

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Aiken County

Honorable Debra R. McCaslin, Circuit Court Judge

JONATHAN ART LINCOLN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002138

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF AIKEN	)	2020-GS-02-02096
	)	2020-GS-02-02097
	)	2020-GS-02-02098
	)	2020-GS-02-02099
	)	2020-GS-02-02100
	)	
THE STATE,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
JONATHAN A. LINCOLN,	)	
DEFENDANT.	)	
_____	)	

July 22-23, 2021
Aiken, South Carolina

B E F O R E:

THE HONORABLE JOCELYN J. NEWMAN, JUDGE.

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Attorneys for the Defendant

Proceedings Recorded by DCRP
Transcribed by Penny M. Johnson

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(Plaintiff's Exhibits)		
1	Dash Cam (Knight)		47
2	Route of pursuit		48
3	Disk		48
4	Alcohol Bottle		54
5	Scales		54
6	Baggies		54
7	Pill Bottle		55
8	Pill Bottle		55
9	Bags		55
10	Photograph of Shotgun		53
11	Registration		56
12	Dash Cam (Palmer)		77
13	Body Cam (Ferrell)		94
14	Cocaine (.96 grams)		113
15	Cocaine (.60 grams)		113
16	Methamphetamine (47 grams)		111
17	Methamphetamine (1.53 grams)		112
18	Heroin (1.49 grams)		114

All Exhibits were retained by the Clerk of Court for Aiken County.

P R O C E E D I N G S

(WHEREUPON, jury venire panel was sworn.)

THE COURT: Good morning, ladies and gentlemen. I'm sorry to keep you waiting. You are here today for jury selection in the trial of a criminal case. I know I asked you a number of questions on Monday, but I'm going to ask you some different questions today that are more specific to your fitness to serve as jurors for the trial of this particular case. We are beginning the State of South Carolina vs. Jonathan Art Lincoln, indictment 2020-GS-02-02096, 97, 98, 99 and 100.

So you've been placed under oath. I'm going to ask you a number of questions. We'll do just like we did on Monday, that is if you need to respond to any of the questions, I'm going to ask you to stand and give me your name and juror number.

This is a criminal case in which the Defendant is charged with five crimes. The crimes of trafficking methamphetamine, failure to stop for blue lights and sirens, possession with intent to distribute heroin, possession with intent to distribute cocaine and resisting arrest, all of which allegedly occurred on February 26th, 2020, here in Aiken County. And as I've told you, the person accused of those crimes is Jonathan Art Lincoln.

My first question is, does any member of the jury panel

1 know anything about this case or think that you know
2 anything about this case? Think that you've heard about it,
3 witnessed it, or have any information whatsoever? If so,
4 please stand.

5 (There was no response.)

6 THE COURT: All right. The person accused of those
7 crimes is Mr. Jonathan Art Lincoln.

8 Mr. Lincoln, would you please stand and face the jury
9 panel.

10 (Defendant stood.)

11 THE COURT: Is there any member of the jury panel
12 related by blood, connected by marriage or have any close
13 personal relationship with Jonathan Art Lincoln? Do you
14 think that you know him at all? If so, please stand.

15 (No response.)

16 THE COURT: Thank you. You may have a seat.

17 (Defendant is seated.)

18 THE COURT: Mr. Lincoln is represented in this case by
19 two attorneys from the Public Defender's Office, Ms. Suzanne
20 Hayes -- and I'm drawing a blank.

21 MR. THOMPSON: Mr. Barry Thompson.

22 THE COURT: Barry Thompson. I'm sorry, I do know his
23 name. It just wouldn't come to me.

24 Is any member of the jury panel related by blood,
25 connected by marriage or have any close personal

1 relationship with Mr. Thompson or Ms. Hayes? Are you
2 currently represented by them or have you been represented
3 by either of them in the past? Do you think that you know
4 them at all? Or do you have any relationship whatsoever
5 with the Aiken County or the Second Circuit Public
6 Defender's Office? If so, please stand.

7 (No response.)

8 THE COURT: This matter is being prosecuted by the
9 Aiken County Solicitor's Office. Ms. Ashley Hammack and --
10 Is Mr. Weeks involved in this?

11 MS. HAMMACK: He is, Your Honor.

12 MR. WEEKS: Yes, Your Honor.

13 THE COURT: Mr. Bill Weeks, who the elected solicitor.
14 Any member of the jury panel related by blood,
15 connected by marriage or have any close personal
16 relationship with Ms. Hammack or Mr. Weeks? Do you think
17 that you know them at all? Or do you have any relationship
18 whatsoever with the Second Circuit Solicitor's Office? That
19 covers prosecution for Aiken, Bamberg and Barnwell Counties.
20 If so, please stand.

21 (Jurors stood.)

22 THE COURT: All right. Let's start over here. Your
23 name and juror number?

24 POTENTIAL JUROR: Juror No. 81.

25 THE COURT: Yes, sir, who do you know?

1 POTENTIAL JUROR: Mr. Weeks is a friend of mine. We
2 don't socialize on a regular basis, but he's a friend.

3 THE COURT: Okay. So when you say you don't socialize,
4 what kind of friendship is it and how often do you have
5 contact?

6 POTENTIAL JUROR: I run into Bill probably once every
7 three or four months or so.

8 THE COURT: Okay. So, like, you run into him out in
9 the world and you chat for a while?

10 POTENTIAL JUROR: That's right.

11 THE COURT: Okay. But you don't maintain contact in
12 between those encounters, do you?

13 POTENTIAL JUROR: No.

14 THE COURT: Based on the relationship you have with Mr.
15 Weeks, would that affect your ability to give both the State
16 and the Defendant a fair and impartial trial in this case?

17 POTENTIAL JUROR: No.

18 THE COURT: Thank you. You may have a seat.

19 Your name and juror number?

20 POTENTIAL JUROR: Number 29, Billy Campo.

21 THE COURT: Yes, sir.

22 POTENTIAL JUROR: I know Mr. Weeks. We're friends. We
23 don't socialize that much, but we have in the past.

24 THE COURT: Okay. How long ago?

25 POTENTIAL JUROR: I can't recall. We see each other in

1 passing.

2 THE COURT: Okay. Has it been several months or a year
3 or more than a year?

4 POTENTIAL JUROR: Probably about a year.

5 THE COURT: Okay. Would your relationship with Mr.
6 Weeks affect your ability to give both the State and the
7 Defendant a fair and impartial trial in this case?

8 POTENTIAL JUROR: No.

9 THE COURT: Thank you. You may have a seat.

10 MR. THOMPSON: Mr. Norwood Bodie is very helpful and a
11 wonderful investigator. I would move for the Court to
12 inquire about Mr. Bodie.

13 THE COURT: Mr. Bodie, would you stand and face the
14 jury panel?

15 (Mr. Bodie stood.)

16 THE COURT: Mr. Bodie works for the Second Circuit
17 Solicitor's Office as well.

18 Any member of the jury panel related by blood,
19 connected by marriage or have any close personal
20 relationship with Mr. Bodie? If so, please stand.

21 (Jurors stood.)

22 THE COURT: And that's Juror No. 29; is that correct?

23 POTENTIAL JUROR: Yes.

24 THE COURT: Tell me about your relationship with Mr.
25 Bodie.

1 POTENTIAL JUROR: We used to work together. We're
2 friends on social media and we talk occasionally.

3 THE COURT: Would that relationship affect your ability
4 to give both the State and the Defendant a fair and
5 impartial trial in this case?

6 POTENTIAL JUROR: No, ma'am.

7 THE COURT: Thank you. You may have a seat.

8 There are several potential witnesses who may testify
9 in this case, and the question is the same as to each of
10 them. And that's whether you're related by blood, connected
11 by marriage or have any relationship with them.

12 Those potential witnesses are Brandon Knight of the
13 Aiken County Sheriff's Office, who is standing before you;
14 Clarke Palmer, Aiken County Sheriff's Office; Deputy Czekaj,
15 Aiken County Sheriff's Office; Joseph Driscoll, Beaufort
16 County Sheriff's Office; Amber Collins, Aiken County
17 Sheriff's Office; and Colt Woody.

18 Does any member of the jury panel know any of those
19 witnesses at all? If so, please stand.

20 (No response.)

21 THE COURT: Is any member of the jury panel a
22 contributor toward -- do you contribute to any law
23 enforcement organization or victim's rights organization,
24 such as the State Trooper's Association or some other law
25 enforcement friendly organization or State Victim's Rights

1 Association, Sister Care, any kind of organization like
2 that? If so, please stand.

3 (Juror stood.)

4 THE COURT: Name and juror number, ma'am?

5 POTENTIAL JUROR: 162, Jennifer Salmon, National
6 Correctional Police Officers Foundation.

7 THE COURT: Do you have any active membership role in
8 that organization?

9 POTENTIAL JUROR: No, ma'am.

10 THE COURT: Would that affect your ability to give both
11 the State and the Defendant a fair and impartial trial in
12 this case?

13 POTENTIAL JUROR: No, ma'am.

14 THE COURT: Thank you. You may have a seat.

15 And Juror No. 81?

16 POTENTIAL JUROR: Yes, ma'am.

17 THE COURT: Okay. Tell me about it.

18 POTENTIAL JUROR: Through our business, we contribute
19 to probably half a dozen sheriff and police organizations.

20 THE COURT: Okay. And you said through your business.
21 Do you personally make contributions? Or is it a small
22 business?

23 POTENTIAL JUROR: It's a small business, two partners,
24 I'm one of the partners.

25 THE COURT: Okay. Would the fact that you make those

1 contributions affect your ability to give both the State and
2 the Defendant a fair and impartial trial in this case?

3 POTENTIAL JUROR: No.

4 THE COURT: Thank you. You may have a seat.

5 Was any member of the jury panel a member of the Grand
6 Jury which returned the indictments in this case? If so,
7 please stand.

8 (No response.)

9 THE COURT: Has any member of the jury panel already
10 formed an opinion about this case or the charges in this
11 case? If so, please stand.

12 (No response.)

13 THE COURT: Does any member of the jury panel know of
14 any reason whatsoever why they should not serve as a juror
15 for the trial of this case? Is there any reason why you
16 cannot give both the State and the Defendant a fair and
17 impartial trial in this case? If so, please stand.

18 (No response.)

19 THE COURT: Has any member of the jury panel been
20 accused of or been a victim of any crime? If so, please
21 stand. You or any member of your immediate family? If so,
22 please stand.

23 (No response.)

24 THE COURT: Has any member of the jury panel read
25 anything about this case in the newspaper or seen anything

1 on TV or social media, heard anything at all about this
2 case? If so, please stand.

3 (No response.)

4 THE COURT: Has any member of the jury panel discussed
5 this case with anyone, been approached by anyone about this
6 case? If so, please stand.

7 (No response.)

8 THE COURT: Is any member of the jury panel or any of
9 your close friends or immediate family involved in law
10 enforcement? That is the State Law Enforcement Division,
11 SLED, employed at the Solicitor's Office, the Attorney
12 General's Office, any federal law enforcement agency, state,
13 county or city law enforcement agency. If so, please stand.

14 (Jurors stood.)

15 THE COURT: Yes, ma'am, your juror number again?

16 POTENTIAL JUROR: 162, Jennifer Salmon.

17 THE COURT: Yes, ma'am.

18 POTENTIAL JUROR: My husband is a federal correctional
19 officer.

20 THE COURT: Okay. Would that affect your ability to
21 give both the State and Defendant a fair and impartial trial
22 in this case?

23 POTENTIAL JUROR: No.

24 THE COURT: Thank you. You may have a seat.

25 Yes, ma'am, your name and juror number?

1 POTENTIAL JUROR: Juror No. 41, Ta'Nauziah Corley. I
2 have an uncle that's a sheriff and works at the jail.

3 THE COURT: Where is your uncle a sheriff?

4 POTENTIAL JUROR: Aiken County.

5 THE COURT: Would that affect your ability to -- what's
6 your uncle's name?

7 POTENTIAL JUROR: Milton Brown.

8 THE COURT: Would that affect your ability to give both
9 the State and the Defendant a fair and impartial trial in
10 this case?

11 POTENTIAL JUROR: No, ma'am.

12 THE COURT: Thank you. You may have a seat.

13 In the white shirt, your name and juror number?

14 POTENTIAL JUROR: 43, Thea Court, and my brother-in-law
15 is a police officer with the City of North Augusta.

16 THE COURT: Would that affect your ability to give both
17 the State and the Defendant a fair and impartial trial in
18 this case?

19 POTENTIAL JUROR: No, ma'am.

20 THE COURT: Thank you. You may have a seat.

21 Your name and juror number, please?

22 POTENTIAL JUROR: Valerie Sumner, 176. My son is a
23 South Carolina DNR Wildlife officer.

24 THE COURT: Would that affect your ability to give both
25 the State and the Defendant a fair and impartial trial in

1 this case?

2 POTENTIAL JUROR: No.

3 THE COURT: Thank you. You may have a seat.

4 Any additional voir dire from the State?

5 MS. HAMMACK: No, Your Honor.

6 THE COURT: From the Defense?

7 MS. HAYES: None from the Defense, Your Honor.

8 THE COURT: All right, folks. If y'all will sit tight
9 for just a moment, we are going to place your names in
10 random order and select the jury for the trial of this case.

11 (Pause.)

12 THE COURT: Juror No. 81, yes, sir?

13 POTENTIAL JUROR: Can I talk to you privately for just
14 a second?

15 THE COURT: Certainly, come around here.

16 (Bench conference with Juror No. 81 and attorneys.)

17 THE COURT: Let's pull 81 out of the selection.

18 (Pause.)

19 THE COURT: Let's select the jury.

20 JURY SELECTION

21 THE CLERK: As I call your name, please come forward,
22 stand about midway between me and the rail and face the
23 clock.

24 Juror No. 171, Trenton R. Smith.

25 (Juror No. 171 came forward.)

1 THE CLERK: What says the State?

2 MS. HAMMACK: Please present Mr. Smith.

3 THE CLERK: What says the Defense?

4 MS. HAYES: Please seat Mr. Smith.

5 THE CLERK: If you would take this piece of paper and
6 hold onto it.

7 Juror No. 161, Tracie M. Sadler.

8 (Juror No. 161 came forward.)

9 THE CLERK: What says the State?

10 MS. HAMMACK: Please present Ms. Sadler.

11 THE CLERK: What says the Defense?

12 MS. HAYES: Please seat Ms. Sadler.

13 THE CLERK: Please take the sheet of paper from the
14 clerk.

15 Juror No. 49, Jayla M. Deberry.

16 (Juror No. 49 came forward.)

17 THE CLERK: What says the State?

18 MS. HAMMACK: Please excuse Ms. Deberry from this case.

19 THE CLERK: Please return to your seat.

20 Juror No. 2, Tina M. Allison.

21 (Juror No. 2 came forward.)

22 THE CLERK: What says the State?

23 MS. HAMMACK: Please present Ms. Allison.

24 THE CLERK: What says the Defense?

25 MS. HAYES: Please excuse Ms. Allison.

1 THE CLERK: Please return to your seat.
2 Juror No. 177, Edythe S. Thompsons.
3 (Juror No. 177 came forward.)
4 THE CLERK: What says the State?
5 MS. HAMMACK: Please present Ms. Thompsons.
6 THE CLERK: What says the Defense?
7 THE CLERK: Please take the sheet.
8 Juror No. 181, Cagney L. Truitt.
9 (Juror No. 181 came forward.)
10 THE CLERK: What says the State?
11 MS. HAMMACK: Please present Ms. Truitt.
12 THE CLERK: What says the Defense?
13 MS. HAYES: Please excuse Ms. Truitt.
14 THE CLERK: Please return to your seat.
15 Juror No. 151, Shanice A. Revell.
16 (Juror No. 151 came forward.)
17 THE CLERK: What says the State?
18 MS. HAMMACK: Please present Ms. Revell.
19 THE CLERK: What says the Defense?
20 MS. HAYES: Please seat Ms. Revell.
21 THE CLERK: Please take the sheet.
22 Juror No. 190, Jarrett D. Walker.
23 (Juror No. 190 came forward.)
24 THE CLERK: What says the State?
25 MS. HAMMACK: Please present Mr. Walker.

1 THE CLERK: What says the Defense?

2 MS. HAYES: Please seat Mr. Walker.

3 THE CLERK: Please take the sheet.

4 Juror No. 74, Christopher P. Hamilton.

5 (Juror No. 74 came forward.)

6 THE CLERK: What says the State?

7 MS. HAMMACK: Please present Mr. Hamilton.

8 THE CLERK: What says the Defense?

9 MS. HAYES: Please seat Mr. Hamilton.

10 THE CLERK: Please take the sheet from the clerk.

11 Juror No. 43, Thea K. Court.

12 (Juror No. 43 came forward.)

13 THE CLERK: What says the State?

14 MS. HAMMACK: Please present Ms. Court.

15 THE CLERK: What says the Defense?

16 MS. HAYES: Please excuse Ms. Court.

17 THE CLERK: Please return to your seat.

18 I have the State has used one challenge, the Defense
19 three; is that correct?

20 MR. THOMPSON: That's correct.

21 MS. HAMMACK: Yes.

22 THE CLERK: Juror No. 192, Helen D. Ware.

23 (Juror No. 192 came forward.)

24 THE CLERK: What says the State?

25 MS. HAMMACK: Please present Ms. Ware.

1 THE CLERK: What says the Defense?

2 MS. HAYES: Please seat Ms. Ware.

3 THE CLERK: Please take the sheet from the clerk.

4 Juror No. 41, Ta'Nauziah R. Corley.

5 (Juror No. 41 came forward.)

6 THE CLERK: What says the State?

7 MS. HAMMACK: Please present Ms. Corley.

8 THE CLERK: What says the Defense?

9 MS. HAYES: Please excuse Ms. Corley.

10 THE CLERK: Please return to your seat.

11 Juror No. 188, Keiautta T. Wade.

12 (Juror No. 188 came forward.)

13 THE CLERK: What says the State?

14 MS. HAMMACK: Please present Ms. Wade.

15 THE CLERK: What says the Defense?

16 MS. HAYES: Please seat Ms. Wade.

17 THE CLERK: Please take the sheet from the clerk.

18 Juror No. 40, Marsha R. Corbitt.

19 (Juror No. 40 came forward.)

20 THE CLERK: What says the State?

21 MS. HAMMACK: Please present Ms. Corbitt.

22 THE CLERK: What says the Defense?

23 MS. HAYES: Please seat Ms. Corbitt.

24 THE CLERK: Take the sheet from the clerk.

25 Juror No. 102, Shelishea T. Littlejohn.

1 (Juror No. 102 came forward.)

2 THE CLERK: What says the State?

3 MS. HAMMACK: Please excuse Ms. Littlejohn from this
4 case.

5 THE CLERK: Please return to your seat.

6 Juror No. 178, Nicholas G. Thompson.

7 (Juror No. 178 came forward.)

8 THE CLERK: What says the State?

9 MS. HAMMACK: Please present Mr. Thompson.

10 THE CLERK: What says the Defense?

11 MS. HAYES: Please seat Mr. Thompson.

12 THE CLERK: Please take the sheet from the clerk.

13 Juror No. 47, Ali Curry.

14 (Juror No. 40 came forward.)

15 THE CLERK: What says the State?

16 MS. HAMMACK: Please present Ms. Curry.

17 THE CLERK: What says the Defense?

18 MS. HAYES: Please seat Ms. Curry.

19 THE CLERK: Please take the sheet from the clerk.

20 Juror No. 159, Melinda R. Rowan.

21 (Juror No. 159 came forward.)

22 THE CLERK: What says the State?

23 MS. HAMMACK: Please excuse Ms. Rowan-Cooper from this
24 case.

25 THE CLERK: Please return to your seat.

1 Juror No. 165, Frances L. Scott.

2 (Juror No. 165 came forward.)

3 THE CLERK: What says the State?

4 MS. HAMMACK: Please present Ms. Scott.

5 THE CLERK: What says the Defense?

6 MS. HAYES: Please seat Ms. Scott.

7 THE CLERK: Please take the sheet from the clerk.

8 I have that as 12 jurors, Your Honor.

9 THE COURT: Yes, sir. Let's just do one alternate.

10 THE CLERK: One alternate. Strikes are?

11 THE COURT: One and two.

12 THE CLERK: One and two.

13 Juror No. 21, Richard A. Bryant.

14 (Juror No. 21 came forward.)

15 THE CLERK: What says the State?

16 MS. HAMMACK: Please present Mr. Bryant.

17 THE CLERK: What says the Defense?

18 MS. HAYES: Please excuse Mr. Bryant.

19 THE CLERK: Please return to your seat.

20 Juror No. 162, Jennifer Salmon.

21 (Juror No. 162 came forward.)

22 THE CLERK: What says the State?

23 MS. HAMMACK: Please present Ms. Salmon.

24 THE CLERK: What says the Defense?

25 MS. HAYES: Please excuse Ms. Salmon.

1 THE CLERK: Please return to your seat.

2 Juror No. 17, John R. Brooks.

3 (Juror No. 17 came forward.)

4 THE CLERK: What says the State?

5 MS. HAMMACK: Please present Mr. Brooks.

6 THE CLERK: What says the Defense?

7 MS. HAYES: Please seat Mr. Brooks.

8 THE CLERK: Please take a sheet from the clerk.

9 THE COURT: All right. So certain ones of you have
10 that sheet of paper, those are the jurors for the trial of
11 this case.

12 If you do not have one of those sheets of paper, your
13 jury service this week is complete and you are free to go.
14 Have a good week.

15 (WHEREUPON, the remaining jury panel is excused.)

16 THE COURT: If you have a white sheet of paper, don't
17 leave.

18 All right. I neglected to ask, but I'll do so for
19 purposes of the record. Were there any objections to jury
20 selection from the State?

21 MS. HAMMACK: No, Your Honor.

22 THE COURT: From the Defense?

23 MS. HAYES: No, Your Honor.

24 THE COURT: Good. That's a relief. I let everyone go.

25 All right. Folks, who were selected for service on

1 this case, we've got some things to handle before we can
2 actually get started. I know it is very early, but I am
3 going to let you go for lunch.

4 Now, when you leave the courtroom, you will want to
5 follow the bailiffs to your jury room. They will show you
6 where you need to be so that you'll know where to report
7 back to when you come back from lunch. And we'll start the
8 trial of this case after lunch.

9 While you are gone for lunch, do not discuss the case
10 amongst yourselves. Do not discuss the case with anyone
11 else. Do not do any research about the case, about the
12 parties involved, the attorneys, the court staff or anyone
13 else. Everything that you learn about the case must come
14 from within this courtroom.

15 Do not talk to anyone who is involved in the case.
16 That includes the attorneys, that includes the Defendant,
17 that includes any potential witnesses. So if you see any
18 police officers walking around, don't want to talk to them
19 either. Just sort of look straight ahead, keep your head
20 down. They know they're not supposed to talk to you, so
21 they shouldn't be striking up a conversation with you. It
22 will be easy. You won't have to talk to anyone.

23 So when you leave here, you're going to go to the jury
24 room. I'm going to ask you to be back from lunch at one
25 o'clock. We will start the trial at that time. So follow

1 the bailiff out this back door here to your jury room. Be
2 back there at one o'clock. Thank you.

3 (WHEREUPON, the jury is excused for lunch at 11:03
4 a.m.)

5 THE COURT: All right, folks, we're going to start this
6 trial at one o'clock, so folks involved in the trial --

7 Yes.

8 MS. HAYES: Your Honor, the Defense would just ask that
9 Lincoln is on bond and he remain on bond.

10 THE COURT: He can remain on bond over the lunch hour.
11 The jury hasn't been sworn, we haven't technically started
12 yet, so bond continues.

13 So trial folks, be back at one o'clock ready to start.

14 In the interim, we're going to do a guilty plea. So
15 court staff, just hang tight until that plea is done and
16 then we'll take a lunch break. But the trial will start at
17 one o'clock.

18 (WHEREUPON, a lunch recess was taken.)

19 THE COURT: Is the State ready to proceed with trial?

20 MR. WEEKS: The State's ready, Your Honor.

21 THE COURT: Defense ready?

22 MS. HAYES: The Defense is, Your Honor. The Defense
23 would like the Court to know that we have filed a Rule 6
24 objection and we'll be making that Motion at the appropriate
25 time.

1 THE COURT: Okay. Any matters we need to handle
2 pretrial?

3 MR. WEEKS: Nothing from the State.

4 THE COURT: From the Defense?

5 MS. HAYES: None from the Defense.

6 THE COURT: All right. Let's bring in the jury.

7 (WHEREUPON, the jury enters the courtroom at 1:04 p.m.)

8 THE COURT: Good afternoon, folks. We are now ready to
9 begin the trial of the State of South Carolina vs. Jonathan
10 Art Lincoln, the Defendant. I am going to give you some
11 preliminary remarks, but before I do that, I'm going to have
12 the clerk of court place you under oath one more time.

13 THE CLERK: Please stand and raise your right hand.

14 (WHEREUPON, the jury was sworn.)

15 OPENING REMARKS BY THE COURT

16 THE COURT: Folks, before we begin this trial, I want
17 to tell you that this trial will probably be different from
18 what you might expect. Many people do not have the chance
19 to attend actual court sessions as you are doing now. And
20 they think from watching television or movies or reading
21 books that trials are always full of intense action, high
22 drama and riveting circumstances.

23 While all these things may be true at times, this trial
24 is not for entertainment. It is a fundamental part of our
25 democracy and effort to make sure that justice is done

1 between the parties before the Court. Making sure that
2 justice is done is often slow, deliberate and repetitive,
3 the opposite of what you may have seen on television or
4 movies or read in books.

5 This courtroom is a place of honor dedicated to the
6 protection and preservation of citizens rights through what
7 many have called the greatest justice system ever created.
8 The attorneys appearing before you are advocates for the
9 parties they represent, but, first and foremost, they are
10 officers of the court sworn to uphold the integrity and
11 fairness of our judicial system and to help you in
12 understanding the evidence. You should expect them to be
13 professional, competent and ethical in the representation of
14 their client's interest. Remember that you have just taken
15 an oath to try this case and reach a fair and just verdict,
16 and you are also expected to be professional, reasonable and
17 ethical.

18 Thank you for accepting the important responsibility of
19 jury service and for your contribution today to our justice
20 system.

21 What I will now say is intended to serve as
22 introduction to the trial of this case. These remarks are
23 not a charge on the law in this case. I will instruct you
24 on the law applicable to this case at the end of the trial
25 before you retire to consider your verdict. This is merely

1 an explanation of the procedure that we'll follow in the
2 trial so that you may better understand what will be
3 happening.

4 You may not take notes during the trial of this case.
5 It's a short case. It's not an overly complicated case. So
6 I don't want you to be distracted by note taking or what
7 ends up being doodling sometimes.

8 In this case, the Defendant is charged in several
9 indictments filed in this court with the crimes of
10 trafficking in methamphetamine, failure to stop his motor
11 vehicle when signaled by law enforcement, possession with
12 intent to distribute heroin, resisting arrest and possession
13 with intent to distribute cocaine. I'll explain the
14 elements of those crimes to you later.

15 The indictments are simply the charges by which the
16 case is brought into court. They are not in any sense
17 evidence of the allegations they contain. The Defendant has
18 pled not guilty to each of these indictments. The State,
19 therefore, has the burden of proving each of the elements of
20 each of the indictments to you beyond a reasonable doubt.
21 It will be your duty, ladies and gentlemen, to determine
22 whether the State has met that burden.

23 Your purpose as jurors is to find and determine facts.
24 You are the sole judges of the facts. If at any time, I
25 make any comment regarding the facts, you must disregard it.

1 You are to determine the facts from the testimony you hear
2 and the other evidence introduced in court. It is up to you
3 to determine the inferences which you feel may properly be
4 drawn from the evidence. It is especially important that
5 you perform your duty of determining the facts diligently
6 and conscientiously because ordinarily there is no way to
7 correct an erroneous determination of the facts by a jury.

8 On the other hand and with equal emphasis, the same law
9 that makes you the judges of the facts makes me the judge of
10 the law. The law as given by the Court is the only law you
11 may consider. You must accept it and follow it even though
12 you may disagree with it. I cannot tell you what the facts
13 are and you cannot disagree with me about what the law is or
14 what the law should be. Your job is to take the law as I
15 give it to you and apply it to the facts as you find them
16 from the testimony of the witnesses and any other evidence
17 that is introduced. After doing that, you will render your
18 verdict under the solemn oath that you just took as jurors.

19 Until I advise you to begin your deliberations, you
20 must not discuss the case with anyone, including your fellow
21 jurors, friends, family members and anyone involved in the
22 case. This includes discussions face-to-face and those by
23 telephone, e-mail, texts, blogs or any other method of
24 communication.

25 You may not use a computer, cell phone or other

1 electronic device with communication capabilities at any
2 time while in the courtroom or during deliberations. Now,
3 of course, during breaks or meals or overnight, you may use
4 those devices; however, you may not at any time use those
5 devices to get or send information about the case. This
6 includes information about a party, a witness, an attorney
7 or a court officer, news reports about a case, research on
8 any topics raised, any topics you think would be helpful in
9 deciding the case or any testimony presented by any witness.

10 During the trial, do not read, listen to or watch any
11 news reports about this case. This includes anything that
12 may be in the newspapers or on the internet, radio or
13 television. You must not consider anything that you may
14 have read or heard about the case outside the courtroom,
15 whether before or during the trial.

16 After the case is submitted to you, you must discuss it
17 only in the jury room with your fellow jurors. The
18 attorneys and parties in this case have been advised that
19 they are not to talk to you at all. So if you see someone
20 involved in the case and they don't even say hello to you,
21 they are not being unfriendly, they're simply following my
22 instructions.

23 It is important that you keep an open mind and not
24 decide any issue in the case until all the evidence has been
25 presented, the parties have made their closing arguments and

1 I have instructed you on the law in this case. It is your
2 solemn responsibility to determine the guilt or innocence of
3 the Defendant and your verdict must be based solely on the
4 evidence as it is presented to you in this trial and on the
5 law as I instruct you during and at the close of the trial.

6 Now, in just a moment, the Solicitor will make what is
7 called an opening statement in which the Solicitor will
8 explain to you what the issues are in this case or, at
9 least, what the Solicitor thinks the issues are in this
10 case. The attorney for the Defendant may also make an
11 opening statement, although they're not required to do so.

12 What the attorneys tell you during their opening
13 statement is not evidence in this case. It is only their
14 contention as to what the issues are. The evidence in this
15 case will be presented to you by the testimony of sworn
16 witnesses from the witness stand and by exhibits that may be
17 introduced into evidence.

18 Now, from time to time during the trial, you may hear
19 one of the lawyers say something like Your Honor, I believe
20 we have a question of law or a matter of law or, Your Honor,
21 may we approach the bench. Or sometimes, I, myself, might
22 find it necessary to excuse you from the courtroom for a
23 short while so I can discuss a matter of law with the
24 attorneys.

25 The reason for this is because you are the judges of

1 the facts and sometimes when I am making a ruling in
2 connection with whether a particular law applies or does not
3 apply, I might have to make some comment as to the facts in
4 connection with that ruling. I'm not supposed to tell you
5 what I think the facts are, so I will dismiss you from the
6 courtroom for a short while while those discussions take
7 place so I will not influence you and you will not be
8 affected in any way by anything that I might say or do in
9 connection with the facts.

10 In determining what the facts are in this case, you
11 must decide whether or not the testimony of the witnesses is
12 believable. It will be my responsibility to rule as a
13 matter of law as to whether certain testimony is admissible
14 or not, but when the testimony is admitted, whether you
15 believe it is solely for you to determine.

16 In deciding whether to believe a witness, you have the
17 right to consider the interest of any witness, the bias of
18 any witness, the prejudice of any witness, the opportunity
19 for the witness to have seen the matters and things about
20 which the witness may testify and the way the witness acts
21 on the witness stand. You have a right to consider anything
22 that is in the record that will help you evaluate the
23 testimony of the witnesses.

24 That means that it is your duty to pay close attention
25 to the witnesses, to observe them, to listen to the

1 witnesses and to pay close attention to the attorneys and to
2 the Court. Do not let your thoughts wander, but give strict
3 attention to the testimony in this case so that at the end
4 of all of the testimony, after the arguments of counsel and
5 the charge on the law by the Court, you will then be in a
6 position to determine what the facts are and to apply the
7 law to those facts and thus render a true and just verdict.

8 It will be the added duty of the Foreperson to preside
9 in the jury room and be the jury spokesperson here in court,
10 but we will discuss that later in further detail.

11 Now, before we begin, in order to preserve everyone's
12 rights, I will give the attorneys an opportunity to object
13 to anything I have just said to you.

14 Any objection from the State?

15 MR. WEEKS: No, ma'am.

16 THE COURT: From the Defense?

17 MS. HAYES: No, Your Honor.

18 THE COURT: We will now begin the trial of the case.
19 I'll call on the Solicitor and ask you to give your full
20 attention for opening statements.

21 MR. WEEKS: Thank you, Your Honor.

22 OPENING STATEMENT BY THE STATE

23 MR. WEEKS: Ladies and gentlemen, the case before you
24 today and the case that you will listen to evidence from
25 today involves a traffic chase. It involves an individual

1 running for what I would suggest to you is an extremely long
2 period of time in an automobile at high speeds to avoid
3 stopping for the police, blue lights and sirens.

4 Our law in this state, in this country is based on some
5 simply premises, one of which is if you have a driver's
6 license and you're on a public highway that when a police
7 attempts to stop you by the means of blue lights and sirens,
8 it's your duty to pull over in a safe location and see what
9 they want. That's your duty. That's the law in this state
10 that's imposed upon you when you get a driver's license. Or
11 whether you get a driver's license, it's still that same
12 law.

13 We are a society of law. If I could just do what I
14 wanted to all the time, I'd do things different sometimes.
15 Some laws I may agree with, some laws I might not, but it's
16 not my job to do anything that disagrees or disrespects the
17 laws of this state and of this country.

18 The Defendant is charged with five indictments in this
19 case. The five indictments stem from his actions in the
20 early morning hours of February 26th going into February the
21 27th of 2020.

22 Officer Knight, who's a ten-year veteran with the
23 sheriff's department here in Aiken, was stationary on
24 interstate I-20 in Aiken County. He sees a vehicle pass by
25 that the windows are so tinted he can't see anything in the

1 vehicle, so he starts out after the vehicle. And when he
2 does, at some point, the vehicle decides he's not going to
3 stop. He exits off the interstate at Highway 29 -- Exit 29,
4 what we call Wire Road. If you're familiar with I-20,
5 there's 19, there's US 1 and then there's Wire Road in Aiken
6 County.

7 Well, he exits off of that and he does not stop and he
8 does not pay any attention to the blue lights and sirens.
9 Deputy Knight is on the radio calling for assistance. He
10 gets assistance from Deputy Palmer with Aiken County
11 Sheriff's Department. He gets Highway Patrol involved in
12 it. And the whole purpose of all of that is to bring this
13 vehicle to a stop. You need to stop and see what the police
14 officer wants.

15 Well, the person driving that vehicle or the persons in
16 that vehicle, the officer didn't really know at that point,
17 he gets close enough, calls dispatch, runs the license
18 through and gets the registration and license information
19 for the tag on this vehicle. As we all know, that might not
20 necessarily be definitively, but he doesn't know at that
21 point because the person won't stop.

22 So one of the indictments that you will be deliberating
23 on is the charge of failure to stop for a blue light and
24 sirens. It's pretty simple. We'll have the officer's
25 testimony. You're going to have video, several locations

1 and it's going to be that he failed to stop for a blue light
2 and sirens.

3 The next indictment you're going to have to consider is
4 whether or not when the police approached him ultimately the
5 next morning, did he resist arrest. You're going to hear
6 many police officers testify about how he resisted arrest.
7 If I was standing here talking to the Judge with my hands in
8 my pocket like I'm talking to y'all, probably the first
9 thing she's going to do is want me to take my hands out of
10 my pocket. And there's a reason for that and I think you
11 all can understand that.

12 But you're going to hear testimony from somebody who
13 wasn't involved in any of the events of that night. He just
14 happened to be in his house on Anderson Road in Aiken
15 County, getting ready to go to work. He's a farmer, a hard
16 worker. He flips on the light and this man at this table
17 over here is sitting on his back porch steps. It's still
18 dark. I mean, he's going to work early. He's a farmer.
19 He's just sitting there. So he backs up, gets his shotgun
20 and calls the police, calls 911.

21 Well, you'll hear testimony that the police had been
22 looking for this man most of the night prior. So they
23 responded to the 911 call and the location pretty quickly.
24 And when they get there, they have discussions with the
25 Defendant telling him get your hands out of your shirt, get

1 your hands out of your shirt. He doesn't do it. They
2 ultimately wrestle him on the property of the homeowner for
3 several minutes until they're able to get him handcuffed.
4 They tase him, what they call blast a shot. The purpose of
5 doing that isn't to make him pass out, it's to get him to
6 obey the command.

7 This homeowner didn't have a thing to do with anything.
8 It was in the early morning hours he had heard the police
9 going up and down this road, but he finally went to bed.
10 His wife was worried, he was worried. Obviously, there was
11 a lot of activity.

12 I grew up in the country. There are dirt roads. There
13 probably are more dirt roads than there are paved roads
14 around where this particular witness lives. It's before you
15 get to New Holland. I don't know if any of you know where
16 New Holland is, but it's out a ways. It's on the northeast
17 side of Aiken, out toward Wagener. Ultimately, the police
18 arrest the man sitting at Defense table.

19 Prior to arresting him, they spent the night wandering
20 through the woods looking for him, taking the tracking dogs
21 through the woods looking for him. They had already
22 searched the car he was driving, which was registered to
23 him. It had mail in it addressed to him. It had an address
24 that wasn't anywhere in the vicinity of where he decides to
25 stop the car and run. He had prescription bottles with his

1 name on them in the car. He had a shotgun in the car. Had
2 his shoes in the car. Assume it was the shoes he was
3 wearing because when he was arrested the following morning,
4 he wasn't wearing shoes. They've got plenty of evidence
5 that this Defendant was driving the car.

6 The person that was driving the car bails out in the
7 back of a field. Looks like everybody was getting stuck in
8 that field, except for the Defendant. The police car pulled
9 right through that field, but it was a wet, plowed corn
10 field off of New Holland Road going to New Holland. Colt
11 Woody lives half a mile as the crow flies through the woods
12 and fields.

13 The police officers from Aiken County and Highway
14 Patrol, the dogs came and everybody was trying to locate the
15 person that jumped and ran from the vehicle. Registration
16 says it was Jonathan Lincoln. Pill bottles in there say it
17 was Jonathan Lincoln. And that's who they were looking for.
18 And guess who they find on the back porch of Colt Woody's
19 house on Anderson Road with no shoes on, disheveled and just
20 sitting under the carport?

21 You're going to hear all this testimony. I'm
22 previewing this testimony that I don't like to do because it
23 kind of takes away, you know, like watching movie trailers.
24 You know, you've got the best scene in the whole durn movie
25 and you've see it before you ever get to the theater. Well,

1 that's the situation here. These officers were doing their
2 job.

3 And, ultimately, on the morning of February 27th after
4 an all-night pursuit of him, they arrest him. You'll hear
5 from Mr. Woody. He'll get up here and testify about what he
6 observed and when he called 911 and later when the police
7 come out and find Mr. Lincoln. All that goes into the
8 failure to stop and resisting arrest.

9 What they did find in the car was trafficking weight of
10 drugs, three different varieties of drugs, cocaine, heroin
11 and methamphetamine. All in one bookbag and all on the
12 passenger seat of his automobile. And then there were
13 prescription bottles that had his name on it. The amount of
14 drugs is what guides our laws, some of our laws regarding
15 drugs.

16 You know, I do this for a living and I have a hard time
17 sometimes remembering all the intricacies of what our
18 statutes say. We all know that heroin is an extremely
19 dangerous drug. You're going to hear from the analyst from
20 the sheriff's department talk about the drugs that were
21 turned into her. There were 28 grams of methamphetamine.
22 She's going to testify as to how much drugs were turned into
23 her. If you have over a certain amount of heroin, that's
24 classified as possession with intent to distribute heroin.
25 The testimony is going to be he had about ten times more of

1 heroin. He had drug paraphernalia, plastic bags, scales.

2 Sometimes this stuff is kind of like TV. You see stuff
3 on TV that you see in this courtroom. I mentioned the
4 methamphetamine, I mentioned the heroin. He had cocaine.
5 The amount of cocaine that would cause our statutory
6 inferences to -- inferences can be allowed.

7 And he had all that in his car. Nobody else did they
8 see bail out of the car. It was all in close access to him
9 in his car. This is after failure to stop, after he pulled
10 off the road into the back of a field. I don't even know
11 exactly how far it was from where Mr. Lincoln laid his head
12 at night. The address on everything is on the other side --
13 the Jackson side of Aiken, out there going out Pine Log
14 Road, not on the New Holland side. And that's where he
15 bailed in the field and ran through the woods and ended up
16 on Mr. Woody's porch.

17 So what the State will be doing now after the Defense
18 opens, if they choose to open, is putting up our witnesses.
19 It's kind of tedious at times, but y'all bear with us. And
20 at the end of the trial, Ms. Hammack or myself one will come
21 back before you and have another chance to say why the
22 evidence we've presented proves Mr. Lincoln guilty beyond a
23 reasonable doubt of all the charges he's charged. I thank
24 you very much for your attention throughout this trial.

25 THE COURT: Ms. Hayes.

1 MS. HAYES: May it please the Court?

2 OPENING STATEMENT BY THE DEFENSE

3 MS. HAYES: Good afternoon, ladies and gentlemen. Mr.
4 Lincoln is here because he is being accused of a crime. As
5 U.S. citizens, we all know about the Constitution. And our
6 rights in that Constitution is you are innocent until proven
7 guilty. Mr. Lincoln is guilty until he is proven guilty by
8 the State. Really, the State is on trial because the State
9 is the one that has the burden of proof to prove to you
10 beyond a reasonable doubt that Mr. Lincoln committed the
11 crimes that he is accused of.

12 So what I want you to do this afternoon is I want you
13 to keep an open mind. I want you to listen to all the
14 witnesses that will come up and testify. And I want you to
15 be the finders of facts and make sure that the State has
16 done every single thing that they have to do to prove to you
17 beyond a reasonable doubt that Mr. Lincoln is guilty of the
18 crimes that he's accused of.

19 If you find that the State has not met their burden,
20 they have to prove -- it's their job. It's not the
21 Defense's job to prove that he's innocent. He doesn't have
22 to testify. We don't have to put up anything. They're the
23 ones that have to prove to you. And I want you to hold them
24 accountable and make sure that they have done their job.

25 At the end of this, I'm going to come back and talk to

1 you again, but I want you to keep an open mind, listen to
2 everybody and make sure that they have done everything that
3 they're supposed to do, that they have done their job.

4 At the end of this, I'm looking forward to coming back
5 and talking to you, but I think at the end of the day,
6 you'll find out that Mr. Lincoln is not guilty.

7 THE COURT: The State can call their first witness.

8 MR. WEEKS: Thank you, Your Honor. The State would
9 call Sergeant Brandon Knight.

10 THE CLERK: Come up here, please, sir. Place your left
11 hand on the Bible and raise your right hand.

12 BRANDON KNIGHT, after being duly
13 sworn, testified as follows:

14 THE CLERK: Have a seat in the witness chair. State
15 your full name when you're seated.

16 THE WITNESS: Sergeant Brandon Jay Knight, Aiken County
17 Sheriff's Office.

18 DIRECT EXAMINATION

19 BY MR. WEEKS:

20 Q Sergeant, what do you do for Sheriff Michael Hunt?

21 A Special operations division. We do criminal
22 enforcement and warrant services.

23 Q This courtroom has flipped on its head since I last
24 tried a case in it. So I'm going to ask you to pull that
25 little fluffy mic, I think, close to you so that this jury

1 out here can hear you. I know you've got all the belts on
2 and all of that, but kind of raise your voice a little bit
3 because I'm having a little bit of trouble hearing you.

4 A Okay. I'm on special operations with Aiken County
5 Sheriff's Office. We do criminal enforcement and warrant
6 services for the county.

7 Q And is I-20, a section of I-20 in Aiken County?

8 A I-20 that we work is in Aiken County.

9 Q A portion of it is?

10 A Yes.

11 Q How long have you been working for Mike?

12 A I've been with the sheriff's office for ten years.

13 Q And before that, were you in law enforcement?

14 A Five years, I was in corrections with South Carolina
15 before coming to the sheriff's office.

16 Q Have you been through any particular type of training
17 as a deputy for the sheriff?

18 A Yes. I've been through countless number of classes for
19 interdiction.

20 Q What's interdiction?

21 A Interdiction is -- we are looking -- we're stopping
22 vehicles looking for drugs, money that has to do with drugs,
23 also, looking for criminals on the roadways.

24 Q And February 26th of 2020, were you working for the
25 Sheriff then?

1 A I was.

2 Q Were you on duty?

3 A I was.

4 Q And where were you stationed or what were you doing on
5 the night of February 26th into the early morning hours --

6 A I was stationed at I-20 eastbound at the 25-mile
7 marker.

8 Q And eastbound would be headed toward Columbia?

9 A Yes, sir.

10 Q Did you observe anything that night that leads us here?

11 A Yes, sir. I observed a white Dodge Durango with very
12 dark tinted windows cross my view, so dark that I couldn't
13 see a silhouette of anybody in the vehicle.

14 Q And were you perpendicular to the --

15 A I was sitting facing perpendicular to the roadway.

16 Q Okay. Did that strike you as odd?

17 A It does.

18 Q Are windows supposed to have a certain visibility
19 requirement?

20 A In South Carolina, the window tint is 27 percent as
21 legal. Anything under that is illegal.

22 Q So when this vehicle passed you, your headlights were
23 on?

24 A My headlights were on. The headlights would not even
25 shine through the windows it was so dark.

1 Q And that aroused your curiosity. What did you do then?

2 A I then pulled out behind the vehicle. The vehicle
3 switched lanes from the fast lane, the number one, to the
4 number two lane without signaling and, also, reduced speed
5 drastically.

6 Q What was your next step?

7 A The next step was I ran the tag and I initiated my blue
8 lights to perform a traffic stop on a vehicle.

9 Q Could you tell how many people were in the vehicle?

10 A I could not.

11 Q All right. You initiated your blue lights and siren?

12 A First, I initiated blue lights. I observed the vehicle
13 wasn't stopping. I turned on my sirens and the vehicle
14 continued to travel without stopping.

15 Q Did it ever exit the interstate?

16 A The vehicle exited the Wire Road exit off the
17 interstate and continued to go towards Aiken.

18 Q And that would be at Exit 29?

19 A Exit 29.

20 Q Any indication by the driver that vehicle was even
21 going to stop?

22 A The driver gave no indication that it was going to
23 stop.

24 Q And what did you do then?

25 A At that point, I advised our dispatch that the vehicle

1 wasn't stopping. I also advised the Highway Patrol, which
2 was sitting right there at 29 and, also, Sergeant Palmer,
3 advised them that --

4 Q Sergeant Palmer is with your --

5 A Yes.

6 Q And what did they do as a result of your advising them?

7 A Highway Patrol took over the pursuit. Highway Patrol
8 then pulled off. I got back behind the vehicle, continued
9 the pursuit. Sergeant Palmer is PIT certified and has a PIT
10 bumper on his vehicle. I called him to get in front of me
11 --

12 Q Slow down and say that again.

13 A Sergeant Palmer is PIT certified. I called him to take
14 the lead of the pursuit.

15 Q And what kind of specialized vehicle does he have?

16 A He has a Dodge Charger with a PIT bumper on the front.

17 Q PIT, P-I-T?

18 A P-I-T.

19 Q And the purpose of that is to bump the car and make
20 them stop?

21 A That's right.

22 Q Can you kind of describe for me where y'all went?

23 A Yes. From I-20, we went down Wire Road. We went --
24 turned left onto New Bridge --

25 Q Before you turned left onto New Bridge, did you pass

1 the detention center?

2 A We did.

3 Q Did you pass any other houses and locations?

4 A We passed Beaver Dam Road. We passed several
5 neighborhoods going down Wire Road. We passed the detention
6 center.

7 Q Beaver Dam Road intersects with Wire Road?

8 A With Wire Road.

9 Q Bunch of houses there, isn't it?

10 A Yes.

11 Q Okay. So you make a left onto New Bridge Road?

12 A That's correct.

13 Q That's where there in front of one of those elementary
14 schools?

15 A It's a little school, daycare right there on the
16 corner.

17 Q Took a left there, you're still following him?

18 A Still behind him.

19 Q You still got any idea how many people are in the car
20 or what's going on?

21 A Still don't know how many people is in the car or who's
22 even driving the car at this point.

23 Q Okay. So what do you do there? Where does the car go
24 then?

25 A The car continues up New Bridge Road, all the way up to

1 New Holland Road.

2 Q Is that going back north again?

3 A It's going back north towards Wagener.

4 Q What's it do when it gets to New Holland Road?

5 A When it gets to New Holland Road, the vehicle turns
6 left on New Holland Road going towards Highway 39 towards
7 Wagener.

8 Q All right. What did y'all do then?

9 A We continued to pursue the vehicle. The vehicle went
10 off into a field near Highway 39.

11 Q All this time that you're following this vehicle, did
12 y'all communicate -- you and the other officers are
13 communicating on the radio?

14 A We were communicating back and forth.

15 Q For most of it, did you have an in-car video that you
16 looked at?

17 A Yes.

18 Q And State's Exhibit No. 1, can you identify what this
19 is?

20 A This is my dash cam video from my patrol vehicle.

21 Q Okay. And have you watched it with us?

22 A I have.

23 Q Is it a true and accurate copy?

24 A It is.

25 Q The video we watched was two or three hours long. Is

1 this a more chopped-down version?

2 A That's the actual video.

3 Q I know, but did we cut it off at some point?

4 A Yes.

5 MR. WEEKS: I move to introduce this, State's Exhibit
6 No. 1. We've provided the Defense with a copy.

7 MS. HAYES: No objection, Your Honor.

8 THE COURT: State's 1 is admitted without objection.

9 (WHEREUPON, State's Exhibit No. 1 admitted into
10 evidence.)

11 BY MR. WEEKS:

12 Q Officer Knight, after you took a left on New Holland
13 and you pulled off into a field at some point, is that what
14 you said?

15 A That's correct.

16 Q What happened to your vehicle?

17 A My vehicle got stuck in a plowed cornfield.

18 Q And did some other officers' vehicles get stuck?

19 A Yes, there was more vehicles that got stuck.

20 Q And where in the cornfield did the Defendant go?

21 A The Defendant went --

22 Q Or the person you were chasing?

23 A The Defendant went down the middle of the cornfield and
24 went straight to the back, back to the right corner. I went
25 down just a little bit, got stuck on the far left going into

1 the field.

2 Q Did you see what happened to the driver of the vehicle?

3 A From what I seen where I got stuck at was running
4 towards the vehicle, the driver door was open to the
5 vehicle. No other doors were open.

6 Q And nobody else was in the vehicle when you got to it?

7 A No one else was in the vehicle.

8 Q Sergeant Knight, I'm going to hand you what's marked
9 State's Exhibit No. 3 and ask you if you can identify the
10 scene depicted in that photograph?

11 A That is the route that we took during the vehicle
12 pursuit.

13 Q The red lines indicate?

14 A The red lines from I-20 show the vehicle and where we
15 went.

16 Q Did you look at this also on the disk?

17 A That's correct.

18 Q And is this a true and accurate depiction of this?

19 A It is.

20 MR. WEEKS: Your Honor, we move to introduce State's
21 No. 2 and State's No. 3.

22 MS. HAYES: No objection, Your Honor.

23 THE COURT: State's 2 and 3 are admitted without
24 objection.

25 (WHEREUPON, State's Exhibit Nos. 2 and 3 admitted into

1 evidence.)

2 BY MR. WEEKS:

3 Q Officer Knight, I hate the jury setup because I've got
4 my back to them and I'm pretty sure they can't see through
5 me. I've got to figure out where I can stand so they can
6 see.

7 Officer Knight, was it -- what time was it when you
8 started your pursuit? Do you know approximately?

9 A Not off the top of my head. It was before midnight,
10 between 10:00 and 12:00.

11 Q Okay. It was before midnight. Was it on February 26?

12 A It was.

13 Q And when you ended in the cornfield, did you ever
14 pursue in your vehicle any more after that?

15 A No, sir.

16 Q What did y'all do?

17 A We ran to the vehicle, cleared the vehicle. As we were
18 clearing the vehicle, we observed that the vehicle was so
19 full of stuff in the rear and back passenger seat and the
20 front passenger seat that there could be no other person in
21 the car.

22 At that point, we observed shoes on the ground. Looked
23 like footprints going to the wood line that was not shoes.
24 We called the Aiken County tracking team to come to the
25 scene.

1 Q And what does the Aiken County tracking team do?

2 A They got bloodhounds which go off last scent.

3 Q And did they bring one out?

4 A They did.

5 Q Did they locate anybody?

6 A Did not.

7 Q While you were pursuing the car, can you give me an
8 idea of the speeds that y'all reached?

9 A We reached speeds of upwards towards 90 miles an hour
10 and as slow as 55 miles an hour.

11 Q What was the weather like that day?

12 A The weather was slightly rainy.

13 Q Were the conditions, were the lighting conditions such
14 that a normal person, a reasonable person could have seen
15 your blue lights and siren, heard your siren?

16 A They could have heard the sirens. With the rain, they
17 possibly could have seen the lights, definitely.

18 Q With the rain what?

19 A With the rain, you could still see the lights.

20 Q And, at least, one officer trying to pull up beside
21 him?

22 A That's correct. Sergeant Palmer attempted to do a PIT
23 maneuver at one point. Due to the vehicle driving in both
24 lanes, he was unable to do so under safe conditions.

25 Q Well, New Holland Road, how would you describe it as

1 far as --

2 A It is a dark, long, windy road.

3 Q And PIT maneuvers are performed where?

4 A PIT maneuvers are performed on the roadway, but
5 preferably on a straight path.

6 Q Okay. We'll let Sergeant Palmer talk about that. Now,
7 I know that I've asked you before when we were preparing
8 this case, but how long was this chase?

9 A The chase was approximately 30, 35 miles.

10 Q And you were within sight of him the whole time?

11 A Within sight the whole time.

12 Q Can you describe what you found in the vehicle and what
13 you took possession of from the vehicle?

14 A Yes. In the back passenger area of the vehicle, there
15 was a black shotgun with a pistol grip. In the front
16 passenger seat in a bag was the narcotics, drugs that were
17 located. Also, the registration in the glove box. There
18 was mail coming back to the Defendant in the front of the
19 vehicle and the rear of the vehicle along with prescription
20 bottles with his name on them.

21 Q Did you take possession of those?

22 A I did.

23 Q As you took possession of them, what did you do with
24 them?

25 A Logged them into evidence, put them in our evidence

1 locker at the Aiken County Sheriff's Office.

2 Q And how about the drugs?

3 A Completed a drug BEST kit and turned it into our drug
4 lab at the sheriff's office.

5 Q And you say turned it in, what did you do to it?

6 A Put it in an envelope, put it in a secure locker and
7 the drug evidence custodian took possession of it to do the
8 testing.

9 Q Did you have any other dealings with the containers
10 after you put them in the box at the Aiken County Sheriff's
11 Department?

12 A Once I put it in the drug evidence box, I had no more
13 dealings with it.

14 Q You mentioned you found a shotgun in the back?

15 A Yeah, the rear of the vehicle.

16 Q Describe this Durango for me.

17 A White Durango, you've got the rear hatch, the back and
18 two driver seats.

19 Q And I'll show you what's marked as State's Exhibit No.
20 2 and ask you if you can identify what that is -- No. 10,
21 I'm sorry?

22 A That's the shotgun that was in the vehicle.

23 Q Did you receive that shotgun?

24 A I did.

25 Q And turned it into the evidence lock?

1 A Turned it into evidence.

2 MR. WEEKS: Your Honor, move to introduce State's No.
3 10. It's a photograph of the shotgun.

4 MS. HAYES: No objection.

5 THE COURT: State's 10 is admitted without objection.

6 (WHEREUPON, State's Exhibit No. 10 admitted into
7 evidence.)

8 BY MR. WEEKS:

9 Q Officer Knight, other than the drugs and the shotgun,
10 what else did you find in the back?

11 A We found letters with his address on it from the mail.
12 We had an alcohol bottle from the front passenger area,
13 scales, baggies --

14 Q What do you mean scales?

15 A Scales to weigh the weight of narcotics.

16 Q I'll ask you to look at what's marked as State's Nos.
17 4, 5 and 6, and ask you if you can identify those items?

18 A Yes. These are the scales that were secured and placed
19 into evidence that were located in the front passenger seat
20 of the vehicle with the narcotics.

21 MR. WEEKS: I move to admit State's Exhibit Nos. 4, 5
22 and 6.

23 THE COURT: Any objection?

24 MS. HAYES: No objection.

25 THE COURT: State's 4, 5 and 6 are admitted without

1 objection.

2 (WHEREUPON, State's Exhibit Nos. 4, 5 and 6 admitted
3 into evidence.)

4 BY MR. WEEKS:

5 Q Deputy Knight, I hand you what's marked State's 7 and 8
6 and ask you if you can identify those, yes or no?

7 A Yes, I can.

8 Q And what are they?

9 A These are the pill bottles that were located in that
10 bag, also, that has the Defendant's name on them.

11 Q These pill bottles, 7 and 8, have the Defendant's name?

12 A This one -- these right here has Jonathan Lincoln's
13 name on it here and Mr. Lincoln's name on it here.

14 Q So his name is on both bottles?

15 A Yes.

16 Q Did you find any other items of concern?

17 A Yeah, these bags were --

18 Q I hand you what's marked as State's No. 9.

19 A These bags, little ziplock bags, little blue bags were
20 also found in the vehicle along with the narcotics. The
21 bags that are used to put narcotics in for sale.

22 Q These are little tee-tiny ziplock bags?

23 A Yeah, usually used for meth, heroin and cocaine.

24 Q Officer Knight, what other kind of alleged drug-related
25 stuff did you find in the bag5?

1 A There was a torch lighter. There was glass meth pipes,
2 glass pipes used for smoking meth.

3 Q And the ziplock bags kind of remind me of the three
4 bears. You've got your little tiny ziplock bags --

5 A That's correct.

6 Q -- and you've got bigger ziplock bags?

7 A Have bigger bags.

8 Q Did you find some of those, too?

9 A Those were in the vehicle, also.

10 Q Did you find anything dealing with -- possibly dealing
11 with marijuana?

12 A Yes.

13 Q And what was that?

14 A It was marijuana paraphernalia in the vehicle.

15 Q Paraphernalia?

16 A Paraphernalia.

17 MR. WEEKS: Move to introduce State's Nos. 8, 9 and 7,
18 Your Honor.

19 MS. HAYES: No objection, Your Honor.

20 THE COURT: State's 7, 8 and 9 are admitted without
21 objection.

22 (WHEREUPON, State's Exhibit Nos. 7, 8 and 9 admitted
23 into evidence.)

24 BY MR. WEEKS:

25 Q Officer Knight, you said at some point during your

1 testimony, you got dispatch to run the tag?

2 A That's correct.

3 Q Do you routinely get stuff from the Department of
4 Corrections -- or the Department of Motor Vehicles that can
5 show us what information you get?

6 A Yes, sir.

7 Q And did you receive something, ultimately, State's
8 Exhibit No. 11, and can you identify that?

9 A Yes. This is the South Carolina Department of Motor
10 Vehicle registration for that vehicle and the plate I ran,
11 which comes back to a Jonathan Lincoln.

12 Q Okay.

13 MR. WEEKS: Your Honor, the State would move to
14 introduce State's No. 11.

15 THE COURT: Any objection?

16 MS. HAYES: No objection.

17 THE COURT: State's 11 is admitted without objection.

18 (WHEREUPON, State's Exhibit No. 11 admitted into
19 evidence.)

20 BY MR. WEEKS:

21 Q Officer Knight, in reference to State's No. 3, blue
22 line goes up -- and this is a smaller version of it. We're
23 fixing to publish a tape if Your Honor allows it. The car
24 pulled to the back of a field, would that be --

25 A That's correct.

1 Q And in front of the car, what was it?

2 A Wood line.

3 Q All right. After you got up to the car, did you
4 personally know the officers who foot tracked the Defendant
5 or tried to locate the Defendant or whoever it was at that
6 point?

7 A No, we note the area. We didn't go to the driver's
8 door where the driver bailed from running through the woods.
9 That way the tracks would be fresh for the dogs.

10 Q But the dogs didn't ultimately catch anybody?

11 A At the end of it, no.

12 Q But aside from the dogs, did you and other officers go
13 to houses and locations?

14 A Once the dogs got through the woods, we had officers
15 roaming the area. Myself, Sergeant Palmer and Blackwater
16 were there. We also went through the woods looking.

17 Q Physically walking through the woods?

18 A Physically walking through the woods.

19 Q Did y'all ever check the house at [REDACTED] Anderson Road?

20 A We stopped just shy of that address. We seen the
21 streetlight down the road that shines near that house. At
22 that point, we didn't go no further. We turned around and
23 went back to our vehicles.

24 Q Because you would have been waking up people, wouldn't
25 you?

1 A Yes.

2 Q But y'all did do that, didn't you?

3 A Eventually, we did, yes, all night.

4 MR. WEEKS: Your Honor, the State would ask permission
5 to publish to the jury State's Exhibit No. 1.

6 THE COURT: Any objection?

7 MS. HAYES: No, Your Honor.

8 THE COURT: Go ahead.

9 (WHEREUPON, State's Exhibit No. 1 published to the
10 jury.)

11 BY MR. WEEKS:

12 Q Officer Knight, the dog barking at the end of that
13 video clip was your dog, wasn't it?

14 A It was my dog, yes, sir.

15 Q Your's is a --

16 A Narcotic canine.

17 Q -- narcotic certified dog, but that wasn't a
18 bloodhound, was it?

19 A That wasn't a bloodhound, no.

20 Q And the officer that ran across at the tail end of that
21 was you running up to the car in question?

22 A That's right.

23 Q Were you stuck at that point?

24 A I was stuck.

25 Q Now, you said earlier that you were the one that

1 collected the drugs that were found in the car?

2 A That's correct.

3 Q And you put them in -- what you call this?

4 A BEST kit.

5 Q A BEST kit?

6 A Yes, sir.

7 Q And then it's sealed?

8 A Sealed.

9 Q And then the analyst does their thing and reseals it?

10 A Then reseals it, yes.

11 Q I'm handing you what's marked State's ID for purposes
12 of this moment in time. Is that what you turned in?

13 A It is, this is what I turned in.

14 Q And you put your initials on it and that's what lets
15 you know that?

16 A I did, that's correct.

17 Q Did you tamper or alter these drugs?

18 A I did not.

19 Q Or do anything to them other than collect them?

20 A I collected them and put them in the bag for evidence.

21 Q And those drugs are the ones you put in the drug
22 lockbox?

23 A That's correct.

24 Q And you don't have any further access to it after you
25 put it in there?

1 A I do not.

2 Q When you saw the Defendant's driver's information, what
3 address came back?

4 A [REDACTED] Alpine Drive.

5 Q Alpine Drive?

6 A Yes, in Aiken.

7 Q Do you know where that's at?

8 A It is on this side of Aiken.

9 Q This side being the south side of Aiken?

10 A South side, yes.

11 Q Off of Pine Log Road on the south side?

12 A That's correct.

13 Q Nowhere near this incident location?

14 A Yes, nowhere near.

15 MR. WEEKS: Answer any questions the Defense has.

16 THE COURT: Let's take a short break prior to
17 cross-examination.

18 I'll send you, ladies and gentlemen, to your jury room.
19 Don't discuss the case amongst yourselves or with anyone
20 else. We'll bring you back shortly.

21 Everyone else remain seated in the courtroom.

22 (WHEREUPON, the jury exits the courtroom at 2:19 p.m.)

23 THE COURT: For the folks remaining in the gallery, I
24 want to make it clear that this is a court of law. This is
25 a jury trial. It is not a football game. It's not a movie.

1 It's not a sport. To the extent that you are permitted to
2 be in here because it is a public place, you must remain
3 quiet. It is not your responsibility to comment on or
4 evaluate the evidence in this case or make determinations of
5 what happened or what did not happen. That is solely for
6 the jury to determine.

7 So when you are sitting talking to each other -- you
8 shouldn't be talking at all, but to the extent that you need
9 to say something to one another, you must whisper to one
10 another. You are sitting within inches of the jurors and I
11 could hear your comments up here about you didn't see him in
12 the video, I didn't see him in there, did you? So,
13 certainly, the jury could hear you because I could hear you.
14 If you are unable to control yourself, unable to remain
15 quiet, then I'll have to put you out of the courtroom and/or
16 hold you in contempt of court, which means going to jail.

17 Let's take a 15-minute break.

18 (Short recess.)

19 THE COURT: Let's bring the jury, please.

20 (Jury enters the courtroom at 2:46 p.m.)

21 THE COURT: Folks, we still have Sergeant Knight on the
22 stand. He's still under oath.

23 Ms. Hayes, cross-examination.

24 MS. HAYES: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MS. HAYES:

2 Q Good afternoon, Sergeant Knight.

3 A Good afternoon.

4 Q How are you doing today?

5 A Doing good.

6 Q On February 26th, the night of this incident, you
7 didn't actually see Mr. Lincoln driving the car, did you?

8 A No.

9 Q And Mr. Lincoln wasn't present at the scene when you
10 searched his car; isn't that correct?

11 A Correct.

12 Q And the cocaine, meth and the heroin that you found and
13 seized out of the car was found in the passenger seat,
14 correct?

15 A That's correct.

16 Q It wasn't packed with all the other belongings in the
17 car?

18 A That's correct, it was in the passenger seat in the
19 back.

20 MS. HAYES: No further questions. Thank you.

21 THE COURT: Anything further from this witness?

22 REDIRECT EXAMINATION

23 BY MR. WEEKS:

24 Q One thing to clear up, when your car got stuck, did you
25 see the car in the back of the field?

1 A I could see the car in the back of the field.

2 Q You were looking at the passenger side?

3 A I was looking at the rear passenger side of the
4 vehicle.

5 Q Did you see anybody get out of that side?

6 A No, no one got out of the passenger side of the
7 vehicle.

8 Q And the car itself had the driver's side door open when
9 y'all approached?

10 A That's correct.

11 MR. WEEKS: Nothing further, Your Honor.

12 THE COURT: Anything further from this witness?

13 MS. HAYES: No, Your Honor.

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

15 Call your next witness.

16 MS. HAMMACK: Thank you, Your Honor. The State calls
17 Sergeant Palmer.

18 THE CLERK: Place your left hand on the Bible and raise
19 your right hand.

20 FRANCES CLARKE PALMER, after being
21 duly sworn, testified as follows:

22 THE CLERK: Have a seat in the witness box. Please
23 state your full name, spelling your last name.

24 THE WITNESS: Sergeant Frances Clarke Palmer, it's
25 P-A-L-M-E-R, with the Aiken County Sheriff's Office.

DIRECT EXAMINATION

BY MS. HAMMACK:

Q Good afternoon, Sergeant Palmer.

A Good afternoon.

Q Can you tell the jury, what do you do for a living at the sheriff's office?

A I'm a sergeant over community policing and special operations divisions. Along with that, I also assist Sergeant Knight in criminal interdiction and warrants as well.

Q So as an example, what do you do on any given day at work?

A Depends day-to-day, sometimes I'm doing community policing, sometimes I'm on the interstate assisting in interdiction.

Q So as a general rule, even though your day-to-day work varies, are you typically sitting behind a desk or are you out on the road in Aiken?

A Out on the road.

Q And how long have you been working for the sheriff's office?

A Five years.

Q Were you working on the night of February 26th, 2020?

A Yes, ma'am.

Q And what were you doing that night?

1 A I was on the interstate with Sergeant Knight. I don't
2 remember where I was originally. I think I had just
3 completed a stop when I heard Sergeant Knight call out his
4 traffic stop and that his vehicle was not stopping for him.

5 Q And when you say Sergeant Knight called out his traffic
6 stop and the vehicle wasn't stopping, is that the case we're
7 here on today?

8 A Yes, ma'am.

9 Q Now, when he called that out, did you go to assist him?

10 A Yes, ma'am.

11 Q And where did you go in order to assist Sergeant
12 Knight?

13 A I was on the interstate as well. I exited at the 29.
14 I was shortly behind him and then I, ultimately, took over
15 the pursuit near Wire and New Bridge Road.

16 Q And so when you say Exit 29, is that the Wire Road
17 exit?

18 A Yes, ma'am.

19 Q Is that closer to Columbia from the US 1 exit?

20 A Yes, ma'am.

21 Q And when you get off on Wire Road from I-20, which
22 direction did you go?

23 A Go right back towards Aiken.

24 Q And as Wire Road is traveling back towards Aiken, does
25 it kind of follow under I-20 for a while before curving

1 south towards downtown?

2 A Yes, ma'am.

3 Q So when you were traveling on Wire Road, at what point
4 did you get behind Sergeant Knight?

5 A I think it was shortly after the interstate, I was
6 pretty close to him. I think I was behind him somewhere
7 around Frontage Road, at that point, I caught up to him.

8 Q So right by the interstate?

9 A Yes, ma'am.

10 Q Do you remember about what time of day this was?

11 A I know it was pretty late in the evening. It was dark
12 out. It was around -- before -- sometime before midnight,
13 10:00 to 12:00.

14 Q And this part of I-20 and Wire Road, is this in Aiken
15 County?

16 A Yes, ma'am.

17 Q And the whole time that you were assisting on this
18 attempted traffic stop, did that entire thing take place in
19 Aiken County?

20 A Yes, ma'am.

21 Q So when you were on Wire Road, just past Frontage Road,
22 how fast were you going, do you remember?

23 A At that time, I believe I was going around 90 to catch
24 up to him.

25 Q What's the speed limit on the road there?

1 A That section, I believe, is around 45.

2 Q Is there any part of Wire Road where the speed limit is
3 90?

4 A No, ma'am.

5 Q So as you're traveling, do you catch up with Sergeant
6 Knight and the vehicle he's trying to stop?

7 A Yes, ma'am.

8 Q And after doing this, what description or knowledge do
9 you have of the vehicle that y'all were trying to stop?

10 A At that time, he had put out it was a white Durango.

11 Q And you mentioned that you, ultimately, passed Sergeant
12 Knight to take over the pursuit. Why was that?

13 A Sergeant Knight called me up -- I am what we call PIT
14 certified, P-I-T certified. It's a two-day course. It's
15 Pursuit Intervention Technique. It's designed to -- the
16 front of my car pushes the rear of the subject vehicle into
17 a controlled spin, ending most pursuits.

18 Q And you've gone through that training?

19 A Yes, ma'am.

20 Q Do you have any kind of special equipment or special
21 vehicle that allows you to do that?

22 A Yes, ma'am. I have a 2018 Dodge Charger with a full
23 wrap-around bumper on the front end. It goes from the front
24 of the left wheel all the way around to the front of the
25 right wheel. We call it a PIT bumper.

1 Q And at what point did you pass Sergeant Knight to take
2 charge of that pursuit?

3 A I believe it was right around the area of the Aiken
4 County Detention Center.

5 Q And that's still on Wire Road?

6 A Yes, ma'am.

7 Q So if you're traveling on Wire Road and you pass the
8 Aiken County Detention Center, what's coming up in front of
9 you?

10 A Coming up, we have May Royal. There's -- right there
11 on the right is May Royal once you pass the detention
12 center. Then you have -- there's a church on the right.
13 And then we, ultimately, took a left on New Bridge Road.
14 There's also a lighted church right there at the corner of
15 New Bridge and Wire.

16 Q May Royal is where the Aiken County Animal Shelter is?

17 A Yes, ma'am, that's there as well.

18 Q And when you talk about New Bridge, is there an
19 elementary school across the street from there?

20 A I believe it's some sort of school, yes, ma'am.

21 Q When y'all got to New Bridge, what happened?

22 A Take a left on New Bridge and, at that point, I'm
23 primary in the pursuit. The Dodge Durango, I'm directly
24 behind it. And then we continue down New Bridge towards New
25 Holland.

1 Q Sergeant Palmer, this is kind of a silly question, but
2 why did you turn onto New Bridge?

3 A Because the Durango did.

4 Q Okay. So you're still following the Durango?

5 A Correct.

6 Q Do you have your lights and sirens on?

7 A Yes, ma'am.

8 Q Is the Durango responding in any way to your lights and
9 sirens?

10 A As far as stopping, no, ma'am. During the pursuit, he
11 was swerving all over the road. He was also speeding up and
12 slowing down, which gave me some kind of indication he knew
13 I was there.

14 Also, further down, I think it was when we turned onto
15 New Holland -- we eventually go down New Bridge, dead end at
16 New Holland, take a left onto New Holland Road where I did
17 attempt to get up next to the vehicle. And he did respond
18 by pulling into the opposite lane of travel to block me
19 getting up next to him to initiate the PIT maneuver.

20 Q I want to go step-by-step through all of these roads
21 that you're talking about, but I want to go back to Wire
22 Road for a minute. What kind of road is Wire Road?

23 A It's a two-lane road.

24 Q And in addition to the detention center and some
25 churches and the animal shelter and a school, what kind of

1 buildings or structures are on the side of Wire Road?

2 A There's a community on the left side, it's a horse
3 community, several houses there. There's also mixed houses
4 on the left and right depending on what area of Wire Road
5 you're on.

6 Q So houses where people live?

7 A Yes, ma'am.

8 Q You said y'all turned onto New Bridge, had y'all not --
9 had the Durango not turned onto New Bridge, where would you
10 ultimately -- what road would you ultimately have run into?

11 A Ultimately, come into the bypass in Aiken.

12 Q Okay. And if you keep going across the bypass, you get
13 to the police department?

14 A Yes, ma'am. You actually would pass two at that point.
15 You would pass Aiken Public Safety is now there on the right
16 once you come up to Beaufort Street and then the Aiken
17 County Sheriff's Office is a little bit further down on the
18 right as well.

19 Q But y'all didn't make it to the police department or
20 the sheriff's office or downtown or any of that?

21 A No, ma'am.

22 Q So when the Durango turned onto New Bridge, you
23 continued on New Bridge, any signs of stopping or responding
24 to your lights and sirens on New Bridge?

25 A No, ma'am.

1 Q About what speed were y'all traveling on on New Bridge?

2 A On New Bridge, I believe we started about 60, 70 miles
3 an hour. Like I said, he was speeding up, slowing down the
4 entire time. We average around 60, 70, 80 miles an hour.

5 Q Is there any point on New Bridge Road where the speed
6 limit is 60, 70, 80 miles an hour?

7 A No, ma'am.

8 Q Do you know what the speed limit is on New Bridge?

9 A It starts out at 35. I believe it goes up to 45. I'm
10 not sure if it goes up any higher.

11 Q And are there houses where people live on New Bridge
12 Road?

13 A Yes, ma'am, especially that first part. There's houses
14 all the way down New Bridge, but the first part once you
15 turn off of Wire is fairly populated with houses.

16 Q And at the time that y'all were pursuing this vehicle,
17 were there ever incidents where you had oncoming traffic?

18 A A couple times, yes, ma'am.

19 Q And New Bridge, what kind of road is that?

20 A It's also a two-lane road.

21 Q You said that in addition to the vehicle speeding up
22 and slowing down that it was going in the middle of the
23 road. Was it straddling that center line between two lanes?

24 A Yes, ma'am.

25 Q And what did that do for you as far as your ability to

1 perform your PIT technique?

2 A Pretty much knocks out the ability. I do need -- to
3 safely maneuver the PIT maneuver, I need a lane that I can
4 travel in next to the subject vehicle.

5 Q So as this vehicle is straddling that center line on a
6 two-lane road and you need another lane to pull into, did
7 you, ultimately, make a decision about whether or not to
8 perform that PIT technique?

9 A Yes, ma'am. Ultimately, I did decide not to perform
10 the PIT technique in this pursuit.

11 Q And when you decided not to perform that PIT technique,
12 was that for your safety and the other people's safety?

13 A Yes, ma'am. For the safety of everybody involved, we
14 look at -- like Sergeant Knight testified to, we look for as
15 straight path as possible. PIT maneuver can be performed in
16 curves, but it's more likely to cause vehicle, what we call
17 -- I'm trying to think of the word, the vehicle not to
18 perform like we want to during the spin.

19 Q Now, New Bridge Road, is it a relatively straight road?

20 A No, ma'am, it's fairly curvy.

21 Q And as y'all were traveling on New Bridge Road, did the
22 Durango ever stop on New Bridge Road?

23 A No, ma'am.

24 Q What happened when the vehicle reached the end of New
25 Bridge Road?

1 A It took a left onto New Holland Road.

2 Q Did you continue behind the vehicle on New Holland
3 Road?

4 A Yes, ma'am.

5 Q When it took a left on New Holland Road, where does
6 that take you to, ultimately?

7 A Ultimately, goes out to Highway 39, which goes between
8 Monetta and Wagener.

9 Q So you started out on the interstate, came all the way
10 down almost to the bypass to downtown Aiken and now we're
11 going back east towards Monetta, Wagener and all that?

12 A Yes, ma'am.

13 Q As you're traveling on New Holland Road -- what kind of
14 road is New Holland?

15 A It's another two-lane road. The speed limit is 45 to
16 55 miles an hour, fairly curvy with a couple of straight
17 shots, but they're not very long.

18 Q Do you recall what speed y'all traveled at on New
19 Holland?

20 A New Holland, I believe we got up to 90 at some points.
21 Again, around 70, 80, 90 is average speed of travel.

22 Q And the whole time this is going on, Sergeant Palmer,
23 did you keep your lights and sirens on this whole time?

24 A Yes, ma'am.

25 Q And did the Durango stay within your sight during the

1 whole time this was going on?

2 A Yes, ma'am.

3 Q And it's continuously traveling down the road, no stops
4 or anything like that?

5 A That's correct.

6 Q Ultimately, as y'all were traveling down New Holland,
7 did the Durango ever leave the road?

8 A Yes, ma'am. He, ultimately, pulled off into what was a
9 plowed field at the time. Knowing the limits of my vehicle,
10 I stayed on the road and paralleled the subject vehicle for
11 a good bit. When he got to the back of the field, from my
12 angle, it looked like he was possibly turning around to go
13 back in the direction we had come because we do see a lot of
14 that in pursuits. And by the time I turned around, I
15 realized that he had actually kind of halfway turned around
16 and then stopped. And that was the end of it.

17 Q What did you do you when you realized the Durango had
18 stopped in the field?

19 A I got out of my vehicle. I pulled off the road and got
20 out and ran out to the Durango.

21 Q What did you see when you got out to the Durango?

22 A When I got out to the Durango, the only door that was
23 open was the driver door and no one else was in the vehicle.

24 Q Did you stay there on scene?

25 A Once the vehicle was cleared, Sergeant Knight and

1 Sergeant Blackwater stayed with the vehicle. I backed out
2 from the location. While waiting on the bloodhound tracking
3 team, I started setting up what we call the parameter to box
4 the subject in.

5 Q When you say parameter, can you explain to the jury
6 what y'all are trying to do with the parameter?

7 A So the parameter, what we try to do is, basically, form
8 a large circle around where the subject could run preventing
9 him from escaping out of that area and, therefore, allowing
10 the dog team to work their magic when they can and follow
11 that scene until they find them. Because, hopefully, while
12 having that parameter set up, he sees that he can't get out
13 of it, so he beds down or something of the sort.

