my statement on the report in the synopsis, however,  
20 due to cutting and pasting from a different report I  
21 failed to do that on there, and that is a clerical  
22 error on my part But in the synopsis of that first  
23 sheet I did put in there that he did throw it down

24 Q But you don't get that from your own knowledge you  
25 get it from talking to people, right?

## KYLE DAVID JOLLIFF - CROSS EXAMINATION BY MR BELLAMY 124

1 A Are you talking about him throwing it down?

2 Q Yeah

3 A Yes, sir That's why I was stating to you and to  
4 them that I did that I did make it correct on the  
5 synopsis form It is documented in my report there  
6 on the synopsis that it was thrown down However,  
7 on my cutting and pasting from a prior report, I  
8 failed to put that it was, and change the word fail  
9 to throw It was just a clerical error on my part

10 Q I understand

11 A But I do admit to that, that is -- yes

12 Q Detective Jolliff, this is your detailed report of  
13 an investigation which is, much more detailed than  
14 your synopsis, correct?

15 A Yes, sir

16 Q Well, let me ask you, you didn't talk to Detective  
17 Santiago or Officer Santiago?

18 A No, sir, I did not

19 Q Well, let me ask you this, if I were to tell you he  
20 is the only one who says he saw anybody throw  
21 anything, where did you possibly get that to put  
22 that in your report?

23 A I'm not sure I follow that question, sir Could you  
24 restate it?

25 Q Well, you did not talk to Corporal Santiago?

KYLE DAVID JOLLIFF - CROSS EXAMINATION BY MR BELLAMY 125

1 A No, sir, I did not

2 Q So, and if he were the only living person, that saw  
3 my client throw down, and you didn't talk to that  
4 only person, how do you come up to put in your  
5 report that somebody threw something down?

6 A Through my interview with Sergeant Green, sir

7 Q What if I tell you he didn't see anything like that?

8 A That's where I got the information from, sir

9 Q But, if he didn't see it how did you get it from  
10 him?

11 A He told me about it

12 Q Okay Well where did he get the information that it  
13 fell out of his pocket, also from Sergeant Green?

14 A I, again, I put that that was a clerical error on my  
15 part The fell out, should not be in that report,  
16 and it is stated correctly in the synopsis that it  
17 was thrown down That was a clerical error on my  
18 part I am admitting that

19 Q If somebody told you it fell, you --

20 A That was from a different case, a different report

21 Q Not a misspelling of words?

22 A No, counselor I'm sorry It was from a different  
23 case Like I said I was cutting and pasting and  
24 that was a clerical error on my part

25 Q So you made a mistake?

## KYLE DAVID JOLLIFF - CROSS EXAMINATION BY MR BELLAMY 126

1 A I made a mistake on the writing of the report, yes,  
2 sir

3 Q And did you correct it in the ten months with me,  
4 before you sat right there?

5 A I just now caught it I reviewed this on Friday,  
6 and I was just catching where I didn't make the two  
7 synopses of that of the fell and throw part of those  
8 two words

9 Q You would agree those are very different things,  
10 aren't they?

11 A Yes

12 Q Falling from your pocket, and throwing it down?

13 A Yes, Counselor

14 Q And you would agree that it is certainly not a  
15 clerical error that you don't even mention Corporal  
16 Santiago anywhere, in any of your report, whether it  
17 is a synopsis, whether it is the Report of  
18 Investigation, whether it is the cover sheet, or  
19 whether it is the arrest warrant you did, he never  
20 mentioned in any of those documents is he?

21 A No, sir

22 Q Yet he is the person who supposedly collected  
23 evidence, and saw my client do something, and he is  
24 not in a single report

25 Detective Jolliff, you didn't take this

KYLE DAVID JOLLIFF - CROSS EXAMINATION BY MR BELLAMY 127

1 item and ask SLED or anyone within your department

2 -- you're not crime scene are you?

3 A No, sir

4 Q You are not a forensic person are you?

5 A Only in cannabis

6 Q Huh?

7 A Cannabis

8 Q Cannabis, oh, I'm sorry But did you ask anyone to  
9 attempt --- I understand that you didn't think there  
10 would be anything there, but you didn't even ask  
11 anyone who was trained in that area to do it, did  
12 you They didn't make an effort did they?

13 A Make an effort for what?

14 Q To fingerprint this item?

15 A Once it is submerged in water, Counselor, it is  
16 futile

17 Q But, is it in your report that anything about the  
18 condition of it was such that you didn't think it  
19 could get there, or that it was in water Is that  
20 in your report or any of the four reports you did?

21 A I only did the two there but --

22 Q -- I believe there's a cover sheet, a synopsis, and  
23 Report of Investigation --

24 A -- Okay

25 Q -- And your arrest warrant Any of those items, is

KYLE DAVID JOLLIFF - CROSS EXAMINATION BY MR BELLAMY 128

1 it contained in it?

2 A No, sir

3 Q No where in it?

4 A No, sir

5 Q Is it anywhere mentioned in there about it being  
6 submerged in water? That is the first time I'm  
7 hearing of it today?

8 A I believe the other two officers testified as well

9 Q Before today, is there any report of any of it being  
10 in water?

11 A No, sir

12 Q Is there any report or discussion on the thoughts on  
13 your part about not having it tested because of  
14 being handled by different people?

15 A No, sir

16 Q No where mentioned?

17 A No, sir

18 Mr Bellamy Court's indulgence for just one  
19 second, Your Honor

20 The Court Yes, sir

21 Q (By Mr Bellamy) Was there another individual  
22 arrested out there on that scene that day?

23 A That is correct

24 Q Mr Willie Douglas?

25 A Yes, sir

LORI RABON - DIRECT EXAMINATION BY MR GRAUSTEIN 129

1 Q And I believe that your investigation revealed that  
2 he jumped out of the vehicle, and ran into the  
3 store, is that correct?

4 A Yes, sir I don't remember which officer told me  
5 that, but that was one of the accounts of which I  
6 had

7 Mr Bellamy Thank you, sir I don't have  
8 anything further

9 The Court Redirect?

10 Mr Graustein No redirect, Your Honor

11 The Court All right, sir, you may step down and,  
12 of course, you are free to return to the counsel's table  
13 Please call your next witness

14 Mr Graustein The State calls Lori Rabon

15 The Court Please come forward to take the oath of  
16 a witness

17 LORI RABON

18 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

19 Clerk Please state your first name spelling your  
20 last name

21 Ms Rabon Lori Rabon R-A-B-O-N

22 DIRECT EXAMINATION BY Mr GRAUSTEIN.

23 Q Ms Rabon, tell me what your present job is right  
24 now?

25 A I am a Property and Evidence Supervisor with the

## LORI RABON - DIRECT EXAMINATION BY MR GRAUSTEIN 130

1 Horry County Police Department

2 Q How long, have you been employed by the Horry County  
3 Police Department?

4 A Ten years

5 Q What are your present duties?

6 A My job is to secure evidence, package evidence,  
7 return evidence that the officers or detectives may  
8 drop Securing it for Court, return it to the  
9 owner, or for further testing

10 Q All right And do your duties include accepting  
11 evidence that has been collected in drug  
12 investigations?

13 A Yes, it does

14 Q Do you have access to the evidence drop box?

15 A Yes, I do

16 Q And what procedures are used by you when handling  
17 evidence when you receive it in, what procedures do  
18 you use?

19 A We verify it to make sure that the evidence listed  
20 on the chain of custody matches the evidence that is  
21 turned in by the officers

22 Q All right Is that a policy set out by the police  
23 department?

24 A Yes, it is

25 Q Let me show you an item marked as Exhibit 1 Was



LORI RABON - DIRECT EXAMINATION BY MR GRAUSTEIN 131

1 this item received by you into your custody?

2 A Yes it was

3 Q Okay And how do you know that?

4 A The control listed on the evidence baggy matches the  
5 chain of custody The control number is like a  
6 serial number

7 Q And that item is marked for identification as  
8 State's Exhibit 1 And does that item appear to be  
9 in the same condition as when you received it into  
10 evidence?

11 A No, sir When it is received into evidence, it is  
12 in the inner bag After it is tested, the chemist  
13 puts it in the outer bag

14 Q Okay So did you transfer this item to anybody at  
15 any time?

16 A Yes I did

17 Q Okay And who did you transfer that to?

18 A It was transferred to Lisa Floyd our in house  
19 chemist

20 Q Okay And when was that transferred?

21 A It was transferred on 10/9/06

22 Q And where did that transfer occur?

23 A At the police department

24 Q Did the chemist come and get it, or did you take it  
25 to them?

1 A Yes, sir, she came and got it

2 Q All right Now, when you received it into your  
3 custody it was in the packaging that it was in,  
4 correct?

5 A The inner package, which is the blue line, around  
6 the tamper resistant seal around it

7 Q Okay And does that appear to have been tampered  
8 with?

9 A No, sir, it does not

10 Q And while it is still in your custody and control  
11 did you change or alter that item in any way?

12 A No, I did not

13 Q Okay And did you maintain the integrity of that  
14 item as long as it was in your custody and control?

15 A Yes, I did

16 Q And you received that item, or was the item returned  
17 to your custody?

18 A It was actually returned after testing to Deidra  
19 Faulk who is my assistant

20 Q And you said that it doesn't appear to be in the  
21 same condition as when you received it?

22 A It's not in the same package

23 Q Not in the same package

24 A The inner package is how we receive it After it is  
25 tested, she has or before it is tested she has to

LORI RABON - CROSS EXAMINATION BY MR BELLAMY 133

1 cut it out of that package and refills it in the  
2 outer package

3 Q Okay And, so now there is an outside package other  
4 than what you have already testified to Does it  
5 appear that the inner package that you received has  
6 been tampered with, in any way?

7 A No, sir, we don't accept the package if it had been  
8 tampered with

9 Q Even if it came back from the chemist that way other  
10 than then what they use to open it?

11 A We would not have accepted the evidence in our  
12 evidence bag that had been tampered with, if the  
13 seal had been broken

14 Mr Graustein That is all the questions I have

15 Your Honor

16 The Court Cross examination?

17 Mr Bellamy Just briefly, yes sir

18 CROSS EXAMINATION BY MR BELLAMY

19 Q Ms Rabon, you all maintain evidence chain of  
20 custody sheets for all evidence, but in particular  
21 drugs?

22 A Yes we do

23 Q Do you have a sheet, a sub-sheet for this particular  
24 item?

25 A Yes, I do

## LORI RABON - CROSS EXAMINATION BY MR BELLAMY

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- 1 Q Could I look at it, please? Does this sheet reflect  
2 everyone who has come in contact with this  
3 particular item?
- 4 A That is the chain of custody up until we transfer it  
5 to the chemist
- 6 Q So that's really from whom you get it from, to the  
7 chemist?
- 8 A That is correct The original should be in her  
9 file
- 10 Q Excuse me?
- 11 A The original should be in her file
- 12 Q And then they return this back to you The chemist  
13 would return that back to the evidence locker?
- 14 A Yes, she does
- 15 Q You presented that to whom?
- 16 A Deidra Faulk on 10/20/06
- 17 Q Okay And then it is maintained in your care  
18 custody and care since?
- 19 A Yes it has
- 20 Q You are an Evidence Custodian?
- 21 A Yes, sir
- 22 Q Are there any other sheets which reflect the  
23 documentation which would reflect prior to you  
24 receiving who would have had it from the point of  
25 collection until it gets to you, or should there be

## LORI RABON - CROSS EXAMINATION BY MR BELLAMY

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1           some?

2           A       This is constituted as the chain of custody for the  
3           drugs

4           Q       And it should constitute the complete chain from  
5           collection to you to the chemist and back?

6           A       This one is from creation of the Drug Kit itself

7           Q       So it's not necessarily a complete chain of custody  
8           Is there such a document that would reflect, and  
9           again, I am not trying to confuse you at all, but  
10          from the point that something is collected until it  
11          does get to the evidence locker, is there a document  
12          that would memorialize that?

13          A       If there is a document I am unaware of it    I am  
14          only concerned with the drug kit --

15          Q       -- From your point forward?

16          A       Correct

17               Mr Bellamy    Thank you, I don't have any further  
18          questions

19               The Court    Is there redirect?

20               Mr Graustein   No redirect, Your Honor

21               The Court    All right    Ma'am, you are free to step  
22          down and free to leave if you wish

23               Ms Rabon    Thank you

24               The Court    Counsel, do you have another witness?

25               Mr Graustein   One last witness, Your Honor    The

LISA FLOYD - VOIR DIRE EXAMINATION BY MR GRAUSTEIN 136

1 State calls Lisa Floyd

2 The Court Please come forward and take the oath  
3 of a witness, ma'am

4 LISA FLOYD

5 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

6 Clerk Thank you Please be seated Please state  
7 your full name, and spell your last name for the Court

8 Ms Floyd Lisa Floyd F-L-O-Y-D

9 VOIR DIRE EXAMINATION BY MR GRAUSTEIN

10 Q Ms Floyd, where do you currently work?

11 A The Horry County Police Department, Regional  
12 Analysis laboratory

13 Q And how long have you been employed by Horry County  
14 Police Department?

15 A Since September of 2002

16 Q And what are your duties there?

17 A I run a drug analysis laboratory I test any  
18 substances that officers feel might be controlled  
19 substances or drugs

20 Mr Bellamy Your Honor, too sped up the process I  
21 would stipulate to her qualifications to tests and  
22 analysis chemical substances for drugs

23 The Court Very good Any objection to that?

24 Mr Graustein No objection, Your Honor

25 The Court All right Let me just discuss that

LISA FLOYD - DIRECT EXAMINATION BY MR GRAUSTEIN 137

1 with the jury The witness is offered as an expert in the  
2 area of drug analysis, is that correct counselor?

3 Mr Graustein That is correct, Your Honor

4 The Court All right All our witnesses we have  
5 had appear previously have been lay witnesses And lay  
6 witnesses are allowed to come in and testify about what  
7 they saw or what they observed A witness who is deemed to  
8 be an expert is allowed to not only testify about what they  
9 saw or what they heard, but because of some scientific  
10 training, or knowledge, or experience expertise within a  
11 particular field, they may also testify as to what opinion  
12 they derived from what they saw or what they observed And  
13 that is the difference between a lay witness and an expert  
14 witness An expert witness is never given for the purpose  
15 of controlling your judgment, it's given for the purpose of  
16 assisting you in making determinations of matters of fact  
17 that are before you that are within the experts area of  
18 expertise You should give it what credibility and  
19 believability, what weight you believe it is entitled And  
20 with that understanding, there is no objection so the  
21 witness is qualified as an expert in the area of drug  
22 analysis so you may proceed, counselor

23 Mr Graustein Thank you, Your Honor

24 DIRECT EXAMINATION BY MR GRAUSTEIN

25 Q Ms Floyd, can you describe the procedures that you

1 use for drug testing?

2 A In general, any substance that comes into the  
3 laboratory, the package is first examined to make  
4 sure it has not been tampered with, in any way  
5 It's a tamper evidence bag Assuming that  
6 everything checks out okay, then it is opened, and I  
7 take out some of the substance, and do what is  
8 called presumptive testing Typically, that is a  
9 color test, and assuming that it tests positively  
10 presumptively, then it gets a confirmatory analysis,  
11 which is usually gas chromatography with a mass  
12 collective spectrometry

13 Q Thank you I am going to show you an item previous  
14 marked as State's Exhibit 1 Do you recognize that  
15 item?

16 A Yes, I do

17 Q And where did you receive that item from?

18 A I received that item from Lori Rabon in evidence on  
19 October 9, 2006

20 Q And, at that time you took custody and control of  
21 the item?

22 A Yes, I did

23 Q And when did that item leave your custody and  
24 control?

25 A I'm not sure Typically, what happens is, I build



LISA FLOYD - DIRECT EXAMINATION BY MR GRAUSTEIN

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1 up a lot of cases I've tested, and those are  
2 transferred back to the agencies in bulk So I  
3 wouldn't, I don't have a copy of that chain to know  
4 what the date was

5 Q But as of today it wasn't in your custody and  
6 control?

7 A No

8 Q Okay And, it had been returned to evidence?

9 A Yes It would have been returned back to the  
10 evidence department to either Lori or Deidra Faulk

11 Q While looking at Exhibit 1, does that item appear to  
12 have been tampered with since you last had custody  
13 and control of it?

14 A No, it does not

15 Q Okay Why was that item given to you, why was it  
16 submitted to you, the Exhibit 1 This Exhibit 1,  
17 why was it given to you, or why did you give it --

18 A Because, it came up on the Docket for Court

19 Q I mean why did you get it in the drug lab?

20 A The officers fill out what is called a Best Kit  
21 which is this inner envelope which has the blue  
22 around the edges, anytime they think they have a  
23 controlled substance, and it is placed into evidence  
24 and then if it precedes to trial it is transferred  
25 to me at that point

## LISA FLOYD - DIRECT EXAMINATION BY MR GRAUSTEIN

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- 1 Q And did you have an opportunity to test that item?
- 2 A Yes I did
- 3 Q And, were you able to form, or were you able to form
- 4 an expert opinion as to what substance is contained
- 5 in that exhibit?
- 6 A Yes Cocaine was found
- 7 Q And the basis for that was?
- 8 A Gas chromatography was the mass selective detector
- 9 spectrometry
- 10 Q That is what you normally use to detect cocaine?
- 11 A Yes it is
- 12 Q Did you ever publish these in a written report,
- 13 those results that were found?
- 14 A Yes I did
- 15 Q I want to show you what's been marked as State's
- 16 Exhibit 2 You can take a look at that Do you
- 17 recognize that document?
- 18 A Yes It is a copy of the original report
- 19 Q Okay And a copy of what report is that?
- 20 A It is a copy of the original report that I have in
- 21 my possession the moment for lab number 06-0386
- 22 which matches the evidence
- 23 Q Is that Exhibit 2, does that accurately reflect the
- 24 finding of your analysis?
- 25 A Yes it does

LISA FLOYD - DIRECT EXAMINATION BY MR GRAUSTEIN 141

1 Mr Graustein Your Honor, I move that State's 1  
2 and State's 2 be moved into evidence

3 The Court What says defense?

4 Mr Bellamy Let me look just briefly at one and  
5 two Judge, I believe State's 2, there is attached to this  
6 another document that was not prepared by Ms Floyd, that I  
7 don't think would be appropriate

8 The Court All right If you want to remove  
9 those, it's up to you counselor

10 Mr Graustein We will move those

11 The Court All right, go ahead

12 Mr Bellamy No objection

13 The Court All right Then State's 1 and 2, in  
14 evidence without objection Let's just take a moment while  
15 our court reporter marks them as admitted

16 Whereupon, State's

17 Exhibit Number 1 and 2

18 were made part of the

19 record

20 The Court All right, very good Please proceed

21 Q (By Mr Graustein) Ms Floyd, tell me if you need  
22 to look at Exhibit 1, again to refresh yourself  
23 Did you tamper with that item at all other than for  
24 your test purposes for testing?

25 A The items are typically removed from the original

## LISA FLOYD - CROSS EXAMINATION BY MR BELLAMY

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1           packing, and it was in that case   And anything I  
2           remove the packaging gets labeled with the lab  
3           number, my initials, and the date it was tested  
4           And that was the case if I remember it from just  
5           looking at it, but that was the only thing that  
6           would have been done

7       Q       And while Exhibit 1 was in your custody and control  
8               did you change or alter it in any way other than  
9               required for your testing?

10      A       No

11      Q       Did you maintain the integrity of the item while it  
12               was in your custody and control other than for your  
13               testing?

14      A       Yes I did

15               Mr Graustein   Thank you   No further questions,  
16      Your Honor

17               The Court   Cross examination?

18               Mr Bellamy   May it please the Court

19      CROSS EXAMINATION BY MR BELLAMY

20      Q       Ms Floyd, your report indicates, if I could look at  
21               it, I believe the State's 2, State's 1   This bag  
22               here with the writing on it, is that what you  
23               believe to be the original packaging that this item  
24               was found in, or is that something law enforcement  
25               would have done?

## LISA FLOYD - CROSS EXAMINATION BY MR BELLAMY

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- 1 A No, sir That is what I put it in after it is  
2 removed from its original packaging for weight  
3 Typically, when it comes in, it can't be sealed so  
4 that it may fall out of that bag right there, and I  
5 put it in ziplock bags typically so it won't get  
6 loose in the bags
- 7 Q So you put it in a ziplock bag within the bigger  
8 bag?
- 9 A That is correct, yes
- 10 Q Is this big bag here what you received it in, or was  
11 it in a blue bag?
- 12 A In a blue bag
- 13 Q Okay
- 14 A And then I cut that open and when I repackage  
15 everything it gets sealed in an outer bag
- 16 Q So this blue bag was received by you?
- 17 A That is correct
- 18 Q And inside the blue bag were these bags?
- 19 A Uh-huh
- 20 Q And then you put it in here?
- 21 A That is correct
- 22 Q As I understand it, from your report Ms Floyd, this  
23 item here, what you told us, is that the cocaine  
24 that was inside ten separate, little bags?
- 25 A That is correct

## LISA FLOYD - CROSS EXAMINATION BY MR BELLAMY

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- 1 Q That is all ten of those bags were inside another  
2 bag, a larger bag, is that right?
- 3 A Yes, sir, that is correct
- 4 Q So it was double bagged, I guess?
- 5 A That is a good way to explain it
- 6 Q I don't know, but there were ten little bags with  
7 small quantities in them that were contained in a  
8 larger bag?
- 9 A That is correct
- 10 Q Did you notice anything when you received it inside,  
11 this is a heat-sealed bag here, that is the evidence  
12 bag, the blue bag, I'm sorry?
- 13 A The blue bag is an adhesive seal which is the three  
14 red strips at the top
- 15 Q But it is completely sealed so nothing can get in or  
16 out, correct?
- 17 A That is correct And when I receive it I put the  
18 initials, O K right there stating that it did not  
19 show any evidence of tampering at the time I  
20 received it
- 21 Q Okay And did you notice anything at all unusual  
22 about the bag inside the sealed bag about the  
23 baggies themselves or anything that you would have  
24 noted on your report?
- 25 A If I may refer to my worksheet

## LISA FLOYD - CROSS EXAMINATION BY MR BELLAMY

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- 1 Q Can I look at what you are looking at? They  
2 haven't given me this
- 3 A I noted that they were ten identical baggies inside  
4 a sandwich baggy
- 5 Q Are these all the notes you had Ms Floyd concerning  
6 your analysis?
- 7 A Yes
- 8 Q Do you have any other notes anywhere?
- 9 A No
- 10 Q Is there anything you what too observed? Yet, the  
11 items you received Ms Floyd was wet, would you put  
12 that in notes?
- 13 A Yes, I would have made note if it was moist or wet
- 14 Q Is that in any of your notes?
- 15 A No The actual description is a powdery white like  
16 substance
- 17 Mr Bellamy Thank you No further questions
- 18 The Court Redirect?
- 19 Mr Graustein No redirect, Your Honor
- 20 The Court All right Ma'am, you are free to  
21 leave, and you may step down And please call your next  
22 witness
- 23 Mr Graustein State has no more witnesses, Your  
24 Honor
- 25 The Court State rests?

## THE STATE V TARREN LEE RICHBURG

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1           Mr Graustein     Yes

2           The Court     All right     Then ladies and gentlemen,  
3     that means we have reached the end of our day, and the State  
4     has rested     And what I would ask you to do is to come back  
5     tomorrow morning to the jury room at 9 30, and we will begin  
6     tomorrow morning at 9 30

7           Now, let me just ask you about this, or just make  
8     this comment to you     When you go home, your loved ones are  
9     going to ask you, well what happened in Court today, and  
10    rather than discuss the facts of this case with them, please  
11    tell them the Judge has instructed you not to discuss the  
12    facts of the case, and I will tell you why     I do not want  
13    some loved one or person of influence in your life, to make  
14    some comment, outside the confines of this courtroom, not  
15    subject to cross examination, or verification, or anything  
16    of that nature that somehow influence you     So, please tell  
17    your love ones that the Judge has asked you not to discuss  
18    it     When it's over with, which will be sometime tomorrow,  
19    you can absolutely fully discuss every aspect of it with  
20    them, but please, not until that time

21          Now, there is one other thing I want to ask you to  
22    do, and Mr Turner, you are our alternate juror, and  
23    tomorrow morning when we all get back in, all the jurors are  
24    in, that will be all thirteen of you, I am going to ask you  
25    to preside and let the jury make a choice, assist the jury



## THE STATE V TARREN LEE RICHBURG

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1 in making a choice of the foreperson, might that be a  
2 foreman or forewomen It should not be you sir, because you  
3 may not actually deliberate with the twelve, that remains  
4 yet to be seen But my suggestion ladies and gentlemen is  
5 that your best foreperson would be someone not who is a  
6 dictator or a controller of opinion, but somebody who is a  
7 moderator of discussion, a facilitator of opinion, because  
8 ultimately your verdict in this case has to be unanimous.  
9 So, you may want to think about who your choice would be,  
10 and I will let you make your own choice tomorrow under Mr  
11 Turner's assistance and direction

12 All right, now any questions from our jury about  
13 scheduling? We will see you at 9 30 tomorrow morning Have  
14 a nice evening Let everyone else, remain where they are  
15 while our jury departs the courtroom

16 Oh, ladies and gentlemen, one more thing, do not  
17 call the jury number tonight for further information to the  
18 jurors, because you are different than the rest of the  
19 group, so please do not do that Just be back here at 9 30  
20 tomorrow morning Have a good evening

21 (Whereupon the jury exits the courtroom  
22 for the day at 5 05 p m )

23 **The Court** All right, now outside of the presence  
24 of the jury, I will tell you that my law clerk is going to  
25 bring in, in just a moment what we believe the charge will

## THE STATE V TARREN LEE RICHBURG

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1 be so you can review that this evening Are there any  
2 Motions here at the close of the State's case from defense?

3 Mr Bellamy Your Honor, at this time we would  
4 move for a Motion for a Directed Verdict Taking in the  
5 evidence in the light, even in light most favorable to the  
6 State, we don't believe that they have met their burden in  
7 this case, and I want to ask the Court to direct a verdict

8 The Court All right It's not for the Court to  
9 weigh evidence at this juncture, but to determine whether  
10 there exist in the record evidence tending to prove the  
11 guilt of the accused I find that the State has adduced  
12 such evidence, and it is in the record, it is admissible and  
13 appropriate evidence So, for those reasons the Court will  
14 deny your Motion Are there further Motions at this  
15 juncture?

16 Mr Bellamy Your Honor, I assume we would precede  
17 in the morning, if I wanted to present evidence Would you  
18 like to discuss it with the Defendant --

19 The Court I will

20 Mr Bellamy -- At this time that issue, and then  
21 we would give you an answer in the morning as to whether we  
22 would be proceeding with his testimony or not

23 The Court All right, we will do that Mr  
24 Richburg, let me get you to stand up just a moment, and let  
25 me speak with you, if I may You are aware, because you are

## THE STATE V TARREN LEE RICHBURG

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1 here in the courtroom with us, that the State has now  
2 rested, which means it is time for the defense to put up a  
3 case if you wish, do you understand that?

4 Mr Richburg Yes, sir

5 The Court All right Now has your lawyer talked  
6 with you about your right to testify in this trial?

7 Mr Richburg Yes, sir

8 The Court And, has he also talked to you about  
9 your right to remain silent in this trial?

10 Mr Richburg Yes, sir

11 The Court All right, so let me discuss that with  
12 you I want you to understand that you are not required to  
13 testify That you have a right to remain silent, and you do  
14 not have to take the stand as a witness in this matter Do  
15 you understand that?

16 Mr Richburg Yes, sir

17 The Court And, if you choose not to testify  
18 because the State cannot compel you to testify, sir, then I  
19 will tell this jury that they may not hold that against you  
20 in any way, and that they should not even mention that in  
21 the jury room, and they should take no inference against you  
22 because you choose not to testify, because you have a  
23 constitutional right to remain silent Do you understand  
24 that?

25 Mr Richburg Yes, sir

## THE STATE V TARREN LEE RICHBURG

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1           The Court     And, of course, that reason for that  
2 right to remain silent is you don't have any burden of  
3 proof, the State has the burden of proof     And do you  
4 understand that?

5           Mr Richburg     Yes, sir

6           The Court     Now do you have any questions about  
7 your right to remain silent?

8           Mr Richburg     No, sir

9           The Court     And, is what I just told you about your  
10 right to remain silent, the same thing your lawyer told you  
11 about your right to remain silent?

12          Mr Richburg     Yes, sir

13          The Court     All right     Now I also want to tell you  
14 that you have a right to testify in this proceeding if you  
15 wish, do you understand that?

16          Mr Richburg     Yes, sir

17          The Court     And if wish to testify you will take  
18 the stand under oath, in front of a jury, and you will be  
19 questioned not only by your own attorney on direct  
20 examination, but cross examination by the State     Do you  
21 understand that?

22          Mr Richburg     Yes, sir

23          The Court     And that will, of course, occur in the  
24 presence of the jury, and they may take whatever inference  
25 they wish to take from your testimony, and use it for you or

## THE STATE V TARREN LEE RICHBURG

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1       against you, that is their determination   Do you understand  
2       that?

