

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

John C. Hayes, III, Circuit Court Judge

RECEIVED

JAN 13 2014

S.C. Supreme Court

DUVAL M. COOPER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001428

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
TRIAL TRANSCRIPT DATED FEBRUARY 15, 2006.....	1
SENTENCING TRANSCRIPT DATED MAY 20, 2010	157
INDICTMENTS AND SENTENCING SHEETS.....	165
APPLICATION FOR POST-CONVICTION RELIEF.....	171
RETURN	179
POST-CONVICTION RELIEF HEARING TRANSCRIPT	186
ORDER OF DISMISSAL	218

1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF YORK
4 2005-GS-3486 AND 3487

5
6 STATE OF SOUTH CAROLINA
7 VS.
8 DUVAL MELVIN COOPER

9
10 YORK, SOUTH CAROLINA
11 FEBRUARY 15-16, 2006
12 BEFORE THE HONORABLE LEE S. ALFORD

13
14 APPEARANCES
15 FOR THE STATE: HORTON, BURRIS
16 FOR THE DEFENDANT: MEETZ, LEMEL
17 REPORTED BY: MICHAEL C. WATKINS
18 OFFICIAL COURT REPORTER

19
20
21
22
23
24
25

1	PRETRIAL MOTIONS:	4
2	VOIR DIRE:	8
3	PRETRIAL MOTIONS:	32
4	OPENING STATEMENTS:	61
5	LONNIE VINESETT:	68
6	ROBERT ELLIS:	82
7	GARY ROLLINS:	92
8	BARBARA TRAILOR:	95
9	CYNTHIA MCCORKLE:	98
10	EBONY KENDRICK:	108
11	CLOSING ARGUMENTS:	124
12	JURY CHARGE:	134
13	JURY VERDICT:	151
14	CERTIFICATE:	155
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	STATE'S EXHIBITS		
2	1	- VIDEOTAPE	77
3	2	- PHOTOGRAPH	77
4	3	- METHAMPHETAMINE	106
5	4	- HEROIN	106
6	5	- CHEMIST REPORT	106
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

PRETRIAL MOTIONS

1 MS. HORTON: State calls the case of State of South
2 Carolina vs. Duval Cooper, indictments numbers
3 2005-GS-46-3486 for trafficking in heroin, 3487 for
4 trafficking methamphetamine. Your Honor, we are not going
5 to call the marijuana case, so just those two.

6 MS. HORTON: Defense counsel ready for trial?

7 MR. MEETZ: Yes, sir, Your Honor.

8 THE COURT: All right, sir. You enter a plea of not
9 guilty on behalf of your client?

10 MR. MEETZ: That's true, Your Honor.

11 MS. HORTON: I note that your client is not present.

12 MR. MEETZ: He is not.

13 MS. HORTON: Tell me what information he had with
14 regard to the trial today.

15 MR. MEETZ: Your Honor, with regard to the trial today
16 he did not have specific information that this case would
17 be called for trial today. I will sort of give you the
18 history of Mr. Cooper and how he has responded to my
19 requests to report here, or for the most part from the time
20 of my representation of Mr. Cooper began until just a
21 couple of weeks ago. When this case that -- I think the
22 arrest date was back on June 23rd of 2005 and we would send
23 letters to an address that he had given, those letters many
24 times would come back but yet he would always be here when
25 he was supposed to be. There were times when he couldn't

PRETRIAL MOTIONS

1 be here on Monday and he would call and say I need to
2 come -- can I come some other time and he would. Offers
3 were made and discussed with Mr. Cooper and he essentially
4 didn't want to accept any of the offers and I told him that
5 Ms. Horton had informed me -- this was back in the early
6 part of January I would imagine, maybe the latter part of
7 December but probably the early part of January -- that she
8 had told me and told Mr. Cooper, I said, "You have got this
9 first term in January to accept this offer if you want to
10 or she indicated she intends to call the case to trial the
11 week of January 3rd." He did not take it by that term of
12 court and the week of January 3rd term of court he was on
13 that court docket. Ms. Horton as it turned out was not
14 going to be able to call the case to trial that week, I
15 believe she may have been in Union that week, but in any
16 event he called on Monday, told me that his grandmother had
17 died, could he come later in the week, I said, "Yeah, you
18 need to be here on Wednesday." He called Wednesday and I
19 told him that and he says listen, can I come Thursday or
20 Friday. I said, "Well, yeah if you have got to come
21 Thursday, not Friday, come tomorrow," basically he said
22 okay and that's the last conversation I have had with
23 Mr. Cooper. So he knew that the case could be called as
24 early as January 30th that week, all right, because I had
25 told him that based on conversations with Ms. Horton. Did

PRETRIAL MOTIONS

1 he know that the case was specifically set for trial this
2 week? No, sir. Because I have not heard back from him
3 since that last conversation on the telephone telling him
4 to come back up here on Thursday during January 30th term
5 of court, again, he didn't show up this week either.

6 MS. HORTON: Have you made any efforts to contact him?

7 MR. MEETZ: Your Honor, I have not. I have called --
8 we have not this week. Last week when he didn't show up
9 last term of court -- whenever clients report there's an
10 investigator from the solicitor's office and one from our
11 office that are checking people in. When they check in
12 with our investigator they write down the name and write
13 down a phone number beside it. I have called -- on the
14 week of January 30th I have called numbers that he had left
15 when he signs in, all of them are I would get a message
16 that says this number cannot be reached as dialed or
17 something along those lines. Again, the letters we send
18 out come back and whenever he does call and speak to a
19 receptionist if they ask for any other contact information
20 he would not supply it.

21 MS. HORTON: Your Honor, also Mr. Cooper did sign the
22 bond paperwork which has the language after September 6,
23 2005, which was his bond returnable date, he shall appear
24 or could be tried in his absence if he failed to appear
25 before.

1 MR. MEETZ: Your Honor, I will say also that I did not
2 make a specific effort to try to call him this week and I
3 have not personally contacted his bondsman to see if the
4 bondsman could locate him.

5 THE COURT: Has the bondsman been notified that he
6 hasn't shown up?

7 MR. MEETZ: I have not called the bondsman today.
8 They're notified in terms of court to have their clients
9 report but I have not called them today.

10 THE COURT: Let me suggest we do this, we will go
11 forward but let's get in touch with the bondsman, maybe the
12 bondsman can come up with him overnight, but we won't get
13 started trying the case today so let's contact the bondsman
14 I would suggest as early as possible and let the bondsman
15 see if he can get him over here and tell him he's going to
16 be tried in his absence. We are drawing the jury today, if
17 he's not here by in the morning, of course, he will be
18 tried in his absence if he is not here. Anytime they can
19 get him here would be better than not getting him here but
20 they need to be aware.

21 MR. MEETZ: He knew he was supposed to be here on
22 January 30th, he called and asked me if he could come in
23 some time later in the week, I said you have to come this
24 week but if you come Wednesday that will be fine. So he
25 called me back on Wednesday and wanted to know if he could

PRETRIAL MOTIONS

1 come Thursday or Friday so I told him then to come in.

2 THE COURT: Mr. Long, please come around and be sworn.

3 (The bailiff, Howard Long, was sworn.)

4 THE COURT: Mr. Long, I would ask that you go out to
5 the front of the building and also just outside of the
6 courtroom in the lobby there if you will and announce three
7 times the name of Duval Melvin Cooper, just announce that
8 three times and see if anyone responds to that name,
9 please, sir.

10 (Break in proceedings.)

11 THE COURT: Mr. Long, did you get any response?

12 THE BAILIFF: I called the name Duvall Cooper three
13 tie from the steps and three times in front of the Moss
14 Justice Center and received no reply.

15 THE COURT: All right. Well, let's go forward,
16 contact the bail bondsman and see if he can find him and
17 have him here tomorrow.

18 (The jury panel entered the courtroom.)

19 THE COURT: Ladies and gentlemen of the jury panel, if
20 you will, please give me your attention. I know it has
21 been a long day for you, we've had a busy afternoon. The
22 first trial for this afternoon was resolved, we are now
23 getting started with another trial. Our hope was trying to
24 decide whether to draw a jury this afternoon, we decided if
25 we go ahead and draw the jury this afternoon that maybe we

VOIR DIRE

1 can release some of you and you might not have to come back
2 again in the morning. We were trying to go ahead and get a
3 jury drawn today in hopes it would free you up some. In
4 any event we are about to go into a trial today in the
5 matter of State of South Carolina versus Duval Melvin
6 Cooper. The State charges Duval Melvin Cooper with two
7 offenses, they charge him with trafficking in heroin and
8 also trafficking in methamphetamines. The State alleges in
9 the indictments that on or about June 23, 2005 in York
10 County, South Carolina, the Defendant, Duval Melvin Cooper
11 did -- I'm not going to go through all of the details of
12 the indictments, I'm reading these allegations in the
13 indictments to you in the event the dates and the times
14 would cause you to know if you had any prior knowledge
15 about this case before coming here to court today. Let me
16 explain to you that an indictment is not proof of anything,
17 it's not evidence of anything in the case, it's merely the
18 formal document by which any person charged with a criminal
19 offense is put on notice as to what the allegations against
20 him or her are so they can come into court then and
21 properly defend themselves. Again, an indictment is not
22 proof of anything, it's not evidence of anything in the
23 case. Now, in this case the State is represented in the
24 case by Assistant Solicitors Misty D. Horton and also
25 Tawana Burris. Counsel, would you please stand and face

VOIR DIRE

1 the jury panel? Thank you, you may be seated. Is there
2 anyone on the jury panel related by blood or marriage,
3 friends with or have any other type social, business or
4 professional relationship with Misty D. Horton or Tawana
5 Burris? If so, please stand. Is anyone on the jury panel
6 related by blood or marriage, friends with or have any
7 other type social, business or professional relationship
8 with anyone who works in the 16th Circuit Solicitor's
9 Office? If so, please stand. Yes, sir, please give us
10 your name and number.

11 THE JUROR: Jason Hortney, juror number 42.

12 THE COURT: Yes, sir?

13 THE JUROR: Tommy Pope is my daughter's Sunday school
14 teacher.

15 THE COURT: All right. Let me ask you, sir, whether
16 that relationship would interfere in any way with your
17 ability to give both the State and the defendant a fair and
18 impartial trial in this case?

19 THE JUROR: No.

20 THE COURT: Thank you, sir, you may be seated. Anyone
21 else? The defendant in this case, Duval Melvin Cooper, is
22 represented by Mr. Vic Meetz and also by Mr. Gary Lemel.
23 Counsel, would you please stand and face the jury so they
24 can see who you are? Thank you, you may be seated. Is
25 anyone on the jury panel related by blood or marriage,

VOIR DIRE

1 friends with or have any other type social, business or
2 professional relationship with either Vic Meetz or Gary
3 Lemel? If so, please stand. Is anyone here -- he is not
4 present here today, but is anyone related by blood or
5 marriage, friends with or have any other type social,
6 business or professional relationship with Duval Melvin
7 Cooper, the defendant in this case? If so, please stand.
8 Ladies and gentlemen, I'm going to go through a list of
9 potential witnesses in this case, all of these witnesses
10 may not be called but they may be called. What I'm going
11 to ask you is when I call their names if you are related by
12 blood or marriage, friends with or have any other type
13 social, business or professional relationship with any of
14 these named potential witnesses I would ask that you please
15 stand when I call their names. If the witnesses are
16 present they can stand so the jury can see who you are.
17 Officer Lonnie Vinesett. Officer Robby Ellis, Officer
18 Ellis is down front here. Lieutenant Kelly Lovelace, she's
19 not present I don't believe. Cynthia McCorkle who is a
20 chemist with the sheriff's department. Gary Rollins.
21 Ebony Kendrick. Jackie Queen. Is any member of the jury
22 panel employed by any city, county, state or federal law
23 enforcement agency either at the present time or in the
24 past? If so, please stand. Is any member of the jury
25 panel related by blood or marriage or close friends with

VOIR DIRE

1 any person employed by any city, county, state or federal
2 law enforcement agency either at the present time or in the
3 past? If so, please stand. Sir, I will take you first.

4 THE JUROR: I am juror number 15.

5 THE COURT: Yes, sir.

6 THE JUROR: I have an aunt that's employed with the
7 City of Rock Hill.

8 THE COURT: All right. And her name, sir?

9 THE JUROR: Charlene Lovelace.

10 THE COURT: Sir, is there anything about that
11 relationship that would interfere with your ability to give
12 both sides a fair and impartial trial in this case?

13 THE JUROR: No.

14 THE COURT: Thank you, sir, you may be seated. Yes,
15 sir?

16 THE JUROR: Francis O'Donnell, juror number 147.

17 THE COURT: Yes, sir.

18 THE JUROR: I have two brothers that are retired law
19 enforcement retired policeman up in New Jersey.

20 THE COURT: Sir, is there anything about those
21 relationships that would interfere in any way with your
22 ability to give both the State and the defendant a fair and
23 impartial trial in this case?

24 THE JUROR: No, sir.

25 THE COURT: Thank you, sir, you may be seated. Yes,

VOIR DIRE

1 sir?

2 THE JUROR: Robert Len Perry, 153. I do know Tommy
3 Pope, friendship, and also in the past I had an
4 ex-son-in-law who was a policeman for Rock Hill.

5 THE COURT: His name was?

6 THE JUROR: Rob Len Davis.

7 THE COURT: Sir, is there anything about those
8 relationships that would interfere in any way with your
9 ability to give both the State and the defendant a fair and
10 impartial trial in this case?

11 THE JUROR: No, sir.

12 THE COURT: Yes, sir?

13 THE JUROR: Matthew Griggs, juror 127.

14 THE COURT: Yes, sir?

15 THE JUROR: My cousin is a law enforcement officer in
16 Indiana, Fort Wayne.

17 THE COURT: Sir, is there anything about that
18 relationship that would cause you an inability to be fair
19 and impartial to the parties in this case?

20 THE JUROR: No, sir.

21 THE COURT: Please give us your name and number.

22 THE JUROR: Sue Childers, 35. I have a son that's
23 with the sheriff's department in Atlanta, Georgia.

24 THE COURT: Ma'am, is there anything about that
25 relationship that would interfere in any way with your

VOIR DIRE

1 ability to give both sides a fair and impartial trial in
2 this case?

3 THE JUROR: No, sir.

4 THE COURT: Thank you, ma'am, you may be seated.

5 Anyone else? Is any member of the jury panel employed by
6 any city, county, state or federal prosecutor's office
7 either at the present time or in the past? If so, please
8 stand. Is any member of the jury panel related by blood or
9 marriage or a close friend to any person employed by any
10 city, county, state or federal prosecutor's office either
11 at the present time or in the past? If so, please stand.
12 Does any member of the jury panel serve as a volunteer with
13 any law enforcement agency or prosecutor's office either at
14 the present time or in the past? If so, please stand. Is
15 any member of the jury panel related to or a close friend
16 to any person who volunteers with any law enforcement
17 agency or prosecutor's office either at the present time or
18 in the past? If so, please stand. Is any member of the
19 jury panel a member of or does any member of the jury panel
20 contribute money to any organization such as Mother's
21 Against Drunk Drivers, Students Against Drunk Driving or
22 Citizens Against Violence Everywhere, or any other
23 organization which lobbies on behalf of victims' rights or
24 for tougher penalties for criminal offenders? If so,
25 please stand. Does any member of the jury panel contribute

VOIR DIRE

1 money to any law enforcement organization such as the
2 Fraternal Order of Police, South Carolina Law Enforcement
3 Officers Association or the South Carolina Troopers
4 Association? If so, please stand. Please give us your
5 game and number.

6 THE JUROR: Kay McCoy, 12. I contribute to the State
7 Troopers.

8 THE COURT: Ma'am, is there anything about your
9 support of that organization that would interfere in any
10 way with your ability to give both sides a fair and
11 impartial trial in this case?

12 THE JUROR: No, sir.

13 THE COURT: Thank you, ma'am, you may be seated.

14 THE JUROR: Clark Brooklyn, 207. I contribute to the
15 Children's Association, too.

16 THE COURT: Sir, is there anything about your support
17 in that organization that would interfere in any way with
18 your ability it give both sides a fair and impartial trial
19 in this case?

20 THE JUROR: No, sir.

21 THE COURT: Thank you, sir, you may be seated. Anyone
22 else? Is there any member of the jury panel who believes
23 that illegal drugs should be legalized? If so, please
24 stand. Ma'am, I will get you to wait just a minute if you
25 will, I will have you come down front and get your response

VOIR DIRE

1 to that question. Is there any member of the jury panel
2 who has any beliefs, religious or otherwise, that would
3 prevent you from rendering judgment against another person?
4 If so, please stand. All right, sir, I will get your
5 response down front, too, as well. Those two if you will
6 remember that. I am going to ask you several other
7 questions, ladies and gentlemen, and what I'm going to ask
8 you to do is listen carefully to these questions, if you
9 need to respond to one or more of these questions I will
10 ask you to come down front when I have completed all of the
11 questions and let you respond down front, we can do that
12 with a little more privacy down front next to the court
13 reporter. Here are the other questions. Have you or a
14 member of your immediate family ever had a substance abuse
15 problem? If so, I will ask you to come forward at the
16 appropriate time. Have you or a member of your immediate
17 family ever been arrested for a drug offense? Again, if
18 you need to respond to that question please come forward at
19 the appropriate time. Have you or a member of your
20 immediate family ever been convicted of a drug related
21 offense? Again, please come forward if you need to respond
22 to that at the appropriate time. I believe that's it.
23 Now, the two persons who stood up earlier and anyone who
24 needs to respond to one or more of these questions I will
25 ask -- I will get you to come to the center aisle and then

VOIR DIRE

1 come forward one at a time.

2 (At this time individual voir dire occurred.)

3 THE COURT: Give us your name and number.

4 THE JUROR: Norma Burke, number 27. I have a son who
5 was an alcoholic but he has been clean for like 12 years in
6 AA and I have a son-in-law who died in August an alcoholic.

7 THE COURT: Let me ask you about your experiences in
8 that regard, would that interfere in any way with your
9 ability to give the defendant a fair and impartial trial.

10 THE JUROR: Not at all.

11 THE COURT: And your name?

12 THE JUROR: Sherry Gullledge, 78. It's Jonathan Chase
13 Gullledge, he was charged back in 2000 for trafficking crack
14 cocaine, two weapon charges, too, he got a youthful
15 offender act.

16 THE COURT: Okay. Let me ask you about your
17 experiences with regard to your son, given the nature and
18 allegations in this whether that would affect your ability
19 to give both sides a fair trial?

20 THE JUROR: I could be fair.

21 THE COURT: Just give us your name.

22 THE JUROR: Mike East, 58.

23 THE COURT: All right, sir. You stood up when I asked
24 if you had religious beliefs that would interfere.

25 THE JUROR: Basically it's issues with drugs and

VOIR DIRE

1 alcohol.

2 THE COURT: So that's your concern?

3 THE JUROR: Yes.

4 THE COURT: Let me ask you then, given the nature of
5 the allegations in this case, do you think you could listen
6 to the testimony and evidence and render a decision which
7 would be fair to both the State and the defendant in this
8 case?

9 THE JUROR: I can't be sure.

10 THE COURT: What is your issue with drugs?

11 THE JUROR: Personal.

12 THE COURT: All right, sir. I won't require you to
13 sit on this jury. Why don't you just go back and have a
14 seat with the jury. Give us your name and number for the
15 record, please?

16 THE JUROR: (Inaudible) 134.

17 THE COURT: You stood up when I asked you if you
18 thought drugs ought to be legalized. Can you tell me more
19 about it?

20 THE JUROR: I just think part of the problems with
21 drugs is the fact it's not legalized and if it was we could
22 tax it.

23 THE COURT: You believe all should be taxed?

24 THE JUROR: Not all but some.

25 THE COURT: Let me ask you if that belief would

VOIR DIRE

1 interfere with your ability to listen to the testimony and
2 evidence in this case and render a verdict which would be
3 fair to the State and the defendant in this case?

4 THE JUROR: I probably shouldn't.

5 THE COURT: Shouldn't serve?

6 THE JUROR: Yeah.

7 THE COURT: I am going to excuse you from this case
8 but just stay with the jury. Give us your name and number.

9 THE JUROR: 101.

10 THE COURT: Yes, sir?

11 THE JUROR: In the past my brother had problems with
12 alcohol and substance abuse at least a dozen years ago, and
13 sometime ago his wife, Bonnie, was arrested and charged
14 with possession of a controlled substance, and I'm not
15 really sure what it was. I'm not sure what the result of
16 the charge was, whether there was a conviction, we were
17 very close.

18 THE COURT: Let me ask you this now, given the nature
19 of the allegations in this case, is there anything in your
20 experience in that regard that would interfere in any way
21 with your ability to give both the State and defendant a
22 fair trial?

23 THE JUROR: No, not at all.

24 THE COURT: Give us your name and number, please.

25 THE JUROR: Carl Blackwater, Jr. juror number 15.

VOIR DIRE

1 THE COURT: Yes, sir?

2 THE JUROR: In 1991 I was arrested for a marijuana
3 charge but I went through pretrial prevention, PTI, I got
4 it off my record and I successfully done that.

5 THE COURT: Let me ask you given the nature of the
6 allegations in this case, is there anything about your
7 experiences in that regard that would interfere in any way
8 with your ability to give both the State and the defendant
9 a fair and impartial trial?

10 THE JUROR: No, sir.

11 THE COURT: Give us your name and number.

12 THE JUROR: George Urban, number 196.

13 THE COURT: Yes, sir?

14 THE JUROR: I have a grandfather and an uncle who were
15 alcoholics and would not be opposed to possession of
16 marijuana.

17 THE COURT: Let me ask you then if you --
18 understanding the nature of the allegations in this case,
19 would your beliefs or your experiences in that regard with
20 your relatives, would that interfere in any way with your
21 ability to give both the State and the defendant a fair and
22 impartial trial in this case?

23 THE JUROR: No.

24 THE COURT: You could follow the law?

25 THE JUROR: Yes.

VOIR DIRE

1 THE JUROR: I'm Caroline Simmons, number 180.

2 THE COURT: Yes, ma'am.

3 THE JUROR: We have a history of alcoholism in the
4 family, no drugs.

5 THE COURT: Let me ask you whether your experiences in
6 that regard would interfere in any way with your ability to
7 give both the State and the defendant a fair and impartial
8 trial in this case?

9 THE JUROR: No.

10 THE JUROR: William Osborne, 149.

11 THE COURT: Yes, sir, Mr. Osborne.

12 THE JUROR: I was convicted of driving under the
13 influence about eight years ago.

14 THE COURT: All right. Let me ask you whether there's
15 anything about that experience that would interfere in any
16 way with your ability to give both the State and the
17 defendant a fair and impartial trial in this case?

18 THE JUROR: No.

19 THE COURT: Please give us your name and number for
20 the record.

21 THE JUROR: Caroline Williams, 208.

22 THE COURT: Yes, ma'am?

23 THE JUROR: I had a nephew charged, Roderick Williams.

24 THE COURT: He was charged with drugs?

25 THE JUROR: Yes.

VOIR DIRE

1 THE COURT: And now given the nature of the
2 allegations in this case, is there anything about that
3 experience that would interfere with your ability to give
4 both the State and the defendant a fair and impartial trial
5 in this case?

6 THE JUROR: No.

7 THE COURT: Thank you, ma'am.

8 THE JUROR: It's Graham, number 44. You asked the
9 question earlier about Lemel, I couldn't remember if he was
10 the same one that used to be with Brown, he drew up some
11 papers but that's as far as it went.

12 THE COURT: Let me ask you then, would that
13 relationship interfere in any way with your ability to give
14 both the State and the defendant a fair and impartial
15 trial?

16 THE JUROR: It won't matter to me.

17 THE COURT: Thank you for your patience, ladies and
18 gentlemen. If you would give me your attention again, I
19 just have a few more questions to ask you. Has any member
20 of the jury panel had any prior knowledge about this case
21 from any source before coming here to court today? If so,
22 please stand. Has any member of the jury panel formed or
23 expressed an opinion as to the guilt or innocence of the
24 defendant, Duval Melvin Cooper? If so, please stand. Is
25 any member of the jury panel conscious of any interest,

VOIR DIRE

1 bias or prejudice for or against the defendant, Duval
2 Melvin Cooper? If so, please stand. Can each member of
3 the jury panel give both the State and the defendant, Duval
4 Melvin Cooper, a fair and impartial trial in this case? If
5 not, please stand. Does any member of the jury panel know
6 of any reason whatsoever why he or she should not serve as
7 a juror in this particular case? If so, please stand. Any
8 additional questions requested of the jury panel from the
9 State?

10 MR. MEETZ: None from the State, Your Honor.

11 THE COURT: From the defense?

12 MR. MEETZ: No, sir, Your Honor.

13 THE COURT: Madam clerk, please give us the jury.

14 THE CLERK: When your name is called please bring any
15 personal belongings you have and come stand by the bailiff.
16 Number 88, Matthew T. Holloday. What say you for the
17 State?

18 MS. HORTON: Please excuse this juror.

19 THE CLERK: Number 152, Charles Peeler. What say you
20 for the State?

21 MS. HORTON: Please present this juror.

22 THE CLERK: Defense?

23 MR. MEETZ: Please swear the juror.

24 THE CLERK: Number 18, Ella Bowen. What say you for
25 the State?

VOIR DIRE

1 MS. HORTON: Please present this juror.
2 THE CLERK: Defense?
3 MR. MEETZ: Please swear the juror.
4 THE COURT: Number 209, Dennis C. Williams. What say
5 you for the State?
6 MS. HORTON: Please present this juror.
7 THE CLERK: Defense?
8 MR. MEETZ: Please excuse this juror.
9 THE COURT: Number 212, Lynn B. Warden. What say you
10 for the State?
11 MS. HORTON: Please present this juror.
12 THE CLERK: Defense?
13 MR. MEETZ: Please swear the juror.
14 THE CLERK: Number 44, Rex J. Craft. What say you for
15 the State?
16 MS. HORTON: Please present this juror.
17 THE CLERK: Defense?
18 MR. MEETZ: Please swear the juror.
19 THE CLERK: Number 211, Joel K. Windchip. What say
20 you for the State?
21 MS. HORTON: Please present this juror.
22 THE CLERK: Defense?
23 MR. MEETZ: Please excuse this juror.
24 THE CLERK: Number 205, Mona P. White. What say you
25 for the State?

