

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Sumter County

S.O. Supreme Court

William Jeffrey Young, Circuit Court Judge

COREY PETERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001082

A P P E N D I X

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF SUMTER	)	
Corey L. Peterson,	)	
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	Indictment #: 2010-GS-43-1305
vs.	)	
	)	
State of South Carolina,	)	
	)	
DEFENDANT.	)	

September 12, 13, 14 and 15, 2010
Sumter County Courthouse

BEFORE:
HONORABLE R. FERRELL COTHRAN, PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor Bronwyn McElveen
Attorney for the State of South Carolina

David Sullivan, Esquire
Public Defender for Sumter County
Attorney for the Defendant

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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1 Mrs. McElveen: The State of South Carolina versus Corey L.
2 Peterson. Indictment number 2010-GS-43-1305. Your
3 Honor may I pass up the indictment and the witness
4 list?

5 The Court: Yes ma'am. Alright ladies and gentlemen of
6 the jury panel, if you'll give me your attention;
7 you're about to hear the State versus Corey Peterson.
8 I need to know if there's any member of the jury
9 panel connected by blood or marriage or close personal
10 friends or a social relationship with Mr. Peterson.
11 If so, please stand. The potential witnesses in this
12 case are Deputy Lyons, Agent Horton, Agent Flowers,
13 Corporal Gardner, Corporal Freeman, Lyons, Allsbrook,
14 McCoy, anybody else?

15 Mrs. McElveen: Besides the list Your Honor, that should be
16 it for me, for the State.

17 The Court: Okay. Alright, any member of the jury panel
18 connected by blood or marriage, close personal friends
19 or social relations with any of those law enforcement
20 officers and or potential witnesses? If so, please
21 stand. The State is being represented by Bronwyn
22 McElveen, the defense by David Sullivan. Any member of
23 the jury panel connect by blood or marriage, close
24 personal friends or social relations or have been
25 represented by either two of these attorneys? If so,

COREY PETERSEN - DIRECT EXAMINATION

4

1 marijuana first offense. And to four years imprisonment
2 for possession with intent to distribute marijuana first
3 offense. All sentences were to be served concurrently.
4 And the Applicant did not appeal his conviction or
5 sentence.

6 Applicant filed a timely application for post
7 conviction relief on November 10, 2011, alleging
8 ineffective assistance of counsel for failure to
9 investigate and prepare for trial. Prosecutorial
10 misconduct for the prosecutor disclosing his criminal
11 background in front of the jury, and newly discovered
12 evidence from a SLED report. The State made its return
13 on January 18, 2012. And he is represented in this
14 action by Richard Strobel.

15 THE COURT: All right. Mr. Strobel, are you ready
16 to proceed?

17 MR. STROBEL: I am ready.

18 THE COURT: Call your first witness.

19 MR. STROBEL: Corey Peterson.

20 BAILIFF: Raise your right hand. State your name
21 please.

22 MR. PETERSON: Corey Peterson.

23 WHEREUPON, COREY PETERSEN

24 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

25 MR. PETERSON: Yes sir

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1 please stand. Any member of the jury panel formed or
2 expressed an opinion about any of the issues involved
3 in this case? If so, please stand. This is a drug
4 case that allegedly occurred on or about May 14, 2010.
5 Any member of the jury panel aware of any bias or
6 prejudice either toward the State of South Carolina or
7 this Defendant? If so, please stand. Any member of the
8 jury panel serve in the grand jury here in Sumter
9 county that heard this case? If so, please stand. Any
10 member of the jury panel, due to religious beliefs or
11 moral reasons, unable to sit in judgment of your
12 fellow man? If so, please stand. Any member of the
13 jury panel know any reason whatsoever they can't give
14 both the State of South Carolina and this Defendant a
15 fair and impartial trial? If so, please stand. Okay.
16 Madam Clerk if you'll give us a jury. I assume y'all
17 didn't have any further questions?

18 Mr. Sullivan: I don't have any additional voir dire from
19 the Defendant.

20 Mrs. McElveen: No sir.

21 Bailiff: May it please the Court?

22 The Court: Yes sir.

23 Bailiff: If your name and number is called just stand in
24 place and if you're accepted as a juror, make your way
25 to your right or to your left and make your way to the

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1 jury box. Number 154; Richard Weatherly, Jr. What
2 sayeth the State?

3 Mrs. McElveen: Please present the juror.

4 Bailiff: What sayeth the Defendant?

5 Mr. Sullivan: Please seat Mr. Weatherly.

6 Bailiff: Make your way forward sir. Number 87; Doretha
7 McElveen. What sayeth the State?

8 Mrs. McElveen: Please present Ms. McElveen.

9 Bailiff: What sayeth the Defendant?

10 Mr. Sullivan: Please seat Ms. McElveen.

11 Bailiff: Make your way forward ma'am. Number 143; Larry
12 Smith. What sayeth the State?

13 Mrs. McElveen: Please present Mr. Smith.

14 Bailiff: What sayeth the Defendant?

15 Mr. Sullivan: Please seat Mr. Smith.

16 Bailiff: Make your way forward Mr. Smith. Number 4;
17 Laura Baker. What sayeth the State?

18 Mrs. McElveen: Please present Ms. Baker.

19 Bailiff: What sayeth the Defendant?

20 Mr. Sullivan: Please excuse Ms. Baker.

21 Bailiff: Have a seat ma'am; you've been excused from
22 this trial at this time. Number 88; Janice
23 McFaddin-Pringle. What sayeth the State?

24 Mrs. McElveen: Please present Ms. McFaddin-Pringle.

25 Bailiff: What sayeth the Defendant?

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1 Mr. Sullivan: Please seat the juror.

2 Bailiff: Make your way forward ma'am. Number 112; Samuel
3 Parks. What sayeth the State?

4 Mrs. McElveen: Please present Mr. Parks.

5 Bailiff: What sayeth the Defendant?

6 Mr. Sullivan: Please seat Mr. Parks.

7 Bailiff: Make your way forward sir. Number 108, Rebecca
8 Nichols. What sayeth the State?

9 Mrs. McElveen: Please present Ms. Nichols.

10 Bailiff: What sayeth the Defendant?

11 Mr. Sullivan: Please excuse Ms. Nichols from the trial of
12 this case.

13 Bailiff: Have a seat ma'am. You've been excused from
14 this trial at this time. Number 146; Chris
15 Tallant. What sayeth the State?

16 Mrs. McElveen: Beg the Court's indulgence. Please present
17 Mr. Tallant.

18 Bailiff: What sayeth the Defendant?

19 Mr. Sullivan: Please seat Mr. Tallant.

20 Bailiff: Make your way forward sir. Number 153; Vernon
21 Washington. What sayeth the State?

22 Mrs. McElveen: Please present Mr. Washington.

23 Bailiff: What sayeth the Defendant?

24 Mr. Sullivan: Please seat Mr. Washington.

25 Bailiff: Make your way forward sir. Number 93; Willie

State of South Carolina vs. Corey L. Peterson

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1 McQuillar.

2 Mrs. McElveen: Please present the juror.

3 Bailiff: What sayeth the Defense?

4 Mr. Sullivan: Please seat the juror.

5 Bailiff: Make your way forward ma'am. Number 140; Quiton

6 Singleton. What sayeth the State?

7 Mrs. McElveen: Please excuse the juror from the trial of

8 this case.

9 Bailiff: Have a seat sir. You've been excused from this

10 trial at this time. Number 22; Max Cockrell, Jr.

11 What sayeth the State?

12 Mrs. McElveen: Please present Mr. Cockrell.

13 Bailiff: What sayeth the Defendant?

14 Mr. Sullivan: Please seat Mr. Cockrell.

15 Bailiff: Make your way forward sir. Number 69; Joseph

16 Jones. What sayeth the State?

17 Mrs. McElveen: Please present Mr. Jones.

18 Bailiff: What sayeth the Defendant?

19 Mr. Sullivan: Please seat Mr. Jones.

20 Bailiff: Make your way forward sir. Number 91; Carlton

21 McLeod. What sayeth the State?

22 Mrs. McElveen: I beg the Court's indulgence. Please present

23 Mr. Mcleod.

24 Bailiff: What sayeth the Defendant?

25 Mr. Sullivan: Please seat Mr. Mcleod.

State of South Carolina vs. Corey L. Peterson

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1 Bailiff: Make your way forward sir. Number 138; David
2 Shirer. What sayeth the State?

3 Mrs. McElveen: Please present Mr. Shirer.

4 Bailiff: What sayeth the Defendant?

5 Mr. Sullivan: Please seat Mr. Shirer.

6 Bailiff: Make your way forward sir. You want one
7 alternate, Judge?

8 The Court: One alternate should be enough. One and
9 two.

10 Bailiff: Number 3; Delores Atkins. What sayeth the
11 State?

12 Mrs. McElveen: Please excuse the juror from the trial of
13 this case.

14 Bailiff: Have a seat ma'am. You've been excused from the
15 trial at this time. Number 1; Lisa Aldridge.

16 Mrs. McElveen: I'm sorry, what was that number?

17 Bailiff: Number 1. What sayeth the State?

18 Mrs. McElveen: Please present the juror.

19 Bailiff: What sayeth the Defense?

20 Mr. Sullivan: Please seat Ms. Aldridge

21 Bailiff: Make your way forward ma'am.

22 The Court: Are there any matters of law pertaining to the
23 selection of the jury on behalf of the State?

24 Mrs. McElveen: No sir.

25 The Court: On behalf of the defense?

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1 Mr. Sullivan: No sir.

2 The Court: Okay. What time do you want the jury to
3 call back?

4 Mr. Finney: Your Honor we'd like them to call back
5 between twelve and one.

6 The Court: This panel?

7 Mr. Finney: Yes, this panel.

8 The Court: Okay.

9 Mr. Finney: And we'll know if we have any work for them
10 at 2:30.

11 The Court: Okay, ladies and gentlemen who are not
12 selected to serve on this jury, if you'll call the
13 clerk's office back between twelve and one today, we
14 will let you know whether I need you to be back at
15 2:30 or to call back after six tonight. Thank you.

16 (PANEL EXITS COURTHOUSE)

17 The Court: Okay, if y'all would approach the bench.

18 Mrs. McElveen: Yes sir.

19 (COUNSEL APPROACHES BENCH)

20 The Court: I'm going to ask you to go to the jury room.

21 I have some matters of law I've got to take up before
22 we actually start this trial. Please don't discuss
23 this case yet and I'll have you back out in a minute.

24 (JURY BREAK)

25 Mr. Sullivan: Your Honor, may we approach?

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1 The Court: Mr. Peterson?

2 Mr. Peterson: Yes sir.

3 The Court: We've got a jury back there and we are
4 fixing to start your trial and your lawyer tells me
5 you want to ask me something?

6 Mr. Peterson: Yes sir. I had want to ask you a question.
7 Last time I came up in here for a trial it was four
8 months ago and the judge who was here, he was like,
9 you not comfortable with who you are with just please
10 let me know right now so I can assign you somebody
11 else or if you have enough money to hire you a private
12 attorney, how ever you want to do it. Now I'm not
13 comfortable with who I got right now, cause he not
14 telling me nothing and he don't, he don't, he showed
15 me one motion for discovery. All he said is he said,
16 she said. Every time I tell him to call me he say he
17 lost all my file to contact me. I was downstairs
18 yesterday morning I can go ahead and give him all my
19 information again. I feel like he not really doing his
20 job Your Honor.

21 The Court: Well, if you want me, you've got a right to
22 an attorney. You've got a right to a Public Defender.
23 If you don't like your Public Defender, you have to
24 hire one. This case is set for trial, I got a jury
25 sitting back there I'm fixing to try your case.

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1 Mr. Peterson: See, that's what he, he didn't never told me
2 nothing about that.

3 The Court: Well, you, he's your attorney and you stuck
4 with him. We fixing to go to trial and you've got to
5 decide at this point if you want to go to trial or
6 whether you want to plead guilty to the charges. If
7 you want to please guilty, I can take your guilty plea
8 and if you want a trial we're certainly ready to start
9 the trial.

10 Mr. Peterson: He ain't give me enough time to hire, he
11 never say nothing, Your Honor. I want to hire a
12 private attorney for my case. Cause he say it wasn't
13 on the trial list today.

14 The Court: You were arrested May the 14th 2010.

15 Mr. Peterson: I was arrested May the 14th 2010 and he say
16 ...

17 The Court: That's a year ago.

18 Mr. Peterson: That's a year ago.

19 The Court: You had all this time to hire an attorney and
20 they've called your case to trial now.

21 Mr. Peterson: He say I wasn't even going to trial.

22 The Court: Well, you, you wouldn't have gone to trial
23 if you'd pled guilty, but now, you certainly have a
24 right to trial and my understanding is you entered a
25 plea of not guilty and we're ready to try this case.

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1 It's going to happen at 2:30.

2 Mr. Peterson: I really, I want to hire somebody else.

3 The Court: Well you'll have, you need your lawyer on
4 board by 2:30?

5 Mr. Peterson: I'll go ahead and pay for it and they come
6 get my file. A thousand dollars and get me an
7 attorne.

8 The Court: And he'd be ready to try the case by 2:30?

9 Mr. Peterson: I have no idea Your Honor. I have no idea,
10 I have no idea.

11 The Court: Alright, I'm going to send the jury home for
12 lunch and bring them back at 2:30 and we'll start your
13 trial.

14 Mr. Peterson: Alright, alright, alright.

15 Mrs. McElveen: Your Honor? Your Honor ? The Defendant just
16 left.

17 The Court: What do you mean he left?

18 Mrs. McElveen: He just walked out. So I'm just hoping maybe
19 we can make sure that he sticks around at least for
20 the jury?

21 The Court: You can't leave.

22 Mr. Peterson: Oh I thought you sent me home to come back at
23 2:30.

24 The Court: Yeah, but I got to bring this jury out here.
25 We going to start this trial at 2:30. You just sit

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1 down a minute while I deal with the jury.

2 Mr. Peterson: Alright.

3 The Court: I got to let them know something.

4 Mr. Peterson: Alright.

5 The Court: Bring in the jury.

6 Bailiff: Yes sir.

7 (JURY ENTERS COURTROOM)

8 Bailiff: All the jurors and all the alternates are in
9 the courtroom, Your Honor.

10 The Court: Thank you sir. ladies and gentlemen I've
11 still got some legal matters to deal with so instead
12 of keeping you locked up while I deal with them, I'm
13 going to send you to lunch and ask you to be back in
14 the jury room at 2:30 and hopefully we'll be in a
15 position at that point to start the testimony on this
16 case. You don't know anything about this case, so
17 don't talk to anybody about it or let anybody talk to
18 you about it. Don't go home and get on the internet,
19 Google anybody. You've got to decide this case based
20 on what you hear in this courtroom. Have a nice lunch
21 and I'll see you at 2:30. If you have an emergency,
22 please call. If you don't call and you don't show up,
23 I'm going to send a deputy looking for you and
24 instruct him to arrest you and bring you to me. Thank
25 you.

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1 (JURY EXITS COURTROOM FOR LUNCH BREAK)

2 Ms. McElveen: The State would request that you put on the
3 record that if the case does, if we start at 2:30 and
4 if the Defendant, the case will proceed if the
5 Defendant is here or not and we would even ask maybe
6 that his bond be revoked.

7 The Court: Alright, you understand that Mr. Peterson?

8 Mr. Peterson: Yes sir.

9 The Court: Now one option is I can revoke your bond and
10 put you in jail until 2:30. But I'm going to let you
11 stay out with the understanding, if you're not back
12 here at 2:30 ...

13 Mr. Peterson: I will be back.

14 The Court: I'm going to proceed without you and issue a
15 bench warrant for your arrest.

16 Mr. Peterson: Alright, alright sir.

17 The Court: Alright, so it's in your best interest to be
18 here.

19 Mr. Peterson: Alright, thank you sir.

20 The Court: Alright.

21 Mr. Peterson: Alright.

22 Ms. McElveen: Thank you Your Honor.

23 The Court: Yes ma'am.

24 (COURT BREAK-

25 The Court: Are we going on all four counts?

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1 Ms. McElveen: Yes sir.

2 The Court: Okay.

3 Mr. Peterson: Your Honor?

4 The Court: Yes sir?

5 Mr. Peterson: Can I please get me a private attorney?

6 The Court: No, it's too late for that. You had til 2:30
7 to get one and you ain't got one here.

8 Mr. Peterson: They say I need a letter.

9 The Court: You didn't get them a letter.

10 Mr. Peterson: They say I need a letter from David Sullivan
11 saying he no longer representing me.

12 The Court: But he is representing you. I'm not going to
13 let, that ain't the way it works and Mr. Held knows
14 that. He has to come up here. I'm the only one that
15 can relieve your attorney. You can't fire your
16 attorney without me. He didn't show up. You can't
17 wait til they call your case to change attorneys. You
18 had a year to get an attorney.

19 Mr. Peterson: He telling me from this and that, he wasn't,
20 he wasn't, he not telling me nothing. I already had
21 one case with him and he did pretty good on that case
22 there, but he wasn't telling me nothing in the second
23 case. I kept telling him. He say man this and that and
24 he ain't telling me nothing.

25 The Court: I don't know what you expect him to tell you

1 other than ...

2 Mr. Peterson: My motion, I want to see my motion of
3 discovery. He's not showing me.

4 The Court: Well, they filed Rule 5. They gave him
5 everything you need.

6 Mr. Peterson: No, they gave me a piece of paper. I want to
7 see my full motion of discovery.

8 The Court: Well, it's too late for that. We're fixing
9 to try this case.

10 Mr. Peterson: And I told him.

11 Ms. McElveen: Your Honor, if the Defendant would like to go
12 *pro se* we would not object to that.

13 The Court: Do you want to represent yourself?

14 Mr. Peterson: I want to have the right to say what I got to
15 say.

16 The Court: Well, you can talk to your lawyer. You've
17 certainly got a right to testify if you want to.
18 We'll go through this trial, you have a right, I'll go
19 through your rights with you. You can get on the stand
20 and tell the jury whatever you want and we'll tell it.

21 Mr. Peterson: Alright, alright.

22 The Court: Bring in the jury.

23 Ms. McElveen: We would like to make a motion to have
24 defense witnesses sequestered.

25 The Court: Okay, what do you say?

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1 Mr. Sullivan: I don't have any problem with that Judge and
2 I'm glad that Ms. McElveen said that because I'd like
3 to have the responding officers sequestered.

4 The Court: Okay. Well, just to let you know, I'll make
5 some opening remarks and if y'all want to make opening
6 statements and then ...

7 Ms. McElveen: Yes sir.

8 The Court: Send them out and sequester the witnesses.

9 (Jurors enter the courtroom)

10 Bailiff: All the jurors and all the alternates are back
11 in the courtroom Your Honor.

12 The Court: Okay, swear them in.

13 (Jury is sworn in)

14 Bailiff: Your Honor the jury is sworn.

15 The Court: Thank you ladies and gentlemen. We're about
16 to begin the trial, as you know The State versus Mr.
17 Peterson. He's been charged in this indictment for
18 basically four counts. One is possession with intent
19 to distribute marijuana. Count two is possession with
20 intent to distribute marijuana within the proximity of
21 one half mile of a public or private school, college
22 or university, playground park or public vocational
23 trade school. Count three is possession with the
24 intent to distribute cocaine and count four is
25 possession with intent to distribute cocaine within

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1 one half mile of a park or public school or
2 playground. To this indictment he's entered a plea of
3 not guilty. Therefore, it places the burden on the
4 State of South Carolina to prove to you beyond
5 reasonable doubt, each element of this crime that he's
6 guilty. Your job is simply to listen to the evidence
7 in this case and it's going to come to you in
8 basically three forms. First of all, through sworn
9 testimony from this witness stand. The witness is
10 going to be under oath and testify to you. The other
11 evidence you may receive is exhibits of photographs or
12 any documents that are introduced into evidence. And
13 the third form of evidence you will receive is
14 stipulations by the attorneys. Basically those are
15 the three forms of evidence you will see. The
16 attorneys are going to make opening statements to you
17 in a few minutes as well as probably closing arguments
18 in the end. I'll remind you that they are not
19 evidence. The questions the attorneys ask are not
20 evidence. The evidence is the testimony you receive
21 from the stand and your job is to determine what the
22 true facts are in this case based on the evidence that
23 comes in. My job is to rule upon the admissibility of
24 the evidence and to explain the law to you. And you
25 are to take that law that I give you, whether you

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1 agree with it or not, and apply it to the facts that
2 you determine in this case to be true and reach a true
3 verdict. That's what you do. I don't have an opinion
4 about the facts and I'm not allowed under the law to
5 have an opinion about the facts. I'm simply here to
6 rule upon the admissibility of evidence you'll hear
7 and explain the law to you at the end of this case.
8 You determine what the truth is in this case based on
9 the testimony and the facts that you hear from this
10 witness stand. And as I've told you the State has the
11 burden of proof in this case. The State has to prove
12 these elements beyond a reasonable doubt and I will
13 explain to you what reasonable doubt is at the end of
14 this case as well as explain to you the charges in
15 this indictment in further detail. I ask that you pay
16 close attention throughout this trial. I will try to
17 stop every hour or hour and a half to take a break,
18 but if you need one sooner than that, just raise your
19 hand, because I need you to pay attention and if
20 you're uncomfortable you can't pay attention. So, for
21 some reason you came in here and you're uncomfortable
22 and you need a break, get my attention and we'll stop
23 and take a break and come back. This should not be a
24 very long trial, but we're probably not going to
25 finish it today. When we do take a break and I send

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1 you back to the jury room, I'm going to tell you, you
2 can't discuss this case. You're going to want to say,
3 'Well we've heard from this witness or that witness,
4 why can't we at least talk about what we've heard?
5 And the reason you can't is if you go out there and
6 you start discussing the case and one of you have an
7 opinion as to what you think this case is about or
8 where this case is headed, at the end of the case
9 you're going to defend that opinion you had early on.
10 It's not right for you to start forming opinions until
11 you've heard all of the case, you've heard all of the
12 evidence in this case as well as the law that I'm
13 going to charge you on and then and only then can you
14 properly start discussing it. Now when you go home
15 tonight, you're not going to be able to tell your
16 families what you've been doing, because it, and
17 they'll want to know what you've been doing all day
18 and you're going to want to share that with them, but
19 for the most part when people sit on a jury it's an
20 unusual experience. But if your family is anything
21 like my family, they are going to have a opinion as to
22 what you ought to do. They ain't in here. This is your
23 call, so I don't want you to talk to them about it
24 until this case is over with. When this case is over
25 with, you can share it with anybody you want to and

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1 tell why you did what you did. That will be up to
2 you. But until you make that decision, I need you to
3 keep it among the thirteen of you. Because that's how
4 it's fair to both sides. Both sides have selected you
5 to be fair and impartial and for our system to work
6 right it's hugely important that you are fair. That
7 you decide this case based on what you hear in this
8 courtroom and this courtroom alone. When you do that
9 our system works like it's suppose to. If you will pay
10 close attention to the attorneys, they're going to
11 make a brief opening statement to you, then we'll get
12 started with testimony. Thank you.

13 Ms. McElveen: Can we approach, Your Honor?

14 The Court: Yes ma'am.

15 (COUNSEL APPROACH BENCH)

16 The Court: One other question that I need to ask y'all.
17 There's been another witness that has come up that I
18 didn't qualify you on. Do any of y'all personal
19 friends, social relations or know a potential witness?
20 Anybody know Mr. Hughes? That's him seated right
21 there. Okay, thank you. You can sit down. Thank you.

22 OPENING STATEMENT BY MS. MCELVEEN:

23 Ms. McElveen: Good afternoon ladies and gentlemen. Thank
24 you for giving us your time and your service. I know it's
25 not the ideal thing in the world to sit here, but it is our

1 justice system and that's what makes us all Americans. On
2 May 14, 2010, officers from the Sumter Police Department,
3 gentlemen who serve our county and our city, many of them
4 are seated here, you'll hear from them and you'll see more
5 coming in and out of the courtroom, were patrolling around
6 Lantana Apartments here on Carolina Avenue. I don't know if
7 any of you know that area, but they saw a vehicle that
8 looked suspicious. A gold vehicle parked backwards, a gold
9 Suburban, and as they were driving through and came closer
10 to the vehicle, a gentleman jumps out and takes off running
11 carrying a white plastic bag in his hand. The officers
12 pursue him, attempted to stop him, were worried about
13 safety and what he was doing in the area. You'll hear about
14 the area in a little bit. He ran into an apartment. As
15 officers approached the apartment the guy that took off
16 running tries to go out the back door. Officers are already
17 at the back door, so he comes back and tries to get out the
18 front door. He was met there by the officers. When
19 Detective Lyons, who you'll hear from, he's seated with me,
20 when Detective Lyons came into the apartment where the
21 gentleman ran, to make sure everybody was okay and that
22 that the Defendant was, Mr. Peterson, was not allowed into
23 that home, he found the white plastic baggy. The white
24 plastic baggy that he saw in his hand when the gentleman
25 exited the vehicle. He found that same baggy inside this

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1 apartment, right near that back door. Right next a freezer
2 and right next to that back door where Mr. Peterson was.
3 Inside that plastic bag was seven grams of cocaine and a
4 hundred and fifty five grams of marijuana. That is a lot of
5 drugs. In fact it's so much drugs, such a large quantity,
6 that based on the quantity alone, the law allows us to
7 infer or to understand and accept that he was possessing
8 those drugs with the intent of distributing them. And with
9 this charge, he's charged with possession with intent to
10 distribute cocaine and marijuana, with this, the weight,
11 you don't have to prove that he actually did distribute
12 these drugs. We don't have to prove that he manufactured
13 them, we don't have to prove that he actually distributed
14 them. The weight alone makes it a possession with intent
15 to distribute. And actually, the thresh hold amount for
16 cocaine is one gram and the officers found seven. For the
17 marijuana it's twenty eight grams or basically an ounce.
18 You know those translations which I'm not very good at.
19 Instead they found a hundred and fifty five grams of
20 marijuana. Which clearly brings it within that possession
21 with intent to distribute level. Also, all of this occurred
22 within a half mile of multiple schools and a park, multiple
23 parks. It's right near Riley park, there's a city park,
24 Morris College is nearby, there's a beauty school nearby
25 and all of these were close by, within a one half mile

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1 proximity. Which brings about the proximity, the
2 possession with intent to distribute within proximity of a
3 school or park. The officers charged him with these, the
4 drugs were tested and came back positive, weighing over
5 these thresh hold amounts and here we are today. We just
6 ask that you listen and use your common sense. We have to
7 prove things, the State must prove things beyond a
8 reasonable doubt. A reasonable doubt it's not any doubt in
9 the world. I mean, we can all come up with stories that
10 could make anything in the world possible. It's beyond a
11 reasonable doubt. I'm just asking you to use your common
12 sense. Listen to the witnesses, listen to the evidence.
13 Think about who you should believe in this case. Give us
14 your attention and please come back with a verdict that
15 speaks the truth. I look forward to presenting the case
16 and speaking with you again in closing. Thank you very
17 much.

OPENING STATEMENTS BY MR. SULLIVAN:

18 Mr. Sullivan: Hello ladies and gentlemen. My name is Dave
19 Sullivan and I represent Mr. Corey Peterson sitting
20 over there at the table beside me. I'm going to first
21 talk about some important concepts in our criminal
22 justice system. Kind of echo some things that the
23 judge has already told you, but if you didn't, they're
24 important, if you didn't get it when he said it, then
25

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1 you can get it when I say it. Just to address a few
2 things that Ms. McElveen told y'all. I'll be
3 interested to hear how Mr. Peterson's sitting in the
4 Suburban in a parking lot is suspicious. She told
5 y'all that it's, it was a huge, huge amount of drugs.
6 Y'all get to see the drugs and I think you'll be
7 surprised at, at how they look. They're not, it's not
8 really a large amount what you'll see. The --- y'all
9 are here for a pretty important purpose. You're,
10 you're called to decide the guilt or innocence of a
11 man. This is a very serious responsibility, because
12 the stakes in a criminal trial are high. In a civil
13 trial, normally what's at stake is just financially.
14 However, in a criminal trial, a person's freedom is at
15 stake and we as Americans place a high value on our
16 liberty. In a civil trial, the Plaintiff is only
17 required to tip the scales ever so slightly to
18 recover, but because there's so much more on the line
19 in a criminal trial, the burden in a, in a criminal
20 trial is much higher. The State's required to prove
21 every, every element of the crime charged beyond a
22 reasonable doubt. That burden's on the State, not the
23 Defendant. The Defendant's not required to prove
24 anything. Every Defendant charged with a crime is
25 presumed innocent until the State has met its high

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1 burden of proving guilty beyond a reasonable doubt.
2 And this isn't some fancy, legal phrase. It's a
3 substantial right that Mr. Peterson and every other
4 individual charged with a crime has. It means that Mr.
5 Peterson comes into this courtroom with a clean slate
6 and the inquiry into whether he's guilty or innocent
7 has just begun. Just because the police have charged
8 him with a crime, is not proof of anything. You all
9 are the fact finders. You decide guilt or innocent.
10 Now whereas the judge is the ultimate authority on the
11 law, you all are the ultimate authority on the facts.
12 You have something special that you bring to the
13 process, which is your common sense. All of y'all have
14 the sixth sense that tells you when something's not
15 right. You don't have to have any sort of special
16 legal training to be a juror. Y'all have your life
17 experiences. I'll talk a little bit about the facts of
18 this particular case. What the State's got to prove to
19 you all. You're going to hear testimony that Mr.
20 Peterson was sitting in a Suburban and several
21 officers approached him and he took off running and
22 ran into an apartment. As you listen to the evidence,
23 I would like you to keep in mind where the, where the
24 drugs were found. The testimony's going to indicate
25 that they were found in an apartment where he wasn't

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1 living. You're going to hear some testimony from an
2 individual named Barrack Dukes, who's going to tell
3 you that the drugs were his. And the State does have
4 to prove that Mr. Peterson had the intent to
5 distribute cocaine and marijuana. The weight of the
6 drugs is a factor that y'all can consider the law says
7 that there's a permissive inference of an attempt to
8 distribute if over a gram of cocaine and twenty eight
9 grams of marijuana is found, but that's just something
10 that y'all can consider. Y'all decide whether there is
11 an intent to distribute and you look at the totality
12 of the circumstances, all of the facts to decide that.
13 That's for you to decide, it's not something that's
14 automatic. I'd ask that you listen to the testimony,
15 all of the witnesses, weigh all the evidence before
16 deciding as to the guilt or innocence of Mr. Peterson.
17 Don't deny Mr. Peterson his freedom unless the State
18 has met its burden of proving every element of the
19 crime charged beyond a reasonable doubt. He's
20 entitled, under our Constitution to a fair trial and
21 I'm sure that that's what y'all will give him. Thank
22 you.

23 The Court: You ready to call your first witness?

24 Ms. McElveen: Yes sir. The State would call Agent Horton.

25 Bailiff: State your name please.

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1 Agent Horton: Special Agent Derrick Horton.

2 Bailiff: Do you solemnly swear or affirm that the
3 testimony you give this court will be the truth, the
4 whole truth and nothing but the truth so help you God?

5 Agent Horton: I do.

6 Bailiff: Have a seat please.

7 Ms. McElveen: Your Honor, may our evidence technician stay
8 in the courtroom with the evidence?

9 Mr. Sullivan: Judge, I don't have a problem with him
10 staying. It won't make a difference.

11 Agent Horton: I'm Special Agent Derrick Horton, H-O-R-T-O-
12 N with the South Carolina Law Enforcement Division.

13 DIRECT EXAMINATION OF AGENT HORTON BY MS. MCELVEEN:

14 Q: Agent Horton, who are you.

15 A: The South Carolina Law Enforcement Division, SLED.

16 Q: And how long have you been with SLED?

17 A: Four years.

18 Q: And what are your duties there?

19 A: I'm a major crimes investigator with Midlands
20 Investigative Services Unit.

21 Q: And what does that entail?

22 A: We work major criminal offenses as requested by local
23 and other state law enforcement agencies in, in the
24 Attorney General's Office.

25 Q: So you are a federal agency or a state agency?

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- 1 A: State agency.
- 2 Q: Okay, but you serve the whole state?
- 3 A: Yes.
- 4 Q: And were you ever requested by the Sumter Police
- 5 Department to work with them?
- 6 A: We were.
- 7 Q: What do you do with them? Can you explain?
- 8 A: Beginning in December of 2009, we were requested to
- 9 coordinate a multi-jurisdictional violent crime, crime
- 10 suppressant initiative, wherein we do criminal patrols
- 11 in high crime areas, address street level issues that
- 12 effect the quality of life in different jurisdictions.
- 13 Q: And is there, was there any of these high crime areas
- 14 that you patrol here in Sumter?
- 15 A: Several. Yes ma'am.
- 16 Q: And is Lantana Apartments one?
- 17 A: It was.
- 18 Q: Were you working on May 14, 2010?
- 19 A: I was.
- 20 Q: What were you doing? Can you explain a little bit
- 21 about what happened on May 14th?
- 22 A: We Special Agent James Flowers, myself, Detective
- 23 Lyons and Officer Gardner, more or less a routine
- 24 patrol in a high crime area; that being Lantana
- 25 Apartments. Driving through the parking lot we

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1. observed the suspect's vehicle backed into a parking
2 space. That is suspicious to us when someone's just
3 sitting in a parking space, with the door open. As we
4 got closer, and were going to get out of the car, I
5 don't remember if we got out or were getting out, the
6 suspect ran into an apartment.