3               Mr Richburg     Yes, sir

4               The Court     And furthermore, if you have some  
5       charges in your past, which may bear on your credibility or  
6       believability as a witness, these may come into evidence on  
7       the issue of credibility and believability   Do you  
8       understand that?

9               Mr Richburg     Yes, sir

10              The Court     All right   Now, do you have any  
11       questions about your right to testify, if you wish to  
12       testify, Mr Richburg?

13              Mr Richburg     No, sir

14              The Court     Is what I just told you about your  
15       right to testify, the same thing your lawyer told you about  
16       your right to testify?

17              Mr Richburg     Yes, sir

18              The Court     All right, sir   And do you understand,  
19       sir, that this is your decision to make, not for someone  
20       else to make for you, not for your attorney, or some third  
21       person, but your decision to make yourself   Do you  
22       understand that?

23              Mr Richburg     Yes, sir

24              The Court     All right   Do you have any questions  
25       now about your right to remain silent, or your right to

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1 testify?

2 Mr Richburg No, sir

3 The Court Very good Now, Mr Bellamy, is there  
4 anything further you wish for me to discuss with Mr  
5 Richburg on this issue?

6 Mr Bellamy Not at this time We would make a  
7 decision in the morning, and certainly let the Court know

8 The Court Very good And, Mr Graustein, is  
9 there anything you would ask that the Court, discuss further  
10 with Mr Richburg about his right to testify or to remain  
11 silent?

12 Mr Graustein No, Your Honor

13 The Court All right I want to advise the  
14 parties, Mr Richburg, your case has been called for trial  
15 which means your bondsman is no longer on your bond, and we  
16 are going to take you into custody at this time You will  
17 be returned to the courtroom tomorrow morning in time for  
18 your appearance here for Court, or for the case to begin,  
19 however that is, whatever your decision shall be

20 All right, and I am going to ask you to step down  
21 with the detention officers

22 All right, this Court now will be in recess until  
23 9 30 tomorrow morning Counsel, I would ask the lawyers to  
24 be here at 9 15 We have, if you will step forward, a copy  
25 of what we believe the charge will be We will discuss that

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1 at 9 15 and be prepared to go forward at 9 30 Very good

2 (Whereupon this Court concludes its

3 business for the day at 5 15 p m on June 4, 2007)

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## DAY TWO OF TRIAL

(Whereupon, The Court comes to order at 9 30 a m ,  
on June 5, 2007 )

The Court All right, ladies and gentleman, good morning We  
are in the trial of Mr Richburg, and I think that Mr Richburg is  
probably on his way to the courtroom Our record should reflect that at  
the end of the day yesterday, we gave a copy of the proposed charge to  
both sides of the case, and I will be glad to hear from counsel now, if  
you have some objection in advance, or some suggestion about the charge,  
I will be glad to hear from you

Mr Graustein Your Honor, I have no objections or changes

The Court Very good, and Mr Bellamy, are there any  
objections or suggested changes to the charge?

Mr Bellamy No, sir Your Honor I would inform the Court,  
when my client gets in here, and you may want to question him, but I do  
not believe he will testify, because obviously dealing with his prior  
record and that sort of thing, obviously, would not be I assume charged,  
but if you would like to inquire of my client if he, desires to testify,  
and then we can go forward

The Court Good morning, Mr Richburg, how are you?

Mr Richburg All right

The Court You may recall when we were last together, we  
talked about your right to remain silent, and your right to testify, and  
your attorney told me that you would, or that your side of the case  
would advise the Court this morning whether you attend to testify, and



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1 let me ask you sir, do you intend to testify?

2 Mr Richburg No, sir

3 The Court All right, now have you had ample and full time to  
4 discuss this with your attorney?

5 Mr Richburg Yes, sir

6 The Court And this decision not to testify, is it your  
7 decision, or is it someone else decision?

8 Mr Richburg It's mine

9 The Court Is there anyone who has tried to push or force you  
10 one way or the other?

11 Mr Richburg No, sir

12 The Court So you are telling me then that you have made the  
13 decision not to testify, and you have made this decision yourself?

14 Mr Richburg Yes, sir

15 The Court All right, very good You may be seated Now,  
16 Mr Bellamy, will there be any other witnesses that will testify on the  
17 Defendant's side of the case?

18 Mr Bellamy No, sir, Your Honor

19 The Court All right, just one moment

20 (Pause)

21 The Court Are all the jurors here?

22 Bailiff Nobles All the jurors are here

23 The Court All right All the jurors are here, very good

24 And are they in the process of choosing their foreperson, or do you know  
25 that?

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1 Mr Nobles I don't know that

2 The Court Please ask them Mr Nobles, if you will, let's see  
3 what the status is of that, and we'll wait for them until we hear back  
4 from them

5 The Court Counsel, how about come up, if you will, and let's  
6 take a look at the Verdict Form

7 Mr Bellamy Your Honor, as well as on the seizure of the  
8 money we have that Consent Order for you to review

9 The Court All right Let me first ask you, do you have an  
10 objection to the Verdict Form?

11 Mr Bellamy No, sir

12 The Court All right Counsel, I'll tell you what we will  
13 do Why don't you go back to counsel's table, and let's just put this  
14 on this record as to how we wish to resolve it, and we will make a copy  
15 of this form as part of the record, so anyone reviewing this will have  
16 the opportunity to look at it The operative language, this is just a  
17 two-page document says, that I also understand that this Consent Order  
18 will not be used against me in the Court of law nor will affect the  
19 criminal charges against me, if any, related to the seizure of this  
20 property by the Horry County Police Department

21 Now, Mr Bellamy, is it your position that this prohibits  
22 mentioning not the fact that there is a Consent Order to forfeit the  
23 money, but that there was money on the Defendant at the time of his  
24 arrest?

25 Mr Bellamy Your Honor, I believe, obviously my client,

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1       unrepresented at the time, this document was drafted by the police and  
2       whoever lawyer they have that it should be viewed in the light most  
3       favorable to my client as a non drafting party   Obviously, the language  
4       talks about the Consent Order will not be used   I believe that  
5       language, lead him to believe that giving them this money it wouldn't be  
6       used against him that he had money   And I think that because he didn't  
7       draft it, he was unrepresented at the time, in that light it should not  
8       be used that nor the fact that he had money on him against in this  
9       criminal proceeding   Certainly when you read it, it says this won't be  
10      used in a Criminal Proceeding, and that is how he viewed it   he viewed  
11      it in that light as a non drafting party

12               The Court   All right   And, Mr   Graustein, do you have a  
13      response?

14               Mr   Graustein   Yes, Your Honor   The plain language of the  
15      Order, the Order itself will not be used against him   The fact that he  
16      had money on him that was seized at the time of his arrest is not  
17      excluded by that Order, and we ask for permission to use that

18               The Court   All right, we'll make a copy of the document and  
19      then submit it as Court's Number 1, later   We're having that copy made  
20      now   Mr   Bellamy, I have to agree with Mr   Graustein that the plain  
21      language of the Order says that the fact that the Order exists will be  
22      used against the Defendant   It does not say that the fact that he had  
23      money in his possession will not be used against the Defendant   So, I  
24      find   from the plain language of the Order as well as from our rules on  
25      which we operate, evidentiary rules, that that Order itself will not

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1 keep the fact that the Defendant had money in his possession out of  
2 evidence Now, the question before me that remains is, is that evidence  
3 more probative than prejudicial I should state for the record that  
4 what happened yesterday, counsel approached me at the bench, they said  
5 just when Mr Graustein was getting ready to put that evidence in that  
6 Mr Bellamy said this is prohibited by the Agreement, the Consent Order  
7 and I said, we will wait and look at the Consent Order Neither party  
8 had a copy of it It's known been shown to me I find that Consent  
9 Order does not prevent its admission into evidence Now, I am told that  
10 there was, eleven hundred dollars in the possession of the Defendant at  
11 the time he was arrested, and let me just hear from you first, Mr  
12 Graustein, tell me how is that more probative than prejudicial?

13 Mr Graustein Your Honor, this money was recovered The  
14 State's position is that the Defendant was in possession of a  
15 significant quantity of cocaine at the time, an amount that definitely  
16 implied that he was selling and distributing the drugs, and that this  
17 money was recovered on the Defendant's person in his shoe, and the large  
18 quantity of money was out of a known job of the Defendant or known  
19 reason for him to be in that possession of that quantity of money, could  
20 easily show that he had possession of these drugs, and was selling these  
21 drugs, and that he was involved in the sale of drugs

22 The Court All right Where is it in evidence that he is  
23 unemployed?

24 Mr Graustein I don't believe it is, sir

25 The Court All right Mr Bellamy, let me hear from you on

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1 that same point, please?

2 Mr Bellamy Your Honor, I believe that the fact that a  
3 person has cash on them, certainly there has been no evidence of him  
4 selling drugs, buying or selling drugs simply possession of drugs And  
5 to suggest then --- That is what they are trying to do is suggest he is  
6 selling drugs by the fact that he has money, when there is no evidence  
7 in this record from anybody that he was selling drugs Likewise, what  
8 they are doing is shifting the burden to say, look, you got all this  
9 money, and he didn't get up there and tell you about his job, and there  
10 is no evidence in the record that he is not employed, and in fact, he  
11 is employed as a brick mason, so I think that it is far more prejudicial  
12 than probative

13 First of all Judge, I don't believe it proves, whether my  
14 client threw the drugs out or not I don't think it's relevant evidence  
15 to prove that point, and I think certainly if there is any relevancy to  
16 it, its prejudicial value is certainly far outweighed by any probative  
17 value, because it is going to cause the jury to speculate now about the  
18 money Thank you

19 The Court All right Counsel I just don't believe this case  
20 is going to turn on that point It is whether or not the police officer  
21 is believed that he saw the Defendant threw the drugs is really the  
22 question If this was a distribution case, and there was a question of  
23 a control buy, or some other circumstances where drugs had been traded  
24 for money, well I could see it coming into evidence But I going give  
25 the benefit of this doubt to the Defendant This is a trafficking case,

## THE STATE V TARREN LEE RICHBURG

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1 and the existence of eleven hundred dollars in his pocket really does  
2 not, in this Court's opinion, bears upon whether he had those drugs in  
3 his possession, and whether he threw those drugs out So for that  
4 reason, I am going to sustain Mr Bellamy's objection yesterday, not  
5 because of the Order that is in question, or the Consent Order, but  
6 because of Rule 403 considerations

7 Anything further now from either side of the case?

8 Mr Bellamy No sir, Your Honor

9 Mr Graustein No, Your Honor

10 The Court All right Then what I would intend to do is to  
11 bring the jury in and the State, of course, will argue first I am  
12 going to let you rest in the presence of the jury I am going to  
13 explain to the jury immediately when the Defendant rest, they are not  
14 required to put up a case, although we have discussed that before, I am  
15 going to remind them of that And then we will go into closing  
16 arguments Are you ready for closing, Mr Graustein?

17 Mr Graustein Yes, Your Honor

18 The Court And Mr Bellamy?

19 Mr Bellamy Yes, sir, Your Honor As far as making a Motion  
20 after I rest, would you like for me so that it flows?

21 The Court Why don't you make it now?

22 Mr Bellamy Your Honor, when we do rest in front of the jury  
23 make a Motion for a directive verdict, taking the evidence in light even  
24 most favorable to the State, we don't believe they've met the burden  
25 Thank you

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1           The Court    All right, I am going to deny your Motion for the  
2           same reasons it was denied at the end of the State's case. Now let's  
3           bring in the jury, please. I am advised that Ms. Susan Smith, juror  
4           number 247, has been chosen as foreperson of the jury.

5           Counsel, let me just tell you, we're going to lock the door in  
6           closing just to keep the jury's attention to where it should be focused.  
7           If there is anybody out in the hall that you want to be able to come in  
8           here, please say it now so we can get them in otherwise we are going to  
9           seal the door. Hearing none, please lock the door.

10          Counsel, are there lesser included offenses here? We hadn't  
11          really discussed that. Let me get you to come to the bench and discuss  
12          it if you will.

13                       (Whereupon, a bench conference was held in the  
14          presence of the jury, but out of the hearing of the jury.)

15          Mr. Bellamy   Your Honor, at this time I would request a  
16          charge on simple possession of cocaine as a lesser included offense.

17          The Court    We will take that up after the closing arguments.

18          Mr. Bellamy   Thank you.

19                       (Whereupon, the jury enters the courtroom at 9:41  
20          a.m.)

21          The Court    Good morning.

22          Jury        Good morning.

23          The Court    All right. Good morning, ladies and gentlemen,  
24          welcome back to the courtroom. And let me begin by asking since we were  
25          last together, is there any member of the jury panel who has had a

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1 discussion about the facts of this case with anyone, or been contacted  
2 by anyone concerning this case, if that applies to you, please raise  
3 your hand Let's let the record reflect no one has raised their hand  
4 Of course, I didn't think someone would be contacting you, I would want  
5 to know that if it did happen, but I appreciate your complying with the  
6 Court's request that you not discuss the facts of the case

7 Ms Smith, I note that you have been chosen foreperson I will  
8 say in advance to you congratulations for the confidence your colleagues  
9 have shown in you in electing you to that position I will talk with  
10 you a little bit further at the end of this case in the charge on the  
11 law about your responsibilities, but again, in advance, I thank you for  
12 accepting and shouldering that responsibility

13 Now, you will recall at the end of the day yesterday we were in  
14 the State's case and the State rested We now turn to the Defendant, in  
15 the defense case, and Mr Bellamy, please call your first witness

16 Mr Bellamy Your Honor, the defense would rest

17 The Court All right, the defense has decided not to put up a  
18 case And let me just say to you, ladies and gentlemen, as I told you  
19 when we first began, the Defendant has no burden of proof here The  
20 Defendant is not required to testify The Defendant is not required to  
21 respond to the charges in any way It's the State's burden to prove the  
22 State's case As you've heard, there is no testimony from the defense  
23 side of the case, which means now we are at the close of the testimonial  
24 phase of the case, and now go into the closing arguments

25 The way we will proceed just as we have done everything else,



## CLOSING ARGUMENT BY MR GRAUSTEIN

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1 the State has the burden of proof The State will go first in closing  
2 argument, and then the defense will go Counsel, are you ready to make  
3 your closing argument at this time What says the State?

4 Mr Graustein Yes, Your Honor

5 The Court And what says defense?

6 Mr Bellamy Yes, Your Honor

7 The Court Let me talk with you about one thing that I know  
8 you are aware of You've heard the evidence in the case The evidence  
9 in the case is what the witnesses say from the witness stand Again,  
10 this is why you sit where they do and they sit where they do

11 Now what the lawyers, tell you in closing argument is their  
12 belief or opinion of what the facts have shown, or what the evidence has  
13 shown, or what the inferences from that evidence reveals What the  
14 lawyers say is not evidence I am sure you understand that The  
15 evidence is what the witnesses have said So please understand the  
16 distinction between an attorney's argument, and the evidence in the  
17 case

18 Now with understanding, the Court recognizes Mr Graustein for  
19 closing statement

20 CLOSING ARGUMENT BY MR GRAUSTEIN

21 Mr Graustein Thank you, Your Honor

22 The Court Thank you

23 Mr Graustein Again, ladies and gentlemen of the jury, thank  
24 you for being here You have heard a lot of testimony in this case I  
25 want you to really focus on what this case is about This case is about

## CLOSING ARGUMENT BY MR GRAUSTEIN

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1 whether or not the Defendant was in possession of these drugs, State's  
2 Exhibit 1, on August 31, 2006 It is not a question about whether or  
3 not the police filled out all of their paperwork The officers here  
4 testified before you They swore to tell the truth as to what they saw  
5 and observed on August 31 Their report and what they put into or what  
6 they told to other officers to put into their report that paperwork is  
7 not evidence in this case, these officers' testimony is So the one  
8 question you have to ask and answer is, did the Defendant possess these  
9 drugs at any time on August 31? And officers testified that when they  
10 recovered them they were not in the possession of the Defendant  
11 Officer Santiago testified he saw the Defendant throw these drugs Well  
12 when he threw them they were in his possession When he threw them,  
13 they were his possession The defense has not put up anything to say  
14 Officer Santiago wasn't telling the truth They told you a lot about  
15 how paperwork may not have been done just right Detective Jolliff did  
16 not talk to Officer Santiago, so what? Officer Santiago sat right here  
17 and told you what he saw What he may or may not have said to Detective  
18 Jolliff, that is not evidence What he told you is, what he told you  
19 under oath is

20 Remember, how did this situation all come about Patrol  
21 Officers were responding to a, be on the look out for a car involved in  
22 a car-jacking They saw a car that matched that description and they  
23 went to investigate Sergeant Green went to investigate, that is what  
24 he is suppose to do He wasn't out looking for drugs He wasn't  
25 looking to make some big drug bust He stops him, yes The Defendant

## CLOSING ARGUMENT BY MR GRAUSTEIN

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1 did cooperate at first He did stop He did go back Sergeant Green  
2 discovered that the Defendant had a suspended driver's license, not  
3 suppose to be driving Sergeant Green did what he was suppose to do  
4 He placed the Defendant under arrest Did he place him under arrest for  
5 drugs? No He was placing him under arrest for driving under a  
6 suspended license And up until that point, up until that point the  
7 Defendant had been cooperative, but then when he started to be placed  
8 under arrest, and when he got placed under arrest he is going to be  
9 searched He starts resisting You have to ask yourself, use your  
10 common sense, why would he start resisting He had been cooperative up  
11 until this point, up until the point he was being arrested He was  
12 going to be searched Sergeant Green was going to find those drugs on  
13 him, so he did what he could to try to get rid of the drugs before the  
14 Sergeant found them He started resisting He could get those drugs  
15 and throw them away from him, then Sergeant Green would not see them  
16 Maybe they would not be found until hours later Anything so that  
17 Sergeant Green could not say or place those drugs in the Defendant's  
18 possession

19 Unfortunately, for the Defendant and fortunately for the State,  
20 Corporal Santiago arrived on the scene, and he saw what was going on  
21 He saw the Defendant resisting and scuffling with Sergeant Green, and he  
22 saw the Defendant with the drugs trying to throw them away Sergeant  
23 Santiago secured the area, and did what he had to do to secure the area  
24 There was another suspect, and he went to assist with that As soon as  
25 he had the opportunity, he went and recovered the object that had been

## CLOSING ARGUMENT BY MR GRAUSTEIN

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1 thrown by the Defendant, these drugs, twenty-three and half grams of  
2 cocaine Corporal Santiago immediately after recovering them went to  
3 Sergeant Green and said, Sarg, the Defendant threw this, and I recovered  
4 it Sergeant Green was the senior officer on the scene, so of course,  
5 that is what Corporal Santiago did, was give it to the senior officer  
6 Did they fill out a piece of paper to say that they had made this  
7 exchange, no, they were sitting right there together at the time of the  
8 incident Sergeant Green then secured the drugs and gave them to  
9 Detective Jolliff

10 This case is really about using your common sense, and there is  
11 a whole lot of stuff about whether the paperwork was done right, and  
12 whether the reports were filled out correctly, and whether a certain  
13 officer was talked to back at the time the report was filled out, but  
14 those reports are not evidence in this case All of those officers  
15 about whether they should or should not have been mentioned in a report,  
16 they were all here to testify They were all here to testify to you and  
17 give evidence, and they were the ones that provided the evidence in this  
18 case, their testimony So, what you have to look at and keep your focus  
19 on in this case is the crime that was committed, not the administrative  
20 procedures afterwards There is not one bit of evidence, not one bit of  
21 testimony that what these officers testified to you about that that did  
22 not occur They all came, they were sworn to testify truthfully They  
23 testified and there is nothing that the defense has produced to say  
24 those events did not occur And especially that what Officer Santiago  
25 testified to, and what he saw, and observed during that stop, and during

## THE STATE V TARREN LEE RICHBURG

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1 that encounter that what he saw did not happen Looking at the evidence  
2 that is presented to you, I would urge you to look at that evidence, use  
3 your common sense What happened here? That is your job What  
4 happened, and did the Defendant have possession of these drugs? The  
5 evidence, I believe, is very clear that he did, and he tried to get rid  
6 of it trying to avoid being arrested

7 Thank you for your attention

8 The Court Defense

9 Mr Bellamy Your Honor, may we approach for just one second

10 The Court You may

11 (Whereupon, a bench conference was held in the  
12 presence of the jury, but out of the hearing of the jury )

13 The Court All right, Mr Bellamy, you have a Motion, sir?

14 Mr Bellamy Yes, Your Honor, I do

15 The Court And what is that?

16 Mr Bellamy Your Honor, I would make a Motion at this time,  
17 I believe, that during the closing argument by Mr Graustein, he  
18 referenced my client not putting up any evidence to contradict  
19 something, and I believe that is burden shifting It is improper of  
20 argument by counsel I believe maybe he mentioned it twice, and again  
21 at the end, and would ask for a Mistrial, based upon that or certainly a  
22 curative instructions

23 The Court All right And do you have a response, Mr  
24 Graustein?

25 Mr Graustein Your Honor, I don't believe the State has

## THE STATE V TARREN LEE RICHBURG

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1 shifted the burden, it was just pointing out that there is nothing I  
2 don't believe that the State has shifted the burden, but if, Your Honor,  
3 believes a curative instruction is appropriate then we would not object  
4 to the curative instructions

5 The Court All right, I am going to deny your Motion for a  
6 Mistrial Mr Bellamy, but I will say to the jury, ladies and gentlemen  
7 the comments you heard in closing about there not being evidence to the  
8 contrary, and what Mr Bellamy is saying, and you heard it so you  
9 understand it, is that shifts the burden to the Defendant somehow to  
10 prove his innocence

11 I am going to sustain that objection with this curative  
12 instruction It's not the Defendant's burden to come in and disprove  
13 any fact within the case, or to prove any fact within the case for that  
14 matter The burden as we have said several times, is always on the  
15 State to prove its case regardless of whether there is responsive  
16 testimony or not The Defendant has constitutional right to remain  
17 silent The State cannot invade that Nor can they require the  
18 Defendant to testify That would not be appropriate constitutionally  
19 So, please understand that the burden at all times is on the State, and  
20 you should not take any inference if the Defendant does not put up any  
21 evidence on a particular point, or the Defendant does not testify on any  
22 point, and I will talk with you further in my charge to you on the law  
23 But that is not to be held against the Defendant in any way

24 Let me ask, are there any questions from the jurors about this  
25 Court's instruction I've just given you Then seeing none, and Mr

## CLOSING ARGUMENT BY MR BELLAMY

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1 Bellamy, you are recognized now for closing argument

2 Mr Bellamy May it please the Court, Your Honor

3 The Court Thank you

4 CLOSING ARGUMENT BY MR BELLAMY

5 Mr Bellamy Madam Forelady, ladies and gentlemen of the  
6 jury, Mr Graustein tells you that reports aren't important, and they  
7 are not evidence, and that sort of thing And they are not in evidence,  
8 but I used them to show you what I think the problems are with this  
9 case, the inconsistencies in this case Before I go any further about  
10 that, let me just say this to you, I know Detective Jolliff, I know Rick  
11 Green, they are friends of mine, and I am in no way suggesting that  
12 they are corruptive bad people But I do suggest to you that just like  
13 myself and each of you they are human, they make mistakes, they assume  
14 certain things sometimes that might be true that aren't true That  
15 doesn't mean they're bad people, they make mistakes, and that is what I  
16 was trying to point out yesterday during some of the testimony

17 So let's talk about evidence presented, not presented in this  
18 case And I am going to talk about the reports and lack of reports  
19 The first thing I want to tell you is that probably the two most  
20 important people in this case, Sergeant Green and Corporal Santiago, did  
21 absolutely no report, Incident Report on this thing, nothing They took  
22 no, and to hear the testimony again, Corporal Santiago, did you take any  
23 notes? No Nine months ago, folks, not a single-note taken, no reports  
24 done I did get Officer Rash to admit that it is policy and procedure  
25 to do an Incident Report when something like this happens Folks, we re

## CLOSING ARGUMENT BY MR BELLAMY

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1 not talking about a littering case, throwing a cigarette butt out the  
2 window, or a gum wrapper, we're talking about a trafficking cocaine  
3 case This is important stuff And those two officers did no report on  
4 this, and if you will recall, Detective Jolliff got him to go over ---  
5 He had three different reports, I believe He had a cover sheet, a  
6 synopsis and a detailed two page report that he did No where in that  
7 report, in any of those report, is Corporal Santiago, the only person,  
8 the only person that they say saw my client with something, and he is no  
9 where in the lead detective's report as having seen anything, or  
10 recovered anything Why is that? And, in fact, in his report he said  
11 something fell from my client's pocket in one of his reports, his most  
12 detailed report, that is what he puts in there Now he didn't make that  
13 up Somebody must have told him that, but we know he didn't talk to  
14 Corporal Santiago, so Detective Green must have told him or Sergeant  
15 Green must have told him that That is the only thing we can surmise  
16 from that because he wasn't there, he didn't talk to Corporal Santiago  
17 So did they fall out of his pocket? Did he throw them? That is the  
18 inconsistencies that I told you that we would see in this case  
19 yesterday, keeping in mind the burden where it is Starting at the  
20 presumption of innocence, as we talked about the State must lay evidence  
21 upon this rail consistent with each other that proves beyond a  
22 reasonable doubt the guilt of my client

23 What else did we hear? I told you, you could decide the case,  
24 in addition to the inconsistencies, and I, will go into that later, but  
25 lack of evidence, what about the car camera? They have them? They



## CLOSING ARGUMENT BY MR BELLAMY

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1 didn't put it on Where is the evidence? I want to talk to you a  
2 little bit about this fingerprint business Mr Graustein went to great  
3 lengths to explain to you why they did not do it It was wet Keep in  
4 mind no where in any report does it say it is wet, and that is why they  
5 couldn't do it No where in there does it say they tried to do it It  
6 is no where in any report The first anybody has heard of it being wet  
7 and in a puddle of water is yesterday But what doesn't fit with that  
8 story? Lisa Floyd the chemist, did she say if it was wet or damp, or  
9 moist and I would have put that in my report It was not, and it was  
10 sealed up in a thing where nothing can come out Is that evidence that  
11 is consistent with each other or inconsistent? Something ain't right  
12 with that, and, folks, according too here, there are ten small bags  
13 enclosed within a large bag But even if there might have been some  
14 water, the independent evidence of Lisa Floyd is there is not What  
15 about the ten little bags, couldn't they have fingerprinted them or at  
16 least try, make some effort, send it somewhere They did a report,  
17 nothing of value there Then we would know That is the kind of  
18 inconsistencies and lack of evidence that I think, and ask that you  
19 consider in this case, because if we had a fingerprint they are just  
20 like your DNA If Tarren Lee Richburg's fingerprint were on that bag,  
21 we would know, but they didn't even make that And, in fact,  
22 their testimony about why, has been controverted by their  
23 own witness, their chemist

24 What other inconsistencies do you we have Well,  
25 let me back up a little bit with Corporal Santiago If you

## CLOSING ARGUMENT BY MR BELLAMY

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1 remember during his testimony, I asked him a number of  
2 questions about things He didn't remember much of anything  
3 about the specifics except the one thing I saw, your  
4 client throw something Now, times and whether he was on  
5 the ground, off the ground, all that, I can't really  
6 remember, I don't know, this that and the other, but he does  
7 remember one thing, and, of course, he has got no notes, no  
8 reports Even if he looks at the other reports even in  
9 those, but he just independently ten months later, nine  
10 montns later remembers

11 What did Sergeant Green tell you about that? It was  
12 in the parking lot, asphalt, black parking lot right there,  
13 that's where it was Drugs were found in this parking lot  
14 Corporal Santiago says it was dirt You can listen to the  
15 testimony, because what I say is not evidence but it's  
16 there

17 There is another inconsistency Officer Rash comes  
18 up, third officer to get there He says my client, is on  
19 the ground face down with one officer on his left with an  
20 arm, one officer on his right with an arm, handcuffed  
21 Corporal Santiago says I never helped Sergeant Green, never  
22 did anything to handcuff him at all Officer Rash said he  
23 did Those are important inconsistencies What that shows  
24 you folks is our memory, if we don't write things down, and  
25 keep contemporaneous notes, or do reports, we don't really

## CLOSING ARGUMENT BY MR BELLAMY

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1 remember, and they don't because somebody is wrong in that  
2 situation Officer Rash, Sergeant Green, and Corporal  
3 Santiago all have different versions of that event, and we  
4 don't know what the truth is Sergeant Green tells you that  
5 there was another person there, and he said he got out and  
6 walked in the store Detective Jolliff puts in his report  
7 that he jumped out and ran into the store, and that is one  
8 reason I use that report, is to point out the  
9 inconsistencies But we got another person there who wrote,  
10 not my client, he stays and engages Sergeant Green in a  
11 conversation Could it have been that whatever was found  
12 out there could have been thrown by Mr Douglas, he ain't  
13 here, but we know he ran into the store, not my client And  
14 Sergeant Green tells you that when I go to arrest him, it  
15 takes fifteen seconds and he's on the ground But what,  
16 does he do before that? He searches him, he pats him down,  
17 and says I find nothing, I find nothing And you'll have  
18 this back in your jury room You'll see how big it is I  
19 find nothing when I searched him, when I pat him down And  
20 he is right there on him, and goes to arrest him, and  
21 somehow in those fifteen seconds when he is right there in  
22 front of him grabbing his arms to handcuff him, he somehow,  
23 I guess, gets his hand in his pocket, or shoe, or wherever  
24 it was that Sergeant Green didn't find it, pulls it out and  
25 somehow throws it eight or ten feet away, and Sergeant Green

## CLOSING ARGUMENT BY MR BELLAMY

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1 doesn't see a bit of it Folks, your common sense tells you  
2 that don't make sense He had already been patted down and  
3 searched, nothing Yet somehow he is able to do this with  
4 the officer right there, and him, not see it Your common  
5 sense tells you that don't make sense It doesn't make  
6 sense Why isn't Corporal Santiago in any report, if he is  
7 the only witness? That is key stuff He can't remember any  
8 other details Everybody is inconsistent in the story My  
9 client is searched standing there but somehow --- And folks  
10 let me say this, I don't suggest to you that these drugs  
11 were planted at Bruce Gerald's Store, here comes two or  
12 three police, and keep in mind, Corporal Santiago goes in  
13 the store for several minutes before ever coming back out  
14 and looking Do you reckon when three police cars pull up  
15 there, start arresting people, if somebody is in that  
16 parking lot with drugs, somebody could have thrown it down?