VOIR DIRE

1 MS. HORTON: Please present this juror.
2 THE CLERK: Defense?
3 MR. MEETZ: Please swear the juror.
4 THE CLERK: Number 153, Robert L. Perry. What say you
5 for the State?
6 MS. HORTON: Please present this juror.
7 THE CLERK: Defense?
8 MR. MEETZ: Please excuse this juror.
9 THE CLERK: Number 183, Stanley W. Smith. What say
10 you for the State?
11 MS. HORTON: Please present this juror.
12 THE CLERK: Defense?
13 MR. MEETZ: Please swear the juror.
14 THE CLERK: Number 27, Norma B. Burke. What say you
15 for the State?
16 MS. HORTON: Please present this juror.
17 THE CLERK: Defense?
18 MR. MEETZ: Please swear the juror.
19 THE CLERK: Number 216. What say you for the State?
20 MS. HORTON: Please present this juror.
21 THE CLERK: Defense?
22 MR. MEETZ: Please swear the juror.
23 THE CLERK: Number 35, Steve W. Childers. What say
24 you for the State?
25 MS. HORTON: Please present this juror.

VOIR DIRE

1 THE CLERK: Defense?

2 MR. MEETZ: Please swear the juror.

3 THE CLERK: Number 143, Anthony L. Myers. What say

4 you for the State?

5 MS. HORTON: Please present this juror.

6 THE CLERK: Defense?

7 MR. MEETZ: Please swear the juror.

8 THE CLERK: Number 127, Matthew McGray. What say you

9 for the State?

10 MS. HORTON: Please present this juror.

11 THE CLERK: Defense?

12 MR. MEETZ: Please excuse the juror.

13 THE CLERK: Number 124, Robert D. McDaniel. What say

14 you for the State?

15 MS. HORTON: Please present this juror.

16 THE CLERK: Defense?

17 MR. MEETZ: Please swear the juror.

18 THE CLERK: Number two, Rusty Adkins. What say you

19 for the State?

20 MS. HORTON: Please excuse this juror.

21 THE CLERK: Number 180, Caroline Simmons. What say

22 you for the State?

23 MS. HORTON: Please present this juror.

24 THE CLERK: Defense?

25 MR. MEETZ: Please swear the juror.

VOIR DIRE

1 THE CLERK: This is for the alternate. 149, William
2 Osborne. What say you for the State?
3 MS. HORTON: Please excuse this juror.
4 THE CLERK: Number 147, Francis J. O'Donald. What say
5 you for the State?
6 MS. HORTON: Please present this juror.
7 THE CLERK: Defense?
8 MR. MEETZ: Please excuse in juror.
9 THE CLERK: Number 39, William E. Cook, Jr. What say
10 you for the State?
11 MS. HORTON: Please present this juror.
12 THE CLERK: Defense?
13 MR. MEETZ: Please swear the juror.
14 THE COURT: Any objections concerning the selection
15 process from the State?
16 MS. HORTON: None from the State, Your Honor.
17 THE COURT: From the defense?
18 MR. MEETZ: Nothing, Your Honor.
19 (The remaining panel was released.)
20 THE COURT: Ladies and gentlemen of the jury panel, if
21 you will give me your attention, we are not actually going
22 to get started with the trial because it's already about 20
23 minutes until 6:00 so we don't want to do that. I'm going
24 to ask Norma Burke to serve as foreperson of the jury. The
25 foreperson is asked to serve as the spokesperson for the

VOIR DIRE

1 jury back to the Court so if there's a matter that needs to
2 come to the attention write it down on a tablet that is
3 provided for you back in the jury room, give that to the
4 bailiff, I will probably correspond in like manner. I will
5 bring you back out of the courtroom and respond as the case
6 may be. We also asks that the foreperson once we have
7 reached the deliberative stage of the trial and you have
8 started deliberating to maintain some order in those
9 deliberations, give everybody an opportunity to participate
10 in those deliberations, proceed and keep some order in
11 that. And finally, once a unanimous verdict is reached by
12 the jury to record those verdicts on the verdict forms that
13 will be given to you and explained to you at the
14 appropriate time at the conclusion of the trial. The
15 primary roll of the foreperson is the same as every other
16 juror and that is to listen carefully to the testimony and
17 evidence so you will be in a position to deliberate and
18 reach a verdict in this case. Now, we ask that the
19 foreperson keep the same seat throughout the trial so
20 ma'am, if you will please keep that seat when you come back
21 in and a bailiff will put you back there. Mr. Cook, you
22 are the alternate in this case. The role of the alternate
23 is the same as the first 12 jurors chosen and that is to
24 listen carefully to the testimony and evidence so you will
25 be in a position to deliberate, help reach a verdict

VOIR DIRE

1 because if for any reason an emergency should develop and
2 we had to excuse one of the first 12 jurors chosen you
3 would automatically fill in for the missing juror and you
4 couldn't do that if you hadn't listened carefully to the
5 testimony and evidence in the case. We ask that the
6 alternate also keep that same seat throughout the trial, so
7 if you will do that. All of the other seats, ladies and
8 gentlemen, are interchangeable so it really doesn't matter
9 where you will sit but we do like to keep the alternate and
10 foreperson in the same seats. I'm going to excuse you at
11 this time, what I'm going to ask you to do on the overnight
12 recess is please do not discuss this case, you don't know
13 anything about the case yet, you only know what the
14 allegations are so you don't know anything about the case.
15 And so please do not discuss the case among yourselves and
16 between now and the time you come back into the courtroom
17 or really again anytime throughout the trial. And also,
18 please do not discuss the case with anyone else that you
19 might see on the break from court, that would include
20 family, friends or anyone else you might see. And you
21 might say, "Well, what's wrong with my discussing it with
22 family and friends?" If they find out you are on a jury
23 they want to know something about the kind of case you are
24 on, the problem with discussing the case among yourselves
25 or with anyone else you might see on the break from court

VOIR DIRE

1 including family and friends is once you start discussing
2 the case and talking about it you start forming opinions
3 and you wouldn't be fair to both sides in this case if you
4 didn't wait until you heard all of the testimony and
5 evidence and I have instructed you upon the law that
6 applies to the issues in this case before you started
7 forming an opinion. Until then you should keep an open
8 mind and wait until you have all of the information you
9 need to make a decision before you start drawing an
10 opinion, so please do not discuss the case until you get to
11 the deliberative stage of the trial. Now, if anyone should
12 deliberately try to discuss the case with you on a break
13 from court or around the courthouse or anywhere, do not
14 discuss it with them but make note of that person and get
15 the best description you can of that person, let the
16 bailiff know or the clerk's office know upon your return,
17 they'll let me know and I will deal appropriately with that
18 person. No one should try to discuss the case with you, if
19 they do I certainly want to be made aware of that so I can
20 deal appropriately with that person. Now, if there should
21 be any media coverage of the trial, I do not know of any,
22 there may very well not be any, but if there should be any
23 media coverage of the trial please do not read, listen to
24 or watch any media account of the trial until after the
25 trial is over. If someone wanted to save it for you until

VOIR DIRE

1 after the trial you may view it after the trial, but it's
2 very important. We can't control the accuracy of any other
3 type of account of this trial and it's very important that
4 you make your decision solely on the sworn testimony and
5 evidence that will come in during the course of this trial
6 and not from any other source. Thank you, ladies and
7 gentlemen, I'm going to excuse you at this time. I'm going
8 to ask you -- we usually get started a little earlier than
9 this but we've not had an opportunity to go through any
10 pretrial matters with counsel and we need to do that before
11 we get started, so what I'm going to ask you to do is to
12 come in in the morning at 10:00 and ask you to please be in
13 the jury room, the bailiff will show you where the jury
14 room is and tell you how to get back to it in the morning.
15 So I will ask you to be in the jury room in the morning
16 ready at 10:00, we will be here before that doing some
17 things.

18 (Break in proceedings.)

19 THE COURT: I'm going to ask you now be back there at
20 10:30. Take time to get your coffee, read your paper,
21 whatever before you come. So just be in the jury room,
22 please, at 10:30 and we will try to get started promptly at
23 10:30.

24 (Court adjourned for the evening and resumed at 9:30
25 A.m., on February 16, 2006.)

PRETRIAL MOTIONS

1 THE COURT: Any news on the defendant?

2 MR. MEETZ: Your Honor, we have spoken to the bondsman
3 for Mr. Cooper and they are searching for him. I guess we
4 can proceed with our motions?

5 THE COURT: We can.

6 MR. MEETZ: I would make a motion and ask for any
7 prior record the State would intend to use should he choose
8 to testify.

9 MS. HORTON: Your Honor, the defendant has four prior
10 drug convictions from New York, three of those, I believe,
11 that we could use. He also has a prior drug -- a federal
12 conviction that we could use. The only question we would
13 ask him was has he been convicted of any felonies, not a
14 drug conviction.

15 THE COURT: Where were those convictions from?

16 MS. HORTON: The New York convictions -- I'm sorry, we
17 could not use any of the New York convictions, the only
18 convictions we could use is a PWID cocaine that occurred in
19 2000.

20 THE COURT: That would be the felony, correct?

21 MS. HORTON: Yes, sir, Your Honor.

22 THE COURT: You would be allowed to feel out and ask
23 him if he has pled guilty or was convicted of a felony and
24 not mention that there was any drugs.

25 MS. HORTON: Thank you.

PRETRIAL MOTIONS

1 MR. MEETZ: We would have no objection to that. The
2 State has provided me with a list of their witnesses.
3 Number four is a motion to determine the existence of and
4 admissibility of any prior bad acts or Lyle testimony the
5 State would intend to introduce.

6 MS. HORTON: The State does not intend to introduce
7 any prior bad acts, Your Honor.

8 MR. MEETZ: We have a motion to sequester witnesses
9 for the State and the defense.

10 MS. HORTON: The State cannot oppose that motion, Your
11 Honor.

12 MR. MEETZ: Okay. Number six is a motion to determine
13 the prior record of any relating witnesses the State would
14 intend to call.

15 MS. HORTON: The only lay witness we have, Your Honor,
16 is Ms. Kendrick, she has no prior record.

17 MR. MEETZ: And motion to determine the existence of
18 and admissibility of any statements that the defendant may
19 have made that the State would intend to introduce at trial
20 pursuant to Jackson versus Denno. There's a videotape of
21 the stop in this case in which my client does make some
22 statements and I do feel like we would need to have a Denno
23 hearing with regards to the --

24 MS. HORTON: Your Honor, in regards to that video,
25 there were some statements made by the defendant that

PRETRIAL MOTIONS

1 occurred before he was Mirandized, we would go ahead and
2 concede that those statements would not come in and that
3 the State would just play the tape on mute from the
4 beginning of the tape until the time that they were
5 Mirandized if the Court allows the statements given after
6 he was Mirandized to come in.

7 THE COURT: Do you still need to get into the
8 statements after the Miranda?

9 MR. MEETZ: Your Honor, I don't think I do after he
10 was Mirandized, he never requested an attorney after that.
11 There were some questions asked after that and he never
12 requested an attorney after that, I don't feel those would
13 be in violation of Miranda.

14 THE COURT: You would intend to show the stop and the
15 video of the stop on mute without any sound so that any
16 statements he made would not be admissible?

17 MS. HORTON: Yes, sir, Your Honor, until the point
18 that he's Mirandized and at that point I would ask that the
19 State play the audio at that point.

20 MR. MEETZ: The only concern would be if the jury
21 requested to be able to watch the video during their
22 deliberations, I don't know if --

23 THE COURT: Well, we could just require them to do it
24 out here and just tell them because technical problems with
25 it they would need to see it out here. Anything else?

PRETRIAL MOTIONS

1 MR. MEETZ: Your Honor, we had -- there's --
2 essentially number eight would have been -- there's also a
3 part of the videotape that the -- not at the end, one of
4 the statements that -- include statements under Jackson
5 versus Denno is that they were coming from New York, that
6 was the response to a question that was asked, and on
7 that -- and at some point in time the officer is heard
8 talking about that statement. One of the officers says to
9 the other I guess it's Officer Vinesett says they were
10 coming down from New York. I would like that redacted as
11 well since it was basically something that was discovered
12 as a result of improper questioning.

13 MS. HORTON: We will also agree to redact that. It
14 may take some time to figure out the exact time of that
15 statement but we will agree to redact that as well.

16 THE COURT: Well, I think if she's going to testify
17 that they were coming down from New York I don't know that
18 it would make a whole lot of difference. If you're saying
19 the police officers are saying they came down from New
20 York, I don't know -- how is that incriminating, that's
21 what I'm trying to think?

22 MR. MEETZ: Well, I would say that that would be --
23 you know, any statement made by the defendant is admissible
24 as an admission whether it's an outright confession or not
25 and I would submit that driving down from New York could be

PRETRIAL MOTIONS

1 prejudicial to the jury if -- no telling what a jury would
2 think in their mind with that knowledge and I think that
3 that was at least from the standpoint -- now, I don't
4 recall on the tape Ms. Kendrick mentioning that, I do
5 recall Mr. Cooper responding.

6 MS. HORTON: She's going to testify today, she can
7 testify to that on the stand was well.

8 MR. MEETZ: It's before she was Mirandized. It was
9 right after Mr. Duval Cooper has already been placed under
10 arrest for marijuana. Officer Vinesett gets Ms. Kendrick
11 out of the van and at that point she tells him she's coming
12 to North Carolina. We need to probably take some testimony
13 with regards to that with regard to the custody issue, I
14 think you could be in custody before somebody specifically
15 says you are under arrest. I doubt very seriously that she
16 was free to leave at that point in time, and if she's not
17 free to leave then she's essentially in custody.

18 THE COURT: I'm just trying to figure -- let's assume
19 for the moment that those statements don't come in, let's
20 assume for the moment -- and I'm not satisfied that that is
21 the case -- but let's assume for the moment that they don't
22 come in, if she comes in and testifies today that she's
23 from New York and they are coming down from New York, then
24 it's really not going to make any difference, she's not
25 going to be prejudiced it appears to me.

PRETRIAL MOTIONS

1 MR. MEETZ: I think you are probably right about that.
2 I think if she's going to testify to it -- of course, I
3 don't know what order those witnesses are going to be
4 coming in, I don't know at this point in time, I don't know
5 if Ms. Kendricks is here or not.

6 MS. HORTON: She's here, Your Honor. If the Court
7 would feel more comfortable, Your Honor, I could establish
8 the authenticity of the video with Officer Vinesett but
9 then hold off playing it until after Ms. Kendrick has
10 testified.

11 MR. MEETZ: I think that's --

12 THE COURT: All right. Well, let's do that, that
13 might be the better way of proceeding with it, to eliminate
14 any questions that might be best way it proceed. All
15 right. Anything else?

16 MR. MEETZ: Your Honor, our ninth motion is actually a
17 motion that Mr. Lemel was going to present, he's actually
18 doing a sentence right now next door, I'll have to sort of
19 check the status of that and see where they are with
20 regards to that.

21 THE COURT: All right.

22 MR. MEETZ: Thank you Your Honor.

23 (Break in proceedings.)

24 MR. LEMEL: Your Honor, I apologize for the delay in
25 being over here.

PRETRIAL MOTIONS

1 THE COURT: That's fine.

2 MR. LEMEL: Your Honor, the next motion for the
3 defense would be for suppressing the contraband that was in
4 the vehicle pursuant to search incident to arrest. Officer
5 Ellis is the one who located the pills and heroin, I'm not
6 sure -- the motion, Your Honor, I will be happy to hand up
7 the cases that I will be citing at this point. They
8 basically deal with probable cause to search. Officer
9 Vinesett -- I think we have established Officer Ellis later
10 arrived on the scene, but it would have been Officer
11 Vinesett that would have been establishing probable cause,
12 I think in this particular case Officer Ellis is just an
13 extension of Officer Vinesett.

14 THE COURT: That's fine. Well, how do you want to
15 proceed?

16 MS. HORTON: Your Honor, since I'm not sure where he's
17 going if Mr. Lemel would like to start questioning him and
18 if there is any follow-up if the Court would allow that.

19 THE COURT: Okay.

20 The witness, OFFICER VINESETT, was first duly sworn

21 And testified as follows, on:

22 DIRECT EXAMINATION

23 BY MR. LEMEL:

24 Q. Officer Vinesett, at the start of this case you were
25 patrolling on I-77, correct?

PRETRIAL MOTIONS

1 A. Yes, sir.

2 Q. As I understand your incident report says you got
3 behind this vehicle and you saw it cross over the center
4 line; is that right?

5 A. Yes, sir.

6 Q. And you pulled up next to it and saw an individual
7 speaking on the cellphone?

8 A. Actually I was not directly behind it, I was sort of
9 in the other lane beside it getting ready to pull up
10 beside the vehicle and noticed him dialing numbers, not
11 actually holding it to his ear but dialing numbers.

12 Q. Okay. And you observed the vehicle crossing the
13 center line, correct?

14 A. Yes, sir.

15 Q. And that's when you decided to stop the car for
16 crossing the center line; is that right?

17 A. Yes, sir.

18 Q. You had no prior information of any sort regarding
19 this vehicle.

20 A. No, sir.

21 Q. Had no information about who was in the vehicle or
22 anything like that before that point in time.

23 A. No, sir.

24 Q. After you stop the car there's a videotape, correct?

25 A. Yes, sir.

PRETRIAL MOTIONS

1 Q. As I watch the videotape, you correct me if I'm not
2 correct, you approach the passenger's side front window,
3 correct?

4 A. Yes, sir.

5 Q. You discover the driver and the passenger in the
6 vehicle, correct?

7 A. Not the passenger right off, but shortly thereafter.

8 Q. She was laying down in the back seat?

9 A. Yes, sir.

10 Q. Okay. And as you approached you asked him for some
11 information with regard to the vehicle, correct?

12 A. Yes, sir.

13 Q. His driver's license.

14 A. Yes, sir.

15 Q. And he was able to produce the driver's license for
16 you.

17 A. Yes, sir.

18 Q. Some information with regards to the registration of
19 the vehicle.

20 A. Yes, sir, which -- yes, sir.

21 Q. And he told you it was his sister's vehicle, correct?

22 A. Sister-in-law.

23 Q. Sister-in-law's vehicle. And you observed very
24 clearly leaning in the window what you believed to be a
25 marijuana cigarette, a blunt, or the remains of a

PRETRIAL MOTIONS

- 1 marijuana cigarette in the ash tray; is that correct?
- 2 A. Not the first thing. The first thing I noticed was
- 3 the High Times magazine between the driver's seat and
- 4 passenger seat in the front and then what appeared to be a
- 5 blunt marijuana cigarette in the ash tray.
- 6 Q. Okay. On the basis of that you asked the driver to
- 7 hand that to you.
- 8 A. Yes, sir.
- 9 Q. Which he did.
- 10 A. Yes, sir.
- 11 Q. Cooperated with you on that.
- 12 A. Yes, sir.
- 13 Q. Then you asked him to step out of the vehicle,
- 14 correct?
- 15 A. Yes, sir.
- 16 Q. And he cooperated with you on that.
- 17 A. Yes, sir.
- 18 Q. Didn't act in any way unusual or suspicious.
- 19 A. No, sir.
- 20 Q. You had him come back to the back of your vehicle,
- 21 correct?
- 22 A. To the side of the vehicle.
- 23 Q. To the side of the vehicle. And y'all had some
- 24 conversations there.
- 25 A. Yes, sir.

PRETRIAL MOTIONS

- 1 Q. You asked him if he had anything on him.
- 2 A. Yes, sir.
- 3 Q. And he revealed to you that he had a small bag of
- 4 marijuana in his pocket.
- 5 A. Yes, sir.
- 6 Q. And again cooperated with you on that.
- 7 A. Yes, sir.
- 8 Q. Didn't face you or anything like that.
- 9 A. No, sir.
- 10 Q. Now, as a result of that you placed him in handcuffs
- 11 and put him in the back of your vehicle.
- 12 A. Yes, sir.
- 13 Q. And had some contact with a passenger at that point
- 14 in time.
- 15 A. Yes, sir.
- 16 Q. And she told you she didn't know of anything in the
- 17 vehicle, correct?
- 18 A. Yes.
- 19 Q. And at one point in time on the tape after the whole
- 20 search is done, I don't know if you remember this, there's
- 21 a question about he says -- the driver said, "I didn't
- 22 consent to you searching the vehicle," do you remember
- 23 that?
- 24 A. Not right off but if it's on the video, yes, sir.
- 25 Q. Okay. And you remember saying to him -- basically to

PRETRIAL MOTIONS

1 him, "I found marijuana on you and I found marijuana in
2 the ash tray and that gives me cause to search the car."

3 A. I would have to -- I haven't watched the video
4 entirely.

5 Q. Would that help refresh your recollection?

6 A. Yes, sir. I don't recall him asking that.

7 Q. So you agree he never gave you consent to search?

8 A. Yes, sir.

9 Q. The basis for you conducting the search was for what
10 you observed at that point in time which was the marijuana
11 blunt, correct?

12 A. And the ash tray.

13 Q. The marijuana you found on him and High Times
14 magazine?

15 A. Yes, sir.

16 Q. Anything else go into your decision to conduct that
17 search?

18 A. The drugs was one, and the fact it's a New Jersey
19 plated vehicle. He stated it belonged to a sister-in-law
20 and he's under arrest so obviously she's not there and
21 couldn't get there in the amount of time for us to wait
22 for her to come get it, so we knew at that point we were
23 going to have to tow the vehicle.

24 Q. What you had was the marijuana was found on the
25 individual, the blunt, the High Times magazine, the fact

PRETRIAL MOTIONS

1 that the car was from New Jersey.

2 A. And the owner was not present.

3 Q. And the owner was not present.

4 A. Yes, sir.

5 MR. LEMEL: Nothing further, Your Honor.

6 MS. HORTON: The State has no followup, Your Honor.

7 MR. LEMEL: Your Honor, the leading case with regard
8 to searching is the State versus McLaughlin (phonetically)
9 which held that if police have probable cause and it
10 believes that the container has contraband. Your Honor, in
11 my research there are basically two cases that I have been
12 able to find that address that particularly in South
13 Carolina. I also hand up the second case to the Court
14 which was State versus Perez, which is 311 South Carolina
15 2nd, 542, 430. In both of these cases, Your Honor, the
16 court found that probable cause existed but found it under
17 circumstances that far exceeded the circumstances that we
18 have in this particular case. Specifically, Your Honor, in
19 McLaughlin there was an observation of the individual ahead
20 of time that showed him in possession of an object, it
21 showed a lot of very unusual behavior in terms of hiding
22 something that when the stop actually occurred the
23 individual denied possession of the item even though the
24 officer had seen it ahead of time and acted in a very
25 suspicious manner. He had possession of a large amount of

PRETRIAL MOTIONS

1 cash and the other inconsistency is he had possession of
2 marijuana, in this case a cigarette. In the Perez case
3 which you had was reliable information previously from a
4 confidential informant that a delivery of marijuana would
5 be made and some significant details and that was the basis
6 for the stop, and on that basis with that information they
7 found that there was probable cause to search the container
8 because there was a likelihood that some of the marijuana
9 could have been located in that container. What we have in
10 this particular case, Your Honor, is basically a traffic
11 stop with no previous information as testified to by the
12 officer, no unusual behavior from the occupant but elements
13 that we have are possession of marijuana in the pocket and
14 also in the ash tray, the presence of a High Times magazine
15 which in and of itself is not indicative of any illegal
16 activity, and the fact that the car was from New Jersey and
17 the owner wasn't present, which again is not indicative of
18 any illegal behavior. Specifically there's absolutely
19 nothing indicating probable cause to search containers for
20 any specific contraband and I don't believe there was
21 testimony to this but I think we stipulated by the State
22 that all of contraband that was found in this case was
23 found inside, my understanding, a black bag; is that
24 correct?

25 MS. HORTON: Your Honor, it was found inside a blue

PRETRIAL MOTIONS

1 gym bag, but the gym bag did not have to be unzipped, the
2 clothes were above the level of the zipper line. Officer
3 Ellis removed the clothes off of the top of the bag and
4 could see the drugs without actually unzipping the
5 container.

6 MR. LEMEL: And I saw the container on the video but I
7 couldn't tell. Is it the State's contention that he could
8 see that there were drugs inside the container once he
9 pulled it out of the bag?

10 MS. HORTON: I believe just from talking to Officer
11 Ellis he would need to be the one that would need to
12 testify from that. But once he removed -- the way he
13 explained it to me before that there were clothes on top of
14 this blue bag and once you moved clothes off the top of the
15 blue pile he could see the drugs on top of the bag and --

16 THE COURT: They were visible to the naked eye once he
17 removed the clothes, is that going to be the testimony?

18 MS. HORTON: Yes, sir.

19 MR. LEMEL: Your Honor, I would submit the fact that
20 the bag itself was closed, it was underneath not in plain
21 sight there still has to be probable cause to conduct that
22 search, even go underneath the clothes at that point.

23 THE COURT: Where was the bag?

24 MS. HORTON: Everything that was found in the vehicle
25 was found in the very back of the vehicle behind the third

PRETRIAL MOTIONS

1 row, I believe, the third row of seats.

2 MR. LEMEL: Your Honor, it would just be the position
3 of the defendant that the police lacked probable cause at
4 that time.

5 THE COURT: Does the State wish to be heard?

6 MS. HORTON: Just, Your Honor, that the case law under
7 the automobile exception that once probable cause has been
8 established to the vehicle you do not need to warrant all
9 through. There were more things in the McLaughlin case
10 that Mr. Lemel stated, the fact that drugs were found in
11 the car would be enough to establish probable cause.

12 THE COURT: I'm going to deny your motion to suppress
13 for a couple of reasons. One are -- let me say that the
14 police officers had a reason, they had probable cause, they
15 had a reason to stop the automobile. He crossed the center
16 line for whatever reason he had for crossing it and, you
17 know, using a cellphone, crossing the center line,
18 cellphone, if I was a police officer I think I would write
19 a ticket. Because in the Court's mind there are inherent
20 dangers while you are trying to drive on two lanes in
21 there, it was difficult for me when I have got to pass
22 somebody to worry about somebody in a blind spot or if I
23 was trying to have to deal with a cellphone I certainty
24 wouldn't have been as attentive I don't think. In any
25 event if he crossed a center line that was a violation of

PRETRIAL MOTIONS

1 the traffic statutes, I'm sure you would agree with that
2 driving left center across the center line and so -- he had
3 a right to stop him. Then once he stopped him and once he
4 saw the marijuana in the car, that's a violation of law
5 because you can't have marijuana even in a small amount as
6 you would have it in your possession. So if they saw
7 marijuana in the car there in plain view when he stopped
8 and they talked to him, you have a right to get his
9 driver's license and evidence of ownership in that, he had
10 a right to do that once he stopped it. Once he saw the
11 marijuana and that he recognized it as marijuana then he
12 asked him to get out and asked him if he had any marijuana
13 on him and he said he did, he pulled it out, then he had
14 further evidence that there were drugs in the car. Now, I
15 don't have the case right in front of me but I can find it,
16 but the fact of the matter is there's been some recent
17 United States Supreme Court cases which have ruled that
18 guns and drugs go together, that once drugs are found
19 police officers can make a search for their own protection
20 in an area where weapons might be found. I know the
21 officer didn't testify to that that was the reason he
22 continued to search, but the supreme court has ruled that
23 once drugs are found or evidence of drugs and in one case
24 it was just I think a set of scales or something like that
25 to indicate some drugs or some indication of that and they

PRETRIAL MOTIONS

1 said it was okay then for them to search for their
2 protection. When he first pulled up to the vehicle the
3 passenger was laying down in the back seat as I understand
4 it and so, you know, I think that's -- they have a right to
5 search for their own protection for any weapons that might
6 be in there. Furthermore if they were going to take the
7 car, impound the car essentially and take it in because
8 they don't have the owner or anything if they've got drugs
9 or not then they have a right to inventory to determine
10 what's in there and what they're going to be responsible
11 for. Do you have any cases on point that once drugs are
12 found they can search the car for the whole drugs?