7 Q: And what happened next after he ran?

8 A: He went into an apartment and shut the door. We
9 obviously didn't know if he belonged in that
10 apartment. Several officers went around to the back of
11 the apartment. Myself and I believe Officer Gardner
12 stayed in the front of the apartment. We, I think we
13 first knocked on the door and by that time, we later
14 found out that he tried to come out the back door and
15 then came back to the front and opened the door at
16 which time he was detained.

17 Q: He was detained at that time?

18 A: Yes.

19 Q: And you were present when he was arrested or when he
20 was detained?

21 A: Right.

22 Q: Did you later arrest him, put him under arrest, place
23 him under arrest?

24 A: I did not. That's what took place, but I did not put
25 handcuffs on him. I was more or less there for

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1 support.

2 Q: Okay did you witness the handcuffs being put on him?

3 A: Yes, I did.

4 Ms. McElveen: Okay, thank you very much. Please answer any
5 questions that defense counsel may have.

6 A: Okay.

7 CROSS EXAMINATION OF AGENT HORTON BY MR. SULLIVAN:

8 Q: Special Agent Horton, you were, you said one of the
9 individuals who was initially, you alone and who else
10 were initially in Lantana Apartments on patrol?

11 A: We were riding four in a car. I believe it was me,
12 Special Agent James Flowers of SLED, Detective Lyons
13 and Officer Gardner.

14 Q: Okay, and you say that you were patrolling Lantana
15 because that's considered you were just patrolling
16 high crime areas and Lantana Apartments is considered
17 a high crime area, is that correct?

18 A: That's correct.

19 Q: Okay, so it being such a high crime area, it wouldn't
20 be too unusual for people who live in those apartments
21 to have drugs in there would it?

22 A: No, it wasn't unusual.

23 Q: Okay and when the drugs were found they were in
24 apartment of Lantana Apartments, correct?

25 A: I believe that's the correct number.

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- 1 Q: Okay, and you testified that there's certain types of
2 suspicious behavior that you look for and one of those
3 types of suspicious behavior is when somebody is
4 sitting in their car and it's backed in, correct?
- 5 A: Yes.
- 6 Q: Yes, that's suspicious?
- 7 A: It is.
- 8 Q: For somebody to be sitting, sitting in their car. Is
9 it suspicious for them to be sitting in their car or
10 both sitting in their car and the car backed in?
- 11 A: Both.
- 12 Q: Okay and you were the one of the ones who --- he was
13 drinking a beer in the Suburban wasn't he?
- 14 A: I don't remember if he was.
- 15 Q: Okay. He took off running?
- 16 A: Yes.
- 17 Q: Alright and you were the ones who went chasing after
18 him?
- 19 A: Yes.
- 20 Q: Okay. And he went into apartment okay. And you
21 don't have any indication to your knowledge, he wasn't
22 living there correct?
- 23 A: We found that out afterwards.
- 24 Q: Okay, okay and the other officers didn't show up
25 later, it was just the three of y'all who were there

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- 1 initially?
- 2 A: I believe there were four of us.
- 3 Q: Four of us? For of y'all?
- 4 A: And I don't recall if there was another car with us at
- 5 the initial part of it.
- 6 Q: Okay. When you initially started approaching the
- 7 Suburban and Mr. Peterson took off running, how far
- 8 away were you?
- 9 A: It was not very far. I don't know the exact distance.
- 10 Q: Was it as far as from you to that wall?
- 11 A: No.
- 12 Q: It was shorter than that or?
- 13 A: I believe it was.
- 14 Q: Okay. A lot shorter than that? It could have been
- 15 just about as far as from you to the wall?
- 16 A: I'd say probably half that distance.
- 17 Q: Okay. Alright, were there cars around? Were other
- 18 cars in the parking lot?
- 19 A: Yes.
- 20 Q: Trees around?
- 21 A: I don't believe there's any trees there.
- 22 Q: Okay, alright. And you went into the front part of
- 23 the apartment or did you come in from the back of the
- 24 apartment?
- 25 A: I went to the front door of the apartment.

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1 Q: Okay and you saw Mr. Peterson and there were some
2 other people in there when you went into the
3 apartment, wasn't there.

4 A: I believe there were.

5 Q: Okay.

6 A: I didn't go in. I was just at the front door.

7 Q: Okay. Was the door open?

8 A: No.

9 Q: Okay. So you knocked on the door or you just ...

10 A: I believe we did knock on the door first.

11 Q: Okay, alright. Did you actually see the drugs when
12 you went in there?

13 A: I didn't go in the apartment, I was at the front door.

14 Q: You never went into the apartment?

15 A: No.

16 Q: Okay, okay. Could you see into the apartment when the
17 other officers were in there?

18 A: I could see inside when the door was, was open and I
19 believe Mr. Peterson opened the door. When we detained
20 him I saw other people in I guess it was the living
21 room part of it. Other than that, I didn't see
22 anything of much detail.

23 Ms. McElveen: Your Honor can we ask the Defendant to please
24 quit physically acknowledging and shaking and rolling
25 and twitching?

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1 The Court: Alright, Mr. Peterson you've got to sit
2 still, okay?

3 Mr. Peterson: Alright.

4 Q: Why didn't you go into the apartment with the other
5 officers? Didn't they need your assistance in there?

6 A: No, I don't recall being asked to go into the
7 apartment. It was, Mr. Peterson was detained when he
8 came to the front door himself.

9 Q: Oh, he came, he came himself to the front door?

10 A: If I remember correctly he did.

11 Q: Okay, but ...

12 A: ... or just inside the front door.

13 Q: Alright. Did you see a white bag at that point?

14 A: No.

15 Q: Okay. So he didn't have any drugs on him?

16 A: At what point?

17 Q: At that point?

18 A: When he came back out?

19 Q: When you went to the apartment and the other officers
20 went in and he came to the front door ...

21 A: When he was detained?

22 Q: Yeah.

23 A: No, he did not.

24 Q: Okay. And the Suburban, there wasn't anything in it?

25 A: I don't recall if there was or not.

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1 Q: Y'all searched it?

2 A: We did, but I don't remember if we found anything in
3 it.

4 Q: Okay. Alright. Mr. Peterson never said anything to
5 indicate that was his marijuana or cocaine?

6 A: Not to me, he didn't.

7 Q: To anybody?

8 A: I don't know.

9 Q: In your presence? When you were there.

10 A: Not in my presence.

11 Q: Okay. That's all the questions I have. Thank you.

12 The Court: Anything further Ms. McElveen?

13 Ms. McElveen: Yes sir.

14 RE-DIRECT EXAMINATION OF AGENT HORTON BY MS. MCELVEEN:

15 Q: What did you find out, defense counsel brought up the
16 --- whether he lived there and if you ever knew if he
17 lived there. You said you found out later about his
18 living situation. What did you mean by that? Did he
19 live there?

20 A: I don't remember who told me, but I believe it was one
21 of the people that was inside the apartment said that
22 he did not live there. That's about all I remember.

23 Q: Did he give any indication that his family lived there
24 or anybody in his family?

25 A: It seems to me that he did say something about that

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1 and again, I don't remember what exactly he said.

2 Q: Okay. And you did not go into the apartment, correct?

3 A: No, if I did it was just inside the front door while
4 he was being detained. I never went passed the front
5 door.

6 Q: Thank you very much. I have no further questions.

7 The Court: You can step down.

8 Agent Horton: Thank you Your Honor.

9 The Court: You may call your next witness.

10 Ms. McElveen: The State calls Detective Lyons.

11 The Court: Okay.

12 Bailiff: State your name please.

13 Detective Lyons: William Lyons.

14 Bailiff: Do you solemnly swear or affirm the testimony
15 you give this court shall be the truth, the whole
16 truth and nothing but the truth, so help you God?

17 Det. Lyons: I do.

18 Bailiff: Thank you.

19 Ms. McElveen: Your Honor may Agent Horton stay in the
20 courtroom now that he's testified?

21 The Court: Is that okay?

22 Mr. Sullivan: I have no objection to that.

23 Bailiff: State your name and spell your last for the
24 record.

25 Det. Lyons: William Lyons, L-Y-O-N-S.

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1 DIRECT EXAMINATION OF DETECTIVE LYONS BY MS. MCELVEEN:

2 Q: Detective Lyons, who do you work for?

3 A: I work for the City of Sumter Police Department.

4 Q: And what are your duties?

5 A: Currently the gang investigator for the department,
6 assigned to criminal investigation. I investigate gang
7 related crimes, to involve gun charges, violations,
8 violent crimes. Basically anything involving gang
9 related activity.

10 Q: And how long have you been employed by the police
11 department?

12 A: Since 2004.

13 Q: Were you working on May 14, 2010?

14 A: I was.

15 Q: Can you tell us a little bit about what you were doing
16 and if you ever got the chance to work with SLED
17 agents or what your role was that day?

18 A: During that time, as Agent Horton stated, the City of
19 Sumter Police Department was engaged in a multi-
20 jurisdictional task force, so to speak, with the City
21 of Sumter Police Department, State Law Enforcement
22 Division, the Bureau of Alcohol, Tobacco and Firearms
23 and the US Marshall Service doing crime suppression in
24 the city of Sumter. We based our crime suppression on
25 an analysis of certain areas in the city and we

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1 focused our efforts on those areas to curtail street
2 level crimes, street level violent crimes, drug
3 dealing, gun trafficking, anything of that nature and
4 our focus was on areas that was determined by crime
5 analysis, as well as, experience having worked the
6 streets for quite a while.

7 Q: So you had the, were you, did you have the opportunity
8 to patrol Lantana Apartments?

9 A: Yes I did. That was one of the areas that we focused
10 some of our crime suppression on. The Lantana Area,
11 the area through Carolina Avenue, back towards
12 Highland and Jackson area. They're what we call the
13 North side of town.

14 Q: And what did you, what happened on May 14th? Can you
15 tell us a little bit about that?

16 A: That particular day myself, Special Agent Horton,
17 Special Agent James Flowers and Corporal Heath Gardner
18 were in the area of the Lantana apartments. During,
19 for lack of a better term, routine patrol through the
20 area. On a day to day basis we patrol through the
21 area. We look for anything out of the ordinary,
22 anything suspicious in nature. On that particular day
23 as we pulled through the Lantana Apartment complex we
24 saw a gold colored Chevrolet Suburban backed into a
25 parking space close to one of the sets of apartments.

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1 We thought it was kind of odd. It was the Defendant,
2 Mr. Peterson. As we approached the vehicle I observed
3 Mr. Peterson get out of the vehicle quickly and take
4 off running carrying a whitish color plastic bag. Mr.
5 Peterson entered an apartment which we later
6 discovered to be number three five, apartment number
7 thirty five. There on the end closest to where the
8 vehicle was parked. As he ran to the front door, I
9 ran around to the rear of the apartments. The
10 apartments have entrance in both the front and the
11 rear. I went back there to see if he was going to
12 come out. He indeed did attempt to come out the rear
13 of the apartment but turned around and went back
14 inside. He went back towards the front door and was
15 met by Agent Horton and Officer Gardner and was
16 detained at that time. I stepped into the rear of the
17 residence, the door was unlocked. I stepped in to
18 secure the residence to find out who lived there to
19 make sure that the residents were safe, to make sure
20 that nothing was wrong with any of them. As I entered
21 through the back door of the residence, just through
22 the inside the door, I saw on the ground, I guess on
23 the floor, not the ground, a white plastic bag similar
24 to the one Mr. Peterson was carrying laying right
25 there on the floor, in plain view with the marijuana

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- 1 and cocaine readily viewable.
- 2 Q: So the white plastic bag was the same one that you saw
- 3 in his hand?
- 4 A: That's correct.
- 5 Q: And you, yourself saw the white bag in his hand when
- 6 he got out of the car?
- 7 A: That is correct.
- 8 Q: And it's the same bag that you yourself found on the
- 9 ground in the apartment?
- 10 A: That is correct.
- 11 Q: Was it hidden behind anything or?
- 12 A: No ma'am. It was in plain view. Nothing had to be
- 13 moved, nothing had to be manipulated. It was simply
- 14 laying there on the floor right next to a trash can.
- 15 Q: Okay, right next to the back door?
- 16 A: Uh-huh.
- 17 Q: Let me hand you this for i.d. I'm handing you what's
- 18 been marked as State's exhibit 1 for i.d. purposes
- 19 only. Can you identify if that white plastic bag that
- 20 you were talking about is in that piece of evidence?
- 21 A: It is.
- 22 Q: I would ask you to remove it, but I don't believe that
- 23 would be a good idea.
- 24 A: I don't have any gloves so I can't do that.
- 25 Q: But that is the bag you found on the ground?

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- 1 A: Yes, this is the bag.
- 2 Q: And that is the bag, are those some of the contents
3 that were inside of the bag?
- 4 A: That is correct. It's individual bags of marijuana
5 that were located inside of this. The cocaine is not
6 in this bag, but it was also inside this white plastic
7 bag as well.
- 8 Q: I'm handing you what's been marked as State's exhibit
9 2. Can you identify those items?
- 10 A: Yes, these would be the individual bags of powder
11 cocaine that were located inside the white plastic bag
12 as well. There's another bag inside these that is just
13 used to send the narcotics to the state law
14 enforcement division for testing in regards to the
15 cocaine, but the individual bags with the little red
16 zipped bags are inside the white plastic bag.
- 17 Q: So there were multiple little bags inside of that
18 white plastic bag?
- 19 A: That is correct. I count one, two, three, four, five,
20 six, seven, at least seven, it's hard to tell if
21 there's anymore, at least seven bags inside this big
22 bag.
- 23 Q: And what did you do after you found that white plastic
24 bag full of the drugs?
- 25 A: The evidence was secured there. The members of the

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1 Sumter City Narcotics were called out. Sergeant Quiroz
2 responded to the scene.

3 Q: Why were they called to respond? Can you explain what
4 they did?

5 A: In normal situations, depending on the amount of
6 narcotics that are found, they would not be called. If
7 anything it constitutes just a simple possession.
8 Other than just one baggy if cocaine or one bag of
9 marijuana they would probably not been notified. They
10 probably would have gotten the intel because of the
11 crime suppression we were doing because they were
12 assisting with the crime suppression, but given the
13 quantity of drugs and the fact it was well over a
14 hundred grams of marijuana and well over a hundred
15 grams of cocaine, we systematically notified our
16 narcotics unit. Even patrol officers notify the
17 narcotics what they consider a substantial amount of
18 drugs.

19 Q: So you consider that a substantial amount, therefore
20 you contacted the narcotics division?

21 A: I would consider that more than for personal use.

22 Q: Okay, so have you had much experience with narcotics
23 and distribution throughout your gang work?

24 A: I have.

25 Q: And you consider that more than personal use?

- 1 A: Yes.
- 2 Q: Now when you saw him exit the vehicle with this white
- 3 plastic bag, how far away were you? If I, I'm going to
- 4 approach you and as I back up, if you'll say stop when
- 5 he was about that distance from you when he exited the
- 6 vehicle I would appreciate it. Can you do that?
- 7 A: I can if you back up just a little bit.
- 8 Q: Okay I just wanted to give you the full opportunity.
- 9 A: Okay, actually it's probably somewhere between myself
- 10 and the second row there behind where Agent Horton is
- 11 sitting. It was not, it wasn't very far. Again, the
- 12 vehicle was parked in a parking spot that's an
- 13 unobstructed view. So, I believe there was a smaller
- 14 two door or four door and that was on the other side
- 15 of the vehicle which would not have obstructed our
- 16 view. We are actually further down so I had a clear
- 17 view of Mr. Peterson as he exited the vehicle and took
- 18 off running.
- 19 Q: And you clearly saw a white bag in his hand?
- 20 A: I did.
- 21 Q: Would it be difficult to conceal that amount of drugs
- 22 in the palm of your hand?
- 23 A: Yes.
- 24 Q: Okay so you were able to see the overflow?
- 25 A: Yes.

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1 Q: And all this did occur in Sumter County?

2 A: It did.

3 Q: And after Mr. Peterson was arrested, who identified
4 him as, with his name and everything, how did you get
5 his information?

6 A: I'm not sure, but I believe we had, I believe we had
7 his i.d.

8 Q: Okay.

9 A: I believe he had some form of i.d. on his person.

10 Q: Great.

11 A: Again, we had his name and date of birth and whatnot.
12 He used 861 Carolina which is the address for Lantana
13 Apartments.

14 Q: So he had that on his i.d?

15 A: I don't recall if it was on his i.d. but it was put on
16 his arrest warrant.

17 Q: You yourself found the drugs?

18 A: I did.

19 Q: Thank you very much.

20 CROSS EXAMINATION OF DET. LYONS BY MR. SULLIVAN:

21 Q: Hello Detective Lyons.

22 A: Hello sir.

23 Q: You are the lead detective on this case?

24 A: I, I guess I would be. I initiated the report. The
25 report got forwarded to narcotics unit so, they were

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1 probably responsible for putting together the case
2 file along with the initial incident report.

3 Q: Okay, you talking about the report, that report right
4 there?

5 A: No, that would originate from somebody from the
6 narcotics unit. I just wrote the initial incident
7 report about two pages. I believe about two or three
8 more pages and you can see the initial incident
9 report.

10 Q: Okay. Alright. Now you weren't there, you weren't one
11 of the ones who were initially patrolling Lantana
12 Apartments were you?

13 A: Yes.

14 Q: Okay and, and you say that when Mr. Peterson's got out
15 of the Suburban and started running you were about as
16 far from where you're sitting to the second row?

17 A: Yeah, somewhere in that distance.

18 Q: Okay. And the purpose for being at Lantana Apartments
19 was, it was considered a high crime area, a lot of
20 drugs there basically, is that the reason for the
21 patrol?

22 A: It is higher crime area.

23 Q: Okay. Alright. And you say that you were one of the
24 ones who was chasing him and you went to the back of
25 apartment?

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- 1 A: I went to the rear of the apartment.
- 2 Q: Okay. And he went towards the front of the apartment?
- 3 A: He went in through the front.
- 4 Q: He went through the front, he went to the back and
- 5 then he came bac towards ...
- 6 A: He made it to the back door of the apartment about the
- 7 same time I did.
- 8 Q: Okay.
- 9 A: He decided not to come out.
- 10 Q: Alright. And the bag was on the floor?
- 11 A: On the floor.
- 12 Q: In the kitchen?
- 13 A: Kitchen area so once you step through in the back
- 14 door, you step in the kitchen area.
- 15 Q: Okay, and it was actually behind a deep freeze wasn't
- 16 it?
- 17 A: No it was not behind anything. It was next to the
- 18 freezer and next to a trash can.
- 19 Q: Okay, where was Mr. Peterson standing in the apartment
- 20 at that point when you saw the bag?
- 21 A: He had already come back to the front door and was
- 22 already being detained by officers at the front door.
- 23 Q: Okay. But you say that, that even though he was from
- 24 you to the second row away from you that it, it
- 25 couldn't be that maybe because you found the bag, when

1 you went into the apartment, was it you who actually
2 picked up the bag?

3 A: I picked up the bag, it was laying there on the floor
4 when I stepped through the back door.

5 Q: Is it possible that maybe after you found the bag,
6 maybe or that you thought that he was carrying the
7 bag? I mean, you're a good ways away from him.

8 A: That's not that far. He, he was less than twenty feet
9 and I saw him running with the bag and enter the
10 apartment with the bag.

11 Q: Okay and there are other individuals inside the
12 apartment?

13 A: Yes there was.

14 Q: Okay. Did you see him drinking beer in the Suburban?

15 | A: Did I see him drinking beer in the Suburban?

16 | Q: Yes.

17 A: No I did not, but I do know we did find a Budweiser
18 can in the Suburban.

19 Q: Okay, so maybe he was drinking beer in the Suburban?

20 | A: We found it when we were going through the scene.

21 Q: Maybe he took off running because he didn't want to
22 get an open container charge.

23 Ms. McElveen: Objection. Calls for speculation, Your
24 Honor.

25 The Court: You can ask him the question but you can't

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1 answer the question.

2 Q: Could, do you think he could have been --- could the
3 beer have been in a bag?

4 A: No, these drugs were in that bag.

5 Q: Okay.

6 A: There was no beer in that bag. These drugs were in
7 that bag that he was carrying. This is what he was
8 carrying, he wasn't carrying beer.

9 Q: A lot of people use those plastic grocery bags that
10 you get from convenient stores or grocery stores ...

11 Ms. McElveen: Objection, testifying, Your Honor.

12 Mr. Sullivan: I'm asking him.

13 The Court: Go ahead.

14 Ms. McElveen: Calls for speculation.

15 The Court: You can ask the question.

16 Q: Do people use those plastic bags they get from grocery
17 stores and convenient stores a lot? Just in your life
18 experience?

19 A: I'm not quite sure I understand your question. Are you
20 asking me if they use them to transport narcotics,
21 yes. Are they using them transport other things, yes.
22 So I mean, I'm not quite sure I understand your
23 question, but people use bags.

24 Q: Those plastic grocery bags? Okay. Alright, so you're
25 sure that the bag that you saw he couldn't have been,

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1 his beer wasn't in that bag? In a plastic bag?

2 A: No, because this is the bag he had. He had the bag
3 with these narcotics in it.

4 Q: Alright.

5 A: The beer that we found was inside the Suburban.

6 Q: Alright.

7 A: It never left the Suburban.

8 Q: Alright. He didn't, Mr. Peterson never, never told
9 you that the drugs were his. He never made a statement
10 to you?

11 A: Not to me personally, no.

12 Q: Okay, to anybody that you're aware of? You were never
13 present, excuse me, you were never present when he
14 ever said that the drugs were his?

15 A: No I was not. No one else in the home claimed the
16 drugs.

17 Q: Okay. Would you say that buying drugs is a dangerous
18 activity? It's a dangerous thing to do?

19 A: I would say that buying and selling would be
20 dangerous.

21 Q: Okay.

22 A: There's an inherent risk in it no matter whether your
23 using it or selling it.

24 Q: Alright. Would it make sense for somebody who uses
25 drugs to purchase their, purchase the drugs in bulk to

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1 buy greater quantities?

2 A: Someone who uses?

3 Q: Somebody who uses.

4 A: No, I can tell you that based on my experience here at
5 the Sumter Police Department, anytime we've ever
6 arrested somebody for the use of narcotics, so to
7 speak, or buying narcotics for personal use, we don't
8 get more than a dime bag, twenty dollars worth of
9 cocaine or twenty dollars worth of crack cocaine. Your
10 typical users are not going to have funds to buy this
11 kind of quantity of drugs to sit around and wait to
12 use over for a time period. The only people that we
13 deal with are users who were using it recreationally
14 or using it on a daily basis buy their drugs at the
15 time they plan on using it.

16 Q: Okay. So basically, if I understand you correctly,
17 what you're saying is people who use cocaine generally
18 don't have a lot of money?

19 A: No, that's not true.

20 Q: Okay.

21 A: That's not a fair statement.

22 Q: So they, they may have money?

23 A: I, I have seen people who use cocaine who were
24 extremely rich and extremely poor let's put it that
25 way.

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1 Q: Okay, well if somebody buys more cocaine, they got to
2 make less trips to their dealer and ...

3 Ms. McElveen: Objection.

4 Q: I'm asking him a question.

5 Ms. McElveen: He's asking for him to testify about how
6 cocaine users buy their drugs. He is not a
7 cocaine user.

8 Mr. Sullivan: He's the law enforcement, he's got his
9 experience.

10 Ms. McElveen: He doesn't buy drugs. You're barking up the
11 wrong tree.

12 The Court: You can cross examine him. You can lead him,
13 just don't testify. Ask him questions that he knows in
14 his field of expertise.

15 Q: Do dealers dilute crack and cocaine?

16 A: In other words, do they buy some and spread it a part
17 and try to make more money for themselves?

18 Q: Yes.

19 A: Yes they do.

20 Q: And that would make a user have to use more crack or
21 cocaine to get the same high, correct?

22 A: Not necessarily.

23 Q: Okay. Alright. Nobody's seen, I haven't heard any
24 testimony that Mr. Peterson was actually out there
25 selling drugs. You don't have any evidence that he was

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1 selling drugs correct?

2 A: I don't, I have never, never to my knowledge, as far
3 as us, if he's selling drugs I do not know if he sells
4 drugs? Based on this quantity here it would be
5 reasonable to believe that he's in the business of
6 selling narcotics.

7 Q: Okay. Are scales an indication of selling drugs?

8 A: Yes.

9 Q: Did you find scales in the Suburban?

10 A: No we did not.

11 Q: Scales in the bag?

12 A: No we did not.

13 Q: Drugs dealers typically carry large amounts of money,
14 is that an indication of somebody who deals drugs?

15 A: That's not what, that's not a fair question because,
16 again, we've arrested people with large quantities of
17 narcotics but didn't have any cash on them. We've
18 arrested people with small amounts of narcotics on
19 them that had a extremely large amount of cash, so you
20 can't say just because you have money and dope that
21 you're a drug dealer. You have to base it on what's
22 the circumstance. This is a large quantity of
23 cocaine. He did have money, however, while he was
24 arrested or detained he decided to get up and take off
25 running and took that money with him and he had to be

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1 chased down again. So therefore, the money he had on
2 his person was lost, because he decided to run after
3 he was already arrested. So I do not, you know, if
4 you're going to say just because you have money or you
5 need money to be a drug dealer, that's not necessarily
6 the case.

7 Q: Well my, my question was when an individual who y'all
8 arrest has a lot of money on their person, that's
9 something that y'all would use if, if you found a
10 bunch of money on Mr. Peterson, that'd be something
11 you'd definitely be using to try to say he's a drug
12 dealer isn't it? That that's an indication of drug
13 use or drug distribution?

14 A: Money only?

15 Q: Huh?

16 A: Money only?

17 Q: Yeah.

18 A: No. Money and these drugs right here, yes. But money
19 only, no.

20 Q: Okay. Any of this on video?

21 A: No sir.

22 Q: Okay, what about, okay, you said that when y'all went
23 into the apartment that which there's no indication
24 that he actually lived there, correct?

25 A: To my knowledge, he has family who lives there and he

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- 1 has used the address.
- 2 Q: Okay, so there's other people in there, right?
- 3 A: There were some other individuals inside the home at
- 4 the time.
- 5 Q: Okay.
- 6 A: None of whom had a white plastic bag on them full of
- 7 drugs.
- 8 Q: Well, he didn't have it on him, did he?
- 9 A: He had it on him when he entered the residence.
- 10 Q: How far ... Okay. Were any fingerprints lifted off
- 11 the bags that were found?
- 12 A: No, the bag was in his hand, it belonged to him.
- 13 Q: But, you were, when you started running you were as
- 14 far from where you are to the second row back and when
- 15 you caught up to him he didn't have the drugs, any
- 16 drugs in his possession.
- 17 A: He dropped them in the floor at the back door when he
- 18 tried to come out the back door.
- 19 Q: You didn't, you didn't see that. You don't know.
- 20 A: When he tried to come out the back door, as I came in
- 21 the back door, the bag he was carrying was laying on
- 22 the floor at the back door.
- 23 Q: Okay, but my point is, if you wanted to be sure, since
- 24 there is, you know, since the drugs were found in
- 25 somebody else's apartment, you could have lifted

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1 fingerprints off the baggies.

2 A: No, the bag is the bag he carried into the apartment.
3 We searched the rest of that apartment based on the
4 permission of the homeowner's there, who, when they
5 discovered these drugs were back there on the floor,
6 they were just as surprised as we were that he came
7 into the apartment with the drugs. They gave us
8 permission to look around. We didn't find no other
9 narcotics anywhere in that apartment, except at the
10 back door that he tried to exit out of.

11 Q: Were you surprised that nobody in the apartment said,
12 'No, those are my drugs. I want to go ahead and claim
13 responsibility for those, I mean, would you expect
14 somebody to do that?

15 A: Well, it's happened.

16 Q: Alright. Thank you Detective Lyons. That's all the
17 questions I have.

18 A: Yes sir.

19 RE-DIRECT OF DETECTIVE LYONS BY MS. MCELVEEN:

20 Q: You stated Detective Lyons that no one in the home
21 claimed the drugs. Did anyone in the home claim Mr.
22 Peterson?

23 A: No.

24 Q: And you said you searched the rest of the apartment.
25 Did you find any other narcotics or proof of drug use

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- 1 or ...
- 2 A: No.
- 3 Q: ... distribution?
- 4 A: No, we did not.
- 5 Q: Did you find scales there?
- 6 A: No ma'am.
- 7 Q: Is it normal for, in your experience with drugs
- 8 dealers, to drive around town with their scales in
- 9 their car?
- 10 A: We have seen it and then we've also not seen it. I
- 11 wouldn't say that just because you have scales you are
- 12 a dealer. To me it's just another factor.
- 13 Q: It's another factor.
- 14 A: I mean, just because you don't have them doesn't mean
- 15 you're not in the business of distributing narcotics.
- 16 Q: Would multiple baggies of drugs give an indication of
- 17 dealing?
- 18 A: Yes.
- 19 Q: Were there multiple baggies found here?
- 20 A: Yes.
- 21 Q: And can you show those again and indicate how many
- 22 baggies there were?
- 23 A: There are at least three baggies here of the
- 24 marijuana, three large bags. Some of them were opened
- 25 in testing and again, without breaking this open, I

1 counted at least seven bags of cocaine, without
2 breaking the seal on this evidence.

3 Q: And have you ever arrested anybody in their home
4 before, have you ever had the chance to arrest
5 somebody for selling drugs out of their house, well
6 let me put it another way. When you find people who
7 sell drugs out of their home, do they keep their drugs
8 in a grocery bag in the center of their kitchen floor
9 near a back door?

10 A: No, they do not.

11 Q: Thank you very much. I have no further questions.

12 Mr. Sullivan: If I could, could I re-cross on what she
13 re-directed? I'll be brief I promise.

14 RE-CROSS OF DETECTIVE LYONS BY MR. SULLIVAN:

15 Q: You ever know anybody that likes to drink a lot of
16 Coke or Pepsi or sodas?

17 A: I mean, I like a Pepsi myself.

18 Q: Okay, alright. When you go to the store, do you buy
19 like the big twenty liter container of Coke a Cola?

20 A: It depends on who's shopping.

21 Q: It depends on what?

22 A: On who's shopping; myself or my wife.

23 Q: Okay, well have you ever seen a big ten or twenty
24 liter container of Coke?

25 A: No, sir. That's ...

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1 Q: It doesn't exist?

2 A: A little bit too much.

3 Q: Okay. Do you buy the cans?

4 A: No.

5 Q: Alright, do you know people that buy the cans?

6 A: Yes.

7 Q: Who drink a lot of soda?

8 A: Yes.

9 Q: Well, if they want a lot of it, why don't they buy the
10 a huge container?

11 Ms. McElveen: Your Honor I'm sorry. I don't see the re-
12 cross aspect here.

13 The Court: What's this got to do with ...

14 Ms. McElveen: I didn't ask about Pepsi or colas.

15 Q: Is it possible that the reason that a user would buy
16 cocaine in more than one baggie is that's the way it's
17 sold? That's the way that a dealer would sell it?

18 A: I can tell you this. That based on my experience, the
19 investigations that I have been part of people who buy
20 narcotics do not buy multiple bags of cocaine,
21 multiple bags of marijuana in this kind of quantity.
22 One to two small baggies maybe. But this kind of
23 quantity, your typical, everyday users do not buy
24 narcotics in this kind of quantity. These are the kind
25 of quantities that we take off people who are in the

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1 business of selling narcotics.

2 Q: I won't go on any longer. That's all the questions I
3 have. Thank you.

4 The Court: You can step down.

5 Mx. McElveen: Your Honor may we approach?

6 The Court: Yes ma'am.

7 (SIDE BAR)

8 The Court: Okay ladies and gentlemen, they've got a
9 function at 4:00. Our next witness is going to run
10 passed that. So, we're going to stop for the day and
11 come back at 9:30 in the morning and finish this
12 trial. I'll remind you please don't discuss this case
13 or do any research. You've got to decide this case
14 from what happens in the courtroom. If you'll be back
15 in the jury room at 9:30. If you have an emergency
16 and you can't get here please call, because we can't
17 do anything without all of you here. Have a nice
18 evening. 9:30.

19 (Jury exits courtroom at 3:39)

20 Ms. McElveen: Thank you Your Honor. At this time, due to
21 the kind of, the lawyer confusion and the tumultuous
22 nature of the Defendant's case we would ask that bond
23 be revoked for the evening until the trial starts in
24 the morning.

25 The Court: Well, normally bond is up when the case is

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1 called. The case has been called, so the bond is up
2 and I'll grant your motion. Yes, sir. You want to
3 tell me something?

4 Mr. Peterson: Yeah, can I please go home with my family
5 till in the morning?

6 The Court: Huh?

7 Mr. Peterson: Can I be home with my mama until in the
8 morning?

9 The Court: No, you can have your mama, send word to get
10 your mama up here in the morning but you've got to
11 stay in custody. Okay?

12 Mr. Peterson: Either way it go I still got to be here for
13 probation, so I still got to be here in the morning.

14 The Court: I understand that, but you've, you're
15 bondsman is not here. Once your case is called they're
16 off your bond. So the only way I can be sure you're
17 here is to take you into custody and that's what the
18 rules say.

19 Mr. Peterson: Well, my witnesses, he want to testify to
20 and get on the stand. They ran him. That's all, I want
21 to make sure my brother be here also to.