17 His Honor, is exactly right, my client doesn't have  
18 to come in here, and contradict as the solicitor tried to  
19 suggest to you I have contradicted it through his  
20 inconsistencies But the testimony of the different  
21 officers don't fit together The fact that there was  
22 another person there who is running, who is also charged  
23 with possession of drugs that they find on him in the store  
24 Folks, the burden of proof that we talked about is on the  
25 State, because they are seeking to take the freedom away

## CLOSING ARGUMENT BY MR BELLAMY

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1 from an individual That is an awesome, awesome burden that  
2 they have, and it should be

3 I told you yesterday that this case isn't about  
4 judging Tarren Lee Richburg It's about judging the State  
5 and whether they have met that burden And we talked about  
6 the presumption of innocence, and proof beyond any  
7 reasonable doubt

8 What is a reasonable doubt proof beyond a reasonable  
9 doubt? I believe, His Honor, will tell you this It is the  
10 kind doubt that would cause a reasonable conscientious  
11 person to hesitate to act That is what reasonable doubt  
12 is So when you go in your jury room, and you sit down, and  
13 you say what about the fact that the drugs weren't wet like  
14 they said I don't --- That's the hesitation that I'm  
15 talking about is reasonable doubt, that hesitation Well,  
16 what if they tried to finger, that hesitation is reasonable  
17 doubt That is what I am talking about That is what the  
18 law says each of you should do What about the fact that he  
19 was patted down and nothing was found What about the fact  
20 that one says it was pavement and one says it was gravel  
21 What about this other guy, what about inconsistencies on  
22 handcuffing, not handcuffing, who did it, whether it was on  
23 the ground when Officer Santiago got there I believe that  
24 is what Sergeant Green said How could it have all happened  
25 like this? Where are the reports? Why isn't Officer

**CHARGE ON THE LAW**

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1 Santiago's in there, all of those inconsistencies and the  
2 lack of evidence, not a soul out there at around one or two  
3 o'clock at Bruce Gerald's Store that saw a thing Folks, I  
4 suggest to you that any of those things are reasonable  
5 doubt But, I ask you to add them up, collectively, each  
6 and ever inconsistency and lack of evidence Certainly,  
7 there is reasonable doubt in this case The burden is on  
8 the State The presumption of innocence is with my client  
9 This isn't about being against the police, because I'm not  
10 But sometimes we make assumptions, they make assumptions,  
11 and they can make mistakes, and they certainly made them in  
12 this case Cutting and pasting, putting the wrong things in  
13 and not putting things in, all of that, folks, those  
14 inconsistencies, I believe, lies with reasonable doubt and  
15 hesitation

16 Thank you

**CHARGE ON THE LAW**

17  
18 **The Court** All right, ladies and gentlemen, I told  
19 you when we began this case that the last person, you would  
20 hear from before you retire to deliberate would be the Court  
21 giving you the charge on the law and this is where we find  
22 ourselves now Let me first ask, can you hear me, is  
23 everyone in the jury able to hear, all right, very good  
24 And before I begin the actual charge, I just simply want to  
25 say this to you You may recall we talked yesterday when we

## CHARGE ON THE LAW

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1 first started about the fact that I know you have busy  
2 lives I know that the jury summons is an interruption in  
3 that life, and how grateful I am, and our justice system is  
4 that you came forward and answered the summons

5 I sit logistically here in the courtroom where I can  
6 look beyond counsel, I can look beyond witnesses and observe  
7 the jury, and I have done that throughout the trial, I try  
8 not to stare at you, I don't want you to be uncomfortable,  
9 but I do look from time to time to check on your comfort  
10 level Every time I've done that, you've been focused, you  
11 have been sitting there with what I would call wrapped  
12 attention, and I appreciate that Because I know in a few  
13 moments when you retire to deliberate and determine the  
14 facts of the case, you are going to be in a position to do  
15 that simply because you have given a level of commitment of  
16 yourselves, and of your time, and of your focus that permits  
17 you to do that So I thank you for your level of  
18 commitment

19 As you are aware, the State seated closes to you  
20 charges the Defendant Tarren Lee Richburg, seated at the  
21 table furthest from you with trafficking powder cocaine in  
22 an amount of more than ten grams but less than twenty-eight  
23 grams and you will have the Indictment with you in the jury  
24 room when you retire to deliberate Now, of course, bear in  
25 mind that the defendant pleads not guilty to these charges

## CHARGE ON THE LAW

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1 and denies the allegations that are contained within the  
2 Indictment And please rememoer that the Defendant is  
3 presumed innocent even if no plea had been entered to the  
4 charges, and the Indictment as I explained to you when  
5 began, and I may begin to sound like a broken record, but it  
6 is simply a set of charges or accusations, allegations  
7 against the Defendant It's not evidence The evidence  
8 which you are to consider is the testimony of the various  
9 witnesses who appeared before you under oath, and subjected  
10 to both direct and cross examination as well as such  
11 exhibits as were introduced into the record during the  
12 course of this trial You will have those exhibits with you  
13 when you go back to deliberate, and you may note we take  
14 particular care to make sure we are aware of what is in  
15 evidence, and what is not in evidence, because those items  
16 in evidence go with to the jury room

17 Now the Defendant comes into this courtroom clothed  
18 with a presumption of innocense, and this presumption of  
19 innocence continues throughout the case, and entitles the  
20 Defendant to a verdict of not guilt unless and until it is  
21 dispelled by evidence that satisfies you the jury beyond a  
22 reasonable doubt, and that is the standard that the  
23 Defendant is guilty of the offense charged, and the State  
24 has proved each and every element to the crime, the alleged  
25 crime beyond a reasonable doubt



## CHARGE ON THE LAW

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1           Now as I said to you when we began, you are the  
2 judges of the facts here   You are the sole judges of the  
3 facts   No one else in this courtroom, are the judges of the  
4 facts   I don't have any position on the facts of the case  
5 and again, I say to you, I've tried in anyway, in every way  
6 really I should say, not to intimate or give some inference  
7 to you how I may feel on the facts   Again, I don't have a  
8 position on the facts, because you are the judges of the  
9 facts which makes you the judges of the credibility and the  
10 believability of the witnesses who appeared before you in  
11 this case   I will not go over, there is no need to be  
12 duplicative, but I suggest you may look to, for credibility  
13 and believability --- You use your own common sense and  
14 judgment that you use every day in determining credibility  
15 and believability   But I will say this, in finding the  
16 facts you may believe as much or little of any particular  
17 witnesses testimony you think appropriate   You can believe  
18 one witness against a whole group of people, or you may do  
19 just the opposite, you may believe part of what a witness  
20 says and completely disbelieve the rest   I will also say to  
21 you the fact that testimony is not directly controverted, it  
22 doesn't mean you have to accept it as true and undisputed  
23 You must first, gauge the credibility and believability of  
24 the witness through which those facts are offered   Keep in  
25 mind throughout this process you have one objective, and

## CHARGE ON THE LAW

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1 that is to seek the truth Again, regardless from which  
2 witness or from what piece of evidence that may come

3 Now there are two types of evidence that are  
4 generally presented during a trial I want to talk to you  
5 about that There is direct evidence and there is  
6 circumstantial evidence Direct evidence is the testimony  
7 of a person who was searched or claim to have actual  
8 knowledge of a fact And this would be something such as an  
9 eye witness who testifies about what they saw or heard or  
10 observed That is direct evidence

11 Now circumstantial evidence on the other hand is  
12 indirect evidence It is proof of a set or chain of facts  
13 that then indicates the existence of yet another fact The  
14 law makes absolutely no distinction between the weight or  
15 value to be given to either direct or circumstantial  
16 evidence, nor is a greater degree of certainty required of  
17 one than the other You should weigh all the evidence in  
18 the case And I will tell you that after weighing all the  
19 evidence if you are not convinced of the guilt of the  
20 Defendant beyond a reasonable doubt then you must find the  
21 Defendant not guilty

22 You will recall yesterday we had one witness who  
23 appeared who was qualified to be an expert witness And I  
24 again say to you, that is because the witness had some  
25 special knowledge, skill, experience, training or education

## CHARGE ON THE LAW

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1 in a particular field within which you have to make a  
2 decision of fact I will say to you that the value and  
3 effect of expert testimony is a matter solely estimated by  
4 you No mere opinion of an expert can be accepted in and of  
5 itself as truthful and reliable, but it must be weighed by  
6 you, and convince you in your judgments beyond a reasonable  
7 doubt with the same force and effect as another fact proved  
8 in the case before you can rely upon it as a basis for  
9 conviction I must say that you should consider expert  
10 testimony in the same manner you do any other testimony,  
11 gauge it for credibility and believability, and give it such  
12 weight as you deem is it entitled to It is never given for  
13 the purpose of controlling your judgment but for assisting  
14 you in making findings of fact that are before you

15 Now I was talking to you a moment ago about weighing  
16 the evidence, and I have been back in your jury room before,  
17 not while you've been back there, but on other occasions I  
18 know that when you go back there, you noticed that there's  
19 not some set of scales to go weigh the evidence on, and I  
20 know you know the reason for that because it is entirely a  
21 mental process But I would say to you that evidence which  
22 weighs with you is that which convinces you of his truth,  
23 again, regardless from which witness, or from what evidence,  
24 or from wherever that may come

25 Now the same constitution that makes you the judges

## CHARGE ON THE LAW

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1 of the facts makes me the Judge of the law in the courtroom,  
2 so I say to you now please, accept the law as I give it to  
3 you in this charge, apply it to the facts as you find them  
4 and reach a verdict which is just and which is true

5 Now I tell you there is a lot of bad information out  
6 on the street about what the law is here in South Carolina,  
7 and I am going to suggest to you and direct you that it is  
8 not appropriate to apply what you may have heard on the  
9 street is the law, or what you think might be a better idea,  
10 or what you believe is just more fair and appropriate  
11 Please accept the law as I give it to you, apply it to the  
12 facts as you find them And let's talk about that If I've  
13 given you the law incorrectly which I am telling you I am  
14 not doing, but if I do, well, we've got a court reporter  
15 here, there is a record being made, that error would be  
16 preserved And there would be another day and another time  
17 when it could be consider, and rectified if necessary But,  
18 for today's purposes, please, accept the law as I give it to  
19 you, and apply it to the facts of the case as you find them

20 Now, in a criminal prosecution of this type as I've  
21 already said to you the State, the prosecution, seated  
22 closes to you has the burden of proof The Defendant has no  
23 burden of proof and is in fact presumed innocent In this  
24 State according to our constitution the prosecution must  
25 prove its case to the standard of proof we call beyond a

## CHARGE ON THE LAW

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1 reasonable doubt before a finding of guilt may occur If  
2 the State fails to meet this high burden, the Defendant is  
3 entitled to an acquittal So you say, well, all right then  
4 what is a reasonable doubt And I am going to being by  
5 defining it by telling you what it is not It is not an  
6 imaginary or fanciful doubt or a weak doubt It is a  
7 substantial doubt It is a doubt that the words imply A  
8 doubt for which you can give or assign a reason based on the  
9 testimony and evidence in the case A reasonable doubt is  
10 not any sort of a doubt that you and I may know from  
11 everyday life We may have any sort of a doubt about any  
12 matter no matter how trivial it may be, such as what tie to  
13 wear to some event, or what pair of shoes we are going to  
14 wear somewhere, well that is not a reasonable doubt A  
15 reasonable doubt is a doubt that makes an honest, sincere,  
16 conscientious jury in search of the truth hesitate to act  
17 Proof beyond a reasonable doubt, that is proof beyond a  
18 reasonable doubt is proof that leaves you firmly convinced  
19 of the Defendant's guilt If you have a doubt for which you  
20 can give or sign a reason as to the guilt of the Defendant  
21 in this case than he is entitled to a verdict of not guilty  
22 I will tell you that reasonable doubt may arise from  
23 evidence that is in the case or from the lack or absence in  
24 the case You, the jury, must make the determination of  
25 whether or not reasonable doubt exists as to guilt of the

## CHARGE ON THE LAW

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1 Defendant in this case

2 Now I will tell you though, the very fact that the  
3 jury goes back in the jury room and engages in a full and  
4 free discussion of the issue of guilt or not guilt in this  
5 case where a conversational ebb and flow on that issue,  
6 doesn't automatically mean that reasonable doubt exists in  
7 this case or in any other case for that matter

8 Now, criminal intent is something I want to you talk  
9 with you about It is a necessary element of every crime,  
10 each crime that must be proved by the State beyond a  
11 reasonable doubt Criminal intent is always a matter that  
12 must be determined by the jury from the circumstances that  
13 surround a situation There is no way to prove intent to  
14 some mathematical certainty You and I know there is no way  
15 medical science can dissect someone's brain and look in and  
16 determine what a person had in mind at a particular time  
17 So the law states that criminal intent may be inferred from  
18 circumstances shown to have existed but before and after the  
19 fact This is how you the jury, make a determination of  
20 whether of not the element requiring criminal intent is  
21 present I will tell you that criminal intent is a state of  
22 mind that operates jointly with an act or an omission in the  
23 commission of a crime Criminal intent is a mental state of  
24 conscious wrong doing so it is up to you the jury, to  
25 determine what the Defendant intended to do or did or did

## CHARGE ON THE LAW

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1 not do based on the circumstances that are shown to have  
2 existed from the testimony in the case I tell you the  
3 State must prove criminal intent beyond a reasonable doubt  
4 just as the State must prove every other element of the  
5 charge beyond a reasonable doubt as I previously explained  
6 to you

7 Now I further instruct you and emphasize the fact  
8 that the Defendant did not testify is not a factor to be  
9 considered by you in any way in your deliberations, and in  
10 your consideration of the question of guilt or innocence of  
11 the Defendant It must not be considered by you in any  
12 manner whatsoever A Defendant has a constitutional right  
13 to remain silent, and the assertion of this right must not  
14 be considered by you in your deliberations and I repeat,  
15 under the oath you took when we began this case you are to  
16 draw no conclusions whatsoever from the fact that the  
17 Defendant in this case did not testify That should not  
18 even be discussed in the jury room The burden of proof as  
19 I've stated to you is on the State The Defendant is not  
20 required to prove his innocence at any time The burden of  
21 proof remains on the State to prove guilt beyond a  
22 reasonable doubt

23 Now let me define the charge for you of trafficking  
24 cocaine, and, of course, this is between ten and twenty-  
25 eight grams The Defendant is charged with trafficking

## CHARGE ON THE LAW

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1 powder cocaine The State must prove beyond a reasonable  
2 doubt in order to prove this that the Defendant knowingly  
3 sold, manufactured, cultivated, delivered, purchased,  
4 brought into the State, provided financial assistance or  
5 otherwise aided, abetted, attempted, or conspired to sell,  
6 manufacture, cultivate, deliver, purchase or bring into this  
7 state, or was knowingly and actual or constructive  
8 possession, or knowingly attempted to become an actual or  
9 constructive possession of powder cocaine The State must  
10 also prove beyond a reasonable doubt that the amount of  
11 powder cocaine or any mixture containing that cocaine was ten  
12 grams or more but less than twenty-eight grams

13 Now, to prove possession the State must prove beyond  
14 a reasonable doubt that the Defendant had both the power and  
15 the intent to control the disposition or use of the powder  
16 cocaine Possession may be either actual or it could be  
17 constructive Actual possession means that the powder  
18 cocaine was in the actual physical custody of the Defendant  
19 Constructive possession means that the Defendant has  
20 dominion and control, or the right to exercise dominion or  
21 control over either the powder cocaine itself, or the  
22 property on which the powder cocaine was found

23 I will tell you that mere presence at the scene  
24 where the drugs were found is not enough to prove possession  
25 of a particular drug Actual knowledge of the presence of



## CHARGE ON THE LAW

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1 the powder cocaine is strong evidence of a Defendant's  
2 intent to control its disposition or use, if you find that  
3 from the facts of this case The Defendant's knowledge and  
4 possession may be inferred when a substance is found on the  
5 property that is under a Defendant's control, however, this  
6 inference is simply an evidentiary fact to be taken into  
7 consideration by you along with the other evidence in the  
8 case and be given the weight you deem it is entitled to

9 Now again I say to you, the mere presence at the  
10 scene where drugs is found is insufficient to prove someone  
11 guilty of a particular crime The burden is upon the State  
12 to prove every element of a crime charge, and if you find  
13 after viewing all the evidence that the State has proved  
14 that the Defendant was only present at the scene of a crime,  
15 and that they have not proved, beyond a reasonable doubt any  
16 other participation in a particular crime, then you must  
17 find the Defendant not guilty on that basis The law is  
18 that proof of mere presence at the scene of a crime is not  
19 sufficient to find someone guilty of that crime

20 All right, ladies and gentlemen, in just a moment  
21 you are going to retire to begin your deliberation and I  
22 want to say to you that, and I know you are, I hope that you  
23 are mindful of the importance of your responsibility You are  
24 not called upon to serve as jurors --- You may remember when  
25 Judge Thomas qualified you yesterday She talked about the

## CHARGE ON THE LAW

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1 fact that you have an exemption for three years from serving  
2 in a particular Court You cannot be required to serve more  
3 than one time in a three-calender year, and there is a  
4 reason for that and the reason is this It is an important  
5 responsibility, and it requires that you and I reach the  
6 height of freeing our mind of all outside and improper  
7 influences, because you and I are acting for the community  
8 to see to it that every trial here is fair and every verdict  
9 is just

10 Now you have probably observed that throughout this  
11 trial the presiding officer, which is me is referred to as  
12 Your Honor I know you know that is not some title given to  
13 me individually, it is given, it is a title assigned to the  
14 position that I am privileged to hold, and that is because  
15 this Court is entrusted with the honor of this county, this  
16 community, this State and indeed this Nation in seeing to it  
17 that every person tried here receives a fair and impartial  
18 justice

19 Now you, the jury, take into your care and control  
20 the preservation and honor of this community, county, State  
21 and Nation when you go back to deliberate Now when I say  
22 that to you, please don't think I am trying to tell you how  
23 you need to decide this case, again it is not my position to  
24 do so, that is an evasion of your province, that is not my  
25 intention What I am simply saying to you is this, as the

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1     presiding officer of the courtroom it is vitally important  
2     to me that whatever verdict you find will be the result of  
3     you going back into the jury room, confining your  
4     consideration to the evidence and the law that you have  
5     heard in this courtroom, applying the facts as you find them  
6     to the law, weighing all that fairly and impartially and  
7     reaching a verdict which is just and true. I have every  
8     confidence that is what you are going to do Everybody in  
9     this case is entitled to justice, both the State and the  
10    Defendant All are entitled to justice, nothing more,  
11    nothing less We owe no support to any party We owe no  
12    sympathy to any party And again, I am of the confirmed  
13    opinion that whatever verdict you reach will represent truth  
14    and justice for all the parties involved

15           Now, Ms Smith, Madam Forelady, members of the jury,  
16    I have in my hand the Verdict Form, and we are going to send  
17    this back with you And the Verdict Form, simply ask one  
18    question It has the caption on it, States of South  
19    Carolina versus Mr Richburg and it says as to Indictment  
20    Number 06-4824, trafficking powder cocaine, we the jury,  
21    unanimously find the Defendant Tarren Lee Richburg, and then  
22    you have got two choices Now let me just simply say this  
23    to you When I have two choices to give you, I can't give  
24    them to you simultaneously On the paper, one actually has  
25    to come in front of the other, but there is no preference

## CHARGE ON THE LAW

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1 here, there is not priority here Simply your first choice  
2 says, not guilty and your second choice says, guilty, and  
3 whatever the unanimous decision of the jury is that will be  
4 your verdict And, Madam Forelady, I would ask you to mark  
5 with an "X" clearly, which of the two it is and sign below  
6 And when you sign below you are signing under this  
7 statement, I certify that this is a unanimous decision of  
8 the jury So you are confirming to the Court that the  
9 decision is, in fact, and indeed a unanimous decision

10 Now, I want to say one thing to Mr Turner before we  
11 retire to deliberate, and it is just this You know, many  
12 times alternate jurors, and I appreciate your service, I  
13 appreciate your assistance this morning as the jury chose  
14 its foreperson Many times alternate jurors say well, you  
15 know, my goodness, I have wasted my time sitting around here  
16 and now I'm not going to deliberate with the twelve I  
17 sense that for the next minute or two these twelve, are  
18 going to hold their health here until they begin  
19 deliberating which means that you will not, but I want to  
20 say this to you I thank you for your service South  
21 Carolina law in a criminal case at the Circuit Court level  
22 requires twelve jurors If you were not here sir, and even  
23 now at the end of this case, as we are getting ready to go  
24 back and deliberate, if one of our jurors, has an emergency,  
25 fell ill, or whatever happen and had to go, well I would

## CHARGE ON THE LAW

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1 have to declare a Mistrial This proceeding would have to  
2 be tried again because there are not twelve jurors Your  
3 presence here would have prevented that had it happen, so I  
4 thank you for your service

5 What I am going to do is, I am going to let you go  
6 back for just a moment, say your goodbys to your colleagues,  
7 and then we're going to bring you back out in the courtroom  
8 when I send the evidence in, and I will speak with you one  
9 further time before you leave

10 Now, ladies and gentlemen, I am going to ask you to  
11 go back to the jury room but don't begin your deliberations,  
12 because what I need to do next is review the evidence, make  
13 sure we have it in order, Verdict Form, Indictment, send it  
14 all back to you and when it goes into you, then begin your  
15 deliberations That's only going to be a moment or two In  
16 the meantime, say your goodbys to Mr Turner until you meet  
17 again, and do not begin your deliberations All right  
18 Now, let everyone else remain where they are while our jury  
19 reports to the jury room We'll send the information into  
20 you shortly

21 (Whereupon, the jury exits the courtroom  
22 at 10 32 a m )

23 The Court You can go back with the jury and say  
24 goodbye, and we will send for you shortly, Mr Turner Thank  
25 you All right, any objections to the jury charge, or

## THE STATE V TARREN LEE RICHBURG

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1 exceptions to it as given by the Court from the State?

2 Mr Graustein No objections, Your Honor

3 The Court From Defendant?

4 Mr Bellamy Your Honor, I would again request  
5 that Your Honor charge the lesser included offense of  
6 possession of cocaine

7 The Court And tell me what evidence is there in  
8 this record for simple possession as opposed to possession  
9 at a level between ten and twenty-eight grams

10 Mr Bellamy Your Honor, I believe it's just a  
11 lesser --- I think they could find that it is simple  
12 possession and not trafficking I don't know that there is  
13 any evidence to suggest that, but certainly the evidence is  
14 that it is over, ten grams, but I would request that, Judge

15 The Court All right, counsel, I am going to deny  
16 your Motion respectfully, because the Court would not submit  
17 a lesser included offense unless there is a factual basis  
18 There are no facts whatsoever, no inference from the facts,  
19 no conclusion that can be drawn by the facts other than it  
20 is either on the way this case is presented, either no  
21 possession at all, or it was I believe 23 5 grams, somewhere  
22 in that vicinity, so I am going to deny your Motion Now,  
23 is there anything further now from the Defendant?

24 Mr Bellamy No, sir

25 The Court All right, counsel, come up, and let me

## THE STATE V TARREN LEE RICHBURG

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1 ask is there an objection to the Verdict Form, you had  
2 reviewed it earlier What says the State?

3 Mr Graustein No objection, Your Honor

4 The Court And defense?

5 Mr Bellamy No, sir, Your Honor

6 The Court All right, please come up and review  
7 the exhibits so that we can take those into the jury And,  
8 ladies and gentlemen, let's remain in session while we do  
9 this, because when our alternate juror comes back, I want us  
10 all to be in the courtroom

11 (Pause)

12 The Court All right, counsel, any objection to  
13 the exhibits?

14 Mr Graustein No objections from the State, Your  
15 Honor

16 Mr Bellamy No, sir, Your Honor

17 (Whereupon, the jury begins their  
18 deliberations at 10 35 a m )

19 The Court All right Please bring in our  
20 alternate, and I will speak with him a moment

21 Mr Turner, welcome back to the courtroom I wanted  
22 to tell you sir, again, I want to thank you for your  
23 service, but I do want to tell you that you are free to go,  
24 if you wish to remain with us you certainly may We don't  
25 know how long the jury will be out, but you are welcome to

## THE STATE V TARREN LEE RICHBURG

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1 stay The jury panel itself, the larger panel, is coming  
2 back this afternoon at two, but I am going to exempt the  
3 members of this jury panel from that jury call We are  
4 going to draw a case which will not come from the thirteen  
5 who have served on this case, and that means please  
6 disregard any messages immediately on the answering machine  
7 But, tonight after six, please call the juror number for  
8 further instructions to the entire panel Do you have any  
9 questions about that, sir? All right, if you just don't  
10 mind standing where you are, I am going to come around and  
11 shake your hand as my expression of gratitude for your  
12 service I'll be right there and then you're free to go or  
13 you're free to stay Do you want to stay with us, or do you  
14 want to go home?

15 Mr Turner I am going to go

16 The Court Very good I'll be right there

17 (Pause)

18 The Court All right, counsel, anything for our  
19 record before we stand down awaiting the call of the jury  
20 What says the State?

21 Mr Graustein Nothing from the State, Your Honor

22 The Court And what says defense?

23 Mr Bellamy No, sir

24 The Court All right, Mr Richburg, we are going  
25 to take you back into custody during this time, and we will



## VERDICT

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1 send for you as soon as we hear from the jury

2 All right, Court will be in recess now subject to  
3 the call of the jury

4 (Whereupon, the Court stands down at 10 38  
5 a m until the jury announces they have a verdict at 12 41  
6 p m )

7 The Court Counsel, I am advised by our Bailiff  
8 that the jury has a verdict Is there anything for our  
9 record before we bring in the jury, first from the State?

10 Mr Graustein No, Your Honor

11 The Court And from defense?

12 Mr Bellamy No, sir, Your Honor

13 The Court All right, very good Please bring in  
14 the jury

15 (Whereupon, the jury enters the courtroom  
16 at 12 48 p m )

17 The Court All right, ladies and gentlemen,  
18 welcome back to the courtroom Ms Smith, I am told that  
19 the jury has reached a verdict, is that correct?

20 Ms Smith Yes, sir, it is

21 The Court Please give your Verdict Form to Ms  
22 Williams

23 The Court All right, let's let the record reflect  
24 that the Verdict Form is appropriately filled out and signed  
25 by the foreperson Defendant, please rise And Ms

## VERDICT

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1 Williams, please publish the verdict

2 Clerk This is Indictment Number 2006-GS-26-4824,  
3 State of South Carolina versus Tarren Lee Richburg As to  
4 Indictment Number 2006-GS-26-4824 trafficking powder  
5 cocaine, we the jury, unanimously find the Defendant, Tarren  
6 Lee Richburg, guilty Signed, Susan Smith, Foreperson,  
7 dated June 5, 2007 Madam Forelady and ladies and gentlemen  
8 of the jury, if this is your verdict, so signify by raising  
9 your right hand Thank you

10 The Court Let the record reflect that each of our  
11 jurors have raised their hands The Defendant may be  
12 seated Now, while we are in the presence of the jury, are  
13 there any Motions for which a jury response may be necessary  
14 from defense?