13 MR. LEMEL: No, sir, Your Honor. Given a little bit
14 of time I could try to locate some cases. We did look
15 around yesterday, not quite sure what the motion was going
16 to be and felt pretty comfortable that the probable cause
17 hadn't been established but didn't print any cases.

18 MS. HORTON: If the Court would feel more comfortable,
19 I know it's the policy of the highway interdiction team and
20 York County Sheriff's policy, it's completely searched and
21 inventoried. We don't have the testimony on that but we
22 could proffer testimony on that if it would help the Court.

23 THE COURT: Well, I've heard that testimony before
24 that that is the procedure we always follow but we are on
25 this case, I can't go by what they said in some other case

PRETRIAL MOTIONS

1 so if you have got evidence on that then you could present
2 it. But I can't -- I have to go by what's presented in
3 this case, not by what might have been presented in another
4 case.

5 MS. HORTON: We could proffer that testimony, Your
6 Honor. Your Honor, the State would call Officer Vinesett
7 back to the stand.

8 BY MS. HORTON:

9 Q. Officer Vinesett, you are employed with the York
10 County Sheriff's Office?

11 A. Yes, ma'am.

12 Q. But specifically on the highway interdiction team?

13 A. Yes, ma'am.

14 Q. Are you familiar with your department's policy on
15 impounding vehicles?

16 A. Yes, ma'am.

17 Q. Could you tell the Court what that policy is please?

18 A. The policy is that if we arrest the driver of the
19 vehicle, place the driver under arrest that we tow the
20 vehicle. If the driver -- if there's a passenger who
21 isn't under the influence or anything like that with a
22 license on them, if the owner of the vehicle gives us
23 consent or tells us to turn the vehicle over to them, then
24 we can do that but if there's -- the owner is not present
25 we are to have the vehicle towed.

PRETRIAL MOTIONS

1 Q. Then what happens once you have the vehicle towed?

2 A. The vehicle is inventoried with a tow sheet and a
3 wrecker company is called to tow the vehicle.

4 Q. And in this -- Mr. Cooper's case was the vehicle
5 towed?

6 A. The vehicle was towed after it was brought to the
7 Moss Justice Center.

8 Q. Did you do an inventory search of the vehicle?

9 A. I believe it was Lieutenant Lovelace and Officer
10 Ellis searched the vehicle more in-depth rather than on
11 the side of the interstate once we got to the department.

12 MS. HORTON: Thank you.

13 CROSS EXAMINATION

14 BY MR. LEMEL:

15 Q. Is this a written policy?

16 A. A written policy as it --

17 Q. Is the policy that you stated that your department
18 has a policy, is it a written policy?

19 A. We have a written policy on towed vehicles.

20 Q. Where is that written policy located?

21 A. At the York County Sheriff's Department.

22 Q. In what book -- or is there a handbook y'all have?

23 A. There's a handbook. I'm not sure exactly of the
24 location of it but we do have it, it's on the computer.

25 Q. And it states specifically that if you arrest

PRETRIAL MOTIONS

1 somebody and the owner is not present you can't turn it
2 over to a passenger?

3 A. I would have to read it but I'm not sure exactly
4 verbatim if it says that or not.

5 Q. So that's your interpretation of the policy?

6 A. Yes, sir.

7 MR. LEMEL: Okay. Nothing further.

8 REDIRECT EXAMINATION

9 BY MS. HORTON:

10 Q. In any event, this vehicle was not turned over to the
11 passenger because she was placed under arrest as well?

12 A. Yes, ma'am.

13 Q. And the vehicle was towed and inventoried pursuant to
14 procedure?

15 A. Yes, ma'am.

16 MS. HORTON: Thank you.

17 RECROSS EXAMINATION

18 BY MR. LEMEL:

19 Q. She was arrested because of the material y'all found
20 pursuant to that search before the inventory took place.

21 A. Yes, sir.

22 Q. If nothing had been found she would not have been
23 arrested, would she?

24 A. No, sir.

25 THE COURT: I've heard enough testimony to know at

PRETRIAL MOTIONS

1 this point he saw something he identified as his -- in his
2 experience as marijuana, part of a marijuana cigarette and
3 based on that -- of course, he asked the driver to get out
4 of the car and asked him if he had anything on him or
5 admitted to having the marijuana on him. Once having found
6 the marijuana then they had to search the vehicle to see if
7 there were any drugs in them. I would point out again that
8 the passenger in the automobile, when the police officer
9 first came up she was lying down in the back seat somewhere
10 in the back and couldn't be seen from the window. When he
11 came up to the window she was not readily visible, rather
12 she was behind somewhere laying down I think in the back
13 seat, that was from counsel's questioning of him, but at
14 any rate she wasn't in the passenger's seat, she was in the
15 back somewhere, so I think the police officers -- even
16 though he didn't say that they have a right to search for
17 weapons if the drugs are identified in the car. Secondly,
18 they have a right to search looking for other drugs and
19 once drugs are found they have a right to look for other
20 drugs throughout the car wherever they may be found and
21 that would include this gym type bag, so I think they have
22 a right to search that bag once drugs were found at the
23 scene as a result of a legal stop. Pursuant to an
24 established policy that they had and that being to where
25 drugs are found in the car to impound the car and not turn

PRETRIAL MOTIONS

1 it over to even a licensed driver or passenger in the car,
2 they impound it and take it in and after they search the
3 entire car and pull everything out of there and so I would
4 allow it. Anything else?

5 MR. LEMEL: No, sir, Your Honor.

6 (The jury returned to the courtroom.)

7 THE COURT: Good morning, Madam Forelady and members
8 of the jury panel, I hope you had a pleasant night last
9 night. I should have listened to the attorneys, they
10 probably thought I probably shouldn't bring you back until
11 11:00 and I probably shouldn't have because we are just
12 getting through with motions and other things we need to do
13 in this case so I apologize for the delay in getting you
14 from the jury room back in the courtroom. We are ready now
15 to actually begin the trial and the first order of business
16 is for the clerk to please swear the jury panel.

17 (The jury was sworn.)

18 THE COURT: Madam Forelady, members of the jury panel,
19 I'm going to give you what I call a preliminary instruction
20 and that is as to what to expect as we go through this
21 trial, what the format will be in the trial and how we will
22 proceed. I suspect that most of you have not served on a
23 general sessions jury before, that is a criminal case in
24 circuit court before and hopefully this information will be
25 a little helpful to you and make you a little more

PRETRIAL MOTIONS

1 comfortable in these unfamiliar surroundings. The first
2 thing that will happen after I finish is that the attorneys
3 for the State, who is the assistant solicitor, will make an
4 openings statement to you, then the attorney for the
5 defendant will have the same opportunity to address you in
6 an opening statement. These opening statements by the
7 attorneys are not evidence, but you should pay close
8 attention because they are in essence going to identify to
9 you what they perceive or say the issues in the case are.
10 After they've made their opening statements to you then the
11 State will proceed by presenting the testimony and evidence
12 that they want you to consider. Now, the reason the State
13 goes first is that the State has the burden of proof in
14 this case. There's no burden of proof upon the defendant
15 to prove his innocence, the burden of proof is upon the
16 State of South Carolina to prove the charges against this
17 defendant by evidence that satisfies you, the jury, beyond
18 a reasonable doubt before you can return a verdict of
19 guilty. If the State fails to meet that burden of proof
20 then your verdict must be not guilty. After the assistant
21 solicitor has presented you the evidence they want you to
22 consider on behalf of the State, then the same opportunity
23 will be afforded to the defense. The defendant may but is
24 not required to present any testimony or evidence because
25 the State has the burden of proving the defendant guilty

PRETRIAL MOTIONS

1 beyond a reasonable doubt. Now, let me point out to you
2 ladies and gentlemen, of course, the defendant is not
3 present in the courtroom at this time for the trial and I
4 would tell you that he's not required to be here and you
5 are to infer absolutely nothing from it or consider it in
6 any way. He's certainly not to be prejudiced for the fact
7 that he's not here participating in the trial. The
8 defendant does not have to be present during the trial and
9 even if he were here sitting there he could remain mute
10 throughout the trial because he doesn't have to present any
11 testimony or evidence in the case. As I have stated to you
12 the State has the burden of proving the defendant guilty
13 beyond a reasonable doubt. The defendant is presumed
14 innocent and that presumption stays with him throughout the
15 trial and may only be removed if the State meets its burden
16 of proving the guilt of the defendant beyond a reasonable
17 doubt. What is evidence in the case? Evidence is sworn
18 testimony that you will hear from the witness stand,
19 exhibits admitted into the record for your consideration by
20 me, the presiding judge, and any stipulation of counsel.
21 Now, stipulations are agreements of facts by the parties in
22 this case, so if the attorneys agree on facts to be
23 presented to you they do that but what we call a
24 stipulation, they stipulate that these were the facts you
25 may consider. Now, if there's a stipulation you can

PRETRIAL MOTIONS

1 consider that will be made known to you and you can
2 consider those facts or stipulation of facts along with all
3 of the other testimony and the evidence when you begin your
4 deliberations and give such weight to them as you deem
5 appropriate. Now, exhibits may take many forms such as
6 documents, pictures, videotapes, maps, diagrams and so
7 forth. Sworn testimony, exhibits and stipulations are the
8 only evidence you may consider in your deliberations of the
9 innocence or guilt of the defendant. Closing arguments, we
10 call them arguments because the attorneys are allowed at
11 that time to argue their position and will attempt to
12 persuade you as to their view or position as to the facts.
13 When you have heard final arguments from counsel I will
14 then charge you, which simply means to instruct you as to
15 the law that applies to the issues in this case. You will
16 then retire to the jury room to deliberate and reach a
17 verdict. That's how a case is tried in general sessions
18 court, whether it be this case or any other case, some
19 cases take a half a day or day, some cases take days or
20 weeks but the same format applies in every case. As the
21 trial judge I have three functions to perform during the
22 trial. I am the presiding officer and therefore must see
23 that the trial is carried out in an orderly manner. I
24 decide based on rules of civil and criminal procedure
25 whether testimony and exhibits are admissible into the

PRETRIAL MOTIONS

1 record for your consideration and at the conclusion of the
2 trial I instruct you as to the law you must apply to the
3 facts in this case in reaching your verdict. You, ladies
4 and gentlemen, are also judges in this case, you are the
5 judges of the facts. In other words, you determine the
6 truth of the facts in this case. Under our constitution
7 I'm not permitted as the judge of the law to have an
8 opinion about the facts so I do not get into whether I
9 believe a witness or not. I'm not permitted to express an
10 opinion if I had one as to the facts in this case. You,
11 the jury, determine what is the truth of the facts. Now, I
12 do not permit jurors to take notes during the trial because
13 it is my experience that while writing notes you may miss
14 something very important for you to hear and you may fail
15 to observe a witness when testifying. It is important that
16 you pay careful attention to all testimony and the
17 introduction of evidence since you must judge the
18 credibility or believability of the witnesses and the
19 weight to give all evidence introduced in this case in
20 determining the truth of the facts. Now, during the trial
21 the attorneys may object to the admissibility of certain
22 testimony or other evidence, I will either sustain the
23 objection, which means I agree and the testimony or
24 evidence may not be made part of the record for your
25 consideration, or I will overrule the objection, which

PRETRIAL MOTIONS

1 means as the judge of the law I have determined it's
2 admissible as part of the record for your consideration.
3 The mere fact that I have admitted it does not mean that
4 you must believe it or disbelieve it, I simply determined
5 that it is admissible under our rules. It is up to you to
6 believe it or disbelieve it and to assign such weight to it
7 as you determine to be appropriate. At the conclusion of
8 the trial I'm going to send you to the jury room, every
9 exhibit that's admitted into evidence will be sent to the
10 jury room for you to examine further and to consider. I
11 remind you ladies and gentlemen that one of the important
12 aspects of your duty as a jury lies essentially in the oath
13 that you have just taken to well and truly try this case
14 and to determine the facts in this case. That oath once
15 again in a very essential way says that you are the sole
16 judges of the facts in this case. As jurors in this case
17 it will be your exclusive duty to determine the facts in
18 this case through your evaluation of the evidence that was
19 received during the course of this trial and to give such
20 evidence whatever value, weight or affect as you deem
21 appropriate with the goal of reaching the truth in this
22 matter. In doing so you will have fulfilled your
23 obligation as jurors and that is to give both the State and
24 the defendant a fair and impartial trial in this matter.
25 The defendant has entered a plea of not guilty to the

PRETRIAL MOTIONS

1 charges and the indictments in this case, the plea of not
2 guilty places upon the State of South Carolina the burden
3 of proof in this case. Under our constitution a person
4 charged with a criminal offense is presumed innocent, the
5 defendant does not have to prove he did not commit a crime.
6 The State of South Carolina is required to prove the
7 charges made against the defendant by evidence that
8 satisfies you of his guilt beyond a reasonable doubt.
9 Whatever your verdict in this case it must be your
10 unanimous verdict, all 12 of you must agree on the verdict
11 which the foreperson will be authorized to write for the
12 jury. I'm concerned about your comfort and with your
13 ability to see and hear the testimony and evidence so you
14 can properly do your job. I will try to take a break about
15 every hour and a half, if you need a break before the time
16 a break is taken please just raise your right hand and let
17 me know and I will take a break as quickly after that as I
18 can. If you cannot hear or see something you need to hear
19 or see during the course of a trial please do not hesitate
20 to raise your right hand and let me know and I will make
21 sure you are able to see and hear so you can properly do
22 your job. I try to anticipate that but if I fail to
23 anticipate it do not hesitate to let me know if you can't
24 see for some reason. Now, if you wish to communicate with
25 the Court other than needing a break or the inability to

PRETRIAL MOTIONS

1 see or hear, please write the message down on a tablet that
2 will be provided for you in the jury room, give that to the
3 bailiff, the bailiff will bring it to me, I will probably
4 correspond in a like manner or by note, or if necessary I
5 will bring you back to the courtroom and respond in the
6 courtroom. Now, I allow jurors to bring something to drink
7 back in the jury box with you, so if you have something
8 back in the jury room you want to bring in the jury box
9 with you to sip along as we go through the trial you are
10 allowed to do that. If you have got coffee or water back
11 there you are welcome to bring something back to the jury
12 box as well if you want to do that. Now, that concludes my
13 opening statement to you. I hope that information is
14 somewhat helpful to you. We're ready to start the trial.
15 Now, as I say, we are going to begin that with opening
16 statements from counsel. I ask that you listen attentively
17 now as counsel addresses you in opening statement. Is
18 counsel ready to proceed?

19 MS. BURRIS: Yes, sir, Your Honor. Good morning,
20 ladies and gentlemen. Officer Vinesett is employed with
21 the York County Sheriff's Office, he works on what is
22 called the Highway Interdiction Team, they call it the HIT
23 team. I have asked him several times to explain to me what
24 it is that he exactly does and he has told me his job, he
25 and Officer Ellis, they enforce -- they ride the highway

OPENING STATEMENTS

1 and interstates of York County everyday that they are
2 working and in doing that their job is to enforce the
3 traffic laws of York County, and also they are looking for
4 contraband or people who may be carrying contraband. I'm a
5 narcotics prosecutor so most of the cases I deal with him
6 are drug cases, all of the cases I have dealt with him are
7 drug cases, but he also tells me they look for other types
8 of contraband, stolen goods, counterfeit goods, anything
9 that would be trafficked up the interstates of South
10 Carolina. And in South Carolina when they are in York
11 County, he and Officer Ellis, their job is to patrol that
12 and to try to catch the people that are doing that. And on
13 June 23rd of 2005 Officer Vinesett was patrolling the
14 interstates of York County, he was on I-77 somewhere near
15 the 901 exit when he saw a van with an out of state license
16 plate. He saw that van cross the line and come into his
17 lane of traffic, he saw the driver dialing on his
18 cellphone. At that time Officer Vinesett stopped the van
19 and he conducted a traffic stop. Officer Vinesett
20 approached the passenger's side window where he began to
21 talk with the driver. The driver was Duval Cooper who is
22 the defendant in this case. When Officer Vinesett was
23 talking with Cooper he saw a High Times magazine which he
24 will talk to you about and he noticed a marijuana cigarette
25 in the ash tray. At that time Officer Vinesett asked

OPENING STATEMENTS

1 Mr. Cooper to get out of the vehicle and he found some more
2 marijuana on Mr. Cooper and he placed him under arrest.
3 The vehicle was then searched by Officer Ellis who is
4 Officer Vinesett's partner, they do not ride together, they
5 each have their own patrol car, but Officer Ellis arrived
6 on the scene and searched the vehicle, he searched the back
7 part of the vehicle behind the third seat of the van and he
8 found a blue gym bag that had clothes on top of it, he
9 started to remove the clothes off and inside the gym bag he
10 could see a bag of pills. He and Officer Vinesett thought
11 those pills were ecstasy, he looked further in the gym bag
12 and found a big brick of something wrapped up in newspaper,
13 they had no idea what this is, it turns out that it is
14 heroin. It's 89 grams of heroin, a chemist will testify to
15 you about that. The pills turned out to be
16 methamphetamine, not ecstasy, 29 grams of methamphetamine.
17 I mixed that weight up, it was 28 grams of heroin,
18 nine grams of -- it was 29 grams of heroin. The chemist
19 will testify to you that she tested those substances, that
20 the heroin did test positive of heroin, the methamphetamine
21 tested positive as meth. Because in South Carolina there
22 are certain inference levels that you are guilty of
23 trafficking if you go above that inference level, in this
24 case heroin, if you have more than four grams of heroin in
25 your possession you are guilty of trafficking. For

OPENING STATEMENTS

1 methamphetamine if you have more than ten grams of
2 methamphetamine you are guilty of trafficking. I have
3 explained to my assistant who asked me one day if she
4 needed to run a driving record on an individual who had a
5 trafficking charge, I said, "Elizabeth, why would you need
6 to run a driving record? He is charged with trafficking,
7 it's a driving offense." I told her no. It is not in this
8 case, it did involve a vehicle but trafficking has
9 absolutely nothing to do with driving other cars or being
10 on the interstate or being in the highway, it has
11 absolutely nothing to do with driving which I explained to
12 her. Trafficking, there's a multitude of ways to traffic
13 and one of the those in this case is merely possession of
14 more than a certain level. On June 23, 2005 Officer
15 Vinesett arrested the defendant, Duval Cooper, and a
16 codefendant, Ebony Kendrick, for trafficking in heroin and
17 in ecstasy later to be determined to be methamphetamine.
18 Throughout the trial you will hear from Officer Vinesett,
19 you will hear from Officer Ellis, you will also hear from
20 the codefendant Ebony Kendrick. The chemist will tell you
21 that she tested the drugs and at the end of the trial you
22 will hear from me again and at that time I will ask you to
23 return a verdict of guilty. Thank you.

24 MR. MEETZ: Please the Court, Your Honor?

25 THE COURT: Counsel.

OPENING STATEMENTS

1 MR. MEETZ: Ladies and gentlemen, my name is Vic Meetz
2 and I work with the public defender's office in York
3 County, and myself with Gary Lemel who, also works in the
4 public defender's office, are defending Duval Cooper. Now,
5 the solicitor just laid out to you the facts that they
6 intend to prove as this case moves along. As the Judge
7 told you a little bit earlier what she said to you however
8 is not evidence in the case, what I am saying to you now is
9 not evidence in the case. She has laid out a road map of
10 what they expect to show. The only evidence you are going
11 to hear in this case is people that sit in that chair and
12 speak in that microphone and tell you what happened. Okay.
13 There also can be evidence, physical evidence that can be
14 admitted and I suspect there will be some physical exhibits
15 submitted to you as well, but those will be the evidence
16 that you will consider in this case and it is important
17 that you do that, that you wait until not only you've heard
18 all of the evidence but until you've heard the law that
19 applies to this case, because only then can you apply the
20 facts as you determine them to be to the law as the Judge
21 gives it to you in order to reach a verdict in the case.
22 Reaching a decision on anything before then goes against
23 the oath that y'all took and is not a way to give each side
24 a fair trial in this case. I would simply ask you to
25 listen to the opening statements, however, not to consider

OPENING STATEMENTS

1 them as any kind of evidence in the case and again, to
2 follow your oaths not to reach any kind of decision or have
3 any kind of discussions with regard to the case until you
4 have heard all of the evidence and been given the law in
5 this case and it is very important that you do that. Now,
6 Mr. Cooper has been charged as the solicitor said and
7 indicted with some drug offenses and the reason he has been
8 charged and indicted we are here and trying this case in
9 front of you all today and because he has been charged and
10 indicted with these offenses he has there are two
11 principles of law that apply. One is that he is presumed
12 innocent and that presumption of innocence, he is cloaked
13 in that presumption of innocence until such time as the
14 second principle of law, he can be found guilty beyond any
15 reasonable doubt, and reasonable doubt is at the crux of
16 most if not every single criminal case that is ever tried.
17 It is the burden of proof that is placed on the State in a
18 criminal case and it's a powerful burden and it is a burden
19 that they must meet with regards to every element of every
20 offense charged. If they don't meet that burden of beyond
21 a reasonable doubt as to every element and every offense
22 then you must resolve that doubt in favor of Mr. Cooper and
23 find him not guilty. And there's going to be evidence
24 presented in this case, but we submit to you that that
25 evidence is going to fall woefully short of proof beyond a

OPENING STATEMENTS

1 reasonable doubt that Duval Cooper is guilty of these
2 charges that he is charged with. And as I said, it's a
3 powerful burden, beyond a reasonable doubt, and the Judge
4 will instruct you at the close of the case exactly as to
5 what a reasonable doubt is, but I will give you a brief
6 explanation of it. Reasonable doubt is a doubt that would
7 cause a reasonable person to hesitate to act. A reasonable
8 doubt doesn't mean that you have to find somebody guilty
9 beyond any and all doubt but it's a standard that comes up
10 just short of that. There's two different kind of trials
11 in circuit court. Civil court, which has civil trials,
12 wreck cases, things like that where there may be money
13 damages or injuries in a wreck, a jury in a trial may be
14 assembled and determine what if any damages would be owed
15 to someone else. The standard of proof in a civil trial is
16 called by a preponderance of the evidence, in other words
17 is it more likely than not that somebody is at fault and it
18 is pretty much 51 percent to 49 percent. In other words,
19 if you think of it as a set of scales and both sides were
20 putting on their inference and once all of their evidence
21 has been put on if those scales in a civil case move at
22 this time every so slightly in one direction then that's
23 the direction that the jury would be found to be in favor
24 of. That's not the case in a criminal trial. In criminal
25 trials -- and they are dealing with people's liberties and

OPENING STATEMENTS

1 that's much more important than any dollar amount and
2 because the stakes are so much higher the burden of proof
3 is a lot higher as well. The burden of proof is beyond a
4 reasonable doubt. If you think of those same set of scales
5 they must pile on evidence until those scales are tilted in
6 their favor before somebody can be found beyond a
7 reasonable doubt. And again, I would submit to you that
8 once you've heard all of the evidence in this case and have
9 heard the law and are charged the law from the Judge and
10 begin your deliberations you will see that the evidence
11 does not rise -- it's not enough to convince you beyond a
12 reasonable doubt that Mr. Duval Cooper is guilty of
13 anything and we will come back before you at the close of
14 the trial and ask you to find just that way, not guilty.
15 Thank you.

16 THE COURT: Call your first witness.

17 MS. HORTON: The State would call Officer Vinesett to
18 the stand.

19 The witness, LONNIE VINESETT, was first duly sworn and
20 testified as follows, on:

21 DIRECT EXAMINATION

22 BY MS. HORTON:

23 Q. Would you please state your full name for the record?

24 A. Lonnie Terrel Vinesett, Jr.

25 Q. What is your occupation?

EXAMINATION OF LONNIE VINESETT

- 1 A. York County Sheriff's Department.
- 2 Q. Are you currently assigned to any special unit?
- 3 A. Yes, ma'am.
- 4 Q. What is that?
- 5 A. It's the Highway Interdiction Team.
- 6 Q. What is the Highway Interdiction Team?
- 7 A. The Highway Interdiction Team is a unit composed of
- 8 two deputies from the York County Sheriff's Office and our
- 9 major focus is to patrol the interstate and major highways
- 10 looking for any type criminal activity that might be
- 11 taking place on those roadways.
- 12 Q. How long have you been on the Highway Interdiction
- 13 Team?
- 14 A. Right at a year and a half.
- 15 Q. How long has that unit been formed?
- 16 A. A year and a half.
- 17 Q. Before that, were you employed with the York County
- 18 Sheriff's Office?
- 19 A. Yes, ma'am.
- 20 Q. Were you employed with any other agencies before
- 21 becoming employed with the sheriff's office?
- 22 A. Yes, ma'am. From 199 -- from '97 to '99 I worked as
- 23 a deputy at the Lancaster County Sheriff's Department.
- 24 Q. So you have been a police officer since 1997?
- 25 A. Yes, ma'am.

EXAMINATION OF LONNIE VINESETT

1 Q. Were you working for the Highway Interdiction Team on
2 June 23rd of 2005?

3 A. Yes, ma'am.

4 Q. And on that date did you have an occasion to
5 encounter Duval Cooper?

6 A. Yes, ma'am.

7 Q. Could you tell the jury about that encounter?

8 A. I was traveling I-77 southbound toward Chester
9 County, I was in the fast lane, there was a white minivan
10 in the slow lane. As I was coming up to beside the
11 vehicle I was right, as I was in the view to be able to
12 look in the window I looked over in the window and noticed
13 the driver dialing a number on a cellphone, not actually
14 on the phone but dialing a number, at which point as he
15 was dialing the number I backed off a little bit to pull
16 back not to pass or do anything. I actually went back a
17 little bit, and as I went back he was still dialing
18 numbers on the phone and I observed him cross over the
19 center line as he was dialing numbers on the phone at
20 which time I stopped the vehicle.