22 The Court: Okay.

23 Mr. Peterson: And I want to spend some time with my
24 family.

25 The Court: Okay.

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1 Officer Yost: You get to make a phone call when you get
2 to jail.
3 The Court: He still out there?
4 Mr. Peterson: Yeah, he still out there.
5 The Court: Okay, well your lawyer will have him here at
6 9:30 in the morning.
7 Ms. McElveen: He's sequestered too Your Honor.
8 The Court: I understand that. So he'll be back here at
9 9:30 in the morning we got him here.
10 Mr. Peterson: So, I can't spend time with my family?
11 The Court: Not tonight.
12 Mr. Peterson: Alright. Let's go.
13 Ms. McElvleen: Thank you.
14 Bailiff: He's not in the hall Judge.
15 Mr. Peterson: He's in the hallway?
16 Bailiff: He's not.
17 Mr. Sullivan: I served a subpoena on him.
18 The Court: You got a way for your lawyer to get in
19 touch with him? A phone number?
20 Mr. Peterson: No, he ain't got no phone.
21 The Court: We'll get him tomorrow.
22 (Court ends for the evening)
23 The Court: Good-Morning.
24 Jury: Morning.
25 The Court: Madame Solicitor you may call your next

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1 witness.

2 Ms. McElveen: The State would call Sergeant Quiroz.

3 Bailiff: State your name please.

4 Srgt. Quiroz: Darien Walker Quiroz.

5 Bailiff: Do you solemnly swear or affirm the testimony you
6 give this court to be the truth, the whole truth and
7 nothing but the truth, so help you God?

8 Quiroz: Yes sir.

9 Bailiff: Thank you, have a seat. State your name and
10 spell your last for the record.

11 Quiroz: Darien Quiroz. Last name is Q-U-I-R-O-Z.

12 DIRECT EXAMINATION OF SARGENT QUIROZ BY MS. MCELVEEN:

13 Q: Who is your employer?

14 A: Sumter City Police Department.

15 Q: And what do you do at the police department?

16 A: Currently I'm a Detective Sergeant of the narcotics
17 unit.

18 Q: And what do your duties entail?

19 A: Supervising the detectives under me, carrying out day
20 to day tasks, making sure they get completed. Also, I
21 do handle cases and make drug cases.

22 Q: And do you respond to scenes where there are drugs
23 involved? How do you arrive at scenes if you're not
24 the one who first appears?

25 A: We have investigators that are on call on various

1 weeks. It just depends on who's on call that week and
2 I happened to be on call.

3 Q: And what does that mean, on call?

4 A: On call means any, most drug incidents that occur of
5 some kind of magnitude. It's up to the patrol officer
6 or the officer making the case, whether or not an
7 investigator needs to be called out and at that time
8 they felt the need to call me out to collect the
9 evidence.

10 Q: And collect evidence, what do you collect when you're
11 there?

12 A: The items that are, are seized as far as drugs
13 anything pertaining to drugs or the case in general.

14 Q: Were you working on May 14, 2010?

15 A: I was.

16 Q: Were you on call?

17 A: Yes ma'am.

18 Q: Did you have the chance, can you tell us a little bit,
19 did you ever have the chance to respond to Lantana
20 Apartments that night?

21 A: I did.

22 Q: Can you tell us what you found when you were there?

23 A: By the time I got there, it pretty much had been
24 settled already. I believe Mr. Peterson was sitting on
25 the curb off the sidewalk in front of the residence

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1 that he was at. I arrived at the residence, touched
2 base with the officers on the scene. At that point,
3 they showed me where the item was, which was a bag by
4 the back door of the residence that Mr. Peterson had
5 in his possession at the time that they got into a
6 little foot chase with him. At that time they brought
7 me by the back door. It was sitting by the back door
8 near a trash can. At that time I looked in it and saw
9 it's contents, which was cocaine and marijuana. And at
10 that time I took it into my possession.

11 Q: I'm handing you what's been marked as State's exhibit
12 1 for identification purposes. Can you identify those
13 items?

14 A: Yes ma'am. It's --- looking to be marijuana in
15 separate bags. I don't know if you want me to dig
16 through this thing.

17 Q: No sir, please don't.

18 A: And then the white bag I can't quite see what's in
19 there. It looks like just residue of marijuana.

20 Q: And is that the white bag that you found on the floor?

21 A: That's correct, a white shopping bag.

22 Q: And are those, is that the marijuana contents that you
23 found?

24 A: Yes ma'am.

25 Q: And I'm handing you what's been marked as State's

1 exhibit two. Can you identify those items?

2 A: Yes ma'am.

3 Q: What is that?

4 A: White baggies containing cocaine powder.

5 Q: Are those the baggies that you found inside the
6 apartment?

7 A: Yes ma'am.

8 Q: On May 14th?

9 A: They were in the bag that I, that's my handwriting on
10 the bag there.

11 Q: Okay, tell us a little bit about that. When you say
12 collect evidence what do you mean?

13 A: When I collect evidence I place it into a separate bag
14 other than what it's in so these here are bagged up
15 separately. What I do is I stick them in a separate
16 bag. I guess more of a controlled bag and I put this
17 evidence tape you see here, which you'll see across
18 the top and I put my initial and the date on there.

19 Q: And so you bagged those items?

20 A: Yes ma'am.

21 Q: And did you bag the marijuana and the plastic bag?

22 A: Yes.

23 Q: How can you tell that?

24 A: It's got my initials, excuse me, and the date at the
25 top of the evidence tape here.

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1 Q: What do you do with the drugs after you collect them
2 and bag them?

3 A: Once I bag them I fill out a chain of custody stating
4 the items that were collected that day from the scene.
5 I sign my name to them verifying that I did have them
6 in my custody, I collected them and placed them into
7 evidence and what I do is I either, depending on
8 whether a technician is around, usually the procedure
9 is to turn the evidence into the evidence locker.

10 Q: And those are evidence lockers that are locked?

11 A: They are secured in the police department, yes.

12 Q: Once you drop it in there can you access that evidence
13 locker again?

14 A: Once you lock it the only person who has access is
15 that evidence technician.

16 Q: Okay, I'm handing you what's been marked as State's
17 exhibit three. Can you identify that item?

18 A: Yes ma'am. This is a chain of custody.

19 Q: Is that your signature?

20 A: Yes ma'am.

21 Q: Your Honor, the State would like to move to have that
22 admitted to evidence at this time.

23 The Court: What sayeth the defense?

24 Mr. Sullivan: No objection.

25 The Court: Okay, it's in without objection.

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1 (State's Number Three)

2 Q: So that is the chain of custody form that you filled
3 out?

4 A: Yes ma'am.

5 Q: I'm handing, I'm going to hand you what's going to be
6 marked as State's exhibit four and five.

7 The Court: What was the exhibit that you just entered?

8 Q: The exhibit that just got entered was the chain of
9 custody form,

10 The Court: I'm talking about the number.

11 Ms. McElveen: I'm sorry, three. After you turn it in, do
12 you ever, what about, what's your procedure for drugs
13 as far as who tests them and how they go from being
14 entered into evidence.

15 A: With marijuana, well, with marijuana we have, I'm
16 certified to analyze marijuana and so are the other
17 detectives in my unit. So we have a lab here in the
18 city to analyze marijuana. So that stays at the Sumter
19 Police Department when we're ready to analyze it. At
20 which time we'll sign out the marijuana, test it and
21 then bring it back with the analysis. The cocaine,
22 SLED has a facility in Columbia that they have
23 chemists that test the cocaine, so what we do is we
24 fill out what they call a best kit. And it's just,
25 it's an evidence kit with a controlled envelope and

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1 forms. Just showing, you know, who collected it, if
2 its changed hands, who it goes to, just a chain of
3 who's touched it. And it has a sealed envelope that
4 you send it off in and they, at that time, once it
5 gets to Columbia, they break that seal and they do the
6 analysis on it.

7 Q: And the police department, on your end, do you fill
8 out paperwork for SLED?

9 A: We do.

10 Q: I'm going to hand you what's been marked as four and
11 five. Can you identify those items?

12 A: Yes ma'am. This is called a B form, which is just an
13 initial contact form to say I'm the only one's that
14 touched it, I would fill out a B form. Anyone after me
15 that's touches it will fill out a C form and it
16 doesn't go on like c, d, or anything like that. It's
17 just a C form after that. S o if five people touch
18 it there's five C forms after the B form. And what
19 this is is a SLED drug analysis request and what it is
20 is just has the type of charge, the contents, the
21 suspects name and it's pretty much just another form
22 that you fill out requesting the analysis of the
23 drugs.

24 Q: And those go with the drugs to SLED?

25 A: Right.

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1 Q: And are those your signatures on those two forms?

2 A: Yes they are.

3 Ms. McElveen: Your Honor the State would like to have
4 exhibits four and five admitted into evidence at this time.

5 The Court: What say the defense?

6 Mr. Sullivan: Just the chain of evidence forms? I don't
7 have an objection to that?

8 The Court: Alright, four and five are in without
9 objection.

10 (State's Exhibit Numbers Four and Five)

11 Q: So you collected the drugs that day at the scene. I'm
12 going to hand you what, I'm going to hand you what's
13 been marked as State's exhibit six and I'm going to
14 get all of this stuff out of your way. What's been
15 marked as State's exhibit six for identification
16 purposes only. Can you, do you know, what does that
17 depict?

18 A: The, I guess what I would call Carolina Gamecock
19 Apartments area on Carolina Avenue.

20 Q: And that, does that have the, is that a street shot or
21 Arial view?

22 A: This would be an arial view.

23 Q: And do you see the apartments, Lantana Apartments on
24 there or where they are located on that map?

25 A: I do.

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1 Q: And is it, according to the map, is there a school or
2 a park or a college or a university within a half mile
3 radius of Lantana Apartments?

4 A: Yes ma'am. There's several locations; one being Morris
5 College, adult education and also the Hope Center that
6 we have.

7 Q: Okay and all of those are within a half mile of
8 Lantana Apartments?

9 A: Yes ma'am, as the crow flies anyway.

10 Q: As the crow flies. Thank you. Your Honor, we would
11 like to have this map entered into evidence at this
12 time.

13 The Court: What says the defense?

14 Mr. Sullivan: No objection.

15 The Court: Okay it's in without objection.

16 (State's Exhibit Number Six)

17 Q: Just to go over it one more time, you collected the
18 drugs?

19 A: Yes ma'am.

20 Q: And you turned them into evidence?

21 A: I did.

22 Q: Thank you very much. Please answer any questions the
23 defense may have.

24 CROSS EXAMINATION OF SARGENT QUIROZ BY MR. SULLIVAN:

25 Q: Hello Detective, Sergeant Quiroz. How you doing?

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- 1 A: Doing good.
- 2 Q: Can I see this? Alright, you printed this out from
- 3 Google Maps?
- 4 A: No sir, I didn't print it.
- 5 Q: Who did?
- 6 A: I believe Detective Lyons did, Jason Lyons.
- 7 Q: Where does it show on that map the distance as the
- 8 crow flies?
- 9 A: I don't think it does. I don't see where it does sir.
- 10 Q: Okay, so there's nowhere on this map that shows that
- 11 Lantana Apartments is within a half mile of these
- 12 other places?
- 13 A: Not on the map sir, no.
- 14 Q: Okay, your role in this is you were the investigator,
- 15 correct?
- 16 A: That's correct.
- 17 Q: Alright and you kind of, you got there later on. You
- 18 weren't there initially?
- 19 A: No, sir.
- 20 Q: Okay, but you can still testify as to, after having
- 21 talked to the officers and done your investigation
- 22 about what happened correct?
- 23 A: That's correct.
- 24 Q: Okay, and basically what your investigation found
- 25 after you talked to the officers and did your

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1 investigation was that Mr. Peterson was in the
2 Suburban and took off running into apartment after
3 officers approached him?

4 A: That's correct.

5 Q: Okay, and and he went into the apartment?

6 A: Right.

7 Q: Okay, and Detective Billy Lyons went, came into the
8 apartment from which direction?

9 A: I'm not ...

10 Q: Not direction, but which side of the apartment?

11 A: I believe, hang on I'll tell you exactly.

12 Ms. McElveen: Your Honor I'm sure Sergeant Quiroz can
13 answer those, but he wasn't present at the scene and
14 he's testified to such that he wasn't present when the
15 other officers came. I just don't ...

16 The Court: Are you objecting?

17 Ms. McElveen: Objection. Speculation and guesstimation.

18 Mr. Sullivan: He's the investigator.

19 Ms. McElveen: No, he's not the investigator, Your Honor.

20 The Court: If he knows the answer to this from his own
21 personal knowledge he can answer that. If he doesn't
22 know it from his own personal knowledge -----

23 A: I believe he came to the back door.

24 Q: Okay. Do you know if, if Mr. Peterson, if officers
25 knocked on the door and he came to the door or if

1 officers just ran in?

2 A: I wasn't there to see it.

3 Ms. McElveen: Again, Your Honor, hold on. Your Honor?

4 The Court: Hold on just a minute. What's your objection?

5 Ms. McElveen: He wasn't there. Again he said he arrived
6 when the Defendant was on the curb, already detained.

7 The Court: I understand, but his question was, do you
8 know? He needs ...

9 A: No sir, I do not know if they knocked on the door.

10 Q: Okay. Did you approve this report right here?

11 A: I did approve the report. Detective White wrote the
12 report.

13 (Defendant's Exhibit Number One)

14 Q: Okay, Detective Sergeant Quiroz, I'm showing you
15 what's been marked as Defendant's exhibit one. The
16 report that you approved. Can you tell me, looking at
17 the first paragraph there, who the first, initial
18 responding officers were according to your report?

19 A: According to Detective White's report, Officer
20 Gardner, SLED Agent Flowers and SLED Agent Horton were
21 at Lantana Apartment.

22 Q: Okay, and this happened over a year ago, correct?

23 A: That's correct.

24 Q: And you've worked a lot of cases since then haven't
25 you?

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- 1 A: Yes sir.
- 2 Q: Okay, so because of the number of cases you have to
- 3 work, you have to kind of depend on the incident
- 4 report, the investigative summary?
- 5 A: Right.
- 6 Q: To kind of refresh you memory about what happened,
- 7 correct?
- 8 A: Usually.
- 9 Q: And according to the report that you approved, it was
- 10 Detective Billy Lyons, paragraph three, who was the
- 11 officer who saw the, the, the bag with the drugs in it
- 12 in the apartment, correct?
- 13 A: According to Detective White's report and the incident
- 14 report that Detective Lyons wrote.
- 15 Q: Okay, alright. And you have no idea of the, the
- 16 distance that Mr. Peterson, when he was in the
- 17 Suburban and took off running, how far he was from the
- 18 officers, because you weren't there and it's not in
- 19 the report correct?
- 20 A: Right, I was not there.
- 21 Q: Okay. And it's not in the report?
- 22 A: No sir, I don't see anything that says the distance.
- 23 Q: Okay, when, according to your investigations, talking
- 24 to the responding officers who were patrolling that
- 25 day the drugs weren't found on Mr. Peterson's person

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1 in the apartment, correct?

2 A: Once they were in the apartment, no. It was laying by
3 the back door.

4 Q: Alright and would you say that Lantana Apartments,
5 that would be a pretty high crime area, wouldn't it?

6 A: It stays pretty busy.

7 Q: Okay, it wouldn't be, you would probably expect to
8 find, if you went into those apartments, it wouldn't
9 be unusual or surprising to find drugs in apartments
10 at Lantana Apartments correct?

11 A: Well I wouldn't say I mean, that can only be
12 determined by investigation. I wouldn't assume that
13 every apartment had drugs in it.

14 Q: And you have no idea how long Mr. Peterson was in the
15 apartment before officers came into the apartment do
16 you?

17 A: Personally, no.

18 Q: Okay. Did they tell you when you talked to them about
19 what happened?

20 A: As far as, like I said, from speaking and from the
21 report, as soon as they saw him he jumped out of the
22 vehicle with the bag in his hand, ran into the
23 apartment, they gave chase, so I, if you're asking my
24 opinion, it wasn't very long.

25 Q: Okay.

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- 1 A: Because they had, they were at the back door and the
2 front door and I don't think there was much time in
3 between.
- 4 Q: Okay. Not very long a minute or two if they knocked
5 on the door?
- 6 A: Probably just maybe a minute.
- 7 Q: Okay, long enough for, if he wanted to, he could hide
8 it, hide the drugs somewhere?
- 9 A: Or run through the house and go to the back door and
10 throw it by the back door.
- 11 Q: But the, from your investigation, the drugs were found
12 beside the deep freeze in the kitchen from talking to
13 Detective Lyons?
- 14 A: It was near, it was near the back door by a trash can
15 and yes there was a freezer there as well.
- 16 Q: Okay, so the kitchen is at the back door isn't that
17 right?
- 18 A: Right, there is a back door to the kitchen.
- 19 Q: Alright. And there, and you don't have anything to
20 indicate that Mr. Peterson was living in that
21 apartment do you?
- 22 A: No sir, I don't have anything.
- 23 Q: And there were, from talking to the officers who
24 responded there were other people in the apartment,
25 correct?

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1 A: I believe so.

2 Q: Okay. Alright and nothing in the Suburban that would
3 indicate him selling drugs, right?

4 A: What do you mean?

5 Q: Would you say from your experience in law enforcement
6 that scales, digital scales would be evidence of
7 dealing drugs?

8 A: It would be one of the elements in dealing drugs, but
9 not necessarily to carry it on themselves at all
10 times. Usually, drug dealers will pre-package items so
11 whenever they do sell it's ready to go. They're not
12 going to take the time to just sit there and weigh it
13 out for every person that comes to them, because they
14 just would just leave more time to be out there and
15 get caught. So a lot of times the stuff is pre-
16 packaged as it was in the evidence.

17 Q: But, I mean, people, individuals who deal drugs a lot
18 of times have scales so they can measure it out.

19 A: Right.

20 Q: But there, there weren't any scales found in his
21 possession on him or in his vehicle correct?

22 A: Not that day.

23 Q: Or the vehicle he was in?

24 A: No sir.

25 Q: What about guns?

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1 A: Guns?

2 Q: Yeah. Would that be, do drug dealers a lot of times
3 carry guns?

4 A: No sir, that's, I mean I think it would just depends
5 on the drug dealer. I've arrested several that didn't
6 have weapons on them at all. A lot of times because of
7 their background status, a lot of them are felons and
8 they know it's a bigger charge to get caught with guns
9 so a lot of times they take these chances with one or
10 the other.

11 Q: But selling drugs can be dangerous?

12 A: Oh I agree.

13 Q: Okay, so a lot of people who sell drugs, I mean more
14 so than the general population, would likely have guns
15 to protect themselves, because it's dangerous right?

16 A: I couldn't speak on that. Like I said, the ones I've
17 dealt with, I think I've had a greater number of
18 arresting people without weapons with drugs than with
19 weapons.

20 Q: Most of the cocaine that you seize was in a big bag.
21 It was 2.6 grams, it was in a big bag, correct?

22 A: It was four clear bags. I can't exactly say how much
23 was in each bag. I think SLED did the analysis on
24 that.

25 Q: Well in six of the baggies it was combined about one

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1 gram wasn't it? Combined in all those bags?

2 A: On the chain I just have a joint ...

3 Ms. McElveen: Objection, I don't hear a question. I just
4 hear him testifying about the weight of the drugs, and how
5 they were packaged.

6 The Court: So your objection is?

7 Ms. McElveen: No question Your Honor.

8 Q: Should I repeat my question?

9 The Court: Yes.

10 Q: Okay. Weren't most of the drugs about 2.6 grams found
11 in one bag?

12 A: I can't recall. If I could look at it I could probably
13 tell you.

14 Q: Okay.

15 A: I mean I couldn't tell you the weight, but I could
16 tell you ... yeah, it appears here that the bigger
17 quantity is in separate bags, versus the two or three
18 little bags you've got here. Like I said SLED did the
19 analysis and the weight on the baggies.

20 Q: Okay. Alright. The cocaine and the six baggies, I
21 mean it's possible that that could be residue from,
22 from used, somebody who used that, could it?

23 A: The white that was there would have to come off a
24 pretty good size rock to create that size residue.
25 Because normally people don't let that stuff sit

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1 around like that.

2 Q: Well you, you don't know the, the weight total did
3 you?

4 A: No sir, but just what I see there, like I said, what
5 you see in those little bags is usually one of those
6 would be personal use.

7 Q: Okay. Would you say that, and I think that you've
8 already said this, I think you said selling drugs is
9 dangerous. Is buying drugs dangerous?

10 A: I believe it would be.

11 Q: Would it make sense for somebody who uses drugs to buy
12 more than just a little bit to buy in bulk because
13 it's dangerous?

14 A: Most common drug users, I won't speak for everyone.
15 I'm sure there's someone out there that can afford to
16 buy as much as they wanted to. Most common users will
17 buy, like I said, like that little, small bag is what
18 we got there. If you got a habit chances are you're
19 not going to carry around that much.

20 Q: Do drug dealers dilute cocaine?

21 A: They do.

22 Q: Okay. Because they can make more money like that,
23 right?

24 A: Right.

25 Q: Okay. If it's diluted, presumably, a user would have

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1 to use more of it to get the same high, correct?

2 A: I, well, there'd be no way to tell whether it's not,
3 and I don't think the dealer can actually tell what
4 the percentage of that cocaine is, because it's been
5 chopped down a few times since it's got wherever the
6 original source came from, whether it be, you know,
7 Columbia or the low country or Mexico or something
8 like that. It's been in different hands. We don't even
9 test for purity whenever we do it just because it's
10 hard to tell.

11 Q: But, but if it's diluted, doesn't it make sense that
12 a user would have to buy more of it in order to get
13 the same high?

14 A: I couldn't speak on that.

15 Q: But it is diluted?

16 Ms. McElveen: Objection, asked and answered Your Honor.

17 The Court: Okay, sustained.

18 Q: Did Mr. Peterson --- First let me ask you this. Drug
19 dealers, is it an indication that somebody that deals
20 drugs, having large amounts of money?

21 A: Do they usually have large amounts? Well, yeah, it's
22 common that someone would have a good bit of money. It
23 just depends on when they started selling when we
24 caught them, at the beginning of the day at the end of
25 the day or middle.

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1 Q: Alright. How much money did y'all find on Mr.
2 Peterson?

3 A: Well, after he ran, he had money in his boot, but
4 after he ran, to be honest with you we couldn't find
5 anything. There were people standing around and we
6 tried to locate the money and it was gone.

7 Q: How many officers would you say were out there?

8 A: I couldn't give you an exact number. It was a hand
9 full of officers out there. I don't know, maybe seven
10 or eight.

11 Q: Seven or eight officers. Okay, how far, how far of an
12 area are we talking about where he ran? I mean as far
13 as re-tracking his steps?

14 A: He ran through the parking lot, through a yard, the
15 residence and the yard and then over towards the
16 Mariner Home Health Care. He ran in that direction. I
17 didn't chase him myself, so I lost sight of him as
18 soon as he got past the building. As a matter of fact,
19 I didn't know he was running until somebody yelled.

20 Q: Do you know what officer saw the money or saw him
21 throw the money?

22 A: Like I said, we all saw the money initially in his
23 boot. Like I said, after he took off, I don't know. I
24 couldn't tell you where it went.

25 Q: He was wearing boots?

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1 A: Well, he had boots sitting next to him. And I think we
2 took them off to search them, his person and I think
3 he might have been able to put them back on after
4 that.

5 Q: So he was carrying them? Carrying boots or?

6 A: I don't know if he had them on or if he ...

7 Q: Was just carrying them around with him?

8 A: Like I said, they took them off initially to search.

9 Q: So he was wearing the boots initially?

10 A: Right, whenever they first seen him.

11 Q: Okay, and a bunch of officers saw him throw money and
12 throw money and they couldn't find it?

13 A: I don't know if they saw him or not. Like I said, I
14 didn't chase him, but he had the currency in his
15 possession at the time that he ran.

16 Q: Okay and that would be something if you did find
17 money, that would be something that you definitely
18 want to put in your report to say look at all this
19 money. We find this guy selling drugs. Isn't it?

20 A: If there was money present whenever we, if we were
21 able to recover money, then that definitely would be
22 mentioned in the report.

23 Q: Okay. Can you tell me where it says in the report
24 that he threw money and y'all couldn't find it?

25 A: It doesn't say.

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- 1 Q: Okay. Alright and I can't, I think I may have asked
2 you this earlier, but according to your investigation
3 and according to the report that you approved, the
4 initial officers who were patrolling were, was
5 Gardner, Flowers and Horton, but not Billy Lyons?
- 6 A: Well, that's what it says on the report that Detective
7 White says, but we also go off of the incident report,
8 which is actually the main report which goes into the
9 police department system. That the public is able to
10 access, whether it be for the newspaper or anything
11 like that. That's actually the official report, this
12 is just an investigation report. That's done after
13 the fact.
- 14 Q: Okay. On the official report? So the report that you
15 write up is not the official report?
- 16 A: It's an investigative report. Like I said, the initial
17 report is the incident report and it's actually
18 usually done by the person that made the case.
- 19 Q: Okay and, and it doesn't say, say who was, who the ...
- 20 A: At the bottom it does. If that's what you're looking
21 for.
- 22 Q: That Detective Billy Lyons was there initially
23 patrolling? Can you show me that?
- 24 A: He wrote the report.
- 25 Q: Okay.

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1 A: He's, he's the one that's ...

2 Q: Alright, okay. But even though your report's not the
3 official report, in your report, he wasn't one of the
4 ones that initially was patrolling correct?

5 A: It wasn't my report. Detective White ...

6 Q: I'm sorry, the report that you approved.

7 A: Right, yeah, it mentions his name in that first
8 paragraph.

9 Q: I keep, I keep saying your report, I mean to say the
10 report that you approved.

11 A: I understand.

12 Q: Okay. That's, thank you Detective Quiroz. That's all
13 the questions I have.

14 A: Thank you.

15 RE-DIRECT OF SERGEANT QUIROZ BY MS. MCELVEEN:

16 Q: Sergeant Quiroz, just kind of back tracking over what
17 he just said. You were trying to say something about
18 the incident report.

19 A: Right.

20 (State's Exhibit Number 7)

21 Q: I'm going to hand you what is marked as State's
22 exhibit number 7. Can you identify this?

23 A: Yes, this is a City Incident Report.

24 Q: And what do incident reports, can you tell us about
25 incident reports versus investigative reports?

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- 1 A: The incident report is made by the officer on the
2 street that made the case initially. This is pretty
3 much the initial report, his findings and usually it's
4 a summary of what took place that day. It's like I
5 said, turned in by the officer that made the case.
- 6 Q: And do you see Detective Lyons, Detective Billy Lyons
7 mentioned on that report?
- 8 A: Right, at the very bottom right here it says Detective
9 William Lyons.
- 10 Q: So what does that mean down there?
- 11 A: That means that he was the one that wrote the report.
- 12 Q: So he wrote that incident report?
- 13 A: Right.
- 14 Q: And ...
- 15 A: Or in this case typed it.
- 16 Q: In the investigative report that Mr. Sullivan handed
17 you, is Detective Lyons mentioned anywhere in the
18 first three paragraphs?
- 19 A: He is, I believe he's mentioned in the third.
- 20 Q: Would you please read that paragraph aloud?
- 21 A: It says Detective Lyons entered the apartment from the
22 back door to check on the residents and uncertain
23 whether or not Peterson was allowed to be there. Upon
24 walking into the kitchen, Detective Lyons observed in
25 plain view on the kitchen floor near the back door,

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1 where Peterson had been attempting to exit, the same
2 white plastic bag Peterson had carried upon fleeing
3 from the officers. The white plastic bag contained
4 approximately seven grams of powder cocaine and
5 approximately 155 grams of marijuana.

6 Q: Thank you and you entered these pieces into evidence,
7 you already testified to that and you showed us this
8 form that you filled out that's been admitted into
9 evidence and you said there were 7.5 grams of cocaine
10 and 155 grams of marijuana?

11 A: Right that was the initial, packing weight.

12 Q: Mr. Sullivan asked you about in your experience about
13 distribution, asking you about scales, in your
14 experience about distribution is that a personal use
15 stash of drugs?

16 A: No ma'am.

17 Q: What is the street value, estimated street value of
18 all those drugs if you can calculate that quickly?

19 A: Just going off of the 15 grams, it's usually about,
20 I'd say about, the marijuana about ten dollars a gram.

21 Q: And there's 155 grams.

22 A: Right. So that's about a hundred and fifty five
23 dollars worth of marijuana, more or less. I mean
24 that's just kind of a rough estimate.

25 Q: A hundred and fifty five times ten dollars a gram?

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- 1 A: Oh I'm sorry.
- 2 Q: That's one thousand, five hundred and fifty dollars?
- 3 A: Yes. I'm sorry.
- 4 Q: I just wanted to make sure.
- 5 A: And like I said a gram of cocaine usually goes for
- 6 about a hundred dollars, like I said, give or take.
- 7 Q: And you entered how many grams into evidence?
- 8 A: 7.5.
- 9 Q: So about seven ...
- 10 A: That's seven hundred and fifty dollars, yeah.
- 11 Q: So that's about two thousand dollars worth of street
- 12 drugs?
- 13 A: Right.
- 14 Q: Is that personal use in your experience?
- 15 A: No ma'am.
- 16 Q: Can you, you've been around Lantana Apartments a lot
- 17 in your experience?
- 18 A: Oh yeah.
- 19 Q: Do you need to look at a map to know that Lantana
- 20 Apartments, where everything is layed out around
- 21 Lantana Apartments? Do you drive around there
- 22 frequently?
- 23 A: Pretty often.
- 24 Q: So you know from experience?
- 25 A: Right, we've made several cases before where we've

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1 charged an individual within a half mile, like I said,
2 there have been plenty of cases before this one was
3 made at those same locations.

4 Q: And so Lantana Apartments, in your experience, you
5 know ...

6 A: Right, it's a known, I mean you have your drug hot
7 spots, and unfortunately Lantana being one of them,
8 you kind of get to know the areas around them. You
9 want to, when you've got somebody dealing in those
10 areas, you want them to get the maximum of what they
11 could get for dealing near schools.

12 Q: And so there's a school within a half a mile?

13 A: Right.

14 Q: And I just want to make sure, you were not an initial,
15 responding officer?

16 A: That's correct.

17 Q: You did not see the pursuit or fleeing from the car?

18 A: Right.

19 Q: You did not search Mr. Peterson?

20 A: No.

21 Q: Did you see him run?

22 A: Like I said, I was doing something and ...

23 Q: I mean after he was detained. Did you see him run the
24 second time?

25 A: I just heard somebody yell and then by the time I

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1 turned around, he was pretty much passing one of the
2 apartment complexes.

3 Q: So, you didn't see ...

4 A: Not initially. Not the initial run. Like I said, I
5 turned around and he was gone.

6 Q: Did you see any money?

7 A: No, I didn't see any money thrown or anything like
8 that.

9 Q: And you don't claim to see any money thrown?

10 A: No.

11 Q: And did you recover any money?

12 A: No ma'am.

13 Q: And where were the drugs when you came in the house?

14 A: By the back door. Like I said, near the kitchen, deep
15 freeze area.

16 Q: Were they behind the freezer at all?

17 A: No. No they were, like if you have the threshold of
18 the door, you have the deep freezer, the trash can,
19 there was, like I said, almost like it was kind of
20 tossed there. I mean it wasn't placed behind something
21 or ...

22 Q: It was in plain view?

23 A: Right.

24 Q: Okay, thank you.

25 Mr. Sullivan: I don't have any re-cross.

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1 The Court: Okay, you can step down.

2 A: Thank you.

3 Ms. McElveen: Thank you Sergeant Quiroz. Your Honor I
4 believe Detective Lyons is gone to get the other
5 Detective Lyons.

6 Bailiff: State your name please.

7 Det. Lyons: Christopher Jason Lyons.

8 Bailiff: Do you solemnly swear or affirm the testimony
9 you give this court will be the truth, the whole
10 truth and nothing but the truth, so help you God?

11 Det. Lyons: Yes sir, I do.

12 Bailiff: Thank you. State your name and spell your last
13 for the record please.

14 A: Christopher Jason Lyons, L-Y-O-N-S.

15 DIRECT EXAMINATION OF JASON LYONS BY MS. MCELVEEN:

16 Q: Mr. Lyons, who are you employed by?

17 A: The Sumter Police Department.

18 Q: And what is your rank?

19 A: Currently I'm a detective.

20 Q: Do you have a brother that works in the police
21 department as well?

22 A: Yes I do.

23 Q: And has he testified in this case as well?

24 A: Yes ma'am, he has.

25 Q: Were you present, were you working on May 14, 2010?

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1 A: Yes I was.