15 Mr Bellamy No, sir, Your Honor

16 The Court And from the State?

17 Mr Graustein No, Your Honor

18 The Court All right, then ladies and gentlemen,  
19 that concludes your service in this case I want to thank  
20 you for your service as jurors I do want to tell you, the  
21 jury is coming back this afternoon at two o'clock, the  
22 greater panel, but I am going to release you from the jury  
23 draw You have already done your service at least for the  
24 first part of this week, but I ask that you call back after  
25 six o'clock tonight for further instructions to the entire

## THE STATE V TARREN LEE RICHBURG

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1 panel I don't know what those instructions will be, if I  
2 did I would give you a heads up on that, but I just simply  
3 do not know what they are, and for that reason I can't tell  
4 you You are free this afternoon Do not, if you go  
5 somewhere and happen to pick up and call the jury line,  
6 please don't respond to it, because it going to tell you to  
7 be here at two o'clock, just disregard that We have  
8 removed your names as well as our alternate, Mr Turner's  
9 name from that draw, and have exempted you from this  
10 afternoon's draw

11 In a few days after you finish your service, the  
12 county is going to send you a check, which is going to be  
13 the county's expression of gratitude It is not going to be  
14 enough to retire on But I am going to come down as you  
15 leave the jury box and shake your hand, which is my  
16 expression of gratitude for your service, for your rendering  
17 a verdict which is just and which is true and I appreciate  
18 your service Before I do that though let me ask, counsel,  
19 step up if you will, please?

20 (Whereupon, a bench conference was held in  
21 the presence of the jury, but out of the hearing of the  
22 jury )

23 The Court All right, ladies and gentlemen, I have  
24 spoken with the solicitor, and the solicitor tells me that  
25 they are not going to be any further criminal jury draws

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1 this week

2 We are getting ready to have a Sentencing  
3 Proceeding, and I am going to invite you to remain with us  
4 if wish The only reason I may not have done that is if it  
5 were possible you were going to serve on another criminal  
6 case There may be some things that you would hear in a  
7 Sentencing Proceeding that may somehow impact your decision  
8 if you sat on another case this week It's not that we're  
9 trying to hide anything from you We're just trying to be  
10 cautious about that But we are going to have a Sentencing  
11 Proceeding There may be additional civil jury draws so  
12 that is why I asked you to call back to the jury number, but  
13 I can tell you there will not be any further jury draws So  
14 what I am actually going to do is I am going to give you the  
15 option It's your lunch time, you've got busy personal  
16 lives, if you wish to leave right now then I will come  
17 around and shake your hand of those who wish to leave and  
18 you may leave We will take you right out through the back  
19 door and you're free to do I suspect the sentencing  
20 proceeding may take ten, could take fifteen minutes Let me  
21 ask, is there any member of our jury panel who wishes to  
22 leave now, and if you do that is perfectly fine, please  
23 raise your hand All right, well let's do this, is there  
24 any member of the jury panel that has anything back in the  
25 jury room You do, several of you do, all right Well then

## THE STATE V TARREN LEE RICHBURG

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1 I am just going to let you remain where you are What I am  
2 going to do was give you the opportunity to go back to the  
3 jury room Why don't we do this, so that you won't be  
4 pinned over there in the jury box, if it gets into something  
5 longer and some of you need to go, I am going to come down  
6 and shake your hands, I am going to let you file out and go  
7 back to the jury room, and then come around and sit in the  
8 back of the courtroom so that you are free to leave if you  
9 wish, not sitting right up there where you are now All  
10 right, just one moment, ladies and gentlemen

11 (Pause)

12 The Court I am just going to stand right here,  
13 ladies and gentlemen, you are free to go or come back into  
14 the courtroom for the sentencing proceedings Thank you for  
15 your service I have enjoyed working with you

16 (Pause)

17 The Court Please remain at ease everyone We are  
18 going to give our jurors just a moment, if they want to come  
19 back and file around, they may do so

20 Mr Nobles, step up just a moment, if you would  
21 please

22 (Pause)

23 The Court Mr Richburg, we are going to take you  
24 into custody now sir, and we're going to place handcuffs on  
25 you, please respond to Mr Nobles

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1           **Mr Bellamy**    Your Honor, I do have some Motions,  
2 obviously

3           **The Court**    All right, we'll give you that  
4 opportunity   We'll let the jury come in, and then we'll  
5 give you the opportunity to make your Motions

6           (Pause)

7           **The Court**    All right, Mr Johnson, will there be  
8 others joining us, will we have other jurors?

9           **Deputy Johnson**   That's all, sir

10          **The Court**    All right, ladies and gentlemen,  
11 welcome back to the courtroom   I am advised that there are  
12 some Motions the Defendant would like to make at this time,  
13 and I will be glad to hear from you, Mr Bellamy?

14          **Mr Bellamy**    Your Honor, may it please the Court  
15 We would renew Motions made at the end of the State and the  
16 defense case for judgment notwithstanding, or actually a  
17 new Motion of Judgment Not Withstanding Verdict, or in the  
18 alternative, a new trial based primarily on what we believe  
19 is burden shifted by the solicitor during his closing  
20 argument   While the Court gave curative instructions, we  
21 believe that it certainly impacted the trial to a point that  
22 it shifted the burden to my client to have presented  
23 evidence to contradict the police officer, and it was  
24 certainly improper, and we would ask that the Court grant a  
25 new trial at this time

## THE STATE V TARREN LEE RICHBURG

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1           The Court     All right, I am going to deny your  
2     Motion, Mr Bellamy   If there was a burden shifting, and  
3     the Court is not certain there was, I certainly don't  
4     believe that was the solicitor's intention   I don't think  
5     the wording that the solicitor used specifically pointed out  
6     the fact that the Defendant did not testify   But, I don't  
7     find there was a burden shifting, and even if there was the  
8     curative instruction given by the Court fully covered that  
9     I asked the jury if they had any questions about that   I  
10    reiterated the fact that the Defendant has no burden of  
11    proof, and that the burden of proof rest fully on the State  
12    I find no basis to grant relief there and I deny your  
13    Motion   Are there further motions?

14           Mr Bellamy     No, sir, Your Honor

SENTENCING HEARING

16           The Court     All right, then you may be seated   I  
17    am going to hear from the State first before I hear from  
18    defense   Mr Graustein, what do you have to say, sir?

19           Mr Graustein   Yes, sir   With regard to  
20    sentencing of the Defendant, the State would ask that the  
21    Defendant be sentenced for this offense, trafficking  
22    cocaine, as a third offense, a third drug offense   The  
23    Defendant had pled guilty in 2000 to a possession with  
24    intent to distribute powder cocaine   Again in the year  
25    2000, he pled guilty to possession with intent to distribute

## THE STATE V TARREN LEE RICHBURG

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1 powder cocaine And, in 2003 he, plead guilty to possession  
2 with intent to distribute marijuana We have certified  
3 copies of all the sentencing sheets, post convictions

4 The Court So in other words, this is a fourth  
5 conviction for Mr Richburg, is that correct?

6 Mr Graustein That is correct, Your Honor

7 The Court All right, now ladies and gentlemen of  
8 the jury, let me tell you the first thing when you hear that  
9 you say well now why didn't I know that, and let me respond  
10 to you on that First of all, under our Rules and  
11 Procedures, that evidence cannot be put in, in the State's  
12 case in chief, because it clearly is prejudicial to the  
13 Defendant The question is, did the Defendant commit this  
14 crime, not did he commit other crimes

15 Now had the Defendant taken the stand to testify, he  
16 may have been subject to examination on those previous  
17 convictions on the issue of whether he is a credible or  
18 believable witness, not necessarily, and not on the issue of  
19 whether he committed this crime Because the Defendant did  
20 not take the stand that did not come into evidence and I've  
21 given you the reason for it I don't want you to think  
22 we're trying to keep something from you That is a  
23 longstanding tradition and rule in the Court of General  
24 Sessions that the Defendant's Record, is not automatically  
25 placed into evidence before the jury, because of the



## THE STATE V TARREN LEE RICHBURG

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1 prejudicial impact that it may have All right, anything  
2 further now from the State?

3 Mr Graustein No, Your Honor, would you care to  
4 have the certified copy?

5 The Court Please And, Mr Bellamy, do you  
6 contest the fact, that there are previous convictions, in  
7 fact, three previous convictions, drug convictions for Mr  
8 Richburg?

9 Mr Bellamy No, sir, Your Honor Other than the  
10 fact, and I don't think it makes a difference in this case  
11 Two of those convictions occurred simultaneously, I believe,  
12 which would then merge into one offense, I believe, so  
13 technically it would be a third This would be a third, not  
14 a fourth, but I don't think again for purposes of sentencing  
15 that makes a difference

16 The Court All right And, of course, the  
17 sentencing then will be under the third as the prosecutor  
18 had notified your Defendant that this was a third offense  
19 conviction

20 Mr Bellamy Right

21 The Court All right, and Mr Solicitor tell us,  
22 what are the penalties, maximum and minimum for third  
23 offense, trafficking cocaine, between ten and twenty-eight  
24 grams?

25 Mr Graustein The minimum sentence, Your Honor,

## THE STATE V TARREN LEE RICHBURG

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1 is twenty-five years, a maximum sentence is thirty years,

2 Your Honor

3 The Court All right Anything further now from  
4 the State?

5 Mr Graustein No, Your Honor

6 The Court And Mr Bellamy, do you have something  
7 you wish to say?

8 Mr Bellamy Briefly, Your Honor Obviously,  
9 certainly we respect the jury's verdict We may disagree  
10 with it, but we certainly respect it We felt like there  
11 were some issues that needed to be litigated, and we did  
12 Obviously the jury was out a substantial period of time in  
13 light of the length of the testimony in this case As the  
14 Court's aware, this is a particular crime or sentence range  
15 which carries eighty-five-percent of virtually day for day

16 Tarren is twenty-eight years old Certainly, we  
17 would ask the Court to consider the minimum sentence which  
18 is extremely severe to him at his age, or at any age quite  
19 frankly This amount of drugs, certainly isn't small but we  
20 are certainly not dealing with someone who is a high level  
21 involved in anything, and we would ask the Court to consider  
22 sentencing at the bottom, or the minimum, and I say minimum  
23 but it is certainly very severe Thank you

24 The Court All right Now back to our jurors who  
25 have come in the room for just a moment by way of

## THE STATE V TARREN LEE RICHBURG

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1 explanation Under South Carolina law we use what, and this  
2 is the General Assembly, this is the law of the State, the  
3 General Assembly's requirement that drug sentences and drug  
4 charges are sentenced in what we call a graduated scheme  
5 If you have a prior drug offense then it counts as a first  
6 offense no matter what, the second or third offense may be  
7 Now this is a trafficking cocaine third offense

8 Now Mr Richburg's previous offenses were possession  
9 with intent to distribute powder cocaine, and possession  
10 with intent to distribute powder cocaine, that again, as  
11 well as a possession with intent to distribute marijuana,  
12 which means he had a certain level of those drugs and that  
13 it was sufficient to rise to the level that a presumption  
14 was made that he was distributing as oppose to having those  
15 for personal use

16 Now, this was a trafficking case Trafficking, of  
17 course, is greater than the distribution Trafficking is  
18 greater than possession And although this is not the third  
19 trafficking offense, it is the third drug offense and thus  
20 it is prosecuted as a trafficking third

21 Now I want to tell you something These decisions  
22 and these things just don't occur in a vacuum Mr Richburg  
23 was not brought in here by the State and subjected straight  
24 up to these charges Mr Richburg had an opportunity to  
25 plead guilty to these charges He had an opportunity, it is

## THE STATE V TARREN LEE RICHBURG

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1 my understanding and I am not involved in this, because the  
2 Court is not on the side of the prosecution nor on the side  
3 of the defense, it's just here to see that the trial is  
4 fair But I am told that Mr Richburg had an opportunity to  
5 plead to this charge with a sentence of four years being  
6 recommended by the State He declined to do so And prior  
7 to this trial beginning, he had an offer to plead guilty  
8 from the State with a cap of twelve years to a lesser  
9 included offense with a cap of twelve years with the Court  
10 given the discretion to sentence anywhere between five,  
11 which would have been the minimum for it, and twelve, and  
12 Mr Richburg declined to do that This is his decision We  
13 discussed it at length His attorney recommended that he  
14 accept the plea He did not And, again, it is fully Mr  
15 Richburg's decision, but I wanted you to have this history  
16 of where we find ourselves And under South Carolina law  
17 there is a mandatory minimum twenty-five-year sentence for  
18 this, third offense trafficking That is the minimum  
19 sentence that can be given by the Court

20 Now, Mr Richburg, if you have something you wish to  
21 say, sir, I would be glad to hear from you

22 Mr Richburg Yes, sir Please Yes, sir  
23 Please, Your Honor, don't give me no twenty-five years  
24 I've got three kids and one of them is just two years old,  
25 Your Honor, that is over half his life, Your Honor I mean

## THE STATE V TARREN LEE RICHBURG

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1 I take the twelve, but I just ain't been, I just ain't been  
2 guilty, but like you said it's been left up to the twelve  
3 hands of the jury

4 Your Honor, I don't, I don't, I don't feel like I'm  
5 guilty, I mean it's just that I don't know some words being  
6 messed up and all kinds of stuff When the officers got up  
7 there and took the stand Your Honor, I know they were  
8 telling a --- I know they was telling a lie out the gate I  
9 know I bad, I bad, Your Honor I ain't mean to get all  
10 that I know they weren't telling the truth off the gates

11 The Court Well, Mr Richburg, why didn't you take  
12 the stand and tell that then, sir? Now please remember, I  
13 discussed with you your right to testify, and I told you  
14 that if you wished to testify you would have an opportunity  
15 before this jury to testify

16 Mr Richburg Yes, sir, I was scared of my  
17 credibility cause my lawyer was saying if I did they were  
18 going to try to bring everything up out the past

19 The Court Well, let me make sure that you and I  
20 understand this, because I asked you directly about this  
21 being your decision, not what your lawyer was telling you,  
22 not what anyone else was telling you, but this was your  
23 decision, that you yourself voluntarily made Do you  
24 understand that, sir?

25 Mr Richburg Yes, sir Yes, sir I made that

## THE STATE V TARREN LEE RICHBURG

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1 decision Your Honor, now I feel like I made stupid one then  
2 I just can't do twenty-five I got three kids Your Honor,  
3 and an old lady The house ain't paid for The kids is  
4 just in school They really ain't got too much on their  
5 back right now, Your Honor

6 The Court Yes, sir

7 Mr Richburg Just please have some sympathy on  
8 me Please

9 The Court All right, sir Anything further now,  
10 Mr Bellamy?

11 Mr Bellamy No, sir

12 The Court All right, I want to state for the  
13 record, because this may be an issue at Post Conviction  
14 Relief That, Mr Bellamy, you have provided against a  
15 strong case with strong evidence against Mr Richburg,  
16 including eye witness evidence from a police officer who was  
17 a credible witness to provide an excellent defense for Mr  
18 Richburg And, in my eight years of presiding over criminal  
19 courts, Mr Richburg has made one of the most unwise  
20 decisions I have ever seen, sir Your lawyer begged you to  
21 take plea arrangement

22 Mr Richburg Yes, sir

23 The Court And he -- not only the first one that  
24 was offered to you which was a four-year sentence at a  
25 minimum service requirement Now you have twenty-five-years

## THE STATE V TARREN LEE RICHBURG

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1 at 85% service requirement, sir, and the reason for it is  
2 that you never engaged, you came in you told me you wanted  
3 to fire your lawyer You told me you didn't know anything  
4 about the case You had no idea it was being called for  
5 trial And the reason for that, let me finish

6 Mr Richburg Uh-huh

7 The Court Is that sir, you've never engaged with  
8 this, you've never worked with your lawyer, you'd never come  
9 forward to make the decisions that were in your best  
10 interest You just simply let it bump right by you and find  
11 yourself where you find yourself today The Court has no  
12 discretion But, I want to make sure this record is clear  
13 that what's happened here is not Mr Bellamy's fault, and  
14 not something Mr Bellamy has done He's provided an  
15 outstanding defense for you on facts that were overwhelming  
16 against you And what this Court cannot understand is why,  
17 sir, even though you didn't wish to go to prison for any  
18 time you wouldn't realize that there was overwhelming  
19 evidence against you, you had these prior charges against  
20 you, this was a twenty-five-year mandatory minimum, but yet,  
21 sir, you just would not take any action to become proactive  
22 even in your own defense So today you find yourself where  
23 you are, and I am so sorry to say because of your actions,  
24 and not because of Mr Bellamy's, or the Court, or anyone  
25 else for that matter, and certainly not the jury, they

## THE STATE V TARREN LEE RICHBURG

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1 simply made a decision on the facts as to whether you were  
2 guilty of this offense

3 In the course of this trial, the Court in effect  
4 assisted you, Mr Richburg, by excluding the fact that you  
5 had, eleven hundred dollars cash, on you at the time you  
6 were arrested, upon Motion of your attorney That  
7 information did not go to the jury That could have been  
8 used as evidence against you, but to prevent any prejudice  
9 arising from that fact the Court excluded it You have been  
10 given every opportunity, sir, and every chance you have been  
11 accorded a full and fair trial before a jury of your peers  
12 For all of these reasons the Court finds it appropriate to  
13 sentence you to twenty-five-years in the Department of  
14 Corrections, and that, sir, is the sentence of the Court

15 I am going to remand you now to the detention center  
16 and I want you to depart with corrections

17 Mr Richburg Can I least tell my wife before I go  
18 out?

19 The Court No, sir Good luck to you, sir Mr  
20 Bellamy, the record should reflect that the statute also  
21 requires a fifty thousand dollar fine, and this is a non  
22 suspendable sentence, and that is the sentence of the Court

23 Mr Bellamy Thank you

24 The Court Good luck to you, Mr Bellamy Ladies  
25 and gentlemen, Mr Graustein, sir, good look to you, Officer



## THE STATE V TARREN LEE RICHBURG

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1 Jolliff

2 Ladies and gentlemen of the jury, I am going to  
3 speak beyond you, counsel, to our jurors who remain We  
4 have to do some difficult things here, and I wanted you to  
5 see the end result of that I don't want you to feel in any  
6 way responsible for what has happened here You made a  
7 decision on the facts You made the appropriate decision  
8 The evidence was crystal clear and strong I hope that this  
9 experience has been a positive one I don't know that you  
10 feel that way right now having to watch the final result,  
11 but I do thank you for your service You are free to go  
12 If you have any questions, I would be glad to answer them  
13 but if you just wish to leave you are free to do so

14 (Whereupon, the trial of this case was  
15 concluded at 1 10 p m on June 5, 2007 )

16 -- End of Transcript -

## Certificate of Reporter

212

I, the undersigned Pamela Ozment-Cartee, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record in the above captioned case, relative to Appeal, in the Circuit Court for Horry County, South Carolina on the 4th and 5th day of June 2007

I further certify that I am neither kin, counsel, nor interested in any party hereto

November 8, 2007

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Pamela Ozment-Cartee  
Circuit Court Reporter

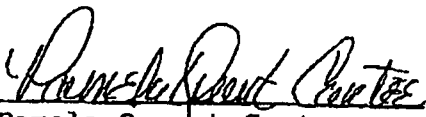
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November 8, 2007

  
Pamela Ozment-Cartee  
Circuit Court Reporter

STATE OF SOUTH CAROLINA )

County of Horry )Tarren Lee Ruchburg #271746 )

Full name and prison number of any of applicant )

v )

State of South Carolina )

Name of Respondent )

In the Court of Common Pleas

C/A 10-CP-26-11APPLICATION FOR  
POST-CONVICTION RELIEF574 HORRY COUNTY  
11 JAN 19 PM 1 37  
MELANIE P. EGGS-WARD  
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court it shall be in writing (legibly, handwritten or typewritten) signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

- 1 Place of detention Broad River C I
- 2 Name and location of Court which imposed sentence Horry County Court house,  
Curry S.C. 29526-0622
- 3 The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed
  - (a) 06-GS-26-4824
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
- 4 The date upon which sentence was imposed and the terms of the sentence
  - (a) 6-05-07 25 years
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_

- 5 Check whether a finding of guilty was made
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty ✓ \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
- 6 Did you appeal from the judgment of conviction or the imposition of sentence? \_\_\_\_\_  
Yes
- 7 If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed
- i S.C. Court of Appeals
- ii \_\_\_\_\_
- iii \_\_\_\_\_
- (b) the result in each such Court to which you appealed
- i Judgment Affirmed
- ii \_\_\_\_\_
- iii \_\_\_\_\_
- (c) the date of each such result
- i April 27, 2010
- ii \_\_\_\_\_
- iii \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results
- i \_\_\_\_\_
- ii \_\_\_\_\_
- iii \_\_\_\_\_
- 8 If you answered "no" to (6) state your reasons for not so appealing
- (a) \_\_\_\_\_
- (b) N/A
- (c) \_\_\_\_\_
- 9 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully
- (a) Ineffective Assistance of Appellate Counsel
- (b) Prosecutorial Misconduct
- (c) Ineffective Assistance of Counsel

10 State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) See attached Page "A"

(b) See attached Page "B"

(c) See attached Page "C"

11 Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law

Yes

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)

No

(d) any other petitions motions or applications in this or any other Court?

Yes

12 If you answered "yes" to any part of (11) list with respect to each petition, motion or application

(a) the specific nature thereof

I

Direct Appeal

II

III

IV

(b) the name and location of the Court in which each was filed

I

S.C. Court of Appeals

II

III

IV

(c) the disposition thereof

I

Judgment Affirmed

II

III

IV

(d) the date of each such disposition

- I April 27, 2010
- II \_\_\_\_\_
- III \_\_\_\_\_
- IV \_\_\_\_\_

(e) if known citations of any written opinions or orders entered pursuant to each such disposition

- I \_\_\_\_\_
- II \_\_\_\_\_
- III \_\_\_\_\_
- IV \_\_\_\_\_

13 Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? Yes

14 If you answered "yes" to (13), identify  
(a) which grounds have been presented

- I \_\_\_\_\_
- II \_\_\_\_\_
- III \_\_\_\_\_

(b) the proceedings in which each ground was raised

- I \_\_\_\_\_
- II \_\_\_\_\_
- III \_\_\_\_\_

15 If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

16 Were you represented by an attorney at any time during the course of

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial if any? Yes
- (c) your sentencing? Yes
- (d) your appeal if any from the judgment of conviction or the imposition of sentence?

Yes

(c) preparation presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes

17 If you answered "yes" to one or more parts of (16) list

(a) the name and address of each attorney who represented you

1. Tru 1 - Scott Kelly 1206 1<sup>st</sup> Ave. Boston, MA 02126

11 D. cult. Hapent - Koth ne H. Hualyais 13300 w/ST. Ser. 101 = 1000 m. 26.2° 210° 3, 12

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(b) the proceedings at which each such attorney represented you

Total

11 Daniel Hyman

111

**18 State clearly the relief you seek in filing this application**

Viscous sentence with prepositional phrase - question indicator word for viscous sentence with prepositional phrase immediate release condition - Alex-Tice 1

19 Are you now under sentence from any other court that you have not challenged?

No



STATE OF SOUTH CAROLINA )  
COUNTY OF Horry )

VERIFICATION

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574

I Tarrell Lee Richburg, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application that I know the contents thereof that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application and that the matters and allegations therein set forth are true

Tarrell Lee Richburg

Sworn to and subscribed before me  
This 29th day of September 2010

Susan J. Johnson

Notary Public for South Carolina

My Commission Expires \_\_\_\_\_ My Commission Expires  
March 5, 2018

HORRY COUNTY  
11 JAN 19 AM 1:31  
CLERK OF COURT

**APPLICATION TO PROCEED WITHOUT PREPAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I Tarrell Lee Richburg, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true

- (1) I am the applicant in this action and I believe I am entitled to redress
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor

X Tarrell Lee Richburg  
Applicant

Sworn to and subscribed before me

This 28th day of September 2010

Susan J. Johnson

Notary Public for South Carolina

My Commission Expires \_\_\_\_\_  
My Commission Expires \_\_\_\_\_ March 5, 2018

11

574

Ineffective Assistance of Appellate Counsel. Appellant 1

- 1) Counsel was ineffective for failing to argue on direct appeal that trial counsel was ineffective for failing to move to suppress evidence
- 2) Claims of ineffective assistance of counsel generally are limited to collateral review and ordinarily will not be considered on direct appeal.
- 3) There is a narrow exception to this rule when the defendant raises an objection at trial or when the trial record clearly reflects grounds for the ineffective assistance claim see, e.g., US v Theodore, 350 F3d 113 (1<sup>st</sup> Cir 2003) (Court may review ineffective assistance on direct appeal because record sufficiently developed due to issues previously being raised), US v Fuchs, 467 F3d 889, 910 n.15 (5<sup>th</sup> Cir 2006) (Court may review ineffective assistance claim on direct appeal because charged trial counsel after conviction, and new counsel argued in not on for new trial that trial counsel was ineffective) In this case Applicant attempted to relieve trial counsel. see also US v Alterman, 433 F3d 1148, 1161 n.6 (4<sup>th</sup> Cir 2006) (Court may review ineffective assistance claim on direct appeal because claim concerned specific conversation in record). Applicant's attempt to relieve trial counsel, concerned a specific conversation in record, Tr/Tt-p 39, Ln 25, pg 40, through pg. 43, his oral motion to relieve counsel was denied.
- 4) The record clearly reflects that trial counsel laid the proper foundation to move to suppress the drugs allegedly thrown by the Applicant. Per Osvaldo Santiago - Cross Examination by Mr. Bellamy Tr/Tt pg. 96, Ln 5-25 and pg 97 Ln 1-14 Trial counsel established that Santiago could not identify the evidence, then proved that Santiago not only violated Hurry County Police Department's standard procedure/policy but that Santiago clearly violated the chain of custody where Santiago "would be in what is called a chain of custody, of that piece of evidence ..

A1:

.. And your name, therefore, should be reflected in the chain of custody log, should it not?' Santiago answered "That is correct" not once, but twice.

- 5) At trial, trial counsel focused on establishing that the chain of command was broken. Counsel through examination proved that Santiago who suppose to sign the evidence bag and that Santiago who found the evidence could not say for certain that when shown the evidence in court that it was the same evidence allegedly found. ~~Moreover~~, the trial record clearly reflects that counsel proved that Santiago not only violated Harry County Police Department's standard procedure/policy, but the chain of custody as well, properly laying a foundation to move to suppress the evidence. The trial record is clear that why he fail to do this is an intentional act where the Applicant attempted to relieve trial counsel.
- 6) Pursuant to Ditch v Grace, 479 F.3d 244 (3<sup>rd</sup> Cir. 2007) counsel's failure to seek suppression of identification made at preliminary hearing was not prejudicial because no reasonable probability, given strength of government's case, that result of proceeding would have been different.
- 7) The record clearly reflects and it is undisputable that <sup>counsel</sup> ~~it~~ moved to suppress the only evidence against Applicant, the state could not prove the charge of trafficking and it would of been nothing left for trial counsel to do but to move for and be granted a directed verdict.
- 8) THEREFORE, Applicant counsel was ineffective for failing to argue on direct appeal, where the trial record clearly reflected that trial counsel was ineffective for failing to move to suppress evidence, where trial counsel laid the proper foundation for suppression and the record reflects it as an intentional act where Applicant attempted to relieve trial counsel. US v Gray, 213 F.3d 509 (10<sup>th</sup> Cir. 2000) (court may review ineffective assistance claim on direct appeal because record sufficiently developed); US v. Toms, 136 F.3d 176 (D.C. Cir. 1998) (court may review ineffective assistance

claim, if trial court record alone shows definitely it is either conclusively entitled to relief or to no relief).

- 4) WHEREFORE, Applicant counsel was ineffective for failing to argue on direct appeal that trial counsel was ineffective for failing to move to suppress evidence.

A3:

- 1) In conduct, The Prosecutor's duty in a criminal prosecution is to seek justice ~~THEREFORE~~ prosecutor should "prosecute with earnestness and vigor," but may not use "improper methods calculated to produce a wrongful conviction." Prosecutor at misconduct justifies declaring a mistrial when it "substantially affects" the trial with unfairness as to make the resulting convictions a denial of due process.
- 2) During closing argument the prosecutor stated "The defense has not put up anything to say Officer Santiago wasn't telling the truth," (Tr. Pg. 164 Lines 13-14) Later in closing the prosecutor stated, "they testified and there is nothing that the defense has produced to say those events did not occur. And especially that what Officer Santiago testified to, and what he, and observed during that stop, and during that encounter, that what he saw did not happen" (Tr. Pg. 166 line 22 - Pg. 167 Line 1).
- 3) The Fifth Amendment forbids comments by the prosecution on the defendant's silence. Doyle v. Ohio, 94 S Ct 2240 (1976), Britt v. California, 85 S Ct 1229 (1965). The state may not comment on a defendant's exercise of a constitutional right. Edmond v. State, 534 S E2d 682 (2000). Specifically, the solicitor must not comment, either directly or indirectly, on a defendant's silence, failure to testify, or failure to present a defense. McFadden v. State, 539 S E2d 391 (2000) (citing State v. Cooper 514 S E2d 584 (1994); Johnson v. State, 480 S E2d 733 (1997)). In State v. Sweet, 536 S E2d 91 (2000) the court of Appeals reversed the defendant's conviction, finding the solicitor's comment that only the defendant could rebut the testimony of two accomplices who incriminated him a constitutional prejudicial comment on the defendant's failure to testify. The court in Sweet found the judge should have given a curative instruction or declared a mistrial. The judge in the present case gave a curative instruction, but the instruction failed to cure the constitutional violation. The test

B 1:

It granting a new trial for improper closing arguments whether the solicitor's comments so infects the trial with unfairness as to make the result of conviction a denial of due process. Perkins v. Wainwright, 106 S Ct 2464 (1986), Donnelly v. Dechert, 94 S Ct 1868 (1974) When a Doyle violation is alleged, the appellate court applies the harmless error analysis from State v. Pickens, 446 SE2d 364 (1994) To be harmless, the record must establish that (1) the reference to the defendant's right to silence was a single reference, (2) the solicitor did not tie the defendant's silence directly to his exculpatory story, (3) the exculpatory story was totally implausible, and (4) the evidence of guilt was overwhelming. Id. at 466 SE2d at 366 Despite the curative instructions given in the present case, the error is not harmless.