14 Q After you set up that parameter, did you do anything
15 else to assist at that point?

16 A Eventually, the -- I think it was a little while later,
17 the dog team did respond out. After their track was
18 unsuccessful, myself, Sergeant Knight and Sergeant
19 Blackwater responded to the next road down off of Anderson
20 Road, which if you go out the back of the field, on the
21 other side of the wood line from the field is a dirt road
22 that a couple of people live on. We walked that entire road
23 and cleared all of the buildings on that road.

24 Q Sergeant Palmer, when you initiated your blue lights
25 and sirens, do you have a video camera in your car that

1 comes on?

2 A Yes, ma'am.

3 Q And what does that video camera -- what view does it
4 have and what does it record?

5 A It's from the front passenger area of my dash.

6 Q Does it show inside the vehicle or does it show the
7 road?

8 A It shows the road.

9 Q And did you have your video on that night?

10 A Yes, ma'am.

11 Q Sergeant Palmer, I'm showing you what has been
12 premarked as State's Exhibit 12. Will you take a look at
13 that and see if you recognize it?

14 A Yes, ma'am. It appears to be my dash camera footage.

15 Q And have you seen your dash camera footage from that
16 night?

17 A Yes, ma'am.

18 Q Is this a true and accurate copy of that dash camera
19 footage from this particular traffic stop?

20 A Yes, ma'am.

21 MS. HAMMACK: Your Honor, at this time, we'd move
22 State's Exhibit 12 into evidence.

23 THE COURT: Any objection?

24 MS. HAYES: Objection, Your Honor. This is cumulative
25 evidence. This is the same as what we saw.

1 MS. HAMMACK: Your Honor, he's testified that Sergeant
2 Knight began pursuit. He caught up to him and then
3 surpassed Sergeant Knight and got directly behind the
4 vehicle. He's got a different view and shows different
5 footage from what Sergeant Knight's footage shows.

6 THE COURT: State's 12 is admitted over the Defendant's
7 objection.

8 (WHEREUPON, State's Exhibit No. 12 admitted into
9 evidence.)

10 MS. HAMMACK: Your Honor, at this time, we would move
11 to publish State's 12.

12 THE COURT: Yes, ma'am.

13 (WHEREUPON, State's Exhibit No. 12 published for the
14 jury.)

15 BY MS. HAMMACK:

16 Q Sergeant Palmer, at the end of that video, you stated
17 he's either bush bonded or stuck. He's bush bonded, I see
18 the door open. What does bush bonded mean?

19 A It's police lingo for he ran from the car.

20 Q Okay. So by the time you got up to the car, was
21 anybody in the car?

22 A No, ma'am.

23 Q And when you say the door is open, which door are you
24 talking about?

25 A The driver door.

1 Q And Sergeant Palmer, the whole time that you pursued
2 this Durango, about how far was that pursuit?

3 A I believe it was around 30 miles.

4 Q Thirty miles from where you started on I-20, got off on
5 Wire Road, came all the way almost to downtown, turned onto
6 New Bridge and then back up New Holland going back towards
7 Wagener?

8 A Yes, ma'am.

9 Q Sergeant Palmer, where that vehicle pulled into the
10 field, what's past that field?

11 A Wood line -- or are you talking about down the road?

12 Q No, wood line.

13 A Okay.

14 Q Is that what you saw at the back of that field where
15 the car was?

16 A Yes, ma'am.

17 Q And when you went up there, which way was the car
18 facing? Was it facing back towards the road where your car
19 was or was it facing the woods?

20 A So if this was the road here, the car was kind of at an
21 angle like this where the passenger side and the rear were
22 towards the road.

23 Q And you mentioned going and walking a dirt road. Are
24 you familiar with Anderson Road?

25 A Yes, ma'am.

1 Q Where is Anderson Road in relationship to where that
2 field was?

3 A That would be the -- so if he would have continued down
4 the road instead of going into the field, it would have been
5 the next road on the right, I believe.

6 Q So the next road on the right off of New Holland is
7 Anderson Road?

8 A Yes, ma'am.

9 Q And in that video, you -- well, excuse me, not the
10 video, sitting up here today, you mentioned you knew your
11 vehicle and you didn't pull into the field. What condition
12 was that field in that night?

13 A Everything was pretty wet. Around that time, there was
14 a lot of rain. I don't know if you saw in the video, there
15 were several spots on the road that were still washing with
16 water. So the field was pretty saturated.

17 MS. HAMMACK: Sergeant Palmer, I don't have any more
18 questions for you. Please answer any questions the Defense
19 may have.

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION

23 BY MS. HAYES:

24 Q Good afternoon, Sergeant Palmer. How are you?

25 A Good afternoon.

1 Q On your pursuit on February 26th, you didn't see Mr.
2 Lincoln driving the car, did you?

3 A No, ma'am, I didn't see who was driving the vehicle.

4 Q Were you present when the car was searched?

5 A No, ma'am, I had backed out from the location.

6 MS. HAYES: I have no further questions of this
7 witness.

8 THE COURT: Anything further, Ms. Hammack?

9 MS. HAMMACK: No, Your Honor.

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

11 Call your next witness.

12 MS. HAMMACK: Your Honor, before we do, may I ask if
13 either Sergeant Knight or Sergeant Palmer wish that they may
14 be excused?

15 THE COURT: Any objections to them being excused from
16 the Defense?

17 MS. HAYES: No, Judge.

18 THE COURT: All right. You're both free to go. Thank
19 you.

20 MS. HAMMACK: Your Honor, the State's next witness is
21 Colt Woody. And I believe Mr. Weeks went to go get him.

22 THE COURT: Okay.

23 Mr. Woody, come forward.

24 THE CLERK: Place your left hand on the Bible and raise
25 your right hand.

1 COLT WOODY, after being duly sworn,
2 testified as follows:

3 THE CLERK: Have a seat in the witness box. Please
4 state your full name, spelling your last.

5 THE WITNESS: My name is Colt Woody.

6 DIRECT EXAMINATION

7 BY MR. WEEKS:

8 Q Colt, where do you live?

9 A [REDACTED] Anderson Road, Wagener.

10 Q What do you do for a living?

11 A I'm a corn and peanut farmer.

12 Q How long you been doing that?

13 A My whole life, 35, 40 years.

14 Q In February, specifically, February the 27th of 2020,
15 were you living on Anderson Road?

16 A I was, yes, sir.

17 Q Same location?

18 A Yes, sir.

19 Q Who lives there with you?

20 A My wife, Shannon.

21 Q I'm going to call your attention to the nighttime or
22 the early morning of February the 27th of that year. Were
23 you home?

24 A I was, yes, sir.

25 Q Did you notice anything going on in your area?

1 A Well, when I went to bed, there was nothing going on,
2 but then starting about 9:30, ten o'clock, then I heard
3 sirens going up and down Anderson Road. I didn't know what
4 was going on, so my wife messaged our next door neighbor
5 about a quarter of a mile down the road from us --

6 Q You can't say what anybody else said, but did you have
7 a commotion in your area?

8 A We did.

9 Q And if you came out your driveway and took a right,
10 you'd be on Anderson Road; is that correct?

11 A That's correct.

12 Q And does it intersect with New Holland?

13 A It does.

14 Q How far?

15 A Three-quarters of a mile, roughly, six-tenths of a
16 mile.

17 Q If you walk straight out your driveway and across those
18 fields in front of your house, how far would New Holland
19 Road be in your estimation?

20 A Just right in front, about the same.

21 Q And on that -- during the nighttime of February 27th,
22 that early morning, what did you do after you heard the
23 sirens?

24 A Well, I went and turned the carport lights on. My
25 pickup is parked under there, so I just turned the lights on

1 for safety and went back to bed. I guess it was probably,
2 roughly, early morning, the sirens finally quit and we went
3 to sleep until the next morning.

4 Q And what did you do the next morning? What was your
5 routine?

6 A I get up somewhere between 5:00 and 5:30, walk through
7 the house and turn the lights on walking through the house.
8 Of course, the carport lights were still on. I've got a
9 door there at the carport with glass in it, so I just --
10 after turning the lights on through the house, walked up to
11 that door to look towards the barn, just looking out. And
12 as I walked up to the door, I saw a man sitting on my back
13 porch steps.

14 Q Can you describe him?

15 A He had -- I think he had a light jacket on, no shoes,
16 socks. His back was towards me.

17 Q Did he ever move, ever say anything?

18 A No.

19 Q Did you ever say anything to him?

20 A Did not.

21 Q What did you do at that point?

22 A I backed up about as fast as I could because I was so
23 startled. I ran to the bedroom, got the shotgun, called 911
24 and waited for the police.

25 Q Did you ever confront him?

1 A Did not.

2 Q Did he ever leave?

3 A Did not.

4 Q Did he ever say anything?

5 A No.

6 Q The porch lights or the carport lights were on?

7 A Absolutely, yeah, bright.

8 Q Bright?

9 A Bright lights.

10 Q And your truck was parked up under there?

11 A That's right.

12 Q What all do you keep in your truck?

13 A All kinds of tools, air compressor, four wheeler.

14 Q You called the police. Did they respond?

15 A They did.

16 Q When they got there, was he still sitting on the porch?

17 A He was.

18 Q Hadn't moved at all?

19 A Hadn't moved at all.

20 Q Did the county officers arrive in some short order?

21 A It took 15 to 20 minutes.

22 Q And what happened then?

23 A They confronted him and he didn't want to do what they

24 wanted.

25 Q What did they have to do? What did you see them do?

1 A They wrestled him down to the ground. I mean, he
2 wouldn't subdue and put his hands behind his back, so they
3 wrestled around there, nearly plumb up under my pickup.

4 Q Did they punch him or do anything to him?

5 A No. I didn't see any punching, no, sir.

6 Q Did he say anything that you could hear during that?

7 A Not that I'm aware of.

8 Q And what were they telling him to do?

9 A Put your hands behind your back.

10 Q And what happened to him? Could you see?

11 A They finally -- they finally got his hands behind his
12 back and got him handcuffed and picked him up and took him
13 over to the car.

14 Q Your house there is in Aiken County?

15 A Yes, sir, it is.

16 MR. WEEKS: Thank you. Answer any questions the
17 Defense has for you, Colt.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION

20 BY MS. HAYES:

21 Q Good afternoon, Mr. Woody.

22 A Yes, ma'am, good afternoon.

23 Q The person that was on your back porch, did he try to
24 rob you?

25 A Did not, no.

1 Q He didn't try to come into your house, did he?

2 A No, ma'am.

3 Q He wasn't trying to hide from you?

4 A He didn't know I was there.

5 Q He was just sitting there?

6 A He was just sitting there with his back towards the
7 door, towards the house.

8 MS. HAYES: I don't have any further questions. Thank
9 you.

10 THE COURT: Anything further from this witness?

11 MR. WEEKS: No further questions.

12 THE COURT: Okay. Mr. Woody, you may step down.

13 Any objection to Mr. Woody being excused?

14 MS. HAYES: No objection.

15 THE COURT: All right. You're free to go, sir.

16 THE WITNESS: Thank you.

17 THE COURT: Thank you.

18 Call your next witness.

19 MS. HAMMACK: The State calls Deputy -- formerly Deputy
20 Czekaj, now, Deputy Ferrell.

21 THE CLERK: Place your left hand on the Bible and raise
22 your right.

23 AGNIESZKA FERRELL, after being duly
24 sworn, testified as follows:

25 THE CLERK: Have a seat in the witness box. State your

1 full name as soon as you're seated.

2 THE WITNESS: My full name is Agnieszka Ferrell.

3 DIRECT EXAMINATION

4 BY MS. HAMMACK:

5 Q And Deputy Ferrell, just for our court reporter, will
6 you spell your last name?

7 A It's F-E-R-R-E-L-L.

8 Q Thank you. Deputy Ferrell, will you tell the jury what
9 you do for a living?

10 A Yes, ma'am. I'm a sworn deputy for Aiken County
11 Sheriff's Office.

12 Q And how long have you been doing that?

13 A Six and a half years, two years in the detention
14 center.

15 Q And what do you do as a general rule on a daily basis?

16 A Patrolling.

17 Q All right. So patrolling, what does that mean? Are
18 you sitting at a desk waiting on your phone to ring or where
19 are you at on a daily basis?

20 A Well, just driving around town making sure that
21 everything is like it's supposed to be, doing a lot of
22 patrol checks.

23 Q Do you have a particular area of the county that you're
24 assigned to?

25 A Yes, ma'am, I'm usually around Monetta, Monetta area,

1 which is Highway 39, between Monetta all the way to New
2 Holland Road.

3 Q And were you working for the sheriff's office on
4 February 27th, 2020?

5 A Yes, ma'am.

6 Q What shift were you on that day?

7 A Morning shift.

8 Q And on morning shift, what does that mean as far as
9 what time you're getting to work?

10 A Well, usually, it's 6:00 a.m. to 6:00 p.m., but a lot
11 of deputies, including myself, we sign in around 5:15, 5:20.

12 Q Did you sign in around 5:15, 5:20 that morning?

13 A Yes, ma'am.

14 Q How quickly did you get a call that morning?

15 A Well, right after we signed in, I went to get gas from
16 our fuel point, which is located on May Royal, and within 20
17 minutes, I got the call for a suspicious person.

18 Q And what road is May Royal off of?

19 A Wire Road. It's between Wire Road and Columbia
20 Highway, North.

21 Q May Royal, where y'all's gas station is, is that right
22 there by the animal shelter?

23 A Yes, ma'am.

24 Q And when you were getting gas and you got a call for a
25 suspicious person, where did that call send you to?

1 A It send me to New Holland -- it was Anderson Road off
2 of New Holland Road.

3 Q And did you have any idea of what you were looking for
4 when you got there?

5 A Suspicious person, which was described as
6 African-American male, that's all.

7 Q Were you sent to a particular address on Anderson Road?

8 A Yes, ma'am, it was [REDACTED] Anderson Road.

9 Q And is that here in your jurisdiction in Aiken County?

10 A It is actually -- it is in the jurisdiction of Aiken
11 County, yes, ma'am.

12 Q Do you remember what the weather was like that morning?

13 A It was cold and kind of drizzling.

14 Q And when you got out at [REDACTED] Anderson Road, what's
15 actually at Anderson Road?

16 A I'm sorry, I didn't hear the question.

17 Q What's actually at [REDACTED] Anderson Road?

18 A Oh, yes, ma'am. It's a residence and quite big farm --

19 Q And -- oh, I'm sorry, I don't want to interrupt you.

20 A It's farmland and a big residence.

21 Q And when you got to [REDACTED] Anderson Road, where did you
22 stop your vehicle?

23 A It was on the side of the residence, I believe it was
24 left side. The vehicle was facing the carport, which is
25 open carport attached to the residence.

1 Q And when you got there, did you approach the house or
2 the carport?

3 A Yes, ma'am. Immediately, upon my arrival, I could
4 observe the person that matched the description of the
5 suspicious person sitting on the steps at the carport.

6 Q And when you saw the person matching the description of
7 the suspicious person sitting on the steps of the carport,
8 what was that person doing?

9 A He was -- the person was pretty much sitting. He had
10 his hands tucked inside of the shirt and he was hiding his
11 face inside of the shirt as well. It appeared like he's
12 cold.

13 Q So when you first walked up, could you see his face or
14 his hands?

15 A No, ma'am.

16 Q Could you see what he was wearing?

17 A Yes, ma'am, he was wearing jeans with, I think he had
18 like a big hole on his knees and dark-colored long-sleeved
19 shirt, no shoes.

20 Q What kind of -- well, let me ask you this, what
21 condition was he in? Did he have anything on him?

22 A Well, he was covered in -- I don't know how to say it,
23 but snot. He had his face and his shirt was covered in
24 snot.

25 Q Was there anything on his clothes?

1 A There was a lot of dirt and grass and a lot of dirt.

2 Q Was he wet?

3 A Well, when we actually come to the point of handcuffing
4 the subject, yes, he was cold. His clothes were wet.

5 Q His clothes were wet?

6 A Yes, ma'am.

7 Q Now, when you first got there and you saw him and you
8 can't see his face and you can't see his hands, what did you
9 do?

10 A Well, I asked him first if he's okay. I just wanted to
11 make sure that he doesn't need any help. And the second
12 thing is, pretty much for our safety, we ask the subjects to
13 show us their hands.

14 Q And you say that's for your safety. Is that to make
15 sure that they don't have anything that could hurt
16 themselves or you or the homeowner?

17 A That's correct, yes, ma'am.

18 Q And when you asked him to show you his hands, did he?

19 A No, ma'am. He had his hands tucked in and he just wave
20 his fingers around his face through the shirt. That's how
21 he showed us his hands.

22 Q And after you asked him to show you his hands and he
23 didn't, what did you do next?

24 A There was another deputy, Deputy Driscoll, he gave him
25 several orders and then later, like, within minutes, he did

1 not comply. So we, actually, had to force him to the ground
2 and get control of his arms, which were still tucked in.

3 When he fell to the ground after we put a lot of force
4 on him, he was laying on his stomach and his arms were under
5 his stomach. He was very hard to actually get control of
6 his arms.

7 Q So he was not complying with what Deputy Driscoll was
8 telling him to do?

9 A No, ma'am, he was not complying. And like I said, we
10 had a very hard time to actually get ahold of his arms.

11 Q And were you trying to get ahold of his arms, again,
12 for his safety and your safety and everyone's safety?

13 A Yes, ma'am. And the safety of the homeowner as well.

14 Q Is it your understanding -- well, tell me -- I'll get
15 back to that in just a minute. The whole time that this was
16 going on, I see you've got a black box on your uniform, what
17 is that?

18 A My --

19 Q What are you wearing right now?

20 A Oh, yes, ma'am. It's my body-worn camera.

21 Q And were you wearing your body-worn camera the day this
22 happened?

23 A Yes, ma'am, I was.

24 Q And did it record what happened?

25 A Yes, ma'am, it recorded the entire incident, but I

1 believe there was no sound.

2 Q Have you had a chance to review that camera footage to
3 ensure it's from that day?

4 A Yes, ma'am.

5 MR. THOMPSON: Your Honor, may we approach?

6 THE COURT: Yes.

7 (WHEREUPON, a bench conference was held.)

8 THE COURT: All right, ladies and gentlemen of the
9 jury, do y'all need a break? Raise your hand if you need a
10 little bit of a break, a cup of coffee, coke, something like
11 that? I know people get a little sleepy after lunchtime and
12 I don't want anybody to doze off, lose focus.

13 Do you want to stand and stretch? Do you want to go
14 back to your jury room? Raise your hand if you need a break
15 at this time.

16 (No hands raised.)

17 THE COURT: All right. Let's continue on with your
18 examination.

19 MS. HAMMACK: Thank you, Your Honor.

20 BY MS. HAMMACK:

21 Q Deputy Ferrell, I'm showing you what's been premarked
22 as State's Exhibit 13. Is that your body-worn camera
23 footage from this morning?

24 A Yes, ma'am.

25 Q And is it a true and accurate copy of what happened

1 that morning?

2 A Yes, ma'am.

3 MS. HAMMACK: Your Honor, at this time, we would move
4 State's Exhibit No. 13 into evidence.

5 THE COURT: Any objection?

6 MR. THOMPSON: No objection.

7 THE COURT: State's 13 is admitted without objection.

8 (WHEREUPON, State's Exhibit No. 13 admitted into
9 evidence.)

10 MS. HAMMACK: And, Your Honor, we'd like to publish it
11 at this time.

12 THE COURT: Yes, ma'am.

13 (WHEREUPON, State's Exhibit No. 13 published for the
14 jury.)

15 BY MS. HAMMACK:

16 Q Deputy Ferrell, when you got the call to respond to a
17 suspicious person, the person you found in the carport at
18 ■ Anderson Road, was that person supposed to be there?

19 A No, ma'am.

20 Q And after that person refused to follow your's and
21 Deputy Driscoll's commands, were y'all trying to arrest him?

22 A We tried to just detain him for our safety and for the
23 safety of the homeowner to find out what's going on pretty
24 much at this time. And he did not want to show us his arms,
25 his hands.

1 Q And did you, ultimately, attempt to arrest him for
2 disorderly conduct?

3 A No, ma'am, he was placed under arrest right after we
4 handcuffed him. It was not our intention at first.

5 Q Okay. Now, when we watched your video, at one point,
6 you had a black object in your hand. What was that?

7 A It was my taser.

8 Q Did you have to use your taser?

9 A Yes, ma'am, I had to use my taser to activate dry stun
10 on the subject to comply with our orders.

11 Q And when you say activate dry stun, that sounds like
12 something off of Power Rangers. What does that mean?

13 A It just gives an electric shock. It doesn't
14 incapacitate a person, it just gives electric shock to the
15 body.

16 Q And do you use that on somebody that's not following
17 your commands or is fighting?

18 A Yes, ma'am.

19 Q And when you activated that dry stun, did it,
20 ultimately, affect the person?

21 A Yes, ma'am. We were able to get ahold of one of the
22 subject's arms. And then I think within a minute, or less
23 than a minute, I had to activate a dry stun again to get in
24 compliance with his other arm.

25 Q Is that because he was still fighting y'all?

1 A Yes, ma'am.

2 Q How many deputies did y'all have out there?

3 A At the time, there was just myself and Deputy Driscoll.
4 Another two deputies showed up, Deputy Deas and Deputy
5 Givens.

6 Q And after y'all finally got him handcuffed, did you
7 attempt to get him in the patrol car to take him on in?

8 A Yes, ma'am. Those three deputies, they escorted the
9 subject to my patrol vehicle. And he was still not
10 complying with putting his feet inside of the vehicle.

11 Q So after he's in handcuffs and he's arrested and y'all
12 are trying to take him, he's still not doing what you're
13 asking him to do?

14 A Yes, ma'am.

15 Q How many deputies did it take to get him in the patrol
16 car?

17 A Three.

18 Q While we were watching your video, there were several
19 things that were handed to you that came off of his person.
20 It looks like a wallet and some cards. Did you have a
21 chance to examine those?

22 A Yes, ma'am, briefly. The first thing that was handed
23 to me was a wallet. I was just trying to find out who is
24 the subject because he was not telling us his name. And the
25 first ID that was located in the wallet, it didn't match the

1 description of the subject. The picture was different from
2 the subject. And then Deputy Deas handed me another ID,
3 which was the subject's ID.

4 Q So the second ID was the subject's ID. Were you able
5 to confirm it by matching the picture with him?

6 A Yes, ma'am.

7 Q And what was the name on that ID?

8 A Lincoln, Jonathan.

9 Q And when you say Lincoln, Jonathan, you're reading that
10 last name first, then first name?

11 A Yes, ma'am, last name is first, Lincoln, then Jonathan.

12 Q Were you able to identify the person you arrested that
13 day?

14 A Yes, ma'am.

15 Q And was that Jonathan Lincoln?

16 A Yes, ma'am.

17 Q And the person you arrested that day and charged with
18 resisting arrest, do you see him here in the courtroom
19 today?

20 A Yes, ma'am.

21 Q Can you identify him by telling us where he's at in the
22 courtroom and what he's wearing?

23 A He's at the table on the right side wearing, I believe,
24 gray long shirt.

25 MS. HAMMACK: Your Honor, let the record reflect that

1 the witness has identified the Defendant.

2 THE COURT: Yes, ma'am.

3 MS. HAMMACK: Deputy Ferrell, I don't have any further
4 questions for you. Please answer any questions the Defense
5 might have for you.

6 THE WITNESS: Thank you.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION

9 BY MS. HAYES:

10 Q Good afternoon, Deputy Ferrell.

11 A Good afternoon, ma'am.

12 Q When you approached the man sitting on the porch, he
13 wasn't under arrest at that point, was he?

14 A No, ma'am, he wasn't.

15 Q He wasn't under arrest at the time he was on the
16 ground, was he?

17 A No, ma'am, he wasn't.

18 Q Your testimony was once he was placed in handcuffs, he
19 was under arrest?

20 A Yes, ma'am, he's under arrest for disorderly conduct.

21 Q And you testified that he wasn't under arrest for
22 disorderly conduct?

23 A No, ma'am, he was not under arrest when we tried to --
24 at first, we tried to detain the subject. And after the
25 fight and everything, we actually applied the handcuffs and

1 we informed that he's under arrest.

2 Q So was he charged with disorderly conduct?

3 A Yes, ma'am.

4 MS. HAYES: No further questions.

5 THE COURT: Anything further from this witness?

6 MS. HAMMACK: No, Your Honor.

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

8 THE WITNESS: Thank you.

9 THE COURT: Any objection to Deputy Ferrell being
10 excused?

11 MS. HAYES: No objection.

12 THE COURT: You're free to go. Thank you.

13 THE WITNESS: Thank you.

14 THE COURT: Call your next witness.

15 MS. HAMMACK: Your Honor, the State calls Amber
16 Collins.

17 THE CLERK: Place your left hand on the Bible and raise
18 your right.

19 AMBER COLLINS, after being duly
20 sworn, testified as follows:

21 THE CLERK: Have a seat in the witness chair and state
22 your full name.

23 THE WITNESS: Amber Way Collins.

24 DIRECT EXAMINATION

25 BY MS. HAMMACK:

1 Q Good afternoon. I don't know whether to call you
2 Officer or Ms. How do you want me to address you?

3 A Amber's fine, whatever you like.

4 Q Thank you. Amber, what do you do for a living?

5 A I'm the forensic drug chemist for Aiken County
6 Sheriff's Office.

7 Q And as a forensic drug chemist, what does that mean
8 that you do?

9 A I analyze all of the thought-to-be controlled
10 substances that are collected throughout the county.

11 Q And Amber, there's a microphone in front of you with a
12 cover on it. I just want to make sure that the back of the
13 jury can hear you.

14 A Okay.

15 Q Did you have to go for any particular education or
16 training in order to become a forensic drug chemist?

17 A I have a Bachelor's Degree in chemistry and I was
18 trained by the South Carolina Law Enforcement Division, or
19 SLED.

20 Q And after you conducted that training -- was that class
21 training and practical, hands-on training?

22 A Yes, ma'am, it was both.

23 Q And once you completed that training and began testing
24 controlled substances collected by law enforcement here in
25 Aiken County, do you have to do any ongoing training or

1 education to stay up to date with science and information?

2 A When able, I attend conferences, but every Friday, I
3 meet with three other chemists within the state and we go
4 over each other's case work.

5 Q And, Amber, this might be an unfair question, but do
6 you know about how many times you've tested a substance here
7 in Aiken County?

8 A Over 10,000.

9 Q How many years have you been doing it?

10 A Fifteen.

11 Q And, Amber, have you ever testified in court before?

12 A Yes, ma'am.

13 Q About how many times?

14 A Seventeen.

15 Q Have you ever been qualified as an expert before?

16 A Yes, ma'am.

17 Q About how many times have you been qualified as an
18 expert?

19 A Seventeen.

20 Q And when you've been qualified as an expert, have you
21 come to testify about how you identify and analyze
22 controlled substances?

23 A Yes, ma'am.

24 MS. HAMMACK: Your Honor, at this time, we would offer
25 Ms. Collins as an expert in drug identification and

1 analysis.

2 THE COURT: Any voir dire?

3 MR. THOMPSON: No objection.

4 THE COURT: All right, ladies and gentlemen, normally,
5 a witness must testify as to their personal observations,
6 what they saw, smelled, touched, taste and heard, et cetera
7 and, generally, do not give opinion testimony. However,
8 when someone is qualified by virtue of their training,
9 knowledge and experience in some particular field, they are
10 permitted to give you opinion testimony within the area of
11 their expertise and the reason for their opinions.

12 Ms. Collins is qualified as an expert in the area of
13 drug identification and analysis. You do not have to accept
14 her opinions as the gospel, so to speak. Just like any
15 other witness, you give her testimony the weight and
16 credibility you think it deserves.

17 Ms. Hammack.

18 MS. HAMMACK: Thank you, Your Honor.

19 BY MS. HAMMACK:

20 Q Amber, did you have an opportunity to test any
21 substances related to this case?

22 A Yes, ma'am.

23 Q When you test any substance submitted to you, where do
24 you get those items from?

25 A There's a locker, it's like an old US dropbox postal

1 locker outside that's locked and I have the key. There's a
2 camera on it. I retrieve the items from there.

3 Q So when any deputy for the sheriff's office collects a
4 substance that they believe to be drugs, is that what
5 they're supposed to do is put it in that locker?

6 A They're supposed to fill out a BEST evidence kit and
7 put it in the envelope and drop it in the locker.

8 Q And that envelope, is it sealed so nobody else can open
9 it?

10 A Yes, ma'am, it's a tamper-evident pouch, so that if
11 there was any form of tampering, you would be able to see
12 it.

13 Q And, specifically, you would be able to see it?

14 A Correct.

15 Q And when an officer puts drugs into this drug locker,
16 can that officer then access that drug locker and get those
17 drugs back for any reason?

18 A No, ma'am.

19 Q Who can access that drug locker?

20 A You said can?

21 Q Who can?

22 A Me, myself.

23 Q So you have the only key to that drug locker?

24 A Yes, ma'am.

25 Q And it's under surveillance by a camera?

1 A Yes, ma'am.

2 Q Do you personally go collect drugs out of that locker
3 to test or do you make someone else go get them?

4 A No, ma'am, I do it.

5 Q So did you go get the drugs out of the drug locker in
6 this case?

7 A Yes, ma'am.

8 Q And when you got those drugs, were they in a BEST
9 evidence kit?

10 A Yes, ma'am.

11 Q And was that BEST evidence kit sealed?

12 A Yes, ma'am.

13 Q And, Amber, when you look at a BEST evidence kit, if
14 there was any indication that it had been opened or changed
15 or altered or tampered with, would you test those drugs?

16 A Absolutely not.

17 Q Amber, I'm going to hand you what's at this point only
18 been marked for identification. Will you take a look at
19 this and see if you recognize it?

20 A Yes, ma'am.

21 Q And how do you recognize it?

22 A It's one of our Aiken County Sheriff's Office BEST kits
23 and my initials are maintained here and where I sealed it.

24 Q So when you seal a BEST kit, is that after you examine
25 what's inside of it?

1 A Yes, ma'am.

2 Q And you initial over where you've sealed it?

3 A Yes, ma'am.

4 Q If somebody were to then go back after you and open
5 that, would it disrupt your initials?

6 A Yes, ma'am.

7 Q So you could look at that and see if it's been opened?

8 A Correct. It has not.

9 Q And when you look at that, can you see who submitted
10 that to the drug locker for your examination?

11 A Officer Knight.

12 Q And that BEST kit, does it say when that was submitted?

13 A The date it was sealed was 2/27/2020.

14 Q And, again, if there was anything wrong with that,
15 would you test it?

16 A No, ma'am.

17 Q Amber, I'm going to ask you to do something that, as
18 you've testified, nobody else has done yet. I'm going to
19 ask you to open that BEST kit.

20 A Okay.

21 Q Scissors okay?

22 A Yes, that's fine. This is a first for me. Okay.

23 Q Amber, inside of that BEST kit, is there just a single
24 substance?

25 A No, ma'am.

1 Q So there are multiple substances inside that BEST kit?

2 A Yes, ma'am.

3 Q When you test an item that's been submitted to you, if
4 you have several substances submitted to you, do you test
5 them separately?

6 A Yes, ma'am.

7 Q And when you test substances, what are you trying to
8 determine?

9 A If there's a controlled substance present.

10 Q And when you say a controlled substance, what does that
11 mean?

12 A Anything like methamphetamine, heroin, cocaine, crack,
13 anything along those lines, pills, prescriptions, little bit
14 of everything.

15 Q And did you test the multiple substances in this case?

16 A Yes, ma'am.

17 Q And when you test them, if -- well, whether you can
18 come to a conclusion or not, do you produce a report about
19 what you've done and what you found?

20 A Yes, ma'am.

21 Q And in that report, do you separate the different items
22 in your conclusion based on the different items?

23 A Yes, ma'am.

24 Q Amber, in this case, did you test each of those items
25 in your hand?

1 A Yes, ma'am.

2 Q And in each of those items, were you able to form a
3 conclusion based on a reasonable degree of scientific
4 certainty as to the identification of those items?

5 A Yes, ma'am.

6 Q Do you have your report with you?

7 A I do.

8 Q Specifically, I want to start with items numbers one
9 and two --

10 THE COURT: Yes, sir.

11 MR. THOMPSON: Your Honor, at this moment, I have a
12 matter that needs to be taken up outside the presence of the
13 jury.

14 THE COURT: Okay.

15 Ladies and gentlemen of the jury, please return to your
16 jury room. Don't discuss the case amongst yourselves.
17 We'll bring you back out shortly.

18 (WHEREUPON, the jury exits the courtroom at 4:10 p.m.)

19 THE COURT: Yes, sir.

20 MR. THOMPSON: Your Honor, I, of course, cannot predict
21 the future and do not know how to read minds, but I would
22 object to this report being entered into evidence insomuch
23 as the report, Your Honor, has one, two, three, four, five,
24 six, seven, eight, nine, ten, eleven, it has 12 different
25 items on it, some of which are prescription medication for

1 Mr. Lincoln that was found in Mr. Lincoln's car that's not
2 illegal for him to have because he has a prescription for
3 it.

4 I would just ask that it be -- I think it would be
5 difficult to enter the report into evidence and for the jury
6 to see a report that's got all kinds of redactions on it.
7 It's going to make it look bad and it's probably more
8 prejudicial than it is probative.

9 We have absolutely no objection if she's going to talk
10 about how hey, this is cocaine, this is heroin, this is
11 methamphetamine that I tested and was found in this BEST
12 kit. But the report itself I think is misleading in that it
13 contains information about things that are not illegal for
14 Mr. Lincoln to have.

15 THE COURT: Correct, but given the fact that there has
16 been testimony about prescription drugs and those
17 prescription bottles with his name entered into evidence,
18 does this simply not complete the picture? I mean, how is
19 it prejudicial?

20 MR. THOMPSON: Your Honor, I would also say,
21 apparently, there are some other things that he's not
22 charged with at this time that are on the report. And
23 that's my only argument, that it's misleading in terms of
24 whether he's guilty or innocent of the charges before us
25 today.

1 But, again, we don't have any objection at all to Ms.
2 Collins testifying about the fact that there is drugs that
3 were in the indictments and the weights of those drugs. I
4 don't have an objection to it.

5 THE COURT: Understood. We're also talking about a
6 report I've never seen.

7 I don't know what you're going to say, Ms. Hammack.

8 MS. HAMMACK: I may can save us some time, Your Honor.
9 I don't intend on entering the report into evidence. And,
10 specifically, the reason I'm asking Ms. Collins item-by-item
11 is because there are other items, such as fentanyl,
12 prescription drugs and marijuana. And because we are not
13 prosecuting him today for those substances, I was not going
14 to ask her about those or enter those.

15 MR. THOMPSON: And with that in mind, I would withdraw
16 my objection.

17 MS. HAMMACK: And that's why I'm having her open it so
18 we just enter the drugs for which we're prosecuting him
19 today.

20 THE COURT: Understood. Sounds like we've worked it
21 out.

22 THE WITNESS: Can I ask a question?

23 THE COURT: Sure.

24 THE WITNESS: Am I going to be pulling anything out of
25 here?

1 MS. HAMMACK: No.

2 THE WITNESS: Okay. Because there's fentanyl and other
3 stuff, I'd prefer gloves and a mask.

4 MS. HAMMACK: I'm not going to ask you to open the
5 bags, but the separate, like, meth -- okay.

6 THE COURT: Let's take five minutes or so.

7 (WHEREUPON, a short recess was taken.)

8 THE COURT: Bring the jury in.

9 (WHEREUPON, the jury enters the courtroom at 4:25 p.m.)

10 THE COURT: Ms. Hammack, you may continue with your
11 examination.

12 MS. HAMMACK: Thank you, Your Honor.

13 BY MS. HAMMACK:

14 Q Amber, I want to bring your attention to items one and
15 two from your report.

16 A Okay.

17 Q What were the items you tested in items one and two?

18 A Item one was three plastic corner bags containing
19 crystal-like substance. Item two was two plastic bags
20 containing crystal-like substance.

21 Q And did you test both of those items?

22 A Yes, ma'am.

23 Q And were you able to come to a conclusion as to what
24 those items were to a reasonable degree of scientific
25 certainty?

1 A Yes, ma'am.

2 Q What were those items?

3 A They were both found to be methamphetamine.

4 Q And what was the total weight of the methamphetamine in
5 those five bags?

6 A You making me do math. Around 49 grams.

7 Q Item one was how many grams?

8 A 1.53 grams.

9 Q And item two was how many grams?

10 A 47.57 grams.

11 Q And, Amber, are those items before you now?

12 A Yes, ma'am. Would you like me to pull them out?

13 Q I would love you to pull them out.

14 A (Witness complied.) This one is item two --

15 Q Give me just a second.

16 A Item two and item one.

17 Q So item two you've stated was 47 grams approximately of
18 methamphetamine?

19 A Yes, ma'am.

20 MS. HAMMACK: I am marking now as State's Exhibit 16
21 and entering that into evidence.

22 THE COURT: Any objection?

23 MR. THOMPSON: Without objection.

24 THE COURT: State's 16 is admitted without objection.

25 (WHEREUPON, State's Exhibit No. 16 admitted into

1 evidence.)

2 BY MS. HAMMACK:

3 Q And, Amber, you stated item one, you concluded, was
4 1.53 grams of methamphetamine?

5 A Yes, ma'am.

6 MS. HAMMACK: I am marking that as State's Exhibit 17
7 and at this time, we would move State's Exhibit 17 into
8 evidence, Your Honor.

9 THE COURT: Any objection?

10 MR. THOMPSON: Without objection.

11 THE COURT: State's 17 is admitted without objection.

12 (WHEREUPON, State's Exhibit No. 17 admitted into
13 evidence.)

14 BY MS. HAMMACK:

15 Q Amber, I'd like to refer you to items three and four
16 that you tested?

17 A Yes, ma'am.

18 Q What were the items that you tested in items three and
19 four?

20 A Item three was a plastic bag containing powdered
21 substance, four was a plastic bag containing powdered
22 substance.

23 Q And were you able to form a conclusion as to the
24 identity of those substances to a reasonable degree of
25 scientific certainty?

1 A Yes, ma'am, both were found to be cocaine.

2 Q And what was the weight of cocaine on item three?

3 A Point 96 grams.

4 Q And what was the weight of cocaine on item four?

5 A Point 60 grams.

6 Q And can you pull those items for me?

7 A Yes, ma'am. This one is number three.

8 Q And item three that you testified as point 96 grams of
9 cocaine I am marking as State's Exhibit 14.

10 MS. HAMMACK: At this time, Your Honor, we would move
11 State's 14 into evidence.

12 THE COURT: Any objection?

13 MR. THOMPSON: Without objection.

14 THE COURT: State's 14 admitted without objection.

15 (WHEREUPON, State's Exhibit No. 14 admitted into
16 evidence.)

17 THE WITNESS: This is number four.

18 BY MS. HAMMACK:

19 Q Amber, item four that you identified as 0.60 grams of
20 cocaine, I am marking as State's Exhibit 15.

21 MS. HAMMACK: At this time, we would move State's 15
22 into evidence, Your Honor.

23 MR. THOMPSON: Without objection.

24 THE COURT: State's 15 is admitted without objection.

25 (WHEREUPON, State's Exhibit No. 15 admitted into

1 evidence.)

2 BY MS. HAMMACK:

3 Q Amber, I'd like to bring your attention to item number
4 five that you tested in this case. What was the item you
5 tested that was labeled item five?

6 A Plastic corner bag containing rock-like substance.

7 Q And did you test that item?

8 A Yes, ma'am.

9 Q And were you able to come to a conclusion as to the
10 substance you tested to a reasonable degree of scientific
11 certainty?

12 A Yes, ma'am. Heroin was found.

13 Q And was there a weight on that heroin?

14 A Yes, ma'am, 1.49 grams.

15 Q Can you pull the 1.49 grams of heroin that you tested?

16 A Yes, ma'am. Number five.

17 MS. HAMMACK: At this time, I am marking that heroin as
18 State's Exhibit 18.

19 And Your Honor, we would move State's 18 into evidence.

20 MR. THOMPSON: Without objection.

21 THE COURT: State's 18 is admitted without objection.

22 (WHEREUPON, State's Exhibit No. 18 admitted into
23 evidence.)

24 BY MS. HAMMACK:

25 Q Amber, when you test these substances, you are looking

1 to identify what they are and also the weight or how much
2 they are. All of these items that you have testified to,
3 you have testified to their weight in grams?

4 A Yes, ma'am.

5 Q Is there another unit of measurement for heroin?

6 A Yes, ma'am.

7 Q Is that grains?

8 A Grains, yes, ma'am.

9 Q And I know you already said something about me making
10 you do math --

11 A I already got it written down.

12 Q Do you know how many grains of heroin are in the 1.49
13 grams of heroin that you identified in this case?

14 A Yes, ma'am.

15 Q How many grains of heroin is that?

16 A 22.99 grains.

17 MS. HAMMACK: Amber, I don't have any further questions
18 for you. Please answer any questions the Defense may have.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Cross-examination.

21 MR. THOMPSON: No questions, Your Honor.

22 THE COURT: All right. Thank you. You may step down.

23 THE WITNESS: Thank you, Judge.

24 MR. WEEKS: One very short recall witness to ask a
25 question.

1 THE COURT: Okay.

2 MR. THOMPSON: Without objection.

3 MR. WEEKS: Your Honor, the State would recall Officer
4 Knight.

5 THE COURT: All right. Officer Knight is still under
6 oath. You may proceed.

7 MR. WEEKS: Thank you.

8 DIRECT EXAMINATION

9 BY MR. WEEKS:

10 Q Officer Knight, at some point past the morning hours of
11 February the 27th, 2020, did you obtain warrants for the
12 arrest of Jonathan?

13 A I did. I completed warrant applications and had it
14 turned into bond court.

15 Q Okay. So, specifically, the warrant for --

16 A The warrant for failure to stop --

17 Q -- trafficking in methamphetamine?

18 A Trafficking in methamphetamine, PWID heroin, PWID
19 cocaine, failure to stop.

20 Q Thank you. And those warrants were, ultimately, served
21 on him and that's what brings us here today?

22 A Yes.

23 MR. WEEKS: Thank you.

24 THE COURT: Anything from this witness?

25 MS. HAYES: No --

1 BY MR. WEEKS:

2 Q What does PWID mean?

3 A Possession with intent to distribute.

4 THE COURT: Now, any cross-examination of this witness?

5 MR. THOMPSON: No questions.

6 THE COURT: Okay. Thank you. You can step down again.

7 Call your next witness.

8 MR. WEEKS: The State rest.

9 THE COURT: Okay.

10 Ladies and gentlemen of the jury, the State has now
11 rested its case. You've heard all the testimony you're
12 going to hear from the State. All that remains is the --
13 the next step would be any defense witnesses, if they're
14 going to happen. They may not, they don't have to. But it
15 is already a little after 4:30, so we're going to call it
16 quits for the day and send you home.

17 Do not discuss the case amongst yourselves or with
18 anyone else. Do not do any research about the case. Go
19 home and be back in your jury room at 9:30 tomorrow morning
20 and we'll finish the case then. Thank you.

21 (WHEREUPON, the jury exits the courtroom and is excused
22 for the day at 4:36 p.m.)

23 THE COURT: Any motions?

24 MR. THOMPSON: Your Honor, two. First of all, we would
25 make a general motion for a directed verdict in that in a

1 review of the evidence in the light most favorable to the
2 State that they have failed to prove the indictments against
3 Mr. Lincoln.

4 THE COURT: That is denied.

5 MR. THOMPSON: Secondly, we would move specifically on
6 the charge of resisting arrest. We would argue that the
7 video is not terribly helpful and that the officer testified
8 that he is not under arrest or they're not seeking to put
9 him under arrest until after they get him into handcuffs.
10 He may be resisting detainment earlier than that, but he's
11 not resisting arrest. He is not charged with resisting
12 detainment, he is charged with resisting arrest.

13 When they come upon Mr. Lincoln, at that point in time,
14 they do not know who -- the unrelated car chase, drug case
15 may or may not be related to Mr. Lincoln. At that point in
16 time, these events are separate. They're isolated. They're
17 just going for a suspicious person who's on this gentleman
18 farmer's carport.

19 When they come up to him, he's cold. He's kind of
20 sitting there and he doesn't want to cooperate with them,
21 but he's not under arrest. I believe the officer even
22 testified that half of what they're doing is kind of a well
23 check to see how he's doing.

24 We would argue that there's a failure to prove that
25 he's resisting arrest and, therefore, directed verdict ought

1 to issue for the Defendant on that charge.

2 THE COURT: Let me hear from the State.

3 MR. WEEKS: I would concede that the officer, when she
4 was first describing it said that he was not under arrest,
5 but she, based on their question, communicated he was being
6 arrested for disorderly conduct. And when she got him out
7 to the patrol car, he was, once again, disorderly and it
8 took three of them to get him into the patrol car. That's
9 after he was arrested. And she did charge him, according to
10 her, with disorderly conduct.

11 That's the State's response to that. I believe that
12 passes the test of in the light most favorable to the State.

13 THE COURT: I think it does, too. That bit about him
14 resisting efforts to get into the police car and it was on
15 cross-examination that she clarified the disorderly conduct.

16 So your motion for directed verdict on that issue is
17 respectfully denied.

18 MR. THOMPSON: Thank you, Your Honor.

19 THE COURT: All right. Does the Defense have a case?
20 Are you going to put up witnesses? Do you want me to advise
21 your client of his right to testify?

22 MS. HAYES: Yes, Your Honor.

23 THE COURT: Mr. Lincoln, you can stand where you are.

24 THE CLERK: Stand up. Raise your right hand.

25 JONATHAN LINCOLN, after being duly

1 sworn, testified as follows:

2 THE CLERK: He's sworn, Your Honor.

3 THE COURT: All right. You can stay standing, please.

4 Mr. Lincoln, at this time, I'm going to explain to you
5 certain of your rights. If you do not understand anything I
6 say, please let me know. If you want me to explain anything
7 in more detail, please let me know.

8 Do you understand?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Right now, we have reached the stage in the
11 trial where you may present your defense. You have the
12 right to claim the protections given to you by the Fifth
13 Amendment to the Constitution of the United States. This
14 amendment states in part that no person shall be compelled
15 in any criminal case to be a witness against himself. This
16 means that you cannot be required to testify in this case.
17 You have the right to testify on your own behalf; however,
18 no one can make you testify. This is a personal right and
19 no one can waive this right except you.

20 If you decide to testify, you will be subject to the
21 same rules that govern other witnesses and you may be
22 examined and cross-examined on any relevant issue in this
23 case.

24 In addition, if you have any convictions involving
25 dishonesty or false statement or for crimes punishable by

1 more than one year and this Court determines that the
2 probative value of admitting that evidence substantially
3 outweighs its prejudicial effect to you, the Solicitor will
4 be able to introduce your record to attack your credibility.

5 If you decide to testify, this decision on your part
6 must be freely, voluntarily and intelligently made with
7 knowledge of the protections given to you by the Fifth
8 Amendment and the consequences of your decision to testify.

9 If you decide not to testify, I will instruct the
10 jurors that they cannot give the fact that you did not
11 testify any consideration whatsoever and that there is to be
12 absolutely no prejudice to you because you did not testify.
13 It is left entirely up to you whether or not you testify.
14 You may talk with your attorney, your family and friends or
15 anyone else, but the final decision will be left entirely up
16 to you.

17 Do you understand what I have explained to you?

18 THE DEFENDANT: I do.

19 THE COURT: Do you have any questions about what I have
20 explained to you?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Okay. You can have a seat. Normally, the
23 next question would be will you testify, but since it's late
24 in the day, I'm going to give you overnight to think about
25 it, talk about it. You may change your mind and I don't

1 want to get an answer from you now if you change your mind
2 by morning. So we will get that answer from you in the
3 morning. Okay?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay.

6 Are there proposed jury charges from the State or from
7 the Defense?

8 MS. HAMMACK: Your Honor, given the time, if we could
9 kind of chew on that overnight and let you know in the
10 morning.

11 THE COURT: That's fine.

12 So I will see y'all at 9:30 tomorrow morning with the
13 proposed jury charges.

14 Now, Mr. Lincoln is on bond, but the trial has begun.
15 I think Mr. Lincoln has got to go into custody overnight
16 tonight.

17 All right. 9:30 tomorrow.

18 (WHEREUPON, court was adjourned for the day to be
19 reconvened on Friday, July 23, 2021.)

20 FRIDAY, JULY 23, 2021

21 THE COURT: Mr. Lincoln, yesterday, I explained to you
22 your Constitutional rights, your right to testify or your
23 right to choose not to testify. Have you had sufficient
24 time to discuss with your attorneys, family, friends,
25 whoever about whether you should testify in this case?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Do you need any more time to talk to
3 anyone?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Do you need me to explain anything to you
6 in further detail?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Do you wish to testify in this case?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Thank you. You may have a seat.

11 Anything this morning before we bring in the jury?

12 Yes, ma'am?

13 MS. HAMMACK: Just wanted to bring up the Defendant's
14 prior criminal history that could be used as impeachment
15 should he testify. I believe the only things that would
16 qualify -- he's got some crimes of dishonesty that are older
17 than ten years old, but, specifically, within the ten-year
18 window, he's got a giving false information from August of
19 2011 and then he's got two convictions for possession with
20 intent to distribute marijuana from December of 2011.

21 THE COURT: And the State seeks to introduce all three
22 of those convictions?

23 MS. HAMMACK: I think all three are proper under the
24 law. I think given the charges in this case, it may be more
25 appropriate to refer to the marijuana convictions simply as

1 felony convictions or convictions for a crime carrying over
2 a year in the last ten years as opposed to actually naming
3 the offense.

4 THE COURT: Okay. What says the Defense?

5 MS. HAYES: Your Honor, the Defense would argue that
6 the drug convictions are more prejudicial than probative.
7 In regards to not really just dishonesty crimes, it shows
8 that he's had those convictions and makes the jury more
9 susceptible.

10 MS. HAMMACK: Your Honor, that's specifically why the
11 State is offering not to mention the drug convictions, to
12 minimize that prejudicial value.

13 THE COURT: Right, but then I don't know what they're
14 probative of when you just refer to two felony convictions.

15 MS. HAMMACK: Because the Rules of Evidence allow that
16 prior convictions for a crime carrying more than a year can
17 be used for impeachment.

18 THE COURT: If the Court determines that the probative
19 value of admitting the evidence outweighs the prejudicial
20 effect.

21 MS. HAMMACK: Absolutely, Your Honor. His credibility
22 is just as important to the jury as any other witness that
23 testifies and that goes to his credibility as a witness.

24 THE COURT: Let me hear from the Defense about
25 referring to them as felony convictions.

1 MS. HAYES: Your Honor, just referring to them as
2 felony convictions is more like character evidence and
3 that's what the jury is going to consider it as, which is
4 not allowed.

5 THE COURT: I tend to agree with the Defense because it
6 does not directly comment on the credibility of the witness.
7 If they were, in fact, crimes of dishonesty or false
8 statement, certainly, that connects credibility, but just to
9 say he's a criminal, you know, he has two felony
10 convictions, I think would be improper character evidence in
11 this situation. So I will not allow the two drug
12 convictions from December of 2011 to be mentioned.

13 What's the Defense's position on the false information?

14 MS. HAYES: I don't think there really is an argument
15 on that one.

16 THE COURT: I agree. So the State can't, of course,
17 mention that, question the witness about that.

18 Anything else before we bring in the jury?

19 MS. HAMMACK: Nothing from the State, Your Honor.

20 THE COURT: From the Defense?

21 MS. HAYES: Your Honor, the Defense at this time does
22 have a Defense request to charge. I believe I gave that to
23 your clerk. There is a court case that I need to attach to
24 that.

25 THE COURT: If you will pass that up and we will -- I

1 suppose we can go ahead and discuss that now.

2 Let me hear from the State on the Defense request to
3 charge right to resist unlawful arrest.

4 MS. HAMMACK: We don't have an objection.

5 THE COURT: Easy enough.

6 And my clerk tells me, Ms. Hammack, you mentioned
7 something about direct and circumstantial evidence. I
8 wasn't clear about what you meant.

9 MS. HAMMACK: Your Honor, I think this is probably a
10 case that would warrant the change defining both direct and
11 circumstantial evidence, but we would defer to Your Honor's
12 charge on that.

13 THE COURT: Okay.

14 MS. HAMMACK: That was all.

15 THE COURT: Okay. Good enough. We'll circle back with
16 the charge after the Defense rest.

17 Bring the jury in, please.

18 (WHEREUPON, the jury enters the courtroom at 10:02
19 a.m.)

20 THE BAILIFF: The jury is present, Your Honor.

21 THE COURT: Thank you, ma'am.

22 Good morning, folks. As you heard yesterday afternoon
23 before you left for the day, the State rested its case,
24 which means that you've heard all the evidence that you're
25 going to hear from the State. It's now time for the Defense

1 to present its case. I'd ask that you give the Defense your
2 full attention.

3 Defense may call your first witness.

4 MS. HAYES: Your Honor, at this time, the Defense calls
5 Jonathan Lincoln to the stand.

6 THE COURT: Mr. Lincoln, come around and be sworn.

7 THE CLERK: Place your left hand on the Bible and raise
8 your right.

9 JONATHAN LINCOLN, after being duly
10 sworn, testified as follows:

11 THE CLERK: Have a seat in the witness box and state
12 your full name.

13 THE COURT: Make sure you pull that microphone in front
14 of you.

15 DIRECT EXAMINATION

16 BY MS. HAYES:

17 Q Good morning, Mr. Lincoln.

18 A Good morning.

19 Q How are you today?

20 A I'm fine.

21 Q I'm going to need for you to speak up so the jury can
22 hear you. They need to hear what you're saying, so speak up
23 because you are a little soft-spoken. Okay?

24 A Yes, ma'am.

25 Q Do you remember the night of February 26th?

1 A I do.

2 Q Of 2020. Can you tell me what you were doing that
3 night?

4 A I was preparing myself to move.

5 Q You were in the process of moving. So what was going
6 on?

7 A Earlier in the day, I had packed all my belongings. I
8 had went to my storage unit and put away the things that I
9 was not going to take to the new residence with me. Just
10 prior to the incident in question, I went to the Burger King
11 on Columbia Highway, which is also known as No. 1. I went
12 to the Burger King there, ordered a meal. I sat in the
13 parking lot and ate the meal.

14 I then went to the Dollar General that is right across
15 the street. I went in and bought some Murphy's Oil
16 treatment stuff because I was getting ready to get on -- you
17 know, make a trip, so I was doing like a pre-trip inspection
18 of my vehicle, checking all the lights, tag, lights, things
19 of that nature.

20 I don't know how far you want me to go. I can tell you
21 everything that happened that night.

22 Q Where did you go -- let's go farther. Where did you go
23 after you left the Dollar General?

24 A After leaving the Dollar General, I went further up
25 Columbia Highway, also, known as No. 1, under the interstate

1 to a road called Piper Road or either Piper Street. It's
2 one of those two, but it's Piper.

3 Q What were you going there for?

4 A I was going to talk to my nephew, Adonis, to see if he
5 would like to ride with me to the new place that I was
6 moving to.

7 Q Did you go to his house?

8 A Yes, ma'am.

9 Q And tell me what happened next.

10 A When I pulled into the yard, it's a relatively dark
11 yard. There's a primary house on the property that sits at
12 the front, then that same person owns a trailer that sits
13 behind his residence. And it's separated by a very small
14 fence.

15 I pulled into the driveway as instructed by my nephew's
16 mother, which is not my sister, but which is my brother's --

17 Q You can just call her your nephew's mom.

18 A Yeah, nephew's mom. I don't like to use the term
19 baby's mama. It sounds a little --

20 Q You can use nephew's mom?

21 A It's my nephew's mom, but we are close because my
22 nephew is like 25 years old, so he's not a young guy.

23 So I pulled into the yard. I have to relieve myself --
24 and it's also an understanding --

25 Q Hold on. What do you mean? You had to do what?

1 A Relieve my -- use the bathroom.

2 Q Okay.

3 A So it's an understanding between me and my nephew and
4 his mother, like, I don't come knocking on her door at ten
5 o'clock at night. So, mainly, what I do when I go to see
6 Adonis because he doesn't really keep a cell phone -- and
7 that's weird and I know it, but he doesn't keep a cell phone
8 regularly.

9 So I pull into the yard and I leave my lights on and I
10 turn my music -- I mean, I keep my music just enough where
11 if they're in the house, he can hear it. He'll know it's me
12 and he'll come outside if he's not already sitting outside
13 because he sits outside a lot.

14 Continue?

15 Q So you get out?

16 A Yes, ma'am.

17 Q Tell me what happens then.

18 A I get out of my truck. I take about, I guess, six or
19 seven steps to where this gentleman is at with the brown
20 coat, tan coat, that's about how far I am from my vehicle.
21 I have my tablet in my hand because I'm playing my music off
22 of my tablet and I can also control the volume to my radio
23 from my tablet in case someone comes out and is like hey,
24 turn the music down, you know.

25 So I'm using the restroom right here and kind of

1 looking at my tablet like this right here. So I'm looking
2 back this way in the same direction that my truck is
3 pointing, but I'm not really looking at my truck. I'm
4 looking more at the woods behind the house, behind the
5 trailer.

6 While I'm using the restroom, I notice that the lights
7 on the trees are moving. So it kind of -- you know, if you
8 see lights moving, you know a car's moving, so I'm thinking
9 either a car's pulling in or my truck's pulling out. So I
10 turn around and look and my truck's pulling out of the yard.

11 Now, at this time, I don't know for sure what is going
12 on. I know now today. And at that time, I had a --

13 Q You said you turned around and your truck was leaving?

14 A Yes, ma'am, it was backing out of the driveway.

15 Q At that moment, what did you think?

16 A At that moment, I immediately thought that my nephew
17 was in my truck. I immediately knew it and thought it.

18 Q You thought your nephew was taking your truck?

19 A Yeah. Not in a criminal way, not like stealing my
20 truck, but I caught you slipping, you know, one of those
21 type of playful things.

22 Q A joke?

23 A Yeah.

24 Q The truck is now leaving this driveway. What are you
25 doing?

1 A I'm walking toward the truck trying to tell him like
2 hey, stop playing, man, stop playing, basically, like that.
3 But he can't hear me or anything, so I'm kind of like body
4 language, more or less, like, man, come on, man, stop
5 playing, I got stuff to do. And he backed out -- I don't
6 even know if he was looking at me at this point because I
7 can't see inside the truck.

8 Q And your belief at that time is you think it was your
9 nephew, but you don't know?

10 A I have no idea.

11 Q But that's what you thought at the time?

12 A Yes.

13 Q So the truck does stop. So after that, what happens?

14 A Well, at that point, I walk to the trailer where he
15 lives. I tap on the door kind of lightly and I go around to
16 his window and I tap a little harder on his bedroom window.
17 Like I say, I don't want to wake his mom or disrupt his mom
18 because she can be a little snippy.

19 So I give it -- I don't want to quote exact times, but
20 I give it about maybe 10, maybe 15 minutes for him to pull
21 back up.

22 Q Did anybody answer the door of the trailer?

23 A No, ma'am.

24 Q So no one responded to your knocks. All right. And
25 after you waited 15 minutes, did the truck come back?

1 A No, ma'am, it did not.

2 Q So then what did you do?

3 A At that time, I kind of gave the house a once-over, a
4 look to see, you know, if anybody was in there because now,
5 I'm not so worried about waking his mom up because now, I'm
6 a little mad. So I'm like well, you know, you shouldn't
7 have been playing.

8 So I go back to the house and look it over. I don't
9 hear anybody in there. I don't see any signs of life or
10 movement in there. So at this point, I'm really mad because
11 now, nobody is there to even help me and I'm out here way
12 out.

13 So I begin to walk. I get on Piper Road. Piper Road,
14 if you make a left onto it going the same way that I came,
15 you go right back to No. 1.

16 Q And how far down Piper Lane would you estimate that
17 your nephew lives?

18 A In miles or time?

19 Q Well, how long did it take you to walk from your
20 nephew's house to No. 1?

21 A I would say probably in between 20 to 30 minutes to
22 walk from there to there.

23 Q So you're walking, what do you do next? Tell us what
24 happened next.

25 A Well, the entire time that I'm walking, I'm searching

1 for anybody's residence that has, like, an open WiFi signal.
2 Because I have a function on my phone, I don't know if
3 anybody's familiar with it -- well, you can track your
4 device using Google Track My Device is what it's called.

5 Q You said a function, would you call it an app?

6 A App, yes, I'm sorry, app.

7 Q So you have an app on your phone. Tell us what it
8 does.

9 A Google Track My Device, it allows you to put devices
10 onto like, I guess, your list of devices that are accepted.
11 You can use this app to track your device almost anywhere.
12 I've used it prior to track a device to the train station in
13 Columbus, so I know it works pinpoint almost, the satellite
14 accuracy.

15 Q But at this time, you don't have WiFi so your tablet is
16 not working?

17 A My tablet's not working.

18 Q Okay. So what do you do next? You're walking, what
19 happens next?

20 A Well, I continue walking until I get to No. 1. I make
21 a right walking on No. 1. From Piper Road to the interstate
22 is probably a four-or-five-minute walk. You can definitely
23 see the interstate from right there.

24 So it's like go under the interstate and the first
25 business that you approach will be McDonald's on your right

1 and Waffle House on your left. And there's a hotel --
2 Waffle House right here, there's a hotel right here and then
3 there's Shaw Industry right there, and it's another hotel
4 right there and a gas station right there. Gas station
5 would have been closed. McDonald's, I believe, was closed,
6 also.

7 So I walked over to the Waffle House because, you know,
8 there's always people at the Waffle House. But at this
9 time, there was like maybe one customer in the Waffle House.
10 He didn't really look like he wanted to be bothered. I
11 didn't really bother him. I didn't feel like I was in a
12 state of panic at this point. I'm mad, but not panicking.

13 So I see the hotel. I attempt to get close to the
14 hotel, but I don't have a room there and I don't want to be
15 trespassing, so I try to stay as far away from the hotel
16 while still being able to catch their WiFi signal. So I'm
17 standing kind of at Shaw and that hotel's property. And I'm
18 standing out kind of close to the road.

19 Tell me when I should stop or just continue.

20 Q And were you able to get WiFi from the hotel?

21 A No, I was not.

22 Q So then what happened?

23 A A vehicle pulls up -- a vehicle pulls up. I can
24 remember the vehicle being white. There was one occupant in
25 the vehicle, it was a white female. She rendered me aid. I

1 cannot speak to why or what made her --

2 Q So when you say she rendered you aid, what did she do?

3 A She stopped to see how she could help me. And I told
4 her well, the first thing you can do to help me is to allow
5 me to use your WiFi. Because I was trying to give her a way
6 to help me without actually having to even touch me or me
7 get near her because I was trying to make -- because this
8 might be my only help, so I'm trying not to scare her off.
9 I know sometimes, you know, people can come off somewhat
10 threatening, so I'm trying to be like if you can just give
11 me a WiFi signal, I can handle everything from there.

12 So she was like fine. She cut on her WiFi hotspot.
13 She pings her signal. I log into her signal. My tablet's
14 up and working. I jump onto my Google Track My Phone and
15 immediately once I answer the appropriate questions, I
16 immediately know where my phone is at. And my phone is in
17 my truck, so now I know where my truck is at.

18 Q So you pinged your phone. I have a question I'm sure
19 everybody wants to know. When you got to the Waffle House,
20 why didn't you call the police when you got to the Waffle
21 House and you tell them that someone took your truck?

22 A I understand that this may not be proper protocol, but
23 I did not want to call the police on my nephew. I mean, he
24 just had lost his brother. He going through some things.
25 He had just lost his job. And for me to compound all of

1 that by calling the police on him.

2 Q So you think it's your nephew who's got your truck?

3 A Excuse me?

4 Q You think it's your nephew who's got your truck?

5 A At this time, I don't know. I do know today that it
6 was.

7 Q So after you ping your phone, what do you do then?

8 A I inform the young lady of the information I just found
9 out. I told her, you know, I found my truck, I found my
10 phone, would you please be so nice as to take me to it. And
11 she obliged me and said come on, yeah, it's no problem. I
12 got in the vehicle with her and I'm sitting there tracking
13 my phone to this point.

14 Q Where did she take you?

15 A She took me, ultimately, to the intersection of Shaws
16 Fork and New Holland Road.

17 Q Is that where your phone was pinging, in that area?

18 A Well, when I told her where, I only told her New
19 Holland Road. So when she seen New Holland, she assumed
20 that her deed was done. And I was like, well, it's a little
21 bit more on down the road here. And she's looking down the
22 road like that road is extremely dark. I don't know you
23 like that. She was, more or less, like well, you know, I
24 got to go.

25 So I'm like -- I'm extremely happy to get this far, so

1 I'm like yes, thank you. If I can ever find you in the
2 future, I will definitely look out for you. You know, at
3 this time, I think I'm fixing to get my truck back.

4 Q Okay. So she lets you out at Shaws Fork and New
5 Holland Road. At that point, what do you do?

6 A I book it. I start on foot walking down New Holland
7 Road. I, in fact, see officers. I see cars. I see police
8 cars, none with their lights on. And they should have, in
9 fact, seen me walking down New Holland Road.

10 Q So tell me -- once you're in that area, what all are
11 you doing? Where are you going? What are you doing?

12 A If you're familiar with that area, it's very wild. I
13 mean, like animals and stuff like that right there and it's
14 extremely dark. So I'm walking, I'm scared. I get chased
15 by animals a few times because people out there, they don't
16 tie their dogs on. You know, their property is so big, they
17 don't have reason to tie their dogs on. So when their dogs
18 come running at you -- and they not really used to seeing
19 people walk down the road because it's not a place where
20 people really walk.

21 So I'm scared, I'm running, jumping up in trees,
22 jumping on picnic tables to get away from animals, stuff
23 like that right there. And this was a really, really long
24 walk. I had no idea that road was that long. And I walked
25 all the way until I got to where -- I think it's important

1 to say that when I got out of the car, I ceased to have
2 internet. So wherever my -- whatever my tablet was showing
3 me at the time I lost my internet, that's what it was still
4 showing. So it's still showing that my vehicle and my phone
5 are there, but this information is old. It's like --

6 Q To where it pinged last?

7 A Yeah, that's where it pinged last.

8 Q So, ultimately, you're out in this area. What are you
9 doing out there?

10 A I'm looking -- trying to get to the spot where my phone
11 last pinged from, so I'm walking. On my way, these things
12 are taking place, you know, I got chased by two sets of
13 dogs. Sometime I might have just been jumping from stuff
14 that was imagined, noises and stuff, but I did get chased by
15 dogs twice on my way to the car.

16 Q So you're searching for -- you're out there. When did
17 -- I guess, tell us what happened. You got chased by the
18 dogs. What happened after that?

19 A It's really uneventful, just walking and trying to --
20 and like I say, only things that I remember or that are
21 pertinent, I guess, to this situation is that I was walking
22 and I seen the officers. I seen some of the cars.

23 It took me a while to get to the location. I don't
24 have any way of knowing how long it took me to get there. I
25 just know it was extremely long. I was extremely tired.

1 But what Officer Czekaĵ said about me having snot on my -- I
2 mean, all that is very true.

3 Q Well, let's fast forward to that morning when you were
4 -- how did you come to be on Mr. Woody's porch?

5 A When I got to the place where it said my truck was at,
6 when I got to the point where it said my phone and my truck
7 was at, I looked and it's a big swamp of darkness. It's
8 nothing. Now, at this point, I'm deflated. I done walked
9 all the way down here.

10 And I didn't really realize -- at the time, I wasn't
11 really thinking that this information is old as the last
12 time I had internet access. I wasn't really thinking about
13 that. I'm thinking it's still pinging, it's still pinging,
14 it's still pinging, you know, so it's still there. When I
15 get there, I don't see anything. I'm totally deflated. I
16 mean, I have no way of getting home. No way of calling
17 anybody. I'm out here in -- I mean, it's very rural out
18 there.

19 So I go to the first house that looks, I guess, like
20 they won't shoot me if I walk on their property. I kind of
21 try to use a little bit of common sense. I do see a work
22 truck under the patio. I see a work truck, so I know that
23 somebody is about to -- I feel that somebody is about to go
24 to work.

25 So I try to be as unthreatening as possible, which is

1 why I was -- I was cold, that's why I was balled up. It was
2 very cold out there. And I was trying to keep my face warm,
3 so I had my face covered up as much as I could, you know,
4 and I'm breathing inside my shirt to keep my face warm and
5 my ears warm.

6 And like I said, I just tried to be as -- I know when
7 you see a guy sitting on your back steps, you might just
8 come out shooting. So I'm like I wanted to look as
9 unthreatening as possible and, hopefully, he'll either do
10 one of two things: He'll come out and help me or he'll call
11 the police.

12 Q So you're sitting on the porch, the police show up.
13 Tell me what happened then.

14 A Contrary to what they might say or believe, I was very
15 happy to see the police. I was very happy to see the
16 police. At this time, I don't even know my truck is stolen.
17 All I know is that the police are here and they won't leave
18 me here. They'll take me somewhere.

19 So when they get there, I was -- you know, I was in a
20 state of kind of like just waking up. You know, I'm a
21 little grouchy, grumpy and a little stiff. I'm 38 years
22 old, so I'm not no spring chicken. I'd been through a lot
23 that night. My joints and stuff are a little stiff.

24 I don't know if you want me to get into the interaction
25 with the police or what. I don't know when to stop.

1 Q Well, Deputy Ferrell testified that when she got there,
2 you didn't have any shoes on. Why didn't you have any shoes
3 on?

4 A Because I left -- first of all, I never had on shoes.
5 I never had on shoes. That's a very big important thing
6 that I think should be brought to the attention of everyone
7 in the courtroom. They were not shoes. They were slippers,
8 bedroom slippers, the Dollar General kind that you buy for
9 three dollars. I was getting ready to take a trip. When I
10 was at Dollar General, that's when I put slippers on because
11 I had no intention of getting back out of the truck, really.
12 So I had on slippers.

13 When I stepped out of my vehicle to use the restroom in
14 my nephew's yard, it was raining. It was raining that day.
15 There's high grass out there. And just to be honest with
16 you, I would never wear my bedroom shoes on the outside,
17 like, ground. I wouldn't do it if it wasn't wet. It's just
18 like one of my things.

19 So I hopped out the truck in my socks. Just took six
20 steps over to about where the gentleman is and used the
21 restroom. I mean, if I sound a little country for that, I'm
22 sorry, but I don't mind getting out the truck with my socks
23 on. I would rather do that than get out with my bedroom
24 shoes on.

25 Q The police testified that when they searched the

1 vehicle that they said is your's, there was some illegal
2 drugs in there. When you had your truck, was there any
3 illegal drugs in that truck?

4 A Illegal?

5 Q Illegal, yes.

6 A No, ma'am.

7 Q That you're not supposed to have?

8 A No, ma'am.

9 Q And all your belongings were in the car because you
10 were moving?

11 A Yes.

12 Q All right. One more question, couple more, when the
13 police approached you on Mr. Woody's porch, there was -- we
14 really don't know what the conversation was, but you didn't
15 cooperate with the police. Why did you kind of fight with
16 them a little bit?

17 A I was a bit agitated because I was being treated like a
18 criminal when, at best, I was a victim. I was not -- I
19 thought they were here to help me and they immediately start
20 to accuse me of things. Even if they would have asked me
21 some things, that would have been, you know, a little more
22 becoming, but they immediately started to accuse me of
23 something. And at this time, I have no idea that my truck
24 has even been involved in anything other than my nephew
25 taking it.

1 Q So the police never questioned you about anything?

2 A I've had zero questions from Aiken County Sheriff's
3 Department even to this day. They did zero investigation,
4 zero.

5 Q So they never talked to you?

6 A Never, ever. They didn't even ask me my name.

7 MS. HAYES: Mr. Lincoln, at this time, I don't have
8 anymore questions for you. Please answer any questions the
9 State may have.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Cross-examination.

12 MR. WEEKS: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. WEEKS:

15 Q Well, your name is what?

16 A Jonathan Art Neal Lincoln.

17 Q And it is on your ID that was in your wallet that they
18 took off of you that night, correct?

19 A Yes, sir.

20 Q And this happened February the 26th of 2020?

21 A What happened?

22 Q This event where they arrested you. February 27th,
23 actually, when they arrested you?

24 A Yes, sir.

25 Q And your nephew is still alive?

- 1 A Yes, sir, he is.
- 2 Q Is his mama still alive?
- 3 A Yes, sir, she is.
- 4 Q They still live in the same place?
- 5 A No, sir.
- 6 Q They moved, too?
- 7 A Well, her house burnt down.
- 8 Q Okay. You still don't want to say that it was your
- 9 nephew that took your truck?
- 10 A I think I already said it is, sir.
- 11 Q Yeah, well, you didn't give us his name. Has he got a
- 12 name?
- 13 A Yes, sir, Adonis Baker.
- 14 Q Adonis?
- 15 A Adonis Lincoln Baker.
- 16 Q Adonis Lincoln Baker. And his mother's name?
- 17 A Chevron Baker, mother of Kalia Baker.
- 18 Q Okay. And are they here today?
- 19 A No, sir.
- 20 Q Now, the police recovered your car, correct?
- 21 A Yes, sir.
- 22 Q In fact, you went and picked it up or you got somebody
- 23 to go pick it up from the tow yard, didn't you?
- 24 A Yes, sir.
- 25 Q Okay. And that car was registered to you?

1 A Yes, sir.

2 Q It was a Durango, light-colored Durango?

3 A Yes, sir.

4 Q Four-door?

5 A Yes, sir.

6 Q And you said you can't see in the windows, so it was
7 heavily tinted?

8 A It was. I didn't say that. Officer -- Sergeant Knight
9 said that.

10 Q Well, you just said on the stand, you can't see in the
11 window. You didn't see who was backing out of the driveway
12 in your car?

13 A Yeah, I couldn't see. No, sir, I couldn't.

14 Q And that's because it's very tinted, isn't it?

15 A I guess, but it was also nighttime, too.

16 Q And the address you were moving from was [REDACTED] Alpine
17 Drive?

18 A Yes, sir.

19 Q And that's on the south side of Aiken?

20 A No, sir.

21 Q Where is it at?

22 A That location which you're speaking of is off of Pine
23 Log Road. I live off of Whiskey Road on Alpine Drive that
24 is a dead end.

25 Q Okay.

1 A Yes, sir.

2 Q And that's on the south side of Aiken, isn't it?

3 A It's not -- well, I guess. It's in between New
4 Ellenton and Aiken. I mean, I don't know what they consider
5 that.

6 Q When you pulled up in your nephew's driveway that
7 night, you had your prescription drugs with you?

8 A I had the majority of my belongings with me because I
9 was moving.

10 Q Well, your prescription drugs are your belongings,
11 right?

12 A Yes, sir.

13 Q And these marked State's No. 8 and State's No. 7 are
14 your's; is that correct?

15 A I would like to see them first.

16 Q That's why I'm handing them to you.

17 A Okay. These are definitely my pill bottles.

18 Q And were they in your truck that night that your nephew
19 supposedly stole?

20 A Yes, sir, I assume they were.

21 Q You say you assume they were?

22 A I mean, I'm trusting the word of the officer who said
23 that he retrieved them out of my truck. I had a lot of
24 stuff in there. But I'm going off the fact that the officer
25 said he took my truck, so, yes, sir.

1 Q Where do you think he would have gotten your
2 prescription pill bottles if it wasn't out of your truck?

3 A Probably out of my truck. I don't remember putting
4 them there is what I'm saying.

5 Q How about these scales for measuring drugs, were they
6 in your truck, too?

7 A I assume they were.

8 Q Well, did you put them there?

9 A It's a possibility that I did.

10 Q Possibility? How about all the baggies? Were you
11 collecting baggies for making your lunch? Were they in your
12 truck?

13 A Yes, sir. If the officer said they were in my truck, I
14 do not disagree with him.

15 Q Okay. Is it your shotgun that was in your truck?

16 A Was that my shotgun in the truck?

17 Q Was it?

18 A It was.

19 Q And I assume when you were preparing to testify and
20 going over with your lawyers, you looked at the shoes that
21 they had or the slippers that they had in evidence?

22 A (Witness shakes head.)

23 Q Your lawyers never showed you that?

24 A Huh-uh, I brought that to their attention.

25 Q You thought what?

1 A I brought that to their attention.

2 Q You brought it to their attention that your shoes
3 should have been -- or your slippers should have been in the
4 truck?

5 A I brought it to my lawyers' attention that prosecution
6 referred to these slippers as shoes, which was a little more
7 hard to understand why they were not on my feet than would
8 be slippers.

9 Q Okay.

10 A Slippers are --

11 Q So you're kind of adjusting your story to whatever the
12 State had?

13 A No, the facts showed that they were slippers. I just
14 wanted the jury to understand that I did not have on whole
15 shoes and was not wearing whole shoes. I took off slippers,
16 which is much more common to take off. And as evidenced by
17 your officers that that's what was actually on the ground
18 and in the truck were slippers and not shoes.

19 Q So you bought the slippers at Dollar General, as I
20 understand it?

21 A Or Wal-Mart, one of the two.

22 Q Well, did you put them on in Dollar General?

23 A I said I put them on while I was at Dollar General.

24 Q Okay. So I'm assuming you would have took off some
25 shoes to put these slippers on and those shoes should have

1 been in the truck. But, clearly, your testimony is you had
2 on sock feet the entire night?

3 A That's not my testimony. My testimony is that I had my
4 slippers on while driving. When I got out at that one point
5 to use the restroom, I slid off my slippers because I did
6 not want to step into the cold, wet grass with those inside
7 shoes on. I used the restroom -- I had no intention of
8 staying unshoed all night.

9 Q But you did, according to your testimony?

10 A Yes, sir.

11 Q After that point?

12 A Yes, sir.

13 Q So you got out in the cold, wet grass in your sock
14 feet?

15 A Yes, sir, I did.

16 Q Trooper said they found a couple phones in your car.
17 Were they your phones?

18 A I would assume so.

19 Q You've had two years to look through all the evidence,
20 Mr. Lincoln. They weren't your phones?

21 A I was incarcerated for an entire year with no bond. So
22 I've had roughly six months to go through stuff that has
23 been went through by other people who retrieved my truck.

24 Q Okay. Were your phones left in your car when you got
25 out to take a piss and look at your tablet at the same time?

1 A Yes, sir.

2 Q Okay. So those are the phones that you were tracking
3 with your tablet?

4 A Yes, sir. I was only tracking one phone, though.

5 Q Only tracking one phone. And, of course, you're out
6 all night long tracking from Shaws Fork and New Holland
7 Road. That's where it pinged?

8 A No, it pinged to wherever it was, which I now know to
9 be Anderson Road --

10 Q I'm sorry --

11 A Or it really didn't ping to Anderson Road, it pinged to
12 the field where the truck was at, but that showed up on the
13 GPS as, basically, nowhere. So I have to reference it to
14 the next closest road or point or something to get you to
15 understand where it was at. Because the truck was in a
16 field and that's where it was pinging from, a field.

17 Q Didn't you say under direct examination that when you
18 first pinged your phone, it was at Shaws Fork and New
19 Holland Road?