2 Q: Did you have the occasion to come to Lantana
3 Apartments?

4 A: Yes I did.

5 Q: Can you tell us how that transpired or what you found
6 or what happened?

7 A: Yes ma'am. On May the 14th I was actually working in
8 the traffic division. I was a Senior Corporal with the
9 police department traffic division. I heard two of the
10 detectives at Lantana Apartments that they had a
11 gentleman run into one of the apartments. So I started
12 heading over that way just in case anything were to
13 happen, they'd have some more officers there, because
14 there was only, I believe four of them in the vehicle
15 at the time. So when I get around to Lantana
16 Apartments, the Defendant Mr. Peterson was sitting on
17 the curb outside of the apartment in handcuffs, with
18 his boots beside him. He was sitting on the curb with
19 another, one of the SLED agents near him. I walked up
20 and spoke to the SLED agent for probably about
21 fifteen, twenty seconds, not very long. At which point
22 in time, Mr. Peterson jumped up with his hands
23 handcuffed behind him, jumped up. He grabbed one of
24 his boots and took off running across the parking lot
25 running toward Carolina Avenue. To give you an idea of

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1 where it's at, if you come up by Shoney's on Pike and
2 you turn left by the old Chinese restaurant, whenever
3 you come down that way, you'll come up to the entrance
4 way of Lantana Apartments. You make a left into there,
5 go down and it's the second set of apartments on the
6 right hand side. It's the first two story set of
7 apartments. He was at the last apartment complex and
8 where he ran from was back toward the road I just
9 described, back toward Carolina Avenue toward Mariner
10 Health Care. It's on Carolina Avenue. As he took off
11 running, myself and the SLED agent and several other
12 officers took off running after Mr. Peterson who was
13 in handcuffs. I advised Mr. Peterson that he was under
14 arrest and that he needed to stop running. He
15 continued to run. I attempted to deploy my taser the
16 first time, which it missed. The probes did not strike
17 Mr. Peterson. They went to the side because he turned
18 as soon as I deployed the taser. I removed the
19 cartridge while running. I had another cartridge
20 underneath the bottom of it. I re-deployed the
21 cartridge. We came up on a vehicle that was parked on
22 the opposite side of the complex from where we had
23 originally taken off running from which point in time,
24 Mr. Peterson tossed his boot at that vehicle. I'm not
25 certain if it went underneath the vehicle or bounced

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1 off the edge of the vehicle, but he kept on running
2 beside it toward Carolina Avenue so I didn't pay much
3 attention to where the boot landed. I just know that
4 he threw it toward that vehicle. As we rounded that
5 ... we crossed over Carolina Avenue and he was about
6 to make it into Mariner Health when I re-deployed the
7 taser which at this point in time, it hit him in the
8 back, one of the probes did. The other probe went
9 beside him and he got tangled up in the wires and it
10 incapacitated him at which point in time I dry stunned
11 with the taser, which makes the connection between the
12 two causing the successful deployment of the taser.
13 At which point in time he went to the ground and we
14 were able to subdue him to get him back into custody.
15 He had a laceration to his foot from where he was
16 running barefooted, because he did not have his shoes
17 on. We called EMS over, they bandaged up his foot so
18 that he was able to go to the jail. At which point in
19 time we walked him back over toward where he ran from
20 and his shoe was empty. We found the shoe and he asked
21 about his money that was in the shoe. Told him the
22 only thing we found was his shoe. He wanted to know
23 where his money went and we told him we did not know,
24 because you took off running with it, you threw it, we
25 got back to it and this is what we've got. And that

1 was all ...

2 Q: So he asked about the money?

3 A: Yes ma'am.

4 Q: He asked where his money was?

5 A: Yes ma'am. He asked where the money was at that was
6 inside the boot, which at that point in time, the only
7 thing I had seen him throw was the boot and that's
8 what we recovered, was the boot.

9 Q: Alright. So you did give him his boot back for him?

10 A: Yes ma'am.

11 Q: But no money?

12 A: No ma'am.

13 Q: I'm handing you what's been, what is State's exhibit
14 six.

15 A: Yes ma'am.

16 Q: Can you identify that?

17 A: Yes ma'am. It is a Google map that contains
18 highlighted sections of, one of the things highlighted
19 is Lantana Apartments.

20 Q: Did you search for that on Google?

21 A: Yes ma'am, I did, I was the one who actually made this
22 map.

23 Q: Have you worked the Lantana area a lot? Lantana
24 Apartments or that area a lot?

25 A: Yes ma'am I go through there quite regularly.

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1 Q: Do you know for a fact that there are any schools,
2 parks, or colleges or universities within a one half
3 mile radius of Lantana Apartments?

4 A: Yes I do. Actually this morning I actually drove
5 through there again, just to check a few things. By
6 roadway, just going straight by roadway, the half mile
7 radius that occurred which would be a straight line,
8 the roadway would lead you a half mile from Lantana
9 Apartments to adult education center on Main Street,
10 which is at Main and Copeland and the North Hope
11 Center, which is across the street and across the
12 street from that, on the same side of the street as
13 the North Hope Center is the city park at Main. If
14 you go over just a little ways, over off, you have
15 Morris College, which is locate over here. This is
16 where adult ed is and the North Hope Center is here.
17 The apartment across the street coming the other
18 direction from Lantana, which is here, you go over to
19 Sumter Christian, which is less than a half mile from
20 Lantana Apartments or to Dillon Park, which is across
21 Pike, which is also less than a half mile from Lantana
22 Apartments.

23 Q: So you actually drove those this morning?

24 A: Yes ma'am. I took my patrol car and whenever I got to
25 Lantana, I went to Lantana and front of apartment

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1 number 35 and drove out and I re-set the tripometer
2 where it would zero to zero tenths and drove out.

3 Q: Thank you for your preparedness and please answer any
4 questions the defense counsel may have.

5 A: Yes ma'am.

6 CROSS EXAMINATION OF DET. LYONS BY MR. SULLIVAN:

7 Q: Detective Lyons, okay, I understand that you say just
8 from driving around there that it's within a half
9 mile, but there's nothing on the map that says it's
10 within a half mile is there?

11 A: If you take the little legend down here in the bottom,
12 you can take a ruler and measure those out and it
13 would actually show you that it is within a half mile.
14 You'd have to calculate the feet, it's, the little
15 legend down here shows you from here to here would be
16 five hundred feet if you measure across. So if we had
17 a ruler we could definitely measure it out for you and
18 show you that it is within a half mile.

19 Q: Okay, but it's, it's not on there, there's nothing on
20 there that says half mile?

21 A: It's not labeled as far as from point A to point B,
22 being a half mile, but in the bottom corner, it has
23 the little legend down here that shows you from this
24 little section to this section here the geography or
25 the bottom side of it if you went the other way it'd

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1 be two hundred meters from the bottom. So you can use
2 the bottom to measure it. That's all we need to do is
3 take a ruler and we could measure each of them with
4 this little legend and it would show that they are
5 within a half mile in any direction which one you'd
6 like to have measured out.

7 Q: By the time that you had got there, he had already
8 gone into, he was, he was sitting out on the curb. All
9 the running into through the apartment and the other
10 officers getting him, they pretty much had him in
11 custody at that point right, by the time that you came
12 on the scene?

13 A: That's correct. When I arrived on scene he was sitting
14 on the curb. They were waiting for a vehicle to
15 transport. At the time I arrived on the scene he was
16 sitting on the curb with officers standing near.

17 Q: Alright. You didn't tell officer White or Detective
18 White or Detective Quiroz about him throwing the
19 money?

20 A: Did I?

21 Q: Yeah.

22 A: Not that I recall.

23 Q: Okay. Alright. That would be something that's
24 significant though wouldn't it as to whether or not he
25 was dealing drugs?

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1 A: I don't follow your question. You have to repeat and
2 clarify what you're asking on that.

3 Q: Normally, when y'all make a case, when you're trying
4 to make --- when you're working on a drug case, trying
5 to prosecute somebody for selling drugs, if you find
6 --- if it looks like they had money that they threw
7 down and you found money on them, that's something
8 that you would want to let a jury know about? That's
9 something that would kind of be a big thing right?

10 A: I'm still not quite sure where you're going with it,
11 what you're asking on the money section.

12 Q: Okay. Do y'all take pictures of money when you seize
13 money from somebody who you're trying to make a case
14 against who you're saying is a drug dealer? You take
15 pictures of it don't you? It's, it's significant.

16 A: We take pictures of anything that we place into
17 evidence, yes sir. As far as if it's money we take
18 pictures of it, we would actually count it out and all
19 that. Same thing with drugs, we take pictures of drugs
20 and turn the drugs in.

21 Q: Okay, alright, so, so, it's something that's relevant.
22 It makes a difference, but you didn't, it's not in the
23 report because you didn't tell White or Quiroz
24 anything about it, did you? But you are talking about
25 it now, the situation with the money.

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1 A: Because we did not recover the money. He actually
2 lost his money because he took off running with the
3 boot that had the money in it and whenever he got re-
4 captured from taking off running and we recovered his
5 boot, after we took off and we got back, there was no
6 money inside of it, which he claimed there was money
7 inside of his boot.

8 Q: Okay. Thank you. That's all the questions I have.

9 RE-DIRECT OF DETECTIVE LYONS BY MS. MCELVEEN:

10 Q: Just quickly Your Honor. Did you see the Defendant
11 throw money or did he just ask you about the money?

12 A: He just asked me about the money. I never saw him
13 throw the money. I saw him throw the boot that he took
14 off running with. I never saw the money inside the
15 boot. All I know is he took off running with a work
16 boot and when he took off running he was sitting on
17 the curb with his hands behind his back and when he
18 stood up he reached over and he grabbed the boot that
19 was beside him. There were two of them there, there
20 was the left shoe and the right shoe and I don't know
21 which one he took off running with, but he took off
22 running with one of his boots and that's the only one
23 he took off running with and as we rounded in front of
24 the vehicle, there was a blue, I believe Buick, don't
25 quote me on what type of vehicle it was, but it was

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1 blue in color parked in front of one of the apartments
2 closer to Carolina Avenue where he threw that boot.
3 There were people outside that residence when we went
4 by, if they got it I don't know. He asked me about his
5 money when we recovered the boot, which was not far
6 from where we apprehended him again.

7 Q: Okay so you, again, you never saw the money, he just
8 asked?

9 A: That's correct. I never saw any money. All I saw was
10 a boot and we recovered what I saw.

11 Q: And you say you never recovered the money? You
12 wouldn't even know how much money it was?

13 A: That's correct. I have no idea how much money he had
14 in his boot if it was in the boot. He asked me about
15 the money that was in his boot and I told him we
16 recovered the boot.

17 Q: So you could not take pictures of money you don't
18 have?

19 A: That's correct. We don't take pictures of what we
20 don't have.

21 Q: Thank you.

22 A: You're welcome.

23 The Court: You can step down.

24 A: Thank you Your Honor.

25 The Court: Alright, we're going to take our morning break.

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1 I don't know whether ya'll need one or not but I do. Don't
2 discuss the case, we'll be back in about ten minutes.

3 (Jury leaves courtroom 10:38)

4 Ms. McElveen: They would not object to Ron Freeman and
5 Nathan McCoy from SLED staying in the courtroom at
6 this time because they were not responding officers.
7 They just analyzed the drugs. So basically, we don't
8 have any other witnesses that are going to be
9 sequestered.

10 The Court: Okay.

11 Ms. McElveen: If you don't mind I'm just going to go tell
12 Nathan McCoy.

13 (Court Break)

14 Ms. McElveen: Yes sir.

15 The Court: We're ready.

16 (Jury enters courtroom 11:03)

17 Bailiff: All the jurors are back in the same seats, Your
18 Honor.

19 The Court: Okay. You can call you next witness.

20 Ms. McElveen: The state would call Detective Aleck to the
21 stand. Um Your Honor, if you could ask the jurors
22 about Detective Aleck.

23 The Court: Okay. What's your full name?

24 A: Johanna J-O-H-A-N-N-A R. Aleck.

25 The Court: I did not qualify her in the initial. Do any

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1 of y'all know here, close personal friends, social
2 relations with her at all? Does anybody know her?
3 Okay.

4 Bailiff: Place your left hand on the Bible and state your
5 full name please.

6 Detective Aleck: Johanna R. Aleck.

7 Bailiff: Do you solemnly swear or affirm that the
8 testimony you give this court shall be the truth, the whole
9 truth and nothing but the truth so help you God?

10 A: I do.

11 Bailiff: Thank you. State your name for the record
12 please.

13 A: Detective Johanna R. Aleck, A-L-E-C-K.

14 DIRECT EXAMINATION OF DET. ALECK BY MS. MCELVEEN:

15 Q: Detective Aleck, who are you employed by?

16 A: The Sumter Police Department.

17 Q: And what is your job there?

18 A: I am a crime scene investigator and also an evidence
19 technician.

20 Q: And by evidence technician, what do you mean?

21 A: I collect, well, when they turn it in I collect it
22 from the lockers, the evidence lockers, store evidence
23 and transport it to SLED and make sure it gets to the
24 different agencies for testing.

25 Q: Okay so you keep evidence in your control and custody?

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1 A: Yes ma'am.

2 Q: Can you tell us a little bit about, for instance,
3 Detective Quiroz said that he put these drugs in an
4 evidence locker. What happens next? What happened to
5 these drugs next?

6 A: When we pull them from the evidence locker, we check
7 the evidence chain and make sure that, kind of like an
8 inventory, make sure what we have is what's actually
9 on the chain and then we log it into a computer and
10 assign it a storage location.

11 Q: So you then store the drugs?

12 A: Yes ma'am.

13 Q: And is this, I'm handing you what is State's exhibit
14 number 3, is this a chain of custody form like the one
15 you check for to make sure?

16 A: Yes ma'am.

17 Q: Okay and then what happens if something needs to be
18 tested?

19 A: If it's tested, if it needs to be tested, like
20 marijuana is tested within the Sumter Police
21 Department, we mark it for analysis and put it in
22 analysis location and once a week or something like
23 that, people from the drug unit will come and they'll
24 sign it out and we sign it out to them and they take
25 it and test it and give it back and we sign it back

1 in.

2 Q: Great, so you transport everything to SLED from SLED

3 ...

4 A: If it needs to go to SLED, for example, the cocaine
5 will go to SLED to be tested and then we transport it
6 to SLED and they will sign for it.

7 Q: And you said you're the alternate evidence technician?

8 A: Yes ma'am.

9 Q: Why are you the alternate evidence technician?

10 A: Our primary evidence technician, Mr. James Allsbrook
11 is recovering from surgery. Normally he comes and
12 testifies to these type of things. He handled all of
13 this, this particular drug he handled. I didn't
14 actually touch it until yesterday when I pulled it
15 from evidence to bring over here. But he's recovering
16 from surgery.

17 Q: So he is recovering. You know the same things he
18 knows?

19 A: Yes ma'am.

20 Q: And you guys follow the same process?

21 A: Yes ma'am.

22 Q: And that is a standardized process?

23 A: Yes ma'am.

24 Q: I'm going to hand you what's been marked as State's
25 exhibit eight. Can you identify that?

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- 1 A: Yes ma'am. It's a form C. It's a Chain of Custody
2 Detective Quiroz signed it in to us and Mr. James
3 Allsbrook received it.
- 4 Q: And signed what in?
- 5 A: It says cocaine, eight clear plastic baggies of powder
6 cocaine.
- 7 Q: Alright and so that's Mr. Allsbrook and that's a form.
8 You've signed those forms before too?
- 9 A: I have.
- 10 Q: Okay. And so Mr. Allsbrook, that means he took custody
11 from Mr. Quiroz or Sargent Quiroz?
- 12 A: Yes ma'am.
- 13 Q: And that other form, evidence number three, does that
14 indicate that Mr. Allsbrook took possession or do you
15 have the original form of that?
- 16 A: I have the original. Normally, he would sign the back,
17 but the back isn't included here. I do have the
18 original.
- 19 Q: I may have the original.
- 20 A: Where he has signed on the back.
- 21 Q: And can you tell us what it means by having all those
22 signatures on the back of that form?
- 23 A: Detective Quiroz, he's the one that initiated the
24 chain because that's his signature at the top. He
25 signed it in. Mr. Allsbrook is the one that received

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1 it from the evidence locker. Then for the marijuana,
2 it has Mr. Allsbook signing it out to Officer Freeman
3 for analysis and then Officer Freeman signing it back
4 in. SLED doesn't normally sign these things.

5 Q: You have those forms C's? That one I just showed you?

6 A: Yes ma'am.

7 Q: Your Honor, the State would like to move to have
8 exhibit eight entered into evidence at this time. The
9 form C and Detective Aleck has authenticated.

10 Mr. Sullivan: No objection.

11 Ms. McElveen: And Your Honor, also if ...

12 The Court: I'm sorry, what did you say?

13 Mr. Sullivan: No objection.

14 The Court: Okay.

15 (State's Exhibit Number Eight)

16 Ms. McElveen: Your Honor if it would please the Court,
17 since Detective Aleck had not yet testify, instead of
18 putting in a copy of the chain form, we would like to
19 admit the original chain of custody form that she has.
20 It's the same document, it's just the document in it's
21 entirety. This was exhibit number three, so if you
22 don't mind Your Honor, we'd just like to switch it for
23 the original instead of the copy.

24 The Court: Okay.

25 Court Reporter: Did it stick?

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1 Ms. McElveen: Yes it did.

2 Q: So after the drugs are taken and you collect them from
3 the evidence locker, you do keep them under lock and
4 key. Can anyone access that area or just, how do you
5 keep that under control?

6 A: Drugs are kept in a locker, a separate locker under
7 lock and key inside the evidence room, which is
8 maintained by lock and key and an alarm that only
9 evidence technician's have access to.

10 Q: So only you and Mr. Allsbrook?

11 A: There is another alternate evidence technician, James
12 Tallon and our supervisor, Officer, well he's
13 Lieutenant Retired now, Truman Duggan.

14 Q: So none of the officers who are seated here today
15 could access that evidence locker?

16 A: No ma'am.

17 Ms. McElveen: Your Honor the State would like to move to
18 have the exhibits one and two admitted into evidence at
19 this time. The marijuana with the bag and cocaine.

20 The Court: What says the defense?

21 Mr. Sullivan: The actual marijuana? No objection.

22 The Court: Okay Exhibits one and two are in without
23 objection.

24 (State's Exhibit Numbers One and Two)

25 Ms. McElveen: Thank you. Please answer any questions the

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1 defense may have.

2 The Court: What is one and what is two?

3 Ms. McElveen: One is the marijuana with the bag and two is
4 the cocaine.

5 The Court: Are they in separate bags?

6 Ms. McElveen: Well no. Marijuana and the bag are in one,
7 yes sir.

8 The Court: Okay.

9 Ms. McElveen: Because the cocaine was tested by SLED, so it
10 went to a different place.

11 The Court: Alright, alright.

12 Ms. McElveen: Yes sir. Thank you Detective Aleck.

13 CROSS EXAMINATION OF DET. ALECK BY MR. SULLIVAN:

14 Q: Detective Aleck, you basically have the same job as
15 James Allsbrook?

16 A: Accept that I am an officer and he's a civilian and I
17 investigate crime scenes.

18 Q: Okay. Basically your role in this case, is just
19 keeping the evidence and tracking it if somebody
20 checks it out, correct?

21 A: Yes sir.

22 Q: Okay, so you couldn't testify as to who actually is
23 the --- whether Mr. Peterson had the drugs or who had
24 possession of the drugs?

25 A: No sir, I was not at the scene.

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1 Q: Okay. That's all the questions I have.

2 The Court: You can step down.

3 Ms. McElveen: The State would call Sr. Corporal Ron Freeman
4 to the stand please.

5 The Court: Okay.

6 Bailiff: Place your left hand on the Bible and raise your
7 right hand and state your name please.

8 Sr. Cpl. Freeman: Ronald Freeman.

9 Bailiff: Do you solemnly swear or affirm that the
10 testimony you give this court shall be the truth, the
11 whole truth and nothing but the truth, so help you
12 God?

13 A: I do.

14 Bailiff: Okay. State your name and spell your last for
15 the record please.

16 A: Ronald Freeman, F-R-E-E-M-A-N.

17 DIRECT EXAMINATION OF SR. CPL. FREEMAN BY MS. MCELVEEN:

18 Q: Good late morning, Sr. Corporal Freeman. Who are you
19 employed by?

20 A: Sumter Police Department.

21 Q: What's your current title?

22 A: My current title is Sr. Corporal. I work, I'm assigned
23 to the patrol division right now.

24 Q: And did you use to be in another division?

25 A: I did. When this incident occurred I was assigned to

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1 the Vice Control, otherwise known as the narcotics
2 unit.

3 Q: And so did you have the occasion to test marijuana at
4 different times?

5 A: Yes, numerous times.

6 Q: How long were you in the narcotics division?

7 A: Approximately five years.

8 Q: And have you received training in order to test and
9 analyze marijuana, suspected marijuana?

10 A: Yes. I went to a certification that was put on by SLED
11 and I also went through re-certification, again
12 through SLED. So I am certified through SLED to test
13 and analyze marijuana.

14 Q: And about how many times have you analyzed marijuana?

15 A: Hundreds.

16 Q: So they were a regular part of your duties?

17 A: Yes ma'am.

18 Q: Have you ever testified about a marijuana analysis
19 before?

20 A: Parts of it yes.

21 Q: Your Honor the State would like to have Sr. Corporal
22 Freeman declared an expert in the field of marijuana
23 analysis.

24 The Court: What says the defense?

25 Mr. Sullivan: No objection.

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1 The Court: Okay, the Court so finds.

2 Q: I'm handing you what's been marked as State's exhibit
3 nine for identification purposes only. Can you
4 identify that?

5 A: This is a form that we print out after we analyze
6 marijuana and it's basically stating that I did
7 analyze the marijuana that I received and it did turn
8 out to be, in fact, marijuana based on a microscopic
9 test.

10 Q: Okay I'm going to hand you exhibit number one. Is this
11 the marijuana that is reflected in your test that you
12 write a report for?

13 A: Yes, it looks to be so.

14 Q: And how can you identify that exhibit?

15 A: Well the markings on it, the case number, the date and
16 the initials that are on it.

17 Q: Okay and so it has the case number on the marijuana
18 that you also wrote on your report?

19 A: That's correct.

20 Q: And so you'd be the one that opened that bag for the
21 first time?

22 A: That's correct. After it's placed into evidence, I
23 retrieve it from evidence and I took it to the lab and
24 analyzed it.

25 Q: Okay, so you cut that seal to analyze it?

1 A: That's right.

2 Q: Can you tell us again, well, when you were analyzing
3 it, were the contents constantly under your care,
4 custody and control. Did you do anything else with
5 those items besides analyze them?

6 A: No, these items, when I signed for them from the
7 evidence technician, they would have been in my care
8 and custody the entire time until I returned them and
9 then signed them back over to the evidence technician.

10 Q: Is this marijuana the same as when you tested it? Does
11 it appear the same as when it was first received?

12 A: That's correct.

13 Q: What did your analysis show? Can you give us some
14 weights and some details about what your analysis
15 showed?

16 A: Okay, there were four items. Four different bags
17 containing marijuana. One of them, the first bag had
18 2.6 grams; the second bag had 50.5 grams; the third
19 bag had 53.9 grams and the fourth bag had 37.2 grams
20 of marijuana.

21 Q: Is there a total weight listed there?

22 A: Not on, not on this particular one.

23 Q: So you divide them by bags?

24 A: Each bag has to be identified, weighed separately and
25 tested separately.

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1 Q: Okay, thank you very much. Please answer any questions
2 the defense counsel may have.

3 CROSS EXAMINATION OF SR. CPL. FREEMAN BY MR. SULLIVAN:

4 Q: Hello Sr. Corporal Freeman.

5 A: Hello.

6 Q: Your only role in this is just pretty much analyzing
7 the marijuana correct?

8 A: That's correct.

9 Q: You don't --- when you analyze it, you don't analyze
10 it for purity do you?

11 A: No.

12 Q: So you could have just a small amount possibly of
13 actual marijuana and the rest could be something that
14 looks like marijuana or whatever else?

15 A: A small portion of it is, I mean, from each individual
16 bag a portion, a sample is taken and is tested from
17 each individual bag. To answer your question, sure
18 there could be something else in the bag, but each bag
19 did contain marijuana.

20 Q: Okay, thank you.

21 Ms. McElveen: I have no further questions. Thank you.

22 The Court: Okay, you can step down.

23 Ms. McElveen: The State would call Nathan McCoy.

24 Bailiff: State your name please.

25 A: Nathan McCoy.

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1 Bailiff: Do you solemnly swear or affirm that the
2 testimony you give this Court shall be the truth, the
3 whole truth and nothing but the truth, so help you
4 God?

5 A: Yes sir.

6 Bailiff: State your name and spell your last for the
7 record.

8 A: Nathan McCoy, M-C-C-O-Y.

9 DIRECT EXAMINATION OF MR. MCCOY BY MCELVEEN:

10 Q: Good late afternoon and late morning again. Mr. McCoy
11 what is your job? Who are you employed by?

12 A: I'm employed by the South Carolina Law Enforcement
13 Division otherwise known as SLED.

14 Q: And what do you do there?

15 A: Currently I work in the implied consent department as
16 a breath alcohol tech specialist.

17 Q: And before that, were you in another division?

18 A: Yes I was. I worked in the drug analysis department.

19 Q: How long were you in the drug analysis department?

20 A: I was in the drug analysis department from 2003 until
21 January of this year.

22 Q: And what were your duties when you were in there?

23 A: My duties was analyze unknown substances for the
24 possible presence of controlled substance.

25 Q: And a controlled substance would that include

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1 narcotics, such as cocaine and marijuana?

2 A: That's correct.

3 Q: And what type of training did you have to receive and
4 what's your education? I'm sure you're very well
5 educated and trained.

6 A: I have a Bachelor's of Science degree in Chemistry
7 from the College of Charleston, also a Bachelor's of
8 Art's degree in bio-chemistry. Correction, a
9 Bachelor's of Science in bio-chemistry and a
10 Bachelor's in Arts in chemistry at the College of
11 Charleston. And also I received training at SLED in
12 drug analysis.

13 Q: Have you had the occasion to testify in court before
14 about drug analysis and your findings?

15 A: Yes I have.

16 Q: How many times?

17 A: Twenty three times.

18 Q: And have you, I take it you've had many occasions to
19 analyze foreign substances and determine whether they
20 are narcotics or not?

21 A: Yes I have.

22 Q: And I guess these analysis were a regular part of your
23 duty at the time correct?

24 A: Yes they were.

25 Q: Your Honor, the State would like to have Mr. McCoy

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1 admitted or established as an expert in the field of
2 chemistry and the analysis of narcotics at this time.

3 The Court: What says the defense?

4 Mr. Sullivan: Your Honor I don't have any objection to him
5 being considered an expert.

6 The Court: Okay, I so find.

7 Q: I'm handing you what's been marked, well, what is
8 State's exhibit two. Based upon your experience and
9 training, does that, well, first of all, can you
10 identify this exhibit?

11 A: Yes, this is a plastic pouch, what we call a K-
12 pak(sic) pouch on the outside. On the inside is what
13 we call a best evidence bag, tamper evidence bag and
14 it also contains multiple baggies of a white powdered
15 substance.

16 Q: I'm going to hand you what's been marked as State's
17 exhibit ten. Can you identify this?

18 A: Yes I can. This is our standard issue report, drug
19 analysis.

20 Q: And how did these two, so you wrote that report?

21 A: That's correct.

22 Q: And how did these two items, item number two or
23 exhibit number two and exhibit number ten correlate?
24 Can you tell them how they're connected to each other?

25 A: Yes, there's a couple of, couple of things. In each

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1 piece of evidence at SLED we put on a yellow label,
2 what we call a lab number. Every piece of evidence
3 that comes in is issued a lab number. Also, sorry,
4 that lab number is also written on the report. They
5 both have the same lab number. And initially, each
6 best evidence bag that comes in from SLED has what we
7 call a b number basically, the letter B and the case
8 report would also reflect that same B number on the
9 report.

10 Q: So there are two ways to link these items together. By
11 the report and the drugs?

12 A: That's correct.

13 Q: And when did you receive these drugs or this exhibit
14 number two? Do you know when you tested them?

15 A: When I tested them?

16 Q: Yes sir.

17 A: I tested these two evidence on July 15, 2010.

18 Q: And what did you find?

19 A: I have multiple findings. I had basically small
20 ziplock bag that contained multiple bags. Item, I go
21 by item numbers up here ...

22 Q: Okay.

23 A: Item 1.1.1 is a plastic bag containing powdered
24 substance, cocaine was found, 1.3 grams.

25 Q: 1.3 grams?

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1 A: That's correct.

2 Q: Okay.

3 A: I have item 1.1.2, plastic bag containing a powered
4 substance and it contained 2.6 grams. Also I have
5 item 1.1.3, this contained 6 plastic zip locked bags,
6 each containing powered substance.

7 Q: So in this one there were six bags?

8 A: There were six bags.

9 Q: Okay.

10 A: However, to explain it, I only tested three of the six
11 bags and three of the six bags, that have a combined
12 weight of 1.1 grams and cocaine was found.

13 Q: And why did you not test all six bags?

14 A: The reason why I didn't test all six bags is based on
15 the amount of weight that the three bags contained
16 to 1.1 grams and the weight of the untested bag,
17 which includes the bag and the powered substance, is
18 1.2 grams. Well, 1.1 gram met the maximum threshold
19 for that particular weight threshold. So adding
20 additional weight would not increase the threshold of
21 that drug.

22 Q: So basically you hit a ceiling and after that you
23 don't go past it?

24 A: Well, basically we hit the lowest weight we got, 1.1
25 grams and additional weight of additional substance

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1 would not get us to the next level.

2 Q: Okay, but you tested from various bags ...

3 A: That's correct.

4 Q: And all tested positive for cocaine?

5 A: That's correct.

6 Q: Can you tell us about your testing method a little
7 bit?

8 A: In this particular case, first we take the substance
9 and we weight the substance first to get an initial
10 weight. We also add some substance to it to do a
11 chemical test. Based on the chemical test, leads us
12 one way to what we're looking for. After we do the
13 chemical test, we also do what we call a instrumental
14 analysis. In this case, I used a instrument called a,
15 it you know, you know, confirms what the substance
16 is.

17 Q: So you performed multiple tests?

18 A: Yes.

19 Q: And in all cases, they all drugs, in each item tested
20 positive under all these tests?

21 A: Yes.

22 Ms. McElveen: Your Honor the State would like to move to
23 have exhibit nine and ten, the marijuana and the
24 cocaine analysis reports entered into evidence at this
25 time.

1 The Court: What says the defense?

2 Mr. Sullivan: No objection.

3 The Court: Okay, in without objection.

4 Q: Thank you very much for being here and please answer
5 any questions the defense counsel has.

6 CROSS EXAMINATION OF MR. MCCOY BY MR. SULLIVAN:

7 Q: Mr. McCoy, do I understand you to say that you didn't
8 test to see if there was cocaine in three of the bags?
9 Is that right?

10 A: Under item 1.1.3 the total of six bags only tested
11 three bags. The three bags contained cocaine.

12 Q: Okay and there was, when you added up the cocaine in
13 all the bags, in all six bags, it came out to 1.1
14 gram?

15 A: Incorrect. I added the weight of the three bags that
16 I tested, those three bags of powder came to 1.1
17 grams. The other three bags, the weight is 1.2 grams
18 and that's just the last three bags with powder and
19 the bag of coke.

20 Q: Okay, so in item 1.1.3 there was a total of 1.1 gram
21 in three of the bags, is that right?

22 A: In the three bags that were tested.

23 Q: Okay. And you don't test for purity do you?

24 A: We're not required to test for purity.

25 Q: Okay. But to answer my question, you don't test for

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1 purity?

2 A: No we do not.

3 Q: Okay. So, you could have a very minute amount of
4 actual cocaine and it could be diluted with creatine
5 or whatever else and you would still show the total
6 weight including the other substance if there were
7 another substance?

8 A: That's correct.

9 Q: Okay, thank you.

10 Ms. McElveen: I have no further questions.

11 The Court: Thank you, sir, you can step down.

12 Ms. McElveen: Thank you. Your Honor if it's okay, some of
13 my officers would like to be released to go back to
14 their job.

15 The Court: Any objection?

16 Mr. Sullivan: No sir.

17 Ms. McElveen: Thank you. I believe at this time the State
18 would rest.

19 The Court: Okay.

20 Ms. McElveen: And is there any objection to Mr. McCoy being
21 allowed to return back to Columbia?

22 The Court: Any objection?

23 Mr. Sullivan: No.

24 Ms. McElveen: Thank you Your Honor.

25 The Court: Ladies and gentlemen, the State has rested

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1 their case and I've got to take up certain legal
2 matters outside of your presence, so I'll ask you to
3 go to the jury room and I'll get you back out as soon
4 as possible. If this is going to take long, I don't
5 have any idea how long it's going to take, but if it's
6 going to take over twenty minutes I'm going to send
7 you to lunch. I'll get you back out and tell you that.
8 If not, I'll meet you back out in fifteen to twenty
9 minutes. I'll remind you please don't discuss the case
10 yet. I'll get you back out to continue the trial or
11 send you to lunch but I don't know that yet. While
12 y'all are back there I need for you to select a
13 foreperson. I find that juries do better when they
14 select their own foreperson and it needs to come from
15 the original twelve of you. That person has no more
16 vote than anybody else; they simply sign the verdict
17 form and I'll instruct the foreperson when it's time
18 to deliberations. So while you're back there decide
19 who you want to be your foreperson and when you come
20 back out let me know, okay?

21 (Jury break 11:29)

22 The Court: Okay, Mr. Peterson?

23 Mr. Peterson: Yes sir.

24 The Court: Stand up a minute and let me put you under
25 oath. Raise your right hand. Do you solemnly swear

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1 that the testimony you're about to give me shall be
2 the truth, the whole truth and nothing but the truth,
3 so help you God?

4 Mr. Peterson: Yes sir.

5 The Court: We've come to the point in this trial where
6 the State has presented all the evidence they're going
7 to present against you.

8 Mr. Peterson: Alright.

9 The Court: You have now an opportunity to present
10 evidence in your own behalf. You do not have to present
11 evidence and I will instruct the jury that you don't have
12 to and they can't consider it in any way if you don't.