4) The prosecutor made reference to the right to Applicant's remain silent and right to present a defense on two separate occasions. He tied those rights to the exculpatory story and that story was not totally implausible. Lastly, the state failed to present overwhelming evidence on Applicant's guilt. A jury could have disbelieved Officer Santoro's testimony and concluded that the passenger who entered the store or an individual in the parking lot, dropped the cocaine.

5) The present case is distinguished from State v. Gill, 552 SE2d 26 (2001), where the court found that any prejudice caused by the prosecutor's comments was cured by judge's curative instructions. The comment made by the prosecutor in the present case, unlike in Gill was a direct comment on Applicant's right to present a defense. Additionally, in Gill, the court found the evidence of guilt was overwhelming, a fact not present in the present case.

B 2:

1) Ineffective Assistance of Counsel The sixth (6<sup>th</sup>) Amendment of the US Const. guarantees the right of effective assistance of counsel in criminal prosecutions. See Yarborough v Gentry, 540 US 1, 4 (2003), see also McMann v Richardson, 397 US 754, 771 n 14 (1970) (6<sup>th</sup> Amendment right to effective assistance applies to both retained and appointed counsel).

2) To obtain reversal of a conviction, the defendant must prove that counsel performance fell below an objective standard of reasonableness and that counsel's deficient performance prejudiced the defendant, resulting in an unreliable or fundamentally unfair outcome in the proceeding. Ottey v Kearney, 464 F.3d 401, 422-23 (3<sup>rd</sup> Cir. 2006) (counsel's failure at sentencing phase to fully investigate and present mitigating evidence of defendant's traumatic and abusive childhood was prejudicial because reasonable probability that jury would have reduced sentence), Stewart v Wolfenbarger, 468 F.3d 338, 361 (6<sup>th</sup> Cir. 2006) (counsel's failure to investigate favorable witnesses to call 2 additional alibi witnesses was prejudicial because testimony 'would have severely undercut' prosecution's strongest witness).

3) Counsel was ineffective for failing to investigate the 911 call and/or the Bolo Report, cause if counsel would have investigated he would have seen the differences in the two cars. Which the one car per the 911 call and/or Bolo report was off white in color, with big rims and tinted windows.

Applicant's car was white, with no rims and no tint on the windows.

THEREFORE, Applicant's car did not match the description, as Sgt Green testified to at trial that Corp Santiago gave Tr 1 Tr Pg 59, Ln 15. And the officers had no probable cause to stop Applicant's car.

4) Per Tr 1 Tr Pg 59, Ln 3-5, Sgt Green was asked "And this Bolo having been issued, is that what led to the incident with you and the Defendant?"

Sgt Green answered "Yes, sir." Indicating the Bolo report was the reason for stopping Applicant's car.

- 5) If counsel would have investigated into all call and/or Bulu Report he would have discovered the above and argued that the officers had no probable cause to stop Applicant's car.
- 6) Pursuant to State v. Green, 499 S.2d 817 (1997) 'the fruit of the poisonous tree doctrine holds, that where evidence would not come to light but for the illegal actions of the police, and the evidence must be excluded.' THEREFORE, applying the standard in Green to this case, a reasonable counsel would have moved to suppress all evidence from an illegal stop because the lack of probable cause, once the evidence was suppressed, it was nothing left for counsel but to move for and be granted directed verdict.
- 7) This court could also consider that counsel was ineffective for failing to investigate and argue that the stop by police of Applicant, violated the 4th Amendment.
- 8) Although an officer may conduct a brief investigative stop of a vehicle (see Delaware v. Prouse, 49 S.Ct 1391 (1979)), such a stop must be justified by "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Terry v. Ohio, 88 S.Ct 1868 (1968) United States v. Brignoni-Ponce, 95 S.Ct 2574 (1975). The US Supreme Court recognized the difficulty in defining "the elusive concept of what cause is sufficient to authorize police to stop a person," and concluded that the essence of the elusive concept was to take the totality of the circumstances into account and determine whether the detaining officer has "a particularized and objective basis for suspecting the particular person stopped of criminal activity." United State v. Cortez, 101 S.Ct 640 (1981) "This demand for specificity in the information upon which police action is predicated is the central teaching of the Supreme Court's Fourth Amendment jurisprudence." Terry v. Ohio, supra. Temporary detention of individuals during stop of an automobile by police, even if only for a brief period and for a limited purpose, constitutes

C 2:



"seizure" of person with a meaning of Fourth Amendment. State v Williams, 571 SE2d 703 (SC App 2002) An individual is "seized" with the meaning of the Fourth Amendment when an officer restrains his freedom, even if the detention is brief and falls short of arrest. Skate v State, 448 SE2d 560 (SC 1994) When a defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance the defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded. Skate v State, sup.

9) Sgt Green was the first officer to arrive on the scene and the one who stopped the Applicant. His initial version of facts were that he stopped the Applicant because he recognized Applicant and that he knew Applicant was driving with no license. Applicant had since grown dreadlocks so that story was not believable so Green changed his story at trial saying he stopped Applicant per a 911 call and/or Bulot Report on a stolen car. An investigation into the description of the car would of revealed that the stolen car had tinted windows and bays. Applicant's car was white, with no rims, no tinted windows. There is no way any reasonable officer having a particularized description of the vehicle would of mistaken Applicant's vehicle for the stolen vehicle.

10) THEREFORE, it is clear from the evidence adduced that Green, the officer that stopped and detained Applicant, did not have the requisite particularized basis for suspecting the driver of Applicant's white car of criminal activity, i.e., stealing a car with bays and tinted windows.

11) The officer did not radio in the license plate of the white car he was following for about four (4) minutes in order to ascertain the ownership thereof, and/or to see if in fact the car was stolen. He failed to obtain a particularized description of the vehicle, he had no other knowledge or suspicion that the vehicle had been involved in any other serious criminal activity, no traffic violation of any kind has been made.

12) Pursuant to Terry v Ohio, sup., the United States Supreme Court held that

“No right is held more sacred, or more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraints of interference of others, unless by clear and unquestionable authority of law.”

13) It can be concluded that Green's action was grossly unreasonable and specifically Green's lack of specific information resulted in an unreasonable government intrusion.

14) Pursuant to Vasquez v. State, 443 S.E2d 474 (Ga. 1994), police officer who stopped white van on suspicion that driver was drunk and had committed hit-and-run did not have requisite particularized basis for suspecting driver of criminal activity and, thus, stop of vehicle constituted unreasonable government intrusion where police officer did not have particularized description of vehicle that allegedly committed hit-and-run, did not know direction in which vehicle had left scene of purported hit-and-run, had not observed criminal activity, on part of driver, and had no knowledge or suspicion that white van had been involved in other similar criminal behavior. U.S.C.A. Const. Amend. 4. Thus, the trial court grant of motion to suppress was upheld as appropriate.

15) The facts in this case are too close for comfort. Trial counsel laid the proper foundation to move to suppress all evidence because the stop of vehicle constituted unreasonable government intrusion. U.S.C.A. Const. Amend. 4, but failed to follow through by moving to suppress all evidence thus constituted Ineffective Assistance of Counsel. Where it is undisputable that the motion to suppress all evidence could have been granted and then it would of been nothing left for counsel to do but to move for and be granted a directed verdict.

16) Ineffective Assistance of Counsel, Counsel was ineffective for failing to move to suppress where counsel laid the proper foundation.

17) Applicant repeats paragraph #4 through #7 of page 'A' as if repeated herein verbatim and state:

- 18) Ineffective assistance of counsel was reflected for failing to object to the drugs being entered into evidence where the state failed to prove a sufficient chain of custody. A complete chain of evidence tracing possession from the evidence in trial control to its final analysis must be established as far as practicable. State v. Carter, 544 S.E.2d 835 (2001). A missing link in a chain of custody creates an issue of admissibility. Id. If a substance has passed through multiple custodians, it must not be left to conjecture concerning who had the evidence and what was done with it between the taking and the analysis. State v. Joseph, 491 S.E.2d 275 (1997). A party offering into evidence fungible items such as drugs and blood sample, must establish a chain of custody as far as practicable. State v. Cobb, 426 S.E.2d 306.
- 19) It is well established that Santiago could not identify the evidence and not only did his action violate Hor, County Police Department's standard procedure/policy, but that Santiago clearly violated the chain of custody.
- 20) THEREFORE, it is undisputable that counsel was ineffective for failing to move to suppress where counsel laid the proper foundation.
- 21) Ineffective Assistance of Counsel. Counsel was ineffective for actively representing conflicting interests, where counsel was/ is friends of the state's witnesses.
- 22) In Cuyler v. Sullivan, 446 U.S. 335, 350 (1980), the Supreme Court ruled that a defendant can demonstrate a Sixth Amendment violation by showing that (1) defense counsel was actively representing conflicting interests, and (2) the conflict had an adverse effect on specific aspects of counsel's performance. see U.S. v. Infante, 404 F.3d 376, 392 (5th Cir. 2005) (conflict of interest because counsel had not fully terminated his friendship with two of the state witnesses and did vouch as to the credibility of these two witnesses. see also, e.g., U.S. v. Schwarz, 283 F.3d 76, 92 (2d Cir. 2002) (conflict of interest because counsel represented

CS:

- defendant in criminal case while representing organization to which defendant belonged in civil case arising from defendant's alleged crime).
- 23) U.S. v. Morris, 259 F.3d 894, 899 (7th Cir. 2001) (conflict of interest because counsel's interest in avoiding malpractice suit conflicted with his duty to effectively represent defendant in motion to withdraw guilty plea on grounds of false information provided by counsel) see U.S. v. Wells, 394 F.3d 725, 733-34 (9th Cir. 2005) (conflict of interest because counsel hired and paid by third operator of alleged criminal enterprise, which created "theoretical division of loyalties") Counsel had to choose between being loyal to his friend or loyal to his client.
- 24) In trial counsel closing argument he vouched as to the credibility of the state two witnesses. Tr/Tr Pg 169, Ln 9-12, Counsel stated "Before I go any further about that, let me just say this to you, I know Detective Sollitt, I know Rick Green, they are friends of mine, and I am in no way suggesting that they are corruptive bad people"
- 25) WHEREFORE, the "right to effective assistance of counsel, impaired where defense counsel operates under conflict of interest because 'counsel breaches the duty of loyalty, perhaps the most basic of counsel duties'."
- 26) MOREOVER, for the record Applicant states that if he had known that counsel was friends with two of the state's witnesses, he would not have hired counsel. Judicial Notice should also be taken to the fact that counsel said he was friends with the state's two witnesses in open court, the Judge had a duty to avoid potential conflicts of interest, especially after counsel vouched as to their credibility. Tr/Tr Pg 169, Ln 9-12.
- 27) A trial court has a limited duty to avoid potential conflicts of interest. Cuyler, 446 U.S. at 346-47. The court must initiate an inquiry if it knows or reasonably should know that a potential conflict exists - see Holloway v. Ack, 435 U.S. 475, 484-85 (1978) (court's failure to inquire into conflict of interest after defense counsel's pretrial warnings violated right to effective

assstance of counsel because court has duty to avoid potential conflicts; Hilly v. U.S., 371 F.3d 969, 974-76 (7th Cir. 2004) (counsel's successive representation of possible witness and defendant entitles defendant to evidentiary hearing to determine whether conflict created adverse effect).

28) WHEREFORE, ~~Applicant's~~ Applicant's Sixth and Fourteenth Amendment rights were violated by the court not inquiring into a clear conflict of interest and counsel vouching for states witnesses, warranting a new trial.

29) Counsel was Ineffective, for failing to bring in an expert witness to show that latent prints could have been removed from such package, thus contradicting the testimony of Det. Solit Hl stating the effort to obtain prints would have been "futile" (See Tr. Pg. 127, Ln 16). Counsel was also ineffective for failing to push for such an analysis prior to trial or having his own analysis done; counsel knew that no finger print analysis was conducted on the package found. Applicant was prejudiced because if an analysis had been performed and Applicant's fingerprint was not found on evidence, the evidence would not have been excluded, suppressed, or thrown out. THEREFORE Applicant was deprived of a complete defense.

30) Ineffective Assistance of Counsel, Counsel was ineffective for failing to object to the introduction of hearsay testimony and improper corroborations (Tr. Pg. 64 Ln 13-18) "upl Sentence came to me and said, 'Sally, while you were at the store, the individual I witnessed him throwing something; it was a plastic bag, but I witnessed him throw it. Then I went to the area where he threw it, and I picked this up.'" This is inadmissible hearsay testimony and ~~improper~~ improper corroborations. Counsel was ineffective for failing to object to its introduction. It does not fall under any of the hearsay exceptions provided under Rule 804, SCRE and was therefore inadmissible. Counsel was ineffective for failing to object, and Applicant was prejudiced by this because it

C7:

allowed just Green to improperly corroborate the testimony of Cooper  
 and also who provided the only devastating evidence against Applicant  
 31) Ineffective Assistance of Counsel - Counsel was ineffective for failing  
 to object to the Judge's curative instruction per solicitor's comment on  
 Applicant's right to remain silent by not putting up a defense (T P, 164,  
 Lines 13-14 and P, 166 Lines 22-23, 167 Line 1) No curative instructions could  
 cure the harm done where in the jury's minds the solicitor has them  
 thinking why Applicant did not testify and put up a defense Counsel  
 should have objected and moved for a mistrial holding that the harm  
 done could not be cured, that the jury as humans could not help but  
 wonder why, why Applicant remained silent and did not put up a  
 defense This is a clear violation of Applicant's Fifth, Sixth and Four-  
 teenth Amendments, where Applicant does not have to testify in his own  
 defense and can elect to remain silent Counsel was ineffective for  
 failing to do so and object to curative instructions where the harm  
 was in-curable The jury's mind was way too polluted and infected  
 to be cured And last, Applicant's due process right can not be said to  
 be upheld as to a right to a fair trial or a verdict that leaves a  
 reasonable mind in doubt as to if the jury convicted a criminal  
 defendant on his silence on his alleged failure to put up a defense  
 And also counsel failure to object to the judge's curative instruction  
 deprived Applicant of a right to preserve issue for an Appellate  
 review

CB:

HORRY C.  
11 JAN 19 PM 1:30.  
MELANIE HUGGINS-WARD  
CLERK OF COURT

Mrs. Huggins,

I filled out this form to the best of my knowledge, I wrote the Court Administrator (1015 Sumter St Suite 200/Columbia SC 29201) and they sent me the same forms with what I needed to check highlighted, and I did as so but you still send it back saying it's not completed and due to Rule 3 Act on Subject to 'ADR'. (b) Exceptions ADR is not required for (4) Post Conviction Relief (PCR) matters, this Rule is stating that this does not pertain to me and my time is steadily taking away. I got to have my PCR filed within the next 2 months or my time will expire. I'm not trying to do no Civil Action, sue nobody, I am just trying to do nothing but file my PCR Application that's all. So Please help me out, if this form is not completed please state precisely what I need to do and what I do it need to do so I can get this over with and continue with my PCR. Please thank you and May God Bless You

*Jo Huggins*

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

Tarren Lee Richburg, # 271746,

Applicant,

v

State of South Carolina,

Respondent

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT

2011-CP-26-0574

**RETURN**  
**(Attorney Appointment Requested)**

Respondent, making its Return to the Application for post-conviction relief filed January 19, 2011, by Tarren Lee Richburg, would respectfully show this Court

#### I – Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County. The Applicant was indicted in November 2006 for trafficking in powder cocaine, 10-28 grams (2006-GS-26-4824). G. Scott Bellamy, Esquire, represented the Applicant. On June 4, 2007, the Applicant was tried and convicted pursuant to a jury trial before the Honorable J. Michael Baxley. Judge Baxley sentenced the Applicant, as a third-time drug offender, to 25 years. A notice of appeal was timely filed, and Kathrine H. Hudgins, Esquire, represented the Applicant on appeal. The South Carolina Court of Appeals affirmed the conviction on April 12, 2010 (2010-UP-235). The case was remitted to the circuit court on May 4, 2010.

Incorporated herein by reference are the records of the Horry County Clerk of Court regarding the conviction, the Applicant's records from the Department of Corrections, the trial transcript, and the direct appeal records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.



## II – Allegations and Relief Sought

In his Application, Mr Richburg alleges that his custody is unlawful for the following reasons

- (1) Ineffective assistance of appellate counsel,
- (2) Prosecutorial misconduct, and
- (3) Ineffective assistance of counsel

The Applicant states he is seeking to have the sentence vacated with prejudice, and/or to have the indictment quashed, and/or to have the sentence vacated with prejudice and immediate release, and/or a new trial

## III

In a post-conviction relief action, the applicant bears the burden of proving his or her allegations by a preponderance of the evidence Stalk v State, 375 S C 289, 297, 652 S E 2d 402, 405 (Ct App 2007) (citations omitted), Rule 71 1(e), SCRCP “Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that ‘counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result ’” Dalton v State, 654 S E 2d 870, 873 (Ct App 2007) (citing Strickland v Washington, 466 U S 668, 669 (1984), Butler v State, 286 S C 441, 334 S E 2d 813 (1985)) The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases Id

A two-pronged test is used to evaluate allegations of ineffective assistance of counsel Dalton v State, 654 S E 2d 870, 873 (Ct App 2007) “In order to prove that counsel was ineffective, a PCR applicant must show that (1) counsel’s performance was deficient, and (2) there is a reasonable probability that, but for counsel’s errors, the result of the trial would have been different ” Smith v State, 375 S C 507, 515, 654 S E 2d 523, 527-28 (2007) (citations

omitted) ‘A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial ’ Id (citations omitted) “Furthermore, when a defendant's conviction is challenged, the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt Id (citations omitted) “There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case ” Id (citations omitted) The applicant must overcome this strong presumption in order to obtain relief Stalk, supra (citation omitted)

Respondent submits that the Applicant will not be able to meet his burden of proof as to any of his claims However, because some of the allegations may raise questions of fact that the record does not conclusively refute, Respondent requests an evidentiary hearing to fully resolve the issues See Sharper v State, 279 S C 264, 305 S E 2d 247 (1983)

#### IV

Each and every allegation, claim, or statement contained within the Application not expressly admitted, qualified, or explained is DENIED

#### V

WHEREFORE, having made its Return, the Respondent requests that counsel be appointed and an evidentiary hearing held

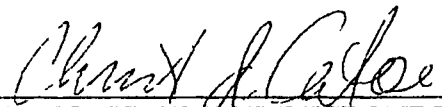
Respectfully submitted,

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March 8, 2011

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS  
2011-CP-26-00574

COUNTY OF HORRY

TARREN LEE RICHBURG,

- vs -

STATE OF SOUTH CAROLINA,

Defendant

August 23, 2011

B E F O R E

HONORABLE STEVEN H JOHN

A P P E A R A N C E S

HEATHER M CANNON, Esquire  
Attorney for the Petitioner

KRISTINA J CATOE, Esquire  
Attorney for the Defendant

Henry P Young  
Court Reporter

## I-N-D-E-X

WITNESS

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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT All right, this is  
3 2011-CP-26-574, State of South Carolina, County of  
4 Horry, post conviction relief application of Tarren  
5 Lee Richburg versus the State of South Carolina  
6 Mr Richburg has filed an application for post  
7 conviction relief in this matter alleging, among  
8 other things, ineffective assistance of appellate  
9 counsel, prosecutorial misconduct and ineffective  
10 assistance of the original counsel

11 So, anything else, Miss Catoe, that we need  
12 to place on the record before we get started?

13 MS CATOE No, Your Honor, unless you would  
14 like a procedural history on the matter?

15 THE COURT If you don't mind, that would be  
16 great

17 MS CATOE Yes, Your Honor The applicant  
18 was indicted in November, 2006, for trafficking in  
19 cocaine 10 to 28 grams as a third drug offense He  
20 was represented by Scott Bellamy He went to trial  
21 in June of 2007 and was convicted and Judge Baxley  
22 sentenced him to 25 years, which was the mandatory  
23 minimum sentence on that sentence, on that offense  
24 A direct appeal was filed but the conviction was  
25 affirmed in April of 2010 and he did file PCR in

1 January of 2011

2 THE COURT Thank you, ma'am

3 All right Miss Cannon, is the applicant  
4 ready to go forward?

5 MS CANNON Yes, sir

6 THE COURT All right, I will be glad for you  
7 to proceed

8 MS CANNON Thank you, Your Honor

9 Your Honor, I would call Tarren Lee Richburg  
10 to the stand

11 THE COURT All right, Mr Richburg, could  
12 you come forward, come right on up here, over here  
13 to the right, please, to my right

14 TARREN LEE RICHBURG,  
15 after being first duly sworn, testified as follows

16 THE COURT All right, Mr Richburg, if you  
17 could, state your full name for the record please,  
18 sir

19 THE WITNESS Tarren Richburg,  
20 R-i-c-h-b-u-r-g

21 THE COURT Very good

22 Miss Cannon

23 MS CANNON Thank you, Your Honor

24 DIRECT EXAMINATION

25 BY MS CANNON

1 Q Mr Richburg, you filed an application for  
2 post conviction relief that had several allegations  
3 and reasons that you should be granted a new trial  
4 One of those was ineffective assistance of  
5 appellate counsel Would you please tell the Court  
6 the issue that you have with your appellate  
7 counsel

8 A Yes, ma'am I filed ineffective assistance  
9 of appellate counsel for the counsel failing to  
10 argue on direct appeal that trial counsel was  
11 ineffective

12 Q She left that out of the application?

13 A Yes, ma'am

14 Q And had you asked her to include that in the  
15 application, ineffective assistance of counsel?

16 A Yes, ma'am

17 Q Okay Another one of the allegations that  
18 you make in your post conviction relief application  
19 is prosecutorial misconduct Would you please tell  
20 the Court your position on that and how you think  
21 the prosecution misbehaved, if you will, at the  
22 trial

23 A Okay I filed a prosecutorial misconduct due  
24 to the prosecutor commenting on my right to remain  
25 silent on two separate occasions



1 Q What did he say? Do you recall what he said  
2 on one occasion?

3 A Yes, ma'am It is like during the closing  
4 argument the prosecutor stated that the defense has  
5 not put up anything to say Officer Santiago wasn't  
6 telling the truth and later in the closing argument  
7 he stated there is nothing the defense has produced  
8 to say those events did not occur and especially  
9 that since what Santiago testified to and what he  
10 saw did not happen

11 Q And the prosecution said that in front of the  
12 jury, that you didn't put up a defense of any kind,  
13 is that how you recall it?

14 A Yes, ma'am

15 Q And what is the second comment that the  
16 prosecution made?

17 A His second comment was he testified there is  
18 nothing that the defense has produced to say those  
19 events did not occur and especially that what  
20 Officer Santiago testified to and what he saw did  
21 not happen

22 Q Did this, this sort of ties into ineffective  
23 assistance of counsel but what did Mr Bellamy do  
24 when the prosecutor made those statements  
25 initially?

1 A He initially objected but then the judge gave  
2 a curative instruction and during the curative  
3 instruction he refused to object to it, he didn't  
4 object to the curative instruction

5 Q All right Let's back up When the  
6 prosecution was speaking to the jury and he was  
7 saying those things about your not testifying,  
8 there was no objection from Mr Bellamy, was there?

9 A No, ma'am, not until the sentencing phase

10 Q Until after the closing argument?

11 A Yes, after the closing argument

12 Q Is that correct?

13 A Yes

14 Q Any other -- well, in addition to making  
15 those comments against you by the prosecution, how  
16 did that affect the outcome of your trial?

17 A Because this is burden shifting, it changes  
18 the, it changes the, I'm assuming it changes the  
19 way the jury was thinking because there wasn't no  
20 overwhelming evidence, none of that, and as the  
21 trial went along it could have easily been going  
22 one direction until that prosecutor's comment and  
23 changed it to the other direction

24 Q As the defendant you don't have to prove your  
25 innocence, do you?

1 A No, ma'am

2 Q And when the prosecution makes a statement  
3 like that could a jury believe you have to prove  
4 your innocence?

5 A Well, yes, ma'am, as a human being, dealing  
6 with a human being

7 Q When Mr Bellamy did not object to those  
8 comments made by the prosecution what was the  
9 effect of him not objecting to those comments?

10 A Like it just changed the whole outcome, it  
11 just leave a reasonable mind The jury convicted  
12 me as to my right to remain silent

13 Q Did you argue that on direct appeal? The  
14 fact he didn't object prevented you from arguing  
15 that on appeal, right?

16 A Yes, ma'am, it did

17 Q He didn't preserve that for appeal, did he?

18 A No, ma'am

19 Q So if he had objected to the comment you  
20 could have appealed those comments, right?

21 A Yes, ma'am, it would have been an appealable  
22 issue

23 Q And it wasn't an appealable issue, was it?

24 A No, ma'am

25 Q So that is an example of ineffective

1 assistance of counsel, is that correct?

2 A Yes, ma'am

3 Q That's your argument to this Court today --

4 A Yes, ma'am

5 Q -- in your PCR application?

6 A Yes, ma'am

7 Q Is there any other issue you have with

8 prosecutorial misconduct? Is that the only issue?

9 A Yes, ma'am, that's the only issue I have with

10 the prosecutorial misconduct

11 Q And back to your ineffective assistance of

12 appellate counsel, that was the only issue you had

13 with appellate counsel as well, is that correct?

14 A Yes, ma'am, failure to argue about the

15 ineffectiveness of my trial counsel

16 Q So you understand that whatever you testify

17 today in regard to appellate counsel and

18 prosecutorial misconduct, you can't bring those

19 issues back up, you have said your piece for today,

20 do you understand that?

21 A Yes, ma'am

22 Q Are you satisfied with what you have

23 testified to in those regards?

24 A As in the appellate counsel and prosecutorial

25 misconduct, yes, ma'am

1 Q Okay Now moving on to ineffective  
2 assistance of counsel You claim in your  
3 application one of the reasons is Mr Bellamy's  
4 lack of objecting to the comment regarding Fifth  
5 Amendment, that you testified to Is that  
6 accurate?

7 A That is one of the reasons

8 Q One of the reasons? In your application you  
9 say he failed to suppress evidence Can you talk  
10 to the Court about how Mr Bellamy failed to  
11 suppress evidence?

12 A Well, he never tried to move to suppress the  
13 evidence

14 Q Under what ground do you think he should have  
15 done that?

16 A Illegal search and seizure

17 Q What about probable cause for the stop?

18 A The probable cause, probable cause and  
19 illegal search and seizure

20 Q Tell the Court about the illegal search and  
21 seizure

22 A Okay The illegal search and seizure, on the  
23 day of my arrest Sergeant Green was the first  
24 officer that arrested me, that arrived on the scene  
25 and stopped me for no particular reason

1 Q He didn't have any reason to stop you?

2 A No, ma'am, no traffic violation, none of that  
3 being made

4 Q Why did he say he stopped you?

5 A He said he stopped me because of a BOLO  
6 report or a BOLO report of a carjacking

7 MS CANNON Your Honor, if I may approach?  
8 I have shown these two reports to Miss Catoe, she  
9 doesn't object to my referring to them

10 THE COURT Very good

11 BY MS CANNON

12 Q Mr Richburg, you have two incident reports  
13 there in front of you that I just handed up The  
14 one on the left is, what is that, a BOLO report?

15 A Yes, ma'am

16 Q Tell the Court about the BOLO report

17 A The BOLO report is dealing with the victim  
18 Marcus Beaty I guess he had stated that he has  
19 been carjacked Well, I'm just going to read the  
20 BOLO report Is that all right?

21 Q You can't read the BOLO report Sum it up  
22 What is the problem with the report? It is a false  
23 report, right?

24 A Yes, ma'am

25 Q All right So this guy called in and he says

1 his car had been stolen?

2 A Yes He called in and told about a  
3 carjacking which he said they pulled up to his  
4 house and carjacked him at gunpoint and it was a  
5 white Caprice with two black males, and after  
6 further investigation it was showed that the guy  
7 gave false information to the police and got cited  
8 for that

9 Q What time was that BOLO report taken?

10 A At 12 00 -- say from 12 45 to 1 00 o'clock,  
11 1300 hours, on 8/31/06

12 Q Okay And who was the officer who wrote that  
13 incident report?

14 A Sergeant Green was the approving officer

15 Q All right Now, you've got another incident  
16 report right beside it That is the incident  
17 report about you, is that correct?