20 A I think the record will reflect that I did not say
21 that. I said that is where she dropped me off at, was at
22 Shaws Fork and New Holland Road. I said that my phone
23 pinged from New Holland Road. New Holland Road is a very
24 long road. Where she dropped me off was the intersection of
25 Shaws Fork and New Holland. I knew when I got out the car

1 that my phone was not there, but further down the road on
2 New Holland.

3 Q I thought you said you looked around and there wasn't
4 anything close?

5 A That's after I'd walked from Shaws Fork to the point
6 where it said my car was at.

7 Q And how far was that?

8 A By way of the crow, I have no idea, sir. I mean, it's
9 nighttime, it's dark. I have no kilometer, I don't know. I
10 can estimate for you, though.

11 Q Well, to get to where they found you on Mr. Woody's
12 porch, how did you get there?

13 A I walked.

14 Q You walked? So you walked down New Holland Road toward
15 New Holland -- you know where New Holland is?

16 A New Holland is also a place?

17 Q Town.

18 A Oh, it's a town. So I didn't know that. I thought it
19 was just a road, but if that's the case, then, yeah.

20 Q Somehow five or six o'clock in the morning, you found
21 yourself in Mr. Woody's carport?

22 A Yes, sir.

23 Q So you would have had to walk down New Holland Road for
24 a long way, get attacked by wild dogs and wild animals --

25 A I didn't get attacked. I got chased, though.

1 Q Every police officer that was in this pursuit would
2 have driven past you if you were on New Holland Road. And
3 you didn't try to wave them down? You didn't do anything?

4 A They traveling pretty fast, so by the time you realize
5 that it's a police officer, they zoom past you. And it's
6 been my experience that officers don't really help you when
7 you in distress on the side of the road. I've been on the
8 side of the road several times and police will pass me by.
9 I will flag them down and they will say I can't put anybody
10 in my car.

11 Q And how many officers do you think passed you that
12 night while you were walking?

13 A How many do I remember passing me? I remember police
14 passing me, at least, three times.

15 Q All right.

16 A But I'm not walking, like, next to the road. I'm kind
17 of off of the road somewhat, too. I'm not walking right
18 next to people that's doing 70, 80 miles per hour on a
19 two-lane road.

20 Q Would you agree that your mail was in the glove box of
21 your Durango with your address on it, some mail?

22 A I would agree that my mail was in the truck.

23 Q Okay.

24 A I don't want to be too specific.

25 Q So these officers aren't lying about that?

1 A No.

2 Q Now, the carport that they pull up on you, obviously,
3 not a residence that you have permission to be in. How long
4 did you sit there before the police arrived?

5 A It seemed like a minute. I dozed in and out of
6 consciousness. I was --

7 Q You dozed sitting there on those brick steps?

8 A Yes, sir.

9 Q And, of course, you saw the truck out there and that's
10 what led you to go to that carport. You didn't knock on the
11 door?

12 A I did.

13 Q You knocked on the door of Mr. Woody's house?

14 A Yeah -- excuse me, yes, sir.

15 Q Okay.

16 A I might have even rung the doorbell. I was really
17 trying to get his attention. I was not there to do
18 anything, any harm or anything to anybody.

19 Q And you're wet, you're soaking wet?

20 A Yes. I mean, not soaking, but, yeah. It's cold, so it
21 feels -- I feel pretty wet. The bottom of my pants were,
22 like, really wet. And those holes, those jeans are designed
23 like that. Maybe they was stretched a little bit more, but
24 they originally were bought with holes and patches in them.

25 Q And no question, when they were wrestling with you, at

1 some point, they got the handcuffs on you; is that right?

2 A Yes, sir.

3 Q And even when you walked to the car, they escorted you
4 to the car that they took you to the jail in, you still
5 resisted, didn't you? Kicking your feet out?

6 A No.

7 Q In fact, you told them to tase you again, didn't you?

8 A It's possible I could have said that. I mean, at this
9 time, I've been pretty much beaten up by the police. I'm
10 pretty sure that y'all seen that. I was attacked by the
11 police, beaten up. Their cams were -- their body cams were
12 intentionally turned away from that so that you wouldn't see
13 it.

14 They're telling me to put my arms behind my back. When
15 Deputy Czekaj admitted on the stand that my arms were up
16 under my stomach with my entire weight on my arms, but
17 you're telling me to put my arm behind my back. How is that
18 even possible if you have your knee in my back putting your
19 weight, plus my weight on top of my hands saying give me
20 your arm, give me your hand.

21 And I'm saying if these videos would actually have the
22 audio that they actually had before, I guess, somebody took
23 it out, you can hear me saying, I'm not resisting. I'm not
24 resisting. How can I give you my arm if it's up under my
25 body.

1 Q All right.

2 A It's all on the audio.

3 Q When they first came up to you and you're sitting there
4 all huddled in your shirt, they asked you to show your
5 hands. And you did this little thing there across the top
6 of the shirt?

7 A Yeah. Sir, if you'll allow me to explain that. What
8 happened was, when he asked me to show him my hands, I stuck
9 my hand through the neck of my shirt. What I was doing was
10 attempting to pull my arm back in and stick it through the
11 arm of my shirt and that's when he grabbed me. If you watch
12 the video very closely, that's what I did. I said -- and
13 then I was like hold on, and he started to grab me and throw
14 me on the ground. I was complying. I never ever did not
15 comply with the police officer. I had no reason not to.

16 Q All you had to do was stand up, but you didn't do that?

17 A He didn't tell me to stand up. If I would have stood
18 up, he might would have hit me.

19 Q And there's no question you continued to resist, even
20 when you got to the car?

21 A Even though it's not illegal to resist an unlawful
22 arrest, I did not resist. Even though I could have, I did
23 not.

24 Q You didn't resist?

25 A By law, I could have, but I did not. I'm sorry, I did

1 not. I wanted them to help me.

2 Q And from Shaws Fork to where you ended up on Anderson
3 Road, there weren't any houses that belonged to all these
4 wild dogs that you could have walked up to and asked for
5 assistance?

6 A At this point, I feel like I had been assisted enough.
7 I had already found where I believed my vehicle to be. I'm
8 on the way to it. I know none of these people. I think
9 that I can only risk being shot or worse by walking up to
10 these people's house this time of night.

11 Now, if I can show this person, hey, look, I pinged my
12 car to your yard and that's why I'm in your yard, that would
13 be different. But to walk up to somebody's house at this
14 time in the morning in this part of the county is very
15 dangerous for a black man, I'm sorry.

16 Q When you were at Waffle House, whatever the motel is
17 there, Hardee's, Burger King, Bojangles, all those places up
18 and down the road, Dollar General, you didn't try to call
19 the police to tell them that somebody stole your car?

20 A As I stated, I had no intention of calling the police
21 on my nephew.

22 Q But you didn't know it was your nephew?

23 A I did not know it, but I had a very good feeling that
24 it was and it turned out to be him. So my hunch was right.
25 And I'm actually -- well, in light of this, I'm not going to

1 say I'm glad I didn't call the police. I'm not going to say
2 that.

3 Q In light of what?

4 A In light of all this, what I've suffered for not
5 calling the police on my nephew. But it would take
6 something like this right here to make me change my mind
7 about calling the police on my nephew when he's just trying
8 to play a prank on me.

9 Q On New Holland Road?

10 A What about New Holland?

11 Q He's trying to play a prank on you by driving your car
12 to New Holland Road?

13 A Oh, I think that was -- I think that point has been
14 left out. There was probably no time between the taking of
15 my car and the pursuit by the police for me to call the
16 police.

17 After reading the motion of discovery, he was blue
18 lighted on I-20, right? So from Piper Lane to the point
19 where he was blue lighted on I-20 by car is roughly two to
20 three minutes. He went off Piper Lane, jumped right on the
21 highway, was immediately blue lighted by Mr. Knight and the
22 chase ensued from this point. I know this now from reading
23 the testimony of the officers and stuff.

24 Q But your testimony is that a whole group of police
25 officers passed you when you were walking on New Holland

1 Road in your sock feet?

2 A A whole group would mean that they would have been
3 riding together, right? So no, they passed me at different
4 times. Not a whole group of police cars, no, sir.

5 Q One after another?

6 A One, then maybe three or four minutes later, another
7 one and ten minutes later, another one. I mean, I was
8 walking on the road for a long time, so I can't -- but I
9 know for a fact that I didn't see more than two of them
10 riding together at a time, so I wouldn't call it a group.

11 Q And you don't dispute that you're the same Jonathan
12 Lincoln who was convicted in 2011 for giving false
13 information to the police?

14 A That was me, sir.

15 Q That was you?

16 A I do not dispute that.

17 I don't lie, Your Honor, when -- I mean, when I'm
18 guilty, I say I'm guilty. When I'm not guilty, I will come
19 this far with it. I'm sorry, I just -- I think that justice
20 should serve everybody. It's served against me in the past.
21 I feel like and hope today that it serves me in the
22 positive.

23 MR. WEEKS: No further questions, Your Honor.

24 THE COURT: Any redirect, Ms. Hayes?

25 MS. HAYES: No, Your Honor.

1 THE COURT: Thank you, sir. You may step down.

2 Call your next witness.

3 MS. HAYES: Your Honor, at this time, the Defense rest.

4 THE COURT: All right. Ladies and gentlemen, the
5 Defense has now rested its case. There's some matters of
6 law I need to discuss with the attorneys outside of your
7 presence. Please return to the jury room. Don't discuss
8 the case amongst yourselves. I'll bring you back shortly.

9 (WHEREUPON, the jury exits the courtroom at 10:52 a.m.)

10 THE COURT: Any motions?

11 MR. THOMPSON: Your Honor, at this time, the Defense
12 would specifically renew the motion for directed verdict on
13 the resisting arrest charge.

14 The argument of the State is somewhat circular. If you
15 ask okay, well, how did he resist arrest? He resisted
16 arrest by failing to get into the police car and not
17 cooperate when he was being told to get in the police car.
18 What was he under arrest for at that point in time? And the
19 answer is he's under arrest for disorderly conduct. What
20 was the disorderly conduct? And the answer is the
21 disorderly conduct was his failure to cooperate with the
22 police officers when they wanted to detain him.

23 Actually, the law for disorderly conduct under section
24 16-17-530, the only way you can get arrested for disorderly
25 conduct is either being grossly intoxicated in public, which

1 there's no allegation he was grossly intoxicated;
2 discharging a gun or pistol or firearm, there's no
3 allegations he was discharging a firearm; using obscene,
4 profane language, there's no allegations he was using
5 profane language.

6 The only other ground for arresting him for disorderly
7 conduct is conducting himself in a disorderly and boisterous
8 manner. The only conduct that was disorder and boisterous
9 is his alleged refusal to cooperate with them when they want
10 to detain him, which is a circular argument. We're going to
11 arrest you for not wanting to be arrested.

12 There is no such law as resisting detainment. That's
13 not a thing. Normally, when you resist detainment, there's
14 other issues and factors and they end up arresting you
15 because they have probable cause to arrest you for other
16 things. But there's no such thing as resisting detainment.
17 What he's doing is resisting detainment. The police
18 characterize his resisting of being detained as disorderly
19 conduct and, therefore, they get to arrest him for
20 disorderly conduct, which, Your Honor, I submit is a
21 circular argument that should not be allowed. And at this
22 point in time, we would move for directed verdict on the
23 resisting arrest charge.

24 I do have one other motion, but I'll sit down on this
25 one.

1 THE COURT: I'll hear from the State.

2 MR. WEEKS: Your Honor, we made the argument at the
3 close of the State's case, viewing it in the light most
4 favorable to the moving party as always that the officer
5 testified that when they got out to the car, he continued to
6 resist his arrest for disorderly conduct.

7 Now, I understand his argument that he was not being
8 disorderly. I beg to differ based on the facts and the
9 testimony of the officer that he was resisting their arrest.

10 MR. THOMPSON: And, Your Honor, my argument is not
11 based on any kind of disagreement about the facts. I would
12 move, though, that as a matter of law that he's not -- the
13 actions that he -- everything alleged is true. The actions
14 that he does as a matter of law are not disorderly conduct
15 and, therefore, he can't be arrested for resisting arrest
16 because he's being arrested for something that's not a
17 crime.

18 THE COURT: Right, if the only disorderly conduct -- if
19 the only conduct he was disorderly was the effort to resist
20 being detained, that is not disorderly conduct, therefore,
21 no lawful arrest. So at the police car, he can't be
22 resisting arrest because no lawful arrest has been made.

23 MR. THOMPSON: Yes. That is our argument, yes, ma'am.

24 THE COURT: And I agree with you. Motion granted.

25 MR. THOMPSON: Additionally, at this time, we would

1 make a general motion for directed verdict based under Rule
2 19.

3 THE COURT: That is respectfully denied.

4 MR. THOMPSON: Thank you, Your Honor.

5 THE COURT: Okay. Now, let's discuss jury
6 instructions.

7 MR. THOMPSON: Your Honor, frankly, I think the
8 proposed jury instruction, since Your Honor has ruled on
9 directed verdict is -- frankly, I believe that is not
10 necessary.

11 THE COURT: Absolutely.

12 So presumption of innocence, reasonable doubt, direct
13 and circumstantial evidence, credibility of witnesses,
14 expert witnesses, identification of the Defendant as the
15 person who committed the crimes charged.

16 Any objection to that?

17 MR. WEEKS: I'm not sure what your's says.

18 THE COURT: I've modified it and it's relatively short,
19 so I'll read it. An issue in this case is the
20 identification of the Defendant as the person who committed
21 the crimes charged. The State has the burden of proving
22 identity beyond a reasonable doubt. You must be satisfied
23 beyond a reasonable doubt of the accuracy of the
24 identification of the Defendant before you may convict the
25 Defendant.

1 Once again, I instruct you the burden of proof is on
2 the State of every element of the crime charged and this
3 succinctly includes the burden of proving beyond a
4 reasonable doubt the identity of the Defendant as the person
5 who committed the crime. If after examining the testimony,
6 you have a reasonable doubt as to the accuracy of the
7 identification, you must find the Defendant not guilty.

8 That may could use some work.

9 MR. WEEKS: It's a little long.

10 THE COURT: It's a little repetitive. I've been
11 working on it while listening to testimony.

12 MR. WEEKS: Also, your charge on reasonable doubt, do
13 you charge also firmly convinced?

14 THE COURT: Yes.

15 MR. WEEKS: I know I interrupted you when you got to
16 the ID. So you were going down the list of your charges.

17 THE COURT: Then criminal intent, followed by prior
18 record of the Defendant, which may only be considered in
19 determining whether the Defendant's testimony is believable
20 and for no other purpose.

21 Then I get into elements of the crimes, possession with
22 intent to distribute, which I combined since there were two
23 charges of PWID. That is charged with possession with
24 intent to distribute cocaine and possession with intent to
25 distribute heroin, the elements of those, the inference,

1 weights. I have our possession of ten or more grains or --
2 I'm sorry, or 0.65 grams of cocaine.

3 MR. WEEKS: I believe it's a gram, Your Honor.

4 THE COURT: Is it? 10 grains or one gram?

5 MR. WEEKS: No, I think it's a gram.

6 THE COURT: So it's not a grain. I'm sorry, yes.

7 MR. WEEKS: On cocaine, I think it's still a gram.

8 THE COURT: I think you are correct. Possession of one
9 or more grams of cocaine. And then heroin, I may have old
10 information, two or more grains?

11 MR. WEEKS: Yes, ma'am.

12 THE COURT: Or 0.13 grams I think is the calculation of
13 heroin. And then I have trafficking --

14 MR. WEEKS: 28 to 99 -- to 100.

15 THE COURT: 28 to 100. Okay. And that's it?

16 MR. WEEKS: More than 10 grains -- more than 28 grams,
17 I'm sorry, for that trafficking statute.

18 THE COURT: Right, 10 to 28. But it's more than --

19 MR. WEEKS: 28 to 100.

20 THE COURT: That's right. I don't know why I said that
21 because I'm looking at the 28 to 100. So right, more than
22 28 grams.

23 Yes.

24 MR. THOMPSON: Your Honor, I agree with the Solicitor
25 on that and I don't want to weigh into the math on this. I

1 do have one completely separate item just for the expedient
2 progress of the trial. I'm fairly certain that Mr. Weeks is
3 not planning on mentioning this in close, but we would
4 object to any argument in close of where are the nephew or
5 the aunt or whoever as burden shifting. It would probably
6 end up in a mistrial. I'm certain they're probably not
7 going to do that. I just wanted to kind of bring that to
8 the Court's attention.

9 THE COURT: Mr. Weeks?

10 MR. WEEKS: I'm not going to be doing close, but he
11 testified as to, basically -- I don't know what you would
12 call it, an alibi or somebody else did it kind of defense.
13 I think it's proper, we should be able to talk about where
14 his auntie --

15 THE COURT: I think it's clearly burden shifting.

16 MR. WEEKS: He shifted it. He opened the door.

17 THE COURT: To fingering his nephew, but, I mean, if it
18 were an armed robbery, you know, generally, the defense is
19 not that no robbery occurred, it's that it wasn't me,
20 generally. Maybe they don't have the name of the person who
21 they know did it, but no, I think it's not proper.

22 All right. Anything else before we close this one out?

23 MR. WEEKS: I don't know there's anything particular
24 about the failure to stop charge.

25 THE COURT: I completely forgot, that's what happened.

1 No, I will charge that of course. Yeah, there's nothing
2 special about it.

3 MR. WEEKS: Thank you, Your Honor.

4 THE COURT: Thank you for mentioning it.

5 All right, we're going to take --

6 Yes, ma'am.

7 MS. HAMMACK: I'm going to let you talk first.

8 THE COURT: No, go ahead. We're about to break, go
9 ahead.

10 MS. HAMMACK: I was just going to ask because the State
11 does plan on using some of the demonstrative evidence for
12 closing if we could have a few minutes.

13 THE COURT: Yeah, we'll take about 20 minutes.

14 (WHEREUPON, a short recess was taken.)

15 THE COURT: State ready?

16 MS. HAMMACK: We are, Your Honor.

17 THE COURT: Defense?

18 Oh, sorry.

19 MS. HAMMACK: I just wanted to make sure we're all on
20 the same page under State V. Beattie since the Defense did
21 introduce evidence in this case, the State is reserving
22 right to rebut following Defense closing.

23 MS. HAYES: We have no objection, Your Honor.

24 THE COURT: Wonderful.

25 All right. Let's bring the jury in.

1 Let me just quickly put on the record. I did provide
2 both sides copies of the jury instructions.

3 Any objection from the State?

4 MS. HAMMACK: No, Your Honor. But I do have one other
5 thing I just thought about.

6 THE COURT: Okay.

7 Let's pause on the jury. Can you close the door?

8 MS. HAMMACK: Sorry.

9 THE COURT: Was there any objection from the Defense?

10 MS. HAYES: No, Your Honor.

11 MS. HAMMACK: I don't think we've ever selected a
12 Foreperson.

13 THE COURT: We didn't, and I'm going to. I mean, I
14 haven't yet, but while y'all were talking, I picked it out.

15 MS. HAMMACK: Perfect. I just thought about it.

16 THE COURT: Thank you.

17 Bring in the jury.

18 (WHEREUPON, the jury enters the courtroom at 11:54
19 a.m.)

20 THE COURT: Welcome back, folks. It's getting on to
21 lunchtime, but we have ordered lunch for you. It will be
22 here shortly.

23 In the meantime, all that remains for this trial is the
24 closing arguments of the attorneys and my charge to you on
25 the law that applies to this case. You will then retire to

1 deliberate until you reach a verdict.

2 So I know there was a question about cell phones.
3 Unless there is an urgent matter, I have not intended to
4 allow you access to your cell phones. Typically, I would
5 over lunchtime, but because we've ordered lunch in and I
6 think the lunch will be here by the time we get done in the
7 courtroom, what I would like is for you to eat lunch and
8 deliberate. So, of course, you cannot have your cell phones
9 during deliberations. I wasn't going to make a separation
10 there.

11 If there is an urgent matter, a childcare matter or
12 something along those lines and you absolutely need to have
13 your cell phone, if you would raise your hand at this time.

14 (No hands raised.)

15 THE COURT: Perfect.

16 So in that case, I'm going to ask you to give the
17 attorneys your undivided attention for their closing
18 arguments.

19 Yes, ma'am.

20 MS. HAMMACK: Thank you, Your Honor.

21 CLOSING ARGUMENT BY THE STATE

22 MS. HAMMACK: It's been a long week, y'all. Friday is
23 here. I thank y'all for staying here. We have to be here
24 anyway, but I know it's been a long week and I appreciate
25 your patience. This is my chance I get to talk to y'all

1 about what has occurred this week and then you will get a
2 chance to make a decision on your own.

3 Over the course of this trial, yesterday and today, the
4 facts have gotten a little bit easier for you because
5 there's not a whole lot that anybody disagrees about. In
6 fact, most of what happened the night of February 26th going
7 into the morning of February 27th, 2020, is undisputed.

8 So let's talk first about things we can all agree on so
9 then we can focus on just the little decisions that you have
10 to make. There is no question and you don't have to debate
11 whether on the evening of February 26th, 2020, that officers
12 with the Aiken County Sheriff's Office attempted to perform
13 a traffic stop on a white Dodge Durango traveling on I-20.
14 Nobody is saying that didn't happen.

15 We know that that night, Sergeant Knight started a
16 traffic stop on I-20 when a Durango drove by him with the
17 windows so tinted that his lights wouldn't go through that
18 tint and he couldn't even see the silhouette of somebody
19 driving that vehicle. He told you what the legal tint law
20 is here in South Carolina.

21 We know that Sergeant Knight pulled out behind that
22 Durango, put on his blue lights. And when the Durango
23 didn't stop, he put on his sirens. Y'all watched more
24 videos than y'all probably wanted to watch of lights and
25 sirens and taillights in the dark for 20 minutes of video,

1 at least.

2 We know from those videos and from the testimony that
3 that traffic stop went from mile marker 25, here we have US
4 1, which is Exit 22, going towards Columbia. The very next
5 exit is the Wire Road exit, Exhibit 29. We know that the
6 Durango turned off of the highway and started coming down
7 Wire Road, all the way back to town, past the jail, past the
8 animal shelter, right there at the elementary school almost
9 back to the bypass where it turned left on New Bridge Road.

10 We know from the video that Sergeant Knight was behind
11 that Dodge Durango with lights and sirens. We know that
12 Highway Patrol was behind that Dodge Durango. We actually
13 see on those videos when the officers passed Highway Patrol
14 to take charge of the pursuit. We know Sergeant Palmer was
15 behind that vehicle with lights and sirens. Y'all had to
16 watch his video, too.

17 As the video is going, you hear the officers talking to
18 dispatch and you heard them testify 80 miles an hour, 90
19 miles an hour, 85 miles an hour, 70 miles an hour going back
20 away from town on New Bridge Road, passing neighborhoods,
21 mailboxes. I couldn't count how many mailboxes we passed
22 watching this video. To where it dead-ended on New Holland
23 Road, still lights and sirens, still the vehicle was not
24 stopping, going twice the speed limit on these roads. The
25 vehicle turned away from town back north onto New Holland,

1 all the way to a field off of New Holland Road.

2 Sergeant Knight and Sergeant Palmer both testified that
3 this car chase was almost 31 miles. We went all the from
4 the highway back to town and back all the way out to where
5 this vehicle stopped. And it didn't stop, it didn't stop on
6 the side of the road. This vehicle pulled into a field.
7 Law enforcement was behind it. Half of them got stuck. And
8 then the driver of that vehicle did what law enforcement
9 called bush bond. He took off and ran. That is not in
10 question. Nobody is saying that didn't happen.

11 Now, when we go to the next picture, the other thing
12 that we know is that that vehicle was left in this field.
13 The driver's door was open. No other doors were open.
14 Officers stated that the vehicle stayed in their sight the
15 entire time they were pursuing it. And they stated when
16 that vehicle stopped in the field, nobody got out of the
17 passenger side, nobody got out of the back. The only door
18 that was open was that driver's door. And there was so much
19 stuff in that Durango, nobody else could have fit in it.

20 We know that law enforcement searched up and down the
21 road, searched these fields, got the tracking dogs out
22 there. They searched half the night looking for the person
23 that ran from this car, that ran from police.

24 And what we also know that's undisputed, that nobody is
25 arguing about, just a few hours later, at ■ Anderson Road,

1 right here, just on the other side of the woods from that
2 car was the Defendant, Jonathan Lincoln.

3 What else do we know that's not in argument, that
4 nobody is disputing, that you can accept as fact? We know
5 that that white Dodge Durango that was running from the
6 police at speeds up to 90 miles an hour past people's houses
7 for 31 miles, we know that that Dodge Durango is his. The
8 DMV said it was. He said it was. The tag is registered to
9 him. The vehicle is registered to him.

10 We also know as fact that his mail was in that car with
11 his name and address. His prescription bottles, he looked
12 at them, said yep, these are definitely mine. Jonathan
13 Lincoln, [REDACTED] Alpine Drive, were in that Durango. His phone
14 was in that Durango. Those were his tinted windows. His
15 slippers. Law enforcement said they found a shoe that
16 somebody had come out of when they ran out of that car. He
17 said, yeah, I was wearing slippers. His shotgun was in the
18 back of that Durango. His baggies. You can't really put a
19 sandwich in this, they're little baggies, found in his car.

20 And, importantly, in that bag in the front passenger
21 seat, is scales. He answered Solicitor Weeks on
22 cross-examination, Yeah, it's possible I left my scales in
23 my truck. These don't measure out hamburger meat or
24 chicken.

25 What's also undisputed that you can take as fact is

1 that the Defendant was found just on the other side of the
2 woods from his car the night that his car ran from the
3 police, it was raining. You saw it on video. He said it
4 was raining. And we know as fact that he was wet and he was
5 dirty. And he didn't have any shoes on.

6 And the last thing that we know, that we don't have to
7 question, that everyone in here agrees on is that in the
8 Defendant's own car off of New Holland, the same time he's
9 found off of New Holland, there's a bag and in that bag is
10 full of drugs. 1.56 grams of powder cocaine, 22.99 grains
11 of heroin and 49.1 grams of methamphetamine.

12 Members of the jury, that makes your job a lot easier.
13 You won't have to argue about that stuff. All of that we
14 know is true. So the only question before you guys is was
15 the Defendant driving his own car when he ran from the
16 police? Was the Defendant, the owner, in possession of
17 these drugs in his car that night? So we've narrowed this
18 down for one question for you.

19 Now, let's talk about what we know about who could have
20 been the driver of that car and who could have had
21 possession of those drugs. I don't want to spend a whole
22 bunch of time talking about it, but I do think it's
23 interesting what the Defendant told you.

24 The Defendant wants you to believe all that stuff is
25 true about the drugs in the car and all that, but I wasn't

1 driving my car because my nephew took it on a joy ride
2 across the county. And everything in that car was mine,
3 except for the illegal stuff. All the other stuff is okay,
4 yeah, I'll claim that, but I'm not going to claim that
5 because it's against the law.

6 The Defendant wanted you to believe that the reason he
7 didn't have any shoes on is not because he ran out of his
8 slippers running from the police and that's why there's one
9 laying right by the car when the police stopped, that's not
10 why his slipper is right there. His slipper is there
11 because he got out to go pee in the grass and he took his
12 slippers off because they're inside shoes and he didn't want
13 to get them wet. He said it was high grass and it was
14 raining and he had socks on.

15 So he's okay with getting his socks wet and dirty and
16 then put those wet and dirty socks back in his indoor shoes.
17 That's okay, but he doesn't want to get his shoes wet. He's
18 got his other shoes that he took off to put those slippers
19 on. But he's not going to put those shoes on to step out
20 away from his car to go to the bathroom outside. He's going
21 to get out in the rain in his sock feet. That's what he
22 wants you to believe. That's the silliest thing I've ever
23 heard.

24 He wants you to believe that his nephew took his truck
25 just for fun, just a joke and didn't bring it back. And his

1 phone is in the car. So he's got to figure out where his
2 truck is and he's got to find his phone, so he's going to
3 get some WiFi to track his phone. So he walks from Piper
4 Lane back under the I to where -- there's all kind of
5 businesses. We've got gas stations, we've got a McDonald's,
6 we've got a Bojangles across the street, there's a hotel.
7 There's all these places -- the Waffle House. There's all
8 these places to stop.

9 So he goes to these places and he doesn't call the
10 police because he doesn't want to get his nephew in trouble.
11 Why didn't he just call his own phone? Hey, nephew, this
12 isn't funny anymore. Just call me and come back and get me.
13 Walk to a landline, you don't need WiFi to use a landline,
14 just call him. The hotel, why couldn't he just walk in the
15 hotel and pick up the phone and say hey, nephew, bring my
16 truck back? This isn't cool. But he doesn't do that. He
17 goes and gets just close enough to hook up to WiFi until a
18 good samaritan arrives. He doesn't know this woman from
19 Adam's house cat, but she's willing to stop and let him use
20 her WiFi. Not her phone.

21 Again, even if he doesn't want to call the police, he
22 could have called his own phone that his nephew has. He
23 could have called his nephew's mom. He could have called a
24 friend. He could have called anybody for a ride, but he
25 says no, no, I just want to use your WiFi, that's all.

1 But, also, as long as I'm not being too big of a
2 burden, can you drive me to New Holland from US 1? I don't
3 know you from Adam's house cat and it's dark and raining,
4 but rather than just letting me make a phone call, why don't
5 you drive me across the county to the country? And he found
6 the world's best good samaritan in Aiken County to drive a
7 stranger in the dark to New Holland?

8 The Defendant wants you to believe that when he was out
9 -- she dropped him off at Shaws Fork and New Holland, still
10 a long way from where he ended up. He wants you to believe
11 that he saw all these police cars going up and down the
12 road. And he said, quote, sitting in that chair, he said to
13 you, They should have seen me.

14 The police have chased somebody for 31 miles in the
15 Defendant's car. They have a tracking dog. They are
16 walking in the rain on foot and driving up and down the road
17 looking for the person that ran from the police. You think
18 they wouldn't have stopped if they saw him? They should
19 have seen me. And even though the police are looking for
20 somebody, they don't stop when there's somebody on the side
21 of the road.

22 The Defendant said he hoped the homeowner would help or
23 call the police when he got to the house. He said he
24 knocked on the door, rang the doorbell. And y'all got to
25 hear from Colt Woody that lived at that house. He said I

1 was in bed and I heard the sirens. I woke up and I turned
2 the lights on for safety. My wife called the neighbor. We
3 made sure we were all locked up and we went back to bed.
4 But he's not going to hear a knocking on the door or a
5 ringing of the doorbell? Colt Woody don't know anybody
6 involved in this case. He doesn't have any reason to come
7 in here and lie to you. If his doorbell had been rung or
8 somebody knocked on his door, he would have told you. But
9 that's not what happened.

10 So the Defendant talked all about using his tablet to
11 turn on his music and control his music. And that's what he
12 was using to try to locate his phone. Well, y'all saw the
13 video when law enforcement found him at Anderson Road, where
14 was his tablet? If he was walking all over creation pinging
15 his phone, where was his tablet?

16 You see, there's a lot of problems with the Defendant's
17 story about why it wasn't him driving that car and why these
18 weren't his drugs. So let's talk about some of the things
19 that we know that tells us that it was the Defendant driving
20 that car running from the police and that he was running
21 from the police because he knew exactly what was in his car.

22 We've already said it's undisputed, it's his car. His
23 stuff is in the car. The prescription bottles with his name
24 on them are in the car. The paperwork in the glovebox is
25 his. Those shoes found by the car -- and Sergeant Knight

1 says there's footprints to the wood line that aren't shoe
2 prints. They're footprints.

3 It's amazing the story he had to come up with to
4 explain why he was so close to his car on the opposite side
5 of the county from where he lives, somewhere he's got no
6 reason to be from just before midnight to six o'clock in the
7 morning from February 26th to February 27th, 2020. He told
8 you he lives between Aiken and New Ellenton. And yet, both
9 his car and him are off of New Holland Road, but it's not
10 because he rode in that car to get there.

11 The Defendant was the only person in that car. Only
12 one person could have been in that car. Only one person ran
13 out of that car and from the police. They said the Durango
14 was in sight at all times and no one got out of the
15 passenger. That only on the driver's side where the shoes
16 were did somebody get out.

17 As a result of this incident, the Defendant was charged
18 with failing to stop for a blue light and sirens and was
19 charged with drugs in his car. And after I talk and the
20 Defense talks, the Judge is going to explain to you what the
21 law is for these crimes, and the law that you have to follow
22 and apply. But I want to give you a little bit of a heads
23 up about what you're going to hear.

24 The crime of failing to stop for a blue light and
25 sirens is kind of just what it sounds like. When law

1 enforcement attempts a traffic stop and they let you know by
2 turning on their blue lights and by turning on those sirens,
3 the law says you have to stop in a reasonable amount time in
4 a reasonable place. You don't have to immediately hit the
5 brakes and cut the car off right then, but you've got to
6 pull over and you've got to stop. That's the signal for
7 stopping. And it's got to be where a reasonable person
8 could see those blue lights and to hear those sirens.

9 This was not a car chase where a car drives by and the
10 police are on a side street and they pop their lights and,
11 you know, they have a split second to maybe see them or not.
12 This is 31 miles. This is the car speeding up, slowing
13 down, turning onto different roads, driving in the middle of
14 the road. When the police car attempts to get closer, he
15 pulled into the middle of a two-lane road and straddled that
16 center line.

17 The actions of the vehicle and the actions of the
18 driver shows he knew the police were behind him. They were
19 behind him for 20 minutes. They took turns. This is not a
20 mistake. This is someone who was running from the police.
21 That's failure to stop for a blue light and sirens.

22 Now, the Defendant is also charged with three different
23 drug crimes. He's charged with possession with intent to
24 distribute cocaine and possession with intent to distribute
25 heroin. We'll talk about the methamphetamine in a minute.

1 In South Carolina, there's kind of three levels with drug
2 cases. There's possessing drugs, there's possession with
3 intent to distribute and there's trafficking.

4 Possession with intent to distribute is, essentially,
5 what it sounds like. You don't have these drugs just for
6 you. They're for someone else. They're for multiple
7 people. And several different things that you get to
8 consider in determining whether someone has drugs with the
9 intent of distributing them.

10 One of those things in South Carolina is called an
11 inference weight. The Judge is going to talk to you about
12 that. But there comes a point where when you have so much
13 of a certain drug, the law says that's more than most people
14 would have just for themselves. Like, just the amount
15 itself, you're sharing that with someone. And so the
16 inference weight in South Carolina for cocaine is one gram.
17 And what that means is when someone has more than one gram
18 of cocaine, you can infer based on the weight that they were
19 going to sell it.

20 With heroin, same situation. There's an inference
21 weight and it's two grains. So if someone has more -- not
22 grams, grains. Because, of course, we had to complicate
23 things and use two different measurements. But for heroin,
24 it's two grains. And if someone has more than two grains of
25 heroin, you can assume that they had it with the intent to

1 sell it, not just to use it themselves.

2 In this case, members of the jury, the amount of
3 cocaine in that man's car was 1.56 grams. So about 150
4 percent of what that inference weight is. Now, for the
5 heroin, it was 22.99 grains of heroin in the Defendant's
6 car. The inference weight is two grains. He had ten times
7 the possession amount of heroin. Not just a little bit
8 more, but ten times the weight where it says that's a
9 distribution.

10 And then for the methamphetamine. The Defendant is
11 charged with trafficking methamphetamine. I told you
12 there's three different levels. There's possession, there's
13 possession with intent to distribute and then there's
14 trafficking. And trafficking is not what a lot of people
15 probably picture. We're not talking about some crazy Walter
16 White, Breaking Bad, making stuff in your kitchen and, you
17 know, having a distribution center and selling it.

18 Trafficking in South Carolina, much like possession
19 with intent to distribute is based on weight. So just
20 possessing enough of a drug makes you guilty of trafficking.
21 You don't have to be caught giving it to a dealer who is
22 then going to deal it to somebody else. Again, the law says
23 when you've got that much, that's not just enough for you to
24 be selling, that's trafficking.

25 In South Carolina, what you're going to hear is that

1 the Defendant is charged with trafficking 28 to 100 grams of
2 methamphetamine. But the inference weight is ten grams.
3 Once somebody has ten grams or more of methamphetamine, you
4 can infer, you can assume that that's for trafficking.
5 There was 49.1 grams of methamphetamine in the Defendant's
6 passenger seat of his Durango. That's five times the
7 inference weight for trafficking.

8 When I think about trafficking versus what we call
9 PWID, possession with intent to distribute, or possession, I
10 have to think about food. And I know it's the perfect time
11 to think about food. I think about food all the time. It's
12 my favorite thing. But when you're talking about somebody
13 with possession weight drugs, that's like going to the
14 grocery store and buying dinner for yourself. You're not
15 sharing it. You're going to eat it.

16 Possession with intent to distribute is like going to
17 Sam's or Costco. You're not going to buy one pound of
18 chicken or a single steak or a single baked potato for you
19 to eat at Sam's or Costco. You're going to be buying the
20 ten-pound bag of potatoes or you're going to be buying the
21 whole beef loin or you're going to be buying a whole chicken
22 cut up because you're going to be feeding other people.
23 You're feeding a family if you go into Sam's or Costco.
24 That's like possession with intent to distribute.

25 And in trafficking, it's like Cisco or U.S. Foods.

1 They've got that 18-wheeler coming. They're the ones that
2 supply the grocery stores. They supply the Costco and the
3 Sam's. They have so much more food that it's not just to
4 sell to straight people, it's to give to the people that
5 sell to the people. In the same way, the weight of drugs in
6 South Carolina distinguishes possession, possession with
7 intent to distribute and trafficking.

8 And that's what we have in this case. The weight of
9 these drugs for the cocaine is 150 percent more than the
10 inference weight. The heroin is ten times the possession
11 weight. And the methamphetamine is five times the
12 possession of intent to distribute weight. It's five times
13 into that trafficking weight.

14 But when you're thinking about possession with intent
15 to distribute or trafficking, you don't have to just
16 consider weight. You can consider how the drugs were
17 packaged and you can consider what else was with them.

18 In this case, these drugs were found in a bookbag in
19 the Defendant's car in the passenger seat. But that bookbag
20 didn't just have drugs in it. That bookbag had these scales
21 that are commonly used to weigh drugs, to weigh drugs, to
22 measure out how much you're going to sell. You don't want
23 to give somebody too much and get short-changed. That's not
24 good business. Because someone that's distributing drugs
25 makes sure that they measure it out exactly so they can

1 maximize their money. It's like somebody selling food or
2 selling any other item.

3 And the other thing that was in that bag with those
4 scales with these drugs is -- I think Solicitor Weeks held
5 it up during the trial, was a bunch of Ziploc sandwich bags.
6 But more importantly, were these. You're not going to put a
7 serving size of any food in these. But what you are going
8 to do after you measure out your cocaine or your heroin or
9 your methamphetamine that's in your stock, in your
10 inventory, you're going to measure it out on that scale and
11 you're going to put it in this little bitty bag to sell to
12 people.

13 And so all of those things go into your determination
14 that these aren't drugs just to hold onto or to use by
15 yourself. These are drugs for distribution. And the
16 methamphetamine so much that it's drugs for trafficking.

17 When you came here on Monday and then on Wednesday and
18 then on Thursday and now today, you had to go through the
19 metal detectors. You had to take your belt off, your watch.
20 I don't know if they make you take your shoes off, I can't
21 remember. It's been a while. But anything that could set
22 off that metal detector, you had to take off. If you have
23 any pocketknives or scissors in your purse, you've got to
24 leave those in your car. But what you don't have to leave
25 is your common sense and your life experiences. You don't

1 have to look at this stuff in a bubble. You get to use what
2 you know about life and your common sense to determine what
3 makes sense and what doesn't, what's reasonable and what's
4 not.

5 The State's burden is to prove guilt beyond a
6 reasonable doubt. And that's exactly what it sounds like,
7 what's reasonable and what doesn't make any sense at all.
8 The Defendant wants you to believe that somebody else just
9 happened to take his car across town to New Holland,
10 somebody else ran from the police in his car and then jumped
11 out of his car and fled. Which is funny, I guess his cousin
12 walked all the way back to Piper Lane on foot and didn't get
13 caught. Because if his cousin drove his car and ran from
14 the police and jumped out, then he's on foot, too. That's a
15 really long walk, a lot longer than what the Defendant said
16 he did.

17 But the Defendant wants you to believe that somebody
18 else took his car, bailed out of it, left his shoes there
19 with all his stuff in the car, but just happened to leave
20 boo-coos, hundreds and hundreds of dollars worth of drugs in
21 that car and just abandoned them.

22 And he wants you to believe that he's walking around in
23 his sock feet so he don't get his shoes wet and he just
24 happens to find a stranger to drive him into the country.
25 And he just happens to stop at this house right near where

1 his car was abandoned. And all of this is circumstance.
2 Everything else in the car is his, but not this. These
3 scales are his that he left in his truck, that were found in
4 the same bag as his drugs. So the scales are his, but the
5 drugs aren't?

6 The Defendant doesn't want you to believe that he was
7 in his car, driving that night, running from the police
8 because he didn't want to get caught with these illegal
9 drugs.

10 MR. THOMPSON: Your Honor, we have an objection and a
11 matter of law that needs to be taken up outside the presence
12 of the jury.

13 THE COURT: Ladies and gentlemen, please return to your
14 jury room. Don't discuss the case amongst yourselves. I'll
15 bring you out shortly.

16 (WHEREUPON, the jury exits the courtroom at 12:34 p.m.)

17 THE COURT: Yes, sir.

18 MR. THOMPSON: I apologize. I hesitate to interrupt
19 anyone's closing argument. While there is absolutely
20 testimony in this case that Mr. Lincoln was presented with
21 the scales and was told -- and was asked if the scales were
22 his and I believe he said yes, he tells me that his scales
23 were packed in the back of the truck. I don't believe that
24 there was any testimony in this trial that the scales that
25 are in this -- that are in evidence in this case were

1 actually found on the passenger seat of this car.

2 I would argue it's a critical piece of evidence in this
3 case -- I would agree with the State that it's a critical
4 piece of evidence in this case if the scales that he claims
5 are actually right there with the drugs, that would be a --
6 that would be very damning testimony, but I don't believe
7 that that testimony was -- was in the evidence and testimony
8 of this case. I don't believe any of the officers actually
9 said that. If that's true, I believe that the State would
10 be arguing facts that are not in evidence and we would move
11 for a mistrial in this case.

12 THE COURT: Yes, ma'am.

13 MS. HAMMACK: Your Honor, it's my recollection that
14 when Sergeant Knight was testifying about where he found the
15 various items in the vehicle, he stated that there was mail
16 in the glovebox and that there was a bag in the passenger
17 seat that contained both the scales and the drugs. I think
18 he said the prescription bottles were in the glovebox. But
19 my recollection was that he stated the scales were in the
20 bag with the drugs with the baggies.

21 Your Honor knows your jury charges and you know that
22 you will tell the jury that our arguments are not evidence
23 and they must rely on their own recollection of the
24 testimony.

25 The Defendant did not testify as to the location of his

1 scales, but he did admit that they were his. Mr. Weeks
2 asked him a two-part question. A, are these your scales;
3 and B, were they in your truck? He said, Yes, they are my
4 scales and it's possible they could have been in my truck.

5 But my recollection of the testimony is that Sergeant
6 Knight said specifically that those scales and the baggies
7 were found in the bookbag in the passenger seat with the
8 drugs. But I think Your Honor's instruction will cure any
9 -- you know, obviously, they can argue otherwise, but Your
10 Honor's instructions to the jury will be that the jury has
11 to rely on their own recollection of the testimony.

12 THE COURT: Yes, sir.

13 MR. THOMPSON: And, Your Honor, I would just ask that
14 we -- this would be an easy thing to resolve if the court
15 reporter can look back at the testimony.

16 But I would argue that unless the officer testified
17 that the scales were found on the passenger seat with the
18 drugs -- because the argument was that they were actually in
19 a bag with the drugs. Unless there's testimony to that
20 effect, then the argument that the scales were physically
21 right there with the drugs, I would tell you that as a
22 juror, I don't know that I would be able to overcome
23 anything like that. I don't think there's any jury
24 instruction to fix that. And I would ask for a mistrial.

25 But, again, I hesitate to interrupt people during their

1 closing arguments, but I would ask that the court reporter
2 actually look back into the record of this case and be able
3 to tell us whether or not the officer actually testified
4 that these scales were on the seat with the drugs.

5 MS. HAMMACK: And, Your Honor, I think we're both
6 entitled to argument to tell the jury what we believe has
7 been presented, but I think we are starting to invade the
8 jury's job of making the determination of fact in this case
9 by telling them what they should or should not accept as
10 fact. It's their job to determine the credibility of the
11 witnesses and to rely on what they've heard. And I think by
12 going into that, we are crossing the line into the jury's
13 job. I think Mr. Thompson is certainly entitled to argument
14 and I think Your Honor will charge the jury appropriately.
15 But I think this is going too far.

16 MR. THOMPSON: Your Honor, we're -- essentially, what
17 we're doing is we're kind of heading off at the pass the
18 question that the jury would have to ask when they are in
19 the jury room. They will have to send us out the question
20 of did the officer say this. We'll be stuck playing the
21 testimony for them in the courtroom after the trial of the
22 case. I would just like to ask that we go ahead and just
23 address this issue at this point in time.

24 THE COURT: Let's go off the record briefly.

25 (WHEREUPON, a short recess was taken.)

1 THE COURT: Bring the jury in, please.

2 (WHEREUPON, the jury enters the courtroom at 1:06 p.m.)

3 THE COURT: All right.

4 Ms. Hammack, you may continue.

5 MS. HAMMACK: Thank you, Your Honor.

6 Y'all have listened to me talk a long time. I know
7 y'all are tired and I'm not going to keep you a whole lot
8 longer. There's just two more things I want to cover real
9 fast and then I promise I'm going to sit down.

10 I talked to you about what's not a question. And
11 what's not a question is that there was a failure to stop
12 for a blue light in the Defendant's car and there were drugs
13 in the Defendant's car. And they are possession with intent
14 distribute weight and possession with intent to distribute
15 accessories, trafficking weight and trafficking accessories.

16 One thing the Judge is going to tell you about these
17 drugs is about what possession is. It's not necessarily --
18 you don't have to register your drugs and make sure you've
19 got a little card that says they're yours. It's just do you
20 have them or not. And there's two types of possession.
21 There's actual possession and constructive possession.

22 Actual possession is me walking around with my coffee
23 cup in my hand. I've physically got ahold of it. Now, I
24 drink more coffee than I should and sometimes I get a little
25 crazy. But Monday morning when I sat here and listened to

1 all y'all talk about where you're from and what you do for a
2 living and what your spouses do, I had my coffee cup. It
3 used to say Dunkin' Donuts, but now it's just plain white
4 because I use it everyday. When I was up here on Thursday
5 and we were picking this jury, I had my coffee cup here on
6 the table. And this morning before we started, I had my
7 coffee cup because I needed it.

8 Now, when I'm over here talking to you guys, I don't
9 have my coffee cup in my hand, but that doesn't mean it's
10 not mine anymore. Constructive possession means if
11 something of yours is in an area that you own or control, if
12 something is in your house, if something is your car, you're
13 in constructive possession of it even it's not physically in
14 your hand. I'm still in possession of my cup even though
15 I've walked away from it for a minute.

16 The things in my house, my TV, my books, I'm in
17 constructive possession of those because I have control over
18 my house, who can get in and who can't. Those are my
19 things, they're not somebody else's.

20 So when the Judge talks to you about possession, just
21 because these drugs weren't in somebody's hands, they
22 weren't in the Defendant's hands doesn't mean he wasn't in
23 possession of them. The fact that it's in his car with his
24 stuff that he just ran out of means he is in possession of
25 these drugs.

1 So, members of the jury, as you go back and you think
2 about what's reasonable in this case and is there a reason
3 to doubt what you've heard from the State, you get to think
4 about what makes sense and what doesn't. It's not
5 reasonable to think that there was another sock-footed,
6 soaking wet, dirty person running from the Defendant's car
7 in New Holland where the Defendant just happened to be
8 because a good samaritan carried him across town when he
9 could have used everybody's phone to get out of this
10 situation. But that instead of making all those phone
11 calls, he rides with a stranger to the country to run around
12 in his sock feet looking for his car and his phone.

13 What's reasonable is that the Defendant, Jonathan
14 Lincoln, was driving his car with illegal drugs in it when
15 the police got behind him and tried to stop him, and he ran.
16 And he ran for 30 miles and he dumped his car in a field and
17 he ran on foot in sock feet up out of his shoes that he left
18 on the floor. And he ran until he found a carport to hide
19 in just on the other side of the woods and he got caught
20 where they found him.

21 If you wake up in the morning and the weather channel
22 says it's going to rain and you get an alert on your phone
23 as you're walking into work and it says rain is going to
24 start in 15 minutes and other people behind you walk into
25 the office and they've got umbrellas that are wet and

1 they've got on rain boots and rain jackets that are dripping
2 water and you go out later and the ground is wet and there's
3 water on your windshield, even if you sat in that office the
4 whole time and you didn't see that rain coming down with
5 your eyes, you know it rained. You didn't have to see with
6 your own eyes Jonathan Lincoln running from his own car,
7 leaving his own drugs because your common sense and this
8 evidence tells you exactly what happened. Find him guilty.

9 THE COURT: Ms. Hayes. Mr. Thompson.

10 MS. HAYES: Thank you.

11 CLOSING ARGUMENT BY THE DEFENSE

12 MS. HAYES: Thank you, ladies and gentlemen of the
13 jury, for sitting here and listening and as I asked you to
14 earlier when I came to talk to you yesterday to keep an open
15 mind. You've listened to everything. And as I told you
16 before, it is not the Defendant's burden to prove his
17 innocence, it's the State's job to prove to you that Mr.
18 Lincoln is guilty of these crimes.

19 I want to go through with what we all have. We had
20 Sergeant Knight and Sergeant Palmer on the stand yesterday.
21 And both of them testified they never saw Mr. Lincoln
22 driving the car. Mr. Lincoln wasn't present at the scene
23 when they were searching his car. So nobody saw -- they
24 realistically don't even know the gender of who was driving
25 the car, the color of the person. There's no description

1 because nobody sees who was driving the car.

2 They testified that there was tons of stuff in the car,
3 belongings, the car was packed. Illegal drugs were found on
4 the passenger side on top of it. Not packed in with
5 belongings. Mr. Lincoln testified he was moving. He put
6 all the stuff in his car that he was taking with him.
7 That's why the car was packed with all the stuff in there.
8 But the drugs were found on top.

9 The State found pill bottles in his glove box with his
10 name on it. Is that so unusual that you find his belongings
11 in the car? It's his car. He's not denying that. My pill
12 bottles have my name on them. Same for everybody else,
13 they're your pills, they have your name on them. They're in
14 your car. That doesn't make him a bad person because he's
15 got a prescription that he's got in his car.

16 He had a gun in the back of the car. That's not
17 illegal. But the State made a point of making sure you knew
18 that there was a gun in the backseat of the car. Does that
19 make him a bad person? Does that make him guilty of this
20 crime because there's a gun in the backseat? No. It's
21 legal to have that.

22 Mr. Lincoln did not have to get up on the stand to tell
23 you about what happened, but he did get up on the stand to
24 tell you. You heard all of the witnesses, except there is a
25 missing witness in this case. And I'm going to tell you who

1 that is, it's the dog.

2 They didn't call anybody from the bloodhound team to
3 come in and talk to you about the tracking and how that
4 works. Most of the time, the bloodhound tracking team is
5 successful. Unless somebody picked the person up in a car.
6 But Mr. Lincoln testified he was in the area. He was in the
7 area. Why didn't the dogs find him? You heard testimony
8 from the whole team that they were there for a long time and
9 the dogs didn't track him. Is it maybe because the dog
10 wasn't tracking his scent? He wasn't the one that ran out
11 of the car?

12 He didn't testify he wasn't in the area. He was in the
13 area, he testified to that. He testified that he was
14 sitting on Mr. Woody's porch because he was tired from
15 walking all night. It was cold. He was kind of fed up, he
16 can't find his car.

17 And what did he do when the police showed up? Did he
18 run? He didn't run, but allegedly the night before he was
19 on a 31-mile chase from the police. Why wouldn't he run as
20 soon as he saw the cops coming up to him on the porch if he
21 was this bad person that was running from the cops? He
22 would have. He would have ran, but he sat there.

23 And what did the police do? We don't really know what
24 was said because miraculously, there is no audio on that
25 video. They want to say that they said are you okay. You

1 know, you couldn't hear what they said. Is there a reason
2 why there was no sound? We don't know.

3 But you saw them take him straight to the ground and
4 arrest him without really talking to him. They didn't ask
5 him -- you know, they didn't interview him. They never took
6 him back to the police department and sat him down and say,
7 hey, can you tell us what happened last night? Let's
8 investigate this. Is Mr. Lincoln the guy they were looking
9 for or is he a victim of the crime of someone stealing his
10 car. They didn't do that.

11 And that's why I asked you at the beginning, make sure
12 you put the State on trial, not Mr. Lincoln. Because the
13 State has the job to prove to you beyond a reasonable doubt
14 that he's guilty.

15 So why didn't they take him back and question him? It
16 would have been easy. They had him in handcuffs. They had
17 him in custody. They could have went back, gave him his
18 rights and questioned him. At that point, he could have
19 said, I don't want to talk to you. He could have answered
20 the questions. They didn't. They just, that's it. We got
21 our guy. We know what happened because he was in the area.

22 You know, the dogs didn't find him. There weren't just
23 one or two officers that were on the scene that you heard
24 from. They testified there was tons of police in the area.
25 Why didn't they find him? He was in the area. He's telling

1 you he was in the area. Yeah, he doesn't have shoes on, but
2 the officers testified that they found shoes, not slippers.
3 My slippers don't look like shoes. I don't know what these
4 slippers or shoes look like because the State never showed
5 them to you, so we're not really sure what they found, what
6 kind of shoes they were. Were they Nike tennis shoes? What
7 were they? We don't know, they only said shoes.

8 The Defendant said he doesn't want to get his slippers
9 wet. Well, you can understand that. You heard testimony
10 from the officers it was wet and rainy and muddy. All his
11 belongings are in the car. He could have taken those wet
12 socks off when he got back in the car and slipped on his
13 slippers.

14 And I don't know if y'all think that's weird, someone
15 driving around in slippers, but if you do, I'm weird because
16 there's times in the mornings when I take the kids to school
17 that I'm just going to take them to school and come back
18 home and get ready for work and I wear my slippers. They do
19 have a rubber bottom on them so if I did have to get out, it
20 would be okay. But I wear them. I'm in the car driving
21 around and it's uncomfortable with shoes. And my slippers
22 are comfortable. And he was telling you he was going on a
23 trip, too.

24 Now, let's talk about what the State did show you.
25 They showed you a video -- two videos of the same thing in

1 regards to a car chase. Y'all saw it. We watched it. We
2 watched two videos pretty much of the same thing. We never
3 saw Mr. Lincoln in that video. All we saw was a car running
4 from the police. There's no denying that. We all saw two
5 videos of the same thing.

6 Yeah, there was a chase. The problem is we don't know
7 who was driving that car. The State makes their
8 assumptions, but that doesn't mean this jury has to agree.
9 They'll probably get up here after me and rebut what I said,
10 but just because they say it over and over again doesn't
11 make it true.

12 So what I want y'all to focus on is not what was the
13 State has shown, but what don't they have. They don't
14 technically have anything other than Mr. Lincoln was on
15 scene later on. He went looking for his car. That's why he
16 was in the area. He didn't have to get on the stand and
17 tell you anything. That's not his burden. The State has to
18 prove to you that he's guilty.

19 Now, the pill bottles that were in the car were his. I
20 think the officers found them inside the glove box. He's
21 admitted to it. All his stuff is in there.

22 In regards to the scales, the officer testified from my
23 recollection that they were in the passenger seat in the
24 area with the narcotics. That doesn't mean they were in the
25 bag. He said passenger area. It could be anywhere in the

1 front seat. We don't know because he wasn't specific. We
2 don't know exactly where that stuff was. We're not sure
3 specifically because the officer didn't testify to that.

4 This was not a thorough case. They put it together
5 because they found him in the area with no investigation. I
6 want a thorough investigation in order to prove someone
7 guilty beyond a reasonable doubt. That is what they should
8 do. In this case, they didn't. They just kind of it's his
9 car, he was in the area, oh, must be guilty. Instead of
10 let's talk to him and see what happened, maybe he has a
11 reasonable story, maybe he doesn't, but they didn't even
12 check. They just yep, yep, yep, that's it. We know that's
13 not how it works. You know, they should have questioned Mr.
14 Lincoln.

15 I want y'all to think about that and put the State on
16 trial and say did the State do enough to make me believe a
17 hundred percent that he's guilty. If you believe that maybe
18 his story he told you was true, then you have to find him
19 not guilty. That is reasonable doubt. And that's what I'm
20 going to ask y'all to do, just consider that he's telling
21 y'all the truth. He didn't have to get on the stand and
22 tell you anything, but he wanted y'all to know what was
23 going on that night.

24 And I think after you go back and consider all of it
25 and think about it, you're going to come back and say, you

1 know, you're right. The State didn't do a thorough job and
2 you didn't convince me beyond a reasonable doubt. And
3 you're going to tell me he's not guilty. Thank you so much
4 for your time.

5 THE COURT: Yes, ma'am.

6 MS. HAMMACK: Thank you, Your Honor.

7 CLOSING ARGUMENT BY THE STATE

8 MS. HAMMACK: The police didn't see the Defendant in
9 that car because the windows were tinted. They didn't see
10 anything in that car. The Defendant wasn't in his car when
11 they searched it because he ran. He ran because he didn't
12 want to get caught with what was in his car.

13 Ms. Hayes says that the State wants to talk about
14 prescriptions and guns and that all of these things are
15 legal, and Ms. Hayes is right, they are. But the reason the
16 State talked about them and the reason they're important is
17 because they're all his. Everything in that car was his.

18 These scales that he said were his were, quote, with
19 the narcotics. You can listen to it. Everything in that
20 car was his except for the stuff he don't want to admit,
21 which is all those drugs.

22 Ms. Hayes said well, they were sitting right on top,
23 somebody put them there. Yeah, when I go to the grocery
24 store, I put my eggs on top so they don't break because
25 they're fragile. You're going to put your drugs on top of

1 stuff so they don't get smushed. That's money is what that.
2 You are going to put them on top, that's exactly where
3 you're going to put them.

4 Ms. Hayes says well, what did the Defendant do when the
5 police pulled up? Yeah, let's talk about what he did. He
6 said when he went to that house he was hoping the homeowner
7 would help or call the police. He said, quote -- and I'm
8 going to make sure I get this right, I was very happy to see
9 the police. Yeah, he looked happy alright.

10 Ms. Hayes said that our Aiken County Sheriff officers
11 who have worked there for over a decade didn't do anything.
12 They just found him in the area, so let's arrest him. They
13 weren't walking around on foot in the cold and rain for
14 hours through the night in a wet field, up and down the road
15 looking for the person that ran from them. That doesn't
16 count for much, to be walking for hours looking for somebody
17 that's run from them at 90 miles an hour past neighborhoods
18 where people live, past schools and churches, somebody
19 that's been a danger for 30 miles and these officers looked
20 for hours.

21 Ms. Hayes said well, they didn't interview the
22 Defendant and they should have talked to him, maybe he has a
23 story. But another thing that maybe he had was the Fifth
24 Amendment right to remain silent. And if I got up here and
25 said well, he should have talked to the police, I'd be in

1 trouble. Because he has a right under the Constitution not
2 to talk to the police, but the Defense wants to know why
3 they didn't go and interrogate him and question him.

4 Members of the jury, the last thing the Defendant said
5 to you when he testified -- let me find it so I can quote it
6 correctly because I wrote it down. He said, Justice should
7 serve everybody. And he's right. For every single person
8 that lived on Wire Road, lived on New Bridge Road, that
9 lived on New Holland Road, for the cars that were driving,
10 oncoming traffic, when a vehicle is in the middle of a
11 two-lane road straddling a center line at 90 miles an hour
12 on a dark, curvy road, for the people asleep in their beds
13 at night who hear lights and sirens going down the road who
14 have to turn on their lights and lock their doors for
15 safety, justice should serve everybody.

16 You don't have to abandon your reason and your common
17 sense. Everything in that car, the car registration itself
18 and the person that they found opposite side of the county
19 where he's supposed to be just passed that car without his
20 shoes that he left beside the car. It was not his nephew,
21 it was the Defendant. He's guilty.

22 CHARGE ON THE LAW

23 THE COURT: All right, folks, it's now time for me to
24 charge you on the law that applies to this case. I remind
25 you that during this trial, you and I have certain duties to

1 perform. As the trial judge, it is my responsibility to
2 preside over the trial of this case. I also have the duty
3 to rule on the admissibility of the evidence offered during
4 this trial.

5 You are to consider only the evidence before you. If
6 there is any testimony ordered stricken from the record
7 during this trial, you must disregard that testimony. You
8 are to consider only the testimony which has been presented
9 from this witness stand, any exhibits which have been made a
10 part of the record in this case and any stipulations of the
11 parties.

12 I have the additional duty to charge you on the law
13 applicable to this case. It is your duty as jurors to
14 accept and apply the law as I now state it to you. If you
15 think you have any idea as to what the law is or what the
16 law ought to be and it does not agree with what I tell you
17 the law is, you must forget that idea because you are sworn
18 to accept the law and apply the law exactly as I state it to
19 you.

20 In every case tried in this court before a jury, the
21 jury becomes the sole and exclusive judge of the facts. A
22 trial judge cannot comment on or make any statement about
23 the facts in a case. Since you are the sole judges of the
24 facts, do not think by anything that I have said during the
25 trial that I have any opinion about the facts in this case.

1 The law does not allow me to have an opinion about the
2 facts.

3 The indictments charge the Defendant with possession
4 with intent to distribute cocaine, possession with intent to
5 distribute heroin, failure to stop a motor vehicle when
6 signaled by a law enforcement vehicle, and trafficking in
7 methamphetamine.

8 I remind you that the fact the Defendant was arrested,
9 charged and indicted in this case is not evidence in this
10 case and cannot be considered by you as evidence of guilt in
11 this case nor does it create any presumption or inference of
12 guilt. The documents are simply the formal written
13 instruments which contain the charges made against the
14 Defendant. They are the formal documents by which this case
15 was brought into this court.

16 The Defendant has pled not guilty to each of these
17 indictments and that plea puts the burden on the State to
18 prove the Defendant guilty. A person charged with
19 committing a criminal offense in South Carolina is never
20 required to prove himself innocent.

21 I charge you that it is an important rule of law that a
22 defendant in a criminal trial, no matter what the
23 seriousness of the charge may be will always be presumed to
24 be innocent of the crimes for which the indictments were
25 issued unless guilt has been proven by evidence satisfying

1 you of that guilt beyond a reasonable doubt.

2 This presumption of innocence does not end when you
3 begin your deliberations, but it accompanies the Defendant
4 throughout the trial until you reach a verdict of guilt
5 based on evidence satisfying you of that guilt beyond a
6 reasonable doubt.

7 The presumption of innocence is like a robe of
8 righteousness placed about the shoulders of the Defendant
9 which remains with the Defendant until it has been stripped
10 from him by evidence satisfying you of the Defendant's guilt
11 beyond a reasonable doubt.

12 The presumption of innocence is not a mere legal
13 theory. It is not just a legal phrase. It is a substantial
14 right to which every Defendant is entitled unless you, the
15 jury, are satisfied from the evidence of the Defendant's
16 guilt beyond a reasonable doubt.

17 What is a reasonable doubt in the law? A reasonable
18 doubt is the kind of doubt that would cause a reasonable
19 person to hesitate to act. The State has the burden of
20 proving the Defendant guilty of each of the charges against
21 him beyond a reasonable doubt.

22 Some of you may have served as jurors in civil cases
23 where you were told that it is only necessary to prove that
24 a fact is more likely true than not true, such as by the
25 greater weight or preponderance of the evidence. In

1 criminal cases, the State's proof must be more powerful than
2 that. It must be beyond a reasonable doubt.

3 Proof beyond a reasonable doubt is proof that leaves
4 you firmly convinced of the Defendant's guilt. There are
5 very few things in this world that we know with absolute
6 certainty and in criminal cases, the law does not require
7 proof that overcomes every possible doubt.

8 If, based on your consideration of the evidence, you
9 are firmly convinced that the Defendant is guilty of the
10 crimes charged, you must find the Defendant guilty. If, on
11 the other hand, you think there is a real possibility that
12 the Defendant is not guilty, you must give the Defendant the
13 benefit of the doubt and find him not guilty.

14 There are two types of evidence which are generally
15 presented during a trial: Direct evidence and
16 circumstantial evidence.

17 Direct evidence is the testimony of a person who claims
18 to have actual knowledge of a fact, such as an eyewitness.
19 It is evidence which immediately establishes the main fact
20 to be proven.

21 Circumstantial evidence is proof of a chain of facts
22 and circumstances indicating the existence of a fact. It is
23 evidence which immediately establishes collateral facts from
24 which the main fact may be inferred. Circumstantial
25 evidence is based on inference and not on personal knowledge

1 or observation.

2 The law makes absolutely no distinction between the
3 weight or value to be given to either direct or
4 circumstantial evidence nor is a greater degree of certainty
5 required of circumstantial evidence than of direct evidence.
6 You should weigh all of the evidence in the case. After
7 weighing all of the evidence, if you are not convinced of
8 the guilt of the Defendant beyond a reasonable doubt, you
9 must find the Defendant not guilty.

10 Necessarily, you must determine the credibility of
11 witnesses who have testified in this case. Credibility
12 simply means believability. It becomes your duty as jurors
13 to analyze and to evaluate the evidence and determine which
14 evidence convinces you of its truth.

15 In determining the believability of witnesses who have
16 testified in this case, you may believe one witness over
17 several witnesses or several witnesses over one witness.
18 You may believe a part of the testimony of a witness and
19 reject the remaining part of the testimony of that same
20 witness. You may believe the testimony of a witness in its
21 entirety or reject the testimony of a witness in its
22 entirety. You may consider whether any witness has
23 exhibited to you any interest, bias, prejudice or other
24 motive in this case. You may also consider the appearance
25 and manner of a witness while on the witness stand.

1 The rules of evidence ordinarily do not permit
2 witnesses to testify to opinions or conclusions. An
3 exception to this rule is for witnesses we call expert
4 witnesses. A witness who by education and experience have
5 become expert in some art, science, profession or calling
6 may state an opinion as to relevant and material matter in
7 which the witness claims to be an expert and may also state
8 the reasons for the opinion.

9 You should consider any expert opinion received in
10 evidence in this case and, like any other evidence, give it
11 the weight you think it deserves. If you decide the opinion
12 of an expert witness is not based on sufficient education
13 and experience or if you conclude that the reasons given in
14 support of the opinion are not sound or that the opinion is
15 outweighed by other evidence, you may disregard the opinion
16 entirely.

17 An expert witness's testimony is to be given no greater
18 weight than that of other witnesses simply because the
19 witness is an expert. Further, you are not required to
20 accept an expert's opinion even though it is not
21 contradicted.

22 An issue in this case is the identification of the
23 Defendant as the person who committed the crimes charged.
24 The State has the burden of proving identity beyond a
25 reasonable doubt. You must be satisfied beyond a reasonable

1 doubt that the accuracy of the identification of the
2 Defendant as the person who committed the crime before you
3 may convict the Defendant. If, after examining the
4 testimony, you have a reasonable doubt as to the accuracy of
5 the identification, you must find the Defendant not guilty.

6 In order to establish criminal liability, criminal
7 intent is required. For example, the mental state required
8 to be proven by the State for a particular crime might be
9 purpose, intent, knowledge, recklessness or criminal
10 negligence. Criminal intent must be proven by the State
11 beyond a reasonable doubt. Criminal intent is always a
12 matter that must be determined by the jury from the
13 circumstances surrounding the situation.

14 There is no way to prove intent to a mathematical
15 certainty. There is no way medical science can dissect a
16 person's brain and determine what the person had in mind.
17 So the law says that criminal intent may be inferred from
18 the circumstances shown to have existed. This is how you
19 make a determination of whether or not the element required
20 of intent was present.

21 It is not necessary to establish intent by direct and
22 positive evidence, but intent may be established by
23 inference in the same way as any other fact, by taking into
24 consideration the acts of the parties and all the facts and
25 circumstances of the case. Criminal intent is a mental

1 state, a conscious wrongdoing. It is up to you to determine
2 what the Defendant intended to do based on the circumstances
3 shown to have existed.

4 You have heard evidence that the Defendant was
5 convicted of a crime other than the one for which the
6 Defendant is now on trial. This evidence may be considered
7 by you if you conclude it's true only in deciding whether
8 the Defendant's testimony is believable and for no other
9 purpose. You must not consider the Defendant's prior record
10 as any evidence of the Defendant's guilt of the charges we
11 are trying today.

12 The Defendant is charged with possession with intent to
13 distribute cocaine and possession with intent to distribute
14 heroin. The State must prove beyond a reasonable doubt that
15 the Defendant possessed cocaine with the intent to
16 distribute it and the State must prove beyond a reasonable
17 doubt that the Defendant possessed heroin with the intent to
18 distribute it.

19 In the prosecution of a crime for possession of
20 narcotics, possession may be actual or constructive. Actual
21 possession occurs when the drugs are found to be in the
22 actual physical custody of the person charged with
23 possession; while constructive possession occurs when the
24 person charged with possession has dominion and control over
25 either the drugs or the premises upon which the drugs are

1 found. Therefore, the State must prove beyond a reasonable
2 doubt that the Defendant had both the power and the intent
3 to control the disposition or use of the cocaine and of the
4 heroin.

5 Mere presence at the scene where the drugs were found
6 is not enough to prove possession. The Defendant's
7 knowledge and possession may be inferred when a substance is
8 found on the property under the Defendant's control.
9 However, this inference is simply an evidentiary fact to be
10 taken into consideration by you along with the other
11 evidence in the case and to be given the weight you decide
12 it should have.

13 The State must also prove beyond a reasonable doubt
14 that the Defendant intended to distribute the cocaine and/or
15 the heroin. Distribute means to deliver, other than by
16 administering or dispensing a drug.

17 Intent may be shown by acts and conduct of the
18 Defendant and other circumstances from which you may
19 naturally and reasonably infer intent.

20 In determining whether the Defendant had the intent to
21 distribute cocaine and/or heroin, you may consider the
22 circumstances surrounding the Defendant's alleged
23 possession. You may consider the amount of the substance
24 alleged to have been possessed, the manner in which it was
25 allegedly possessed, the place where it was allegedly

1 possessed and other factors which you consider to be
2 important. You must find that the Defendant did not intend
3 to have the cocaine or the heroin solely for his own use.

4 Possession of one or more grams of cocaine creates an
5 inference that the Defendant possessed the cocaine with the
6 intent to distribute it. Possession of two or more grains
7 or 0.13 grams of heroin creates an inference that the
8 Defendant possessed heroin with intent to distribute it.

9 These inferences do not relieve the State from proving
10 beyond a reasonable doubt that the Defendant had the intent
11 to distribute. They are simply evidentiary facts to be
12 taken into consideration by you along with the other
13 evidence in the case and to be given the weight you decide
14 it should have.

15 The Defendant is also charged with failure to stop a
16 motor vehicle when signaled to do so by law enforcement.
17 Therefore, the State must prove beyond a reasonable doubt
18 that the Defendant was driving a motor vehicle on a road,
19 street or highway of this state. The State must also prove
20 beyond a reasonable doubt that a law enforcement vehicle
21 signaled by means of a siren or flashing light for the
22 Defendant to stop his vehicle. Finally, the State must
23 prove beyond a reasonable doubt that the Defendant failed to
24 stop his vehicle, attempted to increase the speed of the
25 vehicle or in some other manner avoided the pursuing of law

1 enforcement vehicle.

2 Finally, the Defendant is charged with trafficking in
3 methamphetamine. The State must prove beyond a reasonable
4 doubt that the Defendant knowingly sold, manufactured,
5 cultivated, delivered, purchased, brought into this state,
6 provided financial assistance or otherwise aided, abetted,
7 attempted or conspired to sell, manufacture, cultivate,
8 deliver, purchase or bring into this state, was knowingly in
9 actual or constructive possession, knowingly attempted to
10 become in actual or constructive possession of more than 28
11 grams of methamphetamine. I know that was a mouthful.

12 Now, you have been chosen and sworn to give the parties
13 in this case a fair and impartial trial. When you have done
14 so, you will have complied with your oath and no one will
15 have a right to criticize your verdict. You must not be
16 influenced by any opinions or expressions of opinion you may
17 have heard outside of the courtroom, but, rather, should
18 base your verdict solely on the testimony of the sworn
19 witnesses who took the stand, the exhibits received into
20 evidence and the law which I have stated.

21 You should not be swayed by caprice, passion, prejudice
22 or improper sympathy for or against anyone in this case.
23 Remember, you have no friends to reward or enemies to punish
24 and all parties are entitled to a fair and impartial trial.
25 It is your duty as jurors to consult with one another and to

1 deliberate in an effort to reach an agreement. Each of you
2 must decide this case for yourself, but only after impartial
3 consideration of all of the evidence with your fellow
4 jurors.

5 In the course of your deliberations, do not hesitate to
6 reexamine your own views and change your opinion if you
7 become convinced it is erroneous. However, do not surrender
8 your honest conviction as to the weight or effect of the
9 evidence solely because of the opinion of your fellow jurors
10 or for the mere purpose of returning a verdict. As I stated
11 earlier, you are judges, judges of the fact. Your verdict
12 must represent the considerate judgment of each juror. In
13 other words, your verdict must be unanimous.

14 There are two possible verdicts which you may find for
15 each indictment in this case: Guilty or not guilty. There
16 is no significance whatsoever in the order in which I state
17 these possible verdicts, it's simply that one must be stated
18 first.

19 Now, you may have noticed that I have read these
20 instructions and I do so to give you the law as accurately
21 as possible.

22 Juror No. 177, Ms. Thompkins will be the Foreperson of
23 the jury.

24 Raise your hand, Ms. Thompkins.

25 (Juror raised hand.)

1 THE COURT: There we go.

2 All right. Madam Foreperson, it will be your duty to
3 preside over the deliberations of the jury. If during your
4 deliberations you should desire to communicate with the
5 Court, please put your question in writing or your message
6 in writing, signed by you as the Foreperson and the
7 Foreperson only and pass the note to the bailiff, who will
8 bring it to my attention. I will then respond as promptly
9 as possible either in writing or by having you return to the
10 courtroom. I caution you, however, with regard to any
11 message or question that you might send that you should
12 never state or specify your numerical division at the time.

13 You have heard the evidence and you have heard the law.
14 Whatever your verdict, Madam Foreperson, you will indicate
15 it on the back of each of the indictments and sign it and
16 date it on behalf of the jury. There is an indictment for
17 each charge. I've explained the charge. Then if you flip
18 it over, in this bottom left-hand corner, there is a place
19 to write the verdict, guilty or not guilty. You'll sign it
20 and date it as Foreperson of the jury.

21 Now, remember that although the Foreperson is the only
22 juror who writes the verdict, it is not her's alone. The
23 verdict has to be unanimous.

24 Madam Foreperson, you are not permitted to write the
25 verdict until all of you have agreed upon it.

1 Now, I am going to send you back to your jury room.
2 For the last time, I will ask you not to discuss the case,
3 but that is only until you receive the exhibits and the
4 indictments. Once you receive these things, the exhibits
5 and the indictments, that will be your signal to begin your
6 deliberations.

7 Once you begin your deliberations, you will deliberate
8 until you have reached a verdict, at which time, you will
9 knock on the door, advise the bailiff and we'll bring you
10 back into the courtroom to receive your verdict.

11 Your lunch should already be back there. You may have
12 already eaten it. I noticed when we took a break that it
13 had arrived. Feel free to do that whichever way you choose.

14 Just make sure that the jury, Madam Foreperson,
15 deliberates together. So if two people are eating
16 sandwiches and not paying attention, you know, you will all
17 be in the same room, but just make sure that everyone is
18 involved in the deliberations.

19 So please return to your jury room. As I said, when
20 you get the indictments and the evidence, that's your signal
21 to begin deliberations.

22 (WHEREUPON, the jury exits courtroom for deliberations
23 at 1:48 p.m.)

24 THE COURT: Any objections to the jury charge from the
25 State?

1 MS. HAMMACK: No, Your Honor.

2 THE COURT: From the Defense?

3 MS. HAYES: No, Your Honor.

4 THE COURT: All right. Make sure all the evidence is
5 there and give it to the jury.

6 MR. THOMPSON: Is Your Honor going to call the
7 alternate out?

8 THE COURT: Thank you.

9 When you go hand them the evidence, please bring my
10 alternate out.

11 MR. WEEKS: Your Honor, we're going to send the laptop
12 back with the DVD attached to it.

13 THE COURT: Yes.

14 MR. WEEKS: If the bailiff would instruct them if they
15 have any trouble operating it to let us know.

16 THE COURT: Right.

17 (WHEREUPON, the alternate juror enters the courtroom.)

18 THE COURT: All right, Mr. Alternate. Thank you for
19 your service. Thank you for hanging in there with us. You
20 were the alternate juror in case something happened to one
21 of the main 12. Nothing did, they've made it to the finish
22 line so your service is complete. You're not permitted to
23 deliberate on the case, but you're now free to talk to
24 whoever you want to talk to about the case. You can talk to
25 the attorneys, your family, friends, anyone else. It

1 doesn't matter, give your opinion, don't give your opinion.
2 Either way is fine.

3 You should already have a work excuse. Your check is
4 in the mail. You are no longer qualified to serve on a jury
5 in circuit court for this calendar year, the rest of 2021.
6 If you are summoned in 2022 or 2023, then you will have to
7 appear, but you can exercise the exemption. You will tell
8 the Judge that you served on this jury this week and they
9 will let you go.

10 ALTERNATE JUROR: Okay.

11 THE COURT: So I think that's it. Grab your lunch
12 before you leave and have a good weekend.

13 ALTERNATE JUROR: Thank you.

14 THE COURT: Thank you.

15 All right. Folks, we're going to take a break so we
16 can eat something and then I'm happy to do whatever while we
17 wait for the jury.

18 MS. HAMMACK: Thank you, Your Honor.

19 (WHEREUPON, Court was in recess for lunch and awaiting
20 a verdict.)

21 THE COURT: I understand from the bailiff that the jury
22 has reached a verdict.

23 Please bring the jury in.

24 (WHEREUPON, the jury enters the courtroom at 3:05 p.m.)

25 THE COURT: Madam Foreperson, has the jury reached a

1 verdict as to each of the charges?

2 MADAM FOREPERSON: Yes, ma'am, we have.

3 THE COURT: Are those verdicts unanimous?

4 MADAM FOREPERSON: Yes, they are.

5 THE COURT: If you will hand the indictments to the
6 bailiff, please.

7 Madam Clerk, if you would publish the verdicts.

8 VERDICT

9 THE CLERK: Your Honor, we have case number
10 2020-GS-02-02099, the State of South Carolina, The State vs.
11 Jonathan Art Lincoln, indictment for failure to stop a motor
12 vehicle when signaled by a law enforcement vehicle, not
13 guilty. Signed by the Foreperson, Edith Thompkins, dated
14 7/23/2021.

15 Your Honor, we have case number 2020-GS-02-02100, the
16 State of South Carolina, The State vs. Jonathan Art Lincoln,
17 indictment for trafficking in methamphetamine, verdict,
18 guilty. Signed by the Foreperson, Edith Thompkins, dated
19 July 23rd, 2021.