21 Q. After you stopped the vehicle what happened?

22 A. Once I stopped the vehicle I approached the vehicle
23 on the passenger's side. There's no policy or anything
24 saying that we have to approach the passenger side but
25 most of our stops are on the interstate and I wanted to be

EXAMINATION OF LONNIE VINESETT

1 as far away from the driver's side as possible. Once I
2 stopped the vehicle I approached the vehicle and asked the
3 driver, later identified by his license as Mr. Cooper, for
4 his driver's license and vehicle registration.

5 Q. And at that point he complied with your request?

6 A. Yes, ma'am.

7 Q. After that did you see anything else?

8 A. As he was getting out the information for the vehicle
9 I noticed a magazine on the floorboard between the
10 driver's seat and the passenger's seat, it was a High
11 Times magazine that was laying in the floorboard.

12 Q. Did you observe anything else after that?

13 A. Once I observed a High Times magazine I looked at the
14 ash tray of the vehicle and noticed what appeared to be a
15 marijuana blunt partially smoked in the ash tray of the
16 vehicle.

17 Q. What is a blunt?

18 A. A blunt is not your average cigarette wrapper, it is
19 a tobacco wrapper that you can get and to roll your
20 marijuana or tobacco if you chose.

21 Q. After you saw that what happened?

22 A. At that point I asked Mr. Cooper in reference to the
23 marijuana blunt in the ash tray, asked him what that was
24 in the ash tray, he stated to me that it was an old blunt,
25 at which point I asked him if he would hand that to me

EXAMINATION OF LONNIE VINESETT

1 rather than me reaching inside of the vehicle and getting
2 it.

3 Q. Officer Vinesett, I'm just going to stop you just
4 briefly and remind you, don't go by any statements made by
5 Mr. Cooper at this point, and continue.

6 A. At which point he picked it up and handed it to me,
7 put it in my hand. I asked him if he would step out of
8 the vehicle at which point he's stepping out of the
9 vehicle and I go back to my vehicle and secure the
10 evidence in the front seat and ask him to come back to my
11 vehicle.

12 Q. Did he comply with that?

13 A. Yes, ma'am.

14 Q. What happened after that?

15 A. After that I spoke with Mr. Cooper and later
16 discovered another -- not another, but a bag of marijuana
17 in his front pants pocket.

18 Q. What happened at this point?

19 A. At this point he was placed under arrest for
20 possession of marijuana and placed in the back seat of my
21 vehicle.

22 Q. After you placed him under arrest what happened?

23 A. Once I placed him under arrest I approached the
24 vehicle and spoke with the passenger of the vehicle which
25 at first was in the very, very back and appeared to be

EXAMINATION OF LONNIE VINESETT

1 asleep, as I approached the vehicle she was then in the
2 front passenger seat of the vehicle. I asked her out of
3 the vehicle and asked her if I could search her which she
4 told me that I could. I searched her and at that point
5 nothing was discovered on her.

6 Q. Did anyone ever arrive to assist you with a traffic
7 stop?

8 A. Yes. Shortly thereafter searching her Officer Ellis
9 arrived to assist me in searching the vehicle.

10 Q. And without getting into anything that Officer Ellis
11 said, what happened once he arrived?

12 A. Once he arrived he got into the passenger compartment
13 of the vehicle --

14 MR. MEETZ: Objection, Your Honor.

15 THE COURT: Is this pertaining to a pretrial?

16 MR. MEETZ: Yes, sir, Your Honor.

17 THE COURT: The objection is noted for the record and
18 overruled. You may proceed.

19 A. Officer Ellis got into the passenger area of the
20 vehicle, I was standing -- I was inside the front
21 passenger side where she was sitting, I'm not sure how
22 much exactly you want me to go into as far as --

23 Q. You can go into -- if you will, just tell the jury
24 from what you observed what Officer Ellis found.

25 A. As I'm sitting in the front seat still looking in the

EXAMINATION OF LONNIE VINESETT

1 sister-in-law.

2 Q. And you testified previously that you saw a High
3 Times magazine, what is that?

4 A. A High Times magazine is a magazine that just about
5 the entire magazine is dealing with marijuana. It shows
6 people smoking marijuana, it shows how people grow
7 marijuana, it sells lights, basically anything to help
8 assist people in growing marijuana. Also a lot of the
9 subscriptions have articles and things in there showing
10 how to throw police off or where to hide it where --

11 MR. MEETZ: I am going to object, Your Honor, to
12 specific ads in the magazine, I think the question has been
13 answered sufficiently.

14 THE COURT: Okay. I will sustain the objection,
15 Counsel, as to that.

16 MR. MEETZ: Thank you, Your Honor.

17 Q. Officer Vinesett, did you or do you know if any of
18 the baggies were submitted for fingerprinting?

19 A. Yes, ma'am. The baggies that contained what we
20 believed to be ecstasy were submitted to try to recover
21 any fingerprints off of those.

22 Q. Do you know if fingerprints were recovered?

23 A. There was a report saying that there was no
24 fingerprints recovered off of the baggies.

25 Q. Just one last question. You testified to where the

EXAMINATION OF LONNIE VINESETT

1 traffic stop occurred, what county is that in?

2 A. It's in York County.

3 MS. BURRIS: Thank you.

4 CROSS EXAMINATION

5 BY MR. MEETZ:

6 Q. Lieutenant Vinesett, when you initiated your traffic
7 stop with Mr. Cooper he did not try to run or anything
8 like that?

9 A. No, sir.

10 Q. He pulled right over as soon as you initiated your
11 stop?

12 A. Yes, sir.

13 Q. He was very cooperative with you when you were at the
14 passenger side when you were talking to him at the very
15 beginning of the stop.

16 A. Yes, sir.

17 Q. He remained cooperative throughout the stop.

18 A. Yes, sir.

19 Q. Didn't give you any trouble whatsoever.

20 A. No, sir.

21 Q. In fact, when you saw the marijuana blunt in the ash
22 tray he didn't try to tell you that's not what it was.

23 A. No, sir.

24 Q. Then when you searched and found marijuana on him he
25 didn't try to say he had no idea what that was, did he?

EXAMINATION OF LONNIE VINESETT

1 A. Yes, sir. As I was searching Mr. Cooper he started
2 to put his hands on the vehicle and I told him it was hot.

3 Q. So placing the contraband on there, on a hot car
4 could damage any forensic evidence that may be on there.

5 A. Possibly, I'm not sure.

6 MR. MEETZ: Beg the Court's indulgence, Your Honor.

7 THE COURT: Yes, sir.

8 (Break in proceedings.)

9 MR. MEETZ: I don't have any further questions, Your
10 Honor.

11 MS. HORTON: Nothing from the State, Your Honor.

12 THE COURT: Thank you, sir, you may stand down, sir.

13 MS. HORTON: State would call officer Robbie Ellis.

14 The witness, ROBERT ELLIS, was first duly sworn and
15 testified as follows, on:

16 DIRECT EXAMINATION

17 BY MS. HORTON:

18 Q. State your name, please.

19 A. Robert Ellis.

20 Q. And what is your occupation?

21 A. I'm employed with the York County Sheriff's Office.

22 Q. Are you assigned to a special agency?

23 A. Not an agency, I'm assigned to a special group with
24 the Highway Interdiction Team.

25 Q. How long have you been on the Highway Interdiction

EXAMINATION OF ROBERT ELLIS

1 Team?

2 A. This is -- I think we are working on the end of our
3 second year, beginning of our third year, so two years
4 roughly.

5 Q. How long have you been employed by the York County
6 Sheriff's Office?

7 A. A little over five years.

8 Q. And before that were you employed with any other law
9 enforcement?

10 A. Yes, ma'am, Clover City Police Department.

11 Q. How long were you with Clover?

12 A. Two years.

13 Q. Any other law enforcement experience?

14 A. No, ma'am.

15 Q. Were you working with the interdiction team on
16 June 23, 2005?

17 A. I did.

18 Q. Did you have an experience with Duval Cooper?

19 A. Yes.

20 Q. Tell the jury about that encounter.

21 A. There was two of us on that unit, once Deputy
22 Vinesett -- I was up more north, just got through stopping
23 a car and he stopped a car southbound on the interstate
24 and he called for my assistance on that particular traffic
25 stop.

EXAMINATION OF ROBERT ELLIS

1 Q. Did you go to assist him?

2 A. I did.

3 Q. What did you do to assist him?

4 A. When I came up to the vehicle he had Mr. Cooper
5 already in custody. He explained to me the situation,
6 that he had the narcotics that he had located on I believe
7 it was Mr. Duval's person as well as inside the vehicle
8 and I assisted him with the search of the remainder of the
9 interior of the van.

10 Q. Did you locate anything in your search of the van?

11 MR. MEETZ: Objection, Your Honor.

12 THE COURT: Overruled.

13 Q. Did you find anything in the search of the van?

14 A. I did.

15 Q. What was that?

16 A. When I entered the van I realized the rear door of
17 the van was inoperable and I even unlocked it and it still
18 wouldn't work but I could look in the window and I could
19 see that there was clothes and all piled up between the
20 third row of seats and the back of the van, which to me
21 seemed odd because if it was inoperable how did they get
22 them in there. And I wouldn't --

23 MR. MEETZ: Objection, Your Honor, speculation.

24 THE COURT: I will overrule the objection, you may
25 proceed.

EXAMINATION OF ROBERT ELLIS

1 A. I thought to myself through my training and
2 experience that I wouldn't as a person go through all of
3 the trouble to go put everything in there, I would just
4 put it to where I could easily access it in case I easily
5 needed something. I climbed inside of the van to the
6 third row of seats, I looked down between the seat and the
7 door, I could see the pile of clothes that I observed from
8 the outside, I started removing the layers of clothes and
9 at that point I discovered a plastic baggy, see-through
10 baggies containing white pills.

11 Q. Is that plastic bag inside of anything?

12 A. No, ma'am. It was just in between layers of clothes.

13 Q. But what was the layers of clothes on top of?

14 A. Okay. It was like once you get down further it was
15 almost like a duffle bag, a personal duffle bag, carry bag
16 that was open full of clothes and then it is like they
17 kept piling the clothes on top.

18 Q. So the pills were inside the duffle bag?

19 A. No, ma'am, they were not inside the duffle bag. I
20 mean, if I had to guess it was two or three layers up of
21 clothes from the very top of the zipper but I considered
22 that contained, because it was all -- you could easily
23 grab the handles of the bag and if you picked the handles
24 of the bag up everything could come up with it. So I
25 considered everything contained within that bag.

EXAMINATION OF ROBERT ELLIS

1 Q. Did you find anything else in the bag or on top of
2 the bag?

3 A. Yes, ma'am. After I found the white pills I kept
4 looking and I found what I can describe as two cylinders
5 of square blocks that were taped together, wrapped in
6 magazine paper is how I could describe it.

7 Q. And did you later determine what those -- what was
8 that packed in those?

9 A. Yes, ma'am. It was later determined that that was
10 what we refer to as bundles of heroin.

11 Q. And the pills in those two packages, what did you do
12 with those after you found them?

13 A. I maintained control of the evidence until which
14 point we returned to the back to the sheriff's office.

15 Q. By maintaining control did you carry them around with
16 you everywhere?

17 A. No. But I maintained eyesight of the evidence the
18 whole time in my control and ensured that nobody else
19 carried them off or put anything there.

20 Q. Once you came back to the sheriff's office with them
21 what did you do with them?

22 A. Because I was unclear of just by looking at it that
23 this was heroin we paged the chemist at the sheriff's
24 office to come in and try to ID the substance for us, the
25 pills as well as what was in the newspaper.

EXAMINATION OF ROBERT ELLIS

- 1 Q. Okay. Without going into what the chemist told you,
2 what did you do after that?
- 3 A. I turned everything over to -- I bagged everything up
4 into evidence per our policy and I submitted everything to
5 the evidence at the sheriff's office.
- 6 Q. What happens once you submit something to evidence?
- 7 A. I don't know, I don't have access to it after that
8 point.
- 9 Q. You do not have a key to the evidence locker once you
10 drop it off?
- 11 A. I do not.
- 12 Q. When did you next see the evidence?
- 13 A. This morning after 9:00 when I picked it up to return
14 to court.
- 15 Q. Was it in the same condition when you dropped it into
16 evidence?
- 17 A. With the exception that it had been opened and
18 resealed by the chemist.
- 19 Q. I'm going to give to you what's been marked for
20 identification as State's Exhibits Numbers 3 and 4. Would
21 you identify those for the jury, please?
- 22 A. Yes, ma'am. State's Exhibit 3 as marked contains the
23 white pills that I found first in the vehicle that was
24 later identified as methamphetamine.
- 25 Q. And how do you recognize that as the same pills that

EXAMINATION OF ROBERT ELLIS

1 you found?

2 A. Because of the chain of evidence and by my eyesight
3 knowing that that is the same pills.

4 Q. The chain of evidence, what is that, the chain of
5 evidence?

6 A. Every time something happens like I take the evidence
7 and we have the chain of evidence at the bottom that I'm
8 responsible for filling out so everything anybody touches
9 it or moves it, like for instance I'm the first one it
10 says from R. E. Ellis, Jr. which is my last name to the
11 gun locker which is because of the amount of evidence
12 that's where we had to secure it, the date and time I did
13 so and then the next chain is from the Moss Justice Center
14 evidence to so forth, every time somebody touches it they
15 sign for it.

16 Q. Then the other package, can you identify that,
17 please?

18 A. Yes, ma'am. As I said, further in the search I found
19 wrapped in the newspaper the cylinders, the bundles of
20 heroin and this is the bundles with the same logo which
21 says too much to handle, it's like a brand stamp on
22 heroin, that's the same -- I also -- I can see on the side
23 the package of newspaper or magazine paper it was wrapped
24 in.

25 Q. And I believe I've already asked you this, but are

EXAMINATION OF ROBERT ELLIS

1 those packages in the same condition as when you dropped
2 them off?

3 A. Yes, ma'am. With the exception they've been opened
4 and tested by the chemist and resealed by the chemist, in
5 other words they were not lose like that.

6 Q. From the time that you picked them up this morning,
7 have they been within your continual custody, care and
8 control?

9 A. Yes, ma'am.

10 MS. HORTON: The State has no further questions, Your
11 Honor.

12 CROSS EXAMINATION

13 BY MR. MEETZ:

14 Q. Officer Ellis, as you said you were not there when
15 Officer Vinesett stopped the vehicle.

16 A. No, sir.

17 Q. So when you got there he had already found some
18 contraband of marijuana and Mr. Cooper was already in
19 custody and in the patrol car.

20 A. Yes.

21 Q. And you ended up conducting a search of the van.

22 A. Yes, sir.

23 Q. And that search led you to look behind the very back
24 seat of the van in an area between that back seat and the
25 door.

EXAMINATION OF ROBERT ELLIS

- 1 A. Yes, sir.
- 2 Q. You saw clothes.
- 3 A. Yes, sir.
- 4 Q. You saw the duffle bag.
- 5 A. No, sir.
- 6 Q. There were enough clothes to where the blue duffle
- 7 bag was completely covered.
- 8 A. Yes, sir.
- 9 Q. So the blue bag wasn't visible by just looking at it.
- 10 A. No, sir.
- 11 Q. Neither were these items.
- 12 A. No, sir.
- 13 Q. They were not there either, they were not visible
- 14 just by looking down there.
- 15 A. That's right.
- 16 Q. You had to move clothes around to look at it?
- 17 A. Yes, sir.
- 18 Q. There was also a black suitcase.
- 19 A. Yes, sir.
- 20 Q. Clothes were on top of that, or you could see that?
- 21 A. Could not see that just by looking in.
- 22 Q. So you had to move clothes around before you could
- 23 see the blue duffle bag, these items or the black
- 24 suitcase.
- 25 A. Yes, sir.

EXAMINATION OF ROBERT ELLIS

- 1 Q. None of those clothes were taken into evidence.
- 2 A. No, sir.
- 3 Q. The black suitcase was not taken into evidence.
- 4 A. No, sir.
- 5 Q. And the blue duffle bag was not taken into evidence
- 6 at all?
- 7 A. No, sir.
- 8 Q. You did not have any dealings with Mr. Cooper that
- 9 day, or when you were over at the scene he was already in
- 10 custody in the car, correct?
- 11 A. Yes, sir.
- 12 Q. Did you have any occasion to deal with him directly
- 13 in any way?
- 14 A. After we returned to the office, yes, sir.
- 15 Q. And during those dealings he was cooperative?
- 16 A. Yes, sir.
- 17 Q. At no time that you were around Mr. Cooper was he
- 18 anything other than cooperative with law enforcement.
- 19 A. That's correct.
- 20 Q. Did you see the High Times magazine?
- 21 A. No, sir, I did not.
- 22 Q. Okay. Do you know whether that was taken into
- 23 evidence or not?
- 24 A. I did not put that in evidence, no, sir.
- 25 MR. MEETZ: Beg the Court's indulgence, Your Honor.

EXAMINATION OF GARY ROLLINS

1 (Break in proceedings.)

2 MR. MEETZ: No further questions, Your Honor.

3 MS. HORTON: The State has nothing further, Your
4 Honor.

5 THE COURT: Thank you, sir, you may stand down, sir.
6 The witness, GARY ROLLINS, was first duly sworn and
7 testified as follows, on:

8 DIRECT EXAMINATION

9 BY MS. HORTON:

10 Q. State your name for the record, please.

11 A. Gary Rollins.

12 Q. Where are you employed?

13 A. I'm employed with sheriff's department, in the
14 sheriff's department.

15 Q. What are your duties?

16 A. I pick up evidence from Fort Mill and Rock Hill and
17 transport them to Moss Justice.

18 Q. Do you ever pick up evidence from York as well from
19 the sheriff's department?

20 A. No, ma'am.

21 Q. I'm going to show you what has been marked as
22 Exhibits Number 3 and Number 4. Do you recognize these
23 exhibits?

24 A. Yes, I do. I picked up this evidence at the -- well,
25 it was Moss Justice -- yeah, okay -- on 6/24/05 at 10:13.

EXAMINATION OF GARY ROLLINS

1 Q. How do you recognize them?

2 A. Well, my signature is on it.

3 Q. What did you do with them after you picked them up?

4 A. I put them into the evidence room.

5 Q. Where is that located?

6 A. Downstairs in the sheriff's department.

7 Q. And when you took it to the evidence room where did
8 you put them?

9 A. I just done what I was supposed to do to them and
10 turned them into Barbie Traylor in the evidence room.

11 Q. Okay. And from the time that you picked them up at
12 Moss -- so they were never in your car?

13 A. No, ma'am.

14 Q. So when you gave them to Barbie, are they in the same
15 condition as when you gave them to Ms. Traylor?

16 A. Yes, ma'am.

17 Q. Thank you. And that package as well, do you
18 recognize it?

19 A. Yes. I picked it up at the same time, same place.

20 MS. HORTON: The State has no further questions, Your
21 Honor.

22 CROSS EXAMINATION

23 BY MR. MEETZ:

24 Q. Now, who is Barbie Traylor?

25 A. She works in the evidence room.

EXAMINATION OF GARY ROLLINS

1 Q. Do you know what her duties are?

2 A. Well, she enters evidence as it comes in.

3 Q. Now, other than checking this evidence and delivering
4 it to the evidence room in the sheriff's department, you
5 don't have any knowledge of this case.

6 A. No, sir.

7 Q. No idea, even not one idea about it.

8 A. No.

9 MR. MEETZ: I don't have any further questions.

10 MS. HORTON: Nothing further, Your Honor.

11 THE COURT: Thank you, sir, you may stand down.

12 MS. HORTON: Your Honor, may we approach?

13 THE COURT: Yes, ma'am.

14 (A bench conference was held.)

15 THE COURT: Madam Forelady, we will take a short
16 recess at this time. Please retire to the jury room and
17 refresh yourselves and we will take about probably ten
18 minutes or so. Thank you.

19 (The jury left the courtroom and a recess was taken.)

20 (The jury returned to the courtroom.)

21 THE COURT: Counsel ready to proceed?

22 MS. HORTON: Your Honor, the State would call Barbie
23 Traylor.

24 The witness, BARBARA TRAILOR, was first duly sworn and
25 testified as follows, on:

EXAMINATION OF GARY ROLLINS

1 DIRECT EXAMINATION

2 BY MS. HORTON:

3 Q. State your name for the record, please.

4 A. ~~My full name is Barbara Traylor and I go by Barbie.~~

5 Q. Where are you employed?

6 A. With the York County Sherrif's Office in the evidence
7 department.

8 Q. What exactly do you do with the evidence department?

9 A. My main responsibility is to log in the evidence, put
10 the bar codes on it and store it until it's ready to
11 either go to court or be tested for whoever needs it.

12 Q. I am going to show you what's been marked as State's
13 Exhibits 3 and 4, and ask you to look at those two
14 exhibits. And can you identify those exhibits?

15 A. Yes.

16 Q. What is Exhibit 3?

17 A. This is 4 and 5.

18 Q. I'm sorry, what is Exhibit 4?

19 A. You just want the description off of it?

20 Q. Yes.

21 A. The description on the package is 296 tablets of
22 meth. is the description.

23 Q. And then the other exhibit?

24 A. Item Number 5 is heroin wrapped in paper.

25 Q. I'm referring to these two numbers.

EXAMINATION OF CYNTHIA MCCORKLE

1 where it stayed until it was time to come to trial or be
2 destroyed or in this case that I rechecked it out again.

3 Q. And you rechecked it out and the bag was in the same
4 condition as when you checked it in?

5 A. That's correct.

6 Q. And when you had those bags in your position, both
7 Exhibits 3 and 4, does anyone else have access to them?

8 A. No. What I have in the lab is I have a filing
9 cabinet that I have the only keys for and my evidence
10 remains in that filing cabinet until I test it and return
11 it back to evidence.

12 Q. And in regards to State's Exhibit Number 3, did you
13 make a determination as to the substance in that bag and
14 the weight on that substance?

15 A. Yes, I did. State's Exhibit Number 3, which is item
16 number four in this case was found to be methamphetamine,
17 it was 296 tablets, which was 9.22 grams or 1376 grains, a
18 controlled two substance.

19 Q. And on State's Exhibit Number 4, were you able to
20 make a determination on that, that is the substance and
21 weight?

22 A. Yes, I did. State's Exhibit Number 4, which is item
23 number five in this case, was found to be heroin in the
24 amount of 29.20 grams, or 450.55 grains, and that's a
25 controlled one substance.

EXAMINATION OF CYNTHIA MCCORKLE

1 Q. Now, you said you checked that bag out twice. How do
2 you know you did not test the same substance both times.

3 A. The case itself has 1,001 glycine bags that are about
4 this big each weighing about average .05 grams, what I
5 have got in here is I have got two bags separate where I
6 tested them in this case, this one is the 260 bags that I
7 tested the second time, then the other bag has 290 bags
8 that I tested the first time, the 290 times is equal to
9 about 15 grams. Then at the request of the solicitor's
10 office they wanted me to also test additional bags so I
11 tested 216 more bags to bring it up for, there's still 45
12 bags in here that have not been tested. So based on my
13 average of .05 grams it would be a possibility of about
14 50 grams of heroin.

15 Q. Did you prepare a report with those conclusions on
16 it?

17 A. Yes, I did.

18 Q. Do you have that with you?

19 A. Yes, I do.

20 Q. I'm going to show you what's now been marked as
21 State's Exhibit Number 5. Could you tell the jury what
22 that is?

23 A. This is the report of my findings in this case.

24 Q. And you have already been over those findings. And
25 does that reflect what you've already testified to?

EXAMINATION OF EBONY KENDRICK

- 1 A. I didn't have anything with me. He drove me to my
2 family's house and we picked up my luggage.
- 3 Q. So what did you put in the van?
- 4 A. I put a black luggage that rolls that you can pull,
5 you can lift up the handle and you can pull it.
- 6 Q. And was there anything else in the van when you put
7 your black luggage in the van?
- 8 A. Yes. There was other luggage inside of the van and
9 like scattered underwears and T-shirts and stuff like that
10 and some clothes with tags on it.
- 11 Q. Did you ever see any heroin or the meth. pills in the
12 van?
- 13 A. No, ma'am.
- 14 Q. Did you put those drugs in the van?
- 15 A. No.
- 16 Q. Did you know those drugs were in the van?
- 17 A. No.
- 18 Q. How long were you planning on staying in South
19 Carolina?
- 20 A. Maybe three or four days.
- 21 Q. What did you tell your family?
- 22 A. I told -- well, actually I told my aunt who I was
23 residing with, I told her that I was going with my
24 boyfriend, I was taking some summer clothes home to his
25 house but I really wasn't, I was leaving with him.

EXAMINATION OF EBONY KENDRICK

- 1 Q. Why did you lie?
- 2 A. Because my family know this is my boyfriend back here
- 3 so I didn't really want to say I'm going down south with
- 4 another guy to my aunt.
- 5 Q. Why did you go with Mr. Cooper?
- 6 A. Because I wasn't really doing nothing, I was just
- 7 sitting on the block so when he asked me did I want to go
- 8 on a vacation, if I wanted to get away so I said yes.
- 9 Q. From the time that Mr. Cooper picked you up until the
- 10 time that you were arrested, did you make any stops?
- 11 A. We made a couple.
- 12 Q. What stops did you make?
- 13 A. We stopped at like the resting areas and then one
- 14 time we stopped in the parking lot in North Carolina
- 15 and --
- 16 Q. Why?
- 17 A. We dropped off a dog and a laptop.
- 18 Q. Was the dog with you when you left New York?
- 19 A. Yes, ma'am.
- 20 Q. Where did you drop the dog off at?
- 21 A. In a parking lot in North Carolina, I believe.
- 22 Q. Who did you give the dog to?
- 23 A. He gave the dog to a girl, a girl that had her own
- 24 car.
- 25 Q. Do you know where Mr. Cooper was staying when he was

EXAMINATION OF EBONY KENDRICK

- 1 in New York?
- 2 A. I don't know. Sometimes he would call me from
- 3 Jersey, sometimes he was right around the corner where I
- 4 met him the day we left so I don't know exactly where he
- 5 was staying, no.
- 6 Q. Do you know who the van belonged to?
- 7 A. No. When we got pulled over and the officer asked
- 8 him he said it was his aunt's.
- 9 Q. He never told you it was his van?
- 10 A. No, ma'am.
- 11 Q. When the officers pulled you over and were speaking
- 12 to you, did they ask you where you were coming from?
- 13 A. No.
- 14 Q. You don't remember telling the officers where you
- 15 were coming from?
- 16 A. No.
- 17 Q. Where were you coming from?
- 18 A. We were coming from New York.
- 19 Q. After you were arrested and placed -- what happened
- 20 after you were arrested?
- 21 A. We were brought here to the sheriff's office, they
- 22 searched me, they found a little weed in my pocket and but
- 23 then they tried to like question me for a little while
- 24 then they took us to the other side and they booked us in.
- 25 Q. Before they brought you here from the time that you

EXAMINATION OF EBONY KENDRICK

- 1 were arrested but before you got here, where were you?
- 2 A. Inside the police officer's car.
- 3 Q. Who was in there with you?
- 4 A. Duval.
- 5 Q. Did you say anything to him at that time?
- 6 A. Yes, ma'am.
- 7 Q. What did you say to him?
- 8 A. I asked him why didn't he tell me this is what he was
- 9 doing.
- 10 Q. How long were you in jail before you bonded out, do
- 11 you remember?
- 12 A. Maybe a month and a couple of days.
- 13 Q. Then when you bonded out where did you go?
- 14 A. I went home.
- 15 Q. Why are you back now?
- 16 A. I came back to be tried.
- 17 Q. When did you first agree to testify?
- 18 A. Yesterday.
- 19 Q. Why did you agree to testify?
- 20 A. Because my lawyer advised me to.
- 21 Q. Before yesterday, did your attorney ever advise you
- 22 to testify?
- 23 A. No, ma'am.
- 24 Q. What deal did your attorney say you would get if you
- 25 testified?