18 A Yes, ma'am

19 Q What time was that report?

20 A At 1400 hours, which I believe is 2 00  
21 o'clock

22 Q After the BOLO report?

23 A Yes, ma'am, after the BOLO report

24 Q Who was the officer on your report?

25 A The same officer, Sergeant Green

1 Q All right What is wrong with those two  
2 reports? Why does he stop you, in your report?

3 A He say he stopped me with dealing with the  
4 carjacking that took place The carjacking took  
5 place at 12 45 to 1 00 o'clock, which he said he  
6 stopped me, he had prior knowledge knowing this  
7 carjacking was being based on false information  
8 After he had the prior knowledge of that he still  
9 go along, which is an hour later, and stopped my  
10 car dealing with the same bogus BOLO report

11 Q So you are saying that the reason he stopped  
12 you is because of an incident report that happened  
13 before you, that he knew was false?

14 A Yes, ma'am

15 MS CATOE Object, Your Honor I don't know  
16 how he would know what the officer knew at the  
17 time

18 THE COURT I appreciate that I'll allow  
19 the question and the answer, I will allow you to  
20 cross examine him or any other witnesses that come  
21 forward

22 BY MS CANNON

23 Q That is the reason you put in your post  
24 conviction relief application, that there was no  
25 probable cause to stop you?



1 A Yes, ma'am

2 Q And that Mr Bellamy should have moved to

3 suppress any evidence as a result of that illegal

4 stop?

5 A Yes, ma'am, due to the bogus BOLO report,

6 illegal search and seizure

7 Q Okay That's your position?

8 A Yes, ma'am

9 Q Now, after the prosecution made the comment

10 in regard to the Fifth Amendment at near the

11 closing of that trial Mr Bellamy asked for

12 curative instructions or a mistrial?

13 A Yes, he asked for a curative instruction

14 Q He got a curative instruction, correct?

15 A Yes, ma'am, the judge granted a curative

16 instruction

17 Q And after the curative instructions were

18 given did Mr Bellamy object to the curative

19 instruction?

20 A No, ma'am

21 Q And are you saying to this Court that that is

22 ineffective assistance of counsel?

23 A Yes, ma'am

24 Q That he should have objected to the curative

25 instructions after they were given?

1 A Yes, ma'am

2 Q And he did not?

3 A Yes, ma'am

4 MS CANNON The Court's indulgence

5 THE COURT Okay Tell me when you're done,  
6 then I have a question for you

7 MS CANNON Go ahead

8 THE COURT I'm not sure I understand your  
9 point Are you saying the Court was incorrect in  
10 the law that they gave to the jury in the curative  
11 instruction?

12 MS CANNON No, sir

13 THE COURT Okay You're saying that Mr  
14 Bellamy, and I have got the record in front of me,  
15 Mr Bellamy, after the Solicitor made his argument,  
16 approached the Court, placed on the record that he  
17 either wanted a mistrial and if the Court didn't do  
18 that, if the Court didn't grant the mistrial, then  
19 he wanted a curative instruction?

20 MS CANNON Right

21 THE COURT And the Court declined to grant  
22 Mr Bellamy a mistrial, he denied his motion for a  
23 mistrial and he sustained the objection to the  
24 argument and gave the curative instruction to the  
25 jury?

1 MS CANNON Right

2 THE COURT And then Mr Bellamy made his  
3 closing argument Are you saying after Mr Bellamy  
4 had made his argument to or made his objection to  
5 the Court that after the Court made a decision that  
6 he needed to object to the decision again?

7 MS CANNON Not the decision but the  
8 instructions, after the Court gave curative  
9 instructions

10 THE COURT Are you saying the instruction  
11 the Court gave to the jury was wrong?

12 MS CANNON He should have objected to the  
13 instructions, is what my client's position is, Your  
14 Honor

15 THE COURT Saying that the judge gave the  
16 wrong instruction to the jury? What was the  
17 problem?

18 MS CANNON That it didn't satisfactorily  
19 cure the problem, Your Honor, I think

20 THE COURT But the Court had already ruled,  
21 the Court ruled, "I'm denying your motion for  
22 mistrial, I'm not going to give you a mistrial," so  
23 that issue is done and over with

24 MS CANNON Right

25 THE COURT Okay Mr Bellamy can't argue

1 that again or he faces contempt of court by the  
2 judge, all right, he can't do anything else

3 MS CANNON Sure

4 THE COURT All right The judge rules,  
5 "This is what I am going to do, I am going to give  
6 a curative instruction " He gives the curative  
7 instruction, so unless there is something wrong  
8 with the curative instruction, unless the judge is  
9 wrong what did Mr Bellamy do wrong? Mr Bellamy  
10 did what he was supposed to do, he said, "Judge,  
11 this is wrong, I want a mistrial " The judge said,  
12 "No, I'm not going to give you a mistrial " That's  
13 over and done with, okay? Mr Bellamy can't say  
14 anything else about that

15 He says, "Well, if you're not going to give a  
16 mistrial, then you got to give me a curative  
17 instruction " The Court says, "You're right, I'm  
18 going to give you a curative instruction," and he  
19 does that All right? What is Mr Bellamy  
20 supposed to do, raise the objection again? What do  
21 you think is going to happen?

22 MS CANNON He would be denied again, Your  
23 Honor

24 THE COURT He would be denied, the Court  
25 would be telling him, "Mr Bellamy, I ruled on that

1 matter, you sit down " Correct?

2 MS CANNON That's correct

3 THE COURT All right He's raised the  
4 issue, the Court has ruled on it, it is done and  
5 over All right? So, that's what I'm trying to  
6 get to What is it that Mr Bellamy did wrong  
7 here?

8 MS CANNON Well, we'll move on, Your Honor

9 THE COURT Thank you

10 MS CANNON We'll move on

11 THE COURT Thank you

12 MS CANNON The Court's indulgence, if I  
13 may

14 THE COURT Yes, ma'am, please

15 BY MS CANNON

16 Q Mr Richburg, I have reviewed my notes from  
17 your and my conversations and the key points to  
18 present to the Court today and I have presented  
19 everything in the paperwork that you and I have  
20 discussed Is there anything that we haven't  
21 raised, that you want this Court to know?

22 A Just ineffective for failing to investigate

23 Q I don't have that on my notes Please tell  
24 the Court your position on Mr Bellamy's failure to  
25 investigate

1 A Well, he failed to investigate the 911 call  
2 in or the BOLO report

3 Q Did you ask him to investigate the BOLO  
4 report?

5 A Yes, ma'am

6 Q And what did he tell you when you asked him  
7 to investigate the BOLO report?

8 A He ain't told me nothing because after I  
9 hired him he was like this whole incident revolves  
10 around a carjacking, and I'm assuming I asked him  
11 to investigate that for me and he never did

12 Q What made you ask Mr Bellamy to investigate  
13 a BOLO report? What were your concerns with that?

14 A Because I already know the police didn't have  
15 no probable cause, no reason to stop me because,  
16 like I said, no traffic violations or nothing have  
17 been made, so I was wondering why the police  
18 stopped me and when they did stop me, "That's the  
19 car, that's the car," so I heard about the stolen  
20 car incident and when I hired him I asked him, they  
21 said something about stolen car, so I had asked him  
22 could he look into that for me

23 Q Well, were there two different cars? Was the  
24 car that was reported in the BOLO report a  
25 different car than what you were driving?

1 A Yes, ma'am

2 Q How were they different?

3 A Well, the one that was reported in the BOLO

4 report was a white colored Caprice I was driving

5 an off white Oldsmobile, off white in color

6 Oldsmobile, Delta 88

7 Q Did the report also mention that you were

8 driving with a suspended driver's license or was

9 that one of the reasons the officer pulled you?

10 A No, ma'am, it just said for a suspect in a

11 carjacking

12 Q Okay All right, anything further? Did we

13 cover all the points you raised in your

14 application?

15 A I wanted to raise a chain of custody, also

16 ineffective assistance of counsel, chain of

17 custody

18 Q Tell me what the issue was with the chain of

19 custody

20 A The chain of custody, he failed to object to

21 the evidence being submitted into evidence and he

22 failed to try to suppress the evidence also due to

23 the fact that they ain't had a complete chain of

24 custody as far as practical

25 Q Does that go back to initially your testimony

1 about failure to move to suppress evidence for lack  
2 of probable cause?

3 A Yes, all that goes together

4 Q So you're saying that because they had no  
5 probable cause, everything after that stop,  
6 everything that happened in the trial was improper?

7 A Yes, ma'am

8 Q Should have been suppressed?

9 A Yes, ma'am

10 Q That would include chain of custody?

11 A Chain of custody, yes That chain of  
12 custody, it got missing links in it and he knew  
13 that there was missing links in it He never did  
14 try to object to the evidence being brought, being  
15 brought into evidence due to the missing links in  
16 the chain of custody

17 Q Okay Anything, anything else that we  
18 haven't brought to the Court's attention?

19 A A conflict of interest

20 Q What is the conflict of interest?

21 A In Mr Bellamy's closing argument he said, he  
22 stated that, "I am friends with the two witnesses "  
23 He stated he knew the two witnesses and, "I am  
24 friends with them," and he don't understand they  
25 are bad or corrupt people so in open court he let



1    them know he is their friend and he vouching for  
2    their credibility

3    Q        So you believe that was a comment that was  
4    prejudicial to you?

5    A        Yes, ma'am

6    Q        Do you believe he couldn't represent you well  
7    if he were friends with the witnesses in trial?

8    A        Yes, ma'am

9    Q        Do you believe he didn't represent you well  
10   because he was friends with them?

11   A        Yes    That is why I believe he didn't  
12   represent me well and at the beginning of my trial  
13   I was trying to relieve him but they wouldn't let  
14   me

15   Q        Did you file a motion to relieve him?

16   A        No, ma'am    It is just at the beginning of  
17   the trial I was, I told the judge that I would like  
18   to relieve him as my counsel because he ain't been  
19   representing me to the fullest and all he was  
20   telling me was to take a plea, take a plea every  
21   time I asked him about how the trial looked    He  
22   never give me no input on the trial

23   Q        Anything else?

24   A        No, ma'am, I think that about do it

25   Q        So, that concludes the issues that you have

1 with Mr Bellamy and your application for post  
2 conviction relief as a whole? That is all I have  
3 on my paperwork, if that helps you

4 A Yes, ma'am

5 Q You do understand that any issues that you  
6 don't bring before the Court today you lose the  
7 right to argue those issues in regard to this  
8 application?

9 A Yes, ma'am Before I finish I would like to  
10 ask you are these the same issues that I'm raising,  
11 failing to investigate, illegal search and seizure,  
12 conflict of interest and chain of custody, up under  
13 ineffective assistance of counsel, right?

14 Q That's correct You also discussed those  
15 things before the Court on the record

16 A Okay I just wanted to make sure on the  
17 record, I got this on the record so when I do, if I  
18 do have to take a step farther, that I got all that  
19 covered

20 Q You have it covered

21 THE COURT All right I appreciate that,  
22 counsel, but you understand, sir, this is your  
23 opportunity to raise the issues to the Court that  
24 you have?

25 THE WITNESS Yes, sir

1           THE COURT    So, are there any other issues  
2 that you have, that you want to bring to the  
3 Court's attention?

4           THE WITNESS   I would like to, the Brady,  
5 Brady violation

6           THE COURT    All right, sir, what do you want  
7 to tell me about that?

8           MS   CANNON    I don't have anything about  
9 Brady violation

10          THE COURT    I appreciate that, ma'am, I  
11 appreciate you may have some questions, I'm asking  
12 Mr Richburg what do you want to tell me about  
13 Brady? You brought Brady up, what do you want to  
14 tell me?

15          THE WITNESS   That is it, sir

16          THE COURT    I appreciate this colloquy you  
17 have had between counsel and yourself, but again  
18 now is your opportunity to raise any issue that you  
19 have    If you have any issues tell me about them  
20 Anything else you want to tell me?

21          THE WITNESS   That would be it

22          THE COURT    All right, very good

23          All right, cross-examination, Miss Catoe

24          MS   CATOE    May it please the Court, Your  
25 Honor, just briefly

1 CROSS EXAMINATION

2 BY MS CATOE

3 Q Mr Richburg

4 A Yes, ma'am

5 Q Now, you were, your car was not actually  
6 stopped by the police, is that right, you pulled  
7 into a little convenience store?

8 A Yes, but the police pulled behind me and  
9 stopped me

10 Q Okay You actually got out of the vehicle  
11 and were going to walk toward somewhere, the store?

12 A Yes, ma'am

13 Q All right And then the police officer,  
14 Sergeant Green, I believe was going to talk to you?

15 A No, he wasn't going to talk to me He put  
16 his hand on his gun and told me to stop

17 Q All right And then he determined that you  
18 had a suspended license, after speaking with you,  
19 is that right?

20 A After he handcuffed me and after pushing me  
21 against his car, pat me down and handcuff me, yes

22 Q Okay So he performed a stop and frisk of  
23 your person, he didn't find anything and then  
24 determined that your license was suspended and  
25 placed you under arrest, is that right, according

1 to what he testified at trial, is that right?

2 A Yes, ma'am

3 Q All right And you also recall when he  
4 testified that when he stopped you and talked to  
5 you he believed that the BOLO report was still  
6 valid?

7 A No, ma'am

8 Q He didn't say that at trial?

9 A No Well, I don't know if he said it at  
10 trial but he never said nothing to me At that  
11 point, at that stop he never said, "Well, we  
12 dealing with a carjacking situation, I would like  
13 to ask you some questions " He didn't never tell  
14 me nothing Stopped with his hand on his gun,  
15 "Come here," so I had came to his car When I got  
16 to his car he just pushed me against his car,  
17 patted and put the handcuffs on me, then that is  
18 when he went on proceeding about what else he was  
19 doing

20 Q He did testify at trial that the reason he  
21 stopped you was to investigate the BOLO report, is  
22 that correct?

23 A Yes, ma'am

24 MS CATOE I have nothing further Thank  
25 you

1 THE COURT Any redirect?  
2 MS CANNON Nothing, Your Honor  
3 THE COURT All right, you may step down,  
4 sir  
5 (Witness excused)  
6 THE COURT All right Miss Cannon, any  
7 further witnesses on the applicant's behalf?  
8 MS CANNON None, Your Honor  
9 THE COURT Thank you  
10 All right, Miss Catoe  
11 MS CATOE The State would call Scott  
12 Bellamy to the stand  
13 THE COURT Please come around and be sworn,  
14 sir  
15 SCOTT BELLAMY,  
16 after being first duly sworn, testified as follows  
17 THE WITNESS My name is Scott Bellamy  
18 MS CATOE May it please the Court, Your  
19 Honor  
20 THE COURT Yes, ma'am, go ahead  
21 DIRECT EXAMINATION  
22 BY MS CATOE  
23 Q Mr Bellamy, can you first tell us how long  
24 you have been practicing criminal law?  
25 A Twenty years, I believe

1 Q All right And how did you become involved  
2 in this case?

3 A Mr Richburg hired me to represent him on  
4 these criminal charges, trafficking cocaine, 10 to  
5 28 weight range, third offense

6 Q All right And can you tell us how these  
7 charges, how these charges arose, how the applicant  
8 came to be arrested?

9 A Well, through the trial and through the  
10 discovery I received, Mr Richburg was driving a  
11 car that was similar in description to a car they  
12 were looking for for a totally unrelated crime and  
13 that car, it was spotted by Sergeant Green He  
14 turned around but before he could get to the  
15 vehicle the vehicle pulled into a convenience  
16 store, stopped, the occupants got out, the police  
17 officer approached Mr Richburg to inquire of him,  
18 you know, his identity and some things of that  
19 nature

20 Officer Green testified that he did a  
21 pat-down, not a full search, did not discover any  
22 weapons, and then when he inquired about a driver's  
23 license, Mr Richburg was the driver of the  
24 vehicle, it was determined that he did not have a  
25 license, he was under suspension, and then he went

1 to place him under arrest

2 Q And what happened after he was arrested?

3 A At that point there was -- well, there was a

4 struggle, according to Officer Green, with Mr

5 Richburg in attempting to arrest him, and the

6 second officer was on the scene by then who

7 testified that he observed Mr Richburg throw down

8 an object on the ground during the struggle

9 Q And was that object ever retrieved?

10 A That officer retrieved the object and it was

11 then tested and turned out to be crack cocaine

12 Q All right And this was the applicant's

13 third drug offense?

14 A Yes He had two prior drug convictions

15 Q All right And did you meet with Mr

16 Richburg to discuss the charges?

17 A We met on a number of occasions

18 Q All right And did you discuss his version

19 of the facts?

20 A Yes, we did

21 Q Did you discuss the elements of the offense?

22 A Yes, we did

23 Q And did you review the possible punishments

24 with him?

25 A We did That under the charge that he had it



1 was a mandatory 25 year sentence, minimum sentence,  
2 if he was convicted and a maximum of 30 years if he  
3 was convicted and we went over that extensively  
4 prior to trial in an effort to make sure that Mr  
5 Richburg knew that, and Judge Baxley went over it  
6 at length to make sure he understood if he was  
7 convicted there was, he had no choice but to  
8 sentence him to 25 years

9           There had been some extensive plea  
10 negotiations between myself and the State prior to  
11 trial, prior to that week of trial and then we  
12 continued with those negotiations up until picking  
13 the jury and even after picking the jury, but Mr  
14 Richburg insisted on going to trial

15 Q       Do you recall what the first offer was?

16 A       It was to plead, I believe, to a trafficking  
17 first offense which would take him out of the 85  
18 percent and I believe it was a sentence of five  
19 years

20 Q       If the record reflected four would you object  
21 to that?

22 A       No, I wouldn't object to that but it was on  
23 the low end of the range of first offense which  
24 would have been a max out sentence of roughly 50  
25 percent of that, which would have been two years

1 Q All right And do you recall, did you fully  
2 discuss that with Mr Richburg?

3 A I did

4 Q Did you give him any advice about a plea  
5 versus a trial?

6 A I did I recommended that he, that he take  
7 that deal He indicated to me at one point he  
8 didn't think the officers would show up To that  
9 end I called the different officers who were  
10 involved in the case, discussed the case with them,  
11 discussed what they would testify to and reported  
12 back to Mr Richburg that, that number one, the  
13 officers were here and available and that they were  
14 willing to come forward and testify

15 Q All right And was there a subsequent plea  
16 offer that Mr Richburg also rejected?

17 A There was On the week of the trial another  
18 plea offer was made, I believe for twelve years

19 Q All right

20 A Which would have been an 85 percent but it  
21 would have been less than half of the minimum  
22 sentence under a third offense

23 Q All right

24 A The plea offer, when he rejected the initial  
25 offer, as Solicitors typically do, by policy they

1 are not going to give you a chance to come back in  
2 when you're picking a jury and get the same deal,  
3 sometimes maybe but generally not, so the offer  
4 went up when we were at trial

5 Q All right And did you discuss this offer  
6 with Mr Richburg?

7 A I did

8 Q All right And he still insisted he wanted  
9 to go to trial?

10 A He did

11 Q Did he give you any reason at that time?

12 A He just -- he didn't believe that they could  
13 prove that he had the drugs because they didn't  
14 find anything on him physically, it was a  
15 throw-down case and he wanted to go to trial, and  
16 there was a significant discussion of that on the  
17 record with Judge Baxley

18 Q All right

19 A About him wanting to go to trial

20 Q Did you discuss with Mr Richburg how the  
21 State might be able to prove possession of the  
22 drugs despite the fact that he didn't have it on  
23 his person?

24 A Yes I explained to him actual possession  
25 and constructive possession and I discussed with

1 him my discussions with the police officers and  
2 what they were going to say, that they saw him  
3 throw it down versus they just picked it up off the  
4 ground and assumed it was him, that it was going to  
5 be an officer who would say they saw him throw it  
6 down

7 Q All right And did you and Mr Richburg  
8 review the discovery?

9 A We did

10 Q All right And did you have the information  
11 about the BOLO report?

12 A I did

13 Q Did you see any problem with the BOLO report  
14 that would have come up as an issue?

15 A Well, based upon that, it was clearly not Mr  
16 Richburg that was involved in any other activity  
17 I believe it was the City of Conway that put it  
18 out Sergeant Green through my investigation and  
19 through his testimony, it was apparent that he was  
20 under the belief that it was a valid BOLO report  
21 and that of course he didn't stop the vehicle based  
22 on he got in behind it just to try to figure it out  
23 and before he could the vehicle had already  
24 stopped But that he was acting, I had no reason  
25 to believe he was acting other than in good faith

1 in making an inquiry of the vehicle

2 Q All right Did you discuss this with Mr  
3 Richburg?

4 A I did

5 Q All right And did you discuss possible  
6 defenses in this case?

7 A My discussions with Mr Richburg were that I  
8 felt like that the sentence range, because it was  
9 so severe and we had no witnesses who could come in  
10 and say, no, they threw down the drugs or Mr  
11 Richburg didn't throw down the drugs, that we  
12 would, the defense would be trying to show that the  
13 police made mistakes and that there were  
14 inconsistencies, and to some degree we were able to  
15 do that through the testimony of the officers

16 Q All right And at trial did you see any  
17 issues with the chain of custody that would have  
18 caused you to object?

19 A No issues which would, I believe, excluded  
20 the drugs

21 Q All right Did you develop an opinion  
22 regarding the State's ability to prove guilt beyond  
23 a reasonable doubt in this case?

24 A It was my opinion that they were going to  
25 Because Mr Richburg had a criminal history, I felt

1 like that limited his ability to testify, I felt  
2 like that there were several officers who were  
3 going to testify, because I had spoke to them about  
4 it, I didn't rely simply on what was in the  
5 reports, I called them, and I felt there was a  
6 substantial likelihood that he would be convicted  
7 and his sentence would be 25 years That is why I  
8 recommended, and I believe I did it in open court,  
9 that he accept the deal, and we went through the  
10 history of the plea offers that had been made and I  
11 felt like he should have accepted the deal  
12 However, the fact he didn't did not influence or  
13 impact me in any way in doing what I could to  
14 defend him

15 Q All right And we have heard Mr Richburg's  
16 testimony about the prosecutor's comments Now,  
17 did you object to those comments and at what point  
18 did you object?

19 A I believe there were two comments made by the  
20 Solicitor, one early in his closing and then one  
21 right at the very end, the last sentence or two of  
22 his closing and I objected I approached the  
23 bench, I didn't know how the judge would want to  
24 handle it, whether in front of the jury or not in  
25 front of the jury We discussed that at the bench

1 and went back on the record, the judge wanted to  
2 put on the record, put on the record at that time  
3 that I felt like that the comments were improper by  
4 the prosecutor and it was a comment on the  
5 defendant's right to remain silent and not present  
6 any evidence And at that time I asked for a  
7 mistrial

8 Q All right And did you also ask for any  
9 alternative curative instruction?

10 A Correct, that if he did not deem a mistrial  
11 appropriate, then of course I would want a curative  
12 instruction

13 Q All right Did the judge immediately give a  
14 curative instruction and deny your mistrial?

15 A He denied my motion for mistrial, gave a  
16 curative instruction

17 Q All right Did you believe the curative  
18 instruction sufficiently cured any prejudice?

19 A I believe that his -- I wanted a mistrial but  
20 I had no reason to object to the instruction given  
21 to the jury because I thought it was a correct  
22 instruction I had wanted the mistrial but he  
23 denied that motion

24 Q All right You also heard the applicant's  
25 testimony about a conflict of interest regarding a

1 statement you made in your closing argument about  
2 being friends with the police officers Could you  
3 explain your comment and why you made that comment?

4 A I can When addressing the jury in closing  
5 argument, as the testimony had played out, there  
6 was no evidence that came out through their  
7 testimony nor did we have any evidence to suggest  
8 that the evidence was planted or that there was  
9 some corrupt or evil thing that the police had  
10 done However, during the testimony there was some  
11 inconsistencies in the reports We had the  
12 witnesses sequestered and there were some  
13 inconsistencies and it was my strategy obviously  
14 that if you are going to try to paint the police as  
15 being corrupt you better have evidence to back it  
16 up but the better way to approach it is with the  
17 strategy they, just like anybody else, make  
18 mistakes, and that is what I said, I know them, I  
19 don't think they are bad people but I think just  
20 like me, you and everybody else, they can make  
21 assumptions and mistakes and that is what they have  
22 done in this case, they have made a horrible  
23 mistake here, because without any specific evidence  
24 of some kind of corruption I didn't think that was  
25 the road that you would get anywhere down with a



1 jury because there was no evidence in the testimony  
2 or the record that would support that but that  
3 there was evidence in the record that there were  
4 some mistakes made and that those mistakes have led  
5 us to charge the wrong fellow for something, and  
6 that is why I made those comments

7 MS CATOE All right, thank you, Mr  
8 Bellamy I have no further questions

9 THE COURT Cross-examination, Miss Cannon?

10 MS CANNON Thank you, Your Honor

11 CROSS EXAMINATION

12 BY MS CANNON

13 Q Mr Bellamy, in regard to, this all is  
14 related, I suppose, to the BULO report and the  
15 incident report and I will be glad to let you see  
16 them if you like, and the suppressing evidence and  
17 probable cause to stop, I would like to talk about  
18 that in general Do you have these reports from  
19 the beginning when you went to trial, did you have  
20 these two reports?

21 A Well, if you show them to me, I assume that I  
22 did

23 Q They are both Officer Green's reports

24 A I'm not sure whether I had this one report  
25 here which talks about false information to police

1 and carjacking, I believe that is I don't know  
2 about this one

3 Q And --

4 A I would have to go back through my file and  
5 look at my discovery, and if you want me to do that  
6 I will

7 Q Do you have it with you, can you flip through  
8 it?

9 A Yes

10 Q It's important, we believe, because do you  
11 recall Mr Richburg asking you to check into the  
12 BOLO report? It was his testimony he asked you to  
13 do that

14 A I don't specifically recall that We  
15 discussed the fact that there was a BOLO report and  
16 that was the basis of initially them wanting to  
17 inquire of him but it was the testimony, it was my  
18 belief that the officer was acting in good faith  
19 Even if someone calls in a totally false report,  
20 unless you can show there is some kind of fraud  
21 going on, that if the officers wasn't acting in  
22 good faith, and there was nothing to indicate that  
23 Officer Green knew that all this was false and he  
24 was just intentionally trying to stop the car, so  
25 the fact that someone had made a false carjacking

1 claim I didn't think was relevant because the fact  
2 he didn't stop him, Mr Richburg stopped himself  
3 and when he went to arrest him for an unrelated  
4 lawful arrest is when the drugs were found

5 Do you want me to look for this?

6 Q Well, I don't mind if you flip through, and  
7 really --

8 THE COURT If you want to, why don't you  
9 stop just a second and let Mr Bellamy have an  
10 opportunity to look through his file

11 MS CANNON Yes, sir

12 A I don't believe I was given either one of  
13 these in discovery, in the discovery I have in my  
14 file

15 Q If you had been given that, it seems the same  
16 officer knew that the BOLO report was based on  
17 false information, would you have moved to suppress  
18 the evidence or raised the issue of no probable  
19 cause based on a report signed by the same officer  
20 after the fact?

21 A Well, I believe the BOLO report was out of  
22 the City of Conway, not the county

23 Q I have it if you would like to see it, but  
24 it's the same officer

25 A The reporting officer is S Phillips

1 Q Did Green sign at the bottom?

2 A It's Green but I don't know if that's the  
3 same Green, I have never seen this

4 THE COURT I was just going to ask Miss  
5 Cannon, did you want to make those reports part of  
6 the applicant's case?