20 THE COURT: Mr. Lincoln. Mr. Lincoln, I need you to be
21 quiet. If you need to sit, have a seat, Mr. Lincoln.

22 Madam Clerk, please continue.

23 THE CLERK: Your Honor, we have case number
24 2020-GS-02-02098, the State of South Carolina, The State vs.
25 Jonathan Art Lincoln, indictment for possession with intent

1 to distribute heroin. The verdict is guilty, signed by the
2 Foreperson, Edith Thompkins, dated July 23rd, 2021.

3 Your Honor, we have case number 2020-GS-02-02097, the
4 State of South Carolina, The State vs. Jonathan Art Lincoln,
5 indictment for possession with intent to distribute cocaine.
6 The verdict is guilty, signed by the Foreperson, Edith
7 Thompkins, dated July 23rd, 2021.

8 Your Honor, we have case number 2020-GS-02-02096, the
9 State of South Carolina, The State vs. Jonathan Art Lincoln,
10 indictment for resisting arrest. The verdict is not guilty,
11 signed by Edith Thompkins, dated July 23rd, 2021.

12 Ladies and gentlemen of the petit jury, if this is your
13 verdict for Jonathan Art Lincoln, please indicate by the
14 raising of your right hand.

15 THE DEFENDANT: Please don't. Please.

16 THE CLERK: Judge, all hands are raised.

17 THE COURT: Okay.

18 Anything further from the jury before they're
19 dismissed, Ms. Hayes?

20 MS. HAYES: Nothing from the Defense, Your Honor.

21 THE COURT: Ladies and gentlemen of the jury, thank you
22 for your service. Clearly, this case was significant to the
23 State, to Mr. Lincoln, to his family and friends. So I
24 thank you for your time, attention, focus and deliberation
25 on this case.

1 On behalf of the citizens of Aiken County and the State
2 of South Carolina and everyone else, we know that jury
3 service is an inconvenience and it is -- you have to make
4 difficult decisions, but I trust that you have done what you
5 think is right. And as I said in my instructions, no one
6 has the right to criticize your verdict. So we appreciate
7 that.

8 Your jury service -- of course, it's Friday, your jury
9 service is complete. We appreciate you hanging in there
10 with us this week. You are now free from jury duty for the
11 rest of 2021. You are no longer qualified to serve on a
12 jury in 2021. If you are summoned in 2022 or 2023, you will
13 have to come and you can exercise an exemption. You will
14 tell that Judge that you served on this jury and they should
15 let you go.

16 You should have work excuses. If not, they will bring
17 them to you in the jury room. I'm going to excuse you to
18 the jury room and ask you to just hang tight for a second.
19 I'm going to come back in and chat with you just for a
20 moment before you leave. But outside of that, you're free
21 to discuss the case with anyone you want to talk to about it
22 at this point and do whatever research you want. Those
23 rules don't apply anymore, not since your verdict has been
24 rendered.

25 So you may go back to your jury room. I will follow in

1 just a moment. Thank you.

2 (WHEREUPON, the jury exits the courtroom at 3:12 p.m.)

3 THE COURT: All right, folks, we're going to take 15 or
4 20 minutes so that y'all can get me sentencing sheets and so
5 that Mr. Lincoln can compose himself. We will proceed with
6 any post-trial motions and sentencing at that time.

7 (WHEREUPON, a short recess was taken.)

8 THE COURT: All right. We're back on the record.

9 First, let me hear does the Defense have any post-trial
10 motions.

11 MS. HAYES: Yes, Your Honor. At this time, the Defense
12 will renew all previous motions and objections and we move
13 for a new trial on the basis that the jury lacked enough
14 evidence to necessarily find the Defendant guilty beyond a
15 reasonable doubt.

16 THE COURT: All right. That is respectfully denied.
17 All my previous rulings remain the same.

18 Is there anything else prior to sentencing?

19 (No response.)

20 THE COURT: I just want to acknowledge that, clearly,
21 there was a small error on behalf of the Court in sending
22 the indictments to the jury room and not pulling out the
23 indictment for resisting arrest. It appears to have been a
24 harmless error anyway as he was acquitted of that charge.
25 But I did want to put that on the record because, clearly,

1 the clerk read a verdict for that charge.

2 MR. THOMPSON: We were thinking the same thing, Your
3 Honor.

4 THE COURT: Yes, exactly. I just wanted to address it.
5 Let me hear from the State as to sentencing.

6 MS. HAMMACK: Your Honor, the only thing the State
7 would add in addition to testimony from the trial would be
8 the Defendant's prior criminal history.

9 He has convictions from 2002 of simple assault and
10 battery, shoplifting, open container. He has convictions
11 from 2004 for failure to stop for a blue light, possession
12 with intent to distribute crack cocaine in proximity to a
13 school, park or playground. Convictions from 2005 for
14 possession of marijuana, grand larceny, two convictions for
15 burglary second degree, possession of a stolen vehicle,
16 breaking and entering into an automobile. And convictions
17 from 2011, two counts of possession with intent to
18 distribute marijuana, giving false information and
19 possession of a controlled substance, second offense.

20 THE COURT: So these convictions for possession with
21 intent to distribute heroin and cocaine, trafficking
22 methamphetamine are third offenses?

23 MS. THOMPSON: That's correct, Your Honor.

24 MS. HAMMACK: Yes, Your Honor.

25 THE COURT: Okay. Let me hear from the Defense.

1 MS. HAYES: Your Honor, Mr. Lincoln is 38 years old.
2 He grew up here in Aiken County. He attended Silver Bluff
3 High School and was a football player. He didn't complete
4 high school, but he did obtain his GED in 2000. And then he
5 tells me he went back for his last year of high school
6 because he liked school. He also attended two years of
7 college with a major of psychology with a basis of consumer
8 behavior.

9 He was a maintenance supervisor for the Marriott and
10 while he was out on bond, he was working for Mex-Chem, which
11 is a chemical for lawn care business.

12 He has a daughter who's a freshman this fall in college
13 and a son who's a senior in high school, he's going to be a
14 senior this year in high school.

15 He is a member of the Canaan Baptist Church and he
16 attends Four Mile Missionary Baptist Church here.

17 He's got two brothers and a sister, lots of nieces and
18 nephews, Your Honor. He would ask that you consider the
19 minimum sentence on these charges.

20 And I believe -- I would hope -- I'm going to do it for
21 him, apologize to the Court in regards to his outburst at
22 the verdict being read because it was quite a significant
23 sentence that he's facing, which is a little bit reasonable
24 on why he's upset. And I don't think he wants to address
25 the Court, Your Honor.

1 MS. HAMMACK: He does have some other pending drug
2 charges, to include another trafficking charge. We have
3 already reached out to discuss resolution of those, but they
4 are still pending at this time.

5 MR. THOMPSON: I don't think you want to address the
6 Court, but if you do, now is the time.

7 THE COURT: Mr. Lincoln, I understand that you're
8 upset. I'm happy to give you a moment, but if you want to
9 tell me anything that may impact the sentence I impose on
10 these charges, now is the time to do that. You can choose
11 not to or you can choose to say something. And if you need
12 a moment before you do, let me know.

13 THE DEFENDANT: I don't know what to say.

14 THE COURT: And the reason I want to give you a minute
15 is because I need to understand what you're saying. I'm not
16 able to understand you while you're crying or with your
17 hands in front of your face.

18 THE DEFENDANT: My kids, man. My kids. For drugs,
19 man. Drugs, you taking me from my kids for drugs? I'm
20 sorry, man. For drugs, man. Oh, my God, man.

21 THE COURT: Well, I know it sounds unfortunate and, you
22 know --

23 THE DEFENDANT: Even if I would have been guilty, look
24 how much time that is for drugs.

25 THE COURT: I know.

1 THE DEFENDANT: That's crazy.

2 THE COURT: It is a lot of time for drugs, but it was a
3 lot of drugs and it's not your first offense, which is why
4 the state law is set up the way it is. The first time, you
5 probably wouldn't do any prison time on the first drug
6 charge. And the second time, you're exposed to more time.
7 But by the time you get to trafficking a third offense, 28
8 to 100 grams, that's when it gets serious.

9 And you're put on notice before you even commit those
10 offenses that if you do, you're facing a lot more time,
11 mandatory minimum, which is why you have to back up and make
12 the decision not to commit those offenses again because it
13 puts you in the position where yes, now, at minimum, you're
14 going to do 25 years. That's the minimum. And that may be
15 a good law, it may be a bad law, I take no position on that
16 as I sit here today, but it is the law.

17 THE DEFENDANT: I ain't even guilty. I didn't do it,
18 Your Honor. I ain't even guilty this time. That's why I'm
19 here. That's why I'm at trial. I ain't never went to trial
20 before. The only reason I'm here is because I wasn't
21 guilty, but y'all failed me again. Taking me from my kids.
22 Taking me from my kids again, man. I don't know what to do,
23 man.

24 THE COURT: Is there anything else you want to say, Mr.
25 Lincoln?

1 MR. THOMPSON: I don't believe there's anything else he
2 wants to say.

3 THE DEFENDANT: Oh, no, Your Honor, I'm sorry.

4 SENTENCE OF THE COURT

5 THE COURT: Mr. Lincoln, I respect the jury's verdict,
6 including their verdict of not guilty on the failure to stop
7 for a blue light. That is our justice system. That is the
8 best system I know for resolving these matters. You know,
9 as I said repeatedly throughout the trial, it's not my job
10 to be the finder of facts. I might have found you guilty of
11 the failure to stop as well and that's the least of the
12 concerns. But I did respect the jury's verdict.

13 I say all that to get to the point that I don't know
14 for certain whether it was you driving that car or not. I
15 respect the jury's verdict in finding reasonable doubt
16 there. But what I do know is that it is really unfortunate
17 for you to throw your nephew under the bus to try to save
18 yourself. I think that is deplorable, in fact.

19 So on all charges, Mr. Lincoln, the sentence is that
20 you be committed to the State Department of Corrections for
21 30 years. On the charge of trafficking methamphetamine,
22 there is also a mandatory \$50,000 fine. All sentences will
23 run concurrent to one another. You will get credit for the
24 time that you served.

25 Make the best of your time in the Department of

1 Corrections, sir. Good luck to you.

2 MR. THOMPSON: Your Honor, we have calculated the
3 credit for time served and I believe Ms. Hayes will be able
4 to give that to you momentarily.

5 THE COURT: If you will give me a number of days, I'll
6 write it down.

7 MS. HAYES: It looks like he's got 311 days.

8 THE COURT: Okay. Credit for 311 days served.

9 MR. THOMPSON: Thank you, Your Honor.

10 THE COURT: And thank you all for this week. It's been
11 a busy, but enjoyable week if you can enjoy that kind of
12 thing. I know that's weird to say, but I think everyone
13 within this sytem understands what I mean by that. So not a
14 bad week for my first week in Aiken. Thank you all.

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

June 17, 2025

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Jonathan Art Lincoln, Appellant.

Appellate Case No. 2021-000863

Appeal From Aiken County
Jocelyn Newman, Circuit Court Judge

Unpublished Opinion No. 2022-UP-393
Submitted October 11, 2022 – Filed October 26, 2022

APPEAL DISMISSED

Appellate Defender Lara Mary Caudy, of Columbia, and
Jonathan Art Lincoln, pro se, both for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General William M. Blich,
Jr., both of Columbia, for Respondent.

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.

APPEAL DISMISSED.¹

WILLIAMS, C.J., THOMAS J., and LOCKEMY, A.J., concur.

¹ We decide this case without argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA)

County of AIKEN)JONATHAN ARNEIL LINCOLN #285492)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2023CP0201449
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

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.

- Place of detention RIDGELAND CORRECTIONAL INSTITUTION, 5 CORRECTIONAL ROAD,
RIDGELAND, SOUTH CAROLINA 29936
- Name and location of Court which imposed sentence COURT OF GENERAL SESSIONS,
STATE OF SOUTH CAROLINA, COUNTY OF AIKEN
- Name(s) of co-defendant(s) (if any) N/A
- The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2020-GS-02-02100 "TRAFFICKING IN METHAMPHETAMINE" 28g-100g 3rd(b) 2020-GS-02-02098 "POSS. W/INTENT TO DISTRIBUTE HEROIN" 3rd

FILED

6-27 2023 12:49

JP

1

Robert J. White
C.C.P. & G.S.Shadell Parks
Deputy Clerk2020A0210200393
2020A0210200370
2020A0210200371

(c) 2020-GS-02-02097 "Poss. W/INTENT TO DISTRIBUTE COCAINE" 3rd

5. The date upon which sentence was imposed and the terms of the sentence:

(a) TRAFFICKING IN METHAMPHETAMINE 7/23/2021 30 YEARS(b) POSSESSION W/INTENT TO DISTRIBUTE HEROIN 7/23/2021 30 YEARS(c) POSSESSION W/INTENT TO DISTRIBUTE COCAINE 7/23/2021 30 YEARS

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____ ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. SOUTH CAROLINA COURT OF APPEALS

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. APPEAL DISMISSED PURSUANT TO UNPUBLISHED OPINION NO. 2022-UP-393

ii. _____

iii. _____

(c) the date of each such result:

i. SUBMITTED - OCTOBER 11, 2022; FILED - OCTOBER 26, 2022; REMITTURii. SENT NOVEMBER 18, 2022 "UNPUBLISHED OPINION NO. 2022-UP-393"

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. "DISMISSED AFTER CONSIDERATION OF APPELLANT'S PRO SE PETITION AND REVIEW PURSUANT TO ANDREWSii. V. CALIFORNIA, 386 U.S. 738 (1967). COUNSEL'S MOTION TO BE RELIEVED IS GRANT "PER CURIAM"

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE ATTACHED "MEMORANDUM IN SUPPORT OF POST-CONVICTION RELIEF"
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED "MEMORANDUM IN SUPPORT OF POST-CONVICTION RELIEF"
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (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. DIRECT APPEAL
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. SOUTH CAROLINA COURT OF APPEALS - COLUMBIA, SOUTH CAROLINA
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Appeal Dismissed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Submitted - October 11, 2022; Filed - October 26, 2022
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Per Curiam: "Dismissed After Consideration of Appellant's Pro Se Brief and Review
- ii. Pursuant to Anders v. California, 386 U.S. 738 (1967), Counsel's Motion to Be
- iii. Reviewed is Granted" Unpublished Opinion No. 2022-UP-393
- 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?

The Applicant Craves Reference to Appellate Counsel's "Anders Brief" and Applicant's "Appellant's Pro Se Brief"

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. The Applicant Craves Reference to Appellate Counsel's "Anders Brief" and Applicant's
- ii. "Appellant's Pro Se Brief"
- iii. _____

(b) the proceedings in which each ground was raised:

- i. Appeal from Alameda County (Jocelyn Newman, Circuit Court Judge Appellate Case
- ii. No. 2021-000863
- 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) APPLICANT CRAVES REFERENCE TO ATTACHED "MEMORANDUM IN SUPPORT OF POST-CONVICTION RELIEF"; GROUNDS NOT RECOGNIZABLE UNDER SOUTH CAROLINA APPELLATE COURT RULES AND PURSUANT TO STATEV. DUBENT, 356 S.C. 138, 581 S.E.2d 691

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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. (a) SUZANNE H. HAYES; BARRY THOMPSON - 211 YORK ST. N.E. P.O. Box 2247 Aiken, SC 29801
(b) SUZANNE H. HAYES; BARRY THOMPSON - 211 YORK ST. N.E. P.O. Box 2247 Aiken, S.C. 29801
- ii. (c) SUZANNE H. HAYES; BARRY THOMPSON - 211 YORK ST. N.E. P.O. Box 2247 Aiken, S.C. 29801
(d) LARA M. CADDY - 1330 LADY ST. SUITE 401 COLUMBIA, SOUTH CAROLINA, 29201
- iii. _____

- (b) the proceedings at which each such attorney represented you:

- i. SUZANNE H. HAYES - PRELIMINARY HEARING, TRIAL AND SENTENCING
BARRY THOMPSON - TRIAL AND SENTENCING
- ii. LARA M. CADDY - APPEAL (DIRECT APPEAL)
- iii. _____

19. State clearly the relief you seek in filing this application:

VACATION OF CONVICTIONS AND SENTENCE. REMAND FOR NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Aiken)

VERIFICATION

I, JONATHAN ARNEIL LINCOLN #285492, 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.

SWORN to and subscribed before me this _____
day of _____, _____.

(L.S.)
Notary Public

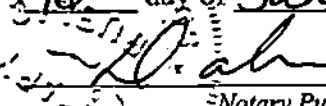
My Commission Expires: _____

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, JONATHAN ARNEIL LINCOLN #285492, 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.


Applicant

SWORN or affirmed to and subscribed before me this
16th day of June, 2013.

Notary Public
My Commission Expires: 8/7/2030

ARREST WARRANT

2020A0210200393

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Aiken

THE STATE

20-010190

against

Jonathan Art Lincoln

Address: Alpine Drive

Aiken, SC 29801-

Phone: [REDACTED] SSN: [REDACTED]
 Sex: M Race: B Height: 5 10 Weight: 155
 DL State: SC DL #: [REDACTED]
 DOB: [REDACTED] 1983 Agency ORI #: SC0020000

Prosecuting Agency: Aiken County Sheriff

Prosecuting Officer: Brandon J Knight, II - S00043

Offense: Drugs / Trafficking in meth. or cocaine base - 28 g or more, but less than 100 g - 1st offense

Offense Code: 0392

Code/Ordinance Sec: 44-53-0375(C)(2)(a)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused
 is to be arrested and brought before me to be
 dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
 defendant on Jonathan Art Lincoln
3-3-20 @ 1447

Signature of Constable Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
 P O Box 583
 109 Park Avenue
 Aiken, SC 29802

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Aiken

Personally appeared before me the affiant Brandon J Knight, II who
 being duly sworn deposes and says that defendant Jonathan Art Lincoln
 did within this county and state on or about 2/26/2020 violate the criminal laws of the
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Aiken)
 in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in meth. or cocaine base - 28 g or more, but less than 100 g - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

Upon information and belief, On 2-26-20 at approximately 2227 hours the defendant, Johnathon Art Lincoln did knowingly and
 without authorization possess approximately 2 ounces of Methamphetamine, a Scheduled II Controlled Substance which was
 located on the passenger seat in a white bag of the vehicle he was driving (2006 Dodge Durango SC tag SIY213), this after being
 stopped for a lawful violation on I-20 east near mile marker 27 and where the vehicle came to a stop at 1945 New Holland Rd in
 Aiken County, SC and being in violation of SC Code of Law 44-53-375 as amended.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Aiken

Affiant's Address 420 Hampton Ave Ne

Aiken, SC 29801-

Affiant's Telephone (803)642-1751

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

it appearing from the above affidavit that there are reasonable grounds believe that

on or about 2/26/2020 defendant Jonathan Art Lincoln

did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Aiken) as set forth below.

DESCRIPTION OF OFFENSE: Drugs / Trafficking in meth. or cocaine base - 28 g or more, but less than 100 g - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
 her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
 soon thereafter as is practicable
 Sworn to and subscribed before me

on 2/26/2020

Lauren Maurice (L.S.)
 Signature of Issuing Judge

Lauren Maurice
 Judge Code: 7406

Judge's Address 435 Wire Road

Aiken, SC 29801-

Judge's Telephone (803)642-2044

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
 A.C. Attorney General
 April 21, 2003
 SCCA 618

240

FILED March 4 20
 Aiken
 Clerk of Court

BAIL set by

WITNESSES

Judge

Lauren Maurice

on

3-3-2020

Type and Amount:

Jurisdiction

Name of Surety:

of Circuit Court

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney:

Decision:

DISPOSITION before

Judge

on

by

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS



Case Number/Charge: 2020A0210200390 Traffic / Failure to stop for a blue light, no Injury or death - 1st offense 2020A0210200391 Drugs / Poss. of 28g (1 oz) or less of marijuana or 10g - 2nd or sub. Offense 2020A0210200393 Drugs / Trafficking in meth. or cocaine base - 28 g or more, but less than 100 g - 1st offense	Trial Court: General Sessions ORIGINAL

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

Directions: Magistrates and municipal court judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND IS SET BY A JUDGE. Magistrates and municipal judges must also use the Checklist on those offenses, for which bond cannot be set by a summary court judge ("non-bailable"), that are GENERAL SESSIONS OFFENSES IN WHICH THEY ARE CONDUCTING FIRST APPEARANCES. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. Defendant must initial where indicated, sign, and be provided a completed copy of this form.

☒ BAIL PROCEEDING/☐ FIRST APPEARANCE BEFORE A MAGISTRATE OR MUNICIPAL JUDGE
 OFFENSES THAT ARE NON-BAILABLE BY A SUMMARY COURT JUDGE)

1. Form used at bail proceeding ☐ Bond Form I (personal recognizance) ☐ Bond Form II (surety, cash, percentage)
☒ None (Non-Bailable Offense) because ☐ charge carries penalty of life or death; or
☒ defendant charged with violent offense while bonded out on violent offense

2. JS (Def. Initials) For cases in which bond was set, defendant was informed:
☒ a. Warrant for arrest may be issued for violation of any condition of bail bond order.
☒ b. His right and obligation to be present at trial and that trial may proceed in his absence if he fails to attend.
☒ c. Failure to appear in court as required may result in institution of additional criminal charges. S.C. Code Ann. § 17-15-90 (2014). Failure to appear in connection with a felony, or while awaiting sentence after conviction, carries an additional penalty of not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, carries an additional penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above may result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.

3. JS (Def. Initials) For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:

☒ Orally ☒ In writing {NOTE: Defendant must be informed of right both orally and in writing.}

- ☒ 4. JS (Def. Initials) Defendant was informed of the right to trial by jury.

5. JS (Def. Initials) In all general sessions cases, in all domestic violence cases, and in all magistrate or municipal cases in which the defendant is subject to a prison sentence, defendant was informed of the following:

- ☒ a. Charges against defendant and nature of the charges.
☒ b. Right to counsel and right to court-appointed counsel if financially unable to afford counsel.

FILED March 4 2020
 C.C.P. & O.S. L.F.H.
Debra Fagan-Hines
 Deputy Clerk

- ☒ c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court-appointed counsel if indigent (must meet guidelines set forth in Rule 602(b), SCACR) and instructions on how to obtain court-appointed counsel. In order to apply for court-appointed counsel, defendant is required to appear before Public Defender's Office located at 211 York St. NE Aiken SC 29801 (803) 642-1732 for indigency screening. Defendant is responsible for a statutory fee of \$40.00 for indigency screening unless that fee is waived or reduced pursuant to §17-3-30(B).

- ☐ 6. _____ (Def. Initials) In all domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.
- ☒ 7. If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.
- ☒ 8. Defendant is required to keep court notified of any change of address until final disposition of charge(s).

Ra Ma

Judge's Signature

[Signature]

Defendant's Signature

March 3, 2020

- ☐ Defendant refused to sign.

2020A0210200390 Traffic / Failure to stop for a blue light, no injury or death - 1st offense
 2020A0210200391 Drugs / Poss. of 28g (1 oz) or less of marijuana or 10g - 2nd or sub. Offense
 2020A0210200393 Drugs / Trafficking in meth. or cocaine base - 28 g or more, but less than 100 g - 1st offense

Jonathan Art Lincoln

ORIGINAL

March 3, 2020

INFORMATION REGARDING YOUR RIGHTS

You have been charged with a criminal offense and if you are found guilty, you are facing serious consequences which may include payment of a fine, loss of your driver's license, and the possibility of a jail sentence. In addition, you may face increased penalties for later convictions, the loss of your right to possess firearms and/or ammunition, and your immigration status will be affected. You have important constitutional rights, including the right to representation by an attorney, but you may lose these rights or waive them if you do not act to protect these rights.

You have the right to hire an attorney to represent you in every case. If you cannot afford an attorney, you may be eligible for a free attorney. If you want a determination made as to whether you are qualified for a free lawyer, then it is your obligation to be screened at the location identified in Paragraph 5(c) of the Bond Checklist Form that you received after your Bond Hearing. If you do not hire an attorney or go to be screened, then you may be found to have waived your right to an attorney at your trial.

You also have the right to represent yourself. However, you should be aware that self-representation can be dangerous. For example, there may be certain factual or legal defenses to your charge that you are not aware of or legal issues related to the conduct of your trial or guilty plea that an attorney would know how to preserve for an appeal. If you exercise your right to proceed without a lawyer, then you are responsible for complying with all applicable rules of court, including rules of evidence, procedural rules, and proper behavior before the Judge and/or Jury.

If convicted on the charge(s) filed against you and ordered to pay a fine, you may request a reasonable scheduled payment plan to pay the fine.

It is your obligation to keep up with your trial date and to obtain an attorney, either by hiring one or by being screened and found eligible for a court-appointed attorney prior to your trial date. If you do not appear at your trial with your attorney, you may be deemed to have waived your right to have an attorney represent you.

You are required to keep the court notified of any change of address until the completion of the case.

Signature of Defendant



☐ Defendant Refused to Sign

FILED March 4 20 20
Robert J. White
 C.C.P. & G.S. Clerk
Late Thomas - Hines
 Deputy Clerk

man 25-30yrs

STATE OF SOUTH CAROLINA

COUNTY OF Aiken

STATE

VS.

Jonathan Art Lincoln

AKA:

Race: Black Sex: M Age: 38DOB: 1983 SS#: [REDACTED]Address: Alpine DriveCity, State, Zip: Aiken, SC 29801DL# [REDACTED] SID# [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2020 - GS - 02 - 02100A/W#: 2020A0210200393Date of Offense: 2/26/2020S.C. Code §: 44-53-0375(C)(2)(c)CDR Code #: 0349

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Drugs / Trafficking in meth. or cocaine base - 28 g or more, but less than 100 g - 3rd or sub. (Fel., 25Y to 30Y)In violation of § 44-53-0375(C)(2)(c) of the S.C. Code of Laws, bearing CDR Code# 0349☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. [REDACTED] (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

80176

100386

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 30 days/months/years/Time Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$ 50,000; provided that upon the service of days/months/years/Time Served and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2020GS0202097, 2098 (July 23, 2021)☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.311 (days/months)☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 It is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Jonathan Art Lincoln INDICTMENT/CASE#: 2020 - GS - 02 - 02100

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

\$14-1-206 (Assessments 107.5%)		\$50,000. ⁰⁰
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$53,750. ⁰⁰
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$100. ⁰⁰
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$25. ⁰⁰
\$14-1-213 (Drug Court Surcharge)	\$150	\$150. ⁰⁰
\$34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$3,120. ¹⁹
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$
TOTAL		\$107,145.75

Clerk of Court/Deputy Clerk: [Signature]
Court Reporter: DCRPPresiding Judge: Jocelyn Neumann
Judge Code: 2757
Sentence Date: July 23, 2021

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	TRAFFICKING IN METHAMPHETAMINE
COUNTY OF AIKEN	)	
	)	§ 44-53-0375(C)(2)(c)

At a Court of General Sessions, convened on December 7, 2020, the Grand Jurors of Aiken County present upon their oath:

That JONATHAN ART LINCOLN did in Aiken County on or about February 26, 2020, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly, actually, or constructively possess, or did knowingly attempt to become in actual or constructive possession of more than 28 grams but less than 100 grams of Methamphetamine, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Brandon J Knight II

Law Enforcement Case #: 20-010190

MBM

ARREST WARRANT NUMBER

2020A0210200393

FILED December 3 20 20

Robert J. Harte
C.C.P. & G.S. PB
Paige Barnes
Deputy Clerk

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: December 3, 2020

for H. Al

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 7/23/2021

DOCKET NO. 2020GS0202100

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

DECEMBER TERM 2020

THE STATE
vs.

JONATHAN ART LINCOLN

CDR #: 0349

Indictment for

TRAFFICKING IN METHAMPHETAMINE

§ 44-53-0375(C)(2)(c)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

CASE # 2020-GS-02-02096, 2020-GS-02-02097,
GENERAL SESSIONS 2020-GS-02-02098, 2020-GS-02-02099,
THE STATE 2020-GS-02-02100vs Jonathan Art Lincoln

STATE'S WITNESSES

Brandon Knight ACSOClarke Palmer ACSOColt WoodyAmieka (Czekaj) Ferrell ACSOAmber Collins ACSO

INDICTED FOR:

Resisting Arrest, Possession with Intent toDistribute Cocaine, Possession with Intent toDistribute Heroin, Failure to Stop motor vehiclewhen signaled by law enforcement vehicle, Trafficking
THE FOLLOWING PETIT JURORS WERE CHOSEN TO PASS ON THIS methamphetamine
CASE: to mine

#171

#161

#177

#151

#190

#74

#192

#188

#40

#178

#47

#165

#17

Alternate I

Alternate II

DEFENSE WITNESSES

Jonathan Lincoln

ARGUMENTS WERE MADE TO THE PETIT JURY BY---

Barry Thompson/Suzanne Hayes

, ATTORNEY FOR THE DEFENSE,

Bill Weeks/Ashley Hammock

, ATTORNEY FOR THE STATE.

THE PETIT JURY WAS CHARGED AND RETIRED BY THE HONORABLE Jocelyn Newman

PRESIDING JUDGE.

JURY RETIRED AT 1:51COURT REPORTER DCRPVERDICT: Trafficking Methamphetamine - GuiltyResisting Arrest - Not guilty; Possession with Intent to Distribute Cocaine - Guilty; Possessionwith Intent to Distribute Heroin - Guilty; Failure to Stop motor vehicle when signaled by law enforcementVehicle -
not guilty

FOREMAN

7-22-2021

7-23-2021 DATE

TIME

COURT CONVENED AT 1:05 pm9:55 amCOURT RECESSED AT 4:44 pm1:55 pm

COURT CONVENED AT

3:07 pm

COURT RECESSED AT

3:10 pm3:49 pm

ARREST WARRANT

2020A0210200370

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Aiken

THE STATE

20-0010190

against

Jonathan Art Lincoln

Address: Alpine Drive

Aiken, SC 29801-

Phone: SSN:

Sex: M Race: B Height: 5 10 Weight: 155

DL State: SC DL #:

DOB: 1983 Agency ORI #: SC0020000

Prosecuting Agency: Aiken County Sheriff

Prosecuting Officer: Brandon J Knight, II - S00043

Offense: Drugs / PWID Cocaine

Offense Code: 3014

Code/Ordinance Sec: 44-53-0375(B)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Jonathan Lincoln on 2-27-20

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P O Box 583
109 Park Avenue
Aiken, SC 29802

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Aiken

Personally appeared before me the affiant Brandon J Knight, II who

being duly sworn deposes and says that defendant Jonathan Art Lincoln

did within this county and state on or about 2/26/2020 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Aiken)

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / PWID Cocaine

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 2-26-20 at approximately 2227 hours the defendant, Johnathon Art Lincoln did knowingly and without authorization possess approximately 6 grams of Cocaine, a Scheduled II Controlled Substance which was located on the passenger seat in a plastic bag of his 2006 Dodge Durango this after being stopped for a lawful violation at I-20 East Bound MM 28 and where the vehicle came to a stop at 1945 New Holland Rd after a pursuit in Aiken County, SC this being in violation of SC Code of Law 44-53-370 as amended.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Aiken

Affiant's Address 420 Hampton Ave Ne

Aiken, SC 29801-

Affiant's Telephone (803)642-1751

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/26/2020 defendant Jonathan Art Lincoln

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Aiken) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / PWID Cocaine

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Sworn to and subscribed before me on 2/27/2020

Signature of Judge
Patrick Dom Sullivan
Judge Code: 5035

(L.S.)

Judge's Address

New Ellenton, SC 29809

Judge's Telephone

(803)652-3609

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

Form Approved by
SC Attorney General
April 21, 2003
SCCA 518

250

FILED March 3 2020
CLERK OF COURT
Aiken County, SC

BAIL set by

WITNESSES

Judge Lauren Maurice
 on 2-23-2020
 Type and Amount: Surety 15,000
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____
 Decision: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
 Sentence: _____

JURORS

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

CODEFENDANTS



Case Number/Charge:

2020A0210200370/Drugs / PWID Cocaine
 2020A0210200371/PWID Heroin
 2020A0210200375/Drugs / Manuf., poss. of Sch. IV drugs, except
 flunitrazepam, with intent to distribute - 1st offense

Trial Court:

General Sessions

ORIGINAL

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

Directions: Magistrates and municipal court judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND IS SET BY A JUDGE. Magistrates and municipal judges must also use the Checklist on those offenses, for which bond cannot be set by a summary court judge ("non-bailable"), that are GENERAL SESSIONS OFFENSES IN WHICH THEY ARE CONDUCTING FIRST APPEARANCES. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. Defendant must initial where indicated, sign, and be provided a completed copy of this form.

☒ BAIL PROCEEDING/☐ FIRST APPEARANCE BEFORE A MAGISTRATE OR MUNICIPAL JUDGE
 OFFENSES THAT ARE NON-BAILABLE BY A SUMMARY COURT JUDGE)

1. Form used at bail proceeding ☐ Bond Form I (personal recognizance) ☒ Bond Form II (surety, cash, percentage)
☐ Nonc (Non-Bailable Offense) because ☐ charge carries penalty of life or death; or
☐ defendant charged with violent offense while bonded out on violent offense

2. JA (Def. Initials) For cases in which bond was set, defendant was informed:

- ☒ a. Warrant for arrest may be issued for violation of any condition of bail bond order.
☒ b. His right and obligation to be present at trial and that trial may proceed in his absence if he fails to attend.
☒ c. Failure to appear in court as required may result in institution of additional criminal charges. S.C. Code Ann. § 17-15-90 (2014). Failure to appear in connection with a felony, or while awaiting sentence after conviction, carries an additional penalty of not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, carries an additional penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above may result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.

3. JA (Def. Initials) For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:

- ☒ Orally ☒ In writing (NOTE: Defendant must be informed of right both orally and in writing.)

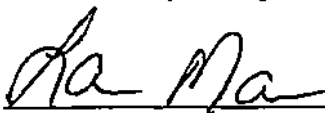
☒ 4. JA (Def. Initials) Defendant was informed of the right to trial by jury.

5. JA (Def. Initials) In all general sessions cases, in all domestic violence cases, and in all magistrate or municipal cases in which the defendant is subject to a prison sentence, defendant was informed of the following:

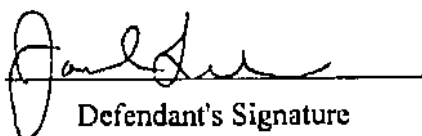
- ☒ a. Charges against defendant and nature of the charges.
☒ b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.

FILED March 5 2020
Robert J. White
 C.C.P. & G.S. JPH
Debra Thomas
 Deputy Clerk

- ☒ c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court-appointed counsel if indigent (must meet guidelines set forth in Rule 602(b), SCACR) and instructions on how to obtain court-appointed counsel. In order to apply for court-appointed counsel, defendant is required to appear before Public Defender's Office located at 211 York St. NE Aiken SC 29801 (803) 642-1732 for indigency screening. Defendant is responsible for a statutory fee of \$40.00 for indigency screening unless that fee is waived or reduced pursuant to §17-3-30(B).
- ☐ 6. _____ (Def. Initials) In all domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.
- ☒ 7. If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.
- ☒ 8. Defendant is required to keep court notified of any change of address until final disposition of charge(s).



Judge's Signature



Defendant's Signature

February 28, 2020

- ☐ Defendant refused to sign.

2020A0210200370 / Drugs / PWID Cocaine

2020A0210200371 / PWID Heroin

2020A0210200375 / Drugs / Manuf., poss. of Sch. IV drugs, except flunitrazepam, with intent to distribute - 1st offense

Jonathan Art Lincoln

ORIGINAL

February 28, 2020

INFORMATION REGARDING YOUR RIGHTS

You have been charged with a criminal offense and if you are found guilty, you are facing serious consequences which may include payment of a fine, loss of your driver's license, and the possibility of a jail sentence. In addition, you may face increased penalties for later convictions, the loss of your right to possess firearms and/or ammunition, and your immigration status will be affected. You have important constitutional rights, including the right to representation by an attorney, but you may lose these rights or waive them if you do not act to protect these rights.

You have the right to hire an attorney to represent you in every case. If you cannot afford an attorney, you may be eligible for a free attorney. If you want a determination made as to whether you are qualified for a free lawyer, then it is your obligation to be screened at the location identified in Paragraph 5(c) of the Bond Checklist Form that you received after your Bond Hearing. If you do not hire an attorney or go to be screened, then you may be found to have waived your right to an attorney at your trial.

You also have the right to represent yourself. However, you should be aware that self-representation can be dangerous. For example, there may be certain factual or legal defenses to your charge that you are not aware of or legal issues related to the conduct of your trial or guilty plea that an attorney would know how to preserve for an appeal. If you exercise your right to proceed without a lawyer, then you are responsible for complying with all applicable rules of court, including rules of evidence, procedural rules, and proper behavior before the Judge and/or Jury.

If convicted on the charge(s) filed against you and ordered to pay a fine, you may request a reasonable scheduled payment plan to pay the fine.

It is your obligation to keep up with your trial date and to obtain an attorney, either by hiring one or by being screened and found eligible for a court-appointed attorney prior to your trial date. If you do not appear at your trial with your attorney, you may be deemed to have waived your right to have an attorney represent you.

You are required to keep the court notified of any change of address until the completion of the case.

Signature of Defendant

☐ Defendant Refused to Sign

FILED March 3 20 20
Robert J. White
CCCP & G.S. LPH
Debra Martin-Hines
Deputy Clerk

man 10-30 yrs

STATE OF SOUTH CAROLINA

COUNTY OF Aiken

STATE

VS.

Jonathan Art Lincoln

AKA:

Race: Black Sex: M Age: 38DOB: -1983 SS#: [REDACTED]Address: Alpine DriveCity, State, Zip: Aiken, SC 29801DL# [REDACTED] SID# [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2020 - GS - 02 - 02097AW#: 2020A0210200370Date of Offense: 2/26/2020S.C. Code §: 44-53-0370(b)(1)CDR Code #: 0185

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II - 3rd or sub. offense CocaineIn violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0185☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. [REDACTED] (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 30 days/months/years/Time Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2020 GS 0262098, 2100 (July 23, 2021)☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.311 (day/months)☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Jonathan Art Lincoln INDICTMENT/CASE#: 2020 - GS - 02 - 02097

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____ \$ _____

§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$ 8.25
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$
TOTAL		\$ 283.25

Clerk of Court/Deputy Clerk: *Devenish*
Court Reporter: DCRPPresiding Judge: *Jocelyn Newman*
Judge Code: 2757
Sentence Date: July 23, 2021

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF AIKEN) POSSESSION WITH INTENT TO DISTRIBUTE
) COCAINE
)
) § 44-53-0370(b)(1)

At a Court of General Sessions, convened on December 7, 2020, the Grand Jurors of Aiken County present upon their oath:

That JONATHAN ART LINCOLN did in Aiken County on or about February 26, 2020, knowingly or intentionally possess with intent to distribute a quantity of Cocaine, a controlled substance under provisions §44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Brandon J Knight II

Law Enforcement Case #: 20-010190

MBM

ARREST WARRANT NUMBER

2020A0210200370

FILED December 3, 2020

Robert L. Harte
C.C.P. & G.S.

Paige Barnes
Deputy Clerk

ACTION OF GRAND JURY

TRUE Bill

Foreperson of Grand Jury
Date: December 3, 2020

[Signature]

VERDICT

Guilty

Foreperson of Petit Jury/
Date: 7/23/2021

DOCKET NO. 2020GS0202097

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

DECEMBER TERM 2020

THE STATE
vs.

JONATHAN ART LINCOLN

CDR #: 0185

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE

§ 44-53-0370(b)(1)

J. STROM THURMOND, SOLICITOR

ARREST WARRANT

2020A0210200371

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Aiken

THE STATE

20-0010190

against

Jonathan Art Lincoln

Address: Alpine Drive

Aiken, SC 29801-

Phone: SSN:

Sex: M Race: B Height: 5 10 Weight: 155

DL State: SC DL #:

DOB: 1983 Agency ORI #: SC0020000

Prosecuting Agency: Aiken County Sheriff

Prosecuting Officer: Brandon J Knight, II - S00043

Offense: PWID Heroin

Offense Code: 0183

Code/Ordinance Sec: 44-53-0370(h)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant on

Jonathan Lincoln
2-27-20

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P O Box 583
109 Park Avenue
Aiken, SC 29802

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Aiken

Personally appeared before me the affiant

Brandon J Knight, II

who

being duly sworn deposes and says that defendant Jonathan Art Lincoln

did within this county and state on or about 2/26/2020

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Aiken)

in the following particulars:

DESCRIPTION OF OFFENSE: PWID Heroin

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 2-26-20 at approximately 2227 hours the defendant, Johnathon Art Lincoln did knowingly and without authorization possess approximately 6 grams of Cocaine, a Scheduled II Controlled Substance which was located on the passenger seat in a plastic bag of his 2006 Dodge Durango this after being stopped for a lawful violation at I-20 East Bound MM 28 and where the vehicle came to a stop at 1945 New Holland Rd after a pursuit in Aiken County, SC this being in violation of SC Code of Law 44-53-370 as amended.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Aiken

Affiant's Address 420 Hampton Ave Ne

Aiken, SC 29801-

Affiant's Telephone (803)642-1751

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/26/2020

defendant Jonathan Art Lincoln

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Aiken

) as set forth below.

DESCRIPTION OF OFFENSE: PWID Heroin

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 2/27/2020

Signature of Issuing Judge

Patrick Don Sullivan

Judge Code: 5035

(L.S.)

Judge's Address

New Ellenton, SC 29809

Judge's Telephone

(803)652-3609

Issuing Court:

☒ Magistrate☐ Municipal☐ CircuitFILED March 3 2020
CLERK OF COURT
J. D. Sullivan
Deputy Clerk

RAIL set by

WITNESSES

Judge Lauren Maurice
on 2-23-2020
Type and Amount: 15,000 Surety
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)
Disposition: _____
Sentence: _____

JURORS

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS



Jonathan Art Lincoln

County Of Aiken

Case Number/Charge: 2020A0210200370/Drugs / PWID Cocaine 2020A0210200371/PWID Heroin 2020A0210200375/Drugs / Manuf., poss. of Sch. IV drugs, except flunitrazepam, with intent to distribute - 1st offense	Trial Court: General Sessions ORIGINAL

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

Directions: Magistrates and municipal court judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND IS SET BY A JUDGE. Magistrates and municipal judges must also use the Checklist on those offenses, for which bond cannot be set by a summary court judge ("non-bailable"), that are GENERAL SESSIONS OFFENSES IN WHICH THEY ARE CONDUCTING FIRST APPEARANCES. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. Defendant must initial where indicated, sign, and be provided a completed copy of this form.

☒ BAIL PROCEEDING/☐ FIRST APPEARANCE BEFORE A MAGISTRATE OR MUNICIPAL JUDGE
 OFFENSES THAT ARE NON-BAILABLE BY A SUMMARY COURT JUDGE)

1. Form used at bail proceeding ☐ Bond Form I (personal recognizance) ☒ Bond Form II (surety, cash, percentage)
☐ None (Non-Bailable Offense) because ☐ charge carries penalty of life or death; or
☐ defendant charged with violent offense while bonded out on violent offense

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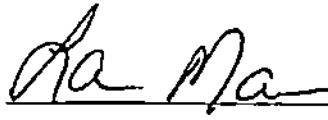
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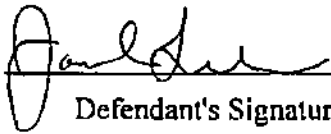
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☒ a. Charges against defendant and nature of the charges.
☒ b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.

FILED March 3 2020
Robert J. White
 C.C.P. & G.S. C.J.
Laura Martin-Hines
 Deputy Clerk

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Judge's Signature



Defendant's Signature

February 28, 2020

- ☐ Defendant refused to sign.

2020A0210200370 / Drugs / PWID Cocaine

2020A0210200371 / PWID Heroin

2020A0210200375 / Drugs / Manuf., poss. of Sch. IV drugs, except flunitrazepam, with intent to distribute - 1st offense

Jonathan Art Lincoln

ORIGINAL

February 28, 2020

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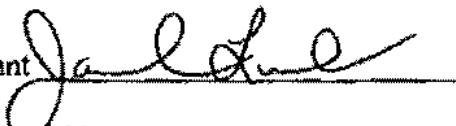
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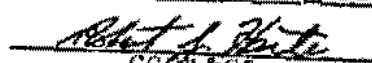
Signature of Defendant


☐ Defendant Refused to Sign

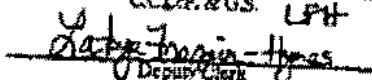
MC126

SCCA 507B (11/2017)

FILED March 3 2020



CCCA & GS LPH



Deputy Clerk

Mon 10-30 yrs

STATE OF SOUTH CAROLINA

COUNTY OF Aiken

STATE

VS.

Jonathan Art Lincoln

AKA:

Race: Black Sex: M Age: 38DOB: 1983 SS#: [REDACTED]Address: Alpine DriveCity, State, Zip: Aiken, SC 29801DL# [REDACTED] SID# [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2020 - GS - 02 - 02098AW#: 2020A0210200371Date of Offense: 2/26/2020S.C. Code §: 44-53-0370(b)(1)CDR Code #: 0185

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II - 3rd or sub. offense HeroinIn violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0185☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s Initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

80178

100386

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 30 days/months/years/Time Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2020 GS 0202097, 2100 (July 23, 2021)☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.
311 days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Jonathan Art Lincoln INDICTMENT/CASE#: 2020 - GS - 02 - 02098

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
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- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____	Beginning	\$ _____
§14-1-206 (Assessments 107.5%)			\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100		\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100		\$ _____
§56-5-2895 (DUI Assessment)	\$12		\$ _____
§56-1-286 (DUI Breath Test)	\$25		\$ _____
§14-1-212 (Law Enforce. Funding)	\$25		\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150		\$ 150.00
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41		\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50		\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea		\$ _____
3% to County (if paid in installments)	TBD		\$ 8.25
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500		\$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD		\$ _____
TOTAL			\$ 283.25

Clerk of Court/Deputy Clerk: Devenard
Court Reporter: DCRPPresiding Judge: Judith Neuman
Judge Code: 2757
Sentence Date: July 23, 2021

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	POSSESSION WITH INTENT TO DISTRIBUTE
COUNTY OF AIKEN	)	HEROIN
	)	
		§ 44-53-0370(b)(1)

At a Court of General Sessions, convened on December 7, 2020, the Grand Jurors of Aiken County present upon their oath:

That JONATHAN ART LINCOLN did in Aiken County on or about February 26, 2020, knowingly or intentionally possess with intent to distribute a quantity of Heroin, a controlled substance under provisions §44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Elizabeth B. Young
 J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Brandon J Knight II

Law Enforcement Case #: 20-010190

MBM

ARREST WARRANT NUMBER

2020A0210200371

FILED December 3, 2020

Robert J. White
C.C.P. & G.S. PB*Paige Barnes*
Deputy Clerk

ACTION OF GRAND JURY

*True Bill*Foreperson of Grand Jury
Date: December 3, 2020*J. B. Clark*

VERDICT

*Guilty*Foreperson of Petit Jury
Date: 7/23/2021DOCKET NO. 2020GS0202098

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

DECEMBER TERM 2020

THE STATE

vs.

JONATHAN ART LINCOLN

CDR #: 0185

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE HEROIN

§ 44-53-0370(b)(1)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

CASE # 2020-GS-02-02096, 2020-GS-02-02097,

GENERAL SESSIONS 2020-GS-02-02098, 2020-GS-02-02099,
2020-GS-02-02100

THE STATE

vs Jonathan Art Lincoln

STATE'S WITNESSES

Brandon Knight ACSO

Clarke Palmer ACSO

Colt Woody

Agnieszka (Czekaj) Ferrell ACSO

Amber Collins ACSO

INDICTED FOR:

Resisting Arrest Possession with Intent to

Distribute Cocaine Possession with Intent to

Distribute heroin, Failure to stop motor vehicle

When signaled by law enforcement vehicle, Trafficking

CASE:

#171

#161

#177

#151

#190

#74

#192

#188

#40

#178

#47

#165

#17

(Foreperson)

DEFENSE WITNESSES

Jonathan Lincoln

Alternate I

Alternate II

ARGUMENTS WERE MADE TO THE PETIT JURY BY---

Barry Thompson/Suzanne Hayes

ATTORNEY FOR THE DEFENSE.

Bill Weeks/Ashley Hammock

ATTORNEY FOR THE STATE.

THE PETIT JURY WAS CHARGED AND RETIRED BY THE HONORABLE Jocelyn Newman

PRESIDING JUDGE.

JURY RETIRED AT 1:51

COURT REPORTER DCBP

VERDICT: Trafficking Methamphetamine - Guilty

Resisting Arrest - Not guilty; Possession with Intent to Distribute Cocaine - Guilty; Possession

With Intent to Distribute Heroin - Guilty; Failure to stop motor vehicle when signaled by law enforcement

July 23, 2021 3:06pm

vehicle -
not guilty

FOREMAN 7-22-2021 7-23-2021 DATE

COURT CONVENED AT 1:05pm 9:55am

COURT RECESSED AT 4:44pm 1:55pm

COURT CONVENED AT 3:07pm

COURT RECESSED AT 3:10pm

3:49pm

STATE OF SOUTH CAROLINA

COUNTY OF AIKENJONATHAN ARZNEIL LINCOLN

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

Submitted By: JONATHAN A. LINCOLN
Address: 5 CORRECTIONAL ROAD, RIDGELAND, S.C.
29936

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2023-CP - 02-01449 12:49
FILED 6-27 2023 SPRobert J. Korte
C.C.P. & G.S.Shadell Parks
Deputy Clerk

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

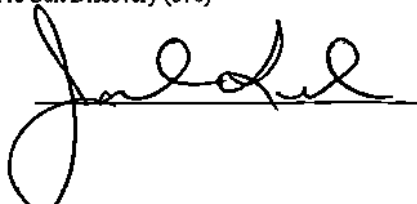
*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Certificate Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199) _____ ☒ Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599) _____	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 <u>-NI-</u> ☐ Notice/ File Med Mal (230) ☐ Other (299) _____ Administrative Law/Relief ☐ Reinstatement Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899) _____ Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) _____ ☐ Sexual Predator (510) ☐ Permanent Restraining Order (680) ☐ Interpleader (690)	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399) _____ Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Incapacitated Adult Settlement (790) ☐ Other (799) _____	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499) _____ Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999) _____

Submitting Party Signature:

Date: 6/15/2023

2023CP0201449

State of South Carolina	)	SECOND JUDICIAL CIRCUIT
County of Aiken	)	COURT OF COMMON PLEAS
Jonathan Artneil Lincoln	)	
Applicant,	)	Indictment Nos.: 2020-GS-02-2100;
v.	)	2020-GS-02-2098;
State of South Carolina	)	2020-GS-02-2097
Respondent.	)	APPLICANT'S MEMORANDUM
	)	IN SUPPORT OF
	)	POST-CONVICTION RELIEF

Please take notice that the Applicant submits the enclosed Memorandum in Support of Post-Conviction Relief. Please file, forward to opposing counsel, and return a copy to Applicant.

FILED

6-27-20 23

12:56
SP

Robert J. White
C.C.P. & G.S.
Shadell Parks
Deputy Clerk

STATEMENT OF FACTS

On the night of February 26, 2020, Sergeant Brandon Knight (Knight) with the Aiken County Sheriff's Office was stationed on Interstate 20 Eastbound at the 25-mile marker. *R. 41, l. 24 – 42, l. 9*. Knight testified he was parked perpendicular to the roadway. *R. 42, ll. 14–15*. Sometime between 9:30 p.m. and 10:30 p.m., Knight allegedly observed a white Dodge Durango “cross [his] view” *R. 42, ll. 10–13; R. 49, ll. 7–12*. The tint on the windows was so dark that Knight alleged he could not “see a silhouette of anybody in the vehicle.” *R. 42, ll. 10–13*. Allegedly suspecting the window tint to be darker than what was permitted by law, Knight pulled out behind the vehicle with the intent of stopping the car. Knight alleged the Durango switched lanes from the fast lane to the slow lane “without signaling” and “reduced speed drastically.” *R. 43, ll. 1–5*. Knight testified that he “ran the tag” and “initiated [his] blue lights.” *R. 43, ll. 6–8*. Knight alleges the Durango did not stop. Knight turned on his sirens. The vehicle still did not stop. *R. 43, ll. 11–14*.

The Durango exited the interstate at Exit 29 onto Wire Road. *R. 43, ll. 15–19*. The driver gave no indication he was going to stop. *R. 43, ll. 20–23*. Knight advised dispatch and the Highway Patrol that the vehicle was not stopping. *R. 43, l. 25 – 44, l. 5*. A trooper with the Highway Patrol was parked at Exit 29 and temporarily “took over the pursuit.” *R. 44, ll. 1–8*. Sergeant Frances Palmer also responded. Palmer was certified to use the Pursuit Intervention Technique (PIT). *R. 67, ll. 13–15*. Palmer explained that when using the technique, the front of his car, which is equipped with a specialized bumper, “pushes the rear of the suspect’s car into a controlled spin, ending most pursuits.” *R. 44, ll. 2–21; R. 67, ll. 13–25*. When Sergeant Palmer caught up to the Durango, he took “lead of the pursuit.” *R. 44, ll. 13–14; R. 68, ll. 1–6*. Palmer ultimately did not perform the PIT maneuver during the chase claiming that the “conditions” were not safe to do so. *R. 50, l. 22 – 51, l. 5; R. 71, l. 21 – 72, l. 20*.

Law enforcement pursued the vehicle for thirty miles reaching speeds up to ninety miles per hour. *R. 50, l. 9–10; R. 51, l. 9; R. 73, ll. 18–21; R. 78, ll. 1–8*. The officers did and do not know who was driving the Durango or how many people were inside. *R. 45, ll. 19–22*. Eventually, the Durango pulled off into a “plowed cornfield” in a rural part of Aiken County. *R. 46, ll. 9–10; R. 47, ll. 12–24; R. 74, ll. 10–16*. Several law enforcement vehicles, including Sergeant Knight’s, got stuck in the field after they attempted to follow the Durango. *R. 47, l. 20 – 48, l. 7*. The driver had fled. Knight observed shoes on the ground and claimed to have observed footprints leading to the wood line. *R. 49, ll. 22–23*. He claimed “the vehicle was so full of stuff” on the front and rear passenger seats that no one else could have fit in the car besides the driver. *R. 49, ll. 18–21*. No pictures or body-worn camera footage were ever taken and/or disclosed of the contents of the Durango in the state in which it was discovered, either, prior-to, during, or after – trial.

Knight alleges he called the “Aiken County tracking team to come to the scene.” *R. 49, ll. 24–25*. The Aiken Bloodhound Tracking Team (hereinafter, “ABTT” or “Team”) used bloodhounds to try to locate the unidentified driver of the Durango, but was unsuccessful. *R. 50,*

II. 1-6. While the tracking team looked for the driver, Knight searched the Durango in the cornfield. The vehicle was never processed nor were photographs or fingerprints taken. Knight claimed he found “a bag” on the *front* passenger seat with narcotics inside. *R. 51, II. 12-20* (emphasis added). He further claimed to have found scales “*in the front passenger seat of the vehicle with the narcotics*” and Ziploc[k] bags “*in the vehicle along with the narcotics.*” *R. 53, II. 9-20* (emphasis added); *R. 54, II. 19-21.* Knight was not specific as to where the drugs, scales, and plastic bags were allegedly found or as to how they were situated with respect to each other and, again, no photographs were taken to show where the items were located within the vehicle. He also did not describe the bag in which the drugs were allegedly found. This is significant because, later (during cross-examination) Knight would testify under oath that he found the drugs “*in the passenger seat in the back*”, contradicting his earlier testimony. *R. 62, II. 12-19* (emphasis added).

The drugs were later identified as 49.1 grams of methamphetamine, 1.56 grams of cocaine, and 1.49 grams of heroin. *R. 110, I. 14 – 115, I. 16.*

After the Bloodhound Tracking Team failed to locate the driver, Sergeants Knight, Palmer, and Blackwater roamed the area searching for the suspect. They searched the woods and walked along the entire length of Anderson Road, which was the road on the other side of the wood line. *R. 57, II. 10-23.* They cleared all the buildings on that road, but also did not locate the driver. *R. 75, II. 22-23.*

At some time between 5:00 and 5:30 a.m. on February 27th 2020, Colt Woody, a peanut and corn farmer who lived on Anderson Road, allegedly woke to find a man, later identified as the Applicant, sitting on the steps of his carport. *R. 81, I. 8 – 83, I. 16; R. 97, II. 4-16.* Woody called the police. *R. 83, II. 21-14.* A patrol officer with the Aiken County Sheriff’s Office responded to the home and observed the Applicant sitting on the steps. *R. 90, II. 1-5.* Applicant’s hand and arms were in his shirt. He appeared to be wet and cold and the officer opined that he appeared “dirty” as well. *R. 90, II. 7-21.* Consequently, the deputies who responded, forced the Applicant to the ground and tased him at least twice, allegedly, in an effort to *gain control of his hands and arms* that law enforcement testified were “under his stomach” while he was admittedly “on his stomach” with “a lot of force on him” that was being admittedly applied by the deputies who allege they were attempting to *gain control of his hands and arms.* *R. 91, I. 22 – 95, I. 24* (emphasis added)

Law enforcement ultimately arrested and charged Applicant with resisting arrest. The underlying offense was supposedly disorderly conduct. *R. 98, I. 12 – 99, I. 3.* Applicant was taken to Aiken County Detention Center. In the ensuing days, Applicant was eventually charged with various felony and misdemeanors arising from the events occurring on February 26th, 2020. Applicant’s bond was initially denied, but was later awarded. Applicant’s bond was posted on December 31st, 2020 and he was released on that same day. There appears to be some confusion as to the facts surrounding Applicant’s indictments and preliminary hearing, but the Applicant was allegedly indicted sometime between December 3rd and December 7th of 2020 for the offenses of Failure to Stop for Blue Lights and Sirens, Trafficking Methamphetamine, PWID Heroin, PWID Cocaine, and Resisting Arrest.

The Applicant's trial began on July 22nd, 2021. He was represented by Lead Counsel, Suzanne Higgins Hayes, Esquire and Co-Counsel, Barry Thompson, Esquire. Represented by Solicitor John William (Bill) Weeks and Assistant Solicitor Ashley Hammack, the State called as witnesses Sergeant Brandon Knight, Sergeant Clarke Palmer, Amber Collins, and Deputy Agnieszka Czekaj-Ferrell, all employees of the Aiken County Sheriff's Office. The State also called Mr. Colt Woody. The Applicant testified in his defense. He explained that he was in the process of moving and most of his personal belongings were in his car as a result. *R. 125, II. 2-9*. Before leaving town, Applicant stopped at his nephew's house to see if his nephew wanted to ride with him to his new place. *R. 129, II. 3-8*. Applicant's nephew, while an adult, did not possess a telephone and resided with his mother. When Applicant arrived at his nephew's mobile home, he found himself needing to urinate. However, due to the lateness of hour, Applicant opted not to disturb his nephew's mother by going inside to use the bathroom. While urinating, Applicant noticed the lights on the trees were moving and turned around. He saw his car backing out of the driveway. *R. 131, II. 1-10*. Applicant assumed at the time that his nephew was playing a joke on him. *R. 131, II. 11-23*.

Applicant waited about ten or fifteen minutes for his nephew to return with his car, but he never did. *R. 132, I. 19 – 133, I. 1*. Applicant then walked to the main road. *R. 133, II. 13-22*. He had his tablet with him. He had been using it earlier to remotely control the music in his car. Applicant was trying to use a Google application feature on his tablet to track his phone, which he presumed, was still in his car, but he did not have access to Wi-Fi. *R. 133, I. 23 – 135, I. 21*. Once out on the main road near his nephew's house, Applicant was recognized by a passing motorist, Jennifer Thompson (Jennifer), with whom he was familiar only in passing, but who seemed be more aware of his identity than he of hers. Jennifer stopped to render aid to the Applicant, allowing him to use the Wi-Fi mobile hotspot on her cell phone to access the internet. Applicant was finally able to locate his car. Upon request, Jennifer agreed to give Applicant a ride to where his tablet indicated that his phone and, therefore, his vehicle was located. Misunderstanding the exact location to which the Applicant had requested a ride, Jennifer reneged on her original offer and agreed to drop Applicant off in the general area where his tablet indicated his phone/vehicle to be located. *R. 135, I. 22 – 137, I. 24*. After being dropped-off by Jennifer Applicant walked for several hours until reaching the intersection of what his tablet had indicated to be the last known location of his phone/vehicle, subject to his tablet's last access to the internet. Notwithstanding his efforts, the Applicant's failed to locate his vehicle. Unbeknownst to him at the time, Applicant's vehicle had been involved in a police pursuit, abandoned by an unidentified individual, and consequently impounded at the behest of law enforcement. *R. 138, I. 4 – 140, I. 2*. Distressed, Applicant sought assistance, eventually happening upon a residence with a well-lit carport and work truck that was clearly visible from the road. Applicant approached the residence door. He knocked and possibly rang the doorbell. No one answered the door, so Applicant, given the hour, day of the week, and the presence of a work truck, decided to wait peaceably for the owner of the work truck arose to depart for work, at which time he intended to request assistance from that person. Due to the frigid temperature, Applicant "balled up", placing his hands and arms inside of his shirt. *R. 140, I. 3 – 141, I. 11*.

At approximately 6:00 a.m., deputies with the Aiken County Sheriff's Office arrived in response to a suspicious persons call made by the homeowner. R. 88, l. 10 – 90, l. 12. Applicant was arrested for disorderly conduct, malicious injury to personal property, and resisting arrest and was later charged with the controlled substance violations which arose from the illegal drugs found in his vehicle following the police pursuit. At trial, Applicant did not dispute that vehicle belonged to him, as it was registered to Applicant and there was mail addressed to him inside the vehicle as well as two prescription drug bottles which were prescribed to Applicant. R. 51, ll. 17-20; R. 53, ll. 9-11; R. 54, ll. 9-15; R. 56, ll. 7-11. Applicant vehemently denied ownership or possession of the illegal drugs found in the vehicle and stated, unequivocally, that they were not in his vehicle when he arrived at his nephew's house. R. 143, ll. 2-8. At the closing of all evidence and upon specific motion by the defense, the trial judge directed a verdict for resisting arrest after finding Applicant's conduct did not constitute disorderly conduct and therefore there was no underlying lawful arrest to resist. R. 160, l. 11 – 162, l. 24. The evidence available reflects that no initial or follow-up investigation was ever conducted into the events giving rise to Applicant's convictions. Applicant was not questioned by law enforcement upon arrest, during his ten-month pre-trial detention period immediately following arrest, nor during the seven months in which Applicant was free on bond prior to trial. Investigative procedures not employed include, but are not limited to: the questioning of the defendant; the fingerprinting of impermissible items; the processing and/or photographing of crime scene; the written or verbal documentation of the state or situation of material evidence, et cetera. To state it plainly, "They did zero investigation, zero." R. 144, ll. 1-6.

*** The Applicant also asserts the Sixth Amendment claim of ineffective assistance of counsel for failure to object to the errors and improprieties alleged; the failure to move for the appropriate remedy, relief, or cure for to all alleged errors and improprieties, and/or; the failure to preserve said errors and improprieties for appellate review.**

I. TRIAL COURT ERRORS:

Applicant's right to a fair trial by a panel of impartial and indifferent jurors; Applicant's right to be free of deprivation of liberty without due process of the law; and Applicant's right to be free from denial of equal protection of the law, as guaranteed by the Sixth and Fourteenth Amendment to the United States Constitution; the South Carolina Constitution Article I Section III, XIV and applicable statutory law, was violated when the trial court committed errors that resulted in defects in the Applicant's trial mechanisms and framework depriving the Applicant of basic constitutional protections, thus making his trial process and punishment fundamentally unfair. To support this position, the Applicant offers the following:

1. Extraneous or Improper Influence on Jury

Relevant Facts

Upon motion from the Applicant and the closing of all evidence - Trial Court, Honorable Jocelyn Newman – directed verdict in favor of the Applicant on the joined offense of resisting arrest. The events giving rise to the resisting arrest charge took place on the morning following the events giving rise to the Failure to Stop for Blue Lights/Sirens and the controlled substance offenses relevant to Applicant’s application for relief. *R. 160, l. 10 – 162, l. 24*. Evidence admitted at trial in support of the resisting arrest indictment at issue, consisted of the testimony and Body-Worn Camera (BWC) footage of Aiken County Sheriff’s Office Deputy, Agnieszka Czeka-Ferrell. Dep. Czeka-Ferrell’s testimony contained an account of the underlying incident, including: the purpose for dispatch to the incident location; time of incident; location of incident (with respect to location of previous night’s incident); weather conditions; physical and mental description of Applicant upon law enforcement’s arrival; the use of force in detaining the Applicant, et cetera. Czeka-Ferrell’s BWC footage (State’s Exhibit No. 13) contained a video-only (no audio) account of the incident and arrest. *R. 87, l. 3 – 99, l. 13* Trial Court erroneously submitted the previously-directed indictment for resisting arrest, along with supporting evidence arising therefrom, to the jury for deliberation. In her charge to the jury, the Trial Court instructed, “... you should base your verdict solely on the testimony of the sworn witnesses who took the stand, the exhibits received into evidence, and the law which I have stated.”. *R. 214, ll. 17-20*. An error occurred upon the submission to the jury of - what was should have been - all **remaining indictments and supporting evidence**. *R. 218, ll. 4-16*. During the reading of the verdicts, the jury foreperson read a finding of “not guilty” as to the charge of resisting arrest, which made the error apparent of record, as well as to Judge J. Newman. *R. 221, ll. 8-11*. Trial Bench acknowledged her error and noted it for the record, but unilaterally concluded that the error was “harmless” without allowing either side the opportunity to lodge objections. Judge Newman went on to explain that she deemed the error harmless based on the fact that the jury had acquitted the Applicant on the particular indictment, stating, “It appears to have been a harmless error anyway as he was acquitted of that charge.”. Applicant’s counsel lodged no objection – only stating, “We were thinking the same thing, Your Honor.” The Court then proceeded to the sentencing phase. *R. 223, l. 20 – 224, l. 5*

In addition, during closing arguments, Asst. Sol. Hammack argued, “What’s also undisputed that you can take as fact is that the Defendant was found just on the other side of the woods from his car the night that his car ran from the police, it was raining. You saw it on video. He said it was raining. And we know that he was wet and he was dirty. And he didn’t have any shoes on. And the last thing that we know, that we don’t have to question, that everyone in here agrees on is that in the

Defendant's own car off of New Holland, the same time he's found off of New Holland, there's a bag and in that bag is full of drugs. 1.56 grams of powder cocaine, 22.99 grains of heroin and 49.1 grams of methamphetamine." *R. 173, l. 25 – 174, l. 11*. Hammack continued, "All of that we know is true. So the only question before you guys is was the Defendant driving his own car when he ran from the police? Was the Defendant, the owner, in possession of these drugs in his car that night. So we've narrowed this down for [sic] one question for you." *R. 174, ll. 13-18*. The Assistant Solicitor again arguing, "The fact that it's in his car with his stuff that he just ran out of means he is in possession of the drugs." *R. 192, ll. 23-25*.

Relevant Cases and Authorities

- "The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors." *State v. Hill*, 394 S.C. 312, 714 S.E.2d 879 (quoting, *State v. Kelly*, 331 S.C. 132, 141, 502 S.E.2d 99, 104 (1998))
- "In a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences. Unless the misconduct affects the jury's impartiality, it is not such misconduct as will affect the verdict." *Id.*
- "Relevant factors a court should consider in determining whether outside influences have affected the jury are the number of jurors exposed, the weight of the evidence properly before the jury, and the likelihood that curative measures were effective in reducing the prejudice." *Id.* (quoting, *Kelly* at 141-42, 502 S.E.2d at 104)
- "Whether an error is harmless depends on the circumstances of the particular case." *Hill* (quoting, *State v. Wiley*, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct.App.2010))
- "No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." *Id.*
- "Error is harmless when it could not have reasonably affected result of the trial." *Id.*
- "When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, [an appellate] court should not set aside a conviction because of errors not affecting the result []." *Id.* (quoting, *State v. Kirton*, 381 S.C. 7, 25, 671 S.E.2d 107, 115-16 (Ct.App.2008))
- "Similarly, in the joinder context, the defendant may argue unfair prejudice if, after the State's case, the trial judge determines that a directed verdict should be granted" *State v. Cutro*, 365 S.C. at 375, 618 S.E.2d at 894
- "If the trial judge finds there is no substantial evidence to submit any one of the joined charges to the jury, the defendant may move for a mistrial on the basis of unfair prejudice resulting from joinder." *Id.*
- "The determination of the prejudicial effect of the evidence must be based on the entire record and the result will generally turn on the facts of each case." *State v. Fletcher*, 379 S.C. at 24, 664 S.E. 2d at 483
- *CSX Transp. v. Hensley*, 556 U.S. 838, 841 (2009) ((per curiam) ("In those cases, as in all cases, juries are presumed to follow the court's instructions."))

- “Under clearly established Supreme Court case law, an influence is not an internal one if it (1) is extraneous prejudicial information; i.e., information that was not admitted into evidence but nevertheless bears on a fact at issue in the case...” *Robinson v. Polk*, 438 F.3d 350, 69 Fed. R. Evid. Serv. 557 (U.S. Ct. App. (2006))
- “We find no error in the admission of this evidence.... However, we hold that the judge abused his discretion in allowing the jury to take the transcript of the tape into the jury room because it unduly emphasized that evidence.” *State v. Gullledge*, 277 S.C. 368, 287 S.E.2d

Discussion

Trial Court improperly submitted prejudicial “spillover” materials to the jury for deliberation thereby rendering them neither, “impartial [nor] indifferent”. See, *State v. Hill*, 394 S.C. 312, 714 S.E.2d 879 (quoting, *State v. Kelly*, 331 S.C. 132, 141, 502 S.E.2d 99, 104 (1998)) (“The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors.”). The Applicant contends that submission of evidence admitted in support of a charge that was dismissed pursuant to directed verdict constituted an “extraneous”, and therefore, improper influence on the jury. *Id.* at 320 (“In a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences. Unless the misconduct affects the jury’s impartiality, it is not such misconduct as will affect the verdict.”); *State v. Fletcher*, 379 S.C. at 24, 664 S.E. 2d at 483 (“The determination of the prejudicial effect of the evidence must be based on the entire record and the result will generally turn on the facts of each case.”). There can be no question as to which indictment the video and testimonial evidence of Deputy Czekaj-Ferrell was admitted to support, i.e. Resisting Arrest. Likewise, there can be no argument as to the fact that the Trial Court directed verdict in favor of the Applicant with respect to said Resisting Arrest indictment. See, *State v. Cutro*, 365 S.C. at 375, 618 S.E.2d at 894 (“Similarly, in the joinder context, the defendant may argue unfair prejudice if, after the State’s case, the trial judge determines that a directed verdict should be granted”); *Id.* (“If the trial judge finds there is no substantial evidence to submit any one of the joined charges to the jury, the defendant may move for a mistrial on the basis of unfair prejudice resulting from joinder.”). Trial Court’s concession to erroneously submitting the indictment to the jury for deliberation is also uncontroverted. Nor is the certainty that the jury did deliberate upon the indictment - to the point of reaching a verdict - an unsettled issue in this case. Equally undisputable is the lack of any curative measure taken to mitigate the trial courts admitted error. Additionally, the absent of any direct evidence and the lack of substantial circumstantial evidence rendered the proof of Applicant’s guilt far from overwhelming. *Id.* (quoting, *Kelly* at 141-42, 502 S.E.2d at 104) (“Relevant factors a court should consider in determining whether outside influences have affected the jury are **the number of jurors exposed, the weight of the evidence properly before the jury, and the likelihood that curative measures were effective in reducing the prejudice.**”) All that remains is the question of the level of prejudice suffered by the Applicant. See, *Hill* (quoting, *State v. Wiley*, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct.App.2010)) (“Whether an error is harmless depends on the circumstances of the particular

case.”); *Id.* (“No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.”). The mere testimony about the circumstances surrounding the resisting arrest incident immediately emphasizes the fact that it occurred in relatively close physical and temporal proximity to the previous night’s incident involving the controlled substance offenses. These incidents are separate in fact and in nature, yet – entail facts that would allow jurors to be swayed by improper character evidence to believe in Applicant’s guilt, and for that reason – are fatally prejudicial to one another. It is implausible to rationally conclude that the jurors could have considered the evidence arising from the Resisting Arrest offense without improperly considering the same (evidence) in their deliberation of the controlled substance offenses stemming from the previous night’s events. *Id.* (“Error is harmless when it could not have reasonably affected result of the trial.”). The high likelihood of this inappropriate amalgamation of facts is exponentially exacerbated, not only by the absence of strict and specific instructions from the Trial Court to refrain from doing so, but also by the presence of numerous strict and specific instructions by the Trial Court to do just that i.e., consider all the “evidence”, “indictments” and “exhibits received into evidence”. See, *CSX Transp. v. Hensley*, 556 U.S. 838, 841(2009) ((per curiam) (“In those cases, as in all cases, juries are presumed to follow the court’s instructions.”). Importantly, as expressly evidenced by Asst. Sol. Hammack’s closing arguments, the State’s version of events involved the circumstances surrounding Applicant’s arrest for resisting arrest as evidence of the Applicant’s guilt for the drug possession offenses. Finally, the Applicant finds the holding of the South Carolina Supreme Court in *Gulledge*, on-point and controlling. In *Gulledge*, Justice Gregory opined that, even though the Court found “no error in the admission” of the challenged evidence, “We hold that the Judge abused his discretion in allowing the jury to take the transcript... into the jury room because it unduly emphasized the evidence”. (*State v. Gulledge*, 277 S.C. 368, 287 S.E.2d) The same is true in the instant matter. Though the evidence was admitted absent any objection or motion to suppress from the Applicant’s counsel (and, for that reason deemed “properly admitted”), the Trial Court’s submission of the resisting arrest indictment/evidence and the jury’s contemporaneous deliberation with the controlled substance offenses, created a situation where the extraneous evidence was unduly emphasized.

2. Improper Jury Instruction

Relevant Facts

- a. Trial Court instructed the jury that the “Defendant’s knowledge and possession may be inferred when a substance is found on the property under the Defendant’s control.” *R. 212, II. 6-8*. Applicant’s convictions are for Possession with Intent to Distribute Heroin and Cocaine and Trafficking in Methamphetamine, all of which are based on constructive possession. The cocaine, methamphetamine, and heroin

was allegedly “found and seized out of the car ... in the passenger seat”. *R. 62, ll. 12-15*. The Trial Court instructed the jury on the State’s burden to prove constructive possession of narcotics – including the requirement to prove knowledge and intent to control its disposition and use - beyond reasonable doubt. This definition of constructive possession, and the requisite proof of said elements, was immediately followed by the Trial Court’s charge on the law of permissible inferences. Trial judge J. Newman instructed the jury that “The mere presence at the scene where the drugs were found is not enough to prove possession. The Defendant’s knowledge and possession may be inferred when a substance is found on property under the Defendant’s control. However, this inference is simply an evidentiary fact to be taken into consideration by you along with other evidence in the case and to be given the weight you decide it should have.” *R. 211, l. 19 – 212, l. 8*.

- b. In addition, to the aforementioned charge to the jury, the Trial Court commented in her “explanation of the [trial] procedure” that, “... you [the jury] will then be in a position to determine what the facts are and to apply the law to those facts and thus render a true and just verdict.” *R. 31, ll. 5-7*. Trial Court further directed the jury to, “Remember that you have just taken an oath to try this case and reach a fair and just verdict...” *R. 25, ll. 14-15*.