EXAMINATION OF EBONY KENDRICK

- 1 A. He said my case would be dismissed.
- 2 Q. Before that happened had your attorney told you about
3 your case being dismissed at all?
- 4 A. No, ma'am.
- 5 Q. Had your attorney told you anything about your story
6 that you told today?
- 7 A. No.
- 8 Q. If your attorney had asked you to testify without
9 telling you your charges would have been dismissed, would
10 you have agreed to testify?
- 11 A. Yes.
- 12 Q. Did you meet with anyone from the prosecutor's office
13 about your testimony?
- 14 A. Yesterday.
- 15 Q. Did anyone tell you what to say?
- 16 A. No.
- 17 Q. Are you telling the truth?
- 18 A. Yes.
- 19 Q. Have you seen Mr. Cooper since you were released from
20 jail?
- 21 A. Once.
- 22 Q. Where did you see him?
- 23 A. I saw him on a block on Broadway and St. Nicholas
24 Avenue around like a block away from my mother's house, he
25 was purchasing a cellphone.

EXAMINATION OF EBONY KENDRICK

- 1 Q. In New York?
- 2 A. Yes.
- 3 Q. Did he say anything to you at that time?
- 4 A. Yes.
- 5 Q. What did he say to you?
- 6 MR. MEETZ: Objection, hearsay.
- 7 THE COURT: Overruled.
- 8 Q. What did he say to you?
- 9 A. He said he was sorry and he also was like -- I told
- 10 him I was going to my mother's house and he told me he
- 11 would drive me over there, I looked at him like he was
- 12 crazy and he said there's no drugs in his car, it's all
- 13 right.
- 14 Q. Did he say anything to you about coming to trial?
- 15 A. He told me that don't worry about it because this is
- 16 his case.
- 17 Q. How did you get back down here this week?
- 18 A. I took the Amtrak.
- 19 MS. HORTON: One moment, Your Honor.
- 20 (Break in proceedings.)
- 21 Q. Ms. Kendrick, when you were in the back of the patrol
- 22 car when you made a statement about why didn't you tell
- 23 me, did you know that you were being recorded at that
- 24 time?
- 25 A. No, ma'am.

EXAMINATION OF EBONY KENDRICK

1 MS. HORTON: Thank you. I have no further questions.

2 CROSS EXAMINATION

3 BY MR. MEETZ:

4 Q. Ms. Kendrick, as I understand your relationship with
5 Duval started about ten years or so back; is that correct?

6 A. Yes.

7 Q. And reunited sometime right before you were arrested
8 about a week before.

9 A. Yes.

10 Q. Okay. And basically he had suggested that y'all get
11 together and come down to South Carolina for a vacation.

12 A. Yes.

13 Q. Which you agreed to do.

14 A. Yes.

15 Q. And as a result of that y'all had some phone calls
16 back and forth, he said come around and meet me, and this
17 was one night about one or two in the morning, right?

18 A. Yes.

19 Q. So you went around the corner and met him there.

20 A. Yes.

21 Q. He had the van at that point in time.

22 A. Yes.

23 Q. And you don't know who had the van before him.

24 A. No, sir.

25 Q. And did you see him place anything in the back seat

EXAMINATION OF EBONY KENDRICK

- 1 area of the van we are talking about?
- 2 A. No.
- 3 Q. Did you ever see him go into that area?
- 4 A. Only when he went to get the dog, because he had the
5 dog like tied to the last seat of the van so he had to go
6 back there to untie it.
- 7 Q. Did he go back into the back area, the compartment
8 where the --
- 9 A. I'm not quite sure. But I know that the leash was
10 tied to the bottom of the seat in the back.
- 11 Q. So he had been working on the bottom of the seat in
12 the back?
- 13 A. Yes.
- 14 Q. That's the only time you saw him there?
- 15 A. Yes.
- 16 Q. Did he ever put on any of the clothes that were back
17 there?
- 18 A. No. I didn't see him put any clothes on from back
19 there.
- 20 Q. Did he ever take any clothes off and put him back
21 there?
- 22 A. No.
- 23 Q. So you don't know how the clothes that were in the
24 back got there?
- 25 A. No.

EXAMINATION OF EBONY KENDRICK

1 Q. Okay. You certainly never saw him do anything for
2 his clothes.

3 A. No.

4 Q. Okay. Now, when you got in the van, was it possible
5 to see what was underneath all of those clothes?

6 A. No.

7 Q. Okay. So anything that would have been underneath
8 those clothes, you had no way of knowing they were there.

9 A. No.

10 Q. When you got into the van y'all began driving down.

11 A. Yes.

12 Q. And you dropped off a dog or laptop with someone in
13 North Carolina.

14 A. Yes.

15 Q. You're coming on down here in South Carolina and you
16 are actually in the back seat area at this point in time,
17 correct?

18 A. Asleep.

19 Q. Were you in the very back?

20 A. Yes.

21 Q. The one that's closest to this cargo area that we are
22 talking about?

23 A. Yes.

24 Q. And you were back there.

25 A. Yes.

EXAMINATION OF EBONY KENDRICK

- 1 Q. And Duval was in front driving.
- 2 A. Yes.
- 3 Q. When the police pulled you over that's when you woke
- 4 up.
- 5 A. Yes. Because the brakes were bad and he was stopping
- 6 hard.
- 7 Q. And when the police came up, did he cooperate with
- 8 the police?
- 9 A. Yes.
- 10 Q. Did you cooperate with the police?
- 11 A. Yes.
- 12 Q. He didn't try to run away from the police or anything
- 13 like that.
- 14 A. No, sir.
- 15 Q. All right. Now, once the police got you out of the
- 16 car, do you remember them asking you specifically is there
- 17 anything else that we need to know about?
- 18 A. The officer asked me is there any drugs inside of the
- 19 car that you know about and I told him no.
- 20 Q. Right. You had no way of knowing what was in the
- 21 back of car, that was the truth, right?
- 22 A. Yes.
- 23 Q. In the course of the whole process they found
- 24 something in the car, right?
- 25 A. Yes.

EXAMINATION OF EBONY KENDRICK

- 1 Q. You know that now?
- 2 A. Yes.
- 3 Q. They arrested you for that?
- 4 A. Yes.
- 5 Q. Put you in handcuffs?
- 6 A. Uh-huh, right. Yes.
- 7 Q. And as you said, they ask you questions about that.
- 8 Didn't you say they asked you questions when they got you
- 9 to the law center?
- 10 A. Yes.
- 11 Q. All you could do is say I don't know what was back
- 12 there, right?
- 13 A. Exactly.
- 14 Q. And you were charged with the exact same thing that
- 15 Duval was charged with, weren't you?
- 16 A. Yes.
- 17 Q. When you came to court yesterday they just dropped
- 18 your charges, right?
- 19 A. Yes.
- 20 Q. Solicitor's office just said, no, we are going to
- 21 decide that you're not going to be charged with this
- 22 anymore, right?
- 23 A. Yes.
- 24 Q. And that made you feel pretty good.
- 25 A. Yes.

EXAMINATION OF EBONY KENDRICK

1 MR. MEETZ: Nothing further, Your Honor.

2 MS. HORTON: Nothing further, Your Honor.

3 THE COURT: Thank you, ma'am, you may stand down now.

4 MS. HORTON: May we approach for a moment?

5 (A bench conference was held.)

6 MS. HORTON: Can she be excused, Your Honor?

7 THE COURT: Any objection?

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

9 THE COURT: Thank you for coming, ma'am, you may be

10 excused.

11 MS. HORTON: Your Honor, the State at this time

12 requests to publish State's Exhibit Number 2 to the jury.

13 THE COURT: You may publish it.

14 (The videotape was shown.)

15 MS. HORTON: Your Honor, the State would rest at this

16 time.

17 THE COURT: Counsel, your motions can be considered

18 timely made and remade so we can proceed on. Do you wish

19 to offer evidence at this time?

20 MR. MEETZ: No, sir, Your Honor. The defense would

21 rest.

22 THE COURT: All right, sir. Madam Forelady, members

23 of the jury panel, that concludes all of the taking of

24 testimony in this case. We have yet remaining the final

25 arguments for counsel and my charge to you with regard to

CLOSING ARGUMENTS

1 the law that applies to the issues in this case. I will
2 ask that you listen attentively now as counsel addresses
3 you in their final argument. Counsel, you may proceed.

4 MS. BURRIS: Ladies and gentlemen, this has been a
5 fairly short case and I'm not going to rehash through all
6 of the testimony and evidence that you have heard and seen
7 today because I will trust you will rely on your own memory
8 of what happened and what you have heard to make your
9 decisions, but there are a few things that I would like to
10 point out to you. When you go back to the jury room to
11 deliberate you can use your common sense to help you decide
12 what the truth is. You can think about the credibility of
13 witnesses and consistency of their testimony, and all of
14 the evidence that you have heard, combine it all and use
15 your common sense and what you find to be the truth. You
16 are the fact finders, the Judge will tell you the law and
17 you use that with the facts that you believe to be true. A
18 few things that I am going to point out is that this van
19 belonged to Duval Cooper's either sister-in-law or aunt but
20 some family member of Duval Cooper, it did not belong to
21 Ebony Kendrick. Duval Cooper has ties to South Carolina,
22 he lives here. Ebony Kendrick said she has been down south
23 one time. Duval Cooper has ties to the New York/New Jersey
24 area, that's where Ebony Kendrick is from. Ms. Kendrick
25 was charged as well, she was charged with the same offenses

CLOSING ARGUMENTS

1 as Mr. Cooper and the State has agreed to dismiss her
2 charges relying partly on Duval Cooper's own statement,
3 "she definitely don't know." If you go back and listen to
4 the tape, "she definitely don't know." Well, for him to be
5 able to say she definitely doesn't know he had to know
6 something. Later on when Duval talks with Ebony he tells
7 her, "Don't worry, this is my case, I'm sorry, I don't have
8 any drugs on me now." In evaluating those statements use
9 your common sense. How could he tell the officers that she
10 definitely didn't know if he didn't know anything about it?
11 The Judge will tell you that the State has to prove to you
12 beyond a reasonable doubt that Duval Cooper did traffic in
13 heroin and in methamphetamines. Part of proving to you
14 beyond a reasonable doubt is that the State has to prove to
15 you that he knew he had possession of those drugs. The
16 Judge will tell you that you can infer from all of the
17 evidence that Duval Cooper knew he had possession. What
18 can you use to infer? The fact that he was the driver of
19 the van belonging to a family member of his. The van was
20 registered in New Jersey, he's from South Carolina,
21 according to Ebony Kendrick they're going back to New York
22 in two or three days, she was just coming down for a
23 vacation. I have stopped trying to guess what the defense
24 is going to say in their closing argument but I assume they
25 are going to -- at least I think they would point out that

CLOSING ARGUMENTS

1 Ebony Kendrick might not be believable. Why would a
2 girl come here and lie? There's truth in her words, didn't
3 have anything else to do, I was just hanging out on the
4 streets. She's 23 years old hanging out on I think she
5 said on the corner in New York, why would she not agree to
6 come on a trip that someone else was willing to take her to
7 a different state and bring her back? Why would she not
8 agree to go? She had a crush on him, she thought something
9 else might develop, nothing else to look forward to. The
10 Judge will charge you on circumstantial evidence, he will
11 charge you that there's such things as direct evidence and
12 there's circumstantial evidence. This case is mostly
13 circumstantial evidence. The drugs were found in the van
14 driven by Duval Cooper, they were found in the back, he was
15 coming from New York, wasn't going to stay in South
16 Carolina very long, it's circumstantial. I submit to you
17 that all adds up. We know in a van driven by Duval Cooper
18 was a large quantity of heroin and large quantity of
19 methamphetamines, it's illegal to possess both of those
20 drugs. It becomes trafficking when those drugs reach a
21 certain amount, in this case the heroin was 29 grams, you
22 can become guilty of trafficking when you have more than
23 four grams in your possession. Methamphetamines, he had
24 89 grams of that, you become guilty of trafficking in meth.
25 when you have possession of more than ten grams of

CLOSING ARGUMENTS

1 methamphetamines. You can be guilty of trafficking if you
2 possess, attempt to possess, to sell more than that
3 allotted amount, to bring into the state more than that
4 amount. Duval Cooper certainly brought into this state
5 more than that amount. I submit to you he was in
6 possession of more than that amount but he knew he was in
7 possession of more than that amount. The defense
8 questioned both Ms. Kendrick and the officers about if
9 Duval Cooper was cooperative. He didn't run, he answered
10 your questions. He did when it was dealing with marijuana.
11 "That's not what you said, Officer, you asked me about what
12 was in my pocket, I told you I had marijuana in my pocket."
13 He was cooperative until the big drugs were found then he
14 didn't know anything other than Ms. Kendrick didn't know
15 nothing. He was cooperative up to a point, up to the point
16 he realized he had been caught and at that point he became
17 uncooperative. Ladies and gentlemen, I will ask you again
18 that when you go back to the room to deliberate think about
19 all of the things that you've heard, all of the things that
20 you have seen, ask yourself, where do you think the truth
21 is? That's all that I can ask you to do, that's all the
22 Judge can ask you to do, that's all the defense can ask you
23 to do is where do you think the truth is? Is the truth
24 that someone else -- that if you believe Ebony that she
25 didn't know anything which she told the officers that day

CLOSING ARGUMENTS

1 she didn't know anything, she told her attorney she didn't
2 know anything, she told you she didn't know anything.
3 Duval Cooper said she didn't know anything, if you believe
4 her that she didn't know anything and you believe
5 Mr. Cooper didn't know anything that means that someone who
6 has a large amount of heroin just let them take a trip down
7 to South Carolina. I submit to you that that does not make
8 sense. Drug traffickers don't let their drugs go away from
9 them, they keep them close until they are ready to sell
10 them. Ask yourself what speaks the truth to you and I ask
11 you to deliver the verdict of guilty. Thank you.

12 MR. MEETZ: Please the Court?

13 THE COURT: Yes, sir, Counsel.

14 MR. MEETZ: Ladies and gentlemen, this case is full of
15 assumptions, full of assumptions. They're wanting you to
16 assume things in order for you to get the verdict that they
17 want you to bring back, and assumption equals reasonable
18 doubt. You don't prove a case with assumptions. The
19 solicitor even just now said to you what do you think
20 happened? What do you think happened? It's got to be more
21 than what you think happened in order to find somebody
22 guilty beyond a reasonable doubt. You have to be firmly
23 convinced. If you're saying, "Well, I think he did it,"
24 that is not enough, that requires you to bring back a
25 verdict of not guilty in any criminal case. You have to be

CLOSING ARGUMENTS

1 firmly convinced of someone's guilt beyond any reasonable
2 doubt before a verdict of guilt can be brought back. Now,
3 as I said, this case is full of assumptions and assumptions
4 equal reasonable doubt. First off, they want you to
5 assume, and this is probably the biggest one because as the
6 solicitor indicated, they have to prove not that he was
7 driving the car that had drugs in it, they also have to
8 prove that he had knowledge. Nobody is going to get up
9 here and say to you that there weren't any drugs found in
10 the car. Videotape didn't show you anything that you
11 didn't already know through his testimony. Mr. Cooper's
12 car was pulled over, he was in possession of some
13 marijuana, they searched the rest of the car and they found
14 the drugs that were here. They presented no evidence at
15 all that connects Duval Cooper to these drugs that were
16 found in the back of that van. They want you to take the
17 leap from he was driving the car so therefore he had to
18 have known that these drugs are in the back of this van and
19 they don't have anything to bridge that gap and that is a
20 gigantic gap, it's an enormous gap. That is the quantum
21 leap of all assumptions because as I told you in my opening
22 statement, in order for someone to be found guilty each
23 element of each offense has to be proven beyond a
24 reasonable doubt. And in these cases on both of these
25 charges trafficking in methamphetamine and trafficking in

CLOSING ARGUMENTS

1 heroin, one such element that has to be proven beyond a
2 reasonable doubt is knowledge. They have to be able to
3 convince you beyond a reasonable doubt that he knew those
4 drugs were back there, and they have presented no evidence
5 to indicate that, no evidence to prove knowledge. They
6 want you to just say he was driving, he must have known it.
7 Now, the solicitor was correct when she told you that the
8 fact that he was driving creates an inference, it can
9 create an inference with you that he had knowledge and that
10 is the law, but that is the law that is more applicable in
11 a situation where somebody is driving their own car and
12 there's no one else in the car with them and when the blue
13 lights are turned on they speed up and they take the police
14 on a big chase. All of those things are more suitable for
15 a case where you could say, well, his car, there's no
16 evidence, there's no testimony that he said yes, I knew
17 they were there. But you would also have his car, he is
18 the only one in there and he took off. None of those
19 things fit in this case, none of those things happened. He
20 was very cooperative, he's not the only one in the car. In
21 fact, there was another person in the car who was also
22 arrested and also charged and she was also closer to the
23 drugs than him. She was in the back seat, the drugs were
24 just on the other side of her, she's charged as. Well,
25 they're essentially in no different position, they are in

CLOSING ARGUMENTS

1 the exact same position except she's closer to the drugs
2 than he is, much closer in proximity. But she shows up the
3 day of her trial, agrees to testify and her case is
4 completely dismissed, completely dismissed. She wants you
5 to -- the State wants you to judge the credibility of these
6 witnesses. Well, I will tell you that's exactly one of the
7 jobs you have as the jurors is to judge the credibility of
8 the witnesses, and I would submit to you that Ebony
9 Kendrick's credibility is very much in question, very much
10 in question. She had plenty to gain in this case. She
11 went from having her potential liberties taken away from
12 her to having her criminal charges completely dismissed to
13 get up there and testify against Duval Cooper. And her
14 credibility should also be in question because she admitted
15 on the stand that she was lying. She told her family --
16 she lied to her family about who she was going to South
17 Carolina with because she didn't want them to know that she
18 was going with some other man besides her boyfriend,
19 something that's not illegal but yet they want you to think
20 she's telling the truth when she comes in here and says --
21 tells the story that's going to get her criminal charges
22 completely dismissed. I would submit to you that based on
23 that that Ms. Kendrick's credibility is very much in
24 question and essentially her testimony should not be
25 believed. Reasonable doubt can come from not only evidence

CLOSING ARGUMENTS

1 and testimony that you do hear, but also things that you
2 don't hear. The State has an obligation to prove to you
3 beyond a reasonable doubt every element of the offense in
4 this case, they just haven't done that. And they are
5 wanting you to say -- they're asking you to overlook their
6 burden in this case but there's plenty of potential
7 evidence that was left on the side of the road that y'all
8 don't get to consider and we have no idea what that
9 evidence would have said, and it's their burden to prove
10 beyond a reasonable doubt. Part of that burden is to
11 present you with all of the evidence and it just hasn't
12 been done in this case. First of all, there was a High
13 Times magazine in this front seat of the car that was not
14 entered into evidence. What could that have told us?
15 Could have had a subscription on it, could have seen who it
16 was and might have seen a subscription on it, could have
17 been tested for fingerprints, stuff like that. The clothes
18 in the back, the gym bag, all of these things, you didn't
19 see any of that. Was the gym bag tested forensically? Was
20 there a name written in it? The clothes and things, were
21 they men's clothes, were they women's clothes? We have no
22 idea because we don't have them here. Were there hairs on
23 the clothes, fibers tested for DNA to determine whose
24 clothes they were? We will never know, none of that was
25 taken into evidence, we have no idea how they got there,

1 any of that. All we know is there was a big pile of
2 clothes in the back of this car big enough to cover up a
3 suitcase and duffle bag, and these drugs -- Ebony Kendrick
4 was sitting right behind them or right in front of them and
5 they both get charged because at the time of the arrest the
6 police assumed they're both guilty even though neither one
7 of them -- even though they had no evidence that either one
8 of them had knowledge of those drugs being there. When you
9 are dealing with people's lives and when you're dealing
10 with people's liberties you've got to have more than just
11 somebody driving somebody else's van with a passenger in
12 the back seat to prove knowledge. The law also says mere
13 presence at the scene of the crime is not sufficient
14 either. These are laws that the Judge will charge you and
15 he will charge you what the law is and you can take that
16 law and apply it to those facts. But I submit to you in
17 that charge he will instruct you that mere presence is not
18 sufficient to sustain a guilty verdict and he will also
19 charge to you that knowledge is an element that must be
20 proven to you beyond a reasonable doubt and in this case
21 that has simply not been accomplished, and because of that
22 we will ask you to bring back a verdict in this case that
23 speaks the truth. He is in absolutely no different
24 position than Ebony Kendrick is and her charges are
25 dismissed. His liberties are in jeopardy and we would ask

CLOSING ARGUMENTS

1 you to find Mr. Cooper not guilty. Thank you.

2 THE COURT: Madam Forelady, members of the jury panel,
3 that concludes final arguments of counsel, it's now time
4 for me to charge the law to you as it applies to the issues
5 in this case. The State charges the defendant, Duval
6 Melvin Cooper, with two offenses, they charged him with
7 trafficking in methamphetamine in an amount of 28 grams or
8 more and they also charged him with the offense of
9 trafficking in heroin in an amount of 28 grams or more.
10 Now, to these charges the defendant has pled not guilty
11 which places upon the State the burden of proving the
12 defendant guilty. A person charged with committing a
13 criminal offense in South Carolina is never presumed
14 guilty. I charge you that it's a vital and important rule
15 of law that a defendant in a criminal trial is presumed
16 innocent until his guilt has been proved beyond a
17 reasonable doubt. This presumption of innocence remains
18 with the defendant at all times throughout the trial and is
19 only removed when and if the State has proved guilt beyond
20 a reasonable doubt. It is your solemn duty, ladies and
21 gentlemen, if not clearly convinced of guilt beyond a
22 reasonable doubt to the contrary to find the defendant not
23 guilty, so the State has the burden of proving the
24 defendant guilty beyond a reasonable doubt. Now, some of
25 you may have served as jurors in civil cases where you were

JURY CHARGE

1 told that it's only necessary to prove the fact is more
2 likely true than not such as by the greater weight or
3 preponderance of evidence. However in criminal cases the
4 State's proof must be more powerful than that, it must be
5 beyond a reasonable doubt. Now, ladies and gentlemen of
6 the jury, proof beyond a reasonable doubt is proof that
7 leaves you firmly convinced of the defendant's guilt.
8 There are very few things in this world that we know with
9 absolute certainty and in criminal cases the law does not
10 require proof that overcomes every possible doubt. A
11 reasonable doubt may also be described as the kind of doubt
12 that would cause a reasonable person to hesitate to act.
13 If you have such a doubt as to the guilt of the defendant
14 then he would be entitled to a verdict of not guilty.
15 Reasonable doubt may arise from evidence which is in the
16 case or from the absence or lack of evidence in the case.
17 If based on your consideration of the evidence you are
18 firmly convinced that the defendant is guilty of the crime
19 charged you must find him guilty. If on the other hand you
20 think there was a real possibility that he is not guilty
21 you must give him the benefit of the doubt and find him not
22 guilty. You alone must make the determination of whether
23 or not reasonable doubt exists as to the guilt of the
24 defendant. Madam Forelady, members of the jury panel, I
25 instruct you now and emphasize to you that the fact that a

JURY CHARGE

1 defendant did not testify on his own behalf in his trial
2 and the fact that he was not present for the trial is not a
3 factor to be considered by you in any way in your
4 deliberations. You must not consider the fact that the
5 defendant has chosen not to be present or to testify when
6 you determine the guilt or innocence of the defendant. It
7 must not be considered by you in any manner whatsoever
8 either against or for the defendant. A defendant has the
9 constitutional right to remain silent. The assertion of
10 that constitutional right cannot be and must not be
11 considered by you in your deliberations. On your oath then
12 you are to reach no inference and draw no conclusion
13 whatsoever from the fact that the defendant did not appear
14 in this case and was not present for trial and did not
15 testify. The fact that the defendant did not testify and
16 was not present should not even be discussed in your jury
17 room. The burden of proof, as I have stated to you, is
18 upon the State, it's not the burden of the accused to prove
19 his innocence. The burden of proof remains upon the State
20 to prove guilt beyond every reasonable doubt. Again, I
21 emphasize that the fact that the defendant did not testify
22 and was not present for the trial is not a factor to be
23 considered by you in determining the guilt or the innocence
24 of the defendant or in any other aspect of your
25 deliberations. Madam Forelady, members of the jury panel,

JURY CHARGE

1 there are two types of evidence which are generally
2 presented during the trial, direct evidence and
3 circumstantial evidence. Direct evidence is the testimony
4 of a person who asserts or claims to have actual knowledge
5 of a fact such as an eye witness. Circumstantial evidence
6 is proof of a chain of facts and circumstances indicating
7 the existence of a fact. The law makes no distinction
8 between weight or value to be given between direct or
9 circumstantial evidence, nor is a greater degree of
10 certainty required of circumstantial evidence than that of
11 direct evidence. You should weigh all of the evidence in
12 the case and after weighing all of the evidence if you are
13 not convinced of the guilt of the defendant beyond a
14 reasonable doubt you must find the defendant not guilty.
15 Now, Madam Forelady, members of the jury panel, you've
16 heard the testimony of a witness who has special knowledge,
17 skill and experience, training or education in a particular
18 field who has given an opinion as to matters in which she
19 is skilled. In determining the weight to be given such
20 opinions you should consider the qualifications, the
21 credibility of the expert witness and the reasons given for
22 her opinions. You are not bound by such opinions or give
23 to them the weight if any you deem them entitled. Madam
24 Forelady, members of the jury panel, under the constitution
25 of South Carolina you are the finders of facts in this