13 Mr. Peterson: Alright.

14 The Court: You also have a right to testify.

15 Mr. Peterson: Alright.

16 The Court: But you don't have to testify. You have a
17 Constitutional right to remain silent.

18 Mr. Peterson: Alright.

19 The Court: If you chose to remain silent, under the
20 Fifth Amendment I will instruct the jury that the fact
21 that you did not testify, they can't consider, they
22 can't talk about that in any way.

23 Mr. Peterson: Alright.

24 The Court: But you also have a right to testify and if
25 you want to testify, you'll be subject to the same

1 rules as any other witness.

2 Mr. Peterson: Alright.

3 The Court: You'll be subject to cross examination by
4 the State.

5 Mr. Peterson: Alright.

6 The Court: If you have a criminal record ...

7 Mr. Peterson: Yeah.

8 The Court: If it qualifies under the law, it may be
9 brought out to impeach you. I don't know whether you
10 do or not. You know if it deals with a crime of
11 dishonesty or if it's happened in the last ten years
12 or carries more than one year ...

13 Mr. Peterson: Yeah.

14 The Court: You may be cross examined on it. And you can
15 discuss that with your attorney. You can talk to your
16 attorney about whether to testify or not to testify
17 and he can advise you as to his opinion what you
18 should do, but ultimately it is your decision.

19 Mr. Peterson: Alright.

20 The Court: It is your decision whether to testify or
21 not to testify, you understand that?

22 Mr. Peterson: Alright.

23 The Court: You can put up whatever witnesses that you
24 want to put up. But as I told you, if you do testify,
25 then you can be cross examined by the State and

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1 impeached on the potential criminal record you have.

2 Mr. Peterson: Alright.

3 The Court: Have you had enough time to talk to your
4 lawyer about this decision yet or do you want to talk
5 to him some more?

6 Mr. Peterson: Yeah, I want to talk to him some more about
7 it.

8 The Court: Okay. Then I'll take or before we take a
9 break, is there any other issues or matters of law
10 that we need to deal with?

11 Mr. Sullivan: I move for a directed verdict, just as a
12 matter of course on proximities. The State hasn't put up
13 enough evidence for the issue to go to the jury. Same on
14 the, on the drug charges and that's about all. Just as
15 matter of course I move for a directed verdict.

16 The Court: Well, I respectfully deny your motion. I
17 think there is evidence on the record, certainly on
18 the drugs as well as the officers that testified in
19 this case. They had knowledge it was there and it was
20 within one half mile of a number of schools or
21 colleges that qualify under the statue. I'll deny
22 your motion at this point and the jury can give it
23 whatever weight and determine whether the facts are
24 within a half mile. There is evidence in the record.
25 Okay, anything else?

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1 Mr. Sullivan: Should I just talk to him out side of this
2 courtroom?

3 The Court: I'll just take a break and give you a ten or
4 fifteen minute break to give you a chance to talk to
5 him and then you know, I need to know whether y'all
6 are going to put up evidence or not. If you're not
7 going to put up any evidence then that will effect how
8 we charge and argue. If you're going to put up some,
9 then you know, that's what I'm really trying to find
10 out. Once you tell me that, we'll decide if we're
11 going to run to maybe 1:00 and then go to lunch or
12 whether we go to lunch now. It depends on that
13 decision. So I'll give you a few minutes to talk to
14 decide what y'all want to do.

15 Mr. Sullivan: Okay.

16 The Court: Is there any other legal matters we need to
17 deal with before the break?

18 Mr. Sullivan: I don't have any.

19 The Court: Okay, does the State have any?

20 Ms. McElveen: No sir.

21 The Court: Okay after y'all, if y'all have any
22 particular requests for charge y'all need to let me
23 and my law clerk know about it.

24 Mr. Sullivan: Okay.

25 Ms. McElveen: Thank you.

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1 (Court break)

2 The Court: Alright are we ready to go? Have y'all had
3 enough time to talk?

4 Mr. Sullivan: Yes sir.

5 The Court: Okay are y'all going to put up any defense?

6 Mr. Sullivan: Yes.

7 The Court: Then I propose, I don't know how long it
8 will take, but I was going to run close to 1:00 to
9 finish all the testimony and break for lunch and come
10 back at two thirty, argue and charge. Of course I'm
11 not limiting you, if your testimony takes longer we'll
12 break for lunch around one, then come back and finish
13 the testimony, okay?

14 Ms. McElveen: Yes sir.

15 The Court: Alright, anything before I bring the jury
16 in?

17 Mr. Sullivan: No sir.

18 Ms. McElveen: No sir.

19 The Court: Okay, if they are ready you can bring them
20 in.

21 (Jury enters court room 11:53)

22 Ms. McElveen: Your Honor?

23 Mr. Sullivan: What about what's going to come in as far as
24 his record?

25 Ms. McElveen: His history?

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1 The Court: Well, I thought y'all had that conversation.

2 Ms. McElveen: Sorry, Your Honor.

3 The Court: Tell him to stop them.

4 Ms. McElveen: Your Honor he does have a prior offenses that
5 we would ask that we bring out if he does take the stand.
6 Specifically, he has a grand larceny from 1997 and we would
7 ask that the Burglary second degree violent come in under
8 the five factors State vs. Goff test, outside of ten years.
9 And then he's got another possession of crack cocaine,
10 which we do not think would come in and a criminal domestic
11 violence, first offense. Which again, we would not think
12 would come in, but we would ask that the grand larceny and
13 the Burglary second degree violent do come in as they are
14 directly related to his credibility and well, one's an
15 impeachment crime and I believe the grand larceny is a
16 crime of dishonesty or false statement. The Burglary we
17 would also ask to have come in. It carries, it carries
18 imprisonment for greater than one year. Although it is a
19 little more remote, it's outside of ten years. We feel the
20 probative values would substantially out weigh its
21 prejudicial effect. Obviously a Burglary second degree
22 violent would have high impeachment value and it occurred
23 at the same time that the grand larceny occurred, it will
24 come out in court and there is no similarity between this
25 drug offense and that burglary, so there would be no chance

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1 of it being unduly prejudicial to the Defendant and
2 obviously the Defendant's testimony is extremely important
3 in this case and the credibility issue is a key factor.
4 Therefore we would ask that the Burglary charge come in as
5 well under the State v. Goff five factor test.

6 The Court: Okay, what is, what is the defense position?

7 Mr. Sullivan: The, I don't think Burglary is a crime of
8 dishonesty. I'm not sure about the, I'd be inclined to
9 think that the grand larceny is. They're remote,
10 they're from 97 or 98, looks like 98. I will argue
11 that his testimony is not that crucial. Mainly, I
12 guess, you know, the age and that burglary I don't
13 think is a crime of dishonesty.

14 The Court: Alright, anything under Rule 609? Does the
15 State give the defense notice that they intended to
16 bring in a ten year old ...

17 Ms. McElveen: Well, we did provide them with a copy of the
18 NCIC Your Honor, but we did not give written notice
19 that we plan to use that, because we were not, we did
20 not know if the Defendant would take the stand, quite
21 frankly. But no sir, we did not give advance written
22 notice. We did provide a copy of the NCIC in
23 discovery.

24 The Court: Okay.

25 Ms. McElveen: Your Honor he, well.

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1 The Court: I think the rule requires advance written
2 notice on anything over ten years that you intend to
3 use it. To give him NCIC, I don't think complies with
4 that. You've got to let them know, at least from my
5 understanding, you've got to let them know if he has
6 it and you intend to use it. That's what the rule
7 says.

8 Ms. McElveen: Yes sir.

9 The Court: And if you had given him notice, then I
10 would have, you know, I think the grand larceny would
11 have come in as a crime of dishonesty.

12 Ms. McElveen: Okay, thank you Your Honor.

13 The Court: Thank you.

14 (Jury enters courtroom at 11:53)

15 Bailiff: All the jurors are back in the courtroom Your
16 Honor.

17 The Court: Mr. Sullivan?

18 Mr. Sullivan: Thank you judge. I'd like to call Mr. Corey
19 Peterson to the stand please.

20 The Court: Okay, you can come down please sir and place
21 your left hand on the Bible and raise your right hand.

22 Bailiff: State your name for the record please.

23 A: Corey Peterson.

24 Bailiff: Do you solemnly swear or affirm that the
25 testimony you give this Court shall be the truth

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1 ...

2 Mr. Peterson: Yes sir.

3 Bailiff: ... the whole truth ...

4 Mr. Peterson: Yes sir.

5 Bailiff: ... and nothing but the truth, so help you God?

6 A: Yes sir.

7 Bailiff: Thank you. State your name and spell your last
8 for the record.

9 A: Corey Peterson.

10 DIRECT EXAMINATION OF MR. PETERSON BY MR. SULLIVAN:

11 Q: Mr. Peterson, you remember this day we've been talking
12 about, May 14th, 2010?

13 A: Yes sir.

14 Q: Okay, were you, you were sitting in a Suburban out
15 there at Lantana Apartments?

16 A: Yes sir.

17 Q: Who' Suburban was that?

18 A: It was mine. I just had bought it.

19 Q: Okay, what were you doing in the Suburban?

20 A: Drinking beer.

21 Q: Okay, what kind of beer were you drinking?

22 A: A Bud Light.

23 Q: Okay, how many of them did you have?

24 A: A six pack. I just had cashed my check, my work check
25 when this started.

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1 Q: What were they in? Were they by themselves or?

2 A: They was in a bag in the floor sitting in the middle
3 of the Suburban.

4 Q: What kind of bag?

5 A: Like a El Cheapo bag. You buy a certain amount of
6 beers they give you a plastic bag.

7 Q: Okay, when you were sitting there in your Suburban,
8 did you see some guys walking up to you?

9 A: No, not really. I had a friend out there with me I was
10 talking to, but no I didn't see nothing.

11 Q: Okay, did you get out of the Suburban and take off
12 running?

13 A: Yeah, when they pulled up.

14 Q: Okay. Were they in a marked car or unmarked car?

15 A: It was an unmarked car.

16 Q: You saw them walking up?

17 A: It was like, about thirty feet away from me.

18 Q: Okay.

19 A: Pulling up to approach me.

20 Q: Alright, you took off running?

21 A: Yeah, I took off and started running and a friend of
22 mine was like dude they undercover and I was like
23 yeah, I see them. Man, they gonna lock me up. I got a
24 open container in the Suburban. I knew I was going to
25 jail for drinking in public and so I took out and

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- 1 started running and ran in the house and I ran in the
2 house I ran in through the front door. There was an
3 officer chasing me ...
- 4 Q: Let me, you're getting away from me.
- 5 A: Alright.
- 6 Q: Do you see who was chasing you?
- 7 A: No, I don't even see him.
- 8 Q: You don't see the officer that was chasing you?
- 9 A: No, he not here, the one that was chasing me.
- 10 Q: How many of them was chasing you?
- 11 A: One.
- 12 Q: How far did they get to you when they was chasing you?
- 13 A: From here to that back, that back door right there;
14 from the second to the back row of the blue chairs
15 there.
- 16 Q: Did you have anything in your hand when you was
17 running from them?
- 18 A: Huh-uh (negative response).
- 19 Q: Okay, you started to say where you ran to?
- 20 A: Yeah, I ran in the house.
- 21 Q: Who's house?
- 22 A: My mother house. My mama.
- 23 Q: Was that an apartment?
- 24 A: That's an apartment; apartment .
- 25 Q: You live there?

- 1 A: No sir.
- 2 Q: How long were you there before the police came in?
- 3 A: The city cops or just the undercover?
- 4 Q: Any.
- 5 A: I wasn't at the front door no more than about three
- 6 seconds and then they came in. One of them came in the
- 7 front, the rest of them one officer had about five
- 8 more at the back door by the refrigerator and the deep
- 9 freezer and he tell all them to freeze. It was five
- 10 black males back there. I was in the front, they was
- 11 at the back.
- 12 Q: You tried to run out the back?
- 13 A: By the time I get half way to the back to the kitchen,
- 14 Officer Wilkerson was already back there with his gun
- 15 out telling them boys to freeze. And he, he's not even
- 16 here. Whatever his name is. Black guy.
- 17 Q: They knock on the door or did they just come running
- 18 in?
- 19 A: Well, I opened up the door. I opened up, me and my
- 20 mother, we opened up the front door for the officer
- 21 who was chasing me, but it was one officer already had
- 22 five black boys at the back door, which would be my
- 23 brother and his friend and my sister boyfriend and his
- 24 friend.
- 25 Q: Okay. Is that the back door of the apartment?

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1 A: This is at the back door of the apartment and the
2 refrigerator would be, the freezer wouldn't be no more
3 than two feet or foot from where he was at.

4 Q: Okay, how many guys you say, four or five?

5 A: Four or five, around four or five.

6 Q: This is at the back door?

7 A: This is at the back door before I even made it out
8 there.

9 Q: Inside or outside?

10 A: They was inside. He had two on the outside of the door
11 and there was two ...

12 Q: I'm talking about the individuals, not the police
13 officers.

14 A: Well, they was outside.

15 Q: Outside?

16 A: Yeah, they ain't came in the house yet. One of them
17 came in the house and said Mr. Peterson, you, stay
18 right there. Don't move. That was the one that came
19 through the front door, but one officer already had
20 four or five boys at the back door. That was my
21 brother, LeDaniel Dukes; my sister boyfriend, Brandon
22 Johnson and two other black males.

23 Q: Okay, where were the drugs that they found in relation
24 to where you were standing in there?

25 A: Like it was from here to where he at when I walked

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1 toward to the kitchen to no less than that officer
2 that sitting right there.

3 Q: The, the other individuals who were in there, were
4 they standing close to where the drugs were?

5 A: They been right beside it. Right beside it, and the
6 drugs were found, when I see they pick it up, the drug
7 was behind the freezer, stashed down to the freezer
8 instead of on the side of the freezer. Now he's
9 saying that all of a sudden it was beside the freezer,
10 but it wasn't.

11 Q: Okay, they were beside the freezer or behind the
12 freezer?

13 A: Behind the freezer with the boy standing right next to
14 it.

15 Q: Was it a regular size refrigerator or like a deep
16 freeze?

17 A: It was a deep freezer about this, about this tall
18 right here.

19 Q: Okay, did you see if they had to search to find the
20 bag or ...

21 A: They had a search warrant in about one minute.

22 Q: Okay.

23 A: They had a search warrant in a minute. There was
24 another dude out there like a detective, they came up
25 with him and they made him sign some paperwork and I

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1 heard them call to the courthouse to get a search
2 warrant but they made him sign it saying we got this
3 stuff right here. He was signing a search warrant to
4 search my mama house. I said mama just go ahead and
5 let them search it anyway, just go ahead and let them
6 search it. And she let them search it. Now when they
7 search it, they have four to five guys by the back
8 door and it take them thirty minutes just to find the
9 marijuana was stashed behind the refrigerator.

10 Q: They were talking about getting a search warrant?

11 A: Yes, they was talking about getting a search warrant.

12 Q: You said, you said ...

13 A: See my mama Christian. She's a good hearted woman so
14 I told her just go ahead and let them search it. Ain't
15 no need to go through all that. She ain't gonna argue
16 all that, she a Christian woman. She's got a good
17 heart.

18 Q: Did your grandmother tell them they could search?

19 A: No my mother told them they could search.

20 Q: Your mother.

21 A: Yeah, my mama told them they could search.

22 Q: And you're saying that the, that there was a bag with
23 drugs in it and it was behind ...

24 A: When they had me handcuffed in the living room and
25 they was like, we seen a bag, we seen a bag, we seen

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1 a bag. When I see them pull it out, it was behind the
2 refrigerator freezer, stashed behind the freezer and
3 it was like four or five guys right there. There was
4 two, well one of the officers had two of them outside
5 and the other two was standing by the door and the
6 drugs wouldn't be no more than like a foot right there
7 by them.

8 Q: Okay, they hand, they took you into custody, they
9 handcuffed you?

10 A: Yeah, they had already arrested me.

11 Q: Okay, they took you over to the curb?

12 A: To the where?

13 Q: To the curb. They sit you down?

14 A: They sit me down to the curb, they sit me down to the
15 curb and they were like, well why you got this money
16 on you for? I said man, I say I been working hard for
17 this money. I say here go my check stub right here. I
18 just cashed my check. They see the check stub, they
19 see I just cash my check, I say now I'm not going to
20 let y'all take my money. I worked hard for it, cause
21 y'all find drugs in my mama house, I ain't got nothing
22 to do with me. So I say y'all ain't going to take my
23 money and they say we going to seize your money, we
24 going to seize your money. They see my check was so
25 big, I been working at International Paper and they

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1 look at it and they say, whoa man, you make a lot of
2 money and I say yeah, man y'all not going to take my
3 check. I don't care what it is, ya'll going try to
4 take my money from me. I'm running.

5 Q: Did they ask you about who the drugs belong to?

6 A: Yeah, they ask me that. They say you tell us, well
7 they say who all live here to the house. Nobody owned
8 up to the drugs.

9 Q: So nobody owned up to the drugs?

10 A: No, nobody owned up to the drugs.

11 Q: Okay, and you say that they, that the police asked you
12 who's drugs it was?

13 A: Yeah, they asked who drugs it was. They say you tell
14 us who's drugs they belong to Mr. Peterson and we'll
15 let you go right now. I say I have no idea who them
16 drugs belong to. I cannot help y'all.

17 Q: Okay, and then what, then what happened after you
18 didn't tell them it was your drugs?

19 A: They got mad and arrested me for it, cause they say
20 well your mama going to jail for it or somebody is. I
21 say you know what, my mama a Christian, don't lock her
22 up for nothing she don't know about.

23 Q: Alright, well tell me about when they, they, they put
24 you in handcuffs and, and sat you down on the ground.
25 You took off running again?

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1 A: Yeah, when they put me in handcuff they say oh we
2 going to seize your money, we going to seize your
3 money. They see the check stub, they had just see I
4 cashed my check. They say they going to take my money
5 and seize it for some drugs they ain't even found on
6 me by some other boys. So you know, I say you know I
7 work hard for this money. If they going to take my
8 money, y'all going to earn it, cause I'm going to run,
9 I'm going to run. I sure enough run. They shoot me
10 with the tazer and everything and that's what they
11 deserve.

12 Q: So why did you run that time?

13 A: With the money?

14 Q: Yeah.

15 A: Cause they was going to take it.

16 Q: Okay.

17 A: I stayed up all night. I work from seven in the
18 afternoon til seven in the morning, take me a nap, get
19 back up around four o'clock, wash up and everything so
20 I can go back to work.

21 Q: The drugs that were found in the bag in Lantana
22 Apartments, in apartment , was that your drugs?

23 A: No sir, no sir.

24 Q: Okay, do you sell drugs?

25 A: Naw, I don't sell no drugs.

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1 Q: Okay, alright, thank you Mr. Peterson. Please answer
2 Ms. McElveen's questions.

3 A: Alright.

4 CROSS EXAMINATION OF MR. PETERSON BY MS. MCELVEEN:

5 Q: Mr. Peterson, what were you carrying in that white
6 plastic bag that the officers saw you jump out with?

7 A: I didn't have nothing in a white plastic bag beside a
8 beer and the bag had drop on the ground. I had beer
9 still in my hand when I ran in the house and the bag,
10 I didn't have the bag when I ran in the front door.

11 Q: Okay, so when you got out of the car you had the
12 plastic bag, you said, and there was a beer in it?

13 A: When I got out the car I had a beer, you could see,
14 the bag was covering up over the beer. The drugs he
15 got on that table, you gonna have to run like this, I
16 had one bag in my hand and a beer was in it and the
17 bag had drop off the beer and I say damn I know I'm
18 going to jail, they going to lock me up for drinking
19 in the public and it is a police officer, so I ran in
20 the house. Took of running.

21 Q: So what did you do with the bag?

22 A: The bag fell, the bag fell.

23 Q: So ...

24 A: So look ...

25 Q: Originally you said you didn't have a bag, there was

1 no bag, there's beer in the car, in the bag in your
2 car and now the beers in your hand, you're running
3 out, your beer's dropping, the bag's dropping. Which
4 one is it?

5 A: The bag he was talking about was the bag I had the
6 beers in. I had one beer in one hand, but I already
7 had a six pack in my car, in my suburban. I had six
8 pack.

9 Q: And ...

10 A: He talking about, he talking about the bag that the
11 beer was in when I jump out and he did see a bag and
12 I had a beer in the bag.

13 Q: And that's the one that the beer came out and the bag
14 happened to fall all at once and you ran for an open
15 container?

16 A: Yeah, I ran for an opener container?

17 Q: Why did, you're scared of getting an open container?

18 A: Not scared, but I know they going to lock me up for
19 drinking in the public. I know they would.

20 Q: And you know you were drinking Bud Light that day?

21 A: Uh-huh (affirmative response).

22 Q: What were you drinking two super bowls ago? What beer
23 did you drink that day?

24 A: Two super bowls ago? Probably a Budweiser, Bud Light.

25 Q: Do you always drink Bud Light?

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- 1 A: Off and on, off and on.
- 2 Q: So you know with certainty everything? You know you
- 3 were drinking a Bud Light?
- 4 A: Yeah, I know I was drinking Bud Lite.
- 5 Q: What were you wearing?
- 6 A: Now what was I wearing? A white tee shirt, when I got
- 7 to the counter I had a white tee shirt on, bloodied
- 8 up.
- 9 Q: Bloodied up?
- 10 A: Yeah.
- 11 Q: Okay and ...
- 12 A: And ...
- 13 Q: I asked you what you were wearing. What were you
- 14 wearing?
- 15 A: A white tee shirt and some jeans.
- 16 Q: What were you wearing the day before that?
- 17 A: The day before that I was at work. So probably my work
- 18 clothes. I couldn't tell you.
- 19 Q: So you work at night til seven a.m. that morning?
- 20 A: I was off work.
- 21 Q: You said you worked the day before that right?
- 22 A: No, it's a shut down job. It's Zachery Construction
- 23 Company.
- 24 Q: I thought it was International Paper?
- 25 A: International Paper, it's a company called Zachery

1 Construction and they work for International Paper,
2 just as well as ...

3 Q: Okay so were you working, you said you were worked the
4 day before. What do you mean? Did you work til seven
5 a.m. the morning of this incident or did you work til
6 seven a.m the morning before because earlier you said
7 you work seven p.m. to seven a.m.

8 A: That's how I work, seven p.m. to seven a.m. in the
9 morning. That's what I was working.

10 Q: So you worked til seven a.m. that morning?

11 A: No, I didn't work no seven a.m. that morning. I got
12 locked up.

13 Q: You got locked up at 3:15 pm. You didn't get locked up
14 at seven am.

15 A: I got locked up, I got locked up May the 14th. I was
16 off the job three days ahead, off the job already. The
17 job was already over, the shut down was over.

18 Q: So how'd you get your check? When did you get your
19 check?

20 A: When I got my check? I got my check before I left
21 there, I got my check.

22 Q: So you got your check three days early then?

23 A: No, I that was like, that's a check I already had.
24 That's a check.

25 Q: What?

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- 1 A: It's a check that I already had.
- 2 Q: So you didn't get your check that day, you'd actually
- 3 gotten it three days earlier?
- 4 A: Yeah, I had my check on me.
- 5 Q: Okay, so you didn't just get paid?
- 6 A: When I cashed my check that day. I didn't never say
- 7 when I got paid, I just cashed my check that day.
- 8 Q: While officers were chasing you, you were taking the
- 9 time to turn around and count how many of them there
- 10 were?
- 11 A: When?
- 12 Q: You said ...
- 13 A: The first time they was chasing me or the second time
- 14 I ran with the money?
- 15 Q: The first time you ran because of the drugs in your
- 16 hand?
- 17 A: No, the first time I ran cause of the alcohol that was
- 18 in my hand?
- 19 Q: The first time you ran?
- 20 A: Yeah the first time I ran was because of ...
- 21 Q: You said there was one officer?
- 22 A: Yeah, one officer that jumped out of the passenger
- 23 side of a gold Yukon or beige, whatever it was it was
- 24 a truck. It's a truck, it's a truck and one jump out
- 25 of the passenger side, he jump out the passenger side

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1 and he chase me. He said you come here and I been
2 already sitting in my Suburban.

3 Q: Okay so there was one officer who was chasing you the
4 first time?

5 A: Yeah.

6 Q: And then all of a sudden there are, how many officers
7 were there? Five at your door?

8 A: No, there was one at the front door. See you trying to
9 cross me over, but you can't. There was one at the
10 front door, there was two at the back door with four
11 or five black males already there and they say y'all
12 three don't move.

13 Q: Was it four or was it five black males? Which one was
14 it?

15 A: It was around about four to five black males. I know
16 there was a bunch of guys in my mama house.

17 Q: So you remember that you were drinking a Bud Light?

18 A: Yeah.

19 Q: And you remember dropping a bag, but you don't
20 remember if there were four or five people standing
21 around a bag with a hundred and fifty five grams of
22 marijuana and 7.5 grams of cocaine?

23 A: It was around four boys. Four or five.

24 Q: So which one was it? Earlier you said it was ...

25 A: It was Bryan Johnson, my brother LaDaniel Duggan, like

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1 I told you earlier.

2 Q: Uh-huh.

3 A: And a few, one of my homeboys friend, Bryan Johnson

4 friend and a boy named Dale, five.

5 Q: Earlier you said it was your brother, your brother's

6 friend, your sister's boyfriend ...

7 A: That's what I'm saying now.

8 Mr. Sullivan: Your Honor I ...

9 A: Isn't that what I just said?

10 The Court: Hold on, hold on, hold on Mr. Peterson.

11 Here's what I need y'all to remember. My court

12 reporter's good, but she can't talk, she can't get it

13 down with all of y'all talking. You got to talk one at

14 a time.

15 Mr. Peterson: Yes sir.

16 The Court: She gets to ask you a question and you get

17 to answer it.

18 Mr. Peterson: Okay.

19 The Court: So if the lawyer objects everybody's got to

20 stop talking.

21 Mr. Peterson: Alright sir.

22 The Court: Now?

23 Mr. Sullivan: Your Honor I would ask that the Solicitor

24 just ask him a question as opposed to telling him what

25 he said. Just ask a question.

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1 The Court: Well, she's cross examining. She's got the
2 right to lead him. I just can't have them talking at
3 the same time. You can ask him a question; you can ask
4 him a leading question. He gets to answer it and
5 explain it.

6 Q: Yes sir. So these four or five other guys that were
7 standing around a bag of drugs in the middle of a
8 kitchen floor, why weren't they arrested or detained?

9 A: It wasn't in the middle of the kitchen floor, that the
10 thing. They didn't find drugs. When they came there
11 they found the drugs thirty minutes later. See my mama
12 and them a witness but I don't got them here right now
13 I couldn't make no phone call. The officers lying
14 against me. It was the drugs were behind the freezer.

15 Q: So your mama's not willing to come up here and take
16 responsibility for those drugs?

17 A: My mama, my mama's don't like to get involved in this
18 cause she's a Christian woman and all. She don't like
19 to get involved in nothing, nothing that got to do
20 with the court. The last time she went to trial with
21 me, I didn't did it, she didn't came.

22 Q: What was the trial you went to? Why did you go on
23 trial?

24 A: Why I went on trial is because my fingerprint didn't
25 match up with a stolen car they claim I stole and I

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1 didn't stole it.

2 Ms. McElveen: Your Honor may we approach?

3 (SIDE BAR)

4 Q: So you think that these officers planned to have you
5 arrested for these drugs?

6 A: See before they take me down to the county, they was
7 like Mr. Peterson we know it ain't yours, but we got
8 to question to ask you. They say we got two questions
9 to ask you, why you run? What was in the bag when you
10 ran? And I said my beer was in the bag and then they
11 say you look like you on drugs so then they start
12 laughing and joking. I didn't, I ain't paid no
13 attention, they all was laughing so I didn't pay no
14 attention. Well they said right now, who drugs it is,
15 belong to? We'll let you go right now. I said officer,
16 I ain't going to tell y'all a lie, I couldn't even
17 tell y'all.

18 Q: So you think these officers have it out for you? Or
19 they knew you from before?

20 A: Yeah, they all know me from the past. They know me.

21 Q: How do they know you from the past?

22 A: The City cops. The ones that arrested me for the
23 stolen car that I didn't stole. They were dirty
24 officers.

25 Q: What year was that?

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1 A: 19, 8 or I say about 2002. I think was the time.

2 Ms. McElveen: Your Honor may we approach?

3 (SIDE BAR)

4 Q: So Mr. Peterson you admit you've been to trial before
5 with the city police?

6 A: Yes ma'am, yes ma'am.

7 Q: And you were charged with grand larceny?

8 A: Yes ma'am.

9 Q: And you were convicted of grand larceny?

10 Mr. Sullivan: And I want on the record that I object.

11 A: I would say, I wouldn't say I was charged with grand
12 larceny and it was like a charge, whatever his name
13 is. And he was like you know, why his fingerprints
14 ... I had five police officers testify against me one
15 of them was in there. One of them I could tell he was
16 a Christian, because he tell the truth the whole time.
17 He say when I came up that dude acted so calm. He say
18 why y'all lock me up? Why y'all lock me up? I was
19 normal and he say I'm a tell you no lie your honor,
20 Judge James, that boy fingerprints is not on this car.
21 And it doesn't match up to the fingerprints we got.

22 Q: I asked you were you convicted of grand larceny in 199
23 ...

24 A: That mean was I found guilty? No.

25 Q: You don't have a grand larceny conviction from 1998?

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- 1 A: No, not that I plead guilty, no. If I pled guilty to
2 it, if that what you really getting at, no I didn't,
3 no.
- 4 Q: I asked did you have a trial on a grand larceny charge
5 and were you found guilty by a jury?
- 6 A: No, I was not found guilty, no, no. I had a trial, but
7 I was not found guilty.
- 8 Q: So your mama knew about these drugs in her house?
- 9 A: No.
- 10 Q: So ...
- 11 A: Well I don't know. My brother got charges, he got drug
12 charges, distribution, so I wouldn't have no idea. I
13 wasn't living there, so I wouldn't know.
- 14 Q: Your brother has drug charges?
- 15 A: Yeah, he got drug charges.
- 16 Q: And your mama's a Christian woman?
- 17 A: Yes, she a Christian woman.
- 18 Q: So, she still gave consent to search her house?
- 19 A: Say that again?
- 20 Q: She knew about these drugs behind the freezer?
- 21 A: No, no she didn't know.
- 22 Q: How'd you know about the drugs behind the freezer?
- 23 A: I didn't know until they told me.
- 24 Q: I thought you said that you saw them searching and
25 pulled it out.

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- 1 A: No, I see when the police officers pull it out. I was
2 in the living room. I'm telling you they told me and
3 I saw it. The officer I want to say it was him, but
4 it, I couldn't even say that because there was another
5 dude already back there before. He came to the back
6 door like five minutes later. He came to the back door
7 and he say he was the first, but he wasn't the first.
- 8 Q: So, your mama was willing to be charged with these
9 drugs that were laying in the middle of her kitchen
10 floor?
- 11 A: No, she wasn't.
- 12 Q: No she wasn't?
- 13 A: No, not to be honest with you, no.
- 14 Q: So why didn't your brother claim responsibility for it
15 if he's got all these drug charges?
- 16 A: Cause he ain't going to claim it. None of them going
17 to claim it.
- 18 Q: Are you not going to claim it?
- 19 A: No, I'm not going to claim it either, no.
- 20 Q: So you have no idea who those drugs belong to or where
21 they were, but you knew ...
- 22 A: Not at that moment, but I know
- 23 Q: Excuse me, I'm still asking a question.
- 24 A: Alright, not at that moment.
- 25 Q: So you knew where those drugs were, and that they

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1 belonged to one of the four or five boys that were in
2 your mama's house. You said you didn't know any of
3 this, you don't know, all of a sudden you don't know
4 where they were stashed, but they were behind the
5 freezer?

6 A: I didn't ...

7 Q: Which one is it?

8 A: I didn't know.

9 Q: Were they behind the freezer or not?

10 A: I didn't know at the moment and you not understanding
11 where I'm coming from. I didn't know at the moment. I
12 said until they put the handcuffs on me, I saw when
13 the officer pulled the drugs out from behind the
14 freezer it was at. That's what I said. I said four or
15 five boys standing next to the dog gone drugs, by the
16 freezer.

17 Q: Why would they handcuff you before they found any
18 drugs?

19 A: Cause they were wondering why I ran from them. That's
20 what their problem was.

21 Q: Why would they handcuff you?

22 A: They said why did you run from us? Why did you run
23 from us?

24 Q: So they have ...

25 A: What do you have in that bag? What do you have in that

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1 bag? See, my mama had about fourteen bags in the
2 kitchen, but ...

3 Q: Is your mama testifying?

4 A: No, my mama not testifying. You locked me up remember
5 so she can't.

6 Q: You told the police when you were sitting on the curb,
7 you're going to take my money, so I'm going to run
8 from you and then you ran. You told police? I'm just
9 letting you know sir ...

10 A: No I didn't ...

11 Q: I'm about to run.

12 A: No, I didn't say that, I didn't say that. They saw my
13 check stub and one of them said man ...

14 Q: Your check stub from three days ago?

15 A: No, they saw my check stub from a full week I worked
16 by the time I cashed my check, I said they saw my
17 check stub, one of them was like man you make a lot of
18 money. You make twelve hundred dollars a week? I'm
19 going to tell you like this right here, you make more
20 than me. You make more than my paycheck, so we was
21 just like joking, joking, joking. I said man I can't
22 let y'all take my little old check; I work too hard
23 for it. I sit up from seven to seven, twelve hours on
24 my foot. I work hard for the money, I can't. And they
25 see my check stub.