Relevant Cases and Authorities

- “Generally, the trial court is required to charge only the current and correct law.” *State v. Dennis*, 402 S.C. 627, 742 S.E. 2d 21, habeas corpus dismissed 2021 WL 4991529
- “The challenged charge in this case was taken almost verbatim from *Adams*, in which we stated, ‘The proper charge on constructive possession is to instruct the jury that the defendant’s knowledge and possession may be inferred if the substance was found on premises under his control’” *State v. Stewart*, 433 S.C. at 391, 858 S.E.2d 812 (citing *State v. Adams*, 291 S.C. at 135, 352 S.E.2d at 486)
- “[Stewart’s] knowledge and possession may be inferred when a substance is found on property under [his] control. However, this inference is simply an evidentiary fact to be taken into consideration by you along with other evidence in the case and to be given the weight you think it deserves.” *State v. Stewart*, (Court of Appeals of South Carolina) 2019 WL 2372976 Unpublished Opinion (Affirmed in Part, Reversed in Part by *State v. Stewart*, 433 S.C. 382, 858 S.E. 2d 808)
- “The inference is a valid one for the jury to draw, and trial attorneys may argue to the jury whether the inference should be drawn. The jury instruction explaining the inference, however, is improper. We overrule *Adams* on that point. The jury charge instructing a jury that it may infer knowledge or possession when a substance is found on property under the defendant’s control should no longer be given.” *State v. Stewart*, 433 S.C. 382, 858 S.E. 2d 808

- “We held this charge is never proper, in part because ‘the trial court has directly commented upon facts in evidence, elevated those facts, and emphasized them to the jury.’” *Id.* (internal quotation, *State v. Burdette*, 427 S.C. at 502-03, 832 S.E.2d at 582)
- “...we considered a [omitted] ...charge and stated ‘it unduly emphasizes that evidence, and deprives the jury of its prerogative both to draw inferences and to weigh evidences.’ The inferences charge in this case had the prejudicial effects we described in *Burdette* and *Cheeks*.” *Id.* (internal quotation, *State v. Cheeks*, 401 S.C. 328-29, 737 S.E.2d at 484)
- “Merely superimposing correct instructions over erroneous ones serves only to foster prejudice and confusion” *State v. Peterson*, 287 S.C. 244, 335 S.E.2d 800, *overruled on other grounds by, State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575
- “However, we agree with the... a trial judge should refrain from informing the jury, whether through comments or through a charge on the law, that it’s role is to search for the truth, or to find the true facts, or to render a just verdict. The phrase could be understood to place an obligation on the jury, independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the verdict the jury believes best serves its perception of justice.” *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502
- “If conviction is sure that error did not influence jury or had but very slight effect, error is harmless and verdict and judgment should stand, but if one cannot say with fair assurance, after pondering all that happened without stripping erroneous action from the whole, the judgment was not substantially swayed by the error, it is impossible to conclude that substantial rights were not affected.” *Conway v. Chemical Leaman Tank Lines, Inc.*, 525 F.2d 927 (U.S. Ct. App. 5th Cir. (1976))

Discussion

Hon. Jocelyn Newman, in her charge on the law, improperly instructed the jury that they may infer Applicant’s knowledge or possession of drugs found on property under the defendant’s control relying on *State v. Adams*, 291 S.C. 132, 352 S.E.2d 483. See, *State v. Dennis*, 402 S.C. 627, 742 S.E. 2d 21, habeas corpus dismissed 2021 WL 4991529 (“Generally, the trial court is required to charge only the current and correct law.”). In *State v. Stewart*, the trial court properly relied upon the *Adams* court which misinterpreted the South Carolina Supreme Court’s decisions - in *Ellis*, *Brown*, *Lane*, and *Hudson* – as they relate to what the trial court may instruct the jury it may infer from substances found on property under the defendant’s control. The *Stewart* court improperly explained the inference of knowledge and possession and the fact that the inference can be made to the jury¹. The relevant, challenged portions of the *Stewart* trial court’s jury instruction was taken, almost verbatim from *Adams*. See specifically, *State v. Stewart*, 433 S.C. at 391, 858 S.E.2d 812 (citing *State v. Adams*, 291 S.C. at 135, 352 S.E.2d at 486) (“The challenged charge in this case was taken almost verbatim from *Adams*, in which we stated, ‘The proper charge on constructive possession is to instruct the jury that the defendant’s

¹ “The proper charge on constructive possession is to instruct the jury that the defendant’s knowledge and possession may be inferred if the substance was found on premises under his control. The trial judge should explain to the jury that it is free to accept or reject this permissive inference of knowledge and possession depending upon its view of the evidence.” *State v. Adams*, 291 S.C. 132, 352 S.E. 2d 483; (overruled by *State v. Stewart*, 433 S.C. 382, 858 S.E. 2d 808 (2021))

knowledge and possession may be inferred if the substance was found on premises under his control”). *Stewart* explicitly holds that “the trial court may not instruct the jury that it may infer the defendant’s knowledge or possession of drugs, in drug possession prosecutions based on constructive possession, when a substance is found on property under the defendant’s control”. *Stewart* at 382 no. 7. To paraphrase the *Burdette* Court, some matters which are proper for when giving arguments to the jury are not appropriate for jury instruction. 427 S.C. at 503, 832 S.E.2d. at 583; *see also*, *State v. Stewart*, 433 S.C. 382, 858 S.E. 2d 808 (“The inference is a valid one for the jury to draw, and trial attorneys may argue to the jury whether the inference should be drawn. The jury instruction explaining the inference, however, is improper. We overrule *Adams* on that point. The jury charge instructing a jury that it may infer knowledge or possession when a substance is found on property under the defendant’s control should no longer be given.” This is, verbatim, the instruction that was given by Judge J. Newman. With respect to the potential argument that the trial court’s jury instruction should be viewed in its entirety, the challenged portion of the jury instruction in the instant matter is exactly identical to the *Stewart* trial court’s jury charge that was overruled by *State v. Stewart*, 433 S.C. 382, 858 S.E.2d 808. The *Adams* court misguidedly opined that the “[t]rial judge should explain to the jury that it is free to accept or reject this permissive inference of and possession depending upon its view of the.” 291 S.C. at 135-36 (overruled by *State v. Stewart*, 433 S.C. 382, 858 S.E.2d 808). This is the quintessential equivalent to the instructive language found in the jury charges of the instant matter and, a fortiori, in *Stewart*. *See*, *State v. Stewart*, (Court of Appeals of South Carolina) 2019 WL 2372976 Unpublished Opinion (Affirmed in Part, Reversed in Part by *State v. Stewart*, 433 S.C. 382, 858 S.E. 2d 808) (“[Stewart’s] knowledge and possession may be inferred when a substance is found on property under [his] control. However, this inference is simply an evidentiary fact to be taken into consideration by you along with other evidence in the case and to be given the weight you think it deserves.”); *see also*, *R. 212, II. 9-12* (“[H]owever, this inference is simply evidentiary fact to be taken into consideration by you along with the other evidence in the case and to be given the weight you decide it should have.” (J. Newman)). Moreover, this attempt at mitigating the erroneous instruction would only serve to further prejudice the Applicant, confuse the jury, or both. *See*, *State v. Peterson*, 287 S.C. 244, 335 S.E.2d 800, (overruled on other grounds by, *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575) (“Merely superimposing correct instructions over erroneous ones serves only to foster prejudice and confusion.”) The improper jury charge can reasonably be viewed as contributing to the verdict. Applicant was not present on the scene when the controlled substances were found in the vehicle, thus the alleged possession was “constructive”, and not “actual”. Applicant was acquitted of Failure to Stop for Blue Light/Siren at trial, which indicates the jury was not convinced that the State proved beyond a reasonable doubt that the Applicant was the driver of the vehicle. Therefore, the only logical legal theory upon which one can conclude that the jury employed to convict Applicant is the possession of the drugs by way of ownership and/or “control” of the property upon which the drugs were found. The inquiry of the Court is not “what the verdict would have been given the correct charge, but whether the erroneous charge contributed to the verdict rendered”. *Burdette*, 427 S.C. at 496, 832 S.E.2d at 578 (quoting *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435). Further guidance is found in the United States Court of Appeals for the Fifth Circuit, District of Eastern Texas, which holds, “If

conviction is sure that error did not influence jury or had but very slight effect, error is harmless and verdict and judgment should stand, but if one cannot say with fair assurance, after pondering all that happened without stripping erroneous action from the whole, the judgment was not substantially swayed by the error, it is impossible to conclude that substantial rights were not affected.” (*Conway v. Chemical Leaman Tank Lines, Inc.*, 525 F.2d 927 (U.S. Ct. App. 5th Cir. 1976)). In light of 1) the impropriety of the jury charge; 2) the inconsistency of the verdicts between the Failure to Stop and possession – offenses; and 3) the nature of the challenged portion of said jury instruction - it cannot be conclusively said that the error did not prejudice Applicant. In fact, indicators weigh heavily in favor of substantial improper swaying of the jury’s judgment due the imprimatur of the trial court and its improper emphasis of the inference of knowledge and possession that may be drawn from substances found on property under the defendant’s control.

In addition, the Applicant asserts that the injurious effect of the above-mentioned jury instruction was exacerbated by the Trial Court’s comment in her “explanation of the [trial] procedure” stating, “... you will then be in a position to determine what the facts are and to apply the law to those facts and thus **render a true and just verdict.**” *R. 31, ll. 5-7*; and further directing the jury, “Remember that you have just taken an oath to try this case and **reach a fair and just verdict...**” *R. 25, ll. 14-15*. The Applicant asserts that, viewed in the context of the entire record, the comments and instructions made by the trial judge subtly, yet, improperly, excused the jury of its prerogative and obligation to determine whether the State has proven the Applicant’s guilt beyond a reasonable doubt.

** The Applicant also asserts the Sixth Amendment claim of ineffective assistance of counsel for failure to object to the errors and improprieties alleged; the failure to move for the appropriate remedy, relief, or cure for to all alleged errors and improprieties, and/or; the failure to preserve said errors and improprieties for appellate review.*

II. PROSECUTORIAL MISCONDUCT

Applicant’s right to Due Process of Law, as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and South Carolina Constitution Article I Section III and applicable statutory law, was violated when the State of South Carolina, represented by Solicitor John William “Bill” Weeks and Assistant Solicitor Ashley Hammack, engaged in prosecutorial misconduct in Applicant’s trial. The action, inactions, and/or omissions of the Solicitor and Assistant Solicitor so prejudiced the Applicant as to render his trial fundamentally unfair. To support this position, the Applicant offers the following:

“Past decisions of this Court demonstrate that the touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, not the culpability of the prosecutor.” *Smith v. Phillips*, 455 S.C. 209, 102 S. Ct. 940, 71 L. Ed. 2d 78 (U.S. Sup. Ct. (1982))

"Moreover, we have here a case where the misconduct of the prosecuting attorney was slight or confined to a single instance, but one where such misconduct was pronounced and persistent, with a probable cumulative effect upon the jury which cannot be disregarded as inconsequential. A new trial must be awarded." *Berger v. U.S.*, 295 U.S. 78, 55 S.Ct. 629, 79 L.Ed. 1314

1. Brady Violation

Relevant Facts

On the night of February 26th, 2020 from exactly 22:27 lasting until the early morning hour of 01:30 on February 27th, 2020 – the Aiken Bloodhound Tracking Team was "called... to come to the scene" of the culmination of a police pursuit involving Applicant's Dodge Durango. *R. 49, ll. 24-25*. The pursuit ended when an unknown subject exited the paved road, entered a freshly plowed cornfield, departed the vehicle and fled on foot. The law enforcement officers' patrol vehicles became stuck in the saturated soil of the freshly-tilled cornfield and were unable to follow the Applicant's vehicle into the field. The Durango proceeded to the rear of the cornfield and came to a halt at an angle that prevented a line of sight from the officers in pursuit to the driver's side door (i.e. the unidentified driver). No one visually observed the subject exit the vehicle or flee, but evidence of flight was apparent from the fact that no one was inside the Durango when the officers finally approached the vehicle on foot. *R. 47, l. 12 – 49, l. 21*. Though none of the incident reports completed by any of the officers on the scene that night (including Sgt. Brandon Knight (Knight)) make any mention of observing footprints and/or shoeprints in the cornfield, Sgt. Knight, nevertheless, testified at trial that "At that point, we observed shoes on the ground. [It] Looked like footprints going to the wood line that was not shoes. We called the Aiken County tracking team to come to the scene." *R. 49, ll. 22-25*. Throughout the State's case several casual references to the Aiken Bloodhound Tracking Team (ABTT) were made during the course of the testimonies of Sgt. Brandon Knight and Sgt. Clarke Palmer (Palmer). However, a requisite standard ACSO Form: SO122 "Call-Out Report" (Exhibit E (hereinafter, "Report")) is produced by the ABTT member(s) for, and is supplied to, the law enforcement agency which requested the "call out". Said Report in this case (Aiken County Sheriff's Office case number: 20 – 010190) was completed by Christopher Carey (Carey) who is a member of the ABTT and was one of four ABTT members present and involved in the tracking and attempted locating of the unknown subject who fled the Applicant's Durango. The Report was disclosed and delivered to the Applicant on November 22, 2022. Said disclosure was made to by way of U.S. mail from Applicant's trial counsel, Suzanne Hayes. Disclosure and delivery of the Report was made to Applicant in response to a letter from the Applicant mailed on 8-17-22 to Mrs. Hayes requesting all discovery material and documents known to and/or in her possession. The document in question was accompanied mostly by other discovery material never previously disclosed to the Applicant and a cover letter listing the documents displayed a date of November 15, 2022. The Report included details of the ABTT's search which were not introduced at Applicant's trial, and therefore, not made available for the jury's deliberation. Details of the tracking contained in the Report, yet not educed by Knight or Palmer's testimony, include: (1) Weather conditions at the time the tracking took place; (2) exact length or "Total Hours" of the ABTT's search; (3) distance tracked; (4) subject identification information; (5) "Evidence Collection" information;

(6) “Team Members Present” information; (7) Location of search; and (8) detailed “Narrative” of the search. Applicant was never aware of the existence of the “Report” prior to trial counsel’s letter despite many pretrial requests made to counsel for “all discovery materials”. Furthermore, the available evidence² demonstrates that the Report was not disclosed and/or provided to the Applicant’s counsel pursuant to *Brady*.

Relevant Cases and Authorities

- SCRCrimP Rule 5: “DISCLOSURE IN CRIMINAL CASES”
- “If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional evidence or material.” *SCRCrimP Rule 5(c)* “Continuing Duty to Disclose”
- “Discovery rule requiring prosecution to disclose evidence material to preparation of defense upon request of defendant applies to evidence within the actual possession of the prosecution and to evidence within the possession of other government agencies.” *State v. Kennerly*, 331 S.C. 442, 503 S.E.2d 214, rehearing denied, certiorari granted, affirmed 337 S.C. 617, 524 S.E.2d 837
- “Under discovery rule requiring prosecution to disclose evidence material to preparation of defense upon request of defendant, test for whether evidence is “material” is determined by employing same test as that used in *Brady* disclosure rule context. *Id.*
- “Evidence is material under *Brady* if there is a ‘reasonable probability’ that the result of the proceeding would have been different had the information been disclosed. *Riddle v. Ozmint*, 369 S.C. 44, 45, 631 S.E.2d at 73
- “A defendant asserting a *Brady* violation must demonstrate that the evidence the state failed to disclose was (1) favorable to the defendant, (2) in the possession or known to the state, (3) suppressed by the state, and (4) material to guilt or punishment.” *State v. Frazier*, 394 S.C. 213, 715 S.E.2d. 650, rehearing denied
- Fed. R. Crim. P. Rule 16: “DISCOVERY AND INSPECTION”
- “A party who discovers additional evidence or material before or during trial must promptly disclose its existence to the other party or the court if: (1) the evidence or material is subject to discovery or inspection under this rule; and (2) the other party

² ACSO Form: AD 182 “GENERAL SESSIONS PACKET” which lists the documents and evidence disclosed to the Applicant’s trial counsel reveals that “Bloodhound Call Out” box listed under “Other Reports” was not checked, indicating that – that document was not provided. Also, Counselor Hayes’ closing argument regarding the failure of the State to call “anybody from the bloodhound team” to testify about “how that works” and the absence of the information attainable from that testimony, further supports the notion that she was not in possession, nor even apprised of the existence, - of the Report. See, *R. 195, l. 25 – 196, l. 11*

previously requested or, the court ordered, its production.” Fed. R. Crim. P. Rule 16(c): “Continuing Duty to Disclose”

- “We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecutor.” Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1197-98, 10 L.Ed.2d 215
- “A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant.” *Id.* at 87-88, 83 S.Ct. 1198, 10 L.Ed.2d 215
- “An individual asserting a Brady violation must demonstrate that evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused’s guilt or innocence or was impeaching.” Riddle v. Ozmint, 369 S.C. 44, 631 S.E.2d at 73
- “If a Brady violation is found to have occurred, PCR must be granted.” *Id.*
- “The burden is on the solicitor to disclose material evidence which is exculpatory or impeaching.” *Id.*
- “The question is not whether the petitioner would more likely have been acquitted had this evidence been disclosed, but whether without this [] evidence, he received a fair trial “resulting in a verdict worthy of confidence.” *Id.* (internal quotation Kyles v. Whitley, *supra*, at 434, 115 S.Ct. 1555)

Discussion

It is well established federal and South Carolina state law that disclosure of evidence or material necessary to the preparation of defense is to be made upon the requesting party. Likewise, it is “blackletter law” that the failure to disclose such exculpatory or impeaching evidence or material constitutes a Brady violation. The Report was in the possession of the State. See, State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214, rehearing denied, certiorari granted, affirmed 337 S.C. 617, 524 S.E.2d 837 (“Discovery rule requiring prosecution to disclose evidence material to preparation of defense upon request of defendant applies to evidence within the actual possession of the prosecution and to evidence within the possession of other government agencies.”). The State was acutely aware of its SCRCrimP Rule 5 obligation. In fact, the State complied with its obligation with regard to other “less exculpatory” evidence and documents. Yet, the Second Judicial Circuit Solicitors’ Office intentionally omitted the Report from the discovery packet provided to the Applicant’s counsel. See, Exhibit # (General Sessions Packet Case No. 20 – 010190); Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1197-98, 10 L.Ed.2d 215 (“We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecutor.”); see also, *Id.* at 87-88, 83 S.Ct. 1198, 10 L.Ed.2d 215 (“A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant.”). The “Report” contained relevant and material information detailing the particular actions of the Aiken Bloodhound Tracking Team. These “particular actions” detailed in the “Report” go far beyond the mere mention of the arrival and subsequent search for the suspect(s)

that was generically alluded to by the State's witnesses, Brandon Knight and Clarke Palmer, or by the Defendants counsel and the Solicitor - Suzanne Hayes and Ashley Hammack - in closing argument. The Report encompasses details that, if made known to the jury, would have gave them an in-depth account of the actions – and insight into the mechanics - of the ABTT search on the night in question. See, *Riddle v. Ozmint*, 369 S.C. 44, 631 S.E.2d at 73 (“The question is not whether the petitioner would more likely have been acquitted had this evidence been disclosed, but whether without this [] evidence, he received a fair trial “resulting in a verdict worthy of confidence.”) (internal quotation *Kyles v. Whitley*, supra, at 434, 115 S.Ct. 1555). The Report would have shown to the jury the specialized knowledge of the Trackers and the level of sophistication involved in the search, including: the exact location of the search (Wire Rd. and Beverdam Rd. Aiken, SC) which differs from the incident location attested to on direct-examination by law enforcement officers Knight and Palmer (New Holland Rd. and Anderson Rd. Aiken, S.C.); the exact “Start Date/Time” (2/26/20 @ 2227) and exact “End Date/Time” (2/27/20 @ 0130)³; the duration of the search (3 hours); the distance of the search (approx. 1 mi.); Weather conditions and Temperature (Clear and 50°) which conflict with law enforcement testimony which state that it was cold and rainy; the description of the crime scene with respect to tracking indicators used such as the “shoes” assumed to belong to the “subj” [subject] thus also assuming – without proof - that the Applicant was the “subj”; the reaction of the bloodhound when “struck” to the “driver’s door”, the lack of any mention of “footprints going to the wood line that was not shoes” (a uncorroborated claim made solely by Knight and for the first time on direct-examination, but not in any of his investigative reports); the “findings” which were that the ABTT and their bloodhound (Titus) spent “approximately two hours trying to locate the subj but with negative results on finding him or any signs”; and that the “ABTT advised on scene officer of findings.”. Also significant and only apparent from the Report is that, though the identity and description of the subject was unknown to law enforcement’s due to their failure to ever catch a glimpse of the actual person driving and/or fleeing the vehicle, the Report lists the Subject’s “Sex” and “Race” as “Male” and “Black”. The Report’s “Narrative” states that “Titus [the bloodhound] was circling for approximately two hours trying to locate the subj but with negative results...”. Yet, the Report “Start/End Time” and “Total Hours” of the search, both, reflect that it was three – and not two - hours. Aside from the obvious exculpatory implications, (1) the inconsistencies between facts in the Report and the testimony of law enforcement, and; (2) the premature assumptions of the ABTT and ACSO as to the identification of the accused as the perpetrator of the crimes at issue, make it readily apparent from the Report, likewise, lend to it (the Report) an impeaching element as well. Therefore, the presence of a *Brady* violation is substantiated. *Id.* (“An individual asserting a Brady violation must demonstrate that evidence: (1)

³ This is important because the jury was not made aware of the amount of time elapsed between the culmination of the ABTT’s search (0130 hrs.) and the time at which the Applicant was arrested (0603 hrs.) (see Aiken County Sheriff’s Office “Incident Report” Case Number 20-010214). This is exactly four hours and thirty-six minutes of elapsed time in which there was absolutely no presence of law enforcement. By all accounts the distance between the location where the vehicle pursuit ended and where the Applicant was subsequently arrested was “half a mile as the crow flies though the woods and fields”. *R. 36, II. 11-12*. The “Distance” of the track indicated on the Report reflects a search distance of “.8” miles. Accordingly, the questions beg themselves: “Why would a person who just ran 35 miles in 30 minutes only make it half a mile in four and a half hours?”; and “How could a trained bloodhound and a four-man Tracking Team canvassing an area of .8 miles fail to locate a subject who was supposedly within half-mile radius?”. Therefore, it is reasonable to assume that confidence in the jury’s verdict may well be undermined by States failure to disclose and/or admit the Report.

favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching."); *Id.* ("If a Brady violation is found to have occurred, PCR must be granted.")

2. Improper Opening Statement

Relevant Facts

Solicitor Weeks made the following comment or remarks giving his Opening Statement by The State: ("Opening Statement by The State" - *R. 31, L 22 – 38, L 24.*)

Comments

- i. Solicitor Weeks stated that the officers in hot pursuit of Applicant's vehicle "really didn't know at that point" who the person was that driving the vehicle. *R. 33, ll. 15-16;*
- ii. Solicitor Weeks stated, "Prior to arresting him [the Applicant], they spent the night wandering through the woods looking for him, taking the tracking dogs through the woods looking for him." Further stating, "They had already searched the car he was driving" and adding unfounded statements such as, "where he [Applicant] decides to stop the car and run." *R. 35, ll. 19-25;*
- iii. Weeks continues, "... everybody was trying to locate the person that jumped and ran from the vehicle. Registration says it was Jonathan Lincoln. Pill Bottles say it was Jonathan Lincoln. And that's who they were looking for." *R. 36, ll. 14-17;*
- iv. The Solicitor further commented, "Nobody else did they see bail out the car." *R. 38, ll. 7-8.*

The denoted statements below were made in the Incident Reports (IR) and Supplemental Reports (SR) of either, Sgt. Clarke Palmer or Sgt. Brandon Knight (as indicated), and can also be found restated in the Investigative Summary Reports (ISR) of Sgt. Brandon Knight.

The relevant portions of all of the reports of the officers involved, state: "... the subject was unable to [be] located at that time" (Palmer SR); "Sgt. Knight will follow up and attempt to identify the 'Defendant'" (Knight SR); "'Defendant' was not identified" (Knight IR (2/26/2020), later revised on 3/6/2020 to include the words "at this time" in Knight ISR). Sgt. Brandon Knight, prosecuting officer and key witness for the State, maintained in his report, only, that he "had ACSO Raod [*sic*] units go to the address of the possible Defendant to see if the vehicle had been stolen or if the owner knew of the whereabouts [*sic*] of the vehicle."

Relevant Cases and Authorities

- “The prosecutor’s opening statement should be an objective summary of the evidence reasonably expected to be produced, and the prosecutor should not use the opening statement as an opportunity to ‘poison the jury’s mind against the defendant’ or ‘to recite items of highly questionable evidence’” *U.S. v. Brockington*, 849 F.2d 872 (internal quotations, *Government of Virgin Islands v. Turner*, 409 F.2d 102, 103 (3d Cir. 1969))
- The opening statement serves to inform the jury of the general nature of the action and the issues involved so they can better understand the evidence presented.” *Smalls v. State*, 415 S.C. 490, 783 S.E.2d 817 (2016) (quoting *State v. Kornahrens*, 290 S.C. 281, 284, 350 S.E.2d 180, 183 (1986))
- “The solicitor is permitted in opening statements to outline the facts the State intends to prove.” *Id.* (quoting *Kornahrens*)
- “As long as the State introduces evidence to reasonably support the stated facts there is no error” *Id.* (quoting *Kornahrens*)
- “The test for reversible prosecutorial misconduct generally has two components: that ‘(1) the prosecutor’s remarks or conduct must in fact have been improper, and (2) such remarks or conduct must have prejudicially affected the defendant’s substantial rights so as to deprive the defendant of a fair trial.’” *U.S. v. Brockington* 849 F.2d 872, overruled on other grounds by, *Bailey v. United States*, 516 U.S. 137, 116 S.Ct. 501, 133, L.Ed.2d 472 (1995)
- “As a general premise, a prosecutor’s repeated references to his or her personal opinion about a defendant may indeed be found improper.” *U.S. v. Higgs*, 353 F.3d 281, 332 (4th Cir. 2003), *cert. denied*, 543 U.S. 999, 125 S.Ct. 627, 160 L.Ed.2d 456 (2004) (U.S Ct. App. 4th Cir.)

Discussion

The language used by Sol. Weeks in Comments i - iv improperly (and inaccurately) suggested that, at some point, the identity of the driver of the vehicle was conclusively determined to be the Applicant. The abundance of evidence and officer testimony demonstrates that law enforcement did not know the identity of the driver of the vehicle and, therefore, could not have possibly been “looking for” the Applicant. In fact, the reports of the all officers indicate only that, “the subject was unable to [be] located at that time” (Palmer SR); “Sgt. Knight will follow up and attempt to identify the ‘Defendant’” (Knight SR); “‘Defendant’ was not identified” (Knight IR (2/26/2020), later revised on (3/6/2020) to include the words “at this time” in Knight ISR). Sgt. Brandon Knight, prosecuting officer and key witness for the State, maintained in his report, only, that he “had ACSO Raod [*sic*] units go to the address of the possible Defendant to see if the vehicle had been stolen or if the owner knew of the whereabouts [*sic*] of the vehicle.” This was the only mention of anyone from law enforcement “looking for” the Applicant, thus making the misrepresentations and insinuations by Weeks in his Opening Statement an improper reference to his personal opinion about the Applicant’s guilt. Also, the Solicitor failed to prove the allegations made in his Opening Statement. Weeks’ wildly deceptive and loaded statement, “Nobody else did they see bail out of the car”, implicitly suggests to the jury that the State is in possession of extraneous knowledge, as no evidence that law enforcement

saw anyone “bail out of the car” was presented at trial. See, U.S. v. Brockington, 849 F.2d 872 (“The prosecutor’s opening statement should be an objective summary of the evidence reasonably expected to produced, and the prosecutor should not use the opening statement as an opportunity to ‘poison the jury’s mind against the defendant’ or ‘to recite items of highly questionable evidence’”) (internal quotations, Government of Virgin Islands v. Turner, 409 F.2d 102, 103 (3d Cir. 1969)); see also, Smalls v. State, 415 S.C. 490, 783 S.E.2d 817 (2016) (quoting Kornahrens) (“The solicitor is permitted in opening statements to outline the facts the State intends to prove.”); Id. (quoting Kornahrens) (“As long as the State introduces evidence to reasonably support the stated facts there is no error”)

Improper comments of solicitor(s), even if not directly related to narcotics possession charges, were prejudicial to the Defendant in that they tended to assert as fact the unsubstantiated allegations that the Defendant was, not only *an* occupant, but the *sole* occupant of the vehicle where the narcotics were found. Both of these assertions are false and unsupported by the evidence educed at trial. See, U.S. v. Brockington, 849 F.2d 872, overruled on other grounds by, Bailey v. United States, 516 U.S. 137, 116 S.Ct. 501, 133, L.Ed.2d 472 (1995) (“The test for reversible prosecutorial misconduct generally has two components: that ‘(1) the prosecutor’s remarks or conduct must in fact have been improper, and (2) such remarks or conduct must have prejudicially affected the defendant’s substantial rights so as to deprive the defendant of a fair trial.’”)

3. Improper Vouching

Relevant Facts

Solicitor Weeks and Assistant Solicitor Hammack, on numerous occasions throughout the trial, commented on the veracity of the State’s witnesses and their testimonies.

(Solicitor Weeks on Colt Woody)

Solicitor Weeks stated, in his opening argument, with respect to State’s witness, Colt Woody, that he: (1) “wasn’t involved in any of the events of that night.” *R. 34, ll. 12-13*; (2) “... [is] a hard worker.” *R. 34, ll. 15-16*; and (3) “didn’t have anything to do with anything.” *R. 35, l. 7*. Throughout Solicitor Weeks’ summary his narrative was given in a tone that asserted the State’s allegations as established facts and conclusive of the Applicant’s guilt.

(Solicitor Weeks on Brandon Knight (bolstering and vouching))

During direct examination of State’s key witness, Sgt. Brandon Knight, Week’s asked and the witness answered: *Knight*: “This is my dash cam video from my patrol vehicle.” *Weeks*: “Okay. And have you watched this with us?” *Knight*: “I have” *Weeks*: “Is it a true and accurate copy?” *Knight*: “It is” *Weeks*: “The video we watched was two or three hours long. Is this a more chopped-down version?” *Knight*: “That’s the actual video.” *Weeks*: “I know, but did we cut it off at some point?” *Knight*: “Yes” *R. 46, l. 20 – 47, l. 4*; *Weeks*: “And where in the cornfield did the Defendant go?” *Knight*: “The Defendant went - -” *Weeks*: “Or the person you were

chasing?" *Knight*: "The Defendant went..." *R. 47, ll. 20-23*; *Weeks*: "Now, I know I've asked you before when we were preparing this case, but how long was this chase?" *Knight*: "The chase was approximately 30, 35 miles." *Weeks*: "And you were within sight of him the whole time?" *Knight*: "Within sight the whole time." *Weeks*: "Can you describe what you found in the vehicle and what you took possession of from the vehicle?" *R. 51, ll. 6-13*; *Weeks*: "... did you personally know the officers who foot-tracked the Defendant or tried to locate the Defendant or whoever it was at that point?" *R. 57, ll. 7-9*; *Knight*: "... At that point, we didn't go no further. We turned around and went back to our vehicles." *Weeks*: "Because you would have been waking up people, wouldn't you?" *Knight*: "Yes." *Weeks*: "But y'all did do that, didn't you?" *Knight*: "Eventually, we did yes, all night." *R. 56, l. 24 – 57, l. 3*.

Asst. Solicitor Hammack, in closing, commented on the veracity of State's key witnesses: Sgt. Brandon Knight and Sgt. Clarke Palmer. Hammack stated "... the facts have gotten a little bit easier for you because there's not a whole lot that anybody disagrees about." *R. 170, ll. 4-5*. Assertions that Hammack described as "undisputed" are, *inter alia*: "Sergeant Knight started a traffic stop on I-20 when a Durango drove by him with the windows so tinted that his lights wouldn't go through that tint and he couldn't even see the silhouette of somebody driving that vehicle." *R. 170, ll. 15-19*; "We know that law enforcement searched up and down the road, searched the fields, got the tracking dogs out there. They searched half the night looking for the person that ran from this car, ran from the police." *R. 172, ll. 20-23*; "And the last thing that we know, that we don't have to question, that everyone here agrees on is that in the Defendant's own car off of New Holland, the same time he's found off of New Holland, there's a bag and in that bag is full of drugs. 1. 56 grams of powder cocaine, 22.99 grains of heroin and 49.1 grams of methamphetamine." *R. 174, ll. 6-11*. Hammack reinforced her position of belief in the unproven allegations, stating, "Members of the jury, that makes your job a lot easier. You won't have to argue about that stuff. All of that we know is true. So the only question before you guys is was the Defendant driving his own car when he ran from the police? Was the Defendant, the owner, in possession of these drugs in his car that night? So we narrowed this down to one question for you." *R. 174, ll. 12-18*; "I talked to you about what's not a question. And what's not a question is... there were drugs in the Defendant's car. ... and trafficking accessories." *R. 191, ll. 10-15*. "Ms. Hayes said that our Aiken County Sheriff officers who have worked there for over a decade didn't do anything." *R. 202, ll. 10-11*.

(Assistant Solicitor Hammack on Colt Woody)

Solicitor Hammack also commented on Colt Woody's credibility and the veracity of his testimony, stating, "Colt Woody don't know anybody involved in this case. He doesn't have any reason to come in here and lie to you. If his doorbell had been rung or somebody knocked on his door, he would have told you. But that's not what happened." *R. 178, ll. 5-9*.

Relevant Cases and Authorities

- “We have held that it is error for the government to bolster or vouch for its own witnesses.” *United States v. Samad*, 754 F.2d 1091, 1100 (4th Cir.1984) U.S. Ct. App. 4th Cir.
- Vouching occurs when the prosecutor’s actions are such that a jury could reasonably believe that the prosecutor was indicating a personal belief in the credibility of the witness.” *United States v. Lewis*, 10 F.3d 1086,1089 (4th Cir.1993) U.S. Ct. App. 4th Cir.
- “Consequently, the prosecutor may not, among other things, make explicit personal assurances that a witness is trustworthy or implicitly bolster the witness by indicating that information not presented to the jury supports the testimony.” *United States v. Lewis*, 10 F.3d 1086,1089 (4th Cir.1993) U.S. Ct. App. 4th Cir.
- “Improper vouching occurs when the prosecution places the government’s prestige behind a witness by making explicit personal assurances of a witness’ veracity, or where a prosecutor implicitly vouches for a witness’ veracity by indicating information not presented to the jury supports the testimony.” *State v. Shuler*, 344 S.C. 604, 545 S.E.2d 805 (2001) S.C. Sup. Ct.
- “Under South Carolina law, the competency of a witness is to be determined by the trial court, whereas the credibility of a witness is exclusively for the jury to decide.” *State v. Reyes*, 432 S.C. 394, 853 S.E.2d 334 (2020) S.C. Sup. Ct.
- “Generally, ‘the assessment of witness credibility is within the exclusive province of the jury.’. Thus, solicitor’s may not vouch for a witness’s credibility, as doing so improperly invades the province of the jury and places the government’s prestige behind the witness.” *Tappeiner v. State*, 416 S.C. 239, 785 S.E. 2d 471 S.C. Sup. Ct.

Discussion

Solicitor Weeks and Assistant Solicitor Hammack, on numerous occasions, improperly bolstered the testimony - and/or vouched for the credibility – of various witnesses for the State. See, *United States v. Samad*, 754 F.2d 1091, 1100 (4th Cir.1984) (“We have held that it is error for the government to bolster or vouch for its own witnesses.”). With respect to State’s witness - Colt Woody – Solicitor John Weeks stated in his opening argument, that he [Colt Woody]: “wasn’t involved in any of the events of that night”; was “... a hard worker.”; and “didn’t have anything to do with anything.”. These comments were improper in that they “placed the government’s prestige” behind Mr. Woody and made “explicit personal assurances” as to his trustworthiness, thus, depriving the jury of their duty and ability to exclusively decide the credibility of the witness. See, *State v. Shuler*, 344 S.C. 604, 545 S.E.2d 805 (2001) (“Improper vouching occurs when the prosecution places the government’s prestige behind a witness by making explicit personal assurances of a witness’ veracity, or where a prosecutor implicitly vouches for a witness’ veracity by indicating information not presented to the jury supports the testimony.”); *State v. Reyes*, 432 S.C. 394, 853 S.E.2d 334 (2020) (“Under South Carolina law, the competency of a witness is to be determined by the trial court, whereas the credibility of a witness is exclusively for the jury to decide.”)

Throughout direct-examination, Solicitor Weeks improperly vouched for the credibility, and bolstered the testimony, of State's key-witness and prosecuting officer, Sgt. Brandon Knight. With regards to the colloquy between Knight and Weeks pertaining to the authentication of Knight's Dashboard Camera video-footage, Weeks improperly bolstered the authenticity of the evidence by using the first-person pronouns "I", "us", and "we" to describe the extraneous viewing (and subsequent editing) of the footage by Knight and himself. Also, in reply to Knight's response "That's the actual video", Weeks said, "I know. But did we cut it off at some point?" That statement - alone - bolstered the authenticity of the evidence proffered by the State's witness signaling that Weeks personally believed in the truth and accuracy of, both, the witness and the evidence. Weeks' comments also were made to suggest to the jury that the edited dashboard and body-worn camera footage contained all of the footage relevant for them to decide the issue of guilt or innocence of the Applicant and that nothing else on the videos were pertinent. *See, State v. Reyes*, 432 S.C. 401, 853 S.E.2d 339 (2020) (quoting *State v. Kelly*, 343 S.C. 350, 540 S.E.2d 851, *reversed and remanded on other grounds by Kelly v. South Carolina*, 534 U.S. 246, 122 S.Ct. 726, 151 L.Ed.2d 670) ("In *State v. Kelly*, we held the solicitor impermissibly bolstered the credibility of the State's witness ... by asking the following questions of the witness: 'What did I tell you that I absolutely required regarding your testimony to this jury today?' and 'Did I tell you to tell the truth to this jury?'. *Id.* at 369 & n.12, 540 S.E.2d at 860-61 & n.12 (emphasis added by the *Kelly* Court). Shortly thereafter, within the same direct-examination of Knight by Weeks, Weeks improperly states, "Now, I know that I've asked you before when we were preparing this case, but how long was this chase?". The Applicant asserts that the mention of and/or alluding to a pre-trial meeting or conference, outside of the testimony before the jury, can reasonably be said to have conveyed the impression that evidence - not presented to the jury, but known to the prosecutor - supported the charges against the Applicant and can, thus, jeopardize the Applicant's right to be tried solely on the evidence presented to the jury without improper influence or emphasis. *See, State v. Kelly* at 350 ("We explained that because the solicitor phrased these questions in the first person, the jury could have perceived the solicitor believed the witness was testifying truthfully - a belief that carried with it the imprimatur of the government, which may have induced the jury to trust the State's judgment about the witness")

On direct-examination Solicitor Weeks improperly bolstered the testimony of State's witness, Brandon Knight, when - in reference to the suspect whose identity was never conclusively determined by any direct evidence or testimony - he (Weeks) used the term "Defendant". Use of the term "Defendant" suggested to the jury the, through some extrinsic evidence, the admittedly unfounded suspicions were substantiated. On the occasions that Mr. Weeks intentionally engaged in this improper questioning he immediately compounded the error by stating, in feigned-innocence "or the person you were chasing" and "or whoever it was at that point". In each instance the witness responded to the improper questioning, on one occasion using the term "Defendant" himself (i.e. leading), even after the "pseudo-correction" by Weeks. Finally, in his query into the scope of the areas searched by witness Brandon Knight and the other law enforcement officers, Mr. Weeks provided the "question and answer" when stating (in

the form of a question) that Knight and his colleagues curtailed their search for the Applicant because they “would have been waking people up”. After an answer in the affirmative, Weeks added, “But y’all did do that, didn’t you?”, to which Knight answered, “Eventually, we did, yes all night.”. Not only was this line of question maliciously intended to place the imprimatur of the “Elected-Solicitor” and his Office behind the character and testimony of the witness, but it was cleverly (yet, improperly) executed to excite the passions, prejudices, and sympathy of the jury.

Assistant Solicitor Ashley Hammack was egregious in her impropriety throughout the trial, but none more so than in her improper closing arguments which bolstered the evidence and testimony of the State’s witnesses and/or vouched for their credibility. Hammack set the stage for her malfeasance by incorrectly instructing the jury on what they could accept as “undisputed” fact. While it is understood that prosecutors may make and present “reasonable inferences” from matters contained in the trial record, please understand that the comments complained of here constitute an assertion of unsubstantiated conjecture as that of uncontested and uncontroverted fact guaranteed by Assistant Solicitor Hammack on behalf of the State. Aside from Ms. Hammack’s arguing facts not in evidence (*addressed in separate section of this Memorandum), she bolstered the respective testimonies of the State’s witnesses by presenting what amount to uncorroborated allegations as facts unquestionably proven by unseen and unheard evidence in the possession of the prosecution.

Asst. Sol. Hammack compounded her and Solicitor Weeks’ error by stating that, “Mrs. Hayes said that *our* Aiken County Sheriff *who have worked there for over a decade* didn’t do anything.” Again, the improper use of the pronoun “our” vouched for the credibility of the witness; suggested an endorsement of the witnesses’ testimony based on improper extraneous influences; and was intended to foment the passions and prejudices of the jury.⁴

Asst. Solicitor Hammack improperly vouched for, and bolstered the testimony of, Colt Woody stating, “Colt Woody don’t know anybody involved in this case. He doesn’t have any reason to come in here and lie to you. If his doorbell had been rung or somebody knocked on his door, he would have told you. But that’s not what happened.” *R. 178, ll. 5-9. See, United States v. Lewis*, 10 F.3d 1086, 1089 (4th Cir. 1993) U.S. Ct. App. 4th Cir. (“Consequently, the prosecutor may not, among other things, make explicit personal assurances that a witness is trustworthy or implicitly bolster the witness by indicating that information not presented to the jury supports the testimony.”) Asst. Sol. Hammack was asserting that the Applicant was lying, and therefore, attacking the veracity of his story and his overall credibility. The events and circumstances surrounding Applicant’s actions upon arriving at the Woody residence are materially probative of purpose and reason for his [Applicant’s] presence. Colt Woody was never asked if his door had been knocked-on or his doorbell rung, and for Asst. Sol. Hammack to suggest that she, herself, can somehow assure the jury that Woody would have offered this unsolicited

⁴ “In *State v. Kelly*, we held the solicitor impermissibly bolstered the credibility of the State’s witness ... by asking the following questions of the witness: ‘What did I tell you that I absolutely required regarding your testimony to this jury today?’ and ‘Did I tell you to tell the truth to this jury?’. *Id.* at 369 & n.12, 540 S.E.2d at 860-61 & n.12 (emphasis added by the *Kelly* Court). We explained that because the solicitor phrased these questions in the first person, the jury could have perceived the solicitor believed the witness was testifying truthfully – a belief that carried with it the imprimatur of the government, which may have induced the jury to trust the State’s judgment about the witness” *Reyes*, at 339, quoting *State v. Kelly*, 343 S.C. 350, 540 S.E.2d 851, *reversed and remanded on other grounds by Kelly v. South Carolina*, 534 U.S. 246, 122 S.Ct. 726, 151 L.Ed.2d 670

information, is highly improper. Furthermore, Colt Woody testified that after the “sirens finally quit --- we went to sleep until the next morning.”, thus lessening the likelihood that he would hear the ringing of a doorbell or a knock. *R. 83, II.2-3*. The prejudicial effect of Hammack’s comments are extremely significant in that the State’s evidence was far from “overwhelming”, entirely circumstantial, and relied solely the credibility of the witnesses. *See, Tappeiner v. State*, 416 S.C. 239, 785 S.E. 2d 471 S.C. Sup. Ct. (“Generally, ‘the assessment of witness credibility is within the exclusive province of the jury.’ Thus, solicitor’s may not vouch for a witness’s credibility, as doing so improperly invades the province of the jury and places the government’s prestige behind the witness.”)

4. Improper Comments and Questions on Direct-Examination (Cumulative, Vouching, Bolstering, Inflammatory, and Leading)

Relevant Facts

Throughout the course of direct-examination, Solicitor John Weeks and Assistant Solicitor Ashley Hammack, repeatedly restated the previous response of the State’s witness when phrasing the questions that followed those responses. The restatements were either verbatim, paraphrased, paraphrased with added inferences, or a combination of the same.

Solicitor Weeks questioned State’s witness, Brandon Knight, by phrasing questions in a manner which suggested to the witness the specific response desired by the prosecution. Examples of Sol. Weeks’ questioning which likely resulted in the furnishing of a false memory to the witness Brandon Knight can be found in his direct-examination of Knight where he (Knight) first asserts, “In the *back passenger area* of the vehicle, there was a black shotgun with a pistol grip. In the *front passenger seat* in a bag was the narcotics, drugs that were located. ... and the *rear of the vehicle* along with prescription bottles with his name on them.” *R. 51, II. 14-20*. Weeks then inexplicably asks the witness, “Officer Knight, other than the drugs and the shotgun, what else did you find *in the back*?”. To that Knight replies, “We found letters with his address on it from the mail. We had an **alcohol bottle from the front passenger area**, scales, baggies - -.” *R. 53, II. 9-13*. Yet, when asked by Weeks to identify the scales for the purpose of admission into evidence, Knight again stated, “Yes. These are the scales that were placed into evidence that were located in the *front passenger seat* of the vehicle with the narcotics.” *R. 53, II. 18-20*. But, when questioned again about the prescription pill bottles he initially claimed were in the *rear of the vehicle* (see *R. 51, II.14-20*), Knight declared, “These are the pill bottles that were located in *that bag*, also, that has the Defendant’s name on them.” *R. 54, II. 9-10*. That “bag” to which Knight makes reference is the same bag Knight originally testified he found on the “*front passenger seat*”. Significantly, on cross-examination by counsel for the defense, Suzanne Hayes, when questioned about the general location of the “cocaine, meth, and the heroin” found in the passenger seat, Knight -

with neither prompt nor suggestion – volunteered that the drugs were in the passenger seat “*in the back*”. *R. 62, ll. 12-19.*

On direct-examination of Sgt. Clarke Palmer, Asst. Sol. Ashley Hammack questioned the State’s witness in a manner which suggested the specific response desired by the prosecution. One such example of Hammack leading the witness involves the question, “And when you decided not to perform the pit technique was that for your safety and the other people’s safety?” to which Palmer obediently replied, “Yes ma’am. For the safety of everybody involved...” *R. 72, ll. 11-13.* And again Hammack leading, “Sergeant Palmer, where that vehicle pulled into the field, what’s past the field?” to which Palmer replied, “Wood line – or are you talking about down the road?”. Hammack confirms, “Wood line.”. *R. 78, ll. 9-12.*

Relevant Cases and Authorities

(Leading)

- “Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness’ testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.” *SC R REV Rule 611(c)* Mode and Order of Interrogation and Presentation: Leading Questions
- “Leading Questions: Leading questions should not be used on the direct examination except as necessary to develop the witness’ testimony. Ordinarily, the court should allow leading questions: (1) on cross-examination; and (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.” *Fed. R Evid.: Rule 611(c)* Mode and Order of Examining Witnesses and Presenting Evidence”
- “The true test of whether a question is leading and therefore improper on direct examination is whether, as said by the Court, it suggests the answer.” *State v Cook*, 204 S.C. 295, 28 S.E.2d 842
- “The essential test of a leading question is whether it so suggests to the witness the specific tenor of the reply desired by counsel that such a reply is likely to be given irrespective of an actual memory. The evil to be avoided is that of supplying a false memory for the witness.” *U.S. v. Durham*, 319 F.2d 590 (1963); quoting, 3 Wigmore, Evidence § 769 (3d ed. 1940)
- “The state has the burden of proving beyond a reasonable doubt the identity of defendant as one who committed the charged crime or crimes.” *State v. Lane*, 406 S.C. 118, 749 S.E.2d 165 (Ct.App. 2013), certiorari granted and reversed by *State v. Lane*, 410 S.C. 505, 765 S.E.2d 557 (2014)
- “Identity of a defendant as one who committed the crime is an element common to proof of all crimes, which the state must prove beyond a reasonable doubt.” *Id.* (quoting *State v. Jackson*, 37 Conn.App. 491, 656 A.2d 1056, 1060 (1995))

- “This Court has long held that a party offering into evidence fungible evidence such as drugs or blood samples must establish a complete chain of custody as far as practicable.” *State v. Pulley*, 423 S.C. 371, 815 S.E.2d 461 (2018) (quoting *State v. Sweet*, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007))

Discussion

Knight’s (1) inconsistency in testimony with respect to the location of the illegal drugs, prescription pill bottles, and scales; (2) the correlation between those inconsistencies to the leading questions asked – and the answers desired – by Solicitor Weeks; and, (3) the significant bearing that the substance of Knight’s testimony had on the establishment of elements essential to a finding of guilt, were all highly indicative of **error and resulting prejudice** due to Solicitor Weeks’ improper intentional phrasing of questions which suggested particular responses and aided in the supplying of a false and/or fabricated memory. See, *SC R REV Rule 611(c)* “Mode and Order of Interrogation and Presentation: Leading Questions” (“Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness’ testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.”). The degree of prejudice suffered was exponentially quantified in that the credibility of the witness – and, a fortiori – the credibility of his testimony, was critical to: (1) the State’s effort to establish the identity of the defendant as the person who committed the crimes alleged; (2) the establishment of the condition and “chain of custody” of the drugs and drug-related evidence; and, (3) establishing a link between the Applicant and the impermissible items (i.e., cocaine, heroin, and methamphetamine), in what was an entirely circumstantial, constructive-possession case. See *State v. Lane*, 406 S.C. 118, 749 S.E.2d 165 (Ct.App. 2013), certiorari granted and reversed by *State v. Lane*, 410 S.C. 505, 765 S.E.2d 557 (2014) (“The state has the burden of proving beyond a reasonable doubt the identity of defendant as one who committed the charged crime or crimes.”); see also *Id.* (quoting *State v. Jackson*, 37 Conn.App. 491, 656 A.2d 1056, 1060 (1995)) (“Identity of a defendant as one who committed the crime is an element common to proof of all crimes, which the state must prove beyond a reasonable doubt.”); *State v. Pulley*, 423 S.C. 371, 815 S.E.2d 461 (2018) (quoting *State v. Sweet*, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007)) (“This Court has long held that a party offering into evidence fungible evidence such as drugs or blood samples must establish a complete chain of custody as far as practicable.”)

5. Improper Questioning on Cross-Examination (Pitting)

The State, questioned the Applicant in a manner that either, explicitly or implicitly, compelled the Applicant to comment on the veracity of testimony of State’s witnesses. Solicitor Weeks, on cross-examination of the Applicant, asked the following questions: (1) *Weeks*: “And you said

you can't see in the windows, so it was heavily tinted?" Lincoln: "It was. I didn't say that. Officer – Sergeant Knight said that." Weeks: "Well, you just said on the stand, you can't see in the window. You didn't see who was backing out of the driveway in your car?" Lincoln: "Yeah, I couldn't see. No, sir I couldn't." Weeks: "And that's because it's very tinted isn't it?" R. 146, ll. 6-14; (2) Weeks: "And were they [pill bottles] that night that your nephew supposedly stole?" Lincoln: "Yes, sir. I assume they were." Weeks: "You say *assume* they were?" Lincoln: "I mean, I'm trusting the word of the officer who said that he retrieved them out of my truck. I had a lot of stuff in there. But I'm going off the fact that the officer said he took [them out of] my truck, so yes, sir." Weeks: "Where do you think he would have gotten your prescription pill bottles if it wasn't out of your truck?" Lincoln: "Probably out of my truck. I don't remember putting them there is what I'm saying." R.147, l. 18 – 148, l. 4 (emphasis added); (3) Weeks: "Would you agree that your mail was in the glove box of your Durango with your address on it, some mail?" Lincoln: "I would agree that my mail was in the truck." Weeks: "Okay." Lincoln: "I don't want to be too specific." Weeks: "So these officers aren't lying about that?" Lincoln: "No." R. 153, l. 20 – 154, l. 1

Relevant Case and Authorities

- "It is improper for the solicitor to cross-examine a witness in such a manner as to force him to attack the veracity of another witness. This error is reversible if the accused is unfairly prejudiced thereby." State v. Bryant, 316 S.C. 216, 447 S.E.2d 852 (quoting State v. Sapps, 295 S.C. 484, 369 S.E.2d 145)
- "We have previously had occasion to address the issue of the propriety of an assistant solicitor attacking the veracity of the defendant by pitting his testimony against that of the State's witness in State v. Hariott, 210 S.C. 290, 42 S.E.2d 385 (1947). See also, State v. Warren, 207 S.C. 126, 35 S.E.2d 38 (1945). In Hariott, the solicitor forced the defendant to attack the veracity of the State's witness, a police officer. This Court concluded that the improper questioning prejudiced the right of the defendant to a fair and impartial trial. Accordingly, this Court reversed the defendant's conviction." State v. Brown, 297 S.C. 27, 374 S.E.2d 669
- "Most recently, in State v. Sapps, 295 S.C. 484, 369 S.E.2d 145 (1988), we reversed Sapps' conviction because the assistant solicitor on cross-examination forced the defendant to attack the veracity of all the State's witnesses. Since Sapps' credibility was a key element to his defense that he did not commit the rape, we found that the questioning prejudiced Sapps' right to a fair trial." Id.
- "When a defendant jointly occupies a residence, proof of constructive possession in the residence requires the government to demonstrate a substantial connection between the defendant and the contraband itself, not just the residence." U.S. v. Salas, United States District Court of Illinois, Eastern Div., 56 F. Supp. 3d 902 (2004)
- "... a substantial connection to the residence is not the same as a substantial connection to the weapons." Id.
- "No matter how a question is worded, anytime a solicitor asks a defendant to comment on the truthfulness or explain the testimony of an adverse witness, the defendant is in

effect being pitted against the adverse witness. This kind of argumentative questioning is improper.” *Burgess v. State*, 329 S.C. 88, 495 S.E.2d 445

Discussion

Solicitor Weeks improperly solicited testimony from the Applicant that “pitted” said testimony against that of the State’s witnesses’ testimony. See, *State v. Bryant*, 316 S.C. 216, 447 S.E.2d 852 (quoting *State v. Sapps*, 295 S.C. 484, 369 S.E.2d 145) (“It is improper for the solicitor to cross-examine a witness in such a manner as to force him to attack the veracity of another witness. This error is reversible if the accused is unfairly prejudiced thereby.”) In the first instance, on cross-examination Sol. Weeks sought to compel Applicant to confirm or deny matters asserted in the testimony of State’s witness, Brandon Knight, concerning the degree of window tint as it relates to visibility inside of the Applicant’s vehicle (*R. 42, II. 10-25*).

Applicant, in his testimony on direct-examination, made only one reference to the visibility inside of his vehicle, stating “... I don’t even know if he was looking at me at this point because I can’t see inside the truck.” (*R. 132, II. 5-7*). Importantly, absent from the Applicant’s testimony was any reference or insinuation to his vehicle’s window tint being the reason for his inability to see inside of his vehicle as it backed out of the driveway. Solicitor Weeks attempted to confuse the jury by suggesting that Applicant’s testimony corroborated that of Knight’s on the issue of lack of visibility and the underlying cause thereof, but Applicant maintained his neutral position on the matter, stating only he “guess”-ed that the tint was the cause because “Sergeant Knight said that”, but held that it “was also, nighttime, too.” The crucial distinction is that the Applicant does not concede that the window tint is the causation of his inability to see inside the vehicle as does Knight. Knight cites this inability to see due to illegally tinted windows as articulable reasonable suspicion upon initial encounter with the Applicant’s vehicle, thus giving legal ground to further investigate and initiate the traffic stop leading to events giving rise to criminal the indictments at bar.

Solicitor Weeks improperly solicited testimony from the Applicant that “pitted” said testimony against that of the State’s witness’. Weeks sought testimony from the Applicant which would cause him (Applicant) to inappropriately attack or confirm the veracity of the officers’ testimony testifying for the State. In the second instance mentioned above, Sol. Weeks, sarcastically, asked the Applicant to comment on where he (the Applicant) thought Sgt. Knight (who was the sole witness to testify to locating and retrieving Applicant’s prescription pill bottles) would have gotten the pill bottles from “if it wasn’t out of your truck?”. This is a direct attempt to elicit an improper comment on the truthfulness of the testimony of an adverse witness. See, *Burgess v. State*, 329 S.C. 88, 495 S.E.2d 445 (“No matter how a question is worded, anytime a solicitor asks a defendant to comment on the truthfulness or explain the testimony of an adverse witness, the defendant is in effect being pitted against the adverse witness. This kind of argumentative questioning is improper.”). Of the particularly high importance in this purely circumstantial case, is the issue of witness credibility and, a fortiori, the precise location of the prescription pill bottles at issue were instrumental to the State’s argument that the Applicant “constructively possessed” the impermissible items. See, *State v. Brown*, 297 S.C. 27, 374 S.E.2d 669 (“Most recently, in *State v. Sapps*, 295 S.C. 484, 369 S.E.2d 145 (1988), we reversed Sapps’ conviction

because the assistant solicitor on cross-examination forced the defendant to attack the veracity of all the State's witnesses. Since Sapps' credibility was a key element to his defense that he did not commit the rape, we found that the questioning prejudiced Sapps' right to a fair trial."). The relevant pill bottles, whose location within the Applicant's truck was the subject of controversy, were used as an "affirmative link to an impermissible item" as explained in Salas.

6. Improper Questioning by State on Cross-Examination (404(b) evidence)

Relevant Facts

Prior to Applicant testifying in his defense, the State moved to introduce three (3) prior convictions for purposes of impeachment. Asst. Sol. Hammack sought to introduce two (2) PWID Marijuana convictions and a giving false information to a police officer, both from 2011. *R. 123, l. 13 – 124, l. 23*. After allowing both parties to make their respective arguments on the propriety of admitting or excluding the evidence, the Trial Court ruled - specifically and unequivocally – to exclude the 404(b) evidence: "The Court: '... but just to say he's a criminal, you know, he has two felony convictions, I think that would be improper character evidence in this situation. **So I will not allow the two drug convictions from December of 2011 to be mentioned.** What's the Defense's position on the false information?' Ms. Hayes: 'I don't think that one should be mentioned either.' The Court: 'I agree. So the State can't, of course, mention that, question the witness about that.'" *R. 125, ll. 11-17*.

In concluding the State's cross-examination, which also constituted the conclusion of all evidence in the trial, came the following exchange between Solicitor Weeks and the Applicant: "Q: 'And you don't dispute that you're the same Jonathan Lincoln who was convicted in 2011 for giving false information to the police?' A: 'That was me, sir.' Q: 'That was you?' A: 'I do not dispute that. I don't lie, Your Honor, when – I mean when I'm guilty, I say I'm guilty. When I'm not guilty, I will come this far with it. I'm sorry, I just – **I think that justice should serve everybody.** It's served against me in the past. I feel like and hope today that it serves me in the positive.' Mr. Weeks: 'No further questions, Your Honor.'" The Defense rested without redirect, rebuttal, or presenting any other evidence.

Trial Court, in her charge to the jury, instructed the jury that though they had "heard evidence that Defendant was convicted of a crime other than the one for which the Defendant is now on trial", said evidence - if believed - may be considered "only in deciding whether the Defendant's testimony is believable and for no other purpose. Trial Court further admonished that the jury "must not consider the Defendant's prior record as any evidence of the Defendant's guilt of the charges we are trying today." *R. 211, ll. 4-11*

Asst. Sol. Hammack, in her closing rebuttal, culminated her argument by repeating the Applicant's words in response to Solicitor Weeks' question stating, "Members of the jury, the last thing the Defendant said to you when he testified – let me find it so I can quote it correctly because I wrote it down. He said, '**Justice should serve everybody**'. And he's right. For every single person that lived on Wire Road... ". Asst. Solicitor Hammack continued to name the roads

on which the police pursuit took place and that “justice should serve” “every single person” who lived on those roads. Hammack then culminated her tirade by reiterating the Applicant’s words, “Justice should serve everybody”. *R. 203, ll. 4-15*

Relevant Cases and Authorities

- “Evidence of other bad acts is not admissible to prove the defendant’s guilt except to show motive, identity, existence of common scheme or plan, absence of mistake or accident, or intent.” *State v. Wallace*, 384 S.C. 428, 432, 683 S.E.2d 275, 277 (2009); (citing SCRE Rule 404(b); *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923))
- “Even if prior bad act evidence... falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant.” *State v. Cope*, 405 S.C. 317, 337, 748 S.E.2d 194, 204 (2013)
- “We hold trial counsel was deficient for failing to object to [] testimony on redirect concerning the prior burglary” *Smalls v. State*, 415 S.C. 490, 783 S.E.2d 817 (2016) (reversed on other grounds by, *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018))
- “Here the state asked the obviously improper question, ‘Here burglarized someone else’s house?’ and [] responded, ‘That’s correct.’. --- Accordingly we find that trial counsel was deficient for failing to object to this testimony, which impermissibly suggested that Petitioner was responsible for a prior burglary involving the shotgun.” *Id.*
- “The determination of the prejudicial effect of the entire record and the result will generally turn on the facts of each case.” *State v. Fletcher*, 379 S.C. at 24, 664 S.E.2d at 483
- The [Fifth] Amendment not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceedings, civil or criminal, formal or informal, where the answers might incriminate him in *future* criminal proceedings.” *State v. Hook*, 348 S.C. 401, 559 S.E. 2d 856
- “Though there was potential for prejudicial testimony to have been submitted to the jury, the trial judge prevented any prejudice by instructing [] not to answer the solicitor’s question.” *State v. Knighton*, 334 S.C. 125, 512 S.E.2d 117
- “Because we conclude that no evidence whatsoever materialized as a result of the two objectionable questions and [] suffered no prejudice, we hold the trial court did not abuse its discretion in refusing to grant a mistrial.” *State v. Watts*, 320 S.C. 377, 465 S.E.2d 359
- “The normal presumption is that the jury will follow a curative instruction. However, this presumption cannot apply when the curative instruction fails by its own terms to address the error.” *U.S. v. Hall*, 989 F.2d 711 (U.S. Ct.App. 4th Cir. 1993)
- “Because the instruction failed to address the jury’s exposure to prejudicial statements that could not have been introduced into evidence, it failed to cure the error introduced by McAfee’s wrongful cross examination.” *Id.* at 717

Discussion

Following the Court's 404b specific ruling explicitly excluding the prior convictions, Solicitor John William Weeks defiantly, inappropriately, and with malicious motive questioned the Applicant about his 2011 conviction for giving false information to a law enforcement officer. See, *State v. Wallace*, 384 S.C. 428, 432, 683 S.E.2d 275, 277 (2009) (citing SCRE Rule 404(b)); *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923) ("Evidence of other bad acts is not admissible to prove the defendant's guilt except to show motive, identity, existence of common scheme or plan, absence of mistake or accident, or intent."). Hon. J. Newman ruled, unequivocally, that the mention of and/or questioning of the Applicant about the 2011 charges was disallowed due to the potential for unfair prejudice to the Defendant. *State v. Cope*, 405 S.C. 317, 337, 748 S.E.2d 194, 204 (2013) ("Even if prior bad act evidence... falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant.") Nonetheless, at the culmination of the cross-examination of the Applicant, Solicitor Weeks improperly elicited previously excluded testimony regarding Lincoln's prior arrest for giving false information to law enforcement. The defense counsel oddly failed to object to Weeks' obvious improper attempt to introduce inadmissible character evidence and to elicit inadmissible, prejudicial testimony from the Applicant in response thereto. *Smalls v. State*, 415 S.C. 490, 783 S.E.2d 817 (2016) (reversed on other grounds by, *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018)) ("We hold trial counsel was deficient for failing to object to [] testimony on redirect concerning the prior burglary"). Significant is the Applicant's trial counsel's failure to object (timely, or otherwise). By neglecting to object to the improper questioning, trial counsel forced the Applicant to answer Solicitor Weeks' question/statement. In compliance with the rules of court requiring his response and, in an attempt to mitigate the damage suffered by the question itself, Applicant responded "That was me." – to the inquiry. In what seemed to be shock at the Applicant's response and, a fortiori, to the trial counsel's failure to object – the solicitor pressed further restating the Applicant's response asking, "That was you?". Applicant then gave a brief clarification of his actions and contrasted between the two situations stating that when guilty he would admit guilt, but when innocent he (Applicant) would "come this far with it". Significantly, in response to the solicitor's improper question, Applicant further stated that the criminal justice system had served against him in past and that "justice should serve everybody" (indicating his desire to be exonerated). Cf. *State v. Knighton*, 334 S.C. 125, 512 S.E.2d 11 ("Though there was potential for prejudicial testimony to have been submitted to the jury, the trial judge prevented any prejudice by instructing [] not to answer the solicitor's question."); and, *State v. Watts*, 320 S.C. 377, 465 S.E.2d 359 ("Because we conclude that no evidence whatsoever materialized as a result of the two objectionable questions and [] suffered no prejudice, we hold the trial court did not abuse its discretion in refusing to grant a mistrial."). Solicitor Weeks should have never been allowed to ask the Applicant about the prior conviction unchecked. Moreover, the Applicant should have never been allowed to respond. Finally, the objectionable question and testimonial evidence elicited therefrom, should have - at least - been cured by instructions from the Court to disregard the improper comments/answers and to strike the same from the record. The irrefutable error in the form of the Solicitor Weeks' question, coupled with the injurious effect of the Applicant's obligatory uncounseled response, was further exacerbated by the Assistant Solicitor's comment during closing argument where she quoted the Applicant's words for the

jury. Words that should never have been a part of the record⁵. Being that there was no objection to the improper question, it follows that no curative measure was immediately taken by the trial court. Yet, in her charge on the law to the jury, the trial court attempted to cure and/or mitigate the effect of the solicitor's question/comment by instructing the jury to consider the improperly admitted evidence only for its probative value and "for no other purpose". Unfortunately, this curative measure could not mitigate the damage that was acknowledged by the Court in deciding to exclude the evidence to begin with, nor did it the instructions do anything to diminish the injury suffered at the hand of Assistant Solicitor in her closing argument. See, *U.S. v. Hall*, 989 F.2d 711 (U.S. Ct.App. 4th Cir. 1993) ("The normal presumption is that the jury will follow a curative instruction. However, this presumption cannot apply when the curative instruction fails by its own terms to address the error."); also, *Id.* at 717 ("Because the instruction failed to address the jury's exposure to prejudicial statements that could not have been introduced into evidence, it failed to cure the error introduced by McAfee's wrongful cross examination.")

7. Prosecution Presenting Testimonial Evidence it Knew or Should Have Known to be False; Failure of Prosecutor to Correct Inconsistent Testimony of State's Witness

Relevant Facts

Solicitor Weeks' allowed State's premiere witness and prosecuting officer, Sergeant Brandon Knight, to testify falsely, inconsistently, and inaccurately on direct and cross-examinations. At various points during the trial the following relevant colloquies took place (relevant portions of supporting investigative documents are also cited):

- i. "Weeks: 'And where in the cornfield did the *Defendant* go?' Knight: 'The *Defendant* went --' Weeks: 'Or the person you were chasing?' Knight: 'The *Defendant* went down the middle of the cornfield and went straight to the back, back to the right corner. I went down just a little bit, got struck on the far left going into the field.'" *R. 47, l. 20 – 48, l. 1*. (emphasis added); "Weeks: 'Did you see what happened to the driver of the vehicle?' Knight: 'From what I seen where I got stuck at was running towards the vehicle, the driver door was open to the vehicle. No other doors were open.'" *R. 48, ll. 2-5*; "Hayes: 'On February 26th, the night of this incident, you didn't actually see Mr. Lincoln driving the car, did you?' Knight: 'No.'" *R. 62, ll. 6-8*
- ii. "Weeks: 'What did y'all do?' Knight: '... [A]t that point, we observed shoes on the ground. Looked like footprints going to the wood line that was not shoes. We

⁵Concurring in a separate opinion, yet dissenting on legal conclusion of the majority and pertaining to the similarly improper form of questioning known as "pitting", Justice Connor opined, "I do not believe the fact that [] did not answer the question is dispositive of whether he was prejudiced ... The improper nature of a [] question lies in the question itself. Usually that type of question does not even call for an answer." *State v. Benning*, 338 S.C. 59, 524 S.E. 2d 852 (J. Connor in concurring opinion) quoting *Burgess v. State*, 329 S.C.88, 495 S.E.2d 445 (1998), cert. denied, 523 U.S. 1141, 118 S.Ct. 1849, 140 L.Ed.2d 1098 (1998)

called the Aiken County tracking team to come to the scene.” *R. 49, ll. 16-25*; “-- [a]nd Sergeant Knight says there’s footprints to the wood line that aren’t shoeprints. They’re *footprints*.” *R. 178, l. 25 – 179, l. 2* (Asst. Sol. Hammack closing argument)

- iii. “*Weeks*: ‘Can you describe what you found in the vehicle and what you took possession of from the vehicle? *Knight*: ‘...[I]n the *front passenger seat in a bag* was the narcotics, drugs that were located. -- [a]nd the *rear of the vehicle* along with prescription bottles with his name on them.’” *R. 51, ll. 12-20*; “*Knight*: ‘These are the pill bottles that were located *in that bag, also*, that has the Defendant’s name on them.’” *R. 54, ll. 9-10*

- iv. “*Weeks*: ‘When you saw the Defendant’s driver’s information what address came back?’ *Knight*: [REDACTED] Alpine Drive.’ *Weeks*: ‘Alpine Drive?’ *Knight*: ‘Yes, in Aiken.’ *Weeks*: ‘Do you know where that’s at?’ *Knight*: ‘It is on this side of Aiken.’ *Weeks*: ‘This side being the south side of Aiken?’ *Knight*: ‘South side, yes.’ *Weeks*: ‘Off of Pine Log Road on the south side?’ *Knight*: ‘That’s correct.’” *R. 60, ll. 2-12*; “Sgt. Knight had ACSO Raod [sic] units go to the address of the possible Defendant to see if the vehicle had been stolen or if the owner knew of the whereabouts of the vehicle. ACSO road units stated that the house appeared to be vacant.” *Exhibit A “Incident Report: Supplemental Report” (Page 3)*, *Exhibit B “Investigative Summary Report” (Page 2)*; “*Weeks*: ‘And the address you were moving from was [REDACTED] Alpine Drive?’ *Lincoln*: ‘Yes, sir’ *Weeks*: ‘And that’s on the south side of Aiken?’ *Lincoln*: ‘No, sir.’ *Weeks*: ‘Where is it at?’ *Lincoln*: ‘That location which your speaking of is off of Pine Log Road. I live off of Whiskey Road on Alpine Drive that is a dead end.’ *Weeks*: ‘Okay.’ *Lincoln*: ‘Yes, sir.’ *Weeks*: ‘And that’s on the south side of Aiken isn’t it?’ *Lincoln*: ‘It’s not – well, I guess. It’s in between New Ellenton and Aiken. I mean, I don’t know what they consider that.’” *R. 146, l. 16 – 147, l. 5*

- v. “*Weeks*: ‘Can you describe what you found in the vehicle and what you took possession of from the vehicle? *Knight*: ‘...[I]n the *front passenger seat in a bag* was the narcotics, drugs that were located.’” *R. 51, ll. 12-17*; “*Knight*: ‘Yes, these are the scales that were secured and placed into evidence that were located in the front passenger seat of the vehicle with the narcotics.’” *R. 53 ll. 18-20*; “*Weeks*: ‘Officer Knight, *other than the drugs* and the shotgun, what else did you find *in the back*?’ *Knight*: ‘We found...’” *R. 53, ll. 9-11*; “*Hayes*: ‘And the cocaine, meth, and the heroin that you found and seized out of the car was found in the passenger seat, correct?’ *Knight*: ‘That’s correct.’ *Hayes*: ‘It wasn’t packed in with all the other belongings in the car?’ *Knight*: ‘That’s correct, it was in the passenger seat in the *back*.’” *R. 62, ll. 12-19*

Relevant Cases and Authorities

- “In prosecuting a criminal trial, the Due Process Clause obliges the government ‘not [to] knowingly use false evidence, including false testimony, to obtain a tainted conviction.’” *U.S. v. Basham*, 789 F.3d 358 (internal quotation *Napue v. Illinois*, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217)
- “Due process is violated ‘regardless of whether the prosecution solicited testimony it knew to be false or simply allowed such testimony to pass uncorrected.’” *Id.* (citing *Boyd v. French*, 147 F.3d 319, 329; and *Giglio v. United States*, 405 U.S. 150, 153, 92 S.Ct. 763, 31 L.Ed.2d 104)
- “Knowingly false testimony of a law enforcement officer is imputable to the prosecution.” *Longworth v. Ozmint*, 377 F.3d 437
- “On collateral attack, a movant alleging this sort of misconduct must demonstrate three elements: (1) that the testimony at issue was false; (2) that the prosecution knew or should have known of its falsity; and (3) that a reasonable probability exists that the false testimony may have affected the verdict. ‘If the movant shows each of these elements, relief must be awarded’” *U.S. v. Basham*, 789 F.3d 358 (internal citation *United States v. Bagley*, 473 U.S. 667, 679-80, 105 S.Ct. 3375, 87 L.Ed.2d. 481)
- “This is so because ‘the jury’s estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant’s life or liberty may depend.’” *U.S. v. Kelly*, 35 F.3d 929 (internal quotations *Napue*, 360 U.S. at 269, 79 S.Ct. at 1177)

Discussion

- i. Solicitor Weeks knowingly allowed the State’s premiere witness and prosecuting officer, Sergeant Brandon Knight, to testify to falsely and inconsistently about the identity of driver of the Applicant’s Durango on the night of the incident. On direct examination, Knight, and Solicitor Weeks himself even, knowingly and intentionally referred to the unknown driver of the vehicle as the Defendant. Weeks, acutely aware of this improper remarks and mode of examination, even corrected himself once by saying “Or the person you were chasing.”, only to allow Knight (who ignored the opportunity for correction) to respond by referring to the unknown driver as the “Defendant”. As evidenced by supporting documents Exhibits A-E (i.e., Incident Reports and ABTT Call-Out Report), and Knight’s unequivocal admission on cross-examination, the driver of the Durango that night was never observed and/or identified by Knight or any other member of law enforcement.
- ii. Weeks also allowed Knight to testify, for the first time at trial, that he observed “[f]ootprints going to the wood line that was not shoes.” Nowhere in the

testimony or written reports of any of the numerous officers on scene, including the professional human trackers of the ABTT, was there any mention of such footprints. In fact, Knight, himself, made no mention of footprints (or any other kind of print) in his multiple investigative reports and summaries. The Supplementary Report (Exhibit D) and trial testimony of Sgt. Palmer who was, (according to his and Knight's account) the first officer to observe the shoes that the "driver" allegedly ran out of when fleeing lacks any mention, fails to mention what would have seemed to be a very important detail. Also, it is without logical reason to doubt that the professional human trackers with the ABTT would have noted this most essential tracking "indicator" in their report, but again, no mention was made even though other observations of disruptions to the surrounding terrain were made. (see Exhibit E "slide marks"). Indeed, Knight, who offered no proof of specialized training in footprints or human tracking, would not be qualified or at least less qualified than, say, Officer Carey of the ABTT to make such an inculpatory statement. Asst. Sol. Hammack honed in on this critical statement in her closing arguments emphasizing to the jury that Sergeant Knight says "there's footprints to the wood line that aren't shoe prints. *They're footprints.*" Nonetheless, Solicitor Weeks presented, and/or allowed to pass uncorrected, highly incriminating testimony from a law enforcement officer witness which Weeks knew or should have known to be false and inconsistent.

- iii. Solicitor Weeks presented and/or allowed to pass uncorrected the false and inconsistent testimony of Sergeant Knight with respect to the location of the prescription medication bottles belonging to the Applicant and located in his Dodge Durango. Knight's testimony, first, that the pill bottles were located in the rear, then later testifying that the pill bottles were "in that bag" with the narcotics allegedly located in the front passenger seat. This false, inconsistent testimony was integral to State's attempt to connect the Applicant to the controlled substances at issue by falsely alleging items which he claimed - and/or could not deny - ownership of, were "in the same bag" with the narcotics.
- iv. Solicitor Weeks presented and/or allowed to pass uncorrected the false and inconsistent testimony of Sergeant Knight with respect to the location of the Applicant's residence and ultimately the allegation Knight dispatched "ACSO Raod [*sic*] units" to Applicant's residence. Knight's false testimony as to the location of the address where the Applicant's lives was allowed to pass uncorrected as was the obvious invention that road units were dispatched in an attempt to investigate the incident at issue. Knight testified that the road units said that the Applicant's residence "appeared to be vacant", but this simply can't be true because the location that Knight described as "off of Pine Log Road" refers to an entirely different "Alpine Drive". This a complete fabrication of facts in an attempt to convince the jury that steps were taken, in the form of a complete and comprehensive investigation, to eliminate all reasonable alternative scenarios that would contradict the State's version of events. Ironically, the version of events that the State's seeks to eliminate with this false testimony is the exact version of

events that Applicant offered as a defense i.e., that his vehicle was taken and/or stolen.

- v. Solicitor Weeks presented and/or allowed to pass uncorrected the false and inconsistent testimony of Sergeant Knight with respect to location of the controlled substances at issue. Sergeant Knight in his investigative reports produced at the time of the incident in question neglected to give any description or make any documentation as to the condition and/or situation of the controlled substances. Yet, when testifying on direct examination, Knight gave varying descriptions of the location which were vague, misleading, and left opportunity for speculation which the State prosecutors took advantage of in attempt to confuse the jury and make allegations unsupported by the record. Knight initially said that the drugs were found in the “front passenger seat” of the Applicant’s Durango. On another occasion during the same examination, Knight neglected to correct Solicitor Weeks, when Weeks posed his question asking, “Other than the drugs and the shotgun, what else did you find *in the back*?”. Yet, when asked straight-forward on cross-examination by Counsel Hayes about the location of the drugs, Knight offered without prompting that the drugs were “in the passenger seat *in the back*”. Again, the location of the drugs is imperative to establishing the “chain of custody”, preserving the credibility of the prosecuting officer in this purely circumstantial – constructive possession case, and helping to determine existence and veracity of allegation that the scales attempting to be attributed to the Applicant were actually in the same bag as the illegal drugs at issue. As previously explained the State was attempting to create a necessary nexus between the Applicant and the impermissible items (i.e., the drugs). The aforementioned pill bottles and the digital scales were the items attempting to be attributed to the Applicant and there was an obviously contrived effort to place those items in the same bag with the drugs by invention.
- The Applicant asserts this Constitutional violation pursuant to well-established law. See U.S. v. Basham, 789 F.3d 358 (internal quotation Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (“In prosecuting a criminal trial, the Due Process Clause obliges the government ‘not [to] knowingly use false evidence, including false testimony, to obtain a tainted conviction.’”). There can be no dispute that the State either, knew, or should have known, each of the relevant details misrepresented by its witnesses, yet allowed said testimony to pass uncorrected. Id. “Due process is violated ‘regardless of whether the prosecution solicited testimony it knew to be false or simply allowed such testimony to pass uncorrected.’”) (citing Boyd v. French, 147 F.3d 319, 329; and Giglio v. United States, 405 U.S. 150, 153, 92 S.Ct. 763, 31 L.Ed.2d 104). Likewise, the law is clearly settled on the culpability of the State in allowing the inaccuracies to proceed unchecked. Longworth v. Ozmint, 377 F.3d 437 (“Knowingly false testimony of a law enforcement officer is imputable to the prosecution.”). As evidenced by the record and the Exhibits submitted to which

the Applicant craves reference, the Applicant has demonstrated that the testimony at issue was false and inconsistent. The prosecution's knowledge and/or requirement thereof has been conclusively proven. The Applicant has also proven that a reasonable likelihood exists that said fabrications contributed to jury's decision to convict. See *U.S. v. Basham*, 789 F.3d 358 ("On collateral attack, a movant alleging this sort of misconduct must demonstrate three elements: (1) that the testimony at issue was false; (2) that the prosecution knew or should have known of its falsity; and (3) that a reasonable probability exists that the false testimony may have affected the verdict. 'If the movant shows each of these elements, relief must be awarded'" (internal citation *United States v. Bagley*, 473 U.S. 667, 679-80, 105 S.Ct. 3375, 87 L.Ed.2d. 481). Finally, the stature and credibility of the witness in the eyes of the jury cannot be understated. Knight's testimony is *sine qua non* to the State's prosecution. See *U.S. v. Kelly*, 35 F.3d 929 ("This is so because 'the jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend.'") (internal quotations *Napue*, 360 U.S. at 269, 79 S.Ct. at 1177)

8. Improper Closing Arguments (A)

Relevant Facts

- i. On direct examination by Solicitor John Weeks, when asked if he could identify "what's marked as State's Nos. 4, 5, and 6", prosecuting officer Sergeant Brandon Knight testified, "Yes. These are the scales that were secured and placed into evidence that were located in the front passenger seat of the vehicle with the narcotics." *R. 53, ll. 16-20*. This is the only reference made to the location of said digital scales in respect to the illegal narcotics at issue.
- ii. On cross examination by Solicitor John Weeks, the following exchange took place with respect to the digital scales in question: Weeks: "How about these scales for measuring drugs, were they in your truck, too?". Applicant: "I assume they were.". Weeks: "Well, did you put them there?". Applicant: "It's a possibility that I did.". Weeks: "Possibility? How about all the baggies? Were you collecting baggies for making your lunch? Were they in your truck?". Applicant: "Yes, sir. If the officer said they were in my truck, I do not disagree with him." *R. 148, ll. 5-14*. Notably, the only other testimony educed at trial with respect to the digital scale and their location was Sergeant Knight's response to Solicitor Weeks' question, "Officer Knight, other than the drugs and the shotgun, what else did you find in the back?" Sergeant Knight's responded, "We found letters with his address on it from the mail. We had an alcohol bottle from the front passenger area, scales, baggies --" *R. 53, ll. 9-13*

- iii. In her closing argument, Asst. Solicitor Hammack referred to matters that were not supported by the trial record. During her closing argument before the jury, the assistant solicitor argued: "And importantly, **in that bag in the front passenger seat, is scales.** He [Applicant] answered Solicitor Weeks on cross-examination, 'Yeah it's possible I left my scales in my truck.' These don't measure out hamburger meat or chicken." *R. 173, ll. 20-24*; "In this case the drugs were found in a book bag in the Defendant's car in the passenger seat. But that book bag didn't just have drugs in it. **That book bag had these scales** that are commonly used to weigh drugs, to weigh drugs, to measure out how much you're going to sell." *R. 184, ll. 18-22*; "And the other thing that was **in that bag with these scales is --**" *R. 185, ll. 3-4*; "**These scales are his** that he left in his truck, that were found in the same bag as his drugs. **So the scales are his** but the drugs aren't?" *R. 187, ll. 2-5* (all emphasis added). After the adamant prompting by the Applicant, Counselor Thompson reluctantly interrupted Asst. Sol. Hammack and half-heartedly informed the judge that he had an objection and a matter of law that needed to be addressed outside the presence of the jury. *R. 187, ll. 10-12*. Once the jury was excused, counsel asserted the solicitor was arguing facts not in evidence. Initially, he argued that there was no testimony that the scales were found on the passenger seat of the Applicant's vehicle. Thompson conceded that evidence that the scales were "right there with the drugs" would be "very damning" to the Applicant and "critical" to the State's case. However, the counselor maintained, such evidence was not presented during the course of the trial. Consequently, he moved for mistrial. *R. 187, l. 13 – 188, l. 11*. Asst. Sol. Hammack claimed her recollection of the relevant testimonies of Sgt. Knight and the Applicant was that Knight explicitly testified that there was a book bag on the passenger seat which contained both the scales and the drugs; and that the Applicant had explicitly testified that said scales were "his". Hammack relied on her erroneous recollection of an exchange on cross-examination between Sol. Weeks and the Applicant, in which Hammack purports that "Mr. Weeks asked him a two-part question: A. 'Are these your scales?'; and B. 'Were they in your truck?'. He (Applicant) said, 'Yes, they are my scales and it's possible they could have been in my truck.'" Hammack continued, "But my recollection of the testimony is that Sergeant Knight said *specifically* that those scales and baggies were found in the book bag in the passenger seat with the drugs." *R. 188, l. 13 – 189, l. 12*. Counselor Thompson asks the judge to have "the court reporter look back at the testimony". Thompson also asserted the position which the Applicant originally request him to assert which was that Sgt. Knight never testified that the scales were *in the same bag* as the drugs, not merely *in the same seat* as the drugs. *R. 189 l. 16 – 190 l. 4*. However, Thompson did not expressly argue the Applicant's accompanying claim: that he (Applicant) never claimed ownership of the scales. The Applicant only stated that he "assumed" the scales were in his truck based on Knight's testimony and that it was a possibility that he may have packed them in his truck along with a multitude of other items retrieved from his child's mother's storage unit were he had stored his belongings prior to moving. *R. 148, ll. 5 - 14*. In her argument opposing the mistrial motion, Hammack also appealed to the judge to

fix any harm by instructing the jury that arguments of counsel are not in evidence and the jurors must rely on their own recollection of the testimony⁶. *R. 188, ll. 21-24*. The Trial Court never gave such an instruction. In fact, the judge merely said, "Let's go off the record briefly." *R. 190, l. 24*. A recess was taken. *R. 190, l. 25*. When the record resumed, the judge immediately asked for the jury and, once the jury entered the courtroom, the State's closing argument recommenced. *R. 191, ll. 1-6*. On closing rebuttal, Asst. Sol. Hammack again inaccurately argues, "These scales **that he said** were his were, quote, with the narcotics." Hammack even invited the jury to "listen to it", further sarcastically stating, "Everything in that car was his except for the stuff he don't [sic] want to admit, which is all those drugs." *R. 201, ll. 18-21* (emphasis added).