JURY CHARGE

1 case. I do not have the right to pass upon the facts or
2 express any opinion I might have to the facts, nor may I
3 suggest in any way what I may think about the guilt or
4 innocence of the defendant. You should form no opinion in
5 that regard from anything I may have said or any ruling I
6 have made during the course of the trial. As the sole
7 judges of the facts in this case you are also necessarily
8 the sole judges of the credibility or believability of each
9 of the witnesses that have testified during the course of
10 the trial. Now, there are a number of factors which you
11 may consider in arriving at your assessment as to a
12 particular witness' credibility or believability. Some
13 factors I'm going to give to you and should you come up
14 with other factors that you believe ought to be considered
15 when you go back in the jury room on the question of
16 credibility then you should consider those factors as well.
17 But you may consider the demeanor of the witness from the
18 witness stand, what was that witness' manner of appearance,
19 was the witness straight forward in answering questions or
20 hesitant in responding to questions. Simply put, do you
21 believe that the witness was telling the truth or not
22 telling the truth. Do you believe the witness knew of what
23 that witness testified or did not know of what that witness
24 testified. You may consider whether or not the testimony
25 of a witness is consistent or inconsistent with that

JURY CHARGE

1 witness' own testimony or with other testimony or evidence
2 presented during the course of the trial. You may also
3 consider how the witness came to know the facts to which he
4 has been testifying. You may consider the opportunity that
5 a witness had to observe or hear, that is to perceive the
6 existence of a fact by means of their sentences. You may
7 also consider whether or not a witness is bias or
8 prejudice, that simply means do you find that a particular
9 witness had some reason to come into court and testify one
10 way or another to help or hurt one side or the other. You
11 as the finders of facts in this case and you as the judges
12 of the credibility or believability as each of the
13 witnesses that have testified may believe as much or as
14 little of what a witness testifies to as you deem
15 appropriate. You may believe all of what a witness says,
16 you may believe none of what a witness says or you may
17 believe only part of what a witness says. You must accept
18 the law that I charge and apply to the law the evidence as
19 you find it and reach your verdict, put aside any
20 conceptions you may have had to the law before coming here
21 today and accept the law as I instruct it to be. You
22 should not be concerned of what you think the law ought to
23 be but what I charge you the law is now in this state.
24 Madam Forelady, members of the jury, I charge you with
25 regard to criminal intent. Criminal intent is a necessary

JURY CHARGE

1 element of a crime that must be proven by the State beyond
2 a reasonable doubt. Criminal intent is always a matter
3 that must be determined by the jury from the circumstances
4 surrounding the situation. There's no way to prove intent
5 to a mathematical certainty. There's no way that medical
6 science can dissect a person's brain and determine what he
7 had in mind so the law says that criminal intent may be
8 inferred from the circumstances shown to have existed.
9 This is how a jury makes a determination as to whether or
10 not the element requiring intent was present. Criminal
11 intent is a state of mind which operated jointly with an
12 act is the commission of the crime. Criminal intent is a
13 mental state, a conscious wrongdoing, so it is up to you,
14 the jury, to determine what the defendant intended to do
15 based on the circumstances shown to have existed. I tell
16 you that the State must prove criminal intent beyond a
17 reasonable doubt just as the State must prove every element
18 beyond a reasonable doubt. It's not necessary to establish
19 intent by direct and positive evidence, but intent may be
20 established by inference and the same way as any other fact
21 by taking into consideration the acts of the parties and
22 all other facts and circumstances by the State when the
23 State may prove motive, however the State must prove
24 intent. Now, Madam Forelady, members of jury, I am going
25 to charge you now specifically with the law regarding the

JURY CHARGE

1 two charges against the defendant today. I will tell you
2 you are not going to have the charges written down for you
3 back in the jury room so you are going to all have to rely
4 on your collective memories as to what I instruct you as to
5 what the law is and it's not all that easy to understand so
6 I am going to ask you to follow along with me as I go
7 through these charges. It's not that lengthy either but I
8 ask you to listen attentively. Now, once you begin your
9 deliberations if you are not sure what the law was as I
10 charged it to you and you want to be recharged on any part
11 of it or all of it on that matter I will be glad to do
12 that. But as for now I ask you to listen very carefully as
13 I go through the charge. The defendant, Duval Melvin
14 Cooper, is charged first with trafficking heroin in an
15 amount of 28 grams or more. The State must prove beyond a
16 reasonable doubt that the defendant knowingly sold,
17 manufactured, cultivated, delivered, purchased, brought
18 into this state, provided financial assistance or otherwise
19 aided, abetted, attempted or conspired to sell,
20 manufacture, cultivate, deliver, purchase, or bring into
21 this state or was knowingly in actual or constructive
22 possession of, or knowingly and attempted to become in
23 actual or constructive possession of heroin in the amount
24 of 28 grams or more. The State must also prove beyond a
25 reasonable doubt that the amount of heroin and any mixture

JURY CHARGE

1 containing heroin was 28 grams or more. To prove
2 possession the State must prove beyond a reasonable doubt
3 that the defendant had both the power and the intent to
4 control the disposition or use of the heroin. Possession
5 may be either actual or constructive. Actual possession
6 means that the heroin was in the actual physical custody of
7 the defendant, constructive possession means that the
8 defendant had dominion and control or the right to exercise
9 dominion or control over either the heroin itself or the
10 property in which the heroin was found. Mere presence at
11 the scene where the drugs were found is not enough to prove
12 possession. Actual knowledge of the presence of the heroin
13 is strong evidence of the defendant's intent to control the
14 disposition or use. Knowledge by the defendant of the
15 presence of the heroin is a necessary element which must be
16 proved by the State. The defendant's knowledge and
17 possession may be inferred when a substance is found on the
18 property or in the property under the defendant's control.
19 However, this inference is simply an evidentiary fact to be
20 taken into consideration by you along with all of the other
21 testimony and evidence in the case and to be given the
22 weight you decide it should have. I charge you that two or
23 more persons may have joint possession of a drug. Now, I
24 am going to charge you with the offense of trafficking
25 methamphetamines, basically it's the same charge but I feel

JURY CHARGE

1 I should go through that with you again, slight difference
2 but primarily the same so you will get a chance to hear it
3 again. The defendant, Duval Melvin Cooper, is charged with
4 trafficking in methamphetamine 28 grams or more in
5 violation of section 44-53-375 of the South Carolina Code
6 of Laws in South Carolina. Possession again may be either
7 actual or constructive. Total possession means that the
8 methamphetamine was in the actual physical custody of the
9 defendant, constructive possession means that the defendant
10 had dominion or control or the right to exercise dominion
11 and control over either the methamphetamine itself or the
12 property in which the methamphetamine was found. Mere
13 presence at the scene where the drugs were found is not
14 enough to prove possession. Actual knowledge of the
15 presence of the methamphetamine is strong evidence of the
16 defendant's intent to control, knowledge of presence of the
17 methamphetamine is a necessary element which the State must
18 prove the defendant's knowledge. Possession maybe inferred
19 when a substance is found in a property under the
20 defendant's control. This inference is simply an
21 evidentiary fact to be taken into consideration by you
22 along with the other testimony and evidence and given such
23 weight as you decide it should have. You will consider
24 each charge separately and make a separate finding as to
25 each of these two charges. Madam Forelady, members of jury

JURY CHARGE

1 panel, nothing that I may have said or done during the
2 course of this trial has been in any way intended to
3 express or suggest a view of the case or an opinion as to
4 the facts or the weight of the evidence or the credibility
5 of the witnesses. If any of my actions or words have
6 seemed to so indicate you will disregard such and form your
7 own opinion as to these matters. You have been selected as
8 fair and impartial jurors sworn to impartially try and
9 determine the facts of this case and when you comply with
10 your oath to do so then no one will have a right to
11 criticize your verdict and you will have fully discharged
12 your duty as jurors. You ought to decide this case
13 according to the testimony as you heard from the lips of
14 the sworn witnesses along with all of the evidence in the
15 course of the trial. I charge you as jurors you must
16 decide the issues in this proceeding without bias and
17 without any prejudice to any party. You cannot allow
18 yourself to be governed by sympathy, by prejudice, by
19 passion, by public opinion or any other arbitrary factor.
20 Both the State and the defendant have the right to expect
21 that each of you will carefully and impartially consider
22 all of the evidence in the case and that you will follow
23 the law as I have explained it to you. Whatever your
24 verdict in this case it must be your unanimous verdict, all
25 12 jurors must agree on the verdict which the foreperson

JURY CHARGE

1 will be authorized to write on behalf of the jury. Now,
2 Madam Forelady, I charge you that once you begin your
3 deliberations you maintain some order in the deliberations
4 and all who wish to be heard and participate in the
5 deliberations be allowed to do so. If for any reason any
6 members wish to take a break, all should take a break, by
7 that I mean all 12 jurors should be deliberating when
8 deliberations are going on. Now, I have prepared for your
9 use in the jury room two verdict forms, one for each of the
10 charges in this case. And they read as follows: We, the
11 jury, find the defendant guilty of trafficking
12 methamphetamine in an amount of 28 grams or more, and the
13 second possible verdict as it appears on the verdict form,
14 we, the jury, find the defendant not guilty. The second
15 verdict form is the same, it reads, we, the jury, find the
16 defendant guilty of trafficking in heroin in an amount of
17 28 grams or more; or, we, the jury, find the defendant not
18 guilty. Madam Forelady, members of the jury panel, in
19 preparing the verdict forms I have to put the possible
20 verdicts on the form in some order, I do it the same way
21 every time. The order in which the possible verdicts
22 appear mean absolutely nothing and you should infer nothing
23 from it. What you should do is deliberate. Once you have
24 reached a unanimous verdict on each of these charges, Madam
25 Forelady, you would simply go to the verdict form, find the

JURY CHARGE

1 verdict which corresponds to the decision of the jury and
2 put a checkmark in the blank beside that particular
3 verdict, sign your name on the line above the word
4 foreperson's signature. And once you have done that as to
5 each of these two charges then knock on the door, let the
6 bailiff know you've reached a verdict and I will bring you
7 back out in the courtroom and receive those verdicts. If
8 you will, hold on to the verdict forms when you return.
9 Now, I'm going to ask you at this time to retire to the
10 jury room but do not yet begin your deliberations, I have
11 to give counsel an opportunity to request additional
12 instructions on the law. If additional instructions are
13 requested, I will bring you back out and give you those
14 additional instructions. It follows then you should not
15 begin deliberations until we make sure all the instructions
16 are complete. In other words, if no other instructions are
17 necessary I will send any exhibits which have been admitted
18 into the record and verdict forms and instructions to begin
19 deliberating. Please do not begin deliberating until you
20 get that instruction. I will tell you that there is a tape
21 which has been admitted into evidence, if you need to hear
22 that tape let the bailiff know, just write it down, let the
23 bailiff know, we will bring you back out in the courtroom
24 and let you view that tape here again in the courtroom as
25 opposed to the jury room, we will need to do that that way.

JURY CHARGE

1 So if you want to see the tape just let the bailiff know
2 and we will bring you back out and replay the tape for you.
3 Now, if you will retire to the jury room all except the
4 alternate, sir, I will ask you at this time not to go into
5 the jury room but to wait just outside the courtroom door
6 for further instructions. Thank you.

7 (The jury left the courtroom.)

8 THE COURT: Any objection from the State?

9 MS. HORTON: No, sir.

10 THE COURT: From the defendant?

11 MR. MEETZ: No, sir. Your Honor, at this time for the
12 record I would like to make a motion for a directed verdict
13 in the cases against Duval Melvin Cooper, based on the fact
14 that the evidence as presented to this jury being for a
15 finding of the guilt in this case primarily, there's no
16 evidence present as to knowledge in the case which will be
17 the key element and I will submit that based on that a
18 reasonable jury couldn't find Mr. Cooper guilty. We would
19 also incorporate in our motions all of our previous
20 objections.

21 THE COURT: All right. Does the State wish to be
22 heard on the motions?

23 MS. HORTON: No, sir, Your Honor.

24 THE COURT: In looking at a motion for a directed
25 verdict I'm required to look at the evidence in the light

JURY CHARGE

1 most favorable to the party to which the motion is being
2 made. In this case, looking at the evidence in the light
3 most favorable to the State, I find there's substantial
4 evidence from which a jury could infer knowledge and
5 possession of these drugs by the defendant in each of these
6 charges. There's substantial evidence from which they
7 could find the State proved those elements of each of those
8 offenses beyond a reasonable doubt and therefore it will be
9 a matter for the jury to determine and the Court would
10 therefore deny your motion for a directed verdict as to
11 each of these two cases that would be in the State's case
12 and in the defense case. Okay.

13 MR. MEETZ: Thank you, Your Honor.

14 (The jury began deliberating and returned with a
15 Question.)

16 THE COURT: Madam Forelady, members of jury panel,
17 there are two questions that you had by your note. One is
18 you asked do we know how long he had the car in New York?
19 My response to that is you have to rely on the record
20 that's already been presented, we cannot add to the record
21 once the trial is complete so we rely on your recollection
22 of what is on there and you have to base it on what the
23 record is. Insofar as you asked me to explain again the
24 control of inference and I think I understand what you mean
25 by that and I am going to recharge you on what would be

JURY CHARGE

1 considered possession and constructive and actual
2 possession and I am going to do that. I am going to go
3 right back through it again so I ask you to listen again,
4 please, carefully as I go through that. Now, I'm going to
5 charge you with actual and constructive possession, this
6 will apply as to each of these charges, of course, it will
7 be the same so I am not going to charge it to you twice, I
8 will just recharge it once. With regard to possession, to
9 prove possession the State must prove beyond a reasonable
10 doubt that the defendant had both the power and the intent
11 to control the disposition or use of the heroin and also as
12 to methamphetamine. Possession may be either actual or
13 constructive. Actual possession means that the heroin was
14 in the actual physical custody of the defendant,
15 constructive possession means that the defendant had
16 dominion and control or the right to exercise dominion and
17 control of either the heroin itself or the property in
18 which the heroin was found, this will be methamphetamine as
19 well. Mere presence at the scene where the drugs were
20 found is not enough to prove possession. Actual knowledge
21 of the presence of the heroin and methamphetamine is strong
22 evidence of the defendant's intent to control the
23 dispositional use. Knowledge by the defendant of the
24 presence of the heroin and methamphetamine is a necessary
25 element which must be proved by the State. The defendant's

JURY CHARGE

1 knowledge and possession may be inferred when a substance
2 is found on the property -- excuse me, in the property
3 under the defendant's control. However, this inference is
4 simply an evidentiary fact to be taken into consideration
5 by you along with the other testimony and evidence in the
6 case and given the weight you decide it should have. Two
7 or more persons may have joint possession of a drug. Now,
8 do you think that's sufficient? I will be glad to go back
9 over it if you want me to.

10 THE JUROR: I think it's sufficient.

11 THE COURT: All right. I will ask you then to please,
12 ma'am, return to the jury room and resume your
13 deliberations. If you need me to recharge you I will be
14 glad to do it again. Okay? Thank you.

15 (The jury left the courtroom and resumed
16 Deliberations.)

17 THE COURT: Any exceptions to the recharge?

18 MS. HORTON: None from the State, Your Honor.

19 MR. MEETZ: Nothing from the defendant.

20 (The jury returned with a verdict.)

21 THE COURT: Madam Forelady, I am informed that the
22 jury has reached a unanimous verdict in these cases?

23 THE JUROR: Yes, we have, Your Honor.

24 THE COURT: If you would please hand the verdicts up
25 to the bailiff. If the clerk would please publish the

JURY VERDICT

1 verdicts.

2 THE CLERK: Indictment number 2005-GS-46-3486,
3 trafficking in heroin, we, the jury, find the defendant
4 guilty of 28 grams or more, signed by foreperson, dated
5 February 16th. Indictment number 2005-GS-46-3487, we, the
6 jury, find the defendant guilty of methamphetamine, signed
7 by the foreperson, dated February 16th. Ladies and
8 gentlemen, if this be your verdicts please say so by the
9 raising of your right hand. Let the record reflect all
10 jurors affirmed these verdicts.

11 THE COURT: Any questions of the jury panel from the
12 State?

13 MS. HORTON: None from the State, Your Honor.

14 THE COURT: From the defense?

15 MR. MEETZ: No, sir, Your Honor.

16 (The jury was dismissed.)

17 THE COURT: Yes, sir, I will hear you with regard to
18 any motions you wish to make.

19 MR. MEETZ: Your Honor, at this time I make a motion
20 for a new trial based on the evidence as presented not
21 supporting the verdict that the jury brought back. We
22 would again incorporate in that motion all prior objections
23 and motions throughout the trial.

24 THE COURT: Thank you, sir. All right. Again looking
25 at your motion today I find that there is substantial

JURY VERDICT

1 evidence on the record to support the jury's verdict. The
2 credibility and determination as to the facts is a matter
3 for the jury to determine, but I find there's substantial
4 evidence from which to support the jury verdicts in this
5 case and I would deny your motion for a new trial.

6 MR. MEETZ: Thank you, Your Honor.

7 THE COURT: What we will do is I will, of course, fill
8 out these sentencing sheets and they will be sealed and
9 opened when the defendant is found and brought before the
10 Court. We need to issue a bench warrant, please, for
11 Mr. Cooper's arrest, please, and notify the bondsman as
12 well that he has been tried in his absence and sentenced.
13 Let me say when the sentences are opened you will have an
14 opportunity to say something then if you wish.

15 MR. MEETZ: That's true. I just wanted to say that
16 obviously the trafficking heroin charge, that carries a
17 mandatory minimum of 25 years which is quite a substantial
18 amount of time, it carries a maximum of 40 years and I
19 think the trafficking meth. I believe they're both treated
20 as firsts, it carries a maximum of 25 and seven to 25, both
21 of which are no parole offenses, Your Honor. With the
22 mandatory minimum the heroin carries we would ask Your
23 Honor to carry that and then consider running the other
24 charge concurrently.

25 MS. HORTON: Your Honor, the State is treating these

JURY VERDICT

1 as first offenses, he does have prior drug offenses. He
2 has four from New York, two in 1987 and in 1988, another in
3 1990. He also has a federal possession with intent to
4 distribute cocaine which he received a three year sentence
5 on in 2000.

6 THE COURT: Okay. I have sealed the sentences.

7 (END OF TRIAL PROCEEDINGS.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I, the undersigned, Michael C. Watkins, Official
2 Court Reporter for the Sixth Judicial Circuit of the State
3 of South Carolina, do hereby certify that the foregoing is
4 a true, accurate and complete transcript of record of the
5 proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in the Court of
7 General Sessions for York County, South Carolina, on the
8 15-16 days of February, 2006.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

11

12

December 1, 2010.

13

14

15

16


Michael C. Watkins
Court Reporter

17

18

19

20

21

22

23

24

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 DUVAL MELVIN COOPER,) 2005-GS-46-3486
7 DEFENDANT.) 2005-GS-46-3487
8) MAY 20, 2010
9) YORK, SOUTH CAROLINA

10 B E F O R E:

11 THE HONORABLE LEE S. ALFORD, JUDGE.
12

13
14 A P P E A R A N C E S:

15 JENNY DESCH, ASSISTANT SOLICITOR
16 ATTORNEY FOR THE STATE

17 B.J. BARROWCLOUGH, DEPUTY PUBLIC DEFENDER
18 JONATHAN SULLIVAN, ASSISTANT PUBLIC DEFENDER
19 ATTORNEYS FOR THE DEFENDANT

20 MICHAEL R. WATTS
21 CIRCUIT COURT REPORTER
22
23
24
25

INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESSES

PAGE

(NO WITNESSES CALLED)

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	(NO EXHIBITS MARKED)			
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 (PROCEEDINGS, MAY 20, 2010)

2 MS. DESCH: Standing before you is Duval Cooper.
3 He is represented today in court by Jonathan Sullivan and
4 B.J. Barrowclough of the public defender's office.

5 Mr. Cooper was tried in his absence February 16th
6 of 2006, and found guilty on indictments 2005-3486, 87, and
7 88.

8 Misty Horton was the representative for the State
9 at the time and Vic Meetze was the representative for the
10 public defender at the time.

11 We are here for the sealed sentence to be read,
12 and Bubba Vinesett was the arresting officer and testifying
13 officer and he's here as well.

14 THE COURT: Mr. Cooper, you have been gone a long
15 time.

16 I have got the sealed sentence. I'm opening it at
17 this time, let the record show. I was the trial judge and
18 judge who wrote the sentences, but I frankly do not recall
19 what I did.

20 In 2005-GS-46-3487, the jury found you guilty of
21 trafficking methamphetamine between 28 and 100 grams, first
22 offense.

23 The sentence of the court is that you be committed
24 to the State Department of Corrections for a determinate
25 term of 25 years.

1 The sentence was concurrent and you were given
2 credit for any jail time served.

3 In case number 2005-GS-46-3486, a trial in
4 absence, the jury found you, Mr. Cooper, guilty of
5 trafficking heroin more than 28 grams.

6 The court sentenced you to the State Department of
7 Corrections for a determinate term of 25 years and a
8 \$200,000 fine, provided upon the service of 25 years, and
9 the balance suspended. So the fine was eliminated. There
10 is 25 years.

11 That sentence was concurrent, was made concurrent,
12 and you were given credit for time served.

13 Counsel?

14 MR. BARROWCLOUGH: Well, Your Honor, being that,
15 as I understand the status of the law, those are the
16 minimums. We were prepared to make a motion to reconsider,
17 but those are the minimums, and we understand it, so we have
18 really have no motion at this time.

19 Just on behalf of Mr. Cooper, you know, he had --
20 I have had some conversations with him and he expressed to
21 me the fact that, you know, his not being present for his
22 trial and not coming to court was no disrespect to the
23 court. As you can see from the charges, Mr. Cooper was
24 involved and he sold drugs to people who were more heavily
25 involved than him and he worked for them. On one hand, they

1 did bond him out, and he had a \$100,000 bond, which they did
2 pay the money to get him out, but then they threatened his
3 life if he came back to court. It was more of a situation
4 where he was afraid for his safety and not any disrespect to
5 the court or to South Carolina, and that's why he's remained
6 back up in the New York area. But, Your Honor, I understand
7 and we understand that those are the minimums and thank the
8 court for giving him the minimums. We don't have a motion
9 for reconsideration.

10 THE COURT: The sentences are imposed and I'm at
11 this time rescinding the bench warrant.

12 MS. DESCH: Thank you, Your Honor.

13 MR. BARROWCLOUGH: Thank you, Your Honor.

14 And also I just want to put on the record that I
15 have explained to Mr. Cooper about his other rights beyond
16 today, you know, appellate and PCR rights. I don't think
17 those -- I think those times clock would start running
18 today.

19 THE COURT: That's correct, and that's good point,
20 and I would reiterate that for the record, and, that is, Mr.
21 Cooper, you would have ten days from today's date to file a
22 notice of intent to appeal, direct appeal of this, of your
23 trial and your sentence. You would have ten days from today
24 to file a notice of appeal, if you want to appeal these
25 sentences. All right, sir.

1 MR. BARROWCLOUGH: Thank you, Your Honor. I just
2 wanted to put that on the record.

3 MR. SULLIVAN: Thank you.

4 MS. DESCH: Thank you, Your Honor.

5 (END OF REQUESTED TRANSCRIPT OF RECORD)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth 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 trial of the captioned case, relative to appeal, in the Court of General Sessions for YORK County, South Carolina, on the 20TH day of MAY, 2010.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

JUNE 15, 2010



Michael R. Watts
Circuit Court Reporter

UP
1
WITNESSES

HIT/Messett

DOCKET NO. 2005-GS-46

3486

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

September 15, Term 2005

eb

ARREST WARRANT NUMBER

H-629134

THE STATE

VS.

Witness:

C.C.C. PLS. AND G.S.

DIVAL MELVIN COOPER

ACTION OF GRAND JURY

TRUE BILL

David Walker

Foreperson of Grand Jury

8-15-08

VERDICT

Guilty

Indictment for

TRAFFICKING HEROIN

Barbara B Burke

Foreperson of Petit Jury

Date: 8/16/08

SC Code: §44-53-370

CDR Code: 0287

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

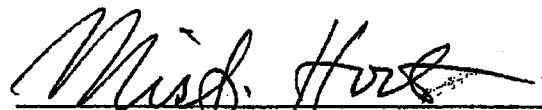
INDICTMENT

At a Court of General Sessions, convened on September 15, 2005, the Grand Jurors of York County present upon their oath:

TRAFFICKING HEROIN

That on or about June 23, 2005, in York County, South Carolina, the Defendant, Duval Melvin Cooper, did wilfully, unlawfully and knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of four grams or more of Heroin, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, in violation of Section 44-53-370, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

MITT Vinesett

eb

ARREST WARRANT NUMBER

H-629135

ACTION OF GRAND JURY
TRUE BILL

Linda Walker
Foreperson of Grand Jury
9-15-05

VERDICT

Guilty

Thomas B Burke
Foreperson of Petit Jury
Date: 2/16/06

DOCKET NO. 2005-GS-46-

3407

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

September 15, Term 2005

THE STATE

VS.

DUVAL MELVIN COOPER

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

Indictment for

TRAFFICKING METHAMPHETAMINE

SC Code: §44-53-375
CDR Code: 0349

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

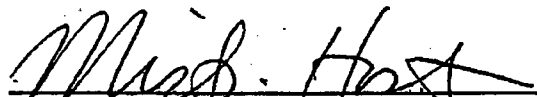
INDICTMENT

At a Court of General Sessions, convened on September 15, 2005, the Grand Jurors of York County present upon their oath:

TRAFFICKING METHAMPHETAMINE

That on or about June 23, 2005, in York County, South Carolina, the Defendant, Duval Melvin Cooper, did, unlawfully and knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of ten grams or more of methamphetamine, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, all in violation of Section 44-53-375, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

SOUTH CAROLINA

Y OF

York

VS.