7 MS CANNON Yes, I would love to

8 THE COURT Why don't you have those marked  
9 by the court reporter, please, ma'am

10 MS CATOE Your Honor, might the State have  
11 just a moment? I haven't actually looked at them

12 THE COURT I will be glad for you to do so,  
13 Miss Catoe, look at them

14 MS CATOE Your Honor, upon my review of  
15 these documents, the only thing I have an objection  
16 to is the fact that there is a section for  
17 reporting officer and a section for approving  
18 officer, and from the testimony at trial I know  
19 that Sergeant Green is actually like a supervisor,  
20 so he signed it as an approving officer

21 THE COURT We don't know if he signed it,  
22 okay

23 MS CATOE That is what it appears

24 THE COURT I appreciate that All we know  
25 is two people named Green signed it

1 MS CATOE Yes, Your Honor, except for the  
2 fact that on the reporting officer's, the first one  
3 is signed by S Phillips and the second one is  
4 signed by L Green, so it is not the same officers  
5 as was stated previously

6 THE COURT And I appreciate all that  
7 Again, the officer that testified, all we know is  
8 from the record, we have to deal with what is in  
9 the record, the officer who testified is a Sergeant  
10 Lucas Green who is employed by the Horry County  
11 Police Department, according to the record, but we  
12 still need to get it marked by the court reporter,  
13 it's a BOLO report from the City of Conway,  
14 correct, the City of Conway Police Department, at  
15 least that is what Officer or Sergeant Lucas Green  
16 testified to at trial, is the City of Conway Police  
17 Department issued the BOLO report

18 MS CATOE Yes, Your Honor

19 THE COURT All right So, whether or not  
20 the BOLO report indicates an L Green signed it,  
21 right now, in the trial nor in this hearing today  
22 do we have any evidence presented to me or any  
23 evidence in the trial transcript that they are the  
24 same person

25 MS CATOE Yes, Your Honor

1           THE COURT    And logic would argue against it,  
2   okay?   The Horry County Police Department and City  
3   of Conway Police Department are two completely  
4   separate entities and they don't sign each other's  
5   reports, unless you have testimony that indicates  
6   for some reason an Horry County Police Department  
7   officer signed a City of Conway report, all right

8           Have those marked by the court reporter

9           MS   CATOE    Yes, Your Honor

10          (Two incident reports marked as Petitioner's  
11   Exhibits 1 and 2)

12          MS   CANNON   Your Honor, if I may bring to  
13   the Court's attention, at the bottom of this,  
14   bottom of these reports they have a unit number in  
15   the area where Sergeant Green's name is, and the  
16   date and the unit numbers are the same

17          THE COURT    And I'm glad for you to bring  
18   that to my attention   Again, I have not heard any  
19   evidence of the fact that they are the same person,  
20   either testimony today or in the record

21          MS   CATOE    Thank you, Your Honor  
22          The Court's indulgence?

23          THE COURT    Yes, ma'am

24          MS   CATOE    Your Honor, we have no further  
25   questions for Mr   Bellamy

1           THE COURT    All right  
2           Redirect?  
3                       REDIRECT EXAMINATION  
4   BY MS   CATOE  
5   Q       Mr   Bellamy, can you just briefly explain --  
6   let me ask you this   Even if you had this citation  
7   regarding a false statement to police, would that  
8   have affected your decision regarding a motion to  
9   suppress, considering that you believed the officer  
10   was acting in good faith and he stated that he was?  
11   A       Well, obviously I never received those  
12   documents in discovery and I haven't fully looked  
13   at them so it is hard for me to say, you know,  
14   without having that at the time of trial   I don't  
15   know it would have made a difference but I didn't  
16   have them at trial  
17   Q       But the officer did testify that he was  
18   acting pursuant to the BOLO report and that he was  
19   acting in good faith   Isn't that correct?  
20   A       Correct   It was nothing, no evidence I had  
21   at the time that would indicate that he was not  
22   responding to what he believed to be a valid BOLO  
23           MS   CATOE   All right, thank you   Nothing  
24   further  
25           THE COURT    You may step down, Mr   Bellamy

1 (Witness excused)

2 THE COURT Can I have the two documents,  
3 please?

4 Thank you, ma'am

5 Miss Cannon, any argument you would like to  
6 make to the Court, please, ma'am?

7 MS CANNON If it pleases the Court, Your  
8 Honor, it is my client's position that a series of  
9 misconduct and ineffective assistance of counsel on  
10 different levels put my client in a position where  
11 there is reasonable probability that but for these  
12 deficiencies he would have gotten a different  
13 result, the guilty verdict would not have been  
14 given at that particular trial

15 We raised the issue of his ineffective  
16 assistance of appellate counsel You know, the  
17 record reflects that Mr Bellamy did not object to  
18 the prosecutor's arguments at the time they were  
19 made He did move for a mistrial and curative  
20 instructions but we believe that he should have  
21 objected at the time they were made Again, both  
22 comments by the prosecution were inappropriate and  
23 we believe that the burden was shifted to my client  
24 and that that was brought to the jurors' attention  
25 during closing argument



1           We introduced the reports that we received  
2   They were, it is information that Mr Bellamy can't  
3   guarantee that he received in discovery, it is  
4   information given to my client in several motions  
5   he made after filing his post conviction relief  
6   application I believe certainly, Your Honor, it  
7   raises an eyebrow and we believe that it shows  
8   proof that my client was stopped as a result of a  
9   false report, that we believe the same officer  
10   signed the reports, Your Honor

11           We ask that the Court please grant this post  
12   conviction relief application of my client Mr  
13   Bellamy testified that there were a series of  
14   mistakes made during the trial that led them to  
15   arrest the wrong person, from his testimony today,  
16   and that is certainly my client's position, so we  
17   would ask that on the ground of ineffective  
18   assistance of counsel and prosecutorial misconduct  
19   his PCR application be granted because there is  
20   reasonable probability that but for the  
21   deficiencies he would have been found not guilty

22           THE COURT All right, thank you

23           Miss Catoe?

24           MS CATOE May it please the Court, Your  
25   Honor, as to the ineffective assistance of

1    appellate counsel for not raising the issue of  
2    ineffective assistance of trial counsel, I think  
3    the case law is fairly clear that that is not an  
4    issue that can be raised because there has to be an  
5    objection made below in order for it to be raised  
6    on appeal

7            As to the issue about the Solicitor's  
8    comment, first of all the State would submit that  
9    the comment was not directly a comment on the  
10   defendant's right to remain silent    Instead, it  
11   was an argument made in response to the defense's  
12   cross-examination of the officers regarding their  
13   lack of proper reports, and the argument was in  
14   fact the reports done by the officers didn't show  
15   they were not being truthful about how things  
16   occurred    I believe that is what the Solicitor's  
17   intent was when he made those comments

18           Second, even if the comments could be  
19   considered some sort of reference to the  
20   defendant's right to remain silent Mr Bellamy did  
21   object at the end of the Solicitor's closing  
22   argument, and the comments were made close to the  
23   end and he also moved for a mistrial    This  
24   occurred in front of the jury, so the jury heard  
25   this and of course as the Court knows, the judge

1 did sustain the objection and immediately issued a  
2 very thorough curative instruction telling the jury  
3 that the defendant had no burden to disprove any  
4 facts within the case and he also asked the jurors  
5 if they had any questions about that and they did  
6 not indicate that they did

7 I would also note for the record that the  
8 judge had previously informed the jury during the  
9 course of the trial, first of all on page 45, that  
10 the defendant has no burden to prove any  
11 allegations and that the burden was on the State  
12 Page 162, "The defense has no burden and is not  
13 required to respond to the charges in any way "  
14 This was in the curative instruction given after  
15 Mr Bellamy's motion for mistrial

16 Furthermore, any possible error was further  
17 cured when Mr Bellamy on page 174 reiterated in  
18 his closing argument that the defense did not have  
19 to contradict the State's evidence, and any  
20 possible prejudice was even further cured by the  
21 judge's final instructions in his jury charge on  
22 page 179 and 185

23 The case law is pretty clear that the  
24 Solicitor's closing argument must be viewed in the  
25 context of the entire record and here we submit

1 that there was not sufficient prejudice and that,  
2 furthermore, that there was overwhelming evidence  
3 of guilt where an officer saw the defendant throw  
4 the drugs onto the ground and the drugs were  
5 immediately collected, and so it is the State's  
6 position that relief should be denied on those  
7 grounds

8 As to the issue about the two reports and the  
9 BOLO issue, it's the applicant's burden to prove  
10 those reports have some significance to this case  
11 It is the State's position that he really can't  
12 tell anything conclusive in those reports What we  
13 do have in the record is Sergeant Green's testimony  
14 at trial which indicates that he was relying in  
15 good faith upon the BOLO report issued So, it is  
16 the State's position that relief should be denied  
17 in this matter

18 Thank you

19 THE COURT Thank you, ma'am

20 All right In a post conviction relief  
21 application where there has been a trial in the  
22 matter the rule is where allegations of ineffective  
23 assistance of counsel are made the question becomes  
24 whether counsel's conduct so undermined the proper  
25 functioning of the adversarial process that the

1 trial cannot be relied on as having produced a just  
2 result

3 There is a two prong test in this The  
4 applicant must show counsel's performance fell  
5 below an objective standard of reasonableness, and  
6 secondly, but for counsel's errors there is a  
7 reasonable probability the result would have been  
8 different

9 First we deal with appellate counsel  
10 regarding those There is some argument that the  
11 appellate counsel failed to argue about ineffective  
12 assistance of counsel or prosecutorial misconduct  
13 The Court of Appeals indicated that the appeal was  
14 about the trial court erring in refusing to grant  
15 the motion for a mistrial, so obviously appellate  
16 counsel presented the issues to the Court of  
17 Appeals and the Court of Appeals affirmed the  
18 decision on a procedural rule, indicating the  
19 issues were not preserved for review That was the  
20 basis of the appellate court So, appellate  
21 counsel raised the issues, the Court of Appeals  
22 affirmed the lower court on a procedural, or in a  
23 procedural ruling

24 As to trial counsel, we are looking at those  
25 two standards It has to be, and we're talking

1 about the reasonable probability, a reasonable  
2 probability sufficient to undermine confidence in  
3 the outcome of the trial Now, in this case the  
4 applicant has raised ineffective assistance of  
5 Counsel regarding the objections to the closing  
6 As indicated, first, the trial judge twice, before  
7 even the closing argument the trial judge had  
8 instructions for the jury and I don't know, I don't  
9 know that is normally the case, but certainly in  
10 this case the trial court instructed before closing  
11 argument and very early in the trial and then right  
12 before the closing arguments that the defendant has  
13 no burden of proof here, the defendant is not  
14 required to testify, the defendant is not required  
15 to respond to the charges in any way, it is the  
16 State's burden to prove the case, and that is the  
17 Court, the Court gave those basic instructions to  
18 the jury

19 After the very short, and it was honestly a  
20 very short closing argument by the State, Mr  
21 Bellamy raised his objections to the trial judge,  
22 the objections being, "I want a mistrial Failing  
23 that, at least give a curative instruction " The  
24 judge denied Mr Bellamy's request for a mistrial,  
25 stated there weren't any grounds He did grant the

1 request for a curative instruction He gave a  
2 curative instruction

3 Again, the Court clearly told the jury, "That  
4 what the lawyers tell you is not evidence, that's  
5 not evidence in the case, the evidence comes from  
6 the witnesses, that the defendant has no burden,  
7 the defendant doesn't have anything to prove to  
8 you " Even went on to ask the jury did they have  
9 any questions about what he just told them, and the  
10 Court indicates there is no response from the jury,  
11 indicating of course they understood what the Court  
12 said, that he went, in the Court's mind, well  
13 beyond his responsibilities in protecting the  
14 rights of the defendant

15 Mr Bellamy did what he was supposed to do  
16 in that regard, the Court made a ruling, that was  
17 the end of it as far as Mr Bellamy was concerned,  
18 he couldn't object Once the Court makes a ruling  
19 that's the end of it It can be appealed but at  
20 the trial it's over

21 Now, the issue about failure to investigate  
22 regarding the BOLO report, all the evidence before  
23 the Court is you've got the officer testifying,  
24 that he is a member of the, a sergeant for the  
25 Horry County Police Department, that the BOLO

1 report came from the City of Conway There is two  
2 reports, they aren't complete reports From the  
3 face of them, the one that apparently was issued by  
4 the Horry County Police Department, it does have  
5 Sergeant L Green as reporting officer and the  
6 approving officer, he must have been in a  
7 supervisory capacity, but he issued the report  
8 about what happened at the convenience store when  
9 he arrested the defendant

10 Then you have a report, and it doesn't  
11 indicate who, what agency issued it, that is the  
12 evidence, so it's the applicant's duty to provide  
13 the information to the Court What I have got is a  
14 report that doesn't indicate the issuing agency  
15 The reporting officer is somebody, and everybody  
16 says this, so I assume it is S Phillips, and  
17 approving officer, it says Green, Lieutenant Green  
18 It may or may not be the same person, I don't know  
19 I have a unit number, they appear to be the same, I  
20 don't know if it the same person or not but there  
21 is no information here and certainly the  
22 information was not available to Mr Bellamy at the  
23 time apparently, but there is no information indeed  
24 that it is the same person But be that as it may,  
25 the evidence that is before the Court and the



1 evidence that is presented, there is nothing in the  
2 record that the Court would find that counsel's  
3 conduct undermined the proper functioning of the  
4 adversarial process, there is nothing in there that  
5 counsel's performance fell below the objective  
6 standard of reasonableness It appears Mr Bellamy  
7 did everything he was supposed to do There is no  
8 evidence there was anything wrong with the chain of  
9 custody, nothing has been presented, there is  
10 nothing in the transcript record or nothing in the  
11 record provided to me there was anything wrong with  
12 the chain of custody

13 The conflict of interest, Mr Bellamy gave  
14 what appears to be a very rational explanation of  
15 his statement to the jury about the officers and  
16 why he would make that statement to the jury  
17 There is no information, there is none that  
18 indicates that the officers were operating in a  
19 corrupt manner in any way There is no evidence of  
20 that, so you say that to the jury and you're going  
21 to lose them completely, they are not going to  
22 listen to another thing you say Mr Bellamy did  
23 exactly what he was supposed to do "I said okay,  
24 we don't have any evidence they are corrupt but  
25 they are humans and humans make mistakes," is

1 exactly what he said

2 I don't see anything wrong with it Simply,  
3 again, that is trial strategy, that is perfectly  
4 acceptable, I see nothing that would indicate  
5 counsel's performance fell below an objective  
6 standard

7 Mr Bellamy talked to the officers ahead of  
8 time, he fully informed Mr Richburg of the charges  
9 he faced, the possible punishment, and Mr Richburg  
10 made the decisions to not accept the plea offers  
11 and to go to trial He certainly has the  
12 constitutional right, everybody has a  
13 constitutional right to have a jury trial, he  
14 wanted to exercise his constitutional right, wanted  
15 to have a jury trial, the jury found him guilty,  
16 the judge gave him the absolute minimum sentence  
17 that the judge could, 25 years The fact there was  
18 a plea offer before that he didn't accept, that's a  
19 decision Mr Richburg made

20 There is nothing in the record to give the  
21 Court any pause as to what occurred I deny Mr  
22 Richburg's application for post conviction relief  
23 in this matter

24 Miss Catoe will do an order to that effect  
25 and forward it to me within seven days of today's

1 date

2 Thank you very much

3 MS CANNON Thank you, Your Honor

4 (Hearing Concluded)

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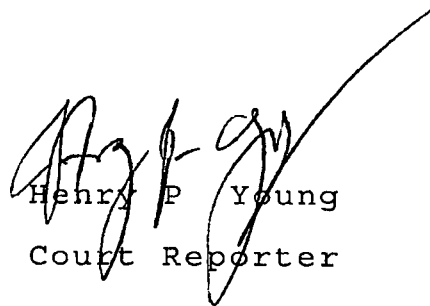
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I, the undersigned Henry P Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Horry County, South Carolina, on the 23rd day of August, 2011

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

November 28, 2011



Henry P Young  
Court Reporter

| INCIDENT TYPE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  | CASE NUMBER                                                                                               |  | NCIC                                            |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-----------------------------------------------------------------------------------------------------------|--|-------------------------------------------------|--|
| TRAFFICKING COCAINE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  | 06 74519                                                                                                  |  | INQ ENT                                         |  |
| COMPLETED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  | FORCED ENTRY                                                                                              |  | PREMISE TYPE                                    |  |
| <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                       |  | 13                                              |  |
| <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                       |  | 13                                              |  |
| <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                       |  | 13                                              |  |
| UNITS ENTERED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  | 0                                                                                                         |  | 0                                               |  |
| 0                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  | 0                                                                                                         |  | 0                                               |  |
| 0                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  | 0                                                                                                         |  | 0                                               |  |
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| INCIDENT LOCATION (Subdivision Apartment and Number Street Name and Number)<br><b>GERALD'S CONVENIENCE STORE, HWY 701 CONWAY SC</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |                                                                                                           |  |                                                 |  |
| INCIDENT DATE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  | 24 Hr Clock                                                                                               |  | DATE                                            |  |
| 8/31/06                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  | 14 00                                                                                                     |  | 8/31/06                                         |  |
| TO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  | 24 Hr Clock                                                                                               |  | 14 30                                           |  |
| COMPLAINANT'S NAME (LAST FIRST MIDDLE)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  | DISPATCH DATE/TIME 24 HR CLOCK                                                                            |  | WEAPON TYPE                                     |  |
| SEE VICTIM                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  | 8/31/06 14 00                                                                                             |  | N/A                                             |  |
| Address                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  | Dis Date                                                                                                  |  | Dis Time                                        |  |
| #1 STRAN                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  | #2                                                                                                        |  | #3                                              |  |
| J S O U                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  | RACE                                                                                                      |  | SEX                                             |  |
| AGE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  | ETH                                                                                                       |  | DAYTIME PHONE                                   |  |
| EVENING PHONE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  | Loc No                                                                                                    |  | 08                                              |  |
| VICTIM NAME (Last First Middle)<br><b>SOCIETY/PUBLIC</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |                                                                                                           |  |                                                 |  |
| Height                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  | Weight                                                                                                    |  | Hair                                            |  |
| 509                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  | 190                                                                                                       |  | BRN                                             |  |
| Eyes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  | Facial Hair Scars Clothing Physical Peculiarities etc                                                     |  | NONE                                            |  |
| BRN                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  | NONE                                                                                                      |  | NONE                                            |  |
| Address                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  | 2560 N MAIN STREET                                                                                        |  | City                                            |  |
| Visible Injury (Vict 1) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  | Explain                                                                                                   |  | City                                            |  |
| Victim (No 1) Using Alcohol <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  | Complaint of any Non Visible Injuries <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |  | State                                           |  |
| Two Men Yeh <input type="checkbox"/> One Man Yeh <input type="checkbox"/> Detective/SPL ASMT <input checked="" type="checkbox"/> Other <input type="checkbox"/> Alone <input checked="" type="checkbox"/> Assisted <input type="checkbox"/> No <input type="checkbox"/> Unk                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  | Type                                                                                                      |  | Zip code                                        |  |
| J This Jurisdiction S State O Out of State U Unknown                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  | 29569                                                                                                     |  | 10                                              |  |
| NAME (LAST FIRST MIDDLE)<br><b>RICHBOURG, TERRANCE</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                                                                                           |  |                                                 |  |
| Race                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  | Sex                                                                                                       |  | Age                                             |  |
| B                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  | M                                                                                                         |  | 28                                              |  |
| Eih                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  | Date of Birth                                                                                             |  | HEIGHT                                          |  |
| N                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  | 7/4/78                                                                                                    |  | 510                                             |  |
| WEIGHT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  | HAIR                                                                                                      |  | EYES                                            |  |
| 180                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  | BLK                                                                                                       |  | BRN                                             |  |
| Address                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  | 2859 COTTONWOOD DRIVE                                                                                     |  | City                                            |  |
| Subject (No 1) Using Alcohol <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  | Arrested Near Offense Scene                                                                               |  | State                                           |  |
| Drugs <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown TYPE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  | TOTAL # ARRESTED 2                                                                                        |  | SC                                              |  |
| Date/Time of Offense                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  | 8/31/06-14 00                                                                                             |  | Date/Time of arrest                             |  |
| 8/31/06-14 00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  | 8/31/06-14 00                                                                                             |  | 11                                              |  |
| ON THE INCIDENT DATE LISTED ABOVE, REPORTING OFFICER OBSERVED RICBOURG OPERATING A WHITE IN COLOR OLDSMOBILE CAPRICE ON HWY 701 IN THE CONWAY SECTION OF HORRY COUNTY THE VEHICLE MATCHED THE DESCRIPTION OF AVEHICLE THAT WAS USED IN A CARKJACKING INCIDENT ON HWY 905 APPROXIMATELY 30 MINUTES TO REPORTING OFFICERS OBSERVATION THE VEHICLE HURRIDELY MANUVERED INTO THE PARKING LOT OF GERALD S CONVENIENCE STORE AND RICHBOURG AND A FRONT SEAT PASSENGER EXITED THE VEHICLE AT THE SAME TIME REPORTING OFFICER ASKED RICHBOURG TO STEP TO THE PATROL VEHICLE AND RICHBOURG COMPLIED BUT IMMEDIATELY ATTEMPTED TO RUN AWAY WHEN NEARING THE OFFICER REPORTING GRABBED SUSPECT (RICHBOURG) AND SUBDUED HIM, WHILE THE FRONT SEAT PASSENGER ENTERED THE STORE DURING THE STRUGGLE RICHBOURG REMOVED FROM HIS TROUSER POCKET A PLASTIC BAG CONTAINING 27.5 GRAMS OF AN OFF WHITE SUBSTANCE BELIEVED TO BE COCAINE HCPD NARCOTICS RESPONDED AND TOOK POSSESSION OF ILLICIT DRUGS AND ASSUMED RESPONSIBILITY OF CASE PREPARATION UP TO AND INCLUDING WARRANT OBTAINMENT AND SERVICE VEHICLE WAS TOWED |  |                                                                                                           |  |                                                 |  |
| TYPE (GROUP)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  | COCAINE                                                                                                   |  | JURISDICTION OF THEFT/LAW ENFORCEMENT AGENCY    |  |
| STOLEN                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                                                                                           |  | JURISDICTION OF RECOVERY/LAW ENFORCEMENT AGENCY |  |
| DAMAGED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |                                                                                                           |  | TOTAL VALUE                                     |  |
| BURNED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                                                                                           |  |                                                 |  |
| RECOVERED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |                                                                                                           |  |                                                 |  |
| SEIZED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  | 27.5                                                                                                      |  | 27.5                                            |  |
| SUBJECT IDENTIFIED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  | SUBJECT LOCATED                                                                                           |  | ACTIVE                                          |  |
| Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>                                       |  | ADM CLOSED                                      |  |
| REASON FOR EXCEPTIONAL CLEARANCE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  | 1 OFFENDER DEATH                                                                                          |  | 2 NO PROSECUTION                                |  |
| REPORTING OFFICERS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  | 3 EXTRADITION DENIED                                                                                      |  | 4 VICTIM DECLINES COOPERATION                   |  |
| SGT L GREEN                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  | DATE                                                                                                      |  | APPROVING OFFICER                               |  |
| 8/32/06                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  | UNIT #                                                                                                    |  | SGT LUKA GREEN                                  |  |
| 348                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  | DATE                                                                                                      |  | 8/31/06                                         |  |
| FOLLOW UP INVESTIGATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  | YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>                                       |  | UNIT #                                          |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |                                                                                                           |  | 348                                             |  |

## INCIDENT TYPE

060.74.499

|                                                                                                                                                                                                                       |  |                                                                                          |  |                                                                                                             |  |                                |  |                                                                                                           |  |                                                                                                                                                                                                                                                                              |  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------|--|--------------------------------|--|-----------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| 1 Car Jacking 125                                                                                                                                                                                                     |  | COMPLETED <input checked="" type="checkbox"/> YES <input checked="" type="checkbox"/> NO |  | FORCED ENTRY <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                            |  | PREMISE TYPE                   |  | UNITS ENTERED                                                                                             |  | TY <input checked="" type="checkbox"/> Ink <input type="checkbox"/> Bu <input type="checkbox"/> Fr <input type="checkbox"/> Go <input type="checkbox"/> Re <input type="checkbox"/> So <input type="checkbox"/> On <input type="checkbox"/> Unl <input type="checkbox"/> Pol |  |
| 2 Fake Info to Police 902                                                                                                                                                                                             |  | <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                      |  | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                         |  | 20                             |  |                                                                                                           |  |                                                                                                                                                                                                                                                                              |  |
| 3                                                                                                                                                                                                                     |  | <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                      |  | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                         |  | 20                             |  |                                                                                                           |  |                                                                                                                                                                                                                                                                              |  |
| INCIDENT LOCATION (SUBDIVISION APARTMENT AND NUMBER STREET NAME AND NUMBER)                                                                                                                                           |  |                                                                                          |  |                                                                                                             |  |                                |  |                                                                                                           |  |                                                                                                                                                                                                                                                                              |  |
| 366 Sean River Rd                                                                                                                                                                                                     |  |                                                                                          |  |                                                                                                             |  |                                |  |                                                                                                           |  |                                                                                                                                                                                                                                                                              |  |
| INCIDENT DATE 24 HR CLOCK                                                                                                                                                                                             |  | TO                                                                                       |  | DATE 24 HR CLOCK                                                                                            |  | DISPATCH DATE/TIME 24 HR CLOCK |  | DISPATCH TIME                                                                                             |  | WEAPON                                                                                                                                                                                                                                                                       |  |
| 8/31/06 1245                                                                                                                                                                                                          |  |                                                                                          |  | 8/31/06 1300                                                                                                |  | 8/31/06 1302                   |  | 1314                                                                                                      |  | 25526 P.261/                                                                                                                                                                                                                                                                 |  |
| COMPLAINANT'S NAME (LAST FIRST MIDDLE)                                                                                                                                                                                |  |                                                                                          |  | RELATIONSHIP TO SUBJECT                                                                                     |  |                                |  | RESIDENT                                                                                                  |  | RACE SEX AGE                                                                                                                                                                                                                                                                 |  |
| See Victim                                                                                                                                                                                                            |  |                                                                                          |  |                                                                                                             |  |                                |  | JSOU                                                                                                      |  | ETH DAY TIME PHONE EVENING                                                                                                                                                                                                                                                   |  |
| ADDRESS                                                                                                                                                                                                               |  |                                                                                          |  | CITY                                                                                                        |  |                                |  | STATE                                                                                                     |  | ZIP CODE                                                                                                                                                                                                                                                                     |  |
|                                                                                                                                                                                                                       |  |                                                                                          |  | Conway                                                                                                      |  |                                |  | SC                                                                                                        |  | 29526                                                                                                                                                                                                                                                                        |  |
| VICTIM'S NAME (LAST FIRST MIDDLE)                                                                                                                                                                                     |  |                                                                                          |  | RELATIONSHIP TO SUBJECT                                                                                     |  |                                |  | RESIDENT                                                                                                  |  | RACE SEX AGE                                                                                                                                                                                                                                                                 |  |
| Beatty Marcus Antuan                                                                                                                                                                                                  |  |                                                                                          |  | "57"                                                                                                        |  |                                |  | JSOU                                                                                                      |  | B M 27                                                                                                                                                                                                                                                                       |  |
| HEIGHT WEIGHT HAIR EYES                                                                                                                                                                                               |  |                                                                                          |  | FACIAL HAIR SCARS TATTOOS GLASSES CLOTHING PHYSICAL PECULIARITIES ETC                                       |  |                                |  | ETH DAY TIME PHONE                                                                                        |  | EVENING                                                                                                                                                                                                                                                                      |  |
| 60 205 BLK Bru                                                                                                                                                                                                        |  |                                                                                          |  |                                                                                                             |  |                                |  | B 465-2037                                                                                                |  |                                                                                                                                                                                                                                                                              |  |
| ADDRESS                                                                                                                                                                                                               |  |                                                                                          |  | CITY                                                                                                        |  |                                |  | STATE                                                                                                     |  | ZIP CODE                                                                                                                                                                                                                                                                     |  |
| 366 Sean River Rd                                                                                                                                                                                                     |  |                                                                                          |  | Conway                                                                                                      |  |                                |  | SC                                                                                                        |  | 29                                                                                                                                                                                                                                                                           |  |
| VISIBLE INJURY (VICT 1) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO EXPLAIN                                                                                                                   |  |                                                                                          |  |                                                                                                             |  |                                |  | COMPLAINT OF ANY NON-VISIBLE INJURIES <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |  |                                                                                                                                                                                                                                                                              |  |
| VICTIM (NO 1) USING ALCOHOL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK                                                                                          |  |                                                                                          |  | DRUGS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK TYPE |  |                                |  |                                                                                                           |  |                                                                                                                                                                                                                                                                              |  |
| TWO-MAN VEH <input type="checkbox"/> ONE MAN VEH <input type="checkbox"/> DETECTIVE/SPL ASMT <input type="checkbox"/> OTHER <input type="checkbox"/> ALONE <input type="checkbox"/> ASSISTED <input type="checkbox"/> |  |                                                                                          |  |                                                                                                             |  |                                |  |                                                                                                           |  |                                                                                                                                                                                                                                                                              |  |
| SUSPECT NAME (LAST FIRST MIDDLE)                                                                                                                                                                                      |  |                                                                                          |  | J—This Jurisdiction S—State O—Out of State U—Unknown                                                        |  |                                |  |                                                                                                           |  |                                                                                                                                                                                                                                                                              |  |
| Unknown                                                                                                                                                                                                               |  |                                                                                          |  | RACE SEX AGE ETH                                                                                            |  |                                |  | DATE OF BIRTH HEIGHT WEIGHT HAIR                                                                          |  |                                                                                                                                                                                                                                                                              |  |
| Wearing Dark Hoodie, Dark Jeans Mask over Face                                                                                                                                                                        |  |                                                                                          |  | B M 9 B                                                                                                     |  |                                |  | Unk 6'0" 180 Bk                                                                                           |  |                                                                                                                                                                                                                                                                              |  |
| ADDRESS                                                                                                                                                                                                               |  |                                                                                          |  | CITY                                                                                                        |  |                                |  | STATE                                                                                                     |  | ZIP CODE                                                                                                                                                                                                                                                                     |  |
| Unknown                                                                                                                                                                                                               |  |                                                                                          |  |                                                                                                             |  |                                |  | W                                                                                                         |  |                                                                                                                                                                                                                                                                              |  |
| SUBJECT (NO 1) USING ALCOHOL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK                                                                                         |  |                                                                                          |  | ARRESTED NEAR OFFENSE SCENE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO             |  |                                |  | DATE/TIME OF OFFENSE                                                                                      |  | DATE/TIME OF ARREST                                                                                                                                                                                                                                                          |  |
| DRUGS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK TYPE                                                                                                           |  |                                                                                          |  | TOTAL # ARRESTED                                                                                            |  |                                |  |                                                                                                           |  |                                                                                                                                                                                                                                                                              |  |

I responded to the above incident location and met with the victim (Marcus Beatty) in reference to the above charge. The victim states that two Black Males pulled up to his driveway in a white in color caprice and took the vehicle that he had rented at gun point. The vehicle is described as a 2006 Toyota Avalon white in color. The vehicle was rented from Thrifty Car Rental Upon further investigation I found that the vehicle had been wrecked in Georgetown County. I then contacted the Highway patrol and found that the accident occurred before the victim had stated the car jacking took place. The victim (Marcus Beatty) was informed of all the circumstances involved and subsequently confessed to being in the accident. Then I issued Mr Beatty a citation for Fake Info to Police and turned him over to Highway Patrol.