- iv. In her closing arguments, Hammack further alleged that "... *they* [officer witnesses] stated when that vehicle stopped in the field, nobody got out of the passenger side, *nobody got out of the back*." *R. 172, ll. 15 – 17*. "And the last thing that we know, that we don't have to question, that everyone here agrees on is that in the Defendant's own car off of New Holland, the same time he's found off of New Holland, there's a bag and in that bag is full of drugs. 1. 56 grams of powder cocaine, 22.99 grains of heroin and 49.1 grams of methamphetamine." *R. 174, ll. 6-11*. (all emphasis added)

Relevant Cases and Authorities

- "Solicitor cannot rely, in his closing arguments on statements not in evidence" *State v. Bottoms*, 260 S.C.187, 195, S.E.2d 116 (1973)
- "A prosecutor should not portray as fact matters that are not in evidence, he should not misstate facts or the law, and he is not to express his personal belief that the defendant is guilty." *U.S. v. Olivierre*, 378 F.3d 419 (4th Cir. 2004) (cert. granted *Olivierre v. U.S.*, 543 U.S. 1112, 160 L.Ed.2d 1050)
- "On appeal, an appellate court will review the impropriety of the solicitor's argument in the context of the entire record, including ... whether there is overwhelming evidence of the defendant's guilt." *State v. Mazique*, 419 S.C. 296, 797 S.E.2d at 737
- "To find whether the assistant solicitor's comments in closing arguments violated the defendant's due process rights, we must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial." *Fortune v. State*, 428 S.C. 549, 837 S.E.2d 39
- "In determining whether a defendant's due process rights were violated by a prosecutor's closing argument, we consider (1) whether the remarks were, in fact, improper, and, (2) if so, whether the improper so prejudiced the defendant's substantial rights that the defendant was denied a fair trial." *United States v. Saint Louis*, 889 F.3d 145 (4th Cir. Ct. App. (2018) (quoting *United States v. Lighty*, 616 F.3d 321, 359 (4th Cir. 2010))

⁶ Additionally, the trial court failed to instruct the jury during her charge on the law that the closing arguments of counsel are not evidence. Consequently, the judge's instructions could not possibly have cured the improper argument made by the solicitor in closing. Also, because the judge did not sustain the objection, no other curative measures were made to mitigate the injury of the improper arguments.

- “In determining prejudice, we consider (1) the degree to which the prosecutor’s remarks had a tendency to mislead the jury and to prejudice the accused; (2) whether the remarks were isolated or extensive; (3) absent the remarks, the strength of competent proof introduced to establish the guilt of the accused; (4) whether the comments were deliberately placed before the jury to divert attention to extraneous matters; (5) whether the prosecutor’s remarks were invited by improper conduct of defense counsel; and (6) whether curative instruction were given to the jury.” *Id.*
- “Constructive possession is a *legal fiction* whereby an individual is deemed to possess contraband items even when he does not actually have immediate, physical control of the objects, i.e., the individual does not possess them in a literal sense.” *U.S. v. Rebolledo-Delgadillo*, 820 F.3d 870 (quoting *United States v. Morris*, 576 F.3d 661, 666 (7th Cir. 2009) (citation and internal quotation marks omitted))
- “Here the alleged statement of Appellant’s brother was not in evidence, nor did he testify regarding any such statement. We find the State’s questioning of Appellant about the statement does not amount to putting this into evidence, particularly when the Appellant denied having told her brother what was in the statement. Furthermore, we find the reference to it during closing argument fundamentally unfair under the circumstances of this case. The evidence showing Appellant’s guilt was far from overwhelming; it was based entirely on circumstantial evidence. The reference to Appellant’s having a plan and offering money for someone to kill Victim, when there was no evidence in the record that she had done so, was highly prejudicial in light of the fact that she was on trial for Victim’s murder (and for conspiring to commit his murder). Therefore, the trial judge erred in refusing to grant a mistrial on this basis.” *State v. Huggins*, 325 S.C. 107, 108, 481 S.E.2d 116, 117

Discussion

As explained above in the Relevant Facts portion of this issue, Assistant Solicitor argued facts not sustained by the record at trial. *State v. Bottoms*, 260 S.C.187, 195, S.E.2d 116 (1973) (“Solicitor cannot rely, in his closing arguments on statements not in evidence”). Asst. Sol. Hammack, on at least four separate occasions, alleged (a) that testimony elicited at trial from Sgt. Knight explicitly stated that the digital scales in question were “in the (same) bag with” with the illegal drugs at issue and; (b) that testimony elicited at trial from the Applicant explicitly stated that he (Applicant) claimed ownership of the scales in question. The record plainly reflects that both of these allegations are categorically false. The record reflects only one reference to the location of the relevant digital scales with respect to the location of the narcotics at issue. In his response, Sgt. Knight merely states that the scales were “secured and placed into evidence that were [sic] located in the front passenger seat of the vehicle with the narcotics.”. Notwithstanding the confounding syntax, the most that can be construed from Knight’s response is that the scales were found in the “front passenger seat of the vehicle”. Assuming *arguendo* that the scales and the drugs were, in fact, in the same bag, this point is essentially of no consequence. What is at issue is whether there exist, in the trial record, *testimony* that the scales were in the same bag as

the narcotics. This is true because no other form of evidence, testimonial or otherwise, was introduced at trial. *U.S. v. Olivierre*, 378 F.3d 419 (4th Cir. 2004) (“A prosecutor should not portray as fact matters that are not in evidence, he should not misstate facts or the law, and he is not to express his personal belief that the defendant is guilty.”) (cert. granted *Olivierre v. U.S.*, 543 U.S. 1112, 160 L.Ed.2d 1050). Moreover, the assistant solicitor - flagrantly and unequivocally - asserted the supposition as fact no less than four times in her closing arguments. Needless to say, it is well established that a prosecutor in her closing arguments must refrain from arguing facts not sustained by the trial record. *United States v. Saint Louis*, 889 F.3d 145 (4th Cir. Ct. App. (2018) (quoting *United States v. Lighty*, 616 F.3d 321, 359 (4th Cir. 2010)) (“In determining prejudice, we consider (1) the degree to which the prosecutor’s remarks had a tendency to mislead the jury and to prejudice the accused; (2) whether the remarks were isolated or extensive; (3) absent the remarks, the strength of competent proof introduced to establish the guilt of the accused; (4) whether the comments were deliberately placed before the jury to divert attention to extraneous matters; (5) whether the prosecutor’s remarks were invited by improper conduct of defense counsel; and (6) whether curative instruction were given to the jury.”)

Even more obviously erroneous than the foregoing assertion made by Assistant Solicitor Hammack, was the added contention that the Applicant was not only the owner of the digital scales, but that he admitted as much when questioned by Solicitor Weeks on cross-examination. This blatantly false and inaccurate argument was also asserted on at least four separate occasions throughout the assistant solicitor’s closing arguments. Hammack even reasserted the erroneous claim immediately upon resuming her rebuttal argument which took place subsequent to the Applicant’s objection to the impropriety of the very same misconduct. Hammack declared, “These scales that *he said* were his were, quote, with the narcotics.” The record plainly reflects that, contrary to the assistant solicitor’s claims, the Applicant never claimed ownership of *any* scales, nor did Solicitor Weeks ever elicit or educe such testimony to that effect from the Applicant. As the record will support Weeks asked the Applicant “were they [the scales] in your truck?”; and “did you put them [the scales] there?”. The Applicant replied that he “assumed they were” in his truck because Sgt. Knight testified to that fact; and that it was a “possibility” that he put them in his truck as he could not be absolutely sure of every item he packed in his truck stating, only three questions prior, that “I [Applicant] had a lot of stuff in there.”.

The improper arguments of Assistant Solicitor Hammack were extremely prejudicial in light of the fact the State’s case against the Applicant was completely circumstantial and evidence of guilt was far from overwhelming. *State v. Mazique*, 419 S.C. 296, 797 S.E.2d at 737 (“On appeal, an appellate court will review the impropriety of the solicitor’s argument in the context of the entire record, including ... whether there is overwhelming evidence of the defendant’s guilt.”). The prosecution was predicated upon the “legal fiction”-theory of constructive possession and, thus, required a substantial nexus between the Applicant and impermissible items. See, *U.S. v. Rebolledo-Delgadillo*, 820 F.3d 870 (“Constructive possession is a *legal fiction* whereby an individual is deemed to possess contraband items even when he does not actually have immediate, physical control of the objects, i.e., the individual does not possess them in a literal sense.”) quoting *United States v. Morris*, 576 F.3d 661, 666 (7th Cir. 2009)

(citation and internal quotation marks omitted). It is quite evident from the assistant solicitor's statement, made just prior to being interrupted by trial counsel Barry Thompson's objection, that the State's position and strategy was to prove the Applicant's knowledge and possession through a link to an impermissible item: Hammack exclaimed, "And all of this is circumstance. Everything else in the car is his, but not this. These scales are his that he left in his truck, that were found in the same bag as his drugs. *So the scales are his, but the drugs aren't?*" *R. 187, ll. 1-5*. The assistant solicitor's deceptive arguments go directly to the heart of the State's case and serve to mislead and improperly infect the jury's deliberation.⁷ See, *Fortune v. State*, 428 S.C. 549, 837 S.E.2d 39 ("To find whether the assistant solicitor's comments in closing arguments violated the defendant's due process rights, we must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial."); see also, *United States v. Saint Louis*, 889 F.3d 145 (4th Cir. Ct. App. (2018) (quoting *United States v. Lighty*, 616 F.3d 321, 359 (4th Cir. 2010) "In determining whether a defendant's due process rights were violated by a prosecutor's closing argument, we consider (1) whether the remarks were, in fact, improper, and, (2) if so, whether the improper so prejudiced the defendant's substantial rights that the defendant was denied a fair trial.")

7. Improper Closing Arguments (B)

Relevant Facts

In her closing arguments, Assistant Solicitor Ashley Hammack, attempted to explain to the jury the law and theory of "constructive possession". To do so, she stated the following:

"After I talk and the Defense talks, the Judge is going to explain to you what the law is for these crimes, and the law that you have to follow and apply. But I want to give you a little bit of a heads up about what you're going to hear." *R. 179, ll. 19-23*

"Now, when I'm over here talking to you guys, I don't have my coffee cup in my hand, but that doesn't mean it's not mine anymore. Constructive possession means if something of yours is in an area that you own or control, if something is in your house, if something is your car, you're in constructive possession even if it's not physically in your hand...." *R. 192, ll. 8-12*

⁷ "Here the alleged statement of Appellant's brother was not in evidence, nor did he testify regarding any such statement. We find the State's questioning of Appellant about the statement does not amount to putting this into evidence, particularly when the Appellant denied having told her brother what was in the statement. Furthermore, we find the reference to it during closing argument fundamentally unfair under the circumstances of this case. The evidence showing Appellant's guilt was far from overwhelming; it was based entirely on circumstantial evidence. The reference to Appellant's having a plan and offering money for someone to kill Victim, when there was no evidence in the record that she had done so, was highly prejudicial in light of the fact that she was on trial for Victim's murder (and for conspiring to commit his murder). Therefore, the trial judge erred in refusing to grant a mistrial on this basis." *State v. Huggins*, 325 S.C. 107, 108, 481 S.E.2d 116, 117

“The things in my house, my TV, my books, I’m in constructive possession of those because I have control over my house, who can get in and who can’t...” *R. 192, IL 16-18*

“The fact that it’s in his car with his that he just ran out of means he is in possession of these drugs.” *R. 192, IL 23-25*

Relevant Cases and Authorities

- “Further, the trial judge charged that articles in a dwelling house ‘must be deemed to be in the constructive possession of the person controlling the house in the absence of the contrary’. The jury could have taken this language to require appellant to rebut the State’s evidence. This instruction impermissibly shifted the burden of proof to appellant to disprove possession which is an element of the offense charged. Moreover, the error could not be harmless in view of appellant’s asserted defense that he had no knowledge of the presence of the drugs and that another person was using his residence in his absence immediately prior to the search.” *State v. Adams*, 291 S.C. 132, 352 S.E.2d 483, overruled on other grounds by, *State v. Stewart*, 433 S.C. 382, 858 S.E. 808
- “A prosecutor should not portray as fact matters that are not in evidence, he should not misstate facts or the law, and he is not to express his personal belief that the defendant is guilty.” *U.S. v. Olivierre*, 378 F.3d 419 (4th Cir. 2004) (cert. granted *Olivierre v. U.S.*, 543 U.S. 1112, 160 L.Ed.2d 1050
- “Merely superimposing correct instructions over erroneous ones serves only to foster prejudice and confusion” *State v. Peterson*, 287 S.C. 244, 335 S.E.2d 800, overruled on other grounds by, *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575

Discussion

In her closing arguments, Assistant Solicitor Hammack, gave what amounted to a charge on the law stating that she was going to give the jury “a little bit of a heads up” on “the law that you have to follow and apply.”. The assistant solicitor’s explanations of the law that the jury had to “follow and apply” went well beyond the applicable law and the reasonable legal inferences that can be drawn from the facts. Furthermore, Hammack presented what amount to permissible inferences (the prerogative of which to make belonging to each individual juror, alone) as legal conclusions that the law (and the judge) categorically require them to make. Hammack asserted that the law pertaining to constructive possession dictates that articles found in an individual’s “house” are definitively determined to be in that individual’s constructive possession. As referenced above, Hammack did not merely argue to the jury that it was their prerogative to make that deduction if they so choose, but instead maintained that the Applicant’s constructive possession necessarily followed from the presence of drugs in his truck. As evidenced by the record, the assistant solicitor left no room for discernment on behalf of the jurors. Assistant

Solicitor Hammack, presumably borrowed this prohibited language from *Ellis*⁸ which was overruled by *Adams*⁹ because of this very same language. See generally, *State v. Peterson*, 287 S.C. 244, 335 S.E.2d 800, *overruled on other grounds by*, *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (“Merely superimposing correct instructions over erroneous ones serves only to foster prejudice and confusion”). Significantly, even the Ellis court opined that this presumption should only be made in the absence of evidence to the contrary. Hammack gives no such quarter. Just as the judge informs the jury that they have no authority to decide what the law is and must accept it as is given, so is the tone and tenor of the assistant solicitor’s argument. Coupled with the prestige and distinction of the government, the line between argument and instruction was imperceptibly obscured by Asst. Sol. Hammack’s improper argument.

III. INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Applicant’s right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution; South Carolina Constitution Article I Section III, XIV; and any applicable statutory law, was violated when Applicant’s trial counsel, Suzanne Hayes and Barry Thompson, performance failed below the objective standard of reasonableness under prevailing professional norms. This deficient performance prejudiced the Applicant rendering his trial fundamentally unfair. To support this position, the Applicant offers the following:

“A defendant has the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution” *Van Dohlen v. State*, 360 S.C. 598, 602 S.E.2d 738

“The Sixth Amendment right to counsel is the right to effective assistance of counsel, and the benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674

⁸ “Ordinarily when articles are in a dwelling house they must be deemed to be in the constructive possession of the person controlling the house in the absence of evidence to the contrary.” *State v. Ellis*, 263 S.C. 22, 207 S.E.2d 408, overruled by *State v. Adams*, 291 S.C. 132, 352 S.E.2d 483

⁹ “Further, the trial judge charged that articles in a dwelling house ‘must be deemed to be in the constructive possession of the person controlling the house in the absence of the contrary’. The jury could have taken this language to require appellant to rebut the State’s evidence. This instruction impermissibly shifted the burden of proof to appellant to disprove possession which is an element of the offense charged. Moreover, the error could not harmless in view of appellant’s asserted defense that he had no knowledge of the presence of the drugs and that another person was using his residence in his absence immediately prior to the search.” *State v. Adams*, 291 S.C. 132, 352 S.E.2d 483, overruled on other grounds by, *State v. Stewart*, 433 S.C. 382, 858 S.E. 808

1. Applicant's right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and, was violated when trial counsel failed to investigate and prepare for trial.

Relevant Facts

- i. Trial counsel, Suzanne Hayes, failed to investigate incident of police pursuit involving Applicant's vehicle that occurred seven months subsequent to the incident at issue and at a time when the Applicant was incarcerated. The incident was similar in nature to the circumstances events giving rise to the convictions at issue in that they involved a high-speed police pursuit involving the Applicant's Dodge Durango. The pursuit also ended when an unidentified subject wrecked the Durango and fled on foot. Applicant was not aware of the incident until the days leading up to his trial at which time he informed his counsel, Suzanne Hayes. Counselor Hayes – in an undermining effort to yield evidence to impeach Applicant's version of events - made inquiries into the transactions and whereabouts pertaining to the Defendant's vehicle in the months following his arrest, including who retrieved it from the impound, yet, she failed to unearth this exculpatory event. Defendant personally obtain the police report from the Sheriff's Office Records Division on the morning of the trial. When the Applicant presented Hayes with the police report in the court, after only a casual glance, Hayes dismissed it as not being useful. The document was never meaningfully contemplated by counsel for possible use in Defendant's case. The Applicant seeks to incorporate said police report by reference.
- ii. Trial counsel, Suzanne Hayes, failed to investigate the prior statements of the State's witnesses. In failing to do so, Counselor Hayes rendered herself incapable of detecting fatal omissions, and/or inconsistencies, between witnesses' prior statements and the testimony of State's primary witnesses. To wit:
 - a. State's key-witness, Sergeant Brandon Knight, testified that he and the other officers "ran to the vehicle" they "observed shoes on the ground. [And what] Looked like footprints going to the wood line that was not shoes." Knight continued, "We called the Aiken County Tracking Team to come to the scene *R. 49, ll. 17 – 25*. Oddly, Sergeant Knight's Supplementary Report (Exhibit # (Knight Supp. Report)) has no mention of any impressions that "looked like footprints" that were "not shoes" or otherwise. Knight's description of he and Sergeant Blackwell's approach

to the subject vehicle in his Supp. Report was inconsistent with his testimony at trial. For example, in Knight's Supp. Report he stated, "Sgt. Knight patrol vehicle became stuck in the mud. Sgt. Blackwelder continued behind the Vehicle. ... Sgt. Knight exited the patrol vehicle and ran to the Defendant vehicle in attempt to assist Sgt. Blackwelder. Sgt. Blackwelder advised that the vehicle was empty and observed that the Driver had one shoe in the vehicle and another on the ground. Sgt. Blackwelder called for the Aiken County Bloodhound team to respond due to the pursuit and trafficking amount of Narcotic in the vehicle." The problems here are numerous: The absence of any reference, whatsoever, to footprints - in either, Sgt. Brandon Knight's Supplementary Report; Sgt. Clarke Palmer's Supplementary Report (Exhibit # (Palmer Supp. Report)) or trial testimony; Officer Chris Carey's Aiken Bloodhound Tracking Team Call-Out Report; or any of the many Body Worn/Dashboard Camera footage - give rise to glaring disparities and deficiencies in Knight's testimony, and, a fortiori the State's case.

- b. Knight's testimony has both, Knight and Blackwelder, approaching the subject vehicle at the same time. The Knight's Supp. Report says that Knight's vehicle "became stuck and Blackwelder continued behind the vehicle".
- iii. Sgt. Knight's account describe the actions and observations of Sgt. Blackwelder, as action that "we" observed, such as the shoes on the ground and the calling of the Aiken Bloodhound Team.
- iv. Counselor Hayes also failed to address the inconsistency of the testimonies given by Sgt. Knight and Sgt. Palmer relating to the scope of their search after the vehicle pursuit ended and the suspect fled the vehicle. During direct-examination Sol. Weeks and Sgt. Knight engaged in the following dialogue: Weeks: "But aside from the dogs, did you and other officers go to houses and locations?" Knight: "Once the dogs got through the woods, we had officers roaming the area. Myself, Sergeant Palmer and Blackwater were there. We also went through the woods looking." Weeks: "Physically walking through the woods?" Knight: "Physically walking through the woods." Weeks: "Did y'all ever check the house at [REDACTED] Anderson Road?" Knight: "We stopped just shy of that address. We seen [sic] the streetlight down the road that shines near that house. At that point, we didn't go no further. We turned and went back to our vehicles." *R. 57, ll. 14-23*. Yet, in Hammack's direct-examination of Sgt. Palmer we find the following exchange: Hammack: "After you set up the parameter [sic], did you do anything else to assist at that point?" Palmer: "Eventually, the - - I think it was a little while later,

the dog team did respond out. After their track was unsuccessful, myself, Sergeant Knight and Sergeant Blackwater responded to the next road down off of Anderson Road, which if you go out the back of the field, on the other side of the wood line from the field is a dirt road that a couple of people live on. **We walked that entire road and cleared all of the buildings on that road.**" *R. 75, ll. 14-23*. The inconsistency is apparent.

Relevant Cases and Authorities

- "In order to prove counsel was ineffective, the applicant must show that counsel's performance was deficient and that there is reasonable probability that, but for counsel's errors, the results would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." *Van Dohlen v. State*, 360 S.C. 598, 602 S.E.2d 738
- "Such a complete lack of pretrial preparation puts at risk both the defendant's right to an 'ample opportunity to meet the case of the prosecution,' and the reliability of the adversarial testing process" *Kimmelman v. Morrison*, 477 U.S. 365, 106 S.Ct. 2574, 91 L.Ed.2d 305 (quoting *Adams v. United States ex rel. McCann*, 317 U.S., at 275, 63 S.Ct., at 240)
- "Counsel must demonstrate a basic level of competence regarding the proper legal analysis governing each stage of a case." *United States v. Carthorne*, 878 F.3d 458
- "An attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under *Strickland*." *Hinton v. Alabama*, 571 U.S. 263, 134 S.Ct. 1081, 188 L.Ed.2d 1
- "Under *Strickland*, 'strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments supports. In other words, counsel has a duty to reasonable investigations or to make reasonable investigations or to make reasonable decisions that makes particular investigations unnecessary.'" *Id.* (internal quotation *Strickland*, 466 U.S. at 690-691, 104 S.Ct. 2052)
- "A criminal defense attorney has a duty to perform a reasonable investigation." *Lounds v. State*, 380 S.C. 454, 670 S.E. 2d 646 S.C. Sup. Ct. (2008) (quoting *Ard v. Catoe*, 372 S.C.331, 642 S.E.2d at 597)
- "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Id.* At 331-32, 642 S.E.2d at 597 found in *Lounds*
- "And 'the failure to raise an objection that would be apparent from a thorough investigation is a significant factor in evaluating counsel's performance.'" *United States v. Freeman*, 24 F.4th 320 (internal quotation *Carthorne*, at 467)

- “In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel’s error had on outcome of the trial.” *Felder v. State*, 427 S.C. 518, 832 S.E.2d 591 (quoting *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843)
- “Generally, ‘the stronger the evidence presented by the State, the less likely the PCR court will find the applicant met his burden of proving prejudice.’” *Id.* (quoting *Smalls*)

Discussion

See, “Relevant Facts” and “Relevant Cases and Authorities”

2. Failure To Prepare For Trial

Relevant Facts

Trial counsel, Suzanne Hayes, failed to properly develop and prepare a competent, comprehensive trial strategy. Possible legal defenses were never discussed, nor were meaningful discussions involving input from Applicant ever had. Applicant’s options whether or not to testify were not explored, nor were the consequences or implications thereto even casually discussed prior to trial.

Relevant Cases and Authorities

- “Such a complete lack of pretrial preparation puts at risk both the defendant’s right to an ‘ample opportunity to meet the case of the prosecution,’ and the reliability of the adversarial testing process” *Kimmelman v. Morrison*, 477 U.S. 365, 106 S.Ct. 2574, 91 L.Ed.2d 305 (quoting *Adams v. United States ex rel. McCann*, 317 U.S., at 275, 63 S.Ct., at 240)
- “Citing - - - [t]he court of appeals rejected this argument, finding that ‘when the defendant presents testimony, he loses the right to have the court review the sufficiency of the evidence based on the state’s evidence alone.’” *State v. Hepburn*, 406 S.C. 416, 753 S.E. 2d 402 (internal quotations *U.S. v. Byfield*, 928 F.2d 1163)
- “An attorney’s ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under *Strickland*.” *Hinton v. Alabama*, 571 U.S. 263, 134 S.Ct. 1081, 188 L.Ed.2d 1

Discussion

Trial counsel, Suzanne Hayes, failed to properly develop and prepare a competent trial defense strategy. On July 21, 2021, the day prior to trial, the Applicant was notified by his

attorney that his trial would begin the following day. His attorney informed Applicant that he needed to meet with them immediately to discuss trial strategy. On the day prior to trial, the Applicant met with Lead Counsel Suzanne Hayes, Co-Counsel Barry Thompson, a private investigator for the public defender's office, and Tessa – a paralegal for the public defender's office. This meeting was presented as a preparation for trial, although no possible legal defenses were ever discussed, nor were any meaningful discussions involving input from Applicant ever had. The Applicant's attorney's, Suzanne Hayes and Barry Thompson, were concerned only with whether the Applicant still wished to call willing and favorable, alibi-witness, Jennifer Thompson (Jennifer), to testify. Prosecutors for the State were demanding to know the Defense's intentions. Hayes claimed to be against calling Jennifer as a witness due to some unfounded recorded "jailhouse telephone calls" that allegedly contained the Applicant and Jennifer discussing details involving the subject – matter of her proposed testimony. The actual recordings and contents thereof were never produced by the State nor by Counselor Hayes. The existence of the recordings were never substantiated. And, the Applicant has and still adamantly maintains that no conversations were had between himself and Jennifer that were damaging to his credibility, defense, or to the credibility of Jennifer's testimony. Applicant unequivocally asserted that he wished to call this critical alibi witness. Ultimately, as the Applicant vocalized his desire to proceed contrarily, Counselor Suzanne Hayes made the unilateral decision not to call Jennifer as a witness. Upon settling the alibi witness issue, the Applicant's counsel stated only that the State intended to "shift the burden" upon the Applicant. No mention was made of how the counsel for the defense intended to "defend" against this strategy. Applicant's options whether or not to testify were not explored, nor were the consequences or implications thereto even casually discussed prior to trial. The Applicant contends that he was not even made aware of the fact that his decision to testify in his own defense would deprive him of the right to have any appellate review of the "sufficiency of the evidence made upon the State's evidence alone." See, *State v. Hepburn*, 406 S.C. 416, 753 S.E. 2d 402 (internal quotations *U.S. v. Byfield*, 928 F.2d 1163) ("Citing - - [t]he court of appeals rejected this argument, finding that 'when the defendant presents testimony, he loses the right to have the court review the sufficiency of the evidence based on the state's evidence alone.'"). Knowledge (or the lack thereof) of this particular point of law, alone, was absolutely pivotal in the Applicant's decision to testify in this completely circumstantial case. It is readily apparent that any reasonably competent attorney would advise a client on this most-imperative consequence of voluntarily testifying in one's own defense. *Hinton v. Alabama*, 571 U.S. 263, 134 S.Ct. 1081, 188 L.Ed.2d 1 ("An attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under Strickland.") In fact, the lack of said preparation was evident from the lack of objections, pre-trial motions, or overall effort to "defend" made by trial counsel prejudicing the Applicant and thereby rendering the "adversarial testing process" fundamentally unfair. See, *Kimmelman v. Morrison*, 477 U.S. 365, 106 S.Ct. 2574, 91 L.Ed.2d 305 (quoting *Adams v. United States ex rel. McCann*, 317 U.S., at 275, 63 S.Ct., at 240) ("Such a complete lack of pretrial preparation puts at risk both the defendant's right to an 'ample opportunity to meet the case of the prosecution,' and the reliability of the adversarial testing process")

3. Failure to Call Alibi Witness

Relevant Facts

On the night in question, the Applicant asserts that - during the period of time in which the State alleges he was the unknown subject in a high-speed pursuit with law enforcement spanning over thirty miles and lasting nearly an hour - he was in the car with a passing motorist by the name of Jennifer Thompson. Applicant claims Thompson “rendered him aid” by allowing him to use her “mobile hotspot” to connect to her carrier’s Wi-Fi with the laptop that he had taken out of his truck with him moments prior to his vehicle being stolen by a unknown individual. The Applicant then contends that, he utilized the internet access to log into his Google account and activated the Google Track My Phone feature. Google Track My Phone is a feature on the company’s website that allows users to register devices so that they may be remotely accessed, tracked, located, erased, and - if needed - deactivated. Nevertheless, the Applicant then informed Jennifer that he has tracked his phone to a location on New Holland Road and she agreed to take him to that location. Upon arriving at different location also New Holland Road, Jennifer realized that they still had not reached the exact location of the Applicant’s vehicle. At that time Jennifer informed Applicant that she would to go no further because she had to go home. Applicant exited Jennifer’s vehicle and continued along New Holland Road on foot. The Applicant eventually reached the location where Google had indicated his phone was last pinged, but due to the fact that he has lost internet access when he parted ways with Jennifer, the information was at least two hours old and there was no sign of Applicant’s vehicle. Unbeknownst to the Applicant, his vehicle had already been towed at the behest of law enforcement. Jennifer and the Applicant, while only vaguely familiar with each other, were not completely unacquainted. While detained and awaiting bond, Applicant was able to locate Jennifer through a mutual friend. They spoke over the phone and Jennifer affirmed that she would be willing to come forward, give a sworn written affidavit to Applicant’s attorney, and testify at trial if necessary. Applicant informed his attorney of the new developments in his search for the motorist who rendered him aid that night along with the Jennifer’s contact information. Oddly, when the information was passed along to Counselor Hayes, Jennifer was contacted by members of the *Solicitor’s* Office in regard to an unrelated case in which she was the victim/witness. After diligent pressuring from Applicant, Hayes eventually met with Jennifer and obtained her written statement. The affidavit contained an account of the events of February 26, 2020 that were wholly consistent with what the Applicant had maintained from the very beginning. Jennifer also left the name and number of her roommate who could corroborate her story. No indication of any reservations about calling Jennifer as a witness were ever expressed by Hayes to the Applicant until the lone pre-trial meeting occurring only the day prior when counselor Hayes unilaterally decided that she would not call Jennifer. Trial counsel,

Suzanne Hayes, failed to subpoena and call a cooperating alibi-witness and failed to question witness's roommate to corroborate witness's (and Defendant's) story.

Relevant Cases and Authorities

- Alibi (*n.*) – [Latin “elsewhere”] (18c) “A defense based on the physical impossibility of a defendant’s guilt by placing the defendant in a location other than the scene of the crime at the relevant time. Fed. R. Crim. P. 12.1. The quality, state, or condition of having been elsewhere when an offense was committed.” *Black’s Law Dictionary* (11th ed. 2019)
- “Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” *Putnam v. State*, 417 S.C. 252, 789 S.E.2d 594 (quoting *Edwards v. State*, 392 S.C. 449,456, 710 S.E.2d 60, 64 (2011))
- “Trial counsel’s failure to subpoena witnesses can constitute ineffective assistance of counsel under certain circumstances.” *Id.* at 789 S.E.2d 600
- “For example, in *Martinez v. State*, our supreme court found trial counsel ineffective for failing to subpoena a witness who would have testified he saw the petitioner at a location other than the crime scene fifteen minutes before the conclusion of the crime.” *Id.* at 789 S.E.2d 600 (citing *Martinez*, 304 S.C. 39, 40-41, 403 S.E.2d 113, 113-14 (1991))
- “We find trial counsel rendered deficient performance by failing to secure the [witnesses] attendance at trial and no probative evidence supports the PCR court’s contrary finding. Because the [witnesses] were not presented at trial, the rule against hearsay prohibited Putnam from introducing their videotaped depositions, which included testimony that [witness] saw Patrick hold the Victim upside down by his feet. The [witnesses] absence also prevented Putnam from questioning them about events occurring before Putnam awoke on the day of the incident.” *Id.*
- *Cf.* “Although Putnam asserted the [witnesses] testimony ‘may have shown some sort of information that may have helped in some way’ and may have provided the jury with a better understanding of ‘what actually going on in the house at the time,’ that testimony was speculative and therefore insufficient to establish prejudice.... Putnam also failed to establish the result of the trial would have been different if the [witnesses] had testified at trial.” *Putnam v. State*, 417 S.C. 266, 789 S.E.2d 601

Discussion

Trial counsel, Suzanne Hayes, failed to subpoena and call a cooperating alibi-witness and failed to question witness's roommate to corroborate witness's (and Defendant's) version of events. *See, Putnam v. State*, 417 S.C. 252, 789 S.E.2d 594 (“Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.”) (quoting *Edwards v. State*, 392 S.C. 449,456, 710 S.E.2d 60, 64 (2011)). Jennifer

Thompson's (Jennifer) sworn statement and version of events completely corroborated the Applicant's unwavering version of events which he has maintained from the very beginning. In spite of the fact that trial counsel was acutely aware of the State's intent to employ a "burden-shifting strategy", which involves the prosecution craftily presenting a case in such a manner that improperly forces a defendant to prove his own innocence, counselors, Suzanne Hayes and Barry Thompson (no relation to Jennifer), unreasonably elected not to call a credible, willing, and available alibi-witness¹⁰ in Thompson. *Id.* at 789 S.E.2d 600 ("Trial counsel's failure to subpoena witnesses can constitute ineffective assistance of counsel under certain circumstances.") As stated above, Jennifer had sworn to facts that - not only - placed the Applicant in a location other than the scene of the crime at the relevant time thereby rendering his guilt a physical impossibility, but also substantiated explanations asserted by the Applicant that answered the State's apprehensions. Said explanations were then portrayed by the State to the jury as preposterous and "unreasonable". *Id.* at 789 S.E.2d 600 ("For example, in *Martinez v. State*, our supreme court found trial counsel ineffective for failing to subpoena a witness who would have testified he saw the petitioner at a location other than the crime scene fifteen minutes before the conclusion of the crime.") (citing *Martinez*, 304 S.C. 39, 40-41, 403 S.E.2d 113, 113-14 (1991)). Additionally, pertinent here is the fact that, neither the substance of Jennifer Thompson's testimony, nor the reasonable probability that it would have changed the outcome of the trial can be intelligently disputed. *Cf. Putnam v. State*, 417 S.C. 266, 789 S.E.2d 601 ("Although Putnam asserted the [witnesses] testimony 'may have shown some sort of information that may have helped in some way' and may have provided the jury with a better understanding of 'what actually going on in the house at the time,' that testimony was speculative and therefore insufficient to establish prejudice.... Putnam also failed to establish the result of the trial would have been different if the [witnesses] had testified at trial.")

4. Failure to Introduce ABTT "Call-Out Report"

Relevant Facts

Trial Counsel Suzanne Hayes failed to introduce the Aiken Bloodhound Tracking Team's "Call-Out Report" (hereinafter, the "Report") into evidence at trial. On the night of February 26th, 2020 leading into the early morning hours of February 27th, 2020, the Aiken Bloodhound Tracking Team (hereinafter, the "Team") was "called-out" to the scene of where a high-speed police pursuit involving the Applicant's vehicle ended with the unknown/unseen driver ejecting and fleeing from the vehicle. The "five-man" team included four (4) human "trackers" and one (1) trained bloodhound named "Titus". After conducting its search for the unknown subject, the Team relayed it's finding to the officer's on scene and departed. A Report was then produced which detailed the conditions, methods, findings (or lack thereof) etc. of the Team's efforts. The Report was, at some point, made available to the Aiken County Sheriff's Office (ACSO) who - in turn - disclosed the same to Solicitor's Office for the Second Judicial Circuit. Though

¹⁰ Black's Law Dictionary (11th ed. 2019) defines an *alibi witness* as "A witness who testifies that the defendant was in a location other than the scene of the crime at the relevant time; a witness who supports the defendant's alibi."

there is no evidence of the solicitor office's compliance with their obligation under *Brady* to timely disclose this report, it is assumed – *arguendo* – to have been disclosed to the Applicant's attorney in time to be presented at trial.¹¹ Applicant's trial took place on July 22 – 23, 2021. At trial, the State prosecuted their case predicated upon the theory that the Applicant led law enforcement on a high-speed chase that culminated in the Applicant pulling the vehicle into a plowed cornfield then fleeing the vehicle, leaving behind the cocaine, methamphetamine, and heroin at issue. Both ACSO Sergeants, Brandon Knight and Clark Palmer, were involved in (and at different times alternately led) the pursuit. Both, Knight and Palmer, testified up to the extent of their respective involvement and knowledge thereto. Generic, references to the ABTT's search efforts were made by Knight and Palmer, as follows: Knight: *R. 49, l. 24 – 50, l. 6*;

Relevant Cases and Authorities

- “The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674
- “We find that autopsy report was powerful piece of documentary evidence that was crucial [] defense because it contradicted the State's theory of the case.” *McKnight v. State*, 378 S.C. 33, 661 S.E.2d 354
- “[t]he autopsy report itself would have served as hard evidence to (1) undermine the conclusion of [], the only expert who opined that cocaine alone caused the fetal demise, and (2) remind jurors of the inconsistencies in the State's [witness] testimony” *Id.*
- “We therefore find trial counsel's failure to introduce the [] letter requires a finding of deficiency. The letter contains evidence that would have been favorable to [defendant] in several important ways... Thus counsel's failure to introduce the letter into evidence was so serious an error that it rendered counsel's performance deficient under the first prong of *Strickland*.” *Freiburger v. State*, 413 S.C. 243, 775 S.E.2d 391
- “We find [] also met his burden of proof as to the second prong of *Strickland* because there is a reasonable probability the jury would have had a reasonable doubt as to whether he was guilty... if trial counsel had introduced the letter at trial. To frame our discussion of prejudice, we point out the evidence against [the defendant] was purely circumstantial, and ... weak.” *Id.*
- “We find trial counsel rendered deficient performance by failing to secure the [witnesses] attendance at trial and no probative evidence supports the PCR court's contrary finding. Because the [witnesses] were not presented at trial, the rule

¹¹ Trial Counsel Suzanne Hayes' post-conviction correspondence to Applicant, which included the Applicant's first and only copy of the Aiken Bloodhound Tracking Team “Call-Out Report”, proves only that the Report was “at some point” provided to Counselor Hayes, but does nothing to establish the Report's “timely” disclosure. Circumstantial evidence available argues against the Report's “timely” disclosure.

against hearsay prohibited Putnam from introducing their videotaped depositions, which included testimony that [witness] saw Patrick hold the Victim upside down by his feet. The [witnesses] absence also prevented Putnam from questioning them about events occurring before Putnam awoke on the day of the incident.”
Putnam v. State, 417 S.C. 252, 789 S.E.2d 594

Discussion

Trial counsel, Suzanne Hayes, failed to introduce the Aiken Bloodhound Tracking Team Call-Out Report (“Bloodhound Report”) at trial. The Bloodhound Report contained relevant, material, and exculpatory information detailing the specific particular actions of the Aiken Bloodhound Tracking Team (“ABTT” or the “Team”). See McKnight v. State, 378 S.C. 33, 661 S.E.2d 354 (“We find that autopsy report was powerful piece of documentary evidence that was crucial [] defense because it contradicted the State’s theory of the case.”) Impeaching evidence detrimental to the State’s case that was apparent from the face of the document, include: “Start Date/Time” of 2/26/20 22:27, which is inconsistent with Police Reports and witness testimony; “Weather”, which is listed as clear, though, prosecution argued that the weather was inclement; the length of time that the Tracking Team spent search for suspect, which is listed as “3 hours”, is inconsistent with witness testimony; “Estimated Tracking Distance”, which is listed as .8 mi., which would have been informative to the jury; “Location”, which is listed as “Wire rd. and Beverdam Rd Aiken Sc” [*sic*], is inconsistent with location given in Police Reports and officer/witness testimony; name and amount of Team Members Present totaling four, yet none were subpoenaed to testify; the findings and comments that the search turned up, not only “negative results of finding him [suspect]...”, but also negative results of “any signs”, thus contradicting the assertion by key officer/witness that there were “footprints going to the wood line that was not shoes.”; admission that “ABTT advised on scene officer of findings.”; and a Call-Out Report Supervisor Approval signature dated 3/13/20 approximately 2 weeks after incident. The “Bloodhound Report” calls into question the integrity, credibility, and veracity of, not only the officers involved, but of the entire investigation. See *Id.* (“[t]he autopsy report itself would have served as hard evidence to (1) undermine the conclusion of [], the only expert who opined that cocaine alone caused the fetal demise, and (2) remind jurors of the inconsistencies in the State’s [witness] testimony”). The omission or neglecting - on behalf of Applicant’s trial counsel - to introduce this extremely impeaching Bloodhound Report - and meaningfully subject the State’s case to the adversarial process - rendered said counsel ineffective in failing perform at a level adequate to prevailing professional norms. See, Freiburger v. State, 413 S.C. 243, 775 S.E.2d 391 (“We therefore find trial counsel’s failure to introduce the [] letter requires a finding of deficiency. The letter contains evidence that would have been favorable to [defendant] in several important ways... Thus counsel’s failure to introduce the letter into evidence was so serious an error that it rendered counsel’s performance deficient under the first prong of Strickland.”). The impact of the information contained in the Report was not unknown to Counselor Hayes, as the failure of the State to call anyone from the Bloodhound Tracking Team to “talk to [the jury] about tracking and how that works”, was central to the Counselor’s closing argument of the State’s failure to meet their burden. Hayes even referred to the Bloodhound Tracking Team as

the “missing witness”. *See, Id.* “We find [] also met his burden of proof as to the second prong of *Strickland* because there is a reasonable probability the jury would have had a reasonable doubt as to whether he was guilty... if trial counsel had introduced the letter at trial. To frame our discussion of prejudice, we point out the evidence against [the defendant] was purely circumstantial, and ... weak.” Furthermore, while the attorney’s arguments are not evidence, closing argument *are* attempts to persuade the jury to interpret the *evidence presented during the trial* in a light favorable to their client. Needless to say, the more evidence introduced to support a particular version of events or - in the alternative, refute the opposing side’s version of events – the better. It follows that - that evidence must first be introduced to have the desired effect.

A. Failure to Move to Sever Prejudicial Joinder of Offenses; Failure to Move for Mistrial Upon Trial Court’s Decision to Direct Verdict on Joined Offense

Relevant Facts

Trial counsel, Suzanne Hayes, failed to move for severance of the independent charge of Resisting Arrest from the charges of Failure to Stop for Blue Lights and Sirens, PWID Cocaine, PWID Heroin, and Trafficking Methamphetamine (hereinafter, “remaining charges”). The independent charge of Resisting Arrest arose from a different chain of circumstance than that of the remaining charges. The Resisting Arrest charge was not alleged to be provable by the same evidence or witnesses as the “remaining charges”. The Resisting Arrest charge and the “remaining charges” are dissimilar in nature. Police arrest reports and several portions of the record reflect the fact that the failure to stop/controlled substances-incident and the resisting arrest incident represent two distinct “chains of circumstances”, for example:

“Well, right after I signed in, I went to get gas from our fuel point, which is located on May Royal, and within 20 minutes [of 5:15--5:20 a.m.], I got a call for a suspicious person.” Dep. Agnieszka Czekaj-Ferrell (trial testimony) *R. 88, ll. 15 - 17*; “When they come up to Mr. Lincoln, at that point in time, they do not know who – the unrelated car chase, drug case may or may not be related to Mr. Lincoln. At that point in time, these events are separate. They’re isolated. They’re just going for a suspicious person who’s on this gentleman farmer’s carport” – Barry Thompson, Esq. (2nd Chair arguing in support of DV on resisting arrest) *R. 118, ll. 13 - 18*; “I would concede that the officer, when she was first describing it said that he was not under arrest, but she... communicated he was being arrested for disorderly conduct.” – Solicitor Bill Weeks (arguing in opposition of DV on resisting arrest) *R. 119, ll. 3 – 6*; The Court: “So at the police car, he can’t be resisting arrest because no lawful arrest has been made.” Mr. Thompson: “Yes that is our argument, yes, ma’am.” The Court: “And I agree with you. Motion granted.” – Hon. Jocelyn J. Newman (trial judge explaining the logic behind her ruling in favor of DV on resisting arrest) *R.162, ll. 21 – 22*

Relevant Cases and Authorities

- “Evidence of prior bad acts that are not the subject of a conviction must be establishing [sic] clear and convincing evidence.” *State v. Holder*, 382 S.C. 278, 676, S.E.2d 690
- “No person shall be subject for the same offense to be twice put in jeopardy of life or liberty, nor shall any person be compelled in any criminal case to be a witness against himself” *S.C. CONST Art I § 12*
- “The indictment or information may charge a defendant in separate counts with 2 or more offenses if the offenses charged - - whether felonies or misdemeanors or both - - are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.”
Fed. R. Crim. P. Rule 8(a)
- “If the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants’ trial, or provide any other relief that justice requires.” *Fed. R. Crim. P Rule 14(a)*
- “The trial judge has a continuing duty at all stages of the trial to grant a severance if prejudice does appear.” *Schaffer v. U.S.*, 362 U.S. 511, 80 S.Ct. 945, 4 L.Ed. 2d 921
- “Charges can be joined in the same indictment and tried together where they (1) arise out of single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature and (4) no real right of the defendant has been prejudiced” *State v. Harris*, 351 S.C. 643, 652, 572, S.E.2d 267 272 (2002)
- “The court further recognized that our Supreme Court has at times articulated the [Harris] test differently, addressing only the fourth element from *Harris* – whether the substantial whether the joint trial prejudiced the defendant. It was unnecessary in those cases, therefore, for the court to consider the first three elements.” *Tyler v. State*, 437 S.C. 17, 876 S.E.2d 132 (internal quote, *State v. McGaha*, 404 S.C. 294 n.4, 744 S.E.2d 604 n.4)
- “Offenses are considered to be of the same general nature where they are interconnected.” *State v. Rice*, 368 S.C. at 614, 629 S.E.2d at 395
- “Conversely, offenses which are of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together.” *Id.*
- “Similarly in the joinder context, the defendant may argue unfair prejudice if, after the State’s case, the trial judge determines a direct verdict should be granted. The standard of submission is of charges to the jury is ‘any substantial evidence’. If the trial judge finds there is no substantial evidence to submit anyone one of the joined charges to the jury, the defendant may move for a mistrial on the basis of unfair prejudice resulting from joinder.” *State v. Cutro*, 365 S.C. 366, 618 S.E.2d 890 (internal quotation, *State v. Johnson*, 334 S.C. 78, 84, 512, S.E.2d 795, 798 (1999))
- “[] ... substantive rights were violated because trying the charges together created the risk that the jury would wrongfully convict [] on one set of charges based on evidence admissible only as to the other. Such prejudice could have been avoided had trial counsel sought a separate trial....” *Tyler v. State*, 437 S.C. 17, 876 S.E.2d 132

Discussion

Trial counsel, Suzanne Hayes, performed well below professional norms by failing to move for severance of the “unrelated charge” of resisting arrest from the “remaining charges” of failure to stop for blue lights and sirens, PWID Cocaine and Heroin, and Trafficking Methamphetamine. Fed. R. Crim. P. Rule 8(a) (“The indictment or information may charge a defendant in separate counts with 2 or more offenses if the offenses charged - - whether felonies or misdemeanors or both - - are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan”); Fed. R. Crim. P. Rule 14(a) (“If the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants’ trial, or provide any other relief that justice requires.”). The unrelated charge of resisting arrest arose from a different chain of circumstances from that of the “remaining charges”. The “unrelated charge” was not provable by the same evidence or witnesses as the “remaining charges”. The “unrelated charge” and the “remaining charges” are not even remotely similar in nature. The Applicant’s right to not be convicted on one charge based upon evidence arising from facts of another offense, that is not rightly before the court, was unequivocally prejudiced. *See, State v. Harris*, 351 S.C. 643, 652, 572, S.E.2d 267 272 (2002) (“Charges can be joined in the same indictment and tried together where they (1) arise out of single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature and (4) no real right of the defendant has been prejudiced”); *see also, Tyler v. State*, 437 S.C. 17, 876 S.E.2d 132 (internal quote, *State v. McGaha*, 404 S.C. 294 n.4, 744 S.E.2d 604 n.4) (“The court further recognized that our Supreme Court has at times articulated the [*Harris*] test differently, addressing only the fourth element from *Harris* – whether the substantial whether the joint trial prejudiced the defendant. It was unnecessary in those cases, therefore, for the court to consider the first three elements.”). Police arrest reports and several portions of the record reflect the fact that the failure to stop/controlled substances-incident and the resisting arrest incident represent two distinct “chains of circumstances”, for example Dep. Czekaj-Ferrell testified, “Well, right after I signed in, I went to get gas from our fuel point, which is located on May Royal, and within 20 minutes [of 5:15–5:20 a.m.], **I got a call for a suspicious person.**”. Second Chair, Barry Thompson arguing for directed verdict on the Resisting Arrest offense maintained, “When they come up to Mr. Lincoln, at that point in time, they do not know who – **the unrelated car chase, drug case may or may not be related to Mr. Lincoln.** At that point in time, **these events are separate. They’re isolated. They’re just going for a suspicious person who’s on this gentleman farmer’s carport.**” *State v. Rice*, 368 S.C. at 614, 629 S.E.2d at 395 (“Offenses are considered to be of the same general nature where they are interconnected.”); *Id.* (“Conversely, offenses which are of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together.”). The Applicant asserts that the record is quite unclear when and how the evidence supports the events ever becoming “unseparated”, except in the conjecture of the State to promote their unsubstantiated version of events. Further, Solicitor Weeks states, “I would concede that the officer, when she was first describing it said that he was not under

arrest, but she... communicated he was being arrested for disorderly conduct.”. Trial Court, Hon. Jocelyn Newman, herself even contributed, “So at the police car, he can’t be resisting arrest because **no lawful arrest has been made.**”. ASCO Incident Reports reflect separate and distinct “case numbers” for the two incidents, 20-010214 for the “unrelated”-incident, and 20-010190 for the “remaining”-incident. The indictments for the offenses also reflect that the circumstances arise from these two distinct “case numbers”. This proves that the resisting arrest charge was separate in fact, circumstance, and temporal situation. Given, (1) the location of the “unrelated”-incident and the location of the “remaining”-incident, were close in proximity; (2) the condition of the Applicant as unshod, wet, and distraught when approached; and (3) the reluctance of the Applicant to being unlawfully arrested, there exists no doubt that the evidence from the misjoinder offense portray the Applicant in an unfair light that is clearly prejudicial. Further, evidence arising from the resisting arrest offense was not admissible under the *res gestae* theory, as it was neither submitted-for, nor necessary-to establishing proof of guilt of the controlled substance offenses. Moreover, the offense of resisting arrest was not proved by clear and convincing evidence, as the Applicant was acquitted of the charge by virtue of directed verdict. *State v. Cutro*, 365 S.C. 366, 618 S.E.2d 890 (internal quotation, *State v. Johnson*, 334 S.C. 78, 84, 512, S.E.2d 795, 798 (1999)) (“Similarly in the joinder context, the defendant may argue unfair prejudice if, after the State’s case, the trial judge determines a direct verdict should be granted. The standard of submission is of charges to the jury is ‘any substantial evidence’. If the trial judge finds there is no substantial evidence to submit anyone one of the joined charges to the jury, the defendant may move for a mistrial on the basis of unfair prejudice resulting from joinder.”). Nevertheless, the prejudicial joinder, more likely than not, improperly influenced the jury’s verdict with respect to the same. *Tyler v. State*, 437 S.C. 17, 876 S.E.2d 132 (“[] ... substantive rights were violated because trying the charges together created the risk that the jury would wrongfully convict [] on one set of charges based on evidence admissible only as to the other. Such prejudice could have been avoided had trial counsel sought a separate trial....”)

The prejudice from the misjoinder and - a fortiori – the failure to sever the same, was further exacerbated by the submission of the prejudicial offense by the trial court, Hon. Jocelyn J. Newman, to the jury subsequent to being dismissed pursuant to directed verdict at the closing of the evidence. The error was admitted by the trial court and unilaterally dismissed by the same, sua sponte, as being a “harmless”, “small”- error. This was done without any objection from either of the Applicant’s trial attorneys. The admission and exchange transpired as follows: Trial Court: “I just want to acknowledge that clearly, there was a small error on behalf of the court in sending the indictments to the jury room and not pulling out the indictment for resisting arrest. It appears to have been a harmless error anyway as he was acquitted of that charge. But I did want to put that on the record because, clearly, the clerk read an error for that charge.” Trial Counsel: “We were thinking the same thing, Your Honor.” Trial Court: “Yes, exactly. I just wanted to address it.” *R. 223, l.20 – 224, l. 4*. Counsel for the defense, again, performed below professional norms by failing to move for mistrial at the directing of the verdict of the joined offense.

The misjoinder evidence is so inextricably intertwined as to render the trial fundamentally unfair. As with *Bruton* errors, this error could not be cured by a limiting instruction to the jury to

consider the prejudicial evidence only for the offense for which it was admitted, because of the high risk that the jury will disregard the instruction. Moreover, the instruction from the Court permitted and, in fact, encouraged the jury to consider all of the evidence, testimony and exhibits received into evidence.

B. Failure to Move for Mistrial or Object to SCRE 404(b) Violation; and Failure to Move to Strike Improper 404(b) Question and Resulting Response by Witness

Relevant Facts

Trial Counsel failed to contemporaneously object to Solicitor Weeks' improper question to Applicant on cross-examination. Prior to Applicant testifying in his defense, the State moved to introduce 3 prior convictions for purposes of impeachment. Asst. Sol. Hammack sought to introduce two (2) Possession with Intent to Distribute Marijuana offenses from December 2011 and a Giving False Information to a Police Officer, also from 2011. *R. 123, l. 13–20*. Arguments in favor, and in opposition of the introduction of the prior convictions, were made by Asst. Sol. Hammack and Lead Counsel for the Defense, Suzanne Hayes, - respectively. *R. 123, l. 23 – 125, l. 4*. Trial Court unequivocally denied the State on all three (3) convictions, stating the following: "THE COURT: '... I think it would be improper character evidence in this situation. So I will **not allow the two drug convictions from December of 2011 to be mentioned.** What's the Defense's position on the false information?' MS. HAYES: 'I don't think that one should be mentioned either.' THE COURT: 'I agree. So the State *can't*, of course, mention that, question the witness about that.'" *R. 125, ll. 10-17*. The Applicant proceeded through direct and cross-examination without inviting the introduction of the excluded prior convictions. Nevertheless, in concluding the State's cross-examination, which also constituted the conclusion of all evidence in the trial, came the following exchange between Solicitor Weeks and the Applicant: "Q: 'And you don't dispute that you're the same Jonathan Lincoln who was convicted in 2011 for giving false information to the police?' A: 'That was me, sir.' Q: 'That was you?' A: 'I do not dispute that. I don't lie, Your Honor, when -- I mean when I'm guilty, I say I'm guilty. When I'm not guilty, I will come this far with it. I'm sorry, I just -- I think that justice should serve everybody. It's served against me in the past. I feel like and hope today that it serves me in the positive.' Mr. Weeks: 'No further questions, Your Honor.'" *R. 159, ll. 11-22*. The Defense rested without redirect, rebuttal, or presenting any other evidence. More importantly, without objection nor motion for mistrial or to strike question and response from the record.

Significantly, in closing arguments, Asst. Solicitor Ashley Hammack made the following statement in which she quoted the Applicant: **"Members of the jury, the *last thing* the Defendant said to you when he testified - - let me find it so I can quote it correctly because I wrote it down. He said, 'Justice should serve everybody'. And he's right. For every single person that lived on Wire Road, lived on New Bridge Road, that lived on New Holland Road, for the cars that were driving, oncoming traffic, when a vehicle is in the middle of a two-lane road straddling a center line at 90 miles an hour on a dark, curvy road, for the people asleep in their beds at night who hear lights and sirens going down the road who have to turn on their lights and lock their doors for safety, justice should serve everybody."** *R. 203, ll. 4-15*

Relevant Cases and Authorities

- "Trial counsel had at least two opportunities to prevent the inclusion of the [] charge and he failed to object even once. - - - Because trial counsel's error fell below an objective standard of reasonableness, we conclude trial counsel's performance was deficient." *Felder v. State*, 427 S.C. 518, 832 S.E. 2d 591
- "Had trial counsel objected, it is almost certain the trial court would have excluded the reference to Felder's lynching charge - - - . Consequently, but for trial counsel's error, the jury would have never heard any mention of Felder's lynching charge." *Id.*

C. Failure to Properly Object and Preserve the Record for Appeal

Relevant Facts

In her closing argument, Asst. Solicitor Hammack referred to matters that were not supported by the trial record. During her closing argument before the jury, the assistant solicitor argued: "And importantly, *in that bag in the front passenger seat, is scales. He [Applicant] answered Solicitor Weeks on cross-examination, 'Yeah it's possible I left my scales in my truck.'* These don't measure out hamburger meat or chicken." *R. 173, ll. 20-24*; "In this case the drugs were found in a book bag in the Defendant's car in the passenger seat. But that book bag didn't just have drugs in it. **That book bag had these scales** that are commonly used to weigh drugs, to weigh drugs, to measure out how much you're going to sell." *R. 184, ll. 18-22*; "And the other thing that was **in that bag with these scales** is --" *R. 185, ll. 3-4*; "These scales are *his* that he left in his truck, **that were found in the same bag as his drugs. So the scales are *his*** but the drugs aren't?" *R. 187, ll. 2-5* (all emphasis added). After the adamant prompting by the Applicant, Counselor Thompson reluctantly interrupted Asst. Sol. Hammack and half-heartedly informed the judge that he had an objection and a matter of law that needed to be addressed outside the presence of the jury. *R. 187, ll. 10-12*. Once the jury was excused, counsel asserted the solicitor was arguing facts not in evidence. Initially, he argued that there was no testimony that the scales were found on the passenger seat of the Applicant's vehicle. Thompson conceded that evidence that the scales were "right there with the drugs" would be "very damning" to the Applicant and "critical" to the State's case. However, the counselor maintained, such evidence was not presented during the course of the trial. Consequently, he moved for mistrial. *R. 187, l.*

13 – 188, I. 11. Asst. Sol. Hammack claimed her recollection of the relevant testimonies of Sgt. Knight and the Applicant was that Knight explicitly testified that there was a book bag on the passenger seat which contained both the scales and the drugs; and that the Applicant had explicitly testified that said scales were “his”. Hammack relied on her erroneous recollection of an exchange on cross-examination between Sol. Weeks and the Applicant, in which Hammack purports that “Mr. Weeks asked him a two-part question: A. ‘Are these your scales?’; and B. ‘Were they in your truck?’. He (Applicant) said, ‘Yes, they are my scales and it’s possible they could have been in my truck.’”. Hammack continued, “But my recollection of the testimony is that Sergeant Knight said *specifically* that those scales and baggies were found in the book bag in the passenger seat with the drugs.” R. 188, I. 13 – 189, I. 12. Counselor Thompson asks the judge to have “the court reporter look back at the testimony”. Thompson also asserted the position which the Applicant originally request him to assert which was that Sgt. Knight never testified that the scales were *in the same bag* as the drugs, not merely *in the same seat* as the drugs. R. 189 I. 16 – 190 I. 4. However, Thompson did not expressly argue the Applicant’s accompanying claim: that he (Applicant) never claimed ownership of the scales. The Applicant only stated that he “assumed” the scales were in his truck based on Knight’s testimony and that it was a possibility that he may have packed them in his truck along with a multitude of other items retrieved from his child’s mother’s storage unit were he had stored his belongings prior to moving. R. 148, II. 5 – 14. In her argument opposing the mistrial motion, Hammack also appealed to the judge to fix any harm by instructing the jury that arguments of counsel are not in evidence and the jurors must rely on their own recollection of the testimony. R. 188, II. 21-24. The Trial Court never gave such an instruction. In fact, the judge merely said, “Let’s go off the record briefly.” R. 190, I. 24. A brief recess was taken. R. 190, I. 25. When the record resumed, the judge immediately asked for the jury and, once the jury entered the courtroom, Newman states, “All right. Ms. Hammack, you may continue.”, and the State’s closing argument recommenced. R. 191, II. 1-6. On closing rebuttal, Asst. Sol. Hammack inaccurately argues, “These scales **that he said were his** were, quote, with the narcotics.” Hammack even invited the jury to “listen to it”, further sarcastically stating, “Everything in that car was his except for the stuff he don’t [sic] want to admit, which is all those drugs.” R. 201, II. 18-21 (emphasis added).

In her closing arguments, Hammack further alleged that “... *they* [officer witnesses] stated when that vehicle stopped in the field, nobody got out of the passenger side, *nobody got out of the back*.”. R. 172, II. 15 – 17. “And the last thing that we know, that we don’t have to question, that everyone here agrees on is that in the Defendant’s own car off of New Holland, **the same time he’s found off of New Holland**, there’s a bag and in that bag is full of drugs. 1. 56 grams of powder cocaine, 22.99 grains of heroin and 49.1 grams of methamphetamine.” R. 174, II. 6-11. (all emphasis added)

The Applicant was convicted on the three controlled substance offenses, acquitted by jury on the Failure to Stop for Blue Light/Siren, and acquitted by judge and jury on the Resisting Arrest indictment. Applicant was sentenced to thirty years for each drugs offense, to be served concurrently. A direct appeal was filed by Appellate Defender Lara M. Caudy pursuant to Anders v. California, stating no meritorious issues were present, but asking, “Did the trial judge abuse her discretion by denying Appellant’s motion for a mistrial after the assistant solicitor

argued facts not in evidence during her closing argument, specifically that Appellant admitted during his testimony that the scales found in the car were his and that these scale were found in the same bag as the drugs, when there is no evidence to support the solicitor's claims, and where Appellant was prejudiced because the evidence presented was purely circumstantial and the state relied on constructive possession to convict Appellant?" *App. Br. Page 1*. The Applicant also filed a *pro se* appellate brief. On 26 October, 2022, Applicant's Direct Appeal was subsequently dismissed in an unpublished opinion pursuant *Anders. 2020 WL 14812664*. The Applicant's appellate counsel was of the opinion that the otherwise meritorious issue was not properly preserved due to the failure of the trial court to make her ruling on the record and the Applicant's trial counsel's subsequent failure to request that the trial court do so.

Relevant Case and Authorities

- "In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." *State v. Dunbar*, 356 S.C. 142, 587 S.E.2d 694-95 (2003)
- "When a conference takes place off the record, it is trial counsels duty to put the substance of the discussion and the trial court's ruling on the record." *Smalls v. State*, 422 S.C. 174, 182 n.3, 810 S.E. 2d 836, 840 n.3 (2018) (emphasis added)
- "The court of appeals correctly noted the importance of parties placing their arguments on the record to preserve them for appellate review..." *State v. Washington*, 431 S.C. 404, 848 S.E.2d 784
- "Fortune's trial counsel made a general objection to the assistant solicitor's improper comments, and, when the trial court did not address the full extent of the assistant solicitor's misconduct in its ruling, counsel did not press the issue. To the extent the trial court ruled, it sustained counsel's objections. Nothing, therefore, was subject to direct review. To the extent the trial court did not rule, and counsel did not insist on a more specific ruling, the claim would be cognizable under the Sixth Amendment for ineffective assistance of counsel. The full extent and effect of the assistant solicitor's misconduct in this case, however, is now subject to review only in a claim for a Fifth and Fourteenth Amendment due process violation." *Fortune v. State*, 428 S.C. 560, 837 S.E.2d 44, 45
- "Petitioner's counsel testified at the at the PCR hearing that he asked the trial judge at a bench conference to question the jurors to determine whether any of the jurors had petitioner in chains. The trial judge denied the request. However, because this request was not on the record, the Court of Appeals refused to address this issue. Thus, counsel was deficient because he failed to adequately preserve this issue for review." *Foye v. State*, 335 S.C. 586, 518 S.E. 2.d 265 (1999)

Discussion

The Applicant asserts that his trial counsels, Suzanne Hayes (Hayes) and Barry Thompson (Thompson), was ineffective for failing to preserve an otherwise meritorious issue for the record on appeal. South Carolina preservation rules require that an issue be "raised-to and

ruled upon” by the lower court to be eligible for appellate review. *State v. Dunbar*, 356 S.C. 142, 587 S.E.2d 694-95 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.”). In the Applicant’s trial, Second Chair Barry Thompson, made a half-hearted objection to Assistant Solicitor Ashley Hammack’s improper arguing of matters not supported by the trial record in her closing arguments. Other than assumed incompetence, the record is unclear as to origin of Thompson’s reluctance to make what was obviously the appropriate objection. After the both parties argued their positions, the trial went “off the record”, overruling the Applicant’s objection without placing her ruling or rationale thereto in the trial record. Pursuant to no reasonable trial strategy, Applicant’s counsel neglected to request that the judge place her ruling on the record for appeal. See, *Smalls v. State*, 422 S.C. 174, 182 n.3, 810 S.E. 2d 836, 840 n.3 (2018) (“When a conference takes place off the record, it is trial counsel’s duty to put the substance of the discussion **and the trial court’s ruling** on the record.”) (emphasis added); *State v. Washington*, 431 S.C. 404, 848 S.E.2d 784 (“The court of appeals correctly noted the importance of parties placing their arguments on the record to preserve them for appellate review...”). Failure of Applicant’s trial counsel to properly preserve the record for appeal, denied the Applicant the ability to raise what was otherwise a meritorious issue on appeal. The courts have long held that this type of deficient performance is grounds for a claim of ineffective assistance of counsel.¹² See, *Foye v. State*, 335 S.C. 586, 518 S.E. 2d 265 (1999) (“Petitioner’s counsel testified at the at the PCR hearing that he asked the trial judge at a bench conference to question the jurors to determine whether any of the jurors had petitioner in chains. The trial judge denied the request. However, because this request was not on the record, the Court of Appeals refused to address this issue. Thus, counsel was deficient because he failed to adequately preserve this issue for review.”)

D. Cumulative Error

The Applicant also asserts the cumulative effect of all errors alleged in this “Memorandum in Support of Post-Conviction Relief” have rendered his trial fundamentally unfair and that the outcome of said proceeding cannot reasonable be relied upon to have administered justice to all involved, especially the Applicant. For support of this position the Applicant craves reference to this Memorandum.

“The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affect the outcome of the trial” *State v. Eubanks*, 437 S.C. 458, 878 S.E.2d 335 (quoting *State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d at 693-94

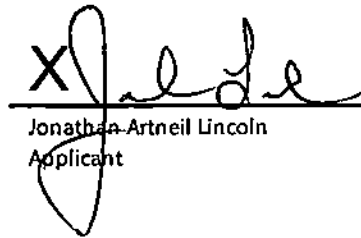
¹² “Fortune’s trial counsel made a general objection to the assistant solicitor’s improper comments, and, when the trial court did not address the full extent of the assistant solicitor’s misconduct in its ruling, counsel did not press the issue. To the extent the trial court ruled, it sustained counsel’s objections. Nothing, therefore, was subject to direct review. To the extent the trial court did not rule, and counsel did not insist on a more specific ruling, the claim would be cognizable under the Sixth Amendment for ineffective assistance of counsel. The full extent and effect of the assistant solicitor’s misconduct in this case, however, is now subject to review only in a claim for a Fifth and Fourteenth Amendment due process violation.” *Fortune v. State*, 428 S.C. 560, 837 S.E.2d 44, 45;

“An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground.”

Based on the foregoing, the Applicant moves this honorable Court of Common Pleas for vacatur of the above-captioned conviction and sentences and remand for new trial if warranted.

This 16th day of June, 2023.

Respectfully Submitted,



Jonathan Artneil Lincoln
Applicant

AGENCY I.D.
SC0020000AIKEN COUNTY SHERIFF'S OFFICE
INCIDENT REPORT

20 - 010190

EXTD.

EVENT	INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM ☐ INDIVIDUAL ☐ BUSINESS ☐ FINANCIAL INST. ☐ GOVERNMENT ☐ RELIGIOUS ORG. ☐ SOCIETY/PUBLIC ☐ OTHER ☐ UNKNOWN ☐ POLICE OFF.
	1. Vehicle Pursuit	☐ YES ☐ NO	☐ YES ☐ NO	STR	0	
	2.	☐ YES ☐ NO	☐ YES ☐ NO			
	3.	☐ YES ☐ NO	☐ YES ☐ NO			
VICTIM 1	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)					WEAPON TYPE
	I-20 East Mile Marker 27 Aiken SC					29803
	INCIDENT DATE	STREET CLOCK	TO	DATE	ZIP CODE	LOCATION #
	02-26-20	2227		02-26-20	2227	50F5
SUBJECT 1	COMPLAINANT NAME (LAST, FIRST, MIDDLE)					DAY PHONE
	Sgt. Knight					
	ADDRESS					LOCATION #
	420 Hampton Ave NE Aiken SC					49F6
VICTIM 2	VICTIM NAME (LAST, FIRST, MIDDLE)					WEAPON TYPE
	Soc/ Public					
	ADDRESS					LOCATION #
SUBJECT 2	SUBJECT NAME (LAST, FIRST, MIDDLE)					WEAPON TYPE
	Unknown					
	ADDRESS					LOCATION #
NARRATIVE	CHARGE #1					
	CHARGE #2					
	CHARGE #3					
	On February 26, 2020 Sgt. Knight was on patrol in the area of I-20 East Bound Mile Marker 25 in the County of Aiken sitting stationary in the median. Sgt. Knight observed a White Dodge Durango traveling east bound in the number one lane (fast lane) of the Interstate. Sgt Knight observed the vehicle pass through the high beams of the patrol vehicle and no visible outline of a driver could be seen due to the window tint being so dark. Sgt Knight then observed that the vehicle had a massive reduction in speed and a abrupt lane change to the Number two lane without using a blinker. Sgt Knight pulled out on the vehicle and observed that the vehicle was bearing a SC tag of SIY213 and initiated a traffic stop on the vehicle around the 28 mile marker east bound. Sgt Knight observed that the vehicle slowed down to approx 55mph and was not pulling over. Sgt Knight activated the patrol vehicle siren which the vehicle still continued and appeared to be pulling over at exit 29 east bound onto wire road. Sgt Knight advised ACSO Dispatch that the vehicle was slow rolling and also Advised Sgt Palmer who was on wire road at the on ramp to Interstate 20. Sgt Knight observed that the vehicle slowed down					
PROPERTY EST.	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY					JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY
	TYPE					TOTAL VALUE
	STOLEN					\$
ADMINISTRATIVE	SUBJECT IDENTIFIED					TOTAL VALUE
	SUBJECT LOCATED					\$
	REASON FOR EXCEPTIONAL CLEARANCE 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY					\$
	REPORTING OFFICERS					\$
ADMINISTRATIVE	DATE					UNIT NUMBER
	02-26-20					5127
	FOLLOW-UP INVESTIGATION ☐ YES ☐ NO					OFFICER

AGENCY I.D.
SC0020000

SUPPLEMENTAL INCIDENT REPORT 20 - 010190

INQ. ENTG.

☐ ORIGINAL REPORT ☐ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIED ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY

PAGE 2 OF 4 PAGES

VICTIM/SUBJECT I.D. OVERFLOW	☐ COMPLAINT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	☐ VICTIM #	Lincoln, Johnathon Art				J S O U	B	M	36	03/31	N
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES ETC.					
	☐ RUNAWAY	510	155	BLK	BRO	Possible Subject					
	☐ WANTED	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE		
☐ WARRANT		Alpine Dr		Aiken	SC	29803	165C5				
☐ ARREST	☐ VICTIM NO. _____	: VISIBLE INJURY ☐ NO ☐ YES		COMPLAINT OF NON-VISIBLE INJURIES		VICTIM USING ALCOHOL ☐ NO ☐ YES ☐ UNK		TWO MAN VEHICLE ☐ DETECTIVE/SPLASHT ☐ ALONE			
☐ JAIL	EXPLAIN:				DRUGS ☐ NO ☐ YES TYPE: ☐ UNK		ONE MAN VEHICLE ☐ OTHER ☐ ASSISTED				
☐ SUBMONG	☐ SUBJECT NO. _____		USING ALCOHOL: ☐ NO ☐ YES								
☐ Person of Interest			USING DRUGS: ☐ NO ☐ YES ☐ TYPE: ☐ UNKNOWN								

VICTIM/SUBJECT I.D. OVERFLOW	☐ COMPLAINT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	☐ VICTIM #					J S O U					
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES ETC.					
	☐ RUNAWAY	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE		
	☐ WANTED										
☐ WARRANT	☐ VICTIM NO. _____	: VISIBLE INJURY ☐ NO ☐ YES		COMPLAINT OF NON-VISIBLE INJURIES		VICTIM USING ALCOHOL ☐ NO ☐ YES ☐ UNK		TWO MAN VEHICLE ☐ DETECTIVE/SPLASHT ☐ ALONE			
☐ ARREST	EXPLAIN:				DRUGS ☐ NO ☐ YES TYPE: ☐ UNK		ONE MAN VEHICLE ☐ OTHER ☐ ASSISTED				
☐ JAIL	☐ SUBJECT NO. _____		USING ALCOHOL: ☐ NO ☐ YES								
☐ SUBMONG			USING DRUGS: ☐ NO ☐ YES ☐ TYPE: ☐ UNKNOWN								

NARRATIVE	and then took a right onto Wire Rd heading into Aiken. Sgt Knight advised that there was only traffic charges and terminated. Highway patrol was behind Sgt Knight and got behind the vehicle who began weaving in the roadway crossing the center line and fog line. Sgt Knight observed that the Driver of the vehicle at this time may be intoxicated due to the driving behavior being shown. Highway Patrol was told not to get involved. Sgt Knight due to experience felt that the driver was intoxicated and was a danger to the public. Sgt Knight advised ACSO Dispatch that the pursuit was terminated but due to the driving behavior being shown that the vehicle driver was possibly intoxicated and initiated blue lights and sirens. ACSO Dispatch was advised that the Driver was active running and a pursuit had been initiated. The Driver was traveling down Wired Rd at speeds of 80 mph and was unable to maintain lanes. Sgt Palmer who is pit certified was called to take lead in the pursuit and became the										
	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY					JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY					

VEHICLE/ETC 1	STATUS	TYPE	VIN AND/OR LICENSE NO.	BOAT HULL NO. AND/OR REG. NO.	
	☐ STOLEN	☐ VEHICLE	1D4HB38N96F155993		
	☐ RECOVERED	☐ GUN	SERIAL AND/OR OWNER APPLIED NO.	SIY213	STATE SC
	☐ FOUND	☐ BOAT	YEAR OF REGISTRATION	YEAR OF EXPIRATION	YEAR 2006 MAKE Dodge TYPE SUV
	☐ TOWED	☐ LICENSE PLATE	MODEL Durango	STYLE 4 door	COLOR White BRAND NAME CAUBER
☐ SUSPECT	☐ SECURITIES/BONDS	A/C NO.	DENOMINATION	ISSUER	SECURITIES DATE
☐ VICTIM	☐ ARTICLE	N.C. GENEALOGY			

PROPERTY EST.	TYPE								TOTAL VALUE
	STOLEN								
	DAMAGED								
	BURNED								
	RECOVERED								
SEIZED									

ADMINISTRATIVE	SUBJECT IDENTIFIED	SUBJECT LOCATED	☐ ACTIVE ☐ ADM. CLOSED	☐ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18
	☐ YES ☐ NO	☐ YES ☐ NO	☐ UNFOUNDED	☐ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY				
	REPORTING OFFICER	DATE	UNIT NUMBER	APPROVING OFFICER	DATE
	Sgt. Knight	022720	5127		
			FOLLOW-UP INVESTIGATION ☐ YES ☐ NO		

Attachments		
☐ Documents # _____	Other Documents # _____	
☐ Pictures	☐ Video	☐ Victim Rights

SUPPLEMENTARY REPORT

AGENCY ID
SC0020000

Case Number

20-0010190

NCIC

☒ Original Report	☐ Supplemental	☐ Follow-Up	☐ Additional Victims	☐ Additional Offender	☐ Additional Stolen Property	☐ Additional Recovered Property
Incident Type:			Date:		Time:	
Victim Name:			Subject Name:			
☐ Warrant obtained by Deputy		Date:		Judge:		
☐ No suspects/leads/clues developed		Date:		Time:		
☐ Contacted victim by telephone		Date:		Time:		
☐ Contacted victim in person		Date:		Time:		
☐ Case turned over to CID		Date:		Investigator:		
Narrative:						
lead car. Sgt Knight was now the second vehicle in the pursuit and advising ACSO Dispatch along with on Duty Supervisor LT. Lancaster the speeds, direction of traveling, traffic in the area, and weather conditions at the time. The Driver turned right off of Wire Rd onto New Bridge Rd and continued at speeds of 80 mph and failing to maintain lanes. Sgt Knight observed that no traffic was on the roadway at the time of the pursuit. The Driver continued to show no signs of stopping for blue lights and sirens. Sgt Knight advised that the Driver continued up New Bridge Rd at speeds of 80 Mph and turned left onto New Holland Rd. Sgt Palmer was unable to PIT the vehicle due to the road curves and no safe zone to pit. The Driver continued up New Holland Rd at speeds ranging from 50mph to 80mph failing to maintain lane. Sgt Palmer attempted to get in position for a PIT Maneuver but was unable to do so due to the vehicle not maintaining lanes. The Vehicle continued up New Holland Rd approaching Hwy 39 at speeds of 75 Mph. Sgt Knight advised ACSO Dispatch that the vehicle left the roadway. Sgt Knight observed that the vehicle was unable to get back onto the roadway and turned further into the field headed to the wood line. Sgt Knight and Sgt Blackwelder who was trailing the pursuit due to being a K9 Handler and having a apprehension K9 followed the vehicle through the field. Sgt Knight patrol vehicle became stuck in the mud. Sgt Blackwelder continued behind the Vehicle. Sgt Palmer was unable to get into the field with his Dodge Charger Patrol vehicle. Sgt Knight advised that the Vehicle came to a stop at the back of the field and the Driver had fled from the vehicle. Sgt Knight exited the patrol vehicle and ran to the Defendant vehicle in attempt to assist Sgt Blackwelder. Sgt Blackwelder advised that the vehicle was empty and observed that the Driver had one shoe in the vehicle and another on the ground. Sgt Blackwelder called for the Aiken County Bloodhound team to respond due to the pursuit and trafficking amount of Narcotic in the vehicle. ACSO Bloodhound team arrived on scene along with Ssgt. Gainey who set up a perimeter with responding units. Upon search of the vehicle a shot Stevens 12 gauge with serial number 151268N was located and was confirmed stolen with Williston Police Department (Supplemental assist other Agency report 20-010206 was completed for stolen gun recovery). During a tow inventory for Busbee towing a bottle of Vodka was located next to the driver seat along with a torch lighter and a glass meth pipe. In the vehicle it was observed that mail and paper work with the name Johnathon Lincoln was in the vehicle which matched the tag registration. The vehicle registration was located with the same name along with several medicine bottles with the name Johnathon Lincoln. Sgt Knight had ACSO Road units go to the address of the possible Defendant to see if the vehicle had been stolen or if the owner knew of the whereabouts of the vehicle. ACSO road units stated that the house appeared to be vacant. Sgt Knight collected evidence from the scene and placed into ACSO Evidence locker and photographed the evidence. Vehicle was secured by Busbee towing. No further at this time. Sgt Knight will follow up and attempt to identify the Defendant.						
Subject Identified ☐ Yes ☒ No		Subject Located ☐ Yes ☒ No		☐ Active	☐ Admin Closed	☐ Unfounded
				☐ Arrest over 18	☐ Arrest under 18	☐ Ex Clear over 18
Reason for Ex Clear						
☐ Offender Death		☐ No Prosecution		☐ Extradition Denied		☐ Victim Declines Coop.
☐ Juv. no custody						
Reporting Officer	Date	Employee Number	Approving Officer	Date	Employee Number	Follow-up Invest.
Sgt. Knight	2-27-20	5127				☐ Yes ☐ No
			Follow-up Investigation Officer			

AGENCY I.D.
SC0020000

SUPPLEMENTAL INCIDENT REPORT

20

010190

INQ.