Mural Cooper

AKA:

Race:

Sex:

Age:

DOB:

2

SSN:

Address:

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

169

INDICTMENT/CASE#

2005-GS-46-3486

A/W#: H629134

Date of Offense:

6-23-2005

S.C. Code § :

44-53-370

CDR Code #:

149

☐ CASE RESTORED

SENTENCE

☒ PLEA ☒ TRIAL☐ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Trafficking Heroin more than 20 grams

in violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 149

☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ 200,000; provided that upon the service of 25 days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended, with probation for _____ months/years and subject to the South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 05-65-46-3487☒ The Defendant is given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 - (Assessments 107.5 %) \$

§ 14-1-211 (A)(1) (Surcharge) \$

§ 14-1-211(A)(2) (Surcharge) \$

§ 56-5-2995 (DUI Assessment) \$

3% to Count (if paid in installments) \$

§ 73.3, 1B TP (Law Enforce. Funding) \$

§ 33.7, 1B TP (Drug Court Surcharge) \$

§ 50-21-114(BUI Breath Test Fee) \$

§ 56-5-2942 (J) (Vehicle Assessment) \$

TOTAL \$

David Hamiltz

Clerk of Court/Deputy Clerk

Court Reporter: Mike Walkers

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 35.13 TP

Requires \$500 be paid to clerk during probation.

PRESIDING JUDGE:

Judge Code:

Sentence Date:

170
 SOUTH CAROLINA
 OF York
 VS.
Alvin Cooper
 AKA:
 Race: Sex: M Age:
 DOB:
 Address:
 DL#: Columbia, SC 29210 SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

2005-GS46-3487

A/W#: H-629135Date of Offense: 06-23-2005S.C. Code §: 44-53-375CDR Code #: 392☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIAL☒ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Trafficking Methamphetamine between 28 and 100 grams 1st offensein violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 392☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center
 for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to the South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 05-65-46-3486☒ The Defendant is given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the
 State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$
 § 14-1-206 - (Assessments 107.5 %) \$
 § 14-1-211 (A)(1) (Surcharge) \$
 § 14-1-211(A)(2) (Surcharge) \$
 § 56-5-2995 (DUI Assessment) \$
 3% to Count (if paid in installments) \$
 § 73.3, 1B TP (Law Enforce. Funding) \$
 § 33.7, 1B TP (Drug Court Surcharge) \$
 § 50-21-114(BUI Breath Test Fee) \$
 § 56-5-2942 (J) (Vehicle Assessment) \$
 TOTAL \$

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 35.13 TP

Requires \$500 be paid to clerk during probation.

PRESIDING JUDGE: Jeffrey [Signature]Judge Code: 04/1/13Sentence Date: 2/16/06

Clerk of Court/Deputy Clerk

Court Reporter: Duke Watkins

FORM 5

STATE OF SOUTH CAROLINA

FILED, RECEIVED

COUNTY OF YORK

2012 SEP 17 PM 11:46

THE COURT OF COMMON PLEAS

Duval M. Cooper #340970DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

2012 CP 46 3203

Full name and prison number (if any) of Applicant

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence York County Court of Gen. Sessions
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Trafficking in Heroin #2005-GS-46-3486
 - (b) Trafficking in Methamphetamine #2005-GS-46-3487
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) On May 20, 2010, twenty-five (25) years to run
 - (b) Concurrent for each charge

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Convictions and Sentences affirmed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Convictions and Sentences affirmed on August 1, 2012 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Not applicable [unpublished Opinion NO. 2012-UP-465] _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: _____

- (a) Ineffective Assistance of Trial Counsel - Many instances
- (b) Ineffective Assistance of Appellate Counsel (No rehearing or Cert filed)
- (c) Trial Court error of law

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Failure to Object, failing to request a Continuance in T.I.A.
- (b) Denied due Process (full bite during Appeal) No rehearing or Cert filed
- (c) Failed to make Notice finding on Record T.I.A w/out Proper notice

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(c) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Vick Meetze (Yes)
- (c) your sentencing? BRYson J. Barrow Clough (Yes)
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? (Yes)
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- Vick Meetze Moss Justice Center P.O. Box 691, York S.C. 29745
 - BRYson J. Barrow Clough - Moss Justice Center P.O. Box 691 York SC 29745
 - Kathrine H. Hudgins S.C.I.D. Appellate Defense P.O. Box 11589 Columbia, SC 29211
- (b) the proceedings at which each such attorney represented you:
- Trial
 - Sentencing
 - Direct Appeal

19. State clearly the relief you seek in filing this application:

Applicant seeks relief from his Convictions and Sentences

20. Are you now under sentence from any other court that you have not challenged?

Yes; New York state

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Duval Cooper

SWORN to and subscribed before me this 4th
day of September, 2012.

Susan H. Frye
Notary Public

(L.S.)

My Commission Expires
March 5, 2018

My Commission Expires: _____

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Duval M Cooper

Applicant

SWORN or affirmed to and subscribed before me this
4th day of September, 2012.

Susan H. Frye

Notary Public

My Commission Expires
March 5, 2018

My Commission Expires: _____

Attachment page

DUVAL COOPER V. SOUTH CAROLINA

1. Ineffective Assistance of trial counsel for failing to object to trial in Absentee.
2. Ineffective Assistance of trial counsel for failing to move for a continuance to prevent a trial in Absentee.
3. Ineffective Assistance of trial counsel for failing to move for direct verdict concerning duffle bag containing drugs due to the fact that the vehicle was owned by another.
4. Ineffective Assistance of trial counsel for failing to conduct any pre-trial investigation and for failing to investigate third party guilt.
5. Ineffective Assistance of trial counsel for failing to move to quash the trafficking indictment based on the fact that joint occupancy alone cannot sustain the inference of dominion, control and knowledge.
6. Ineffective Assistance of trial counsel for failing to move for dismissal of charges due to the fact that the State could not establish a nexus between the defendant and the contraband based solely of defendant's mere presence.
7. Ineffective Assistance of Appellate counsel for failing to argue on appeal the issue of the trial proceeding in Applicant's absence. The record clearly demonstrates that the trial court failed to make a finding concerning whether or not Applicant was properly notified of the trial date, or that the Applicant received warning that the trial would proceed in his absence.
8. Ineffective Assistance of Appellate counsel for failing to file petition for rehearing before Court of Appeals. This denied Applicant a full "bite of the apple" thereby denying him due process.
9. Ineffective Assistance of Appellate counsel for failing to file a writ of certiorari to State Supreme Court. This denied Applicant a full "bite of the Apple" thereby denying him due process.
10. Trial court committed error of law by failing to make a finding on record that the Applicant had received notice of right to be present at trial and for failing to make a finding on record that the Applicant received warning that trial would proceed in his absence.
11. Applicant was denied his right to due process under the Fifth and Fourteenth Amendments to the United States Constitution and denied due process under the South Carolina Constitution by being denied the right to be present during the trial of his case.
12. Applicant was denied his right to due process under the Fifth and Fourteenth Amendments to the United States Constitution and denied his right to due process under the South Carolina Constitution by being denied the opportunity to exhaust every stage of the appellate process.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Duval M. Cooper, #340970,

2012-CP-46-3203

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

2012 DEC 10 AM 9:23
CLERK OF COURT
YORK COUNTY, SC

In response to the post-conviction relief application filed on September 7, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the September 2005 term of the York County Grand Jury for Trafficking Heroin (2005-GS-46-3486) and Trafficking Methamphetamine (2005-GS-46-3486). Vick Meetze, Esquire, represented him. On February 15-16, 2006, the Applicant proceeded to a jury trial *in absentia* pursuant to which he was found guilty of both charges as indicted. The sentence was sealed. On May 20, 2010, the sentence was unsealed and the Honorable Lee S. Alford sentenced the Applicant to confinement for twenty-five (25) years for each charge to run concurrently.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Cooper, Op. No. 2012-UP-465 (filed August 1, 2012). The Remittitur was issued on August 21, 2012.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of trial counsel"
 - a. "many instances"
2. "Ineffective Assistance of Appellate Counsel (No rehearing or cert filed)"
3. Trial Court error of law

Attached herewith and incorporated herein by reference are the records of the York County Clerk of Court regarding the subject conviction, the Applicant's records from the Department of Corrections, the Record on Appeal, and the opinion of the South Carolina Court of Appeals. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. The Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make

appellate proceedings fair. *Id.* Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. *Id.* Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. *Id.*

The Respondent submits that the Applicant cannot satisfy either requirement of the *Strickland v. Washington* test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

The Applicant also alleges trial court error. This allegation raises a direct appeal issue that is procedurally 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). The 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. Therefore, the Court should summarily dismiss this allegation.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

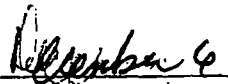
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

 2012

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2012-CP-46-3203

DUVAL M. COOPER, 340970

Applicant,

vs

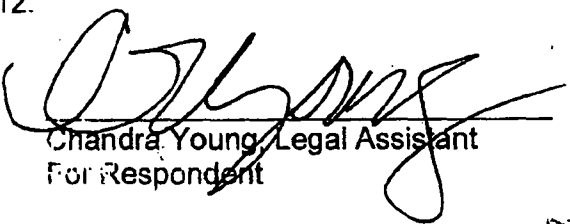
AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,
Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Sarah Patricia Edgecomb, Esquire
1015 Charlotte Ave., Ste 150
Rock Hill, South Carolina 29732

DATED this 6th day of December, 2012.


Chandra Young, Legal Assistant
For Respondent

CLERK OF COURT
YORK COUNTY, SC

2012 DEC 10 AM 9:23

RECEIVED

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Duval M. Cooper, #340970

☐ Plaintiff

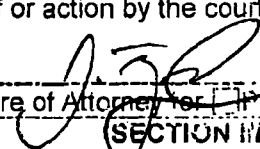
v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2012-CP-46-3203MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Sarah Patricia Edgecomb, Bar No. Address: 1015 Charlotte Ave., Ste 150 Rock Hill, SC 29732 phone: fax: e-mail: other:	Defendant's Attorney: J. Rutledge Johnson, Bar No. 78871 Address: PO Box 11549 Columbia, SC 29211-1549 phone: 803-734-3737 fax: 803-734-4113 e-mail: other:
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant December 6, 2012 Date submitted	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

State of South Carolina.,)
)
)
)
 County of York.)

In the Common Pleas
 Court of York

Case No.: 2012-CP-46-03203

Duval Melvin Cooper.,)
)
 Applicant.,)
)
 -vs-)
)
 State of South Carolina.,)
)
 Respondent.)
 _____)

Transcript of Record

May 16, 2013
 York, South Carolina

B E F O R E:

Honorable John C. Hayes, III, Judge.

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

Mr. Charles Brooks
 Attorney at Law
 309 Broad Street
 Sumter, South Carolina 29150
 803-418-5708
cbrooks@ctbrooks.com
 For the Applicant

ORIGINAL

Mr. J. Rutledge Johnson
 Assistant Attorney General
 State of South Carolina
 Attorney General's Office
 Rembert C. Dennis Building
 Post Office Box 11549
 Columbia, South Carolina 29211-1549
 803-734-3970
 For the Respondent

Wanda Nelson, CVR-M
 Official Court Reporter
 Sixteenth Judicial Circuit
 To the Honorable John C. Hayes, III

I N D E X

1			
2	WITNESS	BY:	PAGE NO.
3	Duval Cooper	Mr. Brooks	P.7-11
4		Mr. Johnson	P.14-17
5	Vick Meetze	Mr. Brooks	P.17-20
6		Mr. Johnson	P.21-25
7	Gary Lemel	Mr. Johnson	P.26-30
8		Mr. Brooks	P.30
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

I-N-D-E-X - CON'TE-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Res.1	Letter	P.24	P.25

Reporter's Note: All Exhibits were filed with the York
County Clerk of Court's Office.

1 (COURT IN SESSION IN THE MATTER OF DUVAL COOPER VERSUS
2 STATE OF SOUTH CAROLINA THURSDAY, MAY 16, 2013 AT 11:09
3 A.M..)

4 MR. JOHNSON: May it please the court, Your Honor.
5 The case of Duval Cooper versus State of South Carolina.
6 It's case number 2012-CP-46-3203.

7 Mr. Cooper was indicted in the September of 2005 term
8 of the York County Grand Jury for trafficking heroine and
9 trafficking methamphetamine. On February 15th and 16th,
10 2006, he proceeded to a jury trial on absentia pursuant to
11 which he was found guilty of both charges as indicated.

12 The sentence was thereafter sealed. On May 20, 2010,
13 the sentence was unsealed and the Honorable Lee S. Alford
14 sentenced him to confinement of twenty-five years for each
15 charge to run concurrently. Notice of appeal was filed on
16 his behalf and appeal was perfected. The South Carolina
17 Court of Appeals confirmed his conviction sentence. A
18 remitter was thereafter issued on August 21st, 2012.

19 Mr. Cooper filed a PCR application on September 7th,
20 2012 and the State filed it's return on December 6th, 2012.
21 He is represented here today by Mr. Charles Brooks.

22 THE COURT: Mr. Brooks, what's the issue for the
23 court?

24 MR. BROOKS: Judge, before we get into that, my client
25 would respectfully ask the court for a continuance.

1 THE COURT: All right. On what basis.

2 MR. BROOKS: Judge, he is serving as you know a
3 twenty-five year sentence. He feels that there needs to be
4 a little bit more deliberation on some of the issues that
5 he had. He is in a very precarious situation.

6 There are some other things outside of the PCR that he
7 wanted to discuss with the law enforcement office for some
8 particular cooperation and some other issues that had
9 arisen at the time. So that's one of the reasons why he
10 would respectfully want to ask the court for a continuance.

11 THE COURT: All right. This was filed September of
12 last year, so it's not that old.

13 What's the State's position on a continuance?

14 MR. JOHNSON: Your Honor, we would ask that you deny
15 this continuance. Whatever cooperation he has with law
16 enforcement in other cases is irrelevant to his PCR matter.
17 And as you know, my docket is getting backed up and I'm
18 gonna have a full term in August. He has had plenty of
19 time to ask for this and ask for a continuance and we ask
20 that you deny it and move forward with the case.

21 THE COURT: Anything else, Mr. Brooks?

22 MR. BROOKS: Just what we put on the record, Judge.

23 THE COURT: Well, I deny the motion. I think this is
24 a time to go forward with the case so it is denied.

25 MR. BROOKS: I understand, Judge.

1 THE COURT: You want to call your first witness.

2 You want to call your first witness?

3 MR. BROOKS: This case was just appointed to me two
4 weeks ago as counselor so he is substituting.

5 THE COURT: You've just been on the case two weeks?

6 MR. BROOKS: I did get the file two weeks ago, Judge,
7 from Ms. Edgecomb. That's true.

8 THE COURT: Why did Ms. Edgecomb - I don't know her.
9 Why did she get relieved?

10 MR. BROOKS: Well I told her I would - you know,
11 Judge, as you know I handle a great number of PCR's, so she
12 sent it over and we took it from her. Personally I was
13 going through the transcript and of course as Your Honor
14 knows I do prepare my own PCR solo. I did explain that to
15 Mr. Cooper but he did respectfully want me to ask for a
16 court for a continuance and I told him I would.

17 THE COURT: If you had additional time other than what
18 Mr. Cooper says he can do with law enforcement, what would
19 change as far as your representation and presentation of
20 his case?

21 MR. BROOKS: Honestly, Judge?

22 THE COURT: Yes, sir.

23 MR. BROOKS: From my stand point having done all
24 regular PCR's it would probably be from my standpoint it
25 probably would not be a lot.

DUVALL COOPER: BY MR. BROOKS

-7-

1 THE COURT: We'll go forward. I'm gonna deny the
2 motion to continue. We'll hear the case today.

3 Call your first witness.

4 MR. BROOKS: We call Mr. Cooper.

5 THE COURT: Please come up and be sworn.

6 MADAME CLERK: Mr. Cooper, if I can have you stop here
7 and place your left hand on the Bible and raise your right
8 as far as you can.

9 (WHEREUPON: DUVALL COOPER,
10 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

11 DIRECT EXAMINATION

12 DUVAL COOPER BY MR. BROOKS:

13 Q. Mr. Cooper, you did not come to your trial; is that
14 correct?

15 A. Correct.

16 Q. And can you explain - Did you get notice that your
17 trial was coming up?

18 A. No.

19 Q. Had you met with your lawyer prior to your trial
20 coming up?

21 A. I met with my lawyer three times. Approximately about
22 three times. Roll call.

23 Q. Did he give you any indication that your trial was
24 coming up?

25 A. No, sir.

DUVALL COOPER: BY MR. BROOKS

-8-

1 Q. Did you give them contact information to find you ---

2 A. Yeah.

3 Q. --- call you about coming to trial?

4 A. Yes.

5 Q. Did you ever receive any phone call?

6 A. Yes.

7 Q. About coming to trial?

8 A. Not trial.

9 Q. What phone call did you get?

10 A. Roll call. About roll call. My next roll call date.

11 Q. How long - You were bonded out on these charges. How
12 long were you out on bond before February of 2006?

13 A. I was out on bond about five months.

14 Q. And when did you find out that your case had been
15 tried?

16 A. When I was arrested in 2010.

17 THE COURT: What was that year? You were arrested
18 when?

19 A. January 6th, 2010.

20 Q. And that was in New York; is that correct?

21 A. Yes.

22 Q. So between 2006 and your arrest in 2010, you had no
23 idea your case had been tried?

24 A. No, sir.

25 Q. You had no contact with them other than when you came

DUVALL COOPER: BY MR. BROOKS

-9-

1 in for roll call; is that correct?

2 A. Yes.

3 Q. Now, obviously you wanted to be at your trial?

4 A. Yes.

5 Q. If you had been at your trial, do you think it would
6 have made a difference?

7 A. Yes.

8 Q. Why do you think it would have made a difference?

9 A. Because I would have been able to tell the court that
10 I was borrowing the car from somebody and what was in the
11 car wasn't mine.

12 Q. In this particular situation, you were driving the car
13 with a female in it; is that correct?

14 A. Yes.

15 Q. You guys were stopped on I-77?

16 A. Yes.

17 Q. And your vehicle was searched and they found drugs; is
18 that correct?

19 A. Yes.

20 Q. Okay. And you told - Did you tell your lawyer that
21 this car was not yours and that it was somebody else's and
22 the dope belonged to somebody else?

23 A. Yes.

24 Q. Okay. And did you also - you did - When you got out
25 of jail, you didn't stay in the Rock Hill area; is that

DUVALL COOPER: BY MR. BROOKS

-10-

1 correct?

2 A. No.

3 Q. Now, why didn't you stay in the Rock Hill area?

4 A. I'm not - I've never been to Rock Hill in a day of my
5 life.

6 Q. Okay. You were passing through?

7 A. Yeah, passing through.

8 Q. Okay. Now, when the officer stopped you, you
9 indicated that he told - Why did he say he stopped you?

10 A. He said I crossed the middle lane. Improper lane
11 change.

12 Q. Okay. And then also in the transcript it talks about
13 he sees a piece of marijuana; is that correct?

14 A. Yes.

15 Q. In the ashtray?

16 A. Yes.

17 Q. And one of the things that you wanted your lawyer to
18 raise was to try to have that suppressed because the
19 officer had intruded into the vehicle; is that correct?

20 A. Yes, sir.

21 Q. And when you say intruded, he leaned over into the
22 vehicle without your consent?

23 A. Yes.

24 Q. Okay. And that's when he saw the clip?

25 A. Yes.

DUVALL COOPER: BY MR. BROOKS

-11-

1 Q. The marijuana clip.

2 And then at that point he decides to search the
3 vehicle without your consent?

4 A. Yes.

5 Q. He takes you out and detains you and ensues the
6 search?

7 A. Yes.

8 Q. Okay. That's what you wanted, your lawyer should have
9 argued to a trial court to have that suppressed; is that
10 correct?

11 A. Yes.

12 Q. That's one of the issues that you raised on PCR?

13 A. Yes.

14 Q. And that your appellant counsel should have obviously
15 argued that on appeal?

16 A. Yes.

17 Q. Now, was there some other information that you told
18 your lawyer about your situation that you thought might
19 have had a bearing on whether or not you may have been able
20 to get a better deal in this case?

21 A. Yes.

22 Q. Tell the court about that now.

23 A. About being bonded out by the person that the
24 contraband belonged to? I explained that to them.

25 Q. Okay. Is there anything else?

DUVALL COOPER: BY MR. BROOKS

-12-

1 A. Yes.

2 Q. Go ahead.

3 A. My life was threatened.

4 Q. And did you tell your lawyer that?

5 A. Yes, on the phone.

6 Q. Okay. In one of those calls about roll call ---

7 A. Yes.

8 Q. --- you told them?

9 A. Yes.

10 Q. And do you recall what their response was?

11 A. Law enforcement would be contacted.

12 Q. And you don't know if they ever followed up on that;
13 is that correct?

14 A. What?

15 Q. Whether or not the lawyer actually got in touch with
16 law enforcement.

17 A. No.

18 Q. To this day you don't know that?

19 A. Don't know.

20 Q. Okay. As a matter of fact, you want to tell law
21 enforcement some information; is that correct?

22 A. Yes, sir.

23 Q. And have not been able to do so?

24 A. That's right.

25 Q. Now, the other person in the car with you, she got

DUVALL COOPER: BY MR. BROOKS

-13-

1 arrested too. Right?

2 A. Yes.

3 Q. She got a deal?

4 A. Yeah.

5 Q. She got her charges dropped?

6 A. Yes.

7 Q. Okay. There was only two of you all in the car?

8 A. Yes.

9 Q. She testified in your case?

10 A. Yes.

11 Q. One of the other things you wanted your lawyer to do
12 is perhaps try to get the indictment quashed; is that
13 correct?

14 A. Right.

15 Q. And that didn't happen either?

16 A. No, it didn't.

17 Q. These are some of the examples of what you think you
18 think your lawyer was ineffectively in representing you;
19 is that correct?

20 A. Right.

21 Q. Okay. All right. And you had as far as information
22 for law enforcement, you had some information about a
23 homicide; is that correct?

24 A. Yes.

25 Q. Is there anything else about your PCR that we have not

DUVALL COOPER: BY MR. BROOKS
BY MR. JOHNSON

-14-

1 covered?

2 A. No, sir.

3 Q. Is that pretty much it?

4 A. Yeah.

5 Q. Okay. Answer any questions of the Attorney General.

6 CROSS EXAMINATION

7 DUVALL COOPER BY MR. JOHNSON:

8 Q. Mr. Cooper, you said that you were just passing
9 through Rock Hill and that you are from New York. Correct?

10 A. Yes.

11 Q. And that one of the reasons you didn't show up for
12 trial is that your life was being threatened?

13 A. Yes, sir.

14 Q. And is that from fellows in New York or the associates
15 that you know back home?

16 A. Yeah.

17 Q. But you went back home after you were arrested.

18 Correct? You went back to New York after you were
19 arrested and then bonded out. Correct?

20 A. Well, I was here in Columbia.

21 Q. But then you bonded out and went to New York. Right?

22 A. Yeah.

23 Q. Okay. So you went back to where the guys were
24 threatening you. Correct?

25 A. He was here already. He had ties here and New York.

DUVAL COOPER: BY MR. JOHNSON

-15-

1 Q. Okay.

2 A. South Carolina and New York.

3 Q. And you say your lawyer was ineffective for not
4 arguing a suppression motion; isn't that correct?

5 A. Yes.

6 Q. But the matter of fact, counsel did argue a
7 suppression motion didn't he?

8 (PAUSE.)

9 Q. Counsel did argue a suppression motion?

10 A. Yes. He argued a suppression motion.

11 Q. Based on the High Times magazine and the blunt clip.
12 Correct?

13 A. Right.

14 Q. And the court denied that?

15 A. Yeah.

16 Q. And the State presents witnesses that they stopped
17 you from crossing the center line and that they saw you
18 call on a cell phone and they pulled you over. They seized
19 the clip. They seized the magazine and then searches the
20 car. Correct?

21 A. Yeah.

22 Q. Okay. And they find .29 grams of heroine and .89
23 grams of methamphetamine?

24 A. Yeah.

25 Q. In a duffle bag. And your co-defendant, she didn't

DUVAL COOPER: BY MR. JOHNSON

-16-

1 have anything to do with it?

2 A. No.

3 Q. She was just down here with you when you were coming
4 down to vacation. Correct?

5 A. Yeah.

6 Q. Okay. And that's what your lawyer argued?

7 A. Yeah.

8 Q. Okay. And the State submitted those drugs to a
9 chemist which then confirmed that it was methamphetamine
10 and heroine. Right? And you were driving that car.
11 Correct?

12 A. Yeah.

13 Q. Okay. And your lawyer argues that you had no
14 knowledge that the drugs were in that car.

15 A. Right.

16 Q. Okay.

17 MR. JOHNSON: Court's indulgence, Your Honor.

18 (PAUSE.)

19 Q. But as a matter of fact, you had multiple drug charges
20 or drug convictions in the past do you not?

21 A. Yeah.

22 Q. From New York?

23 A. Yeah. Very old.

24 Q. But as a matter of fact, you do have drug charges.

25 Correct?

DUVAL COOPER: BY MR. JOHNSON
VICK MEETZE: BY MR. BROOKS

-17-

1 A. Yes.

2 Q. You have a federal conviction don't you?

3 A. Yes.

4 Q. So you've dealt in drugs before?

5 A. Yes.

6 MR. JOHNSON: No further questions, Your Honor.

7 MR. BROOKS: No further questions.

8 THE COURT: Step down and have a seat with your
9 attorney.

10 (WITNESS LEAVING WITNESS STAND.)

11 THE COURT: Call your next witness.

12 MR. BROOKS: We call Mr. Meetz to the stand.

13 THE COURT: All right.

14 (WHEREUPON; VICK MEETZE, BEING
15 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

16 MR. BROOKS: You ready, Judge?

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION

19 VICK MEETZE BY MR. BROOKS:

20 Q. Mr. Meetz, how are you?

21 A. I'm good.

22 Q. You were appointed to represent Mr. Cooper?

23 A. I was.

24 Q. Okay. Do you have any recollection of telling him
25 when his case was coming up to trial?

VICK MEETZE: BY MR. BROOKS

-18-

1 A. I do not.

2 Q. Is that something that you would have handled or
3 somebody on your staff?

4 A. I don't recall whether the last time I spoke with Mr.
5 Cooper whether a trial date had been set for him or not, so
6 I - at the last - I don't recall exactly when the last time
7 I spoke to Mr. Cooper was in relation to when the trial was
8 and I can't remember if a tentative trial date had been
9 given. I know that he had been made an offer and I had
10 conveyed that to him.

11 Q. Do you recall what that offer was?

12 A. Fifteen years ---

13 Q. Okay.

14 A. --- was the offer. He was not very talkative about
15 things, but you know, he did let me know that he would like
16 something better than that. And then subsequently did stop
17 appearing for court and eventually his case was called to
18 trial in his absence.