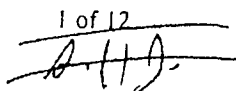
|                                  |  |                             |  |                                              |  |                                              |  |
|----------------------------------|--|-----------------------------|--|----------------------------------------------|--|----------------------------------------------|--|
| TYPE (GROUP)                     |  | 03                          |  | JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY |  | JURISDICTION RECOVERY LAW ENFORCEMENT AGENCY |  |
| STOLEN                           |  | 20000                       |  | TOTAL VALUE                                  |  | 20000                                        |  |
| 1 WAGED                          |  | Jettie                      |  |                                              |  |                                              |  |
| 117M (1)                         |  |                             |  |                                              |  |                                              |  |
| 117M (2)                         |  |                             |  |                                              |  |                                              |  |
| 117M (3)                         |  |                             |  |                                              |  |                                              |  |
| SUBJECT IDENTIFIED               |  | SUBJECT IDENTIFIED          |  | SUBJECT IDENTIFIED                           |  | SUBJECT IDENTIFIED                           |  |
| FIVE                             |  | NO                          |  | YES                                          |  | NO                                           |  |
| ACTION FOR EXCEPTIONAL CLEARANCE |  | 100                         |  | 100                                          |  | 100                                          |  |
| ATTENTION DENIED                 |  | ATTENTION DENIED            |  | ATTENTION DENIED                             |  | ATTENTION DENIED                             |  |
| ARRESTED URGENT                  |  | ARRESTED URGENT             |  | ARRESTED URGENT                              |  | ARRESTED URGENT                              |  |
| ARRESTED 18 AND OVER             |  | ARRESTED 18 AND OVER        |  | ARRESTED 18 AND OVER                         |  | ARRESTED 18 AND OVER                         |  |
| VICTIM DECLINES COOPERATION      |  | VICTIM DECLINES COOPERATION |  | VICTIM DECLINES COOPERATION                  |  | VICTIM DECLINES COOPERATION                  |  |
| EX-CLEAR (NIN)                   |  | EX-CLEAR (NIN)              |  | EX-CLEAR (NIN)                               |  | EX-CLEAR (NIN)                               |  |
| EX-CLEAR (R AND OV)              |  | EX-CLEAR (R AND OV)         |  | EX-CLEAR (R AND OV)                          |  | EX-CLEAR (R AND OV)                          |  |
| JUVENILE (NIN)                   |  | JUVENILE (NIN)              |  | JUVENILE (NIN)                               |  | JUVENILE (NIN)                               |  |
| JUVENILE (R AND OV)              |  | JUVENILE (R AND OV)         |  | JUVENILE (R AND OV)                          |  | JUVENILE (R AND OV)                          |  |
| DATE                             |  | DATE                        |  | DATE                                         |  | DATE                                         |  |
| 8/31/06                          |  | 8/31/06                     |  | 8/31/06                                      |  | 8/31/06                                      |  |
| OFFICER                          |  | OFFICER                     |  | OFFICER                                      |  | OFFICER                                      |  |
| S. Phillips                      |  | S. Phillips                 |  | S. Phillips                                  |  | S. Phillips                                  |  |

|                              |   |                               |
|------------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA      | ) | IN THE COURT OF COMMON PLEAS  |
| COUNTY OF HORRY              | ) | FIFTEENTH JUDICIAL CIRCUIT    |
|                              | ) |                               |
| Tarren Lee Richburg # 271746 | ) | 2011 CP-26-0574               |
|                              | ) |                               |
| Applicant                    | ) |                               |
|                              | ) |                               |
| v                            | ) |                               |
|                              | ) |                               |
| State of South Carolina      | ) | <b>ORDER DENYING</b>          |
|                              | ) | <b>POST CONVICTION RELIEF</b> |
| Respondent                   | ) |                               |
|                              | ) |                               |

This matter came before the Court pursuant to an Application for post-conviction relief filed January 19, 2011 by Tarren Lee Richburg Respondent made a Return on March 8 2011 An evidentiary hearing was convened at the Horry County Courthouse on August 23 2011 The Applicant was present in court and represented by Heather M Cannon Esquire The Respondent was represented by Christina J Catoe Assistant Attorney General

### PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County The Applicant was indicted in November 2006 for trafficking in powder cocaine 10-28 grams (2006-GS-26-4824) G Scott Bellamy, Esquire represented the Applicant On June 4 2007 the Applicant was tried and convicted pursuant to a jury trial before the Honorable J Michael Baxley Judge Baxley sentenced the Applicant as a third-time drug offender to 25 years A notice of appeal was timely filed and Kathrine H Hudgins Esquire, represented the Applicant on appeal The South Carolina Court of Appeals affirmed the conviction on April 12 2010 (2010 UP-235) The case was remitted to the circuit court on May 4 2010

1 of 12  


## STANDARD OF REVIEW

In a post conviction relief proceeding the applicant bears the burden of proving his or her allegations by a preponderance of the evidence Caprood v State 338 S C 103 109-110, 525 S E 2d 514, 517 (2000), Rule 71 1(e) Where ineffective assistance of counsel is alleged as a ground for relief the Applicant must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result Strickland v Washington, 466 U S 668 (1984), Butler v State 286 S C 441 334 S E 2d 813 (1985) The correct measure of performance is whether the attorney provided representation within the range of competence required in criminal cases Butler supra "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case Caprood supra, at 109 525 S E 2d at 517 (citations omitted) The Applicant must overcome this presumption to receive relief Cherry v State, 300 S C 115, 386 S E 2d 624 (1989)

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel First the Applicant must prove that counsel's performance was deficient Under this prong, attorney performance is measured by its reasonableness under professional norms Cherry 300 S C at 117, 385 S E 2d at 625 (citing Strickland) Second counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different ' Cherry, 300 S C at 117-18 386 S E 2d at 625 When a defendant challenges his conviction after a trial, the proper consideration is whether there is a reasonable probability that absent the errors the fact finder would have had a reasonable doubt respecting guilt Smith v State 375 S C 507, 515 654 S E 2d 523 527 28 (2007 (citations omitted) In order to receive relief an



applicant must prove both ineffective assistance and resulting prejudice See, e.g., Suber v. State  
371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

### ALLEGATIONS

At this PCR hearing Mr. Richburg alleged that his custody was unlawful for the following reasons:

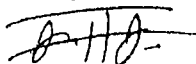
- (1) Ineffective assistance of appellate counsel – failure to raise the issue of ineffective assistance of trial counsel on direct appeal
- (2) Prosecutorial misconduct – improper comments to the jury in closing argument referencing the defendant's right to remain silent
- (3) Ineffective assistance of trial counsel
  - a. Failure to properly object to the solicitor's improper comments in his closing argument
  - b. Failure to suppress drug evidence
    1. Illegal search and seizure and failure to investigate the BOLO report and
    2. Failure to object to missing links in the chain of custody
  - c. Conflict of interest – counsel stated in his closing argument that he was friends with the policemen involved in the case

The Applicant indicated that he was seeking a new trial.

Set forth below are the relevant findings of fact and conclusions of law as required by  
S.C. Code Ann. § 17-27-80 (2003).

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

In considering the Applicant's case, this Court had before it the Applicant's PCR file, including all pleadings filed, the records of the Horry County Clerk of Court regarding the conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the direct appeal records. This Court carefully listened to all of the testimony presented at the hearing and weighed the same according to credibility. This Court found the testimony of G. Scott Bellamy, Esquire, to be highly credible in all respects, while the



Applicant's testimony was lacking in credibility

Issue # 1 – Ineffective Assistance of Appellate Counsel

At the PCR hearing the Applicant claimed that his appeal attorney was ineffective for failing to raise the issue of ineffective assistance of counsel as an issue on direct appeal. This Court finds that this issue is without merit. Appellate counsel had no reason to raise the issue of ineffective assistance of counsel on direct appeal because this issue is a PCR issue rather than a direct appeal issue. See e.g., Al Shabazz v State 338 S C 354 363 64 527 S E 2d 742, 747 (2000). Therefore this allegation is denied and dismissed.

Issue # 2 – Prosecutorial Misconduct

The issue of prosecutorial misconduct will be addressed below since the Applicant also framed this issue as one of ineffective assistance of counsel for failure to object to the prosecutorial misconduct.

Issue # 3 – Ineffective Assistance of Trial Counsel

**Failure to Object to Improper Comments in Solicitor's Closing Argument**

The Applicant asserted at the PCR hearing that his attorney failed to properly object when the solicitor made improper comments in his closing argument that referenced the defendant's right to remain silent. The Applicant contended that counsel failed to immediately object when the comments were made and that he failed to object after a curative instruction was given on the ground that the curative instruction was not sufficient to cure the prejudice flowing from the solicitor's comments. Notably the South Carolina Court of Appeals was presented with this issue on direct appeal but dismissed the issue as not preserved for review because counsel did not object to the sufficiency of the curative instruction.

The record reflects that during the solicitor's closing argument while discussing the testimony of Officer Santiago the solicitor stated that the defense has not put up anything to say

Officer Santiago wasn't telling the truth (See Trial Transcript page 164 lines 13 14) Later toward the end of his closing argument the solicitor made another similar remark as follows "There is not one bit of evidence not one bit of testimony that what these officers testified to you about that that did not occur They all came they were sworn to testify truthfully They testified and there is nothing that the defense has produced to say those events did not occur (See Trial Transcript page 166 lines 20 24) After the solicitor completed his closing argument within seconds of those comments the Applicant's counsel made a motion for mistrial in the jury's presence based upon the solicitor's comments arguing that the comments were improper because they were burden-shifting (See Trial Transcript page 167 lines 13 22) Alternatively he requested curative instructions The judge sustained counsel's objection to the comments but declined to grant a mistrial However the judge immediately issued a curative instruction to the jurors first advising them that the comments made by the solicitor could be construed to shift the burden to the defendant to somehow prove his innocence The judge instructed the jurors as follows

I am going to sustain that objection with this curative instruction It's not the Defendant's burden to come in and disprove any fact within the case or to prove any fact within the case for that matter The burden as we have said several times is always on the State to prove its case regardless of whether there is responsive testimony or not The Defendant has a constitutional right to remain silent The State cannot invade that Nor can they require the Defendant to testify That would not be appropriate constitutionally So please understand that the burden at all times is on the State and you should not take any inference if the Defendant does not put up any evidence on a particular point or the Defendant does not testify on any point and I will talk with you further in my charge to you on the law But that is not to be held against the Defendant in any way (See Trial Transcript page 168 lines 11 23)

The trial judge then asked the jurors if they had any questions about the curative instruction The jurors indicated that there were no questions Defense counsel made no further objections and proceeded with his closing argument At the PCR hearing counsel indicated that

he believed the judge's curative instruction was correct and proper and sufficient to cure any prejudice

After careful consideration of the entire record this Court finds that counsel's conduct in dealing with the solicitor's comments was reasonable, and that the Applicant failed to prove that he suffered prejudice by the comments. First, it does not appear that the solicitor's comments were directly aimed at referencing the defendant's right to remain silent. Instead, both of the comments appear to be an argument in response to the defense's extensive cross-examination of the officers insinuating that their testimony was not accurate because they did not all fill out proper paperwork, did not have a videotape of the incident, and because they did not request fingerprinting. (See Trial Transcript pages 68-81, pages 91-104, p. 109-113, p. 120-29, p. 134-35, p. 142-145). It appears that the solicitor was attempting to argue that regardless of the administrative aftermath, there was no reason to disbelieve the officers' testimony under oath regarding what transpired on the day in question.

Even if the comments could be construed as an indirect reference to the defendant's right to remain silent, counsel objected and moved for mistrial at the end of the solicitor's argument in the presence of the jury. His objection came only moments after the solicitor's last comment. (See Trial Transcript page 166-67). The trial judge sustained the objection and immediately issued a thorough curative instruction emphasizing to the jury that it was not the defendant's burden to disprove any fact within a case. The jurors indicated that they had no questions about this curative instruction. This Court finds that the judge's curative instructions were proper and were sufficient to cure any possible prejudice from the solicitor's comments; therefore, counsel was not ineffective for failing to make further objections.

Moreover, the degree of possible prejudice from the comments was slight because the judge had previously informed the jury during the course of trial that the defendant had no

burden to prove that the State's allegations were incorrect (page 45). Further, just before the State's closing argument, the judge instructed the jury that the defendant had no burden of proof and that he was not required to respond to the charges in any way (page 162). He also told the jurors that what the attorneys say in closing argument is not evidence (page 163).

In addition, after the judge issued his curative instruction in response to counsel's motion for mistrial, counsel reiterated again in his own closing argument that it was not the defendant's burden to contradict the State's evidence (page 174). Subsequently, in the final jury instructions, the judge told the jury that the fact that testimony is not directly controverted does not mean the jury must accept it as true (page 179). The judge also instructed the jurors again that the defendant has the right to remain silent, that he is not required to prove his innocence at any time, and that the burden of proof is on the State to prove its case beyond a reasonable doubt (page 185). This Court would also note that after trial, the judge re-stated his belief that the solicitor's comments were not intended to be a reference to the defendant's right to remain silent but that even if they could be construed that way, the immediate curative instruction and subsequent instructions cured any possible prejudice (page 201).

Therefore, based upon the foregoing, this Court finds that counsel's performance with respect to the solicitor's comments was reasonable and that the Applicant failed to prove he was prejudiced. See State v. Cooper, 334 S.C. 540, 554, 514 S.E.2d 584, 591 (1999). Accordingly, this allegation is denied and dismissed.

### **Failure to Suppress the Drug Evidence**

#### BOLO Report Issue

At his PCR hearing, the Applicant argued that his attorney should have moved to suppress the drug evidence because the officer had no reason to stop him. The Applicant contended that although the officer stated that he stopped him in reliance upon a BOLO report

regarding a carjacking from Conway Police Department the Applicant stated that the carjacking report was a false report. Further, he claimed that the BOLO was issued for a white Caprice, but he was driving a white Oldsmobile. He stated that had counsel investigated these matters, he could have moved to suppress the drugs based upon an illegal search and seizure without probable cause. In support of his allegations, the Applicant introduced two exhibits. Petitioner's Exhibit # 1, a police incident report made by 'Sgt L. Green' on 8/31/06, was introduced into evidence without objection. Petitioner's Exhibit # 2, a police incident report made by officer 'S Phillips' on 8/31/06, was also introduced without objection.

The trial record reflects that Sergeant Green of the Horry County Police Department testified at the Applicant's trial that on the date in question, August 31, 2006, the City of Conway issued a be-on-the-lookout ('BOLO') report for a white Oldsmobile being operated by two males operating in the Highway 701 area of Conway. (See Trial Transcript, page 58). He stated that the BOLO was issued because that vehicle had recently been involved in a car-jacking incident. He further stated that he happened to be on Highway 701 at the time and he parked his vehicle on the shoulder of the road so that he could spot the vehicle if it drove past.

After a few minutes, a white Oldsmobile being operated by two males went past him. Sergeant Green testified that he turned around to follow the vehicle because it was a white vehicle that roughly matched the description from the BOLO. He stated that he wanted to run the tag on the vehicle to verify whether or not it was the same vehicle, however, before he could do so, the vehicle pulled into a convenience store and both the passenger and the driver (who turned out to be the Applicant) exited the vehicle and began to walk away. He pulled in behind the vehicle and called out for the Applicant to stop and speak with him. The Applicant turned around and walked back toward the officer, and the officer conducted a pat-down for weapons because of the violent nature of the reported carjacking incident from the BOLO. Sergeant

Green asked for the Applicant's driver's license and at that point the Applicant stated that his license was suspended. As Sergeant Green went to arrest the Applicant for driving with a suspended license, the Applicant began to resist. Around this time another officer, Corporal Santiago, arrived on the scene and witnessed the Applicant throwing something to the ground when Sergeant Green was not looking. This item was retrieved and it turned out to be a bag containing drugs.

Petitioner's Exhibit # 1 appears to be a police incident report of Sergeant Green regarding the arrest of a suspect named Terrance Richbourg on 8/31/06. The report time is listed as 2:00 pm with a "depart time" of 3:25 pm. The reporting officer is listed as 'Sgt. L. Green' and the approving officer is listed as "Sgt. Luke Green." The report indicates that Sergeant Green observed the suspect operating a "white in color Oldsmobile Caprice" on Highway 701 and that the vehicle matched the description of a vehicle involved in a carjacking approximately 30 minutes previously.

Petitioner's Exhibit # 2 appears to be a police incident report, however, perhaps because the document is cut off at the top – there is nothing indicating the police department from which this incident report originated. The reporting officer is listed as 'S. Phillips' and the date of the incident is 8/31/06. The 'approving officer' is listed as 'Green.' The incident report indicates that one Marcus Beaty made a false report to police regarding a carjacking on 8/31/06. The report indicates a dispatch time of 1:02 pm and an arrival time of 1:14 pm. The "depart time" is listed as 3:00 pm. Notably, the format of the report looks markedly different than the format of Petitioner's Exhibit # 1.

After careful examination of the Applicant's exhibits in conjunction with the trial record, this Court finds that the Applicant failed to meet his burden of proof to show that counsel could have successfully moved to suppress the drugs on the grounds of an illegal search and seizure.

The Applicant contended that had counsel investigated he could have determined that the officer had no probable cause to stop him. This Court finds that the exhibits the Applicant produced at the PCR hearing fail to establish the Applicant's argument. First, the Applicant failed to prove that Petitioner's Exhibit # 2, the incident report regarding the carjacking, is related to his case in any way. Although the Applicant stated that this report was in reference to the same carjacking mentioned by Sergeant Green at trial, the Applicant has failed to submit any proof to that effect. Second, even assuming that the report refers to the same carjacking, there is no evidence that refutes Sergeant Green's trial testimony that he was relying in good faith upon a BOLO report issued by Conway Police Department. Obviously, Sergeant Green was not the officer dealing with the report of the carjacking since the reporting officer was S. Phillips, and since Officer Phillips was on the scene dealing with the carjacking report until 3:00 pm on 8/31/06. Petitioner's Exhibit # 1 indicates that Sergeant Green was involved with the arrest of "Terrance Richbourg" from 2:00 pm until 3:25 pm on 8/31/06. Therefore, Petitioner's exhibits do not in any way establish that Sergeant Green was aware that the carjacking from the BOLO report was actually a false report at the time he stopped the Applicant at 2:00 pm on 8/31/06.

The Applicant also claimed that the police had no probable cause to stop him because the car listed in the BOLO report was a white 'Caprice' and his car was a white Oldsmobile. Again, assuming that Petitioner's Exhibit # 2 is in fact referring to the same carjacking mentioned at the Applicant's trial, Petitioner's Exhibit # 1, Sergeant Green's incident report supports that Sergeant Green believed that a 'Caprice' was made by Oldsmobile. The Applicant has failed to establish that this belief was not genuine and has failed to establish that Sergeant Green's actions in investigating the BOLO were unreasonable. Notably, counsel testified that, prior to trial, he called the officers involved in the Applicant's case to discuss the facts and he received no information at any time that refuted Sergeant Green's testimony that he acted in



good faith pursuant to the BOLO report. In sum, the Applicant has failed to present any evidence that refutes Sergeant Green's testimony that he acted in good faith pursuant to the BOLO report. Therefore, this Court finds that the Applicant failed to prove that counsel could have successfully moved to suppress the drugs on the grounds of an illegal search and seizure. Accordingly, this allegation is denied and dismissed.

#### Chain of Custody Issue

At his PCR hearing, the Applicant alleged that counsel should have objected to missing links in the chain of custody. The Applicant failed to point to any missing links that would have justified suppression of the drug evidence. Therefore, this allegation is denied and dismissed.

#### **Conflict of Interest**

At his PCR hearing, the Applicant claimed that counsel had a conflict of interest because he stated in his closing argument that he was friends with the officers in the case. (See Trial Transcript page 169 lines 9-16). The Applicant stated that he believed that this adversely affected counsel's representation of him. At the PCR hearing, counsel explained that he made this comment about being friends with the officers in the context of his argument that, although the police officers were not bad people, they do make mistakes just like everyone does. Counsel testified that he did not feel that the jury would buy an argument that the police were corrupt, but he thought they might be more receptive to an argument that they were good people who made mistakes and incorrect assumptions. This Court accepts counsel's explanation regarding his comment and finds that the Applicant has failed to prove a conflict of interest. Therefore, this allegation is denied and dismissed.

#### **CONCLUSION**

In conclusion, based upon the entire record, this Court finds and concludes that the Applicant failed to meet his burden of proof as to any of his claims of ineffective assistance of

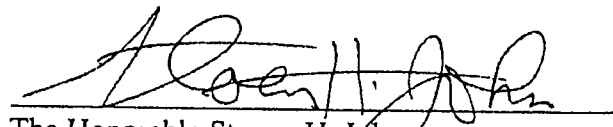
counsel Therefore the Application for post conviction relief must be denied and dismissed with prejudice for failure to meet the burden of proof under Strickland v. Washington 466 U.S. 668 (1984) and Butler v. State, 286 S.C. 441 334 S.E.2d 813 (1985)

Counsel's attention is directed to Marlar v. State 375 S.C. 407, 653 S.E.2d 266 (2007) and Rule 59(e) SCRPC regarding the filing of a Motion to Alter or Amend should counsel believe this Order fails to adequately address all issues raised as required by S.C. Code Ann. § 17-27-80 (2003). This Court further advises that if Applicant desires to secure appellate review of this Order, a notice of appeal must be filed and served **within thirty (30) days** of the service of this Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

**IT IS THEREFORE ORDERED THAT**

- 1 The Application for post conviction relief is **DENIED and DISMISSED with PREJUDICE**
- 2 The Applicant must remain in the custody of the State for completion of his sentence

AND, IT IS SO ORDERED this 31st day of August 2011

  
 The Honorable Steven H. John  
 Resident Judge  
 Fifteenth Judicial Circuit

Conroy South Carolina

DOCKET NO 2006-GS-26- 4824  
 THE STATE OF SOUTH CAROLINA  
 COUNTY OF HORRY  
 JRF 82736 2  
 COURT OF GENERAL SESSIONS  
 NOVEMBER TERM 2006

THE STATE

VS

ARREST WARRANT NO J-315934 *OK*

CDR 0147 44-53-0370 (e)(2)(a)(3)

DOA 08-31-06

Tarren Lee Richburg B/M

2859 Cottonwood Drive

Lons. SC 29569

SSN 248 49-7699 DOB 07-04-78

Scott Bellamy  
Attorney

ACTION OF GRAND JURY

TRUE BILL

NOV 30 2006

Foreman of Grand Jury

VERDICT

INDICTMENT FOR  
 TRAFFICKING POWDER COCAINE  
 MORE THAN 10 GRAMS, LESS THAN 28 GRAMS

ORIGINAL

J GREGORY HEMBREE, SOLICITOR

Foreman of Petit Jury Date

*Jury Trial*  
*J. Michael Boyly, Judge*  
*Panel Carter, CL*

WITNESSES

JOLLIFF/HCPD

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

INDICTMENT FOR

TRAFFICKING POWDER COCAINE  
MORE THAN 10 GRAMS, LESS THAN 28 GRAMS

At a Court of General Sessions, convened on November 30, 2006, the Grand Jurors of Horry County present upon their oath

TRAFFICKING POWDER COCAINE  
MORE THAN 10 GRAMS, LESS THAN 28 GRAMS

(CDR 0147 44-53 0370(e)(2)(a)(3))

That Tarren Lee Richburg did in Horry County on or about August 31, 2006, knowingly, sell, deliver, purchase, or bring into this State, or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of more than ten grams but less than twenty-eight grams, same being a controlled substance all within the meaning of Section 44-53-370, et seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, and being in violation of Section 44-53-370(e)(2)(a)(3), S. C. Code of Laws, 1976, as amended, for the crime of trafficking

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

  
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF  
STATE

VS

Tanner L Richburg

AKA

Race

Sex

Age

DOB

SSN

Address

City State Zip

DL#

SID#

IN THE COURT GENERAL SESSIONS

INDICTMENT/CASE#

2006

-03-

26

4824

A/W#

J-315934

Date of Offense

8/31/2006

S C Code §

44-53-370(e)(2)(a)

CDR Code #

0 1 1 4 7

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO Marijuana Cocaine (5-30 yrs + \$50,000)in violation of § 44-53-370(e)(2)(a) of the S C Code of Laws bearing CDR Code # 0 1 1 4 7☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS (CSC w/minor 1<sup>st</sup> or Lewd Act)☐ §17 25 45The charge is ☐ As Indicted ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (Defendant Initial)  
The plea is ☐ Without Negotiations or Recommendation ☐ Negotiated Sentence ☐ Recommendation by the State  
ATTEST

Solicitor

Defendant

Attorney for Defendant

WHEREFORE the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$50,000 provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_ plus costs and assessments as applicable\* the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation which are incorporated by reference  
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on \_\_\_\_\_  
☒ The Defendant is to be given credit for time served pursuant to S C Code §24 13 40 to be calculated and applied by the State Department of Corrections  
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S C Code §17 25-135☐ RESTITUTION ☐ Heard ☐ Waived, ☐ Ordered  
Total \$ \_\_\_\_\_ plus 20% fee \$ \_\_\_\_\_  
Payment Terms \_\_\_\_\_  
☐ set by SCDPPPSSPECIAL CONDITIONS  
PTUP

\_\_\_\_\_ days/hours Public Service Employment

Recipient  
Fine

|                                        |             |
|----------------------------------------|-------------|
| \$14 1 206 (Assessments 107 5%)        | \$50,000.00 |
| \$14 1 211(A)(1) (Conv Surcharge)      | \$50,000.00 |
| \$14 1 211(A)(2) (DUI Surcharge)       | \$100.00    |
| \$58 5 2995 (DUI Assessment)           | \$100.00    |
| \$35 13 (Public Def/Prob)              | \$12.00     |
| \$73 3 18 TP (Law Enforce Funding)     | \$500.00    |
| \$33 7 18 TP (Drug Court Surcharge)    | \$25.00     |
| \$50 21 114 (BUI Breath Test Fee)      | \$100.00    |
| \$58 5 2942(J) (Vehicle Assessment)    | \$50.00     |
| 3% to County (if paid in Installments) | \$40/ea     |
| TOTAL                                  | \$3189.25   |

107074.25

Obtain GED

Attend Voc. Rehab or Job Corp

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd in equal, consecutive weekly/monthly

pmts of \$ 50.00 beginning 7/5/12

\$ \_\_\_\_\_ paid to Public Defender Fund

Other

☐ Appointed PD or appointed other counsel §35 13 TP  
Requires \$500 be paid to Clerk during probation

Michaela Huggins  
Clerk of Court/Clerk  
Court Reporter Patricia Great-Carter

PRESIDING JUDGE  
Judge Code  
Sentence Date 2/15/07

THIS OPINION HAS NO PRECEDENTIAL VALUE IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

The State, Respondent,

v

Tarren Lee Richburg, Appellant

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Appeal From Horry County  
J Michael Baxley, Circuit Court Judge

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Unpublished Opinion No 2010-UP-235  
Submitted March 1 2010 – Filed April 12 2010

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**AFFIRMED**

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Appellate Defender Kathrine H Hudgins, of Columbia for  
Appellant

Attorney General Henry Dargan McMaster, Chief Deputy  
Attorney General John W McIntosh, Assistant Deputy  
Attorney General Salley W Elliott, Senior Assistant  
Attorney General Norman Mark Rapoport all of Columbia,  
John Gregory Hembree, of Conway for Respondent

**PER CURIAM** Tarren Lee Richburg appeals his conviction for one count of trafficking in powder cocaine more than ten grams but less than twenty-eight grams arguing the trial court erred in refusing to grant his motion for a mistrial We affirm<sup>[1]</sup> pursuant to Rule 220(b)(1) SCACR and the following authority State v George 323 S C 496 510 476 S E 2d 903, 912 (1996) (holding the issue is not preserved for review if the 'objecting party accepts the judge's ruling and does not contemporaneously make an additional objection to the sufficiency of the curative charge or move for a mistrial')

**AFFIRMED**

SHORT, WILLIAMS, and LOCKEMY, JJ , concur

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[1] We decide this case without oral argument pursuant to Rule 215 SCACR