ENTO.

☐ ORIGINAL REPORT		☐ SUPPLEMENTAL REPORT		☐ ADDITIONAL VICTIMS		☐ ADDITIONAL STOLEN PROPERTY		PAGE 1 OF 2 PAGES	
☐ MODIFIED ORIGINAL		☐ CASE STATUS CHANGE		☐ ADDITIONAL OFFENDERS		☐ ADDITIONAL RECOVERED PROPERTY			

VICTIM/SUBJECT I.D. OVERFLOW	☐ COMPLAINT		NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	☐ VICTIM #		Lincoln, Johnathon Art					J S O U	B	M	36		N	
	☒ SUBJECT # 1		HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES ETC.							
	☐ RUNAWAY		510	155	BLK	BRO	SCDL: 011164726							
	☐ WANTED		ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE			
	☐ WARRANT		Alpine Dr		Aiken		SC	29803	165C5					
☐ ARREST		☐ VICTIM NO. : VISIBLE INJURY ☐ NO ☐ YES		☐ COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES		☐ VICTIM USING ALCOHOL ☐ NO ☐ YES ☐ UNK		☐ TWO MAN VEHICLE ☐ DETECTIVE/SPLASHT ☐ ALONE						
☐ JAIL		EXPLAIN:				DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK		☐ ONE MAN VEHICLE ☐ OTHER ☐ ASSISTED						
☐ SUMMONS		☐ SUBJECT NO. 1 : USING ALCOHOL: ☐ NO ☐ YES												
☐		USING DRUGS: ☐ NO ☐ YES TYPE: ☐ UNKNOWN												

VICTIM/SUBJECT I.D. OVERFLOW	☐ COMPLAINT		NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	☐ VICTIM #							J S O U						
	☐ SUBJECT #		HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES ETC.							
	☐ RUNAWAY													
	☐ WANTED		ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE			
	☐ WARRANT													
☐ ARREST		☐ VICTIM NO. : VISIBLE INJURY ☐ NO ☐ YES		☐ COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES		☐ VICTIM USING ALCOHOL ☐ NO ☐ YES ☐ UNK		☐ TWO MAN VEHICLE ☐ DETECTIVE/SPLASHT ☐ ALONE						
☐ JAIL		EXPLAIN:				DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK		☐ ONE MAN VEHICLE ☐ OTHER ☐ ASSISTED						
☐ SUMMONS		☐ SUBJECT NO. : USING ALCOHOL: ☐ NO ☐ YES												
☐		USING DRUGS: ☐ NO ☐ YES TYPE: ☐ UNKNOWN												

NARRATIVE	On February 27, 2020 Sgt Knight was called by Lt Lancaster and advised that the possible Defendant for the earlier pursuit was sitting on a porch of a house in the area of the last known location. Sgt Knight advised Lt Lancaster to relay to the responding units that the possible Defendant Johnathon Lincoln may fight due to his history. On the morning of February 27, 2020 Deputy Czekaj and Deputy Driscoll responded to Anderson Rd in the County of Aiken in regards to a Black Male sitting on a porch. Deputy Czekaj identified the Defendant as Johnathon Art Lincoln (20-010214) who actively resisted arrest and was under the influence of a unknown Substance. Sgt. Knight spoke with Deputy Czekaj who advised that the Subject was wearing jeans, a T-shirt, and no shoes. Sgt Knight located shoes at the crime scene at the end of the vehicle pursuit and also observed that there was no room for any passenger in the vehicle due the the entire rear of the vehicle from the back seat												
	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY								

VEH/GUN/ETC 1	STATUS		TYPE		VIN AND/OR LICENSE NO.		BOAT HULL NO. AND/OR REG. NO.		
	☐ STOLEN		☐ VEHICLE						
	☐ RECOVERED		☐ GUN		SERIAL AND/OR OWNER APPLIED NO.		STATE		
	☐ FOUND		☐ BOAT		YEAR OF REGISTRATION		YEAR OF EXPIRATION		
	☐ TOWED		☐ LICENSE PLATE		MODEL		STYLE		
	☐ SUSPECT		☐ SECURITIES/BONDS		COLOR		BRAND NAME		
☐ VICTIM		☐ ARTICLE		MISCELLANEOUS		ISSUER		SECURITIES DATE	

PROPERTY EST.	TYPE								TOTAL VALUE
	STOLEN								
	DAMAGED								
	BURNED								
	RECOVERED								
	SEIZED								

ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18	
	☐ YES ☐ NO		☐ YES ☐ NO		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER	
	REASON FOR EXCEPTIONAL CLEARANCE 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY									
	REPORTING OFFICER		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
	Sgt Knight		2-27-20		5127					
							FOLLOW-UP INVESTIGATION ☐ YES ☐ NO		OFFICER	

Attachments	
☐ Statements # _____	☐ Other Documents # _____
☐ Pictures ☐ Videos ☐ Victim Rights	

SUPPLEMENTARY REPORT

AGENCY ID
SC0020000

Case Number

20-010190

NCIC

☐ Original Report	☒ Supplemental	☐ Follow-Up	☐ Additional Victims	☐ Additional Offender	☐ Additional Stolen Property	☐ Additional Recovered Property
Incident Type:			Date:		Time:	
Victim Name:			Subject Name:			
☐ Warrant obtained by Deputy		Date:		Judge:		
☐ No suspects/leads/clues developed		Date:		Time:		
☐ Contacted victim by telephone		Date:		Time:		
☐ Contacted victim in person		Date:		Time:		
☐ Case turned over to CID		Date:		Investigator:		
Narrative:						
to the cargo area was filled with items to the roof of the vehicle. Sgt Knight also observed that the front passenger seat contained several bags and the floor board was full of property where there would be no room for a passenger to sit. while on scene at the pursuit it was observed hat only one door to the vehicle was ajar which was the driver door. Deputy Czekaj stated that the Defendant Johnathon Art Lincoln had snot all over his face and shirt. Deputy Czekaj stated that the Defendant was wet and appeared to have dirt all over his clothing as it appeared he had been running and lying down in the woods. Sgt Knight will apply for warrant son the Defendant for Trafficking meth, Trafficking Heroin, PWID cocaine, DUS, fail to stop for blue lights, SPM, and receiving stolen goods. Sgt Knight completed best kit A017103 and submitted drugs located for testing. No further.						
Subject Identified ☒ Yes ☐ No		Subject Located ☒ Yes ☐ No		☐ Active		☐ Admin Closed
				☐ Unfounded		☐ Ex Clear over 18
		☐ Arrest over 18		☐ Arrest under 18		☐ Ex Clear under 18
Reason for Ex Clear						
☐ Offender Death		☐ No Prosecution		☐ Extradition Denied		☐ Victim Declines Coop.
☐ Juv. no custody						
Reporting Officer	Date	Employee Number	Approving Officer	Date	Employee Number	Follow-up Invest.
Sgt Knight	2-27-20	5127				☐ Yes ☐ No
			Follow-up Investigation Officer			



C.C.P. & G.S.

Deputy Clerk

Aiken County Sheriff's Office

INVESTIGATIVE SUMMARY REPORT

Case Number	Defendant Name	Offense
20-010190 pg1 of 3	Johnathon A. Lincoln	Fail to Stop, Open Container, RSG, DUS

On February 26, 2020 Sgt. Knight was on patrol in the area of I-20 East Bound Mile Marker 25 in the County of Aiken sitting stationary in the median. Sgt. Knight observed a White Dodge Durango traveling east bound in the number one lane (fast lane) of the Interstate. Sgt Knight observed the vehicle pass through the high beams of the patrol vehicle and no visible outline of a driver could be seen due to the window tint being so dark. Sgt Knight then observed that the vehicle had a massive reduction in speed and a abrupt lane change to the Number two lane without using a blinker. Sgt Knight pulled out on the vehicle and observed that the vehicle was bearing a SC tag of SIY213 and initiated a traffic stop on the vehicle around the 28 mile marker east bound. Sgt Knight observed that the vehicle slowed down to approx 55mph and was not pulling over. Sgt Knight activated the patrol vehicle siren which the vehicle still continued and appeared to be pulling over at exit 29 east bound onto wire road. Sgt Knight advised ACSO Dispatch that the vehicle was slow rolling and also advised Sgt Palmer who was on wire road at the on ramp to Interstate 20. Sgt Knight observed that the vehicle slowed down and then took a right onto Wire Rd heading into Aiken. Sgt Knight advised that there was only traffic charges and terminated. Highway patrol was behind Sgt Knight and got behind the vehicle who began weaving in the roadway crossing the center line and fog line. Sgt Knight observed that the Driver of the vehicle at this time may be intoxicated due to the driving behavior being shown. Highway Patrol was told not to get involved. Sgt Knight due to experience felt that the driver was intoxicated and was a danger to the public. Sgt Knight advised ACSO Dispatch that the pursuit was terminated but due to the driving behavior being shown that the vehicle driver was possibly intoxicated and initiated blue lights and sirens. ACSO Dispatch was advised that the Driver was active running and a pursuit had been initiated. The Driver was traveling down Wire Rd at speeds of 80 mph and was unable to maintain lanes. Sgt Palmer who is pit certified was called to take lead in the pursuit and became the lead car. Sgt Knight was now the second vehicle in the pursuit and advising ACSO Dispatch along with on Duty Supervisor LT. Lancaster the speeds, direction of traveling, traffic in the area, and weather conditions at the time. The Driver turned right off of Wire Rd onto New Bridge Rd and continued at speeds of 80 mph and failing to maintain lanes. Sgt Knight observed that no traffic was on the roadway at the time of the pursuit. The Driver continued to show no signs of stopping for blue lights and sirens. Sgt Knight advised that the Driver continued up New Bridge Rd at speeds of 80 Mph and turned left onto New Holland Rd. Sgt Palmer was unable to PIT the vehicle due to the road curves and no safe zone to pit. The Driver continued up New Holland Rd at speeds ranging from 50mph to 80mph failing to maintain lane. Sgt Palmer attempted to get in position for a PIT Maneuver but was unable to do so due to the vehicle not maintaining lanes. The Vehicle continued up New Holland Rd approaching Hwy 39 at speeds of 75 Mph. Sgt Knight advised ACSO Dispatch that the vehicle left the roadway. Sgt Knight observed that the vehicle was unable to get back onto the roadway and turned further into the field headed to the wood line. Sgt Knight and Sgt Blackwelder who was trailing the pursuit due to being a K9 Handler and having a apprehension K9 followed the vehicle through the field. Sgt Knight patrol vehicle became stuck in the mud. Sgt Blackwelder continued behind the Vehicle. Sgt Palmer was unable to get into the field with his Dodge Charger Patrol vehicle. Sgt Knight advised that the Vehicle came to a stop at the back of the field and the Driver had fled from the vehicle. Sgt Knight exited the patrol vehicle and ran to the Defendant vehicle in attempt to assist Sgt Blackwelder. Sgt Blackwelder advised that the vehicle was empty and observed that the Driver had one shoe in the vehicle and another on the ground. Sgt Blackwelder called for the Aiken County Bloodhound team to respond due to the pursuit and trafficking amount of Narcotic in the vehicle. ACSO Bloodhound team arrived on scene along with Ssgt. Gainey who set up a perimeter with responding units. Upon search of the vehicle a shot Stevens 12 gauge with serial number 151268N was located and was confirmed stolen with Williston Police Department (Supplemental assist other Agency report 20-010206 was completed for stolen gun recovery). During a tow inventory for Busbee towing a bottle of Vodka was located next to the driver seat along with a torch lighter and a glass meth pipe. In the vehicle it was observed that mail and paper work with the name Johnathon Lincoln was in the vehicle which matched the tag registration. The vehicle registration was located with the same name along with several medicine bottles with the name Johnathon Lincoln. Next Page.

Officer Signature		Employee Number	5127	Date	3-6-3



Aiken County Sheriff's Office

INVESTIGATIVE SUMMARY REPORT

Case Number	Defendant Name	Offense
20-010190 pg 2 of 3	Johnathon A. Lincoln	Fail to Stop, Open Container, RSG, DUS

Sgt Knight had ACSO Road units go to the address of the possible Defendant to see if the vehicle had been stolen or if the owner knew of the whereabouts of the vehicle. ACSO road units stated that the house appeared to be vacant. Sgt Knight collected evidence from the scene and placed into ACSO Evidence locker and photographed the evidence. Vehicle was secured by Busbee towing. No further at this time. Sgt Knight will follow up and attempt to identify the Defendant.

On February 27, 2020 Sgt Knight was called by Lt Lancaster and advised that the possible Defendant for the earlier pursuit was sitting on a porch of a house in the area of the last known location. Sgt Knight advised Lt Lancaster to relay to the responding units that the possible Defendant Johnathon Lincoln may fight due to his history. On the morning of February 27, 2020 Deputy Czekaj and Deputy Driscoll responded to Anderson Rd in the County of Aiken in regards to a Black Male sitting on a porch. Deputy Czekaj identified the Defendant as Johnathon Art Lincoln (20-010214) who actively resisted arrest and was under the influence of a unknown Substance. Sgt. Knight spoke with Deputy Czekaj who advised that the Subject was wearing jeans, a T-shirt, and no shoes. Sgt Knight located shoes at the crime scene at the end of the vehicle pursuit and also observed that there was no room for any passenger in the vehicle due the the entire rear of the vehicle from the back seat to the cargo area was filled with items to the roof of the vehicle. Sgt Knight also observed that the front passenger seat contained several bags and the floor board was full of property where there would be no room for a passenger to sit. while on scene at the pursuit it was observed hat only one door to the vehicle was ajar which was the driver door. Deputy Czekaj stated that the Defendant Johnathon Art Lincoln had snot all over his face and shirt. Deputy Czekaj stated that the Defendant was wet and appeared to have dirt all over his clothing as it appeared he had been running and lying down in the woods. Sgt Knight will apply for warrant son the Defendant for Trafficking meth, Trafficking Heroin, PWID cocaine, DUS, fail to stop for blue lights, SPM, and receiving stolen goods. Sgt Knight completed best kit A017103 and submitted drugs located for testing.

Sgt. Palmer was with Sgt. Knight when he initiated a traffic stop on this listed vehicle in this case. Sgt. Knight called Sgt. Palmer to be the primary chase vehicle due to Sgt. Palmer being PIT certified. Sgt. Palmer took the primary position on Wire Rd. The vehicle then turned onto New Bridge Rd. Sgt. Palmer observed the vehicle pass the center line several times. Sgt. Gainey advised Sgt. Palmer a PIT was permitted with an appropriate location. When Sgt. Palmer attempted to get into position to PIT the vehicle, the vehicle would cross the center line and drive down the middle of the road. The driver of the vehicle would also speed up and then hit the brakes, constantly speeding up and slowing down further indicating to Sgt. Palmer of the subject's intoxication. The vehicle turned onto New Holland Rd. towards Wagener. Sgt. Palmer was unable to find an appropriate location and time to PIT the vehicle. The vehicle then left the road and drove into a field near Gyles Story Rd. Sgt. Palmer was unable to continue into the field in his vehicle but exited vehicle and went into the field on foot. Sgt. Palmer observed the subject vehicle parked in the back of the field with the driver's door ajar and all other doors were closed. Sgt. Gainey called for the tracking team and set up a perimeter. The subject was unable to located at that time. Sgt. Palmer has nothing further.

Sgt Knight observed a White Dodge Durango crossing the center line. After observing the vehicle Sgt Knight initiated a traffic stop on the vehicle bearing SC tag of SIY213. Sgt Knight observed that the Driver may have been intoxicated and advised ACSO Dispatch that the vehicle was actively fleeing. The pursuit ended when the Unknown Defendant Bailed from the vehicle and ran through the woods on the backside of a field on New Holland Rd. Upon inventory of the vehicle a black shotgun with serial number 151268N was located behind the driver seat. The shotgun came back stolen out of Williston PD. ACSO Dispatch confirmed that the gun was stolen. Gun was placed into evidence and Williston PD will secure the stolen gun from ACSO Evidence Locker. Defendant was not identified at this time.

Officer Signature	Employee Number	Date
	5107	3/6/20



Aiken County Sheriff's Office

INVESTIGATIVE SUMMARY REPORT

Case Number	Defendant Name	Offense
20-010190 Pg 3 of 3	Johnathon A. Lincoln	Fail to Stop, Open Container, RSG, DUS

On February 27 at approx 0538 hours Deputy Czekaj responded to the in reference to a suspicious person. Comp stated, unknown subject is sitting on his back porch, and he could be the sub from that ACSO was looking for hours prior to this incident, case #20-010190. Deputy Czekaj was also advised that sub has a long history of fighting police officers. On scene Deputy Czekaj and Deputy Driscoll made a contact with listed sub, who appeared to be under the influence of unknown substance. Sub had both his hands tucked in inside of his shirt, and Dep. Driscoll asked him numerous times to show us his hands. Sub did not comply, and Dep. Driscoll proceed to detain sub for the safety of officers and comp. Subject refused to be detained, and did not comply with the orders. Deputy Czekaj and Dep. Driscoll, put subject to the ground, and after long struggle and numerous orders given to subject, were able to place the handcuffs on subject. During the struggle, subject was able to get a hold of Dep. Driscoll's glasses, and broke them. Subject turned out to be the Defendant from case#20-010190. Deputy Czekaj ran Defendant name through ACSO dispatch, and he came back clear. Deputy Czekaj then transported Defendant to ACDC, without further incidents. While, exchanging the custody at ACDC, Deputy Czekaj retrieved \$65.00 (3X\$20 and 1X\$5 Bills) counterfeit money, which Deputy Czekaj enters into the evidence. When Deputy Czekaj located Defendant at Anderson Rd, Defendant was not wearing any shoes. Defendant was wearing blue jeans with wide holes around his knees, t-shirt color blue navy, and black socks.

Warrants were approved and served on the Defendant while at ACDC. END.....

Officer Signature	Employee Number	Date
	5127	3-6-24

FILED

6-27

2023

EXHIBIT C

(2) PAGES

343

AGENCY I.D.
SC0020000AIKEN COUNTY SHERIFF'S OFFICE
INCIDENT REPORT & C.S.

20

010206

EVENT	INCIDENT TYPE		FORCED ENTRY		PREMISE TYPE		UNITS ENTERED		TYPE VICTIM	
	1. Assist Other Agency		☐ YES ☒ NO		STR		0		☐ INDIVIDUAL ☐ BUSINESS ☐ FINANCIAL INST. ☐ GOVERNMENT ☐ RELIGIOUS ORG. ☐ SOCIETY/PUBLIC ☐ OTHER ☐ UNKNOWN ☐ POLICE OFF.	
	2.		☐ YES ☐ NO							
	3.		☐ YES ☐ NO							
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)										
Wire Rd / Bradley Mill Rd Aiken SC										
ZIP CODE 29803										
WEAPON TYPE										
INCIDENT DATE 2-26-20 24 HR. CLOCK 2227 TO DATE 2-26-20 24 HR. CLOCK 2227 TIME APPROX 2227 TIME DEPART 0128 LOCATION # 50F5										
COMPLAINANT NAME (LAST, FIRST, MIDDLE) Sgt. Knight										
RELATIONSHIP TO SUBJECT #1 #2 #3										
RESIDENT * J B O U										
SEX AGE ETH DAY PHONE NIGHT PHONE										
ADDRESS 420 Hampton Ave NE CITY Aiken STATE SC ZIP CODE 29803 LOCATION # 49F8										
VICTIM 1	VICTIM NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT		RESIDENT		RACE		SEX	
	Unknown		#1 #2 #3		* J B O U					
	HEIGHT WEIGHT HAIR EYES		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECuliarITIES ETC.							
	ADDRESS CITY STATE ZIP CODE		LOCATION #		DAY PHONE		NIGHT PHONE			
☐ VICTIM INJURY ☐ YES ☐ NO ☐ VICTIM USING ALCOHOL ☐ YES ☐ NO ☐ UNK. ☐ DRUGS ☐ YES ☐ NO ☐ UNK. TYPE:										
COMPLAINANT OF NON-MAJOR INJURIES ☐ YES ☐ NO										
TWO MAN VEH. ☐ ONE MAN VEH. ☐ DETECTIVE PLACED ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ ☐ U - THIS JURISDICTION ☐ S - STATE ☐ O - OUT OF STATE ☐ UNKNOWN										
SUBJECT 1	NAME (LAST, FIRST, MIDDLE)		RACE		SEX		AGE		ETH	
	Unknown									
	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECuliarITIES ETC.									
	Poss. Subject listed on page 2									
ADDRESS CITY STATE ZIP CODE LOCATION #										
SUBJECT 1: USING ALCOHOL ☐ YES ☐ NO ☐ UNK. ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO										
DRUGS ☐ YES ☐ NO ☐ UNK. TOTAL # ARRESTED 0										
DATE/TIME OF OFFENSE DATE/TIME OF ARREST										
NARRATIVE	SGT Knight observed a White Dodge Durango crossing the center line. After observing the vehicle Sgt Knight initiated a traffic stop on the vehicle bearing SC tag of SIY213. Sgt Knight observed that the Driver may have been intoxicated and advised ACSO Dispatch that the vehicle was actively fleeing. The pursuit ended when the Unknown Subject Bailed from the vehicle and ran through the woods on the backside of a field on New Holland Rd. Upon inventory of the vehicle a black shotgun with serial number 151268N was located behind the driver seat. The shotgun came back stolen out of Williston PD. ACSO Dispatch confirmed that the gun was stolen. Gun was placed into evidence and Williston PD will secure the stolen gun from ACSO Evidence Locker. Subject was not Identified. No further.									
	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY									
	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY									
	ACSO									
PROPERTY EST.	TYPE		Shotgun						TOTAL VALUE	
	STOLEN								\$	
	DAMAGED								\$	
	BURNED								\$	
RECOVERED		300						\$ 300		
SEIZED								\$		
ADMINISTRATIVE	SUBJECT IDENTIFIED ☐ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO		☐ ACTIVE ☐ ADJ. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED (BAND OVER)		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 11 AND OVER	
	REASON FOR EXCEPTIONAL CLEARANCE 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ AVAILABLE - NO CUSTODY									
	REPORTING OFFICERS		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
	Sgt. Knight		2-26-20		5127					
FOLLOW-UP INVESTIGATION ☐ YES ☐ NO OFFICER										
ACSO Form AD1003 (04/19/07) Attachments: ☐ Statements # ☐ Other Documents # ☐ ☐ Photos ☐ Videos ☐ Mutilated Rights										

AGENCY I.D.
SC0020000

SUPPLEMENTAL INCIDENT REPORT 20 - 010206

IND. ENDA

☐ ORIGINAL REPORT ☐ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIED ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY

PAGE 2 OF 3 PAGES

VICTIM/SUBJECT I.D. OVERFLOW	☐ COMPLAINT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	☐ VICTIM #	Lincoln, Johnathon		#1	#2	#3	* J S O V	B	M	35	5-23-81	N
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL REGULARITIES ETC.						
	☐ RUNAWAY	509	180	BLK	BRO							
	☐ WANTED	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	H	EVENING PHONE	H	B
☐ WARRANT	Alpine Dr		Aiken	SC	29803	48B6						
☐ ARREST	☐ VICTIM NO. : VISIBLE INJURY ☐ NO ☐ YES		COMPLAINT OF NON-VISIBLE INJURIES		☐ VICTIM USING ALCOHOL ☐ NO ☐ YES ☐ UNK		☐ TWO MAN VEHICLE ☐ DETECTIVE/PLASAT ☐ ALONE					
☐ JAIL	EXPLAIN		☐ NO ☐ YES		DRUGS ☐ NO ☐ YES TYPE: ☐ UNK		☐ ONE MAN VEHICLE ☐ OTHER ☐ ASSISTED					
☐ SUMMONS	☐ SUBJECT NO. : USING ALCOHOL ☐ NO ☐ YES											
☐ NO			USING DRUGS ☐ NO ☐ YES TYPE: ☐ UNKNOWN									

VICTIM/SUBJECT I.D. OVERFLOW	☐ COMPLAINT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	☐ VICTIM #			#1	#2	#3	* J S O V					
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL REGULARITIES ETC.						
	☐ RUNAWAY											
	☐ WANTED	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	H	EVENING PHONE	H	B
☐ WARRANT												
☐ ARREST	☐ VICTIM NO. : VISIBLE INJURY ☐ NO ☐ YES		COMPLAINT OF NON-VISIBLE INJURIES		☐ VICTIM USING ALCOHOL ☐ NO ☐ YES ☐ UNK		☐ TWO MAN VEHICLE ☐ DETECTIVE/PLASAT ☐ ALONE					
☐ JAIL	EXPLAIN		☐ NO ☐ YES		DRUGS ☐ NO ☐ YES TYPE: ☐ UNK		☐ ONE MAN VEHICLE ☐ OTHER ☐ ASSISTED					
☐ SUMMONS	☐ SUBJECT NO. : USING ALCOHOL ☐ NO ☐ YES											
☐			USING DRUGS ☐ NO ☐ YES TYPE: ☐ UNKNOWN									

NARRATIVE												

VEHICLE 1	STATUS		TYPE	VIN AND/OR LICENSE NO.		BOAT HULL NO. AND/OR HULL NO.	
	☐ STOLEN	☐ VEHICLE		1D4HB38N96F155993			
	☐ RECOVERED	☐ GUN		SERIAL AND/OR OWNER APPLIED NO.		STATE	
	☐ FOUND	☐ BOAT		SIY213		SC	
	☐ TOWED	☐ LICENSE PLATE		YEAR OF REGISTRATION		YEAR OF EXPIRATION	
	☐ SUSPECT	☐ SECURITY/BONDS		2006		MAKE DODGE TYPE SUV	
	☐ VICTIM	☐ ARTICLE		MODEL DURANGO		STYLE 4 DOOR	
				COLOR WHITE		BRAND NAME	
		SECURITY DATE					
		MISCELLANEOUS					

PROPERTY EXT.	TYPE						TOTAL VALUE
	STOLEN						
	DAMAGED						
	BURNED						
	RECOVERED						
SEIZED							

ADMINISTRATIVE	SUBJECT IDENTIFIED ☐ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18		☐ EXCELSIOR UNDER 18	
					☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EXCELSIOR 18 AND OVER	
	REASON FOR EXCEPTIONAL CLEARANCE 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY									
	REPORTING OFFICERS		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER		
Sgt. Knight		2-26-20	5127							
				FOLLOW UP INVESTIGATION ☐ YES ☐ NO						

FILED

6-27 2023

EXHIBIT D (1) PAGE

345

Robert J. White
C.C.P. & G.S.Shadell Sparks
Deputy Clerk

SUPPLEMENTARY REPORT

AGENCY ID

SC0020000

Case Number

20-010190

NCIC

☐ Original Report	☒ Supplemental	☐ Follow-Up	☐ Additional Victims	☐ Additional Offender	☐ Additional Stolen Property	☐ Additional Recovered Property
Incident Type: Vehicle Pursuit				Date: 2/26/20		Time: 2227
Victim Name: Society/Public			Subject Name: Lincoln, Jonathan			
☐ Warrant obtained by Deputy		Date:		Judge:		
☐ No suspects/leads/clues developed		Date:		Time:		
☐ Contacted victim by telephone		Date:		Time:		
☐ Contacted victim in person		Date:		Time:		
☐ Case turned over to CID		Date:		Investigator:		
Narrative: Sgt. Palmer was with Sgt. Knight when he initiated a traffic stop on this listed vehicle in this case. Sgt. Knight called Sgt. Palmer to be the primary chase vehicle due to Sgt. Palmer being PIT certified. Sgt. Palmer took the primary position on Wire Rd. The vehicle then turned onto New Bridge Rd. Sgt. Palmer observed the vehicle pass the center line several times. Sgt. Gainey advised Sgt. Palmer a PIT was permitted with an appropriate location. When Sgt. Palmer attempted to get into position to PIT the vehicle, the vehicle would cross the center line and drive down the middle of the road. The driver of the vehicle would also speed up and then hit the brakes, constantly speeding up and slowing down further indicating to Sgt. Palmer of the subject's intoxication. The vehicle turned onto New Holland Rd. towards Wagener. Sgt. Palmer was unable to find an appropriate location and time to PIT the vehicle. The vehicle then left the road and drove into a field near Gyles Story Rd. Sgt. Palmer was unable to continue into the field in his vehicle but exited vehicle and went into the field on foot. Sgt. Palmer observed the subject vehicle parked in the back of the field with the driver's door ajar and all other doors were closed. Sgt. Gainey called for the tracking team and set up a perimeter. The subject was unable to located at that time. Sgt. Palmer has nothing further.						
Subject Identified ☒ Yes ☐ No		Subject Located ☒ Yes ☐ No		☐ Active	☐ Admin Closed	☐ Unfounded
				☐ Arrest over 18	☐ Arrest under 18	☐ Ex Clear over 18
Reason for Ex Clear						
☐ Offender Death		☐ No Prosecution		☐ Extradition Denied		☐ Victim Declines Coop.
						☐ Juv. no custody
Reporting Officer	Date	Employee Number	Approving Officer	Date	Employee Number	Follow-up Invest.
C. Palmer	2/27/20	6878				☐ Yes ☐ No
			Follow-up Investigation Officer			

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EXHIBIT E (1 PAGE)



Aiken Bloodhound Tracking Team Call-Out Report

Page 1 of 1

Start Date/Time: 2/26/20 2227	End Date/Time: 2/27/20 0130	Call Canceled: ☐
Location: Wire Rd and Beverdam Rd Aiken Sc		Case Number: 20 - 010190
Requesting Agency: ACSO	Weather: clear	Temperature: 50
Type of Call: Vehicle chase/jump an run	Weapons Used: none	Weapon Type: none
Total Hours: 3	Estimated Tracking Distance: .8	Reporting Officer: carey

Dogs Used

Titus

Team Members Present

Carey

Pearson

Windburn

Anderson

Subject Name	Sex	Race	Date of Birth	Capture
1. unknown	Male	Black	unknown	☐
2.	Select	Select		☐
3.	Select	Select		☐
4.	Select	Select		☐

Evidence Collection

Number of Pieces: none

Type of Evidence:

Collected By:

Narrative

ABTT was called for assistance in locating a subj who fled on foot after been in a vehicle chase with ACSO officer's. ABTT arrived on scene and met with on scene officer (ACSO) who stated that after the chase ended the subj took off running. ABTT located the subj's shoe laying on the ground beside the driver door. ABTT struck bloodhound Titus at the drivers door. Titus immediately struck and began tracking through the woods. approximately 50yards into the woods we observed several slide marks coming from the subj sliding down a small hill. Titus continued on the track constantly baying. ABTT tracked out to an open field, and we was able to meet back up with titus. Once back up with Titus he began circling this large hay field and a section of woods. ABTT searched the hay feild and wooded area where Titus was circling for approximately two hours trying to locate the subj but with negative results on finding him or any signs. ABTT advised on scene officer of findings. No further.

Supervisor Approval

Date

SSG. R.D. Pearson 5190

3/13/20



Aiken County Sheriff's Office
GENERAL SESSIONS PACKET

347

Initial ☒
Final ☐
Supplemental ☐

Deputy Name	Agnieszka Ferrell	Division/Shift	Patrol Division C-Shift
Case Number	20 - 010214		
Lab Numbers			

Case Synopsis	☒
Incident Report	☒
Supplemental	☒
Miranda Waiver	☐
Arrest Warrant	☒
Booking Sheets	☒
Search Warrant	☐
Crime Scene Sketch	☐

Defendant	Lincoln, Jonathan Art				
Address	Alpine Dr				
City	Aiken	State	SC	Zip	29803
Race	B	Sex	M	Date of Birth	1983
Social Security Number					
Co-defendant					
Co-defendant					

VICTIM STATEMENTS

1st Name					
Social Security Number	- -	Date of Birth	- -		
Address					
City		State		Zip	
2nd Name					
Social Security Number	- -	Date of Birth	- -		
Address					
City		State		Zip	
3rd Name					
Social Security Number	- -	Date of Birth	- -		
Address					
City		State		Zip	

WITNESS STATEMENTS

1st Name					
Social Security Number	- -	Date of Birth	- -		
Address					
City		State		Zip	
2nd Name					
Social Security Number	- -	Date of Birth	03 - -		
Address					
City		State		Zip	
3rd Name					
Social Security Number	- -	Date of Birth	- -		
Address					
City		State		Zip	

DEFENDANT STATEMENT

MEDICAL REPORTS

EMS	☐
Hospital	☐
Coroner	☐
Sexual Assault Kit	☐

OTHER REPORTS

Bloodhound Call Out	☐
Fire Run Report	☐
Tow Sheet	☐
Warrant Service Supp.	☒

EVIDENCE REPORTS

Lineups	☐
Evidence Receipts	☐
Evidence Analysis	☐
Lab Reports	☐
Property Recovered	☐
Photographs	☐
Video	☐
Audio	☐

NCIC CRIMINAL HISTORY

Defendant	☐
Victim	☐
Witness	☐

WARRANT NUMBER

2020A0210200368	Resisting of Arrest
2020A0210200369	MIPP

TRAFFIC CASE

UT# 5102P0016128	Date 02 - 27 - 2020
UT#	Date - -

DATA MASTER REPORT

Yes	No

COURT DISPOSITION

Preliminary	Grand Jury	Trial
Disposition		

FILED

6-27

20 23

Approved	Clonard
Date	03-09-20

EXHIBIT F

Deputy Clerk



Aiken County Sheriff's Office
GENERAL SESSIONS PACKET

Initial ☒
Final ☐
Supplemental ☐

Deputy Name	B. Knight, SGT	Division/Shift	Special Operations
Case Number	20 - 010190		
Lab Numbers			

Case Synopsis	☒
Incident Report	☒
Supplemental	☒
Miranda Waiver	☐
Arrest Warrant	☒
Booking Sheets	☒
Search Warrant	☐
Crime Scene Sketch	☐

Defendant	Johnathon Art Lincoln		
Address	133 Alpine DR		
City	Aiken	State	SC
Zip	29803		
Race	B	Sex	M
Date of Birth	1983		
Social Security Number			
Co-defendant			
Co-defendant II			

VICTIM STATEMENTS

1. Name			
Social Security Number	- -	Date of Birth	- -
Address			
City		State	Zip
2. Name			
Social Security Number	- -	Date of Birth	- -
Address			
City		State	Zip
3. Name			
Social Security Number	- -	Date of Birth	- -
Address			
City		State	Zip

WITNESS STATEMENTS

1. Name			
Social Security Number	- -	Date of Birth	- -
Address			
City		State	Zip
2. Name			
Social Security Number	- -	Date of Birth	03 - -
Address			
City		State	Zip
3. Name			
Social Security Number	- -	Date of Birth	- -
Address			
City		State	Zip

DEFENDANT STATEMENT

MEDICAL REPORTS	OTHER REPORTS
EMS ☐	Bloodhound Call Out ☐
Hospital ☐	Fire Run Report ☐
Coroner ☐	Tow Sheet ☒
Sexual Assault Kit ☐	Warrant Service Supp. ☒

EVIDENCE REPORTS
Lineups ☐
Evidence Receipts ☒
Evidence Analysis ☐
Lab Reports ☐
Property Recovered ☐
Photographs ☒
Video ☒
Audio ☒
NCIC CRIMINAL HISTORY
Defendant ☐
Victim ☐
Witness ☐

WARRANT NUMBER	CHARGE
2020A0210200375	Drugs, Poss of Controlled Sub
2020A0210200390	Failure to stop
2020A0210200391	SPM MTF
2020A0210200393	Trafficking meth
2020A0210200394	RSG
TRAFFIC CASE	
UT#	Date
UT#	Date
DATA MASTER REPORT	
Videotape ☐	In Car ☐
BA Room ☐	
COURT DISPOSITION	
Preliminary ☐	Grand Jury ☐
Disposition	Trial ☐

Approved	<i>SSB</i>
Date	3-6-2020

6-27 2023

Robert J. White
CCCP & G.S.
Shirley Tucker
Deputy Clerk

- EXHIBIT G (1) PAGE

MAR 04 2020

State of South Carolina v. JONATHAN A. ~~Lincoln~~

Statement of: Jennifer Thompson

Date: 8/11/2020

Time: 11:15 AM

Witnessed by: MT BANT

On February 26th ~~on 2/26/2020~~ between 10 pm - and 11 pm I was leaving a friends house out by the interstate and when I was coming up Frontage Road I seen someone walking, I realized it was Jonathan Lincoln so I stopped to check on him, he said someone jumped in his truck when he got out to pee. He asked for a ride I told him to call and report the vehicle stolen but instead he said he located where his phone was and asked me to drop him off on New Holland Road. When I dropped him off I didn't see his vehicle any where so I really didn't understand what was going on but I had to get home so I ~~drove~~ left him there.

Using my phone

Jennifer Thompson
~~for [illegible]~~
Kommaste
~~[illegible]~~
Aiken SC

Sworn and Subscribed to before me this 11th day of August 2020

Michael J. [illegible]
Notary Public

My Commission expires: 6/6/2022

FILED

10-27-2023

Robert L. White
C.C.D.P. & G.S.Shadell Parks
Deputy Clerk

Public Defender for the Second Judicial Circuit

211 York Street, N.E.

Post Office Drawer 2247

Aiken, South Carolina 29801

De Grant Gibbons, Circuit Public Defender

November 15, 2022

Ridgeland Correctional Institution
Attn: Mr. Jonathan Lincoln
SCDC ID: 00285492
PO Box 2039
Ridgeland, SC 29936

Re: Documents

Dear Mr. Jonathan Lincoln:

Enclosed please find the following documents:

1. Copies of the Indictments
2. Aiken City Police report which charges were dismissed
3. Aiken County Sheriff Report
4. Drug Results from the Aiken County Sheriff Department
5. Written Statement from [REDACTED]

If you have any questions feel free to contact me.

Sincerely,



Suzanne Hayes
Aiken County Public Defender

Enclosures

Public Defender for the Second Judicial Circuit

211 York Street, N.E.
Post Office Drawer 2247
Aiken, South Carolina 29801

June 17, 2020

Mr. Jonathan Art Lincoln
Aiken County Detention Center
435 Wire Road
Aiken, SC 29801

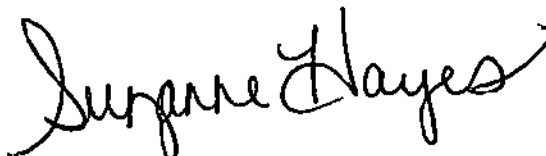
re: Warrants 2020a0210200368; 2020a0210200370; 2020a0210200371;
2020a0210200375; 2020 A02 102 00390; 2020 A02 102 00391; 2020 A02 102 00393;
2019 A02 201 01218; 2019 A02 201 01219

Dear Mr. Lincoln:

Enclosed please find the Discovery that I have in my file other than the videos that the State has provided. Please review these documents so we can go over them when I come to see you next time. We will also review videos.

Please do not hesitate to call my office if you have any questions.

Sincerely,



Suzanne Hayes
Attorney

email address:

Shayes@aikenpd.com

FILED 6-27 20 23
Robert J. White
C.C.P. & G.S.
J. AA [illegible]
Deputy Clerk

- EXHIBIT J (1) PAGE -

Public Defender for the Second Judicial Circuit

211 York Street, N.E.

Post Office Drawer 2247

Aiken, South Carolina 29801

De Grant Gibbons, Circuit Public Defender

April 27, 2022

Mr. Jonathan Lincoln
Ridgeland Correctional Institution
PO Box 2039
Ridgeland, SC 29936

Re: Pending Criminal Charges / Warrant#: 2020a0210200370; 2020a0210200375;
2020a0210200368; 2020 A02 102 00393; 2020a0210200371; 2020 A02 102 00390;
2020 A02 102 00391; 2019 A02 201 01218; 2019 A02 201 01219; 2019 A0220101220;
M-035298; M-035299; M-035300; M-035301; M-035303; M-035304; M-035306;
M-035307; M-006624

Dear Mr. Jonathan Lincoln:

Enclosed please find the discovery in regards to your charges that you have requested. I have not included any video discovery because I am not allowed to send it to you while you are at SCDC. However, if you send me permission I can make copies and turn them over to a family member if you send me something in writing.

All pending charges that were remaining in General Sessions have been dismissed. In order to get these charges expunged off your record you will need to contact the Second Circuit Solicitors Office.

You can contact them at the following address:

Second Circuit Solicitors Office
PO Drawer 3368
Aiken, SC 29802

Public Defender for the Second Judicial Circuit

211 York Street, N.E.
Post Office Drawer 2247
Aiken, South Carolina 29801

De Grant Gibbons, Circuit Public Defender

Please feel free to contact me if you have any questions.

Sincerely,

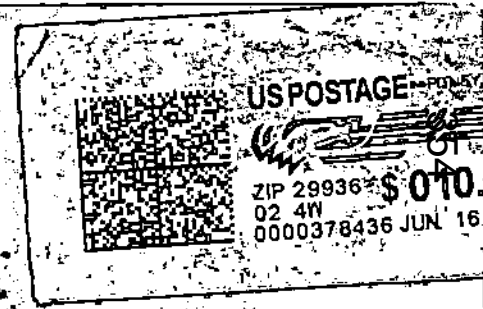

Suzanne Hayes
Aiken County Public Defender

Enclosure

Telephone: (803) 642-1732

Fax: (803) 642-1739

JONATHAN ARTHUR LINCOLN
CORRECTIONAL ROAD / P.O. BOX 2039
RIDGELAND, SOUTH CAROLINA
29936



COURT OF COMMON PLEAS
FOR THE
2ND JUDICIAL CIRCUIT
CLERK OF COURT

ATTN: HON. ROBERT J. HARTE
P.O. BOX Q, 109 PARK AVE S E
AIKEN, SOUTH CAROLINA
29802-0680

RIDGELAND CORRECTIONAL
INSTITUTION
JUN 16 2023
Mailroom

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
Jonathan Art Lincoln, #285492,	)	Case No. 2023-CP-02-01449
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
	)	(COUNSEL APPOINTED)
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief (PCR) action commenced by Jonathan Art Lincoln (Applicant) on June 27, 2023, and received by the State on January 2, 2024, the State makes this return¹:

PROCEDURAL HISTORY

During its December 2020 term, the Aiken County Grand Jury indicted Applicant for trafficking in methamphetamine, 28 – 100 grams (2020-GS-02-02100), possession with intent to distribute cocaine (2020-GS-02-02097), possession with intent to distribute heroin (2020-GS-02-

¹ Respondent's return to the application were due to be filed within ninety days of receipt. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") Now, having completed the returns required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept these returns as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

FILED March 13 20 24
Robert J. White 1240
 C.C.P. & G.S.
Charla Peartie cmr

02098), resisting arrest (2020-GS-02-02906), and failure to stop for a blue light (2020-GS-02-02099). Applicant was represented by Suzanne Hayes, esquire. The case was prosecuted by Assistant Solicitor Ashley Hammack.

On July 21-23, 2021, Applicant proceeded to a jury trial before the Honorable Jocelyn Newman. The jury acquitted Applicant of the failure to stop for a blue light and resisting arrest. The jury found Applicant guilty of trafficking in methamphetamine and both PWID charges. Judge Newman sentenced Applicant to thirty (30) years on each charge, with those sentences to be served concurrently.

Applicant filed a timely notice of appeal. The appeal was perfected by Appellate Defender Lara Caudy of the South Carolina Commission on Indigent Defense – Appellate Division by filing a brief pursuant to Anders v. California.² The South Carolina Court of Appeals affirmed Applicant's convictions in an unpublished opinion. State v. Jonathan Art Lincoln, Unpub. Op. No. 2022-UP-393. The remittitur was sent on November 18, 2022.

FACTS

On February 26, 2024, law enforcement pulled over Applicant's vehicle. During the traffic stop, Applicant suddenly fled in his vehicle. Law enforcement commenced a search for Applicant that continued into early the next morning. Law enforcement located Applicant's vehicle and, following a search of the vehicle, found cocaine, heroin, and methamphetamine. Law enforcement then found Applicant hiding in the carport of a gentleman's home. The gentleman called 911 when he discovered Applicant on his property. Law enforcement responded and Applicant was subsequently arrested.

(R. pp. 31 – 38).

² Anders v. California, 386 U.S. 738 (1967).

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following³:

1. Trial Court error
 - a. Extraneous or Improper Influence on Jury
 - b. Improper Jury Instruction
2. Prosecutorial Misconduct
 - a. Brady Violation
 - i. State failed to disclose Aiken Bloodhound Tracking Team report.
 - b. Improper Opening Statement
 - c. Improper Vouching
 - d. Improper Comments and Questions on Direct-Examination (Cumulative, Vouching, Bolstering, Inflammatory, and Leading)
 - e. Improper Questioning on Cross-Examination (Pitting)
 - f. Improper Questioning by State on Cross-Examination (404(b) evidence)
 - g. Prosecution Presenting Testimonial Evidence if Knew or Should Have Known to be False; Failure to Correct Inconsistent Testimony of State's Witness
 - h. Improper Closing Arguments
3. Ineffective Assistance of Counsel
 - a. Trial Counsel failed to investigate and prepare for trial.
 - b. Failure to call alibi witness.
 - c. Failure to introduce ABTT "Call-Out Report"
 - d. Failure to move to sever prejudicial joinder of offenses; Failure to move for mistrial upon trial court's decision to direct verdict on joined offense.
 - e. Failure to move for mistrial or object to SCRE 404(b) violation; and Failure to move to strike improper 404(b) question and resulting response by witness
 - f. Failure to properly object and preserve the record for appeal.
 - g. Cumulative error

Attached to this return and incorporated by reference are the Aiken County Clerk of Court records regarding the subject conviction, the trial transcript, the records from Applicant's direct appeal, and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

RESPONSE TO ALLEGATIONS OF TRIAL COURT ERROR

Applicant asserts various allegations of trial court error. These issues are improper for post-conviction relief because they could have been raised on direct appeal and are procedurally

³ See Applicant's Memorandum in Support of Post-Conviction Relief for full explanation of allegations.

barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Thus, these allegations should be dismissed.

RESPONSE TO ALLEGATIONS OF PROSECUTORIAL MISCONDUCT

Applicant asserts various allegations of prosecutorial misconduct. Respondent submits Applicant's allegations are without merit. Nevertheless, to the extent Applicant's allegations are not conclusively refuted by the record, Respondent requests an evidentiary hearing be held to fully resolve these issues.

RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not

sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an

adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective

assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 687 (emphasis added).

Applicant makes various allegations of ineffective assistance of counsel. Respondent submits these allegations are without merit.

Conclusion and Action Requested

Respondent denies these allegations; however, to the extent Applicant's allegations are not conclusively refuted by the record, the State requests an evidentiary hearing be held to fully

resolve those issues. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. Id. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP; see also Rules 15(a)-(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. See Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from

the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

[SIGNATURE PAGE FOLLOWS]

CONCLUSION

WHEREFORE, the State respectfully requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.

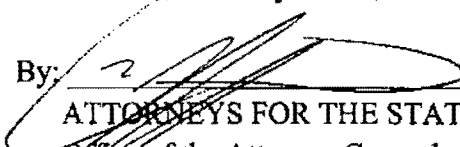
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

T. CRUISE MITCHELL
Assistant Attorney General

By: 

ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

February 28, 2024

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

) IN THE COURT OF COMMON PLEAS
) FOR THE SECOND JUDICIAL CIRCUIT
)
)

Jonathan Lincoln, #285492,
Applicant,

) Case No.: 2023-CP-02-01449
)

v.
State of South Carolina,
Respondent.

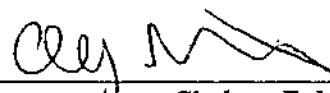
) **APPLICANT'S AMENDED APPLICATION**
)
)
)

NOW COMES Applicant, Jonathan Lincoln, amending his application filed June 27,
2023. In addition to the allegations raised in his initial application, Mr. Lincoln, through PCR
Counsel, submits the following:

1. Ineffective assistance of counsel:

- a. Failure to request a *Logan* charge.
- b. Failure to move to sever the resisting arrest charge from the other charges.

Based upon the above, Mr. Lincoln requests that this Court grant relief, vacate the
convictions, and remand the case to the court of general sessions for a new trial.



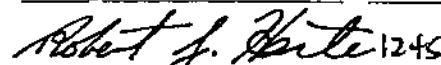
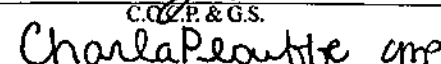
Chelsey F. Marto
Attorney at Law
S.C. Bar No. #104191

The Law Office of Chelsey F. Marto, LLC
P.O. Box 8795
Columbia, SC, 29201

(864)-404-5583
info@chelseymarto.com

For Applicant Jonathan Lincoln

June 9, 2025

FILED JUNE 12 2025

C.C.P. & G.S.

Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

) IN THE COURT OF COMMON PLEAS
) FOR THE SECOND JUDICIAL CIRCUIT
)
)

Jonathan Lincoln, #285492,
Applicant,

) Case No.: 2023-CP-02-01449
)

v.

) Affidavit of Service by Mail
)

State of South Carolina,
Respondent.

)
)
)

1. I am the attorney for Applicant in the above-captioned matter.

2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.

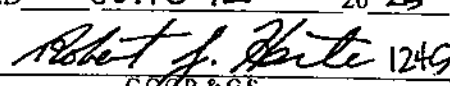
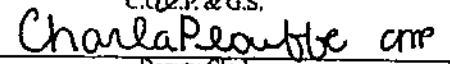
3. I have this day served a copy of the Amended Application on the above-captioned matter on the following person by depositing the same in the United States mail with the proper postage affixed thereto:

Office of the Attorney General
Attn: T. Cruise Mitchell, Esquire
PCR Division
P.O. Box 11549
Columbia, SC, 29211



Attorney for Applicant

June 9, 2025

FILED June 12 20 25

C.C.P. & G.S.

Deputy Clerk

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	2023-CP-02-01449
	)	
	)	
	)	
JONATHAN ARTNEI LINCOLN,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
_____	)	

June 10, 2025
Aiken, South Carolina

B E F O R E:

THE HONORABLE DEBRA R. MCCASLIN, JUDGE.

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

CHELSEY F. MARTO, ESQ.
Attorney for the Applicant

CRUISE MITCHELL, ESQ.
Attorney for the Respondent

Penny M. Johnson
Court Reporter III

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent Witness

	<u>Page No.</u>
<u>(AW) JONATHAN LINCOLN:</u>	
Direct Examination by Ms. Marto.....	5
Cross-Examination by Mr. Mitchell.....	45
<u>(RW) SUZANNE HAYES:</u>	
Direct Examination by Mr. Mitchell.....	48
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E X H I B I T S

(There were no exhibits admitted.)

P R O C E E D I N G S

MR. MITCHELL: May it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. MITCHELL: This is the post-conviction relief matter of Jonathan A. Lincoln V. State, case number 2023-CP-02-01449 out of Aiken County. I am Cruise Mitchell on behalf of the State of South Carolina. Applicant is present represented by counsel, Chelsey Marto.

During the December 2020 term, the Aiken Grand Jury indicted the Applicant for trafficking in methamphetamine, 28 to 100 grams, possession with intent to distribute cocaine, possession with intent to distribute heroin, resisting arrest and failure to stop for a blue light. Applicant was represented by Suzanne Hayes. The case was prosecuted by Assistant Solicitor Ashley Hammack.

On July 21st through the 23rd, 2021, Applicant proceeded to a jury trial before the Honorable Jocelyn Newman. The jury acquitted Applicant of failure to stop for a blue light and resisting arrest charges. The jury found Applicant guilty of trafficking in methamphetamine and both PWID charges. Judge Newman sentenced Applicant to 30 years on each charge with those sentences to be served concurrently.

Applicant filed a timely notice of appeal. The appeal is perfected by Appellate Defender Lara Caudy of the South

1 Carolina Commission on Indigent Defense, appellate division
2 by filing a brief pursuant to Anders v. California.

3 The South Carolina Court of Appeals confirmed
4 Applicant's conviction in an unpublished opinion. The
5 remittitur was sent on November 18th of 2022.

6 With that, Your Honor, I'll turn it over to Ms. Marto.

7 THE COURT: Okay. Go ahead.

8 MS. MARTO: Good morning, Judge. We're going forward
9 with the hearing today based upon the original memorandum my
10 client filed in conjunction with his original PCR as well as
11 a recent amendment raising two other issues. I do have a
12 copy of both for Your Honor.

13 THE COURT: Thank you.

14 This is dated yesterday. Did you see the amended
15 application?

16 MR. MITCHELL: Yes, Your Honor.

17 THE COURT: And you're ready to go forward?

18 MR. MITCHELL: I am, Your Honor.

19 THE COURT: Go ahead.

20 MS. MARTO: Thank you, Your Honor.

21 We would call Mr. Lincoln.

22 JONATHAN LINCOLN,

23 after being duly sworn, testified as follows:

24 The APPLICANT: I will.

25 THE COURT: Please take a seat in the witness stand.

Jonathan Lincoln - Direct by Ms. Marto

1 State your full name for the Court.

2 THE COURT: Ms. Marto, did you tell me the resisting
3 arrest --

4 MR. MITCHELL: Your Honor, that was my mistake. The
5 resisting arrest charge was a directed verdict.

6 THE COURT: Surely, he's not appealing that.

7 MS. MARTO: No, Your Honor. We're just here on the
8 remaining charge.

9 THE COURT: Which is the failure to request the Logan
10 charge, which is the law on circumstantial evidence charge.
11 Am I missing something?

12 MS. MARTO: Yes, Your Honor, that's part of the
13 allegations he wishes to raise today.

14 THE COURT: Okay. Go ahead.

15 DIRECT EXAMINATION

16 BY MS. MARTO:

17 Q Mr. Lincoln, can you state your full name for the
18 record, please?

19 A Jonathan Arneil Lincoln.

20 Q Sir, what were you charged with?

21 A I was charged with resisting arrest, failure to stop
22 for a blue light, possession with intent to distribute
23 cocaine, possession with intent to distribute heroin and
24 trafficking methamphetamine.

25 Q And what was the outcome of your trial?

1 A I received 30 years for the three drug offenses to run
2 concurrent.

3 Q And who were you represented by?

4 A I was represented, lead counsel by Suzanne Hayes,
5 second chair was Barry Thompson.

6 Q How do you feel that counsel represented you at trial?

7 A Insufficiently.

8 Q Do you have a specific example of why you feel like
9 they represented you insufficiently?

10 A Yes, ma'am, I have several.

11 Q Roughly, do you recall how many times they met with
12 you?

13 A Do I recall how many times what?

14 Q They met with you?

15 A About four.

16 Q Do you recall in broad strokes what you discussed
17 during those meetings?

18 A We, basically, just discussed me taking a plea and I
19 was 100 percent against it because I felt like the evidence
20 was not there and I was not guilty.

21 Q And what evidence did they have against you?

22 A Basically, drugs were found in my truck.

23 Q Were you found in your truck?

24 A No, ma'am. I was nowhere near it. My truck had been
25 stolen. Excuse me, if I can get to my notes right quick.

1 Initially, when I asked my attorney why in her legal
2 opinion -- in her professional opinion why I shouldn't go to
3 trial and why I should lose and her response was because the
4 jury was not going to look like me. I asked her to expound
5 upon that and she, basically, told me that my jury would
6 consist of white people who were engineers at Savannah River
7 Site and they would all look at me as a drug dealer because
8 I was black, basically.

9 Q What was your defense at trial?

10 A My defense at trial was that I wasn't there. I did not
11 possess the drugs. I was nowhere to be found. My truck was
12 stolen from me. I used Google to track my phone, to locate
13 my phone, which was in my truck. I eventually located where
14 my truck was at, I went to that area. At that time, the
15 truck was gone. I later found out that the police had towed
16 my truck because it was involved in a high speed chase and
17 the driver had jumped out.

18 So when I got down there, I didn't see my vehicle. I
19 was just, basically, stranded, so I sat on a guy's porch.
20 The guy called the police and here we are.

21 Q You claimed at trial that your nephew stole your truck;
22 is that correct?

23 A Excuse me?

24 Q You claimed at trial that your nephew stole the truck;
25 is that correct?

1 A I said that my nephew -- I pulled up to my nephew's
2 house and my car backed out of the -- my car was backing out
3 of the driveway. And that I assumed it was my nephew
4 because I was at his house.

5 Q How do you feel that counsel did in putting forth that
6 defense at trial?

7 A They didn't put forth a defense at all. They didn't
8 defend me against the State's numerous infractions and
9 errors that they did. But as far as a defense, I,
10 basically, had to take the stand and fend for myself.
11 There's a number of issues with the representation that I
12 had. Let me know when you're ready for me to go into them.

13 Q I believe some of those issues had to do with failure
14 to object to opening and closing arguments; is that correct?

15 A Yes, ma'am.

16 Q And can you identify some of those examples for me?

17 A In closing arguments, Ashley Hammack, I believe, she
18 referred to -- and I go to the issue, it would be -- one can
19 be found on Page 60 under the heading of failure to properly
20 object and preserve the record for appeal.

21 The relevant facts are as follows: In her closing
22 argument, Ashley Hammack, Assistant Solicitor Hammack
23 referred to matters that were not supported by the trial
24 record. During her closing argument before the jury, the
25 Assistant Solicitor argued and importantly, in that bag in

1 the front passenger seat is scales. He, the Applicant,
2 which is me, answered Solicitor Weeks on cross-examination,
3 yes, it's possible I left my scales in my truck. These were
4 her words. These don't measure out hamburger or chicken.
5 This can be found in the record at Page 173, Lines 20
6 through 24.

7 Also, she said, In this case, the drugs were found in a
8 bookbag in the Defendant's car in the passenger seat. That
9 bookbag did not just have drugs in it. In that bookbag had
10 these scales, which are commonly used to weigh drugs, to
11 measure out how much you're going to sell. That can be
12 found at Page 184, Lines 18 through 22 in the record, in the
13 trial transcript.

14 And the other thing that was in that bag with these
15 scales is -- that can be found on Page 185 in the record,
16 Lines 3 through 4. Again, these scales are his that he left
17 in his truck. They were found in the same bag as his drugs.
18 So the scales are his, but the drugs aren't. That can be
19 found at Page 187, Lines 2 through 5.

20 After my adamant prompting of Counselor Thompson, he
21 reluctantly interrupted Assistant Solicitor Hammack and
22 half-heartedly informed the Judge that he had an objection
23 and a matter of law that needed to be addressed outside the
24 presence of the jury. That would be Page 187, Lines 10
25 through 12.

1 Once the jury was excused, Counsel asserted the
2 solicitor was arguing facts not in evidence. Initially, he
3 argued that there was no testimony that the scales were
4 found in the passenger seat of Applicant's vehicle.
5 Thompson then conceded that evidence that the scales were
6 right there with the drugs would be very damning to the
7 Applicant and critical to the State's case. However,
8 Counselor maintained such evidence was not presented during
9 the course of the trial. He was saying that those things
10 that Ashley Hammack said were not actually said, were not a
11 part of the record.

12 Q Just so we're all following, you wanted counsel to
13 object because the Solicitor, in your opinion, was making
14 statements of fact that were found outside the record in
15 testimony; is that correct?

16 A Yes, ma'am. According to the trial record, she made
17 the statement that the officer said that the scales were in
18 the bag with the drugs. The officer never made that
19 statement. At best, you could say that he said the scales
20 were in the same seat with the drugs.

21 She, also, said that I claimed ownership of the drugs
22 and that Solicitor Weeks asked me were the scales mine.
23 Solicitor Weeks never asked me were the scales mine. I
24 never claimed ownership of the scales. That was a complete
25 fabrication. Again, there was no objection to any of this.

1 Might I, also, add that the reason that was important
2 is there was no link between me and the impermissible item
3 and the drugs. So the State was attempting to create a
4 substantial link between myself and the contraband by way of
5 the scales and me claiming ownership, which I did not do.

6 Q And had counsel objected, what do you think the outcome
7 would have been?

8 A Counsel did object.

9 Q Okay.

10 A He finally objected. When he objected, he made the
11 wrong objection. He did not even mention about the scales
12 being mine or not being mine. And he didn't drive home the
13 point of the scales being inside the bag versus on the same
14 seat with the bag. So he dropped the ball on the objection.
15 Consequently, he moved for mistrial. That can be found at
16 187, Line 13 through 188, Line 11.

17 So Assistant Solicitor Hammack claimed her recollection
18 of the relevant testimony of Sergeant Knight and the
19 Applicant was that Knight explicitly testified that there
20 was a bookbag on the passenger seat which contained both
21 scales and the drugs, that Applicant had explicitly
22 testified that the scales were his. Hammack relied on her
23 erroneous recollection of an exchange on cross-examination
24 between Solicitor Weeks and the Applicant in which Hammack
25 purports that Mr. Weeks asked him a two-part question --

1 I'm quoting from the record. Mr. Weeks asked him a
2 two-part question. A, are these your scales and B, were
3 they in your truck? And her recollection, she said that the
4 Applicant said yes, the scales are mine -- or yes, these are
5 my scales. And it's possible that I put them in my truck.
6 Hammack continued, But my recollection of the testimony is
7 that Sergeant Knight said specifically that those scales and
8 baggies were found in the bookbag in the passenger seat with
9 the drugs. That's 188, Line 13 through 189, 12.

10 Counsel Thompson asked the Judge to have the court
11 reporter look back at the testimony. Thompson, also, assert
12 the position that Applicant originally requested him to
13 assert, which was that Sergeant Knight never testified that
14 the scales were in the same bag as the drugs, not merely in
15 the same seat as the drugs. However, Thompson did not
16 expressly argue that the Applicant's accompanying claim that
17 the Applicant never claimed ownership of the scales. The
18 Applicant only stated that he assumed the scales were his
19 based on Knight's testimony that it was -- excuse me, I lost
20 my place.

21 The scales were in the truck based on Knight's
22 testimony and it was a possibility that he may have packed
23 them in the truck along with a multitude of other items
24 retrieved from his child's mother's storage where he stored
25 his belongings prior to moving. That can be found at 148,

1 11 through 14 -- or 5 through 14.

2 In her argument opposing the mistrial, Hammack, also,
3 appealed to the Judge to fix any harm by instructing the
4 jury that the arguments of counsel are not evidence and that
5 the jurors must rely on their own recollection of the
6 testimony, 188, 21 through 24. The trial court never gave
7 such an instruction. In fact, the Judge merely said let's
8 go off the record briefly. 190, Line 24. A brief recess
9 was taken.

10 When the record resumed, the Judge immediately asked
11 for the jury. Once the jury entered the courtroom, Judge
12 Newman states, all right, Ms. Hammack, you may continue.
13 And the State's closing arguments recommenced. On closing
14 rebuttal, Assistant Solicitor Ashley Hammack inaccurately
15 argues, The scales that he said were his, quote, were with
16 the narcotics. This was after the objection. Hammack even
17 invited the jury to listen to it. Further, sarcastically
18 stating, everything in the car was his except for the stuff
19 he don't want to admit, which is all the drugs. That can be
20 found 201, Lines 18 through 21.

21 I'll stop for one second to clarify. At this point,
22 I've asked Barry Thompson to object because I know
23 personally that what the solicitor is saying is not proper,
24 is not correct. So I asked him to object. He gets up and
25 he makes the wrong objection. The Judge has the court

1 reporter go back into the record and play what was said.
2 What was said was supporting my position. The Judge
3 overruled my objection off the record. Came back on the
4 record, never explained it, never put her ruling on the
5 record.

6 My attorneys never preserved the record for appeal.
7 That was my flagship issue on direct appeal. The reason why
8 Ms. Lara caught it, we waited until the midnight hour to
9 make that decision to do Anders versus a merit brief. And
10 the reason she decided to go with merit brief was that --
11 the reason why she decided to go with Anders brief is
12 because the issue was not preserved. She felt it was very
13 meritorious. And the only why she couldn't do it as a merit
14 brief was because it wasn't preserved.

15 Q So your issue isn't that counsel didn't object, but
16 that it wasn't properly preserved on the record, right?

17 A Yes, ma'am.

18 Q It was addressed at a bench conference with the
19 attorneys and the Judge off the record?

20 A Yes, ma'am.

21 Q Therefore, you couldn't appeal that issue?

22 A Yes, ma'am.

23 Q And then based upon your memorandum, it looks like you,
24 also, had issues concerning the closing argument when it
25 came to constructive possession and the things that were

1 being stated concerning constructive possession; is that
2 correct? Page 42.

3 A In her closing argument, Assistant Solicitor Ashley
4 Hammack attempted to explain to the jury the theory, the law
5 and the theory of constructive possession. To do so, she
6 started by stating the following: After I talk and the
7 Defense talks, the Judge is going to explain to you what the
8 law is for these crimes and the law that you have to follow
9 and apply. But I want to give you a little bit of a heads
10 up about what you're going to hear. That can be found at
11 179, Lines 19 through 23.

12 Now, when -- excuse me. This is, also, Ashley Hammack
13 speaking. Now, when I'm over here talking to you guys, I
14 don't have my coffee cup in my hand, but that doesn't mean
15 it's not mine anymore. Constructive possession means that
16 something of yours is in an area that you own and control.
17 If something is in your house, if something is in your car,
18 you're under constructive possession even if it's not
19 physically in your hand.

20 Not only is it not Solicitor Hammack's duty to give the
21 law to the jury, it's definitely not right for her to give
22 improper law to the jury. Because that is not a correct
23 statement of constructive possession.

24 Q Did you want counsel to object to that?

25 A Yes.

1 Q Again, because you believe it was an incorrect
2 understanding and description of constructive possession?

3 A Yes, ma'am.

4 Q If counsel had objected, what do you think the outcome
5 of that objection would have been?

6 A It would have probably resulted in a mistrial.

7 Q So you wanted them to pursue both an objection and a
8 mistrial; is that correct?

9 A Yes, ma'am. In all these errors, I wanted a mistrial
10 declared because all these errors require a mistrial. They
11 so tainted the proceeding that you can't trust the outcome.

12 She, also, said at Page 192, things in my house, my TV,
13 my books, I'm in constructive possession of those because I
14 have control over my house, who can get in and who can get
15 out.

16 Also, at 192, 23 through 25, the fact that it's in his
17 car with his stuff that he just ran out of means that he's
18 in possession of these drugs. I, also, note that she said I
19 ran out of the vehicle. I was found not guilty for failure
20 to stop for a blue light and resisting arrest.

21 In her closing arguments, Assistant Solicitor Ashley
22 Hammack gave what amounted to a charge on the law stating
23 that she was going to give the jury a little bit of a heads
24 up on the law that you have to follow and apply. The
25 Assistant Solicitor's explanation of the law that the jury

1 had to follow and apply went well beyond the applicable law
2 and the reasonable inference that can be drawn from the
3 facts.

4 Furthermore, Hammack presented what amounted to
5 impermissible inferences, the prerogative of which to make
6 belongs to each individual juror alone as legal conclusions
7 that the law and the Judge categorically require them to
8 make. Hammack asserted that the law pertaining to
9 constructive possession dictates the articles found in an
10 individual's house are definitely determined to be in that
11 individual's constructive possession. As referenced above,
12 Ashley Hammack did not really argue to the jury that it was
13 their prerogative to make this deduction if they so chose,
14 but instead maintained that Applicant's constructive
15 possession necessarily followed from the presence of drugs
16 in his truck.

17 As evidenced by the record, the Assistant Solicitor
18 left no room for discernment on behalf of the jury.
19 Assistant Solicitor Hammack presumably borrowed this
20 prohibited language from Ellis, State vs. Ellis, 263 South
21 Carolina 22, where it was stated -- which it was overruled
22 by Adams, State vs. Adams, 291 South Carolina 132, because
23 of this very same language.

24 In Ellis, it was said ordinarily when articles are
25 found in a dwelling house, they must be deemed to be in the

1 constructive possession of the person controlling the house
2 in the absence of evidence to the contrary. Obviously, that
3 was overruled by the Supreme Court. They said that that was
4 not proper, not proper to give that jury instruction.

5 Merely superimposing correct instructions over
6 erroneous instructions only serve to falsely prejudice and
7 confuse. Significantly, the Ellis court opined that this
8 presumption should only be made in the absence of evidence
9 to the contrary. Just as the Judge informs the jury that
10 they have no authority to decide what the law is and must
11 accept it as given, so is the tone and tenor of the
12 Assistant Solicitor's argument coupled with the prestige and
13 distinction of the government, the line between argument and
14 instruction was imperceptibly obscured by Assistant
15 Solicitor's improper argument.

16 Q So these are all allegations concerning the closing
17 argument the State made, correct?

18 A Yes, ma'am. You asked me if that's all of them or so
19 far?

20 Q So far.

21 A Okay. Yes, ma'am.

22 Q You, also, had a couple of issues concerning the jury
23 instructions; is that correct?

24 A Yes, ma'am.

25 Q Did the Court give a Logan charge in this case?

1 A No, ma'am.

2 Q And did you want the Court to give a Logan charge in
3 this case?

4 A I did and I think the law required it. There was --
5 this case was completely circumstantial. It ended in
6 inconsistent verdicts. The Logan instruction is there to
7 protect against those type of things of having verdicts that
8 don't make sense. When a circumstantial case is brought
9 before the jury, they're told to take all the circumstances,
10 when viewed together, must point conclusively to the guilt
11 of the Defendant beyond a reasonable doubt.

12 In the jury instructions given by the Judge -- excuse
13 me, this was a late amendment, so I don't have it. But the
14 jury instruction where the Logan instruction should have
15 been should have been on Page 208. It should have been
16 somewhere between Lines 2 and 9 on 208.

17 This is what the record has. The law absolutely makes
18 no distinction between the weight and value to be given to
19 either direct or circumstantial evidence. Nor is a greater
20 degree of certainty required of circumstantial evidence than
21 direct evidence. You should weigh all the evidence in the
22 case. After weighing all the evidence, if you're not
23 convinced of the guilt of the Defendant beyond a reasonable
24 doubt, you must find the Defendant not guilty.

25 What's missing from that jury instruction is the fact

1 that the circumstances must be taken together and
2 conclusively point to the Defendant's guilt.

3 Q What do you think the outcome would have been had the
4 Logan charge been given in this case?

5 A I think that the jury would have decided to find me not
6 guilty. The inconsistency of the verdict begs the question
7 that I would rather address after I address the improper
8 Stewart instruction because those things kind of merge
9 together when you look at the overall picture.

10 Q The Stewart instruction you're referring to, that's
11 concerning constructive possession; is that correct?

12 A Yes, ma'am.

13 Q And explain a little bit why you think the charge
14 concerning constructive possession was inappropriate in this
15 case?

16 A In Stewart?

17 Q How was it inappropriate in this case as per the
18 Court's decision in State vs. Stewart?

19 A Okay. All right. So it was improper because the
20 Supreme Court said that it should never have been given.
21 The Supreme Court, also, compared the Stewart jury
22 instruction to that in Burdette and Cheeks, which they said
23 is never proper.

24 This came down from the Supreme Court on, I want to
25 say, May 19th of 2021. I went to trial July 22nd, 2021,

1 roughly, 60 days after the Supreme Court handed down this
2 decision that said that this jury instruction should not
3 longer be given. Again, no objection was made to the jury
4 instruction whatsoever.

5 Q And the Court does have a copy of your memorandum, so
6 if you're worried about being read out verbatim, the Court
7 can read it. Just explain a little bit why you think that
8 that charge is inappropriate and how counsel could have done
9 better.

10 A If the Court doesn't mind, I would like to read this
11 one as I wrote it.

12 Honorable Jocelyn Newman, in her charge on the law
13 improperly instructed the jury that they may infer
14 Applicant's knowledge or possession of drugs found on
15 property under the Defendant's control, relying on State v.
16 Adams. Generally, the trial court is required to charge
17 only the current and correct law.

18 In State v. Stewart, the trial court properly relied on
19 Adams, which the Court misinterpreted the Supreme Court's
20 decisions in Ellis, Brown, Lane, and Hudson as they relate
21 to what the trial court may instruct the jury it may infer
22 from substances found on property under the Defendant's
23 control. The Stewart Court improperly explained the
24 inference of knowledge and possession and the fact that the
25 inference can be made to the jury.

1 In Adams, it was said that the proper charge on
2 constructive possession is to instruct the jury that the
3 Defendant's knowledge and possession may be inferred if the
4 substance was found on premises under his control. The
5 trial judge should explain to the jury that it's free to
6 accept or reject this inference of knowledge or possession,
7 depending on its view of the evidence. That was the
8 standing law that came out of Adams, which was overruled by
9 Stewart.

10 The relevant challenged portions of the Stewart trial
11 court, the Court's instruction was taken almost verbatim
12 from Adams.

13 Q And what do you think the outcome would have been had
14 the charge been different?

15 A Had the jury instruction not been given, I believe that
16 the jury would have acquitted me on all offenses. The jury
17 seemed not to accept the State's theory of how the crime was
18 committed. They said that I was driving on Interstate 20
19 and I was blue lighted and went on a high speed chase and
20 jumped out and ran. That was their theory of how I was in
21 possession of these drugs.

22 Well, when they -- the jury didn't believe that I was
23 the person driving the car, obviously, because they
24 acquitted me of that charge. But this jury instruction,
25 basically, told them that he doesn't have to be in the car

1 for you to find him guilty of the drugs. Because it's
2 another theory that allows him to be in constructive
3 possession of the drugs merely by being in ownership or
4 control of the vehicle, which is what the Stewart
5 instruction tells the jury that they can do.

6 Now, the inconsistent verdict tends to suggest that
7 this jury instruction is what led them to actually find me
8 guilty of the drugs. Because there was absolutely no
9 evidence tying me to the drugs whatsoever except for the
10 fact they were in my truck.

11 Q You have a similar issue with the State's opening
12 statement; is that correct? Looking at Page 17 of your
13 memo. It looks like you wanted counsel to object because
14 they made various statements that conclusively pointed
15 towards you as the driver when your theory and defense was
16 that it was another driver involved; is that correct?

17 A Say it again.

18 Q It looks like you had an issue with a few of the
19 comments Solicitor Weeks opened up with in opening
20 statement, in part because it conclusively pointed towards
21 you as the driver?

22 A Oh, yes. Solicitor Weeks made the following comments
23 or remarks given in his opening statements. The opening
24 statements were on Page 31 through 38, Lines 22 through 24
25 on the respective pages.

1 Solicitor Weeks stated that the officers in hot pursuit
2 of Applicant's vehicle really didn't know at that point who
3 the person was that was driving the vehicle. I note that he
4 said "at that point" as if at some time they discovered who
5 the driver was, but that's not true. But they led the jury
6 to believe that at some point, they proved conclusively that
7 I was the driver.

8 Solicitor Weeks stated, Prior to arresting him, me,
9 they spent the night wandering through the woods looking for
10 him, taking the tracking dogs through the woods looking for
11 him. Further stating, They had already searched the car he
12 was driving, and added unfounded statements such as, where
13 he, the Applicant, decides to stop the car and run.

14 Weeks, also, continued, Everybody was trying to locate
15 the person that jumped and ran from the vehicle.
16 Registration says it was Jonathan Lincoln. Pill bottles say
17 it was Jonathan Lincoln. And that's who they were looking
18 for.

19 The Solicitor further commented, Nobody else did they
20 see bail out the car. They didn't see anybody get out of
21 the car. So the "else" suggested that they had seen -- that
22 they had extrinsic evidence that it was not in the presence
23 of the jury.

24 Q So you think those were impermissible inferences that
25 the State made in opening statement; is that fair?

1 A Yes, ma'am.

2 Q And you think counsel should have objected to that?

3 A Yes, ma'am.

4 Q And what do you think the outcome would have been?

5 A I think that a corrective instruction would have
6 probably been given by the Judge and that the Solicitor
7 would have probably stopped doing it. And then the fairness
8 of the trial would have been restored.

9 Q How do you think the Solicitor's opening statement
10 affected you at trial in terms of your outcome?

11 A I think it caused me to be found guilty by improperly
12 suggesting things that were not proven. And I don't think
13 then that they had ample time to prepare this case. I feel
14 that they knew they didn't have the evidence to prove the
15 things that they said in opening statement. If I'm not
16 wrong, I believe that's unethical and against the rules.