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- 1 Q: So you told them I'm going to run?
- 2 A: No, I ain't say I was going to run.
- 3 Q: You already said that.
- 4 A: I said to myself I was going to run, but I told them
- 5 I'm not going to let you take it. That's what I said.
- 6 Q: But if there was nothing wrong and the drugs weren't
- 7 yours, why would you be worried about your check
- 8 money?
- 9 A: Because they already was going to charge me,
- 10 regardless for running from them. They already said
- 11 that. They weren't going to charge me for the drugs,
- 12 they charged me for the drugs ...
- 13 Q: Why would they take your money from running from them?
- 14 A: Why would they take my money for running from them?
- 15 If they find drugs in the house, and they didn't find
- 16 it on me and nobody didn't claim it, but they swore up
- 17 and down the drugs were mine, when they don't know,
- 18 yeah they going to take my money. They got mad because
- 19 I wouldn't tell them who drugs it was. They got mad
- 20 ...
- 21 Q: Maybe they, do you think they would get mad if you
- 22 wouldn't take responsibility for drugs ...
- 23 A: No, they ain't got mad for.
- 24 Q: ... Excuse me, I'm asking a question.
- 25 A: Alright, alright.

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1 Q: Do you think they'd get angry for you not taking
2 responsibility for drugs that were, that you brought
3 into your mama's house and putting it on your mama and
4 your brother? Do you think they'd be angry about that?

5 A: They can, but not if they actually didn't see it.
6 They were from here to here. They didn't know what was
7 in that bag and what was in the bag, the bag dropped.
8 I still had an open container in my hand and the beer
9 was wasting which I was running in the house.

10 Q: I, I lost you on that beer stuff. I'm just going to
11 ask you, do you think your mom is disappointed in you
12 right now?

13 A: No.

14 Q: No?

15 A: Because she know it wasn't mine.

16 Q: So why hasn't she come forward and told people who's
17 it was?

18 A: Why didn't she come forward? Cause she didn't know
19 who it was at the moment, she didn't know.

20 Q: They were just ...

21 A: She know who they is now. The one who confessed to
22 drugs and confessed to them, that's who they belong
23 to. That's who they belong to. The fellow who was up
24 here yesterday said it was his, that's who the drugs
25 belong to.

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- 1 Q: Who? What fellow? We haven't heard from a fellow.
- 2 A: Barack Dukes. Barack Dukes who lives there.
- 3 Q: Oh, so now you're saying they're somebody else's?
- 4 A: I been saying that.
- 5 Q: Well you just named people. You didn't name Barack
- 6 Dukes.
- 7 A: You not, you not, you not hearing me. I said that's
- 8 who drugs it was. Can I tell my story? That's who
- 9 drugs it was.
- 10 Q: Yes and you did not name Barack Dukes, you named
- 11 Nathaniel Dukes.
- 12 A: Cause that's up to them. He wouldn't tell you that
- 13 anyway. David Sullivan can tell you that.
- 14 Q: David Sullivan can't testify. You're the one
- 15 testifying right now.
- 16 A: I'm testifying about my own thing about me. Barrack
- 17 Dukes claimed the drugs and confessed to the drugs.
- 18 That's what I'm telling you.
- 19 Q: Objection, hearsay.
- 20 A: At that moment he wasn't there.
- 21 The Court: She's going to ask you a question.
- 22 A: Okay.
- 23 The Court: And you answer the question. You can
- 24 explain....
- 25 A: Alright, alright.

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1 The Court: ... your answer to her, but you can't just go on
2 and on.

3 A: Okay.

4 Q: So, you mentioned Officer Wilkinson. You said that
5 Officer Wilkinson, a black officer was there.

6 A: I really don't know his name. I really don't know his
7 name, but I got an uncle who on the force, Alexander
8 Dukes. He retired now.

9 Q: Why did he retire?

10 A: Cause he was, he didn't retire. He about to go back.

11 Q: So did he retire or did he not?

12 A: He was retired at the moment or whatever got fired at
13 the moment.

14 Q: So he got fired?

15 A: Yeah, fired or laid off, however you want to say it.

16 Q: Why did he get fired or laid off?

17 A: I have no idea.

18 Q: You have no idea about your family, but you know who's
19 drugs they were behind the freezer in your mama's
20 house with your brother around?

21 A: I didn't know at the ...

22 Q: You don't know why your uncle got fired from the
23 force, but you know the names of officers who are on
24 the force?

25 A: Yeah, I know the name of a lot of officers on the

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- 1 force.
- 2 Q: Seems that you have a selective memory sir.
- 3 A: No.
- 4 Q: So who is Officer Wilkinson and how do you know him?
- 5 A: Who is what?
- 6 Q: Officer Wilkinson and how do you know him?
- 7 A: He's, he's, I told him about a fellow that, when I ran
- 8 from the scene, I ain't really want to bring it up,
- 9 but when I ran from the scene, that dude was, he was
- 10 --- put it that way. When I ran the second time ...
- 11 Q: Did you file a complaint?
- 12 A: No, I talked to David about it.
- 13 Q: Did you file a complaint at the time?
- 14 A: No, it wasn't that serious.
- 15 Q: Okay so it wasn't that serious or did they almost beat
- 16 you to death because you've gone both ways?
- 17 A: No, but he's beating me. He beat me til he left a
- 18 little mug shot, on my mug shot, but it wasn't nothing
- 19 bad. My shirt was all bloodied up, but it wasn't
- 20 nothing I was worried about. I'm not no bad person, so
- 21 it wasn't worth worrying about.
- 22 Q: Do you think that when you run from police there's a
- 23 chance they might have to deploy a taser to get you to
- 24 stop? If you've run not once, but twice?
- 25 A: I did surrender. Once you said by law you surrender,

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1 they got no right to put they hands on you. Especially
2 when a man is already handcuffed running.

3 Q: When a man runs ...

4 A: Yeah, when a man runs.

5 Q: I think there's a chance that they're going to try to
6 detain you again when you are running away.

7 A: Yes, he ...

8 Q: I don't think that gives off the surrender sign, do
9 you?

10 A: What do you mean? No, I told him I surrender. I told
11 the officer I surrender, I surrender. He's still
12 tazed me, throw me on the ground and tazed me and when
13 I was on the ground ...

14 Q: Did you file a complaint?

15 A: No I didn't file no complaint. I told you ...

16 Q: Thank you. Did you file a complaint? One answer.

17 A: No, no.

18 Q: Thank you. So how do you know officer Wilkinson?

19 A: I don't even know if that really exactly his name.

20 Q: Okay.

21 A: I told my uncle about it and he was like was that, you
22 talking about Officer Wilkinson. He a city officer.

23 Q: How did you know? Have you seen this officer before?

24 A: He came out Lantana. The same one that was at the back
25 door. The black fellow that was at the back door with

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1 the little ...

2 Q: Had you seen him before that? How did you know him?

3 A: Yeah, I did see him. I seen him before that. They said
4 they're going through Gamecock. They going through
5 North Main area. They going through like bad drug
6 areas.

7 Q: So have you had a run in with Officer Wilkerson or
8 this black officer before?

9 A: No, not personally, I never did.

10 Q: No, you just saw him on the streets?

11 A: Yeah, that's all.

12 Q: Is your mama up here taking responsibility or is your
13 brother, is Nathaniel Dukes up here taking
14 responsibility?

15 A: No, we had him up here, but you requested him get out
16 the courtroom yesterday.

17 Q: Sir, I asked you a question.

18 A: Not Nathaniel Dukes and not my mama, no ma'am.

19 Q: So, neither of those people are testifying today?

20 A: No, not today.

21 Q: Thank you. I have no further questions.

22 A: Alright.

23 Mr. Sullivan: Re-direct?

24 RE-DIRECT EXAMINATION OF MR. PETERSON BY MR. SULLIVAN:

25 Q: Mr. Peterson, the day that this happened, was it, was

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1 it significant in your life? Was this kind of big deal
2 when this happened?

3 A: What do you mean?

4 Q: Okay, Mrs. McElveen was asking you about what you were
5 wearing and what kind of beer it was that you were
6 drinking. Do you remember this day pretty well?

7 A: Yeah, I remember it, I remember it. Trust me, that's
8 one day I remember.

9 Q: Was, was this day more significant than just any other
10 day in your life?

11 A: Yeah, it was.

12 Q: Okay. Alright, alright. Is that why you can remember
13 the details of it better?

14 A: Yeah, yes sir.

15 Q: Thank you.

16 The Court: You can step down. Alright, Mr. Sullivan,
17 you may call your next witness.

18 Mr. Sullivan: I call Mr. Barrack Dukes.

19 Bailiff: Who's that?

20 Mr. Sullivan: Barack Dukes.

21 Bailiff: Place your left hand on the Bible and raise your
22 right. State your name please.

23 A: Barack Dukes.

24 Bailiff: Do you solemnly swear or affirm that the
25 testimony you give this court shall be the truth,

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1 the whole truth and nothing but the truth so help
2 you God?

3 A: Yes sir.

4 Bailiff: Sit here please. State your name and spell your
5 last name for the record.

6 A: Barack Dukes, D-U-K-E-S.

7 DIRECT EXAMINATION OF MR. DUKES BY MR. SULLIVAN:

8 Q: Mr. Dukes, what's your relationship to Corey Peterson?

9 A: Brother.

10 Q: Okay, y'all, y'all share the same mother?

11 A: Yes sir.

12 Q: Same father?

13 A: No sir.

14 Q: So he's your step brother?

15 A: Yes sir.

16 Q: How old are you?

17 A: Seventeen.

18 Q: The incident that, the reason that we're here happened
19 back in May of 2010. When did you find out about it?

20 That your step brother was charged?

21 A: Like a little bit.

22 Q: Do you remember when you found out about it?

23 A: Yeah, like a couple of weeks.

24 Q: Okay, you didn't find out about him being charged for
25 a couple of weeks later?

- 1 A: Yes sir.
- 2 Q: Okay, were you living in apartment at Lantana
- 3 Apartments?
- 4 A: Yes sir.
- 5 Q: Okay, were you there when all this happened?
- 6 A: No sir.
- 7 Ms. McElveen: Mr. Dukes can you speak up?
- 8 Q: I'm going to ask you that same question again. Were
- 9 you there when all this happened?
- 10 A: No sir.
- 11 Q: Okay. Do you remember where you were?
- 12 A: Yes sir.
- 13 Q: I'm sorry?
- 14 A: Yes sir.
- 15 Q: You do? Where were you?
- 16 A: At military school.
- 17 Q: Okay. Who was, you still live in that apartment?
- 18 A: Yes sir.
- 19 Q: Who was, who was living there at the time?
- 20 A: Me and my mom.
- 21 Q: Okay. Did, did you know about some cocaine and some
- 22 marijuana being in the apartment? Did you?
- 23 A: No sir.
- 24 Q: Did you have a bag of marijuana and cocaine at that
- 25 apartment, apartment ?

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- 1 A: No sir.
- 2 Q: Okay. Did you know there were drugs behind the deep
- 3 freeze?
- 4 A: No sir.
- 5 Q: Okay. Alright. Did you tell me that those drugs were
- 6 yours?
- 7 A: Yes sir.
- 8 Q: You're, you're saying those drugs weren't yours?
- 9 A: No sir.
- 10 Q: Okay. Why did you tell me those drugs were yours?
- 11 A: Probably cause I didn't want to get in trouble.
- 12 Q: But, I don't think you understood me. Why did you tell
- 13 me the drugs were yours? Wouldn't you get in trouble
- 14 if you said the drugs were yours?
- 15 A: Oh yes sir.
- 16 Q: Okay. Okay. Alright. And just so I'm clear, you're now
- 17 saying that, that you don't know anything about the
- 18 drugs that were found in the apartment?
- 19 A: Yes sir.
- 20 Q: Okay, do you understand my question?
- 21 A: What was your question?
- 22 Q: My question is, and just think about what I'm saying.
- 23 I know you're nervous. The drugs that, the marijuana
- 24 and the cocaine in the apartment . Was that yours?
- 25 A: No sir.

1 Q: Okay, thank you.

2 CROSS EXAMINATION OF MR. DUKES BY MS. MCELVEEN:

3 Q: Thank you for being here Mr. Dukes. Were you at
4 school on May 14, 2010?

5 A: Yes, yes ma'am.

6 Q: What time does school get out?

7 A: I was at school.

8 Q: You weren't at the Academic Learning Center?

9 A: You talking about ALC?

10 Q: I'm sorry?

11 A: You talking about ALC?

12 Q: At the Academic Learning Center. I don't know if
13 that's...

14 A: You talking about ALC?

15 Q: Yes sir. ALC, were you at ALC on May 14, 2010?

16 A: No ma'am.

17 Q: But you lived at apartment with your mom?

18 A: Yes ma'am.

19 Q: And you didn't know anything about those drugs?

20 A: I been at school.

21 Q: Okay, so you didn't see those drugs behind the freezer
22 before?

23 A: No ma'am.

24 Q: You didn't know anything about them? I'm sorry you
25 have to give me a verbal answer.

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1 A: Oh, no ma'am.

2 Q: So those drugs were not yours?

3 A: No ma'am.

4 Q: Do you love your brother?

5 A: Yes ma'am.

6 Q: Do you care for him and not want to see him get in

7 trouble?

8 A: Yes ma'am.

9 Q: Thank you. I have no further questions.

10 The Court: You can step down.

11 Ms. McElveen: Thank you Your Honor.

12 The Court: You can step down. Any further witnesses Mr.

13 Sullivan?

14 Mr. Sullivan: No sir.

15 The Court: Okay, any reply testimony from the State?

16 Ms. McElveen: Your Honor may we approach?

17 The Court: Yes.

18 -SIDE BAR-

19 The Court: We're probably going to break for lunch.

20 We'll come back at 2:15 and finish this case up. I

21 remind you to please don't discuss this case yet.

22 (Off the record discussion)

23 The Court: Okay. Any other charges?

24 Ms. McElveen: No sir, besides the standard

25 The Court: My standard charge. PWID, cocaine, PWID

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1 marijuana. Now my understanding is the weight issue is
2 y'all were talking about grams. My understanding on
3 powder cocaine is ten grains, not grams. It is one
4 gram of crack that's ten grains of powder. It's just
5 substantially less than a gram.

6 Ms. McElveen: Right.

7 The Court: So I was going to charge in a, twenty eight
8 ounces of marijuana, excess of having ten grains of
9 powder. Now if y'all ...

10 Ms. McElveen: We would ask that ten grains or one gram
11 because under the law, under 44, let me find it.

12 The Court: It's one gram of crack and one gram of, but
13 with powder, my understanding of the law says ten
14 grains to powder.

15 Ms. McElveen: I have ten grains are one gram.

16 Mr. Sullivan: One gram is ten grains?

17 The Court: No, one gram is a lot more than ten grains.
18 It's a gram of crack and ten grains of powder is my
19 understanding of the law.

20 Ms. McElveen: It's says possession of more than one gram of
21 cocaine for a controlled substance, for PWID. It has
22 possession of more than one gram of cocaine, one
23 hundred milligrams of ...

24 The Court: Where are you reading that out of?

25 Ms. McElveen: I'm reading it out of 44 53 370 d4.

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1 Mr. Sullivan: Is that the new book?
2 Ms. McElveen: Yes, this is 2011 Criminal Law book.
3 Mr. Sullivan: Okay.
4 The Court: 44 53.
5 Ms. McElveen: I can give you my copy Your Honor.
6 The Court: That ain't the law though. That ain't a law
7 book.
8 Ms. McElveen: Oh, oh, okay, sorry. You have to see code
9 books.
10 The Court: I have to look at the real law.
11 Ms. McElveen: Sorry 44, 53 370.
12 The Court: Okay and they didn't have that in there so
13 I was trying to determine whether they had changed it
14 to one gram.
15 Ms. McElveen: Yes, it says one gram of cocaine.
16 The Court: 445337d is what you're telling me?
17 Ms. McElveen: Yes sir..
18 The Court: Okay.
19 Ms. McElveen: In fact cocaine is listed first. And that's
20 also the statute that now talks about conditional
21 discharge.
22 The Court: Okay. Alright then they need to change the
23 charge book.
24 Ms. McElveen: They don't even mention grains under cocaine
25 in this new statute anyways now.

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1 The Court: I guess, I knew they were pushing it in
2 legislature to try to make powder and crack the same
3 thing. Okay, I'll change the charge.

4 Ms. McElveen: Thank you.

5 Mr. Sullivan: I'm sorry?

6 The Court: It really doesn't matter in this case, because
7 of the way ... Yes sir?

8 Mr. Sullivan: Can I get a mere presence charge or would
9 that not apply here? Just the fact that he's merely
10 ...

11 The Court: In my general charge, you know, they've got
12 to prove possession and mere presence doesn't
13 constitute possession. They've got to constitute the
14 actual possession and in that charge itself it says
15 mere presence where drugs are is not enough. They have
16 to prove knowledge that the drugs were there.

17 Mr. Sullivan: That's good enough for me.

18 The Court: That's what the actual charge says.

19 Ms. McElveen: I'm sorry what does it say? That the mere
20 presence?

21 Mr. Sullivan: Is not enough.

22 Mr. Sullivan: Oh yeah, you have to have knowledge that the
23 drugs are there.

24 The Court: You have to prove possession, which is
25 either actual possession or constructive possession.

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1 It says actual possession means that the cocaine was
2 in, or marijuana was in actual, physical custody of
3 the Defendant. Constructive possession means that the
4 Defendant had cocaine or marijuana itself or the
5 property on which the drugs were found. The mere
6 presence is not enough to prove possession. The actual
7 possession of the presence of the drugs is strong
8 evidence, a possession when a substance is found on
9 the property under Defendant's control, however this,
10 take into consideration by you it should have and then
11 the next says two or more persons may have joint
12 possession of a drug and the State must prove the
13 intent to distribute. So, you know, the charge is they
14 got to find that he either had actual or constructive
15 possession ...

16 Ms. McElveen: No.

17 Mr. Sullivan: Works for me.

18 Ms. McElveen: That's fine Your Honor.

19 The Court: Okay, anything else?

20 Ms. McElveen: No sir, I'm just going to contact someone
21 from the clerk's office about testifying.

22 The Court: Okay. I'll see y'all in a little bit.

23 Ms. McElveen: Thank you Your Honor.

24 (Court Break)

25 The Court: Okay, does the State plan to call any more

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1 witnesses?

2 Ms. McElveen: Yes sir. The State plans to call Pamela
3 Haynesworth or whatever your first name is.

4 Mr. Sullivan: I think I may have already put this on the
5 record, but if I didn't, I object to her testifying
6 because it could be two separate incidents. Mr.
7 Peterson said that he was tried and wasn't convicted,
8 so I just object to the ...

9 The Court: What county was he tried in?

10 Mr. Peterson: Grand larceny.

11 The Court: Sir?

12 Mr. Peterson: Grand larceny.

13 The Court: You said, you say, your lawyer's telling me
14 that you were tried and weren't convicted. What county
15 were you tried in and not convicted?

16 Mr. Peterson: It had to be Sumter.

17 The Court: So, I mean, the official records of the
18 clerk of Sumter county have every indictment that's
19 been tried and if there's an indictment out there on
20 him that was tried and not guilty, they will have it.

21 Ms. McElveen: And Your Honor we do, the Defendant also
22 stated that if you're asking if I pleaded, no I didn't
23 plea to that car breaking, or whatever he said. He
24 said that he didn't plea to a charge either and we do
25 have a sheet from 1998 for grand larceny in which he

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1 pleaded guilty.

2 The Court: Okay.

3 Mr. Peterson: I didn't, I didn't plead guilty Your Honor.

4 I took a trial for that one.

5 The Court: Okay, so what document do you have from

6 ...

7 Ms. McElveen: We have a case history print out from the
8 clerk's office. The certified copy.

9 The Court: Okay, alright, so bring the jury back in,
10 she'll get on the stand and testify on whatever
11 records she has and Mr. Sullivan, you can cross
12 examine her if you want. And is there any other reply
13 witnesses?

14 Ms. McElveen: No sir.

15 The Court: Okay and then we'll be ready to argue and
16 charge.

17 Ms. McElveen: Yes sir.

18 The Court: Okay. Does the State waive opening or do
19 you ...

20 Ms. McElveen: I'm happy to open on the law or not, whatever
21 Mr. Sullivan would like. I've got a handy dandy little
22 power point presentation on the law if he wants.

23 The Court: You've got the right to open and close on
24 the law. It's up to you. Now, you can.

25 Ms. McElveen: Honestly, I'd rather just close.

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1 The Court: Okay, do you have any problem with that Mr.
2 Sullivan?

3 Mr. Sullivan: I, I understand it's her choice, so I would
4 prefer that she just open on the law, but if she wants
5 to close, that's, that's fine. It's her prerogative.

6 Bailiff: All of the jurors are back in the courtroom now.

7 The Court: Thank you sir. Madam Prosecutor?

8 Ms. McElveen: Yes sir. As a reply witness, the State would
9 like to call Ms. Pam Haynesworth.

10 The Court: Okay. Come around here and put your hand up
11 here and let's swear you in.

12 Bailiff: State your name please.

13 A: Pam Hayensworth.

14 Bailiff: Do you solemnly swear or affirm that the
15 testimony you give this court shall be the truth,
16 the whole truth and nothing but the truth, so
17 help you God?

18 A: I do.

19 Bailiff: Thank you. Step this way.

20 The Court: You get that Madam Court Reporter?

21 Court Reporter: I did, Your Honor. Thank you.

22 Bailiff: State your name and spell your last for the
23 record.

24 A: Pam Haynesworth, H-A-Y-N-E-S-W-O-R-T-H.

25 DIRECT EXAMINATION OF MS. HAYNESWORTH BY MS. MCELVEEN:

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- 1 Q: Ms. Haynesworth, who is your employer?
- 2 A: Sumter County Clerk of Court Jamie Campbell.
- 3 Q: How long have you been working for the clerk of
- 4 court's office?
- 5 A: Twenty plus years.
- 6 Q: A lot. What are your duties? What are your tasks that
- 7 you perform?
- 8 A: We keep all of the criminal court records, that's just
- 9 in a nutshell, but that's it. We maintain all of the
- 10 criminal court records.
- 11 Q: So you keep all the documentation of everything that
- 12 happens in the criminal trials?
- 13 A: Yes.
- 14 Q: How far do these documents date back?
- 15 A: Back in the twenties, if not before.
- 16 Q: So you keep track of everything?
- 17 A: Yes.
- 18 Q: And you keep these documents in your care, custody and
- 19 control?
- 20 A: Yes.
- 21 Q: Is there another person that works with you in the
- 22 criminal department.
- 23 A: Yes there is.
- 24 Q: Okay, so the two of y'all do that?
- 25 A: Yes.

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1 Q: I'm handing you what's been marked as State's exhibit
2 eleven for i.d. purposes only. What type of document
3 is that?

4 A: It's what we call a disposition sheet after the case
5 has been disposed of we can print it out on the
6 computer with the status of what happened and the date
7 and all of that information.

8 Q: And that is regularly kept in your business?

9 A: Yes.

10 Q: What does that disposition sheet indicate, that
11 specific one I handed you?

12 A: As far as?

13 Q: Who? What case? What happened? What was the
14 disposition?

15 A: Okay, it's a disposition sheet for Corey Lamont
16 Peterson. Back in 1998, the charge was grand larceny;
17 he pled guilty.

18 Mr. Sullivan: I'm going to object.

19 The Court: Okay, I'll note your objection.

20 Ms. McElveen: Keep going.

21 A: He pled guilty July 20, 1998.

22 Q: So the case was disposed of by a guilty plea?

23 A: Yes.

24 Q: So that's, what does a guilty plea mean?

25 A: He stood in court and said I did it. He pled guilty.

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1 Q: Thank you. I have no, well Your Honor, I would like to
2 have this document admitted into evidence at this
3 time. It is a certified, wait, let me ask one more
4 question. Is this a certified copy of this record?

5 A: Yes.

6 Q: I would like to move to have this exhibit entered into
7 evidence at this time.

8 The Court: Okay, I'll make it a court's exhibit, but
9 I'm not admitting it to evidence.

10 Ms. McElveen: Okay, thank you Your Honor.

11 The Court: Okay. Do you have any questions?

12 Mr. Sullivan: Yes.

13 CROSS EXAMINATION OF PAM HAYNESWORTH BY MR. SULLIVAN:

14 Q: Ms. Haynesworth, you don't keep records for other
15 counties do you?

16 A: No.

17 Q: Okay, thank.

18 The Court: You can step down. Anything further?

19 Ms. McElveen: No sir.

20 The Court: Thank you. Any, anything from either side
21 before we charge and argue?

22 Mr. Sullivan: No sir.

23 Ms. McElveen: No sir.

24 The Court: Alright ladies and gentlemen, you've heard
25 all of the evidence that you're going to hear in this

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1 case. Now we've reached the point in the trial where
2 you will hear the closing arguments of the attorneys.
3 Afterwhich, I will charge you on the law and give you
4 this case to decide. Mr. Sullivan?

5 Mr. Sullivan: Thank you Judge.

6 CLOSING ARGUMENTS OF MR. SULLIVAN:

7 Y'all heard testimony at the beginning of this trial,
8 that Mr. Peterson, his sitting in the car was suspicious
9 and well, either his sitting in the car or sitting in the
10 car with the car parked backwards was suspicious. That's
11 what law enforcement testified to. Y'all can ask yourselves
12 whether you think that's really suspicious. I saw several
13 cars in the county lot that were parked, that were backed
14 in, so I guess that's probably suspicious. You don't have
15 to accept what a witness tells you just because it's a law
16 enforcement officer. Y'all's job is to question their
17 credibility and to ask yourselves whether you think they're
18 telling the truth, just like with any other witness. Ms.
19 McElveen's probably going to get up here and tell you well,
20 they're just doing their job. They don't have reason to lie
21 to you. They're just, you know, they don't have an ax to
22 grind. Well, I'd submit to you that, that they may have
23 bias. That they're trying to put somebody away. They may
24 have decided who their man was and they'll do what they
25 need to do to put their man away. And like I said, you're

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1 not doing your jobs as jurors unless you look at their
2 credibility. That's part of your job as a juror. You heard
3 from Detective Billy Lyons. I asked him about whether
4 scales, money, I can't remember if I said guns, I asked him
5 about several different items, if they're indications of
6 selling drugs. And because, I assume, because Mr. Peterson
7 didn't, didn't have those items, they tried to say that
8 some of them weren't indications of somebody who deals
9 drugs. I would submit to you that or ask yourselves, if
10 maybe the police don't like that they needed to tell you
11 that Mr. Peterson, I don't know, maybe they saw a bag drop
12 from Mr. Peterson and testified to that a bag dropped from
13 the beer that he was drinking out of. They testified as to
14 how far away it was that they were standing from him when
15 they saw the bag. You know what you heard. You just have to
16 decide if you heard what Mr. Peterson said about him. He
17 said he wasn't carrying anything and you heard the officers
18 testify and you have to decide who to believe. Of course
19 they found the bag later, so a, a plastic bag, so like I
20 said, you have to decide whether or not you think they're
21 telling the truth about that. Detective Lyons attempted to
22 tell you that, or I understood him to say that cocaine
23 users don't usually buy in bulk, because they can't afford
24 to. I mean, you can ask yourselves if you think that's
25 true. I would say, I would submit to you that a lot of

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1 people when they envision somebody who uses cocaine, it is
2 somebody who actually has a lot of money and a lot of
3 cases Detective Sergeant Quiroz took the stand and I was
4 asking about the investigative summary. I'm assuming
5 because he saw where I was going in my questioning, I was
6 asking him if, if, if the report that he approved said that
7 Detective Lyons was one of the officers who was patrolling
8 out there. He told you he didn't and then he started
9 telling you that well the investigative summary, that's not
10 the official, official report. I'm not sure what the
11 official report would be. It's the investigative summary.
12 One officer testified that they knocked on the door. I
13 submit to you that if they knocked on the door, I believe
14 it was the front door, if they knocked on the door instead
15 of just running in there, it would make sense to me for
16 somebody who's got a bag full of drugs in there would
17 probably try to hide the drugs instead of just throw them
18 down in the middle of the floor where they say they found
19 them. So, I'd submit to you that, that's a little
20 suspect. You heard testimony that the drugs weren't
21 actually found on Mr. Peterson's person. Of course Ms.
22 McElveen will probably tell you that they, that they saw
23 him with the drugs when he started running. You can decide
24 for yourselves whether you think they did or not, but when
25 they found him he didn't have the drugs on him. They were

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1 in the apartment. You heard testimony that he didn't live
2 at the apartment. That there were other people in the
3 apartment and the judge will instruct you that just because
4 somebody is merely in close proximity to drugs, or any kind
5 of contraband, that that doesn't make them guilty. Just
6 because they're close to drugs that doesn't mean that he
7 has possession of the drugs. I think it was the first
8 officer who I heard testify, that the reason that the
9 police were at Lantana Apartments was because of the high
10 crime area. Well, if it's a high crime area, I think common
11 sense would dictate that it wouldn't be that unusual if you
12 went from apartment to apartment, probably some of those
13 apartments you're going to find drugs in. If it is as they
14 say a high crime area. You heard testimony that they didn't
15 lift any fingerprints from any of the baggies. Seems to me
16 since there were several people standing around there when
17 they found them there in the apartment and there's some
18 question as to who the drugs belong to, that would be an
19 easy way to figure out who's they were. If you could try to
20 lift some fingerprints. I would submit to y'all that even
21 if you think that he had possession of the drugs, that
22 there's not enough evidence of the intent to distribute to
23 find him guilty of that crime. You heard, there was not
24 testimony to indicate that there was any guns, he possessed
25 no guns, any scales, large amount of money, things that, I

1 mean, y'all don't need, y'all don't need a law enforcement
2 officer to tell you, you know, things that are maybe
3 indicators of, of somebody who deals drugs. I mean just
4 from y'all having, just being citizens, I mean, y'all know
5 that drug dealers have guns and scales and large amounts of
6 money. That's common sense. There wasn't any testimony,
7 and y'all don't have to decide, you don't have to determine
8 that he was selling drugs based on the amount alone. The
9 judge will tell you that that's permissive inference that
10 y'all can draw from the amount that was found that he was
11 selling drugs, but you don't have to. You can look at all
12 the circumstances, look at everything and decide for
13 yourselves. I don't think that buying in bulk is really
14 that crazy of an idea. It makes sense that because buying
15 drugs is not that safe that the more you buy at one time,
16 the less trips you have to make to your dealer. And you
17 heard some testimony that drug dealers dilute cocaine
18 because they can make more money that way and I think it
19 probably stands to reason that somebody who uses cocaine is
20 probably going to have to use more to get the same high if
21 it's diluted. If you've got pure cocaine, that's obviously
22 going to be a lot stronger. It's not going to take you as
23 much, I would submit to you, to get the same high. You've
24 heard Barack Dukes testimony, the step brother of Mr.
25 Peterson. You heard him testify that he told me that all

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1 the drugs were his, but the drugs really weren't his.
2 Maybe, he was living there, you heard testimony that he was
3 living there. Maybe the drugs, I don't know, you have to
4 decide for yourselves if he was telling the truth. Maybe
5 the drugs were his and he took the stand and he got scared
6 and changed his mind, I don't know. Mr. Peterson's
7 testimony. He testified that he ran because he was afraid
8 of getting an open container charge. Probably not a smart
9 thing to do, but I think it's pretty, pretty believable,
10 pretty reasonable. I wouldn't advise any of my clients or
11 think it's a good idea, but you know, you can see that. He
12 testified that he didn't have a bag when he was running. If
13 I understood his testimony correctly, I think he said that
14 the beer that he had was in a bag and the bag fell down and
15 he took off running. So according to him, he wasn't running
16 with any bag. He testified that the drugs weren't his, that
17 the drugs weren't found on him, that law enforcement asked
18 him if they could search the house and I'm not sure if it
19 was, I think it was, he testified and I'm not sure if he
20 said his mother said too that they could search the house.
21 So that's a little bit different from the testimony from
22 the officers that they just walked in and found it in plain
23 view. Mr. Peterson's testimony was that they actually had
24 to look around to try to find it. You heard Ms. McElveen
25 ask him questions trying to trip him up about the details

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1 of what happened. Or the details of what he was wearing,
2 the kind of beer he was drinking. I would submit to you
3 that the way that most people's mind works if something
4 significant happens in your life, I can't remember what I
5 was doing, you know, just a few weeks ago on any particular
6 day, you know, I can't, I couldn't tell you what I was
7 wearing on any particular day. But if something, if I get
8 charged with a crime or ...

9 Ms. McElveen: Objection. Asserting your own personal
10 knowledge, talking about how he remembers things,
11 irrelevant to the case.

12 Mr. Sullivan: If most people, if the average person, if the
13 average person has something significant happen in their
14 life, they tend to remember it better. I would submit to
15 you all. And that that's why he was able to remember a lot
16 of the details, that he wasn't, he wasn't lying. He
17 testified that there was only one officer that was chasing
18 him. I believe that was different than what the law
19 enforcement testified to. You just have to, you know, what
20 you heard him say. You heard Ms. McElveen telling him that
21 he was contradicting himself. I don't know that he was
22 really, really recalling and contradicting himself. So,
23 you've heard the witnesses. I would as y'all just to give
24 Mr. Peterson a fair shake, he's entitled to that, try to
25 cover everything that you've heard when you go back in the,

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1 in the deliberation room to talk about this case and like
2 I said, don't, just because law enforcement, just because
3 a witness happens to be a law enforcement officer, I mean
4 they're trying to get their man. Don't think that they're
5 just, you know, just have no bias at all. There's nothing
6 wrong with talking about questioning their credibility.
7 Just like you would do with any other witness. So I
8 appreciate y'all's attention. Thanks.

9 CLOSING ARGUMENTS OF MS. MCELVEEN:

10 Ladies and gentlemen, yes the officers want to get
11 their man. They did, they got the man. They got the man
12 that left the car with a hand full of drugs in a bag, they
13 got him. They got him in the apartment he ran into. Mr.
14 Peterson after this was charged with possession with intent
15 to distribute cocaine and possession with intent to
16 distribute marijuana, and both of these within proximity of
17 a school. I'm supposed to let you guys know a little bit
18 about the law. Let you know what we have to prove. We have
19 to prove all of this beyond a reasonable doubt. The
20 elements, possession with intent to distribute cocaine. It
21 is unlawful for any person to possess, with the intent to
22 manufacture, distribute, dispense, deliver or purchase a
23 controlled substance. A controlled substance is the law's
24 way of saying drugs. And they give these threshold levels
25 from which you as jurors and we as prosecutors can infer,

1 agree that he was looking to distribute. The threshold
2 level is one gram of cocaine. The officers, as you've heard
3 through testimony, found over seven grams of cocaine. Seven
4 grams, that is seven times the necessary amounts to
5 distribute. Also, there in six, eight little baggies.
6 That's a lot of separate baggies for personal use. The next
7 offense he's charged with, possession with intent to
8 distribute marijuana. It is unlawful for any person to
9 possess, with intent to distribute, again, dispense,
10 deliver or purchase a controlled substance. In this case
11 marijuana. And here, the level that they put is twenty
12 eight grams, that's one ounce. Here they found a hundred
13 and fifty five grams. That is a lot of marijuana too. No,
14 there weren't any scales, there were no guns, but yes
15 there's the weight and there are a lot of baggies. And
16 even if there wasn't any money, based on the drugs, the way
17 it's packaged alone, that's not for personal use. It's
18 ready to be let go, give to other people, take to other
19 people, let it go. Drug dealers may not, you heard Quiroz,
20 Sergeant Quiroz talk about drug dealers don't always drive
21 around with their scales. That's one more thing that they
22 can get caught with. And they also have to weight their
23 drugs out in their car. No, that's even more time for the
24 drugs to be viewed. And they said there was no money, but
25 officers themselves talked about how Mr. Peterson took off

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1 running with not both of his boots, but one of his boots
2 and after the chase, gave him back his money, where's my
3 money? We didn't see any money. Where's my money? I want
4 my money in my boot. So there was money. The Defendant said
5 so after the chase when he wanted his money back. As far as
6 the definition of possession, we either have to prove
7 actual possession, which means physical occupancy or
8 control. That would be when it was in his hand, that's the
9 physical possession. I am physically possessing these, he
10 physically possessed that bag when it was in his hand.
11 Constructive possession is when it's within the Defendant's
12 dominion and control. So like, I'm not touching these
13 items, but I'm still possessing them. So when they were on
14 the floor, he could still possess them. When he was in that
15 apartment, he had dominion and control over those drugs,
16 just like I have dominion and control over this, that's
17 constructive possession and he actually possessed it when
18 it was in his hand. Now how do we prove that he knew there
19 were drugs? He ran. Ladies and gentlemen, I don't know if
20 all people run for an open container, but I submit to you
21 that he didn't run for an open container, parked in a
22 parking lot of the apartment where he lived. I think he ran
23 because of the large quantities of drugs he had in his
24 possession. And he ran again. He ran twice and this time it
25 was over the money that they were going to seize. Well if

1 they weren't his drugs, they can't seize his money. So why
2 would you run? Why would you run over money? I think
3 again, it was all over the drugs. He also threw the drugs
4 on the ground in the apartment. He got rid of them and the
5 drugs were in plain sight on the kitchen floor, right in
6 the middle, in plain view for the officers. It wasn't
7 behind the freezer. The officers didn't have to get a
8 search warrant. If it was behind a freezer, the officers
9 would have had to get a search warrant. They entered to
10 make sure everyone was okay, just say all good in here,
11 check. Huge amount of marijuana and cocaine in a bag that
12 match the same bag that he was seen running with. He knew
13 that he had drugs, he knew he took them from the car and he
14 brought them in that apartment. The next two charges is
15 under a proximity law. It's a little different law; it says
16 that it's a separate offense for someone to possess with
17 intent to distribute cocaine and marijuana while in, on, or
18 within a one half mile radius of the grounds of a public or
19 private elementary, middle or secondary school, a public
20 playground or park; a public vocational or trade school or
21 technical education center or a public or private college
22 or university. You heard Detective Jason Lyons talk about
23 how he drove it this morning. He even went and looked on
24 Google, he was in his car at eight a.m. this morning,
25 driving around, probably looking silly, clocking his

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1 odometer, but he did it and he was on point. He was,
2 Lantana Apartments are within a one-half mile of proximity
3 of multiple schools. You heard within Morris College, he
4 named all of these schools, parks. Those are what he's
5 charged with and let me just say, we all see CSI, we see
6 Law and Order, we see NCIS, The Closer, this is not t.v.
7 As much as I wish we had all those really cool, high tech
8 gadgets and gizmos that they can tell where a fiber came
9 from, you know Guatemala, we don't have all those. We can't
10 get fingerprints off everything. There has to be a perfect
11 surface for someone to get a fingerprint. If it's slightly
12 crumpled like anything, you can't get fingerprints off of
13 everything. And officers, when they know a piece of
14 evidence comes from a certain person, why waste the State's
15 money to fingerprint test it when you know where it came
16 from? Also, all police officer's vehicles don't have video
17 cameras. Again, it's the police chief's call on what they
18 spend their money on. Ladies and gentlemen, the key issue
19 here is who you should believe, credibility. Do you believe
20 the officers who came up one by one, not hearing what the
21 others had said, came up one by one, gave you testimony?
22 They have no reason to lie. They have years of training and
23 experience. They are the ones not on trial. They're not
24 looking at this trial, they're not the ones sitting where
25 the Defendant sits, they are not on trial. They have years

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1 of training, experience and professionalism and they are
2 here to serve our community. Detective Lyons saw the bag in
3 his hand. He has no reason to lie. Then there's Corey
4 Peterson. He is the one on trial, he is the one that has a
5 reason to lie. He even said on the stand himself, there was
6 one officer, then there were five. There were four guys in
7 the apartment, four other gentlemen in the apartment, then
8 there were five guys. There was a beer, there was beer in
9 a bag in the car, then there was a beer in a bag in his
10 hand, then can was dropping, the bag was dropping. He told
11 officers, he said he told officers that he was going to
12 run, then he said no, I didn't say that. He said someone,
13 he even told you that someone was going to come up here and
14 take possession and claim those drugs. He said someone is
15 going to come up here and tell you those are my drugs. I
16 didn't hear it. No one came up here and took possession for
17 those drugs, of those drugs. He even lied about whether he
18 had a grand larceny charge. That, in and of itself, goes to
19 his credibility ladies and gentlemen. Now , looking at the
20 very nice young gentleman who came up and took the stand
21 Mr. Dukes, I don't see him having anything to do with this.
22 He did not, he said he did not know any drugs, the drugs
23 were not his, it's his brother. He's young obviously, he
24 looked scared. Really he even testified that he said he was
25 at will Lou Gray Opportunity School over in Columbia when

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1 this offense happened. He said that's a military school.
2 These are overnight schools. He wasn't staying at his
3 mama's house, he was at over night school at Will Lou Gray
4 Opportunity School when this happened. And again, he was
5 supposed to be the one that took responsibility for those
6 drugs. He didn't. The Defendant tried to get his little
7 brother to take responsibility for his drugs. Meanwhile,
8 what's Mr. Peterson's defense? He didn't live at the
9 apartment so the drugs weren't his, drugs were one of the
10 four or five other guy's that were there or is it little
11 brother's drugs that we tried to get him to come up to the
12 stand and take responsibility? And if they are his drugs,
13 then maybe he wasn't distributing them because he didn't
14 have scales. Which one is it? A defense clean, where's a
15 clean defense that doesn't overlap and intertwine? Where's
16 the mama? Where's the mama telling them no those drugs
17 aren't his? No the Christian, the good Christian mama,
18 she's not up here. This is all about responsibility. Who
19 needs to take --- someone needs to take responsibility and
20 somebody needs to come clean and you are put in the
21 situation where you need to think about everything you've
22 heard. Think about who to believe, think about what to
23 believe and it's not beyond any doubt, any far fetched,
24 beer cans out of my hand, it's in my hand, bag, four
25 officers, five, five guys in the apartment. No, it's beyond

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1 a reasonable doubt. Reasonable, common sense. You all have
2 it, we all have it. I just ask that you use it and come
3 back with a verdict that speaks the truth and brings
4 justice. Thank you for your time and attention, we really
5 appreciate all that you've done to help the State. Thank
6 you.

7 The Court: Okay ladies and gentlemen, it's probably going
8 to take me fifteen or twenty minutes to charge you on the
9 law. Are y'all okay? You need a break? Everybody okay?

10 (Affirmative response from the Jury)

11 The Court: Now that you've heard the evidence and
12 arguments in this case, I will explain to you the law that
13 you are to apply to this case. Under our Constitution, in
14 the court of law, only the jury can make the finding of the
15 facts in this case. I am not permitted to indicate to you
16 how I might feel about the case, so if I've done anything
17 or said anything during the trial to indicate to you that
18 I have an opinion of the facts, you are to disregard that.
19 Because you and only you can decide what the true facts are
20 in this case and you have to do that solely based on the
21 evidence that you've heard in this courtroom. Under the
22 same Constitution of laws that designates you the exclusive
23 judges of the facts, it also makes me the exclusive judge
24 of the law. So if you have some ideas of what you think the
25 law is or what you think the law ought to be and it differs

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1 from what I now tell you the law is, you are to disregard
2 your idea of the law and take the law exactly as I give it
3 to you and apply it to the facts that you are to consider.
4 The fact that the Defendant was arrested and charged and
5 indicted in this case is not evidence in this case. It
6 cannot be considered as evidence of guilt in this case.
7 Nor does it create any presumption of innocence. An
8 indictment is simply a formal legal entity. It contains
9 the charge against the Defendant and serves as a formal
10 document that brings this case to be processed in the court
11 system. The Defendant has pled not guilty to this
12 indictment and that casts the burden on the State of South
13 Carolina to prove each and every element of that indictment
14 beyond a reasonable doubt. A person charged with a criminal
15 offense in South Carolina is never required to prove
16 himself or herself innocent. It is an important rule of law
17 of this country that a Defendant in a criminal trial will
18 always be presumed to be innocent of the crimes for which
19 he is indicted unless and until his guilt has been proven
20 by evidence that satisfies you the jury of that guilt
21 beyond a reasonable doubt. The presumption of innocence is
22 not a mere theory, it is not just a legal phrase. It is a
23 substantial Constitutional right to which every Defendant
24 is entitled. This presumption of innocence covers the
25 Defendant from the time he's charged throughout the trial,

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1 until you reach a verdict of guilt, based upon the evidence
2 that satisfies you of that guilt, beyond a reasonable
3 doubt. Now proof beyond a reasonable doubt is doubt which
4 makes an honest, sincere, conscientious juror, in search of
5 the truth, to hesitate to act. Proof beyond a reasonable
6 doubt must therefore be proof of such a convincing
7 character that a reasonable person would not hesitate to
8 rely and act upon it in the most important of his or her
9 own affair. Proof beyond a reasonable doubt can be
10 described as proof that leaves you firmly convinced of the
11 Defendant's guilt. Now there are very few things in this
12 world that we know with absolute certainty. In a criminal
13 case, the law does not require proof that overcomes every
14 possible doubt. If based on your consideration of the
15 evidence you are firmly convinced that the Defendant is
16 guilty of the crime charged, you must find him guilty. On
17 the other hand, if you think there's a real possibility
18 that he's not guilty, you must give him the benefit of that
19 doubt and find him not guilty. Now in determining what the
20 facts are in a case, you must necessarily pass upon
21 credibility, which simply means the believability of
22 witnesses and the value and weight to be given to their
23 testimony. You alone must decide the force and effect, the
24 truth of that testimony. In making these decisions there
25 are many things you should take into consideration. Such as

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1 the appearance and manner of the witness on the stand,
2 sometimes referred to as a demeanor. Was the witness
3 forthright or hesitant? Was the witnesses' testimony
4 consistent or did it contain discrepancies? What was the
5 ability of the witness to know the facts about which he or
6 she testified? Did the witness have cause or reason to be
7 bias or prejudice and take the testimony he or she gave.
8 Was the witness's testimony corroborated or made strong by
9 testimony and evidence or was it made weaker or impeached
10 by such other testimony in evidence. Now the rules of
11 evidence do not ordinarily permit a witness to testify to
12 opinions or conclusions. An exception to this rule exists
13 with witnesses we call expert witnesses. A witness, who by
14 education and experience has become an expert in some art,
15 science or professional calling, may state an opinion as to
16 a relevant and material matter in which he or she claims to
17 be an expert. And they may also state the reasons for that
18 opinion. You should consider an expert opinion received in
19 evidence in this case like any other evidence. Give it the
20 weight that you think it deserves. If you decide the
21 opinion of an expert is not based on sufficient education
22 and experience or if you conclude that the reasons given in
23 support of their opinion are not sound or that the opinion
24 is outweighed by other evidence, you may disregard the
25 opinion in its entirety. An expert witness' opinion is to

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1 be given no greater weight than any other witness simply
2 because that witness is an expert. Further, you're not
3 required to accept an expert's opinion, even though it is
4 not contradictory. As jurors, you have the right to
5 believe a small portion of a witness' testimony and
6 disregard the larger or vice versa. You may believe all of
7 a witnesses testimony or none of the witnesses testimony.
8 You may believe the testimony of a single witness against
9 many witnesses or the other way around. Now, criminal
10 intent is an element, excuse me, of each crime that must be
11 proven beyond a reasonable doubt by the State. Criminal
12 intent is always a matter that must be determined by the
13 jury through circumstances surrounding the situation.
14 There's no way to prove criminal intent to a mathematical
15 certainty. There's no way medical science can dissect a
16 person's brain to determine what he or she had in mind. So
17 the law states criminal intent may be inferred if
18 circumstances shown to have existed both before and after
19 the fact. This is how you the jury make your determination
20 on whether or not the element of criminal intent was
21 present. Criminal intent is a state of mind that operates
22 jointly with an act or omission in the commission of a
23 crime. Criminal intent is a mental state of conscience
24 wrong doing. So it is up to you the jury to determine what
25 the Defendant intended to do based on the circumstances

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1 shown to have existed. I will tell you the State must prove
2 criminal intent beyond a reasonable doubt just as the State
3 must prove every element beyond a reasonable doubt. There
4 are two types of evidence which are generally presented
5 during a trial, direct evidence and circumstantial
6 evidence. Direct evidence is the testimony of a person who
7 asserts or claims to have actual knowledge of a fact such
8 as a eye witness. Circumstantial evidence is proof of a
9 chain of facts and circumstances indicate the existence of
10 the fact. Now, I understand that can sometimes be hard to
11 understand. Direct evidence is somebody who saw something
12 directly. Let's say we're in here trying this case. We came
13 in from lunch, it was sun shining outside, the side walks
14 were dry and when we leave here this afternoon, if
15 everything is soaking wet and there are mud puddles in the
16 street and the sidewalks were wet then we can infer that
17 sometime during this trial it rained outside. We didn't see
18 it rain, if we'd seen it rain that's direct evidence.
19 Circumstantial evidence is the fact that we came out and
20 the streets were wet, it must have rained while we were in
21 here trying this case. That's circumstantial evidence. The
22 law makes absolutely no distinction between circumstantial
23 and direct evidence. You are to give the weight to the
24 evidence in this case as you deem appropriate. You must,
25 as I told you, the State must prove this to you beyond a

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1 reasonable doubt. Now the Defendant is charged with
2 possession with intent to distribute cocaine and or
3 marijuana. The State must prove beyond a reasonable doubt
4 that the Defendant possessed cocaine and or marijuana with
5 the intent to distribute. To posses, the State must prove
6 beyond a reasonable doubt the Defendant had both the power
7 and the intent to control the disposition or use of the
8 marijuana and or cocaine. Possession may be either actual
9 or constructive. Actual possession means that the cocaine
10 and or marijuana was in the actual, physical control of the
11 Defendant. Constructive possession means that the Defendant
12 had the dominion and control or the right to exercise
13 dominion and control either over the cocaine and or
14 marijuana itself or the property on which the cocaine and
15 or marijuana was found. The mere presence at the scene
16 where the drugs were found is not enough to prove
17 possession. Actual knowledge of the presence of the drugs
18 is strong evidence that the Defendant intended to control
19 his disposition or his use. The Defendant's knowledge in
20 possession may be inferred when a substance is found on the
21 property under the Defendant's control. However this
22 inference is simply a evidentiary fact to be taken into
23 consideration by you alone with all other evidentiary facts
24 in this case and give it the weight you decide it should
25 have. Two or more persons may have joint possession of

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1 drugs. The State must also prove beyond a reasonable doubt
2 the Defendant intended to distribute the cocaine and or
3 marijuana. Distribute, distribution means to deliver, other
4 than by administering or dispensing the drug. Intent may
5 be shown by acts and conduct of the Defendant and other
6 circumstances in which you may naturally and reasonably
7 infer intent. In determining whether the Defendant had the
8 intent to distribute the cocaine and or the marijuana, you
9 may consider the circumstances surrounding the Defendant's
10 alleged possession. You may consider the amount of
11 substance alleged to have been possessed and the manner in
12 which it was allegedly possessed. The place where it was
13 and where it was allegedly possessed and any other factor
14 that you consider to be important. You must find that the
15 Defendant did not intend to have the cocaine and or
16 marijuana solely for his own use. Possession of more than
17 twenty eight grams or one ounce of marijuana and or one
18 gram of cocaine creates an inference that the Defendant
19 possessed the cocaine and or marijuana with the intent to
20 distribute it. This inference does not relieve the State
21 from proving beyond a reasonable doubt the Defendant had
22 the intent to distribute. It simply is a evidentiary fact
23 to be taken into consideration by you along with the other
24 evidence in this case and you give it the weight you decide
25 it deserves. The Defendant is also charged with possession

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1 with intent to distribute marijuana and or cocaine within
2 proximity of a school or park. The State must prove beyond
3 a reasonable doubt that the Defendant distributed, sold,
4 possessed, manufactured or unlawfully possessed with intent
5 to distribute marijuana and or cocaine while in or within
6 one half mile of the grounds of a public or private
7 elementary school, middle school or secondary school, a
8 public playground or park, a public vocational or trade
9 school or a technical education center or a public or
10 private college or university. Now ladies and gentlemen,
11 you are not partisans or advocates for the State of South
12 Carolina nor for this Defendant. You do not serve as jurors
13 to reward your friends or punish your enemies. That system
14 of justice is simply not tolerated. You have been selected
15 by both the State and this Defendant to be a fair and
16 impartial juror. It is your duty then, in your joint
17 deliberations, to determine the truth of this case, giving
18 the Defendant the benefit of every reasonable doubt on each
19 and every issue. Then to the facts that you determine to
20 be true you are to take by the law as I have given you and
21 arrive at a verdict that speaks the truth. When you have
22 accomplished these responsibilities, you will have
23 satisfied your oath as jurors and discharged your duties to
24 this court. Now, I have had my law clerk draw up a possible
25 verdict form. The order that it's in you can take no

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1 inference from whatsoever, we simply had to put it in some
2 order. It starts out with simply the caption of the case,
3 the State of South Carolina, County of Sumter, the State
4 versus Corey Lamont Peterson and these are the possible
5 verdicts that you can reach. We the jury, unanimously find
6 the Defendant Corey Lamont Peterson, guilty with possession
7 with intent to distribute marijuana or not guilty of
8 possession with intent to marijuana. Number two is we the
9 jury, unanimously find the Defendant Corey Lamont Peterson
10 guilty of possession with intent to distribute marijuana
11 within a one half mile radius of a public or private
12 elementary school, middle school, secondary school or
13 public playground, public vocational or trade center or
14 technical college or private or public college or not
15 guilty. The same with the situation with the cocaine. We
16 the jury unanimously find the Defendant guilty of
17 possession with intent to distribute cocaine or not guilty
18 of possession with intent to distribute cocaine; or we the
19 jury unanimously find the Defendant Corey Lamont Peterson
20 guilty of possession and intent to distribute cocaine
21 within a one half mile of a school or park or not guilty of
22 those. When you have reached a verdict, and it's a
23 unanimous verdict, then and only then will you sign this
24 form and date it. It's not simply the verdict of the
25 foreperson. It is a verdict of all of you, all twelve of

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1 you must agree to this verdict before the foreman can sign
2 this sheet. Now, I am going to send y'all to the jury room
3 because I've got to confer with these lawyers to make sure
4 I haven't left anything out. I may have missed something in
5 the charge; if I have I will bring you back out and re-
6 charge you any additional charges of the law. Then give
7 you this case to decide. If I've covered everything, then
8 I will send you this verdict form with any evidence that's
9 been introduced in this case. When you receive the verdict
10 form and the evidence in this case, then you'll begin your
11 deliberations. When you have reached a verdict you will
12 knock on the door and inform the bailiff that you've
13 reached a verdict. We will bring you back in here and
14 receive that verdict. Mr. Foreman, if at any time during
15 your deliberations, somebody needs to be excused if they
16 need to go to the rest room or whatever, you've got to stop
17 deliberations of the case. You can only talk about the
18 case with all twelve of you are there in the room. So if
19 somebody needs a break, you stop and come back and continue
20 your deliberations. When you have reached a verdict and I
21 tell you it's got to be an unanimous verdict. All twelve
22 of you have to agree before you can sign this sheet.
23 Alright, I'm going to send you to the jury room and I'm
24 going to talk to the lawyers and I'll either send you this
25 so you can start or bring you back out. Mister alternate,

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1 you need to stay with me. It looks like everybody's going
2 to make it.

3 (Jury exits courtroom 3:16 p.m.)

4 The Court: Alright any objection on behalf of the
5 State?

6 Ms. McElveen: No sir.

7 The Court: On behalf of the Defendant?

8 Mr. Sullivan: You didn't charge them just on possession,
9 did you?

10 The Court: No, because you didn't ask me to. I asked
11 you before hand if y'all had any additional charge. I
12 charged what was on the indictment.

13 Ms. McElveen: Your Honor we are also kind of concerned
14 about putting the marijuana back in the jury room,
15 because it is open.

16 The Court: You've got to seal it, you're not carrying
17 it back like that.

18 Ms. McElveen: Yeah, I just wanted to let you know I might
19 take it out and seal it with some tape.

20 Mr. Sullivan: I apologize.

21 The Court: If you want me to get them back out and
22 charge them are you requesting I get them back out
23 here and charge them possession?

24 Mr. Sullivan: Judge, I feel like I really need to ask for
25 that charge.

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1 The Court: Okay. Okay, then I will, it will take me
2 just a second to get this charge. I'll bring them back
3 out and charge them on possession of cocaine and
4 possession of marijuana and then we're going to have
5 to change the verdict form. But we can do it, it's
6 just going to take a minute.

7 Ms. McElveen: He's basing it on possession being a lesser
8 included of PWID?

9 The Court: Yes.

10 Ms. McElveen: Hasn't he had the opportunity to request that
11 charge in the jury form a long time ago?

12 The Court: Yeah, he did, but now that he's requested
13 this on the record, it'll get reversed if it's not
14 charged.

15 Ms. McElveen: Yes sir.

16 The Court: I wish it had happened long ago and we
17 wouldn't have this delay. That's why I asked y'all
18 that question.

19 Mr. Sullivan: I, I'm sorry.

20 (Alternate released)

21 The Court: Bring the jury in.

22 (Jury enters the courtroom 3:36 p.m.)

23 Bailiff: All the jurors are back in the courtroom.

24 The Court: Ladies and gentlemen, I'm sorry. I need to
25 add one more charge. I did not charge you with the

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1 lesser included. I charged you with what the Defendant
2 was indicted on, which was possession with intent to
3 distribute cocaine and proximity and possession with
4 intent to distribute marijuana. The lesser included
5 offense of these charges is possession of cocaine and
6 possession of marijuana. So to prove possession, the
7 State must prove beyond a reasonable doubt the
8 Defendant had both the power and intent to control the
9 disposition and use of cocaine and or marijuana. As I
10 told you before, possession may be either actual or
11 constructive. Actual possession means that the cocaine
12 and or marijuana were in the actual custody, I'm
13 sorry, actual physical custody of the Defendant.
14 Constructive possession means the Defendant had
15 dominion and control or the right to exercise dominion
16 and control over either of the drugs or the property
17 on which the drugs were found. As I told you before,
18 mere presence at the scene where drugs were found is
19 not enough to prove possession. Actual possession of
20 the presence of the cocaine and or marijuana is strong
21 evidence of the Defendant's intent to control the
22 disposition or use. The Defendant's knowledge and
23 possession may either be inferred from the
24 circumstances found on the property, I'm sorry, may be
25 inferred from the substance that is found on the

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1 property under the dominion and control of the
2 Defendant. However this inference is simply an
3 evidentiary fact to be taken in consideration by you
4 with all the other evidence in this case. So I have
5 changed the verdict form and added two more possible
6 verdicts. As I've told you before, one is we the jury
7 find the Defendant guilty with possession with intent
8 to distribute marijuana or not guilty; and then number
9 two is we the jury, find the Defendant guilty of
10 possession with intent to distribute with proximity of
11 a school or park, etc. or not guilty with possession
12 with intent to distribute and then three is the
13 cocaine. We the jury find the Defendant guilty with
14 intent to distribute cocaine or not guilty of
15 possession with intent to distribute cocaine and
16 number four is within the proximity whether you find
17 he had it to distribute in the proximity of a school
18 or park or he didn't, the State did not prove he had
19 it within. Five and six are simple possession. We the
20 jury unanimously find the Defendant Corey Peterson
21 guilty of possession of marijuana or not guilty of
22 possession of marijuana. And number six is we find, we
23 the jury unanimously find the Defendant Corey Peterson
24 guilty of possession of cocaine or not guilty of
25 possession of cocaine. Now, those latter two are

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1 lesser and included offenses. You will only consider
2 them if you feel the State has proved beyond a
3 reasonable doubt that he's guilty of possession with
4 intent to distribute either one of those. He can't be
5 guilty of both. He's either guilty or not guilty. If
6 you find that they've proven beyond a reasonable doubt
7 that he's guilty of possession with intent to
8 distribute, then you wouldn't even consider the
9 possession on that charge. So you've got two different
10 things, the cocaine and marijuana. He can't be guilty
11 of possession of cocaine or possession of marijuana in
12 the proximity. It has to be, you have to find that he
13 intended to distribute within proximity. So, what I'm
14 telling you, you've got six possible verdicts. You
15 will only consider the last two if you find the State
16 has not proven to you beyond a reasonable doubt he's
17 guilty of any of the first four. Then you go to the
18 last two. If he's guilty of the possession with intent
19 to distribute marijuana, he can't be guilty of
20 possession number two. I probably didn't make that
21 very clear. So you only look at the last two if you
22 don't think they've proven beyond a reasonable doubt
23 the first four. You can find him guilty of the
24 marijuana and not guilty of the cocaine or guilty of
25 the cocaine and not guilty of marijuana. It's based on

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1 what you determine the facts are in this case. What
2 the State has proven to you beyond a reasonable doubt.
3 But you can't find him guilty of possession with
4 intent and possession. Okay, so I think I've covered
5 anything. Is there anything before I send you back
6 that we need to talk about?

7 Mr. Sullivan: No sir.

8 Ms. McElveen: There never was.

9 The Court: Okay, if you have a question, I can answer
10 it. I can bring you back in and answer a question on
11 the law. I can't answer a question about the facts, so
12 if you need me to explain the law to you better or
13 this jury form better, I can bring you back in and
14 explain that. If you have a question about the
15 evidence and the facts in this case, I probably can't
16 answer that. But if you do have a question, write it
17 on a piece of paper and give it to the Bailiff and
18 he'll bring it to me and if I can answer it I'll bring
19 you back in and answer it. If I can't answer it, I'll
20 bring you back in and tell you I can't answer it.
21 Okay? I will send this form back with you, along with
22 the evidence and you can begin your deliberations.
23 Knock on the door when you have reached a verdict.

24 (Jury exits Courtroom 3:42/Deliberations begin 3:43)

25 (Court Exhibit Number 1 was marked - note from juror)

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1 (Jury enters courtroom 7:15 p.m.)

2 Bailiff: All the jurors are back in the courtroom Your
3 Honor.

4 The Court: Thank you sir. Mr. Foreman I received a note
5 from y'all that you could not agree on which charge
6 with regard to the cocaine. Is that correct? And I
7 discussed this problem with both lawyers and what I
8 propose is, since you're at this point as late as it
9 is, is to send you home tonight and bring you back in
10 the morning and let you continue your deliberations.
11 And see if y'all can reach a verdict and I'll give you
12 some further instructions in the morning. Maybe you
13 can sleep on it tonight and come back tomorrow and be
14 able to begin your deliberations and see if y'all can
15 possibly reach a verdict in this case. Now, this is a
16 bit unusual, because normally when I give a case to a
17 jury I don't let them go home. Counsel has agree on
18 this, but it's very important that y'all don't talk
19 about this case and your deliberations with anybody
20 until we reach a verdict in this case. So don't please
21 don't discuss it with members of your family or allow
22 anyone to discuss it with you and be, we've got a
23 scheduling problem in the morning. We won't be able
24 to start til ten thirty, at least with y'all. So I
25 need y'all back in the jury room at ten thirty. You've

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1 got some time to do whatever, but if you'll be back,
2 come straight to the jury room at ten thirty. One
3 thing that's unusual, I've lost my alternates. Because
4 normally when I give a case to the jury I release the
5 alternate, so I don't have anyone to replace you with.
6 So I need all twelve of you back and hopefully you
7 won't get sick tonight, but if you have an emergency,
8 please call and let us know something because we can't
9 do anything til all twelve of you are here. Okay, if
10 y'all will follow my instructions and don't discuss
11 this case I'll see y'all at ten thirty in the morning.
12 Now, one thing I will need to do is I'm going to send
13 a bailiff back in the jury room to retrieve all that
14 evidence and get it back to the court reporter. Then
15 we need it back for y'all in the morning. Because I
16 can't have all those drugs laying around the
17 courthouse. Thank y'all. I'll see y'all in the
18 morning.

19 (Jury excused for evening at 7:18 p.m.)

20 The Court: Okay, anything from either side?

21 Mr. Sullivan: Nothing from the defense.

22 The Court: Okay. Probably what you need to do is give
23 the jury a minute to clear. I don't want y'all to walk
24 out in the middle of them. Give the jury a minute to
25 clear. And we'll see y'all at ten thirty.

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1 Ms. McElveen: Thank you Your Honor. Thank you for staying
2 late.

3 (Court ends for evening)

4 (September 15, 2012 a.m.)

5 Ms. McElveen: This is the State of South Carolina versus
6 Corey Lamont Peterson. We had started the trial and
7 the jury's deliberating in the case 2010-GS-43-1305.
8 Mr. Peterson is present and has indicated to his
9 attorney David Sullivan he wishes to plead guilty to
10 the charges possession with intent to distribute
11 marijuana first offense, possession with intent to
12 distribute marijuana within proximity of a school or
13 park, possession with intent to distribute cocaine,
14 second offense, and possession with intent to
15 distribute cocaine within proximity of a school or a
16 park. The State has come without negotiation and
17 without recommendation.

18 The Court: Okay.

19 Bailiff: Place your hand on the Bible and raise your
20 right hand. State your name please.

21 A: Corey Peterson.

22 Bailiff: Do you solemnly swear or affirm the testimony you
23 give this court will be the truth, the whole truth and
24 nothing else but the truth, so help you God?

25 A: Yes sir.

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1 The Court: Mr. Peterson, you want to plead guilty?
2 A: Yes sir.
3 The Court: Have you had enough time to talk with your
4 lawyer about this decision?
5 A: Say what?
6 The Court: Huh?
7 A: Say what?
8 The Court: Have you had enough time to talk with your
9 lawyer about pleading guilty?
10 A: Oh yes sir.
11 The Court: Are you satisfied with his representation?
12 A: Yes sir, yes sir.
13 The Court: Has anybody promised you anything or
14 threatened you in any way to get you to plead guilty?
15 A: No sir.
16 The Court: So you're pleading guilty freely and
17 voluntarily?
18 A: Yes sir.
19 The Court: Are you under the influence of alcohol or drugs
20 right now?
21 A: No sir.
22 The Court: Do you have any mental diseases that would
23 keep you from understanding what you're doing?
24 A: No sir.
25 The Court: You understand that for the PWID, cocaine

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1 and proximity, I can give you up to ten years on that?

2 A: Yes sir.

3 The Court: And for the possession with intent to
4 distribute second it's five to thirty years. Do you
5 understand that?

6 A: Yes sir.

7 The Court: And for the PWID marijuana and proximity is
8 ten years and the possession with intent to distribute
9 marijuana is five. Do you understand that?

10 A: Yes sir.

11 The Court: So you're looking at fifty five years. Do
12 you understand that?

13 A: Yes sir.

14 The Court: By pleading guilty you're giving up your
15 right to remain silent because you're telling me your
16 guilty. Do you understand that?

17 A: Yes sir.

18 The Court: You're also giving up your right to a jury
19 trial. We've gone through that entire trial and the
20 jury's back there deliberating. Do you understand
21 that?

22 A: Yes sir.

23 The Court: And during that trial you had the right to
24 confront the witnesses and you lawyer cross examined
25 those witnesses, and you brought witnesses in to

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1 testify on your behalf. Now that you're pleading
2 guilty, you're giving up any appeals that could come
3 out of that trial by this guilty plea, do you
4 understand that?

5 A: Yes sir.

6 The Court: You also if you want to appeal this guilty
7 plea and sentence today you've got to file it, you or
8 your lawyer within ten days with the clerk of court
9 okay?

10 A: All right.

11 The Court: Do you have any questions you want to ask me?

12 A: No sir.

13 The Court: Okay and I know the facts in this case and
14 they are on the record. And my question to you is, is
15 that true? Are those drugs in evidence yours?

16 A: I'm going to plead to them, I'll take, you might as
17 well say they mine; yes, sir.

18 The Court: Well, I understand that. So you're telling
19 me they were yours>

20 A: Yes, sir.

21 The Court: You're pleading guilty because you are guilty?

22 A: Yes sir, yes sir.

23 The Court: Okay I find there's a factual basis for your
24 plea, it is freely and voluntarily entered into, that
25 you've had advice from competent counsel who you tell

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1 me you're satisfied with and I'll accept your plea.

2 A: Alright.

3 Mr. Sullivan: Judge, I didn't, I didn't notate in my file
4 whether or not he spent any time in jail. He can
5 probably tell you before he bonded out. He, he's on
6 probation. I think it was back in June he plead to his
7 prior drug offense that's enhancing this one; the
8 possession of crack charge. He pled to that back in
9 June when this charge was still pending. He tells me
10 that he got to the 12th grade. He went to Forest Hill
11 High School in Florida. He told me that he had not got
12 a GED but he wants to get one. Told me that he's
13 worked at Zachery, I think he told you a little bit
14 about that. He's got some family members here with
15 him. He's, he's told me that he goes to Greater St.
16 Paul's church in Sumter. His mother is Barbara Dukes,
17 who I believe is here and his family would like to
18 speak on his behalf and I just ask them to identify,
19 tell the Court who they are.

20 The Court: Okay.

21 Ms. Peterson: Good morning everyone. Good morning Your
22 Honor.

23 The Court: Morning.

24 Ms. Peterson: My name is Kyra Peterson and I am Corey
25 Peterson's sister and I want to speak on behalf of my

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1 brother. As a woman of God, I'm going to speak the
2 truth and I'm going to speak it from my heart. Being
3 American citizens I truly believe that everyone should
4 be treated fairly and equal. I do believe in equality.
5 In 1863, when Abraham Lincoln signed the Emancipation
6 Proclamation to set the slaves free, it brought change
7 to America. In 1955 til 1968, when the civil rights
8 movement took place, change came to America. We're
9 living in 2011 and there are so much room for change
10 to come. I just don't understand how we as a society
11 put so much emphasis on street crimes versus any other
12 crimes that take place in the United States. We have
13 a lot of crimes that go on daily. For example, street
14 crimes versus white collar crimes. White collar crimes
15 are crimes when people embezzle money, identity theft,
16 police brutality, misfunded with government funds. A
17 lot of different things. However, these types of
18 crimes go un-noticed because we are so busy focusing
19 on street crimes. Last year alone, white collar crimes
20 cost our country five hundred billion dollars. That is
21 a lot of money versus street crime, it was only two
22 billion dollars. Last year, in corporate crimes in
23 deaths a hundred and thirteen thousand people died
24 versus street crimes, seventeen thousand. And I don't
25 understand because to me, we, as a society has created

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1 a justice system that's supposed to be fair, suppose
2 to be just for all, but however, that's really not the
3 case because I don't understand why some people who
4 commit these street crimes, they get harsher
5 punishment, they get longer sentences and when people
6 who commit white collar crimes they normally, you
7 know, sentenced to lesser time in prison, they're
8 normally just given fines. And I just don't really,
9 you know, understand that and is it because when
10 someone commits a street crime is it because they are
11 lower class citizens? Is it because they are a
12 minority or people from poverty versus people who
13 commit these white collar crimes are most likely
14 powerful people, they are high class, they are middle
15 class people. And I just don't really understand a
16 society to me, is like I say, is so unjust. I don't
17 understand how we put so much time on these street
18 crimes when white collar crimes, white collar crimes
19 go so un noticed. Um, Corey Peterson, I'm not going to
20 sit up here and say that he's an angel, that he's done
21 everything right. He have fall in his life, but
22 everybody falls. He have made some mistakes in his
23 life. I've made some mistakes in my life, you have
24 made some mistakes in your life, everyone does and
25 when we die, we all going to have to stand before God

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1 and give an account of everything that we has, we have
2 done, whether if it's good or whether if it's bad. And
3 sir, I'm asking you, can you look deep within your
4 heart, within yourself to have mercy on my brother.
5 You know, growin up, we never had a father. I met our
6 father maybe twice in our life; once when I was twenty
7 three and a year ago, before he died. Corey only met
8 him one time. You know, I remember growing up as a
9 kid, I use to say God I just want to meet my father.
10 I just want to know him, I just want a father and if
11 you take Corey away from his kids, he have a two year
12 old, a four year old, he have a nine year old. If you
13 sentence him away for a long time you will be taking
14 him away from his family and now his children are
15 going to grow up fatherless. They're going to grow up
16 looking for they dad and want their dad and his, their
17 dad is not going to be there sir. If you put Corey in
18 prison, do you know South Carolina tax payers, we pay
19 anywhere between twelve thousand to fifteen thousand
20 a year just to house inmates. That is a lot of money.
21 I'm just asking you sir, could you just have mercy?
22 Could you use some sort of alternative? Try, just
23 something different sir. If you could just put him on
24 probation maybe house arrest or something. You know
25 and back in October of 1995, our brother was seventeen

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1 years old; he was shot and killed and it broke my
2 mother down so much and our family down. It's like she
3 went into a lot of depression and suffer from mental
4 illness and it really just, like it still, like it
5 happened a while ago, but you still just remember that
6 like yesterday and I don't know if any of you in here
7 have ever lost a child, but that, I can imagine what
8 my mom went through with just a horrible feeling. And
9 by sending Corey away for so many years it going to be
10 just like losing someone else, losing another child
11 again and I just don't want sir, my mom to go through
12 that again. And I don't understand how we, as a
13 society, we can say these drugs should be illegal and
14 what drugs shouldn't be illegal.. We have alcohol and
15 tobacco on the market. Do you know that alcohol killed
16 1.8 million people last year? Alcohol, tobacco causes
17 lung cancer, so many types of diseases and those two
18 drugs are on the market and they killed more people
19 than illegal drugs. You know? And I don't understand
20 why, okay, drug dealers, you know, sometimes in our
21 society we just want to put drug dealers all away, but
22 you know one thing that a drug dealer have in common
23 with all of us? He's trying to survive. He's trying to
24 make a living. Although I say it's the wrong way to
25 go, it's the wrong way to do, you know, but he's

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1 trying to live and sir I'm just pleading with you and
2 just asking you sir, could you please, just have some
3 mercy? Just look within your hear sir. Just to have
4 some mercy on my brother because I don't want this to,
5 I know it's just going to bring my mommy to a
6 depression and just even last night, alone, I couldn't
7 sleep. I stayed up til three o'clock in the morning,
8 crying, just you know, praying, just really, just I
9 don't know, but I'm just praying sir. Just, just look
10 within yourself and just have some mercy for him and
11 Corey I just want you to know that we as a family love
12 you and just remember that God has his hands on you
13 and through your darkest hour and your lonely nights
14 he is there. He will comfort you through the end and
15 every trial, everything that you go through in life,
16 it's not for you, it's for you to help someone else
17 one day. So just be strong and know that the church
18 family and I and all of us we will be praying for you.

19 The Court: Thank you. Anything else?

20 Mr. Peterson: Not really.

21 Mr. Sullivan: That's all judge.

22 Ms. McElveen: Your Honor I believe if I can read you his
23 criminal history and I believe Detective Lyons would
24 like to address the court as well Your Honor.

25 The Court: Okay.

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1 Ms. McElveen: January 1997, Mr. Peterson was convicted of
2 burglary second degree violent and grand larceny; June
3 2011 possession of crack cocaine, he received 18
4 months probation; and Your Honor a CDV, a criminal
5 domestic violence from 1999.

6 The Court: Okay.

7 Ms. McElveen: And Detective Lyons would like to address the
8 Court Your Honor.

9 The Court: Okay.

10 Det. Lyons: Thank you Your Honor. I really didn't plan
11 on saying anything. In law enforcement, a lot of times
12 people think that we're just out there targeting folks
13 and that's not necessarily the case. We're out here
14 targeting criminals. Okay, that's who we're targeting.
15 We don't target just anybody just to target them.
16 That's not our job. Unfortunately I have to disagree
17 with some of the things that were said earlier that I
18 can tell you for a fact that I work violent crimes in
19 the city of Sumter and I would say more than ninety
20 five percent of violent crimes committed in this
21 jurisdiction are drug related. That's why we go out
22 and we try to get drugs off the streets; that's why we
23 try to get guns out of the hands of criminals, out of
24 the hands of drug dealers. That's why we try to get
25 those type of people off the street to give them an

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1 opportunity to come before you in court, to have their
2 day in court, to get some sort of punishment for their
3 crime hopefully learn a lesson from their crime. I'm
4 not here, I'm not standing before you asking you to
5 give Mr. Peterson the max. I could easily sit up here
6 and ask you to give him fifty five years, but I'm not
7 doing that. I don't think Mr. Peterson deserves that.
8 Okay. I do think that he should be held liable; he's
9 obviously accepted his responsibility by pleading
10 guilty, but I do think that along with that
11 responsibility, there has to come some sort of
12 punishment. Okay I believe that that punishment should
13 be fair and just and in accordance with the law will
14 serve and I'm quite certain Mr. Peterson will probably
15 learn a harsh and valuable lesson from what happened.

16 Ms. McElveen: And Your Honor, in your sentencing
17 consideration, we would like to politely remind the
18 Court that Mr. Peterson tried to get his sixteen year
19 old brother to come up here and take responsibility
20 for those drugs. Thank you.

21 Mr. Peterson: Your Honor. He did it on his own free will.
22 He just did it ...

23 The Court: One thing that I didn't ...

24 Mr. Peterson: And I'm sorry for you Ms. McElveen and sorry
25 to the officer.

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1 The Court: One thing I didn't tell you, do you
2 understand these proximity charges, both of them are
3 serious charges so you're going to have two serious
4 offenses against you. Do you understand that?

5 Mr. Peterson: Alright.

6 The Court: If you get a third, you're going to be
7 looking at life without the possibility of parole.

8 Mr. Peterson: Alright.

9 The Court: Okay.

10 Mr. Peterson: Alright.

11 The Court: The sentence on the possession with intent
12 to distribute cocaine, second offense, the sentence of
13 the Court is you are committed to the State Department
14 of Corrections for a term of six years. You're given
15 credit for time served. On proximity charge it's five
16 years to run concurrent. On the distribution of
17 marijuana it's four years to run concurrent and the
18 proximity of marijuana is five years to run concurrent
19 and give him credit. Alright, when you get out, I hope
20 you turn your life around. If you ever get caught
21 with drugs again, now you're looking at spending most
22 of the rest of your life in prison. Do you understand
23 that?

24 Mr. Peterson: Alright.

25 Ms. McElveen: Thank you Your Honor.

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1 Bailiff: All of the jurors are in the courtroom Your
2 Honor.

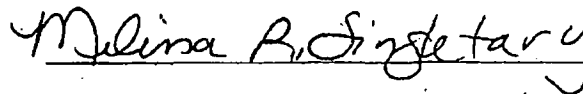
3 (Jury in 11:30 a.m.) (Jury excused for the week 11:52)
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CERTIFICATE

This is to certify that the hearing in the matter of Corey L. Peterson vs. State of South Carolina, consisting of Two Hundred Twenty Eight (228) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 3rd day of April, 2012.



Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

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2011-CP-43-2125

STATE OF SOUTH CAROLINA

JAMES C. CAMPBELL

CLERK OF COURT THE COURT OF COMMON PLEAS

COUNTY OF Sumter

SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY
OF ORIGINAL FILE.

Corey L Peterson S.C.C. #347788

Full name and prison number (if any) of Applicant.

Barbara Shaper

DEPUTY CLERK OF COURT

SUMTER COUNTY

SOUTH CAROLINA APPLICATION FOR

v.

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention WRCI
2. Name and location of Court which imposed sentence Sumter County
3. Name(s) of co-defendant(s) (if any) None
4. ~~The indictment number or numbers (if known) upon which and the offenses for which~~
sentence was imposed: 2010-GS-43-1305
PWID cocaine within proximity sch., park
 - (a) 2010-GS-43-1305 PWID Cocaine 2nd Offense
 - (b) 2010-GS-43-1305 PWID Marijuana 1st Offense
 - (c) 2010-GS-43-1305 PWID Marijuana proximity sch., park
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 9-15-11
 - (b) 6 yrs

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____ X
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____ X
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____ X
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____ X
- ii. _____
- iii. _____
-
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Lawyer did not file for Direct Appeal
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- ~~_____~~

- (a) Ineffective Assistance of Counsel/Conflict Interest
 (b) prosecutor Misconduct
 (c) Newly discovered evidence /sked Report

11. State concisely and in the same order the facts which support each of the grounds set out in (10): Counsel failed to Investigate and prepare for trial

- (a) ~~Ineffective Assistance of Counsel~~
 (b) ~~prosecutor Misconduct~~ Disclosed Criminal Background
 (c) Prematively in front of Jury Before I took the Stand

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

iv. X

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) previous appeal not Filed

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. _____

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. plea, trial, and sentencing

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

Reduction in sentence or plea to a lesser offense

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

County of

VERIFICATION

I, _____, 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.

Cory L. Pitter

SWORN to and subscribed before me this 7th
day of November, 2011.

[Signature] (L.S.)
Notary Public.

My Commission Expires: 02/15/17

SCOC Photo ID # 347788

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Cory L. Patterson

Applicant

SWORN or affirmed to and subscribed before me this
24 day of November, 2011.

Chris Adams

Notary Public

My Commission Expires: 02/15/17

SCOC Photo ID# 347788

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2011-CP-43-2125
	)	
Corey L. Peterson, #347788,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 10, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted for (1) Possession with Intent to Distribute ("PWID") Marijuana, (2) Possession of Marijuana within ½ Mile of a School or Park, (3) PWID Cocaine, and (4) PWID Cocaine within ½ Mile of a School or Park (2010-GS-43-1305). Applicant was represented by David Sullivan, Esquire. On September 15, 2011, the Applicant pled guilty before the Honorable R. Ferrell Cothran, Jr. and was sentenced to six (6) years incarceration. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, and the guilty plea transcript.¹ The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel / Conflict Interest."
 - a. "Counsel failed to investigate and prepare for trial."
2. "Prosecutor misconduct."
 - a. "Prosecutor disclosed criminal background prematurely in front of jury before I took the stand."
3. "Newly discovered evidence / SLED report."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

For purposes of this Return, Respondent interprets Applicant's allegations to be allegations of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

¹ As of the date of this Return, the transcript has been ordered but not yet received. The same will be forwarded upon receipt.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEY'S FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Jan. 18, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2011-CP-43-2125
	)	
COREY L. PETERSON, 347788,	)	
	)	
Applicant,	)	
	)	
vs.	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Michael W. Self, Esquire
 McDougall & Self, LLP
 Post Office Box 2197
 Sumter, SC 29151-2197

DATED this 18th day of January, 2012.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	
Corey Peterson	)	
	)	MARCH 19, 2013
PLAINTIFF	)	
	)	
VERSUS	)	POST CONVICTION RELIEF
	)	
The State of South Carolina	)	2011-CP-43-2125
	)	
DEFENDANTS	)	
	)	

BEFORE

THE HONORABLE WILLIAM JEFFREY YOUNG

APPEARANCES

Richard Strobel Esquire
ATTORNEY FOR THE APPLICANT

Megan E. Harrigan, Esquire
ATTORNEY FOR THE STATE

Pamela Ozment-Cartee
Circuit Court Reporter

COREY PETERSON VERSUS THE STATE

2

Post Conviction Relief Page 03

Call of the case by the Attorney General Page 03

WITNESS

NAME

Page

Corey Peterson Direct Examination Page 04

Case dismissed by the Court Page 10

Certificate of Reporter Page 12

COREY PETERSON VERSUS THE STATE

3

1 (Whereupon, this hearing began at 9:36 a.m.
2 on Tuesday, March 19, 1013)

3 **THE COURT:** Who do we have up the first?

4 **MS. HARRIGAN:** If I may approach with the packets,
5 Your Honor, thank you.

6 **THE COURT:** Thank you.

7 **MS. HARRIGAN:** May it, please the Court?

8 **THE COURT:** Yes ma'am.

9 **MS. HARRIGAN:** Your Honor, the first case is Corey
10 Peterson versus the State of South Carolina. Docket number
11 2011-CP-43-2125.

12 The Applicant was indicted during the October 2010
13 term of the Sumter County Grand Jury, for possession with
14 intent to distribute marijuana first offense. Possession
15 of marijuana within half a mile of a school or park.
16 Possession with intent to distribute cocaine second
17 offense. And possession with intent to distribute cocaine
18 within half a mile of a school or park.

19 Applicant was represented by David Sullivan. On
20 September 15, 2011, during jury deliberations, Applicant
21 pled guilty before The Honorable R. Ferrell Cothran, Jr.
22 Judge Cothran, sentence Applicant to six years in prison
23 for PWID cocaine second. To five years imprisonment for
24 PWID cocaine within proximity of a school or park. To four
25 years imprisonment for possession with intent to distribute

COREY PETERSEN - DIRECT EXAMINATION

4

1 marijuana first offense. And to four years imprisonment
2 for possession with intent to distribute marijuana first
3 offense. All sentences were to be served concurrently.
4 And the Applicant did not appeal his conviction or
5 sentence.

6 Applicant filed a timely application for post
7 conviction relief on November 10, 2011, alleging
8 ineffective assistance of counsel for failure to
9 investigate and prepare for trial. Prosecutorial
10 misconduct for the prosecutor disclosing his criminal
11 background in front of the jury, and newly discovered
12 evidence from a SLED report. The State made its return
13 on January 18, 2012. And he is represented in this
14 action by Richard Strobel.

15 **THE COURT:** All right. Mr. Strobel, are you ready
16 to proceed?

17 **MR. STROBEL:** I am ready.

18 **THE COURT:** Call your first witness.

19 **MR. STROBEL:** Corey Peterson.

20 **BAILIFF:** Raise your right hand. State your name
21 please.

22 **MR. PETERSON:** Corey Peterson.

23 **WHEREUPON, COREY PETERSEN**

24 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

25 **MR. PETERSON:** Yes sir

COREY PETERSEN - DIRECT EXAMINATION

5

DIRECT EXAMINATION BY MR. STROBEL

Q. State your name for the record.

A. Corey Peterson.

THE COURT: You may proceed.

MR. STROBEL: Thank you.

Q. Mr. Peterson, actually this was a jury trial, was it not?

A. Yes, sir.

Q. And in reading the transcript, it appears that at the end of the first day of court, they've let the jury go home around seven or 7:30 that evening, and y'all came back the next morning; is that correct?

A. Yes, sir.

Q. In fact, the jury was already in deliberation at the conclusion of that first day; is that correct?

A. Yes, sir.

Q. So, the only thing left to be done was the reaching of a verdict?

A. Yes, sir.

Q. And then you pled guilty and admitted to everything during the trial you had denied?

A. Yes sir, I did.

Q. I beg your pardon?

A. I pleaded to get out of the trial. I've got one quick question.

COREY PETERSEN - DIRECT EXAMINATION

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1 **THE COURT:** No sir, you don't get to ask questions,
2 you ask your attorney first.

3 A. Mr. Strobel, as I have told you before, I'm really
4 not here to ask ineffective assistance claim. I
5 admitted the due process clause with the State and
6 the trial court judge. Judge Cochran, violated my
7 constitutional rights. And that is basically why I
8 am here for. For newly discovered evidence, I was
9 not knowing exactly what I would need by stated
10 report regarding the transport stated that the drugs
11 came out to be 1.4 grams of cocaine. And I don't
12 have my --- ready to challenge ineffective
13 assistance of counsel claim, but I would challenge
14 the subject matter jurisdiction could be raised at
15 any given time. And I would challenge the due
16 process clause, trial Judge Cothran violated my
17 constitutional rights.

18 **MS. HARRIGAN:** Your Honor, the State would object.
19 We are here on the allegations as set forth in the
20 Applicant's Petition.

21 **THE COURT:** Right. We are just here on your PCR
22 Application.

23 Q. She related earlier that you were upset with the
24 fact that the Solicitor discussed with the jury
25 your past criminal record; is that correct?

COREY PETERSEN - DIRECT EXAMINATION

7

1 A. Yes, sir.

2 Q. What difference does it make?

3 A. What difference does it make? No. No.

4 Q. Listen to me.

5 A. All right.

6 Q. Did --

7 A. -- No --

8 Q. -- Listen to me.

9 THE COURT: Listen to your attorney. Follow your
10 attorney's instruction, he is here to help you.

11 Q. The jury did not decide your case when you decided
12 to give up the jury and plead guilty before the
13 judge; he became the trier of the facts and the law.
14 Is that correct?

15 A. Selling and PW?

16 Q. Yeah.

17 A. Shew (verbal expression) --

18 Q. What the solicitor addressed to the jury was
19 declared null and void when you stop the trial and
20 choose to plead guilty. Is that correct?

21 A. Yes.

22 Q. So, it does not matter what he told the jury, they
23 played no role in your decision-making?

24 A. No, they did not. Do you know what I'm saying?
25 They did not play no role in my decision-making.

COREY PETERSEN - DIRECT EXAMINATION

8

1 But, like I said, I don't have my Rule 5 hearing to
2 challenge the ineffective assistance of counsel,
3 because the State did not give it to you.

4 Q. She just told me that you objected to the fact the
5 prosecutor in this case discussed with the jury your
6 prior criminal record?

7 A. Yes, she did that. But that is like a --- she did it.

8 MADAME COURT REPORTER: Mr. Strobel, I cannot
9 understand your client.

10 MR. STROBEL: I can't understand him either.

11 A. See, the prosecutor went beyond the ten years.

12 MADAME COURT REPORTER: Judge --

13 THE COURT: Speak slowly, sir.

14 MADAME COURT REPORTER: Sir, I need for you to slow
15 down a little bit so that I can understand you, please.

16 MR. PETERSON: All right. All right. All right.

17 MADAME COURT REPORTER: I want your record to be
18 right, sir.

19 MR. PETERSON: All right. All right. Sorry about
20 that. All right.

21 A. The prosecutor went beyond ten years. But, like I
22 said though, I had this right --

23 Q. He went beyond ten years?

24 A. The prosecutor went beyond ten years, Mr. Strobel,
25 that is all I am saying. But, to me, that is a

COREY PETERSEN - DIRECT EXAMINATION

9

1 sample error. I had my rights, and I amended the
2 due process clause and -- the Court -- and took the
3 Court file January 16, 2013, and I am challenging the
4 subject matter jurisdiction, and the due process
5 clause. That is what I am saying.

6 Q. Well, explained to me what you just said?

7 A. I amended the due process clause.

8 Q. I understand that.

9 A. January 16, 2013.

10 Q. What makes you say you did not receive due process?

11 A. The trial judge --

12 Q. -- Judge Cothran --

13 A. -- from the plea. Yeah, Judge Cochran, when we
14 started out from the plea --

15 **MS. HARRIGAN:** Your Honor, I would just state --

16 A. That was on the record.

17 **MS. HARRIGAN:** -- for the record, we do not have a
18 copy of any amending pleadings.

19 **THE COURT:** I am looking at the file. There is no
20 amendment in here.

21 **MR. PETERSON:** I had the amendment right here. I
22 have the amendment right here by Sumter County Clerk of
23 Court.

24 **THE COURT:** It was never supplied to them, so it is
25 not before me today. I am not taking it up today.

COREY PETERSEN - DIRECT EXAMINATION

10

1 MR. PETERSON: Well that is why --

2 THE COURT: No sir. We are not taking that up
3 today.

4 Now, Mr. Strobel, if you could just with what he has
5 filed.

6 MR. PETERSON: I would also like the subject
7 matter jurisdiction --

8 THE COURT: -- Wait a minute, hold on.

9 MR. PETERSON: All right.

10 THE COURT: Answer your attorney's questions. This
11 is not for you to get up and say whatever you want to say.
12 You will answer your attorney's questions.

13 MR. PETERSON: I have a right to say what I want to
14 say.

15 THE COURT: Sir, sir, answered your attorney's
16 questions.

17 MR. PETERSON: I have got the right to --

18 THE COURT: -- Sir, sir, would you like to step
19 down?

20 MR. PETERSON: I have a right to say --

21 THE COURT: You will answer your attorney's
22 questions.

23 MR. PETERSON: I have the right to argue what I want
24 to argue.

25 THE COURT: Take him off the stand. This case is

COREY PETERSEN - DIRECT EXAMINATION

11

1 dismissed.

2 MR. STROBEL: Thank you, Your Honor.

3 MS. HARRIGAN: Thank you, Your Honor, the State will
4 prepare an Order.

5 THE COURT: Thank you.

6 (Whereupon, this case was concluded at 9:46
7 a.m. on Tuesday, March 19, 2013.)

8 -- END OF TRANSCRIPT --

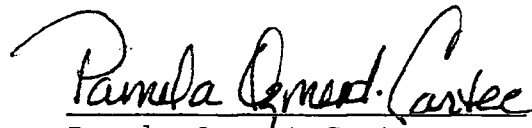
CERTIFICATE OF REPORTER

12

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit 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 Court of Common Pleas in Sumter County, South Carolina, on the 19th day of March 2013.)

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

August 2, 2013


Pamela Ozment-Cartee
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2013 APR 17 PM 1:51

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Corey Peterson, #347788,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Case No. 2011-CP-43-2125

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief filed November 20, 2011. The Respondent made its Return on January 18, 2012. An evidentiary hearing into the matter was convened on March 19, 2013, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Richard W. Strobel, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

I.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted during the October 2010 term of the Sumter County Grand Jury under a multiple count indictment for: (1) Possession with Intent to Distribute Marijuana – First Offense; (2) Possession with Intent to Distribute Marijuana within ½ Mile of a School or Park; (3) Possession with Intent to Distribute Cocaine – Second Offense; and (4) Possession with Intent to Distribute Cocaine within ½ Mile of a School or Park (2010-GS-43-1305). Applicant was represented by David F. Sullivan, Esquire (herein “Counsel”). On September 15, 2011, during jury deliberations following a trial on all four counts, Applicant pled

guilty before the Honorable R. Ferrell Cothran, Jr. Judge Cothran sentenced to six years imprisonment for Possession with Intent to Distribute Cocaine – Second offense; to five years imprisonment for Possession with Intent to Distribute Cocaine within ½ mile of a school or park; to four years imprisonment for Possession with intent to distribute Marijuana - First Offense; and to five years imprisonment for Possession with Intent to Distribute Marijuana within ½ mile of a school or park. All sentences were to be served concurrently. Applicant did not appeal his guilty pleas or sentences.

II.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for:

1. "Ineffective assistance of counsel / Conflict Interest."
 - a. "Counsel failed to investigate and prepare for trial."
2. "Prosecutor misconduct."
 - a. "Prosecutor disclosed criminal background prematurely [sic] in front of jury before I took the stand."
3. "Newly discovered evidence / SLED report."

In its Return, Respondent interpreted Applicant's allegations to be ineffective assistance of counsel; Applicant did not amend his allegation prior to the evidentiary hearing.

III.

At the evidentiary hearing, Applicant was called to the witness stand to present testimony in support of his application. Applicant moved to amend his Application to include allegations that the plea court lacked subject matter jurisdiction to accept his guilty pleas. Respondent objected to this amendment, citing a lack of notice. This Court denied Applicant's motion to amend his application. Applicant then became extremely uncooperative with both his attorney and this Court. The Applicant refused to answer questions or follow directions and was verbally

combative. Though the Applicant was given several warnings to reform his conduct, he refused to either do so or state any grounds upon which he wished to proceed.

After the Applicant left the witness stand, counsel for the Respondent moved for directed verdict or, in the alternative, summary judgment because no evidence had been presented in support of the PCR application. The motion for directed verdict is granted because the Applicant failed to set forth any evidence or testimony to corroborate the issues raised in his post-conviction relief application. See Rule 50, SCRCR. This Court notes one is given a single opportunity to raise all meritorious post-conviction relief issues but finds the Applicant waived his chance to litigate these issues through his own conduct. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (“[A]n applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”); see also Rule 41(b), SCRCR; Don Shevey & Spires, Inc. v. American Motors Realty Corp., 279 S.C. 58, 60, 301 S.E.2d 757, 758 (1983) (holding the plaintiff has the burden of prosecuting his action, and the trial court may properly dismiss an action for plaintiff’s neglect in proceeding with his cause).

IV.

Based upon the Applicant’s conduct at his post-conviction relief hearing, this Court finds the Respondent’s motion for directed verdict was well-taken and the matter is dismissed with prejudice. This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel’s assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on

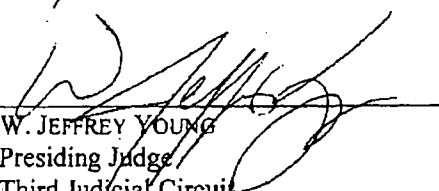
the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Respondent's Motion for Directed Verdict is hereby **GRANTED** and the post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**.
2. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND IT IS SO ORDERED this 11 day of April, 2013.

Sumter, South Carolina


W. JEFFREY YOUNG
Presiding Judge
Third Judicial Circuit

WITNESSES

Darlen Quiroz Sumter Police Dept.

DOCKET NO. 2010-GS-43-1305

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

OCTOBER TERM 2010

THE STATE

vs.

COREY LAMONT PETERSON

ARREST WARRANT NUMBER

M002657 M002658 M002659

M002680

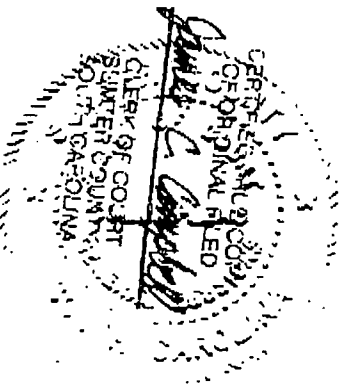
ACTION OF GRAND JURY

True Bill

Forfeiture of Grand Jury
Date: 10-28-10

VERDICT

Forfeiture of Petit Jury
Date:



Indictment for

Drugs / Manuf., poss. of other sub. in Sch. I, II, III or
flunitrazepam or analogue, w.i.t.d.
Drugs/ Poss. with intent to distribute within one-half mile
school/park
Drugs/MDP, Narcotic drugs in Sch. I(b) & (c) and Sched.
II (cocaine).

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Drugs / Manuf., poss. of other sub. in Sch. I, II, III or
flunitrazepam or analogue, w.i.t.d. CERTIFIED TRUE COPY
Drugs/ Poss. with intent to distribute within one-half mile OF ORIGINAL FILE
school/park *Barbara Hanes*
Drugs/MDP, Narcotic drugs in Sch. I(b) & (c) and ~~Section 17~~ DEPUTY CLERK OF COURT
(cocaine). SUMTER COUNTY
SOUTH CAROLINA

At a Court of General Sessions, convened on October 28, 2010 the Grand Jurors of

SUMTER County present upon their oath:

COUNT ONE

That in Sumter County, South Carolina, on or about May 14, 2010, the Defendant, Corey Lamont Peterson, unlawfully did possess with intent to distribute, dispense, or deliver a quantity of marijuana, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, or did otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, or deliver marijuana, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976), as amended.

COUNT TWO

That Corey Lamont Peterson did in Sumter County, on or about May 14, 2010, unlawfully possess with intent to distribute a quantity of Marijuana, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, within a one-half mile radius of the grounds of a public or private school, college, or university, public playground or park, or a public vocational or trade school or technical education center, to wit: within one-half mile of Morris College, in violation of Section 44-53-445(B)(1), S. C. Code of Laws, 1976, as amended.

COUNT THREE

That in Sumter County, South Carolina, on or about May 14, 2010, the Defendant, Corey Lamont Peterson, unlawfully did possess with intent to distribute, dispense, or deliver a quantity of Cocaine a schedule II drug as defined by Section 44-53-110, et seq; Code of Laws of South Carolina (1976), as amended, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976), as amended.

COUNT FOUR

That Corey Lamont Peterson did in Sumter County, on or about May 14, 2010, unlawfully possess with intent to distribute a quantity of Cocaine, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, within a one-half mile radius of the grounds of a public or private school, college, or university, public playground or park, or a public vocational or trade school or technical education center, to wit: within one-half mile of Morris College, in violation of Section 44-53-445(B)(1), S. C. Code of Laws, 1976, as amended.

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

P. Kelly Jackson

SOLICITOR

R.DOT