19 Q. Do you recall having any contact information for Mr.
20 Cooper?

21 A. We had an address which was a Columbia address which
22 is where we sent letters and I do have a copy of the letter
23 that our office sent for that term of court and that
24 address was [REDACTED], Apartment [REDACTED], in Columbia,
25 South Carolina. I do have a phone number written down in

VICK MEETZE: BY MR. BROOKS

-19-

1 here. I don't know if that's the number he was referring
2 to that had been used to contact him by phone in the past.
3 That number is [REDACTED].

4 Q. Now, do you recall Mr. Cooper telling you that he had
5 information that law enforcement may be interested in as
6 far as a homicide is concerned?

7 A. I do not recall that.

8 Q. As far as the record is concerned, you did not make
9 any motion to quash the indictment?

10 A. I did not make a motion to quash the indictment.

11 Q. And you did not try to have a search suppressed on the
12 theory that the law enforcement officer had illegally
13 intruded on Mr. Cooper?

14 A. I did not. The primary suppression motion that was
15 made in this trial was made by another attorney in our
16 office, Mr. Lamel. The testimony, the way I remember it
17 and the way the incident report indicates, was that it was
18 a marijuana blunt in the ashtray that was in plain view
19 situation. The incident report, at least the way I read
20 it, does not indicate that the officer leaned into the car
21 to be able to see that, so - But Mr. Lamel did make the
22 suppression motion in the case.

23 Q. Okay.

24 MR. BROOKS: Beg the Court's indulgence, Your Honor.

25 (PAUSE.)

VICK MEETZE: BY MR. BROOKS

-20-

1 Q Did you ever have a chance to look at the video?

2 A I don't have a copy of the video here and to be honest
3 with you, I don't know that I did and I don't have a copy
4 of the file and I don't remember seeing that video.

5 Q. But there is a video in existence?

6 A. The incident report indicates that there was a video
7 that essentially was the video of Mr. Cooper and the co-
8 defendant at the time in the car, and that when the officer
9 reviewed that video, you could hear the female co-defendant
10 say something along the lines of, why didn't you tell me
11 that stuff was in the car I would have tried to hide it.
12 But that's all apparently that the video said. I don't
13 recall, you know, if it was shown in the trial. I know
14 that she was there and she testified at the trial. She was
15 called to trial the same day, but turned state's --

16 Q. She worked a deal?

17 A. Turned a state's witness the day of trial and
18 testified for the State. But there wasn't anything on the
19 video according to the incident report that was
20 incriminating with regards to anything Mr. Cooper would
21 have said. It doesn't indicate anything he said. Just the
22 statement from her.

23 Q. Okay. Did you ever review a video of the actual stop?

24 A. You know, I don't recall. I believe so. I believe
25 so. I don't have a copy of the video in the file, but I'm

VICK MEETZE: BY MR. JOHNSON

-21-

1 pretty sure that I did see the video at one time.

2 MR. BROOKS: No other questions, Your Honor.

3 MR. JOHNSON: Briefly, your Honor.

4 CROSS EXAMINATION

5 VICK MEETZE BY MR. JOHNSON:

6 Q. Mr. Meetz, besides that address and phone number, do
7 you have any other contact information from Mr. Cooper?

8 A. If you'll beg my pardon. Let's see.

9 The address that is on the bond paperwork that he was
10 given after a bond was set indicates [REDACTED]. It
11 also has - it's got a different phone number as well which
12 we might have had. That phone number is [REDACTED], so
13 we also had that phone number.

14 But the address on the bond paperwork is the same as
15 the address that we had been sending him letters notifying
16 him of court. And I will say that some letters previous to
17 the February term of court had been returned to us. I
18 don't see where that one was returned, but there were
19 letters that we had sent Mr. Cooper that were returned.

20 Q. That's that Columbia address?

21 A. Yes, sir.

22 Q. And the Columbia area code?

23 A. 803.

24 Q. And typically in your practice, does your client give
25 you information? Are they supposed to keep you up to date

VICK MEETZE: BY MR. JOHNSON

-22-

1 with their contact information?

2 A. They are.

3 Q. And were you provided any contact information from Mr.
4 Cooper concerning a New York address?

5 A. No, sir. Not that I remember and not that's
6 documented in the file.

7 Q. Mr. Cooper as he testified and showed up for a few
8 role calls. What typically occurs at a roll call? Is he
9 told to come back the next term?

10 A. Well, you have initial appearances which everyone
11 arrested during a specific period of time is given a date
12 to show up then and then subsequent to that - at that time
13 the way it was done, they had what would be called a bond
14 returnable date and those two dates would be given at the
15 time their bond was set or when they initially appeared
16 before a magistrate.

17 The initial appearance at the time was not during the
18 General Sessions term of court but the bond returnable date
19 would have been during a term of General Sessions court
20 back then. So that second date would have been the first
21 time he would have actually been required to appear in
22 General Sessions. And certainly his bond paperwork does
23 indicate that when he was to first appear in General
24 Sessions court and to appear each subsequent term of court
25 until his case is disposed of. The solicitor's office

VICK MEETZE: BY MR. JOHNSON

-23-

1 would also put out a docket of everybody that was suppose
2 to appear and when our clients would appear on that docket,
3 they would get letters notifying them of that.

4 Q. So once you had the trial docket, you would have sent
5 out a letter saying this is your trial date, you need to
6 appear?

7 A. Correct. Or it wouldn't have necessarily said they're
8 calling your case to trial but it would just say the
9 solicitor's office has notified us that you are required to
10 appear in General Sessions court for the term beginning
11 such and such of date and was certainly notified that they
12 had to be there.

13 Q. And in that letter, would the solicitor also say or
14 state that if you do not show up you will be tried in your
15 absence?

16 A. Well, the bond paperwork does indicate that. Our
17 letter would say, "I've been informed by the York County
18 Solicitor's Office that you are required to be in General
19 Sessions court on Monday, February 13th, 2006 at 8:30 a.m.
20 at the Moss Justice Center on Highway 5. You must remain
21 at the Moss Justice Center until you are excused by your
22 attorney and the solicitor prosecuting your case. If you
23 fail to appear or if you leave without permission, a bench
24 warrant will be issued, your bond will be forfeited and you
25 will be arrested and placed in jail until the call and

VICK MEETZE: BY MR. JOHNSON

-24-

1 disposition of your case.

2 To prepare for court, you must meet with me on
3 February the 8th, 2006 at 10:00 a.m. in our office. Our
4 office is also the Moss Justice Center on Highway 5 in
5 York, South Carolina. We are located on the first floor.
6 You must be keep this appointment. Please do not be late.
7 Please be aware that if you fail to appear at any time,
8 that your case is subject to being called, your trial could
9 proceed without you being present. You could be convicted
10 in your absence and sentenced accordingly. I look forward
11 to speaking with you at your appointment. Sincerely, Vick
12 Meetz."

13 Q. May I see that letter, Mr. Meetz.

14 MR. JOHNSON: If I could have this marked as
15 Respondent's One.

16 I'll get a copy of this.

17 Introduce this into evidence, Your Honor.

18 (WHEREUPON: RESPONDENT'S EXHIBIT NUMBER ONE,
19 PREMARKED FOR IDENTIFICATION.)

20 MR. JOHNSON: Thank you, ma'am.

21 Charles, have you seen this?

22 (MR. BROOKS REVIEWING DOCUMENT.)

23 MR. JOHNSON: Introduce this into evidence, Your
24 Honor.

25 THE COURT: Any objection, Mr. Brooks?

VICK MEETZE: BY MR. JOHNSON

-25-

1 MR. BROOKS: No objection.

2 THE COURT: In without objection.

3 (WHEREUPON: RESPONDENT'S EXHIBIT NUMBER ONE,
4 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

5 BY MR. JOHNSON:

6 Q. Mr. Meetz, you would have sent that letter to the
7 contact address that Mr. Cooper would have provided?

8 A. Yes, sir. Yes, that's right.

9 Q. And did he show up to that meeting?

10 A. No, sir.

11 MR. JOHNSON: That's all the questions I have, Your
12 Honor.

13 THE COURT: Redirect?

14 MR. BROOKS: No questions, Judge.

15 THE COURT: You can step down and be excused. We
16 appreciate your time.

17 MR. MEETZE: Thank you, Your Honor.

18 (WITNESS LEAVING WITNESS STAND.)

19 THE COURT: Call your next witness.

20 MR. BROOKS: Judge, we have no other witnesses but I
21 will tell the court that my client's position is that he
22 did not get that letter. I didn't want to call him back up
23 to the stand just to answer that question. I just wanted
24 to put that on the record for the Court.

25 THE COURT: The State have any witnesses?

GARY LEMEL: BY MR. JOHNSON

-26-

1 MR. JOHNSON: Just one second, Your Honor.

2 We call Gary Lamel to the stand.

3 (WHEREUPON: GARY LEMEL,
4 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

5 MR. JOHNSON: Mr. Barrowclough may be excused.

6 THE COURT: Okay.

7 (ATTORNEY B.J. BARROWCLOUGH LEAVING COURTROOM.)

8 DIRECT EXAMINATION

9 GARY LEMEL BY MR. JOHNSON:

10 Q. Mr. Lamel, can you explain a little bit about how you
11 became involved in this case?

12 A. Once the case was indicated that it was going to be
13 a trial, it was the practice of the public defender's
14 office, that I was employed by at that point in time, to
15 try to whenever possible have an assistant attorney
16 assigned to help the primary attorney on the case. In this
17 case, Mr. Meetz was the primary attorney and so when the
18 case was coming up for trial, he asked me based upon my
19 schedule would I be available to assist him with that. I
20 told him I would be happy to assist him with it and that's
21 how I became involved with the case.

22 Q. And what role did you play in the trial itself?

23 A. Primarily at trial, I handled the suppression issue
24 that came up. Basically in reviewing the case, it's always
25 difficult when you're confronted with a trial in the absent

GARY LEMEL: BY MR. JOHNSON

-27-

1 and so we attempted to look at - I mean, cover every thing
2 we could as part of reviewing the file. I indicated to Mr.
3 Meetz that I thought that there was at least a arguable
4 suppression motion and he asked me would I mind handling
5 that and I told him I'd be happy to do so, so that was my
6 primary role. As a secondary role, I assisted him by
7 taking notes, reviewing the testimony, with him in
8 preparation for closing arguments and just being another
9 set of eyes and ears present in the case that day.

10 Q. And concerning the suppression motion, what would you
11 have reviewed and/or researched to prepare yourself for
12 that motion?

13 A. I don't have - six, seven years ago. I don't have an
14 independent recollection what was on the venue, but I know
15 from looking at what we handled in pretrial, that I had
16 seen the video before we walked into court that day because
17 the questions that I asked as part of the suppression
18 motion, most of those related to what was on the video.

19 As a matter of fact, when there was some times when
20 the officer had some trouble remembering what was going on,
21 I specifically referred to the fact of, well on the video
22 this is what we see. Do you want to see the video to
23 remind yourself of what was happening? So I can tell from
24 how I prepared for that pretrial motion in terms of the
25 questions that I had available to me and in terms of how I

GARY LEMEL: BY MR. JOHNSON

-28-

1 handled the actual argument and the motion that I had seen
2 the video a head of time so I can stay that was probably
3 the first thing that I looked at.

4 And then the other thing that I would have had
5 available to me would have been the other discovery that
6 was provided by the state, the Incident Report and General
7 Sessions Case Summary.

8 Q. And would you have reviewed the relevant case law at
9 the time?

10 A. Yes.

11 Q. And that case law was a little bit different than it
12 is today?

13 A. Yes. In looking back I almost wish that it had been a
14 few years further down the road because there have been
15 some cases that have come out from the Fourth Circuit
16 addressing the - limiting the ability of an officer to
17 search incident to arrest, which is primarily what we had
18 in this case that I think would have been very helpful to
19 Mr. Cooper if those decisions had been rendered at the time
20 we were having his hearing. Unfortunately, they were not.

21 Q. So you made your supersession motion based on the
22 evidence in the case and the case law at the time?

23 A. Correct.

24 Q. And your experience as a defense attorney?

25 A. Correct, and cited the cases to the court at the time

GARY LEMEL: BY MR. JOHNSON

-29-

1 and provided copies to the court at that time.

2 Q. But ultimately that was not successful?

3 A. Ultimately the judge was not in agreement with my
4 position on that and made it clear pretty quickly that he
5 was not.

6 Q. And counsel and Mr. Cooper have brought up that you
7 did not argue suppression motion based on the police
8 intruding into the car?

9 A. That is correct. That was not the basis of my
10 argument. My argument was that because he had already been
11 placed under arrest, was already in handcuffs before the
12 search of the remainder of the vehicle took place, that
13 there was no basis for that search to proceed and that they
14 did not have probable cause to intrude into the particular
15 container that the drugs were ultimately found in.

16 So as the testimony came out during the trial, the
17 officer basically said the first thing he noticed was the
18 Hi Times magazine. That's what sort of raised his
19 awareness. And that he saw in plain sight that there was
20 marijuana in a cup holder and that's what he placed Mr.
21 Cooper under arrest for.

22 He also said that basically because he had seen that,
23 he had enough evidence to -- that he felt that gave him
24 probable cause to search just based on the fact that he had
25 seen that marijuana. That was enough for him. And that

GARY LEMEL: BY MR. JOHNSON
BY MR. BROOKS

-30-

1 was what our argument was about.

2 The intrusion, I don't recall the extent of the
3 intrusion. Like I said, I don't have an independent
4 recollection of the video so I can't say how far in the
5 window somebody leaned. I don't know what our - Well, at
6 the time that I was watching the video, that did not occur
7 to me as being sufficient; I thought that would be a
8 successful argument so that was not what I based my
9 suppression motion on.

10 Q. And had that been an issue, would you have brought it
11 to the court's attention?

12 A. Ideally, yes I would have. Obviously I did not feel
13 that it was at that time.

14 MR. JOHNSON: That's all the questions I have. Thank
15 you, Mr. Lamel.

16 CROSS EXAMINATION

17 GARY LEMEL BY MR. BROOKS:

18 Q. Mr. Lamel, did you have any contact with Mr. Cooper?

19 A. No, sir. I had none.

20 Q. These cases that subsequently came out after Mr.
21 Cooper's case, they would have benefitted him greatly; is
22 that correct?

23 A. I think it would have made the legal position that I
24 was taking much stronger. Yes.

25 Q. Okay. All right.

1 MR. BROOKS: No other questions, Judge.

2 THE COURT: Anything else?

3 MR. JOHNSON: No, your Honor.

4 THE COURT: You can step down. Thank you. And be
5 excused.

6 (WITNESS LEAVING WITNESS STAND.)

7 THE COURT: The State have any further witnesses?

8 MR. JOHNSON: No, your Honor.

9 THE COURT: Anything else from the defense? I mean the
10 applicant.

11 MR. BROOKS: No, sir other than what we've put on the
12 record today.

13 THE COURT: We'll take it under advisement.

14 MR. BROOKS: Thank you, Judge.

15 THE COURT: Thank you. We'll take a break...

16 (END OF TRANSCRIPT OF RECORD.)

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for 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 evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 16th day of May, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson

Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 8-12 / 2013

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Duval M. Cooper, #340970,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
Case No.: 2012-CP-46-3203

ORDER

FILED-RECEIVED
2013 JUN 24 PM 4:12
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

Applicant filed his application for Post-Conviction Relief (PCR) on September 7, 2011. The case was heard by the undersigned on the 16th day of May 2013. The State of South Carolina was represented by J. Rutledge Johnson, Esquire, and the Applicant was represented by Charles Brooks, Esquire.

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the September 2005 term of the York County Grand Jury for Trafficking Heroin (2005-GS-46-3486) and Trafficking Methamphetamine (2005-GS-46-3486). The Applicant was represented by Vick Meetze, Esq. On February 15-16, 2006, the Applicant proceeded to a jury trial *in absentia* pursuant to which he was found guilty of both charges as indicted. The sentence was sealed. On May 20, 2010, the sentence was unsealed and the Honorable Lee S. Alford sentenced the Applicant to confinement for twenty-five (25) years for each charge to run concurrently.

je H #1

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Cooper, Op. No. 2012-UP-465 (filed August 1, 2012). The Remittitur was issued on August 21, 2012.

II.

In his application for post-conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of trial counsel"
 - a. "many instances"
2. "Ineffective Assistance of Appellate Counsel (No rehearing or cert filed)"
3. "Trial Court error of law"

III.

A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 227 S.C. 610, 524 S.E.2d 833 (1999). As with a claim of ineffective assistance of trial counsel, the Applicant bears the burden of proving ineffective assistance of appellate counsel.

At Applicant's PCR hearing, his only mention of any error of Appeal counsel was that Appeal counsel could have raised the suppression issue mentioned above, more specifically, the issue of the arresting officer leaning into Applicant's vehicle at the time of the stop.¹ Applicant presented no case law or testimony which would support the trial judge's ruling on the suppression motion being in error. The Court cannot pass judgment on a prior ruling by another circuit court judge. Therefore, without more than an allegation, this Court cannot, by finding an appealable issue as to the "second issue" assess appellate counsel's approach to Applicant's

¹ There was no testimony offered by others who had the opportunity to view the tape that the arresting officer leaned into the car at the time Applicant was stopped.

JEH #2

appeal. The Court finds that Applicant failed to meet his burden; therefore, the Court will not consider ineffective assistance of Appeal counsel when determining whether or not to grant Applicant's PCR.

VI.

The Applicant also alleges trial court error. This allegation raises a direct appeal issue that is procedurally 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). As stated above, this Court cannot assess another circuit court judge's ruling. Additionally, 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). The alleged trial court errors were not raised at trial or on appeal and are waived. This allegation as a ground for relief is without merit.

V.

Where ineffective assistance of trial counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Je 7/4/3

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Duval Cooper (Applicant) took the stand first on his own behalf. Applicant testified that he was not present at his trial and that he was not given notice of his trial date. Applicant testified that he met with Vick Meetze (trial counsel) and supplied his contact information. Applicant testified that he did receive calls from trial counsel but received none regarding his trial date.

The Court questioned the delay in the PCR, and it was explained to the Court that, while Applicant was found guilty on February 16, 2006, he was not sentenced until March 20, 2010, after having been arrested in the state of New York on January 6, 2010.

Applicant testified that it was not until his arrest on January 6, 2010 that he learned the trial on the charges in question had already taken place. Applicant testified that, prior to the time of his arrest, he had never been to Rock Hill, SC and that he was passing through. Applicant testified that he believed the outcome of the trial would have been different had he been there to testify. Applicant testified that trial counsel should have gotten the drugs found in the car suppressed as evidence, as the arresting officer only saw the marijuana, blunt clip, and "High

Times" magazine after improperly leaning inside of the car. The police officer's viewing such evidence lead to the search of the vehicle, which produced the evidence for the charges in question.

Applicant testified that he told trial counsel that his life was being threatened, but trial counsel never followed up or contacted law enforcement. Applicant testified that he told trial counsel that the owner of the drugs found in the car was the person who paid his bond.

Applicant testified that trial counsel failed to have his indictment quashed. Applicant testified that the other person in the car with him was able to work out a deal with the prosecutor by testifying and that he had offered to give police information on a homicide, but trial counsel was unable to make a deal for Applicant.

On cross-examination, Applicant testified that he did not appear in court because his life was being threatened by people in New York, but he did return to New York after the arrest in question where Applicant has prior drug charges. Applicant testified that those in New York threatening his life also had ties to South Carolina and the Rock Hill area. Applicant testified that his co-defendant, the passenger in the car, had nothing to do with the presence of the drugs in the car.

Applicant then called trial counsel, Mr. Meetze, to the stand to testify. Trial counsel testified that he was appointed to represent Applicant in his trial and that he had no recollection of telling Applicant when his case was coming up for trial. Trial counsel testified, however, to sending a letter regarding a meeting and the trial term to Applicant's Columbia, SC address that he had on file, as well as several letters prior, and none of which were returned. Trial counsel testified that he did convey an offer by the solicitor of fifteen (15) years to Applicant, which Applicant refused. Trial counsel testified that Applicant stopped appearing in court. Trial

JCH #5

counsel testified that the Columbia address was the only physical address he had for Applicant, and he also had an alternate telephone number for Applicant with an 803 area code. Trial counsel testified that he had no recollection of Applicant telling him about any information he had concerning a homicide, and he testified that he did not make a motion to quash the indictment.

Concerning the search of the vehicle, trial counsel testified that, as he understood it, there was no argument of invasion; rather, based on the incident report, it was his understanding that the marijuana, magazine, and blunt clip were in plain view of the officer. Trial counsel did, however, argue for suppression of the evidence. Trial counsel testified that he does not recall having the video recording of the stop, but that he was sure he did review the video at one time.

The State called attorney Gary Lemel (assistant counsel) to testify. Assistant counsel testified that, at the time of Applicant's trial, he was employed by the York County Public Defender's office and that, at the time of Applicant's trial, it was common practice for trial counsel to bring on an assistant to help with a trial. Assistant counsel testified that this was the nature of his association with Applicant's trial. Assistant counsel testified that he handled the motion for suppression of the evidence and while he testified to having no independent recollection of the video of the stop, assistance counsel testified that he knew he had seen the video to argue the motion. Assistant counsel testified that the basis of his argument was that the police officer had no right to search the container under the case law at the time, but the presiding judge was not in agreement. Assistant counsel testified that he understood that the marijuana and blunt clip were in plain view and that he did not see intrusion as an issue at the time of the trial. Assistant counsel testified that case law issued subsequent to Applicant's trial would have made the suppression argument much stronger.

jc H #6

The record reflects that prior to the commencement of Applicant's trial, trial counsel gave a brief history of his contact with Applicant prior to trial. Some of which differs slightly from how trial counsel remembered the events, as far as mailings and phone calls, at Applicant's PCR hearing. Trial counsel informed the Court that Applicant did not have specific information that his case would be called for trial on the day that is was, in fact, called. (TR p. 4, LL 15-17). Trial counsel let the Court know that letters had been sent to Applicant and that many times they would come back, but Applicant would always show up when he was supposed to be in attendance or ask to reschedule. (TR p. 4, LL 22-25 – TR p. 5, LL 1-2). The record reflects that trial counsel presented to the Court that his client, Applicant, was told that he had until the January 3, 2006 term of court to accept the State's offer or Applicant's case would be called during that term. (TR p. 5, LL 8-11). Applicant did not accept the offer, and the case was placed on the docket for the January 3rd term of court. (TR p. 5, 11-15). The Solicitor was unable to call the case to trial that week, and Applicant had a death in his family which he conveyed to trial counsel and kept in contact with him about upcoming dates. (TR p. 5, LL 13-18).

The record reflects that trial counsel's last conversation with Applicant was sometime in mid-January prior to the January 30th term, and trial counsel told the Court that Applicant understood that his case could be called as early as January 30, 2006. (TR p. 5, LL 20-25). Trial counsel relayed to the Court at the time of the trial that he had not been able to or made any efforts to contact Applicant since the January 30th term, as Applicant had failed to show up to court during all terms leading up to the date Applicant's case was called to trial. (TR p. 6, LL 2-5). Trial counsel further presented and reiterated to the court, as reflected in the record, that the telephone numbers left with court officials and investigators at check-in were out-of-service or disconnected numbers, Applicant failed to provide alternate contact information when requested

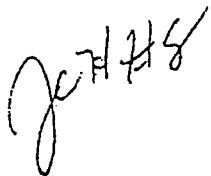
7 Jc H 47

with trial counsel's receptionist, and letters sent to Applicant's address that he provided were being returned as undeliverable. (TR p. 6, LL 13-20).

The record reflects that the Solicitor pointed out to the Court that, "Mr. Cooper did sign the bond paperwork which has the language after September 6, 2005, which was his bond returnable date, he shall appear or could be tried in his absence if he failed to appear before." (TR p. 6, LL 21-25). Trial counsel told the Court that he had not contacted Applicant's bondsman to see if he had located Applicant. (TR p. 7, LL 1-9). The Court suggested proceeding with voir dire and contacting the Applicant's bondsman to see if Applicant could be located overnight. (TR p. 7, LL 10-20). The Court then instructed bailiff, Howard Long, to announce Applicant's name three (3) times outside of the courtroom. Mr. Long did as instructed, as well as going outside of Moss Justice Center to announce Applicant's name, and there was no response. (TR p. 8, LL 2-14). The record reflects that the following day, trial counsel let the Court know that he had spoken to the bondsman and that they were searching for Applicant. (TR p. 32, LL 2-3). Being unable to locate Applicant, the case commenced with pre-trial motions in his absence.

Although trial counsel could not remember at the time of Applicant's PCR hearing, it is clear from the record that trial counsel viewed the video of the stop in question prior to Applicant's trial and vigorously argued his Jackson v. Denno motion based on his viewing of the video. (TR p. 35, LL 2-25 – TR p. 37, LL 1-15). Assistant counsel viewed the video as well, and the Court finds that assistant counsel vigorously and competently argued the motion for suppression of the contraband found as a product of the search incident to Applicant's arrest.

The Court finds that Applicant's trial counsel was effective in the defense of Applicant. While our Court of Appeals has found that the failure to move for a continuation of the case and



failure to object to the trial moving forward without the presence of the defendant is grounds for ineffective assistance of counsel in relation to a PCR hearing, the Court finds that this case differs greatly from the facts of Morris v. South Carolina, 371 S.C. 278, 639 S.E. 2d 53 (2006). Here, Applicant did not show for court at all in the weeks leading up to his case being called for trial, and, unlike Morris, there was no direction from Applicant to defense counsel to move for a continuance. Applicant, in his failure to maintain contact with trial counsel, gave no indication to counsel that, should a continuation be granted, he would make himself available to attend his trial. While speculation of how another circuit judge would rule if presented with an issue is outside the purview of this Court, the Court finds that there does not appear to be any meritorious grounds to support a motion for continuance, and, if requested, a motion for continuance would have likely been denied by the trial court. The Court finds that trial counsel was not deficient in his representation of Applicant at trial and that his representation of Applicant was reasonable under the circumstances and thus, effective.

The Court finds, however, that even if trial counsel was deficient in representation of Applicant, Applicant was not prejudiced by Trial counsel's ineffective assistance. The Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of trial; however, a case may be tried in an accused's absence should the he waive that right. See State v. Fairey, 374 S.C. 92, 99, 646 S.E.2d 445, 448 (Ct.App.2007). Where a court finds that an accused has received notice of his right to be present at trial and where a court finds the accused was warned that trial would proceed in his absence, an accused's right to be present at trial may be waived. State v. Ravenell, 387 S.C. 449, 456, 692 S.E.2d 554, 558, citing Rule 16, SCRCrimP. The trial transcript shows that Applicant was aware of his right to be

Je H #9

Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed
with prejudice.

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge
6/17/13


June 17, 2013
York, South Carolina