17 Q And then, also, concerning opening arguments, it looks
18 like you're, also, raising a claim of improper vouching?

19 A Yes, ma'am. Can you direct me to that page? I see it.

20 Q What do you feel like was improperly vouching in terms
21 of opening statement?

22 A Solicitor Weeks and Assistant Solicitor Hammack on
23 numerous occasions improperly bolstered the testimony and/or
24 vouched for the credibility of various witnesses for the
25 State. With respect to the State's witnesses, the State's

1 witness, Colt Woody, Solicitor John Weeks stated in his
2 opening statement that Colt Woody wasn't involved in any of
3 the events of that night, that he was a hard worker, that he
4 didn't have anything to do with anything.

5 Q How do you feel like that impacted the outcome at
6 trial?

7 A Well, it bolstered the credibility of the witness and
8 the witness's statement to the jury.

9 Q And what role did this witness play at the trial? What
10 did they testify to generally?

11 A He testified to the events that happened on his carport
12 when I was arrested. So he made statements such as, I was
13 combative. I didn't listen. He wouldn't do what they
14 wanted him to do. So it was improper character evidence at
15 best.

16 Q And you feel like counsel should have objected to that?

17 A Yes, ma'am.

18 Q Is there anything else concerning improper vouching
19 that you feel like the Solicitor engaged in that counsel
20 should have objected to?

21 A Yes, ma'am. These comments were improper in that they
22 placed the government's prestige behind Mr. Woody and made
23 explicit personal assurances as to his trustworthiness,
24 thus, depriving the jury of their duty and ability to
25 exclusively decide the credibility of the witness.

1 Throughout direct examination, Solicitor Weeks
2 improperly vouched for the credibility, and bolstered the
3 testimony of the State's key witness and prosecuting
4 officer, Brandon Knight. With regards to the colloquy
5 between Knight and Weeks pertaining to the authentication of
6 Knight's dashboard camera video-footage, Weeks improperly
7 bolstered the authenticity of the evidence by using first
8 person pronouns, "I", "us", and "we" to describe the
9 extraneous viewing and subsequent editing of the footage by
10 Knight and himself.

11 Also, in reply to Knight's response, That's the actual
12 video, Weeks said, I know. But didn't we cut it off at some
13 point? That statement alone bolstered the authenticity of
14 the evidence offered by the State's witness signaling that
15 Weeks personally believed in the truth and accuracy of both
16 the witness and the evidence. Weeks' comments, also, were
17 made to suggest to the jury that the edited dashboard and
18 body-worn camera footage contained all of the footage
19 relevant for them to decide the issue of guilt or innocence
20 of the Applicant and that nothing else on the videos were
21 pertinent.

22 And I find that to be incorrect because if the entirety
23 of the video had been played, then it would have showed that
24 the approach to the vehicle that Sergeant Knight said that
25 he made and the things he said he did when he approached the

1 vehicle were not true. There was a failure to investigate
2 by my attorneys, also, to investigate the facts so they
3 didn't catch these small variations that the State ended up
4 using to support their case and win.

5 Q So you feel like counsel should have investigated a
6 number of things better; is that correct?

7 A Yes, ma'am. If my counsel would have investigated the
8 facts, then the State's witnesses wouldn't have been able to
9 change their testimony on the stand from what they wrote in
10 their police reports.

11 Q So you feel like they should have investigated prior
12 statements and used that in terms of a meaningful cross?

13 A Exactly. They didn't put the officer's testimony to
14 the adversary test. They didn't attempt to impeach him with
15 prior inconsistent statements that were readily available.
16 In fact, when we were at trial, there was nothing on the
17 table. No papers, no motion of discovery, no paperwork
18 whatsoever. The only paper that was on the table were my
19 sentencing sheets. And Mr. Thompson had them staggered so
20 that you could only see the very top of them.

21 I can show you one of them in this book. This is what
22 he wanted me to see. As you can see at the top of my
23 sentencing sheets, it has the time that I'm facing. 10 to
24 30 was on the two, 25 to 30 was on this one. They were
25 staggered so that that was all I could see. That was all

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1 that was on the table at the time. They had nothing. No
2 paperwork at all.

3 Q Do you feel like the lack of paperwork showed a lack of
4 preparation?

5 A I feel like their performance showed a lack of
6 preparation. The lack of paperwork was just almost, like,
7 they didn't care that I knew that they weren't there to
8 represent.

9 Q Now, there's something saying you wanted counsel to
10 investigate a prior incident with the cops; is that correct?

11 A Well, there was -- on the morning of trial, I,
12 actually, went to the police department to receive records.
13 Because while I was incarcerated, the very same thing
14 happened with my truck while I was incarcerated. The
15 sheriff's office didn't charge me with those drugs. It was
16 my truck again. But I had been incarcerated for six months
17 at the time and it couldn't have been me. But they didn't
18 charge me with it just because it was my truck like they did
19 in this situation.

20 So I felt like that would have -- I felt like that
21 would have been -- and I could be wrong, that may not have
22 even been admissible. But I spoke to my attorney and told
23 him about it. They seemed to have no idea about it. I went
24 and got the records from the police department and brought
25 them in that morning, handed them to Suzanne. Suzanne just

1 put them in her briefcase and I never heard anything else
2 about it.

3 Q If they had investigated these things, what do you
4 think would have changed at trial?

5 A I think that if they would have been investigated, they
6 would have been incorporated into my defense in some
7 meaningful way. Because I believe that the evidence was
8 perfect.

9 Q You, also, wanted them to investigate a bloodhound
10 tracking report; is that correct?

11 A Yes, ma'am. Also, that lends to a Brady violation
12 because the bloodhound tracking report is a report that when
13 the bloodhounds come out or they're called out by a specific
14 agency, they do a report about what they did and what they
15 found. And this report is given to the agency that they did
16 the callout for. This was not turned over to me or to my
17 counsel. It was completed roughly two weeks after I was
18 arrested. I went to trial, I want to say, 18 months after
19 the incident. So 17 and a half months they had to turn this
20 over to me. They turned it over to my attorney the morning
21 of trial.

22 I still didn't know. I wrote Suzanne while I was
23 incarcerated and asked her for all the paperwork that -- all
24 the paperwork in my motion. In that, then she sent me the
25 bloodhound callout report. So that was my first time seeing

1 the bloodhound callout report.

2 What was important about the bloodhound callout report
3 is that it refuted a lot of the testimony that the officers
4 on the scene said, such as there were footprints that were
5 not shoe prints that were leading to the wood line.
6 Sergeant Knight never said that in any one of his incident
7 reports. Nobody else said that they ever saw any footprints
8 that weren't shoe prints. In fact, the trained trackers who
9 are trained to track things like footprints came out and
10 they made no mention of footprints, shoe prints. In fact,
11 they said there was no signs of anything.

12 And I thought that was really important because in
13 closing arguments, Solicitor Hammack made such a big deal
14 that I didn't have on shoes when I was arrested. Coupled
15 with the fact that Sergeant Knight said there was footprints
16 that weren't shoe prints and I don't have on shoes, they
17 tried to make a connection. But this was an after-created
18 verification that he seen would bolster his case. And it
19 seemed like it was miniscule, but in closing argument, she
20 emphasized it.

21 Q Just so the record is clear, the bloodhound tracking
22 team report is Exhibit E in your memorandum; is that
23 correct?

24 A Yes, ma'am.

25 Q And had counsel investigated this report, would you

1 have wanted her to use that as part of her cross-examination
2 strategy?

3 A Yes, ma'am. I think that she would want to have done
4 it because in her closing argument, she hung her hat on this
5 very thing. In closing arguments, Suzanne said, Mr. Lincoln
6 did not have to get up on the stand and tell you about --
7 excuse me, this is Page 195 and 196.

8 I'm starting at Line 22 on 195, Mr. Lincoln did not
9 have to get up on the stand and tell you about what
10 happened, but he did get up on the stand to tell you. You
11 heard all the witnesses, except there is one missing witness
12 in this case. I'm going to tell you who that is, it's the
13 dog.

14 They didn't call anybody from the bloodhound team to
15 come in and talk to you about the tracking, how that works.
16 Most of the time, the bloodhound training is successful
17 unless somebody picked the person up in the car. Well, Mr.
18 Lincoln testified he was in the area. He was in the area.
19 Why didn't the dogs find him? You heard the testimony from
20 the whole team that they were there for a long time and the
21 dogs didn't track him. Is it maybe because the dog wasn't
22 tracking his scent? He wasn't the one that ran out of the
23 car.

24 So to hang your hat on missing evidence that is not
25 missing that's in your possession, in fact, I don't even

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1 believe it's safe to say you forgot it because it was given
2 to you the morning of trial. If someone gives me something
3 the morning of trial, the first thing I'm going to wonder is
4 -- I'm going to look at the date and see that it's 17 and a
5 half months old and I'm going to wonder as a seasoned
6 solicitor why you held this until the morning of trial.
7 That would just be my initial presumption is that something
8 is fishy.

9 And it was because, like I say, again, in closing by --
10 this is 178. This is Solicitor Hammack's closing argument.
11 We've already said it's undisputed, it's his car. His stuff
12 in the car. The prescription bottles with his name are in
13 the car. The paperwork in the glove box is his. Those
14 shoes found by the car and Sergeant Knight says they're
15 footprints to the wood line that weren't shoe prints,
16 they're footprints. Again, driving home -- I think this was
17 well orchestrated in my opinion. It's amazing the story
18 that he had to come up with to explain why he was so close
19 to the opposite side of the county where he lives. So
20 again, the issue about shoe, footprints is very essential to
21 the State's theory of guilt.

22 Q And do you feel like had this been disclosed, the
23 report entered and counsel been able to effectively argue
24 that that would have changed the outcome of your trial?

25 A Yes, ma'am, because it would have been -- the

1 footprints would have been challenged. I think that weighed
2 heavy with the jury. The fact that he said there were
3 footprints and then I was found without shoes. But the fact
4 that no one else listed this in any of their reports, I find
5 that to be extremely concerning.

6 Q Now, you testified at trial, correct?

7 A Yes, ma'am.

8 Q And before you testified, were you told, I guess, what
9 charges or prior criminal history would be used against you?

10 A Yes, ma'am.

11 Q And was there anything that during cross-examination by
12 the solicitor that caught you off guard --

13 A Actually, I'm sorry, I answered that incorrectly. I
14 was not informed that my criminal history would be used.

15 Q Okay. Had you been informed, how do you feel like that
16 would have impacted your decision to testify?

17 A Based on that particular thing, I probably would have
18 still testified. But based on the fact that the State -- on
19 appeal, if I was to lose, the fact that only the State's
20 case would be reviewed on appeal if I don't testify is
21 something that probably would have made me not testify. But
22 my attorney didn't inform me that once I testify that I lost
23 the ability to have only the State's case reviewed and not
24 have my own defense brought into question.

25 Q Now, you were questioned about a 2011 conviction of

1 giving false information?

2 A Yes, ma'am.

3 Q Did that catch you off guard?

4 A Oh, yes. My lawyer did not say -- and I don't want to
5 misstate it, but I think it's a 403(b) conference that is
6 had before a defendant testifies to determine what prior
7 convictions or prior bad acts may be used to impeach them.

8 During that conference, it was brought up by the State
9 that they wanted to impeach me with three charges from 2011,
10 giving false information to an officer and two possessions
11 with intent to distribute marijuana. Judge Newman
12 unequivocally denied, excluded any mention of those prior
13 charges. Solicitor Weeks in closing arguments --

14 Q So you feel like when they came out during your
15 testimony, counsel should have objected to it?

16 A Yes, ma'am.

17 Q Was it your understanding that the Court was not going
18 to allow them to question you about that?

19 A Yes, ma'am.

20 Q And how do you feel like the outcome at trial would
21 have been different had that not been disclosed to the jury?

22 A I felt like the jury would have probably more than
23 likely acquitted me. It was a damning point in the trial.
24 The jury could tell I was caught off guard. And I seemed a
25 little more startled than I should have been. I seemed a

1 little more, you know, deer in the headlights than I should
2 have been. If I had been prepared for it, then I would have
3 just gave the answer that I did give, but I wouldn't have
4 responded in a way that seemed like I was hiding something.
5 Maybe if we had known it was going to be introduced, then we
6 may have attempted to take the wind out of the sails by
7 approaching it ourselves first than to do it kind of
8 backhanded like that. And then the response that I gave
9 when my lawyer didn't save me and asked the Judge to tell me
10 not to answer, I had to answer because I don't have the
11 right not to answer it.

12 So I want to find the exact words I said if that's
13 okay. Right here.

14 And you don't dispute that you're the same Jonathan
15 Lincoln who was convicted in 2011 for giving false
16 information to the police?

17 That was me, sir.

18 That was you?

19 I do not dispute that. I don't lie, Your Honor. I
20 mean, when I'm guilty, I say I'm guilty. When I'm not
21 guilty, I will come this far with it. I'm sorry. I just
22 think that justice should serve everybody. It has served
23 against me in the past. I feel like and I hope today that
24 it serves me in the positive.

25 That was my response to that question. That was the

1 last statement of the trial. It was very, very damning
2 punctuation to put it at the end of the trial.

3 And the Judge did cure it in closing by saying that the
4 information that was presented about my prior charges could
5 only be used toward my credibility and not my propensity or
6 whatnot. But that was not the end of the injury because in
7 her closing arguments, Solicitor Ashley Hammack --

8 Q Just to have a clear record, I think on Page 125, the
9 Court asked the Defense what the position on the false
10 information charge was. The Defense said they don't think
11 it should be mentioned and the Court agreed. Do you recall
12 that?

13 A Yes, ma'am.

14 Q So the Court did make a ruling concerning your prior
15 criminal history before you testified; is that right?

16 A Yes, ma'am.

17 Q Now, going back to what you were saying about closing
18 arguments.

19 A Solicitor Hammack in her closing arguments repeated my
20 words exactly. In fact, she wrote them down. She found it
21 so important that she wrote it down and she informed the
22 jury that she wrote it down. A little difficult to work
23 with these chains on, I'm sorry.

24 THE COURT: Ms. Marto, do you know what he's looking
25 for? Maybe you can help him out.

1 BY MS. MARTO:

2 Q What are you looking for, sir?

3 A I'm looking for Ms. Hammack's closing arguments. Okay.
4 I did find it just now. Following the Court's 404(b)
5 specific ruling explicitly excluding the prior convictions,
6 Solicitor John William Weeks defiantly, inappropriate and
7 with malicious motive questioned the Applicant about his
8 2011 conviction for giving false information to a law
9 enforcement officer. The Honorable Judge Newman ruled
10 unequivocally that the mention of and/or questioning of the
11 Applicant about the 2011 charges was disallowed due to the
12 potential for unfair prejudice to the Defendant.

13 Q Do you feel like the Court's jury instructions
14 concerning that point were sufficient to cure what had
15 already come out?

16 A No, ma'am. Because the only thing he cured was the
17 effect of -- excuse me, she. The only thing Your Honor
18 cured was the effect of the credibility assessment versus
19 the propensity angle. But the fact that it was not stricken
20 from the record allowed Ashley Hammack to repeat this in her
21 closing argument and exacerbated it. If it was stricken
22 from the record, then she could not have quoted it in her
23 closing argument. So counsel was deficient for failing to
24 move to strike my response from the record and/or to stop me
25 from even saying it to begin with.

1 Q And you feel like that affected your credibility with
2 the jury so bad if it hadn't come out, a different outcome
3 would have resulted?

4 A I do, definitely do.

5 Q You, also, had a couple of issues concerning the
6 resisting arrest charge; is that correct?

7 A Yes, ma'am.

8 Q Was one of those that the indictments went back with
9 the jury?

10 A Yes, ma'am.

11 Q What do you feel that counsel should have done when
12 that happened?

13 A Counsel should have moved for a mistrial based on
14 improper spillover. It's well established law that when --
15 offenses joined together in a joint trial and any one of
16 those joinder charges is directed on a verdict, the Defense
17 should move and can move for a mistrial based on the
18 improper spillover evidence from the directed indictment.

19 Q You weren't convicted or given any time for that
20 charge, right?

21 A No, ma'am.

22 Q So how do you feel that impacted you if you weren't
23 given any time or convicted of it?

24 A Well, because the evidence that arose from the
25 resisting arrest charge was prejudicial to my defense on the

1 other charges. In fact, I would prefer to start at the top
2 of that issue where there's an ineffective assistance of
3 counsel claim for failing to sever the indictments at trial
4 to begin with. I never should have been at trial for
5 resisting arrest at the same time that I was on trial for
6 the drugs. Because the evidence in the two were prejudicial
7 to each other.

8 And I believe it's the Harris case that gives the four
9 prongs. And I think the Supreme Court has said in some
10 instances you don't even have to address the first three
11 prongs, you can just go to the fourth prong. And if it's
12 prejudicial to the Defendant, it should be severed.

13 Q Can you point to any evidence specifically that
14 wouldn't have come out, but did because the resisting arrest
15 charge?

16 A Yes, ma'am. The proximity of one thing to the next has
17 been -- the physical proximity, the temporal proximity in
18 time, in closeness of the events, the fact that I didn't
19 have on any shoes, the fact that I was dirty, the fact that
20 the video of me being arrested was shown to the jury, none
21 of that would have been shown to the jury but for the
22 resisting arrest indictment. And it was not like it was
23 just unintentional. I think I had numerous charges in the
24 teens, maybe 13, 14 charges. Why was failure to stop for a
25 blue light, drug charges and resisting arrest charges that

1 was chosen to go to trial?

2 Well, that's easy to see because the failure to stop
3 for a blue light allows them to tell the story about the
4 high speed chase and the jump out and all that stuff. The
5 drug charges serve their own purpose. The resisting arrest
6 is to talk about the next day when they arrested me so that
7 they can make this all one big nice picture. But my lawyers
8 should not have allowed that to happen. They should have
9 moved to sever the charges to begin with.

10 I would like to refer to my briefing of that issue on
11 the record because it is set out in detail. I know
12 everybody in here knows the law way better than I do, but
13 I'm just saying. If you give me a second, I will find it
14 really quick. I will not be long. Give me one second.

15 (Pause.)

16 BY MR. MARTO:

17 Q Was the issue of severance raised in your initial
18 application or was that the one raised --

19 A Remember, I told you I was going to go ahead and look
20 to see if I briefed it. And I did, I briefed it.

21 Q Starting on Page 55?

22 A Yes, ma'am.

23 Q Again, the Court does have a copy of your full
24 memorandum, but if there's anything you'd like to
25 specifically highlight in your testimony, you can.

1 A Yes, ma'am. I'm sorry, I would like to highlight those
2 particular points.

3 (Pause.)

4 THE APPLICANT: So given the location of the unrelated
5 incident and the location of the remaining incidents. So
6 the unrelated incident would be the resisting arrest charge.
7 The remaining incident would be the drug charge. So the
8 location between the two incidents were close in proximity.
9 The condition of the applicant as unshod, wet and distraught
10 when the officers approached. All this was, also,
11 illustrated on body cam, which the jury got to watch.

12 The reluctance of the Applicant to being unlawfully
13 arrested, there exist no doubt that the evidence from the
14 misjoinder offense portray the Applicant in an unfair light
15 that is clearly prejudicial.

16 Further, evidence arising from the resisting arrest
17 offense that was not admissible under the res gestae theory,
18 it was neither submitted for nor necessary to establish
19 proof of guilt of the controlled substance offenses.
20 Moreover, the offense of resisting arrest was not proved by
21 clear and convincing evidence.

22 The standard of submission is of charges to the jury is
23 any substantial evidence or any direct evidence or
24 substantial circumstantial evidence. If the trial judge
25 finds that there is no substantial evidence to submit any

1 one of the joined charges to the jury, the Defendant may
2 move for a mistrial on the basis of unfair prejudice
3 resulting from joinder. Nevertheless, the prejudicial
4 joinder, more likely than not, improperly influenced the
5 jury's verdict with respect to the same.

6 Failure to sever the same was further exacerbated by
7 the submission of the prejudicial offense by the trial court
8 to the jury subsequent to being dismissed pursuant to
9 directed verdict at the close of evidence. The error was
10 admitted by trial court and unilaterally dismissed by the
11 same sua sponte as being harmless, small error. This was
12 done without any objection from either of Applicant's trial
13 attorneys.

14 The admission and exchange transpired as follows:
15 Trial court, I just want to acknowledge that clearly -- this
16 is the trial court speaking. I just want to acknowledge
17 that clearly there was a small error on behalf of the Court
18 in sending the indictments to the jury room and not pulling
19 the indictment for resisting arrest. It appears to have
20 been harmless error anyway as he was acquitted of that
21 charge.

22 But I did want to put that on the record because
23 clearly the clerk read a verdict for that charge. So I was
24 acquitted by way of directed verdict. It was sent back to
25 the jury and the jury, also, found me not guilty. And she

1 said because I got found not guilty it was no harm. I
2 disagree with that.

3 Obviously, if you continue to read -- my trial counsel
4 only responded by saying yes, we were thinking the same
5 thing, Your Honor. And the Judge said, yes, exactly. I
6 just wanted to address it.

7 Q Now, are there any other issues that you can think of
8 that you haven't already talk about that you wish to raise
9 today?

10 A I would just like to say that all the issues that I
11 brought up today, all the issues that I brought up today, no
12 matter how I addressed them or how I spoke to them, I would
13 like for them to be recognized as assertions of ineffective
14 assistance of counsel for failing to object and move for the
15 proper remedies for those errors. So I know I may have said
16 prosecutorial misconduct, judicial error, but I mean those
17 in the form of ineffective assistance of counsel. Let me
18 make sure I didn't miss anything.

19 (Pause.)

20 THE APPLICANT: Also, my attorneys -- well, Barry
21 Thompson, when speaking with my family at the end of the
22 first day of trial, for some reason, he felt it proper to
23 tell my friend and my daughter that I was guilty and that I
24 was going to prison, that I should not look forward to --
25 they should not look forward to seeing me come home.

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1 I thought that was something very weird and
2 unprofessional and unethical to say to my family, giving
3 your personal opinion. Especially in a case that is far
4 from overwhelming, I mean, almost zero evidence. It was
5 completely circumstantial. And to tell my family, to tell
6 my daughter that I'm guilty, I think that represents a --
7 gives insight to the frame of mind that my defense.

8 MS. MARTO: Nothing further, Your Honor.

9 MR. MITCHELL: Your Honor, just to note that last
10 allegation about Mr. Thompson. We weren't aware of that
11 allegation and Mr. Thompson is not here.

12 MS. MARTO: Judge, I think that can just be --

13 MR. MITCHELL: Yeah, it's not within the scope of the
14 issues raised in the amendment.

15 MS. MARTO: Judge, I've spoken with Mr. Lincoln and I
16 think the law makes it clear that there needs to be
17 something more than just an assertion of a personal opinion.
18 There needs to be demonstrative proof in the transcript. So
19 I don't know --

20 THE COURT: So you're not going forward on that issue?

21 MS. MARTO: No, Your Honor.

22 THE COURT: She says they're not going forward, so I'll
23 disregard that issue.

24 You can go ahead and cross-examine.

25 CROSS-EXAMINATION

1 BY MR. MITCHELL:

2 Q Just very briefly, Mr. Lincoln. You testified at
3 trial, correct, to your version of events?

4 A Yes, sir.

5 Q And prior to you testifying, Judge Newman did advise
6 you any convictions for false statements could be used
7 against you?

8 A Yes, ma'am -- excuse me, excuse me, sir. Yes, sir.
9 I've been saying yes, ma'am a lot.

10 Q That's no problem. Mr. Lincoln, in your testimony --
11 and this is on Page 53 -- oh, excuse me, Page 148 of the
12 transcript, Mr. Weeks asked you how about these scales for
13 measuring drugs, were they in your truck, too?

14 You responded, I assume they were.

15 Mr. Weeks, Well, did you put them in there?

16 You responded, It's a possibility I did.

17 Would you not say that's an original inference that you
18 admitted to the scales being in your truck?

19 A I don't recall ever denying the scales being in my
20 truck.

21 Q And, in fact, it's possible that you put them in there
22 yourself?

23 A Yes, I did. That was due to the fact that I was moving
24 and that I packed numerous amounts of things. In fact, the
25 record is replete in references to the fact that my truck

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1 was so full of stuff that there was not room for anyone else
2 to even sit in the truck other than the person that was
3 driving. So that tends to show you the state the truck was
4 in as far as being loaded with stuff. So thinking I could
5 have loaded a box with scales in it is just me trying to
6 answer the question as honestly as I could.

7 Q And with regard to Mr. Woody, you never denied that you
8 were in his carport, correct?

9 A No, I don't deny it. I deny or refute some of his
10 characterizations of how I responded to the officers'
11 unlawful arrest.

12 Q And you were, in fact, given a directed verdict on
13 resisting arrest, correct?

14 A Yes, sir.

15 Q And then acquitted of the failure to stop for a blue
16 light?

17 A Yes, sir.

18 MR. MITCHELL: I think that's all the questions I have
19 for you, Mr. Lincoln.

20 THE COURT: Any redirect?

21 MS. MARTO: No, Your Honor.

22 THE COURT: You may step down.

23 Mr. Lincoln, thank you.

24 MS. MARTO: No further witnesses.

25 THE COURT: Does anybody need a break right quick?

Suzanne Hayes - Direct by Mr. Mitchell

1 MS. MARTO: I'll defer to y'all.

2 THE COURT: If you'll give me just one second.

3 (WHEREUPON, a short break was taken.)

4 THE COURT: Call your witness.

5 MR. MITCHELL: We call Suzanne Hayes to the stand.

6 SUZANNE HAYES,

7 after being duly sworn, testified as follows:

8 THE WITNESS: I do.

9 THE CLERK: Please take a seat in the witness stand and
10 state your full name for the Court.

11 THE WITNESS: My name is Suzanne Hayes, H-A-Y-E-S.

12 DIRECT EXAMINATION

13 BY MR. MITCHELL:

14 Q Good morning, Ms. Hayes.

15 A Good morning.

16 Q Where are you currently employed?

17 A At the Second Circuit Public Defender's Office.

18 Q And were you employed there at the time of this trial?

19 A I was.

20 Q And were you appointed to represent Mr. Lincoln?

21 A I was.

22 Q Can you give a brief recap of what charges he was
23 facing and the facts that the State was going to present,
24 their theory of the case at trial?

25 A He was charged with failure to stop for a blue light,

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1 possession with intent to distribute heroin, possession with
2 intent to distribute cocaine, trafficking meth and resisting
3 arrest. He had other charges. Those were dismissed after
4 this trial.

5 Q And what was the State's theory about what happened?

6 A Based on the report, my assumption, what I thought
7 their theory was was that Mr. Lincoln was being pulled over
8 for a traffic stop. He failed to stop. He bailed out of
9 the car, ran away. And later was found at that house, Mr.
10 Woody's house. That was their theory of the case.

11 Q Prior to trial, did you meet with Mr. Lincoln?

12 A I met with Mr. Lincoln several times.

13 Q And during those conversations, did you discuss
14 potential defenses?

15 A His defense was he wasn't driving the car, someone
16 stole his car. He was moving. In the process of moving,
17 had stopped at his nephew's house to see if his nephew
18 wanted to ride with him. In the meantime, he got out to pee
19 and when he got out to pee, someone stole his car. And then
20 what happened after that, he wasn't aware of because he
21 wasn't there.

22 Q And you presented that defense at trial?

23 A That was the defense.

24 Q And was Mr. Lincoln, ultimately, acquitted of the
25 failure to stop for the blue light charge?

1 A He was.

2 Q And a directed verdict was given in the resisting
3 arrest?

4 A That's correct.

5 MR. MITCHELL: Beg the Court's indulgence, Your Honor.

6 THE COURT: Take your time.

7 (Pause.)

8 BY MR. MITCHELL:

9 Q Now, Mr. Lincoln makes allegations and improper --
10 failure to object to improper closing argument. I believe,
11 first, was there an objection made to a closing argument
12 during this trial?

13 A Mr. Thompson objected to the closing.

14 Q And did he, also, make a motion for a mistrial?

15 A He did.

16 Q Did the Court deny the motion?

17 A The Court did deny that. We, also, renewed that motion
18 after the trial was over.

19 Q And now, Mr. Lincoln's issue with the closing statement
20 seems to be about the location of where the scales and
21 baggies were found in conjunction with drugs. If you don't
22 mind turning to Page 52 of the transcript.

23 A Okay.

24 Q Excuse me, Page 51.

25 A Okay.

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1 Q And is this during the direct examination of Sergeant
2 Brandon Knight?

3 A It appears to be.

4 Q And Lines 12 through 20 on that page, I'll just read it
5 out loud.

6 Can you describe -- this is Mr. Weeks' examination of
7 Mr. Knight.

8 Can you describe what you found in the vehicle and what
9 you took possession of from the vehicle?

10 Yes. In the back passenger area of the vehicle, there
11 was a black [indiscernible]. In the front passenger seat in
12 a bag was the narcotics, drugs that were located.

13 So Mr. Knight did testify that he did find narcotics in
14 a bag in the front passenger seat, correct?

15 A Yes.

16 Q And then if you'll turn to Page 53.

17 A (Witness complied.)

18 Q Mr. Knight testifies, We found letters with addresses
19 on them. We had an alcohol bottle from the front passenger,
20 scales, baggies.

21 What do you mean scales?

22 Scales to weigh the weight of the narcotics.

23 Question, I'll ask you to look at what's marked as
24 State's Nos. 4, 5 and 6 and ask if you can identify those?

25 And then answer, Yes. These are the scales that were

1 secured and placed into evidence that were located in the
2 front passenger seat of the vehicle with the narcotics.

3 So Sergeant Knight did testify that these scales were
4 located in the front passenger seat with the narcotics?

5 A He did.

6 Q And he had just previously testified that the narcotics
7 were found in a bag, correct?

8 A He did.

9 Q And so would you say that a reasonable inference could
10 be made in a closing argument that you could reasonably
11 infer that the narcotics -- scales were found in the bag
12 with the narcotics?

13 A That would be up to a jury to determine if that's
14 correct where they were, but they were found in the front
15 where the drugs were found.

16 Q Correct.

17 A In the same vicinity.

18 Q Correct. Correct. But the State would be free to make
19 that argument?

20 A Yeah, I think they would be able to make that argument.

21 Q But nonetheless, you and Mr. Thompson did object to
22 that?

23 A We did.

24 Q Do you recall discussions about prior convictions that
25 Mr. Lincoln would be able to get impeached on if he

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1 testified?

2 A I believe we discussed that. It was quite a few years
3 ago.

4 Q I believe if you turn to Page --

5 A And I know Judge Newman went over it with him as well.
6 I believe Mr. Thompson, actually, went to the jail the night
7 before he testified and went over stuff with him as well. I
8 was not present for that conversation. But Mr. Thompson has
9 been practicing law for a while. I'm pretty sure he, also,
10 went over that stuff with Mr. Lincoln.

11 What page did you want me to look at?

12 Q Give me one second.

13 (Pause.)

14 BY MR. MITCHELL:

15 Q I believe it's Page 128 of the transcript.

16 MR. MITCHELL: I'm sorry, Your Honor. I have two
17 different transcript numbers for some reason.

18 THE COURT: Take your time.

19 BY MR. MITCHELL:

20 Q Yes, it's Page 125?

21 A Are we talking about the false information charge?

22 Q Yes.

23 A I did review that and it looks like I did miss that
24 objection. But I think Mr. Lincoln answered very well in
25 regards to that conviction being questioned by Mr. Weeks.

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1 MR. MITCHELL: Beg the Court's indulgence, Your Honor.

2 (Pause.)

3 MR. MITCHELL: Your Honor, we're having an issue with
4 the transcripts that seem to say two different things, oddly
5 enough. And we're trying to figure that out.

6 THE COURT: I've got the one y'all sent me right here.

7 MR. MITCHELL: Yes, Your Honor. Is that from the
8 record on appeal?

9 THE COURT: It is. Would you like that one?

10 MS. MARTO: It was an Anders brief, Judge, so it should
11 be a full copy.

12 THE COURT: I think all I have -- I don't think I have
13 --

14 MS. MARTO: Yeah, like I said, the full trial
15 transcript is what's going to be in the record.

16 (Pause.)

17 BY MR. MITCHELL:

18 Q We'll come back to that, Ms. Hayes. And you heard Mr.
19 Lincoln testify he had an issue with the opening statement
20 regarding vouching of the witness, Colt Woody. Do you
21 recollect what Mr. Woody's testimony was at trial?

22 A I believe he was called because he called the police
23 because he woke up early in the morning and there was a man
24 sitting on his back porch that he didn't know. I don't -- I
25 believe that's pretty much what all his testimony was.

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1 Q And Mr. Lincoln never disputed that?

2 A No.

3 Q In fact, he agreed with it, correct?

4 A Yes, he did.

5 Q And did you see anything improper when Solicitor Weeks
6 said that Mr. Woody had nothing -- wasn't involved in this
7 case aside from seeing him?

8 A I mean, it was an accurate statement. He wasn't --

9 Q Let me ask you this, do you typically object during
10 opening statements?

11 A I try not to unless there's something so egregious. I
12 don't believe anything in that opening statement -- because
13 it's all allegations. Nothing that's said in opening is
14 evidence. It's the State's version of what their case is.
15 We presented our version of what our case was in our
16 opening. Unless there's something majorly egregious, I try
17 not to. I don't like to, but I will if I have to.

18 Q What's your reason for not objecting unless it's
19 egregious?

20 A It's just -- I mean, my understanding is openings are
21 kind of like a road map of telling the jury where you're
22 going in the case. It's like the State saying in their
23 opening that Mr. Lincoln was driving the car. He says
24 that's not true because that was his defense, but that's the
25 State's version of the case.

1 Our defense was Mr. Lincoln wasn't driving the car when
2 the police were chasing him. Ultimately, the jury didn't
3 feel beyond a reasonable doubt that he was driving the car
4 because they found him not guilty of that.

5 So it's a road map of where the State is going, road
6 map of where the Defense is going in their case. It's not
7 facts. It's not evidence.

8 Q And for the State to state in their opening that they
9 believed the evidence will show the Defendant was the one in
10 the car, that's obviously perfectly proper if that's what
11 they intended to prove?

12 A That was what they planned on entering and trying to
13 show the jury. Whether they prove that at the end of the
14 day was up to the jury.

15 Q Do you recall the Aiken bloodhound report in this case?

16 A I don't recall that. But they don't find Mr. Lincoln,
17 so I don't really understand what -- his theory of
18 footprints. Clearly, the jury didn't believe that he was
19 the one who ran from the car because they didn't feel he was
20 the one that ran from the cops. So I'm not really
21 understanding how that would affect his outcome of this case
22 for the simple fact that he was exonerated on that stuff.
23 His defense was he wasn't there and the jury believed that.

24 Q Also, I believe Sergeant Knight was the one who
25 testified that he noticed footprints. Do you remember that?

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1 A I don't remember that.

2 Q And do you remember if Sergeant Knight was a member of
3 the bloodhound team?

4 A I don't. I know Knight has a drug dog, or he did at
5 the time, but I do not believe he's a member of the
6 bloodhound team.

7 Q Assuming he wasn't a member of the bloodhound team,
8 would you impeach him with a statement from the bloodhound
9 team that didn't find footprints even though he testified he
10 found footprints?

11 A I don't think I could impeach him by another person's
12 statement. I think I would only be able to impeach him by
13 an inconsistent statement that he made.

14 Q Nonetheless, Mr. Lincoln was acquitted of failure to
15 stop for a blue light and resisting arrest?

16 A He was.

17 MR. MITCHELL: Beg the Court's indulgence, Your Honor.

18 THE COURT: Take your time.

19 BY MR. MITCHELL:

20 Q Mr. Lincoln alleges that Weeks improperly bolstered
21 Brandon Knight's statements where he was talking about the
22 body cam footage and asking that is it a true and accurate
23 copy. Are those standard authentication questions?

24 A Those are standard authentication questions. They have
25 to be asked of the witness in order for the evidence to be

1 admitted.

2 Q So not only is it standard, it's required by law to ask
3 those sorts of questions in order to get a piece of evidence
4 admitted?

5 A That's correct. If not, the defense would object to
6 that evidence coming in because it may not be fair and
7 accurate of what the evidence is the State wants to present.
8 So yes, it would be done by the State or the Defense when
9 entering evidence.

10 Q And prior to trial, did you ever consider severing the
11 joinder of these offenses?

12 A I think Mr. Thompson and I briefly discussed that, but
13 I think that information would have come in anyway for the
14 simple fact that that's how they found Mr. Lincoln, that's
15 how he got arrested. I believe that is part of res gestae
16 of the State's case and that would have come in anyway.
17 Because it's still kind of a continuation. The whole thing
18 kind of continued based on the State's case. So I think
19 that would have come in. I don't think it's two separate
20 incidents.

21 Q And especially since the allegation is that the
22 resisting arrest is the charge that should be severed. So
23 the drugs and failure to stop for a blue light, if those
24 were solely on trial, do you believe all the same evidence
25 would have come in?

~~Suzanne Hayes - Direct by Mr. Mitchell~~

1 A Yes.

2 Q And do you recall the jury instruction on constructive
3 possession in this case?

4 A Without reviewing it, no. I have reviewed it in regards
5 to constructive possession.

6 Q The relevant portion is on Page 212 of the transcript.
7 Judge Newman instructs the jury that the Defendant's
8 knowledge and possession may be inferred when a substance is
9 found on property under the Defendant's control. At the
10 time, did you believe that instruction would be harmful to
11 your case?

12 A No, I did not.

13 Q Why is that?

14 A Because the defense of this case was the vehicle was
15 not under Mr. Lincoln's control when the drugs were found or
16 even immediately prior.

17 Q So the Judge instructing that may be inferred if it's
18 under Defendant's control is actually a benefit because
19 you're arguing that he was not in control of the property at
20 all?

21 A Correct.

22 Q And can you testify to Mr. Lincoln's allegation
23 regarding -- well, I'll move on. Do you recall if there was
24 any plea agreements in this case?

25 A There was.

1 Q Do you remember what they were for?

2 A They were for PWID second and trafficking second.

3 Q And were those all relayed to Mr. Lincoln?

4 A They were all discussed with Mr. Lincoln. Mr. Lincoln
5 said he was not going to take that plea because there was no
6 reasonable jury that would ever convict him of these
7 charges. And I told him that was his right, but I had to
8 relay the offer to him in case he wanted to take that.

9 THE COURT: What was the offer again?

10 THE WITNESS: PWID second times two and trafficking
11 second. So he was charged with thirds. They were willing
12 to reduce them down to second and give him 15 years. And
13 that was relayed to Mr. Lincoln prior to being put on the
14 trial list and the day before we were supposed to go to
15 trial. I think it was that Tuesday. Because we were
16 supposed to start the trial on Wednesday and Mr. Lincoln
17 showed up significantly late. Judge Newman had already
18 excused the jury because she didn't want them waiting and
19 then we started the trial on Thursday.

20 BY MR. MITCHELL:

21 Q And do you recall anything improper regarding the
22 circumstantial evidence charge?

23 A No. Because I don't -- I mean, I think some of the
24 evidence was direct. It was Mr. Lincoln's car. It was his
25 vehicle. They found him, like, he had some connection. So

1 I don't feel the circumstantial instruction was incorrect.

2 Q So is that why you didn't feel the need to request a
3 Logan charge?

4 A Correct.

5 MR. MITCHELL: Beg the Court's indulgence.

6 THE COURT: Take your time.

7 (Pause.)

8 MR. MITCHELL: Ms. Hayes, I believe that's all I have
9 for you. Thank you.

10 CROSS-EXAMINATION

11 BY MS. MARTO:

12 Q Good morning, ma'am.

13 A Hey, how are you?

14 Q Good. I just want to make sure that I've got all this
15 right. You didn't consider objecting to the jury
16 instruction concerning constructive possession, correct?

17 A I didn't feel that hurt Mr. Lincoln's case. I,
18 actually, felt it helped his case because it said you can
19 infer he has possession if the property is under his
20 control. Our defense was he wasn't in control of the car so
21 you can't really infer that that's his stuff. The jury
22 obviously agreed because they found him not guilty of
23 failure to stop for a blue light, so he wasn't -- they
24 didn't feel he was in control of that property as well.

25 Q And you didn't consider asking for a Logan charge,

1 correct?

2 A No, I didn't feel it was necessary.

3 Q And then it looks like, according to the transcript,
4 y'all decided the giving false information charge would have
5 been excluded from testimony; is that right?

6 A That is correct.

7 Q And you admitted that that issue, essentially, just
8 kind of snuck by you? That you didn't --

9 A I did miss that objection. As I testified, I do
10 believe Mr. Lincoln's answer to that question was very well
11 answered.

12 Q But it's still an acknowledgement that he was found
13 guilty of something that attacks his credibility, correct?

14 A Say that again.

15 Q It's a crime of dishonesty, correct?

16 A That is correct.

17 Q So that would impeach his credibility, would you agree
18 with that?

19 A It could based on how the jury decided.

20 Q Would it have been preferable that that didn't come out
21 at all?

22 A I mean, would I like to go back and not miss that
23 objection, absolutely. But I can't tell you how the jury
24 would have -- if they would have come up with the same
25 result or not.

1 MS. MARTO: One moment, Your Honor.

2 (Pause.)

3 BY MS. MARTO:

4 Q And then concerning the closing argument, I do
5 acknowledge that you did make an objection, but it looks
6 like maybe it wasn't properly preserved. Do you recall?

7 A I believe Mr. Thompson made that objection and that
8 would probably be something he would have done. But it
9 doesn't look like from the transcripts that it was put on
10 the record. And I can't recall what was even said other
11 than it was clearly denied because the case went on. But we
12 did renew that motion at the end of trial as well.

13 Q You would agree that the trial transcript and direct
14 appeal records are the best indication of what happened at
15 trial and appeal?

16 A Yes.

17 Q And if there was a meeting in jail -- do you recall
18 whether or not Mr. Lincoln was on bond or in jail pending
19 trial?

20 A He was in jail for 311 days and then he did -- we
21 finally got him a bond and he did bond out. So at the day
22 of trial, he was out on bond.

23 Q And I think you referenced that maybe there was a
24 meeting with him and Mr. Thompson down at the jail, but Mr.
25 Lincoln wasn't in jail at that time?

1 A I believe they may have took him back in custody during
2 the trial. So the night before the Defense was supposed to
3 start their case, Mr. Thompson stopped at the jail to talk
4 to him. I was not present for that, so I can't tell you --
5 I do not know what they discussed. But he was out on bond
6 and then when his trial started, they took him back into
7 custody.

8 Q Now, it looks like based upon Mr. Knight's responses to
9 where the drugs were, he placed the drugs both in the
10 passenger seat, but then, also, in the backseat. Do you
11 have any recollection of that?

12 A I don't, but if you'll refer me to -- I can't remember
13 what page we were on.

14 Q 51 and then 62.

15 A You said 62 as well?

16 Q Yeah, 51 and 62.

17 A They both say they were found in the passenger seat.

18 Q And then Line 18 says it was in the back?

19 A Said there was mail -- Line 18, which page?

20 Q 62.

21 A It says, That's correct, it was in the passenger seat
22 in the back. Okay. So that's in the back.

23 Q Is there a reason why you didn't, I guess, more
24 thoroughly cross-examine him about where the drugs were?

25 A Yes. Because our defense was that Mr. Lincoln wasn't

Suzanne Hayes - Cross by Ms. Marto

1 present, so it didn't matter where the drugs were because he
2 wasn't present and didn't even know the drugs were in his
3 car.

4 Q But wouldn't that call in question his credibility and
5 knowledge of what exactly happened in the case?

6 A It may have, but it might, also, be that this case
7 happened, you know, a year or two prior to the actual trial,
8 so his memory might not have been a hundred percent
9 accurate. Our defense was Mr. Lincoln wasn't in the car.
10 He didn't know the drugs were in there. So the relevance of
11 where the drugs didn't matter. The drugs could have been
12 anywhere in the car. Mr. Lincoln didn't know about them,
13 wasn't driving the car. That was our defense.

14 MS. MARTO: Nothing further, Your Honor.

15 MR. MITCHELL: No redirect, Your Honor.

16 THE COURT: Any other witness?

17 MR. MITCHELL: No more witnesses for the State, Your
18 Honor.

19 THE COURT: I'm happy to hear from you. You don't have
20 to do a closing, but if you want to, that's fine. I'm happy
21 to hear from you.

22 MS. MARTO: Judge, I think that Mr. Lincoln did an
23 extremely thorough job laying out every issue he wants this
24 Court to consider.

25 THE COURT: He did and I've got the memorandum up here.

1 MS. MARTO: We would just request that this Court take
2 a careful eye to everything that he named in the memorandum.
3 I think that could sum it up better than I could right now.
4 We would rest on the testimony we've heard today.

5 THE COURT: Thank you.

6 MR. MITCHELL: Your Honor, the State would submit that
7 Mr. Lincoln hasn't met his burden. However, the State would
8 request that we be given time to file a response memo in
9 lieu of a closing.

10 THE COURT: Any objection?

11 MS. MARTO: I would request --

12 THE COURT: I mean, I don't know that I need a
13 response. I've got it. You're happy to do so if you want
14 to.

15 MR. MITCHELL: Or I can just lay it out now.

16 THE COURT: Well, Your Honor, first with the closing
17 argument, the Solicitor is allowed to make reasonable
18 inferences based on the record. Sergeant Knight did testify
19 that drugs were found in a bag. He then later testified
20 that he found scales and the baggies with the drugs.
21 Therefore, a reasonable inference can be made that drugs and
22 scales and baggies were all found in a bag together. And
23 that's what Solicitor Hammack made in her closing argument.

24 Also, counsel did object. I would submit that the
25 objection was clearly denied based on the fact that she was

1 allowed to continue in closing and remade those statements.
2 So I would argue that the issue was preserved. But
3 regardless, even if it weren't preserved, it would not have
4 merit on direct appeal since it was a proper argument to be
5 made at closing.

6 Regarding the erroneous charge on constructive
7 possession, I will concede that Stewart came out a month
8 prior to the trial. However, Ms. Hayes gave a valid reason
9 for why she wouldn't object to that charge, which is Judge
10 Newman instructed that an inference can be made if the drugs
11 are found on property under the Defendant's control.

12 Their defense at trial was that the drugs were not
13 found -- the Defendant had no control over the property at
14 the time. So that instruction wouldn't necessarily be
15 harmful to his defense since the inference would only come
16 if the jury found it was under his control, whereas their
17 whole defense was the Defendant wasn't in control of the
18 property at all.

19 Regarding the improper vouching and bolstering claims,
20 first, regarding the body cam, those were just standard
21 authentication questions that are required by law for a
22 piece of evidence to be admitted. Thus, there's no error
23 there.

24 Regarding improper vouching in opening statement
25 regarding Colt Woody, Mr. Woody was the homeowner who found

1 Mr. Lincoln in the carport. Mr. Lincoln testified at trial
2 that he was there. Mr. Lincoln testified that Mr. Woody was
3 the person that found him. That's all Mr. Woody's testimony
4 was.

5 Also, regarding the Aiken Bloodhound report, State
6 argued that Sergeant Knight was not a member of the Aiken
7 Bloodhound team so he wouldn't be able to use a statement
8 from an Aiken Bloodhound team member to impeach his
9 statement that he found footprints. Furthermore, he was
10 acquitted of failure to stop for a blue light and resisting
11 arrest, so the jury believed that he wasn't the one that
12 ran. So that would be harmless error anyway.

13 Regarding the Logan charge instruction, Your Honor, I
14 submit the circumstantial evidence charge was just fine.

15 THE COURT: The Logan charge is when there's just not
16 any evidence and the State relies solely on circumstantial;
17 is it not?

18 MR. MITCHELL: I'm not entirely sure if it's solely or
19 part --

20 THE COURT: Well, I don't know solely, but the majority
21 of their case.

22 MR. MITCHELL: Yes, Your Honor. And as Ms. Hayes said,
23 there is a lot of drug evidence to support the drugs were
24 found in Mr. Lincoln's car.

25 Furthermore, the language in Logan is not mandatory.

1 It's only mandatory if the trial court request it. If the
2 courts were going to find attorneys ineffective for failure
3 to request, they would have just made it mandatory to begin
4 with and not discretionary. Thus, I believe that allegation
5 should, also, be denied.

6 The State's suppression of evidence, they reviewed all
7 discovery, relayed all the plea details, they were rejected
8 by Mr. Lincoln.

9 And lastly, Your Honor, the failure to request the
10 severance of joint defense, clearly, had the resisting
11 arrest charge been severed prior to trial, all the same
12 evidence still would have come in in the State's case in
13 chief, the failure to stop for a blue light and the drug
14 charge. So it's all part of res gestae of a case,
15 therefore, all that evidence would have come in regardless.
16 So any joinder would not have affected the evidence
17 presented to the jury.

18 For those reasons, Your Honor, his application should
19 be denied.

20 THE COURT: Thank you.

21 I'll take it under advisement.

22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the
Second Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
complete Transcript of Record of the proceedings had and the
evidence introduced in the hearing of the captioned case,
relative to appeal, in the Court of Common Pleas for Aiken
County, South Carolina, on the 10th day of June, 2025.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

December 28, 2025

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Jonathan Art Lincoln, SCDC #285492,

Case No. 2023-CP-02-01449

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Jonathan Art Lincoln ("Applicant") on June 27, 2023. On June 10, 2025, a hearing into the matter was convened before the Honorable Debra R. McCaslin at the Aiken County Courthouse. Applicant was present and represented by Chelsey F. Marto, Esquire. Assistant Attorney General Cruise Mitchell represented the State. At the evidentiary hearing, testimony was taken from Applicant and Suzanne H. Hayes, Esquire ("Counsel").

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Aiken County Clerk of Court. During its December 2020 term, the Aiken County Grand Jury indicted Applicant for trafficking in methamphetamine, 28-100 grams (2020-GS-02-02100), possession with intent to distribute cocaine (2020-GS-02-02097),

possession with intent to distribute heroin (2020-GS-02-02098), resisting arrest (2020-GS-02-02906), and failure to stop for a blue light (2020-GS-02-02099). Applicant was represented by Suzanne Hayes, esquire. The case was prosecuted by Assistant Solicitor Ashley Hammack.

On July 21–23, 2021, Applicant proceeded to a jury trial before the Honorable Jocelyn Newman. The jury acquitted Applicant of the failure to stop for a blue light and resisting arrest. The jury found Applicant guilty of trafficking in methamphetamine and both PWID charges. Judge Newman sentenced Applicant to thirty (30) years on each charge, with those sentences to be served concurrently.

Applicant filed a timely notice of appeal. The appeal was perfected by Appellate Defender Lara Caudy of the South Carolina Commission on Indigent Defense – Appellate Division by filing a brief pursuant to *Anders v. California*.¹ The South Carolina Court of Appeals affirmed Applicant’s convictions in an unpublished opinion. *State v. Jonathan Art Lincoln*, Unpub. Op. No. 2022-UP-393. The remittitur was sent on November 18, 2022.

CURRENT APPLICATION

In her application for post-conviction relief, Applicant alleges she is being detained unlawfully for the following reasons²:

1. Trial Court error
 - a. Extraneous or Improper Influence on Jury
 - b. Improper Jury Instruction
2. Prosecutorial Misconduct
 - a. Brady Violation
 - i. State failed to disclose Aiken Bloodhound Tracking Team report.
 - b. Improper Opening Statement
 - c. Improper Vouching
 - d. Improper Comments and Questions on Direct-Examination (Cumulative, Vouching, Bolstering, Inflammatory, and Leading)
 - e. Improper Questioning on Cross-Examination (Pitting)
 - f. Improper Questioning by State on Cross-Examination (404(b) evidence)

¹ *Anders v. California*, 386 U.S. 738 (1967).

² At the evidentiary hearing, Applicant reframed all allegations as claims of ineffective assistance of counsel.

- g. Prosecution Presenting Testimonial Evidence if Knew or Should Have Known to be False; Failure to Correct Inconsistent Testimony of State's Witness
- h. Improper Closing Arguments
- 3. Ineffective Assistance of Counsel
 - a. Trial Counsel failed to investigate and prepare for trial.
 - b. Failure to call alibi witness.³
 - c. Failure to introduce ABTT "Call-Out Report"
 - d. Failure to move to sever prejudicial joinder of offenses; Failure to move for mistrial upon trial court's decision to direct verdict on joined offense.
 - e. Failure to move for mistrial or object to SCRE 404(b) violation; and Failure to move to strike improper 404(b) question and resulting response by witness
 - f. Failure to properly object and preserve the record for appeal.
 - g. Cumulative error

Before this Court are the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the records of the current action.

INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 687; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its

³ Applicant waived this allegation at the outset of the evidentiary hearing.

“reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel’s deficient performance must have prejudiced 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 (quoting *Strickland*, 466 U.S. at 694). “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on

the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696–97.

FINDINGS OF FACT & CONCLUSIONS OF LAW⁴

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims raised in the application and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Solicitor's Closing Argument and Counsel's Failure to Object

Applicant raises claims regarding Counsel's failure to object to certain allegedly improper comments made by the Solicitor during closing argument. During closing argument the Solicitor made these statements:

And, importantly, in that bag in the front passenger seat, is scales. He answered Solicitor Weeks on cross-examination, yeah, it's possible I left my scales in my truck. These don't measure out hamburger meat or chicken.

...

In this case, these drugs were found in a bookbag in the Defendant's car in the passenger seat. But that bookbag didn't just have drugs in it. That bookbag had these scales that are commonly used to weight drugs, to weigh drugs, to measure out how much you're going to sell.

⁴ As explained in a subsequent section, this Court will only consider the trial transcript certified on June 17, 2025, in making its findings of fact and conclusions of law.

...

And the other thing that was in that bag with those scales with these drugs is - - I think Solicitor Weeks held it up during the trial, was a bunch of Ziploc sandwich bags. But more importantly, were these.

...

These scales are his that he left in his truck, that were found in the same bag as his drugs. So the scales are his, but the drugs aren't?

(Trial Tr. p. 173; p. 184; p. 185; p. 187).

Following this last statement, Counsel objected:

Mr. Thompson: Your Honor, we have an objection and a matter of law that needs to be taken up outside the presence of the jury...I apologize. I hesitate to interrupt anyone's closing argument. While there is absolutely testimony in this case that Mr. Lincoln was presented with the scales and was told - - and was asked if the scales were his and I believe he said yes, he tells me that his scales were packed in the back of the truck. I don't believe that there was any testimony in this trial that the scales that are in this - - that are in evidence in this case were actually found on the passenger seat of this car.

I would argue it's a critical piece of evidence in this - - I would agree with the State that it's a critical piece of evidence in this case if the scales that he claims are actually right there with drugs, that would be a - - that would be very damning testimony, but I don't believe that that testimony was - - was in the evidence and testimony of this case. I don't believe any of the officers actually said that. If that's true, I believe that the State would be arguing facts that are not in evidence and we would move for a mistrial in this case.

(Trial Tr. p. 188).

After arguments from the attorneys, an off-the-record discussion occurred and then the Solicitor was allowed to continue her closing argument. (Trial Tr. p. 190–191). Although Applicant concedes Counsel objected, he avers Counsel “half-heartedly” and wrongly objected. Applicant claims Counsel should have objected on the basis that Applicant never admitted ownership of the drugs, and that this issue was unpreserved.

This Court finds the Solicitor's comments proper. “The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the

evidence.” *Vasquez v. State*, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010). “A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony.” *Id.* (quoting *Randall v. State*, 356 S.C. 639, 591 S.E.2d 608, 610 (2004)).

At Applicant’s trial, Sergeant Brandon Knight testified to the following:

Q. Can you describe what you found in the vehicle and what you took possession of from the vehicle?

A. Yes. In the back passenger area of the vehicle, there was a black shotgun with a pistol grip. In the front passenger seat *in a bag was the narcotics*, drugs that were located.

...

Q. Officer Knight, other than the drugs and shotgun, what else did you find in the back?

A. We found letters with his address on it from the mail. We had an alcohol bottle from the front passenger area, scales, baggies - -

Q. What do you mean scales?

A. Scales to weigh the weight of narcotics.

Q. I’ll ask you took at what’s marked as State’s Nos. 4, 5 and 6, and ask you if you can identify those items?

A. Yes. These are the scales that were secured and placed into evidence that were located in the front passenger seat of the vehicle *with the narcotics*.

(Trial Tr. p. 51; p. 53).

Applicant testified to the following:

Q. How about these scales for measuring drugs, were they in your truck, too?

A. I assume they were.

Q. Well, did you put them there?

A. It’s a possibility that I did.

(Trial Tr. p. 148).

Here, Sgt. Knight testified that the narcotics were found in a bag located in the front passenger seat. He further stated that the scales were found "in the front passenger seat with the narcotics." Applicant testified at trial that it was possible he placed the scales in his truck. In closing, the Solicitor argued both that Applicant admitted it was possible he left his scales in the truck and that the scales were found in the bag along with the narcotics. Taken together with Sgt. Knight's testimony, it is reasonable to infer, and proper to argue, that Applicant claimed ownership of the scales and that both the scales and narcotics were found together in the same bag in the front passenger seat. Thus, Solicitor's comments were proper, and Applicant has failed to establish either deficiency or prejudice as to this allegation.

Accordingly, this allegation is DENIED.

Improper Jury Instruction and Counsel's Failure to Object

Applicant alleges Counsel was ineffective for failing to object to the trial court's improper jury instruction on constructive possession. During jury instructions, the trial court charged the jury with the following:

In the prosecution of a crime for possession of narcotics, possession may be actual or constructive. Actual possession occurs when the drugs are found to be in the actual physical custody of the person charged with possession; while constructive possession occurs when the person charged with possession has dominion and control over either the drugs or the premises upon which the drugs are found. Therefore, the State must prove beyond a reasonable doubt that the Defendant had both the power and intent to control the disposition or use of the cocaine and of the heroin. Mere presence at the scene where the drugs were found is not enough to prove possession. The Defendant's knowledge and possession may be inferred when a substance is found on the property under the Defendant's control. However, this inference is simply an evidentiary fact to be taken into consideration by you along with the other evidence in the case and to be given the weight you decide it should have.

(Trial Tr. pp. 211-212).

“The trial court may not instruct the jury that it may infer the defendant's knowledge or possession of drugs, in drug possession prosecutions based on constructive possession, when a substance is found on property under the defendant's control.” *State v. Stewart*, 433 S.C. 382, 858 S.E.2d 808 (2021).

At trial, Applicant's defense was that he did not have control over the vehicle in which the drugs were discovered, asserting instead that his nephew had stolen the vehicle and was in control of it at the time the drugs were found. At the evidentiary hearing, Counsel explained that she chose not to object to the instruction because it aligned with their defense strategy—that the vehicle was not under Applicant's control—and could therefore support the defense. This Court finds Applicant has failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [her] case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*). “[W]hen Counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010). This Court finds Counsel's explanation for not objecting to be a valid strategic reason. Thus, Counsel was not deficient.

Here, the mere fact that the drugs were found on Applicant's property was not the only evidence presented by the State at trial. The State also introduced evidence that the drugs were found alongside scales, which Applicant admitted could have been his. Additionally, the State presented evidence of other items found in the vehicle that were indisputably linked to Applicant, including a vehicle registration in Applicant's name located in the glove box, mail addressed to Applicant, and prescription medication prescribed to Applicant. (Trial Tr. p. 51). In contrast, the only item in the vehicle Applicant denied ownership of was the drugs. Given the additional

evidence supporting an inference that the drugs belonged to Applicant, he has failed to meet his burden of demonstrating that the jury instruction had any meaningful effect on the verdict. Therefore, Applicant has failed to prove a reasonable probability the outcome at trial would have been different had Counsel objected to the jury instruction.

Furthermore, to the extent Applicant is alleging Counsel should have objected to the Solicitor's comments regarding constructive possession, this Court finds this allegation is without merit. The Supreme Court is clear that it is entirely appropriate for a prosecutor to argue that the jury may infer knowledge or possession when a substance is found on property under the defendant's control. *See State v. Stewart*, 433 S.C. 382, 391, 858 S.E.2d 808, 813 (2021) ("The inference is a valid one for the jury to draw, and the trial attorneys may argue to the jury whether the inference should be drawn."). Thus, Counsel had no meritorious reason to object.

Accordingly, this allegation is DENIED.

Ineffective for Failing to Request Logan Circumstantial Evidence Charge

Applicant further claims Counsel was ineffective for failing to request a *Logan* circumstantial evidence charge. At Applicant's trial, the court gave the following charge on circumstantial evidence:

Circumstantial evidence is a proof of chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in this case. After weighing all of the evidence, if you are convinced of the guilt of the Defendant beyond a reasonable doubt, you must find the Defendant not guilty.

(Trial Tr. pp. 207–208)

This Court finds this instruction to be proper. “In criminal case relying in whole or in part on circumstantial evidence, once proper reasonable doubt instruction is given, jury should be instructed that law makes absolutely no distinction between weight or value to be given to either direct or circumstantial evidence, nor is greater degree of certainty required of circumstantial evidence than of direct evidence, that jury should weigh all evidence in case, and after weighing all evidence, if jury is not convinced of guilt of defendant beyond a reasonable doubt, it must find defendant not guilty.” *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997), *holding modified by State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004). The Supreme Court ruled in *Logan* that “defendants should not be restricted from requesting a jury charge that reflects the requisite connection of collateral facts necessary for conviction.” *State v. Logan*, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013). The Court noted “this holding does not prevent the trial court from issuing the circumstantial evidence charge provided in *Grippon* and *Cherry*. However, trial courts may not exclusively rely on that charge over a defendant’s objection.” *State v. Logan*, 405 S.C. 83, 100, 747 S.E.2d 444, 452–53 (2013).

Here, the trial court gave a proper reasonable doubt instruction immediately preceding its instruction on circumstantial evidence. Meaning, the circumstantial evidence charge given was proper. This Court finds Applicant has failed to show that Counsel’s representation fell below an objective standard of reasonableness for failing to request the *Logan* charge. Because the trial court’s instruction was proper, this Court finds Applicant has not proven deficiency or prejudice as to this allegation.

Accordingly, this allegation is DENIED.

Improper Opening Statement

Applicant alleges Counsel was ineffective for failing to object to certain allegedly improper statements the Solicitor made during opening statement. During his opening statement Solicitor Weeks made the following statements:

Well, the person driving that vehicle or the persons in that vehicle, the officer didn't really know at that point, he gets close enough, calls dispatch, runs the license through and gets the registration and license information for the tag on this vehicle. As we all know, that might not necessarily be definitely, but he doesn't know at that point because the person won't stop.

...

Prior to arresting him, they spent the night wandering through the woods looking for him, taking the tracking dogs through the woods looking for him. They had already searched the car he was driving, which was registered to him. It had mail in it addressed to him. It had an address that wasn't anywhere in the vicinity of where he decides to stop the car and run.

...

The police officers from Aiken County and Highway Patrol, the dogs came and everybody was trying to locate the person that jumped and ran from the vehicle. Registration says it was Jonathan Lincoln. Pill bottles in there say it was Jonathan Lincoln. And that's who they were looking for.

...

I mentioned the methamphetamine, I mentioned the heroin. He had cocaine. The amount of cocaine that would cause our statutory inferences to - - inferences can be allowed. And he had all that in his car. Nobody else did they see bail out of the car.

(Trial Tr. p. 33; p. 35; p. 36; p. 38)

Applicant contends these comments improperly suggested that, at some point, the identity of the driver of the vehicle was conclusively determined to be Applicant. This Court finds this allegation is without merit. Here, the Solicitor was merely outlining the facts the State intended to prove—namely, that Applicant was the individual driving the vehicle containing the narcotics. “The Solicitor is permitted in opening statement to outline facts the state intends to prove.” *State v. Kornahrens* 290 S.C. 281, 284, 350 S.E.2d 180, 183 (1986). The Solicitor's comments were

supported by Brandon Knight's testimony that several items found in the vehicle clearly linked Applicant to it, including the registration in his name, pills that were prescribed to him, and mail addressed to him. The statements were further supported by Colt Woody's testimony that he found Applicant in the carport of his home located near the site where Applicant's vehicle was abandoned after he fled on foot. Therefore, based on the evidence presented at trial, a strong inference can be drawn that Applicant was the individual driving the vehicle. "As long as the Solicitor introduces evidence which reasonably supports the stated facts, there is no error. *Id.*

Accordingly, this allegation is DENIED.

Improper Vouching and Bolstering

Applicant alleges the Solicitors engaged in improper vouching/bolstering at various points in the trial. First, Applicant alleges Solicitor Weeks improperly vouched for the credibility of witness, Colt Woody, during his opening statement. Solicitor Weeks stated:

But you're going to hear testimony from somebody who wasn't involved in any of the events of that night. He just happened to be in his house...getting ready to go to work. He's a farmer, a hard worker. He flips on the light and this man at this table over here is sitting on his back porch steps. It's still dark. I mean, he's going to work early. He's a farmer. He's just sitting there. So he backs up, gets his shotgun and calls the police, calls 911.

...

This homeowner didn't have a thing to do with anything. It was early in the morning hours he had heard the police going up and down this road, but he finally went to bed. His wife was worried, he was worried. Obviously, there was a lot of activity.

(Trial Tr. p. 34; p. 35)

These statements are clearly not improper vouching. Solicitor Weeks is merely describing the involvement of a witness and outlining the facts he believes will be testified to. This Court finds Counsel was not deficient for failing to object to clearly permissible opening statements.

Furthermore, Colt Woody's testimony at trial was not particularly damaging to Applicant's defense nor did he testify to anything Applicant himself did not also testify to. Applicant admitted to being located by law enforcement while in Mr. Woody's carport. Therefore, Applicant has failed to prove he was prejudiced.

Accordingly, this allegation is DENIED.

Applicant further contends Solicitor Weeks engaged in improper vouching by bolstering the authenticity of the dash cam video. This Court finds this allegation is without merit. During the cross examination of Sergeant Brandon Knight, the following exchange occurred:

- A. And State's Exhibit No. 1, can you identify what this is?
- B. This is my dash cam video from my patrol vehicle.
- C. Okay. And have you watched it with us?
- D. I have.
- E. Is it a true and accurate copy?
- F. It is.
- G. The video we watched was two or three hours long. Is this a more chopped-down version?
- H. That's the actual video.
- I. I know, but did we cut it if off at some point?
- J. Yes.

(46-47)

Applicant seems to conflate authentication with improper bolstering. Clearly, this line of questioning was not only proper, but necessary, for the State to authenticate the dash cam video prior to introducing it as evidence. Counsel testified that these were standard authentication questions and had no meritorious reason to object. Thus, Counsel was not deficient for failing to

object. Additionally, the dash cam video was introduced by the State as evidence of failure to stop for a blue light, which Applicant was acquitted of. Therefore, this Court finds Applicant has failed to prove he was prejudiced.

Accordingly, this Court finds this allegation is DENIED.

Counsel's Failure to Object to Improper 404(b) Evidence

Applicant alleges Counsel was ineffective for failing to object to Solicitor improperly eliciting previously excluded testimony regarding Lincoln's prior arrest for giving false information to law enforcement. This Court finds this allegation is without merit.

At the evidentiary hearing, it was discovered there existed two different certified transcripts with conflicting transcriptions. One transcript was certified on October 5, 2021, and the other certified on October 18, 2023. On page 125, lines 5–17, of the transcript certified on October 5, 2021, reads as follows:

The Court: I tend to agree with the Defense because it does not directly comment on the credibility of the witness. If they were, in fact, crimes of dishonesty or false statement, certainly, that connects credibility, but just to say he's a criminal, you know, he has two felony convictions, I think would be improper character evidence in this situation. So I will not allow the two drug convictions from December of 2011 to be mentioned. What's the Defense's position on the false information?

Ms. Hayes: I don't think that one should be mentioned either.

The Court: I agree. So the State can't, of course, mention that, question the witness about that.

On page 128, lines 15–page 129, line 3, of the transcript certified on October 18, 2023, reads as follows:

The Court: I tend to agree with the defense because it - - it does not directly comment on the credibility of the witness. If they were in fact crimes of dishonesty or false statement, certainly that impacts credibility. But just to say he's a criminal, you know, he has two felony convictions, I think would be improper character evidence in this situation. So I will not allow the two drug convictions from

December, 2011 to be mentioned. What's the defense's position on the false information?

Ms. Hayes: I don't think there really is an argument on that one.

The Court: I agree. Okay. So the State can't of course mention that, question the witness about that.

Following the hearing, the State initiated a formal transcript challenge to resolve the discrepancies between the transcripts. (*See Formal Transcript Challenge Letter*, dated June 17, 2025). Upon review of the tapes, Court Reporter, Penny Johnson, certified a corrected transcript on June 17, 2025, in which the relevant portion reads as follows:

The Court: ...What's the defense's position on the false information?

Ms. Hayes: I don't think there really is an argument on that one.

The Court: I agree. So the State can't, of course, mention that, question the witness about that.

(Trial Tr., certified June 17, 2025, p. 125).

This Court will make its findings of fact and conclusions of law based only on the corrected trial transcript certified on June 17, 2025.

Here, Counsel indicated she did not believe there was a credible argument for objecting to the false information conviction being used to impeach Applicant. Based on the context, the trial court's ruling that "the State can't, of course, mention that, question the witness about that" was clearly referring to the two felony drug convictions—not the giving false information conviction. This Court agrees with Counsel's assessment that there is no credible argument against admissibility of the giving false information conviction.

"Under Rule 609(a)(2), SCRE, if a crime is viewed as one involving dishonesty, the court must admit the prior conviction because, prior convictions involving dishonesty or false statement

must be admitted regardless of their probative value or prejudicial effect.” *State v. Bryant*, 369 S.C. 511, 517, 633 S.E.2d 152, 155 (2006). Here, Applicant’s conviction for giving false information was clearly admissible and Counsel had no meritorious reason to object. Additionally, Applicant testified at the evidentiary hearing that he still would have testified even if he was aware that he could be impeached by this prior conviction. Thus, Applicant has failed to prove deficiency or prejudice as to this allegation.

Accordingly, this allegation is DENIED.

Failure to Move to Sever Joinder of Offenses and Failure to Move for Mistrial Upon Trial Court’s Decision to Direct Verdict on Joined Offenses

Applicant first alleges Counsel should have moved to sever the resisting arrest charge from the remaining charges. This Court find this allegation is without merit.

Even where the charges do not arise out of a single, isolated incident, joinder will be allowed when the crimes involve connected transactions closely related in kind, place, and character. *State v. Beekman*, 415 S.C. 632, 637, 785 S.E.2d 202, 205 (2016) (providing examples). Here, the resisting arrest charge arose from Applicant’s conduct after he was discovered in Colt Woody’s carport, following a vehicular pursuit in which he allegedly bailed out of his truck, fled on foot, and ultimately hid in the carport, with drugs subsequently recovered from the truck. Clearly, the arresting charge did not arise “out of a single, isolated incident” and, for the purposes of joinder, it was all one chain of circumstances. In addition, same or similar testimony would have been presented at trial even if the resisting arrest charge had been severed. The discovery of Applicant in the carport and subsequent arrest would clearly have been part of the *res gestae* of the drug and failure to stop for a blue light case. *See State v. King*, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999) (“The *res gestae* theory recognizes evidence of other bad acts may be an integral

part of the crime with which the defendant is charged, or may be needed to aid the fact finder in understanding the context in which the crime occurred.”). Thus, this Court finds Applicant has not proved deficiency or prejudice as to this allegation.

Accordingly, this Court finds this allegation is DENIED.

Counsel's Alleged Failure to Object to Trial Court Submitting Indictment for Resisting Arrest to the Jury

Applicant alleges Counsel was ineffective for failing to object when the trial court erroneously submitted the indictment for resisting arrest to the jury for deliberation after the trial court had already directed a verdict on that charge. This Court finds Applicant has failed to meet his burden proving Counsel was ineffective regarding this issue.

At trial, the court directed verdict on the resisting arrest charge. (Trial Tr. p. 162). Following the reading of the verdicts, the trial court acknowledged it erred in sending the indictments for resisting arrest to the jury for deliberation. The trial court noted any error was harmless because the jury acquitted Applicant of that charge. (Trial. Tr. pp. 223–224). This Court agrees that any error in submitting the resisting arrest indictment was harmless, because Applicant was acquitted of resisting arrest. Thus, this Court finds Counsel was not deficient for failing to object to the trial court erroneously submitting the resisting arrest indictment to the jury. For the same reason, this Court finds Applicant has failed to prove he was prejudiced by any alleged failure to object.

Accordingly, this Court finds this allegation is DENIED.

Counsel's Alleged Failure to Introduce the Aiken Bloodhound Tracking Team Report

Applicant alleges Counsel was ineffective for failing to introduce the Aiken Bloodhound Tracking Team's "Call-Out Report" into evidence at trial. This Court finds this allegation is without merit. Applicant contends this report was inconsistent with the testimony of witness, Sgt.

Knight, and Counsel should have introduced the report to impeach him. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant testified the bloodhound report states there were no signs of anything which contradicts Sgt. Knight's testimony that he found footprints. Counsel testified that Sgt. Knight did not draft the report and she cannot impeach a witness with another individual's prior statements. This Court finds this a valid reason for not objecting; therefore, this Court finds Counsel was not deficient for failing to introduce the bloodhound report to impeach Sgt. Knight. Additionally, Applicant was acquitted of the failure to stop for a blue light charge so any further impeachment of Sgt. Knight on this issue would not have resulted in a different outcome at trial. Thus, this Court finds Applicant has failed to prove prejudice as to this allegation.

Accordingly, this Court finds this allegation is DENIED.

Counsel's Alleged Failure to Prepare for Trial

Applicant contends Counsel was ineffective for failing to investigate and prepare for trial. Applicant specifically contends: 1) Counsel failed to investigate an alleged incident or police pursuit involving Applicant's vehicle that occurred seven months following the underlying incident, and 2) Counsel failed to investigate the prior statements of the State's witnesses. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant testified that on the morning of trial he received law enforcement records regarding a similar incident that occurred with his truck. He explained he told Counsel about the incident who did not present this at trial.

Here, Applicant has wholly failed to demonstrate how a subsequent police pursuit involving his truck could have benefitted his defense at trial, or how such evidence would have been admissible in the first place. Thus, Counsel was not deficient for failing to investigate or

introduce this alleged incident at trial. Furthermore, Applicant has failed to present any record of this incident occurring, besides his own self-serving testimony, at the evidentiary hearing; therefore, he has failed to meet his burden establishing prejudice.

Applicant further contends Counsel was ineffective for failing to investigate the prior statements of the State's witnesses. Specifically, Applicant alleges Counsel should have impeached Sgt. Knight with his supplemental incident report and addressed the inconsistencies between Sgt. Knight and Sgt. Palmer's testimony at trial. Applicant takes issue with the absence of any reference to footprints in either Sgt. Knight or Sgt. Palmer's incident report. As noted in an earlier section, Applicant was acquitted of failing to stop for a blue light, so he has failed to show he was prejudiced by any further cross-examination on this issue. Additionally, Applicant testified at his trial that he was barefoot when he was allegedly searching for his stolen truck, so it was not in dispute that Applicant was in the area with no shoes on. Thus, Applicant has failed to meet his burden establishing deficiency or prejudice as to this allegation.

Accordingly, this allegation is DENIED.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

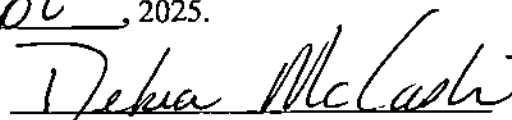
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of

the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant must remain in the custody of the State.

AND IT IS SO ORDERED this 15 day of Sept, 2025.


THE HONORABLE DEBRA R. MCCASLIN
Presiding Judge
Second Judicial Circuit

Aiken, South Carolina

WITNESSES

Aiken County Sheriff

Brandon J Knight II

Law Enforcement Case #: 20-010190

MBM

ARREST WARRANT NUMBER

2020A0210200370

FILED December 3 2020Robert J. White
C.C.P. & G.S. PBPaige Barnes
Deputy Clerk**ACTION OF GRAND JURY**TRUE BillForeperson of Grand Jury
Date: December 3, 2020[Signature]**VERDICT**GuiltyForeperson of Petit Jury
Date: 7/23/2021**DOCKET NO. 2020GS0202097****The State of South Carolina**

County of Aiken

COURT OF GENERAL SESSIONS

DECEMBER TERM 2020

THE STATE
vs.**JONATHAN ART LINCOLN****CDR #: 0185****Indictment for****POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE**

§ 44-53-0370(b)(1)

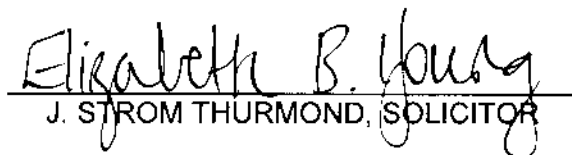
J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF AIKEN) POSSESSION WITH INTENT TO DISTRIBUTE
) COCAINE
)
 § 44-53-0370(b)(1)

At a Court of General Sessions, convened on December 7, 2020, the Grand Jurors of Aiken County present upon their oath:

That JONATHAN ART LINCOLN did in Aiken County on or about February 26, 2020, knowingly or intentionally possess with intent to distribute a quantity of Cocaine, a controlled substance under provisions §44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Brandon J Knight II

Law Enforcement Case #: 20-010190

MBM

ARREST WARRANT NUMBER

FILED December 3 2020
2020A0210200371

Robert J. White
C.C.P. & G.S. PB
Paige Barnes
Deputy Clerk

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: December 3, 2020

for R. CL

VERDICT

Guilty

Foreperson of Petit Jury

Date: 7/23/2021

DOCKET NO. 2020GS0202098

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

DECEMBER TERM 2020

THE STATE
vs.

JONATHAN ART LINCOLN

CDR #: 0185

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE HEROIN

§ 44-53-0370(b)(1)

J. STROM THURMOND, SOLICITOR

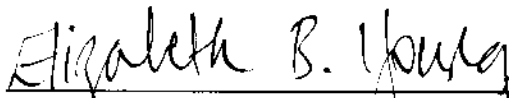
STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF AIKEN) POSSESSION WITH INTENT TO DISTRIBUTE
) HEROIN

§ 44-53-0370(b)(1)

At a Court of General Sessions, convened on December 7, 2020, the Grand Jurors of Aiken County present upon their oath:

That JONATHAN ART LINCOLN did in Aiken County on or about February 26, 2020, knowingly or intentionally possess with intent to distribute a quantity of Heroin, a controlled substance under provisions §44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Brandon J Knight II

Law Enforcement Case #: 20-010190

MBM

ARREST WARRANT NUMBER

2020A0210200393

FILED December 3, 2020
Robert J. White
 C.C.P. & G.S.

Paige Barnes
 Deputy Clerk

ACTION OF GRAND JURY

TRUE Bill

Foreperson of Grand Jury

Date: December 3, 2020

VERDICT

Guilty

Foreperson of Petit Jury

Date: 7/23/2021DOCKET NO. 2020GS0202100

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

DECEMBER TERM 2020

THE STATE
 vs.

JONATHAN ART LINCOLN

CDR #: 0349

Indictment for

TRAFFICKING IN METHAMPHETAMINE

§ 44-53-0375(C)(2)(c)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	TRAFFICKING IN METHAMPHETAMINE
COUNTY OF AIKEN	)	
	)	§ 44-53-0375(C)(2)(c)

At a Court of General Sessions, convened on December 7, 2020, the Grand Jurors of Aiken County present upon their oath:

That JONATHAN ART LINCOLN did in Aiken County on or about February 26, 2020, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly, actually, or constructively possess, or did knowingly attempt to become in actual or constructive possession of more than 28 grams but less than 100 grams of Methamphetamine, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR